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Vol. 56 No. 81

federal register

Friday
April 26, 1991

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6279 of April 23, 1991

Mother's Day, 1991

By the President of the United States of America

A Proclamation

The beloved American humorist, Will Rogers, once said, "Mothers are the only race of people that speak the same tongue. A mother in Manchuria could converse with a mother in Nebraska and never miss a word." It was a remark made with the wry, good-natured wit that was Rogers' trademark. Yet beneath his lighthearted humor was a telling observation about human nature—and about the nature of motherhood in particular.

The language of motherhood is indeed universal. It is the language of unconditional love, spoken throughout history by mothers of every race and every walk of life. Expressed most often through acts of selflessness and generosity, that great love can be read in a mother's eyes, which reveal untold depths of tenderness, worry, and pride in her children. It can be heard in her voice as she soothes a crying infant, as she gives instruction and encouragement to an older child, and as she inquires about the well-being of the young adult who has ventured out on his or her own. Most of all, that great love is communicated by example.

In the silent language of motherhood, any two mothers may offer each other empathy and reassurance just by exchanging a knowing glance or smile. Yet while the language of motherhood is universal, it is also profoundly intimate, as personal and mysterious as the bond between a woman and the child she has carried in her womb. We seldom understand the depth of a parent's love until we have youngsters of our own—then our mother's lessons and example speak to us with renewed clarity and meaning. Indeed, her words often echo in our hearts as we rear our own children and experience for ourselves the singular joys, frustrations, and concerns that have always been a part of parenting. As we advance in years, we also begin to recognize the extent of our mother's influence upon our character and conduct; reflecting on her many gifts to us—from her firm moral guidance and discipline to her patience and forgiveness—we begin to comprehend the truth that led Abraham Lincoln to declare: "No man is poor who has had a godly mother."

With love of untold strength, mothers nourish and enrich the lives of their children and fortify the tender bonds of family life. In so doing, they also strengthen our communities and Nation. Thus, on this occasion, we gratefully honor all those women who, by virtue of giving birth or through adoption or marriage, are mothers.

On this day especially and on every day of the year, let us convey through word and deed our love for our mothers and our appreciation for all that they have given us. Whether we share those heartfelt sentiments in person, across the miles, or through loving memory, we cannot say too often: "Thanks, Mom, for everything."

In grateful recognition of the contributions that mothers make to their families and to the Nation, the Congress, by a joint resolution approved May 8, 1914 (38 Stat. 770), has designated the second Sunday in May each year as "Mother's Day" and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim that Sunday, May 12, 1991, be observed as Mother's Day. I urge all Americans to express their love and respect for their mothers on this day; to reflect upon the importance of motherhood to our families and Nation; and to ask for God's blessing upon both. I also direct Federal officials to display the flag of the United States on all Federal buildings, and I encourage all citizens to display the flag at their homes and other suitable places on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this 23 day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-10079
Filed 4-24-91; 2:28 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 56, No. 81
Friday, April 26, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1944

Self-Help Technical Assistance Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; technical amendments.

SUMMARY: The Farmers Home Administration (FmHA) corrects a final rule published October 16, 1990 (55 FR 41826). In this final rule several words were incorrectly used in the text of 7 CFR part 1944, subpart I. The intent of this action is to correct these errors.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Betsy McDaniel, Senior Loan Specialist, Special Program Branch, Single Family Housing Processing Division, USDA/FmHA, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 475-4209.

SUPPLEMENTARY INFORMATION:

List of Subjects in 7 CFR Part 1944

Grant programs—Housing and community development, Rural housing, Reporting requirements, Nonprofit organizations.

7 CFR part 1944 is amended as follows:

PART 1944—HOUSING

1. The authority for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

§ 1944.407 [Amended]

2. In § 1944.407(a), the phrase "cost equivalent per unit" is changed to "cost per equivalent unit".

§ 1944.411 [Amended]

3. In § 1944.411(d), the reference to "Form FmHA 400-1, 'Equal Opportunity Agreement' " is replaced by "Form FmHA 400-4, 'Assurance Agreement' ".

4. In § 1944.411(f), the word "Constitutional" is replaced by "Construction".

§ 1944.417 [Amended]

5. In § 1944.417(b) introductory text, the reference to "Exhibit C" is replaced by "Exhibit B".

§ 1944.422 [Amended]

6. In § 1944.422 introductory text, the word "biannually" is replaced by "biennially".

Dated: March 22, 1991.

La Verne Ausmann,

Administrator, Farmers Home Administration.

[FR Doc. 91-9684 Filed 4-25-91; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 21, and 73

RIN 3150-AD88

Change in Commercial Telephone Number for Region V

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to indicate a change in the commercial telephone number for the NRC's Region V Office located in Walnut Creek, California. These amendments are necessary to inform the public of these administrative changes to NRC regulations.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7086.

SUPPLEMENTARY INFORMATION: The commercial telephone number for the NRC's Region V Office has been changed, effective immediately. This notice is being published to inform the public of the change in the commercial telephone number.

Because these amendments deal with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature concerning a change in a telephone number.

Environmental Impact: Categorical Exclusion

The NRC has determined that this rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

List of Subjects

10 CFR Part 20

Byproduct material, Criminal penalty, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalty, Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plant and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 20, 21, and 73.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). * * *

Appendix D [Amended]

2. In Appendix D to part 20, in the third column, the commercial telephone number for the NRC Region V Office (Walnut Creek, CA) is revised from "(415) 943-3700" to "(415) 975-0200". The FTS number "(FTS) 463-3700" should be removed.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

3. The authority citation for part 21 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). * * *

§ 21.2 [Amended]

4. In footnote 1 to § 21.2, the commercial telephone number for the NRC Region V Office (San Francisco) is revised from "(415) 943-3700" to (415) 975-0200".

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

5. The authority citation for part 73 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). * * *

Appendix A [Amended]

6. In appendix A to part 73, the commercial telephone number for the NRC Region V Office (Walnut Creek, CA) is revised from "(415) 943-3700" to (415) 975-0200". The FTS number "(FTS) 463-3700" should be removed.

Dated at Rockville, Maryland, this 15 day of April, 1991.

For the Nuclear Regulatory Commission.

James L. Blaha,

Acting Executive Director for Operations.

[FR Doc. 91-9792 Filed 4-25-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-293-AD; Amdt. 39-6985]

Airworthiness Directives; Aerospatiale Model ATR42-300 and ATR42-320 Series Airplanes

AGENCY: Fedeal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42-300 and ATR42-320 series airplanes, which requires the installation of a reinforcing plate on Stringer 14 at Frame 25. This amendment is prompted by fatigue testing by the manufacturer which has identified fatigue damage in the landing gear bay area in line with Frame 25 and Stringer 15. This condition, if not corrected, could result in collapse of the main landing gear.

EFFECTIVE DATE: June 3, 1991.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lium, Standardization Branch, ANM-113; telephone (206) 227-1112. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Aerospatiale Model ATR42-300 and ATR42-320 series airplanes, which would require the installation of a reinforcing plate on Stringer 14 at Frame 25, was published in the **Federal Register** on February 1, 1991 (56 FR 3983).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting request for approval of alternative methods of compliance.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

It is estimated that 56 airplanes of U.S. registry will be affected by this AD, that it will take approximately 80 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $246,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR42-300 and ATR42-320 series airplanes, Serial Numbers 3 though 151, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent collapse of the main landing gear, accomplish the following:

A. Prior to the accumulation of 10,000 landings, or within 30 days after the effective date of this Ad, whichever occurs later, install a reinforcing plate on Stringer 14 at Frame 25, in accordance with Aerospatiale Service Bulletin ATR42-53-0043, Revision 3, dated October 30, 1990.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective June 3, 1991.

Issued in Renton, Washington, on April 16, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-9925 Filed 4-25-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-251-AD; Amdt. 39-6984]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Boeing Model 737-300 and -400 series airplanes, which currently requires the inspection of the left and right outboard flap inboard track forward support fitting attach nuts and bolts for proper installation, and the replacement, if necessary, of titanium bolts and aluminum nuts with steel parts. This condition, if not corrected, could result in separation of the outboard flap from the airplane, which could adversely affect controllability. This action adds eight airplanes to the applicability of the rule. This amendment is prompted by information from the manufacturer which indicated that additional airplanes were not inspected for the proper nuts before they left the factory.

EFFECTIVE DATE: June 3, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington, 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rodriguez, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2779. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-14-04, Amendment 39-6643 (55 FR 26425, June 28, 1990), applicable to Boeing Model 737 series airplanes, to require inspection of the left and right outboard flap inboard track forward support fitting attach nuts and bolts and the replacement, if necessary, of titanium bolts and aluminum nuts with steel parts on eight additional airplanes, was published in the **Federal Register** on December 19, 1990 (55 FR 52052).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supported the rule as proposed.

The Air Transport Association (ATA) of America commented on behalf of its members. One member operator requested that the compliance time be extended because, as proposed, it would impose a heavy economic burden on this operator's daily operation and would result in scheduling disruptions. This operator also noted that the compliance time should be consistent with AD 90-24-04, Amendment 39-6809 (55 FR 47846, November 16, 1990), which requires inspection for improper bolts in the same area. The FAA does not concur. The compliance time determined by the FAA is not based on any individual operator's scheduling convenience, but on the safety impact to the flying public. Furthermore, the compliance time for AD 90-24-04 was based on a failure rate of H-11 bolts that may have been installed in the outboard flap inboard track support fitting. The compliance time for this amendment was based on a determination that the titanium bolts and aluminum nuts installed in the outboard flap inboard track support fitting have an understrength problem.

Another member requested that the proposed rule be clarified to indicate that the BACB30US( ) bolts, listed in the NPRM, are made of Inconel, and are an acceptable bolt replacement for the A286 CRES Steel bolt. The FAA concurs and the final rule has been clarified accordingly.

The ATA requested that the proposed rule should amend, not supersede, the existing AD. The ATA stated that the supersedure would not serve any useful purpose since no additional work is required for the airplanes already modified in accordance with the existing AD; supersedure will require operators now in compliance with AD 90-14-04 to change their paperwork to reflect the new AD number. The FAA does not concur. The FAA's policy in this regard is that when an AD requires a substantive change in its applicability, inspection requirements, method of compliance, etc., the "old" AD is to be superseded by being removed from the system and a new AD added. The FAA considers that adding airplanes to the applicability constitutes a substantive change.

Paragraph G. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 770 Model 737-300 and -400 series airplanes of the affected design in the worldwide fleet. It is estimated that 347 airplanes of U.S. registry, including the additional 4 airplanes addressed in this action, will be affected by this AD, that it will take approximately 57 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,087,845; the total cost impact of this AD, relative to the 4 airplanes added to the applicability of the rule, is estimated to be $12,540.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6643 (55 FR 26425, June 28, 1990), AD 90-14-04, with the following new airworthiness directive:

Boeing: Applies to Model 737-300 and -400 series airplanes, line numbers 1001 through 1769 and 1771, as listed in Boeing Alert Service Bulletin 737-57A1202, Revision 1, dated April 26, 1990, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent separation of the outboard flap from the airplane, accomplish the following:

A. For airplanes line numbers 1001 through 1762: Within the next 30 days after August 25, 1989 (the issuance date of Telegraphic AD T89-18-51), inspect the bolts used to secure the track forward support fitting of the inboard tracks to determine the bolt head designation.

B. If a bolt other than Boeing part numbers BACB30LE6 or BACB30LE7 (A286 CRES steel), or BACB30US6 or BACB30US7 (Inconel), is found installed as a result of the inspection required by paragraph A. of this AD, prior to further flight, replace it with a proper bolt and nut in accordance with Boeing Alert Service Bulletin 737-57A1202, dated August 24, 1989, or Revision 1, dated April 26, 1990.

C. For airplanes line numbers 1001 through 1762, within the next 1,500 cycles or 6 months after August 6, 1990 (the effective date of amendment 39-6643), whichever occurs first, visually or eddy current inspect the nuts used to secure the track forward support fitting of the inboard track to determine nut material, in accordance with Boeing Alert Service Bulletin 737-57A1202, dated August 24, 1989, or Revision 1, dated April 26, 1990.

Note: Inspection of the nuts must be accomplished even if the part numbers of the bolts were previously determined to be correct.

D. If a nut other than A286 CRES steel, Boeing part number BACN10HR, is found installed as a result of the inspection required by paragraph C. of this AD, prior to further flight, replace it with a proper nut in accordance with Boeing Alert Service Bulletin 737-57A1202, dated August 24, 1989, or Revision 1, dated April 26, 1990.

E. For airplanes line numbers 1763 through 1769 and 1771: Within the next 1,500 cycles or 6 months after the effective date of this Amendment, whichever occurs first, visually or eddy current inspect the nuts used to secure the track forward support fitting of the inboard track to determine the nut material, in accordance with Boeing Alert Service Bulletin 737-57A1202, dated August 24, 1989, or Revision 1, dated April 26, 1990.

F. If a nut other than A286 CRES steel, Boeing part number BACN10HR, is found installed as a result of the inspection required by paragraph E. of this AD, prior to further flight, replace it with a proper nut in accordance with Boeing Alert Service Bulletin 737-57A1202, dated August 24, 1989, or Revision 1, dated April 26, 1990.

G. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-6643, AD 90-14-04.

This amendment becomes effective June 3, 1991.

Issued in Renton, Washington, on April 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-9924 Filed 4-25-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ACE-18]

Designation of Transition Area; Monett, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700-foot transition area at Monett, Missouri, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Monett, Missouri, Municipal Airport, utilizing the Neosho VORTAC as a navigational aid.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On February 5, 1991, the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of part 71 of the Federal Aviation Regulations so as to designate a transition area at Monett, Missouri (56 FR 4584). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Except for editorial changes, this amendment is the same as that proposed in the Notice.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G, dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations designates a 700-foot transition area at Monett, Missouri. To enhance airport usage, a new instrument approach procedure is being developed for Monett Municipal Airport, Monett, Missouri, utilizing the Neosho VORTAC as a navigational aid. This navigational aid will offer new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Monett, Missouri, at and above 700 feet above ground level within which aircraft are provided air traffic control service. Transition areas are designed to contain instrument flight rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under IFR from other aircraft operating under visual flight rules (VFR). This action will change the airport status from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

[Airspace Docket No. 90-ACE-18]

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Monett, Missouri [Revised]

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of the Monett Municipal Airport (lat. 36°54'30"N., long. 90°01'00"W.); and within 2 miles each side of Neosho VORTAC 079° radial, extending from the 5-mile radius area to 8 miles west of the Monett Airport.

Issued in Kansas City, Missouri, on April 12, 1991.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 91-9919 Filed 4-25-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ACE-17]

Designation of Transition Area—Kingman, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700-foot transition area at Kingman, Kansas, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Kingman, Kansas, Municipal Airport, utilizing the Hutchinson VORTAC as a navigational aid.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On February 5, 1991, the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of part 71 of the Federal Aviation Regulations so as to designate a transition area at Kingman, Kansas (56 FR 4584). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Except for editorial changes, this amendment is the same as that proposed in the Notice.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G, dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations designates a 700-foot transition area at Kingman, Kansas. To enhance airport usage, a new instrument approach procedure is being developed for the Kingman Municipal Airport, Kingman, Kansas, utilizing the Hutchinson VORTAC as a navigational aid. This navigational aid will offer new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Kingman, Kansas, at and above 700 feet above ground level within which aircraft are provided air traffic control service. Transition areas are designed to contain instrument flight rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under IFR from other aircraft operating under visual flight rules (VFR). This action will change the airport status from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Kingman, Kansas

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of the Kingman Municipal Airport (lat. 37°40'00"N., long. 98°07'21"W.); and within 2.5 miles each side of the Hutchinson, Kansas VORTAC 204° radial, extending from the 5-mile radius area to 13 miles north of the Kingman Airport, excluding that airspace that overlies the Hutchinson, Kansas transition area.

Issued in Kansas City, Missouri, on April 8, 1991.

Billy G. Peacock,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 91-9929 Filed 4-25-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 28531; Amdt. No. 1450]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on April 12, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for part 97 continues to read as follows:

PART 97—[AMENDED]

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * **Effective July 25, 1991**

Zanesville, OH—Zanesville Muni, VOR/DME RWY 4, Amdt. 1, Cancelled
Zanesville, OH—Zanesville Muni, VOR RWY 4, Amdt. 8
Zanesville, OH—Zanesville Muni, VOR RWY 22, Amdt. 3
Zanesville, OH—Zanesville Muni, NDB-A, Amdt. 1

* * * **Effective June 27, 1991**

Beloit, WI—Beloit, VOR-A, Amdt. 5

* * * **Effective May 30, 1991**

Colorado Springs, CO—City of Colorado Springs Muni, NDB RWY 35, Amdt. 25
Colorado Springs, CO—City of Colorado Springs Muni, ILS RWY 17, Amdt. 4
Ft. Myers, FL—Page Field, VOR RWY 5, Amdt. 8, Cancelled
Ft. Myers, FL—Page Field, VOR RWY 13, Amdt. 7, Cancelled
New Smyrna Beach, FL—Massey Ranch Airpark, NDB RWY 12, Orig.
New Smyrna Beach, FL—NDB RWY 29, Amdt. 1
Ocean City, MD—Ocean City Muni, LOC RWY 14, Orig.
Motley, MN—Morey Fish House, VOR RWY 9, Amdt. 1, Cancelled
Dexter, MO—Dexter Muni, NDB RWY 36, Orig.
Osage Beach, MO—Linn Creek-Grand Glaize Meml, VOR RWY 32, Amdt. 4
Belmar/Farmingdale, NJ—Allaire, LOC/DME RWY 14, Orig.
Rock Hill, SC—Rock Hill Municipal/Bryant Field, VOR-A, Amdt. 8
Rock Hill, SC—Rock Hill Municipal/Bryant Field, VOR/DME-B, Amdt. 3
Big Spring, TX—Big Spring MC Mahon-Wrinkle, VOR/DME RWY 17, Amdt. 7
Big Spring, TX—Big Spring MC Mahon-Wrinkle, VOR/DME RWY 35, Amdt. 7
Tacoma, WA—Tacoma Narrows, ILS RWY 17, Amdt. 7
Tacoma, WA—Tacoma Narrows, NDB RWY 35, Amdt. 4

* * * **Effective May 2, 1991**

Keene, NH—Dillant-Hopkins, LOC RWY 2, Amdt. 2
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 18L, Amdt. 1

* * * **Effective April 9, 1991**

Orangeburg, SC—Orangeburg Muni, VOR RWY 5, Amdt. 3
Orangeburg, SC—Orangeburg Muni, NDB RWY 5, Amdt. 3

* * * **Effective April 5, 1991**

Birmingham, AL—Birmingham, ILS RWY 5, Amdt. 39

* * * **Effective April 4, 1991**

Lawrenceville, GA—Gwinnett County-Briscoe Field, NDB RWY 25, Amdt. 1
Lawrenceville, GA—Gwinnett County-Briscoe Field, VOR/DME RWY 7, Amdt. 1

* * * **Effective March 28, 1991**

Denver, CO—Front Range, NDB RWY 26, Amdt. 1

[FR Doc. 91-9922 Filed 4-25-91; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1211

Extraterrestrial Exposure

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is removing 14 CFR part 1211 since it has served its purpose and is no longer in keeping with current policy.

EFFECTIVE DATE: April 26, 1991.

ADDRESSES: Office of Space Science and Applications, Code S, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Kathryn S. Schmoll, 202-453-1410.

List of Subjects in 14 CFR Part 1211

Extraterrestrial exposure, Environmental protection, Security measures, Space transportation and exploration.

PART 1211—[REMOVED]

14 CFR part 1211 (consisting of §§ 1211.100 through 1211.105) is hereby removed and reserved.

Richard H. Truly,

Administrator.

[FR Doc. 91-9904 Filed 4-25-91; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 148

[T.D. No. 91-36]

Registration of Personal Effects To Be Taken Abroad

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The U.S. Customs Service is amending its regulations to permit distribution of blank copies of the Customs Registration Form used by travelers to register foreign-made articles which they are taking with them when they travel outside the United States. Prior to this amendment, travelers could not obtain blank copies of this form. Because all merchandise of foreign origin is subject to a Customs duty, travelers should register foreign-made goods with Customs before departing the United States. This will facilitate identification of the goods upon the traveler's return and exempt them from duty assessment. This amendment is being made to help eliminate delays and frustrations which are sometimes encountered when many travelers complete the form at an airport just prior to departure.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, Office of Inspection and Control, (202) 566-9425.

SUPPLEMENTARY INFORMATION:

Background

All merchandise of foreign origin imported into the United States is subject to a customs duty unless it has been specifically exempted from this duty. Under § 148.1(a), Customs Regulations (19 CFR 148.1(a)), any person, except a nonresident seaman, airman, or person engaged in similar employment, who intends to take effects

of foreign origin abroad may register such articles before departure from the United States in order to facilitate their identification on return to the United States. Only articles of foreign origin having serial numbers or other distinctive, permanently affixed unique markings can be registered.

Under § 148.1(b), travelers desiring to register articles of foreign origin must present the articles to a Customs officer and, at that time, complete a Customs Form 4457. After the Customs officer has examined the articles and verified their description, he will sign the form and return it to the applicant for presentation on return of the articles. A Customs Form 4455, "Certificate of Registration," could be required in instances when Customs Form 4457 will not adequately serve the purpose of registration.

In 1962, when Customs last revised its regulations governing the use of Customs Form 4457, there was concern that fraudulent use of the form could seriously jeopardize revenue collection. That was the rationale for the requirement that the traveler present the articles to be registered before being issued the form.

Customs has reevaluated that position, and has determined that Customs Form 4457 may now be made available to travelers upon their request in advance of their arrival at the Customs office. By permitting travelers to fill out Customs Form 4457 prior to their arrival at a Customs office, delays and frustrations encountered while travelers attempt to fill out the registration forms at the Customs offices will be eliminated, or at least, greatly reduced. The good will generated and savings in time and personnel requirements will significantly outweigh any potential for fraudulent use of the form. Travelers will still have to present both the properly prepared form and the articles being registered to the Customs officer in order to have the form validated. The form will have to be signed in the presence of the Customs officer. All other existing requirements regarding the registration of foreign made articles will remain unaffected by this amendment.

Travelers will be able to obtain a blank Customs Form 4457 and instructions for preparing the form by visiting, telephoning, or writing to any Customs office and requesting that a copy of the form be given or sent to them. It is also anticipated that travel agencies will obtain blank forms and instruction sets for their clients.

The Customs Service believes that this change will benefit both the traveling public and Customs by eliminating an unnecessary delay in the departure process for travelers, speeding processing for both travelers and Customs officers, and reducing the number of officers needed in the registration area.

Inapplicability of Notice and Delayed Effective Date

Because this amendment relaxes an administrative requirement, pursuant to section 553(b)(B) of the Administrative Procedure Act, no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is inappropriate.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 148

Customs duties and inspection, Imports, Personal declarations and exemptions.

Part 148, Customs Regulations (19 CFR part 148) is amended as set forth below:

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for part 148, Customs Regulations (19 CFR 148), continues to read as follows:

Authority: 19 U.S.C. 66, 1498, 1624. The provisions of this part, except for subpart C, are also issued under General Note 8, Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202;

* * * * *

2. Section 148.1 is amended by revising paragraph (b) to read as follows:

§ 148.1 Registration of effects to be taken abroad.

* * * * *

(b) *Procedures for registration.* Applicants for registration of articles of foreign origin shall present the articles, together with a completed, but unsigned, Customs Form 4457, which may be obtained in advance of departure, to a Customs officer. After the Customs officer has examined the articles and verified their description, he shall have the applicant sign the form. The Customs officer shall then sign the form and return it to the applicant for presentation on return of the articles. Customs form 4455 may be required in any case in which Customs form 4457 will not adequately serve the purpose of registration.

* * * * *

Approved: March 29, 1991.

Carol Hallett,

Commissioner of Customs.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 91-9627 Filed 4-25-91; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960-AC51

Supplemental Security Income for the Aged, Blind, and Disabled; Interim Assistance Provisions

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final regulations reflect changes in interim assistance policy resulting from section 9110 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, which amended section 1631(g) of the Social Security Act (the Act). This provision extends interim assistance reimbursement (IAR) to assistance provided by a State to an individual for a month or months the individual's supplemental security income (SSI) benefits and/or federally administered State supplementary payments are suspended or terminated, if it is determined subsequently that the individual was eligible for such benefits or payments for such months. These final regulations also clarify our policy to provide that a State may be reimbursed only on a prorated basis for assistance provided to an individual for the initial month of eligibility for SSI benefits and for the month his or her SSI benefits are reinstated after a period of suspension or termination. The effects of these final regulations are to increase State IAR in cases of reinstatement of SSI after suspension and to decrease State IAR in those cases of first eligibility where we prorate the IAR.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-8470.

SUPPLEMENTARY INFORMATION:

Provisions of the Regulations

Section 1631(g) of the Act, before amendment, authorized the Social Security Administration (SSA) to make the first payment of SSI benefits and/or State supplementary payments (including retroactive payments, if any) due an individual to a State or political subdivision as reimbursement for interim assistance furnished on behalf of the individual by the State if: The State had entered into an IAR agreement with SSA; the individual had signed an IAR authorization form approved by SSA and the State permitting such payment of benefits to the State; and the individual had received interim assistance during the period his or her SSI application was pending. Under these final regulations SSA, upon written authorization by an individual, will reimburse the State from the retroactive SSI benefits and/or State supplementary payments due the individual for interim assistance provided to the individual while the individual's SSI benefits and/or State supplementary payments were suspended or terminated, if it is determined subsequently that he or she was eligible for such benefits and/or payments for such month or months (the posteligibility period). Reimbursement will include only amounts payable for months for which an authorization is effective. A separate IAR authorization for each posteligibility period is required for this reimbursement to enable the SSA district or branch office to distinguish the posteligibility authorization from a prior authorization relating to the individual's initial claim.

In order to avoid confusion about what constitutes interim assistance for months when the SSI benefit is subject to proration, we have modified the definition of interim assistance in § 416.1982. The change makes it clear that interim assistance means assistance furnished by the State beginning with the day an individual applies and is eligible for SSI benefits, or with the day for which SSI eligibility is reinstated after a period of suspension or termination, rather than with the month for which his or her eligibility begins. Consequently, under this definition, the assistance amount payable by a State for a full month will be prorated to determine the amount of IAR in the same fashion as is the SSI benefit under § 416.421.

This clarification in our interim assistance policy will eliminate the ambiguity under which some States have not prorated the assistance amount payable for a full month for the month of initial eligibility or reeligibility for SSI benefits. While we recognize that this clarification may result in less reimbursement to those States that have not prorated interim assistance, we believe the legislative history of IAR reasonably indicates that Congress intended for States participating in IAR to be reimbursed only for assistance paid for periods that overlap the periods for which the SSI benefits subsequently are paid. (See 120 Cong. Rec. 20967-68 (1974).) Thus, our definition of interim assistance would require all participating IAR States, in determining their IAR, to prorate the assistance amount payable for a full month for the initial month of eligibility for SSI benefits as well as the month for which eligibility is reinstated after periods of suspension or termination. SSA follows the proration rules in § 416.421 to prorate SSI benefits and the States will prorate for reimbursement purposes in the same manner. Thus, under our policy, for the initial month of eligibility or reeligibility, States may be reimbursed for assistance provided individuals only for those days in the month for which it is determined subsequently that the individuals are eligible for SSI benefits.

Public Comments

These final regulations were published as a notice of proposed rulemaking (NPRM) on February 8, 1990 (55 FR 4438). The NPRM provided for a 60-day comment period. We received one comment on the NPRM from a city human resource administration. The following summarizes and responds to the comment.

Comment: The statute states that interim assistance begins with the month of application or with the first month for which terminated or suspended SSI benefits were reinstated. Thus, to prorate interim assistance by regulation conflicts with the statute.

Response: We do not agree that to prorate interim assistance conflicts with the statute. The legislative history of the interim assistance provision reveals that Congress intended States to reimburse themselves only for assistance payments they furnish for the period that overlaps the period for which SSI benefits are payable. Senator Long, then Chairman of the Senate Finance Committee, in his statements on the floor, explained that the interim assistance provisions would authorize the withholding from the initial SSI check, upon authorization by the individual, of "an amount sufficient to reimburse the State for any interim payments it may have made to him in lieu of SSI benefits for which he was eligible but which had not yet been processed." (120 Cong. Rec. 20,967-68 (1974)).

As a result of proration, SSI benefits for an initial month of eligibility or a month after a month or more of ineligibility are to be paid at a reduced rate proportionate to the number of days in the month that the individual is eligible for benefits. Thus, it would appear that properly reimbursable interim assistance should also be prorated since, consistent with legislative intent, such amount would appear to be the only assistance furnished by the State that would have been paid "in lieu of SSI benefits for which * * * (the individual) was eligible."

Accordingly, we are declining to withdraw the rules based on the commenter's belief that they conflict with the statute. We are adopting the rules as proposed.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under the terms of Executive Order 12291 because no additional program costs are contemplated, administrative costs are less than $1 million, and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These final regulations impose no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits; Public assistance programs, Supplemental Security Income.

Dated: December 5, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: March 27, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 416 of Chapter III of title 20 of the Code of Federal Regulations is amended as set forth below:

PART 416—[AMENDED]

1. The authority citation for subpart S of part 416 continues to read as follows:

Authority: Secs. 1102 and 1631 of the Social Security Act; 42 U.S.C. 1302 and 1383.

2. Section 416.1901 is amended by revising paragraph (a) to read as follows:

§ 416.1901 Scope of subpart S.

(a) *General.* This subpart explains that we may withhold your SSI benefit and/or State supplementary payments and send them to the State (or a political subdivision of the State) as repayment for interim assistance it gave you while your application for SSI was pending, or while your SSI benefits were suspended or terminated if you are subsequently found to have been eligible for such benefits. Before we will do this, the State must have entered into an interim assistance agreement with us authorizing such reimbursement, and you must have given written authorization for us to repay the State (or a political subdivision of the State).

* * * * *

3. Section 416.1902 is amended by revising the definitions of "Authorization", "Interim assistance", and "SSI benefit payment" to read as follows:

§ 416.1902 Definitions.

* * * * *

Authorization means your written permission, in a form legally acceptable to us and to the State from which you received interim assistance, for use to withhold the appropriate SSI benefit payment and send it to the State.

Interim assistance means assistance the State gives you, including payments made on your behalf to providers of goods or services, to meet basic needs, beginning with the day of the month you apply for SSI benefits and are eligible for them, and ending with, and including, the month your SSI benefit payments begin, or assistance the State gives you beginning with the day for which your eligibility for SSI benefits is reinstated after a period of suspension or termination and ending with, and including, the month the Secretary makes the first payment of benefits following the suspension or termination if it is determined subsequently that you were eligible for benefits during that period. It does not include assistance the State gives to or for any other person. If the State has prepared and cannot stop delivery of its last assistance payment to you when it receives your SSI benefit payment from us, that assistance payment is included as interim assistance to be reimbursed. Interim assistance does not include assistance payments financed wholly or partly with Federal funds.

SSI benefit payment means your Federal benefit and any State supplementary payment made by us to you on behalf of a State (see subpart T of this part) which is due you at the time we make the first payment of benefits or when your benefits are reinstated after suspension or termination. Advance payment, as defined in § 416.520, payment based upon presumptive disability or presumptive blindness, as defined in § 416.931, or certain payments made under the administrative immediate payment procedure, are not considered SSI benefit payments for interim assistance purposes.

* * * * *

4. Section 416.1906 is amended by revising paragraph (a) to read as follows:

§ 416.1906 When your authorization is in effect.

* * * * *

(a) We make the first SSI benefit payment on your initial application for benefits or, in the case of an authorization effective for a period of suspense or termination, until the initial payment following the termination or suspension of your benefits.

* * * * *

[FR Doc. 91-9951 Filed 4-25-91; 8:45 am]

BILLING CODE 4190-29-M

Food and Drug Administration

21 CFR Parts 510 and 555

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from M.K. Laboratories, Inc. (formerly McKesson Laboratories, Inc.), to John J. Ferrante.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-1414.

SUPPLEMENTARY INFORMATION: John J. Ferrante, 11 Fairway Lane, Trumbull, CT 06611, informed FDA of acquiring NADA 65-137 from M.K. Laboratories, Inc. (formerly McKesson Laboratories, Inc.), Bridgeport, CT 06602, through their trustee, Thomas M. Germain, 410 Asylum St., Hartford, CT 06103. The NADA, originally approved November 19, 1968, provides for use of 100- and 250-milligram chloramphenicol (Amphicol-V) capsules to treat dogs. The regulations are amended in 21 CFR 510.600(c) by removing McKesson Laboratories, Inc., because the firm is no longer sponsor of any approved NADA's; by adding John J. Ferrante as a new sponsor; and in 21 CFR 555.110b(c)(2)(ii) by removing "000022" and adding "058034" to reflect the new sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 555

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR Parts 510 and 555 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry "McKesson Laboratories, Inc.," and by alphabetically adding the entry "John J. Ferrante," and in the table in paragraph (c)(2) by removing the entry "000022" and by numerically adding entry "058034" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
John J. Ferrante, 11 Fairway Lane, Trumbull, CT 06611	058034
* * * * *	

(2) * * *

Firm name and address	Drug labeler code
* * * * *	
John J. Ferrante, 11 Fairway Lane, Trumbull, CT 06611	058034
* * * * *	

PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

3. The authority citation for 21 CFR part 555 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 555.110b [Amended]

4. Section 555.110b *Chloramphenicol capsules* is amended in paragraph (c)(2)(ii) by removing "000022" and inserting in its place "058034".

Dated: January 25, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 91-9915 Filed 4-25-91; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

[Docket No. 88N-0451]

New Animal Drugs for Use in Animal Feeds; Removal of Portions of Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing those portions of § 558.20 *Drugs used in medicated feeds in use before January 1, 1958, which are not otherwise listed; interim listing* (21 CFR 558.20) pertaining to: (1) Butynorate (dibutyltin dilaurate), which is being codified to reflect a previously approved new animal drug application (NADA); (2) nitarsone, which has previously been codified and whose status is unchanged; and (3) neomycin, phenothiazine, and piperazine, which are not the subject of approved NADA's providing for their use as sole drug ingredients in Type A medicated articles or in Type B or C medicated feeds. Additionally, FDA is codifying certain uses of arsanilic acid to reflect a previously approved NADA, amending § 558.4 to reflect the removal of neomycin, phenothiazine and piperazine, and editorially revising § 558.3 for increased clarity.

Elsewhere in this issue of the Federal Register, FDA is reproposing to remove the remaining portions of § 558.20 pertaining to arsanilic acid and arsanilate sodium.

DATES: *Effective* May 28, 1991. After the effective date, any Type A medicated article that contains phenothiazine, piperazine, or neomycin as the sole drug ingredient and that is intended for use in food-producing animals but that is not the subject of an approved NADA will be in violation of the Federal Food, Drug, and Cosmetic Act (the act) and subject to regulatory action, unless covered by a statutorily provided exception to the requirement of an approved NADA. In order to allow for an orderly phase-out, manufacture and distribution of such Type A medicated articles shall cease by August 26, 1991; the manufacture of medicated feeds (both Types B and C) from such Type A medicated articles and the distribution of such feeds shall cease by September 23, 1991; and the use of medicated feeds (both Types B and C) containing such Type A medicated articles shall cease by November 22, 1991.

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (HFV-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4438.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of December 18, 1986 (51 FR 45346), FDA proposed to remove § 558.20 *Drugs used in medicated feeds in use before January 1, 1958, which are not otherwise listed;* interim listing (21 CFR 558.20) because the section did not provide an appropriate basis upon which to approve medicated feed applications and because several of the drugs listed were not the subject of approved NADA's.

FDA promulgated § 558.20 as part of a final rule (51 FR 7362; March 3, 1986) revising the procedures and requirements concerning conditions of approval for the manufacture of animal feeds containing new animal drugs. Section 558.20 was intended to list, on an interim basis, new animal drugs that had been in use in animal feeds prior to 1958 but that had not been codified in regulations published under section 512(i) of the act (21 U.S.C. 360b(i)) (46 FR 2456 at 2465; January 9, 1961; 48 FR 34574 at 34580, July 29, 1963; 51 FR 7382 at 7384, March 3, 1986). The drugs listed in § 558.20 are arsanilate sodium, arsanilic acid, butynorate (dibutyltin dilaurate), neomycin, nitarsone, phenothiazine, and piperazine.

Sections 512(a) (1) and (2), 501(a) (5) and (6), 402(a)(2)(D), and 301 of the act (21 U.S.C. 360b(a) (1) and (2), 351(a) (5) and (6), 342(a)(2)(D), and 331) forbid the use of a new animal drug in the manufacture of animal feed, and the marketing of an animal feed bearing or containing a new animal drug, unless FDA has approved: (1) An NADA for the drug for use in the feed, and; (2) a medicated feed application (MFA or FDA Form 1900) for the manufacture of the feed bearing or containing the drug, and the feed, its labeling, and its use conform to the conditions and indications of use of the NADA and the MFA.

An MFA must contain, among other things, a reference to the "regulation" that is published under section 512(i) of the act and that reflects agency approval of the NADA covering the new animal drug with which the sponsor of the MFA wishes to manufacture the medicated feed. Section 512(i) was enacted in 1968 and provides that, when it approves an NADA, FDA must publish in the Federal Register a "regulation" codifying the approved conditions and indications of use of the new animal drug covered by the application. The rationale for publishing approved NADA's in the form of "regulations" was simply to compile in one place a master list of all approved animal drugs, and their conditions of use, for the convenience of medicated feed manufacturers who used such information to ascertain what premixes were approved for use in their animal feeds. Animal Drug Amendments of 1967: Hearing on H.R. 3639 Before the Subcommittee on Public Health and Welfare of the House Committee on Interstate and Foreign Commerce, 90th Cong., 1st sess. 43 (1967); see also statement by Rep. Nelsen, 109 Cong. Rec. 11498, 11500 (1963). Currently, there are no regulations published under

section 512(i) of the act for butynorate, neomycin, phenothiazine, or piperazine or for certain uses of ascorbic acid and ascorbic acid.

FDA proposed to remove § 558.20 based on its conclusion that the regulation is inappropriate because it is not a "regulation" published under section 512(i) of the act and intended to reflect FDA approval of the use of a new animal drug in animal feed, and because there are no approved NADA's for the use of neomycin, phenothiazine, or piperazine providing for their use as sole drug ingredient in the manufacture of Type A medicated articles or in Type B or C medicated feeds. The agency also proposed that the listing for each of these three drugs as a sole ingredient be removed from § 558.4(d) category II. Finally, FDA proposed to:

(1) Transfer the provisions for ascorbic acid and ascorbic acid in § 558.20 to §§ 558.60 and 558.62, respectively, to reflect the approval of these drugs for the uses listed in § 558.20; and

(2) Establish new § 558.128 for butynorate to reflect its approved conditions of use.

Nitrofurazone was to be removed from § 558.20 because it is covered by an approved NADA and the subject of § 558.360 *Nitrofurazone*, a regulation published under section 512(i) of the act.

II. Comments

FDA received six comments on the proposal. Comments were received from two industry associations and from four drug manufacturers. Additionally, FDA received a citizen petition (92N-0481/CP) dated September 1, 1987, submitted on behalf of Fleming Laboratories, Charlotte, NC, that requested that FDA reconsider its proposed removal of § 558.20 transfer as the proposal applied to piperazine, or, alternatively, to "file" the petition as a comment on the proposed rule. FDA responded to the citizen petition by letter dated October 16, 1987, stating that it would address the petition in the preamble to any final rule or in a Federal Register notice withdrawing the proposed rule. FDA's summary of and responses to the comments and the citizen petition follows:

1. Two comments argued that FDA failed to provide a reasoned explanation of why § 558.20 should be removed. One of the comments claimed that the preamble to the proposed rule failed to meet the notice requirements of the Administrative Procedure Act and the agency's regulations, and argued that FDA should withdraw the proposal and reissue it for comment with a clear and comprehensive explanation of FDA's reasons.

FDA disagrees with these comments. In the preamble to the proposed rule (51 FR 45347), the agency explained that § 558.20 was intended to list on an interim basis new animal drugs that had been in use in animal feeds prior to 1968 but that had not been codified in "regulations" published under section 512(i) of the act. (See 46 FR 2466; 46 FR 34580; 51 FR 7384). The rationale for publishing § 558.20 was simply to compile in one place a master list of previously marketed Category II animal drugs so that manufacturers could identify in MFA's a regulation relating to the new animal drug to be used in their medicated feed. However, § 558.20 is not a "regulation" published under section 512(i) of the act, was published only as an interim listing, and was not intended to reflect agency approval of the use of any new animal drug in animal feed. As FDA explained in the preamble to the proposed rule (51 FR 45347 (emphasis added)), "There are no FDA approvals for the use of neomycin, phenothiazine, or piperazine alone in animal feed." For these reasons, the agency proposed to remove § 558.20. This explanation was clear and to the point and provided adequate notice of why FDA believed that § 558.20 should be removed. Indeed, as the comments discussed in paragraphs 3, 4, 5, 6, 8, 9, and 15 of this preamble show, interested persons did not have any difficulty in understanding the basis of the proposed rule.

2. One comment argued that if FDA intends to withdraw its approval of phenothiazine by revoking § 558.20, it must provide an opportunity for a hearing in accordance with section 512(e) of the act.

FDA disagrees with the comment, which proceeds from a false premise to a faulty conclusion. The agency has never approved an NADA for the use of phenothiazine as sole drug ingredient in animal feed. Thus, the requirements set out in section 512(e) of the act are not applicable.

3. Several comments argued that neomycin, phenothiazine, and piperazine are not "new animal drugs" within the meaning of section 201(w) of the act (21 U.S.C. 321(w)) because they are "generally recognized" by qualified experts as safe and effective for their labeled indications.

FDA disagrees. Although neomycin, phenothiazine, and piperazine Type A medicated articles have been marketed for an extended period, neither that fact nor anecdotal evidence of safety and effectiveness precludes a finding of new animal drug status. See, *e.g.*, *United States* v. *Articles of Food and Drug* * * * *Cuff-Tuf 88*, 372 F. Supp. 915, 918–19 (N.D. Ga., 1974), *aff'd*, 518 F.2d 745 (5th Cir. 1975); *United States* v. *An Article of* * * * *Neo-Terramycin*, 569 F. Supp. 363, 379–80 (N.D. Tex 1982), *aff'd sub nom. United States* v. *An Article of Drug* * * * *4,660 Pails*, 725 F.2d 276, 287–88 n.26 (5th Cir. 1984); *United States* v. *Articles of Drug* * * * *Hormonin*, 498 F. Supp. 424, 432 (D.N.J. 1980), *aff'd without opinion*, 672 F.2d 904 (3d Cir. 1981). Rather, a new animal drug is any animal drug product, regardless of how old, about which insufficient published adequate and well-controlled clinical investigations exist upon which qualified experts can reach a consensus ("general recognition") that the product is safe (including safe to people exposed to residues of the product in the edible tissue of treated animals) and effective. See *Weinberger* v. *Hynson, Westcott & Dunning*, 412 U.S. 609, 629–30 (1973); *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 653 (1973).

For an animal drug product to be "generally recognized," there must be a consensus of expert opinion that the product is safe and effective for its labeled indications. That expert consensus must be based on adequate and well-controlled clinical investigations conducted on the product, and the investigations conducted on the product must be published in the scientific literature and available to experts generally. See, *e.g.*, United States v. *Undetermined Quantities* * * * *Equidantin Nitrofurantoin Suspension*, 675 F.2d 894 (8th Cir. 1982), *cert. denied sub nom. Performance Products, Inc.* v. *United States*, 459 U.S. 1051 (1983) and cases cited there; *United States* v. *Seven Cardboard Cases* * * * *"100 Capsules NDC* * * * *Eagic* * * *, with Codeine Capsules, etc." and Forest Pharmaceuticals, Inc.*, 716 F. Supp. 1221 (E.D. Mo. 1989) and cases cited there.

An animal drug product that fails to meet any one of the three conditions is "new." Ibid. FDA is unaware now, as it was on March 3, 1986, when it reaffirmed that neomycin, phenothiazine, and piperazine are new animal drugs requiring approved NADA's (51 FR 7384; see also 48 FR 34580 and 46 FR 2461), and in 1971, 1970, and 1969, when it affirmed the new animal drug status of each of these compounds (36 FR 837, January 19, 1971 (neomycin); 35 FR 18668, December 9, 1970 (phenothiazine); 34 FR 2213, February 14, 1969 (piperazine)) of any published adequate and well-controlled investigations upon the basis of which these could exist "general recognition" among the nation's experts in the evaluation of the safety and

effectiveness of animal drugs that neomycin, phenothiazine, or piperazine is safe and effective for its labeled indications. Moreover, none of the comments included new (post-1986) data from any published (or unpublished) adequate and well-controlled studies on neomycin, phenothiazine, or piperazine.

a. One comment, submitted by a sponsor, included a copy of a summary of information on Dowzen DHC (piperazine dihydrochloride). The summary refers to a series of published target animal safety and effectiveness studies conducted in the 1940's and 1950's. The summary does not contain any studies to show human food safety, i.e., mutagenicity screening, animal (target and rodent) metabolism, rodent toxicity, and target animal residue depletion data are lacking.

b. Another comment referred to an "FDA-approved study on phenothiazine in 1974," which the agency believes is "AIBS Monograph on Pharmocologic Agents Used in Food Producing Animals, Phenothiazine," January 1974, prepared by Aurel O. Foster of the American Institute of Biological Sciences.

This monograph was not "FDA approved," but was previously submitted to FDA's Center for Veterinary Medicine by a sponsor as part of its master file. The report lacks mutagenicity screening tests, long-term carcinogenicity studies in at least two rodent species, teratology studies, total residue studies, metabolism and comparative metabolism studies (which meet current scientific standards), marker residue, safe tissue level and target tissue determinations, regulatory and confirmatory methods of analysis, and withdrawal period determinations.

4. Three comments argued that neomycin, phenothiazine, and piperazine are not "new animal drugs" within the meaning of section 201(w) of the act because they were listed as "old drugs" or as "not new animal drugs" in such publications as the Official Publication of the Association of American Feed Control Officials, Inc. (AAFCO) and the Feed Additive Compendium.

FDA acknowledges that it may have stated in correspondence issued many years ago that each of the drugs in question is not a new animal drug, and that they were included in the publications in question in a list of drugs identified as not new animal drugs. However, in the Federal Register of May 28, 1986 (33 FR 7758), establishing 21 CFR 130.39 New-Drug status opinions; statement of policy (now codified at § 510.100), the agency rescinded the not new drug opinions included in such correspondence. Furthermore, during this same period the agency published a series of Federal Register notices based on the National Academy of Sciences/National Research Council (NAS/NRC) evaluations relating to the three drugs in question: piperazine (34 FR 2213; February 14, 1969), phenothiazine (35 FR 18668; December 9, 1970), and neomycin (36 FR 837; January 19, 1971). These notices affirmed the new animal drug status of each drug, in all cases stating that the drugs could only be marketed "provided they are the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act."

Each of the notices contained a statement that the NAS/NRC evaluation was concerned only with the effectiveness of the drug and its safety to the animal to which it is administered, that it did not take into account the safety for food use of food derived from drug treated animals, and that nothing in the notice would constitute a bar to further proceedings with respect to questions about the safety of the drug or its metabolites as residues in food products derived from treated animals.

Thus, piperazine, phenothiazine, and neomycin were each formally declared to be a new animal drug many years ago and each has remained so since. That the agency has refrained until this time from enforcing the new animal drug requirements for these drugs, through an exercise of regulatory discretion, is simply a reflection of past agency priorities. It does not, however, establish "general recognition". Because piperazine, phenothiazine, and neomycin are unapproved new animal drugs, the agency may not approve medicated feed applications for feeds bearing or containing such drugs.

A list of drugs identified as "not new animal drugs" (with a number of qualifications) continued to appear in the Official Publication of the Association of American Feed Control Officials, Inc., for 2 years following publication of 21 CFR 130.39, but the list reflected of AAFCO's opinion rather than a formal pronouncement by FDA that such drugs were, in fact, not new drugs. This is confirmed in the 1971 AAFCO Official Publication in which the list is prefaced by the statement: "In the past, the following drugs have been classified as 'not new drugs'. The status of these drugs is currently under review." In 1974 the list was removed altogether. In any event, the AFCO official publication is not an FDA publication, and does not and cannot bind the agency.

The Feed Additive Compendium, an industry publication, followed the AAFCO format during these years, subsequently (1973) making it clear that "the 'FDA states' shown for a specific product in this section is the status claimed by the additive manufacturer, * * *". The Feed Additive Compendium is not, in any event, an FDA publication, and does not and cannot bind the agency.

5. One comment argued that extensive data on phenothiazine have been provided to FDA in master file submissions by West Design Chemical in the late 1970's and early 1980's. The comment argued that the data did not reveal that phenothiazine is carcinogenic, mutagenic, or teratogenic, and that if FDA's concern is that additional residue data are needed, the agency can ask for that data without removing § 558.20.

Phenothiazine for use in animal feed is a new animal drug for which there is no approved NADA (see paragraphs 1, 3, and 4 of this preamble), and interim listing of phenothiazine under § 558.20 is no longer consistent with the law or justified by the facts. (See paragraph 15b of this preamble.) If a sponsor believes that its NADA has met the requirements of the act and wishes to contest the Center for Veterinary Medicine's failure to approve the application, the sponsor may request the Center for Veterinary Medicine to issue a notice of opportunity for a hearing proposing to refuse approval of the NADA.

FDA notes that the Center for Veterinary Medicine has reviewed the cited master file and found that the data are inadequate to support the safety for human consumption of food products derived from animals fed phenothiazine. In addition, the Center for Veterinary Medicine has concluded phenothiazine is a mutagen and, therefore, that further testing is required to establish its safety. These tests should include mutagenic screening tests, long term rodent carcinogenicity studies, metabolism studies, and residue depletion studies.

6. One comment argued that neomycin, phenothiazine, and piperazine are not "new animal drugs" within the meaning of section 201(w) of the act because they are "grandfathered" under section 108(b)(3) of the Animal Drug Amendments of 1968, Public Law No. 90-399, 82 Stat. 342 (1968). That section provides:

> In the case of any drug (other than a drug subject to section 512(n) of the basic Act as amended by this Act) intended for use in animals other than man which, on October 9, 1962, (A) was commercially used or sold in the United States, (B) was not a new drug as

defined by section 201(p) of the basic Act as then in force, and (C) was not covered by an effective application under section 505 of that Act, the words "effectiveness" and "effective" contained in section 505(w) as added by this Act to the basic act shall not apply to such drug when intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug on that day.

As an exception to a comprehensive regulatory statute concerned with public safety, the 1938 grandfather clause is to be strictly construed, and the person who seeks for its product the benefit of the exception bears the burden of showing that each of its conditions is met. See, e.g. *United States v. Articles of Drug * * * 5,968 Boxes*, 745 F.2d 105, 113 (1st Cir. 1984), *cert. denied*, 470 U.S. 1004, (1985); *United States v. 1,041,000 Capsules * * * Methylphenobarbitone (Afenil)*, 347 F. Supp. 769, 770 (S.D. Tex. 1972), *aff'd* 494 F.2d 1338 (5th Cir. 1974). See also *United States v. First National City Bank of Houston*, 358 U.S. 361, 366 (1959); *United States v. An Article of Drug * * * "Bontex Ulcerine"*, 466 F.2d 676, 678 (9th Cir. 1972); *Weeling v. Reid*, 139 F.2d 122, 127 (6th Cir. 1943).

The comment did not submit any evidence to show that any currently marketed Type A medicated article containing neomycin, phenothiazine, or piperazine satisfies any of the conditions of the 1938 grandfather clause, and FDA is unaware of any such evidence. Accordingly, the agency rejects the claim that the clause applies.

7. One comment argued that because FDA stated throughout the rulemaking proceedings to revise the procedures and requirements concerning conditions of approval for the manufacture of animal feeds containing new animal drugs (Second Generation) (46 FR 2450, 48 FR 34574, and 51 FR 7384) that Second Generation applies to new animal drugs for use in animal feed, the proposed rule must have been based on agency determinations that neomycin, phenothiazine, and piperazine are not new animal drugs. Those determinations, the comment said, must have accounted for FDA's decision to propose to remove § 558.20.

The agency disagrees with the comment for two reasons. First, in the preamble to the Second Generation proposed rule (46 2461), FDA stated that each of the animal drugs named in proposed § 558.4, including neomycin, phenothiazine, and piperazine, is a new animal drug. Second, in the preamble to the Second Generation tentative final rule (48 FR 34580), FDA stated that "each of the animal drugs named in proposed § 558.4(c) is a new animal drug within the meaning of section 201(w) of the act * * *. The drugs listed in § 558.20 would be deemed to be new animal drugs because they are not generally recognized as safe and effective by current standards."

Because the procedures and requirements set out in Second Generation apply only to approved new animal drugs, the agency is editorially revising § 558.3 *Definitions and general considerations applicable to this part* to clarify that Second Generation applies only to such drugs. This clarification should prevent any future misunderstanding.

8. Two comments pointed out that § 558.15 is an "interim" regulation for some of the drugs listed there, even though those drugs do not have approved NADA's under section 512(c) of the act or published regulations under section 512(i) of the act. The comments argued that it would be prejudicial to require NADA's for neomycin, phenothiazine, and piperazine but not for the unapproved new animal drugs listed in § 558.15. The comments also argued that it would be no less appropriate to reference § 558.20 under section 512(i) of the act than to reference § 558.15 under section 512(i) of the act, and suggested, in the alternative, that neomycin, phenothiazine, and piperazine be transferred to § 558.15 on an interim basis.

FDA disagrees with those comments. Section 558.15 (originally 21 CFR 135.109) was promulgated for the primary purpose of obtaining data on the safety of the subtherapeutic use of antibacterial drugs in animal feeds and on the basis of commitments by sponsors identified in that section to gather the requisite safety data (38 FR 9811, April 20, 1973; and 41 FR 8902, February 25, 1976). Section 558.20 does not identify any sponsor for neomycin, phenothiazine, or piperazine. Neomycin in combination with oxytetracycline is the subject of § 558.15. When used alone, however, neomycin is not the subject of § 558.15 and, hence, does not meet the qualifying criteria under § 558.15 (a) and (b). Neither phenothiazine nor piperazine, which are not antibacterials, has met the criteria under § 558.15 (a) and (b). By contrast, § 558.20 was promulgated to list, on an interim basis, animal drugs that had been in use in animal feeds prior to 1958 but that had not been codified in regulations published under section 512(i) of the act. (See 46 FR 2465, 48 FR 34580, and 51 FR 7384).

9. One comment recommended that FDA retain § 558.20 as an interim listing for neomycin, phenothiazine, and piperazine pending the resolution of their status. Another comment recommended that § 558.20 be retained as a convenience to the agency and to the regulated industry.

FDA disagrees with the recommendations because, as explained in paragraphs 1, 3, and 4 of this preamble, each of the drugs in question for use in animal feed is a new animal drug for which there is no approved NADA, and interim listing is not consistent with the law or justified by the facts. (See paragraph 15(b) of this preamble).

10. One comment stated that the preamble to the proposed rule did not address the future marketing of neomycin, phenothiazine, or piperazine.

This final rule provides after the effective date, any Type A medicated article that contains phenothiazine, piperazine or neomycin as the sole ingredient and that is intended for use in food-producing animals but that is not the subject of an approved NADA will be in violation of the Federal Food, Drug, and Cosmetic Act (the act) and subject to regulatory action, unless covered by a statutorily provided exception to the requirement of an approved NADA. In order to allow for an orderly phase-out, manufacture of such Type A medicated articles shall cease by August 28, 1991; the manufacture of medicated feeds (both Types B and C) from such Type A medicated articles and the distribution of such feeds shall cease by September 23, 1991; and the use of medicated feeds (both Types B and C) containing such Type A medicated articles shall cease by November 22, 1991.

11. Several comments claimed that prohibition of the use of neomycin, phenothiazine, and piperazine in animal feed would have adverse economic consequences on pharmaceutical manufacturers, the feed industry, and livestock producers. In support of these claims, one comment argued that no product other than phenothiazine provides both worm and fly control.

None of the comments submitted any data or information to substantiate any of these claims, and FDA is unaware of any such data or information.

The Environmental Protection Agency, rather than FDA, regulates phenothiazine for fly control, and this final rule does not affect the use.

12. One comment argued that the word "weight" should be removed from the indications for use statement "increase rate of weight gain and improve feed efficiency" in the proposed amendments to §§ 558.60 and 558.62 for arsanilate sodium and arsanilic acid, respectively. The comment stated that the word "weight" was not in § 558.20, that it is understood, and that its inclusion would require the firm to reprint labels. The comment also argued that the proposed 0.025- to 0.04-percent level for arsanilate sodium in § 558.60 and for arsanilic acid in § 558.62 should indicate a 5- to 6-day feeding period in the limitation column.

FDA has reviewed NADA 8-019, which provides for the approved use of arsanilic acid in the feed of growing swine. The approval provides for the drug to the administered to growing swine at 45–90 grams per ton (0.005 percent to 0.01 percent) for increased rate of weight gain and improved feed efficiency, and at 90 grams per ton (0.01 percent), as an aid in the control of swine dysentery (hemorrhagic enteritis or bloody scours). The drug is required to be withdrawn 5 days before slaughter. FDA is codifying, under the provisions of section 512(i) of the act, the conditions and indications for use as approved by letter dated October 19, 1973 (Ref. 1), which contains the word "weight" in the indications for use statement "increased rate of weight gain and improved feed efficiency." Review of the approved labeling also shows that the word "increase" proposed for this statement should read "increased." However, because the NADA shows that the wording for this indication for use has varied from that which is approved, FDA will allow the drug sponsor to correct its label, in this regard, at the next printing.

FDA has considered the comment on the length of the feeding period for the 0.025- to 0.04-percent level and concludes that 5 to 6 days is consistent with labeling submitted to NADA 8-019 on November 13, 1972 (Ref. 2). However, by letter dated October 19, 1973 (Ref. 1), FDA notified the sponsor that the 0.025- to 0.04-percent level was not approved. The sponsor responded to the agency by letter dated November 12, 1973 (Ref. 3), stating that labeling for arsanilic acid 50 percent and 100 percent and for arsanilate sodium Type A medicated articles was being deleted.

For all these reasons, FDA is codifying only approved uses of arsanilic acid; the agency is not codifying any use for arsanilate sodium in swine feed in § 558.60, for arsanilic acid at 0.025 to 0.04 percent in § 558.62, or for arsanilic acid 50 and 100 percent Type A medicated articles in § 558.62, as it had proposed. Because this varies significantly from what was proposed, FDA is not removing the portions of § 558.20 pertaining to these uses of arsanilate sodium and arsanilic acid but is reproposing to remove them in a notice published elsewhere in the Federal Register.

13. Two comments argued that the proposal was using "Second Generation" in an unintended way, in that "Second Generation" was not intended to remove any drugs.

FDA disagrees. Second Generation made it clear that § 558.20 was published only as an interim listing and was not intended to reflect agency approval of the use of any new animal drug in feed. (51 FR 7384; see also 46 FR 34580 and 46 FR 2461 and 2465.) Thus, the proposed removal of § 558.20 and this final rule are fully consistent with Second Generation.

14. One comment submitted by a sponsor argued that although neomycin is a classic example of a "not new animal drug," in 1974 FDA and the Animal Health Institute (AHI), which represents the sponsor and other animal drug manufacturers, entered into discussions designed to solve questions surrounding the status of neomycin. This solution allegedly involved the development of specified data by AHI and submission of such data to an AHI Master File. Other proprietary information would be developed and submitted by each interested company. The combination of these two sources of data would satisfy FDA requirements for NADA approval, according to the comment, which claimed that the requisite toxicology work had been completed, tolerances established (although not yet published), and basic labeling agreed upon.

Neomycin for animal use in animal feed is a new animal drug for which there is no approved NADA (see paragraphs 1, 3, and 4 of this preamble), and interim listing of neomycin under § 558.20 is no longer consistent with the law or justified by the facts. (See paragraph 15(b) of this preamble.) FDA notes that contrary to the implication of the comment, no NADA for neomycin for use in feed has been found to be approvable.

15. The citizen petition dated September 1, 1987, submitted on behalf of Fleming Laboratories contained several comments. Each comment is summarized below, followed by the agency's response.

a. The petition stated that piperazine is no longer a new animal drug because it has been in use since prior to 1958, is generally recognized as safe, its uses have not changed since before 1958, and the NAS/NRC found it to be effective. For these reasons the petition argued that there is no need for approval under section 512(i) of the act. The petition also stated, however, that when piperazine is mixed into medicated feed it probably does become a new animal drug, and therefore that it would be appropriate for its use to be regulated under section 512(m) of the act.

Piperazine is not "generally recognized" as safe or effective (see paragraph 3 of this preamble), and the NAS/NRC evaluations affirmed its new animal drug status (see paragraph 4 of this preamble). Moreover, the petition did not submit data from any published (or unpublished) adequate and well-controlled investigations (see paragraph 3 of this preamble) to support its claim of "general recognition." The agency notes that by the petitioner's own admission, piperazine is "probably" a new animal drug when it is mixed into animal feed.

b. The petition stated that the Commissioner under section 701(a) and 512(m)(sic) has the discretion by regulation to list a product for use in medicated feed to require and permit the continuance of regulation under section 512(m) of the act.

FDA disagrees. Although there are narrowly defined circumstances in which FDA may affirmatively permit the marketing of a violative product, see, e.g., *CNI v. Young*, 818 f.2d 943, 949–50 (D.C. Cir. 1987); *Public Citizen v. Schmidt*, No. 76–405 (D.D.C. 1976)[1]; and the Paragraph XIV exemption developed in response to *American Public Health Ass'n v. Veneman*, 349 F. Supp. 1331 (D.D.C. 1972), FDA does not have the authority to convey a right to market an unapproved new animal drug. See *Hoffmann-La Roche, Inc. v. Wienberger*, 425 F. Supp. 880, 884 (D.D.C. 1975); *Cutler v. Kennedy*, 475 F. Supp. 838, 854 (D.D.C. 1979); see also *American Public Health Ass'n v. Veneman, supra*. Where, as here, FDA affirmed in 1971, 1970, and 1969 that neomycin, phenothiazine, and piperazine, respectively, are new animal drugs (see paragraph 3 of this preamble), and reaffirmed these determinations in 1986 (see id.), interim listing is no longer consistent with the law or justified by the facts.

c. The petition stated that piperazine to control roundworms in poultry, swine, horses, dogs, and cats has been approved on several occasions, and therefore, that FDA's conclusion that no approval exists is incorrect. To support this statement, the petition cited § 520.1801, which sets out approved uses of piperazine, enclosed a copy of

[1] *Public Citizen v. Schmidt* held that FDA could reasonably decide to leave drugs containing a carcinogen, chloroform, on the market for three and a half months following publication of a final rule prohibiting the use of chloroform in drugs.

labeling for NADA 9-861, which allegedly shows that piperazine is approved for use in feed/water for poultry and swine, and identified NADA's 10-005, 10-335, and 10-477 as approved products containing piperazine.

FDA records show that NADA 9-861 is for the use of piperazine in water and not in feed. Only one of the other listed NADA's is an approved product for feed use. That application, NADA 10-447, is for a three-way combination drug product including piperazine, but does not allow for the use of piperazine alone. Nothing in this final rule affects either the use of piperazine in water or the three-way combination product containing piperazine.

III. Codification of Butynorate (Dibutyltin Dilaurate) and Arsanilic Acid

Solvay Animal Health, Inc., 1201 Northland Dr., Mendota Heights, MN 55120, formerly Salsbury Laboratories, Charles City, IA 50616 (55 FR 8459), is the holder of NADA 8-741 for butynorate (dibutyltin dilaurate) for use in turkeys. NADA 8-741 was approved on April 22, 1953. Butynorate is being codified as proposed with the exception of the Type A medicated article 41.5 percent, which was included in error. There is no approved NADA for such a 41.5 percent Type A medicated article.

Fleming Laboratories, Inc., P.O. Box 34384, Charlotte, NC 28234, is the holder of NADA 8-019 for arsanilic acid for use in swine. NADA 8-019 was approved on May 11, 1951.

Although the agency is codifying these approvals, such action does not involve a reevaluation of the NADA's and does not constitute reaffirmation of the safety and effectiveness supporting the approvals. Because the applications were approved before July 1, 1975, a summary of safety and effectiveness data and information submitted in accordance with 21 CFR 514.11(e)(2)(ii) to support approval of these applications is not required.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter dated October 19, 1973, from Paul D. Lepore, Bureau of Veterinary Medicine to Patrick C. Matchette, Agricultural and Veterinary Products Division, Abbott Laboratories, North Chicago, IL 60064.

2. Submission dated November 13, 1972, from Patrick C. Matchette, D.V.M., Government Registration, Agricultural and Veterinary Products Division, Abbott Laboratories, North Chicago, IL 60064, to Jack C. Taylor, Nonruminant Nutrition Branch, Division of Nutritional Science, Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852.

3. Letter dated November 12, 1973, from Patrick C. Machette, D.V.M., Government Registration, Agricultural and Veterinary Products Division, Abbott Laboratories, North Chicago, IL 60064, to Paul D. Lepore, Division of Nutritional Sciences, Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852.

V. Environmental Impact

The agency has determined under 21 CFR 25.24 (a)(8) and (a)(9), that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Impact

The agency has determined that this final rule does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96-354). The final rule would not impose new or different requirements on industry, because it would revise the regulations to reflect the current legal status of these Type A medicated articles.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.3 is amended by revising the introductory text of paragraph (b)(1) to read as follows:

§ 558.3 Definitions and general considerations applicable to this part.

* * * * *

(b) * * *

(1) New animal drugs approved for use in animal feed are placed in two categories as follows:

* * * * *

§ 558.4 [Amended]

3. Section 558.4 *Medicated feed applications* is amended in paragraph (d) in the table "Category II" by removing the entries for "Neomycin," "Phenothiazine," and "Piperazine."

§ 558.20 [Amended]

4. Section 558.20 *Drugs used in medicated feeds in use before January 1, 1958, which are not otherwise listed; interim listing* is amended in the table by removing the entries for "Butynorate (dibutyltin dilaurate)," "Neomycin sulfate," "Nitarsone (4-nitrophenylarsonic acid)," "Phenothiazine," and "Piperazine."

5. Section 558.62 is amended by revising paragraphs (a) and (c) to read as follows:

§ 558.62 Arsanilic acid.

(a) *Approvals.* Type A medicated articles to sponsors in § 510.600(c) of this chapter as follows:

(1) To 015565: 20, 50, and 100 percent for use as in the table in paragraph (c)(1), entry (ii), item 1; entry (ii), item 2; entry (iii); entry (iv); and entry (v) of this section.

(2) To 015565: 20 percent for use as in paragraph (c)(1), entry (i); entry (ii), item 3 of this section.

* * * * *

(c) *Conditions of use.* (1) It is used as follows:

Arsanilic acid in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 45 to 90 (0.005% to 0.01%).		Swine; for increased rate of weight gain and improved feed efficiency in growing swine.	Withdraw 5 days before slaughter; as sole source of organic arsenic.	015565
(ii) 90 (0.01%)		1. Chickens; growth promotion and feed efficiency; improving pigmentation.	do	015565
		2. Turkeys; growth promotion and feed efficiency; improving pigmentation.	do	015565
		3. Swine; and aid in control of swine dysentery (hemorrhagic enteritis, bloody dysentery).	do	015565
(iii)	Erythromycin 4.6 to 16.5	Chickens; growth promotion and feed efficiency; improving pigmentation.	As erythromycin thiocyanate; withdraw 5 days before slaughter; as sole source of organic arsenic.	15565
(iv)	Erythromycin 92.5	1. Chickens; as an aid in the prevention of chronic respiratory disease during periods of stress; growth promotion and feed efficiency; improving pigmentation.	As erythromycin thiocyanate; feed for 2 days before stress and 3 to 5 days after stress; withdraw 5 days before slaughter; as sole source of organic arsenic.	015565
		2. Chickens; as an aid in the prevention of infectious coryza; growth promotion and feed efficiency; improving pigmentation.	As erythromycin thiocyanate; feed for 7 to 14 days; withdraw 5 days before slaughter; as sole source of organic arsenic.	015565
(v)	Erythromycin 185	Chickens; as an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory disease; growth promotion and feed efficiency; improving pigmentation.	As erythromycin thiocyanate; feed for 5 to 8 days; do not use in birds producing eggs for food purposes; withdraw 5 days before slaughter; as sole source of organic arsenic.	15565

* * * * *

6. New § 558.108 is added to read as follows:

§ 558.108 Butynorate (dibutyltin dilaurate).

(a) *Approvals.* Type A medicated articles: 25 percent to 053501 in § 510.600(c) of this chapter.

(b) *Conditions of use.*

(1) *Amount.* 0.0375 percent.

(2) *Indications for use.* For use in turkeys as an aid in the prevention of coccidiosis (caused by *Eimeria meleagridis, E. meleagrimitis, E. gallopavonis*) and hexamitiasis.

(3) *Limitations.* Withdraw 28 days before slaughter.

Dated: March 13, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-9913 Filed 4-25-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1313

Export of Chemicals From the United States to Panama; Policy Statement

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Policy statement.

SUMMARY: Document is hereby given that the policy regarding exports of chemicals to Panama published in the Federal Register, volume 54, no. 230 on December 1, 1989, is now rescinded. DEA is now able to successfully meet its burden with respect to customer investigations. This will allow U.S. exporters to file a DEA Form 486 on or before the date of shipment of a listed chemical to a regular customer in Panama instead of waiting 15 days.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Ernest L. Staples, Chief, Chemical Operations Section, Office of Diversion Control, Drug Enforcement Administration, Arlington, Virginia 22202, telephone (202) 307-7204.

SUPPLEMENTARY INFORMATION: The Chemical Diversion and Trafficking Act (CDTA) of 1988 and the implementing regulations establish a system of recordkeeping and reporting requirements that provide DEA with a mechanism to track domestic and international movement of listed chemicals, tableting and encapsulating machines and equipment. Section 1018(a) of the CDTA (21 U.S.C. 971) provides that "each regulated person who imports or exports a listed chemical shall notify the Attorney General of the importation or exportation not later than 15 days before the transaction is to take place." The requirement is modified by section 1313.24 of the CDTA regulations where the transaction is between a "regulated person" and a "regular customer." In either case, DEA has the obligation to investigate the customer in order to determine if the customer is legitimate and that the chemical will not be diverted to the illicit manufacture of drugs.

Circumstances at the time the initial policy statement regarding exports to Panama was published restricted the ability of the United States Government to investigate the legitimacy of those Panamanian customers submitted for regular customer status (or those submitted on a shipment-by-shipment basis). United States policy at that time prohibited official communication with the Panamanian Defense Force and other Panamanian officials. Since there was no way to determine with any reasonable degree of certainty that the chemical shipment would not be diverted, regular customer status was not accorded to any customer located in Panama. A United States exporter was required to file a DEA Form 486 at least 15 days in advance of the shipment date in accordance with 21 CFR 1313.21 for every shipment of a threshold amount of a listed chemical to Panama.

Due to the change in the political situation in Panama, the DEA is now able to successfully meet its burden with respect to customer investigations. Therefore, the guidelines established by the DEA in determining whether a shipment of listed chemicals will be allowed to Panama are rescinded. U.S. exporters are now required to adhere to the regulations outlined in 21 CFR 1313.21 to 1313.25 when making shipments to Panama.

Exporters are still cautioned to view every order from Panama with vigilance and sound judgment. In cases where shipments are being made to an established customer, the quantity and the intended use must be consistent with previously established experience with that customer. If no previous exports of listed chemicals have been made, the U.S. exporter should make an effort to determine if the quantity and intended use is consistent with the nature and size of the customer's business.

Dated: April 12, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-9520 Filed 4-25-91; 8:45 am]

BILLING CODE 4410-09-M

VOL 56 SS 81 AP 26 1991 UMI

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1204

[NHTSA Docket No. 81-12; Notice 07]

Highway Safety Program Guideline No. 17, Pupil Transportation Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA), DOT.

ACTION: Revisions to guideline.

SUMMARY: As part of a series of efforts to improve school bus safety, this notice announces revisions to Highway Safety Program Guideline 17, Pupil Transportation Safety. Guideline 17 contains recommendations to the States on various operational aspects of their school bus and pupil transportation safety programs. NHTSA and FHWA are updating Guideline 17 to address new pupil transportation safety issues that have arisen since the guideline's last revision and to re-emphasize the importance of existing recommendations. The revision also ensures consistency with the provisions and terminology of NHTSA's Federal Motor Vehicle Safety Standards for school buses. Highway Safety Program Manual No. 17, which contains additional guidance for States and their political subdivisions in developing pupil transportation policies and procedures, is in the process of being revised to reflect the revisions that have been made to Guideline 17.

EFFECTIVE DATE: The revisions made by this document are effective on May 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Engle, Chief, Safety Countermeasures Division, NTS-23, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366-2717.

SUPPLEMENTARY INFORMATION: This notice announces revisions to Highway Safety Program Guideline 17: Pupil Transportation Safety. Guideline 17 contains recommendations to the States on various operational aspects of their school bus and pupil transportation safety programs. The revisions made to the guideline in today's notice are designed to provide States and other school bus operators with up-to-date information on operational measures that NHTSA and FHWA believe should be a part of every pupil transportation safety program.

The safety record of school buses is remarkably good. School buses, which together travel 3.3 billion miles each year, are among the safest means of travel. Between 1980 and 1986, on a vehicle-mile basis, there was an annual average of 0.5 school bus occupant facilities per 100 million vehicle miles travelled, compared to 2.0 for passenger cars.

Although the safety record of school buses is extremely positive overall, school bus safety issues have received substantial attention from the public and the Federal Government following the two tragic crashes. In May 1986, 27 persons died of smoke inhalation, in the fire resulting from the high-speed crash of a pick-up truck (driven by a drunk driver) and a used school bus in Carrollton, Kentucky. This crash focused considerable public interest on the continuing problem of drunk driving, as well as school bus safety. In the second crash, 21 students drowned in Alton, Texas in September 1989, when their bus rolled into a water-filled gravel pit after being struck by a truck. Attention was also focused on school bus safety by a May 1989 report from the National Academy of Sciences on "Improving School Bus Safety" which, while noting the excellent overall safety record of school buses, also highlighted areas where further improvements might be made.

As a result of these events, NHTSA began a review of its school bus safety program to determine whether improvements could be made. A notice was published jointly by NHTSA and FHWA on May 17, 1990 (55 FR 20471), in which the agencies proposed to update Guideline 17 to address new pupil transportation safety issues that have arisen since the guideline was last revised, to emphasize the importance of existing recommendations, and to ensure consistency with the provisions and terminology of NHTSA's existing Federal Motor Vehicle Safety Standards (FMVSS) for school buses. The notice also requested public comment on the proposed revisions to Highway Safety Program Guideline No. 17.

Other actions that have been taken to improve school bus safety include commencing rulemaking actions to improve the crashworthiness and post-crash performance of school buses, and to improve the safety of pupils boarding and leaving school buses. Specifically, NHTSA initiated rulemaking to upgrade the school bus safety standards for mirrors, floor joint strength, emergency exits, fuel system integrity, and flammability of interior materials (FMVSS Nos. 111, 217, 221, 301 and 302). In addition, the agency initiated rulemaking to require school bus stop signal arms. NHTSA also made available $4.5 million in Federal funds for fiscal years 1990 and 1991 for pupil transportation safety. In FY 1990, these funds were awarded to each of the States, territories and the District of Columbia, for such programs as improving driver training, upgrading school bus safety equipment, and teaching children safe bus riding, pedestrian and bicycle behavior to and from school. To receive these funds in FY 1991, States must have submitted applications, and the applications must have been received on or before January 11, 1991.

The notice that was published on May 17, 1990, contains a comprehensive discussion of the background and history of Guideline 17 and section 402 of the Highway Safety Act of 1966 (also known as the section 402 program). It also discusses in detail the Vehicle Safety Act standards, and other highway safety programs administered by NHTSA, that pertain to school buses and school bus safety. Individuals that are interested in this information are encouraged to read that **Federal Register** notice (55 FR 20471).

The agencies wish to reiterate that the updated guideline would, like the existing guideline, not be binding on the States in accordance with the legislative and rulemaking history summarized in the May 17, 1990 notice. A State's decision not to adopt a portion of the guideline, for example, would not render the State's action "illegal," as one commenter suggests. Nonetheless, the agencies encourage the use of the recommendations made in this guideline to optimize the safe operation of pupil transportation programs at the State and local level. We agree with the statements made by the Ohio Department of Education in its comments, and hope that other States maintain a similar attitude. Ohio's comments provide:

> Guideline 17 serves as an important yardstick for the various State agencies to use. The Office of Pupil Transportation, Ohio Department of Education has always sought to meet or exceed the guidelines over the years. Likewise our goal will be to continue in this posture, to meet or exceed the changes [proposed].

General Discussions of Comments Received

We received appoximately 35 comments in response to the May 17, 1990 notice. The respondents represent a broad cross section of the pupil transportation community, and include, among others, State and local officials representing fifteen States, National organizations concerned with pupil transportation issues, such as the National School Transportation Association, the National Education Association and the National Transportation Safety Board, as well as concerned State and local associations, manufacturers of school buses and school bus equipment, and interested private citizens.

The comments were very supportive in general of the agencies' effort to update the guideline, and to seek to provide consistency between the guideline and other relevant requirements, such as the Federal Motor Vehicle Safety Standards (FMVSS) and the Federal Motor Carrier Safety Regulations (FMCSR). The National School Transportation Association (NSTA), for example, commended the agencies for reviewing the guideline and bringing it up to current practices. The National Education Association stated, "[t]he proposed guidelines would institute additional, common sense procedures which would go far to increase school bus safety."

The respondents did raise questions and voice concerns, however, regarding various aspects of the agencies' proposal. Each of these concerns is discussed specifically below. Before we respond to comments that address the particular provisions of the proposed revision to the guideline, however, the agencies wish to discuss a number of general issues associated with our proposal. Some of these comments involve questions that are either beyond the agencies' authority to address or outside the scope of this proceeding.

1. Change Guidelines to Standards

One commenter suggests that the guidelines be changed back to standards. The agencies are without authority to do so. We explained in the notice dated May 17, 1990 that until 1976, the Highway Safety Program Standards were considered mandatory requirements with financial sanctions available for non-compliance. In 1976, Congress provided for a more flexible implementation of the program so that the Secretary would not have to require State compliance with every uniform standard or with each element of every uniform standard. As a result, the standards became more like guidelines for use by the States. This approach was formalized by Congress in 1987, when the Highway Safety Act was amended to provide that State highway programs must follow uniform "guidelines" rather than "standards" promulgated by the Secretary of Transportation. Without Congressional action, the agencies have no authority to change them back.

2. Earmarking Section 402 Funds

Two respondents criticize NHTSA for "earmarking" section 402 funds for school bus safety programs. They suggest that these funds can be used more effectively for other, more serious problems. Although the agency does not generally support set-aside programs, and we have indicated that we will continue to oppose the enactment of new set-asides or earmarks in the section 402 program in the future, we opted to exercise our Congressional mandate and earmark $4.5 million for school bus safety programs in fiscal years 1990 and 1991.

Section 204 of the Highway Safety Act of 1987 (Pub. L. 100-17, title II) permitted NHTSA to set aside a portion of the funds available for section 402 programs in fiscal years 1990 and 1991 for the purpose of making grants to the States to implement school bus safety measures. All States applied for and were granted funds for this purpose in FY 1990.

The set-aside for FY 1991 was announced in a **Federal Register** notice dated August 9, 1990 (55 FR 32554). NHTSA expressed, in that notice, its reservations about the establishment of set-aside programs. Such programs can interfere with State decisions on how to use grant funds most effectively, and may divert funding away from projects which have greater potential safety benefits.

Nevertheless, NHTSA, Congress and others all share a concern in enhancing safe transportation for school children. For this reason, even though the current safety record is already quite positive, the agency indicated, in August 1990, that it intended to continue this short-term set-aside program. We stated that recent public focus on school bus issues makes this an opportune time for added emphasis on these safety programs.

On October 1, 1990, in light of the expected reduction of section 402 grant funds, NHTSA announced, in the **Federal Register** (55 FR 40975), the elimination of the set-aside. When Congress passed and the President signed the FY 1991 appropriation bill for the Department of Transportation, which included the full amount requested for the section 402 program, however, NHTSA published another notice in the **Federal Register** (55 FR 51785) reestablishing the grant program at $4.5 million, as described in the original August 9, 1990, **Federal Register** notice. For FY 1991, applications were due on or before January 11, 1991.

3. Comments Pertaining to FMVSS

Several comments pertain, not to Guideline 17, but rather to Federal Motor Vehicle Safety Standards (FMVSS). We thank the respondents who submitted their comments in these areas. However, since these comments address subjects that are outside the scope of this proceeding, we will not address them individually. Where these comments pertain to an ongoing FMVSS rulemaking action, and have been submitted also to the appropriate docket, they will be considered and addressed as part of those proceedings.

4. Consonance between FMVSS and Guideline 17

The Blue Bird Body Company, while applauding the agencies' efforts to provide consonance between the FMVSS and Guideline 17, suggests that certain aspects of the Identification and Equipment section of the guideline (IV.B.) should be considered safety related design criteria and, therefore, incorporated into FMVSS. In order to establish a FMVSS, the agency must show that the FMVSS "shall meet the need for motor vehicle safety and shall be stated in objective terms." 15 USC 1392(a). The agency has interpreted "objective" as having been shown to demonstrate measurable safety impact. Many of the vehicle issues discussed in the guideline, such as the color of bumpers, sizes of lettering, and the glossy yellow of the school bus body do not meet that test. These aspects of the guideline would not, for example, improve the crashworthiness of a school bus. However, it is well-accepted that this uniform coloring and marking does provide a safety benefit, by increasing visibility of the bus, alerting other motorists of the possible need to stop and, in general, improving the environment in which the school bus is operated. Therefore, these elements will not be incorporated into the FMVSS, but will remain in the guideline.

5. Transportation for Handicapped Students

Although the issue was not raised in the agencies' proposal, three commenters suggest that the guideline include recommendations for the safe transportation of handicapped students. The agencies recognize the importance of this issue; however, it would be premature to include any recommendations in the guideline at this time.

In March 1990, NHTSA published a notice (55 FR 7346) granting a petition for rulemaking to establish requirements for school bus seating for handicapped

students. In May 1989 (55 FR 21081), the agency announced the availability of a report on this topic and requested comments for the pending rulemaking. NHTSA is currently reviewing the comments received and expects to issue a Notice of Proposed Rulemaking in 1991. In addition, as part of the Department of Transportation's rulemaking activities undertaken in connection with the Americans with Disabilities Act of 1990, NHTSA is developing an FMVSS for wheelchair lifts.

The agency recognizes that there are a number of operational issues associated with the transportation of handicapped students, such as the use of attendants, training, and maintenance of equipment; however, we are not in a position to include these topics in the guideline without further study by the agency, and until the other rulemaking activities noted above have been completed. Until such time as a guideline is developed to address these issues, schools should tailor their programs to best suit their individual needs.

8. Republish Proposal

The Maryland Department of Transportation and the National Association of State Directors of Pupil Transportation Services request that the agencies republish their proposal before the revision to Guideline 17 becomes final to afford the public a second opportunity to review and provide comment. The agencies do not believe this is necessary. The revisions made in this notice are not so different from the agencies' initial proposal as to warrant an additional round of notice and comment. They are simply a logical outgrowth of the original proposal and the comments received thereon.

Comments Pertaining to Specific Provisions of Guideline 17

The agencies received no comments regarding Sections I, II and V of the guideline, entitled Scope, Purpose and Program Evaluation. A number of subsections within Section IV, were similarly not specifically addressed. These sections and subsections will be adopted, as proposed in the May 17, 1990 notice.

We received considerable comments on Sections III and IV of the proposed revisions to Guideline 17. The comments received regarding these sections, and any changes being made to the agencies' original proposal in this notice, in response, are discussed in detail below.

Section III. Definitions

1. Federal Motor Carrier Safety Regulations

In the Federal Register notice, dated May 17, 1990, NHTSA and FHWA proposed to add a new definition for the term, "Federal Motor Carrier Safety Regulations" (FMCSR), because many of the vehicles covered by Guideline 17's recommendations are also subject to the FMCSR's. A more detailed discussion of the FMCSR and their applicability to commercial motor vehicles is contained in the notice (55 FR at 20474). By adding this definition, the agencies sought to clarify the guideline, and serve safety, by increasing the awareness of schools and other potential users of commercial buses about the FMCSR. We received no objections to the proposed definition. It has therefore been adopted in the guideline without change.

2. Bus

This notice also proposed revisions to the existing Guideline 17 definitions, to establish consistency between the guideline, the Vehicle Safety Act and the Federal Motor Vehicle Safety Standards (FMVSS). As explained in the May 17 notice, Guideline 17's definitions have not been revised since NHTSA issued the existing school bus definition in the FMVSS under the Vehicle Safety Act. The present guideline is applicable to "Type I" and "Type II" school vehicles, and distinguishes between these vehicles, in the definition section, based on their seating capacity. The agencies proposed instead, in the May 17 notice, to define the guideline's applicability using four new definitions, which include the terms "bus", "school bus", "school vehicle", and "school-chartered vehicle". A full discussion of each of these proposed definitions is contained in the agencies' May 17 notice (55 FR at 20473–75).

The agencies proposed, in the notice, to define the term "bus" to mean "a motor vehicle designed for carrying more than 10 persons (including the driver)." This definition is similar to the FMVSS "bus" definition (49 CFR 571.3). The comments were supportive of this new definition, and it has been adopted, as proposed.

3. School Bus

The notice proposed to define the term "school bus" as "a bus that is used for purposes that include carrying students to and from school or related events on a regular basis, bus does not include a transit bus operated under contract with State or local authorities to provide transportation for these purposes or a school-chartered vehicle." This definition is based on the "school bus" definition in the FMVSS. However, unlike the FMVSS, which applies only to new buses, the guideline, under the proposed definition would include any bus used for carrying students to and from school or related events, including previously-owned buses acquired for such purposes.

Most commenters commended the agencies on this aspect of their proposal. Oregon Department of Education, for example, states, "Good definition, improved and strengthened by its extension to used vehicles." The National Transportation Safety Board (NTSB) says, "NHTSA's elimination of its 'Type I' versus 'Type II' classification system of school buses is particularly commendable." Several suggestions made in the comments, however, should be noted.

Several commenters, for example, express support for other school bus definitions, such as the definition that was adopted at the Eleventh National Conference on School Transportation and the statutory definitions contained in the California and Ohio State Codes. None of these commenters, however, provide reasons explaining why the other definitions might be preferable to that which the agencies proposed. Accordingly, we have decided not to adopt their comments.

With regard to the reference to transit buses in this definition, Maryland DOT recommends that the definition be clarified to exclude not only transit buses "operated under contract with State or local authorities to provide transportation for [purposes that include carrying students to and from school or related events on a regular basis]", but all transit buses. Maryland's recommendation was made to ensure that transit buses that transport school children to and from school along with other passengers as part of routine transit operations without being under contract for such transportation are not considered to be "school buses." The agencies agree with this comment, and have changed the guideline accordingly.

There seemed to be some confusion, among the commenters, regarding whether large vans (those designed to carry 11 or more people), when used for purposes that include carrying students to and from school or related events on a regular basis, meet this "school bus" definition. They clearly do and, if so used, these vehicles must meet the FMVSS applicable to school buses. To clarify this question, subsection IV.B. of the guideline has been revised to specifically recommend that "school buses" meet applicable FMVSS.

4. School-chartered vehicle

The agencies proposed to define the term "school-chartered vehicle" to mean "a motor vehicle that is operated under a short-term contract with State or school authorities who have acquired the exclusive use of the vehicle at a fixed charge to provide transportation for a group of students to a special school-related event." This definition was developed to make allowances, in the guideline, for vehicles that a school may charter occasionally for special events. On those occasions when a school charters a bus instead of using a school bus for a school-related event, the agencies proposed that the guideline's recommendations for the safe operation of the vehicle would apply, but not its recommendations for equipment and identification. This distinction was made to promote safety on trips to school-related events without imposing unreasonable burdens on school administrators.

The commenters did not object to the application of the recommendations to these vehicles. However, six commenters proposed alternative definitions for the term or expressed concern about its breadth. Illinois points out, for example, that trucks and pre-77 buses could be chartered for special events under the proposed definition. The agencies do not wish to encourage that schools charter such vehicles. Accordingly, we have decided to revise the definition to limit the guideline's applicability to school-chartered buses only. In addition, we have included a recommendation that schools should not charter school buses which were not manufactured to meet all current FMVSS for such vehicles.

One commenter requested additional guidance on the meaning of the words "short-term" and "one-time" events used in the definition and preamble in the May 17 notice. They are meant to distinguish between "regular use," which should be reserved for school buses, and occasional use for special events.

5. School vehicle

The agencies proposed, in the May 17 notice, to define the term "school vehicle" to mean "any vehicle that is a 'school bus,' a transit bus operated under contract with State or local authorities to transport students to and from school or related events on a regular basis, or a passenger van (a passenger vehicle constructed on a truck chassis) that is owned by, or operated under contract with, school officials or with State or local authorities for that purpose, but does not include a school-chartered vehicle." This definition was intended to be broad so as to ensure that the guideline's operational and maintenance recommendations apply to all vehicles regularly used to carry students, yet exclude private vehicles, such as the family car or taxis, that might be used to carry school children.

We also proposed to extend identification and equipment recommendations to small vans that schools use to carry school children. These vans, which use truck chassis, are designed to carry 10 or fewer persons. Their passenger capacity makes them too small to meet NHTSA's definition of "school bus;" however, they are increasingly being used to transport school children. Because of this usage, the agencies proposed that these vans should be clearly identified to motorists as school vehicles.

Comments received in response to this proposal were uniformly negative. With regard to transit buses, NSTA notes that, under Urban Mass Transit Administration (UMTA) regulations, these vehicles are prohibited from being used to transport school children in many instances. With regard to vans, the comments of the California Association of School Transportation Officials (CASTO) are representative: "It seems alarming that NHTSA is promoting this definition, which in CASTO's mind seems to fly in the face of the gains made with the adoption of FMVSS 220, 221, 222, 301 and 302."

Accordingly, the agencies have reconsidered their original position. While we felt the proposed revision merely acknowledged the use of transit buses and small vans, many commenters felt that NHTSA and FHWA would be condoning or encouraging the use of such vehicles to transport school children, by including them in the guideline. This is something we do not wish to do, because school buses are believed to be the safest vehicles in which to transport school children. For this reason, the agencies have decided to eliminate this definition completely, and to limit the scope of Guideline 17 to school buses and school-chartered buses.

Section IV.A. Administration

Under the heading Administration, the proposal recommends that each State have a single agency having primary administrative responsibility for pupil transportation and employ at least one full-time professional to carry out these responsibilities. The California State Department of Education (CA DOE) and CASTO, which submitted virtually identical comments on this issue, both suggest that these recommendations should apply also at the Federal level.

In response to this comment, the agencies wish to stress that the purpose of this, as well as the other 17 Highway Safety Program Guidelines that have been promulgated by NHTSA and FHWA is to assist the States in conducting their highway safety programs. They have not been developed for the purpose of defining the manner in which the Federal agencies provide technical, monetary or other assistance to the States. CA DOE and CASTO may be interested to know, however, that there is a single Federal agency that has primary responsibility for pupil transportation, and that Federal agency is NHTSA. In addition, together NHTSA and FHWA employ a number of professionals, in their Offices of Alcohol and State Programs, Vehicle Safety Standards, Motor Carrier Standards and Chief Counsel, with responsibilities for the various aspects of the pupil transportation program.

The agencies' proposal recommended also that States develop an operating system for collecting and reporting pupil transportation information in a manner that is consistent with the criteria set forth in Highway Safety Program Guidelines 10, "Traffic Records," and 18, "Accident Investigation and Reporting." With regard to Accident data, Arizona DOT suggests that States use instead the 1990 National Conference School Bus Accident Reporting Form to standardize statistics. The agencies believe that a State's use of that form would not be inconsistent with the recommendations contained in Guideline 18. We believe also that any changes to the guidelines' recommendations for Accident Reporting should be contained in that guideline (Guideline 18), and not in Guideline 17.

In addition, while the agencies agree that there are advantages to developing a set of standardized, or uniform, statistics, we do not believe it is timely to consider changing Guideline 18 now. On May 1, 1990, NHTSA published, in the Federal Register, a notice with a proposed list of Critical Automated Data Reporting Elements (CADRE), which we hope States will collect on Police Traffic Accident Reports and include on automated databases. The CADRE would contain data elements relevant to pupil transportation as well as other motor vehicle crashes. Comments regarding this proposed list have been received and are being reviewed by the agency. When a final version of the CADRE has been developed, NHTSA

will publish a second notice in the Federal Register.

Section IV.B. Identification and Equipment of School Buses

The agencies proposed to simplify the guideline's identification and equipment recommendations to make clearer which recommendations apply to particular vehicles. Since any new "bus" sold for pupil transportation purposes must be certified as meeting the FMVSS for school buses, under the Vehicle Safety Act, the notice proposed that the identification and equipment recommendations of Guideline 17 apply to *all* school buses, not just Type I school buses (designed to carry more than 16 persons). The commenters that addressed this change, supported it.

The agencies also proposed that the guideline encourage the use of safety equipment and identifying features for other school vehicles, which would include certain transit buses and passenger vans (designed to carry 10 or fewer persons). As stated previously, virtually all commenters disagree with this aspect of the agencies' proposal.

Some commenters disagree on the basis that these recommendations are unnecessary with regard to these vehicles. Colorado DOE, for example, points out that vans are not permitted to control traffic in some States, and, therefore, should not be equipped with flashing lights and stop signal arms. Connecticut states that vans are typically used for transportation needs that do not require frequent stops, such as transporting a small group to a single location. Thus, the need to warn other motorists of the presence of children in the vicinity of the vehicle is less than with school buses.

Some respondents warn against identifying school vehicles which are not "school buses" as if they are, for other reasons. They state that the yellow coloring and "School Bus" markings on a vehicle provide assurances to the public that a vehicle is constructed to provide the highest level of safety to its passengers. Recommending that transit buses and small vans be similarly marked, they believe, would either provide a false assurance to parents and students or erode the confidence currently placed in school buses. Oregon DOE, for example, argues, "The term 'School Bus' must be jealously protected to ensure that students and parents can feel confident in not only the identification of the vehicle, but also its construction."

In addition, as already discussed, many commenters felt that the agencies would be condoning or encouraging the use of these vehicles to transport school children, simply by including them at all in the guideline. This is something we do not wish to do, because school buses are believed to be the safest vehicles in which to transport schoolchildren. For this reason, and the others cited, the agencies have decided that Guideline 17 will not include school vehicles (other than school buses) in its identification and equipment recommendations.

The commenters supported the proposal that the identification and equipment recommendations should not apply to school-chartered vehicles.

Three commenters suggested adopting the new mirror standard adopted by the 1990 National Standards Conference. In December 1989, NHTSA published an Advance Notice of Proposed Rulemaking announcing that the agency was considering changes to FMVSS 111, Rearview Mirrors. The agency is now reviewing comments received in response to this notice. Because the guideline references the FMVSS, any changes to the FMVSS will be incorporated into the guideline by reference.

Two commenters requested clarification of the recommendation that stop arms and signal lamps should not be "operable through the usual controls" when transporting primarily passengers other than school children. These commenters suggested that the guideline recommend instead that signal lamps and stop arms not be "operated," or used. These commenters felt that the current wording requires disconnection of these devices, and stated that this is not practical for occasional non-school use. The agencies have adopted this suggestion. We agree that it would be impractical to disconnect these devices when school buses are used intermittently for non-school use. On those occasions, the agency believes it is sufficient for drivers to use a mechanism that overrides these systems. If the school bus is being used for non-school activities for an extended period of time, however (i.e., during the summer), these devices should be disengaged.

Section IV.C. Operations

1. Personnel

Based on the unique characteristics and responsibilities associated with transporting school children, NSTA asserts that all drivers who transport school children, including transit and charter bus drivers, should receive the same level of training and meet the same qualifications, certifications and licensing provisions required for school bus drivers. As stated earlier, the agencies have decided that Guideline 17's coverage should not include school vehicles (other than school buses), because we do not wish to encourage their use. Accordingly, the guideline does not include a recommendation for the operation of transit buses. The Operations section of the guideline, however, is not limited to drivers of school buses; it pertains also to drivers of school-chartered buses occupied by school children. States are encouraged by the guideline to impose certain minimum requirements on these drivers. States are also encouraged to include in their selection, training and supervision plans, all persons whose primary duties involve transporting school children.

Some comments suggested inclusion of specific qualifications and training components for drivers and driver instructors. While the proposed guideline recommends that States develop a selection, training and supervision plan and minimum requirements for their personnel, the agencies believe that each State should establish its own particular training program and qualification requirements, or adopt an appropriate industry standard. Accordingly, these aspects of the proposed revision to Guideline 17 will not be changed.

Maryland DOT and NSTA suggest that the proposed recommendation that a driver be "free from arrests, convictions, and crashes for at least three years" is overly restrictive and unnecessarily limits the size of the potential school bus driving population. The Virginia DOE also expresses concern regarding this proposed recommendation and suggests that this section of the guideline not be more restrictive than FHWA's new Commercial Driver's License (CDL) Regulations.

The agencies agree with these comments, and have therefore changed this aspect of the guideline. FHWA's CDL regulations establish the minimum licensing requirements for commercial drivers and identify the circumstances that cause these drivers to become disqualified. The regulations cover most school bus and school-chartered bus drivers (all drivers who operate a vehicle designed to carry 16 or more persons, including the driver). Accordingly, the agencies have eliminated the recommendation that a driver be "free from arrests, convictions, and crashes for at least three years," but will continue to include in Guideline 17 a provision that drivers who are subject to the CDL standards have a valid commercial drivers license.

The agencies are mindful that certain school bus and school-chartered bus drivers (drivers who operate a vehicle designed to carry more than 10 but less than 16 persons, including the driver) are not subject to the CDL regulations. (These drivers, according to the guideline, should have a valid State driver's license.) We are also aware that certain serious traffic violations, that should be of concern to a State with regard to drivers who transport school children, would not disqualify a commercial driver. For example, driving a commercial motor vehicle while under the influence of alcohol or a controlled substance; or excessive speeding, reckless driving or committing a traffic violation in connection with a fatal accident while driving a commercial motor vehicle would disqualify a driver, but committing these offenses while driving a non-commercial motor vehicle may not, depending on the strictness of a State's driver disqualification criteria.

We therefore recommend in the guideline that States establish additional physical, mental, moral and other requirements, including requirements for drug and/or alcohol misuse or abuse, which all drivers of school buses and school-chartered buses occupied by school children should meet. States may consider, for example, requiring that these drivers have a traffic record free, for at least two years, from: (1) any license suspension, revocation, cancellation or denial for cause, as those terms are used in the National Driver Register Act of 1982 (23 U.S.C. 401 note), or any disqualification, as defined in 49 CFR 383.51; (2) any conviction for driving under the influence of alcohol or impaired by alcohol or a controlled substance, refusing to undergo testing as required by any State or jurisdiction, leaving the scene of an accident or felony involving the use of a motor vehicle; (3) more than one conviction for a serious traffic violation; and (4) any conviction for a serious traffic violation arising in connection with any traffic accident reportable under State or local law. A serious traffic violation, in this context, could mean a conviction for excessive speeding, as defined by State or local law or regulation; reckless driving, as defined by State or local law or regulation, including but not limited to offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property; improper or erratic traffic lane changes; or following the vehicle ahead too closely.

Two commenters question the recommendation that places on drivers the burden of "provide[ing] clear documentation that there is no evidence of drug and/or alcohol misuse or abuse." In response to this comment, we have removed the burden on the driver to "clearly document" a lack of evidence of drug and/or alcohol misuse or abuse, by recommending instead that States establish and require that drivers meet requirements regarding drug and/or alcohol misuse or abuse.

Several commenters responded to the agencies' request for comments regarding the possible inclusion of a recommendation that pupil transportation safety programs screen school vehicle drivers for drug and alcohol involvement. Most commenters were supportive of the agencies' recommendation, particularly where there is a reason to believe that there is drug or alcohol involvement. The National Education Association, however, opposes random mandatory drug and alcohol testing, and two commenters were concerned about the potential burden to the States and inconvenience to drivers who do not abuse drugs and alcohol.

The agencies have decided that the guideline should not specifically address the issue of drug and alcohol screening. We believe that, by recommending that States hire only drivers found to be without a record of drug and/or alcohol abuse or misuse, the guideline adequately addresses this problem. We are leaving the decision regarding how to gather this information to the States. We note that, presently, many employers and some States routinely use pre-employment screening procedures for all driver applicants.

2. Vehicles—Pre-77 School Buses

The comments were generally supportive of this section of the proposal, which addresses the aspects of operations pertaining to vehicles, particularly with respect to the agencies' proposed recommendation that school buses not manufactured to meet the April 1, 1977 FMVSS for school buses, be replaced with those that do meet the stricter school bus standards.

Except for one commenter who recommended that pre-77 buses could be retro-fitted at a significant savings, all commenters agreed that replacement of these buses is a step in the right direction. In fact, the State of Hawaii announced in its submission that it has, "informed all those that provide pupil transportation in [the] State to phase out pre-1977 school buses by June 1992." We applaud the swift action that has been taken by Hawaii and a number of other States.

Four commenters, however, express concern that the proposed recommendation does not go far enough. Under the proposal, the guideline recommends that pre-77 buses be replaced, "consistent with economic realities." Maryland DOT and Virginia DOE recommend that this condition be dropped because it tends to dilute the impact of the safety message conveyed in the guideline. Instead, they recommend the immediate replacement of these vehicles. While the agencies agree that pre-77 school buses should be replaced as quickly as possible, we also recognize that these vehicles continue to be in prevalent use throughout the country. Many States have indicated, in their comments and elsewhere, that they have a pre-1977 school bus retirement policy already in place. Any recommendation that suggests accelerating this process further for these States could pose an undesirable economic burden on many school districts. Accordingly, this aspect of the guideline will not be changed.

As stated previously in this notice, the agencies have decided to make a revision to their pre-77 school bus guidance. In addition to recommending that schools replace their pre-77 school buses, the agencies also recommend that schools should not charter any such school buses.

The Orange County Passenger Safety Association and NTSB go so far as to say that pre-77 vehicles should not remain in use at all. Orange County, for example, states:

> How can we justify the sale of these dangerous school buses to church and civic groups and excuse ourselves by saying the purchaser was informed of its condition. No pre-77 school bus should be available for purchase to anyone at anytime. This is essentially selling a time bomb and assuming no liability because the buyer knew it was a bomb.

While the agencies certainly encourage all users of school buses, public schools and other groups alike, to use school buses that were manufactured to meet the April 1, 1977 FMVSS for those vehicles, we believe that this commenter overstates the problem. Although post-77 school buses provide the safest form of surface transportation available, other factors should be taken into consideration when making the decision to use pre-77 school buses. For example, because of their size and weight, pre-1977 school buses offer superior levels of crash protection to other vehicles (station wagons and vans) which are often considered as alternatives to older school buses.

In our May 17 notice, the agencies requested comments regarding whether it would be appropriate for the guideline to recommend that purchasers of these pre-1977 school buses should be

informed by the seller (e.g., the State or a school) that the buses were manufactured prior to the April 1, 1977 effective date of NHTSA's comprehensive school bus safety standards. In particular, we requested comments on the merits of the recommendation in general, whether the guideline is an appropriate vehicle for the recommendation, the form and timing of the notice (i.e., at what point in the sales transaction), and the potential burdens State and school officials may have if such a notification procedure were incorporated into the guideline and adopted by a State.

Several commenters were supportive of the notion of notification, but their particular recommendations varied on the precise methods that should be used. We received little information about the form and timing of the notice and its potential burdens. In addition, some potential problems were raised and left unresolved, such as the ability of the procedure to reach non-school groups over which there is little or no regulation.

Accordingly, the agencies have decided to recommend, in this guideline, that States inform potential buyers of pre-1977 school buses that these buses may not meet current standards for newly manufactured vehicles and of the need for continued maintenance of these buses and adequate safety instruction. We have not specified, however, the manner in which this should be accomplished. Some States may choose, for example, to require notification of every purchaser prior to the sale of a pre-1977 school bus, while others may choose instead to conduct a public information program designed specifically to target potential buyers of these buses. These or other comparable solutions would be acceptable under this recommendation.

3. Vehicles—Seating

Two commenters (NSTA and Dennis Furr) have suggested that the seating specifications in the guideline are outdated and need to be changed. This issue was recently the subject of a petition to amend FMVSS No. 222, which argued that the current method of determining capacity results in overcrowding on school buses. The petition has been denied by NHTSA. Standard No. 222 calculates seating positions by a method designed to ensure that adequate crash protection is provided for the maximum number of passengers that could be accommodated. It is not meant to be a measure of the absolute capacity of the school bus for all size occupants.

Similarly, the guideline's recommendation for seating "at least as large as a 5th percentile adult female, as defined in 49 CFR 571.208" is intended to identify the maximum number of students that could be transported on a school bus. In practice, school buses transport students of various sizes (from pre-schoolers to 12th graders). For example, a bus that may be capable of easily accommodating 65 pre-school or elementary students may be capable of carrying only 43 high school students. This figure should, therefore, be adjusted based on the ages and sizes of the passengers involved.

CASTO and Orange County Passenger Safety Association (Orange County) requested that NHTSA conduct testing of recliner seats in connection with FMVSS 222 and perform new studies on the use of safety belts on Type I school buses. These requests pertain to FMVSS and are, therefore, beyond the scope of the guideline.

With regard to the issue of safety belts on school buses, NTSB and Orange County recommend that their use be required when the school bus has a gross vehicle weight rating (GVWR) of over 10,000 pounds. After exhaustive review of the research on the efficacy and cost effectiveness on safety belts on large school buses, the National Academy of Sciences (NAS) came to the opposite conclusion in its May 1989 report, "Improving School Bus Safety." Instead, NAS recommended that school bus safety activities should be focused on making the bus safer in the loading/unloading zone. In a July 1989 **Federal Register** notice, NHTSA accepted NAS's recommendation, and published an ANPRM on mirrors that addressed loading/unloading zones.

The NTSB noted that, prior to the agencies' revision of the guideline, it recommended that children wear restraints in some vehicles that were not required by Federal standards to have restraints. By eliminating the Type I versus Type II distinction, the agencies have resolved this problem. The NTSB continues to be concerned, however, that the use of safety belts which have been modified in a manner inconsistent with Federal standards could pose a safety hazard. The agencies agree that this is a legitimate concern. Accordingly, the following sentence has been added to the guideline: Occupant restraints should comply with the requirements of FMVSS Nos. 208, 209, and 210 as they apply to multipurpose vehicles.

4. Vehicles—Emergency Exit Access

The agencies proposed, in May, to include a recommendation that baggage and other items transported in the passenger compartment should be stored so that the aisles are kept clear and the doors and emergency exits of school vehicles remain unobstructed at all times. There was no opposition to this recommendation. However, the agencies' request for comments on the merits of recommending that buses intended for sports, marching band and other activities that may involve transporting large items of equipment, be ordered with storage compartments beneath the passenger compartment created considerable controversy.

Many commenters felt that the agencies were recommending that school buses should be equipped with luggage racks. The agency did not intend to give this impression. However, the agencies agree with the suggestions made in some comments that interior luggage racks should retain their contents. Accordingly, the agency is including in the guideline a recommendation that, when school buses are equipped with interior luggage racks, the racks should be capable of retaining their contents in a crash or sudden driving maneuver.

The agencies received conflicting comments regarding storage compartments beneath the passenger area of buses. Maryland suggested that storage compartments be allowed either at the rear of or under the passenger area. When buses are intended for sports, marching band and other activities that may involve transporting large items of equipment, Connecticut recommends that they be ordered with storage compartments beneath the passenger compartment. Oregon argues, however, that underside storage is often very limited and may not always provide an acceptable alternative. It was also suggested, by one commenter, that storage compartments can affect the structural integrity of the vehicle. Because of the conflicting opinions in the comments, this issue will not be addressed in the guideline.

Section IV.D. Vehicle Maintenance

A number of commenters from the State of Wisconsin indicate that, in their State, annual inspections and "spot checks" are conducted, rather than semi-annual inspections, as recommended in the guideline. They recommend that the guideline be changed to accept this procedure as an alternative. The agencies' recommendation that inspections be performed semi-annually is not a new one; it has been contained in Guideline 17 (formerly Standard 17) since its inception. While Wisconsin may have had success in maintaining its fleet of school vehicles using a different procedure, and the agencies recognize that spot checks may be useful, NHTSA and FHWA continue to believe that the use of semi-annual inspections is the preferable approach.

Section IV.E. Other Aspects of Pupil Transportation Safety

1. Instruction

The agencies proposed that pupils transported in school vehicles receive instruction in safe riding practices, proper loading and unloading techniques, and proper street crossing to and from school bus stops. Additionally, pupils should participate in supervised emergency evacuation drills, at least once during each school semester. Several comments were received regarding who should receive instruction and how often instruction should be given. The Blue Bird Body Company, for example, took issue with the phrase "pupil transported in a school vehicle" and asked, "Who can say which children will not be transported in a school vehicle?" The agencies leave this determination to State and local school officials. They may choose to provide instruction to all pupils, and we certainly would not discourage such a practice. However, we do not believe it is necessary to include such a recommendation in Guideline 17.

CA DOE and CASTO recommend providing instruction only to those pupils who are transported on school buses, not to those who are transported on other school vehicles. For the reasons discussed previously in this notice, we have adopted this recommendation. These commenters also recommend, as does NTSB, creating a distinction between pupils who are transported from home to school and those who are transported on activity or field trips. They suggest that pupils who are transported only on these trips should receive instruction more frequently (prior to departing on every trip), but that the instruction could be limited. We agree and have, therefore, included in the guideline a recommendation that these pupils be instructed on safe riding practices and on the location and operation of emergency exits prior to departing on every trip.

Blue Bird suggests that younger children might require instruction more often than older children. While no comment recommends providing instruction to younger children (other than those who are transported only on activity trips) more frequently than once each semester, CA DOE seems to recommend that pupils in grades four through eight receive instruction just once per year; and that pupils above the eighth grade not receive instruction at all. The agencies disagree with this recommendation. Guideline 17 has always recommended that pupils of all ages (up to grade twelve) receive instruction twice each year. We have changed the guideline to recommend that instruction take place once each semester, thereby ensuring that it is dispersed throughout the school year. However, we disagree that the guideline should be changed to recommend that instruction occur less frequently.

NTSB and the Education Service Center, Region XIII (ESC) make a number of specific recommendations regarding emergency egress procedures and instruction. For example, they both ask whether police, or fire and rescue personnel will be involved in planning pupil instruction and conduct the training. We agree that such personnel could be involved in evacuation training of school children. However, we believe that this recommendation is premature. NHTSA is currently exploring, with the National Association of State Directors of Pupil Transportation Services, the development of training materials in evacuation for school children and extrication and evacuation for police and emergency services personnel. At present, there are no training programs designed to involve these elements in school bus evacuation training.

NTSB also recommends that the guideline should specify a period of time by which all students should be out of the school vehicle during evacuation drills and include instruction on all avenues of egress so that pupils are prepared in the event of a rollover. The agencies agree that emergency evacuation drills should be timed, and we have revised the guideline accordingly. However, at present, we have no objective data as to what those times should be. Furthermore, the agencies generally do not include this level of detail in their Highway Safety Program Guidelines. As stated previously, however, NHTSA has plans to revise Highway Safety Program Manual No. 17 to reflect the revisions that have been made to Guideline 17 in this notice. The manual is designed as a guide for States and their political subdivisions in developing pupil transportation policies and procedures, and does provide a greater level of detail on specific areas, such as these. It also would be non-binding. NHTSA will consider these comments during its preparation of the revised manual.

2. Pedestrian and Bicycle Safety

In the May 17 notice, the agencies indicated that they were considering expanding the guideline to recommend that pupil transportation safety programs include recommendations for safe pedestrian and bicycle riding practices. We stated also that we were interested in revising the guideline to encourage States to consider adoption of safety measures, such as the school safety patrol, school vehicle monitor and crossing guard programs, for their pupil transportation safety programs. These areas are among those determined by the National Academy of Sciences (NAS) as capable of enhancing school bus safety, and identified by NHTSA as "most effective" in protecting the safety of school children (54 FR 29628; July 13, 1989).

Most commenters who addressed this issue support expanding the pupil transportation guideline to include safe pedestrian and bicycle riding practices. Wisconsin DOT provided the following justification:

> There are over seven times as many pedestrian and bicyclist injuries as there are school bus-related injuries in our state each year. Although it is not clear how many of the pedestrian and bicyclist injuries occur during school-related trips, school children account for a large number of those injured. Over two-thirds of bicyclist injuries involve children, one-fourth of pedestrian fatalities and 40 to 45 percent of pedestrian nonfatal injuries.

Some commenters, however, including NSTA, NTSB and Maryland DOT, were concerned about expanding pedestrian and bicycle safety too broadly within Guideline 17. NSTA, for example, suggests that the guideline should be limited to activities which involve going to and from the school bus stop. While all three commenters agree that safe pedestrian and bicycle riding practices covering all children traveling to and from school is an area which requires and deserves national attention, they advise that it should be addressed in a separate guideline.

In its 1989 Special Report 222, "Improving School Bus Safety," the NAS recommended a number of effective countermeasures to improve school bus safety. Four of these countermeasures addressed pedestrian safety issues. On July 13, 1989, NHTSA issued a notice in the **Federal Register** endorsing NAS's recommendations, and deemed a number of them to be "effective" or "most effective." A number of pedestrian safety measures were determined to be "most effective." On July 20, 1989, NHTSA issued a Federal Register notice announcing the availability of special grant funds, set aside to address school bus safety issues. The sum of $4.5 million was set

aside to address those measures deemed to be "effective" and "most effective" in the july 13, 1989 notice.

Thirty-five States chose to use part of their set-aside funds to address pedestrian and bicycle safety issues. We believe that choice made by these States supports our position that pupil transportation should not be considered to apply solely to school bus transporation safety. Accordingly, we have retained the pedestrian and bicycle safety information in the guideline.

We recognize, of course, that the problem of pedestrian and bicycle safety involves much more than children traveling to and from school, which is not addressed in this or in any other guideline. The agencies have already announced their plans to conduct rulemaking to determine whether to elevate the area of Pedestrian and Bicycle Safety to become a National Priority program area under the section 402 program. If it does become a National Priority area, NHTSA and FHWA would develop additional guidance to assist States in this program area.

With regard to school safety patrol, school vehicle monitor and crossing guard programs, NSTA suggests that a pilot study should be conducted to determine their effectiveness in improving school bus safety. Further, they recommend that, if the pilot study finds that any of these measures will improve school bus safety, use of these measures should be encouraged. The agencies believe these programs are effective. The guideline already recommends their use.

3. Procedures for School Vehicle Drivers and Passengers

Blue Bird suggests that a recommendation be added to the guideline which includes procedures for school vehicle drivers and passengers regarding order and discipline, in loading zones and adjoining areas and for filling seats. If the agencies were to recommend procedures in these areas, they would be included in the manual, not the guideline. We will consider these issues during the preparation of the revised manual.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that it has no federalism implication that warrants the preparation of a federalism assessment. Guideline 17 contains recommendations to the States. It does not impose standards or requirements.

List of Subjects in 23 CFR Part 1204

Grant programs, Highway Safety.

In consideration of the foregoing, NHTSA and FHWA amend 23 CFR part 1204 as follows:

PART 1204—[AMENDED]

1. The authority citation for part 1204 continues to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

§ 1204.4 [Amended]

2. Highway Safety Program Guideline No. 17, Pupil Transportation Safety, is revised and the summary of comments and recommendations is removed to read as follows:

I. *Scope.* This guideline establishes minimum recommendations for a State highway safety program for pupil transportation safety including the identification, operation, and maintenance of buses used for carrying students; training of passengers, pedestrians, and bicycle riders; and administration.

II. *Purpose.* The purpose of this guideline is to minimize, to the greatest extent possible, the danger of death or injury to school children while they are traveling to and from school and school-related events.

III. *Definitions.*

Bus is a motor vehicle designed for carrying more than 10 persons (including the driver).

Federal Motor Carrier Safety Regulations (FMCSR) are the regulations of the Federal Highway Administration (FHWA) for commercial motor vehicles in interstate commerce, including buses with a gross vehicle weight rating (GVWR) greater than 10,000 pounds or designed to carry 16 or more persons (including the driver), other than buses used to transport school children from home to school and from school to home. (The FMCSR are set forth in 49 CFR parts 383–399.)

School-chartered bus is a "bus" that is operated under a short-term contract with State or school authorities who have acquired the exclusive use of the vehicle at a fixed charge to provide transportation for a group of students to a special school-related event.

School bus is a "bus" that is used for purposes that include carrying students to and from school or related events on a regular basis, but does not include a transit bus or a school-chartered bus.

IV. *Pupil Transportation Safety Program Administration and Operations.—Recommendation.* Each State, in cooperation with its school districts and other political subdivisions, should have a comprehensive pupil transportation safety program to ensure that school buses and school-chartered buses are operated and maintained so as to achieve the highest possible level of safety.

A. *Administration.* 1. There should be a single State agency having primary administrative responsibility for pupil transportation, and employing at least one full-time professional to carry out these responsibilities.

2. The responsible State agency should develop an operating system for collecting and reporting information needed to improve the safety of operating school buses and school-chartered buses. This includes the collection and evaluation of uniform crash data consistent with the criteria set forth in Highway Safety Program Guidelines No. 10, "Traffic Records" and No. 18, "Accident Investigation and Reporting."

B. *Identification and equipment of school buses.* Each State should establish procedures to meet the following recommendations for identification and equipment of school buses.

1. All school buses should:

a. Be identified with the words "School Bus" printed in letters not less than eight inches high, located between the warning signal lamps as high as possible without impairing visibility of the lettering from both front and rear, and have no other lettering on the front or rear of the vehicle, except as required by Federal Motor Vehicle Safety Standards (FMVSS), 49 CFR part 571.

b. Be painted National School Bus Glossy Yellow, in accordance with the colorimetric specification of National Institute of Standards and Technology (NIST) Federal Standard No. 595a, Color 13432, except that the hood should be either that color or lusterless black, matching NIST Federal Standard No. 595a, Color 37038.

c. Have bumpers of glossy black, matching NIST Federal Standard No. 595a, Color 17038, unless, for increased visibility, they are covered with a reflective material.

d. Be equipped with safety equipment for use in an emergency, including a charged fire extinguisher, that is properly mounted near the driver's seat, with signs indicating the location of such equipment.

e. Be equipped with device(s) demonstrated to enhance the safe operation of school vehicles, such as a stop signal arm.

f. Be equipped with a system of signal lamps that conforms to the school bus requirements of FMVSS No. 108, 49 CFR 571.108.

g. Have a system of mirrors that conforms to the school bus requirements of FMVSS No. 111, 49 CFR 571.111, and provides the seated driver a view to the rear along both sides of the bus and a view of the front bumper and the area in front of the bus. Mirrors should be positioned and adjusted such that when a rod, 30 inches long, is placed upright on the ground at any point along a traverse line 1 foot forward of the forward-most point of a school bus, at least 7½ inches of the length of the rod should be visible to the driver, either by direct view or by the system of mirrors.

h. Comply with all FMVSS applicable to school buses at the time of their manufacture.

2. Any school bus meeting the identification recommendations of sections 1.a–h above that is permanently converted for use wholly for purposes other than transporting children to and from school or school-related events should be painted a color other than National School Bus Glossy Yellow, and should have the stop arms and school bus signal lamps described by sections 1.e & f removed.

3. School buses, while being operated on a public highway and transporting primarily passengers other than school children, should have the words "School Bus" covered, removed, or otherwise concealed, and the stop arm and signal lamps described by sections 1.e & f should not be operated.

4. School-chartered buses should comply with all applicable FMCSR and FMVSS.

C. *Operations.* Each State should establish procedures to meet the following recommendations for operating school buses and school-chartered buses:

1. *Personnel.* a. Each State should develop a plan for selecting, training, and supervising persons whose primary duties involve transporting school children in order to ensure that such persons will attain a high degree of competence in, and knowledge of, their duties.

b. Every person who drives a school bus or school-chartered bus occupied by school children should, as a minimum:

(1) Have a valid State driver's license to operate such a vehicle. All drivers who operate a vehicle designed to carry 16 or more persons (including the driver) are required by FHWA's Commercial Driver's License Standards by April 1, 1992 (49 CFR part 383) to have a valid commercial driver's license;

(2) Meet all physical, mental, moral and other requirements established by the State agency having primary responsibility for pupil transportation, including requirements for drug and/or alcohol misuse or abuse; and

(3) Be qualified as a driver under the Federal Motor Carrier Safety Regulations of the FHWA, 49 CFR part 391, if the driver or the driver's employer is subject to those regulations.

2. *Vehicles.* a. Each State should enact legislation that provides for uniform procedures regarding school buses stopping on public highways for loading and discharge of children. Public information campaigns should be conducted on a regular basis to ensure that the driving public fully understands the implications of school bus warning signals and requirements to stop for school buses that are loading or discharging school children.

b. Each State should develop plans for minimizing highway use hazards to school bus and school-chartered bus occupants, other highway users, pedestrians, bicycle riders and property. They should include, but not be limited to:

(1) Careful planning and annual review of routes for safety hazards;

(2) Planning routes to ensure maximum use of school buses and school-chartered buses, and to ensure that passengers are not standing while these vehicles are in operation;

(3) Providing loading and unloading zones off the main traveled part of highways, whenever it is practical to do so;

(4) Establishing restricted loading and unloading areas for school buses and school-chartered buses at or near schools;

(5) Ensuring that school bus operators, when stopping on a highway to take on or discharge children, adhere to State regulations for loading and discharging including the use of signal lamps as specified in section B.1.f. of this guideline;

(6) Prohibiting, by legislation or regulation, operation of any school bus unless it meets the equipment and identification recommendations of this guideline; and

(7) Replacing, consistent with the economic realities which typically face school districts, those school buses which are not manufactured to meet the April 1, 1977 FMVSS for school buses, with those manufactured to meet the stricter school bus standards, and not chartering any pre-1977 school buses.

(8) Informing potential buyers of pre-1977 school buses that these buses may not meet current standards for newly manufactured buses and of the need for continued maintenance of these buses and adequate safety instruction.

c. Use of amber signal lamps to indicate that a school bus is preparing to stop to load or unload children is at the option of the State. Use of red warning signal lamps as specified in section B.1.f. of this guideline for any purpose or at any time other than when the school bus is stopped to load or discharge passengers should be prohibited.

d. When school buses are equipped with stop arms, such devices should be operated only in conjunction with red warning signal lamps, when vehicles are stopped.

e. Seating. (1) Standing while school buses and school-chartered buses are in motion should not be permitted. Routing and seating plans should be coordinated so as to eliminate passengers standing when a school bus or school-chartered bus is in motion.

(2) Seating should be provided that will permit each occupant to sit in a seat intended by the vehicle's manufacturer to provide accommodation for a person at least as large as a 5th percentile adult female, as defined in 49 CFR 571.208. Due to the variation in sizes of children of different ages, States and school districts should exercise judgment in deciding how many students are actually transported in a school bus or school-chartered bus.

(3) There should be no auxiliary seating accommodations such as temporary or folding jump seats in school buses.

(4) Drivers of school buses and school-chartered buses should be required to wear occupant restraints whenever the vehicle is in motion.

(5) Passengers in school buses and school-chartered buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or less should be required to wear occupant restraints (where provided) whenever the vehicle is in motion. Occupant restraints should comply with the requirements of FMVSS Nos. 208, 209 and 210, as they apply to multipurpose vehicles.

f. Emergency exit access. Baggage and other items transported in the passenger compartment should be stored and secured so that the aisles are kept clear and the door(s) and emergency exit(s) remain unobstructed at all times. When school buses are equipped with interior luggage racks, the racks should be capable of retaining their contents in a crash or sudden driving maneuver.

D. *Vehicle maintenance.* Each State should establish procedures to meet the following recommendations for maintaining buses used to carry school children:

1. School buses should be maintained in safe operating condition through a systematic preventive maintenance program.

2. All school buses should be inspected at least semiannually. In addition, school buses and school-chartered buses subject to the Federal Motor Carrier Safety Regulations of FHWA should be inspected and maintained in accordance with those regulations (49 CFR Parts 393 and 396).

3. School bus drivers should be required to perform daily pre-trip inspections of their vehicles, and the safety equipment thereon (especially fire extinguishers), and to report promptly and in writing any problems discovered that may affect the safety of the vehicle's operation or result in its mechanical breakdown. Pre-trip inspection and condition reports for school buses and school-chartered buses subject to the Federal Motor Carrier Safety Regulations of FHWA should be performed in accordance with those regulations (49 CFR 392.7, 392.8, and 396).

E. *Other Aspects of Pupil Transportation Safety.* 1. At least once during each school semester, each pupil transported from home to school in a school bus should be instructed in safe riding practices, proper loading and unloading techniques, proper street crossing to and from school bus stops and should participate in supervised emergency evacuation drills, which are timed. Prior to each departure, each pupil transported on an activity or field trip in a school bus or school-chartered bus should be instructed in safe riding practices and on the location and operation of emergency exits.

2. Parents and school officials should work together to select and designate the safest pedestrian and bicycle routes for the use of school children.

3. All school children should be instructed in safe transportation practices for walking to and from school. For those children who routinely walk to school, training should include preselected routes and the importance of adhering to those routes.

4. Children riding bicycles to and from school should receive bicycle safety education, wear bicycle safety helmets, and not deviate from preselected routes.

5. Local school officials and law enforcement personnel should work together to establish crossing guard programs.

6. Local school officials should investigate programs which incorporate the practice of escorting students across streets and highways when they leave school buses. These programs may include the use of school safety patrols or adult monitors.

7. Local school officials should establish passenger vehicle loading and unloading points at schools that are separate from the school bus loading zones.

V. *Program evaluation.* The pupil transportation safety program should be evaluated at least annually by the State agency having primary administrative responsibility for pupil transportation.

Issued on April 23, 1991.

Jerry Ralph Curry,
Administrator, National Highway Traffic Safety Administration.

Thomas D. Larson,
Administrator Federal Highway Administration.

[FR Doc. 91-9960 Filed 4-23-91; 4:17 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program; Board of Review; Office of Administrative Hearings

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is announcing the approval of proposed amendments to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern proposed changes to the Code of Maryland Administrative Regulations (COMAR) and are intended to incorporate regulatory changes initiated by the State. The proposed amendments would abolish the Board of Review of the Department of Natural Resources and revise the procedures for appeal of adjudicatory hearing decisions to correspond with the procedures implemented for the newly created Office of Administrative Hearings, an independent unit in the Executive Branch.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301; Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Submission of Amendments
III. Director's Findings
IV. Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Maryland Program

On February 18, 1982, the Secretary of Interior approved the Maryland program. Information regarding the general background of the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.12, 30 CFR 920.15 and 30 CFR 920.16.

II. Submission of Amendments

Senate Bill (SB) 658, enacted during the 1989 legislative session, created the Office of Administrative Hearings (Administrative Record No. MD-466). Under the authority of SB-658, the duties of the Department of Natural Resources (DNR) Board of Review now fall within the purview of the Maryland Office of Administrative Hearings. Accordingly, SB-144 of the 1990 legislative session repealed sections 1-106 and 1-107 of the Natural Resources Article of the Maryland Annotated Code. These sections defined the authority and duties of the Board of Review. Senate Bills 144 and 658 were formally submitted to OSM as an amendment to Maryland's surface mine regulatory program on September 28, 1990 (Administrative Record No. MD-469).

OSM announced receipt of the proposed amendment in the **Federal Register** on November 16, 1990 (55 FR 47892), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on December 17, 1990.

With the intent of bringing its surface mine regulatory program into conformance with SB-658 and SB-144, by letter dated November 21, 1990, (Administrative Record No. MD-484), Maryland submitted a proposed amendment to modify the following sections of the Code of Maryland (COMAR) 08.13.09.06, 08.13.09.06B, 08.13.09.43K(7), and 08.13.09.43N(7).

OSM announced receipt of the proposed amendment in the January 9, 1991, **Federal Register** (56 FR 822), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments.

The comment period closed on February 8, 1991.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendments submitted on September 28, 1990 (Administrative Record No. MD-469) and on November 21, 1990 (Administrative Record No. MD-484). Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

Revisions to Maryland's Regulations That are Not Substantially Identical to the Corresponding Federal Regulations

1. Senate Bill 658—Office of Administrative Hearings

Senate Bill 658 creates an Office of Administrative Hearings as an independent unit in Maryland's Executive Branch which organizes the State's network of hearing examiners into one unit of professional administrative law judges trained to hear cases in a number of areas. The Federal rule at 43 CFR part 4 provides hearing and appeal procedures through the Office of Hearings and Appeals. The Director finds Maryland's statutory provision not inconsistent with the Federal rule.

2. Senate Bill 144—Repeal of Board of Review

Senate Bill 144 repeals sections 1-106 and 1-107 of the Natural Resources Article, Annotated Code of Maryland, which established a Board of Review as the first level of appeal for contested cases at the Department of Natural Resources (DNR). Maryland will now provide for only a judicial appeal of final DNR's decisions to the Maryland Circuit Court.

Section 525 of SMCRA requires an administrative review process which provides an opportunity for a public hearing. Procedures for both administrative hearings and administrative appeals are provided in 30 CFR part 4. 30 CFR 840.15 and 30 CFR 732.15(b)(10) similarly require development, revision and enforcement of State programs consistent with public participation requirements of the Act and the Federal regulations. 30 CFR 732.15(b)(14) specifically requires that State programs provide for administrative review of State actions in accordance with section 525 of the Act and subchapter L of chapter VII of the Code of Federal Regulations.

It is clear from the preambles to 30 CFR 840.15 and 732.15 that citizen access to the State administrative review process must be provided as stated in 732.15(b)(14). However, the States have flexibility in instituting State procedures. States may develop reasonable regulations on these matters suited to their individual conditions and needs, so long as citizen access consistent with 30 CFR 840.15 is provided (See 44 FR 14965 (1979); 44 FR 15297 (1979); and 47 FR 35625 (1982)).

The Director, therefore, finds that the proposed repeal of these statutory provisions will not render the State program less stringent than section 525 of SMCRA or less effective than the Federal regulations.

3. COMAR 08.13.09.06—Administrative and Judicial Review

Maryland proposes to change the section title of COMAR 08.13.09.06 from "Permit Applications: Judicial Review" to "Administrative and Judicial Review." The Director finds the proposed revision not inconsistent with the Federal regulations.

4. COMAR 08.13.09.06B—Administrative Appeal

Maryland proposes to delete COMAR 08.13.09.06B, "Administrative Appeal," which provides for appeals to the Board of Review. Former subsection COMAR 08.13.09.06C is relettered 08.13.09.06B to maintain organizational consistency. As discussed in Finding 2 above, the Director finds that the proposed deletion will not render the State program less stringent than section 525 of SMCRA or less effective than the Federal regulations.

5. COMAR 08.13.09.43K(7)—General Provisions on Adjudicatory Hearings; Procedure After Testimony Is Concluded

At COMAR 08.13.09.43K(7), Maryland proposes to provide for appeals in accordance with article 41, section 244 *et seq.*, Annotated Code of Maryland. The provision for appeals to the Board of Review has been deleted. As discussed in Finding 2 above, the Director finds the proposed revision not inconsistent with the Federal regulations.

However, the citation to article 41, section 244 *et seq.* Annotated Code of Maryland is incorrect. The correct citation is the Maryland Administrative Procedure Act, State Government Article, sections 10-201 *et seq.* Annotated Code of Maryland. Accordingly, the Director is requiring that Maryland further amend this regulation to correct the citation.

6. COMAR 08.13.09.43N(7)—General Provisions on Adjudicatory Hearings; Award of Costs

At COMAR 08.13.09.43N(7) pertaining to the award of costs, Maryland proposes to provide for appeals in accordance with Article 41, section 244 *et seq.*, Annotated Code of Maryland. The provision for appeals to the Board of Review has been deleted. As discussed in Finding 2 above, the Director finds the proposed revision not inconsistent with the Federal regulations.

As discussed in Finding 5, the citation to Article 41, section 244 *et seq.* Annotated Code of Maryland is incorrect. The correct citation is the Maryland Administrative Procedure Act, State Government Article, sections 10-201 *et seq.* Annotated Code of Maryland. Accordingly, the Director is requiring that Maryland further amend this regulation to correct the citation.

Public Comments

The public comment period and opportunity to request a public hearing announced in the November 16, 1990, **Federal Register** (55 FR 47892) ended on December 17, 1990, and the public comment period and opportunity to request a public hearing announced in the January 9, 1991, **Federal Register** (56 FR 822) ended on February 8, 1991. Public hearings were not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Department of Labor, Mine Safety and Health Administration, the Department of the Interior, Bureau of Land Management, and the Department of the Interior, Fish and Wildlife Service, concurred without comment.

V. Director's Decision

Based on the above findings, the Director is approving the program amendments submitted by Maryland on September 28, 1990, and November 21, 1990.

The Federal regulations at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program

amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 505 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved program. In his oversight of the Maryland program, the Director will review only the statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Maryland of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a state program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). EPA responded on December 7, 1990, and December 21, 1990, and concurred with the proposed amendment.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 703(d) of SMCRA, 30 U.S.C. 1293(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from the preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 17, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 920.15, a new paragraph (j) is added to read as follows:

§ 920.15 Approval of regulatory program amendments.

* * * * *

(j) The following amendments submitted to OSM on September 28, 1990 and November 21, 1990 are approved effective April 26, 1991. The amendments consist of the following modifications to the Maryland program:

(1) Revision of the following rules of Code of Maryland Administrative Regulations:

08.13.09.06 Administrative and Judicial Review.

08.13.09.06B Administrative Appeal (deleted and replaced with Judicial Review).

08.13.09.43K(7) General Provisions on Adjudicatory Hearings; Procedure After Testimony is Concluded.

08.13.09.43N(7) General Provisions on Adjudicatory Hearings; Award of Costs.

3. In § 920.16 a new paragraph (a) is added to read as follows:

§ 920.16 Required program amendments.

(a) By July 25, 1991, Maryland shall submit proposed revisions to COMAR 08.13.09.43K(7) and COMAR 08.13.09.43N(7) to cite the Maryland Administrative Act, State Government Article, sections 10–201 *et seq.*, Annotated Code of Maryland instead of article 41, section 244, *et seq.*, Annotated Code of Maryland.

[FR Doc. 91-9858 Filed 4-25-91; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 111

Nonmailability of Locksmithing Devices

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: With some minor additions and editing, the Postal Service is adopting its proposal of February 6, 1989, to amend its regulations to reflect the provisions of 39 U.S.C. 3002a making locksmithing devices nonmailable.

EFFECTIVE DATE: May 28, 1991.

FOR FURTHER INFORMATION CONTACT: John Ventrasco, (202) 268-5365.

SUPPLEMENTARY INFORMATION: Section 7090 of Public Law 100-690, approved November 18, 1988, amended, among other things, chapter 30 of title 39, United States Code, by adding new section 3002a, entitled "Nonmailability of locksmithing devices." Section 3002a defines the term "locksmithing device", and makes any such device nonmailable unless mailed to specified persons or organizations with a business interest in such a device, such as lock manufacturers and bona fide locksmiths. On February 6, 1989, the Postal Service proposed to amend its regulations on nonmailable articles and substances, contained in part 124 of the Domestic Mail Manual, to reflect the new statute (54 FR 5861). Comments on the proposal were received from four parties. These comments have been considered carefully, and a discussion of them follows.

Section 3002a designates four categories of addressees who are allowed to receive locksmithing devices by mail. One of the categories is a "bona fide locksmith". The statute does not define the quoted term. One commenter urged the Postal Service to do so, on the ground that a uniform definition of the term has not been provided by locksmithing laws and regulations in the United States. The lack of a uniform legal definition would not warrant the action requested, however, as there are plain meanings customarily attributed to the words composing the term. Anyone unfamiliar with these meanings could learn them merely by referring to a standard dictionary. Such references would quickly reveal that a locksmith is one who makes or repairs locks and that "bona fide", in the sense clearly suited to modifying "locksmith", means "genuine". See e.g., Webster's Ninth New Collegiate Dictionary (Merriam-Webster Inc., Springfield, MA, 1986). Thus, the plain meaning of "bona fide locksmith" is "one who genuinely is a maker or repairer of locks". When the wording of a statutory provision is plain, unambiguous, and uncontrolled by other parts of the statute or other statutes on the same subject, it cannot be given a meaning different from what it customarily has. This is the well established principle of statutory construction known as the "plain meaning rule". See Sutherland Stat. Const., 46.01 (4th Ed.).

The same commenter provided its own definition of "bona fide locksmith" which it asked the Postal Service to adopt. The definition would depart from the plain meaning of the term, and would extend "bona fide locksmith" to include any "student enrolled in a locksmithing course of study from a nationally accredited trade, technical or home study school". Whether adoption of such a definition—in effect adding another exempt category to those expressly provided in the statute—would benefit the public sufficiently to offset any potential for thwarting the statute's purpose is a legislative question which would have to be resolved by Congress. Legislation permitting the Postal Service to grant such administrative exceptions to section 3002a was introduced in the 101st Congress, and passed by the House of Representatives, but not acted upon by the Senate. See H.R. 2802, 101st Cong., 1st Sess. (1989).

Section 3002a was intended to make it more difficult for locksmithing devices to fall into the hands of those who might use them unlawfully. Upon introducing the bill which led to enactment of section 3002a approximately one year later, Senator Adams noted that "[i]t is surprisingly easy to order lockpicking tools through the mail" which, "more often than not, * * * fall into the wrong hands." He expressed the belief that the legislation he was proposing would "assist in protecting our citizens from unlawful entry to their homes, businesses, and cars by criminals using lock picks purchased through the mail." He further noted that the four exceptions provided in his bill were "legitimate and necessary for the locksmith and lock industry." See 133 Cong. Rec. S14613 (daily ed. Oct. 20, 1987).

The same commenter also asked the Postal Service to adopt a provision which would, in effect, exempt from the prohibition of section 3002a anyone acting "in reasonable reliance . . . on any written, credible information containing an affidavit or representation that a locksmithing device is mailable because it is being mailed to (an addressee in one of the exempt categories)." We will not discuss the merits of this proposal, as creating such an exemption would also be a legislative matter within the jurisdiction of Congress. Unlike section 3002 of title 39, United States Code (the earlier statute on nonmailable motor vehicle master keys), section 3002a contains no delegation of authority to the Postal Service to create exemptions.

A second commenter asked the Postal Service to provide an exemption—either directly, or via interpreting "bona fide locksmith"—which would allow locksmithing devices to be mailed to "auto/motor clubs providing emergency lockout service". The commenter described interests of safety, convenience, and cost-avoidance advanced by "emergency lockout service", and reliance on the mail for distributing the locksmithing devices for use in providing this service. For the reasons already noted, the Postal Service is without authority to grant this request. The merits of such an additional exemption would have to be evaluated by Congress, in relation to the public-protection interests which section 3002a was intended to advance.

A third commenter suggested creating an exemption for any student taking a locksmithing course from a correspondence school certified by the state in which it operates. The commenter indicated that the cost of fulfilling the "national accreditation" criterion contained in the first commenter's proposal would be prohibitive, and that only one of the major locksmithing correspondence schools is so accredited. As with the proposals discussed above, adoption of this suggested exemption would be a matter within the jurisdiction of Congress, rather than the Postal Service.

A fourth commenter expressed concern about the definition of "locksmithing device" in subsection (b)(2) of section 3002a. Under this definition, the term "locksmithing device" includes a device or tool—other than a key, or a device or tool designed to manipulate the tumblers in a lock into the unlocked position through the keyway of such lock—designed for the "unauthorized opening or bypassing of a lock or similar security device." The commenter questioned the effect of the quoted words on the mailing of such a device or tool which is "designed for the 'unauthorized' opening or bypassing of a lock or similar security device * * *." While not expressly requesting it, presumably the commenter would want the statutory wording interpreted to permit mailing such a device or tool to anyone possessing some lawful, express or implied authority to use it to open or bypass a lock or similar security device. Adopting such an interpretation would have the effect of creating, for this type of device or tool, a vague additional category of exempt addressee, contrary to the restrictive intent of the statute. As indicated earlier, proposals for the creation of additional exemptions should be directed to Congress, rather than the Postal Service.

This comment, however, has revealed a need for regulatory restatement of the subsection (b)(2) definition to assist postal personnel, as well as the public, in understanding its intended scope. As noted in Sutherland Stat. Const., 46.07 (4th Ed.), "[t]he literal interpretation of the words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature and if the words are sufficiently flexible to allow a construction which will effectuate the legislative intention." Here, Congress clearly intended to restrict the mailing of locksmithing devices to the categories of addressees expressly exempted in subsection (a) of section 3002a, to further its purpose of protecting the public from unlawful use of these devices. Giving the word "unauthorized", in subsection (b)(2), a strictly literal interpretation would render meaningless the preceding words, "designed for." As any use of a "subsection (b)(2) device or tool" could be authorized by someone, it would be unlikely that such a device or tool could ever be shown to have been "designed for" unauthorized use. However, the words "designed for the unauthorized opening or bypassing of a lock or similar security device" are sufficiently "flexible" to be given a meaning consonant with the legislative purpose—viz., "designed for bypassing a lock or similar security device, or for opening it by a method normally not employed by consumers to open such locks or security devices." Accordingly, the Postal Service is adopting this interpretation in its new regulations. Additional minor editorial changes, conforming sections 124.11, 124.127, and 124.21 of the Domestic Mail Manual, also are being made.

Based on the proposed rule, and after careful consideration of the comments received, as described above, the Postal Service adopts the following

amendments to part 124 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 124—NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

2. In 124.11, strike "and abortive and contraceptive devices." and insert in lieu thereof "locksmithing devices, and abortive and contraceptive devices.".

3. In 124.127, strike "motor vehicle master keys (124.45);" and insert in lieu thereof "motor vehicle master keys and locksmithing devices (124.45);".

4. In 124.21, strike "and motor vehicle master keys (124.5)," and insert in lieu thereof "and motor vehicle master keys and locksmithing devices (124.45),".

5. In 124.41, in the first sentence, strike the words "and motor vehicle master keys" and insert in lieu thereof the words "motor vehicle master keys, and locksmithing devices".

6. In 124.45, change the heading to read "Motor Vehicle Master Keys and Locksmithing Devices (18 U.S.C. 1716A; 39 U.S.C. 3002 and 3002a)".

7. Strike 124.451, 124.452, and 124.453, and insert in lieu thereof the following:

124.451 Motor Vehicle Master Keys.

a. A motor vehicle master key is any key (other than the key furnished by the manufacturer with the motor vehicle, or the key furnished with a replacement lock, or an exact duplicate of such keys) designed to operate two or more motor vehicle ignition, door, or trunk locks of different combinations, including any pattern, impression, or mold from which such a master key can be made.

b. Any of the items constituting a motor vehicle master key, as defined in 124.451a, and any advertising (see 123.432) for the sale of any such item, are nonmailable, except when sent to:

(1) Lock manufacturers;

(2) Professional locksmiths;

(3) Motor vehicle manufacturers or dealers; or

(4) Federal, state or local government agencies.

c. No markings of any kind which would indicate the nature of the contents shall be placed on the outside wrapper or container of any parcel containing motor vehicle master keys.

124.452 Locksmithing Devices.

a. Any locksmithing device, as defined in 124.452b, is nonmailable, unless such device is mailed to:

(1) A lock manufacturer or distributor;

(2) A bona fide locksmith;

(3) A bona fide repossessor; or

(4) A motor vehicle manufacturer or dealer.

b. A locksmithing device is:

(1) A device or tool (other than a key) designed to manipulate the tumblers in a lock into the unlocked position through the keyway of such lock;

(2) A device or tool (other than a key or a device or tool under 124.452b(1)) designed for bypassing a lock or similar security device, or for opening it by a method normally not employed by consumers to open such locks or security devices; and

(3) A device or tool designed for making an impression of a key or similar security device to duplicate such key or device.

5. Redesignate 124.454 as 124.453.

6. In redesignated 124.453, strike "124.452" and insert in lieu thereof "124.451b or 124.452a".

A transmittal letter making these changes in the Domestic Mail Manual will be published and will be transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91–9617 Filed 4–25–91; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3921–5]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this Notice, EPA is approving amendments to the Alaska "State Air Quality Control Plan" as revisions to the Alaska state implementation plan (SIP). Specifically, EPA is approving amendments to Section IV.F. "Project Review Procedures" and Title 18, Chapter 50, Section 300 "Permit to Operate" of the Alaska Administrative Code (18 AAC 50), which require fugitive emissions to be included when determining whether certain sources are subject to permit review but allow fugitive emissions to be excluded for all other source categories. EPA is also approving a number of other revisions to 18 AAC 50 which relate to the Alaska permit to operate regulations and to the emission limitations for asphalt plants. These amendments were submitted by the Alaska Department of Environmental Conservation (ADEC) to satisfy the requirements of section 110 of the Clean Air Act (hereinafter the Act).

EFFECTIVE DATE: June 25, 1991.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Air Programs Branch, Docket #10A–88–7, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101.

Alaska Department of Environmental Conservation, 3220 Hospital Drive, Juneau, Alaska 99811.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, Telephone: (206) 553–4253, FTS: 399–4253.

SUPPLEMENTAL INFORMATION:

I. Background

On September 12, 1988, the Commissioner of the Alaska Department of Environmental Conservation (ADEC) submitted amendments to section IV.F. of the Alaska State Air Quality Control Plan and numerous amendments to title 18, chapter 50, of the Alaska Administrative Code as revisions to the Alaska SIP. The amendments clarify the source categories for which fugitive emissions must be included in the determination of whether the source is "major" and subject to review under the Alaska "prevention of significant deterioration" (PSD) permit program, revise the emission limitations for existing asphalt plants, revise the PSD applicability provisions with respect to the inclusion of fugitive emissions, and make numerous administrative changes to update and clarify certain regulatory provisions.

On September 14, 1989 (54 FR 37948), EPA proposed approval of the revisions to the State of Alaska state implementation plan and solicited public comments for a 30-day period. On October 12, 1989 (54 FR 41849), EPA granted an extension to the public comment period and subsequently received three comments by the November 15, 1989, deadline.

II. Response to Comments

EPA received comments on its proposal from the ADEC, the Alyeska Pipeline Service Company, and the Sierra Club Legal Defense Fund, Inc. In general, the comments fall into two categories—objections to EPA's statements regarding the stringency of the Alaska SIP, and objections to the new provisions for fugitive emissions.

The ADEC took exception to EPA's statement that the addition of a fugitive emissions exemption would make the Alaska "Permit to Operate" program less stringent than the program which EPA had previously approved. However, EPA continues to maintain that the permit program, as originally adopted and approved by EPA, was more stringent than necessary to meet minimum federal requirements with respect to the inclusion of fugitive emissions. This is evidenced in a March 4, 1981, letter from EPA to ADEC which states "[Alaska] has chosen not to include optional exemptions for PSD and part D sources. Therefore, nonprofit health and educational institutions, portable facilities and temporary emission sources must meet full PSD and part D requirements. *Also, fugitive emissions (and secondary emissions) must be included in determining a source's potential to emit for all source types, thereby subjecting more sources to PSD and part D requirements.*" (emphasis added). Furthermore, in a September 22, 1986 letter to EPA, ADEC states "EPA has commented that exclusion of fugitive emissions is permitted. We recommend against weakening the rule as EPA has implicitly suggested." Until these recent amendments, no changes had been made to the Alaska "State Air Quality Control Plan" or ADEC regulations to exclude fugitive emissions.

The Alyeska Pipeline Service Company objected to EPA's statement regarding the stringency of the ADEC requirements for determining when a modification is "major" and thereby subject to PSD and Part D permit requirements. Alyeska contended that EPA was independently interpreting the ADEC rules to be more stringent than EPA requirements. Again, EPA believes that the permit program, as originally adopted and approved by EPA, was more stringent than federal requirements with respect to the definition of a "major modification." This is evidenced in the March 4, 1981, letter which states "(Alaska's) program does not * * * consider only contemporaneous increases. It accumulates increases continuously from some undefined start time * * * The effect of this is to subject many more modifications to PSD and part D requirements than required by the (Clean Air Act)." Furthermore, a December 30, 1982, letter from the ADEC Commissioner to EPA states "The State's definition of the term 'modify' (18 AAC 50.900(27)) includes a series of changes or additions which increase emissions over time. For PSD 'facilities,' the State rule includes all changes or additions which have occurred since August 7, 1980 or the date of the most recent PSD permit (18 AAC 50.300(a)(5)(C) and (6)(C). 'Facilities' would be subject to PSD review when the changes result in a significant net increase in actual emissions." Finally, the ADEC's permit guidance package includes instructions and standard conditions which emphasize that past increases in emissions must be accumulated when determining the applicability of PSD to future modifications. Since EPA's regulations do not require the accumulation of increases and decreases over time, the ADEC program is clearly more stringent than required by EPA. Clearly then, EPA is not independently construing the ADEC provisions to be stricter than federal law.

Alyeska was also concerned with EPA's interpretation of the proposed changes to 18 AAC 50.300(a)(5)(C) and 18 AAC 50.300(a)(6)(C). Alyeska contended that if the purposes of the changes were in fact to implement an accumulation approach, then adequate notice and opportunity to comment had not been provided by ADEC. As discussed above, the accumulation approach was inherent in the ADEC rules since their inception, and the changes which EPA proposed to approve do not alter this approach. Adequate notice and opportunity to comment on ADEC's approach to modifications was provided in 1982 when Alaska originally adopted these rules. Since no changes to this approach were proposed herein, no additional notice or opportunity to comment is necessary. However, it does appear that Alyeska misunderstood the proposed changes to these provisions. Alyeska contends that the only changes were the addition of a comma and the word "which." However, the phrase "in the affected area" was replaced with the phrase "to the facility" in both provisions as well. It was this replacement of phrases which EPA was proposing to approve in order to "clarify the state's procedures for accumulating emissions increases for determining when a 'major modification' has resulted" (54 FR 37948, September 14, 1989).

The Sierra Club Legal Defense Fund, Inc. objected to EPA's proposed approval of the addition of a fugitive emissions exemption, contending that the revision is inconsistent with the Clean Air Act in four ways. First, the Sierra Club contends that Alaska has not demonstrated that the revisions would not lead to increased air emissions in excess of the PSD increments in accordance with the requirements of 40 CFR 51.166(a)(2). The Sierra Club is specifically concerned about the impact of this revision on the permitting of the proposed Quartz Hill Molybdenum Mine in the Misty Fjords National Monument.

In response, EPA notes that a change in PSD applicability provisions does not itself result in increased air emissions in excess of PSD increments, and as such, other factors must exist before a demonstration by the state under 40 CFR 51.166(a)(2) is required. The basis for this finding rests in part upon the statutory provisions of implementing the PSD increments in section 163 of the Act and the definition of "baseline concentration" in section 169(4) of the Act. In section 163(a) of the Act, Congress required that each state implementation plan contain measures ensuring that the maximum allowable increases (or increments) over baseline concentrations not be exceeded. However, in § 169(4) of the Act, Congress defined the term "baseline concentration" as the ambient concentration levels which exist at the time of the first application for a permit in an area. As a result, no increment consumption occurs until after the first permit application is made for a source subject to section 165 of the Act. Thereafter, increments are not allowed to be exceeded regardless of the source of emissions.

The proposed fugitive emissions exemption would have the effect of reducing the breadth of sources subject to PSD review under the Alaska permit program. However, all of the sources required to be covered by section 165 of the Act and EPA regulations (40 CFR 51.166) would still be covered by the Alaska program. In areas where the baseline concentration has already been set (i.e., a PSD permit application has been filed), the effect of this change would simply exempt certain sources from PSD review; not from the need to meet the PSD increments. In areas where the baseline concentration has

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not been set, the effect of this change would be to potentially delay the date of the first PSD application and the concomitant setting of the baseline, since some sources would now be exempt from PSD review. However, since no PSD increment consumption can occur until after the baseline is set, this change does not result in increased emissions in excess of the PSD increments for such areas.

The Sierra Club also pointed out that Alaska's permit program for "minor" sources does not require that PSD increments be met before a permit may be issued. However, this approach is consistent with section 110(a)(2)(D) of the Clean Air Act and EPA's regulations at 40 CFR part 51, subpart I, which require minor sources to only meet ambient standards as a condition of receiving a permit. The consumption of increment from minor source growth is to be controlled through airshed management and violations are to be remedied through the SIP process (see 40 CFR 51.166(a)(3)). As a result, the Alaska minor source permit program, which currently meets applicable requirements, might result in a new minor source being permitted even though PSD increments would be violated. However, EPA intends to utilize its oversight and information collection authority to ensure that any such violations are remedied through the SIP process. Nevertheless, based on the record presently before EPA, including the absence of potential increment violations from a proposed or contemplated new minor source, it would entail pure speculation for EPA to presume that the addition of the fugitive emissions exemption would cause the PSD increments to be exceeded.

Based on the above discussion, EPA finds that no analysis under 40 CFR 51.166(a)(2) is necessary for demonstrating the approvability of the addition of the fugitive emissions exemption. EPA believes, based on the record presently before it, that the addition of the exemption provision will not, in and of itself, lead to increased air emissions in excess of the PSD increments.

The Sierra Club's second area of concern is that the revisions are potentially misleading as to when PSD review is triggered. Specifically, a statement on the new page IV.F.1-4 indicates that the determination of whether or not a facility is subject to PSD review depends on the amount of "allowable emissions". The Sierra Club points out that this does not clearly indicate that changes in "actual emissions" are to be used for determining whether a modification is subject to PSD review. However, the ADEC regulations clearly indicate that changes in actual emissions are to be used for determining when a modification is subject to PSD review. Furthermore, provisions in the current SIP on page IV.G.1-1 provide additional clarification on the requirement to use actual emissions for determining whether modifications are subject to PSD review. Therefore, EPA finds that the new pages IV.F.1-4 through 1-8 to be approvable.

The Sierra Club's third concern relates to the requirements of section 302(j) of the Clean Air Act. The Sierra Club contends that EPA's proposed approval of the revisions to Alaska's regulations fails to meet the requirements of section 302(j). EPA recognizes that it is under a legal obligation to consider appropriate additions to the list of fugitive emission sources subject to the PSD program. *Sierra Club* v. *Gorsuch*, 715 F.2d 653 (D.C. Cir. 1983). However, until EPA adds a source to the list pursuant to the provisions of section 302(j), EPA cannot require a state to subject an unlisted fugitive emission source to PSD review. Since states can adopt requirements which are more stringent than EPA requirements, states may expand the coverage of a state PSD program by including unlisted fugitive emission sources, or reduce the coverage by deleting such unlisted fugitive emission sources outside of the Congressionally mandated section 302(j) rulemaking process for EPA regulations. As such, EPA action on a SIP revision which adds or deletes such unlisted fugitive emission sources, does not constitute a "determination by rule by the Administrator" under the provisions of section 302(j).

The Sierra Club's fourth concern related to EPA's pending rulemaking on the treatment of fugitive emissions from surface coal mines. The Sierra Club contended that the Alaska provisions would violate the EPA requirements should EPA add surface coal mines to the list of fugitive emission sources. However, on November 28, 1989 (54 FR 48870), EPA took final action under section 302(j) and decided not to add surface coal mines to the list of fugitive emissions sources. As a result, the proposed revisions to the Alaska permit program are consistent with current EPA requirements.

III. Summary of Action

EPA has considered the public comments received on its proposed approval of numerous revisions to the Alaska "State Air Quality Control Plan" as revisions to the Alaska state implementation plan (SIP). EPA is today approving pages IV.F.1-1 through IV.F.1-8 of section IV.F "Project Review Procedures" and amendments to title 18, chapter 50, section 050(a)(4), 050(b), 050(d)(1), 300(a)(5)(C), 300(a)(6)(C), 300(a)(7), 300(c), 300(g), 500(d), 510(a), 520(a), 520(b), and 620 of the Alaska Administrative Code.

IV. Administrative Review

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years and subsequently extended to April 6, 1991.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this request for revision of the federally-approved state implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 11, 1991.

Dana A. Rasmussen,

Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Alaska was approved by the Director of the Office of Federal Register on July 1, 1982.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart C—Alaska

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.70 is amended by adding paragraph (c)(16) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(16) On September 12, 1988, the State of Alaska Department of Environmental Conservation submitted revisions to the State of Alaska state implementation plan. Specifically pages IV.F.1-1 through IV.F.1-8 of section IV.F "Project Review Procedures" and amendments to title 18, chapter 50, sections 050(a)(4), 050(b), 050(d)(1), 300(a)(5)(C), 300(a)(6)(C), 300(a)(7), 300(c), 300(g), 500(d), 510(a), 520(a), 520(b), and 620 of the Alaska Administrative Code.

(i) *Incorporation By Reference.* (A) September 12, 1988, letter from the State of Alaska Department of Environmental Conservation to EPA Region 10 submitting a revision to the Alaska state implementation plan.

(B) Vol. II, Analysis of Problems, Control Actions, Pages IV.F.1-1 through IV.F.1-8 of section IV.F, "Project Review Procedures," revised June 2, 1988.

(C) Title 18, chapter 50, (Air Quality Control) section 050 (Industrial Processes and Fuel Burning Equipment) (a)(4), 050(b), 050(d)(1), 300 (Permit to Operate) (a)(5)(C), 300(a)(6)(C), 300(a)(7), 300(c), 300(g), 500 (Source Testing) (d), 510 (Ambient Analysis Methods) (a), 520 (Emission and Ambient Monitoring) 520(a), 520(b), and 620 (Air Quality Control Plan) of the Alaska Administrative Code as adopted by the State of Alaska Department of Environmental Conservation on March 10, 1988 and effective on June 2, 1988.

3. Section 52.75 is revised to read as follows:

§ 52.75 Contents of the approved state-submitted implementation plan.

The following sections of the State Air Quality Control Plan (as amended on the dates indicated) have been approved and are part of the current State Implementation Plan:

Volume II: Analysis of Problems, Control Action

Section I *Background*

A. Introduction (7/1/82)
B. Air Quality Control Regions (7/1/82)
C. Attainment/ Nonattainment Designations (7/1/83)

Section II *State Air Quality Control Program* (11/1/83)

Section III *Areawide Pollutant Control Program*

A. Statewide Transportation Control Program (6/1/85)
B. Anchorage Transportation Control Program (6/1/85), except B.10.1 through 10.6 Anchorage Air Pollution Curtailment Actions (6/28/87)
C. Fairbanks Transportation Control Program (6/1/85), except C.10.1 through 10.9 Fairbanks Emergency Episode Prevention Plan (6/28/87)
D. Total Suspended Particulate Matter (7/1/82)
E. Ice Fog (7/1/82)
F. Open Burning (10/30/83)
G. Wood Smoke Pollution Control (7/1/83)
H. Lead Pollution Control (7/1/83)

Section IV *Point Source Control Program*

A. Summary (10/30/83)
1. Annual Review Report (10/30/83)
B. State Air Quality Regulations (10/30/83)
C. Local Programs (10/30/83)
D. Description of Source Categories And Pollutants
1. Typical Point Sources (10/30/83)
2. Summary of Major Emitting Facilities (10/30/83)
E. Point Source Control 1. Introduction (10/30/83)
F. Facility Review Procedures
1. Project Review Procedures (6/02/88)
Who needs a permit? (10/30/83, 6/02/88)
2. Standard Application Procedures (10/30/83)
3. PSD Application Procedures (10/30/83)
Preliminary report and meeting (10/30/83)
Pre-construction monitoring (10/30/83) PSD application format (10/30/83)
4. Nonattainment Application Procedures (10/30/83)
G. Application Review and Permit Development (10/30/83)
1. Application Review (10/30/83)
2. Permit Development Requirements (10/30/83)
Monitoring and Testing Requirements (10/30/83)
Ambient Monitoring (10/30/83)
Continuous Emissions Monitoring (10/30/83)
Source Testing (10/30/83)
3. Prevention of Significant Deterioration Review (10/30/83)
Basis of Program (10/30/83)
PSD Regulations (10/30/83)
PSD Analysis (10/30/83)
4. Nonattainment Area Review (10/30/83)
5. New Source Performance Standards Source Review (10/30/83)
6. Visibility Review (10/30/83)
7. Sources under EPA Review (10/30/83)
H. Permit Issuance Requirements (10/30/83)

Section V *Ambient Air Monitoring*

A. Purpose (7/1/82)
B. Completed Air Monitoring Projects (7/1/82)
1. Carbon Monoxide (7/1/82)
2. Nitrogen Oxides (7/1/82)
3. Sulfur Dioxide (7/1/82)
4. Ozone (7/1/82)
5. Total Suspended Particulates (TSP) (7/1/82)
6. Lead (7/1/82)
C. Air Monitoring Network (7/1/82)
1. Network Description (7/1/82)
2. Station Designations (7/1/82)
3. Air Quality Monitoring Procedures (7/1/82)
4. Ambient Sampling for Specific Pollutants (7/1/82)
E. Annual Review (7/1/82)

Volume III. Appendices

Section II *State Air Quality Control Program*

II.A. State Air Statues, except Section 46.03.170 (11/15/83)
State Attorney General Opinions on Legal Authority—(2/29/72, 2/29/80)
Title 18—Environmental Conservation, Chapter 50—Air Quality Control (10/30/83), (6/7/87), (6/2/88)
Title 18—Environmental Conservation Chapter 52—Emissions Inspections and Maintenance Requirements for Motor Vehicles (5/19/85), except
18 AAC 52.010 (3), (3b), (3d), (3e), and (3g) (5/19/85)
18 AAC 52.020 (1) (5/19/85)
18 AAC 52.070 (5) (A)-(C) (5/19/85)
18 AAC 52.900 (14) (5/19/85)
II.B. Municipality of Anchorage/Cook Inlet ADEC Agreements (11/15/83)
II.C. Fairbanks North Star Borough Ordinances, except Section 8.04.070/ FNSB & ADEC Agreements (11/15/83)

Section III *Areawide Pollutant Control Program*

III.B.3-a Anchorage Graphs of Highest and Second Highest CO readings for Each Site (11/15/83)
III.B.5-a Anchorage Traffic Improvements (11/15/83)
III.B.5-b Anchorage Contingency Plan (11/15/83)
III.B.5-c Anchorage Transit Ridership (11/15/83)
III.B.8-a Anchorage Graphs of Projected CO Concentrations for Each Site (11/15/83)
III.G Ordinance of the City and Borough of Juneau (10/6/83)
III.H Support Documents for Lead Plan (11/15/83)

Section IV *Point Source Control Program*

IV.1 PSD Area Classification and Reclassifications (11/15/83)

A. Cities I Area Boundaries (11/15/83)

B. Areas Protected from Visibility Degradation (11/15/83)

C. Reclassification (11/15/83)

1. Limitations on PSD Reclassification (11/15/83)

2. PSD Reclassification Procedures (11/15/83)

IV.2 Compliance Assurance (11/15/83)

IV.3 Testing Procedures (11/15/83)

Section V *Ambient Air Monitoring*

ADEC Ambient Analysis Procedures (11/15/83)

4. Section 52.98(a) is revised to read as follows:

§ 52.98 Significant deterioration of air quality.

(a) The State of Alaska Department of Environmental Conservation Air Quality Control Regulations as in effect on June 2, 1988 (specifically 18 AAC 50.020, 50.021, 50.300, 50.400, 50.510, 50.520, 50.530, 50.600, 50.620, and 50.900) and the State air quality control plan as in effect on June 2, 1988 (specifically, Section I.B. AIR QUALITY CONTROL REGIONS, Section I.C. ATTAINMENT/NONATTAINMENT DESIGNATIONS, Section I.D. PREVENTION OF SIGNIFICANT DETERIORATION DESIGNATIONS, Section IV.F. FACILITY REVIEW PROCEDURES, Section IV.G APPLICATION REVIEW AND PERMIT DEVELOPMENT, Section IV.H PERMIT ISSUANCE REQUIREMENTS, Appendix IV.1. PSD area Classification and Reclassification, and Appendix V ADEC Ambient Analysis Procedures), are approved as meeting the requirements of part C for preventing significant deterioration of air quality.

* * * * *

[FR Doc. 91-9900 Filed 4-25-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3934-9]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a minor revision to the Oregon Carbon Monoxide (CO) State Implementation Plan for the Portland-Vancouver Air Quality Maintenance Area (AQMA). The revision updates the City of Portland, Oregon's, parking policy which originally was adopted in 1975. The Portland Downtown Parking and Circulation Policy established a maximum parking inventory figure of 40,855 parking lid. A more comprehensive and sophisticated count of the spaces was conducted in 1986 which indicated that the baseline is actually 43,914 spaces. The proposed action would increase the baseline to reflect the more accurate count and establish a process to increase the parking lid by 1,370 spaces to accommodate expected new parking growth in the downtown area. A new Parking Offset Rule will allow the City of Portland to increase the parking lid by 1,370 spaces without any increases in CO emissions. In fact, the change will result in actual reductions in emissions.

The new state rule requires that transportation control measures be implemented to counteract the increase in emissions from new parking spaces. The rule insures that replacement measures will actually provide air quality benefit by requiring emission offsets ranging from 1.2 to 2.0 of the potential emissions increase from new parking. The rule also requires documentation of the permanence and enforceability of the proposed replacement measures as well as a monitoring plan and a contingency plan should the measures not meet projected effectiveness.

DATES: This action will be effective on June 25, 1991 unless notice is received before May 28, 1991 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment period.

ADDRESSES: Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Docket #10A-91-1, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.

State of Oregon, Department of Environmental Quality, 811 SW. Sixth, Portland, Oregon 97205.

Comments should be addressed to: Laurie Kral, Air Programs Branch, AT-082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Michael Lidgard, Air Programs Branch, AT-082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 553-4233, FTS: 399-4233.

SUPPLEMENTARY INFORMATION: On October 7, 1982, the Environmental Protection Agency (EPA) approved the Clean Air Act State Implementation Plan (SIP) for the Portland-Vancouver Interstate Air Quality Maintenance Area (AQMA) for carbon monoxide (CO) (47 FR 44261). The city's parking policy originally was adopted in 1975 and was updated in 1980. The Downtown Parking and Circulation Policy established a maximum parking inventory figure of 40,855 spaces composed of (1) existing spaces, (2) spaces allocated to future development projects, and (3) unallocated spaces categorized as the parking reserve.

In 1986, the city initiated a program to collect comprehensive data on downtown parking, including a new count of existing parking spaces. Previous counts conducted by the city were hampered by lack of access to privately owned off-street parking facilities which required city staff to estimate the number of parking spaces and resulted in an underestimate of the actual number of spaces. The 1986 program included a thorough verification process that was not conducted when determining the original baseline. After conducting spot checks and computerizing the data, the new count indicated a baseline of 43,914. Today's action revises the ceiling using this number as the baseline.

From the period of 1975 to 1987, the city downtown employment rose from roughly 65,000 to over 80,000. Much of the additional travel was accommodated through the expansion of transit service; however, there was public pressure to increase the limited parking supply, so the city began to explore alternative control measures which could be used to increase the parking lid while still meeting the air quality goals of the SIP. The city began a project to identify measures to counteract the emissions from increasing the parking supply. Two consultant studies were conducted: one to investigate the feasibility of transportation control measures to serve as replacement measures and another to determine future parking needs and overall transportation circulation in future years. The latter study identified a need for 1,370 spaces to accommodate expected growth in the downtown area by the year 2000 after considering growth in transit ridership.

The rule described in this notice was developed by the City of Portland and the Oregon Department of Environmental Quality. This Parking Offset Rule will allow the City of Portland to increase the current parking lid of 40,855 spaces to meet new parking growth needs by 1,370 spaces without any increase in CO emissions.

The Parking Offset Rule is based on one of the studies described above, which was conducted in 1987 by Cambridge Systematics for the City of Portland. The study quantified CO emissions from new parking spaces and CO emissions decreases from implementation of a variety of transportation control measures.

The rule insures that replacement measures (fringe parking, alternative work schedules, subsidy of ridesharing, increases in long-term parking space rates, increases in all parking rates, restrictions on off-street parking before 10 a.m., reserve parking for carpools, park and ride remote lots, alternative fuels, enhanced vehicle inspection and maintenance, increased transit capacity, traffic flow improvement, bicycle access, and short-term parking spaces) will provide an air quality benefit by requiring emission reductions ranging from 1.2 to 2.0 of the potential emissions increase from new parking. The rule also requires documentation of the permanence and enforceability of the proposed replacement measures and a monitoring plan to provide at least an annual assessment of whether the new measures are attaining their projected effectiveness. The monitoring plan must include continuous monitoring of traffic volumes at key locations downtown.

Under the rule, before any replacement measures are approved, the City of Portland must guarantee the permanence of the measures by providing a contingency plan adopted by resolution. In the event that monitoring indicates a replacement measure is not providing the projected effectiveness, and the city is unable to correct the deficiency, then the city must invoke contingency measures including removing spaces from the reserve and potentially removing existing parking spaces.

On September 20, 1990, the Environmental Quality Commission conducted a meeting to discuss the proposed state rule and a public hearing was held on October 31, 1990. These rules were adopted by the Environmental Quality Commission on December 14, 1990.

EPA Action

EPA today is approving the Oregon Administrative Rules 340-20-405 through 340-20-430 (Parking Offsets in the Portland Central Business District) as a revision to the Oregon carbon monoxide (CO) State Implementation Plan for the Portland-Vancouver Air Quality Maintenance Area. The revision would increase the parking lid baseline to 43,914 to reflect a more accurate count of parking spaces in Portland, and also would increase the parking lid by 1,370 spaces to accommodate expected new parking growth. EPA is also approving a Parking Offset Rule which will allow an increase in the parking lid without any increases in CO emissions. The rule requires that transportation control measures be implemented to counteract the increase in emissions from new parking spaces.

Administrative Review

The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of these revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revision and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this request for revision of the federally-approved state implementation plan for conformance with the provisions of the 1990 amendments enacted on November 5, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years and subsequently extended until April 6, 1991.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of appeals for the appropriate circuit by June 25, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office Federal Register on July 1, 1982.

Dated: March 12, 1991.

Dana A. Rasmussen,

Regional Administrator.

PART 52—[AMENDED]

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

Subpart MM—Oregon

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642

2. Section 52.1970 is amended by adding paragraph (c)(90) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(90) On January 14, 1991, the State of Oregon Department of Environmental Quality submitted amendments to the Parking Offsets in the Portland Central business District (OAR-340-20-405 through 340-20-430) in the State of Oregon Air Quality Control Program.

(i) Incorporation by reference.

(A) Letter dated January 4, 1991, from the Director of the Department of Environmental Quality to EPA Region 10 submitting an amendment to the Oregon Implementation Plan.

(B) Oregon Administrative Rules Chapter 340, Division 20 (Air Pollution Control), section 405 through 430

(Parking Offsets in the Portland Central Business district). These rules were adopted by the Environmental Quality Commission on December 14, 1990.

[FR Doc. 91-9788 Filed 4-25-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 264, 265, and 270

[FRL-3922-6]

Hazardous Waste Treatment, Storage, and Disposal Facilities—Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This document corrects typographical errors in the regulatory text of the final standards that would limit organic air emissions as a class at hazardous waste treatment, storage, and disposal facilities (TSDF) that are subject to regulation under subtitle C of the Resource Conservation and Recovery Act (RCRA). These standards appeared in the Federal Register on June 21, 1990 (55 FR 25454).

EFFECTIVE DATE: December 21, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer at (919) 541-5262, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On June 21, 1990 (55 FR 25454), EPA promulgated regulations limiting organic air emissions from process vents and equipment leaks at hazardous waste TSDF. The regulations contained typographical errors which are discussed briefly below and are corrected by this action. The corrections are editorial and do not alter the requirements of the standards.

Dated: April 12, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, parts 264, 265, and 270 of the Code of Federal Regulations are amended as set forth below.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

§ 264.1030 [Amended]

2. Section 264.1030(a) is amended by revising "2641" to read "264.1".

3. In § 264.1030, paragraph (b) introductory text is amended by revising "§§ 264.1034(d) and 264.1035(e)" to read "§ 264.1034 (d) and (e)".

§ 264.1033 [Amended]

4. Section 264.1033(f)(3) is amended by revising "paragraphs (1) and (2) of this section" to read "paragraphs (f) (1) and (2) of this section".

§ 264.1035 [Amended]

5. Section 264.1035(b)(4)(ii) is amended by revising "Records including the dates of" to read "Records, including the dates, of".

§ 264.1052 [Amended]

6. Section 264.1052(b)(1) is amended by revising "a instrument reading" to read "an instrument reading".

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

7. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

§ 265.13 [Amended]

8. Section 265.13(b)(8) is amended by revising "265.193" to read "265.200".

§ 265.73 [Amended]

9. Section 265.73(b)(3) is amended by revising "265.193" to read "265.200".

§ 265.1030 [Amended]

10. In § 265.1030 paragraph (b) introductory text is amended by revising "§§ 265.1034(d) and 265.1035(d)" to read § 265.1034 (d) and (e)".

§ 265.1034 [Amended]

11. Section 265.1034(c)(1)(vi) is amended by revising "E_a, as determined in paragraph (c)(1)(v) of the section" to read "E_a, as determined in paragraph (c)(1)(iv) of this section".

§ 265.1035 [Amended]

12. Section 265.1035(b)(4)(ii) is amended by revising "Records including the dates of" to read "Records, including the dates, of".

13. Section 265.1035(c)(5) is amended by revising "Paragraph (3)" to read "paragraph (c)(4) of this section."

§ 265.1052 [Amended]

14. Section 265.1052(e)(3) is amended by revising "paragraph (a)(2)" to read "paragraph (e)(2)".

§ 265.1064 [Amended]

15. Section 265.1064(c) introtuctory text is amended by revising "265.1053" to read "265.1053".

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

16. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

17. Section 270.24 is amended by revising paragraph (d)(2) to read as follows:

§ 270.24 Specific part B information requirements for process vents.

* * * * * * *

(d) * * *

(2) Records, including the dates, of each compliance test required by § 264.1033(k).

* * * * *

§ 270.25 [Amended]

18. Section 270.25(e)(2) is amended by revising "Records including the dates of" to read "Records, including the dates, of".

[FR Doc. 91-9084 Filed 4-25-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

RIN 0905-AD07

Health Professions Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule revises existing regulations governing the Health Professions Student Loan (HPSL) program to conform those regulations with amendments made to sections 740-747 of the Public Health Service (PHS) Act (the Act) by the Health Professions Reauthorization Act of 1988. This rule also revises the regulations to conform with amendments made to the Act by the National Health Service Corps Revitalization Amendments of 1990, the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, the Compact of Free Association Act of 1985, and makes other changes which are technical or clarifying in nature.

EFFECTIVE DATE: These regulations are effective April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Beggett, Chief, Student and Institutional Support Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8-34, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443-4776.

SUPPLEMENTARY INFORMATION: The HPSL program is governed by sections 740-747 of the PHS Act. Section 740 of the Act authorizes the Secretary to enter into an agreement with any public or private nonprofit school of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, or veterinary medicine to operate a student loan fund for the purpose of making loans to eligible students. The loan fund consists of at least 1 institutional dollar for every 9 Federal dollars. The institution is responsible for determining eligible recipients, making loans, and collecting loan repayments from borrowers. Regulations governing the HPSL program are codified at 42 CFR part 57, subpart C.

The Health Professions Reauthorization Act of 1988 (title VI of Pub. L. 100-607), enacted on November 4, 1988, made amendments to sections 740-747 of the PHS Act. Other amendments which affect the HPSL program have been made in recent years by the National Health Service Corps Revitalization Amendments of 1990 (Pub. L. 101-597), the Department of the Interior and Related Agencies Act for Fiscal Year 1990 (Pub. L. 101-121), and the Compact of Free Association Act of 1985 (Pub. L. 99-239). The amendments to part 57, subpart C, set out below, implement the amendments made by those Acts literally. In addition, a few technical changes are included that (1) bring the regulations into line with current Department regulatory policies, and (2) provide current Office of Management and Budget approval numbers in those sections which contain information collection requirements.

The amendments are described below according to the sections of the HPSL regulations which they affect.

Section 57.202 Definitions

1. The Department is amending the definitions of "grace period" and "health professions school" by revising the reference to schools of "podiatry" to read "podiatric medicine", in accordance with Public Law 100-607.

2. The Department is amending the definition of "National of the United States" to add the United States Code citation where this term is defined.

3. The definition of "State" is amended by inserting after the "Trust Territory of the Pacific Islands" "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia", in accordance with the Compact of Free Association Act of 1985.

Section 57.206 Eligibility and selection of Health Professions Student Loan Applicants

The Department is revising the words "medical and osteopathic" before the words "student", "students", or "applicants" in paragraph (b) introductory text and paragraph (c) to read "medical (M.D. and D.O.)", in accordance with Public Law 100-607.

The Department also is deleting the citation in paragraph (b)(1) "and published under 34 CFR 674.13", since it is no longer used by the Department of Education. The need analysis methodologies are now authorized under part F of title IV of the Higher Education Act of 1965, as amended.

The Department also is revising paragraph (a)(1)(i) to include those entities, as reflected in the revised definition of "State", in which an applicant may be determined eligible to apply for a loan, in accordance with Public Law 99-239, the Compact of Free Association Act of 1985.

Section 57.208 Health Professions Student Loan Promissory Note and Disclosure Requirements

In accordance with Public Law 100-607, the Department is amending paragraph (a)(1) of this section by reducing the maximum interest rate charged on health professions student loans from 9 percent to 5 percent.

Section 57.210 Repayment and Collection of Health Professions Student Loans

In accordance with Public Law 100-607, the Department is amending paragraph (a)(2) of this section by expanding the deferment provision to exclude from the 10-year repayment period all periods during which a borrower is pursuing a full-time course of study at an eligible health professions school.

Section 57.212 Repayment of Cancellation of Loans for Practice in a Health Manpower Shortage Area

In accordance with Public Law 101-597, the National Health Services Corps Revitalization Amendments of 1990, the Department is amending the term "health manpower shortage area" to read "health professional shortage area" in the section heading and in paragraphs (a) introductory text and (a)(3).

Section 57.213 Continuation of Provisions for Cancellation of Loans Made Prior to November 18, 1971

In accordance with Public Law 100-607, the Department is revising the word "osteopathy" to read "osteopathic medicine" in the first sentence of the section text.

Additionally, a room number is being added to the address listed at the end of the section text.

Section 57.216 Nondiscrimination

The Department is revising the heading and format listing of the Code of Federal Regulations (CFR) citations in this section to reflect current standard departmental policy language. The revised heading is entitled, "What Additional Department Regulations Apply to Schools?" Additionally, a new CFR citation is being added to the regulations, in accordance with Public Law 101-121, section 319, the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, enacted on October 23, 1989, and a notice and interim-final rule, published in the Federal Register on February 26, 1990 (55 FR 6736), to bring this grant program into compliance with governmentwide requirements established under 45 CFR part 93 for this Department.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the requirements in these regulations are minimal in comparison to the overall resources of health professions schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of health professions schools.

The Department also has determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not

required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Justification for Omitting Notice of Proposed Rulemaking

Since these amendments are technical and ministerial in nature, the Secretary has determined pursuant to 5 U.S.C. 553 and departmental policy, that it is unnecessary and impractical to follow proposed rulemaking procedures or to delay the effective date of these regulations.

Paperwork Reduction Act

The Health Professions Student Loan regulations contain information collections which have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned control numbers 0915-0044, 0915-0046, 0915-0047, 0915-0074, and 0915-0094. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Health Professions Student Loan (HPSL) Program.

Description: Information sufficient to assure payment and reduce default, and school applications.

Description of Respondents: Individuals and households (students), nonprofit institutions (schools).

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section No.	Annual No. of respondents	Frequency of response	Total annual responses	Average burden per response	Annual burden hours	OMB No. (0915-)
57.203:						
(Reporting)	750	1	750	30 min	375 hrs	(0044).
57.206(a)(2):						
(Reporting)	7,500	1	7,500	15 min	1,875 hrs	(0047).
57.206(b)(2):						
(Recordkeeping)	300	1	300	70 min	350 hrs	(0047).
57.208:						
(Recordkeeping)	300	82	24,600	1 min	410 hrs	(0074).
(Recordkeeping)	(1)	(1)	(1)	(1)	(1)	(0047).
57.210(a)(1):						
(Reporting)	9,725	1	9,725	10 min	1,620 hrs	(0044).
57.210(b)(1)(i):						
(Reporting)	310	75	23,250	10 min	3,875 hrs	(0094).
(Recordkeeping)	310	75	23,250	1 min	388 hrs	(0094).
57.210(b)(1)(ii):						
(Reporting)	310	19	5,890	29 min	2,847 hrs	(0094).
(Recordkeeping)	310	19	5,890	1 min	98 hrs	(0094).
57.210(b)(1)(iii):						
(Reporting)	310	33	10,230	10 min	1,705 hrs	(0094).
57.210(b)(1)(iv):						
(Reporting)	310	35	10,850	5 min	904 hrs	(0094).
57.210(b)(1)(vi):						
(Reporting)	310	31	9,610	10 min	1,601 hrs	(0094).
57.211(a):						
(Reporting)	40	1	40	30 min	20 hrs	(0047).
57.211(b):						
(Recordkeeping)	94	1	94	1 min	1.5 hrs	(0047).
57.212(a)(3):						
(Reporting)	(2)	(2)	(2)	(2)	(2)	(0047).
57.213(a):						
(Reporting)	5	1	5	5 min	.4 hr	(0044).
57.215(a):						
(Reporting)						
6 months	1,420	1	1,420	3 hrs	4,260 hrs	(0046).
3 months	870	1	870	1 hr.	870 hrs	(Est. Cleared).
57.215(a)(1):						
(Reporting and Recordkeeping)	1,200	1	1,200	5 hrs	6,000 hrs	(0044).
(Reporting and Recordkeeping)	(2)	(2)	(2)	(2)	(2)	(0047).
57.216a(d):						
(Reporting)	6	1	6	3 hrs	18 hrs	(0047).

[1] Regulation clearance only.
[2] Inactive provision—no current burden.
[3] Regulation clearance only.

This final rule (technical amendments) does not impose additional information collection and does not require OMB review.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

(*Catalog of Federal Domestic Assistance*, No. 13.342, Health Professions Student Loan Program)

Dated: March 5, 1991.

James O. Mason,

Assistant Secretary for Health.

Approved: April 5, 1991.

Louis W. Sullivan,

Secretary.

Accordingly, subpart C of 42 CFR part 57 is amended to read as follows:

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Subpart C—Health Professions Student Loans

1. The authority for subpart C is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 740–747, Public Health Service Act, 77 Stat. 170–173, 90 Stat. 2266–2268, 91 Stat. 390–391, 95 Stat. 920, 99 Stat. 532–536, and as amended by 102 Stat. 3125 (42 U.S.C. 294m–q).

2. Section 57.202 is amended by revising the definitions of "grace period", "health professions school", "National of the United States", and "State" to read as follows:

§ 57.202 Definitions.

* * * * *

Health professions school or *school*, for purposes of this subpart, means a public or private nonprofit school of medicine, school of dentistry, school of osteopathic medicine, school of podiatric medicine, school of optometry, or school of veterinary medicine as defined in section 701(4) of the Act, or a school of pharmacy as defined in section 747 of the Act.

* * * * *

National of the United States means: (1) A citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States, as defined in the Immigration and Nationality Act, at 8 U.S.C. § 1101(a)(22).

* * * * *

State means a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

3. Section 57.203 is amended by revising the word "federal" to read "Federal" in paragraph (c); by revising the first sentence in paragraph (a); by adding a room number to the address in footnote [1] for paragraph (a) to read "room 8–34"; and by adding a parenthetical phrase at the end of the section text to read as follows:

§ 57.203 Application by school.

(a) Each school seeking a Federal capital contribution must submit an application at the time and in the form and manner that the Secretary may require.[1] * * *

* * * * *

(Approved by the Office of Management and Budget under control number 0915-0044)

§ 57.204 Amended.

4. Section 57.204 is amended by revising the words "federal capital contributions" to read "Federal capital contributions" in paragraph (a) introductory text and in paragraph (b).

5. Section 57.206 is amended by removing the phrase "and published under 34 CFR 674.13" in paragraph (b)(1); by revising paragraphs (a)(1)(i), (b) introductory text, and (c); and by adding a parenthetical phrase at the end of the section text to read as follows:

§ 57.206 Eligibility and selection of health professions student loan applicants.

(a) * * *

(1) * * *

(i) Citizens, nationals, or lawful permanent residents of the United States, permanent residents of the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, or American Samoa, or lawful permanent residents of the Commonwealth of Puerto Rico, the Virgin Islands or Guam;

* * * * *

(b) *Selection of applicants.* The school will select qualified applicants, including medical (M.D. and D.O.) applicants, and determine the amount of student loans by considering:

* * * * *

(c) *Selection of medical (M.D. and D.O.) student applicants.* In addition to the factors in § 57.206(b), the school must select medical (M.D. and D.O.) students graduating after June 30, 1979, based on the order of greatest need, taking into consideration the other resources available to the student through the school. For purposes of establishing priority for selecting medical (M.D. and D.O.) student applicants to receive health professions student loans, summer earnings, educational loans, veterans (G.I.) benefits, and earnings during the school year will be considered as financial resources.

* * * * *

(Approved by the Office of Management and Budget under control number 0915-0047)

6. Section 57.208 is amended by revising paragraphs (a)(1) and (c)(1)(ii), and the parenthetical phrase at the end of the section text to read as follows:

§ 57.208 Health professions student loan promissory note and disclosure requirements.

(a) * * *

(1) Each promissory note must state that the loan will bear interest on the unpaid balance computed only for periods during which repayment of the loan is required, at the rate of 5 percent per year.

* * * * *

(c) * * *

(1) * * *

(ii) The terms under which repayment of the loan will begin;

* * * * *

(Approved by the Office of Management and Budget under control numbers 0915-0047 and 0915-0074)

7. Section 57.210 is amended by redesignating paragraphs (a)(2)(iv) and (v) as paragraphs (a)(2)(v) and (vi); by adding a new paragraph (a)(2)(iv); and by revising paragraph (a)(2)(iii) and the parenthetical phrase at the end of the section text to read as follows:

§ 57.210 Repayment and collection of health professions student loans.

(a) * * *

(2) * * *

(iii) All periods of advanced professional training including internships and residencies, except as specified in paragraph (a)(2)(vi) of this section;

(iv) All periods during which the borrower is pursuing a full-time course of study at an eligible health professions school;

* * * * *

(Approved by the Office of Management and Budget under control numbers 0915-0044 and 0915-0094)

8. Section 57.211 is amended by adding a parenthetical phrase at the end of the section text to read as follows:

§ 57.211 Cancellation of health professions student loans for disability or death.

* * * * *

(Approved by the Office of Management and Budget under control number 0915-0047)

9. Section 57.212 is amended by revising the term "health manpower shortage area" to read "health professional shortage area" in the section heading and in paragraphs (a) introductory text and (a)(3); and by adding a parenthetical phrase at the end of the section text to read as follows:

§ 57.212 Repayment or cancellation of loans for practice in a health professional shortage area.

* * * *

(Approved by the Office of Management and Budget under control number 0915–0047)

§ 57.213 [Amended]

10. Section 57.213 is amended by revising the word "osteopathy" to read "osteopathic medicine" in the first sentence of the section text; and by adding "Room 8–34" before the words "Parklawn Building" in the address listed in the last sentence of the section text.

11. Section 57.213a is amended by adding a parenthetical phrase at the end of the section text to read as follows:

§ 57.213a Loan cancellation reimbursement.

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0044)

12. Section 57.215 is amended by revising the parenthetical phrase at the end of the section text to read as follows:

§ 57.215 Records, reports, inspection, and audit.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0915–0044, 0915–0046, and 0915–0047)

13. The heading of § 57.216 and paragraph (a) are revised to read as follows:

§ 57.216 What additional Department regulations apply to schools?

(a) Participating schools are advised that in addition to complying with the terms and conditions of these regulations, several other regulations apply under this subpart. These include, but are not limited to:

45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of title VI of the Civil Rights Act of 1964

45 CFR part 83—Regulation for the administration and enforcement of sections 799A and 845 of the Public Health Service Act [2]

45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR part 91—Nondiscrimination on the basis of age in Health and Human Services programs or activities receiving Federal financial assistance

45 CFR part 93—New Restrictions on Lobbying

* * * * *

14. Section 57.216a is amended by revising the parenthetical phrase at the end of the section text to read as follows:

§ 57.216a Performance standard.

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0047)

[FR Doc. 91–9751 Filed 4–25–91; 8:45 am]

BILLING CODE 4160–01–M

[2] Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94–484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94–63.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7512]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended.) This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notificaitons have been made, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance with the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I—Regular Conversions				
Connecticut: Manchester, town of, Hartford County.	090031	Feb. 5, 1974, Emerg; Aug. 16, 1982, Reg; May 2, 1991, Susp	May 2, 1991	May 2, 1991.
Maine:				
Bar Harbor, town of, Hancock County	230064	May 7, 1975, Emerg; May 2, 1991, Reg; May 2, 1991, Susp	do	Do.
Bethel, town of, Oxford County	230068	Aug. 18, 1975, Emerg; May 2, 1991, Reg; May 2, 1991, Susp	do	Do.
Castine, town of, Hancock County	230277	July 24, 1975, Emerg; May 2, 1991, Reg; May 2, 1991, Susp	do	Do.
Deer Isle, town of Hancock County	230280	Apr. 2, 1976, Emerg; May 2, 1991, Reg; May 2, 1991, Susp	do	Do.
Island Falls, town of, Aroostook County	230022	July 11, 1975, Emerg; May 2, 1991, Reg; May 2, 1991, Susp	do	Do.
Lamoine, town of, Hancock County	230285	June 11, 1975, Emerg; May 2, 1991, Reg; May 2, 1991, Susp	do	Do.
Oxford, town of, Oxford County	230869	July 16, 1975, Emerg; May 2, 1991, Reg; May 2, 1991, Susp	do	
Surry, town of, Hancock County	230298	Apr. 30, 1979, Emerg; May 2, 1991, Reg; May 2, 1991, Susp	do	Do.
New Hampshire:				
New Durham, town of, Stratford County	330227	June 27, 1977, Emerg; May 2, 1991, Reg; May 2, 1991, Susp	do	Do.
Newmarket, town of, Rockingham County.	330136	Aug. 28, 1975, Emerg; May 2, 1991, Reg; May 2, 1991, Susp	do	Do.
Region II				
New Jersey:				
Blairstown, township of, Warren County	340482	July 3, 1975, Emerg; Sept. 1, 1983, Reg; May 2, 1991, Susp	do	Do.
Mansfield, township of, Burlington County.	340102	July 24, 1975, Emerg; Mar. 18, 1983, Reg; May 2, 1991, Susp	do	Do.
Region III				
West Virginia: Albright, town of, Preston County.	540161	June 23, 1975, Emerg; Aug. 1, 1987, Reg; May 2, 1991, Susp	do	Do.
Region IV				
Florida: Gadsden County, Unincorporated areas.	120091	July 10, 1975, Emerg; May 2, 1991, Reg; May 2, 1991, Susp	do	Do.
Georgia: Bullock County, Unincorporated areas.	130019	Apr. 7, 1976, Emerg; May 2, 1991, Reg; May 2, 1991, Susp	do	Do.
Region V				
Illinois: Gulfport, Village of, Henderson County.	170280	Mar. 12, 1974, Emerg; Oct. 15, 1985, Reg; May 2, 1991, Susp	Oct. 15, 1985	Do.
Ohio: Coalton, Village of, Jackson County	390291	Dec. 21, 1978, Emerg; May 2, 1991, Reg; May 2, 1991, Susp	May 2, 1991	Do.
Region VI				
Texas: South Padre Island, town of, Cameron County.	480115	Nov. 26, 1973, Emerg; Sept. 15, 1983, Reg; May 2, 1991, Susp	do	Do.
Region IX				
American Samoa: Manua Islands	600001	Mar. 26, 1981, Emerg; May 2, 1991, Reg; May 2, 1991, Susp	do	Do.
Region V—Minimal Conversion—Regular Program				
Michigan: Nottawa, township of, Isabella County.	260821	Apr. 24, 1986, Emerg; May 2, 1991, Reg; May 2, 1991, Susp	do	Do.
Region I				
Maine:				
Arrowsic, town of, Sagadahoc County	230206	Oct. 19, 1979, Emerg; May 15, 1991, Reg; May 15, 1991, Susp	May 15, 1991	May 15, 1991.
Beals, Town of, Washington County	230133	Sept. 16, 1975, Emerg; May 15, 1991, Reg; May 15, 1991, Susp.	do	Do.
Brooksville, town of, Hancock County	230276	June 11, 1976, Emerg; May 15, 1991, Reg; May 15, 1991, Susp.	do	Do.
Enfield, town of Penobscot County	230384	July 3, 1975, Emerg; May 15, 1991, Reg; May 15, 1991, Susp	do	Do.
Islesboro, town of, Waldo County	230256	May 30, 1975, Emerg; May 15, 1991, Reg; May 15, 1991, Susp	do	Do.
Lyman, town of, York County	230195	July 23, 1975, Emerg; May, 15, 1991, Reg; May 15, 1991, Susp	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Northport, town of, Waldo County	230179	July 23, 1975, Emerg; May 15, 1991, Reg; May 15, 1991, Susp.	do	Do.
Winter Harbor, town of, Hancock County	230302	Mar. 31, 1975, Emerg; May 15, 1991, Reg; May 15, 1991, Susp.	do	Do.
Massachusetts: Lowell, city of, Middlesex County.	250201	Jan. 14, 1972, Emerg; Apr. 18, 1979, Reg; May 15, 1991, Susp.	Apr. 18, 1991	Do.
New Hampshire:				
Franconia, town of, Grafton County	330063	Aug. 11, 1975, Emerg; May 15, 1991, Reg; May 15, 1991, Susp.	May 15, 1991	Do.
New Ipswich, town of, Hillsborough County.	330090	Jul. 27, 1976, Emerg; May 15, 1991, Reg; May 15, 1991, Susp.	do	Do.
Sunapee, town of, Sullivan County	330164	Apr. 19, 1976, Emerg; May 15, 1991, Reg; May 15, 1991, Susp.	do	Do.
Woodstock, town of, Grafton County	330079	Jul. 7, 1975, Emerg; May 15, 1991, Reg; May 15, 1991, Susp.	do	Do.
Rhode Island: Warwick, city of, Kent County.	445409	Jun. 19, 1970, Emerg; Apr. 18, 1991, Reg; May 15, 1991, Susp.	Apr. 18, 1991	Do.
Region II				
New York: Cameron, town of, Steuben County.	361208	Apr. 30, 1980, Emerg; Dec. 18, 1984, Reg; May 15, 1991, Susp.	May 15, 1991	Do.
Region V				
Illinois: Monticello, city of, Piatt County	170550	June 6, 1975, Emerg.; May 15, 1991, Reg.; May 15, Susp	do	Do.
Michigan: Pittsfield, charter township of, Washtenaw County.	260629	July 17, 1975, Emerg.; August 2, 1982, Reg.; May 15, 1991, Susp.	do	Do.
Minnesota:				
Baxter, city of, Crow Wing County	270082	April 15, 1974, Emerg.; May 15, 1991, Reg.; May 15, 1991, Susp.	do	Do.
Crow Wing county, unincorporated areas	270081	May 23, 1973, Emerg.; May 15, 1991, Reg.; May 15, 1991, Susp.	do	Do.

Code for reading fourth column:
Emerg.—Emergency
Reg.—Regular
Susp.—Suspension

Issued: April 17, 1991.

C.M. "Bud" Schneeto,

Administrator, Federal Insurance Administration.

[FR Doc. 91-9861 Filed 4-25-91; 8:45 am]

BILLING CODE 6718-21-M

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44 CFR Part 64

[Docket No. FEMA 7513]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or a Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and Floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978 E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date
New eligibles—Emergency Program			
Tennessee:			
Rhea county, unincorporated areas	470151	Mar. 4, 1991	7-22-77.
Grundy county unincorporated areas	470250	Mar. 11, 1991	9-25-78.
Texas: Roanoke, city of, Denton County	480785	Mar. 14, 1991	9-5-78.
Iowa: Shueyville, city of, Johnson County	195184	Mar. 6, 1991	3-18-85.
Illinois: Braidwood, city of, Will County	170848	Mar. 20, 1991	4-11-75.
California: Ferndale, city of Humboldt County	060445	do	3-26-78.
Oklahoma: Choctaw county, unincorporated areas	400470	Mar. 28, 1991	
New eligibles—Regular program			
Alabama:			
Morgan county, unincorporated areas	010175	Mar. 1, 1991	7-16-81.
Lawrence county, unincorporated areas	010324	Mar. 14, 1991	8-15-81.
North Carolina:			
Roxboro, city of, Person County	370347	Mar. 25, 1991	9-14-90.
Pinehurst, village of, Moore County	370463	Mar. 25, 1991	12-15-89.
Reinstatements—Regular Program			
West Virginia: Shepherdstown, town of, Jefferson County.	540069	Feb. 14, 1975, Emerg.; Mar. 18, 1980, Reg.; Aug. 15, 1990, Susp.; Mar. 14, 1991, Rein.	3-19-80
Pennsylvania:			
Foster, township of, Schuylkill County	422006	Apr. 21, 1975, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; Mar. 30, 1991, Rein.	9-1-86
Cooperstown, borough of, Venango County	420835	July 7, 1975, Emerg.; Feb. 6, 1991, Reg.; Feb. 6, 1991, Susp.; Mar. 25, 1991, Rein.	2-6-91
Davidson, township of, Sullivan County	422080	Aug. 20, 1975, Emerg.; Feb. 6, 1991, Reg.; Feb. 6, 1991, Susp.; Mar. 25, 1991, Rein.	2-6-91
Utica, borough of, Venango County	420841	Feb. 10, 1977, Emerg.; Mar. 4, 1991, Reg.; Mar. 4, 1991, Susp.; March 29, 1991, Rein.	3-4-91
Region I—Regular Program Conversions			
Connecticut: Monroe, town of, Fairfield County	090009	March 4, 1991, Suspension Withdrawn	3-4-91
Rhode Island: Smithfield, town of, Providence County	440025	do	Do.
Region II			
New Jersey: Liberty, township of, Warren County	340489	do	Do.
Region V			
Michigan: Iron River, city of, Iron County	260103	do	Do.
Wisconsin; Pestigo, city of Marinette County	550263	do	Do.
Region VI			
Arkansas: Logan county, unincorporated areas	050447	do	Do.
Oklahoma: Del City, city of, Oklahoma County	400233	do	Do.
Texas:			
Odessa, city of, Ector County	480206	do	Do.
Ector county, unincorporated areas	480796	do	Do.
Region I—Regular Program Conversions			
Connecticut:			
Canton, town of, Hartford County	090135	March 18, 1991 Suspension Withdrawn	3-18-91.
Hebron, town of, Tolland County	090162	do	Do.
Woodbridge, town of, New Haven County	090153	do	Do.
Region III			
Pennsylvania:			
Brokenstraw, township of, Warren County	422115	do	Do.
Franklin, township of, Fayette County	421625	do	Do.
Orbisonia, borough of, Huntingdon County	421682	do	Do.
Saltlick, township of, Fayette County	421636	do	Do.
Sandy Lake, borough of, Mercer County	420677	do	Do.
Springhill, township of, Fayette County	421639	do	Do.
West Virginia:			
Gassaway, town of, Braxton County	540237	do	Do.
Braxton county, unincorporated areas	540009	do	Do.
Burnsville, town of, Braxton County	540010	do	Do.
Calhoun county, unincorporated areas	540020	do	Do.
Clay county, unincorporated areas	540022	do	Do.
Clay, town of, Clay County	540023	do	Do.
Doddridge, county, unincorporated areas	540024	do	Do.
Ravenswood, city of, Jackson County	540241	do	Do.
Sutton, town of, Braxton County	540236	do	Do.
West Union, town of, Doddridge County	540025	do	Do.
Region IV			
South Carolina:			
Charleston, county, unincorporated areas	455413	do	Do.
Folly Beach, township of, Charleston County	455415	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
Isle of Palms, township of, Charleston County	455416	do	Do.
Sullivans Island, city of, Charleston County	455418	do	Do.
Tennessee: Green county, unincorporated areas	470345	do	Do.
Region V			
Michigan: Frankfort, city of, Benzie County	260029	do	Do.
Wisconsin:			
Fredonia, village of, Ozaukee County	550313	do	Do.
Cedarburg, city of, Ozaukee County	550312	do	Do.
Grafton, village of, Ozaukee County	550314	do	Do.
Mariette County, unincorporated areas	550259	do	Do.
Mequon, city of, Ozaukee County	555564	do	Do.
Ozaukee county, unincorporated areas	550310	do	Do.
Saukville, village of, Ozaukee County	550317	do	Do.
Thiensville, village of, Ozaukee County	550318	do	Do.
Port Washington, city of, Ozaukee County	550316	do	Do.
Region VI			
Oklahoma: Cherokee county, unincorporated areas	400456	do	Do.
Texas: Cameron county, unincorporated areas	480101	do	Do.
Region IX			
California: Mono county, unincorporated areas	060189	do	Do.

Code for ending fourth column:
Emerg.—Emergency
Reg.—Regular
Susp.—Suspension
Rein.—Reinstatement

Issued: April 17, 1991.

C. M. "Bud" Schneeris,

Administrator, Federal Insurance Administration.

[FR Doc. 91-9862 Filed 4-25-91; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-447; RM-6862 and RM-7205]

Radio Broadcasting Services; Arkansas City and Winfield, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 273A to Arkansas City, Kansas, in response to a petition filed by John C. McVey. See 54 FR 47371, November 14, 1989. The coordinates for Channel 273A are 37-02-34 and 97-01-27, with a site restriction 2.1 kilometers (1.3 miles) southeast. In response to a counterproposal filed by Cowley County Communications, Inc., we shall substitute Channel 300C2 for Channel 232A at Winfield, Kansas, and modify the license for Station KWKS-FM to specify operation on Channel 300C2. The coordinates for Channel 300C2 are 37-14-42 and 96-54-18. This document also allots Channel 240C2 to Winfield, Kansas, in response to comments filed by Robert V. Barnes. The coordinates for Channel 240C2 are 37-07-12 and 96-43-04, with a site restriction 28.7 kilometers (17.6 miles) southeast. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 6, 1991; the window period for filing applications for Channel 273A at Arkansas City, Kansas, and Channel 240C2 at Winfield, Kansas, will open on June 7, 1991, and close on July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 89-477, adopted April 10, 1991, and released April 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036. (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 232A and adding Channels 300C2 and 240C2 at Winfield, and by adding Channel 273A at Arkansas City.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-9862 Filed 4-25-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-534; RM-7037]

Radio Broadcasting Services; Buffalo and Vine Grove, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 268A from Buffalo to Vine Grove, Kentucky, and modifies the construction permit for Station WRZI(FM) to specify Vine Grove as its community of license. The allotment of Channel 268A to Vine Grove will provide the community with its first local FM service, without depriving Buffalo of its only local aural service, in accordance with Section 1.420(i) of the Commission's Rules. See 54 50003, December 4, 1989. The coordinates for Channel 268A at Vine Grove are North Latitude 37-43-09 and West Longitude 86-01-13. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-534, adopted April 10, 1991, and released April 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 268A at Buffalo, and adding Channel 268A, Vine Grove.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-9843 Filed 4-25-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-574; RM-7534]

Radio Broadcasting Services; Los Lunas, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Patricia Benns Komorowski, substitutes Channel 292C1 for Channel 292A at Los Lunas, New Mexico, and modifies her construction permit for Station KZPY to specify operation on the higher powered channel. See 55 FR 49922, December 3, 1990. Channel 292C1 can be allotted to Los Lunas in compliance with the Commission's minimum distance separation requirements at the site specified in petitioner's construction permit. The coordinates for Channel 292C1, at Los Lunas are North Latitude 34-49-19 and West Longitude 106-41-16. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-574, adopted April 10, 1991, and released April 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 292A and adding Channel 292C1 at Los Lunas.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-9844 Filed 4-25-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-318; RM-7069]

Radio Broadcasting Services; Rocky Mount, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Radio Triangle East Company, substitutes Channel 253C3 for Channel 253A at Rocky Mount, North Carolina, and modifies the license of Station WSAY-FM to specify operation on the higher powered channel. Channel 253C3 can be allotted to Rocky Mount in compliance with the Commission's minimum distance separation requirements at Station WSAY-FM's presently licensed transmitter site. The coordinates for Channel 253C3 at Rocky Mount are North Latitude 35-54-43 and West Longitude 77-50-06. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-318, adopted April 9, 1991, and released April 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 253A and adding Channel 253C3 at Rocky Mount.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-9847 Filed 4-25-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-499; RM-6420]

Radio Broadcasting Services; Altus, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Altus FM, Inc. and Fred R. Morton, Jr., substitutes Channel 300C2 for Channel 300A at Altus, Oklahoma, and modifies its construction permit for Station KETB to specify operation on the higher powered channel. See 55 FR 46838, November 7, 1990. Channel 300C2 can be allotted to Altus in compliance with the Commission's minimum distance separation requirements with a site restriction of 25.5 kilometers (15.8 miles) south to avoid a short-spacing to Station KAKS-FM, Channel 300C, Canyon, Texas. The coordinates for Channel 300C2 at Altus are North

Latitude 34-24-30 and West Longitude 99-20-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-489, adopted April 10, 1991, and released April 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 300A and adding Channel 300C2 at Altus.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-9945 Filed 4-25-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-586; RM-7532]

Radio Broadcasting Services; Pamplico, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Pamplico Broadcasting Limited Partnership, substitutes Channel 271C2 for Channel 271A at Pamplico, South Carolina, and modifies its construction permit for Station WMXT to specify operation on the higher powered channel. See 55 FR 49922, December 3, 1990. Channel 271C2 can be allotted to Pamplico in compliance with the Commission's minimum distance separation requirements with a site restriction of 22.5 kilometers (14.0 miles) southwest to avoid a short-spacing to Station WKZQ-FM, Channel 289C2, Myrtle Beach, South Carolina, and Station WJSK, Channel 272A, Lumberton, North Carolina, and to accommodate petitioner's desired transmitter site. The coordinates for Channel 271C2 at Pamplico are North Latitude 33-52-15 and West Longitude 79-45-20. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-586, adopted April 10, 1991, and released April 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 271A and adding Channel 271C2 at Pamplico.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-9946 Filed 4-25-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 80

[PR Docket No. 90-134; FCC 91-85]

Maritime Services; General Exemption for Small Passenger Vessels Operated on Domestic Voyages

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended the rules that exempt U.S. small passenger vessels from the requirement that the vessels be equipped with a manual Morse code radiotelegraph station. Under a revised general exemption, the vessels are now permitted to operate beyond the previous limit of 100 nautical miles from land, provided they carry specified radiotelephone equipment.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Eric Malinen, Special Services Division, Private Radio Bureau, (202) 632-7197.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, adopted March 25, 1991, and released April 10, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC 20037.

Summary of Report and Order

1. The Commission has amended the Maritime Services rules that exempt U.S. passenger vessels of less than 100 gross tons (small passenger vessels), not subject to the International Convention for the Safety of Life at Sea, 1974, as amended, T.I.A.S. No. 9352 (Safety Convention), from the radiotelegraph provisions of part II of title III of the Communications Act of 1934, as amended (Communications Act). Under a revised general exemption, the vessels are now permitted to operate beyond the previous limit of 100 nautical miles from land, provided they carry specified radiotelephone equipment. These amendments follow from the premise that adequate safety communications can be ensured on voyages over 100 nautical miles from land, just as they are for vessels operating under the previous general exemption. This is accomplished by the carriage of high frequency single sideband radiotelephone equipment or satellite communications equipment in lieu of manual Morse code radiotelegraph equipment. These newer technologies offer radio performance equal to or superior to radiotelegraphy, and are easier to operate.

2. Under the revised general exemption, small passenger vessels are required to fit-out with additional equipment in a "step" or tiered approach. At increasingly greater distances from land, vessels carry additional radio equipment. The radiotelephone installations required on vessels operated up to 100 nautical miles from land remains as it was under the previous general exemption: A very high frequency (VHF) radiotelephone installation and a medium frequency (MF) radiotelephone installation. Vessels operated beyond 100 nautical miles from land must carry the above plus the following: A 406 MHz satellite emergency position-indicating radiobeacon (EPIRB) and additionally either a high frequency (HF) single sideband radiotelephone or a ship earth station. Vessels in this latter category must also carry NAVTEX equipment for receiving terrestrial broadcasts of maritime safety information.

3. The amended rules are set forth at the end of this document.

Final Regulatory Flexibility Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), *see* 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this *Report and Order*, which may be obtained from the Commission or its copy contractor.

Procedural Matters

5. The rule amendments proposed herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to decrease the information collection burden that the Commission imposes on the public. The revised general exemption, by permitting small passenger vessels to operate beyond the previous limit of 100 nautical miles from land without first having to obtain formal individual exemptions from the Commission, can avoid unnecessary administrative procedures for both licensees and the Commission. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

6. Authority for issuance of this *Report and Order* is contained in sections 4(i), 303(r), and 352(b)(3) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 352(b)(3).

7. A copy of this *Report and Order* will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 80

Communications equipment, Radiotelegraphy, Radiotelephony, Vessels

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 80 of chapter I of title 47 of Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 80.836, the section heading and paragraph (a) are revised to read as follows:

§ 80.836 General and individual vessel exemptions.

(a) All U.S. passenger vessels of less than 100 gross tons, not subject to the radio provisions of the Safety Convention, are exempt from the radiotelegraph provisions of part II of title III of the Communications Act, provided that the vessels are equipped with a radiotelephone installation fully complying with the Commission's Rules and with the provisions of part III of title III of the Communications Act.

* * * * *

3. In § 80.905, the section heading is revised, paragraphs (a)(2) through (c) are redesignated (b) through (d), a new paragraph (a) introductory text is added, paragraph (a)(1) is revised, and new paragraphs (a)(2) and (a)(3) (i)-(ix) are added to read as follows:

§ 80.905 Vessel radio equipment.

(a) Vessels subject to part III of title III of the Communications Act that operate in the waters described in § 80.901 of this section must, at a minimum, be equipped as follows:

(1) Vessels operated solely within the communications range of a VHF public coast station or U.S. Coast Guard station that maintains a watch on 156.800 MHz while the vessel is navigated must be equipped with a VHF radiotelephone installation. Vessels in this category must not operate more than 20 nautical miles from land.

(2) Vessels operated beyond the 20 nautical mile limitation specified in paragraph (a)(1) of this section, but not more than 100 nautical miles from the nearest land, must be equipped with a medium frequency transmitter capable of transmitting J3E emission and a receiver capable of reception of J3E emission within the band 1605 to 2850 kHz, in addition to the VHF radiotelephone installation required by paragraph (a)(1) of this section. The medium frequency transmitter and receiver must be capable of operation on 2670 kHz.

(3) Vessels operated more than 100 nautical miles from the nearest land must:

(i) Be equipped with a VHF radiotelephone installation;

(ii) Be equipped with a radiotelephone transmitter and receiver meeting the requirements of paragraph (a)(2) of this section; and

(iii) Be equipped with either:

(A) A single sideband radiotelephone capable of operating on any distress and safety frequency in the medium frequency and high frequency bands listed in §§ 80.369 (a) and (b) of this part, on any of the ship-to-shore calling frequencies in the high frequency bands listed in § 80.369(d) of this part, and on at least four of the automated mutual-assistance vessel rescue (AMVER) system HF duplex channels; or

(B) If operated in an area within the coverage of an INMARSAT maritime mobile geostationary satellite in which continuous alerting is available, an INMARSAT ship earth station meeting the equipment authorization rules of parts 2 and 80 of this chapter;

(iv) Be equipped with a reserve power supply meeting the requirements of §§ 80.917(b), 80.919, and 80.921 of this part, and capable of powering the single sideband radiotelephone or the ship earth station (including associated peripheral equipment) required by paragraph (a)(3)(iii) of this section;

(v) Be equipped with a NAVTEX receiver conforming to the following performance standards: IMO Resolution A.525(13) and CCIR Recommendation 540;

(vi) Be equipped with a 406 MHz satellite emergency position-indicating radiobeacon (EPIRB) meeting the requirements of § 80.1061 of this part;

(vii) Be equipped with a radiotelephone distress frequency watch receiver meeting the requirements of § 80.289 of this part;

(viii) Be equipped with an automatic radiotelephone alarm signal generator meeting the requirements of § 80.221 of this part; and

(ix) Participate in the AMVER system on all voyages of more than 24 hours.

* * * * *

4. Section 80.909 is revised in its entirety to read as follows:

§ 80.909 Radiotelephone transmitter.

(a) The medium frequency transmitter must have a peak envelope output power of at least 60 watts for J3E emission on 2182 kHz and at least one ship-to-shore working frequency within the band 1605 to 2850 kHz enabling communication with a public coast station if the region in which the vessel is navigated is served by a public coast station operating in this band.

(b) The single sideband radiotelephone must be capable of operating on maritime frequencies in the band 1605 to 27500 kHz with a peak envelope output power of at least 120 watts for J3E emission and H3E emission on 2182 kHz and J3E emission on the distress and safety frequencies listed in § 80.369(b) of this part.

(c) The transmitter complies with the power output requirements specified in paragraphs (a) or (b) of this section when:

(1) The transmitter can be adjusted for efficient use with an actual ship station transmitting antenna meeting the requirements of § 80.923 of this part; and

(2) The transmitter, with normal operating voltages applied, has been demonstrated to deliver its required output power on the frequencies specified in paragraphs (a) or (b) of this section into either an artificial antenna consisting of a series network of 10 ohms effective resistance and 200 picofarads capacitance or an artificial antenna of 50 ohms nominal impedance. An individual demonstration of power output capability of the transmitter, with the radiotelephone installation normally installed on board ship, may be required.

(d) The single sideband radiotelephone must be capable of transmitting clearly perceptible signals from ship to shore. The transmitter complies with this requirement if it is capable of enabling communication with a public coast station on working frequencies in the 4000 to 27500 kHz band specified in § 80.371(b) of this part under normal daytime operating conditions.

5. In § 80.913, paragraphs (b) through (f) are redesignated as paragraphs (c) through (g), a new paragraph (b) is added, and newly redesignated paragraphs (e) and (f) are revised to read as follows:

§ 80.913 Radiotelephone receivers.

* * * * *

(b) If a single sideband radiotelephone installation is provided, the receiver must be capable of reception of H3E and J3E emissions on 2182 kHz and J3E emission on any receiving frequency authorized pursuant to § 80.909 of this part.

* * * * *

(e) Any receiver provided as a part of the radiotelephone installation must have a sensitivity of at least 50 microvolts in the case of MF equipment, and 1 microvolt in the case of HF or VHF equipment.

(f) The receiver required in paragraphs (a), (b) or (c) of this section must be capable of efficient operation when energized by the main source of energy. When a reserve source of energy is required pursuant to § 80.905 or § 80.917 of this part, the receiver must also be capable of efficient operation when energized by the reserve source of energy.

* * * * *

6. Section 80.923 is amended by revising the first sentence to read as follows:

§ 80.923 Antenna system.

An antenna must be provided in accordance with the applicable requirements of § 80.81 of this part which is as efficient as practicable for the transmission and reception of radio waves. * * *

7. Section 80.931 is amended by revising the first sentence to read as follows:

§ 80.931 Test of radiotelephone installation.

Unless normal use of the radiotelephone installation demonstrates that the equipment is in proper operating condition, a test communication on a required frequency in the 1605 to 27500 kHz band or the 156 to 162 MHz band must be made by a qualified operator each day the vessel is navigated. * * *

[FR Doc. 91-9041 Filed 4-25-91; 8:45 am]

BILLING CODE 6712-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Chapter 99

Cost Accounting Standards Board; Establishment of Rules and Procedures

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Final rule.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board, hereby establishes a final rule for the conduct of its operations. The Board is established pursuant to section 5 of the Office of Federal Procurement Policy Act Amendments of 1988, 41 U.S.C. 422. Section 5(f)(3) of that Act, 41 U.S.C. 422(f)(3) requires the Administrator for Federal Procurement Policy, after consultation with the Board, to prescribe rules and procedures governing actions of the Board. On November 9, 1990, the Administrator, after consultation with the Board, published in the **Federal Register**, an interim rule with request for comments, 55 FR 47055. This final rule is established by the Administrator, after consultation with the Board, and after consideration of public comments received in response to the Board's interim rule.

EFFECTIVE DATE: This rule is effective April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202-395-3300).

SUPPLEMENTARY INFORMATION:

A. Background

Section 5 of Public Law 100-679, "The Office of Federal Procurement Policy Act Amendments of 1988" reestablished the Cost Accounting Standards Board as an independent board within the Office of Federal Procurement Policy. The Board consists of five members, including the Administrator for Federal Procurement Policy, who serves as Chairman. The Board has the exclusive statutory authority to make, promulgate, amend, and rescind cost accounting standards and interpretations thereof designed to achieve uniformity and consistency in the cost accounting practices governing measurement, assignment and allocation of costs to contracts with the United States.

Section 5(f)(3) of the Office of Federal Procurement Policy Act Amendments requires the Administrator, after consultation with the Board, to prescribe rules and procedures governing actions of the Board. The statute requires that such rules and procedures mandate that any cost accounting standard promulgated, amended, or rescinded (and interpretations thereof) shall be adopted by majority vote of the Board Members.

The final rule promulgated herein sets forth the operational rules and procedures of the Cost Accounting Standards Board. It does not promulgate, rescind or modify any existing Standards. Such Cost Accounting Standards, including any waivers, exemptions, interpretations, modifications, rules and regulations, promulgated by the previous Cost Accounting Standards Board under the authority of section 719 of the Defense Production Act of 1950, 50 U.S.C. App. 2168, shall remain in effect unless and until amended, superseded or rescinded by the Board pursuant to the authority of section 5 of Public Law 100-679.

The public is further advised that this rulemaking is purely administrative in nature, and in no way affects the application (including thresholds) of existing cost accounting standards to government contracts. In particular, the public is advised that Section 9901.306, entitled "Standards applicability," should in no way be construed as modifying existing dollar thresholds for cost accounting standards applicability, or the application of the standards to non-defense contracts. The standards as codified at 48 CFR part 30, and 4 CFR, part 331, *et seq.*, remain in full force and effect, until amended, modified or superseded by the Cost Accounting Standards Board.

The previous Cost Accounting Standards Board completed its work in establishing basic Cost Accounting Standards, and subsequently ceased operations on September 30, 1980. After that time, the General Accounting Office (GAO) sponsored the continued publication of CASB regulations (45 FR 79409 December 1, 1980). To reflect this GAO sponsorship, the heading of chapter III of title 4 was changed in the 1981 edition of the CFR from "Cost Accounting Standards Board" to "General Accounting Office (CASB)."

The recodification of the existing sets of Cost Accounting Standards, including any changes in applicability or dollar thresholds, will be the subject of a future rulemaking by the Board.

B. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96-511, does not apply to this rulemaking because this rule does not impose any reporting, recordkeeping or collection of information requirements on offerors, contractors or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* These rules and procedures relate solely to the internal organization and operation of the Cost Accounting Standards Board.

C. Executive Order 12291 and the Regulatory Flexibility Act

This regulation governs the operation of the Cost Accounting Standards Board. The economic impact of establishing and operating the Board is expected to be minor. Therefore, the Chairman has determined that this is not a "major rule" under Executive Order 12291, and that a regulatory impact analysis is not required. Furthermore, this regulation will not have a significant effect on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

D. Public Comments

This final rule is based upon the interim rule which the Board published in the **Federal Register** on November 9, 1990 (55 FR 47055), wherein public comments were invited. One commenter submitted timely comments. These comments and the Administrator's actions taken in reposes thereto are summarized in the paragraphs that follow:

Comment: Section 9901.317 response too much authority in the Administrator for Federal Procurement Policy (Chairman, Cost Accounting Standards Board) to make changes in the rules and procedures governing Board action. For instance, the Chairman could not change the statutory requirements for the Board's authority, majority voting, and membership.

Response: The Administrator agrees with the commenter that he is not empowered to make changes in the statutory authorities and legal requirements for issuance of Cost Accounting Standards that are otherwise reposed in the Board as a whole. However, 41 U.S.C. 422(f)(3) does authorize the Administrator, after consultation with the Board, to prescribe rules and procedures governing actions of the Board. Such rules and procedures, would, of course, have to comply with the statutory requirements of Public Law 100-679, and the Administrator may not deviate from this statute. However, within the context of the authorities granted to the Administrator to issue rules and procedures governing the Board's operation, the Administrator retains exclusive authority (subject to the consultation requirements) to make, promulgate and amend lawful regulations designed to effectuate the management and administration of the Board's work.

Comment: Unlike the previous Cost Accounting Standards Board's rules, the current Board's rules do not address such issues as "general information and organization," "responsibilities and conduct," "release of information," and "delegations of authority" (previous Board's CAS 301-304, 4 CFR Parts 301-304).

Response: The previous Cost Accounting Standards Board, authorized pursuant to 50 U.S.C. App. 2168, was an independent Federal agency established within the Legislative Branch of the Government. As a result of its independent agency status, the old Board was required, for its effective and lawful administration, to issue regulations that addressed the issues discussed by the commenter. Unlike the previous Board, the current Board is a function within the Office of Federal Procurement Policy (OFPP), which is itself a part of an Executive Branch agency—the Office of Management and Budget (OMB). As such, the Board and OFPP, like the rest of OMB, are governed by administrative regulations and procedures as determined by the Director of OMB. Regulations addressing OMB's standards of conduct, public information provisions, post employment conflicts of interest, and other administrative procedures may be found at 5 CFR, Parts 1300-1304.

Comment: The Board's rules should include sections covering such items as staffing, requirements for Congressional reporting, and the responsibility of the Administrator to ensure that other agency regulations do not conflict with Cost Accounting Standards promulgated by the Board.

Response: The Administrator is mindful of his responsibility to ensure that the Board's staff is effectively managed. In so doing, the Administrator requires a necessary degree of flexibility to match the Board's staffing requirements with the nature of the issues facing the Board. In order to maintain this flexibility, as well as to preserve efficient and effective administration of OFPP, the Administrator has chosen not to issue regulations governing personnel qualifications for the Board's staff. Moreover, to do so might conflict with qualification standards issued by the U.S. Office of Personnel Management. However, the Administrator expects that the members of the Board's professional staff will continue to possess a mix of expertise in accounting, law, procurement and contracting, economics, finance and a variety of other disciplines relating to Government contract cost, pricing and accounting matters.

The Administrator is also aware of the statutory requirement, under 41 U.S.C. 422(i), for an annual report to Congress on the activities of the Board. The Administrator believes that the statutory requirement contained in the OFPP Act is clear on its face, and that no further coverage in this regulation is required. Moreover, since the Congressional reporting requirement has no regulatory effect on covered contractors, or the manner in which the Board conducts its substantive

operations, it is not considered to be a necessary part of the Board's rules and procedures.

Finally, the Administrator is aware of the authorities granted to him under 41 U.S.C. 405, to ensure that the regulations issued by Executive Branch agencies, respecting the Government's procurement system, do not conflict with policies or regulations promulgated by OFPP or the Board. However, the Administrator believes that this authority is exercised independently of his authority as Chairman of the Cost Accounting Standards Board, and for this reason, declines to codify in the Board's rules and procedures, his broad-based regulatory oversight role for the Federal procurement system.

Comment: The preamble to the Board's interim rule states that the Cost Accounting Standards as codified at both 48 CFR part 30 and 4 CFR part 331 *et seq.* remain in full force and effect, until amended, modified or superseded by the Board. This places contractors in the untenable position of needing to comply with two sets of Cost Accounting Standards.

Response: The Board is cognizant of the existence of two codified sets of Cost Accounting Standards. This is the reason why the Board has set as its highest priority the recodification of the existing sets of Cost Accounting Standards into one set of codified regulations. Nevertheless, given the existing state of the statutory and case law in this area, the Board is not prepared, at this time, to unequivocally state that one of the existing sets of Cost Accounting Standards takes precedence over the other. The Board believes that the decision of the Court of Claims in *The Boeing Company* v. *United States*, 680 F.2d 132 (Ct. Cl. 1982), *cert. denied*, 460 U.S. 1081 (1983) makes clear the pivotal role that the procuring agencies play in determining the appropriate cost accounting clauses and rules that will govern their respective contracts. Despite the language contained in Public Law 100-679 retaining the standards, rules and regulations issued by the previous Board, the current Board continues to respect the decision of the Court of Claims in the *Boeing* decision, *supra*. Finally, the current Board believes that the two sets of Cost Accounting Standards that are currently codified in the Code of Federal Regulations are substantively alike. Except for two relatively minor distinctions relating to minimum tangible asset capitalization thresholds and use of state-prescribed lump-sum settlement rates for arriving at the discounted present value of future payments of worker's compensation, these two sets of rules do not vary in any meaningful way.

In addition to the above-cited major comments, this same commenter also made a number of editorial suggestions to improve the understanding and readability of the Board's rules and procedures.

The Board has incorporated a number of these suggested editorial corrections into the final rule. Finally, the Board has also initiated several minor editorial changes and/or corrections to the text of the final regulation in order to improve the rule's clarity.

List of Subjects in 48 CFR Part 9901

Government procurement, Cost accounting standards.

For the reasons set out in the preamble, chapter 99 of title 48 of the Code of Federal Regulations is amended as set forth below.

Dated: April 22, 1991.

Allan V. Burman,

Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

The establishment of 48 CFR chapter 99 at 55 FR 47656, November 9, 1990, is adopted as final and part 9901 is revised to read as follows:

PART 9901—RULES AND PROCEDURES

Sec.

9901.301 Purpose.
9901.302 Authority.
9901.303 Offices.
9901.304 Membership.
9901.305 Requirements for standards and interpretive rulings.
9901.306 Standards applicability.
9901.307 Exemptions and waivers.
9901.308 Meetings.
9901.309 Quorum.
9901.310 Board action.
9901.311 Executive sessions.
9901.312 Minutes.
9901.313 Public hearings.
9901.314 Informal actions.
9901.315 Executive Secretary.
9901.316 Files and records.
9901.317 Amendments.

Authority: Pub. L. 100-679, 102 Stat. 4058, 41 U.S.C. 422.

9901.301 Purpose.

This part is published in compliance with Public Law 100-679, section 5(f)(3), 41 U.S.C. 422(f)(3), and constitutes the rules and procedures governing actions and the administration of the Cost Accounting Standards Board.

9901.302 Authority.

(a) The Cost Accounting Standards Board (hereinafter referred to as the "Board") is established by and operates in compliance with Public Law 100-679.

(b) The Board has the exclusive authority to make, promulgate, amend, and rescind cost accounting standards and regulations, including interpretations thereof, designed to achieve uniformity and consistency in the cost accounting practices governing measurement, assignment, and allocation of costs to contracts with the United States Government.

(c) All cost accounting standards, waivers, exemptions, interpretations, modifications, rules, and regulations promulgated under Section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168) shall remain in effect unless and until amended, superseded, or rescinded by the Board pursuant to Public Law 100-679.

9901.303 Offices.

The Cost Accounting Standards Board's offices are located in the New Executive Office Building, 725 17th Street, NW., Washington, DC 20503. The hours of business for the Board are 9 a.m. to 5:30 p.m., local time, Monday through Friday, excluding holidays observed by the Federal Government in Washington, DC.

9901.304 Membership.

The Board consists of five members, including the Administrator of the Office of Federal Procurement Policy (hereinafter referred to as the "Administrator") who shall serve as Chairman, and four other members with experience in Government contract cost accounting who are to be appointed as follows:

(a) A representative of the Department of Defense appointed by the Secretary of Defense.

(b) An officer or employee of the General Services Administration appointed by the Administrator of the General Services Administration or his/her designee.

(c) A representative of industry appointed from the private sector by the Administrator.

(d) An individual who is particularly knowledgeable about cost accounting problems and systems appointed from the private sector by the Administrator.

(e) The term of office of each of the members of the Board, other than the Administrator, shall be four years, with the exception of the initial appointment of members. Of the initial appointments to the Board, two members shall hold appointment for a term of two years, one shall hold appointment for a term of three years, and one shall hold appointment for a term of four years.

(f) The members from the Department of Defense and the General Services Administration shall not be permitted to continue to serve on the Board after ceasing to be an officer or employee of their respective appointing agency. A vacancy on the Board shall be filled in the same manner in which the original appointment was made. A member may be reappointed for a subsequent term(s). Any member appointed to fill an interim vacancy on the Board shall serve for the remainder of the term for which his or her predecessor was appointed.

(g) In the event of the absence or incapacity of the Administrator or during a vacancy in the office, the official of the Office of Federal Procurement Policy, acting as Administrator, shall serve as the Chairman of the Board.

(h) In the event of the absence of any of the other Board members, a representative of that Board member may attend the Board meeting, but shall have no vote, and his or her attendance shall not be counted to establish a quorum.

9901.305 Requirements for standards and interpretive rulings.

Prior to the promulgation of cost accounting standards and interpretations thereof, the Board shall:

(a) Take into account, after consultation and discussion with the Comptroller General, professional accounting organizations, contractors, government agencies and other interested parties:

(1) The probable costs of implementation, including inflationary effects, if any, compared to the probable benefits;

(2) The advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contacts; and

(3) The scope of, and alternatives available to, the action proposed to be taken.

(b) Prepare and publish a report in the Federal Register on issues reviewed under subparagraph (a) above.

(c) Publish an advance notice of proposed rulemaking in the Federal Register in order to solicit comments on the report prepared pursuant to paragraph (b) of this section, and provide all parties affected a period of not less than 60 days after such publication to submit their views and comments. During this 60-day period, consult with the Comptroller General and consider any recommendation the Comptroller General may make.

(d) Publish a notice of such proposed rulemaking in the Federal Register and provide all parties affected a period of not less than 60 days after such publication to submit their views and comments.

(e) Rules, regulations, cost accounting standards, and modifications thereof promulgated or amended by the Board, shall have the full force and effect of law and shall become effective within 120 days after publication in the Federal Register in final form, unless the Board determines a longer period is necessary. Implementation dates for contractors and subcontractors shall be determined by the Board, but in no event shall such dates be later than the beginning of the second fiscal year of affected contractors or subcontractors after the standard becomes effective. Rules, regulations, cost accounting standards, and modifications thereof promulgated or amended by the Board shall be accompanied by prefatory comments and by illustrations, if necessary.

(f) The above functions exercised by the Board are excluded from the operations of sections 551, 553 through 559, and 701 through 706 of Title 5, United States Code.

9901.306 Standards applicability.

Cost Accounting Standards promulgated by the Board shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States Government in excess of $500,000, other than contracts or subcontracts that have been exempted by the Board's regulations.

9901.307 Exemptions and Waivers.

The Board may exempt classes or categories of contractors and subcontractors from cost accounting standards requirements, and establish procedures for waiver of the requirements with respect to individual contracts and subcontracts. The official records of the Board shall be documented with supporting justification for class or category exemptions and individual waivers.

9901.308 Meetings.

The Board shall meet at the call of the Chairman. Agenda for Board meetings shall be proposed by the Chairman, but any Board member may request any item to be placed on the agenda.

9901.309 Quorum.

Three Board members, at least one of whom is appointed by the Administrator from the private sector, shall constitute a quorum of the Board.

9901.310 Board Action.

Board action shall be by majority vote of the members present and voting, except that any vote to publish a proposed standard, rule or regulation in the Federal Register for comment or any vote to promulgate, amend or rescind a standard, rule or regulation, or any interpretation thereof, shall require at least three affirmative votes for the five Board members. The Chairman may vote on all matters presented for a vote, not merely to resolve tie votes. The results of final votes shall be reported in the minutes of the meeting, and the vote of a Board member may be recorded at his/her request.

9901.311 Executive sessions.

During the course of a Board meeting, any Board Member may request that for any portion of the meeting, the Board meet in executive session. The Chairman shall thereupon order such a session.

9901.312 Minutes.

The Executive Secretary of the Board shall be responsible for keeping accurate minutes of Board meetings and maintaining Board files.

9901.313 Public hearings.

Public hearings to assist the Board in the development and explanation of cost accounting standards and interpretive rulings may be held to the extent the Board in its sole discretion deems desirable. Notice of such hearings shall be given by publication in the Federal Register.

9901.314 Informal actions.

The Chairman may take actions on behalf of the Board on administrative issues, as determined by the Chairman, without holding an official meeting of the members. However, details of the actions so taken shall be provided to all of the members at the next Board meeting following such actions. Board members may be polled by telephone on other issues that must be processed on a timely basis when such matters cannot be deferred until the next formal meeting of the Board.

9901.315 Executive Secretary.

The Board's staff of professional, technical and supporting personnel is directed and supervised by the Executive Secretary.

§601.316 Files and records.

The files and records of the Board shall be maintained in accordance with the *Federal Records Creation, Maintenance, and Disposition Manual* of the Executive Office of The President, Office of Administration. As a minimum, the files and records shall include:

(a) A record of every Board meeting, including the minutes of Board proceedings and public hearings.

(b) Cost accounting standards promulgated, amended, or rescinded and interpretations thereof along with the supporting documentation and applicable research material.

(c) Applicable working papers, memoranda, research material, etc. related to issues under consideration by the Board and/or previously considered by the Board.

(d) Substantive regulations and statutes of general applicability and general policy and interpretations thereof.

(e) Any other file or record deemed important and relevant to the duties and responsibilities of the Board.

§601.317 Amendments.

This Part 601, Rules and Procedures, may be amended by the Chairman, after consultation with the Board.

[FR Doc. 91-[illegible] Filed 4-25-91; 8:45am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 72]

RIN 2127—AC13

Crash Tests with Unrestrained Test Dummies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule adopts as a permanent rule the interim final rule that extended the period during which a Hybrid II test dummy will be the only dummy used in compliance tests of vehicles with "passive interiors," i.e., vehicles that provide occupant protection without using any safety belts or air bags. No commenter objected to the interim final rule. This rule delays the use of the Hybrid III test dummy for compliance testing of such vehicles until September 1, 1993. The agency has determined that this additional time is needed to allow the agency to complete and evaluate the many research projects that are now underway examining the Hybrid III test dummy. This rule does not affect the requirement that vehicle manufacturers have the option of specifying the use of either the Hybrid II or the Hybrid III test dummy in compliance testing of vehicles that use either air bags or safety belts to meet the standard.

DATES: Effective date: This rule takes effect on April 26, 1991.

Petitions for reconsideration: Any petition for reconsideration of this rule must be received by the agency not later than May 28, 1991.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number shown above, and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Stanley H. Backaitis, Crashworthiness Division, NRM-12, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Backaitis can be contacted by telepone at (202) 366-4912.

SUPPLEMENTARY INFORMATION:

Background

The Hybrid II test dummy has been used to assess the occupant protection afforded vehicle occupants in frontal crashes since August 1, 1973. The specifications for the Hybrid II test dummy appear at subpart B of 49 CFR part 572. The agency has determined that the Hybrid II test dummy provides a reasonable simulation of a human. While the Hybrid II test dummy had been the only test dummy specified in NHTSA's regulations for use in Standard No. 208 compliance testing, the agency published a rule establishing a second test dummy, the Hybrid III, for use in Standard No. 208 compliance testing on July 25, 1986 (51 FR 26688). The specifications for the Hybrid III test dummy appear at subpart E of 49 CFR part 572. The agency concluded that this test dummy would allow the assessment of more types of potential injuries to vehicle occupants and that this test dummy appeared to be an even more accurate simulation of a human than the older Hybrid II test dummy. The rule establishing the Hybrid III test dummy for use in compliance testing required that the same force levels that are measured and recorded for the Hybrid II test dummy would be measured and recorded for the Hybrid III test dummy, and that the same maximum injury criteria levels would apply to both types of test dummies.

The agency determined that the two types of test dummies were "equivalent," when the dummies were restrained by safety belts or air bags but were not equivalent when they were unrestrained. By "equivalent," the agency means that they displayed only minimal differences in test results when they are exposed to equivalent crash environments. This is critical in compliance testing to ensure that compliance or noncompliance with a safety standard is entirely dependent upon vehicle attributes instead of differing attributes of the types of test dummies. The final rule explained that the chest acceleration measurements for unrestrained Hybrid III dummies were consistently lower than the chest acceleration measurements for unrestrained Hybrid II dummies. To make the two unrestrained test dummies equivalent, some measurement of injury producing forces to the chest of the Hybrid III test dummy, in addition to the existing measurement of chest acceleration, would have to be made to compensate for the lower chest acceleration measurements for unrestrained Hybrid III test dummies. The agency concluded that a measurement of the amount the chest was deflected, or compressed, as measured approximately at the sternum for the Hybrid III test dummy would appropriately compensate for that dummy's lower chest acceleration measurements when it was unrestrained. Hence, a limit was established on the amount of chest deflection permitted when the Hybrid III test dummy was used in compliance testing.

Given the differences in chest acceleration with the two types of unrestrained dummies, the agency concluded in a March 17, 1989 rule (53 FR 8755) that it should not permit the Hybrid III test dummy to be used for compliance testing with the automatic crash protection requirements of vehicles manufactured before September 1, 1990, which used means other than air bags or automatic safety belts to provide the automatic protection. NHTSA anticipated that this delay would be sufficient to allow the agency to investigate this subject further, to ensure that the chest deflection limits for unrestrained Hybrid III test dummies would both meet the need for safety and ensure equivalence of the Hybrid II and Hybrid III test dummies in unrestrained conditions. However, as NHTSA and others conducted research, it became evident

that chest deflection dynamics in the Hybrid III test dummy were far more complex than the agency originally believed and that more sophisticated and suitable instrumentation systems would need to be developed to provide measurements of kinematic distortions of the dummy's ribcage.

Interim Final Rule

Based on the above, NHTSA issued an interim final rule prohibiting the use of the Hybrid III test dummy in crash situations where it would be unrestrained, until a determination could be made about the appropriate chest deflection limits and measurement techniques for the Hybrid III test dummy in those crash situations. (55 FR 38283, September 28, 1990). The interim final rule specified that any vehicles manufactured before September 1, 1993, that comply with the automatic restraint requirement without using any type of safety belt or inflatable restraint must use only the Hybrid II test dummy in testing for compliance with the automatic restraint requirement. The rule explained that the results of the agency's ongoing research program will be completed by December 1992. At that time, the agency will be able to determine the most appropriate course of action and complete the necessary rulemaking actions by September 1, 1993.

In issuing the interim final rule, the agency found for good cause that notice and opportunity for comment on that rule before it became effective would have been impracticable and contrary to the public interest. For a detailed discussion explaining the agency's determination that there was good cause not to provide notice and comment, the reader should refer to the interim final rule. Among the reasons set forth were that the circumstances that forced this postponement were beyond the agency's control, that the agency had acted diligently to initiate the supplemental testing and other potential modifications to the Hybrid III test dummy, that the agency had fully intended to permit the Hybrid III to be used for unrestrained testing on schedule, and that the postponement of the use of the Hybrid III test dummy in unrestrained situations would be for a relatively short time.

In the interim final rule, NHTSA requested comments on its decision to postpone the use of the Hybrid III test dummy in unrestrained situations and explained that it would consider all comments received on this subject and publish a permanent final rule reflecting NHTSA's evaluation of those comments. That notice also explained that the permanent final rule would resolve any unforeseen burdens resulting from the interim final rule.

Comments to Interim Final Rule and the Agency's Response

In response to the interim final rule the agency received two comments. Chrysler supported the amendment to delay the use of the Hybrid III test dummy in compliance testing of non-airbag, non-seat belt restraint systems and to extend the use of the Hybrid II dummy in such testing. In more extensive comments, General Motors (GM) stated its decision not to oppose the delay of the Hybrid III test dummy for use in "unrestrained" compliance testing of a vehicle that employed a means other than safety belts or air bags to comply with Standard No. 208.

After reviewing these comments received on that notice, NHTSA has decided to issue the interim final rule as a final rule, without any modifications. No commenter suggested that the delay adopted in the interim final rule was inappropriate, burdensome, or otherwise improper. The amendments adopted in the interim final rule are therefore made final by this notice.

In its comments to the interim final rule, GM also petitioned the agency to amend Standard No. 208 to allow only the Hybrid III test dummy to be used during "restrained" compliance testing. Because this petition is outside the scope of this rule, the agency will address it separately instead of in this rule.

NHTSA notes that section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. As explained at length in the interim final rule, the agency concluded it was in the public interest to issue the interim final rule. Since the requirements adopted in the interim final rule are adopted verbatim in this final rule, the agency believes that good cause exists to make this final rule effective upon its publication in the Federal Register.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed the impacts of this action and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The postponement in the use of the Hybrid III test dummy in unrestrained seating positions should not adversely affect any person. No manufacturer currently produces a vehicle certified as complying with the occupant protection standard without using safety belts or air bags, nor is the agency aware of any plans to produce such a vehicle design before September 1, 1993. Hence, while there may be some theoretical impacts associated with this rule, there are no actual impacts. For this reason, a full regulatory evaluation has not been prepared.

Regulatory Flexibility Act

NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. This postponement will primarily affect motor vehicle manufacturers, few of which are small entities. As described above, no adverse impacts will be associated with this action. Further, since no price increases will result from this action, small organizations and small governmental entities will not be affected by this postponement when they purchase new vehicles.

Executive Order 12612 (Federalism)

This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

The agency has analyzed this rule for the purposes of the National Environmental Policy Act and determined that this rule will not have a significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1402, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S5 of Standard No. 208 is amended by revising the introductory text of S5.1 and the introductory text of S5.2.1, to read as follows:

S5. *Occupant crash protection requirements.*

S5.1 Vehicles subject to S5.1 shall comply with either S5.1(a) or S5.1(b), or any combination thereof, at the manufacturer's option; except that vehicles manufactured before September 1, 1993 that comply with the requirements of S4.1.2.1(a) by means not including any type of seat belt or inflatable restraint shall comply with S5.1(a).

* * * * *

S5.2 *Lateral moving barrier crash test.*

S5.2.1 Vehicles subject to S5.2 shall comply with either S5.2.1(a) or S5.2.1(b), or any combination thereof, at the manufacturer's option; except that vehicles manufactured before September 1, 1993 that comply with the requirements of S4.1.2.1(c) by means not including any type of seat belt or inflatable restraint shall comply with S5.2.1(a).

* * * * *

Issued on April 22, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-9945 Filed 4-25-91; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 87-12; Notice 4]

RIN 2127-AD66

Federal Motor Vehicle Safety Standards; Tire Selection and Rims for Passenger Cars, and New Non-Pneumatic Tires for Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In July 1990, this agency published a final rule permitting new passenger cars, multipurpose passenger vehicles, and light trucks equipped with passenger car tires to be equipped with a non-pneumatic spare tire. The final rule also established Standard No. 129, *New Non-Pneumatic Tires for Passenger Cars*, which includes definitions relating to non-pneumatic tires and specifies performance, testing, and additional labeling requirements for these tires.

In response to three petitions for reconsideration of this rule, the agency has decided to amend several requirements in the July 1990 final rule. This notice allows some of the required information to be placed on labels that are permanently affixed to the tire or tire assembly instead of being required to be marked into or onto the tire or tire assembly itself. The notice also provides that instead of placing certain information in the owner's manual, vehicle manufacturers may instead place the information on the vehicle placard (required by Standard No. 110, *Tire Selection and Rims*) if the owner's manual includes a reference to this information. The notice also amends the dimensions of the tire strength test cleat. These amendments will enable manufacturers to comply more easily with the requirements without adversely affecting safety.

DATES: *Effective Date:* The amendments are effective on May 28, 1991.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than May 28, 1991.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 87-12; Notice 4 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Shadle, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-5273.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 1989, NHTSA published a notice of proposed rulemaking (NPRM) proposing to amend Standard No. 110 to permit the use of non-pneumatic tires on passenger cars, but only as a temporary spare and to establish Standard No. 129, a new standard for non-pneumatic tires. (54 FR 14109). The notice proposed the following amendments to Standard No. 110: (1) Passenger cars would be allowed to be equipped with a non-pneumatic spare tire; (2) additional labeling and vehicle placarding information would be required explaining that such tires should be used only as a spare tire on a temporary basis at speeds not to exceed 50 mph; and (3) the vehicle's owner's manual would include safety information about the use of a non-pneumatic tire. The NPRM also proposed labeling requirements in Standard No. 129 similar to those set forth in section S4.3 of Standard No. 109, *New Pneumatic Tires*, for size designation, load rating, rim size and type designation, manufacturer or brand name, certification, and the tire identification number.

NHTSA received 13 comments in response to the NPRM. While all commenters generally supported the proposal to permit a vehicle to be equipped with a non-pneumatic spare tire, certain commenters suggested alternative approaches to particular aspects of the proposal.

On July 20, 1990, NHTSA published a final rule permitting new passenger cars and other vehicles equipped with passenger car tires to be equipped with a non-pneumatic spare tire. (55 FR 29561). The final rule modified certain informational requirements in Standard Nos. 110 and 120, *Tire Selection and Rims for Motor Vehicles other than Passenger Cars*, and established Standard No. 129, the new standard for non-pneumatic tires.

The agency received petitions for reconsideration of this rule from the Rubber Manufacturers Association (RMA), Uniroyal Goodrich Tire Company (Uniroyal), and General Motors Corporation (GM). This notice responds to those petitions. For the convenience of the reader, this notice uses the same organization and format as the July 1990 final rule used. When a section heading used in the final rule is not set forth in this preamble, it means that no petition for reconsideration requested changes to the rule's provisions discussed in that section.

Issues Under Reconsideration

Labeling Requirements

The NPRM proposed requiring that certain information about the non-pneumatic tire be "permanently molded, stamped, or otherwise permanently marked into or onto both sides" and be expressed in figures not smaller than a given size. Because the agency thought that molding the required information into or onto some non-pneumatic tire and assembly designs might be impracticable, it proposed allowing different methods of permanent marking in addition to molding—the labeling method required in Standard No. 109 for pneumatic tires.

After analyzing its proposal in response to comments received on this subject, the agency concluded in the final rule that permanently affixed labels should not be allowed as a means for placing the required information on non-pneumatic tires. In the preamble to that notice, the agency explained that the message must be useful and understandable for the lifetime of the tire, i.e., it must be permanent, legible, and conspicuous. Based on these considerations, the agency concluded that affixing a permanent label on a non-pneumatic tire might not meet these ends.

All three petitions for reconsideration requested that permanent stick-on labels, typically made of vinyl or polyester, be allowed for at least some of the information that must be placed on the non-pneumatic tire or tire assembly. The petitioners stated that it would be impracticable to stamp or mold the required information directly onto some non-pneumatic tires or tire assemblies. For instance, Uniroyal reported that there is no room to mold the required information into its non-pneumatic tire because there is no "sidewall" to that tire design. While the petitioners acknowledged that the requirements permit information to be placed on the rim or wheel center member, they believed that stamping or etching the information into the assembly could compromise the wheel's structural integrity. They also believed that information placed on the assembly might be difficult to read.

Uniroyal suggested that while certain required information (e.g., the symbol DOT, the non-pneumatic tire identification code (NPTIC) number, and the load rating) could be required to be stamped or molded into the non-pneumatic tire, other information (e.g., information about the tire's temporary use at limited speeds and the manufacturer's name or brand name) should be allowed to be placed on a label permanently affixed to the tire or tire assembly. In support of its recommendation, Uniroyal explained that the primary purpose of some of the required information is to alert consumers that the tire is for temporary use at limited speeds. Because such information is of primary importance before the non-pneumatic tire is placed on the vehicle, the petitioner believed that consumers would be better served if this information were readily legible. It stated that a permanent label with contrasting colors would provide the greatest legibility. The other two petitioners generally supported Uniroyal's recommendations but did not provide specific suggestions.

Upon reconsideration, NHTSA agrees with the petitioners that stamping or etching the information into the assembly could compromise a wheel's structural integrity and that certain information can be permitted to be placed on permanently affixed labels without compromising the effectiveness of the message. The labels in fact may afford increased legibility and conspicuity given that labels typically contain contrasting colors. In comparison, other methods of permanent marking such as etching or painting may be less legible and conspicuous because, for some non-pneumatic tire designs, this information can only be placed in locations that are difficult to see. The agency further notes that this amendment is consistent with the agency's goal throughout the rulemaking of promulgating regulations that provide manufacturers flexibility to comply with the requirements.

To increase the information's effectiveness of consumers, the agency believes that the "For Temporary Use Only" and "Maximum 50 M.P.H." information should be as legible as possible, especially before the spare tire is placed on the vehicle. The agency further notes that considering the greater volume of information required to be on non-pneumatic tires, certain information should be permitted to be on a permanently affixed label. Such an option reduces the potential for adversely affecting the structural integrity of some non-pneumatic tires and makes it more feasible for manufacturers to comply with the requirements. Accordingly, the agency has decided to modify the requirements in S6 of Standard No. 110 and S6 of Standards No. 129 (which are referenced in S4.3(g) of Standard No. 129) to permit this information to be on a label that is permanently affixed to the non-pneumatic tire or tire assembly. Along with the temporary use information, the agency has decided to grant Uniroyal's request to permit the manufacturer's name to be placed on a permanent label. However, the agency has decided to require the tire to be permanently molded, stamped, or otherwise permanently marked with the rest of the information required in S4.3 of Standard No. 129.

By "permanent," the agency means that the label should remain in the place and be legible for the life of the tire. To ensure the permanency of the label's information, the agency is requiring that it must be subsurface printed. An example of this is a label made from a piece of clear mylar or other plastic where the printing is on the underside; as a result, fluids or abrasion to which it is normally exposed does not contact the printing itself. It must also be made of a material that is fade resistant, heat resistant, and abrasion resistant, and be attached in such a manner that it cannot be removed without destroying or defacing the label. The agency believes that these specifications are necessary to ensure the use of durable, non-detachable labels and prevent the use of labels of doubtful permanency such as paper ones. In summary, NHTSA believes that the improved legibility and conspicuity of labels and the potential impracticability of stamping or molding certain required information outweigh the agency's previous concerns about the permanency of such labels. This has led the agency to conclude that the use of such labels for this portion of the information is warranted.

If labels on non-pneumatic tires are found not to remain affixed and legible for the life of the tire, the agency might initiate additional rulemaking to explore other requirements to ensure the label's permanency. However, such a rulemaking would be premature at this time.

Supplementary Information

Section S7.2 of Standard No. 110 and section S8.2 of Standard No. 129 require the owner's manual of a vehicle equipped with a non-pneumatic spare tire to contain information explaining the tire's proper use. Along with this explanation, the owner's manual for such vehicles must include the NPTIC number that is labeled on the non-pneumatic tire assembly pursuant to the requirements of S4.3(a) of Standard No. 129. The purpose of this requirement is to help identify the non-pneumatic tire with regard to its size and application to a specific non-pneumatic rim, wheel center member, or vehicle.

In its petition for reconsideration, GM requested that the vehicle manufacturer be allowed to include in the owner's manual a simple reference to the vehicle placard, where information about the proper selection of the non-pneumatic tire assembly appears as required by the final rule in Standard No. 110 or Standard No. 120, instead of being required to place the information in the manual itself. GM explained that this change would still allow manufacturers to convey information about the NPTIC but avoid unnecessary complications. GM stated that under the current requirements, vehicle manufacturers have to state in the owner's manual the NPTIC for the non-pneumatic tire used on each specific version of the vehicle model. GM believed that this would necessitate having more than one version of the owner's manual for the same vehicle model, thus increasing the potential for placing an incorrect manual in a vehicle which could result in selecting an incorrect replacement non-pneumatic tire assembly. The petitioner stated that while the owner's manual could contain a table with all potential non-pneumatic tire sizes, such a table could be difficult to understand, thus resulting in an incorrect replacement of a non-pneumatic tire assembly. GM further stated that owner's manuals are not required to contain information about the size, speed or load restriction, or Uniform Tire Quality Grades (UTQG)

of the road tire fitted to a specific model. Instead, the owners are referred to the vehicle placard and UTQG brochure for that information. This prompted GM to request that the requirements for providing information regarding non-pneumatic tire assemblies be consistent with those for road tires.

Upon reconsideration, NHTSA has decided to grant GM's request permitting the owner's manual to include a reference to the information about the NPTIC set forth in S4.3(e) of Standard No. 110 and S5.3.6 of Standard No. 120 that is located on the vehicle placard. This information will still be required on the tire itself. After reviewing GM's petition, the agency believes that including a reference in the owner's manual that the NPTIC can be found on the vehicle placard will adequately convey this information to the owner because the information will continue to be readily available to the vehicle owner.

Test Procedure for Vertical Strength

Along with performance requirements and test procedures for a non-pneumatic tire's lateral strength, tire endurance, and high speed performance, the final rule included requirements for a tire's strength in vertical loading. The agency determined that these requirements will assure a non-pneumatic tire's structural integrity and durability.

In S5.3.2, the final rule specifies that a test "cleat" must be forced into the non-pneumatic tire's tread at five test points equally spaced around the tire's circumference. The final rule also specifies the test cleat's dimensions, as follows: a length of one inch greater than the maximum tire width of the tire, a width of one-half inch with the surface which contacts the tire's tread having one-quarter inch radius, and a height of one inch greater than the difference between the unloaded radius on the non-pneumatic tire assembly and the minimum radius of the non-pneumatic rim or wheel center member, if used with the non-pneumatic tire assembly being tested.

In its petition for reconsideration, RMA requested that the dimensions of the test cleat be modified by adding the word "minimum" before the word "length" and "height" in S5.3.2.2. It claimed that, at present, this provision requires a unique cleat for each size non-pneumatic spare tire. RMA's requested amendment would allow the same test fixture to be used for several sizes of non-pneumatic spare tires.

Upon reconsideration, NHTSA agrees with RMA's request to include the word "minimum" in the provision describing the test cleat's length and height. The agency believes that this modification will reduce the testing burden on manufacturers by permitting a more versatile test device, without adversely affecting the test's ability to measure a non-pneumatic tire's strength in vertical loading.

Upon further review of this provision, the agency has decided to change the phrase in S5.3.2.2(c) which reads "* * * the *minimum* radius of the non-pneumatic rim * * *" to "* * * the *maximum* radius of the non-pneumatic rim * * *." The agency notes that the language as initially adopted in the final rule was based on the NPRM's proposal to use a plunger test device. The agency now believes that the newly adopted phrase is more appropriate given that instead of the plunger test, a cleat test is used to determine a non-pneumatic tire's strength in vertical loading.

Conforming Amendments

Upon further review, the agency has decided to modify the definition for "wheel center member" to add at the end of the existing definition the following language: "or in the case of a non-pneumatic tire not incorporating a wheel, a mechanical device which attaches, either integrally or separably, to the non-pneumatic tire and provides the connection between the tire and the vehicle." The agency believes that this conforming amendment is necessary to make the definition for wheel center member consistent with the types of non-pneumatic tire designs possible under the definition for non-pneumatic tire assembly. While the agency does not anticipate that this modification will affect the current non-pneumatic tire designs now being produced or developed, the modification may permit unforeseen non-pneumatic tire designs that may be developed in the future. The agency believes that by modifying the definition to allow greater flexibility, the agency is better fulfilling its goal to promulgate a generic standard.

Upon further review, the agency is also modifying S4.3(c) by replacing the phrase "* * * wheel *tire assembly* that is contained * * *" with "* * * wheel *center member* that is contained * * *." The agency has determined that this conforming amendment is necessary to make this provision consistent with the listing requirements in S4.4.

Effective Date

NHTSA notes that section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. As with the final rule, NHTSA believes that there is "good cause" not to require the full 180 day lead-in period given that it is already permissible to equip vehicles with these tires. In addition, these amendments will provide greater design flexibility in the production and testing of non-pneumatic tires without imposing any mandatory requirement on manufacturers. Because the amendments provide manufacturers with additional ways to comply with the requirements adopted in the final rule, they result in no additional burden to any manufacturer. In addition, the public interest will be served by not delaying the introduction of these alternative methods of compliance. Therefore, the agency has determined that there is good cause to set an effective date 30 days after publication of this notice.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this notice responding to the petitions for reconsideration about the non-pneumatic spare tire and has determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of Department of Transportation's regulatory policies and procedures. The amendment permitting the use of permanently affixed labels provides manufacturers with another method of complying with the rule's informational requirements. The rule's other amendments also provide greater flexibility in providing information about the NPTIC and conducting the vertical strength test. Accordingly, the amendments should result in a minor cost savings for manufacturers. Because these impacts are so minimal, NHTSA has determined that it is not necessary to prepare a full regulatory evaluation.

Regulatory Flexibility Act

The agency has analyzed the effects of this rule on small entities, in accordance with the Regulatory Flexibility Act. Based on this analysis, I certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, the economic impact of this rule is insignificant.

Executive Order 12612 (Federalism)

This rulemaking has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has considered the environmental implications of this rule in accordance with the National Environmental Policy Act and has determined that the rulemaking would not have a significant adverse effect on the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending Standard No. 110, *Tire Selection and Rims*, Standard No. 120, *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars*, and Standard No. 129, *New Non-Pneumatic Tires for Passenger Cars*, in title 49 of the Code of Federal Regulations at part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.110 [Amended]

2. In § 571.110, S6 is revised to read as follows:

S6 Labeling Requirements for Non-Pneumatic Spare Tires or Tire Assemblies

Each non-pneumatic tire or, in the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, each non-pneumatic tire assembly shall include, in letters or numerals not less than 0.156 inches high, the information specified in paragraphs S6 (a) and (b). The information shall be permanently molded, stamped, or otherwise permanently marked into or onto the non-pneumatic tire or non-pneumatic tire assembly, or shall appear on a label that is permanently attached to the tire or tire assembly. If a label is used, it shall be subsurface printed, made of material that is resistant to fade, heat, moisture and abrasion, and attached in such a manner that it cannot be removed without destroying or defacing the label on the non-pneumatic tire or tire assembly. The information specified in paragraphs S6 (a) and (b) shall appear on both sides of the non-pneumatic tire or tire assembly, except, in the case of a non-pneumatic tire assembly which has a particular side that must always face outward when mounted on a vehicle, in which case the information specified in paragraphs S6 (a) and (b) shall only be required on the outward facing side. The information shall be positioned on the tire or tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of any non-pneumatic rim or wheel center member designated for use with that tire in this standard or in Standard No. 129.

(a) FOR TEMPORARY USE ONLY; and

(b) MAXIMUM 50 M.P.H.

§ 571.110 [Amended]

3. In § 571.110, S7 is revised to read as follows:

S7 Requirements for Passenger Cars Equipped with Non-Pneumatic Spare Tire Assemblies

S7.1 *Vehicle Placarding Requirements.* A placard, permanently affixed to the inside of the vehicle trunk or an equally accessible location adjacent to the non-pneumatic spare tire assembly, shall display the information set forth in S6 in block capitals and numerals not less than 0.25 inches high preceded by the words "IMPORTANT—USE OF SPARE TIRE" in letters not less than 0.375 inches high.

S7.2 *Supplementary Information.* The owner's manual of the passenger car shall contain, in writing in the English language and in not less than 10 point type, the following information under the heading "IMPORTANT—USE OF SPARE TIRE":

(a) A statement indicating the information related to appropriate use for the non-pneumatic spare tire including at a minimum the information set forth in S6 (a) and (b) and either the information set forth in S4.3(e) or a statement that the information set forth in S4.3(e) is located on the vehicle placard and on the non-pneumatic tire;

(b) An instruction to drive carefully when the non-pneumatic spare tire is in use, and to install the proper pneumatic tire and rim at the first reasonable opportunity; and

(c) A statement that operation of the passenger car is not recommended with more than one non-pneumatic spare tire in use at the same time.

§ 571.120 [Amended]

4. In § 571.120, S8 is revised to read as follows:

S8 Labeling Requirements for Non-Pneumatic Spare Tires or Tire Assemblies

Each non-pneumatic tire or, in the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, each non-pneumatic tire assembly shall include, in letters or numerals not less than 0.156 inches high, the information specified in paragraphs S8 (a) and (b). The information shall be permanently molded, stamped, or otherwise permanently marked into or onto the non-pneumatic tire or non-pneumatic tire assembly, or shall appear on a label that is permanently attached to the tire or tire assembly. If a label is used, it shall be subsurface printed, made of material that is resistant to fade, heat, moisture and abrasion, and attached in such a manner that it cannot be removed without destroying or defacing the label on the non-pneumatic tire or tire assembly. The information specified in paragraphs S8 (a) and (b) shall appear on both sides of the non-pneumatic tire or tire assembly, except, in the case of a non-pneumatic tire assembly which has a particular side that must always face outward when mounted on a vehicle, in which case the information specified in paragraphs S8 (a) and (b) shall only be required on the outward facing side. The information shall be positioned on the tire or tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of any non-pneumatic rim or wheel center member designated for use with that tire in this standard or in Standard No. 129.

(a) FOR TEMPORARY USE ONLY; and

(b) MAXIMUM 50 M.P.H.

§ 571.120 [Amended]

5. In § 571.120, S9 is revised to read as follows:

S9 Requirements for Vehicles Equipped with Non-Pneumatic Spare Tire Assemblies

S9.1 *Vehicle Placarding Requirements.* A placard, permanently affixed to the inside of the spare tire stowage area or equally accessible location adjacent to the non-pneumatic spare tire assembly, shall display the information set forth in S8 in block capitals and numerals not less than 0.25 inches high preceded by the words "IMPORTANT—USE OF SPARE TIRE" in letters not less than 0.375 inches high.

S9.2 *Supplementary Information.* The owner's manual of the vehicle shall contain, in writing in the English language and in not less than 10 point type, the following information under the heading "IMPORTANT—USE OF SPARE TIRE":

(a) A statement indicating the information related to appropriate use for the non-pneumatic spare tire

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including at a minimum the information set forth in S9 (a) and (b) and either the information set forth in S5.3.6 or a statement that the information set forth in S5.3.6 is located on the vehicle placard and on the non-pneumatic tire;

(b) An instruction to drive carefully when the non-pneumatic spare tire is in use, and to install the proper pneumatic tire and rim at the first reasonable opportunity; and

(c) A statement that operation of the vehicle is not recommended with more than one non-pneumatic spare tire in use at the same time.

§ 571.129 [Amended]

6. In § 571.129, S3 is amended by revising the definition for "wheel center member" reads as follows:

* * * * *

Wheel center member means, in the case of a non-pneumatic tire assembly incorporating a wheel, a mechanical device which attaches, either integrally or separably, to the non-pneumatic rim and provides the connection between the non-pneumatic rim and the vehicle; or in the case of a non-pneumatic tire assembly not incorporating a wheel, a mechanical device which attaches, either integrally or separably, to the non-pneumatic tire and provides the connection between the tire and the vehicle.

§ 571.129 [Amended]

7. In § 571.129, S4.3 is revised to read as follows:

S4.3 *Labeling Requirements.* Each non-pneumatic tire or, in the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, each non-pneumatic tire assembly shall include, in letters or numerals not less than 0.078 inches high, the information specified in paragraphs S4.3 (a) through (f). The information shall be permanently molded, stamped or otherwise permanently marked into or onto the non-pneumatic tire or non-pneumatic tire assembly, except that the information specified in S4.3(d) and S4.3(g) may appear on a label that is permanently attached to the tire or tire assembly. If a label is used, it shall be subsurface printed, made of a material that is resistant to fade, heat, moisture, and abrasion, and attached in such a manner that it cannot be removed without destroying or defacing the label on the non-pneumatic tire or tire assembly. The information shall appear on both sides of the non-pneumatic tire or non-pneumatic tire assembly, except, in the case of a non-pneumatic tire assembly which has a particular side that must always face outward when mounted on a vehicle, in which case the information shown in paragraphs S4.3 (a) through (g) shall only be required on the outward facing side. The information shall be positioned on the tire or tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of any non-pneumatic rim or wheel center member designated for use with that tire in S4.4 of this standard or in 49 CFR 571.110 or 49 CFR 571.120.

(a) The non-pneumatic tire identification code ("NPTIC");

(b) Load rating, which, if expressed in kilograms, shall be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole pound;

(c) For a non-pneumatic tire that is not an integral part of a non-pneumatic tire assembly, the size and type designation of the non-pneumatic rim or wheel center member that is contained in the submission made by a manufacturer, pursuant to S4.4(a), or in one of the publications described in S4.4(b) for that tire's non-pneumatic tire identification code designation;

(d) The name of the manufacturer or brand name;

(e) The symbol DOT in the manner specified in part 574 of this chapter, which shall constitute a certification that the tire conforms to applicable Federal motor vehicle safety standards;

(f) The tire identification number required by § 574.5 of this chapter;

(g) The labeling requirements set forth in S6 of Standard No. 110 (§ 571.110), or S8 of Standard No. 120 (§ 571.120).

§ 571.129 [Amended]

8. In § 571.129, S5.3.2.2 is revised to read as follows:

S5.3.2.2 The test cleat is made of steel and has the following dimensions;

(a) Minimum length of one inch greater than the maximum tire width of the tire,

(b) Width of one-half inch with the surface which contacts the tire's tread having one-quarter inch radius, and

(c) Minimum height of one inch greater than the difference between the unloaded radius of the non-pneumatic tire assembly and the maximum radius of the non-pneumatic rim or wheel center member, if used with the non-pneumatic tire assembly being tested.

Issued on April 22, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-9848 Filed 4-25-91; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 282

[Docket No. 910129-1020]

RIN 0648-AD15

South Pacific Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule and interim final rule.

SUMMARY: NOAA revises interim regulations issued in 1989 to implement the South Pacific Tuna Act of 1988 (Act). The Act authorizes the Secretary of Commerce to issue regulations as may be necessary to carry out the purposes and objectives of the "Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America" (Treaty) and the Act.

All U.S. fishing vessels except for those using trolling gear to fish for albacore tuna outside of the 200 nautical mile fisheries zones of the Pacific Island Parties, are required to obtain licenses under the Treaty to fish for tuna in a 10 million square mile (25.9 million square kilometer) area of the South Pacific Ocean, known as the "Licensing Area."

This interim final rule clarifies the dates of the licensing year; revises the procedures for applying for licenses; establishes a system for allocating licenses in the event that more applications are received than there are licenses available; and makes a number of other changes to the existing interim regulations. The Office of Management and Budget (OMB) control number assigned to the rule's reporting and recordkeeping requirements is added to 50 CFR part 204 as a final rule.

DATES: This final rule and interim final rule are effective as of April 26, 1991.

Comments on this interim final rule are invited and will be considered if received on or before June 25, 1991.

ADDRESSES: Comments, requests for license applications, information as to license availability and applicable fees, and further information should be addressed to the Director, Southwest Region, NMFS, 300 South Ferry Street, room 2065, Terminal Island, CA 90731; telephone (213) 514-6199; facsimile (213) 514-6194. The regulatory impact report and environmental assessment covering this interim rule are also available upon request.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Dentler, Chief, Trade and Industry Services, Southwest Region, NMFS, (213) 514-6077.

SUPPLEMENTARY INFORMATION: On April 2, 1987, the United States signed the Treaty with 12 Pacific island nations (Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Papua New Guinea, Solomon Islands, Tuvalu, and Western Samoa). The nations of Niue, Palau, Vanuatu and Tonga became signatories at a later date. These 16 nations are referred to as the "Pacific Island Parties." On June 7, 1988, the President signed the implementing legislation into law as the South Pacific Tuna Act of 1988 (Pub. L. 100-330). The Treaty went into effect on June 15, 1988.

In the western Pacific Ocean, conflicting juridical positions with respect to tuna resulted in fisheries disputes between the United States and several Pacific island nations. Some U.S. tuna purse seine vessels were seized by island nations, causing retaliatory U.S. trade embargoes as mandated by the Magnuson Fishery Conservation and Management Act. The Treaty is a result of the efforts of the United States and Pacific island nations to overcome these problems in a mutually beneficial manner.

In January 27, 1989, NOAA issued interim regulations implementing the Treaty and the Act (54 FR 4033). NMFS is responsible for most of the day-to-day operational aspects of the Treaty obligations of the United States. The Department of State is responsible for the formal country-to-country contacts under the Treaty. Certain obligations of the U.S. Government to the Pacific Island Parties relating to alleged infringement of the Treaty are not set forth in the regulations, nor are certain procedures established by the Act with regard to rulemaking authority and interagency operations. These matters are not obligations placed upon the public and are, therefore, not included in the regulations.

All U.S. fishing vessels, except for those using trolling gear to fish for albacore tuna outside of the 200 nautical mile fisheries zones of the Pacific Island Parties, are required to obtain annual licenses under the Treaty to fish for tuna in a 10 million square mile (25.9 million square kilometer) areas of the South Pacific Ocean, known as the "Licensing Area." License applications are available upon request to the Director, Southwest Region, NMFS (see ADDRESSES).

Pursuant to the Act, the Secretary of Commerce is responsible for receiving and forwarding applications to the Secretary of State, who, is accordance with section 2 of Annex II of the Treaty, transmits them to the designated Treaty Administrator, the Forum Fisheries Agency, which acts on behalf of the Pacific Island Parties.

Schedule 2 to Annex II to the Treaty sets forth, for each annual licensing period, which runs from June 15 through June 14 of the following calendar year, the number of licenses available for U.S. vessels and the applicable licensing fees.

For the 1990-1991 fishing year, 50 licenses were available and all were issued. For the 1991-1992 fishing year and beyond, there may be more license applications than there are licenses available. It is, therefore, necessary to revise the interim regulations to set forth procedures for selecting, in a fair and predictable manner, which applications will be forwarded to the Treaty Administrator when there are insufficient licenses available. Section 9 of the Act specifically authorizes the Secretary of Commerce to establish a license allocation system.

The system established by this interim rule allocates licenses for the next licensing period to vessels possessing licenses for the current licensing period, with priority within that group based on the chronological order in which the original license application for each vessel was received. Assuming licenses are available for the next licensing period for all currently licensed vessels, any available additional licenses would be allocated to vessels not currently licensed, based upon the chronological order in which a completed license application for such vessel was received. In the event a license is denied because an insufficient number are available, the vessel's filing date priority would be maintained for subsequent licensing periods, providing an application for a license for the vessel for the subsequent period is submitted at the time specified in the regulations.

Under the present Treaty fee schedule, vessel licenses cost a minimum of $50,000 per annum for the first 40 vessels and a minimum of $60,000 per annum for the next ten vessels. Under the allocation system, the first 40 vessels would continue to maintain their slight fee advantage over the next ten vessels. These 40 vessels were the first to be used to fish under the Treaty and their operators faced a greater economic uncertainty regarding the viability of the fishery. Fishermen entering the fishery later did so with more confidence that they would be economically successful. NMFS believes that the higher fees for the later licensed vessels do not pose a significant financial burden to their operators.

Under the priorty system, each vessel that received a license in the 1990-1991 licensing year (or in subsequent years) and that continues to participate in the fishery in accordance with applicable law and regulations, would receive priority in the allocation of licenses in subsequent years over new applicants. This allows vessel operators to undertake long-term business planning, which is essential for operations in which capital investment ranges from $7-$10 million per vessel. As additional licenses become available or existing licensees drop out of the fishery, new applicants will be able to enter.

Pursuant to the Treaty, the U.S. Government: (1) Pays annually to the Pacific Island Parties foreign assistance moneys of $10 million; (2) collects and forwards vessel license fees to the Forum Fisheries Agency; and (3) investigates alleged violations and enforces certain Treaty provisions. In addition, the U.S. tuna industry is required to contribute annual technical assistance worth $250,000. In return, U.S. vessels obtain fishing access privileges. NMFS believes that since the U.S. Government is paying a significant amount of money for access to these waters, speculation on the part of vessel operators should be discouraged. Therefore, under the interim rule, if a vessel possessing a license for an entire licensing period does not catch and land fish under the Treaty during that licensing period, that vessel's license allocation priority will be forfeited. If a license application is made in a subsequent licensing period for a vessel that has had its license allocation priority forfeited, the vessel will be assigned a new license allocation number as if it were an unlicensed vessel. Such a forfeiture would enable a new applicant to receive a vessel license, while ensuring a continued supply of fish to the canneries of American Samoa, Puerto Rico, and elsewhere, thereby employing U.S. citizens and providing fish products for U.S. consumers.

The allocation system also will allow a vessel owner to retain his or her vessel's license allocation priority when replacing a licensed vessel: *Provided,* That the vessel: (1) Sank or was substantially damaged, except by willful act of the vessel operator; (2) was no longer seaworthy; or (3) will be replaced with a larger or more efficient vessel.

In addition to adding an allocation system, this interim rule:

(1) Expands and clarifies § 282.9(a)(6) regarding falsification of records.

Current enforcement actions under the Treaty have shown the existing falsification provision to be too narrow. The new language is identical to the language used in other NOAA fishery regulations.

(2) Requires that license applications include a copy of the vessel's U.S. Coast Guard Certificate of Documentation. Since licenses may be issued only to U.S. vessels, NMFS must have verification of each vessel's documentation status.

(3) Deletes a requirement that notification of the availability of licenses and applicable fees be made in the Federal Register. This interim rule requires that such notification be made through appropriate newsletters, press releases, and mailings.

(4) Defines the term "Regional Director."

Several minor changes of a technical nature are also made to correct errors and to provide consistency in format. Further, the final rule amends 50 CFR part 204 by adding the OMB Paperwork Reduction Act control number assigned to the reporting and recordkeeping provisions of §§ 282.3 and 282.5.

Classification

NMFS prepared (1) an environmental assessment for the 1989 interim rule, which this action does not significantly alter; and (2) a regulatory impact report analyzing the economic impacts of the license allocation system. Both documents are available upon request (see ADDRESSES).

This action is exempt from the provisions of Executive Order 12291 under section 1(a)(2) of that Order because this rule implements an international fisheries agreement now in force and, thus, involves a foreign affairs function of the United States.

Because it involves a foreign affairs function of the United States, this action also is not subject to section 553 of the Administrative Procedure Act. Thus, this rule may be made immediately effective. While this rule is being made immediately effective, as was the case for the interim rule published on January 27, 1989, NMFS specifically invites comments for consideration in issuance of a final rule. Comments will be considered on the interim regulations, as revised by this action, if received within 60 days. No comments were received on the January 27, 1989, interim rule.

Since notice and an opportunity for comment is not required by law to be given for this rule, preparation of a regulatory flexibility analysis is not required by the Regulatory Flexibility Act and none was prepared.

This rule includes a collection-of-information requirement subject to the Paperwork Reduction Act. The requirements have been approved by OMB under Control Number 0648-0218, which expires January 1, 1992.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This rule does not directly affect the coastal zone of any state with an approved coastal management program.

List of Subjects

50 CFR Part 204

Reporting and recordkeeping requirements.

50 CFR Part 282

Fisheries, Reporting and recordkeeping requirements, South Pacific Treaty.

Dated: April 19, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

Accordingly, 50 CFR part 204 is amended as follows, and the interim final rule adding 50 CFR part 282 that was published at 54 FR 4031 on January 27, 1989, is amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

§ 204.1 [Amended]

2. In § 204.1(b), the table is amended by adding in the left hand column, in numerical order, "§ 282.3" and "§ 282.4" and adding in the right hand column, in a corresponding position, "–0218".

PART 282—SOUTH PACIFIC TUNA FISHERIES

3. The authority citation for part 282 continues to read as follows:

Authority: 16 U.S.C. 973–973r.

4. In § 282.1, paragraph (a) is revised to read as follows:

§ 282.1 Purpose and scope.

(a) The South Pacific Tuna Act of 1988 (16 U.S.C. 973–973r) authorizes the Secretary, with the concurrence of the Secretary of State, and after consultation with the Secretary of the Department in which the Coast Guard is operating, to promulgate regulations to implement the Act. The Act authorizes the Government of the United States to carry out its obligations under the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America.

* * * * *

5. In § 282.2, the definition of "Treaty Administrator" is removed, the new definitions for "Administrator" and "Regional Director" are added in alphabetical order, and the introductory text and the definitions of "Limited Area(s)" and "Pacific Island Party" are revised, to read as follows:

§ 282.2 Definitions.

In addition to the definitions contained in the Act, and unless the context requires otherwise, the terms used in this part have the following meanings (some definitions in the Act have been repeated here to aid in understanding the regulations):

* * * * *

Administrator means the individual or organization designated by the Pacific Island Parties to act on their behalf under the Treaty and notified to the United States.

* * * * *

Limited Area(s) means those areas so identified in schedule 3 of Annex I of the Treaty.

* * * * *

Pacific Island Party means a Pacific island nation that is a party to the Treaty.

* * * * *

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731 (213–514–6197), or the Regional Director's designee.

* * * * *

6. Section 282.3 is revised to read as follows:

§ 282.3 Vessel licenses.

(a) Each vessel fishing in the Licensing Area must have a license issued by the Administrator for the licensing period being fished, unless excepted by § 282.10. Each licensing period begins on June 15 and ends on June 14 of the following year.

(b) Upon receipt, the license must be carried on board the vessel when in the Licensing Area or Closed Areas and must be produced at the request of Authorized Officers, Authorized Party Officers, or Authorized Inspectors. Prior to receipt of the license but after issuance, a vessel may be used to fish provided the number of the issued license is available on board.

(c) Application forms for licenses to use a vessel to fish in the Licensing Area may be requested from, and upon completion, must be returned to, the Regional Director. All of the information requested on the form and the following must be supplied before the application will be considered complete:

(1) The licensing period for which the license is requested;

(2) The name of an agent, located in Port Moresby, Papua, New Guinea, who, on behalf of the license holder, will receive and respond to any legal process issued in accordance with the Treaty;

(3) Documentation from an insurance company showing that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance;

(4) If the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, reasonable assurances that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines; and

(5) A copy of the vessel's U.S. Coast Guard Certificate of Documentation.

(d) For vessels licensed for the current licensing period, complete applications for the next licensing period together with the required license fee must be submitted between May 1 and May 15 of the current licensing period. Applications for vessels not currently licensed may be submitted at any time (the license fee should not be remitted until notification pursuant to paragraph (g) of this section that a license is available).

(e) Vessel license fees must be in the form of a check or money order made payable to the "Forum Fishing Agency." The number of available licenses are set forth in, and the applicable license fees are established pursuant to, part 1 of schedule 2 of Annex II of the Treaty. The applicable licensing fee is for the whole or any part of the licensing period; staggered periods and prorated fees are not available.

(f) Each year, the Regional Director shall assign a license allocation number for the next licensing year to each licensed vessel based upon the chronological order in which the application for that vessel's original license was received. The vessel having the earliest application in time shall be assigned the number "one;" the vessel with the next earliest application shall be assigned the next higher number "two;" and so on until all licensed vessels are assigned a license allocation number. The Regional Director shall then assign license allocation numbers to vessels not currently licensed, in the same manner, based upon the chronological order in which completed license applications for such vessels were received. If more than one application was or is received on the same date and at the same time, the license allocation numbers for those vessels shall be assigned by draw.

(g) Applicants for licenses for vessels not currently licensed must remit the applicable license fee within ten (10) days of receiving notice that a license is available, otherwise the vessel's license allocation number is revoked. In such event, the Regional Director shall notify the applicant for the vessel with the next highest license allocation number that a license is available. All license allocation numbers will be retained for purposes of subsequent licensing periods, provided a complete application for the subsequent licensing period and, if an existing license holder, the required license fee is submitted between May 1 and May 15.

(h) The Regional Director shall mark each complete application with the vessel's license allocation number, shall forward those applications for which licenses are available under the Treaty to the Secretary of State for transmittal to the Administrator, and shall remit the required license fees to the Administrator. If an application is withdrawn or a license allocation number is forfeited, the Regional Director shall lower all higher license allocation numbers, accordingly.

(i) The Secretary, in consultation with the Secretary of State, may determine that a license application for a vessel, regardless of the vessel's license allocation number, should not be forwarded to the Administrator if:

(1) The application is not in accord with the Treaty, Act, or regulations;

(2) The owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, and reasonable financial assurances have not been provided to the Secretary that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines;

(3) The owner or charterer has not established to the satisfaction of the Secretary that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance; or

(4) The owner or charterer has not paid any final penalty assessed by the Secretary in accordance with the Act.

(j) Applicants will be promptly notified if a license application will not be forwarded to the Administrator, and of the reasons therefore, and will be given an opportunity to request reconsideration of the application.

(k) License allocation numbers are not generally transferrable. However, a vessel owner may request the Regional Director to assign the vessel's license allocation number to a replacement vessel for which the vessel owner intends to apply for a license for that or for a subsequent licensing period. The Regional Director shall grant such a request upon finding that the vessel:

(1) Sunk or was substantially damaged, except by willful act of the vessel operator; or

(2) Needs to be replaced because it is no longer seaworthy; or

(3) Will be replaced with a larger or more efficient vessel.

(l) In the case of loss or damage to a vessel as described in paragraph (k) of this section, such a request must be received by the Regional Director within thirty (30) days of the loss or damage. If a request is granted, the license allocation number shall be retained, providing that the vessel owner demonstrates, within 6 months of the date that the Regional Director granted the request, that good faith efforts have been made, and are continuing, to obtain a satisfactory replacement vessel and documentation for that vessel, and providing that, after documentation is obtained, a completed application and all applicable fees for a license for the vessel for the next licensing period are submitted in accordance with paragraph (d) of this section.

(m) If a vessel is licensed for a full licensing period and does not catch and land fish pursuant to the Treaty in that licensing period, the vessel shall forfeit its license allocation number and will be assigned a new license allocation number as for an unlicensed vessel if application is made for a subsequent licensing period.

(n) The Regional Director shall notify prior applicants, any persons requesting information, and representatives of the U.S. tuna industry, by mail, of the availability of licenses and applicable fees. In addition, the Regional Director shall give notice through the issuance of press releases and through notices placed in industry news letters. Inquiries regarding the availability of licenses and applicable fees should be addressed to the Regional Director.

§ 282.4 [Amended]

7. In § 282.4, paragraph (a), the paragraph designation "(a)" is removed and the remaining text is not modified.

8. Section 282.6 is revised to read as follows:

§ 282.8 Vessel and gear identification.

While in the Licensing Area, a Limited Area closed to fishing, or a Closed Area, the international radio call sign of the vessel shall be painted in white on a black background, or in black on a white background, and be clear, distinct, and uncovered, in the following manner:

(a) Amidships on both sides immediately below the gunwale, and on a horizontal plane on the superstructure, in letters and figures 8 inches (20.3 cm) apart, with each letter and figure being at least 40 inches (101.6 cm) high and 20 inches (50.8 cm) wide and with each line at least 5 inches (12.7 cm) wide;

(b) If a helicopter is being carried, on the body of the helicopter in a place clearly visible from sea level, in letters and figures 2 inches (5.1 cm) apart, with each letter and figure being at least 10 inches (25.4 cm) high, 4 inches (10.2 cm) wide and with each line being at least 1 inch (2.5 cm) wide; and

(c) On any other equipment being carried by and intended to be separated from the vessel during normal fishing operations, in letters and figures clearly legible to the naked eye.

9. In § 282.9, paragraphs (a)(6), (a)(8) and (b)(1) are revised to read as follows:

§ 282.9 Prohibitions.

(a) * * *

(6) In any matter material to the administration of the Act, the Treaty, or any regulation promulgated pursuant to the Act, to falsify or conceal a material fact or make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or to fail to report to the Secretary immediately any change in circumstances that has the effect of rendering the information false, incomplete, or misleading;

* * * * *

(8) To refuse to permit any Authorized Officer or Authorized Party Officer to board a fishing vessel for purposes of conducting a search or inspection in connection with the enforcement of the Act or the Treaty;

* * * * *

(b) * * *

(1) To use a vessel to fish unless validly licensed as required by the Administrator;

* * * * *

10. Section 282.15 is revised to read as follows:

§ 282.15 Other inspections.

The operator of any vessel from which any fish taken in the Licensing Area is unloaded shall allow, or arrange for, and assist any Authorized Inspector, Authorized Party Officer, or Authorized Officer to have full access to any place where the fish is unloaded, to remove samples, and to gather any other information relating to fisheries in the Licensing Area.

[FR Doc. 91-9852 Filed 4-25-91; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 649

[Docket No. 910109-1096]

RIN 0648-AD54

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to specify acceptable mechanisms for complying with the degradable escape panel requirement approved under amendment 3 to the American Lobster Fishery Management Plan (FMP) and to implement that requirement as of May 28, 1992. The purpose of the panel is to allow for the escapement of lobster after a trap has been abandoned or lost.

This rule also adds a definition of a "v-shaped notch" to improve enforceability of this requirement.

EFFECTIVE DATE: May 28, 1991.

ADDRESSES: Copies of the environmental assessment (EA) and the regulatory impact review (RIR) for amendment 3 are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, Massachusetts 01960.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Resource Policy Analyst, Management Operations Division, NMFS Northeast Regional Office, 508/281-9331.

SUPPLEMENTARY INFORMATION: The FMP is implemented by regulations appearing at 50 CFR part 649. The objective of the FMP is to support and promote the development and implementation, on a continuing basis, of a unified regional management program for American lobster (*Homarus americanus*). Amendment 1 to the FMP was approved and implemented in 1986 (51 FR 19210, May 28, 1986), amendment 2 in 1987 (52 FR 46088, December 4, 1987), and amendment 3 in 1989 (54 FR 48617, November 24, 1989).

Amendment 3 and its implementing regulations include a requirement that lobster traps contain a degradable escape panel (ghost panel) to allow for the escapement of lobster after a trap has been abandoned or lost. The regulations implementing amendment 3 (54 FR 48617) specified an effective date for this requirement of 12 months after a list of acceptable mechanisms has been published in the Federal Register, but not before January 1, 1992. The proposed rule specifying acceptable mechanisms necessary for complying with this requirement was published on January 23, 1991 (56 FR 2496) and comments were invited until February 22, 1991. This rule amends the American lobster regulations to specify the mechanisms and impose the requirement as of May 28, 1992. The scope and intent of the ghost panel requirement approved under amendment 3 is not affected.

A definition for "v-shaped notch" is also added by this proposed rule. The purpose of this is to improve enforceability of the prohibition on retention of v-notched lobster.

Comments and Responses

No comments were received.

Changes from the Proposed Rule

The implementation date of the ghost panel requirement (§ 649.21(d)) has been changed from January 1, 1992 to May 28, 1992. This change is necessary to make the implementation date consistent with amendment 3 and its implementing regulations. The delayed implementation date is to mitigate the impact of the requirement on the industry by allowing them to modify the traps during the course of normal operations.

In § 649.21(d)(1)(ii), 3⅛ inches (8.04 cm) has been changed to 9/16 inch (.48 cm), which is the correct measurement for the untreated materials.

No other changes have been made.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is consistent with the American Lobster FMP.

This rule does not change the scope or intent of the regulations implementing amendment 3 to the FMP, and is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

Based on the RIR prepared by the Council for amendment 3, the Under Secretary for Oceans and Atmosphere, NOAA, determined a regulatory impact analysis under Executive Order 12291 was not required. The RIR concluded that this requirement is expected to provide annual net benefits of $1.05-

$1.52 million in revenues to lobster harvesters in the exclusive economic zone.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted as proposed, will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

The Council determined that this requirement in amendment 3 will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal management programs of the affected states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Connecticut, Maine, Delaware, and North Carolina agreed with the Council's determination. None of the other states commented within the statutory time period, and, therefore, consistency is automatically inferred. This rule does not change the scope or intent of amendment 3; therefore, this determination remains applicable.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 649

Fisheries, Reporting and recordkeeping requirements.

Dated: April 19, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 649 is amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for 50 CFR part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 649.2, definitions of *ghost panel* and *v-shaped notch* are added in alphabetical order to read as follows:

§ 649.2 Definitions.

* * * * *

Ghost panel means a panel, or other mechanism, which is designed to allow for the escapement of lobster 12 months after a trap has been abandoned or lost.

* * * * *

V-shaped notch means a straight-sided triangular cut, without setal hairs, at least ½ inch (.64 cm) in depth and tapering to a point.

* * * * *

3. In § 649.7, paragraph (a)(6) is revised to read as follows:

§ 649.7 Prohibitions.

(a) * * *

(6) Possess, deploy, haul, harvest lobster from, or carry aboard a vessel any gear not identified, marked, vented, and panelled in accordance with the requirements specified in § 649.21.

* * * * *

4. In § 649.21, the section heading is revised, paragraph (c)(3) is removed, paragraph (d) is redesignated paragraph (e), and a new paragraph (d) is added to read as follows:

§ 649.21 Gear identification and marking, escape vent, and ghost panel requirements.

* * * * *

(d) *Ghost panel.* Beginning on May 28, 1992, and thereafter, lobster traps not constructed entirely of wood must contain a ghost panel.

(1) The specifications of this requirement are as follows:

(i) The opening to be covered by the ghost panel must be rectangular and shall not be less than 3⅝ inches (9.53 cm) by 3⅝ inches (9.53 cm).

(ii) The panel must be constructed of, or fastened to the trap with, one of the following untreated materials: Wood lath, cotton, hemp, sisal or jute twine not greater than 9/16 inch (.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 9/32 inch (.24 cm) in diameter.

(iii) The door of the trap may serve as the ghost panel if fastened with a material specified in paragraph (d)(1)(ii) of this section.

(iv) The ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the trap.

(2) The Regional Director may at the request of, or after consultation with, the Lobster Oversight Committee of the Council, approve by the publication in the Federal Register any other design, mechanism, material, or specification not described in the regulations in this part that serves to create an escape portal not less than 3⅝ inches (9.53 cm) by 3⅝ inches (9.53 cm).

* * * * *

[FR Doc. 91-9777 Filed 4-25-91; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 81
Friday, April 26, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563, 584

[No. 91-186]

RIN 1550-AA23

Qualified Thrift Lender Test

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision ("OTS") proposes to revise its qualified thrift lender ("QTL") regulations to implement amendments made by title III of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183 (1989). Effective July 1, 1991, section 303 of FIRREA amends section 10(m) of the Home Owners' Loan Act ("HOLA") by imposing a more restrictive definition of "qualified thrift investments" and by requiring savings associations to maintain a higher percentage of these qualified thrift investments. The current QTL regulation, found at 12 CFR 584.6, already includes some changes imposed by FIRREA, *i.e.*, the special phase-in for certain savings banks and the new penalty provisions for failure to maintain QTL status, which became effective August 9, 1990.

These proposed regulations set forth the new QTL test, which requires a savings association to maintain 70 percent of its portfolio assets in certain domestic residential or manufactured housing or housing-related investments in order to retain QTL status. The proposed regulations also implement the new statutory provisions regarding the computation period to be used in making the QTL calculations, consistent accounting principles to be used, and requalification following failure to meet the QTL test.

This notice also proposes to recodify most of the QTL provisions in part 563, subpart B. The penalty for QTL failure by thrifts in a holding company structure will remain in part 584, which governs the activities of savings and loan holding companies.

DATES: Comments must be received by May 28, 1991.

ADDRESSES: Send comments to: Director, Information Services Division, Office of Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Kymberly Copa, Attorney, (202) 906-6638; Deborah Dakin, Regulatory Counsel, Regulations, Legislation, and Opinions Division, (202) 906-6445; William Templeton, Attorney, Corporate and Securities Division, (202) 906-7354; Ben Dixon, Program Analyst, (202) 906-5748; Deborah Kennedy, Program Analyst, (202) 906-7324; or Blake Elliott, National Systems Manager, Surveillance, (202) 906-6914, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 303 [1] of FIRREA substantially modified the QTL test first enacted in the Competitive Equality Banking Act of 1987 ("CEBA"), Public Law No. 100-86, 101 Stat. 552 (Aug. 10, 1987).[2] Most of these changes will take effect on July 1, 1991, although new and substantially tougher penalties for failing the test went into effect on August 9, 1990.[3] The FIRREA QTL test continues to require a thrift to hold a statutorily prescribed amount of housing-related investments. The amount required is expressed as a percentage: the "actual thrift investment percentage" or "ATIP". The ATIP is a ratio whose numerator is housing-related investments (called "qualified thrift investments" or "QTI") and whose denominator is "portfolio assets," defined as a savings association's total assets less certain deductions required by statute.

FIRREA redefined both the numerator and the denominator of the QTL ratio and increased the ATIP from 60 to 70 percent. The statute eliminated the five-year waiting period for requalification and reduced the previously unlimited opportunities to requalify to one.

The computation period for determining an association's ATIP was completely changed. Under CEBA, savings associations were required to satisfy the QTL test in three out of four quarters in two out of three years. FIRREA requires savings associations to maintain daily or weekly averages of their QTI and portfolio assets over a two-year period.

Finally, FIRREA significantly limited the types of assets includable as QTI. For example, liquid assets and an association's business property are no longer included in the statutory list of QTI. Consequently, the new QTL test will differ significantly from the current test. See 12 CFR 584.6.

As a part of this proposal, the QTL regulations, with the exception of the penalty provisions applicable to savings and loan holding companies, are being moved to part 563, §§ 563.50 through 563.52. Where the FIRREA provisions do not require revision, the current regulatory provisions remain in effect, but will be recodified at part 563. The holding company provisions remain at section 584.6. Today's notice thus contains both the regulatory text that would be amended by the proposal, as well as the current, unchanged provisions. For illustrative purposes, the OTS has provided examples of the operation of the proposed rule in the appendix to sections 563.50 through 563.52.

[1] Public Law No. 101-73, 103 Stat. 183, 343-53 (Aug. 9, 1989). The amendments to the HOLA made by section 303 will take effect on July 1, 1991. Upon their effective date, they will be codified at 12 U.S.C. 1467a(m). In this notice, references to section 10(m) means section 10(m) of the HOLA as amended by FIRREA. The FIRREA QTL provisions are cited by references to the appropriate pages in the Statutes at Large.

[2] CEBA defined qualified thrift investments as the sum of:

(1) the aggregate amount of loans, equity positions, or securities held by the insured institution (or any subsidiary of such institution) which are related to domestic residential real estate or manufactured housing;

(2) the value of property used by such institution or subsidiary in the conduct of the business of such institution or subsidiary;

(3) liquid assets of the type required to be maintained under section 5A of the Federal Home Loan Bank Act; and

(4) 50 percent of the dollar amount of the residential mortgage loans originated by such insured institution or subsidiary and sold within 90 days of origination.

The latter two were subject to a limit of 10 percent of tangible assets. See Public Law No. 100-86, 101 Stat. 552, 572 (1987). See also 12 CFR 584.6(a)(6) (defining "housing related activities").

[3] The FIRREA amendments also reduced the transition period for state-chartered savings banks by two years and repealed the five-year disqualification period. These changes, as well as the FIRREA penalty provisions, were incorporated into the existing rule when the Office's regulations were recodified after FIRREA. See 54 FR 49411, 49419 (Nov. 30, 1989); 12 CFR 584.0 (1990).

II. Description of the Proposal

A. Initiating the New QTL Test

FIRREA provides that any savings association is a qualified thrift lender if its qualified thrift investments equal or exceed 70 percent of its portfolio assets, "as measured by a daily or weekly average of such qualified thrift investments and such protfolio assets, for the 2-year period beginning on July 1, 1991, and for each 2-year period thereafter." 103 Stat. at 344. Because FIRREA requires that a savings association hold at least 70 percent of its portfolio assets in qualified thrift investments in order to retain its QTL status, the proposed rule increases the required ATIP from 60 to 70 percent.

The new QTL test will take effect on July 1, 1991. Under this proposal, a savings association that has achieved QTL status under the current test as of July 1, 1991, is deemed a qualified thrift lender. The association thereafter preserves its QTL status by maintaining an ATIP of 70 percent or more, measured by the averages of its qualified thrift investments and portfolio assets over every subsequent two-year period. Consequently, under FIRREA and the proposal, a savings association can first fail the new QTL test on June 30, 1993, when the weekly averages for the initial two-year (104-week) measuring cycle will be available. The two-year measuring period then rolls forward from week to week. Accordingly, an association can fail at any time after June 30, 1993, if its weekly ATIP, average over the preceding 104 weeks, falls below 70 percent.

Under this proposed rule, a savings association would report its ATIP on the quarterly Thrift Financial Report ("TFR").[4] As a result, after the expiration of the initial two-year measuring cycle, the association could report that it failed to meet its QTL requirement at the end of any quarter. The OTS recognizes that the weekly averaging prescribed by the statute imposes a greater recordkeeping burden on thrifts than under the current test. The weekly averaging (and quarterly reporting) requirements are necessary to address Congressional concerns [5] that QTL compliance was measured too infrequently under the CEBA QTL test to be effective against manipulation by savings associations. The OTS intends to remedy the problem Congress has identified without, however, requiring more recordkeeping than is necessary for that purpose. Accordingly, the OTS does not propose to require either daily averaging, which FIRREA authorizes, or more frequent reporting than quarterly reporting under the TFR system already in place. The quarterly reporting mechanism will, nonetheless, reflect a weekly averaging calculation over the reported quarter, as required by statute.

The proposal would provide that a savings association fails the test at the end of any quarter when the association's ATIP based on weekly averages for the immediately preceding 104 weeks does not equal or exceed 70 percent. For example, a savings association's ATIP may equal or exceed 70 percent on its June 30, 1993 TFR, but the association may fail the test if its September 30, 1993 TFR shows that its ATIP, as measured by weekly averages of qualified thrift investments and portfolio assets over the preceding two years, falls below 70 percent.[6]

1. Consistent Accounting Principles

Section 10(m)(5), which requires the application of consistent accounting principles, provides that the assets of any subsidiary of the savings association "shall be consolidated" with the assets of the association in the following instances:

(1) If the assets of the subsidiary are added to the assets of the association in determining its qualified thrift investments; or

(2) If residential mortgage loans originated and sold by the subsidiary within 90 days of origination are included in determining the savings association's qualified thrift investments.

103 Stat. at 348-49. Under section 10(m)(5)(B), consistent accounting principles must be used in determining the amount of a savings association's portfolio assets and qualified thrift investments. *Id.*

The legislative history indicates that this provision was intended to preclude thrifts from using subsidiaries' QTI to enhance their ATIP without simultaneously adding subsidiaries' assets to the denominator of the ratio. *See* 135 Cong. Rec. S 10204 (daily ed. Aug. 4, 1989) (statement of Sen. Riegle). The proposal, therefore, implements Congress's mandate that consistent accounting practices be followed in the calculation of the qualified thrift investments and the portfolio assets of a savings association for purposes of the QTL test.[7]

These consistent accounting provisions require the association's consolidation of subsidiaries only under certain, well-defined circumstances. Initially, the proposal provides that a savings association may, but need not, consolidate only those subsidiaries over which it exercises control according to generally accepted accounting principles ("GAAP").[8] As a general rule, the statute requires that if a savings association plans to count its subsidiary's assets, including residential mortgage loans originated by the subsidiary and sold within 90 days, toward the association's QTI, then it must consolidate the subsidiary. 103 Stat. at 348-49.

FIRREA also allows associations another choice for QTL purposes: To consolidate a subsidiary that receives 80 percent of its annual gross revenues from activities directly related to purchasing, refinancing, constructing,

[4] The current TFR would be amended to add a line item for associations to report their quarter-end ATIP. In addition, the TFR instructions would be modified to provide guidance to associations in calculating their ATIP. These instructions would resemble those used in preparing the current QTL report.

[5] See, e.g., 135 Cong. Rec. S 10, 204 (daily ed. Aug. 4, 1989) (Statement of Sen. Riegle).

[6] An association loses its QTL status if its ATIP for the preceding 104 weeks, based on the weekly averages, drops below 70 percent: consistent with current practice, the proposal does not provide for any rounding of the percentage. For example, an ATIP of 69.8 percent would not be rounded up to 70 percent.

[7] An association's portfolio assets will normally include any investment in a subsidiary. Thus, a savings association's decision whether to consolidate its subsidiary's assets has consistent accounting consequences. If the association elects to consolidate its subsidiary's assets, then the subsidiary's qualifying assets will be added to the numerator and all of its assets will be added to the calculation of the denominator. In that case, the association's investment in its subsidiary will be omitted from the numerator and subtracted from the denominator. If instead, the association decides to use its investment in its service corporation as a qualified thrift investment pursuant to section 10(m)(4)(C)(iii)(II), that investment already appears in the denominator, since, as noted above, one type of asset making up the association's portfolio assets is the amount of the association's investments in subsidiaries. 103 Stat. at 347.

[8] Under GAAP, the determinative factor for consolidation is control. If an association owns more than 50 percent of the subsidiary, its control over that subsidiary is presumed, subject to a few limited exceptions. In addition, if the association owns less than a majority interest in the subsidiary, the association may still control the subsidiary by virtue of its control of a majority of the Board of Directors or voting rights. *See* Statement of Accounting Principles No. 94, "Consolidation of All Majority-Owned Subsidiaries" (1988). The proposal establishes GAAP control as the threshold for consolidation in order to avoid complex *pro rata* calculations when the association has only a minority interest in a subsidiary.

improving, or repairing domestic residential real estate or manufactured housing; or to count its investment in the subsidiary as a QTI, subject to the 15 percent cap. See 103 Stat. at 347–49. Under the proposal, if the savings association does not control the subsidiary that receives 80 percent of its annual revenues directly from the housing-related activities listed, the association may only count the investment as a QTI. The proposal follows the express statutory authority requiring consolidation only in the described circumstances. Otherwise, the savings association may elect whether to consolidate any subsidiary it controls under GAAP.

2. *De Novo* Institutions

Under the proposal, newly chartered, or *de novo*, associations will commence their weekly averaging for the ATIP at the beginning of the quarter following the date on which the charter was granted. As of the first week of the first full quarter of the new savings association's existence, it must maintain weekly averages of its QTI and portfolio assets and report them on its quarterly TFR. Based on the proposed two-year measuring cycle, a *de novo*, institution could fail only after the expiration of two years from the first week of the association's recorded ATIP. Thereafter, the new thrift could fail the QTL test at any time its ATIP, as measured weekly over the immediately preceding 104-week period, falls below 70 percent.

3. Phase-in for Certain Federal Associations

FIRREA altered the current phase-in periods to allow certain Federal savings associations more time [9] to comply with the new QTL test, and the proposal reflects those changes. These associations must demonstrate a statutorily-defined improvement in their ATIP culminating with an ATIP of 70 percent by October 1, 1995. *See* 103 Stat. at 350; *cf.* 103 Stat. at 335. The special phase-in provisions for these savings associations, currently located in section 584.6(a)(7), will be relocated to section 563.50(h).

B. Definitions

1. Qualified Thrift Investments

FIRREA defines the term "qualified thrift investments" as the sum of: loans to purchase, refinance, construct, improve, or repair domestic residential housing or manufactured housing; home-equity loans; and securities backed by or representing an interest in mortgages on domestic residential housing or manufactured housing. The statutory definition of qualified thrift investments also expressly includes the total amount of obligations of the Federal Deposit Insurance Corporation ("FDIC"), the Federal Savings and Loan Insurance Corporation ("FSLIC"), the FSLIC Resolution Fund, and the Resolution Trust Corporation for a limited period of time depending on the date on which such obligations were issued.[10] See 103 Stat. at 347.

Subject to an overall limitation of 15 percent of portfolio assets, the statutory definition of qualified thrift investments includes: 50 percent of domestic residential housing mortgage loans originated and sold within 90 days and investments in a service corporation that derives at least 80 percent of its annual gross revenues from certain housing-related activities. Also subject to the 15 percent limitation, an association may include double the amount of its loans and investments made to acquire, develop, and construct starter homes or starter home developments, as defined by the statute; double the amount of its loans for the acquisition or improvement of domestic residential housing, churches, schools, and nursing homes located within, and loans for any other purpose to any small business located within, a credit-needy area identified by the Director; loans for the purchase or construction of churches, schools, nursing homes, and hospitals, other than those previously mentioned and loans for their improvement and upkeep; and loans for personal, family, household, or educational purposes, provided that the dollar amount does not exceed 5 percent of the savings association's portfolio assets. See 103 Stat. at 347–48.[11]

Savings associations headquartered and operating in Puerto Rico or the Virgin Islands benefit from special rules defining qualified thrift investments. Both FIRREA and the proposed rule would allow thrifts headquartered and operating in Puerto Rico or the Virgin Islands to add certain investments to the 15 percent "basket" of QTI. This notice proposes that these Puerto Rican and Virgin Island associations count their includable assets either under the standard rules for all associations or under the special rule for their benefit, but not both.

Such associations could include the entire amount of loans for personal, family, educational, or household purposes made to residents of Puerto Rico or the Virgin Islands, as well as the aggregate amount of loans for the purchase, construction, or improvement of community service facilities, and of loans for small businesses located within Puerto Rico or the Virgin Islands. Similar to the provision for starter homes contained in the general definition of qualified thrift investments, associations in Puerto Rico or the Virgin Islands may include 200 percent of the aggregate amount of loans related to the purchase, development, and construction of residential housing located within Puerto Rico or the Virgin Islands, the value of which is below the median value of newly constructed residential housing in the respective territory. See 103 Stat. at 349–50.

Congress defined qualified thrift investments with much greater specificity in FIRREA than in the original CEBA provisions and, as a result, narrowed the definition of qualified thrift investments. Accordingly, this proposal defines qualified thrift investments narrowly, for the most part incorporating the statutory language.[12]

The OTS believes, however, that residential real estate owned ("REO") by the savings association should also be considered a qualified thrift investment, even though this REO is not explicitly mentioned in the statutory definition of QTI. The proposal defines residential REO for QTL purposes as domestic residential housing (the definition of which is discussed more fully below) acquired as a result of foreclosure or by deed in lieu of

[9] Section 301 of FIRREA reduced the CEBA phase-in schedule from January 1, 1992 to July 1, 1994, whereas section 303 moves the phase-in deadline to October 1, 1995. See 103 Stat. at 331, 350.

[10] These obligations of the FDIC and the FSLIC would include those association assets receiving capital loss coverage from the FSLIC Resolution Fund ("covered assets"). Only the "guarantee" or note amount itself counts as a QTI, however; the value of the asset covered by the guarantee or note does not count unless that asset is itself a QTI.

[11] Clause (iii) of new section 10(m)(4)(C) described assets includible as QTI but subject to a percentage limitation. In calculating the portfolio assets limitation, the total allowable portion of the qualifying investments described in this clause may not exceed 15 percent of the amount of portfolio assets. For example, if an association's portfolio assets amount to $100,000, then the total amount of these qualifying assets cannot exceed $15,000. If its assets qualifying under this section exceed $15,000, the association determines which combination of investments to use in calculating its QTI.

Similarly, in computing the 5 percent limit on personal, family, household, or educational loans qualifying as QTI, the allowable portion may not exceed 5 percent of the amount of portfolio assets. Thus, under the preceding example, the association could include no more than $5,000 of such personal, family, household, or educational loans as QTI.

[12] The legislative history shows a Congressional intent to associate QTL compliance more closely with investments that are directly related to housing than was the case under the Federal Home Loan Bank Board's rule. See 135 Cong. Rec. S 10204 (daily ed. Aug. 4, 1989) (statement of Sen. Riegle).

foreclosure. This definition, therefore, restricts qualifying REO to real estate comprising one or more homes or other dwelling units as defined in 12 CFR Part 541, located within the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands. In other words, qualifying REO is the product of a borrower's default on a loan that, when outstanding, was a QTI.

The exclusion of residential REO resulting from a QTI loan would create perverse incentives with significant safety and soundness ramifications. If residential REO is not considered a QTI, a savings association will have an incentive to delay foreclosing on bad residential loans because of the negative impact on its ATIP. Any unnecessary delay may result in further loss for the association, as well as increased risk to the insurance fund. A rule that excludes residential REO from QTI would, in effect, establish a QTL penalty for a savings association that takes prudent steps to protect itself from losses on troubled loans.

A rule that includes residential REO as QTI is consistent with both the language of the FIRREA QTL provisions and their legislative history. The statute explicitly excludes from the definition of QTI goodwill and other intangible assets; residential REO is not expressly excluded under this provision. In addition, an association must exclude from QTI that portion of any loan or investment, except for home equity loans, that is used for any purpose other than those expressly qualifying under the statute. 103 Stat. at 347. The acquisition of residential REO resulting from otherwise qualifying loans is an inevitable and necessary incident of home lending; it is therefore consistent with the qualifying purposes listed in the statute and described in the legislative history.[13]

The legislative history shows that Congress wanted to strengthen the thrift industry's commitment to make home loans in particular.[14] All savings associations engaged in this type of lending will experience some defaults. A savings association principally engaged in home lending will experience defaults resulting, for example, from unanticipated changes in the borrower's ability to pay, even though the loans were prudently underwritten when they were made. It is thus not possible to divorce the acquisition of REO from the activity of making home loans: the acquisition of REO is a necessary incident of that type of lending. For this reason, the OTS has consistently interpreted the Home Owners' Loan Act ("HOLA") to permit savings associations to take property by foreclosure or deed in lieu of foreclosure, even though the powers provisions of the HOLA do not expressly authorize this activity. See 12 U.S.C.A. 1464(c).

Similarly, the OTS concludes that the inclusion in QTI of REO resulting from otherwise qualifying loans comports with the Congress's requirement that thrifts engage chiefly in housing-related lending. In this way, the proposal avoids perverse incentives and recognizes the necessary relationship between housing-related lending and the acquisition of REO. It is, however, carefully drafted to achieve these objectives without exceeding the limits of Congressional intent. Therefore, only REO resulting from a loan that was itself a qualifying thrift investment would be included as QTI.

The OTS has also concluded that some clarification is necessary concerning the provisions that define qualified thrift investments. In defining the various types of investments that qualify as QTI, Congress used the following terms: domestic residential housing, domestic residential real estate, residential mortgage loans, 1-to-4 family residences, and residential real property.[15]

Review of the legislative history indicates that Congress was chiefly concerned that a savings association maintain a minimum percentage of its assets in housing finance and related investments. See H.R. Rep. No. 222, 101st Cong. 1st Sess. 407 (1989). The legislative history does not suggest that Congress attached particular significance to the differences among the terms it used. It appears, therefore, that Congress used these terms interchangeably.

Congress did, however, intend to require lending directly related to real estate used for homes. The proposal uniformly refers to the qualifying property as "domestic residential housing," as defined in section 563.51(d) of the proposed regulations, and manufactured housing. The proposal defines residential housing as real estate comprising one or more homes (as defined in 12 CFR 541.14) or other dwelling units (as defined in 12 CFR 541.10). For example, the OTS intends that residential housing includes, but is not limited to, 1-to-4 family homes, condominiums, cooperatives, townhouses, apartments, dormitories, and nursing homes.

The term "domestic" as used in this section includes units located within the geographic area where OTS-regulated savings associations are chartered. This area encompasses the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands. The OTS solicits comment on whether further clarification of this term is required.

2. "Portfolio Assets"

FIRREA defines "portfolio assets" as the total assets of the savings association minus the sum of goodwill and other intangible assets, the value of property used by the association to conduct its business, and liquid assets of the type required to be maintained under section 6 of the HOLA, in an amount not exceeding 10 percent of the association's total assets.

The OTS has concluded that the statutory definition requires little clarification. As drafted, the definition includes, as one component of an association's assets, the amount of its investments, if any, in subsidiaries. However, as discussed more fully in the following section, the FIRREA QTL test allows a savings association to choose whether to consolidate its subsidiaries' assets in order to count those assets toward the association's ATIP.

For purposes of this definition, the OTS intends that the term "intangible assets" have the same meaning as the basic definition used for the capital standards. See 12 CFR 567.1(m). The OTS specifically seeks comment as to whether this definition, or the broader concept of total assets, requires further elaboration.

3. "Credit-needy Area"

As part of the 15 percent "basket" of QTI, the new QTL provisions allow a savings association to double its investment in loans for homes, home improvements, small businesses, and community service facilities in credit-needy areas. 103 Stat. at 348 (1989). The

[13] The legislative history indicates that the Congress specifically wanted to prevent saving associations from obtaining QTL "credit" for assets that "have little to do with residential mortgage lending." See 135 Cong. Rec. S 10204 (daily ed. Aug. 4, 1989) (statement of Sen. Riegle). Unlike the assets described in Senator Riegle's remarks, REO resulting from an otherwise qualifying loan is necessarily associated with residential mortgage lending.

[14] More generally, FIRREA's QTL provisions also encourage lending for what may be characterized as community-based purposes. These purposes include lending for the purchase or construction of churches, schools, nursing homes, and hospitals, as well as loans for personal, family, household, or educational purposes. See Public Law No. 101–73, 103 Stat. 183, 347–48.

[15] *See* sections 10(m)(4)(C)(ii)(I), 10(m)(4)(C)(ii)(III), 10(m)(4)(C)(iii)(I)–(m)(4)(C)(iii)(IV), and 10(m)(6)(A)(ii)–(m)(6)(B)(ii) of the FIRREA test. 103 Stat. at 347–50 (1989).

Director must determine which geographic areas are eligible for this allowance. The statute requires the Director to identify low or moderate income areas where the population's credit needs are not being met.

Several methods exist to make this determination. This notice proposes using census tract data to identify low and moderate income areas and Home Mortgage Disclosure Act data to determine if such areas are credit needy. *See* Regulation C, Board of Governors of the Federal Reserve System, 12 CFR 203.4. In addition, as a supplement to the foregoing, OTS proposes to rely on information obtained through examinations to determine an association's compliance with the Community Reinvestment Act ("CRA"). The OTS will entertain requests by savings associations seeking further areas to be so designated.

The OTS proposes to offer supervisory guidance as to both procedures to request designation of credit-needy areas and a list of identified credit-needy areas. The OTS seeks comment on whether this proposed methodology is sufficient to achieve the results sought by Congress.

4. "Starter Homes"

FIRREA gives an association double credit for investments in so-called starter homes or developments of starter homes. By statute, such homes are defined in terms of value, *i.e.*, 1-to-4 family residences that cost or are guaranteed to cost 60 percent of the median value of newly constructed 1-to-4 family homes. 103 Stat. at 348. The OTS proposes to rely on this statutory definition and to meet the additional requirement that the homes be located in the "local community" by defining that term to mean the savings association's CRA community. *See* 12 CFR 563e.3. For developments, the OTS proposes to use the 25 percent cut-off of commercial/residential mix, as required by statute, to determine whether the project is eligible for this allowance.

The OTS proposes to require any savings association that desires to use this allowance to apply to its Regional Director and set forth evidence that the residential property securing its loans meets the requirements outlined above. The OTS plans to offer associations supervisory guidance in meeting this standard of proof.

5. "Community Service Facilities"

In several sections of the statutory definition of QTL Congress lists varying types of community institution to which qualifying loans may be made. 103 Stat. at 348–49. The OTS proposes to designate such institutions, *i.e.*, hospitals, nursing homes, churches (and other places of worship), and schools, as "community service facilities" for purposes of this regulation. These facilities will be treated uniformly. The OTS seeks comments on the efficacy of such a policy.

C. Penalties

As previously mentioned, the new penalties imposed by FIRREA went into effect on August 9, 1989, and have already been incorporated into OTS regulations at 12 CFR 584.6(c)(2). Briefly, when a savings association loses its QTL status, it must either become one or more banks (but not a savings bank), depending on branching limitations, or be subject to numerous restrictions affecting new investment activities, branching, advances from the Federal Home Loan Bank system, and ability to pay dividends. If the non-QTL savings association remains a savings association, the various restrictions imposed on new activities, branching, advances, and dividends limit it to what is permissible for both a national bank and a savings association. 103 Stat. at 344–45.

This proposal allows one limited exception to the general prohibition against new advances for a non-QTL savings association. Under certain circumstances, a non-QTL may be eligible for special short-term liquidity advances as described in section 714(c) of FIRREA. That section permits such advances only upon the request of the Director of OTS to the association's Federal Home Loan Bank. 103 Stat. at 421. The OTS has concluded that section 714(c) offers an exception to the general prohibition on advances and that such advances may be necessary to continue the safe and sound operation of the association.

In addition, if the non-QTL savings association is the subsidiary of a savings and loan holding company, the holding company must be treated as a bank holding company within one year of the association's failure of the QTL test, absent requalification in the interim. If three years elapse after the association's loss of QTL status without its requalification, then the association must repay its outstanding Federal Home Loan Bank advances as promptly as can be prudently accomplished consistent with the safe and sound operation of the association. After three years, the savings association's activities are also restricted to those that are permissible for both a national bank and a savings association. 103 Stat. at 345.

If, subsequent to requalification, a savings association fails to maintain its ATIP at or above 70 percent, all the statutory penalties described above will be imposed immediately. The statute does not allow for any delay of the imposition of penalties if the association fails to maintain its ATIP at or above 70 percent after requalifying following the first failure.

Certain Federal savings banks and the specialized savings association serving transient military personnel remain exempt from the penalties described herein. However, as of July 1, 1991, these penalties apply to savings associations headquartered and operating primarily in Puerto Rico and Virgin Islands, who were previously exempted by statute. 103 Stat. at 346.

D. Requalification

The statute provides that a savings association can requalify as a QTL only once by meeting and maintaining the required ratio of QTI over portfolio assets for a two-year period and thereafter. 103 Stat. at 345. The OTS has interpreted this provision in conjunction with the two-year computation period contained in the basic test. Thus, the proposed rule would require a non-QTL to continue to record weekly averages of its qualified thrift investments and portfolio assets, and to report its ATIP for the preceding 104 weeks on the quarterly Thrift Financial Report.

Under the proposal, when the savings association's quarterly TFR reveals that its ATIP for the immediately preceding two years meets or exceeds the 70 percent requirement, the savings association has requalified. The association remains a QTL for so long as it maintains its ATIP at or above the statutory level. As a result, the statutory sanctions for QTL failure would immediately be lifted. Once an association has requalified, it must remain a QTL. If the requalified association fails to maintain its ATIP at the minimum level, the association will lose its status and will, by statute, be precluded from requalifying.

E. Solicitation of Comments

The OTS solicits comment on all aspects of these proposed regulations. The OTS is providing for a 30-day comment period because it seeks to have these regulations in place by July 1, 1991, the effective date of the new QTL test enacted in FIRREA.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

The Director of the OTS has determined that this proposed regulation does not constitute a "major rule;" therefore, a regulatory impact analysis is not required.

List of Subjects

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend parts 563 and 584, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 304, 103 Stat. 279 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 26, 64 Stat. 891, as amended by sec. 321, 103 Stat. 287 (12 U.S.C. 1829); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

Subpart B—Operation and Structure

2. Sections 563.50, 563.51, 563.52, and Appendix A to §§ 563.50 through 563.52 are added to subpart B to read as follows:

§ 563.50 Qualified thrift lender status.

(a) Beginning July 1, 1991, a savings association that was a qualified thrift lender ("QTL") as of June 30, 1991, as determined under regulations in this chapter in effect on that date, shall be deemed to have QTL status and shall maintain its status as a QTL so long as the association's actual thrift investment percentage ("ATIP") (as defined in § 563.51(a) of this subpart) over each two-year period thereafter continues to equal or exceed 70 percent. For purposes of this paragraph, the savings association's compliance with the QTL test for the immediately preceding two-year period shall be reviewed at the end of each calendar quarter and will be confirmed during the course of supervisory examinations; *provided* that between July 1, 1991 and June 30, 1993, the association shall report its cumulative ATIP on a quarterly basis for the time elapsed since July 1, 1991.

(b) Until June 30, 1993, a savings association shall be a QTL if the association was deemed to be a QTL as of June 30, 1991.

(c) Beginning June 30, 1993, an association shall lose its QTL status when its ATIP, as measured by weekly averages of the association's qualified thrift investments and portfolio assets over the immediately preceding two-year period and as reported in the quarterly Thrift Financial Report, falls below 70 percent.

(d) *Consistent accounting required.* In determining the amount of a savings association's qualified thrift investments and portfolio assets in order to calculate its ATIP, consistent accounting principles shall be used. This requirement includes, but is not limited to, requiring a savings association to consolidate a subsidiary's assets in determining the association's portfolio assets, if the savings association elects to include its subsidiary's assets to compute the association's qualified thrift investments.

(e) *De novo savings associations.* For purposes of paragraph (a) of this section, a *de novo* association shall begin its two-year QTL measuring cycle, maintaining weekly averages of its qualified thrift investments and portfolio assets, at the beginning of the quarter following the date on which its charter was granted.

(f) *Requalification.* An association may requalify as a QTL only once by meeting and maintaining at ATIP, as measured by weekly averages of its qualified thrift investments and portfolio assets over the immediately preceding two-year period, as reported in the quarterly Thrift Financial Report, greater than or equal to 70 percent.

(g) *Exceptions.* Notwithstanding paragraph (a) of this section, the Director of the Office of Thrift Supervision may grant such temporary and limited exceptions from the minimum ATIP requirement contained in paragraph (a) of this section as the Director deems necessary if:

(1) The Director determines that extraordinary circumstances exist, such as when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for a savings association to meet such investment requirements; or

(2) The Director determines that:

(i) The grant of any such exception will significantly facilitate an acquisition under sections 13(c) or 13(k) of the Federal Deposit Insurance Act, as amended;

(ii) The acquired association will comply with the transition requirements of paragraph (h) of this section, as if the date of the exemption were the starting date for the transition period described in paragraph (h) of this section; and

(iii) The exemption will not have an undue adverse effect on competing savings associations in the relevant market and will further the purpose of the qualified thrift lender test.

(h) *Special phase-in for certain Federal savings associations.* Any Federal savings association in existence as a Federal savings association on August 9, 1989, that was chartered as a savings bank or a cooperative bank under State law before October 15, 1982, or whose principal assets were acquired from such a State savings bank or cooperative bank chartered before October 15, 1982, shall be deemed to have QTL status until October 1, 1995, *provided*, that:

(1) After August 9, 1989, the association's actual thrift investment percentage does not decrease below the actual thrift investment percentage on July 15, 1989, calculated as defined in § 563.51(a) of this subpart; and

(2) After calculating the difference between the association's actual thrift investment on August 9, 1989, and 70 percent, the association's actual thrift investment must exceed the difference in conformity with the following schedule—

	Percent
From July 2, 1991 through Sept. 30, 1992	25
From Oct. 1, 1992 through Mar. 31, 1994	50
From April 1, 1994 through Sept. 30, 1995	75
From Oct. 1, 1995 and thereafter	100

§ 563.51 Definitions.

For purposes of determining whether a savings association constitutes a qualified thrift lender after July 1, 1991, the following terms are defined:

(a) *Actual thrift investment percentage* ("ATIP") means the percentage derived by dividing the amount of a savings association's qualified thrift investments (as defined in paragraph (b) of this section) by the

association's portfolio assets (as defined in paragraph (e) of this section).

(b) *Community service facilities* means churches or other places of worship, schools, nursing homes, and hospitals within a community (as defined in § 563e.3 of this subchapter).

(c) *Credit-needy area* means a geographic region or neighborhood which has been identified by the Director, based on data acquired from the Bureau of the Census or from reports submitted pursuant to Regulation C of the Board of Governors of the Federal Reserve System, 12 CFR part 203, in connection with any review or examination of community reinvestment practices, as a geographic area or neighborhood in which the credit needs of low and moderate income residents are not being adequately met at the time the relevant loan was made.

(d) *Domestic residential housing* means real estate comprising one or more homes or other dwelling units as defined in part 541 of this chapter. The term "domestic" refers to units within the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands.

(e) *Portfolio assets* means the total assets of the savings association (as defined in paragraph (i) of this section) minus the sum of: goodwill and other intangible assets; the value of property used by the association to conduct its business; and the association's liquid assets of the type maintained pursuant to section 6 of the Home Owners' Loan Act, in an amount not exceeding 10 percent of the savings association's total assets.

(f)(1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, *qualified thrift investments* ("QTI") means, with respect to any savings association, the sum of:

(i) The aggregate amount of loans held by the savings association, including residential real estate owned as a result of such loans as defined in paragraph (g) of this section, that were made to purchase, refinance, construct, improve, or repair domestic residential housing (as defined in paragraph (d) of this section) or manufactured housing (as defined in § 545.45(a)(1) of this chapter);

(ii) Home-equity loans;

(iii) Securities backed by or representing an interest in mortgages on domestic residential housing or manufactured housing;

(iv) Direct or indirect obligations of the Federal Deposit Insurance Corporation ("FDIC") or the Federal Savings and Loan Insurance Corporation ("FSLIC") issued in accordance with the terms of agreements entered into prior to July 1, 1989, for the 10-year period beginning on the date of issuance of such obligations;

(v) Obligations of the FDIC, the FSLIC, the FSLIC Resolution Fund, and the Resolution Trust Corporation ("RTC") issued in accordance with the terms of agreements entered into on or after July 1, 1989, for the 5-year period beginning on the date of issuance of such obligations; and

(vi) An aggregate amount, not to exceed 15 percent of such association's portfolio assets, of the following assets:

(A) Fifty (50) percent of the dollar amount of the domestic residential housing mortgage loans originated by the savings association and sold within 90 days of origination;

(B) Investments in the capital stock or obligations of, and any other security issued by, any service corporation if such service corporation derives at least 80 percent of its annual gross revenues from activities directly related to purchasing, refinancing, constructing, improving, or repairing domestic residential housing or manufactured housing;

(C) Two hundred (200) percent of the dollar amount of loans and investments to acquire, develop, and construct "starter homes" (as defined in paragaph (h) of this section) or starter home developments, *provided* that not more than 25 percent of this amount may consist of commercial properties related to the starter home development and providing services to residents of the development;

(D) Two hundred (200) percent of the dollar amount of—

(*1*) Loans for the acquisition, construction, or improvement of domestic residential housing and community service facilities (as defined in paragraph (b) of this section) located within a "credit-needy area" (as defined in paragraph (c) of this section); and

(*2*) Loans for any other purpose to any small businesses located within such credit-needy areas;

(E) Loans for the acquisition, construction, or improvement of community service facilities (as defined in paragraph (b) of this section) other than those qualifying under the paragarph (f)(1)(vi)(D) of this section; and

(F) Loans for personal, family, household, or education purposes, provided that the dollar amount treated as QTI under this subsection may not exceed 5 percent of the savings association's portfolio assets, as defined in paragraph (e) of this section.

(2) The term "qualified thrift investments" does not include the following:

(i) That portion of any loan or investment, except for home equity loans, that is used for any purpose other than those expressly qualifying under paragraph (f)(1) of this section;

(ii) Goodwill; or

(iii) Any other intangible asset.

(3) For savings associations headquartered and operating primarily in Puerto Rico or the Virgin Islands, the term "qualified thrift investments" for each territory includes, in addition to the items specified in the general definition contained in paragraphs (f)(1) and (f)(2) of this section, the following investments;

(i) The aggregate amount of loans for personal, family, educational, or household purposes made to persons residing in or domiciled in Puerto Rico or the Virgin Islands;

(ii) The aggregate amount of loans for the acquisition, construction, or improvement of—

(A) Community service facilities (as defined in paragraph (b) of this section) located within Puerto Rico or the Virgin Islands; and

(B) Loans to small businesses located within Puerto Rico or the Virgin Islands; and

(iii) Two hundred (200) percent of the aggregate amount of loans related to the purchase, development, and construction of residential housing located within Puerto Rico or the Virgin Islands, the value of which (at the time of acquisition or upon completion) is below the median value of newly constructed residential housing in Puerto Rico or the Virgin Islands, as applicable.

(iv) Savings associations headquartered and operating primarily in Puerto Rico may include as QTI only those investments described in paragraphs (f)(3)(i) through (f)(3)(iii) of this section located in Puerto Rico, while associations headquartered and operating primarily in the Virgin Islands may include as QTI only those investments described in paragraphs (f)(3)(i) through (f)(3)(iii) of this section located in the Virgin Islands.

(g) *Residential real estate owned* ("residential REO"), for purposes of §§ 563.50 and 563.51 of this subpart, means domestic residential housing (as defined in paragraph (d) of this section) acquired as a result of foreclosure or acquired by deed in lieu of foreclosure with respect to loans that would otherwise constitute QTI, as defined in paragraph (f) of this section.

(h) *Starter homes* means 1-to-4 family residences the purchase price of which is or is guaranteed to be not greater than 60 percent of the median value of comparable newly constructed 1-to-4 family residences within the local community, as determined pursuant to section 563e.3 of this subchapter.

(i) For purposes of §§ 563.50 and 563.51 of this subpart only, *total assets* means total assets as would be required to be reported for consolidated entities on period-end reports filed with the Office of Thrift Supervision in accordance with generally accepted accounting principles:

(1) Minus the assets of any subsidiary that the association elects not to consolidate in calculating its ATIP (as defined in paragraph (a) of this section);

(2) Plus the association's investment in the subsidiaries described in paragraph (i)(1) of this section.

§ 563.52 Penalties.

(a) On the date of savings association fails the OTL test (as defined in § 563.50 of this subpart), the savings association immediately shall either become one or more national banks, or be subject to the following restrictions:

(1) *Activities.* The savings association shall not make any new investments (including an investment in a subsidiary) or engage, directly or indirectly, in any other new activity unless that investment or activity would be permissible for both a national bank and a savings association.

(2) *Branching.* The savings association shall not establish any new branch office at any location at which a national bank located in the savings association's home State may not establish a branch office. For purposes of this paragraph, a savings association's home State is the State in which the savings association's total deposits were largest on the date on which the savings association ceased to be a QTL.

(3) *Advances.* The savings association shall not be eligible to obtain new advances, except for those special liquidity advances described in section 10(h) of the Federal Home Loan Bank Act, from any Federal Home Loan Bank. A non-QTL savings association must obtain the Director of OTS's approval to request such an advance from the appropriate Federal Home Loan Bank.

(4) *Dividends.* The savings association shall be subject to all statutes and regulations governing the payment of dividends by a national bank in the same manner and to the same extent as if the savings association were a national bank.

(b) *Holding Company Regulation.* If any savings association that is a subsidiary of a savings and loan holding company fails to regain its QTL status within one year of the date of failure, the holding company shall be subject to the penalty provided in § 584.6 of this chapter.

(c) *Additional Restrictions Effective After 3 Years.* Three years from the date that a savings association ceases to be a QTL, it shall be subject to the following additional restrictions:

(1) *Activities.* The savings association shall not retain any investment, including an investment in any subsidiary, or engage in any activity, directly or indirectly, unless that investment or activity would be permissible for it both as a national bank and as a savings association.

(2) *Advances.* The savings association shall repay any outstanding advances from any Federal Home Loan Bank as promptly as can be prudently done consistent with the safe and sound operation of the savings association.

(d) *Requalification.* If, at any time after requalification as provided for in § 563.50(f) of this subpart, a savings association (or any savings association that acquired all or substantially of its assets from that savings association) ceases to be a QTL, it shall, upon reporting such failure, be subject to all the penalties contained in paragraphs (a) through (c) of this section as if all the periods described in such provisions had expired.

(f) *Exemptions*—(1) *For specialized savings association serving transient military personnel.* The penalties contained in this section shall not apply to a savings association subsidiary of a savings and loan holding company if:

(i) The savings and loan holding company is a reciprocal interinsurance exchange that acquired control of the savings association before January 1, 1984; and

(ii) At least 90 percent of the customers of the savings and loan holding company and its subsidiaries and affiliates are active or former officers in the United States military services or the widows, widowers, divorced spouses, or current or former dependents of such officers.

(2) *For certain Federal savings associations.* The penalties contained in this section shall not apply to a Federal savings association in existence as a Federal savings association on August 9, 1989, that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law or that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law.

Appendix A to §§ 563.50 through 563.52—Examples Illustrating the operation of the new QTL test.

The following examples are intended to aid understanding the operation of the new QTL regulations in §§ 563.50 through 563.52 of this subpart. These examples are not definitive or conclusive, and they are not a substitute for the QTL worksheet provided by OTS.

The first three examples use the same set of basic facts: savings association ABC ("ABC") has $100,000 in total assets and is a subsidiary of a savings and loan holding company. The fourth example involves a Federally-chartered savings association that is subject to the transition rule at 12 CFR 563.50(h).

Example 1—The computation period.

ABC is a QTL on June 30, 1991, when the previous test expires. Therefore, on July 1, 1991, ABC is deemed a QTL until June 30, 1993, the completion of the initial two-year measuring cycle. As of July 1, 1991, ABC will be required to maintain weekly averages of its QTI and portfolio assets on which to base its weekly ATIP.

Thereafter, at the end of each calendar quarter, ABC will report its ATIP on the quarterly TFR. The quarterly ATIP will consist of an average of ABC's ATIPs for the preceding weeks. Until June 30, 1993, the quarterly ATIP will be an average of the weekly ATIPs since July 1, 1991. Thus, for the quarter ending December 31, 1991, ABC's quarterly ATIP will be the average of its weekly ATIPs for the immediately preceding 24 weeks.

Beginning June 30, 1993, and every quarter thereafter, the quarterly ATIP will be an average of the weekly ATIP for the immediately preceding 104 weeks. Accordingly, for the calendar quarter ending March 31, 1994, ABC would compute its quarterly ATIP by averaging its weekly ATIPs since March 31, 1992, or for the immediately preceding 104 weeks. If, beginning June 30, 1993, and at any time thereafter, ABC's quarterly ATIP falls below 70 percent, the association has failed the QTL test.

Example 2—Requalification.

Based on Example 1 of this appendix, if ABC's quarterly ATIP, as reported on its December 31, 1993 TFR, is 69.9 percent, ABC loses its status as a QTL.[1] The statutory penalties would immediately be imposed. *See* 12 CFR 563.52. ABC can requalify if a subsequent quarterly ATIP, calculated as an average of its weekly ATIPs for the immediately preceding 104 weeks, equals or exceeds 70 percent. In the interim, ABC remains subject to the immediate statutory penalties, and the clock is running for the additional penalties imposed after one and three years. 12 CFR 563.52, 584.6.

Assuming that ABC requalifies on June 30, 1994, with a quarterly ATIP over the previous 104 weeks of 70 percent or above, ABC must thereafter maintain its ATIP at or above the required level or lose its QTL status

[1] The QTL regulations in §§ 563.50 through 563.52 of this subpart do not provide for rounding up.

permanently. As of the June 30, 1994 requalification, the penalties for the previous failure would be lifted, and the additional penalties, including the penalty on its holding company, are not triggered because ABC was out of compliance for less than a year. If ABC subsequently fails its quarterly QTL test, then all penalties take effect. Thus, for example, ABC would be required to repay all its Federal Home Loan Bank Advances as soon as prudently possible, consistent with the safe and sound operation of the association. ABC's holding company would also be required to register as and be deemed a bank holding company. 12 CFR 563.52.

Example 3—Calculating the ATIP.

Assume that ABC's $100,000 in total assets are distributed in the following manner:

(1) *Total Assets:*

$30,000	Loans for domestic residential housing and manufactured housing and residential mortgage backed securities
$10,000	Home equity loans
$5,000	Investment in a service corporation deriving 80% of its gross annual revenues from housing
$5,000	Starter home loan
$5,000	Loan to build a school in a credit needy area
$5,000	Personal loan
$10,000	Cash
$15,000	Purchased mortgage servicing rights ("PMSR")
$5,000	Value of ABC's property used to conduct its business
$10,000	Investment in Federal Home Loan Bank

(2) *Portfolio Assets:*

$100,000	Total assets
−15,000	PMSR's (an intangible asset)
−5,000	The value of ABC's business property
−10,000	Cash, *i.e.*, liquidity (no more than 10% of total assets)
$70,000	Portfolio assets

(2) *Qualified Thrift Investments:*

(a) QTI includable at full value:

$30,000	Qualifying home loans and mortgage backed securities
+10,000	Home equity loans
$40,000	Subtotal

(b) QTI limited to 15% of Portfolio Assets (15% × $70,000 = $10,500):

$5,000	Investment in service corporation [1]
+5,000 × 2.	Investment in loans for starter home
+5,000 × 2.	Loan to build school in credit needy area
+3,500	$5,000 personal loan limited to 5% of portfolio assets ($70,000 × 5% = $3,500)
$28,500	Subtotal prior to imposition of 15% cap.

(c) Total QTI:

$10,500	Cap on QTI limited to 15% of portfolio assets
+$40,000	Previous subtotal of assets includable in entirety
$50,500	Total QTI

(4) *ATIP.*

$50,500 = 72%.
$70,000

[1] ABC decided to use the investment as QTI. If this investment constitutes 51 percent ownership, or if ABC has actual control over the service corporation, then ABC could have consolidated the service corporation's assets.

Example 4—The special phase-in for certain Federal savings associations.

Institution XYZ is a Federal savings association that was originally chartered as a savings bank in 1980. In 1988, XYZ converted to a Federal savings association charter. As a result, XYZ shall be deemed to have QTI status through August 9, 1995, so long as it complies with certain transitional requirements.

The association ATIP cannot fall below its ATIP (as defined in 12 CFR 563.51(a)) on July 15, 1989. In addition, XYZ must compute the difference between its ATIP on August 9, 1989, and 70 percent. Thereafter, XYZ's ATIP must increase in 25 percent increments until it reaches 70 percent by October 1, 1995. Thus, assuming XYZ's ATIP was 50 percent on July 15, 1989, the association's subsequent ATIP could not fall below 50 percent.

On August 9, 1989, if its ATIP remained at 50 percent, then its ATIP would have to increase to 55 percent by July 1, 1991 (70% − 50% = 20%; 20% × 25% + 5%; 50% + 5% = 55%). Similarly, beginning October 1, 1992, XYZ's ATIP would have to reach and remain at 60 percent. From April 1, 1994 through September 30, 1995, XYZ's ATIP would have to be 65 percent, and beginning October 1, 1995, the association would be required to maintain a 70 percent ATIP to comply with the test.

SUBCHAPTER F—REGULATONS OF SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

3. The authority citation for part 584 continues to read as follows:

Authority: sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended; (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468).

4. Section 584.6 is revised to read as follows:

§ 584.6 Penalty for loss of qualified thrift lender status.

Any company that controls a savings association that is subject to the penalties of § 563.52 of this chapter shall, within one year of the date on which the savings association ceased to be a QTL, register as and be deemed to be a bank holding company subject to all of the provisions of the Bank Holding Company Act of 1956, section 8 of the Federal Deposit Insurance Act, and other statutes applicable to bank holding companies, in the same manner and to the same extent as if the company were a bank holding company and the savings association were a bank, as those terms are defined in the Bank Company Act of 1956.

Dated: March 25, 1991.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 91-9762 Filed 4-25-91; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-174-AD]

Airworthiness Directives; Airbus Industrie Model A310-200 and A310-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD), applicable to all Airbus Industrie Model A310-200 and A310-300 series airplanes, which would have required repetitive visual inspections and electrical continuity tests to detect broken or missing vespel bushes in the flap universal joint assemblies, and replacement of universal joint bushes, if necessary. This action would revise the proposal to cite the latest revision to the service bulletin as the appropriate service information, and would reduce the initial inspection time to prior to the accumulation of 5,500 landings.

DATES: Comments must be received no later than June 3, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, attention: Airworthiness Rules Docket No. 90-NM-174-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-174-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive which would have required repetitive visual inspections and electrical continuity tests to detect broken or missing vespel bushes in the flap universal joint assemblies, and replacement of the universal joint bushes, if necessary, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 2, 1990 (55 FR 40193). That NPRM was prompted by reports of abnormal angular backlash found in some flap drive shaft-universal joint assembles, due to loose, broken, or missing vespel bushes installed inthe universal joint forkends. This condition, if not corrected, could result in flap failure and subsequent partial loss of lift in one wing with associated degradation of controllability of the airplane.

Two comments were received in response to the original notice. Both commenters supported the proposed rule.

However, one commenter, Airbus Industrie requested that the description of the unfsafe condition addressed by this AD action be revised to indicate that the rupture of one worn universal joint due to damaged "vespel" bushes will induce a wing tip brake locking, which could contribute to the rupture of another worn universal joint; this second failure would lead then to a partial loss of lift. The FAA concurs that the description of the unsafe condition may be revised somewhat to clarify it. Accordingly, the description has been revised to indicate that discrepancies in the vespel bushes, if not corrected, could result in "rupture of the flap universal joints, subsequent partial loss of lift in one wing, and reduced controllability of the airplanes."

Airbus Industrie also noted that upon review of new findings on in-service airplanes, it was determined that the intitial inspection threshold must be reduced from 8,000 landings to 5,500 landings, with no change to the repetitive inspections intervals. Since issuance of the notice, Airbus Industrie has issued Revision 2 to Service Bulletin A310-27-2054, dated Novemmber 9, 1990, which reduces the initial compliance time from 8,000 landings to 5,500 landings. The French Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, has classified this service bulletin as mandatory, and has issued Airworthiness Directive 90-092-109(B)R1, dated November 28, 1990. The FAA has examined the findings of the DGAC, reviewed all available information, and concure that the reduction in initial compliance time is necessary. Paragraph A. of the proposed rule has been changed to reduce the initial compliance time for inspection and to cite the latest revision to the Airbus service bulletin as the appropriate service information source.

Since this change expands the scope of the proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional time for public comment.

Paragraph C. has been revised to reflect the current procedure for obtaining approvals for alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

It is estimated that 22 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,050.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Model A310-200 and A310-300 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent rupture of the flap universal joints, subsequent partial loss of lift in one wing, and reduced controllability of the airplane, accomplish the following:

A. Prior to the accumulation of 5,500 landings, or within 300 hours time-in-service after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,500 landings, perform a visual inspection and electrical continuity tests of the flap system universal joint assemblies, in accordance with Airbus Industrie Service Bulletin A310-27-2054, Revision 2, dated November 8, 1988.

Note: The Airbus service bulletin references Lucas/Liebherr Service Bulletin No. 53LA-27-013, dated March 1989, for additional instructions.

B. If any universal joint bushes are missing or broken, replace the bushes prior to further flight, in accordance with Airbus Industrie Service Bulletin A310-27-2054, Revision 2, dated November 8, 1988. After replacement, repeat the inspections required by paragraph A. of this AD at intervals not to exceed 3,500 landings.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 16, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-9829 Filed 4-25-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-70-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, which currently requires inspection, repair if necessary, and modification of certain fuselage frames. This action would reduce the threshold for the initial inspection. This proposal is prompted by reports of cracking on airplanes that have accumulated less than the current threshold of 40,000 cycles. This condition, if not corrected, could result in loss of structural integrity of the fuselage that could result in airplane depressurization.

DATES: Comments must be received no later than June 17, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, attention: Airworthiness Rules Docket No. 91-NM-70-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2772. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-70-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 9, 1990, the FAA issued AD 90-06-16, amendment 39-6545 (55 FR 10048, March 19, 1990), applicable to Boeing Model 727 airplanes, to require inspection, repair if necessary, and modification of certain fuselage frames. That action was prompted by reports of fatigue cracking in certain fuselage frames. This condition, if not corrected, could result in loss of structural integrity of the fuselage that could result in airplane depressurization.

Since issuance of that AD, there have been reports of cracks on fuselage frames of airplanes that had accumulated between 28,000 and 40,000 flight cycles.

The FAA has reviewed and approved Boeing Alert Service Bulletin 727-53A0195, dated May 4, 1989, which describes procedures for visual inspection, repair, and modification of certain fuselage frames.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 90-06-16 with a new airworthiness directive that would reduce the threshold for the initial inspection in accordance with the service bulletin previously described.

There are approximately 1,895 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,172 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,031,360.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding amendment 39-6545 (55 FR 10048, March 19, 1990), AD 90-06-16, with the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracking in the fuselage aft lower lobe frames between body stations (BS) 950 and BS 1166, accomplish the following:

A. Conduct a detailed visual inspection of the fuselage frames in accordance with Part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0195, dated May 4, 1989, prior to the times in subparagraphs A.1. or A.2. below, whichever occurs first.

1. Prior to the times in a. or b. below, whichever occurs later:
   a. Within the next 3,000 flight cycles or 15 months after April 24, 1990 (the effective date of AD 90-06-16, Amendment 39-6545), whichever occurs first; or
   b. Prior to the accumulation of 40,000 flight cycles.
2. Prior to the times in a. or b. below, whichever occurs later:
   a. Within the next 3,000 flight cycles or 15 months after the effective date of this AD, whichever occurs first; or
   b. Prior to the accumulation of 28,000 flight cycles.

B. Repeat the inspection required by paragraph A. at intervals not to exceed 4,000 flight cycles or 15 months, whichever occurs first.

C. If any cracks are detected, repair prior to further flight, in accordance with part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0195, dated May 4, 1989. Skin repairs must be accomplished in accordance with section 53-30-3 of the Boeing 727 Structural Repair Manual.

D. Accomplishment of repairs in accordance with Boeing Alert Service Bulletin 727-53A0195, dated May 4, 1989, constitutes terminating action for the inspections required by paragraphs A. and B. of this AD for the repaired areas only.

E. Accomplish the preventive modification in accordance with part I, paragraph B of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0195, dated May 4, 1989, prior to the later of the times specified in subparagraphs E.1. and E.2. below:

1. Within the next 7,500 flight cycles or 45 months after the effective date of this AD, whichever occurs first; or
2. Prior to the accumulation of 47,500 flight cycles.

F. Accomplishment of the preventive modification required by paragraph E. of this AD constitutes terminating action for the inspections required by this AD for the modified area only.

G. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the manager, Seattle ACO.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 16, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 91-9830 Filed 4-25-91; 8:45am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-67-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes, Including C-9 (Military) Airplanes; Model DC-9-80 (MD-80) Series Airplanes; and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9 series airplanes, which would have required the installation of a "tailcone unsafe" indicating system and modification of the tailcone release actuating mechanism shroud. That proposal was prompted by instances of tailcone departure from airplanes during landing roll. This condition, if not corrected, could result in a hazard to incoming or departing aircraft, particularly during night or low visibility conditions. This amended proposal would add additional airplanes that would require modification of the tailcone release actuating mechanism shroud.

DATES: Comments must be received no later than June 3, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, attention: Airworthiness Rules Docket No. 90-NM-97-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846; attn: Business Unit Manager, Technical Publications C1-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Razzeto, Aerospace Engineer, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425, telephone (213) 985-5355.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-67-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations, which would have superseded AD 87-13-09, amendment 39-5865 (52 FR 24962, July 2, 1987), applicable to McDonnell Douglas Model DC-9 series airplanes, to require installation of a "tailcone unsafe" indicating system was published as a notice of proposed rulemaking (NPRM) in the Federal Register on July 10, 1990 (55 FR 28223). That NPRM was prompted by numerous reports of inadvertent tailcone deployments. This condition, if not corrected, could result in an inadvertently deployed tailcone becoming a hazard to other aircraft using the runway, particularly during night or low visibility conditions.

One commenter requested that the applicability statement be changed to add "all-cargo" as an airplane configuration to which the AD is applicable. The FAA concurs that the omission is misleading, since the rule is intended to apply to airplanes in an "all-cargo" configuration. Accordingly, the applicability statement of the proposed rule has been revised to include "all-cargo" configurations, since the AD addresses requirements for "all-cargo" configured airplanes. Additionally, paragraph B.2. of this supplemental NPRM has been revised to clarify that the tailcone release system must be reactivated and the procedures specified in paragraph B.1. must be accomplished prior to further flight upon conversion from an all-cargo configuration to a passenger or passenger/cargo configuration.

Since the issuance of the NPRM, the FAA has determined that the applicability of the rule also must be expanded to include additional Model DC-9-80 series airplanes and Model MD-88 airplanes that were delivered subsequent to the issuance of Revision 2 of McDonnell Douglas Service Bulletin 53-199, and which must be required to accomplish the modification of the tailcone release actuating mechanism shrouds (specified in proposed paragraph C.) As written, the NPRM would have limited the applicability only to those airplanes listed in Revision 2 of the service bulletin. The applicability statement of the Supplemental NPRM has been revised by deleting the reference to airplanes listed in the service bulletin; with this revision, the proposed AD would be applicable to all Model DC-9-80 series airplanes and Model MD-88 airplanes. Consequently, the economic analysis paragraph, below, has been revised to include these additional airplanes. There are approximately 1,778 airplanes in the worldwide fleet with the affected design.

Since the changes described above would expand the scope of the proposed rule, the FAA has determined that it is necessary to revise the notice accordingly and provide additional time for public comment.

Paragraph E. has been revised to reflect the current method for requesting approvals for alternative methods of compliance.

Additionally, the economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

There are approximately 1,778 McDonnell Douglas Model DC-9 series airplanes (including C-9 Military) airplanes, Model DC-9-80 (MD-80) series airplanes, and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 900 airplanes of U.S. registry would be affected by this AD, that it would take approximately 38 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost of parts to accomplish this modification is estimated to be $1,800 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,321,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising the notice of proposed rulemaking, Docket No. 90-NM-67-AD, FR Doc. 90-16066, published in the Federal Register on July 10, 1990 (55 FR 28223), as follows:

McDonnell Douglas: Applies to all Model DC-9 series (including C-9 military) airplanes, Model DC-9-80 (MD-80) series airplanes, and Model MD-88 airplanes; operating in passenger, passenger/cargo, or all-cargo configurations; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent unexpected tailcone deployment on landing, accomplish the following:

A. Within 24 months after August 8, 1987 (the effective date of amendment 39-5865, AD 87-13-09), install a visual indicating means, which is approved by the Manager, Los Angeles, Aircraft Certification Office (ACO), FAA Transport Airplane Directorate, that will signal the appropriate flight crew members when the tailcone is not attached to the airplane.

Note: Any modification to install a tailcone missing indicating system that was previously determined by the FAA to comply with AD 87-13-09, meets the requirements of this paragraph.

Note: Modification is not required on all-cargo configured airplanes for which an alternate means of compliance was established for AD 87-13-09, in which the tailcone release system has been deactivated and the tailcone latches are positively retained in the latched position in a manner acceptable to the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. However, the tailcone release system must be reactivated prior to further flight upon conversion to a passenger or passenger/cargo configuration.

B. Within 24 months after the effective date of this amendment, for airplanes listed in McDonnell Douglas Service Bulletin 53-199, Revision 2, dated March 17, 1989, accomplish either paragraph 1. or 2. below, as applicable:

1. Modify airplanes in a passenger or passenger/cargo configuration by installing the "tailcone unsafe" indicating system in accordance with paragraph 2. of the Accomplishment Instructions of McDonnell Douglas Service Bulletin 53-199, Revision 2, dated March 17, 1989; or

2. Modify airplanes in an all-cargo configuration by deactivating the tailcone release system in a manner approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. However, the tailcone release system must be reactivated and the procedures specified in paragraph B.1. of this AD must be accomplished prior to further flight upon conversion to a passenger or passenger/cargo configuration.

C. For Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes: Within 24 months after the effective date of this amendment, modify the tailcone release actuating mechanism shroud by installing a cover over the slot so the mechanism is not exposed to the cabin. This modification must be accomplished in a manner approved by the Manager, Los Angeles, ACO, FAA, Transport Airplane Directorate.

D. Upon accomplishment of the procedures specified in paragraph B.1. of this AD, the requirements of paragraph A. of this AD are no longer applicable and the visual indicating means installed in accordance with that paragraph may be removed.

E. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector who may concur or comment and then send it to the Manager, Los Angeles ACO.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Publications, C1-HCW (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on April 16, 1991.

Darrell M. Pederson,

Acting Manager, Transportation Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-9926 Filed 4-25-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ASO-13]

Proposed Revision of Transition Area, Punta Gorda, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Punta Gorda, FL Transition Area. A new standard instrument approach procedure (SIAP) has been developed to serve Runway 3 at the Charlotte County Airport based on the Punta Gorda VHF Omnidirectional Range (VOR). This proposed action would add an arrival area extension south of the airport in order to provide controlled airspace protection for instrument flight rules (IFR) aircraft executing the SIAP. Additionally, a minor correction would be made in the latitude/longitude coordinate position of the Charlotte County Airport.

DATES: Comments must be received on or before: June 3, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 91-ASO-13, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on the notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ASO-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR

part 71) to revise the Punta Gorda, FL Transition Area. A new VOR standard instrument approach procedure has been developed to serve Runway 8 at the Charlotte County Airport. This action would add an arrival area extension south of the airport to provide controlled airspace protection for IFR aircraft executing the new SIAP. Also, a minor correction would be made in the latitude/longitude coordinate position of the Charlotte County Airport. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on the substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Punta Gorda, FL [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Charlotte County Airport (lat. 26°55'02"N., long. 81°59'29"W.); within 3 miles each side of the Punta Gorda VOR (lat. 26°54'59"N., long. 81°59'29"W.) 036° and 190° radials, extending from the 6.5-mile radius area to 8.5 miles northeast and south of the VOR.

Issued in East Point, Georgia, on April 3, 1991.

Walter E. Denley,

Acting Manager, Air Traffic Division, Atlanta, Georgia.

[FR Doc. 91-9916 Filed 4-25-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. 86N-0451]

New Animal Drugs for Use in Animal Feeds; Removal of Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Reproposed rule.

SUMMARY: The Food and Drug Administration (FDA) is reproposing to remove § 558.20 *Drugs used in medicated feeds in use before January 1, 1958, which are not otherwise listed; interim listing* (21 CFR 558.20) because the section does not provide an appropriate basis upon which to approve medicated feed applications and because the drugs now listed there, arsanilate sodium and arsanilic acid for certain uses, are not the subject of approved new animal drug applications (NADA's) for the indications of use listed. In a final rule published elsewhere in this issue of the Federal Register, FDA is removing the portions of § 558.20 that pertain to butynorate (dibutyltin dilaurate), nitarsone, neomycin sulfate, phenothiazine, and piperazine and is codifying certain uses of arsanilic acid and butynorate (dibutyltin dilaurate).

DATES: Comments by June 25, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (HFV-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4438.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 18, 1986 (51 FR 45346), FDA proposed to remove § 558.20 *Drugs used in medicatd feeds in use before January 1, 1958, which are not otherwise listed; interim listing* because the section did not provide an appropriate basis upon which to approve medicated feed applications and because several drugs listed were not the subject of approved NADA's. FDA also proposed to: (1) Transfer the provisions for arsanilate sodium and arsanilic acid in § 558.20 to §§ 558.60 and 558.62, respectively, to reflect approval of NADA's for these drugs for the uses listed in § 558.20; (2) establish new § 558.108 for butynorate to reflect its approved conditions of use; and (3) remove the provisions for the use of neomycin sulfate, phenothiazine, and piperazine because there are no currently approved NADA's providing for their use in the manufacture of Type A medicated articles, and delete their listing as sole ingredients in the table in § 558.4(d) Category II. Nitrasone was to be removed from § 558.20 because it is covered by an approved NADA and is the subject of § 558.369 Nitarsone, a regulation published under section 512(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(i)).

Elsewhere in this issue of the Federal Register, FDA is issuing a final rule based on the December 18, 1986 proposal that removes those portions of § 558.20 pertaining to butynorate (dibutyltin dilaurate), nitarsone, neomycin sulfate, phenonthiazine, and piperazine. FDA is not removing certain portions of § 558.20 pertaining to arsanilic acid and arsanilate sodium. FDA proposed to delete arsanilate sodium and arsanilic acid from § 558.20 and to codify in §§ 558.60 and 558.62, respectively, the conditions of use listed in § 558.20 based on its belief that these conditions reflected approved conditions of use. After further review of its NADA records, however, FDA has now tentatively concluded that NADA 8-966 for arsanilate sodium for use in swine feed was voluntarily withdrawn by a letter dated November 12, 1973 (Ref. 1). The agency acknowledged this withdrawal by a letter dated January 16, 1974 (Ref. 2). FDA has also tentatively concluded that arsanilic acid for swine dysentery, which is the subject of NADA 8-019, is not approved at the 0.025- to 0.04-percent use level. The NADA sponsor included labeling for this level with a submission dated November 13, 1972 (Ref. 3). On October 19, 1973, FDA informed the sponsor that the NADA for the dysentery claim at the 0.025- to 0.04-percent use level was incomplete, because it lacked satisfactory residue data (Ref. 4). The NADA sponsor also stated in its November 12, 1973, letter (Ref. 1) that NADA 8-019 was for PRO-GEN 90 (90 grams per pound (g/lb) (20 percent) arsanilic acid), and that labeling for PRO-GEN 227 (227 g/lb (50 percent) arsanilic acid), PRO-GEN (454 g/lb (100 percent) arsanilic acid), and PRO-GEN SODIUM (454 g/lb arsanilate sodium) would be deleted. FDA acknowledged these changes in its January 16, 1974 letter (Ref. 2).

Under section 512(i) of the act, when a new animal drug is approved, the agency is to publish a notice which upon publication becomes a regulation. The notice is to include information upon the basis of which such animal drug is approved including, among other things, the name and address of the applicant, the conditions and indications of use, and for drugs used in animal feed, appropriate purposes and conditions of use applicable to any animal feed for use in which such drug is approved. Because FDA is unaware of any approved NADA for arsanilate sodium in swine feed or for arsanilic acid at 0.025 to 0.04 percent in swine feed, the agency is not codifying these drugs as originally proposed.

FDA is now proposing to remove § 558.20 because it is unaware of any approved NADA for arsanilate sodium in swine feed or for arsanilic acid for the indications of use listed, and because the regulation is inappropriate for the purposes of identifying, in a medicated feed application filed under section 512(m) of the act, a regulation published under section 512(i) of the act. Anyone claiming to hold an approved NADA for such products is requested to submit evidence to substantiate the approval. If an approved NADA is shown to exist for one or more of those indications, § 558.20 will be removed and the approved uses codified elsewhere in 21 CFR part 558.

I. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (a)(9) that its action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

II. Economic Impact

The agency has examined the economic effects of this proposed rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or the regulatory flexibility Act (Pub. L. 96-354). The proposed rule would not impose new or different requirements on industry, because it would revise the regulations to reflect the current legal status of arsanilate sodium and arsanilic acid Type A medicated articles. The agency, therefore, concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Furthermore, the agency certifies that the proposed rule will not have a significant impact on a substantial number of small business entities, as defined in the Regulatory Flexibility Act.

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter dated November 12, 1973, from Patrick C. Matchette, Government Registration, Agricultural and Veterinary Products Division, Abbott Laboratories, North Chicago, IL 60064, to Paul D. Lepore, Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852.

2. Letter dated January 16, 1974, from Paul Lepore, Bureau of Veterinary Medicine, to Patrick C. Matchette, Agricultural and Veterinary Products Division, Abbott Laboratories, North Chicago, IL 60064.

3. Submission dated November 13, 1972, Patrick C. Matchette, Government Registration, Agricultural and Veterinary Products Division, Abbott Laboratories, North Chicago, IL, to Jack C. Taylor, Nonruminant Nutrition Branch, Division of Nutritional Science, Bureau of Veterinary Medicine, 5600 Fishers Lane, Rockville, MD 20852.

4. Letter dated October 19, 1973, from Paul D. Lepore, Bureau of Veterinary Medicine, to Patrick C. Matchett, Agricultural and Veterinary Products Division, Abbott Laboratories, North Chicago, IL 60064.

IV. Comments

Interested persons may, on or before June 25, 1991, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in bracket in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 558 be amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.20 [Removed]

2. Section 558.20 Drugs used in medicated feeds in use before January 1, 1958, which are not otherwise listed; interim listing is removed from subpart A.

Dated: March 13, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-9914 Filed 4-25-91; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 866

[Docket No. 91N-0063]

Immunology and Microbiology Devices; Revocation of the Exemption from Premarket Notification; Blood Culturing System Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the microbial growth monitor classification regulation, 21 CFR 866.2560, by revoking the exemption from the premarket notification procedures for blood culturing system devices used in testing blood and other normally sterile body fluids for bacteria, fungi, and other microorganisms. Devices using traditional manual methods employing turbidity measurements or direct counts, included under this classification regulation, will retain the exemption. The revocation of the exemption for blood culturing system devices is necessary because of the importance of these devices in providing rapid diagnosis of potentially life-threatening conditions.

DATES: Written comments by June 25, 1991 Manufacturers or importers who have introduced blood culturing system devices into commerce since the exemption became effective will be required to submit to FDA premarket notification. FDA intends to require such submissions within 60 days after the final rule based upon this proposal becomes effective.

ADDRESSES: Written comments may be sent to the Dockets Management Branch

(HFA-305), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4674.

SUPPLEMENTARY INFORMATION: Blood culturing system devices are diagnostic devices used in clinical settings to detect the presence of bacteria, fungi, or other microorganisms in blood samples or in samples of other body fluids that are normally sterile. The process involves testing for these microorganisms by inoculating a blood sample directly into broth media or by inoculating a processed blood concentrate onto agar media. Microbial growth is monitored either by traditional manual methods or by instrument assisted monitoring of metabolic activities, such as the increased presence of carbon dioxide or changes in fluorescence, bioluminescence, or ATPase activities.

Blood culturing system devices were classified into class I by regulation § 866.2560 Microbial growth monitor (21 CFR 866.2560) on November 9, 1982 (47 FR 50614 at 50626). In the Federal Register of June 12, 1989 (54 FR 25042), FDA published a final rule exempting microbial growth monitors, subject to certain limitations, from the requirement of premarket notification. FDA proposes to revoke this exemption because of safety and effectiveness considerations. On reconsideration blood culturing system devices do not meet the criteria for exemption identified in the regulation published in the Federal Register of June 12, 1989.

The medical/scientific literature indicates problems with the device. The literature shows device-related problems including: (1) Failure of media to support growth of certain organisms; (2) false negative and false positive results; and (3) cross contamination of cultures (Refs. 1 to 5). Since these devices are relied upon for rapid diagnosis of bacterial or fungal infection, to determine appropriate treatments, speed and accuracy of diagnosis may be urgent, because bacterial or fungal infections of the bloodstream may be life threatening. Malfunction of these devices, therefore, could result in misdiagnosis or a delayed diagnosis, thus impeding the success of treatment and endangering patients.

Because of safety concerns presented by the device, FDA believes that revocation of the exemption from the premarket notification procedures is necessary to ensure that FDA will be able to monitor the introduction into commerce, by manufacturers and importers, of blood culturing system devices, and to determine whether the devices are as safe and effective as legally marketed devices. Devices using traditional manual methods employing turbidity measurement or direct counts that are presently exempt from the premarket notification requirement under the classification regulation (§ 866.2560) are not affected by this proposed regulation. In sum, FDA proposes to amend § 866.2560 by revising paragraph (b), as set forth below, to partially revoke the exemption from premarket notification currently described therein.

Manufacturers or distributors who have introduced blood culturing system devices into interstate commerce without premarket notification to FDA must submit a premarket notification for their respective devices within 60 days after the revocation becomes final so that FDA may classify them.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Aronson, M. D. and D. H. Bor, "Blood Cultures," *Annals of Internal Medicine*, 106:246–253, 1987.

2. Thorpe, T. C. et al., "BacT/Alert: an Automated Colorimetric Microbial Detection System," *Journal of Clinical Microbiology*, 28:1608–1612, 1990.

3. Wallis, C., and J. L. Melnick, "Rapid, Colorimetric Method for the Detection of Microorganisms in Blood Culture," *Journal of Clinical Microbiology*, 21:505–508, 1985.

4. Washington, II, J. A., and D. M. Ilstrup, "Blood Cultures: Issues and Controversies," *Reviews of Infectious Diseases*, 8:792–802, 1986.

5. Welch, W. D. et al., "Variability in CO_2, O_2, and pH levels in Blood Culture Bottles from Five Different Manufacturers," *Journal of Clinical Microbiology*, 20:881–883, 1984.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (a)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully examined the economic impact of this proposed rule and has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (Pub. L. 96-395). In accordance with section 3(g)(1) of Executive Order 12291, the impact of this proposed rule has been analyzed, and it has been determined that the proposed rule is not a major rule as defined in section 1(b) of the Executive Order.

The proposed rule would simply bring any manufacturer initial distributor of a blood culturing system device under the same requirements that most other manufacturers of medical devices must meet. The original implementation of the premarket notification regulation involved assessment of their economic impact, and so no special analyses are needed for this one segment of the device manufacturing community.

Interested persons may, on or before June 25, 1991, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 866 be amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 866.2560 is amended by revising paragraph (b) to read as follows:

§ 866.2560 Microbial growth monitor.

* * * * *

(b) *Classification.* Class I. With the exception of blood culturing system devices, this device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. Blood culturing system devices which are used in testing for bacteria, fungi, and other microorganisms in blood and other normally sterile body fluids are not exempt from the premarket notification procedures.

Dated: April 1, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-9747 Filed 4-25-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting, Reclamation Fee, Basis for Coal Weight Determination

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is reopening until June 25, 1991, the public comment period on the notice of inquiry it published in the March 12, 1991 Federal Register (56 FR 10404). The notice (1) clarified the statutory and regulatory requirements for correctly determining the AML fee liability of operators and (2) sought comments regarding the application of the AML fee procedures to a specific factual situation where an independent operator delivers run-of-mine coal to a preparation plant; the coal is actually cleaned, and the purchaser pays the operator on the basis of an estimated clean coal tonnage yield from the delivered run-of-mine coal.

DATES: OSM will accept written comments on this issue until close of business on June 25, 1991.

ADDRESSES: Hand deliver written comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 1331-L, 1100 L Street, NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131-L, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jane E. Robinson, (202) 343-2826.

SUPPLEMENTARY INFORMATION: OSM published a notice in the March 12, 1991, (56 FR 10404) Federal Register to provide the public with an opportunity to comment on common practice(s) used by the coal industry to determine the weight of coal an operator sells to a purchaser. Comments received in response to that notice would assist OSM in assessing the impact of its current rule on the coal industry and the AML fund. OSM would rely, in part, on information obtained through this process to substantiate a basis for any change in its policy on the determination of coal weight subject to the reclamation fee. That notice announced a public comment period on the notice of inquiry closing April 11, 1991. In response to a request for additional time so that the affected industry can obtain information pertinent to questions posed in the notice, OSM is extending the closing date of the public comment period by 60 days.

Dated: April 18, 1991.

Harry M. Snyder,

Director.

[FR Doc. 91-9856 Filed 4-25-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BPD-681-CN]

RIN 0938-AE59

Medicare Program; Prospective Payment System for Inpatient Hospital Capital-Related Costs; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule; correction.

SUMMARY: In the February 28, 1991 issue of the Federal Register (FR Doc. 91-4474), (56 FR 8476), we propose to revise the Medicare payment methodology for inpatient hospital capital-related costs for hospitals paid under the prospective payment system. We would replace the current reasonable cost-based payment methodology with a prospective payment methodology for capital-related costs. This notice corrects errors made in that document.

FOR FURTHER INFORMATION CONTACT: Barbara Wynn (301) 966-4529.

SUPPLEMENTARY INFORMATION:

We are making the following corrections to the February 28, 1991 proposed rule (56 FR 8476):

1. On page 8482, in the second column, lines one and two, "financial or other investments" is changed to read "current assets". In line three, "hospital" is changed to read "and other long-term". In line five, "investment in non-capital" is changed to "current".

2. On page 8485, in the first column, in the table titled Geographic Adjustment Factor, the following changes are made:

• The formula for Rural and other Urban Areas is changed as follows:

From: WI [.48]

To: WI [.49]

• The formula for Large Urban Areas is changed as follows:

From: (1.016) (WI [.48])

To: (1.016) (WI [.49])

3. On page 8486, in the second column, in line four, the ratio of estimated FY 1992 Medicare capital costs to the aggregate payments based on the national average cost per case and the payment adjustments is changed from 0.7180 to 0.7028. In line five of the same paragraph, 0.7180 is changed to 0.7028.

4. On page 8488, in the first column, in the third full paragraph, in line four, "calendar" is changed to "fiscal".

5. On page 8488, technical errors were made in the update factors for the following 12-month base year cost reporting periods. The published incorrect update factors are shown in the second column and the correct update factors are shown in the third column.

COMPOUNDED UPDATE FACTORS FOR HOSPITAL-SPECIFIC RATE

12-month base year cost reporting period ending	Published update factor	Corrected update factor
October 31, 1989	1.16101	1.16836
November 30, 1989	1.15371	1.16101
December 31, 1989	1.14646	1.15371
January 31, 1990	1.13926	1.14646
February 31, 1990	1.13210	1.13926
March 31, 1990	1.12523	1.13209
April 30, 1990	1.12040	1.12523
May 31, 1990	1.11459	1.12040
June 30, 1990	1.10882	1.11459
July 31, 1990	1.10306	1.10882
August 31, 1990	1.09736	1.10306
September 30, 1990	1.09168	1.09736

6. On page 8494, in the third column under 1. Payment Methodology Determination Examples, Example 1, Cost report data, the Base period cost reporting ending date is changed from 10/31/89 to 9/30/90. Total Medicare inpatient capital costs is changed from $800,000 to $846,410. The FY 1992 cost reporting period ending date is changed from 10/31/92 to 9/30/92.

7. On page 8495, in the first column under Rate adjustment factors, the cost reporting period ending date is changed from 10/31/89 to 9/30/90. The update factor is changed from 1.16101 to 1.09736. In section a. Hospital-specific rate calculation, the following changes are made:

• The allowable cost per discharge in base period is changed as follows:

From: ([illegible] + 1.[illegible]).....$[illegible]
To: ([illegible] / 1.[illegible]).....$[illegible]

• The CMI adjustment is changed as follows:

From: ($800 + 1.2000).....$[illegible]
To: ($[illegible] / 1.2000).....706.34

• The update to FY 1992 is changed as follows:

From: ($[illegible] × 1.16101).....774.01
To: ($706.34 × 1.09736).....774.01

8. On page 8495, in the first column under section b. Adjusted Federal capital rate comparison calculation, the Adjustment for outlier reduction factor reflected in Federal rate is changed from ($471.54 + 0.9490) to ($471.54 / 0.9490).

9. On page 8495, in the second column under Example 2, Cost Report Data, the Base period cost report ending date is changed from 10/31/89 to 9/30/90. Total Medicare inpatient capital costs is changed from $339,500 to $358,140. The FY 1992 cost reporting period ending date is changed from 10/31/92 to 9/30/92. Total capital cost is changed from $662,000 to $762,000. New capital cost is changed from $342,000 to $442,000.

10. On page 8495, in the third column under section a. Hospital-Specific Rate Calculation, the following changes are made:

• The allowable cost per discharge in base period is changed as follows:

From: ($338,500 / 1,000).....$338.50
To: ($358,140 / 1,000).....$358.14

• The CMI adjustment is changed as follows:

From: ($338.50 / 1.030).....$367.73
To: ($358.14 / 1.100).....$325.58

• The ending date for the update to FY 1992 for cost reports ending 10/31/89 is changed from 10/31/89 to 9/30/90.

• The update for FY 1992 is changed as follows:

From: ($307.73 × 1.16101).....$357.28
To: ($325.58 × 1.09736).....$357.28

11. On page 8496, in the first column, under section d. Hold-Harmless Payment Methodology, Hospital Ratio of New Capital Costs to Total Capital Costs in FY 1992, the following changes are made:

• FY 1992 New capital costs is changed from $342,000 to $442,000.

• FY 1992 Total capital costs is changed from $662,000 to $762,000.

• The ratio of new capital costs to old capital costs is changed as follows:

From: ($342,000 / $662,000).....0.5166
To: ($442,000 / $762,000).....0.5801.

• The hospital-specific ratio is changed from (0.5166) to (0.5801).

12. On page 8499, in the first column, in line 12 of the second full paragraph, "casts" is changed to read "costs."

13. On page 8502, in the second column, in line 16 of the first full paragraph, "end" is changed to read "tend."

14. On page 8506, in Scenarios 1 through 3 of table 3, the negative signs were omitted for all numbers in the rows labelled "Average dollar change per case" and "Average Percentage Change." All the numbers shown below in portions of Scenarios 1 through 3 of table 3 have parentheses around them to indicate that they are negative figures.

TABLE 3—IMPACT OF CAPITAL PROSPECTIVE PAYMENT SYSTEM ON HOSPITALS PAID UNDER HOLD-HARMLESS METHODOLOGY

[Payment Change per Case (Dollars) Compared to 85 Percent of Reasonable Cost Reimbursement]

	Percent of hospitals			
	FY 1992	FY 1993	FY 1994	FY 1995
Scenario 1: No change in new capital costs				
Average dollar change per case	(62.27)	(79.80)	(105.69)	(146.47)
Average percentage change	(6.5)	(7.8)	(10.6)	(12.5)
Scenario 2: 10 percent reduction in new capital costs beginning in FY 1994				
Average dollar change per case	(62.27)	(79.80)	(95.69)	(117.10)
Average percentage change	(6.5)	(7.8)	(9.8)	(10.2)
Scenario 3: 20 Percent reduction in new capital costs beginning in FY 1994				
Average dollar change per case	(62.27)	(79.80)	(83.46)	(91.23)
Average percentage change	(6.5)	(7.8)	(7.8)	(8.2)

§ 412.320 (Amended)

15. On page 8515, in line one in the first column, in § 412.320(b), "of" is amended to read "for."

Table 2a

16. On pages 8517 through 8522, the heading for Table 2a is changed from "Table 2a—Geographic Adjustment Factors Wage Index For Urban Areas" to Table 2a.—"Geographic Adjustment Factors For Urban Areas."

Table 2c

17. On page 8522, computational errors were made in the Geographic adjustment factor column. The published geographic adjustment factors are shown in column three and the correct geographic adjustment factors are shown in column four.

TABLE 2c.—GEOGRAPHIC ADJUSTMENT FACTOR FOR RURAL COUNTIES WHOSE HOSPITALS ARE DEEMED URBAN

County	Urban area	Published geographic adjustment factor	Corrected geographic adjustment factor
Fredericksburg City, VA	Washington, DC-MD-VA	1.6000	1.0000
Jefferson Co., WV	Washington, DC-MD-VA	1.6000	1.0000

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: April 22, 1991.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 91-9626 Filed 4-25-91; 8:45 am]

BILLING CODE 4120-01-M

Notices

Federal Register
Vol. 56, No. 81
Friday, April 26, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Office of the Secretary

April 1, 1990 Census Counts of the Voting Age Population

Under the requirements of the 1976 amendment to the Federal Election Campaign Act, title 2, United States Code, section 441a(e), I hereby give notice that the April 1, 1990 census count of the voting age population for each state and the District of Columbia is as shown in the following table.

Note: The 1990 population counts set forth herein are subject to possible correction for undercount or overcount. The U.S. Department of Commerce is considering whether to correct these counts and will publish corrected counts, if any, not later than July 15, 1991.

I have certified these counts to the Federal Election Commission.

Dated: April 16, 1991.

Robert A. Mosbacher,

Secretary of Commerce.

POPULATION OF VOTING AGE, BY STATE: APRIL 1, 1990 CENSUS

Area	Population 18 and over
United States	185,105,441
Alabama	2,961,799
Alaska	377,699
Arizona	2,664,109
Arkansas	1,729,594
California	22,009,298
Colorado	2,433,126
Connecticut	2,537,535
Delaware	502,827
District of Columbia	489,808
Florida	10,071,689
Georgia	4,750,913
Hawaii	826,103
Idaho	698,344
Illinois	8,484,236
Indiana	4,666,195
Iowa	2,057,875
Kansas	1,815,990
Kentucky	2,731,202
Louisiana	2,992,704

POPULATION OF VOTING AGE, BY STATE: APRIL 1, 1990 CENSUS—Continued

Area	Population 18 and over
Maine	916,926
Maryland	3,619,227
Massachusetts	4,663,350
Michigan	6,836,532
Minnesota	3,208,316
Mississippi	1,828,455
Missouri	3,602,247
Montana	576,961
Nebraska	1,149,373
Nevada	904,865
New Hampshire	830,497
New Jersey	5,930,726
New Mexico	1,068,328
New York	13,730,906
North Carolina	5,022,489
North Dakota	463,415
Ohio	8,047,371
Oklahoma	2,308,578
Oregon	2,118,191
Pennsylvania	9,086,833
Rhode Island	777,774
South Carolina	2,566,496
South Dakota	497,542
Tennessee	3,660,561
Texas	12,150,671
Utah	1,095,406
Vermont	419,675
Virginia	4,662,620
Washington	3,605,305
West Virginia	1,349,900
Wisconsin	3,602,787
Wyoming	318,063

Note: The 1990 population counts set forth herein are subject to possible correction for undercount or overcount. The U.S. Department of Commerce is considering whether to correct these counts and will publish corrected counts, if any, not later than July 15, 1991.

[FR Doc. 91-9962 Filed 4-25-91; 8:45 am]

BILLING CODE 3510-BP-M

International Trade Administration

[A-588-019]

Cyanuric Acid and Its Chlorinated Derivatives; From Japan Final Results of Antidumping Duty Administrative Reviews, and Revocation on Trichloro Isocyanuric Acid and Revocation in Part on Dichloro Isocyanurates

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews, and revocation on Trichloro Isocyanuric Acid and revocation in part on Dichloro Isocyanurates.

SUMMARY: On January 3, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan. The review covers two manufacturers/exporters of this merchandise to the United States, and two consecutive periods from April 1, 1987, through March 31, 1989, for the order on cyanuric acid, and from April 1, 1987, through November 20, 1988, for the orders on dichloro isocyanurates and trichloro isocyanuric acid. It also covers the two trading companies through which the respondents sell in the United States, Mitsubishi Corporation and Toyo Menka Kaisha, Ltd. We published a tentative determination to revoke the orders on dichloro isocyanurates and trichloro isocyanuric acid on November 21, 1988.

We gave interested parties an opportunity to comment on the preliminary results. At the request of Monsanto Company, Mitsubishi Corporation, Mitsubishi International, and Shikoku Chemicals Corporation, we held a hearing on February 19, 1991. Based on our analysis of the comments received and the correction of a clerical error, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 239) its Preliminary Results of Antidumping Duty Administrative Reviews and Intent to Revoke on Trichloro Isocyanuric Acid and to Revoke in Part on Dichloro Isocyanurates. The orders on cyanuric acid and its chlorinated derivatives were published on April 27, 1984 (49 FR 18148). The Department has now completed the administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of cyanuric acid (also known as isocyanuric acid) and its chlorinated derivatives (dichloro isocyanurates and trichloro isocyanuric acid) used in the swimming pool trade. We have categorized the merchandise as cyanuric acid, dichloro isocyanurates (DCA), and trichloro isocyanuric acid (TCA), which we consider to be separate classes or kinds of merchandise. These products are sold in three basic consistencies: powder, granular, and tablet. This merchandise is currently classifiable under Harmonized Tariff System (HTS) item number 2933.69.50.50. The HTS item number is provided for convenience and Customs purposes only. The written description remains dispositive.

The reviews cover Shikoku Chemicals Corporation (Shikoku), Nissan Chemical Industries (Nissan), Mitsubishi Corporation (Mitsubishi), and Toyo Menka Kaisha, Ltd. (Toyo Menka), and the two consecutive periods April 1, 1987, through March 31, 1989, for the order on cyanuric acid, and from April 1, 1987, through November 20, 1988, for the orders on DCA and TCA. The review does not cover cyanuric acid manufactured by Nissan because Nissan was excluded from the order on cyanuric acid. During the review periods Nissan exported all of its merchandise subject to the order through Toyo Menka, and Shikoku exported all its merchandise subject to the order through Mitsubishi.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of Monsanto Company (Monsanto), Shikoku, Mitsubishi, and Mitsubishi International, we held a public hearing on February 19, 1991. We received comments from Monsanto and Shikoku, and rebuttal comments from Monsanto, Shikoku, and Nissan.

Comment 1

Monsanto argues that Shikoku and Nissan have created a fictitious market in Japan for their granular DCA and TCA (collectively "CD") products by keeping the price of the granular form of the subject merchandise artificially low, while raising the price of the powder and tablet forms of the subject merchandise. Monsanto alleges that evidence of record indicates that the powder and tablet forms of CD have had price movements different from that of the granular CD in the home market. This indicates, pursuant to section 773(a)(5) of the Tariff Act, that the respondents have created a fictitious market. This evidence is corroborated, in the case of Nissan, by volume shifts that indicate that Nissan has reduced its sales quantity of granular CD, and increased its sales quantity of powder and tablet CD. Accordingly, the Department should disregard all sales that create a fictitious market.

Respondents argue that differences in price movements between the granular form and the powder and tablet forms are not sufficient to establish the existence of a fictitious market. Shikoku argues that there must be some evidence that prices are not a fair or reliable measure of FMV. Nissan, citing *Timken Co.*, v. *United States*, 673 F. Supp. 495, 504–505 (CIT 1987), argues that a fictitious market can only exist where there are "pretended sales," sales that have not "actually [taken] place," or sales that are not otherwise "bona fide" or legitimate.

Furthermore, both respondents suggest that Monsanto has been highly selective in its use of data to substantiate its fictitious market allegation. They argue that the evidence of record as a whole does not indicate the existence of price movements for powder and tablet CD substantially different from those for granular CD. Nissan argues that where prices of powder and tablet CD did rise relative to granular CD, this data must be seen in the context of overall price trends and relative volumes being sold.

Department's Position

Since publication of the preliminary results of review, we examined the evidence submitted by the petitioner, and have concluded that it is insufficient to justify conducting a fictitious market inquiry. Based on our examination of prices and sales volumes, we conclude that the price movements of granular CD and powder and tablet CD are not the result of an attempt to create a fictitious market. Key to our interpretation of the data was the fictitious market inquiry the Department undertook during the third and fourth administrative reviews (April 1, 1985, through March 31, 1986, and April 1, 1986, through March 31, 1987, respectively), in which we concluded that neither respondent had created a fictitious market for its granular product. We set forth our reasons for this conclusion in the final results of review published in the **Federal Register** on January 18, 1990 (55 FR 1690). Our analysis of the evidence in these reviews convinces us that price movements during review periods five and six (for the orders on CD, April 1, 1987, through March 31, 1988, and April 1, 1988, through November 20, 1988, respectively) have changed little since review periods three and four. Thus, we see no need to conduct a fictitious market inquiry again for reviews five and six. A more thorough discussion of our evaluation of the evidence for reviews five and six is contained in a memorandum to the file dated April 4, 1991.

Comment 2

Monsanto argues that the Department should include in its analysis of the fictitious market issue the CD products that both respondents sell in the home market that contain chemical additives in addition to the CD. The chemical additives consist of binders, lubricants, and dissolving agents, and serve the purpose of either tabletizing the product, or speeding or slowing the rate of dissolution. In Monsanto's view, these additional additives do not change the essential chemical nature of the products, or the purposes which they can serve. Thus, they should be considered a different form of the subject merchandise, and relevant to the fictitious market issue.

Shikoku argues that due to their different composition and the different uses to which the products are suited, the CD products containing additional chemical additives are not different forms of the subject merchandise, but different chemical products entirely.

Nissan agrees with Shikoku. It argues that the time-controlled release of chlorine effected by the additives is an essential function of the product, making it unsuitable for certain markets. Because the markets for these products are different from those of CD granules, prices in those markets bear no necessary relationship to prices for CD granules.

Department's Position

In the Final Results of Antidumping Duty Administrative Review covering the third and fourth review periods (55 FR 1690; January 18, 1990), we stated:

> We are not necessarily persuaded that price movements for the non-chemically-identical merchandise (tablet TCA and DCA with chemical additives) are relevant for determining whether a fictitious market exists in the home market for the chemically-identical granular product. In particular, we are concerned that such merchandise might not be considered "similar" within the meaning of section 771(16). If it were not similar merchandise, then it could not serve as an alternative basis for computing foreign market value. If we cannot use the prices of non-similar merchandise as the basis for foreign market value, we see no reason to disregard home market sales for chemically

identical merchandise based upon trends for non-similar merchandise.

Our position in these reviews remains unchanged from that of review periods three and four. Nevertheless, to give the petitioner's case the fullest possible hearing, we did include the non-chemically identical products in our analysis of the fictitious market issue; doing so did not alter the conclusions stated in our response to comment #1.

Comment 3

Monsanto argues that the Department should not allow Shikoku an adjustment in the home market for competitive rebates because the verification report does not state that Shikoku calculated this adjustment only with respect to competitive rebates granted on sales to the swimming pool market.

Shikoku argues that Monsanto's argument is frivolous because a verification report is not intended to document every bit of information considered or examined. Moreover, in verifying the competitive rebate adjustment for the fifth and sixth reviews, the verifier clearly relied on the verification report for the third and fourth reviews, which specifically stated that Shikoku's calculation included only those rebates given on granular product shipped to the swimming pool market.

Department's Position

We agree with Shikoku. While the verification report of January 18, 1990, did not explicitly state the market upon which Shikoku calculated its rebate adjustment, it does imply reliance upon the third and fourth review period verification report, which states that the adjustment calculation included only those rebates granted on sales to the swimming pool market. In addition, the Department is not required to verify all aspects of each adjustment.

Comment 4

Monsanto argues that the Department should not allow Shikoku an adjustment in the home market for cash rebates because the verification report does not stae that Shikoku calculated this adjustment only with respect to cash rebates granted on sales to the swimming pool market. Furthermore, the cash rebate adjustment should also be denied because the methodology employed by Shikoku in calculating this adjustment included rebates granted on tablet product sales.

Shikoku argues that it correctly calculated the cash rebate adjustment. It divided the total value of the rebates by the total value of qualifying merchandise, so that only that portion of Shikoku's cash rebate expense which was directly related to the sale of granular product was claimed as an adjustment. Furthermore, the Department fully verified the allocation methodology and the claimed adjustment amounts.

Department's Position

The ITA verified that the cash rebate program applied to purchases in both the swimming pool and septic tank market. It did not, as Monsanto suggests, verify that Shikoku included rebates to the septic tank market in its calculation. In fact, verification exhibit 6–11 states that only rebates to the swimming pool market were included in the calculation.

As for the calculation methodology, we agree with Shikoku that its formula correctly allocated the rebate expense over only qualifying merchandise.

Comment 5

Monsanto argues that the Department erred in not requiring Shikoku to supply detailed information on how prices are set between Shikoku and Mitsubishi, and in not obtaining information from Shikoku on whether any rebates are paid to Shikoku from Mitsubishi's customers. Monsanto had requested in its comments on the verification report that the Department obtain this information.

Shikoku argues that the Department is not required to verify all information submitted, nor is a verification report intended to document every piece of information verified. Moreover, the verification report states in regard to U.S. sales that "the basic terms and elements of sale were verified."

Department's Position

The Department verified Shikoku's information from November 19, 1989, through December 2, 1989. The verification report was issued January 18, 1990. Monsanto submitted its request that the Department seek additional information from Shikoku with regard to its U.S. sales on March 9, 1990. We felt no need to pursue this matter as it was raised so late in the review, particularly in light of Monsanto's failure to substantiate its allegation. Moreover, as Shikoku has argued, the Department is not required to verify all information submitted.

Comment 6

Monsanto argues that the respondents have not met all the Department's requirements for revocation. Specifically, it argues that respondents have not refrained from dumping in the U.S. for a period of at least two years (under the pre-1989 regulations), and that dumping is likely to resume following revocation of the order. As evidence, it points to the alleged fictitious market which respondents have established, and attempts to demonstrate numerically that had the price of respondents' granular products followed the same price trends that their powder and tablet products followed since issuance of the antidumping duty order, both respondents would have dumping margins at higher than *de minimis* levels during the fifth and sixth review periods. Furthermore, Monsanto alleges that U.S. prices for cyanuric acid, DCA, and TCA fell during 1989, raising the possibility that dumping may resume.

Shikoku and Nissan argue that they have met both prongs of the Department's requirements for revocation. Both point to their years of zero or *de minimis* margins as evidence that dumping has ceased, and dismiss Monsanto's fictitious market allegation for the reasons given in comment #1. Shikoku points to its years of zero or *de minimis* margins and to its sworn declarations of intent as evidence that dumping is not likely to resume. Furthermore, Shikoku discounts Monsanto's allegation of a drop in U.S. prices during 1989 because the basis of the allegation failed to include all the pertinent factors.

Department's Position

The Department is conducting these revocations under the pre-1989 regulations because the tentative determination to revoke was published November 21, 1988. To qualify for revocation under the pre-1989 regulations, three conditions must be met. They are:

1. Respondents must have ceased dumping for at least two years;

2. Respondents must submit a certified statement of intent to refrain from future dumping; and,

3. The Department must determine that dumping is not likely to resume. (19 CFR 353.54 (1985))

The Department has determined that Shikoku has met the requirements for revocation of the order on TCA, and Nissan has met the requirements for revocation of the orders on DCA and TCA. Monsanto's arguments that the respondents have established a fictitious market we have dealt with under comment No. 1. The alleged 1989 price trends that Monsanto argues indicate the likelihood of future dumping are unsubstantiated by any evidence in the record.

Comment 7

Shikoku argues that in making the home market packing adjustment, the Department should employ the adjustment expense Shikoku submitted to the Department in its questionnaire response, rather than the adjustment expense the Department's verifier calculated at the verification. The adjustment amount the verifier calculated excluded some packing expenses attributable to the tablet product, so that the adjustment would reflect only granular product packing expense. Shikoku argues that its calculation is more accurate because Shikoku incurred a number of general packing expenses in addition to the particular expenses identified in the verification report. Shikoku claims that for these general packing expenses it is impossible to segregate costs for granular products from those for tablet products, and that the costs for granular products are higher. Shikoku also argues that the Department should employ Shikoku's calculation in the interest of administrative equity. In other cases the Department has sometimes used less-accurate calculation methodologies for this reason, and should do so here as well, even if the Department does determine that Shikoku's calculation is not as accurate as the verifier's. It was a calculation methodology Shikoku had used during the investigation and four prior administrative reviews, and was rendered presumptively reasonable by the Department's acceptance of it at three prior verifications. Moreover, in setting its home market price so as not to sell below fair value in the U.S., Shikoku relied heavily upon the Department's continued acceptance of this calculation methodology.

Monsanto argues that the Department acted properly in excluding non-subject merchandise from the home market packing calculation. This methodology is justified because 19 U.S.C. sec. 1677b(a)(1) requires that FMV be based on "such or similar merchandise." Therefore, any adjustment to FMV must be based on identical merchandise. Moreover, Shikoku's argument that general packing expenses are greater for granular product than tablet product is invalid because there is no evidence on the record to substantiate this claim. Nor is Shikoku's equity argument valid, for the Department has not in fact adopted a new policy, but simply enforced an old one, that of preferring actual expenses over allocations wherever possible.

Department's Position

We agree with Monsanto. The Department's standard practice is to employ actual expenses wherever possible, and while the Department does sometimes employ a less-accurate method of allocation in the interests of administrative equity, it will not perpetuate an error on those grounds. Furthermore, as Monsanto has observed, Shikoku's claim of higher general packing expenses for granular product is unsubstantiated by any evidence in the record.

Comment 8

Shikoku argues the Department should make an adjustment to its FMV for its exchange rate adjustment (ERA) claim. The ERA is a rebate Shikoku pays to its home market customers whenever changes in the dollar/yen exchange rate may result in dumping margins on its U.S. sales. At verification the Department learned that there is no written policy explaining this rebate, or any formula by which a customer will know what exchange rate realignment will trigger the ERA rebate. The Department denied the claim on grounds that it was not a directly related selling expense because the terms and conditions were not known or fixed with certainty on or prior to the date of sale. Shikoku argues that it should not be required to demonstrate the existence of a "trigger mechanism" to be entitled to this adjustment, and that in practice the ERA rebate is indistinguishable from the competitive rebate which the Department has always allowed; both are established informally and are dependent on the good faith administration of the parties.

Monsanto argues that the Department's practice has been to grant rebate adjustments to FMV only where the parties have a contractual right to the rebate. This requirement is not met where, as here, the granting of the rebate is purely at the discretion of Shikoku. Nor can a rebate be considered part of an "informal contractual obligation," as Shikoku argues, where its purpose is to avoid U.S. dumping duties, and there is thus no mutuality of obligation. Moreover, following revocation of the antidumping duty order with respect to Shikoku, Shikoku would very likely cease paying this rebate as it would have no further incentive to continue paying it.

Department's Position

We remain unconvinced that the ERA rebate is a directly related selling expense. Hence, we deny this claim as we have in the past. We will consider allowing this claim in future administrative reviews only if Shikoku can demonstrate the existence of a formulator criterion applicable to all customers and reasonably communicated to them that will enable customers to predict the circumstances under which they will receive an ERA rebate.

Comment 9

Shikoku argues that for the fifth review period the Department erred in using Shikoku's home market credit period in calculating U.S. credit, and its U.S. credit period in calculating home market credit.

Department's Position

We agree, and have corrected this error.

Final Results of the Review: As a result of our review of the comments received and the correction of a clerical error, the final results are revised from those presented in the preliminary results of review as follows:

Manufacturer/exporter	Product	Period	Margin (percent)
Nissan Chemical Industries, Ltd*	Dichloro Isocyanurates	04/01/88–11/20/88	0.00
		04/01/87–03/31/88	0.29
	Trichloro Isocyanuric Acid	04/01/87–03/31/88	0.15
		04/01/88–11/20/88	0.01
Nissan Chemical Industries, Ltd./Toyo Manka Kaisha*	Dichloro Isocyanurates	04/01/87–03/31/88	0.00
		04/01/88–11/20/88	0.29
	Trichloro Isocyanuric Acid	04/01/87–03/31/88	0.15
		04/01/88–11/20/88	0.01

Manufacturer/exporter	Product	Period	Margin (percent)
Shikoku Chemicals Corporation	Cyanuric Acid	04/01/87-03/31/88	0.00
		04/01/88-03/31/89**	0.00
	Dichloro Isocyanurates	04/01/87-03/31/88	0.81
		04/01/88-11/20/88	0.91
	Trichloro Isocyanuric Acid	04/01/87-03/31/88	0.00
		04/01/88-11/20/88	0.002
Shikoku Chemicals Corporation/Mitsubishi Corp.	Cyanuric Acid	04/01/87-03/31/88	0.00
		04/01/88-03/31/89**	0.00
	Dichloro Isocyanurates	04/01/87-03/31/88	0.81
		04/01/88-11/20/88	0.91
	Trichloro Isocyanuric Acid	04/01/87-03/31/88	0.00
		04/01/88-11/20/88	0.002

* The order on cyanuric acid excludes cyanuric acid manufactured by Nissan.
** No shipments of cyanuric acid during the period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions for each exporter directly to the Customs Service. Individual differences between United States price and foreign market value may vary from the percentages stated above.

Further, as provided in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for entries of dichloro isocyanurates manufactured by Shikoku. A cash deposit of estimated antidumping duties of 10.93 percent shall also be required for entries of cyanuric acid manufactured by Shikoku, based on the final results of administrative review for the period April 1, 1989, through March 31, 1990, published in the **Federal Register** on January 24, 1991 (56 FR 2742). The Department will not require a cash deposit of estimated antidumping duties on shipments of cyanuric acid manufactured by Nissan because the order excludes sales of cyanuric acid produced by Nissan. Since we are revoking the order on trrichloro isocyanuric acid, no further cash deposits will be required from Nissan or Shikoku for imports of this product. Further, since we are revoking the order on dichloro isocyanurates with respect to Nissan, no cash deposit shall be required from Nissan for imports of this product.

For any future entries of cyanuric acid manufactured or exported by a new manufacturer and/or exporter, not covered in this or any prior administrative review, whose first shipment occurred after March 31, 1990, and before March 31, 1990, and who is unrelated to any reviewed firm or previously reviewed firm, no cash deposit shall be required. For any future entries of cyanuric acid form a new manufacturer and/or exporter, not covered in this or any prior administrative review, whose first shipment occurred after March 31, 1990, the cash deposit shall be 5.76 percent, as stated in the final results of administrative review for the period April 1, 1989, through March 31, 1990 (56 FR 2742; January 24, 1991). For any future entries of dichloro isocyanurates manufactured and/or exported by a new manufacturer and/or exporter, not covered in this or any prior administrative reviews, whose first shipment occurred after November 20, 1988, and who is unrelated to any reviewed firm, a cash deposit of 0.91 percent shall be required. Since we are revoking the order on trichloro isocyanuric acid, no further cash deposits will be required from any firm for imports of this product effective as of the date of publication of this notice in the **Federal Register**.

These deposit requirements are effective for all shipments of Japanese cyanuric acid and dichloro isocyanurates entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

We are revoking the order on trichloro isocyanuric acid and revoking in part the order on dichloro isocyanurates under the pre-1989 Commerce Department regulations because our tentative determination to revoke was published November 21, 1988. Thus, in accordance with 19 CFR 353.54 (1985) we are revoking the antidumping duty order on dichloro isocyanurates and trichloro isocyanuric acid with respect to Nissan on the basis of at least two years of no dumping or dumping at *de minimis* levels, Nissan's certified statement, and our determination that future dumping is not likely. The revocation applies to all unliquidated entries of dichloro isocyanurates and trichloro isocyanuric acid manufactured by Nissan and entered, or withdrawn from warehouse, for consumption on or after November 21, 1988. We are also revoking the order on trichloro isocyanurates with respect to Shikoku on the basis of two years of no dumping or dumping at *de minimis* levels, Shikoku's certified statement, and our determination that future dumping is not likely. The revocation applies to all unliquidated entries of trichloro isocyanurates manufactured by Shokoku and entered, or withdrawn from warehouse, for consumption on or after November 21, 1988. We will instruct the Customs Service to cease suspending liquidation of entries of all products and/or companies as to which we are revoking the order and to refund any estimated antidumping duties deposited on unliquidated entries thereof.

This administrative review, revocation on trichloro isocyanuric acid, and revocation in part on dichloro isocyanurates, are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1)), and § 353.54 of the Commerce Regulations (19 CFR 353.54 (1985)).

Dated: April 19, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-9866 Filed 4-25-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-582-501]

Final Results of Antidumping Duty Administrative Review: Photo Albums and Filler Pages from Hong Kong

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On January 25, 1991, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on photo albums and filler pages from Hong Kong. This review covers 36 producers/exporters of photo albums and filler pages during the periods December 1, 1986 through November 30, 1987 (Period I) and December 1, 1987 through November 30, 1988 (Period II). The final dumping margins for Climax Paper Converters Ltd. are 1.15 percent for Period I and 5.16 percent for Period II. All other reviewed companies' margins are 3.69 percent for Period I and 5.16 for Period II, as best information available.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mi-Yong Kim or Rick Herring, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0189 or 377-3530, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 25, 1991, the Department published in the **Federal Register** (58 FR 2902) the preliminary results of its administrative review of the antidumping duty order on photo albums and filler pages from Hong Kong (50 FR 43751, October 29, 1985). On February 25, 1991, the Department received a comment from one respondent, Climax Paper Converters Ltd. (Climax), on those preliminary results. The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act) and 19 CFR 353.22(c)(8).

Scope of Review

Imports covered by this review are shipments of photo albums and photo album filler pages from Hong Kong. The order covers all photo albums and filler pages regardless of tariff classification. During the review periods, the merchandise was classifiable under item numbers 256.60, 256.87, 256.90, or 774.55 of the Tariff Schedules of the United States (TSUS). As of January 1, 1989, this merchandise is classifiable under item numbers 3920, 3921, 3926.90, 4819.50, 4820.50, 4820.90, or 4823.90 of the Harmonized Tariff Schedule (HTS). The TSUS and HTS item numbers are provided for convenience and customs purposes.The written description remains dispositive.

The review covers 36 producers/exporters of photo albums and filler pages form Hong Kong.

United States Price

We based United States price on both purchase price and exporter's sales price (ESP), in accordance with section 772(b) and (c) of the Act. Purchase price was used where sales were made directly to unrelated parties prior to importation into the United States. ESP was used where sales were made to unrelated purchasers after the date of importation into the United States. ESP was also used where the merchandise was sold to unrelated purchasers prior to importation but was carried in the inventory of a U.S. company related to Climax prior to delivery in the United States.

We calculated purchase price based on packed, f.o.b. Hong Kong port or c.i.f. prices. We made deductions, where appropriate, for foreign inland freight, ocean freight and marine insurance, in accordance with section 772(d)(2) of the Act.

Where United States price was based on ESP, we calculated ESP based on f.o.b. U.S. warehouse prices. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, U.S. brokerage, and U.S. inland freight. We made further deductions, where appropriate, for discounts, rebates, credit expenses, commissions, inventory carrying costs, and other indirect selling expenses, in accordance with section 772(e)(1) and (2) of the Act.

Foreign Market Value

Foreign market value (FMV) was calculated based on home market prices, third country prices or constructed value (CV), as appropriate.

Where FMV was based on home market sales, we made deductions for foreign inland freight. We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

We made circumstance of sale adjustments, where appropriate, for differences in credit expenses in accordance with 19 CFR 353.56. Where commissions were paid only in the U.S. market, we also made an adjustment, where appropriate, using home market indirect selling expenses to offset commissions paid in the United States, in accordance with 19 CFR 353.56(a)(2).

For comparisons involving ESP transactions, we made further deductions for home market indirect selling expenses capped by indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

In addition, where appropriate, we made adjustments to account for differences in the physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

Where FMV was based on sales to a third country market, we made deductions, where appropriate, for foreign inland freight, ocean freight, and marine insurance. We also deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

We made circumstance of sale adjustments, where appropriate, for differences in credit expenses in accordance with 19 CFR 353.56. Where commissions were paid only in the U.S. market, we also made an adjustment, where appropriate, using third country indirect selling expenses to offset commissions paid in the United States, in accordance with 19 CFR 353.56(a)(2).

For comparisons involving ESP transactions, we made further deductions for third country indirect selling expenses capped by indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

In addition, where appropriate, we made adjustments to account for differences in the physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

Where FMV was based on CV, we included materials, fabrication, general expenses, profit, and packing. For comparisons involving purchase price and ESP sales we used: (1) the statutory ten percent minimum of materials and fabrication costs to represent general expenses because actual general expenses were less than the statutory minimum; (2) the statutory minimum profit of eight percent of the cost of production because actual profit was less than the statutory minimum; and (3) credit which was included in the selling expenses.

We made an adjustment to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. This adjustment was made for differences in credit expenses.

For comparisons involving ESP transactions, we made a further deduction for indirect selling expenses capped by the indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

For those U.S. sales where we had no matches in the home market or a third country market and where no CV was provided, we used the calculated margin from the final determination of the less than fair value investigation as best information available.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a timely comment from Climax.

Comment: Climax argues that the Department should base FMV on third

country sales or CV for certain such or similar categories, despite the fact that the home market was found to be viable for those categories. Climax advocates this approach because the home market sales represent less than one percent of U.S sales when based on the entire class or kind of merchandise.

Department's Position: We disagree. The Department ordinarily calculates FMV based on the price at which such or similar merchandise is sold in the home market. 19 CFR 353.48(a). Only when the quantity of such or similar merchandise sold in the home market is less than five percent of that sold to third countries does the Department resort to using third country sales or CV. 19 CFR 353.48(a). The home market sales of certain of the such or similar categories in this case were determined to be viable, *i.e.*, five percent or more, for purposes of calculating FMV, and those home market sales were used. The Department has in the past rejected the argument that it apply this test on a "class or kind" basis. Final Determination of Sales at Less Than Fair Value: Industrial Belts from Singapore, (54 FR 15469, April 18, 1989); Final Determination of Sales at Less Than Fair Value: Porcelain-on-Steel Cooking Ware from Taiwan (51 FR 36425, October 10, 1986); Final Determination of Sales at Less Than Fair Value: Lightweight Polyester Filament from Japan (49 FR 472, January 4, 1984). Only under extremely unusual circumstances has the Department departed from its normal practice. One such case involved the viability test used in Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany (54 FR 18992, May 3, 1989) (Bearings). In the Bearings case, we were unable to clearly establish such or similar categories of merchandise because of the enormous number of products sold and the numerous physical permutations among bearing types. Thus it was impossible to determine home market viability based on such or similar categories. Such is not the case in the present review.

As we stated in the preliminary results of this review, we found that the volume of home market sales represented more than five percent of the aggregate volume of third country sales in several of the such or similar categories.The Department, therefore, determined that for these such or similar categories, home market sales constituted a viable basis for calculating FMV. However, because the home market sales data were received too late to be considered for the preliminary results, we used constructed value as FMV for the models within these such or similar categories.

For the final results, because we have had adequate time to analyze the home market sales data and we have no grounds to deviate from our normal practice, we have used home market sales to establish FMV for those such or similar categories where the home market was found to be viable.

Final Results of the Review

Based on our analysis, we have determined that the following margins exist for the following companies for Period I and Period II:

Manufacturer/exporter	Period I margin (percent)	Period II margin (percent)
Climax	1.15	5.16
AICO	3.69	5.16
Berniavia	3.69	5.16
Chung Wai	3.69	5.16
Consolidated Powers	3.69	5.16
Evergreen & Pych	3.69	5.16
Hoi Kun	3.69	5.16
Lee Tung	3.69	5.16
Marks International	3.69	5.16
Mascotte	3.69	5.16
Miral Danshi (HK)	3.69	5.16
Northvale	3.69	5.16
Orient Consolidation	3.69	5.16
Perfect Leather Ware	3.69	5.16
Potex	3.69	5.16
S & C Import Export	3.69	5.16
Schenker (HK)	3.69	5.16
Sun Woo	3.69	5.16
Tradepower Holdings Limited	3.69	5.16
Union Paper Box & Printing	3.69	5.16
Wah Luen	3.69	5.16
World Wide Stationery	3.69	5.16
Far East Metal & Plastic	3.69	5.16
General Trading	3.69	5.16
Graphics International	3.69	5.16
Great China Industrial	3.69	5.16
Hang Fat	3.69	5.16
Hip Sing Leather Products	3.69	5.16
Pavri Bros.	3.69	5.16
Perfect Industrial	3.69	5.16
Sincere	3.69	5.16
Tai Shun	3.69	5.16
Unique Stationery	3.69	5.16
Wing Shing	3.69	5.16
Wiseman Plastic Products	3.69	5.16
Zamford Enterprises	3.69	5.16

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between the United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. Additionally, because no liquidation instructions for any other manufacturers/exporters were sent out at the time this review was initiated, we will direct Customs to liquidate any other entries of the subject merchandise at a rate of 3.69 percent, the rate that would have applied to those shipments at the time they entered.

Furthermore, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rates assigned in Period II; (2) the cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the rate published in the antidumping duty order; (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in the December 1, 1986 through November 30, 1987 review period or the original investigation, whose first shipments occurred after November 30, 1987 but before December 1, 1988, and who is unrelated to a reviewed firm or any firm that was subject to the original investigation will be 1.15 percent, the rate established for Climax for the period December 1, 1986 through November 30, 1987; and (4) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in this administrative review or the original investigation, whose first shipment occurred after November 30, 1988, and who is unrelated to a reviewed firm or any firm that was subject to the original investigation will be 5.16 percent, the rate established for Climax for the period December 1, 1987 through November 30, 1988.

These deposit requirements are effective for all shipments of Hong Kong photo albums and filler pages entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice, and shall remain in effect until the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and CFR 353.22(c)(8).

Dated: April 19, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-9861 Filed 4-25-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain From Japan; Partial Termination of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of partial termination of antidumping duty administrative reviews.

SUMMARY: On July 19, 1986 (51 FR 24883), the Department of Commerce initiated various administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan. The Department has now decided to terminate those reviews covering periods prior to 1980.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1986, the Department of Commerce (the Department) published a notice of initiation of various administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan (51 FR 24883). This notice stated that we would review entries for certain exporters during various periods from March 1, 1972 through March 31, 1985.

For the periods of review prior to 1980, the petitioner and/or respondents, as appropriate, have withdrawn their requests for review for the firms and periods stated below:

APC Corp.	4/78-3/79
Asia Machinery	4/78-3/79
Daido Kogyo	9/75-3/79
Daido Kogyo-Enuma	10/75-3/79
Daido Kogyo/Meisei Trading	10/75-3/79
Deer Island	9/72-3/79
Enuma	2/77-3/79
Enuma/Meisei Trading	9/77-3/79
Honda	4/78-3/79
Meisei Trading	4/75-3/79
Nissan Motors	4/78-3/79
Rocky Asia	4/78-3/79
Shima Trading	10/77-3/79
Tsubakimoto	3/72-3/79

Although generally a request for review must be withdrawn not later than 90 days after the date of publication of the notice of initiation of the requested review, the time limit may be extended if the Secretary decides that it is reasonable to do so (19 CFR 353.22(a)(5)). Given the acquiescence of both petitioner and all respondents to the termination, the burden of completing these reviews on the respondents and the Department, the fact that substantial work must be undertaken by all parties to complete the reviews, and the relative remoteness of the review periods in question, we deem it reasonable to extend the time limit in this case and allow withdrawal.

Accordingly, the Department has determined to terminate the reviews listed above. This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and § 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-9863 Filed 4-25-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests by various parties to the proceeding, the Department of Commerce has conducted administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan. The reviews cover one manufacturer/exporter of this merchandise to the United States, Toshiba Corporation (Toshiba), and the periods September 28, 1983 through February 28, 1986. The reviews indicate dumping margins ranging from zero to 10.91 percent for Toshiba during these periods.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Maura Kim or Melissa Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3601 or (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1991, the Department of Commerce (the Department) published the final results of our last administrative review, in the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971), covering Toshiba and the periods March 1, 1986 through February 28, 1987, March 1, 1988 through February 28, 1989, and March 1, 1989 through February 28, 1990. Various parties to the proceeding requested in accordance with 19 CFR 353.22(a) that we conduct these administrative reviews. We published notices of initiation of these antidumping duty administrative reviews on July 9, 1986 (51 FR 24883) for the fifth and sixth reviews, covering the periods from September 28, 1983 through March 31, 1984, and April 1, 1984 through February 28, 1985, and on April 18, 1986 (51 FR 13273) for the seventh review covering the period from March 1, 1985 through February 28, 1986. As required by section 751 of the Tariff Act of 1930 (the Tariff Act), the Department has now conducted these administrative reviews.

Scope of the Review

Imports covered by the reviews are shipments of television receiving sets, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. During the review periods, television receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). The merchandise is currently classifiable under item numbers 8528.10.80 and 8528.20.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

These reviews cover one manufacturer/exporter of Japanese television receivers, monochrome and color, Toshiba, and the periods

September 28, 1983 through February 28, 1988.

United States Price

In calculating United States price (USP) the Department used exporter's sales price (ESP) as defined in section 772 of the Tariff Act. USP was based on the packed, c.i.f., or delivered price to unrelated purchasers in the United States. We made adjustments for ocean freight, marine insurance, U.S. duty, U.S. and Japanese inland freight, U.S. and Japanese inland freight insurance, U.S. and Japanese brokerage fees, Japanese bank fees, export selling expenses incurred in Japan, the U.S. subsidiaries' direct and indirect selling expenses, U.S. commissions, and royalties. We also deducted discounts and rebates, as applicable. Toshiba's U.S. subsidiaries Toshiba Hawaii (THI) and Toshiba America (TAI) granted quantity discounts according to the number of units sold of a particular model. However, THI did not report the quantity discount for one model in any of the review periods. Therefore, we used the quantity discount applicable to the other U.S. model sold as best information available. TAI granted volume discounts to its U.S. customers which were based upon the sales volume of all products sold, excluding accessories. TAI also granted volume rebates, which were based upon the anticipated sales volume of all products sold during a one year period. Although TAI provided descriptions of both its volume discounts and volume rebates, it did not explain how it calculated the amounts from among its various discount and rebate programs. Therefore, we used the amount of THI's quantity discount as best information available (BIA). No other adjustments were claimed or allowed.

Foreign Market Value

We based Toshiba's foreign market value (FMV) on its constructed value (CV) data. We calculated CV as the sum of material and fabrication costs, general expenses, profit, direct selling expenses, and the cost of home market packing. Since Toshiba's general expenses were greater than the statutory minimum of ten percent of the sum of materials and fabrication costs, we used actual general expenses. Since actual profit was less than eight percent of the sum of the material costs, fabrication costs, and general expenses, we used the eight percent statutory minimum, as provided by section 773 of the Tariff Act. We made circumstance of sale adjustments to CV for direct selling expenses. We did not consider interest expense a direct selling expense because Toshiba did not demonstrate how the expense related directly to the subject merchandise. Therefore, we treated the expense as an indirect selling expense and included it in the pool of home market indirect selling expenses. We adusted CV for indirect selling expenses up to the amount of the U.S. indirect selling expenses and U.S. commissions to unrelated parties, and for differences in physical characteristics and differences in packing. No other adjustments were claimed or allowed.

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily determine that the following margins exist:

Manufacturer/Exporter	Review No.	Period of review	Margin (%)
Toshiba	5	9/28/83–3/31/84	0
	6	4/1/84–2/28/85	10.01
	7	3/1/85–2/28/86	0.10

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held as early as convenient for the parties, but not later than 44 days after the date of publication of this notice or the first workday thereafter. Case briefs/written comments from parties to the proceeding may be submitted not later than 30 days after the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after submission of the case briefs. The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any such written comments or at a hearing.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 35.40 percent, based on the margin for Toshiba in the eleventh review, covering the period from March 1, 1989 through February 28, 1990, will be required for Toshiba. For any shipments of this merchandise manufactured by Final, Fujitsu General, Hitachi, Matsushita, Mitsubishi, NEC, Sanyo, Seiko Epson, Sharp, or Victor, the cash deposit will continue to be the same as the rates published in the final results of the administrative reviews for these firms (56 FR 5302, February 11, 1991). The cash deposit rate for all other exporters/producers shall be 38.26 percent, which is Sharp's rate for its ninth review, which is the highest non-BIA rate among responding firms with shipments during the most recent review. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Regulations (19 CFR 353.22).

Dated: April 19, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-9904 Filed 4-25-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two domestic parties to this proceeding, the Department of Commerce is conducting an administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covers two manufacturers/exporters of this merchandise to the United States, Casio Computer Company, Ltd., and Citizen Watch Company, Ltd., and the period March 1, 1989 through February 28, 1990. The review indicates the existence of dumping margins for these firms during the period.

As a result of this review, the Department of Commerce has preliminarily determined to assess antidumping duties equal to the differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 1990, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (55 FR 11417) of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). Two domestic parties to the proceeding, Zenith Electronics Corporation (Zenith), and the United Electrical Workers of America, Independent, International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, and Industrial Union Department, AFL-CIO (the Unions), requested that we conduct an administrative review, in accordance with section 353.22(a) of the Commerce Regulations. We published the notice of initiation of the antidumping duty administrative review on April 27, 1990 (55 FR 17782), covering the period March 1, 1989 through February 28, 1990. The Department has now conducted the review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of television receiving sets, monochrome and color, from Japan. Television receiving sets include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. During the review period, television receiving sets, monochrome and color, were classifiable under Harmonized Tariff Schedule (HTS) item numbers 8528.10.80 and 8528.20.00. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

This review covers two manufacturers/exporters of Japanese television receivers, monochrome and color, Casio Computer Company, Ltd. (Casio), and Citizen Watch Company, Ltd. (Citizen), and the period March 1, 1989 through February 28, 1990.

United States Price

In calculating United States price (U.S. price), the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act. U.S. price was based on the packed f.o.b., c.i.f. delivered, or ex-godown price to the first unrelated purchaser in the United States.

We made deductions from both PP and ESP sales for international air or ocean freight, international insurance, U.S. and Japanese inland freight and insurance, U.S. and Japanese brokerage and handling charges, U.S. Customs duties, and discounts. We made additional deductions from ESP sales for rebates, credit expenses, royalties, advertising, warranty, commissions, re-packing expenses in the United States, inventory carrying costs, selling expenses incurred in Japan, and the U.S. subsidiary's indirect selling expenses. Technical service expenses incurred for producing manuals used in repair centers and commissions paid to a related company for sales to the U.S. subsidiary are considered to be indirect selling expenses.

Where appropriate, we added an amount to U.S. price for PP and ESP sales to account for the Japanese commodity and consumption taxes which were not collected by reason of the exportation of the merchandise to the United States, as specified in section 772(d)(1)(c) of the Tariff Act. The commodity tax was in effect through March 31, 1989. The consumption tax went into effect on April 1, 1989.

No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value (FMV), the Department used home market price, as defined in section 773 of the Tariff Act.

Zenith alleged that Casio and Citizen sold televisions in the home market at prices which were below the cost of production. We considered the allegations sufficient to warrant an investigation of possible sales below the cost of production. As a result of our investigation, we found below-cost sales. When more than 10 percent of the sales of a particular model were determined to be below the cost of production, those sales were excluded from our calculation of FMV. When 90 percent or more of the sales of a particular model were determined to be below the cost of production, all sales of that model were excluded from our calculation of FMV. If there were not sufficient contemporaneous sales of such or similar merchandise made at or above the cost of production, constructed value (CV) was used for calculating FMV.

Home market price was based on the packed, c.i.f. delivered, or delivered price to the first unrelated party in the home market. We made adjustments to the home market price for brokerage and handling, inland freight, discounts, rebates, royalties, credit expenses, advertising, warranty, differences in the physical characteristics of the merchandise, and differences in packing. We also added an amount to appropriate sales for the Japanese consumption tax not included in the reported selling price, and made appropriate circumstance of sale adjustments for commodity and consumption tax differences. When FMV was compared with ESP, we deducted indirect selling expenses and inventory carrying costs from FMV, not exceeding the amount of U.S. indirect selling expenses plus commissions paid in the U.S. market. When FMV was compared with PP, we added U.S. credit, royalties, advertising, and commissions, as appropriate. When comparisons were made to PP sales on which commissions were paid, we made an adjustment for indirect selling expenses to offset U.S. commissions.

CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general selling expenses or the statutory minimum of 10 percent of materials and fabrication, whichever was greater, (2) actual profit or the statutory minimum of 8 percent of materials and fabrication costs, and general expenses, whichever was greater, and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. For comparisons with ESP, we made a further deduction for indirect selling expenses in the home

market, not exceeding the amount of U.S. indirect selling expenses plus commissions paid in the U.S. market, in accordance with 19 CFR 353.56(b)(2).

No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/Exporter	Period of review	Margin (percent)
Casio Computer Company, Ltd.	03/01/89–02/28/90	0.38
Citizen Watch Company, Ltd.	03/01/89–02/28/90	17.41

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs and/or written comments within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated dumping duties based on the above margin will be required for Citizen. Since the margin for Casio is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of antidumping duties on entries of television receivers, monochrome and color, from Casio. For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, whose first shipment occurred after February 28, 1990, and who is unrelated to Casio or Citizen, or any previously reviewed firm, a cash deposit of 17.41 percent shall be required. These deposit requirements and waiver will be effective for all shipments of Japanese television receivers, monochrome and color, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1990).

Dated: April 16, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-9895 Filed 4-25-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination: Certain Type 430 Stainless Steel Wire Rod

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain type 430 stainless steel rod.

SHORT-SUPPLY REVIEW NUMBER: 42.

SUMMARY: The Secretary of Commerce ("Secretary") hereby modifies his short-supply decision of March 21, 1991, by granting short supply for an additional 1,250 metric tons of certain Type 430 stainless steel rod for the balance of 1991 under the U.S.-EC, U.S.-Brazil, U.S.-Korea, and U.S.-Japan steel arrangements.

EFFECTIVE DATE: April 19, 1991.

FOR FURTHER INFORMATION CONTACT: Jonathan Freilich or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377-0408 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On February 19, 1991, the Secretary received an adequate short-supply petition from the American Wire Producers Association ("AWPA"), on behalf of various members of the Stainless Committee, for certain sizes of Type 430 stainless steel wire rod. This request, which totaled 3,300 metric tons for March-December 1991, was made under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products, Article 8 of the Arrangement Between the Government of South Korea and the Government of the United States of America Concerning Trade in Certain Steel Products, Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States of America Concerning Trade in Certain Steel Products, and Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products.

The Secretary conducted a short-supply review on this product, pursuant to Section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Pub. L. No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and Section 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Supply Procedures"). Because short-supply had been granted on this product for the two immediately preceding years, the Secretary conducted this review, pursuant to 4(b)(4)(B)(i)(II) of the Act and Section 357.106(b)(1)(ii) of Commerce's Short-Supply Procedures, under the 15-day guidelines, providing a rebuttable presumption of short supply.

On March 5, 1991, Baltimore Specialty Steels Corporation ("BSSC") informed the Secretary that it could produce the requested product, supply the full amount requested (3,300 metric tons), and that its order-to-delivery period was 9 to 11 weeks. Based on this information, the presumption of short supply was rebutted and on March 6, 1991, the Secretary denied this request in its entirety.

On March 12, 1991, BSSC informed the Secretary that it, in fact, could supply only 2,500 metric tons of the requested Type 430 wire rod for March-December 1991. Thus, because the Secretary's March 6, 1991, determination was based on inaccurate information, the Secretary revised that determination and on March 21, 1991, granted short supply for 800 metric tons. On April 12-15, 1991, BSSC informed the Secretary that it was further reducing the quantity of Type 430 wire rod it would commit to supply during the balance of 1991. BSSC stated that it would be able to supply only 1,250 metric tons of the requested Type 430 wire rod during this period, effectively reducing the quantity it can supply by another 1,250 metric tons.

CONCLUSION: BSSC is willing to supply only 1,250 of the 3,300 metric tons of the certain Type 430 stainless steel wire rod requested by the AWPA for the balance of 1991. Therefore, the Secretary hereby modifies the March 21, 1991, short-supply decision with respect to the requested 430 stainless steel wire rod, by granting a short-supply allowance for an additional 1,250 tons of this product for the balance of 1991.

Dated: April 19, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-9882 Filed 4-25-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Incidental Take of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of request for a letter of authorization.

SUMMARY: NMFS has received a request from ARCO Alaska, Inc. for a Letter of Authorization that would allow a take of marine mammals (by harassment) incidental to exploration activities in the Beaufort Sea during the 1991/92 drilling season.

DATES: Comments should be received no later than May 28, 1991.

ADDRESSES: Dr. Nancy Foster, Director, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910. A copy of the requests may be obtained by writing to this address or by telephoning the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz, Office of Protected Resources, NMFS (301) 427-2322 or Ron Morris, Western Alaska Field Office (907) 271-5006.

SUPPLEMENTARY INFORMATION:

Background

Regulations governing the taking of marine mammals incidental to oil and exploration activities in Alaska were published July 18, 1990 (55 FR 29214). The regulations are based on section 101(a)(5) of the Marine Mammal Protection Act and NMFS' determination that the taking of six species of marine mammals (bowhead, gray and beluga whales and bearded, ringed and spotted seals) incidental to exploratory activity in the Beaufort and Chukchi Seas will have a negligible impact on the species or stocks and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. The regulations include permissible methods of taking, and require exploration companies to monitor the effects of their activities on marine mammals and to cooperate with the Alaska native communities to ensure that marine mammals are available for subsistence.

A Letter of Authorization must be requested annually by each group or individual conducting an exploratory activity where there is the likelihood of taking any of the six species of marine mammals identified in the regulations. NMFS grants the Letters based on a determination that the total level of taking by all applicants in any one year is consistent with the estmated level of activity used to make a finding of negligible impact and a finding of no unmitigable adverse impacts.

The regulations require the applicant to submit a request for a Letter of Authorization at least 90 days before the activity is scheduled to begin. NMFS must publish notices of each request in the Federal Register with an opportunity for public comment.

Requests for Letters of Authorization must include a plan of cooperation that identifies what measures have been and will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. It must include a description of the activity including the methods to be used, the dates and duration of the activity, and the specific location. Also, it must include a site-specific plan to monitor the effects on marine mammals that are present during exploratory activities.

Summary of Request from ARCO

On April 5, 1991, NMFS received a request from ARCO Alaska, Inc. for a Letter of Authorization that would allow non-lethal takes of bowhead, gray and beluga whales and bearded, ringed and spotted seals incidental to planned exploratory drilling operations, known as the Cabot Project, during the 1991/92 drilling season in the Beaufort Sea off the coast of Alaska. The request includes a description of the specific operations ARCO plans to conduct, the measures it has employed and will continue to implement to minimize any potential conflicts between those activities and subsistence hunting, and a plan to monitor any effects of the activities on marine mammals. ARCO anticipates drilling one exploratory well from a bottom-founded unit at the Cabot Project. ARCO may perform site clearance work during two days of the open water season, then tow the bottom-founded drilling unit from its Fireweed Project location about August 15, 1991, and arrive at the drill site around August 18, 1991. Most drilling will occur in the winter months, but will not begin until the fall bowhead whale migration has passed the drill site. The project is located about 30 miles east of Barrow, Alaska and 15 miles north of Dease Inlet. ARCO has met with the Barrow Whaling Captains' Association, and the residents of Barrow to discuss the proposed offshore exploration program. Also, ARCO has submitted a draft proposal for a site-specific plan to monitor the effects of exploratory activities on marine mammals especially bowhead whales.

Dated: April 19, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-9829 Filed 4-25-91; 8:45 am]

BILLING CODE 3510-22-M

Endangered Marine Mammals

AGENCY: National Marine Fisheries Service NOAA, Commerce.

ACTION: Modification No. 4 to Permit No. 675 (P440).

Notice is hereby given that pursuant to the provisions of §216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and § 220.24 of the Regulations Governing Endangered Species (50 CFR part 217-222), Scientific Research Permit No. 675 was issued to Dr. C. Scott Baker, Department of Health and Human Services, Section of Genetics, Building 560, room 21-105, National Cancer Institute, Frederick, Maryland 21701-1013 on August 4, 1989 (54 FR 35220). The permit was modified on November 15, 1989 (54 FR 47543), May 31, 1990 (55 FR 22056), and January 3, 1991 (56 FR 248) and is further modified as follows:

Additions to section B. *Special Conditions:*

5. Add as a third paragraph: "Practice with the modified cross-bow shall be documented prior to its use in the field. The results of the tests on the five possible dimensions of the larger sampling instrument, to be conducted on beached carcasses, shall be provided to NMFS prior to using the larger sampling instrument at sea. The results of the application of the new methodology on approximately the first 25-40 humpback whales must be provided to NMFS and

evaluated for impact on the whales to determine that the method is safe. Based on this report, NMFS will notify the permit holder if research may continue beyond 40 whales. If an endangered cetacean dies as a result of the biopsy procedure, sampling of endangered species shall be suspended until the cause of death can be determined and the sampling procedure revised as necessary."

Add as a fourth paragraph:

"Arrangements shall be made to identify the struck animals and make the information available so that the animals can be inspected for long-term effects when subsequently seen by others."

All conditions currently contained in the permit remain in effect.

This modification is effective upon signature.

Dated: April 17, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Services.

[FR Doc. 91-9630 Filed 4-25-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits; Sea World Research Institute

AGENCY: National Marine Fisheries Service, NOAA, DOC.

ACTION: Application for modification no. 1 to permit no. 697; Sea World Research Institute.

Notice is hereby given that the Applicant has applied in due form for a modification to Permit No. 697 to extend the expiration date of the permit from February 7, 1992 to February 7, 1994, and to amend the permit to include attaching ultrasonic transmitters to up to twenty turtles, and performing biopsies on the turtles as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) regulations governing endangered fish and wildlife permits (50 CFR parts 217-222).

1. Applicant: Peter Dutton and Donna McDonald, Sea World Research Institute, 1700 South Shores Road, San Diego, California 92109.

2. Type of Permit: Scientific Purposes.

3. Name and Number of Species: Green turtles (*Chelonia mydas*), Olive ridley sea turtles (*Lepidochelys olivacea*), Loggerhead sea turtle (*Caretta caretta*). The current permit allows up to 50 turtles to be taken.

4. Type of Take: The applicant is conducting scientific studies on sea turtles that occur in San Diego Bay to assess the current status of sea turtles in that area, and to provide the basis for developing an appropriate conservation program. The current research involves capturing turtles with a net that is set across the channel where turtles are found, tagging, and releasing the turtles.

The applicant is requesting to modify the type of take by including the attachment of ultrasonic transmitters to up to 20 turtles, and the performance of biopsies on those turtles with fibropapilloma tumors. Biopsies will help to determine the cause of the disease, and may also help in determining the origin of the turtles.

5. Location and Duration of Activity: The collecting efforts are in San Diego bay adjacent to the entrance of the effluent channel of the San Diego Gas and Electric Power Plant. Turtles are tagged and released every two weeks until all turtles are tagged. Recapture will take place over the length of the permit. The current permit expires on February 7, 1992.

The applicant requests that the expiration date of the permit be extended from February 7, 1992, to February 7, 1994.

Written data or views, or requests for a public hearing on this permit modification should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular permit modification would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of NOAA, NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, NOAA, NMFS, 1335 East-West Highway, Silver Spring, Maryland 20910; and

Director, Southwest Region, NOAA, NMFS, 300 S. Ferry St., Terminal Island, California, 90731-7415.

Dated: April 19, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-9628 Filed 4-25-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; College of the Atlantic (P322B)

On January 29, 1991, notice was published in the **Federal Register** (56 FR 3241) that an application had been filed by Dr. Steven K. Katona, College of the Atlantic, 105 Eden Street, Bar Harbor, ME 04609, to take 500 fin whales (*Balaenoptera physalus*), for scientific research.

Notice is hereby given that on April 22, 1991 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this permit as required by the Endangered Species Act of 1973 was based on a finding that such permit; (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This permit was also issued in accordance with and is subject to parts 220-222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The permit is available for review by interested persons in the following offices:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 7324, Silver Spring, Maryland 20910;

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930.

Dated: April 22, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-9631 Filed 4-25-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Proposed Permit Modification: Dr. Randall S. Wells (P319B)

Notice is hereby given that Dr. Randall S. Wells has requested a modification to Permit No. 655 issued on December 20, 1988 (53 FR 53050) under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), as modified on June 21, 1990 (55 FR 26734).

Permit No. 655 authorizes the capture, sampling, marking, tagging and release of up to 150 Atantic bottlenose dolphins (*Tursiops truncatus*) over a five (5) year period, and the recapture of selected individuals as many as three times each year for followup testing. Three of these dolphins may be tagged with satellite-monitored radio transmitters and VHF tags.

The Permit Holder is requesting that Permit No. 655 be modified to allow measurement of metabolic rates in free-ranging dolphins by administering stable forms of labelled water and measuring the dilution of the components of this water over time. The labelled water is composed of the stable, non-radioactive, isotopes of Oxygen-18 and Deuterium. This technique has been shown to be safe enough to use on pre-term human infants. The project will involve the capture, administration of isotopes, release, and recapture for blood sampling 4-5 days later of up to six (6) dolphins each in 1991 and 1993, and up to 12 dolphins in 1992. This request will not involve any additional takes.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this modification request to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this notice of modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/427-2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200) and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893-3141).

Dated: April 22, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-9632 Filed 4-25-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Dr. Bernd Wursig and Dr. Graham Worthy (P36C)

On February 1, 1991 notice was published in the **Federal Register** (56 FR 40482) that an application had been filed by Dr. Bernd Wursig and Dr. Graham Worthy, Marine Mammal Research Program, Department of Marine Biology, Texas A&M University at Galveston, P.O. Box 1675, Galveston, TX 77553-1675, to take by harassment, capture and radio-tag Atlantic bottlenose dolphins (*Tursiops truncatus*) for scientific purposes.

Notice is hereby given that on April 22, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The permit is available for review in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, Maryland 20910 (301/427-2289);

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702 (813/893-3141).

Dated: April 22, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-9633 Filed 4-25-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: May 16, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 1, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 8750) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to the Procurement List:

Toothpaste
8520-01-303-4037
8520-01-303-6438

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. 91-9905 Filed 4-25-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 30, 1991.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Bag, Plastic
8105-LL-N90-0975 20" x 16"
8105-LL-N90-0976 26" x 36"
(Requirements of the Norfolk Naval Shipyard, Portsmouth, VA).

Hood, Extreme Cold Weather
8415-00-473-0505

Pad, Sleeping
5905-01-323-9421

Services

Commissary Warehousing
Lowry Air Force Base, Colorado

Commissary Warehousing
Kirtland Air Force Base, New Mexico

Janitorial/Custodial
Naval Training Center Complex
Orlando, Florida

Janitorial/Custodial
William Cotter Federal Building
135 High Street
Hartford, Connecticut

G. John Heyer,
General Counsel.

[FR Doc. 91-[illegible] Filed 4-25-91; 8:45 am]

BILLING CODE 6820-33-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 91-3-89CD]

Commencement of the 1989 Cable Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice commencing 1989 cable distribution proceeding.

SUMMARY: The Copyright Royalty Tribunal announces that controversies exist concerning the distribution of the royalties paid by cable operators in 1989 in both Phase I and Phase II. The Tribunal seeks comments on how much of the 1989 cable royalty fund may be distributed.

DATES: The 1989 cable distribution controversy is declared, effective April 26, 1991. Comments on partial distribution of the fund are due May 10, 1991.

ADDRESSES: An original and five copies of the comments shall be addressed to: Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 (202-673-5400).

SUPPLEMENTARY INFORMATION: On February 20, 1991, the Tribunal requested comments from the claimants to the 1989 cable copyright royalty fund whether any controversies exist concerning the distribution of the fund. 56 FR 6841. Comments were due April 19, 1991.

The Tribunal was informed that a Phase I controversy exists, and controversies exist in the following Phase II categories: Program Suppliers, Sports, Noncommercial Television, Music, Devotional Claimants, and Noncommercial Radio.

Accordingly, the Tribunal declares, effective April 26, 1991, that controversies exist in Phase I and Phase II of the 1989 cable royalty distribution proceeding.

The procedural schedule for the hearing of these controversies will be announced at a later date.

None of the parties has indicated how much of the 1989 cable royalty fund may be distributed, and how much should be retained to satisfy all controversies. The Tribunal asks that the parties comment on this by May 10, 1991. The parties may comment singly or jointly, and the parties may comment earlier than May 10.

Dated: April 22, 1991.

J.C. Argetsinger,
Acting Chairman.

[FR Doc. 91-[illegible] Filed 4-25-91; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Hearings of the Defense Base Closure and Realignment Commission

ACTION: Public hearings of the Defense Base Closure and Realignment Commission.

SUMMARY: During the month of May 1991, the Defense Base Closure and Realignment Commission, an independent Presidential group, will held hearings in eight major cities throughout the United States. The purpose of these field hearings is to provide a forum for oral testimony on the closure and realignment of the bases on the Secretary of Defense's April 1991 Base Closure and Realignment list. Overall, the Commission will hold eight regional field hearings in major metropolitan areas to allow for reasonable travel of interested parties. Written material may be sent to the Defense Base Closure and Realignment Commission, 1625 K Street, NW., Washington, DC 20006, by May 30, 1991.

FOR FURTHER INFORMATION: Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, 202-653-0623.

San Francisco, California: The first regional hearing will be on Monday and Tuesday, May 6th and 7th, 1991, at the California Palace of the Legion of Honor, Florence Gould Theatre, Lincoln Park, 34th & Clement Streets, San Francisco, CA from 9:30 a.m. to 4:30 p.m. Testimony is invited on the following facilities: Sacramento Army Depot, CA; Fort Ord, CA; Castle AFB, CA; Hunters Point Annex, CA; Moffett Field Naval Air Station, CA; Naval Electronic Systems Engineering Center, Vallejo, CA; Whidby Island Naval Air Station, WA; Sand Point (Puget Sound) Naval Station, WA; and Naval Undersea Warfare Engineering Station, WA.

Los Angeles, California: The second regional hearing will be held on May 8, 1991 at a time and place to be determined and published in the Federal Register. Testimony is invited on the following facilities: Naval Weapons Center, China Lake, CA; Pacific Missile Test Center Pt., Mugu, CA; Long Beach Naval Station, CA; Marine Corps Air Station, Tustin, CA; Integrated Combat Systems Test Facility, San Diego, CA; Naval Electronic System Engineering Center, San Diego, CA; Naval Space Systems Activity, Los Angeles, CA; and Naval Ocean System Center Detachment, Kaneohe, Hawaii.

Denver, Colorado: The third regional hearing will be on Monday, May 13, 1991 in Denver, Colorado at a time and place to be determined and published in the Federal Register. Testimony is invited on facilities in the following states: Colorado, Arizona, Idaho, New Mexico, and Missouri.

Fort Worth, Texas: The fourth regional hearing will be on Tuesday, May 14, 1991 in Fort Worth, Texas, at a time and place to be determined and published in the Federal Register. Testimony is invited on facilities in the following states: Texas, Louisiana, and Arkansas.

Jacksonville, Florida: The fifth regional hearing will be on Thursday, May 23, 1991, in Jacksonville, Florida at a time and place to be determined and published in the Federal Register. Testimony is invited on facilities in the following states: Florida, Georgia, Alabama, and South Carolina.

Philadelphia, Pennsylvania: The sixth regional hearing will be on Friday, May 24, 1991, in Philadelphia, Pennsylvania, at a time and place to be determined and published in the Federal Register. Testimony is invited on facilities in the following states: Pennsylvania, New Jersey, and Maryland.

Boston, Massachusetts: The seventh regional hearing will be on Tuesday, May 28, 1991, in Boston, Massachusetts, at a time and place to be determined and published in the Federal Register. Testimony is invited on facilities in the following states: Massachusetts, Maine, Rhode Island, and Connecticut.

Indianapolis, Indiana: The eighth regional hearing will be held on Thursday, May 30, 1991, in Indianapolis, Indiana, at a time and place to be determined and published in the Federal Register. Testimony is invited on facilities in the following states: Indiana, Michigan, Illinois, Ohio, and Kentucky.

Washington, DC: Hearings will be held in Washington, DC on Tuesday and Wednesday, May 21st and 22nd at a time and place to be determined and published in the Federal Register. Testimony is invited on facilities in the following states: Virginia, and the District of Columbia.

The Commission will consider all written testimony during its deliberations. All interested individuals and groups are invited to submit their testimony or comments in writing to: Defense Base Closure Commission, 1625 K Street, NW., Suite 400, Washington, DC 20006. In order to ensure all written comments may be considered, please submit them so as to arrive at the Commission offices by May 30, 1991.

In some instances, less than 15 days notice is being given due to difficulties in confirming appropriate locations in San Francisco and Los Angeles to accommodate large public hearings.

Dated: April 23, 1991.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-9903 Filed 4-25-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

April 18, 1991.

The USAF Scientific Advisory Board Tactical Cross-Matrix Panel will meet on May 20-24, 1991 from 0800 a.m. to 5 p.m. local time at HQ USAFE, Ramstein AB, GE; MBB and IABG, Ottobrunn, GE; ICT, Berghausen, GE; Cite de L' Air, General Delegation for Armaments, Paris, FR; Dassault Aviation, SNPE, SNECMA, Aerospatiale, and MATRA, Paris, FR; and RAE, Farnborough, UK.

The purposes of this meeting are to review "lessons learned" from USAFE support of Desert Shield/Desert Storm and to discuss with NATO Allies what technologies these countries are pursuing in aeronautics and munitions/explosives. This meeting will be closed to the public, in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-8404.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.

[FR Doc. 91-9822 Filed 4-25-91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Notice of Public Hearings for the Draft Programmatic Environmental Impact Statement for Proposed Homeporting of Fast Combat Support Ships (AOE-6 Class) on the West Coast of the United States

Pursuant to Council on Environmental Quality regulations (40 CFR Parts 1500-1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Programmatic Environmental Impact Statement (DPEIS) for proposed homeporting of fast combat support ships (AOE-6 Class) on the west coast of the United States.

The DPEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DPEIS findings and to solicit comments will be held on May 14, 1991, beginning at 7 p.m., in the Great Northwest Federal Savings community room, 500 Pacific Avenue, Bremerton, Washington; on May 16, 1991, beginning at 7 p.m., at the Clarion Hotel Edgewater, 6400 East Pacific Coast Highway, Long Beach, California; and, on May 17, 1991, beginning at 7 p.m., at Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, California.

The public hearings will be conducted by the Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by June 3, 1991, to become part of the official record.

As discussed during the scoping process, early planning for AOE-6 Class ship acquisition included eight ships with four ships to be homeported on each coast. Due to budget reductions, near-term programming for ship acquisition includes a total of only four AOE-6 Class ships with only two ships scheduled for homeporting on each coast. However, the requirement continues to exist for a total of eight ships and additional ships may be programmed for acquisition at a later date.

Therefore, since the acquisition of Fast Combat Support Ships will take

place over an extended period of time (up to 10 years or longer). It is necessary to develop a program for these future actions and to provide specific detail for actions that are proposed to occur in the near term. As future plans allow for the homeporting of ships, any sites identified as homeports will be evaluated in a complete tiered analysis which will be prepared when an additional action is proposed.

The first part of the DPEIS is the programmatic analysis for homeporting on the west coast and identifies three sites as potential homeports: Naval Air Station North Island and Naval Station San Diego, California; Naval Station Long Beach, California; and, Naval Shipyard Puget Sound, Bremerton, Washington. The second part of the DPEIS is the complete tiered analysis of homeporting the first two AOE-6 Class ships at Naval Shipyard Puget Sound, Bremerton, Washington.

Additional information concerning this notice may be obtained by contacting Mr. Robert Schwarz (Code 20, telephone (202) 433-3367), Chesapeake Division, Naval Facilities Engineering Command, Building 212, Washington Navy Yard, Washington, DC 20374-2121.

Dated: 24 April 1991.

Wayne Beaulac,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 91-10061 Filed 4-25-91; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: May 13, 1991 from 10 a.m. to 5 p.m., May 14, 1991 from 9 a.m. to 5 p.m., and on May 15, 1991 from 9 a.m. to 12 p.m.; closed May 13, 1991 from 10 a.m. to 5 p.m., May 14, 1991 from 9 a.m. to 5 p.m., and on May 15, 1991 from 9 a.m. to 12 p.m.

ADDRESSES: Georgetown Marbury Hotel, 3000 M Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets, SW., Washington, DC 20202 (202) 708-5750.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under section 1001 of the Higher Education Amendments of 1980, title X (20 U.S.C. 1135a-1). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants of a given kind.

On May 15, 1991 the Board will meet in open session from 12 p.m. to 5 p.m. The proposed agenda for the open portion of the meeting will include a review of the progress on FIPSE special initiatives, including: The European Community/ERASMUS program; campus diversity and racism program; FIPSE/FIRST partnership; and FIPSE/NSF/NEH collaboration on general education. On May 13, 1991 from 10 a.m. to 5 p.m., May 14, 1991 from 9 a.m. to 5 p.m., and on May 15, 1991 from 10 a.m. to 12 p.m. the meeting will be closed to the public for the purpose of reviewing, recommending, and evaluating grant applications submitted to the Fund under the Innovative Projects for Community Services and Student Financial Independence Program and the Comprehensive Program. This portion of the meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 920-463; 5 U.S.C.A. appendix 2) and under exemptions (4) and (6) of the Government in the Sunshine Act (Pub. L. 94-409, 5 U.S.C. 552b(c)(4) and (6). The review and discussions of the applications and the qualifications of proposed staff to work on these grants is likely to disclose commercial or financial information obtained from a person and privileged or confidential or which would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, room 3100, Regional Office Building #3, 7th & D Streets, SW., Washington, DC 20202 from the hours of 8 a.m. to 4:30 p.m.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91-9838 Filed 4-25-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Proposed Clean Power Cogeneration, Inc., Project; Postponement of Public Scoping Meeting

AGENCY: U.S. Department of Energy (DOE).

ACTION: Postponement of public scoping meeting for the proposed Air-Blown Integrated Gasification Combined Cycle (IGCC) Power Plant project at the Arvah B. Hopkins Station, Tallahassee, Florida.

SUMMARY: On March 7, 1991 (56 FR 9691), DOE announced its intent to prepare an Environmental Impact Statement (EIS) to assess the environmental effects of the construction and operation of the proposed Air-Blown Integrated Gasification Combined Cycle (IGCC) Power Plant project at the Arvah B. Hopkins Station, Tallahassee, Florida, and to conduct a public scoping meeting. The meeting was scheduled for 7 p.m. on Wednesday, March 27, 1991, at the Radisson Hotel, 415 North Monroe Street, Tallahassee, Florida 32301.

However, on March 22, 1991, Clean Power Cogeneration, Inc., requested that DOE postpone the scoping meeting in order to allow for additional time to evaluate some aspects of the project that need further consideration. Accordingly, the public scoping meeting was postponed until further notice. The postponement was advertised in the local newspaper, and was announced on radio stations and television channels in the Tallahassee area.

Notification of rescheduling the public scoping meeting will be provided in the Federal Register at least fifteen calendar days prior to the meeting date.

ADDRESSES: Questions regarding the postponement of the public scoping meeting, or questions concerning the project, should be directed to: Bruce J. Buvinger, Environmental Specialist D04, U.S. Department of Energy, Morgantown Energy Technology Center (METC), P.O. Box 880, Morgantown, WV 26505, Telephone: (304) 291-4379.

FOR FURTHER INFORMATION CONTACT: For general information on the EIS process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Tel. (202) 586-4600.

Signed in Washington, DC, this 19th day of April 1991, for the United States Department of Energy.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 91-9855 Filed 4-25-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent to Award Grant to Brackett Research

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14 it is making a financial assistance award under Grant Number DE-FG01-91CE15516 to Brackett Research to modify and test an engineering prototype of an automotive-size internal combustion engine.

This grant will provide funding to Brackett Research for the estimated cost of $88,200 to be provided by the Government. Over $1.8 million has been invested in the overall project by the private sector. Implementation of the new technology in the many industries and markets where slider-crank technology can be applied may save millions of barrels of oil and reduce pollution. Based on the acceptance of an unsolicited application, eligibility for this award is limited to Brackett Research.

The inventor, Mr. Douglas Brackett, has developed and patented an innovative, high efficiency internal combustion engine technology which modifies conventional engine technology, reducing friction and increasing the efficiency of engines in many applications. The inventor is the founder, chairman of the board, and president of Cammax Corporation, a Delaware corporation formed in 1987 for the commercialization of this technology. In addition, he is the sole proprietor of Brackett Research. He has been doing research and development work successfully for over 20 years, holds 4 U.S. patents and 6 foreign patents in addition to a number of patents pending. He is listed in the "1990 Who's Who of American Inventors". In accordance with 10 CFR 600.14(e)(1), it has been determined that this project represents a unique idea that is not eligible for financial assistance under a recent, current or planned solicitation. The Energy-Related Inventions Program (ERIP) has been structured since its beginning in 1975 to operate without competitive solicitations because the legislation directs ERIP to provide support for worthy ideas submitted by the public. The proposed project and technology have a strong potential of adding to the national energy resources.

The anticipated term of the proposed grant shall be eighteen months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of placement and Administration; ATTN: Rose Mason, PR-322.2, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-9852 Filed 4-25-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent to Award Grant to Khanh Dinh

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14 it is making a financial assistance award under Grant Number DE-FG01-91CE15501 to Khanh Dinh to write a design manual and computer program for air-conditioning engineers so that his invention, a high-efficiency dehumidifier air-conditioning system using heat pipe technology from the space program, which can be readily adapted to residential and commercial buildings.

This grant will provide funding to Khanh Dinh for the estimated cost of $99,500 to be provided by the Government. The invention allows for higher thermostat settings on air-conditioners while simultaneously lowering the humidity levels. It promises an estimated energy savings figure of 900,000 barrels of oil equivalent annually. Based on the acceptance of an unsolicited application, eligibility for this award is limited to Khanh Dinh.

The inventor, Khanh Dinh, who has a master's degree in mechanical engineering, holds a patent on his invention. He is the founder and president of the Dinh Company, Inc., of Alachua, Florida, which was formed in 1983. He has received a number of awards for his invention including the NASA Technical Innovation Award in 1984, the Florida Governor's Energy Award in 1987, and the DOE National Awards Program for Energy Innovation in 1987. In accordance with 10 CFR 600.14(e)(1), it has been determined that this project represents a unique idea that is not eligible for financial assistance under a recent, current or planned solicitation. The Energy-Related Inventions Program (ERIP) has been structured since its beginning in 1975 to operate without competitive solicitations because the legislation directs ERIP to provide support for worthy ideas submitted by the public. The proposed technology has a strong possibility of allowing for future reductions in the nation's energy consumption.

The anticipated term of the proposed grant shall be 24 months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR-322.2, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-9853 Filed 4-25-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent to Award Grant to James J. Dolan

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14 it is making a financial assistance award under grant number DE-FG01-91CE15458 to James J. Dolan to prove the concept of the float process for the continuous casting of steel.

This grant will provide funding to James J. Dolan for the estimated cost of $84,306 to be provided by the Government. When fully implemented, this technology has the potential of saving about 10 million barrels of crude oil equivalent annually for the entire U.S. steel industry. Based on the acceptance of an unsolicited application, eligibility for this award is limited to James J. Dolan.

The inventor, James J. Dolan, is a highly qualified steel engineer. He plans to perform part of the work at Carnegie Mellon University (CMU), which has advanced facilities and is staffed with highly qualified personnel. Mr. Dolan, in addition to having an M.S. in mechanical engineering, has over 40 years experience in the steel industry.

He will use his own facilities to perform standard physical tests on the samples.

In accordance with 10 CFR 600.14(e)(1), it has been determined that this project represents an unique idea that is not eligible for financial assistance under a recent, current or planned solicitation. The Energy-Related Inventions Program (ERIP) has been structured since its beginning in 1975 to operate without competitive solicitations because the legislation directs ERIP to provide support for worthy ideas submitted by the public. The proposed project and technology have a strong potential of adding to the national energy resources.

The anticipated term of the proposed grant shall be two years from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR-322.2, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-9954 Filed 4-25-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent to Award Grant to Debbie Gioello

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14 it is making a financial assistance award under grant number DE-FG01-91CE15477 to Debbie Gioello to design and develop a prototype of a CAD/CAM shell for automating the design, layout and packing activities utilized in the fashion design industry and to make the software package accessible on a personal computer.

This grant will provide funding to Debbie Gioello for the estimated cost of $75,800 to be provided by the Government. It is anticipated that productivity gains and time-saving aspects will demonstrate the worthiness of this system. Based on the acceptance of an unsolicited application, eligibility for this award is limited to Debbie Gioello.

The inventor, Debbie Gioello, has developed and patented a CAD/CAM shell, and she will make available her company office/design studio including sewing machines, patternmaking tables, dressforms and standard office equipment. She is president of Gioello Enterprises, Ltd., and is a noted fashion designer, academician and author of several fashion design related books. She is currently an associate Professor of Fashion Design and Coordinator of the Fashion Design Apparel Department of the Evening College of the Fashion Institute of Technology (NYC).

In accordance with 10 CFR 600.14(e)(1), it has been determined that this project represents a unique idea that is not eligible for financial assistance under a recent, current or planned solicitation. The Energy Related Inventions Program (ERIP) has been structured since its beginning in 1975 to operate without competitive solicitations because the legislation directs ERIP to provide support for worthy ideas submitted by the public. The proposed project and technology have a strong potential of adding to the national energy resources.

The anticipated term of the proposed grant shall be eighteen months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR-322.2, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-9955 Filed 4-25-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. GP91-7-000]

Bureau of Land Management, Section 108 Determination, HiGar Petroleum, Inc., No. 1 USA "D" Well, FERC No. JD91-02669; Order Issuing Preliminary Finding That Jurisdictional Agency Determination is not Supported by Substantial Evidence

Issued: April 19, 1991.

Introduction

On January 9, 1991, the United States Department of the Interior's Bureau of Land Management (Land Management) notified the Commission that the No. 1 USA "D" Well (#1 well) did not disqualify as a stripper well after HiGar Petroleum, Inc. (HiGar) contested Colorado Interstate Gas Company's (CIG) notice that the well had disqualified as a stripper well. Order No. 188 [1] states that days when a well is shut-in by the pipeline when there is no demand can not be counted as production days in determining whether production exceeds the statutory limit for stripper wells. Since Land Management determined that the well did not disqualify because it counted as production days, days when the well was shut-in, the Commission staff requested Land Management to explain its determination. Land Management acknowledges that the Commission has held that days when a well is shut-in are not production days but states that it affirmed HiGar's motion to ensure that the Commission would review the matter. For the reasons stated below, the Commission will issue a preliminary finding that Land Management's determination is not supported by substantial evidence and provide a 30-day comment period.

Background

CIG implemented a computerized payment system in January 1988 which contained production and pricing data to enable it to monitor stripper wells on its system. Based on reports from the computerized payment system showing that 75 wells had disqualified as stripper wells because production exceeded the statutory limit, CIG sent notices of disqualification to the 60 producers who owned the wells.

One producer, HiGar, filed a motion contesting CIG's notice of disqualification for the #1 well by a May 26, 1989, letter to Land Management.[2]

Land Management's determination

On January 9, 1991, Land Management notified the Commission that it had affirmed HiGar motion.[3] The determination includes written statements that Land Management permitted both parties to submit. CIG's statement asserted that it shut-in the #1 will on days when it did not need gas and that Order No. 188 states that those days can not be counted as production days. HiGar argues that the Commission subsequently modified the definition of production day in Order No. 445 (FERC Statutes and Regulations, ¶ 30,684 (1988)) and that all days should be counted as production days because it did not shut-in the well. HiGar also argues that the well had not disqualified because CIG's notice was untimely filed.[4]

The Commission staff's review of Land Management's determination showed that Land Management counted days when the well was shut-in by CIG due to lack of demand as production days. The Commission staff's review also showed that if the shut-in days are not counted as production days, the well produced more than an average of 60 Mcf per production day during certain 90-day production periods. Since the Commission held in Order No. 188 that days when a well is shut-in by the pipeline are not production days, the Commission staff requested Land Management to explain its determination in a February 22, 1991 letter.[5]

In a letter received on March 5, 1991 Land Management acknowledges that the Commission has held that days when a well is shut-in due to lack of demand by the pruchaser do not count as production days.[6] Land Management states, however, that it affirmed HiGar's motion so that the Commission would consider HiGar's position. On March 7, 1991, HiGar submitted proposed findings of fact and conclusions that had been previously submitted to Land Management.

Discussion

Section 108 of the NGPA defines a stripper well as a well that produces an average of less than 60 Mcf of nonassociated gas per production day during the preceding 90-day production period at its maximum efficient rate of flow. Therefore, the total production during a 90-day production period is divided by the number of "production" days in that period to determine a well's average rate of production.

The Commission has held that days when the well is shut-in due to lack of demand do not count as "production days." NGPA section 108(b)(3)(A) and 271.803(d) of the regulations define a "production day" as (1) a day that natural gas is produced or (2) a day when natural gas is not produced because production is prohibited by a state law or a conservation practice recognized or approved by the jurisdictional agency.

The Commission has stated that days when a well is shut-in can not qualify as production days unless that jurisdictional agency makes a specific finding that shutting-in the well was a recognized conservation practice.[7] Moreover, in Order No. 188,[8] the Commission held that days when a well is shut-in due to a pipeline's action are not "production days" because that well would not be producing, attempting to produce or shut-in to comport with state conservation practices as required by the NGPA.[9]

The Commission finds HiGar's argument that the Commission modified the definition of production day in Order No. 445 is without merit. Order No. 445 merely revised the stripper well regulations to eliminate the need for a producer to file for a temporary pressure build-up determination every time a well's production exceeded an average of 60 Mcf per production day due to a temporary pressure build-up.[10] The Commission did not change the definition to provide that a day when a well was shut-in by the purchaser could be counted as a production day.

Conclusion

The Commission finds preliminarily that Land Management's determination for the well is not supported by substantial evidence. Land Management counted days when the well was shut-in because CIG did not need the gas as production days. If these days are not counted as production days, the well's production exceeded an average of 60 Mcf per production day during the relevant 90-day production periods. Because days when a well is shut-in by the pipeline can not be counted as production days, the Commission believes that Land Management's determination is not supported by substantial evidence. Accordingly, we issue this preliminary finding and provide for a 30-day comment period. A final order shall issue within 120 days from the date of the preliminary finding.

The Commission Orders

(A) The Commission makes a preliminary finding as described in the text of this order that Land Management's determination is not supported by substantial evidence.

(B) Interested parties shall have 30 days to comment on the Commission's preliminary finding.

By the Commission.

Lois D. Cashell,

Secretary.

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[1] FERC Statutes and Regulations, [Regulation Preambles 1977-1981] ¶ 30,310 (1981).

[2] CIG notified HiGar in a letter dated February 6, 1989 that the well disqualified as a stripper well for several 90-day production periods between 1985 and 1988.

[3] Section 271.808(b) of the regulations requires a jurisdictional agency to treat a motion contesting the disqualification of a stripper well as an application for a determination.

[4] The well qualified as a stripper well in FERC Confcol No. [D82-34309.

[5] Section 275.203(b)(3) provides that the 45-day review period will not begin until an explanatory statement is received, if the Commission notifies the jurisdictional agency that the notice is incomplete.

[6] The 45-day review period ends on April 19, 1991.

[7] Interim interpretative regulation issued in Docket No. RM79-73; FERC Statutes and Regulations, Regulations Preambles, 1977-1981, ¶ 30,182 (1979). In order for shut-in days to be counted as production days, a jurisdictional agency must verify the particular physical impediment requiring the shutting-in of the well and explain why the conservation practice achieves and maintains production.

[8] See, f.n. 1, *supra*.

[9] Section 271.805(c) provides that gas is "produced" on: (1) any day during which there is measurable production of natural gas from a well; and (2) any day on which the well is open to the line but is unable to produce measurable quantities of gas.

[10] III Statutes and Regulations, ¶ 30,684 (1988).

Office of Energy Research

Health and Environmental Research Advisory Committee; Open Meeting

Under the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC).

Date and Time: May 21, 1991, 9:00 a.m.-5:00 p.m. May 22, 1991, 9:00 a.m.-1:00 p.m.

Place: Chancellor's Conference Room (S-118), University of California, 3rd and Parnassus Avenue, San Francisco, California 94143.

Contact: George D. Duda, Office of Health and Environmental Research (ER-72), Office of Energy Research, U.S. Department of Energy, Washington, DC 20585, Telephone: 301/353-3651.

Purpose of the Committee: To provide advice on a continuing basis to the Director of Energy Research of the Department of Energy (DOE), on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Research (HER) program.

Tentative Agenda: Briefings and discussions of:

May 21, 1991

- New Business
- Program Highlights by staff of the Laboratory of Radiobiology and Environmental Health, University of California
- HER Multiyear Program Plan
- Public Comment (10 minute rule)

May 22, 1991

- Outstanding HERAC Reports
- Public comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact George D. Duda at the address or telephone number listed above. Requests to make oral statements must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE-190,

Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on April 23, 1991.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-9957 Filed 4-25-91; 8:45 am]

BILLING CODE 6560-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3924-6]

Establishment And Open Meeting of the Policy Dialogue Committee on Mining

AGENCY: U.S. Environmental Protection Agency.

ACTION: Establishment of Federal Advisory Committee on Mining Waste.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the establishment of a Mining Waste Dialogue Committee to provide a forum to refine and further develop issues related to managing mining waste and to facilitate the exchange of ideas and information among the interested parties. We have determined that this is in the public interest and will assist the Agency in performing its duties prescribed in the Resource Conservation Recovery Act. Copies of the Committee Charter will be filed with the appropriate committees of Congress and the Library of Congress.

DATES: The Committee's first meeting will be held on May 15, 1991 from 1 p.m. to 5 p.m. and May 16, 1991 from 9 a.m. to 3 p.m.

ADDRESSES: The location of the meeting is Quality Inn, 415 New Jersey Avenue, NW., Washington, DC. The Committee's facilitator has notified interested parties of the meeting dates. The purpose of the meeting is to discuss issues related to the development of EPA's mining program. The Committee meeting is open to the public without need for advance registration.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the Committee should call Stephen Hoffman, Office of Solid Waste, at (703) 308-8413. Persons needing further information on procedural matters should call Deborah Dalton, Regulatory Negotiation Project, at (202) 382-5495.

SUPPLEMENTARY INFORMATION:

Background

In October, 1980 the Resource Conservation and Recovery Act (RCRA) was amended by adding section 3001(b)(3)(A)(iii) to exclude "solid waste from the extraction, beneficiation, and processing of ores and minerals" from regulation as hazardous waste under subtitle C of RCRA, pending completion of a study and a Report to Congress required by section 8002(f) and (p) and a determination by the EPA Administrator either to promulgate regulations under subtitle C or that such regulations are unwarranted.

On December 31, 1985, EPA published a Report to Congress, entitled Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale.

On July 3, 1986 (51 FR 24496), EPA published a regulatory determination based on the findings of the Report to Congress. These findings concluded that extraction and beneficiation mining wastes should be regulated a solid wastes under RCA subtitle D rather than as hazardous wastes under RCRA subtitle C even though some mining wastes exhibit hazardous characteristics. In addition, the report also indicated that: EPA is concerned about actual and potential mining waste problems; maximum flexibility is necessary to develop an appropriate program for mining wastes; the program needs to take into account the variability of risk in order to control individual facilities on a site-specific basis; existing subtitle C regulations do not provide enough flexibility to address mining wastes, while existing subtitle D regulations do not provide enough Federal authority or Federal enforcement; and EPA would develop a flexible, site-specific, risk-based program.

In May 1988 and again in May 1990, the Office of Solid Waste (OSW) released for public comment "strawman" documents that outlined various approaches for managing noncoal extraction and beneficiation wastes and materials. These documents were staff-level approaches designed to facilitate the participation of interested parties in program development and enhance EPA's understanding of mining waste issues. A series of meetings were held to receive comments on the strawman documents.

EPA believes that the formation of a Mining Waste Dialaogue Committee will provide a forum to refine and further develop issues raised during the strawman development and comment process; and to facilitate the exchange of new ideas and information among the interested parties. It is hoped that consensus may be possible on some issues but, at a minimum, we would like to ensure that issues are thoroughly defined and that differing positions, as well as the reasons for those differences are identified. The output of the Policy Dialogue Committee would be made available to various EPA decision-makers in the mining waste program development process.

Participants

EPA anticipates that seven representatives from each of the interested parties (States, the mining industry, and public interest groups) will serve as representatives on the Committee. Representatives from EPA and other federal agencies will also serve as members of the Committee. The following is a listing of representatives for the interested parties:

States—Mr. James Cornelius, Chief, Program Support Branch, California Division of Clean Water Programs; Mr. Fred Banta, Director, Mine land Reclamation Division, Colorado Department of Natural Resources; Mr. Tom Fronapfel, Bureau Chief, Bureau of Mining Regulation and Reclamation, Nevada Department of Conservation and Natural Resources; Mr. Charles Gardner, State Geologist, Director of Land Resources, North Carolina Department of Health, Environment and Natural Resources; Mr. Jim Joy, Chief, Air Quality Control, South Carolina Department of Health and Environmental Control; Mr. Steve Pirner, Director, Division of Environmental Regulation, South Dakota Department of Water and Natural Resources; Mr. Ken Alkema, Director, Division of Environmental Health, Utah Department of Health.

Mining Industry—Mr. David Crouch, Corporate Manager, Environmental Affairs, Homestake Mining Company; Mr. Thomas Janeck, Vice President, Environmental Affairs, Zinc Corporation of America; Mr. Norman Greenwald, Norman Greenwald Associates; Dr. Krishna Parameswaren, Senior Analyst, Government Relations, ASARCO Incorporated; Mr. Steven Barringer, Esq., Holland & Hart; Mr. Ivan Urnovitz, Manager, Government Relations, Northwest Mining Association; and a currently unnamed mining industry representative.

Public Interest Group—Mr. David Lennett, Esq., National Audubon Society; Dr. Glenn Miller, Sierra Club; Mr. Wm. Paul Robinson, Southwest Research & Information Center; Mr. James Jensen, Montana Environmental Information Center; Mr. Thomas Galloway, Esq., Friends of the Earth; Mr. Philip Hocker, Mineral Policy Center; and a currently unnamed public interest group representative.

The names of Federal agency representatives have not yet been finalized.

Dated: April 19, 1991.

Richard D. Morgenstern,

Acting Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 91-9901 Filed 4-25-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3924-7]

Establishment of the Environmental Financial Advisory Board and Notice of Open Meeting on May 30 and 31, 1991

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act, U.S.C. (App. I) 9(c), the Environmental Protection Agency (EPA) hereby gives notice of the establishment of the Environmental Financial Advisory Board (EFAB). EPA has determined that this action is in the public interest.

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Board is to provide authoritative analysis and advice to the EPA Administrator regarding environmental finance issues to assist EPA in carrying out its environmental mandates. Copies of the Advisory Board charter will be filed with appropriate committees of Congress and are available upon request.

EFAB was formerly a committee of the National Advisory Council for Environmental Policy Transfer and became a separate advisory board with its current membership intact. Board members serve one or two year terms and are appointed as independent experts from state and local governments, elected officials, the finance and banking community, business and industry, national organizations, and academia. The Board will meet at least two times a year. No honoraria or salaries are provided Board members.

The Designated Federal Official for EFAB is Herbert Barrack, Assistant Regional Administrator for Policy and Management, EPA Region 2.

Open Meeting

EFAB will hold an open meeting of its small communities workgroup in Albuquerque, New Mexico on May 30 and 31, 1991. The purpose is to collect comments and views on financing strategies that help lower the cost of and pay for environmental facilities and services in small communities. The meeting will be held at the Marriott Hotel located at 2101 Louisiana Boulevard NE.

On May 30, the workgroup will meet from 1:30-5 p.m. in the Santa Fe Room to consider the latest draft of its advisory statement. On May 31, the workgroup will hold an open meeting in Salons G-J, from 8:15 a.m.-5 p.m. Members of the public who wish to provide written comment may do so by submitting material to Gene Pontillo, EPA staff contact for EFAB administrative matters, U.S. EPA, 401 M Street, SW., NELC-014, H-3304, Washington, DC 20460. Those who wish to provide oral comment at the meeting on May 31 should make their request to Mr. Pontillo (202/475-7044) by no later than May 17, 1991.

The meetings on May 30 and 31 will be open to the public. Seating is limited.

John J. Sandy,

Director, Resource Management Division.

[FR Doc. 91-9899 Filed 4-25-91; 8:45 am]

BILLING CODE 6560-01-M

[ER-FRL-3959-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 8, 1991 through April 12, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14098).

Draft EISs

ERP No. D-AFS-K65128-CA Rating EC2, Duncan/Sunflower Timber Sales, Implementation, Duncan Canyon, Tahoe National Forest, Foresthill Ranger District, Placer County, CA.

Summary: EPA expressed environmental concerns regarding potential project impacts to water quality, air quality, fish and wildlife. EPA requested that the FEIS discuss potential impacts to air quality from prescribed burns and identify appropriate air quality mitigation.

ERP No. D-AFS-K65129-CA Rating EC2, Stormy II Watershed/Fire Recovery, Implementation, Sequoia National Forest, San Joaquin Valley Air Basin, Tulare and Kern Counties, CA.

Summary: EPA expressed environmental concerns with the proposed action and requested that the FEIS contain additional information on: Air quality impacts resulting from prescribed burns; continued livestock grazing in burned areas; the need for mitigation to protect water quality if water quality monitoring detects adverse effects; harvesting in riparian areas; and the various timber and salvage activities.

ERP No. D-BLM-K61115-AZ Rating EO2, Kingman Resource Area, Resource Management Plan, Implementation, Mohave, Yavapi and Coconino, AZ.

Summary: EPA expressed environmental objections because the preferred alternative would perpetuate land management practices that adversely affect water quality, soils, vegetation, riparian habitats, and wildlife. Livestock grazing, mineral developments and other actions authorized by BLM cause increased soil erosion and sedimentation of surface waters. EPA requested that BLM consider preparing a supplemental EIS to address these issues more fully and to develop appropriate mitigation to protect water quality and natural resources.

ERP No. D-NOA-B90011-MA Rating LO2, Stellwagen Bank National Marine Sanctuary, Implementation, Designation and Management Plan, Boston, MA.

Summary. EPA supports the approval of NOAA's preferred boundary alternative and recommends that additional information be provided with regard to proposed sanctuary regulations.

ERP No. D-UAF-B11012-NH Rating EO2, Pease Air Force Base (AFB) Disposal and Reuse, Implementation, Portsmouth, Newington, Greenland, Rye, Dover Durham, Madburg Rochester, NH and Kittery, Eliot and Berwicke, ME.

Summary: EPA commented that the DEIS does not contain sufficient information to fully assess the potential environmental impacts of the proposed action and that the proposed action could cause significant impacts that must be avoided. Environmental concerns identified include: Wetlands; traffic-induced impacts on air quality; noise impacts from a airport operations; and hazardous waste issues.

Final EISs

ERP No. F-COE-G36144-LA, Comite River Basin and Tributaries Flood Protection Plan, Implementation, Amite River Basin, Baton Rouge and Livingston Parishes, LA.

Summary: EPA has no objection to the selection of the preferred project action.

ERP No. FB-FHW-B40089-MA, Central Artery/I-93 Third Harbor Tunnel/I-90 Extension, Design Modifications, Updated and Additional Information, Funding, U.S. COE section 10 and 404 Permits, U.S. CGD Permits and EPA NPDES Permit, Suffolk County, MA.

Summary: EPA is encouraged by the resolution of the issues relating to the Spectacle Island fill proposal and the Dewey Square Tunnel air quality impacts. EPA encourages the FHWA to take steps to ensure that the mass transit and emission reduction measures are carried out, and that the design of the Charles River Crossing include measures to minimize adverse environmental impacts.

Dated: April 23, 1991.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 91-9932 Filed 4-25-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3935-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed April 15, 1991 Through April 19, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910118, Draft EIS, BLM, CA, Redding Resource Area, Land and Resource Management Plan, Implementation, Ukiah District, Butte, Shasta, Siskiyou, Tehama and Trinity Counties, CA, Due: June 28, 1991, Contact: Francis Berg (916) 246-5325.

EIS No. 910119, Draft EIS, AFS, MT, St. Joseph Timber Sale and Road Management, Implementation, Bitterroot National Forest, Stevensville Ranger District, Ravalli and Missoula Counties, MT, Due: June 10, 1991, Contact: Calvin Joyner (406) 777-5461.

EIS No. 910120, Draft EIS, AFS, MT, Turkey Salvage Timber Sale and Road Construction, Implementation, Lewis and Clark National Forest, Judith Ranger District, Judith Basin County, MT, Due: June 10, 1991, Contact: Richard M. Abt (406) 761-4626.

EIS No. 910121, Draft EIS, MMS, 1992 Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales 139 and 141, Lease Offering, Due: June 10, 1991, Contact: James Bennett (703) 787-1671.

EIS No. 910122, Draft EIS, BLM, MD, Antietam National Battlefield General Management Plan, Implementation, Washington County, MD, Due: June 30, 1991, Contact: Jacob J. Hoogland (202) 343-5214.

Dated: April 23, 1991.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 91-9931 Filed 4-25-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59297; FRL 3939-2]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of 3 applications for exemption, provides a summary, and requests comments on the appropriateness of granting these exemptions.

DATES:

Written comments by:

T 91-13, March 25, 1991.
T 91-14, March 25, 1991.
T 91-15, May 5, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS-59296)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., rm. L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

T 91-13

Close of Review Period. May 8, 1991.

Manufacturer. Confidential.

Chemical. (G) Alkyl polyamine derivative.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

T 91-14

Close of Review Period. May 8, 1991.

Manufacturer. Confidential.

Chemical. (G) Alkyl polyamine derivative.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

T 91-15

Close of Review Period. May 19, 1991.

Importer. Confidential.

Chemical. (G) Di (p-methylbenzyl) oxalate.

Use/Import. (S)Efficiency improver (sensititizer) for heat-sensitive recording sheet. Prod. range: Confidential.

Dated: April 22, 1991.

Steven Newberg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-9937 Filed 4-25-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Commission Requests Comment on NECA's Proposed Additional Revisions to the Average Schedules

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: This document corrects a notice, 56 FR 14523, April 10, 1991, that established comment dates on the National Carrier Association, Inc. proposed additional revisions to the average schedules.

FOR FURTHER INFORMATION CONTACT: Kent Nilsson, Policy and Program Planning Division, Common Carrier Bureau (202) 632-6363.

SUPPLEMENTARY INFORMATION: In FR Doc 91-6341, published in the April 10, 1991, Federal Register on page 14523, the following corrections are made in the Appendix:

Line Haul Distance Sensitive

The settlement would be [($1.034214) (interstate circuit miles)] + [($.0011455) (traffic sensitive switched minutes)].

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-9949 Filed 4-25-91; 8:45 am]

BILLING CODE 6712-01-M

DLB Broadcasting, Partnership, et al.; Applications

1. The Commission has before it the following mutually exclusive applications for three new FM stations:

Applicant, city/state	File No.	MM docket No.
I.		
A. DLB Broadcasting, Partnership, Comfort, TX.	BPH-891026MF	91-87
B. Roy E. Henderson, d/b/a Comfort Broadcasting Company, Comfort, TX.	BPH-891026MG	
C. Pinkman Broadcasting Corporation, Comfort, TX.	BPH-891026MH	
D. Comfort Radio Partner, Comfort, TX.	BPH-891026MI	
E. Nancy K. Hinson Grubbs, Comfort, TX.	BPH-891025MO	
Issue Heading and Applicants 1. Air Hazard, B, C 2. Comparative, All 3. Ultimate, All		
II.		
A. Homewood Superior Broadcasters, Ltd., Homewood, AL.	BPH-8908160B	90-636
Issue Heading and Applicants 1. Comparative, A 2. Ultimate, A		
III.		
A. Great Scott Broadcasting, Hawley, PA.	BPH-890925MF	91-91
B. Susan T. LaRose, Hawley, PA.	BPH-890925MG	
C. Jerry C. Paparelli, Hawley, PA.	BPH-890925MH	
Issue Heading and Applicant(s) 1. Air Hazard, A, B 2. Comparative, A, B, C 3. Ultimate, A, B, C		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Divi. .on, Mass Media Bureau.

[FR Doc. 91-9948 Filed 4-25-91; 8:45 am]

BILLING CODE 6712-01-M

[Pr. Docket No. 91-95]

J.W. Miller Aviation, Inc., et al.; Hearing Designation Order

AGENCY: Federal Communications Commission.

ACTION: Notice of designation.

SUMMARY: Notice is given that the renewal application for an aeronautical advisory station (unicom) at Horseshoe Bay Airport in Marble Falls, Texas, filed by J.W. Miller Aviation, Inc., and the application for a unicom at the same location, filed by Horseshoe Bay Management Co., have been determined to be mutually exclusive and are therefore designated for hearing in a consolidated proceeding to determine in light of the evidence presented, which application, if any, should be granted.

FOR FURTHER INFORMATION CONTACT: Susan Jones, Federal Communications Commission, Private Radio Bureau, 2025 M Street, NW., Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: 47 CFR 87.213(b)(1), 87.215(b), 1.221 (a), -(c), -(f), -(g), 1.254, 1.971(a)(4), 1.973(a).

In re Renewal Application of J.W. Miller Aviation, Inc. and Application of Horseshoe Bay Management Co. For an Aeronautical Advisory Station at Horseshoe Bay Airport in Marble Falls, Texas. PR Docket No. 91-95; File No. 812223, File No. 812418.

Hearing Designation Order

Adopted: March 28, 1991.

Released: April 22, 1991.

1. The applications of J.W. Miller Aviation, Inc. (Miller) and the Horseshoe Bay Management Co. (Horseshoe Bay) propose to operate an aeronautical advisory station (unicom) at Horseshoe Bay Airport in Marble Falls, Texas. Unicom stations provide information concerning flying conditions, weather, availability of ground services, and other information to promote the safe and expeditious operation of aircraft. See § 87.213(b)(1) of the Commission's Rules, 47 CFR 87.213(b)(1).

2. Both applicants propose to provide service at Horseshoe Bay Airport, where there is no control tower of FAA flight service station. Section 87.215(b) of the Commission's Rules, 47 CFR 87.215(b), authorizes the operation of only one unicom station at such airports. Pursuant to Sections 1.971(a)(4) and 1.973(a) of the Commission's Rules, 47 CFR 1.971(a)(4), 1.973(a), these applications are mutually exclusive and must therefore be designated for comparative hearing.

3. *Accordingly, it is Ordered* That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), and Section 1.221(a) of the Commission's Rules, 47 CFR 1.221(a), the above captioned applications are designated for hearing in a consolidated proceeding to determine the following issues:

a. To determine which applicant would provide the public with better aeronautical advisory service based on the following considerations:

(1) Location of the fixed-based operation and proposed radio station in relation to the landing area and traffic patterns;

(2) Hours of operation;

(3) Personnel available to provide advisory service;

(4) Experience of applicant and employees in aviation and aviation communications;

(5) Ability to provide information pertaining to primary and secondary communications as specified in Section 87.257 of the Commission's Rules;

(6) Proposed radio system including control and dispatch points; and

(7) The availability of the radio facilities to other fixed-base operators;

b. To determine whether there was an improper transfer of control of J.W. Miller Aviation, Inc., as alleged by Horseshoe Bay Management Co., only to the extent that new material has come to light since the initial consideration

and subsequent dismissal by the Chief, Special Services Branch, Licensing Division, Federal Communications Commission, in his February 17, 1987 letter;

c. To determine, in light of the evidence presented, which application, if any, should be granted to best serve the public interest, convenience, and necessity.

5. *It is further ordered* That the burden of proceeding with the introduction of evidence with respect to all the issues listed here shall be governed by Section 1.254 of the Commission's Rules, 47 CFR 1.254.

6. *It is further ordered* That, to avail themselves of the opportunity to be heard, the applicants, Miller and Horseshoe Bay, must each file with the Commission, within 20 days of the mailing of this Hearing Designation Order, a written notice of appearance in triplicate, accompanied by a processing fee of $6,760.00, stating their intentions to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order, in accordance with § 1.221 (c), (f) and (g) of the Commission's Rules, 47 CFR 1.221 (c), (f) and (g).

7. The time and place of the comparative hearing will be specified in a subsequent Order.

Federal Communications Commission.

Robert H. McNamara,

Chief, Special Services Division.

[FR Doc. 91-9850 Filed 4-25-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Revision of 3067-0024.

Title: General Admission Application and National Fire Academy Roster of Course Completion.

Abstract: The General Admission Application (FEMA Form 75-5) and National Fire Academy Roster of Course Completion (FEMA 75-9) are completed by applicants to the National Emergency Training Center to enroll in National Fire Academy (NFA) and Emergency Management Institute (EMI) courses. Some students receive stipends for attending NFA courses. The application forms are used to determine eligibility for course enrollment and stipend payments.

Information from the application forms is maintained in the Student Record System to: (1) Provide a consolidated record of all FEMA training taken by the student; (2) identify or verify participation in prerequisite courses; and (3) produce a transcript for use by the student to request college credit or continuing education units for courses completed.

Type of Respondents: Individuals or households, State and local governments, Federal agencies or employees, and Non-profit institutions.

Estimate of Total Annual Reporting and Recordkeeping Burden: 5,000 hours.

Number of Respondents: 33,000.

Estimated Average Burden Hours Per Response: 9 minutes.

Frequency of Response: Other—each time a student applies to an NETC NFA or EMI Course.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Clearane Officer at the above address; and to Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: April 19, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91-9877 Filed 4-25-91; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Extension of 3067-0113

Title: The Declaration Process: Requests for Damage Assessment, Federal Disaster Assistance, and Loans.

Abstract: Requests for Federal disaster assistance and loans must be made by the Governor. Certain information is necessary to comply with statutory requirements, which are implemented in FEMA regulation 44 CFR part 206, subpart B. Affected public includes individuals, State and local governments, and private nonprofit organizations.

Type of Respondents: Individuals, or households, State or local governments, and non-profit institutions.

Estimate of Total Annual Reporting and Recordkeeping Burden: 944 Hours.

Number of Respondents: 59.

Estimated Average Burden Hours Per Response: 8

Frequency of Response: Other—as required.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: April 11, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91-9878 Filed 4-25-91; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Extension of 3067-0122.

Title: Debt Collection—Financial Statement.

Abstract: The principal purpose of FEMA Form 22-13, Debt Collection Financial Statement, is to gather information on a debtor's financial condition to determine whether he/she has the ability to pay a debt due to the Federal Government.

Type of Respondents: Individuals or households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 210 Hours.

Number of Respondents: 280.

Estimated Average Burden Hours Per Response: 45 minutes.

Frequency of Response: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: April 12, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91-9879 Filed 4-25-91; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-894-DR]

Amendment to a Major Disaster Declaration; California

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-894-DR), dated February 11, 1991, and related determinations.

DATES: April 17, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated April 17, 1991, the President amended his declaration of a major disaster for the State of California, dated February 11, 1991, as follows:

On February 11, 1991, I determined that the damage in certain areas of the State of California, resulting from a severe freeze which occurred December 19, 1990, through January 3, 1991, was of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") and I authorized you to provide Disaster Unemployment Assistance in the designated areas.

I have determined that special conditions exist which warrant the provisions of additional assistance under this major disaster declaration. I, therefore, amend my declaration to authorize you to provide Temporary Housing assistance in the designated areas.

Public Assistance and other Individual Assistance programs may be provided at a later date, if warranted, and a proper cost sharing commitment is obtained. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster:

The counties of Alameda, Butte, Colusa, Fresno, Glenn, Imperial, Kern, Los Angeles, Madera, Marin, Mendocino, Merced, Monterey, Napa, Riverside, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Ventura, Yolo, and Yuba for Temporary Housing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-9874 Filed 4-25-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-901-DR]

Major Disaster and Related Determinations; Maine

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA-901-DR), dated April 19, 1991, and related determinations.

DATES: April 19, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated April 19, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Maine, resulting from severe storms, ice jams, and flooding beginning on April 6, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared major disaster: Aroostook County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Jerry D. Jennings,

Deputy Director, Federal Emergency Management Agency.

[FR Doc. 91-9876 Filed 4-25-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-900-DR]

Major Disaster and Related Determinations; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-900-DR), dated April 12, 1991, and related determinations.

DATED: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated April 12, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe storms, tornadoes, and flooding beginning on April 5, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be provided at a later date, if damage assessments warrant. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alton S. Ray, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster: Cameron County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91-9673 Filed 4-25-91; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Mitsui O.S.K. Lines, Ltd., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232-011327.

Title: The Mitsui O.S.K. Lines Ltd. and Kawasaki Kisen Kaisha, Ltd. Space Charter and Sailing Agreement in the Far-East/West Asia/Mid-East-U.S. Pacific Coast Trades.

Parties: Mitsui O.S.K. Lines, Ltd., Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed Agreement would authorize the parties to charter space from one another and to rationalize sailings in the trade between ports in the Far East/West Asia/Mid-East and ports on the U.S. Pacific Coast, including Alaska, and U.S. points via such ports. In addition, the Agreement authorizes the parties to charter limited space on Agreement vessels to Hyundai Merchant Marine Co., Ltd. in the Far East-U.S. Pacific Northwest trades, subject to the filing of a space charter agreement among the three carriers.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: April 22, 1991.

[FR Doc. 91-9640 Filed 4-25-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Universal Bancorporation, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than May 15, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Universal Bancorporation, Inc., Aurora, Colorado; to acquire 87.75 percent of the voting shares of Bank of the West, Parker, Colorado.

Board of Governors of the Federal Reserve System, April 22, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-9634 Filed 4-25-91; 8:45 am]

BILLING CODE 6210-01-F

Huntington Bancshares Incorporated; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 15, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Huntington Bancshares Incorporated, Columbus, Ohio; to acquire certain assets and assume all deposit liabilities of five Cincinnati, Ohio, branches of TransOhio Savings Bank, Cleveland, Ohio, by means of an Oakar transaction involving Huntington Interim FSB, an interim federal savings bank pursuant to § 225.25(b)(9) of the Board's Regulation Y and 12 U.S.C.A. 1815(d)(3)(A).

Board of Governors of the Federal Reserve System, April 22, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-9635 Filed 4-25-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary, Office of the General Counsel, Social Security Division;

Statement of Organization, Functions and Delegations of Authority

The Statement of the Office of the General Counsel, chapter AG, as last amended at 38 FR 17032, 6/28/73, is amended to reflect the creation within the Social Security Division of two Branches, as follows:

AG 22.8—Social Security Division (AGS), Retirement Survivors and Disability Programs Branch I (AGS1) and Retirement, Survivors and Disability Programs Branch II (AGS2).

Under the general direction of the Deputy Associate General Counsel for Programs, the Deputy Associate General Counsel, and the Associate General Counsel, each Branch is responsible for specific matters arising primarily under Title II of the Social Security Act with each Branch providing the Social Security Administration with various legal services including responding to requests for legal advice through the coordination and preparation of legal opinions, memoranda and other communications.

Dated: April 11, 1991.

Kevin E. Moley,

Assistant Secretary for Management and Budget.

[FR Doc. 91-9637 Filed 4-25-91; 8:45 am]

BILLING CODE 4110-60-M

Family Support Administration

Forms submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the package submitted to OMB since the last publication. (For a copy of the package, call the FSA, Report Clearance Officer 202-401-5604.)

Target Group Expenditure Report—FSA-901—(0970-0087). This information requested is needed to determine the appropriate Federal Financial Participation (FFP) rate for the Job Opportunities and Basic Skills Training (JOBS) program in each State. Respondents: state and local governments; Number of Respondents: 54; Frequency of Response: annually; Estimated Average Burden per Response: 24 hours; Estimated Annual Burden: 1,296 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations for the proposed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: April 23, 1991.

Sylvia E. Vela,

Deputy Associate Administrator, Office of Management and Information Systems.

[FR Doc. 91-9691 Filed 4-25-91; 8:45 am]

BILLING CODE 4130-04-M

Food and Drug Administration

[Docket No. 89N-0346]

Guidelines for the Scientific Review of Enteral Food Products for Special Medical Purposes; Report; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report on the scientific rationale for the use of certain types of medical foods and guidelines for evaluating studies designed to substantiate the safety and suitability of medical foods for their intended uses. The report and guidelines were prepared by the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB).

DATES: The report became available publicly on March 8, 1991.

ADDRESSES: Requests for a single copy of the report should be sent to FASEB's Special Publications Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, along with $24 to cover the cost. In the near future, the report will be available from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161. Copies are available for public examination at the LSRO, FASEB office (address above) and at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Yetley, Center for Food Safety and Applied Nutrition (HFF-235), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0087.

SUPPLEMENTARY INFORMATION: FDA has a contract (223-88-2124) with FASEB concerning the analysis of scientific issues in food and cosmetic safety. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with food and cosmetic safety.

In the Federal Register of September 22, 1989 (54 FR 39049), FDA announced that it had asked LSRO, FASEB, as a task under the contract, to prepare a summary of the scientific rationale for the use of certain categories of enteral food preparations and to develop guidelines for evaluating studies useful in substantiating the safety and suitability of medical foods for their intended purposes. The types of medical foods included in the study are: (1) Products formulated for persons with end-stage renal disease; (2) preparations containing branched-chain amino acids formulated for dietary management of hepatic diseases and hepatic coma; (3) products formulated for persons with

pulmonary diseases; (4) products useful in dietary management of trauma or other hypermetabolic conditions; and (5) other product categories as designated by FDA.

In the Federal Register of April 25, 1990 (55 FR 17672), FDA announced the availability of LSRO's tentative report and provided for public comment. FDA is now announcing that the final report became available to the public on March 8, 1991.

Dated: April 18, 1991

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-9963 Filed 4-25-91; 8:45 am]

BILLING CODE 4160-01-M

Public Workshop; Lead Specifications of Food Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) and the Institute of Medicines's Committee on Food Chemicals Codex of the National Academy of Sciences (NAS) are announcing a forthcoming public workshop to discuss issues regarding lead specifications for food ingredients.

DATES: The workshop will be held on Thursday, May 2, 1991, 9 a.m. to 5 p.m. No registration is required.

ADDRESSES: The workshop will be held in the lecture room at NAS, 2101 Constitution Ave. NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT:

Sanford W. Bigelow, Committee on Food Chemicals Codex, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418, 202-334-2580,

or

Paul Kuznesof, Center for Food Safety and Applied Nutrition (HFF-415), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5680.

SUPPLEMENTARY INFORMATION: The purpose of the workshop is to: (1) Identify the sources and estimate the levels of lead exposure from the environment, diet, and food ingredients; (2) review the existing toxicological data on lead; and (3) gain information regarding lead levels, suitable lead limits, and analytical procedures used for measuring lead in food ingredients.

Twelve speakers are scheduled to make presentations regarding the above information, followed by a panel discussion on pertinent issues.

Dated: April 23, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-9960 Filed 4-25-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BPD-729-N]

Medicare and Medicaid Programs ICD-9-CM Coordination and Maintenance Committee Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) Coordination and Maintenance Committee. The public is invited to participate in the discussion of the topic areas.

DATES: The meeting will be held on Thursday, May 2, 1991, from 9 a.m. to 5 p.m. eastern daylight time.

ADDRESSES: The meeting will be held in room 503A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Laura Green (301) 966-9364.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid, and all other health-related DHS programs. The work of the ICD-9-CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use in Federal Programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use of Federal programs. It is co-chaired by the National Center for Health Statistics and the Health Care Financing Administration.

The Committee holds public meetings to present proposed coding changes and other educational issues. The meetings provide an opportunity for input concerning these issues to representatives of organizations active in medical coding, as well as physicians, medical record administrators, and other members of the public. The Committee encourages the public to participate in these meetings. After considering the comments presented at the public meetings, the Committee markes recommendations concerning the proposed changes to the Director of NCHS and the Administrator of HCFA for their approval.

At this meeting, the Committee will discuss: excision of acoustic neuroma, revision of joint replacement of the upper extremity, electrohydraulic lithotripsy, removal of non-ruptured ectopic pregnancy, hypertensive crisis, arterio-occlusive disease, ultraviolet skin photo damage, obstetrical conditions, heart murmurs, encounter for chemotherapy, screening for chlamydia, and other topics.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare—Hospital Insurance Program; No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: April 7, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration

[FR Doc. 91-9825 Filed 4-25-91; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92-463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

Advanced General Dentistry Review Committee Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G-619, 330 Independence Avenue, SW., Washington, DC, telephone (202) 619-0791. Copies may be obtained from: Dr. Richard Weaver, Executive Secretary, Advanced General Dentistry Review Committee, Room 8C-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-6837.

Dated: April 23, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-9963 Filed 4-25-91; 8:45 am]

BILLING CODE 4160-15-M

The Ryan White Comprehensive AIDS Resources Emergency Act of 1990; Early Intervention Services

AGENCY: Health Resources and Services Administration.

ACTION: Notice of public meeting.

SUMMARY: The Health Resources and Services Administration will hold a pre-application technical assistance meeting concerning the funding available under title III, Early Intervention Services, of the newly enacted Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Public Law 101-381. Grants under this program will be awarded to eligible ambulatory service entities that have strong primary care programs to increase their capacity and capability to provide a continuum of HIV prevention and care services. Eligible applicants are: Community and Migrant Health Centers, Health Care for the Homeless Programs, Family Planning Grantees (other than State), Comprehensive Hemophilia Diagnostic and Treatment Centers, Federally Qualified Health Centers and Public and Private Not-for-Profit Providers of Comprehensive Primary Care Services.

Purpose: The purpose of this meeting is to discuss the Bureau of Health Care Delivery and Assistance plans for implementing this new program and to provide an overview of the requirements of the program.

Due to the anticipated high level of interest and available meeting space, attendance will be limited to one individual per organization. Arrangements for attending the meeting can be made with Ms. Maria Lago, Division of Special Populations Program Development, room 7A-22, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301 443-7587. Attendees will be responsible for their own expenses.

The meeting will be held on Monday, May 13, 1991, 10 a.m. to 1:30 p.m., in the Parklawn Building, Conference Room "H", 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: April 22, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-9916 Filed 4-25-91; 8:45 am]

BILLING CODE 4160-15-M

Availability of Funds for Grants to Provide Health Services in the Pacific Basin

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration announces the availability of approximately $830,000 for grants to public and nonprofit private entities for projects to improve delivery of health services, including preventive health services, in the Commonwealth of Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau. It is anticipated that up to 15 grant awards will be made at a funding level ranging from $30,000 to $200,000. The project period will be for one year. The funds will be awarded under the authority of section 301 of the Public Health Service (PHS) Act.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This program is related to the priority area of improving access to health services in underserved areas. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

DATES: To receive consideration, grant applications must be received in the PHS San Francisco Regional Office by June 15, 1991. Applications will be considered as meeting the deadline if they are either (1) received on or before the established deadline date or (2) sent on or before the established deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or receipt from a commercial carrier or U.S. Postal Service on or before June 15, 1991. Private metered postmarks will not be acceptable as proof of timely mailing. Facsimiles will not be accepted. Any application which does not meet the deadline will be returned to the applicant.

ADDRESSES: Application for grants is made on PHS form 5161-1 (approved under OMB #0937-0189). Grant application guidelines, application forms and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be obtained from: Ms. Linda Gash, Chief, Office of Grants Management, Public Health Service, Region IX, Room 335, 50 United Nations Plaza, San Francisco, CA 94102, 415-556-2595.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance other than grant applications, contact Ms. Joan Holloway, Director, Division of Special Populations Program Development, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7A-22, Parklawn Building, Rockville, Maryland 20857. Telephone (301) 443-8134.

SUPPLEMENTARY INFORMATION: Funds are available for initiatives to improve health services and provide technical assistance in the Republic of the Marshall Islands, Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Federated States of Micronesia, and the Republic of Palau. The provision of technical assistance relating to such projects is permitted under the appropriation.

ELIGIBLE APPLICANTS: Eligible applicants include public and private nonprofit entities. However, preferential consideration for funding will be given to applicants that are Pacific Basin government entities or a private nonprofit entity in one or more of the six Pacific areas.

EVALUATION OF APPLICATIONS: The following factors will be used to evaluate the applications submitted for funding:

1. Documentation of need for proposed services, including applicability to other Pacific Basin jurisdictions.

2. Goals and Objectives that are clearly defined, appropriate to the population being served, with reasonable expectation of achievement within the specified time frame. Projects should emphasize improved health service delivery, including preventive health services, public health issues of major importance in one or more of the six Pacific areas, standards of professional practice, and quality assurance. Projects should emphasize the provision of community based services to isloated or underserved areas including outer island populations.

3. Action Plan that thoroughly describes how the program will achieve its goals and objectives and demonstrates coordination among entities with the jurisdictions being served.

4. Evaluation Plan that is designed to measure how well the goals and objectives will be achieved.

5. Experience in and knowledge of the six Pacific areas.

LIMITS ON USE OF GRANT FUNDS: Project costs related to construction, acquisition or renovation of health facilities will not be approved. Grant funds may not be used to supplant locally funded public programs. Projects addressing systems development, computer technology, etc., will not receive priority in funding.

Other Grant Information

The grant program to provide health services in the Pacific Basin has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of the Federal programs by appropriate health planning agencies, as implemented by regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian Tribal governments) should contact their State Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to accommodate or explain its response to State process recommendations it receives after that date. (See Part 148 Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

(The OMB Catalog of Federal Domestic Assistance number of this program is 93.183.)

Dated: March 29, 1991.

John H. Kelso,

Acting Administrator.

[FR Doc. 91-9861 Filed 4-25-91; 8:45 am]

BILLING CODE 4160-15-M

Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body schedule to meet during the month of June 1991:

Name: National Advisory Committee on Rural Health.

Date and Time: June 10-12, 1991, 8:15 a.m.

Place: Lawrence Education Center, Borgess Medical Center, 1521 Gull Road, Kalamazoo, Michigan 49001.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care services in rural areas.

Agenda: During this meeting, the Committee intends to continue monitoring progress on many of the issues raised in its first two years. It will also continue examination of the Medicaid Program. Some portion of the Work Groups Health Care Financing Work Groups, Health Personnel Work Groups, and Health Services Delivery Work Group) meetings will be devoted to developing recommendations to be reported in the Fourth Report to the Secretary.

Anyone requiring information regarding the subject Council should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, room 14-22; Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443-0835.

Agenda items are subject to change as priorities dictate.

Dated: April 23, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-9864 Filed 4-25-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Meeting of Cancer Biology-Immunology Contracts Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contracts Review Committee, National Cancer Institute, National Institutes of Health, June 27, 1991, Executive Plaza North, Conference Room H, Rockville, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public from 10 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commerical property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Lalita D. Palekar, Executive Secretary, Cancer Biology-Immunology Contracts Review Committee, 5333 Westbard Avenue, room 805, Bethesda, Maryland 20892 (301/496-7575) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

[FR Doc. 91-9862 Filed 4-25-91; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting of Developmental Therapeutics Contracts Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, June 13-14, 1991, Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on June 13 from 8:30 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on June 13 from 9:30 a.m. to recess and on June 14 from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and a roster of committee members upon request.

Dr. Susan E. Feinman, Executive Secretary, Developmental Therapeutics Contracts Review Committee, 5333 Westbard Avenue, room 809, Bethesda, Maryland 20892 (301/402-0944) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: April 17, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-9863 Filed 4-25-91; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute; Meeting of the Board of Scientific Counselors, NEI

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, June 3 and 4, 1991, Building 31, NEI Conference Room 6A35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 3 from 9 a.m. until approximately 4 p.m. for general remarks by the Institute's Acting Director, Intramural Research Programs, on matters concerning the intramural programs of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on June 3 from approximately 4 p.m. until recess and on June 4 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Ophthalmic Genetics and Clinical Services Branch. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, room 6A08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9110 will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: April 16, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-9868 Filed 4-25-91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meetings of the National Heart, Lung, and Blood Advisory Council and its Research Subcommittee and Training Subcommittee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, May 23-24, 1991, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892. In addition, the Research Subcommittee and the Training Subcommittee of the above Council will meet together on May 22, in Building 31, Conference Room 9.

The Council meeting will be open to the public on May 23 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., section 10(d) of Public Law 92-463, the Council meeting will be closed to the public from approximately 3:30 p.m. to recess on May 23 and from 8:30 a.m. to adjournment on May 24 for the review, discussion and evaluation of individual grant applications. The meetings of the Research Subcommittee and the Training Subcommittee of the above Council on May 22, will be closed from 1 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Council members.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, room 7A-17, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7416, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health).

Dated: April 12, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-9867 Filed 4-25-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Public Law 92-463, notice is hereby given of meeting of the National Advisory Child Health and Human Development Council, June 3-4, 1991 in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland, and the meeting of the Subcommittee on Planning on June 3 from 8:30 a.m. to 9:30 a.m. in Building 31, room 2A03.

The Council meeting will be open to the public on June 3 from 9:30 a.m. until 5 p.m. The agenda includes a report by the Director, NICHD, and a presentation by the Pregnancy and Perinatology Branch, Center for Research For Mothers and Children. The meeting will be open on June 4 immediately following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on June 3 from 8:30 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on June 4 from 8 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Council Secretary, NICHD, Executive Plaza North, room 520, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research; and 13.865, Research for Mothers and Children, National Institutes of Health.)

Dated: April 17, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-9664 Filed 4-25-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Meeting of National Advisory Environmental Health Sciences Council.

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, May 20-21, 1991, in Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public on May 20 from 9 a.m. to approximately 3 p.m. for the report of the Acting Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public May 20, from approximately 3 p.m. to adjournment on May 21, for the review, discussion and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, rm. 2B55, NIH, Bethesda, Md. 20892 (301) 496-3511, will provide summaries of the meeting and rosters of council members.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541-7723, FTS 629-7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos 13.113, Biological Response to Environmental Agents; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health).

Dated: April 12, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-9665 Filed 4-25-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, May 7 and 8, 1991, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public from 8 a.m. on Tuesday, May 7 until 12 noon and will again be open to the public from 1 p.m. until 4:50 p.m. On Wednesday, May 8 the meeting will be open from 9 a.m. until 12:30 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on May 7 from 8:30 a.m. until 9 a.m., from 12 p.m. until 12:45 p.m. and again from 4:50 p.m. until recess. On May 8 the meeting will be closed from 8:30 a.m. until 9 a.m. and again from 12:30 p.m. until adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institute on Aging, NIH, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, room 5C02, National Institutes of Health, Bethesda, Maryland 20892, (telephone: 301/496-9322) will provide a summary of the meeting and a roster of committee members. Dr. George R. Martin, Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health.

Dated: April 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 9967 Filed 4-25-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; Meetings of the National Deafness and Other Communication Disorders Advisory Council and its Research Subcommittee

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the National Deafness and Other Communication Disorders Advisory Council and its Research Subcommittee on May 14-16, 1991, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting of the full Council will held in Conference Room 6, Building 31C, and that of the subcommittee in Conference Room 4, Building 31A.

The meeting of the full Council will be open to the public on May 15 from 8:30 a.m. until recess at approximately 5 p.m., and closed on May 16 from 8:30 a.m. to adjournment about 5 p.m. The open portion will be devoted to a Report by the Institute Director, a scientific presentation, reports from the Research and Training Subcommittees and the NDCD Advisory Board, and two presentations by other agencies concerned with support of research, training or education in the communication disorders.

In accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting of the Research Subcommittee on May 14 will be closed to the public from 2 p.m. until recess at approximately 4 p.m. The meeting of the full Council will be closed to the public on May 15 from 8:30 a.m. until adjournment. The closed portions of the meetings will be for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council and Subcommittee meetings may be obtained from Dr. Earleen F. Elkins, Acting Executive Secretary, National Institute on Deafness and Other Communication Disorders, Executive Plaza South, room 546, National Institutes of Health, Bethesda, Maryland 20892, 301-402-0693. A summary of the meetings and rosters of the members may also be obtained from her office.

(Catalog of Federal Domestic Assistance Program No. 13.173 Biological Research Related to Deafness and Other Communicative Disorders).

Dated: April 17, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-9666 Filed 4-25-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, April 12, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package).

1. Protection of Human Subjects—Recordkeeping and Reporting Requirements Institutional Review Boards (21 CFR part 56)—0910-0130—Documentation of IRB activities and retention of those records are necessary for FDA to be able to assess compliance with regulations during inspections. *Respondents:* Businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations; *Number of Respondents:* 3,000; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 7.8 hours; *Estimated Annual Burden,* 23,400 hours.

2. NCHS Application for Technical Assistance—Training Form—0920-0217—Applicants for mortality medical coder training and for vital registration methods training complete an application form for use by the instructor in selecting training applicants. An annual survey of medical coder training is conducted among vital registration areas. This training is in support of coverage and quality of national vital statistics. *Respondents:* Individuals or households, State or local governments; *Number of Respondents:* 192; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .27 hours; *Estimated Annual Burden:* 52 hours.

3. Nursing Education Loan Repayment Agreements—0915-0140—Nurses with education loans use the application to apply for repayment of the loans in return for services in an area designated by the Secretary as having a shortage of nurses. For nurses accepted into the program, their lenders must confirm the purpose and amount of the loans to be repaid. *Respondents:* Individuals or households, businesses or other for-profit, small businesses or organizations.

	No. of respondents	No. of hours per reponse	No. of responses per respondent
Nurses' application	1,000	1.0 hrs	1
Lender's confirmation of loan	200	.25 hrs	1

Estimated Annual Burden: 1,050 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: April 15, 1991.

James M. Friedman,

Director, Office of Health Planning and Evaluation.

[FR Doc. 91-9669 Filed 4-25-91; 8:45 am]

BILLING CODE 4160-17-M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, April 12, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. IHS Hospital, Dental and Other Contract Health Service Reports—0917-0002—Provides a description of the patient's diagnosis, procedures performed, health care services provided and fee charged to IHS. Serves as a legal document for health care rendered. Copies of the form are used for billing purposes and the provision or program health statistics. *Respondents:* State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations; *Number of Respondents:* 2,350; *Number of Responses per Respondent:* 145; *Average Burden per Response:* 0.17 hours; *Estimated Annual Burden:* 57,800 hours.

2. National Drug and Alcoholism Treatment Unit Survey (NDATUS)—0930-0106—Information collected by NDATUS on the location, scope, and characteristics of all known drug abuse and alcoholism treatment and prevention programs in the United States is needed to assess the nature and extent of these resources, identify gaps in service, and provide a data base for treatment referrals. *Respondents.* State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Providers:			
States	56	15 hrs.	1
Treatment	7,200	.8333 hrs.	1
Nontreatment	3,200	.05 hrs.	1

Estimated Annual Burden: 7,000 hours.

3. X-Ray Examination Program/Federal Mine Safety and Health Act 1977 (42 CFR Part 37)—0920-0020—Information is utilized for early identification of incidence and/or treatment. Identification is followed by clinical management of miners' health, through appropriate notification of medical findings and applicable dust transfer rights. Public affected includes underground coal miners and operators, physicians, and x-ray facilities. Respondents: Individuals or households, businesses or other for-profit.

	No. of respondents	No. of hours per response	No. of responses per respondent
Roentgenographic interpretation 42 CFR 37.40(b)	20,000	.03 hrs.	1.05
Miner identification title 42 CFR 37.20	10,000	.3 hrs.	1
Coal mine operator plan 42 CFR 37.4(a)	500	.33 hrs.	1
Facility certification 42 CFR 37.42(c)	100	.167 hrs.	20
Interpreting physical certification 42 CFR 37.51(c)	300	.05 hrs.	1

Estimated Annual Burden: 4,215 hours

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: April 19, 1991.

James M. Friedman,

Director, Office of Health Planning and Evaluation.

[FR Doc. 91-9836 Filed 4-25-91; 8:45 am]

BILLING CODE 4160-17-M

National Toxicology Program; Announcement of Intent to Conduct Long-term Toxicological Studies of Five Chemicals; Request for Comments

As part of an effort to inform the public, the National Toxicology Program (NTP) routinely announces in the Federal Register the lists of chemicals for which it intends to conduct long-term toxicological studies. This announcement will allow interested parties to comment and provide information on the following chemicals under consideration for long-term toxicology and carcinogenesis studies.

1. Gallium Arsenide (1303-00-0)—2-year studies via inhalation in B6C3F1 mice and F344 rats.

2. Indium Phosphide (22398-80-7)—4-day, 14-day, 13-week and 2-year studies via inhalation in B6C3F1 mice and F344 rats.

3. Isoprene (78-79-5)—2-year studies via inhalation in B6C3F1 mice and F344 rats.

4. o-Nitrotoluene (88-72-2)—2-year studies via dosed-feed in B6C3F1 mice and F344 rats.

5. Cinnamaldehyde (104-55-3)—14-day, 13-week, and 2-year studies via microencapsulated chemical in feed in B6C3F1 mice and F344 rats.

6. Citral (5392-40-5)—13-week and 2-year studies via microencapsulated chemical in feed in B6C3F1 mice and F344 rats.

7. 1,2-Dicholoroethylene (cis/trans mixture) (540-59-0)—14-day and 13-week studies via microencapsulated chemical in feed in B6C3F1 mice and F344 rats.

8. cis-1,2 Dichloroethylene (156-59-2)—14-day and 13-week studies via microencapsulated chemical in feed to B6C3F1 mice and F344 rats.

9. trans-1,2 Dichloroethylene (156-60-5)—14-day and 13-week studies via microencapsulated chemical in feed in B6C3F1 mice and F344 rats and via corn oil gavage in B6C3F1 mice and F344 rats.

10. 2,3 Dichloropropylene (78-88-6)—2-year studies via inhalation in B6C3F1 mice and F344 rats.

11. Electromagnetic fields—8-week and 2-year studies will be conducted exposing B6C3F1 mice and F344 rats to 60 Hz magnetic fields.

12. 1,1,2,2-tetrachloroethane (79-34-5)—14-day and 13-week studies via microencapsulated chemical in feed in B6C3F1 mice and F344 rats.

13. 1,4-Butanediol (110-63-4)—14-day, and 13-week, and 2-year via dosed-feed in B6C3F1 mice and F344 rats.

14. Sodium Nitrite (7632-00-0)—2-year studies via dosed water in B6C3F1 mice and F344 rats.

Anyone having relevant information (including ongoing toxicological studies, current or future trends in production and import, use pattern, human exposure levels, and toxicological data) to share with the NTP on any of these chemicals, should contact Dr. William Eastin within 60 days of the appearance of this announcement. The information provided will be considered by the NTP in designing these studies.

Contact may be made by mail to: Dr. William Eastin, NIEHS/NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709 or by telephone at 919-541-7941.

Dated: April 22, 1991.

David G. Hoel,

Acting Director, National Toxicology Program.

[FR Doc. 91-9869 Filed 4-25-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-23]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: April 26, 1991.

ADDRESS: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech- impaired (202) 708-2565. (These telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: April 18, 1991.

Paul Roitman Bardack,

Deputy Assistant, Secretary for Economic Development.

[FR Doc. 91-9718 Filed 4-25-91; 8:45 am]

BILLING CODE 4210-29-M

Office of Policy Development and Research

[Docket No. 91-3255]

Commission on Regulatory Barriers To Affordable Housing; Meeting

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of open meeting.

SUMMARY: The Commission was established on March 14, 1990 in accordance with the provisions of the Commission's charter and the Federal Advisory Committee Act (FACA). The Commission was created to advise the Secretary on the nature and impact upon costs, of Federal, State and local regulations governing the construction of housing and to present its findings as well as advisory recommendations as to possible remedial Federal, State, and local actions that can be taken to eliminate excessive, duplicative or unnecessary regulations that increase the cost of housing.

Commission meetings have been held in Washington, DC on May 31, September 26, December 14, February 27-28, and in Chicago, IL on August 1. Public hearings were held in Trenton, NJ on July 11, in Chicago, IL on July 31, and August 1, in San Francisco, CA, on September 12 and 13, and in Washington, DC, on September 25, 1990. The purpose of these hearings was to solicit testimony on the nature and extent of regulatory barriers to affordable housing and on possible approaches to implementing regulatory reform.

TIME AND PLACE: The Commission will meet on Friday, May 3, 1991 from 8:30 a.m. to approximately 4:30 p.m. The meeting will take place at the Holiday Inn, Crowne Plaza at Metro Center, 775 12th Street, NW., Washington, DC. These are open meetings.

AGENDA: The Commission will discuss the contents of the final report.

PUBLIC PARTICIPATION: The public is invited to submit written comments on any aspect of the Commission's mandate or activities.

FOR FURTHER INFORMATION CONTACT: Heather Aveilhe, Office of Policy Development and Research, room 8122, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708-0544. (This is not a toll-free number).

Dated: April 12, 1991.

John C. Weicher,

Assistant Secretary for Policy Development and Research.

[FR Doc. 91-9847 Filed 4-25-91; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-964-01-4230-15]

Alaska Native Claims Selection; Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sections 14(e) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), and 1621(j) will be issued to Doyon, Limited. The lands involved are in the vicinity of Tok, Alaska.

Serial	Land description	Approximate acreage
F-21904-91	T. 21 N., R. 16 E., Copper River Meridian.	11,464
F-21905-93	T. 20 N., R. 15 E., Copper River Meridian.	2,560
F-21905-94	T. 20 N., R. 16 E., Copper River Meridian.	7,440

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, # 13, Anchorage, Alaska 99513-7599 (907) 271-5960.

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until May 28, 1991 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

G. Steve Flippen,

Lead Land Low Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 91-9823 Filed 4-25-91; 8:45 am]

BILLING CODE 4310-JA-M

[NV-930-4322-01]

Battle Mountain District Advisory Council Meeting in Austin, Nevada

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and 43 CFR part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Wednesday and Thursday, May 22 and 23, 1991. The meeting will convene at 10 a.m. May 22, 1991 at the Community Hall in Austin,

Nevada. On Thursday, May 22, 1991 a field tour will be conducted.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Status Report on Austin Driving Tours.
2. Update on Las Vegas Water Filings.
3. Slide Show—Holistic Resource Management, Carter Ranch.
4. Public Comment.
5. Field Trip to Hickison Summit and Carter Ranch (Tony Tipton).

The meeting is open to the public. Interested persons may make oral statements between 11 and 11:30 a.m. on May 22, 1991. If you wish to make an oral statement, please contact James D. Currivan, District Manager by 4:30 p.m., May 15, 1991.

FOR FURTHER INFORMATION CONTACT: James D. Currivan, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820 or phone (702) 635-4000.

Dated: April 12, 1991.

James D. Currivan,

District Manager, Battle Mountain, Nevada.

[FR Doc. 91-9620 Filed 4-25-91; 8:45 am]

BILLING CODE 4310-HC-M

[CO-070-0-4410-13-241A]

Grand Junction District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Grand Junction District Advisory Council will meet on Wednesday, May 29, 1991. The meeting will convene at 9 a.m. in the third floor conference room at the Bureau of Land Management Office, 764 Horizon Drive, Grand Junction, Colorado.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include (1) introduction, (2) opening remarks by District Manager, (3) discussion on future functions of the council, and (4) discussion on two issues—the long-term solution to illegal dumping on public lands and long term visitor use in the Glenwood Springs Resource Area.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 and 11:30 a.m. to file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506, by May 22, 1991. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Minutes of the Council meeting will be available for public inspection in the District Office thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bruce Conrad, District Manager, Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506, phone (303) 243-6552.

Bruce Conrad,

District Manager.

[FR Doc. 91-9621 Filed 4-25-91; 8:45 am]

BILLING CODE 4310-JB-M

Salmon District Advisory Council; Meeting

AGENCY: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Advisory Council.

DATE: The meeting will be held Wednesday, May 8, 1991, at 10 a.m.

ADDRESS: The meeting will be held at the Library, in Leadore, Idaho.

SUPPLEMENTARY INFORMATION: The meeting is held in accordance with Public Laws 92-463 and 94-579. The purpose for the meeting is to discuss the GAO report on grazing trespass on the public lands, Salmon River Corridor management, the timber program in the Salmon District, the use and occupancy proposal under the Mining Law, and current Salmon District issues.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 a.m. and 11:30 a.m. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Salmon District Office by May 3, 1991.

Summary minutes to the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy S. Jackson, District Manager, Salmon District BLM, Box 430, Salmon, Idaho 83467.

Dated: April 8, 1991.

Robert W. Heidemann,

Associate District Manager

[FR Doc. 91-9670 Filed 4-25-91; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-01-4212-13; N-53883]

Corrected Realty Action

The Notice of Realty Action published in the Federal Register, on March 5, 1991 (56 FR 9288; FR Doc 91-5063) is hereby corrected with respect to the legal description. The proper legal description is as follows:

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 20, E½NE¼SE¼SW¼, E½E½ NW¼SE¼, SW¼NW¼SE¼, W½NW¼ SW¼SE¼
Sec. 29, E½NW¼NE¼SE¼, SE¼NW¼ NE¼, E½SE¼SW¼NE¼, E½SW¼ SE¼NE¼, W½SE¼SE¼NE¼
Aggregating 60 acres (gross).

All other terms and conditions of the Notice continue to apply.

Dated: April 15, 1991.

Ben F. Collins,

District Manager, Las Vegas, Nevada.

[FR Doc. 91-9619 Filed 4-25-91; 8:45 am]

BILLING CODE 4310-HC-M

[WY-940-01-4730-12]

Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of plats of survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10 a.m., March 19, 1991.

Sixth Principal Meridian

T. 44 N., R. 77 W.

The plat representing the dependent resurvey of the Eleventh Standard Parallel North, through Range 77 West, the south boundary, a portion of the east boundary, and the subdivisional lines, T. 44 N., R. 77 W., Sixth Principal Meridian, Wyoming, Group No. 507, was accepted March 12, 1991.

T. 44 N., R. 78 W.

The plat representing the dependent resurvey of a portion of the Eleventh Standard Parallel North, through Range 78 West, a portion of the south boundary, the east boundary and a portion of the subdivisional lines, T. 44 N., R. 78 W., Sixth Principal Meridian, Wyoming, Group No. 507, was accepted March 12, 1991.

T. 43 N., R. 69 W.

The plat representing the corrective dependent resurvey of the line between sections 10 and 15, T. 43 N., R. 69 W., Sixth Principal Meridian, Wyoming, Group No. 532, was accepted March 12, 1991. These surveys were executed to meet certain administrative needs of this Bureau.

T. 44 N., R. 78 W.

The plat showing a subdivision of certain sections, T. 44 N., R. 78 W., Sixth Principal Meridian, Wyoming, was accepted March 12, 1991. This supplemental plat was prepared to meet certain administrative needs of this Bureau.

T. 31 N., R. 4 W.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, and the subdivision of section 7, T. 31 N., R. 4 W., Sixth Principal Meridian, Nebraska, Group No. 120, was accepted March 12, 1991.

T. 32 N., R. 5 W.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 29, T. 32 N., R. 5 W., Sixth Principal Meridian, Nebraska, Group No. 120, was accepted March 12, 1991.

These surveys were executed to meet certain administrative needs of the Bureau of Indian Affairs.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: April 18, 1991.

John P. Lee,

Chief, Branch of Cadastral Survey.

[FR Doc. 91-9936 Filed 4-25-91; 8:45 am]

BILLING CODE 4310-22-M

[CO-930-4220-10-4355; COC-51843]

Proposed Withdrawal; Opportunity for Public Meeting, CO

April 17, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Energy has requested withdrawal of public land near Nucla, Colorado, for 5 years. The land is proposed as a permanent disposal site for radioactive uranium mill tailings. If this site is designated for permanent disposal, administrative jurisdiction will be transferred to Department of Energy for management. This notice will segregate the land from operation of the public land laws, including location and entry under the mining laws for up to 2 years. The land will continue to be open to mineral leasing.

DATES: Comments on this proposed withdrawal or request for a public meeting must be received on or before July 25, 1991.

ADDRESSES: Comments and meeting requests should be sent to the Colorado State Director, Bureau of Land Mangement, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, Bureau of Land Mangement, Colorado State Office (303) 239-3706.

SUPPLEMENTARY INFORMATION: The Department of Energy has filed application to withdraw the following described public land from settlement, sale, location or entry under the public land laws, including the mining laws, subject to valid existing rights, pursuant to the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714:

New Mexico Principal Meridian

Burro Canyon Site

T. 46 N., R. 18 W.,
Sec. 21, S½S½; Sec. 28, W½NE¼, NW¼.

The area described contains approximately 400 acres in Montrose County.

The purpose of this withdrawal is to segregate the land and provide protection until requirements are completed for a permanent transfer of administrative jurisdiction to the Department of Energy under the authority of the Uranium Mill Tailings Radiation Control Act of 1978; 92 Stat. 3021, 42 U.S.C. 7801, as amended.

Effective on the date of publication, these lands are segregated from all forms of appropriation under the public land laws, including the mining laws. The land remains open to mineral leasing subject to concurrence by the Department of Energy, the Nuclear Regulatory Commission, and the Department of the Interior. The lands will reamin open to surface uses which are compatible with the project until the witdrawal is final and construction is started.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed withdrawal. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with Bureau of Land Management Manual, section 2351.16B.

All persons who desire to submit comments, suggestions, or objections or who desire a public meeting for the purpose of being heard on this proposed action must submit a written request to the Colorado State Director within 90 days of the publication of this notice.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from operation of the public land laws as specified above unless the application is denied or cancelled or the transfer of administrative jurisdiction takes place prior to that date.

The temporary segregation of this land in connection with the application shall not affect the administrative jurisdiction over the land and will not authorize any use of the land by the Department of Energy.

Herbert K. Olson,

Acting Chief, Branch of Realty Programs.

[FR Doc. 91-9624 Filed 4-25-91; 8:45 am]

BILLING CODE 4310-JB-M

Bureau of Reclamation

[DES-90-20]

South Delta Water Management Program, Sacramento-San Joaquin Delta, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Reopen comment period.

SUMMARY: The Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) are reopening the public comment period on the Draft Environmental Impact Report/Draft Environmental Impact Statement (DEIR/DEIS) for the South Delta Water Management Program (DES 90-20). The DEIR/DEIS was filed with the Environmental Protection Agency on July 30, 1990. The public comment period was previous extended to March 15, 1991, in the **Federal Register**, Vol. 56, No. 9, dated January 14, 1991.

DATES: The comment period is reopened from the date of this notice to June 30, 1991.

ADDRESSES: Copies of the DEIR/DEIS may be requested from the DWR or Reclamation's Mid-Pacific Regional Office at the following addresses:

Department of Water Resources, Division of Planning, 1416 Ninth Street, P.O. Box 942836, Sacramento, California 94236-0001; telephone: (916) 445-9371.

Regional Director, Bureau of Reclamation, Mid-Pacific Regional Office, 2800 Cottage Way, Attention: MP-750, Sacramento, California 95825-1898; telephone: (916) 978-5130.

Copies of the DEIR/DEIS are available for inspection at the addresses above, at libraries in California, and also at the following locations:

Office of the Commissioner, Bureau of Reclamation, Technical Liaison Division, 1849 C Street NW., room 7456, Washington, DC 20240; telephone: (202) 208-4662.

Denver Office, Bureau of Reclamation, Library, room 167, Building 67, Denver Federal Center, Denver, Colorado 80225; telephone: (303) 236-6963.

FOR FURTHER INFORMATION CONTACT: Fred Bechmann (Chief, South Delta Management Section, Department of Water Resources), (916) 324-6751; Douglas Kleinsmith, (Project Environmental Specialist, Bureau of Reclamation, Mid-Pacific Region), (916) 978-5121; or Dr. Wayne Deason (Manager, Environmental Services Staff), Bureau of Reclamation, Denver Federal Center, (303) 236-9336.

SUPPLEMENTARY INFORMATION: The DWR and Reclamation have decided to extend the comment period to June 30, 1991, to allow more time for the public to review and comment on the DEIR/DEIS.

Dated: April 19, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 91-9907 Filed 4-25-91; 8:45 am]

BILLING CODE 4310-09-M

Trinity River Basin Fish and Wildlife Task Force; Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of a meeting of the Trinity River Basin Fish and Wildlife Task Force.

DATES: The meeting will begin on Thursday, May 16, 1991, at 1 p.m.

ADDRESSES: The meeting will be held at the Civil Defense Hall, 109 Memorial Drive, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Shaffer, Trinity River Task Force Secretary, Bureau of Reclamation, MP-720, 2800 Cottage Way, Sacramento, California 95825; telephone: (916) 978-4962.

SUPPLEMENTARY INFORMATION: Task Force members will be briefed on operating procedures for Task Force meetings, Trinity River temperature issues, a draft report being prepared by California Department of Water Resources which requests additional funding from Congress, a Natural Heritage Institute Report, and riparian issues on the Trinity River.

The meeting of the Task Force is open to the public. Any member of the public may file a written statement with the Task Force before, during, or after the meeting, in person or by mail. To the extent that time permits, the Task Force chairman will allow public presentation of oral statements at the meeting.

Dated: April 10, 1991.

J. William McDonald,

Assistant Commissioner, Resources Management.

[FR Doc. 91-9857 Filed 4-25-91; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. The parent corporation is Country Fresh, Inc. and the address of the principal office is: 2555 Buchanan Avenue SW., P.O. Box 314, Grand Rapids, Michigan 49560.

2. Wholly-owned subsidiaries which will participate in the operations, and their States of incorporation:

(i) Embest, Inc., a Michigan corporation.

(ii) G.R. Best, Inc., A Michigan corporation.

(iii) Bemid, Inc., a Michigan corporation.

(iv) McDonald Dairy, Inc., a Michigan corporation.

(v) Frostbite Brands, Inc., a Michigan corporation.

B. 1. *Parent corporation and address of principal office:* Minstar, Inc., A Delaware Corporation, 100 South Fifth Street, suite 2400, Minneapolis, MN 55402

2. *Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:*

(i) Genmar Industries, Inc., A Delaware Corporation.

(ii) Mastercrafters Corporation, A Louisiana Corporation.

(iii) Crestliner, Inc., A Minnesota Corporation.

(iv) Glastron, Inc., A Texas Corporation.

C. 1. Parent corporation and address of principal office: Wakefern Food Corporation, 600 York Street, Elizabeth, NJ 07207-0506.

2. Updated notice of wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

(i) Food Hauliers, Inc	New Jersey.
(ii) Shoprite Supermarkets, Inc.	New Jersey.
(iii) Shoprite Beverage, Inc	New Jersey.
(iv) National Transport Services Co., Inc.	New Jersey.
(v) Wakefern Finance Company, Inc.	New Jersey.
(vi) T.R.R. Carriers, Inc	New Jersey.
(vii) Shoprite Cigarettes of Connecticut, Inc.	New Jersey.
(viii) Readington Farms, Inc	New Jersey.
(ix) Risk Services, Inc	New Jersey.
(x) Faust & Snyder Corporation.	Pennsylvania.

Kathleen M. King,

Acting Secretary.

[FR Doc. 91-9908 Filed 4-25-91; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-No. 27)]

Intrastate Rail Rate Authority—Oregon

AGENCY: Interstate Commerce Commission.

ACTION: Extension of certification.

SUMMARY: By decision served October 30, 1990, the Commission granted a 180-day extension of certification for Oregon, through its Public Utility Commissioner, to regulate intrastate matters, pending filing of its application for recertification pursuant to *State Intrastate Rail Rate Authority*, 5 I.C.C. 2d 680 (1989). Pursuant to a request from the State, the Commission grants another extention so that Oregon can complete modifications of its procedures and prepare an application for recertification.

DATES: Oregon's certification is extended until October 23, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmer, (202) 275-7245.

[TDD for hearing impaired: (202) 275-1721]

Decided: April 22, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 91-9927 Filed 4-25-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office for Victims of Crime; FY 1991 Discretionary Grant Application

AGENCY: Office of Justice Programs, Office for Victims of Crime.

ACTION: Public announcement of the availability of the Application Kit for Fiscal Year 1991 Discretionary Grants to be awarded by the Office for Victims of Crime.

SUMMARY: The Office for Victims of Crime (OVC) is publishing this Notice of FY 1991 Discretionary Grant Application Kit availability for all interested applicants.

DATES: All proposals responding to the announcement of the Application Kit must be postmarked by the specific due dates indicated in the Application Kit for each program.

ADDRESS: Office for Victims of Crime, room 1342, 633 Indiana Avenue, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Jo Morrow, Special Projects Division, Office for Victims of Crime, at the above address. Telephone: (202) 307-5947. To obtain Application Kits, call the National Victims Resource Center (NVRC) 1-800-627-6872 at the National Criminal Justice Reference Service (NCJRS), Box 6000, AHG, Rockville, MD 20850.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority: This action is authorized under the following: § 303(b) of Title III ("Family Violence Prevention and Services Act") of the Child Abuse Prevention, Adoption, and Family Services Act of 1988 (Pub. L. 100-294), 42 U.S.C. 10401; and the Victims of Crime Act of 1984, Sec. 1401-1410 of Pub. L. 98-473 as amended by the Children's Justice and Assistance Act of 1986 (CJA), Pub. L. 99-401, and by the Anti-Drug Abuse Act of 1988, title VII, subtitle D, of the Pub. L. 100-690, 42 U.S.C. 10601-10605.

Background

The Office of Justice Programs, Department of Justice, published a Notice in the **Federal Register** (56 FR 1672, Jan. 16, 1991) announcing the FY 1991 Discretionary Program Plan for its component bureaus, including the Program Plan for the Office for Victims of Crime. The OVC Discretionary Grant Application Kit, announced herein, expands upon information provided in the program plan and defines specific Application requirements and deadlines. Interested applicants should call the toll-free number at 1-800-627-6872 to request a copy of the FY 1991 Discretionary Grant Application Kit.

Jane Nady Burzley,

Director, Office for Victims of Crime.

[FR Doc. 91-9912 Filed 4-25-91; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying outs its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Bureau of Labor Management Relations and Cooperative Programs

Airline Employee Protection Program (29 CFR part 220).

1225-0024, On occasion; semi-annually, Individual or households, 35 respondents; 700 total burden hours; 20 average hours per response.

The Airline Deregulation Act (ADA), section 43 (d) requires the Secretary of Labor to establish a program to implement the first-right-to-hire provision of the ADA. This program, as outlined in 29 CFR part 220 includes two specific information collection requirements: (1) An airline job vacancy list; and (2) a semi-annual report of designated employees hired. Both reports are required by the ADA.

Salary Offset

1225-0038

Regulatory requirement	Affected Public	Respondents	Frequency	Average time per response
29 CFR 20.60	Individuals or households	150	On occasion	1.25 hours.
29 CFR 20.61	Individuals or households	150	On occasion	1.25 hours.
375 total hours				

Information is collected from debtors to assist in determining whether an individual is actually indebted to the Department of Labor, and if so indebted, to evaluate the individual's ability to repay the debt.

Extension

Employment and Training Administration,
JASR Annual Status Report Revisions for Program Year 1990-1991,
1205-0313; ETA 9090.
Annually,
State or local governments,
57 respondents; 399,168 total hours; 6,520 hrs per response; 1 form.

Reporting is necessary for the Secretary to carry out responsibilities specific at sections 105, 106, and 109 of JTPA.

Signed at Washington, DC this 22nd day of April, 1991.

Theresa M. O'Malley,
Acting Department Clearance Officer.

[FR Doc. 91-9911 Filed 4-25-91; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

Attestations Filed by Facilities Using Nonimmigrant Aliens As Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The addresses of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process:

The Employment and Training Administration has established a voice-mail service for the H-1A nurse attestation process. Call Telephone Number: 202-535-0843 (this is not a toll-free number). At that number, a caller can:

(1) Listen to general information on the attestation process for H-1A nurses;

(2) Request a copy of the Department of Labor's regulations (20 CFR part 655, subparts D and E, and 29 CFR part 504, subparts B and E) for the attestation process for H-1A nurses, including a copy of the attestation form (form ETA 9029) and the instructions to the form;

(3) Listen to information on H-1A attestations filed within the preceding 30 days;

(4) Listen to information pertaining to public examination of H-1A attestations filed with the Department of Labor;

(5) Listen to information on filing a complaint with respect to a health care facility's H-1A attestation (however, see the telephone number regarding complaints, set forth below); and

(6) Request to speak to a Department of Labor employee regarding questions not answered by Nos. (1) through (4) above.

Regarding the Complaint Process:

Questions regarding the complaint process for the H-1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202-523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 28 U.S.C. 1101(a)(15)(H)(i)(a) and 1161(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50509 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 19th day of April, 1991.

Robert A. Scherrer,
Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[04/08/91 TO 04/12/91]

CEO-Name/facility name/address	State	Approval date
Mr. Russell Harrington, Baptist Medical System, 9601 I-630, Exit 7, Little Rock, AR 72205, 501-227-2654.	AR	04/11/91.
Mr. Charles R. Shuffield, Sparks Regional Med. Ctr., 1311 South J, Fort Smith, AR 72917, 501-441-4000.	AR	04/12/91.
Mr. Solomon Soldner, Santa Anita Conval. Hosp., 5522 Gracewood Ave., Temple City, CA 91780, 818-579-0310.	CA	04/11/91.
Ms. Mary Anderson, Associated Health Professional, 6095 Bristol Parkway, Culver City, CA 90230, 213-417-3011.	CA	04/11/91.
Mr. Howard LeVant, La Palma Intercommunity Hosp., 7901 Walker, La Palma, CA 90623, 714-670-6025.	CA	04/11/91.
Mr. John R. Cochran III, Martin Luther Hospital, 1830 W. Romneya Ave., Anaheim, CA 92801, 714-491-5200.	CA	04/11/91.
Ms. Betty Gillespie Pollack, Visiting Nurse Assoc., Home Health Care, Inc., San Jose, CA 95128, 408-463-8295.	CA	04/12/91.
Mr. Michael Markley, St. Mary Desert Valley Hospital, 16300 Hwy. 18, Apple Valley, CA 92307, 619-242-2311.	CA	04/12/91.
Mr. Elwin V. Svenson, University of California, Ofc. of Inter'l Students & Scholars, Los Angeles, CA 90024, 213-825-1984.	CA	04/12/91.
Mr. A. Jason Geisinger, Hillhaven Conval Ctr. of Mill, First Healthcare Corp., d.b.a., Mill Valley, CA 94941, 415-388-0861.	CA	04/12/91.
Mr. A. Jason Geisinger, Hacienda Care Center, First Healthcare Corp., d.b.a., Woodland, CA 95695, 916-662-9193.	CA	04/12/91.
Mr. William L. Pegler, San Diego Rehab. Institute, R.H.S.C. Alvarado, Inc. dba, San Diego, CA 92120, 619-286-7374.	CA	04/12/91.
Mr. Louis Rubino, Los Angeles Community Hosp., 4081 East Olympic Boulevard, Los Angeles, CA 90023, 213-267-0477.	CA	04/12/91.
Mr. Edward Martinez, Harbor View Medical Center, 120 Elm Street, San Diego, CA 92101, 619-235-3127.	CA	04/12/91.
Mr. Timothy McMurdo, San Mateo County Gen'l Hosp., 222 West 39th Ave., San Mateo, CA 94403, 415-573-2222.	CA	04/12/91.
Mr. Larry J. Mays, Villa Convalescent Hosp., 6965 Magnolia Ave., Riverside, CA 92503, 714-689-5788.	CA	04/12/91.
Mr. A. Jason Geisinger, Pine Towers Conval. Hosp., First Healthcare Corp., d.b.a., San Francisco, CA 94115, 415-563-7600.	CA	04/12/91.
Mr. Neil Bratcher, Greater Southeast Comm. Hosp., 1310 Southern Ave., S.E., Washington, DC 20032, 202-574-6616.	DC	04/12/91.
Mr. Brian E. Keeley, Baptist Hospital of Miami, 8900 North Kendall Drive, Miami, FL 33176, 305-596-6585.	FL	04/12/91.
Mr. A. Jason Geisinger, Quality Care of Bay Point Nur Pavilion, First Healthcare Corp., St. Petersburg, FL 33712, 813-867-1104.	FL	04/12/91.
Mr. A. Jason Geisinger, Hillhaven Conval of Sarasota, First Healthcare Corp., d.b.a., Sarasota, FL 33583, 813-922-6009.	FL	04/12/91.
Mr. A. Jason Geisinger, Boca Raton Convalescent Ctr., First Healthcare Corp., d.b.a., Boca Raton, FL 33487, 407-391-5200.	FL	04/12/91.
Mr. Newell France, The Tampa Gen'l Hosp., 470 Harborside Tower, Tampa, FL 33601, 813-251-7463.	FL	04/12/91.
Mr. T. Richard Quigley, Veville Hosp. and Rehab. Ctr, 1575 Cambridge St., Cambridge, MA 02138, 617-876-4344.	MA	04/11/91.
Mr. Philip E. Dould, Lemuel Shattuck Hospital, Dept. of Public Health, Jamaica Plain, MA 02130, 617-522-8110.	MA	04/12/91.
Mr. James O. Dague, Bon Secours Hospital, Inc., 2800 W. Baltimore Street, Baltimore, MD 21223, 301-362-3600.	MD	04/11/91.
Mr. Robert M. Heyssel, The Johns Hopkins Hosp., 600 N. Wolfe St., Baltimore, MD 21205, 301-955-4222.	MD	04/12/91.
Mr. James R. Wood, Maryland General Hosp., Inc., 827 Linden Avenue, Baltimore, MD 21201, 301-225-8080.	MD	04/12/91.
Mr. John P. Callan, St. Joseph Mercy Hosp., 900 Woodward Ave., Pontiac, MI 48341, 313-858-3000.	MI	04/12/91.
Mr. A. Jason Geisinger, Hillhaven Conval. of Chapel H, First Healthcare Corp., d.b.a., Chapel Hill, NC 27514, 919-967-1416.	NC	04/12/91.
Mr. A. Jason Geisinger, Hillhaven-Rose Manor Convales, First Healthcare Corp., d.b.a., Durham, NC 27704, 919-477-9905.	NC	04/12/91.
Mr. Richard G. Warner, Concord Hospital, 250 Pleasant St., Concord, NH 03301, 603-225-2711.	NH	04/11/91.
Cathedral Healthcare, One Gateway Center, Newark, NJ, 201-642-5100.	NJ	04/11/91.
Ms. Maria Lapid, Green Acres Manor, 1931 Lakewood Road (Rte. 9), Toms River, NJ 08755, 201-286-2323.	NJ	04/12/91.
Ms. Maria Lapid, Abbott Manor Conval. Ctr., 810 Central Avenue, Plainfield, NJ 07060, 201-757-0696.	NJ	04/12/91.
Mr. Ernest Dicker, Manhattanville Nursing Care C, 311 West 231st Street, Bronx, NY 10467, 212-601-8400.	NY	04/12/91.
Mr. J. Zilberberg, Oceanview Nursing Home, 315 Beach 9th Street, Far Rockaway, NY 11691, 718-471-6000.	NY	04/12/91.
Mr. Siegmundo Hirsch, Rockville Nursing Center, Inc., 41 Main Avenue, Rockville Centre, NY 11570, 516-536-7730.	NY	04/12/91.
Ms. Beth Goldstein, Dumont Masonic Home, 676 Pelham Road, New Rochelle, NY 10805, 914-632-9600.	NY	04/12/91.
Mr. William L. Ivey, Richland Memorial Hosp. & Richland Medical Park, Columbia, SC 29203, 803-765-7000.	SC	04/11/91.
Mr. L. Marcus Fry, Jr., DBA Sierra Medical Center, National Medical Enterprises, El Paso, TX 79902, 915-747-4000.	TX	04/11/91.
Ms. Helen J. Dichoso, Assurance Health Services, DBA Allied Health Services, Houston, TX 77081, 713-664-1064.	TX	04/11/91.
Mr. Ralph E. Beaty, Huntsville Memorial Hospital, 38001-45, Huntsville, TX 77340, 409-291-4521.	TX	04/11/91.
Mr. Gary Young, Park Manor Senior Care, Inc., 207 E. Parkerville Rd., Dallas, TX 75185, 214-220-9600.	TX	04/12/91.
Mr. Gary M. Moore, Maverick County Hospital Dist., 360 South Adams Street, Eagle Pass, TX 78852, 512-773-5321.	TX	04/12/91.
Mr. Jay Grinney, Rosewood Medical Center, 9200 Westheimer, Houston, TX 77063, 713-780-5858.	TX	04/12/91.
Mr. James H. Brown, Valley Regional Medical Center, 1 Ted Hunt Blvd., Brownsville, TX 78521, 512-831-9611.	TX	04/12/91.
Mr. Windell M. McCord, Hall County Hospital, 1600 N. Boykin, Memphis, TX 79245, 806-259-3504.	TX	04/12/91.
Mr. Charles J. Hall, Sam Houston Memorial Hosp., West Houston Healthcare Group d/b/a, Houston, TX 77055, 713-468-4311.	TX	04/12/91.
Mr. Alan A. Beauchamp, Eastway Gen'l Hosp./DBA Docto, 9339 North Loop East, Houston, TX 77029, 713-675-3241.	TX	04/12/91.
Mr. Walter LeLeux, Pasadena General Hosp., 1004 Seymour, Pasadena, TX 77506, 713-473-1771.	TX	04/12/91.
Mr. H. Wayne Jones, Maryview Medical Center, 3636 High Street, Portsmouth, VA 23707, 804-398-2200.	VA	04/11/91.
Total Attestations 52		

[FR Doc. 91-9909 Filed 4-25-91; 8:45 am]

BILLING CODE 4510-30-M

Employment And Training Administration

Wagner-Peyser Act Final Planning Allotments for Program Year (PY) 1991

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the final planning allotments for Program Year (PY) 1991 (July 1, 1991, through June 30, 1992) for basic labor exchange activities provided under the Wagner-Peyser Act.

FOR FURTHER INFORMATION CONTACT: Robert A. Schaerfl, Director, U.S. Employment Service, 200 Constitution Avenue, NW., room N-4470, Washington, DC 20210. Telephone (202) 535-0157 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In accordance with section 6(b)(5) of the Wagner-Peyser Act, the Employment and Training Administration is publishing final planning allotments for each State for Program Year (PY) 1991 (July 1, 1991, through June 30, 1992). Preliminary planning estimates were provided to each State on January 10, 1991. The total amount of funds currently available for distribution is $805,117,000. Funds are distributed in accordance with formula criteria established in section 6(a) and (b) of the Wagner-Peyser Act. Civilian labor force (CLF) and unemployment data for Calendar Year 1990 are used in making the formula calculations.

The Secretary of Labor set aside 3 percent of the total available funds to assure that each State will have sufficient resources to maintain statewide employment services, as required by section 6(b)(4) of the Act. In accordance with this provision, $23,593,149 is set aside for administrative formula allocation. These funds are included in the total planning allotment. The funds that are set aside are distributed in two steps to States which have lost in relative share of resources from the prior year. In Step 1, States which have a CLF below one million and are below the median CLF density are maintained at 100 percent of their relative share of prior year resources. The remainder is distributed in Step 2 to all other States losing in relative share from the prior year but which do not meet the size and density criteria for Step 1. The technical change introduced in PY 1990 remains in effect. The change redefined a "losing" State as one losing in relative share of total current available resources under the Wagner-Peyser Act base formula allocation as compared to its relative share of the prior year's total allotment.

Postage costs incurred by States during the conduct of employment service (ES) activities are billed directly to the Department of Labor by the U.S. Postal Service. The total final planning allotment reflects $18,678,700, or 2.32 percent of the total amount available, withheld from distribution to finance postage costs associated with the conduct of ES business.

Differences between preliminary planning estimates and final planning allotments are caused by the use of a Calendar Year data base as opposed to the earlier data used for preliminary planning estimates.

Ten percent of the total sums allotted to each State shall be reserved for use by the Governor to provide performance incentives for public ES offices; services for groups with special needs; and for the extra costs of exemplary models for delivering job services.

Signed at Washington, DC, this 23rd day of April, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

Appendix

BILLING CODE 4510-30-M

ATTACHMENT

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINISTRATION
FINAL PY 1991 WAGNER-PEYSER ALLOTMENTS TO STATES

	BASIC FORMULA	3% DISTRIBUTION STEP 1*	STEP 2**	TOTAL	TOTAL ALLOTMENT***
Alabama	11,587,763	0	293,111	293,111	11,880,874
Alaska	7,462,678	1,086,282	0	1,086,282	8,548,960
Arizona	9,731,283	0	112,684	112,684	9,843,967
Arkansas	6,984,915	0	254,998	254,998	7,239,913
California	84,102,154	0	0	0	84,102,154
Colorado	9,676,688	0	349,679	349,679	10,026,367
Connecticut	9,938,724	0	0	0	9,938,724
Delaware	2,130,599	0	66,060	66,060	2,196,659
District of Columbia	4,748,707	0	383,602	383,602	5,132,309
Florida	37,199,335	0	0	0	37,199,335
Georgia	18,253,342	0	274,579	274,579	18,527,921
Hawaii	2,573,406	0	187,228	187,228	2,760,634
Idaho	6,217,738	905,067	0	905,067	7,122,805
Illinois	35,674,831	0	167,643	167,643	35,842,474
Indiana	15,934,679	0	80,136	80,136	16,014,815
Iowa	8,108,876	0	655,037	655,037	8,763,913
Kansas	6,912,681	0	37,771	37,771	6,950,452
Kentucky	10,261,296	0	421,459	421,459	10,682,755
Louisiana	12,228,737	0	987,840	987,840	13,216,577
Maine	3,697,631	538,234	0	538,234	4,235,865
Maryland	13,711,972	0	0	0	13,711,972
Massachusetts	18,536,458	0	0	0	18,536,458
Michigan	29,200,816	0	249,151	249,151	29,449,967
Minnesota	13,142,319	0	0	0	13,142,319
Mississippi	7,519,332	0	330,752	330,752	7,850,084
Missouri	15,210,070	0	0	0	15,210,070
Montana	5,081,168	739,625	0	739,625	5,820,793
Nebraska	6,106,566	888,883	0	888,883	6,995,449
Nevada	4,939,431	718,993	0	718,993	5,658,424
New Hampshire	3,634,005	0	0	0	3,634,005
New Jersey	22,356,045	0	0	0	22,356,045
New Mexico	5,701,964	829,989	0	829,989	6,531,953
New York	48,930,348	0	3,952,604	3,952,604	52,882,952
North Carolina	17,741,500	0	0	0	17,741,500
North Dakota	5,174,148	753,160	0	753,160	5,927,308
Ohio	31,221,756	0	274,874	274,874	31,496,630
Oklahoma	11,187,552	0	903,733	903,733	12,091,285
Oregon	8,495,816	0	354,890	354,890	8,850,706
Pennsylvania	33,387,553	0	0	0	33,387,553
Puerto Rico	9,260,148	0	204,048	204,048	9,464,196
Rhode Island	3,163,381	0	0	0	3,163,381
South Carolina	9,350,675	0	10,444	10,444	9,361,119
South Dakota	4,782,103	696,092	0	696,092	5,478,195
Tennessee	13,420,642	0	156,520	156,520	13,577,162
Texas	50,008,205	0	1,688,268	1,688,268	51,696,473
Utah	10,459,041	1,522,438	0	1,522,438	11,981,479
Vermont	2,240,212	326,089	0	326,089	2,566,301
Virginia	16,888,362	0	0	0	16,888,362
Washington	13,725,002	0	603,521	603,521	14,328,523
West Virginia	5,473,590	796,746	0	796,746	6,270,336
Wisconsin	13,741,657	0	250,857	250,857	13,992,514
Wyoming	3,710,187	540,062	0	540,062	4,250,249
FORMULA TOTAL	760,928,087	10,341,660	13,251,489	23,593,149	784,521,236
Guam	367,992	0	0	0	367,992
Virgin Islands	1,549,072	0	0	0	1,549,072
Indicia Postage	18,678,700	0	0	0	18,678,700
NATIONAL TOTAL	781,523,851	10,341,660	13,251,489	23,593,149	805,117,000

* - FUNDS ARE ALLOCATED TO THE 13 STATES WHOSE RELATIVE SHARE DECREASED FROM FY 1990 TO THE FY 1991 BASIC FORMULA AMOUNT AND WHICH HAVE A CIVILIAN LABOR FORCE (CLF) BELOW ONE MILLION AND ARE BELOW THE MEDIAN CLF DENSITY. THESE STATES ARE HELD HARMLESS AT 100% OF THEIR FY 1990 RELATIVE SHARE.

** - THE BALANCE OF THE 3% FUNDS ARE DISTRIBUTED TO THE REMAINING 26 STATES LOSING IN RELATIVE SHARE FROM FY 1990 TO THE FY 1991 TOTAL ALLOTMENT AMOUNT.

*** - HOLD HARMLESS PROVISIONS REQUIRED UNDER SECTION 6(B) OF THE WAGNER-PEYSER ACT, AS AMENDED, ARE MAINTAINED AT THE REVISED ALLOTMENT LEVEL.

[FR Doc. 91-9837 Filed 4-25-91; 8:45 am]

BILLING CODE 4510-30-C

Occupational Safety and Health Administration

Oregon State Standards; Approval

1. *Background.* Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of subpart D to part 1952 containing the decision.

The Oregon plan provides for adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required. The Oregon plan also provides for the adoption of Federal standards as State standards by reference.

In response to Federal standards changes, the State has submitted by letters dated January 16, 1990 and September 25, 1990, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State amendments to Formaldehyde comparable to corrections and technical amendments to 29 CFR 1910.1048 published in the **Federal Register** (54 FR 29545) on July 13, 1989, and (54 FR 31765) on August 1, 1989; and the stays to the Hazard Communication section of the Formaldehyde standard, as published in the **Federal Registers** (53 FR 45080) on November 8, 1988; (53 FR 47168) on November 22, 1988; (54 FR 35639) on August 29, 1989; (54 FR 37531) on September 11, 1989; and (54 FR 43344) on October 24, 1989. The State's rules pertaining to Formaldehyde; Final Rule, Corrections and Technical Amendments and Adoption of Stays to the Hazard Communication Section contained in OAR 437-02-360(27), were adopted by reference on March 2, 1990, and became effective on March 2, 1990, pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under OR-OSHA Administrative Order 6-1990 (perm). The corrections and technical amendments were first adopted by reference on an emergency basis by OR-OSHA Administrative Order 1-1990 (temp) on January 11, 1990 and became effective on January 11, 1990. The original State standard, Formaldehyde, received approval on January 13, 1989 (54 FR 1461). On January 25, 1990, the State mailed the notice of proposed amendment of rules to those on the Department of Insurance and Finance mailing list established pursuant to OAR 436-01-000 and to those on the Department's distribution mailing list as their interest appeared. No written comments or requests for a public hearing were received.

The State submitted by letters dated July 18, 1989 and October 6, 1990, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standard amendments comparable to 29 CFR 1910.120, Hazardous Waste Operation and Emergency Response, final rule, as published in the **Federal Register** (54 FR 9294) on March 6, 1989; and corrections published in the **Federal Register** (55 FR 14072) on April 13, 1990. The State's rules pertaining to Hazardous Waste Operation and Emergency Response, contained in OAR 437-02-100(17), were adopted by reference on July 14, 1989 and became effective on July 14, 1990 pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under Oregon APD Administrative Order 12-1989. The corrections were adopted by reference on September 28, 1990, and became effective on October 1, 1990, as ordered and transmitted under OR-OSHA Administrative Order 22-1990. On June 20, 1989, and August 22, 1990, the State mailed the notices of proposed amendment of rules to those on the Department of Insurance and Finance mailing list established pursuant to OAR 436-01-000 and to those on the Department's distribution mailing list as their interest appeared. No written comments or requests for a public hearing were received.

Although Oregon adopted the hazardous waste operations standard by reference, it also included an Oregon-initiated rule at OAR 437-02-101 which provided for a different effective date and some different start-up dates. However, the State presented compelling reasons on the need for later dates, and all of these dates have now passed.

In response to Federal standards changes, the State has submitted by letters dated July 5, 1990, and September 28, 1990, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, amendments to OAR 437-02-360(20), comparable to 29 CFR 1910.1025, Lead, as published in the **Federal Register** (55 FR 3166) on January 30, 1990, amended in the **Federal Register** (55 FR 4998) on February 13, 1990, and modified per OSHA Instruction CPL 2-2.47 published by the Office of Health Compliance Assistance, OSHA, on July 10, 1990. The State's rules pertaining to Lead contained in OAR 437-02-360(20), were adopted by reference on June 28, 1990 and became effective on August 1, 1990 pursuant to ORS 654.025(2), ORS 656.726(3) and ORS 183.335 as ordered and transmitted under OR-OSHA Administrative Order 14-1990. Additional changes to the Lead final rule, appendix B, in response to OSHA Instruction CPL 2-2.47 were adopted and became effective on the same day, September 18, 1990. They were transmitted under OR-OSHA Administrative Order 20-1990. On May 15 and August 27, 1990, the State mailed the proposed amendments of rules pertaining to Lead to those on the Department of Insurance and Finance mailing list, established pursuant to OAR 436-01-000, and to those on the Department's distribution list as their interest appeared. No written comments or requests for a public hearing were received.

The State submitted by letter dated April 16, 1990, from John A. Pompei, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standards amendments comparable to 29 CFR 1926 subpart P, Excavations, as published in the **Federal Register** (54 FR 45959) on October 31, 1989 and comparable to 29 CFR 1926 subpart Q, Concrete and Masonry Construction, as published in the **Federal Register** (54 FR 22612) on October 5, 1989. The Oregon standards are contained in OAR 437, Division 3, subdivisions P and Q. The amendments were adopted by reference March 30, 1990, and became effective on September 1, 1990, pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under OR-OSHA Administrative Order 8-1990. The Administrative Order adopted the completely revised Federal Excavation Standard by reference, and also included a State-initiated amendment which deleted 29 CFR 1926.651(b)(2); notification of utilities. Other Oregon State codes, OAR 860-24-006 and -007, and ORS 757.541 through ORS 757.571, require utility companies to be notified prior to opening an excavation. The Administrative Order also adopted by reference editorial amendments to subdivision Q, Concrete and Masonry Construction. On February 15, 1990, the State mailed the proposed Amendment of Rules to those on the Department of Insurance and Finance mailing list established pursuant to OAR 436-01-000 and to those on the Department's distribution list as their interest appeared. No written comments or requests for a public hearing were received.

The State has submitted by letters dated February 13, 1985 from William J. Brown to James W. Lake and incorporated as part of the plan, State initiated amendments to recodify and amend State standards comparable to 29 CFR 1910, subpart P as published in the **Federal Register** at 36 FR 10652 dated May 29, 1971. These State standards which were originally contained in OAR 437, Chapters 6 and 12, received OSHA approval and notice to that effect was published in the **Federal Register** at 40 FR 36818 dated August 22, 1975. Both of the State amendments were adopted on December 12, 1984 with an effective date of January 1, 1985 after the notices of proposed amendment of rules were mailed to those on the Workers' Compensation Department mailing list established pursuant to OAR 436-00-505 on November 1, 1984 and to those on the Department's distribution list as their interest appeared. Both of these actions failed to elicit requests for hearings.

As part of the amendments, OAR 437, chapter 6, Hand Tools and Hand Held Power-Driven Tools, is recodified as OAR 437, Division 65, Hand Tools, Portable Power Tools and Equipment and Power Lawnmowers; also, OAR 437, Chapter 12, Powder-Actuated Tools and Fastening Systems, is recodified without change of title as OAR 437, Division 93. Additionally, the State is allowing certain pneumatic staplers to be used without a safety device if suitable eye protection is worn, which is consistent with OSHA's general standard on personal protective equipment at 29 CFR 1910.132(a). The State has also removed itself as an approving authority for powder-actuated tools and fastening systems.

The State submitted by letter dated January 26, 1990, from John A. Pompei, Director, to James W. Lake, Regional Administrator and incorporated as part of the plan, State standards amendments comparable to 29 CFR 1910.147, Control of Hazardous Energy Sources (Lockout/Tagout), as published in the **Federal Register** (54 FR 36687) on September 1, 1989, and subsequent amendment, change of effective date (54 FR 46610) dated November 6, 1989. The Oregon Control of Hazardous Energy Sources (Lockout/Tagout) Standard is contained in OAR 437-02-140(7). The amendment was adopted and became effective on March 1, 1990, pursuant to OAR 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under OR-OSHA Administrative Order 2-1990. The Administrative Order adopted the Federal rules on Control of Hazardous Energy Sources (Lockout/Tagout) by reference, with the exception of 29 CFR 1910.147(f)(3), Group Lockout or Tagout, in accordance with Oregon's longstanding position prohibiting the practice. (The State's original 1974-75 rules on lockout/tagout in pulp, paper and paperboard mills did not allow group lockout or tagout, and were approved by OSHA). The State, however, has indicated that it is willing to grant variance requests for group lockout or tagout if certain conditions are met, and has already granted two such variances. Also included are State-initiated amendments which make the rules applicable to all employers (as required by the Oregon Safe Employment Act), and require that "each person's lock shall have either a key or combination unique to that device." OSHA considers this latter requirement to be a minor difference. On January 9, 1990, the State mailed the proposed Amendment of Rules to those on the Department of Insurance and Finance mailing list established pursuant to OAR 436-01-000 and to those on the Department's distribution list as their interest appeared. No written comments or requests for a public hearing were received.

In response to Federal standards changes, the State has submitted by letter dated May 3, 1989 from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standard amendments comparable to 29 CFR 1926.550(g), Crane or Derrick Suspended Personnel Platforms, final rule, as published in the **Federal Register** (53 FR 29139) on August 2, 1988. Subsequently, by letter dated September 13, 1989 from John Pompei, Administrator, to James W. Lake, Regional Administrator, the same amendments were resubmitted as permanent standards. The State's temporary rules pertaining to Crane or Derrick Suspended Personnel Platforms were contained in OAR 437, Division 3. They were adopted by reference on an emergency basis on March 31, 1989 and became effective May 1, 1989 pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under Oregon APD Administrative Order 5-1989. Concurrently, State rules contained in Division 63, Construction, were repealed by the same Administrative Order. Subsequently, the State adopted by reference and effective July 7, 1989, permanent rules for Crane or Derrick Suspended Personnel Platforms pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under Oregon APD Administrative Order 6-1989. The State also added to this standard an Oregon-initiated rule at OAR 437-03-060, which requires the employer to provide a wind velocity device which will give a visible or audible alarm to the crane operator at a predetermined wind velocity. This rule was previously approved by OSHA on March 18, 1983 (48 FR 11536). On April 18, 1989, the State mailed the notice of emergency adoption of rules and the proposed permanent amendment of rules to those on the Department of Insurance and Finance mailing list, established pursuant to OAR 436-01-000 and to those on the Department's distribution list as their interest appeared. A public hearing was not held for the emergency adoption of the State's rules. On April 26, 1989 and May 5, 1989, the State mailed the notice of the proposed permanent amendment of rules to those on the Department of Insurance and Finance mailing list as their interest appeared. The State's notifications failed to elicit a request for public hearing.

2. *Decision.* Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standard amendments for Formaldehyde; Hazardous Waste; Lead; and, Concrete and Masonry Construction are identical to the Federal standard amendments and that the State's standard amendments for Lockout/Tagout and Crane or Derrick Suspended Personnel Platforms are at least as effective as the comparable Federal standard amendments, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal standard amendments for Excavations and Powder-actuated Tools are minimal and that the standard amendments are thus substantially identical. OSHA therefore approves these standards; however, the right to reconsider this approval for the State standard amendments for Lockout/Tagout, Crane or Derrick Suspended Personnel Platforms, Excavations and Powder-actuated Tools

is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, suite 715, Seattle, Washington 98101–3212; Oregon Occupational Safety and Health Division, Department of Insurance and Finance, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, room N–3476, 200 Constitution Avenue, NW., Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards are as effective as to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standard amendments were adopted in accordance with the procedural requirements of State law which included opportunity for public comments and further public participation would be repetitious.

This decision is effective April 26, 1991.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Seattle, Washington, this 5th day of November, 1990.

James W. Lake,

Regional Administrator.

[FR Doc. 91–9668 Filed 4–25–91; 8:45 am]

BILLING CODE 4510–26–M

Vermont State Standards; Approval

1. *Background.* Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On October 16, 1973, notice was published in the Federal Register (38 FR 28658) of the approval of the Vermont State Plan and the adoption of subpart U to part 1952 containing the decision.

The Vermont State Plan provides for the adoption of Federal standards as State standards after:

a. Publishing for two (2) successive weeks, in three (3) newspapers having general circulation in the center, northern and southern parts of the State, an intent to amend the State Plan by adopting the standard(s).

b. Review of standards by the Interagency Committee on Administrative Rules, State of Vermont.

c. Approval by the Legislative Committee on Administrative Rules, State of Vermont.

d. Filing in the Office of the Secretary of State, State of Vermont.

e. The Secretary of State publishing, not less than quarterly, a bulletin of all standard(s) adopted by the State.

The Vermont State plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. By letters dated January 4, 1990, March 14, 1990, and November 20, 1990 from Jeanne Van Vlandren, Commissioner, Vermont Department of Labor and Industry, to John B. Miles, Jr., Regional Administrator, and incorporated as part of the plan, the State submitted updated State standards identical to 29 CFR parts 1910; 1913; 1917; 1918; 1926; and 1928 and subsequent amendments thereto, as described below:

(1) Revisions to 29 CFR 1910.106 Hazardous Materials; Attendant Exemption and Latch-Open Devices, Flammable and Combustible Liquids (47 FR 39166, dated 9/7/82.

(2) Amendment to 29 CFR 1910.177, Servicing of Single Piece and Multi-Piece Rim Wheels; final rule (49 FR 4350, dated 2/3/84).

(3) Amendment to 29 CFR 1910.243, Power Lawnmowers; final rule (50 FR 4649, dated 2/1/85).

(4) Amendment to 29 CFR 1910.145, Specifications for Accident Prevention Signs and Tags, final rule (51 FR 33260, dated 9/19/86).

(5) Revision to 29 CFR 1926.400, Electrical Standards for Construction; final rule, Subpart K-Electrical (51 FR 25318, dated 7/11/86).

(6) Revision to 29 CFR 1910.1200, Hazard Communication; final rule (52 FR 31877, dated 8/24/87).

(7) Revision to 29 CFR 1915.98, Occupational Safety and Health Standards for Shipyard Employment, Hazard Communication (52 FR 31876, dated 8/24/87).

(8) Revision to 29 CFR 1917.28, Marine Terminals, Hazard Communication (52 FR 31876, dated 8/24/87).

(9) Revision to 29 CFR 1918.90, Safety and Health Regulations for Longshoring, Hazard Communication (52 FR 31876, dated 8/24/87).

(10) Revision to 29 CFR 1928.21, Occupational Safety and Health Standards for Agriculture, Hazard Communication (52 FR 31876 dated 8/24/87).

(11) Revision to 29 CFR 1926.59, Safety and Health Regulations for Construction, Hazard Communication (52 FR 31876, dated 8/24/87).

(12) Amendment to 29 CFR 1910.1028, Occupational Exposure to Benzene; final rule (52 FR 34562, dated 9/11/87).

(13) Revision to 29 CFR 1910.1048 Occupational Exposure to Formaldehyde; final rule, subpart Z, Formaldehyde (52 FR 46291, dated 12/4/87).

(14) Amendment to 29 CFR 1910.1047, Occupational Exposure to Ethylene Oxide; final rule (53 FR 11437, dated 4/6/88).

(15) Correction and Revision to 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response; final rule (54 FR 9317, dated 3/6/89 and 55 FR 14073, dated 4/13/90).

(16) Amendment to 29 CFR 1910.1000, Air Contaminants; final rule (54 FR 2920, dated 1/19/89).

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly are approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 133 Portland Street, Boston, Massachusetts 02114; Office of the Commissioner, State of Vermont, Department of Labor and Industry, 120 State Street, Montpelier, Vermont 05602; and the Office of State Programs, 200 Constitution Avenue, NW., room N3700, Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Vermont State Plan as proposed changes and making the Regional Administrator's approval effective upon publication for the following reason:

1. The Standards were adopted in accordance with the procedural requirements of the State Law which included public comment, and further public participation would be repetitious.

This decision is effective November 30, 1990.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at Boston, Massachusetts, this 28th day of February, 1991.

John B. Miles, Jr.,

Regional Administrator.

[FR Doc. 91–9910 Filed 4–25–91; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL COMMISSION ON RESPONSIBILITIES FOR FINANCING POSTSECONDARY EDUCATION

Meeting Announcement

AGENCY: The National Commission on Responsibilities for Financing Postsecondary Education.

ACTION: Notice of meeting.

DATES: Monday, May 6, 1991—8:30 a.m. to 3:00 p.m.

ADDRESSES: J.W. Marriott Hotel (Longworth Room), 1331 Pennsylvania Avenue, NW., Washington, DC 20004, 202–393–2000.

FOR FURTHER INFORMATION CONTACT: Peter Smith, Executive Director, 202–632–0546.

TYPE OF MEETING: Open.

Peter Smith,

Executive Director.

[FR Doc. 91–9673 Filed 4–25–91; 8:45 am]

BILLING CODE 6820–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Design Advancement Project Grants for Individuals, Design Innovation, USA Fellowships Section) to the National Council on the Arts will be held on May 15–16, 1991 from 9 a.m.–7 p.m. and May 17 from 9 a.m.–4 p.m. in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 17 from 3 p.m.–4 p.m. The topic will be policy discussion.

The remaining portions of this meeting on May 15–16 from 9 a.m.–7 p.m. and May 17 from 9 a.m.–3 p.m. are for the purpose of Panel review, discussion, evaluation,and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506,or call (202) 682–5433.

Dated: April 22, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–9654 Filed 4–25–91; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Fellowships to Individuals/Solo Performance Theater Artists Section) to the National Council on the Arts will be held on May 15–16, 1991 from 9:30 a.m.–6 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on May 15 from 9:30 a.m.–10:30 a.m. and on May 16 from 4:30 p.m.–6 p.m. The topics will be opening remarks, explanation of application review criteria, policy and FY 92 guidelines discussion.

The remaining portions of this meeting on May 15 from 10:30 a.m.–6 p.m. and May 16 from 9:30 a.m.–4:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants.

In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accomodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: April 22, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-9895 Filed 4-25-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The NRC has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revised.

2. Title of the information collection: 10 CFR 73.56, Personnel Access Requirements for Nuclear Power Plants.

3. The form number if applicable: Not applicable.

4. How often the collection is required: There is a one-time submittal to update the Physical Security Plan and to confirm compliance with the regulatory guide or to alternative measures. Licensees will then collect information on an as needed basis. Records shall be maintained of access authorization appeaval for the duration of the authorization plus 5 years, records of denial for 5 years, and records of the results of audits, resolution of audit findings, and corrective actions for 3 years.

5. Who will be required or asked to report: All licensees authorized to operate a nuclear power reactor pursuant to 10 CFR 50.22.

6. An estimate of the number of respondents: 122 licensees.

7. An estimate of the total numbers of hours needed to complete the requirements or request: There will be a one-time burden the first year of 49,289 hours and a recurring annual burden of 19,666 hours.

8. The average burden per respondent: The average licensee will have a one-time burden of 406 hours the first year and an annual incremental burden of 161 hours.

9. An indication of whether section 3504(h), Public Law 96-511 applies: Applicable.

10. Abstract: The Nuclear Regulatory Commission (NRC) is amending its regulations to require an access authorization program for individuals requiring unescorted access to protected and vital areas at nuclear power plants. Licensees currently have programs for granting unescorted access to nuclear power plants as part of their Physical Security Plans which are part of their license conditions. An access authorizaiton program consists of: a background investigation, psychological assessment, and behavioral observation. The rule will require licensees to submit changes to their Physical Security Plans to the NRC, to maintain records of individual access authorization approval and disapproval and to perform audits.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW, Lower Level, Washington, DC 20555.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, (3150-0002), NEOB-3019, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395-3019. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland this 17th day of April, 1991.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated Senior Official for Information Resources Management.

[FR Doc. 91-9884 Filed 4-25-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on May 8-11, 1991, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the Federal Register on March 20, 1991.

Wednesday, May 8, 1991, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.

2:00 p.m.–2:15 p.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks and comment briefly regarding items of current interest.

2:15 p.m.–6:00 p.m.: Containment Design Criteria for Future Nuclear Power Plants (Open)—The members will continue their discussion regarding a proposed report to the NRC on containment design criteria to accommodate severe accidents in nuclear power plants.

Thursday, May 9, 1991

8:30 a.m.–10:00 a.m.: Reactor Operating Experience (Open)—The Committee will be briefed by representatives of the NRC staff regarding the recent steam generator tube failure at the Mihama nuclear plant in Japan and similar events in U.S. nuclear power plants.

10:15 a.m.–11:30 a.m.: Meeting with Director, Office of Nuclear Reactor Regulation (Open)—The Committee will hold discussions with the NRR Director regarding items of mutual interest including the status of implementation of lessons learned from the NRC Regulatory Impact Survey, and NRR plans to review technical policy issues applicable to advanced nuclear reactor plant designs including the scope of design detail for these designs.

11:30 a.m.–12:15 p.m.: Future ACRS Activites (Open)—The Committee will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

1:15 p.m.–2:45 p.m.: Fitness for Duty Requirements (Open)—The members will meet with representatives of the NRC staff to discuss the proposed final rule on Fitness for Duty Requirements for Licensed Operators (10 CFR part 26). Representatives of the nuclear industry will participate, as appropriate.

3:00 p.m.–4:00 p.m.: Reactor Pressure Vessel Integrity (Open/Closed)—A briefing by and discussion with representatives of the NRC staff will be held regarding practices and procedures for annealing of reactor pressure vessels in the USSR.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

4:00 p.m.–6:00 p.m.: Containment Leak Rate Testing (Open)—The committee will review the proposed NRC final rule and a related regulatory guide on testing of containment leak rates in nuclear power plants (10 CFR Part 50, Appendix J). Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

Friday, May 10, 1991

8:30 a.m.–9:30 a.m.: Emergency Response Data System (Open)—The Committee will review the proposed NRC final rule regarding the Emergency Response Data System. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

9:30 a.m.–10:45 a.m.: Documentation of NRC Thermal-Hydraulic Computer Codes (Open)—A briefing by and discussion with representatives of the NRC staff will be held on policies and practices regarding documentation of computer codes used in the regulatory process.

11:00 a.m.–12:00 Noon: Radiobiological Effects (Open)—A briefing by and discussion with representatives of the NRC staff will be held regarding a recent report of a high incidence of leukemia among workers at the Oak Ridge National Laboratory.

1:00 p.m.–2:00 p.m.: NRC Safety Research Program (Open)—The members of the Committee will discuss the proposed scope and nature of an ACRS report to the Commission on the NRC safety research program and budget.

2:00 p.m.–3:00 p.m.: Regulatory Practices and Procedures (Open)—The members will discuss proposed ACRS comments/recommendations regarding the manner in which probabilistic risk assessment is being used in the regulatory process.

3:15 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed reports to the NRC regarding matters considered during this meeting.

Saturday, May 11, 1991

8:30 a.m.–9:00 a.m.: ACRS Practices and Procedures (Open)—The members will review a proposed revision of the ACRS Bylaws.

9:00 a.m.–9:45 a.m.: Appointment of New Committee Members (Closed)—The members will discuss the qualifications of candidates proposed for consideration as members of the Committee.

This session will be closed to discuss information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

9:45 a.m.–10:15 a.m.: ACRS Subcommittee Activities (Open)—The members will hear and discuss the reports of subcommittees regarding activities of cognizant ACRS subcommittee chairmen and members, including the March 26-28, 1991 meeting of the Nuclear Power Plant Aging Research Review Group attended by ACRS members and the May , 1991 meeting of the ACRS Planning and Procedures subcommittee.

10:30 a.m.–12:30 p.m.: Preparation of ACRS Reports to the NRC (Open)—The Committee will continue discussion of proposed Committee reports regarding items considered during this meeting.

2:30 p.m.–2:30 p.m.: Miscellaneous (Open)—The Committee will resume discussion of items considered during this meeting and items which were not completed at previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 2, 1990 (55 FR 40049). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Public Law 92-463 that it is necessary to close portions of this meeting noted above to discuss information the release of which represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and to discuss information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492-8049), between 8 a.m. and 4:30 p.m.

Dated: April 22, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91-9887 Filed 4-25-91; 8:45 am]

BILLING CODE 7590-01-M

Nominations for New Members of the Advisory Committee on the Medical Uses of Isotopes.

AGENCY: Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The Nuclear Regulatory Commission (NRC) is increasing membership on its Advisory Committee on Medical uses of Isotopes (ACMUI) and is inviting nominations of qualified individuals, from public interest groups, to serve as a consumer representative.

DATES: Date for receipt of nominations expires June 25, 1991.

ADDRESSES: Submit nominations to: Secretary of the Commission, ATTN: Advisory Committee Management Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, Mailstop 6-H-3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3417.

SUPPLEMENTARY INFORMATION: The ACMUI advises NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on changes in NRC rules, regulations, and guides concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and providing technical assistance in licensing, inspection, and enforcement cases.

Committee members possess the medical and technical specialty skills needed to address evolving issues. The ACMUI currently consists of two physician specialists in therapeutic radiology; four physician specialists in nuclear medicine, with backgrounds in pathology, radiology, internal medicine, and nuclear cardiology; one nuclear medicine technologist; a radiopharmacist; and two specialists in medical physics. Because NRC is now examining issues such as quality assurance and training and experience criteria, it is appropriate to expand the ACMUI's experience base to include new members who not only are technically qualified, but who also can represent patients' interests on have experience, from the perspective of the States, on the regulation of radioactive material for medical use.

A previous Federal Register notice (55 FR 52922; 12/26/90) solicited nominations of persons to fill three openings on the ACMUI, one of which was for an individual qualified to address patients' rights and care. No nominations were received for such an individual.

NRC is again soliciting nominations of an individual qualified to address patients' rights and care, to serve as a consumer representative on the ACMUI. Persons who can provide perspectives from organizations on patients' rights and care are encouraged to apply.

Committee members will serve a 2-year term, with possible reappointment.

Nominations must include a resume describing the educational and professional qualifications of the nominee, and provide the nominee's current address and telephone number.

Nominees must be United States citizens and be able to devote approximately 80 hours per year to committee business. Members will be compensated and reimbursed for travel (including per diem in lieu of subsistence), secretarial, and correspondence expenses.

Dated at Washington, DC this 22nd day of April 1991.

For The Nuclear Regulatory Commission.

John C. Hoyle,

Management Officer, Office of the Secretary of the Commission.

[FR Doc. 91-[illegible] Filed 4-25-91; 8:45 am]

BILLING CODE 7590-01-M

Commonwealth Edison Co.; Withdrawal of Application for Amendments to Facility Operating Licenses

[Docket Nos. 50-295 and 50-304]

The United States Nuclear Regulatory Commission (the Commission) has granted a request from Commonwealth Edison Company (the licensee) to withdraw its September 28, 1988, application for proposed amendments to Facility Operating License Nos. DPR-39 and DPR-48 for the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

The proposed amendments would modify Technical Specification Section 4.2.1.F.1 (Boric Acid System) to clarify the testing requirements for the heat trace which protects piping from the Boric Acid Tanks to the Charging Pump suction lines.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the Federal Register on December 30, 1988 (53 FR 53092). However, by letter dated April 2, 1991, the licensee withdrew the application for the proposed change.

For further details with respect to this action, see the application for amendments dated September 28, 1988, and the licensee's letter dated April 2, 1991, which withdrew the application for license amendments. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC., and the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 16th day of April 1991.

For the Nuclear Regulatory Commission.

John B. Hickman,

Project Manager, Project Directorate III-2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-[illegible] Filed 4-25-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Law Enforcement and Protective Occupations

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice; extension of comment period.

SUMMARY: The Office of Personnel Management (OPM) published a notice on April 5, 1991 (56 FR 14142), inviting preliminary written comments and recommendations on the procedures to be employed and the issues to be addressed by OPM in considering the establishment of a special position classification and pay system (or systems) for law enforcement and protective occupations in the Federal Government. This notice extends the comment period to May 10, 1991. This will not be the only opportunity to submit views and to consult on substantive issues. The notice of April 5, 1991, was intended to give only a preliminary indication of the important issues to be considered. During the course of these studies, OPM will provide extensive opportunities for all interested parties to exchange views and provide input on substantive matters.

DATES: Comments and recommendations in response to the notice of April 5, 1991, will be considered if received by May 10, 1991.

ADDRESSES: Send or deliver comments or recommendations to Barbara L. Fiss, Assistant Director for Pay and Performance, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 7H30, 1900 E Street, NW., Washington, DC 20415.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-[illegible] Filed 4-25-91; 8:45 am]

BILLING CODE [illegible]-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Cincinnati Stock Exchange, Incorporated

April 22, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Barnett Banks, Inc.
 Series A $4.50 Cum. Conv. Pfd. $0.10 Par Value (File No. 7-6730)
Commercial Interteck Corp.
 Common Stock, $1.00 Par Value (File No. 7-6731)
Intellicall, Inc.
 Common Stock, $0.01 Par Value (File No. 7-6732)
Mueller Industries, Inc.
 Common Stock, $0.01 Par Value (File No. 7-6733)
Republic of Austria
 Stock Index Notes due 8/15/96 (File No. 7-6734)
Scripps (E.W.) Co. (The)
 Class A Common Stock, $0.01 Par Value (File No. 7-6735)
Americus Trust for Arco Chemical
 Score Component No Par Value (File No. 7-6736)
Americus Trust for Johnson & Johnson
 Score Component No Par Value (File No. 7-6737)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 13, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-[illegible] Filed 4-25-91; 8:45 am]

BILLING CODE [illegible]-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

April 22, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Attwoods, Plc
 American Depositary Shares Representing Five Ordinary Shares By each (File No. 7-6738)
Sheans, Inc.
 Common Stock, $.01 Par Value (File No. 7-6739)
Uno Restaurant Corporation
 Common Stock, $.01 Par Value (File No. 7-6740)
United States Filter Corporation
 Common Stock, $.01 Par Value (File No. 7-6741)
The Washington Post Company
 Class B Common Stock, $1.00 Par Value (File No. 7-6742)
The Continum Company Inc.
 Common Stock, $.10 Par Value (File No. 7-6743)
Moog, Inc.
 Common Stock, $1.00 Par Value (File No. 7-6744)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 13, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-[illegible] Filed 4-25-91; 8:45 am]

BILLING CODE [illegible]-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

April 22, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Illinois Central Corp.
 Common Stock, $1.001 Par Value (File No. 7-6728)
Mid American Waste Systems, Inc.
 Common Stock, $2 Par Value (File No. 7-6727)
Super Food Services
 Common Stock, $1 Par Value (File No. 7-6726)
Elscint Limited
 Ordinary Shares (NIS 0.01 Nom. Val.) (File No. 7-6725)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 13, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-[illegible] Filed 4-25-91; 8:45 am]

BILLING CODE [illegible]-01-M

[File No. 500-1]

Innovative Tech Systems, Inc.; Order of Suspension of Trading

April 23, 1991.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of Innovative Tech Systems, Inc. ("Innovative Tech") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, Innovative Tech's financial statements, financial condition and assets. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Innovative Tech.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the common stock of Innovative Tech, over-the-counter or otherwise, is suspended for the period from 9:30 a.m. [EDT], April 23, 1991 through 11:59 p.m. [EDT] on May 6, 1991.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-[illegible] Filed 4-25-91; 8:45 am]

BILLING CODE [illegible]-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; San Antonio International Airport, San Antonio, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of San Antonio, Texas, for San Antonio International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for San Antonio International Airport, Texas, under part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before October 8, 1991.

EFFECTIVE DATES: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is April 12, 1991. The public comment period ends June 11, 1991.

FOR FURTHER INFORMATION CONTACT: Dean McMath, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76193-0002, (817) 624-5594. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for San Antonio International Airport, San Antonio, Texas, are in compliance with applicable requirements of part 150, effective April 12, 1991. Further,

FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before October 9, 1991. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compartility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The city of San Antonio, Texas, submitted to the FAA on January 28, 1991, noise exposure maps, descriptions and other documentation which were produced during development of the San Antonio International Airport FAR part 150 Noise Compatibility Study from October 1987 through December 1990. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of San Antonio, Texas. The specific maps under consideration are depicted in Figure 3–2 (page 43) and Figure 3–3 (page 46) in the submission.

The FAA has determined that these maps for San Antonio International Airport are in compliance with applicable requirements. This determination is effective on April 12, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA formally received the noise compatibility program for San Antonio International Airport, also effective on April 12, 1991. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 9, 1991.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW. room 617, Washington, DC 20591.

Federal Aviation Administration, Airports Division, ASW–600, 4400 Blue Mound Road, Forth Worth, Texas 76193–0600.

City of San Antonio, Department of Aviation, 9800 Airport Boulevard, San Antonio, Texas 78216–9990.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, April 12, 1991.

Hugh W. Lyon,

Assistant Manager, Airports Division.

[FR Doc. 91–9923 Filed 4–25–91; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 164, Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment, Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the ninth meeting of Special Committee 164 to be held May 20–22, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the eighth meeting's minutes, RTCA Paper No. 87–90/SC164–42; (3) technical presentations; (4) review of task assignments from last meeting; (5) review of the third draft of the MOPS, RTCA Paper No. 82–91/SC164–41. Review those items identified during the eighth meeting requiring further consideration; (6) working group sessions; (7) assignment of tasks; (8) other business; (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005 (202 682–0266.

Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 19, 1991.

Steven Zaidman,

Designated Officer.

[FR Doc. 91–9917 Filed 4–25–91; 8:45 am]

BILLING CODE 4910–13–M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations act, 1991, Public Law 101–516, signed into law by President George Bush on November 5, 1990, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management Division, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., room 9301, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The Section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban area. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was estabished by the Surface transportation Assistance act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
City and County of Honolulu, Honolulu, HI	HI–03–0014–00	$10,500,000	3–27–91
County of Fairfax, Washington, DC–MD–VA	VA–03–0040–00	7,339,125	3–19–91

SECTION 9.—GRANTS

Transit property	Grant number	Grant amount	Obligation date
Birmingham-Jefferson County Transit Authority, Birmingham, AL	AL–90–X053–00	$3,378,820	03/29/91
City of Gadsden, Gadsden, AL	AL–90–X055–00	63,060	03/29/91
Arkansas State Highway and Transportation Department, Arkansas	AR–90–X023–00	1,209,042	03/29/91
Metroplan, Little Rock-N. Little Rock, AR	AR–90–X024–00	100,000	03/29/91
Central Arkansas Transit Authority, Little Rock-N. Little Rock, AR	AR–90–X025–00	1,685,908	03/29/91
City of Phoenix, Phoenix, AZ	AZ–90–X027–00	8,383,354	03/29/91
Golden Empire Transit District, Bakerfield, CA	CA–90–X413–00	2,618,486	03/29/91
Southern California Rapid Transit District, Los Angeles-Long Beach, CA	CA–90–X416–00	54,348,515	03/29/91
Orange County Transit District. Los Angeles-Long Beach, CA	CA–90–X428–00	15,135,200	04/01/91
Alameda-Contra Costa Transit District, San Francisco-Oakland, CA	CA–90–X429–00	15,598,361	03/29/91
Riverside Transit Agency, San Bernardino-Riverside, CA	CA–90–X434–00	318,227	03/29/91
Metropolitan Transit Development Board, San Diego, CA	CA–90–X435–00	7,942,693	04/05/91
Hub Area Transit Authority, Yuba City, CA	CA–90–X436–00	324,200	03/29/91
Sunline Transit Agency, Palm Springs, CA	CA–90–X438–00	295,906	03/29/91
Riverside Transit Agency, San Bernardino-Riverside, CA	CA–90–X439–00	2,249,270	03/29/91
North San Diego County Transit Development Board, San Diego, CA	CA–90–X443–00	5,508,411	04/05/91
Regional Tranportation District, Denver, CO	CO–90–X058–00	13,961,959	03/29/91
City of Fort Collins, Fort Collins, CO	CO–90–X059–00	767,686	03/29/91
Mesa County, Grand Junction, CO	CO–90–X060–00	185,655	03/29/91
Connecticut Department of Transportation, Connecticut	CT–90–X181–00	8,631,135	03/29/91
Greater Waterbury Transit District, Waterbury, CT	CT–90–X182–00	305,000	03/29/91
Connecticut Department of Transportation, Connecticut	CT–90–X183–00	4,859,612	03/29/91
Middletown Transit District, Danbury, CT	CT–90–X184–00	120,000	03/29/91
Washington Metropolitan Area Transit Authority, Washington, DC-MD-VA	DC–90–X016–00	16,070,000	03/29/91
Orange-Seminole-Osceola Transportation Authority, Orlando, FL	FL–90–X156–01	700,000	03/29/91
Palm Beach Co Bd of Commissioners—Palm Beach Co Transit Authority, West Palm Beach, FL	FL–90–X166–00	1,940,825	03/29/91
Sarasota County Area Transportation Authority, Sarasota-Bradenton, FL	FL–90–X168–00	1,200,000	03/29/91
Lakeland Area Mass Transit District, Lakeland, FL	FL–90–X169–00	877,108	03/29/91
Georgia Dept. of Transportation—Office of Intermodal Programs, Georgia	GA–90–X061–00	58,112	03/29/91
Atlantic Regional Commission, Atlanta, GA	GA–90–X062–00	167,088	03/29/91
City of Davenport—Department of Municipal Transportation, Davenport-Rock Isl-MO, IA-IL	IA–90–X124–00	627,272	03/29/91
Bloomington-Normal Public Transit System, Bloomington-Normal, IL	IL–90–X148–00	106,586	03/29/91
Pekin Municipal Bus Service, Peoria, IL	IL–90–X174–00	111,745	03/29/91
Suburban Bus Division—RTA, Chicago, IL-Northwestern IN	IL–90–X175–00	8,690,960	03/29/91
Rock Island County Metropolitan Mass Transit District, Davenport-Rock ISL-MO, IA-IL	IL–90–X176–00	936,400	03/29/91
Regional Transportation Authority, Chicago, IL-Northwestern IN	IL–90–X177–00	49,018,893	03/29/91
Chicago Transit Authority, Chicago, IL-Northwestern IN	IL–90–X178–00	19,994,568	03/29/91
City of Kokomo, Kokomo, IN	IN–90–X149–00	153,091	03/18/91

SECTION 9.—GRANTS—Continued

Transit property	Grant number	Grant amount	Obligation date
Muncie Public Transportation Corporation, Muncie, IN	IN-90-X159-00	1,281,002	03/29/91
Bloomington Public Transportation Corporation, Bloomington-Normal, IL	IN-90-X151-00	451,161	03/29/91
City of Terre Haute, Terre Haute, IN	IN-90-X152-00	460,090	03/29/91
Wichita Metropolitan Transit Authority, Wichita, KS	KS-90-X046-00	1,991,266	03/29/91
Wichita Metropolitan Transit Authority, Wichita, KS	KS-90-X049-00	27,040	03/29/91
Transit Authority of Northern Kentucky, Cincinnati, OH-KY	KY-90-X052-00	1,441,166	03/29/91
Regional Planning Commission, New Orleans, LA	LA-90-X145-00	350,000	03/29/91
Greater Attleboro—Taunton Regional Transit Authority, Taunton, MA	MA-90-X121-00	1,361,556	03/29/91
Berkshire Regional Transit Authority, Pittsfield, MA	MA-90-X122-00	262,696	03/29/91
Montachusett Regional Transit Authority, Fitchburg-Leominster, MA	MA-90-X125-00	22,400	03/29/91
Maine Department of Transportation, Maine	ME-90-X058-01	126,814	03/29/91
City of Detroit Department of Transportation, Detroit, MI	MI-90-X128-00	12,803,000	03/29/91
Kalamazoo Metro Transit, Kalamazoo, MI	MI-90-X141-00	895,299	03/29/91
Bay County Metropolitan Transportation Authority, Bay City, MI	MI-90-X142-00	507,136	03/29/91
Flint Mass Transportation Authority, Flint, MI	MI-90-X143-00	2,377,848	03/29/91
Duluth Transit Authority, Duluth-Superior, MN-WI	MN-90-X051-00	441,009	03/29/91
St. Cloud Metropolitan Transit Commission, St. Cloud, MN	MN-90-X052-00	367,470	03/29/91
Metropolitan Transit Commission, Minneapolis-St. Paul, MN	MN-90-X053-00	9,165,860	03/29/91
City of East Grand Forks, Grand Forks, ND-MN	MN-90-X054-00	69m709	03/29/91
North Carolina Department of Transportation, North Carolina	NC-90-X104-00	184,000	03/25/91
City of Fargo, Fargo-Moorhead, ND-MN	ND-90-X023-00	502,400	03/29/91
City of Grand Forks, Grand Forks, ND-MN	ND-90-X024-00	523,500	03/29/91
Omaha Metro Area Transit, Omaha, NE-IA	NE-90-X026-00	5,821,316	03/29/91
Manchester Transit Authority, Manchester, NH	NH-90-X013-01	31,712	03/29/91
New York City Department of Transportation, New York, NY-Northeastern NJ	NY-90-X204-00	17,915,434	03/29/91
Southwest Ohio Regional Transit Authority, Cincinnati, OH-KY	OH-90-X139-00	4,409,824	04/05/91
Canton Regional Transit Authority, Canton, OH	OH-90-X145-00	1,152,339	03/29/91
Central Ohio Transit Authority, Columbus, OH	OH-90-X146-00	912,329	03/29/91
Miami Valley Regional Transit Authority, Dayton, OH	OH-90-X147-00	2,858,588	03/29/91
Western Reserve Transit Authority, Youngstown-Warren, OH	OH-90-X148-00	1,873,720	03/29/91
Greater Cleveland Regional Transit Authority, Cleveland, OH	OH-90-X149-00	16,765,615	03/29/91
Tri-County Metropolitan Transportation District of Oregon, Portland, OR-WA	OR-90-X035-00	5,602,144	03/29/91
Cambria County Transit Authority, Johnstown, PA	PA-90-X206-00	807,927	03/29/91
Mid Mon Valley Transit Authority, Monessen, PA	PA-90-X207-00	382,446	03/25/91
City of Washington, Pittsburgh, PA	PA-90-X209-00	419,137	03/29/91
City of Williamsport, Bureau of Transportation, Williamsport, PA	PA-90-X210-00	398,714	03/25/91
Municipality of Cataño, San Juan, PR	PR-90-X013-02	224,000	03/29/91
Municipality of Moca, Aquidilla, PR	PR-90-X048-01	48,000	03/29/91
Greenville Transit Authority, Greenville, SC	SC-90-X027-03	98,947	03/29/91
Spartanburg County Government, Spartanburg, SC	SC-90-X036-00	252,135	03/29/91
City of Sioux Falls, Sioux Falls, SD	SD-90-X018-00	691,633	03/29/91
Memphis Area Transit Authority, Memphis, TN-AR-MS	TN-90-X086-01	3,010,660	03/29/91
City of Bristol, Bristol, TN-VA	TN-90-X091-00	131,200	03/25/91
Fort Worth Transportation Authority, Dallas-Ft. Worth, TX	TX-90-X207-00	2,360,142	03/29/91
City of El Paso—Sun Metro, El Paso, TX	TX-90-X208-00	2,772,306	03/29/91
City of Sherman, Sherman-Denison, TX	TX-90-X209-00	52,000	03/29/91
Via Metropolitan Transit Authority, San Antonio, TX	TX-90-X210-00	6,164,530	03/29/91
City of Amarillo, Amarillo, TX	TX-90-X211-00	567,004	03/29/91
City of Galveston, Galveston, TX	TX-90-X213-00	1,077,696	03/29/91
Municipality of Metropolitan Seattle, Seattle-Everett, WA	WA-90-X113-00	22,520,941	03/29/91
Intercity Transit, Olympia, WA	WA-90-X115-00	978,000	03/29/91
Clark County Public Transportation Benefit Area, Portland, OR-WA	WA-90-X117-00	243,200	03/29/91
City of Waukesha, Milwaukee, WI	WI-90-X136-00	216,296	03/29/91
City of Appleton, Appleton, WI	WI-90-X139-00	594,399	03/29/91
Janesville City Planning Dept.—Metropolitan Planning Organization, Janesville, WI.	WI-90-X140-00	259,842	03/29/91
Kenosha Department of Transportation, Kenosha, WI	WI-90-X141-00	547,360	03/29/91
Oshkosh Transit System, Oshkosh, WI	WI-90-X142-00	403,252	03/29/91
City of Sheboygan, Sheboygan, WI	WI-90-X143-00	523,449	03/29/91
City of Superior, Duluth-Superior, MN-WI	WI-90-X144-00	127,000	03/29/91
Kanawha Valley Transportation Authority, Charleston WV	WV-90-X042-00	987,919	03/25/91

Issued on: April 22, 1991.

Brian W. Clymer,

Administrator.

[FR Doc. 91-9851 Filed 4-25-91; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 19, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1095.

Form Number: None.

Type of Review: Reinstatement

Title: Opinion Survey of Taxpayers Contacted by IRS Collection Function.

Description: The data collected will be used to evaluate the level of satisfaction of taxpayers contacted by the IRS Collection Function to identify possible areas of program improvement, and thereby improve the effectiveness of Collection activities.

Respondents: Individuals or households.

Estimated Number of Respondents: 7,500.

Estimated Burden Hours Per Response: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,250 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderahuf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Juanita F. Holder,

Departmental Reports, Management Officer.

[FR Doc. 91-9838 Filed 4-3-91; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 81
Friday, April 26, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:10 a.m. on Monday, April 22, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the Corporation's corporate activities.

Matters relating to certain financial institutions.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,880
Gibraltar Savings Association, Houston, Texas

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: April 23, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–10010 Filed 4–24–91; 8:45 am]

BILLING CODE 6714-0-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, April 30, 1991, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Amendments to the Corporation's Bylaws.

Discussion Agenda:

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which increases the assessment to be paid by Bank Insurance Fund members during the second half of calendar year 1991 and thereafter.

Memorandum and resolution re: Final amendments to Part 333 of the Corporation's rules and regulations, entitled "Extension of Corporate Powers," which final rule provides that a savings association that has converted to a state savings bank charter and retains membership in the Savings Association Insurance Fund will continue to be subject to the same activity and investment restrictions and loan to one borrower limits that were applicable to a savings association prior to its conversion.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: April 23, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–10011 Filed 4–24–91; 9:43 am]

BILLING CODE 6714-0-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:00 p.m. on Tuesday, April 30, 1991, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to secitons 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Reports of the Office of Inspector General:

Audit Report re:
Equity Bank for Savings, F.A., Oklahoma City, Oklahoma, Assistance Agreement, Case Number SWP–012/028c (Memo dated April 12, 1991)

Audit Report re:
Guaranty Federal Savings Bank, FSB, Dallas, Texas, Assistance Agreement, Case Number SWP–015c (Memo dated March 18, 1991)

Audit Report re:
Meritor Savings, F.A., Arlington, Virginia, Assistance Agreement, Case Number C–231c (Memo dated April 5, 1991)

Audit Report re:
Southwest Savings Association, Dallas Texas, Assistance Agreement, Case Number SWP–002c (Memo dated April 15, 1991)

Audit Report re:
Bossier City Consolidated Office, Cost Center—305 (Memo dated March 19, 1991)

Audit Report re:
Oklahoma City Consolidated Office, Cost Center—401 (Memo dated April 10, 1991)

Audit Report re:
The Huntsville National Bank, Huntsville, Texas (4208) (Memo dated April 10, 1991)

Audit Report re:
Inventory Closing Procedures, Oklahoma City Consolidated Office (Memo dated April 10, 1991)

Audit Report re:
Personal Action Request Tracking System, Development Project, Project Definition Phase (Memo dated April 12, 1991)

Audit Report re:
Procurement and Control of Property Managers—Irvine Consolidated Office (Memo dated April 12, 1991)

Audit Report re:
Audit of Legal Expenses Paid to the Law Firm of Schall, Boudreau & Gore (Memo dated March 27, 1991)

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of these assets:

Case No. 47,880
Gibraltar Savings Association, Houston, Texas

Discussion Agenda:

Request of an insured institution for modification of an order approving deposit insurance.

Personel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: April 23, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–10012 Filed 4–24–91; 9:43 am]

BILLING CODE 6714-0-M

Corrections

Federal Register
Vol. 56, No. 81
Friday, April 26, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 910370-1070]

Reef Fish Fishery of the Gulf of Mexico

Correction

In proposed rule document 91-7237 beginning on page 12896, in the issue of Wednesday, March 27, 1991, in the second column, under the heading **DATES:** "May 13, 1991" should read "May 6, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 231

Department of Defense, Federal Acquisition Regulation Supplement; Independent Research and Development Costs

Correction

In proposed rule document 91-5975 beginning on page 10854, in the issue of Thursday, March 14, 1991, make the following correction:

On page 10855, in the second column, in amendatory instruction 3, in the first line "Section 231.2095-18" should read "Section 231.205-18".

BILLING CODE 1505-01-D

federal register

Friday
April 26, 1991

Part II

Department of Labor

Employment and Training Administration

Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Proposed Performance Standards and Reporting Revisions for Program Years (PY) 1991 and 1992; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Migrant and Seasonal Farmworker Program Proposed Performance Standards for Program Years (PY) 1991 and 1992

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed performance standards; request for comments.

SUMMARY: The Department of Labor (Department) is announcing proposed revisions to the performance standards for the Employment and Training Administration programs serving migrant and seasonal farmworkers under section 402 of the Job Training Partnership Act (JTPA). Two measures are being proposed for the next two program years, (PY) 1991 and 1992 (July 1, 1991–June 30, 1993). The current entered employment rate will be retained and a new measure—average wage at placement—will be added. The current cost measure (cost per entered employment) is to be discontinued as one of the performance standards. Grantees will begin collecting information on employability enhancements gained through program participation and the employment status and earnings of participants three months after leaving the program. This information will be useful in setting future measures of employability enhancements and postprogram performance.

DATE: Written comments are invited from the public. Comments must be received on or before May 16, 1991.

ADDRESS: Comments should be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Gloria Duus, Chief, National Programs Performance Standards Unit, Room N5637.

FOR FURTHER INFORMATION CONTACT: Gloria Duus, Telephone: 202–535–0685 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Purpose of Performance Standards

The Secretary of Labor (Secretary) issues performance standards pursuant to section 106 of the Job Training Partnership Act (JTPA) to determine whether the basic objectives of JTPA, increased earnings and employment and reduced welfare dependency, are being met. JTPA implementing regulations at 20 CFR 633.321 further requires the Secretary to issue grantee performance standards for the Migrant and Seasonal Farmworker (MSFW) programs.

Performance standards serve as a management tool for grantees in planning programs for the upcoming year as well as an assessment guide in measuring results of yearly program achievements. The Department assigns performance goals to each grantee in advance of the program year and adjusts each grantee's performance standards at year's end, based on the mix of clients actually served during that year, to determine whether the program was performing at an acceptable level.

B. Background

Two measures set by the Secretary to assess section 402 program performance have remained unchanged since JTPA's inception. These are the entered employment rate and the cost per entered employment. Unlike JTPA Title II–A programs, MSFW grantees that exceed their standards are not rewarded with additional funds. However, performance against these standards is used in monitoring grantees' progress, and as one of fourteen responsibility review-factors found at 20 CFR 633.204.(a)(5), in addition to other considerations, used by the Department in selecting potential grantees.

C. Performance Management Goals for FY 1991–1992

The effects of performance standards on program design, service delivery and participants served have drawn increased public attention within the JTPA system. For this reason, current performance measures were reviewed by a Technical Workgroup of grantee and service provider representatives to assess the contribution to the advancement of these measures of current Departmental policy and MSFW program objectives. As a result of this consultative process, performance standards revisions are proposed to support the following MSFW program goals:

- Targeting services to a more at-risk population.
- Improving the quality and intensity of services that lead to long-term employability and increased earnings.
- Placing greater emphasis on basic and occupational skills acquisition to qualify for employment or advanced education and training.
- Promoting comprehensive coordinated human resource programs to address the multiple needs of at-risk populations.
- Advancing the economic and social development of farmworkers through related assistance and supportive services.
- Fostering programs which increase farmworkers' opportunities to achieve employment stabilization.

D. Rationale for Performance Standards Revisions

Current performance standards for the MSFW program promote increased placements and program efficiency. Program experience has shown that assessing performance solely on job placements and unit costs does little to encourage programs to improve the employability skills of participants to ensure their long-term labor market success. Moreover, research has shown that continued use of cost standards, in the absence of information on the types of clients served and the availability of other community resources, creates an inherent contradiction between the measure and current policy aimed at targeting services to the most at-risk population. Thus, current performance measures do not provide sufficient inducements to grantees to enhance the basic education and occupational skills of their participants.

As program goals have expanded emphasis on the long-term employability of harder-to-serve populations, it has become necessary to update the measures upon which JTPA program performance is assessed to more fully address these new program directions—to encourage both stable employment and skill development. In response, Title II–A programs have shifted from counting job placements and earnings at termination to longer-term measures of employment and earnings for adults and to make employability enhancements coequal with job placements as acceptable measures for the youth program. The section 401 programs serving the Indian and Native Americans recently proposed adding an employability enhancement measure to balance the employment goals of the program with those that emphasize skills acquisition. Grantees serving migrants and seasonal farmworkers likewise saw a need to revise their performance standards to enhance the quality of skills training and job placements for their participants.

E. New Measure Promoting High Wage Placements

Grantees frequently cite the need for a qualitative measure of job placement to more adequately assess program efforts at improving the long-term employability of farmworkers. Placement in high wage jobs, preferably those with health benefits, not only increases the earning power of farmworkers, but is likely to contribute to their employment stability. Grantees currently report their average placement wages, therefore the Department proposes adding a measure of average wage at placement to serve as a proxy for placement quality.

F. Elimination of the Cost Standard

Cost measures are perceived by grantees as a strong disincentive to providing more intensive training to meet participants' needs. Because differences in available resources within the grantee areas that result in lowered program costs are not taken into account, it is also an imprecise measure of cost efficiency. For these reasons, the Department has discontinued the use of cost measures in its performance management system across all JTPA programs.

G. Future Measure of Employability Enhancements

The Department believes that JTPA performance standards should reflect an emphasis on basic education and occupational skills development for its participants to ensure their long-term employability. To this end, future performance standards must encourage programs to directly provide competency-based instruction in basic and occupational skills training or link up with other resources such as secondary education, vocational education, and other Federal programs serving migrants and seasonal farmworkers, as well as other JTPA service providers within the area.

To promote this effort, the Department will begin examining alternative measures that better account for basic education and occupational skill upgrading among MSFW program participants. In the interim, grantees will begin reporting on a wide range of program outcomes that will be included in this measure to promote such activities as high school or GED completion, entry into advanced skill training, dropout prevention and recovery, completion of work experience, tryout employment, and attainment of needed employability skills, including vocational certificates or completion of adult basic education or ESL programs. The Department is particularly interested in public comments on whether this expanded reporting on participant skill enhancements is burdensome and whether a separate measure of employability enhancements will have the desired effect of increasing the long-term employability of participants in farmworker programs.

H. Future Post-Program Performance Measures

A significant new dimension to the performance management system for MSFW programs is the proposed collection of post-program data. Focusing program management and evaluation on measures of employment and earnings after termination is gaining increased support within the employment and training community. Post-program measures of employability and wages are closely correlated with long-term earnings increases of program participants. More importantly, these measures serve to strengthen the quality of programs over the current termination-based approach to program design and service delivery which merely emphasizes getting participants jobs.

The Department anticipates adding new standards in the future that measure post-program outcomes. Data collection must begin in PY 1991 to assure sufficient information for setting these standards. Proposed revisions to the MSFW program's management information system and accompanying reporting instructions will be published separately in the Federal Register. It is anticipated, however, that selected information will be collected on all those placed in jobs when they leave the program. Employers will be contacted first, but if information is unavailable, terminees will be contacted directly. Information will be sought on wages, employment status of participants three months after leaving the program and whether fringe benefits were provided or offered by the employer. Comments are invited on the extent of the reporting burden generated from this required postprogram data collection activity and whether a shift to postprogram standards will promote the necessary design changes needed to achieve greater employment stability among farmworker participants.

J. Public Comment and Participation

The Department is committed to a participatory process in the development of performance standards. The proposed revisions resulted from a process of consultation by convening a technical workgroup comprised of grantees, service providers and members of public interest groups to address performance standards issues. Two technical workgroup meetings were held between September and October 1990. This request for comment is another important part of this process.

PY 1991 Planning Instructions

The Department presently plans to issue PY 1991 planning instructions in April, 1991. Pending receipt and review of comments in response to this notice, the Department will determine whether to proceed with the changes being considered. Such changes, if adopted, may require revisions to these planning instructions.

Signed at Washington, DC, this 19th day of April 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91–9974 Filed 4–25–91; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Proposed Reporting Revisions for Program Years (PY) 1991 and 1992

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed reporting revisions; request for comment.

SUMMARY: The Department of Labor (Department) is requesting comments on proposed changes to the Job Training Partnership Act (JTPA or the Act) Migrant and Seasonal Farmworker (MSFW) Annual Status Report (FASR) for the JTPA Title IV, section 402, Program, and relevant planning and financial reports. The proposed revisions extend and update the reporting system for section 402 grantees in order to provide data for future postprogram performance measures, expand employability enhancement outcomes for adults and youth and improve grantee adjustments to performance standards.

The proposed reporting revisions will more adequately identify harder-to-serve individuals among the MSFW population, will provide more detailed information on participants' basic education and occupational skills attainment, and will more completely identify the duration of participation in intensive training activities. For those participants placed at termination, information will be collected on their retention, wages and fringe benefits three months after leaving the program.

DATES: Written comments are invited from the public. Comments must be submitted on or before May 16, 1991.

ADDRESS: Comments shall be addressed to the Assistant Secretary of Labor for Employment and Training, U.S. Department of Labor, Room N–5637, 200

Constitution Ave., NW., Washington, DC 20210; Attention: Gloria Duus, Chief, National Programs Performance Standards Unit. The proposed revisions have been forwarded to the Office of Management and Budget (OMB) for review pursuant to the provisions of the Paperwork Reduction Act. Comments should also be sent to the OMB reviewer at the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3001, Washington, DC 20503; Attention: Steve Semenuk; Telephone: (202) 395-6880 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Gloria Duus, Chief, National Programs Performance Standards Unit. Telephone: (202) 535-0555 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is publishing its proposed revisions to the Job Training Partnership Act's, Farmworker Annual Status Report and accompanying planning and financial forms in the Federal Register in order to solicit comments on the Department's intended reporting requirements for Program Years (PY) 1991-1992 (July 1, 1991-June 30, 1993). Upon completion of the OMB review, the Department will notify the JTPA system of any resulting changes or adjustments. Unless otherwise specified citations made below are to sections of JTPA.

Justification

A. Authority and Purpose of the JTPA Annual Reporting Requirements

Collection of information (reporting) is necessary to comply with the statutory provisions requiring the Secretary to be responsible for JTPA section 402 programs' performance standards, recordkeeping and reporting.

Performance Standards

—Section 106(d)(3) requires the Secretary to set performance standards for JTPA programs, including Migrant and Seasonal Farmworker programs.

—Section 106(e)(1) permits variations in standards to adjust for local economic factors, the characteristics of the population being served, and the types of services provided. Such factors vary from region to region, with significant effects on individual grantees' delivery of services and performance. Performance standards are adjusted according to each grantee's client characteristics and local economic conditions.

—Section 402(c)(4) directs Migrant and Seasonal Farmworker grantees to establish performance goals in compliance with performance standards as set by the Secretary of Labor (Secretary) pursuant to Section 106.

As stated in section 106(a)(2), the basic return on the JTPA investment is to be measured by increased earnings and employment and decreased dependence on public assistance.

Reports, Recordkeeping and Investigations

—Section 165 prescribes that federal grantees maintain records and report information regarding program performance and fiscal management as specified by the Secretary.

—Section 402(b) dictates that the Secretary establish administrative procedures for the selection, administration, monitoring and evaluation of Migrant and Seasonal Farmworker employment and training programs.

Administrative Provisions

—Section 168(d)(1) and (3) requires the Secretary to submit an annual report to the Congress which includes a summary of achievements, failures, and problems of all programs authorized under the JTPA with recommendations for program modifications based on analysis of such findings or other recommendations as the Secretary deems appropriate.

• Establishing future performance standards for subsequent program years is dependent upon current program year performance data from grantees.

• The proposed revisions update the Migrant and Seasonal Farmworker reporting system without changing the continued justification for grantee-level reporting on performance and participant characteristics, which are necessary to set objective standards and estimate the effects of varying local conditions on performance in a systematic, consistent, cost-effective way.

B. Reasons for Revisions

The proposed revisions to the Section 402 reporting system support the expanded policy emphasis on skill development for the harder-to-serve population. Goals for the Migrant and Seasonal Farmworker program include: (1) Targeting services to a more at-risk population; (2) making quality training investments that lead to long-term employability and increased earnings; (3) emphasizing basic education and occupational skills attainment for adults and youth; and, (4) promoting coordinated service delivery among human service providers. The revisions to reporting were designed to achieve these objectives.

These changes will make section 402 reporting more consistent with other JTPA programs, provide more complete information on the overall performance of grantees and encourage improved services to farmworkers—the Department's fundamental objective. The proposed revisions were developed by a technical work group of grantee representatives and DOL staff.

The Department is proposing revisions to Section 402 reporting for the following reasons:

• In an effort to increase services to those who are less employable, performance standards revisions are being proposed which would create incentives for the enrollment of applicants who are less skilled over those who are more job ready. The new employability enhancement outcomes, which focus on skill development, balance the measurement of grantee performance between employment-directed services *and* employment-enhancement activities which should encourage greater assistance to at-risk participants.

Additional data will be collected to identify more completely these farmworkers who are among the hardest-to-serve. Information on those with multiple employment barriers, lengthy work history in agriculture, and deficiencies in basic education and occupational skills will be used to improve adjustments to performance standards to better account for varying levels of service to these groups.

• The lack of non-agricultural job skills among farmworkers has led the Department to expand its MSFW performance goals from emphasis on job placements to longer-term employability development. Because postprogram data provide a more direct measure of long-term employability, the Department anticipates using new standards in PY 1993 that would measure postprogram outcomes three months after termination. Data collection must begin in PY 1991 for there to be adequate information for setting these standards in the next two-year cycle beginning in PY 1993.

Concentrating on intensive training and improved access to other human service resources is essential to preparing farmworkers for a wider range of job opportunities in labor market areas served by grantees. Enhancement outcomes now fully recognize basic skills training, dropout recovery and prevention, general equivalency diploma (GED) preparation and work-site training as valuable services leading to more stable future employment.

• To further the objective to expand basic and occupational skills development, new data items are proposed which highlight the average time spent in intensive, skill-based training as compared to measures of overall program participation. Data that identify average time spent in intensive training will assist the Department in adjusting grantee performance expectations for differing program designs.

Farmworkers eligible for job training under section 402 often need extensive remediation and English-language training which are critical to employment and job retention. Enhancement outcomes have been expanded to give grantees explicit options to show adult as well as youth skill achievements. One proposed outcome measures basic education and occupational skill attainments gained through academic or vocational course completion. This would provide a more direct measure of individual skills attainment by linking basic education and occupational skill gains to the employability development planning process.

• Conforming program outcome measures to parallel those used in other JTPA programs facilitates coordination with other JTPA providers. Consistent outcomes across JTPA-funded programs also enable the Department to make inter-program comparisons on how well JTPA is serving its target populations.

• Permitting grantees to record the training received and the skill gains achieved from adult education, and other non-section 402 providers promotes increased access to other non-JTPA resources. Interprogram coordination helps grantees develop more comprehensive services and ensures that participants have greater access to all available assistance.

C. Proposed Changes

The Department is proposing the following additions and modifications to the Farmworker Annual Status Report and other reporting forms:

Performance Outcomes

• Also Attained Any Employability Enhancement [New].

A new subset of Entered Unsubsidized Employment is proposed to identify all terminees who received both an employability enhancement and job placement. This line item, "Also Attained Any Employability Enhancement," is necessary to compute a future measure of employability enhancements.

• Attained Employability Enhancement ONLY [New].

This line item replaces the current column, "Youth Positive Terminations." Similar in concept, but now applicable to adults as well as youth, this outcome reflects those terminees who attained at least an employability enhancement but did *not* get placed in a job. When combined with those terminees mentioned above that also attained an employability enhancement, grantees can document the total number of participants who have increased their employability through basic education or occupational skill gains regardless of job placement. This line item is necessary to compute a future employability enhancement measure.

• Employability Enhancements.

This proposed section is added to identify the individual enhancements that all terminees have received.

Employability Enhancement Outcomes

• Entered Non-Section 402 Training [Redefined].

This subset of employability enhancements is expanded to include entering postsecondary education as well as entering an occupational employment/training program funded from sources other than the section 402 grantee. Training must also expand upon and *not duplicate* what the participant has already received in the farmworker program.

• Returned to Full-Time School [Redefined].

Redefined to focus program resources on dropout prevention as well as dropout recovery, this subset of enhancements expands program credit to those grantees that successfully retain at-risk youth in school as well as those that return dropouts to full-time schooling.

• Completion of Worksite Training Objective [New].

A subset of employability enhancements is proposed to recognize attainment of skills gained on the worksite including the completion of a work experience or tryout employment assignment, or completion of an apprenticeship or agricultural upgrade program.

• Attained Basic/Occupational Skills Proficiency [New].

A subset of employability enhancements is proposed to document those participants who, by the time they leave the program, have demonstrated proficiency in either basic skills or occupational skills and/or earned a certificate of completion from a basic education, pre-apprenticeship, or skill training program.

Characteristics of Terminees

Migrant Status

• Instate Migrant [Retitled].

• Interstate Migrant [New].

A subset of migrants who are being served by the program in a location distant from their home-based domicile. This migrant group is considered to be specially hard-to-serve as they are uprooted from their traditional support system and may be enrolled in the program for only a short period of time.

Age

• Under 10 [Retitled].

This age breakout has been retitled to reflect a broader category of youthful participants who are most likely to be served in enhancement programs rather than employment-directed programs.

Other Barriers to Employment

• Reading below 7th grade level [New].

Participants with a low (below 7th grade) reading level are among the hardest-to-serve. This new line item will allow adjustments to grantee standards for those participants who have serious reading deficiencies and thus will need more intensive training. This item conforms to what is being reported in other JTPA programs.

• Long-term Agricultural Employment [New].

Program experience has shown that participants with lengthy work histories in agricultural employment require extensive training to obtain needed skills for placement in non-agricultural jobs. Thus, this subgroup is considered to be among the hardest-to-serve in the farmworker population.

• Multiple barriers to employment [New].

Any adult or youth who has three or more of the following barriers to employment:

Interstate migrant
School dropout
Limited English language proficiency
Handicapped/disabled
Offender
Reading below the 7th grade level
Math skills below the 7th grade level
Long-term agricultural employment
Lacks significant work history
Substance abuse
Pregnant/parenting teen
Lacks transportation

Like Title II, participants who have several significant employment impediments are being classified under one element. Thus, grantees serving those with multiple employment barriers in the farmworker population will receive more adequate adjustments to

standards to account for the difficulty programs experience in addressing their needs.

Public Assistance Information

• Public Assistance Recipients [Redefined].

The welfare item is expanded to reflect a more complete listing of public assistance farmworkers may be receiving, such as SSI and Food Stamps.

Veteran Status

• Veterans [New].

• Vietnam-Era Veterans (sub-item of veterans) [New].

The 1989 Amendments to the JTPA require the Department to prescribe "variations in performance standards" to account for service to these groups.

Training Information

• Average Hours in All [Specific] Training [New].

• Average Hours in Section 402 Training [New].

These line items distinguish between average training duration in all training activities (regardless of funding source) and average training duration of those enrolled in section 402 training. These data will highlight the extent to which participants received intensive training (defined to exclude non-skill building activity) and whether it was funded solely by grantees or a combination of service providers. Thus, it is expected that grantee performance may vary depending on the extent to which grantees are able to leverage additional training resources on behalf of their clients. These data will be useful in making adjustments to standards to account for differences in local program design.

Total Program Costs and Available Funds

• Total Available Funds [New].

• Carry-In Funds [New].

• New Obligational Authority [New].

This information will provide the only accounting of actual federal funds available for the report period necessary for federal oversight.

Participation in Program Activities

• Training Assistance [New].

This item identifies the extent to which participants are receiving exclusively job search and non-training services. Refocusing JTPA programs to provide more skill development should result in greater emphasis on providing more than job search and support services only.

Postprogram Information

• Terminees Entering Unsubsidized Employment at Termination [New].

This line item identifies the total number of participants who were eligible for follow-up including those placed in jobs during the last quarter of the previous program year plus those from the first three quarters of the current program year.

• Employment Confirmed by Employer [New].

This line item indicates the total number of terminees who were confirmed by the employer as being employed thirteen weeks after termination. To maximize response rates, the Department is requiring that the primary method of contact be the employer. Therefore, the more costly participant contact will be limited only to those for whom employment cannot be confirmed directly by the employer.

• Direct Contacts Attempted [New].

This calculation will identify the total number of terminees that grantees need to contact directly.

• Number of Direct Attempts Contacted [New].

This line item identifies the total number of terminees that were successfully contacted.

• Number Direct Contacts Employed [New].

This line item reflects the total number of terminees who were contacted directly and found to be employed.

• Total Employed at Follow-up [New].

This computation represents the total number employed at follow-up (13 weeks after termination from the program) adjusted for biases that result from non-responses.

• Average Hourly Wage at Follow-up [New].

Wage levels are a well-known proxy for employment quality. In combination with information on fringe benefits, more complete assessments can be made regarding the program's progress in obtaining more stable employment for participants.

• Total Employed with Fringe Benefits [New].

This line item indicates the total number employed in jobs where the following fringe benefits are available: FICA, social security, and health or medical benefits.

The Department is proposing the following deletions:

• Average Weeks Participated.

This line item has been replaced by two new line items that measure average hourly duration in training, including that funded by non-Section 402 sources. These are considered to be superior measures of training intensity than the current line item that expresses duration in weeks and also reflects a broader definition of program participation to include less intensive activities, such as job search, job club and support services.

• Tryout Employment (under Total Program Costs section).

Costs associated with Tryout Employment are to be combined with costs for Work Experience. This category constitutes such a small proportion of program costs, justifying consolidation of the separate entries under one category.

• Tryout Employment (under Participation in Program Activities section).

As a result of its programmatic similarity to work experience and the small number of participants in Tryout Employment, this line item is combined with the number of participants in work experience.

Purpose of Collection

The method of data collection and reporting will not be changed as a result of these revisions. Grantees collect the data for submission to the Department. The purpose of collecting such information is to: (1) Enable the Secretary to establish standards at the national level, (2) permit grantee adjustments to standards for client characteristics and local conditions, (3) provide the Department with a basis for measuring performance against such standards, and (4) enable the Secretary to report to Congress.

The significant new dimensions to the reporting system include the reporting of post-program information on those placed in jobs when leaving the program, reporting basic education and occupational skills attainment on all participants, expanding in-school youth outcomes to include dropout prevention, collecting additional information relating to barriers to employment, and reporting data on participation in intensive training, including training funded from non-section 402 sources. These support the measurement of the Department's goal of long-term employability development of JTPA participants, the provision of intensive services to the hardest-to-serve, and the encouragement of coordination with other human services/employment training providers.

Failure to collect postprogram outcomes as well as data on enhancements, skills attainment, barriers to employment, and intensity of services would:

• Raise questions as to whether the Department is conforming to statutory requirements to prepare disadvantaged farmworkers facing serious barriers to employment for entry into the labor force;

• Reduce the Department's ability to address criticism that the system is mainly training people who can obtain employment without Federal intervention;

• Focus program design on short-term strategies which do not enhance prospects for long-term, stable employment, a consequence which is inconsistent with Departmental policy goals; and

• Limit the program's ability to properly relate required skills acquisition of farmworkers to the emerging needs of employers in labor markets.

D. Public Comment

In the development of these proposed revisions, meetings were held in October 1990, and February 1991, to obtain input and feedback from MSFW Technical Workgroup members in addition to ongoing meetings of DOL staff. In all, more than 75 individuals participated in the various discussions held on the proposed revisions. This request for comment is another important part of the process of introducing new and expanded reporting requirements.

E. Cost to the System

The changes included in this request are not expected to substantially increase the reporting burden for grantees, because most of the information is either already available or involves self-reporting by the participants at program entry. One exception is the collection of postprogram data which may involve new procedures which some grantees are not presently undertaking. A recent survey of MSFW grantees, however, indicated that nearly all of those grantees responding to the survey collect postprogram information on the employability and wages of their terminees as part of their ongoing follow-up services to clients. A majority of those grantees responding to the survey also indicated that their followup period coincided with the proposed 90 day period.

To keep data collection costs low and to minimize the number of terminees that must be contacted directly, the proposed instructions provide for data to be collected where possible from the employers. Each completed followup will take an estimated one-half hour, including attempts at contact, the interview, and recording the results. We estimate that approximately 13,400 followup contacts per year will be required. Although costs to support the activity will vary, using $15 per contact results in grantee costs nationally of $201,000. Based on the survey results, it is anticipated that a portion of the postprogram data collection costs are already being expended by grantees.

In addition to the grantees' costs, the estimated cost to the federal government is $10,000. This includes forms design, printing, meetings, tabulating and analyzing the data. This is not a significant change in cost at the federal level.

The collection of participant reading level skills below the 7th grade is another exception as it may also involve procedures which grantees are not currently undertaking. An estimated 40% of the MSFW participants are already being assessed for reading, either through enrollment in classroom training, in JTPA Title II–B where assessment for reading and math is required, or co-enrolled in other JTPA or Federally-funded programs where assessment is required (e.g., JTPA Titles II–A and III). Programs serving students and post high school attendees may use school records. Therefore, many participants are not expected to require assessment or contribute to additional data collection costs. Although costs of assessment may vary, using an average cost of $3.00 per test for the remaining 60% of the MSFW participants results in an additional cost of $45,000, nationally. It is estimated that a one-time cost will be involved in revising reporting formats and management information systems. This cost has been prorated in annual burden hours.

An increased programmatic reporting burden of 6,947 hours has been submitted to OMB, based annually on an average of 56 grantees per program year.

F. OMB Submission

The document appended to this notice has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act as a revision to a currently approved information collection system.

Signed at Washington, D.C., this 16th day of April, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

The Job Training Partnership Act of 1982

Migrant and Seasonal Farmworker Program, Section 402

Grantee Planning and Reporting Forms and Instructions

Employment and Training Administration, U.S. Department of Labor, April 1991

Pending Office of Management & Budget Approval.

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The Participant Record Tag (Title IV–A, Section 401, Supplement)

Introduction

Under the provisions of the Job Training Partnership Act (JTPA) the Secretary must review applications for financial assistance, make reports to the President and the Congress, perform evaluations and assessments, and provide financial and other assistance to recipient grantees under the Act. Facsimiles of the forms required to meet these responsibilities and the related procedures are contained in this grantee planning and reporting forms and instructions package. The following information is provided for each form:

• Purpose of form.

• General instructions and description of content of form.

• Facsimile of form.

• Instructions for completing form.

The planning and reporting forms for which instructions are given in this package are mandatory.

The Department of Labor has submitted the planning and reporting requirements detailed in this package to the Office of Management and Budget (OMB) for clearance per the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Clearance for the package has been provided under OMB Number (Expiration Date:). Any additional requirements on planning or reporting will be submitted to OMB and will be issued officially to the Department through its directives system subsequent to clearance under which OMB granted Paperwork Reduction Act clearance.

No forms or reports in this package may be changed or altered in any way

without prior approval from the National Office of the Employment and Training Administration and OMB clearance, as required by the Paperwork Reduction Act of 1980.

Note: These revised planning/reporting instructions and formats are effective for PY 1991. The current unrevised planning/reporting instructions and formats are to continue to be used for PY 1990 and for any revisions submitted for periods prior to July 1, 1991.

Farmworker JTPA Budget Information Summary (FBIS)

1. *Purpose.* The Farmworker Budget Information Summary (FBIS) displays planned expenditures broken out by program activity within cost category. It is a financial summary of the program's objectives.

2. *General Instructions.* The FBIS is required for each JTPA Title IV–A, section 402 grantee's program and is a required part of the grant application. Planned expenditures are arrayed cumulatively by program year quarter. The instructions which follow detail the preparation of the Budget Information Summary for section 402 grants.

3. *Facsimile of Form.* The FBIS form is ETA 8595. See the following page.

BILLING CODE 4510-30-M

OMB Approval No.

U.S. DEPARTMENT OF LABOR: Employment and Training Administration

JTPA BUDGET INFORMATION SUMMARY

TITLE IV-A, SECTION 402 · MIGRANT/SEASONAL FARMWORKER PROGRAM

F

a. GRANTEE NAME AND ADDRESS	b. GRANT NUMBER	MODIFICATION NUMBER
DRAFT	DATE SUBMITTED (Month, Day, Year)	
	c. PERIOD OF GRANT From: To:	

I. CUMULATIVE QUARTERLY PROJECTIONS OF EXPENDITURES BY COST CATEGORIES AND PROGRAMS

A. GRANT PROGRAM FUNCTION AND ACTIVITY	B. CUMULATIVE QUARTERS			
	1st	2nd	3rd	4th
1. Training				
a. Classroom Training				
b. On-the-Job Training				
c. Work Experience/Tryout Employment				
d. Training Assistance				
(1) ■ Direct Entered Unsub. Employ.	■	■	■	■
2. Trng.-Related Supportive Services				
a. Classroom Training				
b. On-the-Job Training				
c. Work Experience/Tryout Employment				
d. Training Assistance				
(1) ■ Direct Entered Unsub. Employ.	■	■	■	■
3. Non-Trng.-Related Supportive Services ONLY (No Referral to Employment)				
4. Administration				
5. Total				
II. TOTAL AVAILABLE FUNDS				
A. Carry-In Funds				
B. New Obligational Authority				

REMARKS:

ETA 8595 (April 1990)

BILLING CODE 4510-30-M

4. *Instructions for Completing the Farmworker, JTPA Budget Information Summary* (FBIS)

a. *Grantee Name and Address.* Enter the name and complete mailing address of the grantee as it appears on the Notice of Obligation (or equivalent).

b. *Grant Number.* Enter the grant number as it appears on the appropriate Notice of Obligation (or equivalent) and date submitted. If this is a modification, enter the modification number and the date submitted.

c. *Period of Grant.* Enter the month, day and year of the program year's starting date and ending date.

Section I—Cumulative Quarterly Projections of Expenditures by Cost Categories and Programs

Quarterly projections of obligations and expenditure of funds should be listed for the items below. Planning periods correspond to Federal fiscal year quarters, (i.e., end dates of December 31, March 31, and June 30 and September 30). 20 CFR 633.304 covers classification of costs by category. All plan entries on the FBIS will be rounded to the nearest whole dollar.

Enter the projected expenditures by program activities within cost category and total for the grantee's program. These expenditures should be the total planned, from Carry-In as well as New Obligational Authority, and should not include any expenditures incurred during the previous program year. All planned expenditures should be entered.

All non-administrative expenditures of Federal funds in the grantee's program must be charged to an activity.

Column (A) *Grant Program Function and Activity.*

This column lists cost categories and program activities against which the budget will be displayed by cumulative quarters in the appropriate column under (B).

Line 1. *Training.* Enter by quarter, the planned accrued training expenditures for classroom or other training activities (as defined below). The entry for Line 1. for each quarter is the sum of the entries for Lines 1.a. through 1.d. for that quarter. Include amounts paid to employers for allowable expenses resulting from on-the-job training. Instruction and related costs consist of goods and services, except supportive services, which affect those program participants who are in either a work environment, or classroom setting. Costs of compensation paid to participants for time spent in training activities shall be charged to training.

Line 1.a. *Classroom Training* (Includes Occupational and Basic Skills Training). Enter by quarter, the planned accrued training expenditures for Classroom Training programs conducted by the grantee and its agents. Accrued expenditures for Classroom Training should include the cost of any Classroom Training conducted directly by the grantee or included in a Classroom Training contract or subgrant, such as:

(a) Cost of compensation paid to participants for time spent in Classroom Training (i.e. allowances). Wages and fringe benefits may be paid to Classroom Training participants as specified at 20 CFR 633.304(c)(2)(ii) and should be treated as allowances and included in the Training cost category;

(b) The cost of Training Assistance provided to individuals prior to, during, or after participation in Classroom Training, which also should be included in the Training cost category;

Note: Cost of any supportive services to Classroom Training participants should be included in the Training-Related Supportive Services cost category on Line I.A.2.a., below.

Basic Education Skills—Training that includes remedial reading, writing, communication, mathematics and/or English for non-English speakers.

Job Skills Training—Training that includes: vocational education which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs.

Line 1.b. *On-the-Job Training.* Enter by quarter the planned accrued training expenditures for On-the-Job Training (OJT) conducted by the grantee and its agents. Accrued expenditures for On-the-Job Training should include the cost of any On-the-Job Training conducted directly by the grantee or included in an On-the-Job Training contract or subgrant, such as:

(a) Cost of reimbursement to employers for the extraordinary costs associated with training On-the-Job participants, which should be included in the Training cost category;

(b) Cost of Training Assistance provided to individuals prior to, during, or after participation in On-the-Job Training, which also should be included in the Training cost category;

Note: Cost of any supportive services to On-the-Job Training participants should be included in the Training-Related Supportive Services cost category on Line I.A.2.b., below.

Note: (1) For combined activities, when allowances are paid in the primary activity and OJT is the nonprimary activity, ALLOWANCES WILL NOT BE PAID FOR OJT. (2) Reimbursement to private-for-profit employers for OJT costs are limited to amounts allowable in 20 CFR 633.303 and 633.304 of the Federal regulations.

Line 1.c. *Work Experience/Tryout Employment.* Enter by quarter, the planned accrued training expenditures for Work Experience and/or Tryout Employment programs conducted by the grantee and its agents. Accrued expenditures for Work Experience and/or Tryout Employment should include the cost of any Work Experience and/or Tryout Employment conducted directly by the grantee or included in a Work Experience and/or Tryout Employment contract or subgrant, such as:

(a) Cost of compensation paid to participants or time spent in Work Experience and/or Tryout Employment. Such wages and fringe benefits may be paid to Work Experience and/or Tryout Employment participants as specified at 20 CFR 633.304(c)(2)(ii) and should be included in the Training cost category;

(b) Cost of Training Assistance provided to individuals prior to, during, or after participation in Work Experience and/or Tryout Employment, which should be included in the Training cost category.

Note: Cost for any supportive services to Work Experience and/or Tryout Employment participants should be included in the Training-Related Supportive Services cost Category on Line I.A.2.c., below.

Line 1.d. *Training Assistance.* Enter by quarter, the planned accrued training expenditures for Training Assistance provided by the grantee and its agents for participants who are not enrolled in any other activity. Accrued expenditures for Training Assistance should include, but not be limited to costs for:

Training Assistance—Includes, but is not limited to:

(a) Training Assistance to Applicants

(1) Outreach
(2) Intake
(3) Screening for eligibility determination

(b) Training Assistance to Participants

(1) Orientation to the world of work
(2) Job-related counseling and assessment
(3) Employability assessment (other than that performed during intake)
(4) Job development
(5) Job search assistance
(6) Job referral and placement
(7) Vocational Exploration Programs

Note: Cost of any supportive services to Training Assistance participants should be included in the Training-Related Supportive Services cost category on Line I.A.2.d., below.

Line 1.d.(1) *Direct Entered Unsubsidized Employment.* These expenditures are a sub-breakout of expenditures reported by quarter on

Line 1.d. Accrued expenditures should include the cost of the programs for participants who entered unsubsidized employment during the program year after receiving only Training Assistance services:

Training Assistance—Includes, but is not limited to:

(a) Training Assistance Applicants

(1) Outreach
(2) Intake
(3) Screening for eligibility determination

(b) Training Assistance to Participants

(1) Orientation to the world of work
(2) Job-related counseling and assessment
(3) Employability assessment (other than that performed during intake)
(4) Job development
(5) Job search assistance
(6) Job referral and placement
(7) Vocational Exploration Programs

Note: Cost of any supportive services to Training Assistance participants should be included in the Training-Related Supportive Services cost category on Line I.A.2.d., below.

Note: Direct entries into unsubsidized employment can be reported only when the grantee verifies from a reliable source, preferably the employer, that the participant has become employed.

Direct entry into unsubsidized employment includes those terminees who establish their own business and become self-employed following participation in Training Assistance activities designed to achieve this result. A person is to be considered self-employed if s/he has established a business which meets, at a minimum, the definition contained in IRS Publication No. 334, Tax Guide for Small Businesses, Part I (i.e., A business is an activity entered into for the purpose of making a profit. Two characteristic elements of a business are: regularity of activities and transactions, and the production of income.) Where a state or local statute contains stricter requirements for determining the existence of a business, that statute should be followed.

Line 2. *Training-Related Supportive Services.* Enter by quarter, the planned accrued expenditures for Training-Related Supportive Services to participants. These planned expenditures include costs of supportive services which are necessary to enable an eligible individual to participate in training or subsidized employment under section 402 and to obtain subsequent unsubsidized employment.

Such supportive services may include, but are not limited to:

(1) Health care
(2) Meals and other nutritional assistance
(3) Residential support, including temporary shelter
(4) Legal, financial and personal counseling
(5) Child care
(6) Relocation assistance
(7) Transportation
(8) Emergency assistance

The entry for Line 2 for each quarter is the sum of the entries for Lines 2.a. through 2.d. for that quarter.

Include in *each* of Lines 2.a. through 2.d.(1) (by cumulative quarter) the planned accrued expenditures for Training-Related Supportive Services provided to participants in that activity.

Line 2.a. *Classroom Training* (includes Basic Education and Job Skills Training).

Line 2.b. *On-the-Job Training.*

Line 2.c. *Work Experience/Tryout Employment.*

Line 2.d. *Training Assistance.*

Line 2.d. (1) *Direct Entered Unsubsidized Employment.*

This entry is a sub-breakout of Line 2.d.

Line 3. *Non-Training-Related Supportive Services ONLY* (No Referrals to Employment).

Enter by quarter, the planned accrued training expenditures for Non-Training-Related Supportive Services to participants. These planned expenditures include "*Services ONLY*" costs of the goods and services which:

(a) Involve no training or subsidized employment;

(b) Are provided to participants who are not in any training or Training Assistance activities;

(c) Are provided to participants who have not been referred to unsubsidized employment;

(d) Include, but are not limited to such services as:

(1) Health care
(2) Meals and other nutritional assistance
(3) Residential support, including temporary shelter
(4) Legal, financial and personal counseling
(5) Child care
(6) Relocation assistance
(7) Transportation and commuting assistance
(8) Emergency assistance

Line 4. *Administration.* Enter, by quarter, the planned accrued training expenditures for administrative costs as identified in the regulations (20 CFR 633.304(c)(1)). Administrative costs consist of all direct and pro-rated costs associated with the management of the grantee's program. This includes subgrantee, and contractor direct and pro-rated administrative costs.

Line 5. *Total.* Enter, by quarter, the sum of Lines 1 through 4.

Section II—Total Available Funds

Enter the amount of total federal funds available. The entry for Section II is the sum of the entries for Section II.A. and II.B.

Section II.A—Carry-In Funds

Enter the amount of funds granted by the Employment and Training Administration during the program year preceding the report period which have not been charged as an accrued expenditure. The grantee's section 402 funds contained in this item will consist of (1) amounts the grantee has not yet legally committed and (2) unliquidated obligations, and these are assumed to be available for accrued expenditures during the program year *covered by this financial planning document.*

Note: For purposes of this section an unliquidated obligation is an order or other legal commitment of funds for goods/services *not yet received.*

Section II.B—New Obligational Authority

Enter the amount of funds granted by the Employment and Training Administration for operation of the grantee's program under this JTPA section 402 for the program year.

Farmworker JTPA Program Planning Summary (FPPS)

1. *Purpose.* The Farmworker Program Planning Summary (FPPS) displays program goals for a grantee's program. On this required form, planned participation is shown both for the total grant and for individual program activities.

2. *General Instructions.* The FPPS will be submitted for each JTPA Title IV–A, section 402, grantee's program and is a required part of the grant application. The specific instructions below explain the items on the FPPS. Development of the information needed to complete these items is one product of the grantee's planning system.

3. *Facsimile of form.* The FPPS form is ETA 8596. See the following page.

BILLING CODE 4510-30-M

OMB Approval No.

U.S. DEPARTMENT OF LABOR: Employment and Training Administration

JTPA PROGRAM PLANNING SUMMARY

TITLE IV-A, SECTION 402 - MIGRANT/SEASONAL FARMWORKER PROGRAM

F

A. GRANTEE NAME AND ADDRESS	B. GRANT NUMBER	MODIFICATION NUMBER
DRAFT	DATE SUBMITTED (Month, Day, Year)	
	C. PERIOD OF GRANT From: To:	

I. PARTICIPATION AND TERMINATION SUMMARY	CUMULATIVE QUARTERS 1ST	2nd	3rd	4th
A. TOTAL PARTICIPANTS				
1. New Participants				
2. Participants Carried Over				
B. TOTAL TERMINATIONS				
1. Entered Unsubsidized Employment				
a. Direct (No Training or Sub. Employment)				
b. Indirect (Other Training/Sub. Employment)				
(1) ■ Also Attained Any Employ. Enhanc.	■	■	■	■
2. Attained Employability Enhanc. ONLY				
3. Services ONLY (No Referrals to Employ.)				
4. All Other Terminations				
C. TOTAL CURRENT PARTICIPANTS (End of Quarter)				
II. PARTICIPATION IN PROGRAM ACTIVITIES				
A. Classroom Training				
B. On-the-Job Training				
C. Work Experience/Tryout Employment				
D. Training Assistance				

III. SIGNIFICANT CHARACTERISTICS OF TERMINEES PROGRAM YEAR PLAN
(Exclude Services ONLY Terminees)

A. Instate Migrants		School Dropout E. 8th Grade or Less		Reading Skills Below I. 7th Grade Level	
Interstate B. Migrants		Black F. (Not Hispanic)		Long-Term J. Agricultural Employ.	
C. Female		G. Hispanic		K. Multiple Barriers	
D. Under 22		Single Hd. of H. Hshld. w/Dep. Child		Public Assistance L. Recipient	

REMARKS:

BILLING CODE 4510-30-C

ETA 8396 (April 1991)

4. Instructions for Completing the Farmworker, JTPA Program Planning Summary (FPPS)

a. *Grantee Name and Address.* Enter the name and mailing address of the grantee as it appears on the Notice of Obligation (or equivalent).

b. *Grant Number.* Enter the grant number as it appears on the appropriate Notice of Obligation (or equivalent) and date submitted. If this is a modification, enter the modification number and the date submitted.

c. *Period of Grant.* Enter the month, day and year of the program year's starting date and ending date.

Section I—Participation and Termination Summary

Section I describes the planned flow of participants through the program: the number entering, those leaving (including the reasons for their departures), and those remaining in the program. The plan is cumulative by program year quarter unless otherwise specified and includes carry over participants.

Column headings will reflect the quarters of the Federal fiscal year (i.e., September 30, December 31, and June 30). There should be no mix of program years on any FPPS. In those few instances where a grantee's program covers more than one year, an additional FPPS should be completed showing the other year's activity on the appropriate lines.

Entries under Items I.A. and I.B. are to be cumulative and entries for I.C. contain the planned participation as of the close of business on the last day of each quarter.

Line I.A. *Total Participants.* Enter by quarter, the total number of participants planned for the program. Entries should be cumulative for the program year to date. This item is the sum of Items I.A.1.—New Participants, and Item I.A.2.—Participants Carried Over.

Participant—Any individual who has: (1) been determined eligible for participation upon intake; and (2) started receiving employment, training, or services (except post-termination services) funded under the Act following intake. This does not include individuals who receive only outreach and/or intake and initial assessment services.

Outreach Services—The collection, publication and dissemination of information on program services directed toward economically disadvantaged and other individuals eligible to receive JTPA section 402 training and support services.

Intake Services—The screening for eligibility, and (1) a determination of whether the program can benefit the individual; (2) an identification of the employment and training activities and services which would be appropriate for that individual; (3) a determination of the availability of an appropriate employment and training activity; (4) a decision on selection for participation; and (5) the dissemination of information on the program.

Assessment Services—A service designed to initially determine each participant's employability, aptitude, abilities and interests, through interviews, testing and counseling to achieve the applicant's employment related goals.

Line I.A.1. *New Participants.* Enter by quarter, the number of new participants expected to enter the program after the beginning of the program year.

Also include in this item, those persons expected to enter this title or program from another program operated under the Act by a different recipient. A participant in another program or title under JTPA who met the eligibility criteria for section 402 at the time of enrollment into such other program or title may be enrolled in the section 402 program. A section 402 participant who met the eligibility criteria for another program or title under JTPA at the time of enrollment into section 402 program may be enrolled in such other program or title.

Line I.A.2. *Participants Carried Over.* Enter by quarter, the number of participants planned to be in the grantee's program on the last day of the previous program year whose participation will continue in this program year.

This entry should be updated to reflect the actual number of participants carried over when that information becomes available. It will then be the same for all subsequent quarters of the year.

Line I.B. *Total Terminations.* Enter by quarter, the number of participants expected to terminate from the program for any reason during the program year. Entries by quarter should be cumulative of the program year to date. This entry is the sum of Items I.B.1 through I.B.4.

(Participants who move among program activities within a title are not terminations and should not be counted here.)

Termination—The separation of a participant from a given title of the Act who is no longer receiving employment, training or services (except post-termination services) funded under the title.

Note: Individuals may continue to be considered as participants for a single period of up to 90 days after last receipt of employment and/or training (30 days after last receipt of services only) funded under a given title.

Line I.B.1. *Entered Unsubsidized Employment.* Enter by quarter, the cumulative number of participants who are expected to enter (through the grantee or otherwise) unsubsidized employment through the end of the reporting period.

Note: Seasonal agricultural placements will not be considered as entered unsubsidized employment unless such placement represents an upgraded position within agriculture and will not result in the continued underemployment of the participant (20 CFR 683.104).

Unsubsidized Employment—Employment not financed from funds provided under the Act that includes a job, entry into registered apprenticeship and/or military service, or self employment.

Line I.B.1.a. *Direct* (No Training or Subsidized Employment). Enter by quarter, the cumulative number of participants who are expected to enter (through the grantee or otherwise) unsubsidized employment after receiving only Training Assistance Services. This line is a sub-breakout of Line I.B.1.

Note: Direct entries into unsubsidized employment can be reported only when the grantee verifies from a reliable source, preferably the employer, that the participant has become employed.

Direct entry into unsubsidized employment includes those terminees who may establish their own business and become self-employed following participation in Training Assistance activities designed to achieve this result. A person is to be considered self-employed if he/she has established a business which meets, at a minimum, the definition contained in IRS Publication No. 334, Tax Guide for Small Businesses, Part I (i.e., A business is an activity entered into for the purpose of making a profit. Two characteristic elements of a business are regularity of activities and transactions and the production of income.). Where a State or local statute contains stricter requirements for determining the existence of a business, that statute should be followed.

Direct—A participant who will receive no basic skills or occupational skills training or subsidized employment while enrolled as a Section 402 participant.

Subsidized Employment—Employment financed from funds provided under the Act.

Training Assistance—Includes, but is not limited to:

(a) Training Assistance to Applicants

(1) Outreach

(2) Intake

(3) Screening for eligibility determination

(b) Training Assistance to Participants
(1) Orientation to the world of work
(2) Job-related counseling and assessment
(3) Employability assessment (other than that performed during intake)
(4) Job development
(5) Job search assistance
(6) Job referral and placement
(7) Vocational Exploration Programs

(c) Supportive services to Training Assistance participants.

Line I.B.1.b. *Indirect* (After Training/Subsidized Employment).

Enter in item I.B.1.b. the number of participants who are expected to enter unsubsidized employment during the program year, after participation in occupational or remedial training or subsidized employment activity. These terminees may or may not have received supportive services. This line is a sub-breakout of Line I.B.1.

Note: Indirect entries into unsubsidized employment can be reported only when the grantee verifies from a reliable source, preferably the employer, that the participant has become employed.

Indirect entry into unsubsidized employment includes those terminees who may establish their own business and become self-employed following participation in a program activity specifically designed to achieve this result. A person is to be considered self-employed if he/she has established a business which meets, at a minimum, the definition contained in IRS Publication No. 334, Tax Guide for Small Businesses, part I (i.e., A business is an activity entered into for the purpose of making a profit. Two characteristic elements of a business are regularity of activities and transactions and the production of income.). Where a State or local statute contains stricter requirements for determining the existence of a business, that statute should be followed.

Indirect—A terminee who will receive basic skills and/or occupational skills training or subsidized employment while a Section 402 participant.

Line I.B.1.b.(1) *Also Attained Any Employability Enhancement.*

Employability enhancement may be an outcome for participants in addition to entered unsubsidized employment, which is recognized as enhancing long-term employability and contributing to the potential for a long-term increase in earnings and employment. *This line is a sub-breakout of Line I.B.1.b.* Outcomes which meet this requirement will be restricted to the five types of employability enhancements listed below:

Entered Non-Section 402 Training—the unduplicated total number of participants who, at termination from section 402 programs, had entered an occupational skills training program or postsecondary education program not funded under Section 402 of the JTPA, which builds upon and *does not duplicate* training received under section 402.

Returned to Full-Time School—the unduplicated total number of participants who returned to full-time secondary school (e.g., junior high school, middle school and high school), including alternative school, if, at the time of intake the participant was not attending school, exclusive of summer, and had not obtained a high school diploma or equivalent certificate. This category also applies to at-risk youth who were retained in school as a result of continuing active participation in the section 402 program.

Completed Major Level of Education—the unduplicated total number of participants who, prior to termination, had completed during enrollment, a level of educational achievement which had not been reached at entry. Levels of educational achievement are secondary and postsecondary. Completion standards shall include attainment of a high school diploma, GED Certificate or equivalent at the secondary level, and shall require a diploma or other written certification of completion at the postsecondary level.

Completion of Worksite Training Objectives—the unduplicated total number of participants who, prior to termination, had completed a level of work readiness, through worksite training, which had not been reached at entry. This includes the completion or a work experience, tryout employment, pre-apprenticeship of agricultural upgrading program.

Attained Basic/Occupational Skills Proficiency—the unduplicated total number of participants who, prior to termination, had demonstrated proficiency, as defined by the grantee in basic skills and occupational skills, in which the participant was deficient at the time of enrollment in the section 402 program. Skill/learning gains must be achieved through active program participation and must be the result of a prior employability development planning process which identifies the participant's skill deficiencies, the training needed to overcome the deficiencies and the level of proficiency needed for attainment of the employability skill. Documented skill/learning gains achieved from completion of an adult basic education program, English as a second language, or remedial and/or supplemental basic skills course, or completion of a pre-apprenticeship course, agricultural upgrade program, youth employment competency program, or occupational/vocational or technical skills course are acceptable. The training involved in this outcome may be paid for solely from JTPA section 402 funds or in combination with other sources.

Line I.B.2. *Attained Employability Enhancement ONLY.*

Enter by quarter, the cumulative number of participants who are expected to (1) attain one of the enhancements outcomes under Item I.B.1.b. (1), and (2) will not be placed in unsubsidized employment. A participant shall be reported in only one of the enhancement outcomes even though more than one enhancement may be achieved.

Note. This is a unduplicated count and does not include those who may receive Training Assistance ONLY.

Line I.B.3. *Services ONLY* (No Referrals to Employment).

Enter by quarter, the cumulative number of participants who are expected to receive Services ONLY.

Note: Such individuals would not receive any program employment/training and no entry/referral to unsubsidized employment.

Line I.B.4. *All Other Terminations.*

Enter by quarter, the total number of participants who are expected to be terminated for reasons other than those in Lines I.B.1., I.B.1.a., I.B.1.b., I.B.2., and I.B.3.

Line I.C. *Total Current Participants* (End of Quarter).

Enter by quarter, the total number of participants who are expected to be in the programs as of close of business on the last day of each quarter and who are expected to continue to receive services into the next reporting period.

Section II. Participation in Program Activities

This section summarizes JTPA program plans (goals) for providing training and subsidized employment to participants. The plan is presented in terms of a cumulative count of all participants in each program activity. Only those participants whose program activities are to be financed with section 402 funds should be entered here.

Enter by quarter, the cumulative number of participants expected to enter the activities during the program year. This will include participants carried over from the previous program year as well as those who enter the activity after the start of the current program year. Participants who are expected to be in more than one activity should be counted only *once* for each activity in which they are expected to participate. Participants who are expected to receive Services ONLY should be counted only in Section I-Participation and Termination Summary, as appropriate.

Line II.A. *Classroom Training* (Includes Occupational and Basic Skills Training).

Enter by quarter, the cumulative number of participants expected to be in occupational classroom training activities operated by the grantee, its contractor or subgrantee. Occupational/job skills classroom training includes training ordinarily conducted in an institutional setting and designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. Participants in other classroom activities which are designed to enhance the employability of the participant by upgrading basic skills (e.g., remedial education or training in English language proficiency) also would be included here.

Line II.B. *On-the-Job Training.*

Enter by quarter, the cumulative number of participants expected to be in On-the-Job Training.

Line II.C. *Work Experience/Tryout Employment.*

Enter by quarter, the cumulative number of participants expected to be in Work Experience and Tryout Employment activities as referred to at (20 CFR 633.302(c) and (d)). In-school Work Experience activities include part-time employment for students enrolled full-time in, and attending, an elementary, secondary, trade, technical or vocational school, or college or a university, or scheduled to attend full-time the next regularly scheduled quarter or semester of any of these schools. Also, include here the number of participants expected to be enrolled in Work Experience activities other than In-school Work Experience activities.

Line II.D. *Training Assistance.*

Enter by quarter, the cumulative number of participants expected to be in Training Assistance.

Training Assistance—Includes, but is not limited to:

(a) Training Assistance to Applicants
(1) Outreach
(2) Intake
(3) Screening for eligibility determination

(b) Training Assistance to Participants
(1) Orientation to the world of work
(2) Job-related counseling and testing
(3) Employability assessment (other than that involved during intake)
(4) Job development
(5) Job search assistance
(6) Job referral and placement
(7) Vocational Exploration Program (VEP)

(c) Supportive Services to Training Assistance Participants

Section III. Significant Characteristics of Terminees

Lines III. A. through L., enter as appropriate the number of participants expected for the entire program year. Entries will be for the program year and will include participants carried over from the previous program year. Enter each participant in as many of these items as are appropriate, if any.

Note: Exclude Services ONLY terminees (Line I.B.3.).

A participant record should be established for *each* dependent served under the section 402 grant, aged 16 years or older.

Farmworker JTPA Financial Status Report (FFSR)

1. *Purpose.* The Farmworker Financial Status Report (FFSR) displays cumulative information on the amount of JTPA funds expended, by program activity, by the grantee.

2. *General Instructions.* The FFSR is required for each JTPA Title IV–A, section 402 grant. Reporting periods correspond to Federal fiscal year quarters (i.e., end dates of September 30, December 31 and March 31). Cumulative information through the end of the fourth quarter will be entered on the FASR and no FFSR will be submitted for that report period.

Three copies of the FFSR are to be provided to: U.S. Department of Labor, Employment and Training Administration, ATTN: TDNF Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210.

Reports due at DOL are to be postmarked no later than 45 days after the end of each report period (20 CFR 633.314).

Section 402 program FFSR expenditure data will be compiled on an accrual basis. All entries on the quarterly FFSR will be made to the nearest whole dollar. A grantee whose records are not maintained on an accrual basis may develop accrual data for reports on the basis of an analysis of the documentation on hand (29 CFR 70–207–2(a)).

3. *Facsimile of form.* The FFSR form is ETA 8597. See the following page.

BILLING CODE 4510-30-M

OMB Approval No.

U.S. DEPARTMENT OF LABOR - Employment and Training Administration

JTPA FINANCIAL STATUS REPORT

TITLE IV-A, SECTION 403 - MIGRANT/SEASONAL FARMWORKER PROGRAM

F

a. GRANTEE NAME AND ADDRESS

DRAFT

b. GRANT NUMBER

c. REPORT PERIOD

From: | To:

A. STATUS OF FUNDS (Report in Whole Dollars ONLY)	TOT. FED. SHARE OF PROGRAM OUTLAYS	TRAINING	SUPPORTIVE SERVICE	
			Training-Related	Non-Training-Related
	(A)	(B)	(C)	(D)
1. Classroom Training				
2. On-the-Job Training				
3. Work Experience/Tryout Employ.				
4. Training Assistance				
a. ■ Direct Entered Unsub. Employ.	■	■	■	
5. Services ONLY (No Refer. to Employ.)				
6. Administration				
7. Total				

REMARKS:

B. CERTIFICATION ---> I CERTIFY that to the best of my knowledge and belief that this report is CORRECT and COMPLETE and all outlays are for the purposes set forth in the GRANT AGREEMENT

TYPED NAME AND TITLE OF AUTHORIZED OFFICIAL	PHONE NUMBER	SIGNATURE	DATE SUBMITTED (Month, Day, Year)

ETA 9097 (April 1991)

BILLING CODE 4510-30-C

4. *Instructions for Completing the Farmworker, JTPA Financial Status Report* (FFSR).

a. *Grantee Name and Address.* Enter the name and address of the grantee as it appear on the Notice of Obligation (or equivalent).

b. *Grant Number.* Enter the grant number as it appears on the Notice of Obligation (or equivalent).

c. *Report Period* Enter the month, day, and year of the beginning and ending of the period for which this report is prepared. Since the report will be prepared on a cumulative basis, the beginning date will be the first day of the program year.

A. *Status of Funds* (Report in Whole Dollars).

Lines 1 through 7

Enter the accrued program expenditures from the beginning of the program year to date for each of these lines. Accrued expenditures are the actual disbursements (payments other than advances) plus invoices on hand and other projected payments for goods or services received (for which invoices have not been received); and salaries and related benefits (earned but not paid) for the days between the beginning of the program year and the end of the reporting year.

Include in each of Lines 1 through 5 the accrued Federal share of non-administrative program outlays directly attributed to that activity. 20 CFR 633.304(d) assigns program activities to cost categories. Accrued expenditures for Administration are to be entered on Line 6, Column (A).

All non-administrative expenditures of Federal funds in the JTPA grant must be charged to an activity (i.e., Lines 1 through 5).

Column (A) *Total Federal Share of Program Outlays.*

Distribute the entries for Column (A) Lines 1 through 6 by the appropriate cost category. (Refer to 20 CFR 633.304.) The sum of Lines 1 through 6 should be entered on Line 7—Total.

Columns (B) through (D)

These columns for each line are sub-totals of the entry in Column (A). Distribute the entries for Columns (B) through (D), Lines 1 through 5 by the appropriate cost category. (Refer to 20 CFR 633.304.) The sums of Columns (B) through (D) are totaled in Column (A) for a given line.

Note: The entries on Line 5, Columns (A) and (D) should be identical.

Entries in Column (B) contain the accrued Training expenditures associated with the activity, from the beginning through the end of the report period for all participants served. Entries in Column (C) contain the accrued Training-Related Supportive Service expenditures associated with the activity, from the beginning through the end of the report period for all participants served. The entry in Column (D) contains the accrued Non-Training-Related Supportive Service expenditures (also called Services ONLY expenditures) associated with the activity, from the beginning through the end of the report period for all Services ONLY participants served.

Line 1. *Classroom Training* (Includes Occupational and Basic Skills Training).

Enter the accrued training expenditures for Classroom Training programs conducted by the grantee and its agents. Accrued expenditures for Classroom Training should include the cost of any Classroom Training conducted directly by the grantee or included in a Classroom Training contract or subgrant, such as:

(a) Cost of compensation paid to participants for time spent in Classroom Training (i.e., allowances). Wages and fringe benefits may be paid to Classroom Training participants as specified at 20 CFR 633.304(c)(2)(ii) and should be treated as allowances and included in the Training cost category;

(b) Cost of Training Assistance provided to individuals prior to, during, or after participation in Classroom Training, which also should be included in the Training cost category;

(c) Cost of any supportive services to Classroom Training participants, which should be included in the Training-Related Supportive Services cost category.

Basic Education Skills—Training that includes remedial reading, writing, communication, mathematics and/or English for non-English speakers.

Job Skills Training—Training that includes vocational education which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs.

Line 2. *On-the-Job Training.*

Enter the accrued training expenditures for OJT activities conducted by the grantee and its agents. Accrued expenditures for OJT should include the cost of any OJT conducted directly by the grantee or included in an OJT contract or subgrant, such as:

(a) Cost of reimbursement to employers for the extraordinary costs associated with training On-the-Job participants, which should be included in the Training cost cateory;

(b) Cost of Training Assistance provided to individuals prior to, during, or after participation in On-the-Job Training, which also should be included in the Training cost category;

(c) Cost of any supportive services to On-the-Job Training participants, which should be included in the Training-Related Supportive Services cost category.

Note: (1) For combined activities, when allowances are paid in the primary activity and OJT is the nonprimary activity, ALLOWANCES WILL NOT BE PAID FOR OJT. (2) Reimbursement to private-for-profit employers for OJT costs are limited to amounts allowable in 20 CFR 633.308 and 633.304 of the Federal regulations.

Line 3. *Work Experience/Tryout Employment.*

Enter the accrued training expenditures for Work Experience and/or Tryout Employment programs conducted by the grantee and its agents. Accrued expenditures for Work Experience and/or Tryout Employment should include the cost of any Work Experience and/or Tryout Employment conducted directly by the grantee or included in a Work Experience and/or Tryout Employment contract or subgrant, such as:

(a) Cost of compensation paid to participants or time spent in Work Experience and/or Tryout Employment. Such wages and fringe benefits may be paid to Work Experience and/or Tryout Employment participants as specified at 20 CFR 633.304(c)(2)(ii) and should be included in the Training cost category;

(b) Cost of Training Assistance provided to individuals prior to, during, or after participation in Work Experience and/or Tryout Employment participants, which should be included in the Training-Related Supportive Services cost category;

(c) Cost of any supportive services to Work Experience and/or Tryout Employment participants, which should be included in the Training-Related Supportive Services cost category.

Line 4. *Training Assistance.*

Enter the accrued training expenditures for Training Assistance provided by the grantee and its agents for participants who are not enrolled in any other activity. Accrued expenditures for Training Assistance should include, but not be limited to costs for:

Training Assistance—Includes, but is not limited to:

(a) Training Assistance to Applicants
  (1) Outreach
  (2) Intake
  (3) Screening for eligibility determination

(b) Training Assistance to Participants
  (1) Orientation to the world of work

(2) Job-related counseling and assessment
(3) Employability assessment (other than that performed during intake)
(4) Job development
(5) Job search assistance
(6) Job referral and placement
(7) Vocational Exploration Programs
(c) The cost of any supportive services to Training Assistance participants, which should be included in the Training-Related Supportive Services cost category.

Line 4.a. *Direct Entered Unsubsidized Employment.*

These expenditures are a sub-breakout of expenditures reported by quarter on Line 4. Accrued expenditures should include the cost of the programs for participants who entered unsubsidized employment during the program year after receiving only Training Assistance services:

Training Assistance—Includes, but is not limited to:

(a) Training Assistance to Applicants
(1) Outreach
(2) Intake
(3) Screening for eligibility determination
(b) Training Assistance to Participants
(1) Orientation to the world of work
(2) Job-related counseling and assessment
(3) Employability assessment (other than that performed during intake)
(4) Job development
(5) Job search assistance
(6) Job referral and placement
(7) Vocational Exploration Programs
(c) The cost of any supportive services to Training Assistance participants, which also should be included in the Training-Related Supportive Services cost category.

Note: Direct entries into unsubsidized employment can be reported only when the grantee verifies from a reliable source, preferably the employer, that the participant has become employed.

Direct entry into unsubsidized employment includes those terminees who establish their own business and become self-employed following participation in Training Assistance activities designed to achieve this result. A person is to be considered self-employed if s/he has established a business which meets, at a minimum, the definition contained in IRS Publication No. 334, Tax Guide for Small Businesses, part I (i.e., a business is an activity entered into for the purpose of making a profit. Two characteristic elements of a business are: regularity of activities and transactions, and the production of income.) Where a state or local statute contains stricter requirements for determining the existence of a business, that statute should be followed.

Line 5. *Services ONLY* (No Referral to Employment).

Enter the accrued expenditures for Non-Training-Related Supportive Services to participants. These planned expenditures include "Services ONLY" costs of the goods and services which:

(a) Involve no training or subsidized employment;

(b) Are provided to participants who are not in any training or Training Assistance activities;

(c) Are provided to participants who have not been referred to unsubsidized employment;

(d) Include, but are not limited to such services as:

(1) Health care
(2) Meals and other nutritional assistance
(3) Residential support, including temporary shelter
(4) Legal, financial and personal counseling
(5) Child care
(6) Relocation assistance
(7) Transportation and commuting assistance
(8) Emergency assistance

Line 6. *Administration.*

Enter the accrued training expenditures for administrative costs as identified in the regulations (20 CFR 633.304(c)(1)). Administrative costs consist of all direct and pro-rated costs associated with the management of the grantee's program. This includes subgrantee, and contractor direct and pro-rated administrative costs.

Line 7. *Total.*

Enter the sum of Lines 1 through 6.

B. *Certification.*

Enter the typed name and title of an authorized official, telephone number, signature of an authorized official and the date submitted.

Note: The annual accounting settlement process requires special consideration when there is a change in the costs (accrued expenditures) after the FASR has been submitted by the grantee. A revised FASR will be required for expenditures that have been increased or decreased.

Farmworker, JTPA Program Status Summary (FPSS)

1. *Purpose.* The Farmworker Program Status Summary (FPSS) collects cumulative participation and termination information, for each of the first 3 quarters of the program year and provides quantitative program accomplishments of the grantee's program.

2. *General Instructions.* The FPSS will be required for each JTPA Title IV–A, section 402, grant. Reporting periods correspond to Federal fiscal year quarter, i.e., end dates of September 30, December 31 and March 31. (Cumulative information through the end of the fourth quarter will be entered on the FASR and no FPSS will be submitted for that report period).

Three copies of the FPSS are to be provided to: U.S. Department of Labor, Employment and Training Administration, Attention: TDNF, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210.

Reports due to DOL are to be postmarked no later than 45 days after the end of each report period.

3. *Facsimile of form.* The FPSS form is ETA 8598. See the following page.

BILLING CODE 4510-30-M

OMB Approval No.

U.S. DEPARTMENT OF LABOR: Employment and Training Administration

JTPA PROGRAM STATUS SUMMARY

TITLE IV-A, SECTION 402 - MIGRANT/SEASONAL FARMWORKER PROGRAM

F

a. GRANTEE NAME AND ADDRESS	b. GRANT NUMBER
DRAFT	c. REPORT PERIOD From: To:

I. PARTICIPATION AND TERMINATION SUMMARY	SUBTOTAL (a)	TOTAL (b)
A. TOTAL PARTICIPANTS		
1. New Participants		
2. Participants Carried Over		
B. TOTAL TERMINATIONS		
1. Entered Unsubsidized Employment		
a. ■ Direct (No Training or Subsidized Employment)	■	
b. ■ Indirect (After Training/Subsidized Employment)	■	
(1) ■■ Also Attained Any Employability Enhancement	■■	
2. Attained Employability Enhancement ONLY		
3. Services ONLY (No Referrals to Employment)		
4. All Other Terminations		
C. TOTAL CURRENT PARTICIPANTS (End-of-Quarter)		
II. PARTICIPATION IN PROGRAM ACTIVITIES		
A. Classroom Training		
B. On-the-Job Training		
C. Work Experience/Tryout Employment		
D. Training Assistance		

REMARKS:

III. CERTIFICATION —> I CERTIFY that to the best of my knowledge and belief that this report is CORRECT and COMPLETE for the purposes set forth in the GRANT AGREEMENT

NAME AND TITLE OF AUTHORIZED OFFICIAL	PHONE NUMBER	SIGNATURE	DATE SUBMITTED (Mo., Day, Yr.)

BILLING CODE 4510-30-C

ETA 8598 (April 1991)

4. *Instructions for Completing the Farmworkers JTPA Program Status Summary* (FPSS)

a. *Grantee Name and Address* Enter the name and address of the grantee as it appears on the Notice of Obligation (or equivalent).

b. *Grant Number* Enter the grant number as it appears on the appropriate Notice of Obligation (or equivalent). Also, enter date submitted if a modification.

c. *Report Period* Enter the month, day and year of the beginning and ending of the period for which this report is prepared. Since the report will be prepared on a cumulative basis, the beginning date will be the first day of the program year.

Column Headings

Entries for Lines I.B.1.a., I.B.1.b., and I.B.1.b.(1) are to be made in Column (a) Subtotal. Entries for all other lines will be made in Column (b) Total.

Section I. Participation and Termination Summary

Section I provides information on actual program accomplishments in terms of the total cumulative number of participants in the program, the number and types of terminations from the program, and the number of participants currently in the program as of the end of the reporting period.

Entries under Lines I.A. and I.B. are cumulative for the reporting period. Entries under Line I.C. report the current participation as of the close of business on the last day of each quarter.

Line I.A. *Total Participants.*

Enter the total number of participants who are or were in the program during the reporting period, including both those on board at the beginning of the program year and those who have entered during the program year. This item is the sum of Lines I.A.1. and I.A.2.

Participant—Any individual who has: (1) been determined eligible for participation upon intake; and (2) started receiving employment, training, or services (except post-termination services) funded under the Act following intake. This does not include individuals who receive only outreach and/or intake and initial assessment services.

Outreach Services—The collection, publication and dissemination of information on program services directed toward economically disadvantaged and other individuals eligible to receive JTPA section 401 training and support services.

Intake Services—The screening for eligibility; and, (1) a determination of whether the program can benefit the individual; (2) an identification of the employment and training activities and services which would be appropriate for that individual; (3) a determination of the availability of an appropriate employment and training activity; (4) a decision on selection for participation; and, (5) the dissemination of information on the program.

Assessment Services—A service designed to initially determine each participant's employability, aptitudes, abilities and interests, through interviews, testing and counseling to achieve the applicant's employment related goals.

Line I.A.1. *New Participants.*

Enter the number of new participants who have entered since the beginning of the program year.

Also include in this Line those persons who have entered this title or program from another program operated under the Act by a different recipient. A participant in another program or title under JTPA who met the eligibility criteria for section 402 at the time of enrollment into such other program or title may be enrolled in the section 402 program. A section 402 participant who met the eligibility criteria for another program or title under JTPA at the time of enrollment into the Section 402 program may be enrolled in such other program or title.

Line I.A.2. *Participants Carried Over.*

Enter the number of participants in the program at the beginning of the program year who were carried over from the previous program year. This entry should be the same for all subsequent quarters of the program year when the estimated figures on the FPPS are updated with actual figures.

Line I.B. *Total Terminations.*

Enter the number of participants terminated from the program for any reason during the reporting period. This line is the sum of Lines I.B.1 through I.B.4. (Participants who moved among program activities within a title and are not terminated, should not be counted here.)

Termination—The separation of a participant from a given title of the Act who is no longer receiving employment, training or services (except post-termination services) funded under the title.

Note: Individuals may continue to be considered as participants for a single period of up to 90 days after last receipt of employment or training funded under a given title.

Line I.B.1. *Entered Unsubsidised Employment.*

Enter the cumulative number of participants who entered (through the grantee or otherwise) full or part-time unsubsidized employment during the reporting period. This line is the sum of Line I.B.1.a. and I.B.1.b.

Note: Seasonal agricultural placements will not be considered as entered unsubsidized employment unless such placement represents an upgraded position within agriculture and will not result in the continued underemployment of the participant (20 CFR 663.704).

Unsubsidized Employment—Employment not financed from funds provided under the Act that includes a job upgrade, entry into apprenticeship and/or military service, or self employment.

Line I.B.1.a. *Direct* (No Training or Subsidized Employment).

Enter by quarter, the cumulative number of participants who entered (through the grantee or otherwise) unsubsidized employment after receiving only Training Assistance services.

Note: Direct entries into unsubsidized employment can be reported only when the grantee verifies from a reliable source, preferably the employer, that the participant has become employed.

Direct entry into unsubsidized employment includes those terminees who may establish their own business and become self-employed following participation in Training Assistance activities designed to achieve this result. A person is to be considered self-employed if he/she has established a business which meets, at a minimum, the definition contained in IRS Publication No. 334, Tax Guide for Small Businesses, Part I (i.e., A business is an activity entered into for the purpose of making a profit. Two characteristic elements of a business are regularity of activities and transactions and the production of income.). Where a State or local statute contains stricter requirements for determining the existence of a business, that statute should be followed.

Direct—A terminee who received no basic skills or occupational specific training or subsidized employment while a section 401 participant.

Subsidized Employment—Employment financed from funds provided under the Act.

Training Assistance—Includes, but is not limited to:

(a) Training Assistance to Applicants
  (1) Outreach
  (2) Intake
  (3) Screening for eligibility determination
(b) Training Assistance to Participants
  (1) Orientation to the world of work
  (2) Job-related counseling and assessment
  (3) Employability assessment (other than that performed during intake)
  (4) Job development
  (5) Job search assistance
  (6) Job referral and placement
  (7) Vocational Exploration Programs
(c) Supportive services to Training Assistance participants.

Line I.B.1.b. *Indirect* (After Training/Subsidized Employment).

Enter in Item I.B.1.b. the number of participants who entered unsubsidized employment during the program year after participation in occupational or remedial training or subsidized employment activity. These terminees may or may not have received supportive services.

Note: Indirect entries into unsubsidized employment can be reported only when the grantee verifies from a reliable source, preferably the employer, that the participant has become employed.

Indirect entry into unsubsidized employment includes those terminees who may establish their own business and become self-employed following participation in a program activity specifically designed to achieve this result. A person is to be considered self-employed if he/she has established a business which meets, at a minimum, the definition contained in IRS Publication No. 334, Tax Guide for Small Businesses, Part I (i.e., A business is an activity entered into for the purpose of making a profit. Two characteristic elements of a business are regularity of activities and transactions and the production of income.). Where a State or local statute contains stricter requirements for determining the existence of business, that statute should be followed.

Indirect—A terminee who has received basic skills and/or occupational skills training or subsidized employment while a section 401 participant.

Line I.B.1.b.(1) *Also Attained Any Employability Enhancement.*

Enter the total number of participants who (1) entered unsubsidized employment, Line I.B.1., and (2) also had one of the five types of employability enhancements: (1) Entered Non-Section 402 Training, (2) Returned to Full-Time School, (3) Completed Major Level of Education, (4) Completion of Worksite Training Objective, and (5) Attained Basic/Occupational Skills Proficiency. This line is a sub-breakout of Line I.B.1.b.

Entered Non-Section 402 Training—The total number of participants who, at termination, entered an occupational skills training program or postsecondary education program not funded under section 402 of the JTPA, which builds upon and *does not duplicate* training received under section 402.

Returned to Full-Time School—The total number of participants who, at termination, had returned to full-time secondary school (e.g., junior high school, middle school and high school), including alternative school, if, at the time of intake the individual was not attending school, exclusive of summer, and had not obtained a high school diploma or equivalent. Also enter on this line the total number of at-risk youth who were retained in school as a result of continuing active participation in the section 402 program.

Completed Major Level of Education—The total number of participants who, at termination, had completed a level of educational achievement which had not been reached at entry. Levels of educational achievement are secondary and postsecondary. Completion standards shall include a high school diploma, GED Certificate or equivalent at the secondary level, and shall require a diploma or other written certification of completion at the postsecondary level.

Completion of Worksite Training Objective—The total number of participants who, at termination, had attained a level of work readiness, through worksite training, which had not been reached at entry. This includes the completion of a work experience, tryout employment or community service employment assignment, and/or completion of an occupational skills, pre-apprenticeship, or job-upgrading program.

Attained Basic/Occupational Skills Proficiency—The total number of participants who, at termination, had demonstrated proficiency, as defined by the grantee in one or more of the following two skill areas in which the terminee was deficient at enrollment: basic education skills and occupational skills. Skill gain must be achieved through active program participation and must be the result of a prior employability development planning process which identifies the participant's skill deficiencies, the training needed to overcome the deficiencies and the level of proficiency needed for attainment of the basic/occupational skills. Documented skill gains achieved from completion of a pre-apprenticeship course, a youth employment competency program, an adult basic education program, an English as a Second Language (ESL) program, or a course in remedial and/or supplemental basic skills are acceptable. Training needed to achieve this outcome may be funded from section 402 or other sources.

Line I.B.2. *Attained Employability Enhancement ONLY.*

Enter the total number of terminees who (1) were not placed in unsubsidized employment and (2) attained one of the employability enhancements listed in Line I.B.1.b.(1). A terminee shall be reported only once on this line even though more than one enhancement may have been achieved.

Note: This is a unduplicated count.

Line I.B.3. *Services ONLY* (No Referrals to Employment).

Enter the cumulative number of participants who were terminated after receipt of Services ONLY.

Note: Such individuals would not receive any program employment/training and no entry/referral to unsubsidized employment.

Line I.B.4. *All Other Terminations.*

Enter the total number of participants who were terminated for reasons other than those in Lines I.B.1., I.B.2., and I.B.3., during the reporting period.

Line I.C. *Total Current Participants.*

Enter the total number of participants in the program as of close of business on the last day of the quarterly reporting period. This line is the difference between Lines I.A. and I.B.

Section II. Participation in Program Activities

This section provides the cumulative number of actual participants to date in each program activity.

The program activities listed have been provided for standardized reporting purposes and to follow the discussion of allowable activities in 20 CFR 633.304(d). No total is required for these entries since participants may be in more than one activity concurrently or throughout their participation in the program and, therefore, would be counted in more than one program activity. Only those participants financed with section 402 funds should be entered here.

Participants receiving Services ONLY should be counted only in Section I, Participation and Termination Summary, as appropriate.

For each program activity, enter the actual cumulative total number of participants in the activity on a quarterly basis. This Line includes participants who were in the activity at the beginning of the year and participants who entered after the start of the year. Participants in more than one program activity should be reported only once for each activity in which they participate. (For comparison, "Plan" goals for each activity may be obtained from the corresponding entries under Section II for the appropriate quarter on the latest FPPS.)

Line II.A. *Classroom Training (Includes Occupational and Basic Skills Training).*

Enter the cumulative number of participants in occupational classroom training activities operated by the grantee, its contractor or subgrantee. Occupational classroom training includes training ordinarily conducted in an institutional setting and designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. Participants in other classroom activities which are designed to enhance the employability of the participant by upgrading basic skills (e.g., remedial education or training in English language proficiency) also would be included here.

Line II.B. *On-the-Job Training.*

Enter the cumulative number of participants in On-the-Job Training.

Line II.C. *Work Experience/Tryout Employment.*

Enter the cumulative number of participants in Work Experience and/or Tryout employment activities as referred to at 20 CFR 633.302 (c) and (d). In-School Work Experience activities include part-time employment for students enrolled full-time in, and attending, an elementary, secondary, trade, technical or vocational school, or college or a university, or scheduled to attend full-time the next regularly scheduled quarter or semester of any of these schools. Also include the number of participants in work experience activities other than In-School Work Experience activities.

Line II.D. *Training Assistance and/or Supportive Services.*

Enter the cumulative number of participants expected to be in Training Assistance activities.

Training Assistance.—Includes, but is not limited to:

(a) Training Assistance to Applicants
 (1) Outreach
 (2) Intake
 (3) Screening for eligibility determination

(b) Training Assistance to Participants
 (1) Orientation to the world of work
 (2) Job-related counseling and testing
 (3) Employability assessment (other than that involved during intake)
 (4) Job development
 (5) Job search assistance
 (6) Job referral and placement
 (7) Vocational Exploration Program

(c) Supportive services to Training Assistance participants.

Note: There is no significant Characteristics of Terminees section on the FPSS as there is on the FPFS. Significant Characteristics of Terminees from the FPFS will be compared against actual characteristics reflected in appropriate items on the Annual Status Report (FASR).

Instructions for Section IV—Certification

Enter the typed name, title, telephone and signature of an authorized official and the date the report was submitted.

Farmworker JTPA Section 402 Grants, Annual Status Report (FASR)

1. *Purpose.* The Farmworker Annual Status Report (FASR) displays cumulative data on participation, termination, performance measures and the socio-economic characteristics of all terminees on an annual basis. The information will be used to determine levels of program service and performance measures.

2. *General Instructions.* The FASR is required for each JTPA Title IV–A, section 402 grant.

Each reporting period begins on the start date of each JTPA program year, as stated in section 101 of the Act. The Farmworker Annual Status Report (FASR) replaces the fourth quarter of the Farmworker Program Status Summary (FPSS) and the Farmworker Financial Status Report (FFSR). Three copies of the FASR are to be provided to: U.S. Department of Labor, Employment and Training Administration ATTN: TDNE Room N-4641, 200 Constitution Avenue, NW., Washington, DC 20210.

Reports due at DOL are to be postmarked no later than 45 days after the end of each program year.

3. *Facsimile of Form.* The FASR form is ETA 8599. See the following page.

BILLING CODE 4510-30-M

OMB Approval No.

U.S. DEPARTMENT OF LABOR: Employment and Training Administration

JTPA FARMWORKER PROGRAM ANNUAL STATUS REPORT

TITLE IV-A, SECTION 402 - MIGRANT/SEASONAL FARMWORKER PROGRAM

a. GRANTEE NAME AND ADDRESS DRAFT

b. GRANT NUMBER

c. REPORT PERIOD From: To:

I. PARTICIPATION AND TERMINATION SUMMARY	TOTAL (A)	SERVICES ONLY (No Referral to Employment) (B)	[illegible] (C)
A. TOTAL PARTICIPANTS			
B. TOTAL TERMINATIONS			
C. TOTAL CURRENT PARTIC.			

II. SELECTED TERMINATION SUMMARY	All E & T TERMINATIONS (A)	CLASSROOM TRAINING (B)	ON-THE-JOB TRAINING (C)	WORK EXP./ TRYOUT EMPL. (D)	TRAINING ASSISTANCE (E)
A. Entered Unsubsidized Employment					
1. ■ Also Attained Any Employ. Enhanc.	■	■	■	■	
B. Attained Employability Enhancement ONLY					
C. Other Employment and Training Terms.					

III. EMPLOYABILITY ENHANCEMENTS	TOTAL (A)
A. Entered Non-Section 402 Training	
B. Returned to Full-Time School	
C. Completed Major Level of Education	
D. Completion of Worksite Training Object.	
E. Attained Basic/Occup. Skills Proficiency	

IV. TERMINEE PERFORMANCE MEASURES INFORMATION			ENTERED UNSUB. EMPLOYMENT (A)	ATTAINED EMPLOYABILITY ENHANCEMENT ONLY (B)	OTHER E & T TERMINATIONS (C)	SERVICES ONLY (No Referral to Employment) (D)
1	TOTAL					
2	FARMWORKER GROUP	Instate Migrant				
3		Interstate Migrant				
4		Seasonal				
5	SEX	Male				
6		Female				
7	AGE	Under 16				
8		16 - 21				
9		22 - 44				
10		45 and Over				

ETA 8599 (April 1991)

OMB Approval No.

U.S. DEPARTMENT OF LABOR: Employment and Training Administration

JTPA FARMWORKER PROGRAM ANNUAL STATUS REPORT

TITLE IV-A, SECTION 402 - MIGRANT/SEASONAL FARMWORKER PROGRAM

F

a. GRANTEE NAME AND ADDRESS	b. GRANT NUMBER
	c. REPORT PERIOD From: | To:

I. PARTICIPATION AND TERMINATION SUMMARY	TOTAL (A)	SERVICES ONLY (No Referral to Employment) (B)	BALANCE (C)
A. TOTAL PARTICIPANTS			
B. TOTAL TERMINATIONS			
C. TOTAL CURRENT PARTIC.			

II. SELECTED TERMINATION SUMMARY	All E & T TERMINATIONS (A)	CLASSROOM TRAINING (B)	ON-THE-JOB TRAINING (C)	WORK EXP./ TRANSIT. EMPL. (D)	TRAINING ASSISTANCE (E)
A. Entered Unsubsidized Employment					
1. ■ Also Attained Any Employ. Enhanc.	■	■	■	■	
B. Attained Employability Enhancement ONLY					
C. Other Employment and Training Terms.					

III. EMPLOYABILITY ENHANCEMENTS	TOTAL (A)
A. Entered Non-Section 402 Training	
B. Returned to Full-Time School	
C. Completed Major Level of Education	
D. Completion of Worksite Training Object.	
E. Attained Basic/Occup. Skills Proficiency	

IV. TERMINEE PERFORMANCE MEASURES INFORMATION			ENTERED UNSUB. EMPLOYMENT (A)	ATTAINED EMPLOYABILITY ENHANCEMENT ONLY (B)	OTHER E & T TERMINATIONS (C)	SERVICES ONLY (No Referr. to Employment) (D)
1	TOTAL					
2	FARMWORKER GROUP	Instate Migrant				
3		Interstate Migrant				
4		Seasonal				
5	SEX	Male				
6		Female				
7	AGE	Under 16				
8		16 - 21				
9		22 - 44				
10		45 and Over				

ETA 8599 (April 1991)

a. GRANTEE NAME	b. GRANT NUMBER
DRAFT	c. REPORT PERIOD From: | To:

IV. TERMINEE PERFORMANCE MEASURES INFORMATION - CONT'D			ENTERED UNSUB. EMPLOYMENT (A)	ATTAINED EMPLOY. ENHANC. ONLY (B)	OTHER E & T TERMINATIONS (C)	SERVICES ONLY (No Ref. to Emp.) (D)
11	EDUCATION STATUS	School Dropout: 8th Grade or Less				
12		School Dropout: 9th - 12th Grade (Not Graduated)				
13		Student, H.S. or Less				
14		High School Grad., Equiv., or Above				
15	RACIAL/ETHNIC GROUP	White (Not Hispanic)				
16		Black (Not Hispanic)				
17		Hispanic				
18		American Indian or Alaskan Native				
19		Asian or Pacific Islander				
20	FAM. STAT.	Single Head of Hshld w/Deps. < Age 18				
21	OTHER BARRIERS TO EMPLOYMENT	Limited English Language Proficiency				
22		Handicapped				
23		Reading Skills Below 7th Grade Level				
24		Long-Term Agricultural Employment				
25		Multiple Barriers to Employment				
26	LABOR FORCE STAT.	Unemployed				
27	P.A. RECPT.	Public Assistance Recipient				
28	VETERAN STATUS	Veteran (Total)				
29		■ Veteran (Vietnam Era)	■	■	■	■
30	TRAINING INFORMATION	Average Hours in All Training				
31		Average Hours in Section 402 Training				
32	Average Earnings (52 Weeks Preprogram)					
33	Average Hourly Wage at Termination					

REMARKS:

ETA 8599 (April 1991)

a. GRANTEE NAME	b. GRANT NUMBER
	c. REPORT PERIOD From: | To:

V. TOTAL PROGRAM COSTS AND AVAILABLE FUNDS (Report in Whole Dollars ONLY)		TOTAL	TRAINING	SUPPORTIVE SERVICES	
				Training-Related	Non-Training-Related
		(A)	(B)	(C)	(D)
34	Classroom Training				
35	On-the-Job Training				
36	Work Exper./Tryout Employ.				
37	Training Assistance				
38	■ Direct Entered Unsub. Empl.	■	■	■	
39	Services ONLY (No Ref. to Empl.)				
40	Administration				
41	TOTAL				
42	TOTAL AVAILABLE FUNDS				
43	Carry-In Funds				
44	New Obligational Authority				

VI. PARTICIPATION IN PROGRAM ACTIVITIES		TOTAL
45	Classroom Training	
46	On-the-Job Training	
47	Work Experience/Tryout Employment	
48	Training Assistance	
49	Services ONLY (No Referrals to Employment)	

VII. FOLLOW-UP INFORMATION ON THOSE EMPLOYED AT TERMINATION		
50	Terminees Entering Unsub. Employment at Termination	
51	Employment Confirmed by Employer	
52	Direct Contacts Attempted (Line 50 minus Line 51)	
53	Number of Direct Attempts Contacted	
54	Number of Direct Contacts Employed	
55	Total Employed at Follow-up	
56	Average Hourly Wage at Follow-up	
57	Total Employed with Fringe Benefit	

CERTIFICATION —> I CERTIFY that to the best of my knowledge and belief that this report is CORRECT and COMPLETE and all outlays are for the purposes set forth in the GRANT AGREEMENT

TYPED NAME AND TITLE OF AUTHORIZED OFFICIAL	PHONE NUMBER	SIGNATURE	DATE SUBMITTED (Month, Day, Year)

ETA 8599 (April 1991)

OMB Approval No.

U.S. DEPARTMENT OF LABOR, Employment and Training Administration

JTPA BUDGET INFORMATION SUMMARY

TITLE IV A, SECTION 402 MIGRANT SEASONAL FARMWORKER PROGRAM

a. GRANTEE NAME AND ADDRESS	b. GRANT NUMBER	MODIFICATION NUMBER
	DATE SUBMITTED (Month, Day, Year)	
	c. PERIOD OF GRANT From: | To:	

I. CUMULATIVE QUARTERLY PROJECTIONS OF EXPENDITURES BY COST CATEGORIES AND PROGRAMS

A. GRANT PROGRAM FUNCTION AND ACTIVITY	B. CUMULATIVE QUARTERS			
	1st	2nd	3rd	4th
1. Training				
a. Classroom Training				
b. On-the-Job Training				
c. Work Experience/Tryout Employment				
d. Training Assistance				
(1) ■ Direct Entered Unsub. Employ.	■	■	■	■
2. Trng.-Related Supportive Services				
a. Classroom Training				
b. On-the-Job Training				
c. Work Experience/Tryout Employment				
d. Training Assistance				
(1) ■ Direct Entered Unsub. Employ.	■	■	■	■
3. Non-Trng.-Related Supportive Services ONLY (No Referral to Employment)				
4. Administration				
5. Total				
II. TOTAL AVAILABLE FUNDS				
A. Carry-In Funds				
B. New Obligational Authority				

REMARKS:

BILLING CODE 4510-30-C

ETA 8595 (April 1991)

4. Instructions for Completing the Farmworker JTPA Section 402 Grants Annual Status Report (FASR).

a. Grantee Name and Address. Enter the name and address of the grantee as it appears on the appropriate Notice of Obligation (or equivalent).

b. Grant Number. Enter the grant number as it appears on the appropriate Notice of Obligation (or equivalent).

c. Report Period. Enter in "From" the beginning date of the designated JTPA program year and enter in "To" the ending date of that program year.

d. Typed Name and Title of Authorized Official (at bottom of the page). Type the name and title of the authorized official.

e. Telephone Number. Enter the area code and telephone number of the authorized official.

f. Signature. The authorized official should sign here.

g. Date. Enter the date the report was signed by the authorized official.

5. General Information. Unless otherwise indicated, data reported on characteristics of terminees should be based on information collected at the time of eligibility determination. Characteristics information on an individual at the time of eligibility determination for the recipient's JTPA program should not be updated when the individual terminates from the JTPA program.

Section I—Participation and Termination Summary

Section I displays the total cumulative number of: Participants in the program, terminations from the program, and participants currently enrolled in the program as of the end of the reporting period.

Entries for Items I.A. and I.B. are cumulative from the beginning of the program year through the end of the reporting period. Entries for Item I.C. reflect the current number of participants as of close of business on the last day of the reporting period.

Column Headings. Column (A) *Total.*

This column will contain an entry for each appropriate item for *all* participants and terminees.

Note: The entry for Column (A) will be the sum of the entries for Columns (B) and (C) for a given line.

Column (B) *Services ONLY (No Referrals to Employment).*

This column will contain an entry for all terminees who received Services ONLY.

Note: Such individuals have received no program employment/training and no entry/referral to unsubsidized employment and are entered in Section IV, Line 1, Column (D).

Column (C) *Balance.*

This column will contain an entry for all terminees who did *not* receive Services ONLY and who did participate in employment and training activities as entered in Section IV, Line 1, Columns (A), (B), or (C) as appropriate.

Note: The entry for Column (C) will be the difference between the entries of Column (A) and Column (B) for Item I.B.

Line Item Definitions and Instructions

Item I.A. *Total Participants.* Enter the total number of participants who are or were in the program through the end of the reporting period, including both those on board at the beginning of the designated program year and those who have entered during the program year. If individuals received concurrent employment, training and/or services under more than one title they are to be considered participants in both titles for purposes of recording actual time spent in training, dollars expended, program accomplishments, and other pertinent data.

Participant—Any individual who has: (1) been determined eligible for participation upon intake; and (2) started receiving employment, training, or services (except post termination services) funded under the Act following intake. This does not include individuals who received only outreach and/or intake and initial assessment services.

Outreach Services—The collection, publication and dissemination of information on program services directed toward economically disadvantaged and other individuals eligible to receive JTPA section 402 training and support services.

Intake Services—The screening for eligibility; and (1) a determination of whether the program can benefit the individual; (2) an identification of the employment and training activities and services which would be appropriate for that individual; (3) a determination of the availability of an appropriate employment and training activity; (4) a decision on selection for participation; and (5) the dissemination of information on the program.

Assessment Services—A service designed to initially determine each participant's employability, aptitude, abilities and interests, through interviews, testing and counseling to identify the applicant's employment related goals.

Item I.B. *Total Terminations.* Enter by column the total number of participants terminated from the program for any reason from the beginning of the program year through the end of the reporting period.

Termination—The separation of a participant from a given title of the Act who is no longer receiving employment, training or services (except post-termination services) funded under that title.

Note: Individuals may continue to be considered as participants for a single period of up to 90 days after last receipt of employment and/or training (30 days after last receipt of services only) funded under a given title.

Item I.C. *Total Current Participants.* Enter the total number of participants in the program as of close of business on the last day of the reporting period. This line is the difference between Items I.A. and I.B.

Section II—Selected Termination Summary

Section II displays the program's accomplishments in terms of the total number and types of terminations from employment and training activities. Terminees who received services ONLY are excluded. Entries for Items II.A., II.B., and II.C are cumulative from the beginning of the program year through the end of the reporting period.

Column Headings. If training was in more than one Employment and Training activity, column entries will be based on the appropriate training activity in which each terminee's participation was the *longest.*

Column (A) *All Employment and Training Terminations.*

This column will contain an entry for each appropriate item for *all* participants terminated from Employment and Training activities.

Note: The entry for Column (A) will be the sum of the entries for Columns (B) through (E) for a given line.

Column (B) *Classroom Training.*

This column will contain an entry for each appropriate item for all participants who received Classroom Training before termination from the program.

Column (C) *On-the-Job Training.*

This column will contain an entry for each appropriate item for all participants who receive On-the-Job Training before termination from the program.

Column (D) *Work Experience/Tryout Employment.*

This column will contain an entry for each appropriate item for all participants who received either Work Experience and/or Tryout Employment before termination from the program.

Column (E) *Training Assistance.*

This column will contain an entry for each appropriate item for all

participants who received Training Assistance before termination from the program.

Line Item Definition and Instructions

Item II.A. *Entered Unsubsidized Employment.* Enter by column the total number of participants who, at termination, entered (through the grantee or otherwise) full or part-time unsubsidized employment through the end of the reporting period.

Note: The entry for Column (A) will be the sum of the entries for Columns (B) through (E) for a given line.

Unsubsidized Employment—Employment not financed from funds provided under the Act, which includes a job, entry into the Armed Forces (including entry onto active duty from Reserve and National Guard units for Operation Desert Shield/Storm, effective August 2, 1990), entry into employment in a registered apprenticeship program or self employment.

Subsidized Employment—Employment financed from funds provided under the Act.

Part-Time Employed—An individual who is regularly scheduled for work less than 30 hours per week.

Item II.A.1. *Also Attained Any Employability Enhancement.* Enter by column the total number of terminees who (1) entered unsubsidized employment, Item II.A., and (2) also had one of the employability enhancement outcomes listed in Section III. *This item is a sub-breakout of Item II.A.*

Note: This item does not include those who receive Training Assistance ONLY.

Item II.B. *Attained Employability Enhancement ONLY.* Enter by column the total number of terminees who (1) were not placed in unsubsidized employment and (2) attained one of the employability enhancement outcomes listed in Section III. (A terminee shall be reported only once on this line even though more than one enhancement may have been achieved.)

Note: This is an unduplicated count and does not include those who received Training Assistance ONLY.

Item II.C. *Other Employment and Training Terminations.* Enter by column the total number of terminees who received program employment/training and did not (1) enter unsubsidized employment or (2) attain one of the employability enhancements (e.g., did not complete assigned training).

Note: Exclude terminees who received Services ONLY. These are entered in Item I.B., Column (B) above.

Section III—Employability Enhancements

Employability enhancement is an outcome for terminees other than entered unsubsidized employment, which is recognized as enhancing long-term employability and contributing to the potential for a long-term increase in earnings and employment. Successful outcomes which meet this requirement shall be restricted to the following: (1) Entered Non-Section 402 Training, (2) Returned to Full-Time School, (3) Completed Major Level of Education, (4) Completion of Worksite Training Objective, and (5) Attained Basic/Occupational Skills Proficiency.

Enter in Column (A), the total number of terminees who attained any of the following enhancement outcomes. A terminee shall be reported in only one of the five categories listed below, even though more than one outcome may have been achieved. The sum of Items III.A. through III.E. should equal the sum of Items II.A.1. and II.B. in Column (A) of Section II.

Item III.A. *Entered Non-Section 402 Training.* Enter the unduplicated total number of participants who, at termination from section 402 programs, had entered an occupational skills training program or postsecondary education program not funded under section 402 of the JTPA, which builds upon and *does not duplicate* training received under section 402.

Occupational Skills Training—Training that includes: (1) vocational education which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs, and (2) on-the-job training which is training in the public or private sector given to an individual, who has been hired first by the employer, while he or she is engaged in productive work which provides knowledge or skills essential to the full and adequate performance of the job.

Item III.B. *Returned to Full-Time School.* Enter the unduplicated total number of participants who returned to full-time secondary school (e.g., junior high school, middle school and high school), including alternative school, if, at the time of intake the participant was not attending school, exclusive of summer, and had not obtained a high school diploma or equivalent certificate. This category also applies to at-risk youth who were retained in school as a result of continuing active participation in the section 402 program.

At-risk youth—Youth whom the grantee regards as within a group that may drop out of school prior to receipt of a high school diploma. Such an outcome must be consistent with the goals and service strategy set for the participant in his or her Employability Development Plan (EDP).

Alternative School—A specialized, structured curriculum offered inside or outside of the public school system which may provide work-study and/or GED preparation.

Item III.C. *Completed Major Level of Education.* Enter the unduplicated total number of participants who, prior to termination, had completed during enrollment, a level of educational achievement which had not been reached at entry. Levels of educational achievement are secondary and postsecondary. Completion standards shall include attainment of a high school diploma, GED Certificate or equivalent at the secondary level, and shall require a diploma or other written certification of completion at the postsecondary level.

Item III.D. *Completion of Worksite Training Objectives.* Enter the unduplicated total number of participants who, prior to termination, had completed a level of work readiness, through worksite training, which had not been reached at entry. This includes the completion of a work experience, tryout employment, pre-apprenticeship or agricultural upgrading program.

Item III.E. *Attained Basic/Occupational Skills Proficiency.* Enter the unduplicated total number of participants who, prior to termination, had demonstrated proficiency, as defined by the grantee in basic skills and occupational skills, in which the participant was deficient at the time of enrollment in the section 402 program. Skill/learning gains must be achieved through active program participation and must be the result of a prior employability development planning process which identifies the participant's skill deficiencies, the training needed to overcome the deficiencies and the level of proficiency needed for attainment of the employability skill. Documented skill/learning gains achieved from completion of an adult basic education program, English as a second language, or remedial and/or supplemental basic skills course, or completion of a pre-apprenticeship course, agricultural upgrade program, youth employment competency program, or occupational/vocational or technical skills course are acceptable. The training involved in this outcome may be paid for solely from JTPA section 402 funds or in combination with other sources.

Basic Education Skills—Training that includes, but is not limited to remedial reading, writing, communication, mathematics and/or English for non-English speakers.

Section IV—Terminee Performance Measures Information

Section IV displays performance and socio-economic information. As indicated previously, data reported on characteristics of terminees should be based on information collected at time of eligibility determination unless otherwise indicated.

Column Headings. Column (A) *Entered Unsubsidized Employment.*

This column will contain an entry for each appropriate item for terminees in Item II.A. above who entered unsubsidized employment at time of termination from the program.

Column (B) *Attained Employability Enhancement ONLY.*

This column will contain an entry for each appropriate item for terminees in Item II.B. above who (1) were not placed in unsubsidized employment and (2) attained one of the enhancement outcomes in Section III.

Column (C) *Other Employment and Training Terminations.*

This column will contain an entry for each appropriate item for terminees who received program employment/training, and did not (1) enter unsubsidized employment or (2) attain one of the employability enhancements.

Note: Exclude terminees who are entered in Columns (A), (B), and (D) of this Section.

Column (D) *Services ONLY (No Referral to Employment).*

This column will contain an entry for each appropriate item for terminees who received Services ONLY in Item I.B., Column (B) above. (Such individuals have received no training or employment and no entry or referral to unsubsidized employment.)

Line Item Definitions and Instructions

Line 1 *Total*

The entry on Line 1 Column (A) should equal the entry in Item II.A., Column (A). The entry for Column (B) should equal the entry in Item II.B., Column (A). The entry for Column (C) should equal the entry for Item II.C., Column (A). The entry for Column (D) should equal the entry for Item I.B., Column (B).

Farmworker Group

Line 2 *Instate Migrant*
Line 3 *Interstate Migrant*
Line 4 *Seasonal*

Distribute the terminees according to the farmworker groups listed above. The sum of Lines 2 through 4 in this column should equal Line 1—Total in that column.

Instate Migrant—an individual who is away from domicile but in State of residence.

Interstate Migrant—an individual who meets the definition of a migrant farmworker at § 633.104, and who is away from his/her home based State of residency (domicile of longest duration in year) at the time of intake.

Sex

Line 5 *Male*
Line 6 *Female*

Distribute by column the total number of terminees according to Sex. The sum of Lines 5 and 6 in each column should equal Line 1—Total in that column.

Age

Line 7 *Under 16*
Line 8 *16–21*
Line 9 *22–44*
Line 10 *45 and Over*

Distribute by column the total number of terminees according to Age. The sum of Lines 7 through 10 in each column should equal Line 1—Total in that column.

Education Status

Line 11 *School Dropout: 8th Grade or Less*
Line 12 *School Dropout: 9th–12th Grade (Not Graduated)*
Line 13 *Student, High School or Less*
Line 14 *High School Graduate, Equivalent, or Above*

Distribute by column the total number of terminees according to Education Status. The sum of Lines 11 through 14 in each column should equal Line 1—Total in that column.

School Dropout—An adult or youth (aged 14–21) who is not attending school full-time and has not received a high school diploma or a GED certificate.

Student—An adult or youth who has not received a high school diploma or a GED certificate and is enrolled in and attending full-time a secondary or postsecondary-level vocational, technical or academic school, or is between school terms and intends to return to school.

High School Graduate, Equivalent or Above—An adult or youth who has received a high school diploma or a GED certificate, and has attended (or is attending) any postsecondary-level vocational, technical or academic program (one normally requiring a high school diploma or GED for entry).

Race/Ethnic Group

Line 15 *White (Not Hispanic)*
Line 16 *Black (Not Hispanic)*
Line 17 *Hispanic*
Line 18 *American Indian or Alaskan Native*
Line 19 *Asian or Pacific Islander*

Distribute the terminees according to the Race/Ethnic group listed above. For purposes of this report, Hawaiian Natives are to be recorded as "Asian and Pacific Islanders". The sum of Lines 15 through 19 in each column should equal Line 1—Total in that column.

Family Status

Line 20 *Single Head of Household with Dependent(s) Under Age 18*

Enter by column the total number of terminees for whom the above Family Status classification applies.

Single Head of Household—A single, abandoned, separated, divorced or widowed individual who has responsibility for one or more dependent children under age 18.

Other Barriers to Employment

Line 21 *Limited English Language Proficiency*
Line 22 *Handicapped*
Line 23 *Reading Skills Below 7th Grade Level*
Line 24 *Long-Term Agricultural Employment*
Line 25 *Multiple Barriers to Employment*

Enter by column the total number of terminees for whom each of the above Other Barriers to Employment apply.

Note: Lines 23 and 25 do not apply to those receiving Services ONLY.

Limited English Language Proficiency—Inability of an applicant, whose native language is not English, to communicate in English, resulting in a job handicap.

Handicapped Individual—Refer to section 4(10) of the Act. Any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment. This definition includes disabled veterans for reporting purposes.

Note: This definiton will be used for performance standards purposes, but is not required to be used for program eligibility determination (Sec. 4(8)(E)).

Reading Skills Below 7th Grade Level—An individual assessed as having English (except in Puerto Rico) reading skills below the 7th grade level on a generally accepted standardized test.

Note: The following other methods of determination may be used:

• A school record of reading level determined within the last 12 months.

• If an applicant is unable to read and therefore cannot complete a self-application for the JTPA program, he or she may be considered to have English reading skills below the 7th grade level.

• Individuals with any of the following may be considered to have English reading skills above the 7th grade level:

—A GED certificate received within the last year.

—A degree (usually a BA or BS) conferred by a 4-year college, university or professional school.

If there is any question regarding reading ability, a standardized test should be administered.

Long-Term Agricultural Employment—An individual who has engaged in agricultural work as their principal employment (where they received their primary source of income) for a minimum of four (4) years prior to intake.

Multiple Barriers to Employment—Any adult or youth who has three or more of the following barriers to employment:

Interstate Migrant
School Dropout
Limited English Language Proficiency
Handicapped/Disabled Individual

Offender—The term "offender" is defined as any adult or youth who requires assistance in overcoming barriers to employment resulting from a record of arrest or conviction (excluding misdemeanors).

Reading Skills Below 7th Grade Level

Math Skills Below 7th Grade Level—An adult or youth assessed as having mathematical/computational skills below the 7th grade level on a generally accepted standardized test.

Lacks Significant Work History—An adult or youth who had not worked for the same nonagricultural employer for longer than three consecutive months in the two years prior to JTPA eligibility determination. A suggested approach for obtaining information on whether a participant lacks a significant work history: To the participant, "Think back over the past two years about full-time and part-time jobs you have had. Which employers did you work for during this period? How long did you work for Employer A, for Employer B, for Employer C, etc.?"

Long-Term Agricultural Employment

Substance Abuse—An individual who has an alcohol and/or other drug problem which for such an individual constitutes or results in a substantial barrier to employment. Grantees are responsible for developing criteria for identifying those individuals considered to be substance abusers in their programs.

Pregnant/Parenting Teen—A female age 19 and under who either is pregnant or the mother of a child, or a male age 19 and under who is the father of a child.

Lacks Transportation—An individual who lacks access to adequate public and adequate/reasonable private transportation services, resulting in a barrier to receiving training or accepting employment requiring travel to and from work.

Note: Offender, Math Skills Below the 7th Grade Level, Lacks Significant Work History, Substance Abuse, Pregnant/Parenting Teen, and Lacks Transportation will not be collected as separate line items on the FASR. Individuals determined to have these barriers, in addition to the FASR line item barriers, may be included on the multiple barriers line.

Labor Force Status

Line 26 *Unemployed.* Enter by column the total number of terminees who were unemployed at time of eligibility determination for grantee's section 402 program.

Unemployed—An individual who did not work during the 7 consecutive days prior to application for a JTPA program, who made specific efforts to find a job within the past 4 weeks prior to application, and who was available for work during the 7 consecutive days prior to application (except for temporary illness).

Public Assistance Information

Line 27 *Public Assistance Recipient.* Enter by column the total number of terminees for whom the following public assistance classifications apply.

Public Assistance Recipient—An individual who, at the time of JTPA eligibility determination, was listed on the welfare grant and was receiving cash payments from a means-tested, income transfer program or receiving Food Stamps. The income transfer programs include AFDC (SSA Title IV), General Assistance (State or local government), Refugee Assistance (Pub. L. 96–212), and SSI (SSA Title XVI).

Veteran Status

Line 28 *Veteran (Total).*

Line 29 *Veteran (Vietnam Era).* Enter by column the total number of terminees for whom each of the above Veteran classifications apply. Line 29 is a subbreakout for a specific group included in Line 28.

Veteran—A person who served on active duty in the military, naval, or air service (of the U.S.) for a period of more than 180 days and who was discharged or released therefrom with other than a dishonorable discharge or was discharged or released from active duty because of a service-connected disability. (38 U.S.C. 2011(4)).

Note: The term "active" means full-time duty in the Armed Forces, other than duty for training in the reserves or National Guard. Any period of duty for training in the reserves or National Guard, including authorized travel, during which an individual was disabled from a disease or injury incurred or aggravated in the line of duty, is considered "active" duty. The term "active" is further defined at (38 U.S.C. 101).

Disabled Veteran—A veteran who is entitled to compensation under laws administered by the Veterans' Administration, or an individual who was discharged or released from active duty because of a service-connected disability.

Vietnam-Era Veteran—A veteran, any part of whose active military, naval, or air service occurred between August 5, 1964 and May 7, 1975.

Training Information

Line 30 *Average Hours in All Training.* Enter by column for all terminees the average number of hours in all training (JTPA and non-JTPA) from the start date of his/her participation in that training until his/her last receipt of that training. Repeat for any additional training activity. Sum all the terminees' hours of training and divide the result by the number of terminees, as entered in Section IV, Line 1, Columns (A) through (C) as appropriate.

Note: Terminees who have received any training activity funded under a cooperative agreement with: (1) Other JTPA monies or (2) other than JTPA funds may be counted in this line, PROVIDED SUCH TRAINING WAS FOR THE COMPLETION OF THE INITIALLY DETERMINED TRAINING OBJECTIVE, and the participant is concurrently enrolled in JTPA at the same time she/he enrolled in the other training program.

Line 31 *Average Hours in Section 402 Training.* Enter by column for all terminees the average hours in only JTPA section 402 program funded training activities from the start date of his/her participation in that training until his/her last receipt of that training. Repeat for any additional section 402 funded training activity. Sum all the terminees' hours of section 402 funded training and divide the result by the number of terminees, as entered in Section IV, Line 1, Columns (A) through (C) as appropriate.

Note: The following definition of training is to be used for Line items 30 and 31. This definition of training is not to be used for the training cost category in Section IV of the

FASR, or the Farmworker Budget Information Summary and Financial Status Report.

Training Activities

Remedial education and basic skills training
Literacy and bilingual training
Institutional skill training
Classroom training
Occupational skills training
On-the-job training
On-site industry-specific training
Customized training
Education-to-work transition training
Pre-apprenticeship training
Upgrading and retraining
Vocational explorational training
Work experience training/Tryout employment
Training to develop marketable work habits
Coordinated training programs with other Federal employment-related activities

Exclude the following services (unless these services are included as part of the training activities listed above):

Supportive services
Outreach and intake
Orientation
Assessment
Testing
Job or career counseling
Job club activities
Job search assistance
Job placement assistance

Line 32 *Average Earnings (52 Weeks Preprogram).* Enter the amount of earnings in the immediate 52-weeks prior to application, summed for all terminees who entered unsubsidized employment at termination, divided by the number of such terminees, as entered in Section IV, Line 1, Column (A).

Line 33 *Average Hourly Wage at Termination.* Enter by column the average hourly wage at termination summed for all terminees who entered unsubsidized employment at termination, divided by the number of such terminees, as entered in Section IV.A., Line 1, Column (A).

Note: Hourly wage includes any bonuses, tips, gratuities and commissions earned.

IV.A., Line 1, Column (A). Note: Hourly wage includes any bonuses, tips, gratuities and commissions earned.

Section V—Total Program Costs and Available Funds (Report in Whole Dollars ONLY)

This section represents the total actual accrued expenditures for the grantee's program, through the end of the reporting period, for *all* participants served. This section updates the information reported on the Farmworker Financial Status Report (FFSR) for the third quarter.

Note: Entries will be made to the nearest whole dollar. Section 402 program FSAR expenditure data will be reported on an accrual basis. A grantee whose records are not maintained on an accrual basis may develop accrual data for reports on the basis of an analysis of the documentation on hand (29 CFR 70-207-2(a)).

Accrued Expenditures—The allowable charges incurred during the program year to date requiring provision of funds for: (1) goods and other tangible property received; and (2) costs of services performed by employees, contractors, subrecipients, and other payees.

Note: These charges do not include "resources on order", i.e., amounts for contracts, purchase orders and other obligations for which goods and/or services have not been received.

Column Headings. Column (A) *Total.* This column contains totals for each cost category. Subtotals in Columns (B) through (D) should equal entries in Column (A).

Distribute the entries for Columns (B) through (D), Lines 34 through 40 by the appropriate cost category. (Refer to 20 CFR 633.304) The sum of Columns (B) through (D) are totaled in Column (A) for a given line.

Entries in Column (B) contain the accrued Training expenditures associated with the activity, from the beginning through the end of the program year for all participants served. Entries in Column (C) contain the accrued Training-Related Supportive Service expenditures associated with the activity, from the beginning through the end of the program year for all participants served. The entry in Column (D) contains the accrued Non-Training-Related Supportive Service expenditures (also called Services ONLY expenditures) associated with the activity, from the beginning through the end of the program year for all Services ONLY participants served.

Accrued expenditures are the actual disbursements (payments other than advances) plus invoices on hand and other projected payments for goods or services received (for which invoices have/have not been received); and salaries and related benefits (earned but not paid) for the days between the beginning of the progam year and the end of the reporting period.

Line Items

Line 34. *Classroom Training* (Includes Occupational and Basic Skills Training). Enter the accrued expenditures to date for Classroom Training programs conducted by the grantee and its agents. Accrued expenditures for Classroom Training should include the cost of any Classroom Training conducted directly by the grantee or included in a Classroom Training contract or subgrant, such as:

(a) The cost of compensation paid to participants for time spent in Classroom Training (i.e. allowances). Wages and fringe benefits may be paid to Classroom Training participants as specified at 20 CFR 633.304(c)(2)(ii) and should be treated as allowances and included in the Training cost category;

(b) The cost of Training Assistance provided to individuals prior to, during, or after participation in Classroom Training, which should be included in the Training cost category;

(c) The cost of any supportive services to Classroom Training participants, which should be included in the Training-Related Supportive Services cost category.

Basic Education Skills—Training that includes, but is not limited to remedial reading, writing, communication, mathematics and/or English for non-English speakers.

Job Skills Training—Training that includes: vocational education which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs.

Line 35. *On-the-Job Training.* Enter the accrued expenditures to date for On-the-Job Training programs conducted by the grantee and its agents. Accrued expenditures for On-the-Job Training should include the cost of any On-the-Job Training conducted directly by the grantee or included in an On-the-Job Training contract or subgrant, such as:

(a) The cost of reimbursement to employers for the extraordinary costs associated with training On-the-Job participants, which should be included in the Training cost category;

(b) The cost of Training Assistance provided to individuals prior to, during, or after participation in On-the-Job Training, which should be included in the Training cost category;

(c) The cost of any supportive services to On-the-Job Training participants, which should be included in the Training-Related Supportive Services cost category.

Line 36. *Work Experience and Tryout Employment.*

Enter the accrued expenditures to date for Work Experience and/or Tryout Employment programs conducted by the grantee and its agents. Accrued expenditures for Work Experience and/or Tryout Employment should include the cost of any Work Experience and/or Tryout Employment conducted directly by the grantee or included in a Work Experience and/or Tryout Employment contract or subgrant, such as:

(a) The cost of compensation paid to participants or time spent in Work Experience and/or Tryout Employment. Such wages and fringe benefits may be paid to Work Experience and/or Tryout Employment participants as specified at 20 CFR 633.304(c)(2)(ii) and should be included in the Training cost category;

(b) The cost of Training Assistance provided to individuals prior to, during, or after participation in Work Experience and/or Tryout Employment, which also should be included in the Training cost category;

(c) The cost of any supportive services to Work Experience and/or Tryout Employment participants, which should be included in the Training-Related Supportive Services cost category.

Line 37. *Training Assistance.*

Enter the accrued expenditures to date for Training Assistance programs conducted by the grantee and its agents for participants who are not enrolled in any other activity. Accrued expenditures for Training Assistance should include, but not be limited to costs for:

Training Assistance—Includes, but is not limited to:

(a) Training Assistance to Applicants
(1) Outreach
(2) Intake
(3) Screening for eligibility determination
(b) Training Assistance to Participants
(1) Orientation to the world of work
(2) Job-related counseling and assessment
(3) Employability assessment (other than that performed during intake)
(4) Job development
(5) Job search assistance
(6) Job referral and placement
(7) Vocational Exploration Programs
(c) The cost of any supportive services to Training Assistance participants, which should be included in the Training-Related Supportive Services cost category.

Line 38. *Direct Entered Unsubsidized Employment.*

These expenditures are a sub-breakout of expenditures reported on Line 37. Accrued expenditures should include the cost for the program to date for participants who entered unsubsidized employment during the program year after receiving only Training Assistance services, such as:

Training Assistance—Includes, but is not limited to:

(a) Training Assistance to Applicants
(1) Outreach
(2) Intake
(3) Screening for eligibility determination
(b) Training Assistance to Participants
(1) Orientation to the world of work
(2) Job-related counseling and assessment
(3) Employability assessment (other than that performed during intake)
(4) Job development
(5) Job search assistance
(6) Job referral and placement
(7) Vocational Exploration Programs
(c) The cost of any supportive services to Training Assistance participants, which should be included in the Training-Related Supportive Services cost category.

Note: Direct entries into unsubsidized employment can be reported only when the grantee verifies from a reliable source, preferably the employer, that the participant has become employed.

Direct entry into unsubsidized employment includes those terminees who establish their own business and become self-employed following participation in Training Assistance activities designed to achieve this result. A person is to be considered self-employed if s/he has established a business which meets, at a minimum, the definition contained in IRS Publication No. 334, Tax Guide for Small Businesses, Part I (i.e., A business is an activity entered into for the purpose of making a profit. Two characteristic elements of a business are: regularity of activities and transactions, and the production of income.) Where a state or local statute contains stricter requirements for determining the existence of a business, that statute should be followed.

Line 39. *Services ONLY* (No Referrals to Employment).

Enter the accrued expenditures in both Columns (A) and (D) for the program to date for Non-Training Related Supportive Services (also called Services ONLY) which:

(a) Involve no training or subsidized employment;

(b) Are provided to participants who are not in any training or Training Assistance activities;

(c) Are provided to participants who have not been referred to unsubsidized employment;

(d) Include, but are not limited to such services as:

(1) Health care
(2) Meals and other nutritional assistance
(3) Residential support, including temporary shelter
(4) Legal, financial and personal counseling
(5) Child care
(6) Relocation assistance
(7) Transportation and commuting assistance
(8) Emergency assistance

Line 40. *Administration.*

Enter the accrued expenditures for administrative costs as identified in the regulations (20 CFR 633.304(c)(1)). Administrative costs consist of all direct and pro-rated costs associated with the management of a grantee's program. This includes subgrantee and contractor direct and pro-rated administrative costs.

Line 41. *Total.*

Enter the sum of Column (A) Lines 34, 35, 36, 37, 38 and 40. Exclude Line 38, Column (A) from this total.

Line 42. *Total Available Funds.*

Enter the amount of total Federal funds available. The entry for Line 42 is the sum of the entries for Lines 43 and 44.

Line 43. *Carry-In Funds.*

Enter the amount of funds granted by the Employment and Training Administration during the program year preceding the report period which have not been charged as an accrued expenditure. The grantee's section 402 funds contained on this item will consist of (1) amounts the grantee has not yet legally committed and (2) unliquidated obligations, and these are assumed to be available for accrued expenditures during the program year covered by this report.

Note: For purposes of this section an unliquidated obligation is an order or other legal commitment of funds for goods/services *not yet received.*

Line 44. *New Obligational Authority.*

Enter the amount of funds granted by the Employment and Training Administration for operation of the grantee's program under this JPTA title for the program year of this report.

Section VI—Participation in Program Activities

This section contains entries for the total number of Section 402 program participants by specific program activity for the reporting period. This section updates the information reported in Section II of the Farmworker Program Status Summary for the third quarter.

Line 45. *Classroom Training*
Line 46. *On-the-Job Training*
Line 47. *Work Experience/Tryout Employment*
Line 48. *Training Assistance*
Line 49. *Services ONLY (No Referrals to Employment)*

Enter by column the total number of terminees who participated in *each* of the above activities for the program year. A participant should be included in as many line items as appropriate, but

should be counted only once for each line.

Section VII—Follow-up Information on Those Employed at Termination

Section VII displays information based on follow-up data which must be collected through contact with the initial employer, or if the information is unavailable from the employer, through direct participation contact. Information is being sought on the individual's labor force status, hourly wages and fringe benefits, if any, during the 13th full calendar week after termination. Follow-up data will be collected for terminees who entered unsubsidized employment (the follow-up group) during the last quarter of the prior program year and the first three quarters of the current program year of this report.

Note: For FY 1991 only, follow-up data will begin for those eligible individuals who terminate after June 30, 1991.

Follow-Up Information will be collected only for participants who entered unsubsidized employment at termination.

In order to ensure consistency of data collection and to guarantee the quality of the follow-up information, follow-up procedures must satisfy certain minimum criteria. (See the Follow-up Guidelines included in these FASR instructions, Appendix A.)

Note: Every precaution must be taken to prevent a "response bias" which could arise because the outcomes of those with valid responses are different from those of nonrespondents. Therefore, the number who are employed must be adjusted for nonresponse bias. This adjustment is included in the FASR at Lines 51 through 57.

Line 50. *Terminees Entering Unsubsidized Employment at Termination.*

Enter the total number of participants who were eligible for follow-up.

Note: This entry is the sum of the eligible terminees from the last quarter of the previous program year plus those from the first three quarters of the program year covered by this report.

Line 51. *Employment Confirmed by Employer.*

Enter the total number of terminees who were confirmed by the employer as being employed during the 13th full calendar week after termination.

Line 52. *Direct Contacts Attempted* (Line 50 minus 51).

Enter the difference between Line 50 and Line 51. This entry reflects the total number of terminees that grantees must attempt to contact directly.

Line 53 *Number of Direct Attempts Contacted.*

Enter the total number of terminees that grantees were able to contact directly.

Line 54 *Number of direct Contacts Employed.*

Enter the total number of terminees who were contacted directly and employed during the 13th full calendar week after termination.

Line 55 *Total Employed at Follow-up.*

Enter the total estimated number of terminees who were employed at termination that were employed during the 13th full calendar week after termination. Multiply the number of direct contacts attempted (Line 52) by the number of direct contacts employed (Line 54). Divide the product by the number of direct attempts contacted (Line 53). Round to the nearest whole number. Add the number of those employed who were confirmed by the employer (Line 51).

Note: This entry combines those terminees found to be employed and others estimated to be employed 13 weeks after termination from the program. (An assumption is made that those who could not be contacted are employed at the same rate as those terminees who were contacted directly.)

Line 56 *Average Hourly Wage at Follow-up.*

Enter the average hourly wage of those employed at follow-up.

Enter the average hourly wage for all those employed at follow-up. Respondents not employed at follow-up are not included in this average. To calculate this entry: Sum the hourly wage for all those employed during the 13th full calendar week after termination. Divide the result by the number of employed at follow-up shown in Lines 51 and 54.

Note: Hourly wage includes any bonuses, tips, gratuities and commissions earned.

Line 57 *Total Employed with Fringe Benefits.*

Enter the total number employed at follow-up who were in jobs where the following fringe benefits were provided employees: FICA, social security and health or medical benefits.

Attachment A

Follow-up Guidelines

To ensure consistent data collection and accurate information procedures used to obtain follow-up information must satisfy the following criteria:

- The employer with whom the terminee was employed at termination must be contacted first to ascertain whether the terminee is still employed there.
- Terminees are to be contacted directly to ascertain follow-up employment status only if the employer indicated that the terminee is no longer employed there or if the employer refused to cooperate or could not be located.
- Respondents (whether employers or terminees) should be contacted by telephone or in person. Mail questionnaires may be used in those cases where an individual does not have a telephone or cannot be reached.
- Respondents are to be contacted in the 13th full calendar week after termination or as soon as possible thereafter, but no later than the 17th calendar week after termination.
- Regardless of when contact is made, data reported are to reflect the terminee's labor force status, wages, and receipt of fringe benefits during the 13th full calendar week after termination.
- Interview questions developed by DOL (see the following Exhibit) must be used to determine the follow-up information recorded on the ASR. Respondents must be told that responding is voluntary and that information provided by them will be kept confidential. The grantee may develop an appropriate lead-in to the follow-up survey. Other questions also may be included in the interview. Additional questions may precede DOL questions, but additional questions related to employment and wages can be asked only if they follow the DOL items.
- Attempts must be made to contact all employers with whom terminees were placed at termination and all terminees whose employers indicated they were no longer employed there. Multiple attempts at contact may be necessary.
- Minimum overall response rates of 70% are required. A valid response is needed from a minimum of 50 percent of those whose employment is not confirmed by the employer. The response rate is calculated as the number of terminees with valid responses divided by the total number of terminees eligible for follow-up. A valid response occurs if:

—The employer the terminee was with at termination indicated that the terminee was still employed there, or
—The employer did not confirm employment but the terminee was contacted directly, and
—Complete follow-up information was obtained.

Minimum Postprogram Data Collection Questions

Questions to be used if employer is the respondent:

(Alternative wording in brackets or words separated by slashes may apply depending on whether the questionnaire is being conducted during the 13th week or sometime thereafter).

1a. I want to ask you about the week starting on Sunday, _____, and ending on Saturday, _____, which was [last week/two/three/four weeks] ago. Was RESPONDENT NAME employed by you during that week?

_____ Yes (Go to question 2)
_____ No (Go to End)

or, if the 13th week is the current week, ask instead,

1b. Is RESPONDENT NAME employed by you?

_____ Yes (Go to question 2)
_____ No (Go to End)

2. How much did/does he/she get paid per hour? Please include wages, tips, bonuses and commissions.

_____ dollars per hour

3. How many hours did/does he/she work per week?

_____ hours per week

4a. Are/were health insurance benefits made available to him/her?

_____ Yes (Go to question 5a)
_____ No (Go to question 4b)

4b. Will health insurance benefits be made available once his/her probation period ends?

_____ Yes (Go to question 5a)
_____ No (Go to question 5a)

5a. Were/are deductions to his/her weekly earnings made for contributions to FICA, or Social Security?

_____ Yes (Go to End)
_____ No (Go to question 5b)

5b. Does he/she participate in an employer-sponsored pension plan?

_____ Yes
_____ No

Questions to be used if terminee is the respondent:

(Alternative wording in brackets or words separated by slashes may apply depending on whether the questionnaire is being conducted during the 13th week or sometime thereafter).

1a. I want to ask you about the week starting on Sunday, _____, and ending on Saturday, _____, which was [last week/two/three/four weeks] ago. Were you employed during that week?

_____ Yes (Go to question 2)
_____ No (Go to End)

Or, if the 13th week is the current week, ask:

1b. Are you currently employed?

_____ Yes (Go to question 2)
_____ No (Go to End)

2. How much did you get paid per hour? Please include wages, tips, bonuses and commissions.

_____ dollars per hour

3. How many hours did you work per week?

_____ hours per week

4a. Are/were health insurance benefits made available to you?

_____ Yes (Go to question 5a)
_____ No (Go to question 4b)
_____ Don't know (Go to question 4b)

4b. Will health insurance benefits be made available once your probation period ends?

_____ Yes (Go to question 5a)
_____ No (Go to question 5a)
_____ Don't know (Go to question 5a)

5a. Were/are deductions to your weekly earnings made for contributions to FICA, or Social Security?

_____ Yes (Go to End)
_____ No (Go to question 5b)
_____ Don't know (Go to question 5b)

5b. Do you participate in an employer-sponsored pension plan?

_____ Yes
_____ No
_____ Don't know

Correcting for Nonresponse Bias

Allowing responses from both employers and participants can give rise to nonresponse bias in follow-up employment rates, because employers can tell you if a terminee is no longer working for them but not whether the terminee might have found a job elsewhere. In this sense, employers can only confirm employment, but cannot disconfirm it.

To correct for this potential bias, follow-up employment rates are calculated by assuming that nonrespondents (i.e., those without valid responses, as defined above) have the same employment rate as terminees who are no longer working with the employer they were with at termination but who were contacted directly and gave responses to the follow-up questions.

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Part III

Department of Housing and Urban Development

Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 968
Public and Indian Housing
Comprehensive Grant Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 968

[Docket No. R-91-1591; FR-2860-P-01]

Public and Indian Housing Comprehensive Grant Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend 24 CFR parts 905 and 968 to establish the new Comprehensive Grant program for public housing agencies (PHAs) and Indian Housing Authorities (IHAs) that own or operate 500 or more public or Indian housing units. The Comprehensive Grant program, which would allocate modernization funds on the basis of a formula, is designed to provide larger housing authorities with greater discretion in the planning and implementation of modernization activities. The rule would also revise the existing Comprehensive Improvement Assistance program (CIAP program) to limit its applicability to PHAs and IHAs that own or operate fewer than 500 public or Indian housing units.

The rule would also implement: (1) Section 509 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) ("the NAHA") which establishes the formula process for allocating modernization funds under the Comprehensive Grant program; (2) section 509(e) of the NAHA which, beginning with funding for FFY 1993, reduces the threshold for participation in the Comprehensive Grant program from 500 or more public or Indian housing units to 250 or more units. Also beginning in FFY 1993, the ceiling for participation in the CIAP program would be reduced from fewer than 500 public or Indian housing units to fewer than 250 units. Because the Department considers section 509(e) to be a self-executing provision, it intends to implement this section in the course of this rulemaking, for effect in FFY 1993; (3) section 516 of the NAHA which provides for the one-time comprehensive modernization of Mutual Help homeownership units under both the CIAP and Comprehensive Grant programs; and (4) various technical and conforming amendments contained in the NAHA.

DATES: Comments must be received by June 25, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours (weekdays 7:30 a.m. to 5:30 p.m.) at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk at voice, (202) 708-2084, or TDD (202) 708-3259. None of the telephone numbers listed in this paragraph is toll-free.

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Public and Indian Housing, Department of Housing and Urban Development, room 4122, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-1800.

Indian housing authorities may contact Don Nessi, Director, Office of Indian Housing, Public and Indian Housing, Department of Housing and Urban Development, room 4230, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-1015.

Hearing or speech impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The Department has submitted this proposed rule to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. The OMB control number, when assigned, will be announced by separate document in the Federal Register.

The Comprehensive Grant program will significantly reduce the information collection requirements currently imposed under the CIAP program on larger PHAs and IHAs (the Department estimates the reduction in paperwork burden to be approximately 18,000 hours). This is because the rule consolidates into a few primary documents all of the information collection requirements required under this ongoing modernization program (e.g., the comprehensive plan, annual statement, performance and evaluation report), in contrast to the more elaborate paperwork requirements imposed under the annual CIAP competition.

In addition, HUD has carefully scrutinized the requirements established under the Comprehensive Grant program, with a view toward minimizing the paperwork burden on larger PHAs and IHAs. Specifically, with respect to HUD's monitoring under the CGP program of a PHA's management performance (as determined under the Public Housing Management Assessment program at 24 CFR part 901) ("PHMAP"), the Department decided to permit a PHA to simply include in its CGP action plan a cross-reference to the tasks it intends to carry out under the PHA's improvement plan or Memorandum of Agreement under PHMAP. In this manner, a PHA would not have to restate under both the PHMAP and the CGP programs the identical tasks it intends to carry out to correct its management deficiencies. Similar efforts were made throughout this proposed rule to minimize the paperwork burden on PHAs and IHAs.

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Findings and Certifications. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The information collection requirements pertaining to the Performance and evaluation report shall be submitted to OMB at a later date, and public comment will be requested on these requirements.

II. Background

Section 14 of the U.S. Housing Act of 1937 (42 U.S.C. 1437l) ("the Act") established the Department's current public housing modernization program: the Comprehensive Improvement Assistance Program (CIAP program). The CIAP program was designed to improve the physical condition of existing public housing projects, and to upgrade the management and operation of these projects to ensure that the projects continue to be available to serve low income families. The Department promulgated regulations for the CIAP program at 24 CFR part 968, and these regulations have governed the modernization of all public housing assisted under the Act.

(The reader should note that, for ease of discussion, the preamble to this proposed rule uses the terms "public housing" to mean both public and Indian housing, and "PHA" or "public housing agency," to mean both PHAs and IHAs, unless otherwise stated.)

On February 5, 1988, the Housing and Community Development Act of 1987 (Pub. L. 100-242) ("1987 Act") was enacted, and contained a provision which significantly revised the public housing modernization program. Section 119 of the 1987 Act established the new Comprehensive Grant program (CGP) which was designed to govern the modernization needs of PHAs that owned or operated 500 or more public housing units. In addition, section 119 amended the CIAP program to limit its applicability only to PHAs that owned or operated fewer than 500 public housing units.

(Beginning with funding for FFY 1993, the statutory threshold for participation in the CGP program will be reduced from 500 or more public housing units to 250 or more units. In the CIAP program, the ceiling for participation will be reduced from fewer than 500 public housing units to fewer than 250 units. For a more detailed discussion of these changes, see Section VII of this preamble.)

The Department published a proposed rule on October 27, 1988 (53 FR 43048) to implement the amendments contained in section 119 of the 1987 Act, and also to propose changes to the CIAP program which were intended to simplify and streamline the program. Specifically, the proposed rule would have: (1) Renamed part 968 as "Public Housing Modernization," and reorganized it by establishing a subpart A, containing generally applicable provisions; (2) established under subpart B the existing CIAP program, as revised by the proposed streamlining provisions, and limiting its applicability to PHAs that owned or operated fewer than 500 public housing units; and (3) established a new Subpart C, setting forth the new Comprehensive Grant program for PHAs that owned or operated 500 or more public housing units.

HUD has not published a final rule to implement most of these proposed amendments because of language contained in section 14(k)(1) of the Act, which directed HUD to fund public housing modernization "in substantial accordance with the allocation method in effect on the date of enactment of the [1987 Act], "(*i.e.*, to continue funding modernization activities using the CIAP allocation method). The Department was required to use the CIAP allocation method until such time as Congress established a revised method for allocating modernization assistance under section 14(k)(1).

Accordingly, the Department published a final rule on December 21, 1989 (54 FR 52666) which implemented only those provisions of HUD's October, 1988 proposed rule that pertained to the streamlined CIAP application process, and to the reorganization of part 968 into a subpart A (with generally applicable provisions), and subpart B (containing the revised CIAP provisions). The final rule did not contain any provisions relating to the Comprehensive Grant program, since Congress had not yet enacted a law governing the funds allocation process for that program. Thus, the CIAP program remained HUD's sole vehicle for providing modernization funds to PHAs of all sizes.

(The Department subsequently incorporated the streamlined CIAP program into its consolidated rulemaking for the Indian housing program (see the interim rule published on June 18, 1990 at 55 FR 24722). As a result, the Indian Housing program has its own freestanding CIAP regulations at 24 CFR part 905, subpart I.)

On November 28, 1990, President Bush signed into law the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625) ("the NAHA"). Section 509 of the NAHA established a formula allocation method for the Comprehensive Grant program, which HUD is required to implement following notice and comment rulemaking.

In this proposed rule, the Department has decided to republish, with modifications, the program requirements for the Comprehensive Grant program which were contained in its October 27, 1988 proposed rule, as well as the formula allocation process contained in section 509 of the NAHA. In this manner, HUD intends to provide the public with an additional opportunity to comment on the CGP program requirements, and also to review it in its entirety.

For purposes of FFY 1991 funding, PHAs will continue to receive modernization funds under the CIAP program. However, to ease the transition from the CIAP program to the Comprehensive Grant program, HUD will permit PHAs to adapt their comprehensive plans for modernization (CPMs) under CIAP for use in the Comprehensive Grant program. By adapting its CPM, a PHA would not need to undertake entirely new assessments of its physical and management needs, but would rather update the existing assessments. In any event, the PHA's submission for the FFY 1992 Comprehensive Grant program would have to contain the other items required by § 905.672 or § 968.320, as well as additional information that may be required by HUD in accordance with the CGP program handbook.

III. Program Objectives

The Comprehensive Grant program has two basic objectives for PHAs that own or operate 500 or more public housing units (250 or more units beginning in FFY 1993):

(1) To provide greater discretion to PHAs in carrying out their modernization programs, thereby returning it to local control; and

(2) To establish reliable funding for capital improvements through the use of formula funding for the annual accrual of capital improvement needs and for current needs.

Under the program, larger PHAs receive capital improvement funds by a formula allocation method, instead of the current competitive, discretionary CIAP program in which HUD decides which projects are to be funded by setting priorities, establishing a ranking system, and reviewing and approving individual applications. The program provides PHAs with much greater discretion in planning and carrying out modernization of their public housing projects.

This revised proposed rule would:

(1) Amend the CIAP program at 24 CFR part 968, subpart B, so as to limit its applicability to PHAs that own or operate fewer than 500 public housing units (fewer than 250 units beginning in FFY 1993);

(2) Add a new subpart C to part 968, which would set forth the new Comprehensive Grant program for PHAs that own or operate a total of 500 or more public housing units (250 or more units beginning in FFY 1993); and

(3) Revise both the CIAP and Comprehensive Grant programs for purposes of implementing various technical and substantive program

amendments contained in sections 509 (b) through (f) of the NAHA.

In the Indian Housing program, the proposed rule would rename part 905, subpart I, as "Modernization;" and reorganize subpart I into three undesignated headings:

(1) The first heading would contain provisions which would be generally applicable to both CIAP and Comprehensive Grant modernization under part 905, subpart I;

(2) The second heading would contain the streamlined CIAP requirements, with modifications to limit its applicability only to IHAs that own or operate fewer than 250 units beginning in FFY 1993);

(3) The third heading would add the new Comprehensive Grant program for IHAs that own or operate 500 or more Indian housing units (250 or more units beginning in FFY 1993); and

(4) In addition, the rule would revise both the CIAP and Comprehensive Grant programs under Subpart I for purposes of implementing various technical and substantive program amendments contained in sections 509 (b) through (f) of the NAHA, as well as section 516 of the NAHA which provides for the comprehensive modernization of a Mutual Help unit using a single CIAP or CGP grant.

(The Department currently is reviewing public comments that it has received on the interim Indian Housing rule published on June 18, 1990 (55 FR 24722). Since several of these comments pertain to the CIAP program under subpart I of part 905, it is conceivable that some of the CIAP provisions included in this proposed rule may be affected by that separate rulemaking.)

The following schedule specifies the location of parallel provisions, contained in parts 905 and 968, for the Public Housing and Indian Housing Modernization programs:

Location in part 968	Section heading	Location in part 905 (subpart I)
Subpart A	General	
§ 968.101	Purpose and applicability.	§ 905.600
968.103	Allocation of funds under Section 14.	905.601
968.105	Definitions	905.102
968.110	Other program requirements.	905.120
968.115	Modernization and energy conservation standards.	905.603
968.120	Preemption of State prevailing wage requirements.	905.120
Subpart B	Comprehensive Improvement Assistance Program (For PHAs that own or operate fewer than 500 public housing units).	
968.201	Purpose	§ 905.600
968.203	Definitions	905.102
968.205	Eligible costs	905.615
968.210	Procedures for obtaining approval of a modernization program.	905.618
968.215	Modernization project	905.621
968.220	Resident participation	905.624
968.225	Homebuyer participation.	905.627
968.230	Special requirements for homeownership projects.	905.630
968.235	Special requirements for section 23 leased housing bond-financed projects.	905.633
968.236	Additional limitations for special purpose modernization.	905.636
968.240	Contracting requirements.	905.639
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968.246	Progress reporting	905.645
968.250	Budget revisions	905.648
968.251	On-site inspections	905.651
968.255	Fiscal closeout of a modernization program.	905.654
Subpart C	Comprehensive Grant Program (For PHAs that own or operate 500 or more public housing units).	
968.301	Purpose	905.660
968.305	Definitions	905.102
968.310	Eligible costs	905.666
968.312	Reserve for disasters and emergencies [non-formula].	905.667
968.315	Allocation of assistance [formula] [for troubled and non-troubled PHAs].	905.669
968.318	Modernization strategy	905.670
968.320	Comprehensive plans	905.672
968.325	HUD review and approval of comprehensive plan.	905.675
968.330	Annual statement of activities and expenditures.	905.678
968.335	Conduct of modernization activities.	905.681
968.340	PHA performance and evaluation report.	905.684
968.345	HUD review of PHA performance.	905.687

IV. Program Implementation

In administering the Comprehensive Grant program, HUD is required by section 14(e)(4)(D) of the Act to respect, to the greatest extent possible, the professional judgment of a PHA's administrators. HUD strongly supports this statutory mandate and has made every effort in this proposed rule to provide PHAs with maximum discretion and flexibility in planning and carrying out their modernization strategies under the CGP program.

Yet while HUD firmly believes that a PHA is the key factor in the modernization process, it also believes that the residents of public housing, as well as the community and its political leadership, share in that responsibility and must be involved in planning and establishing priorities for a PHA's modernization program.

For this reason, HUD is proposing that residents of public housing, and the local community, be provided with ample opportunity to participate, not only during the upfront development of a PHA's modernization strategy, but throughout the ongoing implementation of that strategy. In this manner, the Department hopes to foster a local partnership between a PHA, its public housing residents, and the local community, which can jointly carry out the objectives and priorities established in a PHA's modernization strategy.

a. Modernization Strategy

Consistent with this view, the Department would require each PHA to develop an overall "modernization strategy" for all of its public housing projects. This modernization strategy would consist of the following components of a PHA's comprehensive plan:

(1) An Executive Summary (§§ 905.672(c)(1) and 968.320(c)(1));

(2) The physical and management needs assessments, and related requirements under the comprehensive plan (§§ 905.672(c)(2), (c)(3), (c)(4), (c)(6), (c)(7) and (c)(8), and analogous provisions under § 968.320);

(3) The five-year action plan (§§ 905.672(c)(5) and 968.320(c)(5)); and

(4) The annual statement (§§ 905.678 and 968.330).

1. Comprehensive Plan

The Comprehensive plan is the focal point of a PHA's modernization strategy, and provides a thorough analysis of the physical and management improvement needs which are needed to bring a PHA's projects, including its "high need projects" [1] up to:

[1] Under the Comprehensive Grant program, HUD is defining a "high need project" to mean a project with either:

(1) High vacancy rates (i.e., 15 percent or more vacant units, excluding units which have been approved by HUD for demolition or disposition, or

Continued

(1) The modernization and energy conservation standards under section 14(e)(1)(A)(ii) of the Act; and

(2) The management performance indicators/ standards under the Public Housing Management Assessment program (PHMAP) at 24 CFR part 901 which address all of the prescribed management and operation areas under section 14(e)(1)(B) of the Act.

The plan must include estimates of the cost of these improvements, and establish general strategies for addressing identified needs. In addition, the comprehensive plan must highlight any special strategies, such as major redesign or partial demolition of a project, which are necessary to ensure the long-term physical and social viability of the projects.

With respect to Indian Housing Authorities (IHAs), HUD is providing that the comprehensive plan must specify the physical and management improvement needs which are necessary to bring the IHA's projects: (1) Up to the modernization and energy conservation standards under section 14(e)(1)(A)(ii) of the Act; and (2) in compliance with prescribed statutory, regulatory and contractual requirements for management and operations areas identified under section 14(e)(1)(B) of the Act, as identified or determined in accordance with 24 CFR 905.135, the Administrative Capabilities Assessment (ACA), and the Field Office Monitoring of Indian Housing Authorities Handbook (HUD 7440.3, issued May, 1989). HUD is not utilizing the PHMAP for purposes of assessing an IHA's management and operation needs since section 527 of the NAHA expressly excludes IHAs from its coverage.

Since the comprehensive plan is not linked to the availability of funds, it presents all of the physical and management improvements that a PHA believes must be undertaken to meet these statutory standards. Thus, the comprehensive plan establishes a PHA's overall modernization needs, which must then be used by the PHA as the basis for planning its modernization improvements under the five-year action plan. All PHAs participating in formula funding under the Comprehensive Grant program must have an approved comprehensive plan before they can draw down funds from their formula allocations (except for emergencies).

To ensure that a PHA's modernization strategy remains up-to-date, a PHA must submit to HUD (in addition to annual amendments to its comprehensive plan), a reassessment of its comprehensive plan at least once every five years to ensure that the identification of the PHA's physical and management needs is current. The PHA would be required to re-apply both the "reasonable cost test" and the "viability review," which are discussed below, to the revised needs assessments. The reassessment of a PHA's comprehensive plan must be submitted at the time a PHA submits its annual statement.

The comprehensive plan consists of several components, which are identified and discussed below:

(i) *Executive summary.* (See §§ 905.672(c)(1); 968.320(c)(1).)

HUD is proposing under this rule that a PHA or IHA be required to include as part of its comprehensive plan an Executive Summary to facilitate review and comprehension by the public and development residents. The Executive Summary would consist of the following components:

(A) For each of a PHA's or IHA's projects (with its high need projects being separately identified): (*1*) The total cost needed to bring each such project to a level at least equal to the HUD modernization standards (see HUD Handbook 7485.2, as revised, *Public and Indian Housing Modernization Standards*), and to the HUD energy conservation and life-cycle cost-effective performance standards under §§ 905.603 and 968.115; (*2*) the percentage of the Total Development Cost standard required by the hard costs of the project; and (*3*) the current percentage of vacant units in the project. In addition, the PHA must briefly describe the actions which it proposes under the Comprehensive Grant program to bring each of its projects to a level at least equal to the modernization standards and to the energy conservation and life-cycle cost-effective performance standards.

(B) A listing of the PHA-wide management and operation areas under the PHMAP functional areas at 24 CFR part 901 which need improvement (as determined by a failed grade under the PHMAP indicators/standards, i.e., less than a "C" grade under any indicator/ standard), and a brief discussion of the PHA's proposed actions under the CGP program to bring the PHA at least to a "C" grade on each of the PHMAP indicators/standards, so that decent, safe, and sanitary living conditions will be provided in each of its projects.

Since IHAs are not covered under the PHMAP, HUD would request that an IHA identify, in accordance with its management improvement plan under 24 CFR 905.135, the Administrative Capabilities Assessment (ACA), and the Field Office Monitoring of Indian Housing Authorities Handbook, any IHA-wide management and operation deficiencies in the areas prescribed by section 14(e)(1)(B) of the Act. The IHA would also provide a brief discussion of its proposed actions under the Comprehensive Grant program to bring the IHA to an acceptable level of performance for each area of deficiency, in accordance with the targets established in the IHA's management improvement plan under § 905.136.

(C) A PHA would identify each of its high need projects, and discuss the social, physical, and operational problems of each such project, and provide a brief discussion of the PHA's proposed actions under the CGP program to address those problems. The PHA shall identify such problems by using project-level data, where available, for the PHMAP functional areas identified under 24 CFR part 901. (An IHA would identify such problems by using project-level data, where available, for the management and operations areas prescribed by section 14(e)(1)(B) of the Act.) Additional project-level data, including data pertaining to crime and drug use, may be addressed, as appropriate.

(D) A statement by the PHA or IHA concerning its overall modernization strategy, and its rationale for the approach and priorities adopted in its comprehensive plan. For example, a PHA's or IHA's strategy may be that it will focus its resources on addressing its vacant properties before its brings its occupied units up to the modernization standards.

(E) A descriptive narrative of the PHA's or IHA's process for maximizing the level of involvement by project residents, the local government, and the public, during the development of the comprehensive plan.

(ii) *Physical needs assessment.* (See §§ 905.672(c)(2); 968.320(c)(2).)

The physical needs assessment identifies all of the work that a PHA or IHA must undertake to bring its projects up to the modernization and energy conservation standards, as required by section 14(e)(1)(A)(ii) of the Act. (It should be noted that since the CGP program is intended to fund capital physical improvements and replacements, a PHA should address routine, preventive maintenance by means of its operating subsidy and not by CGP funds.)

A PHA's or IHA's assessment of its physical needs must be completed on

which are in a funded, on-schedule modernization program); or

(2) High cost (modernization hard costs exceed 25 percent of Total Development Cost for non-elevator projects, or 26 percent for elevator projects).

Form HUD-52827, or its equivalent, and retained in the PHA's files to ensure that supporting documentation is available for the data which are to be incorporated into the comprehensive plan. The following must be provided with respect to each of a PHA's or IHA's projects (with a PHA's or IHA's high need projects being separately identified):

(A) A brief (preferably one-page) summary of the general characteristics of the project, including the number of units, the number and size of bedrooms, the type of project (e.g., family, elderly, or mixed; high-rise, low-rise, walk-up, or scattered site, etc.); the project vacancy rate; the total project cost (including the percentage of TDC); and the end of the initial operations period (EIOP)). In addition, the summary must include:

(*1*) A description of the current physical condition of each project, and the physical improvements necessary to bring each project to a level at least equal to the modernization standards contained in HUD Handbook 7485.2 (Public and Indian Housing Standards); and to the energy conservation and life-cycle cost-effective performance standards, as required in §§ 905.603 and 968.115; and

(*2*) An estimate of the total cost needed to complete such work;

(B) The replacement needs of equipment systems and structural elements that will be required to be met (assuming routine and timely maintenance is performed) during the period covered by the action plan;

(C) Whether one or more buildings occupied predominantly by one racial or ethnic group are in substandard condition and are in significantly worse condition than one or more buildings occupied predominantly by other racial or ethnic groups, and in such cases the improvements required to correct the conditions. (This portion of the physical needs assessment is not required to be submitted by IHAs established under tribal law, or by IHAs established under state law which have been determined not to be subject to titles VI of the Civil Rights Act of 1964 or the Fair Housing Act);

(D) In addition, the PHA shall provide the following information:

(*1*) In the case of IHAs only, the Mutual Help units (identified by the name/number of the projects in which the units are located) that the IHA is proposing for comprehensive modernization, in accordance with § 905.666(b)(2);

(*2*) The vacant and non-homebuyer-occupied Turnkey III units (identified by the name/number of the project in which the units are located) that the PHA or IHA is proposing for comprehensive modernization and subsequent sale, in accordance with § 905.666(b)(3) or § 968.310(b)(2), as appropriate;

(*3*) A certification provided by a licensed architect or engineer for the costs associated with modernizing each high need project that has modernization hard costs which exceed 25 percent of TDC for non-elevator projects, or 38 percent for elevator projects. (A PHA would not be required to obtain a cost certification for its high need projects which have been so designated because of a high vacancy rate.)

(*4*) A copy of the PH Section 504 Needs Assessment and Transition Plan under 24 CFR part 8. In fulfilling this requirement, the PHA shall attach a copy of its needs assessment and transition plan as an addendum to its physical needs assessment under the CGP program.

Because the physical needs assessment addresses all of the modernization improvements and replacements which are required at each of a PHA's projects, its serves as the mechanism for determining whether completion of the improvements and replacements identified by the PHA in its plan will reasonably ensure the long-term physical and social viability of each project at a reasonable cost. Thus, the "viability review" and "reasonable cost test" required under section 14(e)(1)(C) of the Act are intended to ensure that a PHA does not spend CGP funds on projects which cannot effectively be modernized.

HUD is proposing in this rulemaking that a PHA provide a certification by a licensed architect or engineer for the costs associated with modernizing each high need project that has modernization hard costs which exceed 25 percent of TDC for non-elevator projects, or 28 percent for elevator projects. A PHA would not be required to obtain a cost certification for its high need projects which have been so designated because of a high vacancy rate. A PHA would be required to review the cost certification to determine whether its proposed improvements to the high need projects are within the cost guidelines.

The Field Office will consider on a case-by-case basis any PHA request to exceed the cost guidelines, both with respect to a PHA's high need projects, or for any other project. A PHA that wishes to exceed the cost guidelines must submit a request to the Field Office for determination. Criteria for cost guideline determinations will be contained in the CGP handbook.

To ensure that a PHA's modernization strategy remains up-to-date, but to avoid imposing unrealistic burdens on the PHA, the detailed physical needs assessment need only be revised once every five years, although the PHA may elect to revise the assessment more frequently for some or all of its projects.

Consequently, every five years, a PHA must submit to HUD, as part of its annual statement, an amendment to its physical needs assessment which would include all of the items required under a PHA's initial submission of the assessment. The PHA would be required to re-apply both the "reasonable cost test" and the "viability review" to the amend needs assessment prior to its submission to HUD.

(iii) *Management needs assessment.* (See §§ 905.672(c)(3); 968.320(c)(3).)

Pursuant to section 502 of the NAHA, a PHA is annually required to assess its performance in accordance with the PHMAP. (Since IHAs are expressly excluded from coverage under PHMAP, the Department will separately address an IHA's management needs assessment later in this discussion.)

The results of the PHMAP evaluation will be used by HUD under the Comprehensive Grant program to ensure that all of a PHA's management and operations needs (including those which are needed to bring each of a PHA's projects to a decent, safe, and sanitary living condition) are identified, and that appropriate strategies for addressing those needs are developed in the action plan.

Specifically, under section 14(e)(1)(B) of the Act, a PHA is required under its comprehensive plan to provide "a comprehensive assessment of the improvements needed to upgrade the management and operation of the public housing agency and of each * * * project so that decent, safe, and sanitary living conditions will be provided such projects, which assessment shall include at least an identification of needs related to—

(i) The management, financial and accounting control systems of the PHA that are related to such projects;

(ii) The adequacy and qualifications of personnel appropriate to be employed by the PHA (in the management and operation of such projects) for each significant category of employment; and

(iii) The improvement of the efficacy of—

(I) Resident programs and services in such projects;

(II) The security of each such project and its residents;

(III) Policies and procedures of the PHA for the selection and eviction of residents insuch projects;

(IV) Other policies and procedures of the PHA relating to such projects, as specified by the Secretary.

HUD intends to use the indicators/standards developed under the PHMAP as a means of assessing a PHA's performance under these statutorily prescribed management and operations areas. In addition, HUD will use the PHMAP indicators/standards to assess other areas affecting the overall management of a PHA and its projects, as identified by the Secretary under section 14(e)(1)(B)(iii)(IV) of the Act.

Furthermore, to avoid duplication of effort, the Department is also proposing to use the PHMAP assessment as the basic tool for determining the extent of a PHA's management and operations needs which are required to upgrade the PHA and each of its projects so that decent, safe and sanitary living conditions will be provided such projects,[2] in accordance with section 14(e)(1)(B) of the Act.

Finally, the PHMAP will also be used to establish targets for improvement where a PHA has received a failed grade on one or more of the indicators/standards, and for purposes of monitoring a PHA's performance in achieving those targets. Hence, the Comprehensive Grant program will essentially serve as one vehicle for a PHA's achieving its improvement goals established under the PHMAP.

Hence, a PHA's management and operations needs assessment would contain the following information:

(A) An identification of each of the PHMAP indicators/standards for which the PHA has received a failed grade (i.e., below a "C" grade), and a brief discussion of their current status (e.g., vacancies—20 percent);

(B) A brief summary of the actions necessary to bring each PHMAP indicator/standard to at least a "C" grade) within the timeframes agreed to by the PHA and HUD pursuant to the PHA's improvement plan or Memorandum of Agreement (MOA) under the PHMAP, or as otherwise established by the PHA;

(C) An identification of the social and operational problems at each of a PHA's high need projects, and a brief summary of the actions necessary to correct those problems. The PHA shall identify such problems by using project level-data, where available, for the PHMAP functional areas identified under 24 CFR part 901. Additional project-level data, including data pertaining to crime and drug use, may be addressed, as appropriate.

(D) The total estimated cost, if any, needed to bring a PHA to at least a "C" grade under each of the PHMAP indicators/standards; and

(E) A description of any other management and operations needs identified either under PHMAP, or elsewhere, which the PHA wants to address at the PHA-wide level, or at the project level, and the actions and costs needed to address those needs, or to improve its performance;

For IHAs, the management needs assessment would contain the following information:

(A) An identification of each of the management and operations areas prescribed by section 14(e)(1)(B) of the Act for which the IHA has had deficiencies identified pursuant to § 905.135, the ACA, and the Field Office Monitoring of IHAs Handbook;

(B) A brief summary of the actions necessary to correct each such deficiency, in accordance with the timeframes agreed to by the IHA and HUD pursuant to the IHA's management improvement plan, or as otherwise established by the IHA;

(C) An identification of the social and operational problems at each of an IHA's high need projects, and a brief summary of the actions necessary to correct those problems. The IHA would identify such problems by using project level-data, where available, for the management and operations areas prescribed by section 14(e)(1)(B) of the Act. Additional project-level data, including data pertaining to crime and drug use, may be addressed, as appropriate.

(D) The total estimated cost, if any, needed to correct any identified IHA-wide management and operations deficiencies.

(E) A description of any other management and operations needs identified either under an IHA's management improvement plan, or elsewhere, which the IHA wants to address at the IHA-wide level, or at the project level, and the actions and costs needed to correct those needs.

Any change in a PHA's grade under the PHMAP indicators/standards, or in an IHA's compliance with prescribed requirements, which results in an indicator/standard being rated as unacceptable (or, in the case of IHAs, the identification of additional deficiencies), which was not unacceptable at the time of the approval of the comprehensive plan, must be identified through an amendment to a PHA's or IHA's management needs assessment, and also to its action plan for purposes of specifying the work items that a PHA plans to undertake for purposes of correcting the new management and operations deficiency(ies.)

(iv) *Viability review and reasonable cost test.* (See §§ 905.672(b)(4); 968.320(b)(4).)

A PHA must provide an analysis, on a project-by-project basis, demonstrating that completion of the improvements identified in its physical and management needs assessments will reasonably ensure the long-term physical and social viability of each project at a reasonable cost (e.g., the so-called "viability review" and "reasonable cost test").

Once a PHA has applied both the reasonable cost test and the viability review to its identified needs in the comprehensive plan, it should have a clear sense of those projects for which modernization is not feasible, so that it can seek alternative solutions or approaches. For a further discussion of the "reasonable cost test," and requests to exceed the cost guidelines, see item (ii) of this summary.

(v) *Action plan and annual statement.*

—*Action plan.* (See §§ 905.672(c)(5) and 968.320(c)(5).)

While the physical and management needs assessments identify the improvements and replacements which a PHA must undertake to bring its projects up to the modernization and energy conservation standards, the action plan establishes a PHA's five-year goals toward achieving those standards. The action plan also sets forth the actual work to be undertaken by a PHA in broad categories (e.g., kitchens, floors, etc.), and establishes the PHA's annual priorities for carrying out work items from among the various

[2] For purposes of determining whether a PHA's projects provide "decent, safe, and sanitary living conditions," in accordance with section 14(e)(1)(B) of the Act, HUD has decided to use the habitability standard established under the Housing Quality Standards (HQS), or any equivalent standard (see 24 CFR 882.109). Since HUD intends to include the HQS standard as one of the PHMAP factors, the Department will primarily monitor a PHA's performance in bringing its units up to HQS under the PHMAP. However, HUD wants to clarify that the ability of a PHA to meet HQS in no way obviates its statutory responsibility to bring its units up to at least the Modernization Standards. This is because the HQS establishes only an interim step toward bringing a PHA's projects to the modernization standards, and also because its primary function is to establish a habitability (rather than a rehabilitation) standard for a PHA's projects. Finally, it should be noted that any individual work item which is carried out by a PHA under the Comprehensive Grant program must be in compliance with the modernization standards.

projects covered by the comprehensive plan.

HUD uses the five-year action plan to determine whether a PHA will achieve, or make reasonable progress toward achieving, the modernization and performance standards pertaining to the condition of the projects.

While it is expected that some PHAs will be able to address all of their current backlog needs in five years, many will need a longer period of time in which to do so. Section 14(e)(1)(D) of the Act specifically addresses this issue by providing for "any longer period reasonably needed to make the improvements and replacements, considering the scope of the improvements and replacements and the amount of funding provided." It is for this reason (in addition to the fact that all PHAs will continue to accrue additional modernization needs each year), that HUD is providing in this proposed rule that the five-year action plan have a "rolling base," meaning that the plan must be annually updated with the previous year being eliminated and an additional year being added.

As discussed above, the action plan sets forth, in priority order, the work that the PHA intends to fund over the following five-year period to meet the needs identified in the needs assessments. While PHAs have discretion to determine the priority order of work to be undertaken under the action plan, a PHA must first address improvements and replacements that are required to correct any life threatening condition, as mandated by section 14(e)(1)(D)(i) of the Act. The Department normally would expect a PHA to give first priority to the correction of any conditions which threaten tenant health and safety, and to address statutory (or other legally-mandated) requirements, e.g., compliance with a court-ordered desegregation plan, voluntary compliance agreement, or activities required to carry out a section 504 transition plan under 24 CFR part 8.

Under the action plan, a PHA must indicate how it intends to address each of the deficiencies identified under its physical and management needs assessments, as follows:

(A) With respect to the physical condition of a PHA's or IHA's projects, a PHA or IHA must indicate in its action plan how it intends to address, over a five-year period, the deficiencies identified in its physical needs assessment so as to bring each of its projects (with a separate identification of its high need projects) up to a level at least equal to the modernization and energy conservation standards;

This would include specifying the actual work to be undertaken in broad categories (e.g., kitchens, floors, etc.), establishing annual priorities for carrying out work items from among the various projects covered by the comprehensive plan, and estimating the total project cost on an annual basis, regardless of the source of funding. In addition, a PHA or IHA must specify the length of time, target date, and the cost needed to upgrade each project to the modernization and energy conservation, life-cycle cost-effective performance standards.

(B) With respect to any management and operations deficiencies, a PHA (but not an IHA) would be required to:

(*1*) Indicate in its action plan the actual work it intends to undertake to address each of the PHMAP indicators/standards, as identified under its management needs assessment, so as to bring its score under each such indicator/standard to at least a "C" grade. In carrying out this requirement, a PHA may elect to simply cross-reference in its action plan to the tasks, if any, already identified in the PHA's improvement plan or MOA under PHMAP at 24 CFR part 901. In evaluating a PHA's action plan, HUD will consider whether the proposed work items will enable the PHA to meet the performance targets established under the PHMAP improvement plan or MOA, as agreed to by the PHA and HUD. For example, a PHA which has indicated under the PHMAP that it intends to reduce its vacancy rate from 20 percent to 18 percent in a one-year period, must describe the actions that it will take under its CGP action plan so that it can achieve the 18 percent PHMAP target within the one-year period.

(*2*) Separately indicate for any high need project how the PHA intends to correct any management and operations deficiencies identified in its needs assessment.

It should be noted that for both PHA-wide and project-specific deficiencies, a PHA may choose to establish for itself, with respect to any specific PHMAP indicator/standard, a higher standard of performance than the "C" grade of acceptable performance.

(C) With respect to any management and operations deficiencies, an IHA would be required to:

(*1*) Indicate in its action plan the actual work it intends to carry out to address each of the IHA-wide management and operations deficiencies identified in the IHA's management needs assessment so as to correct each such deficiency, in accordance with its management improvement plan, § 905.135, the ACA, and the Field Office Monitoring IHAs Handbook.

(*2*) Separately indicate for any high need project, how the PHA intends to correct any management and operations deficiencies identified in its needs assessment, in accordance with its management improvement plan, § 905.135, the ACA, and the Field Office Monitoring of IHAs Handbook.

Consistent with this summary, HUD has included in this revised proposed rule a definition of "action plan" to mean, "a plan of the actions to be funded by the IHA over a period of five years (including a PHA's proposed allocation of its modernization funds to a reserve established under § 905.600(a)(3) or 968.310(a)(3), as appropriate) to make the necessary physical and management improvements identified in the PHA's needs assessment." This definition further provides that the action plan must be annually updated to reflect a rolling five-year base.

HUD will review the five-year action plan both in terms of its consistency with the comprehensive plan, and for purposes of determining whether it purports to correct conditions that directly and adversely affect the living conditions of the project residents, and specifies the necessary actions to meet or make progress toward meeting HUD's performance standards.

—*Annual statement.* (See §§ 905.675 and 968.330.)

The first year of the rolling base five-year action plan is identified as the "annual statement," and provides a more detailed discussion of the activities, obligations and expenditures which the PHA plans to undertake, in whole or in part, with the assistance to be provided by HUD. Thus, the annual statement is intended to provide HUD with greater detail concerning the planned utilization of current year funds, than that provided by years two through five of the action plan. After being advised by HUD of the estimated amount of assistance it will receive with respect to any FFY, the PHA will submit to HUD its annual statement, as described below.

(A) The annual statement would include, for each project for which work is to be funded out of that year's grant;

(*1*) A list of development accounts (e.g., "dwelling structures") with a general description of work items (e.g., "replace kitchen cabinets," "repair bathroom floors")

(*2*) The cost for each development account, and the overall cost;

(*3*) The management improvements to be undertaken during the year, identified either as PHA-wide or project-specific, as appropriate;

(*4*) A summary description of the actions to be taken with non-CGP funds to meet physical and management improvement needs which have been identified in the needs assessments; and

(*5*) A schedule of the activities to be funded by the PHA with the year's annual grant, including target dates for obligating and expending such funds;

(B) Certifications by the PHA that:

(*i*) The proposed activities, obligations and expenditures are consistent with the approved comprehensive plan of the PHA (except for emergencies, which may be addressed at any time);

(*ii*) The PHA has complied with the requirement governing participation by local government officials and residents of the projects covered by the comprehensive plan, and has given full consideration to local government and resident comments in preparing and submitting its annual statement (or any amendment to the comprehensive plan submitted with the annual statement).

(*iii*) The PHA will not obligate, in any manner, the expenditure of funds from the current year's annual grant, or otherwise undertake the activities identified in its annual statement, until the PHA receives written notification from HUD indicating that the Department has complied with its responsibilities under NEPA and related environmental authorities;

(*iv*) The PHA will comply with § 905.630 or § 968.230, as appropriate, where a homeownership project is involved; and

(*v*) The PHA will comply with § 905.633 or § 968.235 with respect to section 23 leased housing bond-financed projects;

(*7*) In addition, a PHA must also include in its annual statement any proposed amendments to the comprehensive plan including (but not limited to) the following:

(*i*) An update of the five-year action plan (removing the previous year and adding an additional year); and

(*ii*) Amendments to the physical and management needs assessments contained in the comprehensive plan, as follows:

(*a*) A revised one-page summary describing the physical needs, and proposed corrective action, for any project whose revised physical improvement and replacement needs have resulted in a change to the action plan, and which have resulted in changes to the PHA's action plan;

(*b*) A statement of any change in the PHA's grade under the PHMAP indicators/standards which results in an additional indicator/standard being rated as unacceptable. (An IHA would be required to provide a statement of any change in its compliance with prescribed requirements, its management improvement plan under § 905.135, or to indicate any additional deficiencies identified pursuant to the ACA and the Field Office Monitoring of IHAs Handbook);

(*c*) With respect to any management improvement work item added to this five-year plan (other than one added in response to a new PHMAP indicator/standard receiving a grade lower than a "C," or an IHA-equivalent deficiency), an amendment, as appropriate, to the management needs assessment to reflect the underlying deficiency; and

(*d*) Every fifth year, a revision of the physical needs assessment in the form of a revised summary sheet for each project, which must be substantiated by a detailed physical needs assessment (to be retained in the PHA's files) for each such project. In addition, the PHA must update its PHA-wide management needs assessment, and specifically address any high need projects.

Consistent with this summary, the Department has included a revised definition of "annual statement" to mean "a statement submitted annually by the PHA to HUD of the activities and related costs it expects to fund with the annual grant, and which may also include amendments to the approved comprehensive plan." HUD believes that this revised definition more closely reflects the relationship between the annual statement and the five-year action plan.

(vi) *Local government statement.* (See §§ 905.672(c)(6); 968.320(c)(6).)

The Chief Executive Officer of the unit of local government must submit, as part of a PHA's comprehensive plan, a statement certifying that:

(A) The PHA's comprehensive plan is consistent with the unit of general local government's assessment of its lower income housing needs (as evidenced by a PHA's Comprehensive Housing Affordability Strategy under 24 CFR part 91, or an IHA's Comprehensive Homeless Assistance plan under 24 CFR part 90 or, as appropriate, its housing assistance plan under 24 CFR part 570; and

(B) The PHA has consulted with local government officials and with residents of the affected housing developments, and that such consultations included at least one public hearing held prior to the initial adoption of the plan.

Furthermore, because the annual addition of a year's work constitutes a significant revision to the action plan under the comprehensive plan, and since the other amendments to the comprehensive plan may also be substantial, HUD is providing in this proposed rule that a PHA must annually hold a public hearing, to be preceded by a meeting with the PHA-wide resident group. These opportunities for resident participation must take place before a PHA submits its annual statement to HUD.

(vii) *Civil rights statement.* (See §§ 905.672(c)(7); 968.320(c)(7).)

The plan must include a statement, signed by its Chief Executive Officer, certifying that the PHA will carry out the comprehensive plan either in comformity with title VI of the Civil Rights Act of 1964 and the Fair Housing Act, or with the Indian Civil Rights Act (title II of the Civil Rights Act of 1968), as applicable; and with section 504 of the Rehabilitation Act of 1973, as appropriate.

(viii) *PHA resolution.* The plan must include a resolution adopted by the PHA's Board of Commissioners approving the comprehensive plan, and certifying (among other things) that the PHA's proposed physical work meets the modernization and energy conservation standards, and that the PHA will comply with the requirements pertaining to relocation assistance, physical accessibility, and lead-based paint testing and abatement. The PHA must also certify that it will provide HUD with documentation that the Department needs to carry out its review under the National Environmental Policy Act and other related authorities, and that the PHA will not obligate the expenditure of CGP funds until the PHA receives written notification from HUD indicating that the Department has complied with its responsibilities under NEPA and related authorities.

In addition, a PHA must also certify (if applicable) that its proposed comprehensive modernization of vacant and non-homebuyer-occupied Turnkey III units will result in those units being brought into full compliance with the homeownership objectives under the Turnkey III program. The PHA must also certify that it has homebuyers who are both eligible for homeownership, and who have demonstrated an intent to be placed into each of the proposed Turnkey III units.

2. HUD Review of Comprehensive Plan

Once a PHA submits its comprehensive plan to HUD, it will be considered approved unless the Department notifies the PHA within 75

days of the date of its submission that the plan has been disapproved.

A comprehensive plan can be disapproved by HUD for any of the following reasons:

(2) The plan is incomplete in significant matters;

(3) The identification by the PHA of its needs is plainly inconsistent with available significant facts and data pertaining to the physical and operational condition of the PHA's projects, or with the management and operations of the PHA;

(3) The action plan is plainly inappropriate to meet the needs identified in the comprehensive plan, or the PHA has failed to demonstrate that completion of the identified improvements and replacements will reasonably ensure long-term viability of one or more projects to which they relate at a reasonable cost; or

(4) There is evidence which tends to challenge in a substantial manner a certification contained in the comprehensive plan.

The comprehensive plan will be considered to be incomplete if the needs assessments fail to identify a PHA's physical and management improvement needs for purposes of bringing a PHA and each of its projects to an acceptable level under the performance standards.

In addition, the comprehensive plan must specify under the action plan the actual work to bring the PHA's grade under each PHMAP indicator/standard to an acceptable level, consistent with targets established under the PHMAP improvement plan or MOA, within five years of the initial unacceptable grade or within such other timeframe as agreed to by HUD and the PHA. (In the case of IHAs, the action plan must specify the actions proposed to correct all IHA deficiencies identified by HUD relating to management and operations areas, so as to bring the IHA's performance to a level consistent with targets established under an IHA's management improvement plan under § 905.135, the ACA and the Field Office Monitoring Handbook.

For both PHAs and IHAs, the action plan must specify the actions needed to bring each of its projects to the modernization and energy conservation, life-cycle cost-effective performance standards over the five years covered by the action plan, or within such longer period of time as may be necessary.

3. Monitoring

Although HUD intends to provide PHAs with maximum discretion in planning and carrying out activities under the Comprehensive Grant program, each PHA will be held strictly accountable through a post-audit process for the use of CGP funds, including the quality of the modernization improvements carried out under the program. A PHA which fails to effectively supervise and monitor the quality of the modernization improvements under this program will be subject to corrective action.

Since a PHA would be required under its PHMAP improvement plan or MOA to develop specific goals for remedying any PHMAP indicator/standard for which it received lower than a "C" grade, HUD is proposing that for purposes of determining whether a PHA under the Comprehensive Grant program is making timely and reasonable progress toward achieving at least a "C" grade for each of the PHMAP indicators/standards, that HUD base its evaluation upon the PHA's progress in meeting the PHMAP goals established by the PHA and HUD.

An IHA would be evaluated for purposes of determining whether it is making timely and reasonable progress toward achieving compliance with prescribed requirements, based upon its progress in meeting the IHA-wide targets identified in its management improvement plan under § 905.135, the ACA, and the Field Office Monitoring of IHAs Handbook.

Under this proposed rule, HUD has included a definition of the term "modernization capability," which provides that a PHA or IHA has adequate modernization capability if it:

(1) Obligates approved modernization funds in accordance with its approved implementation schedule (except in circumstances beyond the PHA's control);

(2) Adequately inspects its modernization projects to ensure that the physical work is being carried out in accordance with the HUD-approved budget (if appropriate), and plans and specifications, and that any HUD monitoring findings relating to the quality of the physical work have been, or are being, resolved; and

(3) Has an acceptable procurement policy, in accordance with 24 CFR 85.36, and is administering its modernization contracts in accordance with that policy.

HUD wants to clarify that "modernization capability" is a limited test of a PHA's performance under certain key functions pertaining to the modernization program, which is designed to determine whether a PHA should be ordered to take corrective action in carrying out its modernization program.

However, the term "modernization capability" does not purport to encompass the broader concept of a PHA's (but not an IHA's) designation as a mod troubled agency under PHMAP, which is used also for the purpose of determining a PHA's level of funding under the CGP program. In addition, the Department is proposing with respect to its annual review of PHA performance under the CGP program, that any PHA which has been determined to be mod troubled under the PHMAP will automatically be considered not to have a continuing capacity to carry out its comprehensive plan.

The Department will also review under § 968.345 the timeliness of a PHA's performance in carrying out activities specified in the action plan.

V. Allocation of Modernization Funds Under Section 509 of the National Affordable Housing Act

Section 509(a) of the NAHA establishes a system of formula allocation of modernization funds to PHAs with 500 or more units (250 or more units beginning in FFY 1993), while continuing (with some modification) the current modernization process under CIAP for PHAs with fewer than 500 units (fewer than 250 units beginning in FFY 1993).

The formula allocation system presented in this proposed rule is based upon data derived from the following sources:

(1) The Modernization Needs Study: National, Regional, and Field Office Estimates: Backlog of Modernization Needs, prepared by Abt Associates, Inc., of Cambridge, Massachusetts, 1988 ("the Abt report");

(2) Future Accrual of Capital Repair and Replacement Needs of Public Housing, prepared by ICF, Inc., of Fairfax, Virginia, 1988 ("the ICF report"); and

(3) HUD operational information systems on past uses of modernization funds.

a. Reserve for Natural and Other Disasters and for Emergencies

Section 509(a)(1) calls for not more than $75 million, to be reserved by the Secretary from any appropriation provided for public housing modernization, to be used to fund modernization needs arising from natural and other disasters, and from emergencies. The section also calls for amounts provided for emergencies to be repaid by PHAs for their future formula allocations of modernization funds, where available.

Under the Comprehensive Grant program, emergency repair needs are defined as those conditions which present an immediate threat to tenant health or safety, and therefore must be corrected as soon as possible. Emergency repair needs are not different in kind from the types of repair and replacement needs included in the formula. Rather, they differ in their urgency. For example, a boiler failure may lead to an immediate need for replacement in order to provide heat and hot water for residents, and thus fall into the category of an emergency need. A planned replacement of the same boiler at the end of its expected useful life would be part of ongoing modernization work and would be reflected in either the backlog or the accrual formula.

Since repairs or replacements which become emergency needs because of their timing are the same repairs and replacements accounted for in the backlog and accrual estimates, formula funding based on these estimates incorporates funds for emergency repairs. If a PHA received a special grant instead of a loan from HUD for emergency repairs as well as its full formula allocation of modernization funds in subsequent years, it would receive a disappropportionate share of the formula funds vis-a-vis other PHAs.

A PHA could only receive funds from this special reserve to address its emergency needs if it does not have sufficient funds available to pay for the work items. In addition, the PHA would be required to repay such funds out of its future years' allocations, if available. HUD proposes to deduct funds provided to a PHA for emergencies from the following year's formula allocation, up to 50 percent of the allocated amount. Any outstanding balance would be deducted, as necessary, from succeeding years' allocations.

Since PHAs with fewer than 500 units (fewer than 250 units beginning in FFY 1993) will not be participating in the formula funding approach to modernization, but will be funded on a project-by-project basis based on applications submitted by the PHA as currently provided in the CIAP program, HUD believes that a special reserve of funds to meet specific project modernization needs arising from natural or other disasters, or from emergencies, is not necessary to enable them to meet those needs. Therefore, HUD is providing in this proposed rule that these smaller agencies will not be eligible for funding from the Secretary's reserve for disasters or emergencies. Only agencies with 500 or more units under management (250 or more units beginning in FFY 1993) will be eligible for funding under this special reserve of funds for natural or other disasters, or for emergencies.

Under section 14(k)(1), HUD is authorized to reserve "not more than" $75 million for modernization needs resulting from natural and other disasters and from emergencies. HUD is proposing in this rule that it retain in the reserve any unobligated funds remaining from previous years. The Department would then add to this amount sufficient newly appropriated CGP funds so that the reserve would always start out at the beginning of each fiscal year with a $75 million balance.

PHAs applying for emergency or natural disaster funds may submit an application to HUD at any time, and HUD will immediately process the request in accordance with the requirements of § 905.867(a) or § 968.312(a), as appropriate, and subject to the availability of funds in the reserve.

Funds provided to PHAs to meet needs arising from natural or other disasters would be provided in the form of a grant, and would not have to be repaid. Formula funding cannot, by its very nature, provide for unpredictable idiosyncratic events, such as earthquakes, hurricanes, riots, or civil disorders, that can cause severe damage to an individual PHA's property. Therefore, these grants are necessary to address extraordinary events which can only be expected to affect one or a few PHAs.

PHAs could submit applications for grants for damage from such idiosyncratic events, and would be approved if the disaster was declared by the President (or would qualify for a Presidential declaration if it were on a larger scale), or if the damage came from an uninsurable cause, such as riot or civil disorder. PHAs would be eligible to receive grants from this fund without regard to the availability of other modernization funds or reserves at the PHA, but could only receive funds for needs that are in excess of its insurance coverage.

PHAs without an approved modernization strategy are authorized by section 14(e)(1) of the Act to tap into their formula allocation of funds to enable them to address emergency needs. The Secretary proposes that these PHAs submit to HUD a request for such assistance, and HUD shall immediately process the request in accordance with the requirements of § 905.872(f) or § 968.320(f), subject to the review requirements of §§ 905.878 and 968.210, as appropriate.

b. Set Aside For Credits Under 24 CFR Part 968 (Subpart C) for PHAs Initially Designated as Mod Troubled Under PHMAP

Section 509(a)(3)(D) provides that the Secretary shall carry out a credit system to provide PHAs that were designated as mod troubled under the initial designation of such agencies under PHMAP with additional funds to compensate them for the amounts not received because of their mod troubled status. HUD is permitted under section 14(k)(5)(D)(iv) to set aside no more than five percent of the funds available for allocation—after deducting amounts for disasters and emergencies under the reserve described above—for the payment of credits under this provision. (For a full discussion of the credit system for reimbursing mod troubled PHAs, see Section VI of this preamble.)

c. Funds Allocation Based on Relative Need

Section 509(a)(2)(B) calls for the Secretary to allocate the funds remaining after establishing the reserve discussed above, and the set-aside of credits under section 14(k)(5)(D)(iv), on the basis of a formula designed to measure the relative backlog and accrual needs of PHAs. Under the formula, HUD is required to take into account funds previously made available to PHAs for modernization and for the major reconstruction of obsolete projects (MROP), to the extent determined appropriate by the Secretary.

(i) Allocation Based on Relative Backlog Needs; Deduction for Past Modernization Funding

Under section 509(a)(2)(B), HUD is required to allocate half of the amount determined under section V(c) of this preamble based upon the relative backlog needs of PHAs in the following three categories:

1. The backlog of needed repairs and replacements of existing physical systems in public housing projects;

2. Items that must be added to projects to meet the modernization standards of the Secretary, and State and local codes; and

3. Items that are necessary or highly desirable for the long-term viability of a project.

Where HUD determines that the data are statistically reliable for individual PHAs, or the aggregate of smaller agencies not participating in the formula funding portion of the modernization program, it will base its allocation on direct estimates of the statutory categories of backlog need, based on the

most recently available, statistically reliable data.[8]

Where HUD determines that such data are not statistically reliable for individual PHAs with 500 or more units, the funds are to be allocated on the basis of estimates of the statutory categories of backlog need, using the most recently available data on the backlog and objectively measurable data on public housing agency, community, and project characteristics, regarding:

1. The average number of bedrooms in the units in a project;
2. The proportion of units in a project available for occupancy by very large families;
3. The extent to which units for families are in high-rise elevator projects;
4. The age of the projects;
5. In the case of a large agency, the number of units with 2 or more bedrooms;
6. The cost of rehabilitating property in the area; and
7. For family projects, the extent of population decline in the unit of general local government determined on the basis of the 1970 and 1980 censuses.

In addition to the formula factors cited above, the backlog portion of the formula uses an equation constant of 1412.9.

Although HUD does not intend at this time to add any additional factors to the formula, it may choose to do so at a later date. In such an event, the Department would undertake notice and comment rulemaking before it attempts to add any additional factors to the formula.

The Secretary has determined that it is appropriate to deduct past modernization funding from the backlog portion of the formula which will be used to allocate modernization funds to PHAs. This is because the inspections on which the needs estimates are based took place in 1985, and provided a "snapshot" of repair and rehabilitation needs at public housing projects, without regard to funds available to address those needs. The current relative need for modernization funds of individual PHAs must take into account not only the modernization needs identified in the 1985 inspections, but funds which have been provided to PHAs to meet those needs.

An important reason why PHAs with a similar per-unit work need in 1985 might show dissimilar per-unit funding need in 1990 is that they were funded differently under CIAP in recent years. Such differential funding of need was common. In some cases, HUD staff may have properly judged that a PHA had shown insufficient capacity to obligate or spend funds provided to it in the past, and thus did not approve further funding for the PHA.

In sum, if only 1985-based estimates of need are used to determine 1992 formula need shares for PHAs, without regard to funds allocated but unspent to meet that need, there will be considerable disparity between the unfunded backlog of modernization need at a particular PHA and the formula estimate of that need. This would be inequitable for PHAs that have received little modernization funding, for whatever reason.

Therefore, it is appropriate to deduct CIAP funds allocated to a PHA from a PHA's estimate of need, as authorized in the statute. Since FFY 1984 modernization funds would not have been spent by the time of the Abt inspections in the summer and fall of 1985, HUD proposes to base deductions on funds allocated to individual PHAs from FFY 1984 onwards through the most recent fiscal year for which accurate CIAP and MROP funding data are available.

The ICF study estimated that about 90 percent of the FFY 1984–1988 CIAP allocation was spent on items included in the categories of backlog need, that is: (1) The backlog of needed repairs and replacements of existing physical systems in public housing projects; (2) items that must be added to projects to meet the modernization standards of the Secretary under (e)(1)(A)(ii)(I) and State and local codes; and (3) items that are necessary or highly desirable for the long-term viability of the project. These are program-wide averages. Since this percentage will vary somewhat for individual PHAs, and since there might be a disparity between the estimated needs of projects and their actual funding, HUD is proposing to operationalize the deduction for CIAP allocations by establishing a 60 percent deduction. No PHA, however, would have its total estimated need for backlog funding more than halved by this deduction.

However, a concern has been raised that the formula is biased against high needs projects. As a means of partially addressing this bias, an alternative method of deducting prior year modernization funds has been suggested. Under this proposed method, HUD would provide that deductions for prior years' modernization funding be on a project-by-project basis, and that the deduction for a project never exceed the modernization needs predicted for that project under the formula. Since an average of 90 percent of CIAP funding went to categories of backlog covered by the formula, HUD would establish a 90 percent deduction of past CIAP funding under this proposed project-by-project deduction of past modernization and a 90 percent deduction of past MROP funding.

For example, if the formula predicts that a particular project has $2.5 million in modernization needs, and that project has already received $5 million in CIAP funding from HUD in the most recent few years, then the calculation should be that 90% of the $5 million, or $4.5 million, was used for purposes consistent with the formula categories of need, but that only $2.5 million will be deducted from the PHA's needs, since that was the level of need predicted by the formula for that project. Otherwise, the subtraction would be made against the modernization needs of other projects, which the commenter claims would be unreasonable.

Whether prior year modernization funding is deducted at the project or at the PHA-level, a sum of deductions can be computed for the entire PHA. However, a case can be made for limiting, or capping, the degree to which these total deductions offset the total estimated backlog need of a PHA in computing its share of formula backlog need. In its 1990 report to Congress on formula modernization issues, HUD recommended that no PHA would have its total estimated need for backlog funding more than halved by deductions for modernization funding from 1984 onward—a recommendation that is carried forward to the PHA-level deductions incorporated in the proposed rule. This recommendation was carried forward to maintain consistency with the HUD report.

It can be argued, however, that the capping of PHA-level deductions at 50 percent of estimated backlog need is too generous, because the assumptions under which the HUD report were made have been somewhat altered. The HUD report made its recommendation of a 50 percent cap on the basis of backlog needs which were restricted to mandatory need. However, the statute altered the definition of estimated backlog need to include project-specific needs. In effect, this revision raised by approximately 50 percent the estimates of backlog need at the project and PHA-level.

Measured against these higher estimated levels of backlog, only very high adjusted modernization levels of funding would cause a significant deduction of funding from overall PHA estimates of backlog need. Such high levels of recent funding would give the affected PHAs such an advantage relative to other PHAs, that it does not seem as necessary to protect at least 50 percent of their estimate of backlog need from overall deduction of modernization funding.

The 50 percent recommendation of the 1990 report also assumed a single-step deduction of PHA funding from PHA backlog need. If a more accurate project-level deduction were made in the first step, as discussed above, then the margin of error between estimated need and funded need would be reduced and the rationale would be weakened for a second level of capping PHA modernization deductions. Nevertheless, there might be grounds even under the project-based method of having a secondary cap at the PHA-level, albeit a cap that allows a greater deduction than the 50 percent cap.

It has also been suggested that funding which has occurred more recently gives a PHA more flexibility in addressing current backlog needs than funding which occurred in the mid-1980s. For this reason, a sliding scale might be developed in determining the overall cap for deducting PHA funding against estimated backlog need—a sliding scale in which more recent funding yields a lower effective cap on the deduction than less recent funding.

For instance, if a PHA received all of its 1984–1987 funding in 1987, its effective cap might be 15 percent, whereas a PHA which received all of its 1984–91 funding in 1984 might have an effective cap of 60 percent. HUD invites comments on both proposed approaches to deducting prior year modernization funds from a PHA's backlog estimate of modernization needs. HUD invites comments on both the average level, and the use of a sliding scale, for purposes of determining the overall deduction of prior year modernization funds from estimates of backlog modernization needs.

However, since the HUD report was developed, another issue has arisen related to the need for funding of the backlog of modernization need. The analysis conducted to develop the formula did not distinguish between newly constructed and other units of similar size and occupancy type. Therefore, newly constructed units are funded under the backlog formula as though they were typical dwelling units in the pre-1995 inventory of public housing units.

Since newly constructed units can be expected to have little or no backlog of modernization need, it would seem to make sense to treat them for formula purposes as though they had been comprehensively modernized, that is, deduct development hard costs from the formula estimate of backlog need. Therefore, HUD is requesting comment as to this alternative approach to determining a PHA's formula estimate of backlog need, i.e., deducting not only a portion of a PHA's previous CIAP and MROP funding, but also deducting a portion of the development hard costs of newly constructed projects.

If the method for deducting modernization funding from the backlog estimate set forth in the proposed rule is adopted for the final rule, 60 percent of development hard costs would be deducted, or, if the alternative project-based method discussed above is used for deducting modernization funds provided to a PHA, 90 percent of development hard costs would be deducted. This would also be true if the sliding scale, as discussed above, is adopted by HUD.

HUD would like public comments on whether some portion of new construction funding should be deducted from estimated backlog need in the same manner that recent modernization funding is partially deducted from the estimated backlog need of older projects.

(ii) *Allocation based upon relative accrual needs.* Section 566(a)(2)(C) calls for the Secretary to allocate the other half of the remaining funds based on the relative accrual needs of PHAs for the following categories of modernization needs under section 509(a)(2)(B)(i) (I) and (II):

1. The backlog of needed repairs and replacements of existing physical systems in public housing projects; and
2. Items that must be added to projects to meet the modernization standards of the Secretary.

The allocation to individual PHAs based upon their relative accrual needs is to be handled in the same manner as that discussed above for the backlog of modernization needs. That is, for individual PHAs with 500 or more units, and for the aggregate of PHAs with fewer than 500 units, direct estimates of accrual needs since the date of the last objective measurement of the two specified categories of backlog need are to be used where they are statistically reliable.

Where HUD determines that these estimates are not reliable for individual PHAs with 500 or more units, it will use instead estimates of accrual need using the most recently available data on the backlog and objectively measurable data on PHA, community, and project characteristics, concerning:

1. The average number of bedrooms in the units in a project;
2. The proportion of units in a project available for occupancy by very large families;
3. The age of the projects;
4. The extent to which the buildings in projects of an agency average fewer than 5 units;
5. The cost of rehabilitating property in the area; and
6. The total number of units of each agency that owns or operates 500 or more units (250 or more units beginning in FFY 1993).

In addition to the formula factors cited above, the accrual portion of the formula uses and equation constant of 602.1.

(iii) *Analytical Basis for the Formula.* The basis for the formula established in the NAHA is data on the estimated modernization needs of public housing projects derived from the inspections conducted as part of the study of the backlog of modernization needs in public housing projects. (See the Abt study cited earlier in this preamble). This project-level information was then tested against a wide variety of characteristics of public housing projects to determine which characteristics came closest to predicting what HUD already knew about the projects from the inspection data.

While the modernization needs study was not designed to produce project-level estimates of modernization need, but rather to produce national and regional totals of this need, the method of developing these estimates called for detailed inspections at a scientifically selected sample of 996 public housing projects. This method produced a wealth of data about individual projects, enough data to permit the development of modernization backlog estimates for each of these sampled projects.

The availability of this data for a large sample of individual projects permits the use of an indirect method based on the characteristics of public housing projects for determining the relative modernization need of individual PHAs.

[8] Pursuant to authority under section 14(k)(2)(D)(iii), the Secretary has determined that the Abt and ICF studies are the most recently available, statistically reliable data on the modernization needs of PHAs. Furthermore, the Secretary has determined that the New York City Housing Authority is the only PHA in the Abt sample with a sufficient number and variety of inspected projects to sustain precise sample estimates of its backlog and accrual needs. The sample size was also adequate for the aggregate of agencies with less than 500 units (less than 250 units in FY 1993) to allow the use of direct estimates of need in determining the share of the overall modernization appropriation to be allocated for application by these agencies. All other PHAs will have their funding amounts determined by the formula discussed below.

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This indirect method involves estimating statistical relationships between modernization needs and the characteristics of PHA's inventory of projects.

These relationships can be estimated from the information provided in the Modernization Needs Study and from supplementary information provided by HUD and the Census on the PHAs and communities in which they are located. These relationships are then applied to a data base containing project, PHA, and community characteristics for each PHA with over 500 units to yield an estimate of modernization needs for each of these PHAs. These PHA needs estimates, when expressed as relative shares of total modernization needs, provide indicators of relative need and allocation factors that can be used to distribute funds in a formula-based funding system.

The Abt and ICF studies of modernization needs provide the essential tools for estimates of PHA need based on project characteristics. First, they provide estimates of the backlog and accrual need for 996 projects on the basis of standardized inspection and modeling.

Second, Abt collected basic data about projects for these and 5,670 other projects in more than 950 PHAs (including almost all projects in PHAs with 500 or more units under management). Previous Abt and HUD studies also provided contextual indicators of need at the PHA and community level to apply to all of the projects.

Third, the Abt and ICF studies provided sampling weights that enable statistical relationships of need for the 996 inspected projects to be generalized to all projects with the same set of objective indicators—the Abt sampling frame of 6,670 projects as well as other projects for which data are easily collected.

The formula estimate of needs for public housing projects was developed using a statistical technique called multivariate regression. Multivariate regression, a technique that HUD already uses to help set PHA allowable operating expenses under the Performance Funding System (PFS), allows selection of a set of indicators which maximizes the explanation (or "fit") of an independent measure. The multivariate technique also suggests the explanatory contribution of each indicator, individually and in combination with other indicators.

Project characteristic had to meet several criteria in order to be used as explanatory indicators in the final regression estimates of backlog moderization need and accrual need (each estimated separately). These criteria were:

—*Believability.* Previous studies or professional judgment related the charateristic to some aspect of public housing need.

—*Individual explanatory significance.* The project characteristic had to be significantly related (positively or negatively), with 97.5 confidence, to the need measure—in statistical terms, a "t-ratio" above 2, or below minus 2, as appropriate.

—*Net explanatory impact.* When added to other characteristics to be used as indicators, the characteristic adds significantly to the "fit" (for this formula, an increase in "adjusted R-squared" of at least .25, when the maximum R-squared is 100).

—*Expected Sign.* The characteristic is related to the estimated measure in the expected direction (over different time periods, in the case of the accrual measure).

—*Non-collinearity.* The explanatory indicator cannot be explained to a large degree by one or a set of other explanatory indicators (operationalized by an R-squared of less than 75, where 100 is maximum). When indicators are collinear, the indicator with the best quality and rationale is chosen, or collinear indicators are combined.

—*Clarity.* The characteristic has a clear-cut specification not easily manipulated in data reporting.

—*Continuity.* The indicator has as continuous a range of values as possible in order to avoid a notch effect.

—*Ease of collection.* The characteristic has been collected, or can be collected, in standardized form from all PHAs.

A. *Indicators selected for the backlog formula.* Using the selection guidelines just described, seven indicators were chose to estimate the backlog of modernization needs at public housing projects to modernize them to the HUD modernization standards and to ensure their long-term viability. These indicators were presented in appendix B of the Report of Congress on Alternative Methods of Funding Public Housing Modernization, and are listed as the backlog formula elements in section 509(a)(2)(B)(ii)(I)–(VII) of the NAHA.

The formula elements used in the backlog formula and their assigned weights are as follows:

1. *Average number of bedrooms per unit in a project, weighted at 2858.7.* This indicator represents the mix of elderly and family units in a project and represents the square footage per unit that can require repair. A higher number should yield a higher backlog per unit. Efficiencies are counted as zero bedrooms for this indicator.

2. *Large family units in a project, weighted at 7295.7.* This indicator represents very large families and a concentration of children in a project, with consequent wear and tear on the physical facilities. A higher number should yield a higher backlog per unit. This indicator is the difference between the average number of bedrooms per unit and 2.5, with values below zero set to zero.

3. *High-rise family project, weighted at 5555.8.* This indicator represents the special problems, such as elevator repair of housing families with children in high-rise buildings. A value of "1" is given for projects averaging at least 35 units per building *and* averaging at least 1.5 bedrooms per unit, or averaging between 1.2 and 1.5 bedrooms per unit and having at least 100 units of 2 or more bedrooms. A value of "1" should yield higher backlog per unit, relative to all other projects given a value of zero.

4. *Age of project, weighted at 206.5.* This indicator is the physical age of the project as of 1985 (the year in which the backlog inspections were conducted), capped at 50 years for acquired projects. It represents years of physical wear and, sometimes, years of under-maintenance. A higher value should yield higher backlog per unit.

5. *Total family units in a large PHA, weighted at .433.* This indicator is the number of units with 2 or more bedrooms in a PHA, with 5,000 deducted from that number. Values are capped at zero and 15,000. It represents the complex social and physical environment of housing low-income families in a concentrated manner in a large PHA. A higher number should yield higher backlog per unit.

6. *Area cost index, weighted at 27544.3.* This indicator is the R.S. Means index (the area cost index used in the Abt and ICF studies), calibrated nationally at 1.00, with values expressed as the index minus 1. It represents inter-area differences in the cost of rehabilitating a given physical property. A higher value should yield a higher backlog per unit.

7. *Severe population decline in the community, weighted at 759.5.* This indicator is a population loss from 1970 to 1980 in excess of 12 percent for the community. When community population loss is below 12 percent or when the project is a project for the elderly, the value is zero. It represents community and neighborhood problems, such as abandonment of property, that can accentuate wear and tear for projects with children. A higher value should yield more backlog per unit. Although data from the 1990 census will be available shortly; this indicator will not be updated to reflect that data, since it reflects conditions in a community in the years preceding the 1985 project inspections on which the regression equation is based.

In addition, to calibrate the above indicators for estimating backlog need per unit, an equation constant of 1412.9 is used in the same manner as that provided in Table 3 of Appendix B to the HUD Report on Alternative Methods for Funding Public Housing Modernization.

B. *Indicators selected for the accrual formula.* For this formula, accrual need is the 1986–1995 average of age-related capital accrual needs as modeled by ICF from Abt data, and updated to 1990 national totals. Using the selection guidelines described above, six indicators were chosen to estimate accrual need per unit, and are incorporated as formula elements in section 509 of the NAHA. Summarized below is the exact specification of these indicators and a brief explanation of their expected influence on the estimation of accrual need. These indicators are:

1. *Average number of bedrooms per unit, weighted at 100.1.* This indicator represents the mix of elderly and family units in a project, and the square footage per unit that can require repair. A higher value should yield a higher accrual per unit. Efficiencies are counted as zero bedrooms.

2. *Age of project, weighted at 10.4.* This indicator is the physical age of the project as of 1985, capped at 50 years for acquired projects. It represents the stage of the useful life of building systems and equipment. Up to a certain age, as modelled, a higher value should yield higher accrual per unit.

3. *Large family units in a project, weighted at 358.7.* This indicator represents very large families and a concentration of children in a project, with consequent wear and tear on the physical facilities. A higher number should yield a higher accrual per unit. This indicator is the difference between the average number of bedrooms per unit and 2.5, with values below zero set to zero.

4. *Low-rise projects, weighted at 87.1.* This indicator represents the likelihood of fewer economies of scale for major systems and the likelihood of larger square footage of floors, walls, and roof covering when the number of bedrooms per unit is held constant. It is the difference between five units per building and the actual average number of units per building, e.g., a maximum value of four for single-unit buidings. Values below zero are set to zero. A higher value should yield a higher accrual per unit.

5. *Cost index, weighted at 679.1.* This indicator is the R.S. Means index (the area cost index used in the Abt and ICF studies), calibrated nationally at 1.0, with values expressed as the index minus 1.0. It represents inter-area differences in the cost of rehabilitating a given physical property. A higher value should yield higher accrual per unit.

6. *PHA total units, weighted at .0144.* This indicator is the total number of units in the PHA capped at 6,000. It represents the probable complexity of physical systems not captured by project-specific indicators. A higher value should yield a higher accrual per unit.

In addition, to calibrate the above indicators in estimating accrual need per unit, an equation constant of 602.1 is used in the same manner as that provided in table 2 of appendix B to the HUD Report on Alternative Methods for Funding Public Housing Modernization.

For the first years of the formula, HUD intends to use, as weights of the enacted formula factors, those specified on table 3 of the HUD Report for FIX plus Mandatory Adds plus Project Specific Adds, and on Table 2 for Accrual (Technical appendix B of the HUD report on Alternative Methods). These weights go hand-in-hand with the enacted formula factors, and both were based on a rigorous statistical analysis that received extensive review within and outside HUD. The PHA, project, and community characteristics specified for use in allocating funds to PHAs under formula funding of modernization are the same as those presented in the HUD report to Congress on Alternative Methods for Funding Public Housing Modernization in the presentation of the formula for estimating FIX plus Mandatory ADDs plus Project-Specific ADDS and the formula for estimating the accrual needs of PHAs. Therefore, HUD considers it to be appropriate to use the two formulae, with their relative weights and formula constants, as they were presented in the HUD Report.

c. *Indicators tested but not selected.* Indicators were selected or rejected on the basis of the criteria described above. When two similar indicators met all the criteria, the indicator contributing most to goodness of fit was usually selected. In some cases, the impact of an indicator on other indicators also had to be judged, so that all indicators finally selected met the selection criteria and maximized goodness of fit.

The following indicators not chosen (or not readily available) are arranged by the type of need they were expected to represent. The phrases "bounded at alternative levels" or "interaction" represent many variations tested for a listed indicator.

1. *PHA status.*

—Total units in PHA, bounded at alternative levels.

—Total two or more bedroom units in PHA, bounded at alternate levels.

—HUD designation as "mod" troubled.

—Median household income of families (not readily available).

—Proportion of family units, large family units in the PHA.

2. *Community status.*

—CDBG formula, formula-B per capita.

—Population growth 1970–1980, bounded at alternate levels.

—Climatic harshness (a specific indicator not readily available and not used).

—Percent of households female-headed.

—Percent of persons in poverty.

—HUD Region recodes ("dummy" variables).

3. *Project household composition.*

—Percent elderly.

—Percent two or more bedrooms (sometimes interacting with other indicators).

—Percent three or more bedrooms.

4. *Project size.*

—Total units, bounded at alternate levels.

—Total two or more bedroom units, bounded at alternate levels.

5. Project density.

—Average units per building, bounded at alternate levels.

—Medium high-rise recodes ("dummy" variables).

—Scattered-site status.

—Maximum height in stories (an indicator not readily available for the project sample).

—Weighted height in stories (not readily available for the project sample).

6. *Project age.*

—Low age, high age recodes ("dummy" variables).

—Absolute value of 20-age, 40-age: bounded zero to 10.

—A recode of projects aged 19 to 26 years in 1985.

—Age interacting with family, elderly status.

7. Project maintenance and modernization.

—Vacancy rate, 1984.

—Modernization approvals, 1981–84 (estimated by PHA).

—Modernization spending, 1981–1984 (estimated by PHA).
—Estimate of need per unit in 1984 (estimated by PHA).
—High need per unit (estimated by PHA).
—High redesign need (estimated by PHA).
—FIX need per unit (for accrual estimation).
—Age-related FIX need per unit (for accrual estimation).

A more complete description of the reasoning behind, and the process concerning, formula development is available in the HUD Report to Congress on Alternative Methods for Funding Public Housing Modernization.

iv. *Related formula issues.*

—In accordance with section 14(k)(2)(D)(i) of the Act, HUD intends to count as one unit each existing rental and section 23 bond-financed unit under the annual contributions contract (ACC) for purposes of determining both the threshold for participation in the formula grant program, and the amount of funding to be provided.

Turnkey III units will be counted as one-fourth of a unit. This percentage has been determined on the basis of the types of activities that can be funded, and on the basis of the historical levels of funding for Turnkey III projects, with their limited eligibility for funding, relative to the levels of funding for rental projects.

Mutual Help units will be counted as three-fouths of a unit. This level of funding not only recognizes that homebuyer families under the Mutual Help program remain responsible for repair and replacement needs that are accruing in the future, but also that in the initial years of the formula funded modernization program there will be a substantial amount of backlog repair and replacement needs to be funded by IHAs in comprehensively modernizing Mutual Help projects. HUD may adjust this weight at some point in the future when it determines that Mutual Help units have been comprehensively modernized. (See §§ 905.600(b)(1); 968.101(b)(1).)

—Section 14(k)(2)(D)(i) of the Act provides that a PHA that has already qualified to participate in the CGP program because it owns or operates 500 or more units (250 or more units beginning in FFY 1993) may elect to continue to participate in the program if it owns or operates at least 400 units (at least 200 units beginning in FY 1993). (See §§ 905.600(b)(1); 968.101(b)(1).)

—Section 14(k)(2)(D)(ii) of the Act provides that, where an existing unit is demolished or disposed of, the Secretary shall not adjust the amount the PHA receives, unless more than one percent of the units are affected on a cumulative basis. In such case, HUD has decided to reduce, over a three-year period based on annual one-third increments, the PHA's funding to reflect the new number of units under the ACC. HUD plans to implement this requirement by comparing the units eligible for funding in the initial year under formula funding with the number of units eligible for funding for formula funding purposes for the current year. If the change is less than one percent, the PHA will be funded as through no change had occurred.

However, if the change is greater than one percent, the number of units on which formula funding is based will be the number of units reported as eligible for funding for the current program, plus two thirds of the difference between the initial year and the current year in the first year, plus one third of the difference in the second year, and at the level of the current year in the third year. Once a PHA's unit count has been fully reduced to reflect the new number of units under the ACC, this new number of units will serve as the base for purposes of calculating whether there has been a one percent reduction in units on a cumulative basis. A reduction in formula funding, based upon additional reductions to the number of a PHA's units, will also be phased in over a three-year period, as described above.

Where a PHA's units are reduced in two or more consecutive years, the actual unit count for the second or subsequent year shall be used as the basis for determining whether the one percent reduction is reached, and for purposes of calculating the phase-down of funds. For purposes of calculating any reduction in funding due to a loss of units caused by demolition or disposition, HUD intends to disregard those units that are added to a PHA's inventory after the initial year of the CGP program. (See §§ 905.601(j); 968.103(j).)

VI. Allocation of Assistance to Troubled and Non-Troubled PHAs under the Comprehensive Grant Program

a. Formula Characteristics Report

The Secretary proposes to require PHAs with 500 or more units under management, and the New York City Housing Authority, to transmit the necessary information to HUD about the PHA and project characteristics which are needed to run the formula and to determine relative funding shares for these PHAs. HUD plans to provide a standard format for the characteristics report. Additionally, in order to save PHAs unnecessary effort, HUD plans to provide initial information on the PHA and project characteristics to the PHAs, which they will then verify, certify, and submit to HUD.

The characteristics report and certification must be submitted annually. If a PHA fails to file its formula characteristics report by the date specified by HUD, the Department will use the latest data it has available about the PHA and its projects to run the formula. In such case, the PHA will be deemed to have waived its right under § 905.909(b)(2) or § 968.315(b)(2) to appeal its formula allocation for the fiscal year, on the basis of either an error in the data used by HUD, or on the basis of "unique" circumstances.

The formula characteristics report must be accompanied by a resolution adopted by the PHA Board of Commissioners approving the report, and certifying that the data provided in the formula characteristics report are accurate, to the best of its knowledge.

While the characteristics report is not specifically authorized by section 14 of the Act, HUD cannot develop the formula shares of funding without obtaining accurate information about each PHA to run the formula.

b. HUD Notification of Estimated Formula Amount; Appeal Rights

Section 14(k)(7) provides that PHAs may appeal the amount of their formula allocation either on the basis of unique circumstances, or on the basis that the data used by HUD to calculate the PHA's formula share of funds were incorrect. HUD hopes to minimize the necessity for appeals on the latter basis by requiring the PHA itself to certify the data on PHA and project characteristics which will be used to calculate the formula shares of funds. Nevertheless, it is possible that errors can occur.

PHAs that wish to appeal their formula allocation on the basis of inaccurate data about the PHA must make this appeal to HUD within 30 calendar days of the time that HUD notifies the PHA in writing of its formula allocation for that fiscal year. The PHA must specify its reasons for claiming that the data used to determine its formula allocation are inaccurate. HUD will respond in writing within 30 days of the date of its receipt of the PHA's request for an appeal.

As noted above, the statute also provides for a PHA to appeal the amount of its formula amount based on "unique circumstances." This appeal must also be submitted to HUD within 30 calendar days of written notification of its formula amount for the fiscal year. The PHA would be expected to identify the basis for its claim that there are "unique" circumstances supporting its appeal, specifying the way in which it is different from all other PHAs participating in the formula-funded modernization program, and providing supporting documentation for its appeal. HUD will respond to the PHA's appeal within 30 calendar days of the date of its receipt of the PHA's request. Moreover, the Department intends to publish in the Federal Register a description of any request for an appeal based upon "unique" circumstances, including the Department's disposition of the appeal.

HUD invites comments on what events or circumstances might constitute "unique circumstances." Commenters should bear in mind that section 509 already provides special grant funding for repair and replacement needs caused by natural or other disasters, the types of repair and replacement need which most readily come to mind as possibly constituting unique circumstances.

c. Reduced Formula Allocation for PHAs Initially Designated as Mod Troubled Under PHMAP

(i) *Reduction in funding.*

—*How reduction in funding is calculated.*

As discussed below, a PHA which is designated as mod troubled shall have its funding limited under the formula grant program. Section 14(k)(5)(A) provides that the initial grant under the program shall be limited to the sum of:

(1) The average amount the PHA received under CIAP and Major Reconstruction of Obsolete Projects (MROP) for each of fiscal years 1989, 1990, and 1991, adjusted to take into account construction cost changes; plus

(2) 25 percent of the difference between the amount and the full formula allocation which the PHA would otherwise be entitled to if it were not designated as mod troubled for purposes of the modernization program.

After a mod troubled PHA has transmitted the necessary information on PHA and project characteristics to allow HUD to run the formula, HUD will inform the PHA of whether or not its funding will be limited under the statutory provision cited above.

HUD will also provide the PHA with information on the funding levels under modernization and MROP in FFYs 1989, 1990 and 1991 which it intends to use to calculate the average amount of funding for those years on which the formula grant program will be based, and the adjustment factors it intends to use to adjust for changes in the cost of rehabilitating property. HUD intends to use the Means construction cost index for each area relevant to each PHA for this purpose.

HUD will also provide the PHA with information on, or an estimate of, its full formula amount, and of the amount which represents 25 percent of the difference between the average amounts provided in FFYs 1989, 1990 and 1991 and its full formula allocation of funds. While it would be desirable to provide "mod" troubled PHAs with the actual dollar amount of their formula allocations, it may not be possible to do so early in the fiscal year.

A mod troubled PHA with reduced funding remains eligible for funding from the natural disaster and emergency reserve fund, under the conditions applicable to that fund.

—*PHMAP rule*

Section 14(k)(5)(A) provides that any PHA designated as troubled with respect to the modernization program, in the initial designation of mod troubled agencies under the performance indicators authorized by section 502 of the Act, shall not receive its full formula allocation of funds for FFY 1992 and for every year thereafter, so long as it remains designated as mod troubled. Instead, the Secretary is required to limit a PHA's formula allocation, as discussed above.

HUD is issuing a separate rule to implement section 502 of the NAHA, which amends 6(j) of the U.S. Housing Act to call for the development and implementation of performance indicators for PHAs (but not for IHAs), and which will be codified at 24 CFR part 901. This separate rule would establish the PHMAP, which is designed to allow the Department to identify PHA management capabilities and deficiencies, and to provide for overall better management of the public housing program.

This rule will also specifically identify those indicators and factors which will be considered in designating a PHA as mod troubled for the purposes of the modernization program, and therefore subject to the funds limitation provisions of section 14(k)(5)(A).

It should be noted that under section 527 of the NAHA, the PHMAP is not applicable to IHAs. Consequently, in this proposed rule, HUD is not providing for any reduction in funding because of an IHA's designation as a troubled agency, nor is it establishing a credit system to reimburse IHAs for such amounts. Instead, HUD will condition the grant of any IHA that fails to make progress toward meeting its management improvement plan under § 905.135. (For a further discussion of HUD's proposed approach with respect to IHAs that are determined to lack administrative capability, see Section VI(e) of this preamble.)

While the performance indicators/standards relevant to designation as a mod troubled PHA for modernization purposes will be presented in the separate PHMAP rule for notice and comment, the Department wants to emphasize that these indicators/standards are key to the initial funding levels of certain PHAs under the formula funded modernization program. Additionally, they will also be used by HUD for purposes of measuring a PHA's progress toward meeting the performance indicators/standards established under section 6(j)(1) for purposes of assessing whether a mod troubled PHA's funding should be increased.

Commenters should also note that, while these indicators/standards are being discussed here in the context of mod troubled PHAs, they will in fact be applicable to all PHAs participating in the formula-funded modernization program. All PHAs (but not IHAs) participating in the CGP program will be expected to achieve at least a "C" grade on each of the PHMAP indicators/standards. This being the case, all commenters should carefully consider these indicators/standards in developing their comments on this rule as well as on the separate PHMAP rule.

(ii) *Appeal Rights.* It is important that each mod troubled PHA know the proposed amount of its funding as early as possible, so that there is time for the PHA to file, and for HUD to act on, the statutorily provided appeal to request additional funds, as discussed below.

A mod troubled PHA may request additional amounts beyond the amount proposed to be provided to it under the limitations set forth in section 14(k)(5)(A), and to request funds up to 100 percent of the formula allocation to which it would be entitled if it were not a mod troubled PHA.

This request from a mod troubled PHA for an increase in funds will be decided on the basis of the PHA's progress in meeting the mod troubled indicators/standards under PHMAP. HUD expects to judge this progress by assessing the progress the PHA has made in meeting goals and targets set forth in its MOA under PHMAP, which

is intended to allow the PHA to achieve at least a "C" grade under each of the mod troubled indicators/standards under the PHMAP in its activities with respect to the public housing program.

The mod troubled PHA's request for additional funds should specify how the PHA is achieving the goals and objectives set forth in its MOA and, therefore, is making progress toward meeting at least a "C" grade under the mod troubled indicators/standards under PHMAP, so that HUD can make the appropriate determination under section 14(k)(5)(B).

The mod troubled PHA's request for additional funds, up to 100 percent of its formula allocation, is due to HUD within 30 calendar days of written notification of the expected funding level for the mod troubled PHA for the current fiscal year. HUD will respond to the request within 30 calendar days of the date of its receipt of the request for additional funding and any necessary supporting documentation.

A mod troubled PHA may submit a request for additional funds in the initial year under the formula, and in any subsequent funding year in which it has not yet been authorized to receive its full formula allocation of funds.

It should be noted that the maximum amount of funds any "mod" troubled PHA can receive is its full formula allocation of funds. There may be cases in which the full formula allocation of funds is less than the average of the funding received by the mod troubled PHA under CIAP and MROP in FFYs 1989, 1990 and 1991. In such a case, the PHA would receive its full formula amount, and not the average funding level for the three cited years.

(iii) *Reallocation of funds withheld from mod troubled PHAs.* Amounts allocated to a mod troubled PHA by the formula, but not provided to the PHA because of the statutory funding limitations discussed above, will be reallocated to all other PHAs under the CGP program which have not been determined to be either troubled or mod troubled under PHMAP, and to IHAs under the CGP program which have not been determined by HUD to lack administrative capability under § 905.135. HUD will reallocate such funds based upon the relative needs of these PHAs and IHAs, as determined under the formula.

(iv) *Credits for PHAs designated as mod troubled under PHMAP.*

—*Accrual of credits.* Section 14(k)(5)(D) provides that the Secretary shall carry out a credit system to provide mod troubled PHAs which do not receive their full formula allocations, as discussed above, with additional funds to compensate for the amounts they did not receive because of their mod troubled status. A mod troubled PHA whose funding has been limited, as discussed above, would receive a "credit" for the difference between the amount the formula allocates to the agency, and the amount of funds actually provided to the agency.

—*Failure to remove mod troubled designation.* A mod troubled PHA could only accrue credits for three consecutive fiscal years. If the PHA has not achieved at least a "C" grade under the mod troubled indicators/standards under PHMAP, and had its mod troubled designation removed by the end of the fourth fiscal year, its total credits would be reduced by 10 percent.

The credits would be reduced by an additional 20 percent of the original amount if the PHA had not achieved at least a "C" grade under the mod troubled indicators/standards and had its mod troubled designation removed by the end of the fifth fiscal year.

Similarly, the outstanding credits would be reduced by an additional 30 percent of the original amount of credits if the PHA continued to be designated as mod troubled by the end of the sixth fiscal year.

If the PHA remained mod troubled by the end of the seventh fiscal year, all credits under this section would be eliminated.

—*Obtaining credits.*

When a PHA makes sufficient progress in improving its management and operation of the public housing program to be removed from mod troubled status, section 14(k)(5)(D) provides that it shall have access to its accrued credits. HUD proposes to make these credits available to the formerly mod troubled PHA in the fiscal year which begins after the PHA has been removed from the "mod" troubled list under PHMAP, so that the Department can reserve funds for payment of credits from the overall appropriation for that fiscal year, before establishing the formula allocation amount for each participating PHA.

It should be noted that section 14(k)(5)(D)(iv) limits the amount of an appropriation which can be reserved for the payment of these credits to no more than five percent of the funds available for allocation under the formula. Where formerly mod troubled PHAs are entitled to credits exceeding the five percent reserve, a pro rata reduction for that fiscal year shall be applied to the credit amount available to each formerly mod troubled PHA. A PHA remains entitled to receive its remaining balance of credits in future fiscal years.

Section 14(k)(5)(D)(v) provides that, in making payments to a PHA based upon its accrued credits, the Secretary may take into account the ability of the formerly mod troubled PHA to expeditiously expend funds available in the PHA's "credit account." HUD is proposing in this rulemaking to adjust the rate at which a PHA is provided access to its credits on the basis of the following guidelines, as determined appropriate by HUD: 10% of a PHA's accrued credits in the first year; an additional 20% of its accrued credits in the second year; an additional 30% of its accrued credits in the third year; and the remaining 40% of its accrued credits in the fourth year.

d. PHAs Subsequently Designated as Mod Troubled Under PHMAP

Section 14(k)(5)(E) calls for the Secretary to establish special rules for limiting the amount of assistance provided to PHAs that become mod troubled after the date of the initial designation of mod troubled PHAs under PHMAP. The statute specifies that these rules may also provide for a credit system.

The Department proposes to deal with PHAs that subsequently become designated as mod troubled under PHMAP in a different manner from the approach legislatively mandated under section 14(k)(5)(A) for PHAs that are initially designated as mod troubled under PHMAP.

Specifically, HUD would notify any PHA that is determined to be a mod troubled agency, after the initial designation of such agencies under PHMAP, of its mod troubled status and provide the PHA with an opportunity to appeal its designation in accordance with 24 CFR part 901. HUD shall also inform the PHA that, unless the PHA is able to remove its designation as a mod troubled agency during the appeal process under part 901, it shall withhold and reallocate a substantial amount of the PHA's formula allocation under the Comprehensive Grant program.

If a PHA is determined to be a mod troubled agency, following the opportunity provided to appeal its designation under part 901, HUD shall withhold its entire formula allocation under § 968.103 (e) and (f) for that fiscal year, except that a PHA would still be eligible to receive funding for its modernization needs for those eligible activities under § 968.310 which pertain to emergency work, management improvements, and statutorily-required activities (e.g., lead-based paint testing and abatement; section 504 activities, etc.).

The Department believes that it is critical that PHAs under the CGP program have a financial disincentive from becoming mod troubled under PHMAP, since a PHA which is determined to be a mod troubled agency has a major impact upon the quality of life of its project residents, as well as upon the upkeep and modernization of its physical structures.

Accordingly, HUD believes that the special rules it has established for PHAs under this section, pursuant to its authority under section 14(e)(5)(E) of the Act, are likely to have a significant deterrent effect upon PHAs from becoming mod troubled and, hence, should be highly effective in improving the overall quality of a PHA's modernization program.

Any amounts which are not provided to a PHA because of its designation as a mod troubled agency under this section will be reallocated by HUD to other PHAs under 24 CFR part 968 (subpart C) which are not designated as either troubled or mod troubled under PHMAP, and to IHAs with 500 or more units (250 or more units beginning in FFY 1993) under 24 CFR part 905 (subpart I) which have not been determined to lack administrative capability under § 905.135. HUD will reallocate such funds based upon the relative needs of these PHAs and IHAs, as determined under the formula.

(It should be noted that since section 502 of the NAHA excludes IHAs from coverage under the PHMAP, the Department has similarly excluded IHAs from coverage under these special rules governing PHAs which are subsequently designated as mod troubled under PHMAP. However, because an IHA may have its grant funds withheld and reallocated under § 905.687 (e) and (f) based upon a determination that it lacks administrative capability, HUD has decided to include in one pot all of the IHA and PHA funds to be reallocated under this program.)

e. Indian Housing Authorities Under Part 905 (Subpart I)

Under section 527 of the NAHA, IHAs are expressly excluded from coverage under the PHMAP. As a result, IHAs cannot be subject to any reduction in funding on the basis of their designation as a mod troubled agency under PHMAP, either as the result of an initial designation under PHMAP (section 14(k)(5)(A) of the Act), or because of a subsequent designation (under section 14(k)(5)(E) of the Act).

For this reason, many of the provisions that pertain to PHAs under the Comprehensive Grant program at 24 CFR part 968, subpart C, do not apply to IHAs under part 905. Some examples include the opportunity provided to a PHA to appeal its reduced funding allocation, the provisions relating to the reallocation of withheld formula funds, and the credit system for reimbursing a PHA that has removed its designation as a mod troubled agency for amounts previously withheld.

Nevertheless, it should be noted that the Department still has the authority established under section 14(e)(3)(D) of the Act to require an IHA to take corrective action if it has been determined to lack administrative capability pursuant to § 905.135, the ACA, and the Field Office Monitoring Handbook. An IHA which fails to take the HUD-prescribed corrective action, following notice and an opportunity to carry out such actions, shall have its grant funds withheld in accordance with § 905.687(e) of the proposed rule. HUD will continue to withhold an IHA's funds if it determines that the IHA has failed to comply with prescribed requirements, as determined by the ACA and the Field Office Monitoring of IHAs Handbook, or if it has failed to make reasonable progress toward meeting the goals established under its management improvement plan under § 905.125.

If an IHA's funds under the CGP program are withheld for a prescribed period of time, or if HUD recaptures for good cause some or all of an IHA's grant funds (for reasons other than the IHA's designation as an agency that lacks administrative capability under § 905.135), HUD will reallocate such funds to other IHAs under the CGP program which have not been determined to lack administrative capability under § 905.135, and to PHAs under the CGP program which have not been determined under PHMAP to be either troubled or mod troubled. HUD will reallocate such funds based upon the relative needs of these PHAs and IHAs, as determined under the formula.

VII. Other Changes

In this proposed rule, HUD also intends to implement a number of technical and substantive amendments to the CIAP and Comprehensive Grants programs contained in sections 509 (b) through (f), and section 516, of the NAHA. A brief discussion of HUD's proposed implementation of these amendments follows:

a. Section 509(b)—Removal of Certain Requirements for PHAs With Fewer Than 500 Units

Section 509(b) amended section 14(d)(4) of the Act by removing the requirement under the CIAP program for replacement needs and planning estimates, project financial information, and financial resources estimates. (See §§ 905.618(e); 968.210(e).)

b. Section 509(c)—Limitation of Special Purpose Modernization to PHAs With Fewer Than 500 Units

Section 509(c) amended section 14(f)(2)(B) of the Act by limiting the availability of special purpose modernization funding to PHAs participating under the CIAP program. (No amendment is needed to implement this legislative provision.)

c. Section 509(d)—Special Purpose Management Modernization for Agencies With Fewer Than 500 Units (Fewer Than 250 Units Beginning in FFY 1993)

Section 509(d) amended section 14(i)(1) of the Act by adding special purpose management modernization as a new category of eligible activities under the CIAP program. The term "special purpose management modernization" is defined under section 509(b) to mean "management improvement needs which are not otherwise eligible for assistance under the CIAP program, and which pertain to any low-income housing project other than a project assisted under section 8 of the Act.) (See §§ 905.615(b)(3); 968.205(b)(3).)

d. Section 509(e)(1)—Establishment of 250-Unit Threshold Beginning in Fiscal Year 1993

Effective October 1, 1992, section 509(e)(1) of the NAHA amended section 14 of the Act by reducing the threshold for participation under the Comprehensive Grant program from 500 or more units to 250 or more units. Furthermore, section 509(e)(2) of the NAHA amended section 14 of the Act by reducing the threshold for continued participation by a PHA which has already qualified for assistance under the CGP program from at least 499 units to at least 250 units. (See §§ 905.509(b)(1) and 905.503(i); 968.101(b)(1) and 968.102(i).)

e. Section 509(f)—Transition

Section 509(f) amended section 14 of the Act by providing that any amount that the Secretary has obligated to a PHA under the CIAP program shall be used for the purposes for which the

funding was provided, or for purposes consistent with an approved action plan submitted by the PHA under the Comprehensive Grant program, as determined appropriate by HUD. (See §§ 905.600(c); 968.101(c).)

f. Section 516—Eligibility of Indian Mutual Help Housing for Comprehensive Improvement Assistance

Section 516 of the NAHA amended section 202(b) of the Act to provide that, notwithstanding the provisions of section 14(c) of the Act, the Secretary may provide comprehensive modernization assistance to Mutual Help projects (or units within a project)" under both the CIAP and Comprehensive Grant program. This section further provides that any such assistance shall be provided " . . . only in the form of a single grant for each housing project (or unit within a project) selected for such assistance."

HUD has decided, for both the Comprehensive Grant and the CIAP programs, to apply section 516's reference to a "single grant" at the unit, rather than at the project, level, e.g., an IHA may not use more than a single CIAP or CGP grant to comprehensively modernize a Mutual Help unit. In addition, the Department is limiting the availability of comprehensive modernization under section 516 to only those existing units which are at least 10 years old. A unit which subsequently becomes 10 years old shall also be eligible for such assistance.

Since the Comprehensive Grant program does not provide for "modernization types," the Department has included a definition (borrowed from the CIAP program) of "comprehensive modernization" for the limited purpose of implementing section 516 under the CGP program.

It should be noted that the provisions of § 905.630, special requirements for homeownership projects, will apply to both CIAP and CGP grants. Accordingly, Mutual Help homebuyers who have their units comprehensively modernized pursuant to section 516 will have their homebuyer agreements amended to reflect the cost of the comprehensive modernization. However, the amendment will be limited to the difference between the cost of eligible work items that they would not have been charged for under the definition of "homeownership modernization," and the cost of work items actually undertaken pursuant to "comprehensive modernization."

Mutual Help homebuyers who elect not to have their units comprehensively modernized under section 516 may still participate in the modernization program under homeownership modernization.

An IHA which intends to comprehensively modernize its Mutual Help units under section 516 would be required to identify in its physical and management needs assessments those units which are at least 10 years old and which are, therefore, eligible for comprehensive modernization. In addition, the IHA's action plan would specify an IHA's prioritized goals for comprehensively modernizing its eligible Mutual Help units over the succeeding five-year period. Finally, the annual statement must specify each eligible unit to be comprehensively modernized with that year's annual grant. (See §§ 905.615(f) and 905.666(b).)

In addition to the statutorily-required changes discussed above, HUD also notes two additional provisions of the CGP program:

1. HUD is providing that a PHA or IHA may comprehensively modernize its vacant and non-homebuyer-occupied Turnkey III units with a single CIAP or CGP grant, if such modernization will result in bringing the units into full compliance with the homeownership objectives under the Turnkey III program under 24 CFR part 904 or part 905, as appropriate. Furthermore, to qualify for such assistance, the PHA or IHA must certify that it has homebuyers who are both eligible for homeownership, in accordance with the requirements of parts 904 or 905, and who have demonstrated their intent to be placed into each of the Turnkey III units proposed to be comprehensively modernized under the CIAP or CGP programs.

Before a PHA or IHA can draw down funds for the comprehensive modernization of a Turnkey III unit under this provision, however, it must first deplete any tenant equity account, or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit (although the PHA may retain in the NRMR sufficient funds to carry out future work items not covered by the comprehensive modernization of the unit). Any increase in the value of a unit caused by its comprehensive modernization under this provision shall be reflected in the purchase price for subsequent homebuyers as a result of its appraised fair market value.

2. In addition, HUD intends to apply to the CGP program the variations on the part 85 contracting requirements which currently are in effect for the CIAP program.

Specifically, under 24 CFR part 85 (the OMB government-wide codification of circular A-102) program income does not include interest on grant funds and, thus, might be interpreted to mean that the Department can no longer offset interest income against subsidy amounts. However, under the public housing program management phase (including modernization), interest income is treated the same as other program income in the determination of operating subsidy eligibility.

HUD intends to continue for the CGP program the existing requirements under § 990.109(e)(3) which provides that regular program income does, in fact, include interest on grant funds.

HUD intends to observe the part 85 requirements governing the treatment of program income in the limited area of interest accrued by a PHA on the non-formula replacement reserves. In this area only, HUD will not consider the interest accrued by a PHA on its replacement reserves to be program income and, hence, these funds shall not be subject to offset against subsidy amounts.

Another variation on the part 85 requirements which HUD intends to continue for this program includes alternative methods of providing bonding or other security for the performance of construction or equipment contractors beyond the single bonding procedure set out in § 85.36(h)(2). Section 85.36(h) (procurement—bonding requirements) requires a 100% performance or payment bond for contracts exceeding $100,000.

In contrast, HUD's rules (e.g., 24 CFR 968.12(c)) provide for a variety of alternatives. While 100% bonds are among these, in 24 CFR 968.12(c), HUD allows for separate performance and payment bonds, each for 50 percent or more of the contract price, or for a 20 percent cash escrow, or for a 25 percent letter of credit. These HUD rules are intended to promote greater opportunity for participation in construction and equipment contracting by small or minority or women-owned firms, and the Department's experience with these requirements has been a successful one. Accordingly, HUD is continuing its existing practice on bonding, notwithstanding the general applicability of 24 CFR part 85 to these programs.

VIII. HUD's Response to Public Comments on October 27, 1988 Proposed Rule

The Department received 21 public comments on its October 27, 1988 proposed rule. The commenters included 16 PHAs, two public housing organizations, one housing commission, one legal services corporation, and one private citizen.

Comments on the proposed rule are discussed below so that potential commenters on this revised proposed rule will understand HUD's reasoning in accepting or rejecting a proposed change, and to aid them in developing their comments on this revised proposed rule. For ease of reference, each topic heading includes citations to the relevant provisions in this proposed rule for both the Public and the Indian Housing Modernization Program under Parts 968 and 905, respectively.

a. Modernization and Energy Conservation Standards

(Sections 905.603; 968.113)

1. Scope of Modernization Activities.

Several commenters objected to HUD's purported intention to fund only "mandatory modernization" needs, and the accrual of mandatory modernization needs over time, arguing that there is no statutory basis for this limitation.

One commenter expressed concern that, in HUD's "Perspective" on the Abt study, the Department defined mandatory modernization in such a way as to exclude many improvement activities that currently are eligible under CIAP, such as management improvements, energy conservation, security improvements, and unit redesign for changing resident populations.

The Department wants to clarify that under section 14(a)(1)(A)(ii) of the Act, PHAs are required to rehabilitate their projects to the modernization standards. That section specifically provides that the comprehensive plan must contain an assessment of:

" " " the physical improvements necessary for each such project to permit the project to be rehabilitated *to a level at least equal to* the modernization standards specified in [HUD's] Modernization Handbook " " " as well as the modernization standards established by the Secretary and in effect at the time of the preparation of the comprehensive plan."

In addition, under section 14(c)(1)(B), PHAs are required to include in their comprehensive plans an assessment of their management and operations improvements that are needed to upgrade the PHA and its projects so that decent, safe, and sanitary living conditions will be provided in such projects.

The modernization standards consist of both mandatory and project-specific standards. Their overall purpose is to ensure that projects:

(1) Are safe, in physically sound condition, and have all systems performing their intended design functions;

(2) Can be efficiently maintained at a reasonable operating cost after rehabilitation;

(3) Provide attractive, livable residential environments;

(4) Provide increased security for resident and project property, as required; and

(5) Consist of energy efficient buildings and systems.

The modernization standards apply to improvements pertaining to health and safety, systems integrity, and energy conservation. The standards, on the other hand, exceed the mandatory standards and include work which is necessary or highly desirable for the long-term viability of a particular project, including site and building security. Project-specific work is not approvable across-the-board for all projects, but may be approved after taking into account the particular needs of each project.

Consequently, it is possible for a PHA to undertake modernization work which exceeds the mandatory modernization standards, but which nevertheless meets the requirements for project-specific work contained in HUD Handbook 7485.2, as revised. HUD has clarified this section of the rule to reflect that both mandatory and project-specific work items are included under the modernization standards.

The Seattle Housing Authority (SHA) commented that the reference to "minimum property standards" contained in § 968.113 should be omitted. The SHA urged that this term be replaced instead with the concept of "maximum property standards," which it claimed was a more appropriate standard to be applied to public housing units, since it imposes maximum standards for units that have limited living spaces and functional uses.

The Department agrees that its proposed reference to "minimum property standards" is an outdated and inappropriate standard by which to measure modernization activities, and has eliminated this term in this proposed rule. However, HUD has not adopted the suggested term, "maximum property standards," since it believes that the use of the HUD mandatory modernization standards, including both the mandatory and project-specific standards, more closely tracks the legislative intent behind section 14(c)(2) of the Act.

The Baltimore City Housing Authority (BCHA) wrote that it was concerned that the mandatory modernization standards might not include all local building code requirements. As a result, the BCHA asked whether PHAs would be required to obtain State and local government funding for modernization costs which exceed HUD's mandatory modernization standards, but which are nevertheless required to achieve compliance with local building code requirements.

HUD notes that the mandatory standards contained in HUD Handbook 7485.2, as revised (Public and Indian Housing Modernization Standards) clearly state that PHAs are required to comply with local building codes. The handbook provides that, in the event of a conflict between Federal and local mandatory standards, PHAs are required to comply with the more stringent standard. Consequently, modernization activities which would otherwise be eligible under § 968.310 of this proposed rule, and which are undertaken to achieve compliance with these standards, are eligible for funding under the CGP program. Accordingly, the Department has not modified this section in response to the BCHA's comment.

2. Effect of Non-HUD Resources for Modernization Activities.

A number of commenters expressed concern over HUD's statement in the proposed rule that "PHAs should be exploring with their State and local governments sources of funding to enable them to undertake that work which they have identified as desirable." These commenters insisted that they were unaware of any provision under section 14 of the Act which requires a State or local government to provide modernization assistance to a PHA, as a condition of the PHA's receiving financial assistance from HUD. They also argued that a PHA's receipt of non-HUD modernization assistance should not be used by HUD to decrease the PHA's funding eligibility under the Comprehensive Grant program.

The Department wants to emphasize that, while it does not intend to reduce the level of the CGP modernization grant as a result of State or local government contributions to a PHA, HUD does want to encourage PHAs to explore with their State and local governments the possibility of obtaining additional funding to meet their modernization needs.

HUD believes that State and local governments need to be encouraged to take an interest in the local public housing program, since a PHA should properly be viewed as an integral part of its community rather than as an extension of the Federal Government. Also, some PHAs have a significant

backlog of outstanding modernization needs, and this backlog can more rapidly be reduced if State and local governments make financial commitments to the PHA.

Even if State and local governments do not make a direct commitment to fund a PHA's modernization needs, they nevertheless control many of the resources (such as public safety and public works resources) which can be used to upgrade conditions in the neighborhoods surrounding a project and, thus, can indirectly improve conditions within the projects. The Department believes that it is only with the ongoing and committed involvement of all three levels of government—Federal, State and local—that permanent improvements can be made in the condition of many of the nation's public housing projects.

For these reasons, HUD is continuing to propose that a PHA that receives a commitment of non-HUD modernization funds must include these funds in its annual statement and performance report, so that HUD can ensure that a PHA's proposed work in its action plan and annual statement remains consistent with the needs identified in the comprehensive plan.

b. Preemption of Prevailing State Wage Rate Requirements

(Sections 905.120; 968.120)

A law firm commenting on behalf of a number of IHAs wrote that the preemption under § 968.120 of tribal prevailing wage rates is not statutorily authorized by Congress. The commenter asserted that the Davis-Bacon Act does not authorize an agency to preclude enforcement of tribally enacted minimum wage laws on Indian reservations.

HUD disagrees with this commenter. On August 10, 1988, HUD published a final rule in the **Federal Register** (at 53 FR 154) which preempted State wage rates, as well as wage rates that are determined to be prevailing under Indian tribal law, that exceed Federal wage rates.

Section 12 of the Act establishes the prevailing wage rate under the Davis-Bacon Act as a minimum wage rate. However, section 12 does not impose a cap on the wage rates that may be paid in the development or operation of a public housing project, nor does Section 12 preempt the imposition of higher wage rates that are determined under State law.

While section 12 does not directly preempt higher State or Tribal wage rates, HUD's determination to preempt higher State wage rates was made pursuant to its overall responsibility to carry out the purpose of the Act. Thus, the Department determined that the imposition on PHAs and IHAs of State wage rates that exceed the Davis-Bacon prevailing wage rate conflicts with the purpose of the Act.

This determination was based on the fact that the overall purpose of HUD's assistance to PHAs and IHAs under the Act is to maintain the lower income character of public and Indian housing projects and to ensure that they continue to be available to serve lower income families. HUD's decision to preempt higher State (including Tribal) wage rates prevents an unnecessary increase in the costs of developing and operating public and Indian housing projects, and enables the Federal Government to make the most effective use of limited budget reserves. Accordingly, this provision has been retained without modification in this revised proposed rule.

c. Purpose of the Comprehensive Grant Program

(Sections 905.660; 968.301)

(i) General

A number of commenters criticized HUD for publishing in the **Federal Register** its October, 1988 proposed rule for the Comprehensive Grant program. They argued that the Department did not have the legal authority to publish a regulation for the program until Congress enacted legislation establishing the CGP formula allocation method. These commenters urged HUD to withdraw its proposed rule, and to instead meet with PHAs and their representatives to develop a new proposed rule for the Comprehensive Grant program.

Five commenters expressed strong enthusiasm for HUD's overall implementation of the Comprehensive Grant program, stating that the program would provide a viable means of funding for large PHAs. However, other commenters argued against HUD's proposed regulations, claiming that critical aspects of the program contained in section 119 of the 1987 Act had been omitted in the October, 1988 proposed rule.

Other commenters, including the National Association of Housing and Redevelopment Officials (NAHRO), asserted that even in those areas where HUD had implemented provisions contained in section 119, its implementation deviated substantially from the letter and intent of the statutory mandate. As an example, NAHRO asserted that the purpose of the Comprehensive Grant program under section 119 is to provide funding on a "reliable and predictable basis," to give "considerable discretion" to PHAs in establishing modernization priorities, and to give PHAs greater control over the planning and expenditure of modernization funds. This commenter, however, claimed that since HUD's proposed rule did not include the method for allocating funds under the Comprehensive Grant program, it failed to comply with section 119's mandate to establish a reliable and predictable flow of funding.

While the Department believes that it had the authority to publish its proposed rule for the Comprehensive Grant program requirements, it has decided to republish the rule (with modifications) so that the public may comment on not only the program requirements, but also on the funding allocation method to be used for the CGP program.

Several commenters objected to the requirement in the proposed rule that restricted the Comprehensive Grant program to PHAs that own or operate 500 or more public housing units. These commenters asserted that the rule failed to explain why smaller housing authorities should be required to compete for CIAP modernization funds, while larger PHAs could receive a share of each year's available funding in accordance with a formula.

While HUD can appreciate these commenters' concerns, the Department does not have the discretion to modify the 500-unit statutory threshold for participation in the CGP program. Nevertheless, the Department notes that under section 509 of the NAHA there are a number of miscellaneous amendments which affect the CGP program, including a self-executing provision at section 509(e) which lowers the unit threshold for participation in the Comprehensive Grant program beginning in FFY 1993 from 500 to 250 public housing units. This section also reduces in FFY 1993 the ceiling for participation in the CIAP program from fewer than 500 units to fewer than 250 units. Because HUD considers this provision to be self-executing, it has implemented it in this proposed rule, for effect in FFY 1993.

A couple of commenters objected to HUD's decision in the proposed rule to exclude Turnkey III and Mutual Help units for purposes of calculating the 500-unit threshold for participation in the CGP program, and for determining the formula allocation. The commenters argued that the effect of this requirement was to prevent most, if not all, IHAs, from participating in the CGP program.

HUD agrees with these commenters, and has decided in this revised proposed rule to count Mutual Help units as three-quarters of a unit, and Turnkey III units as one-quarter of a unit, for purposes of calculating the 500-unit threshold for participation in the CGP program and for the formula allocation. Express authority to include these units is contained in section 14(k)(2)(D)(i) of the NAHA, which states that "* * * an existing unit under the turnkey III and the mutual help programs may be counted as less than one unit, to take into account the responsibility of families for the costs of certain maintenance and repair." Accordingly, HUD has included these proposed revisions in this rulemaking.

(ii) *Regulations for Indian Housing.* One commenter claimed that the regulations for the Comprehensive Grant program, as they would pertain to IHAs, should be proposed for separate comment. In this manner, the commenters maintained that IHAs could be consulted and be provided with an opportunity to comment before the regulations took effect.

The Department wants to point out that, although HUD's October 27, 1988 proposed rule specifically instructed persons interested in Indian Housing to comment on both the proposed Comprehensive Grant regulation, as well as the consolidated rulemaking for the Indian Housing program under 24 CFR part 905, this has become a moot issue since HUD is now republishing the proposed rule in its entirety, and is separately setting forth the requirements for the Indian Housing program under 24 CFR part 905 (subpart I).

d. Definitions

(Sections 905.102; 968.305)

(i) "*Emergency work.*" The New York City Housing Authority (NYCHA) urged HUD to broaden the scope of the definition of "emergency work." HUD defined this term in the proposed rule as "an immediate threat to the life, health or safety of residents or related to fire safety." The NYCHA asked that this definition be revised instead to read, "physical work items of an emergency nature which, in the judgment of the PHA, pose immediate or imminent threats to the life, health, safety or welfare of residents and/or PHA staff or relate to local building, fire, electrical, environmental or health codes."

The Department has not adopted the NYCHA's proposed definition of "emergency work," since it would greatly expand the types of activities that would qualify as emergency work. Furthermore, HUD has revised its earlier definition of "emergency work" to more closely track the legislative intent behind section 14(e)(1) of the Act. Under that section, HUD is prohibited from making assistance available to a PHA under the CGP program unless HUD has approved a 5-year comprehensive plan, "* * * except that the Secretary may provide such assistance if it is necessary to correct *conditions that constitute an immediate threat to the health or safety of tenants.*" (Emphasis added.) Consequently, HUD has revised its definition of "emergency work" by eliminating the reference to fire safety, in accordance with section 14(e)(1).

(ii) "Reasonable cost." Several comments were received on HUD's proposed definition under § 968.305 of "reasonable cost." One commenter argued that the 62.5% prototype cost would not take into account large developments that require extensive exterior work, and asked for an increase in the prototype limit.

Another commenter asked what items HUD was including in the 62.5% guidelines for new project cost, but asserted that if the 62.5% figure referred to total development cost, rather than total dwelling cost, it was a reasonable figure.

Other commenters asserted that the development of cost guidelines which limit the total cost of comprehensive modernization is irrelevant when comparing those costs to acquisition or new construction programs. Similarly, commenters stated that if, under an annual modernization grants program, modernization approaches other than "comp mod" are allowed, then cost guidelines for comprehensive modernization become irrelevant. In place of such cost guidelines, these commenters urged that other ways need to be developed to ensure that these modernization costs are reasonable.

While the Department believes that these comments raise valid concerns, it has nevertheless decided to retain in this revised proposed rule its definition of "reasonable cost." The "reasonable cost test" is mandated by section 14(e)(2)(A)(iii) of the Act, which provides that any improvements identified by the PHA in its comprehensive plan as being necessary for its projects to meet the modernization and energy conservation standards, must also reasonably ensure the long-term physical and social viability of each of these projects "at a reasonable cost."

Historically, in the modernization program, HUD has used a test of whether it is financially feasible to modernize a project. As a general rule, it is not considered to be financially feasible to modernize a project if it would be more expensive to modernize it than it would be to build a new project. As a result, HUD's financial feasibility test has been that modernization "hard costs" cannot exceed 62.5% of the computed total development cost for the development of new nonelevator units in the area (69% for elevator units).

The Department has adopted this same concept with regard to the "reasonable cost test" under the comprehensive plan, i.e., that a reasonable cost for modernization must not exceed the costs which would be incurred to build a new project on the same site.

However, the so-called "Green Amendment" contained in HUD's FY 1990 appropriations (Pub. L. 101-144, approved November 9, 1989) directed the Department to calculate total development cost in a new way, using the average of two commercial construction cost indices. This new method of calculating total development cost has resulted in an increase in the allowable "hard costs" and, thus, in an increase in the reasonable cost standard under the Comprehensive Grant program. Consequently, the Department has decided to retain without modification the existing figures of 62.5 percent of TDC for non-elevator units and 69 percent of TDC for elevator units.

HUD is providing in this proposed rule that a PHA must provide a physical needs assessment under the comprehensive plan which indicates the total estimated cost to bring each project up to at least the modernization standards, and to the energy conservation and life-cycle cost-effective performance standards. In addition, the PHA would be required to include as part of its comprehensive plan a certification from a licensed architect or engineer concerning the cost estimates (not just the costs that exceed 62.5%) provided by the PHA for each of its high need projects that has modernization hard costs which exceed 25 percent of TDC for non-elevator projects, or 28 percent for elevator projects. The PHA would then determine whether the project meets the reasonable cost test under section 14(e)(1)(C) of the Act.

The Department intends to review on a case-by-case basis any request by a PHA to exceed the cost guidelines limit, both with respect to its high need projects, or any other project.

a. Eligible Costs

(Sections 905.600; 968.310)

(i) General

Five commenters expressed concern as to whether HUD intended to limit a PHA's use of grant funds under the Comprehensive Grant program to the same types of activities that currently are encompassed under the term, "comprehensive modernization" in the CIAP program. These commenters asserted that such a restriction would violate section 119's goal of providing discretion to PHAs to decide upon specific improvements, the timing of expenditures, and to control the expenditure of funds.

Two other commenters objected to HUD's statement in the proposed rule that it would seek a repeal of section 14(f)(2)(B) of the Act, which authorizes a PHA to use Comprehensive Grant assistance for special purpose needs even when those needs are not included in the PHA's comprehensive plan or annual statement. These commenters argued that a repeal of section 14(f)(2)(B) was not justified since the rule failed to provide for other types of special purpose activities.

The Department wants to clarify that the Comprehensive Grant program does not provide for "modernization types," such as the comprehensive, special purpose or homeownership modernization categories contained in the CIAP program. Accordingly, PHAs are not required to undertake "comprehensive modernization" under this program, but may use their CGP grant allocation for any of the eligible activities listed in § 968.310, so long as these activities are included in their comprehensive plan and annual statement.

(The only exception concerning "modernization types" arises under HUD's proposed implementation of section 516 of the NAHA for purposes of the Mutual Help program under 24 CFR part 905 (subpart I). This is because section 516 of the NAHA specifically refers to HUD's providing assistance for an IHA to comprehensively modernize its Mutual Help units on a one-time basis. For a further discussion of HUD's implementation of section 516 of the NAHA, see section VII(f) of this preamble.)

HUD recognizes that the proposed rule erroneously referred to "comprehensive modernization" under § 968.320(b)(4)(B)(ii). Under that provision, HUD required PHAs to include in their action plan the estimated period of time within which each project would be "comprehensively modernized." The Department has removed this reference in this revised proposed rule, and has added clarifying language to indicate instead that PHAs are required to include in their action plan a schedule which lists, in priority order, the actions to be funded by the PHA over a five-year period to bring their projects to the modernization standards, and to the energy conservation and life-cycle cost-effective standards, and to meet the performance standards.

With regard to the commenters who objected to HUD's intention to seek a repeal of special purpose modernization under section 14(f)(2)(B) of the Act, the Department notes that the Comprehensive Grant program was intended to provide larger PHAs with greater discretion in carrying out their modernization activities. As a result, the establishment of a separate category for special purpose modernization is obsolete under this program, since a PHA already has the discretion under the CGP program to use funds for the same types of activities previously covered by special purpose modernization.

The Congress became aware of this technical error and subsequently included a provision under section 509(d) of the NAHA which limited the applicability of special purpose modernization to PHAs that receive modernization assistance under the CIAP program. HUD is implementing this statutory authority in this proposed rule. Although HUD construes section 509(d) to be a self-executing provision, it has decided to delay its implementation until the final rule for the Comprehensive Grant program is published. HUD's decision is premised on the need to ensure that all PHAs are able to carry out special purpose modernization until such time that formula funding is established for larger PHAs under the CGP program.

(ii) Limits on Eligible Costs

Several commenters expressed concern that the proposed rule contained many of the same constraints, such as cost guideline limits, management improvement restrictions and relocation costs, as the existing CIAP program.

A number of commenters claimed that HUD's proposed 15 percent annual cap on "soft costs" (defined by HUD to include management improvements, fees, and relocation costs) was too restrictive and should apply only to administrative and management fees. However, another commenter expressed the contrary view when it stated that HUD not only should provide a 15 percent cap on soft costs, but it should also include a maximum per unit cap that would limit the amount of funding a PHA could spend on management improvements.

Other commenters claimed that any funding needed to carry out any required relocation activities under the Comprehensive Grant program should be separately approved and paid for, and should not be included in HUD's 15 percent annual cap on "soft costs."

The Department agrees with many of these comments and provides in this proposed rule that management improvement costs (development account 1408) will be capped at 10 percent of a PHA's annual CGP grant. Additionally, administrative costs (development accounts 1410, 1430 and 1440), excluding any costs related to lead-based paint testing and any relocation expenses (development account 1495) will be capped at 10 percent of a PHA's annual CGP grant.

(iii) Management Improvements

One commenter asked that HUD more clearly define in the proposed rule the list of eligible and ineligible management improvements. This commenter specifically urged that "social service type" activities not be considered eligible improvements, since it claimed that these services should be provided by the local government rather than by the PHA.

Several other commenters, however, asked that PHAs (and not HUD) be given the task of defining eligible management improvements. These commenters asked HUD to include only a limited list of management improvements for which specific HUD approval would be required. The commenters asserted that, in this manner, HUD could avoid predetermining that a particular management improvement is ineligible without taking local factors into consideration.

The Department agrees that the rule needs to provide greater guidance in terms of defining what is an eligible management improvement. However, HUD does not believe that the rule should contain an exhaustive listing of eligible and ineligible management improvements, since this approach would preclude the exercise of flexibility to take local factors into account.

Accordingly, HUD has decided to adopt a standard for determining whether a management improvement is eligible under the CGP program, rather than providing a detailed listing of eligible and ineligible management improvements. Under this standard, a PHA must be able to establish that its proposed improvements are necessary to correct management deficiencies that have been identified in its comprehensive plan.

Examples of eligible management improvement under this standard would include the development or upgrading of resident programs and services; management, financial and accounting control systems; and the qualifications of PHA personnel. Ineligible management improvements would include hiring additional staff, using existing staff, or using contract labor to directly provide social services to residents projects to be modernized; or funding the ongoing operating expenses of resident organizations.

(iv) Relocation Costs

The NYCHA commented that it was troubled by HUD's incorporation-by-reference, under § 968.110(g) of the proposed rule, of relocation regulations that had not yet been published by the Department of Transportation (DOT). DOT's (then unpublished) regulations were intended to implement amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 that were contained in the Uniform Relocation Act Amendments of 1987. The NYCHA claimed that since DOT's regulations had not beeen published at the time HUD published its proposed rule, it did not have a meaningful opportunity to comment on the relocation standards that would apply to resident moving costs under § 968.310(a)(1)(iii) (under "Eligible costs").

While the Department appreciates the NYCHA's concern, it notes that it did not have the discretion to omit the reference to the as-yet unpublished DOT regulations. These regulations would automatically have applied to any part 968 modernization activities conducted after April 2, 1989, and HUD needed to apprise PHAs of that fact so that they could participate in the development of that separate rulemaking. HUD notes that PHAs did, in fact, have the opportunity to comment on DOT's regulations when they were published for comment. Furthermore, as discussed above, resident relocation expenses no longer are subject to an annual cap on "soft costs."

The Department also notes that it currently is in the process of developing a final rule to implement provisions of the DOT relocation requirements for its various programs, including the Public and Indian Housing Modernization programs. That separate rulemaking will establish the DOT requirements that are applicable to the Indian Housing program at 24 CFR 905.117, and for the Public Housing Modernization program at § 968.112.

(v) Lead-Based Paint Testing and Abatement

A commenter urged HUD to permit PHAs to abate lead-based paint using fair and reasonable guidelines. The Department is very sympathetic to this request, and notes that interim lead-based paint testing and abatement guidelines have been published and a rule currently is under development at HUD which would reflect changes mandated by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988).

Until that rule is effective, however, existing statutory, regulatory, and HUD notice provisions applicable to lead-based paint shall apply and the Department will strive to give PHAs as much flexibility as possible to permit testing and abatement of lead-based paint in their public housing projects. HUD will also continue to reserve 24 CFR part 905 (subpart H) (Indian Housing), and § 968.110(k) (Public Housing Modernization), for the future inclusion of the final lead-based paint requirements that are promulgated in the separate rulemaking.

(vi) Reserve Accounts

Several commenters supported the idea of reserve accounts for each development, but requested additional information concerning how reserve accounts would apply to future replacement and emergency needs in the action plan and annual statement, and their effect on the cost guidelines.

Other commenters stated that when a PHA's action plan and annual statement provide for funding of replacement reserves, HUD should actually provide those funds to the PHA. Commenters also expressed interest in having reserve accounts funded at the beginning of the grant period, and is not having HUD diminish future funding as a result of any accrued interest that the PHA may have received on the account.

Two commenters expressed the view that since the reserve for replacement serves the commonly accepted function of providing sufficient funds to replace deteriorating major equipment and building systems, they were surprised that HUD intended such reserves to fund not only replacements, but also emergencies.

The Department believes that many of these comments raise valid concerns, and it has undertaken a lengthy consideration of the nature of the reserve accounts to be funded under the CGP program.

The possibility of funding reserve accounts exists because a formula funding system, unlike the current CIAP program, does not fund existing work which needs to be done now at a particular project, but rather funds an estimate of work needed now and in the future at all of a PHA's projects, based on the characteristics of the PHA. Because an overall estimate of funding needs is used, some PHA's may be allocated more funds than are needed immediately to address existing deficiencies at their projects, although these funds will be needed in the future to address deficiencies as they arise. These PHAs are expected to place the excess funds in a reserve account for future use.

It is generally acknowledged that there is a large outstanding backlog of modernization needs at public housing projects which need to be funded in order to bring public housing up to a decent, safe and sanitary standard. By permitting PHAs to fund the reserve account when there are other outstanding needs would delay actions necessary to address the backlog of modernization needs.

Accordingly, in this proposed rule, HUD is providing that a PHA's five-year action plan can provide for the allocation of funds to a reserve account only: (1) When modernization funds are not needed for existing needs, as set forth in the comprehensive plan; or (2) or when a proposed work item requires more funds than those available in an annual allocation of formula modernization funding. These criteria are necessary both to allow PHAs to develop action plans and annual statements which may call for placing some funds in reserve accounts, and for HUD to review these plans and statements to determine whether they are "plainly inappropriate" to the needs of the PHA.

Specifically, HUD intends that PHAs will show a planned allocation to the reserve account in both the five-year action plan and the annual statement, as well as planned allocation of funds for needed repairs and replacements at various projects. The uses of funds shown in the action plan and the annual statement must be consistent with the needs for physical and management improvements shown in the overall comprehensive plan. Hence, the review standard for determining whether funds can legitimately be allocated to reserves would be the same standard used by HUD to review all proposed allocations

of funds to particular uses, i.e., whether allocation of funds to the reserve account is consistent with addressing needs identified in the comprehensive plan.

With regard to funding emergency modernization needs from the reserve account, the Department notes that in its October, 1988 proposed rule it stated that PHAs would be expected to plan the use of their formula allocation so that they could address emergency modernization needs and other unanticipated needs as they arise. However, HUD was unaware at that time that section 509 of the NAHA would establish a special Secretarial reserve fund for emergencies, which could be used by a PHA to fund emergencies when its own resources were inadequate, and which could later be repaid by the PHA from future funds allocations under the formula. Thus, the combination of unobligated funds and the Secretary's reserve available for emergency loans serve the purpose of a PHA-held reserve for emergency repair needs.

f. Allocation of Assistance

(Sections 905.608; 968.315)

Several commenters claimed that it was inappropriate for HUD to state in its proposed rule that the Department intended to seek a repeal of several provisions of Section 14 that it considered to be inconsistent with a formula allocation system. The commenters maintained that, since HUD was statutorily required to submit to Congress proposed alternatives for the CGP funding allocation method, it should not have been considering the repeal of "inconsistent" legislative provisions before the proposed funding alternatives were made available to the public.

While the Department can appreciate these commenters' concerns, a formula allocation method for the Comprehensive Grant program has now been encated by the Congress under section 509 of the NAHA, and the inconsistent legislative provisions have been removed.

g. Comprehensive Plans

(Sections 905.672; 968.320)

(i) Comprehensive Assessment of Physical Needs

A commenter asked that § 968.320(b)(1)(iv) of the proposed rule, which required a PHA's comprehensive plan to include an assessment of whether one or more buildings occupied predominantly by one racial or ethnic group are in substandard condition, could be broadened so as to address disparate treatment of developments.

The Deparment has not adopted this comment since it does not have the discretion to do so under the Fair Housing Act. Under section 808(a) of that Act, HUD is required to collect racial and ethnic data on a building-by-building basis for purposes of ascertaining whether any substandard buildings are predominantly occupied by one racial or ethnic group. Since this is a statutory requirement, HUD has retained this provision without modification.

(ii) Resident Involvement and Public Hearings

Two commenters strenuously objected to the requirement that a PHA hold a public hearing prior to the initial adoption of the comprehensive plan. The commenters maintained that, while residents should be consulted and the executive officer of the local government be advised of the PHA's comprehensive plan, a public hearing would greatly slow down the funding process.

On the other hand, a legal services organization strongly supported the opportunities provided for resident involvement under the CGP program, stating that this is critical to the success of the modernization program. However, the commenter urged HUD to require PHAs to obtain "sign-offs" from local resident organizations to indicate that they have been given notice and an opportunity to comment on any amendments to the comprehensive plan, rather than simply requiring certifications to that effect by the local government body or housing authority. This commenter also stated that resident organizations should have the right to submit their comments directly to HUD, after they have exhausted efforts to resolve their concerns directly with the PHA.

Initially, HUD notes that the requirement that a PHA hold a public hearing prior to the initial adoption of a comprehensive plan is statutorily required under section 14(e)(1)(E)(i) of the Act. However, even aside from this statutory mandate, the Department strongly supports the involvement of residents in the modernization of public housing projects.

Accordingly, HUD at its own initiative is proposing in this rule to maximize the opportunities for resident participation in the development and implementation of a PHA's comprehensive plan. Thus, the Department is requiring a PHA to make reasonable efforts to notify at least three weeks in advance of the public hearing each project resident affected by a PHA's comprehensive plan that it intends to hold a meeting with the PHA-wide resident group. The PHA-wide resident group should consist, to the extent possible, of the members of the board of the PHA-wide resident council or resident management corporation, and at least one resident from each of the projects covered by a PHA's comprehensive plan (who must be elected by the residents of the covered project(s)). The purpose of this meeting shall be to discuss the contents of a PHA's comprehensive plan, and to provide residents with sufficient information concerning the PHA's plan that they can effectively participate in the development of the plan.

Thereafter, a PHA shall hold a public hearing which provides local government officials and residents of the affected projects with an opportunity to summarize their priorities and concerns. The PHA is required to certify under the CGP program that it has given full consideration to the comments and concerns of the local government body and of the project residents in developing the comprehensive plan.

Since HUD intends to require a PHA to annually amend its action plan to add an additional year of work, and also to submit with its annual statement certain amendments to the physical and management needs assessments in the comprehensive plan, the Department is also proposing in this rule that the PHA-wide resident group meeting and the public hearing be conducted by the PHA on an annual basis, prior to the submission of the PHA's annual statement.

Because the Department believes that its expanded requirements governing resident participation under this rule would protect the rights of residents who want to participate in the process for developing and implementing a PHA's comprehensive plan, HUD has not adopted the commenter suggestion that PHA obtain a sign-off from resident organizations. Nevertheless, HUD wants to emphasize that resident organizations, as well as any other interested individuals or entities, may submit their comments on any proposed amendment to the comprehensive plan directly to HUD, whenever they believe that a PHA has not adequately responded to their concerns.

(iii) Amendment of Action Plan

In its October 1988 proposed rule, HUD solicited public comment on when PHAs should be required to submit amendments to their five-year action plans. One commenter responded that PHAs should submit their amendments at the end of the five-year period, so long as the amendment does not adversely affect the funding to be provided over that period. However, nine commenters preferred that amendments to the action plan be submitted annually, since this would provide a better ongoing planning and monitoring device.

One commenter claimed that it was reluctant to concur in proposals for annual plan amendments, if PHAs would be required also to undergo the rigors of notice and comment.

In response to these comments, the Department has decided to propose that revisions to the five-year "rolling base" action plan be annually submitted to HUD as an amendment to the PHA's comprehensive plan. Hence, PHAs would be required annually to consult with residents, as discussed above.

(iv) Viability Standards

A number of commenters were in favor of allowing PHAs to make more improvements to a project than are strictly necessary to achieve viability. They asked that HUD include a provision in the rule that would allow well-managed PHAs to spend more on a project, when necessary, to maximize its social viability.

The NYCHA asserted that the viability standards established by HUD are not necessarily appropriate for each community or development, and asked that HUD instead defer to the judgment of the PHA.

NAHRO questioned HUD's interpretation of the "social viability" test, which it claimed grants HUD overly broad discretion to reject a PHA's comprehensive plan. This commenter stated that it was unreasonable for HUD to expect a PHA to address such a wide range of environmental factors over which it might have no direct control, e.g., factors such as air pollution.

A legal services organization asked HUD to include a provision in the rule which would permit residents, resident organizations, and State and local government officials to be informed of a dispute between HUD and PHA over certain types of viability determinations, and to be given an opportunity to submit comments.

Initially, the Department wants to point out that PHAs do have the flexibility to make more improvements to a project than are strictly necessary to achieve viability. As discussed above, the modernization standards contained in HUD Handbook 7485.2, as revised (Public and Indian Housing Modernization Standards) are composed of both mandatory and project-specific standards. When a PHA modernizes to the project-specific standards (in contrast to the mandatory standards), it may undertake improvements that are necessary or highly desirable for the project to achieve viability. Consequently, HUD has not made any revisions in this revised proposed rule to its viability standards.

With regard to the other comments concerning viability, the Department notes that it has decided to retain in this revised proposed rule the existing viability review standards under § 968.320(c)(4).

In response to the commenter who asked that residents, resident organizations, and State and local government officials be informed of certain types of viability determinations, the Department notes that these individuals and entities already have a statutorily-protected right to participate in this process. Under section 14(e)(1)(E), a PHA is required to hold at least one public hearing before the initial adoption of the comprehensive plan. The purpose of the public hearing is to provide "tenants and other interested parties" with an opportunity to summarize their priorities and concerns. Since the comprehensive plan necessarily encompasses the PHA's long-term physical and social viability determinations for each of its projects under section 14(e)(1)(C), all interested parties will have an opportunity to raise their concerns about the viability determinations at the required public hearing. Accordingly, the Department has not made any modifications to the rule in response to this comment.

A commenter argued that, under the viability review at § 968.320(b)(3), PHAs should be required to demonstrate that all work items within the past five years (and not just non-emergency items) do not duplicate work funded during that period. In support of its view, the commenter claimed that many PHAs propose items as "emergency" items which are, in fact, deferred maintenance, and that the purpose of the evaluation of past assistance is to insure against duplication. The commenter also urged HUD to include in the five-year list other types of funding that the PHA either has received or expects to receive from State or local governments, private sources, or other federal programs, including MROP CDBG, pilot programs, and HHS initiatives.

HUD agrees that the existing procedure for monitoring whether a PHA's proposed improvements are duplicative of previously-funded improvements is confusing and needs to be revised. Consequently, the Department has removed the monitoring system previously contained in the October 1988 proposed rule, and specifically requests comments concerning alternative monitoring systems which could be implemented in the final rule for this program.

(v) Consistency With PHA's Occupancy Plan

A commenter suggested hat PHAs should be required to ensure that their comprehensive plans and annual statements are consistent with the comprehensive occupancy plans that they submit under § 990.116. This commenter also urged that PHAs be required to include information in their performance and evaluation report concerning how the modernization work either achieved the outcome called for by the comprehensive occupancy plan, or explains why it failed to do so.

The Department agrees with this comment, and provides in this proposed rule that a PHA incorporate into its CGP comprehensive plan, either as an addendum or as an integral part of the plan, the comprehensive occupancy plan developed under 24 CFR part 990. Although HUD currently is in the process of revising its regulations concerning the public housing occupancy plan under part 990, PHAs could use the existing regulations until a final rule implementing these changes is published.

h. HUD Review and Approval of Comprehensive Plan

(Sections 905.675; 968.325)

(i) General

Two commenters objected to HUD's proposed process for reviewing and approving a PHA's five-year comprehensive plan, claiming that this process may become "* * * as detailed and cumbersome as the CIAP application approvals." These commenters urged HUD to deregulate the CGP program in areas where detailed HUD intervention is inappropriate, but to retain more detailed standards where the Department has to implement a specific statutory mandate.

The Department is cognizant of the fact that section 119 of the 1987 Act provides that the purposes of the Comprehensive Grant program include providing considerable discretion to PHAs, and significantly simplifying the Federal funding of capital improvements at public housing projects. Nevertheless, sections 14 (e)(2)(A), (e)(3)(C), (e)(4) (A) and (B) of the Act, as amended, also impose upon HUD a statutory obligation to review and approve a PHA's comprehensive plan, action plan, annual

statement, and performance and evaluation reports.

The Department intends to review a PHA's comprehensive plan under the CGP program with a view toward ensuring that the overall plan is viable, and that not only physical, but particularly, management needs are addressed, given available facts and data about the PHA and its projects. Furthermore, the Department will use the PHMAP as a monitoring tool to evaluate PHA performance, and will provide PHAs with maximum local flexibility in carrying out modernization activities under this program.

HUD intends to evaluate the administrative capability of IHAs under the Comprehensive Grant program in accordance with § 905.135, the Administrative Capabilities Assessment (ACA), and the Field Office Monitoring of IHAs Handbook (Handbook 7440.3, as revised).

For a further discussion of HUD's proposed implementation of the Comprehensive Grant program, including the requirements to be established under the comprehensive plan, see section IV of this preamble.

(ii) Disapproval of Comprehensive Plan

A couple of commenters noted that under § 968.325(b)(2)(i)(B) of the proposed rule, HUD is required to disapprove a PHA's comprehensive plan if the proposed work fails to address all management and operation areas that HUD has determined to be deficient. These commenters suggested that the use of the word "all" in this subsection sets too strict a standard and will result in numerous review rejections by local HUD offices. As an alternative standard, the commenters asked HUD to require a PHA to be making "reasonable progress" towards meeting the objectives under this section.

The Department has not adopted this comment since section 14(e)(1)(B) of the Act clearly requires a PHA to undertake an assessment of all of its management and operations deficiencies. Furthermore, HUD is not adopting a "reasonable progress" since this is the same standard used by HUD to review a PHA's annual statement and performance report. Consequently, HUD is retaining the existing regulatory language, without amendment.

NAHRO disputed HUD's ability to reject a comprehensive plan under § 968.325(b)(2)(i) on the basis of "available data" if proposed improvements and replacements would not bring all projects up to energy conservation standards. This commenter accurately pointed out that not all aspects of a PHA's comprehensive plan are relevant to energy conservation, such as in the case of lead-based paint and management improvements. The Department agrees with this comment, and has modified the section to clarify that project improvements must meet energy conservation standards only when these are applicable to the work being performed.

The NYCHA urged the Department to give a PHA notice of its intention to disapprove a proposed plan, and to offer the PHA a 30-day period in which to resolve problems. In this manner, the NYCHA insisted, the local HUD office could contact the PHA and arrange for a conference in which differences could be worked out.

While HUD is sympathetic to this approach, it notes that section 14(e)(2)(B) of the Act gives the Department only 75 calendar days from the date a PHA submits its comprehensive plan to complete its review and to notify the PHA of its reasons for disapproving the plan. As a result, there may not be enough time for HUD to review a PHA's plan, provide the PHA with 30-days advance notice of its intent to disapprove the plan, and still meet the 75-day statutory period for disapproving a plan. HUD field staff, however, will make every effort to discuss their concerns with a PHA before rejecting its comprehensive plan. It should be noted, however, that even if a PHA's comprehensive plan is rejected, it can still obtain emergency funds under the CGP program until such time as HUD approves its resubmitted plan. HUD has included language in this proposed rule that it shall not disapprove a comprehensive plan because it does not have sufficient time to complete its review within the 75-day deadline.

(iii) Timeframe for ACC Amendments

A commenter asked HUD to include in the rule a timeframe for the completion of ACC amendment documents so that PHAs can undertake more accurate scheduling. While HUD has not adopted this suggestion in this revised proposed rule, it does intend to include a timeframe for the completion of ACC amendment documents in a handbook developed for the Comprehensive Grant program, as currently provided in the revised CIAP handbook.

(i) Annual Statement of Activities and Expenditures

(Sections 905.678; 968.330)

A couple of commenters objected to the exception carved out under § 968.330(d) for emergency and unanticipated work, from the general requirement that a PHA must submit to HUD for approval only "major changes" to its annual statement. HUD provided in its October, 1988 proposed rule that emergency and unanticipated work discovered during rehabilitation need not be submitted to the Department for approval, although they had to be included in the PHA's performance and evaluation report. These commenters insisted, however, that emergency and unanticipated work could greatly change a previously approved plan; result in unnacceptable materials, methods and procurement; and override established program controls.

The Department has decided in this rule to propose a number of revisions to the procedure for informing HUD of "major changes to a PHA's annual statement. First, HUD has included a definition of the term "major changes," so that PHAs are aware of the types of changes to the annual statement that trigger a need for HUD approval. HUD has defined "major changes" to mean additions or deletions of work items in the annual statement involving more than 10 per cent of a PHA's annual grant allocation and which are included within the five-year action plan (but excluding emergencies, which may be addressed at any time without the need for an amendment.)

Second, because the definition of "major changes" will provide PHAs with sufficient flexibility to respond to unauthorized work discovered during rehabilitation, an amendment covering such work must be submitted to HUD for approval if it results in the overall addition or deletion of work items to a PHA's annual statement involving more than 10 per cent of its annual grant.

Finally, HUD has included language to clarify that a PHA must advise the Department in its performance and evaluation report of any deviations from its annual statement (or amended annual statement), including changes caused by the need to address emergencies.

j. Conduct of Modernization Activities

(Sections 905.681; 968.335)

Four commenters urged HUD to permit PHAs to draw down modernization funds, since they claimed that the current direct payment system has resulted in late payments to vendors and contractors. These commenters stated that a draw-down of funds provides PHAs with more flexibility and a greater opportunity to plan and control expenditure of funds, while still providing appropriate fiscal checks and balances. Furthermore, they

recommended that PHAs be allowed to draw down 15% of their estimated five-year allocation on an up-front basis, rather than annually.

The Department notes that it currently is reviewing its various payment systems, as well as 24 CFR Part 85 ("Administrative Requirements for Grants and Cooperative Agreements to States, Local, and Federally Recognized Indian Tribal Governments"), to determine which payment system would best meet the objectives of the Comprehensive Grant program. HUD will provide details on the requisition system that is ultimately selected for use in the CGP program in the program handbook.

HUD will not, however, permit a PHA to draw down funds from its estimated five-year allocation on an up-front basis. This decision is premised on the fact that HUD is required under 24 CFR 85.21(b) to ensure that its methods and procedures for payment to a grantee minimize the time elapsing between HUD's transfer of funds and the subsequent disbursement of those funds by the grantee (in accordance with Treasury regulations at 31 CFR part 205). The commenter's suggestion that PHAs be permitted to draw down 15 percent of their estimated five-year allocation up-front is inconsistent with this requirement under part 85 and, hence, has not been adopted.

A PHA expressed concern that modernization award decisions and CGP funding be provided early enough in the year to allow PHAs to accomplish their modernization goals. The Department fully agrees with this view and, accordingly, has decided to operate the Comprehensive Grant program on the basis of the Federal Fiscal Year, rather than the PHA's fiscal year.

Since HUD does not expect to inform PHAs of their annual CGP formula allocations until a period not to exceed 60 days after appropriations become available for the program, PHAs will not be able to finalize their annual statements until that time. In addition, final formula allocations will not be made available to PHAs until approximately mid-February (for those years in which appropriations are available on October 1). As a result, PHAs that have an October 1 or January 1 fiscal year will not be able to finalize their annual statements specifying the use of funds until after that time, or they would have to amend their annual statement. In either case, these PHAs could not receive formula funds to coincide with their fiscal years.

If appropriations for the CGP program are delayed beyond October 1, even the PHAs with an April 1 fiscal year may not have enough time to prepare their annual statements, while PHAs with a July 1 fiscal year will have to wait longer than necessary to receive their formula allocation funds. Accordingly, HUD has decided to provide in this revised proposed rule that the Comprehensive Grant program will operate on the basis of the Federal Fiscal year.

k. PHA Performance and Evaluation Report

(Sections 905.684; 968.340)

The Portland Housing Authority stated that the year-end reporting requirements contained in the proposed rule were unclear. The housing authority also requested that the time period for submission of the performance and evaluation report be changed from 30 days to 90 days following the end of each PHA's fiscal year to provide adequate time to solicit resident input.

The Department agrees that the proposed time period for the submission of the performance and evaluation report is too short, and is currently considering a 90-day deadline following the end of a PHA's program year for purposes of submitting the report. HUD specifically requests comments concerning alternative submission dates for the performance and evaluation report under this section. The proposed rule now provides that the report shall be submitted to HUD, in a form and at a time to be prescribed by HUD. Specific details concerning the performance and evaluation report will be contained in the CGP program handbook.

l. HUD Review of PHA Performance

(Sections 905.687; 968.345)

(i) Reasonable Progress/Physical Performance Standards

A commenter objected to HUD's using the Housing Quality Standards (HQS) under 24 CFR 882.109 as a basis for determining whether a PHA is making reasonable progress toward meeting physical performance standards. This commenter maintained that the HQS used in the Section 8 program have no relevance to the public housing modernization program, and asserted that the appropriate standard to be used is the one contained in HUD's modernization standards handbook.

The Department wants to clarify that the HQS is an occupancy standard, and *not* a rehabilitation standard. The HQS occupancy standard is a fairly simple standard, familiar to PHAs, that is used to measure whether the public housing project is meeting under section 14(e)(1)(B) the basic goal of providing decent, safe and sanitary housing. The modernization standards for the public housing program are contained in HUD Handbook 7485.2, as revised, (Public and Indian Housing Modernization Standards). These modernization standards establish the rehabilitation standards for all public housing units, and are statutorily mandated under section 14(e)(1)(A)(ii) of the Act. That section requires the comprehensive plan to contain an assessment of:

(ii) the physical improvements necessary for each such project to permit the project—

(I) to be rehabilitated to a level at least equal to the modernization standards specified in the Modernization Handbook of the Department of Housing and Urban Development in effect on the date of the enactment of the Housing and Community Development Act of 1987, as well as the modernization standards established by the Secretary and in effect at the time of the preparation of the comprehensive plan:

The Department construes this provision to mean that any improvements undertaken by a PHA under the CGP program must meet the modernization standards specified in HUD Handbook 7485.2, as revised. However, HUD does not believe that this language requires all of a PHA's projects covered by the action plan to reach the modernization standards within five years.

Nevertheless, HUD has decided to remove its reference to the HQS as a minimum goal that a PHA must meet for its projects during the five-year period covered by the action plan. Instead, the Department is providing in this rule that a PHA must specify in its action plan the actual work items, the cost, and projected target dates for bringing each of a PHA's projects up to the modernization standards, and to the energy conservation and life-cycle cost effective standards.

HUD is also requiring a PHA to include in its annual statement an implementation schedule of the length of time it will take the PHA to carry out the activities, including those activities pertaining to its high need or other designated projects, to be funded under the action plan, and to report in its performance and evaluation report on its progress in carrying out these activities.

Finally, HUD will review under § 968.345 the timeliness of a PHA's performance in carrying out the activities identified in the action plan. Nevertheless, since the performance standards set by the Secretary include a standard that projects meet HQS, PHAs with deficiencies in this area will be

expected to address them in the context of their action plans.

(ii) Reasonable Progress/Management Performance Standards

HUD received several comments concerning the management performance standards that are to be used to determine whether a PHA has made reasonable progress in carrying out its modernization program.

Two commenters claimed that the seven standards contained in HUD's proposed rule bear no relationship to a PHA's ability to perform its modernization program. Specifically, these commenters argued that there is little relationship between section 119's "reasonable progress" determination, and HUD's proposed management standards which include an assessment of a PHA's annual utility consumption and its percentage of rent collections.

A legal services organization, though apparently satisfied with the management standards contained in the proposed rule, urged HUD to consult with residents and resident organizations before proposing any changes to these standards. Another commenter expressed concern about the relevance to Indian housing of the proposed management standards, and asked that HUD consult with IHAs before establishing management performance standards pertaining to Indian housing.

In response to these comments, the Department notes that the management performance standards that were contained in the October, 1988 proposed rule were derived from the Public Housing Decontrol Program (see HUD Handbook 7460.5, issued October 16, 1987). However, in January, 1990, the Department suspended the Decontrol Program and currently is in the process of developing new management performance indicators/standards to implement section 502 of the NAHA (the "Public Housing Management Assessment Program" (PHMAP)).

The PHMAP indicators/standards—which include standards relevant to public housing modernization in general, as well as to PHAs designated by HUD as "troubled" and "mod troubled"—will be developed following a proposed and final rulemaking, and will ultimately be codified at 24 CFR part 901. Public housing residents, resident organizations, and other interested individuals will have ample opportunity to submit comments on the PHMAP rule during the course of its development.

However, because the Decontrol program has been suspended and the PHMAP rule is not yet effective, HUD has removed the management performance standards that were previously contained at § 968.345(a)(3) of the October, 1988 proposed rule. Instead, the Department would provide that reasonable progress means that a PHA meets at least a "C" level of performance under each of the PHMAP indicators/standards under 24 CFR part 901, or that it is making reasonable progress toward meeting at least a "C" level of performance under each of the PHMAP indicators/standards, based upon its progress in meeting targets established under its MOA or improvement plan under PHMAP.

With respect to the Indian housing program, the operative performance standards for assessing an IHA's administrative capability remain in effect under § 905.135 and the ACA. HUD would provide that reasonable progress means that an IHA has satisfied, or has made reasonable progress toward satisfying, the terms of its management improvement plan.

A PHA objected to HUD's standard for evaluating whether a PHA "* * * has satisfied, or has made reasonable progress towards satisfying" the performance standards contained in § 968.345(a)(3) of the proposed rule. HUD had indicated in the proposed rule that its "reasonable progress" determination would take into account what is reasonable to expect a PHA to achieve, "based on the experience of PHAs in similar circumstances, as determined by HUD." The commenter asserted that this standard might not always be appropriate, as when comparative or similar circumstances do not exist. The Department has decided to entirely remove this portion of the "reasonable progress" determination, on the basis that it is not administratively feasible for HUD to implement this provision.

(iii) Corrective Action

A couple of commenters disputed HUD's statement in the proposed rule that the Department has inherent authority to reallocate a PHA's grant funds because of its express authority to take corrective actions against PHAs under section 14(e)(4)(D) of the Act. These commenters also asked how HUD would deal with emergency needs if a PHA's formula allocation under the CGP program were withheld.

A parallel issue raised by commenters is why HUD provides an opportunity for consultation or appeal by a PHA when its funds are to be reallocated, but denies such an opportunity when funding is to be conditioned. They urged HUD to provide notice and an opportunity for an informal conference both prior to the imposition of conditions or the cutoff of funding. In addition, they asked that PHAs be provided with a written determination after the hearing which sets out the basis for HUD's actions, as well as its reasons for rejecting any proposals made by the housing authority.

Although the Department believes that many of the issues raised by these commenters address valid concerns, it continues to interpret section 14(e)(4)(D) as inherently authorizing HUD to reallocate some or all of the PHA's grant funds whenever:

(1) HUD has required the PHA to take corrective action and the PHA has failed to correct the deficiency in a reasonable time; or

(2) HUD has withheld a PHA's grant for a prescribed period of time.

As indicated in the proposed rule, HUD's interpretation is premised on the fact that section 14's express authority to withhold a PHA's grant allocation inherently authorizes HUD to take steps to subsequently reallocate those funds, and thereby make the statutorily-authorized withholding provision a viable sanction. The Department has, however, clarified in this proposed rule that even if a PHA has its funding withheld under § 968.345, it may still obtain funds to address its emergency modernization needs.

Finally, the Department agrees that PHAs should be provided with notice and an opportunity for consultation whenever HUD decides to condition, withhold, recapture for good cause, or reallocate grant funds, and has made the necessary modifications to this proposed rule.

IX. Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5 p.m. weekdays) in the Office of the Rules Docket Clerk, room 10272, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Have a significant adverse effect on competition, employment, investment, productivity, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rule was not listed under the Office of Public and Indian Housing in the Department's Semiannual Regulatory Agenda published on October 29, 1990 (55 FR 44530, 44536), under Executive Order 12291 and the Regulatory Flexibility Act.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule establishes a new Comprehensive Grant program under which larger PHAs receive modernization assistance from HUD on a formula basis. HUD does not anticipate a significant economic impact on small entities since PHAs will continue to carry out their modernization activities by entering into contracts for the work as they now do.

On February 26, 1990, the Department published an interim final rule (24 CFR part 87) advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101-121, approved October 23, 1989) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The interim final rule generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds.

The certification and disclosure requirements apply to all grants in excess of $100,000. All potential grantees are required to submit the certification, and to make the required disclosure if the grant amount exceeds $100,000. Potential grantees should refer to 24 CFR part 87 for the language for the certification and disclosure. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

The information collection requirements for the proposed Comprehensive Grants program have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

SUMMARY OF BURDEN HOURS

	No. of PHAs/IHAs		Annual total burden hours		Average annual burden hours	
	CIAP	Comp Grant	CIAP	Comp Grant	CIAP	Comp Grant
Current Program	1,600		127,482		79.8	
Year 1	1,193	407	95,053	71,792	79.6	[1] 176.3
Year 2	746	854	59,439	141,160	79.6	[2] 165.2
Year 3	746	854	[3] 59,439	[3] 51,760	79.6	60.6

The first two years of the Comprehensive Grant Program will be an anomaly because PHAs/IHAs are required to submit a Comprehensive Plan for approval. This document provides the basic framework for the Program and will only be submitted during the first year. PHAs/IHAs, will be required to thoroughly analyze their needs and this requires burden hours that will not be required after the initial submission.

[1] 120 hours have been allocated for the 407 PHAs/IHAs (all except 38 IHAs have Plans that will be adapted to current program requirements).

[2] 200 hours have been allocated for the 447 PHAs/IHAs that have never developed Comprehensive Plans and will require more than the PHAs referenced above who will adapt existing plans.

[3] The total burden hours for both the CIAP and Comp Grant Program will be 111,199 (after the initial years requiring the submission of comprehensive plans) reflecting a *decrease* in total annual burden hours of *16,283 hours*.

COMPREHENSIVE GRANT BURDEN HOURS 1ST YEAR

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Comprehensive plan, including action plan, local government statement, civil rights statement, PHA resolution, and public hearing requirement.	968.320	407	1	407	120.00	48,840
Annual statement of activities and expenditures, including resident and local government consultation requirements.	968.330	407	1	407	24.00	9,768
Fund requisitions	968.335(b)	407	5	2,035	1.00	2,035
Contract Administration	968.335(c)	80	1	80	2.00	160
Fiscal closeout	968.335(d)	407	1	407	2.00	814
Performance and evaluation report, including resident consultation requirement.	968.340	407	1	407	25.00	10,175
Corrective action	968.345(c)(1)	50	2	100	5.00	500
Total Annual Burden						71,792

COMPREHENSIVE GRANT BURDEN HOURS 2ND YEAR

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Comprehensive plan, including action plan, local government statement, civil rights statement, PHA resolution, and public hearing requirement.	968.320	447	1	447	200.00	89,400
Annual statement of activities and expenditures, including resident and local government consultation requirements.	968.330	854	1	854	24.00	20,496
Fund requisitions	968.335(b)	854	5	4,270	1.00	4,270
Contract Administration	968.335(c)	167	1	167	2.00	334
Fiscal closeout	968.335(d)	854	1	854	5.00	4,270
Performance and evaluation report, including resident consultation requirement.	968.340	854	1	854	25.00	21,350
Corrective action	968.345(c)(1)	104	2	208	5.00	1,040
Total Annual Burden						141,160

COMPREHENSIVE GRANT BURDEN HOURS 3RD YEAR

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Annual statement of activities and expenditures, including resident and local government consultation requirements.	968.330	854	1	854	24.00	20,496
Fund requisitions	968.335(b)	854	5	4,270	1.00	4,270
Contract Administration	968.335(c)	167	1	167	2.00	334
Fiscal closeout	968.335(d)	854	1	854	5.00	4,270
Performance and evaluation report, including resident consultation requirement.	968.340	854	1	854	25.00	21,350
Corrective action	968.345(c)(1)	104	2	208	5.00	1,040
Total Annual Burden						51,760

This proposed rule has been developed in accordance with Executive Order 12612, *Federalism*, and determined by the General Counsel not to have substantial, direct effects on PHAs. The Comprehensive Grant program simply provides an alternative means of funding PHAs, based on the allocation method contained in section 509 of the NAHA. PHAs no longer have to compete for funding, and are given greater discretion in carrying out their modernization activities. The new program is consistent with federalism principles since it reduces unnecessary burdens on PHAs. While it is a "new" program, it is primarily a change only in the way that HUD funds PHA modernization activities, and not as to the modernization activities.

In addition, since the changes in this proposed rule primarily relate to the allocation system for providing modernization assistance, and participation by PHAs is discretionary, the rule lacks the direct and substantial effects on PHAs required for a policy with federalism implications under the Order.

This rule has been developed in accordance with Executive Order 12606, *the Family*. The rule does not have the potential for significant impact on family formation, maintenance, or general well-being, since its effect is limited to providing funding for large PHAs on a formula grant basis. Families are not affected since PHAs will continue to carry out modernization activities at public housing projects.

The Catalog of Domestic Assistance numbers for the programs affected by this rule are 14.146, 14.147, 14.850, 14.851, 14.852, and 15.141.

List of Subjects

24 CFR Part 905

Aged, Grant programs—housing and community development, Grant programs—Indians, Handicapped, Homeownership, Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 968

Grant programs—housing and community development, Indians, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, parts 905 and 968 of title 24 of the Code of Federal Regulations would be amended as follows:

1. The authority citation for 24 CFR part 905 would continue to read as follows:

Authority: Secs. 201, 202, 203, 205, United States Housing Act of 1937, as added by the Indian Housing Act of 1988 (Pub. L. 100-358) (42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 905.102 would be amended by adding new definitions in alphabetical order; by revising certain existing definitions; by amending the definition of "nonroutine maintenance" by revising the first sentence of paragraph (b); and by amending the definition of "special purpose modernization" by removing the word "and" at the end of paragraph (d), by replacing the period at the end of

paragraph (e) with the words ";and", and by adding a new paragraph (f), to read as follows:

§ 905.102 Definitions.

* * * * *

Action plan. A plan of the actions to be funded by an IHA over a period of five years (including an IHA's proposed allocation of its modernization funds to a reserve established under § 905.666(a)(3)) to make the necessary physical and management improvements identified in the IHA's comprehensive plan. The action plan is updated annually to reflect a rolling five-year base. See the Comprehensive Grant program under subpart I of this part.

* * * * *

Annual statement. A statement submitted annually by an IHA to HUD of the activities and related costs it expects to fund with the annual grant, and with any other modernization funds available to the IHA. See the Comprehensive Grant program under subpart I of this part.

* * * * *

Comprehensive plan. A plan prepared by an IHA, and approved by HUD, under the Comprehensive Grant Program setting forth all of the physical and management improvement needs of the IHA's housing projects, and the management improvement needs of the IHA and its high need projects, and which includes the IHA's action plan, cost estimates, cost certification, and required local government and IHA certifications. The comprehensive plan may be revised, as necessary (but at least once every five years). See subpart I of this part.

* * * * *

Emergency work. Physical work items of an emergency nature, posing an immediate threat to resident life, health or safety. Under the Comprehensive Grant program, management improvements are not eligible as emergency work and, therefore, must be covered by the comprehensive plan (including the action plan), before the PHA may carry them out. See subpart I of this part.

* * * * *

High need project. A project with either:

(a) High vacancy rates (i.e., 15 percent or more vacant units, excluding units which have been approved by HUD for demolition or disposition, or which are in a funded, on-schedule modernization program); or

(b) High cost (modernization hard costs exceed 25 percent of Total Development Cost for non-elevator projects, or 28 percent for elevator projects).

* * * * *

IHA-wide resident group. A group of residents required to be consulted during the development of a comprehensive plan, amendment to the comprehensive plan, or annual statement, under the Comprehensive Grant program under subpart I of this part. The group should consist, to the extent possible, of the members of the board of the area-wide resident council or resident management corporation, and at least one resident from each project covered by the IHA's comprehensive plan, who shall be elected by the residents of the project.

* * * * *

Management capability. Management capability will be deemed to be adequate unless, in accordance with § 905.135, HUD has determined that management practices do not comply with prescribed requirements. Among the IHA practices considered for this determination are the management, financial, and accounting controls; resident programs and services; resident and project security; resident selection and eviction; occupancy; and maintenance.

* * * * *

Modernization capability. An IHA has adequate modernization capability if the IHA:

(a) Obligates approved modernization funds in accordance with its approved implementation schedule, except in circumstances beyond the IHA's control;

(b) Adequately inspects its modernization projects to ensure that the physical work is being carried out in accordance with the HUD-approved budget (if appropriate), and plans and specifications, and that any HUD monitoring findings relating to the quality of the physical work have been, or are being, resolved; and

(c) Has an acceptable procurement policy in accordance with 24 CFR 85.36, and is administering its modernization contracts in accordance with that policy.

Modernization funds. Funds derived from an allocation of budget authority for the purpose of funding physical and management improvements.

Modernization program. An IHA's program for carrying out modernization, as set forth in the approved application for modernization funds, or the approved comprehensive plan. See subpart I of this part.

Modernization project. The improvement of one or more existing Indian housing projects, under a new project number designated for modernization under the Comprehensive Improvement Assistance Program (CIAP), or as set forth in the annual statement under a new grant number designated for the FFY under the Comprehensive Grant program. The term "project" or "public housing project" means a development project with a unique project number. See subpart I of this part.

Modernization strategy. An IHA's overall planning objectives and implementation schedule for modernizing its Indian housing projects under the Comprehensive Grant program. The modernization strategy encompasses the following components of an IHA's comprehensive plan:

(a) An Executive Summary (§ 905.672(c)(1));

(b) The physical and management needs assessments, and related requirements under the comprehensive plan (§ 905.672 (c)(2), (c)(3), (c)(4), (c)(6), (c)(7) and (c)(8));

(c) The five-year action plan (§ 905.672(c)(5)); and

(d) The annual statement (§ 905.678).

* * * * *

Nonroutine maintenance. * * *

(b) For purposes of the CIAP and Comprehensive Grant Modernization Programs under subpart I of this part and the applicability of wage rates, nonroutine maintenance refers to work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. * * *

* * * * *

Reasonable cost. The hard cost (excluding the cost of management improvements, administration, architectural and engineering fees, and other soft costs) of rehabilitating a project which does not exceed 62.5 percent (for a nonelevator structure) or 69 percent (for an elevator structure) of the total cost guidelines limit for a new project with the same structure type and number and size of units in the market area.

* * * * *

Special purpose modernization. * * *

* * * * *

3. The table of contents for 24 CFR part 905, subpart I, would be revised, to read as follows:

Subpart I—Modernization

General Provisions

Sec.
905.600 Purpose and applicability.
905.601 Allocation of funds under section 14.
905.602 Modernization and energy conservation standards.

Comprehensive Improvement Assistance Program (For IHAs That Own or Operate Fewer Than 500 Indian Housing units) (Fewer Than 250 Units Beginning in FFY 1993)

905.609 Purpose.
905.615 Eligible costs.
905.618 Procedures for obtaining approval of a modernization program.
905.621 Modernization project.
905.624 Tenant participation.
905.627 Homebuyer participation.
905.630 Special requirements for homeownership projects.
905.633 Special requirements for section 23 leased housing bond-financed projects.
905.636 Additional limitations for special purpose modernization.
905.639 Contracting requirements.
905.642 Fund requisitions.
905.645 Progress reporting.
905.648 Budget revisions.
905.651 On-site inspections.
905.654 Fiscal closeout of a modernization program.

Comprehensive Grant Program (For IHAs That Own or Operate 500 or More Indian Housing Units) (250 or More Units Beginning in FFY 1993)

905.660 Purpose.
905.669 Eligible costs.
905.667 Reserve for disasters and emergencies (non-formula).
905.669 Allocation of assistance (formula).
905.670 Modernization strategy.
905.672 Comprehensive plans (including action plan).
905.675 HUD review and approval of comprehensive plan (including action plan).
905.678 Annual statement of activities and expenditures.
905.681 Conduct of modernization activities.
905.684 IAH performance and evaluation report.
905.687 HUD review and IHA performance.

4. In 24 CFR part 905, subpart I, the existing section numbers would be redesignated as set forth in the following table:

Old section	New section
905.601	905.609
905.670	905.603
905.605	905.615
905.610	905.618
905.615	905.621
905.620	905.624
905.625	905.627
905.635	905.633
905.640	905.636
905.645	905.642
905.650	905.645
905.655	905.648
905.660	905.651
905.665	905.654

5. 24 CFR part 905, subpart I, would be amended by revising the title of subpart I; by adding a new undesignated centerheading directly below the title; by revising newly designated § 905.600; and by adding new § 905.601, to read as follows:

Subpart I—Modernization

General Provisions

§ 905.600 Purpose and applicability.

(a) Purpose. Section 14 of the United States Housing Act of 1937 established the Indian Housing Modernization program, authorizing HUD to provide financial assistance to Indian Housing Authorities (IHAs) to improve the physical condition and upgrade the management and operation of existing Indian housing projects to assure that such projects continue to be available to serve lower income families. These physical and management improvements are authorized under sections 5(c) and 14(b)(2) of the Act, pursuant to the funding method prescribed under section 14(k) of the Act. This subpart prescribes the requirements and procedures for the Indian Housing Modernization program.

(b) Applicability. (1) The undesignated heading entitled, General Provisions, applies to all modernization under this subpart. The undesignated heading entitled, Comprehensive Improvement Assistance Program (CIAP program), sets forth the requirements and procedures for the CIAP program for IHAs that own or operate fewer than 500 Indian housing units (fewer than 250 units beginning in FFY 1993). The undesignated heading entitled, Comprehensive Grant program, sets forth the requirements and procedures for the Comprehensive Grant program for IHAs that own or operate 500 or more Indian housing units (250 or more units beginning in FFY 1993). For purposes of the 500 or more unit threshold for participation in the Comprehensive Grant program (250 or more units beginning in FFY 1993), and for the formula allocation under § 905.601, an existing rental and section 23 bond-financed housing unit under the ACC shall count as one unit; a unit under the Turnkey III program shall count as one-fourth of a unit; and a unit under the Mutual Help program shall count as three-quarters of a unit. An IHA that has already qualified to participate in the CGP program because it owns or operates 500 or more units (250 or more units beginning in FFY 1993), may elect to continue to participate in the CGP program so long as it owns or operates at least 400 units (at least 200 units beginning in FFY 1993).

(2) This subpart applies to IHA-owned low income Indian housing projects, and to section 23 Leased Housing Bond-Financed projects, for which IHAs request assistance under the CIAP or CGP programs. This subpart also applies to the implementation and modernization programs which were approved before FFY 1992. This subpart does not apply to projects under the Section 23 Leased Housing Non-Bond Financed program, the section 10(c) Leased program, or the section 23 or Section 8 Housing Assistance Payments programs.

(c) Transition. Any amount that HUD has obligated to an IHA under the CIAP program must be used for the purposes for which the funding was provided, or for purposes consistent with an approved action plan submitted by the IHA under the Comprehensive Grant program.

(d) See subpart A of this part for applicable requirements, other than the Act, that apply to modernization under this subpart.

§ 905.601 Allocation of funds under section 14.

(a) *General.* This section describes the process for allocating modernization funds to the aggregate of PHAs and IHAs participating in the CIAP program (i.e., agencies that own or operate fewer than 500 units, or fewer than 250 units beginning in FFY 1993), and to individual PHAs and IHAs participating in the Comprehensive Grant program (i.e., agencies that own or operate 500 or more units, or 250 or more units beginning in FFY 1993). The program requirements governing PHA participation in the CIAP and CGP programs are contained in 24 CFR part 968.

(b) *Set-aside for disasters and emergencies for CGP agencies.* For each FFY, HUD shall reserve from amounts approved in appropriations acts for grants under this part, $75 million (which shall include unused amounts reserved during previous FFYs), which shall be made available to IHAs under the Comprehensive Grant program and to PHAs under 24 CFR part 968 (subpart C), for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY so that it always begins with a $75 million balance. Any unused funds from previous years will remain in the reserve until allocated. The requirements governing the reserve for disasters and emergencies, and the procedures by which an IHA may request such funds, are set forth in § 905.667.

(c) *Set-aside for credits for mod troubled PHAs under 24 CFR part 968, subpart C*—(1) *General.* After deducting amounts for the reserve for natural and other disasters and for emergencies under paragraph (b) of this section, HUD shall set aside no more than five percent of the remaining amount for the purpose of providing credits to PHAs under 24 CFR part 968 (subpart C) that are included on the initial designation of mod troubled agencies under the Public Housing Management Assessment program ("PHMAP") at 24 CFR part 901. The purpose of this set-aside is to compensate such PHAs for amounts previously withheld by HUD because of their designation as a mod troubled agency.

(2) *Nonapplicability to IHAs.* Since the PHMAP indicators/standards under 24 CFR part 901 do not apply to IHAs, these agencies cannot be deemed "mod troubled" for purposes of the modernization program under this subpart. Hence, IHAs are not subject to any reduction in funding under section 14(k)(5)(a) of the Act, nor do they participate in the set-aside of credits established under paragraph (c)(1) of this section.

(d) *Formula allocation based on relative needs.* After determining the amounts to be reserved under paragraphs (b) and (c) of this section, HUD shall allocate the amount remaining pursuant to the formula set forth in paragraphs (e) and (f) of this section, which is designed to measure the relative backlog and accrued needs of IHAs and PHAs.

(e) *Allocation for backlog needs.* HUD shall allocate half of the formula amount determined under paragraph (d) of this section based on the relative backlog needs of IHAs and PHAs (after deducting 60 percent of the modernization funds made available from FFY 1984 to 1991, and 60 percent of the funds made available for the Major Reconstruction of Obsolete Projects (MROP), to the PHA or IHA with 500 or more units; or 60 percent of the modernization funds made available from FFY 1984 to 1992, and 60 percent of the MROP funds made available for the IHA or PHA with 250 to 499 units, subject to a maximum 80 percent deduction of an IHA's or PHA's total need for backlog funding), as follows:

(1) *Statistically reliable data.* Where HUD determines that the data concerning the categories of backlog need identified under paragraph (e)(3) of this section are statistically reliable for individual IHAs and PHAs with 500 or more units (250 or more units beginning in FFY 1993), or the aggregate of IHAs and PHAs with fewer than 500 units (fewer than 250 units beginning in FFY 1993) not participating in the formula funding portion of the modernization program, it will base its allocation on direct estimates of the statutory categories of backlog need, based on the most recently available, statistically reliable data.

(2) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the categories of backlog need identified under paragraph (e)(3) of this section are not available for individual IHAs and PHAs with 500 or more units (250 or more units beginning in FFY 1993), it will base its allocation of funds under this section on estimates of the categories of backlog need using:

(i) The most recently available data on the categories of backlog need under paragraph (e)(3) of this section;

(ii) Objectively measurable data concerning the folowing IHA or PHA, community and project characteristics:

(A) The average number of bedrooms in the units in a project. (Weighted at 2858.7).

(B) The proportion of units in a project available for occupancy by very large families. (Weighted at 7295.7).

(C) The extent to which units for families are in high-rise elevator projects. (Weighted at 5555.8).

(D) The age of the projects. (Weighted at 208.5).

(E) In the case of a large agency, the number of units with 2 or more bedrooms. (Weighted at .433).

(F) The cost of rehabilitating property in the area. (Weighted at 27544.3).

(G) For family projects, the extent of population decline in the unit of general local government determined on the basis of the 1970 and 1980 censuses. (Weighted at 759.5); and

(iii) An equation constant of 1412.2.

(3) *Categories of backlog need.* The most recently available data to be used under either paragraph (e) (1) or (2) of this section must pertain to the following categories of backlog need:

(i) Backlog of needed repairs and replacements of existing physical systems in public housing projects;

(ii) Items that must be added to projects to meet HUD's modernization standards under § 905.603, and State and local codes; and

(iii) Items that are necessary or highly desirable for the long-term viability of a project, in accordance with HUD guidelines.

(f) *Allocation for accrual needs.* HUD shall allocate the other half remaining under the formula allocation under paragraph (d) of this section based upon the relative accrued needs of IHAs and PHAs, determined as follows:

(1) *Statistically reliable data.* Where HUD determines that statistically reliable data are available concerning the categories of need identified under paragraph (f)(3) of this section for individual IHAs and PHAs with 500 or more units (250 or more units beginning in FFY 1993), and for the aggregate of IHAs and PHAs with fewer than 500 units (fewer than 250 units beginning in FFY 1993), it shall base its allocation of assistance under this section on the needs that are estimated to have accrued since the date of the last objective measurement of backlog needs under paragraph (e)(1) of this section; or

(2) *Statistically reliable data is unavailable.* Where HUD determines that statistically reliable data concerning the categories of need identified under paragraph (f)(3) of this section are not available for individual IHAs and PHAs with 500 or more units (250 or more units beginning in FFY 1993), it shall base its allocation of assistance under this section on estimates of accrued need using:

(i) The most recently available data on the categories of backlog need under paragraph (f)(3) of this section;

(ii) Objectively measurable data concerning the following IHA or PHA, community, and project characteristics:

(A) The average number of bedrooms in the units in a project. (Weighted at 100.1).

(B) The proportion of units in a project available for occupancy by very large families. (Weighted at 356.7).

(C) The age of the projects. Weighted at 10.4.

(D) The extent to which the buildings in projects of an agency average fewer than 5 units. (Weighted at 67.1.)

(E) The cost of rehabilitating property in the area. (Weighted at 679.1).

(F) The total number of units of each IHA or PHA that owns or operates 500 or more units (250 or more units beginning in FFY 1993). (Weighted at .0144); and

(iii) An equation constant of 602.1.

(3) *Categories of need.* The data to be provided under either paragraph (f) (1) or (2) of this section must pertain to the following categories of need:

(i) Backlog of needed repairs and replacements of existing physical system in public housing projects; and

(ii) Items that must be added to projects to meet HUD's modernization standards under § 905.603, and State and local codes.

(g) *Allocation for CIAP program.* The formula amount determined under paragraphs (e) and (f) of this section for IHAs and PHAs with fewer than 500 units (fewer than 250 units beginning in FFY 1993) shall be allocated to IHAs in accordance with the requirements of the undesignated heading under this subpart entitled, "Comprehensive Improvement Assistance Program," and to PHAs in accordance with the requirements of 24 CFR part 968 (subpart B).

(h) *Allocation for Comprehensive Grant program.* The formula amount determined under paragraphs (e) and (f) of this section for IHAs with 500 or more units (250 or more units beginning in FFY 1993) shall be allocated in accordance with the requirements of the undesignated heading under this subpart entitled, "Comprehensive Grant Program," and for PHAs in accordance with the requirements of 24 CFR part 968 (subpart C). An IHA that is eligible to receive a grant under the Comprehensive Grant program may appeal the amount of its formula allocation under this section in accordance with the requirements set forth in § 905.669(b)(2). An IHA which is eligible to receive modernization funds under the Comprehensive Grant program because it owns or operates 500 or more units (250 or more units beginning in FFY 1993), is disqualified from receiving assistance under the CIAP program under this part.

(i) *Use of formula allocation.* Any amounts allocated to an IHA under paragraphs (e) and (f) of this section may be used for any eligible activity under this subpart, notwithstanding that the allocation amount is determined by allocating half based on the relative backlog needs and half based on the relative accrued needs of IHAs and PHAs.

(j) *Calculation of number of units.* For purposes of determining under this section the number of units owned or operated by a PHA or IHA, and the relative modernization needs of IHAs and PHAs, HUD shall count as one unit each existing rental and section 23 Bond-Financed unit under the ACC, except that it shall count as one-fourth of a unit each existing unit under the Turnkey III programs, and as three-quarters of a unit each existing unit under the Mutual Help program, to take into account the responsibility of families for the costs of certain maintenance and repair.

(k) *Demolition or disposition of units.* Where an existing unit under an ACC is demolished or disposed of, HUD shall not adjust the amount the IHA or PHA receives under the formula, unless more than one percent of the units are affected on a cumulative basis. Where more than one percent of the existing units are demolished or disposed of, HUD shall reduce the formula amount for the IHA or PHA over a 3-year period to reflect removal of the units from the ACC. In implementing this provision, HUD shall compare the units eligible for funding in the initial year under formula funding with the number of units eligible for funding for formula funding purposes for the current year. If the change is less than one percent, the IHA or PHA will be funded as though no change had occurred. If the change is greater than one percent, the number of units on which formula funding is based will be the number of units reported as eligible for funding for the current program, plus two thirds of the difference between the initial year and the current year in the first year, plus one third of the difference in the second year, and at the level of the current year in the third year. Once an IHA's or PHA's unit count has been fully reduced to reflect the new number of units under the ACC, this new number of units will serve as the base for purposes of calculating whether there has been a one percent reduction in units on a cumulative basis. A reduction in formula funding, based upon additional reductions to the number of an IHA's or PHA's units, will also be phased in over a three-year period, as described above. Where an IHA's or PHA's units are reduced in two or more consecutive years, the actual unit count for the second or subsequent year shall be used as the basis for determining whether the one percent reduction is reached, and for purposes of calculating the phase-down of funds. Units which are added to an IHA's or PHA's inventory after the initial year of the CGP program shall be disregarded for purposes of calculating any reduction in an IHA's or PHA's funding caused by a loss of units through demolition or disposition.

6. Newly redesignated § 905.603 would be amended by revising paragraphs (a) and (b), to read as follows:

§ 905.603 Modernization and energy conservation standards.

(a) All improvements funded under this subpart, which may include alterations, betterments, additions, replacements or non-routine maintenance, shall meet the HUD modernization standards, described in paragraph (b) of this section and established to provide decent, safe, and sanitary living conditions in IHA-owned and IHA-operated housing. All improvements funded under this part shall meet the HUD-energy conservation standards for cost-effective energy conservation measures in such projects, described in paragraphs (c) and (d) of this section.

(b) The modernization standards are comprised of both mandatory and project-specific standards. The mandatory standards are intended to provide decent, safe, and sanitary living conditions in Indian housing, including corrections of violations of basic health and safety codes, and to address all deficiencies, including those related to deferred maintenance. The project-specific standards permit a PHA to undertake improvements that are necessary or highly desirable for the long-term physical and social viability of a project, which includes site and building security. The modernization standards are contained in HUD Handbook 7485.2, as revised, Public and Indian Housing Modernization Standards,[1] and in other documents cited in the Handbook.

* * * * *

6. 24 CFR part 905, subpart I, would be amended by adding a new undesignated center heading directly after § 905.603; and by adding a new § 905.609, to read as follows:

Comprehensive Improvement Assistance Program (For IHAs that Own or Operate Fewer than 500 Indian Housing Units) (Fewer than 250 Units Beginning in FFY 1993)

§ 905.609 Purpose.

The purpose of the undesignated heading entitled, Comprehensive Improvement Assistance Program, is to set forth the policies and procedures for the CIAP program under which IHAs that own or operate fewer than a total of 500 units of Indian housing (fewer than 250 units beginning in FFY 1993) may receive financial assistance for the modernization of Indian housing projects, including comprehensive, emergency, homeownership, and special purpose modernization.

7. Newly designated § 905.615 would be amended by revising the first sentence of paragraph (a); by revising the introductory text of paragraph (b)(1); by adding a new paragraph (b)(3), and

[1] Copies may be obtained by writing to the office of Public and Indian Housing, 451 7th Street, SW., room 4122, Washington, DC 20410.

by revising paragraph (f), to read as follows:

§ 905.615 Eligible Costs.

(a) *Physical improvements.* Physical improvements eligible for modernization funding include alterations, betterments, additions, replacements, and non-routine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 905.603. * * *

(b) *Management improvement costs*—(1) *Eligibility.* Management improvements that are project-specific or IHA-wide in nature are eligible costs only under special purpose management modernization under paragraph (b)(3) of this section, or under comprehensive modernization, subject to all of the following conditions:

* * * * *

(3) *Special purpose management modernization.* Special purpose management improvements are eligible modernization costs under the category of special purpose modernization, if they address needs which are not otherwise eligible for assistance under paragraph (b)(1) of this section.

* * * * *

(f) *Homeownership projects*—(1) *General.* For homeownership projects only, eligible physical improvements are limited to work items that are not the responsibility of the homebuyer families, and that are related to health and safety, correction of development deficiencies, physical accessibility, and cost-effective energy conservation measures, and lead-based paint testing and abatement. Nonroutine maintenance or replacements, additions, items that are the responsibility of the homebuyer families, and management improvements are not eligible modernization costs for homeownership projects.

(2) *Exception for Mutual Help units.* Notwithstanding the requirements of paragraph (f)(1) of this section, an IHA may use no more than a single CIAP grant under this subpart for purposes of comprehensively modernizing a Mutual Help unit which is at least 10 years old, and which the IHA has identified in its CPM. Mutual Help homebuyers who agree to have their units comprehensively modernized under this paragraph must agree to have their homebuyer agreements amended to reflect the cost of the comprehensive modernization, in accordance with the provisions of § 905.630 (special requirements for homeownership projects.) The revision to the homebuyer agreement must reflect the difference between the cost for which the homebuyer would not have been charged under the definition of "homeownership modernization" at § 905.102, and the cost of the comprehensive modernization actually undertaken:

(3) *Exception for vacant and non-homebuyer-occupied Turnkey III units.* Notwithstanding the requirements of paragraph (f)(1) of this section, an IHA may use no more than a single CIAP grant under this subpart for purposes of comprehensively modernizing a vacant and non-homebuyer-occupied Turnkey III unit. An IHA that intends to use funds under this paragraph must identify in its CPM the specific units proposed for comprehensive modernization and subsequent sale, including the name/number of the projects in which the units are located. In addition, the IHA must demonstrate in its CPM that: The proposed modernization under this paragraph would result in bringing the identified units into full compliance with the homeownership objectives under the Turnkey III program (see Subpart G of this part); and the IHA has homebuyers who are both eligible for homeownership, in accordance with the requirements of 24 CFR part 905, and who have demonstrated their intent to be placed into each of the Turnkey III units proposed to be comprehensively modernized. Before an IHA can draw down funds for the comprehensive modernization of a unit under this paragraph, it must first deplete any tenant equity account, or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit (although the IHA may retain in the NRMR sufficient funds to carry out future work items not covered by the comprehensive modernization of the unit). Any increase in the value of a unit caused by its comprehensive modernization under this paragraph shall be reflected in the purchase price for subsequent homebuyers, as a result of its appraised fair market value.

* * * * *

§ 905.618 [Amended]

8. Newly designated § 905.618 would be amended by removing paragraph (e)(3), and by redesignating the existing paragraph (e)(4) as paragraph (e)(3).

9. 24 CFR part 905, subpart I, would be amended by adding a new undesignated center heading to follow immediately after newly designated § 905.664, by adding new §§ 905.660, 905.666, 905.667, 905.668, 905.672, 905.676, 905.678, 905.681, 905.684, and 905.687, and by revising § 905.670, to read as follows:

Comprehensive Grant Program (For IHAs That Own or Operate 500 or More Indian Housing Units) (250 or More Units Beginning in FFY 1993)

§ 905.660 Purpose.

(a) *Purpose.* (1) The purpose of the Comprehensive Grant program under this subpart is:

(i) To provide modernization assistance to IHAs that own or operate a total of 500 or more units of Indian housing (250 or more units beginning in FFY 1993) on a reliable and more predictable basis, to enable them to operate, upgrade, modernize, and rehabilitate Indian housing projects, to ensure their continued availability for low income families as decent, safe, and sanitary rental housing at affordable rents;

(ii) To provide considerable discretion to IHAs to decide the specific improvements, the manner of their execution, and the timing of the expenditure of funds;

(iii) To simplify significantly the program of Federal assistance for capital improvements in Indian housing projects;

(iv) To provide increased opportunities and incentives for more efficient management of Indian housing projects; and

(v) To give IHAs greater control in planning and expending funds for modernization, rehabilitation, maintenance, and improvement of Indian housing projects to benefit low income families.

(2) The purpose of the sections under the undesignated heading entitled, Comprehensive Grant Program, is to set forth the policies and procedures for the Comprehensive Grant program under which IHAs that own or operate a total of 500 or more units of Indian housing (250 or more units beginning in FFY 1993) receive financial assistance on a formula grant basis in accordance with § 905.601 (e) and (f) for the modernization of Indian housing projects.

§ 905.666 Eligible costs.

(a) *Eligible costs.* An IHA may use financial assistance received under the Comprehensive Grant program only:

(1) To undertake activities described in its approved action plan under § 905.672(c)(5), and its annual statement under § 905.678, including the following:

(i) Physical improvements, including alterations, betterments, additions, replacement, and non-routine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in

§ 905.603. These mandatory standards may be exceeded only when the IHA determines that it is necessary or highly desirable for the long-term physical and social viability of the individual project. If demolition is proposed, the IHA shall comply with 24 CFR part 905 (subpart M);

(ii) Management improvements that are necessary to correct management deficiencies that have been identified by the IHA in its comprehensive plan;

(iii) Relocation payments and other relocation assistance for permanent and temporary relocation, where such assistance is required by § 905.117;

(iv) Administrative costs necessary for the additional design and implementation of the physical and management improvements, as follows:

(A) The salaries of nontechnical and technical IHA personnel assigned full-time or part-time to the modernization program are eligible modernization costs. Any direct charges for salaries shall be justified by the IHA, authorized by HUD, and reflected by an appropriate revision to the IHA's operating budget; and

(B) IHA contributions to employee benefit plans on behalf of nontechnical and technical IHA personnel are eligible modernization costs in proportion to the amount of salary charged to the modernization program;

(v) Lead-based paint testing costs, as described in subpart H of this part [2];

(vi) Lead-based paint hazard abatement costs, as described in subpart H of this part [2]; and

(vii) Use of management funds to assist a resident or resident management corporation, as defined in § 905.355 of this chapter, to develop its management capabilities and carry out management improvements identified as IHA-wide or project-specific in nature, under the terms of a management contract between the IHA and the resident management corporation. (See § 905.355 for information on the establishment and functions of resident management corporations.) Such funding is subject to the limitation indicated in paragraph (c) of this section;

(2) To carry out emergency work, whether or not the need is indicated in the IHA's comprehensive plan (including the action plan) or annual statement;

(3) To fund a reserve to carry out eligible activities in future years, provided the IHA can demonstrate that:

(i) Modernization funds are not needed for existing needs, as identified by the IHA in its comprehensive plan; or

(ii) A proposed work item requires more funds than the IHA would receive under its annual formula allocation;

(4) To prepare a comprehensive plan, including an action plan, under § 905.672, including reasonable costs necessary to assist residents in participating in the planning process in a meaningful way; an annual statement under § 905.678; and an annual performance and evaluation report under § 905.684; and

(5) To carry out an audit, in accordance with 24 CFR part 44 and § 905.120;

(b) *Homeownership projects*—(1) *General.* For homeownership projects only, eligible physical improvements are limited to work items that are not the responsibility of the homebuyer families, and that are related to health and safety, correction of development deficiencies, physical accessibility, cost-effective energy conservation measures, and lead-based paint testing and abatement. Nonroutine maintenance or replacements, additions, items that are the responsibility of the homebuyer families, and management improvements are not eligible modernization costs for homeownership projects.

(2) *Exception for Mutual Help units.* Notwithstanding the requirements of paragraph (b)(1) of this section, an IHA may use no more than a single CGP grant under this subpart for purposes of comprehensively modernizing a Mutual Help unit which is at least 10 years old, and which the IHA has identified in its comprehensive plan (including its action plan and annual statement). Mutual Help homebuyers who agree to have their units comprehensively modernized under this paragraph must agree to have their homebuyer agreements amended to reflect the cost of the comprehensive modernization, in accordance with the provisions of § 905.630 (special requirements for homeownership projects.) The revision to the homebuyer agreement must reflect the difference between the cost for which the homebuyer would not have been charged under the definition of "homeownership modernization" at § 905.102, and the cost of the comprehensive modernization actually undertaken.

(3) *Exception for vacant and non-homebuyer-occupied Turnkey III units.* Notwithstanding the requirements of paragraph (b)(1) of this section, an IHA may use no more than a single CGP grant under this subpart for purposes of comprehensively modernizing a vacant and non-homebuyer-occupied Turnkey III unit. An IHA that intends to use funds under this paragraph must identify in its comprehensive plan (including its action plan and annual statement) the specific units proposed for modernization and subsequent sale, including the name/number of the projects in which the units are located. In addition, the IHA must demonstrate in its comprehensive plan that: the proposed modernization under this paragraph would result in bringing the identified units into full compliance with the homeownership objectives under the Turnkey III program (see subpart G of this part); and the IHA has homebuyers who are both eligible for homeownership, in accordance with the requirements of 24 CFR part 905, and who have demonstrated their intent to be placed into each of the Turnkey III units proposed to be comprehensively modernized. Before an IHA can draw down funds for the comprehensive modernization of a unit under this paragraph, it must first deplete any tenant equity account, or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit (although the IHA may retain in the NRMR sufficient funds to carry out future work items not covered by the comprehensive modernization of the unit). Any increase in the value of a unit caused by its comprehensive modernization under this paragraph shall be reflected in the purchase price for subsequent homebuyers, as a result of its appraised fair market value.

(c) *Cost limitations.* An IHA shall not use more than a total of 10 percent of its annual grant for management improvement costs. In addition, an IHA shall not use more than a total of 10 percent of its annual grant on administrative costs, excluding any costs related to lead-based paint testing, and relocation expenses.

(d) *Luxury improvements prohibited.* An IHA shall not make luxury improvements, as specified by HUD.

§ 905.687 Reserve for natural disasters and emergencies (non-formula).

(a) *Emergencies*—(1) *Eligibility for assistance.* An IHA (including an IHA which has been determined by HUD to lack administrative capability under § 905.135) may obtain funds, at any time, for any eligible emergency work item under § 905.102, from the non-formula reserve established under § 905.601(b). It is not necessary for a IHA to have an approved modernization strategy under § 905.670 before it can request emergency assistance from this reserve.

(2) *Procedure.* To obtain emergency funds, an IHA must submit a request, in a form prescribed by HUD, which demonstrates that without the requested funds from the set-aside under this section, it would not have adequate funds available under its annual formula allocation under § 905.103(e) and (f) and from other unobligated modernization funds, to correct the conditions which present an immediate threat to resident health or safety. HUD will immediately process an emergency request and, if it determines that the IHA's request meets the requirements of paragraph (a)(1) of this section, it shall approve the request, subject to the availability of funds in the reserve.

(3) *Repayment of emergency funds.* An IHA that receives assistance for its emergency needs from the reserve under § 905.601(b) must repay such assistance from its succeeding years' formula allocations, where available. To this extent, HUD shall deduct up to 50 percent of an IHA's succeeding year's formula allocation under § 905.601(e) and (f) to repay emergency funds previously provided by HUD to the IHA. The remaining balance, if any, shall be deducted from an IHA's succeeding years' formula allocations.

(b) *Natural and other disasters*—(1) *Eligibility for assistance.* An IHA (including an IHA which has been determined by HUD to lack administrative capability under § 905.135) may request assistance at any time from the non-formula reserve under § 905.601(b) for the purpose of permitting the IHA to respond to a natural or other disaster. To qualify for assistance, the disaster must pertain to an extraordinary event affecting only one or a few IHAs, such as an earthquake, hurricane, riot, or civil disorder. Any disaster declared by the President (or which would qualify for a Presidential declaration if it were on a larger scale) qualifies for assistance under this paragraph. An IHA may receive funds from the reserve regardless of the availability of other modernization funds or reserves, but only to the extent its needs are in excess of its insurance coverage. It is not necessary for an IHA to have an approved modernization strategy under § 905.670 before it can request assistance from the non-formula reserve under § 905.601(b).

(2) *Procedure.* To obtain funding for natural or other disasters under § 905.601(b), an IHA must submit a request, in a form prescribed by HUD, which demonstrates that it meets the requirements of paragraph (b)(1) of this section. HUD will immediately process a request for such assistance and, if it determines that the request meets the requirements under paragraph (b)(1) of this section, it will approve the request, subject to the availability of funds in the reserve.

(3) *Repayment.* Funds provided to an IHA under § 968.601(b) of this chapter for natural and other disasters shall be in the form of a grant, and are not required to be repaid.

§ 905.689 Allocation of assistance (formula).

(a) *Submission of formula characteristics report.*—(1) *Formula characteristics report.* Each IHA shall annually transmit data (in a form and at a time to be prescribed by HUD) concerning IHA and project characteristics, so that HUD can develop the IHA's annual funding allocation under the CGP program in accordance with § 905.601 (e) and (f). If an IHA fails to submit to HUD the formula characteristics report by the prescribed deadline, HUD will use the data which it has available concerning IHA and project characteristics for purposes of calculating the IHA's formula allocation under § 905.601 (e) and (f).

(2) *IHA Board Resolution.* The IHA must include with its formula characteristics report under paragraph (a)(1) of this section, a resolution adopted by the IHA Board of Commissioners approving the report, and certifying that the data contained in the formula characteristics report are accurate, to the best of its knowledge.

(b) *HUD notification of formula amount; appeal rights*—(1) *Estimated formula amounts.* After HUD determines an IHA's tentative formula allocations under § 905.601 (e) and (f) based upon the IHA, project, and community characteristics, it shall notify the IHA of its estimated formula amount.

(2) *Appeal rights.* An IHA may appeal in writing HUD's determination of its estimated formula amount within 30 days of the date of HUD's notification, on the basis that: There are unique circumstances applicable to the IHA; or there has been an error with respect to the IHA, project and community characteristics used by HUD to determine the IHA's formula under § 905.601 (e) and (f). An IHA which fails to submit the formula characteristics report to HUD by the prescribed deadline, as required by paragraph (a)(1) of this section, may not appeal its estimated formula amount.

(i) *Appeal based upon unique circumstances.* An IHA that appeals its formula allocation on the basis of "unique circumstances" must indicate how it is unique, and specify the manner in which it is different from all other IHAs participating in the CGP modernization program, and provide any necessary supporting documentation. HUD shall render a written decision on an IHA's appeal under this paragraph within 30 days of the date of its receipt of the IHA's request for an appeal. HUD shall publish in the **Federal Register** a description of the facts supporting any request for an appeal based upon "unique" circumstances, and the Department's final disposition of the appeal.

(ii) *Appeal based on error.* An IHA that requests an appeal on the basis of an error must describe the nature of the error, and also provide any necessary supporting documentation. HUD shall render a written decision on an IHA's appeal under this paragraph within 30 days of the date of its receipt of the IHA's request for an appeal.

(c) *IHAs determined to lack administrative capability*—(1) *Effect of determination.* Any IHA that is determined by HUD to lack administrative capability under § 905.135, the ACA, and the Field Office Monitoring of IHAs Handbook, shall have its formula allocation under the Comprehensive Grant program conditioned in accordance with § 905.687. If the IHA fails to meet, or to make reasonable progress toward meeting, the goals established in its management improvement plan under § 905.135, HUD may withhold some or all of the IHA's annual grant in accordance with § 905.687(e). An IHA which has been determined to lack administrative capability, and which has had some or all of its grant funds withheld under § 905.687 for a prescribed period of time, shall have its grant funds reallocated to other IHAs with 500 or more units (250 or more units beginning in FFY 1993) which have not been determined to lack administrative capability under § 905.135, and to PHAs which have not been determined under 24 CFR part 901 to be either troubled or mod troubled. HUD shall reallocate such funds based upon the relative needs of these PHAs and IHAs, as determined under the formula.

(2) *Right of appeal.* Any IHA that is notified by HUD that its grant funds under the Comprehensive Grant program will be conditioned, withheld, or reallocated under paragraph (c)(1) of this section, shall have an opportunity, within a prescribed period of time, to consult with HUD regarding the proposed action, in accordance with § 905.687 (d) and (e).

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[2] The Department expects shortly to publish a final rule implementing the lead-based paint requirements for Indian Housing. These regulations will be codified at 24 CFR part 905, subpart H.

[3] See footnote 2 in paragraph (a)(1)(v) of this section.

§ 905.670 Modernization strategy.

Each IHA must develop an overall modernization strategy to facilitate the planning and implementation of its modernization needs under the Comprehensive Grant program. The modernization strategy consists of the following components of an IHA's comprehensive plan: An Executive Summary (§ 905.672(c)(1)); the physical and management needs assessments, and related requirements under the comprehensive plan (§ 905.672 (c)(2), (c)(3), (c)(4), (c)(6), (c)(7) and (c)(8)); the five-year action plan (§ 905.672(c)(5)); and the annual statement (§ 905.678). All IHAs participating in the CGP program under Subpart I must have an approved modernization strategy before they can draw down funds from their formula allocation, except in the case of emergencies.

§ 905.672 Comprehensive plan (including action plan).

(a) *Deadline for submission.* As soon as possible after modernization funds first become available for allocation under this subpart, HUD shall notify IHAs in writing of their availability and the deadline for submitting a comprehensive plan.

(b) *Participation by residents and officials of the appropriate governing body.* An IHA is required to develop the comprehensive plan under this section, and thereafter to annually amend portions of the plan (both for purposes of adding an additional year to the five-year rolling-base action plan, and to reflect any changes to the approved physical and management needs assessments), in consultation with officials of the appropriate governing body and with residents of the projects covered by the comprehensive plan, as set forth below:

(1) *Notification.* The IHA shall make reasonable efforts to provide advance notice to each resident in the affected housing project(s) of the date and time of the meeting with the IHA-wide resident group under paragraph (b)(2) of this section, and of the public hearing under paragraph (b)(3) of this section;

(2) *Meeting with IHA-wide resident group.* The IHA shall hold, at least three weeks before the public hearing under paragraph (b)(3) of this section, a meeting with the IHA-wide resident group at which the IHA will provide residents with information concerning the contents of the IHA's comprehensive plan so that residents can adequately comment on the contents of the plan at the public hearing;

(3) *Public hearing.* The IHA shall hold a public hearing which provides officials of the appropriate governing body, residents of the projects covered by the comprehensive plan, and other interested parties, an opportunity to summarize their priorities and concerns. The IHA shall give full consideration to the comments and concerns of the appropriate governing body, and of the residents of the affected projects in its development of the comprehensive plan (including any amendments to the plan).

(c) *Contents of comprehensive plan.* The comprehensive plan shall identify the physical and management improvements needed for an IHA and its high need projects. The plan shall also include estimates of the cost of these improvements. The costs associated with undertaking the identified improvements at high need projects which has modernization hard costs that exceed 25 percent of TDC for non-elevator projects, or 28 percent for elevator projects, must be certified to by a licensed engineer or architect. The plan shall set forth general strategies for addressing the needs (including those of its high need projects), and highlight any special strategies, such as major redesign or partial demolition of a project, that are necessary to ensure the long-term physical and social viability of the projects. Accordingly, each comprehensive plan shall contain the following elements:

(1) *Executive summary.* An IHA shall include as part of its comprehensive plan an Executive Summary to facilitate review and comprehension by the public and development residents. The Executive Summary consists of the following components:

(i) For each of an IHA's projects (with its high need projects being separately identified):

(A) The total cost needed to bring each such project to a level at least equal to the HUD modernization standards (see HUD Handbook 7485.2, as revised, Public and Indian Housing Modernization Standards), and to the energy conservation and life-cycle cost-effective performance standards under § 905.603;

(B) The percentage of the Total Development Cost standard required by the hard costs of the project; and

(C) The current percentage of vacant units in the project.

In addition, the IHA shall briefly describe the actions the IHA proposes to carry out under the CGP program to bring its projects, to a level at least equal to the modernization standards, and to the energy conservation and life-cycle cost-effective performance standards.

(ii) A listing of the IHA-wide management and operation areas under section 14(e)(1)(B) of the Act which need improvement, as determined by deficiencies identified pursuant to the ACA and the Field Office Monitoring of IHAs Handbook. The IHA must also provide a brief discussion of its proposed actions to bring the IHA into compliance with prescribed requirements, in accordance with the targets established in the IHA's management improvement plan under § 905.135.

(iii) An identification of the social, physical and operational problems at each of an IHA's high need projects, and a brief summary of the IHA's proposed actions under the CGP program to correct those problems. The IHA may identify such problems by using project-level data, where available, for the areas prescribed by section 14(e)(1)(B) of the Act. Additional project-level data, including data pertaining to crime drug use, may be included, as appropriate.

(iv) A statement by the IHA concerning its overall modernization strategy, and its rationale for the approach and priorities adopted in its comprehensive plan. For example, an IHA's strategy may be that it will focus its resources on addressing its vacant properties before it brings its occupied units up to the modernization standards.

(v) A descriptive narrative of the IHA's process for maximizing the level of involvement by project residents, the local government, and the public, during the development of its comprehensive plan.

(2) *Physical needs assessment*—(i) *Requirements.* The physical needs assessment identifies all of the work that an IHA must undertake to bring its projects up to the modernization and energy conservation standards, as required by section 14(e)(1)(A)(ii)(I) of the Act, and to comply with other program requirements under § 905.115. The assessment of an IHA's physical needs must be completed on Form HUD-52827, or its equivalent, and retained in the IHA's files to ensure that supporting documentation is available for the data which is to be incorporated into the comprehensive plan. The physical needs assessment must provide information with respect to each of an IHA's projects (with an IHA's high need projects being separately identified), as follows:

(A) A brief (preferably one-page) summary of the general characteristics of the project, including the number of units, the number and size of bedrooms, the type of project (e.g., family, elderly, or mixed; high-rise, low-rise, walk-up, or scattered site, etc.); the project vacancy rate; the total project cost (including the percentage of TDC); and the end of the initial operating period (EIOP). In addition, the summary must include:

(1) A description of the current physical condition, and the physical improvements necessary to bring each project to a level at least equal to the modernization standards contained in HUD Handbook 7485.2 (Public and Indian Housing Standards, as revised), and to the energy conservation and life-cycle cost-effective performance standards under § 905.603; and

(2) An estimate of the total cost involved in completing such work;

(B) The replacement needs of equipment systems and structural elements that will be required to be met (assuming routine and timely maintenance is performed) during the period covered by the action plan;

(C) Whether one or more buildings occupied predominantly by one racial or ethnic group are in substandard condition and are in significantly worse condition than one or more buildings occupied predominantly by other racial or ethnic groups, and in such cases the improvements required to correct the conditions. (This provision only applies to IHA established under state law, and which have been determined to be subject to title VI of the Civil Rights Act of 1964 and the Fair Housing Act);

(D) In addition, the IHA shall provide the following information:

(1) The Mutual Help units (identified by the name/number of the projects in which the units are located) that the IHA is proposing for comprehensive modernization, in accordance with § 905.666(b)(2);

(2) The vacant and non-homebuyer-occupied Turnkey III units (identified by the name/number of the project in which the units are located) that the IHA is proposing for comprehensive modernization and subsequent sale, in accordance with § 905.666(b)(3); and

(3) A certification provided by a licensed architect or engineer for the costs associated with modernizing each of a PHA's high need project that has modernization hard costs which exceed 25 percent of TDC for non-elevator projects, or 28 percent for elevator projects;

(4) A copy of the IHA's section 504 Needs Assessment and Transition Plan under 24 CFR part 8, where required. In fulfilling this requirement, the IHA shall attach a copy of its needs assessment and transition plan as an addendum to its physical needs assessment under the CGP program.

(ii) *Submission.* To ensure that an IHA's modernization strategy remains up-to-date, but to avoid imposing unrealistic burdens on the IHA, the detailed physical needs assessment need only be revised once every five years, although the IHA may elect to revise the assessment more frequently for some or all of its projects. Consequently, every five years, an IHA must submit to HUD, as part of its annual statement, and amendment to its physical needs assessment, which would include all of the items required under an IHA's initial submission of the assessment.

(3) *Management needs assessment*—(i) *Requirements.* The plan shall include a comprehensive assessment of the improvements needed to upgrade the management and operation of the IHA and of each viable project so decent, safe and sanitary living conditions will be provided. The management needs assessment must contain the following information:

(A) An identification of needs related to the following areas for which the IHA has had deficiencies identified pursuant to § 905.135, the ACA, and the Field Office Monitoring of IHAs Handbook:

(1) The management, financial, and accounting control systems of the IHA;

(2) The adequacy and qualifications of personnel employed by the IHA in the management and operation of its projects, for each significant category of employment;

(3) The adequacy and efficacy of the following:

(i) Resident programs and services,
(ii) Resident and project security,
(iii) Resident selection and eviction,
(iv) Occupancy,
(v) Rent collection, and
(vi) Maintenance; and

(4) Resident management corporations, as provided in § 905.355;

(B) A brief summary of the actions necessary to correct each deficiency, within the timeframes agreed to by the PHA and HUD pursuant to the IHA's management improvement plan, or as otherwise established by the IHA;

(C) An identification of the social and operational problems at each of an IHA's high need projects, and a brief summary of the actions necessary to correct those problems. The IHA may identify such problems by using project-level data, where available, for the management and operations areas prescribed by paragraph (c)(3)(i)(A) of this section. Additional project-level data, including date pertaining to crime and drug use, may be included, as appropriate;

(D) The total estimated cost, if any, needed to correct an IHA's deficiencies under the management and operations areas prescribed by paragraph (c)(3)(i)(A) of this section;

(E) A description of any other management and operations needs identified either under an IHA's management improvement plan, or elsewhere (e.g., a self-assessment by an IHA, established under state law, of its administration of equal opportunity requirements), which the IHA wants to address at the IHA-wide level, or at the project level, and the actions and address those needs, or to improve its performance.

(ii) *Submission.* Any change in an IHA's compliance with prescribed requirements, which results in the identification of additional deficiencies, which were not identified at the time of the approval of the comprehensive plan, must be identified by the time an IHA submits its next annual statement under § 905.678 through an amendment to the IHA's management needs assessment, and also to its action plan for purposes of specifying the work items that an IHA plans to undertake for purposes of correcting the new management and operations deficiency(ies.).

(4) *Demonstration of long-term physical and social viability.* The plan shall include an analysis, on a project-by-project basis, demonstrating that completion of the improvements and replacements identified under paragraphs (c) (2) and (3) of this section will reasonably ensure, in accordance with HUD guidelines, the long-term physical and social viability of each project at a reasonable cost. The plan may not include improvements and replacements unless their completion would reasonably ensure long-term viability at a reasonable cost, except in the case of emergency work. The IHA and HUD shall review the cost certification provided under § 905.672(c)(2) to determine whether the proposed improvements for an IHA's high need projects are within the cost guidelines limit. An IHA may submit to the HUD Field Office a request to exceed the 62.5% or 69% limit for modernization hard costs, both for its high need projects and for any other project. The Field Office will review such requests on a case-by-case basis, in accordance with criteria prescribed by HUD in its CGP handbook.

(5) *Five-year action plan*—(i) *General.* The comprehensive plan shall include an action plan to carry out the improvements and replacements identified under paragraphs (c)(2) and (c)(3) of this section that the IHA determines will reasonably ensure the long-term physical and social viability of each project at a reasonable cost, as required by paragraph (c)(4) of this section, and will reasonably ensure that

the IHA will meet or make reasonable progress toward meeting the performance standards in § 990.145 of this chapter. The IHA shall develop the action plan based upon its estimates of the five-year formula allocation under § 905.120 (e) and (f) (for this purpose the IHA should assume that the current year level of funding will be available for each year of the five-year plan), and on IHA estimates of funds that will be available from other sources, such as State and local governments.

(ii) *Requirements.* Under the action plan, an IHA must indicate how it intends to use the funds available to it under the CGP program, including how it intends to address each of the deficiencies identified under its physical and management needs assessments, as follows:

(A) *Physical condition.* With respect to the physical condition of an IHA's projects, an IHA must indicate in its action plan how it intends to address, over a five-year period, the deficiencies identified in its physical needs assessment so as to bring each of its projects up to a level at least equal to the modernization and energy conservation standards. This would include specifying the actual work to be undertaken in broad categories (e.g., kitchens, floors, etc.), establishing priorities among the various types of work items, and among projects, and estimating the total project cost on an annual basis, regardless of the source of funding. In addition, an IHA must specify the length of time, target date, and the cost needed to upgrade each project to the modernization and energy conservation standards. Before an IHA schedules any other types of work items, it shall give priority to activities required to correct conditions that are life-threatening, or to meet statutory (or other legally mandated) requirements, e.g. compliance with a court-ordered desegregation plan, voluntary compliance agreement, activities required to carry out a section 504 transition plan under 24 CFR part 8, compliance with lead-based paint testing and abatement requirements, etc.

(B) *Management and operations.* With respect to any management and operations deficiencies, an IHA must indicate in its action plan:

(*1*) The actual work it intends to undertake to address each of the management and operations deficiencies identified in its management needs assessment. In addition, the action plan must set forth how the IHA intends to correct any IHA-wide deficiencies in accordance with an IHA's management improvement plan under § 905.135, and the ACA, and the Field Office Monitoring of IHAs Handbook;

(*2*) Separately indicate for any high need project, how the IHA intends to correct any management and operations deficiencies identified in its needs assessment.

(iii) *Procedure for maintaining current five-year action plan.* The IHA shall maintain a current five-year action plan by annually amending its action plan, in connection with the submission of its annual statement, so that the previous year of the existing action plan is eliminated and an additional year is added until all necessary work is covered by the action plan.

(6) *Statement of the appropriate governing body.* The comprehensive plan shall include a statement signed by the chief executive officer of the appropriate governing body, certifying to the following:

(i) The IHA developed the comprehensive plan in consultation with the appropriate governing body and with residents of the housing projects covered by the comprehensive plan, in accordance with the requirements set forth in § 905.672(b)(3).

(ii) The comprehensive plan is consistent with the appropriate governing body's assessment of its low income housing needs (as evidenced by its comprehensive homeless assistance plan under 24 CFR part 91, or its housing assistance plan under 24 CFR part 570, as appropriate), and that the unit of general local government will cooperate in providing resident programs and services.

(7) *Civil rights statement.* The plan shall include a statement, signed by the chief executive officer of the IHA, certifying that the IHA will carry out the comprehensive plan either in conformity with title VI of the Civil Rights Act of 1964 and the Fair Housing Act, or with the Indian Civil Rights Act (title II of the Civil Rights Act of 1968), as applicable; and with section 504 of the Rehabilitation Act of 1973, as appropriate.

(8) *IHA resolution.* The plan shall include a resolution adopted by the IHA Board of Commissioners approving the comprehensive plan and certifying that:

(i) The IHA will comply with all policies, procedures, and requirements prescribed by HUD for the modernization, including implementation of the modernization in a timely, efficient, and economical manner;

(ii) The proposed physical work meets the modernization and energy conservation standards in § 905.603;

(iii) The IHA will provide HUD with any documentation that the Department needs to carry out its review under the National Environmental Policy Act and other related authorities in accordance with § 905.120 (a) and (b), and will not obligate, in any manner, the expenditure of funds under this subpart, or otherwise undertake the activities identified in its comprehensive plan, until the IHA receives written notification from HUD indicating that the Department has complied with its responsibilities under § 905.120 (a) and (b);

(iv) The IHA's proposed comprehensive modernization of its vacant and non-homebuyer-occupied Turnkey III units will result in those units being brought into full compliance with the homeownership objectives under the Turnkey III program under subpart G of this part. Furthermore, the IHA has homebuyers who are both eligible for homeownership, in accordance with the requirements of 24 CFR part 905, and who have demonstrated their intent to be placed into each of the Turnkey III units proposed to be comprehensively modernized;

(v) The IHA has fully considered the priorities and concerns of the residents of the projects covered by the comprehensive plan, including any resident comments which ultimately were not adopted by the IHA in developing the plan. Furthermore, the IHA has fully complied with the requirements governing local government and resident participation, as set forth in § 905.672(b);

(vi) The IHA will comply with applicable civil rights requirements under § 905.120;

(vii) The IHA will comply with relocation assistance and real property acquisition requirements under § 905.117;

(viii) The IHA will comply with requirements for physical accessibility under § 905.120(f);

(ix) The IHA will comply with lead-based paint testing and abatement requirements under 24 CFR part 905 (subpart H) [4]; and

(x) The IHA will comply with all other applicable laws, regulations and other program requirements.

(d) *Conversion of a CPM under the CIAP program to a Comprehensive Grant comprehensive plan.* If, under the CIAP program in connection with pre-FFY 1992 funding, an IHA has submitted a comprehensive plan for modernization (CPM) before the effective date of the CGP program, the IHA may submit only the changes necessary to reflect the results of consultations with the appropriate governing body and residents and to include the additional items required by § 905.672, instead of an entirely new comprehensive plan.

(e) *Amendments to the comprehensive plan (including action plan).*—(1) *Circumstances requiring an amendment to the plan.* When the bases for the needs assessment or other features of the comprehensive plan have substantially changed, and IHA shall propose an amendment to its comprehensive plan (including is action plan), as part of its annual statement (see § 905.678(c)(3)), or at any time. These amendments, which shall be reviewed by HUD in accordance with § 905.675, shall include (but are not limited to) the following:

(i) An update of the five-year action plan, removing the previous year and adding an additional year.

(ii) Amendments to the physical and management needs assessments, as follows:

(A) A revised one-page summary describing the physical and management needs, and proposed corrective action, for any project whose needs have significantly changed since the last needs assessment was submitted to HUD, and which have resulted in changes to the IHA's action plan (not including changes occurring because of the completion of earlier years of the CGP program). An IHA shall specify whether the project is a high need project;

(B) A statement of any change in the IHA's compliance with prescribed requirements, as identified or determined under § 905.135, the ACA and the Field Office Monitoring of IHAs Handbook which results in the identification of additional deficiencies;

(C) With respect to any management improvement work item added to the five-year action plan (other than one added in response to a newly identified deficiency), an amendment, as appropriate, to the management needs assessment to reflect the underlying deficiency; and

(D) Every fifth year, an update of the physical needs assessment in the form of revised summary sheet for each project, and substantiated by a detailed physical needs assessment (to be retained in the IHA's files) for each such project. The IHA must also update its IHA-wide management needs assessment, and separately identify and discuss any high need projects.

(2) *Submission.* The IHA shall submit its proposed amendments to the comprehensive plan under paragraph (e)(1) of this section when it submits its annual statement to HUD. Other amendments to the comprehensive plan may be submitted at any time. The proposed amendments to the plan must be submitted with the certifications and IHA resolution required under § 905.672(c) (6), (7) and (8).

(3) *Extension of time for performance.* An IHA shall have the right to amend its comprehensive plan and related annual statements to extend the time for performance whenever HUD has not provided the amount of assistance set forth in the comprehensive plan or has not provided the assistance in a timely manner.

(f) *Prerequisite for receiving assistance.* No financial assistance, except for emergency work to be funded under §§ 905.601(b) and 905.666(a)(2), and for modernization needs resulting from disasters under § 905.601(b), may be made available under the Comprehensive Grant program under this subpart unless HUD has approved a comprehensive plan submitted by the IHA which meets the requirements of § 905.672. An IHA that has failed to submit an approvable comprehensive plan by the end of a FFY shall have its formula allocation for that year (less than amounts provided to the IHA for emergencies) added to the subsequent year's appropriation of funds for grants under this part. HUD shall allocate such funds to PHAs and IHAs participating in the CGP program in accordance with the formula under § 905.601 (e) and (f). To receive funding from the reserve for natural disasters and emergencies (whether or not HUD has approved an IHA's comprehensive plan), an IHA shall submit an application to HUD requesting such assistance, in accordance with the requirements of § 905.667. To receive funds from its formula allocation to address emergency modernization needs, where HUD has not approved an IHA's comprehensive plan, an IHA shall submit an application to HUD requesting such assistance, in accordance with the requirements of § 905.618.

§ 905.675 HUD review and approval of comprehensive plan (including action plan).

(a) *Submission of comprehensive plan.* (1) Upon receipt of a comprehensive plan from an IHA, HUD shall determine whether:

(i) It is complete in all significant matters; and

(ii) The IHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate IHA performance, audit findings, or civil rights compliance findings. If the IHA has submitted a complete comprehensive plan and all required information and assurances, HUD will accept the plan for review, as of the date of receipt. If the IHA has not submitted all required material, HUD will promptly notify the IHA that it has disapproved the plan as submitted, indicating the reasons for disapproval and the modifications required to qualify the comprehensive plan for HUD review.

(b) *HUD approval of comprehensive plan (including action plan).* (1) A comprehensive plan (including the action plan) that is accepted by HUD for review in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the IHA in writing, postmarked within 75 days of the date of HUD's receipt of the comprehensive plan, that HUD has disapproved the plan, indicating the reasons for disapproval, and the modifications required to make the comprehensive plan approvable. HUD shall not disapprove a plan merely because it does not have sufficient time to review the plan.

(2) *HUD approval of comprehensive plan (including action plan).* HUD shall approve the comprehensive plan except where it makes a determination in accordance with one or more of the following:

(i) *Identified needs are plainly inconsistent with facts and data.* On the basis of available significant facts and data pertaining to the physical and operational condition of the IHA's projects or the management and operations of the IHA, HUD determines that the IHA's identification of modernization needs (see § 905.672(c)(2) and (3)) is plainly inconsistent with such facts and data. HUD will take into account facts and data such as those derived from HUD monitoring, audits, and resident comments and will disapprove a comprehensive plan based on such findings as:

(A) *Identified physical improvements and replacement are inadequate.* The completion of the identified physical improvements and replacements will not bring all of an IHA's project to a level at least equal to the modernization and energy conservation and life-cycle cost-effective standards in § 905.603 (except that a project must meet the energy conservation standards under § 905.603 only when they are applicable to the work being performed);

(B) *Identified management improvements are inadequate.* The identified management and operations improvements do not address all of an IHA's areas of deficiency, or the completion of those deficiencies would not result in each area of deficiency under an IHA's management improvement plan under § 905.135 being

[4] See footnote 2 in § 905.[illegible].

brought up to an acceptable level of performance under the ACA and the Field Office Monitoring of IHAs Handbook; and

(C) *Proposed physical and management improvements fail to address identified needs.* The proposed improvements are not related to the identified needs, such as where one or more projects have significant vacancy rates, but the plan does not address how to fill the vacancies.

(ii) *Action plan is plainly inappropriate to meeting identified needs.* On the basis of the comprehensive plan, HUD determines that the action plan (see § 905.672(c)(5)) is plainly inappropriate to meet the needs identified in the comprehensive plan. HUD may take into account the thoroughness of the IHA in identifying the physical and managerial needs, including causes of managerial problems; the effectiveness, based on experience, of the proposed activities in meeting the IHA's management and physical improvement needs; and whether the action plan fails to address work items that are needed to correct conditions which constitute a threat to resident health and safety, or which are otherwise needed to correct statutory (or other legally mandated) requirements, as identified by the IHA in its comprehensive plan.

(iii) *Inadequate viability demonstration.* HUD determines that the PHA has failed to demonstrate the completion of improvements and replacements identified in the comprehensive plan, as required by § 905.672(c) (2) and (3), will reasonably ensure long-term viability of one or more Indian housing projects to which they relate at a reasonable cost, as required by § 905.672(c)(4).

(iv) *Contradiction of local government statement of IHA resolution.* HUD has evidence which tends to challenge, in a substantial manner, the appropriate government body's statement or IHA resolution contained in the comprehensive plan, as required in § 905.672(c) (6) and (7). A pattern of complaints from residents that they did not have an opportunity to express their views, or did not have their views adequately considered by the IHA, or from the appropriate governing body that it was not adequately consulted in the development of the plan shall be considered such evidence. With respect to an IHA established under state law and determined to be subject to the requirements of title VI of the Civil Rights Act of 1964 and the Fair Housing Act, HUD shall also consider the following to be such evidence:

(A) A pending administrative proceeding against the IHA brought by HUD under the Fair Housing Act;

(B) A pending civil rights suit against the IHA instituted by the Department of Justice;

(C) Outstanding HUD findings of IHA noncompliance with civil rights statutes and executive orders under 24 CFR part 905.120(a), or implementing regulations, as a result of formal administrative proceedings, unless the IHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance;

(D) There has been a deferral of the processing of applications from the IHA imposed by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and HUD section 504 regulations (24 CFR 8.57); or

(E) There has been an adjudication of a violation under any of the authorities under 24 CFR 905.120(a) in a civil action filed against the IHA by a private individual, unless the IHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance.

(3) *Effect of HUD approval of comprehensive plan.* After HUD approves the comprehensive plan (including the action plan), or any amendments to the plan, it shall be binding upon HUD and the IHA.

(c) *Partial approval of comprehensive plan.* Where the IHA and HUD disagree over a discrete portion of the plan, HUD may approve a comprehensive plan (including the action plan) subject to resolution of the disagreement between HUD and the IHA. In such case, an IHA may begin to carry out work items specified in its approved annual statement which pertain to the approved portion of its comprehensive plan.

§ 905.676 Annual statement of activities and expenditures.

(a) *Submission of annual statement of activities and expenditures.* After being advised by HUD of the estimated amount of assistance it will receive under this subpart with respect to any fiscal year and estimating how much funding will be available from other sources, such as State and tribal governments, the IHA shall submit an annual statement of activities and expenditures in accordance with instructions provided by HUD. Since the annual statement constitutes the first year of an IHA's five-year rolling-base action plan under § 905.672(c)(4), the IHA should submit its annual statement to HUD at the same time it submits its amendment to the action plan under § 905.672. Upon receipt of an annual statement from an IHA, HUD shall determine whether:

(1) It is complete in all significant matters; and

(2) The IHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate IHA performance, audit findings, or civil rights compliance findings. If the IHA has submitted a complete annual statement and all required information and assurances, HUD will accept the statement for review, as of the date of receipt. If the IHA has not submitted all required material, HUD will promptly notify the IHA that it has disapproved the statement as submitted, indicating the reasons for disapproval and the modifications required to qualify the annual statement for HUD review.

(b) *Participation by residents and officials of the appropriate governing body.* An IHA is required to develop its annual statement, including any proposed amendments to its comprehensive plan as provided in § 905.672(d), in consultation with officials of the appropriate governing body and with residents of the projects covered by the comprehensive plan, as set forth below:

(1) *Notification.* The IHA shall make reasonable efforts to provide advance notice to each resident in the affected housing project(s) of the date and time of the meetings with the IHA-wide resident group under paragraph (b)(2) of this section, and of the public hearing under paragraph (b)(3) of this section;

(2) *Meeting with IHA-wide resident group.* The IHA shall hold, at least three weeks before the public hearing under paragraph (b)(3) of this section, a meeting with the IHA-wide resident group at which the IHA will provide residents with information concerning the contents of the IHA's annual statement (including any proposed amendments to the IHA's comprehensive plan) so that residents can adequately comment on the contents of the annual statement, and any proposed amendments, at the public hearing;

(3) *Public hearing.* The IHA shall hold a public hearing which provides officials of the appropriate governing body, residents of the projects covered by the comprehensive plan, and other interested parties, an opportunity to summarize their priorities and concerns. The IHA shall give full consideration to

the comments and concerns of the appropriate governing body, and of the residents of the affected projects in its development of the annual statement, or any amendments to the comprehensive plan.

(c) *Contents of annual statement*—(1) *General.* The annual statement is the first year of the five-year rolling base action plan, and is intended to provide a more detailed discussion of the activities, obligations and expenditures which the IHA plans to undertake, in whole or in part, with the assistance to be provided by HUD. Thus, the annual statement provides HUD with greater detail concerning the planned utilization of current year funds, then the remaining years (two through five) covered by the action plan.

(2) *Requirements.* After being advised by HUD of the estimated amount of assistance it will receive with respect to any FFY, the IHA must submit to HUD its annual statement, as described below. The annual statement must include, for each project for which work is to be funded out of that year's grant:

(i) A list of development accounts (e.g., "dwelling structures") with a general description of work items (e.g., "replace kitchen cabinets," "repair bathroom floors");

(ii) The cost for each development account, and the overall cost;

(iii) The management improvements to be undertaken during the year, identified IHA-wide, and for an IHA's high need projects, as appropriate;

(iv) A summary description of the actions to be taken with non-CGP funds to meet physical and management improvement needs which have been identified by an IHA in its needs assessments;

(v) With respect to any proposed physical improvements, and for any management improvements not covered under an IHA's management improvement plan under § 905.135, a schedule for the use of current year funds, including target dates for obligation and expenditure of the funds;

(vi) In addition, an IHA must provide HUD in its annual statement with any documentation that HUD needs to assist it in carrying out its responsibilities under the National Environmental Policy Act and other related authorities in accordance with § 905.120 (a) and (b);

(vii) *IHA certifications.* Shall include certifications by the IHA that:

(A) The proposed activities, obligations, and expenditures are consistent with the approved comprehensive plan of the IHA;

(B) The IHA has complied with the requirements governing participation by officials of the appropriate governing body and residents of projects covered by the comprehensive plan, as specified under paragraph (b) of this section, and had given full consideration to resident and local government comments in preparing and submitting the annual statement (or any amendment to the annual statement submitted with the annual statement);

(C) The IHA will not obligate, in any manner, the expenditure of funds from the current year's annual grant under this subpart, or otherwise undertake the activities identified in its annual statement, until the IHA receives written notification from HUD indicating that the Department has complied with its responsibilities under NEPA and related environmental authorities, in accordance with § 905.120 (a) and (b);

(D) The IHA will comply with § 905.630, where a homeownership project is involved; and

(E) The IHA will comply with § 905.633, with respect to section 23 leased housing bond-financed projects;

(viii) *IHA resolution.* Shall include an IHA resolution approving the annual statement, and stating that the resolution submitted in accordance with § 905.672(c)(8) is still current, or amending the obsolete resolution;

(ix) *Additional submissions with annual statement.* An IHA must submit with its annual statement any amendments to the comprehensive plan, as set forth in § 905.672(e). HUD shall review any proposed amendments to the comprehensive plan in accordance with the review standards under § 905.675(b).

(d) *HUD review and approval of annual statement*—(1) *General.* An annual statement accepted in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the IHA in writing, postmarked within 75 days of the date that HUD accepts the annual statement for review under paragraph (a) of this section (or of the date funds are appropriated, if later), that HUD has disapproved the annual statement, indicating the reasons for disapproval and the modifications required to make the annual statement approvable. HUD shall not disapprove an annual statement on the basis that the Department cannot complete its review under this section within the 75-day deadline;

(2) *Bases for disapproval of annual statement.* HUD shall approve the annual statement, except where:

(i) *Plainly inconsistent with comprehensive plan.* HUD determines that the activities and expenditures proposed in the annual statement are plainly inconsistent with the IHA's approved comprehensive plan;

(ii) *Contradiction of IHA certifications or resolution.* HUD has evidence which tends to challenge, in a substantial manner, the certifications or resolution contained in the annual statement, as required by paragraphs (c)(vii) and (c)(viii) of this section;

(3) *HUD conditional approval of annual statement.* HUD may approve an annual statement with conditions, where HUD determines, based on substantial evidence, that the IHA has failed to fully meet the standards set forth in paragraph (d)(2) of this section. In such a case, HUD shall notify the IHA that the annual statement is being approved with conditions, indicating the reasons for the conditions and the modifications required for HUD to remove the conditions. The conditions may restrict use of funds in accordance with HUD guidelines and may include the actions specified in § 905.687(c). In addition, HUD may approve an IHA's annual statement, subject to the IHA's agreeing to modify or eliminate certain proposed activities or expenditures which HUD has determined to be inconsistent with the requirements of NEPA and related environmental authorities under § 905.120 (a) and (b);

(e) *Amendments to annual statement.* The IHA shall submit major changes in its annual statement to HUD for approval, except in the case of emergency work. The IHA shall advise HUD of all changes due to emergencies in its performance and evaluation report under § 905.684. HUD shall review a request to amend an annual statement in accordance with paragraph (d)(2) of this section. (For purposes of this paragraph, "major changes" means additions or deletions of work items in the annual statement involving more than 10% of an IHA's annual grant allocation, and which are included within the five-year action plan.) Any changes with respect to work items involving less than 10% of an IHA's annual grant allocation do not require HUD approval, so long as the work is covered under the IHA's action plan. Emergencies can be addressed at any time without the need for an amendment.

(f) *ACC Amendment.* After HUD approval of each year's annual statement, HUD and the IHA shall enter into an ACC amendment to obtain modernization funds.

§ 905.681 Conduct of modernization activities.

(a) *Initiation of activities.* After HUD has approved the annual statement and entered into an ACC amendment with the IHA, the IHA shall undertake the

modernization activities and expenditures set forth in its approved annual statement.

(b) *Fund requisitions.* To request modernization funds against the approved annual statement, the IHA shall submit a request to HUD in accordance with HUD requirements.

(c) *Contracting requirements.* The IHA shall comply with the wage rate requirements in § 905.120. In addition, the IHA shall comply with the requirements, as set forth in 24 CFR part 85, except as follows:

(1) *Assurance of completion.* For each construction or equipment contract over $25,000, the contractors shall furnish a performance and payment bond for 100 percent of the contract price or, notwithstanding 24 CFR 85.36(h), a 20 percent cash escrow, or a 25 percent letter of credit or, as may be required by law, separate performance and payments bonds, each for 50 percent or more of the contract price.

(2) *Prior HUD approval.* Notwithstanding 24 CFR 85.36(g), where HUD imposes additional requirements under § 905.687 (c) or (d), the IHA shall submit the following documents to HUD for prior approval:

(i) Proposed agreement with the architect/engineer before execution;

(ii) Complete construction and bid documents before inviting bids;

(iii) Proposed award of contracts, including construction and equipment contracts and management contracts, if the proposed amount exceeds the amount approved by HUD in the annual statement; or

(iv) Proposed contract modifications prior to issuance, including modifications to construction and equipment contracts, and management contracts.

(3) *Previous participation.* The IHA shall obtain HUD clearance under previous participation procedures for construction or equipment contract awards, which shall include verifying that the contractor is not included on the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

(d) *Fiscal closeout of a comprehensive grant.* Upon completion of activities funded by each annual grant, the IHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to HUD for review, audit verification, and approval. The audit shall follow the guidelines prescribed by 24 CFR part 44, Non-Federal Government Audit Requirements. If the audited modernization cost certificate discloses unauthorized expenditures, the IHA shall take such corrective actions as HUD may direct.

§ 905.684 IHA performance and evaluation report.

For any Federal fiscal year in which an IHA has received assistance under this subpart, the IHA shall submit a performance and evaluation report, in a form and at a time to be prescribed by HUD, describing its use of assistance in accordance with the approved annual statement. The report shall include an assessment of the relationship of the use of funds made available under this subpart, as well as the use of other funds such as Community Development Block Grant program assistance, State assistance, and private funding, to the needs identified in the IHA's comprehensive plan and to the purposes of this subpart. The report shall include an assessment of how the PHA has used the modernization funds provided under this subpart to address the needs identified in its comprehensive plan and to carry out activities identified in its approved annual statement, and shall specifically address: any funds used for emergency needs not set forth in its annual statement; and any deviations within the 10% cap for "major changes" to the annual statement under § 905.678. The IHA must also describe the status of its obligations and expenditures from previous year's annual grants, and specify how the IHA is performing with respect to the modernization schedules provided in its approved annual statements. The performance and evaluation report must also include a certification by the IHA that it has made reasonable efforts to provide notice to each resident in the projects covered by the comprehensive plan of the opportunity to review the draft report and to comment on it before its submission to HUD.

§ 905.687 HUD review of IHA performance.

(a) *HUD determination.* At least annually, HUD shall carry out such reviews of IHA performance as may be necessary or appropriate to make the determinations required by this paragraph, taking into consideration all available evidence.

(1) *Conformity with comprehensive plan.* HUD will determine whether the IHA has carried out its activities under this subpart in a timely manner and in accordance with its comprehensive plan.

(i) In making this determination, HUD will review the IHA's performance to determine whether the modernization activities undertaken during the period under review conform substantially to the activities specified in the approved annual statement, consistent with the approved comprehensive plan. HUD will also review an IHA's schedules which are provided with its annual statement for purposes of determining whether the IHA has carried out its modernization activities in a timely manner. The review may also include whether any activities that were undertaken which were not included in the approved annual statement are eligible under § 905.666, are specified in the action plan, or are due to emergencies. In addition, for the early years of the CGP modernization program, HUD will also consider an IHA's performance in carrying out its modernization program under CIAP for purposes of the determination under this section. HUD will also consider whether the IHA received more or less funding than anticipated when it developed its annual statement.

(ii) HUD will review an IHA's performance to determine whether the activities carried out comply with the requirements of the Act, including the requirement that the work carried out meets the modernization and energy conservation standards in § 905.603, this part, and other applicable laws and regulations.

(2) *Continuing capacity.* HUD will determine whether the IHA has a continuing capacity to carry out its comprehensive plan in a timely manner.

(i) The primary factors to be considered in arriving at a determination that a recipient has a continuing capacity are those described in paragraphs (a) (1) and (3) of this section as they relate to carrying out the comprehensive plan. If HUD determines that the IHA has:

(A) Carried out its activities under the CGP program in a timely manner, taking into account the level of funding available;

(B) Adequately inspected its modernization projects to assure that the physical work is being carried out in accordance with the plans and specifications;

(C) Administered its modernization contracts in accordance with an acceptable procurement policy, as provided in 24 CFR 85.36;

(D) Carried out its activities in accordance with its comprehensive plan; and

(E) Has satisfied, or made reasonable progress toward satisfying, the performance standards prescribed in paragraph (a)(3) of this section as they relate to activities under the CGP program, HUD will generally consider the IHA to have a continuing capacity.

(ii) HUD will give particular attention to IHA efforts to accelerate the progress of the program and to prevent the recurrence of past deficiencies or noncompliance with applicable laws and regulations.

(3) *Reasonable progress.* HUD shall determine whether the IHA has satisfied, or has made reasonable progress towards satisfying, the following performance standards:

(i) With respect to the physical condition of each project, whether the work items being carried out by the IHA are in conformity with the modernization standards, and the energy conservation and life-cycle cost-effective performance standards, and whether the IHA has brought, or is making reasonable progress toward bringing, all of its projects to these standards, in accordance with targets identified in its action plan; and

(ii) With respect to the management condition of the IHA, whether the IHA has corrected deficiencies, both IHA-wide and at its high-need projects, which have been identified or determined under § 905.135 and the ACA, or whether it has made reasonable progress toward correcting identified deficiencies in accordance with goals established in the IHA's management improvement plan under § 905.135.

The Department will propose changes to these standards only after consultation with IHAs and IHA organizations.

(b) *Condition for receipt of assistance.* No financial assistance may be made available under this subpart unless HUD determines that the IHA has made substantial efforts to meet the objectives of the preceding year under the IHA's comprehensive plan or, for the first year an IHA receives assistance under the CGP program, under the IHA's approved CIAP program. In making this determination, HUD will take into account its determinations under paragraph (a) of this section.

(c) *Corrective action.* (1) HUD may order an IHA to take corrective action only if HUD determines:

(i) The IHA has not submitted a performance and evaluation report, in accordance with § 905.684;

(ii) The IHA has not carried out its activities under this subpart in a timely manner and in accordance with its comprehensive plan;

(iii) The IHA does not have a continuing capacity to carry out its comprehensive plan in a timely manner;

(iv) The IHA has not satisfied, or has not made reasonable progress towards satisfying, the performance standards specified in paragraph (a)(3) of this section;

(v) An audit conducted in accordance with 24 CFR Part 44 and § 905.120 reveals findings that HUD reasonably believes require corrective action;

(vi) The IHA has failed to repay HUD for amounts awarded under the CGP program that were improperly expended; or

(vii) The IHA has been determined to lack administrative capability, in accordance with § 905.135.

(2) HUD shall design corrective action to prevent a continuation of the deficiency; mitigate any adverse effects of the deficiency to the extent possible; and prevent a recurrence of the same or similar deficiencies.

(3) HUD may direct an IHA to take one or more of the following corrective actions:

(i) Submit additional information:

(A) Concerning the IHA's administrative, planning, budgeting, accounting, management, and evaluation functions, to determine the cause for a IHA not meeting the standards in paragraph (a) (1), (2), or (3) of this section;

(B) Explaining any steps the IHA is taking to correct the deficiencies;

(C) Documenting that IHA activities were not inconsistent with the IHA's annual statement or other applicable laws, regulations, or program requirements; and

(D) Demonstrating that the IHA has a continuing capacity to carry out the comprehensive plan in a timely manner;

(ii) Submit schedules for completing the work identified in its annual statement and report periodically on its progress on meeting the schedules;

(iii) Correct deficiencies specified in a letter from HUD advising the IHA of the deficiencies and warning it that HUD will impose sanctions if the deficiency recurs or if it is not corrected within a specified time;

(iv) Submit supporting material to document one or more of the statements, resolutions, and certifications submitted as part of the IHA's comprehensive plan, annual statement, or performance and evaluation report;

(v) Not to incur financial obligations, or to suspend payments for one or more activities;

(vi) Reimburse, from non-HUD sources, one or more program accounts for any amounts improperly expended;

(vii) Take such other corrective actions HUD determines appropriate to correct IHA deficiencies.

(d) *Conditioning.* HUD may condition the approval of the next year's annual statement, or otherwise condition an IHA's program, based on: Substantial evidence, in accordance with paragraph (a) of this section; or an IHA's failure to take corrective action within a reasonable time after HUD has notified the IHA of the deficiency. Before conditioning an IHA's modernization program, HUD will notify the IHA and give it an opportunity, within a prescribed period of time, to consult with HUD regarding the proposed action.

(e) *Withholding, recapturing, and reallocating grant amounts.* (1) HUD may withhold some or all of the IHA's annual grant where it has required an IHA to take corrective action and the IHA has failed to correct the deficiency within a reasonable time. In addition, HUD may recapture for good cause any grant amounts previously provided to an IHA, based upon a determination that the IHA has failed to comply with the requirements of the CGP program (other than because of an IHA's designation as an agency that lacks administrative capability under § 905.135). Before withholding or recapturing some or all of an IHA's annual grant, HUD will notify the IHA and give it an opportunity, within a prescribed period of time, to consult with HUD regarding the proposed action.

(2) Where HUD was withheld in IHA's annual grant for a prescribed period of time, or recaptured for good cause some or all of an IHA's annual grant, it may reallocate such amounts to other IHAs under the CGP program which have not been determined by HUD to lack administrative capability under § 905.135, and to PHAs under the CGP program which are not designated as either troubled or mod troubled under the PHMAP at 24 CFR part 901. Such funds shall be reallocted by HUD based upon the relative needs of these PHAs and IHAs, as determined under the formula at § 905.601 for the FFY in which the funds were derived, except that where such funds are recaptured for good cause from an IHA for a reason other than its designation as an agency that lacks administrative capability under § 905.135, HUD shall first obtain congressional approval before reallocating such funds. Before reallocating some or all of an IHA's annual grant, HUD will notify the IHA and give it an opportunity, within a prescribed period of time, to consult with HUD regarding the proposed action.

PART 968—PUBLIC HOUSING MODERNIZATION

10–11. The authority citation for 24 CFR part 968 would continue to read, as follows:

Authority: Secs. 6 and 14, United States Housing Act of 1937 (42 U.S.C. 1437d, 1437*l*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

12. Section 968.101 would be revised, and a new § 968.103 would be added, to read as follows:

Subpart A—General

§ 968.101 Purpose and applicability.

(a) *Purpose.* Section 14 of the Act established the Public Housing Modernization program, authorizing HUD to provide financial assistance to public housing agencies (PHAs) to improve the physical condition and upgrade the management and operation of existing public housing projects, to assure that such projects continue to be available to serve low income families. These physical and management improvements are authorized under sections 5(c) and 14(b)(2) of the Act, pursuant to the funding method prescribed under section 14(k) of the Act. This part prescribes the requirements and procedures for the Public Housing Modernization Program.

(b) *Applicability.* (1) Subpart A applies to all modernization under this part. Subpart B sets forth the requirements and procedures for the Comprehensive Improvement Assistance Program (CIAP) for PHAs that own or operate fewer than 500 public housing units (fewer than 250 units beginning in FFY 1993). Subpart C sets forth the requirements and procedures for the Comprehensive Grant program for PHAs that own or operate 500 or more public housing units (250 or more units beginning in FFY 1993). Modernization of housing owned or operated by Indian housing authorities (IHAs) is covered by 24 CFR part 905. For purposes of the 500 or more unit threshold for participation in the Comprehensive Grant program (250 or more units beginning in FFY 1993), and for the formula allocation under § 968.103, an existing rental and section 23 bond-financed unit under the ACC shall count as one unit; a unit under the Turnkey III program shall count as one-fourth of a unit; and a unit under the Mutual Help program shall count as three-quarters of a unit. A PHA that has already qualified to participate in the CGP program because it owns or operates 500 or more units (250 or more units beginning in FFY 1993), may elect to continue to participate in the CGP program so long as it owns or operates at least 400 units (at least 200 units beginning in FFY 1993).

(2) This part applies to PHA-owned low income public housing projects, including conveyed Lanham Act and Public Works Administration (PWA) projects, and to section 23 Leased Housing Bond-Financed projects, for which PHAs request assistance under the CIAP or CGP programs. This part also applies to the implementation of modernization programs which were approved before FFY 1992. This part does not apply to projects under the section 23 Leased Housing Non-Bond Financed program, the section 10(c) Leased program, or the section 23 or section 8 Housing Assistance Payments programs.

(c) *Transition.* Any amount that HUD has obligated to a PHA under the CIAP program must be used for the purposes for which the funding was provided, or for purposes consistent with an approved action plan submitted by the PHA under the Comprehensive Grant program.

§ 968.103 Allocation of funds under section 14.

(a) *General.* This section describes the process for allocating modernization funds to the aggregate of PHAs and IHAs participating in the CIAP program (i.e., agencies that own or operate fewer than 500 units, or fewer than 250 units beginning in FFY 1993), and to individual PHAs and IHAs participating in the Comprehensive Grant program (i.e., agencies that own or operate 500 or more units, or 250 or more units beginning in FFY 1993). The program requirements governing IHA participation in the CIAP and CGP programs are contained in 24 CFR part 905 (subpart I).

(b) *Set-aside for disasters and emergencies for CGP agencies:* For each FFY, HUD shall reserve from amounts approved in appropriations acts for grants under this part, $75 million (which shall include unused amounts reserved during previous FFYs), which shall be made available to PHAs under 24 CFR part 968 (subpart C) and to IHAs with 500 or more units (250 or more units beginning in FFY 1993) under 24 CFR part 905 (subpart I), for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY so that it always begins with a $75 million balance. Any unused funds from previous years will remain in the reserve until allocated. The requirements governing the reserve for disasters and emergencies, and the procedures by which a PHA may request such funds, are set forth in § 968.312.

(c) *Set-aside for credits for mod troubled PHAs under subpart C of this part*—(1) *General.* After deducting amounts for the reserve for natural and other disasters and for emergencies under paragraph (b) of this section, HUD shall set aside no more than five percent of the remaining amount for the purpose of providing credits to PHAs that are included on the initial designation of mod troubled agencies under the PHMAP (see 24 CFR part 901). The purpose of this set-aside is to compensate such PHAs for amounts not allocated by HUD because of their designation as a mod troubled agency.

(2) *Non-applicability to IHAs.* Since the PHMAP performance indicators/standards under 24 CFR part 901 do not apply to IHAs, these agencies cannot be deemed "mod troubled" for purposes of the Comprehensive Grant modernization program. Hence, IHAs are not subject to any reduction in funding under section 14(k)(5)(a) of the Act, nor do they participate in the set-aside of credits established under paragraph (c)(1) of this section.

(d) *Formula allocation based on relative needs.* After determining the amounts to be reserved under paragraphs (b) and (c) of this section, HUD shall allocate the amount remaining pursuant to the formula set forth in paragraphs (e) and (f) of this section, which is designed to measure the relative backlog and accrued needs of PHAs and IHAs.

(e) *Allocation for backlog needs.* HUD shall allocate half of the formula amount determined under paragraph (d) of this section based on the relative backlog needs of PHAs and IHAs (after deducting 60 percent of the modernization funds made available from FFY 1984 to 1991, and 60 percent of the funds made available for the Major Reconstruction of Obsolete Projects (MROP), to the PHA or IHA with 500 or more units; or 60 percent of the modernization funds made available from FFY 1984 to 1992, and 60 percent of the MROP funds made available for the PHA or IHA with 250 to 499 units, subject to a maximum fifty percent deduction of a PHA's or IHA's total need for backlog funding), as follows:

(1) *Statistically reliable data.* Where HUD determines that the data concerning the categories of backlog need identified under paragraph (e)(3) of this section are statistically reliable for individual IHAs and PHAs with 500 or more units (250 or more units beginning in FFY 1993), or the aggregate of IHAs and PHAs with fewer than 500 units (fewer than 250 units beginning in FFY 1993) not participating in the formula funding portion of the modernization program, it will base its allocation on direct estimates of the statutory categories of backlog need, based on the most recently available, statistically reliable data.

(2) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the categories of backlog need identified under paragraph (e)(3) of this section are not available for individual PHAs and IHAs with 500 or more units (250 or more units beginning in FFY 1993), it will base its allocation of funds under this section on estimates of the categories of backlog need using:

(i) The most recently available data on the categories of backlog need under paragraph (e)(3) of this section;

(ii) Objectively measurable data concerning the following PHA or IHA, community and project characteristics:

(A) The average number of bedrooms in the units in a project. (Weighted at 2858.7);

(B) The proportion of units in a project available for occupancy by very large families. (Weighted at 7295.7);

(C) The extent to which units for families are in high-rise elevator projects. (Weighted at 5555.8);

(D) The age of the projects. (Weighted at 206.5);

(E) In the case of a large agency, the number of units with 2 or more bedrooms. (Weighted at .433);

(F) The cost of rehabilitating property in the area. (Weighted at 27544.3);

(G) For family projects, the extent of population decline in the unit of general local government determined on the basis of the 1970 and 1980 censuses. (Weighted at 759.5);

(iii) An equation constant of 1412.9.

(3) *Categories of backlog need.* The most recently available data used under either paragraph (e)(1) or (2) of this section must pertain to the following categories of backlog need:

(i) Backlog of needed repairs and replacements of existing physical systems in public housing projects;

(ii) Items that must be added to projects to meet HUD's modernization standards under § 968.115, and State and local codes; and

(iii) Items that are necessary or highly desirable for the long-term viability of a project, in accordance with HUD guidelines.

(f) *Allocation for accrual needs.* HUD shall allocate the other half remaining under the formula allocation under paragraph (d) of this section based upon the relative accrued needs of PHAs and IHAs, determined as follows:

(1) *Statistically reliable data.* Where HUD determines that statistically reliable data are available concerning the categories of need identified under paragraph (f)(3) of this section for individual PHAs and IHAs with 500 or more units (250 or more units beginning in FFY 1993), and for the aggregate of PHAs and IHAs with fewer than 500 units (fewer than 250 units beginning in FFY 1993), it shall base its allocation of assistance under this section on the needs that are estimated to have accrued since the date of the last objective measurement of backlog needs under paragraph (e)(1) of this section;

(2) *Statistically reliable data is unavailable.* Where HUD determines that statistically reliable data concerning the categories of need identified under paragraph (f)(3) of this section are not available for individual PHAs and IHAs with 500 or more units (250 or more units beginning in FFY 1993), it shall base its allocation of assistance under this section on estimates of accrued need using:

(i) The most recently available data on the categories of backlog need under paragraph (f)(3) of this section;

(ii) Objectively measurable data concerning the following PHA or IHA, community, and project characteristics:

(A) The average number of bedrooms in the units in a project. (Weighted at 100.1.)

(B) The proportion of units in a project available for occupancy by very large families. (Weighted at 356.7.)

(C) The age of the projects. (Weighted at 10.4.)

(D) The extent to which the buildings in projects of an agency average fewer than 5 units. (Weighted at 87.1.)

(E) The cost of rehabilitating property in the area. (Weighted at 679.1.)

(F) The total number of units of each PHA or IHA that owns or operates 500 or more units (250 or more units beginning in FFY 1993). (Weighted at .0144);

(iii) An equation constant of 602.1;

(3) *Categories of need.* The data to be provided under either paragraph (f)(1) or (2) of this section must pertain to the following categories of need:

(i) Backlog of needed repairs and replacements of existing physical systems in public housing projects; and

(ii) Items that must be added to projects to meet HUD's modernization standards under § 968.115, and State and local codes.

(g) *Allocation for CIAP program.* The formula amount determined under paragraphs (e) and (f) of this section for PHAs and IHAs with fewer than 500 units (fewer than 250 units beginning in FFY 1993) shall be allocated to PHAs in accordance with the requirements of subpart B of this part (the Comprehensive Improvement Assistance Program), and to IHAs in accordance with the requirements of 24 CFR part 905 (subpart I, the CIAP program).

(h) *Allocation for Comprehensive Grant program.* The formula amount determined under paragraphs (e) and (f) of this section for PHAs with 500 or more units (250 or more units beginning in FFY 1993) shall be allocated in accordance with the requirements of subpart C of this part (the Comprehensive Grant Program), and for IHAs in accordance with the requirements of 24 CFR part 905 (subpart I, the CGP program). A PHA that is eligible to receive a grant under the Comprehensive Grant program may appeal the amount of its formula allocation in accordance with the requirements set forth in § 968.315(b)(2). A PHA which is eligible to receive modernization funds under the Comprehensive Grant program because it owns or operates 500 or more units (250 or more units beginning in FFY 1993), is disqualified from receiving assistance under the CIAP program under this part.

(i) *Use of formula allocation.* Any amounts allocated to a PHA under paragraphs (e) and (f) of this section may be used for any eligible activity under this part, notwithstanding that the allocation amount is determined by allocating half based on the relative backlog needs and half based on the relative accrued needs of PHAs and IHAs.

(j) *Calculation of number of units.* For purposes of determining under this section the number of units owned or operated by a PHA or IHA, and the relative modernization needs of PHAs and IHAs, HUD shall count as one unit each existing rental and section 23 bond-financed unit under the ACC, except that it shall count as one-fourth of a unit each existing unit under the Turnkey III program, and as three-quarters of a unit each existing unit under the Mutual Help program, to take into account the responsibility of families for the costs of certain maintenance and repair.

(k) *Demolition or disposition of units.* Where an existing unit under an ACC is demolished or disposed of, HUD shall not adjust the amount the PHA or IHA receives under the formula, unless more than one percent of the units are affected on a cumulative basis. Where more than one percent of the existing units are demolished or disposed of, HUD shall reduce the formula amount for the PHA or IHA over a 3-year period to reflect removal of the units from the ACC. In implementing this provision, HUD shall compare the units eligible for funding in the initial year under formula funding with the number of units eligible for funding for formula funding purposes for the current year. If the change is less than one percent, the IHA or PHA will be funded as though no change had occurred. If the change is greater than

one percent, the number of units on which formula funding is based will be the number of units reported as eligible for funding for the current program, plus two-thirds of the difference between the initial year and the current year in the first year, plus one third of the difference in the second year, and at the level of the current year in the third year. Once a PHA's unit count has been fully reduced to reflect the new number of units under the ACC, this new number of units will serve as the base for purposes of calculating whether there has been a one percent reduction in units on a cumulative basis. A reduction in formula funding, based upon additional reductions to the number of a PHA's units, will also be phased in over a three-year period, as described in this paragraph. Where a PHA's units are reduced in two or more consecutive years, the actual unit count for the second or subsequent year shall be used as the basis for determining whether the one percent reduction is reached, and for purposes of calculating the phase-down of funds. Units which are added to a PHA's or IHA's inventory after the initial year of the CGP program shall be disregarded for purposes of calculating any reduction in a PHA's or IHA's funding caused by a loss of units through demolition or disposition.

13. Section 968.110 would be amended by adding a new paragraph (m), to read as follows:

§ 968.110 Other program requirements.

* * * * *

(m) *Coastal barriers.* In accordance with the Coastal Barriers Resources Act, 16 U.S.C. 3801, no financial assistance under this part may be made available within the Coastal Barrier Resources System.

14. Section 968.115 would be amended by revising paragraphs (a) and (b), to read, as follows:

§ 968.115 Modernization and energy conservation standards.

(a) All improvements funded under this part, which may include alterations, betterments, additions, replacements, or non-routine maintenance, shall meet the HUD modernization standards described in paragraph (b) of this section and established to provide decent, safe, and sanitary living conditions in PHA-owned and PHA-operated public housing. All improvements funded under this part shall meet the HUD-energy conservation standards for cost-effective energy conservation measures in such projects, described in paragraphs (c) and (d) of this section.

(b) The modernization standards are comprised of both mandatory and project-specific standards. The mandatory standards are intended to provide decent, safe, and sanitary living conditions in public housing, including corrections of violations of basic health and safety codes, and to address all deficiencies, including those related to deferred maintenance. The project-specific standards permit a PHA to undertake improvements that are necessary or highly desirable for the long-term physical and social viability of a project, which include site and building security. The modernization standards are contained in HUD Handbook 7485.2, as revised, Public and Indian Housing Modernization Standards,[1] and in other documents cited in the Handbook.

* * * * *

Subpart B—Comprehensive Improvement Assistance Program (For PHAs That Own or Operate Fewer Than 500 Public Housing Units) (Fewer Than 250 Units Beginning in FFY 1993)

15. The heading of subpart B of 24 CFR Part 968 would be revised to read, as set forth above.

16. Section 968.201 would be revised to read, as follows:

§ 968.201 Purpose.

The purpose of this subpart is to set forth the policies and procedures for the CIAP program under which PHAs that own or operate fewer than a total of 500 units of public housing (fewer than 250 units beginning in FFY 1993) receive financial assistance for the modernization of public housing projects, including comprehensive, emergency, homeownership, and special purpose modernization. Funding for this program is provided under section 5(c) of the Act, pursuant to section 14(k) of the Act (see § 968.103 for the formula allocation process for the aggregate of CIAP agencies under this subpart).

17. The definition of "special purpose modernization," contained in § 968.203, would be amended by adding a new paragraph (6), by removing the word "and" at the end of paragraph (4), and by revising the period at the end of paragraph (5) to read "; and", to read as follows:

§ 968.203 Definitions.

* * * * *

Special purpose modernization. * * *

[1] Copies may be obtained by writing to the Office of Public and Indian Housing, 451 7th Street, SW., Room 4122, Washington, DC 20410.

(6) Special purpose management modernization.

* * * * *

18. Section 968.205 would be amended by revising paragraph (b)(1) introductory text; by adding a new paragraph (b)(3); and by revising paragraph (f), to read as follows:

§ 968.206 Eligible costs.

* * * * *

(b) *Management improvement costs*—(1) *Eligibility.* Management improvements that are project-specific or PHA-wide in nature are eligible costs only under special purpose management modernization under paragraph (b)(3) of this section, or under comprehensive modernization, subject to all of the following conditions:

* * * * *

(3) *Special purpose management modernization.* Special purpose management improvements are eligible modernization costs under the category of special purpose modernization, if they address needs which are not otherwise eligible for assistance under paragraph (b)(1) of this section.

* * * * *

(f) *Homeownership projects*—(1) *General.* For homeownership projects only, eligible physical improvements are limited to work items that are not the responsibility of the homebuyer families and that are related to health and safety, correction of development deficiencies, physical accessibility, cost-effective energy conservation measures, and lead-based paint testing and abatement. Nonroutine maintenance or replacements, additions, items that are the responsibility of the homebuyer families, and management improvements, are not eligible modernization costs for homeownership projects.

(2) *Exception for vacant and non-homebuyer-occupied Turnkey III units.* Notwithstanding the requirements of paragraph (f)(1) of this section, a PHA may use no more than a single CIAP grant under this part for purposes of comprehensively modernizing a vacant and non-homebuyer-occupied Turnkey III unit. A PHA that intends to use funds under this paragraph must identify in its application the specific units proposed for modernization and subsequent sale, including the name/number of the projects in which the units are located. In addition, the PHA must demonstrate in its application that: The proposed modernization under this paragraph would result in bringing the identified units into full compliance with the homeownership objectives under the Turnkey III program (see 24 CFR part 904); and the PHA has homebuyers who are both eligible for homeownership, in accordance with the requirements of 24 CFR part 904, and who have demonstrated their intent to be placed into each of the Turnkey III units proposed to be comprehensively modernized. Before a PHA can draw down funds for the comprehensive modernization of a unit under this paragraph, it must first deplete any tenant equity account, or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit (although the PHA may retain in the NRMR sufficient funds to carry out future work items not covered by the comprehensive modernization of the unit). Any increase in the value of a unit caused by its comprehensive modernization under this paragraph shall be reflected in the purchase price for subsequent homebuyers, as a result of its appraised fair market value.

* * * * *

19. Section 968.210 would be amended by removing paragraph (e)(3), and by redesignating paragraph (e)(4) as paragraph (e)(3).

20. Part 968 of title 24 of the Code of Federal Regulations would be amended by adding a new subpart C, to read as follows:

Subpart C—Comprehensive Grant Program (For PHAs That Own or Operate 500 or More Public Housing Units) (250 or More Units Beginning in FFY 1993)

Sec.
968.301 Purpose.
968.305 Definitions.
968.310 Eligible costs.
968.312 Reserve for disasters and emergencies (non-formula).
968.315 Allocation of assistance for troubled and non-troubled PHAs (formula).
968.318 Modernization strategy.
968.320 Comprehensive plan (including action plan).
968.325 HUD review and approval of comprehensive plan (including action plan).
968.330 Annual statement of activities and expenditures.
968.335 Conduct of modernization activities.
968.340 PHA performance and evaluation report.
968.345 HUD review of PHA performance.

Subpart C—Comprehensive Grant Program (For PHAs That Own or Operate 500 or More Public Housing Units) (250 or More units Beginning in FFY 1993)

§ 968.301 Purpose.

(a) The purpose of the Comprehensive Grant program under this subpart is:

(1) To provide modernization assistance to PHAs that own or operate a total of 500 or more units of public housing (250 or more units beginning in FFY 1993) on a reliable and more predictable basis to enable them to operate, upgrade, modernize, and rehabilitate public housing projects, to ensure their continued availability for low income families as decent, safe, and sanitary rental housing at affordable rents;

(2) To provide considerable discretion to PHAs to decide the specific improvements, the manner of their execution, and the timing of the expenditure of funds;

(3) To simplify significantly the program of Federal assistance for capital improvements in public housing projects;

(4) To provide increased opportunities and incentives for more efficient management of public housing projects; and

(5) To give PHAs greater control in planning and expending funds for modernization, rehabilitation, maintenance, and improvement of public housing projects to benefit low income families.

(b) The purpose of this subpart is to set forth the policies and procedures for the Comprehensive Grant program under which PHAs that own or operate a total of 500 or more units of public housing (250 or more units beginning in FFY 1993) receive financial assistance on a formula grant basis in accordance with § 968.103 (e) and (f) for the modernization of public housing projects.

§ 968.305 Definitions.

In addition to the definitions in § 968.105, the following definitions apply to this subpart:

Action plan. A plan of the actions to be funded by a PHA over a period of five years (including a PHA's proposed allocation of its modernization funds to a reserve established under § 968.310(a)(3) to make the necessary physical management improvements identified in the PHA's comprehensive plan. The action plan is updated annually to reflect a rolling five-year base. (See § 968.320(b)(5).)

Annual statement. A statement submitted annually by a PHA to HUD of the activities and related costs it expects to fund with the annual grant, and with any other modernization funds available to the PHA. (See § 968.330.)

Comprehensive plan. A plan prepared by a PHA and approved by HUD setting forth all of the physical and management improvement needs of the PHA's public housing projects, and the management improvement needs of the PHA and its high need and other designated projects, and which includes the IHA's action plan, cost estimates, cost certification, and required local government and PHA certifications. The comprehensive plan may be revised, as necessary (but at least once every five years). (See § 968.320(b).)

Emergency work. Physical work items of an emergency nature, posing an immediate threat to resident life, health, or safety. Under the Comprehensive Grant program, management improvements are not eligible as emergency work and, therefore, must be covered by the comprehensive plan (including the action plan) before the PHA may carry them out.

High need project. A project with either:

(1) High vacancy rates (i.e., 15 percent or more vacant units, excluding units which have been approved by HUD for demolition or disposition, or which are in a funded, on-schedule modernization program); or

(2) High cost (modernization hard costs exceed 25 percent of Total Development Cost for non-elevator projects, or 28 percent for elevator projects).

Homebuyer agreement. A Turnkey III Homebuyer's Ownership Opportunity Agreement.

Improvement plan. [Reserved]

Lack of management capability. The PHA has inadequate management practices, as determined by HUD on the basis of its annual review of PHA performance under § 968.345, or lacks management capability, as defined in § 968.203, with respect to CIAP funding received by the PHA before FFY 1992, and has not taken appropriate corrective action.

Memorandum of Agreement. (MOA. [Reserved]

Modernization capability. A PHA has adequate modernization capability if the PHA: Obligates approved modernization funds in accordance with its approved implementation schedule, except in circumstances beyond the PHA's control; adequately inspects its modernization projects to ensure that the physical work is being carried out in accordance with the HUD-approved budget (if appropriate), and plans and specifications, and that any HUD monitoring findings relating to the quality of the physical work have been, or are being, resolved; and has an acceptable procurement policy, in accordance with 24 CFR 85.36, and is administering its modernization contracts in accordance with that policy. (Modernization capability is a limited test of a PHA's performance under certain key functions under the

modernization program, for the purpose of determining whether a PHA should be ordered under § 968.345 to take corrective action with respect to its modernization program. It does not purport to address the broader concept of designation as a mod troubled agency under PHMAP, which is used for the purpose of determining a PHA's level of funding under the CGP program.)

Modernization funds. Funds derived from an allocation of budget authority for the purpose of funding physical and management improvements.

Modernization project. The improvements to one or more existing public housing projects, as set forth in the annual statement, under a new grant number designated for that FFY. The term "project" or "public housing project" means a development project with a unique project number.

Modernization strategy. A PHA's overall planning objectives and implementation schedule for modernizing its public housing projects under the Comprehensive Grant program. The modernization strategy encompasses the following components of a PHA's comprehensive plan:

(1) An Executive Summary (§ 968.320(c)(1));

(2) The physical and management needs assessments, and related requirements under the comprehensive plan (§ 968.320 (c)(2), (c)(3), (c)(4), (c)(6), (c)(7) and (c)(8));

(3) The five-year action plan (§ 968.320(c)(5)); and

(4) The annual statement (§ 968.330).

Non-routine maintenance. Work items that ordinarily would be performed on a regular basis in the course of upkeep of property, but have become substantial in scope because they have been put off, and involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does qualify, but reconstruction, substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units does not qualify.

PHA-wide resident group. A group of residents required to be consulted during the development of a comprehensive plan, amendment to the comprehensive plan, or an annual statement, under this subpart. The group should consist, to the extent possible, of members of the board of the PHA-wide resident council or resident management corporation, and at least one resident from each of the projects covered by the PHA's comprehensive plan, who shall be elected by the residents of each such project.

PHMAP. The Performance Management Assessment Program (PHMAP) is designed to allow HUD to identify PHA management capabilities and deficiencies, and to lead to overall better management of the public housing program. See 24 CFR part 901.

Reasonable cost. The hard cost (excluding the cost of management improvements, administration, architectural and engineering fees, and other soft costs) of rehabilitating a project that does not exceed 62.5 percent (for a nonelevator structure) or 69 percent (for an elevator structure) of the total cost guidelines limit for a new project with the same structure type and number and size of units in the market area.

§ 968.310 Eligible costs.

(a) *Eligible costs.* A PHA may use financial assistance received under this subpart only:

(1) To undertake activities described in its approved action plan under § 968.320(c)(5), and its annual statement under § 968.330, including the following:

(i) Physical improvements, including alteration, betterments, additions, replacement, and non-routine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 968.115. These mandatory standards may be exceeded only when the PHA determines that it is necessary or highly desirable for the long-term physical and social viability of the individual project. If demolition is proposed, the PHA shall comply with 24 CFR part 970;

(ii) Management improvements that are necessary to correct management deficiencies that have been identified by the PHA in its comprehensive plan;

(iii) Relocation payments and other relocation assistance for permanent and temporary relocation where such assistance is required by § 968.110(g);

(iv) Administrative costs necessary for the additional design and implementation of the physical and management improvements, as follows:

(A) The salaries of nontechnical and technical PHA personnel assigned full-time or part-time to the modernization program are eligible modernization costs. Any direct charges for salaries shall be justified by the PHA, authorized by HUD, and reflected by an appropriate revision to the PHA's operating budget; and

(B) PHA contributions to employee benefit plans on behalf of nontechnical and technical PHA personnel are eligible modernization costs in proportion to the amount of salary charged to the modernization program;

(v) Lead-based paint testing costs, as described in §§965.705 and 965.706 of this chapter and §968.110(k);

(vi) Lead-based paint hazard abatement costs, as described in §§965.705 and 965.706 of this chapter and §968.110(k); and

(vii) Use of management funds to assist a resident or resident management corporation, as defined in §964.7 of this chapter, to develop its management capabilities and carry out management improvements identified as PHA-wide or project-specific in nature, under the terms of a management contract between the PHA and the resident management corporation. (See part 964 of this chapter for information on the establishment and functions of resident management corporations.) Such funding is subject to the limitation indicated in paragraph (c) of this section;

(2) To carry out emergency work, whether or not the need is indicated in the PHA's comprehensive plan (including the action plan), or annual statement;

(3) To fund a reserve to carry out eligible activities in future years, provided the PHA can demonstrate that:

(i) Modernization funds are not needed for existing needs, as identified by the PHA in its comprehensive plan; or

(ii) A proposed work item requires more funds than the PHA would receive under its annual formula allocation;

(4) To prepare a comprehensive plan and an action plan under §968.320, including reasonable costs necessary to assist residents in participating in the planning process in a meaningful way; an annual statement under §968.330; and an annual performance and evaluation report under §968.340; and

(5) To carry out an audit, in accordance with 24 CFR part 44 and §968.110(i).

(b) *Homeownership projects*—(1) *General.* For homeownership projects only, eligible physical improvements are limited to work items that are not the responsibility of the homebuyer families and that are related to health and safety, correction of development deficiencies, physical accessibility, cost-effective energy conservation measures, and lead-based paint testing and abatement. Nonroutine maintenance or replacements, additions, items that are the responsibility of the homebuyer families, and management improvements are not eligible modernization costs for homeownership projects.

(2) *Exception for vacant and non-homebuyer-occupied Turnkey III units.* Notwithstanding the requirements of paragraph (b)(1) of this section, a PHA may use no more than a single CGP grant under this subpart for purposes of comprehensively modernizing a vacant and non-homebuyer-occupied Turnkey III unit. A PHA that intends to use funds under this paragraph must identify in its comprehensive grant (including its action plan and annual statement) the specific units proposed for modernization and subsequent sale, including the name/number of the projects in which the units are located. In addition, the PHA must demonstrate in its comprehensive plan that: The proposed modernization under this paragraph would result in bringing the identified units into full compliance with the homeownership objectives under the Turnkey III program (see 24 CFR part 904); and the PHA has homebuyers who are both eligible for homeownership, in accordance with the requirements of 24 CFR part 904, and who have demostrated their intent to be placed into each of the Turnkey III units proposed to be comprehensively modernized. Before a PHA can draw down funds for the comprehensive modernization of a unit under this paragraph, it must first deplete any tenant equity account, or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit (although the PHA may retain in the NRMR sufficient funds to carry out future work items not covered by the comprehensive modernization of the unit). Any increase in the value of a unit caused by its comprehensive modernization under this paragraph shall be reflected solely by its subsequent appraised value, and not by an automatic increase in its selling price.

(c) *Cost limitations.* A PHA shall not use more than a total of 10 percent of its annual grant for management improvement costs. In addition, a PHA shall not use more than a total of 10 percent of its annual grant on administrative costs, excluding any costs related to lead-based paint testing and relocation expenses.

(d) *Luxury improvements prohibited.* A PHA shall not make luxury improvements, as specified by HUD.

§ 968.312 Reserve for disasters and emergencies (non-formula).

(a) *Emergencies.*—(1) *Eligibility for assistance.* A PHA (including a PHA which has been designated as mod troubled under PHMAP) may obtain funds at any time, for any eligible emergency work item as defined in § 968.305, from the non-formula reserve established under § 968.103(b). It is not necessary for a PHA to have an approved modernization strategy under § 968.318 before it can request emergency assistance from this reserve.

(2) *Procedure.* To obtain emergency funds, a PHA must submit a request, in a form to be prescribed by HUD, which demonstrates that without the requested funds from the set-aside, the PHA would not have adequate funds available under its annual formula allocation under § 968.103 (e) and (f) and from other unobligated modernization funds, to correct the conditions which present an immediate threat to resident health or safety. HUD will immediately process a request for such assistance and if it determines that the PHA's request meets the requirements under paragraph (a)(1) of this section, it shall approve the request, subject to the availability of funds in the reserve.

(3) *Repayment of emergency funds.* A PHA that receives assistance for its emergency needs from the reserve under § 968.103(b) must repay such assistance from its succeeding years' formula allocations, where available. To this extent, HUD shall deduct up to 50 percent of a PHA's succeeding year's formula allocation under § 968.103 (e) and (f) to repay emergency funds previously provided by HUD to the PHA. The remaining balance, if any, shall be deducted from a PHA's succeeding years' formula allocations.

(b) *Natural and other disasters*—(1) *Eligibility for assistance.* A PHA (including a PHA which has been designated as mod troubled under PHMAP) may request assistance at any time from the non-formula reserve established under § 968.103(b) for the purpose of permitting the PHA to address a natural or other disaster. To qualify for assistance, the disaster must pertain to an extraordinary event affecting only one or a few PHAs, such as an earthquake, hurricane, riot, or civil disorder. Any disaster declared by the President (or which would qualify for a Presidential declaration if it were on a larger scale) qualifies for assistance under this paragraph. A PHA may receive funds from the reserve regardless of the availability of other modernization funds or reserves, but only to the extent its needs are in excess of its insurance coverage. It is not necessary for a PHA to have an approved modernization strategy under § 968.318 before it can request assistance from the non-formula reserve under § 968.103(b).

(2) *Procedure.* To obtain funding for natural or other disasters under §968.103(b), a PHA must submit a request, in a form to be prescribed by HUD, which demonstrates that the PHA meets the requirements of paragraph (b)(1) of this section. HUD will immediately process a request for such assistance and, if it determines that the request meets the requirements under paragraph (b)(1) of this section, it shall approve the request, subject to the availability of funds in the reserve.

(3) *Repayment.* Funds provided to a PHA under § 968.103(b) for natural and other disasters shall be in the form of a grant, and are not required to be repaid.

§ 968.315 Allocation of assistance for troubled and non-troubled PHAs (formula).

(a) *Submission of formula characteristics report.*—(1) *Formula characteristics report.* Each PHA shall annually transmit data (in a form and at a time to be prescribed by HUD) concerning PHA and project characteristics so that HUD can develop the PHA's annual funding allocation under this subpart, in accordance with § 968.103 (e) and (f). If a PHA fails to submit to HUD the formula characteristics report by the prescribed deadline, HUD will use the data which it has available concerning PHA and project characteristics for purposes of calculating the PHA's formula share.

(2) *PHA Board Resolution.* The PHA include with its formula characteristics report under paragraph (a)(1) of this section, a resolution adopted by the PHA Board of Commissioners approving the report, and certifying that the data contained in the formula characteristics report are accurate, to the best of its knowledge.

(b) *HUD notification of formula amount; appeal rights*—(1) *Estimated formula amounts.* After HUD determines a PHA's estimated formula allocations under § 968.103 (e) and (f) based upon the PHA, project and community characteristics, it shall notify the PHA of its estimated formula amount.

(2) *Appeal rights.* A PHA may appeal in writing HUD's determination of its estimated formula amount within 30 days of the date of HUD's notification, on the basis that: There are unique circumstances applicable to the PHA; or there has been an error with respect to the PHA, project and community characteristics used by HUD to determine the PHA's formula amount under § 968.103 (e) and (f). A PHA which fails to submit the formula characteristics report to HUD by the prescribed deadline, as required by paragraph (a)(1) of this section, may not appeal its estimated formula amount.

(i) *Appeal based upon unique circumstances.* A PHA that appeals its

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formula allocation on the basis of "unique circumstances," must indicate how it is unique, and specify the manner in which it is different from all other PHAs participating in the CGP modernization program, and provide any necessary supporting documentation. HUD shall render a written decision on a PHA's appeal under this paragraph within 30 days of the date of its receipt of the PHA's request for an appeal. HUD shall also publish in the Federal Register a description of the facts supporting any request for an appeal based upon "unique" circumstances, and the Department's final disposition of the appeal.

(ii) *Appeal based upon error.* A PHA that requests an appeal on the basis of an error must describe the nature of the error, and provide any necessary supporting documentation. HUD shall render a written decision on a PHA's appeal under this paragraph within 30 days of the date of its receipt of the PHA's request for an appeal.

(c) *Reduced formula allocation for PHAs initially designated as mod troubled under PHMAP.*—(1) *Notification.* After a PHA that has been included in the initial designation of mod troubled agencies under PHMAP (24 CFR part 901) transmits to HUD its formula characteristics report under paragraph (a)(1) of this section, HUD shall inform the PHA whether its funding will be limited under this subpart because of its initial designation as a mod troubled PHA. HUD shall also provide the PHA with information concerning the PHA's funding levels for CIAP and MROP in FFYs 1989, 1990 and 1991 for purposes of determining the PHA's reduced formula allocation, in accordance with paragraph (c)(2) (i) and (ii) of this section. In addition, HUD will provide the PHA with information on, or an estimate of, its full formula allocation under § 968.103 (e) and (f), and the amount which represents 25 percent of the difference between the average amounts provided to the PHA in FFYs 1989, 1990 and 1991 and its full formula allocation.

(2) *Reduction in funding.* HUD shall determine the extent of the reduction in funding under paragraph (c)(1) of this section based upon:

(i) The average of the amount that the mod troubled PHA received for modernization activities under this part, and for major reconstruction of obsolete projects, for FFYs 1989, 1990 and 1991, which average shall be adjusted to take into account changes in the cost of rehabilitating property based upon the Means Construction Cost Index; plus

(ii) 25 percent of the difference between the amount determined under paragraph (c)(1)(i) of this section, and the amount that would have been allocated to the PHA for the fiscal year if it were not designated as a mod troubled PHA.

(3) *Right of appeal.* The notice under paragraph (c)(1) of this section shall also specify that a PHA which will receive a reduction in its formula allocation under paragraph (c)(2) of this section because of its initial designation under PHMAP as a mod troubled PHA, may petition HUD within 30 days of its receipt of HUD's notice, to increase the amount to be allocated to the PHA. HUD shall determine whether to increase the amount of assistance to provide a PHA under this paragraph based upon the PHA's progress in meeting goals and targets set forth in the PHA's Memorandum of Agreement (MOA) under PHMAP concerning actions the PHA is expected to take to achieve at least a "C" grade under each of the mod troubled indicators/standards under the PHMAP. In its appeal request, a PHA must specify how it is achieving the goals and objectives set forth in the MOA. The request must be submitted to HUD within 30 days of the date of HUD's notice under this paragraph. HUD shall render a decision in writing on the PHA's request within 30 days of the date of its receipt of the PHA's appeal and any supporting documentation.

(4) *Maximum allowable allocation to mod troubled PHAs.* The maximum amount that HUD may provide to a PHA under this paragraph is the amount that would have been allocated to the PHA for the fiscal year if it had not been designated as a mod troubled PHA under PHMAP. Where the full formula allocation is less than the average of funding received by the PHA under CIAP and MROP for FFYs 1989, 1990, and 1991, the PHA will receive its full formula amount, and not its average funding level for FFYs 1989, 1990, and 1991.

(5) *Reallocation of funds withheld from mod troubled PHAs.* Any amounts which are not provided to a PHA under paragraph (c)(1) of this section because the PHA is included on the initial designation of mod troubled agencies under PHMAP, shall be reallocated by HUD to other PHAs under this subpart which are not designated as either troubled or mod troubled agencies under PHMAP, and to IHAs with 500 or more unit (250 or more units beginning in FFY 1993) under 24 CFR part 905 (subpart I) which have not been determined to lack administrative capability, in accordance with § 905.135, the ACA, and the Field Office Monitoring of IHAs Handbook. Such funds shall be reallocated based upon the relative needs of these PHAs and IHAs, as determined under the formula.

(6) *Credits for PHAs designated as mod troubled*—(i) *Accrual of credits.* A PHA that has received a reduced formula allocation under paragraph (c)(1) of this section because it was included in the initial designation of mod troubled agencies under PHMAP may accrue credits under this paragraph, for up to three consecutive fiscal years, representing the difference between:

(A) The amount the PHA would have been allocated for the FFY under § 968.103 (e) and (f) if it were not included on the initial designation of mod troubled PHAs and PHMAP; and

(B) The reduced funding amount actually provided to the PHA under paragraph (c)(2) of this section because it was included on the initial designation of mod troubled PHAs under PHMAP.

(ii) *Failure to remove mod troubled designation.* After a three-year period during which the mod troubled PHA has accrued credits under paragraph (c)(6)(i) of this section, the credits accrued by the PHA shall be:

(A) Decreased by 10 percent of the total accumulated credits if the PHA's initial designation as a mod troubled agency under PHMAP is not removed before the end of the first FFY following the three-year accrual period;

(B) Decreased by an additional 20 percent of the original total accumulated credits if the PHA's initial designation as a mod troubled agency under PHMAP is not removed before the end of the second FFY following the three-year accrual period;

(C) Decreased by an additional 30 percent of the original total accumulated credits if the PHA's initial designation as a mod troubled agency under PHMAP is not removed before the end of the third FFY following the three-year accrual period; and

(D) Eliminated if the PHA's initial designation as a mod troubled agency under PHMAP is not removed before the end of the fourth fiscal year following the three-year accrual period.

(iii) *Obtaining credits.* HUD shall reserve under § 968.103(c) up to five percent of the total formula funds available for allocation in any fiscal year for the purpose of providing PHAs that are included on the initial designation of mod troubled PHAs under PHMAP with additional assistance after HUD determines that a PHA is no longer a mod troubled agency. HUD shall make the determination that a PHA is no longer a mod troubled agency based upon its achieving at least a "C" grade under each of the mod troubled indicators/standards that were initially used to designate the agency as mod troubled under the PHMAP. The amount of assistance to be provided under this paragraph shall be determined at the end of each FFY, and shall be provided to the formerly mod troubled PHA in the fiscal year following the year in which the PHA is removed from the mod troubled list. Such assistance shall be provided to the PHA in addition to a PHA's regular formula allocation under § 968.103 (e) and (f), and shall consist of:

(A) The total amount of credits accumulated by the PHA under paragraph (c)(6)(i) of this section; minus

(B) Any reductions under paragraph (c)(6)(ii) of this section to the total accumulated credits, based upon the length of time that the PHA has taken to remove its mod troubled designation; and

(C)(*1*) Adjusted by HUD to take into account the ability of the PHA to expeditiously expend the accrued credit amounts. In general, HUD intends to adjust the rate at which a PHA is provided access to its credits under this paragraph so that a PHA receives 10% of its accrued credits in the first year; an additional 20% of its accrued credits in the second year; an additional 30% of its accrued credits in the third year; and the remaining 40% of its accrued credits in the fourth year, as determined appropriate by HUD;

(*2*) In any fiscal year where formerly mod troubled PHAs are entitled to credits exceeding the five percent reserve, HUD shall apply a pro rata reduction for each formerly mod troubled PHA for such fiscal year. A PHA shall remain entitled to receive its outstanding balance of credits in future fiscal years, depending upon the availability of funds in the set-aside under § 968.103(c).

(d) *PHAs subsequently designated as mod troubled under PHMAP.*—(1) *Notice; right of appeal.* HUD shall notify any PHA that is determined to be a mod troubled agency, after the initial designation of such agencies under PHMAP, of its mod troubled status and to provide the PHA with an opportunity to appeal its mod troubled designation in accordance with the requirements of 24 CFR part 901. HUD shall also inform the PHA that, unless the PHA is able to remove its designation as a mod troubled agency during the appeal under Part 901, it shall withhold and reallocate a substantial amount of the PHA's formula allocation, in accordance with paragraph (d)(2) of this section.

(2) *Withholding and reallocation of formula funds*—(i) *Withholding.* A PHA which is determined to be a mod troubled agency under PHMAP, following the opportunity provided to appeal such status under 24 CFR part 901, shall have its entire formula allocation under § 968.103 (e) and (f) withheld for the fiscal year, except that the PHA shall remain eligible to receive funds for:

(A) Emergency work;

(B) Management improvements; and

(C) Statutorily-required activities (e.g., lead-based paint testing and abatement, section 504 activities, etc.).

(ii) *Reallocation.* Any amounts which are not provided to a PHA because of its designation as a mod troubled PHA under paragraph (d)(2)(i) of this section shall be reallocated by HUD to other PHAs under this subpart which are not designated as troubled or mod troubled under PHMAP, and to IHAs with 500 or more units (250 or more units beginning in FFY 1993) under 24 CFR part 905, subpart I, which have not been determined by HUD to lack administrative capability under § 905.135, the ACA, and the Field Office Monitoring of IHAs Handbook. HUD shall reallocate such funds based upon the relative needs of these PHAs and IHAs, as determined under the formula.

§ 968.316 Modernization strategy.

Each PHA shall develop an overall moderization strategy to facilitate the planning and implementation of its modernization program under this subpart. The modernization strategy consists of the following components of a PHA's comprehensive plan: An Executive Summary (§ 968.320(c)(1)); the physical and management needs assessments, and related requirements under the comprehensive plan (§ 968.320 (c)(2), (c)(3), (c)(4), (c)(6), (c)(7) and (c)(8)); the five-year action plan (§ 968.320(c)(5); and the annual statement (§ 968.330). All PHAs participating in the CGP program under this subpart must have an approved modernization strategy before they can draw down funds from their formula allocation, except in the case of emergencies.

§ 968.320 Comprehensive plan (including action plan).

(a) *Deadline for submission.* As soon as possible after modernization funds first become available for allocation under this subpart, HUD shall notify PHAs in writing of their availability and the deadline for submitting a comprehensive plan.

(b) *Resident and local government participation.* A PHA is required to develop the comprehensive plan under this section, and thereafter to annually amend portions of the plan (both for purposes of adding an additional year to the five-year rolling-base action plan, and to reflect any changes to the approved physical and management needs assessments), in consultation with local government officials and with residents of the projects covered by the comprehensive plan, as set forth below:

(1) *Notification.* The PHA shall make reasonable efforts to provide advance notice to each resident in the affected housing project(s) of the date and time of the meetings with the PHA-wide resident group under paragraph (b)(2) of this section, and of the public hearing under paragraph (b)(3) of this section;

(2) *Meeting with PHA-wide resident group.* The PHA shall hold, at least three weeks before the public hearing under paragraph (b)(3) of this section, a meeting with the PHA-wide resident group at which the PHA shall provide residents with information concerning the contents of the PHA's comprehensive plan so that residents can adequately comment on the contents of the plan at the public hearing;

(3) *Public hearing.* The PHA shall hold a public hearing which provides appropriate local government officials, residents of the projects covered by the comprehensive plan, and other interested parties, an opportunity to summarize their priorities and concerns. The PHA shall give full consideration to the comments and concerns of local government officials and residents of the affected projects.

(c) *Contents of comprehensive plan.* The comprehensive plan shall identify the physical improvements needed for a PHA and its high need projects. The plan shall also include estimates of the cost of these improvements. The costs associated with carrying out the identified improvements with respect to a PHA's high need projects that have modernization hard costs which exceed 25 percent of TDC for non-elevator projects, or 28 percent for elevator projects, must be certified to by a licensed engineer or architect. The plan shall set forth general strategies for addressing the needs (including those of high need projects), and highlight any special strategies, such as major redesign or partial demolition of a project, that are necessary to ensure the long-term physical and social viability of the projects. Accordingly, each comprehensive plan shall contain the following elements:

(1) *Executive summary.* A PHA shall include as part of its comprehensive plan an Executive Summary to facilitate review and comprehension by the public and development residents. The Executive Summary consists of the following components:

(i) For each of a PHA's projects (with its high need projects being separately identified:

(A) The total cost needed to bring each such project to a level at least equal to the HUD modernization standards (see HUD Handbook 7485.2, as revised, Public and Indian Housing Modernization Standards), and to the energy conservation and life-cycle cost-effective performance standards under § 968.115;

(B) The percentage of the Total Development Cost standard required by the hard costs of the projects; and

(C) The current percentage of vacant units in the project.

In addition, the PHA should briefly describe the actions the PHA proposes to carry out under the CGP program to bring each of its projects to a level at least equal to the modernization standards, and to the energy conservation and life-cycle cost-effective performance standards.

(ii) A listing of the PHA-wide management and operation areas under the PHMAP functional areas at 24 CFR part 901 which need improvement (as determined by a failed grade under the PHMAP indicators/standards, i.e., less than a "C" grade under any indicator/standard), and a brief discussion of the PHA's proposed actions under the CGP program to bring the PHA to at least a "C" grade) on each of the PHMAP indicators/standards, so that decent, safe, and sanitary living conditions will be provided in each of its projects.

(iii) An identification of the PHA's high need projects, and a discussion of the social, physical, and operational problems of each such project, and a brief discussion of the PHA's proposed actions under the CGP program to address those problems. The PHA shall identify such problems by using project-level data, where available, for the PHMAP functional areas identified under 24 CFR part 901. However, additional project-level data, including data pertaining to crime and drug use, may be addressed, as appropriate.

(iv) A statement by the PHA concerning its overall modernization strategy, and its rationale for the approach and priorities adopted in its comprehensive plan. For example, a PHA's strategy may be that it will focus its resources on addressing its vacant properties before it brings its occupied units up to the modernization standards.

(v) A descriptive narrative of the PHA's process for maximizing the level of involvement by project residents, the local government, and the public, during the development of the comprehensive plan.

(2) *Physical needs assessment*—(i) *Requirements.* The physical needs assessment identifies all of the work that a PHA must undertake to bring its projects up to the modernization and energy conservation standards, as required by section 14(e)(1)(A)(ii) of the Act and to comply with other program requirements under § 968.110 (e) and (h). The assessment of a PHA's physical needs must be completed on form HUD-52837, or its equivalent, and retained in the PHA's files to ensure that supporting documentation is available for the data which is to be incorporated into the comprehensive plan. The following information must be provided with respect to each of a PHA's projects (with a PHA's high need projects being separately identified):

(A) A brief (preferably one-page) summary of the general characteristics of each project, including the number of units, the number and size of bedrooms, the type of project (e.g., family, elderly, or mixed; high-rise, low-rise, walk-up, or scattered site, etc.); the project vacancy rate; the total project cost (including the percentage of TDC); and the end of the initial operating period date (EIOP)). In addition, the summary must include:

(*1*) A description of the current physical condition of each project, and the physical improvements necessary to bring each such project to a level at least equal to the modernization standards contained in HUD Handbook 7485.2 (Public and Indian Housing Standards; and to the energy conservation and life-cycle cost-effective performance standards, as required in § 968.115; and

(*2*) An estimate of the total cost involved in completing such work;

(B) The replacement needs of equipment systems and structural elements that will be required to be met (assuming routine and timely maintenance is performed) during the period covered by the action plan;

(C) Whether one or more buildings occupied predominantly by one racial or ethnic group are in substandard condition and are in significantly worse condition than one or more buildings occupied predominantly by other racial or ethnic groups, and in such cases the improvements required to correct the conditions;

(D) In addition, the PHA shall provide the following information:

(*1*) The vacant and non-homebuyer-occupied Turnkey III units (identified by the name/number of the project in which the units are located) that the PHA is proposing for comprehensive modernization and subsequent sale, in accordance with § 968.310(b)(2);

(*2*) A certification provided by a licensed architect or engineer for the costs associated with modernizing each of a PHA's high need project that has modernization hard costs which exceed 25 percent of TDC for non-elevator projects, or 28 percent for elevator projects.

(*3*) A copy of the PHA's Section 504 Needs Assessment and Transition Plan, as required under 24 CFR part 8. In fulfilling this requirement, the PHA shall attach a copy of its needs assessment and transition plan as an addendum to its physical needs assessment under the CGP program.

(ii) *Submission.* To ensure that a PHA's modernization strategy remains up-to-date, but to avoid imposing unrealistic burdens on the PHA, the detailed physical needs assessment need only be revised once every five years, although the PHA may elect to revise the assessment more frequently for some or all of its projects. Consequently, every five years, a PHA must submit to HUD, as part of its annual statement, an amendment to its physical needs assessment which would include all of the items required under a PHA's initial submission of the assessment. A PHA may propose an amendment to its comprehensive plan in any annual statement.

(3) *Management needs assessment*—(i) *Requirements.* The plan shall include a comprehensive assessment of the improvements needed to upgrade the management and operation of the PHA and of each viable project so decent, safe and sanitary living conditions will be provided. The management needs assessment must contain the following information:

(A) An identification of each of the PHMAP indicators/standards for which the PHA has received a grade lower than a "C", and a brief discussion of its current status (e.g., vacancies—20 percent);

(B) A brief summary of the actions necessary to bring each failed indicator/standard under PHMAP to at least a "C" grade within the timeframes agreed to by the PHA and HUD pursuant to the PHA's improvement plan or MOA under the PHMAP, or as otherwise established by the PHA;

(C) An identification of the social and operational problems at each of a PHA's high need projects, and a brief summary of the actions necessary to correct those problems. The PHA should identify such problems by using project-level data, where available, for the PHMAP functional areas identified under 24 CFR part 901. Additional project-level data, including data pertaining to crime and drug use, may be addressed, as appropriate;

(D) The total estimated cost, if any, needed to bring the PHA to at least a "C" grade under each of the PHMAP indicators/standards; and

(E) A description of any other management and operations needs identified either under PHMAP, or elsewhere (e.g., a self assessment by the PHA of its administration of equal opportunity requirements), which the PHA wants to address at the PHA-wide level, or at the project level, and the actions and cost needed to address those needs, or to improve its performance.

(ii) *Submission.* Any change in a PHA's grade under the PHMAP indicators/standards which results in an indicator/standard being rated as unacceptable, which was not unacceptable at the time of the approval of the comprehensive plan, must be identified by the time a PHA submits its next annual statement to HUD under § 968.330 through an amendment to a PHA's management needs assessment, and also to its action plan for purposes of specifying the work items that a PHA plans to undertake for purposes of correcting the new management and operations deficiency(ies.)

(4) *Demonstration of long-term physical and social viability.* The plan shall include an analysis, on a project-by-project basis, demonstrating that completion of the improvements and replacements identified under paragraphs (c) (2) and (3) of this section will reasonably ensure, in accordance with HUD guidelines, the long-term physical and social viability of each project at a reasonable cost. The plan may not include improvements and replacements unless their completion would reasonably ensure long-term viability at a reasonable cost, except in the case of emergency work. The PHA and HUD shall review the cost certification provided under § 968.320(c)(2) to determine whether the proposed improvements for a PHA's high need projects are within the cost guidelines. The PHA may submit to the HUD Field Office a request to exceed the 62.5% or 69% limit for modernization hard costs, for both its high need projects and for any other project. The Field Office will review such requests on a case-by-case basis, in accordance with criteria prescribed by HUD in the CGP Handbook.

(5) *Five-year action plan*—(i) *General.* The comprehensive plan shall include a five-year action plan to carry out the improvements and replacements identified under paragraph (c) (2) and (3) of this section that the PHA determines will reasonably ensure the long-term physical and social viability of each project at a reasonable cost, as required by paragraph (c)(4) of this section, and will reasonably ensure that the PHA will meet or make reasonable progress towards meeting the performance standards in § 968.345. The PHA shall develop the action plan based on estimates provided by HUD of the amount of assistance the PHA will receive over a five-year term under § 968.103 (e) and (f) (for this purpose, the PHA should assume that the current year level of funding will be available for each year of its five-year plan), and a PHA's estimate of the funds that will be available from other sources, such as State and local governments.

(ii) *Requirements.* Under the action plan, a PHA must indicate how it intends to use the funds available to it under the CGP program, including how it intends to address each of the deficiencies identified under its physical and management needs assessments, as follows:

(A) *Physical condition.* With respect to the physical condition of a PHA's projects, a PHA must indicate in its action plan how it intends to address, over a five-year period, the deficiencies identified in its physical needs assessment so as to bring each of its projects (with a separate identification of its high need projects) up to a level at least equal to the modernization and energy conservation standards. This would include specifying the actual work to be undertaken by a PHA in broad categories (e.g., kitchens, floors, etc.), establishing annual priorities among the various types of work items and among projects, and estimating the total project cost on an annual basis, regardless of the source of funding. In addition, a PHA must specify the length of time, target date, and the cost needed to upgrade each project to the modernization and energy conservation standards. Before a PHA schedules other types of work items, it shall give priority to activities required to correct conditions that are life-threatening or to meet statutory (or other legally mandated) requirements, e.g., compliance with a court-ordered desegregation plan, voluntary compliance agreement, or activities required to carry out a section 504 transition plan under 24 CFR part 8, compliance with lead-based paint testing and abatement requirements.

(B) *Management and operations.* With respect to any management and operations deficiencies, a PHA must indicate in its action plan:

(*1*) The actual work it intends to undertake to address each failed grade under the PHMAP indicators/standards, as identified under its management needs assessment, so as to bring its grade under each such indicator/standard to at least a "C" level. In carrying out this requirement, a PHA may elect to simply cross-reference in its action plan the tasks, if any, already identified in the PHA's improvement plan or MOA under PHMAP at 24 CFR part 901. In evaluating the PHA's action plan, HUD will consider whether the proposed work items will enable the PHA to meet the performance targets agreed to by the PHA and HUD pursuant to the improvement plan or MOA under PHMAP. For example, a PHA which has indicated under the PHMAP that it intends to reduce its vacancy rate from 20 percent to 18 percent in a one year period, must describe the actions that it will take under its action plan so that it can achieve the 18 percent target within the one year period; and

(*2*) Separately indicate for any high need project, how the PHA intends to correct any management and operations deficiencies identified in its needs assessment.

(iii) *Procedure for maintaining current five-year action plan.* The PHA shall maintain a current five-year action plan by annually amending its action plan, in connection with submission of its annual statement, so that the previous year of the existing action plan is eliminated and an additional year is added until all necessary work is covered by the action plan.

(6) *Local government statement.* The comprehensive plan shall include a statement signed by the chief executive officer of the unit of general local government, certifying to the following:

(i) The PHA developed the comprehensive plan in consultation with local government officials and with residents of the projects covered by the comprehensive plan, in accordance with the requirements of § 968.320(b)(3).

(ii) The comprehensive plan is consistent with the unit of general local government's assessment of its low income housing needs (as evidenced by its Comprehensive Housing Affordability Strategy under 24 CFR part 91, if applicable), and that the unit of general local government will cooperate

in providing resident programs and services.

(7) *Civil rights statement.* The plan shall include a statement, signed by the chief executive officer of the PHA, certifying that the PHA will carry out the comprehensive plan in conformity with title VI of the Civil Rights Act of 1964, the Fair Housing Act, and section 504 of the Rehabilitation Act of 1973.

(8) *PHA resolution.* The plan shall include a resolution adopted by the PHA Board of Commissioners approving the comprehensive plan and certifying that:

(i) The PHA will comply with all policies, procedures, and requirements prescribed by HUD for the modernization, including implementation of the modernization in a timely, efficient, and economical manner;

(ii) The proposed physical work meets the modernization and energy conservation standards in § 968.115;

(iii) The PHA will provide HUD with any documentation that the Department needs to carry out its review under the National Environmental Policy Act and other related authorities in accordance with § 968.110 (a) and (b), and will not obligate, in any manner, the expenditure of funds under this subpart, or otherwise undertake the activities identified in its comprehensive plan, until the PHA receives written notification from HUD indicating that the Department has complied with its responsibilities under § 968.110 (a) and (b);

(iv) The PHA's proposed comprehensive modernization of its vacant and non-homebuyer-occupied Turnkey III units will result in those units being brought into full compliance with the homeownership objectives under the Turnkey III program under 24 CFR part 904. Furthermore, the PHA has homebuyers who are both eligible for homeownership, in accordance with the requirements of 24 CFR part 904, and who have demonstrated their intent to be placed into each of the Turnkey III units proposed to be comprehensively modernized;

(v) The PHA has fully considered the priorities and concerns of the residents, including any resident comments which ultimately were not adopted by the PHA in developing the comprehensive plan. Furthermore, the PHA has fully complied with the requirements governing local government and resident participation, as set forth in paragraph (b) of this section;

(vi) The PHA will comply with applicable civil rights requirements under § 968.110(a);

(vii) The PHA has adopted the goal of awarding a specified percentage of the dollar value of the total of the modernization contracts, to be awarded during subsequent FFYs, to minority and women's business enterprises under § 968.110(b);

(viii) The PHA will comply with relocation assistance and real property acquisition requirements under § 968.110(g);

(ix) The PHA will comply with requirements for physical accessibility under § 968.110(h);

(x) The PHA will comply with lead-based paint testing and abatement requirements under § 968.110(k); and

(xi) The PHA will comply with all other applicable laws, regulations and other program requirements.

(d) *Conversion of a CPM under the CIAP program to a Comprehensive Grant comprehensive plan.* If, under the CIAP program in connection with pre-FFY 1992 funding, a PHA has submitted a comprehensive plan for modernization (CPM) before the effective date of this subpart, the PHA may submit only the changes necessary to reflect the results of consultations with local government officials and residents and to include the additional items required by § 968.320, instead of an entirely new comprehensive plan.

(e) *Amendments to the comprehensive plan (including action plan)*—(1) *Circumstances requiring an amendment to the plan.* When the bases for the needs assessment or other features of the comprehensive plan have substantially changed, a PHA shall propose an amendment to its comprehensive plan (including its action plan), as part of its annual statement (see § 968.330(c)(3)), or at any other time. These amendments, which shall be reviewed by HUD in accordance with § 968.325, shall include (but are not limited to) the following:

(i) An annual update of the five-year action plan, removing the previous year and adding an additional year.

(ii) Amendments to the physical and management needs assessments, as follows:

(A) A revised one-page summary describing the physical and management needs, and proposed corrective action, for any project whose needs have significantly changed since the last needs assessment was submitted to HUD, and which have resulted in changes to the PHA's action plan (not including changes occurring because of the completion of earlier years of the CGP program);

(B) A statement of any change in the PHA's grade under the PHMAP indicators/standards which results in an additional indicator/standard being rated as unacceptable (i.e., lower than a "C" grade);

(C) With respect to any management improvement work item added to the five-year action plan (other than one added in response to a new PHMAP indicator/standard for which a PHA received lower than a "C" grade), an amendment, as appropriate, to the management needs assessment to reflect the underlying deficiency; and

(D) Every fifth year, an update of the physical needs assessment in the form of a revised summary sheet for each project, and substantiated by a detailed physical needs assessment (to be retained in the PHA's files) for each such project. The PHA must also update its PHA-wide management needs assessment, and separately update its high need projects.

(2) *Submission.* The PHA shall submit its proposed amendments to the comprehensive plan under paragraph (e)(1) of this section when it submits its annual statement to HUD. Other amendments to the comprehensive plan may be submitted at any time. The proposed amendments to the plan must be submitted with the certifications and PHA resolution required under § 968.320(c)(8) and (8).

(3) *Extension of time for performance.* A PHA shall have the right to amend its action plan and related annual statements to extend the time for performance whenever HUD has not provided the amount of assistance set forth in the comprehensive plan or has not provided the assistance in a timely manner.

(f) *Prerequisite for receiving assistance.* No financial assistance, except for emergency work to be funded under § 968.103(b) and 968.310(a)(2), and for modernization needs resulting from disasters under § 968.103(b), may be made available under this subpart unless HUD has approved a comprehensive plan submitted by the PHA which meets the requirements of § 968.320. A PHA that has failed to submit an approvable comprehensive plan by the end of a FFY shall have its formula allocation for that year (less any amounts provided to the PHA for emergencies) added to the subsequent year's appropriation of funds for grants under this part. HUD shall allocate such funds to PHAs and IHAs participating in the CGP program in accordance with the formula under § 968.108 (e) and (f). To receive funding from the reserve for natural disasters and emergencies (whether or not HUD has approved a PHA's comprehensive plan), a PHA shall submit an application to HUD requesting such assistance, in accordance with the requirements of § 968.312. To receive funds from its formula allocation to address emergency modernization needs, where HUD has not approved a PHA's comprehensive plan, a PHA shall submit an application to HUD requesting such assistance, in accordance with the requirements of § 968.218. HUD shall review and approve such an application in accordance with the requirements of § 968.218.

§ 968.325 HUD review and approval of comprehensive plan (including action plan).

(a) *Submission of comprehensive plan.* (1) Upon receipt of a comprehensive plan from a PHA, HUD shall determine whether:

(i) It is complete in all significant matters; and

(ii) The PHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate PHA performance, audit findings, or civil rights compliance findings. If the PHA has submitted a complete comprehensive plan and all required information and assurances, HUD will accept the plan for review, as of the date of receipt. If the PHA has not submitted all required material, HUD will promptly notify the PHA that it has disapproved the plan as submitted, indicating the reasons for disapproval and the modifications required to qualify the comprehensive plan for HUD review.

(b) *HUD approval of comprehensive plan (including action plan).* (1) A comprehensive plan (including the action plan) that is accepted by HUD for review in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the PHA in writing, postmarked within 75 days of the date of HUD's receipt of the comprehensive plan, that HUD has disapproved the plan, indicating the reasons for disapproval and the modifications required to make the comprehensive plan approvable. HUD shall not disapprove a comprehensive plan on the basis that the Department cannot complete its review under this section within the 75-day deadline.

(2) *HUD approval of comprehensive plan (including action plan).* HUD shall approve the comprehensive plan except where it makes a determination in accordance with one or more of the following:

(i) *Identified needs are plainly inconsistent with facts and data.* On the basis of available significant facts and data pertaining to the physical and operational condition of the PHA's projects or the management and operations of the PHA, HUD determines that the PHA's identification of modernization needs (see § 968.320(c)(2) and (3)) is plainly inconsistent with such facts and data. HUD will take into account facts and data such as those derived from HUD monitoring, audits, and resident comments and will disapprove a comprehensive plan based on such findings as:

(A) *Identified physical improvements and replacements are inadequate.* The completion of the identified physical improvements and replacements will not bring all of the PHA's projects to a level at least equal to the modernization and energy conservation and life-cycle cost-effective standards in § 968.115 (except that a project must meet the energy standards under § 968.115 only when they are applicable to the work being performed);

(B) *Identified management improvements are inadequate.* The identified management and operations improvements do not address all of a PHA's areas of deficiency, or the completion of those improvements would not result in each of the PHMAP indicators/standards being brought up to at least a "C" grade;

(C) *Proposed physical and management improvements fail to address identified needs.* The proposed physical and management improvements are not related to the identified needs, such as where one or more projects have significant vacancy rates, but the plan does not address how to fill the vacancies

(ii) *Action plan is plainly inappropriate to meeting identified needs.* On the basis of the comprehensive plan, HUD determines that the action plan (see § 968.320(c)(5)) is plainly inappropriate to meet the needs identified in the comprehensive plan. HUD may take into account the thoroughness of the PHA in identifying the physical and managerial needs, including causes of managerial problems; the effectiveness, based on experience, of the proposed activities in meeting the PHA's management and physical improvement needs; and whether the action plan fails to address work items that are needed to correct conditions which constitute a threat to resident health and safety, or which are otherwise needed to correct statutory (or other legally mandated) requirements, as identified by the PHA in its comprehensive plan.

(iii) *Inadequate viability demonstration (including reasonable cost test).* HUD determines that the PHA has failed to demonstrate that completion of improvements and replacements identified in the comprehensive plan, as required by § 968.320(c) (2) and (3), will reasonably ensure long-term viability of one or more public housing projects to which they relate at a reasonable cost, as required by § 968.320(c)(4).

(iv) *Contradiction of local government statement or PHA resolution.* HUD has evidence which tends to challenge, in a substantial manner, the local government statement or PHA resolution contained in the comprehensive plan, as required in § 968.320(c) (6) and (8). A pattern of complaints from residents that they did not have an opportunity to express their views or did not have their views considered by the PHA, or from the unit of general local government that it was not adequately consulted in the development of the plan shall be considered such evidence. HUD shall also consider as such evidence:

(A) A pending administrative proceeding against the PHA brought by HUD under the Fair Housing Act;

(B) A pending civil rights suit against the PHA instituted by the Department of Justice;

(C) Outstanding HUD findings of PHA noncompliance with civil rights statutes and executive orders under 24 CFR Part 968.110(a), or implementing regulations, as a result of formal administrative proceedings, unless the PHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance;

(D) There has been a deferral of the processing of applications from the PHA imposed by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and HUD section 504 regulations (24 CFR 8.57);

(E) There has been an adjudication of a violation under any of the authorities under 24 CFR 968.110(a) in a civil action filed against the PHA by a private individual, unless the PHA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance.

(3) *Effect of HUD approval of comprehensive plan.* After HUD approves the comprehensive plan (including the action plan), or any amendments to the plan, it shall be binding upon HUD and the PHA.

(C) *Partial approval of comprehensive plan.* Where the PHA and HUD disagree over a discrete portion of the plan, HUD may approve a comprehensive plan (including the action plan) subject to resolution of the disagreement between HUD and the PHA. In such case, a PHA

may begin to carry out work items specified in its approved annual statement which pertain to the approved portion of its comprehensive plan.

§ 968.330 Annual statement of activities and expenditures.

(a) *Submission of annual statement of activities and expenditures.* After being advised by HUD of the estimated amount of assistance it will receive under this subpart with respect to any fiscal year and estimating how much funding will be available from other sources, such as State and local governments, the PHA shall submit an annual statement of activities and expenditures in accordance with instructions provided by HUD. Since the annual statement constitutes the first year of a PHA's rolling base action plan under § 968.320(c)(5), the PHA should submit its annual statement to HUD at the same time that it submits its amendment to the action plan under § 968.320. Upon receipt of an annual statement from a PHA, HUD shall determine whether:

(1) It is complete in all significant matters; and

(2) The PHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate PHA performance, audit findings, or civil rights compliance findings. If the PHA has submitted a complete annual statement and all required information and assurances, HUD will accept the statement for review, as of the date of receipt. If the PHA has not submitted all required material, HUD will promptly notify the PHA that it has disapproved the statement as submitted, indicating the reasons for disapproval and the modifications required to qualify the annual statement for HUD review.

(b) *Resident and local government participation.* A PHA is required to develop its annual statement, including any proposed amendment to its comprehensive plan as provided in § 968.320(d), in consultation with local government officials and with residents of the projects covered by the comprehensive plan, as follows:

(1) *Notification.* The PHA shall make reasonable efforts to provide advance notice to each resident in the affects housing project(s) of the date and time of the meetings with the PHA-wide resident group under paragraph (b)(2) of this section, and of the public hearing under paragraph (b)(3) of this section;

(2) *Meeting with PHA-wide Resident Group.* The PHA shall hold, at least three weeks before the public hearing under paragraph (b)(3) of this section, a meeting with the PHA-wide Resident Group at which the PHA will provide residents with information concerning the contents of the PHA's annual statement (including any proposed amendments to the PHA's comprehensive plan to be submitted with the annual statement) so that resident can adequately comment on the contents of the annual statement, and any proposed amendments, at the public hearing;

(3) *Public hearing.* The PHA shall hold a public hearing which allows appropriate local government officials, residents of the projects covered by the comprehensive plan, and other interested parties, an opportunity to summarize their priorities and concerns. The PHA shall give full consideration to the comments and concerns of local government officials and residents of the affected projects in developing its annual statement, or any amendments to its comprehensive plan.

(c) *Contents of annual statement*—(1) *General.* The annual statement is the first year of the five-year rolling base action plan, and is intended to provide a more detailed discussion of the activities, obligations and expenditures which the PHA plans to undertake, in whole or in part, with the assistance to be provided by HUD. Thus, the annual statement provides HUD with greater detail concerning the planned utilization of current year funds, than the remaining years (two through five) covered by the action plan.

(2) *Requirements.* After being advised by HUD of the estimated amount of assistance it will receive with respect to any FFY, the PHA must submit to HUD its annual statement. The annual statement must include, for each project for which work is to be funded out of that year's grant:

(i) A list of development accounts (e.g., "dwelling structures") with a general description of work items (e.g., "replace kitchen cabinets," "repair bathroom floors");

(ii) The cost for each development account, and the overall cost;

(iii) The management improvements to be undertaken during the year, identified either as PHA-wide, or for a PHA's high need projects, as appropriate;

(iv) A summary description of the actions to be taken with non-CGP funds to meet physical and management improvement needs which have been identified by a PHA in its needs assessments;

(v) With respect to any proposed physical improvements, or any management improvements not covered by an improvement plan under PHMAP, a schedule for the use of current year funds, including target dates for obligation and expenditure of the funds;

(vi) In addition, a PHA must provide HUD in its annual statement with any documentation that HUD needs to assist it in carrying out its responsibilities under the National Environmental Policy Act and other related authorities in accordance with § 968.110 (a) and (b);

(vii) *PHA certifications.* Shall include certifications by the PHA that:

(A) The proposed activities, obligations, and expenditures are consistent with the approved comprehensive plan of the PHA;

(B) The PHA has complied with the requirements governing local government and resident participation, as specified under paragraph (b) of this section, and has given full consideration to resident and local government comments in preparing and submitting the annual statement (or any amendment to the comprehensive plan submitted with the annual statement);

(C) The PHA will not obligate, in any manner, the expenditure of funds from the current year's annual grant under this subpart, or otherwise undertake the activities identified in its annual statement, until the PHA receives written notification from HUD indicating that the Department has complied with its responsibilities under NEPA and related environmental authorities, in accordance with § 968.110 (a) and (b);

(D) The PHA will comply with § 968.230, where a homeownership project is involved; and

(E) The PHA will comply with § 968.235, with respect to section 23 leased housing bond-financed projects;

(viii) *PHA resolution.* Shall include a PHA resolution approving the annual statement, and stating that the resolution submitted in accordance with § 968.320(c)(8) is still current or amending the obsolete resolution.

(3) *Additional submissions with annual statement.* A PHA must submit with the annual statement any amendments to the comprehensive plan, as set forth in § 968.320(e). HUD shall review any proposed amendments to the comprehensive plan in accordance with the review standards under § 968.325(b).

(d) *HUD review and approval of annual statement*—(1) *General.* An annual statement accepted in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the PHA in writing, postmarked within 75 days of the date that HUD accepts the annual statement for review under paragraph (a) of this section, that HUD has disapproved the annual statement, indicating the reasons for disapproval and the modifications required to make the annual statement approvable. HUD shall not disapprove an annual statement on the basis that the Department cannot complete its review under this section within the 75-day deadline.

(2) *Bases for disapproval of annual statement.* HUD shall approve the annual statement, except where:

(i) *Plainly inconsistent with comprehensive plan.* HUD determines that the activities and expenditures proposed in the annual statement are plainly inconsistent with the PHA's approved comprehensive plan;

(ii) *Contradiction of PHA certifications or resolution.* HUD has evidence which tends to challenge, in a substantial manner, the certifications or resolution contained in the annual statement, as required by paragraphs (c)(2)(vii) and (viii);

(3) *HUD conditional approval of annual statement.* HUD may approve an annual statement with conditions, where HUD determines, based on substantial evidence, that the PHA has failed to fully meet the standards set forth in paragraph (d)(2) of this section. In such a case, HUD shall notify the PHA that the annual statement is being approved with conditions, indicating the reasons for the conditions and the modifications required for HUD to remove the conditions. The conditions may restrict use of funds in accordance with HUD guidelines and may include the actions specified in § 968.345(c). In addition, HUD may approve a PHA's annual statement, subject to the PHA's agreeing to modify or eliminate certain proposed activities or expenditures which HUD has determined to be inconsistent with the requirements of NEPA and related environmental authorities under § 968.110 (a) and (b).

(e) *Amendments to annual statement.* The PHA shall submit major changes in its annual statement to HUD for approval, except in the case of emergency work. The PHA shall advise HUD of all changes due to emergencies in its performance and evaluation report submitted under § 968.340. HUD shall review a request to amend an annual statement in accordance with paragraph (d)(2) of this section. For purposes of this paragraph, "major changes" means additions or deletions of work items in the annual statement involving more than 10% of a PHA's annual grant allocation, and which are included within the five-year action plan. Any changes with respect to work items involving less than 10% of a PHA's annual grant allocation do not require HUD approval, so long as the work is covered under the PHA's action plan.

(f) *ACC Amendment.* After HUD approval of each year's annual statement, HUD and the PHA shall enter into an ACC amendment to obtain modernization funds.

§ 968.335 Conduct of modernization activities.

(a) *Initiation of activities.* After HUD has approved the annual statement and entered into an ACC amendment with the PHA, the PHA shall undertake the modernization activities and expenditures set forth in its approved annual statement.

(b) *Fund requisitions.* To request modernization funds against the approved annual statement, the PHA shall submit a request to HUD in accordance with HUD requirements.

(c) *Contracting requirements.* The PHA shall comply with the wage rate requirements in §§ 968.110(e) and (f), and 968.120. In addition, the PHA shall comply with State and local laws and Federal requirements, as set forth in 24 CFR part 85, except as follows:

(1) *Assurance of completion.* For each construction or equipment contract over $25,000, the contractors shall furnish a performance and payment bond for 100 percent of the contract price or, notwithstanding 24 CFR 85.36(h), a 20 percent cash escrow, or a 25 percent letter of credit or, as may be required by law, separate performance and payments bonds, each for 50 percent or more of the contract price.

(2) *Prior HUD approval.* Notwithstanding 24 CFR 85.36(g), where HUD imposes additional requirements under § 968.345(c) or (d), the PHA shall submit the following documents to HUD for prior approval:

(i) Proposed agreement with the architect/engineer before execution;

(ii) Complete construction and bid documents before inviting bids;

(iii) Proposed award of contracts, including construction and equipment contracts and management contracts, if the proposed amount exceeds the amount approved by HUD in the annual statement; or

(iv) Proposed contract modifications prior to issuance, including modifications to construction and equipment contracts, and management contracts.

(3) *Previous participation.* The PHA shall obtain HUD clearance under previous participation procedures for construction or equipment contract awards, which shall include verifying that the contractor is not included on the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

(d) *Fiscal closeout of a comprehensive grant.* Upon completion of activities funded by each annual grant, the PHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to HUD for review, audit verification, and approval. The audit shall follow the guidelines prescribed by 24 CFR part 44, Non-Federal Government Audit Requirements. If the audited modernization cost certificate discloses unauthorized expenditures, the PHA shall such corrective actions as HUD may direct.

§ 968.340 PHA performance and evaluation report.

For any Federal fiscal year in which a PHA has received assistance under this subpart, the PHA shall submit a performance and evaluation report, in a form and at a time to be prescribed by HUD, describing its use of assistance in accordance with the approved annual statement. The report shall include an assessment of the relationship of the use of funds made available under this subpart, as well as the use of other funds such as Community Development Block Grant program assistance, State assistance, and private funding, to the needs identified in the PHA's comprehensive plan and to the purposes of this subpart. The report shall include an assessment of how the PHA has used the modernization funds provided under this subpart to address the needs identified in its comprehensive plan and to carry out the activities identified in its approved annual statement, and shall specifically address: any funds used for emergency needs not set forth in its annual statement; and any deviations within the 10% cap for "major changes" to the annual statement under § 968.330. The PHA must also describe the status of its obligations and expenditures from previous year's annual grants, and specify how the PHA is performing with respect to the modernization schedules provided in its approved annual statements. The performance and evaluation report must also include a certification by the PHA that it has made reasonable efforts to provide notice to each resident in the project(s) of the opportunity to review the draft report and to comment on it before its submission to HUD.

§ 968.345 HUD review of PHA performance.

(a) *HUD determination.* At least annually, HUD shall carry out such reviews of PHA performance as may be necessary or appropriate to make the determinations required by this

paragraph, taking into consideration all available evidence.

(1) *Conformity with comprehensive plan.* HUD will determine whether the PHA has carried out its activities under this subpart in a timely manner and in accordance with its comprehensive plan.

(i) In making this determination, HUD will review the PHA's performance to determine whether the modernization activities undertaken during the period under review conform substantially to the activities specified in the approved annual statement, consistent with the approved comprehensive plan. HUD will also review a PHA's schedules which are provided with its annual statement for purposes of determining whether the PHA has carried out its modernization activities in a timely manner. The review may also include whether any activities that were undertaken which were not included in the approved annual statement are eligible under § 968.310, are specified in the action plan, or are due to emergencies. In addition, for the early years of the modernization program under this subpart, HUD will also consider a PHA's performance in carrying out its modernization program under CIAP (24 CFR part 968, subpart B) for purposes of the determination under this section. HUD will also consider whether the PHA received more or less funding than anticipated when it developed its annual statement.

(ii) HUD will review a PHA's performance to determine whether the activities carried out comply with the requirements of the Act, including the requirement that the work carried out meets the modernization and energy conservation standards in § 968.115, this part, and other applicable laws and regulations.

(2) *Continuing capacity.* HUD will determine whether the PHA has a continuing capacity to carry out its comprehensive plan in a timely manner.

(i) The primary factors to be considered in arriving at a determination that a recipient has a continuing capacity are those described in paragraphs (a)(1) and (3) of this section as they relate to carrying out the comprehensive plan. If HUD determines that the PHA has:

(A) Carried out its activities under this subpart in a timely manner, taking into account the level of funding available;

(B) Adequately inspected its modernization projects to assure that the physical work is being carried out in accordance with the plans and specifications;

(C) Administered its modernization contracts in accordance with an acceptable procurement policy, as provided in 24 CFR 85.36;

(D) Carried out its activities in accordance with its comprehensive plan; and

(E) Has satisfied, or made reasonable progress toward satisfying, the performance standards prescribed in paragraph (a)(3) of this section as they relate to activities under this subpart, HUD will generally consider the PHA to have a continuing capacity.

A PHA which has been determined to be mod troubled under the PHMAP at 24 CFR part 901 will automatically be considered not to have a continuing capacity.

(ii) HUD will give particular attention to PHA efforts to accelerate the progress of the program and to prevent the recurrence of past deficiencies or noncompliance with applicable laws and regulations.

(3) *Reasonable progress.* HUD shall determine whether the PHA has satisfied, or has made reasonable progress towards satisfying the following performance standards:

(i) With respect to the physical condition of each project, whether the work items being carried out by the PHA are in conformity with the modernization standards, and with the energy conservation and life-cycle cost-effective performance standards, and whether the PHA has brought, or is making reasonable progress toward bringing, all of its projects to these standards, in accordance with targets identified in its action plan; and

(ii) With respect to the management condition of the PHA, whether it meets at least a "C" grade for each of the PHMAP indicators/ standards under 24 CFR Part 901, or whether it has made reasonable progress toward bringing each of the PHMAP indicators/ standards to at least a "C" grade, in accordance with the goals set forth in its MOA or improvement plan.

The Department will propose changes to these standards only after consultation with PHAs and PHA organizations.

(b) *Condition for receipt of assistance.* No financial assistance may be made available under this subpart unless HUD determines that the PHA has made substantial efforts to meet the objectives of the preceding year under the PHA's comprehensive plan or, for the first year a PHA receives assistance under this subpart, under the PHA's approved CIAP program. In making this determination, HUD will take into account its determinations under paragraph (a) of this section.

(c) *Corrective action.* (1) HUD May order a PHA to take corrective action only if HUD determines:

(i) The PHA has not submitted a performance and evaluation report, in accordance with § 968.340;

(ii) The PHA has not carried out its activities under subpart C in a timely manner and in accordance with its comprehensive plan;

(iii) The PHA does not have a continuing capacity to carry out its comprehensive plan in a timely manner;

(iv) The PHA has not satisfied, or has not made reasonable progress towards satisfying, the performance standards specified in paragraph (a)(3) of this section;

(v) An audit conducted in accordance with 24 CFR part 44 and § 968.110(i) reveals findings that HUD reasonably believes require corrective action;

(vi) The PHA has failed to repay HUD for amounts awarded under this subpart that were improperly expended;

(vii) The PHA has received a grade of less than a "C" under any of the PHMAP indicators/standards, and has failed to make satisfactory progress under its PHMAP improvement plan in bringing the identified indicators/standards to at least a "C" grade.

(2) HUD shall design corrective action to prevent a continuation of the deficiency; mitigate any adverse effects of the deficiency to the extent possible; and prevent a recurrence of the same or similar deficiencies.

(3) HUD may direct a PHA to take one or more of the following corrective actions:

(i) Submit additional information:

(A) Concerning the PHA's administrative, planning, budgeting, accounting, management, and evaluation functions, to determine the cause for a PHA not meeting the standards in paragraph (a)(1), (2), or (3) of this section;

(B) Explaining any steps the PHA is taking to correct the deficiencies;

(C) Documenting that PHA activities were not inconsistent with the PHA's annual statement or other applicable laws, regulations, or program requirements; and

(D) Demonstrating that the PHA has a continuing capacity to carry out the comprehensive plan in a timely manner;

(ii) Submit schedules for completing the work identified in its annual statement and report periodically on its progress on meeting the schedules;

(iii) Correct deficiencies specified in a letter from HUD advising the PHA of the deficiencies and warning it that HUD will impose sanctions if the deficiency recurs or if it is not corrected within a specified time;

(iv) Submit supporting material to document one or more of the statements, resolutions, and certifications submitted as part of the PHA's comprehensive plan, annual statement, or performance and evaluation report;

(v) Not to incur financial obligations, or to suspend payments for one or more activities;

(vi) Reimburse, from non-HUD sources, one or more program accounts for any amounts improperly expended;

(vii) Take such other corrective actions HUD determines appropriate to correct PHA deficiencies.

(d) *Conditioning.* HUD may condition the approval of the next year's annual statement, or otherwise condition a PHA's program, based on: substantial evidence, in accordance with paragraph (a) of this section; or a PHA's failure to take corrective action within a reasonable time after HUD has notified the PHA of the deficiency. Before conditioning a PHA's modernization program, HUD will notify a PHA and give it an opportunity, within a prescribed period of time, to consult with HUD regarding the proposed action.

(e) *Withholding, recapturing, and reallocating grant amounts.* (1) HUD may withhold some or all of a PHA's annual grant where it has required a PHA to take corrective action and the PHA has failed to correct the deficiency within a reasonable time. In addition, HUD may recapture for good cause any grant amounts previously provided to a PHA, based upon a determination that the PHA has failed to comply with the requirements of this subpart (other than because of a PHA's designation as a troubled or mod troubled agency under 24 CFR part 901). Before withholding or recapturing some or all of a PHA's annual grant, HUD will notify the PHA and give it an opportunity, within a prescribed period of time, to consult with HUD regarding the proposed action.

(2) Where HUD has withheld a PHA's annual grant for a prescribed period of time, or recaptured for good cause some or all of a PHA's annual grant, it may reallocate some or all of the such amounts to other PHAs under the CGP program which are not designated as either troubled or mod troubled under the PHMAP at 24 CFR Part 901, and to IHAs under the CGP program which have not been determined by HUD to lack administrative capability under § 905.135 of this chapter. Such funds shall be reallocated by HUD based upon the relative needs of these PHAs and IHAs, as determined under the formula at § 968.103, except that where such funds are recaptured for good cause from a PHA for a reason other than its designation as a troubled or mod troubled agency under 24 CFR part 901, HUD shall first obtain congressional approval before reallocating such funds. Before reallocating some or all of a PHA's annual grant, HUD will notify the PHA and give it an opportunity, within a prescribed period of time, to consult with HUD regarding the proposed action.

Dated: March 25, 1991.

Thomas Sherman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 91-9450 Filed 4-25-91; 8:45 am]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Long Beach Radar Service and Alteration of John Wayne Airport/Orange County Airport Radar Service Area, CA; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWA-13]

Proposed Establishment of Long Beach Airport Radar Service Area and Alteration of John Wayne Airport/Orange County Airport Radar Service Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish an Airport Radar Service Area (ARSA) at Long Beach (Daugherty Field), CA, and to adjust the southwest confines of the John Wayne Airport/Orange County ARSA to accommodate the adjoining Long Beach ARSA. Long Beach is a public-use airport with an operating control tower served by a Level V Radar Approach Control Facility. Establishment of this ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at the affected locations would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before June 24, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 90-AWA-13, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Alton Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AWA-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1-2 concluded that Terminal Radar Service Areas (TRSA) should be replaced. Four types of airspace configurations were considered as candidates for replacement of TRSA's. Of the four, Model B airspace, since redesignated "ARSA," was recommended by a consensus of the NAR Task Group.

The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83-9 (July 28, 1983; FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX; Columbus, OH; and the Baltimore/Washington International Airports (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures are in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which are included in the TRSA replacment program. The task group recommended that these criteria include, among other things, traffic mix, traffic flow and density, airport configuration, geographical features, collision-risk assessment, and ATC capabilities to provide service to users. These critieria have been developed and are published via the FAA directives system.

The FAA has established ARSA's at 121 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's or locations without TRSA's which warrant implementation of an ARSA. This notice proposes an ARSA designation at one of the locations identified as ARSA candidates in the preamble to Amendment No. 71-10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the Federal Register.

The Current Situation at the Proposed ARSA Location

Long Beach (Daugherty Field), is a public-use airport with an operating control tower served by a Level V Radar Approach Control Facility. The airport operations at this airport are quite varied as to the mix of aircraft. Aircraft speeds range from the extremely slow to the maximum speed allowed under regulations with maneuverability varying from the extremely maneuverable to the slower maneuvering aircraft. Although most aircraft landing at Long Beach are sequenced with the aid of radar, airspace and operating rules are not established by regulation. Participation by pilots operating under visual flight rules (VFR) is voluntary, although pilots are urged to participate. This level of service is known as Stage II and is provided at some locations not identified as TRSA's. The NAR Task Group recommended, and the FAA adopted, the establishment of numerical criteria to allow airports having particular safety, traffic, and other needs to become ARSA candidates regardless of whether such airports were encompassed by TRSA's. Long Beach is in this category of airports.

Long Beach is rapidly becoming more heavily used by numerous air carriers and air taxis. The 679,728 passengers boarded annually far surpasses the 250,000, which is the number adopted for ARSA candidacy.

The NAR Task Group stated that, due to the different levels of service offered in terminal areas such as Long Beach, users are not always sure of what restrictions or privileges exist, or how to cope with them. Stage II services offered at Long Beach include tariff advisories and sequencing to the runway but do not include conflict resolution in the terminal airspace. Participation in this program strictly voluntary. The only services available outside the airport traffic area (ATA) are separation for instrument flight rules (IFR) traffic and VFR traffic advisories, as an additional service. Some believe that the voluntary nature of Stage II at airports with moderate traffic levels does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and its associated approach and departure courses. There is strong advocacy among user organizations that, within a given standard airspace designation, a terminal radar facility should provide all pilots with the same level of service, and in the same manner, to the extent that this is feasible.

Certain provisions of FAR § 91.129 add to the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the ATA of the primary airport are excluded from the two-way radio communications requirement of § 91.129. This condition is acceptable until the volume and density of traffic at the primary airport dictate further action.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish an ARSA at Long Beach (Daugherty Field), CA. This location is a public airport with an operating control tower served by a Level V Radar Approach Control Facility. This action would also adjust the southwest confines of the John Wayne Airport/Orange County ARSA to accomodate the adjoining Long Beach ARSA.

The FAA has published a final rule (50 FR 9252; March 6, 1985) which defines an ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA.

The final rule provides, in part, that all aircraft arriving at any airport in an ARSA or flying through an ARSA, prior to entering the ARSA, must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area; and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established with the ATC facility having jurisdiction over the area as soon as practicable after takeoff, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions. However, the rule permits ATC to authorize appropriate deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR Task Group recommendation that each ARSA be of the same airspace configuration insofar as is practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviations from this standard have been necessary at some airports because of adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA's may be found in §§ 71.14 and 71.501 of part 71 and §§ 91.1 and 91.130 of part 91 of the Federal Aviation Requirements (14 CFR parts 71, 91).

Regulatory Evaluation

This section summarizes the regulatory evaluation prepared by the FAA which provides more detailed information on estimates of the potential economic consequences of this proposal. This summary and the evaluation quantify, to the extent practicable, estimated costs of the proposal to the private sector, consumers; Federal, state, and local governments; and also the anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this proposal is not "major" as defined in the executive order. Therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the proposal, has not been prepared. Instead, the agency has prepared a more concise document termed a "regulatory evaluation," which analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980

Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, then he or she should consult the regulatory evaluation contained in the docket.

Costs

The FAA has determined that the establishment of the proposed Long Beach ARSA would impose a one-time FAA administrative costs of $500 (discounted, 1989 dollars). For the aviation community (namely, aircraft operators and fixed-based operators), the NPRM would not impose any additional cost. The potential costs of the proposed ARSA are discussed below.

1. *Potential FAA Administrative Costs (air traffic controller staffing, controller training, and facility equipment costs)*—For the proposed ARSA (and the ARSA program in general), the FAA does not expect to incur any additional costs for ATC staffing, training, or facility equipment. The FAA is confident that it can handle any additional traffic that would participate in radar services at the proposed ARSA through more efficient use of personnel at the current authorized staffing level.

The FAA expects to be able to train its controller force in ARSA procedures during regularly scheduled briefing sessions routinely held at Long Beach. Thus, no additional training costs are expected. Previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no significant additional equipment requirements are anticipated. Modification of the computer software used to operate radar equipment may also be necessary, although it has not been necessary to date. Essentially, the FAA would be modifying its terminal radar procedures in the ARSA program in a manner that would make more efficient use of existing resources.

2. *Other Potential FAA Administrative Costs (revision of charts, notification of the public, and pilot education)*—Establishment of ARSA's throughout the country have made it necessary, and will continue to make it necessary, to revise sectional charts to remove existing airspace depictions and incorporate the new ARSA airspace boundaries. The FAA currently revises these sectionals every 6 months. Changes of the type required to depict an ARSA are made routinely during these charting cycles, and can be considered an ordinary operating cost. Thus, the FAA does not expect to incur any additional charting costs as a result of the proposed Long Beach ARSA. Pilots would not incur any additional costs in obtaining current charts depicting ARSA's because they are already required to use current charts.

The FAA holds an informal public meeting at each proposed ARSA location. These meetings provide pilots with the best opportunity to learn both how an ARSA works and how it would affect their local operations. The expenses associated with these public meetings are incurred regardless of whether an ARSA is ultimately established. Thus, they are more appropriately considered routine FAA costs. If the proposed ARSA does become a final rule, any subsequent public information costs would be strictly attributed to the proposal. For instance, the FAA would distribute a Letter To Airmen to all pilots residing within 50 miles of the ARSA site and issue an advisory circular that would explain the operation and airspace configuration of the proposed ARSA. The combined Letter to Airmen and prorated advisory circular costs would be approximately $500 (discounted). This one-time negligible cost would be incurred upon the initial establishment of the proposed ARSA.

FAA district offices conduct aviation safety seminars on a regular basis. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, including ARSA's, and do not involve additional costs. Also, no significant costs are expected to be incurred as a result of the follow-up user meetings that are held at each site following implementation of the ARSA. The FAA organizes these meetings to get feedback from users on local ARSA operations. The meetings are held at public facilities or other facilities, and are provided free of charge or at a nominal cost. Because local FAA facility personnel conduct these meetings, no travel, per diem, or overtime costs are incurred by regional or headquarters personnel.

3. *Potential Costs to the Aviation Community (circumnavigation delays, and radio communications)*—The FAA anticipates that some pilots who currently transit the terminal area without establishing radio communications or participating in Stage II services may choose to circumnavigate the proposed ARSA. However, the FAA contends that these operators could circumnavigate the ARSA without significantly deviating from their regular flight path. They could also remain clear of the proposed ARSA by flying above the ceiling (4,400 feet MSL) or under the various floors (which range from 1,300 to 2,700 feet MSL). The FAA estimates that the proposed rule would have a negligible, if any, cost impact on nonparticipating general aviation (GA) aircraft operations because of the small deviations from current flight paths which would result.

The FAA recognizes that delays might develop at Long Beach following the initial establishment of the proposed ARSA. The additional traffic that ATC would be handling due to the mandatory pilot participation requirement may result in minor delays to aircraft operations. However, those delays that do occur are typically transitional in nature. The FAA contends that any potential delays would eventually be more than offset by the increased flexibility afforded controllers in handling traffic as a result of ARSA separation standards. This has been the experience at the three ARSA's that have been in effect for the longest period of time as well as at more recently established ARSA's. The FAA does not anticipate that establishing an ARSA at Long Beach would result in any problems, and it expects a smooth transition process, which has characterized the majority of ARSA sites established to date.

The FAA assumes that aircraft operating in the vicinity of the proposed ARSA already have two-way radio communications capability because Long Beach is surrounded by airport traffic areas, ARSA's, and a TCA. Thus, it is virtually impossible for an aircraft to operate in and around Long Beach and not be already equipped with two-way radio equipment. Nevertheless, the FAA has made an effort to minimize any potential radio installation costs that may occur by providing cutouts along the floor of the proposed ARSA. In addition, procedural agreements between ATC and affected satellite airports could be used to avoid imposing radio installation costs on operators at these airports.

If the proposal becomes a final rule, participation in the ARSA would be mandatory and businesses at airports located within the 5-nautical-mile core may be altered or may lose customers to airports outside of the core. The FAA has endeavored to exclude satellite airports located within the core of the proposed ARSA, thereby avoiding any adverse impacts on their operations, and simplifying ATC coordination responsibilities between the primary and satellite airports. In some cases, the same purposes were achieved through Letters of Agreement between ATC and the affected airports by establishing special procedures for aircraft operators.

In this manner, the FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports that could result from the ARSA program. Similarly, the FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as on soaring, ballooning, parachuting, and ultralight and banner towing activities, by developing special procedures that would accommodate these activities through local agreements between ATC facilities and the affected organizations. The FAA has utilized such arrangements extensively throughout the ARSA program.

The proposal would also slightly modify the Santa Ana ARSA. A more detailed description of the proposed modification can be found in the NPRM. The FAA is proposing the modification so that the sections adjoining the proposed Long Beach ARSA and the Santa Ana ARSA would have the same base altitudes. The FAA contends that the proposed modification would not impose any additional costs on airspace users.

4. *Mode C and TCAS Rules*—Ordinarily, aircraft operating in and above the proposed ARSA would be required to have Mode C transponders as a result of Phase II of the Mode C rule, which goes into effect in December 1990. However, all of the airspace that would be included in the proposed ARSA currently lies entirely within the Los Angeles TCA Mode C Veil centered around Los Angeles International Airport. Therefore, the FAA contends that all aircraft operating in or above the proposed ARSA at Long Beach already have Mode C transponders as a result of Phase I of the Mode C rule, which became effective in July 1989.

The FAA has also adopted regulations requiring certain aircraft operators to install Traffic Collision Avoidance System (TCAS), which allows air carrier operators to determine the position of other aircraft from the signal emitted by Mode C transponders on board the other air carriers. TCAS issues conflict resolution advisories as to what evasive actions are most appropriate for avoiding potential midair collisions. The TCAS Rule would not contribute to the potential cost of the proposed ARSA; however, it would contribute to the potential benefits. The benefits of the proposed Long Beach ARSA are discussed below.

Benefits

The benefits of the proposed Long Beach ARSA would be enhanced aviation safety (in terms of a lowered risk of midair collisions) and improved operational efficiency (in terms of higher air traffic controller productivity with existing resources). These potential benefits are difficult to quantify in monetary terms. Thus, such benefits have been analyzed in qualitative terms, as explained in the following sections.

The NAR Task Group found that airspace users, especially GA users, encountered significant problems with terminal radar services. Different levels of radar service offered within terminal areas caused confusion and users were not always certain what restrictions and privileges existed. The standardization and simplification of operating procedures provided by ARSA's is expected to alleviate many of these problems. As both pilots and controllers become more familiar with ARSA operating procedures, all IFR and VFR traffic is expected to move as efficiently and expeditiously as it did under Stage II service. These benefits of the ARSA program cannot be specifically attributed to individual airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. Establishment of the proposed Long Beach ARSA would contribute to these overall improvements.

The proposed ARSA would generate potential safety benefits in the form of a lowered risk of midair collisions due to increased positive control of airspace around Long Beach. Because of the proactive nature of the proposed ARSA, the potential safety benefits are difficult to quantify in monetary terms. Based on symptoms indicating an increased probability of a midair collision at Long Beach, the FAA is proposing to establish an ARSA there to prevent a safety problem from occurring. These early symptoms are the increased volume of passenger enplanements and the increased complexity of aircraft operations.

The volume of passenger enplanements at Long Beach has risen dramatically. Enplanements at Long Beach for 1989 were estimated to be 633,000, up from 103,600 in 1980, and are projected to be 1.7 million by the year 2000. The number of aircraft operations have also increased. Total aircraft operations at Long Beach in 1989 were 465,700 (ranked 9th in the country) and are projected to be 527,000 by the year 2000. This high volume of passenger enplanements and aircraft operations have made Long Beach eligible to become an ARSA.

The complexity of aircraft operations at Long Beach has also increased. Complexity refers to air traffic conditions resulting from a mix of controlled and uncontrolled aircraft that vary widely in speed and maneuverability. As this mix increases, so does the potential for midair collisions.

The ARSA program has the potential for reducing the likelihood of midair collisions. This task would be accomplished by assuring a reduction in the number of near-midair collisions (NMAC). In a study of NMAC data, the FAA's Office of Aviation Safety (ASF) found that approximately 15 percent of reported NMAC's occur in TRSA airspace. This study found that about half of all NMAC's occur in the 1,000 to 5,000 feet altitude range, which closely compares with the altitudes where pilot participation will be mandatory in the ARSA. This study also found that over 85 percent of NMAC's occur in VFR conditions when visibility is 5 miles or greater. Finally, the study found that the largest number of NMAC reports is associated with IFR operators under radar control conflicting with VFR traffic during VFR flight conditions below 12,500 feet. The mandatory participation requirements of the ARSA and the radar services provided by ATC to VFR as well as IFR pilots would help alleviate such conflicts.

The NAR Task Group study conducted by Engineering & Economics Research, Inc. reviewed NMAC data for Austin and Columbus during the 1978 to 1984 period. This study found that the presence of an ARSA reduced the probability of NMAC occurrence by 38 percent at Austin, and by 33 percent at Columbus. Another FAA study estimated that the potential for NMAC's could be reduced by about 44 percent. Since, NMAC's and actual midair collisions result from similar causal factors, a reduction in NMAC's as a result of the ARSA program suggests that a reduction in actual midair collisions would also happen.

An FAA study on the ARSA confirmation sites included a detailed analysis to determine if a reduction in midair collision risk might result from replacing a TRSA with an ARSA. The collision risk analysis was based upon the experience at Columbus because recorded radar data through Automated Radar Terminal System (ARTS III-A) extraction was available there. The study focused on conditions of fairly heavy VFR activity in the terminal radar area because the ARSA affects what procedures are used to handle VFR traffic there. The analysis examined the intersections of flight paths before and after the ARSA was installed because the replacement of a TRSA with an ARSA might alter the routes to travel, particularly for aircraft that did not

previously participate in the TRSA. The flight path analysis focused on the areas immediately around, under, and over the ARSA, and determined that there was no compression of traffic in this airspace following installation of the ARSA. In the absence of compression, the study concluded that the mandatory participation requirement for all aircraft operating within the ARSA resulted in a 75 percent reduction in midair collision risk.

The FAA reviewed NTSB midair collision accident records for the period between January 1978 and October 1984. This review indicated that the establishment of an ARSA, in place of a TRSA, could greatly reduce the probability of midair collisions. Because the circumstances observed at the Columbus test site may not be the same at other TRSA locations, the 75 percent reduction in midair collision risk measured there may not be achieved at other ARSA sites. Therefore, the FAA conservatively estimates that the ARSA program would reduce the risk of a midair collision by 50 percent at any given TRSA location. Establishing ARSA's at high density airports currently providing Stage II radar service would similarly contribute to a reduction in midair collision risk.

The reduction of midair collisions by 50 percent per year where an ARSA could have made a difference would result in the prevention of one midair collision nationally every one to two years. The quantifiable benefits of preventing a midair collision can range from less than $150,000, resulting from the prevention of a minor non-fatal accident between GA aircraft, to $250 million or more, resulting from the prevention of a midair collision involving a passenger jet airplane. Establishment of the proposed Long Beach ARSA would contribute to this improvement in aviation safety.

Ordinarily, the benefit of a reduction in the risk of midair collisions from establishing an ARSA would be attributed entirely to the ARSA program. However, an indeterminant amount of the benefits have to be credited to the interaction of the proposed ARSA (and the ARSA program in general) with the Mode C Rule, which in turn interacts with the TCAS Rule. This is because the benefits of the proposed Long Beach ARSA, as well as other designations of airspace that require Mode C transponders, cannot be separated from the benefits of the Mode C and TCAS Rules. These airspace actions would share potential benefits totaling $2.1 billion.

Comparison of Costs and Benefits

The FAA has determined that the proposed rule to establish an ARSA at Long Beach would impose a negligible cost of $500 on the agency. When this cost estimate of $500 is added to the total cost of the ARSA and TCA programs and the Mode C Rule and the TCAS Rule (see Table II), the combined cost would still be less than their total potential safety benefits. The proposal would also generate some benefits in the form of enhanced operational efficency. In addition, the proposal would not impose any additional cost to the aviation community. Thus, the FAA believes that the proposed rule would be cost-beneficial.

International Trade Impact Assessment

The proposal would only affect U.S. terminal airspace operating procedures at and in the vicinity of Long Beach, CA. The proposal would not impose a competitive trade disadvantage on foreign firms in the sale of either foreign aviation products or services in the United States. In addition, domestic firms would not incur a competitive trade disadvantage in either the sale of United States aviation products or services in foreign countries.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." Under FAA Order 2100.14A, entitled Regulatory Flexibility Criteria and Guidance, a significant economic impact means annualized net compliance cost to an entity, which when adjusted for inflation, is greater than or equal to the threshold cost level for that entity. A substantial number of small entities means a number that is not fewer than eleven and represents more than one-third of the small entities subject to a proposed or existing rule.

For the purpose of this evaluation, the small entities that would be potentially affected by the proposed rule are defined as fixed-base operators, flight schools, agricultural operators, and other small aviation businesses located at satellite airports that are within 5 nautical miles of a potential ARSA site. The mandatory participation associated with the proposed ARSA along with special conditions around Long Beach could potentially impose certain costs on users. Some of the users and activities that may be affected are local fixed-base operators and airport operations; i.e., flight training, crop dusting, soaring, ballooning, parachuting, and ultralight and banner towing. However, the FAA may employ exclusions, cutouts, and special procedures to alleviate any adverse impacts. The FAA may also develop special procedures to accommodate these activities through local agreements between ATC and the affected organizations. For these reasons, the FAA does not expect any such adverse impacts to occur as a result of the proposed ARSA. The FAA expects that any delay problems that may initially develop following implementation of an ARSA would be transitory. Furthermore, airports that would be affected by this proposed ARSA represent only a small proportion of all the public-use airports affected by the proposed Long Beach ARSA. Thus, small entities of any type that use aircraft in the course of their business would not be adversely impacted.

The FAA has determined that the proposed rule would not result in a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required under the terms of the RFA.

Federalism Implications

This proposed regulation would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 108(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Long Beach, CA [New]

That airspace extending upward from the surface to and including 4,400 feet MSL beginning at the Seal Beach VORTAC (SLI) 300° radial and the Artesia Freeway (91), extending east on the Artesia Freeway until the San Gabriel Freeway (605), extending south on the San Gabriel Freeway until intersecting the Seal Beach VORTAC 315° radial, thence direct to the Seal Beach VORTAC, thence via the Seal Beach VORTAC 215° radial to the shoreline, extending west along the shoreline until the Seal Beach VORTAC 259° radial, and extending north to the point of beginning; including that airspace extending upward from 2,500 feet MSL to and including 4,400 feet MSL starting at the intersection of the San Gabriel Freeway and Lincoln Avenue, extending east on Lincoln Avenue to the Santa Ana Freeway (5), extending southeast on the Santa Ana Freeway to the western boundary of the Santa Ana ARSA, thence southwest along the western boundary of the Santa Ana ARSA to Beach Boulevard, extending north on Beach Boulevard until intersecting the Seal Beach VORTAC 135° radial, thence via the Seal Beach VORTAC 135° radial to Seal Beach VORTAC, extending northwest via the Seal Beach VORTAC 315° radial until the San Gabriel Freeway, and extending north on the San Gabriel Freeway to the point of beginning; including that airspace extending upward from 1,300 feet MSL to and including 4,400 feet MSL beginning at the Seal Beach VORTAC extending southeast via the Seal Beach VORTAC 135° radial until Beach Boulevard, extending south on Beach Boulevard until the western boundary of the Santa Ana ARSA, extending southwest along the western boundary of the Santa Ana ARSA until the Seal Beach VORTAC 178° radial 9-mile DME fix, thence northwest to the east tip of the Long Beach Breakwater, thence north to the Seal Beach VORTAC 240° radial (Oil Island Chaffee), extending west to the Seal Beach VORTAC 248° radial (Oil Island Freeman), extending west along the South boundary of Pier "J" (Long Beach Outer Harbor), thence west along the south boundary of the Navy Mole until the Seal Beach VORTAC 256° radial, thence north to the shoreline, extending east along the shoreline until intersecting the Seal Beach VORTAC 215° radial and thence to the point of beginning; and that airspace extending upward from 2,700 feet MSL to and including 4,400 feet MSL beginning at the Oil Island Chaffee, thence south to the east tip of the Long Beach Breakwater, extending west along the Long Beach Breakwater and the San Pedro shoreline until Pacific Avenue (San Pedro), extending north on Pacific Avenue until Harbor Freeway (110), extending north on the Harbor Freeway until the Artesia Freeway, extending east on the Artesia Freeway until the Seal Beach VORTAC 300° radial, thence south to the Navy Mole, extending east along the southern boundary of Pier "J", thence east to Oil Island Freeman, and thence east to the point of beginning. This airport radar service area is effective during the specific days and hours of operation of the Long Beach (Daugherty Field) and Radar Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Santa Ana, CA [Revised]

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5-mile radius of the John Wayne Airport/Orange County (lat. 33°40'32" N, long. 117°52'02" W.) excluding that airspace east of a line between the points where the 5-mile arc of John Wayne Airport/Orange County intercepts the 5-mile arc of El Toro MCAS (lat. 33°40'34" N., long. 117°43'46" W.); and that airspace extending upward from 2,500 feet MSL to and including 4,400 feet MSL within a 10-mile radius of the John Wayne Airport/Orange County, west of a line from the point where the 5-mile arc southeast of John Wayne Airport/Orange County intercepts the 5-mile arc southwest of El Toro MCAS, to the point where the 10-mile arc of John Wayne Airport/Orange County intercepts the 10-mile arc of El Toro MCAS clockwise to the 175° bearing from John Wayne Airport/Orange County; and that airspace extending upward from 1,500 feet MSL to and including 4,400 feet MSL within a 10-mile radius of John Wayne Airport/Orange County from the 175° bearing clockwise to the 201° bearing from John Wayne Airport/Orange County; and that airspace extending upward from 3,500 feet MSL to and including 5,400 feet MSL within a 10-mile radius of John Wayne Airport/Orange County from the 201° bearing from the airport to the Seal Beach VORTAC 178° radial 9-mile DME fix, thence east to the shoreline and Beach Boulevard, excluding that airspace west of a line from the 351° bearing from John Wayne Airport/Orange County to the 251° bearing from John Wayne Airport/Orange County; and that airspace extending upward from 1,300 feet MSL to and including 5,400 feet MSL within a 10-mile radius of John Wayne Airport/Orange County beginning at the intersection of Warner Avenue and Beach Boulevard, extending south along Beach Boulevard to the shoreline, thence west to the Seal Beach VORTAC 178° radial 9-mile DME fix, excluding that airspace west of a line from the 351° bearing from John Wayne Airport/Orange County to the 251° bearing from John Wayne Airport/Orange County; and that airspace extending upward from 2,500 feet MSL to and including 5,400 feet MSL within a 10-mile radius of John Wayne Airport/Orange County from the shoreline to the San Diego Freeway (I-405), excluding that airspace west of Beach Boulevard and excluding that airspace west of a line from the 351° bearing from John Wayne Airport/Orange County to the 251° bearing from John Wayne Airport/Orange County; and that airspace extending upward from 2,500 feet MSL to and including 4,400 feet MSL within a 10-mile radius of John Wayne Airport/Orange County from the San Diego Freeway clockwise to the 360° bearing from the John Wayne Airport/Orange County, excluding that airspace west of a line from the 351° bearing from John Wayne Airport/Orange County to the 251° bearing from John Wayne Airport/Orange County; and that airspace extending upward from 2,000 feet MSL to and including 4,400 feet MSL within a 10-mile radius of John Wayne Airport/Orange County from the 360° bearing from the John Wayne Airport/Orange County clockwise to a line from the point where the 5-mile arc of John Wayne Airport/Orange County intercepts the 5-mile arc of El Toro MCAS to the point where the 10-mile arc of John Wayne Airport/Orange County intercepts the 10-mile arc of El Toro MCAS. This airport radar service area is effective during the specific days and hours of operation of the Orange County Tower and Radar Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Washington, DC, on April 10, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

LONG BEACH - SANTA ANA, CA

AIRPORT RADAR SERVICE AREAS

LONG BEACH FIELD ELEV. - 57 FT. JOHN WAYNE ORANGE CO. - FIELD ELEV.- 54 FT.

(Not to be used for navigation)

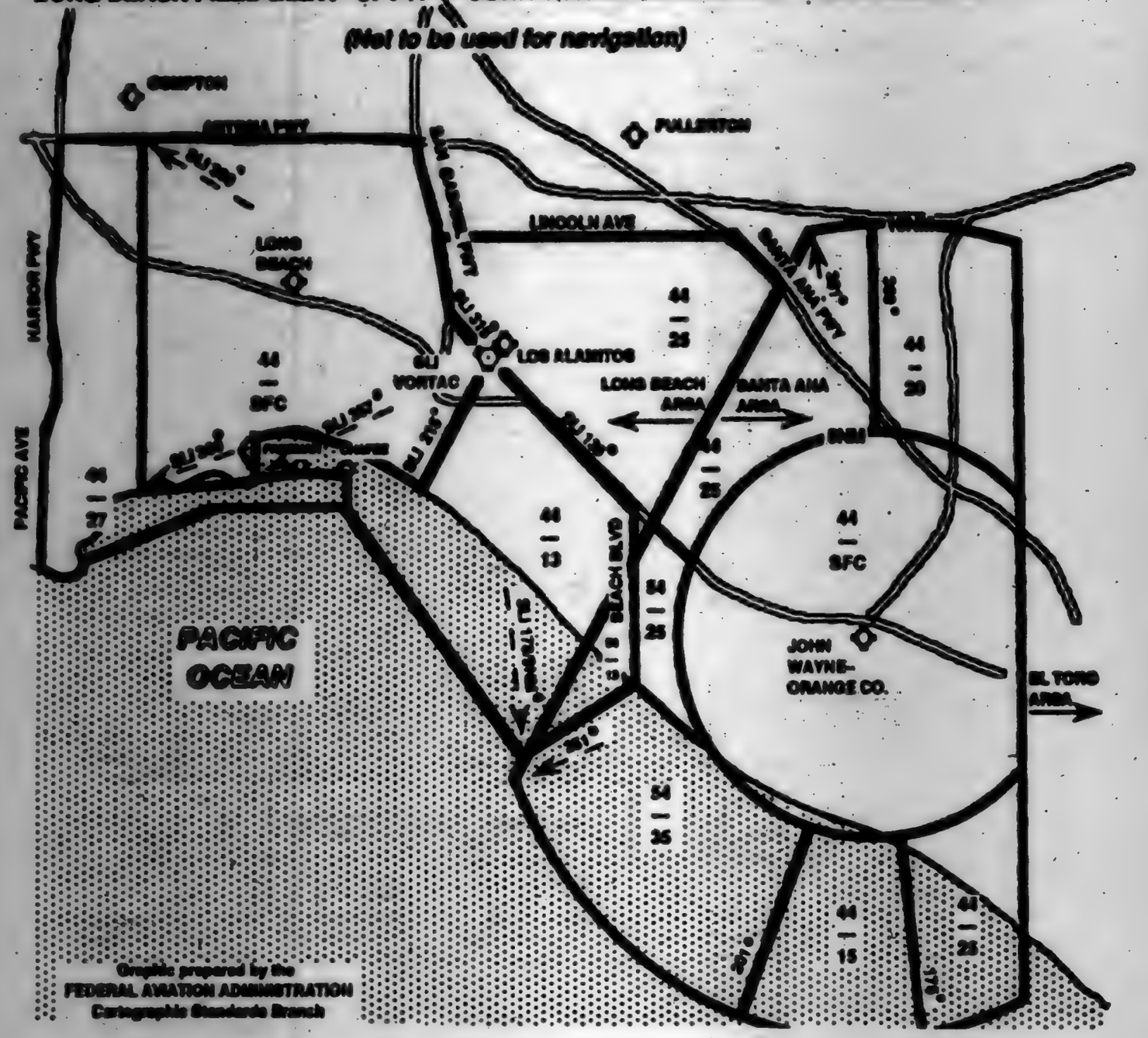

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federal register

Friday
April 26, 1991

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

Real Estate Settlement Procedures Act, Section 6 Transfer of Servicing of Mortgage Loans, (Regulation X); Interim Rule and Request for Comments

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. R-91-1530; FR-2842-I-02]

24 CFR Part 3500

Real Estate Settlement Procedures Act, Section 6 Transfer of Servicing of Mortgage Loans, (Regulation X)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule implements the provisions of section 6 of the Real Estate Settlement Procedures Act (12 U.S.C. 2601, *et seq.*) (RESPA) added by the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) (the Act) as amended on April 10, 1991 by the Act Making Dire Emergency Supplemental Appropriations for the Consequences of Operation Desert Shield/Desert Storm, Food Stamps, Unemployment Compensation Administration, Veterans Compensation and Pensions and other Urgent Needs for the Fiscal Year Ending September 30, 1991 and for Other Purposes (Pub. L. 102-27) (hereafter referred to as the "Dire Emergency Supplemental Appropriations Act"). This new section 6 sets forth procedures regarding the transfer of mortgage servicing for any federally-related mortgage loan. "Federally-related mortgage loan" is defined in section 3(1) of RESPA and the definition is refined in the implementing regulation for RESPA (Regulation X) (24 CFR 3500) at § 3500.2(b). Certain regulatory exemptions from coverage are set forth in § 3500.5(d), including refinancings. However, the regulatory exemption for refinancings has been terminated for § 3500.21. (See § 3500.21(a)(3)).

DATES: Effective date: April 26, 1991. Comment due date: June 25, 1991.

ADDRESSES: Comments on interim rule: Interested persons are invited to submit comments regarding this interim rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and date of publication. A copy of each comment submitted will be available for public inspection during regular business hours at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will *not* be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk (voice (202) 708-2084; TDD (202) 708-3259).

Comments on information collection: Comments on the information collection requirements contained in this interim rule should be submitted both to the Rules Docket Clerk at the above address (Attention: Desk Officer for HUD) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments should reference the docket number and date of publication.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, RESPA Enforcement, room 9146, 202-708-2619 (for non-legal questions, including complaints and requests for documents) or Grant E. Mitchell or John B. Shumway (for legal questions), Office of General Counsel, room 10252, 202-708-1550, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Requirements

The information collection requirements contained in this interim rule have been approved on a temporary basis by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2502-0458. The public reporting burden for each of these collections of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is set out below. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, within 30 days from the date of this interim rule to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Description	Disclosure to Applicant	Notice of Transfer	Total
Number of respondents	[1] 20,000	[1] 20,000	20,000
Average # per respondent	2,120	3,000	
Total annual responses	4,240,000	60,000,000	64,240,000
Hours per response	2 minutes (0.033 hr)	6 minutes (0.10 hr)	
Total hours	139,900	6,000,000	6,139,900
Annual cost	[2] $2,120,000	[3] $60 million	$62,120,000

[1] These are the same 20,000 respondents.
[2] Includes labor at the rate of $10 per hour, plus miscellaneous costs.
[3] Includes $0.50 per notice for postage and miscellaneous costs.

Section 941 of the Cranston-Gonzalez National Affordable Housing Act amended RESPA by adding a new section 6, which requires disclosure to mortgage loan applicants of historical data regarding the transfer of mortgage servicing (that is, the right to collect mortgage payments for principal, interest and escrow account items) as well as estimates regarding the potential transfer of servicing pertaining to the applicant's mortgage loan and other mortgage loans. This new section 6 was further amended on April 10, 1991 by the Dire Emergency Supplemental Appropriations Act which created a transition period during which lenders and servicers would not be liable for

violations of the Act. This amendment also directed HUD to publish implementing regulations effective no later than April 20, 1991.

Section 6 provides that applicants be given information in a Disclosure Statement at the time of loan application concerning the likelihood that their mortgage servicing might be transferred. Section 6 sets forth additional requirements for notice at the time of a servicing transfer, and other rights for borrowers, and provides for the collection of damages and costs by borrowers from servicers for noncompliance. Finally, section 6 preempts any State law or regulation regarding notice to borrowers at the time of application or at the time of servicing transfer, so long as the lender or servicer complies with the relevant provisions of section 6.

HUD originally complied with the requirements of sections 6(a)(2) and 6(a)(3) to promulgate a Model Disclosure Statement and Applicant's Acknowledgement by publication of a notice in the Federal Register on March 20, 1991 (56 FR 11686). HUD also provided sample language to assist mortgage lenders and servicers in complying with the other notice requirements set out in this new section 6.

All of the provisions of section 6 originally appeared to be effective immediately upon enactment of the Act. Sections 6(a)(2) and 6(a)(3), however, gave the Secretary 90 days from the date of enactment to develop a Model Disclosure Statement and Applicant's Acknowledgement. HUD concluded in its March 20, 1991 notice that development of the Model Disclosure Statement and Applicant's Acknowledgement was necessary for lender compliance and made section 6(a) effective upon publication of its notice on March 20, 1991. Subsequently, section 6 of RESPA was amended by the Dire Emergency Supplemental Appropriations Act to create a transition period during which lenders and servicers were protected from liability until HUD issued regulations regarding section 6, which Congress directed to be no later than April 20, 1991 (this regulation). HUD's interpretation of the transition period language is that no lender or servicer can be successfully sued for a failure to comply with the new section 6 of RESPA until the effective date of these regulations. This interim rule also makes clear that use of the specific language of the Model Disclosure Statement is not mandatory, except for the Applicant's Acknowledgement, so long as any disclosure statement contains all of the information required by the Act. Similarly, the Model Disclosure Statement language published on March 20, 1991 was not mandatory except for the Applicant's Acknowledgement, and variations from that language were acceptable so long as the information required by the Act was disclosed.

Regulatory Flexibility Act

Under 5 U.S.C. 605(b) (The Regulatory Flexibility Act), the undersigned hereby certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. HUD finds that there are no anti-competitive discriminatory aspects of the interim rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities. In any event, by statute, the requirements of this rule must be uniformly adhered to by all lenders and servicers.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with Part 50 of this title, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332). The subject Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

OMB Control Number

2502-0458.

Executive Order 12291 Review

Because of the statutorily required expedited publication schedule for this rule, it was not possible for the rule to be subjected to regular review under Executive Order 12291 before its publication. However, the Department forwarded copies of this document to the Office of Management and Budget for review in accordance with the Executive Order as soon as an approvable draft was available. HUD's final rule in this proceeding will be subjected to the normal review processes under the Order.

Regulatory Impact Analysis

The interim rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this regulation do not have significant federalism implications and, thus, are not subject to review under the Order. Issuance of the regulation does not change existing Federal, State or local governmental relationships, except that, under the statute, compliance with the disclosure provisions of this rule will preempt State law requirements dealing with identical subject matter. Given the lack of discretion pertaining to the preemption issue by the statute, further analysis of the federalism implications of the rule would serve no purpose.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, *the Family*, has determined that the policies contained in this regulation do not have a potential significant impact on family function, maintenance and general well being, and, thus, are not subject to review under the order.

Justification for Interim Rule

The statutory deadline for implementation of the new section 6 of RESPA calls for "regulations that shall *take effect* not later than April 20, 1991." Since the Congressional enactment containing this amendment was not approved until April 10, 1991, and the statutory command was not even known to the Department until March 22, 1991, when it was published in the *Congressional Record* as part of a conference report on a supplemental appropriations bill unrelated to HUD, it is clear that the Congress did not intend for HUD to receive public comments before publishing the rule for effect, as usually is done for rules implementing new legal requirements. Ordinarily, HUD rules published for public comment are also subjected to a 15-day pre-publication review period by the House and Senate Banking Committees. It is also clear that, given the extremely brief period provided for development and publication of the interim rule for effect,

the Congress did not intend that the pre-publication review requirements of HUD's legislative review statute be applied to the publication of this particular interim rule. In addition, the Congress clearly did not intend that the interim rule await a 30-day post-publication waiting period before becoming effective, as is normally required for rules published for effect by the Department under 24 CFR part 10 and under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)). This interim rule is effective as of the date of publication.

Despite the need for immediate effectiveness of this interim rule, the Department is interested in receiving public comments on the rule, and will take these comments into account in fashioning a permanent rule to govern mortgage servicing transfers. The Department is particularly interested in any matters which are unclear or not addressed in this interim rule, as well as unusual problems such as those caused by State homestead provisions or by the preemption of State laws. In addition, the Department requests comments specifically on the inclusion of the requirements in § 3500.21(b) (4) and (5). Do these requirements, which describe disclosure of mortgage servicing transferring procedures and borrower inquiry procedures at the time of mortgage loan application, benefit the applicant, even though there will be later notification to the borrower in the event that mortgage servicing is transferred? (See § 3500.21 (e) and (f)). The rule is being published as an interim rule, for immediate effect, but with a 60-day public comment period.

Semi-annual Agenda of Regulations

This rule revision did not appear on the Department's most recent semi-annual Agenda of Regulations, published on April 22, 1991 (56 FR 17360) under Executive Order 12291 and the Regulatory Flexibility Act because the legislation was not enacted until November 28, 1990.

List of Subjects in 24 CFR Part 3500

Consumer Protection, Condominiums, Housing, Mortgages, Mortgage servicing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 3500 is amended by adding a new § 3500.21, to read as follows:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation for 24 CFR part 3500 continues to read as follows:

Authority: Real Estate Settlement Procedures Act of 1974, Pub. L. 93–533 (12 U.S.C. 2601 et seq.), Real Estate Settlement Procedures Act Amendments of 2975 (Pub. L. 94–205).

2. A new § 3500.21 is added, to read as follows:

§ 3500.21 Mortgage servicing transfers.

(a) *Definitions.* As used in this section:

(1) *Business day* means any day, excluding legal public holidays (State or Federal), Saturday and Sunday. In any provision of § 3500.21, if a day is not specified as a Business Day it is a calendar day.

(2) *Effective date of transfer* means the date on which the mortgage payment of a borrower is first due to the transferee servicer (new servicer) of a mortgage loan pursuant to the assignment, sale or transfer of the servicing of the mortgage loan.

(3) *Federally-related mortgage loan* has the meaning set forth in § 3500.5(b) of Regulation X (24 CFR part 3500) subject to the exemptions of § 3500.5(d). However, for purposes of this § 3500.21, pursuant to secton 19(a) of RESPA, the Secretary has withdrawn a limited exemption and all refinancings of mortgage loans by lenders which meet all of the other requirements of section 3(1) of RESPA are covered for all purposes of this § 3500.21.

(4) *Servicer* means the person responsible for the servicing of a loan. This term does not include the following:

(i) The Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC), in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution; or

(ii) The Government National Mortgage Association (GNMA), the Federal National Mortgage Corporation (FNMA), the Federal Home Loan Mortgage Corporation (Freddie Mac), the RTC or the FDIC, in cases when the assignmemt, sale or transfer of the servicing of the mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the FDIC or RTC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(5) *Servicing* means receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts under section 10 of RESPA, and making the payments of principal and interest, and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

(b) *Disclosure at the time of loan application.* Every person who receives an application for a federally-related mortgage loan (as defined in paragraph (a)(3) of this section) shall disclose to each person who applies for a loan, at the time of application for the loan:

(1) Whether the servicing of the loan may be assigned, sold or transferred to any other person at any time while the loan is outstanding. If the person who makes the loan does not engage in the servicing of any federally-related mortgage loans, the disclosure may consist of a statement that the person making the loan currently intends to assign, sell or transfer servicing of the loan to another person. The following represents a model format for complying with the requirements of this paragraph (b)(1). The person making the loan may use the language which best describes the circumstances:

The following is the best estimate of what will happen to the servicing of your mortgage loan:

We may assign, sell or transfer the servicing of your loan while the loan is outstanding. [We are able to service your loan [.] [,] and we [will] [will not] [haven't decided whether to] service your loan.]

[or]

We do not service mortgage loans, and we presently intend to assign, sell or transfer the servicing of your mortgage loan. You will be informed about your servicer.

(2) The percentages (rounded to the nearest quartile (25%)) of loans made by the person making the loan for which servicing has been assigned, sold or transferred as of the end of the most recent calendar year completed, subject to the following limitations. For applications received in calendar year 1991, this percentage shall include mortgage loans assigned, sold or transferred in calendar year 1990. For applications received in calendar year 1992, these percentages will include calendar years 1990 and 1991, and for applications received in 1993, and thereafter, these percentages will include the most recent three calendar years. This information should be calculated and included in the disclosure within a reasonable time after the end of the calendar year, but in any event no later than 31 days after the end of the calendar year. If the percentages of transfers are less than 12.5%, the word "normal" or the actual percentage amount of servicing transfers may be used. Each percentage should be obtained by dividing the federally related mortgage loans for which servicing is transferred within the calendar year by the total federally-related mortgage loans originated in the calendar year. These percentages need not include the assignment, sale or transfer by the lender of mortgage loan servicing by the person making the loans to an affiliate or subsidiary of that person. However, this information may be provided voluntarily. The person making the loan should indicate if these percentages include assignments, sales or transfers to affiliates or subsidiaries.

(3) The best available estimate of the percentage (between 0 and 25 percent, between 26 and 50 percent, between 51 and 75 percent, and between 76 and 100 percent) of all loans made by the person making the loan for which the servicing may be assigned, sold or transferred during the 12-month period beginning on the date of origination. Each percentage should be obtained by dividing the federally related mortgage loans for which servicing may be transferred within the calendar year by the total federally-related mortgage loans expected to be originated in the calendar year. These percentages need not include the estimated assignment, sale or transfer of mortgage loan servicing by the person making the loan to an affiliate or subsidiary of that person. However, this information may be provided voluntarily. The person making the loan should indicate if the percentages include assignments, sales or transfers to affiliates or subsidiaries.

(4) A summary of the information set out in paragraph (e) of this section.

(5) A summary of the information set out in paragraph (f) of this section.

(6) A written acknowledgement that the applicant [and the co-applicant, if any] has read and understood the disclosure, evidenced by the signature of the applicant (and co-applicant, if any).

(c) *Model Disclosure Statement.* The Model Disclosure Statement referred to in section 6(a)(2) appears as Appendix A to this section. It is not mandatory that lenders use the specific language of this Model Disclosure Statement, but lenders must include all the required information set out in section 6 of RESPA in their Disclosure Statement. The use of the Applicant's Acknowledgement portion of the Disclosure Statement in the format stated *is mandatory.* The information set forth in Instructions to Preparer on the Model Disclosure Statement need not be included on the form given to applicants and square bracketed [ ] material is optional or alternative language.

(d) *Disclosure Statement and Applicant Acknowledgement; Delivery.* If a face-to-face interview with all applicants is held at the time of application, the Disclosure Statement is to be delivered at that time. Under any other circumstance, delivery is effectuated by placing the document in the mail, with prepaid first-class postage, within three Business Days from receipt of the application. If co-applicants indicate the same address on their application, one copy delivered to the address shown is sufficient. If different addresses are shown on the application, a copy must be delivered to each of the applicants. A Disclosure Statement signed by each applicant is a required part of any application package and must be received by the mortgage lender before the loan is closed. A federally-related mortgage loan should not be funded unless the necessary signed Disclosure Statement is in the loan package. For applications which are not funded, a lender will be deemed to have complied with these Disclosure Statement requirements if, after delivery of the Disclosure Statement, it has made reasonable follow-up efforts to obtain signed acknowledgements, including correspondence or communications regarding return of the acknowlegements which inform the applicants that the loan cannot be funded unless the acknowledgements are returned.

(e) *Notice by transferor (present servicer) and transferee (new servicer) of transfer of loan servicing at time of transfer.* Each servicer of any federally-related mortgage loan shall notify the borrower in writing of any assignment, sale or transfer of the servicing of the loan.

(1) *Time of notice.* (i) The notice required under this section shall be made by the transferor (present servicer) to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage loan. The notice shall be made by the transferee (new servicer) to the borrower not more than 15 days after the effective date of the transfer. Both notices may be combined in one notice of the 15-day period delivery provision of this section is met and all information required is disclosed.

(ii) The notice required under paragraph (e) of this section shall be made to the borrower by the transferor (present servicer) or the transferee (new servicer) to the borrower not more than 30 days after the effective date of the transfer of the servicing of the mortgage loan, in any case in which the transfer is preceded by termination of the contract for servicing the loan for cause; commencement of proceedings for bankruptcy of the servicer; or commencement of proceedings by the Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC) for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(iii) The notice required under paragraph (e) of this section can be made at settlement by the transferor (present servicer) and transferee (new servicer), or in a single notice on behalf of both parties at settlement, and this notice will satisfy the timing requirements of this paragraph (e).

(2) *Contents of notice.* The notice required under this paragraph (e) of this section shall include the following information:

(i) The effective date of the transfer of servicing.

(ii) The name, address, and toll-free or collect call telephone number of the transferee servicer (new servicer).

(iii) A toll-free or collect call telephone number for an individual employed by the transferor servicer (present servicer) or the department of the transferor servicer that can be contacted by the borrower to answer servicing transfer inquiries.

(iv) A toll-free or collect call telephone number for an individual employed by the transferee servicer (new servicer) or the department of the transferee servicer that can be contacted by the borrower to answer servicing transfer inquiries.

(v) The date on which the transferor servicer (present servicer) who is servicing the loan before the transfer will cease to accept payments relating to the loan and the date on which the transferee servicer (new servicer) will begin to accept such payments. These dates shall be the same or in the alternative, consecutive days.

(vi) Any information concerning the effect the transfer may have, if any, on the terms or the continued availability of mortgage life or disability insurance or any other type of optional insurance and what action, if any, the borrower must take to maintain coverage

(vii) A statement that the transfer of servicing does not affect any term or condition of the security instruments other than terms directly related to the servicing of the loan.

(3) Sample language that may be used to comply with the requirements of this section is set forth in appendix B to this section. [Use of this language is not mandatory, but notices must contain all the statutorily and regulatorily required information].

(4) During the 60-day period beginning on the effective date of transfer of the servicing of a federally-related mortgage loan, a late fee may not be imposed on the borrower with respect to any payment on the loan, and no payment may be treated as late, if the payment is received by the transferor servicer (present servicer) rather than by the transferee servicer (new servicer) who should receive the payment, before the due date applicable to such payment.

(f) *Duty of loan servicer to respond to borrower inquiries*—(1) *Notice of receipt of inquiry.* If a servicer of a federally-related mortage loan, as defined in § 3500.21(a)(3), receives a qualified written request from the borrower for information relating to the servicing of the loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 20 Business Days, unless the action requested is taken within that period, and the borrower is notified in accordance with the provision of paragraph (f)(3) of this section. For purpose of this paragraph (f), the term "borrower" includes an agent of the borrower.

(2) *Qualified written request.* A qualified written request means a written correspondence (other than notice on a payment coupon or other payment medium supplied by the servicer) that includes, or otherwise enables the servicer to identify, the name and account of the borrower, and a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error, or that provides sufficient detail to the servicer regarding other information sought by the borrower.

(3) *Action with respect to the inquiry.* Not later than 60 Business Days after the receipt from the borrower of a qualified written request and, if applicable, before taking any action with respect to the inquiry, the servicer shall:

(i) Make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of the correction (including the name and telephone number of a representative of the servicer who can provide assistance to the borrower); or

(ii) After conducting an investigation, provide the borrower with a written explanation or clarification that includes:

(A) To the extent applicable, a statement of the reasons of the servicer that the account is correct, and the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower; or

(B) Information requested by the borrower or an explanation why the information requested is unavailable or cannot be obtained by the servicer and the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.

(4) *Protection of credit rating.* (i) During the 60-Business Day period beginning on the date of the servicer's receipt from a borrower of a qualified written request relating to a dispute regarding the borrower's payments, a servicer may not provide information regarding any overdue payment, owed by the borrower and relating to this period or the qualified written request, to any consumer reporting agency (as that term is defined in section 603 of the Fair Credit Reporting Act).

(ii) Borrowers should be aware that section 17 of RESPA provides that RESPA does not affect the validity or enforceability of any loan, loan agreement, mortgage, or lien made or arising in connection with a federally-related mortgage loan, and therefore the protection of credit rating provision of paragraph (f)(4)(i) of this section does not impede a lender or servicer from taking other legal action under the loan and mortgage documents.

(g) *Damages and costs.* Whoever fails to comply with any provision of this section shall be liable to the borrower in the following amounts:

(1) *Individuals.* In the case of any action by an individual, an amount equal to the sum of any actual damages to the borrower as the result of the failure, and any additional damages in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed $1,000.

(2) *Class Actions.* In the case of a class action, an amount equal to the sum of any actual damages to each of the borrowers in the class as the result of the failure and any additional damages in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not greater than $1,000 for each member of the class, except that the total damages in any class action may not exceed the lesser of $500,000 or one percent of the servicer's net worth.

(3) *Costs.* In addition to the amounts under paragraphs (g)(1) and (2) of this section, in the case of any successful action under this section, the costs of the action, together with any attorneys' fees incurred in connection with the action as a court may determine to be reasonable under the circumstances.

(4) *Non-liability.* A transferor (present servicer) or transferee (new servicer) shall not be liable for any failure to comply with the requirements of this section if, within 60 days after discovering an error (whether pursuant to a final written examination report or a servicer's own procedures) and before commencement of an action under this section and the receipt of written notice from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

(h) *Preemption of conflicting State laws.* A person who makes a federally-related mortgage loan or a servicer shall be considered to have complied with the provisions of any State law or regulation requiring notice to a borrower at the time of application for a loan or transfer of the servicing of a loan if the person or servicer complies with the requirements of this section.

Appendix A to § 3500.21 Disclosure Statement

[Use Lender's business stationery or similar heading]

Notice to Mortgage Loan Applicants: The Right to Collect Your Mortgage Loan Payments may be Transferred. Federal Law Gives you Certain Related Rights. Read This Statement and Sign it Only if you Understand its Contents.

Because you are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 *et seq.*) you have certain rights under that Federal law. This statement tells you about those rights. It also tells you what the chances are that the servicing for this loan may be transferred to a different loan servicer. "Servicing" refers to collecting your principal, interest and escrow account payments, if any. If your loan servicer changes, there are certain procedures that must be followed. This statement generally explains those procedures.

Transfer Practices and Requirements

If the servicing of your loan is assigned, sold, or transferred to a new servicer, you must be given written notice of that transfer. The present loan servicer must send you notice in writing of the assignment, sale or transfer of the servicing not less than 15 days before the effective date of the transfer. The new loan servicer must also send you notice within 15 days after the effective date of the transfer. The present servicer and the new servicer may combine this information in one notice, so long as the notice is sent to you 15 days before the effective date of transfer. The 15 day period is not applicable if a notice of prospective transfer is provided to you at settlement. The law allows a delay in the time (not more than 30 days after a transfer) for servicers to notify you under certain limited circumstances, when your servicer is changed abruptly. This exception applies only if your servicer is fired for cause, is in bankruptcy proceedings, or is involved in a conservatorship or receivership initiated by a Federal agency.

Notices must contain certain information. They must contain the effective date of the transfer of the servicing of your loan to the new servicer, the name, address, and toll-free or collect call telephone number of the new servicer, and toll-free or collect call telephone numbers of a person or department for both your present servicer and your new servicer to answer your questions about the transfer of servicing. During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Complaint Resolution

Section 6 of RESPA (12 U.S.C. 2605) gives you certain consumer rights, *whether or not your loan servicing is transferred.* If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, or must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request.

A Business Day is any day, excluding public holidays (State or Federal), Saturday and Sunday.

Damages and Costs

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section.

Servicing Transfer Estimated by Lender

1. The following is the best estimate of what will happen to the servicing of your mortgage loan:

We may assign, sell or transfer the servicing of your loan sometime while the loan is outstanding. [We are able to service your loan [.] (,) and we [will] [will not] [haven't decided whether to] service your loan.]

[or]

We do not service mortgage loans, and we presently intend to assign, sell or transfer the servicing of your mortgage loan. You will be informed about your servicer.

2. For all the mortgage loans that we make in the 12 month period after your mortgage loan is funded, we estimate that the percentage of mortgage loans for which we will transfer servicing is between:

_____ 0 to 25%
_____ 26 to 50%
_____ 51 to 75%
_____ 76 to 100%

[This estimate *[does] [does not]* include assignments, sales or transfers to affiliates or subsidiaries.] This is only our best estimate and it is not binding. Business conditions or other circumstances may affect our future transferring decisions.

3. This is our record of transferring the servicing of the mortgage loans we have made in the past:

Year	Percentage of loans transferred (rounded to nearest quartile—0%, 25%, 50%, 75% or 100%)
19—	____ %
19—	____ %
19—	____ %

[This information *[does] [does not]* include assignments, sales or transfers to affiliates or subsidiaries.]

_____
Lender [Signature Not Mandatory]

_____
Date

Instructions to Preparer: For item 3, for applications received in calendar year 1991, the information will be for calendar year 1990 only; for applications received in 1992, this information will be for calendar years 1990 and 1991; and for applications received in 1993 and thereafter, this information will be for the previous three calendar years. If the percentage of servicing transferred is less than 12.5%, the word "nominal" or the actual percentage amount of servicing transfers may be used.

Acknowledgement of Mortgage Loan Applicant

I/we have read this disclosure form, and understand its contents, as evidenced by my/our signature(s) below.

_____
Applicant's Signature

_____
Co-Applicant's Signature

_____
Date

Appendix B to § 3500.21 [Sample Language]

Notice of Assignment, Sale or Transfer of Servicing Rights

You are hereby notified* that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from _____ to _____, effective _____

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer, or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing. [In this case, all necessary information is combined in this one notice].

Your present servicer is _____. If you have any questions relating to the transfer of servicing from your present servicer call _____ [enter the name of an individual or department here] between _____ a.m. and _____ p.m. on the following days _____. This is a [toll-free] or [collect call] number.

Instructions to Preparer: Delivery means placing the notice in the mail, first class postage prepaid, prior to 15 days before the effective date of transfer (transferor) or prior to 15 days after the effective date of transfer (transferee). However, this notice may be sent not more than 30 days after the effective date of the transfer of servicing rights if assignment, sale or transfer of the servicing of the mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC) for conservatorship or receivership of the servicer, or an entity by which the servicer is owned or controlled.

"Lender" may be substituted for "present servicer" where appropriate.

Your new servicer will be _____. The business address for your new servicer is: _____. The [toll-free] [collect call] telephone number of your new servicer is _____. If you have any questions relating to the transfer of servicing to your new servicer call _____ [enter the name of an individual or department here] at _____ [toll free or collect call telephone number] between _____ a.m. and _____ p.m. on the following days _____.

The date that your present servicer will stop accepting payments from you is _____. The date that your new servicer will start accepting payments from you is _____.

[Use this paragraph if appropriate; otherwise omit] The transfer of servicing rights may affect the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance in the following manner

_____
_____
_____
_____

and you should take the following action to maintain coverage: _____.

* This notification is a requirement of section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2605).

You should also be aware of the following information, which is set out in more detail in Section 6 of RESPA (12 U.S.C. 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C. 2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgement within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notes on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. Not later than 60 Business Day after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During the 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request.

A Business Day is any day, excluding legal public holidays (State or Federal), Saturday and Sunday.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

(Approved by the Office of Management and Budget under Control No. 2502-0458.)

Dated: April 22, 1991.

Arthur J. Hill,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 91-10005 Filed 4-25-91; 8:45 am]

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federal register

Friday
April 26, 1991

Part VI

Environmental Protection Agency

Registration and Agreement for TSCA Section 8(e) Compliance Audit Program Modification; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59015A; FRL-3951-8]

Registration and Agreement for TSCA Section 8(e) Compliance Audit Program Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice, pursuant to sections 15 and 16 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq., announces modifications to EPA's TSCA Section 8(e) Compliance Audit Program and the Agreement for the TSCA Section 8(e) Compliance Audit Program ("CAP Agreement"). The modifications to the TSCA Section 8(e) Compliance Audit Program and the CAP Agreement include extension of the registration and termination dates, the opportunity to petition EPA for a case-by-case extension of the termination date, modifications to the CAP Agreement provisions regarding admission of a violation of TSCA section 8(e) and waiver of right to a hearing, and EPA's development of a TSCA section 8(e) reporting guide.

DATES: The Registration period for the TSCA Section 8(e) Compliance Audit Program closes on June 18, 1991. Persons interested in registering for the TSCA Section 8(e) Compliance Audit Program must request a CAP Agreement and submit a signed CAP Agreement to EPA no later than June 18, 1991.

ADDRESSES: Copies of the CAP Agreement may be obtained from the TSCA Assistance Information Service, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 1, 1991 (56 FR 4128), EPA announced the opportunity to register for the TSCA Section 8(e) Compliance Audit Program. The TSCA Section 8(e) Compliance Audit Program is a one-time voluntary compliance audit program developed in order to achieve EPA's goal of obtaining any outstanding TSCA section 8(e) data. The TSCA Section 8(e) Compliance Audit Program has been initiated to foster compliance with the statutory obligations of TSCA section 8(e), and to obtain critical information about potential risks of chemical substances. In designing the TSCA Section 8(e) Compliance Audit Program EPA's objective was to provide, in the context of an enforcement initiative, positive incentives for companies to conduct audits of their data and to submit to the Agency the type of information required under section 8(e) of TSCA.

EPA recognizes that proper application of section 8(e) requires the exercise of scientific judgement. EPA is not interested in creating an atmosphere in which companies view a "data dump" strategy as the best course of action for meeting their obligations. The Agency hopes that cooperative consultation among EPA, data submitters, and other interested parties can lead to a more successful TSCA Section 8(e) Compliance Audit Program and ultimately a better understanding of the section 8(e) program. Based on written communications with the regulated industry, EPA has made the following modifications to the TSCA Section 8(e) Compliance Audit Program and CAP Agreement that was published on February 1, 1991.

II. Modifications to the TSCA Section 8(e) Compliance Audit Program and the CAP Agreement

A. Registration Requirements

The registration deadline/audit commencement date has been extended for 45 days to June 18, 1991. Thus, Units I.B and D of the CAP Agreement have been modified to read as follows:

B. To register for the TSCA Section 8(e) Compliance Audit Program, the Regulatee must, no later June 18, 1991, sign and return this CAP Agreement by certified mail-return receipt requested to....

D. The TSCA Section 8(e) Compliance Audit Program shall commence no later than June 18, 1991.

The audit termination date/deadline has been extended for approximately 90 days, to February 28, 1992. Procedures for case-by-case extensions have also been added. A Regulatee can petition EPA in writing no later than November 29, 1991, for an additional extension of the audit termination date (i.e., beyond February 28, 1992). Extension petitions must contain an adequate justification for the request, and will be favorably viewed if based on difficulties experienced by a Regulatee with the volume of information being reviewed and not because the Regulatee delayed initiation of the audit. Companies are urged to submit studies or reports as they are determined to be reportable, and extension petitions will be viewed with disfavor if a Regulatee has not submitted any information by the November 29, 1991, deadline for extension requests. In this way EPA encourages the phased receipt of information over time while recognizing the need for appropriate time extensions for Regulatees that have a large amount of records to review. Thus, Unit I.E of the CAP Agreement has been modified to read as follows:

E. The TSCA Section 8(e) Compliance Audit Program shall terminate on February 28, 1992, and all submissions under this TSCA Section 8(e) Compliance Audit Program must be delivered to EPA no later than February 28, 1992. The Regulatee may petition EPA in writing at the address specified in Unit I.B of this CAP Agreement for an extension of the February 28, 1992, termination date. Extension requests must be received by EPA no later than November 29, 1991, and must contain an adequate justification for the extension.

No other modifications to the "registration requirements" portion of the CAP Agreement have been made.

B. Terms of Agreement--General Provisions

The provision of the CAP Agreement regarding an admission of violation or a "violation of TSCA" has been changed and Unit II.A.4 of the CAP Agreement has been modified to read as follows:

4. The Regulatee neither admits nor denies that the submission of studies or reports by the Regulatee under this TSCA Section 8(e) Compliance Audit Program and pursuant to the terms of this CAP Agreement constitutes admission of a violation of TSCA sections 8(e) and 15(3)(B), but agrees to pay a stipulated civil penalty for each study or report in accordance with Unit II.B.2 of this CAP Agreement. Any study or report submitted under TSCA section 8(e) prior to the date of commencement of the TSCA Section 8(e) Compliance Audit Program is not subject to the terms of this CAP Agreement or the TSCA Section 8(e) Compliance Audit Program.

The provision of the CAP Agreement regarding waiver of rights has been changed and Unit II.A.3 of the CAP Agreement has been modified to read as follows:

3. The Regulatee waives its right to request a judicial or administrative hearing, under TSCA section 16(a)(2)(A) or other provisions of law, on any issue of law or fact that has arisen or may arise regarding the application of TSCA section 8(e) to any study or report submitted pursuant to Unit II.B.1 of this CAP Agreement.

The provision of the CAP Agreement regarding "prior violations" has been modified slightly to make it clear that submissions under the CAP Agreement will count as one "prior violation" of 8(e) only. Thus, Unit II.A.7 of the CAP Agreement has been modified to read as follows:

7. EPA agrees that any submissions made pursuant to the terms of this CAP Agreement and the TSCA Section 8(e) Compliance Audit Program will be viewed by EPA as one "prior such violation" under TSCA section 16(a)(2)(B) for future violations of TSCA section 8(e) only.

No other modifications to the "terms of agreement--general provisions" portion of the CAP Agreement have been made.

C. Terms of Agreement--TSCA Section 8(e) Compliance Audit Program and Civil Penalties

In order to facilitate participation in the TSCA Section 8(e) Compliance Audit Program as well as to improve section 8(e) compliance in general, EPA is preparing and plans to disseminate a section 8(e) reporting "guide" comprised primarily of approximately 150 existing TSCA section 8(e) submission "Status Reports" which contain useful reporting and implementation guidance. This guide will include two indices. The first index, which pertains to the 150 "Status Reports," will be arranged by toxicologic study type and other important subheadings related to reporting criteria. The second index will be cumulative and arranged by type of study for all initial submissions received under section 8(e) to date. An additional component of the guide will be a consolidated presentation of section 8(e) question and answer (Q&A) documents arranged under subheadings similar to the indices described above.

In response to a written request from the Chemical Manufacturers Association (CMA) for additional guidance in the areas of neurotoxic effects and environmental effects/releases, EPA agreed to perform an expedited review of a limited number of case histories to be submitted by CMA in early May. The Office of Pesticides and Toxic Substances (OPTS) is establishing a panel of EPA staff scientists to perform the expedited review of the case histories which are submitted. While the EPA panel can address endpoints of concern, CMA was asked to prioritize the submissions to focus attention on the key scientific questions, especially neurotoxicity/acute toxicity concerns. The EPA review will focus primarily on whether the case studies would be reportable under section 8(e). The rationale for EPA's conclusions and responses concerning the appropriateness of reporting will be provided as part of the section 8(e) reporting guide which has been described above. EPA will make every effort to complete the guide in early June and release it prior to the revised June 18, 1991, registration deadline/audit commencement date.

EPA requested that the environmental effects/release cases focus on areas that industry believes are problematic in terms of what is reportable under section 8(e). In order for EPA to respond more completely about the section 8(e) reportability of the provided environmental effects/release information cases, EPA also asked if the information is required to be submitted to another governmental authority and, if so, the identity of that authority and the timeframe for the reporting. The rationale for EPA's conclusions and responses concerning the appropriateness of reporting will be provided as part of the section 8(e) reporting guide described above. EPA will make every effort to complete the guide in early June and release it prior to the revised June 18, 1991, registration deadline/audit commencement date. However, if necessary because of a delay in completion of the guidance on the environmental effects/release information, reporting of this information under the TSCA Section 8(e) Compliance Audit Program will be put on a specific schedule which will be determined later based on when EPA completes and disseminates the guidance in this area.

Thus, to reflect the availability of the TSCA section 8(e) reporting guide, the second portion of the CAP Agreement language at Unit II.B.1 has been modified to read as follows:

....Upon Registration for the TSCA Section 8(e) Compliance Audit Program, the Regulatee will receive a copy of the TSCA Section 8(e) Policy Statement, the publication numbers of publicly available and previously published volumes of Section 8(e) "Status Reports" available through the National Technical Information Service, copies of Question and Answer documents developed in response to specific questions involving section 8(e), a document entitled "Substantiating Claims of Confidentiality," and the TSCA section 8(e) reporting guide.

EPA believes that the actions described above emphasize the Agency's strong commitment to making the TSCA Section 8(e) Compliance Audit Program a successful initiative. EPA hopes that providing the selected case histories and the section 8(e) reporting guide will enhance understanding of the TSCA section 8(e) program, and assist the regulated community as they participate in the TSCA Section 8(e) Compliance Audit Program.

III. Conclusions

EPA has announced modifications to the TSCA Section 8(e) Compliance Audit Program and the CAP Agreement. Any further information regarding this Audit Program or the CAP Agreement may be obtained from the contact person noted above.

Dated: April 24, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-10065 Filed 4-26-91; 8:45 am]

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Part VII

Environmental Protection Agency

Pesticide Tolerance for Procymidone; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300225C; FRL-3936-3]

RIN 2070-AB78

Pesticide Tolerance for Procymidone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a time-limited tolerance for residues of the fungicide procymidone, N-(3,5-dichlorophenyl)-1,2-dimethylcyclopropane-1,2-dicarboximide, in or on the raw agricultural commodity (RAC) wine grapes grown prior to January 1, 1990, at 7.0 parts per million (ppm). Sumitomo Chemical Co., Ltd., petitioned EPA to establish a maximum permissible level for residues of procymidone on grapes.

EFFECTIVE DATE: This regulation becomes effective April 26, 1991.

ADDRESSES: Written objections, identified by the document control number, [OPP-300225C], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, room 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lewis, Product Manager (PM) 21, (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)- 557-1900.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 25, 1990 (55 FR 39171), EPA issued an advanced notice of proposed rulemaking (ANPR) to solicit comment on its consideration of Sumitomo's petition to establish a tolerance of 5 ppm for residues of the fungicide procymidone on grapes and to establish immediately an interim tolerance of 7 ppm to last 1 year. The Agency issued this ANPR to (1) give its preliminary assessment of the risk posed by procymidone residues in imported wine, (2) set out its options for a decision, and (3) request public comment on key scientific and policy questions raised by this petition for tolerance.

After considering the comments received on the ANPR and after further review of the data submitted by Sumitomo, EPA issued a proposed rule in the Federal Register of February 6, 1991 (56 FR 4772), giving notice that Sumitomo Chemical Co., Ltd., had submitted a pesticide petition, PP OE3859, under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 et seq.). This document proposed to establish a time-limited tolerance for procymidone in wine grapes grown prior to January 1, 1990 at 7 ppm. In the Federal Register of February 20, 1991 (56 FR 6821), EPA reissued the proposed rule in its entirety to include certain statements in the proposed rule document that were inadvertently omitted in the February 6, 1991 issuance.

EPA in this document is establishing a time-limited tolerance for procymidone in wine grapes at 7 ppm. This tolerance has two conditions placed on it: (1) The tolerance will only be effective for four years, and (2) the tolerance will only apply to wine grapes grown in 1989 or before.

I. Comments on the Proposed Rule

In response to the procymidone proposed rule, 17 comments have been received.

1. Fifteen comments supported establishing a time-limited tolerance. A majority, including the Delegation of the Commission of the European Communities, French Embassy, Italian Embassy, and wine exporters and importers, also stated that permanent tolerances should be established as soon as possible. The French Embassy indicated that European wine growers could encounter serious difficulties and sustain major losses in grape production without procymidone to control botrytis.

EPA's response: As EPA stated in its proposal, EPA is unwilling to establish a tolerance for procymidone which is of any wider scope than necessary to address the extraordinary circumstances which warranted expedited consideration of the petition. Once the Agency receives all the data required, the petitioner's request for a permanent tolerance will be considered.

2. Food & Allied Service Trades (FAST) and Consumer Union/Natural Resources Defense Council (CU/NRDC) filed overlapping comments. First, CU/NRDC contended that EPA cannot legally establish a tolerance under the FFDCA unless the pesticide has been registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or an application for registration under FIFRA has been filed. CU/NRDC quotes EPA regulations in support of this argument. Second, FAST and CU/NRDC both assert that EPA does not have the authority to set interim tolerances other than interim or temporary tolerances for pesticides used pursuant to an experimental use permit under FIFRA. Third, FAST and CU/NRDC argue that EPA does not have sufficient toxicity and exposure data to establish a tolerance. Finally, FAST and CU/NRDC assert that EPA elevated economic concerns over safety concerns in proposing a tolerance for procymidone.

EPA received supplemental comments from Sumitomo responding to the comments filed by CU/NRDC. Sumitomo noted that the lack of a FIFRA registration was not a bar to a tolerance because it had petitioned for a tolerance under section 408(e) and that CU/NRDC cited no authority for the proposition that EPA could not put a time limitation on a tolerance. Sumitomo also disputed CU/NRDC's claim that EPA focused primary attention on economic considerations. Sumitomo cited the 11,000 pages of toxicology studies submitted to EPA and EPA's extensive review process for that data as demonstrating EPA's adherence to its statutory mandate.

EPA's response: CU/NRDC's first comment is incorrect. A tolerance may be established for a pesticide not registered under FIFRA. The FFDCA provides two separate petition procedures for obtaining a tolerance. Under section 408(d) of the FFDCA, any person who has registered, or submitted an application for registration, under FIFRA may file a petition for tolerance. Under section 408(e), "[t]he Administrator may at any time, upon his own initiative or upon the request of any interested party, propose the issuance of a regulation establishing a tolerance * * *." The regulations quoted by CU/NRDC which appear to support their contention apply only to section 408(d) petitions. See 40 CFR 180.7(a). Regulations governing section 408(e) petitions are contained in 40 CFR 180.29. Neither section 408(e) nor 40 CFR 180.29 in any way restricts section 408(e) petitions to pesticides registered, or for which registration application has been submitted, under FIFRA.

NRDC argued in comments to the ANPR that EPA had the authority to put time limitations on tolerances only for temporary tolerances issued in connection with experimental use permits. In response, EPA explained in the procymidone tolerance proposal that the authority to grant temporary tolerances in section 408(j) did not restrict the broad general authority to grant tolerances in section 408(b) which was being exercised in this instance. FAST and CU/NRDC add essentially nothing new in this round of comments. FAST states only that NRDC's comments were not adequately responded to by EPA. CU/NRDC cite a case (National Coalition Against the Misuse of Pesticides v. Thomas, 815 F.2d 1579 (D.C. Cir. 1987)) which even they acknowledge does not address the issue. CU/NRDC also reference the regulations pertaining to temporary tolerances established in connection with experimental use permits (40 CFR 180.31). In response to FAST, EPA would reiterate that the creation of authority to establish tolerances for special circumstances (experimental uses of pesticides) does not restrict EPA's ability to place conditions on tolerances issued under its general tolerance-setting authority. In response to CU/NRDC, EPA would note that the regulations pertaining to section 408(j) temporary tolerances issued in connection with experimental use permits have no relevance to tolerances established under section 408(b)'s general tolerance authority.

FAST and CU/NRDC also argue that EPA has inadequate information on toxicity and exposure to establish a tolerance. The basis for this conclusion is that EPA is requiring that several studies be repeated and that EPA's independent Scientific Advisory Panel concurred with EPA that several studies should be repeated to reduce the level of uncertainty. FAST and CU/NRDC, however, make no attempt to contest EPA's and the Scientific Advisory Panel's explanation of why, despite any uncertainties due to deficiencies in the existing studies, the data are sufficient (1) to make a risk assessment and (2) to conclude that the risks from procymidone are low.

Finally, FAST and CU/NRDC contend that EPA has elevated economic issues over public health concerns. FAST and CU/NRDC argue that the deciding factors in EPA's proposal to establish the procymidone tolerance were the disruption of foreign trade and the impact on exporting countries which resulted from the absence of a procymidone tolerance. That is incorrect. In establishing tolerances under section 408, EPA is required to focus principally on factors related to the public health. As noted by CU/NRDC, it has been held that "health factors * * * [must] be at the forefront of EPA's deliberations." *National Coalition Against the Misuse of Pesticides v. Thomas*, 809 F.2d 875, 882 (D.C. Cir. 1987) ("*NCAMP I*"). A health factor of central importance to any tolerance determination is the degree of risk posed by the pesticide. EPA's focus throughout this rulemaking proceeding has been directed precisely at that issue. Both the ANPR and the tolerance proposal discussed in detail EPA's findings from analysis of the scientific data on procymidone. EPA also took the unusual step of requesting the advice of the independent Scientific Advisory Panel created under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act on potential health risks of procymidone exposure. Both EPA scientists and the Scientific Advisory Panel agreed that the risk posed by procymidone was low. EPA's conclusion in this final rule is that the risk posed by procymidone is so slight that the proposed procymidone tolerance would be protective of public health. The other statutory public health factors which under section 408 must be considered in establishing a tolerance also support this determination. First, in the absence of a procymidone tolerance, the adequacy and affordability of the food supply would be adversely affected. It is undisputed that significant amounts of wine would be excluded from the U.S. if a tolerance is not established, with resulting ramifications on both the supply and cost of wine. Second, since this is the first tolerance for procymidone, consumers do not have other exposures to procymidone which must be taken into account.

EPA has candidly acknowledged that the potential trade implications posed by the procymidone situation were considered by EPA in evaluating Sumitomo's petition. EPA took into account potential impacts on both foreign and U.S. economies and the public health of U.S. consumers. The U.S. Court of Appeals for the District of Columbia Circuit has held that to the extent international trade factors implicate the public health of U.S.consumers those factors are central to the required public health determination under section 408. *National Coalition Against the Misuse of Pesticides v. Thomas*, 815 F.2d 1579, 1582 (D.C. Circuit 1987); *NCAMP I*, 809 F.2d at 882. Further, that court held that impact on foreign economies even where that impact is unrelated to U.S. public health may be treated by EPA as having "some relevance" to its public health determination. *NCAMP I*, 809 F.2d at 882. With the procymidone petition, however, EPA's consideration of trade implications was more narrow than either of the two circumstances contemplated by the District of Columbia Circuit Court. EPA's consideration of trade implications did not relate to its public health determination but solely to the timing of EPA's action on the petition and the scope of any tolerance. Under normal circumstances, a petition such as Sumitomo's would have simply been held by EPA while the petitioner redid the studies which did not meet EPA guidelines. As a matter of administrative efficiency, EPA is unwilling to devote its resources to reviewing studies which are not fully acceptable. In this case, EPA decided that because of the overwhelming trade issues, it would deviate from its usual administrative practice and review studies which did not meet all guideline requirements to determine if nonetheless there was sufficient information to make the statutory "public health" finding under section 408. The trade issues, to an extent, also shaped the scope of the tolerance in that EPA wanted to ensure that any deviation from normal administrative practice was narrowly limited to the circumstances which justified taking the extraordinary step. Thus, trade issues were relied upon to justify an expedited decision, and they shaped the scope of what was under consideration; however, they did not affect EPA's ultimate decision on whether or not to establish the tolerance. EPA's decision-making procedure for establishment of a procymidone tolerance fully adhered to the requirement under section 408 that "health factors * * * be at the forefront of EPA's deliberations." *Id.*

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule.

II. Peer Review

When the proposed rule was published, the Health Effects Division (HED) Peer Review Committee of the Office of Pesticide Programs was reviewing the Scientific Advisory Panel's conclusion to classify procymidone as a Group C— Possible Human Carcinogen. The Panel had cited only the testicular tumors seen in the chronic rat study. The Peer Review Committee did not concur with the Scientific Advisory Panel, but concludes that the evidence supports a Group B_2— Probable Human Carcinogen classification. In addition to the testicular tumors, the Group B_2 classification was based on pituitary adenomas in female rats and liver adenomas and combined adenomas/carcinomas in female mice. Additionally, a variant of hepatocellular carcinoma, hepatoblastoma, had a significant trend in male mice. The HED Peer Review Committee recommendations noted that this trend may be indicative of a progression to a more anaplastic state. While the tumor incidence in mice was not greatly elevated, the effects were seen at doses well below an adequate top dose, and

the available evidence for a mechanism involving altered hormonal influences was not conclusive.

III. Projected Procymidone Risks

No modifications of the projected risks posed by procymidone are required as a result of the Peer Review Committee's review of the Scientific Advisory Panel's report because EPA had in its earlier risk assessment classified procymidone under Group B.

The upper bound to the carcinogenic risk is estimated to be 5.0×10^{-6} for a high consumer and 4.6×10^{-7} for an average consumer assuming a theoretical maximum residue of 3 ppm in wine based on the 7 ppm level in wine grapes. Actual residues in wine probably will be less. The Food and Drug Administration (FDA) is monitoring approximately 1,100 imported wine samples collected over the past year (since February 1990) found the highest level of only 0.6 ppm in wine. The incidence of positive samples (i.e., at or greater than 0.02 ppm) was 9 percent, and the average positive finding was 0.06 ppm. Assuming that a wine consumer chooses vintages from before 1990 for the next 10 years and residue levels of procymidone in wine are at 0.6 ppm, the highest level detected by FDA, the upper bound on dietary carcinogenic risk is estimated for the high consumer to be 1.9×10^{-7} and for the average consumer to be 1.8×10^{-8}. The average and high consumers were derived for wine drinkers only and do not include the 53 percent of the U.S. population who claim not to have drunk any wine in approximately 1 year.

Procymidone appears to cause effects on reproduction and development of reproductive organs. Since neither a lowest effect level (LEL) nor a no-observed-effect level (NOEL) has been established, a quantitative assessment is not possible at this time. However, in view of the 4 orders of magnitude difference between the dose that did not cause frank effects in rats and exposure even for the 99th percentile of wine consumers, it does not appear that reproductive effects would be expected.

Developmental toxicity is also not expected. The NOEL from the accepted study is above 1,000 mg/kg/day; exposure to the 99th percentile of wine consumers is expected to be approximately 7 orders of magnitude less.

Based on the data and information considered, the Agency concludes that the time-limited tolerances will protect the public health because the risks posed by exposure to procymidone in wine grapes grown prior to 1990 are low. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objection. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims to the contrary; and resolution of factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A Certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 23, 1991.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.455, to read as follows:

§ 180.455 Procymidone; tolerances for residues.

A tolerance is established for the residues of the fungicide procymidone, N-(3,5-dichlorophenyl)-1,2-dimethylcyclopropane-1,2-dicarboximide, in or on the following raw agricultural commodity:

Commodity	Parts per million	Expiration date
Wine grapes grown prior to January 1, 1990	7.0	April 28, 1995

There are no U.S. registrations as of February 20, 1991.

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S. 534/Pub. L. 102-32

To authorize the President to award a gold medal on behalf of the Congress to General H. Norman Schwarzkopf, and to provide for the production of bronze duplicates of such medal for sale to the public. (Apr. 23, 1991; 105 Stat. 175; 2 pages) Price: $1.00

S. 565/Pub. L. 102-33

To authorize the President to award a gold medal on behalf of the Congress to General Colin L. Powell, and to provide for the production of bronze duplicates of such medal for sale to the public. (Apr. 23, 1991; 105 Stat. 177; 2 pages) Price: $1.00

S.J. Res. 118/Pub. L. 102-34

To designate April 22, 1991, as "Earth Day" to promote the preservation of the global environment. (Apr. 23, 1991; 105 Stat. 179; 2 pages) Price: $1.00

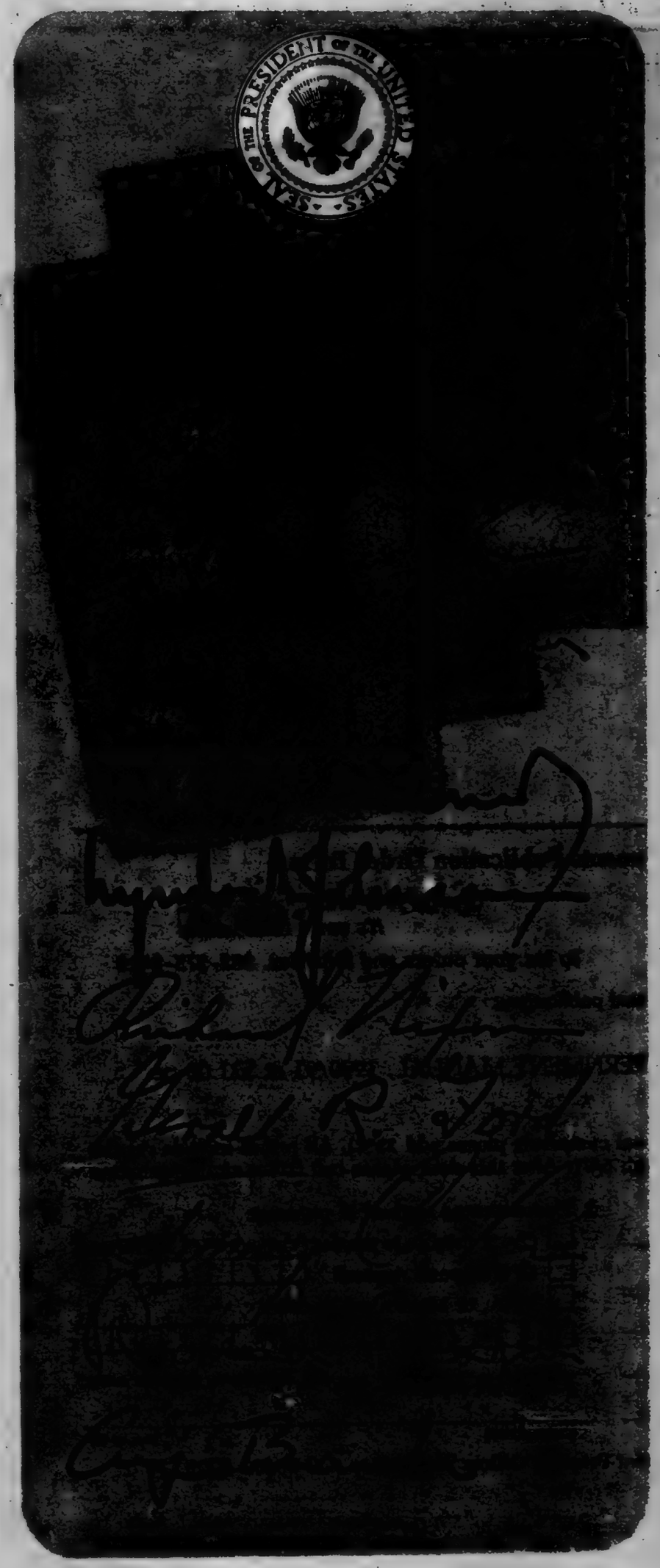

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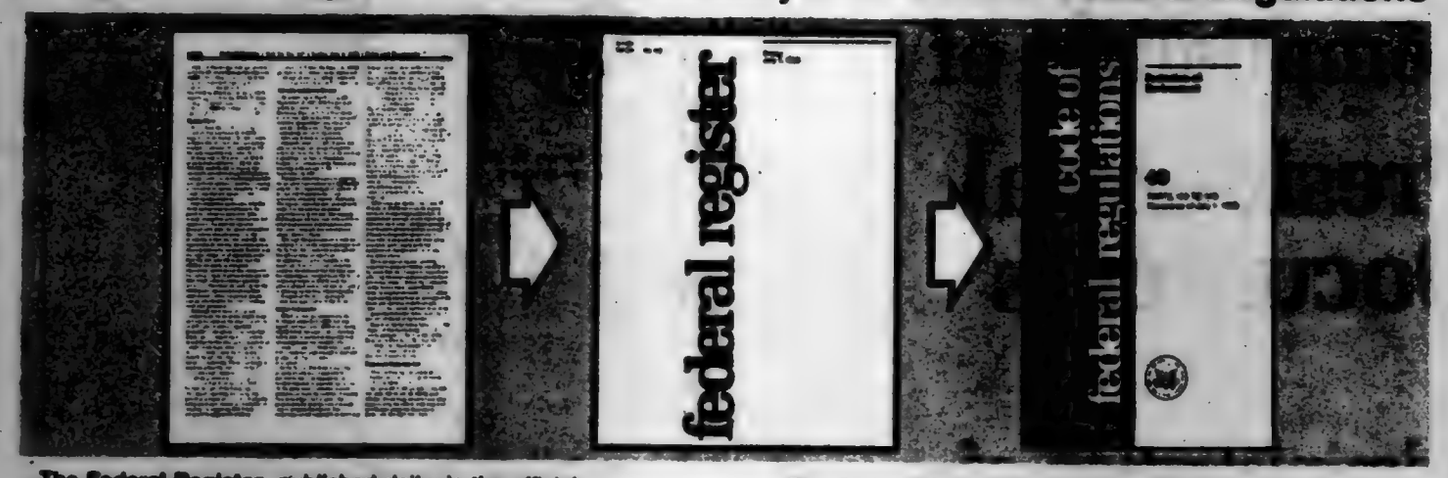

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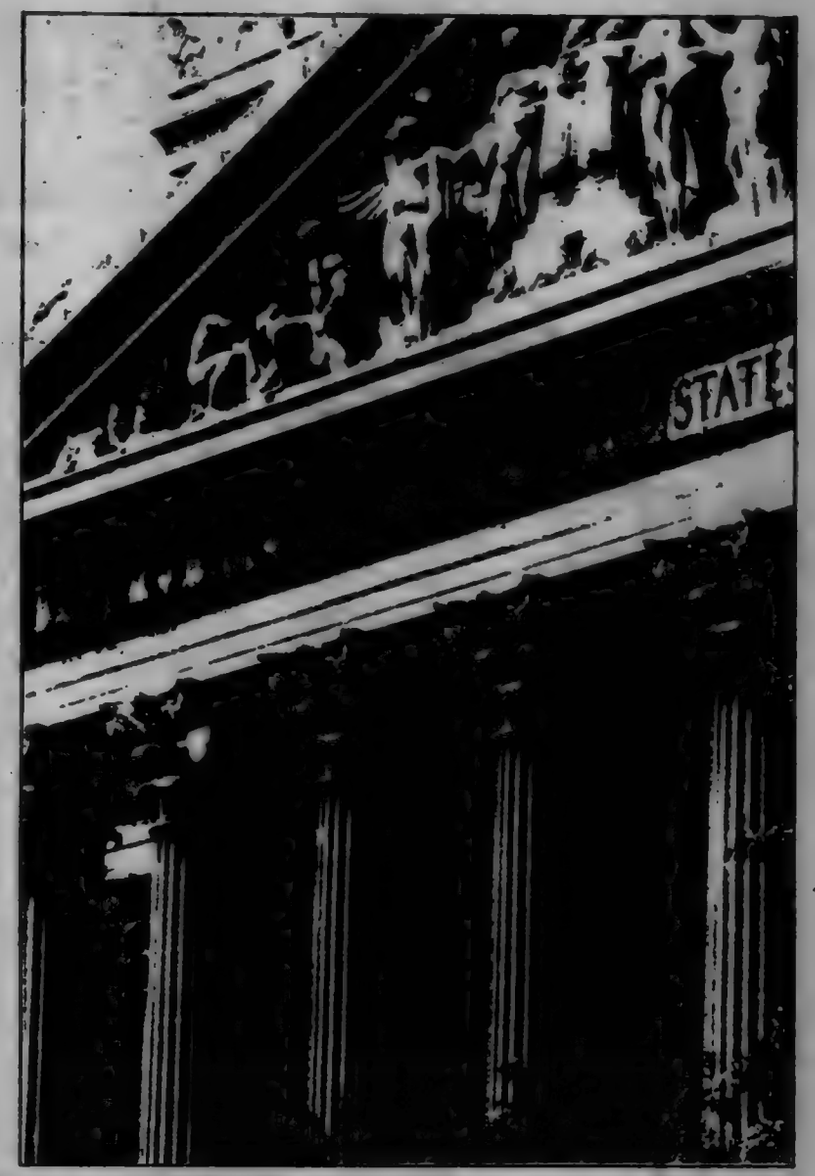

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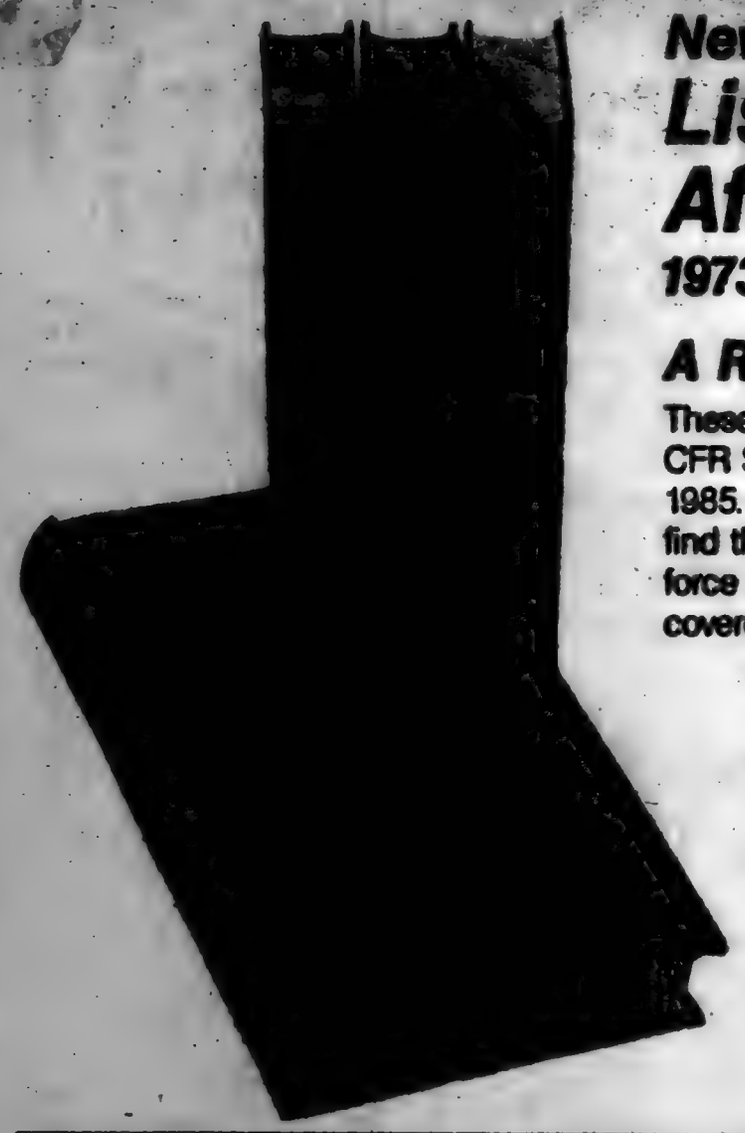

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WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: May 2, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202-523-5240

NEW YORK, NY

WHEN: May 21, at 9:00 am
WHERE: 26 Federal Plaza
Room 305 B and C
New York, NY
RESERVATIONS: Federal Information Center
1-800-347-1997

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202-523-5240 (voice); 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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Presidential Documents

Title 3—

The President

Proclamation 6290 of April 25, 1991

National Day of Prayer, 1991

By the President of the United States of America

A Proclamation

While we owe constant praise to Almighty God, we Americans have added cause for thanksgiving on this National Day of Prayer because of the recent coalition victory in the Persian Gulf. However, our joy and gratitude are inspired by far more than military triumph; on this special day of prayer held in the 200th year of our Bill of Rights, we give thanks for America's long and abiding legacy of freedom.

During the past 200 years, the ideals enshrined in our Bill of Rights have gained favor around the world. Even where tyrants have sought to rule by repression and terror, the spirit of freedom has endured. This is because, as Alexander Hamilton once noted, "the Sacred Rights of Mankind are not to be rummaged for among old parchments or musty records. They are written, as with a sunbeam, in the whole volume of human nature, by the Hand of the Divinity itself, and can never be erased or obscured by mortal power." Almighty God has granted each of us free will and inscribed in our hearts the unalienable dignity and worth that come from being made in His image.

Because our dignity and freedom are gifts of our Creator, we have a duty to cherish them, always using the latter to choose life and goodness. On this occasion we do well to pray for the wisdom and the resolve to do just that.

As an elevation of the soul's eyes to Heaven, prayer helps us to distinguish between liberty and license—to recognize that which is the grateful exercise of free will and that which is its corruption. Through prayer, we turn our hearts toward their real home and, in so doing, gain a sense of proper direction and higher purpose.

Faith and prayer are as important to guiding the conduct of nations as they are to individuals. We Americans, Abraham Lincoln once wrote, "have been the recipients of the choicest bounties of heaven." A nation so richly blessed has equally great responsibilities. Indeed, we have recently been reminded that "much will be asked of those to whom much has been given." The crucible of war has once again tested our Nation's character, and it has shown us both the need for and the power of prayer.

On this National Day of Prayer, let us acknowledge with heartfelt remorse the many times we have failed to appreciate the Lord's gifts and to obey His Commandments. Giving humble thanks for His mercy, let us vow to fulfill not only our responsibilities but also our potential as one Nation under God. Most important, let us make our prayers pleasing to Him by the regular practice of public and private virtue and by a genuine renewal of America's moral heritage. As Scripture says, "righteousness exalteth a nation, but sin is a reproach to any people."

Since the approval of the joint resolution of the Congress on April 17, 1952, calling for the designation of a specific day to be set aside each year as a National Day of Prayer, recognition of such a day has become a cherished annual event. Each President since then has proclaimed a National Day of Prayer annually under the authority of that resolution, continuing a tradition

that dates back to the Continental Congress. By Public Law 100-307, the first Thursday in May of each year has been set aside as a National Day of Prayer.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim May 2, 1991, as a National Day of Prayer. I urge all Americans to gather together on that day in homes and places of worship to pray, each after his or her own manner, for God's continued blessing on our families and our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this 25 day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush.

[FR Doc. 91-[illegible]
Filed 4-26-91; 4:02 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6281 of April 26, 1991

National Organ and Tissue Donor Awareness Week, 1991 and 1992

By the President of the United States of America

A Proclamation

Through organ and tissue transplantation, thousands of Americans have been given the chance to enjoy fuller, longer lives. For example, bone marrow transplants have brought hope and healing to victims of cancer; new corneas have helped to bring sight to the blind; and the gift of a new heart, lung, or kidney has enabled many gravely ill Americans to gain improved health.

Much has been done in recent years to encourage public support of organ and tissue donation. Millions of Americans have learned about transplants through regional and local donor programs, voluntary health agencies, and the media. Government grants and our national transplantation system have also helped to encourage organ and tissue donation. Many Americans have responded to public awareness campaigns by signing a donor card or by indicating on their driver's licenses their willingness to donate.

However, despite our best efforts and the development of worldwide transplant programs, the waiting list of those in need of donated organs or tissues continues to grow. The Department of Health and Human Services reports that a new name is added to our national waiting list every 30 minutes. As many as 25 percent of the patients waiting for specific organs will die before a well-matched donor is found.

As compelling as these facts are, it is both fitting and proper that we pause to reflect carefully on organ and tissue transplantation. Every donation is a profound act of personal sacrifice and generosity. Every transplant underscores the power of medicine and the precious nature of human life. Because God has granted every person equal dignity and worth, because human life must always be treated with reverence and care, all Americans should give careful thought to becoming organ and tissue donors. This includes learning the facts about transplantation and discussing any moral and ethical concerns with one's family and doctor.

When pursued in a thoughtful and reverent manner, organ and tissue transplantation is a medical procedure that reflects not only the highly sophisticated nature of our Nation's health care system but also the traditional generosity and compassion of the American people.

To promote public awareness of organ and tissue donation, the Congress, by House Joint Resolution 218, has designated the weeks beginning April 21, 1991, and April 19, 1992, as "National Organ and Tissue Donor Awareness Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the weeks of April 21 through April 27, 1991, and April 19 through April 25, 1992, as National Organ and Tissue Donor Awareness Week. I ask health care professionals, public and private service organizations, and all Americans to join in supporting this humanitarian cause.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-10304
Filed 4-26-91; 4:02 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6282 of April 25, 1991

To Modify Duty-Free Treatment Under the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to Title V of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2461 *et seq.*), the President may designate specified articles provided for in the Harmonized Tariff Schedule of the United States (HTS) as eligible for preferential tariff treatment under the Generalized System of Preferences (GSP) when imported from designated beneficiary developing countries.

2. Pursuant to section 504(c) of the 1974 Act (19 U.S.C. 2464(c)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries pursuant to section 504(c)(6) of the 1974 Act, are subject to limitations on the preferential treatment afforded under the GSP. Pursuant to section 504(c)(5) of the 1974 Act, a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in section 504(c)(1) (after application of paragraph (c)(2)) during the preceding calendar year. Further, pursuant to section 504(d)(2) of the 1974 Act (19 U.S.C. 2464(d)(2)), the President may disregard the limitations provided in section 504(c)(1)(B) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to $5,000,000 as the gross national product of the United States for that calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1979.

3. Sections 502(b)(7) and 502(c)(7) of the 1974 Act (19 U.S.C. 2462(b)(7) and 2462(c)(7)) provide that a country that has not taken or is not taking steps to afford internationally recognized worker rights, as defined in section 502(a)(4) of the 1974 Act (19 U.S.C. 2462(a)(4)), is ineligible for designation as a beneficiary developing country for purposes of the GSP. Pursuant to section 504 of the 1974 Act, the President may withdraw, suspend, or limit the application of duty-free treatment under the GSP with respect to any article or with respect to any country upon consideration of the factors set forth in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)).

4. Pursuant to sections 501, 503(a), and 504(a) of the 1974 Act (19 U.S.C. 2461, 2463(a), and 2464(a)), in order to subdivide and amend the nomenclature of existing provisions of the HTS to modify the GSP, I have determined, after taking into account information and advice received under section 503(a), that the HTS should be modified to adjust the original designation of eligible articles. In addition, pursuant to Title V of the 1974 Act, I have determined that it is appropriate to designate specified articles provided for in the HTS as eligible for preferential tariff treatment under the GSP when imported from designated beneficiary developing countries, and that such treatment for other articles should be terminated. I have also determined, pursuant to sections 504(a), (c)(1), and (c)(2) of the 1974 Act, that certain beneficiary countries should no longer receive preferential tariff treatment under the GSP with respect to certain eligible articles. Further, I have determined, pursuant to

section 504(c)(5) of the 1974 Act, that certain countries should be redesignated as beneficiary developing countries with respect to specified previously designated eligible articles. These countries have been previously excluded from benefits of the GSP with respect to such eligible articles pursuant to section 504(c)(1) of the 1974 Act. Last, I have determined that section 504(c)(1)(B) of the 1974 Act should not apply with respect to certain eligible articles pursuant to section 504(d)(2) of the 1974 Act.

5. Pursuant to sections 502(b)(7), 502(c)(7), and 504 of the 1974 Act (19 U.S.C. 2462(b)(7), 2462(c)(7), and 2464), I have determined that it is appropriate to provide for the suspension of preferential treatment under the GSP for articles that are currently eligible for such treatment and that are imported from Sudan. Such suspension is the result of my determination that Sudan has not taken and is not taking steps to afford internationally recognized worker rights, as defined in section 502(a)(4) of the 1974 Act (19 U.S.C. 2462(a)(4)).

6. Pursuant to sections 501 and 502 of the 1974 Act (19 U.S.C. 2461 and 2462), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Czechoslovakia as a beneficiary developing country for purposes of the GSP.

7. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other Acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to Title V and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide benefits under the GSP to specified designated eligible articles when imported from any designated beneficiary developing country, the HTS is modified as provided in Annex I to this proclamation.

(2)(a) In order to provide benefits under the GSP to specified designated eligible articles when imported from any designated beneficiary developing country, the Rates of Duty 1-Special subcolumn for the HTS subheadings enumerated in Annex II(a)(1) and II(b)(1) is modified by inserting in the parentheses the symbol "A" as provided in such Annexes to this proclamation.

(b) In order to provide benefits under the GSP to a specified designated eligible article and in order that a country should not be treated as a beneficiary developing country with respect to such eligible article for purposes of the GSP, the Rates of Duty 1-Special subcolumn for the HTS subheadings enumerated in Annex II(b)(2) is modified by inserting in the parentheses the symbol "A*" as provided in such Annex to this proclamation.

(c) In order to provide preferential tariff treatment under the GSP to certain countries which have been excluded from the benefits of the GSP for certain eligible articles imported from such countries, following my determination that a country previously excluded from receiving such benefits should again be treated as a beneficiary developing country with respect to such article, the Rates of Duty 1-Special subcolumn for each of the HTS provisions enumerated in Annex II(a)(2) and II(b)(3) to this proclamation is modified: (i) by deleting from such subcolumn for such HTS provisions the symbol "A*" in parentheses, and (ii) by inserting in such subcolumn the symbol "A" in lieu thereof.

(d) In order to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to an eligible article for purposes of the GSP, the Rates of Duty 1-Special subcolumn for each of the HTS provisions enumerated in Annex II(b)(4) to this proclamation is modified: (i) by deleting from such subcolumn for such HTS provisions the symbol "A" in parentheses, and (ii) by inserting in such subcolumn the symbol "A*" in lieu thereof.

(3) In order to provide for the designation of Czechoslovakia as a beneficiary developing country for purposes of the GSP, to provide for the suspension of preferential treatment under the GSP for Sudan, to provide that one or more countries which have not been treated as beneficiary developing countries with respect to an eligible article should be redesignated as beneficiary developing countries with respect to such article for purposes of the GSP, and to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to an eligible article for purposes of the GSP, general note 3(c)(ii) to the HTS is modified as provided in Annex III to this proclamation.

(4) In order to provide for the continuation of previously proclaimed staged reductions on Canadian goods in the HTS provisions modified in Annex I to this proclamation, effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex IV to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn followed by the symbol "CA" in parentheses for each of the HTS subheadings enumerated in such Annex shall be deleted and the rate of duty provided in such Annex inserted in lieu thereof on the dates specified.

(5) In order to provide for the continuation of previously proclaimed staged reductions on products of Israel in the HTS subheadings modified in Annex I to this proclamation, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex V to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn followed by the symbol "IL" in parentheses for each of the HTS subheadings enumerated in such Annex shall be deleted and the rate of duty provided in such Annex inserted in lieu thereof on the dates specified.

(6) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(7)(a) The amendment made by Annex III(a) of this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after the date of publication of this proclamation in the **Federal Register**.

(b) The amendments made by Annexes I(a), II(a), and III(b) of this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after May 1, 1991.

(c) The amendments made by Annexes I(b), II(b), and III(c) of this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1991.

(d) The amendments made by Annexes IV and V of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates indicated for the respective Annex columns.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-10309
Filed 4-25-91; 4:10 pm]
Billing code 3195-01-M

Annex I

Notes:

1. Bracketed matter is included to assist in the understanding of proclaimed modifications.

2. The following supersedes matter now in the Harmonized Tariff Schedule of the United States (HTS). The subheadings and superior descriptions are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

(a) Effective with respect to articles both: (i) imported on or after January 1, 1976 and (ii) entered, or withdrawn from warehouse for consumption, on or after May 1, 1991.

(1) Subheading 2903.69.50 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Halogenated...:]			
	[Halogenated...:]			
	[Other:]			
"2903.69.05	3-Bromo-α,α,α-trifluorotoluene; 2-Chloro-5-bromo-α,α,α-trifluorotoluene; and α-Chloro-3-methyltoluene	9.1%	Free (A,E) 2.8% (IL) 3.6% (CA)	15.4¢/kg + 71%"
	[Other:]			
"2903.69.60	Other	9.1%	Free (E) 2.8% (IL) 3.6% (CA)	15.4¢/kg + 71%"

(2) Subheading 2904.90.45 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Sulfonated...:]			
	[Other:]			
"2904.90.15	4-Chloro-3-nitro-α,α,α-trifluorotoluene; 2-Chloro-5-nitro-α,α,α-trifluorotoluene; and 4-Chloro-3,5-dinitro-α,α,α-trifluorotoluene	3.7¢/kg + 15.9%	Free (A,E,IL) 1.4¢/kg + 6.3% (CA)	15.4¢/kg + 51%"
	[Other:]			
	[Aromatic:]			
"2904.90.47	Other	3.7¢/kg + 15.9%	Free (E,IL) 1.4¢/kg + 6.3% (CA)	15.4¢/kg + 51%"

(3) Subheading 2908.10.30 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Halogenated...:]			
	[Derivatives...:]			
"2908.10.15	3-Hydroxy-α,α,α-trifluorotoluene	13.5%	Free (A,CA,E)	15.4¢/kg + 62%"
	[Other:]			
"2908.10.35	Products described in additional U.S. note 3 to section VI	13.5%	Free (CA,E)	15.4¢/kg + 62%"

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(a) (con.)

(4) Subheading 2916.39.10 is superseded by:

	[Unsaturated...:]			
	[Aromatic...:]			
	[Other:]			
"2916.39.04	Benzoic anhydride; tert-Butyl peroxybenzoate; m-Chloroperoxybenzoic acid; p-Nitrobenzoyl chloride; 2-Nitro-m-toluic acid; and 3-Nitro-o-toluic acid	6.7%	Free (CA,E,IL)	15.4¢/kg + 40.5%
2916.39.08	4-Chloro-3-nitrobenzoic acid	6.7%	Free (A,CA,E,IL)	15.4¢/kg + 40.5%"

(5) Subheading 2916.39.30 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Unsaturated...:]			
	[Aromatic...:]			
	[Other:]			
"2916.39.12	4-Chloro-3,5-dinitrobenzoic acid and its esters	13.5%	Free (A,E,IL) 5.4% (CA)	15.4¢/kg + 57%"
	[Other:]			
	[Other:]			
"2916.39.40	Products described in additional U.S. note 3 to section VI	13.5%	Free (E,IL) 5.4% (CA)	15.4¢/kg + 57%"

(6) Subheading 2916.39.50 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Unsaturated...:]			
	[Aromatic...:]			
	[Other:]			
"2916.39.16	4-Chlorobenzoic acid	3.7¢/kg + 17.9%	Free (A,E,IL) 1.4¢/kg + 7.1% (CA)	15.4¢/kg + 57%"
	[Other:]			
	[Other:]			
"2916.39.60	Other	3.7¢/kg + 17.9%	Free (E,IL) 1.4¢/kg + 7.1% (CA)	15.4¢/kg + 57%"

(7) Subheading 2921.42.50 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Amine-function...:]			
	[Aromatic...:]			
	[Aniline...:]			
"2921.42.24	Metanilic acid; and Sulfanilic acid	2.4¢/kg + 18.8%	Free (A,E,IL) 0.9¢/kg + 7.5% (CA)	15.4¢/kg + 60%"
	[Other:]			
	[Other:]			
"2921.42.60	Other	2.4¢/kg + 18.8%	Free (E,IL) 0.9¢/kg + 7.5% (CA)	15.4¢/kg + 60%"

Conforming change: HTS headings 9902.30.28, 9902.30.30 and 9902.30.31 are each modified by striking out "2921.42.50" and inserting "2921.42.60" in lieu thereof.

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(a) (con.)

(8) Subheading 2921.43.50 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Amine-function...:]			
	[Aromatic...:]			
	[Toluidines...:]			
"2921.43.18	α,α,α-Trifluoro-m-toluidine; α,α,α-Trifluoro-o-toluidine; and α,α,α-Trifluoro-6-chloro-m-toluidine	2.4¢/kg + 18.8%	Free (A,E,IL) 0.9¢/kg + 7.5% (CA)	15.4¢/kg + 80%"
	[Other:]			
"2921.43.60	Other	2.4¢/kg + 18.8%	Free (E,IL) 0.9¢/kg + 7.5% (CA)	15.4¢/kg + 80%"

Conforming changes: HTS heading 9902.29.28 is modified by striking out "2921.43.50" and inserting "2921.43.18" in lieu thereof. HTS heading 9902.30.33 is modified by striking out "2921.43.50" and inserting "2921.43.60" in lieu thereof.

(9) Subheading 2924.29.45 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Carboxyamide-function...:]			
	[Cyclic...:]			
	[Other:]			
	[Aromatic:]			
"2924.29.02	Acetanilide	3.7¢/kg + 10.1%	Free (A,E,IL) 1.4¢/kg + 7.2% (CA)	15.4¢/kg + 58%"
	[Other:]			
	[Other:]			
	[Other:]			
"2924.29.47	Other	3.7¢/kg + 10.1%	Free (E,IL) 1.4¢/kg + 7.2% (CA)	15.4¢/kg + 58%"

Conforming changes: HTS heading 9902.30.67 is modified by striking out "2924.29.45" and inserting "2924.29.47" in lieu thereof.

(10) Subheading 8703.10.00 is superseded by:

	[Motor cars...:]			
"8703.10	Vehicles specially designed for traveling on snow, golf carts and similar vehicles:			
8703.10.10	Vehicles specially designed for traveling on snow	2.5%	Free (B,CA,E,IL)	10%
8703.10.50	Other	2.5%	Free (A,B,CA,E,IL)	10%"

(b) Effective with respect to articles both: (i) imported on or after January 1, 1976 and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1991.

(1) Subheading 0406.10.00 is superseded by:

	[Cheese...:]			
"0406.10	Fresh cheese (including whey cheese), not fermented and curd:			
0406.10.10	Cottage	10%	Free (A,E,IL) 7% (CA)	35%
0406.10.50	Other	10%	Free (E,IL) 7% (CA)	35%"

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(b) (con.)

(2) Subheading 0701.90.00 is superseded by:

	[Potatoes...:]			
"0701.90	Other:			
0701.90.10	Yellow (Solano) potatoes	0.77¢/kg	Free (A,E,IL) 0.5¢/kg (CA)	1.7¢/kg
0701.90.50	Other	0.77¢/kg	Free (E,IL) 0.5¢/kg (CA)	1.7¢/kg"

(3) Subheading 0710.80.95 is superseded by:

	[Vegetables...:]			
	[Other vegetables:]			
	[Other:]			
	[Reduced in size:]			
"0710.80.93	Okra	17.5%	Free (A,E,IL) 12.2% (CA)	35%
0710.80.97	Other	17.5%	Free (E,IL) 12.2% (CA)	35%"

(4) Subheading 2901.10.20 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Acyclic hydrocarbons:]			
	[Saturated:]			
"2901.10.30	n-Pentane and isopentane	5%	Free (A,CA,E,IL)	25%"
	[Other:].			
"2901.10.40	Derived in whole or in part from petroleum, shale oil or natural gas	5%	Free (CA,E,IL)	25%"

(5) Subheading 2904.90.10 is superseded by:

	[Sulfonated...:]			
	[Other:]			
	"Monochloromononitrobenzenes:			
2904.90.04	o-Nitrochlorobenzene; and p-Nitrochlorobenzene	10%	Free (A,E,IL) 4% (CA)	15.4¢/kg + 50%
2904.90.08	Other	10%	Free (E,IL) 4% (CA)	15.4¢/kg + 50%"

(6) Subheading 2907.29.50 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Phenols...:]			
	[Polyphenols:]			
	[Other:]			
"2907.29.20	4,4'-Biphenol; and tert-Butylhydroquinone	7.2%	Free (A,CA,E)	15.4¢/kg + 44%"
	[Other:]			
"2907.29.60	Other	7.2%	Free (CA,E)	15.4¢/kg + 44%"

Conforming change: HTS heading 9902.30.13 is modified by striking out "2907.29.50" and inserting "2907.29.60" in lieu thereof.

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(b) (con.)

(7) Subheading 2908.90.10 is superseded by:

	[Halogenated...:]			
	[Other:]			
	"Nitrophenols:			
2908.90.04	p-Nitrophenol	8.1%	Free (A,E,IL) 3.2% (CA)	15.4¢/kg + 51.5%
2908.90.08	Other	8.1%	Free (E,IL) 3.2% (CA)	15.4¢/kg + 51.5%"

(8) Subheading 2921.42.60 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Amino-function...:]			
	[Aromatic...:]			
	[Aniline...:]			
"2921.42.23	3,4-Dichloroaniline	2.4¢/kg + 18.8%	Free (A,E,IL) 0.9¢/kg + 7.5% (CA)	15.4¢/kg + 60%"
	[Other:]			
	[Other:]			
"2921.42.70	Other	2.4¢/kg + 18.8%	Free (E,IL) 0.9¢/kg + 7.5% (CA)	15.4¢/kg + 60%"

Conforming change: HTS headings 9902.30.28, 9902.30.30 and 9902.30.31 are each modified by striking out "2921.42.60" and inserting "2921.42.70" in lieu thereof.

(9) Subheading 2924.29.47 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Carboxyamide-function...:]			
	[Cyclic...:]			
	[Other:]			
	[Aromatic:]			
"2924.29.04	2-Methoxy-5-acetamino-N,N-bis(2-acetoxyethyl)aniline	3.7¢/kg + 18.1%	Free (A,E,IL) 1.4¢/kg + 7.2% (CA)	15.4¢/kg + 58%"
	[Other:]			
	[Other:]			
	[Other:]			
"2924.29.46	Other	3.7¢/kg + 18.1%	Free (E,IL) 1.4¢/kg + 7.2% (CA)	15.4¢/kg + 58%"

Conforming changes: HTS heading 9902.30.67 is modified by striking out "2924.29.47" and inserting "2924.29.46" in lieu thereof.

(10) Subheading 2929.10.50 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Compounds...:]			
	[Isocyanates:]			
"2929.10.30	3,4-Dichlorophenylisocyanate	2.9¢/kg + 16.2%	Free (A,CA,E,IL)	15.4¢/kg + 52%"
	[Other:]			
"2929.10.60	Other	2.9¢/kg + 16.2%	Free (CA,E,IL)	15.4¢/kg + 52%"

Conforming changes: HTS heading 9902.30.71 is modified by striking out "2929.10.50" and inserting "2929.10.60" in lieu thereof.

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(b) (con.)

(11) Subheading 2934.20.50 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Other heterocyclic...:]			
	[Compounds...:]			
"2934.20.05	N-tert-Butyl-2-benzothiazolesulfenamide	3.7¢/kg + 16.2%	Free (A,E,IL) 1.4¢/kg + 6.4% (CA)	15.4¢/kg + 52%"
	[Other:]			
	[Other:]			
"2934.20.60	Other	3.7¢/kg + 16.2%	Free (E,IL) 1.4¢/kg + 6.4% (CA)	15.4¢/kg + 52%"

(12) Subheading 3205.00.10 is superseded by:

	[Color lakes...:]			
"3205.00.20	Carmine	15%	Free (A,E,IL) 8% (CA)	72%
	Other:			
3205.00.40	Products described in additional U.S. note 3 to section VI	15%	Free (E,IL) 8% (CA)	72%"

Conforming change: The article description for subheading 3205.00.50 shall have the same degree of indentation as new subheading 3205.00.40 above.

(13) Subheading 3817.10.00 is superseded by:

	[Mixed alkylbenzenes...:]			
"3817.10	Mixed alkylbenzenes:			
3817.10.10	Mixed linear alkylbenzenes	1.1¢/kg + 17.3%	Free (E,IL) 0.4¢/kg + 6.9% (CA)	15.4¢/kg + 55%
3817.10.50	Other	1.1¢/kg + 17.3%	Free (A,E,IL) 0.4¢/kg + 6.9% (CA)	15.4¢/kg + 55%"

(14) Subheading 3823.90.29 is superseded by:

	[Prepared binders...:]			
	[Other:]			
	[Other:]			
	[Mixtures...:]			
"3823.90.25	Aqueous mixtures of triphenyl sulfonium chloride, diphenyl (4-phenylthio)phenyl sulfonium chloride and (thiodi-4,1-phenylene)bis-(diphenyl sulfonium) dichloride	3.7¢/kg + 13.6%	Free (A,E,IL) 1.4¢/kg + 5.4% (CA)	3.7¢/kg + 63%
3823.90.27	Other	3.7¢/kg + 13.6%	Free (E,IL) 1.4¢/kg + 5.4% (CA)	3.7¢/kg + 60%"

Conforming changes: HTS heading 9902.29.55 is modified by striking out "3823.90.29" and inserting "3823.90.27" in lieu thereof. HTS heading 9902.38.25 is modified by striking out "3823.90.29" and inserting "3823.90.27" in lieu thereof.

Annex I (con.)
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(b) (con.)

(15) Subheading 5608.90.20 is superseded by:

	[Knotted netting...:]			
	[Other:]			
	[Other:]			
	"Of cotton:			
5608.90.23	Hammocks	16%	Free (A) 4.8% (IL) 11.2% (CA)	80%
5608.90.27	Other	16%	4.8% (IL) 11.2% (CA)	80%"

(16) Subheading 6204.39.40 is superseded by:

	[Women's or girls'...:]			
	[Suit-type jackets...:]			
	[Of other textile...:]			
	"Other:			
6204.39.60	Containing 70 percent or more by weight of silk or silk waste	6.7%	Free (A,E*,IL) 4.6% (CA)	65%
6204.39.80	Other	6.7%	Free (E*,IL) 4.6% (CA)	65%"

(17) Subheading 6204.49.00 is superseded by:

	[Women's or girls'...:]			
	[Dresses:]			
"6204.49	Of other textile materials:			
6204.49.10	Containing 70 percent or more by weight of silk or silk waste	7.5%	Free (A,E*,IL) 5.2% (CA)	65%
6204.49.50	Other	7.5%	Free (E* IL) 5.2% (CA)	65%"

Annex II

Modification in the HTS of an Article's Preferential Tariff Treatment under the GSP

(a) Effective with respect to articles both: (i) imported on or after January 1, 1976 and (ii) entered, or withdrawn from warehouse for consumption, on or after May 1, 1991:

(1) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "A," in alphabetical order:

0202.30.20	1602.49.20	6911.10.41
0203.22.10	2007.99.05	6911.10.45
0203.29.20	2007.99.10	7013.21.50
1602.41.20	2007.99.20	7013.31.50
1602.42.20	2007.99.25	

(2) For HTS subheading 2935.00.31, in the Rates of Duty 1-Special subcolumn, delete the symbol "A*" and insert an "A" in lieu thereof.

(b) Effective with respect to articles both: (i) imported on or after January 1, 1976 and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1991:

(1) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "A," in alphabetical order:

0807.10.60	2929.10.15	7801.99.90
1702.30.40	3606.90.60	7901.12.50
2208.90.50	3906.90.50	8533.10.00
2903.61.10	6912.00.41	8714.92.50
2903.61.30	7013.91.50	9608.10.00
2917.37.00	7801.10.00	

(2) For HTS 7901.11.00, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "A*," in alphabetical order.

(3) For the following HTS provisions, in the Rates of Duty 1-Special subcolumn, delete the symbol "A*" and insert an "A" in lieu thereof:

1905.90.90	7605.19.00	8529.90.50
2005.80.00	7614.90.[illegible]	8527.11.11
2933.19.25	8302.10.90	9006.52.10
3402.90.30	8406.11.90	9019.20.00
4013.10.00	8406.19.90	9026.80.60
4802.51.10	8406.90.90	9031.40.00
4804.31.60	8419.11.00	9401.90.10
4818.90.00	8474.20.00	9603.30.40
7008.00.00	8507.90.40	
7113.20.21	8516.80.80	

(4) For the following HTS provisions, in the Rates of Duty 1-Special subcolumn, delete the symbol "A" and insert an "A*" in lieu thereof:

0710.80.70	3917.33.00	7401.10.00
0802.90.15	3926.90.87	8418.10.00
1901.90.90	4011.91.50	8428.90.00
2916.39.15	4104.31.20	8501.40.60
2929.90.50	6210.10.20	8535.40.00
3207.40.10	6307.90.60	8520.20.00
3402.90.10	7113.19.10	

Annex III

Modifications to General Note 3(c)(ii) of the HTS

(a) Effective with respect to articles both: (i) imported on or after January 1, 1976 and (ii) entered, or withdrawn from warehouse for consumption, on or after the date of publication of this proclamation in the Federal Register, general note 3(c)(ii)(A) is modified by inserting "Czechoslovakia" in alphabetic order in the enumeration of independent countries.

(b) Effective with respect to articles both: (i) imported on or after January 1, 1976 and (ii) entered, or withdrawn from warehouse for consumption, on or after May 1, 1991, general note 3(c)(ii)(D) is modified by deleting "2935.00.31 Yugoslavia" from such note.

(c) Effective with respect to articles both: (i) imported on or after January 1, 1976 and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1991:

(1) General note 3(c)(ii)(A) is modified by deleting "Sudan" from the enumeration of independent countries.

(2) General note 3(c)(ii)(B) is modified by deleting "Sudan" from the enumeration of least-developed beneficiary developing countries.

(3) General note 3(c)(ii)(D) is modified--

(i) by deleting the following HTS provisions and the countries set opposite these provisions:

1905.90.90	Mexico	8406.19.90	Israel
2005.80.00	Thailand	8406.90.90	Israel
2933.19.25	Guatemala	8419.11.00	Israel
3402.90.30	Mexico	8474.20.00	Philippines
4013.10.00	Mexico	8507.90.40	Mexico
4802.51.10	Mexico	8516.80.80	Mexico
4804.31.60	Mexico	8527.11.11	Malaysia
4818.90.00	Mexico	8529.90.50	Mexico
7008.00.00	Mexico	9006.52.10	Mexico
7113.20.21	Dominican Republic	9019.20.00	Mexico
7605.19.00	Venezuela	9026.80.60	Mexico
7614.90.50	Venezuela	9031.40.00	Israel
8302.10.90	Mexico	9401.90.10	Mexico
8406.11.90	Israel	9603.30.40	Mexico

(ii) by adding in numerical sequence, the following HTS provisions and countries set opposite them:

0710.80.70	Guatemala	4104.31.20	Thailand
0802.90.15	Mexico	6210.10.20	Mexico
1901.90.90	Mexico	6307.90.60	Mexico
2916.39.15	India	7113.19.10	Peru
2929.90.50	Bahamas	7401.10.00	Mexico
3207.40.10	Mexico	7901.11.00	Mexico
3402.90.10	Mexico	8418.10.00	Mexico
3917.33.00	Mexico	8428.90.00	Mexico
3926.90.87	Mexico	8501.40.60	Mexico
4011.91.50	Israel	8535.40.00	Mexico

(iii) by deleting the following countries opposite the following HTS provisions:

1005.90.20	Chile
1701.11.02	Dominican Republic

(iv) by adding, in alphabetical order, the following countries opposite the following HTS subheadings:

6406.10.65	Dominican Republic
7113.19.50	Israel
7402.00.00	Mexico

Annex IV

Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For each of the following subheadings created by Annex I of this proclamation, on or after January 1 of each of the following years, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty inserted in lieu thereof on the date specified below.

HTS Subheading	1992	1993	1994	1995	1996	1997	1998
0406.10.10	6%	5%	4%	3%	2%	1%	Free
0406.10.50	6%	5%	4%	3%	2%	1%	Free
0701.90.10	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
0701.90.50	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
0710.80.83	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0710.80.97	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2903.69.05	1.8%	Free	Free	Free	Free	Free	Free
2903.69.60	1.8%	Free	Free	Free	Free	Free	Free
2904.90.04	2%	Free	Free	Free	Free	Free	Free
2904.90.08	2%	Free	Free	Free	Free	Free	Free
2904.90.15	0.7¢/kg + 3.1%	Free	Free	Free	Free	Free	Free
2904.90.47	0.7¢/kg + 3.1%	Free	Free	Free	Free	Free	Free
2908.90.04	1.6%	Free	Free	Free	Free	Free	Free
2908.90.08	1.6%	Free	Free	Free	Free	Free	Free
2916.39.12	2.7%	Free	Free	Free	Free	Free	Free
2916.39.40	2.7%	Free	Free	Free	Free	Free	Free
2916.39.16	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2916.39.60	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2921.42.23	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2921.42.24	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2921.42.70	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2921.43.18	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2921.43.60	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2924.29.02	0.7¢/kg + 3.6%	Free	Free	Free	Free	Free	Free
2924.29.04	0.7¢/kg + 3.6%	Free	Free	Free	Free	Free	Free
2924.29.46	0.7¢/kg + 3.6%	Free	Free	Free	Free	Free	Free
2934.20.05	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2934.20.60	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
3205.00.20	3%	Free	Free	Free	Free	Free	Free
3205.00.40	3%	Free	Free	Free	Free	Free	Free
3817.10.10	0.2¢/kg + 3.4%	Free	Free	Free	Free	Free	Free
3817.10.50	0.2¢/kg + 3.4%	Free	Free	Free	Free	Free	Free

Annex IV (con.)

HTS Subheading	1992	1993	1994	1995	1996	1997	1998
3823.90.25	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
3823.90.27	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
5608.90.23	8.5%	5%	6.4%	4.8%	3.2%	1.6%	Free
5608.90.27	8.5%	5%	6.4%	4.8%	3.2%	1.6%	Free
6204.30.00	4%	3.3%	2.6%	2%	1.3%	0.6%	Free
6204.30.00	4%	3.3%	2.6%	2%	1.3%	0.6%	Free
6204.40.10	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6204.40.50	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free

Annex V

Effective with respect to products of Israel which are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For each of the following subheadings created by Annex I of this Proclamation, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "IL" in parentheses is deleted and the following rates of duty inserted in lieu thereof on the date specified below.

HTS Subheading	January 1, 1992	January 1, 1995
2903.69.05	0.9%	Free
2903.69.60	0.9%	Free
5608.90.23	1.6%	Free
5608.90.27	1.6%	Free

Memorandum of April 25, 1991

Actions Concerning the Generalized System of Preferences

Memorandum for the United States Trade Representative

Pursuant to subsections 502(b)(4) and 502(b)(7) and section 504 of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2462(b)(4), 2462(b)(7), and 2464), I am authorized to make determinations concerning the alleged expropriation without compensation by a beneficiary developing country, to make findings concerning whether steps have been taken or are being taken by certain beneficiary developing countries to afford internationally recognized worker rights to workers in such countries, and to modify the application of duty-free treatment under the Generalized System of Preferences (GSP) currently being afforded to such beneficiary developing countries as a result of my determinations.

Specifically, after considering a private sector request for a review concerning the alleged expropriation by Peru of property owned by a United States person allegedly without prompt, adequate, and effective compensation, without entering into good faith negotiations to provide such compensation or otherwise taking steps to discharge its obligations, and without submitting the expropriation claim to arbitration, I have determined that it is appropriate to continue to review the status of such alleged expropriation by Peru.

Second, after considering various private sector requests for a review of whether or not certain beneficiary developing countries have taken or are taking steps to afford internationally recognized worker rights (as defined in subsection 502(a)(4) of the 1974 Act (19 U.S.C. 2462(a)(4))) to workers in such countries, and in accordance with subsection 502(b)(7) of the 1974 Act (19 U.S.C. 2462(b)(7)), I have determined that Benin, the Dominican Republic, Haiti, and Nepal have taken or are taking steps to afford internationally recognized worker rights, and I have determined that Sudan has not taken and is not taking steps to afford such internationally recognized rights. Therefore, I am notifying the Congress of my intention to suspend the GSP eligibility of Sudan. Finally, I have determined to continue to review the status of such worker rights in Bangladesh, El Salvador, and Syria.

Further, pursuant to section 504 of the 1974 Act, after considering various requests for a waiver of the application of section 504(c) of the 1974 Act (19 U.S.C. 2464(c)) with respect to certain eligible articles, I have determined that it is appropriate to modify the application of duty-free treatment under the GSP currently being afforded to certain articles and to certain beneficiary developing countries.

Specifically, I have determined, pursuant to subsection 504(d)(1) of the 1974 Act (19 U.S.C. 2464(d)(1)), that the limitation provided for in subsection 504(c)(1)(B) of the 1974 Act (19 U.S.C. 2464(c)(1)(B)) should not apply with respect to certain eligible articles because no like or directly competitive article was produced in the United States on January 3, 1985. Such articles are enumerated in the list of Harmonized Tariff Schedule of the United States (HTS) subheadings in Annex A.

Pursuant to subsection 504(c)(3) of the 1974 Act (19 U.S.C. 2464(c)(3)), I have also determined that it is appropriate to waive the application of section 504(c) of the 1974 Act with respect to certain eligible articles from certain beneficiary developing countries. I have received the advice of the United

States International Trade Commission on whether any industries in the United States are likely to be adversely affected by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)), that such waivers are in the national economic interest of the United States. The waivers of application of section 504(c) of the 1974 Act apply to the eligible articles in the HTS subheadings and the beneficiary developing countries set opposite such HTS subheadings enumerated in Annex B.

These determinations shall be published in the **Federal Register**.

[FR Doc. 91-[illegible]
Filed 4-[illegible] pm]
Billing code 3190-01-C

Annex A

HTS subheadings for which no like or directly competitive article was produced in the United States on January 3, 1985

HTS Subheading
0406.10.10
2924.29.04
3205.00.20
8527.11.11

Annex B

HTS subheadings and countries granted waivers of section 504(c) of the 1974 Act

HTS Subheading	Country
1602.41.20	Poland
2935.00.31	Yugoslavia
8517.10.00	Malaysia
8520.20.00	Malaysia
8527.11.11	Malaysia

Rules and Regulations

Federal Register
Vol. 56, No. 82
Monday, April 29, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-90-006]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to the referendum on the designation of Ocilla, Georgia, as a flue-cured tobacco market and merger with the currently designated market of Fitzgerald, Georgia, to become the consolidated market of Fitzgerald-Ocilla. A mail referendum was conducted during the period of March 11–15, 1991, among tobacco growers in the counties of Ben Hill, Berrien, Coffee, Irwin, Tift, Turner, Telfair, and Wilcox, Georgia, to determine producer approval of the designation of these two markets as one consolidated market. Eligible producers voted in favor of the designation. Therefore, for the 1991 and succeeding flue-cured marketing seasons, the Fitzgerald and Ocilla, Georgia, tobacco markets shall be designated as and called Fitzgerald-Ocilla. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, room 502 annex, Washington, DC 20090–6456, telephone (202) 447–2567.

SUPPLEMENTARY INFORMATION: A notice was published in the March 8, 1991, issue of the **Federal Register** (56 FR 9932) announcing that a referendum would be conducted among active flue-cured producers in the counties of Ben Hill, Berrien, Coffee, Irwin, Tift, Turner, Telfair, and Wilcox, Georgia, to ascertain if such producers favored the consolidated market.

The referendum was conducted among producers who were engaged in the production of flue-cured tobacco in the counties of Ben Hill, Berrien, Coffee, Irwin, Tift, Turner, Telfair, and Wilcox, Georgia, during the calendar year 1990. Ballots for the March 11–15 referendum were mailed to 729 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The department received a total of 259 responses: 214 eligible producers voted in favor of the consolidation of the Ocilla and Fitzgerald markets; 35 eligible producers voted against the consolidation; and 10 ballots were determined to be invalid.

The notice of referendum announced the determination by the Secretary that the consolidated market of Fitzgerald-Ocilla, Georgia, would be designated as a flue-cured tobacco auction market and receive mandatory, Federal grading of tobacco sold at auction for the 1991 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Ocilla, Georgia, on November 1, 1990, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule because it does not meet any of the criteria established for major rules under the executive order.

Additionally, in conformance with the provisions of Public Law 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most tobacco producers and many tobacco warehouses are small businesses as defined in the Regulatory Flexibility Act. It has been determined that this action will not have a significant impact on a substantial number of small entities, and will not substantially affect the normal movement of the commodity in the marketplace.

List of Subjects in 7 CFR Part 29

Administrative Practice and Procedure, Advisory Committees, Government Publications, Imports, Pesticides and Pests, Reporting and Recordkeeping Procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 29, subpart D, is amended as follows:

PART 29—[AMENDED]

Subpart D—Order of Designation of Tobacco Markets

1. The authority citation for 7 CFR part 29, subpart d, continues to read as follows:

Authority: Sec. 5, 49 Stat. 732, as amended by sec. 157(a)(1), 95 Stat. 374 (7 U.S.C. 511d).

§ 29.[illegible] [Amended]

2. In § 29.8001, the table is amended by removing under item (ddd) in the column Auction Markets the word Fitzgerald and by adding a new entry (fff) to read as follows:

Territory	Types of tobaccos	Auction markets	Order of designation	Citation
(fff) Georgia	Flue-Cured	Fitzgerald-Ocilla	May 29, 1991	

Dated: April 24, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-10071 Filed 4-26-91; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 55, 56, 59, and 70

[Docket No. FV-91-001]

RIN 0581-AA19

Increase in Fees and Charges for Egg Products Inspection and Egg, Poultry, and Rabbit Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the fees and charges for Federal voluntary egg products inspection and egg, poultry, and rabbit grading; as well as Federal mandatory egg products inspection holiday and appeal services. These fees and charges are increased to cover the increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

EFFECTIVE DATE: May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, Chief, Standardization Branch, 202-447-3506.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Regulatory Flexibility Act

This rule has been reviewed under USDA procedures implementing Executive Order 12291 and Department Regulation 1512-1 and has been classified a "non-major" rule under the criteria contained therein. It (i) will have an annual effect on the economy of less than $100 million; (ii) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or (iii) will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The AMS Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because (1) the fees and charges merely reflect, on a cost-per-unit-graded/inspected basis, a minimal increase in the costs currently borne by those entities utilizing the services and (ii) competitive effects are offset under the major voluntary programs (resident shell egg and poultry grading) through administrative charges based on the volume of product handled; i.e., the cost to users increases in proportion to increased volume.

The information collection requirements that appear in §§ 56.52(a)(4) and 70.77(a)(4) to be amended by this rule have been previously approved by the Office of Management and Budget and assigned OMB Control No. 0581-0126 and No. 0581-0127, respectively, under the Paperwork Reduction Act of 1980.

Background

The Agricultural Marketing Act of 1946, as amended, provides for the collection of fees approximately equal to the cost of providing voluntary egg products inspection and voluntary egg, poultry, and rabbit grading services. Likewise, the Egg Products Inspection Act requires the collection of fees to cover costs of holiday and appeal inspection services. Each fiscal year, these fees undergo a cost analysis to determine if they are adequate to recover the cost of providing the services. They were last increased effective May 1, 1990.

Projected operating costs are expected to increase in 1991. Federal employees' salaries increased by 4.1 percent in January 1991. Also, the cost of life insurance, health benefits, and Medicare increased by about 8 percent, Federal employee retirement fringe costs increased 12 percent, and salaries and fringe benefits of federally licensed State employees increased by about 9 percent.

Resident fees and administrative service charges will be increased approximately 6.5 percent. Resident fees cover Federal and State salaries, fringe benefits, relief, and other service-related costs. Administrative service charges apply to the costs of supervision and other overhead and administrative costs and are assessed on each case of shell eggs and each pound of poultry handled in plants using resident grading service. In 1990, the rate for these charges was established at $0.029 per case of shell eggs and $0.00029 per pound of poultry. These rates are changed to $0.031 per case of shell eggs and $0.00031 per pound of poultry. Also, these charges were set at a minimum of $145 and maximum of $1,450 per billing period for each official plant. These charges are changed to $155 and $1,550, respectively.

The hourly rate for nonresident voluntary grading and inspection service is increased from $27.20 to $28.64. The hourly rate for such services performed on Saturdays, Sundays, or holidays is increased from $27.36 to $29.66. The hourly rate for voluntary appeal gradings or inspections is increased from $23.20 to $24.48. The hourly rates for mandatory egg products inspection services are increased from $14.72 to $16.04 for holiday inspection and from $23.20 to $24.48 for certain appeal inspections.

Administrative charges for resident voluntary rabbit grading, resident voluntary egg products inspection, and nonresident voluntary continuous poultry and egg grading will continue to be based on 25 percent of the grader's or inspector's total salary costs. The minimum charge per billing period for these programs is increased from $145 to $155 per official plant.

Based on an analysis of costs to provide these services, a proposed rule to increase the fees for certain grading and inspection services for eggs, poultry, and rabbits was published in the Federal Register (56 FR 7592) on February 25, 1991. Comments on the proposed rule were solicited from interested parties until March 27, 1991.

Two comments were received in opposition to the proposed increase in fees. One commenter, a shell egg producer/handler, supported the voluntary egg grading program but expressed general concerns about the impact of the cholesterol and *Salmonella enteritidis* issues on egg producers. These general concerns are outside the scope of this action. The commenter also expressed concerns about escalating costs and specifically opposed the administrative costs based on 25 percent of the employee's salary that appears in § 56.54. As indicated in the February 25, 1991, proposal, the 25 percent rate is unchanged from previous years. The Agricultural Marketing Act of 1946, as amended, provides that fees collected be reasonable and as nearly as possible recover the cost of providing services. The overall fee structure has been designed accordingly, and periodic minimal increases in fees are necessarily commensurate with increases in Federal pay costs.

The second comment was received from a poultry producer who opposed the cap or maximum charge applicable to the administrative charge based on pounds produced as proposed in § 56.52. The commenter proposed that the per-pound charge be reduced and the administrative service charge cap be removed. The Poultry Division periodically evaluates the fee structure for the voluntary grading and inspection programs. The establishment of a minimum and maximum charge for resident fees and administrative service charges was determined to be the most equitable and reasonable method to ensure recovery of the cost of providing services on a nationwide basis. This continues to be the case. Accordingly, no changes will be made.

Accordingly, the fee increase, as proposed, is adopted in this final rule.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register, because the fees need to be implemented on an expedited basis in order to minimize the period of time between the effective date of the Federal pay increase and the effective date of the fee increase. Also, the fee increases coincide with the next available billing cycle beginning on May 1, 1991.

List of Subjects

7 CFR Parts 55 and 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 59

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Polychlorinated biphenyls (PCB's), Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, title 7, Code of Federal Regulations, parts 55, 56, 59, and 70 is amended as follows:

PART 55—VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING

1. The authority citation for part 55 continues to read as follows:

Authority: Secs. 202-208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087-1091; 7 U.S.C. 1621-1627).

2. Section 55.510 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 55.510 Fees and charges for services other than on a continuous resident basis.

* * * * *

(b) Fees for product inspection and sampling for laboratory analysis will be based on the time required to perform the services. The hourly charge shall be $28.64 and shall include the time actually required to perform the sampling and inspection, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $29.66 per hour. Information on legal holidays is available from the Supervisor.

(d) The cost of an appeal grading, inspection, laboratory analysis, or review of a grader's or inspector's decision shall be borne by the appellant at an hourly rate of $24.48 for time spent performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, inspection, laboratory analysis, or review of a grader's or inspector's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

3. Section 55.560 is amended by revising paragraph (a)(3) to read as follows:

§ 55.560 Charges for continuous inspection and grading service on a resident basis.

* * * * *

(a) * * *

(3) An administrative service charge equal to 25 percent of the grader's or inspector's total salary costs. A minimum charge of $155 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

4. The authority citation for part 56 continues to read as follows:

Authority: Secs. 202-208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087-1091; 7 U.S.C. 1621-1627).

5. Section 56.46 is amended by revising paragraphs (b) and (c) to read as follows:

§ 56.46 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $28.64 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $29.66 per hour. Information on legal holidays is available from the Supervisor.

6. Section 56.47 is revised to read as follows:

§ 56.47 Fees for appeal grading or review of a grader's decision.

The cost of an appeal grading or review of a grader's decision shall be borne by the appellant at an hourly rate of $24.48 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

7. Section 56.52 is amended by revising paragraph (a)(4) to read as follows:

§ 56.52 Continuous grading performance on a resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $0.031, except that the minimum charge per billing period shall be $155 and the maximum charge shall be $1,550. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

8. Section 56.54 is amended by revising paragraph (a)(2) to read as follows:

§ 56.54 Charges for continuous grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $155 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

9. The authority citation for part 59 continues to read as follows:

Authority: Secs. 2-28 of the Egg Products Inspection Act (84 Stat. 1620-1636; 21 U.S.C. 1031-1056).

10. Section 59.128 is amended by revising paragraph (a) to read as follows:

§ 59.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such

service in constituted holiday work. The official plant shall, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and shall pay the Service therefor at an hourly rate of $16.04 to cover the cost thereof.

* * * * *

11. Section 59.370 is amended by revising paragraph (b) to read as follows:

§ 59.370 Cost of appeals.

* * * * *

(b) The costs of an appeal shall be borne by the appellant at an hourly rate of $24.48, including travel time and expenses if the appeal was frivolous, including but not being limited to the following: The appeal inspection discloses that no material error made in the original inspection, the condition of the product has undergone a material change since the original inspection, the original lot has changed in some manner, or the Act or these regulations have not been complied with.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES

12. The authority citation for part 70 continues to read as follows:

Authority: Secs. 203–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C 1621–1627).

13. Section 70.71 is amended by revising paragraphs (b) and (c) to read as follows:

§ 70.71 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $28.84 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $29.88 per hour. Information on legal holidays is available from the Supervisor.

14. Section 70.72 is revised to read as follows:

§ 70.72 Fees for appeal grading, laboratory analysis, or examination or review of a grader's decision.

The costs of an appeal grading, laboratory analysis, or examination or review of a grader's decision will be borne by the appellant at an hourly rate of $24.48 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, laboratory analysis, or examination or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

15. Section 70.76 is amended by revising paragraph (a)(2) to read as follows:

§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $155 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

16. Section 70.77 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) *For poultry grading.* An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00031, except that the minimum charge per billing period shall be $155 and the maximum charge shall be $1,550. The minimum charge also applies where an approved application is in effect and no product is handled.

(5) *For rabbit grading.* An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $155 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Done at Washington, DC, on: April 24, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–10070 Filed 4–26–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 985

[FV–91–261FR]

Expenses and Assessment Rate for Spearmint Oil Produced in the Far West

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for the 1991–92 marketing year established under the spearmint oil marketing order. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the Spearmint Oil Administrative Committee (Committee), the agency responsible for the administration of the order, to have sufficient funds to meet the expenses of operating the program and to facilitate program operations. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture (Department) for approval.

EFFECTIVE DATES: June 1, 1991, through May 31, 1992.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524–S, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR part 985) regulating the handling of spearmint oil produced in the Far West. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Thus, both statutes have small entity orientation and compatibility.

There are approximately nine handlers of spearmint oil produced in the Far West who are subject to regulation under the spearmint oil marketing order and approximately 253 producers of spearmint oil in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2) as those having annual revenues of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of spearmint oil producers and handlers may be classified as small entities.

The spearmint oil marketing order requires that the assessment rate for a particular marketing year shall apply to all assessable spearmint oil handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are producers of the regulated spearmint oil. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of spearmint oil. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay their expenses.

The Committee met on February 27, 1991, and unanimously recommended 1991–92 marketing order expenditures of $198,000 and an assessment rate of $0.08 per pound of spearmint oil. Assessment income for the 1991–92 marketing year is estimated at $172,000 based on shipments of 2,150,000 pounds of spearmint oil. Additionally, interest and incidental income for the 1991–92 marketing year is estimated at $11,000. In comparison, the 1990–91 marketing year budgeted expenditures were $187,000 and the assessment rate was $0.09 per pound of spearmint oil.

Major expenditure categories in the 1991–92 budget are $88,100 for program administration, $80,900 for salaries, and $22,000 for Committee travel and compensation. Comparable budgeted expenditures for the 1990–91 marketing year were $75,400, $86,000, and $26,000, respectively.

The Committee may expend operational reserve funds of $18,000 to meet budgeted expenses and additional reserve funds may be used to meet any deficit in assessment income. Also, any unexpended funds may be carried to the next marketing year as a reserve.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 985.311 and is based on Committee recommendations and other information. A proposed rule on the expenses and assessment rate was published in the March 28, 1991, issue of the Federal Register (56 FR 12866). Comments on the proposed rule were invited from interested persons until April 8, 1991. No comments were received.

After consideration of the information and recommendation submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This rule should be expedited because the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Committee at public meetings. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C 553).

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 985.311 is added as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

§ 985.311 Expenses and assessment rate.

Expenses of $198,000 by the Spearmint Oil Administrative Committee are authorized and an assessment rate payable by each handler, in accordance with § 985.41, is established at $0.08 per pound of salable spearmint oil for the 1991–92 marketing year ending May 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: April 23, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–10087 Filed 4–26–91; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 90–216]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Indiana from Class Free to Class A. We have determined that Indiana no longer meets the standards for Class Free status, but meets the standards for Class A status. This action imposes certain restrictions on the interstate movement of cattle from Indiana.

DATES: Interim rule effective April 23, 1991. Consideration will be given only to comments received on or before June 28, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies of written comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 90–216. Comments received

may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6183.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*.

The brucellosis regulations contained in 9 CFR part 78 (referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C status are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle in the State or area for 12 months preceding the classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches and achieves Class Free status.

The standards for the different classifications of States or areas entail maintaining (1) a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughtering establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection—including herds adjacent to infected herds and herds from which infected animals have been sold or received, and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) minimum procedural standards for administering the program.

Before the effective date of this interim rule, Indiana was classified as a Class Free State in part because of a finding of no known brucellosis in cattle for at least 12 months. However, since a cattle herd in Indiana has been found to be affected with brucellosis, we have concluded that the State of Indiana no longer meets the standards for Class Free status.

In order to attain and maintain Class A status, a State or area must (1) not exceed a cattle herd infection rate, due to field strain of *Brucella abortus*, of 0.25 percent or 2.5 herds per 1,000 based on the number of reactors found within the State or area during any 12 consecutive months, except in States with 10,000 or fewer herds; (2) maintain a 12 consecutive months, MCI reactor prevalence rate not to exceed one reactor per 1,000 cattle tested (0.10 percent); and (3) have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd. After reviewing Indiana's brucellosis program records, we have concluded that Indiana meets the standards for Class A status.

Therefore, we are removing Indiana from the list of Class Free States or areas in § 78.41(a) and adding it to the list of Class A States or areas in § 78.41(b).

This action will place certain restrictions on the interstate movement of cattle from Indiana.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause to publish this interim rule without prior opportunity for public comment. Immediate action is warranted to prevent the interstate spread of brucellosis.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with the Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Indiana from Class Free to Class A increases certain testing and other requirements governing the interstate movement of cattle from Indiana. However, testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis free herds are not affected by this change.

The group affected by this action will be herd owners in Indiana, as well as buyers and importers of Indiana cattle.

There are an estimated 37,000 cattle herds in Indiana which potentially would be affected by this rule, 98 percent of which are owned by small entities. Most of these herds are not certified-free. Test-eligible cattle offered for sale from other than certified-free herds must have a negative test under Class A status regulations. Based on experience, we estimate that approximately 47,000 test-eligible cattle will be tested annually. The average cost of testing cattle for brucellosis is approximately $7.00 per animal. If the total cost of testing is equally distributed among all herds in Indiana, this classification change would cost less than $9 per herd. Therefore, we have determined that changing Indiana's brucellosis status will not significantly affect market patterns.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are amending 9 CFR part 78 as follows:

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 135b; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.41 [Amended]

2. Section 78.41, paragraph (a) is amended by removing "Indiana."

§ 78.41 [Amended]

3. Section 78.41, paragraph (b) is amended by adding "Indiana," immediately before "Iowa."

Done in Washington, DC, this 23rd day of April 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-10055 Filed 4-26-91; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Regulations G, T, U and X; Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is comprised of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) represents foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to or deletions from the previous OTC List and deletions from the previous Foreign List. Both Lists were published on January 31, 1991 (56 FR 3773) and effective on February 11, 1991.

EFFECTIVE DATE: May 13, 1991.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffram, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452-2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452-3544.

SUPPLEMENTARY INFORMATION: Listed below are additions to or deletions from the OTC List. This supersedes the last OTC List which was effective February 11, 1991. Additions and deletions to the OTC List were last published on January 31, 1991 (56 FR 3773). A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated under a Securities and Exchange Commission (SEC) rule as qualified for trading in the national market system (NMS security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their MNS designation. The names of these stocks are available at the Board and the SEC and will be incorporated into the Board's next quarterly publication of the OTC List.

Also listed below is the one deletion from the Foreign List. There are no new additions to the Foreign List, which was last published January 31, 1991 (56 FR 3773) and effective February 11, 1991. Stocks on the Foreign List are eligible for margin treatment at broker-dealers pursuant to a 1990 amendment to Regulation T (12 CFR part 220). The Foreign List includes those stocks that meet the criteria in Regulation T and are eligible for margin at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6 (a) and (b), 220.17 (a), (b), (c) and (d), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(u) and 220.17(e) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List, and the one deletion from the Foreign List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed For Failing Continued Listing Requirements

Amerifirst Bank, A Federal Savings Bank (Florida)
$.01 par common
Asarco Incorporated
Warrants (expire 08-15-91)
Bankunited, A Savings Bank
Class A, $.01 par common
Barton Industries Inc.
$.01 par common
Bell Savings Holdings, Inc.
$1.00 par common
Cellcom Corp.
$.001 par common
Circadian, Inc.
$.01 par common
Computer Automation, Inc.
$.10 par common
Continental Savings of America (California)
$1.11 par common
Convex Computer Corporation
6% convertible subordinated debentures
County Bank, F.S.B.
$1.00 par common
Dartmouth Bancorp, Inc.
$1.00 par common
Distributed Logic Corporation
$.01 par common
Eastmaque Gold Mines Ltd.
No par common
Evansville Federal Savings Bank (Indiana)
$1.00 par common
Financial Benefit Group, Inc.
Class, A, $.01 par common
Financial Center Bancorp
No par common
Fingermatrix, Inc.
$.02 par common
First Executive Corporation
$2.00 par common
Series E, $1.00 par depositary preferred
Series F, $1.00 par depositary preferred
Series G, $1.00 par cumulative convertible preferred
Depositary Preference Shares
First Federal Savings Bank of Georgia
$1.00 par common
First Federal Savings Bank of Perry
$1.00 par common
First Woburn Bancorp, Inc.
$.10 par common
Flextronics, Inc.
$.01 par common
Granite Co-Operative Bank (Massachusetts)
$.10 par common
Imatron Inc.
Warrants (expire 11-12-01)
Infotechnology, Inc.
$.01 par common
International Capital Equipment Limited
$.05 par common
International Mobile Machines Corporation
$.10 cumulative convertible preferred
International Remote Imaging Systems, Inc.
No par common
Kasler Corporation
Convertible subordinated debentures (due 2007)
Kustom Electronics
$.10 par common
Lexicon Corporation
$.10 par common
Management Technologies, Inc.
$.01 par common
Mediagenic
No par common
Merchants Bancorp, Inc., The
$1.25 par common
Metro Airlines, Inc.
$.10 par common
Metrobank Financial Group, Inc.
$.10 par common
New England Bancorp, Inc.
$.25 par common
Olympic Savings Bank (Washington)
$1.00 par common
Oxidyne Group, Inc., The
$1.00 par common
Phoenix Medical Technology, Inc.
No par common
Picturetel Corporation
Warrants (expire 03-26-92)
Poseidon Pools of America, Inc.
$.01 par common
Qintex Entertainment, Inc.
$.001 par common
Satellite Information Systems Company
No par common
SBT Corp.
No par common
Schwartz Brothers, Inc.
Class A, $.10 par common
Sea Galley Stores, Inc.
$.05 par common
Silk Greenhouse, Inc.
$.01 par common
Sirco International Corp.
$.10 par common
Southland Corporation, The
15% cumulative exchangeable preferred stock
Southmark Corporation
Class A, $.01 par convertible preferred
Syntrex Incorporated
$.10 par common
Trustbank Savings, F.S.B.
$.01 par common
Tudor Corporation Ltd.
No par common
Vista Organization, Ltd., The
$.001 par common
Xyvision, Inc.
$.03 par common
Y&A Group, Inc.
$.0025 par common

Stocks Removed For Listing On A National Securities Exchange Or Being Involved In An Acquisition

Academy Insurance Group, Inc.
$.10 par common
Atico Financial Corporation
$1.00 par common
Attwoods PLC
American Depositary Receipts
Buckeye Financial Corp.
No par common
Care Plus, Inc.
$.01 par common
Comerica Incorporated
$5.00 par common
Series B, $4.32 par cumulative convertible preferred
Commercial Intertech Corp.
$1.00 par common
Continental Homes Holding Corp.
$.01 par common
E.R.C. Environmental & Energy Services Co., Inc.
$.05 par common
Geodyne Resources, Inc.
$.10 par common
Heartfed Financial Corporation
$.01 par common
Home Savings & Loan Association, Inc. (North Carolina)
$1.00 par common
Illinois Central Corporation
$.001 par common
Index Technology Corporation
$.10 par common
Interim Systems Corporation
$.01 par common
International Game Technology
$.01 par common
Liz Claiborne, Inc.
$1.00 par common
Lodgistix, Inc.
No par common
Mallard Coach Company, Inc.
$.01 par common
Martech USA, Inc.
$.01 par common
Mid-American Waste Systems, Inc.
$1.00 par common
Office Club, Inc.
No par common
Plaza Commerce Bancorp
No par common
Scripps, E.W. Company, The
Class A, $.01 par common

Terex Corporation
$.01 par common
Trimas Corporation
$.01 par common
TVX Broadcast Group, Inc.
$.01 par common
Visx, Incorporated
$.01 par common
Western Waste Industries
No par common
Wholesale Club, Inc., The
$1.00 par common
Wyoming National Bancorporation
$1.00 par common
Yankee Energy System, Inc.
$5.00 par common

Additions to the List of Marginable OTC Stocks

Ahold Limited
American Depositary Receipts
Alta Health Strategies, Inc.
$.01 par common
Angeion Corporation
$.01 par common
Atmel Corporation
No par common
Banc One Corporation
Series C, no par cumulative convertible preferred
Bobbie Brooks, Incorporated
$.001 par common
Carenetwork, Inc.
$.01 par common
Celtrix Laboratories, Inc.
$.01 par common
Citation Insurance Group
$.10 par common
Clinical Homecare Ltd.
$.03 par common
College Bound, Inc.
$.001 par common
Community Health Systems, Inc.
$.01 par common
Compania Boliviana De Energia
No par common
Coventry Corporation
$.01 par common
Cygnus Therapeutic Systems
No par common
DVI Financial Corporation
Warrants (expire 02-06-96)
Fedfirst Bancshares, Inc.
$.01 par common
First Commerce Bancshares, Inc.
$1.00 par common
Franklin Savings Bank, FSB (Michigan)
Warrants (expire 09-15-94)
Genzyme Corporation
Warrants (expire 12-31-94)
Grand Valley Gas Company
$.0125 par common
Health Management Associates, Inc.
Class A, $.01 par common
Homecorp, Inc.
$.01 par common
IAF Biochem International Inc.
No par common
Image Entertainment, Inc.
No par common
Input/Output, Inc.
$.01 par common
Intercontinental Bank
$2.00 par common
LXE, Inc.
$.01 par common
Magna Bancorp Inc.
$.01 par common
Medical Marketing Group, Inc.
$.01 par common
Merit Medical Systems, Inc.
No par common
PAC RIM Holding Corporation
$.01 par common
Penril Datacomm Networks, Inc.
$.01 par common
Pubco Corporation
$.01 par common
Quidel Corporation
$.001 par common
R&B, Inc.
$.01 par common
Regeneron Pharmaceuticals, Inc.
$.001 par common
SBE, Inc.
No par common
Simtek Corporation
$.01 par common
Warrants (expire 03-06-96)
Sonic Corporation
$.01 par common
Symix Systems, Inc.
$.01 par common
Takecare, Inc.
$.10 par common
Total Pharmaceutical Care, Inc.
No par common
TVX Gold, Inc.
No par common
USA Waste Services, Inc.
$.01 par common
Value Health, Inc.
No par common
Ventura Entertainment Group, LTD.
Class A Warrants (expire 05-31-93)
Video Jukebox Network, Inc.
$.001 par common
Zilog, Inc.
No par common

Deletion From the List of Foreign Margin Stocks

Polly Peck International, PLC
Ordinary shares, par value 10 p

By order of the Board of Governors of the Federal Reserve System, acting by its Staff Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), April 23, 1991.

William W. Wiles,
Secretary of the Board.

[FR Doc. 91-10023 Filed 4-26-91; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Parts 211 and 265

[Docket No. R-0703]

Regulation K—International Banking Operations; Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The International Banking Act of 1978 (Pub. L. 95-369) requires the Board to review and revise its regulation governing the operation of Edge corporations every five years. In connection with this review, the Board has examined all of the provisions of Regulation K, 12 CFR part 211, which governs international banking operations, and has revised provisions of the regulation governing permissible activities of U.S. banking organizations abroad, including underwriting and dealing in equity securities; investments by U.S. banking organizations under the general consent procedures; portfolio investments; domestic powers of Edge corporations; capitalization and supervision of Edge corporations; debt-for-equity investments; qualifying foreign banking organizations; powers of foreign branches of member banks; and export trading companies. In addition, there are other and technical amendments to Regulation K and certain amendments to the Board's Rules Regarding Delegation of Authority, 12 CFR part 265.

EFFECTIVE DATE: Effective May 24, 1991, except in the case of § 211.5 (b)(1)(iii), (c)(1) and (f)(5), which are effective immediately.

FOR FURTHER INFORMATION CONTACT: Ricki Rhodarmer Tigert, Associate General Counsel (202/452-3428), Kathleen M. O'Day, Assistant General Counsel (202/452-3786), Kimberly A. Lynch, Attorney (202/452-3584), Deborah K. Burand, Attorney (202/452-3427), Legal Division; Michael G. Martinson, Assistant Director (202/452-3640), or Michael D. O'Connor, Senior Financial Analyst (202/452-3806), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The International Banking Act of 1978 ("IBA") requires the Board to review and revise its rules issued under section

25(a) of the Federal Reserve Act ("Edge Act") at least once every five years to ensure that the purposes of the Edge Act are being served in light of prevailing economic conditions and banking practices.

On August 1, 1989, following a comprehensive review of the regulation, the Board requested public comment on proposed revisions to Regulation K (54 FR 32424). The comment period, originally scheduled to expire September 30, 1989, was extended to October 14, 1989, with comments being received through January 17, 1991. The Board received 26 comments from outside the Federal Reserve System. Comments were received from 15 U.S. banks or bank holding companies; 4 Edge Act corporations; 5 foreign banking organizations; 5 law firms; and 7 trade associations. The Board also received comments from the United States Department of Commerce and the Commission of the European Communities.

The Board has considered the comments and, as a result of this further review, some of the revisions adopted differ from the amendments proposed. The Board has revised Regulation K in a number of areas, including: Equity securities activities abroad; the portfolio investment authority; the general consent provisions of the investment procedures; debt-for-equity investments; provisions related to Edge corporations, including domestic powers, capitalization, and the Board's supervisory authority; additions to the list of permissible activities abroad, including the authority to engage in certain swap transactions, to underwrite life and related insurance products, and to engage in futures commission merchant activities; qualifying foreign banking organizations; and standards for bank-affiliated export trading companies. Certain other amendments, including technical amendments, were also made to Regulation K.

Equity Securities Activities

The Board proposed the following revisions to the authority of U.S. banking organizations to underwrite equity securities abroad under Regulation K:

1. Raise the underwriting limit applicable to U.S. banking organizations, on a consolidated basis (excluding underwriting commitments by affiliated section 20 companies[1]), to the lesser of $60 million or 25 percent of the investor's Tier 1 capital, and eliminate the per subsidiary limitation of $3 million.
2. Permit banking organizations to underwrite 100 percent of the equity of any one issuer.
3. Permit banking organizations, on an organization-by-organization basis, to underwrite equity securities in excess of the $60 million limit where the banking organization would remain strongly capitalized after the authorized excess amount is permanently deducted from its capital.
4. Require banking organizations not currently engaged in equity underwriting or dealing activities to obtain the Board's specific consent before commencement of equity underwriting activities.

Under the proposal, any shares held by the investor or its affiliates 30 days after the close of the underwriting period would be considered to be held in the dealing account and would be required to conform to the permissible limits for dealing in equity securities. In addition, with respect to the proposal to permit underwriting in excess of the $60 million limit on an organization-by-organization basis, the Board requested comment on whether a parent bank holding company should be required to guarantee any losses that a bank may incur in connection with overline underwriting.

The Board also proposed the following revisions to the authority in Regulation K for dealing in equity securities abroad:

1. Raise the limit relating to equity securities of any one issuer held in trading or dealing accounts to the lesser of $30 million or 10 percent of the investor's Tier 1 capital.
2. For bank holding companies, lower the aggregate dollar amount of equity securities of companies engaged in impermissible activities that can be held in trading or investment accounts to 25 percent of Tier 1 capital. The aggregate limit for Edge corporations would remain 100 percent, although the relevant measure of capital would be Tier 1 capital instead of capital and surplus. Underwriting commitments would continue to be included in the aggregate limit for both bank holding companies and Edge corporations.
3. Apply both of the above limitations on a net basis by permitting some level of offset for hedged positions.
4. Expressly limit the dealing authority to equity securities "of foreign issuers."
5. Require banking organizations not currently engaged in equity underwriting or dealing activities to obtain the Board's specific approval before commencement of equity dealing activities.

The Board specifically solicited comment on its proposal to apply the dealing limit on a net basis, and particularly on the amount of offset that should be permitted for hedged positions.

Fourteen of the seventeen comments that addressed this topic supported liberalization of foreign securities powers. The liberalization was opposed by three comments. The comments that opposed liberalization stated that no expansion of foreign powers should be allowed because it would increase risk to the federal safety net. After review of all the comments the Board has adopted the proposed revisions with some modifications as described below.

Dollar Limitations on Underwriting and Dealing Authority

Many of the comments that favored expanded underwriting and dealing authority opposed the proposed dollar limitations on the underwriting and dealing authority. The comments maintained that dollar limitations, which were designed chiefly to regulate the investments of banking organizations in other companies, should not be applied to dealing and underwriting activities. The comments opposing expansion rejected any increase in current limits.

The comments supporting expansion particularly objected to the $30 million restriction on dealing in the shares of a single issuer, noting that there is a relationship between underwriting and dealing activities, especially in the extent to which dealing activities in the secondary market are necessary to support an underwriting. The comments maintained that inflexible dollar limits on dealing activities could interfere with their ability to use the expanded underwriting authority. A number of comments favored a limitation based solely upon a percentage of the investor's capital (*e.g.*, the capital of the Edge corporation or bank holding company parent of the underwriting subsidiary). The comments argued that limitations based on a percentage of the investor's capital more accurately represent the risk of a single issuer to an underwriter or dealer. Four comments requested case-by-case authority to exceed the dealing limits, similar to the proposed underwriting authority.

Although the dollar limitations in Regulation K were originally designed to deal primarily with long-term investments, they have also served the function of placing some limitation on total exposure arising from the securities business conducted in subsidiaries of U.S. banks. Moreover, because there are not the same firewalls for foreign securities affiliates of U.S. banks as apply to domestic section 20 companies, the dollar limitations operate as an additional restriction on the risks associated with the combination of banking and securities operations in a single organization, complementing other supervisory and operational safeguards.

In adopting its proposal, the Board considered whether it would be appropriate to liberalize the authority to conduct securities activities abroad through subsidiaries of banks or whether to require any expanded securities activities to be conducted in the domestic structure through specially-regulated subsidiaries of bank holding companies. The Board's proposal was a compromise that involved some expansion of current limits, in the interests of furthering the international competitiveness of U.S. banks, without imposing a changing domestic structure abroad. Under the Board's proposal, activities of a broader nature than those permitted by Regulation K could still be conducted through the section 20 format.

The quantitative limits proposed by the Board represented a careful balancing of the Board's competing interests—the overseas competitiveness of U.S. banking organizations, concerns for the safety net with respect to activities conducted through a subsidiary of a U.S. bank, and recognition that decisions on the appropriate structure for broader powers for U.S. banking organizations should properly be made in a wider context. The expansion is relatively modest and should not present material risk to the safety net.

The Board has adopted the quantitative limitations on underwriting and dealing authority as proposed. Subject to the requirement of supervisory review that is discussed below, U.S. banking organizations may (1) underwrite, on a consolidated basis, the lesser of $60 million or 25 percent of the investor's Tier 1 capital, and (2) hold equity securities of any one issuer in trading or dealing accounts equivalent to the lesser of $30 million or 10 percent of the investor's Tier 1 capital. Incidental to the authority to engage in equity securities activities, foreign subsidiaries may issue equity derivatives products and engage in related equity derivatives activities, including swap transactions.

Requirement of Supervisory Review Before Commencement of Expanded Securities Activities

The proposal would have required only banking organizations not currently engaged in underwriting or dealing in equity securities to obtain the Board's specific consent before commencement of such activities. The comments were generally concerned about the purpose of the review, whether the requirement would be applied on an organization-by-organization basis or on a subsidiary-by-subsidiary basis, and the type of approval that would be required — prior notice or specific consent.

Under the proposal, any banking organization currently engaged in equity securities activities abroad would have automatically been able to take advantage of the expanded authority. After further review of this issue, the Board determined that while the new limits for underwriting and dealing in equity securities do not themselves raise significant supervisory concerns where proper operational and managerial controls are in place, the proposed authority could lead to an expansion in the volume of overseas securities activities. The Board recognized that such expansion could affect the adequacy of internal controls with respect to an existing foreign securities business and could also require that additional capital be allocated to those operations.

Accordingly, the Board has revised the regulation to require each banking organization that wishes to use the new underwriting and dealing limits in Regulation K to submit to a review by the Board of its foreign securities operations. Such a review will focus on the adequacy of internal controls and procedures for dealing with the new limits. The review will also evaluate whether the capital of existing foreign securities operations would be adequate to support any expansion of activity contemplated under the new limits. Banking organizations currently engaged in equity securities activities are authorized to continue such activities under the existing limitations. However, under Regulation K, significant investments in new or existing foreign securities affiliates require prior notice to the Board, and any investors would be expected to be in strong financial condition in order to make such investments.

Dealing in Securities of U.S. Issuers

The proposal would have continued to implement the current limitation that U.S. banking organizations may deal abroad only in equity securities "of foreign issuers." Comments strongly opposed this limitation, arguing that it inhibits the ability of U.S. banking organizations to underwrite equity securities of U.S. issuers because an underwriter needs to be able to support an underwriting through dealing or market-making activities in the secondary market. The Board has reviewed the statutory basis for this interpretation and has revised the proposal in this area.

The limitation reflected an interpretation of paragraph 5(c) of the Edge Act (12 U.S.C. 615), which prohibits an Edge corporation from purchasing and holding stock of any company that engages in business in the United States other than business incidental to its foreign business. Under that interpretation, dealing authority excluded dealing in shares of U.S. companies because the organization could be viewed as "holding" the shares in its dealing account in violation of the statute. Many of the comments noted that this limitation is not required by the Edge Act because dealers do not "hold" securities within the meaning of this provision.

The legislative history of the Edge Act demonstrates that the Congress was concerned that the ownership of U.S. equity securities by Edge corporations could permit Edge corporations to monopolize the businesses that they were intended to finance, primarily producers of agricultural products and raw materials for export. In light of the evolving nature of the business of dealing in equity securities, the growing internationalization of securities markets that has led to increased issuance of securities outside home markets, and the legislative history of the Edge Act, the Board is of the view that "holding" stock in a dealing account is not the kind of purchasing or controlling of securities at which the limitation in the Edge Act was aimed. Therefore, the Board has determined that subsidiaries of Edge corporations and bank holding companies may deal in equity securities of U.S. corporations abroad; however, U.S. banking organizations may only sell securities of U.S. issuers to, or buy such securities from, foreign persons, as that term is defined in the revised regulation. In addition, this authority may not be used to evade the restrictions applicable to the domestic securities activities of U.S. banking organizations.

This determination is in keeping with the requirements in the IBA, establishing the five-year review of Regulation K, that the Board consider ways of enhancing the ability of U.S. banking organizations to compete effectively with foreign-owned institutions. This determination with respect to the shares of U.S. issuers must, however, take account of the provisions of the Bank Holding Company Act ("BHC Act"), under which a U.S. banking organization may not generally acquire more than 5 percent of the voting shares and 24.9

[1] A "section 20 company" is a company owned by a bank holding company that is authorized under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) to engage in underwriting and dealing in corporate and other non-governmental securities.

percent of the total equity of a U.S. company. Therefore, a bank holding company may not exceed these limits on an aggregate basis, even where such shares are held in a foreign securities subsidiary and regardless of whether the ownership of the subsidiary is through a bank holding company or an Edge corporation that is a subsidiary of a bank. Banking organizations engaged in securities activities domestically through the section 20 structure are subject to these same limitations.

Applying the Dealing Limits on a Net Basis

The Board proposed to apply both the dollar limit on holding individual shares and the aggregate dollar portfolio investment limit, which is discussed below, on a net basis by permitting some offset for long and short positions in the same security and for positions hedged with derivative instruments. Nine comments responded to the Board's request for comment on the level of offset that would be permissible for positions hedged with various instruments. The comments generally urged the Board to permit flexibility in any formula used for determining permissible offsets and recommended against the implementation of any such formulation by regulation, because of the frequently changing nature of the market in equity securities and their derivatives. There were various suggestions: that the Board could permit any hedging technique approved by Board interpretation or staff opinion; that it could permit the Reserve Banks to approve netting techniques under delegated authority; or that it could allow netting issues to be handled through examination guidelines.

One comment expressed concern about the proposal to impose a percentage limit on hedging through options or futures contracts in the underlying security. Comments also expressed concern about the Board's failure to include in its proposal a variety of equity derivatives, such as options on stock indices and over-the-counter derivatives, as permissible offsetting instruments.

The Board is of the view that permitting an organization to establish individual netting techniques, subject to organization-by-organization approval, would give banking organizations the flexibility they desire while limiting the level of exposure to risks presented by dealing in equity securities and providing for regulatory review of hedging techniques. The Board has concluded that a limit, or "haircut," on the use of such techniques is necessary both to account for risk and to impose a ceiling on the dollar amount of equity securities that may be held by a U.S. banking organization.

Accordingly, the Board has adopted the following amendments:

(1) Regulation K has been revised to permit a banking organization to use netting techniques to hedge risks from positions in equity securities within certain limitations: long and short positions in the same security may be netted, and positions in equity securities may also be offset through the use of derivative instruments, such as futures, forwards, options, and similar instruments referenced to the same equity security (including matched indices), subject to the requirement that, for the purposes of the limits in Regulation K, the risk exposure associated with the holding of a position in a given equity will in no event be viewed as having been reduced by more than 75 percent through hedging.[8]

(2) Regulation K has further been revised to state that an organization's proposed specific hedging method for netting is subject to the Board's prior approval; and

(3) The Board's Rules Regarding Delegation of Authority (12 CFR part 265) have been revised to delegate to the Staff Director of Banking Supervision and Regulation the authority to approve specific hedging methods.

Including Underwriting Commitments and Shares Held in Dealing Accounts in the Aggregate Limits on Impermissible Investments

Both the current regulation and the proposal include underwriting commitments and shares held in dealing accounts in the aggregate limit on ownership of "impermissible" equity securities — generally, equity securities of a company engaged in nonfinancial activities. The aggregate limit is currently 100 percent of the investor's capital and surplus. As noted above and discussed in greater detail below, the Board proposed to lower the aggregate limit to 25 percent of the investor's Tier 1 capital when the investor is a bank holding company.[9]

A number of comments objected to including underwriting commitments and equity securities held in dealing accounts in this aggregate limit. The comments noted that there is a significant difference between, on the one hand, underwriting and dealing in shares that are generally held for a short period and marked-to-market daily, and, on the other hand, portfolio investments that are held for a longer period and recorded at historic cost.

The Board has determined that it is appropriate to continue to include underwriting commitments and equity securities held in dealing accounts in the aggregate limit on impermissible investments. The limit is intended to restrict the total exposure of U.S. banking organizations to the risks presented by equity holdings in nonfinancial companies. Underwriting commitments and equity securities held in dealing accounts are, in particular, subject to the risk of rapid changes in market values. For these reasons, underwriting commitments for equity shares and shares held in dealing accounts are included in the aggregate limit.

One comment requested that, at a minimum, underwriting commitments in excess of $60 million, as may be authorized on an organization-by-organization basis, should not be included in the aggregate amount limitations because such commitments would already have been counted against capital specifically earmarked for that purpose. The Board agrees that because the risk of such commitments would be addressed by the capital deduction, underwriting commitments in excess of $60 million are excluded from the aggregate dollar limits on impermissible investments. Given this exclusion and the authority for shares held in dealing accounts to be netted for purposes of determining compliance with this limit, which is discussed above, the Board does not believe that the inclusion of underwriting commitments and shares held in dealing accounts in the aggregate limitation on impermissible investments will be unduly burdensome with respect to equity underwriting and dealing activities.

Limiting Voting Shares of a Single Issuer Held in Dealing Accounts to 19.9 Percent

As discussed below with respect to portfolio investments, Regulation K prohibits an investor or its affiliates from holding 20 percent or more of the voting shares of a company engaged in impermissible activities. In the past this limitation has included underwriting commitments and shares held in dealing accounts, as well as shares held in investment accounts. The Board proposed to exclude underwriting commitments for securities from the 20 percent limit in order to permit U.S. banking organizations to compete more

[8] Thus, the maximum fully-hedged long position in a single stock could be $120 million — the $90 million dealing limit divided by the 25 percent haircut. Stated otherwise, if 25 percent of the risk is always retained then the maximum fully-hedged position is four times the $90 million dealing limit.

[9] The investor can be a bank holding company, Edge corporation, or foreign bank subsidiary of a member bank.

effectively, especially in underwriting initial public offerings, and has adopted this amendment as proposed.

The comments supported the proposal to exclude underwriting commitments from the 20 percent limit but opposed the continuing inclusion of shares held in dealing accounts in the limitation. The Board has, however, determined that it is appropriate to continue to include shares held in dealing accounts in the limitation on equity ownership of a company engaged in impermissible activities. Limiting the total percentage of an issuer's shares that may be held by a U.S. banking organization in both dealing and investment accounts assures that a U.S. banking organization's interest in a nonfinancial company remains at a level commensurate with a passive investment.[4] Without such limitation, there is a potential for evasion of the prohibition on exercising control over nonfinancial companies, through holding substantial blocks of equity in both an investment and dealing account. The 19.9 percent limitation should not inhibit underwriting activities because, as discussed below, a banking organization would have 90 days after the payment date for an underwriting to sell down any excess position obtained in connection with an underwriting to a position that meets the proposed limit or to seek the Board's approval to retain the shares.

To address concerns that dealing accounts should not be used to disguise securities held as investments, one comment proposed that the Board require that any securities held in a dealing account for more than a certain period of time, such as 90 days, be reported to the appropriate Federal Reserve Bank with an explanation of the dealer's strategy for disposing of the securities. The comment suggested that this procedure would be a preferable alternative to limiting the percentage of shares of an individual company that may be held in dealing and portfolio investment accounts. The Board does not consider this proposal an adequate substitute for the percentage limits on ownership of shares of a nonfinancial company. Moreover, the Board generally would not expect shares to be held in a dealing account longer than 90 days. In the event shares are held longer than 90 days in a dealing account, Regulation K is amended to require such holdings to be reported to senior management of the banking organization.

Underwriting Period

Under the Board's proposal, a banking organization would be permitted to underwrite 100 percent of the equity securities of an issuer, provided that 30 days after the close of the underwriting period the underwriter and its affiliates together do not hold in their dealing and investment accounts more than the permissible percentage and dollar amounts of an issuer's shares.

Most comments opposed the 30-day limitation, contending that it takes significantly longer than 30 days to distribute an equity issue outside the United States, where markets are not as developed, and thus not as deep or broad, as the market in this country. A number of the comments noted that a short underwriting period after which positions must be sold down to the dealing limits could require U.S. banking organizations to dispose of securities at firesale prices. Accordingly, many of the comments requested an underwriting period of at least 90 days, with some asking for up to six months. Comments also requested that the Board clarify what would constitute the end of the underwriting period.

To address the concerns expressed in the comments, the Board has revised Regulation K to require underwriting positions to be sold-down to the dealing limits within 90 days after the payment date for the underwritten securities. Market participants have stated that the term "payment date" is clearly understood to mean the date on which the issuer receives the net proceeds of the underwriting from the underwriters. Thus, the use of the term "payment date" will provide clarity in the regulation. The Board has adopted a 90-day period instead of a 30-day period to reflect the fact that foreign markets may not be as liquid as U.S. markets and typically have longer underwriting periods.

Underwriting in Excess of $60 Million

The Board proposed to permit banking organizations on an organization-by-organization basis to underwrite issues in excess of the $60 million consolidated limitation, provided that the banking organization remains strongly capitalized after a deduction from its regulatory capital of the amount by which its underwriting limit exceeds $60 million. The Board specifically requested comment on whether to require a guarantee from the bank holding company parent for losses to a subsidiary bank when underwriting activities are conducted under the bank ownership chain.

The comments generally favored the proposal because it would provide U.S. banking organizations with greater flexibility in their foreign underwriting business. The comments generally objected, however, to the requirement of a permanent deduction of the entire overline amount from the banking organization's regulatory capital. A number of comments noted that to require a deduction of the overline amount on a permanent basis would be inefficient because an organization's use of the full overline amount would be sporadic.

The Board has adopted the proposed authority for underwriting in excess of $60 million, including the requirement of a capital deduction for the entire stand-by capability. The $60 million limit establishes a ceiling on potential loss from a particular underwriting, and the requirement of a capital deduction for amounts above $60 million helps ensure that the safety net is not unduly exposed to the additional risks of equity securities activities beyond that amount. The alternative to a permanent deduction from regulatory capital of the maximum overline amount would be to deduct the amount on a transaction-by-transaction basis. A number of comments dismissed the approach of authority on a transaction-by-transaction basis as unworkable and as likely to interfere too much with the daily operations of an underwriting subsidiary.

Several comments noted that the "strongly capitalized" requirement was vague. In the Board's view, "strongly-capitalized" means a risk-based capital level well in excess of the Basle standards after the overline amount is deducted. As in the case of domestic section 20 subsidiaries, the capital deduction is required to be evenly distributed with 50 percent from Tier 1 capital and 50 percent from Tier 2 capital. Approval will be granted on an organizational basis to ensure that, when the overline activity is conducted by a subsidiary of a bank, the bank as well as the bank holding company remain "strongly-capitalized." Thus, the deduction from capital will be made on a consolidated basis, including from the bank's capital, when the underwriting subsidiary is held under a bank, as well as from the parent bank holding company's capital. Moreover, excess capital in other parts of the banking organization cannot substitute for capital in the bank for purposes of this requirement.

[4] As noted below in the discussion on portfolio investments, Regulation K has been amended to specify explicitly that total equity ownership in a foreign company is limited to 40 percent. Nonvoting shares of a nonfinancial company held in a dealing account are included in this limitation.

Four comments responded to the Board's request for comment on whether a bank holding company parent should be required to guarantee a bank subsidiary against losses resulting from securities activities conducted indirectly by the bank. All four comments opposed the requirement of a parent guarantee as unnecessary. One of these comments also stated, however, that a requirement for a parent guarantee was preferable to the requirement of a capital deduction.

As noted above, the deduction from regulatory capital will be made from the capital of both the parent bank, where relevant, and the parent bank holding company. Further, overline authority will be granted only on an organization-by-organization basis in order to ensure that the banking organization, including a parent bank of an underwriting subsidiary, is sufficiently strong to conduct expanded underwriting activities in an indirect subsidiary. Given these safeguards, the Board believes that a bank will be adequately shielded from losses that might result from indirect equity underwriting activities based on the overline authority and that the holding company guarantee is therefore unnecessary. Accordingly, Regulation K does not include the requirement of a separate guarantee by the parent for use of overline authority.

Other Equity Securities Issues

Under the Board's proposal, underwriting commitments of affiliated section 20 companies would be excluded from the consolidated limit of the lesser of $60 million or 25 percent of Tier 1 capital. Two comments noted their support for this proposal but recommended that the Board similarly exempt equity shares held by affiliated section 20 subsidiaries from the other limitations in Regulation K, such as the dollar limitations on dealing authority and other limits applicable to dealing accounts. The Board has adopted both its proposal and clarifications that exclude shares held by affiliated section 20 subsidiaries from the dollar amount limitations on dealing authority and the aggregate limit on impermissible investments applicable to dealing accounts. However, shares held in dealing accounts of affiliated section 20 subsidiaries must be included in determining compliance with the percentage limitations under Regulation K on voting and total equity ownership of companies engaged in impermissible activities.

In addition, one comment requested that the Board modify the restriction on purchases and sales of assets applicable to section 20 companies to clarify that a foreign securities subsidiary may subunderwrite a portion of its underwriting liability to its section 20 affiliate and transfer securities to the latter in connection with the underwriting. The Board does not believe that the revision of Regulation K is the appropriate context in which to amend the restrictions applicable to section 20 companies.

Portfolio Investment Authority

Regulation K currently permits U.S. banking organizations to make a passive portfolio investment in less than 20 percent of the voting shares of a foreign company without regard to the nature of its non-U.S. activities.[5] The regulation does not currently expressly limit total equity ownership — that is, ownership of voting and non-voting equity shares — although there is a requirement that the investment be non-controlling. The regulation also currently imposes an aggregate limit on all investments in companies engaged in impermissible activities (including securities held in trading or dealing accounts and underwriting commitments for shares) of 100 percent of the investor's capital and surplus. An investor is either a bank holding company, Edge corporation, or foreign bank subsidiary of a member bank, depending upon which entity holds the investment. The Board proposed a number of amendments to this authority.

First, the Board proposed to limit the total equity investment a U.S. banking organization would be able to make under the portfolio investment authority to 24.9 percent, which was derived from the limit on total equity ownership for non-controlling investments under Regulation Y. Unlike domestic non-controlling investments, however, up to 19.9 percent of the equity could be in the form of voting shares as currently provided in Regulation K. In addition, the Board proposed an exception to the 24.9 percent total equity limit to permit banking organizations to make small portfolio investments in up to 40 percent of the total equity of a company, provided that the total amount of equity investments in, and loans to, the foreign company would not exceed the proposed general consent limit of $25 million.

Second, the Board proposed to define "equity" to encompass various forms of instruments conferring rights of ownership, including loans that give rights to participate in the profits of an organization, and, as currently under Regulation K, subordinated debt when the investor also holds shares of the company. This approach recognizes that many types of hybrid instruments confer ownership interests that are equivalent to equity interests. The proposal also provided, however, that an investor could seek a specific determination from the Board that participating loans or subordinated debt would not be considered equity in the circumstances of a particular investment.

Third, the Board proposed to lower the aggregate portfolio investment authority for bank holding company investors to 25 percent of the investor's Tier 1 capital.

The Board received thirteen comments on the proposed revisions to the portfolio investment authority. Two comments opposed any authority for U.S. banking organizations to make investments in nonfinancial companies. The other eleven comments opposed various aspects of the proposal as too restrictive. In light of the comments, the Board has modified the original proposal and has revised the portfolio investment provisions as described below.

Total Equity Ownership

Eight comments opposed the proposed 25 percent total equity limitation on investments in a nonfinancial company when the organization's exposure to the company exceeds $25 million. The comments generally disagreed with the Board's position that large equity interests may impair credit judgments, with several comments noting that the procedures and approvals required in most banks for investments and credit judgments are entirely separate and that credit judgments are required to stand on their own.

The Board has revised the portfolio investment provisions to limit total equity ownership of a nonfinancial company to 40 percent, regardless of the size of the investment. This approach is consistent with interpretations of the current provisions of Regulation K that limited total equity positions in portfolio investments to 40 percent, a number derived from the maximum limitation on debt-for-equity investments in private sector, nonfinancial companies. The Board has adopted a 40 percent limitation for foreign portfolio investments, rather than the domestic 24.9 percent limitation, in recognition that U.S. banks compete abroad with foreign banks that have the authority to make these types of equity investments. Under current practice, a U.S. banking organization may invest in up to 19.9 percent of a foreign firm's voting shares, and may also invest in additional non-voting equity in the company as long as the investment does not exceed a total of 40 percent of the company's total equity.[6]

In connection with these revisions to Regulation K, the Board reiterates that U.S. banking organizations may not exert control over nonfinancial companies in which they invest through the portfolio investment authority. Accordingly, a U.S. banking organization may not be involved in the operations of a company in which it makes a portfolio investment except to the extent necessary to protect its investment. This stipulation generally means that the U.S. banking organization would be able to appoint one—but not more than one—director to the board of directors of the company, if the organization has sufficient share ownership to elect one director. No officer, director, or employee of a U.S. banking organization would be permitted to be an employee or officer of the company in which the investment is made. Management agreements that give a right to participate in the day-to-day operations of a company are also contrary to the requirement that a portfolio investment must be passive.

Definition of "Equity"

Nine comments opposed the proposed definition of "equity" on the ground that it was overly broad. The term "equity" for purposes of the 40 percent limit on total equity ownership has been defined to include voting and nonvoting shares; quasi-equity instruments, such as warrants and other convertible instruments; and loans that give rights to participate in the profits of a company. This is a less stringent standard than proposed by the Board in that it excludes subordinated debt when determining the percentage of equity ownership. The Board continues to believe that ownership of warrants, other convertible instruments, and profit participation loans provide the holder with an equity interest in, and the potential to exercise influence over, a company and should therefore be included for purposes of the limits on equity holdings. The percentage of equity ownership in a company is to be determined on a fully diluted basis where there are unexercised rights to shares.[7]

Definition of "Investment"

The term "investment" for purposes of both the dollar limitations under the general consent provisions and the aggregate dollar limit on portfolio investments has been defined to include all instruments incorporated within the definition of "equity," and also to include subordinated debt when the investor or an affiliate also owns 5 percent or more of the company's shares as an investment or in a dealing account. The provision for subordinated debt represents a liberalization of both the proposal and the existing regulation in that both include subordinated debt if any shares are also owned by the investor or an affiliate. The *de minimis* 5 percent threshold is intended to permit a banking organization to hold a small investment or an inventory of a company's shares in a dealing account without being subject to the general consent dollar limitations when, for example, the banking organization makes a subordinated loan to the company.

Unlike the original proposal, senior loans would not be counted in the general consent dollar limitations. However, to address supervisory concerns about equity ownership affecting lending decisions, the regulation has been revised to require arms's-length lending decisions when the lender or an affiliate has an equity investment in the company. This requirement means, *inter alia*, that approvals of loans and equity investments are to be obtained by separate parts of a banking organization to ensure against conflicts of interest.

Aggregate Limitations on Portfolio Investments

The Board has adopted the proposal to lower the aggregate limit on portfolio investments in companies engaged in nonfinancial activities from 100 percent of capital and surplus to 25 percent of Tier 1 capital when the investor is a bank holding company. The limitations on aggregate holdings are designed to make certain that the overall capitalization of an investor is not impaired by market and other risks attendant to equity holdings in non-affiliated companies. The aggregate limit for portfolio investments by Edge corporations and foreign bank subsidiaries of member banks remains at 100 percent; however, consistent with the risk-based capital guidelines, the regulation has been revised to indicate that Tier 1 capital is the relevant standard rather than the current standard of capital and surplus.[8]

Six comments opposed the Board's proposal to decrease the aggregate portfolio investment authority for bank holding companies to 25 percent of Tier 1 capital. The comments were for the most part concerned with the inhibiting effect the proposal would have on their equity underwriting and dealing businesses. As noted above in the discussion on equity securities powers, equity shares of nonfinancial companies held in dealing and trading accounts and underwriting commitments for such shares are included in the aggregate limit on impermissible investments. The proposed 25 percent limitation for bank holding companies would not appear to constrain unduly the existing equity securities activities of such companies. In addition, as noted above, shares held in dealing accounts can be netted for purposes of determining compliance with this limit. The Board will, however, monitor future developments in this area to determine the continued appropriateness of the aggregate limitations.

Other Issues

One comment sought expanded authority to make portfolio investments in foreign companies that derive up to 10 percent of their consolidated assets and revenues from business in the United States. The Board has determined that such authority in the context of new investments in foreign companies would not be consistent with the requirement

[5] As noted in the discussion on equity securities activities above, this limitation also previously included underwriting commitments for voting shares and voting shares held in dealing accounts. As Regulation K has been revised, underwriting commitments are excluded in determining compliance with the 19.9 percent limitation on voting shares and the 40 percent limitation on total equity of companies engaged in impermissible activities.

[6] In determining the percentage of shares of a foreign company held by a U.S. banking organization, shares held under Regulation K or any other authority are aggregated. The definitions of "joint venture" and "subsidiary" in Regulation K have been clarified to this effect.

[7] A number of comments raised concerns about the possible effect of incorporating the proposed definition of "equity" into the term "equity securities" as used in the underwriting and dealing authority, although this incorporation was not specifically proposed by the Board. The comments stated that such an incorporation would subject the underwriting and dealing of many kinds of debt instruments to the limitations on equity securities activities in Regulation K, even though as a general matter they are not currently subject to those limitations. The proposed definition of "equity" was not intended to carry over to "equity securities" for purposes of underwriting and dealing authority. Accordingly, the provisions of the regulation addressing the limitations on underwriting and dealing in equity securities use the term "shares" instead of "equity securities" in order to confirm that, consistent with current practice, debt instruments with limited equity characteristics do not come within the limitations on equity securities activities in Regulation K.

[8] Regulation K has been revised to state that Tier 1 capital is the relevant standard for all capital measures other than those implementing statutory restrictions based on capital and surplus.

in the Edge Act that investments in foreign companies be limited to those engaged only in U.S. business that is incidental to foreign business. Moreover, U.S. banking organizations already have the authority under Regulation K to invest in up to 5 percent of the voting shares of foreign companies engaged in business in the United States.

General Consent Procedures

The Board proposed to increase the dollar limitation on investments under the general consent provisions of Regulation K from $15 million to $25 million. Thus, a bank holding company, member bank, or an Edge corporation engaged in banking would be permitted to invest the lesser of $25 million or 5 percent of its Tier 1 capital in activities and investments abroad permitted under Regulation K without providing the Board with prior notice of the investment.[9] Permissible activities are those activities specifically listed in Regulation K that the Board has found to be usual in connection with the transaction of banking or other financial operations abroad. Under the general consent authority, U.S. banking organizations may also make portfolio investments in companies that engage in "impermissible," usually nonfinancial, activities, and in joint ventures and subsidiaries engaged largely in permissible activities abroad.

Dollar Limitations

The Board received eleven comments on the proposed liberalization of the general consent authority. One comment specifically opposed the proposal on the grounds that any expansion of foreign powers threatens the deposit insurance fund. Ten comments supported the liberalization although most of them would prefer more liberal authority in the form of either a larger dollar amount or a limitation based only upon a percentage of the investor's capital. The comments generally argued that a percentage of the investor's capital was a more accurate reflection of the exposure of a banking organization to a particular investment than an absolute dollar limitation.

Meaningful Board review of foreign investments has been a primary justification for giving U.S. banking organizations the authority to make investments in a wide range of activities through subsidiaries of U.S. banks abroad. The Board's proposal sought to balance the need for continuing oversight — and to encourage more substantial internal review of such investments by banking organizations when a prior notice to the Board is required — against any inconvenience to the investors from Board review.

One of the factors that the Board considered in proposing this revision to the general consent limitations was that the existing limitations do not appear to be unduly burdensome. The general consent procedures — even with the $15 million limitation — accommodated approximately 60 percent of the dollar amount of foreign investments and 80 to 90 percent of the total number of foreign investments by a sample group of eight multinational bank holding companies in 1986.

The Board proposed to increase the dollar limitation from $15 million to $25 million to reflect the average growth of the dollar amount of the Tier 1 capital of multinational banks since the last five-year review of Regulation K, which was slightly less than one-third, with a projection for the same amount of growth over the next five years. The Board does not believe that the comments provide any additional insights that have not already been considered by the Board. Moreover, there seems to have been no diminution of risk to the banking system over the past five years that would warrant more substantial liberalization at this time. Accordingly, the Board has adopted the general consent provisions as proposed.

Two comments proposed that the Board include subordinated debt in the definition of "historical cost" in Regulation K, because in certain cases Regulation K defines subordinated debt to be an investment in capital for purposes of the investment provisions. The historical cost of an investment is one of the factors used to determine the dollar amount of permissible additional investments that can be made in an organization each calendar year under the general consent provisions. The Board is of the view that, although it is appropriate to view subordinated debt as an investment in a company for regulatory purposes in certain circumstances where it functions much like preferred shares, subordinated debt should not be viewed as part of the historical cost of an investment because debt is contractually required to be repaid.

Exceptions for Joint Ventures and Subsidiaries Acquired as Going Concerns

Regulation K currently permits U.S. banking organizations to invest in (1) a joint venture that derives up to 10 percent of its assets and revenues from impermissible activities, that is, activities not on Regulation K's list of permissible activities, and (2) a subsidiary acquired as a going concern that derives up to 5 percent of its assets and revenues from impermissible activities. Three comments proposed that these allowances for impermissible activities be increased by various amounts, from 20 to 25 percent for joint ventures and 10 to 15 percent for subsidiaries. The Board is of the view that the existing standards already provide sufficient leeway for foreign investments in joint ventures and subsidiaries acquired as going concerns, while limiting the risks associated with impermissible investments, and that increases in the level of permissible activities such as those proposed would not be appropriate at this time.

Definition of Subsidiary

The Board proposed to clarify Regulation K by specifying that any company of which an investor or its affiliate is a general partner will be considered a subsidiary of the investor. This policy is consistent with definitions in Regulation Y and with existing interpretations under Regulation K. The rationale for this policy is that general partners usually have full management powers and full liability for partnership debt and commitments. Thus, general partners can be deemed to control the partnership. The comments did not object to this proposal and the definition of subsidiary has been revised to reflect this clarification.

Other Issues

The regulation has also been amended to clarify that, in computing the amounts that may be invested in a company under the general consent procedures of Regulation K, an investor must also include amounts that have been invested in the same company by the investor or its affiliates under any authority other than Regulation K. For example, if an investor proposes to make an investment in a company under Regulation K, an investment in the company held by a bank holding company under section 4(c)(6) of the BHC Act (12 U.S.C. 1843(c)(6)) must also be included for purposes of determining compliance with the general consent procedures.

Debt-for-Equity Investments

The Board amended Regulation K in 1987 and 1988 to permit specifically investments to be made by banking organizations for their own accounts through debt-for-equity swaps in heavily indebted countries, subject to certain limitations. As an analogy to the authority for banks to acquire investments to prevent a loss on debts previously contracted ("DPC"), the Board permitted a banking organization to acquire as a debt-for-equity investment as much as 100 percent of the shares of a foreign nonfinancial company being privatized by a heavily indebted foreign government. The Board also permitted a banking organization to acquire up to 40 percent of the equity of a private sector company in a heavily indebted country through a debt-for-equity swap, subject to certain limitations. Generally, a debt-for-equity investment in a nonfinancial company must be made through a bank holding company rather than a bank. However, Regulation K currently provides that in special circumstances, as permitted by the Board on a case-by-case basis, such debt-for-equity investments may be made by banks or their subsidiaries. Furthermore, Regulation K permits debt-for-equity investments to be made under special general consent procedures that require no prior notice to the Board unless the size of the investment exceeds the greater of U.S. $15 million or one percent of the bank holding company's equity capital.

The Board proposed several technical modifications to the provisions of Regulation K governing debt-for-equity investments. First, the Board proposed to increase the general consent amount for debt-for-equity investments to the greater of $25 million or 1 percent of Tier 1 capital (from the greater of $15 million or 1 percent of equity capital). Second, the Board proposed to modify the reference to the procedures for exchanges of debt-for-equity to make clear that such procedures need not be pursuant to a formal government program as long as the procedures are otherwise permitted under applicable law or regulation. Along these lines, the Board proposed to adjust the divestiture requirement for debt-for-equity investments, which requires that investments be divested within two years after repatriation of the investment is permitted by the debtor country, with a maximum divesture period of fifteen years. To take account of the fact that there may not be any restrictions on repatriation, the Board proposed the alternative of requiring divestiture within ten years of an acquisition, subject to extensions of time approved by the Board for up to an additional five years.

The Board received eight public comments on the debt-for-equity investment proposal. The comments generally favored the technical modifications proposed by the Board, but recommended more substantive changes to the provisions of Regulation K governing debt-for-equity investments.

The Board has adopted the technical revisions discussed above. In connection with the divestiture requirement for debt-for-equity investments, the Board has also simplified the reporting requirements. In addition, in response to the requests for further revisions to the debt-for-equity procedures, the Board has adopted several substantive revisions to the regulation.

Cash Investment

The Board has revised the debt-for-equity investment provisions of Regulation K to allow U.S. banking organizations to make a relatively small new cash investment as part of a debt-for-equity investment in heavily indebted countries under the applicable general consent limit. Some heavily indebted countries that have sought to privatize government-owned companies in recent years have required that investors include a cash component in their bids to acquire such companies through debt-for-equity investments. The special provisions in Regulation K applicable to debt-for-equity investments do not generally permit additional cash investments without prior notice to, or approval from, the Board.

While this issue was not raised in written comments on the Board's proposal, discussions at various times between industry representatives and Board staff in connection with specific investments have indicated that U.S. banking organizations find the general consent provisions for debt-for-equity investments unduly limiting without the ability to include a cash component. Regulation K has been amended to permit a cash component for debt-for-equity investments under the special provisions of the regulation as long as the cash component does not exceed ten percent of the fair value of the debt being invested. As a condition of such investments, the Board expects that a reasonable judgment can be made that the likelihood of recovery from the investment would be greater than the potential risks of not collecting on the existing debt. In addition, if a larger cash component were required, the investor could request authority under other provisions of Regulation K.

Divestiture and Business in the United States

While the comments supported the Board's proposal to revise the divestiture requirement of Regulation K to take account of the fact that there is often no formal debt-for-equity program in eligible countries, five comments objected to the requirement that an investment in a foreign company be automatically divested if the company engages in business in the United States. The comments contended that the debt-for-equity investment itself is already subject to divestiture after a period of years and that foreign companies that engage in a limited U.S. business represent some of the best investment opportunities in heavily indebted countries. In response to these comments, the Board has eliminated the automatic divestiture requirement for debt-for-equity investments in companies that engage in a small level of business activities in the United States.

The Board has amended Regulation K to permit bank holding companies to retain, for the permitted holding period, debt-for-equity investments in companies that derive no more than 10 percent of their consolidated assets or revenues from activities conducted within the United States. To prevent any attempt to avoid the restrictions on the domestic activities of U.S. banking organizations, however, this authority excludes financial activities in the United States that otherwise require the Board's prior approval.

This revision will permit foreign companies in which U.S. banking organizations have invested through debt-for-equity swaps to engage in a greater amount of business in the United States than is currently permitted for other investments under Regulation K, where only U.S. activities otherwise incidental to the foreign business are permitted. The Board nevertheless believes that debt-for-equity investments can be distinguished from other types of investments with respect to their U.S. activities because, as noted by the comments, such investments are subject to a requirement of divestiture.[10] In addition, the Board has determined that in the context of U.S. banking organizations seeking to manage their exposure to heavily indebted countries

[9] Edge corporations not engaged in banking would be able to invest the lesser of $25 million or 25 percent of Tier 1 capital, without giving the Board prior notice.

[10] There is some precedent for this type of distinction: when a foreign company in which a U.S. banking organization has invested subsequently commences activities in the United States, the U.S. banking organization is given a grace period before divestiture of the foreign company is required, albeit a much shorter period than the holding period permitted for debt-for-equity investments.

through investments in foreign companies with limited business in the United States, such U.S. business is incidental to foreign business as required by the Edge Act. Therefore, the Board has amended Regulation K to permit debt-for-equity investments in companies that derive no more than 10 percent of their consolidated assets or revenues from U.S. activities.

Dollar Limitations Under the Consent Procedures

As noted above, the Board has increased the maximum dollar amount limitations under the consent provisions for debt-for-equity investments from $15 million to $25 million. A number of comments suggested further increases in the maximum amount that could be invested under the special general consent provisions for debt-for-equity investments — from 1 to 2 percent of the Tier 1 capital of the investor. One comment also suggested a maximum general consent amount of 10 percent of the capital of the investor if the investor is an Edge corporation, while another suggested 3 percent. Two comments also urged that loans be excluded from the definition of "investment" for purposes of the provisions applicable to debt-for-equity investments.

In the Board's experience, few proposed debt-for-equity investments have exceeded the amount limitations of the general consent provisions for debt-for-equity investments and those that have were handled on an expedited basis, when requested by the banking organization. The Board has amended Regulation K, however, to provide additional leeway in the general consent procedures by excluding senior loans and extensions of credit from the definition of "investment" for purposes of the general consent procedures applicable to debt-for-equity investments.[11] Consistent with the definition of "investment" generally under Regulation K, which is discussed above, investments for purposes of the debt-for-equity provisions will continue to include subordinated debt and loans conferring rights to participate in profits of an organization when the banking organization also has an equity interest in the company. Thus, the same definition of "investment" will apply to both debt-for-equity investments and other investments under Regulation K. Accordingly, the special definition of "investment" in the debt-for-equity provisions has been eliminated.[12]

Investment Vehicle

The proposed revisions to Regulation K discussed above will provide substantial additional authority for U.S. banking organizations to make debt-for-equity investments in heavily indebted countries; however, an issue addressed by several comments was the appropriate vehicle for such investments. Five comments recommended the elimination of the restriction requiring that debt-for-equity investments be held by or through the bank holding company unless the Board specifically approves an investment under the bank. One comment observed that requiring such investments to be held by the bank holding company or a subsidiary of a bank holding company may be inconsistent with the law of the country where the investment is taking place. Several of the comments stated that transferring debt from a bank to the bank holding company for purposes of making a debt-for-equity investment can raise tax and accounting issues. The comments advocated that the Board permit debt-for-equity investments to be made in nonfinancial companies through subsidiaries of the bank and not only subsidiaries of the bank holding company.

It should be noted that Regulation K currently permits debt-for-equity investments by Edge corporation and foreign bank subsidiaries of a bank under the portfolio investment provisions of Regulation K, including investments involving amounts in excess of the general consent limits, although the portfolio investment provisions limit ownership of voting shares to 19.9 percent. In response to the concerns expressed in the comments, however, the Board will give substantial consideration on a case-by-case basis to permitting debt-for-equity investments under the special provisions of Regulation K through Edge corporation and foreign bank subsidiaries of a bank. Regulation K has therefore been amended to provide more flexibility for the Board to approve such investments. In making such judgments on applications in this area, the Board will look closely at, among other factors, the existing and contingent risks posed to the bank by the proposed investment. After experience is gained with these types of investments, the Board will consider implementing appropriate general consent authority for debt-for-equity investments under the special provisions of Regulation K through an Edge corporation or foreign bank subsidiary of a bank.

40 Percent Limitation on Shares of Private Sector Companies

Bank holding companies are permitted to acquire up to 40 percent of the equity of a private sector company under the special debt-for-equity provisions of Regulation K, subject to certain restrictions. Six comments recommended the elimination of the 40 percent of equity limitation on the shares that can be held in private sector companies that are acquired through debt-for-equity investments. These comments noted that some of the best investment opportunities are in the private sector in heavily indebted countries and that it appears to be inconsistent to limit investments in these private sector companies while permitting the acquisition of 100 percent of the equity in public companies being privatized, when such companies may present greater investment risks. One of the comments also suggested that if the 40 percent limit is not increased, then the Board should clarify that investments made by two or more U.S. banking organizations in the same company would not be aggregated for purposes of the 40 percent of equity limitation.

The Board continues to believe that the 40 percent limitation serves a useful purpose, namely to permit U.S. banking organizations to have a significant stake in private sector companies, while assuring that there would be substantial participation by other investors in such companies. The limitation is intended to assure that a U.S. banking organization does not bear primary responsibility for the risks associated with running nonfinancial enterprises. Limiting a debt-for-equity swap participation in a private sector company to a substantial, but minority, position should help protect against the possibility that a U.S. banking organization would be so linked to its investment in the private sector company that it would make imprudent loans to an ailing enterprise or be held responsible for the liabilities incurred by such companies. Therefore, — and in keeping with the total equity limitation on portfolio investments — the Board has retained the 40 percent equity limit on debt-for-equity investments in nonfinancial private sector companies. Unless there are other indicia of control,

[11] Bank holding companies making debt-for-equity in more than 25 percent of the voting shares of a private-sector company continue to be subject to the restriction in Regulation K that lending by the bank holding company and its affiliates to the foreign company may not exceed 50 percent of the total loans to the company.

[12] The definitions of "loans and extensions of credit" and "eligible country" have been moved from the special debt-for-equity investment provisions of Regulation K to the definitions applicable to the entire regulation.

however, separate debt-for-equity investments by two or more U.S. banking organizations in the same private sector company will not be aggregated for purposes of calculating the 40 percent limitation.

Edge Corporations

Domestic Powers

The Edge Act limits the powers of lending and deposit-taking by Edge corporations in the United States to transactions that the Board has determined are incidental to the international or foreign business of the Edge corporation. Thus, an Edge corporation is generally required to verify that every deposit-taking or credit transaction it conducts is related to an international transaction. There are certain exceptions to this requirement. First, Edge corporations may take all types of deposits from foreign persons and governments. Second, Edge corporations are permitted to provide general banking services — including lending and deposit-taking — to so-called qualified business entities ("QBE"), companies that are listed in Regulation K that by charter or license are engaged in activities of an international character, without having to document the international character of each transaction. The Board requested comment on whether there are other entities for which Edge corporations could appropriately act as full service banks in the United States.

Most of the comments expressed the view that the U.S. activities of Edge corporations were too restrictive for Edge corporations to remain competitive and proposed numerous revisions, although one comment opposed any expansion of the domestic powers of Edge corporations other than adding to the list of QBEs, as currently defined. Comments proposed expansive liberalization of both QBE authority and the permissible U.S. activities of Edge corporations. Eight comments stated that the QBE list should be expanded to include foreign correspondent banks generally, or foreign organizations whose assets or revenues are predominantly foreign and predominantly derived from the business of banking, that is, foreign organizations that qualify as qualified foreign banking organizations.

Domestic Lending and Other Banking Services to Foreign Persons

In response to these comments, the Board has substantially liberalized the domestic powers of Edge corporations by revising the regulation to permit Edge corporations to offer full banking services, including credit services for U.S. purposes, to foreign persons.[13] The Board has previously determined that the foreign status of a person or company constitutes a sufficient "international" nexus to meet the requirement in the Edge Act that Edge corporations engage only in "international or foreign business." At present, Edge corporations may take deposits from, but generally cannot make loans to, foreign persons for domestic purposes. Thus, the revision to Regulation K with respect to credit extensions and other banking services parallels current authority for Edge corporations to accept domestic deposits from foreign governments and persons. Edge corporations also continue to be able to provide full banking services for U.S. entities that are QBEs under Regulation K.

This revision will enable Edge corporations to participate in the domestic activities of their foreign customers, as requested by a number of comments. It will, for example, enable Edge corporations to offer a full range of services to foreign correspondent banks and to foreign insurance and reinsurance companies, as requested by several comments. Nine comments requested authority to provide standby letters of credit to their customers, regardless of whether the specific transaction has an international origin. The Board's revision to Regulation K will enable an Edge corporation to provide a domestic standby letter of credit as long as the customer is a foreign person. Similarly, the revisions should satisfy the desire, reflected in four comments, for authority for Edge corporations to provide domestic as well as international wire transfers for foreign-based customers.

Overdrafts

The existing regulation permits Edge corporations to receive deposits from foreign governments and foreign persons. The Board proposed to add to this provision the limitation that overdrafts in a deposit account may not be frequent and should be restored within a short period of time because overdrafts are essentially extensions of credit that are not authorized by the regulation. One comment opposed this new limitation, indicating that overdraft financing had been a good source of revenue.

The purpose of the proposed limitation was to limit extensions of credit in the form of overdrafts to foreign customers so that they would be consistent with the deposit-taking and credit authority of Edge corporations. In light of the Board's amendment that permits Edge corporations to make loans to foreign persons for any purpose, as discussed above, the Board has decided that this amendment is unnecessary.

Other Comments

Five comments advocated permitting Edge corporations to provide a full range of services for their parent banks. Such services would include funds transfers, check collection, and processing of letters of credit. These services are currently permissible where the transaction is related to international or foreign business. If the transaction is not related to international or foreign business, the Board takes the view that the Edge Act was not intended to permit an Edge corporation effectively to act as a branch of the parent bank.

Capitalization of Edge Corporations

The Board proposed changing the capitalization requirement for Edge corporations engaged in banking from 7 percent of risk assets to 10 percent of risk-weighted assets as computed under the risk-based capital standards, with at least half of that amount consisting of Tier 1 capital. The 10 percent standard is higher than the 8 percent ratio required by the Board for state member banks and bank holding companies. As with the 8 percent ratio, the proposed 10 percent standard is considered a minimum standard. In both cases, the Board continues to have supervisory discretion to impose higher standards as appropriate on the basis of the nature of the activities and the condition of the organization as a whole.

Most of the comments received on this proposal were strongly opposed to a ratio higher than 8 percent, which they deemed unfair and anticompetitive. They argued that the activities of Edge corporations were no more inherently risky than the activities of their parent banks and that the various risks inherent in the activities of Edge corporations were adequately taken into account in the new, risk-based capital standards. Three comments stated that the imposition of a 10 percent standard would greatly reduce their ability to issue letters of credit and participate in clearing activities.

Despite the objections of the comments, nearly all of the Edge corporations engaged in banking appear

[13] This includes foreign governments and their agencies and instrumentalities; and offices or establishments located, and individuals residing, outside the United States.

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to meet the 10 percent minimum standard and most are at substantially higher capital levels. The Board believes that the higher risk-based standard for Edge corporations is justifiable in light of the fact that Edge corporations are specialized U.S. deposit-taking entities that have unique risk characteristics, as compared to insured banks. Due to their specialized nature, Edge corporations currently have different capital standards than banks, and it should be noted that the proposed changes do not subject Edge corporations to the additional requirement of a leverage limit.

Accordingly, the Board has adopted a minimum 10 percent risk-based capital standard, with at least half that amount consisting of Tier 1 capital, effective December 31, 1992. However, because of restraints on investments in Edge corporations and their limited access to the markets, the Board will permit all of the Tier 2 capital of an Edge corporation to be comprised of subordinated debt. At present, Edge corporations may not count subordinated debt as capital. Until the new capital standards become effective, Edge corporations are required to abide by the current capital standards.

Emergency Meeting of Shareholders of an Edge Corporation

The Board proposed to amend Regulation K to require that the bylaws of an Edge corporation contain a provision giving the Federal Reserve Board the authority to call an emergency meeting of shareholders to address pressing problems of the Edge corporation. The Board has adopted this proposal. The regulation requires any shareholder or group of shareholders that own or control 25 or more percent of the shares, or a representative of such shareholder or group of shareholders, to attend the meeting or risk being barred from further direct or indirect participation in the management and affairs of the Edge corporation. This provision is designed to give the Board an alternative supervisory tool to a more time-consuming enforcement proceeding.

Two comments were received on this proposal. One comment opposed the proposal and another comment suggested that the regulation be revised to limit expressly the purpose for which the Board could call such a meeting to the discussion of serious problems of the Edge corporation. The Board has nonetheless adopted the requirement because it provides necessary authority to deal quickly and efficiently with serious developing problems in an Edge corporation.

Additions to the List of Permissible Activities Abroad

Swap Activities

The Board proposed to add acting as principal or agent in swap transactions relating to currency or interest rate obligations and their derivative products to Regulation K's list of permissible activities. The Board received ten comments on this proposal, all of which opposed the proposal. One comment opposed the proposal on the grounds that such swap transactions present risks that threaten the deposit insurance fund. Nine comments opposed the proposal on the theory that (1) the authority under Regulation K to engage in commercial and other banking activities already provides foreign subsidiaries with the authority to engage in swap transactions, and (2) the limitation in the proposal to currency and interest rate obligations and their derivative products suggests that other such products, such as commodity swaps, are not covered, and therefore the proposal narrows the existing authority.

In recognition of the fact that national and state banks are currently engaged in some commodity-linked transactions under permission granted by their chartering authorities, the Board has amended Regulation K to permit U.S. banking organizations to engage in swap activities abroad, including commodity swaps, to the same extent that state member banks are permitted to engage in such activities domestically. Therefore, such activities would be permitted unless the Board takes action to prohibit or limit state member banks from engaging in a particular swap activity domestically.[14] The Board intends to review the parameters for permissible swap activities for state member banks.

With respect to commodity-linked swap transactions there is, however, another issue. The Edge Act generally prohibits an Edge corporation from trading in commodities (12 U.S.C. 617). This requirement was generally intended to safeguard against Edge corporations attempting to control the prices of commodities. Thus, to the extent that U.S. banks are authorized to engage in commodity swap transactions and such transactions are not prohibited or limited for state member banks, the authority for Edge corporations to engage in such activities abroad is limited to contracts with an option for cash settlement. This requirement is intended to prevent foreign subsidiaries of Edge corporations from taking delivery of commodities in settlement of swap contracts, thereby trading in the commodities themselves in violation of the statutory prohibition.

Life Insurance Underwriting

The Board proposed to add the underwriting of life insurance and other actuarially predictable risks to the list of permissible overseas activities, subject to the requirements that (1) the activity be conducted through a bank holding company subsidiary, and (2) capital investments in, and unsecured extensions of credit to, an insurance underwriting subsidiary be deducted from the regulatory capital of the bank holding company.

Ten comments supported the Board's proposal to add life insurance underwriting to the list. Six of the comments objected, however, to the requirement that the activity be conducted through a subsidiary of a bank holding company and not a subsidiary of a bank. Six comments also opposed the requirement of a capital deduction. Several of the comments maintained that such requirements should not be necessary given the Board's determination that underwriting actuarially predictable risks does not present undue risks to U.S. banking organizations.

The Board has added the underwriting of life insurance, insurance written in connection with pension funds and annuities, and the underwriting of other actuarially predictable risks to the list of permissible activities abroad under Regulation K, subject to the above-stated requirements. Unlike securities activities, insurance underwriting has not traditionally been conducted by banks through their Edge corporation and foreign bank subsidiaries. As a result, the Board believes it is appropriate to require life insurance underwriting abroad to be conducted generally through a subsidiary of a bank holding company and not a bank. Moreover, a deduction from regulatory capital is appropriate because, although banking and insurance may be complementary activities and may even at times offer functionally equivalent products, some of the risks are sufficiently different from banking that the most appropriate method for evaluating capital adequacy is on an unconsolidated basis. Such an approach is consistent with the Basle agreement.

[14] Swap transactions involving equity derivative products are separately authorized under Regulation K as incidental to equity securities powers.

The addition of annuity and pension fund-related insurance underwriting responds to the request of one commenter for clarification as to the types of activities contemplated by the provision with respect to "other actuarially predictable risks." These types of activities have previously been approved by the Board on a case-by-case basis.[15]

FCM Activities

The Board proposed to add futures commission merchant ("FCM") activities on exchanges that the Board has previously approved to the list of permissible activities in Regulation K, subject to the requirement that any activities by foreign subsidiaries of U.S. banks on mutual exchanges or any activities involving nonfinancial instruments or their derivative products continue to require the Board's prior approval.

Three comments opposed the Board's proposal. Two comments objected on the basis that FCM activities are risky and threaten the deposit insurance fund. One comment generally objected to the proposal because it would require FCMs that are operating subsidiaries of national banks to obtain the approval of both the Board and the Comptroller of the Currency ("Comptroller") before becoming members of mutual exchanges abroad.

Seven comments generally supported the Board's proposal. Five of those comments recommended, however, that the Board also permit the brokerage of nonfinancial instruments without prior Board approval because, the comments maintained, the brokerage function and risk are no different for financial and nonfinancial futures. Three comments noted that the Comptroller permits the brokerage of nonfinancial futures.

The Board is of the view that the addition of FCM activities with respect to financial instruments is an appropriate addition to the list of permissible activities, particularly given that such activities are permissible domestically under Regulation Y. The Board, however, does not believe it is appropriate to add the brokerage of nonfinancial instruments to Regulation K's list of permissible activities at this time because such "nonfinancial" activities present additional risks for banking organizations in nontraditional areas where they have little experience and expertise. Accordingly, as proposed, the Board has added FCM activities on exchanges that the Board has previously approved to the list of permissible activities in Regulation K.[16] The Board has nevertheless limited such authority to financial instruments of the type it has previously approved under Regulation K. Basically, these include instruments with respect to which FCM activities have been authorized domestically under Regulation Y (12 CFR 225.25(b)(18)) and the foreign equivalents of such instruments, including futures and options on stock indices, bond indices, other interest rate contracts, and foreign exchange contracts. The Board would expect U.S. banking organizations to consult with Board staff when there is a question as to whether a product is a financial instrument of the type previously approved by the Board.

The Board also proposed to require prior approval for foreign subsidiaries of U.S. banks to engage in FCM activities on any mutual exchange. Two comments noted that this requirement would encompass mutual exchanges that the Board had previously approved and proposed that the Board require prior approval for bank subsidiaries to become members of mutual exchanges only when the Board has not previously approved the particular mutual exchange. One comment recommended that the prior approval requirement for mutual exchanges be eliminated when the exchange acknowledges that the parent bank is not liable for its subsidiary's obligations to the exchange.

Upon further review, because of the risks associated with mutual exchanges, the Board will require prior approval for foreign subsidiaries to engage in FCM activities on a mutual exchange, regardless of whether the parent of the foreign subsidiary is a bank or a bank holding company. In response to the comments regarding mutual exchanges that the Board has previously approved, however, the Board has delegated to Reserve Banks the authority to approve applications to become members of mutual exchanges, provided that the mutual exchange has previously been approved by the Board and membership is on the same basis, and subject to the same terms and conditions, as that which the Board has previously approved. This requirement generally means that a Reserve Bank has the authority to approve such applications if the applicant has made the same commitments as the commitments on which the Board relied in previously authorizing membership on that mutual exchange. Approval for any new exchange, including any new mutual exchange, would continue to be granted by the Board.

Other Activities

Two comments recommend that the Board add Islamic banking products, such as purchase and repurchase arrangements involving goods and real property, which the comments maintained are the functional equivalent of extensions of credit, to the list of permissible activities. The Board recognizes that such activities may be usual in connection with the transaction of banking or other financial operations in certain foreign jurisdictions, and in that situation a banking organization may seek the Board's prior approval to engage in the activities in that jurisdiction. In the Board's view, however, such activities are not so prevalent or necessarily generically the same so as to warrant addition to the list of permissible activities in all foreign jurisdictions.

Another comment proposed that the current leasing authority in Regulation K, which is limited to leasing that is the functional equivalent of credit, be broadened to reflect recent changes domestically in leasing powers for banks and bank holding companies. For example, the Board has proposed to amend the list of permissible activities for bank holding companies in Regulation Y to include leasing transactions that rely upon an estimated residual value of up to 100 percent of the acquisition cost of the property leased (*See* 55 FR 22349 and 23440). Because the list of permissible activities in Regulation K incorporates activities permissible under Regulation Y, such leasing activities would be permissible under Regulation K if any revisions are made to Regulation Y. Accordingly, the

[15] Specifically, the Board has approved: (1) underwriting life insurance in the United Kingdom, Federal Republic of Germany, and Australia; (2) underwriting credit insurance not directly related to extensions of credit by affiliates, savings completion insurance, and home loan life insurance and endowment life insurance related to mortgage lending activities of affiliates, in Belgium and Luxembourg; (3) underwriting pension fund-related insurance and disability insurance in connection with Chilean mandated worker pensions; (4) underwriting retirement-related life insurance in Argentina; and (5) underwriting permanent health insurance in the United Kingdom.

[16] The Board, under Regulation K, has approved FCM activities for certain banking organizations on the London Gold Futures Market; the London International Financial Futures Exchange; the Singapore International Monetary Exchange; the Sydney Futures Exchange; the Tokyo Stock Exchange; the Marche a Terme d'Instruments Financiers, Paris; the Hong Kong Futures Exchange; the Bolsa Mercantile à do Futuros Exchange, Sao Paulo; the Bolsa de Mercadorias de Sao Paulo; the Bolsa Brasileira de Futuros, Rio de Janeiro; the Amsterdam Financial Futures Market; the Tokyo International Financial Futures Exchange; the DTB Deutsche Terminbourse; the New Zealand Futures and Options Exchange Limited, Auckland; and the Osaka Securities Exchange.

Board does not believe it is necessary to expand the leasing authority in Regulation K at this time.

Finally, one comment requested that the Board add real estate brokerage and management, and pension fund administration to the list of permissible activities. The Board has approved these activities in a limited number of instances on a case-by-case basis. The Board continues to believe that such activities are best addressed in connection with a case-by-case review of the nature of each of the activities and the usualness of each activity in the proposed foreign jurisdiction, rather than by adding such activities to the list of permissible activities in Regulation K. More specifically, absent the Board's specific approval, U.S. banking organizations should not engage in real estate development through any combination of authorities for permissible activities.

Qualifying Foreign Banking Organizations

Regulation K implements statutory exemptions from the BHC Act for certain activities of foreign banks. These exemptions are granted to qualifying foreign banking organizations ("QFBOs"). In order to be deemed a QFBO, the foreign banking organization generally must derive more than half of its non-U.S. business from banking and more than half of its banking business from outside the United States. Banking business is defined to include any activity listed as permissible in Regulation K, if such activities are conducted in the bank ownership chain, that is, by the foreign bank or a subsidiary of the foreign bank.

The Board requested comments on several issues under Regulation K to address the increasing number of foreign affiliations between banks and other financial services companies, including insurance companies. In particular, the Board was concerned about foreign acquisitions that could prevent a previously qualifying foreign bank from satisfying the QFBO standard and the related extraterritorial effects of the Board's regulation. The proposals were to:

1. Add underwriting life and related insurance to the list of activities that are permissible for a U.S. banking organization abroad so that insurance activities conducted in the bank ownership chain would contribute toward a banking organization's qualification under the QFBO test.

2. Exercise the Board's discretion on a case-by-case basis to grant specific determinations of eligibility under the QFBO standard to prevent hardships to foreign financial services companies that are engaged largely in activities permissible to U.S. bank holding companies abroad.

3. Amend Regulation K to state that specific determinations of eligibility would generally not be granted to a foreign industrial or commercial company that owns a foreign bank or to a company that derives less of its commercial banking business from outside the United States than it derives from inside the United States. In this context a commercial banking business means a banking business conducted through a regulated foreign commercial bank.

4. Modify Regulation K to permit a previously qualifying organization that falls out of compliance with the QFBO standard to continue to conduct activities and make acquisitions abroad without prior Board review until such time as the Board acts on a request for exemption from the QFBO standard.

The Board received twelve public comments on these issues. Most of the comments supported the Board's proposal, but some comments stated that the Board did not go far enough to avoid undue extraterritorial application of U.S. law to the activities of foreign banking organizations. Many of the comments provided extensive, detailed suggestions for liberalizing the QFBO standard, expanding the permissible activities of QFBOs, and clarifying means of compliance with the QFBO exemptions.

Definition of Banking under the QFBO Test

The comments supported the Board's decision to expand the kinds of activities that U.S. banks may conduct abroad to include life insurance, recognizing that this proposed change will help international banks that acquire insurance companies to meet the QFBO standard. A number of comments, however, proposed further expansion of the definition of "banking assets" for purposes of determining compliance with the QFBO standard. The proposals varied widely, including a proposal that the Board consider any activity permitted by the home regulator as "banking" and several proposals that the Board eliminate the requirement that banking activities be conducted in the bank ownership chain for purposes of determining compliance with the QFBO standard. These comments argued that the current rules do not accommodate a bank holding company structure because the activities conducted by the subsidiaries held outside of the bank ownership chain do not count towards qualifying status.

These issues were considered in connection with the proposed revisions to Regulation K. The Board determined that, because of the many unknown varieties of corporate combinations that may exist outside the United States, it is preferable at this time to retain the existing standard and to permit case-by-case exemptions rather than to create a new standard. In addition, a new standard could be considered after more experience is gained with respect to the ongoing consolidations in Europe and elsewhere. A number of comments expressly noted their support for the case-by-case exemptive procedure proposed by the Board to grant interim authority to non-qualifying foreign banking organizations to continue their activities outside the United States while their request for exemption is under consideration. Accordingly, the Board has adopted the four proposals listed above. It should be noted, however, that the temporary authority to engage in activities abroad prior to the Board's determination of an exemption from the QFBO standard would be provided only to foreign organizations that previously satisfied the QFBO standard and to affiliates of such organizations, but not to organizations that have never satisfied, and are not affiliated with organizations that previously satisfied, the QFBO test.

A number of comments also suggested that the Board provide certain grandfather rights to QFBOs, including QFBOs that have fallen out of compliance. One comment suggested grandfather rights for a QFBO that falls out of compliance because the growth of its U.S. banking operations exceeds that of its worldwide banking business. Two comments suggested that the Board grandfather U.S. insurance and banking operations that pre-date an affiliation outside the United States.

The Board has not adopted any provisions that provide grandfather rights for QFBOs. The first suggestion is in part dealt with by the Board's decision to treat certain foreign insurance activities conducted in the bank ownership chain, or otherwise permitted by the Board on an exemptive basis, as foreign "banking" activities. Where such grandfather rights would permit a foreign organization to develop substantial U.S. banking operations without the support of a foreign bank parent of nearly equivalent size, broader issues of supervisory and regulatory policy are raised. The second suggestion, if permitted on a permanent basis, would give foreign banks a significant competitive advantage over U.S. banking organizations.

Exemptions for Nonbanking Activities of QFBOs

QFBOs are granted authority in two respects under Regulation K to engage in certain nonfinancial activities within the United States that are impermissible for domestic bank holding companies. First, Regulation K implements section 2(h)(2) of the BHC Act (12 U.S.C. 1841(h)(2)) by authorizing a QFBO to control a foreign company that is engaged directly or indirectly in nonfinancial activities in the United States, provided that (1) more than 50 percent of the foreign company's assets and revenues derive from outside the United States, and (2) the U.S. activities of the foreign company are in the same line of business as its foreign activities. Second, Regulation K implements section 4(c)(9) of the BHC Act (12 U.S.C. 1843(c)(9)) by permitting a QFBO to engage directly in the United States in activities incidental to its activities outside the United States and to own or control the voting shares of a company engaged in U.S. activities that are incidental to the international or foreign business of such company.

Comments proposed introducing into Regulation K a basket exemption for small foreign venture capital investments, without regard to the U.S. activities of such companies. Section 2(h)(2) of the BHC Act authorizes foreign banking organizations to invest in foreign companies that are "principally engaged in business outside the United States." Under the proposed basket exemption there would be no way to ensure compliance with the statutory requirement, and such an exemption would provide a foreign banking organization with business opportunities unavailable to U.S. banking organizations.

One comment suggested that the Board should establish a "safe harbor" presumption of non-control for investments in a foreign company by a QFBO. The comment further suggested that the standard for control in Regulation K should not be as stringent as that in Regulation Y because of the extraterritorial consequences. The Board has not adopted these suggestions because they would allow foreign banking organizations to make significant equity investments in foreign companies conducting business in the United States that would be impermissible for U.S. bank holding companies.

A comment also asked that the Board make it clear that the Board will not apply its policy guidelines limiting nonvoting equity investments by bank holding companies (*See* 12 CFR 225.143) to foreign venture capital investments that may engage in impermissible activities in the United States. For purposes of foreign banking organizations, Regulation K assumes control to exist at any level of share ownership in excess of 24.9 percent of voting shares. Whether ownership of voting shares below that level could constitute control is a question of fact and depends upon whether there are other indicia of control.

Compliance Issues Related to QFBOs

The proposal and comments also raised a number of issues concerning the method of determining compliance with certain exemptions from the BHC Act available to QFBOs. As noted above, in implementing the exemption in section 2(h)(2) of the BHC Act for investments in foreign companies with U.S. business, Regulation K requires that (1) 50 percent of the foreign company's consolidated assets and revenues derive from outside the United States, and (2) the U.S. activities of the foreign company be in the same line of business as the activities of the foreign company abroad. In computing the amount of business of a foreign company that is conducted outside the United States, assets and revenues are considered to be derived from outside the United States unless the assets are located in, or revenues generated by, the U.S. offices of the foreign company. Thus, the test is based on the location of the offices conducting the business and not the residency of the customers of the foreign company.

50 Percent Requirement

The requirement that 50 percent of the foreign company's consolidated assets and revenues derive from outside the United States is designed to implement the statutory requirement that the foreign company be "principally engaged in business outside of the United States." One comment stated that the Board has not made clear the dates or periods of time that are to be used in determining compliance with the consolidated assets and revenues tests. Although the Board does not believe that this has been an area of confusion, it should be noted that financial information as of the previous fiscal year should be used unless there is more recent information readily available.

The comment also suggested that Regulation K could be amended to clarify that where a foreign bank does not actually control a company, the foreign bank should be entitled to rely on information that is "reasonably available" to it for purposes of the Board's regulation. The regulation currently includes a provision permitting reliance on reasonably available information; however, to remedy possible confusion as to the types of reports to which the provision is applicable, the Board has made certain technical amendments to the regulation to the effect that this provision applies to all reports on minority investments by foreign banks required under Regulation K.

This comment also proposed grandfathering investments that satisfy the 50 percent test at the time of investment but, because of changes beyond the control of the investor, subsequently cease to satisfy the 50 percent test. The Board has rejected this suggestion because it is inconsistent with the statutory requirement that foreign companies be "principally engaged in business outside the United States."

Noting the hardship imposed by a divestiture requirement for nonqualifying investments, the comment also proposed that if a company falls out of compliance with the assets or revenues test, the foreign bank should generally be given two years from that date to sell the investment. The Board has revised Regulation K to provide that if the investment fails to satisfy the 50 percent test for two consecutive years, the QFBO may either divest the investment within one year or seek the Board's specific approval to retain the investment for a longer period.

Same Line of Business Requirement

Regulation K looks to the Standard Industrial Classification (the "SIC") to determine whether activities are in the same line of business for purposes of the section 2(h)(2) exemption. The SIC was modified in 1987. The Board proposed to revise the references to the SIC in Regulation K to reflect the new SIC categories. No public comments were received on the issue. Thus, the Board has revised the references to the SIC in Regulation K as proposed.

Lending by Foreign Bank Subsidiaries of U.S. Banking Organizations to U.S. Residents

Although the Board did not solicit comments on this topic, three comments recommended that the Board rescind its policy which prohibits foreign bank subsidiaries of U.S. banking organizations from making loans to U.S. residents except for international purposes.[17] The comments contended

[17] Letter, dated November 20, 1990, from Kenneth A. Kenyon to American International Bank ("AIB").

Continued

that U.S. banking organizations are competitively disadvantaged by this requirement because foreign banks are permitted to make loans to U.S. residents.

The Board's decision to impose this restriction in 1970 was based in large part upon concern that permitting foreign subsidiaries of U.S. banking organizations to make loans to U.S. residents would permit avoidance of reserve requirements, as loans by foreign subsidiaries to U.S. residents would not be subject to the reserve requirements that would apply to such loans if made by the parent bank or its foreign branches. In light of the Board's recent decision to reduce to a rate of zero the reserve requirements on nonpersonal time and net Eurocurrency transactions, the incentive for banks to encourage foreign subsidiaries to make domestic loans in order to avoid reserve requirements no longer exists. Accordingly, the Board has suspended the prohibition against lending by foreign bank subsidiaries of U.S. banking organizations to U.S. residents for domestic purposes, as long as reserve requirements on nonpersonal time and Eurocurrency transactions are set at zero.

Powers of Foreign Branches of Member Banks

Investing, Underwriting, and Dealing in Government Obligations

Foreign branches of member banks are permitted to (1) invest in the securities of "governmental entities" of the country in which the foreign branch is located, and (2) to underwrite, distribute, buy, and sell obligations of "an agency or instrumentality of the national government of the country in which the branch is located." The former authority is limited to 1 percent of the total deposits of the bank's branches in that country and the latter authority is limited to 10 percent of the bank's capital and surplus. The Board proposed to limit both authorities to obligations or securities that are supported by the taxing authority or the full faith and credit of the national government.

Four comments opposed the proposed limitation to "full faith and credit" obligations of the national government as too restrictive. The Board proposed this amendment because the question of what constitutes the security of a governmental entity or the obligation of an instrumentality of a national government has been raised in connection with several proposed foreign investments. The Board has adopted its proposal to define obligations of an agency or instrumentality as those supported by the taxing authority or full faith and credit of the national government to provide clarity as to what is intended by the regulation. The Board has, however, defined the authority to invest in securities of governmental entities to include securities of governmental entities not supported by the taxing authority or full faith and credit of the national government. The Board has clarified that the authority to underwrite, distribute, buy, and sell obligations, includes the authority to hold such obligations; thus the authority to invest in securities of governmental entities under this provision is authority in addition to the authority for investments in obligations of an agency or instrumentality.

Several comments requested that the Board increase the additional authority to invest in securities of governmental entities from 1 percent to 5 or 10 percent of the deposits of a bank's branches in that country. Because this authority includes securities that are not supported by the full faith and credit of the national government, the Board has not expanded the authority. However, the Board has revised the authority to underwrite, distribute, buy, sell, and hold governmental obligations supported by the full faith and credit of the national government from 10 percent of a member bank's capital and surplus to the greater of 10 percent of a member bank's Tier 1 capital or 10 percent of the deposits of a bank's branches in that country.

Six comments requested that the Board remove the limitations in the authority to invest in, and underwrite and deal in, obligations of a foreign government that restricts such authority to the country in which the branch is located. The comments noted the globalization of financial markets and stated that eliminating the restriction would give branches additional flexibility in managing their assets and would give banks greater flexibility in organizing their government securities activities. The Board has rejected this suggestion because it would permit banking organizations to build global government securities operations in a branch of the bank rather than through a separate subsidiary, which is contrary to the Board's policy of protecting insured banks from the direct risk of securities activities.

Finally, the term "political subdivision" has been substituted for the current language of "municipality or other local or regional governmental entity." This term is generally intended to mean municipalities or local or regional governments with independent taxing authority.

Operating Subsidiaries

Regulation K currently permits foreign branches, with the Board's specific approval, to establish wholly-owned subsidiaries where required by local law. The Board's proposal removed the condition that such subsidiaries be required by local law. A number of comments supported this proposal and some requested even broader authority to establish operating subsidiaries, including elimination of the requirement that such subsidiaries be wholly-owned by the branch. The Board has adopted its proposal, thereby removing the restriction that such subsidiaries be required by local law. This revision will given U.S. banking organizations greater flexibility in their foreign operations by permitting them, with the approval of the Board, to establish operating subsidiaries in countries where a bank operates a branch whenever permitted — rather than required — by local law. In addition, in response to the comments that in some foreign jurisdictions 100 percent ownership of an operating subsidiary by a branch may not be legally permissible, the Board has revised the authority to permit less than 100 percent ownership where local law or regulation requires local investors to hold directors' qualifying shares or equivalent types of share interests. Any investments by a branch in an operating subsidiary, however, are subject to the Board's prior approval and the Board would not generally expect investments by another investor to be substantial.

Export Trading Companies

The Board proposed to amend formally its provisions governing export trading companies to conform with certain standards mandated by Congress in the Omnibus Trade and Competitiveness Act of 1988 (P. L. 100-418). The Board has previously implemented the statutory requirements administratively. The Board proposed to (1) neutralize the effect of third party transactions for purposes of determining whether a company is a permissible bank-affiliated export trading company; (2) provide companies with a longer period to satisfy the revenues test for purposes of determining their status as a permissible export trading company; and (3) eliminate certain Board Delegation Rules regarding leverage ratios and dollar amounts of inventory for bank-affiliated export trading companies.

The Board received two comments on this proposal. One banking organization stated that the amendments would be useful. In addition, the United States Department of Commerce ("Commerce"), which has a role in implementing other aspects of the Bank Export Services Act, the statute that authorizes bank-affiliated export trading companies, generally supported the proposed revisions. Commerce suggested, however, an amendment to the Board's proposal that would have the effect of permitting revenues derived from third country trade to be considered as derived from the export of a service produced in the United States. Under this approach, such revenues could be counted as derived from exports for purposes of satisfying requirements for export trading company status. This issue was raised at the time the statute mandating these amendments was adopted and the proposal was rejected by the Congress. Accordingly, the Board has adopted the revisions with regard to export trading companies as proposed without making the revision requested by Commerce.

Other Technical Revisions

Other technical revisions that are not substantive in nature have been made to Regulation K to clarify existing provisions.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that this final rule will not have a significant economic impact on a substantial number of small entities that are subject to the regulation.

List of Subjects

12 CFR Part 211

Accounting for fees on international loans, Allocated transfer risk reserve, Banking, Banks, Export trading companies, Exports, Federal Reserve System, Foreign banking, Holding companies, Investment made through debt-for-equity conversions, Investments, Reporting and recordkeeping requirements, Reporting and disclosure of international assets.

12 CFR Part 265

Authority delegations (Government agencies), Federal Reserve System.

For the reasons set forth above, the Board has amended 12 CFR part 211, subparts A, B, and C, and part 265 as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS

1. The authority citation for part 211 is revised to read as follows:

Authority: Federal Reserve Act (12 U.S.C. 221 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978 (Pub. L. 95-369; 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235); the International Lending Supervision Act (Title IX, Pub. L. 98-181, 97 Stat. 1153, 12 U.S.C. 3901 *et seq.*); and the Export Trading Company Act Amendments of 1988 (Title III, Pub. L. 100-418, 102 Stat. 1384 (1988)).

2. Subpart A (§ § 211.1 through 211.7) is revised to read as follows:

Subpart A—International Operations of United States Banking Organizations

Sec.
211.1 Authority, purpose, and scope.
211.2 Definitions.
211.3 Foreign branches of U.S. banking organizations.
211.4 Edge and Agreement corporations.
211.5 Investments and activities abroad.
211.6 Lending limits and capital requirements.
211.7 Supervision and reporting.

Subpart A—International Operations of United States Banking Organizations

§ 211.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the Federal Reserve Act ("FRA") (12 U.S.C. 221 *et seq.*); the Bank Holding Company Act of 1956 ("BHC Act") (12 U.S.C. 1841 *et seq.*); and the International Banking Act of 1978 ("IBA") (12 U.S.C. 3101 *et seq.*). Requirements for the collection of information contained in this regulation have been approved by the Office of Management and Budget under the provision of 44 U.S.C. 3501, *et seq.* and have been assigned OMB Nos. 7100-0107; 7100-0109; 7100-0110; 7100-0069; 7100-0086; and 7100-0073.

(b) *Purpose.* This subpart sets out rules governing the international and foreign activities of U.S. banking organizations, including procedures for establishing foreign branches and Edge corporations to engage in international banking and for investments in foreign organizations.

(c) *Scope.* This subpart applies to:

(1) Corporations organized under section 25(a) of the FRA (12 U.S.C. 611-631), "Edge corporations";

(2) Corporations having an agreement or undertaking with the Board under section 25 of the FRA (12 U.S.C. 601-604a), "Agreement corporations";

(3) Member banks with respect to their foreign branches and investments in foreign banks under section 25 of the FRA (12 U.S.C. 601-604a);[1] and

(4) Bank holding companies with respect to the exemption from the nonbanking prohibitions of the BHC Act afforded by section 4(c)(13) of the BHC Act (12 U.S.C. 1843(c)(13)).

§ 211.2 Definitions.

Unless otherwise specified, for the purposes of this subpart:

(a) An *affiliate* of an organization means:

(1) Any entity of which the organization is a direct or indirect subsidiary; or

(2) Any direct or indirect subsidiary of the organization or such entity.

(b) *Capital Adequacy Guidelines* means the Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (12 CFR part 208, app. A).

(c) *Capital and surplus* means paid-in and unimpaired capital and surplus, and includes undivided profits but does not include the proceeds of capital notes or debentures.

(d) *Directly or indirectly,* when used in reference to activities or investments of an organization, means activities or investments of the organization or of any subsidiary of the organization.

(e) *Eligible country* means a country that, since 1980, has restructured its sovereign debt held by foreign creditors, and any other country that the Board deems to be eligible.

(f) An Edge corporation is *engaged in banking* if it is ordinarily engaged in the business of accepting deposits in the United States from nonaffiliated persons.

(g) *Engaged in business* or *engaged in activities* in the United States means maintaining and operating an office (other than a representative office) or subsidiary in the United States.

(h) *Equity* means an ownership interest in an organization, whether through:

(1) Voting or nonvoting shares;

(2) General or limited partnership interests;

(3) Any other form of interest conferring ownership rights, including warrants, debt, or any other interests

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regarding AIB's investment in Henry Ansbacher & Co., Limited, London, England (the "Ansbacher letter").

[1] Section 25 of the FRA, which refers to national banking associations, also applies to state member banks of the Federal Reserve System by virtue of section 9 of the FRA (12 U.S.C. 321).

that are convertible into shares or other ownership rights in the organization; or

(4) Loans that provide rights to participate in the profits of an organization, unless the investor receives a determination that such loans should not be considered equity in the circumstances of the particular investment.

(i) *Foreign* or *foreign country* refers to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

(j) *Foreign bank* means an organization that:

(1) Is organized under the laws of a foreign country;

(2) Engages in the business of banking;

(3) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations;

(4) Receives deposits to a substantial extent in the regular course of its business; and

(5) Has the power to accept demand deposits.

(k) *Foreign branch* means an office of an organization (other than a representative office) that is located outside the country under the laws of which the organization is established, at which a banking or financing business is conducted.

(l) *Foreign person* means an office or establishment located, or individual residing, outside the United States.

(m) *Investment* means:

(1) The ownership or control of equity;

(2) Binding commitments to acquire equity;

(3) Contributions to the capital and surplus of an organization; and

(4) The holding of an organization's subordinated debt when the investor and the investor's affiliates hold more than 5 percent of the equity of the organization.

(n) *Investor* means an Edge corporation, Agreement corporation, bank holding company, or member bank.

(o) *Joint venture* means an organization that has 20 percent or more of its voting shares held directly or indirectly by the investor or by an affiliate of the investor under any authority, but which is not a subsidiary of the investor.

(p) *Loans and extensions of credit* means all direct and indirect advances of funds to a person made on the basis of any obligation of that person to repay funds.

(q) *Organization* means a corporation, government, partnership, association, or any other entity.

(r) *Person* means an individual or an organization.

(s) *Portfolio investment* means an investment in an organization other than a subsidiary or joint venture.

(t) *Representative office* means an office that:

(1) Engages solely in representational and administrative functions such as solicitation of new business for or liaison between the organization's head office and customers in the United States; and

(2) Does not have authority to make business decisions for the account of the organization represented.

(u) *Subsidiary* means an organization more than 50 percent of the voting shares of which is held directly or indirectly, or which is otherwise controlled or capable of being controlled, by the investor or an affiliate of the investor under any authority. Among other circumstances, an investor is considered to control an organization if the investor or an affiliate is a general partner of the organization or if the investor and its affiliates directly or indirectly own or control more than 50 percent of the equity of the organization.

(v) *Tier 1 capital* has the same meaning as provided under the Capital Adequacy Guidelines (12 CFR part 208, appendix A).

§ 211.3 Foreign branches of U.S. banking organizations.

(a) *Establishment of foreign branches.*

(1) *Right to establish branches.* Foreign branches may be established by any member bank having capital and surplus of $1,000,000 or more, an Edge corporation, an Agreement corporation, or a subsidiary held pursuant to this subpart. Unless otherwise provided in this section, the establishment of a foreign branch requires the specific prior approval of the Board.

(2) *Branching within a foreign country.* Unless the organization has been notified otherwise, no prior Board approval is required for an organization to establish additional branches in any foreign country where it operates one or more branches.[2]

(3) *Branching into additional foreign countries.* After giving the Board 45 days' prior written notice, an organization that operates branches in two or more foreign countries may establish a branch in an additional foreign country, unless notified otherwise by the Board.[3]

(4) *Expiration of branching authority.* Authority to establish branches through prior approval or prior notice shall expire one year from the earliest date on which the authority could have been exercised, unless the Board extends the period.

(5) *Reporting.* Any organization that opens, closes, or relocates a branch shall report such change in a manner prescribed by the Board.

(b) *Further powers of foreign branches of member banks.* In addition to its general banking powers, and to the extent consistent with its charter, a foreign branch of a member bank may engage in the following activities so far as usual in connection with the business of banking in the country where it transacts business:

(1) *Guarantees.* Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events,[4] if the guarantee or agreement specifies a maximum monetary liability; but except to the extent that the member bank is fully secured, it may not have liabilities outstanding for any person on account of such guarantees or agreements which, when aggregated with other unsecured obligations of the same person, exceed the limit contained in paragraph (a)(1) of section 5200 of the Revised Statutes (12 U.S.C. 84) for loans and extensions of credit;

(2) *Government obligations.* Underwrite, distribute, buy, sell, and hold obligations of:

(i) The national government of the country in which the branch is located;

(ii) An agency or instrumentality of the national government where supported by the taxing authority, guarantee, or full faith and credit of the national government; and

(iii) A political subdivision of the country;

Provided however that, no member bank may hold, or be under commitment with respect to, such obligations for its own account in an aggregate amount exceeding the greater of:

(A) 10 percent of its Tier 1 capital; or

(B) 10 percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or the date of acquisition of the branch in the case of a branch that has not been so reported);

(3) *Other investments.* Invest in:

(i) The securities of the central bank, clearing houses, governmental entities other than those authorized under

[2] For the purpose of this paragraph, a subsidiary other than a bank or an Edge or Agreement corporation is considered to be operating a branch in a foreign country if it has an affiliate that operates an office (other than a representative office) in that country.

[4] "Readily ascertainable events" include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or costs of transport and loss or nonconformance of shipping documents.

paragraph (b)(2) of this section, and government-sponsored development banks of the country in which the foreign branch is located;

(ii) Other debt securities eligible to meet local reserve or similar requirements; and

(iii) Shares of automated electronic payments networks, professional societies, schools, and the like necessary to the business of the branch; Provided however that, the total investments of the bank's branches in that country under this paragraph (exclusive of securities held as required by the law of that country or as authorized under section 5136 of the Revised Statutes (12 U.S.C. 24, Seventh)) may not exceed 1 percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or on the date of acquisition of the branch in the case of a branch that has not so reported);

(4) *Credit extensions to bank's officers.* Extend credit to an officer of the bank residing in the country in which the foreign branch is located to finance the acquisition or construction of living quarters to be used as the officer's residence abroad, provided however that:

(i) The credit extension is reported promptly to the branch's home office; and

(ii) Any extension of credit exceeding $100,000 (or the equivalent in local currency) is reported also to the bank's board of directors;

(5) *Real estate loans.* Take liens or other encumbrances on foreign real estate in connection with its extensions of credit, whether or not of first priority and whether or not the real estate has been improved;

(6) *Insurance.* Act as insurance agent or broker;

(7) *Employee benefits program.* Pay to an employee of the branch, as part of an employee benefits program, a greater rate of interest than that paid to other depositors of the branch;

(8) *Repurchase agreements.* Engage in repurchase agreements involving securities and commodities that are the functional equivalents of extensions of credit;

(9) *Investment in subsidiaries.* With the Board's prior approval, acquire all of the shares of a company (except where local law requires other investors to hold directors' qualifying shares or similar types of instruments) that engages solely in activities:

(i) In which the member bank is permitted to engage; or

(ii) That are incidental to the activities of the foreign branch; and

(10) *Other activities.* With the Board's prior approval, engage in other activities that the Board determines are usual in connection with the transaction of the business of banking in the places where the member bank's branches transact business.

(c) *Reserves of foreign branches of member banks.* Member banks shall maintain reserves against foreign branch deposits when required by part 204 of this chapter (Regulation D).

§ 211.4 Edge and Agreement corporations.

(a) *Organization.*—(1) *Board authority.* The Board shall have the authority to approve:

(i) The establishment of Edge corporations; and

(ii) Investments by member banks and bank holding companies in Agreement corporations.

(2) *Permit.* A proposed Edge corporation shall become a body corporate when the Board issues a permit approving its proposed name, articles of association, and organization certificate.

(3) *Name.* The name shall include "international," "foreign," "overseas," or some similar word, but may not resemble the name of another organization to an extent that might mislead or deceive the public.

(4) **Federal Register** notice. The Board shall publish in the **Federal Register** notice of any proposal to organize an Edge corporation and will give interested persons an opportunity to express their views on the proposal.

(5) *Factors considered by the Board.* The factors considered by the Board in acting on a proposal to organize an Edge corporation include:

(i) The financial condition and history of the applicant;

(ii) The general character of its management;

(iii) The convenience and needs of the community to be served with respect to international banking and financing services; and

(iv) The effects of the proposal on competition.

(6) *Authority to commence business.*

(i) After the Board issues a permit, the Edge corporation may elect officers and otherwise complete its organization, invest in obligations of the United States Government, and maintain deposits with depository institutions, but it may not exercise any other powers until at least 25 percent of the authorized capital stock specified in the articles of association has been paid in cash, and each shareholder has paid in cash at least 25 percent of that shareholder's stock subscription.

(ii) Unexercised authority to commence business as an Edge corporation shall expire one year after issuance of the permit, unless the Board extends the period.

(7) *Amendments to articles of association.* No amendment to the articles of association shall become effective until approved by the Board.

(8) *Shareholders meeting.* An Edge Corporation shall provide in its bylaws that:

(i) A shareholders meeting shall be convened at the request of the Board within five days after the Board gives notice of the request to the Edge corporation;

(ii) Any shareholder or group of shareholders that owns or controls 25 percent or more of the shares of the Edge corporation shall attend such a meeting in person or by proxy; and

(iii) Failure by a shareholder or authorized representative to attend any such meeting in person or by proxy may result in removal or barring of such shareholders or any representatives from further participation in the management or affairs of the Edge corporation.

(b) *Nature and ownership of shares*—(1) *Shares.* (i) Shares of stock in an Edge corporation may not include no-par value shares and shall be issued and transferred only on its books and in compliance with section 25(a) of the FRA and this subpart.

(ii) The share certificates of an Edge corporation shall:

(A) Name and describe each class of shares indicating its character and any unusual attributes such as preferred status or lack of voting rights; and

(B) Conspicuously set forth the substance of:

(*1*) Any limitations upon the rights of ownership and transfer of shares imposed by section 25(a) of the FRA; and

(*2*) Any rules that the Edge corporation prescribes in its by-laws to ensure compliance with this paragraph.

(iii) Any change in status of a shareholder that causes a violation of section 25(a) of the FRA shall be reported to the Board as soon as possible, and the Edge corporation shall take such action as the Board may direct.

(2) *Ownership of Edge corporations by foreign institutions.*—(i) *Prior Board approval.* One or more foreign or foreign-controlled domestic institutions referred to in paragraph 13 of section 25(a) of the FRA (12 U.S.C. 619) may apply for the Board's prior approval to acquire directly or indirectly a majority

of the shares of the capital stock of an Edge corporation.

(ii) *Conditions and requirements.* Such an institution shall:

(A) Provide the Board information related to its financial condition and activities and such other information as the Board may require;

(B) Ensure that any transaction by an Edge corporation with an affiliate[4] is on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions by the Edge corporation with nonaffiliated persons, and does not involve more than the normal risk of repayment or present other unfavorable features;

(C) Ensure that the Edge corporation will not provide funding on a continual or substantial basis to any affiliate or office of the foreign institution through transactions that would be inconsistent with the international and foreign business purposes for which Edge corporations are organized;

(D) Invest no more than 10 percent of the institution's capital and surplus in the aggregate amount of stock held in all Edge corporations; and

(E) In the case of a foreign institution not subject to section 4 of the BHC Act:

(*1*) Comply with any conditions that the Board may impose that are necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States; and

(*2*) Give the Board 45 days' prior written notice, in a form to be prescribed by the Board, before engaging in any nonbanking activity in the United States, or making any initial or additional investments in another organization, that would require prior Board approval or notice by an organization subject to section 4 of the BHC Act; in connection with such notice, the Board may impose conditions necessary to prevent adverse effects that may result from such activity or investment.

(*3*) *Change in control.*—(*i*) *Prior notice.* Any person shall give the Board 60 days' prior written notice, in a form to be prescribed by the Board, before acquiring, directly or indirectly, 25 percent or more of the voting shares, or otherwise acquiring control, of an Edge corporation. The Board may extend the 60-day period for an additional 30 days by notifying the acquiring party. A notice under this paragraph need not be filed where a change in control is effected through a transaction requiring the Board's approval under section 3 of the BHC Act (12 U.S.C. 1842).

(*ii*) *Board review.* In reviewing a notice filed under this paragraph, the Board shall consider the factors set forth in paragraph (a)(5) of this section and may disapprove a notice or impose any conditions that it finds necessary to assure the safe and sound operation of the Edge corporation, to assure the international character of its operation, and to prevent adverse effects such as decreased or unfair competition, conflicts of interest, or undue concentration of resources.

(c) *Domestic branches*—(1) *Prior notice.* (i) An Edge corporation may establish branches in the United States 45 days after the Edge corporation has given notice to its Reserve Bank, unless the Edge corporation is notified to the contrary within that time.

(ii) The notice to the Reserve Bank shall include a copy of the notice of the proposal published in a newspaper of general circulation in the communities to be served by the branch.

(iii) The newspaper notice may appear no earlier than 90 calendar days prior to submission of notice of the proposal to the Reserve Bank. The newspaper notice must provide an opportunity for the public to give written comment on the proposal to the appropriate Reserve Bank for at least 30 days after the date of publication.

(2) *Factors considered.* The factors considered in acting upon a proposal to establish a branch are enumerated in paragraph (a)(5) of this section.

(3) *Expiration of authority.* Authority to open a branch under prior notice shall expire one year from the earliest date on which that authority could have been exercised, unless the Board extends the period.

(d) *Reserve requirements and interest rate limitations.* The deposits of an Edge or Agreement corporation are subject to parts 204 and 217 of this chapter (Regulations D and Q) in the same manner and to the same extent as if the Edge or Agreement corporation were a member bank.

(e) *Permissible activities in the United States.* An Edge corporation may engage directly or indirectly in activities in the United States that are permitted by the sixth paragraph of section 25(a) of the FRA and are incidental to international or foreign business, and in such other activities as the Board determines are incidental to international or foreign business. The following activities will ordinarily be considered incidental to an Edge corporation's international or foreign business:

(1) *Deposit activities*—(i) *Deposits from foreign governments and foreign persons.* An Edge corporation may receive in the United States transaction accounts, savings, and time deposits (including issuing negotiable certificates of deposits) from foreign governments and their agencies and instrumentalities, and from foreign persons.

(ii) *Deposits from other persons.* An Edge corporation may receive from any other person in the United States transaction accounts, savings, and time deposits (including issuing negotiable certificates of deposit) if such deposits:

(A) Are to be transmitted abroad;

(B) Consist of funds to be used for payment of obligations to the Edge corporation or collateral securing such obligations;

(C) Consist of the proceeds of collections abroad that are to be used to pay for exported or imported goods or for other costs of exporting or importing or that are to be periodically transferred to the depositor's account at another financial institution;

(D) Consist of the proceeds of extensions of credit by the Edge corporation;

(E) Represent compensation to the Edge corporation for extensions of credit or services to the customer;

(F) Are received from Edge or Agreement corporations, foreign banks and other depository institutions (as described in part 204 of this chapter (Regulation D));

(G) Are received from an organization that by its charter, license, or enabling law is limited to business that is of an international character, including Foreign Sales Corporations (26 U.S.C. 921); transportation organizations engaged exclusively in the international transportation of passengers or in the movement of goods, wares, commodities or merchandise in international or foreign commerce; and export trading companies that are exclusively engaged in activities related to international trade.

(2) *Liquid funds.* Funds of an Edge or Agreement corporation that are not currently employed in its international or foreign business, if held or invested in the United States, shall be in the form of:

(i) Cash;

(ii) Deposits with depository institutions, as described in part 204 of this chapter (Regulation D), and other Edge and Agreement corporations;

(iii) Money market instruments (including repurchase agreements with respect to such instruments), such as bankers' acceptances, federal funds sold, and commercial paper; and

(iv) Short- or long-term obligations of, or fully guaranteed by, federal, state, and local governments and their instrumentalities.

(3) *Borrowings.* An Edge corporation may:

(i) Borrow from offices of other Edge and Agreement corporations, foreign banks, and depository institutions (as described in part 204 of this chapter (Regulation D)) or issue obligations to the United States or any of its agencies or instrumentalities;

(ii) Incur indebtedness from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency or instrumentality thereof that the Edge corporation is obligated to repurchase;

(iii) Issue long-term subordinated debt that does not qualify as a "deposit" under part 204 of this chapter (Regulation D).

(4) *Credit activities.* An Edge corporation may:

(i) Finance the following:

(A) Contracts, projects, or activities performed substantially abroad;

(B) The importation into or exportation from the United States of goods, whether direct or through brokers or other intermediaries;

(C) The domestic shipment or temporary storage of goods being imported or exported (or accumulated for export); and

(D) The assembly or repackaging of goods imported or to be exported;

(ii) Finance the costs of production of goods and services for which export orders have been received or which are identifiable as being directly for export;

(iii) Assume or acquire participations in extensions of credit, or acquire obligations arising from transactions the Edge corporation could have financed, including acquisitions of obligations of foreign governments;

(iv) Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events,[5] if the guarantee or agreement specifies the maximum monetary liability thereunder and is related to a type of transaction described in paragraphs (e)(4)(i) and (ii) of this section; and

(v) Provide credit and other banking services for domestic and foreign purposes to foreign governments and their agencies and instrumentalities; foreign persons; and organizations of the type described in paragraph 211.4(e)(1)(ii)(C) of this section.

(5) *Payments and collections.* An Edge corporation may receive checks, bills, drafts, acceptances, notes, bonds, coupons, and other instruments for collection abroad, and collect such instruments in the United States for a customer abroad; and may transmit and receive wire transfers of funds and securities for depositors.

(6) *Foreign exchange.* An Edge corporation may engage in foreign exchange activities.

(7) *Fiduciary and investment advisory activities.* An Edge corporation may:

(i) Hold securities in safekeeping for, or buy and sell securities upon the order and for the account and risk of, a person, provided such services for U.S. persons shall be with respect to foreign securities only;

(ii) Act as paying agent for securities issued by foreign governments or other entities organized under foreign law;

(iii) Act as trustee, registrar, conversion agent, or paying agent with respect to any class of securities issued to finance foreign activities and distributed solely outside the United States;

(iv) Make private placements of participations in its investments and extensions of credit; however, except to the extent permissible for member banks under section 5136 of the Revised Statutes (12 U.S.C. 24, Seventh), no Edge corporation may otherwise engage in the business of underwriting, distributing, or buying or selling securities in the United States;

(v) Act as investment or financial adviser by providing portfolio investment advice and portfolio management with respect to securities, other financial instruments, real property interests and other investment assets,[6] and by providing advice on mergers and acquisitions, provided such services for U.S. persons shall be with respect to foreign assets only; and

(vi) Provide general economic information and advice, general economic statistical forecasting services and industry studies, provided such services for U.S. persons shall be with respect to foreign economies and industries only.

(8) *Banking services for employees.* Provide banking services, including deposit services, to the officers and employees of the Edge corporation and its affiliates; however, extensions of credit to such persons shall be subject to the restrictions of part 215 of this chapter (Regulation O) as if the Edge corporation were a member bank.

(9) *Other activities.* With the Board's prior approval, engage in other activities in the United States that the Board determines are incidental to the international or foreign business of Edge corporations.

(f) *Agreement corporations.* With the prior approval of the Board, a member bank or bank holding company may invest in a federally- or state-chartered corporation that has entered into an agreement or undertaking with the Board that it will not exercise any power that is impermissible for an Edge corporation under this subpart.

§ 211.5 Investments and activities abroad.

(a) *General policy.* Activities abroad, whether conducted directly or indirectly, shall be confined to activities of a banking or financial nature and those that are necessary to carry on such activities. In doing so, investors shall at all times act in accordance with high standards of banking or financial prudence, having due regard for diversification of risks, suitable liquidity, and adequacy of capital. Subject to these considerations and the other provisions of this section, it is the Board's policy to allow activities abroad to be organized and operated as best meets corporate policies.

(b) *Investment requirements*(1) *Eligible investments.* Subject to the limitations in paragraph (b)(2) of this section, an investor may directly or indirectly:

(i) Invest in a subsidiary that engages solely in activities listed in paragraph (d) of this section or in such other activities as the Board has determined in the circumstances of a particular case are permissible; provided however that, in the case of an acquisition of a going concern, existing activities that are not otherwise permissible for a subsidiary may account for not more than 5 percent of either the consolidated assets or revenues of the acquired organization;

(ii) Invest in a joint venture provided that, unless otherwise permitted by the Board, not more than 10 percent of the joint venture's consolidated assets or revenues are attributable to activities not listed in paragraph (d) of this section; and

(iii) Make portfolio investments in an organization, provided however that:

(A) The total direct and indirect portfolio investments by the investor and its affiliates in organizations engaged in activities that are not

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[4] For purposes of this paragraph, "affiliate" means any organization that would be an "affiliate" under section 23A of the FRA (12 U.S.C. 371c) if the Edge corporation were a member bank.

[5] "Readily ascertainable events" include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or cost of transport and loss or nonconformance of shipping documents.

[6] For purposes of this section, management of an investment portfolio does not include operational management of real property, or industrial or commercial assets.

permissible for joint ventures do not exceed:

(*1*) 40 percent of the total equity of the organization, when combined with shares in the organization held in trading or dealing accounts pursuant to paragraph (d)(14) of this section and shares in the organization held under any other authority; or

(*2*) 25 percent of the investor's Tier 1 capital where the investor is a bank holding company or 100 percent of Tier 1 capital for any other investor, when combined with underwriting commitments and shares held in trading or dealing accounts pursuant to paragraph (d)(14) of this section;[7] and

(B) Any loans and extensions of credit made by an investor or its affiliates to the organization are on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions between the investor or its affiliates and nonaffiliated persons.

(2) *Direct investments by member banks.* A member bank's direct investments under section 25 of the FRA shall be limited to:

(i) Foreign banks;

(ii) Foreign organizations formed for the sole purpose of either holding shares of a foreign bank or performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the member bank; and

(iii) Subsidiaries established pursuant to § 211.3(b)(9) of this subpart.

(3) *Investment limit.* In computing the amount that may be invested in any organization under this section, there shall be included any unpaid amount for which the investor is liable and any investments in the same organization held by affiliates under any authority.

(4) *Divestiture.* An investor shall dispose of an investment promptly (unless the Board authorizes retention) if:

(i) The organization invested in:

(A) Engages in the general business of buying or selling goods, wares, merchandise, or commodities in the United States;

(B) Engages directly or indirectly in other business in the United States that is not permitted to an Edge corporation in the United States except that an investor may hold up to 5 percent of the shares of a foreign company that engages directly or indirectly in business in the United States that is not permitted to an Edge corporation; or

(C) Engages in impermissible activities to an extent not permitted under paragraph (b)(1) of this section; or

(ii) After notice and opportunity for hearing, the investor is advised by the Board that its investment is inappropriate under the FRA, the BHC Act, or this subpart.

(c) *Investment procedures.*[8] Direct and indirect investments shall be made in accordance with the general consent, prior notice, or specific consent procedures contained in this paragraph. Except as the Board may otherwise determine, in order for an investor to make investments under the general consent procedure, the investor and any other investor of which it is a subsidiary shall be in compliance with applicable minimum standards for capital adequacy. The Board may at any time, upon notice, modify or suspend the general consent and prior notice procedures with respect to any investor or with respect to the acquisition of shares of organizations engaged in particular kinds of activities. An investor shall apply for and receive the prior specific consent of the Board for its initial investment in its first subsidiary or joint venture unless an affiliate has made such an investment. Authority to make investments under prior notice or specific consent shall expire one year from the earliest date on which the authority could have been exercised, unless the Board extends the period.

(1) *General consent.* Subject to the other limitations of this section, the Board grants its general consent for the following:[9]

(i) Any investment in a joint venture or subsidiary, and any portfolio investment, if the total amount invested (in one transaction or in a series of transactions) does not exceed the lesser of:

(A) $25 million; or

(B) 5 percent of the investor's Tier 1 capital in the case of a member bank, bank holding company, or Edge corporation engaged in banking, or 25 percent of the investor's Tier 1 capital in the case of an Edge corporation not engaged in banking;

(ii) Any additional investment in an organization in any calendar year so long as:

(A) The total amount invested in that calendar year does not exceed 10 percent of the investor's Tier 1 capital; and

(B) The total amount invested under § 211.5 (including investments made pursuant to specific consent or prior notice) in that calendar year does not exceed cash dividends reinvested under paragraph (c)(1)(iii) of this section plus 10 percent of the investor's direct and indirect historical cost[10] in the organization, which investment authority, to the extent unexercised, may be carried forward and accumulated for up to five consecutive years;

(iii) Any additional investment in an organization in an amount equal to cash dividends received from that organization during the preceding twelve calendar months; or

(iv) Any investment that is acquired from an affiliate at net asset value.

(2) *Prior notice.* An investment that does not qualify under the general consent procedure may be made after the investor has given 45 days' prior written notice to the Board. The Board may waive the 45-day period if it finds immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is accepted. The Board may suspend the period or act on the investment under the Board's specific consent procedures.

(3) *Specific consent.* Any investment that does not qualify for either the general consent or the prior notice procedure shall not be consummated without the specific consent of the Board.

(d) *Permissible activities.* The Board has determined that the following activities are usual in connection with the transaction of banking or other financial operations abroad:

(1) Commercial and other banking activities;

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[7] For this purpose, a direct subsidiary of a member bank is deemed to be an investor.

[8] When necessary, the general consent and prior notice provisions of this section constitute the Board's approval under the eighth paragraph of section 25(a) of the FRA for investments in excess of the limitations therein based on capital and surplus.

[9] In determining compliance with these limits, an investor shall combine the value of all shares of an organization held in trading or dealing accounts under paragraph 211.5(d)(14)of this section with investments in the same organization. Shares held in trading or dealing accounts are also subject to the limits in paragraph 211.5(d)(14) of this section.

[10] The "historical cost" of an investment consists of the actual amounts paid for shares or otherwise contributed to the capital accounts, as measured in dollars at the exchange rate in effect at the time each investment was made. It does not include subordinated debt or unpaid commitments to invest even though these may be considered investments for other purposes of this part. For investments acquired indirectly as a result of acquiring a subsidiary, the historical cost to the investor is measured as of the date of acquisition of the subsidiary at the net asset value of the equity interest in the case of subsidiaries and joint ventures, and in the case of portfolio investments, at the book carrying value.

(2) Financing, including commercial financing, consumer financing, mortgage banking, and factoring;

(3) Leasing real or personal property, or acting as agent, broker, or advisor in leasing real or personal property, if the lease serves as the functional equivalent of an extension of credit to the lessee of the property;

(4) Acting as fiduciary;

(5) Underwriting credit life insurance and credit accident and health insurance;

(6) Performing services for other direct or indirect operations of a U.S. banking organization, including representative functions, sale of long-term debt, name saving, holding assets acquired to prevent loss on a debt previously contracted in good faith, and other activities that are permissible domestically for a bank holding company under sections 4(a)(2)(A) and 4(c)(1)(C) of the BHC Act;

(7) Holding the premises of a branch of an Edge corporation or member bank or the premises of a direct or indirect subsidiary, or holding or leasing the residence of an officer or employee of a branch or subsidiary;

(8) Providing investment, financial, or economic advisory services;

(9) General insurance agency and brokerage;

(10) Data processing;

(11) Organizing, sponsoring, and managing a mutual fund if the fund's shares are not sold or distributed in the United States or to U.S. residents and the fund does not exercise managerial control over the firms in which it invests;

(12) Performing management consulting services provided that such services when rendered with respect to the U.S. market shall be restricted to the initial entry;

(13) Underwriting, distributing and dealing in debt securities outside the United States;

(14) Underwriting, distributing, and dealing in equity securities outside the United States as follows:

(i) By an investor, or an affiliate, that had commenced such activities prior to March 27, 1991, and subject to limitations in effect at that time (12 CFR part 211 (1990)); or

(ii) With the approval of the Board, underwriting equity securities if:

(A) Commitments by an investor and its affiliates for the shares of an organization do not in the aggregate exceed the lesser of $60 million or 25 percent of the investor's Tier 1 capital unless the underwriter is covered by binding commitments from subunderwriters or other purchasers obtained by the investor or its affiliates; and

(B) Commitments by an investor and its affiliates for the shares of an organization in excess of those permitted by paragraph (d)(14)(ii)(A) of this section provided that:

(1) The underwriting level approved by the Board for the investor and its affiliates in excess of the limitations of paragraph (d)(14)(ii)(A) of this section is fully deducted from the capital of the bank holding company, and from the capital of the bank where the securities activities are conducted by a subsidiary of a U.S. bank;[11] and

(*2*) In the Board's judgment such bank holding company and bank would remain strongly capitalized after such deduction from capital; and

(iii) With the approval of the Board, dealing in the shares of an organization (including the shares of a U.S. organization with respect to foreign persons only and subject to the limitations on owning or controlling shares of a company in section 4 of the BHC Act and the Board's Regulation Y (12 CFR part 225)) where the shares held in the trading or dealing accounts of an investor and its affiliates, when combined with any shares held pursuant to the authority provided under paragraph (b) of this section, do not in the aggregate exceed the lesser of $30 million or 10 percent of the investor's Tier 1 capital, provided however that:

(A) For purposes of determining compliance with the limitations of this paragraph (d)(14)(iii) and paragraph (b)(1)(iii)(A)(*2*) of this section, long and short positions in the same security may be netted and positions in a security may be offset by futures, forwards, options, and similar instruments referenced to the same security through hedging methods approved by the Board, except that any position in a security shall not be deemed to have been reduced by more than 75 percent;

(B) Any shares held in trading or dealing accounts for longer than 90 days shall be reported to the senior management of the investor;

(C) Any shares acquired pursuant to an underwriting commitment for up to 90 days after the payment date for such underwriting shall not be subject to the dollar and percentage limitations of paragraph (d)(14)(iii) of this section or the investment provisions of paragraph (b) of this section, other than the aggregate limits in paragraph (b)(1)(iii)(A)(*2*) of this section; and

(D) Shares of an organization held in all trading and dealing accounts, when combined with all other equity interests in the organization held by the investor and its affiliates, other than underwriting commitments for shares and shares held pursuant to an underwriting for 90 days following the payment date for such shares, must conform to the permissible limits for investments in an organization under paragraph (b) of this section.[12]

(iv) Underwriting commitments for shares and shares held by an affiliate authorized to underwrite equity securities under section 4(c)(8) of the BHC Act shall not be included in determining compliance with the aggregates limits in paragraph (b)(1)(iii)(A)(*2*) and the limits of paragraphs (d)(14)(ii)(A) and (iii) of this section, except that shares held by such an affiliate shall be included for purposes of determining compliance with paragraph (d)(14)(iii)(D) of this section.

(15) Operating a travel agency provided that the travel agency is operated in connection with financial services offered abroad by the investor or others;

(16) Underwriting life, annuity, pension fund-related, and other types of insurance, where the associated risks have been previously determined by the Board to be actuarially predictable, provided however that:

(i) Investments in, and loans and extensions of credit (other than loans and extensions of credit fully secured in accordance with the requirements of section 23A of the FRA (12 U.S.C. 371c) or with such other standards as the Board may require) to, the company by the investor or its affiliates are deducted from the capital of the investor;[13] and

(ii) Activities conducted directly or indirectly by a subsidiary of a U.S. insured bank are excluded from the authority of this paragraph.

(17) Acting as a futures commission merchant for financial instruments of the type, and on exchanges, that the Board has previously approved, provided however that:

(i) Activities are conducted in accordance with the standards set forth in § 225.25(b)(18) of the Board's Regulation Y (12 CFR 225.25(b)(18)); and

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[11] Fifty percent of such capital deductions shall be from Tier 1 capital.

[12] Underwriting commitments are combined with shares held by an investor and its affiliates (other than an affiliate authorized to deal in shares under section 4(c)(8) of the BHC Act) in dealing or trading accounts and with portfolio investments for purposes of determining compliance with the aggregate limits in paragraph (b)(1)(iii)(A)(*2*) of this section.

[13] Fifty percent of such capital deduction shall be from Tier 1 capital.

(ii) Prior approval must be obtained for activities conducted on an exchange that requires members to guarantee or otherwise contract to cover losses suffered by other members.

(18) Acting as principal or agent in swap transactions[14] subject to any limitations applicable to state member banks under the Board's Regulation H (12 CFR part 208), except that where such activities involve contracts related to a commodity, such contracts must provide an option for cash settlement and the option must be exercised upon settlement.

(19) Engaging in activities that the Board has determined in Regulation Y (12 CFR 225.25(b)) are closely related to banking under section 4(c)(8) of the BHC Act; and

(20) With the Board's specific approval, engaging in other activities that the Board determines are usual in connection with the transaction of the business of banking or other financial operations abroad and are consistent with the FRA or the BHC Act.

(e) *Debts previously contracted.* Shares or other ownership interests acquired to prevent a loss upon a debt previously contracted in good faith are not subject to the limitations or procedures of this section; however, they shall be disposed of promptly but in no event later than two years after their acquisition, unless the Board authorizes retention for a longer period.

(f) *Investments made through debt-for-equity conversions*—(1) *Permissible investments.* A bank holding company may make investments through the conversion of sovereign or private debt obligations of an eligible country, either through direct exchange of the debt obligations for the investment or by a payment for the debt in local currency, the proceeds of which, including an additional cash investment not exceeding in the aggregate more than 10 percent of the fair value of the debt obligations being converted as part of such investment, are used to purchase the following investments:

(i) *Public sector companies.* A bank holding company may acquire up to and including 100 percent of the shares of (or other ownership interests in) any foreign company located in an eligible country if the shares are acquired from the government of the eligible country or from its agencies or instrumentalities.

(ii) *Private sector companies.* A bank holding company may acquire up to and including 40 percent of the shares, including voting shares, of (or other ownership interests in) any other foreign company located in an eligible country subject to the following conditions:

(A) A bank holding company may acquire more than 25 percent of the voting shares of the foreign company only if another shareholder or control group of shareholders unaffiliated with the bank holding company holds a larger block of voting shares of the company;

(B) The bank holding company and its affiliates may not lend or otherwise extend credit to the foreign company in amounts greater than 50 percent of the total loans and extensions of credit to the foreign company; and

(C) The bank holding company's representation on the board of directors or on management committees of the foreign company may be no more than proportional to its shareholding in the foreign company.

(2) *Investments by bank subsidiary of bank holding company.* Upon application, the Board may permit an indirect investment to be made pursuant to this paragraph through an insured bank subsidiary of the bank holding company where the bank holding company demonstrates that such ownership is consistent with the purposes of the FRA. In granting its consent, the Board may impose such conditions as it deems necessary or appropriate to prevent adverse effects, including prohibiting loans from the bank to the company in which the investment is made.

(3) *Divestiture*—(i) *Time limits for divestiture.* The bank holding company shall divest the shares of, or other ownership interests in, any company acquired pursuant to this paragraph (unless the retention of the shares or other ownership interest is otherwise permissible at the time required for divestiture) within the longer of:

(A) Ten years from the date of acquisition of the investment except that the Board may extend such period if, in the Board's judgment, such an extension would not be detrimental to the public interest; or

(B) Two years from the date on which the bank holding company is permitted to repatriate in full the investment in the foreign company;

Provided however that, in either event divestiture occurs within fifteen years of the date of the acquisition.

(ii) *Report to the Board.* The bank holding company shall report to the Board on its plans for divesting an investment made under this paragraph two years prior to the final date for divestiture, in a manner to be prescribed by the Board.

(iii) *Other conditions requiring divestiture.* All investments made pursuant to this paragraph are subject to paragraphs (b)(4)(i)(A) and (B) of this section requiring prompt divestiture (unless the Board upon application authorizes retention) if the company invested in engages in impermissible business in the United States that exceeds in the aggregate 10 percent of the company's consolidated assets or revenues calculated on an annual basis; provided however that, such company may not engage in activities in the United States that consist of banking or financial operations (as defined in § 211.23(f)(5)(iii)(B) of this chapter), or types of activities permitted by regulation or order under section 4(c)(8) of the BHC Act, except under regulations of the Board or with the prior approval of the Board.

(4) *Investment procedures*—(i) *General consent.* Subject to the other limitations of this paragraph, the Board grants its general consent for investments made under this paragraph if the total amount invested does not exceed the greater of $25 million or 1 percent of the Tier 1 capital of the investor.

(ii) All other investments shall be made in accordance with the procedures of paragraph (c) of this section requiring prior notice or specific consent.

(5) *Conditions*—(i) *Name.* Any company acquired pursuant to this paragraph shall not bear a name similar to the name of the acquiring bank holding company or any of its affiliates.

(ii) *Confidentiality.* Neither the bank holding company nor its affiliates shall provide to any company acquired pursuant to this paragraph any confidential business information or other information concerning customers that are engaged in the same or related lines of business as the company.

§ 211.6 Lending limits and capital requirements.

(a) *Acceptances of Edge corporations*—(1) *Limitations.* An Edge corporation shall be and remain fully secured for:

(i) All acceptances outstanding in excess of 200 percent of its Tier 1 capital; and

(ii) All acceptances outstanding for any one person in excess of 10 percent of its Tier 1 capital;

Provided however that, these limitations apply only to acceptances of the types described in paragraph 7 of section 13 of the FRA (12 U.S.C. 372).

(2) *Exceptions.* These limitations do not apply if the excess represents the international shipment of goods and the Edge corporation is:

(i) Fully covered by primary obligations to reimburse it that are guaranteed by banks or bankers; or

(ii) Covered by participation agreements from other banks, as such agreements are described in section 250.165 of this chapter.

(b) *Loans and extensions of credit to one person*—(1) *Limitations.* Except as the Board may otherwise specify:

(i) The total loans and extensions of credit outstanding to any person by an Edge corporation engaged in banking and its direct or indirect subsidiaries may not exceed 15 percent of the Edge corporation's Tier 1 capital;[15] and

(ii) The total loans and extensions of credit to any person by a foreign bank or Edge corporation subsidiary of a member bank, and by majority-owned subsidiaries of a foreign bank or Edge corporation, when combined with the total loans and extensions of credit to the same person by the member bank and its majority-owned subsidiaries, may not exceed the member bank's limitation on loans and extensions of credit to one person.

(2) "Loans and extensions of credit" has the meaning set forth in § 211.2(p) of this part[16] and, for purposes of this paragraph, include:

(i) Acceptances outstanding that are not of the types described in paragraph 7 of section 13 of the FRA (12 U.S.C. 372);

(ii) Any liability of the lender to advance funds to or on behalf of a person pursuant to a guarantee, standby letter of credit, or similar agreements;

(iii) Investments in the securities of another organization except where the organization is a subsidiary; and

(iv) Any underwriting commitments to an issuer of securities where no binding commitments have been secured from subunderwriters or other purchasers.

(3) *Exceptions.* The limitations of paragraph (b)(1) of this section do not apply to:

(i) Deposits with banks and federal funds sold;

(ii) Bills or drafts drawn in good faith against actual goods and on which two or more unrelated parties are liable;

(iii) Any bankers' acceptance of the kind described in paragraph 7 of section 13 of the FRA that is issued and outstanding;

(iv) Obligations to the extent secured by cash collateral or by bonds, notes, certificates of indebtedness, or Treasury bills of the United States;

(v) Loans and extensions of credit that are covered by bona fide participation agreements; or

(vi) Obligations to the extent supported by the full faith and credit of the following:

(A) The United States or any of its departments, agencies, establishments, or wholly-owned corporations (including obligations to the extent insured against foreign political and credit risks by the Export-Import Bank of the United States or the Foreign Credit Insurance Association), the International Bank for Reconstruction and Development, the International Finance Corporation, the International Development Association, the Inter-American Development Bank, the African Development Bank, the Asian Development Bank, or the European Bank for Reconstruction and Development;

(B) Any organization if at least 25 percent of such an obligation or of the total credit is also supported by the full faith and credit of, or participated in by, any institution designated in paragraph (b)(3)(vi)(A) of this section in such manner that default to the lender will necessarily include default to that entity. The total loans and extensions of credit under this paragraph (b)(3)(vi)(B) to any person shall at no time exceed 100 percent of the Tier 1 capital of the Edge corporation.

(c) *Capitalization.* An Edge corporation shall at all times be capitalized in an amount that is adequate in relation to the scope and character of its activities. In the case of an Edge corporation engaged in banking, after December 31, 1992, its minimum ratio of qualifying total capital to weighted-risk assets, as determined under the Capital Adequacy Guidelines, shall not be less than 10 percent, of which at least 50 percent shall consist of Tier 1 capital; provided however that for purposes of this paragraph, no limitation shall apply as to the inclusion of subordinated debt that qualifies as Tier 2 capital under the Capital Adequacy Guidelines.

§ 211.7 Supervision and reporting.

(a) *Supervision*—(1) *Foreign branches and subsidiaries.* Organizations conducting international banking operations under this subpart shall supervise and administer their foreign branches and subsidiaries in such a manner as to ensure that their operations conform to high standards of banking and financial prudence. Effective systems of records, controls, and reports shall be maintained to keep management informed of their activities and condition. Such systems shall provide, in particular, information on risk assets, liquidity management, operations, internal controls, and conformance to management policies. Reports on risk assets shall be sufficient to permit an appraisal of credit quality and assessment of exposure to loss, and for this purpose provide full information on the condition of material borrowers. Reports on the operations and controls shall include internal and external audits of the branch or subsidiary.

(2) *Joint ventures.* Investors shall maintain sufficient information with respect to joint ventures to keep informed of their activities and condition. Such information shall include audits and other reports on financial performance, risk exposure, management policies, operations, and controls. Complete information shall be maintained on all transactions with the joint venture by the investor and its affiliates.

(3) *Availability of reports to examiners.* The reports and information specified in paragraphs (a)(1) and (2) of this section shall be made available to examiners of the appropriate bank supervisory agencies.

(b) *Examinations.* Examiners appointed by the Board shall examine each Edge corporation once a year. An Edge corporation shall make available to examiners sufficient information to assess its condition and operations and the condition and activities of any organization whose shares it holds.

(c) *Reports*—(1) *Reports of condition.* Each Edge corporation shall make reports of condition to the Board at such times and in such form as the Board may prescribe. The Board may require that statements of condition or other reports be published or made available for public inspection.

(2) *Foreign operations.* Edge and Agreement corporations, member banks, and bank holding companies shall file such reports on their foreign operations as the Board may require.

(3) *Acquisition or disposition of shares.* A member bank, Edge or Agreement corporation or a bank holding company shall report, in a manner prescribed by the Board, any acquisition or disposition of shares.

(d) *Filing and processing procedures.*

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[14] Swap transactions involving equity instruments are separately authorized under paragraph (d)(14) of this section.

[15] For purposes of this subsection, "subsidiary" includes subsidiaries controlled by the Edge corporation but does not include companies otherwise controlled by affiliates of the Edge corporation.

[16] In the case of a foreign government, these include loans and extensions of credit to the foreign government's departments or agencies deriving their current funds principally from general tax revenues. In the case of a partnership or firm, these include loans and extensions of credit to its members and, in the case of a corporation, these include loans and extensions of credit to the corporation's affiliates where the affiliate incurs the liability for the benefit of the corporation.

(1) Unless otherwise directed by the Board, applications, notifications, and reports required by this part shall be filed with the Reserve Bank of the district in which the parent bank or bank holding company is located or, if none, the Reserve Bank of the district in which the applying or reporting institution is located. Instructions and forms for such applications, notifications and reports are available from the Reserve Banks.

(2) The Board shall act on an application or notification under this subpart within 60 calendar days after the Reserve Bank has accepted the application or notification unless the Board notifies the investor that the 60-day period is being extended and states the reasons for the extension.

Subpart B—Foreign Banking Organizations

3. Section 211.21 is revised to read as follows:

§ 211.21 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) ("BHC Act"); and the International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*) ("IBA").

(b) *Purpose and scope.* This subpart is in furtherance of the purposes of the BHC Act and the IBA. It applies to foreign banks and foreign banking organizations with respect to:

(1) The limitations on interstate banking under section 5 of the IBA (12 U.S.C. 3103); and

(2) The exemptions from the nonbanking prohibitions of the BHC Act and the IBA afforded by sections 2(h) and 4(c)(9) of the BHC Act (12 U.S.C. 1841(h) and 1843(c)(9)).

4. In § 211.22, paragraphs (a)(2), and (a)(5) are revised to read as follows:

§ 211.22 Interstate banking operations of foreign banking organizations.

* * * * *

(a) *Definitions.* * * *

* * * * *

(2) *Banking subsidiary,* with respect to a specified foreign bank, means a bank that is a subsidiary as the terms *bank* and *subsidiary* are defined in section 2 of the BHC Act (12 U.S.C. 1841).

* * * * *

(5) *Foreign bank,* for purposes of this section, is an organization that is organized under the laws of a foreign country and that engages in the business of banking.

5. In § 211.23, paragraphs (d), (e), (f)(4), (f)(5), (g), and (h) are revised, and paragraph (i) is added, to read as follows:

§ 211.23 Nonbanking activities of foreign banking organizations.

* * * * *

(d) *Loss of eligibility for exemptions.*

(1) A foreign banking organization that qualified under paragraph (b) of this section shall cease to be eligible for the exemptions of this section if it fails to meet the requirements of paragraph (b) of this section for two consecutive years as reflected in its Annual Reports (F.R. Y-7) filed with the Board.

(2) A foreign banking organization that ceases to be eligible for the exemptions of this section may continue to engage in activities or retain investments commenced or acquired prior to the end of the first fiscal year for which its Annual Report reflects nonconformance with paragraph (b) of this section. Activities commenced or investments made after that date shall be terminated or divested within three months of the filing of the second Annual Report unless the Board grants consent to continue the activity or retain the investment under paragraph (e) of this section.

(3) A foreign banking organization that ceases to qualify under paragraph (b) of this section, or an affiliate of such foreign banking organization, that requests a specific determination of eligibility under paragraph (e) of this section may, prior to the Board's determination on eligibility, continue to engage in activities and make investments under the provisions of paragraphs (f)(1), (2) and (4) of this section.

(e) *Specific determination of eligibility for nonqualifying foreign banking organizations.* (1) A foreign banking organization that does not qualify under paragraph (b) of this section for the exemptions afforded by this section, or that has lost its eligibility for the exemptions under paragraph (d) of this section, may apply to the Board for a specific determination of eligibility for the exemptions.

(2) A foreign banking organization may apply for a specific determination prior to the time it ceases to be eligible for the exemptions afforded by this section.

(3) In determining whether eligibility for the exemptions would be consistent with the purposes of the BHC Act and in the public interest, the Board shall consider:

(i) The history and the financial and managerial resources of the organization;

(ii) The amount of its business in the United States;

(iii) The amount, type, and location of its nonbanking activities, including whether such activities may be conducted by U.S. banks or bank holding companies; and

(iv) Whether eligibility of the foreign banking organization would result in undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(4) Such determination shall be subject to any conditions and limitations imposed by the Board, including any requirements to cease activities or dispose of investments.

(5) Determinations of eligibility would generally not be granted where a majority of the business of the foreign banking organization derives from commercial or industrial activities or where the U.S. banking business of the organization is larger than the non-U.S. banking business conducted directly by the foreign bank or banks (as defined in § 211.2(j) of this part) of the organization.

(f) *Permissible activities and investments.* A foreign banking organization that qualifies under paragraph (b) of this section may:

* * * * *

(4) Own or control voting shares of any company in a fiduciary capacity under circumstances that would entitle such shareholding to an exemption under section 4(c)(4) of the BHC Act if the shares were held or acquired by a bank.

(5) Own or control voting shares of a foreign company that is engaged directly or indirectly in business in the United States other than that which is incidental to its international or foreign business, subject to the following limitations:

(i) More than 50 percent of the foreign company's consolidated assets shall be located, and consolidated revenues derived from, outside the United States; provided however that, if the foreign company fails to meet the requirements of this paragraph for two consecutive years (as reflected in Annual Reports (F.R. Y-7)) filed with the Board by the foreign banking organization, the foreign company shall be divested or its activities terminated within one year of the filing of the second consecutive Annual Report that reflects nonconformance with the requirements of this paragraph, unless the Board grants consent to retain the investment under paragraph (g) of this section;

(ii) The foreign company shall not directly underwrite, sell, or distribute, nor own or control more than 5 percent of the voting shares of a company that underwrites, sells, or distributes securities in the United States except to the extent permitted bank holding companies;

(iii) If the foreign company is a subsidiary of the foreign banking organization, the foreign company must be, or must control, an operating company, and its direct or indirect activities in the United States shall be subject to the following limitations:

(A) The foreign company's activities in the United States shall be the same kind of activities or related to the activities engaged in directly or indirectly by the foreign company abroad as measured by the "establishment" categories of the Standard Industrial Classification (SIC) (an activity in the United States shall be considered related to an activity outside the United States if it consists of supply, distribution, or sales in furtherance of the activity);

(B) The foreign company may engage in activities in the United States that consist of banking, securities, insurance or other financial operations, or types of activities permitted by regulation or order under section 4(c)(8) of the BHC Act, only under regulations of the Board or with the prior approval of the Board.

(*1*) Activities within Division H (Finance, Insurance, and Real Estate) of the SIC shall be considered banking or financial operations for this purpose, with the exception of acting as operators of nonresidential buildings (SIC 6512), operators of apartment buildings (SIC 6513), operators of dwellings other than apartment buildings (SIC 6514), and operators of residential mobile home sites (SIC 6515); and operating title abstract offices (SIC 6541); and

(*2*) The following activities shall be considered financial activities and may be engaged in only with the approval of the Board under subsection (g): Credit reporting services (SIC 7323); computer and data processing services (SIC 7371, 7372, 7373, 7374, 7375, 7376, 7377, 7378, and 7379); armored car services (SIC 7381); management consulting (SIC 8732, 8741, 8742, and 8748); certain rental and leasing activities (SIC 4741, 7352, 7353, 7359, 7513, 7514, 7515, and 7519); accounting, auditing and bookkeeping services (SIC 8721); courier services (SIC 4215 and 4513); and arrangement of passenger transportation (SIC 4724, 4725, and 4729).

(g) *Exemptions under section 4(c)(9) of the BHC Act.* A foreign banking organization that is of the opinion that other activities or investments may, in particular circumstances, meet the conditions for an exemption under section 4(c)(9) of the BHC Act may apply to the Board for such a determination by submitting to the Reserve Bank of the District in which its banking operations in the United States are principally conducted a letter setting forth the basis for that opinion.

(h) *Reports.* (1) The foreign banking organization shall inform the Board through the organization's Reserve Bank within 30 days after the close of each quarter of all shares of companies engaged, directly or indirectly, in activities in the United States that were acquired during such quarter under the authority of this section.

(2) The foreign banking organization shall also report any direct activities in the United States commenced during such quarter by a foreign subsidiary of the foreign banking organization. This information shall (unless previously furnished) include a brief description of the nature and scope of each company's business in the United States, including the 4-digit SIC numbers of the activities in which the company engages. Such information shall also include the 4-digit SIC numbers of the direct parent of any U.S. company acquired, together with a statement of total assets and revenues of the direct parent.

(i) *Availability of information.* If any information required under this section is unknown and not reasonably available to the foreign banking organization, either because obtaining it would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of a company that is not controlled by the organization, the organization shall:

(1) Give such information on the subject as it possesses or can reasonably acquire together with the sources thereof; and

(2) Include a statement either showing that unreasonable effort or expense would be involved or indicating that the company whose shares were acquired is not controlled by the organization and stating the result of a request for information.

6. Subpart C (§ § 211.31 through 211.34) is revised to read as follows:

Subpart C—Export Trading Companies

211.31 Authority, purpose, and scope.
211.32 Definitions.
211.33 Investments and extensions of credit.
211.34 Procedures for filing and processing notices.

Subpart C—Export Trading Companies

§ 211.31 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) ("BHC Act"), the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235 (1982)) ("BESA"), and the Export Trading Company Act Amendments of 1988 (Title III, Pub. L. 100-418, 102 Stat. 1384 (1988)) ("ETC Act Amendments").

(b) *Purpose and scope.* This subpart is in furtherance of the purposes of the BHC Act, the BESA, and the ETC Act Amendments, the latter two statutes being designed to increase U.S. exports by encouraging investments and participation in export trading companies by bank holding companies and the specified investors. The provisions of this subpart apply to the following (hereinafter referred to as "eligible investors"):

(1) Bank holding companies as defined in section 2 of the BHC Act (12 U.S.C. 1841(a));

(2) Edge and Agreement corporations, as described in § 211.1(c) of this part, that are subsidiaries of bank holding companies but are not subsidiaries of banks;

(3) Bankers' banks as described in section 4(c)(14)(F)(iii) of the BHC Act (12 U.S.C. 1843(c)(14)(F)(iii)); and

(4) Foreign banking organizations as defined in § 211.23(a)(2) of this part.

§ 211.32 Definitions.

The definitions of § 211.2 in subpart A apply to this subpart subject to the following:

(a) *Export trading company* means a company that is exclusively engaged in activities related to international trade and, by engaging in one or more export trade services, derives:

(1) At least one-third of its revenues in each consecutive four-year period from the export of, or from facilitating the export of, goods and services produced in the United States by persons other than the export trading company or its subsidiaries; and

(2) More revenues in each four-year period from export activities as described in paragraph (a)(1) of this section than it derives from the import, or facilitating the import, into the United States of goods or services produced outside the United States.

For purposes of this section, "revenues" shall include net sales revenues from exporting, importing, or third party trade

in goods by the export trading company for its own account, and gross revenues derived from all other activities of the export trading company.

(b) The terms *bank, company* and *subsidiary* have the same meanings as those contained in section 2 of the BHC Act (12 U.S.C. 1841).

§ 211.23 Investments and extensions of credit.

(a) *Amount of investments.* In accordance with the procedures of § 211.24 of this subpart, an eligible investor may invest no more than 5 percent of its consolidated capital and surplus in one or more export trading companies, except that an Edge or Agreement corporation not engaged in banking may invest as much as 25 percent of its consolidated capital and surplus but no more than 5 percent of the consolidated capital and surplus of its parent bank holding company.

(b) *Extensions of credit*—(1) *Amount.* An eligible investor in an export trading company or companies may extend credit directly or indirectly to the export trading company or companies in a total amount that at no time exceeds 10 percent of the investor's consolidated capital and surplus.

(2) *Terms*—(i) An eligible investor in an export trading company may not extend credit directly or indirectly to the export trading company or any of its customers or to any other investor holding 10 percent or more of the shares of the export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extensions of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(ii) For the purposes of this provision, an investor in an export trading company includes any affiliate of the investor.

(3) *Collateral requirements.* Covered transactions between a bank and an affiliated export trading company in which a bank holding company has invested pursuant to this subpart are subject to the collateral requirements of section 23A of the Federal Reserve Act (12 U.S.C. 371c), except where a bank issues a letter of credit or advances funds to an affiliated export trading company solely to finance the purchase of goods for which:

(i) The export trading company has a bona fide contract for the subsequent sale of the goods; and

(ii) The bank has a security interest in the goods or in the proceeds from their sale at least equal in value to the letter of credit or the advance.

§ 211.24 Procedures for filing and processing notices.

(a) *Filing notice*—(1) *Prior notice of investment.* An eligible investor shall give the Board 60 days' prior written notice of any investment in an export trading company.

(2) *Subsequent notice*—(i) An eligible investor shall give the Board 60 days' prior written notice of changes in the activities of an export trading company that is a subsidiary of the investor if the export trading company expands its activities beyond those described in the initial notice to include:

(A) Taking title to goods where the export trading company does not have a firm order for the sale of those goods;

(B) Product research and design;

(C) Product modification; or

(D) Activities not specifically covered by the list of activities contained in section 4(c)(14)(F)(ii) of the BHC Act.

(ii) Such an expansion of activities shall be regarded as a proposed investment under this subpart.

(b) *Time period for Board action.* (1) A proposed investment that has not been disapproved by the Board may be made 60 days after the Reserve Bank accepts the notice for processing. A proposed investment may be made before the expiration of the 60-day period if the Board notifies the investor in writing of its intention not to disapprove the investment.

(2) The Board may extend the 60-day period for an additional 30 days if the Board determines that the investor has not furnished all necessary information or that any material information furnished is substantially inaccurate. The Board may disapprove an investment if the necessary information is provided within a time insufficient to allow the Board reasonably to consider the information received.

(3) Within three days of a decision to disapprove an investment, the Board shall notify the investor in writing and state the reasons for the disapproval.

(c) *Time period for investment.* An investment in an export trading company that has not been disapproved shall be made within one year from the date of the notice not to disapprove, unless the time period is extended by the Board or by the appropriate Reserve Bank.

(d) *Time period for calculating revenues.* For any export trading company that commenced operations two years or more prior to August 23, 1988, the four-year period within which to calculate revenues derived from its activities under § 211.32(a) of this part shall be deemed to have commenced with the beginning of the 1988 fiscal year for that export trading company. For all other export trading companies, the four-year period shall commence with the first fiscal year after the respective export trading company has been in operation for two years.

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 continues to read as follows:

Authority: Sec. 11(k), 38 Stat. 261 and 80 Stat. 1314 (12 U.S.C. 248(k)).

2. In § 265.2, paragraph (c)(38) is added to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(c) * * *

(38) Under § 211.5(d)(4) of this chapter (Regulation K):

(i) To approve requests for authority to engage in the activities of underwriting, distributing, and dealing in shares outside the United States, provided that the Staff Director has determined that the internal procedures and operations of the organization and the effect of the proposed activities on capital adequacy are consistent with approval; and

(ii) To approve hedging methods authorized under § 211.5(d)(14)(iii)(A) of this chapter.

* * * * *

§ 265.2 [Amended]

3. In § 265.2, paragraphs (f)(46)(iii) and (46)(v) are removed; paragraphs (f)(46)(iv) and (46)(vi) are redesignated as (f)(46)(iii) and (46)(iv) respectively; and paragraph (f)(46)(ii) is revised, and paragraph (f)(53) is added, to read as follows:

* * * * *

(f) *Each Federal Reserve Bank* * * *

* * * * *

(46) * * *

(i) * * *

(ii) A bank holding company investor and its lead bank meet the minimum capital adequacy guidelines of the Board, the Comptroller of the Currency or the Federal Deposit Insurance Corporation or have enacted capital enhancement plans that have been determined by the appropriate supervisory authority to be acceptable;

* * * * *

(53) Under § 211.5(d)(17) of this chapter (Regulation K) to approve applications to engage in futures commission merchant activities on an exchange that requires members to guarantee or otherwise contract to cover losses suffered by other members, provided that the Board has previously approved the exchange and the application is on the same terms and conditions on which the Board based its approval of the exchange.

* * * * *

Board of Governors of the Federal Reserve System, April 18, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-9972 Filed 4-26-91; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 69, 168, and 188

Removal of parts

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document removes 32 CFR Part 69, "Department of Defense Dependent Schools (DoDDs)," Part 168, "Management and control of engineering and technical services, and part 188, "Development, use, marking and stocking of fallout shelters". These parts have served the purpose for which they were intended and are no longer required.

EFFECTIVE DATE: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Directives Division, Washington Headquarters Services, Pentagon, Washington, DC 20301, telephone (703) 697-4111.

SUPPLEMENTARY INFORMATION:

List of Subjects

32 CFR Part 69

Elementary and secondary education; Government employees; Military personnel.

32 CFR Part 168

Armed forces; Government procurement.

32 CFR Part 188

Armed forces; Civil defense; Fallout shelters; Federal buildings and facilities; Radiation protection.

PARTS 69, 168, AND 188 [REMOVED]

Accordingly, under the authority of 10 U.S.C. 131, 32 CFR parts 69, 168, and 188 are removed.

Dated: April 24, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-10089 Filed 4-26-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 90-054]

RIN 2115-AD64

Pollution-Prevention Requirements of Annex V of MARPOL 73/78

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the rules that carry out Annex V of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78). This rule is necessary because on February 18, 1991, two amendments to the Annex became effective internationally. Like those amendments, this rule designates the North Sea as a Special Area under the Annex and eliminates the previous exemption under the Annex for the loss of synthetic material incidental to the repair of fishing nets.

EFFECTIVE DATE: This rule is effective on May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant James H. McDowell, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G-MPS-3), (202) 267-0491, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant James H. McDowell, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Mr. Patrick J. Murray, Project Counsel, Office of Chief Counsel.

Regulatory History

On January 9, 1991, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Pollution-Prevention Requirements of Annex V of MARPOL 73/78 in the Federal Register (56 FR 824). The Coast Guard did not receive any letters commenting on the proposal. No public hearing was requested, and none was held.

Background and Purpose

The United States implements Annex V of MARPOL 73/78 through the Act to Prevent Pollution From Ships, as amended (33 U.S.C. 1901–1912) (the Act). The Act directs the Secretary of the Department in which the Coast Guard is operating to prescribe any necessary or desired regulations to carry out the provisions of MARPOL 73/78. On September 4, 1990, the Coast Guard published a final rule entitled Regulations Implementing the Pollution-Prevention Requirements of Annex V of MARPOL 73/78 in the Federal Register (55 FR 36986). With related rules, that rule carries out the Annex for foreign ships operating in U.S. waters and for U.S. ships operating in any waters. The several rules establish, for ships, requirements on garbage discharge and, for facilities, requirements on garbage reception.

On February 18, 1991, two amendments to Annex V became effective internationally. The International Maritime Organization (IMO) had adopted these amendments, and the U.S. delegation to IMO had fully participated in the deliberative process for the amendments. The amendments (1) designate the North Sea as a Special Area under the Annex, and (2) eliminate an exemption under the Annex for the loss of synthetic material incidental to the repair of fishing nets.

Annex V imposes more stringent restrictions on discharges into waters designated as Special Areas. This rule adds the North Sea to those waters designated as Special Areas under Annex V. Special Areas under Annex V now comprise (1) the Mediterranean Sea area, (2) the Baltic Sea area, (3) the Black Sea area, (4) the Red Sea area, (5) the Gulfs area, which includes parts of the Persian Gulf, and (6) the North Sea area.

Previously, the loss of synthetic material incidental to the repair of fishing nets did not violate Annex V if all reasonable precautions had been taken to prevent this loss. The elimination of the exemption for this loss will further reduce the amount of plastic and other synthetic materials entering the water. This will lessen the harmful effects of these materials on marine wildlife and will aid efforts to reduce the amount of debris that collects on the nation's shorelines and beaches.

The existing rules carry out Annex V as it stood until February 18, 1991. This rule conforms them to the Annex as the two amendments modify it.

Discussion of Comments and Amendments

The Coast Guard did not receive any letters commenting on the NPRM published on January 9, 1991, in the Federal Register (56 FR 824). No public hearing was requested, and none was held. This rule adopts the NPRM without substantive changes. This rule adds text to the prefatory language of 33 CFR 151.53, adds text in the form of a new paragraph (f), and adds text to Note 2 to appendix A to §§ 151.51 through 151.77; these added texts, respectively, list, define, and emphasize the North Sea as a Special Area under Annex V. This rule also deletes the text in § 151.77(c) exempting the loss of synthetic material incidental to the repair of fishing nets, though it does leave the text exempting the accidental loss of synthetic fishing nets themselves.

Regulatory Evaluation

The Coast Guard considers this rule not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures [44 FR 11040 (February 26, 1979)].

The Coast Guard prepared a Final Regulatory Evaluation for the final rule carrying out Annex V. A copy of this evaluation is available in the docket for inspection or copying at the office of the Marine Safety Council, U.S. Coast Guard Headquarters, room 3406, 2100 Second Street SW., Washington, DC 20593-0001. Office hours are between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. The Coast Guard expects the economic impact of this rule to be so minimal that a new Regulatory Evaluation is not necessary. This rule makes only minor changes to the rules previously evaluated and adopted. It affects only U.S.-flag ships operating in the North Sea, and those few fishing vessels losing synthetic material during the repair of fishing nets despite exercising all reasonable precautions.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Again, the Coast Guard prepared a Final Regulatory Evaluation for the final rule carrying out Annex V. The Coast Guard conducted, as a part of this evaluation, a regulatory flexibility analysis, which certified that that rule would not have a significant economic impact on a substantial number of small entities. This rule makes only minor changes to that rule. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*].

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and has concluded that preparation of an Environmental Impact Statement is not necessary. The Coast Guard conducted an Environmental Assessment for the final rule carrying out Annex V; this led to a Finding of No Significant Impact. This rule makes only minor changes to that rule. The Environmental Assessment and Finding of No Significant Impact are available in the docket for inspection or copying at the address in the "Regulatory Evaluation" section of this preamble.

List of Subjects in 33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE AND MUNICIPAL OR COMMERCIAL WASTE

1. The citation of authority for subpart A of part 151 is revised to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 11735, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

2. Section 151.53 is amended by revising the introductory text and adding a new paragraph (f) before the note, to read as follows:

§ 151.53 Special areas for Annex V of MARPOL 73/78.

For the purposes of §§ 151.51 through 151.77, the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, the Gulfs area, and the North Sea area, which are defined as follows:

* * * * *

(f) The North Sea area means the North Sea proper, including seas within the North Sea southwards of latitude 62° N and eastwards of longitude 4° W; the Skagerrak, the southern limit of which is determined east of the Skaw by latitude 57°44.8' N; and the English Channel and its approaches eastwards of longitude 5° W. The discharge restrictions in § 151.71 are effective in the North Sea area on February 18, 1991.

* * * * *

3. Section 151.77 is amended by revising paragraph (c), to read as follows:

§ 151.77 Exceptions for emergencies.

* * * * *

(c) The accidental loss of synthetic fishing nets, provided all reasonable precautions have been taken to prevent such loss.

4. Appendix A to §§ 151.51 through 151.77 is amended by revising Note 2, to read as follows:

Appendix A to §§ 151.51 through 151.77—Summary of Garbage Discharge Restrictions.

* * * * *

Note 2: Special areas under Annex V are the Mediterranean, Baltic, Black, Red, and North Seas areas and the Gulfs area. (33 CFR 151.53)

* * * * *

Dated: April 2, 1991.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91-9789 Filed 4-26-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF04

Death Pension Eligibility—Wartime Service

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations concerning eligibility for death pension. This change is necessary because VA General Counsel has pointed out that those regulations do not clearly reflect the statutory requirement that the veteran's service must have been during a period of war. The intended effect of this change is to clarify the wartime service eligibility requirement for death pension benefits.

EFFECTIVE DATE: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In a memorandum dated October 11, 1990, VA General Counsel held that 38 CFR 3.3(b)(3)(iii) and and 3.3(b)(4)(iii) do not clearly reflect the provisions of 38 U.S.C. 541 and 542; specifically, that the veteran's service must have been during a period of war. We are amending 38 CFR 3.3(b)(3) and 3.3(b)(4) to clarify this eligibility requirement. As a result of this amendment, the cross-reference contained in § 3.1(d)(2) is being amended.

VA is issuing a final rule to amend the provisions of 38 CFR 3.3(b)(3) and 3.3(b)(4). This change is necessary to clarify the regulatory provisions in accordance with the memorandum of VA General Counsel. Because this amendment does not constitute a substantive change, publication as a proposal for public notice and comment is unnecessary. For these reasons, this amendment is effective on April 29, 1991.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601-612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance program number is 64.105.)

List of Subjects in 38 CFR Part 3

Administrative practices and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 28, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 3—[AMENDED]

38 CFR part 3, Adjudication, is amended as follows:

§ 3.1 [Amended]

1. In § 3.1(d)(2), remove the words "(See § 3.3(b)(4)(iii))" and add, in their place, the words "(See §§ 3.3(b)(3)(i) and 3.3(b)(4)(i))". The authority citation for this paragraph is revised as follows:

(Authority: 38 U.S.C. 210(c)).

2. In § 3.3, paragraphs (b) (3) and (4) are revised to read as follows:

§ 3.3 Pension.

* * * * *

(b) * * *

(3) *Section 306 death pension.* A monthly benefit payable by the Department of Veterans Affairs to a surviving spouse or child because of a veteran's nonservice-connected death. Basic entitlement exists if:

(i) The veteran (as defined in § 3.1(d) and (d)(2)) had qualifying service as specified in paragraph (a)(2)(i), (ii), or (iii) of this section; or

(ii) The veteran was, at time of death, receiving or entitled to receiver compensation or retired pay for service-connected disability based on wartime service; and

(iii) The surviving spouse or child (A) was in receipt of section 306 pension on December 31, 1978, or (B) had a claim for pension pending on that date, or (C) filed a claim for pension after that date but within 1 year after the veteran's death, if the veteran died before January 1, 1979; and

(iv) The surviving spouse or child meets the income and net worth requirements of 38 U.S.C. 541, 542 or 543 as in effect on December 31, 1978, and all other provisions of title 38, United States Code in effect on December 31, 1978, applicable to section 306 pension.

Note: The pension provisions of title 38, United States Code, as in effect on December 31, 1978, are available in any VA regional office.)

(4) *Improved death pension, Public Law 95-588.* A benefit payable by the Department of Veterans Affairs to a veteran's surviving spouse or child because of the veteran's nonservice-connected death. Payments are made monthly unless the amount of the annual benefit is less than 4 percent of the maximum annual rate payable to a veteran under 38 U.S.C. 521(b), in which case payments may be made less frequently than monthly. Basic entitlement exists if:

(i) The veteran (as defined in § 3.1(d) and (d)(2)) had qualifying service as specified in paragraph (a)(3)(i), (ii), (iii), or (iv) of this section [38 U.S.C. 541(a)]; or

(ii) The veteran was, at time of death, receiving or entitled to receive compensation or retired pay for a service-connected disability based on service during a period of war. [The qualifying periods of war are specified in paragraph (a)(3) of this section.) (38 U.S.C. 541(a)]; and

(iii) The surviving spouse or child meets the net worth requirements of § 3.274 and has an annual income not in excess of the applicable maximum annual pension rate specified in §§ 3.23 and 3.24.

(Authority: 38 U.S.C. 541 and 542).

* * * * *

[FR Doc. 91-10036 Filed 4-26-91; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3961-4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for specified wastes to be generated by USX Corporation, Chicago, Illinois. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 266 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators

the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: April 29, 1991.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., room M-2427, Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-89-UXFP-FFFFF." The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

USX Corporation (USX), located in Chicago, Illinois, petitioned the Agency to exclude from hazardous waste control a specific waste it intends to generate. After evaluating the petition, on July 20, 1989, EPA proposed to exclude USX's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32, conditional upon USX meeting certain sampling, analysis, and reporting requirements. (See 53 FR 30406).

USX petitioned the Agency for an "upfront" exclusion. A petitioner requests an upfront exclusion for wastes that have not yet been generated or that will be subject to further treatment. When treatment is planned, an upfront delisting petition requests that an exclusion be granted based on untreated waste characteristics, full-scale or pilot-scale treatment data if available, and process descriptions. As a condition of an upfront exclusion, the Agency may impose batch testing requirements, which often include analytical testing of representative samples obtained from the full-scale system. These data can be used to verify that the treatment system, once on-line, is operating as described in the petition. The Agency may also specify verification testing limitations (*i.e.*, the maximum allowable levels of hazardous constituents of concern in the waste) in the conditions of the granted exclusion. When the actual levels of the constituents of concern are below these levels, the waste will not be considered hazardous. If the actual levels of the constituents are above these levels, the waste is still considered to be hazardous and must be retreated or disposed in accordance with RCRA subtitle C requirements.

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

USX Corporation, Chicago, Illinois

1. Proposed Exclusion

USX petitioned the Agency for an upfront exclusion of its chemically stabilized electric arc furnace dust (CSEAFD), presently listed as EPA Hazardous Waste No. K061. USX based its petition on the claim that the constituents of concern, although present in the waste, were in an essentially immobile form (*i.e.*, cement-like). Furthermore, to support its claim that both the non-listed and listed constituents of concern would not be present in the fully-cured CSEAFD above health-based levels of concern, USX submitted results from total constituent, EP toxicity, and multiple extraction procedure (MEP) analyses (used to assess stabilized wastes) for all the EP toxic metals, nickel, cyanide, antimony, beryllium, and thallium. USX did not submit results from MEP analyses for barium and cyanide. (See 54 FR 30410, July 20, 1989). The total constituents analyses were performed on representative samples of the untreated electric arc furnace dust. The EP and MEP leachate analyses were performed on representative samples of the fully-cured CSEAFD as generated using a laboratory-scale treatment system. The verification testing conditions attached to the exclusion are designed to ensure that these constituents will not be present in the fully-cured CSEAFD at concentrations above the health-based levels used in delisting decision-making. See 54 FR 30406, July 20, 1989 for a more detailed explanation of why EPA proposed to grant USX's petition for its fully-cured CSEAFD.

2. Agency Response to Public Comments

The Agency received public comments on the proposed rule from one commenter. The commenter opposed the Agency's proposed decision to exclude the fully-cured CSEAFD. The objections raised by the commenter are discussed below.

Petition-Specific Comments

The commenter believed that the Agency did not provide sufficient information on the particle size and physical nature (including pH) of both the intermediate and final waste forms. The commenter asserted that this information was needed to evaluate the potential for waste dispersal and exposure by routes in addition to leaching. The commenter, therefore, believed that their ability to provide "meaningful" public comment was seriously restricted.

The agency disagrees with the commenter. First, USX provided adequate data characterizing the physical and chemical composition of both the untreated waste and the CSEAFD. These data were provided in the exclusion petition. (See 54 FR 30406, July 20, 1989). With regards to information concerning the pH of the CSEAFD, although this information was not specifically provided in the Federal Register notice, the notice stated that the CSEAFD did not exhibit the characteristic of corrosivity. (See 54 FR 30411, July 20, 1989). The fully-cured CSEAFD is a solid material, therefore, the pH cannot be directly measured. However, the petition did contain pH measurements on mixtures of the waste and distilled water. USX provided pH data on four concentrated samples of fully-cured CSEAFD suspended in water and all four samples had a pH of 12.3.

In regards to information concerning particle size, the proposed rule stated that USX's waste possessed a rigid, friable texture similar to that of a clay soil. (See 54 FR 30409, July 20, 1989). The Agency believes that this information is sufficient to perform a worst-case evaluation because relative particle size can be inferred based on the physical description of the waste. In regards to information concerning the intermediate form of the CSEAFD, the Agency did not evaluate the intermediate form because the exclusion only covers the final, fully-cured CSEAFD. (The Agency notes that the intermediate waste (*i.e.*, uncurred CSEAFD) is still a hazardous waste subject to all of the information

submitted by USX. Information that was not claimed to be confidential is available in the RCRA public docket for public inspection.

The commenter stated that the CSEAFD still exhibits one of the criteria for which it was listed—the presence of significant concentrations of the inorganic constituents of concern (*i.e.*, cadmium, chromium, and lead). The commenter also stated that the waste contains significant concentrations of nickel. The commenter, therefore, believed that the petition should be denied because USX did not meet the regulatory requirements of 40 CFR 261.11(a)(3)(ii) and (vii). Specifically, the commenter asserted that because the waste contains significant concentrations of both the listed and non-listed constituents (*i.e.*, cadmium, chromium, lead, and nickel), the petitioner must make a demonstration showing that the petitioned waste, under all plausible types of mismanagement scenarios, is non-hazardous.

First, the Agency considered in its analysis of the petitioned waste all of the factors listed in 40 CFR 261.11(a)(3), including all plausible mismanagement scenarios (see 54 FR 30407, July 20, 1989). EPA, therefore, disagrees with the commenter's assertion that granting this petition would be inconsistent with the regulations.

In regards to the presence of the cadmium, chromium, lead, and nickel in the petitioned waste, the Agency agrees that the presence in K061 wastes of significant total constituent concentrations of the inorganic constituents of concern was one of the criteria for listing K061 wastes as "T" (toxic) wastes. See 40 CFR 261.11(a)(3)(ii) and "Background Document, Resource Conservation and Recovery Act, subtitle C, Hazardous Waste Management, section 3001, Identification and Listing of Hazardous Waste," 1980. The Agency also believes that the data presented in the Background Document broadly characterize the physical/chemical nature of untreated electric arc furnace dusts and that these data are not representative of the physical/chemical nature of USX's stabilized electric arc furnace. EPA, therefore, uses elevated concentrations of constituents as an indicator of potential hazard as it is reasonable to expect that as the concentration of an unbound or loosely bound etal present in a waste increases, the potential for the metal to leach from the waste also increases. (Generally, the higher the total concentrations of an unbound or loosely bound metal, the higher the potential EP leachate concentrations.) Thus, wastes having significant concentrations of unbound or loosely bound metals are more likely to impact the underlying ground water than wastes having lower concentrations of unbound or loosely bound metals are more likely to impact the underlying ground water than wastes having lower concentrations of unbound or loosely bound metals. In this specific case, the metals in USX's waste are tightly bound within the waste matrix. The Agency's conclusion that all of the inorganic constituents (including, cadmium, chromium, lead, and nickel) are bound in the waste matrix and thus are not available for leaching is supported by the results of both the EP and MEP leachate analyses, which showed that the inorganic constituents would not leach at hazardous levels from USX's waste under conditions similar to those found in municipal waste landfills. (See 54 FR 30411, July 20, 1989). As a result, the Agency believes that the total levels of cadmium, chromium, lead and nickel present in USX's waste, in this specific case, are not an appropriate indicator of hazard to human health and the environment.

Furthermore, EPA evaluated the waste's potential impact on human health using either the maximum EP or MEP leachate concentration (whichever was greater) and the vertical and horizontal spread (VHS) model. For the volume of waste generated by USX (35,000 tons/year), the VHS model predicts a dilution factor of approximately 6.3. The VHS model analysis provides a conservative and reasonable worst-case evaluation of the behavior of the leachate from the waste in an underlying aquifer. The predicted compliance-point concentrations resulting from this conservative analysis were below the levels of concern used for delisting purposes. See 54 FR 30411, July 20, 1989 for a description of the modeling analysis of USX's waste.

As indicated above, the commenter believed that the Agency failed to consider all plausible mismanagement scenarios in its evaluation of the petitioned waste. Specifically, the commenter asserted that because the Agency based its evaluation exclusively on the "worst-case scenario" of land disposal, the proposed rule provides no basis for determining if the waste would be hazardous under other plausible mismanagement scenarios. The commenter, therefore, believed that EPA only considered the leachable levels of hazardous constituents and did not consider the waterborne dispersal, airborne dispersal, or direct dermal contact with the waste potentially occurring through other plausible mismanagement scenarios.

The Agency does not believe that it is likely for other mismanagement scenarios to occur. With regard to possible airborne dispersal, the Agency believes that the commenter's concerns regarding airborne dispersal of the waste are unfounded. First, the Agency notes that USX's untreated the uncured wastes will continue to be regulated as hazardous wastes. Therefore, the regulatory requirements under RCRA for transport and storage will provide some control of any releases of either the untreated or uncured wastes to the atmosphere. With regard to USX's fully-cured CSEAFD, USX must either dispose of their fully-cured CSEAFD waste on-site or ensure that the fully-cured CSEAFD waste is delivered to an off-site storage, treatment or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. (See 54 FR 30413, July 20, 1989).

While the commenter is correct in noting that the listing background document characterized K061 wastes as being fine particles of dust, the CSEAFD produced by USX is not a fine "dust," but rather has a texture of a clay soil. Therefore, EPA does not believe that airborne exposure to hazardous contaminants from USX's fully-cured CSEAFD is likely to present a hazard to human health or the environment due to its physical form. However, in order to fully respond to the specific comment, the Agency evaluated the hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents from USX's fully-cured CSEAFD. Specifically, EPA used the methodology documented in "Rapid Assessment of Exposure to Particulate Emissions from Surface Contamination sites," U.S. Environmental Protection Agency, Office of Health and Environmental Assessment, EPA/600/8-85/002, February 1985, to estimate respirable particulate emissions from wind erosion of surfaces with an "unlimited reservoir" of erodible particles. The worst-case emission rate derived from this methodology then was input to the Agency's Ambient Air Dispersion Model (AADM), a steady-state, Gaussian plume dispersion model to predict the concentrations of the inorganic constituents 1000 feet downwind of the facility. For a complete description and discussion of the AADM, see 50 FR 48963, November 27, 1985.

In this specific analysis, the Agency assumed conservative values for all variables likely to influence the

potential for soil erosion including wind velocity and vegetation. The Agency, however, modified the assumptions regarding unit dimensions used in the AADM to more closely resemble a landfill (*i.e.*, unit depth was changed from one foot to eight feet as used in the VHS model). The results of this conservative, worst-case analysis indicated that no substantial present or potential hazard to human health or the environment from airborne exposure to both the listed and non-listed inorganic constituents from USX's fully-cured CSEAFD is likely. For a complete description of the Agency's modeling and analysis of air emissions from USX's fully-cured CSEAFD see "Docket Report on Evaluation of Air Emissions resulting from USX Corporation's Fully-Cured CSEAFD," October 16, 1989 (located in the docket for this rule).

With regard to waterborne dispersal of the waste, it is again important to note that USX's waste will be stabilized and handled as hazardous until it is fully-cured. With regard to waterborne dispersal of the fully-cured CSEAFD, it is important to note that the VHS model analysis described in the proposal shows that leachate from the waste that travels through ground water will not exceed health-based levels. The Agency acknowledges that it may also be possible for surface water runoff to transport contaminants from the waste to a nearby surface water body. However, the Agency does not believe that analysis of such overland transport of contaminants as a reasonable exposure route for the petitioned waste would compel a different result for this petition. As described in the proposed rule, the Agency believes that landfill disposal is a reasonable worst-case management scenario for USX's fully-cured CSEAFD. Contamination of surface water might occur, therefore, through runoff from the petitioned waste. However, EPA believes that the concentrations of any hazardous constituents in that runoff will tend to be lower than the levels in either the EP or MEP leachate analyses reported in the proposal, due to the acidic medium of the EP and MEP tests. Furthermore, any transported constituents would be further diluted in the surface water body.

Finally, the Agency believes that, in general, the leachate derived from this waste will not directly enter a surface water body without first travelling through the saturated (subsurface) zone where dilution and attenuation of hazardous constituents may occur. The VHS model takes this saturated zone into account as it predicts the ultimate fate and transport of hazardous constituents.

The commenter believed that the Agency did not consider the potential toxicity of USX's CSEAFD with regard to dioxin content. The commenter based its concern of the possibility of dioxin contamination on data obtained through the Agency's National Dioxin Study, Tier 4 Combustion Report. (See "National Dioxin Study Tier 4 Combustion Sources: Engineering Analysis Report," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, EPA-450/4-84-014h, September, 1987.)

The Agency disagrees with the commenter. EPA evaluated USX's petition and did not believe that any other hazardous constituents, including dioxins, were present in USX's waste. In response to the commenter's specific concern regarding the possibility of dioxin contamination, EPA reviewed the Tier 4 report cited by the commenter. Although data presented in the Tier 4 report indicated that dioxins were present in wastes generated by secondary copper smelters and wire reclamation incinerators, the Agency considers it highly unlikely for dioxins to be present in USX's waste. As discussed in the Tier 4 report, the principal reasons for the possible presence of dioxins in wastes generated by secondary copper smelters and wire reclamation incinerators are the presence of dioxin-forming precursors in raw materials and low combustion temperatures.

Specifically, the report noted that secondary copper smelters' raw materials can contain quantities of polyvinyl chloride wire insulation (telephone wire), electrical parts, and other sources of copper (including circuit boards and electrical switches). Wire reclamation incinerators can process polyvinyl chloride wire insulation and polychlorinated biphenyls (PCBs)-containing transformer cores and parts. These types of raw materials contain dioxin-forming precursors.

The report also found that combustion temperatures maintained by both secondary copper smelters and wire reclamation incinerators are low enough to promote to formation of dioxins. Surveyed secondary copper smelting furnaces operated at approximately 1500 °F, and wire reclamation incinerators operated at approximately 1000 °F (some had afterburners operating at 1900 °F).

The Agency reviewed the list of scrap materials USX reported it uses to charge its furnaces and notes that USX's scrap materials do not consist of coated wiring, electronic scrap, or other materials containing dioxin-forming precursors. The Tier 4 report states that secondary copper smelters and wire reclamation incinerators are less likely to generate dioxin-containing wastes if they do not use polyvinyl coated wire and low combustion temperatures. In addition, the Tier 4 report stated that dioxins generally are destroyed at temperatures above 800 °C (1472 °F), especially in incinerators with residence times of 1.5–2.0 seconds or more. USX's furnaces heat molten steel to 3000 °F. Therefore, USX's furnaces run at more than twice the temperature required to destroy polychlorinated dibenzo-p-dioxins (PCDDs), PCBs, and polychlorinated dibenzofurans (PCDFs). EPA, based on the above discussion, does not believe that it is reasonable to expect dioxins to be present in USX's waste.

EPA's Modeling Approach

The commenter believed that the VHS model understates the health and environmental risks of disposal of USX's waste following delisting for the reasons discussed below.

First, the commenter asserted that USX's waste alone contributes amounts of cadmium, chromium (total and hexavalent), lead, and selenium that are substantial percentages of the regulatory levels of concern (*i.e.*, the predicted compliance-point concentrations for cadmium, chromium (total and hexavalent), lead, and selenium are close to their respective regulatory levels of concern). The commenter, therefore, stated that disposing of this waste with any other contaminant source within the same landfill could readily cause exceedences of the regulatory levels of concern.

The Agency believes that the commenter is implying that wastes should not be delisted unless the predicted at-the-well concentrations of the contaminants are significantly less than their respective regulatory levels of concern (*i.e.*, some unspecified percentage reduction of the regulatory level of concern) in order to safeguard against the impact of other potential contamination sources. The Agency is not able to modify the VHS model to assess the effects of additional contaminant sources on the underlying aquifer within the same disposal site. The Agency, therefore, does not have any technical basis to support a determination of an appropriate percentage reduction and believes that some stipulated percentge reduction would be arbitrary. In light of the conservative nature of the VHS model (*e.g.*, no degradation, infinite source), EPA will continue to allow wastes to exhibit compliance-point concentrations up to 100 percent of the regulatory levels of concern.

Second, the commenter was also troubled by the compliance-point concentration for both lead and cadmium since EPA is considering lowering the drinking water standard for both constituents to 0.005 mg/l. The commenter believes that the waste should be considered hazardous since, if the 0.005 mg/l standard for both these constituents is adopted, the calculated compliance-point concentration for lead would exceed the standard by a factor of three-fold and the calculated compliance-point concentration for cadmium would be approximately two-thirds of the new standard.

In making delisting decisions, the Agency uses the existing health-based levels cited in "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989 (located in the RCRA public docket). EPA has no way of predicting the final drinking water standards until they are actually promulgated (the standards could be less than or greater than the proposed level or the 0.005 mg/1 level cited by the commenter). Neither can the Agency be certain exactly when the new standards might be promulgated. Without new final drinking water standards, the Agency does not believe it is fair to the petitioner to postpone a final rulemaking until new drinking water standard for both lead and cadmium are promulgated.

Third, the commenter was further troubled with the predicted compliance-point concentration for lead because the commenter believed that USX's MEP leachate data indicated that "lead continued to leach appreciably throughout all nine iterations of the MEP, with no significant decrease even in the ninth round relative to the first extractions." The commenter asserted that USX failed to adhere to the MEP analytical method (SW-846 Method Number 1320) because the analyses were not contained until the MEP concentration decreased relative to concentrations detected on day seven or eight. See "Test Methods of Evaluating Solid Waste: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986. The commenter, therefore, believed that because it was unclear whether the lead leaching would continue or even increase with additional rounds of extraction, they had no confidence in EPA's conclusion that the "fully-cured CSEAFD treatment residue exhibits long-term stability."

The commenter's concern regarding the day nine MEP concentration was also motivated by the results cited in a column leaching study performed on municipal solid waste incinerator residues stabilized using only Portland Cement (Type II).[1] The study indicated initially very low leachability of lead, followed by a sharp increase. The authors concluded that the leaching was attributed to both the amphoteric nature of lead (*i.e.*, the ability of lead to become solubilized under either acidic or basic conditions) and the presence of organic material in the incinerator residue. The commenter also cited a previous notice where the Agency indicated that the addition of portland cement to a pesticide manufacturing residue (EPA Hazardous Waste number K031) actually increased the leachability of arsenic (another amphoteric metal). (See 54 FR 1101, January 11, 1989).

The Agency believes that the results from the above studies are not applicable to USX's CSEAFD and provide no evidence that lead or arsenic will leach from USX's CSEAFD. First, the USX EAF dust is a different matrix than municipal incinerator residue and pesticide residue. USX's waste does not contain organic material or elevated concentrations of arsenic (*i.e.*, K031 wastes can have levels of arsenic in excess of one percent). USX's process (*i.e.*, the "CHEMFIX" process) also relies on several additives in addition to portland cement (Type I). In addition, the leachate concentrations obtained from the MEP analyses of the four CSEAFD samples were all lower than the initial leachate level obtained in the study by Holland, et al. (1989).

Furthermore, the Agency notes that it is difficult to draw comparisons between the data obtained from the column leaching test and the data obtained from the MEP leachate tests due to significant differences in analytical procedures and assumptions regarding leachate generation. Specifically, the data obtained from the column leaching test was generated by continuously leaching 36.1 kg of crushed solidified incinerator residue having a particle size of less than one-half inch in a 60 inch (height) × 10 inch (diameter) column. The data obtained from the MEP leachate tests were generated by nine days of successive leaching of 0.1 kg of ground CSEAFD having a particle size of less than 9.5 mm (<0.37 inches). Additionally, the column leaching test utilized a liquid to solids (L/S) ratio of 0.6 while each day of the MEP test utilized a L/S ratio of 20. The Agency, therefore, is unable to compare the results obtained from two very different leaching procedures.

In regards to the analytical data characterizing USX's CSEAFD, the Agency believes that the Table summarizing the *maximum* MEP levels (from all four MEP analyses) presented in the proposed notice may have misled the commenter to conclude that USX's stabilization process was ineffective. (See Table 4, 54 FR 30410, July 20, 1989). Data from all four MEP analyses for lead are presented in Table 1.

[1] Holland, P.J., et al., "Evaluation of Leachate Properties and Assessment of Heavy Metal Immobilization from Cement and Lime Amended Incinerator Residues," *Proceedings of the International Conference on Municipal Waste Combustion*, sponsored by U.S. EPA and Environment Canada, held April 11–14, 1989 in Hollywood, Florida, Vol. 1, Pages 4B-25–4B-43.

TABLE 1.—MEP LEACHATE CONCENTRATIONS—LEAD FULLY-CURED CSEAFD (MG/L)

Sample dates	Days/Concentrations								
	1	2	3	4	5	6	7	8	9
7/13	0.007	0.005	<0.025	<0.005	<0.005	<0.005	<0.005	<0.005	<0.005
7/16	<0.005	0.007	<0.005	<0.005	<0.005	<0.005	<0.005	<0.005	<0.005
11/3	0.025	0.095	0.020	<0.005	0.009	0.026	0.022	0.034	0.046
11/11	0.009	0.031	0.011	0.095	0.024	0.037	0.018	0.046	0.013

<: Denotes that the constituent was not detected at the detection limit specified in the Table.

As indicated by the MEP data presented in Table 1, the MEP concentration of lead obtained from the ninth extraction was either nondetect or lower than the MEP levels obtained on day seven or eight for all but one of the four analyses. The Agency, therefore, concluded that the CSEAFD exhibited long-term stability when subjected to an aggressive analytical procedure (which included grinding the sample to pass through a 100X mesh screen and successive extractions with an acidic solution (pH 3)). The commenter is correct in noting that for one sample (11/3), the day nine extraction concentration exceeded the level demonstrated on day seven. However, based on data from the other three tests, the Agency believes that the MEP concentration of lead is not of concern.

The data do not suggest, as the commenter asserted, that "lead continued to leach appreciably throughout all nine iterations of the MEP. * * *" EPA notes that the data did exhibit minor fluctuations, which in part, resulted from analytical variation. The Agency also notes that the MEP test is an extremely aggressive test which is used to provide additional information to support the results obtained from the standard EP test. The observed concentrations of lead never approached the maximum allowable concentration of 0.315 mg/l (back-calculated using the dilution factor obtained from the VHS model and the health-based level for lead: 6.3 × 0.05 mg/l = 0.315 mg/l). The Agency, therefore, is not concerned with the minor fluctuations exhibited by the data.

Fourth, the commenter believes that the Agency's assumption of 500 feet as the distance from the facility boundary to the nearest downgradient drinking water well underestimates potential ground-water contamination because 24 percent of the original 38 state agencies interviewed reported that drinking water wells were located within 500 feet of landfills. (See 50 FR 7898, February 26, 1985). The commenter reasoned that the Agency's use of the 76th percentile (500 feet) as a reasonable worst-case distance could mean that the VHS would underestimate potential ground-water contamination at up to 1,500 sites nationwide (*i.e.*, 1,500 sites represents approximately 24 percent of the over 6,000 existing municipal solid waste landfills). Lastly, the commenter cited data on actual distances to drinking water wells collected by EPA and used in proposing revisions to the federal criteria for municipal solid waste landfills. These nationwide data indicate a median distance from landfill to the nearest drinking water well as approximately 1,370 feet. The commenter also stated that two states had a median distance of 1,000 feet and that one state had a median distance of 797 feet.

The Agency believes that the commenter has neither provided adequate data or methodology to calculate an improved distance from facility boundary to the nearest drinking-water well. As noted by the commenter, the median nationwide distance from the unit boundary to the nearest drinking-water well is 1,370 feet, which is nearly three-times greater than the current assumption of 500 feet. The Agency notes that the survey from which the 500 foot distance (and the 24 percent of wells located within 500 feet) was limited since the results usually were only best estimates and the values reported frequently were given as a range. (See 50 FR 7896, February 26, 1985). The Agency, more importantly, also believes that it is unnecessary to calculate an improved distance from facility boundary to the nearest drinking-water well because of the conservative assumptions regarding well placement. Specifically, the model assumes that the drinking-water well is in the exact position to receive the highest concentration of the contaminant (*i.e.*, the bottom of the well is just at the top of the aquifer and the well is exactly in line with the disposal facility and the ground water flow). (See 50 FR 7896, February 26, 1985). Furthermore, the model does not consider finite sources, attenuation, hydrolysis, adsorption, precipitation, or any other chemical/physical processes that will reduce the concentration of the contaminants. To construct a reasonable worst-case model, it is unreasonable to use only absolute worst-case assumptions because the assumptions will compound such that the overall model will be unreasonable. The Agency, therefore, believes that the VHS model has a number of conservative assumptions which, when used with the selection of 500 feet as the distance from facility boundary to the nearest downgradient drinking-water well, will provide results that are protective of human health and the environment.

Fifth, the commenter believed that the VHS model was incapable of predicting the behavior of even modest volumes of waste disposed over time (*i.e.*, petitioned wastes in excess of 2,000 cubic yards disposed of every year over the course of a landfill's useful operating life). The Agency addressed these comments in a recent notice finalizing another exclusion. (See 54 FR 34178–34179, August 18, 1989). The commenter reviewed the responses made in the August 18, 1989 notice, but still considers the VHS model to be incapable of predicting the behavior of petitioned wastes in excess of 2,000 cubic yards disposed of every year over the course of a landfill's useful operating life.

The Agency continues to maintain that the VHS model performs a reasonable, worst-case analysis and provides dilution factors for waste volumes in excess of 2,000 cubic yards that are fully protective of human health and the environment. Based on the quantity of waste to be disposed of, the VHS model calculates a dilution factor ranging between 6.3 and 32.3. (See 50 FR 48886, 48899, November 27, 1985). (The maximum and minimum dilution factors occur at waste volumes of less than, or equal to 475 cubic yards and equal to, or greater than 8,000 cubic yards, respectively.) We note that for a waste volume of 2,000 cubic yards, the VHS model predicts a dilution factor of 8.98 and for USX's waste volume (34,500 cubic yards), the VHS model predicts a dilution factor of 6.3.

The Agency also maintains that, while the predicted dilution factor remains constant after the waste volume increases above 8,000 cubic yards, the VHS model does not have an "upper limit" as the commenter infers. Rather, the assumptions made in the VHS model regarding the dimensions of the disposal unit prevent the predicted dilution factor from falling below 6.3. For a discussion of the assumptions made in the disposal unit dimensions for the VHS model, See 53 FR 48990, November 27, 1985.

The Agency continues to maintain that it is unrealistic to modify the VHS model to account for cumulative volumes (*i.e.*, multiple years of waste disposed of at the same landfill cell). Specifically, large volumes of waste generally result from continuously operating processes; therefore, the waste is periodically disposed of and, as such, is distributed throughout the entire landfill, as the landfill is filled (see below). The Agency believes that periodic disposal of a continuously generated waste over the course of time (*e.g.*, ten years) would likely increase mixing (*i.e.*, dilution) of the petitioned waste with other non-hazardous wastes and fill material (*e.g.*, native soils) at the Subtitle D landfill. Subsequently, due to this long-term mixing, the waste's effect on the underlying aquifer would be reduced. The Agency also believes the VHS model's assumption that the entire annual waste volume is disposed of in the same landfill cell is a reasonable worst case and is protective of human health and the environment. The Agency, however, will continue to use the total volume when the petitioner is attempting to obtain a "one-time" delisting for waste no longer generated.

Sixth, the commenter claims that the VHS model is incapable of evaluating large volumes of wastes disposed in several trenches because of EPS's assumptions that different cells overlie different aquifers, that cells only leach for one year, that a typical municipal landfill uses more than one cell annually, and that municipal landfills are lined.

The Agency considers the commenter's claims that EPA assumes that different cells overlie different aquifers and that cells only leach for one year to be incorrect. The Agency does not assume that different cells overlie different aquifers. In fact, the Agency assumes that all of the leachate enters the aquifer (without dilution by other municipal wastes and fill material in the unsaturated zone) and is then directly intersected at the downgradient compliance point. Furthermore, the conservative assumptions incorporated into the VHS model make the Agency's evaluation of successive trenches, leaching at different rates (rates which in time would approach zero in order to conserve mass) unnecessary because the Agency is being more conservative by assuming that the waste will leach at the maximum rate throughout time. Specifically, the VHS model incorporates the following conservative assumptions: infinite source (*i.e.*, the waste leaches at the maximum observed leachate concentration indefinitely, ignoring mass-balance relationships), no degradation or retardation of contaminant transport, 100 percent of the leachate enters the aquifer, there is no liner or leachate collection system, and that the compliance-point well directly intersects the contaminated ground-water plume.

Lastly, it is common engineering practice for typical municipal landfill operations to involve the use of successive lifts or cells which are covered daily with clean fill.[8] Specifically, wastes are placed in a lift (or cell), compacted, and covered with clean fill daily. Successive lifts are placed next to each other and then on top of one another until the final grade of the landfill is reached. Therefore, it is not unreasonable for EPA to assume that wastes disposed of throughout the entire year will be placed in cells with other wastes and clean fill material, and that the location of these cells will change as the landfill manages its operation. Finally, the Agency did not assume, as the commenter suggested, that municipal waste landfills are lined. On the contrary, EPA makes the reasonable worst case assumption that no engineered barriers are in place. Therefore, the Agency continues to maintain that the VHS model performs a reasonable, conservative analysis and provides dilution factors that are fully protective of human health and the environment.

Seventh, the commenter stated that the Agency did not restrict the coverage of the exclusion to a specific amount of waste. The commenter noted that, although the preamble specified that the proposed exclusion would apply only to the processes covered by the original demonstration, USX is not prevented from increasing its waste generation. (See 54 FR 30413, July 20, 1989).

In order to clarify the scope of the exclusion, the Agency has decided to modify the final rule to include a limitation on the waste generation rate. The Agency does not believe that the petitoner will be adversely affected by such a limitation because, as noted in the preamble to the proposed rule: (1) The petitioner provided (and certified as correct) an accurate estimate of the maximum annual waste generation rate, and (2) the exclusion is only valid for the maximum annual waste volume certified in the petition. The Agency, therefore, has modified the final rule to include the certified generation rate (35,000 tons) as an upper limit on the exclusion.

Conditional Testing and Reporting Requirements

The commenter stated that if the Agency granted USX an exclusion, the conditional requirements of the exclusion should include analyses for total constituent concentrations and MEP constituent concentrations of the hazardous constituents.

The Agency disagrees with the commenter. The Agency believes that the reasonable worst-case disposal scenario for this waste will be disposal in a municipal landfill, where soil conditions would be mildly acidic. EPA believes that the EP extraction procedure is the appropriate analytical tool to evaluate the potential leachability of this waste in an acidic environment. For this waste, EPA believes that continued evaluation of the EP leachable concentrations as required by the conditions of this exclusion will be adequate to protect human health and the environment. Furthermore, the Agency does not have health-based standards regulating the total constituent concentrations of any of the EP toxic metals (now TC metals) or nickel. To require USX to continually monitor for the total constituent concentrations of all the EP toxic metals and nickel will not ensure further protection of human health or the environment in a meaningful manner.

Lastly, the Agency does not believe it is necessary to require USX to perform continuous MEP analyses. First, the Agency's belief that the stabilization process is effective is substantiated by the analytical data obtained from the previous MEP leachate tests. Additionally, if the stabilization process were ineffective and an increase in the leachability of the hazardous constituents from the waste were to occur, the Agency believes that the EP (now replaced by the TCLP) leachate analyses would measure such an increase.

Inconsistencies Between the Delisting Program and the Land Disposal Restrictions Program

The commenter believed that the Agency's decision to exclude USX's waste was inconsistent with the Land Disposal Prohibition Provisions of the 1984 HSWA amendments. Specifically, the commenter stated that the proposed "delisting levels" (*i.e.*, the maximum allowable EP leachate concentrations) for lead and nickel exceed the Agency's promulgated best demonstrated available technology (BDAT) treatment levels for lead and nickel in K061 wastes (see 54 FR 30408, July 20, 1989, and 53 FR 31134, August 17, 1988, respectively).

The Agency agrees with the commenter that there are differences in approach between some of the decision criteria used in individual delisting decisions and those used in the Land Disposal Restrictions Program (LDRP). However, these differences are appropriate given the separate functions of the two programs and their different regulatory coverage. The Delisting Program and the LDRP are fundamentally different in that the Delisting Program's standards are health-based and the LDRP's treatment standards are technology-based. See RCRA section 3001 (42 U.S.C. 6921) and RCRA section 3004(M) (42 U.S.C. 6924(m)), respectively. The Agency, however, believes that both the health-based and technology-based approaches of the Delisting Program and the LDRP, respectively, are protective of human health and the environment.

[8] Tchobanoglous, George. "Solid Wastes: Engineering Principals and Management Issues." McGraw-Hill Series in Water Resources and Engineering. McGraw-Hill Publishing. Co., Copyright 1977, pages 310–323.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the CSEAFD, when subject to the verification testing requirements specified in the exclusion, should be excluded from hazardous waste control. The Agency, therefore, is granting a final conditional exclusion to USX Corporation, located in Chicago, Illinois, for its fully-cured chemically stabilized electric arc furnace dust treatment residue, described in its petition as EPA Hazardous Waste No. K061. The exclusion only applies to 35,000 tons of chemically stabilized electric arc furance dust generated annually by the processes covered by the original demonstration. The facility would require a new exclusion if its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated either in excess of 35,000 tons per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion for USX is being granted under the Federal (RCRA) delisting program. On April 30, 1990, the State of Illinois received authorization to administer a number of RCRA programs, including delisting, in lieu of the Federal program. EPA would normally transfer the delisting petition file to the State for further action. In this case, however, USX has indicated that the delisted waste may be transported for disposal to another State not authorized for delisting. Because any decision by an authorized State to delist a waste would only have effect within that State, a Federal delisting would still be needed for out of State transport as nonhazardous waste. Furthermore, because EPA was close to issuing the final exclusion for USX, the Agency believes it is appropriate to follow through with its decision. While a Federal delisting will not have any immediate effect within an authorized State, such action may expedite the implementation of the final exclusion by allowing Illinois the option of adopting the Federal rule directly, and thereby avoiding the need for the State to complete its own time-consuming administrative process for delisting. Therefore, the Agency has decided to proceed with the final rulemaking and is granting a Federal delisting to USX.

IV. Effective Date

This rule is effective April 29, 1991. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective April 29, 1991. These reasons also provide a basis for making this rule effective April 29, 1991, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling and Reporting and Recordkeeping Requirements.

Dated: April 17, 1991.

Jeffery D. Denit,

Deputy Director Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 shall be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922 and 6938.

2. In table 2 of appendix IX, add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste Description
• • •	• • •	• • •
USX Steel Corporation, USS Southworks Plant, Gary Works.	Division, Chicago, Illinois	Fully-cured chemically stabilized electric arc furnace dust/sludge (CSEAFD) treatment residue (EPA Hazardous Waste No. K061) generated from the primary production of steel after April 29, 1991. This exclusion (for 35,000 tons of CSEAFD per year) is conditioned upon the data obtained from USX's full-scale CSEAFD treatment facility. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, USX must implement a testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid: (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW-846 methodologies. (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, USX must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions), and the total concentrations of reactive sulfide and reactive cyanide. USX must report the analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) *Subsequent Testing:* USX must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. USX then must analyze each weekly composite sample for all of the EP toxic metals, and nickel. The analytical data, including quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Illinois. (2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA. (3) *Data submittals:* Within one week of system start-up USX must notify the Section Chief, Delisting Section (see address below) when their full-scale stabilization system is on-line and waste treatment has begun. The data obtained through condition (1)(A) must be submitted to the Section Chief, Delisting Section, CAD/OSW (OS-333), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified. At the Section Chief's request, USX must submit any other analytical data obtained through conditions (1)(A) or (1)(B) within the time period specified by the Section Chief. Failure to submit the required data obtained from conditions (1)(A) or (1)(B) within the specified time period or maintain the required records for the specified time will be considered by the Agency, at its discretion, sufficient basis to revoke USX's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."
• • •	• • •	• • •

[FR Doc. 91-9867 Filed 4-26-91; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3931-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for specified wastes to be generated by Occidental Chemical Corporation, Delaware City, Delaware. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270 and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: April 29, 1991.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., room M-2427, Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-90-OTEF-FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Narendra Chaudhari, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4787.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine (1) that the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

Occidental Chemical Corporation (Occidental), located in Delaware City, Delaware, petitioned the Agency to exclude from hazardous waste control a specific waste that it intends to generate. After evaluating the petition, on October 5, 1989, EPA proposed to exclude Occidental's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32, conditional upon Occidental's meeting certain sampling, analysis, and reporting requirements. See 54 FR 41114.

Occidental petitioned the Agency for an "upfront" exclusion. A petitioner requests an upfront exclusion for wastes that have not yet been generated or that will be subject to further treatment. When treatment is planned, an upfront delisting petition requests that an exclusion be granted based on untreated waste characteristics, pilot-scale treatment data if available, and process descriptions. As a condition of an upfront exclusion, the Agency may impose batch testing requirements, which often include analytical testing of representative samples obtained from the full-scale system. These data can be used to verify that the treatment system, once on-line, is operating as described in the petition. The Agency may also specify verification testing limitations (*i.e.*, the maximum allowable levels of hazardous constituents of concern in the waste) in the conditions of the granted exclusion. When the actual levels of the constituent of concern are below these levels, the waste will not be considered hazardous. If the actual levels of the constituents are above these levels, the waste is still considered to be hazardous and must be retreated or disposed in accordance with RCRA Subtitle C requirements.

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

Occidental Chemical Corporation, Delaware City, Delaware.

1. Proposed Exclusion

Occidental petitioned the Agency to conditionally exclude from regulation as a hazardous waste its treated mercury brine muds, presently listed as EPA Hazardous Waste No. K071—"Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used." Occidental based its petition on the claim that the constituent of concern, although present in the waste, was in an essentially immobile form. To support its claim that both the non-listed and listed constituents of concern would not be present in the treated wastes above levels of regulatory concern, Occidental submitted (1) detailed descriptions of its manufacturing and proposed waste treatment processes: (2) a list of the raw materials used in both the manufacturing and treatment processes; (3) results from total constituent and Extraction Procedure (EP) toxicity analyses for all the EP toxic metals, nickel and cyanide; (4) results from total constituent analyses for total sulfide and total oil and grease, and; (5) information on the characteristics of ignitability, corrosivity and reactivity. These analyses were performed on representative samples of Occidental's treated wastes, as generated using a laboratory-scale treatment system.

The Agency evaluated the information and analytical data provided by Occidental in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. In order to evaluate the potential hazards of the petitioned waste, the Agency considered the various possible exposure scenarios for this type of waste. Specifically, the Agency used its vertical and horizontal spread (VHS) model to evaluate the scenario where the petitioned waste is disposed in an unlined landfill and subsequently leaches into the ground water (*i.e.*, no unsaturated zone). Based on this evaluation, the Agency determined that the constituents in Occidental's waste would not migrate at concentrations above the health-based levels used in delisting decision-making. See 54 FR 41114, October 5, 1989, for a more detailed explanation of why EPA proposed to grant Occidental's petition for an upfront exclusion of treated mercury brine muds (K071) to be generated at its Delaware City, Delaware facility.

2. Agency Response to Public Comments

The Agency received public comments from two interested parties. One commenter supported the proposed rule, and made some suggestions for minor changes to the proposed conditional testing requirements. The second commenter opposed the Agency's proposed rule for several reasons.

Suggested Modifications to Proposed Rule

One commenter suggested that the term "sludges" (*i.e.*, those wastes identified in the petition as sodium chloride treatment sludges (NaCl–TS) and potassium chloride treatment sludges (KCl–TS)) be replaced by the term "muds."

The Agency has no objection to this change, as it does not alter the Agency's evaluation in any way. Thus, the rule now refers to sodium chloride treatment muds (NaCl–TM) and potassium chloride treatment muds (KCl–TM), replacing the proposed NaCl–TS and KCl–TS, respectively.

The commenter also suggested that the phrase "on a daily basis" be deleted from the provisions of testing conditions 1(A) and 1(B), because the waste streams are not normally generated on a daily basis.

The Agency believes the requested modification is appropriate. In developing the proposed conditional testing requirements, the Agency wanted to ensure that any given volume of waste treated at a single time (*i.e.*, a batch) be adequately represented in the daily and weekly composite sample (conditions 1(B) and 1(A), respectively). In other words, the Agency is emphasizing that the definition of a "batch" must be limited to that volume of waste treated at a given time. The Agency realizes, however, that some facilities may not generate a batch of treated waste on a daily basis. Therefore, the testing requirements stipulated in conditions 1(A) and 1(B) in the final rule have been modified; the term "on a daily basis" has been eliminated. As a result of these clarifications, Occidental, in accordance with condition 1(A) is required to sample each batch of the three wastes produced during the week, and in accordance with condition 1(B) is required to sample each batch of the three wastes produced on any given day. Occidental is not required by either condition 1(A) or 1(B) to collect samples on days when waste is not generated.

Lastly, the commenter suggested that only mercury be required as part of the subsequent testing because no other constituents (*i.e.*, the remaining EP toxic metals, nickel or cyanide) are listed constituents of concern for K071 wastes.

The Agency will not modify the conditional testing requirements to incorporate this change. These post-exclusion testing requirements were incorporated to ensure that Occidental's full-scale treatment system can successfully render the K071 wastes non-hazardous, and to ensure that no other additional factors (including additional constituents) are present at levels which may cause the waste to be hazardous waste. Furthermore, the Agency believes the commenter may have overlooked the fact that the testing requirements for the remaining EP metals, nickel, cyanide, total reactive cyanide, and total reactive sulfide may indeed be terminated (as discussed in Condition 2(A)) after the initial four-week testing period (as long as Occidental's treatment system works as effectively as portrayed in the initial demonstration and the appropriate delisting levels are met).

Petition Specific Comments

One commenter opposed the Agency's proposed rule for the reasons discussed below.

Total Constituent Concentrations

The commenter stated that the waste still exhibits one of the criteria for which it was listed—the presence of significant concentrations of mercury. The commenter also noted that Occidental's treatment residues exhibit 1,000 times the background level of mercury typically found in soils and that lead and chromium are present at high levels in one of Occidental's three treated K071 wastes. The commenter, therefore, believes that Occidental's treatment residues represent at least a potential risk to human health and the environment.

The Agency agrees that the presence in K071 wastes of significant total concentrations of mercury was one of the reasons for listing K071 wastes as a "T" (toxic) waste. See 40 CFR 261.11(a)(3)(ii) and "Background Document, Resource Conversation and Recovery Act, subtitle C, Hazardous Waste Management System, section 3001, Identification and Listing of Hazardous Waste, 1980." The Agency, however, believes the data presented in the Background Document broadly characterize the physical and chemical nature of mercury brine purification muds, and that these data are not representative of the physical and chemical nature of Occidental's treated K071 wastes.

First, the concentrations of total and EP leachable mercury present in Occidental's treated K071 wastes are significantly less than the levels of total and EP leachable mercury typically found in untreated K071 wastes (see Background Document noted above). Second, EPA believes it is reasonable to expect that, as the total constituent concentration of an unbound or loosely bound metal present in a waste increases, the potential for the metal to leach from the waste also increases (generally, the higher the total constitutent concentration of an unbound or loosely bound metal, the higher the potential EP leachate concentration). Thus, wastes having significant total constituent concentrations of unbound or loosely bound metals, as did those considered in the Background Document, are more likely to impact the underlying ground water than wastes having lower total constituent concentrations of unbound or loosely bound metals. Here, however, unlike the mercury brine muds considered in the Background Document for K071 wastes, the metals in Occidental's treated K071 wastes are tightly bound within the waste matrix. Thus, the Agency believes that the levels of the metals present in Occidental's K071 treated wastes should not pose a threat to either human health or the environment. The Agency's conclusion that the listed and non-listed inorganic constituents of concern are bound in the waste matrix and thus, are not available for leaching, is supported by the result of the EP leachate analyses. See 54 FR 41114, October 5, 1989.

EPA evaluated the potential mobility of Occidental's treated K071 wastes using the maximum EP leachate concentrations and the vertical and horizontal spread (VHS) model. For the volume of waste to be generated by Occidental (a total of 1,018 tons per year for all three treated K071 wastes), the VHA model predicts a dilution factor of approximately 15.5. The VHS model analysis provides a conservative and reasonable worst-case evaluation of the waste's effect on the underlying aquifer. The predicted compliance-point concentrations resulting from this conservative analysis were below the levels of concern used for delisting purposes. See 54 FR 41114, October 5, 1989, for a description of the modeling analysis of Occidental's waste.

Furthermore, in delisting evaluations, EPA considers all the factors for which the waste was listed, as well as factors other than those for which the waste was originally listed, that could cause the waste to be hazardous. See 42 U.S.C. 6921(f). For this specific wastestream, based on the discussion presented above and in the proposal, EPA does not believe that any other factors, including total concentrations of the listed and non-listed inorganic constituents of concern, could cause this wastestream to present a hazard to human health and the environment.

Alternative Routes of Exposure

The commenter also contends that the Agency failed to consider the risk to human health and the environment through air or surface waste exposure paths if the waste is mismanaged during transportation or other handling prior to disposal.

The Agency believes that the commenter's concerns regarding airborne disposal of the waste are unfounded. First, the Agency notes that Occidental's untreated wastes will continue to be regulated as hazardous wastes. Therefore, the requirements under RCRA for transport and storage will provide some control of any releases of untreated wastes to the atmosphere. With regard to Occidental's treated K071 wastes, Occidental must either dispose of their treated K071 wastes on-site or ensure that the treated K071 wastes are delivered to an off-site storage, treatment or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. See 54 FR 41114, October 5, 1989.

EPA does not believe that airborne exposure to hazardous contaminants from Occidental's NaCl-TM and KCl-TM wastes are likely to present a hazard to human health or the environment, because Occidental has stated that the NaCl-TM and KCl-TM will contain approximately 50-60 percent moisture. With this level of moisture, none of the wastes will likely emit respirable particles prior to disposal. In fact, it is most likely that the NaCl-TM and KCl-TM wastes will not lose significant amounts of moisture until long after they have been disposed at an appropriate solid waste disposal facility. Upon initial disposal at Subtitle D facilities, it is standard practice to cover each day's waste with a soil layer in order to contain the waste and protect it from adverse weather conditions. This practice also further slows the moisture loss from the treated K071 wastes. As discussed further below, however, EPA did evaluate airborne exposure from Occidental's NaCl-TM and KCl-TM wastes.

Unlike the NaCl-TM and KCl-TM wastestreams, Occidental's NaCl-SC wastes will be managed as almost 100 percent solids. While EPA believes that exposure to hazardous airborne contaminants from Occidental's NaCl-SC wastes is still unlikely to present a hazard to human health or the environment because the wastes would likely be covered with soil after landfill disposal, the Agency, in order to fully respond to the specific comment, evaluated the hazards resulting from such an exposure to all three of Occidental's wastestreams. Specifically, EPA used the methodology documented in "Rapid Assessment of Exposure to Particulate Emissions from Surface Contamination Sites," U.S. Environmental Protection Agency, Office of Health and Environmental Assessment, EPA/600/8-85/002, February 1985, to estimate respirable particulate emissions from wind erosion of surface with an "unlimited reservoir" of erodible particles. The worst-case emission rate derived from this methodology then was used as an input to the Agency's Ambient Air Dispersion Model (AADM), a steady-state, Gaussian plume dispersion model, to predict the concentrations of the inorganic constituents 1,000 feet downwind of the facility. For a complete description and discussion of the AADM, see 50 FR 49963, November 27, 1985.

In this specific analysis, the Agency assumed conservative values for all variables likely to influence potential soil erosion, including wind velocity and vegetation. The Agency, however, modified the assumptions regarding unit dimensions used in the AADM to more closely resemble a landfill rather than a land treatment unit (*i.e.*, unit depth was changed from one foot to eight feet as used in the VHS model). The results of this conservative, worst-case analysis indicated that no substantial present or potential hazard to human health or the environment is likely from airborne exposure to both the listed and non-listed inorganic constituents from Occidental's NaCl–SC wastestream (or NaCl–TM and KCl–TM wastestreams). (A complete description of the Agency's modeling and analysis of air emissions from Occidental's K071 wastes is presented in "Docket Report on Evaluation of Air Emissions Resulting from Occidental Chemical Corporation's K071 Wastes," April 17, 1990, which is available in the docket for today's final rule.)

With regard to waterborne dispersal of the waste, it is important to note that Occidental's K071 wastes will be handled as hazardous until treated. The VHS model analysis described in the proposal shows that leachate from the treated residues that travels through ground water will not exceed health-based levels.

The Agency acknowledges that it may also be possible for surface water runoff to transport contaminants from the waste to a nearby surface water body. However, the Agency does not believe that analysis of such overland transport of contaminants as a reasonable exposure route for the petitioned waste would compel a different result from this petition. As described in the proposed rule, the Agency believes that landfill disposal is a reasonable worst-case scenario for Occidental's treated K071 wastes. While contamination of surface water might possibly occur through runoff from the petitioned waste, EPA believes that the concentrations of any hazardous constituents in that runoff will tend to be lower than the levels in the EP leachate analyses reported in the proposal due to the acidic medium of the EP test. Furthermore, any transported constituents would be further diluted in the surface water body. Finally, the Agency believes that, in general, the leachate derived from this waste will not directly enter a surface water body without first travelling through the saturated (subsurface) zone where dilution and attenuation of hazardous constituents may occur. The VHS model takes this saturated zone into account as it predicts the ultimate fate and transport of hazardous constituents.

VHS Model

The commenter believes that the VHS landfill model cannot be assumed to predict a reasonable worst case when applied to Occidental's waste because the model assumes the Occidental's wastes will be the only source of contamination affecting the underlying ground water.

As the Agency discussed in the **Federal Register** on February 26, 1985 and on November 13, 1986 (see 50 FR 7806 and 51 FR 41085), the VHS model analysis assumes that there are no other potential contaminant sources at the disposal site (*i.e.*, leachate from the waste mixed with non-contaminated ground water). Additionally, without specifying management conditions or considering site-specific characteristics, the Agency cannot modify the VHS model to assess the effects of additional contaminant sources on the underlying aquifer within the same disposal site.

The commenter is inferring that wastes should not be delisted unless the VHS-predicted at-the-well concentrations of the contaminants are significantly less (*e.g.*, 50 percent, 75 percent, 95 percent) than their respective health-based levels. The Agency does not have any technical basis to support a determination of an appropriate percentage reduction and believes that, without a technical basis, any resulting percentage reduction would be arbitrary. Therefore, in light of the conservative nature of the VHS model, EPA will continue to allow wastes to exhibit predicted compliance-point concentrations up to 100 percent of the health-based standard.

The commenter also contends that the VHS model is inadequate because it considers the impact of only one year of waste disposal, rather than the cumulative impact of continuing disposal. The commenter noted that after 2.5 years of such waste generation and disposal, the VHS model predicts that lead and mercury will exceed their respective health-based levels. The commenter believes this situation is further exacerbated by the fact that the proposed rule does not set limits on the waste volume Occidental will be allowed to manage as non-hazardous.

The commenter is incorrect in stating that the Agency is not justified in using annual waste volumes instead of cumulative waste volumes. The Agency considers the use of annual or one-time waste volumes to be sufficiently conservative since it is a reasonable worst-case for a petitioner to dispose of one year's accumulated waste in a single landfill cell at one time. Based on routine landfill management practice, EPA believes that it is unreasonable to assume, even in a worst-case scenario, one time disposal in the same landfill cell of waste continuously generated over 2.5 years. Specifically, wastes continuously generated are not disposed of in the same landfill cell. Rather, continuously generated wastes (if disposed of at the same landfill) are periodically distributed throughout the entire landfill, as the landfill is filled. The Agency notes that it is common engineering practice for typical municipal landfill operations to involve the use of successive lifts or cells which are covered daily with clean fill.[1] Specifically, wastes are placed in a lift (or cell), compacted, and covered with clean fill daily. Successive lifts are placed next to each other and then on top of one another until the final grade of the landfill is reached. Therefore, it is not unreasonable for EPA to assume that wastes disposed of throughout the entire year will be placed in cells with other wastes and clean fill material, and that the location of these cells will change as the landfill manages its operation. The Agency notes that most landfills utilize more than one lift or cell and considers the commenter's assertions that wastes disposed of in different years (*e.g.*, 2.5 years) are disposed of in the same cell to be unrealistic.

[1] Tchobanoglous, George, "Solid Wastes: Engineering Principles and Management Issues," McGraw-Hill Series in Water Resources and Engineering, McGraw-Hill Publishing Co., Copyright 1977, pages 316–326.

The Agency believes that periodic disposal of a continuously generated waste over the course of time (*e.g.*, 2.5 years) would likely increase mixing (*i.e.*, dilution) of the petitioned waste with other non-hazardous materials and fill materials (*e.g.*, native soils) at the Subtitle D landfill, and the waste's effect on the underlying aquifer would be reduced. The Agency, therefore, believes the assumption that the annual waste volume is disposed in the same landfill cell is a reasonable worst-case and is protective of human health and the environment. With regard to the commenter's concern regarding waste volume limitations, see the discussion under Conditional Testing Requirements.

Inconsistency with Land Disposal Restrictions

The commenter is disturbed by the fact that the delisting level for mercury set in Condition (3) of the proposed rule is greater than the treatment level for mercury established for K071 wastes under the Land Disposal Restrictions Program (LDRP).

The Agency agrees with the commenter that there are differences between some of the decision criteria used in individual delisting decisions and those used in the LDRP. However, these differences are appropriate given the separate functions of the two programs and their different statutory bases. The Delisting Program and the LDRP are fundamentally different in that the Delisting Program's standards are health-based and the LDRP's treatment standards are currently technology-based. See RCRA Section 3001 (42 U.S.C. 6921) and RCRA Section 3004 (42 U.S.C. 6924(m)), respectively. It is the Agency's view that Congress expected the Agency to adopt a different approach to establishing the LDRP's treatment standards than the approach used heretofore by the Agency in establishing Subtitle C regulatory standards. For the LDRP's treatment standards the Agency is to set standards that diminish waste toxicity or mobility in order that "short-term and long-term threats to human health and the environment be minimized." This may result in a standard different from one set according to the usual Subtitle C regulatory command that standards be necessary to protect human health and the environment.

Conditional Testing Requirements

With regard to the proposed testing requirements, the commenter stated that the testing requirements should be expanded to include total levels of mercury.

The Agency disagrees with the commenter. The Agency expects that this waste will be disposed of in a municipal waste disposal scenario where soil conditions are generally expected to be mildly acidic. EPA believes that the EP extraction procedure is the most appropriate analytical tool to evaluate the potential leachability of this waste in an acidic environment. For this waste, EPA believes that evaluation of the EP leachable concentrations as required by the conditions of this exclusion will be adequate to protect human health and the environment. Furthermore, the Agency does not have health-based levels regulating the total concentations of any of the EP toxic metals or nickel. To require Occidental to continually monitor for the total constituent concentration of mercury will not ensure further protection of human health and the environment.

The commenter noted if the petition were to be granted, then the Agency's proposed conditional testing requirements should include several additional provisions. The commenter is specifically concerned about post-exclusion alterations in Occidential's manufacturing and/or treatment processes. The commenter noted that an "adverse" process change was not defined by the Agency, nor did the Agency specify who would determine whether or not an adverse process change had occurred.

When evaluating delisting petitions, the Agency examines the processes that produce the waste(s) in detail in order to gain an understanding of the manufacturing and treatment processes. EPA, then determines if the processes are variable (*e.g.*, include seasonal products, batch dumps, irregular or infrequent dumps, scheduled maintenance operations) and as such, are likely to generate wastes exhibiting variability in constituent concentrations (and waste characteristics). This evaluation allows EPA to determine whether the analytical data provided in the petition are representative of the potential range of variations in both the presence and levels of constituents occurring over time. (The Agency realizes that minor process variations will occur on a day-to-day basis, and that such minor day-to-day variations do not notably influence the waste's physical and chemical characteristics. However, the levels of any hazardous constituents in the waste and their mobility are the primary concern of the Agency.)

EPA views any process change as significant (or adverse) if, as a result of

the change: (1) The manufacturing or treatment processes are no longer the same as described in the original delisting petition, or (2) hazardous constituents may be present in greater concentrations than prior to the process change or new constituents may be detected in the waste at levels of concern. The Agency, however, is not concerned with "process changes" which neither alter the manufacturing or treatment processes nor affect waste composition. Examples of such "process changes" (*i.e.*, non-adverse or insignificant process changes) include identical raw materials or process chemicals purchased from different manufactures (materials with different names but having the same ingredients), replacement of worn filter press plates with plates having identical characteristics (*i.e.*, pore size), and rescheduling of manufacturing lines. (For example, interchanging the scheduled operation of a nickel plating line and a brass plating line; each line would continue to operate the same length of time, and no new lines, such as a zinc plating, would be added.) These types of "process changes" would not alter waste composition (and characteristics) outside of the range demonstrated in the original demonstration.

Therefore, EPA's policy concerning process changes has not undergone any change. The Agency continues to view changes to processes which either change the processes as originally described in the petition or are likely to elevate constituent levels or introduce new constituents of concern as outside the scope of the original delisting petition. Such changes clearly would result in a new waste no longer covered by the promulgated exclusion.

Due to the possible variations in Occidental's waste, the Agency proposed that Occidental perform periodic testing of its treated K071 waste; the Agency continues to believe that such periodic testing is appropriate in this case. In addition, volume limitations incorporated in today's rule (as discussed further below) will also discourage any adverse process changes.

The commenter also believed that EPA should modify the proposed exclusion language pertaining to changes in waste volume, prohibiting Occidental from increasing its annual waste generation rate over the estimated 1,018 tons per year (total) for all three treated K071 wastes.

The Agency believes that it is unlikely for Occidental to significantly increase its waste generation without modifying its production processes. The Agency, however, does not believe that the petitioner will be adversely affected by a volume limitation because the petitioner was required to provide (and certify as correct) an accurate estimation of its maximum annual waste generation rate. The Agency, therefore, has modified the final rule to include a volume limitation. As a result of this volume limitation, any volume of waste generated in excess of 1,018 tons per year would be hazardous and must be handled in accordance with the applicable Subtitle C regulations.

The commenter requested that EPA require Occidental to report the amounts of waste covered by the delisting that are actually generated, treated and set for disposal. The commenter believes such information will provide additional assurance that Occidental is complying with the volume limitations set forth in the exclusion. The commenter also believes that failure to submit the required conditional data, or disposal of amounts of waste in excess of the volume limitation, should automatically result in revocation of the exclusion.

The Agency agrees with the commenter that Occidental should be required to keep records of the amount of treated wastes generated. As noted in the preamble to the rule and in the rule itself, the exclusion is applicable only for 1,018 tons per year of treated K071 wastes. Any treated K071 wastes generated above and beyond the 1,018 tons per year limit must be managed as hazardous. Occidental is responsible for adhering to this 1,018 ton annual limit, and would be subject to the appropriate enforcement actions if wastes in excess of the 1,018 ton per year limitation are handled as non-hazardous. As noted in the proposal, all petitioners are required to submit a signed certification statement with conditional data submittal. This certification statement binds the petitioner to conduct the conditional testing and subsequent waste management in an appropriate manner. (EPA notes that several minor typographical errors contained in the certification statement were found and have been corrected in today's rule.) To further clarify the volume limitations of the exclusion, EPA has added language to the rule that explicitly states the maximum annual volume and requires Occidental to keep records (as part of the testing conditions) of the volume of waste generated. EPA does not believe that this record keeping requirement will impact Occidental because Occidental will have to track its waste generation in order to comply with the volume limitations of the exclusion.

The Agency does not consider it necessary to act upon the commenter's suggestion that failure to submit conditional data should automatically result in revocation of the exclusion. The Agency believes that the commenter overlooked the requirement that Occidental sign the certification statement (discussed above) for each conditional data submittal. This certification statement requires that if false, fraudulent or incomplete data are submitted as part of the final exclusion, the exclusion will be void as if it never had effect or to the extent directed by EPA, and that Occidental will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon Occidental's reliance on the void exclusion.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Occidental's treated K071 wastes, when subject to the verification testing requirements specified in the exclusion, should be excluded from hazardous waste control. The Agency, therefore, is granting a final conditional exclusion to Occidental Chemical Company, located in Delaware City, Delaware, for its treated K071 wastes, described in its petition as EPA Hazardous Waste No. K071. The exclusion applies only to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective April 29, 1991. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose to Section 3010, EPA believes that this rule should be effective April 29, 1991. These reasons also provide a basis for making this rule effective April 29, 1991 under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

Lists of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: April 12, 1991.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In table 2 of appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Waste Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* * *	* * *	* * *
Occidental Chemical Corporation	Delaware City, Delaware	Sodium chloride treatment *muds* (NaCl–TM), sodium chloride saturator cleanings (NaCl–SC), and potassium chloride treatment muds (KCl–TM) (all classified as EPA Hazardous Waste No. K071) generated at a maximum combined rate (for all three wastes) of 1,018 tons per year. This exclusion was published on April 29, 1991 and is conditioned upon the collection of data from Occidental's full-scale brine treatment system because Occidental's request for exclusion was based on data from a laboratory-scale brine treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment system is in operation, Occidental must implement a testing program for the petitioned waste. All sampling and analyses (including quality control procedures) must be performed according to SW–846 methodologies. This testing program must meet the following conditions for the exclusion to be valid: (1) *Initial Testing:* During the first four weeks of full-scale treatment system operation, Occidental must do the following:

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) Collect representative grab samples from each batch of the three treated wastestreams (sodium chloride saturator cleanings (NaCl-SC), sodium chloride treatment mude (NaCl-TM) and potassium chloride treatment mude (KCl-TM)) on an as generated basis, and composite the samples to produce three separate weekly composite samples (of each type of K071 waste). The three weekly composite samples, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel and cyanide (using deionized water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. Occidental must report the waste volumes produced and the analytical test data, including all quality control data, obtained during this initial period, no later than 90 days after the treatment of the first full-scale batch. (B) Collect representative grab samples of each batch of the three treated wastestreams (NaCl-SC, NACl-TM and KCl-TM) and composite the grab samples to produce three separate daily composite samples (of each type of K071 waste) on an as generated basis. The three daily composite samples, prior to disposal, must be analyzed for the EP leachate concentration of mercury. Occidental must report the waste volumes produced and the analytical test data, including all quality control data, obtained during this initial period, no later than 90 days after the treatment of the first full-scale batch. (2) *Subsequent Testing:* After the first four weeks of full-scale treatment operations, Occidental must do the following (all sampling and analyses (including quality control procedures) must be performed according to SW-846 procedures): (A) Continue to sample and test as described in condition (1)(A). Occidental must compile and store on-site for a minimum of three years the records of waste volumes produced and all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Delaware. These testing requirements shall be terminated by EPA when the results of four consecutive weekly composite samples of the petitioned waste, obtained from either the initial testing or subsequent testing, show the maximum allowable levels in condition (3) are not exceeded and the Section Chief, Variances Section, notifies Occidental that the requirements of this condition have been lifted. (B) Continue to sample and test for mercury as described in condition (1)(B). Occidental must compile and store on-site for a minimum of three years the records of waste volumes produced and all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Delaware. These testing requirements shall be terminated and replaced with the requirements of condition (2)(C) if Occidental provides EPA with analytical and quality control data for thirty consecutive batches of treated material, collected as described in condition (1)(B), demonstrating that the EP leachable level of mercury in condition (3) is not exceeded (in all three treated wastes), and the Section Chief, Variances Section, notifies Occidental that the testing in condition (2)(B) may be replaced with (2)(C). (C) [If the conditions in (2)(B) are satisfied, the testing requirements for mercury in (2)(B) shall be replaced with the following condition.] Collect representative grab samples from each batch of the three treated wastestreams (NaCl-SC, NaCl-TM and KCl-TM) on an as generated basis and composite the grab samples to produce three separate weekly composite samples (of each type of K071 waste). The three weekly composite samples, prior to disposal, must be analyzed for the EP leachate concentration of mercury. Occidental must compile and store on-site for a minimum of three years the records of waste volumes produced and all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Delaware.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(3) If under conditions (1) or (2), the EP leachate concentration for chromium, lead, arsenic, or silver exceeds 0.77 mg/L; for barium exceeds 15.5 mg/L; for cadmium or selenium exceeds 0.16 mg/L; for mercury exceeds 0.091 mg/L; for nickel or total cyanide exceeds 10.0 mg/L; or the total reactive cyanide or total reactive sulfide levels exceeds 250 mg/kg and 500 mg/kg, the waste must either be retreated or managed and disposed of in accordance with all applicable hazardous waste regulations. (4) Within one week of system start-up, Occidental must notify the Section Chief, Variances Section (see address below) when the full-scale system is on-line and waste treatment has begun. All data obtained through condition (1) must be submitted to the Section Chief, Variances Section, PSPD/OSW, (OS-333), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period required in condition (1). At the Section Chief's request, Occidental must submit any other analytical data obtained through conditions (1) and (2) to the above address within the time period specified by the Section Chief. Failure to submit the required data will be considered by the Agency sufficient basis to revoke Occidental's exclusion to the extent directed by EPA. All data (either submitted to EPA or maintained at the site) must be accompanied by the following statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

* * * * *

[FR Doc. 91-9556 Filed 4-26-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6851

[ID-943-4214-10; ID-27862]

Partial Revocation of Public Land Order No. 3842; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects 20.30 acres of public land withdrawn for the Bureau of Land Management's Powersite Classification No. 454. The withdrawal is being revoked to permit the lease of public land under the Recreation and Public Purpose Act to Twin Falls County for a public recreation facility. The land is not needed for the purpose for which it was withdrawn. This action will open the land to surface entry. The land has been and will remain open to the mining and mineral leasing laws.

EFFECTIVE DATE: May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706 (208) 384-3166.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 3842, which withdrew public land for Powersite Classification No. 454, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 9 S., R. 17 E.,
sec. 33, lot 3.

The area described contains 20.30 acres in Twin Falls County.

2. At 9 a.m. on May 29, 1991, the land described in paragraph one above shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on May 29, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: April 18, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-9982 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-GG-M

43 CFR Public Land Order 6852

[NV-060-4214-10; Nev-051745]

Modification of the Secretarial Order of June 4, 1930

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order modifies a Secretarial order insofar as it affects 9.28 acres of public land withdrawn for the Bureau of Reclamation's Colorado River Storage Project. This action will open the land to a proposed sale to resolve a trespass situation in compliance with a court ordered stipulated agreement in a lawsuit. The land remains closed to all other forms of appropriation under the public land laws including the mining laws but has been and will remain open to mineral leasing.

EFFECTIVE DATE: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Clark, BLM, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702-785-6530.

SUPPLEMENTARY INFORMATION:

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial order of June 4, 1930 is hereby modified to permit sale of the following described land:

Mount Diablo Meridian

T. 30 S., R. 64 E.,
Sec. 31, lots 5 to 12, inclusive.

The area described contains 9.28 acres in Clark County.

2. Effective immediately, subject to valid existing rights, the land shall be opened to sales under section 203 of the Federal Land Policy and Management Act in compliance with the United States District Court, District of Nevada, Order for Compromise Settlement and for Dismissal with Prejudice in the case, *Nancy Lynn Kidwell, et al.*, v. *United States of America, ex rel. United States Department of Interior, Bureau of Land Management, et al.*

Dated: April 18, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-9981 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-HC-M

43 CFR Public Land Order 6853

[ID-943-4214-10; IDI-17810]

Partial Revocation of Secretarial Order Dated October 9, 1928; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial Order insofar as it affects 14.50 acres of National Forest System lands withdrawn for the Bureau of Reclamation's Boise Reclamation Project. The lands are no longer needed for reclamation purposes. This action will open the lands to surface entry and mining. The lands have been and will remain open to the mineral leasing laws.

EFFECTIVE DATE: May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706 (208) 334-1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated October 9, 1928, which withdrew land for the Bureau of Reclamation's Boise Project, is hereby revoked insofar as it affects the following described lands:

Boise Meridian

T. 2 N., R. 5 E.,
Sec. 17, that portion of Riparian Placer Segregation Survey within lot 1;
Sec. 18, lot 4.

The areas described aggregate 14.50 acres in Elmore County.

2. At 9 a.m. on May 29, 1991, the lands described in paragraph one shall be open to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law, including location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. The lands have been and will remain open to the mineral leasing laws.

Dated: April 18, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-9980 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-GG-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 15

[Regulation Identifier Number: 3067-AB65]

Conduct in Buildings and on Grounds at the National Emergency Training Center

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule prescribes the standards of conduct for persons entering onto the premises at the FEMA National Emergency Training Center (NETC) in Emmitsburg, Maryland. Currently there is no standard of conduct for visitors, contractors, guests or students at NETC. This rule is adapted from the General Services Administration regulations concerning Conduct on Federal Property, is revised to be agency specific and is applicable to the NETC facility owned by FEMA and under its custody and control. The implementation of this rule at NETC will provide a basis for corrective action in instances of violation(s) of the standard of conduct at the NETC facility.

EFFECTIVE DATE: June 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald P. Face, Jr., Director, Office of NETC Operations and Support, U.S. Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, Telephone (301) 447-1223.

SUPPLEMENTARY INFORMATION: FEMA published a proposed rule in the Federal Register on October 18, 1990, (55 FR 42216) with comments due on or before December 17, 1990. No comments were received.

This rule is essentially the same as the proposed rule. Minor changes have been made to conform this rule to internal

delegations concerning operations at NETC.

FEMA operates its National Emergency Training Center in Emmitsburg, Maryland. This regulations is administrative and, as such is categorically excluded from the requirements for environmental assessments contained in 44 CFR part 10.

This rule is not a major rule as defined in Executive Order 12291, nor will it have a significant economic impact on a substantial number of small entities. Hence, regulatory impact analyses are not necessary.

This rule does not contain information requirements that are subject to the Paperwork Reduction Act of 1980 (44 USC 3501, et seq.) and OMB implementing regulations 5 CFR 1320.

In promulgating this rule, FEMA has considered the Executive Order 12612 on Federalism. The purpose of the order is to assure the appropriate division of governmental responsibilities between national government and the States. The problem dealt with in this rule is national in scope.

List of Subjects in 44 CFR 15

Federal buildings and facilities; Penalties; Security measures.

Accordingly, chapter 1, part 15, title 44, Code of Federal Regulations is amended by designating existing §§ 15.1 through 15.15 as subpart A under the following heading and adding a new subpart B to part 15 to read as follows:

Subpart A—Conduct at the FEMA Special Facility

Subpart B—Conduct at the National Emergency Training Center

Sec.
15.31 Purpose.
15.32 Applicability.
15.33 Inspection.
15.34 Preservation of property.
15.35 Conformity with signs and directions.
15.36 Disturbances.
15.37 Gambling.
15.38 Alcoholic beverages and narcotics.
15.39 Soliciting, vending and debt collection.
15.40 Distribution of handbills.
15.41 Photographs and other depictions.
15.42 Dogs and other animals.
15.43 Vehicular and pedestrian traffic.
15.44 Weapons and explosives.
15.45 Penalties.
15.46 Other laws.

Authorities: EO 11222, EO 12148, Federal Fire Prevention and Control Act of 1974, PL 93-498, 15 USC 2201, *et seq.*

§ 15.31 Purpose.

To set forth the National Emergency Training Center (NETC) policy and procedure relating to the NETC grounds and buildings and to the conduct of all persons entering, while on, and leaving the NETC, and actions to be taken for violation of these rules and regulations.

§ 15.32 Applicability.

This subpart applies to all the property known as the "National Emergency Training Center," located on 16825 South Seton Avenue in Emmitsburg, Maryland, which is owned, operated and controlled by the Federal Emergency Management Agency (FEMA) and to all persons entering, while on, or leaving the property.

§ 15.33 Inspection.

All vehicles, packages, handbags, briefcases, and other containers brought into, while on, or being removed from NETC may be subject to inspection. A full search of a person may accompany an arrest or apprehension.

§ 15.34 Preservation of property.

The improper disposal of rubbish at NETC, the willful destruction of or damage to property, the theft of property, the creation of any hazard to persons or things, the throwing of articles of any kind from or at a building, or the climbing upon the roof or any part of the building is prohibited.

§ 15.35 Conformity with signs and directions.

Persons in and on the NETC shall at all times comply with official signs of a prohibitory, regulatory, or directory nature and with the direction of the security force or other authorized individuals.

§ 15.36 Disturbances.

Any unwarranted loitering, disorderly conduct, or other conduct at NETC which creates loud or unusual noise or a nuisance; which unreasonably obstructs the usual use of classrooms, dormitory rooms, entrances, foyers, lobbies, corridors, offices, elevators, stairways, roadways or parking lots; which otherwise impedes or disrupts the performance of official duties by Government employees or Government contractors; which interferes with the delivery of the educational program; or which prevents the general public from obtaining the services provided on the property in a timely manner, is prohibited.

§ 15.37 Gambling.

Participating in games for money or other personal property or the operating of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets at NETC is prohibited.

§ 15.38 Alcoholic beverages and narcotics.

Operating a motor vehicle at NETC by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines as defined in the Annotated Code of Maryland, Transportation Article, Section or Title 21902 is prohibited. Entering upon, or while on the property under the influence of or using or possessing any narcotic drug, hallucinogen, marijuana, or barbiturate, or amphetamine is prohibited. This prohibition shall not apply in cases where the drug has been prescribed for a patient by a licensed physician. Entering upon the property, or being on the property under the influence of alcoholic beverages as defined in the Annotated Code of Maryland, Transportation Article, Section or Title 21902 is prohibited. Bringing alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines onto the premises of NETC is prohibited unless the individual has been authorized. The use of alcoholic beverages on the property is prohibited except in the Student Center and other locations and occasions as authorized in writing by the Administrator, U.S. Fire Administration, FEMA, or his/her designee.

§ 15.39 Soliciting, vending and debt collection.

Soliciting alms and contributions, commercial or political solicitation and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts at NETC are prohibited. This does not apply to:

(a) approved national or local fund drives for health, welfare, or other purposes as authorized by the "Manual on Fund Raising Within the Federal Service" issued by the U.S. Office of Personnel Management and sponsored or approved by the occupant agencies (all such drives must have the prior approval of the Administrator, U.S. Fire Administration, FEMA or his/her designee);

(b) concessions or personal notices posted by employees on authorized bulletin boards; and

(c) solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 title 5, United States Code, section 1101.

§ 15.40 Distribution of handbills.

The distribution of materials such as pamphlets, handbills, and/or flyers, and the displaying of placards or posting of materials on bulletin boards or elsewhere at NETC is prohibited except

as authorized above or when such distribution or displays are conducted as part of authorized government activity.

§ 15.41 Photographs and other depictions.

Photographs may be taken inside classroom or office areas only with the consent of the occupants. Except where security regulations apply or a Federal court order or rule prohibits it, photographs may be taken in entrances, lobbies, foyers, corridors, or auditoriums when used for public meetings. Subject to the foregoing prohibitions, photographs for advertising and commercial purposes may be taken only with written permission of the Director, Office of NETC Operations and Support, U.S. Fire Administration or other authorized official where the photographs are to be taken.

§ 15.42 Dogs and other animals.

Dogs and other animals, except for seeing eye dogs or other guide dogs, shall not be brought into the buildings at NETC for other than official purposes.

§ 15.43 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles entering or while at NETC shall drive in a careful and safe manner at all times and shall comply with the parking and vehicle registration/requirements (except parking of four hours or less), signals and directions of security personnel and all posted traffic signs;

(b) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants on the property is prohibited; and

(c) Parking without authority, parking in unauthorized locations or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, shall be subject to removal at the owner's risk and expense. The Administrator, U.S. Fire Administration or his/her designee may supplement this paragraph from time to time by issuing and posting such specific traffic directives as may be required. When issued and posted, such directives shall have the same force and effect as if made a part hereof. Proof that a motor vehicle was parked in violation of these regulations or other directives may be taken as evidence that the registered owner was responsible for the violation.

§ 15.44 Weapons and explosives.

No person entering or while at NETC shall carry or possess firearms, other dangerous or deadly weapons, explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes (i.e., Federal, State or local law enforcement; when authorized by the Administrator, U.S. Fire Adminstration; or his designee or contract security forces when authorized by the contract project officer) and in accordance with FEMA policy governing the possession of firearms.

§ 15.45 Penalties.

(a) Misconduct: Any misconduct will be processed and disposed of in accordance with FEMA/NETC policy or Instruction.

(b) Parking violations: Vehicles parked in violation of State law, FEMA or NETC Instruction shall be subject to towing at the owner's expense.

§ 15.46 Other Laws.

Nothing contained in this subpart shall be construed to abrogate any other Federal laws or any State and local laws and regulations applicable to the National Emergency Training Center premises. This subpart supplements the penal provisions of title 18, United States Code, relating to Crimes and Criminal Procedure, which apply without regard to the place of the offense and those penal provisions which apply in areas under the special maritime and territorial jurisdiction of the United States, as defined in 18 U.S.C. 7. However, the content of this subpart supersedes those provisions of State law which are made Federal criminal offenses by virtue of the Assimilated Crime Act (18 U.S.C. 13) to the extent that they are in conflict with this subpart. State and local criminal laws are applicable as such only to the extent that authority in that regard has been reserved to the State by the State consent or cession statute or vested in the State by Federal statute.

Dated: April 18, 1991.

Olin L. Greene,

Administrator, U.S. Fire Administration.

[FR Doc. 91-9660 Filed 4-26-91; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 90, and 97

[PR Docket No. 89-552; FCC 91-74]

Private Land Mobile Radio Services; Use of the 220-222 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order that amends part 90 of the rules to establish service rules and technical standards for the use of frequencies in the 220-222 MHz band. The adopted rules will provide eligible part 90 applicants with additional spectrum for their operational needs as well as foster the development of land mobile radio equipment that utilizes narrowband technology.

DATES: Except as indicated below, all rules adopted in this proceeding are effective May 29, 1991. 47 CFR 90.711 is effective May 1, 1991, and 47 CFR 90.713 is effective July 29, 1991.

FOR FURTHER INFORMATION CONTACT: John Bozkowski or Ron Netro, Rules Branch, Private Radio Bureau, (202) 634-2443. For engineering or technical information, contact Eugene Thomson, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 89-552, FCC 91-74, adopted March 14, 1991, and released April 17, 1991. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, Washington, DC 20036, telephone (202) 452-1422.

Summary of Report and Order

1. The 2 MHz of spectrum available in this band is divided into 400 5 KHz-wide frequencies, paired to create 200 narrowband channels. Of the 200 channels, 60 are set aside for nationwide applicants. Of these 60 channels, 10 are set aside exclusively for Government use and 50 exclusively for non-Goverment use. Nationwide channels are divided into 5-channel blocks and 10-channel blocks. Of the 50 non-Government nationwide channels, 30 channels (two 10-channel blocks and two 5-channel blocks) are set aside for non-commercial applicants [licensees using the system for their own internal purposes only], and 20 channels (four 5-channel blocks) are set aside for commercial applicants (applicants that intend to operate their systems as private carriers providing communications services to others).

2. The 140 channels not dedicated to nationwide use are set aside for local use. All of these channels are available on a co-equal basis for Government and non-Government licensees. Of these 140 channels, 100 are set aside for trunked operations, 20 are set aside for data operations (digital transmissions or analog non-voice transmissions), 10 are set aside for public safety/mutual aid use, and 10 do not have such use restrictions. The trunked channels are assigned in groups of 5 non-contiguous channels spaced 150 kHz (30 channels) apart. Ten of the 20 channels set aside for data operations are not immediately available because they may be allocated for public-safety uses in other on-going Commission proceedings.

3. All applications for licenses in this band will be granted on a first-come, first-served basis and may be filed on or after the second day after publication of a summary of this document in the Federal Register. Licenses will not be granted, however, until the first type-acceptance of equipment for land mobile use in the 220-222 MHz band. A single applicant may apply for one of each type of nationwide system for which it qualifies (*i.e.*, one non-Government commercial system, one 5-channel non-Government non-commercial system, one 10-channel non-Government non-commercial system, etc.), but may not initially be licensed for more than one commercial block and one non-commercial block. Nationwide applicants must submit a detailed plan for construction and operation of the nationwide system and must meet certain financial qualifications. Generally, non-nationwide applicants may not be authorized for more than one individual channel or trunked channel group in a geographic area. Individual channels may not be stacked to obtain a wideband channel. Non-nationwide applicants that seek more than one channel or system in the same geographic area must establish a strong showing of communications need for the additional channel(s) or system(s).

4. Same-day applications for nationwide channel blocks that exceed the number of blocks available in the relevant category and same-day applications for local channels in a geographic area that exceed the number available in the relevant category will be considered as mutually exclusive and resolved by lottery. Non-nationwide licensees will have a five-year license term and systems must be constructed and placed in operation within eight months of license grant. Nationwide licensees will have a ten-year license term and must be constructed and placed in operation according to a schedule of benchmarks at 2, 4, 6 and 10 years. Non-nationwide authorizations for systems that are not constructed or placed in operation within eight months, and nationwide authorizations for systems that do not meet their two-year or four-year construction benchmarks, cancel automatically. No systems in this band may be partially transferred or assigned; full transfer or assignment of a license is permitted, but only for nationwide systems that are 40 percent constructed or non-nationwide systems that are fully constructed. Applications may be filed only for primary land mobile uses, although fixed and paging uses ancillary to a licensee's land mobile operations will be permitted.

5. For each 5 kHz channel, a system will be authorized a maximum channel bandwidth of 4 kHz. Channels may not be stacked for wideband operation. All transmitter emissions must satisfy a single emissions mask. Except for nationwide assignments, co-channel frequency reuse will be 120 kilometers. Geographic separation will be required for certain systems with transmitting and receiving frequencies less than 200 kHz (40 channels) apart. The maximum base station facility permitted will be 500 watts effective radiated power at an antenna height of 150 meters. The effective radiated power authorized will be based on a sliding scale according to antenna height. Base station frequency tolerance will be ±0.00001%; mobile/portable frequency tolerance will be ±0.00015%.

Final Regulatory Flexibility Analysis

6. Pursuant to the Regulatory Flexibility Act of 1980, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision which may be viewed at the Commission's offices or obtained from its copy contractor.

Paperwork Reduction Act Statement

7. The rules adopted herein have been analyzed pursuant to the Paperwork Reduction Act of 1980. This analysis is contained in the full text of this decision.

List of Subjects

47 CFR Part 1

Communications common carriers, Penalties, Reporting and recordkeeping requirements, Radio.

47 CFR Part 90

Private land mobile radio services, 220-222 MHz narrowband frequencies, Radio.

47 CFR Part 97

Communication equipment, Radio, Satellites.

Amendatory Text

47 CFR part 1, 47 CFR part 90 and 47 CFR part 97 are amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. 47 CFR 1.1102 is amended by adding 6(a) (vii) and (viii) and 6(b) (vii) and (viii) and by adding a note C to read as follows:

Action	FCC form No.	Fee amount	Fee type code	Address
* * *	* * *	*	* * *	*
6. Land Mobile Radio Stations:				
a. New, Reinstatement, Modification and/or Renewal (per call sign):				
* * *	* * *	*	* * *	*
(vii) 220-222 MHz (Nationwide only)—see Note C below).	FCC 574, FCC 155	35	PAL	Federal Communications Commission, 220-222 MHz Services, P.O. Box 358360, Pittsburgh, PA 15251-5360.
(viii) 220-222 MHz (Non-nationwide only).	FCC 574	35	PAL	Federal Communications Commission, 220-222 MHz Services, P.O. Box 358360, Pittsburgh, PA 15251-5360.
b. Assignments (per station):				
* * *	* * *	*	* * *	*
(vii) 220-222 MHz (Nationwide only)—see Note C below).	FCC 574, FCC 155	35	PAL	Federal Communications Commission, 220-222 MHz Services, P.O. Box 358360, Pittsburgh, PA 15251-5360.
(viii) 220-222 MHz (Non-nationwide only).	FCC 574	35	PAL	Federal Communications Commission, 220-222 MHz Services, P.O. Box 358360, Pittsburgh, PA 15251-5360.
* * *	* * *	*	* * *	*

Note: C. The fee due for any application related to a nationwide 220–222 MHz system is calculated by multiplying the number of stations (call signs) by $35. For nationwide systems at 220–222 MHz, each frequency pair (channel) in each geographic location is a separate given a separate call sign.

3. The authority citation for part 90 is amended to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

4. 47 CFR 90.17 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 173.30625 MHz and 450 to 470 MHz to read as follows:

§ 90.17 Local Government Radio Service.

* * * * *

(b) * * *

LOCAL GOVERNMENT RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(4)

5. 47 CFR 90.19 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (d) between the entries for 173.075 MHz and 450–470 MHz to read as follows:

§ 90.19 Police Radio Service.

* * * * *

(d) * * *

POLICE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(4)

6. 47 CFR 90.21 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 170.150 MHz and 450–470 MHz to read as follows:

§ 90.21 Fire Radio Service.

* * * * *

(b) * * *

FIRE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(17)

7. 47 CFR 90.23 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 169–172 MHz and 450–470 MHz to read as follows:

§ 90.23 Highway Maintenance Radio Service.

* * * * *

(b) * * *

HIGHWAY MAINTENANCE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(16)

8. 47 CFR 90.25 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 172.375 MHz and 450–470 MHz to read as follows:

§ 90.25 Forestry-Conservation Radio Service.

* * * * *

(b) * * *

FORESTRY-CONSERVATION RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(23)

9. 47 CFR 90.53 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (a) between the entries for 169–172 MHz and 450–470 MHz to read as follows:

§ 90.53 Frequencies available.

(a) * * *

SPECIAL EMERGENCY RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(9)

10. 47 CFR 90.63 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (c) between the entries for 216–220 MHz and 406–413 MHz to read as follows:

§ 90.63 Power Radio Service.

* * * * *

(c) * * *

POWER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(26).

11. 47 CFR 90.65 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 216–220 MHz and 406–413 MHz to read as follows:

§ 90.65 Petroleum Radio Service.

* * * * *

(b) * * *

PETROLEUM RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(17).

12. 47 CFR 90.67 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 216–220 MHz and 406–413 MHz to read as follows:

§ 90.67 Forest Products Radio Service.

* * * * *

(b) * * *

FOREST PRODUCTS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(37).

13. 47 CFR 90.69 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 173.375 MHz and 806–821 MHz to read as follows:

§ 90.69 Motion Picture Radio Service.

* * * * *

(b) * * *

MOTION PICTURE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(13).

14. 47 CFR 90.71 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 173.375 MHz and 452.975 MHz to read as follows:

§ 90.71 Relay Press Radio Service.

* * * * *

(b) * * *

RELAY PRESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(10).

15. 47 CFR 90.73 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (c) between the entries for 216–220 MHz and 406–413 MHz to read as follows:

§ 90.67 Special Industrial Radio Service.

* * * * *

(c) * * *

SPECIAL INDUSTRIAL RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(37).

16. 47 CFR 90.75 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 216–220 MHz and 406–413 MHz to read as follows:

§ 90.75 Business Radio Service.

* * * * *

(b) * * *

BUSINESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(44).

17. 47 CFR 90.79 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (c) between the entries for 216–220 MHz and 450–470 MHz to read as follows:

§ 90.79 Manufacturers Radio Service.

* * * * *

(c) * * *

MANUFACTURERS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(37).

18. 47 CFR 90.81 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (c) between the entries for 216–220 MHz and 450–470 MHz to read as follows:

§ 90.81 Telephone Maintenance Radio Service.

* * * * *

(c) * * *

TELEPHONE MAINTENANCE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(1).

19. 47 CFR 90.89 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 169–172 MHz and 450–470 MHz to read as follows:

§ 90.89 Motor Carrier Radio Service.

* * * * *

(b) * * *

MOTOR CARRIER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(22).

20. 47 CFR 90.91 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 169–172 MHz and 406–413 MHz to read as follows:

§ 90.91 Railroad Radio Service.

* * * * *

(b) * * *

RAILROAD RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(26).

21. 47 CFR 90.93 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 169–172 MHz and 450–470 MHz to read as follows:

§ 90.93 Taxicab Radio Service.

* * * * *

(b) * * *

TAXICAB RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Megahertz:		
* * *	* * *	* * *
220 to 222	Base and mobile	(16).
* * *	* * *	* * *

22. 47 CFR 90.95 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (c) between the entries for 160–172 MHz and 450–470 MHz to read as follows:

§ 90.95 Automobile Emergency Radio Service.

* * * * *

(c) * * *

AUTOMOBILE EMERGENCY RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Megahertz:		
* * *	* * *	* * *
220 to 222	Base and mobile	(16).
* * *	* * *	* * *

23. 47 CFR 90.17(c)(4), 90.19(e)(4), 90.53(b)(8), 90.65(c)(17), 90.81(d)(1), 90.21(c)(17), 90.23(c)(19), 90.25(c)(23), 90.63(d)(26), 90.67(c)(37), 90.69(c)(13), 90.71(c)(10), 90.73(d)(37), 90.75(c)(44), 90.79(d)(27), 90.89(c)(22), 90.91(c)(20), 90.93(c)(16) and 90.95(d)(19) are added, in each case to read as follows:

* * * * *

(__) (__) Subpart T contains rules for assignment of frequencies in the 220–222 MHz band.

* * * * *

24. 47 CFR 90.149 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 90.149 License term.

(a) Except as indicated in paragraph (c) of this section, license for stations authorized under this part will be issued for a term not to exceed five years from the date of the original issuance, modification or renewal.

* * * * *

(c) Nationwide authorizations under subpart T of this part will be issued for a term not to exceed ten years from the date of the original issuance, modification or renewal.

25. 47 CFR 90.175 is amended by adding paragraph (f)(14) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(f) * * *

(14) Applications for frequencies in the 220–222 MHz band.

26. 47 CFR 90.205(b) is amended by adding the 220–222 MHz band and limitation 12 to the table and revising the 220–470 entry to 222–470 to read as follows:

§ 90.205 Power.

* * * * *

(b) * * *

Frequency range (MHz)	Maximum output power (watts)	Maximum effective radiated power (ERP) (watts)
* * *	* * *	* * *
220 to 222	—	500. (1*)
222 to 470	(2*) 350	—
* * *	* * *	* * *

(1*) Transmitter peak envelope power shall be used to determine ERP.

27. 47 CFR 90.209 is amended by revising paragraphs (b)(8) and (j) and adding paragraph (l) to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(8) For narrowband operations on 5 kHz channels in the 150–170 MHz band, the maximum authorized bandwidth shall be 3.6 kHz. For narrowband operations on 5 kHz channels in the 220–222 MHz band, the maximum authorized bandwidth shall be 4 kHz. Assignable frequencies represent the center of the authorized bandwidth.

* * * * *

(j) Except as indicated in paragraph (l) of this section, for transmitters that operate on channels spaced 5 kHz apart (see § 90.271 of this part), the power of any emission shall be attenuated below the peak envelope power (P) in accordance with the following schedule:

* * * * *

(l) For transmitters that operate on 5 kHz channel assignments in the 220–222 MHz frequency band, the power of any emission shall be attenuated below the power of the highest emission contained within the authorized channel bandwidth in accordance with the following schedule:

(1) On any frequency within the authorized bandwidth: Zero dB.

(2) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 2 kHz up to and including 3.75 kHz: The lesser of $30+20(f_d-2)$ dB, or $55+10 \log (P)$ where (P) is the highest emission (watts) of the transmitter inside the authorized bandwidth, or 65 dB.

(3) On any frequency beyond 3.75 kHz removed from the center of the authorized bandwidth: At least $55+10 \log (P)$ dB.

(4) The resolution bandwidth of the instrumentation used to measure the emission power shall be 100 Hz for measuring emissions up to and including 250 kHz from the edge of the authorized bandwidth, and 10 kHz for measuring emissions more than 250 kHz from the edge of the authorized bandwidth. If a video filter is used, its bandwidth shall not be less than the resolution bandwidth. The power level of the highest emission within the channel, to which the attenuation is referenced, shall be remeasured for each change in resolution bandwidth.

(5) Emission power (P) shall be measured in peak values.

28. 47 CFR 90.211(d)(2) is revised to read as follows:

§ 90.211 Modulation requirements.

* * * * *

(d) * * *

(2) Transmitters subject to the emission limitations of paragraphs (f), (g), (h), (j), or (l) of § 90.209 of this part shall be exempt from the audio low-pass filter requirements of this section, provided that transmitters used for digital emissions must be type accepted with the digital modulating signal or signals specified by the manufacturer. The type acceptance application shall contain such information as may be necessary to demonstrate that the transmitter complies with the emission limitations specified in paragraphs (f), (g), (h), (j), or (l) of § 90.209 of this part.

§ 90.213 [Amended]

29. 47 CFR § 90.213 is amended by adding footnote 18 to the 50–450 MHz band in the Frequency Tolerance Table to read:

(18) In the 220–222 MHz band, base stations shall maintain the carrier frequency to within ±0.00001 per cent, and mobiles shall maintain the carrier frequency to within ±0.000015 per cent. Mobile units may utilize synchronizing signals from associated base stations to achieve the specified carrier stability.

* * * * *

30. 47 CFR 90.233 is amended by revising paragraph (c) read as follows:

§ 90.233 Base/mobile non-voice operations.

* * * * *

(c) Provisions of this section do not apply to authorizations for paging, telemetry, radiolocation, AVM, radioteleprinter, radio call box operations, or authorizations granted pursuant to subpart T of this part.

31. 47 CFR 90.238 is amended by adding paragraph (f) to read as follows:

§ 90.238 Telemetry operations.

* * * * *

(f) 220–222 MHz as available under subpart T of this part.

* * * * *

32. 47 CFR 90.243 is amended by revising paragraph (a) in its entirety to read as follows:

§ 90.243 Mobile relay stations.

(a) Mobile relay stations under this part may be authorized only as follows:

(1) On frequencies below 450 MHz, except the 220–222 MHz band, mobile relay stations may be authorized within the contiguous 48 states to operate only in the Police, Fire, Local Government, Highway Maintenance, Forestry Conservation, Power, Petroleum, Forest Products, Manufacturers, Telephone Maintenance, and Railroad Radio Services.

(2) On frequencies below 450 MHz, except the 220–222 MHz band, mobile relay stations may be authorized outside the contiguous 48 states to operate only in the Police, Fire, Local Government, Highway Maintenance, Forestry Conservation, Power, Petroleum, Forest Products, Manufacturers, Telephone Maintenance, Railroad Radio, Business and Special Industrial Radio Services.

(3) Mobile relay operations will be authorized in the 220–222 MHz band.

(4) Mobile relay stations will be authorized on frequencies between 450 MHz and 470 MHz in all of the services governed by this part except for the Radiolocation Service.

(5) Mobile relay stations will be authorized on frequencies between 470 MHz and 512 MHz in all of the services that have been allocated such frequencies.

* * * * *

33. 47 CFR 90.419 is amended by revising paragraph (a) to read as follows:

§ 90.419 Points of communication.

* * * * *

(a) Base stations licensed under subpart T of this part and those in the Public Safety and Special Emergency Radio Services that operate on frequencies below 450 MHz, may communicate on a secondary basis with other base stations, operational fixed stations, or fixed receivers authorized in these services.

* * * * *

34. 47 CFR 90.425 is amended by adding paragraph (d)(8) to read as follows:

§ 90.425 Station identification.

* * * * *

(d) * * *

(8) It is a base or mobile station in the 220–222 MHz band authorized to operate on a nationwide basis in accordance with subpart T of this part.

35. 47 CFR 90.555 is amended by adding the 220–222 MHz frequency band to the combined frequency list in paragraph (b) to read as follows:

§ 90.555 Combined frequency listing.

* * * * *

(b) Combined frequency list.

Frequency	Services	Special limitations
* * *	* * *	* * *
220–222	All Svcs. Exc. RS.	See subpart T.
* * *	* * *	* * *

36. 47 CFR part 90 is amended by adding a new subpart T to read as follows:

Subpart T—Regulations Governing Licensing and Use of Frequencies in the 220–222 MHz Band

Sec.
90.701 Scope.
90.703 Eligibility.
90.705 Forms to be used.
90.709 Special limitations on amendment of applications and on assignment or transfer of authorizations licensed under this subpart.
90.711 Processing of applications.
90.713 Entry criteria.
90.715 Frequencies available.
90.717 Channels available for nationwide systems in the 220–222 MHz band.
90.719 Individual channels available for assignment in the 220–222 MHz band.
90.720 Channels available for public safety/mutual aid.
90.721 Channels available for trunked systems in the 220–222 MHz band.
90.723 Selection and assignment of frequencies.
90.725 Construction requirements.
90.727 Extended implementation schedules.
90.729 Limitations on power and antenna height.
90.731 Restrictions on operational-fixed stations.
90.733 Permissible operations.
90.735 Station identification.
90.737 Supplemental reports required of licensees.
90.739 Number of systems authorized in a geographical area.
90.741 Urban areas for nationwide systems.

§ 90.701 Scope.

Frequencies in the 220–222 MHz band are available for land mobile use for both Government and non-Government operations. This subpart sets out the regulations governing the licensing and operation of non-Government systems operating in the 220–222 MHz band. It includes eligibility requirements, application procedures, and operational and technical standards for stations licensed in these bands. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflicts, the provisions of this subpart shall govern with respect to licensing and operation in this frequency band.

§ 90.703 Eligibility.

The following persons are eligible for licensing in the 220–222 MHz band.

(a) Any person eligible for licensing under subparts B, C, D or E of this part.

(b) Any person proposing to provide communications service to any person eligible for licensing under subparts B, C, D or E of this part on a not-for-profit, cost-shared basis.

(c) Any person, except wire line telephone common carriers, eligible under this part proposing to provide on a commercial basis, station and ancillary facilities for the use of individuals, federal government agencies and persons eligible for licensing under subparts B, C, D or E of this part.

§ 90.705 Forms to be used.

Applications for all radio facilities under this subpart must be prepared on FCC Form 574 and must be submitted or filed in accordance with § 90.127 of this part.

§ 90.709 Special limitations on amendment of applications and on assignment or transfer of authorizations licensed under this subpart.

(a) Except as indicated in paragraph (b) of this section, the Commission will not consent to the following:

(1) Any request to amend an application so as to substitute a new entity as the applicant;

(2) Any application to assign or tranfer a license for a non-nationwide system prior to the completion of construction of facilities; or

(3) Any application to transfer or assign a license for a nationwide system before the licensee has constructed at least 40% of the proposed system pursuant to the provisions of § 90.725(a) of this part.

(b) The Commission will grant the applications described in paragrpah (a) of this section if:

(1) the request to amend an application or to transfer or assign a license does not involve a substantial change in the ownership or control or the applicant; or

(2) The changes in the ownership or control of the applicant are involuntary due to the original applicant's

insolvency, bankruptcy, incapacity, or death.

(c) The assignee or transferee of a nationwide system is subject to the construction benchmarks and reporting requirements of § 90.725(a) of this part. The assignee or transferee of a nationwide system is not subject to the entry criteria described in § 90.713 of this part.

(d) A licensee may not partially assign any authorization granted pursuant to the subpart.

§ 90.711 Processing of applications.

(a) Applications will be processed on a first-come, first-served basis. When multiple applications are filed on the same day for frequencies in the same geographic area, and insufficient frequencies are available to grant all applications (*i.e.*, if all applications were granted, violation of the provisions of § 90.723(f) of this subpart would result), or when multiple applications for nationwide systems are filed on the same day for a number of systems in excess of those available in the relevant category (10-channel non-commercial, 5-channel non-commercial, or 5-channel commercial), these applications will be considered mutually exclusive and will be subject to lottery proceeding pursuant to § 1.972 of this chapter.

(b) All applications will first be considered to determine whether they are substantially complete and acceptable for filing. If so, they will be assigned a file number and put in pending status. If not, they will be dismissed.

(c) Except as otherwise provided in this section, all applications in pending status will be processed in the order in which they are received, determined by the date on which the application was received by the Commission in its Gettysburg, Pennsylvania office (or the address set forth at § 1.1102 of this chapter for applications requiring the fees established by part 1, subpart G of this chapter).

(d) Each application that is accepted for filing will then be reviewed to determine whether it can be granted. Frequencies will be assigned by the Commission pursuant to the provisions of § 90.723 of this part.

(e) An application which is dismissed will lose its place in the processing line.

(f) If an application is returned for correction and resubmitted and received by the Commission within 60 days from the date on which it was returned to the applicant, it will retain its place in the processing line. If it is not received within 60 days, it will lose its place in the processing line.

§ 90.713 Entry criteria.

(a) As set forth in § 90.717 of this part, two blocks of ten and six blocks of five contiguous channels have been set aside for exclusive assignments for non-Government use on a nationwide basis. Each application for a nationwide channel block must include:

(1) Certification that, within ten years of receiving a license, the applicant will construct a minimum of one base station in at least 70 different geographic areas; that base stations will be located in a minimum of 28 of the 100 urban areas listed in § 90.741 of this part; that each base station in the ten large urban areas designated in § 90.725(h) of this part will have all assigned nationwide channels constructed and in operation (regularly interacting with mobile and/or portable units); and that all other base stations will have a minimum of five of the assigned nationwide channels constructed and in operation;

(2) Certification that the applicant will meet the construction requirements set forth in § 90.725 of this part;

(3) A ten year schedule detailing plans for construction of the proposed system;

(4) An itemized estimate of the cost of constructing 40 percent of the system and operating the system during the first four years of the license term; and

(5) Proof that the applicant has sufficient financial resources to construct 40 percent of the system and operate the proposed system for the first four years of the license term; *i.e.*, that the applicant has net current assets sufficient to cover estimated costs or a firm financial commitment sufficient to cover estimated costs.

(b) Applicants relying on personal or internal resources for the showing required in paragraph (a) of this section must submit independently audited financial statements certified within one year of the date of the application showing net current assets sufficient to meet estimated construction and operating costs. They must also submit an independently audited balance sheet dated no more than sixty days before the date of the application showing the continued availability of sufficient net current assets.

(c) Applicants submitting evidence of a firm financial commitment for the showing required in paragraph (a) of this section must obtain the commitment from a *bona fide* commercially acceptable source, *e.g.*, a state or federally chartered bank or savings and loan institution, other recognized financial institution, the financial arm of a capital equipment supplier, or an investment banking house. If the lender is a not a state or federally chartered bank or savings and loan institution, other recognized financial institution, the financial arm of a capital equipment supplier, or an investment banking house, the lender must also demonstrate that it has funds available to cover the total commitments it has made. The lender's commitment shall contain a statement that the lender:

(1) Has examined the financial condition of the applicant including an audited financial statement, and has determined that the applicant is creditworthy;

(2) Has examined the financial viability of the proposed system for which the applicant intends to use the commitment; and

(3) Is willing to provide a sum to the applicant sufficient to cover the realistic and prudent estimated costs of construction of 40% of the system and operation of the system for the first four years of the license term.

(d) An applicant in a geographic area for frequencies in the 220–222 MHz band may not have any interest in another pending application in the same geographic area for frequencies in the same category (trunked, individual, individual data, public safety/mutual aid) in that band. An applicant for a nationwide system in the 220–222 MHz band may not have any interest in another pending application for a nationwide system in the same category (10-channel non-commercial, 5-channel non-commercial, 5-channel commercial) in that band.

§ 90.715 Frequencies available.

(a) The following table indicates the channel designations of frequencies available for assignment to eligible applicants under this subpart. Frequencies shall be assigned in pairs, with base station frequencies taken from the 220–221 MHz band with corresponding mobile and control station frequencies being 1 MHz higher and taken from the 221–222 MHz band. Only the lower half of the frequency pair(s) is listed in the table.

TABLE OF 220–222 MHz CHANNEL DESIGNATIONS

Channel No.	Base frequency (MHz)
1	220.0025
2	.0075
3	.0125
4	.0175
5	.0225
6	.0275
7	.0325
8	.0375
9	.0425
10	.0475
11	.0525
12	.0575

TABLE OF 220–222 MHz CHANNEL DESIGNATIONS—Continued

Channel No.	Base frequency (MHz)
13	.0625
14	.0675
15	.0725
16	.0775
17	.0825
18	.0875
19	.0925
20	.0975
21	220.1025
22	.1075
23	.1125
24	.1175
25	.1225
26	.1275
27	.1325
28	.1375
29	.1425
30	.1475
31	.1525
32	.1575
33	.1625
34	.1675
35	.1725
36	.1775
37	.1825
38	.1875
39	.1925
40	.1975
41	220.2025
42	.2075
43	.2125
44	.2175
45	.2225
46	.2275
47	.2325
48	.2375
49	.2425
50	.2475
51	.2525
52	.2575
53	.2625
54	.2675
55	.2725
56	.2775
57	.2825
58	.2875
59	.2925
60	.2975
61	220.3025
62	.3075
63	.3125
64	.3175
65	.3225
66	.3275
67	.3325
68	.3375
69	.3425
70	.3475
71	.3525
72	.3575
73	.3625
74	.3675
75	.3725
76	.3775

TABLE OF 220–222 MHz CHANNEL DESIGNATIONS—Continued

Channel No.	Base frequency (MHz)
77	.3825
78	.3875
79	.3925
80	.3975
81	220.4025
82	.4075
83	.4125
84	.4175
85	.4225
86	.4275
87	.4325
88	.4375
89	.4425
90	.4475
91	.4525
92	.4575
93	.4625
94	.4675
95	.4725
96	.4775
97	.4825
98	.4875
99	.4925
100	.4975
101	220.5025
102	.5075
103	.5125
104	.5175
105	.5225
106	.5275
107	.5325
108	.5375
109	.5425
110	.5475
111	.5525
112	.5575
113	.5625
114	.5675
115	.5725
116	.5775
117	.5825
118	.5875
119	.5925
120	.5975
121	220.6025
122	.6075
123	.6125
124	.6175
125	.6225
126	.6275
127	.6325
128	.6375
129	.6425
130	.6475
131	.6525
132	.6575
133	.6625
134	.6675
135	.6725
136	.6775
137	.6825
138	.6875
139	.6925
140	.6975

TABLE OF 220–222 MHz CHANNEL DESIGNATIONS—Continued

Channel No.	Base frequency (MHz)
141	220.7025
142	.7075
143	.7125
144	.7175
145	.7225
146	.7275
147	.7325
148	.7375
149	.7425
150	.7475
151	.7525
152	.7575
153	.7625
154	.7675
155	.7725
156	.7775
157	.7825
158	.7875
159	.7925
160	.7975
161	220.8025
162	.8075
163	.8125
164	.8175
165	.8225
166	.8275
167	.8325
168	.8375
169	.8425
170	.8475
171	.8525
172	.8575
173	.8625
174	.8675
175	.8725
176	.8775
177	.8825
178	.8875
179	.8925
180	.8975
181	220.9025
182	.9075
183	.9125
184	.9175
185	.9225
186	.9275
187	.9325
188	.9375
189	.9425
190	.9475
191	.9525
192	.9575
193	.9625
194	.9675
195	.9725
196	.9775
197	.9825
198	.9875
199	.9925
200	220.9975

(b) The 200 channels are divided into three sub-bands as follows:

Channel No.	Sub-band	Frequencies (MHz)
1–40	A	220.0025–220.1975/221.0025–221.1975
41–160	C	220.2025–220.7975/221.2025–221.7975
161–200	B	220.8025–220.9975/221.8025–221.9975

§ 90.717 Channels available for nationwide systems in the 220–222 MHz band.

Channels 81–90 and 141–150 are 10-channel blocks available to applicants eligible in all Part 90 services only for nationwide non-commercial systems. Channels 61–65 and 66–70 are 5-channel blocks available to applicants eligible in all Part 90 services only for nationwide non-commercial systems. The term "non-commercial system" is defined as a system that will be used only for a licensee's internal use. Channels 21–25, 26–30, 151–155, and 156–160 are 5-channel blocks available to non-Government applicants only for nationwide commercial systems. Channels 111–115 and 116–120 are 5-channel blocks available for Government nationwide use only.

§ 90.719 Individual channels available for assignment in the 220–222 MHz band.

Channels 171–200 are available to both Government and non-Government applicants, and may be assigned singly or in contiguous channel groups. Channels 171–180 are available for any use consistent with this subpart. Channels 181–200 are set aside for data only operations until March 31, 2000. The term "data", for purposes of this subpart, includes the transmission of text, control codes, and other information typical of machine-to-machine communications. Digitized voice signals are considered data signals under this subpart.

Note: Channels 181–185 and 196–200 are indefinitely reserved until further Commission action, and are not currently available for assignment or use.

§ 90.720 Channels available for public safety/mutual aid.

(a) Part 90 licensees whose licenses reflect a two-letter radio service code beginning with the letter "P" (except for "PS") are authorized by this rule to use mobile and/or portable units on Channels 161–170 throughout the United States, its territories, and possessions to transmit:

(1) Communications relating to the immediate safety of life or

(2) Communications to facilitate interoperability between public safety entities.

(b) Any entity eligible to obtain a license under subpart B of this part is also eligible to obtain a license for base/mobile operations on Channels 161–170. Base/mobile or base/portable communications on these channels that do not relate to the immediate safety of life or to communications interoperability between public safety entities may only be conducted on a secondary, non-interference basis to such communications.

§ 90.721 Channels available for trunked systems in the 220–222 MHz band.

The channel groups listed in the following Table are available to both Government and non-Government applicants for trunked operations or operations of equivalent or greater efficiency for non-commercial or commercial operations.

TABLE—TRUNKED CHANNEL GROUPS

Group No.	Channel Nos.
1	1-81-61-61-121
2	2-32-62-92-122
3	3-33-63-93-123
4	4-34-64-94-124
5	5-35-65-95-125
6	6-36-66-96-126
7	7-37-67-97-127
8	8-38-68-98-128
9	9-39-69-99-129
10	10-40-70-100-130
11	11-41-71-101-131
12	12-42-72-102-132
13	13-43-73-103-133
14	14-44-74-104-134
15	15-45-75-105-135
16	16-46-76-106-136
17	17-47-77-107-137
18	18-48-78-108-138
19	19-49-79-109-139
20	20-50-80-110-140

§ 90.723 Selection and assignment of frequencies.

(a) Applications for frequencies in the 220–222 MHz band shall specify the number of frequencies requested and whether their intended use is for 5- or 10-channel nationwide systems, commercial or non-commercial use, 5-channel trunked systems, public safety/mutual aid use, individual data/voice use, or individual data only use. All frequencies in this band will be assigned by the Commission.

(b) Channels will be assigned pursuant to §§ 90.717, 90.719, 90.720 and 90.721 of this part.

(c) Applicants will be assigned only the number of channels justified to meet their requirements. Except for the 10-channel nationwide assignments, the maximum number of frequencies that will be assigned to an applicant at any one time is five.

(d) Base station receivers utilizing channels assigned from Sub-band A as designated in § 90.715(b) of this part will be geographically separated from those base station transmitters utilizing channels removed 200 kHz or less and assigned from Sub-band B as follows:

GEOGRAPHIC SEPARATION OF SUB-BAND A BASE STATION RECEIVERS AND SUB-BAND B BASE STATION TRANSMITTERS

Separation distance (kilometers)	Effective radiated power (watts)[1]
0.0–0.3	(2)
0.3–0.5	5
0.5–0.8	10
0.8–0.8	20
0.8–2.0	25
2.0–4.0	50
4.0–5.0	100
5.0–6.0	200
Over 6.0	500

[1] Transmitter peak envelope power shall be used to determine effective radiated power.

[2] Stations separated by 0.3 km or less shall not be authorized. This table does not apply to the low-power mobile data channels 196–200. See § 90.729(c) of this part.

(e) A mobile station is authorized to transmit on any frequency assigned to its associated base station (mobile units not associated with base stations (see § 90.720(a) of this part must operate on "mobile" channels).

(f) Except for nationwide assignments, the separation of co-channel base stations shall be 120 kilometers. Shorter separations will be considered on a case-by-case basis upon submission of a technical analysis indicating that at least 10 dB protection will be provided to an existing station's 38 dBu signal level contour.

§ 90.725 Construction requirements.

(a) Licensees granted nationwide authorizations will be required to construct base stations having a minimum of five assigned nationwide channels (or, for ten-channel nationwide systems, ten assigned channels in the ten large areas listed in paragraph (h) of this section) and place those base stations in operation as follows:

(1) In at least 10 percent of the geographic areas designated in the application within two years of initial license grant, including base stations in at least seven urban areas listed in § 90.741 of this part;

(2) In at least 40 percent of the geographic areas designated in the application within four years of initial license grant, including base stations in at least 28 urban areas listed in § 90.741 of this part;

(3) In at least 70 percent of the geographic areas designated in the application within six years of initial license grant, including base stations in at least 28 urban areas listed in § 90.741 of this part;

(4) In all geographic areas designated in the application within ten years of initial license grant, including base

stations in at least 28 urban areas listed in § 90.741 of this part.

(b) Licensees not meeting the two and four year criteria shall lose the entire authorization, but will be permitted a six month period to convert the system to non-nationwide channels, if such channels are available.

(c) Licensees not meeting the six and ten year criteria shall lose the authorizations for the facilities not constructed, but will retain exclusivity for constructed facilities.

(d) Each nationwide licensee must file a system progress report on or before the anniversary date of the grant of its license after 2, 4, 6 and 10 years, demonstrating compliance with the relevant construction benchmark criteria. This progress report must include:

(1) An overall status report of the system, that must include, but need not be limited to:

(i) A list of all sites at which base stations have been constructed, with antenna heights and effective radiated power specified for each site;

(ii) A list of all other known base station sites at which construction has not been completed; and

(iii) A construction and operational schedule for the next five-year period, including any known changes to the plan for construction and operation submitted with the licensee's original application for the system.

(2) An analysis of the system's compliance with the requirements of paragraph (a) of this section, with documentation to support representations of completed construction, including, but not limited to:

(i) Equipment purchase orders and contracts;

(ii) Lease or purchase contracts relating to antenna site arrangements;

(iii) Equipment and antenna identification (serial) numbers; and

(iv) Service agreements and visits.

(e) Beginning with its second license term, each nationwide licensee must file a progress report once every five years on the anniversary date of the grant of the first renewal of its authorization, including the information required by paragraph (b)(1) of this section.

(f) Licensees authorized non-nationwide systems must construct their systems (*i.e.*, have all specified base stations constructed with all channels) and place their systems in operation within eight months of the initial license grant date. Authorizations for systems not constructed and placed in operation within eight months from the date of initial license grant cancel automatically.

(g) A licensee that loses authorization for some or all of its channels due to failure to meet construction deadlines or benchmarks may not reapply for nationwide channels in the same category or for non-nationwide channels in the same category in the same geographic area for one year from the date the Commission takes final action affirming that those channels have been cancelled.

(h) Base stations of 10-channel nationwide systems must be fully constructed (*i.e.*, must have all 10 channels) to be counted towards the benchmark criteria in paragraph (a) of this section if they are located in any of the ten large urban areas listed in the following Table (base stations are considered located in the following ten large urban areas if they are within 60 kilometers of the coordinates listed:

TABLE

Large urban area	North longitude °	'	"	West latitude °	'	"
New York, New York—Northeastern New Jersey	40	45	06	73	59	39
Los Angeles—Long Beach, California	34	03	15	118	14	28
Chicago, Illinois—Northwestern Indiana	41	52	25	87	38	22
Philadelphia, Pennsylvania—New Jersey	39	56	55	75	09	21
Detroit, Michigan	42	19	48	83	02	57
Boston, Massachusetts	42	21	24	71	03	25
San Francisco—Oakland, California	37	46	30	122	24	40
Washington, DC—Maryland—Virginia	38	53	51	77	00	33
Dallas—Forth Worth, Texas	32	47	09	96	47	37
Houston, Texas	29	45	26	95	21	37

§ 90.727 Extended implementation schedules.

Except for nationwide and commercial systems, a period of up to three (3) years may be authorized for constructing and placing a system in operation if:

(a) The applicant submits justification for an extended implementation period. The justification must include reasons for requiring an extended construction period, the proposed construction schedule (with milestones), and must show either that:

(1) The proposed system will serve a large fleet of mobile units and will involve a multi-year cycle for its planning, approval, funding, purchase, and construction; or

(2) The proposed system will require longer than 12 months to place in operation because of its purpose, size, or complexity; or

(3) The proposed system is to be part of a coordinated or integrated area-wide system which will require more than 12 months to construct; or

(4) The applicant is a local governmental agency and demonstrates that the government involved is required by law to follow a multi-year cycle for planning, approval, funding, and purchasing the proposed system.

(b) Authorizations under this section are conditioned upon the licensee's compliance with the submitted extended implementation schedule. Failure to meet the schedule will result in loss of authorizations for facilities not constructed.

§ 90.729 Limitations on power and antenna height.

(a) The permissible effective radiated power (ERP) with respect to antenna heights shall be determined from the following Table. These are maximum values and applicants are required to justify power levels requested.

ERP VS. ANTENNA HEIGHT TABLE

Antenna height above average terrain (HAAT), meters	Effective radiated power, watts [1]
Up to 150	500
150 to 225	250
225 to 300	125
300 to 450	60
450 to 600	30
600 to 750	20
750 to 900	15
900 to 1050	10
Above 1050	5

[1] Transmitter PEP shall be used to determine ERP.

(b) The maximum permissible ERP for mobile units is 50 watts. Portable units are considered as mobile units.

(c) Channels 196–200 are limited to 2 watts ERP and a maximum antenna height of 20 feet/6.1 meters above ground.

§ 90.731 Restrictions on operational-fixed stations.

(a) Except for control stations, operational-fixed stations will not be authorized in the 220–222 MHz band. Licensees may utilize their authorized frequencies for fixed signaling in accordance with § 90.235 of this part.

(b) Control stations associated with one or more mobile relay stations will be authorized only on the assigned frequency of the associated mobile station. Use of a mobile service frequency by a control station of a mobile relay system is subject to the condition that harmful interference shall not be caused to stations of licensees authorized to use the frequency for mobile service communications.

§ 90.733 Permissible operations.

(a) Systems authorized in the 220–222 MHz band may be used:

(1) Only for base/mobile and mobile relay transmissions on a primary basis, and fixed voice, signaling and paging transmissions ancillary to land mobile use. Fixed-only and paging-only operations are not permitted in this band.

(2) Only by persons who are eligible for facilities under either this subpart or in the radio services included in subparts B, C, D, or E of this part.

(3) Only for the transmission of messages or signals permitted in the services in which the licensees are eligible.

(b) See § 90.720 of this part for permissible operations on mutual aid channels.

(c) When two or more contiguous channels are authorized to a single licensee (up to a 10-channel nationwide block), more than a single emission may be utilized within the authorized bandwidth. In such cases, the frequency stability requirements of § 90.213 of this part shall not apply, but the out-of-band emission limits of § 90.209(1) of this part shall be met.

(d) Licensees of non-commercial nationwide systems that have constructed 40 percent of their systems may lease excess capacity of their systems as private carriers.

§ 90.735 Station identification.

(a) Except for nationwide systems authorized in the 220–222 MHz band, station identification is required pursuant to § 90.425 of this part.

(b) Trunked systems shall employ an automatic device to transmit the call sign of the base station at 30 minute intervals. The identification shall be made on the lowest frequency in the base station trunked group assigned to the licensee. If this frequency is in use at the time identification is required, the identification may be made at the termination of the communication in progress on this frequency.

(c) Station identification may be by voice or International Morse Code. If the call sign is transmitted in International Morse Code, it must be at a rate of between 15 to 20 words per minute, and by means of tone modulation of the transmitter, with the tone frequency being between 800 and 1000 hertz.

(d) Data transmissions (see § 90.719 of this part) may also be identified by data transmission of the station call sign. A licensee that identifies its station in this manner must provide the Commission, upon its request, information (such as digital codes and algorithms) sufficient to decipher the data transmission to ascertain the call sign transmitted.

§ 90.737 Supplemental reports required of licensees.

(a) Licensees of nationwide systems must submit progress reports pursuant to § 90.725(d) of this part.

(b) Licensees offering service on a commercial basis must maintain records of the names and addresses of each customer and the dates that service commenced and terminated. These records must be made available to the Commission upon request. Such licensees must report at the time of license renewal the number of mobile units being served.

(c) Non-commercial trunked system licensees must report at the time of license renewal the number of mobile units being served.

(d) Except for licensees of nationwide systems, all licensees must report whether construction of the facility has been completed within eight months of the date of grant of their respective licenses.

(e) All reports must be filed with the Land Mobile Branch, Licensing Division, Private Radio Bureau, Gettysburg, PA 17326.

§ 90.739 Number of systems authorized in a geographical area.

No licensee will be authorized more than one system in the 220–222 MHz band in a single category (i.e., one non-commercial nationwide system [either 5 or 10-channel], one commercial nationwide system, one 5-channel trunked system, one data-only local system of 1–5 channels, one unrestricted non-trunked local system of 1-5 channels, or one public safety/mutual aid local system of 1-5 channels) within 64 kilometers (40 miles) of an existing system authorized to that licensee in the same category, unless the licensee can demonstrate that the additional system is justified on the basis of its communications requirements.

§ 90.741 Urban areas for nationwide systems.

Licensees of nationwide systems must construct base stations in a minimum of 28 of the urban areas listed in the following Table within ten years of initial license grant. A base station is considered to be within one of the listed urban areas if it is within 80 kilometers of the specified coordinates.

TABLE

Urban Area	North Longitude °	'	"	West Latitude °	'	"
New York, New York—Northeastern New Jersey	40	45	06	73	59	39
Los Angeles-Long Beach, California	34	03	15	118	14	28

TABLE—Continued

Urban Area	North Longitude °	'	"	West Latitude °	'	"
Chicago, Illinois—Northwestern Indiana	41	52	28	87	38	52
Philadelphia, Pennsylvania/New Jersey	39	56	59	75	09	21
Detroit, Michigan	42	19	49	83	02	57
Boston, Massachusetts	42	21	24	71	05	28
San Francisco-Oakland, California	37	46	30	122	24	49
Washington, DC/Maryland/Virginia	38	53	51	77	00	38
Dallas-Fort Worth, Texas	32	47	09	96	47	37
Houston, Texas	29	45	29	95	21	37
St. Louis, Missouri/Illinois	38	37	45	90	12	22
Miami, Florida	25	46	37	80	11	32
Pittsburgh, Pennsylvania	40	26	19	80	00	09
Baltimore, Maryland	39	17	25	76	36	45
Minneapolis-St. Paul, Minnesota	44	59	57	93	15	43
Cleveland, Ohio	41	29	51	81	41	50
Atlanta, Georgia	33	45	10	84	23	37
San Diego, California	32	42	53	117	09	21
Denver, Colorado	39	44	58	104	59	22
Seattle-Everett, Washington	47	36	32	122	20	12
Milwaukee, Wisconsin	43	02	19	87	54	15
Tampa, Florida	27	58	58	82	27	25
Cincinnati, Ohio/Kentucky	39	06	07	84	30	35
Kansas City, Missouri/Kansas	39	04	56	94	35	29
Buffalo, New York	42	52	52	78	52	21
Phoenix, Arizona	33	27	12	112	04	28
San Jose, California	37	20	16	121	53	24
Indianapolis, Indiana	39	46	07	86	09	46
New Orleans, Louisiana	29	56	53	90	04	16
Portland, Oregon/Washington	45	31	06	122	40	35
Columbus, Ohio	39	57	47	83	00	17
Hartford, Connecticut	41	46	12	72	40	49
San Antonio, Texas	29	25	37	98	29	06
Rochester, New York	43	09	41	77	36	21
Sacramento, California	38	34	57	121	29	45
Memphis, Tennessee/Arkansas/Mississippi	35	08	46	90	03	13
Louisville, Kentucky/Indiana	38	14	47	85	45	49
Providence-Pawtucket-Warwick, RI/MA	41	49	32	71	24	41
Salt Lake City, Utah	40	45	23	111	53	28
Dayton, Ohio	39	45	32	84	11	43
Birmingham, Alabama	33	31	01	86	49	36
Bridgeport, Connecticut	41	10	49	73	11	22
Norfolk-Portsmouth, Virginia	36	51	10	76	17	21
Albany-Schenectady-Troy, New York	42	39	01	73	45	01
Oklahoma City, Oklahoma	35	28	28	97	31	04
Nashville-Davidson, Tennessee	36	09	33	86	46	55
Toledo, Ohio/Michigan	41	39	14	83	32	39
New Haven, Connecticut	41	18	25	72	55	30
Honolulu, Hawaii	21	19	00	157	52	00
Jacksonville, Florida	30	19	44	81	39	42
Akron, Ohio	41	05	00	81	30	44
Syracuse, New York	43	03	04	76	08	14
Worcester, Massachusetts	42	15	37	71	48	17
Tulsa, Oklahoma	36	09	12	95	59	34
Allentown-Bethlehem-Easton, PA/NJ	40	36	11	75	28	06
Richmond, Virginia	37	32	15	77	28	09
Orlando, Florida	28	32	42	81	22	38
Charlotte, North Carolina	35	13	44	80	50	45
Springfield-Chicopee-Holyoke, MA/CT	42	06	21	72	35	32
Grand Rapids, Michigan	42	58	03	85	40	13
Omaha, Nebraska/Iowa	41	15	42	95	58	14
Youngstown-Warren, Ohio	41	05	57	80	39	02
Greenville, South Carolina	34	50	50	82	24	04
Flint, Michigan	43	00	50	83	41	33
Wilmington, Delaware/New Jersey/Maryland	39	44	46	75	32	51
Raleigh-Durham/North Carolina	35	45	38	78	38	21
West Palm Beach, Florida	26	42	36	80	03	07
Oxnard-Simi Valley-Ventura, California	34	12	00	119	11	00
Fresno, California	36	44	12	119	47	11
Austin, Texas	30	16	09	97	44	37
Tucson, Arizona	32	13	15	110	58	08
Lansing, Michigan	42	44	01	84	33	15
Knoxville, Tennessee	35	57	39	83	55	07
Baton Rouge, Louisiana	30	29	59	91	11	00
El Paso, Texas	31	45	36	106	29	11
Tacoma, Washington	47	14	59	122	26	16
Mobile, Alabama	30	41	36	88	02	33
Harrisburg, Pennsylvania	40	15	43	76	52	59
Albuquerque, New Mexico	35	05	01	106	39	05

TABLE—Continued

Urban Area	North Longitude			West Latitude		
	°	'	"	°	'	"
Canton, Ohio	40	47	50	81	22	37
Chattanooga, Tennessee/Georgia	35	02	41	85	18	32
Wichita, Kansas	37	41	30	97	20	16
Charleston, South Carolina	32	46	35	79	55	53
San Juan, Puerto Rico	18	28	00	66	07	00
Little Rock-North Little Rock, Arkansas	34	44	42	92	16	37
Las Vegas, Nevada	36	10	20	115	08	37
Columbia, South Carolina	34	00	02	81	02	00
Fort Wayne, Indiana	41	04	21	85	08	28
Bakersfield, California	35	22	31	119	01	16
Davenport-Rock Island-Moline, IA/IL	41	31	00	90	35	00
Shreveport, Louisiana	32	30	46	93	44	58
Des Moines, Iowa	41	35	14	93	37	00
Peoria, Illinois	40	41	42	89	35	33
Newport News-Hampton, Virginia	36	59	30	76	28	00
Jackson, Mississippi	32	17	58	90	11	06
Augusta, Georgia/South Carolina	33	28	20	81	58	00
Spokane, Washington	47	39	32	117	25	33
Corpus Christi, Texas	27	47	51	97	23	45
Madison, Wisconsin	43	04	23	89	22	56
Colorado Springs, Colorado	38	50	07	104	49	16

Note: The geographic coordinates given are from the Department of Commerce publication of 1947: "Air-line Distances Between Cities in the United States" and from data supplied by the National Geodetic Survey. The coordinates are determined by using the first city mentioned as the center of the urban area.

PART 97—[AMENDED]

37. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

38. Paragraph (b) of § 97.201 is revised to read as follows:

§ 97.201 Auxiliary station.

* * * * *

(b) An auxiliary station may transmit only on the 1.25 m and shorter wavelength bands, except the 431–433 MHz and 435–438 MHz segments.

* * * * *

39. 47 CFR 97.203 is amended by revising paragraph (d) to read as follows:

§ 97.203 Beacon station.

* * * * *

(d) A beacon may be automatically controlled while it is transmitting on the 28.20–28.30 MHz, 50.06–50.08 MHz, 144.05–144.06 MHz, 222.05–222.06 MHz or 432.07–432.08 MHz segments, or on the 33 cm and shorter wavelength bands.

* * * * *

40. 47 CFR 97.205 is amended by revising paragraph (b) to read as follows:

§ 97.205 Repeater station.

* * * * *

(b) A repeater may receive and retransmit only on the 10 m and shorter wavelength frequency bands except the 28.0–29.5 MHz, 50.0–52.0 MHz, 144.0–144.5 MHz, 145.5–146.0 MHz, 431.0–433.0 MHz and 435.0–438.0 MHz segments.

* * * * *

41. 47 CFR 97.301 is amended by revising the third line entry in the Table in paragraph (a) and the first line entry in the Table in paragraph (f) to read as follows:

* * * * *

§ 97.301 Authorized frequency bands.

* * * * *

(a) For a station having a control operator holding a Technician, General, Advanced or Amateur Extra Class operator license:

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303 (paragraph)
	•	•	•	•
1.25 m	• •	222-225 •	• •	(a), (b).

(f) For a station having a control operator holding a Novice Class operator license:

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303 (paragraph)
VHF	MHz	MHz	MHz	
1.25 m	• •	222-225 •	• •	(a), (b).

§ 97.303 [Amended]

42. 47 CFR 97.303 is amended by removing and reserving paragraph (e).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-9397 Filed 4-29-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 73, 76

[MM Docket Nos. 90-570 and 83-670, FCC 91-113]

Broadcast and Cable Services; Children's Television Programming

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this action, implements the provisions contained in the Children's Television Act of 1990. The Commission, first, prescribes standards for commercial limits in television broadcast and cable programming directed to children 12 years of age and under. Second, the Commission implements the requirement that it review at renewal whether television broadcasters, over the license term, have served the educational and informational needs of children, interpreting the requirement to encompass programming directed to children up to the age of 16 that furthers their positive development in any way, including serving their cognitive/intellectual or social/emotional needs. Third, the Commission requires certification of compliance with the commercial limits and submission of a summary of broadcasters' programming response to children's educational and informational needs in licensees' renewal applications and establishes certain commercial and children's programming record-keeping requirements. Fourth, the Commission applies essentially the same standards that it applies in enforcing its other rules to violations of the regulations implementing the Act. Fifth, the Commission establishes an effective date for the rules of October 1, 1991. Under these rules, the first television broadcast renewal applicants required to demonstrate compliance would be those who file renewal applications on February 1, 1992, having license expiration dates of June 1, 1992.

EFFECTIVE DATE: The effective date for the rules is October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Gina Harrison, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: The public recordkeeping burden for § 73.3526 (3060-0214) is estimated to vary from 104 hours to 130 hours per recordkeeper with an average of 106 hours 59 minutes per recordkeeper; the public reporting burden for FCC Form 303-S (3060-0716) is estimated to vary from 48 minutes to 3 hours 10 minutes per response with an average of 46 minutes per response; and the public recordkeeping burden for § 76.305 (3060-0316) is estimated to vary from 8 hours 38 minutes to 21 hours 50 minutes with an average of 13 hours 52 minutes, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0214/3060-0710), Washington, DC 20503.

This is a synopsis of the Commission's Report and Order in MM Docket Nos. 90-570 and 83-670, adopted April 9, 1991, and released April 12, 1991.

The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1919 M Street, NW, room 246, Washington, DC 20554.

Synopsis of Report and Order

1. This proceeding was initiated in response to the Children's Television Act of 1990, Public Law 101-437, codified at 47 U.S.C. 303a, 303b, 394 (Act). The Act: (1) Required the Commission to adopt rules limiting the number of commercial minutes that commercial broadcast licensees and cable operators may air during children's programming; (2) required that the Commission consider in its review of television broadcast license renewals, the extent to which the licensee has met the commercial limits, and the extent to which it has served the educational and informational needs of children through its overall programming, including programming specifically designed to serve such needs; and (3) required the completion, within 180 days of enactment [1] of a pending proceeding that had sought to define and resolve the treatment of "program length commercials." The notice of proposed rule making (notice), at 55 FR 50635 (December 6, 1990) solicited comment regarding various issues related to implementation of the Act's provisions.

2. Several parties raised questions regarding the constitutionality of the Act. The Commission stated that it was not obliged to question the constitutionality of an Act of Congress which it was charged with enforcing and observed that Congress had already provided a vigorous defense of its constitutionality. The Commission added that it was consistent with legislative intent, however, to interpret the Act with sensitivity to the constitutional rights of the broadcasters and cable operators it affects by affording them significant discretion when implementing the Act.

3. The Act provides that television broadcast licensees and cable operators limit the duration of advertising in children's programming to "not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays." The Commission defined children's programming as "programs originally produced and broadcast for an audience of children 12 years old and under." This definition excludes programs originally produced for a general audience that might nevertheless be significantly viewed by children. The Commission found that the legislative history reveals that Congress intended that an age definition of 12 and under be used. It noted that there was some empirical evidence supporting an upper age limit as high as 12 years. The Commission observed that if, after some experience with using an age definition of 12 and under to implement the statute, there appears to be additional evidence that a change in the maximum age would be appropriate, the Act grants the Commission the authority to consider such modification after January 1, 1993. The Commission also clarified that if a station with an all-advertising format directs commercials for children's products to adult viewers/purchasers, these commercials would not be considered as aired in connection with "programs originally produced and

[1] The Act was enacted on October 18, 1990. It required the Commission to complete MM Docket No. 83-670 (Further Notice of Proposed Rule Making at 52 FR 44666, November 20, 1987) by April 18, 1991. The Act also required the Commission to prescribe rules implementing the commercial limits by that date.

broadcast for an audience of children 12 years of age and under."

4. The Commission defined "commercial matter" as "air time sold for purposes of selling a product or service." The Commission clarified that the requirement that air time be "sold" means that the advertiser must give some valuable consideration either directly or indirectly to the broadcaster or cablecaster as an inducement for airing the material. For purposes of determining whether material is "commercial matter," the furnishing of material for airing may or may not qualify as consideration. Some barter arrangements, depending on their terms, may involve consideration furnished as an inducement to air commercial matter.

5. The Commission additionally found that the scope of section 317 of the Communications Act, which governs when the sponsor of broadcast material must be identified, is not coterminous with the scope of commercial matter. In particular, the Agency held that material is not necessarily "commercial matter" for purposes of the Act, simply because section 317 requires a sponsorship identification. Action For Children's Television (ACT) requested that the Commission include in the definition of commercial matter all matter placing undue emphasis on products or promotional material, even if not within the scope of section 317. The Commission found that, unless the circumstances show that such material placing undue emphasis on products or promotional material fits the adopted definition of commercial matter, such material will not be deemed commercial matter.

6. The Commission found that the bare sponsorship identification announcement required under section 317 and its implementing rules, where such material is not otherwise commercial in nature, will not be deemed commercial matter under our definition here. Thus, public service messages sponsored by nonprofit organizations that promote not-for-profit activities will not be considered commercial matter for purposes of applying the commercial limits. Similarly, air time sold for purposes of presenting educational and informational material, including "spot" announcements, with the only sponsorship mention a "sponsored by," is not commercial matter. Indeed, the Commission wishes to encourage the sponsorship of educational and informational material, and believes that short-segment programming of this nature may be particularly effective in reaching a child audience. However, if a station or cable operator's promo: (1) Mentions that the upcoming program is "brought to you" by a sponsor; (2) promotes a product or service related to the program or program sponsor; or (3) mentions a prize furnished by the program sponsor, the mention of the sponsor or the sponsor's product, not being required under section 317 of the Commission's Rules, will be considered commercial matter. Of course, some consideration must be furnished for the airing of the material for it to qualify as commercial matter. Even if no separate consideration is received for such mentions, if such "hybrid" promotional/commercial spots are part of a program package for which the broadcaster or cablecaster receives consideration, then consideration was received for the airing of these announcements. Promotions of upcoming programs which do not contain sponsor-related mentions such as those described, *supra* this paragraph, will not be deemed commercial matter.

7. The Commission defined "program" as an identifiable unit of program material that is not a commercial or promotional announcement. This definition will also be used in assessing a licensee's children's programming record. The Commission clarified that under this definition, a 30 or 60 second noncommercial spot can qualify as educational and informational programming, depending on content.

8. The Commission adopted a clock-hour approach to counting commercial minutes. Counting by the clock hour begins at the start of the hour and finishes at the hour's end, and not at the start of a program segment. The Commission agreed with ACT that where a half-hour "island" of children's programming airs in the midst of adult viewing, the limits should apply on a proportionate basis. The Commission did not apply the limits to programs of shorter duration, however, as such programs constitute a relatively small proportion of children's programming. The Commission clarified that no limits should apply to an adult program aired as an "island" within a block of children's programming.

9. The Commission clarified that the limits apply to commercial breaks before and after a children's program, as well as to commercials during a program. In the general case, the Commission will measure commercial time associated with a program beginning at the hour or half-hour as appropriate, and ending on the hour or half-hour, depending on the program's duration. For programs not conforming to the standard hour or half-hour time periods or otherwise not involving clear starting and ending periods, the Commission will allocate half of the break at the beginning or end of a program to the immediately proceeding program and half to the next program.

10. The commercial limits contained in the statute apply to both television broadcast stations and cable operators. The Commission exempted cable operators from liability for commercial limit violations on broadcast stations they passively carry and on access channels, but applied the commercial limits to cable operators' locally originated channels and to cable network programs.

11. The Commission adopted a requirement that broadcast licensees certify their compliance with the commercial limits on children's programs at renewal time. If they cannot so certify, they must explain all instances in which they have exceeded these limits. In light of the statutory directive that the Commission "shall review" television renewal applications for compliance with the limits, the Agency stated that it lacked the discretion to rely completely on public monitoring. There is no such directive with respect to cable, however. In light of this fact, and given the record-keeping requirements imposed with respect to commercial limits on children's programming described below, the Commission found that reliance on public monitoring of cable is appropriate. Given the certification and record-keeping requirements imposed, and the probable efficacy of public monitoring, the Commission also declined at this time to institute a regular program of random compliance audits of broadcast stations, as requested by some commenters.

12. The Commission required commercial television broadcast licensees and cable operators to maintain records sufficient to verify compliance with the Act's commercial limits. In the case of broadcast licensees, these records should be sufficient to permit substantiation of the broadcaster's certification of compliance at renewal time. In the case of cable operators, not subject under the Act to renewal review, these records must be retained for a period sufficient to cover the applicable statute of limitations, 47 U.S.C. 503(b)(6)(B). The Commission observed that cable operators may wish to arrange to have cable networks provide to them commercial records for the children's programming cable networks supply. Broadcasters and those cable operators subject to a public file requirement, see 47 CFR 73.3526, 76.305, must make these records part of their public inspection file.

13. The Act requires that, in reviewing television license renewal applications, the Commission consider whether the licensee has served the "educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." The Agency may "in addition" consider: (1) "Any special nonbroadcast efforts * * * which enhance the educational and informational value of such programming" and (2) any "special effort" to produce or support programming broadcast by another station in the licensee's market that is "specifically designed to serve the educational and informational needs of children." In light of the legislative intent, the Commission stated that it would implement this provision by reviewing a licensee's renewal application to determine whether, over the course of its license term, it has served the educational and informational needs of children in its overall programming, including programming specifically designed to serve such needs. The Commission stated that it expects substantial compliance throughout all of the broadcaster's license term. In situations in which the Act was in effect for less than a broadcaster's full license term, the Commission will examine a licensee's compliance during the period of the licensee's term that the rules were in effect.

14. The Agency found that the different policies underlying the Act's programming renewal review provision necessitate a broader age definition of "children" than that used for commercial limits. It interpreted the programming renewal review requirement to apply to programs originally produced and broadcast primarily for an audience of children 16 years of age and under. The Commission did not, however, require licensees to target programming to all ages of children in the under-16 range.

15. The Commission defined "educational and informational" programming for children as programming that furthers the positive development of the child in any respect, including the child's cognitive/intellectual or emotional/social needs. The notice proposed to require each licensee to assess the needs of children given (1) the circumstances within the community, (2) other programming on the station, (3) programming aired on other broadcast stations within the community, and (4) other programs for children available in the broadcaster's community of license. The Commission, however, declined to make use of these criteria mandatory, although it did adopt them as permissive guidelines for exercise of licensee discretion in applying the definition. The Commission stated that these factors can serve to make the licensee's decisionmaking process more objective and may make it easier for licensees to justify programming decisions that are questioned. The Commission did not adopt proposals for structured assessment procedures. It stated that licensees will retain reasonable discretion to determine the manner in which they assess the educational and informational needs of children in their communities, provided they are able to demonstrate the methodology they have used.

16. The Commission stated that television broadcasters have no *per se* obligation to monitor other stations' children's programming or to change their plans based on what another station airs. It stated, however, that Congress intended that licensees air some educational and informational programming "specifically designed" for children 16 years of age and under in order to satisfy our renewal review. The Commission stated that the Act imposes no quantitative standards and the legislative history suggests that Congress meant that no minimum amount criterion be imposed. The Commission stated that the amount of "specifically designed" programming necessary to comply with the Act's requirement is likely to vary according to other circumstances, including but not limited to, the type of programming aired and other nonbroadcast efforts made by the station. The Commission thus declined to establish any minimum educational and informational children's programming requirement for licensees for renewal review independent of that established in the Act.

17. The Commission clarified that short segment programming, including vignettes and PSAs, may qualify as specifically designed educational and informational programming for children. Whether or not short segment programming fully satisfies the requirement to air programming "specifically designed" to meet children's needs depends on the entire context of the licensee's programming and nonbroadcast efforts directed at children.

18. The Agency further clarified that qualifying programming need not be locally produced and need not be live action, as opposed to animation. As the legislative history also indicates, general audience programming can contribute, as part of the licensee's overall programming, to serving children's needs pursuant to the Act. It does not by definition, however, satisfy the additional requirement that licensees air some programming "specifically designed" to serve the educational and informational needs of children.

19. The legislative history of the Act provides a wealth of examples of children's programming that is educational and informational. These include "Fat Albert and the Cosby Kids" (dealing with issues important to kids, with interruptions by host reinforcing purpose of show), "CBS Schoolbreak Specials" (original contemporary drama educating children about the conflicts and dilemmas they confront), "Winnie the Pooh and Friends" (show based on books designed to encourage reading), "ABC Afterschool Specials" (everyday problems of youth), "Saved by the Bell" (topical problems and conflicts faced by teens), "Life Goes On" (problems of a retarded child, emphasizing pro-social values), "The Smurfs" (prosocial behavior), "Great Intergalactic Scientific Game Show" (basic scientific concepts), and "Action News for Kids" (weekly news program for and by kids).[2] Where determinations of whether a program qualifies as "educational and informational" are in doubt, licensees will be expected to substantiate their determinations. The Commission will rely on the guidance given in the legislative history, including the specific examples cited above, in ruling on the sufficiency of such demonstrations.

20. Section 103(b) of the Act, allows the Agency, in evaluating at renewal time whether a broadcaster has served the educational and informational needs of children, to consider "in addition" to the licensee's programming (1) "any special nonbroadcast efforts * * * which enhance the educational and informational value" of programming meeting such needs and (2) any "special effort" to produce or support programming broadcast by another station in the licensee's market that is specifically designed to meet such needs.

21. For nonbroadcast efforts to contribute to satisfying the Act's programming renewal review requirement, they must enhance the "educational and informational value"

[2] See Children's Television Act of 1988, Senate Committee on Commerce, Science and Transportation, S. Rep. No. 227, 101st Cong., 1st Sess. 7–8 (1989).

to children of television programming broadcast either by the licensee or by another station in the community. Therefore, community outreach efforts unrelated to television programming do not qualify. The Commission held that support for children's radio programming does not qualify as support for another licensee's programming under section 103(b)(2). For support for radio programming to be credited, it must also enhance a related television program under section 103(b)(1).

22. If a station produces or buys children's programs broadcast on another station, so as to qualify under section 103(b)(2) of the Act, the Commission held that both stations may rely on such programming in their renewal applications. The extent of support, measured in both time and money, given to another station's programming will determine the weight afforded it. Such support does not have to consist of the underwriting of an entire program or series to receive some credit. The licensee's obligation to have aired "specifically designed" educational and informational programming will be satisfied to a degree commensurate with the extent of its nonbroadcast efforts or support for other stations' programming. Nonprogramming efforts, however, will not entirely eliminate the obligation to air some "specifically designed" educational and informational programming. Finally, the Commission ruled that the discretion given licensees in fulfilling their responsibility to serve children's needs under the Act encompasses consideration of financial and technical factors and market size in evaluating compliance.

23. The Commission found that application of the Act's programming provisions to noncommercial stations is not required by the statute, its legislative history, or the public interest. The Commission stated that the additional costs of regulation are largely unnecessary for noncommercial stations, and would outweigh any potential benefits from application of the children's programming rules to them.

24. The Commission found that, consistent with legislative intent, television broadcasters should (1) maintain children's programming records, (2) make these records part of their public inspection file, and (3) retain discretion with regard to the form in which these records are kept. The Commission imposed only the requirements necessary to provide meaningful review. These children's programming records should contain a summary of the licensee's programming response, nonbroadcast efforts and support for other stations' programming directed to the educational and informational needs of children. The summary should reflect the most significant programming related to such needs that the licensee has aired. (As used here, the term "children's programming records" refers to all the records licensees must keep to demonstrate their response to the education and informational needs of children, even though these records may also document nonprogramming responses to such needs.) Moreover, although they are not required to do so, licensees may wish also to retain records supporting their children's programming summaries that would help demonstrate the extent of their response to the educational and informational needs of children if challenged on this issue at renewal.

25. Licensees may make their children's programming records (specifically identified as such) part of their issues/programs list or keep them as a separate list and may update them on either a quarterly or annual basis. However, at a minimum, as the legislative history suggests, such records should indicate the time, date, duration and a brief description of the program or nonbroadcast effort the licensee has made. Licensees may make general statements regarding the scheduling of short-segment programming such as PSAs and regularly scheduled programs. Licensees need not provide exact times for each and every airing in these cases. Licensees also need not give the exact time of a short-segment program that airs within a longer program. Having not adopted a targeting requirement, the Commission did not impose a *per se* obligation to record the age groups of children a program serves. As a general matter, licensees need not state the origin of a program.

26. The Commission believes that a certification of compliance would not provide enough information for the Agency to perform the type of children's programming renewal review apparently intended by the Congress. In certifying compliance with the commercial limits, a licensee is responding to a question of fact—whether it has limited its commercial time in children's programs to a measurable number of minutes, as prescribed by statute. The Act, however, does not set measurable standards for programming review at renewal time. Rather, it suggests that the Commission should take a more individualized approach to each renewal application, looking at "the extent" to which the broadcaster has met children's educational and informational needs through its "overall programming," including programming specifically designed to serve such needs, and taking into account special nonbroadcast efforts and support for other stations' programming. Certification would not allow for the performance of a review of this nature.

27. The Commission accordingly will require submission at renewal time of the summary of the licensee's programming response and other efforts directed to the educational and informational needs of children that the licensee is required to maintain in its public file. The Commission did not, however, require submission of supporting records that the licensee might wish to maintain, although those records could later be submitted by the licensee if questions regarding licensee compliance arise.

28. In light of the submission that the Agency is requiring, it is not necessary at this time to institute a regular program of random audits, as some parties suggest, although audits are always a possible enforcement mechanism. The statute does not require (or specifically authorize) the Commission to pass upon a licensee's on-going efforts prior to renewal or a licensee's promise of future compliance, and so the Agency declined to require information about proposed programs. Finally, the language and purpose of the statute do not warrant extending the filing requirements to applications for transfer and assignment, and, so the Commission elected not to do so.

29. Subject to the exception for *de minimis* violations suggested in the legislative history, the Commission will apply the same enforcement standards that it uses in enforcing the Agency's other rules to violations of the Act and its implementing rules. The Commission will assess forfeitures for violations of rules implementing the Act if violations are "willful or repeated" within the meaning of 47 U.S.C. 503. (See *MCI Telecommunications Corp.*, 3 FCC Rcd 509, 515–16 n. 22, supplemented, 3 FCC Rcd 3155, 4 FCC Rcd 7299 (1989), *appeal dismissed sub nom. Telestar, Inc.* v. *FCC*, 901 F. 2d 1131 ((D.C. Cir. 1990)).) Given that the Act's programming requirement is to be measured over the course of the license term, however, forfeitures for violation of that requirement would be appropriately considered only at renewal. Similarly, consistent with the Commission's existing enforcement scheme, violations of the Act would be considered along with a licensee's overall performance in determining whether it is entitled to a renewal.

30. In tailoring penalties to suit the magnitude of the violation, the Commission may impose reporting requirements, forfeitures, short-term renewals, or other sanctions and may take violations into account in determining the weight of a renewal expectancy in a comparative renewal proceeding. The Agency does not believe that the Act empowers it to waive compliance on a long term, blanket basis either where an "average" number of commercial minutes is within the limits, or for financial hardship or other "unique" circumstances. The Commission noted, however, that it would consider the necessity for an emergency, occasional scheduling change which might result in commercial overage in a given hour (but did result in the "average" number of minutes in a given block of children's programming exceeding the limits), as a factor in a Commission decision to allow for extenuating circumstances. The Commission clarified that it will include in the category of *de minimis* violations, an isolated and inadvertent violation of the commercial limits.

31. The Commission defined program-length children's commercial as a program associated with a product in which commercials for that product are aired. In light of the Act's imposition of commercial limits on both television broadcasters and cable operators, the Commission will apply its definition of program-length children's commercials to both television broadcast and cable programs for children. The Act requires that the Commission complete MM Docket 83–670, which raises the program-length children's commercial issue. The Act, however, affords no specific guidance on how to decide the questions relating to program-length children's commercials.

32. The Commission found that the definition of children's program-length commercial it adopted—a program associated with a product, in which commercials for that product are aired—is clear, easy to understand and apply, and narrowly tailored. The Commission stated that this definition directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter. Removal of related commercial matter should help alleviate this confusion. This definition also would cover programs in which a product or service is advertised within the body of the program and not separated from program content as children's commercials are required to be. The Commission found that the adopted definition clarified the manner in which the traditional definition of program-length commercial (a program segment "so interwoven with, and in essence, auxiliary to the sponsor's advertising * * * that the entire program constitutes a single commercial promotion for the sponsor's product or service") would apply to children's programs. The Commission stated that given the First Amendment context of this issue, its approach was a restrained one. It added that if abuses occur, however, it would not hesitate to revisit this issue. Further, the Commission's adopted definition harmonizes with, and codifies to some degree, existing policies with respect to host-selling and adequate separation of commercial from program material in children's programs. (In general, a first-time violation of a Commission policy such as host-selling or separation of program and commercial material will result in a letter of admonishment. Violations of the Commission's rules regarding program-length children's commercials may be subject to forfeitures.)

33. In addition, a program will be considered a program-length commercial if a product associated with the program appears in commercial spots not separated from the start or close of the program by at least 60 seconds of unrelated material. The Commission did not find record evidence justifying extending this rule beyond 60 seconds, or further expanding the host-selling policy, as one commenter requested.

34. The Commission held that any children's program found to be a program-length commercial would count toward the statutory commercial limits. Although a program-length commercial of a duration under the commercial limits would not by definition violate the commercial limits, it could violate the Commission's policy against host-selling or its policy requiring separation of commercial and program material. Because programs of such brief duration are unlikely to be aired, the Commission found it unnecessary to formulate additional penalties for short-segment program-length commercials.

35. The Commission decided not to impose a requirement that sponsorship identification announcements be interspersed through "program-length" children's commercials. The Commission further found that the record substantiates its determination that interactive toys are not in use in children's programs at this time. Thus, the Commission declined further consideration of this issue at this time.

36. Finally, the Commission set an effective date for the rules and policies regarding commercial limits, educational and information programming renewal review and program-length commercials, of October 1, 1991, subject to OMB approval. The Commission will begin evaluating compliance with the rules, effective as stated above on October 1, 1991, in commercial television broadcast renewal applications filed as of February 1, 1992, corresponding with licenses expiring as of June 1, 1992. The period from October 1, 1991, through February 1, 1992, is sufficient for the Commission to begin the compliance review mandated under the Act.

37. Some commenters asked that the Agency grant a blanket temporary waiver of the commercial time limits for children's programming acquired on a barter basis prior to completion of this proceeding, contending that a more stringent, no exceptions implementation would curtail the advertising time available to the station and reduce expected revenues from barter programs. The Commission stated that the record does not reflect (1) the number of barter contracts that divide advertising availabilities between the station and program supplier as one party described, (2) whether the division of such availabilities between the supplier and the station can be or has been renegotiated as a result of the imposition of commercial limits, (3) the amount of advertising time and associated revenues that stations would lose in the absence of the requested waiver, (4) the number of years that such barter contracts have yet to run, and (5) how the proposed relief would harmonize with the objectives of the statute. Therefore, the Commission said it was unwilling at this time to carve out the temporary exception requested.

38. Finally, Form 303–S will be amended to reflect that: (1) Commercial television broadcast licensees must certify their compliance with the commercial limits on children's programs at renewal time, and if they cannot so certify, they must explain all instances in which they have exceeded these limits; and (2) commercial television licensees must submit at time of renewal a summary of their most significant programming response and other efforts directed to the educational and informational television needs of children. A public notice will be issued when the revised Form 303–S becomes available (after the rules go into effect).

The revised forms may then be ordered from the Commission's Forms Self-Service Center, located at 1919 M Street, NW., room L-17, Washington, DC 20554. The telephone number for the Center is (202) 632-FORM.

Final Regulatory Flexibility Analysis Statement

39. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have a significant impact on a substantial number of small entities because it imposes restrictions and recordkeeping requirements on television broadcast licensees and on cable operators. The Commission, in adopting these restrictions and requirements, sought to balance fulfillment of the goals intended by the Children's Television Act, with a minimum of unnecessary burden on broadcast licensees and cable operators.

40. The Secretary shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.*, (1981)).

41. Accordingly, *It Is Ordered* That pursuant to the authority contained in Sections 4 and 303 of the Communications Act of 1934, 47 U.S.C. 154 and 303, as amended, and the Children's Television Act of 1990, 47 U.S.C. 303(a) and 303(b), parts 73 and 76 of the Commission's Rules, 47 CFR parts 73 and 76, and FCC Form 303-S, *Are Amended*, effective October 1, 1991.

42. *It is Further Ordered* That MM Docket No. 83-670 *Is Terminated* and the ACT Petitions dated January 17, 1986, February 9, 1987, August 26, 1987, and October 5, 1987, *Are Granted to the Extent Indicated Herein and Otherwise Denied.*

AMENDATORY TEXT

Parts 73 and 76 of title 47 of the Code of Federal Regulations are amended as follows:

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 73.3526 is amended by adding new paragraphs (a)(8)(ii) and (a)(8)(iii), by redesignating existing paragraph (a)(8) as (a)(8)(i), and by revising the fourth sentence and adding a new sentence in paragraph (e) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(a) * * *

(8) * * *

(ii) For commercial TV broadcast stations, records sufficient to permit substantiation of the station's certification, in its license renewal application, of compliance with the commercial limits on children's programming established in 47 U.S.C. 303a and 47 CFR 73.670.

(iii) For commercial TV broadcast stations, on either an annual or quarterly basis, records demonstrating the extent to which the licensee responded to the educational and informational needs of children in its overall programming, including programming specifically designed to serve such needs. These records may also reflect any special nonbroadcast efforts by the licensee which enhance the educational and informational value of such programming to children and any special efforts by the licensee to produce or support programming broadcast by another television station in the licensee's marketplace, which is specifically designed to serve the educational and informational needs of children. These records shall include a summary of the licensee's programming response, nonbroadcast efforts and support for other stations' programming directed to the educational and informational needs of children, and shall reflect the most significant programming related to such needs which the licensee has aired. Licensees may make their children's programming records part of their issues/programs list or keep them as a separate list. Such records should indicate, at a minimum, the time, date, duration and a brief description of the program or nonbroadcast effort the licensee has made to serve the educational and informational needs of children.

* * * * *

(e) *Period of Retention.* * * * The "significant treatment of community issues" list and the records demonstrating the station's response to the educational and informational needs of children specified in paragraph (a)(8) of this section shall be retained by commercial broadcast television licensees for the term of license, 5 years. Commercial AM and FM radio licensees shall retain the "significant treatment of community issues list" specified in paragraph (a)(9) of this section for the term of license, 7 years. * * *

* * * * *

3. Section 73.670 is added to read as follows:

§ 73.670 Commercial limits in children's programs.

No commercial television broadcast station licensee shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

Note 1: *Commercial matter* means air time sold for purposes of selling a product or service.

Note 2: For purposes of this section, *children's programming* refers to programs originally produced and broadcast primarily for an audience of children 12 years old and younger.

4. Section 73.671 is added to read as follows:

§ 73.671 Educational and informational programming for children.

(a) Each commercial television broadcast station licensee has an obligation to serve, over the term of its license, the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs.

(b) Any special nonbroadcast efforts which enhance the value of children's educational and informational television programming, and any special effort to produce or support educational and informational television programming by another station in the licensee's marketplace, may also contribute to meeting the licensee's obligation to serve, over the term of its license, the educational and informational needs of children.

Note: For purposes of this section, educational and informational television programming is any television programming which furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs.

5. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, and 309.

6. Section 76.225 is added to read as follows:

§ 76.225 Commercial limits in children's programs.

(a) No cable operator shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

(b) This rule shall not apply to programs aired on a broadcast television channel which the cable operator passively carries, or to access channels over which the cable operator may not exercise editorial control, pursuant to 47 U.S.C. 531(e) and 532(c)(2).

(c) Cable operators must maintain records sufficient to verify compliance with this rule and make such records available to the public. Such records must be retained for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).

Note 1: *Commercial matter* means air time sold for purposes of selling a product or service.

Note 2: For purposes of this section, children's programming refers to programs originally produced and broadcast primarily for an audience of children 12 years old and younger.

7. Section 76.305 is amended by revising paragraphs (a) and (c) to read as follows:

§ 76.305 Records to be maintained locally by cable system operators for public inspection.

(a) *Records to be maintained.* The operator of every cable television system having 1000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by § 76.205(d) (origination cablecasts by candidates for public office); § 76.221(f) (sponsorship identification); § 76.79 (EEO records available for public inspection); and § 76.225(c) (commercial records for children's programming).

* * * * *

(c) The records specified in paragraph (a) of this section shall be retained for the period specified in §§ 76.205(d), 76.221(f), 76.9 and 76.225(c).

List of Subjects

47 CFR Part 73

Television broadcasting.

47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-9736 Filed 4-29-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 910115-1091]

RIN 0648-AD62

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement certain allocative regulations governing fishing for halibut in Regulatory Area 4E in the eastern Bering Sea and Bristol Bay as recommended by the North Pacific Fishery Management Council (Council). The primary purpose and intended effect of this action is to assure the Nelson Island and Nunivak Island halibut fisheries an equitable share of the Area 4E catch limit while allowing a test fishery in Bristol Bay.

EFFECTIVE DATE: May 28, 1991.

ADDRESSES: Copies of documents supporting this rule may be obtained from Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, Fishery Management Division, Alaska Region, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The fishery for Pacific halibut (*Hippoglossus stenolepis*) off the coasts of Alaska, British Columbia, Washington, Oregon, and California is governed by the Convention for the Preservation of the Halibut Fishery of the Northen Pacific Ocean and the Bering Sea (Convention) signed by the United States and Canada in 1953. The Convention is carried out by the International Pacific Halibut Commission (IPHC). In 1977, the Secretary of State, in cooperation with the Secretary of Commerce (Secretary), determined that the Convention was inconsistent with the purposes and policies of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Consequently, the United States and Canada amended the Convention in 1979 with the Protocol Amending the Convention (1979 Protocol). The Northern Pacific Halibut Act of 1982 (Halibut Act, Pub. L. 97-176) was subsequently enacted to give effect to the 1979 Protocol.

Until 1987, all regulations governing the Pacific halibut fishery were developed by the IPHC and, for United States fishermen, recommended to the Secretary of State for implementation and published in Title 50 of the U.S. Code of Federal Regulations, Part 301. However, section 5(c) of the Halibut Act provides that the appropriate Regional Fishery Management Council under the Magnuson Act may develop regulations, including limited access regulations, that govern the United States portion of Convention waters and apply to nationals or vessels of the United States. If developed, these regulations must be in addition to, and not in conflict with, regulations adopted by the IPHC.

In 1987, this provision was interpreted by NOAA to mean that regulations having domestic allocation of the Pacific halibut resource as a primary purpose could be developed by the North Pacific Fishery Management Council with respect to Alaska and by the Pacific Fishery Management Council with respect to Washington, Oregon, and California. Regulations having biological conservation as a primary purpose would continue to be developed by the IPHC. This policy does not necessarily prevent both Regional Councils from developing biological conservation regulations that are in addition to and not in conflict with IPHC regulations. Neither does the policy necessarily prevent the IPHC from developing regulations that have secondary domestic allocation effects.

To determine the need for domestic allocation of Pacific halibut, the Council solicited regulatory proposals from the general public, other agencies and staff between August 15 and September 15, 1990. The Council received 18 such proposals and they were reviewed and evaluated by the Council's Halibut Management Team (MT) and the Halibut Regulatory Amendment advisory Group (RAAG). At its meeting of September 24-29, 1990, the Council reviewed recommendations of the MT and RAAG and decided to take no action on the proposals. Instead, the Council decided to request the IPHC to establish separate regulatory areas along the same geographical boundaries of Area 4E that existed in 1990 (55 FR 21876 and 21877, May 30, 1990) and to prescribe catch limits and seasons for these areas. The IPHC staff indicated in October that the IPHC will likely decline taking the requested action. Therefore, the Council, at its meeting of December 3-7, 1990, decided to recommend a regulatory amendment for Area 4E.

An environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) was prepared that assesses the potential environmental and economic effects of reasonable regulatory alternatives to the proposed measure including the status quo (or no change) alternative as required by the National Environmental Policy Act of 1969, Executive Order 12291, and NOAA policy.

At its December 3-7, 1990, meeting, the Council considered public testimony and the recommendations of its Advisory Panel and Scientific and Statistical Committee. The Council then voted to adopt the proposed measure as its preferred alternative and recommend its implementation to the Secretary.

NOAA published a notice of the proposed rule and request for public comment in the Federal Register on February 27, 1991 (56 FR 8176).

Changes From the Proposed Rule in the Final Rule

The only difference between the proposed rule and this action is the designation of the section number pertaining to catch limits from § 301.9 in the proposed rule to § 301.10 in the final rule. This change is necessary because the 1991 final rule published on April 23, 1991, on behalf of the IPHC (56 FR 18535), renumbered § 301.9 Catch limits as § 301.10.

Public Comments

No public comments were received before the end of the public comment period on March 28, 1991.

Effect of the Final Rule

This regulatory change (1) divides Area 4E into north and south subareas at a line established for the 1990 fishery by an interim rule (55 FR 21677, May 30, 1990), (2) apportions 70 percent of the catch limit for Area 4E to the north subarea and 30 percent to the south subarea, and (3) reallocates 50 percent of any unharvested catch share in the north subarea on August 1 to the south subarea.

Classification

This rule is published under section 5(c) of the Halibut Act and may be implemented only with the approval of the Secretary who has determined that it is consistent with the Halibut Act and other applicable law.

The Council prepared an EA in combination with a RIR and FRFA for this regulatory amendment. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA/RIR/FRFA may be obtained from the Regional Director (see ADDRESSES).

The Assistant Administrator determined that this rule is not a "major rule" requiring preparation of a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/FRFA. As required by section 604 of the Regulatory Flexibility Act, as discussed above, an FRFA was prepared for this rule.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act. This rule also does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State did not respond within the statutory time period so consistency is automatically inferred.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Dated: April 23, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 301 is amendned as follows:

PART 301—PACIFIC HALIBUT FISHERIES

1. The authority citation for part 301 continues to read as follows:

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773k.

2. In § 301.10, paragraph (g) is redesignated as paragraph (h) and revised, and a new paragraph (g) is added to read as follows:

§ 301.10 Catch limits.

* * * * *

(g) Notwithstanding paragraph (a) of this section, the portion of Area 4E that is south and east of a line from 58°21'2" N. latitude, 163°00'00" W. longitude to Cape Newenham (at 58°30'00" N. latitude, 162°10'25" W. longitude) shall be closed to fishing for halibut when the Commission determines that 30 percent of the catch limit for Area 4E has been taken from this portion of Area 4E, except that 50 percent of the unharvested catch limit remaining on August 1 in the portion of Area 4E that is north and west of this line will be available for harvest in the portion of Area 4E that is south and east of this line, subject to the other provisions of this part.

(h) When under paragraphs (c), (d), (e), (f), or (g) of this seciton the Commission has announced a date on which the catch limit for a regulatory area will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

[FR Doc. 91-10034 Filed 4-26-91; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 82
Monday, April 29, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV-91-220]

Tomatoes Grown in Florida; Withdrawal of Proposed Rule to Revise Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule which would have established container and pack requirements for fresh market shipments of Florida tomatoes sold within the regulated area, the same as those in effect for fresh market tomato shipments to destinations outside the regulated area. The proposal also would have provided an exemption from the handling regulations to handlers who are producers who well tomatoes directly to consumers at roadside stands and u-pick operations. The proposed rule is being withdrawn because of a lack of sufficient evidence to support the proposed changes.

EFFECTIVE DATE: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96454, room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5331.

SUPPLEMENTARY INFORMATION: This action withdraws a proposed rule under Marketing Agreement No. 125 and Marketing Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida. The marketing agreement and order are authorized under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601–674).

On December 28, 1990, a proposed rule was published in the Federal Register (55 FR 53308) to establish container and pack requirements for fresh market shipments of Florida tomatoes sold within the regulated area. This proposal also would have provided an exemption from the handling regulations to handlers who are producers who sell tomatoes directly to consumers at roadside stands and u-pick operations. The proposal was recommended by the Florida Tomato Committee (committee), the agency responsible for local administration of the marketing order, at an October 9, 1990, meeting. Comments were requested on the proposal from interested persons through January 14, 1991.

The U.S. Department of Agriculture (Department) received a comment filed by Florida Rural Legal Services, Inc., on January 14, 1991, opposing the proposed rule and requesting that the comment period be extended in order to provide more time for interested persons to analyze the proposed rule and prepare commenters. Subsequently, the Department extended the comment period until February 19, 1991. Approximately 300 comments on the proposed rule were received. Most of the comments submitted were in opposition and were filed by small handlers who purchase the right to enter tomato fields and glean from them tomatoes that were picked over or missed by regular harvesting crews. These small handlers do not qualify as "registered handlers" under the marketing order because they lack permanent, non-portable facilities to properly grade, size and pack tomatoes. It was asserted that the proposed container and pack requirements would severely impact these handlers and hinder the harvesting of the crop.

The committee met again on February 12, 1991, and unanimously recommended the withdrawal of the proposed changes in the handling regulation to require all tomatoes handled for shipment within the regulated area to meet container and pack requirements and, exempt from the handling regulation procedures who operate roadside stands and u-pick operations.

The committee withdraw its recommendation based on the negative comments it had received and the comments received by the Department. Further, the committee also cited as reasons for its withdrawal the prospective costs and difficulty of ensuring compliance with the proposed rule had it been adopted.

On the basis of the information supplied in the comments submitted and the proponent committee's February 12 vote to withdraw its recommendations, it is found that there is insufficient evidence in the rulemaking record to support the proposed changes in the handling regulations.

Therefore, the proposed rule published in the Federal Register (55 FR 53308, December 28, 1990) is hereby withdrawn.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: April 23, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-10089 Filed 4-26-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1230

[No. LS-91-003]

Pork Promotion, Research, and Consumer Information

AGENCY: Agricultural Marketing Service; USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the Order thereunder, this proposed rule would (1) increase the rate of assessment of 0.25 percent of market value of porcine animals as prescribed in the initial Order to 0.35 percent; and (2) increase the amount of assessment per pound due on imported pork and pork products to reflect the proposed 0.10 percent increase in the initial assessment rate. The proposed assessment increases would increase annual funding of the promotion, research, and consumer information program by an estimated $10 to $12 million.

DATES: Comments must be received by May 29, 1991.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural

Marketing Service; USDA, room 2634–S; P.O. Box 96456; Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in room 2624 South Building; 14th and Independence Avenue, SW.; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch—202/382–1115.

SUPPLEMENTARY INFORMATION: This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation 1512–1 and is hereby classified as a nonmajor rule under the criteria contained therein.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the order would not have a significant economic impact upon a substantial number of small entities.

Information available to the Department indicates that nearly all of the estimated 278,000 pork producers and many of the estimated 200 importers can be classified as small entities. This proposed rule would increase the initial rate of the assessment from 0.25 percent of the market value of porcine animals to 0.35 percent, and would increase the cents per pound and per kilogram of assessments on imported pork and pork products subject to assessment. Adjusting the rate of assessment from 0.25 to 0.35 percent and increasing the assessments on imported pork and pork products would result in an estimated increase in assessments of $10 to $12 million over a 12-month period. Of that amount approxiately $750,000 would be attributed to the increase in importer assessments. However, the gross market value of all swine marketed in the United States during 1990 exceeded $11,799,000,000. The economic impact of the proposed assessments will not be a significant portion of the total market value of swine.

Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the provisions of the Pork Promotion, Research, and Consumer Information Order which would be affected by this proposal have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0651–0151.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36363 and amended at 53 FR 1909 and 53 FR 30243) and assessment began on November 1, 1986.

The Order requires the producers pay to the Board an assessment of 0.25 percent of the market value of each porcine animal upon sale. However, for purposes of collecting and remitting assessments, porcine animals are divided into three separate categories (1) feeder pigs, (2) slaughter hogs, and (3) breeding stock. The Order specifies that purchasers of feeder pigs, slaughter hogs, and breeding stock shall collect an assessment on these animals if assessments are due. The Order further provides that for the purpose of collecting and remitting assessments, persons engaged as a commission merchant, auction market or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be demed to be a purchaser.

The Order requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.25 percent of the animal's declared value and importers of pork and pork products to pay to the USCS, upon importation, the assessment of 0.25 percent of the market value of the live porcine animals from which such pork and pork products were produced.

The procedures for collection and remittance of assessments are specified in § 1230.71 of the Order.

Pursuant to § 1620 of the Act, the assessment rate of 0.25 percent of the market value of porcine animals, pork, or pork products sold or imported was established in the initial Order and has remained unchanged since November 1, 1986, when assessment collections began. Based on the assessment rate of 0.25 percent, the total annual assessments collected during 1990 were approximately $31.5 million. Assessments on imported pork and pork products accounted for about $1.7 million of the total.

The Act and § 1230.71 of the Order contain provisions for increasing the initial rate of assessment. Section 1620(b)(2) of the Act provides that the rate of the assessment in the initial Order may be increased by not more than 0.1 percent per year upon recommendation of the National Pork Producers Delegate Body whose producer and importer members are appointed annually by the Secretary. The Act further provides that the rate of assessment may not be increased by more than 0.1 percent annually nor exceed 0.5 percent of the market value unless the Delegate Body recommends a greater increase and it is approved in a referendum.

The 1991 Delegate Body, at its annual meeting on March 7–9, 1991, in Denver, Colorado, voted overwhelmingly to recommend to the Secretary that the initial rate of assessment of 0.25 percent be increased to 0.35 percent. There were 173 Delegate Body members appointed by the Secretary in 1991. At the Delegate Body meeting 163 delegates were present during voting and cast 27,787 valid share votes. States and importers are allotted one share per $1,000 of the aggregate amount of assessment collected. There were 23,780 share votes cast in favor of the 0.1 percent increase.

The following example will illustrate the effect of the 0.1 percent increase on a per head basis. Based on the 1990 annual average seven market price of $54.55 per hundred weight for barrows and gilts with an average weight of 240 pounds as reported in the USDA's publication "Livestock, Meat, and Wool Weekly Summary and Statistics" published in January 1991, the total assessment per head at the assessment rate of 0.35 percent would be 46 cents. At the initial assessment rate of 0.25 percent, the total per-head assessment would be 34 cents. Based on the Delegate Body's recommendation and in accordance with § 1230.71(d) of the Order, it is proposed that regulations be issued increasing the rate of assessments from 0.25 to 0.35.

This proposed rule also would increase the amount of assessment on all of the imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule on October 22, 1990, and effective on November 21, 1990 (55 FR 42554).

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published

in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animals is determined by multiplying the live animal equivalent weight by an annual average seven market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.25 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect increases in the rate of assessments or changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

Substituting the proposed assessment rate of 0.35 in the formula and using the 1990 average annual seven market price for domestic barrows and gilts of $54.55 per hundred weight results in an increase in assessments for all the Harmonized Tariff Systems (HTS) numbers listed in the table in § 1230.110, 55 FR 29340; July 19, 1990, as revised at 55 FR 42554; October 22, 1990, of an amount equal to eleven- to seventeen-hundredths of a cent per pound, or as expressed in cents per kilogram, twenty-four to thirty-nine hundredths of a cent per kilogram. Based on Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period Janaury 1, 1990, through October 31, 1990, the proposed increases in the assessment amounts would result in an estimated $750,000 increase in importer assessments over a 12-month period.

On March 19, 1991, a proposed rule was published in the **Federal Register** (56 FR 11519) which would increase the per-pound and per-kilogram assessments on imported pork and pork products to reflect the increase in the average seven market price per hundred weight for domestic barrows and gilts from $43.77 in 1989 to $54.55 in 1990. The initial assessment rate of 0.25 percent was used in the calculations.

Should the March 19, 1991, proposed rule become a final rule, it would increase the amount of assessments on all imported pork and pork products by four- to five-hundredths of a cent per pound or nine- to eleven-hundredths cents per kilogram. Additionally, the estimated increase in importer assessments would be $350,000 over a 12-month period. As a result, the cents-per-pound and per-kilogram assessments and the total annual increase in importer assessments resulting from the assessment rate increase proposed herein from 0.25 to 0.35 percent of market value would be less than previously discussed. The proposed rule herein reflects the increase in importer assessments using the average swine market price per hundred weight for domestic barrows and gilts of $54.55 in 1990.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agriculture research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1230 be amended as set forth below:

PART 1230—PORK, PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Subpart B—Rules and Regulations would be amended by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on Imported Pork and Pork Products.

The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.00004	0.35 percent customs entered value.
0103.91.00006	0.35 percent customs entered value.
0103.92.00005	0.35 percent customs entered value.

The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	cents/lb	cents/kg
0203.11.00002	.27	.601305
0203.12.10107	.27	.601305
0203.12.10205	.27	.601305
0203.12.90100	.27	.601305
0203.12.90208	.27	.601305
0203.19.20106	.32	.697513
0203.19.20901	.32	.697513
0203.19.40104	.27	.601305
0203.19.40907	.27	.601305
0203.21.00000	.27	.601305
0203.22.10007	.27	.601305
0203.22.90000	.27	.601305
0203.29.20006	.32	.697513
0203.29.40004	.27	.601305
0206.30.00006	.27	.601305
0206.41.00003	.27	.601305
0206.49.00005	.27	.601305
0210.11.00101	.27	.601305
0210.11.00209	.27	.601305
0210.12.00206	.27	.601305
0210.12.00404	.27	.601305
0210.19.00103	.32	.697513
0210.19.00906	.32	.697513
1601.00.20105	.37	.835814
1601.00.20906	.37	.835814
1602.41.20203	.41	.907970
1602.41.20409	.41	.907970
1602.41.90002	.27	.601305
1602.42.20202	.41	.907970
1602.42.20406	.41	.907970
1602.42.40002	.27	.601305
1602.49.20009	.37	.835814
1602.49.40005	.32	.697513

3. Section 1230.112 would be added to Subpart B-Rules and Regulations to read as follows:

§ 1230.112 Rate of Assessment.

In accordance with § 1230.71(d) the rate of assessment shall be 0.35 percent of market value.

Done at Washington, DC on: April 24, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–10072 Filed 4–26–91; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1955

Conveyance of Single Family Housing Security Property by Deed in Lieu of Foreclosure

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: Farmers Home Administration (FmHA) proposes to amend its regulations on the conveyance of Single Family Housing (SFH) security property. FmHA will consider a borrower's offer to convey security property to the Government by deed in lieu of foreclosure only after the debt is accelerated and when it is in the Government's interest. The borrower will be advised of the assistance FmHA can offer with sale of the property, and of the consequences of a conveyance by deed in lieu of foreclosure. FmHA will credit the account with the market value of the property less any prior liens, and if the debt is not satisfied, will not release the borrower of liability. When processing an offer, if the value of the property does not appear adequate to retire the debt, FmHA will require a budget and/or financial statement and, if necessary to confirm the existence of other assets, a search of public records. The intended effect of this action is to encourage voluntary liquidation of problem loans, minimizing potential equity realization and minimizing negative credit implications for the borrower, while assuring the maximum recovery to the Government and reducing the incidence of Government acquisition of security property and the resulting costs of holding and disposition.

DATES: Comments must be submitted on or before June 28, 1991.

ADDRESSES: Farmers Home Administration, U.S. Department of Agriculture, room 5307, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Joyce M. Halasz, Senior Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, telephone (202) 382-1481.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or affect more than one agency or to be controversial. The net result is to provide better service to rural communities.

Background/Discussion

The Office of Inspector General (OIG) in Audit No. 04063-02-CH, Cash and Debt Management Activities, made recommendations to minimize FmHA's losses from SFH borrowers who liquidate their loans by conveyance of security property to the Government when the market value is less than the debt and to clarify policy on consideration and acceptance of conveyances to reduce Government acquisition of security property.

I. Consideration of an Offer to Convey SFH Security Property

There has been no objective basis for FmHA to determine when it is appropriate to consider a borrower's offer to convey SFH security property by deed in lieu of foreclosure. In the past, FmHA regulations have given the borrower a limited right to make such an offer at any time the borrower no longer wants the security property or is unable to make the payments. The ease with which FmHA has accepted deeds in lieu of foreclosure has contributed to a large inventory of unsold houses with the consequent high cost of maintaining and selling this inventory. To establish an objective criterion, FmHA will not consider an offer for a deed in lieu of foreclosure until the debt is accelerated.

II. Satisfaction of Debt and Release of Liability Upon FmHA Acceptance of a Conveyance by Deed in Lieu of Foreclosure

Until recently, section 510(c) of the Housing Act of 1949 authorized FmHA, upon accepting a conveyance of the security property, to fully satisfy and release the borrower of liability for the debt based solely on a determination that the borrower acted in good faith, adequately maintained the property and otherwise fulfilled the loan covenants to the best of the borrower's ability. FmHA regulations implementing this provision required FmHA to accept a conveyance based on such a determination, regardless of whether or not the conveyance is in the interest of the Government. An amendment to section 510(c) of The Housing Act of 1949 removed the "good faith" provisions, enabling the Agency to base its acceptance or rejection of an offer to convey on whether or not it is in the Government's interest and, upon its acceptance, to credit a borrower's account only with the value of the security property. Under present regulations, if there is any remaining debt, the borrower is not released from liability and the debt is declared immediately due and payable.

III. Budget and/or Financial Statement Requirement

Any release of liability after a conveyance resulting in a deficiency would be based on an approved debt settlement. Therefore, when the market value of a property appears to be less than the debt, a deficiency is likely, and FmHA will need to obtain and fully consider information about the borrower's financial condition to determine appropriate debt settlement action. FmHA may also need a search of public records if it is determined necessary to discover suspected undisclosed assets.

Programs Affected

The SFH program is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans and No. 10.417—Very Low Income Housing Repair Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR 3015, subpart V, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not directly involve small entities nor does it add or remove any authorities which would affect small entities.

List of Subjects in 7 CFR Part 1955

Foreclosure, Government acquired property.

Therefore, as proposed, chapter XVIII of title 7, Code of Federal Regulations, is amended as follows:

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

2. § 1955.10 is amended by revising paragraph (d)(3) and the introductory text of paragraph (f)(1) to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

* * * * *

(d) * * *

(3) A current financial statement containing information similar to that required to complete Forms FmHA 410-1, "Application for FmHA Services;" or FmHA 442-3, "Balance Sheet," and information on present income and potential earning ability. Exception for SFH loans: FmHA requires a budget and/or financial statement and, if necessary to discover suspected undisclosed assets, a search of public records, only when the value of the security property may be less than the debt.

* * * * *

(f) * * *

(1) *SFH loans.* FmHA does not solicit or encourage conveyance of SFH security property to the Government and will consider a borrower's offer to convey by deed in lieu of foreclosure only after the debt has been accelerated and when it is in the Government's interest. Upon receipt of an offer to convey, the servicing official will remind the borrower of provisions for voluntary liquidation under § 1965.125(a) of subpart C of part 1965 of this chapter, and the consequences of a conveyance by deed in lieu of foreclosure as follows: All costs related to the conveyance which FmHA pays will be added to the debt; a credit equal to the market value of the property, as determined by FmHA, less prior liens, will be applied to the debt; and if the credit does not satisfy the debt, the borrower will not be released of liability. The conveyance is processed as follows:

* * * * *

Dated: March 22, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-9993 Filed 4-26-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 5

[Notice No. 719; Re: T.D. ATF-306, T.D. ATF-311, Notice Nos. 403, 419, 563]

RIN 1512-AA19

Alteration of Class and Type: Vodka (91F009P)

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco, and Firearms (ATF) is reconsidering the citric acid limitation for vodka set forth in T.D. ATF-306 (55 FR 49994, dated December 4, 1990) based, in part, on a petition it has received from Heublein, Inc. Heublein's petition presents new information and data not previously considered concerning maximum detectable levels of citric acid in vodka. In response to Heublein's petition, and in recognition of the time between issuing Notice No. 563 (51 FR 6009, dated February 19, 1986) and T.D. ATF-306, the Bureau wishes to gather additional information by inviting comments from the public and industry as to whether the 150 ppm citric acid limitation set forth in T.D. ATF-306 (55 FR 49994, dated December 4, 1990) should be retained or revised. ATF is again proposing to set a maximum limitation of 150 ppm, but also is seeking comments on whether a different limitation is appropriate.

DATES: Written comments must be received on or before July 29, 1991.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms, P.O. Box 385, Washington, DC 20044-0385. ATTN: Notice No. ____.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

T.D. ATF-306, (55 FR 49994, dated December 4, 1990), amended 27 CFR 5.23(a)(3) to authorize the use of up to 2 grams per liter (2,000 parts per million (ppm)) sugar, and a trace amount (defined as 150 milligrams per liter or 150 parts per million (ppm)) of citric acid in the production of vodka. T.D. ATF-306 (55 FR 49994, dated December 4, 1990) was effective January 3, 1991, with a formula and label cancellation date of March 4, 1991, for products not made within the limitations of the Treasury decision. The purpose in issuing T.D. ATF-306 (55 FR 49994, dated December 4, 1990) was solely to clarify the standard of identity for vodka and to maintain the integrity of the product.

On Monday, March 4, 1991, T.D. ATF-311 (56 FR 8922) was published in the Federal Register deferring to December 4, 1991, the effective compliance date with respect to the citric acid limitation in T.D. ATF-306 (55 FR 49994, dated December 4, 1990). The compliance date was deferred in response to a petition by Heublein, Inc. The compliance date in T.D. ATF-306 (55 FR 49994, dated December 4, 1990) regarding maximum levels for the use of sugar in vodka remains unchanged.

Petition

On February 8, 1991, Heublein, Inc., petitioned ATF for reconsideration of T.D. ATF-306 (55 FR 49994, dated December 4, 1990) and for a suspension of the March 4, 1991, formula and label cancellation date stated in the T.D., in order to permit ATF to examine new and relevant scientific information not previously available concerning maximum levels for the use of citric acid in vodka. Heublein had not submitted this information or any other comments in response to Notice No. 563 (51 FR 6009, dated February 19, 1986).

Heublein Sensory Tests

In January 1991, Heublein's Senior Sensory Scientist, Research and Development, performed standardized American Society for Testing and Materials (ASTM) approved Duo-Trio sensory discrimination tests on the difference level for detectability of citric acid in vodka. The ASTM method of Duo-Trio discrimination (balanced reference with on application (per Heublein affidavit) replication (per Heublein lab summary)) was used to determine product differences. Heublein

states that a screened and trained panel of sixteen Heublein employees evaluated and compared Heublein's Popov vodka at different acidity levels in two different tests. In the first test, the vodka at 150 ppm citric acid blender was compared to Popov vodka at its current level of 528 ppm citric acid blender. The second test compared the vodka at 150 ppm citric acid blender and at 480 ppm citric acid blender. Although the reason for selecting test levels of 50 ppm and 528 ppm is apparent, Heublein's documentation did not indicate the reason for selecting a citric acid blender content of 480 ppm as a test level.

Heublein's stated goal in conducting the tests was to determine (1) whether the current formulation of Popov vodka with 528 ppm citric acid blender is perceptibly different from a reformulated Popov vodka with 150 ppm citric acid blender and (2) whether Popov vodka with a reduced level of 480 ppm citric acid blender is perceptibly different from Popov vodka with 150 ppm citric acid blender.

Heublein Test Procedure

Heublein stated in their affidavit that, pursuant to standard industry practice, the vodka was diluted with de-ionized water to 40 percent alcohol by volume while according to the Heublein lab summary it was diluted to 20 percent alcohol by volume, and served at ambient temperature. Two "Duo-Trio balanced reference discrimination" tests were conducted. "Balanced reference" means that one-half of the reference vodkas provided to the judges contained 150 ppm citric acid blender and one-half contained the other sample; either 528 ppm or 480 ppm citric acid blender, depending on which of the two tests was being conducted. According to Heublein, this method of testing provides more accurate results because it minimizes the risk of the reference vodka will affect the judges' ability to determine differences.

Each judge entered a plain and isolated booth having air flow control to prevent distracting aromas. When ready for the test to begin, the judge turned on a small light so that the vodkas, one reference vodka and two unknown vodkas, would be produced through a small door in the booth. After tasting and comparing the vodkas, the judge marked down which of the two unknown vodkas matched the reference vodka then sent the samples back through a small door. After a one minute rest, the test was repeated.

Heublein Test Results

In Test #1, which compared the Popov vodka at 528 ppm citric acid blender against the Popov vodka at 150 ppm citric acid blender, Heublein found that 21 out of 32 selections were made which correctly matched the proper unknown Popov vodka sample with the reference Popov vodka sample. Heublein claims that this result is statistically significant because it produced a "p value" equal to .055.

Heublein explained "p value" as the probability of getting the same number of correct matches of unknown vodka to reference vodka based purely on chance. Thus, a p value equal to .055 means that there is a 5.5 chance in 100 that judges randomly matching the vodkas would have produced the above results. This result may be expressed conversely as 94.5 percent "confidence level."

Heublein states that it is widely accepted in the scientific community that a p value of 0.5 or smaller is a statistically significant response which indicates an ability to choose based on perceived differences.

Heublein further states that a p value of .055 is also statistically significant when combined with other statistical analysis, such as the number of judges who correctly matched vodkas two times in a row and the variable, subjective nature of human responses to sensory data. In this case according to Heublein, a 94.5 percent confidence level indicates that the judges were able to perceive a difference between the two Popov vodka samples and did not randomly choose one over the other.

In Test #2, comparing the Popov vodka at 480 ppm citric acid blender to the Popov vodka at 150 ppm citric acid blender, Heublein found that 18 out of 32 judges correctly matched the proper unknown Popov vodka sample with the reference Popov vodka sample. The p value for these results equaled .298 meaning that approximately 30 percent of the time, judges would make the same number of correct responses based on chance alone.

A p value equal to .298 is not statistically significant. In other words, the judges were unable to perceive a difference between Popov vodka with the 480 ppm citric acid blender and Popov vodka with the 150 ppm citric acid blender. According to Heublein, Test #2 indicates that Popov vodka must contain more than 480 ppm citric acid blender before the judges would be able to correctly match the unknown Popov vodka sample with the reference Popov vodka sample in statistically significant numbers.

Discussion of Heublein Test Results

Heublein concluded that the results of these tests indicate that there is no significant difference in the sensory character (taste, smell, look) of Popov vodka containing between 150 ppm citric acid blender and 480 ppm citric acid blender. Heublein stated that the difference threshold (how much citric acid must be added to the product before a perceptible difference exists) for Popov vodka must be greater than 480 ppm. According to Heublein, the maximum level of citric acid could be set at 480 ppm rather than 150 ppm and still meet the standard of identity for vodka (i.e. "without distinctive character, aroma, taste, or color").

The panel did find a significant perceptible difference, however, between Popov vodka with 528 ppm citric acid blender and Popov vodka with 150 ppm citric acid blender. Heublein was concerned that the results of their tests indicate that a reduction in citric acid content of Popov vodka from the current level of 528 ppm to the 150 ppm level set by T.D. ATF-306 (55 FR 49994, dated December 4, 1990) will significantly change the sensory character of the product. Heublein feels that such a change in the taste and other sensory qualities of the vodka is likely to cause confusion among consumers who are accustomed to purchasing Popov vodka and other Heublein mid-priced vodkas which are widely recognized and preferred for their current taste.

ATF Sensory Tests

ATF is now in the process of evaluating the Heublein tests. In addition, ATF has secured an outside testing firm to conduct independent testing on sensory threshold levels for citric acid addition to vodka. The results of these tests will have a direct bearing on ATF's final decision concerning maximum levels for the use of citric acid in vodka without changing its designation as vodka. When the results of these tests are received, ATF will publish a notice in the Federal Register announcing the results and will make the material available for public comment. If the 90 day comment period is not sufficient to provide for public comment, ATF will extend the comment period.

ATF believes that the original maximum citric acid level of 150 ppm set by T.D. ATF-306 (55 FR 49994, dated December 4, 1990) was reasonable in light of the rulemaking record resulting in T.D. ATF-306 (55 FR 49994, dated December 4, 1990). T.D. ATF-306 (55 FR 49994, dated December 4, 1990) was based, in part, on sensory tests conducted by the ATF laboratory which found that 150 ppm is approximately the threshold at which the presence of citric acid can be detected in vodka. Even though the ATF sensory tests involved 200 ppm of citric acid, the results supported the 150 ppm limitation taking into account a margin of 50 ppm to ensure non-detectability of the citric acid.

The ATF laboratory conducted a sensory test to determine if the presence of citric acid in vodka was organoleptically detectable at a concentration of 200 ppm. Since alcohol tends to anesthetize the taste buds it was necessary to design a test which would not require the participants to taste successive samples of 80 proof vodka. Each of the panelists were given an unidentified sample and asked to taste that sample three (3) times each day and describe, in their own words, the characteristics of their sample. A total of 23 panelists were divided into two groups. One group of 13 were given initial samples of vodka containing citric acid at a 200 ppm level, while the second group of 10 were given samples of vodka only. After 5 days they were given another sample to taste and asked to determine if the final sample was the same as or different than the initial sample which they had tasted all week.

Testing in this manner did not require that the panelist be able to determine if citric acid was absent or present in the vodka, but only that the panelist be able to determine that their initial sample was the same as or different than the final sample.

Results of ATF Tests

Seven (7) of the 13 panelists, whose initial sample contained citric acid, correctly determined that their initial sample, containing citric acid, was different from their final sample which contained only vodka. Three (3) others correctly identified their initial sample containing citric acid and their final sample containing citric acid as being the same. The remaining three panelists were unable to determine that their initial sample containing citric acid was the same as the final sample which also contained citric acid.

Three (3) of the 10 panelists whose initial sample contained only vodka correctly matched their initial sample containing vodka only with their final sample which contained vodka only. One other panelist correctly identified the initial sample containing only vodka as being different than the final sample which contained citric acid. Three (3) panelists incorrectly determined that their initial sample containing vodka was different than their final sample containing only vodka. The remaining three (3) panelists incorrectly determined that their initial sample containing only vodka was the same as their final sample which contained citric acid.

A total of 14 out of 23 panelists, or 60.9 percent correctly identified the final sample as being the same or different than their initial sample.

Statistical tables indicate that 14 correct judgments in a field of 23 trials is not statistically significant. A field of 23 trials would require 16 correct judgments to establish a reliability of 95 percent. It would appear that a significant difference arises when the panelists are given citric acid first (10 of 13 correct) as opposed to those given vodka first (4 of 10 correct).

Proposed Regulatory Change

ATF is proposing to retain § 5.23(a)(3)(ii) authorizing the use of a trace amount [defined as up to 150 milligrams per liter or 150 ppm) of citric acid in the production of vodka, without changing its designation as vodka. Because citric acid is not an essential component of vodka, ATF is proposing to amend § 5.23 which regulates additions of substances to distilled spirits, rather than § 5.22(a)(1) which is the standard of identity of vodka. Under this proposal, vodka made with a greater concentration of citric acid would be designated "flavored vodka" or labeled with a fanciful name under part 5.

Public Participation

ATF requests comments from all interested persons. ATF is particularly interested in comments concerning citric acid levels higher or lower than the proposed maximum level of 150 ppm. Also, ATF is interested in comments concerning the current standard of identity for vodka in 27 CFR 5.22(a)(1) relative to vodkas containing citric acid. That is, should ATF establish a separate standard of identity for vodkas containing citric acid. This issue was previously raised in an advance notice of proposed rulemaking published in 1982. (Notice No. 488, 47 FR 1148, dated January 11, 1982).

All comments received on or before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. ATF will not recognize any material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Regulatory Flexibility Act

It is hereby certified that this document will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the document is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this document because no requirement to collect information is imposed.

Disclosure

Copies of the petition, the notices, the Treasury decision, and all comments are available for public inspection during normal business hours at: ATF Reading Room, room 6300, 650 Massachusetts Avenue NW., Washington, DC. The test results submitted by Heublein are in the affidavits of Heublein employees. These affidavits are available for public inspection.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and Containers.

Issuance

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Paragraph 1. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 5.23(a)(3)(ii) is revised to read as follows:

§ 5.23 Alteration of class and type.

(a) *Additions.* * * *

* * * * *

(3) * * * (ii) any material whatsoever in the case of neutral spirits or straight whiskey, except that vodka may be treated with sugar in an amount not to exceed 2 grams per liter, and with citric acid in an amount not to exceed 150 milligrams per liter; or * * *

* * * * *

Signed: April 16, 1991.

Daniel R. Black,

Acting Director.

Approved: April 17, 1991.

John P. Simpson,

Acting Assistant Secretary, (Enforcement).

[FR Doc. 91-10095 Filed 4-26-91; 8:45 am]

BILLING CODE 4810-31-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804 and 1852

RIN 2700-AB14

Security Plan for Unclassified Automated Information Resources

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Notice of proposed rulemaking.

SUMMARY: NASA is considering an amendment to the NASA FAR Supplement (NFS) that provides for a solicitation provision and a contract clause to obtain contractor compliance with requirements for protecting unclassified automated information resources under the Computer Security Act of 1987. This proposed NFS coverage will require the apparently successful offeror, under NASA solicitations involving unclassified automated information resources, to provide a plan describing its automated information security program.

DATES: Comments must be received on or before May 29, 1991.

ADDRESSES: Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Carol E. Bennett, Telephone: (202) 453-6254.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written comments. Persons submitting comments should include their names and addresses, identify this notice (NASA Case 0339) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned.

Background

Sensitive information and automated information resources are important to the functioning of the Federal government. The protection of such information is integral to the government serving the public interest. Concern that Federal agencies were not adequately protecting sensitive information contained in computers caused Congress to enact Public Law 100-235, the Computer Security Act of 1987 (the Act). The Act provides for establishing minimum acceptable security practices for Federal computer systems that contain sensitive information and declares that improving the security and privacy of sensitive information in Federal computers systems is in the public interest. It prompts Federal agencies to take measures to improve the security and privacy of these systems. This requirement for an automated information security plan is being adopted under Section 6 of the Act, Additional Responsibilities for Computer Systems Security and Privacy, consistent with the guidelines in OMB Bulletin 88-16. In addition, this requirement complies with 41 CFR 201-39.1001-1(i), Federal Information Resources Management Regulations, which is effective April 29, 1991.

Comment on Alternatives

Interested persons are invited to suggest other methods, in addition to, or in place of, a contractor security plan for complying with section 6 of the Act.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

Regulatory Flexibility Act

The proposed revision is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the security plan will be required from only the apparently successful offeror and only when the solicitation involves a compuer system covered by the Act. Therefore, an initial regulatory flexibility analysis has not been performed. However, comments from small entities concerning the affecting NASA FAR Supplement sections will also be considered in accordance with the Act.

Paperwork Reduction Act

This proposed rule does not significantly alter any reporting or recordkeeping requirements currently approved by OMB under OMB Control Number 2700-0042 (expires May 31, 1993).

List of Subjects in 48 CFR Parts 1804 and 1852

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR parts 1804 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Subpart 1804.4 is amended as set forth below:

1804.470-3 [Amended]

a. In section 1804.470-3, the existing paragraph is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

1804.470-3 Responsibilities.

(a) * * *

(b) The requiring activity is also responsible for determining to what extent a contractor security plan for unclassified automated information resources will be required and evaluating and recommending approval of prospective contractors' automated information security plans.

1804.470-4 [Amended]

b. In section 1804.470-4, the existing paragraph is designated as paragraph (a), the word "The" of newly designated paragraphs (a) is removed and the word "Except as provided in paragraph (b) of this section, the" are added in its place, and a new paragraph (b) is added to read as follows:

1804.470-4 Contract clause.

(a) * * *

(b) The clause prescribed in paragraph (a) of this section may be excluded from any contract when the requiring activity, in consert with its computer security manager, recommends that a security plan for unclassified automated information resources be submitted by the apparently successful offeror after notification of selection but before contract award. Under these circumstances, the contracting officer shall insert the provision at 1852.204-77, Submission of Security Plan for Unclassified Automated Information Resources, in solicitations and the clause at 1852.204-78, Security Plan for Unclassified Automated Information Resources, in contracts. The provision may be modified to identify specific information that is to be included in the plan. The contracting officer shall incorporate the approved plan into the contract by reference as provided for in the provision and the clause. The clause may be modified to omit reference to the provision when the solicitation did not include the provision.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Part 1852 is amended as set forth below:

1852.204-76 [Amended]

a. In the introductory paragraph of section 1852.204-76, the citation "1804.470-4" is revised to read "1804.470-4(a)."

1852.204-77 [Added]

b. Section 1852.204-77 is added to read as follows:

1852.204-77 Submission of Security Plan for Unclassified Automated Information Resources.

As prescribed in 1804.470-4(b), insert the following provision:

Submission of Security Plan for Unclassified Automated Information Resources (XXX 1991)

(a) The apparently successful offeror shall provide a plan, for Contracting Officer approval prior to award, that describes its automated information security program. The plan shall be submitted no later than thirty days after receipt of the Contracting Officer's written request. The plan shall address the security measures and program safeguards which will be provided to ensure that all information systems and resources acquired and utilized in the performance of the contract by contractor and subcontractor personnel:

(1) Operate effectively and accurately;

(2) Are protected from unauthorized alteration, disclosure, or misuse of information processed, stored, or transmitted;

(3) Can maintain the continuity of automated information support for NASA missions, programs, and functions;

(4) Incorporate management, general, and application controls sufficient to provide cost-effective assurance of the system's integrity and accuracy; and

(5) Have appropriate technical, personnel, administrative, environmental, and access safeguards.

(b) This plan, as approved by the Contracting Officer, will be included in any resulting contract for contractor compliance.

(End of provision)

1852.204-78 [Added]

c. Section 1852.204-78 is added to read as follows:

1852.204-78 Security Plan for Unclassified Automated Information Resources.

As prescribed in 1804.470-4(b), insert the following clause:

Security Plan For Unclassified Automated Information Resources (XXX 1991)

In addition to complying with any functional and technical security requirements set forth in the Schedule and the clauses of this contract, the Contractor shall comply with the Unclassified Automated Information Resources Security Plan submitted pursuant to provision 1852.204-77, Submission of Security Plan for Unclassified Automated Information Resources, as approved by the Contracting Officer.

(End of clause)

[FR Doc. 91-10052 Filed 4-26-91; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 191, 192, and 195

[Docket No. PS-123, Notice 1]

RIN 2137-AB 94

Inspection and Safety of Offshore Gas and Hazardous Liquid Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Natural gas and hazardous liquid pipelines buried in shallow offshore waters in the Gulf of Mexico have been involved in accidents with fishing and other vessels. Public Law 101-599 was enacted to determine the extent to which pipelines in shallow waters in the Gulf of Mexico may be a hazard to fishing vessels. These proposed rules would implement the immediate provisions of Public Law 101-599 amending the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979. As proposed in this Notice, operators of natural gas and hazardous liquid pipelines would be required to do the following: [1] Conduct an underwater inspection of pipelines in the Gulf of Mexico and its inlets located in water less than 15-feet deep, within 1 year of the issuance of the final rule or May 18, 1992, whichever comes first; [2] report to the Coast Guard those pipelines which have become exposed or otherwise present a hazard to navigation and mark such pipelines with a buoy; and [3] bury those pipelines identified under [2] above, or by any other person, within 6 months after discovery. Other proposals necessary to implement Public Law 101-599 would provide for reporting of the results of the underwater inspection to the Department, as well as providing for criminal penalties for damaging, removing, defacing, or destroying a pipeline marker buoy.

DATES: Interested persons are invited to submit written comments on this proposal by May 29, 1991. Late filed comments will be considered to the extent practicable. A short comment period is necessary in order to try to meet the statutory deadline.

ADDRESSES: Send comments in duplicate to the Dockets Unit, room 8417, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice number stated in the

heading of this notice. All comments and docketed material will be available for inspection and copying in room 8419 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, (202) 366-1640, regarding the subject matter of this proposed rule or the Dockets Unit, (202) 366-4146, regarding copies of this proposed rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1987 a fishing vessel struck and ruptured an 8-inch diameter natural gas liquid pipeline while maneuvering in shallow waters in the Gulf of Mexico off the coast of Louisiana. The released gas ignited, resulting in the deaths of two crewmen. The pipeline was originally installed in 1968 and buried onshore, parallel to the shoreline. In the intervening years, the shoreline underwent substantial erosion, and at the time of the accident, the pipeline reportedly was exposed on the seabed in open water approximately 1 mile offshore.

On October 3, 1989, a 160-foot menhaden fishing vessel, the Northumberland, struck a Natural Gas Pipeline Co. 16-inch diameter offshore gas transmission pipeline about a ½ nautical mile offshore in the gulf of Mexico near Sabine Pass, Texas. Natural gas under a pressure of 835 psig was released. An undetermined source on board the vessel ignited the gas and engulfed the vessel in flames. Eleven of fourteen crew members died as a result of the accident. An investigation of the accident determined that the pipeline had been exposed above the seabed for 1 or more years.

In February 1990, at the request of RSPA, a joint task force was formed, made up of five Federal agencies and two state agencies to develop solutions to the risks posed in the Gulf of Mexico by the co-existence of pipelines and vessel operations. The agencies represented were RSPA, the Minerals Management Service (MMS) of the Department of the Interior, the National Ocean Service of the National Oceanic and Atmospheric Administration, the U.S. Coast Guard, the U.S. Army Corps of Engineers, the Texas Railroad Commission, and the Louisiana Office of Conservation. A report on offshore pipelines prepared by the joint task force is available in the docket.

On April 9, 1990, the RSPA sent an alert notice to all operators of natural gas and hazardous liquid pipelines located in offshore waters. A copy of the alert notice is available in the docket. The purpose of this alert notice was to advise pipeline operators of recurring safety problems involving marine vessel operations and to alert them that exposed pipelines pose a threat to the safety of the crews of fishing vessels in shallow coastal waters. It also advised pipeline operators to identify and correct any conditions which would violate applicable pipeline safety requirements. RSPA also sent the Alert Notice to the Louisiana Shrimp Association, Texas Shrimp Association, Southeastern Fisheries Association, National Fish Meal & Oil Association, and Concerned Shrimpers of America to alert the commercial fishing industry to the potential hazards of unburied offshore pipelines.

In addition, on May 18, 1990, the Coast Guard issued a safety notice which was published in the Local Notice to Mariners by the Coast Guard district offices in the Gulf of Mexico. A copy of the safety notice is available in the docket. The Coast Guard safety notice advised mariners regarding the risks posed by submerged offshore pipelines that may have become exposed and thereby may endanger fishing vessels. The safety notice requested that mariners discovering an exposed pipeline report the location immediately to the Coast Guard.

The RSPA pipeline safety regulations require that all newly constructed gas and hazardous liquid offshore pipelines located in water less than 12 feet in depth must have a minimum of 36 inches of cover or 18 inches in consolidated rock (49 CFR 192.327 and 195.248). Newly constructed gas and hazardous liquid pipelines in offshore waters from 12 feet to 200 feet deep must be installed so that the top of the pipe is below the seabed unless the pipe is protected by other equivalent means (§§ 192.319 and 195.246). The MMS issues rights-of-way permits for pipelines on the Outer Continental Shelf (OCS) and requires that newly constructed pipelines be buried 36 inches (30 CFR 250.153). The Corps of Engineers issues permits for burial of offshore pipelines and normally requires that newly constructed pipelines be buried to a depth of 36 inches in water less than 200 feet deep. However, none of the three agencies currently require that pipeline operators conduct an underwater inspection or maintain the burial of those pipelines.

As a result of the alert notice issued by RSPA, many of the major gas transmission companies initiated inspection of offshore pipelines in water less than 22 feet deep. This was the depth of water originally proposed by the fishing associations in the spring of 1990 in which pipelines should be buried for safe navigation of vessels. In a survey of the member gas transmission pipeline companies conducted by the Interstate Natural Gas Association of America (INGAA), regarding offshore pipelines, 11 major gas transmission pipelines companies responded. Those companies reported that they had 126 pipelines consisting of 723 miles of pipelines in offshore waters less than 22 feet deep. By June 23, 1990, 22 of these pipelines totaling 59 miles in length had been inspected underwater to determine if those pipelines were still buried. One pipeline segment of 1320 feet was found to be exposed.

On February 28, 1990, and May 16, 1990, the Department testified on offshore pipeline safety before the Subcommittee on Coast Guard and Navigation of the House Committee on Merchant Marine and Fisheries and on September 11, 1990 before a joint hearing of the House Public Works and Transportation and the Energy and Commerce Committees. As a result of these hearings and meetings between Congressional staff members and representatives of the pipeline industry and the commercial fishing industry, Congress passed H.R. 4888, which was signed by the President on November 16, 1990. That legislation, Public Law 101-599, is available in the docket.

Public Law 101-599

Public Law 101-599 amended the Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 U.S.C. 1671 *et seq.*) and the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (49 U.S.C. 2001 *et seq.*), which are administered by the RSPA. The law requires that not later than 18 months after the enactment of this legislation or 1 year after issuance of regulations, whichever occurs first, the operator of each offshore gas or hazardous liquid pipeline facility in the Gulf of Mexico and its inlets shall inspect such pipeline facility and report to the Department on any portion of a pipeline facility which is exposed or is a hazard to navigation. Therefore, this initial inspection must be completed by May 16, 1992 or 1 year after issuance of regulations, whichever comes first. This requirement shall apply to pipeline facilities between the high water mark and the point where the subsurface is under 15 feet of water, as measured from mean low water. In accordance with Public Law 101-599, hazardous liquid gathering lines of 4 inch nominal diameter and smaller are excepted from this inspection. The Department may extend the time period for compliance with this inspection requirement for an additional period of up to 6 months for gas transmission pipeline facilities, or up to 1 year for hazardous liquid pipeline facilities. The law provides that any inspection of a pipeline facility which has occurred after October 3, 1989 (the date of the Northumberland accident) may satisfy the inspection requirements if it complies with the pertinent requirements proposed in this Notice.

Public Law 101-599 requires the Department to establish standards by May 16, 1991, on what constitutes an "exposed pipeline facility," and what constitutes a "hazard to navigation." The law requires that pipeline operators report to the Department, through the appropriate Coast Guard offices, potential or existing navigational hazards involving pipeline facilities. As result of the inspection, an operator of a pipeline facility who discovers any pipeline facility which is a hazard to navigation in water 15 feet deep or less as measured from mean low water, shall mark the location with a Coast Guard approved buoy or marker and notify the Department. The law provides that the marine buoy or marker is considered a pipeline sign or right-of-way marker for purposes of section 11(c)(3) of the NGPSA or section 206(c)(3) of the HLPSA. These sections provide for criminal penalties for persons who willfully and knowingly damage, deface, remove, or destroy any pipeline sign or marker. Public Law 101-599 also requires the Secretary of Transportation to issue regulations requiring each gas and hazardous liquid pipeline facility that has been inspected and found to be exposed or that constitutes a hazard to navigation, be buried within 6 months after the condition is reported to the Department.

Furthermore, Public Law 101-599 requires that not later than May 16, 1993, the Secretary shall, on the basis of experience with the initial inspection program, establish a mandatory, systematic, and, where appropriate, periodic inspection program of offshore pipeline facilities in the Gulf of Mexico and its inlets. This will be addressed in a future rulemaking.

In addition, Public Law 101-599 amends the Ports and Waterways Safety Act (33 U.S.C. 1221 at seq.), which is administered by the Coast Guard, to encourage fishermen and other vessel operators to report potential or existing navigational hazards involving pipeline facilities to the Department through the appropriate Coast Guard field office. Upon notification by the pipeline operator or by any other person of a hazard to navigation, the Department will notify the Coast Guard, the Office of Pipeline Safety, other affected Federal and state agencies, and vessel owners and operators in the vicinity of the pipeline facility.

Advisory Committees

The Technical Pipeline Safety Standards Committee met in Washington, DC, on February 20, 1991 and the Technical Hazardous Liquid Pipeline Safety Standards Committee met in Washington, DC, on February 21, 1991. These advisory committees were established by statute to consider the feasibility, reasonableness, and practicability of proposed pipeline safety regulations.

The advisory committees informally discussed a draft notice of proposed rulemaking, which proposed revisions to the regulations in parts 192 and 195 regarding offshore pipelines. The draft notice considered by the advisory committees addressed the requirements in Public Law 101-599 as well as additional requirements that were not included in the law but which had been developed by the multi-agency task force formed after the Northumberland accident, including: applicability to all offshore areas, inclusion of abandoned pipelines in the monitoring requirements, requiring 36 inch burial of pipelines in water depths up to 200 feet deep, and a discussion of possibly proposing underwater inspection requirements of offshore pipelines after a major storm.

Staff representatives of the Subcommittee on Coast Guard and Navigation of the House Committee on Merchant Marine and Fisheries that participated in the drafting of Public Law 101-599 appeared before each pipeline advisory committee to urge that the Department issue more narrow regulations limited to the requirements of that law. As a result of the unanimous opinion of the advisory committees and the valuable assistance of subcommittee staff representatives, this proposed rule addresses only the immediate requirements of Public Law 101-599. The longer-term mandates of Public Law 101-599, as well as other offshore and underwater pipeline proposals that may merit consideration, will be addressed in a future proposed rulemaking.

Discussion of Proposed Revisions

The RSPA is proposing similar requirements for both gas transmission and hazardous liquid pipeline facilities, and these regulations would be applicable to interstate and intrastate offshore pipelines. In accordance with §§ 192.1 and 195.1, these proposed rules would be applicable to offshore pipeline facilities on the OCS as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331). Further, in accordance with §§ 192.9 and 195.1, these proposed rules would also be applicable to all gas and hazardous liquid gathering lines subject to part 192 or part 195 in the Gulf of Mexico and its inlets; except, as provided in the law, those hazardous liquid gathering lines of 4 inch nominal diameter and smaller. Gathering lines, if they are exposed in shallow water, can be equally as unsafe as transmission pipelines. It should be noted that under the current regulations, gathering lines located in the inlets of the Gulf of Mexico may be defined as onshore gathering lines and consequently not be currently subject to the regulations in part 192 or part 195. This proposed regulation would make those gatherings lines in the inlets of the Gulf of Mexico subject to the proposed inspection, marking, and re-burial requirements in §§ 192.612 and 195.413.

In accordance with §§ 192.1(b)(1) and 195.1(b)(5), these proposed rules would not apply to the offshore gathering of gas or hazardous liquids upstream from the outlet flange of each facility on the OCS where hydrocarbons are produced or where hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream. It should also be noted that gathering lines do not include production flow lines. The extent of production flow lines will be better defined in an upcoming NPRM proposing to revise the definition of a gathering line.

Proposals

This proposed rulemaking incorporates all of the immediate requirements of this legislation administered by RSPA. The proposed rule would apply to pipelines which, in accordance with the definition of "pipeline" in §§ 192.3 and 195.2, means all parts of those physical facilities through which gas or hazardous liquids move in transportation, including pipe, valves, and other appurtenances attached to a pipe. For the purpose of this rulemaking, we are not using the term "pipeline" facilities" as set forth in Pub. L. 101-599. "Pipeline facilities" is defined by RSPA regulations (§§ 192.3 and 195.2) to include such facilities as offshore platforms that are not intended to be buried. These structures were not intended to be addressed by the statute.

Section 190.229(d), which is applicable to both gas and hazardous liquid pipelines, would be revised in accordance with Public Law 101-599 to include a provision that if a person willfully and knowingly defaces,

damages, removes, or destroys a pipeline marine buoy, such a person shall, upon conviction, be subject to a fine of not more than $5,000, imprisonment for a term not to exceed 1 year, or both. The use of pipeline marine buoys is regulated in 33 CFR part 64 which is referenced in the proposed §§ 192.612 and 195.415.

A new § 191.27, which is applicable to both gas and hazardous liquid pipelines, would be added to require the filing of offshore pipeline condition reports required by the underwater inspection of pipelines proposed in §§ 192.612 and 195.413. These reports would have to be submitted to RSPA within 60 days after the completion of the inspection of all pipelines subject to the underwater inspection. This information will be used to later develop regulations for the mandatory, systematic, and, where appropriate, periodic inspection of offshore pipelines in the Gulf of Mexico and its inlets. The law requires that such regulations be established within 30 months after enactment of the legislation, or May 16, 1993.

Sections 192.1(b)(2) and 195.1(b)(4) are proposed to be revised to clarify that gathering lines that are located in the inlets of the Gulf of Mexico, which currently may be defined as onshore gathering lines, will be subject to the proposed inspection, marking, and re-burial requirements in §§ 192.612 and 195.413. However, such gathering lines in the inlets of the Gulf of Mexico would not be subject to other regulations in parts 192 or 195.

Definitions of "exposed pipeline," "Gulf of Mexico and its inlets," and "hazard to navigation" are proposed to be added to §§ 192.3 and 195.2.

With regard to the definition of "exposed pipeline," a pipeline is considered to be exposed on the seabed when the top of the pipeline protrudes above the seabed, or protrudes above the silty bottom if the bottom of the ocean is not firm. RSPA recognizes that many offshore areas in the Gulf of Mexico do not have an easily definable seabed but believes that establishing a qualitative measurement of the ocean bottom, such as silt density, would be difficult because of shifting and varying silt density on the ocean bottom.

With regard to the definition of "Gulf of Mexico and its inlets," it would include the waters from the mean high water mark of the Gulf including its inlets, seaward to a depth of 15 feet, as measured from the mean low water. The term "mean low water" is used in this regulation to comport with that term as used in Public Law 101-599. "Mean low water" can be considered to denote "mean lower low water" as used in the nautical chart datum of the National Ocean Service. The inlets that are open to the Gulf and subject to the navigation of vessels, such as Barataria or Timbalier Bay, are included in the definition to assure that pipelines in these inlets do not pose a hazard to vessels.

With regard to the definition of "hazard to navigation," it is proposed to mean that the top of a pipeline is buried less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water. Because fishing vessels navigate frequently in offshore waters that are less than 15 feet deep, it is important that a pipeline be sufficiently buried in these locations. These fishing vessels frequently navigate in a manner that their hulls touch the seabed. As a result, it is important that the pipelines be buried to protect the fishing vessels and the pipelines. We have consulted with the Coast Guard concerning these proposed definitions. RSPA urges the operators currently conducting underwater inspections to note the depth of burial of their pipelines pending the issuance of a final rule that establishes a final definition of an "exposed pipeline" and a pipeline that is a "hazard to navigation." Although the law uses the terms as mutually exclusive, in fact, for the purposes of this statute and its implementing regulations, "hazard to navigation" subsumes "exposed pipeline" and the proposed definitions reflect this.

New §§ 192.612 and 195.415 would be added to require that each operator conduct an underwater inspection of its offshore pipelines in the Gulf of Mexico and its inlets, which are located in water less than 15 feet deep, as measured from the mean low water, within 1 year after the issuance of a final rule or May 16, 1992, whichever occurs first. As proposed, the inspection may be conducted by any means that will detect the location of the pipeline and the depth to which it is buried.

In lieu of the initial inspection proposed in this Notice pursuant to Public Law 101-599, the regulation would give credit to an initial inspection by an operator if it was conducted after October 3, 1989 (the date on which the Northumberland accident occurred) and completed in accordance with the final inspection requirements in this rulemaking. Many pipeline operators have already conducted underwater inspections of their pipelines advised in the ALERT Notice issued by RSPA on April 9, 1990.

Under proposed §§ 192.612 and 195.413, if a required inspection reveals, or a third party reports, that a pipeline located in water less than 15 feet deep, as measured from the mean low water, is exposed on the seabed or otherwise constitutes a hazard to navigation, the operator of that pipeline would be required to do the following: (1) Promptly notify the U.S. Coast Guard, but not later than 24 hours after discovery; (2) promptly mark the pipeline with a buoy in accordance with the Coast Guard regulations in 33 CFR part 64, "Marking of Structures, Sunken Vessels, and Other Obstructions," but no later than 7 days after discovery; and (3) within 6 months after discovery, bury the pipeline below the seabed to a depth of 36 inches for normal excavation or 18 inches for rock excavation. We have consulted with the Coast Guard concerning these reporting and marking proposals.

Impact Assessment

The proposed rules are considered to be non-major under Executive Order 11591, and are not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This proposed rulemaking is required by law. The costs of conducting the underwater inspections are averaging $8,000 per mile using recently developed technology. Some of the variables that impact the costs of conducting an underwater inspection are the amount of pipeline to be inspected, weather, mobilization costs, and location. There are about 1,600 miles of offshore gas and hazardous liquid pipelines in the Gulf of Mexico and its inlets in water less than 15 feet deep, so that it will cost about $8 million to conduct the initial inspection of these pipelines as mandated by Public Law 101-599. Costs are expected to drop as better technology is developed and underwater inspections become more common. Assuming the information provided by INGAA regarding the underwater inspections that have been conducted as of June 23, 1990 is representative of the findings in future underwater pipeline inspection, it appears that less than 1 percent of the offshore pipelines may be exposed above the seabed. However, information is not yet available to determine the percentage of the pipelines that may be a hazard to navigation (i.e., those pipelines buried less than 12 inches). Current pipeline technology can be used in re-burying a pipeline also varies significantly depending on similar variable factors set forth above.

A Draft Regulatory Evaluation has been prepared and it is available in the docket. This evaluation estimates the present value of the benefits to be $17.6 million and the present value of the costs to be $8.7 million. The agency requests comments on these estimates. Based on the facts available concerning the impact of this proposal, I certify under section 605 of the Regulatory Flexibility Act that it would not, if adopted as final, have a significant impact on a substantial number of small entities, because small entities do not operate pipelines offshore.

Paperwork Reduction Act

The final rule requires that pipeline operators report to RSPA pipelines in the Gulf of Mexico and its inlets that are exposed or a hazard to navigation. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), these information collection requirements will be submitted to the Office of Management and Budget for approval. Persons desiring to comment on these information collection requirements should submit their comments to: Desk Officer, Research & Special Programs Administration, Office of Regulatory Policy, Office of Management and Budget, 728 Jackson Place, NW., Washington, DC 20503.

Persons submitting comments to OMB are requested to submit a copy of their comments to RSPA as indicated above under "ADDRESSEE."

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. RSPA has determined that it does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 190

Buoy, Penalties, Pipeline.

49 CFR Part 191

Pipeline, Report, Underwater inspection.

49 CFR Parts 192 and 195

Exposed, Gulf of Mexico, Hazard to navigation, Pipeline, Underwater inspection.

In consideration of the foregoing, RSPA proposes to amend 49 CFR parts 190, 191, 192, and 195 as follows:

PART 190—[AMENDED]

1. The authority citation for part 190 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1681, 1804, 2002, 2009, 2007, 2008, 2009, and 2010; 49 CFR 1.53.

2. Section 190.229 would be amended by revising paragraph (d) to read as follows:

§ 190.229 Criminal penalties generally.

* * * * *

(d) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign, right-of-way marker, or marine buoy required by the NGPSA, the HLPSA, or the HMTA, or any regulation or order issued thereunder shall, upon conviction, be subject, for each offense, to a fine of not more than $5,000, imprisonment for a term not to exceed 1 year, or both.

* * * * *

PART 191—[AMENDED]

1. The authority citation for part 191 continues to read as follows:

Authority: 49 App. U.S.C. 1681(b) and 1808(b); §§ 191.23 and 191.25 also issued under 49 App. U.S.C. 1672(a); and 49 CFR 1.53.

2. Section 191.27 would be added to read as follows:

§ 191.27 Filing offshore pipeline condition reports.

(a) Each operator shall, within 60 days after completion of the underwater inspection of all pipelines subject to §§ 192.612(a) or 195.415(a), report the following information:

(1) Name and principal address of operator.

(2) Date of report.

(3) Name, job title, and business telephone number of person submitting the report.

(4) Total number of miles of pipeline inspected.

(5) Length and date of installation of each exposed pipeline segment, and location according to the Minerals Management Service or state offshore area and block number tract.

(6) Length and date of installation of each pipeline segment, if different from a pipeline segment identified under paragraph (a)(5) of this section, that is a hazard to navigation, and the location according to the Minerals Management Service or state offshore area and block number tract.

(b) The report shall be mailed to the Information Officer, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.1 would be amended to add paragraph (b)(2)(iii) to read as follows:

§ 192.1 Scope of part.

* * * * *

(b) * * *

(2) * * *

(iii) Inlets of the Gulf of Mexico except as provided in § 192.612.

3. In section 192.3, definitions of *Exposed pipeline*, *Gulf of Mexico and its inlets*, and *Hazard to navigation* would be added in appropriate alphabetical order as follows:

§ 192.3 Definitions.

* * * * *

Exposed pipeline means a pipeline that is protruding above the seabed in water less than 15 feet deep, as measured from the mean low water.

* * * * *

Gulf of Mexico and its inlets means the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets seaward to include the territorial sea and Outer Continental Shelf to a depth of 15 feet, as measured from the mean low water.

Hazard to navigation means, for the purpose of this part, a pipeline that is buried less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water.

* * * * *

4. Section 192.612 would be added to subpart L to read as follows:

§ 192.612 Inspection and re-burial of pipelines in the Gulf of Mexico and its inlets.

(a) Each operator shall conduct an underwater inspection of its pipelines in the Gulf of Mexico and its inlets. The inspection must be conducted after October 3, 1989 and before (*12 months after issuance of the final rule*).

(b) If, as a result of an inspection under paragraph (a) of this section, or upon notification by any person, an operator discovers that a pipeline it operates is exposed on the seabed or constitutes a hazard to navigation, the operator shall—

(1) promptly, but not later than 24 hours after discovery, notify the U.S. Coast Guard;

(2) promptly, but not later than 7 days after discovery, mark the location of the pipeline in accordance with 33 CFR part 64; and

(3) within 6 months after discovery, bury the pipeline below the seabed to a depth of 36 inches for normal excavation or 18 inches for rock excavation.

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2001 et seq.; 49 CFR 1.53.

2. Section 195.1 would be amended by revising paragraph (b)(4) to read as follows:

§ 195.1 Applicability.

* * * * *

(b) * * *

(4) Transportation of petroleum in onshore gathering lines in rural areas except gathering lines in the inlets of the Gulf of Mexcio would be subject to § 195.413.

* * * * *

3. In section 195.2, definitions of *Exposed pipeline, Gulf of Mexcio and its inlets,* and *Hazard to navigation* would be added in appropriate alphabetical order as follows:

§ 195.2 Definitions.

* * * * *

Exposed pipeline means a pipeline that is protruding above the seabed in water less than 15 feet deep, as measured from the mean low water.

* * * * *

Gulf of Mexico and its inlets means the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets seaward to include the territorial sea and Outer Continental Shelf to a depth of 15 feet, as measured from the mean low water.

* * * * *

Hazard to navigation means, for the purpose of this part, a pipeline that is buried less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water.

* * * * *

4. Section 195.413 would be added to subpart F to read as follows:

§ 195.413 Inspection and re-burial of pipelines in the Gulf of Mexico and its inlets.

(a) Except for gathering lines of 4 inch nominal diameter or smaller, each operator shall conduct an underwater inspection of its pipelines in the Gulf of Mexico and its inlets. The inspection must be conducted after October 3, 1989 and before (12 months after issuance of final rule).

(b) If, as a result of an inspection under paragraph (a) of this section, or upon notification by any person, an operator discovers that a pipeline it operates is exposed on the seabed or constitutes a hazard to navigation, the operator shall—

(1) promptly, but not later than 24 hours after discovery, notify the U.S. Coast Guard;

(2) promptly, but not later than 7 days after discovery, mark the location of the pipeline in accordance with 33 CFR part 64; and

(3) within 6 months after discovery, bury the pipeline below the seabed to a depth of 36 inches for normal excavation or 18 inches for rock excavation.

Issued in Washington, DC, on April 22, 1991.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 91-9850 Filed 4-26-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on a Petition to List Five Comal Springs Invertebrates

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petition has been found to present substantial information indicating that listing two of the Comal Springs invertebrates (*Heterelmis comalensis* and a new genus and species of beetle in the family Dryopidae) as threatened or endangered may be warranted. A status review is initiated on these two species. Substantial information was not provided on the taxonomic status and validity of *Hexagenia* sp. and *Microcylloepus* sp. to make a positive finding on these two taxa. The current petition represented a second petition for *Stygonectes* (=*Stygobromus*) *pecki*. Since 1984 the Service has annually made a "warranted but precluded" finding for *Stygonectes* (=*Stygobromus*) *pecki*. A "warranted but precluded" finding is determined when the petition action is warranted, but the immediate proposal and timely promulgation of a regulation to implement the petitioned action is precluded because of other pending proposals to list, delist, or reclassify species.

DATES: The finding announced in this notice was made on December 14, 1990. Comments and information should be submitted by May 29, 1991.

ADDRESSES: Information, comments, or questions should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, Stadium Centre Building, 711 Stadium Drive East, Suite 252, Arlington, Texas 76011. The petition, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Alisa Shull, Endangered Species Biologist, at the above address (817-885-7830 or FTS 334-7830).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the Federal Register. If the finding is positive, the Service is also required to promptly commence a status review of the species.

Mr. David Whatley, Director of Parks and Recreation for the City of New Braunfels, Texas, submitted a petition to the Service to list five Comal Springs invertebrates as endangered or threatened species. The petition was dated June 20, 1990, and received by the Service on June 21, 1990.

The five invertebrates are endemic to the Comal Springs in New Braunfels, Texas. *Heterelmis comalensis* is an aquatic insect in the family Elmidae. It belongs to a group known as "riffle beetles." A new genus and species of beetle belonging to the family Dryopidae is presently being described by Dr. Cherryl Barr of California State University and Dr. Paul Spangler of the National Museum of Natural History (Whatley, *in litt.*). This beetle is the first and only known underground-water-inhabiting, eyeless member of the family (Spangler, *in litt.*). *Hexagenia* sp. is an aquatic insect belonging to a group known as "burrowing mayflies" (Insecta: Ephemeroptera). *Microcylloepus* sp. is an aquatic insect in the "riffle beetle" group. *Stygonectes* (=*Stygobromus*) *pecki* is a crustacean (family Gammaridae) whose common name is Peck's cave amphipod. These five species are known only from Comal Springs in New Braunfels, Texas. The springs occur in Edwards limestone at the eastern edge of the Balcones Escarpment, and flow into the Comal River, which then flows into the Guadalupe River.

The Comal Springs are dependent upon the Edwards Aquifer for their flow. The demand on the Edwards Aquifer continues to increase. In 1989 and 1990, several of the Comal Springs ceased flowing. Although *Heterelmis comalensis* and the unnamed dryopid beetle may retreat further underground in drying situations, how far they can retreat and how long they can remain there is unknown. Experts on these species consider the prospect of Comal Springs drying up to be a serious threat to these species.

After a review of the petition, and information otherwise available to the Service, the Service has found that the petition presented substantial information that listing *Heterelmis comalensis* and a new genus and species of beetle in the family Dryopidae as threatened or endangered species may be warranted. This finding initiates a status review for these two invertebrates as required under section 4(b)(3)(A) of the Act. Within one year from the date the petition was received, the Service is required under Section 4(b)(3)(B) of the Act to make a finding as to whether the petitioned action is warranted.

The Service would appreciate any additional data, information, or comments from the public, government agencies, the scientific community, industry, or any other interested party concerning the status of *Heterelmis comalensis* and the dryopid beetle.

Based on insufficient support for the taxonomic validity of *Hexagenia* sp. and *Microcylloepus* sp., the Service finds that the petitioner has not presented substantial information that the petitioned action may be warranted.

The Service originally received a petition to list *Stygobromus pecki* in 1974. In 1984, the Service made a "warranted, but precluded" finding for *Stygonectes* (=*Stygobromus*) *pecki* (49 Fr 2485). This finding has remained as "warranted, but precluded" in each annual finding since 1984. The "warranted but precluded" finding means that the petitioned action is warranted, but precluded by other listing actions. The current petition represented a second petition for this species.

Author

This notice was prepared by Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. (505-766-3972 or FTS 474-3972.)

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: April 5, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-10024 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 56, No. 82
Monday, April 29, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-91-006]

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. app.) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: May 21, 1991.

Time: 1 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Purpose: To discuss market selling schedules, submarketing areas, new policies and procedures, and other matters for the 1991 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-2567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: April 23, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-10060 Filed 4-26-91; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket No. 91-052]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that three applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
91-078-01	DNA Plant Technology Corporation	03-19-91	Tomato plants genetically engineered to express the chitinase (*chi4*) gene to control fungal plant pathogens.	California.
91-079-01	DNA Plant Technology Corporation	03-20-91	Tomato plants genetically engineered to express a thermal hysteresis protein gene.	California.
91-080-01	University of Wisconsin at Madison	03-21-91	Alfalfa plants genetically engineered to express the B-glucuronidase (GUS) gene and a kanamycin resistance gene.	Wisconsin.

Done in Washington, DC, this 23rd day of April 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-10059 Filed 4-26-91; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 91-049]

Public Meeting; Availability of Environmental Assessment and Preliminary Finding of No Significant Impact for Field Testing a Live Genetically Engineered Vaccinia Vectored Rabies Vaccine in Pennsylvania

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we are holding a public meeting to discuss an environmental assessment and preliminary finding of no significant impact that has been prepared by the Animal and Plant Health Inspection Service concerning a live genetically engineered vaccinia vectored rabies vaccine that expresses the rabies virus surface glycoprotein. The environmental assessment and preliminary finding indicates that the field testing of the rabies vaccine will not have a significant impact on the human environment. Based on this preliminary finding of no significant impact, the Animal and Plant Health Service has determined that an environmental impact statement need not be prepared for a field test of the rabies vaccine in Pennsylvania.

DATES: The public meeting will be held from 10 a.m. to 12:30 p.m. and 1:30 to 4 p.m. local time of Friday, May 17, 1991. Written comments received on or before June 1, 1991, regarding the environmental assessment will be considered.

ADDRESSES: The public meeting will be held in the Auditorium, Pennsylvania Game Commission, State Headquarters Building, 2001 Elmerton Avenue, Harrisburg PA 17110-9797.

A copy of the environmental assessment and preliminary finding of no significant impact and any written comments are available for public inspection in room 1141, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250 between 8 a.m. and 4:30 p.m., Monday through Friday except holidays. A copy of the environmental assessment may also be obtained from the person listed under FOR FURTHER INFORMATION CONTACT.

Send an original and three copies of written comments to Chief, Regulatory Analysis and Development Staff, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-049.

FOR FURTHER INFORMATION CONTACT: Dr. Robert B. Miller, Senior Staff Veterinarian, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 838, Federal Building, 6505 Belcrest Road, Hyattsville MD 20782; Telephone No. (301) 436-5963.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment and preliminary finding of no significant impact relative to a request for authorization to conduct a limited field trial in Sullivan County, Pennsylvania, with an experimental live vaccinia vectored rabies vaccine that expresses the rabies virus surface glycoprotein. The sponsor of the limited field trial is the Wistar Institute of Anatomy and Biology, Philadelphia, Pennsylvania. A limited field trial of the same vaccine was previously approved by APHIS and initiated on Parramore Island, Virginia, on August 20, 1990. The bait distribution stage of that field trial has been completed. Monthly reports of the Parramore Island limited field trial have been reviewed by APHIS and the relevant data incorporated into APHIS' environmental assessment for the limited field trial in Pennsylvania.

Prior to the preparation of an environmental assessment and preliminary finding of no significant impact (hereinafter "the document") the document was reviewed by an ad hoc expert panel and the Vaccinia Subcommittee of the National Vaccine Program of the Public Health Service of the Department of Health and Human Services. The ad hoc expert panel reviewed the document in the context of their respective scientific expertise in the areas of pox virology, rabies virology, wildlife biology, raccoon biology, human medicine, ethics and public policy. The Vaccinia Subcommittee of the National Vaccine Program, consisting of scientists and physicians from the Centers for Disease Control, the National Institutes of Health, and the Food and Drug Administration, reviewed the document with primary emphasis on the public health aspects of the field trial in Pennsylvania.

APHIS is convening a public meeting with the ad hoc expert panel that reviewed the document. The purpose of the meeting is to provide a forum in which the public may participate, in an open discussion of the issues raised in the document.

Previous Public Meetings

APHIS participated in a joint State-Federal public meeting in LaPorte, Pennsylvania, on October 24, 1990, and a public hearing in Harrisburg, Pennsylvania, on November 14, 1990, to discuss the proposed limited field trial in Pennsylvania (see 55 FR 30730, July 27, 1990). At the public hearing in Harrisburg, Pennsylvania, on November 14, 1990, the first month report of the limited field trial on Parramore Island, Virginia, the proposed protocol for the limited field trial in Pennsylvania, and additional safety data were presented.

Procedures for the Public Meeting

The meeting will be held from 10 a.m. until 12:30 p.m., and will reconvene at 1:30 p.m. until 4 p.m., local time. The meeting may end earlier, however, if the ad hoc expert panel has concluded its discussion and all persons who have requested an opportunity to speak have been heard. Persons who wish to deliver a statement that has been prepared in advance of the meeting, should register at the meeting location with the presiding officer, before the meeting. Pre-meeting registration will be conducted at the meeting location from 9:30 a.m. to 10 a.m., local time, on the day of the meeting. Registered persons will be heard in the order of their registration. Other persons who wish to speak at the meeting will be afforded the opportunity after the registered persons have been heard. It is requested that two copies of any written statements that are presented be provided to the presiding officer at the meeting. If the number of preregistered persons and other participants at the meeting warrants, the presiding officer may limit the time for each presentation in order to allow everyone wishing to speak an opportunity to be heard. Interested persons may appear and be heard in person, by their attorney, or by other representative.

Environmental Assessment and Preliminary Finding of No Significant Impact

Before a veterinary biological product can be licensed, under the Virus-Serum-Toxin Act (VSTA, 21 U.S.C. 151-158), it must be shown to be pure, safe, potent, and efficacious. Field testing under 9 CFR part 103.3 is necessary in order to

satisfy vaccine safety requirements as a prerequisite to licensing vaccines. In the course of reviewing the field testing protocol for the vaccinia vectored rabies vaccine, APHIS assessed the impact on the human environment of authorizing the sponsor to conduct a limited field trial of the product in Pennsylvania.

The environmental assessment and preliminary finding of no significant impact provide the public with documentation of APHIS' review and analysis of environmental effects which would be associated with the gathering of information in this limited field trial.

The facts that support a preliminary finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Genetic engineering procedures were employed to incorporate only the rabies glycoprotein gene within the thymidine kinase (TK) locus of vaccinia virus. The recombinant vaccine cannot induce rabies.

2. The vaccinia rabies glycoprotein (V–RG) recombinant vaccine has been shown to cause no adverse clinical signs or gross or histopathological lesions, yet is fully capable of eliciting an immune response that protects a variety of species from virulent rabies virus challenge. The V–RG recombinant vaccine in target and non-target species is unable to evoke antibodies to the remaining rabies viral structural proteins.

3. The TK gene insertion is a stable characteristic of the V–RG recombinant vaccine with a very low probability of loss or reversion.

4. The V–RG recombinant vaccine does not contain an oncogene or cancer-causing substance, and does not contain any new genetic information to enhance the likelihood of it becoming oncogenic.

5. Biological transmission of the V–RG recombinant vaccine could not be demonstrated in laboratory studies involving more than 40 species of domesticated and wild mammals and birds.

6. In rare instances, contact (probably mechanical) transmission between animals was observed immediately after oral administration of the V–RG vaccine. No adverse effects from these transmissions were observed, and no adverse outcomes are expected from similar exposures during the field trial.

7. Laboratory containment experiments demonstrate that the vaccine is non-pathogenic, safe, and efficacious in a variety of laboratory animal model systems and a number of target and non-target species, including sub-human primates and the major terrestrial wildlife and domestic animal reservoirs of rabies.

8. Previous field trials of V–RG vaccine in Europe and Virginia have not demonstrated adverse effects of V–RG vaccine for workers, local human populations, or wildlife.

9. In the proposed field trial, mitigating measures will be taken to minimize the potential impact of the V–RG vaccine and the field trial itself on human populations and the environment. These measures will include immunization of project workers and restricted access to the trial site during the two-week initial period of vaccine-bait placement.

10. Monitoring of wildlife and human populations in the area of the field trial will continue for one year after the initiation of the trial. Based on the foregoing, APHIS has made a preliminary determination that the field trial of the live vaccinia vectored rabies vaccine that expresses the rabies surface glycoprotein would have no significant impact on the human environment.

The environmental assessment and preliminary finding of no significant impact have been prepared in accordance with (1) the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (title 40, Code of Federal Regulations (CFR) parts 1500–1506); (3) USDA regulations implementing NEPA (7 CFR 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 24 day of April, 1991.

Robert Melland,

Acting Administrator Animal and Plant Health Inspection Service.

[FR Doc. 91–10058 Filed 4–26–91; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Paw Timber Sale, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare an environmental impact statement (EIS) for timber harvest in the Paw Planning Area. The purpose of the EIS will be to develop and evaluate a range of alternatives, including a no action alternative, which respond to the key issues generated during the scoping process. This proposal is in accordance with direction set forth in the 1990 Umpqua National Forest Land and Resource Management Plan which provides for timber harvest within applicable standards, guidelines, and management prescriptions; and will be in compliance with the 1990 Umpqua National Forest Final Environmental Impact Statement and the 1988 Final Environmental Impact Statement for Managing Competing and Unwanted Vegetation. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected propls are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by June 1, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to J. Dan Schindler, District Ranger, Diamond Lake Ranger District, HC 60 Box 101, Idleyld Park, Oregon 97447.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Mike Hupp, Timber Management Assistant, Diamond Lake Ranger District, HC 60 Box 101, Idleyld Park, Oregon 97447; phone (503) 672–5469.

SUPPLEMENTARY INFORMATION: The Paw EIS Planning Area encompasses the Paw and Westlake Watershed Analysis Areas (WAAs) located within the Clearwater Resource Scheduling Area (RSA). The Paw WAA encompasses 5442 acres south of state highway 138 and the Clearwater River, north of Mt. Bailey and Rodley Butte, east of Bear Creek, and west of Lake Creek; and is located in all or portions of sections 3, 4, 8, 9, 10, 11, 14, 15, 16, 21, 22, 23, 27, 28, T27S, R5E, Willamette Meridian, Douglas County, Oregon. The Westlake WAA encompasses 4776 acres south of state highway 138 and the Clearwater River, north of Mt. Bailey and Rodley Butte, east of Lost Creek, and west of Lake Creek; and is located in all or portions of sections 1, 2, 3, 10, 11, 12, 13, 14, 23, 24, 26, 27, T27S, R5E, Willamette Meridian, Douglas County, Oregon.

The 1990 Umpqua National Forest Land and Resource Management Plan allocates the Paw EIS Planning Area into Management Areas 1, 10, and 11. Management Area 1 focuses upon providing opportunities for unroaded recreation primarily in a semiprimitive environment. Management Area 10 is primarily devoted to producing timber on a cost efficient, sustainable basis consistent with other resource objectives. Management Area 11 is primarily managed to provide big game winter range habitat and timber production consistant with other resource objectives.

The preliminary key issues identified to date include the following:

1. Potential effects on the northern spotted owl and it's critical habitat.

2. Potential effects to the roadless character of the Mount Bailey Roadless Area.

3. Potential effects on biodiversity by fragmentation of large contiguous areas of natural forest.

4. Potential effects on elk travel corridors inside elk transitory summer range.

5. The economics of harvesting mountain hemlock ecotype inside the Mount Bailey Roadless Area.

6. The harvest of timber stands heavily infected with root disease.

The proposed timber sale will harvest 606 acres containing 18.6 million board feet of timber and to construct 2.42 miles of road. Logging systems would be primarily ground based (loader, cat, or skidder) with some units being skyline logged. Silvicultural prescriptions would consist of a combination of seed tree, shelterwood, clearcut, partial cut, and final harvest removal methods.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies; and other individuals or organizations who may be interested in or affected by the proposed action. This information will be used in preparation of the draft EIS. The scoping process includes the following:

1. Identification if issues.

2. Identification of key issues to be analyzed in depth.

3. Elimination of insignificant issues, issues which have been covered by a relevant previous environmental process, and issues that could be successfully mitigated.

4. Exploration of additional alternatives based on the key issues identified during the scoping process.

5. Identification of potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

An open house will be held on June 7, 1991 at the Umpqua National Forest Superintendent's Office to allow review of the information gathered to date.

Licenses and permits required to implement the proposed action are already held by the Forest Service who is the lead agency for this project.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1992. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is very important that those interested in the management of the Umpqua National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Hertages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by September, 1992. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS; and applicable laws, regulations, and policies considered in making the decision regarding this proposal.

The Forest Supervisor, Umpqua National Forest, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR 217).

Dated: April 19, 1991.

Claude C. McLean,

Acting Forest Supervisor.

[FR Doc. 91–10015 Filed 4–26–91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Advisory Committee: Availability of Report on Closed Meetings

AGENCY: Department of Commerce.

ACTION: Announcing public availability of report on closed meetings of advisory committees.

SUMMARY: The Department of Commerce has prepared its report on the activities of closed or partially-closed meetings of advisory committees as required by the Federal Advisory Committee Act.

ADDRESSES: Copies of the reports have been filed and are available for public inspection at two locations.

Library of Congress, Newspaper and Current Periodicals Reading Room, room LM133, Madison Building, 1st and Independence Avenues, SE., Washington, DC 20540.

Department of Commerce, Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230 Telephone (202) 377–4115.

SUPPLEMENTARY INFORMATION: The reports cover the closed and partially-closed meetings held in 1990 of 39 committees and their subcommittees, the names of which are listed below.

Automated Manufacturing Equipment Technical Advisory Committee
—Joint Factory Computing and Communication Subcommittee

Biotechnology Technical Advisory Committee

Committee of Chairmen of Industry Advisory Committees for Trade Policy Matters (TPM)

Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee
—Joint Factory Computing and Communications Subcommittee

Computer System Security and Privacy Advisory Board
Computer Systems Technical Advisory Committee
—Joint Factory Computing and Communications Subcommittee
—Software Subcommittee
Electronic Instrumentation Technical Advisory Committee
—Joint Factory Computing and Communications Subcommittee
—Laser and Opto-Electronic Subcommittee
Industry Policy Advisory Committee for Trade Policy Matters (TPM)
ISAC on Aerospace Equipment for TPM
—Military Trade Subcommittee
—Space Equipment Subcommittee
ISAC on Capital Goods for TPM
—Government Procurement Subcommittee
ISAC on Chemicals and Allied Products for TPM
ISAC on Consumer Goods for TPM
ISAC on Electronics and Instrumentation for TPM
ISAC on Energy for TPM
ISAC on Ferrous Ores and Metals for TPM
ISAC on Footwear, Leather, and Leather Products for TPM
ISAC on Industrial and Construction Material and Supplies for TPM
ISAC on Lumber and Wood Products for TPM
ISAC on Nonferrous Ores and Metals for TPM
ISAC on Paper and Paper Products for TPM
ISAC on Services for TPM
ISAC on Small and Minority Business for TPM
ISAC on Textiles and Apparel for TPM
ISAC on Transportation, Construction, and Agricultural Equipment for TPM
ISAC on Wholesaling and Retailing for TPM
Importers and Retailers' Textile Advisory Committee
Industry Functional Advisory Committee on Customs Matters for TPM
Industry Functional Advisory Committee on Intellectual Property Rights for TPM
Industry Functional Advisory Committee on Standards for TPM
—Subcommittee on Conformity Assessment
—Subcommittee on Standards and Standards Process
Judges Panel of the Malcolm Baldrige National Quality Award
Management-Labor Textile Advisory Committee
Materials Technical Advisory Committee
Militarily Critical Technologies List Technical Advisory Committee
National Medal of Technology Nomination Evaluation Committee
Semiconductor Technical Advisory Committee
Telecommunications Equipment Technical Advisory Committee
—Fiber Optics Subcommittee
—Radio Subcommittee
—Switching Subcommittee
Transportation and Related Equipment Technical Advisory Committee
U.S. Automotive Parts Advisory Committee
Visiting Committee on Advanced Technology

FOR FURTHER INFORMATION CONTACT: Jan Jivatode, Management Analyst, Office of the Secretary, Department of Commerce, Washington, DC 20230, Telephone (202) 377–4115.

Dated: April 22, 1991.

Jan Jivatode,

Management Support Division, Office of Federal Assistance and Management Support.

[FR Doc. 91-9669 Filed 4-29-91; 8:45 am]

BILLING CODE 3510-FA-M

International Trade Administration

[A-412-806]

Preliminary Determinations of Sales at Less Than Fair Value: Gene Amplification Thermal Cyclers and Subassemblies Thereof, From the United Kingdom

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that gene amplification thermal cyclers and subassemblies thereof (GATCs) from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of GATCs from the United Kingdom, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by July 8, 1991.

EFFECTIVE DATE: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: Michelle A. Frederick, or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–0656 or (202) 377–4136, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department preliminarily determines that GATCs from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on December 13, 1990 (55 FR 51307), the following events have occurred. On December 27, 1990, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of GATCs from the United Kingdom (55 FR 53302).

On January 14, 1991, the Department presented its questionnaire to LEP Scientific Limited (LEP), which accounts for more than 60 percent of exports by volume to the United States during the period of investigation (POI), in accordance with 19 CFR 353.42(b). In February 1991, we received responses to the questionnaire. We issued a supplemental questionnaire in March 1991 and received a response to it prior to the date of this preliminary determination.

Scope of Investigation

The products covered by this investigation are certain gene amplification thermal cyclers, consisting of Peltier-effect in vitro GATCs, whether assembled or unassembled, and the subassemblies thereof specified below. GATCs are microprocessor-based reaction controllers that regulate temperatures of biologic reagents through a programmed and highly controlled thermal regime. GATCs incorporate a metal sample block, one or more thermoelectric modules, one or more electronic thermal sensors, a heat exchanger, power supply circuitry, microprocessor-based logic circuitry, software, and a housing or enclosure. GATCs are used in a variety of biotechnology applications, such as in vitro gene amplification, and sequencing and radionucleotide labeling reactions. Peltier-effect machines use one or more thermoelectric modules for cooling the biologic samples, and the thermoelectric modules and/or electric resistive heaters for heating the biologic samples. Excluded from this investigation are vapor compression thermal cyclers, which use a reversed Rankine cycle apparatus, and heat-only thermal cyclers.

The following subassemblies are included in the scope of the investigation when they are manufactured according to specifications and operational requirements for use only in a GATC as defined in the preceding paragraph: (a) The sample block/thermoelectric sensor/heat exchanger subassembly, which consists of the sample block, one or more thermoelectric modules, one or more electronic thermal sensors, and a heat exchanger, and which can include an electric resistive heater; (b) the housing or enclosure, whether finished or unfinished, for the GATC; (c) the membrane keypad used to program and control a GATC; and (d) the software to operate the GATC. GATCs are currently classifiable under the Harmonized Tariff Schedule (HTS) subheading 8419.89.5075. GATC subassemblies are currently classifiable under HTS subheading 8419.90.9060. The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

Normally, the Department selects as its POI the six-month period ending in the month in which the petition is filed. However, in this investigation, LEP reported that all of its U.S. sales were made prior to this six-month period. Consequently, we extended the POI to March 1, 1990 through November 30, 1990, as permitted by 19 CFR 353.42(b).

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that all the products covered by this investigation comprise a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of GATCs from the United Kingdom to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of GATCs to the most similar home market sales of GATCs. We also compared sales of GATCs on the same commercial level of trade, in accordance with 19 CFR 353.58.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act, as all U.S. sales were made to an unrelated party prior to importation into the United States. We calculated purchase price based on f.o.b. factory or delivered prices. We made deductions, where appropriate, for foreign inland freight, U.S. duty, brokerage, inland freight and airline entry fee, in accordance with section 772(d)(2) of the Act. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price, the amount of the United Kingdom value-added tax that would have been collected if the merchandise had not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of GATCs in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of GATCs to the volume of third country sales of GATCs, in accordance with section 773(a)(1) of the Act. LEP had a viable home market with respect to sales of GATCs made during the POI.

We calculated FMV based on f.o.b. factory prices to unrelated customers in the home market. We made deductions, where appropriate, for discounts. We deducted home market packing costs and added U.S. packing costs.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing, advertising expenses, warranty expenses, and royalty payments. We also made a circumstance of sale adjustment for promotional expenses for purposes of this determination. We will, however, further examine the promotional expense and how it was incurred at verification. We made adjustments for physical differences in merchandise, in accordance with 19 CFR 353.57. Finally, we made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

We recalculated LEP's imputed credit claim on its home market sales, as the interest rate claimed by LEP in its questionnaire response was inconsistent with the support document.

We also recalculated LEP's imputed credit expense on U.S. sales because LEP did not support its claim that it had access to financing at U.S. interest rates. In addition, LEP calculated its credit expense on certain U.S. sales based on warehouse withdrawal date, rather than shipment date. We recalculated the credit expense using the home market interest rate and the appropriate credit period.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of GATCs from the United Kingdom, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
LEP Scientific Limited	9.87
All Others	9.87

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than June 13, 1991, and rebuttal briefs no later

then June 20, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on June 24, 1991, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Persons interested in attending the hearing should ascertain with the Department the date and time of the hearing as the scheduled date approaches to ensure that circumstances have not required a change in plans.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the Federal Register. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673(f)) and 19 CFR 353.15.

Dated: April 23, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10086 Filed 4-23-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-001]

Final Results of Antidumping Duty Administrative Review: Potassium Permanganate from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On December 31, 1990, the Department of Commerce published the preliminary results of its antidumping duty administrative review on potassium permanganate from the People's Republic of China (PRC). The review covers the China National Chemicals Import and Export Corporation ("SINOCHEM"), including all production facilities, and eight third country resellers of potassium permanganate to the United States during the period January 1, 1989, through December 31, 1989.

We gave interested parties an opportunity to comment on our preliminary results. Based upon the comments received, our final results are unchanged from the preliminary results with the exception of the rate for third country new shippers.

EFFECTIVE DATE: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Graham or Stephanie L. Hager, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4105 or 377-5055, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On December 31, 1990, the Department of Commerce ("the Department") published in the Federal Register (55 FR 53581) the preliminary results of its administrative review of the antidumping duty order on potassium permanganate from the PRC (48 FR 57347, January 31, 1984). Counsel for petitioner and two importers requested a public hearing in this review. Case briefs were filed by all parties on January 28, 1991 and rebuttal briefs were filed by the petitioner and one importer on February 4, 1991. A public hearing was held on February 11, 1991. Surrebuttal briefs were filed by the petitioner and one importer on February 12, 1991.

We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of the Review

Imports covered by this review are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. During the review period, potassium permanganate was classifiable under item 2841.60.0010 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Review Period

The review period is January 1, 1989, through December 31, 1989.

Interested Party Comments

Petitioner's and interested party's comments are discussed below.

Comment 1: Novachem, an importer, argues that it has not been given the opportunity to meaningfully participate in this review. On August 16, 1990, the Department informed Novachem that it was considered an interested party and would be served Federal Register notices. Novachem believed that it would be served copies of all submissions made by other parties. However, between August 17, 1990 and December 10, 1990, petitioner failed to serve Novachem any of its submissions. On this basis, Novachem contends that it has not been allowed to meaningfully participate in this review, and therefore the Department should apply the margin calculated in the original investigation to all entities. Novachem requests that petitioner's submissions from August 17, 1990 to the date of publication of the preliminary results be rejected because they did not comply with the Department's regulations (*i.e.*, 19 CFR 353.31(g)).

Novachem cites *Blaw Knox Construction Equipment Co.* v. *United States*, 596 F. Supp. 476 (Ct. International Trade 1984) ("Blaw Knox"), in which the CIT remanded the review to the Department because it based its final margin results on information provided by respondent without giving petitioner an opportunity to comment. Novachem contends that the CIT ruled that petitioner was entitled to notice so it could meaningfully participate in the review. Likewise, Novachem argues that its imports should receive the rate from the original investigation (39.63 percent) since it has been denied meaningfully participation in this case.

Petitioner argues that Novachem has given the opportunity to meaningful participate in this review. Petitioner states that Novachem was notified of the proceeding by the Department on August 16, 1990, when it was sent the notice of initiation of review and a copy of the Department's regulations. Petitioner also states that according to the regulations, in order to be served by other parties, Novachem would have to have been on the service list. Petitioner argues that Novachem should have clarified this point with the Department. Petitioner cites *Timken Co.* v. *United States* 699 F. Supp. 300, 309 (Ct. International Trade) ("Timken"), in which the CIT determined that parties to trade proceedings must be afforded adequate notice and opportunity to be heard. Petitioner argues that Novachem, having been notified of the initiation, had the opportunity to comment on issues and review the public file. Petitioner further points out that Novachem has had sufficient time since receiving the preliminary results in which it could have commented on the determination. Petitioner contends that this fact distinguishes this case from

Blaw Knox, in which the Department took final action without giving notice to petitioner.

DOC Position: On August 16, 1990, the Department informed Novachem that it was an interested party and would be served copies of Federal Register notices. As an interested party that requested that it be considered a party to the proceeding, Novachem should have been served other parties' submissions in addition to Federal Register notices. In this case, while Novachem was included on the interested party list, the Department's service list was not updated to include Novachem. As a result, petitioner failed to serve Novachem copies of its submissions. While the Department's failure to update the service list may have delayed Novachem's response to petitioner's BIA report, we have allowed Novachem to submit factual information in support of its arguments. Thus, the Department did not deny Novachem the right to meaningfully participate in this review.

In Timken, the Court of International Trade ruled that parties to the proceeding must be afforded adequate notice and an opportunity to be heard. In this case, Novachem was notified of the preliminary determination nearly three months prior to the scheduled date of the final determination and fully participated in this proceeding through written and oral argument. Novachem submitted a case brief, two rebuttal briefs, and participated in the public hearing. As such, this case is clearly distinguishable from Blaw Knox where the Department took final action without providing petitioner with notice or opportunity to comment.

Comment 2: Petitioner argues that the Department should consider SINOCHEM to include all PRC manufacturers, producers and exporters of the subject merchandise, whether know, unknown, existing or new. They assert that such a decision would be consistent with the Department's final determination in the original investigation, and accurately reflect the extent of PRC government control and coordination of the production and export of the subject merchandise. Petitioner further argues that such a decision would also be consistent with the Department's determination in Final Results of the Antidumping Administrative Review of Iron Construction Castings from the People's Republic of China (56 FR 2742, 2744, January 24, 1991) ("Castings") to establish a single country-wide rate for the PRC. Petitioner asserts that if the BIA rate is not applied to all entries of the subject merchandise, the PRC will be allowed to continue dumping.

Novachem argues that it is not a permissible adverse inference and use of BIA for the Department to "deem" all manufacturing, production and export entities in the PRC of the subject merchandise to be part of SINOCHEM. Novachem states that the use of BIA with regard to PRC corporations not covered by the review and which have never received a Department request for information is contrary to the rule of *Olympic Adhesives, Inc.* v. *United States* 899 F.2d 1565, 1574 (Fed. Cir. 1990) ("Olympic Adhesives"). Novachem also states that petitioner's attempt to treat all of the PRC as one entity, is contrary to U.S. law and policy. Novachem asserts that the Foreign Sovereign Immunities Act of 1976, Public Law No. 94-583, 90 Stat. 2891, codified at 28 U.S.C. 1330, 1332(a)(2), 1391(g), 1441(d) and 1602-1611 (FSIA), requires distinction be made between a foreign state and an instrumentality owned by a foreign state, and one instrumentality and another.

Novachem farther argues that it is wrong for the Department to assume, based on the Castings notice, that all national import/export corporations are one entity, controlled by the PRC government. Although it was recognized in Castings that more than MINMETALS was subject to the review, the Department assigned a single rate for all exports without differentiating between companies. The Department should not employ this same methodology in this review.

DOC Position: Producers/exporters of the subject merchandise in the PRC forfeited their opportunity to argue the separation issue by not responding to the Department's questionnaire. Even if the Department were to consider arguments for separate rates, because there are no facts on the record relating to the independence of producers/exporters, there would be no legal basis for such a determination.

Comment 3: Petitioner argues that the Department should consider all of the subject merchandise exported by all existing and future PRC and third country exporters or resellers, whether or not deemed separate from SINOCHEM, as SINOCHEM product and therefore, subject to the SINOCHEM rate. Petitioner contends that there is no evidence that there are any production facilities of the subject merchandise in the PRC, Hong Kong, or the entire Far East, other than SINOCHEM's. On this basis, petitioner argues that the cash deposit rate set by the Department in its final results should reflect that (1) There are no other known manufacturers/producers/exporters of the subject merchandise other than SINOCHEM, (2) no basis exists to establish a separate rate for any PRC or third country exporter or reseller because these firms are trading dumped SINOCHEM product, (3) future entries from new PRC exporters and third country resellers who do not manufacture the product should be subject to the SINOCHEM rate, and (4) no "new" producer should receive the lower deposit rate in the investigation unless that producer clearly demonstrates that it is independent from SINOCHEM and the PRC state-run chemical sector.

Novachem argues that since it has not been allowed to meaningfully participate in this review, the Department should reject petitioner's claim that all manufacturers, producers, and resellers should be given the BIA rate. Novachem cites Blaw Knox, in which the CIT remanded the review to the Department because it based its final margin results on information provided by respondent without giving petitioner an opportunity to comment. Since Novachem was not allowed to meaningfully participate in this review, the Department should apply the margin calculated in the original investigation to all entities.

DOC Position: We have determined that all of the subject merchandise exported by existing and future PRC producers/exporters should be subject to the single rate established for the PRC. We disagree, however, with petitioner that all existing and future third country exporters or resellers should be assigned the rate applied to SINOCHEM. Our normal practice in an antidumping proceeding involving a market economy is to assign specific rates to reviewed companies. New exporters are assigned the highest non-BIA rate calculated in a particular segment of the proceeding. However, if there are no non-BIA rates in the current segment, they are assigned the highest non-BIA rate from the most recent segment of the proceeding. In this review, the Department has assigned a single country-wide rate to all producers/exporters in the PRC of the subject merchandise because there is no information on the record relating to the independence of producers/exporters in the PRC which would provide a legal basis for assigning separate rates. The Department has determined however, that it would be inappropriate to apply the country-wide rate for the PRC to new third country resellers. These resellers should not automatically be

consolidated with the PRC producers, especially since they are located in a separate market economy. Therefore, we have determined that these third country resellers should be assigned a rate based on the Department's normal practice in a market economy proceeding. On this basis, the Department has established a rate for new third country exporters equal to the most recent non-BIA rate, which is the rate from the original investigation. Petitioner has not provided us with a sufficient basis to depart from our normal methodology.

Comment 4: Novachem objects to the Department's use of Thailand as a surrogate for the PRC. It states that the use of Thailand as a surrogate is punitive and misinterprets the BIA provision. The BIA provision should be used to draw adverse inferences concerning factors of production, not the choice of an appropriate surrogate country. Novachem cites *Olympic Adhesives, Inc.* v. *United States*, 899 F.2d 1565, 1571 (Fed. Cir. 1990) in which the Court of Appeals for the Federal Circuit stated that "section 1677e(b) clearly requires non-compliance with an information request before resort to the best information rule is justified, whether due to refusal or mere inability." In this case, Novachem asserts, respondent was not requested to provide surrogate country information. Therefore, BIA should not be used for the choice of a surrogate.

Novachem also states that the Final Determination of Sales at Less than Fair Value: Industrial Nitrocellulose from the PRC (55 FR 21051, 1990) ("Nitrocellulose") memorandum cited by petitioner is not applicable because it is based on 1987 statistics, whereas the memorandum the Department correctly utilized in this review, which deleted Thailand from the list of surrogates, contains the most recent statistics which are for 1988. The Department's concurrence memorandum listed six countries as the most appropriate surrogates for the PRC, and Thailand was not included on this list.

Novachem contends that while Thailand was used as the surrogate in the original investigation, the economy has changed drastically since that time. According to Novachem: (1) Thailand is considered to be one of the world's 37 lower-middle income countries with an average per-capita GNP of $1,000; (2) the PRC is considered one of the world's 42 low-income countries, with an average per-capita GNP of $330; and (3) both wages and prices are higher in Thailand than in the PRC.

Novachem cites two recent cases involving chemical products in which the Department used India as a surrogate for the PRC (see, Initiation of Antidumping Duty Investigation; Certain Sulphur Chemicals from the PRC (55 FR 32, 116, August 7, 1990) and Preliminary Determination of Sales at Less than Fair Value; Sodium Thiosulfate from the PRC (55 FR 51,140, December 12, 1990)). Novachem asserts that the Department should (1) Reject the use of Thailand as a surrogate for the PRC and adopt one of the countries suggested in the Office of Policy memorandum, (2) keep the deposit rate at the level determined in the original investigation, or (3) re-open the review.

Petitioner supports the Department's choice of Thailand as a surrogate for the PRC. In applying BIA, the Department has the discretion to determine which information it deems the best available (see, Final Determination of Sales at Less than Fair Value; Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the PRC (56 FR 241, 245, 1990)). Petitioner rejects Novachem's assertion that the Department should have requested surrogate country information from respondent. Given the PRC companies' refusal to respond to the Department's questionnaire, the petitioner questions the likelihood of those same companies providing information on surrogate countries. Petitioner asserts that although Thailand was not included on the list in the Department's concurrence memorandum, it can still be considered comparable to the PRC. Petitioner specifically claims that since most of the production costs of potassium permanganate involves globally traded commodities, and labor and other factors of production are a smaller proportion of the total cost, the use of Thailand as a surrogate has not resulted in a skewed margin. Petitioner further states that Thailand is a reasonable surrogate to use because (1) It was based on verified factor of production information on the public record in the original investigation, (2) the same surrogate country was used in the investigation and actual factor costs were obtained from that country, and (3) "low-end" or "mid-point" prices for inputs were used. Petitioner contends that the margin in the BIA report more accurately reflects the current rate of dumping than the original rate of 39.63 percent.

In several recent PRC cases, petitioner claims that the Department has used Thailand as a surrogate for the PRC. Most recently, in Nitrocellulose, the Department used Thailand as a surrogate, based on a December 1989 memo which lists Thailand as one of the seven most comparable economies for the PRC. The Department also used Thailand for its Final Results of Antidumping Duty Administrative Review; Barium Chloride from the PRC (54 FR 53, January 3, 1989).

Petitioner also argues that this case is distinguishable from Olympic Adhesives in which the Department improperly applied BIA to a company which had been cooperative. In this case, respondent has not cooperated.

DOC Position

Regarding Novachem's objections to the use of Thailand as a surrogate, we note that the list of six countries identified in the October 12, 1990 Office of Policy memorandum is not exhaustive. This memorandum, in accordance with agency practice, considered three factors in selecting a surrogate country for this review: (1) Per capita gross national product ("GNP"); (2) the growth rate of per capita GNP; and (3) the national distribution of labor. While Thailand is not on the list of preferred surrogates, the memorandum notes that Thailand has been used in the past as a surrogate for the PRC. Despite the changes in Thailand's level of development, the Department does not consider the comparability of Thailand and the PRC to be so disparate as to render Thailand an inappropriate surrogate for BIA purposes. Thus, the Department's reliance on petitioner's data is reasonable.

In this instance, respondents failed to submit any response to the Department's questionnaire. For this reason, the Department was forced to rely on BIA in its preliminary and final results. In selecting the information to use as BIA, the Department reviews the information on the record and selects that which it believes is the most appropriate. BIA is not necessarily the most accurate information but a choice of information on the record which is usually prejudicial to respondents for non-compliance with the Department's requests for information. This well-established proposition follows from the long-standing tenet that the best information rule is a rule of reasonable adverse inference designed to induce respondents, in the absence of any subpoena power vested in the Department, to submit timely, complete, and accurate questionnaire responses.

Comment 5: Novachem argues that petitioner's public summary of the BIA report is inadequate because petitioner failed to properly range the proprietary data contained in the report. Novachem contends that since the Department denied Novachem's APO application, it should also require petitioner to properly range the proprietary data in its BIA report.

Petitioner rejects Novachem's claim that the public version of its BIA report was improperly ranged. Rather, they assert that it was filed in accordance with § 353.32(b)(2).

DOC Position: Section 353.32(b)(2) of the Department's regulations states that "all requests for proprietary treatment shall include or be accompanied by an adequate public summary of all proprietary information or a statement itemizing those portions of the proprietary information which cannot be summarized adequately and all arguments supporting that conclusion for each portion." Petitioner's August 27, 1991 submission (the BIA report) included an explanation of why certain portions of the report were designated proprietary and why it was impossible for petitioner to range or summarize the cost figures included in the report. We have determined that petitioner's treatment of proprietary information complies with § 353.32(b)(2).

Comment 6: C.I. Specialty Chemicals, Inc. (CISC), an importer, argues that the information relied upon by the Department in its preliminary results is not accurate and that the Department should reassess the validity of the basis of its margin calculation. CISC contends that it has obtained certain information which demonstrates that the margin is too high and should be reduced considerably. Based on this information, CISC contends (1) The Department wrongly relied on Bank of China exchange rates in calculating PRC prices and costs, (2) the Department incorrectly used an imported price for potassium hydroxide and manganese dioxide for the surrogate country when the PRC had its own domestic sources of products, and (3) that a comparison of the price of finished potassium permanganate sold to the PRC Foreign Trade Departments, which CISC obtained from confidential documents, to an FOB import price for potassium permanganate published by the United States Government for 1989, indicates that there is little or no dumping margin.

Petitioner argues that the Department should not consider the facts presented in CISC's brief. It asserts that the information was submitted too late to be considered in the context of this review (see 19 CFR 353.31(a)). Petitioner contends that the information is specific to the PRC chemical industry and, therefore, should not be considered since respondents refused to respond to the Department's questionnaire. Petitioner also contends that the information is irrelevant since the Department does not consider exchange rates and prices in a non-market economy investigation.

DOC Position: We agree with petitioner's assertion that the factual information submitted by CISC was untimely and, therefore, we did not consider it in the context of this review. Section 353.31(a)(ii) of the Department's regulations states that "submissions of factual information for the Secretary's consideration shall be submitted not later than the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice of initiation of the review." The Department received CISC's factual submission 231 days after the date of the initiation of this review, and after the issuance of the Department's preliminary results. On this basis, the Department did not consider CISC's factual submission.

Final Results of Review

Based on comments received, our final results are unchanged from those presented in the notice of preliminary results of review except for the rate assigned to third country new shippers. We determine that the following margins exist for the period January 1, 1989, through December 31, 1989:

Manufacturer/exporter/Hong Kong resellers	Margin (percent)
China National Chemicals Import and Export Corporation and all other PRC producers	126.94
Far Ocean Trading Company	126.94
Go Up Company	39.63
Hip Fung Trading Company	39.63
K L & Company	126.94
Landyet Company Ltd	126.94
Sam Wing International, Ltd	126.94
Tin Sing Chemical Engineers, Ltd	39.63
Yue Pak Company, Ltd	126.94

Go Up Company, Hip Fung Trading Company and Tin Sing Chemical Engineers responded to the Department's questionnaire by stating that they had no shipments during the review period. The Department verified this claim with the Customs Service. Therefore, the margin listed is that from the original investigation. The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for all future entries of the subject merchandise from the PRC and the following third country resellers (e.g., Far Ocean Trading Company, K L & Company, Landyet Company, Ltd., Sam Wing International, Ltd., Yue Pak Company, Ltd.) will be 126.94 percent *ad valorem*; (2) the cash deposit for Go Up Company, Hip Fung Trading Company, and Tin Sing Chemical Engineers, Ltd., will be 39.63 percent *ad valorem*; (3) for any shipments of this merchandise produced or exported by current third country exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the original less than fair value investigation, which is equal to 39.63 percent *ad valorem*; and, (4) the cash deposit rate for any future entries of this merchandise from a new third country exporter, not covered in this review or in the original less than fair value investigation, whose first shipments occurred after December 31, 1989, and who is unrelated to the reviewed firms or any previously reviewed firm, will be 39.63 percent *ad valorem*.

These deposit requirements are effective for all shipments of Chinese potassium permanganate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of this Act (19 U.S.C. 1675(a)(1) and 19 CFR 353.22(c)(8).

Dated: April 22, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10069 Filed 4-26-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by James and Uta Stein From an Objection by State of Washington Department of Ecology

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On January 18, 1991, the Secretary of Commerce (Secretary) received a notice of appeal from Alexander W. Mackie, Esquire, on behalf of James and Uta Stein (Appellants). The Steins are appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the State of Washington, Department of Ecology, (State) to Appellants' consistency

certification that their proposal to build a 600-foot long sea wall or bulkhead, for which a U.S. Army Corps of Engineers' permit must be obtained, is consistent with the State's Coastal Zone Management Program. The proposed bulkhead would start at the southwest corner of the property and extend 600 feet in a northeasterly direction at the base of the sea cliff. It would be approximately 5 to 6 feet high, and backfill would be placed between the cliff and the bulkhead. Six-foot-high wing walls would be extended from the bulkhead to the toe of the cliff at each end of the bulkhead.

The legal description of Appellants' property is:

A portion of section 5, township 19 north, range 2 West, Willamette Meridian.

The property address is 3600—85th Avenue NW., Olympia, Washington, in Thurston County. The property is located on the north side of 85th Avenue NW. and adjacent to the east side of Totten Inlet.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121.

Appellants request that the Secretary override the State's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Susan K. Auer, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., suite 603, Washington DC 20235. Copies of comments should also be sent to M.F. Palko, Department of Ecology, Mail Stop PV-11, Olympia, Washington 98504-8711.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the Department of Ecology, Environmental Review, 7240 Martin Way, Lacey, Washington 98503, and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Susan K. Auer, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., suite 603, Washington, DC 20235, (202) 673-5200.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

Dated: April 23, 1991.

Thomas A. Campbell,

General Counsel.

[FR Doc. 91-10066 Filed 4-26-91; 8:45 am]

BILLING CODE 3510-08-M

South Atlantic Fishery Management Council; Amended Meeting Agenda

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The agenda for the public meeting of the South Atlantic Fishery Management Council (Council), at the Town and Country Inn, 2008 Savannah Highway, Charleston SC (803-571-1000), on April 29—May 3, 1991, previously published at 56 FR 16073 on April 19, 1991, has been amended. All other information as originally published remains unchanged.

On April 30, 1991, from 2:30 p.m., to 5 p.m., the Council will hold a closed meeting (not open to the public), of its Advisory Panel (AP) Selection Committee. The Committee will review applicants and choose members for the new Wreckfish AP, and for the vacancy on the Snapper-Grouper AP.

For more information contact Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407, telephone (803) 571-4366.

Dated: April 24, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-10061 Filed 4-26-91; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 7-536,860, "Monoclonal Antibody Immunoassay Kit for Avian REV" to Consultants for Applied Biosciences, Inc., having a place of business at Wilton, Connecticut. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the reqirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention relates to the combination of monoclonal antibodies which enables an increase in sensitivity of an ELISA assay for diagnosing reticuloendotheliosis virus in poultry flocks and for detecting new strains and variants of the viral subtype.

The availability of the invention for licensing was published in the **Federal Register** Vol. 55, No. 163, p.34309 (1990). A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/487-4650 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Douglas J. Campion, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice may be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Patent Licensing Specialist, Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 91-9979 Filed 4-26-91; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

April 16, 1991.

The USAF Scientific Advisory Board Arnold Engineering Development Center (AEDC) Advisory Group will meet on June 25-26, 1991 from 8 a.m. to 4 p.m. Central Time at Arnold Air Force Base, Tennessee.

The purposes of this meeting will be to acquaint the new AEDC Advisory Group members with the mission and test facilities of AEDC and for AEDC senior leadership to receive feedback from the Advisory Group on AEDC's ASTF modifications to support NASP. This meeting will be closed to the public, in accordance with section 552b(c) of title 5, United States Code, specifically subparagraph (1).

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 91-9972 Filed 4-26-91 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Foreign Languages Assistance Program

AGENCY: Department of Education.

ACTION: Notice of proposed interpretations and designation of critical foreign languages.

SUMMARY: For the purposes of the Foreign Languages Assistance Act of 1988 enacted in title II, part B, of the Elementary and Secondary Education Act, the Secretary proposes to designate Chinese (all dialects), Japanese, Korean, Arabic (all dialects), and Russian as critical foreign languages. The proposed designation would limit Federal financial assistance under this program to foreign language instruction projects that focus on one or more of the designated languages. The Secretary also proposes certain interpretations of the Act that are needed to administer the program.

DATES: Comments must be received on or before May 29, 1991.

ADDRESSES: All comments concerning this notice should be addressed to Alicia C. Coro, Director, School Improvement Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-6437.

FOR FURTHER INFORMATION CONTACT: Doris Crudup, School Effectiveness Division, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-6437, (202) 401-1062. Deaf and hearing impaired individuals may call the Federal Duty Party Relay Service at 1-800-877-8339 (in the Washington, DC area code, telephone 708-9300 between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Foreign Languages Assistance Program is authorized by title II, part B, of the Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary Eduction School Improvement Amendments of 1988 (P.L. 100-297). It is a new formula grant program that is intended to provide financial assistance to State educational agencies (SEAs) to improve the quantity and quality of instruction at both the elementary and secondary school levels in foreign languages that are critical to the economic and security interests of the United States. Congress has appropriated $4.9 million for fiscal year 1991 to implement the program.

Under the statute, each SEA distributes funds on a competitive grant basis to local educational agencies (LEAS) for model programs they have designed that represent alternative and innovative approaches to foreign language instruction. Unless the Secretary grants a waiver, the non-Federal matching requirement is 50 percent. Because the statute requires the SEA's application for the Federal share of program funding to contain a description of the model projects to be conducted, the Secretary has determined that it is necessary at this time to propose certain criteria under which the Foreign Languages Assistance Program will be administered.

The Critical Foreign Languages. Section 2105 of the Act defines the term "foreign language instruction" as "instruction in critical foreign languages as defined by the Secretary." For the Foreign Languages Assistance Program, the Secretary proposes to designate five languages as "critical": Chinese (all dialects), Japanese, Korean, Arabic (all dialects), and Russian. On August 2, 1985, the Secretary issued a notice in the **Federal Register** (50 FR 31412) designating a much more extensive list of 169 foreign languages for programs at the postsecondary level that were supported under the foreign language section of the Secretary's Discretionary Fund authorized by title II of the Education for Economic Security Act (EESA), Public Law 98-377. However, because the Foreign Languages Assistance Program that is the subject of this notice will fund model programs of foreign language instruction only at the elementary and secondary school levels, the Secretary has determined that the list of languages designated for title II of the EESA should not apply to this program.

Consistent with the objectives of the authorizing legislation and the Senate report accompanying the fiscal year 1991 appropriation for this program, the emphasis on Chinese, Japanese, Korean, Arabic, and Russian reflects a concern that the economic and security interests of the United States require that more students at the elementary and secondary school levels study these languages. In addition, because of the statutorily limited purpose, the limited amount of funds available and the statutory requirement that funds be used to support model programs, the Secretary has determined that the primary objectives of the Foreign Languages Assistance Program could best be served by focusing resources on this select group of less commonly taught, but highly critical, foreign languages.

The Secretary does support the study of all foreign languages in the Nation's elementary and secondary schools and believes that the quantity and quality of all foreign language instruction should be strengthened. However, the Secretary notes that other languages, such as French and Spanish, are commonly offered in the nation's schools. The Secretary believes, therefore, that there is no important Federal role in subsidizing the development of models for teaching in these languages.

By contrast, instruction in the proposed five critical languages is not generally available in American elementary and secondary schools. This may be in part due to the lack of availability of proven teaching models. A recent study conducted by the Center for Applied Linguistics revealed that few elementary and secondary schools offer any one of the five proposed critical foreign languages. In this regard, the Council of Chief State School Officers (CCSSO) has recommended that Federal agencies encourage State and local

provision for study in less commonly taught languages. (*International Dimensions of Education*, November 1985, CCSSO).

Beyond the issue of limited availability, expanded and improved instruction in Chinese, Japanese, Korean, Arabic, and Russian is of immediate importance to the Nation. Strengthened instruction in these critical languages at the elementary and secondary school levels may help the country maintain competitiveness in the areas of international trade and national security.

Application Content. Section 2103(b) requires that any State agency desiring to receive a grant shall submit an application to the Secretary containing information and assurances as the Secretary may require. The Secretary believes that all applications should include information that will ensure that projects contribute to the legislation's goal of developing model programs from which other schools in the Nation could benefit. Therefore, the Secretary proposes to require that applications include the following information, in addition to the items enumerated in section 2103(b) of the statute:

(1) A description of how the model program could benefit other school systems in the Nation;

(2) A description of how the programs' design will provide a reliable measure of the impact of the programs or of student educational achievement; and.

(3) An assurance that, upon completion of programs, the State educational agency will provide to the Secretary documentation and a final evaluation of each model program, in a form suitable for dissemination to other schools or school districts that may wish to replicate the project.

Program Duration. Section 2104(b) of the Act provides that an SEA may receive an allotment of funds for two additional years if the Secretary is satisfied that funds made available to the State during the first year were used in a manner required under the State's approved application. At this time, however, the Administration has not proposed funding this program for FY 1991.

Program Variety. The Secretary proposes to take into consideration the amount of program funds that each State receives in determining whether the State's model programs represent a variety of alternative and innovative approaches to foreign language instruction, as required by section 2103(b)(1)(B) of the Act.

Participating Children. Section 2103(b)(2) of the Act requires the SEA's application to contain an assurance that "all children aged 5 through 17 who reside within the school district of the LEA" must be able to participate in any model program funded under the Foreign Languages Assistance Act. The Secretary believes that it would not be feasible to require all LEAs to implement model programs for which all children who reside in the school district of the LEA, regardless of grade level, are eligible to participate. Therefore, the Secretary proposes to require only that, for whatever grade span a model program is designed, all children in those grade levels who reside within the area served by the LEA must be eligible to participate.

Non-Federal Share. Section 2103(b)(3) of the Act requires that the SEA's application contain an assurance "that the State will pay the non-Federal share of the activities for which assistance is sought from non-Federal sources." The Secretary proposes to interpret the requirement in section 2103(b)(3) for "State" payment of the non-Federal share to mean that the source of the non-Federal contribution will be either State or local. In either case, the contribution must come from non-Federal sources. In addition, the requirement of a 50 percent non-Federal share of project costs would include both these costs and third party in-kind contributions that are allowable under § 80.24 of the Education Department General Administrative Regulations (EDGAR).

Waiver of Non-Federal Share. Section 2103(c)(2) of the Act authorizes the Secretary to waive the requirement of a 50 percent State or local share if the Secretary determines that adequate resources are not available. Consistent with the intent of Congress in enacting the waiver provision (see S. Rep. No. 222, 100th Cong., 1st Sess. 76 (1987)) the Secretary would grant a waiver only if presented with a clear case of hardship.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this notice. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 2040, 400 Maryland Avenue, SW., Washington, DC between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 3001–3003.

Dated: April 22, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-9969 Filed 4-23-91; 8:45 am]

BILLING CODE 4000-01-M

Privacy Act of 1974; System of Records

AGENCY: Department of Education.

ACTION: Notice of an additional routine use for the Guaranteed Loan Program—Loan Control Master File (18-40-0030).

SUMMARY: The Assistant Secretary for Postsecondary Education publishes this notice of a new routine use for the system of records known as the Guaranteed Loan Program—Loan Control Master File (18-40-0030), and to give notice of a change in the location of that system. The new routine use provides that records from this system of records may be disclosed to other Federal agencies, such as the Department of the Treasury (Treasury) to determine whether computer matching programs should be conducted regarding applicants for student loans.

DATES: This change is effective May 29, 1991, unless the Assistant Secretary determines, in response to comments from the public received before that date, to modify this change.

ADDRESSES: Comments should be sent to Tom Pestka, Director, Division of Credit Management and Debt Collection, Office of Student Financial Assistance, Department of Education, room 5114, ROB-3, 7th and D Streets, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Tom Pestka, Telephone number: (202) 708-4764.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires the Department to publish in the Federal Register notice of a system of records, and to consider comments from interested members of the public regarding proposed routine uses for the system of records. The regulations adopted by the Department to implement the Privacy Act of 1974 are contained in the Code of Federal Regulations (CFR) at 34 CFR part 5(b). The Department currently maintains a system of records known as the Guaranteed Loan Program—Loan Control Master File (18-40-0030); a notice for this system was published in the Federal Register on April 30, 1982 at 47 FR 16835-6 and amended on June 28, 1982 at 47 FR 27685 and December 9, 1983 at 48 FR 55159.

The routine uses listed in the 1982 notice indicate that the Department uses the information in this system for a variety of purposes related either to enforcement of the loan obligation or to determining whether a borrower's repayment status qualifies that borrower for further student financial assistance under Title IV of the Higher Education Act of 1965, as amended. This new routine use will permit the Department to disclose information from this system to other Federal agencies and to guaranty agencies to determine whether computer matching programs should be conducted by the Department regarding applicants for loans under the Guaranteed Student Loan Programs or other title IV aid. For example, the Secretary will use this new routine use initially to disclose information from this system to the Internal Revenue Service for the purpose of determining whether student loan defaulters also were delinquent with regard to Federal tax obligations. The Department would use the results of this particular study to determine whether the Department should screen applicants for loans under the Guaranteed Student Loan Programs to determine whether applicants are delinquent with regard to their Federal tax obligations. Because this addition of a routine use will not significantly change or alter the system, we are not preparing a report of altered system of records under 5 U.S.C. 552a(r).

A second amendment is made here to provide the current location of this system of records.

[CFDA number does not apply.]

Dated: April 22, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

The Assistant Secretary for Postsecondary Education amends the notice for the system of records designated the Guaranteed Loan Program—Loan Control Master File (18-40-0030) as follows:

1. The System Location is revised to read as follows:

SYSTEM LOCATION:

National Computer Systems, P.O. Box 30, Iowa City, IA 52244.

2. That portion of the system notice titled "Routine uses of records maintained in the system, including categories of users and the purposes for such uses:" is amended by adding the following after the first sentence:

"To Federal agencies and to guaranty agencies to conduct manual or computerized comparisons needed for research to determine whether the Department should conduct computer matching programs regarding applicants for, or recipients of, loans or other student financial assistance authorized under Title IV of the Higher Education Act, as amended."

[FR Doc. 91-9960 Filed 4-6-91; 8:45 am]

BILLING CODE 4000-10-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 91-21-NG]

North American Resources Company; Application to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on March 20, 1991, of an application filed by North American Resources Company (NARCo) requesting blanket authorization to import up to 10.95 Bcf of natural gas from Canada over a two-year period commencing with the date of first delivery. NARCo intends to use existing pipeline facilities within Canada and the United States. NARCo states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., May 29, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Charles E. Backburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: NARCo, a Montana corporation with its principal place of business in Butte, Montana, is engaged in the exploration, production and marketing of natural gas and oil. NARCo proposes to purchase quantities of competitively priced Canadian natural gas from a variety of Canadian suppliers, on a short term or spot market basis, for resale in the United States.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under the proposed arrangement will be competitive. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulation in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete

understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of NARUc's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 23, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-10007 Filed 4-26-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 405-030, et al.]

Hydroelectric Applications, Susquehanna Power Co., et al.; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

1. a. *Type of Application:* Amendment to the Conowingo Comprehensive Recreation Master Plan.

b. *Project No:* 405-030.

c. *Date Filed:* February 4, 1991.

d. *Applicant:* The Susquehanna Power Company and Philadelphia Electric Power Company.

e. *Name of Project:* Conowingo Project.

f. *Location:* On the Susquehanna River near Conowingo, Maryland.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Eugene Bradley, The Susquehanna Power Company, P.O. Box 8699, Philadelphia, PA 19101, (215)–841–4000.

i. *FERC Contact:* Brian Romanek, 219–2662.

j. *Comment Date:* June 8, 1991.

k. *Description of Project:* The Susquehanna Power Company and Philadelphia Electric Company, licensees for the Conowingo Project, propose to amend the project's comprehensive master recreation plan. The proposed amendment involves: [1] The re-alignment of the project boundary to add 200 acres of land that will accommodate a primitive campground site in the area of Broad Creek; and [2] the re-alignment of the project boundary to remove 80 acres of project land in the area of Hopkins Cove. The purpose of this boundary re-alignment is to allow the licensee to locate a campground on the Broad Creek site rather than the Hopkins site as was required by the Recreation Plan. A recent study conducted by the licensee showed that the Broad Creek area would be more suitable for a primitive campground site than the Hopkins site.

The removal of the 80 acres of Hopkins Cove from the project boundary means that the Commission would no longer have jurisdiction over the use of this land. The addition of 200 acres to the project at Broad Creek means that the Commission would gain jurisdiction over the use of this land.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

2. a. *Type of Application:* Transfer of license.

b. *Project No.:* 719-008.

c. *Date filed:* March 29, 1991.

d. *Applicant:* Two Rivers, Inc., (Transferor) and Trinity Conservancy, Inc. (Transferee).

e. *Name of Project:* Trinity Project.

f. *Location:* On Phelps and James Creeks, in Chelan County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Donald E. Booth, Two Rivers Inc., 22750 Highway 207, Leavenworth, WA 98826, (509) 763-3389.

i. *FERC Contact:* Michael Spencer at (202) 219-2846.

j. *Comment Date:* June 3, 1991.

k. *Description of Proposed Action:* On July 28, 1970, a license was issued to Jesse I. Smith for the construction, operation, and maintenance of the Trinity Project. The license was transferred to Two Rivers, Inc., on August 8, 1980. It is proposed to transfer the license to Trinity Conservancy, Inc. The proposed transfer will not result in any changes to the development. The Transferor certifies that it has fully complied with the terms and conditions of the license. The Transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

1. This notice also consists of the following standard paragraphs: B and C.

3a. *Type of Application:* Amendment of License.

b. *Project No:* 2009-011.

c. *Date Filed:* February 27, 1991.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Utica Project.

f. *Location:* The project is located on the North Fork Stanislaus River in Alpine, Calaveras, and Tuolumne Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Rodney J. Strub, Manager, Hydro Generation, Pacific Gas and Electric Company, 77 Beale Street, San Francisco, CA 94106, (415) 973–5316.

i. *FERC Contact:* Kenneth Fearon, (202) 219–2657.

j. *Comment Date:* May 30, 1991.

k. *Description of Amendment:* The amendment proposes to remove Lake Alpine, Union Reservoir and Utica Reservoir from the Project license. As a result of the installation of the North Fork Stanislaus Project, FERC No. 2409, the licensee states that the reservoirs are no longer directly connected to the project's only generating facility, Murphys Powerhouse. Project No. 2409's new North Fork Diversion allows water released from Lake Alpine, Union and Utical Reservoirs to be directed for storage at New Spicers Meadow Reservoir. McKays Point Reservoir, which is located on the North Fork Stanislaus River and is also a part of Project No. 2409, inundated PG&E's Utica Diversion and portions of the Upper Utica Conduit. Water is now delivered to the remainder of the Upper Utica Conduit, just above Hunters Reservoir, by a tap on P–2409's Colliverville Tunnel. An impact agreement between the licensee's of Projects 2019 and 2409 defines the schedule and amount of water to be delivered by the tunnel tap to the Upper Utica Conduit. Therefore, the Utica Project is no longer regulated by, or directly connected to Lake Alpine and Union and Utica Reservoirs. PG&E plans

to continue to operate and maintain the reservoirs as it has done historically.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

4a. *Type of Application:* Surrender of License (1.5 MW or Less).

b. *Project No:* 2706-010.

c. *Date Filed:* March 21, 1991.

d. *Applicant:* Thermalito Irrigation District and Table Mountain Irrigation District.

e. *Name of Project:* Concow.

f. *Location:* On Concow Creek in Butte County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. James O. Schmidt, Manager, Thermalito Irrigation District, 410 Grand Avenue, Oroville, CA 95965.

i. *FERC Contact:* Mr. Surender M. Yepuri, (202) 219–2847.

j. *Comment Date:* June 6, 1991.

k. *Description of Proposed Action:* The Licensee requests surrender of its license, without prejudice to its right to reapply, stating that it is imprudent and impossible to comply with the requirements of the license due to the pending litigation between the licensee and Pacific Gas and Electric Company. The project would have consisted of the licensee's existing Concow dam and reservior, a penstock, a powerhouse with a rated capacity of 990 kW, a transmission line, and other appurtenance.

The licensee states that no construction has commenced on the project.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

a. *Type of Application:* Transfer of License.

b. *Project No.:* 9857-007.

c. *Date Filed:* February 14, 1991.

d. *Applicant:* Greenwood Ironworks and Harvell Hydro Associates.

e. *Name of Project:* Harvell Dam.

f. *Location:* On the Appomattox River in Dinwiddie and Chesterfield Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Wayne L. Rogers, 191 Main Street, Annapolis, MD 21401, (301) 268-8820.

i. *FERC Contact:* Charles T. Raabe (tag) (202) 219–2811.

j. *Comment Date:* May 10, 1991.

k. *Description of Transfer:* The Greenwood Ironworks and Harvell Hydro Associates (co-licensees) propose to transfer the Harvell Hydro Associates interests to Greenwood Ironworks.

The license was issued December 1, 1987, and would expire November 30, 2027.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

a. *Type of Filing:* Surrender of License.

b. *Project No.:* 8862-013.

c. *Date Filed:* March 29, 1991.

d. *Applicant:* Nockamixon Hydro Associates.

e. *Name of Project:* Nockamixon.

f. *Location:* On Tohickon Creek in Bucks County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David M. Coombe, suite 408, 410 Severn Avenue, Annapolis, MD 21403.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Comment Date:* May 29, 1991.

k. *Description of Application:* The proposed project would have consisted of: (1) An existing 112-foot-high earth and rockfilled dam owned by the Commonwealth of Pennsylvania; (2) an existing reservoir with a normal water surface area of 1,450 acres, a storage capacity of 40,000 acre-feet at normal water surface elevation of 395 feet m.s.l.; (3) an existing concrete intake tower; (4) two existing 344-foot-long horseshoe shaped concrete conduits; (5) an existing 72-inch-diameter, 344-foot-long steel penstock; (6) a powerhouse containing three generating units with a total rated capacity of 1,480 kW; (7) an existing 800-foot-long tailrace; and (8) a 350-foot-long transmission line.

The applicant states that it is unable to find a power purchaser who is willing to execute a power purchase agreement before the April 5, 1991, construction commencement deadline. No project construction activities have been initiated at the proposed site.

1. This notice also consists of the following standard paragraphs: B and C.

a. *Type of Filing:* Transfer of License.

b. *Project No.:* 8914-009.

c. *Date Filed:* March 25, 1991.

d. *Applicant:* Colorado River Water Conservation District, Water Users Association No. 1, and the Rio Blanco Water Conservancy District.

e. *Name of Project:* Taylor Draw.

f. *Location:* On the White River in Rio Blanco County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, section 30, 16 U.S.C. Section 791(a)–825(r).

h. *Applicant Contact:*

Roland C. Fischer; Colorado River Water Conservation District, P.O. Box 1120, Glenwood Springs, CO 81601, (303) 945-8522.

Michael N. McCarty, Attorney, Ritts, Brickfield & Kaufman, Watergate 600 Building, suite 915, Washington, DC 20037, (202) 342-0800.

Norman Klements, Rio Blanco Water Conservancy District, 2252 East Main Street, Rangely, CO 81648, (303) 675-5055.

i. *FERC Contact:* Hector M. Perez, (202) 219–2843.

j. *Comment Date:* June 3, 1991.

k. *Description of the proposed action:* The applicants propose to transfer the license from the Colorado River Water Conservation District and the Water Users Association #1 (Transferor) to the Rio Blanco Water Conservancy District (Transferee) to localize the ownership and control of the project.

The transfer would not result in any changes to the proposed development, which construction is scheduled to commence by July 1991. The Transferor certifies that it has fully complied with the terms and conditions of the license. The Transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same conditions of the license to the same extent as though it were the original licensee.

1. This notice also consists of the following standard paragraphs: B and C.

a. *Type of Filing:* Conduit Exemption.

b. *Project No.:* 11694-000.

c. *Date Filed:* February 25, 1991.

d. *Applicant:* Calleguas Municipal Water District.

e. *Name of Project:* Springville.

f. *Location:* At the Calleguas Municipal Water District's water distribution system, in Ventura County, California.

g. *Filed Pursuant to:* Federal Power Act, section 30, 16 U.S.C. Section 791(a)–825(r).

h. *Applicant Contact:* James A. Hubert, General Manager, Calleguas Municipal Water District, 2100 Olsen Road, Thousand Oaks, CA 91362, (213) 245–5785.

i. *FERC Contact:* Hector M. Perez, (202) 219–2843.

j. *Comment Date:* May 23, 1991.

k. *Description of Project:* The proposed project would consist of a powerhouse with a 1,000-kilowatt-generating unit at the inflows of the Springville Reservoir. The Springville Reservoir is a buried concrete reservoir also part of the water distribution system. The project would have an average annual generation of 3,658,200 kilowatthour.

l. *Purpose of the project:* Project energy would be sold to Southern California Edison Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11096-000.

c. *Date filed:* March 4, 1991.

d. *Applicant:* Ida-West Energy Company.

e. *Name of Project:* Hollister.

f. *Location:* On Salmon Falls Creek, on lands administered by the Bureau of Land Management, in Twin Falls County, Idaho. Township 13 S Range 15 E.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Application Contact:* Mr. Kip Runyan, Ida-West Energy Company, 333 North 13th Street, Boise ID 83702, (208) 336–4254.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* June 5, 1991.

k. *Description of Project:* The proposed project utilize the Salmon River Canal Company's Salmon Falls Creek reservoir, dam and main canal and would consist of: (1) A gated diversion structure on the main canal; (2) 6-foot-diameter, 9,000-foot-long penstock; (3) a powerhouse containing generating units with a combined capacity of 4,900 kW and an estimated annual generation of 11.4 GWh; (4) a 1-mile-long transmission line; and (5) a 9,000-foot-long access road to the powerhouse.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $46,000.

l. *Purpose of Project:* Project power will be sold to Idaho Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11107-000.

c. *Date filed:* March 14, 1991.

d. *Applicant:* The City of Oswego, New York.

e. *Name of Project:* Norfolk.

f. *Location:* On the Raquette River, in the Town of Norfolk, Norfolk Township, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Application Contact:* Paul V. Nolan, 6219 North 19th Street, Arlington, VA 22205, (703) 534–4409.

i. *FERC Contact:* Charles T. Raabe (202) 219–2811.

j. *Comment Date:* May 22, 1991.

k. *Completing Application:* Project No. 10636-000, *date filed:* August 10, 1988, *due date:* February 28, 1991.

l. *Description of Project:* Applicant proposes to study the feasibility of developing the available head using the river flow amounts excess to the flow utilized by the existing, operating Norfolk Development of the licensed Raquette River Project No. 2330.

It is contemplated that the project will be evaluated for utilization of flows from 1,770 cfs to 2,650 cfs at a hydraulic head of approximately 43 feet. The estimated average annual energy production of such a facility would be from 15 GWH to 25 GWH. The proposed project would include a new powerhouse containing a new generating unit having a rated generator capacity of 3,700 kW, a new intake structure with trashracks and a new 13-foot-diameter, 103-foot-long penstock, or a new 13-foot-diameter bifurcated penstock connected to an existing penstock. Applicant estimates that the cost of studies to be performed under the terms of the permit would be $125,000. The existing dam and existing facilities are licensed to and owned by Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A9, A10, B, C & D2.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11108–000.

c. *Date filed:* March 14, 1991.

d. *Applicant:* The City of Oswego, New York.

e. *Name of Project:* Sugar Island Hydro Project.

f. *Location:* On the Raquette River, in the Town of Potsdam, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Paul V. Nolan, 6219 North 19th Street, Arlington, VA 22205, (703) 534–5509.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* May 29, 1991.

k. *Competing Application:* Project No. 10636-000, *date filed:* August 10, 1988, *due date:* February 28, 1991.

l. *Description of Project:* Applicant proposes to study the feasibility of developing the available head using the river flow amounts excess to the flow utilized by the existing, operating Sugar Island Development of the licensed Middle Raquette River Project No. 2320.

It is contemplated that the project will be evaluated for utilization of flows in the range of 1,190 to 2,650 cfs and have a combined rated capacity of about 6,900 kW at a hydraulic head of approximately 66 feet. The estimated average annual energy production of such a facility would be approximately 20 to 30 GWh. The proposed project would include a new powerhouse containing a new generating unit having a rated generator capacity of 6,900 kW, a new intake structure with trashracks and a new 14-foot-diameter penstock. Applicant estimates that the cost of studies to be performed under the terms of the permit would be $125,000. The existing dam and existing facilities are licensed to and owned by Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C & D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027 (810 1st), at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments—The Commission requests that the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agenc(ies), for the purposes set forth in Section 408 of the Energy Security Act of 1980, file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, state and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 22, 1991, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9895 Filed 4-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-4-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 22, 1991.

Take notice that on April 17, 1991, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff with a proposed effective date of May 1, 1991:

Original Volume No. 1:

Thirty-eighth Revised Sheet No. 10
Thirty-eighth Revised Sheet No. 10A
Nineteenth Revised Sheet No. 11
Ninth Revised Sheet No. 11A
Ninth Revised Sheet No. 11B

First Revised Volume No. 2–A

Sixth Revised Sheet No. 14

Texas Gas states that the proposed tariff sheets are being filed as part of Texas Gas's second Annual Reconciliation of take-or-pay settlement payments contained in original Docket Nos. RP89–119, RP89–208 and RP90–58. Texas Gas notes that the filing makes the appropriate adjustments and restates the Commodity TOP Surcharge to be collected during the third Annual Recovery Period beginning May 1, 1991, and ending April 30, 1992.

Texas Gas further states that it has served copies of this filing upon the company's sales and transportation customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9895 Filed 4-26-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

Ecological Processes and Effects Committee; Ecorisk Assessment Subcommittee; Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Ecorisk Assessment Subcommittee of the Ecological Processes and Effects Committee (EPEC) of the Science Advisory Board (SAB) will be held on May 20-22, 1991. This meeting will be held at the Conference Facility in Calloway Gardens, U.S. Highway 27, Pine Mountain, Georgia 31822-2000.

The meeting will start at 9 a.m. on May 20 and will adjourn no later than 5 p.m. on May 22, and is open to the public. The main purpose of this meeting is to review a five year plan for Ecological Risk Assessment Research that supports the EPA's Offices of Pesticide Programs and Toxic Substances. The research includes plans for field testing and predictive toxicology. EPA is expected to discuss both states of the practice and the science for ecological risk assessment. Copies of background documents are available from Dr. Lee Mulkey at the Athens Laboratory (Phone: (404) 546-3128).

For additional information concerning this meeting or to obtain an agenda, please contact Dr. Edward Bender, Designated Federal Official, Ecological Processes and Effects Committee (EPEC), Science Advisory Board (A-101-F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (Phone: (202) 382-2552; Fax: (202) 475-9693). Anyone wishing to make a presentation at the meeting should forward a written statement to Dr. Bender no later than May 6, 1991. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Seating at the meeting will be on a first come basis.

Dated: April 17, 1991.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 91-10080 Filed 4-26-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

H. Alan Bell Trust II; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than May 20, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. H. Alan Bell Trust II, Manhattan, Kansas; to acquire an additional 18.9 percent of the voting shares of Bellcorp, Inc., Manhattan, Kansas, for a total of 42.7 percent, and thereby indirectly acquire Citizens Bank and Trust Company, Manhattan, Kansas.

Board of Governors of the Federal Reserve System, April 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-10028 Filed 4-26-91; 8:45 am]

BILLING CODE 6210-01-F

Second Mid-America Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 20, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Second Mid-America Bancorp, Inc., Davenport, Iowa; to become a bank holding company by acquiring 86.2 percent of the voting shares of FINB Holding Company, Savanna, Illinois, and thereby indirectly acquire First Illinois National Bank, Savanna, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Sun Financial Corporation, Earth City, Missouri; to acquire 90.34 percent of the voting shares of Summit Bank, Holts Summit, Missouri.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Big Sandy Holding Company, Limon, Colorado; to become a bank holding company by acquiring at least 90 percent of the voting shares of The First National Bank of Limon, Limon, Colorado.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Hillebrand Paradise Ranch Resort, Inc., Grants Pass, Oregon; to become a bank holding company by acquiring 25 percent of the voting shares of Colonial Banking Company, Grants Pass, Oregon.

2. Topdanmark A/S, Ballerup, Denmark; to become a bank holding company by retaining 100 percent of the voting shares of Aktivbanken A/S, Vejle, Denmark, and thereby indirectly acquire National Bank of Long Beach, Long Beach, California.

Board of Governors of the Federal Reserve System, April 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-10027 Filed 4-26-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AOA-91-2]

Fiscal Year 1991 Program Announcement; Availability of Funds and Request for Applications

AGENCY: Administration on Aging, DHHS.

ACTION: Announcement of availability of funds and request for applications to be submitted to the Administration on Aging for the establishment and operation of National Eldercare Institutes to assist and cooperate in a National Eldercare Campaign for older persons at risk.

SUMMARY: The Administration on Aging (AoA) announces that it will make assistance awards available, through cooperative agreements, for the establishment and operation of National Eldercare Institutes, to work in cooperation with a National Eldercare Campaign on behalf of older Americans at risk of losing their self-sufficiency. Funding for awards under this special announcement is authorized by title II and title IV of the Older Americans Act, Public Law 89-73, as amended. A subsequent Program Announcement will be made by AoA for the support of research, demonstration, training, and development projects through its Discretionary Funds Program for Fiscal Year 1991.

This program announcement consists of three parts. Part I provides background information on the National Eldercare Campaign and documents the statutory funding authority for the support by AoA of National Eldercare Institutes. Part II describes the nature, scope, and objectives of the National Eldercare Institutes for which AoA is inviting applications to be considered for funding. Part III describes in detail the application process and provides guidance on how to prepare and submit an application.

All of the forms necessary to submit an application are published as part of this announcement following part III. No separate application kit is necessary for submitting an application. If you have a copy of this announcement, you have all the information and forms required to prepare and submit an application.

Assistance awards, in the form of cooperative agreements, will be made under announcement subject to the availability of funds for the support of these activities.

DATE: The closing date for receipt of applications under this announcement is June 28, 1991.

ADDRESS: Application receipt point: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, Acquisition and Assistance Management Branch, 200 Independence Avenue, SW., room 341-F, Washington, DC 20201, Attn: AoA-91-2.

FOR FURTHER INFORMATION CONTACT: Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, SW., room 4661, Washington, DC 20201, telephone (202) 619-0441.

SUPPLEMENTARY INFORMATION:

Part I Background

A. The National Eldercare Campaign

Demographic trends highlight the growing numbers and importance of our older population, both now and in the future. By the year 2030, one of every four Americans, over 83 million persons, will be 60 years or older and approximately 8 million of them will be age 85 or older. What has been called the graying of America has captured considerable media attention and given rise to widespread concern over future economic, political, and societal trends, especially when the baby-boom generation reaches age 60+ in the early decades of the 21st century.

It is vitally important that we, as a nation, focus on the need to build our capacity to respond to the dramatic increase in our older population today and into the next century. That challenge is heightened by the growing numbers of elderly who are at risk, including those who are physically or mentally impaired; abused, neglected, or exploited; or without a caregiver to assist them when in need. At special risk are those older people who are poor; particularly women, rural Americans, and members of minority groups. For these and other older Americans, the crucial consideration is to function independently at home and in the community as long as possible. Their greatest fear is that, if and when they begin to lose that independence, there will be no one and no place to turn to for help.

The term "eldercare" is gaining broad acceptance as defining the caregiving role our society must play on behalf of older persons. Within that context, the National Eldercare Campaign focuses on care provided older persons at risk through home and community-based services. While most care is provided by family members, friends and neighbors, eldercare can also be made available through formal social and health support systems, religious organizations, fraternal groups, national organizations and corporate benefit programs established to assist employees in carrying out their caregiver roles for at-risk family members.

The Administration on Aging recognizes that much has and is being accomplished through both the informal and formal support systems to care for older persons at risk. Federal, State, and local governments, as well as the private and voluntary sectors, have made progress to expand eldercare services. However, many prominent organizations and individuals have not yet played a role in this effort. More can be done not only to bring non-traditional resources and approaches to bear on the problem, but also to reinforce our family and community-based systems of care.

The Administration on Aging has recently announced the start of a National Eldercare Campaign—a nationwide, multi-year effort to mobilize resources for home and community-based care for older persons at risk of losing their self-sufficiency. The cornerstone of the campaign is a national public awareness strategy. It will be directed toward making all segments of society aware of the implications of an aging society and of the role public, private, and voluntary organizations can play in ensuring the availability and accessibility of home and community-based services for older persons at risk, now and in the future.

The commitment to helping at-risk older persons encompasses both informal and formal support systems, organizations and leaders in the aging constituency as well as organizations with a new-found consciousness of eldercare issues. The eldercare campaign will be aimed at expanding the involvement of a wide variety of agencies and organizations representing government, business, labor, the voluntary, religious, and civic communities. The Administration on Aging will encourage these organizations to: (1) Develop relevant eldercare activities at the national level related to their organization's concerns; and (2) encourage their State and local affiliates to participate in State and local eldercare coalitions aimed at building systems of quality eldercare services in every community.

Because the National Eldercare Campaign is focused on how older persons at risk are served in their homes and in their communities, action at the State and local levels is critical to the success of the Campaign. State and

community eldercare coalitions, in which State and Area Agencies on Aging have a catalytic leadership role, will be called on to demonstrate that the public, private, and voluntary sectors, can be mobilized around an eldercare agenda and cooperate effectively in providing home and community-based services for older persons at risk.

The Administration on Aging is in the process of awarding a number of grants and contracts in conjunction with the National Eldercare Campaign. In accordance with DHHS policy governing the use of contracts and grants, activities which provide direct benefits to the Administration on Aging will be supported through the contract mechanism. Other activities which promote more generally the goals of the National Eldercare Campaign will be supported by grants and cooperative agreements.

B. National Eldercare Institutes

The establishment and operation of special National Eldercare Institutes represents a major commitment by the Administration on Aging to achieve the goals of the National Eldercare Campaign. The Eldercare Institutes should be seen as a valuable component of the National Eldercare Campaign. The Administration on Aging will consider an application for funding only if the applicant provides convincing evidence that it will contribute substantially to achieving the goal of the National Eldercare Campaign.

The Institutes are designed to focus on critical substantive areas closely related to the delivery of eldercare services in the home and in the community. Their roles will be to serve as a knowledge base and program resource, to promote the effective transfer, dissemination, and utilization of relevant information, and to provide needed training and technical assistance. The National Eldercare Institutes, and their functions and activities, are the subject of this AoA program announcement.

In initiating the National Eldercare Campaign, the Administration on Aging is carrying out its leadership and advocacy responsibilities under the Older Americans Act to serve all older persons, with a special focus on those older persons in the greatest economic or social need. Underlying these issues and concerns is the recognition by AoA and the nationwide aging network that we must develop and use our resources to (1) serve the current generation of older Americans more effectively and (2) achieve a long range capacity to respond to the dramatic increases in the older population projected for the coming decades.

In seeking to accomplish these tasks and as part of the Eldercare Campaign, AoA has substantial functional and program authority under titles II and IV of the Older Americans Act to enlist the expertise, and capabilities assistance of special National Eldercare Institutes. The subject area of each Institute is based on its relevance to priority eldercare issues and to the objectives of the National Eldercare Campaign.

C. Coordination With Other Federal Agencies

Under the Older Americans Act, the Administration on Aging functions as a focal point within the Federal government for aging-related concerns. In that capacity, AoA advises the Secretary of Health and Human Services in matters affecting older Americans and provides consultation and information to other Federal agencies on the characteristics, circumstances, and needs of older persons. AoA's national level program and advocacy responsibilities place major emphasis on the development of collaborative relationships with other Federal agencies aimed at coordinating diverse and wide-ranging Federal program resources and linking those resources to the similarly diverse needs of older persons.

Dating back two decades, AoA has worked hard to develop and implement a network of Interagency Agreements with such relevant Federal departments and agencies as the Departments of Transportation, Housing and Urban Development, and Labor, the Social Security Administration, the Health Care Administration, ACTION, and the National Institute on Aging.

Recent examples of AoA initiatives to improve coordination with other Federal efforts include: A Housing initiative with a Memorandum of Understanding (MOU) with the Farmers Home Administration (FmHA) of the Department of Agriculture, the focus of the MOU being to promote the well-being of older persons by providing a coordinated, integrated response to the housing and supportive service needs of older persons, particularly those programs serving the rual and low-income elderly; and an Employment initiative with the Employment and Training Administration (ETA) to facilitate cooperation between the two agencies and to assist States and local communities in improving linkages between human service programs, and to achieve an integrated response to increasing employment and training opportunities for older persons.

During 1990 a joint effort occurred with AoA/ACTION sponsoring a jointly funded, three-year program effort to demonstrate innovative approaches to gain private sector support to expand the number of Senior Companions providing in-home services to homebound vulnerable older persons, and a multi-purpose Transportation initiative, which was designed to improve the coordination of transportation services funded under the Urban Mass Transportation Act of 1964, as amended, and the Older Americans Act which relate to older persons.

AoA has recently established a Federal Interdepartmental Task Force to better identify issues for policy and program coordination and to develop collaborative interdepartmental approaches in preparation for the changing and growing elderly population. The Task Force is comprised of representatives from the Department of Education, Department of Veterans Affairs, Department of Labor, Department of Housing and Urban Development, Department of Transportation, Department of Agriculture, Social Security Administration, Health Care Financing Administration, National Institute of Aging, Family Support Administration, Health Resources and Services Administration, and the Food and Drug Administration. The Task Force established four work groups to address the following areas: Housing, Employment/Volunteers, Health, and In-home and Community-Based Care Services. The work groups have convened meetings to identify and select issues of major concern in the designated subject area, prioritize issues, develop action plans and report recommendations to the Task Force.

The interagency collaborations represent, along with the National Eldercare Campaign, a strategic coupling of AoA's resources to serve the nation's elderly, especially those at risk of losing their independence.

AoA's Federal Interagency Agreements cover a spectrum of program efforts—in housing, transportation, health promotion, elder abuse, etc.—that closely parallel the subject areas of the proposed National Eldercare Institues. In both subject matter and functional terms, the Institutes will serve to complement and augment the gains achieved through interagency cooperations.

The Institutes will also serve as a technical resource in enhancing AoA's ability to play a coordination role in such complex emerging areas as, for example, Federal implementation of the Americans with Disabilities Act (ADA), which will have wide ramifications for housing, transportation, employment, rehabilitative, and other services for the disabled elderly. ADA is expected to be a focus of attention and policy consideration during the next several years and the Institutes could serve as a major resource to AoA in this area.

D. Statutory Authority

The statutory authority under which cooperative agreements will be awarded to support the establishment and operation of National Eldercare Institutes is:

- Title II and title IV of the Older Americans Act, as amended (42 U.S.C. 3001 et seq.).

E. Public Comments on this Announcement

AoA invites comments on this National Eldercare Institute Announcement. Please direct your comments to: Office of Program Development, Administration on Aging, 330 Independence Avenue, SW., Washington, DC 20201.

Part II—National Eldercare Institutes

This part describes: (a) Who is eligible to apply under this program announcement; (b) the Federal share of budget costs and the duration of AoA support for the Institutes; (c) the core functions and activities to be undertaken by each of the institutes; (d) the role of AoA in coordinating and managing the work of the National Eldercare Institutes and; (5) each specific subject or issue area under which AoA expects to support a National Eldercare Institute. A listing of the Institutes, in their order of presentation in this announcement, is provided for the convenience of prospective applicants.

A. Eligible Applicants

In general, any public or nonprofit agency, organization, or institution is eligible to apply under this program announcement. However, in order to merit consideration for a National Eldercare Institute award, an applicant must demonstrate that it has: (1) Extensive knowledge and experience in the relevant subject and program area(s); (2) a track record of substantive achievement in the relevant subject/program area which is nationwide in scope, and; (3) the requisite organizational capability to carry out the activities of an Eldercare Institute on a nationwide scale.

Any nonprofit organization applying under this program announcement that is not a current DHHS grantee should include with its application Internal Revenue Service or other legally recognized documentation of its nonprofit status. A nonprofit applicant cannot be funded without acceptable proof of its status.

Applications from individuals cannot be considered because they are ineligible to receive a grant award under the provisions of title IV of the Older Americans Act. For profit organizations are not eligible applicants, but they may participate as subgrantees or subcontractors to eligible public or nonprofit agencies.

B. Project Costs and Duration

The Federal share of project costs for each Institute is expected to approximate $250,000 for the first year. AoA will assess the performance of the Institute to determine whether further support is warranted. Depending upon the performance of the Institute and/or the availability of funds, the approximate Federal share of project costs may be increased to $300,000 a year for the second and third years. The project period for each Institute is limited to three (3) years. Applicants must indicate that they recognize these limitations and will seek other sources of funding to support the Institute during, as well as beyond, the project period.

C. Core Institute Activities

Each National Eldercare Institute must carry out the following functions and activities of general support for the nationwide Eldercare Campaign, with appropriate emphasis on assisting the work of national, State, and community eldercare coalitions:

1. Knowledge Synthesis and Analysis

The nation's ability to respond effectively, now and in the future, to issues of concern to our older population, particularly the at-risk elderly, will depend significantly on the depth and clarity of public understanding and discussion of those issues. The Eldercare Institute is responsible for (a) synthesizing the state of knowledge in its priority topical area and serving as a knowledge base to participants in the National Eldercare Campaign and others who work on behalf of the aging; (b) advancing our critical understanding of the key eldercare issues relevant to the Institute's subject area; and (c) stimulating debate on a future eldercare agenda based on accurate analysis and models of the changing needs, circumstances, and resources of the older population.

2. Knowledge Transfer and Information Dissemination

The Institute has a major role in transferring knowledge and educating appropriate audiences regarding the implications of eldercare issues in an emerging aging society. In this capacity, the Institute will be: (a) Providing resources key to heightening the national awareness of older persons at risk and to stimulating the growing involvement in the National Eldercare Campaign of aging and non-aging organizations, and; (b) providing timely and practical information for the use of national, State and community eldercare coalitions. Knowledge transfer and information dissemination vehicles to reach the right educational and dissemination vehicles to reach the right audience(s) and on sharing practical, useful information, across the continuum of care for older persons, with aging network agencies, service providers, professionals, and the public.

3. Training and Technical Assistance

Training and technical assistance should be targeted selectively to the agencies and organizations comprising the national, State, and community eldercare coalitions, particularly those organizations with an emerging interest in aging and eldercare issues. The aim should be to equip aging network agencies and other participants in the eldercare campaign with the latest information and approaches to providing care and services for older persons. At the same time, through its interaction with the many eldercare coalitions, the Institute can be expected to gain a fuller understanding of how aging agencies and practitioners perceive the practical issues being faced by older persons and their families.

D. Roles of AoA and the Institutes

The Administration on Aging will have an overall responsibility for coordinating the efforts of the National Eldercare Institutes as well as a particularized responsibility for sharing in the management of each Institute. In its coordinating role, AoA will apprise the Institutes of the status of the National Eldercare Campaign and of Federal executive agency program developments relevant to their areas of interest. AoA will also, with the support of a contractor, coordinate certain logistical and scheduling activities of the Institutes to minimize overlap of effort.

Under the cooperative agreement mechanism, AoA and each Institute will share the responsibility for managing that Institute. The Institute will have the primary responsibility for developing

and implementing the activies of the Institute. AoA will jointly participate with the Institute in such activities as clarifying the specific issues to be addressed by the Institute, through periodic briefings and ongoing consultation—sharing with the Institute its knowledge of the issues being addressed by the Institute as well as information about eldercare activities being undertaken by others, providing feedback to the Institute about the usefulness to the field of its written products and information sharing activities, and participating as much as possible in the deliberations of the Institute's advisory committee. The details of this relationship will be set forth in the cooperative agreement to be developed and signed prior to issuance of the award.

E. Listing of the National Eldercare Institutes

(1) National Eldercare Institute on Long Term Care
(2) National Eldercare Institute on Elder Abuse and State Ombudsman Services
(3) National Eldercare Institute on Older Women
(4) National Eldercare Institute on Multipurpose Senior Centers and Community Focal Points
(5) National Eldercare Institute on Transportation
(6) National Eldercare Institute on Housing and Supportive Services
(7) National Eldercare Institute on Nutrition Services
(8) National Eldercare Institute on Human Resources Development
(9) National Eldercare Institute on Health Promotion
(10) National Eldercare Institute on Income Security
(11) National Eldercare Institute on Employment and Volunteerism
(12) National Eldercare Institute on Business and Aging
(13) National Eldercare Institute on Coalition Building

National Eldercare Institute Subject Areas Descriptions

1. National Eldercare Institute on Long Term Care

With the "aging" of American society, there is a concomitant increase in many chronic, disabling conditions such as heart disease, stroke, arthritis, Alzheimer's Disease and other dementias. Because of physical and mental impairments, millions of older persons are at risk of losing their independence. For these elderly, the need for long term care, especially home and community-based services, continues to grow. These developments and the challenges they raise lend impetus to the establishment of a National Eldercare Institute on Long Term Care.

At the national level, there has been considerable debate on and proposals for long term care reform. There is increasing emphasis on improving coordination of current Federal, State, and local programs. At the State and local levels, efforts have focused on developing more responsive and cost-effective systems of care, with a complementary emphasis on community based approaches. State and Area Agencies on Aging have been in the forefront in improving the access of older persons to a broad array of home and community services.

The proposed National Eldercare Institute on Long Term Care would advance these efforts through a combination of activities: Issue analyses; knowledge transfer and dissemination; training and technical assistance. Institute applicants must demonstate a strong knowledge base and a track record of substantive nationwide achievement in the areas of long term care and eldercare, as well as extensive nationwide experience in working with national, State, and local organizations active in this program area. They should address a full range of issues regarding home and community-based systems of care for at-risk elderly, including the victims of Alzheimer's Disease and their families. Such issues include, but are not limited to:

- Access to home and community-based services;
- Functional assessment and care planning;
- Managing and coordinating multiple programs and funding streams;
- Quality of home and community-based care;
- Linkages between community service agencies and hospitals and residential long term care facilities;
- Public and private collaboration in relation to the delivery of long term care;
- Approaches to financing community based eldercare services; and
- Assuring consumer decision-making and protection.

Applicants also should demonstate cost-effective approaches to implementing the functions of the Institute. Particular attention should be paid to:

- Translating research findings, into useful and pragmatic guides for action by national, State, and community eldercare coalitions in promoting in-home and community services for at-risk elderly;
- Analyzing those factors and key issues that impact on long term care at national, State, and local levels;
- Incorporating best practice information into training and technical assistance materials for use in conjunction with the work of national, State, and community eldercare coalitions;
- Disseminating source materials and pertinent information on long term care program developments to national, State, and community eldercare coalitions and other appropriate audiences; and
- Convening or participating in symposia, seminars, and conferences to transfer knowledge and exchange practical information on home and community-based eldercare services for older persons at risk; such meetings should facilitate the exchange of timely and useful information between the Aging Network and other organizations not traditionally identified as providers of eldercare.

2. National Eldercare Institute on Elder Abuse and State Ombudsman Services

Several recent developments have called attention to the problem of elder abuse, both at home and in institutional settings, and highlighted the need to take action on behalf of those elderly at risk of being exploited, neglected, or abused. These activities include Congressional hearings and reports and activities undertaken by the Department of Health and Human Services. Secretary Sullivan has established a DHHS Elder Abuse Task Force to develop a comprehensive elder abuse strategy that combines public and private resources at national, State, and local levels. As part of that strategy, the Administration on Aging will be expanding its commitment to address elder abuse, neglect, and financial exploitation in both domestic and institutional settings. The establishment of a National Eldercare Institute on Elder Abuse and State Ombudsman Services is an important part of that AoA effort. Accordingly, the proposed Institute will be expected to coordinate its work with the elder abuse strategy developed by the DHHS Task Force.

There is evidence from several quarters of a substantial increase in the number of older persons who are abused, exploited, and neglected, and who constitute a sizeable segment of the older population at risk of losing their self-sufficiency. The Subcommittee on Health and Long Term Care of the U.S. House of Representatives Select Committee on Aging estimated that, in 1989, approximately 1.5 million

Americans were victims of elder abuse in their own homes—an increase of 50% since 1986. The National Aging Resource Center on Elder Abuse estimated in a recent report (entitled "Summaries of National Elder Abuse Data: An Exploratory Study of State Statistics") that there is an annual incidence of 2 million reportable elder abuse incidents in domestic settings.

In 1990, the DHHS Office of the Inspector General released a report entitled "Resident Abuse in Nursing Homes." According to the report: (1) There is widespread abuse in nursing homes; (2) reporting systems for abuse complaints involving nursing home residents are inadequate, and; (3) State and Federal activities to prevent abuse of nursing home residents need strengthening.

Residential long term care facilities or nursing homes provide care to the most chronically ill, to the most physically and mentally impaired elderly. As the number of older persons grows, and especially as the number of "old-old" (those older persons over 85 years in age) increases, the need for institutional care will also increase. Because of their illnesses and impairments, institutionalized elder persons are particularly vulnerable to abuse, neglect, and exploitation.

The ongoing concern about the quality of life and the quality of case of older persons in long term care facilities led to the establishment of the Long Term Care Ombudsman program under Title III of the Older Americans Act. Each State Ombudsman program is responsible for the investigation and resolution of complaints made by or on behalf of residents in long term care facilities, including board and care facilities. These complaints may relate to abuse or neglect or to a variety of other issues which have an effect on the health, safety, welfare, or rights of residents. Recent expansion of title III funding for the Ombudsman program is aimed at addressing complaints of abuse in long term care facilities, including board and care homes.

Ombudsman programs are also responsible for analyzing and monitoring the development and implementation of Federal, State, and local laws, regulations, and policies which affect long term care residents and for providing recommendations for resolving issues related to the care of older persons in long term care facilities.

In order to carry out their many responsibilities, Ombudsman programs must recruit, train, and retain both skilled professional staff and teams of dedicated volunteers. In 1989, nationwide, State Ombudsman programs handled 132,000 complaints (73% in nursing homes, 12% in board and care homes). There were almost 600 Ombudsman programs operating at the local level.

The work of the proposed National Eldercare Institute on Elder Abuse and State Ombudsman Services on behalf of vulnerable older persons will be integrated in and supportive of the National Eldercare Campaign. The Institute is expected to undertake functions and activities that address the problems associated with the maltreatment of older persons, in both domestic and institutional settings. The Institute is also expected to support the development and effective operation of Ombudsman programs across the nation and within each State. Institute applicants must therefore demonstrate a strong knowledge base and a track record of substantive nationwide achievement in the areas of both elder abuse and State Ombudsman program issues, as well as extensive nationwide experience in working with the national, State, and local organizations active in these fields.

Among the elder abuse issues to be addressed by the Institute are the following:

- Increased public awareness of elder abuse and increased willingness of those affected to seek help and outside interventions;
- Improvement of State and community programs to prevent, identify, report, and resolve elder abuse cases through coordinated ombudsman, protective, social, medical, legal, and enforcement services;
- Close scrutiny and analysis of Federal and State program policies, legislation, legislative trends, regulations, and their impacts related to State and local elder abuse programs; and
- Increased understanding of the nature, scope, and causes of domestic elder abuse; the comparative strengths and weaknesses of mandatory versus voluntary State reporting systems; best practices in coordinating and improving methods of preventing, reporting, investigating, and providing follow-up on elder abuse cases; and estimates of the programmatic and financial resources needed in implementing best practices locally and Statewide.

With respect to State Ombudsman Services, the Institute should focus its activities on such areas as the following:

- Examination of trends in State program development, analysis of systems changes needed to improve program effectiveness, and dissemination of information about best practice models;
- Identification and analysis of Federal legislation, such as the Omnibus Budget Reconciliation Act(s), which impact on the role and function of Ombudsman programs;
- Examination of effective models for coordinating Ombudsman programs with such other relevant programs as adult protective services, Title III legal services, licensure agencies, Medicaid fraud investigation units, law enforcement and Area Agencies on Aging;
- Analysis of the correlates/causes of elder abuse in institutional settings such as staff capabilities, physical and financial resources, the presence or lack of a family/informal support network for the resident, and the institution's record of compliance with regulatory standards;
- Strengthening linkages between the Ombudsman program and programs administered by the Health Care Financing Administration; and
- Increasing the professional expertise of Ombudsman personnel by strengthening State training programs.

In responding to these issues, the National Eldercare Institute on Elder Abuse and State Ombudsman Services is expected to carry out the core functions and activities set forth for all Eldercare Institutes. Some specific activities which might be undertaken by the Institute in support of the National Eldercare Campaign include, but are not limited to, the following:

Translation of research findings into useful and pragmatic guides for follow-up action by national, State, and community eldercare coalitions and other appropriate agencies and organizations;

Analysis of those factors and key issues that have an impact on the development of more effective elder abuse programs and State Ombudsman programs;

Development, adaptation, synthesis and dissemination of technical assistance and training materials to meet the specialized needs of different audiences, particularly national, State, and community eldercare coalitions; and

Convening or participating in symposia, seminars, and conferences to transfer knowledge and exchange practical information on preventing elder abuse and improving State Ombudsman programs; such meetings should facilitate the exchange of timely and useful information between the Aging Network and other organizations not traditionally identified as providers of eldercare.

3. National Eldercare Institute on Older Women

The impetus for establishing a National Eldercare Institute on Older Women is based on the urgent need to address the eldercare needs of older women, particularly minority older women. Eldercare is predominantly an older women's issue. Among those older persons at risk—the old-old, the abused, the chronically impaired, the socially isolated, etc.—women comprise the large majority of those in need of eldercare services. The problem, is compounded by the fact that older women make up 71 percent of the elderly poor.

Moreover, those older women with incomes near or below po—overty levels are likely to be minority older women. Because most minority older women live alone, are poorer, unskilled, and have more than one major health pro' 'em, there is a need to focus part. ular attention on the eldercare and related issues–employment, income security, health, etc.—of minority older women.

Older women are the majority of caregivers and thus constitute a critical resource in a nationwide effort to provide quality eldercare services. But that resource is being eroded. The burdens of caring for victims of Alzheimer's Disease and related dementias take a heavy toll. As caretakers, older women run the risk of not just burnout but also of serious physical injury and impairment, the result of having had to take on the heavier duties of caregiving—moving, lifting, and the like—for a disabled spouse or other family member.

Single older women face different but often equally challenging circumstances and prospects. Due to their lack of education or previous work experience, many single older women are underemployed or unemployed. A large number are widows and live alone. One-third rely on social security benefits for at least 90 percent of their income. In addition, Medicare pays a smaller percentage of medical bills for single women. Without spousal support or the benefit of survivor pensions, many older women lack the essential economic, physical and emotional support that can mean the difference between a healthy and rewarding retirement and rapid physical and emotional deterioration.

The proposed National Eldercare Institute on Older Women will have an important role to play in the National Eldercare Campaign. Institute applicants must demonstrate a strong knowledge base and a track record of substantive nationwide achievement in issue areas concerning older women and eldercare programs and services. The applicant must also show it has extensive nationwide experience collaborating with those national, State, and local organizations which have an overlapping interest in combining their work on behalf of older women with an active role in the National Eldercare Campaign. Some of the activities which might be undertaken by the National Eldercare Institute on Older Women include, but are not limited to, the following:

• Examine issues directly related to older women, and work in support of the National Eldercare Campaign, to focus national attention on the critical problems facing older women, particularly low-income minority older women.

• Review the state of knowledge regarding older women's issues with particular attention to minority older women, single older women, and family caregivers; analyze the current and future settings for providing quality eldercare services to older women; prepare cogent and realistic options for consideration by national, State, and community eldercare coalitions in addressing older women's issues, now and in the future.

• Identify model approaches and best practice materials regarding programs and outreach efforts to increase eldercare services responsive to the needs of older women; highlight effective approaches to addressing employment, income security, health, caregiving, and other issues related to older women.

• Incorporate model approaches and best practice information into training and technical assistance materials for use in conjunction with the work of national, State, and community eldercare coalitions.

• Convene symposia, seminars, and conferences to facilitate the exchange of information and ideas on the issues of older women; such meetings should facilitate the exchange of timely and useful information between the Aging Network and other organizations not traditionally identified as providers of eldercare.

4. National Eldercare Institute on Multipurpose Senior Centers and Community Focal Points

While the exact number of senior centers in this country is not known, it is clear they are one of the major providers of community-based services for older persons. For both the well and the at-risk elderly, senior centers are a first line of defense in maintaining their independence. A fully developed multipurpose center will provide congregate meals, social and recreational opportunities, educational activities, health promotion programming, a variety of supportive services and referral to other community resources. A National Eldercare Institute on Multipurpose Senior Centers and Community Focal Points would address the critical roles played by these community organizations in a comprehensive and coordinated system of eldercare services for older persons.

The Older Americans Act calls for Area Agencies on Aging to "designate, where feasible, a focal point for comprehensive delivery in each community to encourage the maximum colocation and coordination of services for older individuals, and give special consideration to designating multipurpose senior centers as such focal points." This provision is reinforced and elaborated in the Title III regulations.

In recent years, AoA has supported this development through training and technical assistance efforts designed to strengthen the capacity of the aging network to develop such focal points. AoA also has implemented an initiative known as the Community Achievement Awards to recognize communities which have made significant progress in developing exemplary systems of services for older persons.

Although much needs to be learned about the development of senior centers and community focal points, a substantial body of knowledge and experience already exists. That base of knowledge and experience can now be augmented by a growing understanding of the importance of non-traditional resources and approaches in providing eldercare services to older persons at risk.

The proposed National Eldercare Institute on Multipurpose Senior Centers and Community Focal Points will play a major role in linking national, State, and community eldercare coalitions to the information they need to integrate senior centers and community focal points into effective community-based eldercare service delivery systems. Institute applicants must demonstrate that they have the requisite knowledge, and the track record of nationwide achievement, to make them well qualified to work effectively with national, State, and community eldercare coalitions. The Institute should address the following major concerns, among others, relative to senior centers and community focal points:

• Increasing their accessibility and responsiveness to the needs of elderly at risk of losing their independence, in particular: those without formal or informal caregiving support systems, low income and minority older persons, the frail, rural elderly, and other vulnerable groups among the older population;

• Increasing the provision of multiple services at each location by broadening the operation to include the nontraditional resources of a variety of organizations with an emerging interest in aging programs and issues;

• Planning and providing the necessary resources for community focal points to serve as the entry point into the service system;

• Adaptation and implementation of senior center standards and assessment procedures;

• Strengthening programs that encourage senior center participants to be public policy advocates on behalf of other seniors;

Through a planned, pro-active approach to issue analysis and information dissemination, the Institute will help States, localities, service providers, and others to improve older persons' access to community-based services. This will be accomplished through a number of methods, including:

• Conducting analyses of the key factors and issues that affect the development, organization, and operation of senior centers and community focal points as priority resources to serve the at-risk older population; translating the results of these analytical studies into useful and pragmatic guides for action by national, State, and community eldercare coalitions in promoting in-home and community services for at-risk elderly;

• Disseminating to national, State, and community eldercare coalitions and other appropriate audiences source materials and pertinent information on developments relevant to multipurpose senior centers and community focal points; and

• Development, adaptation, and synthesis of technical assistance and training materials to meet the specialized needs of national, State, and community eldercare coalitions and other appropriate audiences; and

• Convening or participating in symposia, seminars, and conferences to transfer knowledge and exchange practical information on the roles of senior centers and community focal points; such meetings should facilitate the exchange of timely and useful information between the Aging Network and other organizations not traditionally identified as providers of eldercare.

5. National Eldercare Institute on Transportation

The ability to access such community services as banks, doctors' offices, food stores, pharmacies, and social services is an important factor in determining whether an elderly person can live independently. Access to these services for the at-risk elderly population is often dependent upon the availability of transportation services. Transportation services are also necessary for continued social interaction, recreation, religious purposes and general usefulness. The inability to maintain these activities often diminishes an older person's sense of well-being. By the turn of the century the majority of the elderly will live in low-density communities in either the suburbs or rural areas.

It is important that there be an effective and affordable system of transportation services available to the at-risk elderly population if they are to avail themselves of community-based services. The Administration on Aging will establish a National Eldercare Institute on Transportation, in recognition of the importance transportation plays in making services accessible and maintaining a socially healthy life style for older persons.

The National Eldercare Institute on Transportation will support the goals of the National Eldercare Campaign by helping to ensure that older persons can remain in their own homes for as long as possible. The Institute will attempt to ensure more efficient and effective community-based transportation services for older persons at risk of losing their independence. Institute applicants must demonstrate that they have the requisite knowledge, capability, and track record of substantive nationwide experience to work effectively on transportation issues with the National Eldercare Campaign participants—the Aging Network, professionals in the field of aging, agencies and organizations that traditionally provide transportation services, and organizations not traditionally associated with providing such services to the elderly. Some of the activities which might be undertaken by the Institute include, but are not limited to, the following:

• Conduct analyses of transportation-related policies at national, State, and local levels as those policies may relate to the National Eldercare Campaign and to older persons at risk. Policies to be analyzed may be those of national transportation organizations that have existing relationships with the Aging Network as well as those of organizations not traditionally identified as providers of eldercare services, such as private sector providers of bus and taxi services.

• Develop information on transportation services in areas of major national concern such as how best to target transportation services to elderly populations at greatest risk, particularly older women, older persons who live alone, rural elderly, elderly members of minority groups and the old-old.

• Collect and analyze information and develop transportation management systems that are responsive to the work of national, State, and community coalitions as part of the National Eldercare Campaign and to the coordination of community-based transportation services by State and Area Agencies on Aging and transportation service providers.

• Work with AoA and other organizations to synthesize best practice materials that exemplify the effective provision of community-based transportation services by agencies and organizations that have an interest in the well-being of older Americans. Develop methodologies to assist National and State organizations in the transfer of best practices to their State and local affiliates and to encourage the replication of these best practices.

• Develop training modules and technical assistance materials for persons working at the national, State and local levels in the National Eldercare Campaign. These modules and materials should be designed to improve the provision of community-based transportation services to older persons at risk of losing their independence. The Institute would be expected to identify existing unique and innovative training modules and technical assistance materials developed by State and Area Agencies on Aging, service providers and other sources that can be shared with the participants in the National Eldercare Campaign, the Aging Network and other public and private sector organizations that provide transportation services to older persons at risk.

• Convene and participate in national and regional conferences, seminars, workshops and roundtables on various topics related to providing community-based transportation services to older persons at risk of losing their independence. Meetings should facilitate the exchange of timely and useful information between the Aging Network and other organizations not traditionally identified as providers of eldercare.

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6. National Eldercare Institute on Housing and Supportive Services

A recent housing preference study conducted by the American Association of Retired Persons showed that 86% of older consumers said they wanted to stay in their present homes and never move; this is up from 78% in 1986. Many of those surveyed acknowledged a need for supportive and transportation services to remain independent. These findings are consistent with other studies of elderly housing which have documented the growing problem of the elderly who are staying in their homes, housing complexes and apartment buildings, but lack the necessary supportive services and are at risk of losing their independence.

The expansion of elderly housing options and safer living arrangements can contribute to an elderly person's ability to live independently when linked to an effective system of community based supportive services. Indeed elderly housing options can be seen as a form of supportive service or as enhancing access to supportive services. For example, many elderly homeowners may be cash poor with no means to tap their home equity because there is no home equity conversion program available. Where home equity conversion programs do exist, studies have shown that the elderly use the income to purchase needed services for themselves or to improve their homes to make them safer and more liveable. Many homes owned by the elderly are several decades old and require repair, upgrading, or retrofitting. Lack of funds may prevent needed improvements or modifications to preserve the home's suitability for an elderly person's reduced physical capacity.

Home sharing may be an appropriate solution which provides social support and help with caring for the home. An accessory apartment in a home that is now too large for an elderly owner may provide additional financial support. Echo housing also provides an elderly resident with necessary social and caregiving supports.

Over the past several years AoA has supported a number of initiatives in elderly housing. Our goal has been to expand the availability of affordable housing alternatives, increase the capacity of the aging network to work with other networks and provide public education and information to the elderly and their families to make informed decisions about their housing choices. While much has been accomplished, more needs to be done. Other networks and organizations, not traditionally associated with the problems of the elderly, need to become part of the effort. The demographics of an aging society are such that the traditional organizations and networks cannot do the job alone if we are to effectively meet the challenge in the years ahead. Failure to take action risks the likelihood of increasing numbers of the elderly being institutionalized.

To address this challenge, AoA will support the establishment of a National Eldercare Institute on Housing and Supportive Services. Institute applicants must demonstrate a strong knowledge base and a track record of substantive nationwide achievement regarding housing, supportive services, and related eldercare issues, as well as extensive nationwide experience in working with national, State, and local organizations active in these program areas.

The Institute will work cooperatively with AoA to lend support to the National Eldercare Campaign and to the aging network. One of its primary missions will be to provide a focal point for information about non-traditional approaches to the care of older persons at risk through the integration of supportive services with elderly housing options. The Institute's program should be focused on supporting national, State, and community eldercare coalitions as they promote the development of community based systems of eldercare services for older persons in their State. Some of the activities which might be undertaken by the Institute include, but are not limited to, the following:

• Identifying and analyzing developments which are relevant to the linking of housing and supportive services to the programmatic initiatives of the national, State and community eldercare coalitions.

• Analyzing, synthesizing, and disseminating information on housing and supportive services for older persons at risk and putting such information into formats which are useful to national, State and local eldercare coalitions. Emphasis should be placed on the development of practical products such as a useful instrument or tool; educational, practice and technical assistance materials; or descriptions of non-traditional approaches in operation.

• Providing training, technical information and expertise to States, communities, educational institutions, professionals in the field of housing and supportive services, and others active in national, State, and community eldercare coalitions. Emphasis should be placed on the training of staff from the aging network and other organizations on key practical issues relating to the development of non-traditional approaches to linking housing and supportive services to community-based eldercare systems.

• Convening and participating in national and regional conferences, seminars, workshops and roundtables on various topics related to providing housing and supportive services to older persons at risk of losing their independence. Meetings should facilitate the exchange of timely and useful information between the Aging Network and other organizations not traditionally identified as providers of eldercare.

7. National Eldercare Institute on Nutrition Services

Favorable nutritional status throughout life can increase life expectancy. As people age they experience various nutritional problems and needs that are related to the many environmental, social, economic, and physical factors associated with or related to the process of aging.

To sustain these improvements in the area of nutrition and related services for older Americans in particular, will require more than the traditional efforts of public and private sector agencies active in the field of aging. Many of the at-risk elderly will need assistance with shopping, meal preparation, and eating. Nutrition intervention services, such as congregate and home delivered meals and shopping assistance, all appear to have a positive impact upon the quality of life of the older person. Home delivered meal programs are especially well-suited to respond to the needs of those single older persons who have no informal or formal support system. We face a challenge in developing the resources to maintain these nutrition programs and services for an expanding at-risk older population. Meeting that challenge is the task of the National Eldercare Campaign and the hundreds of participating eldercare coalitions whose success will depend considerably on their developing non-traditional resources and approaches to complement the efforts of the public, voluntary, and private sectors.

Title III (C) of the Older Americans Act recognizes the critical nature of nutrition services. The Elderly Nutrition Program is the largest funded program administered by AoA and provides more units of direct service to America's elderly than any aging program in the country. It is also the program that provides the Aging Network with its largest pool of volunteers.

The National Eldercare Institute on Nutrition will collaborate with AoA to support the National Eldercare Campaign by helping to ensure greater efficiency and effectiveness in the delivery of in-home and community-based nutrition services to older persons at risk of losing their independence. Institute applicants must demonstrate a strong knowledge base and a track record of substantive nationwide achievement regarding nutrition services and related eldercare issues, as well as extensive nationwide experience in working with national, State, and local aging organizations active in this program area. Some of the activities which might be undertaken by the Institute include, but are not limited to, the following:

• Conduct analyses of nutrition related policies of national, State, and local organizations as those policies may relate to the National Eldercare Campaign and to older persons at risk. Policies to be analyzed may be those of national nutrition organizations that have existing relationships with the Aging Network as well as those of organizations not traditionally identified as providers of eldercare services, such as private sector food processors and distributors.

• Develop information on nutrition services in areas of major or national concern such as how best to target nutrition services to elderly populations at greatest risk of malnutrition, particularly older women, older persons who live alone, rural elderly, elderly members of minority groups and the old-old.

• Collect and analyze management information and develop management systems that are fully responsive to the needs of the National Eldercare Campaign and to the provision of in-home and community-based nutrition services by State and Area Agencies on Aging and nutrition service providers.

• Synthesize best practice materials that exemplify the effective provision of in-home and community-based nutrition services by agencies and organizations that have an interest in the nutritional well-being of older Americans. Develop methodologies to assist national and State organizations in the transfer of best practices to their State and local affiliates and to encourage the replication of these best practices.

• Develop training modules and technical assistance materials for persons working at national, State and local levels in the National Eldercare Campaign. These modules and materials should be designed to improve the provision of in-home and community-based nutrition services to older persons at risk of losing their independence. The Institute would be expected to identify existing unique and innovative training modules and technical assistance materials developed by State and Area Agencies on Aging, service providers and other sources that can be shared with the participants in the National Eldercare Campaign, the Aging Network and other public and private sector organizations that provide nutrition services to older persons at risk.

• Develop and convene national and regional conferences, seminars, workshops and roundtables on various topics related to providing in-home and community-based nutrition services to older persons at risk of losing their independence. Meetings should facilitate the exchange of timely and useful information between the Aging Network and other organizations not traditionally identified as providers of eldercare.

8. National Eldercare Institute on Human Resources Development

The increasing number of older persons in our population has correspondingly increased demand for specialized programs and services for both well and at-risk elderly. Responding to this demand, the private sector, Federal, State and local governments, and non-profit agencies and organizations have expanded their operations and created programs to serve older persons. The knowledge, training, and skills of the personnel who manage and administer these aging programs—especially programs of eldercare services to older persons at risk—are among the critical concerns to be considered by a National Eldercare Institute on Human Resources Development. Other key factors which will shape the Institute's agenda are Federal, State and local regulations affecting employment standards and the terms and conditions of employment affecting retention of experienced personnel.

For the past twenty-five years, the Administration on Aging has been one of several Federal agencies investing discretionary funds to support the development of specialized training programs—both in the basic fields that underlie the study of aging and gerontology, and in applied fields and professions that have direct contact with and impact on older persons. During this period, AoA has been a principal source of funding for State and Area Agencies on Aging, and other constituent elements of a national network on aging, which employ a modest but important pool of personnel working on behalf of the elderly.

The investment by AoA and other Federal agencies in education and training programs for persons working in the field of aging, including qualified older persons—as well as Federal health, housing, economic security, social service, and other programs with an elderly clientele—affect the quality and availability of personnel working in these fields. The private profit and non-profit sectors also play major roles as the initiators of innovative and gap-filling programs, as employers, as trainers and educators, and as the developers of personnel practices which meet the minimum standards set by States and the Federal government for their particular sector (housing, health, insurance, transportation, etc.).

Paralleling the broad continuum of care and services for older persons is an equally broad range of issues related to employment and training of persons working with or on behalf of the elderly. The National Eldercare Institute on Human Resources Development must, of course, have the capacity to deal with those broad concerns, but also the knowledge and track record of nationwide experience and achievement to focus effectively on training and personnel issues pertinent to eldercare service programs. The Institute will undertake, but not be limited to, the following functions and activities:

• Serve as a resource to the National Eldercare Campaign by selectively collating and synthesizing best personnel practices and training materials affecting in-service training and continuing education of persons employed in relevant occupations and service areas;

• Provide projections of the type and number of personnel required to respond to the eldercare needs of an aging society; provide analyses of the implications of the Federal and State programs with respect to employment and training in the field of aging, particularly as they relate to the development of personnel better qualified to serve older persons at risk;

• Develop and disseminate a national quarterly calendar of regional and national meetings of organizations that offer institutes, seminars, and symposia in their meetings related to human resources development; dissemination will be to national, State, and community eldercare coalitions, aging network agencies, and all national and regional organizations with interest in these topics;

• Plan and conduct activities at national meetings of academic and training organizations, national aging organizations, professional societies, occupation-based trade associations, and other private sector groups not traditionally involved in aging issues, to

sensitize them to the need for specialized training and employment practices that contribute materially to better eldercare services for older persons; and

• Collaborate with other Institutes in defining and studying issues of employment and training in the field of aging, especially those relevant to the provision of eldercare services to at-risk older persons. Joint efforts may include co-sponsorship of national or regional symposia, conferences, or other training events; and/or co-authership of technical assistance documents and other media materials.

9. National Eldercare Institute on Health Promotion

To encourage the adoption of healthy behaviors by older persons and the reduction of risk for chronic and preventable conditions, the Administration on Aging will support the establishment and operation of a National Eldercare Institute on Health Promotion. One of the main goals of health promotion and disease prevention among older persons is to increase their years of functional independence and their ability to perform the activities of daily living. Another goal is to control some of the health problems of old age through such preventive measures as adequate and appropriate exercise, proper diet, immunization, smoking cessation, cancer screening, cholesterol level testing and blood pressure checks. A growing body of evidence indicates that changing certain health behaviors, even in the later years, can benefit health and improve the quality of life.

Most of the diseases that affect older persons in this country are the so-called "lifestyle diseases," conditions such as diabetes, heart disease, and lung cancer, which are strongly linked to such risk factors as cigarette smoking, poor nutrition, lack of regular exercise, and chronic stress. Some of these lifestyle habits have developed as America has become more sedentary in its work habits at the same time as our living conditions have been altered by mobility, economics, and other factors. Among the aging population, 80% suffer from one or more of these lifestyle diseases and/or other chronic conditions and about half of the elderly are limited in their daily activities.

In the report Healthy People 2000: National Health Promotion and Disease Prevention Objectives, three broad goals are identified: (1) Increase the span of healthy life for Americans; (2) reduce health disparities among Americans; and (3) achieve access to preventive services for all Americans. In the same report, a number of objectives for older persons are discussed. One overall theme is the longer a person lives, the greater the likelihood of increasing functional dependence. Statistics indicate that although people aged 65 and older have an average of 16.4 years of life remaining, they have only an average of 12 years of healthy life remaining. People aged 65 and older constitute a substantial share of all persons who are not able to be independent in physical functioning. Nevertheless, there is increasing evidence that even among frail elderly, improved diet and appropriate exercise can improve a person's functional capacity and reduce some of his need for assistance with activities of daily living.

The National Eldercare Institute on Health Promotion will focus on encouraging older persons to adopt lifestyle habits and risk reduction behaviors which will lead to improved well-being and reduction in the need for eldercare. Although a number of health promotion programs for older persons have been implemented across the country, there is a need for a great many more programs to assist the increasing numbers of older persons in maintaining their well-being and independence as long as possible. It is important to disseminate models of what has worked and why and to collect information about additional programs of which the aging and health networks should be aware. It is also critical to begin to establish standards by which health promotion programs can be evaluated as to their utility for a given population.

The National Eldercare Institute on Health Promotion will be actively involved in these efforts. One goal of the Institute will be to improve the transfer of knowledge about health promotion to appropriate audiences across the country. Information should be made available to national, State, and community eldercare coalitions, national organizations participating in the National Elderly Campaign, State and Area Agencies on Aging, State and local Health Departments, universities with medical schools, nursing schools, and programs in geriatrics and health care, hospitals, nursing homes, senior centers, nutrition sites, and to older persons and their caregivers. Information should be made available about various health promotion strategies for older persons and how to undertake programs to change behaviors, on both a group and individual basis. Information should also be collected and disseminated about opportunities which exist for training, education and research projects in health promotion and aging.

Institute applicants must demonstrate that they have the knowledge, the practical experience, and the track record of nationwide achievement to work effectively with national, State, and community Eldercare Coalitions in addressing the following major concerns:

• Translating research findings into useful and pragmatic guides for action by national, State, and community eldercare coalitions in developing health promotion programs, particularly programs which use non-traditional resources and approaches;

• Incorporating best practice information on health promotion into training and technical assistance materials for use in conjunction with the work of national, State, and community eldercare coalitions;

• Identifying barriers to reaching low income minority populations and the development and implementation of health promotion strategies for overcoming these barriers;

• Disseminating to national, State, and community eldercare coalitions and other appropriate audiences source materials and pertinent information on program developments related to health promotion;

• Establishing linkages with other organizations who are working in this field as well as those organizations which may have an emerging interest in eldercare services and in committing their resources to address the health problems of older persons; and

• Convening or participating in symposia, seminars, and conferences to transfer knowledge and exchange practical information on health promotion programs for older persons; such meetings should facilitate the exchange of useful information between the Aging Network and organizations not traditionally identified with eldercare.

10. National Eldercare Institute on Income Security

Many older Americans anticipate retirement and look forward to this time of their lives. However, a good number of older people cannot afford to leave the world of work, or, if they do, discover that their fixed incomes are not high enough to cover such contingencies as inflation, rising real estate taxes, or a serious illness that results in big medical bills. In 1989 the median income of persons 65 years and older was only $9,578 from all sources. The income levels of one out of every five persons 65 and over are in the "poor" or "near-poor" ranges. Moreover, poverty among the elderly is much more apt to be long term poverty—poverty that is persistent and inescapable.

The risk of being poor is typically two to three times greater for minority elderly; only 10% of elderly Whites are poor, but 31% of elderly Blacks and 21% of elderly Hispanics are poor. In addition to minorities, other at-risk groups include women, for whom poverty levels are significantly higher than they are for men (71% of the elderly poor are women), and older persons living alone or with non-relatives, who comprise 64% of the elderly poor.

In order to address the eldercare needs relating to the income security of older persons at risk, particularly older minorities, women, and people who live alone or with non-relatives, the Administration on Aging proposes to establish a National Eldercare Institute on Income Security. The proposed Institute will address issues that include, but are not limited to: (1) Benefits and entitlement programs, including sub-issues related to eligibility criteria, gaining access, and improved outreach efforts; (2) significant drains on the income of older persons, e.g. health care, long term care, and housing, and ways of meeting these cost burdens; (3) retirement and financial planning and counseling; (4) employment opportunities and re-training programs for older people; and (5) consumer choices, including economical purchasing strategies such as buying in bulk through the use of shopping cooperatives and similar plans, the use of generic drugs, etc.

In responding to these issues, the National Eldercare Institute on Income Security is expected to integrate its efforts with, and be supportive of, the National Eldercare Campaign. Institute applicants must therefore demonstrate that they have the knowledge, capability, and track record of substantive nationwide experience and achievement to work effectively with national, State, and community eldercare coalitions in carrying out the following major activities, among others, relative to promoting income security for older persons at risk:

• Conduct analyses of the key factors and issues relative to income security programs for the at-risk older population; translate study findings and results into useful and pragmatic proposals for action to be considered by individuals and groups who are involved in the National Eldercare Campaign;

• Facilitate the transfer and dissemination of pertinent information on income security to national, State, and community eldercare coalitions and other appropriate audiences;

• Synthesize, adapt, develop and disseminate training materials and technical assistance information to appropriate audiences across the country on the relevant issues—such audiences to include national, State, and community eldercare coalitions, professionals, aging service providers, and the public;

• Convene seminars, symposia and at least one national conference a year; such meetings should be designed so that aging network organizations and other organizations not traditionally identified as providers of eldercare can come together to share information on programs and projects focused on issues of income security for the at-risk older population.

11. National Eldercare Institute on Employment and Volunteerism

The dramatic increase in the number of persons over the age of 60, particularly the "old-old" (those 85+ years old) who are most at risk of losing their self-sufficiency, will require new and innovative approaches to providing eldercare services. The ability to make the best use of human resources, through both volunteerism and paid employment, will be critical to the Nation's ability to meet the challenges of the 21st century.

Many individuals have indicated their interest and commitment to volunteering their time, talents and energy on behalf of older persons and others in their community. In fact, volunteers have been an integral and essential part of Older Americans Act programs since its inception. Volunteers are used in such areas as policy formulation, needs assessment, systems design, advocacy, program administration, and service delivery. The services that volunteers provide are vital to helping older persons live independent, meaningful, and dignified lives in their own homes and communities.

The need for increased numbers of volunteers to serve the elderly will become even more apparent in future years as the increase in our older population, and particularly the old-old further strains limited resources. There are now approximately 450,000 persons, most of them older people, who volunteer in Older Americans Act programs. In order to meet the increasing demand for services, we must maximize our resources and expand existing volunteer efforts by encouraging others to participate.

Currently, our society does not offer adequate employment opportunities for older Americans. Over the next several decades, American workers will witness rapid and remarkable changes in the industrial and occupational structure of their workplace. Our workforce and the very nature of work itself will undergo significant transformations. Older workers will become increasingly important to the success of American industry, not only as a resource for production, but also for the maturity and experience they bring to the workplace.

Studies have indicated that older persons want strongly to remain independent and contributing members of society, whether through volunteer or paid employment opportunities. In order to meet this challenge, the Administration on Aging will support the establishment of a National Eldercare Institute on Employment and Volunteerism. Institute applicants must demonstrate a strong knowledge base and a track record of substantial nationwide achievement with respect to employment and volunteerism issues as they relate to the Eldercare Campaign, as well as extensive nationwide experience in working with national, State, and local organizations active in the program areas of both employment and volunteerism. However, during the first year, the Institute will be expected to concentrate efforts in goal areas related to volunteerism. Thus, the initial activities of the institute will be expected to include, but not be limited to, the following:

• Conduct analyses on the volunteerism policies of national, State, and local organizations as those policies may relate to the National Eldercare Campaign and to older persons at risk. Policies to be analyzed may be those of national and State Organizations that have existing relationships with the Aging Network as well as those of organizations not traditionally identified as providers of volunteer eldercare services. Issues should be analyzed in such areas as the recruitment, training and retention of volunteers for eldercare.

• Synthesize best practice materials that exemplify the effective utilization of volunteers to provide in-home and community-based services to older persons at risk. These best practice materials should include, but not be limited to, volunteer fund raising, monitoring tools, successful models of State approaches to addressing liability insurance for volunteers and other relevant subjects.

• Develop methodologies to assist national and State organizations in the transfer of best practices to their State and local affiliates and to encourage the replication of these best practices.

• Provide support to the National Eldercare Campaign by public education activities that emphasize the opportunities for volunteer participation in programs on behalf of older persons at risk. These efforts would be targeted both at encouraging the public and private sectors to recruit, train and retain older volunteers for eldercare service and encouraging older persons to remain as contributing members of society through volunteer opportunities in eldercare. The Institute should provide assistance aimed as well at strengthening the existing system of volunteerism in Older Americans Act Programs.

• Develop training modules and technical assistance materials for persons working as volunteers and administering volunteer programs at the national, State and local levels in the National Eldercare Campaign. These modules and materials should be designed to improve in-home and community-based volunteer services to older persons at risk. The Institute would also identify innovative training and technical assistance materials that can be shared with participants in the National Eldercare Campaign, the Aging Network and other public and private sector organizations that provide volunteer services to older persons at risk. Specialized training and technical assistance materials should be developed and disseminated in such areas as "state-of-the-art" approaches to recruitment of special cadres of volunteers (e.g. in-home services) and retention of volunteers and fund raising for local volunteers.

• Develop and convene national and regional conferences, seminars, workshops and roundtables on various topics related to the use of volunteers to provide in-home and community-based services to older persons at risk of losing their independence. Such meetings should facilitate the exchange of timely and useful information on volunteerism between the Aging Network and other organizations, including those not traditionally identified as providers of eldercare.

12. National Eldercare Institute on Business and Aging

Building our Nation's capacity to respond to the needs of an increasing older population is a societal issue. The demographic changes expected in the next century dictate the need for new responses. Public resources alone will not meet the needs of the elderly. New approaches involving the public, private and voluntary sectors are needed. Business and industry currently play a major role in the lives of older Americans as employees, retirees and consumers. The need for their involvement will increase along with the growth in America's older population.

Corporate America has traditionally provided financial or in-kind support to assist community efforts on behalf of those in need. Business is now realizing the impact of the changing demographics of the aging population in relation to their workforce and consumer base. For many corporations, the issues of eldercare are not new. These companies have recognized the importance of providing older persons with a wide range of programs such as employment and training opportunities, innovative work options, health promotion resources, retiree programs and benefits, products and services for the older consumer, as well as supportive services for employed caregivers of older persons.

As the 21st century approaches, there is a need for the business community and the national network on aging to work in partnership to develop innovative options to meet the eldercare needs of older persons. The Administration on Aging will establish a National Eldercare Institute on Business and Aging which will be responsible for encouraging and facilitating the interest and commitment of the business community in aging concerns and eldercare programs.

Institute applicants must demonstrate that they have the requisite knowledge, capability, and track record of nationwide experience and achievement to link the private and public sectors, business and aging organizations at all levels, in support of older persons at risk. The institute will be expected to focus its attention in three key areas: (1) Activities to support the National Eldercare Campaign which is designed to improve in-home and community-based services for older persons at risk of losing their independence; (2) activities directed specifically at intensifying the awareness and involvement of the business community in aging issues; and (3) activities in concert with State and community eldercare coalitions directed at improving collaboration between the business community and State and Area Agencies on Aging and other agencies in the aging network.

Some of the activities which might be undertaken by the Institute include, but are not limited to, the following:

• Identify and disseminate for use by the national, State, and local eldercare coalitions, current materials on business and aging issues that affect eldercare such as employment and training, work/family issues, retirement planning, health insurance issues and volunteerism. In addition to responding to requests for information, the Institute will develop public awareness programs to stimulate interest in aging issues and programs by business sector employees and employers.

• Synthesize best practice materials that exemplify effective collaboration between the Aging Network and business to improve in-home and community-based services to older persons at risk. Develop methodologies to assist national and State aging organizations and business in the transfer of these best practices to their State and local affiliates and to encourage the replication of these best practices.

• Develop training modules and technical assistance materials for persons working at the State and local levels on the National Eldercare Campaign. These modules and materials should include approaches and techniques for successful collaboration between the Aging Network and business. The focus of these training and technical assistance materials should include coalition building, methods of contacting business, overcoming barriers to collaboration and development of model partnership agreements. The Institute would be expected to identify existing unique and innovative training modules and technical assistance materials developed by State and Area Agencies on Aging, service providers and other sources that can be shared with the participants in the National Eldercare Campaign, the Aging Network and other public and private sector organizations.

• Develop methods such as a loaned executive program to facilitate the exchange of executives between the National Network on Aging and business.

• Facilitate the exchange of information and ideas on the issues of business and aging through the dissemination of a regular newsletter on business and aging issues and by developing and convening national and regional conferences, seminars, workshops and roundtables on various topics related to facilitating the interest and commitment of business to eldercare. Such meetings should facilitate the exchange of timely and useful information on business and aging issues between the Aging Network and other organizations, including those not traditionally identified as providers of eldercare.

• Develop and conduct an annual awards program to provide special recognition to those businesses which have demonstrated leadership and commitment in developing programs and policies of mutual benefit to business and older Americans. This activity should not only honor businesses that have developed examplary programs, but also help to stimulate comparable initiatives by other business organizations.

13. National Eldercare Institute on Coalition Building

As emphasized in part I, section A of this program announcement, because the National Eldercare Campaign is focused on better serving older persons at risk in their homes and in their communities, action at the State and local levels is critical to its success. State and community eldercare coalitions, in which State and Area Agencies on Aging have a catalytic leadership role, will be called on to demonstrate that the public, private, and voluntary sectors can be mobilized around an eldercare agenda and cooperate effectively in providing home and community-based services for older persons at risk. All of the twelve topical National Eldercare Institutes described above in this announcement will provide subject matter technical assistance, knowledge, and information to the State and community eldercare coalitions. But the coalitions will also require expert support and guidance in the actual techniques and practices of community organization and coalition building, with particular relevance to aging programs, services, and organizations. To meet this objective, the Administration on Aging will fund a National Eldercare Institute on Coalition Building.

The National Eldercare Institute on Coalition Building is a key element of an overall AoA strategy to demonstrate the value of State and local coalition building in: (1) mobilizing local resources to address the service needs of the current generation of older persons at risk and (2) achieving a long range capacity to respond to the significant increases in the older population projected for the coming decades. The central part of that coalition building strategy is the State and Community Eldercare Coalition Building Demonstration Program. Under this nationwide demonstration program, the Administration on Aging will make 2-year project awards to State Agencies on Aging. A portion of the grant award will be set aside for the establishment and implementation of State eldercare coalitions, with the lion's share of the funding support earmarked for the development and operation of up to five (5) community eldercare coalitions in each State.

To realize the full potential of the eldercare coalitions, State and Area Agencies on Aging will be urged to enlist the collaboration of a wide range of public and private organizations and associations in the planning, development, and delivery of eldercare to older persons at risk, with special attention paid to organizations which have traditionally not been involved in addressing the challenges of an aging society. In tandem with its participation in an eldercare coalition, each organization would be expected to educate its own membership regarding the important issues at stake and to adopt an eldercare agenda in support of the coalition's activities. Other recommended steps for the coalitions to consider include: (1) the holding of an Eldercare Forum as a means of capturing public attention, followed up by a sustained public awareness campaign and (2) encouraging the involvement of prominent State and local elected officials to infuse the coalition, and its efforts on behalf of eldercare for older persons at risk, with even greater visibility.

The proposed National Eldercare Institute on Coalition Building would focus its effort on providing technical assistance, training, guidance, information, and other support to the State and community eldercare coalitions. In addition, the Institute would serve to coordinate and facilitate interaction between the other National Eldercare Institutes and the State and community eldercare coalitions. Institute applicants must demonstrate: (1) A solid, practical understanding of the nature and process of coalition building; (2) a track record of substantive nationwide achievement and capability in effectively assisting State and community eldercare coalitions and; (3) extensive nationwide experience in working with the State and local organizations who will comprise the eldercare coalitions. Institute applicants should address a variety of concerns and challenges—planning, developmental, organizational, and operational—that eldercare coalitions are likely to encounter. Additional information on the State and Community Eldercare Coalition Building Demonstration Program is available by contacting AoA at 202/619-0011.

Specific activities to be undertaken by the proposed National Eldercare Institute on Coalition Building include, but are not limited to, the following:

• Providing background information, issue papers, and program analyses on eldercare issues relevant to the work of the eldercare coalitions;

• Developing, adapting, and disseminating training and technical assistance materials to meet the specialized needs of the State and community eldercare coalitions;

• Incorporating model approaches and best practice materials on techniques for building collaboration and cooperation among members of coalitions for use by the State and community eldercare coalitions;

• Working with the other National Eldercare Institutes to help coordinate their activities in support of the State and community eldercare coalitions;

• Organizing regional conferences, as well as an annual national conference, for the purpose of transferring knowledge and exchanging practical information among the leadership of the State and community eldercare coalitions.

Part III. Information and Guidelines for the Application Process and Review

This part contains general information for potential applicants and basic guidelines for submitting applications in response to this announcement. Application forms are provided along with detailed instructions for developing and assembling the application package for submittal. Guidelines on applicant eligibility are provided in part I.

A General Information

1. Review Process and Considerations for Funding

Within the limits of available Federal funds, the Administration on Aging (AoA) makes financial assistance awards consistent with the purposes of this announcement and the statutory authorities contained in the Older Americans Act. The following steps are involved in the review process.

a. *Notification.* All applicants will automatically be notified of the receipt of their application and informed of the identification number assigned to it.

b. *Screening.* To insure that certain minimum standards of equity and fairness have been met, applications that fail to meet the screening criteria contained in section D below will not be reviewed and will receive no further consideration for funding.

c. *Expert Review.* Applications that conform to the requirements of this announcement will be reviewed and scored competitively against the evaluation criteria specified in section F, below, by review panels consisting of qualified persons from outside the Federal government and knowledgeable

non-AoA Federal Government officials. The scores and judgments of these expert reviewers are a major factor in making award decisions.

d. *Other Comments.* AoA solicits comments, as appropriate, from other Federal Departments, State Agencies on Aging, national organizations, interested foundations, and others. These comments are considered by the Commissioner on Aging in making funding decisions.

e. *Other Considerations.* In making funding decisions on National Eldercare Institute awards, AoA will pay particular attention to applications which demonstrate they will support the objectives of the National Eldercare Campaign and focus their efforts on older persons at risk of losing their self-sufficiency.

f. *Other Funding Sources.* AoA reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant.

g. *Decision-Making Process.* After the panel review sessions, applicants may be contacted by AoA staff to furnish additional information. Applicants who are contacted should not assume that funding is guaranteed. An award is official only upon the applicant's receipt of the Financial Assistance Award (Form DGCM 3-785).

h. *Timeframe.* Applicants should be aware that the time interval between the deadline for submission of applications and the award of a grant may be as long as six months. This time is required to review and process grant applications.

2. Notificaiton Under Executive Order 12372

This is not a covered program under Executive Order 12372.

B. Deadline for Submission of Applications

The closing date for submission of applications under this program announcement is June 28, 1991. Applications must be either sent or hand-delivered to the address specified in section D, below.

Hand-delivered applications are accepted during the normal working hours of 9 a.m. to 5:30 p.m., Eastern Time, Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received at the mailing address on or before the deadline date; or

2. Sent before midnight of the deadline date as evidenced by either (1) a U.S. Postal Service receipt or postmark or (2) a receipt from a commercial carrier. The application must also be received in time to be considered under the competitive independent review mandated by Chapter 1-62 of the DHHS Grants Administration Manual. Applicants are strongly advised to obtain proof that the application was sent by the deadline date. If there is a question as to when an application was sent, applicants will be asked to provide proof that they have met the deadline date. Private metered postmarks are not acceptable as proof of a timely submittal.

Applications which do not meet the above deadline are considered late applications. The Acquisition and Assistance Management Branch will notify each late applicant that its application will not be considered in the current competition.

AoA may extend the deadline for all applicants because of acts of God, such as floods, hurricanes or earthquakes, when there is widespread disruption of the mail or when AoA determines an extension to be in the best interest of the government. However, if AoA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant(s).

C. Grantee Share of Project Costs

AoA does not make grant awards for the entire project cost. Successful applicants must, at a minimum, contribute one (1) dollar, secured from non-Federal sources, for every three (3) dollars received in Federal funding. The non-Federal share amounts to at least 25% of the entire project cost.

The one exception to this cost sharing formula is for applications originating from the territories of American Samoa, Guam, the Virgin Islands or the Northern Mariana Islands. Applicants from these territories are covered by Section 501(d) of Public Law 95-134, as amended, which requires the Department to waive "any requirement for local matching funds under $200,000" for these territories.

The non-Federal share of total project costs may be in the form of grantee-incurred direct or indirect costs, third party in-kind contributions, and grant related income. If the required non-Federal share is not met by a funded project. AoA will disallow any unmatched Federal dollars. A common error to be avoided is to match 25% of the Federal share rather than 25% of the entire project cost. Applicants should be sure that they have met the match requirements before submitting their budgets.

D. Application Screening Requirements

All applications will be screened to determine completeness and conformity to the requirements of this announcement. These screening requirements are intended to assure a level playing field for all applicants. Applications which fail to meet one or more of the criteria described below will not be reviewed and will receive no further consideration for funding. Complete, conforming applications will be reviewed and scored competitively.

To be reviewed, the application must meet the following screening requirements:

1. The application must not exceed sixty (60) pages, double-spaced, exclusive of certain required forms and assurances which are listed below. Applications whose typescript is single-spaced or space-and-a-half will be reviewed only if it is determined the applicant has not thereby gained a competitive advantage.

Certain documents are excluded from the 60 page limitation: (1) Standard Forms (SF) 424, 424A (including the budget justification) and 424B; (2) the certification forms regarding (a) lobbying, (b) debarment, suspension, and other responsibility matters, and (c) drug-free workplace requirements; (3) proof of non-profit status, and; (4) indirect cost agreements.

To conform to the sixty (60) page limitation, the following guidelines are suggested:

—Summary description (one page);
—Narrative (approximately forty pages);
—Applicant's capability statement (including an organization chart) and vitae for key Institute personnel (approximately twelve to fifteen pages) and;
—Letters of commitment and cooperation (approximately four to seven pages).

2. Applications must be postmarked by midnight, June 28, 1991 or hand-delivered by 5:30 p.m., Eastern Time, June 28, 1991 to the following address: Department of Health and Human Services, Grants and Contracts Management Division, Acquisition and Assistance Management Branch, 200 Independence Avenue, SW., room 341-F, Washington, DC 20201, Attn: AoA-91-2.

Under no circumstances will applications that do not meet these screening requirements be assigned to reviewers.

E. Indirect Costs

Indirect costs generally may be requested only if the applicant has a negotiated indirect cost rate with the Department's Division of Cost Allocation or with another Federal agency.

F. Evaluation Criteria

Applications which pass the screening will be evaluated by an independent review panel of at least three individuals. These reviewers will be primarily experts from outside the Federal government. Based on the specific programmatic considerations set forth in the description of each Institute under which an application has been submitted, the reviewers will comment on and score the applications, focusing their comments and scoring decisions on the criteria below.

1. Objectives and Need for Assistance: 25 points.

a. Does the application pinpoint relevant economic, societal, institutional, and related issues and problems to be addressed by the Institute?

b. Is the need for the proposed Institute clearly demonstrated and supported by documentation? Does the applicant provide convincing evidence that it will contribute substantially to achieving the program objectives of the National Eldercare Campaign.

c. Are the principal and subordinate objectives, functions, and activities of the Institute clearly stated, justified, innovative, and relevant to the issue/problem area?

d. Does the application include relevant data based on previous planning and policy studies in providing a thorough discussion of the current state of knowledge relevant to the proposed Institute?

2. Results or Benefits Expected: 25 points.

a. Are the expected benefits and/or results clearly identified, realistic, and consistent with the objectives and functions of the proposed Institute? Are important anticipated contributions to policy, practice, theory and/or research clearly indicated?

b. Does the application clearly indicate how the expected results will be of direct and tangible benefit to older people? Does the application describe how its products will be disseminated to and utilized by appropriate, well-chosen audiences?

3. Approach: 25 points.

a. Does the application provide a sound and workable plan of action for the proposed Institute and detail how the proposed work will be accomplished?

b. Are persuasive reasons offered for the Institute taking the proposed approach as opposed to others? Does the application clearly explain the methodology for determining if the Institute has achieved the expected results and benefits?

c. Does the proposed work/task schedule offer a logical and realistic projection of accomplishments to be achieved? Is a time-line chart or its equivalent employed to show Institute activities in chronological order and indicate the target dates for the projected accomplishments?

d. Has the application clearly identified the kinds of data to be collected and analyzed, and discussed the criteria to be used in evaluating the success of the Institute?

e. Has the applicant identified and secured the commitment of the key cooperating organizations, groups, and individuals who will work with the Institute and provided an adequate description of the nature of their participation?

4. Level of Effort: 25 points.

a. Does the applicant demonstrate that it has a track record of solid nationwide achievement as well as the requisite knowledge, experience, leadership, and staff resources to carry out the functions and activities of the proposed Institute effectively and efficiently?

b. Are the key staff well qualified to carry out the work of the Institute? Are consultants and advisors used appropriately?

c. Does the budget justification adequately describe the requisite resources for conducting the work of the proposed Institute? Is the budget reasonable in terms of the intended results?

G. The Components of an Application

To expedite the processing of applications, we request that you arrange the components of your application, the original and two copies, in the following order:

- SF 424, Application for Federal Assistance; SF 424A, Budget together with your budget justification; SF 424B (Assurances); and the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements. *Note:* The original copy of the application must have an original signature in item 18d on the SF 424;
- Proof of nonprofit status, as necessary;
- A copy of the applicant's indirect cost agreement, as necessary;
- Institute summary description;
- Program narrative;
- Organizational capability statement and vitae;
- Letter of Commitment and Cooperation.
- A copy of the Check List of Application Requirements (See Section K, below) with all the completed items checked.

The original and each copy of the application should be stapled securely (front and back if necessary) in the upper left corner. Pages should be sequentially numbered. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials such as agency promotion brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

H. Communications with AoA

Do not include a self-addressed, stamped acknowledgment card. All applicants will automatically be notified of the receipt of their application and informed of the identification number assigned to it. This number and the priority area should be referred to in all subsequent communication with AoA concerning the application. If acknowledgment is not received within seven weeks after the deadline date, please notify the Acquisition and Assistance Management Branch by telephone at (202) 245-0018.

After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number for quick retrieval. It will not be possible for AoA staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given.

Applicants are advised that, prior to reaching a decision, AoA will not release information relative to an application other than that it has been received and that it is being reviewed. Unnecessary inquiries delay the process. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.

I. Background Information and Guidance for Preparing the Application

In the Program Narrative of the application (see section J below), applicants are expected to demonstrate familiarity with recent and ongoing activity related to their Institute proposal. With respect to AoA-supported discretionary grant projects, information on Current AoA Projects may be obtained by contacting the Office of Program Development at 202/691-0441. Regarding Completed AoA Projects, copies of all AoA discretionary grant final reports and printed materials

are sent to: the National Technical Information Service (NTIS), an abstract clearinghouse and document source for Federally sponsored reports; AgeLine, a bibliographic database service sponsored by the AARP; and the U.S. Government Printing Office Library Program, a catalog and microfiche service for 1400 depository libraries located throughout the United States.

Information concerning access to the bibliographic and document referral services provided by these clearinghouses can be obtained through most public and academic libraries. For direct information use the following addresses and telephone numbers:

National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22151, (703) 487-4600.

AgeLine Database, BRS Customer Services, 1200 Route 7, Latham, NY 12110, (800) 345-4277.

Acquisition Unit, Library Programs Service, U.S. Government Printing Office, North Capital and H Streets, NW., Washington, DC 20401, (202) 275-1070.

J. Completing the Application

In completing the application, please recognize that the set of standardized forms and instructions prescribed by OMB is not perfectly adaptable to the particulars of this AoA Program Announcement. Wherever possible, we have attempted to iron out discrepancies. If you encounter a problem, please call (202) 619-0441 for assistance.

Forms SF 424, SF 424A, SF 424B, and the certification forms (regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements) have been reprinted as part of this **Federal Register** announcement for your convenience in preparing the application. Single-sided copies of all required forms must be used for submitting your application. You should reproduce single-sided copies from the preprinted form and type your application on the copies. Please do not use forms directly from the **Federal Register** announcement as they are printed on both sides of the page.

To assist applicants in completing Forms SF 424 and SF 424A correctly, samples of these forms have been provided as part of this announcement. These samples are to be used as a guide only. Please submit your application on the blank copies. When specific information is not required under this program, N/A (not applicable) has been preprinted on the form.

Please prepare your application in accordance with the following instructions:

1. SF 424, Cover Page

Complete only the items specified in the following instructions:

Item 1. Preprinted on the form.

Item 2. Fill in the date you submitted the application. Leave the applicant identifier box blank.

Item 3. Not applicable.

Item 4. Leave blank.

Item 5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, applicant address, and name and telephone number of the person to contact on matters related to this application.

Item 6. Enter the employer identification number (EIN) of the applicant organization as assigned by the Internal Revenue Service. Please include the suffix to the EIN, if known.

Item 7. Enter the appropriate letter in the space provided.

Item 8. Preprinted on form.

Item 9. Preprinted on form.

Item 10. Preprinted on form.

Item 11. Enter the title of the proposed Institute.

Item 12. Not applicable.

Item 13. Enter the desired start date for the project, beginning no later than September 30, 1991, and the desired end date for the project.

Item 14. List the applicant's Congressional District and the District(s), if any, directly affected by the program of the Institute.

Item 15. All budget information entered under item 15 should cover only the first twelve months of the project period. The applicant should show the Federal grant support requested under sub-item 15a. Sub-items 15b-15e are considered cost-sharing or "matching funds". The value of third party in-kind contributions should be entered in sub-items 15c-15e, as applicable. It is important that the dollar amounts entered in sub-items 15b-15e total at least 25 percent of the total project (total project cost is equal to the requested Federal funds plus funds from non-Federal sources).

Check: Does all information entered in Items 15a to 15f cover only the first twelve months of the proposed project period, not the total costs for the entire project period?

Item 16. Preprinted on form.

Item 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

Item 18. To be signed by an authorized representative of the applicant organization. A document attesting to that sign-off authority must be on file in the applicant's office.

2. SF 424A—Budget Information

This form is designed to apply for funding under more than one grant program; thus, for purposes of this AoA program, most of the budget item blocks are superfluous and have been marked not applicable (N.A.). The applicant should consider and respond to only the budget items for which guidance is provided below. Sections A, B, and C should include the Federal as well as non-Federal funding for only the first year of the project period.

Section A—Budget Summary

This section includes a summary of the budget. On line 5, enter total Federal Costs in column (e) and total Non-Federal Costs (including third party in-kind contributions but not program income) in column (f). Enter the total of columns (e) and (f) in column (g).

Section B—Budget Categories

Under column (5) enter the total requirements for funds (both Federal and non-Federal) by object class category.

A separate budget justification should be included to fully explain and justify major items, as indicated below. The budget justification should not exceed four typed pages and should immediately follow SF 424A.

Line 6a—Personnel: Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included under 6h—Other.

Justification: Identify the Institute Director(s) and other key personnel. Specify the key staff, their titles, and time commitments in the budget justification.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Line 6c—Travel: Enter total costs of out-of-town travel (travel requiring per diem) for staff of the Institute. Do not enter costs for consultant's travel or local transportation.

Justification: Include the total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. For all other grantees, the threshold for equipment if $500 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified as necessary for the conduct of the Institute. The equipment, or a reasonable facsimile, must not be otherwise available to the applicant organization or its sub-grantees. The justification also must contain plans for the use or disposal of the equipment after the project ends.

Line 6e—Supplies: Enter the total costs of all tangible expendable personal property (supplies) other than those included on line 6d.

Line 6f—Contractual: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

Justification: Attach a list of contractors indicating the name of the organization, the purpose of the contract, and the estimated dollar amount. If the name of the contractor, scope of work, and estimated costs are not available or have not been negotiated, indicate when this information will be available. Whenever the applicant/grantee intends to delegate all or part of the project work to another agency, the applicant/grantee must provide a completed copy of Section B, Budget Categories for each contractor, along with supporting information.

Line 6g—Construction: Leave blank since new construction is not allowable and Federal funds are rarely used for either renovation or repair.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to: insurance, medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs; and staff development costs.

Line 6i—Total Direct Charges: Show the totals of Lines 6a through 6h.

Line 6j—Indirect Charges: Enter the total amount of indirect charges (costs), if any. If no indirect costs are requested, enter "none." Indirect charges may be requested if: (1) The applicant has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency; or (2) the applicant is a State or local government agency. If the applicant does not have an negotiated indirect cost rate agreement, the applicant may request it in accordance with Department of Health and Human Services procedures.

Applicants other than State and local governments are requested to enclose a copy of this agreement. Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When indirect charges are requested, these costs are included in the indirect cost pool only and should not be also charged as direct costs to the grant.

Line 6k—Total: Enter the total amounts of Lines 6i and 6j.

Line 7—Program Income: Estimate the amount of income, if any, expected to be generated from this project. Describe the source and expected use of income in the Level of Effort section of the Program Narrative.

Section C—Non-Federal Resources

Line 12—Totals: Enter amounts of non-Federal resources that will be used in carrying out the proposed project. If third-party in-kind contributions are included, provide a brief explanation in the budget justification section.

Section D—Forecasted Cash Needs

Not applicable.

Section E—Budget Estimate Federal Funds Needed for Balance of the Project

Line 20—Totals: Enter the estimated required *Federal* funds (exclude estimates of the amount of cost sharing) for the period covering months 13 through 24 under column "(b) First;" and for months 25 through 36 under "(c) Second."

Section F—Other Budget Information

Line 21—Direct Charges: Not applicable

Line 22—Indirect Charges: Enter the type of indirect rate (provisional, predetermined, final or fixed) to be in effect during the funding period, the base to which the rate is applied, and the total indirect costs.

Line 23—Remarks: Provide any other explanations or comments deemed necessary.

3. SF 424B—Assurances

SF 424B, Assurances—Non-Construction Programs, contains assurances required of applicants under Older Americans Act programs. Please note that a duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances.

With the possible exception of an Assurance of Protection of Human Subjects, no other assurances are required. For research components of the Institute's proposed activities, in which human subjects may be at risk, an Assurance of Protection of Human Subjects may be needed. If there is a question regarding the applicability of this assurance, contact the Office of Research Risks of the National Institutes of Health at (301) 496-7041.

4. Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (c) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

5. Summary Description of the Proposed Institute

On a separate page, provide an Institute summary description headed by two identifers: (1) The name of the applicant organization as shown in SF 424, item 5 and (2) the title of the proposed Institute as shown in SF 424, item 11. Please limit the summary description to a maximum of 1,200 characters, including words, spaces and punctuation.

The description should be specific and succinct. It should outline the objectives of the Institute, the approaches to be used, and the outcomes expected. The Institute summary description, together with the information on the SF 424, comprise and "abstract" which is entered into AoA's computer data base. The summary description provides the reviewer with an introduction to the substantive parts of the application. Therefore, care should be taken to produce a summary which accurately and concisely reflects the functions and activities of the proposed Institute.

6. Program Narrative

The Program Narrative is the most important part of the application. It should be clear, concise, and pertinent to the functions, activities, and issue areas of the particular Institute under

which the application is being submitted. In describing the proposed Institute, make certain that you respond fully to the evaluation criteria set forth in Section F above. The format of the narrative should, in fact, parallel the criteria, beginning with a discussion of (a) the Institute's objectives and the need for assistance; leading to an account of (b) the results/benefits the Institute expects to accomplish; followed by a detailed explanation of (c) the approach(es) the Institute would take to achieve its objectives; and ending with (d) the level of effort the Institute would undertake, in terms of staff, funding, and other resources.

Please have the narrative typed on one side of 8½" x 11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) should be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. (Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement).

The narrative should conclude by identifying the author(s) of the proposal, their relationship with the applicant, and the role they will play, if any, should the project be funded.

7. Organizational Capability Statement and Vitae for Key Institute Personnel

An organizational capability statement should be included. The statement should describe how the applicant agency, or the designated organizational unit, is organized, the nature and scope of its work, and its capabilities relevant to the proposed work of the Institute. This description should cover capabilities of the applicant not included in the program narrative. It may include descriptions of any current or previous relevant experience and describe the competence of the proposed Institute personnel. An organization chart showing the relationships between the Institute and the applicant organization should be included.

Vitae should be included for key Institute staff only.

K. Checklist for a Complete Application

The checklist below should be typed on 8½" x 11" plain white paper, completed and included in your application package. It is for use in ensuring proper preparation of your application.

Checklist

I have checked my application package to ensure that it includes or is in accord with the following:

____ One original application plus two copies, each stapled securely (no folders or binders) with the SF 424 as the first page of each copy of the application;
____ SF 424; SF 424A—Budget Information (and accompanying budget justification); SF 424B—Assurances; and Certifications;
____ SF 424 has been completed according to the instructions, signed and dated by an authorized official (item 18);
____ As necessary, a copy of the current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency;
____ Proof of nonprofit status, as necessary;
____ Summary description;
____ Program narrative;
____ Organizational capability statement;
____ Vitae for key personnel;
____ Letters of commitment and cooperation, as appropriate.

L. Points to Remember

1. There is a sixty (60) double-spaced page limitation for the substantive parts of the application. Before submitting your application, please check that you have adhered to this requirement which is spelled out in Section D.

2. You are required to send an original and two copies of an application.

3. The summary description (1,200 characters or less) should accurately reflect the nature and scope of the proposed Institute.

4. To meet the cost-sharing requirement (see section C above), you must, at a minimum, match $1 for every $3 requested in Federal funding to reach the threshold of 25% of total project costs (the Federal share plus the non-Federal share of the Institute's cost). For example, if your request for Federal funds is $250,000, then the required minimum match or cost sharing is $83,333. The total project cost is $333,333, of which your $83,333 share is 25%.

5. In following the required format for preparing the program narrative, make certain that you have responded fully to the four (4) evaluative criteria which will be used by reviewers to evaluate and score all applications.

6. Do *not* include letters which endorse the proposed Institute in general and perfunctory terms. In contrast, letters which describe and verify tangible commitments to the Institute, e.g., funds, staff, space, should be included.

7. If more than one application is submitted, each should be submitted under separate cover.

8. Before submitting the application, have someone other than the author(s): (1) apply the screening requirements to make sure you are in compliance; and (2) carry out a trial run review based upon the evaluative criteria. Take the opportunity to consider the results of the trial run and then make whatever changes you deem appropriate.

9. Applications must be mailed by midnight, or hand delivered (by 5:30 p.m., eastern time), no later than June 28, 1991 to: Department of Health and Human Services, Grants and Contracts Management Division, Acquisition and Assistance Management Branch, 200 Independence Avenue, SW., room 341–F, Washington, DC 20201, Attn: AoA–91–2.

Joyce T. Berry,

U.S. Commissioner on Aging, Administration on Aging.

BILLING CODE 4130-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier: Not Applicable (N/A)
	3. DATE RECEIVED BY STATE: N/A	State Application Identifier: N/A
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY: Administration on Aging

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 9 3 . 6 6 8
TITLE: Special Programs for the Aging-Title IV

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE_____
b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. N.A.	N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
2. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
3. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
4. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
5. TOTALS	13.668	$ N.A.	$ N.A.	$	$	$

SECTION B – BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$
b. Fringe Benefits	N.A.	N.A.	N.A.	N.A.	
c. Travel	N.A.	N.A.	N.A.	N.A.	
d. Equipment	N.A.	N.A.	N.A.	N.A.	
e. Supplies	N.A.	N.A.	N.A.	N.A.	
f. Contractual	N.A.	N.A.	N.A.	N.A.	
g. Construction	N.A.	N.A.	N.A.	N.A.	N.A.
h. Other	N.A.	N.A.	N.A.	N.A.	
i. Total Direct Charges (sum of 6a - 6h)	N.A.	N.A.	N.A.	N.A.	
j. Indirect Charges	N.A.	N.A.	N.A.	N.A.	
k. TOTALS (sum of 6i and 6j)	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$
7. Program Income	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8. N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
9. N.A.	N.A.	N.A.	N.A.	N.A.
10. N.A.	N.A.	N.A.	N.A.	N.A.
11. N.A.	N.A.	N.A.	N.A.	N.A.
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
14. Non-Federal	N.A.	N.A.	N.A.	N.A.	N.A.
15. TOTAL (sum of lines 13 and 14)	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16. N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
17. N.A.	N.A.	N.A.	N.A.	N.A.
18. N.A.	N.A.	N.A.	N.A.	N.A.
19. N.A.	N.A.	N.A.	N.A.	N.A.
20. TOTALS (sum of lines 16-19)	$	$	$ N.A.	$ N.A.

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges: N.A.	22. Indirect Charges:
23. Remarks	

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APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED: April 29, 1991	Applicant Identifier: Not Applicable (N/A)
3. DATE RECEIVED BY STATE: N/A	State Application Identifier: N/A
4. DATE RECEIVED BY FEDERAL AGENCY:	Federal Identifier:

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: XYZ Organization

Organizational Unit: Division on Aging

Address (give city, county, state, and zip code):
1234 Smith Street
Jonesburg, Iowa 54321

Name and telephone number of the person to be contacted on matters involving this application (give area code):
Jane Doe
(234) 567-8901

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 9 8 — 7 6 5 4 3 2 1

7. TYPE OF APPLICANT: (enter appropriate letter in box) N
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify):

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:
Administration on Aging

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 9 3 . 6 6 8
TITLE: Special Programs for the Aging-Title IV

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
National Eldercare Institute on ...

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):
N/A

13. PROPOSED PROJECT:
Start Date: 09/01/91
Ending Date: 08/31/94

14. CONGRESSIONAL DISTRICTS OF:
a. Applicant: 3
b. Project: 1-7

15. ESTIMATED FUNDING:

a. Federal	$ 250,000	.00
b. Applicant	$ 83,333	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$ 333,333	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☒ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative: Richard Roe	b. Title: Executive Director	c. Telephone number: (444) 555-6666
d. Signature of Authorized Representative:		e. Date Signed: 04/28/91

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OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. N.A.	N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
2. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
3. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
4. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
5. TOTALS	93.668	$ N.A.	$ N.A.	$ 250,000	$ 83,333	$ 333,333

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ 200,000
b. Fringe Benefits	N.A.	N.A.	N.A.	N.A.	30,000
c. Travel	N.A.	N.A.	N.A.	N.A.	10,000
d. Equipment	N.A.	N.A.	N.A.	N.A.	5,000
e. Supplies	N.A.	N.A.	N.A.	N.A.	3,333
f. Contractual	N.A.	N.A.	N.A.	N.A.	15,000
g. Construction	N.A.	N.A.	N.A.	N.A.	N.A.
h. Other	N.A.	N.A.	N.A.	N.A.	30,000
i. Total Direct Charges (sum of 6a - 6h)	N.A.	N.A.	N.A.	N.A.	293,333
j. Indirect Charges	N.A.	N.A.	N.A.	N.A.	40,000
k. TOTALS (sum of 6i and 6j)	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ 333,333
7. Program Income	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$

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SECTION C - NON-FEDERAL RESOURCES

	(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
9.	N.A.	N.A.	N.A.	N.A.	N.A.
10.	N.A.	N.A.	N.A.	N.A.	N.A.
11.	N.A.	N.A.	N.A.	N.A.	N.A.
12.	TOTALS (sum of lines 8 and 11)	$ 83,333	$	$	$ 83,333

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
14. Nonfederal	N.A.	N.A.	N.A.	N.A.	N.A.
15. TOTAL (sum of lines 13 and 14)	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

	(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
		(b) First	(c) Second	(d) Third	(e) Fourth
16.	N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
17.	N.A.	N.A.	N.A.	N.A.	N.A.
18.	N.A.	N.A.	N.A.	N.A.	N.A.
19.	N.A.	N.A.	N.A.	N.A.	N.A.
20.	TOTALS (sum of lines 16-19)	$ 300,000	$ 300,000	$ N.A.	$ N.A.

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges: N.A.	22. Indirect Charges:

23. Remarks

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Organization

_____

Authorized Signature Title Date

NOTE: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State of local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services(HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction. " provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions
(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(Continued on reverse side of this sheet)

HHS—Certification Regarding Drug-Free Workplace Requirements—continued from reverse page

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) _____

_____

Check ___ *if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Signature _____ **Date:** _____

Title _____

Organization _____

DGMO Form#1 Revised May 1990

[FR Doc. 91-[illegible] Filed 4-[illegible]; 8:45 am]
BILLING CODE 4150-04-C

Alcohol, Drug Abuse, and Mental Health Administration

Grant to the National Coalition for the Mentally Ill in the Criminal Justice System

OFFICE: Office for Treatment Improvement, National Institute of Mental Health, National Institute on Drug Abuse, HHS.

ACTION: Grant to support national activities concerning the mentally ill in the criminal justice systems.

SUMMARY: This notice is to provide information to the public concerning a planned grant from the Office for Treatment Improvement/ADAMHA to the National Coalition for the Mentally Ill in the Criminal Justice System (National Coalition). This is not a formal request for applications. Assistance will be provided only to the National Coalition.

Authority: The grant will be made under authority of section 301 of the Public Health Service Act, as amended, 42 U.S.C. 241. This grant is the appropriate mechanism to fund this activity since it is our intent to provide support for a public purpose and agency involvement in the actual conduct of the activity is not required. The grant is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Findings: Previous research shows that mentally ill offenders show a high degree of comorbidity (combined mental health and substance abuse disorders). One of the critical issues to be dealt with in this project is the screening and diagnosis of this comorbid population in correctional settings. Because of the comorbidity issue, funding is being provided by three ADAMHA components.

This grant will fund two distinct activities:

(1) A national Work Session on Mental Illness in the Juvenile Justice System, to be attended by 50 representatives of national organizations, experts, and practitioners representing a variety of disciplines—juvenile corrections, juvenile court judges, adolescent treatment providers, legislative leaders, and Federal agencies involved in mental health, juvenile justice, and drug treatment; and

(2) A national capacity building project to provide information packages and technical assistance to the states on topics related to the mentally ill in the criminal justice system.

Reasons for Selecting the National Coalition as Recipient of This Grant

The National Coalition for the Mentally Ill in the Criminal Justice System is a unique non-profit organization created to deal with a growing national crisis—the increasing numbers of mentally ill offenders held by criminal justice agencies. It is the only organization that has developed a national agenda to work with this underserved population. Organized in June, 1990, National Coalition members have been working to collect information and educate a wide range of policy makers in criminal justice, mental health, and State, local and Federal governments about the needs of the mentally ill offender. The National Coalition is an outgrowth of a Washington State organization established three years earlier, Community Action for the Mentally Ill Offender. The National Coalition has close ties to the National Alliance for the Mentally Ill, the largest national organization dealing with public education on mental illness.

Moreover, the National Coalition has formed a working partnership with the Human Interaction Research Institute to manage the Coalition's long-range workplan. The human Interaction Research Institute is a thirty year old non-profit center for research, policy studies and program development on health issues based in Los Angeles, California. Of the 70 projects completed by the Research Institute since 1961, many empirical studies and field interventions have been completed in both the mental health and criminal justice fields.

In conclusion, the National Coalition has undertaken a mission that is not performed by any other national organization. That mission is to develop national models for screening, diverting and treating mentally ill offenders, and to implement the models in at least five states. The mission is based on the supposition that proper screening and handling of the mentally ill offender by criminal justice agencies is a national problem that has substantial public safety, public health, econmomic and moral implications, not only for criminal justice agencies but for every level of government. Three specific offender groups have been targeted as priorities: the mentally ill in local jails; the mentally ill juvenile offender; and the mentally ill in prison.

The National Coalition is operating under a four-year plan, the Capacity Building Project (1991–1995). Pursuant to the plan, five tasks will be performed: National needs assessment; developing information packages; a national clearinghouse; State technical assistance (capacity building); and a policy and planning study.

The current grant will be divided equally between a national workshop, and staffing for the capacity building effort. A national Work Session on Mentally Ill in the Juvenile Justice System will be developed in 1991, along the lines of the successful 1990 Work Session on the Mentally Ill in Jails.

Availability of Funds

Approximately $200,000 will be available in Fiscal Year 1991 to fund this project. It is expected that the grant will begin in May, 1991, and will be funded for at least a 12-month period. Based on the results of this initial funding period additional funding may be provided.

The Office for Treatment Improvement will administer the grant, and coordinate with representatives of NIMH and NIDA in the oversight and evaluation of grant activities.

FOR FURTHER INFORMATION CONTACT: Nicholas L. Demos, J.D., OTI/ADAMHA, Rockwall II, 10th floor, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443–6533.

(The Catalog of Federal Domestic Assistance number for this program is 93.903.)

Dated: April 23, 1991.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–10021 Filed 4–26–91; 8:45 am]

BILLING CODE 4160–20–M

Family Support Administration

Parents' Fair Share (PFS) Demonstration; Invitation Letter to Governors to Participate in PFS Demonstration

AGENCY: Family Support Administration, HHS.

ACTION: Public information copy of letter to governors.

SUMMARY: A letter has been sent by the Secretary of Health and Human Services and the Secretary of Labor to the nation's governors inviting them to apply to participate in the Parents' Fair Share (PFS) Demonstration. The Parents' Fair Share Demonstration will be coordinated with a provision in the Social Security Act (section 482(s)(3)) as amended by the Family Support Act of 1988 (Pub. L. 100–485) which calls for the Secretary of Health and Human Services to allow up to five states to provide Job Opportunities and Basic Skills Training (JOBS) program services to unemployed noncustodial parents of children receiving AFDC. If a state indicates an interest in applying to participate in the PFS demonstration, with the approval of the governor's office or its designate, it will be sent an application package and will be invited to an information meeting.

FOR FURTHER INFORMATION CONTACT: Mark Fucello, Family Support Administration/OPE, 370 L'Enfant Promenade, SW., Washington, DC., 20447; telephone (202) 401–4538.

SUPPLEMENTARY INFORMATION: The Parents' Fair Share (PFS) Demonstration is the product of a unique public/private partnership that includes the U.S. Department of Health and Human Services, the U.S. Department of Labor, the Pew Charitable Trusts, and the AT&T Foundation, the Ford Foundation and the Manpower Demonstration Research Corporation. A state that wishes to participate in the PFS demonstration and receive private foundation grants will be asked to apply to this consortium. States that wish to be permitted to provide JOBS services to unemployed noncustodial parents whose children receive Aid to Families with Dependent Children under section 482(d)(3) of the Social Security Act may apply to the Secretary of Health and Human Services. PFS demonstration sites will be given preference by the Secretary of HHS in his selection of states permitted to use JOBS funds in this manner. The following materials regarding the PFS demonstration are provided for the general information of the public.

Dear Governor _____: Many children live in poverty, in part because their disadvantaged, absent fathers are either unable or unwilling to support them. A major demonstration project is being mounted to address these problems by attempting to improve the earnings of disadvantaged men, the effectiveness of the child support enforcement system, and the financial well-being of poor children. We invite the State/Commonwealth of _____ to apply to join the demonstration.

The Parents' Fair Share Demonstration will help fulfill the vision of parental support of children underlying the Family Support Act of 1988 (FSA). It will offer employment, education, and other services to unemployed noncustodial parents (usually fathers) of children receiving Aid to Families with Dependent Children (AFDC) so that they may be able to get stable employment and meet their child support obligations. The project will also include services designed to resolve conflicts between the parents, and to help participants understand the rights and responsibilities associated with fatherhood. This initiative, along with improved child support enforcement efforts and new employment services for AFDC custodial parents authorized by FSA, represents a multi-pronged strategy to attack poverty among children living in single-parent households.

The demonstration is the product of a unique public/private partnership including the U.S. Department of Health and Human Services (HHS), the U.S. Department of Labor (DOL), the Pew Charitable Trusts, the Ford Foundation, and the Manpower Demonstration Research Corporation (MDRC), a nonprofit research and demonstration organization. It builds upon an FSA provision authorizing the Secretary of HHS to grant waivers to five states so they can serve unemployed noncustodial parents under the Job Opportunities and Basic Skills Training (JOBS) Program for AFDC recipients, and DOL interest in encouraging Job Training Partnership Act (JTPA) service providers to serve disadvantaged men with child support obligations. Participating states will receive matching grants and enhanced federal funding during all phases of the project, along with expert technical assistance in designing and implementing the program.

Enclosed are descriptive materials on the demonstration that seek general information about your state's interest. We hope you and your staff (copies of this letter have been mailed to state human service officials) will signal your desire to learn more about this innovative demonstration and consider applying to participate in the demonstration.

Sincerely,

Louis W. Sullivan, M.D.,

Secretary of Health and Human Services.

Lynn Martin,

Secretary of Labor.

Manpower Demonstration Research Corporation

The Parents' Fair Share Demonstration—Background Paper

Overview

Parents' Fair Share (PFS) is the name of a challenging new demonstration project for unemployed absent parents (usually fathers) of poor children who owe child support but are not paying it, at least officially. The project's central goals are to reduce poverty among children receiving Aid to Families with Dependent Children (AFDC), to encourage and require their fathers to establish paternity and pay child support, to increase the earnings of absent fathers who are unemployed and unable to adequately support their children, and to assist them in providing other forms of support to their children when appropriate. This effort is the product of a unique public/private partnership that includes the U.S. Department of Health and Human Services, the U.S. Department of Labor, the Pew Charitable Trusts, the Ford Foundation, and the Manpower Demonstration Research Corporation (MDRC).

The web of problems confronting poor children includes an increasing probability of living in a single-parent household, deepening poverty among these households and a worsening economic position of many of the absent fathers, especially young men with limited education and skills. Disadvantaged men's earnings have declined steadily throughout the 1970's and 1980's, even while efforts to increase child support collections have increased.

The PFS demonstration seeks to address the interrelationships among these problems. It poses four central challenges: First, what combination of services would yield increased earnings for disadvantaged men? Second, can these services be delivered as an integral part of the child support enforcement system? Third, if absent parents improve their earnings position, will they support their children? And fourth, will children be better off financially or emotionally?

States choosing to apply to participate in the Parents' Fair Share demonstration may also apply to the Secretary of Health and Human Services to be permitted to provide JOBS services to unemployed noncustodial parents whose children receive Aid to Families with Dependent Children (AFDC) under section 482(d)(3) of the Social Security Act. PFS demonstration sites will be given preference by the Secretary of HHS in his selection of states permitted to use JOBS funds in this manner. An 1115 waiver may be granted as well by the Secretary of HHS for some aspects of the demonstration. Participating states will receive some modest funding from the demonstration partners, and will be expected to contribute state or local funding to the project. Funds provided by state sources (plus those provided by the demonstration funding consortium) will generally be matchable by the federal government under existing programs, including Child Support and JOBS. States are encouraged to use other funds as well, including Job Training Partnership Act (JTPA), Food Stamp Work and Training and education funds. However, federal dollars, such as JTPA funds, would not be matchable. In addition, participating states will be eligible for technical assistance provided by a team of MDRC assembled experts in child support policy, employment and training, welfare reform, and other areas.

Demonstration programs will not be expected to follow a uniform design. Instead, the sponsoring foundation and public consortium members will encourage states to meet some general requirements, such as the establishment of linkages and cooperation among the agencies the state proposes to involve

(examples might include child support, judicial, welfare and JTPA employment and training agencies), and the provision of services in several key areas including:

- Employment and training,
- Child support enforcement and/or paternity establishment,
- Mediation, and
- Parental rights and responsibilities.

States are free to vary the emphasis they place on these components, to propose additions, and to design programs that represent a range of possible options. For example, the consortium hopes to select some "late intervention" programs that work primarily with noncustodial parents for whom paternity has been established and who are required to participate in lieu of legal action. These mandatory programs would be expected to intervene when a noncustodial father appears before the courts, either because of failure to pay child support or when an order is established and the noncustodial parent informs the court he cannot pay because he is unemployed.

The consortium also hopes to select some "early intervention" programs that attempt to recruit volunteers who have not yet established paternity. Ultimately, paternity establishment will be necessary in order for volunteers to participate in the full range of programmatic activities. The voluntary programs will conduct outreach and recruitment at hospitals, JTPA programs and possibly even pre-natal clinics. Some state applicants may wish to operate both early and late intervention programs together, offering the same services to both groups of noncustodial parents or offering a richer array of services and incentives to "early" volunteers. It is also anticipated that the lead state agency responsible for administering the programs will vary among applicants.

MDRC will be responsible for coordinating the demonstration, and will carry out the evaluation with funds provided by the demonstration partners. The other partners, including the Secretary of HHS, will select the sites, set project policy, and provide overall guidance. The demonstration will be conducted in five states for up to two years on a pilot basis, currently scheduled to begin in the fall of 1991. States would be expected to work with MDRC to collect baseline and program participation data. MDRC will prepare reports describing noncustodial fathers, their participation in the child support process, employment and training, parental responsibility and mediation activities and other aspects of the demonstration as well as outcome data involving employment and earnings, paternity establishment and child support payments. The demonstration would be extended for several more years if the pilot experience indicates the potential value of expanding the evaluation so that a full-scale experimental design could be used to determine program impacts and benefits and costs for the participants and the agencies providing services.

Benefits to Participating Programs

States that are selected to participate in the demonstration will be given priority by the Secretary of HHS in the selection of those that are permitted to use JOBS funds to serve noncustodial parents, will be eligible for other waivers if necessary, and will be among the first to test the viability of this expanded set of services for improving the employment and earnings of noncustodial parents who are unemployed and owe child support. The following additional benefits will also accrue to participating states:

- The demonstration offers the possibility of increasing paternity establishment and child support collections in the jurisdictions in which it operates.
- Participating states will have the opportunity to meet and share information and innovative ideas.
- MDRC will provide technical assistance and training in the major program components and in organizational linkages, welfare reform, and program design.
- Demonstration funds will be provided to participating states to help offset the costs of operating the program.
- States can break new ground in helping to learn what works for disadvantaged men, and in learning about ways to link job training, mediation and other services designed to overcome some of the most prominent obstacles offered by absent fathers for the failure to establish paternity and pay child support.
- States have the opportunity to influence national policy development.
- The program will be evaluated at virtually no cost to the participating states.

Selection Process

States interested in participating in the PFS demonstration and in using JOBS funds to serve the demonstration participants are encouraged to complete and submit applications to HHS. After recording receipt of the applications, HHS will forward copies of the PFS applications to MDRC for the consortium's review and will retain and review the federal applications for waivers. The demonstration states will be chosen through a competitive selection process.

As a first step, each interested state should designate a contact person for future correspondence with HHS and MDRC. This individual should represent either the funding agency (the IV-A agency from which JOBS funds and any waiver requests must originate), the lead state agency that will be responsible for the administration of the program (e.g., JTPA or Child Support Enforcement), or the Governor's Office. Participation in the demonstration will require extensive collaboration among these and other agencies. We urge interested states to establish mechanisms for coordination among the various agencies involved as soon as possible.

It is anticipated that all or most of the programs will operate in selected jurisdictions or regions of states, rather than statewide. In many states, existing programs operated at the local level by courts, community-based organizations, JTPA agencies, or others are currently offering services that could be part of Parents' Fair Share. States are encouraged to identify, coordinate with, and ultimately propose such existing programs, as part of the demonstration, if they can be adapted to a program structure that fits the demonstration guidelines. MDRC staff have information about programs currently operating in several states, and will be available to share this data with interested state officials. The consortium also encourages promising local programs to contact state officials to develop collaborative strategies.

Funding

The five states selected to participate in the Parents' Fair Share demonstration will receive foundation grants of up to $100,000 each to help offset the cost of planning, assisting MDRC in data collection, and for operating the program. These funds will be matchable under IV-D authority (the Child Support Enforcement program) to the extent they are used for administrative activities related to the operation of the program and under IV-F (JOBS) authority to the extent they are used to provide actual employment and training and related services. States will receive $60,000 upon selection and $40,000 at the start of program operations and $60,000 after six months of operations. Selected states will be asked to provide a like amount to the project and to develop program plans and budgets that would build to a capacity to actively serve at least 300 participants during the course of a year.

So for example, a "late intervention" program might have to refer 1,000 absent fathers for services with the expectation that approximately one-third will fail to show, one-third will find jobs before services begin, and one-third will participate actively.

Next Steps and Schedule

States are invited to send representatives to a Parents' Fair Share Information Meeting, hosted by the funding partners. Between one and three of these public meetings will be held beginning in mid-June. These one-day information meetings will cover all aspects of the demonstration including timetables, program requirements, waivers, and funding. State representatives should feel free to offer comments or suggestions on the demonstration plans, and to ask questions about the application process at these meetings. Interested states are asked to complete the enclosed state profile, which seeks some general background information about early plans for the demonstration so that MDRC can plan productive meetings and be prepared to respond to states' questions. The dates and sites for the meetings will be set after responses to the state profile are reviewed. States are asked to complete section I, which indicates the state's intention to participate in the information meeting, and mail this to MDRC no later than May 24, 1991. Completing the state profile is voluntary.

States that express interest will receive an Application Packet to apply to be part of the Parents' Fair Share Demonstration and standard federal forms to be completed by any state wishing to use JOBS funds to serve unemployed noncustodial parents. Completed applications for the demonstration are due August 16, 1991. MDRC will review the applications obtaining further information through site visits and telephone conversations. MDRC will then assemble this information and make recommendations to the consortium for the selection of foundation grant recipients and to HHS for the selection of waiver recipients. The Secretary of HHS will announce the selections in the fall. We strongly encourage you to consider participating in this pathbreaking project.

Parents' Fair Share Demonstration

Tentative Site Selection Process and Timetable

April 12 Governors sent a letter signed by the Secretaries of HHS and Labor soliciting their interest in the Parents' Fair Share Demonstration and inviting them to send a representative to an Information Meeting and requesting the name of a contact person.

April 26–May 24 MDRC will telephone contact people in all states that respond to the letter to answer questions and provide updated information. Application packets will be mailed to all states that express interest. These packets will include guidelines for completing applications and standard federal forms for applying for the HHS waiver.

May 24 Responses due to MDRC regarding attendance at the Information Meeting(s).

June 17–June 28 Between one and three regional Information Meeting(s) open to the public hosted by MDRC, HHS, and DOL. Application packets will be available for any party who did not receive one prior to the meeting. First meeting scheduled for June 17 in Washington, DC. Others will be arranged as appropriate.

July 1–August 16 Applications should be forwarded to HHS including, as appropriate, letters from the following agencies pledging cooperation: courts, JTPA, JOBS agency, and the child support enforcement agency.

July 1–October 15 Review process, including telephone interviews and site visits. MDRC will present information from the visits and other sources to the funding partners and to the Secretary of HHS for final decisions.

Fall 1991 Selections announced.

Dated: April 22, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Family Support.

[FR Doc. 91-9966 Filed 4-26-91; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise two notices describing records maintained by the Office of Administrative Services in the Office of the Secretary. Except as noted below, all changes being published are editorial in nature, and reflect organization, address, and other miscellaneous administrative revisions which have occurred since the previous publications of the material in the Federal Register. The two notices being revised, which are published in their entirety below, are:

1. "Library Circulation Control System—Interior, Office of the Secretary—35," (previously published in the Federal Register on May 27, 1981; 46 FR 28519).

2. "Secretarial Subject Files—Interior, Office of the Secretary—46," (previously published in the Federal Register on July 15, 1986; 51 FR 25611).

In one notice (OS-35), the existing routine disclosure statement is revised to include the release (1) to a congressional office in response to an inquiry the individual has made to the congressional office; and (2) to Federal, State, tribal, territorial, or local agencies that have requested information necessary or relevant for personnel actions. Also in OS-35, the storage statement is revised to reflect that the records are maintained in a computer data file. This reflects a change from the prior manual record file, however this change does not create a greater access to the records in the system. Since these changes do not involve any significant new or intended use of the information in the systems of records, the two notices shall be effective upon publication in the Federal Register (April 29, 1991). Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Dated: April 18, 1991.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

INTERIOR/OS—35

SYSTEM NAME:

Library Circulation Control System—Interior, Office of the Secretary—35.

SYSTEM LOCATION:

Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Borrowers of library materials from Department of the Interior library.

CATEGORIES OF RECORDS IN THE SYSTEM:

Borrowers' name and working address; book call number, due date, and book information; telephone number and ID number; and affiliation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 27a, 1456, 1457, 40 U.S.C. 483(b), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is control of library materials.

Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when, (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (3) to Federal, State, tribal, territorial, or local agencies that have requested information necessary or relevant to the hiring, firing, or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit; and (4) to appropriate Federal, State, tribal, territorial, local, or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing, implementing, or administering a statute, rule, regulation, program, facility, order, lease, license, contract, grant, or other agreement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computer data files.

RETRIEVABILITY:

Retrievable by name of individuals, patron ID number, book call number, due date, and other book information.

SAFEGUARDS:

Records are maintained in computer files, and are accessible only by authorized persons. The records are attended constantly during working hours with library locked after work hours.

RETENTION AND DISPOSAL:

Records are maintained for the current year plus one and disposed of in accordance with disposition instructions contained in the Office of the Secretary Administrative Handbook Number 7.

SYSTEM MANAGER AND ADDRESS:

Library Contractor COTR, Office of Administrative Services, Division of General Services, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records shall be addressed to the System Manager with respect to records located in the library. A written and signed request stating that the requester seeks information concerning records pertaining to him/her is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

A request for access may be addressed to the System Manager, with respect to records located in the library. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.66.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals using library services.

INTERIOR/OS-46

SYSTEM NAME:

Secretarial Subject Files—Interior, Office of the Secretary—46.

SYSTEM LOCATION:

Office of the Secretary, Office of Administrative Services (PMO), Division of General Services, U.S. Department of the Interior, 1849 C St., NW., Washington, D.C. 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those who have had correspondence with the Secretary, Under Secretary, Assistant Secretaries, Deputy Assistant Secretaries, and individuals acting in these capacities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Index cards containing the name, dates, and subject codes for retrieval of subject files, subject files of correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 43 U.S.C. 1457, 44 U.S.C. 3101, Reorganization Plan 3 of 1950.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records are to support the operational, program and policy decisions of the Secretary of the Interior, Under Secretary, Assistant Secretaries, and Deputy Assistant Secretaries. Disclosures outside the department are (1) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determine that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled, (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license, and (3) to a congressional office from the record of an individual in response to an unquiry made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3" x 5" index cards; correspondence filed in folders.

RETRIEVABILITY:

Indexed by subject, date, and name.

SAFEGUARDS:

Stored in locked office and locked file cabinets.

RETENTION AND DISPOSAL:

Retained and disposed of in accordance with the Office of the Secretary Comprehensive Records Disposal Schedule K-1.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Branch of Paperwork Management, Division of General Services (PMO), Office of Administrative Services, U.S. Department of the Interior, 1849 C St., NW., Washington, D.C. 20240.

NOTIFICATION PROCEDURE:

A written and signed request stating that the requester seeks information concerning records pertaining to him/her. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

Submit requests to the System Manager. The request must be in writing, signed by the requester, and meet the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Correspondence or documents signed at the Secretarial level.

[FR Doc. 91-9875 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-RK

Bureau of land management

[AK-964-4230-15; F-72913]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Bering Straits Native Corporation for approximately 6,901 acres. The lands involved are in the vicinity of Mount Distin, Alaska, within T. 8S., R. 33 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until May 29, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 91-9884 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-JA-M

Bureau of Land Management

[AK-(964)-4230-15; F-14857-A]

Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f), will be issued to Gwitchyaazhee Corporation for approximately 82 acres. The lands involved are in the vicinity of Fort Yukon, Alaska.

Certain lands within:

Secs. 7 and 8, T. 20 N., R. 12 E., Fairbanks Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until May 29, 1991, to file an appeal. However, parties receiving sevice by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address indentified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Frances J. Reed,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 91-9883 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-JA-M

[CO-010-01-4220-02]

Craig Colorado Advisory Council Meeting

TIME AND DATE: June 12, 1991 10 a.m.

PLACE: BLM—Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

STATUS: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the craig District Office.

MATTERS TO BE CONSIDERED:

1. Status Report on Resolutions.
2. Status of Occidental C-b.
3. Colorado Division of Wildlife's Harvest Statistics.
4. Colorado Division of Wildlife's Deer, Elk, and Antelope Program Issues.
5. Habitat Partnership Program Update.
6. Recreation 2000.
7. Election of Officers.

CONTACT PERSON FOR MORE INFORMATION: Mary Pressley, Craig district Office, 455 Emerson Street, Craig, Colorado 81625-1129, Phone: (303) 824-8261.

Dated: April 17, 1991.

Kenneth F. Smith,

Acting District Manager.

[FR Doc. 91-10014 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-09-4212-14; N-52468]

Realty Action; Direct Sale of Federal Land in Nye County, NV

SUMMARY: The following described land has been examined and identified as suitable for disposal by direct sale to Nye County under sections 208 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719) at the appraised fair market value:

Mount Diablo Meridian

T. 12 S., R. 47 E.,

Sec. 7, parcels A-Z and AA-DD.

Thirty parcels of land containing a total of 93.45 acres.

The proposed sale is a sale of the streets and alleys within the Beatty Townsite. The sale is consistent with the Bureau's planning system and in conformance with the Esmeralda-Southern Nye Resource Management Plan, approved October 10, 1986. The parcels are isolated. The land is not needed for any resource program and is not suitable for management by the Bureau or any other Federal department or agency. The land will not be offered for sale for at least 60 days after the publication of this Notice in the Federal Register. These lands may be in a flood prone area.

Patent, when issued, will contain the following reservation to the United States:

A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

No minerals will be reserved to the United States.

Patent will be subject to all valid prior existing rights. The following reservation should be made to the Nevada Department of Transportation: CC-020518, 100' wide right-of-way for SR 374 across parcels G, H, I, and J.

The lands are not within any grazing allotment.

GENERAL INFORMATION: Publication of this notice in the Federal Register segregates the public lands from all forms of appropriation under the public land laws and the mining laws. The segregative effect will end upon issuance of a patent to these lands, upon publication in the Federal Register of a notice of termination, or 270 days from the date of publication of this notice, whichever comes first.

The appraised fair market value of the 93.45 acre tract will be made available at a later date.

For a period of 45 days from the date of publication of this Notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, NV 89820. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

James D. Carriven,

District Manager, Battle Mountain District.

[FR Doc. 91-9973 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF INTERIOR

Geological Survey

Southern California Earthquake Center (SCEC); Restriction of Eligibility for Cooperative Agreement Award

The U.S. Geological Survey (USGS) intends to award cooperative agreement 14-08-0001-A0901 to the California Institute of Technology (Caltech) in support of enhancements of the joint USGS-Caltech operation of the SCEC. Initial USGS funding will be $376,966.

Project Scope: The geoscientific database at Caltech will be integrated for the purpose of formulating seismic hazard analysis. Support of enhancements to the joint operation will serve to meet the goals of the USGS's Earthquake Hazards Reduction Program. Therefore, award of a cooperative agreement for support of the database is appropriate.

Further Information: For further information contact Elaine Padovani, U.S. Geological Survey, Geological Division—MS 905, 12201 Sunrise Valley Drive, Reston, VA 22092, Telephone 703-684-6722 or Thomas Heaton, U.S. Geological Survey, Office of Earthquake, Volcanoes and Engineering, 525 South Wilson Avenue, Pasadena, CA 91106, Telephone 818-405-7814.

(Catalog of Federal Domestic Assistance Number 15.807)

Dated: April 3, 1991.

Jack J. Stassi,

Assistance Director for Administration.

[FR Doc. 91-9978 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-31-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) (for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010-0043); Washington, DC 20503, telephone (202) 395-7340, with copies to John V. Mirabella; Acting Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virigina 22070-4817.

Title: 30 CFR part 250, subpart F, Well-Workover Operations.

OMB approval number: 1010-0043.

Abstract: The information will be used by MMS's District Supervisors to evaluate and approve or disapprove the adequacy of equipment and/or procedures to be used during the conduct of well-workover operations. The information collection requirements are being modified to clarify the information the lessees are required to document concerning blowout-preventer tests.

Bureau form number: None.

Frequency: On occasion.

Description of respondents: Federal Outer Continental Shelf oil and gas lessees.

Estimated completion time: .5 hour.

Annual responses: 2,220.

Recordkeeping hours: 328.

Annual burden hours: 1,436.

Bureau clearance officer: Dorothy Christopher (703) 787-1239.

Dated: April 5, 1991.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 91-9977 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010-0067); Washington, DC 20503, telephone (202) 395-7340, with copies to John V. Mirabella; Acting Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817.

Title: 30 CFR part 250, subpart E, Well-Completion

OMB approval number: 1010-0067

Abstract: Respondents submit this information to MMS's District Supervisors so they can evaluate and approve or disapprove the adequacy of equipment and/or procedures to be used during the conduct of well-completion operations.

Bureau form number: None.

Frequency: Varies.

Description of respondents: Federal Outer Continental Shelf oil and gas lessees.

Estimated completion time: .5 hour.

Annual responses: 2,220.

Recordkeeping hours: 298.

Annual burden hours: 1,408

Bureau clearance officer: Dorothy Christopher, (703) 787-1239.

Dated: April 5, 1991.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 91-9985 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development International Disaster Advisory Committee; Meeting

The International Disaster Advisory Committee (IDAC) Wednesday, May 29, 1991. Topics for discussion will include corporate-government cooperation for international disaster, mitigation, prevention and response.

Date: May 29, 1991.

Time: 2 p.m.-4 p.m.

Place: Old Executive Office Building 17th and Pennsylvania Avenue, Washington, DC.

The meeting is free and open to the public. However, Notification by May 15, 1991, through the Advisory Committee Office is required.

Persons wishing to attend the meeting must call Anne C. Bradley (202) 647-5210 before May 17, 1991, or write to be received by that date to: International Disaster Advisory Committee, Agency for International Development, room 1262A NS, Washington, DC 20523-0008.

Dated: April 22, 1991.

Oliver R. Davidson,

Executive Director, International Disaster Advisory Committee.

[FR Doc. 91-10020 Filed 4-26-91; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

Lodging of Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 18, 1991, a consent decree in *United States* v. *Hercules Incorporated, et al.*, Civil Action No. 89-593-LON, was lodged with the United States District Court for the District of Delaware. This is the second consent decree lodged in this action. See 55 FR 36916 (September 7, 1990).

The amended complaint filed by the United States on December 27, 1989, alleges that Hercules Incorporated, Allied-Signal, Inc., American Can Corporation, American Cyanamid Company, Amoco Chemical Corporation, Avon Products, Inc., Champlain Cable Corporation, Chrysler Corporation, Congoleum Corporation, E.I. du Pont de Nemours & Co., Inc., General Motors Corporation, ICI Americas, Inc., Johnson Controls, Inc., Motor Wheel Corporation, Occidental Chemical Corporation, SCA Services, Inc. ("SCA"), Standard Chlorine of Delaware, Inc., Waste Management of Delaware, Inc. ("WMDI"), and Witco Corporation, are responsible to reimburse the United States costs totalling in excess of $2.1 million incurred by the Environmental Protection Agency ("EPA") between November 1, 1979 and April 22, 1988, in responding to the release and threatened release of hazardous substances from the Delaware Sand & Gravel Landfill Superfund Site in New Castle County, Delaware (the "Site"). The amended complaint also alleges that all defendants, except SCA and WMDI, arranged for the transport to and disposal of hazardous substances at the Site, and that SCA and WMDI selected the Site and transported to and disposed of hazardous substances at the Site. The United States, on behalf of EPA, seeks judgment against the defendants jointly and severally for reimbursement of the aforementioned past response costs under section 107(a) of CERCLA, 9607(a), and a determination under section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2), that any finding of liability would be binding in any subsequent action for further response costs.

In the consent decree, Avon Products, Inc. ("Avon") has agreed to reimburse the Hazardous Substance Response Trust Fund (the "Fund") in the amount of $825,000.08. The consent decree does not resolve Avon's liability for any costs other than those incurred by the United States between November 1, 1979 and April 22, 1988, and costs of enforcement and statutory interest specified in the consent decree. Under the consent decree, the United States' request for declaratory relief against Avon under section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2) will be dismissed without prejudice. Hercules Incorporated, Allied-Signal, Inc., American Can Corporation, American Cyanamid Company, Amoco Chemical Corporation, Avon Products, Inc., Champlain Cable Corporation, Chrysler Corporation, Congoleum Corporation, E.I. du Pont de Nemours & Co., Inc., General Motors Corporation, ICI Americas, Inc., Johnson Controls, Inc., Motor Wheel Corporation, Occidental Chemical Corporation, SCA Services, Inc. ("SCA"), Standard Chlorine of Delaware, Inc., Waste Management of Delaware, Inc. ("WMDI"), and Witco Corporation have not resolved their liability for response costs claimed in the amended complaint. But see 55 FR 36916 (September 7, 1990).

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Hercules Incorporated, et al.*, DOJ Ref. No. 90-11-2-298. The proposed consent decree may be examined at the office of the United States Attorney, District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, room 5110, Wilmington, Delaware. Copies of the consent decree may also be examined and obtained in person at the Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, room 6314, Tenth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, Box 7611 Ben Franklin Station, Washington, DC 20044.

When requesting a copy of the consent decree by mail, please enclose a check in the amount of $1.10 (ten cents per page reproduction costs) payable to the "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-10019 Filed 4-26-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 15th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Affiliated Indus. of Shippensburg (Wkrs)	Shippensburg, PA	04/15/91	03/30/91	25,659	Department Store Fixtures.
Atlas Power Co. (OCAW)	Tamaqua, PA	04/15/91	04/02/91	25,660	Machines Assembly.
Bates Corrugated (UPIU)	Townsend, MA	04/15/91	03/08/91	25,661	Boxes.
Connecticut Mfg. Co., Inc. (Wkrs)	Waterbury, CT	04/15/91	02/22/91	25,662	Screws & Fasteners.
Crydom Corp. (Wkrs)	Milwaukee, WI	04/15/91	03/27/91	25,663	Circuits.
CTS Electronics Corp. (Wkrs)	Brownsville, TX	04/15/91	03/07/91	25,664	Components.
Dallco Industry, Inc. (Company)	York, PA	04/15/91	04/03/91	25,665	Apparel.
Dallco Industry, Inc. (Wkrs)	Mt. Union, PA	04/15/91	04/03/91	25,666	Apparel.
Dinner Bell/B.J. Packing (UFCW)	Defiance, OH	04/15/91	04/02/91	25,667	Pork.
Electric Mobility Corp. (Wkrs)	Westville, NJ	04/15/91	04/03/91	25,668	Handicapped Bikes.
Electric Mobility Corp. (Wkrs)	Sewell, NJ	04/15/91	04/03/91	25,669	Handicapped Bikes.
Frame One Corp. of America (Wkrs)	Roanoke, VA	04/15/91	03/25/91	25,670	Frame Pictures.
Gear Products Inc. (Wkrs)	Tulsa, OK	04/15/91	03/25/91	25,671	Bearings.
General Electric Co. Appliances (SMW)	Cicero, IL	04/15/91	04/03/91	25,672	Household.
Gilbert & Bennett (Wkrs)	Georgetown, CT	04/15/91	03/20/91	25,673	Wire Fencing.
Glamour Sportswear Corp. (Wkrs)	Frackville, PA	04/15/91	04/02/91	25,674	Sportswear.
HBI Automotive Glass (ABGWU)	Lancaster, OH	04/15/91	04/02/91	25,675	Auto Glass.
K. T. Swasey (IAMAW)	Solon, OH	04/15/91	04/04/91	25,676	Cutting Machinery.
Keystone Carbon Co. (Wkrs)	St. Marys, PA	04/15/91	04/01/91	25,677	Power Tools.
Liz Ann Mfg., Co. (Wkrs)	New Braunfels, TX	04/15/91	04/03/91	25,678	Clothing.
New Jersey Tanning Co. (LWU)	Newark, NJ	04/15/91	03/11/91	25,679	Leather Goods.
Otis Elevator Co. Controllers (IUE)	Bloomington, IN	04/15/91	03/25/91	25,680	Elevator & Components.
Pacific Press & Shear (IAM&AW)	Mt. Carmel, IL	04/15/91	04/03/91	25,681	Brakes & Shears.
Pat Fashions, Inc. (Wkrs)	Perth Amboy, NJ	04/15/91	04/03/91	25,682	Coats.
Quantum Chemical Corp., USI Div. (Wkrs)	Rolling Meadows, IL	04/15/91	04/01/91	25,683	Plastic.
Rodime, Inc. (Company)	Boca Raton, FL	04/15/91	03/21/91	25,684	Hard Disk Drive.
Sharpe Cedar Products (Wkrs)	Onalaska, WA	04/15/91	03/31/91	25,685	Cedar Fence Boards.
Snap-On Tools Corp. (IAM)	Mt. Carmel, IL	04/15/91	04/04/91	25,686	Hand Tools.
Stinson Canning (Wkrs)	Rockland, ME	04/15/91	04/01/91	25,687	Fish.
Straits Forest Products, Inc. (Wkrs)	Amanda Park, WA	04/15/91	04/19/91	25,688	Softwood Lumber & Chips.
Straits Forest Products, Inc. (Wkrs)	Pt./ Angeles, WA	04/15/91	03/19/91	25,689	Softwood Lumber & Chips.
Tektronix, Inc. (Wkrs)	Beaverton, OR	04/15/91	04/02/91	25,690	Hybrid Components.
Tultex Corp. (Wkrs)	Marion, NC	04/15/91	03/25/91	25,691	Sweatshirts.
Tultex Corp. (Wkrs)	Spindale, NC	04/15/91	03/25/91	25,692	Sweatshirts.
Tultex Corp. (Wkrs)	Martinsville, VA	04/15/91	03/25/91	25,693	Sweatshirts.
United Technologies Auto Group (IBEW)	Wabash, IN	04/15/91	03/28/91	25,694	Auto Wire Harness.
Weather Tamer, Inc. (Wkrs)	Centerville, TN	04/15/91	03/30/91	25,695	Outerwear.
Winning Moves, Inc. (Wkrs)	Athens, AL	04/15/91	03/28/91	25,696	Outerwear.

[FR Doc. 91-10053 Filed 4-26-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,316]

Hercules, Inc., Radford Army Ammunition Plant; Radford, VA; Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Correction

This notice corrects the certification on petition TA-W-24,316 which was published in the **Federal Register** on June 28, 1990 (55 FR 26035) in FR Document 90-14788. The Department inadvertently set the impact date as January 1, 1989 and left out the termination date of January 1, 1991.

The affirmative determination for petition TA-W-24,316 should read: "Hercules, Inc., Radford Army Ammunition Plant, Radford, VA. A certification was issued covering all workers separated on or after January 1, 1990 and before January 1, 1991."

Signed in Washington, DC, this 17th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-10054 Filed 4-26-91; 8:45 am]

BILLING CODE 4510-30-M

Commission on Achieving Necessary Skills; Open Meeting

AGENCY: Employment and Training Administration, Labor.

SUMMARY: The Secretary's Commission on Achieving Necessary Skills (SCANS) was established in accordance with the Federal Advisory Committee Act (Public Law 92-463) on February 20, 1990. The Commission is to advise the Secretary on national competency guidelines for the level of basic skills required of high school graduates for entry into employment. The Commission will be charged with the practical task of

specifying and quantifying levels of basic skills' attainment to adequately perform different types of entry-level jobs.

TIME AND PLACE: The sixth meeting will be held May 17, 1991, from 9 a.m. until 5 p.m. at the Washington Vista Hotel, Ballroom A, Ballroom Level, 1400 M Street, NW., Washington, DC 20005.

AGENDA: The agenda for the meeting follows:

1. Welcome and Introductions.
2. Presentation and discussion of the Commission's draft report to the Secretary of Labor defining Functional Skills.
3. Public comment.

PUBLIC PARTICIPATION: The meeting will be open to the public. Thirty minutes will be set aside for public comments. Seating will be available for the public on a first-come, first-serve basis. Five seats will be reserved for the media. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made.

Individuals or organizations wishing to submit written statements should send 10 copies to Dr. Arnold Packer, Executive Director, SCANS—room C-2318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Papers received on or before April 30, 1990 will be included in the record of the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Packer, Exec. Dir., SCANS—room C-2318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-4840.

Signed at Washington, DC this 22nd day of April 1990.

Lynn Martin,

Secretary of Labor.

[FR Doc. 91-10052 Filed 4-26-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before June 13, 1991. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1-AFU-91-24). Routine payroll records.
2. Department of the Air Force (N1-AFU-91-25). Short-term records of closing bases.
3. Department of Agriculture, Animal and Plant Health Inspection Service (N1-463-91-1). Routine and facilitative records.
4. Department of Commerce, Bureau of the Census (N1-29-89-3). Selected Title 15 datafiles.
5. Department of Commerce, Patent and Trademark Office, Office of Patent Services (N1-241-90-1). Licensing files for Government interests.
6. Department of Energy, Bonneville Power Administration (N1-305-90-2). Environmental quality, legal, and resource planning and forecasting records.
7. United States Information Agency, Voice of America (N1-306-90-4). Facilitative and duplicative files.
8. Department of the Interior, Minerals Management Service (N1-473-91-1). Summary Geologic Reports and Block Nomination Files.
9. Department of Justice, Immigration and Naturalization Service (N1-85-91-1). Congressional correspondence regarding constituent inquiries.
10. Department of Labor, Wage and Hour and Public Contracts Division (N1-155-91-1). Administrative and programmatic records, 1936-72, including notices, contract files, compliance survey and review cards, hearing transcripts, industry reports, routine memoranda and operations bulletins.
11. Office of Personnel Management, Office of International Affairs (N1-478-91-1). Records relating to visits of foreign nationals.
12. Occupational Safety and Health Review Commission (N1-455-90-1). Case files relating to notices of contests of citations issued under provisions of the Occupational Safety and Health Act of 1970.
13. Department of State, All Foreign Service Posts (N1-84-91-2). Visa refusal and child custody case files.

Dated: April 19, 1991.

Don Wilson,

Archivist of the United States.

[FR Doc. 91-9974 Filed 4-26-91; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of each permit application received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of a permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by May 31, 1991. The permit application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

Applicant 91-02: R. R. Veit, Department of Zoology, University of Washington, Seattle, Washington 98195.

Activity for which permit requested: Taking. Import into USA. The applicant is conducting research on the spatial association of Antarctic pelagic birds and Antarctic Krill, and requests permission to collect birds to examine stomach contents. The applicant also requests permission to collect birds to supplement the comparative collections of the University of Washington Burke Museum. The applicant requests permission to take the following specimens:

BURKE MUSEUM PROPOSED SPECIMEN COLLECTIONS AROUND SOUTH GEORGIA JUNE-JULY, 1991

Permit request	Species
1	Wandering Albatross.
10	Black-browed Albatross.
10	Gray-headed Albatross.
10	Light-mantled Sooty Albatross.
10	Southern Giant Petrel.
10	Northern Giant Petrel.
10	Antarctic Fulmar.
20	Antarctic Petrel.
20	Cape Petrel.
20	Kerguelen Petrel.
20	White-chinned Petrel.
20	Blue Petrel.
20	Dove Prion.
20	Fairy Prion.
5	Gray-backed Storm-Petrel.
2	Black-bellied Storm-Petrel.
40	Common Diving Petrel.
5	Georgian Diving Petrel.
2	King Penguin.
2	Emperor Penguin.
10	Gentoo Penguin.
10	Chinstrap Penguin.
5	Macaroni Penguin.
5	Imperial Shag.
10	Yellow-billed Pintail.
5	American Sheathbill.
5	Antarctic Skua.
5	Kelp Gull.
10	Antarctic Tern.
5	South Georgia Pipit.

Location: South Georgia, Antarctic Peninsula

Dates: June-August 1991.

Charles Myers,

Permit Office.

[FR Doc. 91-10002 Filed 4-26-91; 8:45 am]

BILLING CODE 7555-01-M

Notice of Meeting; Amendment

The Advisory Committee for Biological, Behavioral, and Social Sciences (BBS) is changing the date of its meeting. The advisory committee was scheduled to meet on May 2-3, 1991 at the National Science Foundation. This meeting is being postponed until May 28-29. The agenda remains the same.

The location of the May 28-29 meeting is not known at this time. Those persons wishing to attend should call the Assistant Director's office at 202-357-9654 for specifics.

The original notice for this meeting appeared in the Federal Register on April 15, 1991, vol. 56, no. 72, page 15169.

Dated: April 24, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-10003 Filed 4-26-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341]

Detroit Edison Company; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Detroit Edison Company (DECo), (licensee) for an amendment to Facility Operating License No. NPF-43 issued to the licensee for operation of the Fermi-2 facility, located in Monroe County, Michigan. A Notice of Consideration of Issuance of this amendment was not published in the Federal Register.

The proposed license amendment was to revise the Technical Specifications (TS) to permit DECo to maintain the residual heat removal (RHR) system operable with the minimum flow valve disabled in the closed position when the system is in the shutdown cooling mode of operation. The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated April 18, 1991.

By May 29, 1991, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 200 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

For further details with respect to this action, see (1) The application for amendment dated August 2, 1990, and (2) the Commission's letter to the licensee dated April 18, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48226. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 18th day of April 1991.

For the Nuclear Regulatory Commission.

L.B. Marsh,

Project Director, Project Directorate III-1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-10041Filed 4-26-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-266, License No. DPR-64, EA 90-178

Order Imposing Civil Monetary Penalty

In the Matter of New York Power Authority, Indian Point 3 Nuclear Power Plant, Buchanan, New York 10511.

I

The New York Power Authority (Licensee) is the holder of License No. DPR-64 issued by the Nuclear Regulatory Commission (NRC or Commission). The license authorizes the Licensee to operate the Indian Point 3 nuclear reactor in Buchanan, New York in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted at the facility on September 14-20, 1990. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated December 7, 1990. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation. The Licensee responded to the Notice on January 18, 1991. In its response, the Licensee denied the violation. However, in the alternative, the Licensee requested full mitigation of the civil penalty if the NRC maintains that a violation occurred.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is Hereby ordered That:*

The Licensee pay a civil penalty in the amount of $50,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in section II above, as amended in the appendix to this Order, and

(b) whether, on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland this 19th day of April 1991.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

Appendix—Evaluations and Conclusions

On December 7, 1991, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection. New York Power Authority (Licensee) responded to the Notice January 18, 1991 (Response). In its Response, the Licensee denies the violation. However, the Licensee also contends that full mitigation of the civil penalty is warranted if the NRC maintains that the violation occurred. The NRC's evaluation and conclusion regarding each of the licensee's requests are as follows:

1. Restatement of Violation

10 CFR 50.54(k) requires that an operator or senior operator licensed pursuant to Part 55 of this chapter shall be present at the controls at all times during the operation of the facility.

Technical Specifications (T.S.) 6.2.2 requires a minimum crew composition which includes, in part, two licensed Senior Reactor Operators and two licensed Operators (T.S. 6.2.2.a). Further, it requires that a licensed Senior Reactor Operator be on duty in the control room at all times (T.S. 6.2.2.h) and that a licensed Operator be in the control room when fuel is in the reactor (T.S. 6.2.2.b)

Contrary to the above, at approximately 5:07 a.m. on September 14, 1990, at a time when the reactor was in an operational condition with fuel in the reactor vessel, the NRC Senior Resident Inspector observed that the licensed Operator and licensed Senior Reactor Operator in the control room assigned to monitor the operation of Unit 3, were not fully attentive to their duties; thus, neither a reactor operator nor senior reactor operator were present at the controls as required. The licensed Reactor Operator (RO) was not fully attentive to his duties in that the inspector observed the licensed Reactor Operator with his eyes closed, head tilted back, and feet up on a desk. The licensed Senior Reactor Operator was not fully attentive to his duties in that the inspector observed him with is eyes closed, and head tilted back.

This is a Severity Level III violation. (Supplement I)

Civil Penalty—$50,000.

2. Summary of Licensee's Response Concerning Denial of the Violation

The Licensee denies the violation, stating that the NRC did not adequately take into account several events that occurred shortly before the alleged inattentive period which, along with the statements of the operators, provide strong evidence the the operators were attentive to their duties when observed by the Senior Resident Inspector (inspector). The Licensee believes that the NRC has not considered the whole record and that the sanction imposed is not supported by substantial evidence. The Licensee submits that the NRC has not struck a fair balance between the sole observation of the inspector, which it additionally believes is mistaken with respect to the licensed reactor operator (RO), and the weight of the evidence which it claims supports a finding that both operators were attentive to their duties during the period in question.

With respect to the licensed senior reactor operator (SRO), the Licensee does not dispute the facts provided by the inspector as well as the SRO's acknowledgement that his eyes may have been closed for as long as 60 seconds. However, the Licensee states that the NRC proposes to set a standard for attentiveness that is unreasonable and largely undefined, and that a licensed operator can remain attentive to his duties while his eyes are closed for up to 60 seconds. The Licensee indicates that the SRO stated that his mind was on his work while his eyes were momentarily shut, thinking of

the next jobs to perform on shift, and the Licensee indicates that there is nothing in the record to refute the SRO's testimony. The Licensee also states that the inspector acknowledged that the SRO was instantly alert when he opened his eyes. The Licensee further states that the SRO denies that his head was tilted back or that he was asleep, and that the SRO asserts he was stretching his back muscles to obtain relief from a minor discomfort associated with a recurring back problem. The Licensee also states that the SRO has an excellent performance record and has never been found inattentive to duties.

With respect to RO, the Licensee states that the inspector's observation is not in accord with the RO's testimony, and provides what it believes are reasonable explanations for the factual differences between the inspector's and RO's accounts. Specifically, the Licensee states that it may be that the movement by the RO which the inspector interpreted as dropping of the feet from the desk to the floor was actually the shifting of the RO's leg from under his body and the dropping of his foot to the floor because he had developed an idiosyncrasy of sitting in a chair with one leg folded under him. The Licensee also states that, although the RO allegedly "appeared to have just awakened" when the inspector addressed the RO and SRO in the control room, the Licensee claims that this may have been nothing more than the RO's normal facial expression which may appear to be somewhat lethargic. The Licensee notes that the RO stated that he was aware that someone had entered the control room and had turned his head and saw the inspector approaching. The Licensee also contends that the RO has an excellent performance record and has never been found inattentive to duties.

With respect to both individuals, the Licensee also notes that there was a phone call from Indian Point 3 shortly before the inspector entered the control room which rang loudly on several phones in the control room and that 8 a.m. log readings were taken on time. The Licensee also indicated that there was also a plant vent monitor alarm shortly before the inspector entered the control room and the RO silenced the alarm and the SRO investigated the indication. The Licensee also points out that shift management was present in the control room on nine occasions coinciding earlier in the shift which provided further evidence that the operators were attentive.

The Licensee further submits that the NRC is dealing with the appearance of inattentiveness, and not inattentiveness, and claims that the NRC's definition of inattentiveness is unacceptable. In support of this contention, the Licensee notes that operators are routinely involved in control room activities that distract their attention from the panels. The Licensee provided examples of such activities, such as an operator's eyes being directed away from the control board while discussing issues with plant personnel or an NRC inspector, when reviewing operations related documents, or when responding to plant operations related telephone calls. The Licensee states that such examples would also be considered examples of inattentiveness if the NRC position in this case is maintained.

NRC Evaluation of Licensee's Response

The NRC has evaluated the Licensee's Response, and based upon that evaluation, continues to conclude that the RO and SRO were not fully attentive to their duties, and therefore, a violation of NRC requirements did exist.

Before responding to the individual arguments raised by the NRC, it is clear, from some of the Licensee's arguments, that a restatement of the obligation of a licensed reactor operator or senior reactor operator to be fully attentive to their duties is necessary. For a licensed operator to be satisfactorily performing his duties while in the control room, the operator must be physically present and able to respond to changes in plant status at all times. The operator must be continuously cognizant of plant status and trends based upon frequent and comprehensive observation of control panel indications. Awareness of plant status based on control room indications and responding appropriately to those indications is the primary responsibility of a reactor operator. Continuous observations of the control panels is not required. The NRC recognizes that reactor operators have important secondary responsibilities in addition to awareness of plant status, such as discussing issues with plant personnel or NRC inspectors, completing logs and communicating by phone in the furtherance of safe plant operations. Such activities are permitted as long as they do not cause the reactor operator to lose awareness of plant status. When not performing such legitimate secondary duties, reactor operators must devote their full attention to plant status and controls. Sleeping, performing non-job-related tasks while on shift, engaging in potentially distracting or unauthorized activities that impair an operator's ability to remain alert and responsive to plant conditions, or the condition of others on shift, and lack of attention to control room activities are not compatible with the reactor operator's obligation to be fully attentive and, therefore, are prohibited. With these standards in mind, the Staff now addresses the Licensee's arguments.

With respect to the SRO, the NRC concedes that the SRO's head may not have been tilted back when observed by the inspector, given the slouched position of the individual in the chair. Accordingly, the violation is amended by revising the last sentence to read as follows:

"The licensed Senior Reactor Operator was not fully attentive to his duties in that the inspector observed him with his eyes closed."

The NRC is concerned, however, that the SRO's eyes were closed for a period of time. The NRC has considered the Licensee's contention that the SRO was stretching his back muscles and had his mind on work while his eyes were closed. Nevertheless, the NRC remains convinced that the SRO was not fully attentive to his duties since (1) the inspector observed the individual with his eyes closed (admittedly on the part of the SRO for as long as 40 seconds); (2) the inspector observed that the SRO was in a relaxed and comfortable position without any movement from the time the inspector entered the control room until the inspector obtained the SRO's attention when he knocked on a desk beside the SRO; and (3) the SRO was not cognizant of the posture, position and inattentiveness of the RO at the time the inspector observed the condition of both individuals in the control room. In addition, the SRO did not turn around to see the inspector's entry into the control room although it was the inspector's experience that it was standard practice for an SRO to do so. Accordingly, when these factors are considered in total, the NRC concludes that the SRO was not fully attentive to his duties at approximately 5:07 a.m. on September 14, 1990. The length of time that the SRO would have remained in a position that compromised the SRO's ability to remain alert had the NRC inspector not challenged the condition would have been longer, though how much longer is open to speculation. The inspector did observe as reported in NRC Inspection Report No. 90-16 that the SRO appeared to be a alert after he opened his eyes.

With respect to the RO, the NRC does not accept the Licensee's contention that the inspector misconstrued the posture and position of the individual. The NRC maintains that the RO was not fully attentive to his duties since: (1) from the time that the inspector entered the operating area of the control room, the inspector maintained complete observation of the RO and noted that his feet were on the desk, and his head was tilted back; (2) during the time the inspector traversed the operating area to the area next to the SRO, there was no movement on the part of the RO, and the RO did not look back to view the inspector, contrary to the Licensee's stated assertion that he did so; (3) when the inspector arrived at the area next to the SRO, he could clearly see that the RO's feet were on the desk, both of the RO's eyes were closed, and the RO's head was tilted back; and (4) the RO (who did not in any manner acknowledge or respond to the inspector's presence) reacted with a startled facial expression when the inspector knocked on the desk next to the SRO and spoke to the two operators. Accordingly, when these factors are considered in total, the NRC concludes that the RO was not fully attentive to his duties at approximately 5:07 a.m. on September 14, 1990. As with the SRO, if the inspector had not intervened, the length of time that the RO would have remained inattentive is open to speculation.

With respect to both individuals, the NRC has no reason to dispute the Licensee's statements that the RO and SRO have excellent performance records. However, these records do not alter the actual observations by the inspector on September 14, 1990. The NRC also acknowledges that there was a telephone call received by the control room as well as a plant vent monitor alarm, shortly before the inspector entered the control room and that shift management may have been in the control room on nine occasions on that shift, and that shift management states that the individuals were attentive to duties at those times. However, contrary to the Licensee's assertions, that information does not alter the actual observations by the inspector that those individuals were not fully attentive to duties when the inspector entered the control room at approximately 5:07 a.m. on September 14, 1990. The NRC notes that the Licensee's evidence of activity during this shift and supervisors observations contributed significantly to the NRC conclusion that the period of time the individuals were not fully attentive had existed for only a short period.

Based on the above, the NRC maintains that both the RO and SRO were not fully attentive to their duties at approximately 5:07 a.m. on September 14, 1990, and the Licensee had not provided an adequate basis for withdrawal of that violation. Therefore, the violation remains as stated, with the exception of that portion of the Notice which indicates that the SRO's head was tilted back.

3. Summary of Licensee's Response Requesting Mitigation of the Civil Penalty

The Licensee contends that, if the NRC adheres to the view that a violation occurred, the proposed penalty should be mitigated in full since the Licensee disagrees with the NRC statement in the letter transmitting the Notice that the Licensee's corrective actions were not prompt and comprehensive. The Licensee indicates that, following this incident, it initiated a prompt investigation and instituted several measures to address the possibility of inattentiveness by operators. Its actions included: the temporary removal of the SRO and RO from licensed activities pending the completion of the Licensee's investigation into the event; Licensee management meeting with all watchstanders immediately after the event to stress the importance of attentiveness on duty; the Resident Manager and Operations Superintendent meeting with all licensed operators to reinforce the Licensee's policy regarding attentiveness to duties; revision of procedures, as appropriate; and planned modifications to training programs, as appropriate.

With regard to the comprehensiveness of its corrective actions, the Licensee disputes the NRC statement that its initial investigation focused on the narrow issue of whether the operators were sleeping, rather than the broader issue of operator inattentiveness. The Licensee states that its investigation included interviews which covered topics including the Licensee's policy regarding attentiveness and the appearance of inattentiveness, so that it was not confined to the issue of sleeping.

The Licensee also contends that the NRC seems to ignore the fact that the Licensee has emphasized attentiveness to duty, not merely staying awake, for a number of years. The Licensee referenced several internal memoranda, meetings, and procedures to support its contention. The Licensee also indicates that programmatic enhancements have been implemented to ensure that licensed operators will be attentive while on duty. Finally, the Licensee takes issue with the NRC's view that its corrective actions were insufficient because it did not include a means for verifying attentiveness, independent of the scheduled shift. The Licensee contends that it is in the best position to assess whether additional measures such as additional unannounced visits by senior management during the backshift would enhance performance and that, in light of unannounced visits already being made by shift management, such additional visits are not warranted.

The Licensee also disagrees with the NRC's conclusion that its actions in response to the NRC's findings were not prompt since station administrative procedures were not revised to provide staff and supervisors with guidance on attentiveness until six weeks after the event. The Licensee states that several meetings with licensed personnel were held within hours of the event to reinforce the Licensee's policy on the matter, and the Licensee discussed its schedule for responsive actions with the NRC within 48 hours of the incident, and the NRC gave every indication during those discussions that the planned schedule was fully acceptable. The Licensee maintains that the most important corrective actions were taken within a week or so after the event. The Licensee states that the fact that procedures were not revised for several weeks following the event is not of significance since it had stressed the importance of attentiveness in the meetings. Further, the Licensee states that it elected to await completion of the interviews it conducted with a significant number of licensed operators because it wanted the benefit of the information provided by those interviews before modifying the procedures so that any relevant knowledge acquired could be reflected in the new procedures.

NRC Evaluation of Licensee's Response Requesting Mitigation of the Civil Penalty

The NRC recognizes that the Licensee promptly removed the operators from their duties on a temporary basis, immediately stationed the assistant shift supervisor in the control room, and initiated a prompt investigation of this event (including review of log and data entries as well as interviews with all operators) when informed of the inspector's finding. The NRC also recognizes that the Licensee promptly discussed this event with all watchstanders. The NRC agrees that the Licensee discussed portions of its schedule for corrective actions with the NRC within 48 hours of this event, though the NRC did not provide any indication that the Licensee's planned schedule was fully acceptable. The NRC accepts the argument that the procedure revisions need not have been made sooner since the message had already been delivered to all operators in meetings. The NRC concludes that the Licensee was prompt in these specific actions. However, the Licensee's actions were not sufficiently comprehensive.

With regard to the comprehensiveness of the Licensee's corrective actions, notwithstanding the fact that the Licensee conducted interviews with plant personnel which included the discussion of operator inattentiveness, the Licensee, in its initial questioning of the SRO and RO, focused upon whether these individuals were sleeping rather than the broader issue of attentiveness to duty. For example, the Licensee did not explore the SRO's supervision of the RO and the issue of their positions and postures. In fact, the NRC is concerned that the Licensee was ready to return these individuals to licensed duties when Licensee management briefed NRC management at approximately 4 p.m. on the afternoon of September 18, 1990, without fully exploring these issues, or the broader issue of whether these individuals had been inattentive to their duties until the NRC intervened.

The NRC recognizes that the Licensee promptly instituted several measures following the event. These measures included meetings with all watchstanders, and planned revision of procedures and modifications to training programs. However, for the reasons given above, the Licensee's actions, while ultimately acceptable, were not initially sufficiently comprehensive, given the significant role that licensed operators have in ensuring that the reactor is operated safely and in accordance with the facility Technical Specifications, to merit mitigation based on the application of this factor.[1]

4. NRC Conclusion

The NRC has concluded that the violation as amended occurred and that the Licensee has not provided an adequate basis for either withdrawal of the violation, or for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of $50,000 should be imposed.

[FR Doc. 91-[illegible] Filed 4-26-91; 8:45 am]

BILLING CODE [illegible]

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Corpus Christi-Mustang I, Corpus Christi, TX

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Corpus Christi-Mustang I located on Mustang Island, Corpus Christi, Texas is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until July 29, 1991.

[1] The NRC did not, contrary to the Licensee's assertion, prescribe that the Licensee had to institute periodic unannounced visits by senior management during backshift hours. However, given this event, and the fact that it was not identified by the existing coverage provided by shift management, whose offices are located outside of the control room, the NRC did question the absence in the Licensee's corrective actions of any increase in the level of oversight provided. The absence of such an increase in oversight, given these circumstances, provides another basis for the NRC to conclude that the corrective actions were not sufficiently comprehensive to merit mitigation.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mike McCord, Resolution Trust Corporation, Mid-Central Consolidated Office, Board of Trade Building II, Post Office Box 419670, 4900 Main Street, Kansas City, Missouri 64141, (816) 968-7133, Fax (816) 561-0862.

SUPPLEMENTARY INFORMATION: The property is located on the northern edge of Mustang Island, one-half mile north of Port Aransas, Texas and adjoins Park Road Number 53 on the west and the Gulf of Mexico on the east. The beach adjoining the property is regulated by the City of Port Aransas. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property is rectangular in shape, undeveloped grasslands, with no man made improvements. A public beach is adjacent to the eastern boundary of the property.

Property size: 80.3 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before July 29, 1991 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by July 29, 1991 to Mike McCord at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

Re: Corpus Christi-Mustang I

Federal Register Publication Date: April 29, 1991.

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration of entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: April 22, 1991.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91-10009 Filed 4-26-91; 8:45 am]

BILLING CODE 6714-01-M

Coastal Barrier Improvement Act; Property Availability; Deer Haven Ranch, Canon City, CO

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Deer Haven Ranch located near Canon City, Fremont County, Colorado is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until July 29, 1991.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: James Meeks, Resolution Trust Corporation, P.O. Box 91183, Baton Rouge, Louisiana 70821, (504) 339-1054, Fax (504) 338-0085.

SUPPLEMENTARY INFORMATION: The property is located in south central Colorado on the eastern slope of the Rocky Mountains in Fremont County and approximately 40 miles west of Pueblo, Colorado. To the west, the property borders Chaffee County; to the north, Park and Teller Counties; and to the south Custer, County. The Bureau of Land Mangement and the State of Colorado both own neighboring properties. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property is located in an area utilized for ranching. There are two parcels with the main ranch consisting of 4,297 acres. The terrain is varied with small valleys and slopes of up to 40%. Vegetation includes native grasses and trees such as Ponderosa Pine. The ranch and adjacent public lands provide excellent habitat for a variety of game and nongame wildlife species. Abundant male deer and wild turkey inhabit this area along with elk, morning dove, fox, coyote, several nongame birds, mammals and reptiles. Bald eagles also frequently use the area.

Property size: 4,936 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before July 29, 1991 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government;
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by July 29, 1991 to James Meeks at the above ADDRESSES and in the following form:

Notice of Serious Interest

Re: Deer Haven Ranch

Federal Register Publication Date: April 29, 1991.

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: April 22, 1991.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91-10008 Filed 4-26-91; 8:45 am]

BILLING CODE 6714-01-M

Coastal Barrier Improvement Act; Property Availability; Land Between the Lakes, Grand Rivers, KY

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Land Between the Lakes located near Grand Rivers, in Livingston and Lyon Counties, Kentucky is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until July 29, 1991.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Bob Barkey, Specialist in Charge, Resolution Trust Corporation, (Institution #7164), P.O. Box 580, Hot Springs, Arkansas 71902, (501) 321-2156, Fax (501) 321-6113.

SUPPLEMENTARY INFORMATION: The property is located off of Highway 453, partiefly within the city limits of Grand Rivers, Kentucky, and is part of a peninsula that is between two lakes, Kentucky Lake, which is part of the Kentucky River and Barkley Lake, which is part of the Cumberland River. Both lakes are within the Tennessee Valley Resource Development System. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property is heavily timbered and undeveloped. It fronts on its easterly boundary on Barkley Canal which connects Kentucky Lake and Barkley Lake.

Property size: 290.73 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before July 29, 1991 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by July 29, 1991 to Bob Barkey at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

Re: Land Between the Lakes

Federal Register Publication Date: April 29, 1991.

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: April 22, 1991.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91-10006 Filed 4-26-91; 8:45 am]

BILLING CODE 6714-01-M

Coastal Barrier Improvement Act; Property Availability; White River Valley Estates, Eureka Springs, AR

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as White River Valley Estates located in Eureka Springs, Carrol County, Arkansas is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until July 29, 1991.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Harry Lampher, Specialist in Charge, Resolution Trust Corporation, (Institution #7237), 112 West Center Street, suite 200, Fayetteville, Arkansas 72702, (501) 443-9690, Fax (501) 521-7894.

SUPPLEMENTARY INFORMATION: The property is located below Beaver Dam on Beaver Lake approximately nine miles northwest of Eureka Springs, Carrol County, Arkansas and is adjacent to the Table Rock Recreational Area, a recreational area managed by the U.S. Army Corps of Engineers. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property consists of the undeveloped, wooded and open areas. Site improvements are limited to graded, unpaved dirt streets transgressing a three-acre portion of the site.

Property size: 51 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before July 29, 1991 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.c. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by July 29, 1991 to Harry Lampher at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

Re: White River Valley Estates

Federal Register Publication Date: April 29, 1991.

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: April 22, 1991.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91-10007 Filed 4-26-91; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29192; File Nos. SR-Amex-91-22; SR-CBOE-91-11]

Self-Regulatory Organizations; American Stock Exchange, Inc. and Chicago Board Options Exchange, Inc.; Filing of Proposed Rule Changes Relating to the Joint-Exchange Options Plan.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), on April 11, 1991, and March 21, 1991, respectively, the American Stock Exchange, Inc. ("Amex") and the Chicago Board Options Exchange, Inc. ("CBOE") (collectively, "the Exchanges") have filed with the Securities and Exchange Commission ("Commission") identical proposed rule changes as described in items I, II, and III below, which items have been prepared by the Exchanges. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The adoption of rule 19c-5 under the Act effectively eliminated the Options Allocation Plan which had served since

1980 as the principal agreement among the options exchanges under which exchange-listed stocks were selected for trading.[1] In order to establish uniform procedures for selecting, listing, challenging and arbitrating the eligibility of new equity options for both exchange-traded and over-the-counter-listed securities, the Amex, CBOE, New York Stock Exchange, Inc. ("NYSE"), Philadelphia Stock Exchange, Inc. ("PHLX"), Pacific Stock Exchange, Inc. ("PSE"), and the Options Clearing Corporation ("OCC") have agreed to adopt the following Joint-Exchange Options Plan ("the Plan"). The Plan is to become effective immediately upon the Commission's approval of a rule filing for each of the exchanges noted above.[2]

Joint-Exchange Options Plan

1. An exchange which seeks to list a new equity option on a security (the "Selecting Exchange") must:

(a) Notify OCC of its selection (the "Selected Option") through the submission of an intent to certify; and

(b) Simultaneously give written notification of its selection to the other exchanges. Such Selecting Exchange has the right to determine the ticker symbol and the trading cycle for the Selected Option.

2. Upon receipt of notification from the Selecting Exchange, any other exchange may:

(a) Submit an intent to certify the Selected Option to the OCC provided such request is submitted no later than 4 p.m. New York City time on the business day following receipt of notification from the Selecting Exchange *and* further, provided such exchange(s) notifies all other exchanges of its intention to concurrently list the Selected Option; or

(b) Challenge the eligibility of the Selected Option provided notification of such challenge is submitted to the Selecting Exchange, OCC and all the other exchanges no later than 4 p.m. New York City time on the business day following receipt of notification from the Selecting Exchange. Upon any challenge, any challenging exchange and any challenged exchange shall submit written support for its claim of eligibility to the Arbitrator by 4 p.m. New York City time and to all of the other Exchanges by 5 p.m. New York City time on the third business day following notification of an intent to certify the Selected Option by the Selecting Exchange. Any exchange which has submitted an intent to certify the Selected Option will automatically be deemed to be a party to the challenge.

3. An exchange that elects to:

(a) Notify OCC of its intent to certify a Selected Option is prohibited from challenging such selection.

(b) Challenge the eligibility of a Selected Option is prohibited from requesting certification of such selection except in accordance with the provisions of paragraph 6 set forth below.

4. If no challenge is asserted as to the Selected Option and no other exchange has submitted an intent to certify such option in accordance with the provisions of paragraph 2(a), the Selecting Exchange may commence trading in such option on the third (3rd) business day following the date of its submission to the OCC of its intent to certify. Any other exchange may not commence trading the Selected Option prior to the eighth (8th) business day following the date the Selecting Exchange submitted its intent to certify to the OCC.

5. If no challenge is asserted as to a Selected Option, then the Selecting Exchange and any other exchange which has submitted an intent to certify such option in accordance with the time provisions of paragraph 2(a), may commence trading in such option on the fifth (5th) business day following the date of the Selecting Exchange's submission to the OCC of its intent to certify. Any other exchange may not commence trading the Selected Option prior to the tenth (10th) business day following the date the Selecting Exchange submits its intent to certify to the OCC.

6. If a challenge is asserted as to a Selected Option in accordance with the time provisions of paragraph 2(b) above, the Arbitrator shall resolve the challenge by the close of the business day following its receipt of written support for the Selected Option's eligibility or ineligibility from the challenged/challenging exchanges.

Should the Arbitrator require additional time to make a determination as to the Selected Option's eligibility, the Arbitrator shall notify the exchanges of the additional time needed which shall not exceed five business days from the receipt of written support from the challenged/challenging exchanges without the approval of the challenged/challenging exchanges. If the Arbitrator deems the Selected Option eligible for option trading, the challenging exchange(s) as well as any other exchange may submit an intent to certify such option and further, notify all other exchanges of its intention to list such option prior to the close of one (1) Business day following the Arbitrator's determination. Trading of the Selected Option will commence on the third (3rd) business day following the Arbitrator's resolution of the challenge for the Selecting Exchange and any other exchange which submitted an intent to certify such option in accordance with the time provision in either paragraph 2(a) or paragraph 6 herein.

7. In performing its duties and functions as Arbitrator, OCC shall determine whether a Selected Option is eligible and there shall be no appeal from the Arbitrator's determination. A Selected Option will be eligible only if it meets the applicable exchange listing standards as of the date the Selecting Exchange notifies OCC of its intent to certify such option. It shall be no defense to any challenge that any provision of an exchanges rules permits a waiver of listing requirements due to exceptional circumstances. OCC may employ whatever law firms, accounting firms or other agents and may perform such review as it, in its sole discretion, deems necessary to resolve any challenge within the time limits prescribed by this Agreement. The Arbitrator in its sole discretion shall have the right to request additional information as to eligibility or ineligibility from the selecting or challenging exchange(s) and to the extent the Arbitrator deems necessary to independently verify the information received.

It is expressly understood and agreed that, since OCC is to be the issuer of any Selected Option, it may independently of any challenge take any action permitted it under the Participant Exchange Agreement between it and the exchanges. Further, the Arbitrator may in its sole discretion, assess against any losing party or parties to any challenge the total cost of any outside services and/or OCC staff time allocated to resolving a challenge. In this regard, the exchanges jointly and severally agree to idemnify OCC and to hold it harmless from and against any and all loss, damage, or expense, resulting from its activities as Arbitrator hereunder in the performance of its duties as such.

8. All notices required under the terms of this Agreement shall be deemed to have been duly given if communicated by telefacsimile.

[1] Rule 19c-5 allows for the multiple trading of standardized options overlying exchange-listed stocks. See Securities Exchange Act Release No. 26870 (May 29, 1989), 54 FR 23093.

[2] The Commission expects that the NYSE, PHLX, PSE, and the OCC will shortly file their own proposed rule changes to adopt the Plan.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of this proposal is to comply with the Commission request that the options exchanges implement procedures which will supplant the Options Allocation Plan (the "old Plan") and ensure the adherence to a uniform set of guidelines for selecting new equity options. Accordingly, the exchanges have worked together to develop the Plan.

SEC rule 19c-5, which became effective on January 22, 1980, effectively eliminated the old Plan and provided for the expansion of multiple trading to include qualified exchange-listed securities along with qualified OTC securities (which have been permitted to be multiply-traded since 1985). While the old Plan was never amended to include OTC stocks under its provisions, since 1980 it has served as the principle agreement under which the five options exchanges selected, certified challenged and arbitrated disputes concerning new equity options on exchange-listed stocks.

Like its predecessor, the new Plan provides for uniform selection, certification and challenge procedures that are similar to those that were previously in effect. The exchanges will continue to pre-announce their intended selections and cerify such selections to the OCC. Further, the Plan contains provisions for exchanges to challenge and defend the eligibility of selected underlying stocks and provides for the OCC to act as arbiter to resolve any disputes.

In an attempt to permit an exchange to benefit from its research efforts, the Plan stipulates certain rigid time frames within which other exchanges must act if they seek to similarly select ("piggy-back") the same new option. Also, to satisfy member firm concerns that they receive adequate advance notice in the case an option will be multiply traded, the Plan provides certain waiting periods before the start up of such trading.

The proposed rule changes are consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchanges be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges believe that the proposed rule changes will not impose a burden on competition.

C. Self-Regulatory Organziations' Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received although the proposed filings have been discussed with member firm representatives who appear to strongly favor the elements of the Plan.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consent the Commission will:

(A) By order approve such proposed rule changes, or,

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all writen statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to File Nos. SR-Amex-91-06 and/or SR-CBOE-91-11 and should be submitted by May 20, 1991.

For the Commision by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 18, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10044 Filed 4-29-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29129; File No. SR-NSCC-90-24]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of Proposed Rule Change Concerning Modifications to the CNS Reorganization Processing System

April 22, 1991.

On November 28, 1990, the National Securities Clearing Corporation ("NSCC"), filed a proposed rule change (File No. SR-NSCC-90-24) with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] On February 19, 1991, NSCC amended this proposal by filing Amendment No. 1. Notice of this proposal was published in the **Federal Register** on April 4, 1991, to solicit comments from interested persons.[2] No comments were received. This order approves the proposal.

I. Description of the Proposal

The proposed rule change will enhance the CNS Reorganization Processing System ("System")[3] to

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 28963 (March 28, 1991), 56 FR 13045.

[3] NSCC's rules governing its CNS Reorganization Processing System are set forth in NSCC's Procedures, § VII.H.4 (Corporation Reorganizations), pp. 49-52 (rev. ed., Jan. 30, 1991). See also Securities Exchange Act Release No. 24295 (April 17, 1987), 52 FR 13779 (File No. SR-NSCC-87-09) (Order approving CNS Reorganization Processing System).

CNS refers to NSCC's Continuous Net Settlement System for processing securities transactions. NSCC Rules, Rule 11 (CNS System), pp. 37-42 (rev. ed., Jan. 30, 1991).

provide for the processing of voluntary tender or exchange offers ("tender offers"), with protection periods of five days or greater.[4] For NSCC members that hold long positions in securities subject to a tender offer, the System provides members with an increased opportunity to obtain more of those securities. The System does so by putting such members on high priority for allocation of securities and by holding the NSCC members with short positions in those securities liable for failing to deliver. Currently, securities eligible for processing in the CNS System are those securities subject to a tender offer with protect periods of eight days.

NSCC provides up to two reorganization sub-accounts for each security in order to provide protection for up to two competing tender offers for that security.[5] If there are more than two tender offers for a security, all positions in the security not previously moved to a sub-account are removed from the CNS System and balance orders are produced. Four days after the expiration date of the tender offer (*i.e.*, "E+4"), members with long CNS positions in a security subject to a tender offer may submit a Letter of Liability to NSCC instructing NSCC to move those positions to a reorganization sub-account. On E+5, NSCC issues Potential Liability Reports to members with the oldest short positions advising these members of their potential liability for the tender value. After the day cycle on E+5, NSCC moves long positions for which it has received Letters of Liability into the sub-account. Concurrently, NSCC moves a corresponding number of short positions into the sub-account.

Between E+5 and the end of the protect period, regular CNS allocation occurs with the long positions in the sub-account assigned the highest priority for allocation. In addition, on E+6 and each day thereafter until payable date, NSCC marks each short position to the tender offer price. Upon completion of the tender offer, members with long positions are credited, and members with short positions are debited for the securities and/or cash under the terms of the tender offer.

When NSCC implemented the System in 1987,[6] it limited processing to accommodate tender offers with eight day protect periods because most of the tender offers at that time had eight day protect periods. NSCC since has recognized that there have been an increased number of tender offers with protect periods of five days or greater that could benefit from the System. To accommodate these tender offers, NSCC is proposing the following specific changes to the System:[7]

1. The ability to submit adjustment input in the form of an add instruction or a withdrawal instruction will not be available for tender offers with five day protect periods.

2. CNS allocations will occur from E+5 until the day cycle of the last day of the protect period no matter whether the protect period is five or eight days.

3. Potential Liability Reports will be issued one day earlier (*i.e.*, on E+4). This change will enable members with short positions to receive earlier notification of their potential liability.

4. Members who contact each other directly and arrange for delivery of securities themselves will be able to notify NSCC of such delivery by submitting a CNS exit request form to NSCC. If delivery is made outside the System without NSCC being so notified, the short member's account will automatically be debited for the cash or securities under the terms of the tender offer.

5. A technical change is being made to provide that the reorganization information will no longer appear on the CNS Projection Report but will appear on a separate Reorganization Information Report.

6. NSCC will modify the Automated Customer Account Transfer ("ACAT") Service in order to provide that securities subject to a tender offer will be deemed non-CNS eligible for ACAT processing.[8]

7. NSCC will amend its Automated Stock Borrowing Procedure to preclude borrowing from participants securities undergoing a voluntary tender offer after the nighttime allocation on E+2 until the end of the protest period.[9]

[4] The filing defines "protect period" as "protection period" as the amount of time after the expiration of a tender offer that the owner or record holder, who has elected to participate in the tender, has to submit the shares to the tender agent to cover his position.

[5] NSCC procedures governing CNS sub-accounts are set forth in NSCC's Procedures, § VII.I, p. 64–65 (rev. ed., Jan. 30, 1991).

[6] Securities Exchange Act Release No. 24883, *supra* note 2.

[7] Unless otherwise noted, the modifications are reflected in changes to NSCC Procedures, § VII.H.A. (Corporate Reorganizations) (rev. ed. Jan. 30, 1991).

[8] The ACAT Service is an industry-wide service that assists broker-dealers in transferring assets in connection with the transfer of customer accounts between broker-dealers. NSCC Rule 50, § 10 (ACAT Service), pp. 109–115 (rev. ed. Jan. 30, 1991).

[9] NSCC Procedures, Addendum C (NSCC Automated Stock Borrow Procedures) (rev. ed. Jan. 30, 1991).

II. Discussion

The Commission believes that the proposal is consistent with the Act, particularly section 17A of the Act. Section 17A(a)(1) of the Act encourages efficient, effective, and safe procedures for securities clearance and settlement, particularly by the use of a automation.[10] Moreover, section 17A(b)(3)(F) of the Act requires the rules (including procedures) of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the control of clearing agencies.[11]

The Commission also believes for several reasons that the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions. First, participants will be afforded the benefits of the netting process when reorganizations are processed through the CNS System. This, among other advantages, will reduce the number of actual settlements required and, accordingly, will lower clearing expenses for participants. Second, the CNS System provides automatic book-entry delivery or receipt of the securities versus money settlement at the Depository Trust Company ("DTC"), a procedure that is more efficient, more secure, and less prone to error than other depository deliveries or physical delivery of the securities. Third, as a general matter, an automated environment for clearance and settlement will reduce processing expenses per transaction.

The Commission believes that the proposal will help assure the safeguarding of securities and funds in NSCC's control or for which NSCC is responsible. Inasmuch as NSCC rules require participants to settle CNS delivery obligations by book-entry movement at DTC, rather than by physical delivery of certificates, the proposal should reduce the risk of loss that can result from physical delivery.[12]

The Commission further believes that this proposal by NSCC is responsive to a 1983 Commission directive to NSCC to provide a full range of automated, centralized services for securities subject to reorganizations.[13]

NSCC has requested that the Commission find good cause for approving the proposed rule change

[10] 15 U.S.C. 78q-1(a)(1).

[11] 15 U.S.C. 78q-1(b)(3)(F).

[12] NSCC Rules, Rule 11, section 3, pp. 27–30 (rev. ed., Jan. 30, 1991).

[13] Securities Exchange Act Release No. 19875 (April 5, 1983), 48 FR 15089

prior to the thirtieth day after the date of publication of notice of the filing. Such accelerated approval would permit NSCC both to begin operating the System with the proposed enhancements according to schedule and to notify their members in a timely manner prior to the actual institution of the modifications to the System. The Commission regards the proposal as one that (1) will provide substantial benefits and added efficiency to the national clearance and settlement system, (2) furthers, as explained above, a long standing goal of the Commission,[14] and (3) is not controversial and is not expected to be the subject of numerous comment letters. The Commission believes good cause exists under section 19(b)(2) of the Act for approving the proposal prior to the thirtieth day after publication of the notice.

III. Conclusion

For the reasons discussed in this order, the Commission believes that the proposal is consistent with the requirements of the Act, particularly Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (SR–NSCC–90–24) be, and hereby is, approved.

By the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10048 Filed 4-26-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29110; File No. SR-NYSE-90-20]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Rule 113—Specialists' Public Customers

On April 17, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend NYSE Rule 113(b) in order to delete the current identification requirement for proprietary orders in a specialty stock received by a specialist from an affiliate to provide that such orders need not be identified if received by the specialist by means of the Exchange's automated order routing systems.

The proposed rule change was noticed in Securities Exchange Act Release No. 28084 (June 1, 1990), 55 FR 23496 (June 8, 1990). No comments were received on the proposal.

NYSE Rule 113(b) currently provides that orders in a specialty stock for the specialist, for specified individuals associated with a specialist, and for approved persons (*i.e.*, entities in a control relationship with a specialist) must be identified when they are left with the specialist. If an order is not for one of these accounts, it may not be identified. The order identification requirement of NYSE Rule 113(b) facilitates specialist compliance with the provisions of NYSE Rule 92, a rule which prohibits a member from trading for his own account or for the account of an affiliated individual or entity while he holds or knows that his member organization holds a customer order capable of execution at the same price or better. Essentially, NYSE Rule 92 was designed to ensure that an Exchange member does not give preferential treatment to an order for an affiliate over an order for a customer. Consequently, NYSE Rule 113(b), by requiring order identification, ensures that a specialist knows which orders given to him are affiliate orders and enables him to comply with Rule 92.

Currently, Exchange automated order routing systems do not allow for order identification by account type. Account type indicators are "stripped" at the Common Message Switch before an order is received by the specialist. Thus, as a practical matter, it is not possible, because of system constraints, for affiliates of a specialist to comply with the order identification requirement of NYSE Rule 113(b) for systematized orders.

The Exchange estimates that a significant expenditure would be required in order to make the necessary system enhancements that would allow the identification of orders of an affiliate.[3] The Exchange believes that such an expenditure does not appear cost-justified when weighed against the overall purposes of NYSE Rules 113(b) and 92.

The Exchange proposes, therefore, to delete the order identification requirement contained in NYSE Rule 113(b) for orders in a specialty stock given to a specialist by an affiliate if received by the specialist by means of an Exchange automated order routing system. Because there are no account type indicators on systematized orders, the specialist cannot know that a systematized order is a proprietary order for the account of an affiliate. Thus, there is no possibility that the specialist could give preferential treatment to that order ahead of other orders in violation of Rule 92.

After careful consideration, the Commission has determined that the proposed amendment to NYSE Rule 113(b) is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposed rule change is consistent with sections 6(b)(5) and 6(b)(1)[4] and Rule 11b-1[5] under the Act for the following reasons.

The Commission believes that the proposed rule change is consistent with the section 6(b)(5) requirement that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, and, in general, to protect investors and the public interest. The proposed rule change is consistent with section 6(b)(5) in that it allows the facilitation of transactions in securities by means of the NYSE's automated order routing systems while still maintaining the effectiveness of NYSE Rule 113(b).

In addition, the Commission believes that the proposal is consistent with the section 6(b)(1) requirement that the Exchange have the capacity to enforce compliance by its members, and persons associated with its members, with the rules of the Exchange. As stated previously, Exchange Rule 92 prohibits a member from trading for his own account or for the account of an affiliated individual or entity while he holds or knows that his member holds a customer order capable of execution at the same price or better. Rule 113(b) was adopted, therefore, to help secure compliance with Exchange Rule 92 by ensuring that the specialist had the requisite knowledge of the type of accounts held by individuals and entities affiliated with him. Because there are no account type indicators on systematized orders, however, NYSE Rule 113(b), as it relates to orders received by the specialist by means of

[14] *See supra* note 13 and accompanying text.

[15] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1989).

[3] See letter from Brian M. McNamara, Managing Director, Market Surveillance, NYSE, to Mary N. Revell, Branch Chief, Division of Market Regulation, SEC, dated February 26, 1991.

[4] 15 U.S.C. 78f(b)(5) and (b)(1) (1988).

[5] 17 CFR 240.11b-1 (1989).

the Exchange's automated order routing system, currently is not needed to enforce specialist compliance with Exchange Rule 92.

Finally, the Commission finds that the proposal is consistent with Rule 11b-1 under the Act. Specifically, the Commission believes the proposal is consistent with Rule 11b-1(a)(2) which requires that the rules of an exchange provide provisions which state the responsibilities of a specialist acting as a broker in securities in which he is registered. By providing provisions which relate to specialists who accept orders for both customers and individuals or entities affiliated with the specialist, Exchange Rule 92 fulfills the Exchange's obligation with regard to Rule 11b-1(a)(2). Moreover, because the NYSE's automated order routing systems do not provide for identification by account type, the proposed amendment to NYSE Rule 113(b) does not impede the effectiveness of current NYSE Rule 113(b). The proposal, therefore, has no impact upon the actual responsibilities of a specialist, as set forth in NYSE Rule 92, when acting in his capacity as a broker.[6]

To summarize, NYSE Rule 113(b) was designed to provide specialists with the knowledge needed to guard against a violation of NYSE Rule 92. The potential for any fraudulent or manipulative act in violation of NYSE Rule 92 is lessened, however, given the fact that the NYSE's automated order routing systems do not provide identification by account type. Thus, a specialist does not know whether orders that were routed over automated systems are firm proprietary or customer orders. Given the significant expenditures required to modify the Exchange's automated routing system to allow identification of affiliated orders, as represented by the NYSE,[7] and the fact that the Rule 92 protections are not jeopardized by the proposed rule change, the Commission believes that the proposed rule change is consistent with sections 6(b)(1) and 6(b)(5) and Rule 11b-1 of the Act.

It is therefore ordered, pursuant to section 19(b)(2)[8] of the Act, that the proposed rule change be, and hereby is, approved.

[6] The Commission also notes that this proposal has no effect on the Rule 92 requirement that a non-specialist member must refrain from trading for his own account or for the account of an affiliate while he holds or knows that his member organization holds a customer order capable of execution at the same price or better.

[7] See note 3, *supra*.

[8] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: April 19, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10062 Filed 4-26-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29113; File No. SR-NYSE-91-10]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Usage Fees for the Exchange's Step-Out Service

April 22, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 29, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NYSE-91-10) as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing a usage fee for its new electronic service known as the "Step-Out Service."[2] The new service permits all or part of a securities transaction effected on the NYSE floor to be transferred from one clearing firm to another clearing firm's on firms' clearing account(s) prior to clearance and settlement.

[9] 17 CFR 200.30-3(a)(12) (1990).

[1] 15 U.S.C. 78s(b).

[2] The proposed usage fee for the Step-Out Service technically became effective when the proposed rule change (File No. SR-NYSE-91-10) was filed with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act. The companion rule change (File No. SR-NYSE-91-09) that proposes the Step-Out Service, however, was filed by the Exchange pursuant to section 19(b)(2) of the Act. The latter filing has not yet received the Commission approval that is required for proposed rule changes submitted pursuant to section 19(b)(2). Accordingly, the NYSE has assured the Commission that the Step-Out Service will not be put in operation until it receives formal Commission approval under section 19(b)(2) of the Act. Telephone conversation between Dennis Cowell, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, Division of Market Regulation, Commission (April 19, 1991).

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Step-Out Service is a simple, expeditious, and cost effective method whereby all or part of a securities transaction effected on the floor of the Exchange can be transferred electronically from one clearing firm to another clearing firm's or firms' clearing account(s) prior to settlement. This electronic system uses and builds upon a segment of the NYSE's electronic Overnight Comparison System[3] that currently is used to resolve uncompared trades.

The Step-Out Service will be available only for NYSE clearing members. The NYSE currently is charging its clearing firms fees for hardware installation, maintenance, and access for the Exchange's Correction System[4] in accordance with rates contained in the Correction System's 1989 rate schedule.[5] The Exchange plans to charge the same rates for the Step-Out Service, except the usage fee will be reduced form $0.40 to $0.20 per item since only a segment of the entire Overnight Comparison System will be used to operate the Step-Out Service. An NYSE clearing firm desiring to use both the Correction System and the Step-Out Service will be required only to install one terminal system since both services can be obtained from the one system.

[3] For information on the NYSE's Overnight Comparison System, see Securities Exchange Act Release No. 26227 (March 14, 1989), 54 FR 11070 [File No. SR-NYSE-88-36].

[4] For information on the NYSE's Correction System, see Securities Exchange Act Release No. 26773 (May 1, 1989), 54 FR 20227 [File No. SR-NYSE-89-08].

[5] Securities Exchange Act Release No. 26859 (March 9, 1989), 54 FR 10887 [File No. SR-NYSE-88-04].

(2) Statutory Basis Under the Act for the Proposed Rule Change

The basis under the Act for the proposed rule change is Section 6(b)(4) of the Act, which requires that a national securities exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

(B) SRO's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) SRO's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The NYSE has not solicited comments on the proposed rule change and no unsolicited comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[6] and paragraph (e)(2) of Rule 19b-4 under the Act[7] in that it establishes or changes a due, fee, or other charge imposed by the NYSE. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-91-10 and should be submitted by May 20, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10063 Filed 4-26-91; 8:45 am]

BILLING CODE 8010-01-M

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b-4(e)(2).

[8] 17 CFR 200.30-3(a)(12).

[Release No. 34-29114; File No. SR-PHLX-89-48, Amendment 2]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Proposed Amendment Regarding its Revised Cash Index Participation Filing

April 19, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 28, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby submits as proposed rule change the second amendment to SR-PHLX-89-48 regarding its revised Cash Index Participation ("CIP") filing. The text of the rule change, as amended, is attached as exhibit A.

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX submitted SR-PHLX-89-48 on August 30, 1989. In this filing, the PHLX proposed to amend its CIP contract to provide that a CIP holder may exercise the cash-out privilege on a daily basis without a penalty and receive the next day's opening index value of the pertinent index.

After consultation with the Stock Clearing Corporation of Philadelphia ("SCCP"), the licensor of the revised CIP contract specifications, it was determined that the proposed instrument's appeal and utility to public investors could be heightened if a holder exercising the cash-out privilege could receive the same day's closing index value. To accomodate this change, the PHLX filed SR-PHLX-89-48, amendment 1 with the Commission on October 18, 1990.

The instant proposed amendment, amendment 2 to SR-PHLX-89-48, establishes a daily exercise cut-off procedure similar to that of certain equity index options and announces that CIP holders exercising the cash-out privilege are entitled to accrued dividend equivalent payments calculated up to the time of the cash-out. With respect to the exercise cut-off amendments, the cut-off time for CIP notices will be 4:15 p.m., Philadelphia time, rather than the 3 p.m., Philadelphia time, cut-off set forth prior to this amendment. The amendment makes clear that it is a PHLX rule that requires exercise decisions to be made by the cut-off time. Accordingly, The Options Clearing Corporation ("OCC") may still have consistent rules which permit the tendering of exercise instructions after 4:15 p.m. so long as the decisions underlying these instructions are made on or before 4:15 p.m.

The 4:15 p.m. exercise cut-off time is compatible with other comparable major market stock options indices expiration cut-off times, including for example the CBOE's daily OEX options exercise instructions cut-off rule. Accordingly, the 4:15 p.m. exercise cutoff time promotes a consistent industry wide standard in order for investors to easily determine and identify a widely recognized exercise cut-off time.

With respect to the dividend equivalent modification, no change will be effected to the procedure of OCC on a quarterly basis crediting and debiting

[9] 17 CFR 200.30-3(a)(12).

the accounts of CIP record holders and shorts a proportionate amount of any regular cash dividend equivalents derived from ex-dividend information of securities underlying and pertinent CIP index made public during the quarter.

Accordingly, any CIP holder who is long at the end of trading on the third Thursday of March, June, September and December ("Quarterly Thursday") is entitled to receive an accrued dividend equivalent payment based on the entire quarter. In this regard, a CIP holder selling his CIPs on a quarterly Thursday is not entitled to such accrued dividend equivalent payment; rather his purchaser will instead receive this payment. Additionally, a CIP holder who exercises the cash-out privilege on the Quarterly Thursday will also receive the accrued dividend equivalent payment based upon the entire quarter. The rationale for this entitlement is based upon the fact that all exercise instructions are processed after the close of trading and therefore the exercising CIP holder is technically still long at the close of trading on the Quarterly Thursday.

The current amendment establishes the additional right of a CIP holder exercising the cash-out privilege on any day within the quarter to receive the dividend equivalent value accrued since the end of the previous quarter. For example, a CIP holder exercising the cash-out privilege on the next business day following a Quarterly Thursday would be entitled to any dividend equivalent value accrued for the first day of the new quarter assuming that an issuer or issuers of a security or securities had paid a dividend or dividends on that day.

The accrued dividend equivalent will be calculated as follows. On the ex-dividend date for each component security in the pertinent stock index an amount representing the dividend for that security, adjusted to reflect the relative weight of the security in the pertinent stock index, will be added to the dividend equivalent for the quarter. The calculation of the accrued dividend equivalent will be performed by PHLX or a processor selected by PHLX. The calculations performed by the PHLX and/or its processor will be deemed final for purposes of OCC paying out accrued dividend equivalents reflecting daily cash-outs as well as payments of the dividend equivalent to those holding CIP long positions held at the close of trading on a given Quarterly Thursday.

This amendment, coupled with the revised CIP daily cash-out privilege, at no discount, will assure that CIP pricing stays in lockstep with the current or spot value of the underlying stock index. Accordingly, the amendment should create a more attractive product for investors, and assure that the revised CIP instrument is analyzed as a spot security having none of the pricing characteristics of a futures contract.

The proposed rule change is consistent with section 3(a)(10) delineating the instruments that constitute securities and section 6(b)(5) of the Exchange Act, which provides in pertinent part that the rules of the exchange are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposal, if approved, also assures the removal of impediments to and the perfection of the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

B Self-Regualtory Organiztion's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The PHLX has prepared this rule change in close coordination with OCC and the SCCP.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–PHLX–89–48 and should be submitted by May 20, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

The following text assumes that the revisions made in SR–PHLX–89–48, amendment 1, as filed on October 18, 1990, are incorporated. Accordingly, only the revisions made pursuant to this filing are denoted with new text italicized and deleted text bracketed:

Accrued Dividend Equivalent Calculation

Rule 1002B–1. The accrued dividend equivalent in respect to a particular CIP index shall be calculated as follows. On the ex-dividend date for each component security an amount representing the ordinary cash dividend or distribution for that security, adjusted to reflect the relative weight of the security in the index, will be added to the dividend equivalent for that quarter. The dividend equivalent for a quarter shall accrue from the third Friday of December, March, June and September and the accrual shall end on the respective following third Thursday of March, June, September and December. The calculation of the accrued dividend equivalent will be performed each business day by the Exchange and/or the reporting authority. The calculations performed by the Exchange and/or the reporting authority shall be deemed final for purposes of any CIP dividend equivalent payment entitlement. In this regard, a holder of the CIP at the end of a quarter shall receive an accrued dividend equivalent based on the entire quarter in accordance with rules of The Options Clearing Corporation.

. . .Commentary

.01 For purposes of rule 1002B–1, the term "ordinary cash dividend or distribution" means a cash dividend or distribution in an aggregate amount which does not exceed 10% of the market value (as of the ex-dividend date) of the underlying security outstanding. The Exchange will determine on a case-by-case basis whether other cash dividends or distributions are "ordinary cash dividends or distributions."

* * * * *

Cash-Out Privilege

Rule 1006B. The purchaser of a CIP may exercise the CIP cash-out privilege at any time after establishing a CIP position. Exercise of the CIP cash-out privilege entitles the holder of a long CIP position to obtain the CIP closing index value *plus any accrued dividend equivalent value* as specified in rule 1008B relating to exercise of the cash-out privilege.

* * * * *

Exercise of Cash-Out Privilege

Rule 1008B. (a) Exercise of the cash-out privilege shall entitle the holder of the CIP to receive: *(1)* The CIP index value as calculated at the close of trading on the same business day as the date of the exercise of the cash-out privilege *and (2) the accrued dividend equivalent value as calculated pursuant to rule 1002B–1.*

(b) The text of this part is to be withdrawn and replaced by the following text [all of which is new]:

(b) The decision and written evidence of such to exercise the CIP Cash-Out privilege by a purchaser of a CIP must be made no later than 4:15 p.m., Philadelphia time, to be effective for the date on which the exercise is made. Additionally, 4:15 p.m., Philadelphia time, shall be the latest time at which an exercise instruction may be [1] Accepted by a clearing member organization from a non-clearing member, or [2] accepted by a member organization from any customer.

The term "exercise instruction" means also an instruction to cancel an exercise instruction previously submitted. All exercise instructions must be time stamped at the time they are accepted by the receiving member organization.

Notwithstanding the foregoing, member organizations may receive exercise instructions after 4:15 p.m., Philadelphia time, but prior to any cut-off times imposed by The Options Clearing Corporation (i) in order to remedy mistakes made in good faith, (ii) to take appropriate action as the result of a failure to reconcile unmatched Exchange CIP transactions, or (iii) where exceptional circumstances relating to a customer's ability to communicate exercise instructions to the member organization [or the member organization's ability to receive exercise instructions] prior to such time warrant such action.

Notice of exercise of the CIP Cash-Out privilege must be provided by a purchaser of a CIP in accordance with the rules and procedures of The Options Clearing Corporation. An exercise notice may be tendered to The Options Clearing Corporation only by the clearing member in whose account with The Options Clearing Corporation the CIP is carried. Members and member organizations, to the extent that they do not conflict with the rules and procedures of the Exchange and The Options Clearing Corporation, shall establish fixed procedures as to the latest hour at which they will accept exercise notices from their customers.

Rule 1008B–1. No change.

[FR Doc. 91-[illegible] Filed 4-26-91; 8:45 am]

BILLING CODE [illegible]

[Investment Company Act Rel. No. 18168; International Series [Rel. No. 282; 812-7708]

Global Income Plus Fund, Inc., et al.; Notice of Application

April 22, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Global Income Plus Fund, Inc., PaineWebber America Fund, PaineWebber Atlas Fund, PaineWebber Classic Flexible Income Fund, Inc., PaineWebber Classic Regional Financial Fund, Inc., PaineWebber Fixed Income Portfolios, PaineWebber Investment Series, Inc., PaineWebber Master Series, Inc., PaineWebber Olympus Fund, PaineWebber Series Trust.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and rule 12d3–1.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting applicants to invest in equity or convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser ["foreign securities companies"], provided that these investments meet the conditions in proposed amended rule 12d3–1.

FILING DATE: The application was filed on April 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 20, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington DC 20549. Applicants, 1285 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundas, Staff Attorney, at (202) 272–2108, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each applicant is a management investment company registered under the Act. Mitchell Hutchins Asset Management Inc. ("Mitchell Hutchins") serves as investment adviser for each of the applicants.

2. Applicants request that any relief given pursuant to the application apply to any other registered investment company or series thereof that in the future is advised by Mitchell Hutchins or its parent, PaineWebber Inc., or for which Mitchell Hutchins or PaineWebber Inc. serve as principal underwriter.

3. Applicants wish to invest in foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser.

4. Applicants seek relief from section 12(d)(3) of the Act and rule 12d3–1 thereunder to invest in securities of foreign securities companies to the extent allowed in the proposed amendments to rule 12d3–1 ["Proposed Amendments"]. *See* Investment Company Act Release No. 17099 (Aug. 8, 1989), 54 FR 33027 (Aug. 11, 1989). Applicants' proposed acquisitions of securities issued by foreign securities companies will satisfy each of the requirements of the Proposed Amendments.

Applicants' Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Subparagraph (b)(4) of rule 12d3–1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." "Margin security" status is, generally speaking, available only to securities traded in

United States markets.[1] Accordingly, applicants seek an exemption from the "margin security" requirement of rule 12d3-1.

2. The Proposed Amendments provide that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the Proposed Amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicants' Condition

Applicants agree to the following condition in connection with the relief requested:

Applicants will comply with the provisions of the proposed amendments to rule 12d3-1 [Investment Company Act Release No. 17096 (August 3, 1989); 54 FR 33027 (August 11, 1989)], and as such amendments may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10046 Filed 4-26-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18107; 811-5345]

Orange County Growth Fund; Application for Deregistration

April 19, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Orange County Growth Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: The Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on January 23, 1991 and amended on March 11, 1991 and April 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 16, 1991 and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 3151 Airway Avenue, Suite H-1, Costa Mesa, California 92626.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2283, or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Applicant was organized as a Massachusetts business trust and is registered under the Act as an open-end diversified management investment company. On September 24, 1987, the Applicant filed a registration statement pursuant to Section 8(b) of the Act. On the same date, the Applicant filed a registration statement on Form N-1A under the Securities Act of 1933, which became effective on March 23, 1988.

2. At a meeting held on December 5, 1990, the Applicant's board of trustees adopted a plan of termination under which the Applicant would convert its assets into cash and then make a liquidating distribution to its shareholders. On December 12, 1990, the Applicant sent its shareholders a letter informing them of the board's decision. In response to the letter, 102 of the Applicant's 131 shareholders voluntarily redeemed their shares, for which they received the then current net asset value of between $6.03 and $6.06 per share.

3. Proxy materials, which were filed with the SEC, were distributed to shareholders on January 9, 1991. At a shareholder meeting held on January 17, 1991, 9 shareholder accounts were represented in person or by proxy. These 9 shareholder accounts represented 61.6% of the Applicant's remaining shares and all 9 approved the plan of termination. Fourteen shareholders were not represented in the vote because they failed to respond to the proxy solicitation.

4. On January 18, 1991, 19 of the remaining 23 shareholders received liquidating distributions that totaled $25,319 or $6.06 per share. On January 23, 1991, 3 of the remaining 4 shareholders received liquidation distributions totalling $48,754 or $6.06 per share. The delay in distribution to these 3 shareholders was due to a processing error by the Applicant's shareholder service agent.

5. Following the January 23, 1991 distributions, the Applicant's sole shareholder was its original shareholder, who held 13,169 shares with an aggregate value of $79,740. Since that time, the value of the original shareholder's account has dropped to $38,514. This decline in value was due, in part, to the fact that the original shareholder reimbursed to all former shareholders a total of $23,306 for amortized organizational expenses recognized since the Applicant's inception. The rest of the decline was caused by the original shareholder's paying certain administrative and legal expenses.

6. All expenses related to the termination have been or will be borne by the Applicant's manager, Newport Securities Corporation.

7. The Applicant is not a party to any litigation or administrative proceeding. The Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10047 Filed 4-26-91; 8:45 am]

BILLING CODE 8010-01-M

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[1] The Board of Governors of the Federal Reserve System recently amended Regulation T to include "foreign margin stock(s)." However, because the requirements for inclusion on the Board's "List of Foreign Margin Stocks" are generally more restrictive than the requirements for a "margin security" traded in the United States markets, securities issued by many foreign securities firms are not included in the definition of "foreign margin stocks" under Regulation T. See 12 CFR § 220.2(i) and (q)(6).

[Release No. 35-25298]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 19, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing of the application(s) and/or declaration(s) should submit their views in writing by May 13, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbus Southern Power Company, et al. (70-7491)

Columbus Southern Power Company ("CSP"), 215 North Front Street, Columbus, Ohio 43215 and American Electric Power Service Company ("AEPSC"), 1 Riverside Plaza, Columbus, Ohio 43215, subsidiaries of American Electric Power Company, Inc. ("AEP"), a registered holding company, have filed a post-effective amendment under sections 9, 10, 12b, 12(f), 13(b) and 13(f) of the Act and Rules 45, 90, 91 and 95 thereunder to the declaration filed solely by CSP under Sections 12(b) and 12(f) of the Act and Rule 45 thereunder.

CSP, The Cincinnati Gas and Electric Company ("CG&E") and The Dayton Power and Light Company ("DP&L") ("Owners"), all unaffiliated public utility companies, are joint-owners of the Zimmer Generating Station ("Zimmer") located in Moscow, Ohio. Zimmer was originally planned as a nuclear generating unit with CSP, CG&E and DP&L owning 28.5%, 40%, and 31.5%, respectively. After encountering a variety of difficulties, the Owners agreed, pursuant to a Settlement Agreement, to convert Zimmer from a nuclear unit to a coal-fired station. The Settlement Agreement also provided that the ownership interests of the Owners be changed from the original ownership interests to 25.4%, 46.5% and 28.1% for CSP, CG&E and DP&L, respectively. By order dated January 16, 1985 (HCAR No. 23574) in S.E.C. File No. 70-7057, the Commission approved the sale of part of CSP's ownership interest in Zimmer. By subsequent order dated March 9, 1988 (HCAR No. 24595) in this file, the Commission authorized CSP, along with CG&E and DP&L, to indemnify AEPSC against all liability in any way attributable to or arising out of a certain Project Management Agreement, a Training Services Contract, or the sale of any goods or services arising out of the conversion of Zimmer.

In anticipation of a March 31, 1991 completion date for Zimmer's conversion and its expected commercial operation, the Owners have determined that AEPSC should provide certain services relating to the operation and maintenance of Zimmer following its commercial operation date. In this regard, CSP and AEPSC request authority to consummate a Services Agreement ("Services Agreement"), entered into on February 11, 1991, subject to Commission approval, among the Owners and AEPSC. Under the Services Agreement, AEPSC will provide the services and CSP, along with CG&E and DP&L, will indemnify AEPSC, and its associated companies, in proportion to the Owner's undivided interests Zimmer, against all costs, liabilities or damages arising under the Services Agreement.

The Services Agreement provides that AEPSC will provide the following services: (1) Routine maintenance and production of documents and reports pursuant to an Operation Agreement among the Owners dated October 22, 1986; (2) engineering, design, and management services on a case-by-case basis within a defined scope of work as requested by the Owners; (3) services of the Central Machine Shop owned by Appalachian Power Company, an associate company of CSP and AEPSC, for the repair of Zimmer components; (4) access to AEP System's 1300-MW series spare parts at replacement costs; and (5) access to a 1300-MW Unit Simulator owned jointly by two associate companies of CSP and AEPSC, and located in St. Albany, West Virginia, for training services. All of these services will be provided at cost in accordance with Section 13(b) of the Act and the relevant rules thereunder, except that spare parts shall be sold to the Owners at the then replacement price. Replacement price is defined in the Services Agreement as the market price at which the parts could be purchased from a recognized vendor of such parts, plus additional reasonable costs anticipated to be incurred if the part were replaced at the time it is sold to the Owners. CSP and AEPSC have requested that the Commission exempt, pursuant to part (2) of the last sentence of Section 13(b), the sale of AEP System 1300-MW series spare parts at replacement cost from the "at cost" standard of Section 13(b) of the Act.

The Potomac Edison Company (70-7786)

The Potomac Edison Company ("Potomac"), Downsville Pike, Hagerstown, Maryland 21740, an electric public-utility subsidiary company of Allegheny Power System, Inc., a registered holding company, has filed an application under Section 9(c)(3) of the Act.

Potomac proposes to subscribe to and acquire 100 shares, at a total purchase price of $100,000, of class A voting common stock of the Virginia Economic Development Corporation ("VEDCORP"). VEDCORP, a for-profit corporation, was created to make investments in small rural Virginia firms in order to stimulate and promote economic growth and retain jobs. The Commonwealth of Virginia will hold the class B stock of VEDCORP and is entitled to elect two of its eleven member Board of Directors.

Potomac will not be represented on the Board and will not otherwise seek to exercise influence over VEDCORP. In addition, Potomac will own less than 5% of the outstanding common stock of VEDCORP.

Eastern Utilities Associates, et al., (70-7830)

Ocean State Power I ("OSP I") and Ocean State Power II ("OSP II"), both located at One Bowdoin Square, Boston, Massachusetts 02114, general partnerships and subsidiaries of EUA Ocean State Corporation ("EUA-OS"), Washington Highway, Lincoln, Rhode Island 02865, and Narragansett Energy Resources Company ("NERC"), 280 Melrose Street, Providence, Rhode Island 02901, and their respective indirect and direct parent companies, Eastern Utilities Associates ("EUA"), One Liberty Square, Boston, Massachusetts 02107 and New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, EUA Service Corporation, 750 West Center Street, West Bridgewater, Massachusetts 02379, and New England Power Service Company, 25 Research Drive, Westborough, Massachusetts 01582, service company subsidiaries of EUA and NEES, respectively, Blackstone Valley Electric Company,

Washington Highway, Lincoln, Rhode Island 02865, an electric utility subsidiary of EUA; TransCanada PipeLines Limited, 55 Commerce Court West, Toronto, Ontario M5L 1C2, Canada, and its indirect subsidiary, TCPL Power Ltd., 123 Dyer Street, Providence, Rhode Island 02903, an affiliate of OSP I and OSP II, have filed a post-effective amendment under Sections 12(b) and 12(f) of the Act and Rule 45 thereunder to their joint application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b), 12(d), 12(f), 13(b), and 13(c) of the Act and Rules 43, 44, 45, 50(a)(5), 90, 91 and 96 thereunder.

By orders dated October 13, 1988 (HCAR No. 24727), December 23, 1989 (HCAR No. 24790), September 28, 1989 (HCAR No. 24869) and December 18, 1989 (HCAR No. 25217), the Commission authorized, among other things, certain transactions with respect to Unit I and Unit II of the Ocean State Power Project ("Project"), a combined cycle electric generating facility located in Rhode Island, which included: (1) The formation by EUA and NEES of new subsidiary companies, EUA–OS and NERC, respectively; (2) the respective acquisition by EUA–OS and NERC of 29.9% and 29% equity interests in each of two partnerships, OSP I and OSP II, formed to own and operate Unit I and Unit II of the Project for aggregate investment amounts of $71.27 million and $50 million; (3) the funding of EUA and NEES of EUA–OS and NERC to enable them to meet their obligations to make capital contributions to OSP I and OSP II in the same aggregate investment amounts; and (4) the financing of 100% of the construction of each of the units through non-recourse loans under separate general construction-loan credit facilities.

A notice of the filing of a prior post-effective amendment was issued by the Commission on February 22, 1991 (HCAR No. 25292). In that filing EUA–OS and NERC proposed to distribute to EAU and NEES, respectively, capital which had been returned to them by OSP II as the Project was depreciated. The capital will be returned through repurchases of common stock or the payment of dividends out of capital. EUA–OS and NERC further proposed to make additional capital contributions to their subsidiary OSP II to satisfy rate refund obligations that OSP II may incur.

By this post-effective amendment, OSP I, OSP II and Blackstone seek authority to enter into an easement agreement ("Easement Agreement") in order for OSP I and OSP II to acquire, and for Blackstone to grant, an easement ("Easement") in certain property owned by Blackstone, and for OSP I and OSP II reimburse Blackstone for any fees and expenses, and to indemnify Blackstone for any liability incurred in connection with the Easement.

Under the Easement Agreement, Blackstone will grant to OSP I and OSP II an easement in certain property adjacent to the Project site which Blackstone owns and on which a portion of the Project common to both OSP I and OSP II was inadvertently built. The Easement encompasses approximately one-third of an acre, and consists of the land on which a detention pond is located and a buffer area. The total area devoted to the detention pond, including that portion of the pond and buffer area located on the Unit 1 site and that portion located on the Blackstone property, is approximately an acre. In order to avoid the cost and delay which moving the detention pond entirely onto OSP I's property would entail, Blackstone, OSP I and OSP II have agreed to enter into the Easement Agreement.

In consideration for the grant of the Easement, the Easement Agreement provides that OSP I and OSP II will pay Blackstone's transaction costs involved in granting the Easement, and will indemnify Blackstone for any claims or liabilities arising from or out of the proposed Easement, thereby leaving Blackstone in essentially the same position it would have been had no portion of the detention pond been constructed on Blackstone's side of the property line. Pursuant to the proposed Easement Agreement, OSP I and OSP II will each pay one-half of Blackstone's transaction costs and will be jointly and severally obligated to indemnify Blackstone for any costs Blackstone incurs as a result of the encroachment.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10049 Filed 4–26–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0259]

Boston Hambro Capital Corp.; License Surrender

Notice is hereby given that Boston Hambro Capital Corporation, 100 State Street, Boston, MA 02109 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Boston Hambro Capital Corporation, was licensed by the Small Business Administration on January 4, 1960.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on February 12, 1991, and accordingly, all rights privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 22, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91–10004 Filed 4–26–91; 8:45 am]

BILLING CODE 8025–01–M

Region IX Regional Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 11 a.m. on Thursday, June 13, 1991, at the Verdugo Club, 400 West Glenoaks Boulevard, Glendale, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call M. Hawley Smith, District Director, U.S. Small Business Administration, 330 N. Brand Blvd., suite 1200, Glendale, California 91203, telephone (213) 894–2977.

Dated: April 22, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–10002 Filed 4–26–91; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 8:30 a.m. on Monday, June 10, 1991, at the Days Inn, 900 East Main Street, Meriden, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Michael P. McHale, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut, telephone (203) 240–4670.

Dated: April 22, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–10003 Filed 4–26–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

[Public Notice 1379]

Reinstatement of Suspended Munitions Export Licenses for Kuwait

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that licenses and approvals to export or transfer defense articles to the Government of Kuwait, suspended in August 1990, have been reinstated. Applications for such licenses and approvals are once again being accepted and reviewed by the Office of Defense Trade Controls on a case-by-case basis.

EFFECTIVE DATE: March 25, 1991.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Chief, Licensing Division, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State (703) 875–6644.

SUPPLEMENTARY INFORMATION: U.S. manufacturers, exporters and other affected parties are hereby notified that the Department of State has reinstated all licenses and approvals to export or otherwise transfer defense articles and services to the Government of Kuwait that were suspended following Iraq's August 2, 1990 invasion of that country (55 FR 31808, Aug. 3, 1990).

Licenses or other approvals destined for Kuwait but with end-users other than the Government of Kuwait, should be resubmitted for approval to the Office of Defense Trade Controls.

In addition, new applications to export or otherwise transfer defense articles and services to Kuwait are once again being accepted and reviewed on a case by case basis.

These actions have been taken pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778) in furtherance of the foreign policy of the United States.

Dated: April 18, 1991.

Richard A. Clarke,

Assistant Secretary, Bureau of Politico-Military Affairs.

[FR Doc. 91–9976 Filed 4–26–91; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended April 19, 1991.

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47510.

Date filed: April 19, 1991.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 482 (Fares from Angola).

Proposed Effective Date: May 1, 1991.

Phillis T. Kaylor,

Chief Documentary Services Division.

[FR Doc. 91–9940 Filed 4–26–91; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 19, 1991

The following applications for certificates of public convenience and necessity and foregn air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47504.

Date filed: April 16, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 14, 1991.

Description: Application of HCL Aviation, Inc. d/b/a AV Atlantic, pursuant to section 401(d)(3) of the Act and subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing interstate, intrastate and overseas charter air transportation.

Docket Number: 47505.

Date filed: April 16, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 14, 1991.

Description: Application of HCL Aviation, Inc. d/b/a AV Atlantic, pursuant to section 401(d)(3) of the Act and subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing foreign charter air transportation of persons and property between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and Europe, Mexico, Caribbean, Far East, South America and the Middle East.

Docket Number: 47506.

Date filed: April 16, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 16, 1991.

Description: Application of TNT SAVA Servicios Aereos do Vale Amazonico S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit authorizing the carriage of property and mail on a charter basis between a point or points in Brazil and a point or points in the United States.

Docket Number: 47352.

Date filed: April 15, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 13, 1991.

Description: Second Amendment to Application of Air Aruba, N.V., pursuant to section 402 of the Act and subpart Q of the Regulations, requests addition of the following segments to the requested foreign air carrier permit: (iv) Between Aruba and Curacao and New York/Newark and (v) Between Aruba and Bonaire and New York/Newark.

Phillis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91–9939 Filed 4–26–91; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement: Dare County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project to replace the existing Herbert C. Bonner bridge with a new facility crossing Oregon Inlet in Dare County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Nicholas L. Graf, P.E., Division Administrator, Federal Highway Administration, Post Office Box 26806, Raleigh, North Carolina 27611. Telephone: (919) 856-4346.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to replace the Herbert C. Bonner Bridge across Oregon Inlet with a new crossing. The proposed improvement would involve a replacement facility and the demolition of the existing bridge.

The Bonner Bridge provides the principal means of access to Hatteras Island. A replacement facility is considered necessary because the existing bridge has a remaining service life of approximately 8 to 12 years. Maintenance costs are projected to become excessive. As the population and tourism increase, emergency evacuation will become more difficult. A replacement facility is being studied to maintain and improve traffic services to the island.

Alternates under consideration include:

1. No Action
2. Ferry Crossing
3. Tunnel Crossing
4. Bridge Replacement

The bridge replacement alternate includes two corridors. One corridor is parallel to the existing bridge on essentially the same alignment. The other corridor is further east and follows a more direct route across the inlet. The bridge replacement alternate also includes variations in the structure type and navigational clearances. A feasibility study has been completed which indicates that the No Action, Ferry Crossing, and Tunnel Crossing Alternates are not reasonable.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest or are known to have interest in this proposal. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal interagency scoping meeting is planned for May 29, 1991.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Robert L. Lee, P.E.,
District Engineer, FHWA, Raleigh, North Carolina.

[FR Doc. 91-10018 Filed 4-26-91; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Automotive Fuel Economy Program; Report to Congress; Correction

In report to Congress document 91-7784 beginning on page 13691 in the issue of Wednesday, April 3, 1991, make the following correction:

1. On page 13703, in the third column, in the first full sentence "Some manufacturer previously eligible for alternative fuel economy of acquisition by larger manufacturers." should read "Some manufacturers previously eligible for alternative fuel economy standards may not be eligible for future model years as a result of acquisitions by larger manufacturers."

Dated: April 24, 1991.

Barry Felrice,
Associate Administrator for Rulemaking.

[FR Doc. 91-10017 Filed 4-26-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1990 Rev., Supp. No. 13]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Central Mutual Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Central Mutual Insurance Company, of Van Wert, Ohio, under the United States Code, title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 55 FR 27340, July 2, 1990.

With respect to any bonds currently in force with Central Mutual Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-0521.

Dated: March 23, 1991.

Charles F. Schwan, III,
Director, Funds Management Division.

[FR Doc. 91-6994 Filed 4-26-91; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1990 Rev., Supp. No. 11]

Surety Companies Acceptable on Federal Bonds, Name Change: Puerto Rican-American Insurance Company

Puerto Rican-American Insurance Company a Puerto Rico Corporation, has formally changed its name to The Continental Insurance Company of Puerto Rico, effective January 8, 1991. The company was last listed as an acceptable surety on Federal bonds at 55 FR 27342, July 2, 1990.

Federal bond approving officers should annotate their reference copies of the Treasury Circular 570, 1990 Revision, at page 55 FR 27343 to reflect this change.

A Certificate of Authority as an acceptable surety on Federal bonds, is hereby issued, effective January 8, 1991 under sections 9304 to 9308 of title 31 of the United States Code, to The Continental Insurance Company of Puerto Rico, San Juan, Puerto Rico. This Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $5,361,000 established for the company as of July 1, 1990, remains unchanged until the July 1, 1991, revision is published, unless revoked prior to that date. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the circular, may be obtained from the Surety Bond Branch, Funds Management Division, Department of the Treasury, Washington, DC 20227, Telephone (202) 287-0521.

Dated: March 23, 1991.

Charles F. Schwan, III,
Director, Funds Management Division.

[FR Doc. 91-6994 Filed 4-26-91; 8:45 am]

BILLING CODE 4810-35-M

Office of Thrift Supervision

[AC-16]

First Federal Savings and Loan Association of Rochester, Rochester, NY and First Federal Savings and Loan Association of Cape Cod, Hyannis, MA; Final Action; Approval of Conversion Application; Approval of Merger Application

Date: April 19, 1991.

Notice is hereby given that on April 19, 1991, the Director of the Office of Thrift Supervision approved the application of First Federal Savings and Loan Association of Cape Cod, Hyannis, Massachusetts, to merge into First Federal Savings and Loan Association of Rochester, Rochester, New York, the application of First Federal Savings and Loan Association of Rochester, Rochester, New York, to convert to the federal stock form of organization pursuant to a modified conversion, and approved the acquisition of the conversion stock by B.A.T. Industries plc, Imasco Limited, and CT Financial Services, Inc., and related companies.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 91-10022 Filed 4-26-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-17; OTS No. 5889]

Keokuk Federal Savings and Loan Association, Keokuk, Iowa; Final Action; Approval of Conversion Application

Notice is hereby given that on April 12, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Keokuk Federal Savings and Loan Association, Keokuk, Iowa for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Deputy Regional Director, Office of Thrift Supervision of Des Moines, Regency West 2, Suite 300, 1601 50th Street, West Des Moines, Iowa 50265.

Dated: April 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 91-10023 Filed 4-26-91; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 82
Monday, April 29, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

April 25, 1991.

DATE AND TIME: Friday, May 3, 1991, 9:00 a.m.–5:00 p.m.

PLACE: U.S. Commission on Civil Rights, 1121 Vermont Avenue, N.W., Room 512, Washington, D.C. 20425.

STATUS: Open to the Public.

Friday, May 3, 1991

I. Approval of Agenda
II. Approval of Minutes of April Meeting
III. Announcements
IV. Draft Letter to the President on the 1992 Elections
V. Options Paper on Police Conduct
VI. State Advisory Committee Appointment: Idaho, Maryland, New York, and Washington
VII. *Fair and Open Environment? Bigotry and Violence on College Campuses in California*
VIII. Staff Director's Report
IX. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376-8312.

Emma Monroig,
Solicitor.

[FR Doc. 91-10186 Filed 4-25-91; 2:01 pm]

BILLING CODE 6335-01-M

DATE AND TIME:
May 10, 1991—8:30 a.m. Closed Session
May 10, 1991—9:00 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street, NW. Room 540, Washington, DC 20550.

STATUS:
Part of this meeting will be open to the public.
Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Friday, May 10, 1991

Closed Session (8:30 a.m. to 9:00 a.m.)

1. Minutes—March 1991 Meeting
2. NSB and NSF Staff Nominees
3. Election of Executive Committee Members
4. Grants and Contracts

Friday, May 10, 1991

Open Session (9:00 a.m. to 11:30 a.m.)

5. Chairman's Report
6. Minutes—March 1991 Meeting
7. NSB Calendar of Meetings for 1992
8. Delegation of Authority
9. Director's Report
10. Annual Executive Committee Report
11. Annual Report on the NSF Proposal Review System
12. Other Business

Thomas Ubois,
Executive Officer.

[FR Doc. 91-10202 Filed 4-25-91; 3:58 pm]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 29, May 6, 13, and 20, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 29

Thursday, May 2

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Brown Ferry Unit 2 Restart (Tentative)

Week of May 6—Tentative

Monday, May 6

9:00 a.m.
Briefing on Maintenance Rule (Public Meeting)

Tuesday, May 7

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 13—Tentative

Wednesday, May 15

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 20—Tentative

Monday, May 20

10:00 a.m.
Briefing on Final Rule on Performance Based QA—Part 35 (Public Meeting)

Tuesday, May 21

10:00 a.m.
Briefing on BRC Consensus Process (Public Meeting)

2:00 p.m.
Briefing on Proposed Rule on Training and Qualification of Nuclear Power Plant Personnel (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492-0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: April 24, 1991.

William M. Hill, Jr.,
Office of the Secretary.

[FR Doc. 91-10143 Filed 4-25-91; 1:50 pm]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

Meeting

TIME AND DATE: 9:00 a.m., April 30, 1991.

PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Docket No. R90-1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, D.C. 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,
Secretary.

[FR Doc. 91-10083 Filed 4-24-91; 4:33 pm]

BILLING CODE 7710-FW-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session following the adjournment of the FDIC open meeting beginning at 2:00 p.m. on Tuesday, April 30, 1991 to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Discussion Agenda:

A. *Memorandum re:*
Proposed policy on self-insurance for real estate owned property.

B. *Memorandum re:*
Proposed policy on collateralized put obligations.

C. *Memorandum re:*
Staff requests for delegation of authority to issue subpoenas.

D. *Memorandum re:*
Staff requests for delegation of authority to appoint contractors as the Corporation's agent to perform duties pursuant to services agreements.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416-7282.

Dated: April 23, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,
Executive Secretary.

[FR Doc. 91-10094 Filed 4-25-91; 9:21 am]

BILLING CODE 6714-01-M

VOL
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federal register

Monday
April 29, 1991

Part II

Department of Agriculture

Forest Service

National Environmental Policy Act
Revised Policy and Procedures; Notice;
Request for Comment

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596-AB96

National Environmental Policy Act Revised Policy and Procedures

AGENCY: Forest Service, USDA.

ACTION: Notice of revised policy and procedures; request for comment.

SUMMARY: The Forest Service gives notice of and requests comment on proposed revisions to its policy and procedures for implementing the National Environmental Policy Act and the regulations of the Council on Environmental Quality. Upon adoption, this direction would replace current policy and procedures issued through the agency directives system as Forest Service Manual (FSM) chapter 1950, Environmental Policy and Procedures, and Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures Handbook. These revisions are needed to address new regulations, case law, experience gained with existing procedures, and public and internal comments on the current policy and procedures.

DATES: Comments must be received in writing by June 28, 1991.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (1950), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Stephen E. Stine, Environmental Coordination Specialist, (202) 447-4708.

SUPPLEMENTARY INFORMATION: Chapter 1950 of the Forest Service Manual (FSM) and Forest Service Handbook (FSH) 1909.15 contain Forest Service policy and procedures for implementing the National Environmental Policy Act (NEPA) in compliance with the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508). The current directives were adopted after notice and comment on June 24, 1985 (50 FR 26078, part II).

In this proposed revision, both FSM 1950 and FSH 1909.15 have been reorganized, revised, and edited for a more concise, logical presentation and for ease of understanding by both Forest Service employees and other persons using these guidelines. In addition, relevant portions of the CEQ regulations at 40 CFR parts 1500-1508 have been incorporated into the text of the Handbook for ease of understanding and reference.

The Forest Service Manual sets forth the broad authorities, objectives, policies and responsibilities needed primarily by agency decision makers. Procedural and detailed direction for carrying out the broad policy in the Manual is set forth in separate handbooks. Consistent with agency directives policy, FSM 1950 has been revised to specify desired results, to minimize procedural detail, to rely as much as practicable on the judgment of field level professionals, and to permit discretion in achieving on-the-ground results, given the diverse nature of the biologic, geographic, and socio-economic conditions under which the Forest Service operates. The direction in FSH 1909.15 is intended to include all information and procedures needed to conduct and document environmental analyses and to prepare and distribute both decision and environmental documents.

Several important changes are being proposed. The proposed Handbook contains new and expanded direction on providing notice to the public of upcoming proposals (Zero Code Chapter), on analyzing new information related to environmental concerns or changed circumstances after a decision has been made (chapter 10), and on excluding certain categories of actions from documentation in an environmental assessment or environmental impact statement (chapter 30). Also, changes are proposed to the content requirements for decision documents. A discussion of the specific changes follows.

Revisions FSM 1950

No substantive changes in policy are proposed in FSM 1950 with the exception of limiting the content of supplements to FSM 1950 and FSH 1909.15 by units other than the Washington Office. Process-related direction on scoping, environmental analysis, documentation, related documents, categorical exclusions, and emergency and classified actions is being removed from FSM 1950 and incorporated with other procedural direction in the Handbook.

Revisions to FSH 1909.15

Zero Code Chapter. In the Forest Service directive codification scheme, direction in a "zero code" chapter at the beginning of a handbook sets forth the broad legal authority, policies, responsibilities, and other direction that govern or apply to all subsequent direction.

Specific changes planned in this chapter of the Handbook include: clarification of the purpose of FSH 1909.15 regarding the integration of environmental analysis into the work of all Forest Service programs, including implementation of the National Forest Management Act (36 CFR part 219); and inclusion of direction on emergency and classified actions currently in FSM 1950. An Authority section provides a synopsis of the enabling legislation, regulations, and Departmental policies and procedures concerning environmental analyses. The Definitions section now incorporates selected terms and definitions directly from the CEQ Regulations (40 CFR part 1500-1508). The definition of decision document is expanded to include a decision memo, a new type of document established by the agency when it adopted new administrative appeal procedures for National Forest System Land and Resource Management plan and project decisions (36 CFR part 217; 54 FR 3358, January 23, 1989).

This chapter would also establish new requirements for public notice of upcoming proposals. This proposed direction would require that each Forest Supervisor, Station Director, and the Area Director prepare and distribute a calendar of proposed actions that may undergo environmental analysis. This calendar is not intended to be a substitute for appropriate scoping at the time environmental analysis begins. Rather, the purpose of the calendar is to give early, informal notice of proposals so that the public can become aware of Forest Service activities, indicate their interest in specific proposals, and become involved early in the process. The direction calls for the calendar to be distributed to interested and affected agencies, organizations, and individuals. As a minimum, the calendar would be distributed twice a year. Direction for the calendar of proposed actions is found in section 07 of the Zero Code chapter.

Chapter 10—Environmental Analysis. Direction on scoping would be placed in this chapter rather than in a chapter by itself. The purpose of this reorganization is to emphasize that scoping is a part of environmental analysis. The scoping section emphasizes the importance of involving the public early in the planning and decisionmaking process. A new section 11.8 on determining if a proposal can be categorically excluded would be added to better guide Forest Service employees. Section 13, Collecting and Interpreting Data, has been expanded to include the requirements for addressing incomplete or unavailable information when evaluating adverse impacts.

A new section 18 would provide direction on analysis of new information after a decision has been made. A responsible official may learn of new information relating to the environmental effects of a proposed action after a decision has been made, but prior to completion of the project or activity. New information may result from monitoring, research, further intensive inventory, or changed circumstances, for example, as a result of fire, flood, or windstorm. Direction for reviewing the new information and documenting the results is provided in section 18 of the Handbook. The revision would provide for the preparation of a supplement to an environmental assessment and the determination of whether to prepare a new finding of no significant impact (FONSI). New direction also clarifies what decision documents would be required based on the nature of the new information or changed circumstances.

Chapter 20—Environmental Impact Statements and Related Documents. This chapter would replace existing chapter 40 of the same title. Highlights of new or revised direction in this chapter follow.

1. *Actions Requiring EIS's.* A section would be added concerning classes of actions requiring environmental impact statements (EISs), previously addressed in FSM 1952.1. Two new classes of actions requiring EIS's would be added:

a. Proposals to carry out or to approve the operational aerial application of chemical pesticides, and

b. Proposals that would substantially alter the undeveloped character of an inventoried roadless area of 5,000 acres or more.

2. *Notice of Intent.* The required content of a notice of intent to prepare an EIS has been expanded to give the public more information concerning proposed actions. The CEQ regulations require that a notice of intent to prepare an environmental impact statement contain four elements—the proposed action, possible alternatives, the proposed scoping process, and the name and address of an agency contact person. The Forest Service has additional content requirements. The agency's experience is that the more information the public is given during scoping, the more precise or specific the public can be in providing comments on the proposed action and the potential environmental effects. Therefore, in addition to the four elements required by the CEQ regulations, direction would be added to require that notices of intent must describe or identify the nature and scope of the proposed action and the decision to be made, the preliminary issues, any permits and licenses required to implement the proposed action, the responsible official, and the estimated schedule for completing the analysis. Guidance for preparing a notice of intent is contained in section 21 of the Handbook.

3. *Record of Decision.* Guidelines for the content requirements of the Record of Decision would be expanded to include the following: identification of the issues and inclusion of a brief summary of public participation efforts; identification of factors other than environmental consequences in making the decision; a statement of the findings required by other laws; and designation of a contact person. Additional direction also would be given for the notice and distribution of the record of decision, in addition to the State Single Point of Contact.

The National Forest Management Act of 1976 (NFMA) requires that subject to valid existing rights, decisions implemented on National Forest lands after approval of a Forest Land and Resource Management Plan, be consistent with the Forest Plan. NFMA also requires certain findings related to vegetation manipulation to be made prior to making a decision. Other laws not directly related to National Forest management place responsibility on the Forest Service to make sure certain conditions exist prior to taking an action. For example, the Federal Land Policy and Management Act requires the Forest Service to determine that a proposed use is in the public interest prior to issuing a land use occupancy permit. The Endangered Species Act also requires that the Forest Service find that certain conditions be met prior to taking an action if the habitat for an endangered or threatened species may be affected. Therefore, the agency's procedures would be amended to require that all decisions documented in a Record of Decision must contain the findings required by other laws and regulations which relate to implementation of the decision being made.

Chapter 30—Categorical Exclusions. In April 1987 the Western Natural Resource Law Clinic, on behalf of the Oregon Natural Resources Council and The Wilderness Society, petitioned the Forest Service for rulemaking regarding the use of categorical exclusions. They asked the Forest Service to:

1. Amend Forest Service Manual (FSM) section 1952.2 so that it describes specific and objectively identifiable categories of actions to be excluded from environmental documentation.

2. Prohibit the categorical exclusion of timber sales involving more than 25 thousand board feet or more than one acre.

3. Immediately stay the application of FSM 1952.2 to timber sales of more than 25 thousand board feet or more than one acre until final agency action on this petition.

This proposed revision is designed to respond to the first two proposals. In this proposed revision of agency procedure, the categories are now more specific and objectively identifiable. In addition, any proposed action to be excluded must fit within one of the specific categories and involve no extraordinary circumstances.

The request to prohibit the categorical exclusion of timber sales involving more than 25 thousand board feet or more than one acre is unreasonably conservative and has not been included in this proposed revision. Instead, the proposed revision of FSH 1909.15 would categorically exclude any proposal to harvest or salvage timber which remove one million board feet or less of merchantable wood products; require one mile or less of new road construction, assure regeneration of harvested or salvaged areas, where required; and are consistent with Forest land and resource Management Plans. These activities have little potential for soil movement, loss of soil productivity, water and air degradation or impact on sensitive resource values. The Forest Service has prepared environmental assessments on hundreds of timber sales which have these characteristics and has always found them to have no significant environmental effects. This category is fully consistent with the Council on Environmental Quality's advice which encourages agencies to consider broadly defined criteria which characterize types of actions that, based on the agency's experience, do not cause significant environmental effects (46 FR 41131, August 14, 1981 and 48 FR 34263-34268, July 28, 1983).

In response to petitioner's request to stay categorical exclusions of timber sales of more 25,000 board feet or more than one acre, the Forest Service issued Interim Directive Number 2 to FSH 1909.15 (54 FR 9073-9075, March 3, 1989) which limited categorical exclusion of salvage, thinning, and harvest cuts to those less than 100 thousand board feet or less than 10 acres. Subsequently, Interim Directive Number 17 to Forest Service Manual 1950, which was issued on March 22, 1989, and published in the Federal Register on August 21, 1989 (54 FR 34533), provides broad guidance for determining if an action may be categorically excluded. Upon expiration, both interim directives were reissued as Interim Directive Number 3 (January 31, 1990) and Interim Directive Number 18 (April 6, 1990) respectively.

In this proposed revision, detailed directions on categorical exclusions would be removed from FSM 1950 and placed in FSH 1909.15 for ease of reference and use. The Forest Service has followed the advice of the Council on Environmental Quality in considering which types of action, based on the agency's experience, do not cause significant environmental effects (48 FR 34263–34268, July 29, 1983). Experience in applying agency NEPA procedures and project monitoring has resulted in identifying 29 categories of actions which may be categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA). The addition of new categories and expansion of existing ones is necessary to prevent needless paperwork, to clarify definitions of categories, and to expand examples to facilitate understanding and interpretation, thereby ensuring proper use.

In addition, the Secretary of Agriculture's seven categories of action that are excluded from documentation (7 CFR 1b.3) have been incorporated into the text of the handbook.

Other major proposed revisions to Chapter 30 of the Handbook address decision documentation and record keeping. A summary of these follows:

1. *Decision Memo.* When the Forest Service's administrative appeal regulations [36 CFR part 217] were adopted in 1989 (54 FR 3342, January 23, 1989), decisions to proceed with some proposed actions which are categorically excluded from documentation in an environmental impact statement or environmental assessment were made subject to administrative review. To implement this provision a new type of document—the decision memo—was developed to disclose the decision to be implemented, the reasons for categorically excluding the proposed action, and the findings required by other laws and regulations. The format and content requirements were issued as Interim Directives Numbers 2 and 17, effective February 23, 1989, and March 22, 1989, respectively. These interim requirements would be incorporated as continuing direction in section 32 of the proposed Handbook revision. Additionally, section 33 would provide direction for giving public notice of a decision to proceed with a proposed action which has been categorically excluded and for distributing a decision memo to interested and affected individuals, groups, organizations, and agencies.

2. *Categories for which a Project File and Decision Memo are not Required.* The Chief of the Forest Service has established six categories for which a project or case file and decision memo are not required. Of these six categories two are new. The new categories include: (a) Proposals to issue or issuance of rules, regulations, policy, or procedures which in and of themselves result in little or no environmental effects. Agency experience indicates that most codified rules and policies issued by the agency do not have direct or indirect environmental effects. Generally, such rules are highly procedural and establish broad policy and process to govern program managers. (b) Proposals to issue, reissue, or adjust land use authorization which is consistent with an existing Forest Land and Resource Management Plan where the proposed activity or continuation of the activity will have little potential for soil movement, loss of soil productivity, water and air quality degradation, or impact on sensitive resources. Substantial agency experience indicates activities in this category have temporary or nonexistent environmental effects.

Two other categories are new to this section. These are: (1) Proposals to acquire land or interest in land involving only transfer of title to the United States which include purchase, donation, tripartite land-for-timber exchanges, or acquisition of replacement land in Sisk Act cases; and (2) Proposals to carry out small-scale pest management activities that have little adverse impact on non-target species, soil productivity, water quality, or sensitive resources—are new to this section. Currently, decisions to categorically exclude these actions require a decision memo. However, because these types of actions have rarely been appealed in the past, the agency concludes that decision memos and project or case files are no longer needed.

The category of proposals to issue orders pursuant to 36 CFR Part 261 to provide short-term protection for sensitive resource values and which, in and of themselves, result in little or no environmental effects has been modified to reflect the short-term nature of the action.

The category covering proposals to perform routine repair, maintenance, and administrative activities which cause little surface disturbance includes more specific examples for enhanced clarity and understanding.

3. *Categories of Actions Requiring a Project File or Case File and Decision Memo.* The Chief of the Forest Service has also identified fourteen categories for which a project or case file and decision memo are required. Nine of these fourteen categories are new. One of the nine new categories concerns proposals to conduct research activities and administrative studies which do not involve genetically engineered organisms and that have little potential for soil movement, loss of soil productivity, water and air quality degradation, or impact on sensitive resource values. In the absence of extraordinary circumstances, activities in this category have been shown not to have significant effects and, therefore, are appropriate to exclude from documentation in an environmental assessment or environmental impact statement.

Another new category concerns proposals to issue or reissue a term permit for the continuing operation of existing facilities that have little potential for soil movement, water and air quality degradation, or impact on sensitive resource values and that are consistent with the existing Forest land and resource management plan. This type of use is excluded from documentation, because it continues an existing use without allowing new construction or ground-disturbing activities.

The third new category, amendments to forest land and resource plans which do not change decisions made in forest plans, is categorically excluded when the amendments in and of themselves have little potential for environmental effects. Examples include minor management area boundary changes and text changes made to management direction for clarification or updating of information.

Other new categories include—(1) Proposals or issuance of authorizations to construct, reconstruct, or upgrade trails and low-standard roads (service level D as defined in FSH 7709.58) where the activity will have little potential for soil movement, loss of soil productivity, water and air degradation or impact on sensitive resource values and (2) Proposals or issuance of authorizations to construct, reconstruct, or upgrade facilities or utilities on approved sites that have little potential for soil movement, loss of soil productivity, water quality degradation, or impact on sensitive resource values were previously contained in one category and did not require a project file or decision memo. In order to be more precise and clarify the definition and because of anticipated interest by various publics, a project file and decision memo would now be required.

Previously, an existing category of low impact silvicultural activities included a variety of actions such as harvest, salvage, thinning, planting and site preparation. In order to provide precise, clearly understood categories of proposed actions, this category was expanded and would now be divided into four separate categories. They include: (1) Proposals to harvest or salvage timber which remove one million board feet or less of merchantable wood products; require one mile or less of new road construction; assure regeneration of harvested or salvaged areas, where required; (2) Proposals to thin merchantable timber from over-stocked stands which require one mile or less of new road construction; (3) Proposals to artificially regenerate areas to native tree species, including needed site preparation not involving the use of pesticides; and (4) Proposals to improve vegetation or timber conditions using approved silvicultural or habitat management techniques, not including the use of herbicides. Each of the categories includes an expanded definition wherein the activity will have little potential for soil movement, loss of soil productivity, water and air degradation or impact on sensitive resource values and is consistent with Forest land and resource management plans. The parameters for the harvesting activities have been increased because of the number of environmental assessments and findings of no significant impact found in every case over the last 10 years in timber sales of this size.

Lastly, a new category is proposed—proposals to reissue a grazing permit which newly incorporates forest plan management direction when there is little potential for soil movement, loss of soil productivity, water quality degradation, or impact on sensitive resource values. Examples include reissuing a term permit as a result of permit expiration or issuing a grazing permit as a result of the sale of permitted livestock or base property. The remaining categories have not changed.

Chapter 40—Environmental Assessment and Related Documents. This chapter would replace existing Chapter 30 and provide direction for completing a finding of no significant impact; preparing decision notices; and informing the public of the decision. Most of the direction in this chapter would remain unchanged from that in the current Handbook. However, direction on preparing a decision notice would be expanded to include: additional guidance in regard to actions when the Chief or Secretary is the responsible official; expanded information required to identify the location of the proposed action; and requirements for a summary of how the public was involved and the name of a contact person. In addition, the decision notice would include the findings required by other laws as described in proposed chapter 30.

Chapter 50—Implementation and Monitoring. Direction would be provided for the required conditions under which implementation of activities in inventoried roadless areas or "further planning areas" can occur.

Chapter 60—References. This chapter contains reference material needed to assist in conducting analyses, preparing documents, and giving notices of decisions. Because of the chapter's length and because the information contained in this chapter is generally available to the public, only the table of contents of chapter 60 is published in this notice. It is included in the Handbook to ensure that employees have ready access to these materials.

Environmental Impact

Based on experience and environmental analysis, the implementation of the revised Forest Service environmental policy and procedures will not significantly affect the quality of the human environment, individually or cumulatively. Therefore, this action is categorically excluded from documentation in an environmental impact statement or an environmental assessment (FSM 1952.2 and 40 CFR 1508.4).

Controlling Paperwork Burdens on the Public

These policies and procedures do not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, impose no paperwork burden on the public.

Impact

This proposed policy has been reviewed under USDA procedures and Executive Order 12291. It has been determined that this proposed policy is not a major rule. The policy will not have an effect of $100 million or more on the economy; substantially increase prices or costs for consumers, industry, or State or local governments; nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets. In short, little or no effect on the National economy will result from this policy as it consists primarily of minor changes in agency procedures and it does not increase costs to the Government or users of the National Forests.

Moreover, this policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities.

The full text of FSM 1950 and FSH 1909.15 is set out at the end of this notice. Comments are invited and will be considered prior to adoption of the final policy and procedures.

Dated: March 15, 1991.

George M. Leonard,

Associate Chief.

Title 1900—Planning

Chapter 1950—Environmental Policy and Procedures

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This chapter sets forth Forest Service objectives, policy, and responsibilities for meeting the requirements of the National Environmental Policy Act (NEPA).

1950.1 Authority

1. *National Environmental Policy Act of 1969 (NEPA),* as amended (42 U.S.C. 4321–4346). NEPA encourages the Forest Service to carry out its programs in ways that will create and maintain conditions under which people and nature can exist in productive harmony and can fulfill social, economic, and other requirements of present and future generations.

The act requires the agency to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources. NEPA also directs the use of a systematic, interdisciplinary approach in planning and decisionmaking for

actions that may affect the human environment.

The act also requires detailed statements on proposals for legislation and on other major Federal actions that significantly affect the quality of the human environment.

2. *Council on Environmental Quality Regulations* (40 CFR 1500–1508). These regulations set forth specific requirements for implementing the National Environmental Policy Act. The regulations implement the "action-forcing" section 102(2) of the National Environmental Policy Act; ensure environmental information is available to public officials and the public including emphasis on significant issues; and provide direction to assist public officials in making decisions based on an understanding of environmental consequences.

3. *U.S. Department of Agriculture NEPA Policies and Procedures* (7 CFR part 1b). These regulations direct Department of Agriculture agencies to develop and to implement procedures for compliance with NEPA. The regulations exclude seven categories of activities from documentation such as program funding, educational and informational activities, and civil and criminal law enforcement and investigation activities.

The full texts of these authorities and supplementary Council on Environmental Quality guidance are printed in chapter 60 of the Forest Service Environmental Policy and Procedures Handbook (FSH 1909.15). Additionally, the authorities are included, in part, in bold type in relevant portions of FSH 1909.15.

1950.2 Objectives

In meeting the requirements of the National Environmental Policy Act, the Forest Service seeks to:

1. Fully integrate National Environmental Policy Act requirements into agency planning and decisionmaking.

2. Fully consider the environmental impacts of Forest Service proposed actions.

3. Involve interested and affected agencies, organizations, and persons in planning and decisionmaking.

4. Conduct and document environmental analyses and subsequent decisions appropriately, efficiently, and cost effectively.

5. Allow line officers to carry out the direction in FSH 1909.15, the Environmental Policy and Procedures Handbook.

1950.3 Policy

It is Forest Service policy to:

1. Determine the depth and breadth of environmental analysis required for a proposed action.

2. Involve the public in scoping and environmental analysis of a proposed action.

3. Give timely notice to interested and affected parties of the availability of environmental and decision documents and make those documents available to the public free of charge to the extent practicable.

4. Apply the concepts of tiering, adoption, and incorporation by reference to both environmental impact statements and environmental assessments.

1950.4 Responsibility

1950.41 Authority to act as Responsible Official

1950.41a Chief

The Chief reserves the discretion to be the responsible official (sec. 1950.5) for environmental analyses, documentation, and decisions relating to proposed actions of national importance. In accordance with the delegations of general authority at FSM 1235, the Associate Chief may act as responsible official on any matter reserved by the Chief, unless the Chief directs otherwise.

In cases of proposed legislation where the Secretary of Agriculture is the responsible official, the Chief is responsible for providing support for the analysis and documentation.

1950.41b Deputy Chiefs and Associate Deputy Chiefs

In accordance with delegations at FSM 1235, the Deputy Chiefs and Associate Deputy Chiefs may serve and sign as the responsible official on any environmental matter of national importance within their areas of jurisdiction, reserved to the Chief, unless the Chief specifically directs otherwise.

1950.41c Regional Foresters, Station Directors, and Area Director

As provided in FSM 1235, Regional Foresters, Station Directors, and the Area Director are delegated responsibility for conducting environmental analyses, preparing environmental documents, and making decisions related to proposed actions under their jurisdiction.

Regional Foresters, Station Directors, and the Area Director may file environmental impact statements directly with the Environmental Protection Agency for proposed actions within their authority, except that matters requiring consultation with the Council on Environmental Quality are referred to the Washington Office Director of Environmental Coordination.

Regional Foresters, Station Directors, and the Area Director may redelegate responsibility for conducting environmental analyses, preparing the necessary documentation, filing environmental impact statements, and making decisions on proposed actions to Forest Supervisors, Assistant Station Directors, Research project leaders, and State and Private Forestry field representatives.

1950.41d Forest Supervisors

Forest Supervisors have authority and responsibility for conducting environmental analyses, preparing the necessary documentation, and making decisions on proposed actions under their jurisdiction (FSM 1235). This authority may be redelegated to District Rangers by supplement to this chapter or on a case-by-case basis to District Rangers.

1950.42 Issuance of Directives

1950.42a Deputy Chief for Programs and Legislation

The authority to issue new or revised National Environmental Policy Act procedures is reserved to the Deputy Chief except as noted in section 1950.43.

1950.42b Field Line Officers

Notwithstanding the delegation of authority in FSM 1104 to issue supplements to the Forest Service Manual and the Handbooks, Regional Foresters, Station Directors, Area Director, and Forest Supervisors may issue supplements to FSM 1950 and FSH 1909.15 only as follows:

1. Supplements to FSM 1950 may be issued only to delegate authority or responsibility.

2. Supplements to FSH, 1909.15 may be issued only for the purposes of issuing internal procedures for preparing and processing environmental documents and records, assigning responsibilities, or adding reference materials.

1950.43 Director of Environmental Coordination

The Director is the staff official responsible for developing and recommending national policy, procedures, coordination measures, technical administration, and training necessary to implement the National Environmental Policy Act (NEPA) for the Forest Service. The Director is also responsible for policy, procedures, and training for conducting social impact analysis (FSM 1970 and FSH 1909.17, ch. 30).

The Director is responsible for liaison with the Council on Environmental Quality and consults with the Council on possible referrals (40 CFR part 1504) and emergencies (40 CFR 1506.11). The Director also provides liaison with the Environmental Protection Agency and, as needed, requests changes in the prescribed time periods for preparation and processing of environmental impact statements (40 CFR 1506.10).

When the Chief or the Secretary is the responsible official for a proposed action, the Director advises and assists the appropriate field unit or Washington Office (WO) staff in preparation of the necessary documents. The Director coordinates, reviews, and processes documents for actions for which the Chief or the Secretary is the responsible official.

The Director's signing authority includes:

(a) Correspondence with the Council on Environmental Quality, Environmental Protection Agency, and other departments and agencies, and on Forest Service legislation, projects, and programs which relate to the National Environmental Policy Act of 1969.

(b) General correspondence regarding environmental and decision documents and environmental quality matters.

(c) Routine correspondence (FSM 1237) to Members of Congress and routine referrals from the President and Secretary.

1950.5 Definitions

Responsible Official. The responsible official is the agency employee who has the line or delegated authority to make a decision on a proposed action.

Note: When issued in the Forest Service directive system, certain text of this Handbook will be set out in boldface type, however, Federal Register printing specifications do not permit that material to be set out in boldface here.

Environmental Policy and Procedures Handbook

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Zero Code

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This Handbook provides procedural guidance for implementing the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations (40 CFR 1500–1508), USDA NEPA Policies and Procedures (7 CFR part 1b), and Forest Service Manual 1950 in Forest Service activities.

This Handbook provides direction and guidance for analyzing and documenting the environmental consequences of proposed actions. Chapter 10 sets forth guidelines on scoping and environmental analysis. Chapters 20, 30, and 40 contain the documentation and process requirements for environmental impact statements, categorical exclusions, and environmental assessments. Chapter 50 addresses implementing and monitoring requirements. Chapter 60 includes the text of pertinent laws, regulations, memoranda, and other reference materials which may be useful to carry out the procedures in this Handbook.

Compliance with NEPA is fundamental to managing all Forest Service resource, research, and cooperative forestry programs and must be integrated into the management processes for these programs. Therefore, the procedures in this handbook must be used in conjunction with other direction found throughout the Forest Service Manual and Handbooks. Specifically, use this Handbook in conjunction with FSM 1950, Environmental Policy and Procedures, which sets forth the broad Forest Service objectives, policy, and responsibilities for meeting the requirements of the National Environmental Policy Act. Also, integrate the requirements in this Handbook with the procedures set forth in FSM 1920 and FSH 1909.12 and the regulations implementing the National Forest Management Act (36 CFR part 219).

For ease of reference and use, the text of the CEQ regulations governing implementation of NEPA are incorporated throughout this Handbook. The CEQ regulations are set out in boldface to distinguish them from Forest Service direction.

01 Authority

1. *The National Environmental Policy Act of 1969 (NEPA)*, as amended (42 U.S.C. 4321–4346). NEPA declares a national policy which encourages "productive and enjoyable harmony between man and his environment." NEPA requires Federal agencies to: (a) use a systematic interdisciplinary approach in planning and decisionmaking which may have an impact on man's environment, (b) consider the environmental impact of proposed actions, (c) identify adverse environmental effects which cannot be avoided should the proposal be implemented, (d) consider alternatives to the proposed action, (e) consider the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (f) identify any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

2. *Council on Environmental Quality Regulations* (40 CFR parts 1500–1508). These regulations set forth specific requirements for implementing the provisions of the National Environmental Policy Act.

3. *U.S. Department of Agriculture NEPA Policies and Procedures* (7 CFR part 1b). These regulations direct Department of Agriculture agencies to develop and to implement procedures for compliance with NEPA. The regulations exclude seven categories of activities from preparation of environmental assessments or environmental impact statements.

The full text of these authorities is printed in chapter 60 of this Handbook.

02 Objectives

1. To incorporate environmental considerations into Forest Service planning and decisionmaking in a systematic and cost-effective manner.

2. To conduct and document environmental analyses and the related decisions associated with national forest resource management, cooperative forestry, and research activities in a consistent manner.

04 Responsibility.

Line officers are responsible for ensuring that the procedures in this Handbook are understood and followed.

05 Definitions.

The definitions in boldface are those taken directly from the CEQ regulations (40 CFR part 1508). The remaining terms and definitions are those devised by the Forest Service and used throughout this handbook.

1. *Act*—" * * the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as NEPA." (40 CFR 1508.2)

2. *Categorical Exclusion*—" * * a category of actions which do not individually or cumulatively have a

significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations ({1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. (40 CFR 1508.4)

3. *Connected Actions.* Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification. (40 CFR 1508.25)

4. *Cooperating Agency*—* * * any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in {1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency. (40 CFR 1508.5)

5. *Council*—* * * the Council on Environmental Quality established by title II of the Act. (40 CFR 1508.6)

6. *Cumulative Action*—* * * actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement. (40 CFR 1508.25)

7. *Cumulative Impact*—* * * the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. (40 CFR 1508.7)

8. *Decision Document.* A decision memo, decision notice, or record of decision.

9. *Decision Memo.* A concise written record of the responsible official's decision to implement an action that has been categorically excluded from documentation in an environmental impact statement or environmental assessment (sec. 30.5).

10. *Decision Notice.* A concise written record of the responsible official's decision when an environmental assessment and finding of no significant impact are prepared (sec. 43.2).

11. *Effects.* These include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial. (40 CFR 1508.8)

See also, cumulative impact.

12. *Environmental Analysis.* An investigation of a proposed action and alternatives to that action and their direct, indirect, and cumulative environmental impacts. This process provides the necessary information for reaching an informed decision. It also provides the information needed for determining whether a proposed action may have significant environmental effects and for preparing environmental documents (Ch. 10).

13. *Environmental Assessment*—(a) * * * a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. (40 CFR 1508.9)

14. *Environmental Document*—* * * includes the documents specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent). (40 CFR 1508.10)

15. *Environmental Impact Statement*—* * * a detailed written statement as required by section 102(2)(C) of the Act. (40 CFR 1508.11)

16. *Environmentally Preferable Alternative.* An alternative that best meets the goals of section 101 of the National Environmental Policy Act and required by 40 CFR 1505.2(b) to be identified in a record of decision. Ordinarily, this is the alternative that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources. In some situations, there may be more than one environmentally preferable alternative.

17. *Federal Agency*—* * * all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. (40 CFR 1508.12)

18. *Finding of No Significant Impact (FONSI)*—* * * a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). (40 CFR 1508.13)

19. *Floodplains.* As defined by E.O. 11988, as amended, lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year (sec. 66.3).

20. *Human Environment*—* * * shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. . .This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment. (40 CFR 1508.14)

21. *Jurisdiction by Law*—* * * agency authority to approve, veto, or finance all or part of the proposal. (40 CFR 1508.15)

22. *Lead Agency*—* * * the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement (40 CFR 1508.16)

This also applies to environmental assessments.

23. *Legislation*—* * * a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement. (40 CFR 1508.17)

24. *Major Federal Action*—* * * includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§ 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§ 1508.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as Federal and federally assisted activities. (40 CFR 1508.18)

25. *Matter*—(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major Federal action to which section 102(2)(C) of NEPA applies. (40 CFR 1508.19)

26. *Mitigation*—* * * (a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments. (40 CFR 1508.20)

27. *NEPA Process*—* * * all measures necessary for compliance with the requirements of section 2 and Title I of NEPA. (40 CFR 1508.21)

28. *Notice of Intent*—* * * a notice that an environmental impact statement will be prepared and considered. (40 CFR 1508.22)

29. *Preferred Alternative.* The alternative(s) which the agency believes would best fulfill its statutory mission and responsibilities, giving consideration to environmental, social, economic, and other factors and disclosed in an environmental impact statement.

30. *Prime Farmland, Rangeland, and Forest Land.* (See Departmental Regulation 9500-3 in § 65.21 for a detailed definition.)

31. *Proposed Action.* A proposal made by the Forest Service to authorize, recommend, or implement an action to meet a specific purpose and need (see section 32).

32. *Proposal*—* * * exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated * * * A proposal may exist in fact as well as by agency declaration that one exists. (40 CFR 1508.23)

33. *Record of Decision*—* * * shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation. (40 CFR 1505.2)

34. *Referring Agency*—* * * the Federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. (40 CFR 1508.24)

35. *Similar Action*—(3) * * * when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. (40 CFR 1508.25)

36. *Scope*—* * * the range of actions, alternatives, and impacts to be considered in an environmental impact statement. (40 CFR 1508.25)

37. *Scoping.* The procedure by which the Forest Service identifies important issues and determines the extent of analysis necessary for an informed decision on a proposed action. Scoping is an integral part of environmental analysis.

38. *Significance.* Includes both context and intensity: (a) Context. This means

that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. (40 CFR 1508.27)

39. *Special Expertise*—* * * statutory responsibility, agency mission, or related program experience. (40 CFR 1508.26)

40. *Tiering*—* * * the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe. (40 CFR 1508.28)

41. *Wetlands*—As defined by E.O. 11990, areas that are inundated by surface or ground water with a frequency sufficient to support, and that under normal circumstances do or would support a prevalence of vegetation or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction (sec. 66.4).

06 Overview of Process

Exhibit 1 illustrates the full National Environmental Policy Act process and indicates the normal sequence of actions.

07 Public Notice of Upcoming Proposals

07.04 Responsibility

Each Forest Supervisor, the Area Director, and each Station Director is responsible for ensuring the preparation and distribution of a calendar of proposed actions in accordance with this section.

07.1 Calendar of Proposed Actions

Provide notice of upcoming proposals which may undergo environmental analysis and documentation to interested and affected agencies, organizations, and persons through the use of a calendar of proposed actions. The purpose of the calendar of proposed actions is to give early informal notice of proposals so the public can become aware of Forest Service activities and indicate their interest in specific proposals.

1. *Frequency of Distribution.* Prepare and distribute the calendar of proposed actions at least every six months to interested and affected agencies, organizations, and individuals. For those proposed actions which are proposed and undergo analysis after publication of the calendar, notice of the status of the action shall show in the subsequent calendar.

2. *Format and Content.* Any format may be used, however as a minimum the calendar of proposed actions shall contain the following information:

(a) Name of the administrative unit and time period covered by the calendar.

(b) Description of the upcoming proposed action(s) (upcoming projects and/or activities) which are expected to undergo environmental analysis in the time period specified.

(c) Location of the proposed action including the State, county, and where appropriate, the Ranger District, and the legal land description.

(d) The estimated date when scoping may begin.

(e) The estimated date of the decision.

(f) A name, address, and telephone number of the person to contact.

(g) Status of the analysis including dates of any Federal Register or other legal notices and dates of decision documents, and the estimated implementation date(s).

08—Emergency and Classified Actions

1. *Emergency Actions.* Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review. (40 CFR 1506.11)

For emergencies other than fire suppression, contact the Washington Office Director of Environmental Coordination regarding consultation with the Council on Environmental Quality (FSM 1950.41b and 1950.42).

2. *Classified Actions.* (a) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public. (40 CFR 1507.3(c))

Among its exemptions to public disclosure requirements, the Freedom of Information Act contains an exemption for law enforcement purposes to the extent that production of investigatory records would "(A) interfere with enforcement proceedings; * * * (E) disclose investigative techniques and personnel." (5 U.S.C. 552(b)(7) (1977).) Cannabis eradication falls within the scope of this exemption. For this reason environmental and decision documents which address cannabis eradication should be withheld from public disclosure until the cannabis has been eradicated from the site or until law enforcement needs no longer require that they be withheld.

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Exhibit 1 - Sec. 06 NEPA PROCESS OVERVIEW

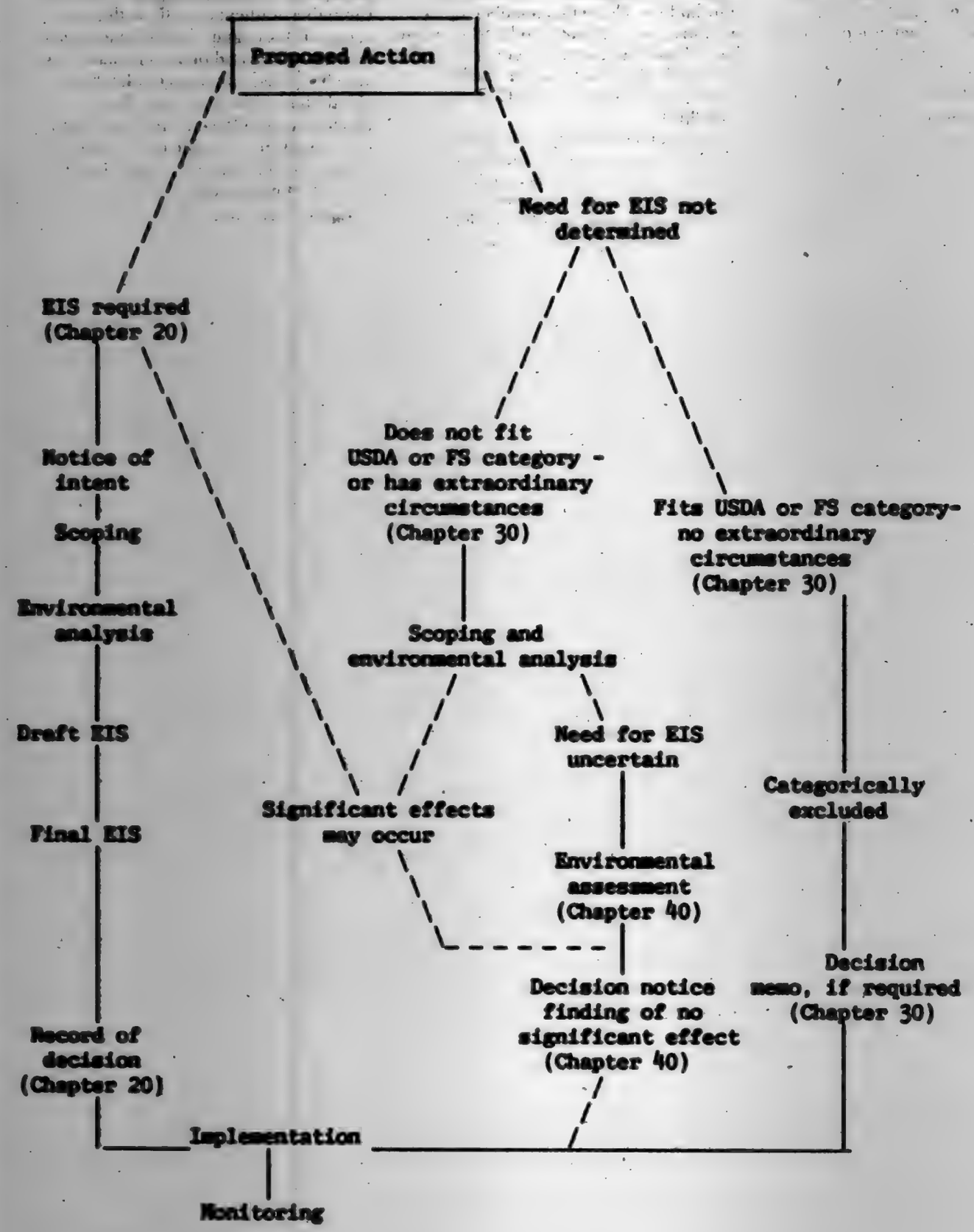

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Chapter 10—Environmental Analysis

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Environmental analysis assesses the nature and importance of the physical, biological, social, and economic effects of a proposed action and its reasonable alternatives. Exhibit 1 in sec. 06, Chapter Zero Code, shows how environmental analysis relates to other procedures required under the National Environmental Policy Act and its implementing regulations.

For ease of reference and use, the text of the relevant CEQ regulations is set out in boldface type throughout this chapter.

10.2 Objectives.

1. Conduct environmental analyses to assess the nature, characteristics, and significance of the effects of a proposed action and its alternatives on the human environment.

2. Conduct scoping to:

a. Determine the nature and complexity of the proposed action.

b. Identify environmental issues related to the proposed action.

c. Determine the disciplines required and guide environmental analysis and documentation.

d. Achieve effective use of time and money in conducting environmental analysis.

10.3 Policy.

1. Investigate the nature and characteristics of a proposed action and determine how much analysis is necessary through scoping. The use of scoping applies to all proposed actions which are analyzed using the National Environmental Policy Act process, except those which may be categorically excluded from documentation (FSH 1909.15, Ch 30); it is not confined to the preparation of an environmental impact statement.

2. Conduct the scoping actions set forth in this chapter commensurate with the nature and complexity of the proposed action.

3. Keep the public informed of the progress of environmental analyses and decisionmaking.

10.4 Responsibility.

The official who is responsible for a decision on a proposed action (FSM 1950.4) also has the responsibility to:

1. Ensure that an appropriate level of scoping and environmental analysis occurs.

2. Determine whether an interdisciplinary (ID) team of specialists and a formal plan of work are needed.

3. Select the ID team and leader and keep abreast of their work (sec. 11.7).

4. Ensure that the public is kept informed of the results of scoping and the progress of the environmental analysis commensurate with the public interest in the proposed action.

For actions where the Chief or the Secretary is the responsible official, the Washington Office (WO) Environmental Coordination Staff participates in scoping and subsequent analysis with the appropriate field or other WO staffs and involves the appropriate Deputy Chief, the Chief, or the Assistant Secretary, as necessary (FSM 1950.61a).

11 Conduct Scoping

Although the Council on Environmental Quality (CEQ) Regulations require scoping only for environmental impact statement preparation, the Forest Service has broadened the concept to apply to all proposed actions without regard to the type of documentation required, except those which may be categorically excluded.

Scoping is an integral part of environmental analysis. Scoping includes refining the proposed action, determining the responsible official and lead and cooperating agencies, identifying preliminary issues, and identifying interested and affected persons. The results of scoping are used to identify public involvement methods, refine issues, select an interdisciplinary team, establish analysis criteria, explore possible alternatives and their probable environmental effects.

Because the nature and complexity of a proposed action determine the scope and intensity of the required analysis, no single technique is required or prescribed. Except where required by statute or regulations, the responsible official may adjust or combine the various steps of the process outlined in this chapter to aid in the understanding of the proposed action and identifying issues. The CEQ Regulations provide the following direction on scoping:

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping.

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under § 1507.3(c). An agency may give notice in accordance with § 1506.6.

(2) Determine the scope (§ 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§ 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the

human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in § 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule. (40 CFR 1501.7)

11.1 Organize Scoping Effort

The National Environmental Policy Act (NEPA) requires a systematic, interdisciplinary approach to ensure integrated application of the natural and social sciences and the environmental design arts in any planning and decisionmaking that affects the human environment (NEPA, sec. 102(2)(A)).

The responsible official may choose to establish an interdisciplinary (ID) team and designate a team leader to conduct scoping and environmental analysis. However, the decision not to establish an ID team does not relieve the Forest Service of the responsibility to take an interdisciplinary approach to the analysis of the proposed action. Responsible officials shall be guided by the direction on interdisciplinary analysis in sec. 12 of this chapter.

The responsible official determines the scoping needed based on the nature and complexity of the proposed action and the decision to be made. Guidance on conducting public meetings and information gathering activities is found in FSH 1609.B, FSH 1609.13 Public Participation Handbook.

11.2 Identify the Characteristics of the Proposed Action and Nature of the Decision to be Made

The most important element of the scoping process is to correctly identify and define the proposed action. Identification of the proposed action should consider the nature, characteristics, and scope of the proposed action, the purpose and need for the proposed action, and the decision to be made.

The CEQ Regulations provide the following direction relevant to scoping associated with major Federal actions requiring the preparation on an environmental impact statement; however, the concepts apply to gathering preliminary information for all proposals which may undergo environmental analyses and documentation.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (§ 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (§ 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (§ 1501.7), tiering (§ 1502.20), and other methods listed in §§ 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay. (40 CFR 1502.4)

11.3 Identify Responsible Official(s) and Agencies Involved

The responsible official for implementing a proposed action usually is the agency employee who has the delegated authority to make the required decision(s) (FSM 1230; 1950). When an action is proposed, the responsible official must identify and contact other Federal, State, or local agencies with an interest in the action.

11.31 Determine Lead and Cooperating Agencies

Refer to definitions of lead and cooperating agency in Chapter Zero Code, Section 05.

11.31a Lead Agency

When the proposed action is on the National Forest System, the Forest Service is usually the lead agency.

The CEQ regulations address the determination and role of the lead agency as follows:

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the council asking it to determine which Federal agency shall be the lead agency. A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies. (40 CFR 1501.5)

If a responsible Forest Service official wishes to ask the Council on Environmental Quality to determine which Federal agency shall be the lead agency, send the request to the Director of Environmental Coordination in Washington, DC, for processing.

11.31b Cooperating With Other Agencies

Where National Forest System lands are involved, the Forest Service shall play a strong role in the preparation of environmental documents. If the Forest Service is the lead agency, promptly request in writing that all other Federal agencies with jurisdiction by law or special expertise (sec. 05) become cooperating agencies.

The CEQ regulations address the role of the lead and cooperating agencies' responsibilities as follows:

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in (1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests. (c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b)(3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council. (40 CFR 1501.6.)

When National Forest System lands are involved and the Forest Service is not the lead agency, the responsible Forest Service official shall request participation as a cooperating agency in scoping, environmental analysis, and documentation. The Forest Service may also be a lead or cooperating agency when State and private forest lands are involved.

If the Forest Service is asked to be a cooperating agency and other program commitments preclude being able to become involved, the responsible official shall consult with the Director of Environmental Coordination in Washington, DC, prior to preparing a reply to this effect to the requesting agency. Send two copies of this reply to the Director of Environmental Coordination in Washington, DC, for transmittal to the Council on Environmental Quality.

11.4 Determine if Existing Documents Address the Proposed Action

During scoping, determine which existing documents are pertinent to the environmental analysis. Existing environmental documents, higher level plans such as Regional Guides, Land and Resource Management Plans or Regional Vegetation Management Plans, and other pertinent documents or data sources may provide useful information to:

1. Help define the proposed action.
2. Narrow the scope of analysis.
3. Estimate potential environmental effects.
4. Reduce the bulk of the documentation.

In such cases, all or parts of these existing documents may be tiered to, adopted, or incorporated by reference (secs. 05, 25.1, 25.2, and 22.32).

11.5 Look for Preliminary Issues, Identify Public Participation Needs

11.51 Identify Preliminary Issues

Based on reviews of similar actions, knowledge of the area or areas involved, discussions with interested and affected persons, community leaders, organizations, and/or consultations with experts and other agencies familiar with such actions and their direct, indirect, and cumulative effects, prepare and evaluate preliminary issues for possible significance. This review provides an early look at potential issues and sharpens the focus of the environmental analysis and provides a means for:

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly. (40 CFR 1501.1(d))

11.52 Identify Public Participation Needs

Review and consider comments and suggestions offered by interested and affected agencies, organizations, and individuals in response to the entry on the calendar of proposed actions (sec. 11.1). Consider options for involving potentially interested and affected agencies, organizations, and persons in the analysis process. (See FSH 1609.13, Public Participation Handbook, for information on techniques to involve the public in Forest Service planning and decisionmaking).

The CEQ regulations provide the following direction on public notice and participation:

Agencies shall: * * *

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter * * * An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses * * *

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact

statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public. (40 CFR 1506.6)

11.6 Determine If Proposal Can Be Categorically Excluded from Documentation in an Environmental Impact Statement or an Environmental Assessment

After determining the nature of the proposed action; identifying the interested and affected agencies, organizations, and individuals; and the extent of existing documentation, the responsible official should have sufficient data to determine if the proposed action can be categorically excluded from documentation in an environmental impact statement or an environmental assessment or if an environmental impact statement should be prepared.

If the proposed action falls within one of the categories in the Department of Agriculture policies and procedures (7 CFR 1b.3(a)) or one of the categories listed in section 32 and if the proposed action does not involve any extraordinary circumstances (sec. 31), the action may be categorically excluded from documentation in an EIS or EA.

If required by Chapter 30, record a decision to categorically exclude a proposed action from documentation in a decision memo.

At this point it may be possible to determine if an environmental impact statement should be prepared. If the proposed action falls within one of the classes of actions which require preparation of an environmental impact statement in section 20.6, or if preliminary analysis indicates that there may be significant effects on the environment, prepare a notice of intent to prepare an environmental impact statement for publication in the **Federal Register**.

11.7 Inform Participants and the Public of Results of Scoping and the Progress of the Analysis

Consistent with the importance of the proposed action, keep the public informed of the progress of the environmental analysis through appropriate means. This may include personal contacts with individuals, organizations, and local government officials; use of local media sources; and Forest or Regional newsletters.

Enter the status of the environmental analysis, the decision memo, or the notice of intent to prepare an environmental impact statement on the calendar of proposed actions. Monitor and consider the concerns of interested and affected agencies, organizations, and persons, and respond to individual requests for information.

12 Use Interdisciplinary Analysis

Section 102(2)(A) of the National Environmental Policy Act requires all agencies to use an interdisciplinary approach to analysis which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on the human environment. The CEQ regulations require that:

> The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (1501.7). (40 CFR 1502.6).

Use interdisciplinary teams to analyze proposed actions with the potential for significant environmental effects, especially if an environmental impact statement may be needed.

Proposals for less complex actions may not require the selection of an interdisciplinary team. A knowledgeable individual may perform the analysis, which must consider all of the physical, biological, social, and economic factors pertinent to the decision.

Interdisciplinary review of the analysis also may satisfy the requirement for use of the interdisciplinary approach.

12.1 Interdisciplinary Team Selection

The responsible official must select the leader and other members of the interdisciplinary team, define their tasks, and keep abreast of their work.

The disciplines and skills of this group must be appropriate to the scope of the action and the issues identified. The team may consist of whatever combination of Forest Service staff and other Federal Government personnel is necessary to provide the necessary analytical skills. The team must have the expertise to identify and to evaluate the potential direct, indirect, and cumulative social, economic, physical, and biological effects of the proposed action and its alternatives (sec. 05, definition 31). Limit the team to a manageable number of persons.

12.1a Team Leader

To ensure selection of an effective team leader, the responsible official should consider such factors as the individual's:

1. Degree of working knowledge of the National Environmental Policy Act process and the interrelationship with the National Forest Management Act and other applicable laws and regulations.

2. Ability to communicate effectively with team members and the responsible official and to facilitate interaction among team members.

3. Ability to organize, analyze, and interpret information.

4. Past performance in meeting assigned deadlines.

12.1b Other Team Members

In selecting other team members, consider such factors as:

1. Variety of disciplines needed.

2. Ability to work as part of a team.

3. Ability to communicate to others information about the field or speciality that a member represents.

4. Knowledge of and degree of experience in the environmental analysis process.

5. Ability to conceptualize and solve problems.

12.2 Selection of Interdisciplinary Analyst(s)

The responsible official may select one or more persons to conduct the required interdisciplinary analysis. The analyst(s) must have a working knowledge of the National Environmental Policy Act process and its relationship to forest planning, other applicable statutes and regulations, and natural resource interactions.

12.3 Role of the Interdisciplinary Team or Analyst(s)

The team or assigned analyst is responsible for identifying the issues to be analyzed in detail in the subsequent environmental analysis and for preparation of environmental documents. A team integrates its collective knowledge of the physical, biological, economic, and social sciences and the environmental design arts into the analysis process. Interaction among team members often provides insight that otherwise would not be apparent. The role of the ID team or analyst(s) includes, but is not limited to:

12.3a Expand Public Involvement as Appropriate

Depending on the nature and complexity of the environmental analysis required for a proposed action, a diligent effort may be necessary to involve the public in the planning, analysis, and decisionmaking processes. This effort may include:

1. *Identifying target groups.* Identify potentially affected groups and the nature of their concerns (FSH 1609.13). Maintain and use mailing lists as appropriate.

2. *Determining the methods of public participation.* Establish the level of needed public participation. Ensure that the level of effort to inform and to involve the public is consistent with the scale and importance of the proposed action and the degree of public interest.

When extensive public involvement is necessary, prepare a formal public participation plan (FSM 1626). The Public Participation Handbook, FSH 1609.13, provides guidance in identifying and involving the public, preparing public involvement plans, and using public responses in the analysis process. Invite participation from potentially interested and affected Federal, State, and local agencies; Indian tribes; interested individuals and groups; and others who may be affected by the proposed action or its alternatives.

12.3b Formulate Analysis and Evaluation Criteria

Development of criteria or standards may be necessary to guide the analysis process. Analysis and evaluation criteria or standards may be needed to:

1. Identify and select data sources, analysis methods, and set standards of accuracy.

2. Determine the depth or detail of the analysis.

3. Develop a suitable range of alternatives.

4. Evaluate alternatives.

5. Estimate the significance of environmental effects (sec. 05, definition 38).

When formulating analysis and evaluation criteria or standards, be sure to consider Forest Service objectives identified in legislation, policies, plans, and by the public. Refine these criteria and standards, as necessary, during the course of the analysis.

12.3c Finalizing Issues

Decide on the significant issues which will be considered, taking interested and affected agency, organization, and public comments into account. Adjust and refine these issues as necessary as new insights and information emerge during analysis.

12.3d Exploring Alternatives

Consider a full range of reasonable alternatives to the proposed action that are responsive to the significant issues.

During scoping and the subsequent public participation activities, discuss the feasibility and possible effects of these alternatives with potentially interested and affected agencies, organizations, and persons. The ID team and the responsible official decide which alternatives merit further study and which do not require detailed analysis.

13 Collect and Interpret Data

The type and amount of data to collect depend on the nature of the action, agency objectives, issues, and the scope, context, and intensity of anticipated effects. Focus data collection on the current and expected physical, biological, economic, and social conditions affecting or affected by the proposed action. When appropriate, document the assumptions, methods, and data sources.

Section 22.34 sets forth the requirements for addressing incomplete or unavailable information within an environmental impact statement. If, when evaluating significant adverse effects on the human environment, and information that is essential to a reasoned choice among alternatives is either missing or incomplete, CEQ requires the agency to obtain the data if it is essential to a reasoned choice among alternatives. However, the agency is not required to obtain missing information at an exorbitant price or when there is no known means to obtain it.

In such a case, the responsible official must:

1. Determine the relevance of the missing information to evaluating reasonably foreseeable significant adverse impacts on the human environment;

2. Be able to cite existing credible scientific evidence relevant to evaluating those adverse impacts; and

3. Evaluate those impacts based upon either theoretical approaches or research methods generally accepted in the scientific community.

As used in the CEQ regulations, "reasonably foreseeable" includes:

> * * * impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason. (40 CFR 1502.22)

When evaluating reasonably foreseeable adverse impacts for which essential information is incomplete or unavailable, consider a range of possible scenarios. These should include a scenario that would most likely occur and ones that would be less likely but have the most severe impacts you could reasonably expect. When possible, include a discussion of relative probabilities of occurrence for each scenario.

14 Develop Alternatives

Based on the results of scoping and the determination of issues to be analyzed in detail, develop and consider all reasonable alternatives to the proposed action. The phrase "all reasonable alternatives" established in case law interpreting the National Environmental Policy Act has not been interpreted to require that an infinite or unreasonable number of alternatives be analyzed.

14.1 No-Action Alternatives

Consider the no-action alternative in detail in each environmental analysis. The no-action alternative provides a baseline for estimating the effects of other alternatives.

Two distinct interpretations of no-action are often possible, depending on the nature of the proposed action being evaluated. The first interpretation involves an action such as the initial approval or updating of a land and resource management plan where ongoing programs initiated under the existing plan continue, even as new plans are being developed. In these cases the no-action alternative means no change from current management direction. Consequently, the responsible official would compare the projected impacts of alternative management schemes to those impacts projected for the existing plans.

The second interpretation of no-action is that no-action or activity would take place, such as when proposals for projects are denied.

The nature and scope of the proposed action will aid the responsible official in determining which interpretation is appropriate to the analysis.

14.2 Other Alternatives

Develop other alternatives fully and impartially. Ensure that the range of alternatives does not foreclose prematurely options that might protect, restore, and enhance the environment. Consider reasonable alternatives even if outside the jurisdiction of the Forest Service. Modify alternatives or develop new alternatives as necessary as the analysis proceeds. Alternatives must specify any activities that may produce important environmental changes, and they must address management requirements, mitigation measures, and monitoring of environmental effects.

14.3 Alternatives Not Considered in Detail

Describe the alternatives not considered in detail, briefly discuss the reasons for their being eliminated, and include this information in the project

file. If an environmental impact statement is required, this information must be disclosed in the chapter on alternatives. [sec. 22.3, 5].

15 Estimate Effects of Each Alternative

For each alternative, estimate the direct, indirect, and cumulative environmental effects including the effectiveness of the mitigation measures, that would result from implementing each of the alternatives, including the no-action alternative. Also identify any additional mitigation measures that may be required, such as measures common to all alternatives.

Express the effects in terms of changes that would occur in the physical (land, water, air), biological (plants and animals), economic (money passing through society), and social (the way people live) components of the human environment. Consider the magnitude, duration, and significance of the changes. See section 61 for a more specific list of environmental factors.

When analysis and disclosure of social and/or economic impacts are important to a reasoned decision, follow the direction in FSM 1970 and FSH 1909.17. Also consider unquantifiable environmental amenities and values.

For all alternatives be sure to consider the environmental effects on the following:

1. Consumers, civil rights, minority groups, and women (FSM 1750).
2. Prime farmland, rangeland, and forest land (Departmental Regulation 9500–3, sec. 65.21).
3. Wetlands and flood plains (sec. 05, definition 42).
4. Threatened and endangered species (FSM 2670).
5. Cultural resources (FSM 2360).

15.1 Cumulative Effects (sec. 05, definition 7)

Individual actions when considered alone may not have a significant impact on the quality of the human environment. Groups of actions, when added together, may have collective, or cumulative, impacts which are significant. Cumulative effects can occur without regard to land ownership boundaries. Consideration must be given to the incremental effects of past, present, and reasonably foreseeable related future actions of the Forest Service, as well as those of other agencies and individuals.

16 Evaluate Alternatives and Identify Preferred Alternative(s)

Compare alternatives on the basis of their effects on the human environment. Although the ID Team may make a recommendation based on the results of the interdisciplinary analysis, the responsible official identifies the preferred alternative(s).

When the Chief or the Secretary is the responsible official, the Washington Office (WO) Environmental Coordination Staff participates with appropriate field units or other WO staff(s) and with the appropriate Deputy Chief, Chief, or Assistant Secretary to identify the preferred alternative(s).

17 Determine Type of Environmental Document Needed

The significance of environmental effects of a proposed action determines whether an environmental impact statement must be prepared [sec. 05, definition 38].

If the proposed action may have significant environmental effects, prepare an environmental impact statement [ch. 20]. "Significance" is discussed in section 05. Otherwise, prepare an environmental assessment (ch. 40).

Ther CEQ regulations provide the following direction on whether to prepare an environmental impact statement:

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations * * * whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement. (40 CFR 1501.4)

18 Review of New Information on Impacts Received After a Decision Has Been Made

If new information or changed circumstances relating to the environmental impacts of a proposed action come to the attention of the responsible official after a decision has been made and prior to completion, he or she must review the information carefully to determine the importance of the information.

If the responsible official considers the new information within the context of the overall proposal and determines that a supplement or change to an environmental document is not necessary and a new decision is not required, continue implementation. Document the results of the interdisciplinary review process in the planning record or in the case file.

18.1 Decisions Based on an Environmental Impact Statement

CEQ regulations require:

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

* * * * *

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement * * *. (40 CFR 1502.9(c))

If the responsible official determines, based on the above, that a supplement to an environmental impact statement is appropriate, issue a notice of intent to prepare an environmental impact statement. Also issue a record of decision based on the supplement. Follow the instructions in Chapter 20.

18.2 Decisions Based on an Environmental Assessment and Finding of No Significant Impact

Prepare a supplement to an environmental assessment if:

(a) The analysis of the new information or changed circumstances indicates changes in the proposed action may be needed to address environmental concerns; or

(b) the new information or circumstances are relevant to environmental concerns and bear on the proposed action or its impacts.

Prepare a new finding of no significant impact which considers the impacts disclosed in both the environmental assessment and the supplement. If the decision is changed, issue a new decision notice. If the decision is unchanged, do not issue a new decision notice. Follow the instructions in Chapter 40.

If, based on the environmental assessment and the supplement, a finding of no significant impact cannot be prepared, issue a notice of intent to prepare an environmental impact statement. Follow the instructions in Chapter 20.

18.3 Decisions for Which a Case File and Decision Memo Have Been Prepared

Take no further action if review of the new information shows that the proposed action still fits within the identified category in 31.2 and no extraordinary circumstances exist. Issue a new decision memo if the new information or changed circumstances require a new or changed decision. Follow the instructions in Chapter 30.

If the new information indicates that extraordinary circumstances are now present and the proposed action may have a significant impact on the human environment, file a notice of intent to prepare an environmental impact statement. Follow the instructions in Chapter 20.

If the new information indicates that extraordinary circumstances are now present but the significance of the impacts on the human environment are uncertain, prepare an environmental assessment. Follow the instructions in Chapter 40.

18.4 Decisions Which Have Been Categorically Excluded from Documentation and for Which a Case File and Decision Memo Have Not Been Prepared

Implement the proposed action if an interdisciplinary review of the new information or extraordinary circumstances shows that the proposed action still fits within the identified category in Section 31.1 and no extraordinary circumstances exist.

If the new information indicates that extraordinary circumstances are now present and the proposed action may have a significant impact on the human environment, file a notice of intent to prepare an environmental impact statement. Follow the instructions in Chapter 20.

If the new information indicates that extraordinary circumstances are now present but the significance of the impacts on the human environment are uncertain, prepare an environmental assessment. Follow the instructions in Chapter 40.

Prepare a case file and decision memo if the proposed action fits within a category in § 31.2, Follow the instructions in Chapter 30.

Chapter 20—Environmental Impact Statements and Related Documents

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20.6 Classes of Actions Requiring Environmental Impact Statements

Classes of actions that require preparation of environmental impact statements are listed below. Examples of actions are included.

The requirements for classes 2, 3, and 4 may be met by the appropriate use of program environmental impact statements and tiered site-specific environmental documents or by the preparation of site-specific environmental impact statements.

1. *Proposed actions for which an environmental impact statement is required by law or regulation.* Examples include:

a. Preparing or revising a land and resource management plan required by the National Forest Management Act (36 CFR 219.10).

b. Proposing that Congress enact legislation to designate a wilderness or a wild and scenic river (40 CFR 1508.5).

2. *Proposals to carry out or to approve the operational aerial application of chemical pesticides.* Examples include:

a. Applying chemical insecticides by helicopter on an area infested with spruce budworm to prevent serious resource loss.

b. Authorizing the application of herbicides by helicopter on a major utility corridor to control unwanted vegetation.

c. Applying herbicides by fixed-wing aircraft on an area to release trees from competing vegetation.

3. *Proposals that would substantially alter the undeveloped character of an inventoried roadless area (FSH 1909.12) of 5,000 acres or more.* Examples include:

a. Proposed road construction and associated timber harvesting in a 56,000-acre inventoried roadless area where the proposed road and harvest units impact 3,000 acres in only one part of the roadless area.

b. Construction or reconstruction of water reservoir facilities in a 5,000-acre unroaded area where flow regimens may be substantially altered.

c. Issuance of a special use permit in an unroaded area of more than 5,000 acres that would involve substantial surface disturbing activities such as approval of an operations plan for a mine or approval of a permit to develop a ski resort.

4. *Proposals to take major Federal actions that may significantly effect the quality of the human environment.*

21 Notices of Intent

21.1 Preparation and Distribution of Notices of Intent

Prepare and publish a notice of intent in the Federal Register as soon as practicable after deciding that an environmental impact statement (EIS) will be prepared. The purpose of a notice of intent to prepare an environmental impact statement is to begin the scoping process for the EIS.

CEQ regulations require that

* * * The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meetings will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement. (40 CFR 1508.22).

In addition, the notice of intent must include the following information:

a. Name and address of the responsible official(s);

b. A description of the nature and scope of the proposed action and the decision to be made;

c. Tentative or preliminary issues and alternatives which have been identified;

d. Identification of permits or licenses required to implement the proposed action and the issuing authority;

e. The lead, joint lead, or cooperating agencies (sec. 05, definitions).

f. The estimated dates (month and year) for filing the draft and final EIS;

g. An address to which comments may be mailed;

h. The reviewer's obligation to comment during the review period rather than after completion of the final environmental impact statement. Use the following standard paragraph:

The comment period on the draft environmental impact statement will be [enter correct time period (45-day minimum)] from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the [enter correct time period] comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. [Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Follow the Federal Register document preparation requirements and mailing instructions in section 87. Send one copy of the signed notice of intent to the Washington Officer Director of Environmental Coordination (hard copy: Chief (1950); DC address: SCwOtc). When the Chief or the Secretary is the responsible official, the appropriate field unit or WO staff shall prepare the notice of intent and send it to the WO Environmental Coordination Staff for review, processing, and submission to the Office of the Federal Register.

Once the title of the EIS under preparation has been identified in the notice of intent, use the same title on the cover of the draft and final environmental impact statement.

21.2 Revision of Notices of Intent

The official responsible for preparation of an environmental impact statement (EIS) must notify the appropriate Regional Station, or Area Environmental Coordinator and the Washington Office Director of Environmental Coordination whenever there is a major change in the information shown in the notice of intent. Major changes may require publishing a revised notice of intent in the Federal Register (sec. 21.1).

Examples of major changes can require a revised notice of intent are:

1. A delay of more than six months in filing either the draft or final EIS;

2. A change in the proposed action or the decision to be made; or

3. A change in the responsible official.

A revised notice of intent shall reference the date and page number of all prior notices relevant to the proposed action which were published in the Federal Register. Prepare and distribute a revised notice of intent in the same manner as the original (sec. 21.1).

21.3 Cancellation of a Notice of Intent

Publish a cancellation notice in the Federal Register to terminate the environmental analysis process if, after publication of a notice of intent or distribution of a draft EIS, a decision on a proposed action is no longer necessary. A cancellation notice must refer to the date(s) and page number(s) of previously published notice(s) of intent or the notice of availability of an EIS which were published in the Federal Register. Prepare and distribute a cancellation notice in the same manner as the notice of intent (sec. 21.1). In addition, send a copy of the cancellation notice to the Environmental Protection Agency's Office of Federal Activities (sec. 22.4).

When the Chief or the Secretary is the responsible official, the appropriate field unit or WO staff prepares the cancellation notice as soon as there is a decision to terminate the process and sends the notice to the Director of Environmental Coordination for review, processing, and submission to the Office of the Federal Register and Environmental Protection Agency's Office of Federal Activities.

22 Environmental Impact Statements—Uniform Requirements (Section 05, definitions)

The CEQ regulations identify the following requirements for EISs:

As required by sec. 102(2)(C) of NEPA environmental impact statements (§ 1508.11) are to be included in every recommendation or report.

On proposals (§ 1508.23).

For legislation and (§ 1508.17).

Other major Federal actions (§ 1508.18).

Significantly [§ 1508.27).

Affecting [§ 1508.3, 1508.8).

The quality of the human environment (§ 1508.14). [40 CFR 1502.3)

22.1 Page Limits

The text of final environmental impact statements * * * shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages. [40 CFR 1502.7)

22.2 Writing

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. [40 CFR 1502.8)

22.3 Content and Format

An environmental impact statement must contain the following:

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for action.

(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected environment.

(g) Environmental consequences (especially sections 102(2)(C) (i), (ii), (iv), and (v) of the Act).

(h) List of preparers.

(i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.

(j) Index.

(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section. * * * (40 CFR 1502.10)

1. *Cover Sheet.* The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement. (40 CFR 1502.11)

Also include the name, title, and address of the responsible official.

The abstract of the EIS should include the alternatives considered and identification of the preferred alternative(s) if one or more exists.

If the EIS is a draft, the cover sheet must also include the date by which comments must be received. The cover sheet for a draft environmental impact statement should contain the following statement about the reviewer's obligation to comment during the review period. It may be necessary to reduce the type size to accommodate this information.

Reviewers should provide the Forest Service with their comments during the review period of the draft environmental impact statement. This will enable the Forest Service to analyze and respond to the comments at one time and to use information acquired in the preparation of the final environmental impact statement, thus avoiding undue delay in the decisionmaking process. Reviewers have an obligation to structure their participation in the National Environmental Policy Act process so that it is meaningful and alerts the agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Comments on the draft environmental impact statement should be specific and should address the adequacy of the statement and the merits of the alternatives discussed (40 CFR 1503.3).

2. *Summary.*

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages. (40 CFR 1502.12)

3. *Table of Contents.* List the major sections as well as a list of tables and exhibits.

4. *Purpose and Need.* The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action. (40 CFR 1502.13)

5. *Alternatives Including the Proposed Action.* This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives. (40 CFR 1502.14)

Additionally, for proposed actions on National Forest System lands, the description of each alternative should state whether or not it is consistent with the Forest Land and Resource Management Plan (36 CFR 219.10(c)).

6. *Affected Environment.* The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced.

Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement. (40 CFR 1502.15)

7. *Environmental Consequences.* This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C) (i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources

which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

(a) Direct effects and their significance (§ 1508.8).

(b) Indirect effects and their significance (§ 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See § 1508.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under § 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under (1502.14(f)). (40 CFR 1502.16)

8. *List of Preparers.* The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (§§ 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified * * * (40 CFR 1502.17)

9. *List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent.* The list should include names only and not addresses.

10. *Index.* All environmental impact statements (EISs) must include indexes. The purpose of an index is to make the information in the EIS fully available to the reader without delay. See section 62 for preparation of indexes.

11. *Appendix.* If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (§ 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request. (40 CFR 1502.18)

22.31 *Tiering*

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (40 CFR 1502.20)

The environmental impact statement which accompanies a land and resource management plan is an example of a "broad" EIS prepared for a program or policy statement.

22.32 *Adoption*

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under Part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify. (40 CFR 1506.3).

22.33 *Incorporation by Reference*

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference. (40 CFR 1502.21)

22.34 *Incomplete or Unavailable Information*

Refer to section 13 of this handbook. Systematically respond to all of the following:

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statements.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statements:

(1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule or reasons. (40 CFR 1502.22)

22.35 *Documentation of Cost-Benefit Analysis*

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statements should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision. (40 CFR 1502.23)

22.36 *Identification of Methodology and Scientific Accuracy*

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix. (40 CFR 1502.24)

22.4 *Filing, Circulation, and Availability of Environmental Impact Statements*

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. (40 CFR 1506.9)

* * * * *

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in § 1502.18(d) and unchanged statements as provided in § 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period. (40 CFR 1502.19)

A summary of this EIS distributed as a separate document must:

a. State how other agencies, organizations, and persons can obtain or review the complete EIS.

b. Have a cover sheet attached.

23 *Requirements Specific to Draft Environmental Impact Statements*

23.1 *Identification in Draft Environmental Impact Statements of Permits Necessary to Implement Proposal*

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate. (40 CFR 1502.25(b))

23.2 *Circulating and Filing a Draft Environmental Impact Statement*

1. Circulate a draft EIS to agencies and to the public prior to or at the same time it is transmitted to the Environmental Protection Agency (EPA) in Washington, DC. If the statement is unusually long, a summary may be circulated instead (40 CFR 1502.19).

However, the responsible unit must file the entire document with EPA and furnish it to other agencies which have jurisdiction by law or special expertise. The entire EIS must also be furnished to the project proponent and other individuals and groups who have requested it.

2. File five copies of a draft EIS with the Environmental Protection Agency at the following address: Management Information Unit, Office of Federal Activities (A-104), Environmental Protection Agency, Room 2119 Mail, 401 M Street, SW., Washington, DC 20460.

EPA will then publish the Notice of Availability in the Federal Register.

3. The following are the mandatory mailings for all EISs prepared by the Forest Service.

ENVIRONMENTAL PROTECTION AGENCY REGIONAL OFFICE

(Regions, addresses, and number of copies are listed in Chapter 90)

	DEIS	FEIS
Director, Environmental Coordination (Chief, 1950), Forest Service—USDA, Box 96090, Washington, DC 20090-6090	5	5
Office of Environmental Affairs, Department of the Interior, MS 2340, Washington, DC 20240		
Projects east of the Mississippi River	12	7
Projects west of the Mississippi River	16	12

Always send copies of EISs to these agencies by expeditious methods of delivery. These methods also may be desirable for other key recipients. Base any other distribution to Federal agencies on agency expertise and legal jurisdiction as indicated in section 63. The addresses and number of copies required by each agency are shown in section 63.1.

3. Calculate the review period from the date after EPA's notice of availability appears in the Federal Register.

(a) The Environmental Protection Agency shall publish a notice in the Federal Register each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

* * * * *

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a

showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency * * * Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. * * * (40 CFR 1506.10)

23.3 Solicit Comments on a DEIS

Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed * * *

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected. (40 CFR 1503.1)

Conduct public participation sessions, if appropriate. See FSH 1609.13 for suggestions on methods to involve the public in Forest Service planning and decisionmaking activities.

23.4 Extending the Comment Period on a DEIS

If the responsible official determines that an extension of the review period on the draft EIS is appropriate, notify interested and affected agencies, organizations, or persons in an appropriate manner (ch. 10). Forward one copy of the notice to EPA and one copy to the Washington Office Director of Environmental Coordination. EPA will publish the notice of the extension of the comment period in the Federal Register on the Friday following the week the notice is received.

24 Requirements Specific to a Final Environmental Impact Statement

24.1 Use of Comments on a Draft Environmental Impact Statement in a Final Environmental Impact Statement

1. Review, analyze, evaluate, and respond to substantive comments on the draft EIS.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a) (4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated ((1502.19). The entire document with a new cover sheet shall be filed as the final statement (§ 1506.9). (40 CFR 1503.4)

2. When the responsible official determines that a summary of responses is appropriate, the summary must reflect accurately all substantive comments received on the draft EIS. Comments that are pertinent to the same subject may be aggregated by categories. Avoid a general summary.

3. As a minimum, include in an appendix of a final EIS copies of all comments received on the draft EIS from Federal, State, and local agencies and elected officials.

24.2 Filing and Distributing a Final Environmental Impact Statement

1. File a final environmental EIS with the Environmental Protection Agency (EPA) as shown in 23.2, along with all substantive comments or a summary of the comments on the draft EIS. The official filing date is the date that the EPA receives the EIS, not the date that EPA's notice of availability appears in the Federal Register. The Washington Office Director of Environmental Coordination files with EPA the statements for which the Chief or the Secretary is the responsible official.

2. Distribute a final EIS to other agencies and to the public prior to or at the same time it is filed with EPA (40 CFR 1506.9). If the statement is unusually long, a summary may be circulated instead (40 CFR 1502.19). However, the responsible unit must file the entire document with EPA and furnish it to other persons or agencies specified in sections 23.2.

If changes resulting from comments to a draft EIS are minor, they may be written on an errata sheet and attached to the draft EIS. In this case only the comments, the responses, and the changes need to be circulated. File the entire document with a new cover sheet as the final EIS (40 CFR 1503.4(c)).

3. After filing the EIS with the EPA, ensure that a reasonable number of copies of the statement are available free of charge.

4. Calculate the implementation date from the date the legal notice of the decision is published as required by 36 CFR part 217.

24.3 Environmental Impact Statements Involving Inventoried Roadless Areas

If an EIS involves plans that allocate an inventoried roadless area or a RARE II "further planning" area(s) to nonwilderness uses, the responsible official distributes the final EIS to the public and files the final EIS with EPA in the same manner as other EISs (sec. 51).

Additionally, the responsible official must send four additional copies of the final EIS and the record of decision to the Washington Office Director of Environmental Coordination who will coordinate the transmittal to congressional committees. The implementation date begins the day the responsible official receives notice from the Director of Environmental Coordination that there has been no objection to the decision by Congress.

24.4 Corrections, Supplements, and Revisions

24.4a Corrections

Use errata sheets to make simple corrections.

24.4b Supplements

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council. (40 CFR 1502.9(c))

24.4c Revisions

(a) * * * If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion * * * (40 CFR 1500(a))

Review environmental impact statements that have not been implemented or those for ongoing programs at least every 5 years to determine if they should be supplemented or revised. Distribute any corrections, supplements, and revisions to all holders of the environmental impact statement involved.

24.5 Review of Other Agency Environmental Impact Statements

Because of special agency expertise or jurisdiction by law, the Forest Service may be asked to review and comment on environmental impact statements (EISs) prepared by other agencies.

Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in (1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment. (40 CFR 1503.2)

Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences. (40 CFR 1503.3)

Unless otherwise assigned by the Chief, officials in the Washington Office shall review and comment on EISs prepared on legislative proposals, Service-wide policies and regulations, or national program proposals. The Director of Environmental Coordination coordinates these reviews and responses.

24.51 Referrals to Council on Environmental Quality

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar review of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public. (40 CFR 1504.1)

When Forest Service review of another agency's draft EIS concludes that the proposed action is environmentally unacceptable, the affected field unit shall immediately contact the WO Director of Environmental Coordination who will coordinate the referral procedure.

The 25-day time period allowed for review is extremely short; therefore, begin referral immediately after determining that the proposal is environmentally unacceptable.

25 Other Planning and Preparation Requirements for Environmental Impact Statements

25.1 Consultation Requirements

Refer to FSM 2360 for consultation requirements on archaeological and cultural resources and FSM 2670 for consultation requirements with the Fish and Wildlife Service on threatened and endangered species.

Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders. (40 CFR 1502.25(a))

25.2 Elimination of Duplication With State and Local Procedures

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication

between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law. (40 CFR 1506.2)

25.3 Combining Documents

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork. (40 CFR 1506.4)

Examples include Wilderness Study Reports and Wild and Scenic River Study Reports which may be combined with a supporting EIS.

25.4 Federal Agencies With Legal Jurisdiction or Special Expertise

See section 63 for the Council on Environmental Quality's list of agencies with jurisdiction by law or special expertise. See § 63.1 for addresses and recommended document distribution.

26 Responsibilities When Applicants and Contractors Are Involved

The responsible official may require project proponents to conduct studies and provide data and documentation for consideration and use in preparing an EIS. However, the Forest Service does not have authority to require a proponent to prepare or fund an environmental impact statement.

Agency responsibility.

(a) Information. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers § 1502.17. It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

* * * * *

(c) Environmental impact statements. Except as provided in §§ 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by a contractor selected by the lead agency or where appropriate under § 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents * * * (40 CFR 1506.5 (a) and (c)).

27 Documentation of Decisions

27.1 Timing of a Decision.

The following time limits apply to decisions supported by an environmental impact statement:

Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the Federal Register each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under § 1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement. (40 CFR 1506.10)

27.2 Record of Decision.

If an environmental impact statement has been prepared, document the decision in a record of decision. Prior to signing the record of decision, the responsible official shall read and understand the environmental impact statement.

At the time of its decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, * * *, shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation. (40 CFR 1505.2)

The record of decision must also include consistency and conformance findings which are required by laws and regulations relevant to the decision being made.

27.21 Format and Content.

Records of decision should generally conform to the following format and must meet the following content requirements. Sections of the format may be combined or rearranged in the interest of clarity and brevity. Records of decision should reflect the analysis documented in the environmental impact statement and contain the following elements.

1. *Heading.* The heading must identify:

(a) Agency.

(b) Type of decision document, i.e., Record of Decision.

(c) The title of the proposed action.

(d) The location of the proposed action, including administrative unit, county, and state.

2. *Decision.* Describe the decision being made, including the permits, licenses, grants, or authorizations needed to implement the decision. Identify the specific location of the alternative selected, including the legal land subdivision if pertinent. Refer to or include any mitigation and monitoring program related to the decision.

3. *Public involvement conducted.* Identify the issues which determined the scope of the analysis. Provide a brief summary of the public participation that relates to the decision. Agencies, organizations, or persons raising issues or asserting opposing viewpoints may be identified and their positions discussed.

4. *Alternatives considered.* All alternatives considered (including the no-action) should be briefly discussed with specific references to the environmental impact statement. Mitigation measures, management requirements, and monitoring provisions that are pertinent to environmental concerns should be discussed with specific citations to pages of the environmental impact statement.

5. *Reasons for the decision.* This section identifies:

(a) Applicable laws, regulations, and policies.

(b) How environmental issues were considered and addressed.

(c) Factors other than environmental consequences considered in making the decision.

(d) Identification of environmental document(s) read and considered in making the decision.

6. *Findings required by other laws.* Include any findings required by any other laws. For example, findings of consistency with the forest plan, suitability, and vegetation management required by the National Forest Management Act.

7. *Identify the Environmentally Preferable Alternative.* Based on the definition in section 05, definition 16, state which alternative(s) is environmentally preferable.

8. *Implementation date.* Identify the date when the responsible official intends to implement the decision (sec. 51).

9. *Administrative review or appeal opportunities.* Clearly state whether the decision is subject to review or appeal (citing the applicable regulations), and identify when and where to file a request for review or appeal.

10. *Contact Person.* Identify the name, address, and phone number of a contact person who can supply further information.

11. *Signature and Date.* The responsible official must sign and date the record of decision on the date the decision is made.

(a) For decisions subject to review under the Forest Service appeal regulations (36 CFR 217), the responsible official may sign and date the record of decision on the date that it is transmitted with the final environmental impact statement to the Environmental Protection Agency and made available to the public.

(b) For decisions not subject to review, the responsible official must sign and date the record of decision no sooner than 30 days after EPA's notice of availability of the final environmental impact statement is published in the Federal Register (sec. 27.1).

(c) For legislative proposals the record of decision may be signed up to 30 days prior to filing and distributing the legislative environmental impact statement.

When an environmental impact statement identifies joint lead agencies (sec. 11.31a) or cooperating agencies with jurisdiction by law, the responsible official from each agency shall sign and date a record of decision for those actions within the authority of each.

When the Chief or Secretary is the responsible official, the appropriate field unit or WO staff prepares the record of decision with assistance from the WO Environmental Coordination Staff. The WO Environmental Coordination Staff coordinates the review and signing of the record of decision, involving the appropriate WO staff(s), Deputy Chief, Chief, or Secretary, as necessary. The signed original is then filed in WO Environmental Coordination Staff office files and the WO Environmental Coordination Staff forwards a copy to the appropriate field unit or WO staff for necessary distribution.

28 Notice and Distribution of the Record of Decision

Distribute the record of decision as soon as it is signed to agencies, organizations, and persons interested in or affected by the proposed action.

1. The responsible official shall promptly mail the record of decision to those who have requested it in writing, and to those who are known to have participated in the decisionmaking process.

2. For decisions subject to appeal under 36 CFR 217, in addition to the notice required by paragraph 1, the responsible official shall publish a notice of the availability of the record of decision in the legal section of a newspaper(s) of record with general circulation in the area where the proposed action will take place as required by 36 CFR 217. The responsible official may also elect to publish a summary of the decision or the complete text of the record of decision.

3. The responsible official will provide other forms of notice appropriate to the importance of the decision.

4. The responsible official shall enter the date of the record of decision on the calendar of proposed actions in the "status/comments" column.

When required by E.O. 12372, send copies to the State Single Point of Contact or, in cases where a State has elected not to establish a Single Point of Contact, the State official(s) involved.

Chapter 30—Categorical exclusion from Documentation

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30.3 Policy.

1. A proposed action may only be categorically excluded from documentation in a environmental impact statement or environmental assessment if the proposed action:

a. Falls within one of the categories in the Department of Agriculture (USDA) policies and procedures in 7 CFR Part 1b;

b. Falls within one of the categories listed in sec. 31.1b and 31.2; and

c. Does not involve any extraordinary circumstances.

Extraordinary circumstances may include, but are not limited to, the presence of threatened and endangered species or their critical habitat; flood plains; wetlands; municipal watersheds; Congressionally designated areas, such as wilderness, wilderness study areas, or National Recreation Areas; inventoried roadless areas; Research Natural Areas; Native American religious or cultural sites; archaeological sites; or historic properties or areas.

If extraordinary circumstances are present and the proposed action may have a significant environmental effect, prepare an environmental impact statement (Ch. 20). If the need for an

environmental impact statement is uncertain, prepare an environmental assessment (Ch. 40).

If an activity has already been sufficiently analyzed in an existing environmental assessment or environmental impact statement and identified in the appropriate decision document, it can be implemented without considering the categories in this chapter 30.

If an activity has been sufficiently analyzed in an existing environmental assessment or environmental impact statement, but not identified in an appropriate decision document, issue a decision document based on the analysis without considering the categories in chapter 30.

30.5 Definitions.

1. *Categorical exclusion*—* * * a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implemenation of these regulations (1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. (40 CFR 1508.4)

2. *Decision Memo.* A concise memorandum signed by the responsible official recording a decision to take or implement an action that has been categorically excluded from documentation in either an environmental impact statement or environmental assessment.

31 Categories of Actions Excluded from Documentation.

31.1 Categories for Which a Project or Case File and Decision Memo Are Not Required.

At the discretion of the responsible official, a project or case file and a decision memo are not required but may be prepared for the categories of actions set forth in section 31.1a and 31.1b.

31.1a Categories Established by the Secretary.

The rules at 7 CFR 1b.3 exclude from documentation in an environmental impact statement or an environmental assessment the following categories:

(a) * * *

(1) Policy development, planning and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions;

(2) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(3) Inventories, research activities, and studies, such as resource inventories and routine data collection which such actions are clearly limited in context and intensity;

(4) Educational and informational programs and activities;

(5) Civil and criminal law enforcement and investigative activities;

(6) Activities which are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation;

(7) Activities related to trade representation and market development activities abroad. (7 CFR 1b(3))

31.1b Categories Established by the Chief.

The following categories of routine administrative and maintenance actions normally do not individually or cumulatively have a significant effect (sec. 05) on the quality of the human environment and, therefore, may be categorically excluded from documentation in an environmental impact statement or environmental assessment:

1. *Proposals to issue or issuing orders pursuant to 36 CFR part 261 to provide short-term protection for sensitive resource values.* Examples include but are not limited to:

a. Issuing an order to close a road to protect bighorn sheep during lambing season.

b. Issuing an order to close an area during a period of extreme fire danger.

2. *Proposals to issue or issuance of rules, regulations, policy, or procedures which in and of themselves result in little or no environmental effects.* Examples include but are not limited to:

a. Proposing a rule to adjust special use fees.

b. Proposing to use a technical or scientific methodology or procedure for screening effects of emissions on air quality related values in Class I wildernesses.

c. Proposing a policy to defer payments on certain permits or contracts to reduce the risk of default.

d. Proposing to establish a Service-wide process for responding to offers to exchange land and agreeing on land values.

e. Proposing to establish a process for developing, adopting, and revising land and resource management plans.

f. Proposing to establish a generic definition and description of old-growth forests on national forest lands.

3. *Proposals to perform routine repair and maintenance activities which have little potential for soil movement, loss of soil productivity, water quality degradation, or impact on sensitive resources values.*

Examples include but are not limited to:

a. Mowing vegetation along a National Forest System road.

b. Reroofing and painting a building.

c. Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail.

d. Grading a road and clearing the roadsides of brush without the use of herbicides.

e. Resurfacing an existing road.

f. Posting land line boundary signs.

4. *Proposals to acquire land or interest in land involving only transfer of title to the United States which include purchase, donation, tripartite land-for-timber exchanges, or acquisition of replacement land in Sisk Act cases.*

Examples include but are not limited to:

a. Donation of lands or interest in land to the National Forest System.

b. Purchase of a conservation easement or other interests in lands.

5. *Proposals to issue, reissue, or adjust a land use authorization which are consistent with an existing Forest Land and Resource Management Plan where the proposed activity or continuation of the activity will have little potential for soil movement, loss of soil productivity, water and air quality degradation, or impact on sensitive resource values.*

Examples include but are not limited to:

a. Issuing, reissuing, or adjusting an outfitter and guide permit.

b. Renewing a special use authorization to operate a communication site.

c. Renewing a special use permit to operate and maintain a domestic waterline and spring box.

d. Issuing a road use permit to haul commodities over National Forest System roads.

e. Issuing a road maintenance agreement authorizing a use to perform grading, culvert cleaning, and resurfacing operations on an existing Forest Service road.

f. Issuing a grazing permit where the existing AMP is consistent with the Forest Land and Resource Plan.

6. *Proposals to carry out small-scale pest management activities that have little adverse impact on non-target species, soil productivity, water quality or sensitive resources.*

Examples include but are not limited to:

a. Applying registered herbicides to control poison ivy on infested sites in a campground.

b. Applying biological agents on freshly cut stumps to prevent annosus root-rot.

c. Applying registered incesticides by compressed air sprayer to control insects at a recreation site complex.

d. Removing small infestations of noxious weeds by hand grubbing and pulling.

31.2—Categories of Actions for Which a Project or Case File and Decision Memo Are Required.

Maintain a project or case file and prepare a decision memo on the following categories of proposed actions. As a minimum, the file should include any records prepared, such as: (1) A list of the names of interested and affected people, groups, and agencies contacted during scoping; (2) the determination that no extraordinary circumstances exist; (3) a copy of the decision memo (sec. 30.5(2); (4) a list of the people notified of the decision, (5) a copy of the legal notice required by 36 CFR Part 217 and any other notice used to inform interested and affected persons of the decision to proceed with or to implement an action that has been categorically excluded. A proposed action that falls within any of the following categories and does not involve any extraordinary circumstances may be excluded from documentation in an EIS or EA; however, the decision to proceed must be documented in a decision memo (sec. 32).

1. *Proposals or issuance of authorizations to construct, reconstruct, or upgrade trails and low-standard roads (service level D as defined in FSH 7709.56) where the activity will have little potential for soil movement, loss of soil productivity, water and air degradation or impact on sensitive resource values.*

Examples include but are not limited to:

a. Constructing or upgrading a trail to a scenic overlook.

b. Reconstruct a low-standard road (service level D as defined in FSH 7709.56) in a previously roaded area with gentle slopes, non-erosive soils, and no sensitive resource values.

2. *Proposals or issuance of authorizations to construct, reconstruct, or upgrade facilities or utilities on approved sites that have little potential for soil movement, loss of soil productivity, water and air quality degradation, or impact on sensitive resource values.*

Examples include but not limited to:

a. Improve a water system in an existing Forest Service campground or administrative site.

b. Issuing a special use authorization permitting the construction of an additional telephone or utility line in an approved right-of-way corridor.

3. *Proposals to carry out fish and wildlife habitat management activities where there is little potential for displacement of exposed soil, changes in vegetation species composition, or new sources of water pollution.*

Examples include but are not limited to:

a. Installing a fish ladder on an existing dam.

b. Using explosive charges to remove the tops of a number of widely spaced trees to create snags for cavity nesting birds.

4. *Proposals to transfer lands or interests in land where loss of Federal jurisdiction will have little potential for soil, water and air quality degradation or impact on sensitive resources.*

Examples include but not limited to:

a. Selling or exchanging land pursuant to the Small Tracts Act.

b. Exchanging National Forest System lands or interests with a State agency, local government, or other non-Federal party (individual or organization), with similar resource management objectives and practices.

c. Exchanges of lands or interest in lands with similar resource values and characteristics.

d. Exchanges of administrative sites involving other than National Forest resource lands.

5. *Proposals to conduct research activities and administrative studies which do not involve genetically engineered organisms and which have little potential for soil movement, loss of soil productivity, water and air quality degradation or impact on sensitive resources.*

Examples include but are not limited to:

a. Conducting a field experiment on a previously logged area to determine the effects of several methods of site preparation on tree seedling survival and early growth.

b. Conducting an administrative study to evaluate the effectiveness of different fire retardants in reducing the rate of spread of fires burning under controlled conditions.

c. Conducting a field experiment to determine the effectiveness of aerial application of gypsy moth virus in preventing defoliation.

6. *Proposals to harvest or salvage timber which remove one million board feet or less of merchantable wood products; require one mile or less of new road construction; assure regeneration of harvested or salvaged areas, where required; and are consistent with Forest land and resource management plans. Activities have little potential for soil movement, loss of soil productivity, water and air quality degradation or impact on sensitive resource values.*

Examples include but are not limited to:

a. Harvesting (FSM 2470.1 and 2470.2) 800,000 board feet of merchantable timber from 100 acres, including the construction of one-half mile of additional roads from an area that has moderately steep slopes, stable but somewhat erosive soils, no sensitive resource values, and where soil type and moisture conditions are favorable for prompt regeneration.

b. Salvaging (FSM 2470.3) an estimated volume of 975,000 board feet of merchantable timber from dead or dying trees, including the construction of one mile of access road, from an area that is generally flat with good drainage and no sensitive resource values.

7. *Proposals to thin merchantable timber from over-stocked stands which require one mile or less of new road construction and are consistent with Forest lands and resource management plans. Activities have little potential for soil movement, water and air quality degradation, or impact on sensitive resource values.*

Examples include but are not limited to:

a. Thinning (FSM 2476.4) an estimated 850,000 board feet of merchantable timber from over-stocked timber stands, including the construction of one-quarter mile of additional access road, from an area that has moderate slopes, stable but somewhat erosive soils.

8. *Proposals to artificially regenerate areas to native tree species, including needed site preparation not involving the use of herbicides, which have little potential for soil movement, loss of soil productivity, water and air quality degradation, or impact on sensitive resource values and are consistent with Forest land and resource management plans.*

Examples include but are not limited to:

a. Planting seedlings of superior trees in a progeny test site to evaluate genetic worth.

b. Planting trees or mechanical seed dispersal of adapted tree species following a fire, flood, or landslide.

9. *Proposals to improve vegetation or timber conditions using approved silvicultural or habitat management techniques, not including the use of herbicides, which have little potential*

for soil movement, loss of soil productivity, water and air quality degradation or impact on sensitive resource values and are consistent with Forest land and resource management plans.

Examples include but are not limited to:

a. Performing precommercial thinning or brush control, not involving the use of herbicides, including the opening of an existing road to a dense timber stand on a site with steep slopes, moderately unstable and erodible soils, and no sensitive resource values.

b. Girdling to kill less desirable species.

c. Conducting a prescribed burn to control understory hardwoods in stands of southern pines.

d. Conducting a prescribed burn to reduce natural fuel build-up and improve plant vigor for forage species.

10. *Proposals to approve mineral and energy activities where there is little potential for soil movement, loss of soil productivity, water and air quality degradation or impacts to sensitive resource values.*

Examples include but are not limited to:

a. Approving a plan of operations which authorizes the repair of an existing road and/or the construction of temporary roads; the clearing of vegetation from a small area with moderate slopes, stable and non-erosive soils for trenches, drill pads or support facilities; and drilling of several core holes in the area to determine the extent of a mineral deposit.

b. Issuing a permit for geophysical operations which authorized the use and repair of existing roads and/or construction of temporary roads.

c. Authorizing the disposal of mineral materials through permit or sale from an existing community pit or common-use area.

d. Consent to the Bureau of Land Management to issue leases on producing wells when mineral rights revert to the United States from private ownership.

11. *Proposals to reissue a grazing permit which newly incorporates forest plan management direction which have little potential for soil movement, loss of soil productivity, water quality degradation, or impact on sensitive resource values.*

Examples include but are not limited to:

a. Issuance of a grazing permit to a new permittee as a result of the purchase of permitted livestock or base property and waiver of the outstanding permit to the United States in favor of the purchaser.

b. Re-issuance of a term grazing permit as a result of permit expiration.

12. *Proposals to modify a grazing management activity where no adequate allotment management plan is in effect and the proposed activity will have little potential for soil movement, loss of soil productivity, water quality degradation or impact on sensitive resource values.*

Examples include but are not limited to:

a. Reconstruct a fence to improve animal distribution.

b. Adding a stock watering facility to an existing water line.

c. Spot seeding native species of grass or applying lime to maintain rangeland condition.

13. *Proposals to issue or reissue a term permit for the continuing operation of existing facilities that have little potential for soil movement, water and air quality degradation, or impact on sensitive resource values and are consistent with the existing Forest Land and Resource Management Plan.*

Examples include but are not limited to:

a. Proposals to issue or reissue a term permit for a resort or marina as long as the permit does not provide for construction of new facilities.

b. Proposals to issue or reissue a term permit for an organizational camp as long as the permit does not provide for construction of new facilities.

14. *Amendments to Forest Land and Resource Management Plans which do not change decisions made in Forest Plans.*

Examples include but are not limited to:

a. Minor management area boundary changes.

b. Text changes made to management direction for clarification or updating of information.

c. Changes resulting from budget adjustments which do not affect the range of outputs identified in the Forest plan.

d. Additions or deletions to Forest plan schedules that do not change the objectives of the Plan (36 CFR 219.3).

e. Establishing management direction for research natural areas subsequent to designation.

32 Documentation of Decisions

32.1 Decision Memo Not Required

If a proposed action has been categorically excluded from documentation in an environmental impact statement or an environmental assessment under USDA categories (7 CFR 1b.3(a)) or the categories listed in section 31.1b, a Decision Memo is not required; however, interested and affected persons must be informed in an appropriate manner of the decision to proceed with the proposed action (sec. 11.5).

32.2 Decision Memo Required

If the proposed action has been categorically excluded from documentation in an environmental impact statement or environmental assessment under the categories listed in section 31.2, document the decision to proceed with the proposed action in a decision memo. Section 32.3 sets forth the format and content of a decision memo.

When the Chief or Secretary is the responsible official, the appropriate field unit prepares the decision memo with assistance from the Washington Office (WO) Environmental Coordination Staff. The WO Environmental Coordination Staff coordinates the review and signing of the decision memo, involving the appropriate WO staff(s), Deputy Chief, Chief, or Secretary, as necessary. The signed original will be filed in WO Environmental Coordination Staff office files. The WO Environmental Coordination Staff will forward a copy to the appropriate field unit or WO staff for necessary distribution.

32.3 Format and Content of a Decision Memo

The format of a decision memo is not intended to replicate the format of a correspondence memorandum (FSH 6209.17). Generally, decision memos should conform to the following format and content although sections may be combined or rearranged in the interest of clarity and brevity.

1. *Heading.* The heading will identify:
(a) Agency.
(b) The title of the proposed action.
(c) The location of the proposed action (including administrative unit, county, and state). If appropriate, include the legal land description.

2. *Decision.* Describe the decision to be implemented and the reasons for categorically excluding the proposal. Include (a) the category (7 CFR 1b.(3) and sec. 31 into which the proposed action falls (b) a finding that no extraordinary circumstances exist (sec. 30.3, 1.c).

3. *Public Involvement.* List any interested and affected agencies, organizations, and persons contacted.

4. *Findings required by other laws.* Include any findings required by any other laws. For example, findings of consistency with the Forest Land and Resource Management Plan as required by the National Forest Management Act (FSM 1922.41 and FSH 1909.12, sec. 31.1b(5); or a public interest determination (36 CFR 254.3(c) and FSM 5430.3).

5. *Implementation date.* Include the date when the responsible official intends to implement the decision (sec. 51), and identify any conditions related to implementation.

6. *Administrative review or appeal opportunities.* State whether the decision is subject to review or appeal, cite the applicable regulations, and identify when and where to file a request for review or appeal.

7. *Contact Person.* Include the name, address, and phone number of a contact person who can supply further information about the decision.

8. *Signature and Date.* The responsible official must sign and date the decision memo on the date the decision is made.

33 Notice and Distribution of Decision Memo

Distribute a decision memo as soon as it is signed to agencies, organizations, and persons interested in or affected by the proposed action.

1. The responsible official shall promptly mail the decision memo to those who requested it.

2. As a minimum, for a decision subject to appeal under 36 CFR part 217, in addition to the notice required by paragraph 1, the responsible official shall publish a notice of the availability of the decision memo and a summary of the decision as required by 36 CFR part 217. The responsible official may elect to publish the complete text of the decision memo.

3. The responsible official may provide other forms of notice appropriate to the importance of the decision.

4. The responsible official shall enter the date of the decision memo on the Calendar of Proposed Actions in the "Status/Comments" column. (Sec. 07)

5. When required by E.O. 12372, send copies to the State Single Point of Contact or, in cases where a State has elected not to establish a Single Point of Contact, the State official(s) involved.

Chapter 40—Environmental Assessments and Related Documents

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41 Environmental Assessments

Prepare environmental assessments to document the results of environmental analyses and to disclose the environmental consequences for proposed actions that are not categorically excluded from documentation and for which the need for an environmental impact statement has not been determined.

The CEQ Regulations provide that an environmental assessment is not necessary if the agency has decided to prepare an environmental impact statement (40 CFR 1501.3(a)). Therefore, if prior to completion of the environmental assessment the responsible official determines an environmental impact statement should be prepared, discontinue the environmental assessment documentation, prepare a notice of intent (sec. 21), and proceed with the preparation of an environmental impact statement (ch. 20).

41.1 Purpose of Environmental Assessments

The purpose of an environmental assessment is to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary. (40 CFR 1508.9)(a))

41.2 Content

An environmental assessment may be prepared in any format useful to facilitate planning, decisionmaking, and public disclosure as long as the requirements of this chapter are met. The length and detail of an environmental assessment may vary according to the complexity of the issues involved in the analysis. An environmental assessment:

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. (40 CFR 1508.9(b))

42 Other Considerations in Preparing Environmental Assessments

42.1 Tiering

Tier environmental assessments to other environmental documents of broader scope to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision. See sections 05, 22.31, and 25.1 for additional information about tiering.

42.2 Adoption

Adopt other agency existing environmental assessments or portions thereof to eliminate duplication and reduce excessive paperwork if the document meets Forest Service standards and requirements. Section 25.2 contains additional guidance on adoption.

42.3 Incorporation by Reference

Incorporate material into environmental assessments by reference when the result will be to cut down on bulk without impeding agency and public review of the proposed action and alternatives. Include a brief summary of the material being incorporated by reference. Consult Section 22.33 for additional guidance on incorporation by reference.

43 Documentation of Decisions

43.1 Finding of No Significant Impact (FONSI)

When an environmental assessment has been prepared, the responsible official shall review the document and determine whether the proposed action may have a significant effect on the quality of the human environment. The CEQ Regulations define a finding of no significant impact (FONSI) as:

> . . . a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference. (40 CFR 1508.13)

If the responsible official determines that the proposed action may have a significant effect on the quality of the human environment, publish a notice of intent to prepare an environmental impact statement (ch. 20) in the Federal Register. Otherwise, prepare FONSI. A FONSI may be a separate document or included as part of a decision notice (sec. 43.2).

Use the criteria in the definition for "significantly," section 05, for determining whether the action will have a significant effect on the human environment.

43.2 Decision Notice

If an environmental assessment and a FONSI have been prepared, document the decision to proceed with an action or activity in a decision notice. The responsible official shall read and concur in the environmental assessment and finding of no significant impact prior to signing a decision notice.

A FONSI may be a separate document or combined with a decision notice.

If a FONSI cannot be prepared because the proposed action may have a significant effect on the environment, a decision notice is not required. If this is the case, prepare and issue a notice of intent to prepare an environmental impact statement. Note the status of the environmental analysis on the calendar of proposed actions (sec. 07).

When the Chief or Secretary is the responsible official, the appropriate field unit or Washington Office (WO) staff(s) prepares the decision notice with assistance from the WO Environmental Coordination Staff. The WO Environmental Coordination Staff coordinates the review and signing of the decision notice, involving the appropriate WO staff(s), Deputy Chief, Chief, or Secretary, as necessary. The signed original will be retained in WO Environmental Coordination.

The WO Environmental Coordination Staff will forward a copy to the appropriate field unit or WO staff for necessary distribution.

43.21 Format and Contents

Decision notices should reflect the conclusions drawn and the decision(s) made from the analysis documented in the environmental assessment. Generally, they should conform to the following format and content suggestions. Sections may be combined or rearranged in the interest of clarity and brevity.

1. *Heading.* The heading will identify:

(a) Agency.

(b) The title of the proposed action.

(c) The location of the proposed action, including administrative unit, county, State. In some cases, it may be appropriate to include the legal land description.

2. *Decision and Reasons for the Decision.* The selected alternative and the nature of the decision are described. In addition, this section identifies:

(a) Applicable laws, regulations, and policies.

(b) How issues were considered.

(c) Factors other than environmental effects considered in making the decision.

(d) Identification of environmental document(s) read and considered in making the decision.

(e) How (a)–(d) were weighed and balanced in arriving at the decision.

3. *Alternatives considered.* All alternatives considered, including the no-action alternative, should be briefly discussed with specific references to relevant information in the environmental assessment.

Relevant mitigation measures, management requirements, and monitoring provisions should be discussed with specific citations to pages of the environmental assessment.

4. *Public involvement.* Provide a brief summary of how the public was involved in the analysis.

Persons or groups raising issues or asserting opposing viewpoints may be identified and their views discussed in light of the decision.

5. *Finding of no significant impact (FONSI).* The decision notice will either contain or refer to a finding of no significant impact (section 41.3). The FONSI will identify the reasons why an action will not have a significant effect on the quality of the human environment giving consideration to the criteria for determining significance set forth in section 05. (40 CFR 1508.27)

6. *Findings required by other laws and regulations.* Include any findings required by any other laws which apply to the decision being made. For example, findings regarding consistency with the forest plan, suitability for timber production, and vegetation management criteria required by the National Forest Management Act (FSM 1922.41 and FSH 1909.12 sec. 05.3).

7. *Implementation date.* Identify the date when the responsible official intends to implement the decision (sec. 51).

8. *Administrative review or appeal opportunities.* State whether the decision is subject to administrative review or appeal, cite the applicable regulations, and indicate when and where to file a request for review or appeal.

9. *Contact person.* Identify the name, address, and phone number of a contact person who can supply additional information.

10. *Signature and Date.* The responsible official must sign and date the decision notice on the date the decision is made.

44 Notice and Distribution of FONSI and Decision Notice

Distribute environmental assessments, decision notices, and FONSIs to agencies, organizations, and persons interested in or affected by the proposed action.

When unusual circumstances are involved, the responsible official may want to issue a FONSI and decision notice separately. The FONSI will be issued first. In these cases, the CEQ Regulations provide that:

> . . . the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:
>
> (i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to 1507.3, or
>
> (ii) The nature of the proposed action is one without precedent. (40 CFR 1501.4(e)(2))

1. The responsible official shall promptly mail the FONSI and decision notice to those who, in writing, have requested it, and to those who are known to have participated in the decisionmaking process.

2. As a minimum, for decisions subject to appeal under 36 CFR part 217, in addition to the notice required by paragraph 1, the responsible official shall promptly publish a notice of the availability of the decision notice in the legal section of a newspaper(s) of record as required by 36 CFR part 217. The responsible official may elect to publish a summary of the decision or the complete text of the decision notice.

3. The responsible official may provide other forms of notice appropriate to the nature and scope of the decision.

4. The responsible official shall enter the date of the FONSI and the decision notice on the calendar of proposed actions in the "status" column (sec. 07).

5. When required by E.O. 12372, send copies to the State Single Point of Contact or, in cases where a State has elected not to establish a Single Point of Contact, the State official(s) involved.

Chapter 50—Implementation and Monitoring

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51 Implementing Decisions Based on Environmental Impact Statements

A decision documented in a record of decision can be implemented no sooner than 30 days following the date the Environmental Protection Agency publishes the Notice of Availability of the related final environmental impact statement in the **Federal Register** (40 CFR 1506.10).

Commitments for mitigation efforts or monitoring activities included in the final EIS and record of decision must be met.

In addition, if an environmental impact statement allocates an inventoried roadless area or a RARE II "further planning" area(s) to nonwilderness uses, do not implement any activity that would alter the roadless character of the area(s) until a letter is received from the Washington Office Environmental Coordination Staff indicating implementation may take place. (sec. 24.3)

52 Implementing Decisions Based on Environmental Assessments

52.1 Limitations on Implementation

When a proposed action is similar to one that normally requires an environmental impact statement or when the nature of a proposed action is without precedent, do not implement the decision until after the decision notice and a finding of no significant impact have been available for public review for 30 days (40 CFR 1501.4(e)(2)). In addition, as required by E.O. 12372, send copies to the State Single Point of Contact or, in cases where a State has elected not to establish a Single Point of Contact, to the State official(s) involved.

At the end of the 30-day period, consider public comment and implement the decision, or publish a notice of intent to prepare an EIS.

52.11 Actions Involving Flood Plains and Wetlands

For actions involving flood plains and wetlands, do not implement decisions until 30 days after the decision notice has been signed and dated. This delay allows a reasonable period of public review as required by Executive Order 11988, as amended, and Executive Order 11990.

53 Monitoring

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring. (40 CFR 1505.3)

In addition to complying with the monitoring requirements of an existing Forest Land and Resource Management Plan (FSH 1909.12, Ch. 6), monitor actions to ensure that:

1. Mitigation measures and terms and conditions of permits or other land use authorizations are met.

2. Anticipated results are achieved.

3. Necessary adjustments are made to achieve desired results.

Chapter 60—References

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Part III

Department of the Interior

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments; Notice of Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090-AA82

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Interior (the Department) is proposing revisions to the natural resource damage assessment rule, codified at 43 CFR part 11, to conform with a court ruling. In that ruling, the court held that: (1) Restoration costs are the preferred measure of natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601, *et seq.*; and (2) all reliably calculated lost use values of injured natural resources should also be recoverable, with no specific hierarchy of methodologies required of natural resource trustees in conducting those valuations. The court also requested clarification as to the extent to which privately owned natural resources might be subject to the natural resource damage assessment rule.

The natural resource damage assessment rule was developed pursuant to section 301(c) of CERCLA. The Department promulgated two types of assessment rules: Standard procedures for simplified assessments requiring minimal field observation (type A procedures); and site-specific procedures for detailed assessments in individual cases (type B procedures). The type A rule and the type B rule were challenged in two separate, but parallel, cases. The Department is now seeking comments on proposed revisions to the type B rule to comply with the court's decision. These proposed revisions will ensure that the type B rule carries out the purpose and requirement of CERCLA for the recovery of damages to be used for the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of injured natural resources as full compensation for the injured resources. Today's proposed rulemaking provides for a unified process for trustees to develop claims for both the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and reliably calculated lost values of the injured resources, with no required hierarchy of valuation methodologies for determining those values.

This notice deals solely with issues relating to those provisions of the type B rule remanded by the court for revision or clarification. The statutorily-required two-year review of the type B rule is scheduled to begin when today's proposed rule is published as a final rulemaking. That review will provide an opportunity to address issues beyond those addressed in today's Notice. The Department's proposed revisions to the existing type A rule for coastal and marine environments and comparable modifications to the ongoing development of a new type A rule for the Great Lakes environments will be published separately at future dates.

The date upon which the court-ordered revisions for both type A and type B, whichever is later, become effective as a final rule is the date on which "regulations are promulgated" for the purposes of determining the period in which actions may be brought for natural resource damages.

DATES: Comments will be accepted through June 28, 1991.

ADDRESSES: Office of Environmental Affairs, ATTN: *NRDA Rule*, room 2340, Department of the Interior, 1849 C Street, NW., Washington, DC 20240 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Cecil Hoffmann or David Rosenberger at (202) 208-3301.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Statutory Background

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601, *et seq.*, authorizes natural resource trustees to recover compensatory damages for injury to natural resources, as well as the reasonable costs of assessing such injury and any prejudgment interest. The damages that may be sought by natural resource trustees are for the injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance. Natural resource damages are in addition to cost-recovery for response actions. Federal and State natural resource trustees may bring an action for damages under sections 107(f) and 113(g) of CERCLA, 42 U.S.C. 9607(f) and 9613(g), and sections 311(f) (4) and (5) of the Clean Water Act (CWA), 33 U.S.C. 1321(f) (4) and (5) (also known as the Federal Water Pollution Control Act). Indian tribes may commence an action as natural resource trustees under sections 107(f) and 126(d) of CERCLA, 42 U.S.C. 9607(f) and 9626(d). Section 107(f) requires that all sums recovered as damages must be used only to restore, replace, or acquire the equivalent of such natural resources. Section 107(f) also provides that assessments performed by Federal and State natural resource trustees in accordance with the rule receive the evidentiary status of the rebuttable presumption.

Section 301(c) of CERCLA, 42 U.S.C. 9651(c), requires the promulgation of regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance. Section 301(c) calls for the natural resource damage assessment regulations in the following terms:

> (2) Such regulations shall specify (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

The promulgation of these regulations was delegated to the Department of the Interior by Executive Order 12580, 52 FR 2923 (January 23, 1987).

The Oil Pollution Act of 1990 (Pub. L. 101-380) was signed into law on August 18, 1990. It makes provision for natural resource damage assessment rules for discharges of oil in navigable waters to be developed by the Under Secretary of Commerce for Oceans and Atmosphere, particularly the National Oceanic and Atmospheric Administration (NOAA), in consultation with, among others, the Fish and Wildlife Service of the Department of the Interior. This Department will make itself available to work with NOAA to ensure the coordination of the parallel processes for damage assessments whether they result from releases of hazardous substances or discharges of oil. Section 6001(b) of the Oil Pollution Act of 1990 provides that any rule in effect under a law replaced by the Act will continue in effect until superseded. In particular, Senate committee report language makes it clear that "[t]he existing Interior Department rules, as amended by the court's decisions, may be used with a rebuttable presumption in the interim" until the new regulations are promulgated by Commerce. S. Rep. No. 101-94, 101st Cong. 1st Sess. 15 (1990).

CERCLA mandates biennial review and revision, as appropriate, of the Department of the Interior's damage assessment rule. The revisions are to be based on, among other things, new information or experience in applying the existing rule. The Department proposes to begin its planning of the next biennial update of the type B rule as soon as possible, coordinating input to the greatest extent possible with NOAA. The target date for an advance notice of proposed rulemaking soliciting input for that review process is in June 1991. The first biennial review of the type B rule produced only four comments. Those comments essentially reflected issues that the court was deliberating at the time. However, many comments and suggestions from users or potential users of the rule have been heard by Department staff over the years since the rule has been in use.

One excellent source of such comments has been the State briefing workshops which are scheduled by Interior at the request of individual States, and which have been held since the rule was published late in 1986. These workshops are generally attended by personnel from States' trustee agencies and attorney general offices, response agencies, and field personnel from a variety of Federal agencies with either trustee or response concerns in the region. Another source of insight on use of the rule is the stream of calls received by Interior staff day-to-day from trustee officials in the field requesting technical assistance as they apply the rule in their individual situations.

The court decision was handed down in July 1989. At that time, the Department considered whether to begin the next biennial review and combine the revisions mandated by the court with those derived from user experience to that date. However, the court expressly mandated expeditious revision. The issues raised by various users did not present easy solutions. Some suggestions offered for addressing issues are diametrically opposed to each other. Thus, the Department decided that the current revisions should just implement the court decision, and that revisions based on experience should await further analysis, consultation with relevant agencies, and public input.

Revising the rule to accommodate known concerns will require considerable analysis and involvement of other governmental agencies and the public. The Department has begun planning for the next biennial revision of the rule mindful of these concerns. Also, as a result of the new provisions of the Oil Pollution Act of 1990, this Department will be coordinating its biennial review efforts with NOAA, since the Under Secretary of Commerce for Oceans and the Atmosphere was designated to write the natural resource damage assessment rules implementing that new Act.

For the information of readers looking forward to the biennial review of the Interior rule, the following are highlights of issues heard to date: The general overall concern about the rule heard most often over time is that it is "too complicated" or "too wordy," and that it should be written in simpler language, "in plain English," with fewer "shalls." There should be an expedited process for (oil) spills. There should be more guidance on pre-assessment coordination. There should be more guidance on post-assessment activities. There should be provisions for starting restoration activities while the damage assessment is still under way (while not precluded, it is not expressly discussed). The standards for injury determination should be relaxed. The standards for injury determination should be more explicit.

One issue heard throughout the Exxon Valdez experience to date has been the lack of public knowledge of both the immediate effects of the spill in the region and the potential long range effects on the environments affected by the spill. Some members of the public have expressed frustration at the apparent lack of opportunity for those with varied concerns to provide their input to decisionmaking on many aspects of the aftermath of the spill. These are concerns about all aspects of the incident, but some of them center on the natural resource damage assessment process and the potential for restoration of injured resources, and, therefore, they are concerns with any future application of the Department's rule. Some comments heard following the Exxon Valdez incident stressed the need for early public involvement, both in the damage assessment process and in restoration planning, that restoration planning must be a cooperative effort involving the public. A suggestion was made that there be more guidance to trustees on making their restoration decisions, putting the emphasis first on rehabilitation, then on replacement, and finally on acquisition, in effect establishing restoration planning priorities that give the highest priority to rehabilitation. A suggestion was made that socioeconomic effects of restoration alternatives might be added to the list of factors that trustees are to consider in making their selection among restoration alternatives. Another issue is the access of the scientific community and the public to scientific and technical data contributing to damage assessment when that data was gathered for, or might be useful in, litigation of damage claims at a future date.

As soon as the current revisions are completed, the Department will publish an advance notice of proposed rulemaking to request general comments on experience to date, and also to request specific comments on issues, such as those highlighted above. The target date for that advance notice is 1991 June.

Meanwhile, the Department is proceeding with revisions of the type A rule in accordance with the court decision: the existing Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME), and the model under development for Great Lakes Environment (NRDAM/GLE). For efficiency, changes were made first on the work in progress, NRDAM/GLE. A proposed rule for the Great Lakes environment is targeted for May 1991. The contract to amend the existing NRDAM/CME model was advertised in July of 1990, with a target for proposed rulemaking in December of 1991.

B. Regulatory History

The Department, pursuant to its delegated responsibilities under CERCLA, has promulgated various final rules for the assessment of damages for injuries to natural resources in the following rulemakings: (1) August 1, 1986 (51 FR 27674), "type B" procedures, the general process for conducting natural resource damage assessments, and the alternative methodologies for conducting assessments in individual cases; (2) March 20, 1987 (52 FR 9042), "type A" procedures, the standard procedure for simplified assessments in coastal and marine environments, using a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME); (3) February 22, 1988 (53 FR 5166), to amend 43 CFR part 11 to conform with amendments to CERCLA; and (4) March 25, 1988 (53 FR 9769), technical corrections to the NRDAM/CME. This combination of rulemakings, codified at 43 CFR part 11, is the natural resource damage assessment rule called for by section 301(c) of CERCLA.

The major impact of today's proposal would be in the damage determination phase. Therefore, reviewers should keep in mind the context of the entire natural resource damage assessment rule when considering the proposed revision. Reviewers may wish to refer to the type B rule (43 CFR part 11) in preparation of the comments on today's proposal.

Existing Assessment Process: The natural resource damage assessment rule provides an administrative process for conducting natural resource damage assessments with four major components. The first component of this process, the preassessment activities, includes several steps to take before initiating an assessment. All natural resource damage assessments contain these same initial steps. These steps generally begin with the notification of or detection by the natural resource trustee of a discharge or release. The trustee performs a preassessment screen to determine that a CERCLA or CWA-covered incident has occurred and that resources of the trustee may have been affected. The trustee makes a determination upon completion of the preassessment screen as to the appropriateness of further assessment actions. Provisions are made for emergency restoration as authorized by section 111(i) of CERCLA.

The second component calls for the preparation of an Assessment Plan before initiating an assessment using either the type A or type B procedures. The level of detail contained in the Assessment Plan should be consistent with the rule's requirement for reasonable cost. The trustee must also comply with the rule's requirements for coordination with co-trustees, identification and involvement of the potentially responsible party, and public involvement in the development of the Assessment Plan. Also, the trustee must decide whether to conduct a type A or type B assessment. The trustee documents all decisions on the selection of both the scientific and economic methodologies to be used in the assessment in the Assessment Plan. The Assessment Plan must ensure that only the reasonable costs of assessment will be incurred. The trustee must provide for public involvement in the Assessment Plan with at least a 30-day review and comment period before implementing the Plan or making significant modifications. Comments received during this review, as well as responses to these comments, will be maintained as part of the administrative record of the assessment.

In the third component, the trustee begins either the type A or type B assessment. Both the type A and type B procedures follow the same three steps. Each type of assessment requires an Injury Determination phase, a Quantification phase, and a Damage Determination phase. The discussion that follows relates to a type B assessment.

During the Injury Determination phase, the assessment focuses on determining that an injury to the resource has occurred and that the injury has resulted from the discharge or release. After injury has been confirmed in this phase, the assessment moves into the Quantification phase. The focus of the Quantification phase is on identifying the services, such as habitat, recreation, or erosion control, provided by the resource, determining the baseline level of such services that existed before the discharge or release, and quantifying the reduction in services resulting from the discharge or release. The Quantification phase is closely related to the third phase of the type B assessment, the Damage Determination phase. The Damage Determination phase focuses on calculating the monetary compensation to be sought as damages for the injury to the natural resources. The calculations are based on the information derived from the Quantification phase as to the extent of the injury sustained and the effects on the services provided by the resource.

At the end of every natural resource damage assessment, whether a type A or a type B procedure is followed, the fourth component consists of several post-assessment requirements. These requirements include a Report of Assessment to act as the administrative record of the assessment, the establishment of an account for damage assessment awards, and the development of a Restoration Plan to ensure that all damage assessment awards are used for the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured resources.

This overall administrative process for conducting a natural resource damage assessment pursuant to the Department's rule would remain basically unchanged by today's proposed revision. There would still be the four phases, or components, in the assessment process: the preassessment phase, the assessment plan phase, the assessment phase (where the trustee conducts a type A or type B assessment), and the post-assessment phase. Also, there would continue to be two planning components in a type B assessment: the Assessment Plan, and the Restoration and Compensation Determination Plan (formerly called the Restoration Methodology Plan), which is to be part of the Assessment Plan.

Points in the Process Unchanged: The majority of the issues considered by the court in its review of the type B rule were upheld as valid. Therefore, the rule would still require that assessment costs be "reasonable" when compared to the anticipated amount of damages to be recovered. The biological response acceptance criteria will remain as a method for identifying "actionable" injuries. The concept of valuing "committed" uses would remain when estimating compensable value and still serves to prevent speculative damages. The contingent valuation methodology still is a valid tool in a damage assessment. The requirement that trustees develop a restoration plan for use after the damage award still stands and will assist with the statutory intent that the trustee restore, rehabilitate, replace, and/or acquire resources equivalent to those injured by the discharge or release.

C. Judicial Review

Section 113 of CERCLA provides that any member of the public may petition the Court of Appeals for the District of Columbia Circuit to review any regulation promulgated under CERCLA. A number of parties filed such petitions for the court to review the natural resource damage assessment rule. The rule was challenged in two separate, but parallel, cases. In *State of Ohio* v. *United States Department of the Interior*, 880 F.2d 432 (D.C. Cir. 1989) (*Ohio* v. *Interior*), petitioners challenged a total of twelve issues that pertained to the administrative process and the type B procedures established in the rule. In *Colorado* v. *United States Department of the Interior*, 880 F.2d 481 (D.C. Cir. 1989), petitioners challenged two issues pertaining to the type A procedures.

The United States Court of Appeals for the District of Columbia Circuit unanimously upheld in part and invalidated in part certain aspects of the administrative process and the type B procedures. In that ruling, the court held that: (1) Restoration costs are the preferred measure of natural resource damages under CERCLA; and (2) all reliably calculated lost use values of injured natural resources should also be recoverable, with no specific hierarchy of methodologies required of natural resource trustees in conducting those valuations. The court also asked the Department to clarify its interpretation of extant to which the rule applies to natural resources that are privately owned.

Today's notice deals only with the three issues remanded to the Department in *Ohio* v. *Interior* affecting the administrative process and the type B procedures. The revisions to the type A procedures will be conducted under future, separate rulemakings.

1. Issues Remanded for Revision

Measure of damages. One issue decided by the court concerned the Department's type B rule requiring the trustee's basic measure of damages for natural resource injuries to be either restoration costs or lost use value of the resources, whichever was estimated to be the lesser amount. The court held that CERCLA indicates a distinct preference for using restoration costs as the measure of damages, although the court acknowledged the role of the Department in determining under what conditions the use of restoration costs as the measure of damages might not be appropriate.

The provisions for calculating restoration costs were set out in the type B rule since restoration costs were one of two possible measures of damages. The rule required the trustee to quantify the effects of the injury to the natural resources in terms of services lost or disrupted as a result of a discharge or release. The trustee then determined alternative management actions that would restore those lost or disrupted services in a cost-effective manner. In addition, the rule allowed the natural resource trustee to claim damages for loss or lessening of use values associated with the lost services over the time required to accomplish the restoration. Much of this present guidance would be retained.

Economic valuations. The other issue upon which the type B rule was remanded for revision was the Department's prescribed ranking, or hierarchy, of economic valuation methodologies for determining use values, and the associated limitation of those valuation methodologies for the recovery of nonuse values only to those situations where no direct uses could be found.

The type B rule provided a listing of economic valuation methodologies to calculate lost use values ranked as to their reliability. The court upheld the methodologies listed in the rule, but said that the rule could not require the use of one methodology over another.

The type B rule categorized various uses to be valued for an injured resource as "use" values and "option and existence" values, and allowed recovery for option and existence values only where the trustee could not apply a valuation methodology to determine a direct use value for a resource. The court held that while option and existence values represent passive use of a resource, they ought to be recoverable in a damage assessment.

2. Issue Remanded for Clarification

On one issue, the court upheld the rule, but asked the Department to clarify the scope of public ownership of natural resources covered by the rule. The preamble to the final type B rule suggested that natural resource damage assessments should not cover privately-owned natural resources. However, the court understood the Department's oral argument to suggest that a substantial degree of government regulation, management, or other form of control over privately-owned natural resources could be sufficient to make the natural resource damage provisions apply to such resources in certain circumstances. The court construed CERCLA to mean that, while purely private resources are excluded from the natural resource damage provisions, some resources not owned by the government are encompassed by CERCLA's natural resource damage provisions. The court's construction was based primarily on the definition of natural resources found in section 101(16) of CERCLA and its legislative history. The court invited the Department to clarify its interpretation of the degree of management, regulation, control, or property interest that might make natural resources subject to the natural resource damage assessment rule.

D. Advance Notice of Proposed Rulemaking

The Department published a Federal Register notice on September 22, 1989 (54 FR 39018), to announce the Department's intent to revise the type B rule to comply with the court's decisions. Responses were requested on the following kinds of questions to assist in carrying out that purpose: (1) What possible considerations might trigger the use of a measure of damages other than restoration costs; (2) should the rule provide criteria and, if so, what criteria might be used to determine whether restoration is "technically feasible;" (3) should the rule define the term "grossly disproportionate" and, if so, how; (4) how much guidance should the rule include and what would be possible selection criteria to make available to the trustee in selecting the most appropriate methodology to determine lost use values; (5) what systems were available for classifying resource uses, as to use and nonuse, etc., which would also aid the trustee to avoid double counting; and (6) what degree and type of management, regulation, control, or property interest might make natural resources subject to the provisions of CERCLA for the purposes of enabling public trustees to recover damages for injuries to such resources?

The Department received over 700 pages of comments from 32 submissions on the possible revisions to the type B rule. The discussion of those comments on the type B rule with the Department's response is found in Section IV. of this preamble.

II. Discussion

A. Introduction

The Department is proposing to revise the type B rule to comply fully with the court order. The court's ruling on the measure of damages centered around the "lesser of" requirement found in § 11.35 of the current type B rule. The rule required that the trustee conduct an assessment for the natural resource injury with the measure of damages being either an estimate of the restoration costs or the lost use value of the resources, whichever was estimated to be the lesser amount. The court held that CERCLA indicates a distinct preference for using restoration costs as the measure of damages for injured natural resources.

The second major issue ruled upon by the court on the type B rule was in the area of the economic valuation methodologies and the kinds of "uses" of the resources that could be valued using those methodologies. The rule

provided a listing of economic valuation methodologies, and listed these methodologies ranked in order of their reliability and accuracy. The rule required first considering the use of market price or appraisal methodologies, then, only if these were not appropriate, moving to other valuation methodologies down the list. In addition, the rule categorized the types of values that a resource might have as "use" or "nonuse" values. The rule allowed the trustee to recover "nonuse" values only when no direct uses could be identified.

The court said that the rule could not require the use of one methodology over another, but that the trustee should be allowed to use any reliable methodologies available. The court also said that, even though "nonuse" values might represent only "passive" or "non-consumptive" use of a resource, they should be recoverable in a damage assessment.

At a minimum, to comply with the court's decisions on these two issues, the Department could do three simple revisions: (1) remove the "lesser of" requirement of § 11.35; (2) delete the language of § 11.83 requiring the economic valuation hierarchy; and (3) delete the language of § 11.83 restricting recovery of nonuse values to those cases where the trustee can determine no direct uses of the injured resource. However, today's proposed revision would provide an approach, particularly affecting the Damage Determination phase of the rule, that provides greater assistance to trustees in planning and recovering for restoration activities. The proposed revision would provide guidance to help trustees recover compensation based on both estimating the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and valuing the loss of services to the public. These two components of the measure of damages are presented together throughout the section describing these estimation and valuation activities to provide a comprehensive approach to assessing damages.

B. Restoration Costs as the Measure of Damages

The court held that CERCLA indicates a preference for using restoration costs as the measure of natural resource damages. However, the court also suggested that there might be circumstances when some factor other than restoration costs could be the measure of damages. The court used the simple term "restoration" costs. The law provides that sums recovered from natural resource damage claims must be used to restore, rehabilitate, replace, or acquire the equivalent of affected natural resources. The Department proposes to use the phrase "restoration, rehabilitation, replacement, and/or acquisition of equivalent" as encompassing the full range of possible "restoration" actions a trustee might plan to take and, therefore, use to estimate the costs of the selected "restoration" action. It is recognized that, in many cases, trustees will take some combination of these actions, rather than only one. Some portion of this broader list—restoration, rehabilitation, replacement, or acquisition of the equivalent—will always be a part of the trustee's "restoration" activities, because some trustee actions will always be required beyond the trustee's normal management actions. Thus, there will always be some cost attributable to "restoration" or what the proposed revision calls restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. On this basis, the Department does not propose to set out circumstances when some factor other than restoration costs should be the measure of damages as would have been allowable under the court's ruling.

The Department is proposing revisions to the Damage Determination phase to provide some additional guidance to the trustee in estimating site-specific costs of various possible alternatives to bring about the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured resources. The guidance discusses such factors as the trustee's consideration of the technical feasibility of the possible alternatives, and also consideration of whether the relationship of the estimated costs of an alternative are proportionate to the anticipated benefits gained from that action.

In addition to recovering the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, the trustee may also recover the value of the services lost to the public until the lost services are returned to baseline levels. The proposed revision of the Damage Determination phase would describe the values for which the public may be compensated, and the methodologies that may be used to estimate those values.

Therefore, the measure of damages under the proposed revision would be the estimated cost of the selected alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, plus the compensable value of the services that will be lost to the public through the period of recovery to the baseline conditions existing before the discharge or release. The types of costs and the extent of compensable value that may be recovered are discussed together in the Damage Determination phase to ensure that the trustee simultaneously makes plans to recover both, as appropriate, for any given incident.

Restoration and Compensation Determination Plan: The proposed revision of the Damage Determination phase provides for the development of a Restoration and Compensation Determination Plan. This Restoration and Compensation Determination Plan would replace the Restoration Methodology Plan of the existing rule. In the Restoration and Compensation Determination Plan, the trustee will identify and consider a reasonable number of possible alternatives for the restoration, rehabilitation, replacement, and/or acquisition of resources equivalent to the injured resources. In the Restoration and Compensation Determination Plan, the trustee would also include an estimate of the services that are likely to be lost to the public during the recovery to baseline associated with the possible alternatives being considered. The trustee would be required to address both: (1) The possible ways to restore, rehabilitate, replace, and/or acquire equivalent resources; and (2) the estimated lost services associated with each alternative, in a single plan for determining damages.

The trustee would include in the Restoration and Compensation Determination Plan the possible alternatives considered, the lost services associated with each, and the estimated period of recovery associated with each alternative. The trustee would list the cost estimating methodologies he plans to use to estimate the cost of the actions that make up the selected alternative. He would also identify the valuation methodologies he plans to use to value the lost services associated with the selected alternative. The trustee would give a brief rationale for the choice of the selected alternative, of the methodologies to estimate the costs, and those to estimate the compensable value associated with that alternative. This Restoration and Compensation Determination Plan would become part of the overall Assessment Plan, and thus, subject to public review and comment.

If the trustee does not have sufficient information to develop the Restoration and Compensation Determination Plan by the time the Assessment Plan is made available for public review and comment, the Restoration and Compensation Determination Plan could be developed and made available for public review and comment separately, later in the assessment process, at any time up to the completion of the Quantification Phase. At that point, the trustee will have collected the information concerning the extent of injury and the effects of those injuries on the services provided by the injured natural resources. Whenever the Restoration and Compensation Determination Plan is presented for public review, the trustee would allow at least 30 days for review and comment before proceeding with the cost estimating and valuation of the selected alternative. The Restoration and Compensation Determination Plan, along with the public comments received and responses to those comments, would become part of the Report of Assessment.

Alternatives: In developing the Restoration and Compensation Determination Plan, the trustee would list a "reasonable number" of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. For large, complex assessments involving a variety of resources and services, there may exist a very large number of possible alternatives. When there are potentially a very large number of possible alternatives, only a reasonable number of alternatives, covering the full spectrum of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, should be developed. The trustee has the discretion to decide on a case-by-case basis what constitutes a reasonable range of possible alternatives.

Range of Actions: In developing each possible alternative, the trustee may consider a range of actions that might include restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The actions may be taken singly or in any combination. The rule would guide the trustee on how to develop the possible alternatives. The proposed revision emphasizes the wide range of actions available to the trustee to return to baseline levels both the injured natural resources and the services that the natural resources provide to the public. For example, the trustee might consider all or parts of the following kinds of possible alternatives: (1) Intensive restoration or rehabilitation actions that are needed to bring the injured resources and their services back to baseline (pre-spill or pre-release conditions) in a relatively short period of time; (2) restoration, rehabilitation, replacement, and/or acquisition actions combined in a manner that would optimize the recovery of all injured resources and services back to their baseline condition; (3) replacement or acquisition of equivalent resources if the injured resources and their services cannot be restored or rehabilitated through direct management actions or indirect use limitations; or (4) allowing the resources to recover naturally with minimal trustee management action. Moreover, a trustee, or cotrustees, would be afforded the flexibility of defining possible restoration actions to address individual resources or groups of resources in order to adopt an overall restoration strategy that best meets the needs of the trustee(s).

One of the possible alternatives to be considered is allowing the resources to recover naturally, with minimal management actions. Other possible alternatives would provide for actions that reduce the time for recovery to baseline conditions from that expected from natural recovery. In the Restoration and Compensation Determination Plan, the trustee would state the reasons for considering each possible alternative to be viable and worthy of consideration.

Services through Recovery Period: Services provided by an injured resource refer to all of the functions performed by that resource for and/or to the public and to other resources and the interactions between them. The term "services" includes "passive" or "non-consumptive" functions performed by the resource for and/or to the public. The trustee would estimate the loss in services provided by the injured resources from the time of the discharge or release through the estimated recovery period associated with each of a reasonable number of possible alternatives. The recovery period is that time between the occurrence of the discharge or release and the successful completion of the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the natural resources and their lost services. The trustee would use the determination of the period of resource recovery associated with each alternative to develop an estimate of the services that would be lost to the public during the implementation of that alternative. The services provided by the resource before the discharge or release constitute the baseline level of services against which the trustee is to measure the loss in services for each of the possible alternatives.

Selection of Alternatives: The trustee should select the alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources most appropriate for the particular incident based on a number of different considerations. The proposed revision provides guidance by listing factors that the trustee, at a minimum, shall consider and weigh, among other things, in making this selection. Each of the reasonable number of possible alternatives identified should be evaluated using all relevant factors, but the various alternatives considered may address and balance these factors in different ways. In practice, the alternative selected by the trustee as the most appropriate might not satisfy all of the considerations, yet still be "correct" for the purposes of the assessment. The trustee, after considering all the relevant factors, may make a selection that gives greater weight to some factors over others. The trustee is required to explain, in the Report of the Assessment, the reasoning for giving greater weight to certain factors over others.

Factors to Consider: The trustee should consider all relevant factors in selecting the most appropriate alternative. Each alternative would be considered to the extent that a particular factor was relevant to the actual situation faced by the trustee. The factors listed in the proposed revision are: (1) Technical feasibility; (2) the relationship of the expected costs of the proposed actions to the expected benefits from the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources; (3) cost-effectiveness; (4) the results of any actual or planned response actions; (5) potential for additional injury resulting from the proposed actions, including long-term and indirect impacts, to the 32 injured resource or other resources; (6) the natural recovery period; (7) ability of the resource to recover with or without alternative actions; (8) acquisition of equivalent land for Federal management where restoration, rehabilitation, and/or other replacement of land is not possible; (9) potential effects of the action on human health and safety; and (10) consistency with applicable Federal and State laws and policies. Addressing these factors, the trustee will evaluate the list of possible alternatives and the loss in services associated with each, and select the alternative that combines the most appropriate actions to adopt for the particular incident. Most of the considerations are incorporated from the current rule, and are discussed in Section II. G. of this preamble. The two

factors the court said might be considered are described more fully here, "technical feasibility" and "relationship of costs to benefits."

Technical Feasibility: The trustee should determine whether the actions considered in each alternative would be technically feasible, as that term is used within a natural resource damage assessment. The term "technically feasible" is defined in the type B rule at § 11.14(qq). In the context of an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, the term would mean that the technology and management skills necessary to implement an alternative are well known and that each component or action of the alternative has a reasonable chance of successful completion in an acceptable period of time. The trustee is the one who will make the determination of "technically feasible" on a case-by-case basis. This determination will be subject to public review as part of the Assessment Plan, or separately in the public review of the Restoration and Compensation Determination Plan.

Relationship of Costs to Benefits: The trustee should consider the relationship of the expected costs of an alternative to the benefits from the implementation of that alternative, both in terms of the recovery of the resource and the benefits to the public that would result. This consideration is not intended to be a straight cost/benefit analysis. The trustee should weigh circumstances unique to each assessment against the expected alternative costs. Such circumstances might include seasonal conditions, e.g., long winters resulting in a short field sampling season requiring extra personnel, overtime, and high travel costs. All relevant considerations that might affect the weighing of costs and benefits should be taken into account by the trustee on a case-by-case basis. The trustee will document this consideration within the Restoration and Compensation Determination Plan that is subject to public review and comment.

This determination of the relationship of costs to benefits is not an attempt to define in quantitative terms, as suggested by the court, what costs might be "grossly disproportionate" to the value of the services lost. Instead, the proposed revision would require that all of the various factors listed be considered by the trustee in selecting the most appropriate alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. These factors, when considered together, would encompass the "grossly disproportionate" determination suggested by the court.

Costs as a Component of Damages: The proposed revision describes the kinds of items that could be included as "costs" to be recovered, i.e., direct and indirect costs, comparable to the direct and indirect costs of conducting the assessment. The proposed revision describes methodologies that the trustee could use to estimate these direct and indirect costs to restore, rehabilitate, replace, and/or acquire the equivalent resources, based on standard and accepted accounting practices for estimating costs. The proposed revision includes factors for the trustee to use in selecting which cost estimating or valuation methodologies would be best for the selected alternative.

Direct costs are those that are identified by the trustee as charged directly to the conduct of the selected alternative. Direct costs would include trustee agency expenses for a specific action that is a component of the selected alternative, e.g., salaries and benefits, travel costs, materials and supplies purchased specifically for the implementation of the selected alternative, equipment lease costs, building related costs if a building is leased or purchased for the sole purpose of implementing the selected alternative, payments for goods and services furnished by private companies or other government agencies under contract with the trustee agency. Direct costs can also include all costs of other entities performing actions for the trustee agency. These costs could include a contractor's overhead, labor, and material costs, which the contractor would bill directly to the trustee agency. A trustee, however, should take into account the requirements of reasonable cost when identifying and accounting for direct costs.

Under the proposed revision, compensation for indirect costs could be included in the damage claim in one of two ways. The trustee could either identify indirect costs or claim a certain indirect cost rate for expenses. Indirect costs could be based on costs associated with a particular action for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources where there is no direct way to calculate or attribute them to a particular action or series of actions. Such indirect costs could include offsite expenses involved with labor or materials necessary to restore, rehabilitate, replace, and/or acquire the equivalent resources, such as the part of an agency's offsite personnel involved in management or review of actions associated with restoration, or of off-site equipment normally involved in regular agency work being used in part for restoration. Indirect costs may also include the administrative management, policy formulation, and reporting costs.

Instead of computing indirect costs, a trustee agency would be allowed to claim an indirect cost rate for recovery of indirect costs. This recovery of indirect costs could be based upon the trustee agency's established practice. The Department notes that recovery of indirect costs are best accomplished where the trustee agency already has an established indirect cost rate.

Cost Estimating Methodologies: Also by way of guidance, the proposed revision would add a list of particular cost estimating methodologies. As a result of the court's ruling, costs for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources will be a part of the measure of damages in all cases under CERCLA. Therefore, trustees will need guidance in how to estimate, and then collect for, the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources in a damage assessment. In most cases trustees will need to estimate in advance the total costs of the selected alternative as accurately as possible. Therefore, full descriptions of reliable and accepted costing methodologies are included in the proposed revision to allow trustees unfamiliar with these procedures to capture an estimate of "total costs." In performing their assessments, trustees will want to have this kind of expertise on their assessment team. This guidance simply serves to familiarize trustee managers with this need.

The Department is proposing to include specific examples of standard and accepted cost estimating practices of the accounting profession that may be used to determine the direct and indirect costs of the selected alternative in the claim for damages. Although their individual designs may differ, the purpose of these methodologies, referred to as "cost estimating" methodologies, is to derive the estimate of costs for the performance of actions within the selected alternative that will be sought as part of the claim for damages. The methodologies range from general to comprehensive estimates in which the level and extent of calculations becomes progressively more detailed. The accuracy of the estimate derived from the respective methodologies depends on the amount and quality of information available to prepare the estimate. The trustee's selection of

methodologies will need to reflect these factors along with the general requirement of the rule that selected assessment methodologies represent reasonable costs. Other cost estimating methodologies may be appropriate for a particular action that is part of the selected alternative. Therefore, the proposed revision also includes an acceptance criterion that provides for a trustee to use methodologies other than those listed in the rule so long as those cost estimating methodologies are standard and commonly accepted methodologies of cost accounting. The rationale for the trustee's choice will be noted in the Restoration and Compensation Determination Plan.

Restoration costs are the preferred measure of damages. They will normally be only part of the total damage claim. The other part will be made up of all reliably calculated values, including option and existence values, as described in Section II.D. below. The court's opinion touched on the methodologies for such calculations, as discussed in the following section.

C. Hierarchy of Valuation Methodologies

As initially published, the rule stated that if the trustee determined that the market for the injured resource was "reasonably competitive," then the diminution of the market price attributable to the discharge or release should be used to estimate damages. If the market price methodology was not appropriate then the rule stated that appraisals should be used to estimate damages. Only when neither the market price nor the appraisal methodologies were appropriate for the affected resources being assessed, did the rule allow the trustee to use nonmarket valuation methodologies.

The court ruled that the hierarchy, or ranked order, of valuation methodologies established in the original version of the rule incorrectly established a strong presumption in favor of the market price and appraisal methodologies. The court said that neither CERCLA nor its legislative history showed any Congressional intent to limit use values to market prices. The court said that the damage assessment rule should capture fully all aspects of the public loss.

In response to the Court's ruling, the requirement for choice according to a hierarchy of valuation methodologies is being removed. The trustee may now select among the methodologies—or combination of methodologies—to estimate the economic value of the services provided by the injured natural resources before the injury. In removing the hierarchy requirement for use of various methodologies, the Department is not implying that all valuation methodologies are equally reliable or applicable. Depending on the data available and the nature of the injury, different methodologies may be more or less reliable. The trustee will briefly state his rationale for his choice of any methodology in the Restoration and Compensation Determination Plan that is a part of the overall Assessment Plan.

In cases where the full value of a natural resource is captured by a competitively determined market price, the Department considers the market price methodology to be the most reliable valuation method. The mere presence of a competitive market does not, however, ensure the price will "capture fully" the value of the resource. Where the trustee determines that this is the case, the nonmarketed methodologies may be used. If nonuse values are significant, the only way to quantify these values explicitly is to use the contingent valuation methodology (CVM). CVM is the only nonmarket valuation methodology currently available that is capable of explicitly estimating nonuse values. Thus, for the case of a competitively-sold natural resource with significant nonuse values, the CVM, possibly used in conjunction with the market price methodology, could be used to estimate the value compensable to the public. When nonuse values are not significant, the most reliable valuation methodology to employ for competitively-sold natural resources may be the market price methodology.

Use value damages may be measured using valuation methodologies, known as "revealed preference" methodologies, that are based on observing changes in human behavior and/or actual market transaction data resulting from the injured natural resources (e.g., travel cost model, hedonic pricing, etc., described in the preamble to the August 1986 type B rule). The most common revealed preference valuation methodologies are the market price methodology, land appraisals, factor income methodology, travel cost analysis, and hedonic price analysis. Generally, it is thought that if a value can be quantified using revealed preference methodologies, assuming the needed set of observable data is available, then it is a use value; if it cannot be quantified that way, then it is a nonuse value.

The contingent valuation methodology is not a revealed preference methodology, but it also can be used to quantify use values. The trustee would be free to select any of the listed methodologies for quantifying use values so long as he explains his selection in the Restoration and Compensation Determination Plan. The fact that a use value can be measured using revealed preference methodologies is not a requirement that all use values must be quantified using revealed preference methodologies. The trustee should select the most reliable methodology for quantifying economic value, while at the same time considering cost effectiveness in applying the methodology and the need to complete the assessment at a reasonable cost.

The proposed revision would group the various valuation methodologies by the type of values to be determined and the type of methodology available to determine that type of value. This grouping lists both marketed and nonmarketed methodologies that are available to determine use values. The grouping also reflects the fact that the only methodology currently available to determine nonuse values is the CVM. A further discussion of the CVM can be found in Section II.H. of this preamble.

For estimating use and nonuse values, the trustee should consider the types of economic values involved and the reliability of different valuation methodologies when selecting an overall economic valuation strategy. Once the choice is made, the rationale for the choice would be documented in the Restoration and Compensation Determination Plan.

D. Resource Values

Another issue upon which the type B rule was remanded for revision was the limitation on the recovery of nonuse values. The court said that all reliably calculated values of the resource, including option and existence values, should be recoverable, keeping in mind the proscription in CERCLA that the trustee may not double count.

The rule as it exists already allows for computation of use and nonuse values by various economic methodologies. Their use continues to be allowed under this proposal for valuation of lost services during the period of time between the spill or release and the recovery of the resource. The court decision upheld uses of the various economic methodologies already described in the rule. Thus, the revised rule continues its description of how these methodologies work.

The proposed revision would add a new term, compensable value, to stand for the combination of resource value determinations that will go to make up the damage claim in addition to

restoration costs. Compensable value encompasses all of the public economic values associated with an injured resource, including use values and nonuse values such as option, existence, and bequest values. Natural resources have public economic value because of the variety of services they provide to the public. These services include "passive" or "non-consumptive" uses. When natural resources are injured, the flow of services they provide is apt to be disrupted, thereby resulting in economic damage. Compensable value is a dollar measure of this damage.

The concept of compensable value allows for many different reasons why the public may value natural resources—including reasons not represented by market prices. For example, some individuals might be willing to pay to avoid an injury to a favorite recreation area. Others may be willing to pay to avoid the loss associated with knowing wildlife were injured, even though they will never visit the injured area. This willingness to pay by people who will never visit the area is a nonuse value. It is the natural resource trustee who recovers on behalf of the public for these losses, rather than the individual person. The term compensable value incorporates a wide spectrum of values, and is intended to address the court's ruling that option and existence values may be included as a part of damages.

The rule subdivides compensable value into two parts: use values and nonuse values. Use values refer to economic values that arise because of direct public use of the resource or the services that a resource provides. Some examples of use values include on-site recreation of all types, including hunting, fishing, wildlife viewing, hiking, camping, driving for pleasure, etc.; extractive uses of natural resources, including energy production and mining; use of renewable natural resources to produce products such as timber, fish, or agricultural products; uses of stream flows for irrigation, municipal and industrial water supplies, and for power generation; and transportation services provided by navigation over public waterways, lands, or airspace.

Nonuse values are the difference between compensable value and use values. This concept of nonuse values is being used because there are many categories of nonuse values that have not been consistently defined. Any attempt to categorize explicitly different types of nonuse value would involve arbitrarily selecting a single definition. In contrast, almost all economists accept that the difference between compensable value and use value represents nonuse value. As a practical matter, it is usually not necessary to subdivide among the various types of nonuse values. Included in the definition of nonuse values are the concepts commonly referred to as existence value, bequest value, preservation value, and intrinsic value, which are discussed in the preamble of the August 1986 type B rule. At present, there is controversy over whether option value is more accurately considered a use or nonuse value. Regardless of its category, if it is applicable, it is clearly a part of compensable value.

Although nonuse values can theoretically exist for any natural resource, they are most significant for irreversible or long-lasting changes to well-known, unique natural resources. For environments that quickly recover to the baseline condition following a discharge or release, nonuse values may not normally be significant. Also, an injury to a common natural resource with many substitutes (e.g., a typical small stream), may not generate large nonuse values, particularly for those residing outside the area where the injury occurred, even if the recovery takes a long time. However, a permanent injury to a unique resource (e.g., the Grand Canyon) may generate significant nonuse values, even for those residing in areas far removed geographically from the site where the injury occurred. Trustees might best substantiate their claims for lost nonuse values—particularly as they relate to persons who do not directly use the injured resource—by demonstrating irreversible, or very long-lasting, adverse impacts to unique, widely-recognized natural resources.

For a situation where there are significant use and significant nonuse values potentially at stake, the trustee may wish to first quantify the lost use values using either a marketed or nonmarketed method. He may then wish to quantify the total compensable value (use plus nonuse), using CVM. This dual quantification of use value may help increase the reliability of the assessment because the estimate of use values would not become solely tied to a CVM-based estimate where use and nonuse are estimated simultaneously. If this dual quantification approach is adopted, the trustee would subtract the previously determined use values from the total estimated compensable value in order to arrive at a separate estimate of the nonuse component of the total compensable value.

Compensable value continues to have two important limitations. First, adverse effects on human health could not be included within compensable value because they are not covered under the natural resource damage liability provisions of CERCLA. Second, compensable value would not include any private economic damages related to the secondary or indirect economic effects on individuals, businesses, or other non-governmental organizations associated with a discharge or release, and the associated cleanup activities. For example, an oil spill may have regional economic impacts that cause some private businesses to grow (e.g., charter boats for cleanup) and others to diminish (e.g., resort hotels). Although private individuals might gain or lose money as a result of these activities, the losses cannot be included in compensable value because they are not covered in the natural resource provisions of CERCLA. Only losses related to the public's use of the injured resource, or the services provided by the resource, are included in compensable value.

E. Scope of Public Ownership

The court asked for a clarification of the Department's views on the extent to which the natural resource damage assessment rule applies to natural resources that are privately owned. Commenters to the Department on this rulemaking offered no previously validated criteria or readily transferable procedure for such determination. Several commenters said that trustees must have the flexibility to determine the scope of their trusteeship on a case-by-case basis. Therefore, the proposed revision in response to the court's concern directs the trustee, or co-trustees, to state briefly the authority for asserting trusteeship, or co-trusteeship, in the Assessment Plan, and also in the Notice of Intent to Perform an assessment that is sent to the potentially responsible party. In describing the natural resources of concern to the trustee, the trustee will cite the relevant treaty or other provision of international law, constitution, statute, common law, regulation, order, deed or other conveyance, permit, or agreement providing the basis for the trusteeship. This authority statement within the Assessment Plan, which is available for public review and comment, will enable an early notice to the public as to the trustee's assertion of trusteeship. This statement in the Notice of Intent to Perform an Assessment will also serve to inform the potentially responsible party of the various agencies involved in an assessment and of their natural resource concerns.

On the issue of the scope of public ownership of natural resources, the court did not dispute the rule, but asked the Department for "its consideration and explanation" of the rule insofar as it may extend to natural resources not "owned" by a government entity. The court concluded that CERCLA, primarily the definition of natural resources, and its legislative history mean that purely private resources are excluded from the natural resource damage provisions. CERCLA defines natural resources as "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by" the United States, any State or local government, any foreign government, or any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe. The court noted that the rule defines the term "natural resources" consistent with the statutory definition found in section 101(16) of CERCLA.

The court looked at the preamble to the final type B rule that said "Section 101(16) of CERCLA clearly indicates that privately-owned natural resources are not to be included in natural resource damage assessments" (54 FR 27686). The court understood the Department's oral argument to suggest that a substantial degree of government regulation, management, or other form of control over natural resources could be sufficient to make the natural resource damage provisions apply to such resources in certain circumstances. The court did not call for any changes in the definition of natural resources in the rule itself. However, the court suggested that it would be too narrow a reading of the statute to prohibit recovery for publicly-managed natural resources that were privately owned. Thus, the court asked the Department to clarify whether the application of the rule might extend to lands not owned by a government entity.

In response, the Department notes that it had not meant to suggest that recoveries under the rule hinge solely on ownership or exercise of a formal document transferring the property to a government entity. The Department used in its rule the CERCLA definition of natural resources that provides for various degrees of government regulation, management or other form of control over the natural resources to make the CERCLA natural resource damage provisions applicable. The rule repeats the statutory language of "belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by," and thus covers a broad range of government interest in natural resources on behalf of the public. Pursuant to that language, general sources of authority for recovery under the rule could include, but not necessarily be limited to, relevant treaty or other provision of international law, constitution, statute, common law, regulation, order, deed or other conveyance, permit, or agreement.

The statutory phrase "belonging to" connotes ownership and would cover government-owned lands, as well as resources affixed, i.e., permanently attached, to such lands. However, the remaining terms, "managed by, held in trust by, appertaining to, or otherwise controlled by," ensure a wide range of legitimate government interest in natural resources that may, in fact, be held in private ownership.

F. Other Significant Revisions

Need for preliminary estimate: One other revision is related to the way the Department is proposing to amend the rule in accordance with the court's ruling that restoration costs be the preferred measure of damages. As described in section II.B. above, the Department is proposing to remove the requirement that the trustee base his damage determination on the lesser of restoration costs or the diminution in use values. This "lesser of" requirement was contained in the Economic Methodology Determination of § 11.35. The Economic Methodology Determination in the existing rule served two purposes: (1) To establish the method of determining damages to be used in conducting the assessment; and (2) to assist in ensuring that the assessment as planned could be performed at a reasonable cost. Although the "lesser of" requirement would be removed, it is still important to plan for an assessment that could be performed at a reasonable cost. Therefore, it would still be necessary for the trustee to develop a preliminary estimate of damages that may prove to be recoverable before he begins the development of an Assessment Plan. This preliminary estimate would help to structure the Injury Determination, Quantification, and Damage Determination phases of the assessment.

Thus, the proposed revision keeps the idea that the trustee must develop a preliminary estimate of the anticipated costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and the compensable value of the lost services resulting from the discharge or release. The trustee uses this "preliminary estimate of damages" solely for the purpose of scoping the Assessment Plan to ensure that the assessment will be performed at a reasonable cost. The proposed revision would provide guidance to the trustee to make this preliminary estimate at the assessment planning stage, although the estimate may be revised as the assessment proceeds. The trustee would make this preliminary "back-of-the-envelope" estimate based on existing information. The trustee would include this estimate in the Report of the Assessment at the end of the assessment.

Statute of Limitations: With respect to the period in which actions may be brought for natural resource damages, section 113(g) of CERCLA provides that

> " " " no action may be commenced for damages " " " unless that action is commenced within 3 years after the later of the following:
>
> (A) The date of the discovery of the loss and its connection with the release in question.
>
> (B) The date on which regulations are promulgated under section 301(c).

For the purposes of the statute of limitations encompassed by (B), the "date on which regulations are promulgated" is the date upon which both sections of the rule, type A and type B, including the court-ordered revisions, become effective as a final rule.

G. Factors to Consider in Selecting Alternatives

Section II.B. above notes factors to consider in selecting the actions that will comprise the trustee's selected alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent of the injured resources. Two of those factors were recommended by the court, and were detailed in Section II.B. Several other factors represent considerations already inherent in the existing rule. There are other considerations in selecting an alternative, such as:

Cost-effectiveness: Cost-effectiveness is defined in the damage assessment rule as achieving an objective with the least expenditure of financial or other assets. Cost-effectiveness generally means that whenever the same or a similar benefit can be obtained in several ways, the least costly means of obtaining that benefit is selected. Cost-effectiveness is not intended to be used as a measure to select between alternatives or actions that provide very different levels of benefits at different costs.

Response Actions: The law and the existing rule provide that natural resource damages are for injuries

residual to those injuries that may be mitigated in the response action. In some instances it may be necessary to anticipate an eventual or continued response or remedial action in planning a natural resource damage assessment. In addition, the damages include compensation for the lost services from the time of the injury caused by the discharge or release until resource recovery results from actions to restore, rehabilitate, replace, and/or acquire equivalent resources.

Additional Injury: Actions to carry out a proposed alternative could in themselves result in additional injury to the injured resource or to other resources. The trustee should consider whether the actions for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources would result in an unreasonable amount of long-term and indirect impacts on other resources.

Ability of the Resource to Recover: The trustee should consider the ability of the injured resource to recover naturally and/or with assistance by various actions. This consideration encompasses whether all important and measurable services of the lost or injured resources are being restored.

Recovery Period: The trustee should estimate the time necessary for recovery, both without restoration efforts beyond the removal or remedial action and normal management practices, and with alternative actions to restore, rehabilitate, replace, and/or acquire equivalent resources. The trustee should then consider the extent to which the alternative would lessen the period of recovery of the resource and its services when compared to the estimated period of natural recovery absent any actions on the part of the trustee. This recovery period will be determined according to the facts of the given site or incident situation.

Federal Land Acquisition: Federal trustees should generally consider first restoration, rehabilitation, or replacement actions, looking to the acquisition of land to carry out some component of a possible alternative when restoration, rehabilitation, or replacement are not feasible. This consideration would apply only to acquisition of land by Federal trustees.

Human Health and Safety: The trustee should consider whether any actions of the alternative under consideration would be likely to have any adverse impact on human health and safety.

Other Laws and Policies: The trustee should look to applicable Federal and State law or policy, including his own agency's mandates, to ensure that the alternative is consistent with any directives and policies concerning administration of his programs and responsibilities. A potential conflict would have to be considered and resolved if that alternative were to be selected.

H. Considerations in using the Contingent Valuation Methodology (CVM)

Compensable value, discussed in Section II.D. of this preamble, includes both use and nonuse values. The Court ruled that CVM is a "best available technology." For nonmarketed use values, such as those associated with publicly provided outdoor recreation, CVM, when properly applied, has produced values comparable to values based on "revealed preference" methods.

It is difficult to get a consensus on the reliability of CVM. It may be much harder to set up a hypothetical market for nonuse values, such as a unique recreational opportunity that respondents have never taken or the existence of an endangered species they will never see, than it is to set up a hypothetical market for resource use opportunities with which respondents are quite familiar. It is currently difficult to get a consensus as to whether it is possible to set up hypothetical markets to measure nonuse values to the same degree that is possible to define existing markets to determine use values compared to the reliability of values based on the revealed preference approaches. A body of research comparing nonuse values to values based on revealed preference approaches does not yet exist to the same degree as for CVM use values. Thus, it is more difficult to evaluate the reliability of CVM nonuse values, compared to use values. It is because of this that the Department has characterized CVM, when used to determine nonuse values, as the least reliable method.

Nevertheless, CVM is the only method currently available for estimating nonuse values. A trustee should, at the outset of a damage assessment, determine whether nonuse values are likely to be a significant part of compensable value. As noted in Section II.D., the magnitude of the injury, its irreversible or long-term effects, the uniqueness of the resources involved, and other such factors are likely to be important in this determination.

In order to help the trustee in the application of CVM, the following books may be of assistance: Cummings, Donald G., Brookshire, David S., and Schulze, William D.; Valuing Environmental Goods: An Assessment of the Contingent Valuation Method; Rownan & Allanheld; Totowa, NJ (1986); and Mitchell, Robert C., and Carson, Richard T.; Using Surveys to Value Public Goods: The Contingent Valuation Method; Resources for the Future; Washington, DC (1989).

The trustee should always attempt to use the most reliable method to estimate the dollar value of all the components of compensable value. The proposed revision makes a distinction between the methodologies listed for determining use and nonuse values. In the Department's view, the reliability of CVM varies greatly, and is dependent upon the type of values quantified. When CVM is used to quantify use values alone, it is judged to be just as reliable as the other nonmarket valuation methodologies. When CVM is used to quantify use values alone, the survey population would normally consist of actual users of the resource. Use value estimates based on general population surveys would be considered in the least reliable category when survey respondents are asked to allocate a portion of their bid to nonuse values. When CVM is used to quantify either nonuse alone or use plus nonuse values, it is in the least reliable category of the other nonmarketed valuation methods. As the state of the art advances, CVM estimates of nonuse values may become more reliable. Although any estimates of nonuse will generally be less reliable than corresponding estimates of use values, the Department recognizes that CVM is the only method available to determine explicitly nonuse values.

III. Annotated List of Sections to be Revised

Section 11.13 would be revised to state that the Damage Determination phase includes guidance on determining damages based on the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, plus the compensable value.

Section 11.14(qq) would be revised to replace the reference to the Restoration Methodology Plan with a reference to the Restoration and Compensation Determination Plan.

Section 11.15(a)(3)(ii) would be revised to include the costs of planning and undertaking the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources among recoverable damages.

Section 11.30(c)(1) would be revised to include the costs of making the preliminary estimate of damages among recoverable assessment costs.

Section 11.31(a)(2) would be revised to include the trustee's statement of authority for asserting trusteeship in the Assessment Plan.

Section 11.31(c)(2), referring to the Economic Methodology Determination, would be removed.

Section 11.31(c)(4) would be added to include the Restoration and Compensation Determination Plan of § 11.81 in the Assessment Plan.

Section 11.32(a)(2) would be revised to include the trustee's statement of authority for asserting trusteeship in the Notice of Intent to Perform an Assessment that is sent to the potentially responsible party.

Section 11.32(f)(2) would be revised to remove the reference to the Economic Methodology Determination of the old § 11.35.

Section 11.32(f)(3) would be revised to include the trustee's statement of authority for asserting trusteeship in the Assessment Plan.

Section 11.35 would be revised to remove the Economic Methodology Determination (the "lesser of" requirement). This language would be replaced with the preliminary estimate of damages, in which the trustee would make a preliminary estimate of the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and compensable value.

Section 11.60(d)(1) would be revised to replace the reference to the Restoration Methodology Plan with the reference to the Restoration and Compensation Determination Plan and to replace the phrase "Use value methodology" with "Valuation methodology."

Section 11.71(a)(2) would be revised to delete the reference to the Economic Methodology Determination.

Section 11.71(1)(4) would be revised to restate that baseline data are needed for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources efforts *and* for calculation of compensable value.

Section 11.72 (b)(4) would be revised to remove the reference to the Economic Methodology Determination.

Section 11.73(a) would be revised to replace the reference to the old § 11.81 with the reference to the revised § 11.82 and to replace "restoration" with "restoration, rehabilitation, replacement, and/or acquisition of equivalent resources."

Sections 11.80, 11.81, 11.82, and 11.83 would be replaced with new sections providing guidance on determining damages based on the cost of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, plus compensable value. (See Section III of this preamble.)

Section 11.90 would incorporate references to the new materials and organization of §§ 11.81, 11.82, and 11.83.

Section 11.91 would be revised to call for the development of the Restoration and Compensation Determination Plan that is part of the Assessment Plan. The trustee would list in the Restoration and Compensation Determination Plan a reasonable number of possible alternative actions to restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources; identify the alternative selected; and identify the methodologies to be used to estimate the costs and compensable value. Provisions would also be made for the public review of the Restoration and Compensation Determination Plan for times when that plan cannot be made available with the rest of the Assessment Plan.

Section 11.82 would describe the phrase alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and would give: (1) Guidance on the development and selection of the alternative; and (2) guidance on estimating the loss of services and period of recovery associated with each possible alternative.

Section 11.83 would be revised to combine consideration and estimation of the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and compensable value into one unit. This section would give guidance on the types of costs (i.e., direct and indirect) to include in the damage estimate and guidance on methodologies the trustee may use to estimate those costs. This section would also describe the term "compensable value" to include use and nonuse values, to allow recovery of the total value lost to the public.

Section 11.84, implementation guidance, would be revised to reflect the determination of damages based on the estimated costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources plus compensable value.

Section 11.90 would be revised to replace the reference to the Restoration Methodology Plan with a reference to the Restoration and Compensation Determination Plan.

Section 11.91 would be revised to establish the time period within which natural resource damage actions may be brought.

Section 11.92 would be revised to replace references to "restoration" actions with actions for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

Section 11.93 would be revised to reflect the use of sums recovered to restore or replace the injured resource and the services it provided prior to the discharge or release.

IV. Response to Comments

A. General

The Advance Notice of Proposed Rulemaking (ANPRM) published in Federal Register by the Department on September 22, 1989, requested comments on the following kinds of questions to assist in carrying out the court ordered revisions: (1) What possible considerations might trigger the use of a measure of damages other than restoration costs; (2) should the rule provide criteria and, if so, what criteria might be used to determine whether restoration is "technically feasible;" (3) should the rule define the term "grossly disproportionate" and, if so, how; (4) how much guidance should the rule include and what would be possible selection criteria to make available to the trustee in selecting the most appropriate methodology to determine lost use values; (5) what available systems for classifying resource uses exist, as to use and nonuse, etc., which would also aid the trustee to avoid double counting; and (6) what degree and type of management, regulation, control, or property interest might make natural resources subject to the provisions of CERCLA for the purposes of enabling public trustees to recover damages for injuries to such resources?

The comments received in response to these questions covered a wide range of issues and points of view. Few comments, however, had specific technical suggestions or language that could be used in the revision of the rule. Although there is no consensus among the commenters on any of the issues being considered in the revision, most of the commenters expressed the opinion that the decisions concerning "grossly disproportionate" and "technically infeasible" should be left to the judgment of the trustee on a case-by-case basis. Differing points of view were expressed on whether guidance should be provided to the trustee in either the preamble or the rule itself.

The issue of the economic methodologies resulted in a split of opinion among the commenters. Some commenters said that the trustee should be free to choose among the list provided in the current rule. Others felt that there should be criteria or guidance given in the rule to guide trustees in

their decisions as to which methodologies should be used in a particular situation.

On the issue of the application of the rule to natural resources not "owned" by a government entity, comments also represented a split of opinion as to whether guidance or criteria should be given to trustees.

Finally, many commenters provided extensive suggestions concerning criteria and/or guidance on the use of contingent valuation methodology in a natural resource damage assessment, a subject which was not an issue in the court remand.

B. Restoration Costs as Measure of Damages

The court's decision established restoration costs as the preferred measure of damages in a natural resource damage assessment. However, the court suggested that there might be times when the trustee could use a different measure of damages. Therefore, in the ANPRM of September 22, 1989, the Department asked what possible considerations might trigger the use of a measure of damages other than restoration costs in various stages of an assessment. Commenters presented a broad range of opinions on what those factors might include.

All of the commenters either stated or implied that there might be times when a trustee would not be able to use restoration costs as the measure of damages. When commenters directly addressed the issue of what considerations might trigger the use of a different measure of damages, they basically discussed whether to give the trustee specific criteria in the rule itself, or to give no guidance. Quite a few of the commenters said that the decision as to the measure of damage should be made on a case-by-case basis by the trustee based on best professional judgment, with no guidance or criteria given in the rule.

Other commenters said that some guidance or criteria are needed within the rule because a rebuttable presumption will be granted to the assessment. These commenters listed certain factors that should be considered by a trustee: the degree to which the restoration actions would shorten the rate of recovery; the feasibility, utility, and cost of restoration actions; the degree to which restoration actions would avoid injury or destruction of other resources and significant risks to human health and the environment; the degree to which substitute resources nearby would lessen the need for total restoration; and whether the restoration actions are "reasonable."

Some of the commenters who said that restoration costs should be the measure of damages said that although the Department might develop or suggest some exceptions to that measure, these exceptions should *never* be allowed in cases where: (1) There is willful misconduct or negligence on the part of the PRP, or (2) where "special" resources, i.e., resources that have been identified for special protection, have been injured. Another commenter said that the trustee should be required to always base a natural resource damage assessment on restoration costs, or lose the benefit of the rebuttable presumption, even if the trustee found that restoration was impossible.

Response: The court said that restoration costs are to be the preferred measure of damages under CERCLA and the Clean Water Act, but suggested that there might be situations where "exceptions" to this measure would be warranted. After careful consideration of CERCLA, the court decision, and the comments received, the Department finds that exceptions to this preferred measure of damages are not needed. The law requires sums recovered as damages for injuries to natural resources to be used "only to restore, replace, or acquire the equivalent of such resources" (CERCLA 107(f)(1)). Therefore, within the rule, the term "restoration" includes restoration or rehabilitation, as well as replacement or acquisition of equivalent resources. So long as the term "restoration" is always understood to include also "replacement or acquisition of the equivalent," there would always be some part of the trustees' work effort that will constitute "restoration." Thus, there is no need for "exceptions" to the use of restoration costs as the preferred measure of damages. The proposed revision uses the phrase restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to reinforce the idea that the possible alternatives would include a mixture of all actions.

Putting this idea in terms of trustee actions, the trustee will be looking at a range of possible alternatives that could restore or replace the resource, and the services provided by that resource to the public or to other resources before the discharge or release in question. To do this, the trustee considers allowing the resource to recover naturally, with a minimal amount of trustee management action; the trustee considers intensive restoration or replacement actions that would bring the injured resource and its services back to baseline in a shorter period of time than natural recovery would take; and, the trustee considers replacement or acquisition of equivalent resources in cases where the injured resource cannot be restored. (In actual practice, the trustees' choices will likely be combinations of these actions.) Whatever the case, there will be some restoration costs, and, therefore, there need be no exception to the rule that restoration costs form the preferred measure of damages. Even if the trustee were to choose natural recovery, restoration costs would cover whatever minimal management actions were appropriate (e.g., preventing public access, or monitoring the condition of the resource).

The total bill for damages will include the costs of the selected alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources added to a dollar figure computed for the compensable value of the services lost to the public for the period of the recovery—whether a natural recovery, which might be longer, or an assisted recovery, which might be shorter. If the selected alternative encompasses minimal restoration activities and a long recovery period, the value of lost services, in most cases, would form a higher proportion of the total damages claimed. If the selected alternative includes maximum restoration activities and a shorter recovery period, then the value of lost services, in most cases, would be a smaller proportion of the total damages. In each instance, both restoration costs and compensable value will be represented.

The revised rule would instruct the trustee to select the most appropriate method of restoring or replacing the resource and its services, based upon several considerations. The kinds of concerns expressed by the commenters are included in these selection factors. For example, factors the trustee would now consider in evaluating a particular alternative would include: the technical feasibility of the alternative; the extent to which the alternative is likely to reduce the recovery period; whether the estimated cost of the alternative would be proportionate to the expected benefits to the resource and to the public; the possibility of the alternative itself having an adverse impact on resources that have been set aside for special protection; applicability of any other statute to resources affected by the proposed restoration alternative; and other considerations that might be applicable to that resource. (See section II. B. of this preamble.)

The trustee, using his expertise and best professional judgment, and applying factors such as these above, will be able to determine the most appropriate course of action to restore or replace the injured resource and the services it provides to the public. The selection of the alternative would be subject to public review when the Restoration and Compensation Determination Plan is published for public review and comment.

C. Technically Feasible

In the ANPRM of September 22, 1989, the Department asked if the revised rule should give criteria on the subject of whether restoration is "technically feasible" and, if so, what criteria might be used.

The majority of the commenters said that the determination of "technically feasible" should be left to the judgment of the trustee on a case-by-case basis. Some of these commenters said that there should not be guidance or criteria in the rule. Other commenters said that there should be specific guidance given within the rule on "technically feasible." Other commenters suggested specific revisions to the current definition of the term "technically feasible."

Response: The Department agrees that determination of technical feasibility should continue to be left to the trustee in the proposed revision. The rule already defines the term "technically feasible," at § 11.14(qq). Within the rule, the term means that the technology and management skills necessary to implement an assessment are well known and that each element of the plan has a reasonable chance of successful completion in an acceptable period of time. The proposed revision would not change that definition. Technical feasibility depends upon site-specific circumstances. Therefore, the Department can only give a generic definition that the trustee must apply in each instance.

D. Grossly Disproportionate

In the ANPRM of September 22, 1989, the Department asked whether or not the rule should define the term "grossly disproportionate" and, if so, how should it be defined. The court decision had suggested a factor of three times the value of the loss in use as the area where restoration costs could be viewed as disproportionate.

Almost all commenters said there should be no numeric factor such as that suggested by the court for determining when restoration costs are "grossly disproportionate" to the value of the services of the resource that are lost to the public. Many of these commenters said that "grossly disproportionate" should be determined by the best professional judgment of the trustee on a case-by-case basis, with no guidance or criteria given in the rule. Some said costs should be reasonable. On the other hand, several commenters said that some guidance should be given within the rule.

A few commenters said that a numeric factor might be helpful. One commenter suggested a sliding scale where the factor by which restoration costs are multiplied decreases as the magnitude of damages increases. An alternative approach suggested by some commenters would be to use a "reasonableness" standard, with a "grossly disproportionate" determination used only to determine when costs would be prohibitive. Some commenters said that, if the Department were to give guidance on this issue, such guidance should not apply to resources that have been set aside for special protection.

Response: The Department agrees that there should not be a numeric standard imposed upon a trustee to make a "grossly disproportionate" determination for establishing natural resource damages. The proposed revision provides that the decisionmaking process includes factors that help keep in balance the several possible elements of the damage assessment, all of which would be added together to arrive at the damage claim. The proposed revision provides that the trustee would choose to conduct some actions for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources in all instances, whether as a smaller or larger proportion of the total possible damage claim, and that the costs of these actions will be included in total damages claimed along with all reliably calculated compensable value. The proposed revision would require the trustee to consider the expected costs of the actions as a factor in selecting the appropriate alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The determination is left to the judgment of the trustee based upon a comparison of the expected costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources with both the length of the recovery period and the loss in services to the public during that recovery period. If such a numeric factor were to consist of the sliding scale comparing estimated costs and compensable value as suggested by the one commenter, it could not take into account all the factors a trustee should consider in making a "grossly disproportionate" determination in each case.

Reasonableness is not listed in the proposed revision as a separate factor to consider, since all of the factors listed should enter into the trustee's decisionmaking as to the "reasonableness" of the selected alternative. Overall, the guidance in the proposed revision is intended to aid the trustee in making reasonable choices, using his best judgement in light of the various circumstances of the particular case. Trustee decisions and the justification for them appear in the Restoration and Compensation Determination Plan to be published for public comment.

E. Economic Methodologies

In the ANPRM of September 22, 1989, the Department asked how much guidance to include in the rule and what possible selection criteria could be made available to the trustee on selecting the most appropriate methodology to determine lost use values.

Several of the commenters said that no criteria, or even guidance, on the selection of economic methodologies should be given in the rule. Other commenters, however, said that some guidance or criteria should be given as to which methodology should be used under specific circumstances. One of these commenters suggested that the Department should direct the trustee to use the most reliable of the possible methodologies applicable to a particular incident or to document why a less reliable methodology was chosen by the trustee for the assessment. The commenter said that, where a trustee uses a less reliable technique for valid reasons, certain defined parameters must be met to use that technique. Other commenters suggested specific guidance that the Department should provide in the rule to direct the trustee in the choice of a methodology.

A large portion of the comments received on the question of selection criteria for choosing an economic valuation methodology dealt instead with the validity of, and the allowance for, contingent valuation methodology (CVM) in a natural resource damage assessment. Comments in effect reiterated the arguments for and against CVM that the court had heard. Several commenters provided technical suggestions on guidelines for applying CVM in an assessment. While the use of CVM was specifically at issue in the court's review, it was upheld by the court. For that reason, the use of CVM was no longer at issue, and was not included in the Department's ANPRM of September 22, 1989. Nevertheless, several commenters did provide general

technical information concerning the application of the contingent valuation methodology.

Response: Though it has deleted the requirement for trustees to choose economic methodologies in a particular order or hierarchy, the Department has maintained the general list of economic valuation methodologies that may be used in conducting a natural resource damage assessment pursuant to the rule. The description of that listing reflects the generally accepted reliability of the methodologies, including that of CVM. The Department has decided not to include required criteria for selection of an economic valuation methodology since that could be perceived to be equally as constraining as the original constraints to which the court objected. Instead, the proposed revision provides factors the trustee would consider in selecting both cost estimating and valuation methodologies or a combination of these methodologies. The proposed revision asks the trustee to choose, and to explain his choice briefly.

The use of CVM was expressly upheld by the court, thus no change was required within its description, once constraints on its use were deleted. Thus, it remains in the revised rule as an acceptable methodology that may be used by trustees. Considerations in using the CVM are discussed in section II.H. of this preamble.

F. Resource Values

In the ANPRM of September 22, 1989, the Department asked what systems might be available for classifying different types of resource uses, as to use and nonuse, etc., which might also aid the trustee to avoid double counting.

A number of commenters said that trustees should be able to assess all resource values within an ecosystem to allow full recovery of all damages. Several of these commenters said that there should be no guidance or criteria in the rule that would constrain the exercise of judgment of the trustee in his decisions on what and how to value those resources.

Several commenters suggested criteria for the trustee to follow in order to assess and recover for "nonuse" values of injured resources. While some commenters said that there should be some classification of resource values to avoid double counting, others concluded that there is no need for any guidance on double counting since use and nonuse values are concurrent. One commenter said that the Department should not attempt, at this time, to construct a system for classifying resource uses that would further define such uses beyond that of use and nonuse. The commenter said that there is an element of arbitrariness in any system of classification and recommended that the rule acknowledge the importance of the total value of the flow of services from natural resources. The commenter said that the rule should distinguish between use and nonuse values primarily on the basis of the availability of indirect or observational methods (e.g., travel cost models) for measuring use values. Beyond this, there should be no further attempt to distinguish among various categories of nonuse values.

Response: In accordance with the court's order, the proposed revision no longer contains the restriction that limited recovery of "nonuse" values to only those cases where the trustee could determine no "direct" use values. Instead, the trustee may recover all "compensable value." Compensable value is defined in broad terms to include all values for the services provided to the public by the resources, including "passive" or "nonconsumptive" uses of the resources.

As the definition of "compensable value" is written, all values lost to the public, both use and nonuse, of a resource resulting from an incident may be recovered. The trustee is to make a decision to seek recovery for any component of those values on a case-by-case basis. Reasonable costs, uncertainty of the estimates, and the potential for double counting are among the factors that the trustee is to consider in determining the categories of compensable value that will be sought.

The definition of "compensable value" includes a description of "use" and "nonuse" to aid the trustee in avoiding double counting and to clarify the extent of compensable value for which the trustee may claim damages. The Department has, of course, retained the prohibition on double counting, since it is a statutory requirement.

G. Public Resources

The court requested clarification on the application of the rule to natural resources not "owned" by a government entity, noting that preamble language in the existing rule appeared to provide an overly narrow interpretation of the law. In the ANPRM of September 22, 1989, the Department asked for comments as to what degree and type of management, regulation, control, or property interest should make natural resources subject to the provisions of CERCLA for the purposes of enabling public trustees to recover damages for injuries to such resources.

A few of the commenters said that there should be no change in the rule concerning "public resources," but that preamble language should be added to clarify this issue. Several commenters said that the determination of a "public resource" should be left to the judgment of the trustee on a case-by-case basis.

One commenter suggested a continuum of public interest, from purely government ownership, to purely private interest. Other commenters suggested the kinds of interest (substantial connections) that would allow recovery under CERCLA and also cited problems that might result from allowing overly-broad recoveries by public trustees.

Response: The court did not directly remand this issue to the Department to provide a regulatory definition of "public resources," rather it asked for clarification. Neither the public comments received nor the Department's analysis of its various jurisdictions has yielded a definitive line between public resources and private. In general, the Department agrees that this determination must be left to the trustee. The trustee, as the one who has the responsibility for the management and protection of the resources, is the one best able to determine whether he has trust responsibilities for a particular resource. Thus, the proposed revision of the rule would ask the trustee to cite the basis for his trusteeship in the Assessment Plan which is presented for public comment.

The Department disagrees that the lack of a regulatory definition of "public resources" would necessarily result in "overly-broad recoveries." Apparently, no comparable decision process already exists as a model among trustees' or other commenters' current management practice. No clear position was suggested or reached during Department of the Interior staff discussions on the amount and nature of guidance to be offered trustees in making this determination, nor on whether the guidance should be presented in an interpretive rule or as information discussed in preamble language. The question remains open and may be addressed in the final rulemaking for the proposed revisions or in the biennial reviews, based on further comments that may be received. In time, experience gained from the proposed revision's new requirement for the trustee to select and explain the authority on which that trustee bases a particular natural resource damage claim should assist the Department in developing further guidance.

National Environmental Policy Act, Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

The Department of the Interior has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no further analysis pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (43 U.S.C. 4332(2)(C)) has been prepared.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule provides technical procedural guidance for the assessment of damages to natural resources. It does not directly impose any additional cost. In addition, the estimate of the potential economic effects of this rule is well below $100 million annually. As the rule applies to natural resource trustees, it is not expected to have an effect on a substantial number of small entities. The information collection requirement contained in § 11.41(c) has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084–0025.

List of subjects in 43 CFR Part 11

Continental shelf, Environmental protection, Fish, Forests and forest products, Grazing land, Indian lands, Hazardous substances, Mineral resources, National forests, National parks, Natural resources, Oil pollution, Public lands, Wildlife, Wildlife refuges.

Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and the Superfund Amendments and Reauthorization Act of 1986, and for the reasons set out in the preamble, title 43, subtitle A of the Code of Federal Regulations is proposed to be amended as set forth below.

Dated: March 15, 1991.

John E. Schrote,

Acting Assistant Secretary, Policy, Management, and Budget.

PART 11—NATURAL RESOURCE DAMAGE ASSESSMENTS

1. The authority citation for part 11 continues to read as follows:

Authority: 42 U.S.C. 9651(c), as amended.

Subpart A—Introduction

2. Section 11.13 is amended by revising paragraph (e)(3) to read as follows:

§ 11.13 Overview.

* * * * *

(e) * * *

(3) *Damage Determination phase.* The purpose of this phase is to establish the appropriate compensation expressed as a dollar amount for the injuries established in the Injury Determination phase and measured in the Quantification phase. The sections of subpart E of this part comprising the Damage Determination phase include guidance on acceptable cost estimating and valuation methodologies for determining compensation based on the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, plus compensable value.

* * * * *

3. Section 11.14 is amended by revising paragraph (qq) to read as follows:

§ 11.14 Definitions.

* * * * *

(qq) *Technical feasibility* or *technically feasible* means that the technology and management skills necessary to implement an Assessment Plan or Restoration and Compensation Determination Plan are well known and that each element of the plan has a reasonable chance of successful completion in an acceptable period of time.

* * * * *

4. Section 11.15 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 11.15 Actions against the responsible party for damages.

(a) * * *

(3) * * *

(ii) Administrative costs and expenses necessary for, and incidental to, the assessment, assessment planning, and restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources undertaken; and

* * * * *

Subpart C—Assessment Plan Phase

5. Section 11.30 is amended by revising paragraph (c)(1)(v) to read as follows:

§ 11.30 Assessment Plan—general.

* * * * *

(c) * * *

(1) * * *

(v) Preliminary estimate of damages costs; and

* * * * *

6. Section 11.31 is amended by revising paragraph (a)(2), removing paragraph (c)(2), removing the word "and" at the end of paragraph (c)(3) and replacing the period at the end of paragraph (c)(4) with the words "; and", redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(2) and (c)(3) respectively, and adding a new paragraph (c)(4) to read as follows:

§ 11.31 Assessment Plan—content.

(a) * * *

(2) The Assessment Plan shall be of sufficient detail to serve as a means of evaluating whether the approach used for assessing the damage is likely to be cost-effective and meets the definition of reasonable costs, as those terms are used in this part. The Assessment Plan shall include descriptions of the natural resources and the geographical areas involved. The Assessment Plan shall also include a statement of the authority for asserting trusteeship, or co-trusteeship, for those natural resources considered within the Assessment Plan. In addition, for type B assessments, the Assessment Plan shall include the sampling locations within those geographical areas, sample and survey design, numbers and types of samples to be collected, analyses to be performed, preliminary determination of the recovery period, and other such information required to perform the selected methodologies.

* * * * *

(c) * * *

(4) The Restoration and Compensation Determination Plan developed in accordance with the guidance in § 11.81 of this part. If existing data are not sufficient to develop the Restoration and Compensation Determination Plan as part of the Assessment Plan, the Restoration and Compensation Determination Plan may be developed later, at any time before the completion of the Injury Determination or Quantification phases. If the Restoration and Compensation Determination Plan is published separately, the public review and comment will be conducted pursuant to § 11.81(d) of this part.

7–8. Section 11.32 is amended by revising paragraphs (a)(2)(iii)(A) and (f)(2), and by removing paragraph (f)(3) to read as follows:

§ 11.32 Assessment Plan—development.

(a) *Pre-development requirements.*

* * *

(2) * * *

(iii)(A) The authorized official shall send a Notice of Intent to Perform an Assessment to all identified potentially responsible parties. The Notice shall invite the participation of the potentially responsible party, or, if several parties are involved and if agreed to by the lead authorized official, a representative or representatives designated by the parties, in the development of the type and scope of the assessment and in the performance of the assessment. The Notice shall briefly describe, to the extent known, the site, vessel, or facility involved, the discharge of oil or release of hazardous substance of concern to the authorized official, and the resources potentially at risk. The Notice shall also contain a statement of authority for asserting trusteeship, or co-trusteeship, over those natural resources identified as potentially at risk.

* * * * *

(f) *Plan review.* * * *

(2) The purpose of this review is to ensure that the selection of methodologies for the Quantification and Damage Determination phases is consistent with the results of the Injury Determination phase, and that the use of such methodologies remains consistent with the requirements of reasonable cost, as that term is used in this part.

6. Section 11.35 is revised to read as follows:

§ 11.35 Assessment Plan—preliminary estimate of damages.

(a) *Requirements.* When performing a type B assessment pursuant to the requirements of subpart E of this part, the authorized official shall develop a preliminary estimate of: the anticipated costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources for the injured natural resources; and the compensable value, as defined in § 11.83(c) of this part, of the natural resources. This preliminary estimate is referred to as the preliminary estimate of damages. The authorized official shall use the guidance provided in this section, to the extent possible, to develop the preliminary estimate of damages.

(b) *Purpose.* The purpose of the preliminary estimate of damages is for reference in the scoping of the Assessment Plan to ensure that the choice of the scientific, cost estimating, and valuation methodologies expected to be used in the damage assessment fulfills the requirements of reasonable costs, as that term is used in this part. The trustee will also use the preliminary estimate of damages in the review of the Assessment Plan as required in § 11.32(f) of this part, to ensure the requirements of reasonable costs are still met.

(c) *Steps.* The authorized official shall make a preliminary estimate of damages, i.e., the anticipated costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources for the injured natural resources and the services those resources provide, plus the anticipated compensable value of the lost services to the public through the period of time until completion of the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and recovery of the services. The preliminary estimate of damages should include consideration of the ability of the resource to recover naturally and the compensable value through the recovery period with and without possible alternative actions. The authorized official shall consider the following factors, to the extent possible, in making the preliminary estimate of damages.

(1) The preliminary estimate of costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources should include consideration of a range of possible alternative actions that would accomplish the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources of the injured natural resources.

(i) The preliminary estimate of costs should take into account the effects, or anticipated effects, of any response actions.

(ii) The preliminary estimate of costs also should represent the expected present value of anticipated costs, expressed in constant dollars, and should include direct and indirect costs, and include the timing of those costs. The provisions detailed in §§ 11.81–11.84 of this part are the basis for the development of the estimate.

(iii) The discount rate to be used in developing the preliminary estimate of costs shall be that determined in accordance with the guidance in § 11.84(e) of this part.

(2) The preliminary estimate of compensable value should be consistent with the range of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources being considered.

(i) The preliminary estimate of compensable value should represent the expected present value of the anticipated compensable value, expressed in constant dollars, accrued through the period for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to baseline conditions, i.e., between the occurrence of the discharge or release and the completion of the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured resources and their services. The estimate should use the same base year as the preliminary estimate of costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The provisions detailed in §§ 11.81–11.84 of this part are the basis for the development of this estimate.

(ii) The preliminary estimate of compensable value should take into account the effects, or anticipated effects, of any response actions.

(iii) The discount rate to be used in developing the preliminary estimate of compensable value shall be that determined in accordance with the guidance in § 11.84(e) of this part.

(d) *Content and timing.* (1) In making the preliminary estimate of damages, the authorized official should rely upon existing data and studies. The authorized official should not undertake significant new data collection or perform significant modeling efforts at this stage of the assessment planning phase.

(2) Where possible, the authorized official should make the preliminary estimate of damages before the completion of the Assessment Plan as provided for in § 11.31 of this part. If there is not sufficient existing data to make the preliminary estimate of damages at the same time as the assessment planning phase, this analysis may be completed later, at the end of the Injury Determination phase of the assessment, at the time of the Assessment Plan review.

(3) The preliminary estimate of damages, along with its assumptions and methodology, shall be included in the Report of the Assessment as provided for in § 11.91 of this part.

(e) *Review.* The authorized official shall review, and revise as appropriate, the preliminary estimate of damages at the end of the Injury Determination and Quantification phases. If there is any significant modification of the preliminary estimate of damages, the authorized official shall document it in the Report of the Assessment.

Subpart E—Type B Assessments

10. Section 11.60 is amended by revising paragraphs (d)(1) (iii) and (iv) to read as follows:

§ 11.60 Type B assessments—general.

* * * * *

(d) *Type B assessment costs.* (1) * * *

(iii) Restoration and Compensation Determination Plan development costs including:

(A) Development of alternatives;

(B) Evaluation of alternatives;

(C) Potentially responsible party, agency, and public reviews;

(D) Other such costs for activities authorized by § 11.81 of this part;

(iv) Cost estimating and valuation methodology calculation costs; and

* * * * *

11. Section 11.71 is amended by revising paragraphs (a)(2) and (i)(4)(ii) to read as follows:

§ 11.71 Quantification phase—service reduction quantification.

(a) * * *

(2) This determination of the reduction in services will be used in the Damage Determination phase of the assessment.

* * * * *

(i) *Biological resources.* * * *

(4) * * *

(ii) Provide data that will be useful in planning efforts for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, and in later measuring the success of these efforts, and that will allow calculation of compensable value; and

* * * * *

12. Section 11.72 is amended by revising paragraph (b)(4) to read as follows:

§ 11.72 Quantification phase—baseline service determination.

* * * * *

(b) * * *

(4) Baseline data collection shall be restricted to those data necessary for conducting the assessment at a reasonable cost. In particular, data collected should focus on parameters that are directly related to the injury quantified in § 11.71 of this part and to data appropriate and necessary for the Damage Determination phase.

* * * * *

13. Section 11.73 is amended to revise paragraph (a) to read as follows:

§ 11.73 Quantification phase—resource recoverability analysis.

(a) *Requirement.* The time needed for each injured resource to recover to the state that the authorized official determines services are restored, rehabilitated, replaced, and/or the equivalent have been acquired to baseline levels shall be estimated. The time estimated for recovery or any lesser period of time as determined in the Assessment Plan shall be used as the recovery period for purposes of § 11.35 and the Damage Determination phase, §§ 11.80 through 11.84, of this part.

(1) In all cases, the amount of time needed for recovery if no restoration, rehabilitation, replacement, and/or acquisition of equivalent resources efforts are undertaken beyond response actions performed or anticipated shall be estimated. This time period shall be used as the "No Action-Natural Recovery" period for purposes of § 11.82 and § 11.84(g)(2)(ii) of this part.

(2) The estimated time for recovery shall be included in possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, as developed in § 11.82 of this part, and the data and process by which these recovery times were estimated shall be documented.

* * * * *

14. Section 11.80 is revised to read as follows:

§ 11.80 Damage determination phase—general.

(a) *Requirement.* (1) The authorized official shall make his damage determination by estimating the monetary damages resulting from the discharge of oil or release of a hazardous substance based upon the information provided in the Quantification phase and the guidance provided in this Damage Determination phase.

(2) The Damage Determination phase consists of § 11.80—general; § 11.81—Restoration and Compensation Determination Plan; § 11.82—alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources; § 11.83—cost estimating and valuation methodologies; and § 11.84—implementation guidance, of this part.

(b) *Purpose.* The purpose of the Damage Determination phase is to establish the amount of money to be sought in compensation for injury to natural resources resulting from a discharge of oil or release of a hazardous substance. The measure of damages is the cost of restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured natural resources and the services those resources provide, plus the compensable value of the services lost to the public for the time period from the discharge or release until the attainment of the restoration, rehabilitation, replacement, and/or acquisition of equivalent of the resources and their services to baseline.

(c) *Steps in the Damage Determination phase.* The authorized official shall develop a Restoration and Compensation Determination Plan, described in § 11.81 of this part. To prepare this Restoration and Compensation Determination Plan, the authorized official shall develop a reasonable number of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and select, pursuant to the guidance of § 11.82 of this part, the most appropriate of those alternatives; and identify the cost estimating and valuation methodologies, described in § 11.83 of this part, that will be used to calculate damages. The guidance provided in § 11.84 of this part shall be followed in implementing the cost estimating and valuation methodologies, as appropriate. After public review of the Restoration and Compensation Determination Plan, the authorized official shall implement the Restoration and Compensation Determination Plan.

(d) *Completion of the Damage Determination phase.* Upon completion of the Damage Determination phase, the type B assessment is completed. The results of the Damage Determination phase shall be documented in the Report of Assessment described in § 11.90 of this part.

15. Section 11.81 is revised to read as follows:

§ 11.81 Damage Determination phase—Restoration and Compensation Determination Plan.

(a) *Requirement.* (1) The authorized official shall develop a Restoration and Compensation Determination Plan that will list a reasonable number of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and the related services lost to the public associated with each; select one of the alternatives and the actions required to implement that alternative; give the rationale for selecting that alternative; and identify the methodologies that will be used to determine the costs of the selected alternative and to determine the compensable value of the services lost to the public associated with the selected alternative.

(2) The Restoration and Compensation Determination Plan shall be of sufficient detail to evaluate the possible alternatives for the purpose of selecting the appropriate alternative to use in determining the cost of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources for the injured natural resources and the services those resources provided, plus the compensable value of the services lost to the public through the completion

of the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and their services to the baseline.

(b) The authorized official shall use the guidance in §§ 11.82, 11.83, and 11.84 of this part to develop the Restoration and Compensation Determination Plan.

(c) The authorized official shall list the methodologies he expects to use to determine the costs of all actions considered within the selected alternative and to determine the compensable value of the lost services through the recovery period associated with the selected alternative. The methodologies to use in determining costs and compensable value are described in § 11.83 of this part.

(d)(1) The Restoration and Compensation Determination Plan shall be part of the Assessment Plan developed in subpart B of this part. If existing data are not sufficient to develop the Restoration and Compensation Determination Plan at the time that the overall Assessment Plan is made available for public review and comment, the Restoration and Compensation Determination Plan may be developed later, after the completion of the Injury Determination or Quantification phases.

(2) If the Restoration and Compensation Determination Plan is prepared later than the Assessment Plan, it shall be made available separately for public review by any identified potentially responsible party, other natural resource trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of the public for a period of no less than 30 calendar days. Reasonable extensions may be granted as appropriate.

(3) Comments received from any identified potentially responsible party, other natural resource trustees, other affected Federal or State agencies or Indian tribes, or any other interested members of the public, together with responses to those comments, shall be included as part of the Report of Assessment, described in § 11.90 of this part.

(4) Appropriate public review of the plan must be completed before the authorized official performs the methodologies listed in the Restoration and Compensation Determination Plan.

(e) The Restoration and Compensation Determination Plan may be expanded to incorporate requirements from procedures required under other portions of CERCLA or the CWA or from other Federal or State statutes applicable to restoration or replacement of the injured resource or may be combined with other plans for related purposes, so long as the requirements of this section are fulfilled.

16. Section 11.82 is revised to read as follows:

§ 11.82 Damage Determination phase—alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(a) *Requirement.* The authorized official shall develop a reasonable number of possible alternatives for the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured natural resources and the services those resources provide. For each possible alternative developed, the authorized official will identify an action, or set of actions, to be taken singly or in combination by the trustee agency to achieve the restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources and the services those resources provide to the baseline. The authorized official shall then select from among the possible alternatives the alternative that he determines to be the most appropriate based on the guidance provided in this section.

(b) *Steps.* (1) The authorized official shall develop a reasonable number of possible alternatives that would restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources. Each of the possible alternatives may, at the discretion of the authorized official, consist of actions, singly or in combination, that would achieve those purposes.

(i) Restoration or rehabilitation actions are those actions undertaken to return an injured resource to its baseline condition, as measured in terms of the injured resources' physical, chemical, or biological properties or the services previously provided by those resources. Such actions would be in addition to response actions completed or anticipated pursuant to the National Contingency Plan (NCP).

(ii) Replacement or acquisition of the equivalent means the substitution for an injured resource with a resource that provides the same or substantially similar services, when such substitutions are in addition to any substitutions made or anticipated as part of response actions and when such substitutions exceed the level of response actions determined appropriate to the site pursuant to the NCP.

(iii) Possible alternatives are limited to those actions that restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources and services to no more than their baseline, that is, the condition without a discharge or release as determined in § 11.72 of this part.

(2) *Services provided by the resources.* (i) In developing each of the possible alternatives, the authorized official shall list the proposed actions that would restore, rehabilitate, replace, and/or acquire the equivalent of the services provided by the injured natural resources that have been lost, and the period of time over which these services would continue to be lost.

(ii) The authorized official shall identify services previously provided by the resource in its baseline condition in accordance with § 11.72 of this part and compare those services with services now provided by the injured resource, that is, the with-a-discharge-or-release condition. All estimates of the with-a-discharge-or-release condition shall incorporate consideration of the ability of the resource to recover as determined in § 11.73 of this part.

(c) *Range of possible alternatives.* (1) The possible alternatives considered by the authorized official that return the resource and its lost services to baseline level could range from: intensive action on the part of the authorized official to return the various resources and services provided by that resource to baseline conditions as quickly as possible; to natural recovery with minimal management actions. Possible alternatives within this range could reflect varying rates of recovery, combination of management actions, and needs for resource replacements or acquisitions.

(2) An alternative considering natural recovery with minimal management actions, based upon the "No Action-Natural Recovery" determination made in § 11.73(a)(1) of this part, shall be one of the possible alternatives considered.

(d) Factors to consider in selecting which alternative to pursue. In selecting which alternative to pursue, the authorized official shall evaluate each of the possible alternatives based on all relevant considerations, including the following factors, when appropriate:

(1) Technical feasibility, as that term is used in this part.

(2) The relationship of the expected costs of the proposed actions to the expected benefits from the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(3) Cost-effectiveness, as that term is used in this part.

(4) The results of any actual or planned response actions.

(5) Potential for additional injury resulting from the proposed actions, including long-term and indirect impacts, to the injured resource or other resources.

(6) The natural recovery period determined in § 11.73(a)(1) of this part.

(7) Ability of the resource to recover with or without alternative actions.

(8) Acquisition of equivalent land for Federal management where restoration, rehabilitation, and/or other replacement of land is not possible.

(9) Potential effects of the action on human health and safety.

(10) Consistency with applicable Federal and State laws and policies.

17. Section 11.83 is revised to read as follows:

§ 11.83 Damage Determination phase—cost estimating and valuation methodologies.

(a) *General.* (1) This section contains guidance and methodologies for determining:

(i) The costs of the selected alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources; and

(ii) The compensable value of the services lost to the public through the completion of the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured resources and their services to baseline.

(2)(i) The authorized official shall select among the cost estimating and valuation methodologies set forth in this section, or methodologies that meet the acceptance criterion of either paragraph (b)(3) or (c)(3) of this section.

(ii) The authorized official shall define the objectives to be achieved by the application of the methodologies.

(iii) The authorized official shall follow the guidance provided in this section for choosing among the methodologies that will be used in the Damage Determination phase.

(iv) The authorized official shall describe his selection of methodologies and objectives in the Restoration and Compensation Determination Plan.

(3) The authorized official shall determine that the following criteria have been met when choosing among the cost estimating and valuation methodologies. The authorized official shall document this determination in the Report of the Assessment. Only those methodologies shall be chosen:

(i) That are feasible and reliable for a particular incident and type of damage to be measured.

(ii) That can be performed at a reasonable cost, as that term is used in this part.

(iii) That avoid double counting.

(iv) That are cost-effective, as that term is used in this part.

(b) *Costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.* (1) Costs for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources are the amount of money determined by the authorized official as necessary to complete all actions identified in the selected alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, as selected in the Restoration and Compensation Determination Plan of § 11.81 of this part. Such costs shall include direct and indirect costs, consistent with the provisions of this section.

(i) Direct costs are those that are identified by the authorized official as attributed to the selected alternative. Direct costs are those charged directly to the conduct of the selected alternative including, but not limited to, the compensation of employees for the time and effort devoted to the completion of the selected alternative; cost of materials acquired, consumed, or expended specifically for the purpose of the action; equipment and other capital expenditures; and other items of expense identified by the authorized official that are expected to be incurred in the performance of the selected alternative.

(ii) Indirect costs are costs of activities or items that support the selected alternative, but that cannot practically be directly accounted for as costs of the selected alternative. The simplest example of indirect costs is traditional overhead, e.g., a portion of the lease costs of the buildings that contain the offices of trustee employees involved in work on the selected alternative may, under some circumstances, be considered as an indirect cost. In referring to costs that cannot practically be directly accounted for, this subpart means to include costs that are not readily assignable to the selected alternative without a level of effort disproportionate to the results achieved.

(iii) An indirect cost rate for overhead costs may, at the discretion of the authorized official, be applied instead of calculating indirect costs where the benefits derived from the estimation of indirect costs do not outweigh the costs of the indirect cost estimation. When an indirect cost rate is used, the authorized official shall document the assumptions from which that rate has been derived. Such amounts determined in lieu of indirect costs shall be treated as an offset to the total indirect costs of the selected alternative before allocation to the remaining activities. The base upon which such remaining costs are allocated should be adjusted accordingly.

(2) *Cost estimating methodologies.* The authorized official may choose among the cost estimating methodologies listed in this section or may chose other methodologies that meet the acceptance criterion in paragraph (b)(3) of this section.

(i) *Comparison Methodology.* This methodology may be used for unique or difficult design and estimating conditions. This methodology requires the construction of a simple design for which an estimate can be found and applied to the unique or difficult design.

(ii) *Unit Methodology.* This methodology derives an estimate based on the cost per unit of a particular item. Many other names exist for describing the same basic approach, such as order of magnitude, lump sum, module estimating, flat rates, and involve various refinements. Data used by this methodology may be collected from technical literature or previous cost expenditures.

(iii) *Probability Methodologies.* Under these methodologies, the cost estimate represents an "average" value. These methodologies require information which is called certain, or deterministic, to derive the expected value of the cost estimate. Expected value estimates and range estimates represent two types of probability methodologies that may be used.

(iv) *Factor Methodology.* This methodology derives a cost estimate by summing the product of several items or activities. Other terms such as ratio and percentage methodologies describe the same basic approach.

(v) *Standard Time Data Methodology.* This methodology provides for a cost estimate for labor. Standard time data are a catalogue of standard tasks typically undertaken in performing a given type of work.

(vi) *Cost- and Time-Estimating Relationships (CERs and TERs).* CERs and TERs are statistical regression models that mathematically describe the cost of an item or activity as a function of one or more independent variables. The regression models provide statistical relationships between cost or time and physical or performance characteristics of past designs.

(3) Other cost estimating methodologies. Other cost estimating methodologies that are based upon standard and accepted cost accounting practices and are cost-effective are acceptable methodologies to determine the costs of restoration, rehabilitation,

replacement, and/or acquisition of equivalent resources under this part.

(c) *Compensable value.* (1) Compensable value is the amount of money required to compensate the public for the loss in services provided by the injured resources between the time of the discharge or release and the time the resources and the services those resources provided are fully restored to their baseline conditions. The compensable value includes the value of lost public use of the services provided by the injured resources, plus lost nonuse values such as option, existence, and bequest values. Compensable value is measured by changes in consumer surplus, economic rent, and any fees or other payments collectable by the government or Indian tribe for a private party's use of the natural resource; and any economic rent accruing to a private party because the government or Indian tribe does not charge a fee or price for the use of the resource. Compensable value does not include any losses related to secondary economic impacts caused by the discharge or release.

(i) Use value is the value of the resources to the public attributable to the direct use of the services provided by the natural resources.

(ii) Nonuse value is the difference between compensable value and use value, as those terms are used in this section.

(2) *Valuation Methodologies.* The authorized official may choose among the valuation methodologies listed in this section to estimate willingness to pay or may choose other methodologies provided that the methodology can satisfy the acceptance criterion in paragraph (c)(3) of this section. The following methodologies are grouped as "use value: marketed methodologies," "use value: nonmarketed methodologies," and "nonuse value: contingent valuation methodology." Generally, the "use value: marketed valuation methodologies" are more reliable than the "use value: nonmarketed valuation methodologies," which, in turn, are more reliable than the "nonuse value: contingent valuation methodology." Nothing in this section precludes the use of a combination of valuation methodologies so long as the authorized official does not double count.

(i) Use value: marketed valuation methodologies.—(A) *Market price methodology.* This methodology may be used if the natural resource is traded in the market. In using this methodology, the authorized official should make a determination as to whether the market for the resource is reasonably competitive. If the authorized official determines that the market for the resource, or the services provided by the resource, is reasonably competitive, the diminution in the market price of the injured resource, or the lost services, may be used to determine the compensable value of the injured resource.

(B) *Appraisal Methodology.* Where sufficient information exists, the appraisal methodology may be used. In using this methodology, compensable value should be measured, to the extent possible, in accordance with the applicable sections of the "Uniform Appraisal Standards for Federal Land Acquisition" (Uniform Appraisal Standards), Interagency Land Acquisition Conference, Washington, DC, 1973 (incorporated by reference, see § 11.18). The measure of compensable value under this appraisal methodology will be the difference between the with- and without-injury appraisal value determined by the comparable sales approach as described in the Uniform Appraisal Standards.

(ii) *Use value: nonmarketed valuation methodologies.*—(A) *Factor Income Methodology.* If the lost resource is an input to a production process, which has as an output a product with a well-defined market price, the factor income methodology may be used. This methodology may be used to determine the economic rent associated with the use of a resource in the production process. This methodology is sometimes referred to as the "reverse value added" methodology. The factor income methodology may be used to measure the in-place value of the resource.

(B) *Travel Cost Methodology.* The travel cost methodology may be used to determine a value for the use of a specific area. An individual's incremental travel costs to an area are used as a proxy for the price of the services of that area. Compensable value of the area to the traveler is the difference between the value of the area with- and without-a-discharge-or-release. When regional travel cost models exist, they may be used if appropriate.

(C) *Hedonic Pricing Methodology.* The hedonic pricing methodology may be used to determine the value of nonmarketed resources by an analysis of private market choices. The demand for nonmarketed natural resources is thereby estimated indirectly by an analysis of commodities that are traded in a market.

(D) *Contingent Valuation Methodology.* The contingent valuation methodology includes all techniques that set up hypothetical markets to elicit an individual's economic valuation of a natural resource. In order to fall within the "use valuation: nonmarketed methodologies" category, the contingent valuation methodology must be limited to quantifying use values.

(E) *Unit Value Methodology.* Unit values are preassigned dollar values for various types of nonmarketed recreational or other experiences by the public. Where feasible, unit values in the region of the affected resource and unit values that closely resemble the recreational or other experience lost with the affected resource may be used.

(iii) *Nonuse value: Contingent Valuation Methodology.* The contingent valuation methodology includes all techniques that set up hypothetical markets to elicit an individual's economic valuation of a natural resource. If the contingent valuation methodology is used to quantify nonuse values, or use plus nonuse values, then it falls within this category.

(3) *Other valuation methodologies.* Other valuation methodologies that measure compensable value in accordance with the public's willingness to pay, in a cost-effective manner, are acceptable methodologies to determine compensable value under this part.

18. Section 11.84 is amended by revising paragraphs (a), (b)(1), (d)(2), (f), and (g) heading, (1), (2) introductory text, (i), (ii), and (iii); removing paragraph (h); and redesignating paragraph (i) as new paragraph (h) and revising it to read as follows:

§ 11.84 Damage Determination phase—Implementation guidance.

(a) *Requirement.* The authorized official should use the cost estimating and valuation methodologies in § 11.83 of this part following the appropriate guidance in this section.

(b) *Determining uses.* (1) Before estimating damages for the compensable value under § 11.83 of this part, the authorized official should determine the uses made of the resource services identified in the Quantification phase.

* * * * *

(d) *Uncertainty.* * * *

(2) To incorporate this uncertainty, the authorized official should derive a range of probability estimates for the important assumptions used to determine damages. In these instances, the damage estimate will be the net expected present value of the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and compensable value.

* * * * *

(f) *Substitutability.* In calculating the compensable value, the authorized official should incorporate estimates of the ability of the public to substitute resource services or uses for those of the injured resource services. This substitutability should be estimated only if the potential benefits from an increase in accuracy are greater than the potential costs.

(g) *Compensable value during the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.* (1) In determining the amount of damages, the authorized official should also compute the compensable value for the period of time required to achieve the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(2) To calculate the compensable value during the period of time required to achieve restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, the authorized official should follow the procedures described below. The procedures need not be followed in sequence.

(i) The ability of the resource to recover over the recovery period should be estimated. This estimate includes estimates of natural recovery rates as well as recovery rates that reflect management actions or resource acquisitions to achieve restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(ii) A recovery rate should be selected for this analysis that is based upon cost-effective management actions or resource acquisitions, including a "No Action-Natural Recovery" alternative. After the recovery rate is estimated, the compensable value should be estimated.

(iii) The rate at which the uses of the injured resources and their services will be restored through the restoration or replacement of the services should be estimated. This rate may be discontinuous, that is, no uses are restored until all, or some threshold level, of the services are restored, or continuous, that is, restoration or replacement of uses will be a function of the level and rate of restoration or replacement of the services. Where practicable, the supply of and demand for the restored services should be analyzed, rather than assuming that the services will be utilized at their full capacity at each period of time in the analysis. The compensable value should be discounted using the rate described in paragraph (e)(2) of this section. This estimate is the expected present value of uses obtained through restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

* * * * *

(h) *Scope of the analysis.* (1) The authorized official must determine the scope of the analysis in order to estimate the compensable value.

(2) In assessments where the scope of analysis is Federal, only the compensable value to the Nation as a whole should be counted.

(3) In assessments where the scope of analysis is at the State level, only the compensable value to the State should be counted.

(4) In assessments where the scope of analysis is at the tribal level, only the compensable value to the tribe should be counted.

Subpart F—Post-Assessment Phase

19. Section 11.90 is amended by revising paragraph (c) to read as follows:

§ 11.90 Post-assessment phase—Report of Assessment.

* * * * *

(c) *Type B assessments.* For a type B assessment conducted in accordance with the guidance in subpart E of this part, the Report of Assessment shall consist of all the documentation supporting the determinations required in the Injury Determination phase, the Quantification phase, and the Damage Determination phase, and specifically including the test results of any and all methodologies performed in these phases. The preliminary estimate of damages shall be included in the Report of Assessment. The Restoration and Compensation Determination Plan, along with comments received during the public review of that Plan and responses to those comments, shall also be included in the Report of Assessment.

20. Section 11.91 is amended to add a paragraph (e) to read as follows:

§ 11.91 Post-assessment phase—demand.

* * * * *

(e) *Statute of limitations.* The date on which regulations are promulgated for the purposes of section 113(g) of CERCLA is the date upon which the court-ordered revisions for both type A and type B, whichever is later, become effective as a final rule.

21. Section 11.92 is amended to revise paragraph (b) to read as follows:

§ 11.92 Post-assessment phase—restoration account.

(a) * * *

(b) *Adjustments.* (1) In establishing the account pursuant to paragraph (a) of this section, the calculation of the expected present value of the damage amount should be adjusted, as appropriate, whenever monies are to be placed in a non-interest bearing account. This adjustment should correct for the anticipated effects of inflation over the time estimated to complete expenditures for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(2) In order to make the adjustment in paragraph (b)(1) of this section, the authorized official acting as trustee should adjust the damage amount by the rate payable on notes or bonds issued by the United States Treasury with a maturity date that approximates the length of time estimated to complete expenditures for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

* * * * *

22. Section 11.93 is amended to revise paragraph (a) to read as follows:

§ 11.93 Post-assessment phase—Restoration Plan.

(a) Upon determination of the amount of the award of a natural resource damage claim as authorized by section 107(a)(4)(C) of CERCLA, or section 311(f)(4) and (5) of the CWA, the authorized official shall prepare a Restoration Plan as provided in section 111(i) of CERCLA. The plan shall be based upon the Restoration and Compensation Determination Plan described in § 11.81 of this part. The Plan shall describe how the monies will be used to address natural resources, specifically what restoration, replacement, or acquisition of the equivalent resources will occur. The Plan shall also describe how monies will be used to address the services that are lost to the public until restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is completed. The Restoration Plan shall be prepared in accordance with the guidance set forth in § 11.81 of this part.

* * * * *

[FR Doc. 91-9890 Filed 4-26-91; 8:45 am]
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Part IV

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines and Advisory Committee Meeting; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on May 30-31, 1991. The meeting will be held at the Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015, in the Chevy Chase Rooms 1 and 2, starting at approximately 9 a.m. on May 30 to adjournment at approximately 3 p.m. on May 31. The meeting will be open to the public to discuss the following proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958, May 7, 1986):

Proposed Major Actions to the NIH Guidelines;

Five additions to appendix D of the NIH Guidelines Regarding Human Gene Transfer Protocols;

Amend Section I-C-2 and delete Section III-A-2 in its entirety of the NIH Guidelines regarding deliberate release into the environment of any organism containing recombinant DNA, except certain plants as described in Appendix L.

Amend the Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects: (1) To eliminate the review responsibilities of the Human Gene Therapy Subcommittee from the approval process of human gene therapy protocols as described in the Introduction, Sections 4, 6, 7, 9, 10, 12; (2) to totally transfer the review responsibilities of the Human Gene Therapy Subcommittee to the parent committee, the Recombinant DNA Advisory Committee, as described in the Introduction, Section 1 and 4; and (3) to have more explicit directives for animal model systems and cell culture studies in Section I-B-2.

Amend Appendices B-I-B-1 and B-I-B-2 of the NIH Guidelines to include only pathogenic genera and species of the bacterial order, Actinomycetales, in the current list of microorganisms.

Review the proposal for a registry of gene transfer patients entitled: "The Gene Transfer Patient and Provider Network (GENTRANET)".

Other Matters To Be Considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, telephone (301) 496-9838, fax (301) 496-9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: April 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-9999 Filed 4-26-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958, May 7, 1986).

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals.

These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on May 30-31, 1991. After consideration of these proposals and comments by the RAC, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES: Comments received by May 20, 1991, will be reproduced and distributed to the RAC for consideration at its May 30-31, 1991, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health Bethesda, Maryland 20892, or sent by fax to 301-496-9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9838.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocol/Dr. Lotze

In a letter dated September 13, 1990, Dr. Michael T. Lotze of the University of Pittsburgh School of Medicine indicated his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

"The Administration of Interleukin-2, Interleukin-4, and Tumor Infiltrating Lymphocytes to Patients with Melanoma."

The protocol was reviewed during the Human Gene Therapy Subcommittee meeting on November 30, 1990, and forwarded to the Recombinant DNA Advisory Committee on February 4, 1991, for their approval. The Recombinant DNA Advisory Committee deferred approval and sent the protocol back to the Human Gene Therapy Subcommittee for further deliberations on April 5, 1991.

On April 5, 1991, the Human Gene Therapy Subcommittee gave provisional approval with the stipulation that more

information be provided about the quantitative assays of gene marked tumor infiltrating lymphocytes. It was suggested that the consent form concerning the gene marking be separated form the consent from regarding interleukin-2 and interleukin-4.

The Human Gene Therapy Subcommittee forwarded the protocol to the Recombinant DNA Advisory Committee for consideration during the May 30-31, 1991, meeting.

II. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocols/Dr. Brenner

In a letter dated February 22, 1991, Dr. Malcolm K. Brenner of St. Jude Children's Research Hospital indicated his intention to submit two human gene transfer protocols to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval.

The first protocol is entitled: "A Phase I/II Trial of High-Dose Carboplatin and Etoposide with Autologous Marrow Support for Treatment of Stage D Neuroblastoma in First Remission: Use of Marker Genes to Investigate the Biology of Marrow Reconstitution and the Mechanism of Relapse."

The second protocol is entitled: "A Phase II Trial of High-Dose Carboplatin and Etoposide with Autologous Marrow Support for Treatment of Relapse/Refractory Neuroblastoma Without Apparent Bone Marrow Involvement: Use of Marker Genes to Investigate the Biology of Marrow Reconstitution and the Mechanism of Relapse." This second protocol was reviewed during the Human Gene Therapy Subcommittee meeting on November 30, 1990. The protocol was deferred with a request for additional data and further consideration at the next meeting on April 5, 1991.

On April 5, 1991, the Human Gene Therapy Subcommittee gave provisional approval to both protocols with the stipulation that reviewers further evaluate Dr. Brenner's procedures for in vitro bone marrow assays to detect residual tumor. Second, a provision for early termination of the protocol needs to be developed if the relapse rate in the patient population exceeds the statistical predictions.

The Human Gene Therapy Subcommittee forwarded these protocols to the Recombinant DNA Advisory Committee for consideration during the May 30-31, 1991, meeting.

III. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocol/Dr. Deisseroth

In a letter dated December 20, 1990, Dr. Albert B. Deisseroth of the MD Anderson Cancer Center indicated his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

"Autologous Transplantation for Chronic Myelogenous Leukemia: Retroviral Marking to Discriminate Between Relapses Arising from Residual Systemic Disease vs. Residual Contamination of Autologous Marrow."

The protocol was considered during the April 5, 1991, Human Gene Therapy Subcommittee meeting. The Human Gene Therapy Subcommittee gave provisional approval with the stipulation that there be a major revision of the consent form including text for differentiating the gene transfer part of the research from the other part of the research. Additional data needs to be provided about the level of neomycin resistance gene expression and BCR-Abl gene expression in colonies of cells isolated during blast crisis.

The Human Gene Therapy Subcommittee forwarded this protocol to the Recombinant DNA Advisory Committee for consideration during the May 30-31, 1991 meeting.

IV. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocol/Drs. Ladley and Woo

In a letter dated December 19, 1990, Drs. Fred D. Ladley and Savio L.C. Woo of the Baylor College of Medicine indicated their intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

"Hepatocellular Transplantation in Acute Hepatic Failure and Targeting Genetic Markers to Hepatic Cells."

This protocol was considered during the April 5, 1991, Human Gene Therapy Subcommittee meeting. The Human Gene Therapy Subcommittee gave provisional approval with the stipulation that more data be provided about the transduction efficiency of the neomycin resistance gene in human hepatocytes. Additional changes need to be made in the consent form which will clarify the differences between the hepatocellular transplantation procedures and the use of the neomycin resistance gene as a marker.

The Human Gene Therapy Subcommittee forwarded this protocol to the Recombinant DNA Advisory Committee for consideration during the May 30-31, 1991, meeting.

V. Amend Section I-C-2 and Delete Section III-A-2 of the "NIH Guidelines" regarding Deliberate Release

On December 6, 1990, the Planning Subcommittee met and made a series of recommendations for the Recombinant DNA Advisory Committee. Among these recommendations was the proposal to amend the *NIH Guidelines* to eliminate the Recombinant DNA Advisory Committee review of experiments involving deliberate environmental release of any organism containing recombinant DNA except certain plants as described in Appendix L. This recommendation reflects the fact that the Recombinant DNA Advisory Committee has not reviewed an experiment of this type for several years. Further, the U.S. Department of Agriculture and the Environmental Protection Agency are reviewing environmental release experiments within the framework of existing regulations.

At the Recombinant DNA Advisory Committee meeting on February 4, 1991, a motion was passed to publish in the Federal Register the notice that the Recombinant DNA Advisory Committee is considering relinquishment of review of experiments involving planned environmental release of organisms containing recombinant DNA.

Pending receipt of public comments the Recombinant DNA Advisory Committee will consider this matter further at its meeting on May 30-31, 1991.

Category of Experiments: Experiments that require RAC review and NIH and IBC approval before initiation. Section I-C-2 currently reads:

I-C-2. If they involve deliberate release into the environment or testing in humans of materials containing recombinant DNA developed with NIH funds, and if the institution that developed those materials sponsors or participates in those projects. Participation includes research collaboration or contractual agreements, but not mere provision of research materials.

Proposed amendment of this section reads:

I-C-2. If they involve testing in humans of materials containing recombinant DNA developed with NIH funds, and if the institution that developed those materials sponsors or participates in those projects. Participation includes research collaboration or contractual agreements, but not mere provision of research materials."

Category of Experiments: Experiments that require RAC review and NIH and IBC approval before initiation. Section III–A–2 currently reads:

III–A–2. Deliberate release into the environment of any organism containing recombinant DNA except those listed below. The term '*deliberate release*' is defined as a planned introduction of recombinant DNA-containing microorganisms, plants, or animals into the environment.

III–A–2–a. Introductions conducted under conditions considered to be accepted scientific practices in which there is adequate evidence of biological and/or physical control of the recombinant DNA-containing organisms. The nature of such evidence is described in appendix L.

III–A–2–b. Deletion derivatives and single base changes not otherwise covered by the Guidelines.

III–A–2–c. For extrachromosomal elements and microorganisms (including viruses), rearrangements and amplifications within a single genome. Rearrangements involving the introduction of DNA from different strains of the same species would not be covered by this exemption.

It is proposed to delete this Section III–A–2 in its entirety.

VI. Amend the "Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects"

A. Review Process

In a memorandum dated April 8, 1991, from Dr. W. French Anderson of the National Institutes of Health, he proposes that the Human Gene Therapy Subcommittee be eliminated from the review process involving human gene therapy protocols. These review responsibilities would be totally transferred to the parent committee, the Recombinant DNA Advisory Committee.

In his letter, he states:

Over the past year the RAC has undertaken a review of its mission. Many of its earlier duties are no longer required, but human gene therapy remains as a major responsibility. The RAC has been acquiring over the past several years the expertise to review clinical protocols and, in fact, there is now almost a duplication of review, in some cases by the same people (there are seven individuals who sit on both the Subcommittee and the RAC). I believe that the Subcommittee has now fulfilled its role and should be dissolved. However, the expertise of the Subcommittee members should not be lost. Accordingly, those Subcommittee members with unexpired terms could serve as ad hoc consultants to the RAC until their appointments are completed. By having the national review limited to the RAC, time would be saved in the review process and duplication would be avoided. If the number of RAC meetings were increased to four per year, then the total number of meetings would be reduced from six to four, and the length of the review process would be decreased. Local review, RAC national review, and FDA ongoing review would appear to be more than adequate to insure a thorough oversight. It would seem to be timely for the RAC to consider this possibility.

The proposed amendment to the Introduction, section 4, 6, 7, 9, 10, 12 of the Points to Consider deletes all references to the Subcommittee. The text reads as follows:

(4) A proposal will be considered by the RAC only after the protocol has been approved by the local Institutional Biosafety Committee (IBC) and by the local Institutional Review Board (IRB) in accordance with Department of Health and Human Services (DHHS) Regulations for the Protection of Human Subjects (45 Code of Federal Regulations, Part 46). (If a proposal involves children, special attention should be paid to subpart D of these DHHS regulations.) The IRB and IBC may, at their discretion, condition their approval on further specific deliberation by the RAC. Consideration of proposals by the RAC may proceed simultaneously with review by any other involved federal agencies [1] provided that the RAC is notified of the simultaneous review. Meetings of the Committee will be open to the public except where trade secrets or proprietary information would be disclosed. The committee prefers that the first proposals submitted for RAC review contain no proprietary information or trade secrets, enabling all aspects of the review to be open to the public. The public review of these protocols will serve to inform the public not only on the technical aspects of the proposals but also on the meaning and significance of the research.

(6) Following the Introduction, this document is divided into four parts. Part I requests a description of the protocol with special attention to the short-term risks and benefits of the proposed research to the patient [2] and to other people, the selection of patients, informed consent, and privacy and confidentiality. In part II, investigators are requested to address special issues pertaining to the free flow of information about the clinical trials. These issues lie outside the usual purview of IRBs and reflect general public concerns about biomedical research. Part III summarizes other requested documentation that will assist the RAC in its review of the proposals. Part IV specifies reporting requirements.

(7) The RAC will not at present entertain proposals for germ line alterations but will consider for approval protocols involving somatic cell gene therapy. The purpose of somatic cell gene therapy is to treat an individual patient, e.g., by inserting a properly functioning gene into a patient's somatic cells. In germ line alterations, a specific attempt is made to introduce genetic changes into the germ (reproductive) cells of an individual, with the aim of changing the set of genes passed on to the individual's offspring.

(9) In their evaluation of proposals involving the transfer of recombinant DNA into human subjects, the RAC will consider whether the design of such experiments offers adequate assurance that their consequences will not go beyond their purpose, which is the same as the traditional purpose of all clinical investigations, namely, to protect the health and well-being of the individual subjects being treated while at the same time gathering generalizable knowledge.

Two possible undesirable consequences of the transfer of recombinant DNA would be unintentional: (1) vertical transmission of genetic changes from an individual to his or her offspring or (2) horizontal transmission of viral infection to other persons with whom the individual comes in contact. Accordingly, this document requests information that will enable the RAC to assess the possibility that the proposed experiments will inadvertently affect reproductive cells or lead to infection of other people (e.g., treatment personnel or relatives).

(10) In recognition of the social concern that surrounds the subject of gene transfer, the RAC will cooperate with other groups in assessing the possible long-term consequences of the transfer of recombinant DNA into human subjects and related laboratory and animal experiments in order to define appropriate human applications of this emerging technology.

(12) Investigators should indicate points which are not applicable with a brief explanation. Investigators submitting proposals that employ essentially the same vector systems (or with minor variations), and/or that are based on the same preclinical testing as proposals previously reviewed by the Recombinant DNA Advisory Committee (RAC), may refer to preceding documents without having to rewrite such material."

This proposed amendment will be considered during the Recombinant DNA Advisory Committee May 30–31, 1991, meeting.

B. Preclinical Studies

In a letter dated March 4, 1991, Dr. R. Scott McIvor of the University of Minnesota proposed having more explicit directives for animal model systems and cell culture studies in Section I–B–2 of the Points to Consider.

Section I–B–2 in the Points to Consider currently reads:

2. Preclinical studies, including risk-assessment studies.

Describe the experimental basis (derived from tests in cultured cells and animals) for claims about the efficacy and safety of the proposed system for gene delivery and explain why the model(s) chosen is (are) the most appropriate.

During the Human Gene Therapy Subcommittee meeting of April 5, 1991, the subcommittee recommended the following text change in the Points to Consider:

I–B–2. Preclinical studies, including risk assessment studies. Provide results that demonstrate the safety, efficacy, and feasibility of the proposed procedures using animal and/or cell culture model systems, and explain why the models chosen are the most appropriate.

VII. Amend Appendices B–I–B–1 and B–I–B–2 of the "NIH Guidelines" regarding the Bacterial Order, Actinomycetales.

In a written request dated April 15, 1991, Dr. Diane O. Fleming of Merck & Co., Inc., requested that only pathogenic genera and species of the bacterial order, Actinomycetales, be included in Appendix B–I–B–1 of the NIH Guidelines.

It is proposed that the following pathogens be included under Bacterial Agents in Appendix B–I–B–1 of the NIH Guidelines as follows:

Actinomadura madurae
Actinomadura pelletieri
Actinomyces bovis
Actinomyces israelii
Nocardia asteroides
Nocardia brasiliensis

In Appendix B–I–B–2, the entry under Actinomycetes will be deleted.

This proposed amendment will be considered during the Recombinant DNA Advisory Committee on May 30–31, 1991, meeting.

VIII. Registry of Gene Transfer Patients

In a memorandum dated March 27, 1991, Dr. Fred Ledley requested the Recombinant DNA Advisory Committee to review a proposed registry of gene transfer patients entitled: The Gene Transfer Patient and Provider Network (GENTRANET). Funding for this registry will be requested separately through an application to the Division of Research Grants, NIH.

This document will be considered during the Recombinant DNA Advisory Committee May 30–31, 1991, meeting.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 30592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: April 19, 1991.

Jay Moskowitz,

Associate Director for Science Policy and Legislation.

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Part V

Department of Education

34 CFR Part 668
Student Assistance General Provisions;
Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840-AB67

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations to implement a system for determining the immigration status of noncitizen applicants for student financial assistance under title IV of the Higher Education Act of 1965, as amended (title IV, HEA). The purpose of the proposed regulations is twofold: (1) To reduce the potential of fraud and abuse in the title IV, HEA programs by improving the institutions' ability to determine whether these applicants are eligible for title IV, HEA assistance under § 668.7(a)(4)(ii), and (2) to substantially relieve most institutions of the burden of manually inspecting the immigration status documents of all noncitizen applicants for title IV, HEA assistance.

DATES: Comments must be received on or before June 28, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Adara L. Walton, Acting Chief, Student Verification Branch, Division of Policy and Program Development, U.S. Department of Education, (Regional Office Building 3, room 4613), Washington, DC 20202-5451.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Claude Denton, Chief, Verification Development Section, Student Verification Branch, Division of Policy and Program Development, U.S. Department of Education, (Regional Office Building 3, room 4613), Washington, DC 20202-5451, Telephone (202) 708-4601.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations implement requirements that apply to all institutions that participate in the title IV, HEA student financial assistance programs. For purposes of this subpart, the title IV, HEA programs include the Pell Grant, Stafford Loan, PLUS, Supplemental Loans for Students (SLS), State Student Incentive Grant (SSIG), Income Contingent Loan (ICL), Perkins Loan, College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs.

These regulations are being proposed to reduce the potential of fraud and abuse in the title IV, HEA programs by implementing a system that will help to ensure that only eligible aliens receive Federally-subsidized student financial assistance in accordance with the provisions of § 668.7(a)(4)(ii). The Secretary believes that the proposed immigration status confirmation procedure will assure that Federal student financial assistance dollars are used to provide educational opportunities to U.S. citizens, U.S. nationals, or noncitizens who prove that they possess an immigration status that makes them eligible for title IV, HEA financial assistance. At the same time, the proposed confirmation procedure will relieve most institutions of a substantial portion of the administrative burden currently associated with identifying the immigration status represented on immigration documents and determining whether those documents are authentic.

These proposed regulations would establish procedures for institutions to use in determining the eligibility of noncitizen applicants for title IV, HEA benefits. The term "confirmation" of immigration status as set forth in subpart I is equivalent to the term "verification" of immigration status that is commonly used by the Immigration and Naturalization Service (INS) and other agencies using the INS's immigration status verification system. The Secretary substituted the term "confirmation" in place of the term "verification" in order to avoid confusion with the process of verification of the student's Expected Family Contribution in 34 CFR part 668, subpart E. Therefore, institutions may not count confirmations under subpart I toward the thirty percent verification ceiling mandated by section 484(f) of the Higher Education Act of 1965, as amended (HEA).

Background

A major objective of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603) (IRCA) is to prevent ineligible aliens from receiving benefits through various public assistance programs (including the title IV, HEA programs). In an effort to meet this objective, IRCA amended section 484 of the HEA to provide for the implementation of a procedure whereby all postsecondary institutions would be required to secure from the INS confirmation that each noncitizen applicant for title IV, HEA assistance possessed the immigration status needed to qualify for that assistance. The IRCA amendments specifically directed institutions to use an applicant's alien file or alien admission number to confirm the applicant's immigration status through an automated confirmation system designed by INS for use with institutions. The IRCA confirmation procedure would have required most of the 8000 institutions that participate in the title IV, HEA programs to establish direct electronic access to the INS computerized database.

Section 121(c)(4)(B)(ii) of IRCA further provides that an agency may waive the application of the IRCA amendments to a program covered by the amendments if the agency determined that the costs of administration of the procedure required by IRCA would exceed the estimated savings to be achieved from use of that procedure. On March 28, 1988, the Secretary exercised his authority under IRCA to waive the requirement that institutions use the direct access immigration status confirmation procedure prescribed by IRCA. The Secretary made his decision to waive implementation of the IRCA confirmation requirements as a result of a national pilot study conducted by Department staff showing that the costs of implementing the IRCA direct-access method of confirmation would outweigh any expected savings.

The Secretary maintained, however, that as an alternative to the IRCA direct-access procedure, the Department would explore the use of a centralized matching program between the Department and INS that could accomplish the IRCA objectives in a more cost-effective and efficient manner. The Secretary also maintained that the proposed centralized matching program would relieve most institutions of a significant portion of the administrative burden currently associated with inspecting immigration documents. The alternative procedure, which become operational in January 1989, provides the Department with access to INS data by means of an electronic data exchange between INS and the Department's central processing system, which is operated by an entity under contract with the Department to process most application data for title IV, HEA benefits. These proposed regulations would implement this centralized matching program, as well as a second back-up confirmation procedure to be used if the data exchange does not result in a match or if an application is not processed through the Department's central processing system.

Regulatory Changes

Section 484(a)(5) of the HEA requires, in part, that to be eligible to receive any Federal financial assistance under title IV of the HEA, a student must be a citizen or national of the United States, a permanent resident of the United States, or in the United States for other than a temporary purpose and able to provide evidence from the INS of the student's intent to become a permanent resident. Therefore, to demonstrate eligibility for assistance under the Pell Grant, SEOG, SSIG, Stafford Loan, PLUS, SLS, CWS, ICL, and Perkins Loan programs, § 668.7(a)(4)(ii) requires non-U.S. citizen applicants to provide evidence from the INS that they are permanent residents of the United States or are in the United States for other than a temporary purpose with the intention of becoming citizens or permanent residents of the United States. In order to improve an institution's ability to determine whether a student satisfies the eligibility requirements of § 668.7(a)(4)(ii), the Department has instituted a matching program with the INS, referred to in these rules as primary confirmation, which attempts to match immigration status information from most Federal student financial aid applications with INS data. A match confirms that the INS verification of a student's immigration status indicates that the student meets the citizenship eligibility requirements of title IV student financial assistance and, therefore, fulfills the documentation requirements of § 668.7(a)(4)(ii).

If a claim to eligible immigration status based on data in a student financial aid application is not confirmed by INS data as a result of primary confirmation, the proposed regulations would require the Department to notify the student that the INS did not confirm the student's eligible immigration status. Before taking any action with regard to whether this student, or a student whose application data were not processed by the central processing system, is eligible under § 668.7(a)(4)(ii), institutions would be required to provide the applicant an opportunity to prove his or her eligible noncitizen status by submitting INS documentation of immigration status to the institution. Within ten days after receipt of these documents, the institution would be required to institute a second stage of investigation of the claim; this second step is referred to in these proposed rules as secondary confirmation. To perform secondary confirmation, an institution must submit to the INS the immigration documents provided by the applicant to the institution and request that INS search its other automated or paper files in an effort to determine the immigration status of the student, as well as to evaluate the authenticity of the INS documents provided by the student.

Part 668—Student Assistance General Provisions

Section 668.132 Institutional Determinations of Eligibility Based on Primary Confirmation.

In order to comply with 34 CFR 668.7(a)(4)(ii), a student must provide evidence from the INS that the student's immigration status is an eligible status for purposes of title IV, HEA program aid. Currently, an institution routinely must inspect the immigration documents provided by the student to determine if the student's immigration status is a title IV, HEA-eligible status. An institution then documents its determination of the student's immigration status in the student's financial aid file. The Secretary believes that this manual immigration status determination process is an administratively burdensome and often confusing exercise, and that institutions using the manual process alone do not benefit from INS expertise in detecting forged or altered documents.

These proposed regulations would reduce the administrative burden on the institutions and strengthen the immigration status determination process by substantially replacing this manual confirmation procedure with primary confirmation. Primary confirmation is a procedure that uses the INS's Alien Status Verification Index (ASVI) database, an automated file containing immigration status information for approximately 22 million aliens. Using the primary confirmation procedure, data relating to immigration status that is contained in either an Application for Federal Student Aid or a Multiple Data Entry application filed by a noncitizen is electronically "exchanged" between the Department of Education's central processing system (CPS) and the ASVI database to confirm the student's immigration status and to detect any fraudulent misrepresentations.

To obtain a primary confirmation match, the identifying data and immigration status information on a student's application for Title IV, HEA program aid must correspond to the data located in the ASVI database. The ASVI database is designed so that a match will occur only for those applicants who meet the eligibility requirements of § 668.7(a)(4)(ii). The results of this matching process appear as a message on the output document, which is generated as the result of the processing of data provided in the Application for Federal Student Aid or Multiple Data Entry application. The message printed on the output document varies depending upon whether a match occurred. (If a noncitizen files a financial aid application other than an Application for Federal Student Aid or a Multiple Data Entry application, the application will not be processed by the Department of Education's CPS, the primary confirmation procedure will not occur, and an output document will not be generated.)

For applicants with output documents indicating that a primary confirmation match took place, the proposed rules require no action by institutions other than to recognize the appropriate message on the output document. Because a primary confirmation data match means that an applicant has satisfied the eligibility requirements of section 484(a)(5) of the HEA and § 668.7(a)(4)(ii) of the Student Assistance General Provisions regulations, students with output documents evidencing a primary confirmation match are ordinarily not required by these proposed rules to produce documentation of their immigration status. The institution does require the applicant to produce documentation, however, if the institution has documentation that conflicts with the immigration status reported on the output document or has reason to believe that the immigration status reported on the output document is incorrect.

Based on preliminary evaluations of the results of matching programs already conducted, the Secretary believes that the primary confirmation system will determine that approximately 80% of noncitizen applicants who have their applications processed through the Department's CPS will meet the citizenship requirements for Title IV, HEA program aid, thereby substantially reducing the institutional burden associated with immigration document inspection for these applicants. This reduction in burden, however, would be realized only by institutions with students that use the Application for Federal Student Aid or one of the Multiple Data Entry application processes.

Section 668.133 Conditions Under Which an Institution Shall Require Documentation and Request Secondary Confirmation

An institution shall request INS (1) to perform secondary confirmation for

each student whose output document instructs the student to provide the institution with proof of the student's immigration status and (2) to perform secondary confirmation for each student who did not use either the Application for Federal Student Aid or Multiple Data Entry application process and therefore will not receive an output document. An institution shall request INS to perform secondary confirmation when the institution has received an output document indicating that a student satisfies the eligibility requirements of § 668.7(a)(4)(ii) but the institution has documentation that conflicts with immigration status documents submitted by that student or reported on the output document, or the institution has reason to believe that the immigration status reported by the student or on the output document is incorrect.

An institution is not required to request secondary confirmation for a student who provides evidence of a U.S. citizen status, a U.S. national status, or eligibility under the provisions of § 668.7(a)(4)(iii) or § 668.7(a)(4)(iv).

Section 668.136 Institutional Policies and Procedures for Requesting Documentation and Receiving Secondary Confirmation

An institution shall establish and use written policies and procedures to implement the secondary confirmation process and to assist it in its determination of whether a student meets the eligibility requirements of § 668.7(a)(4)(ii). These policies and procedures must include: (1) Providing the student a deadline by which the student must submit immigration status documentation that the student wishes to have considered to support the claim that the student meets the requirements of § 668.7(a)(4)(ii), (2) the consequences of the student's failure to provide this documentation within the specified time period, and (3) the time period within which the institution will notify a student of the institution's determination regarding the student's eligibility under § 668.7(a)(4)(ii).

An institution's policies and procedures must also provide that the institution will not make a determination that a student is not an eligible noncitizen as defined in § 668.131 until the institution has provided the student an opportunity to submit the documentation in support of the student's claim of eligibility under § 668.7(a)(4)(ii).

An institution must furnish to each student required to undergo secondary confirmation a clear explanation of the documentation needed to satisfy the secondary confirmation requirements, and a clear explanation of the student's responsibilities with respect to providing the evidence of the student's immigration status required under § 668.7(a)(4)(ii), including the deadlines for completing any action required under this subpart and the consequences of failing to complete any required action.

Section 668.135 Institutional Procedures for Completing Secondary Confirmation

For a student required by § 668.136(a) to undergo secondary confirmation, the institution must, within ten business days after it receives the immigration status documents submitted by the student, forward a completed INS Document Verification Request Form G-845, along with a copy (front and back) of the student's immigration status documents submitted by the student, to the appropriate INS District office.

In accordance with its own policies, the INS then completes the response portion of the Form G-845, stating the student's immigration status and whether the student's immigration status documents are valid. INS is expected to return both the Form G-845 and the attached copies of the student's immigration status documents to the institution within ten working days after receipt by INS.

Section 668.136 Institutional Determinations of Eligibility That are not Based on Primary Confirmation

In the majority of cases, the institution shall rely on the response by INS to the Form G-845 to make its determination of whether the student's immigration status is a title IV-eligible immigration status under § 668.7(a)(4)(ii). The Secretary believes that an INS determination of a student's immigration status and the authenticity of the immigration status documents submitted by that student, should precede any decision by the institution with regard to the student's eligibility for title IV, HEA assistance. However, the Secretary does not wish an institution to delay title IV, HEA assistance unduly to a student awaiting a secondary confirmation response from INS when the institution can make a reasonable determination of the student's eligibility under § 668.7(a)(4)(ii) using documents submitted by the student.

Therefore, an institution shall make its determination concerning a student's eligibility under § 668.7(a)(4)(ii) prior to the institution's receipt of an INS response to the institution's Form G-845 request concerning that student, provided that: (1) At least fifteen business days have elapsed from the date the secondary confirmation request was sent to INS; (2) the institution possesses sufficient documentation concerning the student's immigration status to make this determination; (3) the institution has no documentation that conflicts with immigration status documentation submitted by that student; and (4) the institution has no reason to believe that the immigration status data reported by the student is incorrect.

If an institution has disbursed or released Title IV, HEA funds to a student in the award year or employed the student under the CWS program, and the institution determines, in reliance on the INS response to the institution's request for secondary confirmation regarding that student, that the student was in fact not an eligible noncitizen during the award year, the institution must establish and use policies and procedures to ensure that the institution provides the student with notice of the institution's determination, an opportunity to contest the institution's determination, and notice of the institution's final determination.

Section 668.137 Deadlines for Submitting Documentation and the Consequences of Failure to Submit Documentation

A student shall submit all documentation required by § 668.7(a)(4)(ii) to the institution on or before a reasonable deadline to be set by the institution. The deadline set by the institution shall be within the award year for which the student is applying for Pell Grant, SEOG, SSIG, CWS, ICL or Perkins Loan funds, or within the period of enrollment for which the student or parent is applying for Stafford Loan, SLS, or PLUS funds. If the student fails to submit the documentation by the deadline established by the institution, the institution may not disburse to the student, or certify that a student is eligible for, any Title IV, HEA funds for that period of enrollment or award year, employ the student under the CWS Program, or certify a Stafford, PLUS, or SLS loan application for the student for that period of enrollment.

Section 668.138 Liability

A student is liable for any SSIG, SEOG, or Pell Grant payment and for any Stafford, SLS, ICL or Perkins Loan made to the ineligible student. A PLUS Loan borrower is liable for any PLUS loan made to the PLUS Loan borrower on behalf of an ineligible student.

The Secretary does not take any adverse action against an institution with respect to any error in the institution's determination that a student is an eligible noncitizen if, in making that determination, the institution relied on a confirmation of the student's immigration status or eligibility under § 668.7(a)(4)(ii) as a result of the primary or secondary confirmation process.

If the institution does not rely on an INS confirmation in making its determination that a student is an eligible noncitizen, and the institution makes an error in that determination, the institution is liable for any title IV, HEA disbursements made to this student during the award year for which the student applied for title IV, HEA assistance.

Section 668.139 Recovery of Payments and Loan Disbursements to Ineligible Students

If the institution makes a grant payment or a disbursement of a Perkins loan or ICL to an ineligible student for which it is not liable, it must assist the Secretary in recovering the funds by making a reasonable effort to contact the student and collect the overpayment or ineligible loan disbursement. If the institution causes a Stafford, SLS, or PLUS loan to be disbursed to an ineligible student or PLUS loan borrower for which it is not liable, it must assist the Secretary in recovering the funds by notifying the lender that the student has failed to establish eligibility under the requirements of § 682.201(d).

If an institution is liable for a grant payment or Perkins loan or ICL disbursement to an ineligible student, the institution shall restore the amount equal to the payment or disbursement to the institution's ICL or Perkins loan fund or Pell Grant, SEOG, or SSIG account, even if the institution cannot collect the payment or loan disbursement from the student.

If an institution is liable for a Stafford, SLS or PLUS loan disbursement to an ineligible student, the institution shall restore the amount equal to the disbursement to the Stafford, SLS or PLUS lender and provide written notice to the borrower.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education. These proposed regulations are intended to reduce the institutional burden caused by manual inspections of immigration status of all noncitizen applicants for title IV, HEA assistance. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 668.133, 668.134 and 668.135 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations are available for public inspection, during and after the comment period, in room 4613, ROB-3, 7th and D Streets, SW., Washington, DC 20202-5451, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burden in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: April 23, 1991.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Stafford Loan Program, 84.032; PLUS Program, 84.032; College Work-Study Program, 84.033; Perkins Loan Program, 84.038; Income Contingent Loan Program, 84.220; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069)

The Secretary proposes to amend part 668 of title 34 of the Code of Federal Regulations by adding a new subpart I to read as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

* * * * *

Subpart I—Immigration Status Confirmation

668.130 General.
668.131 Definitions.
668.132 Institutional determinations of eligibility based on primary confirmation.
668.133 Conditions under which an institution shall require documentation and request secondary confirmation.
668.134 Institutional policies and procedures for requesting documentation and receiving secondary confirmation.
668.135 Institutional procedures for completing secondary confirmation.
668.136 Institutional determinations of eligibility that are not based on primary confirmation.
668.137 Deadlines for submitting documentation and the consequences of failure to submit documentation.
668.138 Liability.
668.139 Recovery of payments and loan disbursements to ineligible students.

Authority: 20 U.S.C. 1091, 1092, and 1094, unless otherwise noted.

* * * * *

Subpart I—Immigration Status Confirmation

§ 668.130 General.

(a) *Scope and purpose.* The regulations in this subpart govern the responsibilities of institutions and students in determining the eligibility of those noncitizen applicants for title IV, HEA assistance who must, under § 668.7(a)(4)(ii), produce evidence from the United States Immigration and Naturalization Service (INS) that they are permanent residents of the United States or in the United States for other than a temporary purpose with the intention of becoming citizens or permanent residents.

(b) *Student responsibility.* Upon the request of the Secretary or the institution at which an applicant for title IV, HEA financial assistance is enrolled or accepted for enrollment, an applicant who asserts eligibility under § 668.7(a)(4)(ii) shall provide documentation from the INS of immigration status.

(Authority: 20 U.S.C. 1091, 1094.)

§ 668.131 Definitions.

The following definitions apply to this subpart:

Eligible noncitizen: An individual possessing an immigration status that meets the requirements of § 668.7(a)(4)(ii).

Immigration status: The status conferred on a noncitizen under the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1182.

Output document: The Student Aid Report (SAR), Electronic Student Aid Report (ESAR), other document or automated data generated by the Department of Education's central processing system as the result of the processing of data provided in an Application for Federal Student Aid or Multiple Data Entry application.

Primary confirmation: A process by which the Secretary, by means of a matching program conducted with the INS, compares the information contained in an Application for Federal Student Aid or a Multiple Data Entry application regarding the immigration status of a noncitizen applicant for title IV HEA assistance with records of that status maintained by the INS in its Alien Status Verification Index (ASVI) system for the purpose of determining whether a student's immigration status meets the requirements of § 668.7(a)(4)(ii), and reports the results of this comparison on an output document.

Secondary confirmation: A process by which the INS, at the request of an institution, searches pertinent paper and automated INS files, other than the ASVI database, for the purpose of determining a student's immigration status and the validity of the INS documents submitted, and reports the results of this search to the institution.

(Authority: 20 U.S.C. 1091.)

§ 668.132 Institutional determinations of eligibility based on primary confirmation.

(a) Except as provided in § 668.133(a)(3), the institution shall determine a student to be an eligible noncitizen if the institution receives an output document for that student establishing that—

(1) The INS has confirmed the student's immigration status; and

(2) The student's immigration status meets the noncitizen eligibility requirements of § 668.7(a)(4)(ii).

(b) If an institution determines a student to be an eligible noncitizen in accordance with paragraph (a) of this section, the institution may not require the student to produce the documentation otherwise required under § 668.7(a)(4)(ii).

(Authority: 20 U.S.C. 1091,1094.)

§ 668.133 Conditions under which an institution shall require documentation and request secondary confirmation.

(a) *General requirements.* Except as provided in paragraph (b) of this section, an institution shall require the student to produce the documentation required under § 668.7(a)(4)(ii) and request the INS to perform secondary confirmation for a student claiming eligibility under § 668.7(a)(4)(ii), in accordance with the procedures set forth in § 668.135 if—

(1) The student's output document indicates that the student must provide the institution with evidence of the student's immigration status required under § 668.7(a)(4)(ii);

(2) The student did not use the Application for Federal Student Aid or a Multiple Data Entry application and, therefore, will not receive an output document as defined in § 668.131; or

(3) The institution receives an output document that satisfies the requirements of § 668.132(a)(1)(2), but the institution—

(i) Has documentation that conflicts with immigration status documents submitted by the student or the immigration status reported on the output document; or

(ii) Has reason to believe that the immigration status reported by the student or on the output document is incorrect.

(b) *Exclusions from secondary confirmation.* The institution may not require the student to produce the documentation required under § 668.7(a)(4)(ii) and may not request that INS perform secondary confirmation, if the student—

(1) Demonstrates U.S. citizen or national status; or

(2) Demonstrates eligibility under the provisions of § 668.7(a)(4)(iii) or (iv).

(Authority: 20 U.S.C. 1091, 1094.)

§ 668.134 Institutional policies and procedures for requesting documentation and receiving secondary confirmation.

(a) An institution shall establish and use written policies and procedures for requesting proof, and securing confirmation, of the immigration status of applicants for title IV, HEA student financial assistance who claim to meet the eligibility requirements of § 668.7(a)(4)(ii). These policies and procedures must include—

(1) Providing the student a deadline by which to provide the documentation that the student wishes to have considered to support the claim that the student meets the requirements of § 668.7(a)(4)(ii);

(2) Providing to the student information concerning the consequences of a failure to provide the documentation by the deadline set by the institution; and

(3) Providing that the institution will not make a determination that the student is not an eligible noncitizen until the institution has provided the student the opportunity to submit the documentation in support of the student's claim of eligibility under § 668.7(a)(4)(ii).

(b) An institution shall furnish, in writing, to each student required to undergo secondary confirmation—

(1) A clear explanation of the documentation the student must submit as evidence that the student satisfies the requirements of § 668.7(a)(4)(ii); and

(2) A clear explanation of the student's responsibilities with respect to the student's compliance with § 668.7(a)(4)(ii), including the deadlines for completing any action required under this subpart and the consequences of failing to complete any required action, as specified in § 668.137.

(Authority: 20 U.S.C. 1091, 1092, 1094.)

§ 668.135 Institutional procedures for completing secondary confirmation.

Within 10 business days after an institution receives the documentation evidence of immigration status submitted by a student required to undergo secondary confirmation, the institution shall—

(a) Complete the request portion of the INS Document Verification Request Form G–845;

(b) Copy front and back sides of all immigration status documents received from the student and attach copies to the Form G–845; and

(c) Submit Form G–845 and attachments to the INS District Office.

(Authority: 20 U.S.C. 1091, 1094.)

§ 668.136 Institutional determinations of eligibility that are not based on primary confirmation.

(a) Except as provided in paragraphs (b) and (c) of this section, an institution shall make its determination concerning a student's eligibility under § 668.7(a)(4)(ii) by relying on an INS response to the Form G–845.

(b) An institution shall make its determination concerning a student's eligibility under § 668.7(a)(4)(ii) pending the institution's receipt of an INS response to the institution's Form G–845 request concerning that student, if—

(1) The institution has given the student an opportunity to submit documents to the institution to support the student's claim to be an eligible noncitizen;

(2) The institution possesses sufficient documentation concerning a student's immigration status to make that determination;

(3) At least 15 working days have elapsed from the date that the institution sent the Form G–845 request to the INS;

(4) The institution has no documentation that conflicts with the immigration status documentation submitted by the student; and

(5) The institution has no reason to believe that the immigration status reported by the applicant is incorrect.

(c) An institution must establish and use policies and procedures to ensure that if the institution has disbursed or released title IV, HEA funds to the student in the award year or employed the student under the CWS program, and the institution determines, in reliance on the INS response to the institution's request for secondary confirmation regarding that student, that the student was in fact not an eligible noncitizen during that award year, the institution provides the student with notice of the institution's determination, an opportunity to contest the institution's determination, and notice of the institution's final determination.

(Authority: 20 U.S.C. 1091, 1094.)

§ 668.137 Deadlines for submitting documentation and the consequences of failure to submit documentation.

(a) A student shall submit before a deadline specified by the institution all documentation the student wishes to have considered to support a claim that the student meets the requirements of § 668.7(a)(4)(ii). The deadline, set by the institution, must be within the award year for which the student is applying for Pell Grant, SEOG, SSIG, CWS, ICL or Perkins Loan funds, or within the period of enrollment for which the student or parent is applying for Stafford Loan, SLS, or PLUS funds.

(b) If a student fails to submit the documentation by the deadline established in accordance with paragraph (a) of this section, the institution may not disburse to the student, or certify the student as eligible for, any title IV, HEA program funds for that period of enrollment or award year, employ the student under the CWS Program, or certify a Stafford, PLUS, or SLS loan application for the student for that period of enrollment.

(Authority: 20 U.S.C. 1091, 1094.)

§ 668.138 Liability.

(a) A student is liable for any SSIG, SEOG, or Pell Grant payment and for any Stafford, SLS, ICL or Perking Loan made to the ineligible student.

(b) A PLUS loan borrower is liable for any PLUS loan made to the PLUS loan borrower on behalf of an ineligible student.

(c) The Secretary does not take any action against an institution with respect to an error in the institution's determination that a student is an eligible noncitizen if, in making that determination, the institution relied on—

(1) An output document for that student indicating that the INS has confirmed that the student's immigration status meets the eligibility requirements for title IV, HEA assistance; or

(2) An INS determination of the student's immigration status and the authenticity of the student's immigration documents, provided in response to the institution's request for secondary confirmation.

(d) Except as provided in paragraph (c) of this section, if an institution makes an error in its determination that a student is an eligible noncitizen, the institution is liable for any title IV, HEA disbursements made to this student during the award year for which the student applied for title IV, HEA assistance.

(Authority: 20 U.S.C. 1091, 1094.)

§ 668.139 Recovery of payments and loan disbursement to ineligible students.

(a) If an institution makes a payment of a grant or a disbursement of a Perkins loan or ICL to an ineligible student for which it is not liable in accordance with § 668.138, it shall assist the Secretary in recovering the funds by—

(1) Making a reasonable effort to contact the student; and

(2) Making a reasonable effort to collect the payment or Perkins loan or ICL disbursement.

(b) If an institution causes a Stafford, SLS, or PLUS loan to be disbursed to an ineligible student or PLUS loan borrower for which it is not liable in accordance with § 668.138, it shall assist the Secretary in recovering the funds by notifying the lender that the student has failed to establish eligibility under the requirements of § 682.201(d).

(c) If an institution is liable for a payment of a grant or Perkins loan or ICL disbursement to an ineligible student, the institution shall restore the amount equal to the payment or disbursement to the institution's ICL or Perkins loan fund or Pell Grant, SEOG, or SSIG account, even if the institution cannot collect the payment or disbursement from the student.

(d) If an institution is liable for a Stafford, SLS or PLUS loan disbursement to an ineligible student, the institution shall restore the amount equal to the disbursement to the Stafford, SLS or PLUS lender and provide written notice to the borrower.

(Authority: 20 U.S.C. 1091, 1094.)

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S.J. Res. 16/Pub. L. 102-35
Designating the Week of April 21-27, 1991, as "National Crime Victims' Rights Week". (Apr. 24, 1991; 105 Stat. 181; 1 page) Price: $1.00

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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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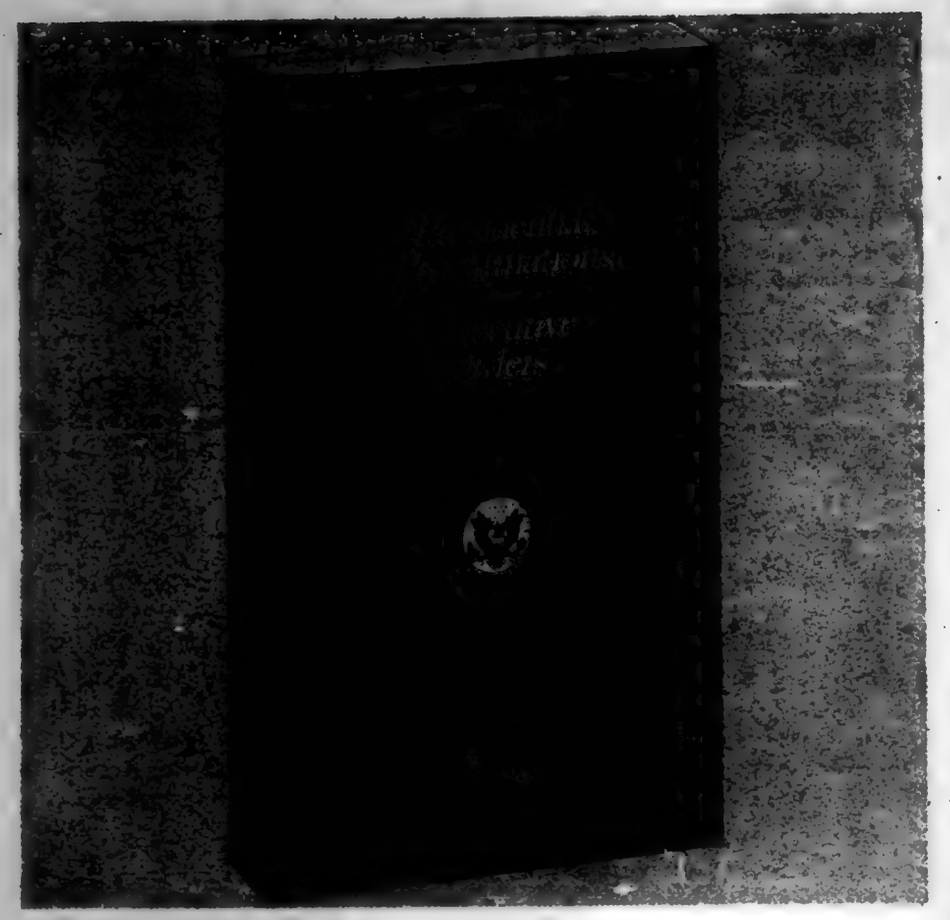

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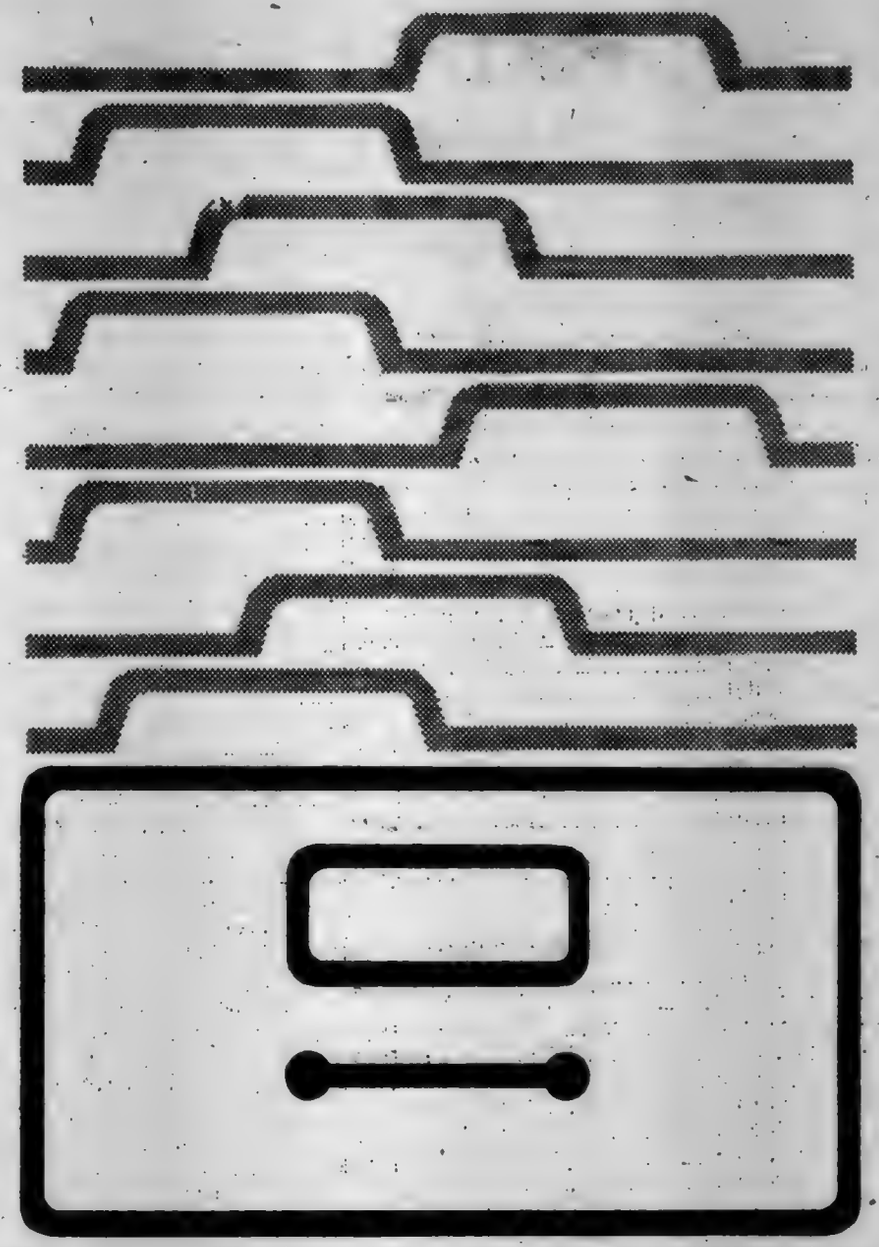

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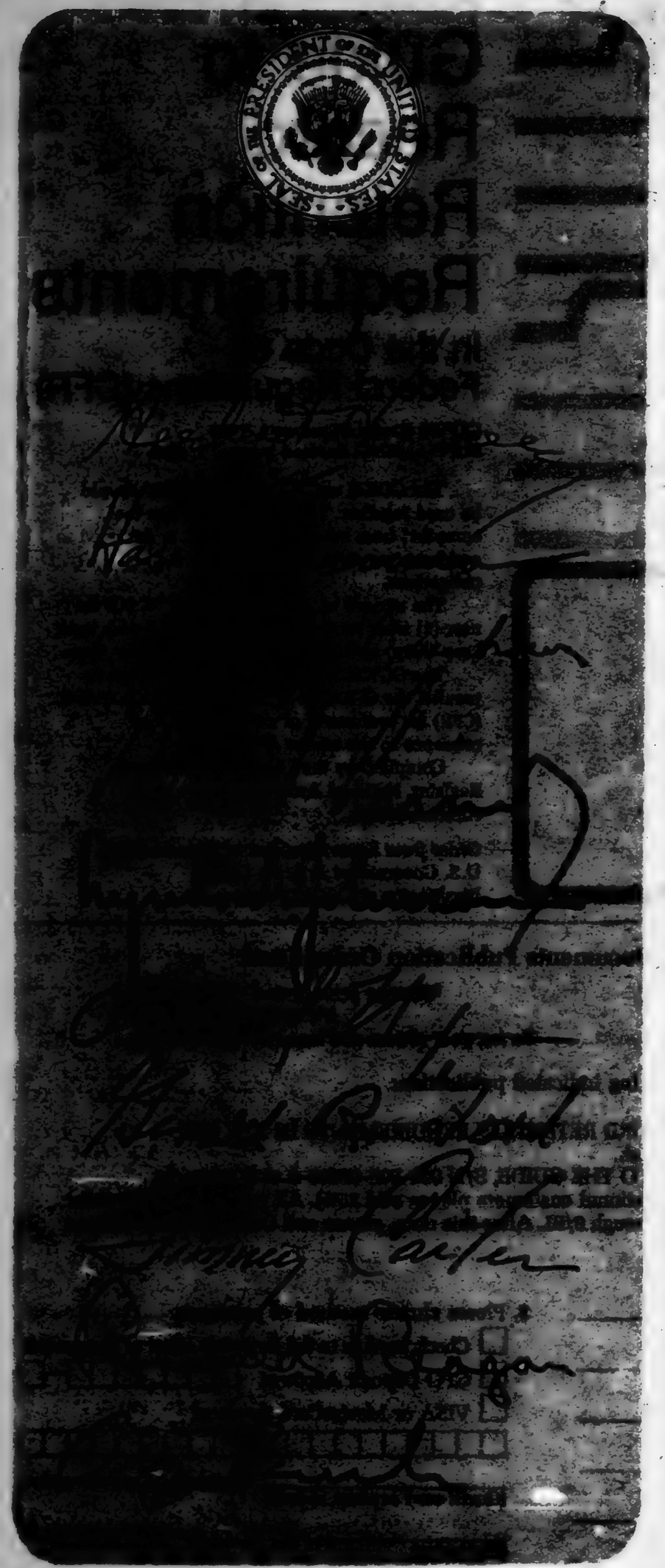

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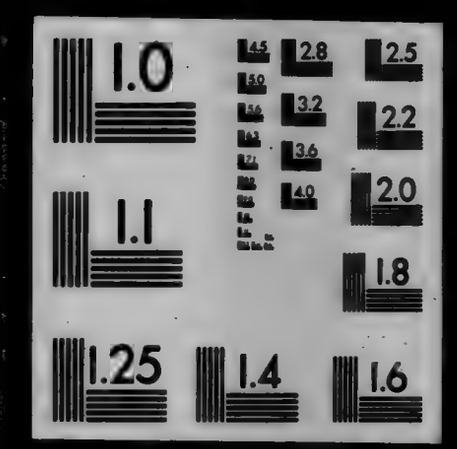
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319 and 321

[Docket No. 91-038]

Importation of Potatoes From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning foreign quarantine notices and importation of potatoes by adding restrictions on the importation of potato plants or tubers from the Canadian provinces of New Brunswick and Prince Edward Island. This emergency action is necessary to prevent the introduction of the necrotic strain of potato virus Y into the United States.

DATES: This interim rule is effective April 25, 1991. Consideration will be given only to comments received on or before July 1, 1991.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies of written comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 604, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-038. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: James Petit de Mange, Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8645.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 321 restrict the importation of potatoes from foreign countries, to prevent the introduction into the United States of potato wart and other injurious potato diseases and insect pests. Prior to the effective date of this document, § 321.8 of the regulations allowed potatoes to be imported without restrictions from Canada (except from Newfoundland and the Land District of South Saanich on Vancouver Island of British Columbia).

Recently a potato virus that presents a plant pest risk has been identified in potatoes in New Brunswick and Prince Edward Island. The necrotic strain of potato virus Y (PVY-N) (also known as tobacco veinal necrosis strain) can infect potatoes, tobacco, tomatoes, and peppers. Preliminary investigation by Agriculture Canada indicates that PVY-N has been traced back to a single farm in Prince Edward Island, and subsequent spread of PVY-N has been the result of movement of Atlantic variety seed potatoes from that farm to other farms in Prince Edward Island and New Brunswick.

The PVY-N virus is spread slowly in nature by aphids feeding on infected plants and transmitting the virus to healthy plants. Long-distance spread of the disease has resulted from the movement of infected potato tubers.

PVY-N is not known to exist in the United States, and its introduction would represent a threat to United States crops. There is no practical way to inspect commercial shipments of potatoes for infection with PVY-N, and there is no treatment available to destroy PVY-N in commercial shipments of potato tubers.

Therefore, we are adding importation restrictions in 7 CFR 321.9 for potatoes from Canada. For purposes of part 321, the term "potato" refers solely to tubers.

We are adding a requirement that potato tubers imported from New Brunswick or Prince Edward Island must be imported under a United States Department of Agriculture permit, and also (with one exception for processing potatoes, discussed below) must be accompanied by a phytosanitary certificate documenting certain facts about the origin and treatment of the potatoes, to ensure that they will not spread PVY-N.

New definitions in § 321.2 of the regulations identify potatoes imported from Canada by dividing them into the following three classes:

Seed potato. Potato tuber intended for planting and growing potato plants.

Table stock. Potato tuber intended for sale as a fresh vegetable.

Processing potato. Potato tuber intended to produce potato products, incapable of propagation, not to include table stock. We are imposing specific conditions for the importation of each class.

We are requiring that all seed potatoes from Canada must be accompanied by a phytosanitary certificate. If the seed potatoes were grown in Prince Edward Island, the phytosanitary certificate must state that the potatoes were grown in Prince Edward Island Seed Potato Inspection District 5 or 6. The PVY-N virus has never been found in these two areas in Prince Edward Island and none of the seed potatoes produced in these districts are the progeny of seed potatoes from any PVY-N infected farm.

Seed potatoes grown in New Brunswick must be accompanied by a phytosanitary certificate issued by Agriculture Canada stating that the potatoes were not the progeny of, nor were they grown on the same farm with, "Atlantic" variety seed potatoes that were produced on Prince Edward Island in 1988 or later. We are limiting the requirement of the additional declaration to "Atlantic" variety seed potatoes because infected "Atlantic" variety potatoes have been implicated in the spread of the disease, either directly or indirectly, in every case. Also, the quarantines established by Agriculture Canada prevent the movement of seed potatoes from any infected farm and from farms within 200 meters of an infected farm.

If the seed potatoes were not grown in Prince Edward Island or New Brunswick, the certificate must state their province of origin and state that they are not the progeny of potatoes of the "Atlantic" variety produced on Prince Edward Island in 1988 or later.

Table stock potatoes imported into the United States from New Brunswick and/or Prince Edward Island will be required to be accompanied by a phytosanitary

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certificate. The certificate must state that the potatoes were either not grown in New Brunswick or Prince Edward Island or that they were treated with a sprout inhibitor (such as chlorpropham or other sprout inhibitors labeled for use on potatoes in the United States), in accordance with labeled rates, approved and authorized by the Environmental Protection Agency (EPA).

Processing potatoes may be imported into the United States from New Brunswick and Prince Edward Island if they are accompanied by a phytosanitary certificate with an additional declaration stating that (1) the potatoes were not grown in New Brunswick or Prince Edward Island or (2) that the potatoes were treated with a sprout inhibitor as required for table stock potatoes. However, processing potatoes may be imported from New Brunswick and Prince Edward Island with a phytosanitary certificate, lacking additional declarations described in (1) and (2) above, if they are moved from the first U.S. port of entry to the processing plant, under U.S. Customs Service bond, or U.S. Department of Agriculture seal, applied at the port by a Plant Protection and Quarantine Programs representative.

Potatoes imported from New Brunswick and Prince Edward Island for table stock or processing present a low pest risk to American agriculture because they are intended for purposes other than propagation. The application of sprout inhibitors to table stock and processing potatoes will act as a safeguard to further reduce the pest risk.

This document imposes no restrictions on table stock and processing potatoes that are grown in and imported from areas in Canada outside New Brunswick and Prince Edward Island.

The regulations in 7 CFR 319.37, "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" govern the importation of living plants, plant parts, and seeds for or capable of propagation, and related articles." We are adding a definition of "*Solanum* spp. true seed" to 7 CFR 319.37-1 to distinguish the true seeds from the flowers of *Solanum* spp. and *Solanum* tubers, whole or cut, that are referred to as *Solanum* seeds or seed potatoes. The PVY-N virus is not reported to be transmitted through true seed. For the purposes of § 319.37 of this part, the term "potato," referred to in the prohibited list, means all parts of the plant except tubers which are regulated under part 321. Therefore, we are changing the regulations in § 319.37-2 that restrict the importation of nursery stock, to prohibit the importation of potato plants subject to that subpart from New Brunswick and Prince Edward Island, except true seeds.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of the necrotic strain of potato virus Y (PVY-N) into the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

The emergency nature of this action makes it impracticable for the Agency to follow the procedures of Executive Order 12291 and Secretary's Memorandum 1512-1 with respect to this interim rule. Immediate action is warranted to prevent the introduction of PVY-N into the United States.

This emergency situation also makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the Final Regulatory Impact Analysis, if required, will address the issues required in section 604 of Public Law 96-354, the Regulatory Flexibility Act.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this interim rule will be submitted for approval to the Office of Management and Budget. Written comments should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. A duplicate copy of comments should be submitted to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects

7 CFR Part 319

Agricultural commodities, Imports, Nursery stock, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

7 CFR Part 321

Agricultural commodities, Imports, Plant diseases, Plant pests, Plants (Agriculture), Potatoes, Quarantine, Transportation.

Accordingly, 7 CFR parts 319 and 321 are amended to read as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 319.37-1, the definition of *Solanum* spp. true seed" is added in alphabetical order as follows:

§ 319.37-1 Definitions.

* * * * *

Solanum spp. true seed. Seed produced by flowers of *Solanum* capable of germinating and producing new *Solanum* plants, as distinguished from *Solanum* tubers, whole or cut, that are referred to as *Solanum* seeds or seed potatoes.

* * * * *

3. In § 319.37-2 paragraph (a) the entries for "*Solanum* spp." * * * are revised to read as follows:

§ 319.37-2 Prohibited articles.

(a) * * *

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
* * *	* * *	* * *
Solanum spp. (excluding potato tubers which are subject to 7 CFR part 321).	All except Canada (excluding New Brunswick and Prince Edward Island).	Andean potato latent virus; Andean potato mottle virus; potato mop top virus; dulcamara mottle virus; tomato blackring virus; tobacco rattle virus; potato virus Y (tobacco veinal necrosis strain); potato purple top wilt agent; potato marginal flavescence agent; potato purple top roll agent; potato witches broom agent; stolbur agent; parastolbur agent; potato leaflet stunt agent; potato spindle tuber viroid.
Solanum spp. true seed (tuber-bearing species only—Section Tuberarium).	All except Canada	Andean potato latent virus; potato virus T; tobacco ringspot virus (Andean potato calico strain).
* * *	* * *	* * *

PART 321—RESTRICTED ENTRY ORDERS

4. The authority citation for part 321 is revised to read as set forth below and the authority citations following all the sections in part 321 are removed:

Authority: 7 U.S.C. 154, 159, and 162; 44 U.S.C. 35; 7 CFR 2.17, 2.51, and 371.2(c).

5. Section 321.2 is revised to read as follows:

§ 321.2 Definitions.

Canadian seed potato farm. A production unit identified as a single entity in the Canadian seed potato certification system as administered by Agriculture Canada.

Potato. Tuber of the common or Irish potato (*Solanum tuberosum*) and any botanical varieties or horticultural forms thereof, or any other tuber-producing species of the genus *Solanum* and any botanical varieties or horticultural forms of such species.

Processing potato. Potato tuber intended to produce potato products, incapable of propagation, not to include table stock.

Seed potato. Potato tuber intended for planting and growing potato plants.

Table stock. Potato tuber intended for sale as a fresh vegetable.

§ 321.3 [Amended]

6. In § 321.3 (a) "§ 321.8," is removed and "§§ 321.8 and 321.9," is added in its place.

7. Section 321.8 is revised and a new § 321.9 is added to read as follows:

§ 321.8 Special provision for the importation of potatoes from Bermuda.

Potatoes grown in Bermuda may be imported from Bermuda into the United States free of any restrictions under this subpart.

§ 321.9 Importation of potatoes from Canada.

Potatoes grown in Canada may be imported from Canada into the United States free of restrictions under this subpart other than those contained in this section.

(a) Potatoes grown in Newfoundland and the Land District of South Saanich on Vancouver Island of British Columbia may not be imported.

(b) Seed potatoes of the variety "Atlantic" grown in Prince Edward Island may not be imported.

(c) Seed potatoes (other than variety "Atlantic") grown in Prince Edward Island may be imported into the United States only if accompanied by a phytosanitary certificate issued by Agriculture Canada naming the potato variety and stating that the articles are seed potatoes and bearing an additional declaration stating that the potatoes were grown in Prince Edward Island Seed Potato Inspection District 5 or 6.

(d) Seed potatoes grown in New Brunswick may be imported into the United States only if accompanied by a phytosanitary certificate issued by Agriculture Canada stating that the articles are seed potatoes and stating the province of origin and bearing an additional declaration stating that the seed potatoes are neither the progeny of, nor were grown on the same Canadian seed potato farm with, any potatoes of the variety "Atlantic" produced on Prince Edward Island in 1988 or later.

(e) Seed potatoes imported from Canada that are not provided for in paragraphs (a), (b), (c) or (d) of this section must be accompanied by a phytosanitary certificate stating that the articles are seed potatoes and stating the province of origin and bearing an additional declaration stating that the seed potatoes are not the progeny of potatoes of the variety "Atlantic" produced on Prince Edward Island in 1988 or later.

(f) Table stock imported from New Brunswick and Prince Edward Island must be accompanied by a phytosanitary certificate with an additional declaration stating that (1) the potatoes were not grown in New Brunswick or Prince Edward Island or (2) the potatoes were treated with a sprout inhibitor (such as chlorpropham or other sprout inhibitors labeled for use on potatoes in the United States), in accordance with labeled rates, approved and authorized by the Environmental Protection Agency (EPA).

(g) Processing potatoes may be imported from New Brunswick and Prince Edward Island if they are accompanied by a phytosanitary certificate with an additional declaration stating that (1) the potatoes were not grown in New Brunswick or Prince Edward Island or (2) the potatoes were treated with a sprout inhibitor (such as chlorpropham or other sprout inhibitors approved for use on potatoes in the United States), in accordance with labeled rates, approved and authorized by the Environmental Protection Agency (EPA). Processing potatoes may be imported from New Brunswick and Prince Edward Island with a phytosanitary certificate, lacking additional declarations described in paragraph (g) (1) and (2) of this section, if they are moved from the first U.S. port of entry to the processing plant, under U.S. Customs Service bond, or U.S. Department of Agriculture seal, applied at the port by a Plant Protection and Quarantine Programs representative.

(h) Importers must obtain an import permit issued by the United States Department of Agriculture for which phytosanitary certificates are required by paragraphs (c) through (g) of this section.

Done in Washington, DC, this 25th day of April 1991.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-10135 Filed 4-29-91; 8:45 am]
BILLING CODE 3410-34-M

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Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV-91-255]

Irish Potatoes Grown in Washington; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 946 for the 1991–92 fiscal period. Authorization of this budget will permit the State of Washington Potato Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1991, through June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–447–2020.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 113 and Order No. 946, both as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of Washington potatoes under this marketing order and approximately 385 producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Washington potato producers and handlers may be classified as small entities.

The budget of expenses for the 1991–92 fiscal year was prepared by the committee which is the agency responsible for local administration of the order, and submitted to the Secretary of Agriculture for approval. The members of the committee are producers and handlers of Washington potatoes. They are familiar with the committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Washington potatoes. Because that rate is applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

The committee met February 7, 1991, and unanimously recommended a budget for the 1991–92 fiscal year of $35,000, the same as last year. The new budget includes a decrease of $1,100 in compliance audits to be offset by increases in office supplies, postage, audit, salaries, and salary expenses. All other budget categories remain the same.

The committee also recommended an assessment rate of $.005 per hundredweight (cwt.), which is $.001 more than last year's rate. The increased assessment rate will yield $30,000 in assessment income when applied to anticipated fresh market shipments of 6 million cwt., down from last year's shipments of just over 7 million cwt. Total assessment income, plus $5,000 from the committee's authorized reserve, will be adequate to cover budgeted expenses of $35,000. Estimated reserves at the beginning of the year will be $15,000.

While this action imposes some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on the producers. However, these costs will be offset by the benefits derived by the operation of the order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on March 14, 1991 [56 FR 10826]. That document contained a proposal to add § 946.244 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through April 15, 1991. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is hereby amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 946.244 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 946.244 Expenses and assessment rate.

Expenses of $35,000 by the State of Washington Potato Committee are authorized, and an assessment rate of $0.005 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1992. Unexpended funds may be carried over as a reserve.

Dated: April 25, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–10187 Filed 4–29–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 981

[FV-91-233FR]

Almonds Grown in California; Changes to the Administrative Rules and Regulations Concerning Transfers of Reserve Credits

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the administrative rules and regulations established under the Federal marketing order for California almonds to allow handlers to transfer reserve credits to other handlers before they have made reserve dispositions in excess of their own reserve obligations. This action is needed to facilitate the disposition of reserve almonds in years when volume regulations are in effect under the program. The action is based on a unanimous recommendation of the Almond Board of California (Board), which is responsible for local administration of the order, and other available information.

EFFECTIVE DATE: April 30, 1991.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3923.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981 [7 CFR part 981], both as amended, hereinafter referred to as the "order," regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with U.S. Department of Agriculture (USDA) Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of almonds who are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.1] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This final action allows handlers of California almonds to transfer reserve credits to other handlers before they have met their own reserve disposition obligations. This action relieves a restriction on handlers and is not expected to impose any additional burden or costs on handlers.

This action revises § 981.455 of Subpart—Administrative Rules and Regulations and is based on a unanimous recommendation of the Board and other available information.

The order contains provisions which allow the Secretary of Agriculture to establish salable and reserve percentages for a particular crop year. The crop year period designated under the order begins on each July 1 and ends on each June 30. When salable and reserve percentages are in effect, they apply to all marketable almonds received by handlers for their own accounts during a particular crop year. Handlers may dispose of salable almonds in any markets. Reserve almonds must be withheld from handling, disposed of by handlers in reserve outlets, or delivered to the Board for disposition in reserve outlets.

Section 981.55 of the order provides that any handler may, upon notice to and under the supervision and direction of the Board, transfer reserve credits to another handler. Handlers receive credits against their reserve obligations for disposing of almonds in reserve outlets or delivering almonds to the Board for disposition. Reserve outlets are specified in § 981.66(c) of the order, which states that no reserve almonds shall be sold in the United States, Puerto Rico, and the Canal Zone other than to governmental agencies or to charitable institutions for charitable purposes, except for diversion into almond oil, almond butter, poultry or animal feed, or into other channels which the Board finds are noncompetitive with existing normal markets for almonds, and with proper safeguards in each case to prevent such almonds thereafter entering the channels of trade in such normal markets.

Section 981.455(b) of the rules and regulations established under the order currently provides that if a handler has reserve disposition credit in excess of that handler's reserve obligation, all or part of the excess disposition may be credited to another handler. Section 981.50 of the order provides that a handler's reserve obligation for a particular crop year is equal to the quantity of almonds having a kernelweight equal to the reserve percentage of the kernelweight of all almonds such handler receives for its own account during that crop year.

This action amends § 981.455(b) to allow handlers to transfer reserve credits before they have made reserve dispositions in excess of their reserve obligations. The Board believes that this change is needed because the current language of § 981.455(b) unduly restricts handlers who wish to transfer credit.

In many crop years when a reserve percentage is in effect under the order, a portion of the reserve is released back to the salable category during the crop year or shortly after the end of the crop year. In some crop years when the reserve is released to the salable category, it is released in more than one installment. Section 981.48 of the order provides that requests to the Secretary of Agriculture to increase the salable percentage must be filed prior to May 15. The Secretary of Agriculture must then go through rulemaking proceedings before issuing a final rule to release reserve almonds to the salable category. Thus, handlers may not know until near the end or after the end of a particular crop year what their ultimate reserve obligations for that crop year will be.

Handlers are generally unwilling to dispose of reserve almonds which may be released to the salable category at a later date. Thus, because many handlers do not make reserve dispositions in excess of their reserve obligations by disposing of their almonds in reserve outlets or delivering those almonds to the Board, they are unable to utilize the reserve credit transfer provisions as currently specified in § 981.455(b) of the rules and regulations established under the order.

This action allows handlers to transfer reserve credits before they have made reserve dispositions in excess of their reserve obligations. This change is expected to benefit the industry by encouraging handlers who have developed markets for reserve almonds to sell as large a quantity of almonds to those markets as possible and transfer credits to other handlers who may not have developed such markets. Thus, the change would improve marketing efficiencies and facilitate the disposition of reserve almonds. The change should also provide buyers of reserve almonds with a more stable and reliable supply.

Language is also added to § 981.455(b) indicating that the transfer of reserve credit will not relieve the transferring handler from that handler's reserve obligation for the applicable crop year. Handlers must at all times hold in their

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possession or under their control a quantity of almonds necessary to meet their reserve obligations, less the quantity of almonds for which they have received reserve credits which have not been transferred to another handler and less any quantity for which they have otherwise been relieved by the Board of the responsibility to so hold.

Section 981.455(b) of the rules and regulations established under the order also currently provides that transferred reserve credit shall not exceed the quantity needed by the receiving handler to cover that handler's reserve obligation, that the Board shall complete the transfer of reserve credits upon receipt of an ABC Form 11 executed by both handlers, and that no transfer of reserve credits shall be made to satisfy a handler's inedible disposition obligation incurred pursuant to § 981.42(a) of the order. These provisions will continue to govern reserve credit transfers.

Notice of this action was published in the **Federal Register** on February 21, 1991 [56 FR 6996]. Written comments were invited through March 8, 1991. No comments were received.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581-0071.

After consideration of all relevant matter presented, the information and recommendations submitted by the Board, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Handlers are currently disposing of 1990-91 crop year reserve almonds and earning reserve credits; (2) some handlers have indicated that they would like to utilize this provision as soon as possible; (3) this action relieves a restriction on handlers; (4) handlers are aware of this action and need no additional time to comply; and (5) no useful purpose would be served by delaying the effective date of this action.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 981.455 is amended by revising paragraph (b) to read as follows:

§ 981.455 Interhandler transfers.

* * * * *

(b) *Transfers of reserve credits.* A handler may transfer reserve credits to another handler after having filed with the Board, in accordance with § 981.474, a completed ABC Form 13/14 covering the almonds to be diverted to a noncompetitive outlet and all the documentation applicable thereto. Such a transfer does not relieve the transferring handler of any reserve obligations for the applicable crop year. The transferred credit shall not exceed the quantity needed by the receiving handler to cover that handler's reserve obligation. The Board shall complete the transfer upon receipt of an ABC Form 11 executed by both handlers. No transfer of reserve credits shall be made to satisfy a handler's inedible disposition obligation incurred pursuant to § 981.42(a).

* * * * *

Dated: April 25, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-10156 Filed 4-29-91; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Parts 94 and 95

[Docket 90-252]

Importation of Animal Products and Byproducts From Countries Where BSE Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: We are amending our regulations by adding a list of countries where bovine spongiform encephalopathy (BSE) exists, and by prohibiting or restricting the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which have been in a country in which BSE exists. This action is necessary to reduce the risk that BSE could be introduced into the United States. This change will affect persons seeking to import the articles described above.

DATES: Interim rule effective April 30, 1991. Consideration will be given only to comments received on or before July 1, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-252. Comments may be inspected at room 1141 of the South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. John Gray, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7885.

SUPPLEMENTARY INFORMATION:

Background

A neurological disease of bovine animals and deer called bovine spongiform encephalopathy (BSE) has been identified in France, Great Britain, Northern Ireland, the Republic of Ireland, Oman, and Switzerland. Since the disease was first identified in 1986 there have been over 23,300 cattle on over 10,400 farms in Great Britain that have died or been destroyed as a result of BSE infection. BSE has also been found to affect a small number of deer in Great Britain. At the present time, BSE is not known to exist in the United States.

At our present state of knowledge about the disease, it appears that BSE in bovine animals and deer may be caused by the same agent that causes the disease scrapie in sheep and goats. The major means of spread of BSE appears to be through the use of ruminant feed containing meat and other products from ruminants infected with BSE, and through use of veterinary biologic products which contain byproducts from ruminants infected with BSE.

This rule prohibits or restricts the importation of certain meat, products, and byproducts from ruminants which have been in countries in which BSE exists. Some ruminant feed used in the United States contains imported

ruminant meat, products, and byproducts. Further, some imported ruminant byproducts are used in veterinary biologic products in the United States. BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants in countries in which BSE exists, are imported into the United States and are fed to or injected into ruminants in the United States. Therefore, the importation of these ruminant meat, products, and byproducts poses a risk of the introduction of BSE into the United States.

The Animal and Plant Health Inspection Service (APHIS) has determined that to prevent the introduction of BSE into the United States, the importation of fresh, frozen, and chilled meat, and edible products other than meat, from ruminants that have been in a country in which BSE exists must be prohibited unless the following conditions have been met: (1) All bones and visually identifiable lymphatic tissue and nerve tissue have been removed from the meat or edible product other than meat; (2) the meat or edible product other than meat is from ruminants that have not been in any country in which BSE exists during a period of time when the country permitted the use of ruminant protein in ruminant feed; and (3) the ruminants from which the meat or other edible products to be imported are derived were examined prior to slaughter by a salaried veterinarian employed by the national government of the country in which the ruminants were slaughtered, and found not to display any signs indicative of a neurological disorder.

These conditions are imposed on the importation of fresh, frozen, and chilled meat, and edible products other than meat, from ruminants that have been in a country in which BSE exists for the following reasons. First, the BSE agent concentrates in nerve and lymphatic tissue and bone marrow. Lymphatic and nerve tissue that is not visually identifiable does not constitute a significant risk of introducing BSE into the United States. Second, ruminants that have never been fed ruminant protein are extremely unlikely to develop BSE. Finally, ruminants that display signs of neurological disorder pose a high risk of being infected with BSE.

To ensure that a proper examination is made by persons able to detect signs indicative of a neurological disorder, ruminants from which the meat or other edible products to be imported are derived must be examined prior to slaughter by a salaried veterinarian employed by the national government of the country in which the ruminants are slaughtered for any signs indicative of a neurological disorder.

Further, APHIS has determined that to prevent the introduction of BSE into the United States, the importation of bone meal, blood meal, meat meal or tankage, fat, glands, and offal from ruminants that have been in a country in which BSE exists must be prohibited. These products are commonly added to ruminant feed, and we wish to remove the possibility that these animal byproducts from ruminants that have been in a country in which BSE exists could be imported and added to ruminant feed in the United States.

Further still, APHIS has determined that to prevent the introduction of BSE into the United States, the importation of ruminant serum from ruminants that have been in a country in which BSE exists must be prohibited, except when imported under a permit for scientific, educational, or research purposes. Imported serum is occasionally used in veterinary biologic products in the United States, and ruminant serum from ruminants that have been in countries in which BSE exists potentially could infect animals susceptible to infection with BSE that are injected with products made from it.

The regulations in 9 CFR parts 94 and 95 (the regulations) govern the importation of animals, animal products, animal byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases. The regulations currently prohibit or restrict the importation of ruminants and swine; fresh, chilled, and frozen meat of ruminants and swine; and other specified animal products and animal byproducts that originate in or are shipped from a country where certain animal diseases exist.[1] We are adding restrictions for certain meat, products, and byproducts of the types described above from ruminants that have been in countries in which BSE exists, and we are listing France, Great Britain, Northern Ireland, the Republic of Ireland, Oman, and Switzerland as countries in which BSE exists. We are also adding definitions of "Administrator," "Animal and Plant Health Inspection Service," and "United States" in part 95.

[1] Animal diseases addressed by Part 94 include, but are not limited to, rinderpest, foot-and-mouth disease, fowl pest, Newcastle disease, African swine fever, and hog cholera.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this rule without prior opportunity for public comment.

BSE is a serious animal disease that has caused great loss to the cattle industry of Great Britain, and the introduction of this disease into the United States would cause great harm to the United States cattle industry. The restrictions contained in this interim rule must be implemented immediately to reduce the risk that BSE could be introduced into the United States through importation of certain meat, products, and byproducts from ruminants that have been in countries in which BSE exists.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 for making it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

As an alternative to the provisions of this rule, we have considered taking no action, and enforcing the current import regulations. This alternative was

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rejected because it would allow meat, animal products, and animal byproducts that might spread BSE to be imported into the United States.

The provisions of this rule will not have a significant economic impact on large or small entities. The only businesses affected will be a small number of importers of meat, products, and byproducts of ruminants which have been in a country in which BSE exists. Alternative sources for these products are available in the United States.

In recent years no fresh, chilled, or frozen beef has been imported from France, Great Britain, Northern Ireland, Oman, or Switzerland. A small amount of beef was imported from the Republic of Ireland in recent years; the value of these imports for the period 1987–88 was only $1,200,000. Recently one plant in Northern Ireland has applied to export beef to the United States. If this plant is approved, it will bear additional deboning and preparation costs for meat exported to the United States, to ensure that the meat meets the requirements of this rule.

An exporter in Great Britain has recently expressed interest in exporting small amounts of meat from deer to the United States. The exporter would also have to bear additional deboning and preparation costs to ensure that the meat meets the requirements of this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

African swine fever, Animal diseases, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, rinderpest, and Swine vesicular disease.

List of Subjects in 9 CFR Part 95

Animal byproducts, Animal diseases, Imports, Livestock and livestock products.

Accordingly, the regulations in 9 CFR parts 94 and 95 are amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150aa, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. A new § 94.18 is added to read as follows:

§ 94.18 Ruminant meat and edible products from ruminants that have been in countries where bovine spongiform encephalopathy exists.

(a) Bovine spongiform encephalopathy exists in the following countries:France, Great Britain, Northern Ireland, the Republic of Ireland, Oman, and Switzerland.

(b) The importation of fresh, frozen, and chilled meat, and edible products other than meat, from ruminants that have been in any country listed in paragraph (a) of this section is prohibited unless the following conditions have been met:

(1) All bones and visually identifiable lymphatic tissue and nerve tissue have been removed from the meat or edible product other than meat;

(2) The meat or edible product other than meat is from ruminants that have not been in any country listed in paragraph (a) of this section during a period of time when the country permitted the use of ruminant protein in ruminant feed; and

(3) The ruminants were examined prior to slaughter by a salaried veterinarian employed by the national government of the country in which the ruminants were slaughtered, and found not to display any signs indicative of a neurological disorder.

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

3. The authority citation for part 95 is revised to read as follows:

Authority: 21 U.S.C. 111; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 95.1 [Amended]

4. The paragraph designations in § 95.1 are removed, the definitions are placed in alphabetical order, and new definitions of "Administrator," "Animal and Plant Health Inspection Service," and "United States" are added in alphabetical order to read as follows:

Administrator means the Administrator, Animal and Plant Health Inspection Service, or any individual authorized to act for the Administrator.

Animal and Plant Health Inspection Service means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

United States means the several States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

5. A new § 95.4 is added to read as follows:

§ 95.4 Bone meal, blood meal, meat meal, offal, fat, glands, and serum from ruminants that have been in countries in which bovine spongiform encephalopathy exists.

The importation of bone meal, blood meal, meat meal or tankage, offal, fat, and glands from ruminants that have been in any country listed in § 94.18 of this chapter, is prohibited. The importation of serum from ruminants that have been in any country listed in § 94.18 of this chapter is prohibited, except that serum from ruminants may be imported for scientific, educational, or research purposes if the Administrator determines that the importation can be made under conditions that will prevent the introduction of bovine spongiform encephalopathy into the United States. Serum from ruminants imported in accordance with this section must be accompanied by a permit issued by the Animal and Plant Health Inspection Service in accordance with § 104.4 of this chapter, and must be moved and handled as specified on the permit.

Done in Washington, DC, this 24th day of April 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–10083 Filed 4–29–91; 8:45 am]

BILLING CODE 3410–34–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1245

Patents and Other Intellectual Property Rights

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1245 by amending Subpart 5, "Authority and Delegation to Take Certain Actions Relating to Patents and Other Intellectual Property Rights." This Subpart 5 sets forth the authority and delegations relating to intellectual property rights, and the administration of the NASA patent program. This amendment makes a nomenclature change to accurately reflect the current position title of the Associate General Counsel for Intellectual Property.

EFFECTIVE DATE: April 30, 1991.

ADDRESSES: Office of the General Counsel, Code GP, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Harold W. Adams (202) 453–2418.

SUPPLEMENTARY INFORMATION: 14 CFR part 1245 subpart 5 is amended by amending §§ 1245.502 and 1245.503 to update a position title. Since this action is internal and administrative in nature and does not affect existing regulations, notice and public comment are not required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1245

Administrative practice and procedure, Authority delegations (Government agencies), Inventions and patents.

For reasons set out in the Preamble, 14 CFR part 1245 is amended as follows:

PART 1245—PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS

1. The authority citation for 14 CFR part 1245, subpart 5, continues to read as follows:

Authority: 42 U.S.C. 2473, 2457; 14 CFR 1204.506.

2. Section 1245.502 is amended by revising the section heading and the introductory text to read as follows:

§ 1245.502 Associate General Counsel for Intellectual Property.

The Associate General Counsel for Intellectual Property provides functional direction to all Patent Counsel and is redelegated the authority to take the following actions:

* * * * *

3. Section 1245.503 is amended by revising paragraph (a) to read as follows:

§ 1245.503 Patent Counsel of Field Installations.

* * * * *

(a) *Rights determination.* To make determination, under Executive Order 10096 of January 23, 1950, as amended, or the respective rights of the Government and of the inventor in and to inventions made by employee under the administrative jurisdiction of their installations in those instances where the Government is entitled to obtain the entire right, title, and interest, and to make each determination, with the concurrence of the Associate General Counsel for Intellectual Property, in those instances where the Government acquires less than the entire domestic right, title, and interest.

* * * * *

Dated: April 17, 1991.

Richard H. Truly,

Administrator.

[FR Doc. 91–10016 Filed 4–29–91; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 172

[FHWA Docket No. 89–28]

RIN 2125–AE30

Administration of Engineering and Design Related Service Contracts

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is required by law to implement the provisions of 23 U.S.C. 112(b)(2), as amended by section 111(b) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (1987 STURAA). These provisions require States and local agencies to award engineering and design service contracts using Federal-aid highway funds in accordance with the provisions of title IX of the Federal Property and Administrative Services Act of 1949 (Pub. L. 92–582, 86 Stat. 1278 (1972), 40 U.S.C. 541, *et seq.*), commonly called the "Brooks Bill," or use equivalent State qualifications-based procedures unless they have established or choose to establish a formal procurement procedure by State statute. The "Brooks Bill" provisions require that all applicable contracts be awarded pursuant to a fair and open competitive negotiation process and on the basis of demonstrated competence and qualification.

The FHWA is issuing this regulation to describe acceptable procurement procedures for engineering and design services when Federal-aid highway funds (under the grant-in-aid process) participate in the contract. The regulation describes the various steps both State and local agencies will follow when advertising, selecting, negotiating and monitoring the work. These steps will assure that the contracting procedures used comply with 23 U.S.C. 112(b) requirements, the "Brooks Bill," other applicable Federal statutes, and accepted contracting principles. It will also allow appropriate FHWA contract monitoring that is essential for discharging its stewardship responsibilities.

The regulation requires State and local agencies to: (1) Get the FHWA's approval before using a consultant in management role; (2) have written procedures that are approved by the FHWA; (3) perform prenegotiation audits for contracts over $250,000; (4) prepare adequate scopes-of-work, evaluation factors and cost estimates; (5) evaluate and select firms using either qualifications-based procedures or procedures based on State statutes; (6) specify the method of payment for the work performed; and (7) establish adequate contract monitoring procedures. The regulation also allows States to substitute their approval actions for the FHWA's.

EFFECTIVE DATE: April 30, 1991. All contracts using Federal-aid highway funds, for engineering and design related services, authorized after the effective date of this regulation, are subject to these provisions.

FOR FURTHER INFORMATION CONTACT: Keith E. Borkenhagen, Interstate and Programs Support Branch, Office of Engineering, 202–366–4630, or Vivian Philbin, Office of Chief Counsel, 202–366–1393, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for legal holidays.

SUPPLEMENTARY INFORMATION:

The FHWA published an NPRM on the administration of engineering and design related service contracts on March 5, 1990 (55 FR 7739). It provided a 60-day period for agencies, firms or individuals to provide comments.

Unlike many contracts that can be administered under the common grant management rule, 49 CFR part 18, engineering and design service contracts

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using Federal-aid highway funds are governed by the additional statutory requirements in title 23 and the "Brooks Bill." The FHWA is establishing procedures to assure that State and local agencies meet these requirements.

The "Brooks Bill" provisions require all agencies to: (1) Publicly announce all requirements; (2) conduct negotiations based on demonstrated competence and qualifications; (3) negotiate with at least three qualified firms based on qualifications and performance data on file or proposals submitted; (4) evaluate qualifications based on announced criteria; (5) negotiate a fair and reasonable price with the most technically qualified firm; and (6) if unable to negotiate a satisfactory contract with the top ranked firm, terminate negotiations and start negotiations with the next highest ranked firm. Contracting agencies must comply with these provisions, unless they have or choose to establish by State statutes, other procedures.

This regulation carries out the FHWA's responsibility to promulgate rules to ensure that these provisions are met.

Discussion of Comments

This section briefly describes the provisions of the major sections and addresses the comments received on the NPRM. The FHWA received comments from 19 State highway agencies, 9 consultant engineering associations/societies, 17 consultant engineering firms and 11 individuals.

General Comments

Four State comments support the regulation essentially as published in the NPRM and eight State comments support major features of the NPRM. Fifteen engineering societies, associations and firms also support acceptance of the regulation. Three State comments said the NPRM conflicts with the requirements of the common grant management rule, 49 CFR part 18 (hereafter referred to as the "common rule"). The common rule applies to all types of contracts, but it contains only general requirements and does not focus on the statutory requirements applicable to engineering and design service contracts using Federal-aid highway funds. Thus, while the FHWA has applied the policies of the common rule whenever appropriate, it has included more specific requirements where necessary to comply with statutory requirements.

In response to the three comments stating the NPRM conflicts with the common rule, the FHWA maintains that the regulation is appropriate and does not impose unnecessary or burdensome non-statutory requirements on contracting agencies. Where requirements depart from the common rule, they are necessary to implement the provisions of 23 U.S.C. 112(b)(2), the "Brooks Bill," other applicable Federal statutes and our stewardship responsibilities in ensuring the proper and effective use of Federal-aid highway funds.

Because these three comments did not identify specific areas of conflict, the FHWA reexamined the regulation to ascertain whether the requirements that depart from the common rule are justified. The results of this review and our response to specific comments are covered in the applicable section of the regulation.

Section 172.1 Purpose and Applicability

This section defines the purpose and applicability of the regulation. The regulation is applicable to all engineering and design related service contracts using Federal-aid highway funds.

One State and two individuals requested that the regulation be modified to exclude highway planning and research and planning funded contracts since these funds cannot be used for services relating to construction projects. The FHWA agrees with this comment and the regulation has been modified accordingly.

There were 23 comments from engineering associations, societies, firms and individuals requesting that the regulation's applicability be expanded to apply to all engineering and design service contracts instead of only Federal-aid highway funded contracts. Two States requested that additional language be added to clearly exempt all 100 percent State funded contracts from the regulation. The FHWA's longstanding interpretation of 23 U.S.C. 112 is that it applies only to the specific contracts financed with Federal-aid highway funds whether such contracts are for physical construction or for engineering services. The FHWA maintains that neither the "Brooks Bill" provision of 23 U.S.C. 112(b) nor its legislative history provide a basis for changing this interpretation. Therefore, the FHWA has determined that the provisions of 23 U.S.C. 112(b)(2) apply only to contracts funded with Federal-aid highway funds.

One State requested that paragraph (b) be amended to allow procedures codified in State statutes to be used for selecting consultants. An individual requested that a sentence be added to this paragraph to explain which regulation applies to non-engineering and design service contracts. The FHWA agrees with these two comments and the regulation has been modified accordingly.

Section 172.3 Definitions

This section defines terms used in the regulation to assure consistent interpretation by the consultant industry and the contracting agencies.

Two engineering firms requested that the term "contractor" be changed and redefined to cover firms engaged in engineering and design services. The FHWA agrees and the term "contractor" has been changed to "consultant" throughout the regulation and has been redefined accordingly.

There were 12 comments from engineering associations, societies and firms requesting clarification of the term "competitive negotiations." This term is now defined in the regulation.

There were three comments from engineering societies and firms requesting clarification of the term "fixed fee." Its definition has been amended to include business expenses not allocable to overhead.

Two engineering firms requested that the term "engineering and design services" be defined. This term is now defined in the regulation in the same way it was defined in section 111(b) of the 1987 STURAA.

One State requested that the term "audit" be changed to "prenegotiation audit" to separate it from the "post audit" performed by some States. The FHWA agrees with this change and the term "prenegotiation audit" is now used throughout the regulation.

Section 172.5 General Principles

This section requires contracting agencies to: (1) Obtain approval from the FHWA before using a contractor in a "management" role; (2) have written procedures that are approved by the FHWA for procuring contracts; and (3) sets the dollar limit for contracts requiring prenegotiation audits at $250,000. It also sets procedures dealing with a State highway agency's responsibility and control in local agency contracts and claim settlements.

Two engineering firms requested that paragraph (a) be modified to delete the FHWA's approval requirement for hiring consultants in a management role. The provisions of 23 U.S.C. 302, require States to have adequate powers, and be suitably equipped and organized to discharge the duties required by title 23. U.S.C. States must justify their reason(s) for requesting the use of a consultant to manage a program or project and why

the State cannot perform the work. Hiring consultants for management roles should be limited to situations requiring expertise outside the State's normal staff capability or where unique or unusual circumstances exist. Some examples are: (1) Very large projects; (2) where there are unusual cost or time constraints; or (3) the lack of State expertise in a particular area. This paragraph has also been amended to indicate that this requirement is applicable only to Federal-aid highway funded contracts.

This rule requires States and local agencies to have written procedures to implement Federal requirements when procuring contracts using Federal-aid highway funds. These procedures must be approved by the FHWA. Written procedures are necessary to assure that all agencies, particularly local agencies, using Federal-aid highway funds to procure engineering and design services will comply with all applicable Federal statutes and for the proper control of Federal-aid contracts. Having adequate written procedures will assist the FHWA in determining whether a State's procedures include all the provisions of the "Brooks Bill." Without such procedures, the FHWA cannot assure that State and local agencies have procedures in place that meet the very specific mandates of the Federal law. In fact, not specifying specific procedures may ultimately prove more burdensome to State and local governments that wish to comply and need guidance on how to establish procedures that comply with the legislative requirements.

There were three individual comments requesting that paragraph (b)(1) be revised to delete the words "prior to beginning the process of" since some items required under this paragraph can be can be done later in the selection process. The FHWA agrees and the regulation has been modified accordingly.

Two engineering firms requested that paragraph (b)(6), which required cost reimbursement for errors, be eliminated to minimize the potential liability for consultants and one individual requested that additional guidance be provided in this area to assure equity in application. This paragraph has been revised to shift its emphasis from "obtaining reimbursement" to "determining the extent of liability." In addition, a new paragraph explaining liability has been added to § 172.13(c).

Four States and three engineering firms requested that paragraph (c) be revised to delete the requirement for auditors to determine if the firm has "sufficient resources to complete the work on time." The FHWA agrees that this determination should not be made by the auditors and the phrase has been deleted.

The rule requires prenegotiation audits for certain contracts. Prenegotiation audits are appropriate because the "Brooks Bill" clearly requires agencies to negotiate contracts at a compensation determined to be "fair and reasonable to the Government." The FHWA has concluded that a prenegotiation audit is the best way to obtain detailed cost information to determine the validity of a firm's cost proposal, insure non-allowable costs are not included and the costs are "fair and reasonable" to the government.

Four States and five engineering associations, societies and firms support the $250,000 prenegotiation audit threshold in paragraph (c)(1). One State asked for it to be set at $500,000 and one State asked for it to be set at $100,000. The average cost (between 1987 and 1989) of Federal-aid funded consultant engineering service contracts was $171,000. Thus, the $250,000 threshold is reasonable to assure that an acceptable number of contracts are reviewed and has been retained.

One State commented that the first sentence in paragraph (c)(2) conflicts with the audit scope prescribed in "generally accepted auditing standards" and Government Auditing Standards. The FHWA agrees and this sentence has been deleted.

Two States requested that paragraph (c)(3) be modified to permit "audit judgment to be a factor" in determining the need for an audit by recognizing that a review of less scope than an audit required under Government Auditing Standards is acceptable when "sufficient audited contractor data" is already on hand to permit a reasonable comparison with the cost proposal. The FHWA agrees and this paragraph has been modified accordingly.

Two individuals requested that the types of contracts covered in paragraph (e) clearly specify engineering and design service contracts subject to 23 U.S.C. 112(b)(2). The FHWA agrees and the regulation has been modified accordingly.

Five State comments requested that paragraph (f) be changed to stipulate that: (1) State highway agencies maintain oversight in local contracts; (2) State highway agencies are responsible for settling claims; (3) the FHWA should review, approve and participate in the cost of the settlements; and (4) the "code of conduct" and procedures for eliminating duplicative purchasing should be left to the States. The FHWA agrees and has added the first three points mentioned above, deleted the duplicative purchasing requirement and dropped the requirement for a State "code of conduct."

Section 172.7 Methods of Procurement

This section addresses the methods of procurement to be used in contracting for engineering and design service contracts. It list specific requirements under the competitive negotiation section for: (1) Preparation of the scope of work, evaluation factors and cost estimate; (2) soliciting proposals; (3) proposal analysis and contractor selection; (4) negotiation responsibility; and (5) the execution of the contracts. It sets the upper dollar limit for small purchase contracts at $25,000 and lists the circumstances under which noncompetitive negotiations can be used.

Six engineering firms requested an explanation of the procurement types allowed under this regulation. The FHWA agrees and a paragraph listing the three forms of acceptable procurement methods has been added to the regulation. One State asked whether "general" engineering service contracts are allowed under the regulation. These contracts are allowed under the competitive negotiation section.

One State requested a quicker selection procedure for hiring firms for construction engineering and inspection (CE&I) projects, two States requested a quicker selection process for small local or routine projects and one State requested that small States be allowed to establish different selection procedures. Because engineering and design service contracts using Federal-aid highway funds are governed by additional statutory provisions [title 23, U.S.C. and the "Brooks Bill"], procurement flexibility is limited. Contracting agencies must comply with these provisions, unless they have or choose to establish by State statutes, other procedures that exempt them from these provisions. However, a streamlined procurement process for small projects (under $25,000) is permitted under § 172.7(b). Further flexibility is provided under § 172.15 that allows States to substitute their contract review and approval actions for that of the FHWA.

One State requested that non-competitive negotiations be allowed for all contracts below $500,000. This request is not in accordance with the requirements of the "Brooks Bill."

Two States questioned the need for FHWA approval actions in the selection and contract modification phases of the process. The FHWA maintains that this

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requirement is necessary to monitor the expenditure of Federal-aid highway funds to insure obligations are not exceeded and project costs are not excessive.

One State and one engineering firm requested that the words "prior to issuing a Request for Proposal" in paragraph (a)(1) be removed since the preparation of the detailed cost estimate, listed in paragraph (a)(1)(ii), does not have to be prepared in this phase, but can be prepared in later phases of the process. The FHWA agrees and the regulation has been modified.

Two States requested that paragraph (a)(1)(iii) be modified to delete the phrase "salary estimates" from the scope phase because these costs cannot be determined until the negotiation phase. The FHWA agrees and the regulation has been modified accordingly.

One State requested that the preparation of a detailed cost estimate be eliminated for contracts under $250,000. Requiring States to prepare detailed cost estimates is clearly appropriate because the "Brooks Bill" requires agencies to negotiate contracts at a compensation determined to be "fair and reasonable to the Government." Having a detailed agency cost estimate is a crucial tool in the negotiations process. Therefore, cost estimates are required on Federal-aid contracts except for contracts awarded under small purchase procedures.

Five States requested that paragraph (a)(2)(i) be changed to allow additional methods of advertising the work. The FHWA agrees and the regulation has been modified to add other methods.

There were 14 comments from engineering associations, societies and firms requesting that paragraph (a)(2)(ii)(C) be modified to clearly state that "priced proposals" can only be used in the selection phase when they are a part of the selection process established by a State's statues. The FHWA agrees and the regulation has been modified accordingly.

One State and five engineering firms requested that the term "cost estimate" be deleted from paragraph (a)(3) because it belongs in the negotiations section. In addition, there were eight comments from engineering associations, societies and firms requesting that the term "permitted" in paragraph (a)(3)(ii)(B) be revised to read "established." The FHWA agrees with these two changes and the regulation has been modified accordingly.

Three engineering associations and firms requested that the phrase "or subsequently established" be deleted from paragraph (a)(3)(ii)B. The FHWA has determined that the 1987 STURAA allows States the future option of passing State statutes establishing procedures for the procurement of these services.

There were 10 comments from engineering associations, societies and firms requesting that paragraph (a)(4)(ii) be modified to delete overhead as a negotiated item since it is an actual audited cost. The FHWA agrees and the paragraph has been modified and amended to exempt services normally negotiated on a per unit cost (cost per unit of work and specific rate of compensation) since these units already include all elements of cost and an amount for the consultant's fee.

Three engineering firms asked that the dollar limit for small purchase procedures be set at $10,000. One State asked that the limit be set at $50,000, and five comments from engineering firms requested that the small purchase option be eliminated. In addition, two States and one engineering firm requested that the requirement for obtaining two price quotations be deleted. The FHWA has determined that the $25,000 figure used in the NPRM is an acceptable limit for small purchase contracts and is consistent with other contract requirements. The regulation has been revised to delete the requirement for obtaining two price quotations.

Three engineering firms requested that noncompetitive negotiations be thoroughly documented and justified. One State comment requested that services from "public agencies or educational institutions" be included in this section. Because noncompetitive negotiations are an exception to the qualifications-based procurement process, the regulation has been revised to clarify the requirement for contracting agencies to submit justification and receive FHWA approval before using this type of contracting. The use of public agencies or educational institutions is allowed under this section.

Section 172.9 Compensation

This section requires that the cost principles in 48 CFR 31 (Federal Acquisition Regulations) be used on all contracts governed by this regulation and sets forth and defines the methods of payment allowed.

There were several comments requesting a revision to the payment methods allowed by the regulation. One State indicated that the "cost-plus-a-percentage-of-cost" method should be allowed and one State commented that the regulation's prohibition on "cost-plus-a-percentage-of-cost" method of contracting conflicts with the common rule. Three engineering firms requested that this method not be used. Under a "cost-plus-a-percentage-of-cost" contract, a firm's fee is based on a predetermined percentage of the final cost of completed work included in the consultant's contract. Therefore, this method does not encourage firms to maximize and streamline their work to keep the total contract cost low because it will also reduce their fee. The FHWA maintains that compensation for professional engineering and design services based on a "cost-plus-a-percentage-of-cost" method could lead to increased contract costs. Therefore, the regulation prohibits this method of payment.

One State requested that the lump sum method of payment be allowed for construction inspection services when well defined items of work can be determined prior to the work being done. The FHWA agrees and the regulation has been modified to allow the lump sum method of payment for inspection services when the agency can establish the extent, scope, complexity, character and duration of the work to be required to a degree that fair and reasonable compensation including a fixed fee can be determined.

One State requested that variations of the four methods of payment be allowed. Any of the four methods specified in the regulation, or variation that primarily uses these methods is allowed by the regulation.

One engineering firm requested that paragraph (c)(3) specify that the maximum amount payable relate only to the profit portion of the contract and not the reimbursable portion. Contracts using Federal-aid highway funds require the inclusion of a maximum cost limit in order to prevent the expenditure of Federal funds that have not been authorized. Since the maximum amount payable phrase refers to the maximum contract cost that is allowable without processing a contract modification, this provision was not modified.

There were seven comments from engineering societies, associations and firms requesting that the lower limit for the fixed fee range in paragraph (d) be raised from six to ten percent. The FHWA maintains that consultant fees should be negotiated on facts pertinent to the specific contract, namely: type/complexity of work, degree of risk, consultant investment, project duration and overhead. Since fee ranges for contracts can vary significantly, the six percent lower limit stated in the regulation is being retained.

Two engineering firms requested that the practice of setting overhead rate and salary caps by some States be disallowed. The FHWA does not have statutory authority to prohibit States from setting maximum limits on these items.

Section 172.11 Contract Modifications

This section defines when contract modifications are required and requires agencies to: (1) Clearly document the changes and method of compensation; (2) properly negotiate changes; and (3) obtain FHWA approval before executing the contract modification.

One State and five engineering firms requested that the term "significantly," relating to the degree of contract changes requiring a contract modification, be deleted from paragraphs (a) and (c). The FHWA maintains that this term is necessary. The regulation requires modifications any time there is a change in the "cost" of the contract. However, changes to the character, scope, complexity or duration of work would not require modifications unless they are considered "significant." The term "significantly" makes it clear that minor changes or adjustments in these items do not require contract modifications or FHWA approval, thereby reducing paperwork and project delays. Large changes would require modifications and FHWA approval to assure the work is eligible for Federal reimbursement. Therefore, the term "significantly" has not been deleted in the regulation.

One State requested that States be allowed to approve extra work changes without getting the FHWA's approval. The FHWA needs to approve contract modifications in order to assure that the work is eligible for Federal funding and that sufficient Federal funds are available.

Section 172.13 Monitoring the Contract Work

This section requires that a qualified public employee be placed in responsible charge of each contract, identifies what this employee must do and requires the employee to write a performance evaluation report after the contract is completed.

Performance evaluations are appropriate because the "Brooks Bill" clearly requires agencies to "evaluate current statements of qualifications and performance data on file with the agency" during the selection process. Without performance evaluations, the contracting agencies might not have all the information needed to correctly select the "most technically qualified" firm.

Two States remarked that making performance evaluations for contracts less than $250,000 would impose additional work on their State and two States requested that the evaluations be at the State's option. Three engineering firms requested that performance evaluations be limited to contracts over $250,000 and seven engineering associations, societies and firms requested that the consultant firm be allowed to review and comment on the performance evaluation. The FHWA has concluded that having current information on a firm's prior performance is in accordance with the "Brooks Bill" because the "Brooks Bill" requires negotiations and selection to be based on "qualifications and performance data." Therefore, performance evaluations are required on projects using Federal-aid highway funds, except for contracts let under the small purchase procedures. The regulation has been revised to give firms the opportunity to comment on the evaluation.

In response to a request for additional information on consultant liability, a new paragraph (c) was added to address a process for obtaining correction of design errors and for assigning liability for the cost associated with supplemental construction work needed to correct the errors.

Two States thought that requiring a public employee to be in "responsible charge" of each contract might cause staffing or funding problems for their State. The FHWA maintains that State and/or local monitoring requirements are necessary for the proper control of the work and to allow knowledgeable completion of the performance evaluations. Under 23 U.S.C. 302, States are required to "be suitably equipped and organized to discharge to the satisfaction of the Secretary the duties required by this title."

One State requested that paragraph 172.13(a)(5), requiring States to visit every consultant's office on every contract should be left to the discretion of the State. This paragraph does not require visits to the consultant's office for each monitoring review. It allows States to determine the frequency of reviews, as long as the number and place of reviews is appropriate for the specific contract size and type of work undertaken.

Section 172.15 Alternate Procedures

This section establishes a process whereby the contracting agency can be authorized to substitute its contract review and approval actions for those of the FHWA.

One State thought that providing copies of executed contracts, in accordance with paragraph 172.13(d), to the FHWA would add paperwork and is unnecessary. The FHWA needs copies of executed contracts approved by States under alternate procedures to verify project cost in order to provide for the obligation of Federal funds.

One individual asked whether contracts to design federally funded "off-system" projects could be included under alternate procedures. Paragraph 172.15 has been revised to allow coverage of all Federal-aid highway funded contracts without reference to any Federal-aid system.

Federalism Implications

The FHWA has carefully reviewed this action in light of the Executive Order on federalism [Executive Order 12612, October 28, 1987]. In his Executive Order on federalism, the President ordered Executive Departments and agencies to be guided by certain fundamental federalism principles in formulating and implementing policies that have federalism implications. These policies have been taken fully into account in the development of this regulation, as the following paragraphs indicate.

This action implements section 111(b) of the 1987 STURAA that amended section 112 of title 23, U.S.C. Section 112(b)(2) requires contracts for engineering and design services for highway construction projects performed by a State highway department or under its supervision to be awarded in the same manner as contracts for architectural and engineering services negotiated under title IX of the Federal Property and Administrative Services Act of 1949, as amended, or equivalent State qualifications-based requirements, except to the extent that a State adopts or has adopted by statute a formal procedure for the procurement of such services.

This action will not impose a significant burden upon State and local governments. The rule permits States to use equivalent State qualifications-based procedures or procedures established or subsequently established in State statutes. The cost to State and local governments to implement this regulation, if any, will be minimal since all costs that are directly attributable to an individual project are reimbursable under the Federal-aid highway program.

The statutory basis for this action has been outlined above. This final rule limits the policymaking discretion of the States only in narrow ways, and does so

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only to achieve the requirements of section 112(b)(2) of 23 U.S.C., other statutory requirements and the FHWA's stewardship responsibilities. Accordingly, it is certified that the policies contained in this document have been reviewed in light of the principles, criteria, and requirements of the Federalism Executive Order, and accord fully with the letter and spirit of the President's Federalism initiative. Based on the analysis, the FHWA has determined that this rulemaking does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. Accordingly, a full regulatory evaluation is not required. It is anticipated that the regulatory impact of this rulemaking, if any, will be minimal since it replaces the prior FHWA regulation on negotiated contract procedures and delineates procedures consistent with Federal statutes and the common rule. Thus States using procedures based on the prior regulation, for evaluating, selecting and negotiating these contracts, will find the actions required by this regulation easy to integrate into their existing procedures. The regulation will impose some mandatory standards on State and local governments that are required by Federal statutes and provide general procedural direction and recommended criteria to ensure conformance with the statutes.

The regulation provides an opportunity to effect a reduction in the time required to process the award of a contract by establishing an alternate procedure for project approval that allows States to substitute their contract review and approval actions for that of the FHWA.

The revisions will increase the number of consultants receiving consideration for providing engineering and design services by giving contracting agencies numerous ways to advertise the work and requiring technical proposals to be requested from a minimum of three qualified firms.

For the foregoing reasons, which also apply to small entities, and under the criteria of the Regulatory Flexibility Act (Pub. L. 96-354), the FHWA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

In consideration of the foregoing, the FHWA hereby revises part 172 of chapter I of title 23, Code of Federal Regulations, as set forth below.

List of Subjects in 23 CFR Part 172

Government procurement, Grant programs—transportation, Highways and roads.

Issued on: April 23, 1991.

T.D. Larson,

Administrator.

The FHWA revises 23 CFR part 172 to read as follows:

PART 172—ADMINISTRATION OF ENGINEERING AND DESIGN RELATED SERVICE CONTRACTS

Sec.
172.1 Purpose and applicability.
172.3 Definitions.
172.5 General principles.
172.7 Methods of procurement.
172.9 Compensation.
172.11 Contract modifications.
172.13 Monitoring the contract work.
172.15 Alternate procedures.

Authority: 23 U.S.C. 112(b), 114(a), 302, 315, and 402; 23 CFR 17; 48 CFR 12 and 31; 49 CFR 1.48(b); 49 CFR 18; 41 U.S.C. 253 and 259.

§ 172.1 Purpose and applicability.

(a) To prescribe policies and procedures for contracting to ensure that a qualified consultant is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner, at a reasonable cost.

(b) This regulation applies to all engineering and design related service contracts financed with Federal-aid highway funds. Agencies with approved Certification Acceptance Plans (CA), Secondary Road Plans (SRP) and/or Combined Road Plans (CRP) shall submit for the Federal Highway Administration's (FHWA) approval, procedures consistent with this regulation if they intend to utilize Federal-aid highway funds for any of the above contract types. The use of procedures codified in State statutes to select consultant firms is also acceptable. Other types of negotiated contracts should be administered under the requirements of the common grant management rule, 49 CFR 18.

§ 172.3 Definitions.

(a) *Competitive negotiation.* Any form of negotiations that utilizes, (1) qualifications-based procedures complying with title IX of the Federal Property and Administrative Services Act of 1949 (Pub. L. 92-582, 86 Stat. 1278 (1972)), (2) equivalent State qualifications-based procedures or (3) a formal procedure permitted by State statute.

(b) *Consultant.* The individual or firm providing engineering and design related services as a party to the contract.

(c) *Contract modification.* An agreement modifying the existing contract, such as an agreement to accomplish work beyond the scope of the original contract.

(d) *Contracting agency.* The State highway agency or local governmental agencies which have responsibility for the procurement.

(e) *Engineering and design services.* Contracts for project management, construction management and inspection, feasibility studies, preliminary engineering, design engineering, design, engineering, surveying, mapping and architectural related services.

(f) *Extra work.* Any services or actions required of the consultant above and beyond the obligations of the original or modified contract.

(g) *Fixed fee.* A dollar amount established to cover the consultant's profit and business expenses not allocable to overhead.

(h) *Prenegotiation audit.* An examination of a consultant's records made in accordance with generally accepted auditing standards.

(i) *Scope of work.* All services and actions required of the consultant by the obligations of the contract.

§ 172.5 General Principles.

(a) *Need for consultant services in management roles.* When Federal-aid highway funds participate in the contract, the contracting agency shall receive approval from the FHWA before hiring a consultant to act in a "management" role for the contracting agency. This concept should be limited to situations where unique or unusual circumstances exist and where the contracting agency has provided adequate justification to explain its reason for using a consultant in this role and the reason it cannot perform the work.

(b) *Written procedures.* The contracting agency shall prepare written procedures for each method of procurement it proposes to utilize. These procedures and all revisions shall be approved by the FHWA and describe, as appropriate to the particular method of procurement, each step used:

(1) In preparing a scope of work, evaluation factors and cost estimate for selecting a consultant,

(2) In soliciting proposals from prospective consultants,

(3) In the evaluation of proposals and the ranking/selection of a consultant,

(4) In negotiation of the reimbursement to be paid to the selected consultant,

(5) In monitoring the consultant's work and in preparing a consultant's performance evaluation when completed, and

(6) In determining the extent to which the consultant, who is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors or deficiencies in design furnished under its contract.

(c) *Prenegotiation audits.* The contracting agencies shall prepare prenegotiation audits to provide the necessary data to assure that the consultant has an acceptable accounting system, adequate and proper justification of the various rates charged to perform work and is aware of the FHWA's cost eligibility and documentation requirements.

(1) Prenegotiation audits and the resultant audit opinions are required for all contracts expected to exceed $250,000 and for contracts of less than $250,000 where:

(i) There is insufficient knowledge of the consultant's accounting system,

(ii) There is previous unfavorable experience regarding the reliability of the consultant's accounting system, or

(iii) The contract involves procurement of new equipment or supplies for which cost experience is lacking.

(2) The use of an independent audit, an audit performed by another State/Federal agency or an audit performed by another local governmental agency is acceptable if the information is current and of sufficient detail.

(3) Prenegotiation audits may be waived when sufficient audited consultant data is available to permit reasonable comparisons with the cost proposal.

(d) *State responsibility in local agency contracts.* The State highway agency shall ensure that procurement actions by or through other State agencies or local agencies comply with this regulation. When Federal-aid highway funds participate in the contract, a local agency shall use the same procedures as used by the State to administer contracts not under CA, the SRP or the CRP. These contracts shall be subject to the prior approval of the State highway agency and the FHWA. Nothing herein shall be taken as relieving the State of its responsibility under Federal-aid highway laws and regulations for the work to be performed under any agreements entered into by a local agency.

(e) *Disadvantaged Business Enterprise (DBE) program.* The contracting agency shall give consideration to DBE firms in the procurement of engineering and design related service contracts subject to 23 U.S.C. 112(b)(2).

(f) *Contractual responsibilities.* The contracting agency or State highway agency shall be responsible for the settlement of all contractual/administrative issues. All settlements shall be reviewed and approved by the FHWA before Federal-aid highway funds can participate in any additional costs.

§ 172.7 Methods of procurement.

This regulation addresses three methods of procurement for the hiring of consultants to perform engineering and design related services specified in 23 U.S.C. 112(b)(2). These methods are: competitive negotiations which follows qualifications-based selection procedures or another selection procedure permitted by State statutes; small purchase procedures for small dollar value contracts; and non-competitive negotiations where specific conditions exist allowing negotiations to take place with a single firm.

(a) *Competitive negotiation.* Competitive negotiation should be used for the selection of a consultant to provide engineering and design related services. The following procedures shall apply to the competitive negotiation process:

(1) *Scope, evaluation factors and cost estimate development.* The contracting agency shall prepare:

(i) A scope of work before issuing a Request for Proposal that reflects a clear, accurate, and detailed description of the technical requirements for the services to be rendered and a list identifying the evaluation factors and their relative importance.

(ii) A detailed cost estimate, except for contracts awarded under small purchase procedures, with an appropriate breakdown of specific types of labor required, work hours, and an estimate of the consultant's fixed fee (considering the risk and complexity of the project) for use during negotiations.

(2) *Soliciting proposals.*

(i) *Solicitation.* The solicitation process shall be by advertisement (project, task or service), by mailing Requests for Proposals to certified/prequalified consultants, or any other method that ensures qualified in-State and out-of-State consultants are given the opportunity to be considered for award of a contract. It shall include a process where either:

(A) General interest is solicited for performing the work; responding consultants are ranked based on an evaluation of their qualification statements (submitted with their letters of interest or on file with the contracting agency); and proposals are requested from three or more firms starting with the highest ranked firm, or

(B) Proposals are solicited from all consultants that are interested in being considered for the work.

(ii) *Request for proposal.* The request for proposal shall:

(A) Provide a description of the scope of work and identification of the evaluation factors including their relative importance as included in paragraph (a)(1) of this section.

(B) Specify the method(s) of payment (lump sum, cost plus a fixed fee, cost per unit of work, or specific rate(s) of compensation).

(C) Request the submission of a proposal. Priced proposals may be used in the selection phase if allowed for under a State statute, but shall not be used in the selection phase when qualifications-based procedures are used.

(D) Allow sufficient time for the consultant to prepare and submit the proposal.

(3) *Analysis and selection.*

(i) The consultants' proposals, containing the information required by paragraph (a)(2) of this section, shall be evaluated and ranked by the contracting agency. This process shall include an analysis of the proposals in comparison to the evaluation factors. In addition, the consultants' applicable work experience, present workload, past performance, staffing capabilities, etc., should be evaluated and included in the ranking process.

(ii) The award of engineering and design related services shall:

(A) Utilize qualifications-based procedures that either comply with the provisions of Title IX of the Federal Property and Administrative Services Act of 1949 (Pub. L. 92-582, 86 Stat. 1278 (1972), as amended) or utilize equivalent

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State qualifications-based procedures, or

(B) Utilize a formal procurement procedure that is established by State statute or is subsequently established by State statute.

(iii) The contracting agency shall retain acceptable documentation of the proposal, evaluation and selection of the consultant. Records shall be maintained in accordance with the provisions of 49 CFR 18.42.

(4) *Negotiation responsibilities.*

(i) The negotiator shall use all resources available to conduct effective negotiations, including but not limited to, the refined scope of work, the evaluation factors and their relative importance, the agency's cost estimate as required in paragraph (a)(1) of this section and the audit opinion issued as a result of the prenegotiation audit required in § 172.5(c) of this part.

(ii) The negotiator shall separately negotiate the dollar amounts for elements of cost and a fixed fee except for services normally negotiated on a per unit (includes costs and fees) cost.

(iii) The contracting agency shall maintain records of negotiations to document negotiation activities and set forth the resources considered by the negotiator. Records shall be maintained in accordance with the provisions of 49 CFR 18.42.

(5) *Execution of contracts.* The proposed contract including the agreed upon cost figures shall be submitted to the FHWA for approval prior to its execution.

(b) *Small purchases.* Contracting agencies may use small purchase procedures for the procurement of engineering and design related services when the contract cost does not exceed $25,000.

(c) *Noncompetitive negotiation.* Noncompetitive negotiation may be used to obtain engineering and design related services when the award of a contract is not feasible under small purchase or competitive negotiation procedures. The contracting agency shall submit justification and receive approval from the FHWA before using this form of contracting when Federal-aid highway funds are used in the contract.

(1) Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(i) The service is available only from a single source, or

(ii) There is an emergency which will not permit the time necessary to conduct competitive negotiations, or

(iii) After solicitation of a number of sources, competition is determined inadequate.

(2) The contracting agency shall comply with the following procedures for noncompetitive negotiations:

(i) Establish a process to determine when noncompetitive negotiation will be used.

(ii) Develop an adequate scope of work, evaluation factors and cost estimate as required in paragraph (a)(1) of this section,

(iii) Conduct negotiations as required in paragraph (a)(4) of this section, and

(iv) Submit the proposed contract and cost estimate to the FHWA for approval.

§ 172.9 Compensation.

(a) Contracting agencies may establish cost principles for determining the reasonableness and allowability of costs. Federal reimbursement shall be limited to the Federal share of the costs allowable under the cost principles in 48 CFR Part 31 (Federal Acquisition Regulations). Any references included in 48 CFR Part 31 to other parts of 48 CFR do not apply to these contracts.

(b) Applicable cost principles shall be referenced in each contractual document.

(c) Methods of payment.

(1) The method of payment to compensate the consultant for all work required shall be set forth in the original contract and in any contract modifications thereto. It may be a single method for all work or may involve different methods for different elements of work. The methods of payment which shall be used are: lump sum, cost plus fixed fee, cost per unit of work or specific rates of compensation.

(2) Compensation based on cost plus a percentage of cost or percentage of construction cost shall not be used.

(3) When the method of payment is other than a lump sum, the contract shall specify a maximum amount payable which shall not be exceeded unless adjusted by a contract modification.

(4) The lump sum method shall not be used to compensate a consultant for construction engineering and inspection services except when the agency has established the extent, scope, complexity, character and duration of the work to be required to a degree that fair and reasonable compensation including a fixed fee can be determined.

(d) Fixed fees.

(1) The determination of the amount of the fixed fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The establishment of the fixed fee shall be project specific.

(2) Fixed fees normally range from 6 to 15 percent of the total direct and indirect cost. Subject to the approval of the FHWA, a fixed fee over 15 percent may be justified when exceptional circumstances exist.

§ 172.11 Contract modifications.

(a) Contract modifications are required for any modification in the terms of the original contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.

(b) A contract modification shall clearly outline the changes made and determine a method of compensation. FHWA approval of contract modifications shall be obtained prior to beginning the work except as discussed in paragraph (d) of this section.

(c) Overruns in the costs of the work shall not warrant an increase in the fixed fee portion of a cost plus fixed fee contract. Significant changes to the Scope of Work may require adjustment of the fixed fee portion in a cost plus fixed fee contract or in a lump sum contract.

(d) In unusual circumstances, the consultant may be authorized to proceed with work prior to agreement on the amount of compensation and execution of the contract modification, provided the FHWA has previously approved the work and has concurred that additional compensation is warranted.

§ 172.13 Monitoring the contract work.

(a) A public employee qualified to ensure that the work being pursued is complete, accurate and consistent with the terms, conditions, and specifications of the contract shall be in responsible charge of each contract or project. The employee's responsibilities include:

(1) Scheduling and attending progress meetings with the consultant and being involved in decisions leading to change orders or supplemental agreements,

(2) Being familiar with the qualifications and responsibilities of the consultant's staff,

(3) Visiting the project and/or consultant's offices on a frequency that is commensurate with the magnitude, complexity and type of work. This includes being aware of the day-to-day operations for Construction Engineering Service contracts, and

(4) Assuring that costs billed are consistent with the acceptability and progress of the consultant's work.

(b) A final performance evaluation report, except for contracts awarded under small purchase procedures shall be prepared by the public employee in responsible charge of the contract and shall be submitted to the State highway agency's contracting office. The report should include, but not be limited to, an evaluation of such items as timely completion of work, conformance with contract cost and the quality of work. A copy of the report shall be sent to the firm for its review and/or comments and any written comments submitted to the contracting agency by the firm shall be attached to the final report.

(c) Contracting agencies should include a clause in engineering contracts requiring the consultant to perform such additional work as may be necessary to correct errors in the work required under the contract without undue delays and without additional cost to the owner. However, in general, a consultant should not be held responsible for additional costs in subsequent related construction resulting from errors or omissions which are not a result of gross negligence or carelessness.

§ 172.15 Alternate Procedures.

(a) This is a process whereby the contracting agency can be authorized to substitute its contract review and approval actions for those of the FHWA. Before a contracting agency can operate under the alternate procedures concept, it shall submit procedures to the FHWA that include the following:

(1) A formal request to operate under the alternate procedure concept.

(2) The written procedures, as required by § 172.5(b) of this part, it will follow, and

(3) A statement signed by the chief administrative officer of the contracting agency certifying that it will conform with its written procedures, the provisions of this regulation, and all applicable Federal and State laws and administrative requirements.

(b) The alternate procedures and all revisions shall be approved by the FHWA.

(c) The alternate procedures concept may apply to all Federal-aid highway funded contracts.

(d) A copy of the original executed contract and all contract modifications shall be submitted to the FHWA.

[FR Doc. 91-10092 Filed 4-29-91; 8:45 am]

BILLING CODE 4910-22-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3962-3]

Michigan: Schedule of Compliance for Modification of Michigan's Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region V.

ACTION: Notice of Michigan's Compliance Schedule to adopt program modifications.

SUMMARY: On September 22, 1986, U.S. EPA promulgated amendments to the deadlines for State program modifications and published requirements for States to be placed on a compliance schedule to adopt necessary program modifications. EPA is today publishing a compliance schedule for Michigan to modify its program in accordance with § 271.21(g) to adopt Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Judy Greenberg, Michigan Regulatory Specialist, RCRA Program Management Branch, U.S. Environmental Protection Agency, Region V, 5HR-JCK-13, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-4179 [FTS: 8-886-4179].

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Michigan hazardous waste program within the State in lieu of the Federal hazardous waste program is granted by EPA if the Agency finds the State program: (1) Is "equivalent" to the Federal program; (2) is "consistent" with the Federal program and other State programs; and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)). EPA regulations for final authorization appear at 40 CFR 271.1-271.25. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

B. Michigan

Michigan received final authorization of its hazardous waste program on October 30, 1986 (see 51 FR 36804, October 16, 1986). Effective January 23, 1990, EPA granted authorization to Michigan for revisions to its hazardous waste program (see 54 FR 48608). On August 29, 1990, Michigan submitted a request under the provisions of 40 CFR 271.21(e)(3) for an extension of time of six months to obtain necessary program revisions. On January 25, 1991, Michigan submitted a request under the provisions of 40 CFR 271.21(g)(1)(v) for an extension of time of an additional year in order to complete the necessary program revisions. Today, U.S. EPA is publishing a compliance schedule for Michigan to complete program revisions for the following Federal regulations:

1. Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems, 53 FR 34079, September 2, 1988.

2. Identification and Listing of Hazardous Waste; and Designation, Reportable Quantities, and Notification, 53 FR 35412, September 13, 1988.

3. Statistical Methods for Evaluating Ground-Water Monitoring Data from Hazardous Waste Facilities, 53 FR 39720, October 11, 1988.

4. Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators, 54 FR 615, January 9, 1989.

5. Amendment to Requirements for Hazardous Waste Incinerator Permits, 54 FR 4286, January 30, 1989.

6. Direct Action Against Insurers, HSWA section 3004(t).

7. Corrective Action, 50 FR 28702, July 15, 1985.

8. Sharing of Information with the Agency for Toxic Substances and Disease Registry, HSWA section 3019(b).

The deadline under 40 CFR 271.21 for Michigan to adopt these Federal regulations was July 1, 1990. However, the State's rulemaking has been delayed due to the lack of statutory authority in Michigan for corrective action, direct action against insurers, and sharing of information with the Agency for Toxic Substances and Disease Registry. The rules package cannot be taken to the State legislature until the statute has been amended. The statutory amendment is expected to be introduced to the legislature during May 1991.

The State has agreed to complete the needed program revisions to its authorized program according to the following schedule:

1. The Department of Natural Resources will submit the proposed rule package to the State Legislative Service Bureau by September 1, 1991.

2. The Legislative Service Bureau will submit the proposed rule package to the Michigan Department of Attorney General by September 30, 1991.

3. The Michigan Department of Attorney General will submit the rule package to the legislative Joint Committee on Administrative Rules by October 31, 1991.

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4. The Joint Committee on Administrative Rules will conduct a committee hearing and issue a determination by December 31, 1991.

5. Once the proposed rule package is approved by the Joint Committee on Administrative Rules, the rules will be submitted to the Michigan Secretary of State for codification in the Act 64 administrative rules.

Michigan expects to submit an application to U.S. EPA requesting authorization for the Federal regulations listed above by February 28, 1992.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: April 17, 1991.

Ralph Base,

Acting Regional Administrator.

[FR Doc. 91-10144 Filed 4-29-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6864

[ID-943-4214-10; ID-27721, ID-27872]

Partial Revocation of the Secretarial Orders Dated May 22, 1926, and March 26, 1930; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes two Secretarial Orders insofar as they affect 5 acres of National Forest System land withdrawn for the Bureau of Land Management Powersite Classification No. 146 and the Bureau of Reclamation Owyhee Reclamation Project in the Boise National Forest. The withdrawals are being revoked so the Forest Service can transfer the land to the Department of Energy to clean up radioactive sands left over from the trespass milling of rare earths on the land. The land is not needed for reclamation or powersite purposes. This action will open the land to surface entry and mining. The land has been and will remain open to the mineral leasing laws.

EFFECTIVE DATE: May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 334-1735.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Orders dated May 20, 1926, and March 26, 1930, which withdrew the land for the Bureau of Land Management Powersite Classification No. 146 and the Bureau of Reclamation Owyhee Reclamation Project, respectively, are hereby revoked insofar as they affect the following described land:

Boise Meridian

T. 9 N., R. 7 E.,
sec. 27, NE¼SE¼SE¼SE¼ and SE¼NE¼SE¼SE¼.

The area described contains 5 acres in Boise County.

2. At 9 a.m. on May 30, 1991, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws. Appropriation of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 23, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-10128 Filed 4-29-91; 8:45 am]

BILLING CODE 4310-00-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 402

RIN 0970-AA73

State Legalization Impact Assistance Grants (SLIAG)

AGENCY: Family Support Administration, HHS.

ACTION: Final rule with comment.

SUMMARY: This rule amends Department regulations implementing the State Legalization Impact Assistance Grant (SLIAG) program, 45 CFR part 402, published at 53 FR 7832 et seq. (March 10, 1988). The amendments incorporate references to new Departmental grant administration regulations at 45 CFR part 92, which are applicable to most grants awarded by the Department of Health and Human Services after October 1, 1988 to States, local governments, and Federally recognized Indian tribes. This regulation also implements technical amendments made to the Immigration Reform and Control Act of 1986, the authorizing legislation for SLIAG by the Immigration Technical Corrections Act of 1988 (Pub. L. 100-525).

DATES: *Effective:* April 30, 1991. Comments must be received on or before May 30, 1991.

ADDRESSES: Comments may be mailed to: Family Support Administration, Attention: David B. Smith, Mail Stop: ORR, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: David B. Smith, Director, Division of State Legalization Assistance, at 202-401-6255.

SUPPLEMENTARY INFORMATION: Section 204 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603), enacted on November 6, 1986, establishes State Legalization Impact Assistance Grants (SLIAG) for States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam for fiscal years 1988 through 1991. (The term "State" is used hereinafter as defined in the current SLIAG regulation, that is, to include all eligible SLIAG grantees.) States may use (obligate) SLIAG grant funds through September 30, 1994. The purpose of SLIAG is to alleviate some of the financial impact on State and local governments that may result from the legalization of aliens under the Immigration Reform and Control Act (IRCA).

On March 10, 1988, the Department published a final rule implementing section 204 of IRCA. (These regulations, 45 CFR part 402, were published at 53 FR 7832 et seq.) These amendments to the final rule are designed to make certain conforming modifications based on Departmental and Congressional actions since the publication of the final rule. The Department finds good cause for dispensing with a notice of proposed rulemaking and attendant procedures because the technical and conforming nature of these amendments renders prior notice and public comment unnecessary. A subsequent 30 day comment period will be provided.

Amendments to reflect 45 CFR part 92

Effective October 1, 1988, 45 CFR part 92, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," replaced 45 CFR part 74 for the administration of most HHS grants to States, local governments, and Federally recognized Indian tribes, including SLIAG. Part 74 will no longer be applicable to grants covered by part 92, i.e., for FY 1989 and subsequent fiscal years' SLIAG grants. We are therefore amending those sections of the current regulation affected by this change.

This amendment incorporates references to Part 92 into 45 CFR part 402 where they do not conflict with the intentions of the citations to part 74 in the SLIAG regulation. In most instances, we have simply added a reference to part 92, in addition to the existing reference to part 74. Part 74 continues to apply to FY 1988 grants; part 92 applies to subsequent years' grants. This amendment, however, allows a State to apply any or all provisions of part 92 to FY 1988 SLIAG funds. This will simplify administration of the program.

There is an existing reference to part 74 in part 402 where we have not added a reference to part 92. Section 402.2 currently defines the term "Recipient" by incorporating the definition in part 74. Part 92 does not define the term "Recipient." Therefore, we have deleted the reference to part 74, and instead substituted the full text of the part 74 definition. This change will avoid confusion as to the definition of "Recipient" for fiscal years after FY 1988. This definition applies to all fiscal years' SLIAG grants.

This amendment incorporates the definition of "Local government" that is in part 92. This term also is defined in part 74. That definition is marginally different from the definition in part 92. We have incorporated the part 92 definition in order to avoid having two different definitions of this critical term in this temporary program. This definition applies to all SLIAG grants, beginning with FY 1988.

We have adopted the time limit for the expenditure of grant funds contained in part 92 for all years' SLIAG grants. Currently, grant funds subject to part 92 must be expended not later than 90 days after the end of the funding period. For FY 1989, 1990, and 1991 SLIAG grant funds, this date currently would be December 29, 1994, because section 204(b)(4) of IRCA allows States to obligate funds through September 30, 1994. The funding period of a SLIAG grant begins on October 1 of the Federal fiscal year for which the allotment is made and ends on September 30, 1994.

The SLIAG regulation currently requires that obligations by States be liquidated within 12 months of the end of the fiscal year in which the obligation was made. This requirement would continue in effect for FY 1988 grant funds if we did not amend the regulation to adopt the part 92 time limit. Without this amendment, States would have to cope with two time limits—one applicable to FY 1988 grant funds and another applicable to subsequent years' funds. We concluded that this was overly complicated and are therefore adopting a uniform rule for all SLIAG grant funds, i.e., the time period imposed by 45 CFR 92.23(b). Except for FY 1988 funds obligated by States in FY 1994, part 92 allows States more flexibility by allowing a longer period for the expenditure of grant funds.

Incorporation of Technical Amendments to IRCA

The Immigration Technical Corrections Act (Pub. L. 100-525), enacted on October 24, 1988, amends IRCA, the legislative authority for SLIAG. Section 2(k)(5) of the Immigration Technical Corrections Act (ITCA) provides that States may use SLIAG funds to reimburse the costs of public health assistance provided to aliens applying on a timely basis to become eligible legalized aliens under sections 245A, 210, or 210A of the Immigration and Nationality Act (INA). This amends section 204(c)(1)(B) of IRCA which restricted the use of funds for such purpose to those aliens applying only under section 245A of the INA. To conform with this provision, we have amended section 402.10 of the SLIAG regulation to allow States to use SLIAG funds to reimburse the costs of public health assistance provided to aliens who have applied to INS for lawful temporary resident status under sections 210, 210A, or 245A of the INA.

Another amendment to IRCA by ITCA necessitates that we amend § 402.53 to state that we will reallot among other States the designated allotment of any State that indicates in its application that it does not intend to use the full amount of its allocation in the fiscal year for which the application is made or any succeeding fiscal year before 1995. The reference to "any succeeding fiscal year before 1995" replaces "the succeeding fiscal year" both in IRCA and in the regulation.

There are other changes in the ITCA which affect section 204 of IRCA, but these changes are technical corrections to the statutory language and do not require any additional changes to the SLIAG regulation.

Required Consultation

Section 204(i) of IRCA requires that the Department consult with representatives of State and local governments in establishing regulations and guidelines for SLIAG. Section 204(e) of IRCA permits the Secretary to require the submission of reports in such form and containing such information as he deems necessary after consultation with States and the Comptroller General. Since these amendments are being made to conform the SLIAG regulation to existing Departmental and Congressional actions, and do not affect any other aspect of those regulations, including reporting requirements, we are publishing these amendments as a final rule. Any interested party that wishes to comment on these amendments may do so in accordance with the instructions already noted.

Regulatory Procedures

In accordance with 5 U.S.C. 605(b), the Secretary certifies that this rule does not have a significant adverse economic impact on small business entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

Paperwork Reduction Act

Section 402.51 (c) and (e) of the SLIAG final rule contain information collection requirements which have been approved by the Office of Management and Budget under control number 0970-0078. There are no new information collection requirements contained in these amendments.

(Catalogue of Federal Domestic Assistance Program No. 93.025, State Legalization Impact Assistance Grants)

List of Subjects in 45 CFR Part 402

Administrative cost, Allocation formula, Aliens, Allotment, Education, Grant programs, Immigration, Immigration Reform and Control Act, Public assistance, Public health assistance, Reporting and recordkeeping requirements, State Legalization Impact Assistance Grants.

Dated: November 20, 1990.

Jo Anne B. Barnhart,

Assistant Secretary, Family Support Administration.

Approved: April 5, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, 45 CFR part 402 is amended as follows:

PART 402—STATE LEGALIZATION IMPACT ASSISTANCE GRANTS

1. The authority citation for part 402 is revised to read as follows:

Authority: 8 U.S.C. 1255a note, as amended.

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2. Section 402.2 is amended by revising the definitions of "The Act," "Local government," and "Recipient," and by revising paragraph (2) in the last sentence of the definition of "SLIAG-related costs," to read as follows:

§ 402.2 Definitions.

* * * * *

The Act means the Immigration Reform and Control Act of 1986, Public Law 99-603, as amended.

* * * * *

Local government has the same meaning as in 45 CFR part 92.

* * * * *

Recipient means grantee or subgrantee.

* * * * *

SLIAG-related costs * * * (2) program income (as defined in 45 CFR 74.42 or 45 CFR 92.25(b), as applicable) received from or on behalf of eligible legalized aliens receiving services or benefits for which payment or reimbursement may be made under this part.

* * * * *

3. Section 402.10 is amended by revising paragraphs (a)(2) and (c) to read as follows:

§ 402.10 Allowable use of funds.

(a) * * *

(2) Public health assistance provided to an alien applying on a timely basis to become an eligible legalized alien under sections 245A, 210, or 210A of the INA.

* * * * *

(c) To the extent consistent with 45 CFR part 74 (for grants awarded in FY 1988) or 45 CFR part 92 (for grants awarded in FY 1989 and succeeding fiscal years) and § 402.22 of this part, funds provided under this part may be used for State and local costs associated with meeting the administrative requirements established by the Act and this part and the administrative costs associated with providing assistance or services to eligible legalized aliens under a program or activity that receives funds under this part.

* * * * *

4. Section 402.11 is amended by revising paragraph (e)(5) to read as follows:

§ 402.11 Limitations on use of SLIAG funds.

* * * * *

(e) * * *

(5) In no event may the amount paid to a local education agency or other provider of educational services exceed the actual costs of providing those services to eligible legalized aliens, as determined in accordance with 45 CFR part 74 (for grants awarded in FY 1988) or 45 CFR part 92 (for grants awarded in FY 1989 and succeeding fiscal years).

* * * * *

5. Section 402.20 is revised to read as follows:

§ 402.20 General provisions.

Except where otherwise required by Federal law, the Department rules codified at 45 CFR part 74 (for grants awarded in FY 1988) or 45 CFR part 92 (for grants awarded in FY 1989 and succeeding fiscal years), relating to the administration of grants, apply to funds awarded under this part. A State may, however, apply any or all provisions of part 92 to FY 1988 SLIAG funds.

6. Section 402.24 is revised to read as follows:

§ 402.24 Withholding.

After notice and opportunity for a hearing, the Secretary may withhold payment of funds to any State which is not using its allotment in accordance with the Act, these regulations, 45 CFR part 74 (for grants awarded in FY 1988) or 45 CFR part 92 (for grants awarded in FY 1989 and succeeding fiscal years), and terms of the grant award.

7. Section 402.26 is amended by adding a sentence to paragraph (a) and revising the first sentence of paragraph (b) to read as follows:

§ 402.26 Time period for obligation and expenditure of grant funds.

(a) * * * The funding period of a SLIAG grant begins on October 1 of the Federal fiscal year for which the allotment is made and ends on September 30, 1994.

(b) Obligations of funds by the State must be expended within the time limit set by 45 CFR 92.23(b). * * *

8. Section 402.33 is revised to read as follows:

§ 402.33 Allotment of excess funds.

If a State fails to qualify for an allotment in a particular fiscal year because it did not submit an approvable application by the deadline established in § 402.43 of this part, or is not allotted its designated allocation amount because it indicated in its application that it does not intend to use, in the fiscal year for which the application is made or in any succeeding fiscal year before FY 1995, the full amount of its allocation, funds which would otherwise have been allotted to the State in that fiscal year shall be allotted among the remaining States submitting timely approved applications in proportion to the amount that otherwise would have been allotted to such State in that fiscal year.

[FR Doc. 91-10061 Filed 4-29-91; 8:45 am]

BILLING CODE 4189-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-431; RM-6819]

Radio Broadcasting Services; Cottonwood, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 240C1 for Channel 240A at Cottonwood, Arizona, and modifies the Class A license of Regency Communications Limited Partnership for Station KSMK-FM, as requested, to specify operation on the higher class channel, thereby providing that community with an expanded coverage FM service. *See* 52 FR 38797, October 19, 1987. Coordinates used for Channel 240C1 at Cottonwood are 34-41-12 and 112-07-00, with a site restriction 10.7 kilometers (6.6 miles) southwest of the community. Concurrence of the Mexican government has been received. With this action, the proceeding is terminated.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87-431, adopted April 11, 1991, and released April 23, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 240A and adding Channel 240C1 at Cottonwood.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-10114 Filed 4-29-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-645; RM-7555]

Radio Broadcasting Services; Jesup and Midway, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 252C1 from Jesup to Midway, Georgia, and modifies the construction permit of Station WGCO(FM) to specify Midway, Georgia, as its community of license. The allotment of Channel 252C1 to Midway will provide the community with its first local aural FM service without depriving Jesup of its only aural service, in accordance with Section 1.420(i) of the Commission's Rules. See 56 FR 1508, January 15, 1991. Channel 252C1 can be allotted to Midway in compliance with the Commission's minimum distance separation requirements with a site restriction of 22.5 kilometers (14 miles) south of the community at petitioner's construction permit site. The coordinates for Channel 252C1 at Midway are North Latitude 31-36-45 and West Longitude 81-21-37. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-645, adopted April 11, 1991, and released April 23, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 252C1 at Jesup and adding Channel 252C1, Midway.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-10115 Filed 4-29-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-22; RM-7168]

Radio Broadcasting Services; Buckhannon, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Harlyna, Inc., substitutes Channel 228B1 for Channel 228A at Buckhannon, West Virginia, and modifies its license for Station WBTQ(FM) at Buckhannon to specify operation on the higher powered channel. See 55 FR 04208, February 7, 1990. Channel 228B1 can be allotted to Buckhannon in compliance with the Commission's minimum distance separation requirements at the site specified by the petitioner with a site restriction of 13 kilometers (8.1 miles) to avoid a short-spacing to Station WBNV, Channel 228A, Barnesville, Ohio. The coordinates for Channel 228B1 at Buckhannon are North Latitude 38-53-36 and West Longitude 80-08-22. Since Buckhannon is located within the protected areas of the National Radio Astronomy Observatory "Quiet Zone" at Green Bank, West Virginia, petitioner will be required to comply with the notification requirement of § 73.1030(a) of the Commission's Rules. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-22, adopted April 15, 1991, and released April 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Channel 228A and adding Channel 228B1 at Buckhannon.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-10124 Filed 4-29-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN: 1018-AB52

Endangered and Threatened Wildlife and Plants; Endangered Status for the Lower Keys Population of the Rice Rat (Silver Rice Rat)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the Lower Keys population of the rice rat, or silver rice rat (*Oryzomys palustris natator* (=*Oryzomys argentatus*)), a small mammal restricted to wetlands of the Lower Keys of Monroe County, Florida. This species is known to occur on eight keys, generally at low population levels. It is believed extirpated from one key where it formerly occurred, and may also have been extirpated from two other keys. The species is endangered by habitat loss due to residential and commercial development, and by predation, competition, and habitat modification from various introduced mammals. Its low populations may endanger it because of reduced genetic variability. This rule extends the protection of the Endangered Species

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Act of 1973, as amended, to the silver rice rat.

EFFECTIVE DATE: May 30, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Field Supervisor, at the above address (904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

Rice rats (*Oryzomys*) are New World rats of generalized rat-like appearance, with coarse fur and a long, sparsely haired tail. The genus occurs from the southeastern U.S. and Mexico through Central America to northern South America. Rice rats occur on the Galapagos Islands and on several islands in the Caribbean. Hall (1981) recognized five subgenera and over a dozen species in North and Central America. Numi Spitzer (now Goodyear) trapped two rice rats in a fresh water marsh on Cadjoe Key in the Lower Keys of Monroe County, Florida in 1973, and believed that they represented a new species or subspecies of *Oryzomys* (Spitzer 1978). These two specimens were later used to describe a new species, *Oryzomys argentatus* (Spitzer and Lazell 1978). *O. argentatus* was diagnosed as differing from other species in the subgenus *Oryzomys* (one of five subgenera in the genus *Oryzomys*) in lacking digital bristles projecting beyond the ends of the median claws on the hind foot; and in having large, wide sphenopalatine vacuities; a slender skull with long narrow nasal bones; and silver-grey pelage dorsally. Spitzer and Lazell (1978) stated that *O. argentatus* could be separated from *O. palustris*, the common marsh rice rat of the southeastern U.S., by skull comparisons. They computed a ratio based on the maximum length of both nasals divided by their combined width; this number was then compared to the quotient of the condylobasal length divided by the zygomatic width. *O. argentatus* specimens had high scores for both ratios, and could be separated from 105 *O. palustris* by plotting the ratios on two axes. The measurements of the holotype and paratype specimens, respectively, in millimeters (inches) were: total length 251 (9¾), 250 (10¼); tail length, 121 (4¾), 132 (5¼); hind foot length, 32 (1¼), 32 (1¼), 32 (1¼); length of ear from notch, 17 (¾), 16 (¾) (Spitzer and Lazell 1978).

An unpublished report (Veasey *et al.* 1976) resulting from a biological study of Raccoon Key in the Lower Keys found that rice rats were common there; the investigators considered them to be *O. palustris*, but subsequent examination showed that they were silver rice rats. In 1978 and 1979, Humphrey and Barbour (1979; Barbour and Humphrey 1982) trapped for silver rice rats at the type locality on Cudjoe Key and at sites on Little Torch, Middle Torch and Sugarloaf Keys. They caught no rice rats and believed that the species had been extirpated from these keys. They also suggested that the characters used to distinguish *O. argentatus* were more indicative of subspecific rather than specific status.

In Service-funded status survey work (Spitzer 1982; Goodyear 1984), Goodyear trapped silver rice rats on eight additional Lower Keys, confirming their presence on Raccoon Key. The additional sites consisted of salt, rather than fresh water marsh. Using radiotelemetry, she found that silver rice rats used three vegetational zones: 1. low intertidal areas, usually flooded, vegetated with mangroves (*Rhizophora mangle* and *Avicennia germinans*), and used for foraging and travelling; 2. saltmarsh flats, flooded only occasionally, with low grassy vegetation (*Distichlis spicata, Batis maritima*, and *Sporobolus* sp.) and used for foraging and nesting; and 3. elevated areas flooded only by the highest tides, vegetated with abundant grasses (*Distichlis* and *Sporobolus*), sea oxeye (*Borrichia frutescens*) and buttonwood (*Conocarpus erectus*), and used mainly for nesting. She found that silver rice rats had unusually large home ranges (about 20 hectares (50 acres)) and occurred at very low densities for a small rodent. Both plant (seeds and plant parts) and animal foods (arthropods) are taken by silver rice rats (Spitzer 1983). She was unable to find rice rats in the Upper Keys and concluded that inadequate marsh habitat was available there. Further information on the ecology of the silver rice rat is provided in Spitzer (1983).

Goodyear and Lazell (1986) compared nine skulls of *O. argentatus* (including some related laboratory-reared animals) with 109 skulls of six subspecies of *O. palustris*, using canonical discriminant function to analyze four skull variables (condylobasal length, zygomatic breadth, nasal length, and nasal width) and to generate three models based on preselected taxonomic arrangements. The statistic Roy's Greatest Root was used to determine which model best fit the data. It was concluded that the taxonomic arrangement with the best fit considered *O. argentatus* and *O. palustris* to be seperate taxa.

Humphrey and Setzer (1989) revised the genus *Oryzomys* in the U.S., including six subspecies of *O. palustris*, *O. couesi*, and *O. argentatus*. They analyzed 12 skull measurements and pelage color. They did not include nasal width as a character (one of the characters considered diagnostic for *O. argentatus* by Spitzer and Lazell (1978)), citing the lack of a standard position for taking this measurement. Their quantitative analysis included 261 *Oryzomys*; all were adult males except for the 5 specimens of *O. argentatus* available to them, which consisted of 4 subadults and 1 adult of unknown sex. Adult male *Oryzomys* are regarded as being more likely to show diagnostic skull characters (Merriam 1901).

Humphrey and Setzer first examined the existing taxonomic arrangement of U.S. *Oryzomys* with principle components analysis. Only minor differences were found; canonical discriminant analysis was then used to maximize intergroup differences. A simplified taxonomic arrangement was compared to the original classification, using both of the above statistical methods. Overlap among groups of the original and simplified classifications was compared by testing for misclassification of specimens with discriminant function analysis. To avoid recognizing trivial differences resulting from discriminant analysis, the original variables were subjected to analysis of variance to show how the groups defined actually differed. These authors pointed out that canonical-discriminant function, as used by Goodyear and Lazell (1986), is designed to find differences, and that it is necessary to determine whether differences found are biologically meaningful. A colorimeter was used in an attempt to quantify pelage color objectively, but the samples so measured were judged too small to be analyzed statistically. They expressed concern that pelage color might vary with age, both in living animals and museum specimens. They also noted that some mainland specimens of *O. palustris* had silver pelage.

Humphrey and Setzer concluded that a simplified taxonomy was more appropriate for U.S. *Oryzomys*, including only two subspecies of *O. palustris*; *O. p. palustris* in most of the southeast and *O. p. natator* in peninsular Florida. *Oryzomys argentatus* was considered to be synonymous with *O. p. natator*.

Service actions regarding the silver rice rat began with the receipt of a petition dated March 12, 1980, from the Center for Action on Endangered Species, requesting that the silver rice rate be listed as an endangered species. In the **Federal Register** of July 14, 1980 (45 FR 47385), the Service issued a notice accepting the petition and announcing a status review of the species. The 1982 amendments to the Endangered Species Act (Act) required that petitions of this kind, which were pending as of October 13, 1982, be treated as having been received on that date. Section 4(b)(3) of the Act, as amended, requires that, within 12 months of the receipt of such a petition, a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other activity involving additions to or removals from the Federal Lists of Endangered and Threatened Wildlife and Plants. Therefore, on October 13, 1983, the Service made the finding that the determination of endangered was warranted but precluded by other listing activity. That finding was published in the **Federal Register** of January 20, 1984 (49 FR 2487), as corrected in the **Federal Register** of February 10, 1984 (49 FR 5977). In the case of such a finding, the petition is recycled and another finding is due in 12 months. Repeated findings of warranted but precluded were made on October 12, 1984 (published on May 10, 1985 (50 FR 19762)); on October 11, 1985 (published on January 9, 1986 (51 FR 24312)); on October 10, 1986 (published on June 30, 1987 (52 FR 25512)); and on October 14, 1987 (published on July 7, 1988 (53 FR 25511)).

In 1988, Drs. Henry Setzer and Steven Humphrey of The Florida Museum of Natural History advised the Service's Jacksonville Field Office that their taxonomic work on U.S. rice rats, then in progress, indicated that the silver rice rat was not distinguishable from mainland rice rats (*O. palustris*) at either the specific or subspecific level. These authors believe that the silver rice rat is only a peripheral population of *O. p. natator*, a subspecies common in fresh and salt water marshes throughout the Florida peninsula.

As a result of the Humphrey-Setzer findings, the Service's Southeastern Regional Office requested that any decision on proposing the silver rice rat be delayed until the taxonomic issue could be resolved, and recommended that a panel of Service zoologists review the taxonomic controversy. Three zoologists from the Service's Division of Research were detailed to this task in July, 1988; they concluded that the Lower Keys rice rats were " * * * a weakly distinguished geographical variant of *O. palustris* that may be known as *O. palustris argentatus* * * *". They recommended that additional material, particularly adult males, be collected to assist in determining the taxonomic status of the silver rice rat. Based on this continuing uncertainty, the Service made a negative petition finding on December 9, 1988 (published on December 29, 1988 (53 FR 52746)). On January 6, 1989 (54 FR 562), the Service placed the silver rice rat in category 3B of the animal notice of review, indicating that it was not a taxon that met the Endangered Species Act's definition of a species. Such entities are not current listing candidates, but additional information can lead to reevaluation of their suitability for listing.

On December 20, 1989, Sierra Club Legal Defense Fund, Inc. filed suit on behalf of the silver rice rat and James D. Lazell, Jr. in the U.S. District Court for the District of Columbia (*Silver Rice Rat and James D. Lazell, Jr.* v. *Lujan*, Civil Action No. 89-389), challenging the Service's decision not to proceed with listing the silver rice rat. The complaint stated, in part, that the Service had not adequately addressed listing the silver rice rat as a distinct population segment as defined in section 3(15) of the Act. In a **Federal Register** review notice (55 FR 17648) dated April 26, 1990, the Service announced a review period for listing the silver rice rat as a vertebrate population and rescinded the negative petition finding for the silver rice rat, returning the petition finding to the "warranted but precluded" category until the conclusion of the review. In a Stipulation of Parties dated May 3, 1990, the Service agreed to announce the results of its reconsideration of the previous decision by October 25, 1990. It was further agreed that if listing was appropriate, the "warranted but precluded" status would not be repreated, but that a final listing regulation would be published by May 1, 1991. On October 25, 1990 (55 FR 43002), the Service proposed to list the silver rice rat as an endangered species. That listing proposal constituted the Service's finding required by the Stipulation of Parties, and the final petition finding required by the Act for the silver rice rat.

Summary of Comments and Recommendations

Comments received in response to the Service's July 14, 1980, and April 26, 1990, review notices were summarized and responded to in the October 25, 1990, proposed rule.

In the October 25, 1990, proposed rule and associated notifications, all interested parties were contacted and requested to comment. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Key West, Florida, Key West Citizen on November 11, 1990, inviting general public comment. Fourteen comments were received. The Florida Game and Fresh Water Fish Commission supported the proposal, regardless of how the taxonomic issue might be decided. Four conservation groups, the Service's Division of Research, and seven private individuals supported the proposed listing; one private individual opposed it. Issues raised by commentors and the Service's response to each are discussed below.

Issue 1: It is ludicrous to spend tax dollars to protect a destructive rodent. Service Response: The silver rice rat is a harmless native rodent that does not associate with humans or cause economic damage. It qualifies for the protection of the Endangered Species Act and the Service has accordingly proceeded with its listing.

Issue 2: The silver rice rat should be listed as a full species, not a population. Dr. Goodyear's paper, currently in press, defends this status. The combination of difference in pelage color and skull morphology found in the silver rice rat is sufficient, by the standards of mammalian taxonomy, to indicate a species-level difference. The Service has no persuasive reasons to reject species status. Service Response: Variation in mammalian pelage color and skull proportions are interpreted variously by taxonomists, and the Service is unaware of standards that would be generally applicable. Such characteristics might indicate specific, subspecific, or only populational differences. Taxonomic views on the status of the silver rice rat currently include opinions that the silver rice rat represents a species, a subspecies, or a population. Other mammalian taxa described as Florida Keys endemics (Key deer, Lower Keys cotton rat, keys rabbit) are currently considered subspecies. The Service's Division of Research considered subspecific standing the appropriate status for the silver rice rat. The Service appreciates the considerable time and effort Dr. Goodyear has expended to clarify the conservation and taxonomic status of the silver rice rat. At the same time, it appears that there will continue to be varying interpretations of the taxonomic (but not the conservation) status of this rodent. Listing under the Act does not require agreement or resolution of this particular taxonomic

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question, and the protective measures of the Act will apply regardless. Since valid disagreement remains about species status, the silver rice rat is being listed as a vertebrate population. Subspecific status appears warranted, but it is inappropriate for the Service to publish a new taxonomic combination in a listing regulation. Such taxonomic rearrangements should be published in the scientific literature.

Issue 3: The silver rice rat is less common on Raccoon Key than indicated by the Vessey *et al.* (1976) study; while they had a 9.5 percent capture rate, Dr. Goodyear had a rate of only 1.8 percent in subsequent status survey work. Therefore the silver rice rat cannot be considered common on Raccoon Key. Service Response: The Vessey *et al.* (1976) study demonstrates that silver rice rats may occur at densities similar to those of rice rats elsewhere. Since small rodent populations may fluctuate greatly over short periods, it is not surprising that capture rates could differ over time. The listing of the silver rice rat as an endangered rather than a threatened species is recognition of its rarity and the threats to its continued existence.

Issue 4: The Service should designate critical habitat for the silver rice rat. Collecting is not a threat to the rat, and therefore is not a justification for not designating critical habitat. Localities for the silver rice rat have already been published in a major scientific journal and are therefore public knowledge. Failure to designate critical habitat will deprive the silver rice rat of the most direct mechanism for protecting its habitat. Service Response: The Service's regulations concerning the designation of critical habitat (50 CFR 424.12) state that a designation of critical habitat is not prudent when one or both of the following situations exist:

1. The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the threat to the species, or

2. Such designation would not be beneficial to the species.

The Service determines that both situations apply to the silver rice rat. Unlike publication of locality information in a scientific journal, designation of critical habitat is a Federal regulation whose promulgation involves publicizing the location of species populations and possible economic impacts (see 50 CFR 424.19). Though critical habitat designation, by definition, affects only Federal agency actions, this can arouse concern and resentment on the part of private landowners, at the same time providing location data for this vulnerable species. This could result in human activities harmful to the silver rice rat and its habitat. The Service agrees that collecting does not now appear to be a serious current threat to the silver rice rat, but continues to believe that there is no conservation benefit offsetting the risk of future harm. The Service is dealing with isolated populations of an endangered species and prefers to risk erring on the side of caution.

Section 7(a)(2) of the Act requires Federal agencies to insure that their actions are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat designated for any such species. The Service's section 7 regulations (50 CFR 402.02) define "jeopardize the continued existence" as to engage in an action that would reduce appreciably the likelihood of both the survival and recovery of a listed species. "Destruction or adverse modification" is defined as an alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. In practice, the threshold required to make a finding of "jeopardy" or "destruction or adverse modification" of critical habitat are identical. Review of Federal agency activities for the silver rice rat will therefore be no less rigorous for the silver rice rat than if critical habitat had been designated for this species. Most federally listed species do not have designated critical habitat, but the required section 7 consultations on Federal agency actions take place nonetheless. Federal agencies affected by the listing of the silver rice rat are discussed under "Available Conservation Measures" below.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Lower Keys population of the rice rat, or silver rice rat, should be classified as endangered. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the silver rice rat in the Lower Keys (*Oryzomys palustris natator* (=*Oryzomys argentatus*)) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The ancestor of the silver rice rat may have colonized the Lower Florida Keys during the late Pleistocene, when sea levels were lower than at present. The cooler climate prevailing at that time, and the larger exposed land mass, would have supported more extensive mangrove forests and salt marshes than exist currently. Rising sea levels several thousand years ago reduced the land area of the Lower Keys to their current configuration, probably fragmenting and reducing the distribution and numbers of the silver rice rat (Spitzer, 1983). In recent times, human impacts have further reduced silver rice rat populations. A known population on Cudjoe Key was recently extirpated (Barbour and Humphrey, 1982); and Goodyear (1984) believed that the species recently occurred on Big Pine and Boca Chica Keys, where suitable habitat still exists but where she was unable to trap rice rats.

The silver rice rat is currently known from transitional wetland areas on eight keys (Big Torch, Johnston, Middle Torch, Raccoon, Saddlebunch, Little Pine, Summerland, and Water Keys), where it usually occurs at very low densities for a small rodent (Spitzer, 1982; Goodyear, 1984). Goodyear (1984) had only 0.47 percent trap-night success over the course of her survey work, although she had an 8.6 percent success rate on Johnston Key, an off-road key; and Vessey *et al.* (1976) considered rice rats to be common on Raccoon Key, where they had a 9.5 percent trap-night capture rate.

Much silver rice rat habitat has been lost because of commercial and residential development during the past few decades. Remaining habitat on the highway keys continues to be filled for house pads, driveways, and other purposes.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The silver rice rat is one of the most recently named species of mammals in the United States, and there are interesting questions concerning its taxonomic status, relationship to other rice rats, behavior, and ecology. Therefore, it is likely that specimens will continue to be sought by collectors for purposes of scientific study, or by amateur naturalists. Most zoologists and museum personnel would avoid activities that might place an endangered species in still greater jeopardy, but there is a need to ensure that the situation of the silver rice rat is recognized and that collection (which would be authorized for certain purposes) is properly regulated. Silver rice rat populations on the on-road keys may have abnormally low densities, and unregulated collecting could have serious effects.

C. *Disease or predation.* Goodyear (1983) found that raccoons preyed on silver rice rats. Although a native mammal of the Lower Keys, raccoons on developed keys may be unnaturally abundant due to the availability of human garbage as food. This increase may have adversely affected silver rice rat populations on these keys.

D. *The inadequacy of existing regulatory mechanisms.* The silver rice rat is listed as endangered by the Florida Game and Fresh Water Fish Commission (Chapter 39–27.003, Florida Administrative Code) and is protected from pursuit, harm, harassment, capture, possession, or killing (Chapter 39–27.002 and 39–27.011, Florida Administrative Code). This protection does not, however, address habitat destruction.

Portions of the range of the silver rice rat are included in Great White Heron National Wildlife Refuge and National Key Deer Refuge. Federal listing of this species would increase consideration of the habitat needs of this species in refuge management decisions.

E. *Other natural or manmade factors affecting its continued existence.* The black rat (*Rattus rattus*), an introduced Old World rat, is found on many of the Lower Florida Keys, particularly near human habitation. It may compete with the silver rice rat for space and food. The black rat is abundant on Big Pine and Boca Chica Keys, and may have contributed to the disappearance of silver rice rats from these keys. Conversely, silver rice rats are relatively abundant on Johnston (Goodyear 1984) and Raccoon (Vessey *et al.* 1976) Keys, where black rats are presently absent.

On Raccoon Key, a breeding colony of rhesus monkeys (*Macaca mulatta*) has been introduced and maintained. The monkeys have defoliated the fringing mangrove trees on this key, making the silver rice rat more vulnerable to storm effects and predation.

Because of the limited amount of habitat suitable for the silver rice rat and its large home range, further habitat fragmentation could reduce silver rice rat populations to the point that adequate genetic viability for long-term survival is not maintained.

The Service has carefully assessed the best scientific and commercial information available regarding past, present, and future threats faced by the silver rice rat in determining to make this rule final. Based on this evaluation, the preferred action is to list the population as endangered. This classification is based on the fact that the silver rice rat occurs in relatively low numbers within a very restricted range, is facing further loss of habitat due to continuing development, and with further habitat fragmentation could reach a point where genetic variability is no longer sufficient to assure long-term survival of the population. There also appear to be threats from competition with the introduced black rat and from predation by raccoons in areas where they occur in abnormally high numbers. The silver rice rat population is in danger of becoming extinct throughout all or a significant portion of its range and thus meets the Act's definition for endangered as defined under section 3(6).

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that "critical habitat" be designated "to the maximum extent prudent and determinable" concurrent with the determination that a species is endangered or threatened. The Service finds that designation of critical habitat is not prudent at this time. As noted in factor "B" in the "Summary of Factors Affecting the Species", there may continue to be interest in collecting specimens of the silver rice rat. Most populations are of such low density that removal of even a few individuals may be deleterious to this species. Publication of critical habitat descriptions and maps could increase enforcement problems and expose the species to undesirable collecting and other human-related disturbances or threats, placing its survival in further jeopardy. Habitat protection for the silver rice rat will be addressed through the Act's section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Currently known Federal activities that may affect the silver rice rat include the management of the Service's Great White Heron and Key Deer National Wildlife Refuges, and the U.S. Army Corps of Engineer's wetland permitting activities in the Lower Keys. These Federal agency activities, among others, will require consultation with regard to any aspects that may affect the silver rice rat.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register of October 25, 1983 (48 FR 49244).

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Author

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List of Subjects in 50 CFR Part 17

Endangered and threatened species, Imports, Exports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "MAMMALS", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species: Common name	Species: Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
MAMMALS							
* * *							
Rat, rice (=silver rice)	*Oryzomys palustris natator* (=*O. argentatus*)	U.S.A. (FL)	Lower Fl. Keys (west of the Seven Mile Bridge)	E	421	NA	NA
* * *							

Dated: April 22, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-10189 Filed 4-29-91; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 56, No. 83
Tuesday, April 30, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN-91-008]

Revisions of User Fees for Cotton Classification, Testing and Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule

SUMMARY: The Agricultural Marketing Service (AMS) proposes to maintain at the 1990 level the user fees charged to cotton producers for cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 1991 user fee for this classification service would remain at $1.23 per bale.

Fees charged for cotton classification services under the U. S. Cotton Standards Act would be increased. Also, higher fees are proposed for other classification and testing services. These proposed fees are necessary to recover the increased costs of providing such services including administrative and supervisory costs.

DATES: Comments must be received by May 15, 1991.

ADDRESSES: Comments and inquiries should be addressed to Ronald H. Read, Cotton Division, AMS, USDA, Room 2641–S, P.O. Box 96456, Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Rm. 2641–South Building, 14th & Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ronald H. Read, 202–447–2145.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action as stated in the Order. The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) The proposed fee increases merely reflect a minimal increase in the cost-per-unit currently borne by those entities utilizing the services; (2) the cost increase will not affect competition in the marketplace; and (3) the use of classification and testing services and the purchase of standards is voluntary.

The information collection requirements contained in this proposed rule have been previously approved by the Office of Management and Budget and assigned OMB control numbers under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

It is anticipated that the proposed changes, if adopted, would be made effective July 1, 1991.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for manual classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.23 during the 1990 harvest season (54 FR 23449) as determined using the formula provided in the Uniform Cotton Classing Fees Act of 1987. The charges cover salaries, cost of equipment and supplies, and other overhead and include administrative and supervisory costs. This proposed rule would maintain the user fee for manual classification charged to producers at $1.23 per bale. This fee was calculated by adjusting the 1990 base fee for the rate of inflation and the projected size of the crop and adding a surcharge necessary to maintain a minimum operating reserve as required by the Act. The 1990 base fee is $1.25 per bale. A 4.3 percent, or five cents per bale, increase due to the Implicit Price Deflator of the Gross National product would be added to the $1.25 resulting in a 1991 base fee of $1.30 per bale. The 1991 crop is currently estimated at 16,490,000 running bales. The base fee would be decreased 5 percent based on the estimated size of the crop (one percent for every 100,000 bales or portion thereof above the base of 12,500,000 bales, limited to a maximum adjustment of 15 percent). This percentage factor would amount to a 20 cents per bale reduction and would be subtracted from the base fee of $1.30 per bale resulting in a fee of $1.10 per bale. There would be a surcharge of five cents added to the $1.10 per bale fee since the projected operating reserve is less than 25 percent. The five cent surcharge would result in a 1991 season fee of $1.15 per bale. Assuming a fee of $1.15, the projected operating reserve is six percent. An additional 8 cents per sample must be added to provide an ending accumulated operating reserve for the fiscal year of at least 10 percent of the projected cost of operating the program. This would establish the 1991 season fee at $1.23 per sample, the same as for 1990. Accordingly, no change to the language that appears in § 28.909(b) is necessary.

The additional fee for High Volume Instrument (HVI) classification would remain 50 cents per bale. Thus, the fee for HVI classification during the 1991 harvest season would remain at $1.73 per bale. As provided for in the Uniform Cotton Classing Fees Act of 1987, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents.

The fee for a manual review classification in § 28.911 would also remain at $1.23 per bale since the fee for review classification is the same as the original classification fee. Likewise, the fee for HVI review classification would remain at $1.73 per bale. Accordingly, since the 1991 harvest season fees for manual and HVI classification and review classification would be the same as the current fees, no change to the language of sections 28.909 and 28.911 concerning classification fees would be needed.

Printed cards that are both eye readable and machine scannable would be added to the current alternative methods of issuing Classification data in § 28.910. There is no additional fee if only one method of receiving data is requested. If the issuance of classification data is requested on printed cards as well as by another method, the fee for printed cards would be one cent per card issued, with a minimum fee of $10.00 per gin per season. The Cotton Division will provide computer punch cards that are both eye and machine readable for data issuance for cotton classed from the 1991 crop.

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Computer punch cards will not be provided for the 1992 and subsequent crops, due to the obsolescence of card punch equipment. Also in § 28.910, the fee for a new memorandum would increase from $4.50 per sheet to a minimum of $5.00 per sheet or 15 cents per bale. The fee for returning samples after classification in § 28.911 would increase from 30 cents per sample to 35 cents per sample.

Fees for Classification Services Under the United States Cotton Standards Act

Certain cotton classification services are conducted under the United States Cotton Standards Act. Fees for these services have been reviewed. In order to recover increased costs, including supervision and overhead, it is proposed that the fees for classification of cotton or samples in § 28.116 be increased. The current additional fee of 30 cents per sample would increase to 35 cents per sample unless the sample becomes Government property immediately after classification.

The fee in § 28.117 for each new memorandum or certificate issued in substitution for a prior one would be increased from 10 cents per bale to 15 cents per bale. The minimum fee would be increased from $4.75 per sheet to $5.00 per sheet.

The specific fee prescribed in §§ 28.120 and 28.149 for Form C determinations would be removed. Industry requests for this service have been very rare.

The portion of the practical classing examination for staple length will no longer be offered since most all USDA length measurements are now determined by HVI. The fee in § 28.122 for the practical classing examination for grade would be reduced from $140.00 to $100.00.

Fees for Cotton Standards

Practical forms of the cotton standards are prepared and sold by the Cotton Division offices in Memphis, Tennessee, under the authority of the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*). The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) directs that the price for standards will cover, as nearly as practicable, the costs of providing the standards.

This proposal would increase the fees listed in §§ 28.123 and 28.151 for practical forms of the cotton standards, including both grade and staple standards for American Upland cotton, American Pima cotton and for cotton linters. The fees need to be adjusted due to increased costs for salaries, preparation and delivery, and postage of the standards.

The fees for American Upland cotton grade standards would be increased from $110.00 to $120.00 f.o.b. Memphis, Tennessee, or overseas air freight collect. The price would be increased from $114.00 to $125.00 for domestic surface delivery and from $150.00 to $160.00 for overseas air parcel post delivered. The fees for American Upland staple standards f.o.b. Memphis and overseas airfreight collect would increase from $16.00 to $18.00. The domestic surface delivered fee would increase from $18.00 to $21.00 and the overseas air parcel post delivered fee would increase from $30.00 to $32.00. The fees for American Pima grade standards would increase from $140.00 to $155.00 f.o.b. Memphis or overseas air freight collect. The price would increase from $144.00 to $160.00 for domestic surface delivered and from $180.00 to $195.00 for overseas air parcel post delivered. Fees for American Pima staple standards would increase from $17.00 to $19.00 for f.o.b. Memphis and overseas air freight collect. The domestic surface delivered fee would increase from $19.00 to $22.00 and the overseas air parcel post delivered fee would increase from $31.00 to $33.00. The fees for linters grade standards would be increased from $110.00 to $120.00 f.o.b. Memphis or overseas air freight collect. The price for domestic surface delivery would increase from $114.00 to $125.00 and the price for overseas air parcel post delivery would increase from $150.00 to $160.00. The f.o.b. Memphis or overseas air freight collect fees for linters staple standards would increase from $18.00 to $20.00. The delivered price would increase from $20.00 to $23.00 for domestic and from $32.00 to $34.00 for overseas air parcel post.

Testing Services

Cotton testing services are provided by the USDA Laboratory in Clemson, South Carolina under the authority of the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471-478). The tests are available, upon request, to private sources on a fee basis. The Cotton Service Testing Amendment (7 U.S.C. 473d) specifies that the fees for the services be reasonable and cover as nearly as practicable the costs of rendering the services. The cost of providing these services has increased since the last fee increases in 1969 due to higher costs for salaries and miscellaneous overhead costs including supplies and materials. The fees for fiber and processing tests in § 28.956 would be increased.

AMS proposes to revise the instrument calibration and check materials listed in § 28.956. An instrument check program for High Volume Instrument (HVI) Systems would be added as item 1.1. Two samples will be sent to a participant for testing each month. The test results will be returned to the Cotton Division for summarization and report preparation. The summary report will show the averages of all participants for each measured property of each sample tested. An individualized report will show the deviations from the averages for a participant and will be provided that participant only. Proposed fees for this monthly service are $156.00 for surface delivery within the continental United States and $312.00 for air parcel post delivery outside the continental United States.

Item 3.0 would be revised by removing the reference to Nickerson-Hunter Cotton Colorimeters and the master diagram. Fees for furnishing the set of standard color tiles would be increased to $115.00 f.o.b. Memphis, Tennessee. AMS proposes to revise the fee structure to include the costs of delivery for these materials. The proposed fee for a set of standard color tiles surface delivered within the continental United States is $120.00. The proposed fee for air freight collect outside the continental United States is $115.00. The proposed fee for air parcel post delivery of a set of standard color tiles outside the continental United States is $155.00. AMS proposes to revise item 3.1 to provide for furnishing a single tile for use as a replacement in a set described in item 3.0 or as a calibration device for certain colorimeters. The fee for the single tile would be increased to $21.00 f.o.b. Memphis, Tennessee. A fee of $24.00 is proposed for surface delivery within the continental United States. The proposed fee for air freight collect outside the continental United States is $21.00. The fee of $34.00 is proposed for air parcel post delivery outside the continental United States.

Item 4.0 will be revised to make the calibration box applicable to all cotton colormeters. The fee structure would be revised to provide for the recovery of transportation charges applicable to the delivery of the box. The fee for a box f.o.b. Memphis, Tennessee will be increased to $40.00 each. The proposed fee for surface delivery of a box in the continental United States is $45.00. The proposed fee for air freight collect outside the continental United States is $40.00. The proposed fee for air parcel post delivery of a box outside of the continental United States is $60.00. The

current item 4.1 will no longer be available. Supplying new readings for samples in colormeter calibration boxes is unsatisfactory because the samples are in poor condition by the time new readings are needed. Further, only one client has requested this service in recent years. Elimination of this service will have no appreciable impact on the cotton industry. AMS is proposing to add as a revised item 4.1 a calibration sample box for trashmeters containing six cotton samples with trash readings in percent area. The fees for this item would be $40.00 f.o.b. Memphis, Tennessee; $45.00 surface delivered in the continental United States; $40.00 air freight collect outside the continental United States; and $60.00 delivered by air parcel post to destinations outside the continental United States.

AMS proposes to add additional tests in § 28.956. A single strand yarn strength test would be added as item 27.1. One hundred single strand strength determinations of a yarn sample would be made on the Statimat Tester and the average strength, elongation and coefficients of variation reported. The fee for this test would be $6.00 per sample. Imperfections in yarn would be added as item 28.2. Four tests per sample will be made on the Uster Evenness Tester and the averages of percent coefficients of variation and the thick places, thin places and neps, yarn imperfections, reported. The fee for this test would be $6.00 per sample.

AMS would speed the dissemination of reports. Additional copies of a test report routinely furnished with a test item would be sent by facsimile (FAX). The fee for proposed item 33.2, facsimile transmission of reports within the continental United States would be $2.00 per page and outside the continental United States would be $5.00 per page. AMS is proposing to require a minimum fee of $6.00 when furnishing additional copies of test data reports.

Equipment for conducting the open-end spinning test is no longer available. Item 20.1, Cotton Carded yarn spinning test (open-end) for short staple cottons is being removed. Test data are being calculated by computer and individual observations and calculations are no longer available. Item 31.0, Furnishing copies of test data worksheets, is being removed.

The fees for fiber and processing tests in § 28.956, except items 5.0, 10.0, 10.1, and 18.0 will be increased. The proposed fees and new services are as follows:

Item No.	New Service	Fee: Current	Fee: Proposed
1.0a		84.00	90.00
1.0b		88.00	95.00
1.0c		84.00	90.00
1.0d		124.00	130.00
	1.1a		156.00
	1.1b		312.00
2.0a		17.00	19.00
2.0b		18.00	21.00
2.0c		17.00	19.00
2.0d		27.00	29.00
2.1a		25.00	27.00
2.1b		27.00	30.00
2.1c		25.00	27.00
2.1d		39.00	41.00
3.0a		105.00	115.00
	3.0b		120.00
	3.0c		115.00
	3.0d		155.00
3.1a		17.00	21.00
	3.1b		24.00
	3.1c		21.00
	3.1d		34.00
4.0a		30.00	40.00
	4.0b		45.00
	4.0c		40.00
	4.0d		60.00
	4.1a		40.00
	4.1b		45.00
	4.1c		40.00
	4.1d		60.00
5.0		1.65	1.65
6.0		1.10	1.20
7.0		8.50	9.00
7.1		5.50	5.75
8.0		8.75	9.25
8.1		5.50	5.75
9.0a		8.75	9.25
9.0b		6.50	7.00
9.0c		5.50	5.75
10.0		.85	.85
10.1		.35	.35
11.0		12.00	15.00
Minimum		60.00	75.00
12.0		6.50	7.00
13.0a		70.00	74.00
13.0b		108.00	113.00
13.0c		130.00	136.00
13.1a		52.00	54.00
13.1b		74.00	78.00
13.1c		101.00	106.00
13.2		122.00	130.00
14.0a		24.00	25.00
14.0b		29.00	30.00
14.0c		34.00	35.00
15.0a		7.50	8.00
15.0b		13.00	14.00
16.0		15.00	16.00
17.0		5.00	5.25
Minimum		25.00	26.25
18.0		25.00	25.00
19.0		80.00	84.00
20.0		110.00	115.00
21.0		100.00	105.00
22.0		145.00	152.00
23.0		210.00	220.00
24.0		230.00	240.00
25.0		31.00	33.00
25.1		42.00	45.00
26.0a		80.00	84.00
26.0b		23.00	24.00
27.0		12.00	13.00
	27.1	6.00	
28.0		5.00	5.50
28.1		7.50	8.00
	28.2	6.00	
29.0		18.00	19.00
29.1		31.00	33.00
30.0		14.00	15.00
Minimum		42.00	45.00
31.0 (remove)		3.00	
32.0		3.50	4.00
33.0		1.25	1.50
Minimum		6.00	
33.1		15.00	16.00
	33.2a		2.00
	b		5.00
	Minimum		6.00

It has been determined that a 15-day comment period is appropriate for interested persons to comment on this proposed regulatory revision because all user fee increases in the revision are required by the Acts governing the services, and the user fee charged to producers for the classification of cotton must be announced not later than June 1, 1991, as provided in the Uniform Cotton Classing Fees Act of 1987. The user fee charged to cotton producers was calculated in accordance with the Uniform Cotton Classing Fees Act of 1987. Other user fee increases in the revision reflect fees needed to recover the costs of providing these services as are required in the Acts governing these services.

List of Subjects in 7 CFR Part 28

Administrative practice and procedures, Cotton, Reporting and Recordkeeping requirements, Warehouses, Cotton samples, Standards, Cotton linters, Grades, Staples, Market news, Testing.

For the reasons set forth in the preamble, 7 CFR part 28 is proposed to be amended as follows:

Part 28—[Amended]

1. The authority citation for subpart A of part 28 would continue to read as follows:

Authority: Sec. 5, 50 Stat. 62, as amended (7 U.S.C. 55); Sec. 10, 42 Stat. 1519 (7 U.S.C. 61).

2. Section 28.116 would be amended by revising paragraph (c) to read as follows:

§ 28.116 Amounts of Fees for classification; exemption.

* * * * *

(c) An additional fee of 35 cents per sample shall be assessed for services described in paragraphs (a) (1), (2), and (3), and (b) of this section unless the request for service is so worded that the samples become Government property immediately after classification.

* * * * *

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3. Sections 28.117, 28.120, 28.122, 28.123, 28.149, and 28.151 would be revised to read as follows:

§ 28.117 Fee for new memorandum or certificate.

For each new memorandum or certificate issued in substitution for a prior memorandum or certificate at the request of the holder, thereof, on account of the breaking or splitting of the lot of cotton covered thereby or otherwise for his business convenience, the person requesting such substitution shall pay a fee of 15 cents per bale or a minimum fee of $5.00 per sheet. If the memorandum is provided by means of a computer diskette, the fee for each diskette shall be the higher of $10.00 or 10 cents per bale. The cost of any diskette not returned to the Division will be billed to the requestor.

§ 28.120 Expenses to be borne by party requesting classification.

For any samples submitted for Form A, Form C, or Form D determinations, the expenses of inspecting and sampling, or supervising the sampling, and the preparation of the samples and delivery of such samples to the classification room or other place specifically designated for the purpose by the Director shall be borne by the party requesting classification.

§ 28.122 Fee for practical classing examination.

The fee for the practical classing examination for cotton or linters shall be $100.00. Any applicant who passes the examination may be issued a certificate indicating this accomplishment. Any person who fails to pass the examination may be reexamined. The fee for this practical reexamination is $80.00.

§ 28.123 Costs of practical forms of cotton standards.

The costs of practical forms of the cotton standards of the United States shall be as follows:

Effective date July 1, 1991	Dollars each box or roll			
	Domestic shipments		Shipments delivered outside the continental United States	
	f.o.b. Memphis, TN	Surface delivery	Air freight collect	Air parcel post delivered
Grade standards:				
American Upland	$120.00	$125.00	$120.00	$160.00
American Pima	155.00	160.00	155.00	195.00
Standards for length of staple:				
American Upland (prepared in one pound rolls for each length)	18.00	21.00	18.00	32.00
American Pima (prepared in one pound rolls for each length)	19.00	22.00	19.00	33.00

§ 28.149 Fees and costs; Form C determinations.

For samples submitted for Form C determinations, the party requesting the classification shall pay the fees and costs of supervising the sampling incurred on account of each request.

§ 28.151 Cost of practical forms for linters, period effective.

Practical forms of the official cotton linters standards of the United States will be furnished to any person subject to the applicable terms and conditions specified in § 28.105; *provided,* That no practical form of any of the official cotton linters standards of the United States for grade shall be considered as representing any such standards after the date of its cancellation in accordance with this subpart, or, in any event, after the expiration of 12 months following the date of its certification. The cost of the practical forms of cotton linters standards of the United States shall be as follows:

Effective date: July 1, 1991	Dollars each box or roll			
	Domestic shipments		Shipments delivered outside the continental United States	
	f.o.b. Memphis, TN	Surface delivery	Air freight collect	Air parcel post delivered
Linters Grade Standards (6 sample box for each grade)	$120.00	$125.00	$120.00	$160.00
Linters Staple Standards (prepared in one pound rolls for each length)	20.00	23.00	20.00	34.00

4. The authority citation of subpart D of part 28 would continue to read as follows:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); sec. 3c, 50 Stat. 62 (7 U.S.C. 473c); unless otherwise noted.

5. Sections 28.910 and 28.911 would be revised to read as follows:

§ 28.910 Classification of samples and issuance of classification data

(a) The samples submitted as provided in this subpart shall be classified by employees of the Division and classification memoranda showing the official quality determination of each sample according to the official cotton standards of the United States will be issued as computer punch cards that are both eye and machine readable. These cards will be returned by the Division to the ginner or to the agent designated by the ginner to receive the classification data. In lieu of punch cards, ginners or the ginners' designated agents may select any one of the following alternative methods of receiving data at no additional charge.

(1) Classification data for all bales from a gin may be transferred by electronic telecommunication equipment. If the issuance of classification data is requested by telecommunications transfer as well as by another method, the fee for telecommunication transfer shall be one cent per bale ginned. All long distance telephone line charges will be paid by the receiver of data.

(2) Classification data for all bales from a gin may be issued on a computer tape or diskette. If the issuance of classification data is requested on tape or diskette as well as by another method, the fee for each tape or diskette shall be the higher of $10.00 or one cent per bale. The cost of any tape or diskette not returned to the Division will be billed to the requestor.

(3) Classification data for all bales from a gin may be issued as printed cards that are both eye readable and machine scannable. If the issuance of classification data is requested on printed cards as well as by another method, the fee for printed cards shall be one cent per card issued, with a minimum fee of $10.00 per gin per season.

(b) Upon request of an owner of cotton for which classification memoranda have been issued under this subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be 15 cents per bale or a minimum of $5.00 per sheet.

§ 28.911 Review classification

A producer may request one manual or one High Volume Instrument (HVI) review classification for each bale of eligible cotton. The fee for manual review classification is $1.23 per sample. The fee for HVI review classification is $1.73 per sample. Samples for review classification must be drawn by gins of warehouses licensed pursuant to §§ 28.20–28.22, or by employees of the United States Department of Agriculture. Each sample for review classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instructions issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment for samples for review classification shall be assumed by the producer. After classification, the samples shall become the property of the Government unless the producer requests the return of the samples. The proceeds from the sale of samples that become Government property shall be used to defray the costs of providing the services under this subpart. Producers who request return of their samples after classing will pay a fee of 35 cents per sample in addition to the fee established above in this section.

6. The authority citation for subpart E of part 28 would continue to read as follows:

Authority: Sec. 3c, 50 Stat. 62; 7 U.S.C. 473c; Sec. 3d, 55 Stat. 131 (7 U.S.C. 473d).

7. Section 28.956 would be revised to read as follows:

§ 28.956 Prescribed fees

Fees for fiber and processing tests shall be assessed as listed below:

Item No./Kind of test	Fee per test
1.0 Calibration cotton for use with High Volume Instruments, per 5 pound package:	
a. f.o.b. Memphis, Tennessee	$90.00
b. By surface delivery within continental United States	95.00
c. By air freight collect outside continental United States	90.00
d. By air parcel post delivery outside continental United States	130.00
1.1 High Volume Instrument (HVI) System Check Level. Furnishing two samples per month for HVI determinations, summarizing returned data, and reporting deviations from average of all laboratories for measurements taken, per 12 months:	
a. By surface delivery within continental United States	156.00
b. By air parcel post delivery outside continental United States	312.00
2.0 Furnishing international calibration cotton standards with standard values for micronaire reading and fiber strength at zero and 1/8-inch gage and Fibrograph length:	
a. f.o.b. Memphis, Tennessee 1/2-lb. sample	18.00
b. By surface delivery within continental United States, 1/2-lb sample	21.00
c. By air freight collect outside continental United States, 1/2-lb sample	19.00
d. By air parcel post delivery outside continental United States, 1/2-lb sample	29.00
2.1 Furnishing international calibration cotton standards with standard values for micronaire reading only:	
a. f.o.b. Memphis, Tennessee, 1-lb sample	27.00
b. Surface delivery within continental United States, 1-lb sample	30.00
c. By air freight collect outside continental United States, 1-lb sample	27.00
d. By air parcel post delivery outside continental United States, 1-lb sample	41.00
3.0 Furnishing standard color tiles for calibrating cotton colorimeters, per set of five tiles including box:	
a. f.o.b. Memphis, Tennessee	115.00
b. Surface delivery within continental United States	120.00
c. By air freight collect outside continental United States	115.00
d. By air parcel post delivery outside continental United States	155.00
3.1 Furnishing single color calibration tiles for use with specific instruments or as replacements in above sets, each tile:	
a. f.o.b. Memphis, Tennessee	21.00
b. Surface delivery within continental United States	24.00
c. By air freight collect outside continental United States	21.00
d. By air parcel post delivery outside continental United States	34.00
4.0 Furnishing a colorimeter calibration sample box containing six cotton samples with color values Rd and +b for each sample, per box:	
a. f.o.b. Memphis, Tennessee	40.00
b. Surface delivery within continental United States	45.00
c. By air freight collect outside continental United States	40.00
d. By air parcel post delivery outside continental United States	80.00
4.1 Furnishing a trashmeter calibration sample box containing six cotton samples with trashmeter percent area readings for each sample, per box:	
a. f.o.b. Memphis, Tennessee	40.00
b. Surface delivery within continental United States	45.00
c. By air freight collect outside continental United States	40.00
d. By air parcel post delivery outside continental United States	80.00
5.0 High Volume Instrument (HVI) measurement. Reporting micronaire, length, length uniformity, 1/8-inch gage strength, color and trash content. Based on a 6 oz. (170 g) sample, per sample	1.65
6.0 Color of ginned cotton lint. Reporting data on the reflectance and yellowness in terms of Rd and +b values as based on the Nickerson-Hunter Cotton Colorimeter on samples which measure 5 x 6-1/2 inches and weigh approximately 50 grams, per sample	1.20
7.0 Fiber length of ginned cotton lint by Fibrograph method. Reporting the average length and average length uniformity as based on 4 specimens from a blended sample, per sample	8.00
7.1 Fiber length of ginned cotton lint by Fibrograph method. Reporting the average length and average length uniformity as based on 2 specimens from each unblended sample	5.75
8.0 Pressley strength of ginned cotton lint by flat bundle method for either zero or 1/8-inch gage as specified by applicant. Reporting the average strength as based on 6 specimens from a blended sample, per sample	9.25
8.1 Pressley strength of ginned cotton lint by flat bundle method for either zero or 1/8-inch gage as specified by applicant. Reporting the strength as based on 2 specimens for each unblended sample, per sample	5.75
9.0 Stelometer strength and elongation of ginned cotton lint by the flat bundle method for 1/8-inch gage. Reporting the average strength and elongation:	
a. Based on 6 specimens from each blended sample, per sample	9.25
b. Based on 4 specimens from each blended sample, per sample	7.00
c. Based on 2 specimens from each blended sample, per sample	5.75
10.0 Micronaire readings on ginned lint. Reporting the microaire based on 2 specimens per sample	0.65
10.1 Micronaire reading based on 1 specimen per sample	0.35
11.0 Fiber maturity and fineness of ginned cotton lint by the Causticaire method. Reporting the average maturity, fineness, and microaire reading as based on 2 specimens from a blended sample, per sample	15.00
Minimum fee	75.00

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12.0 Fiber fineness and maturity of ginned cotton lint by the IC-Shirley Fineness/Maturity Tester method, reporting the average micronaire, maturity ratio, percent mature fibers and fineness (linear density) based on 2 specimens from a blended sample, per sample 7.00

13.0 Fiber length array of cotton samples. Reporting the average percentage of fibers by weight in each 1/8-inch group, average length and average length variability as based on 3 specimens from a blended sample:
- a. Ginned cotton lint, per sample 74.00
- b. Cotton comber noils, per sample 113.00
- c. Other cotton wastes, per sample 138.00

13.1 Fiber length array of cotton samples. Reporting the average percentage of fibers by weight in each 1/8-inch group, average length, and average length variability as based on 2 specimens from a blended sample:
- a. Ginned cotton lint, per sample 54.00
- b. Cotton comber noils, per sample 78.00
- c. Other cotton wastes, per sample 108.00

13.2 Fiber length array of cotton samples, including purified or absorbent cotton. Reporting the average percentage of fibers by weight in each 1/8-inch group, average length and average length variability as based on 3 specimens from a blended sample, per sample. 190.00

14.0 Fiber Length and Length Distribution of cotton samples by the Almeter method. Reporting the upper 25 percent length, mean length, coefficient of variation, and short fiber percentages by weight, number or tuft in each 1/8-inch group, as based on 2 specimens from a blended sample:
- a. Report percentages of fiber by weight only 25.00
- b. Report percentages of fiber by weight and number or tuft 30.00
- c. Report percentages of fiber by weight, number and tuft 35.00

15.0 Foreign matter content of cotton samples. Reporting data on the non-lint content as based on the Shirley Analyzer separation of lint and foreign matter:
- a. For samples of ginned lint or comber noils, per 100-gram specimen 8.00
- b. For samples of ginning and processing wastes other than comber noils, per 100-gram specimen 14.00

16.0 Neps content of ginned cotton lint. Reporting the neps per 100 square inches as based on the web prepared from a 3-gram specimen by using accessory equipment with the mechanical fiber blender, per sample 16.00

17.0 Sugar content of cotton. Reporting the percent sugar content as based on a quantitative analysis of reducing-substances (sugars) on cotton fibers, per sample 5.25
Minimum fee 26.25

18.0 Miniature carded cotton spinning test. Reporting data on tenacity (centinewtons per tex) of 22's yarn and HVI data (see Item 5.0). Based on the processing of 50 grams of cotton in accordance with special procedures per sample 25.00

19.0 Two-pound cotton carded yarn spinning test available to cotton breeders only. Reporting data on yarn skein strength, yarn appearance, yarn neps and the classification and the fiber length of the cotton as well as comments on any unusual processing performance as based on the processing of 2 pounds of cotton in accordance with standard procedures into two standard carded yarn numbers employing a standard twist multiplier, per sample 84.00

20.0 Cotton carded yarn spinning test. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps and classification, and fiber length as well as comments summarizing any unusual observations as based on the processing of 6 pounds of cotton in accordance with standard laboratory procedures at one of the standard rates of carding of 6-1/2, 9-1/2, or 12-1/2 pounds-per-hour into two of the standard carded yarn number of 8s, 14s, 22s, 36s, 44s, or 50s, employing a standard twist multiplier unless otherwise specified, per sample 115.00

21.0 Spinning potentials test. Determining the finest yarn which can be spun with no ends down and reporting spinning potential yarn number. This test requires an additional 4 pounds of cotton, per sample 165.00

22.0 Cotton combed yarn spinning test. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps, and classification and fiber length as well as comments summarizing any unusual observations as based on the processing of 8 pounds of cotton in accordance with standard procedures at one of the standard rates of carding of 4-1/2, 6-1/2, or 9-1/2 pounds per hour into two of the standard combed yarn numbers of 22s, 36s, 44s, 50s, 60s, 80s, or 100s employing a standard twist multiplier unless otherwise specified, per sample. .. 152.00

23.0 Cotton carded and combed yarn spinning test. Reporting the results as based on the processing of 10 pounds of cotton into two of the standard carded and two of the standard combed yarn numbers employing the same carding rate and the same yarn numbers for both the carded and the combed yarns, per sample 220.0

24.0 Cotton carded and combed yarn spinning test. Reporting the results as based on the processing of 8 pounds of cotton into two of the standard combed yarn numbers employing different carding rates and/or yarn numbers for the carded and combed yarns, per sample 240.00

25.0 Processing and testing of additional yarn. Any carded or combed yarn number processed in connection with spinning tests including either additional yarn numbers or additional twist multipliers employed on the same yarn numbers, per additional lot of yarn 33.00

25.1 Processing and furnishing of additional yarn: Any yarn number processed in connection with spinning tests. Approximately 300 yards on each of 16 paper tubes for testing by the applicant, per additional lot of yarn 45.00

26.0 Twist in yarns by direct-counting method. Reporting direction of twist and average turns per inch of yarn:
- (a) Single yarns based on 40 specimens per lot of yarn 84.00
- (b) Plied or cabled yarns based on 10 specimens, per lot of yarn 24.00

27.0 Skein strength of yarn. Reporting data on the strength and the yarn numbers based on 25 skeins from yarn furnished by the applicant per sample. 13.00

27.1 Single Strand Yarn Strength Test. Measuring 100 strands on a Statimat Tester and reporting yarn strength, elongation and coefficient of variation, per test 6.00

28.0 Appearance grade of yarn furnished on bobbins by applicant. Reporting the appearance grade in accordance with ASTM standards as based on yarn wound from one bobbin, per bobbin 5.50

28.1 Furnishing yarn wound on boards in connection with yarn appearance tests ... 9.00

28.2 Yarn Imperfections Test. Measuring yarn on the Uster Evenness Tester and reporting the yarn imperfections, thick places, thin places, and neps, and the percent coefficient of variation, per sample 6.00

29.0 Strength of cotton fabric. Reporting the average warp and filling strength by the grab method as based on 5 breaks for both warp and filling of fabric furnished by the applicant, per sample. 19.00

29.1 Cotton fabric analysis. Reporting data on the number of warp and filling threads per inch and weight per yard of fabric as based on at least three (3) 6 x 6-inch specimens of fabric which were processed or furnished by the applicant, per sample 33.00

30.0 Chemical finishing tests on finished drawing sliver. The Ahiba Texomat Dyer is used for scouring, bleaching and dyeing of a 3-gram sample. Color measurements are made on the unfinished, bleached and dyed cotton samples, using a Hunterlab Colorimeter, Model 25 M-3. The color values are reported in terms of reflectance (Rd), yellowness (+b) and blueness (−b) 15.00
Minimum fee 45.00

32.0 Furnishing identified cotton samples. Includes samples of ginned lint stock at any stage of processing or testing, waste of any type, yarn or fabric selected and identified in connection with fiber and/or spinning tests, per identified sample 4.00

33.0 Furnishing additional copies of test reports. Including extra copies in addition to the two copies routinely furnished in connection with each test item, per additional sheet 1.50
Minimum fee 6.00

33.1 Furnishing a certified retesting of test results. Includes samples or sub-samples selected from any previous tests, per sheet 18.00

33.2 Sending copies of test reports by facsimile (FAX), per sheet:
- a. Within continental United States 2.00
- b. Outside continental United States 5.00

Minimum fee (additional copies) 6.00

34.0 Classification of ginned cotton lint is available in connection with other fiber tests, under the provisions of 7 CFR 28, § 28.56, at the fees prescribed by 7 CFR 28, § 28.116. Classification includes grade, staple, and micronaire reading based on a 6 oz. (170g) sample.

Dated: April 24, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-10082 Filed 4-29-91; 8:45 am]

BILLING CODE 3410-09-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Chicken Egg Industry

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to increase the size standard for the Chicken Egg Industry, Standard Industrial Classification (SIC) code 0252, from $1 million to $7 million in average annual receipts. This action is being proposed in an attempt to better define a small business in this industry.

DATES: Comments must be submitted on or before May 30, 1991.

ADDRESSES: Send Comments to: Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 409 3rd Street, SW.—5th flr., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Harvey D. Bronstein, Economist, Size Standards Staff, Tel: (202) 205-6618.

SUPPLEMENTARY INFORMATION: The Chicken Egg industry's small business size standard of $1 million in average annual receipts has been in effect since 1980. Two small dealers have indicated to SBA that few small chicken egg producers are participating in the Federal procurement of chicken eggs by either contracting directly with the Federal Government or through small dealers. In view of the limited participation of small egg producers in government procurement, SBA has reexamined the appropriateness of the present size standard.

When examining a size standard, SBA considers a number of specific factors characterizing industry structure such as: industry competition, average firm size, start-up costs, distribution of firms by size and program impact, in this case the small business share of Federal procurement of eggs.

As an indicator of industry competition, SBA looks at concentration or the share of industry sales controlled by the largest producers. As an industry is more concentrated, especially when compared to other similar industries, the influence of this factor is to move the size standard upward. If an industry is less concentrated, this would be a downward influence on the standard.

Average firm size is also a consideration in the evaluation of a size standard and is related to start-up costs. Industries differ by average firm size. The average is also an indicator of how difficult it is to start a business in an industry. If average firm size is high compared to other similar industries then the tendency is to support a higher size standard. A lower size standard would generally be the case for an industry with a relatively low average firm size.

Firm size distribution indicates the proportion of industry sales, employment and other economic activity accounted for by firms of different sizes. For example, if the preponderance of an industry's output is by the smaller firms, that is, those at the low end of the distribution, this would tend to support a lower size standard. The opposite would be the case for an industry in which firm size distribution shows that output is controlled by large firms.

Program impact is an important factor because this is the most immediate application of a size standard. While factors other than size standards effect program results, a change in a size standard can be expected to have an appreciable outcome on the procurement set-aside and other SBA programs. In the case of chicken eggs, the size standard is expected to influence the set-aside program and improve the low participation of small business in selling eggs to the Government.

The chicken egg industry has become more concentrated due to stagnant production and the declining number of firms. Egg production was the same in 1987 as it was in 1967, according to U.S. Department of Agriculture (USDA) statistics. From 1960 to 1986, the number of producers reported in the United States Establishment and Enterprise Microdata file (USEEM, SBA's Small Business Data Base) declined by one-quarter, from 1202 to 920. Also the share of industry sales by producers owning more than one million hens has gone from 36% in 1960 to 56% in 1987, according to the USDA. This same source also observed, "Production has become more concentrated over time (and) is comprised of larger firms."

As part of this industry consolidation, average firm size has been increasing as producers seek to take advantage of economies of scale. A trade source, the magazine Egg Industry, reported in its 1989 survey of the largest producers "the firms at the top of the list continue to get bigger," and that the largest firm in 1989 more than doubled in size through the acquisition of another large producer. Similarly, average firm size in the industry according to USEEM was $2.5 million in annual receipts in 1986 (equivalent to approximately 16 employees), up from $1.4 million in 1990.

The distribution of firms by size class can be seen from Table 1. This table also shows firm size in terms of the number of layers or hens, as this is a common measure of producer size in the industry.

TABLE 1.—ESTIMATED INDUSTRY SIZE DISTRIBUTION BY EQUIVALENT FIRM SIZES, Chicken Eggs, SIC Code 0252

Employee Size Class	7	20	50	100	1,367
Sales Size Class	$1M	$3M	$7M	$14M	$186M
Layer Size Class (000's)	76	221	552	1106	15,000
Number of Firms (cumul.)	407	764	851	893	920
Percent of Firms (cumul.)	54%	83%	93%	97%	100%
Percent of Sales (cumul.)	6%	22%	37%	50%	100%

Sales based on 1986 egg prices from USDA.
Sources: USEEM, 1986 and Egg Industry, Nov. 1989.

In spite of these trends, the egg industry is still quite competitive, in part because eggs can be economically transported from producer to market, sometimes for distances of over one thousand miles. Relatively small differences in prices will cause eggs to be shipped from one region to another, state USDA sources in the USDA's Economic Research Service. This would act to curtail any geographic market power of the largest producers.

While part of agriculture, the egg industry's method of production differs significantly from farming. The industry is highly mechanized with factory-type operations and has average firm size of $2.5 million in annual receipts. By

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contrast, the average size farm only has $700,000 in receipts according to the SBA's Small Business Data Base. In addition, as discussed above, the egg industry is much more concentrated than general farming, with levels of concentration more typical of manufacturing that agriculture. The top five firms in the egg industry control 19 percent of sales according to both USEEM and Egg Industry. In contrast, for general farming concentration is practically zero. Thus the current $500,000 farming size standard—established by law in 1986—is of limited relevance compared to the size standard for the egg industry.

When re-examining a size standard, a consideration of other sectors' average firm sizes and their relationship to their size standards is helpful. (These are listed below in table 2.) This comparison is important because if shows how a size standard relates to other industries' size standards. SBA has no specific ratio of size standard to average firm size as a goal in considering a size standard for an industry. It is a rule of thumb for making interindustry comparisons and is evaluated with other industry characteristics.

Usually a size standard is several times greater than the average firm size for a given industry. Such is not the case for the chicken egg industry, however, in which its current size standard is actually below the average firm size.

TABLE 2

Industry	Size standard	Average firm size
Farming	$0.5M	$0.7M
Services	3.5M	1.2M
Retail	3.5M	1.3M
Special Trade	7.0M	0.8M
Construction		
Manufacturing	500E	76E
Eggs	$1.0M	$2.5M

Source: USEEM, 1988, based on credit reports from Dun and Bradstreet. Census Data which incorporates many more records, estimated average farm size at $115,000 in 1992. USEEM data is used in this report because Census data is not separately compiled for the egg industry.

SBA has used the concept of an anchor size standard for comparing size standards across industries. In 1985, SGA's Size Policy Board adopted two anchor size standards to service as reference points from which to begin considerations of a specific standard. For nonmanufacturing industries a receipt-based size standard of $3.5 million is the anchor and for manufacturing, an employee-based size standard of 500 employees was adopted. The receipt-based size standard originated in 1954, a short time after the inception of the Agency. At that time, the most common or anchor size standard for receipt-based size standards was established at $1.0 million. Inflationary adjustments to this figure eventually led to the $3.5 million size standard in 1984 which is still in effect today.

SBA's size standards define as small, or cover, about 98 percent of all firms in the economy. These firms account for approximately 38 percent of sales or value of the economy's output on a gross national product basis. While not a goal in itself, these coverage rates can be used as a guide in selecting a proposed size standard and in considering the impact of the size standard on SBA programs. Chart A below compares coverage for current size standards for the egg industry, farms, and small businesses taken as a whole. It shows that the current size standard for eggs covers relatively few firms, 54 percent, and hardly and industry sales, 8 percent.

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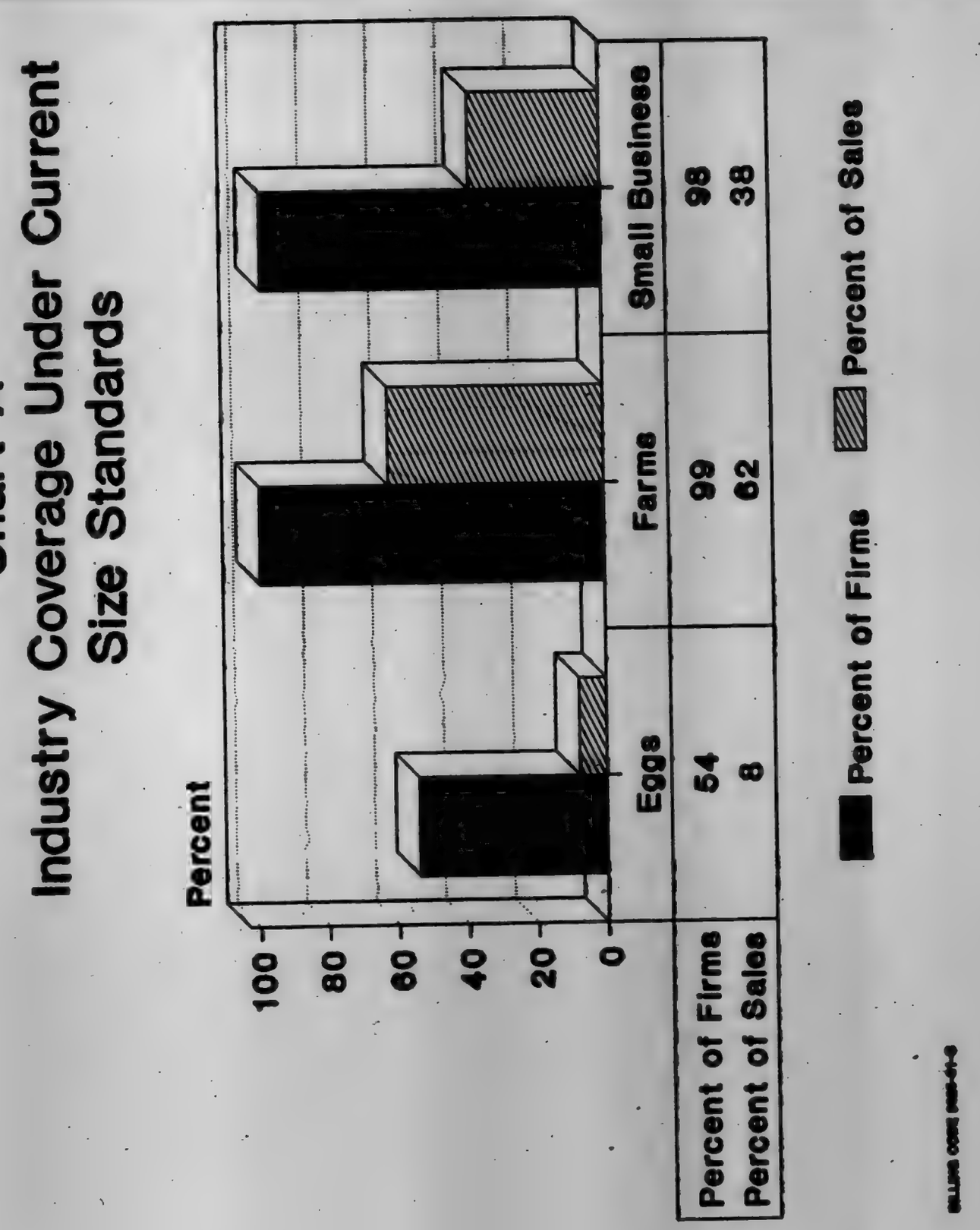

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Chart B shows how varying size levels can achieve higher rates of coverage. At levels of one-half million or even one million dollars, only a few percent of industry sales are represented by firms at or below this size. Moving to higher size levels results in increased small business coverage for the industry.

Chart B
Egg Industry; Cumulative Distribution of Firms and Sales, by Firm Size

	$0.5M	$1M	$3.5M	$7M	$14M	500 emp.
Percent of Firms	39	54	84	93	97	99
Percent of Sales	5	8	24	37	50	81

Firm Size

— Percent of Firms —+— Percent of Sales

The impact on the small business set-aside program revolves around the fact that only 1 percent to 2 percent of Federal egg contracts have been awarded to small business. According to the Defense Personnel Service Center (DPSC) in Philadelphia, the Government's primary purchaser of eggs, there were no awards to small business in 1989 and only one award in 1988 for $55,000. In 1989 DPSC awarded several hundred contracts aggregately worth about $37 million for eggs.

The current $1 million size standard has produced low results for the small business share of Federal procurement of eggs. While the overall small business share of Federal procurement is about 20 percent for all goods and services, for egg procurement it has been practically zero. SBA believes a better definition of small egg producers could improve program results.

SBA looked at several alternative size standards for this industry. To keep the number of alternatives to manageable levels, SBA considered size standards at already existing levels. These are listed below in table 3 along with their anticipated effect on the industry. The size standards at these levels are used, respectively, in farming ($0.5 million), services and retail trade ($3.5 million), special trade construction and computer services ($7 million), motion pictures ($14 million), and manufacturing (500 employees).

Of these alternatives, SBA is proposing a $7 million size standard. This size standard would make the chicken egg industry standard more comparable to other industries in terms of average firm size and coverage rates, and improve program results. The $7 million size standard would define as small 93 percent of industry firms (851 out of 920), which account for .37 percent of industry sales. Under the current size standard, only about one half of the firms are considered small, and they account for only 8 percent of total industry sales.

Also, as shown in table 2, size standards are generally several times greater than the average firm size for an industry. For the egg industry, this means the proposed size standard would be about three times greater than average firm size. At this level, the relationship between average firm size and the size standard for chicken eggs would be about the same as for the retail trade and service industries—the two most significant industry divisions using receipt levels as size standards. In terms of program impact, egg buyers at DPSC estimate that a higher size standard could substantially increase purchases from producers defined as small. At the proposed size standard, small egg producers could be expected to obtain at least 20 percent of Government egg procurement.

SBA specifically invites comment on the appropriateness of this standard and on alternative standards (either higher or lower). Comments suggesting other standards should address the questions of: (1) The interaction of this size standard with SBA's programs; (2) the relative levels of participation at different size standards; (3) the effect of this proposed size standard or other alternative size standard on the businesses within this industry; and (4) the prospect of significant new entries into these businesses in response to this program.

Compliance With Executive Orders 12291 and 12612, Regulatory Flexibility Act and Paperwork Reduction Act (5 U.S.C. 601, et seq. and 44 U.S.C. Chapter 35)

The SBA certifies that this proposed rule, if promulgated as final, would not constitute a major rule for purposes of E.O 12291. This rule does not qualify as a major rule because SBA made only 20 loans to firms in this industry for $4.1 million in 1989, and the number of contracts set aside for small business in this industry is small. In the procurement program, the small business set-aside amount could increase to an estimated 20 percent of $37 million in procurement, to perhaps $7 million per year from the present $55,000. In addition, SBA believes this rule is not likely to result in a major increase in costs or prices.

The SBA certifies that this proposed rule, if promulgated as final, would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

This proposed rule would define which firms in the Chicken Egg Industry are eligible for SBA assistance as small businesses. Even though small business eligibility would be expanded, from approximately 500 firms to 851, SBA anticipates that few of these firms would be affected. This is because based on current levels of participation by egg producers in SBA programs, the newly eligible firms are expected to generate no more than 10 additional loans and 40 to 50 additional small business contracts per year. The expected impact would be $1.5 million in new loans and $5 million to $7 million worth of contracts per year. For most egg producers the changed size standard would not affect their day-to-day business operations.

SBA certifies that this proposed rule, if promulgated as final, would not contain recordkeeping or reporting requirements subject to the Paperwork Reduction Act, 44 U.S.C., chapter 35. Also, this rule does not require a Federalism Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—businessSmall business.

Accordingly, part 121 of 13 CFR is proposed to be amended as follows:

PART 121—[AMENDED]

1. The authority citation for Part 121 continues to read as follows:

Authority: Secs 3(a) and 5(b)(6) of the Small Business Act 15 U.S.C. 632(a) and 634(b) and Pub. Law 100-656, 102 Stat. 3853 (1988).

§ 121.601 [Amended]

2. In § 121.601 for Major Group 02, SIC code 0252, is revised to read as follows:

SIC (* = new SIC code in 1987; not used in 1972)	Description (N.E.C.—not elsewhere classified)	Size standards in No. of employees or millions of dollars
*	* * *	*
0252	Chicken Eggs	$7.0

Dated: April 11, 1991.

Patricia F. Saiki,

Administrator, Small Business Administration.

[FR Doc. 91-9630 Filed 4-29-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-107-88]

RIN 1545-AS90

Normalization: Inconsistent Procedures and Adjustments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to Internal Revenue Code sections 167(l) and 168(i)(9) that was published in the Federal Register on Tuesday, November 27, 1990. The proposed regulations address the extent to which the normalization requirements of the Internal Revenue Code are violated by certain utility ratemaking procedures and adjustments that are based on tax savings attributable to the filing of a consolidated tax return.

FOR FURTHER INFORMATION CONTACT: Martin Scheffler (202) 566-3553 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On Tuesday, November 27, 1990, the Internal Revenue Service issued proposed regulations titled Normalization: Inconsistent Procedures and Adjustments (55 FR 49294). The proposed regulations address the extent to which the normalization requirements of the Internal Revenue Code are violated by certain utility ratemaking procedures and adjustments that are based on tax savings attributable to the filing of a consolidated tax return. Upon consideration of the comments received, the Service has decided to withdraw those proposed regulations and to close the related regulations project (PS-107-88).

List of Subjects in 26 CFR 1.61-1 Through 1.281-4

Deductions, Exemptions, Income tax, Taxable income.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published in the Federal Register on Tuesday, November 27, 1990, (55 FR 49294) is withdrawn.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-10141 Filed 4-25-91; 2:00 pm]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL-3962-9]

Open Meeting of the Negotiated Rulemaking Advisory Committee; Clean Fuels Rules and Guidelines

AGENCY: Environmental Protection Agency.

ACTION: FACA committee meetings—Negotiated Rulemaking and Committee on Clean Fuels and Guidelines.

SUMMARY: EPA is announcing a meeting of the full Advisory Committee to negotiate a rule for reformulated gasoline and labeling of oxygenated gasoline as well as for developing guidelines for oxygenated fuel credit trading programs for inclusion in State implementation plans. The purpose of the meeting is to see if the Committee can reach consensus on the substantive issues.

DATES: The Committee will meet from 9 am–6pm on May 13, and for 8 am–4 pm [or completion] on May 14.

ADDRESSES: The meeting will be held at the Quality Hotel Capitol Hill, 425 New Jersey Avenue NW., Washington, DC 20001, (202) 638-1616.

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FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the rule should call Carol Mennings of EPA's Motor Vehicle Emission Laboratory, Office of Mobile Sources, (313) 668-4575, with respect to issues concerning reformulated fuels, and Alfonse Mannato of EPA's Field Operations and Support Division, Office of Mobile Sources, (202) 382-2687, with respect to issues concerning oxygenated fuels. Persons needing further information on administrative matters such as committee arrangements or procedures should contact Chris Kirtz of EPA's Regulatory Negotiation Project at (202) 382-7565, or one of the Committee's independent facilitators, Philip J. Harter at (202) 667-1033 or Alana S. Knaster at (818) 702-9626.

Dated: April 26, 1991.

Paul Lapsley,

Director, Regulatory Management Division, Office of Policy, Planning, and Evaluation.

[FR Doc. 91-10291 Filed 4-29-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket No. 91-120; FCC 91-122]

Administrative Practice and Procedure

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The notice of proposed rulemaking amends §§ 1.23 and 1.24 to provide for the temporary suspension of attorneys practicing before the Commission who are the subject of a final order or suspension or disbarment by a court or other lawful tribunal.

DATES: Comments are due on or before June 14, 1991, and reply comments are due on or before July 1, 1991.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James Mullins, Office of General Counsel, (202) 254-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rulemaking, General Docket 91-120 adopted April 12, 1991, and released [April 24], 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Notice of Proposed Rulemaking

1. On April 12, 1991, the Commission adopted a notice of proposed rulemaking in General Docket No. 91-120 proposing to amend 47 CFR 1.24 to provide for the temporary suspension of any lawyer, at the discretion of the Commission and without opportunity for preliminary hearing, upon receipt by the Commission of official notification of that person's final suspension or disbarment by a duly authorized tribunal. The temporary suspension would remain in effect until completion of the Commission's disciplinary proceeding conducted pursuant to § 1.24(b) or until the Commission determines that reinstatement of the practitioner, prior to the completion of those proceedings, would serve the public interest.

2. In addition, the Commission proposed to amend 47 CFR 1.23 to add that an attorney who is subject to suspension, disbarment or otherwise restricted from the practice of law by a final order of a lawfully authorized Federal or State agency is prohibited from practice before the Commission.

3. Members of the public should note that for purposes of this non-restricted notice and comment rulemaking proceeding *ex parte* presentations are permitted except during the Sunshine Agenda period.

4. Accordingly, it is ordered, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r) that a notice of proposed rulemaking is issued, proposing the amendment of 47 CFR part 1 as set forth below.

5. It is further ordered, Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, that all interested parties may file comments on the matters discussed in this NPRM and on the proposed rules contained below by June 14, 1991, and reply comments by July 1, 1991. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments and reply comments. If participants wish each Commissioner to have a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

6. It is further ordered, That the Secretary shall cause a copy of this NPRM to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605 (1980).

List of Subjects in 47 CFR Part 1

Administrative Practice and Procedure

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, part 1 of title 47 is proposed to be amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303.

2. In § 1.23, paragraph (a) is revised to read as follows:

§ 1.23 Persons who may be admitted to practice.

(a) Any person who is a member in good standing of the bar of the Supreme Court of the United States, or of the highest court of any state, territory, or of the District of Columbia, and is not under any final order, entered by any court or any state or federal agency or tribunal lawfully authorized to restrict an attorney in the practice of law, suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law, may represent others before the Commission.

* * * * *

3. In § 1.24, paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 1.24 Censure, suspension, or disbarment of attorneys.

* * * * *

(b) Except as provided in paragraph (c) of this section, before any member of the bar of the Commission shall be censured, suspended, or disbarred, charges shall be preferred by the Commission against such practitioner and he shall be afforded an opportunity to be heard thereon.

(c) Upon receipt of official notice from any federal court or any court of any state, territory, or the District of Columbia, or any state or federal agency or tribunal lawfully authorized to suspend an attorney from the practice of law, which demonstrates that an attorney practicing before the Commission is the subject of an order of final suspension (not merely temporary suspension pending further action) or disbarment by such entity, the Commission may, without preliminary hearing, enter an order temporarily suspending the attorney from practice before it pending final disposition of a disciplinary proceeding brought pursuant to paragraph (a)(1) of this section, which shall afford the attorney an opportunity to be heard.

[FR Doc. 91-10168 Filed 4-29-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-124, RM-7566]

Radio Broadcasting Services; Bentonville, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Demaree Media, Inc., licensee of Station KOLZ(FM), Channel 252A, Bentonville, Arkansas, seeking the substitution of Channel 252C3 for Channel 252A and modification of its license accordingly. Coordinates for this proposal are 36-31-06 and 94-10-36. Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's rules. Therefore, we will not accept competing expressions of interest in the use of Channel 252C3 at Bentonville or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before June 17, 1991, and reply comments on or before July 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: M. Anne Swanson, Esq., Koteen & Naftalin, 1150 Connecticut Ave., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No. 91-124, adopted April 15, 1991, and released April 25, 1991.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st St., NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. see 47 CFR 1.1204(b) for rules governing permissible *ex Parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-10166 Filed 4-29-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-118, RM-7569]

Radio Broadcasting Services; Cedar Key, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Karen Voyles proposing the substitution of Channel 274C3 for Channel 274A at Cedar Key, Florida, and modification of her construction permit (BPH-881115MD) to specify the higher class channel. Channel 274C3 can be allotted to Cedar Key in compliance with the Commission's minimum distance separation requirements at the site specified in the construction permit, with a site restriction of 8.0 kilometers (5.0 miles) north of the community. The coordinates are North Latitude 29-12-24 and West Longitude 83-00-51. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before June 14, 1991, and reply comments on or before July 1, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Karen Voyles, c/o Riley & Bergquist, P.A., 5200 Willson Road, suite #308, Edina, Minnesota 55424 (petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 91-118, adopted April 11, 1991, and released April 23, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-10116 Filed 4-29-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-117, RM-7570]

Radio Broadcasting Services; Edgewater, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

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SUMMARY: This document requests comments on a petition by deHaro Radio, Ltd., proposing the substitution of Channel 228C3 for Channel 228A at Edgewater, Florida, and modification of its construction permit to specify the higher class channel. Channel 228C3 can be allotted to Edgewater in compliance with the Commission's minimum distance separation requirements at the site specified in the construction permit, with a site restriction of 8.4 kilometers (5.2 miles) south of the community. The coordinates for this proposed allotment are North Latitude 28-54-52 and West Longitude 80-53-48. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before June 14, 1991, and reply comments on or before July 1, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Cary S. Tepper, Putbrese, Hunsaker & Ruddy, 6800 Fleetwood Road, suite 100, P.O. Box 539, McLean, Virginia 22101 (attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-117, adopted April 11, 1991, and released April 23, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-10117 Filed 4-29-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-640; RM-7560]

Radio Broadcasting Services; Weiser, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: This document dismisses the petition of Treasure Valley Broadcasting requesting the substitution of Channel 300C2 for Channel 257A at Weiser, Idaho, because no comments expressing continuing interest in Channel 298C2, the channel proposed by the Commission, were filed by the petitioner or any other party. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-648, adopted April 11, 1991, and released April 23, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-10118 Filed 4-29-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-123, RM-7693]

Radio Broadcasting Services; Newton, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by S. Kent Lankford, proposing the substitution of Channel 278B1 for Channel 278A at Newton, Illinois, and modification of his construction permit (BPH-880727MI) to specify the higher class channel. Channel 278B1 can be allotted to Newton in compliance with the Commission's minimum distance separation requirements at the site specified in the construction permit with a site restriction of 9.9 kilometers (6 miles) northwest of the community. The site restriction is necessary in order to avoid short-spacing to a construction permit for Station WUEZ(FM), Channel 279A, Christopher, Illinois, Station WFIU(FM), Channel 278B, Bloomington, Illinois, and Station WDBR(FM), Channel 279B, Springfield, Illinois. The coordinates are North Latitude 39-04-31 and West Longitude 88-11-19. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before June 17, 1991, and reply comments on or before July 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., 13609 Black Meadow Road, Spotsylvania, Virginia 22553 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No. 91-123, adopted April 15, 1991, and released April 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio Broadcasting

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-10167 Filed 4-29-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-628; RM-7576]

Radio Broadcasting Services; Gilman, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: This document dismisses the petition of Jerry Rosalius requesting the allotment of Channel 277A to Gilman, Illinois, since no comments expressing continuing interest in Channel 277A at Gilman were filed by the petitioner or any other party. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 643-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-628, adopted April 11, 1991, and released April 23, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-10119 Filed 4-29-91; 8:45 am]

BILLING CODE 6712-01-M

VOL 56 ISS 83 APR 30 1991 UMI

Notices

Federal Register
Vol. 56, No. 83
Tuesday, April 30, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Drug Alliance; Availability of Funds

ACTION: Notice of availability of funds.

ACTION, the federal domestic volunteer agency, announces the availability of funds during fiscal year 1991 for Drug Alliance grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title I, part C). These grants are to address the particular need for illicit drug prevention programs that focus on at-risk youth in public housing neighborhoods.

ACTION, historically a principal source of volunteer leadership in America, has been mandated by the President and Congress to confront the crisis of illegal drug use by youth by supporting innovative prevention programs that use volunteer resources at the local level to respond to this crisis. Volunteers of all ages and from every segment of the community can make vital contributions to illegal drug use prevention and education programs. Therefore, ACTION intends to support programs which encourage and sustain the spirit of voluntarism as a weapon in America's fight against illegal drugs.

The best strategy to combat illegal drug use by youth is to prevent it from starting. Effective prevention requires the involvement of every segment of the community in delivering and reinforcing clear and consistent "no use" messages. Because no single approach will work in every locale, ACTION has supported and promoted a wide range of models using volunteers of all ages to stop the use of illegal drugs by youth. The search continues for new approaches or models, as well as for strategies to adapt existing models to individual communities. There is continuing need for effective approaches that use volunteers to provide specific drug use prevention information and refusal skills as well as to provide a wide range of positive activities for at-risk youth that can reinforce prevention efforts.

Local community and youth serving organizations are in a unique leadership position to provide meaningful structured volunteer programs which focus on preventing illegal drug use among youth. Such local organizations have demonstrated in the past that they are best able to address community problems such as illicit drug use among youth because they are closest to the problem and have the greatest stake in solving it. Also, they are most able to include both parents and youth in the planning and implementation of programs to combat illegal drug use—a strategy increasingly recognized as critical to the ultimate effectiveness of such community-based projects.

While youth constitute a most important target for anti-drug programming, drug-free youth also constitute a tremendous resource for a community's drug prevention educational effort. There is a critical need for communities to develop programs which will provide opportunities for drug-free youth to become leaders and role models to help counter peer pressure to use illegal drugs. In addition to being of value to the community, youth volunteers themselves receive significant benefits from providing service to others.

There is particular need for illicit drug prevention programming in public housing neighborhoods. The needs in such communities that may be met through voluntary service are great, and the youth who live in these areas are generally considered at extremely high risk of becoming involved with illegal drugs. This announcement solicits innovative and creative proposals which respond to this need in public housing neighborhoods.

A. Eligible Strategy

Public and private non-profit agencies, including community-based organizations, which provide services to youth residents of public housing are encouraged to submit proposals to implement the following strategy by: (a) Expanding an existing project, (b) or developing a new project.

The proposed program must use non-stipend volunteers to provide illegal drug use prevention education and related activities for youth program participants. It must involve parents, make extensive use of non-stipended youth and/or adult volunteers in its operation, and target youth who reside in public housing communities. There should be special emphasis on the recruitment of volunteers who live in the community being served by the project.

The prevention education component must include information on the harmful consequences of illegal drug use as well as peer pressure resistance and refusal skills. The involvement of other drug prevention educational resources from the community is encouraged.

Additional positive activities to benefit or to involve youth which are designed to reinforce the prevention education process should be built in to the program as well. Such activities may include (but are not limited to); mentoring, tutoring, and recreational/cultural/educational opportunities.

B. Eligible Applicants

Only applications from private non-profit incorporated organizations and public agencies that provide services to youth in public housing will be eligible. Such organizations may include, but are not limited to, local coalitions or councils dedicated to the prevention of illegal drug use, community-based volunteer groups, religious organizations, local government agencies, service clubs, fraternities, sororities and youth-serving organizations.

Any applicant that does not adhere to a strict policy of the non-use of illegal drugs will not be eligible for consideration. Furthermore, an application will be deemed ineligible if it refers to philosophy, proposed activities, training or educational meterials that advocate the tolerance of the initial or responsible use of any illegal drug, and/or the illegal use of any legal drug. This issue must be addressed in the application.

C. Available Funds and Scope of Grant

The amount of a grant will not exceed $9,000 each. Grant funding will be provided on a one-time, non-refundable basis for a budget period not to exceed one year.

All grants awarded under this announcement require a match of at least 10% (cash or in-kind) of the federal share. Additional non-federal match is strongly encouraged, and will be considered in the decision-making process.

Subject to availability of funds, up to $540,000 will be available for grants under this announcement. Publication of this announcement does not obligate ACTION to award any specific number of grants, or to obligate the entire amount of funds available, or any part thereof.

D. General Criteria for Grant Review and Selection

Grant applications will be reviewed and evaluated based on the criteria outlined below, as well as on conformance to the instructions included in the application.

1. Statement of need that includes both an analysis of the type and extent of the problem to be addressed by the project and an overview of the applicant's qualifications to meet that need.

2. Ability and plans to recruit, train, and retain non-stipended older youth or adult volunteers to assist youth residing in public housing.

3. Ability and plans for volunteers to provide appropriate illicit drug use prevention education (including information about harmful consequences to health from use and resistance training) for youth participants.

4. Ability and plans for volunteers to provide additional positive activities for youth participants (e.g., mentoring, tutoring, recreational/cultural/educational opportunities.).

5. Plans to involve youth and parents in developing and/or implementing the program.

6. Realistic plans to continue project activities beyond the end of the ACTION grant.

7. Evidence of local community support for this project, including three letters from agencies or organizations which make a commitment to participate in the project.

8. Carefully formulated Work Plan which includes time-phased and quantifiable objectives, including objectives for continuation of the project, and the feasibility of proposed methods for meeting those objectives.

9. Innovative approach to combine federal and non-federal resources and volunteer participation, including potential for replication.

10. Evidence of public and private sector support (financial and in-kind). Amount and type of non-federal support will be considered.

E. Application Review Process

Applications submitted under this announcement will be reviewed and evaluated by their respective ACTION State and Regional Offices and ACTION's Program Demonstration and Development Division. ACTION's Associate Director for Domestic and Anti-Poverty Operations will make the final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

The Associate Director of Domestic and Anti-Poverty Operations may use additional factors in choosing among applicants which meet the minimum criteria specified above, such as:

1. Geographic distribution;

2. Applicant's access to alternate resources; and

3. Allocation of Drug Alliance resources in relation to other ACTION funds.

Pursuant to Public Law 101–204, priority will be given to applicants that have not previously received Drug Alliance funds.

F. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the appropriate ACTION State Office no later than 5 p.m. local standard time on Friday, June 14, 1991. Only those applications that are received at the appropriate ACTION State Office by 5 p.m. local standard time on this date will be eligible.

All grant applications must consist of:

a. Application for Federal Assistance (ACTION Form 424–PDD) with narrative budget justification, a narrative of project goals and objectives, a detailed Work Plan, and Assurances.

b. Signed and dated Certification Regarding Drug Free Workplace Requirements.

c. Signed and dated Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions.

d. Current resume of the candidate for the position of project director, if available, or the current resume of the director of the applicant agency or project.

e. Organizational chart of the applicant showing how the project is related to the organization.

f. List of the current board of directors showing their names, addresses and organizational and professional affiliations.

g. Three letters of support attesting to the applicant's ability to meet the above criteria and evidencing intent to cooperate with applicant in development and implementation of project.

h. Statement that identifies previous ACTION funding (type, amounts) or a statement that applicant has not previously received funding from ACTION.

i. CPA certification of accounting capability.

j. Articles of incorporation including the page that contains the State seal.

k. Proof of non-profit status or an application for non-profit status, which should be made through documentation. Items i, j and k above are not required for public agencies of state and local government.

To receive an application kit, please contact the appropriate ACTION State Program Office. Following is a list of ACTION Regional Offices, along with the addresses and telephone numbers of the ACTION State Program Office under their jurisdiction.

Region I

ACTION Regional Office, 10 Causeway Street, room 473, Boston, MA 02222–1038, 617/565–7000

(Connecticut)
ACTION State Office, 1 Commercial Plaza 21st Floor, Hartford, CT 06103–3510, 203/240–3237

(Maine)
ACTION State Office, U.S. Court House, rm 305, 76 Pearl Street, Portland, ME 04101–4168, 207/780–3414

(Massachusetts)
ACTION State Office, 10 Causeway Street, room 473, Boston, MA 02222–1038, 617/565–7018

(New Hampshire/Vermont)
ACTION State Office, Federal Post Office & Courthouse, 55 Pleasant Street, rm 223, Concord, NH 03301–3939, 603/225–1450

(Rhode Island)
ACTION State Office, John O. Pastore Federal Building, Two Exchange Terrace, room 232, Providence, RI 02903–1758, 401/528–5424

Region II

ACTION Regional Office, 6 World Trade Center, room 758, New York, NY 10048–0206, 212/466–3481

(New Jersey)
ACTION State Office, 44 S. Clinton Avenue, suite 702, Trenton, NJ 08608–1507, 609/989–2243

(Metropolitan New York)
ACTION State Office, 6 World Trade Center, room 758, New York, NY 10048–0206, 212/466–4471

(Upstate New York)
ACTION State Office, U.S. Courthouse & Federal Bldg., 445 Broadway, room 168, Albany, NY 12207–2923, 518/472–3004

(Puerto Rico/Virgin Islands)
ACTION State Office, U.S. Federal Building, 150 Carlos Chardon Avenue, suite C49, Hato Rey, PR 00918–1737, 809/766–5314

Region III

ACTION Regional Office, U.S. Customs House, 2nd & Chestnut St., rm 106, Philadelphia, PA 19106–2912, 215/597–9372

(Delaware/Maryland)

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ACTION State Office, Federal Building, 31 Hopkins Plaza, room 1125, Baltimore, MD 21201-2814, 301/962-4443

(Kentucky)
ACTION State Office, Federal Building, room 372-D, 600 Federal Place, Louisville, KY 40202-2230, 502/582-6384

(Ohio)
ACTION State Office, Leveque Tower, room 304A, 50 W. Broad Street, Columbus, OH 43215, 614/469-7441

(Pennsylvania)
ACTION State Office, US Customs House, room 108, 2nd & Chestnut Streets, Philadelphia, PA 19106-2998, 215/597-3543

(Virginia/Dist. of Columbia)
ACTION State Office, 400 North 8th St., rm 1119, P.O. Box 10066, Richmond, VA 23240-1832, 804/771-2197

(West Virginia)
ACTION State Office, 603 Morris Street, 2nd Floor, Charleston, WV 25301-1409, 304/347-5246

Region IV

ACTION Regional Office, 101 Marietta St., NW., Suite 1003, Atlanta, GA 30323-2301, 404/331-2860

(Alabama)
ACTION State Office, Beacon Ridge Tower, rm 770, 600 Beacon Parkway West, Birmingham, AL 35209-3120, 205/731-1908

(Florida)
ACTION State Office, 3165 McCrory Street, suite 115, Orlando, FL 32803-3750, 407/648-6117

(Georgia)
ACTION State Office, 75 Piedmont Ave., NE., suite 412, Atlanta, GA 30303-2587, 404/331-4946

(Mississippi)
ACTION State Office, Federal Building, rm 1005-A, 100 West Capital Street, Jackson, MS 39269-1092, 601/965-5664

(North Carolina)
ACTION State Office, Federal Bldg., P.O. Century Station, 300 Fayetteville Street Mall, rm 131, Raleigh, NC 27601-1739, 919/856-4731

(South Carolina)
ACTION State Office, Federal Building, room 872, 1835 Assembly Street, Columbia, SC 29201-2430, 803/765-5771

(Tennessee)
ACTION State Office, 265 Cumberland Bend Drive, Nashville, TN 37228, 615/736-5661

Region V

ACTION Regional Office, 175 West Jackson Blvd., suite 1207, Chicago, IL 60604-3964, 312/353-5107

(Illinois)
ACTION State Office, 175 West Jackson Blvd, suite 1207, Chicago, IL 60604-3964, 312/353-2622,

(Indiana)
ACTION State Office, 46 East Ohio Street, room 457, Indianapolis, IN 46204-1922, 317/226-6724

(Iowa)
ACTION State Office, Federal Building, rm 722, 210 Walnut, Des Moines, IA 50309-2195, 515/284-4816

(Michigan)
ACTION State Office, Federal Bldg., room 656, 231 West Lafayette Blvd., Detroit, MI 48226-2798, 313/226-7848

(Minnesota)
ACTION State Office, 431 South 7th Street, room 2480, Minneapolis, MN 55415, 612/334-4083

(Wisconsin)
ACTION State Office, 517 East Wisconsin Ave., rm 601, Milwaukee, WI 53202-4507, 414/291-1116

Region VI

ACTION Regional Office, 1100 Commerce, rm 6B11, Dallas, TX 75242-0696 214/.767-9494

(Arkansas)
ACTION State Office, Federal Building, room 2508, 700 West Capitol Street, Little Rock, AR 72201-3291, 501/324-5234

(Kansas)
ACTION State Office, Federal Building, room 248, 444 S.E. Quincy, Topeka, KS 66603-3501, 913/295-2540

(Louisiana)
ACTION State Office, 628 Main Street, suite 102, Baton Rouge, LA 70801-1910, 504/389-0471

(Missouri)
ACTION State Office, Federal Office Building, 911 Walnut, room 1701, Kansas City, MO 64106-2009, 816/426-5256

(New Mexico)
ACTION State Office, First Interstate Plaza, 125 Lincoln Avenue, suite 214-B, Santa Fe, NM 87501, 505/988-6577

(Oklahoma)
ACTION State Office, 200 NW 5th, suite 912, Oklahoma City, OK 73102-6093, 405/231-5201

(Texas)
ACTION State Office, 611 East Sixth Street, suite 404, Austin, TX 78701-3747, 512/482-5671

Region VIII

ACTION Regional Office, Executive Tower Building, 1405 Curtis Street, Suite 2830, Denver, CO 80202-2349, 303/844-2671

(Colorado)
ACTION State Office, Columbine Bldg., room 301, 1845 Sherman Street, Denver, CO 80203-1167, 303/866-1070

(Montana)
ACTION State Office, Federal Office Bldg., Drawer 10051, 301 South Park, rm 192, Helena, MT 59626-0101, 406/449-5404

(Nebraska)
ACTION State Office, Federal Bldg., room 293, 100 Centennial Mall North, Lincoln, NE 68508-3896, 402/437-5493

(North & South Dakota)
ACTION State Office, Federal Building, room 213, 225, S. Pierre Street, Pierre, SD 57501-2452, 605/224-5996

(Utah)
ACTION State Office, U.S. Post Office & Courthouse, 350 South Main St., room 484, Salt Lake City, UT 84101-2198, 801/524-5411

(Wyoming)
ACTION State Office, Federal Building, room 8009, 2120 Capitol Avenue, Cheyenne, WY 82001-3649, 307/772-2385

Region IX

ACTION Regional Office, 211 Main Street, Rm 530, San Francisco, CA 94105-1914, 415/744-3013

(Arizona)
ACTION State Office, 522 North Central, rm 205-A, Phoenix, AZ 85004-2190, 602/379-4825

(California)
ACTION State Office, 211 Main Street, room 534, San Francisco, CA 94105-1914, 415/744-3015
ACTION State Office, Federal Building, room 14218, 11000 Wilshire Blvd. Los Angeles, CA 90024-3671

(Hawaii/Guam/American Samoa)
ACTION State Office, Federal Building, room 6328, 300 Ala Moana Boulevard, P.O. Box 50024, Honolulu, HI 96850-0001, 808/541-2832

(Nevada)
ACTION State Office, 4600 Kietzke Lane, suite E-141, Reno. NV 89502-5033, 702/784-5314

Region X

ACTION Regional Offi e, Jackson Federal Building, 915 Second Avenue, Ste. 3190, Seattle, WA 98174-1103, 206/553-4520

(Alaska)
ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174-1103, 206/442-1558

(Idaho)
ACTION State Office, 304 North 8th Street, room 344, Boise, ID 83702, 208/334-1707

(Oregon)
ACTION State Office, Federal Bldg., room 647, 511 NW Broadway, Portland, OR 97209-3416, 503/326-2261

(Washington)
ACTION State Office, Suite 3190, Jackson Federal Bldg., 915 Second Avenue, Seattle, WA 98174-1103, 206/442-4975

Signed at Washington, DC., this 18th day of April, 1991.

Jane A. Kenny,
Director.

[FR Doc. 91-10078 Filed 4-29-91; 8:45 am]

BILLING CODE 6050-28

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States. The meeting will be held at 10 a.m. on Wednesday, May 8, 1991, at the Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th Floor).

The committee will meet for further discussion of the Conference's draft recommendation on the National Vaccine Injury Compensation Program. The proposed recommendation is based in part on a draft report written by Professor Wendy K. Mariner of the Boston University Schools of Public Health and Medicine. The committee may also discuss the status of other pending projects.

For further information concerning this meeting, contact David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC. (Telephone: 202-254-7065.)

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: April 25, 1991.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 91-10227 Filed 4-29-91; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Scope Rulings

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of scope rulings.

SUMMARY: The International Trade Administration (ITA) hereby publishes a list of scope rulings completed between January 1, 1991, and March 30, 1991. In conjunction with this list, the ITA is also publishing a list of pending scope inquiries. The ITA intends to publish future lists within thirty days of the end of each quarter.

EFFECTIVE DATE: April 30, 1991.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4851.

Background

Sections 353.29(d)(8) and 355.29(d)(8) of the Department's regulations (19 CFR 353.29(d)(8)) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the Federal Register a list of scope rulings completed within the last three months. The lists are to include the case name, reference number, and brief description of the ruling.

This notice lists scope rulings completed between January 1, 1991, and March 30, 1991, and pending scope clarification requests. The ITA intends to publish in July 1991 a notice of scope rulings completed between April 1, 1991, and June 30, 1991.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

Scope Rulings Completed Between January 1, 1991, and March 30, 1991

Country: Canada.

C-122-505: Oil Country Tubular Goods; Algoma Steel Corp., Ltd.—seamless mechanical tubing/certain coupling stock meeting criteria are excluded from the scope of the order—03/28/91.

A-122-506: Oil Country Tubular Goods; Algoma Steel Corp., Ltd.—seamless mechanical tubing/certain coupling stock meeting criteria are excluded from the scope of the order—03/28/91.

A-122-605: Color Picture Tubes: International Association of Machinists and Aerospace Workers, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried Machine and Furniture Workers, Industrial Union Department, AFL-CIO, and the United Steelworkers of America—the order on color picture tubes (CPTs) from Canada is not being circumvented by the assembly of CPTs into color television receivers in Mexico before importation into the United States—02/28/91.

Country: Argentina.

C-357-803: Leather; Howes Leather Company, Inc.—HTS subheadings 42053.30.0000 and 4205.00.4000 are GSP categories and may not be included within the scope of the order without an ITC injury finding and parts of footwear made of leather, such as shoe soles, entering under HTS subheading 6404.99.6000, are not within the scope of the order—02/02/91.

Country: Singapore.

A-559-601: Color Picture Tubes: International Association of Machinists and Aerospace Workers, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried Machine and Furniture Workers, Industrial Union Department, AFL-CIO, and the United Steelworkers of America—the order on color picture tubes (CPTs) from Singapore is not being circumvented by the assembly of CPTs into color television receivers in Mexico before importation into the United States—02/28/91.

Country: People's Republic of China.

A-570-506: Porcelain-on-Steel Cookware.

CGS International—The high quality, hand finished cookware, including the small basin, medium basin, large basin, small colander, large colander, 6" bowl, 6" bowl, mugs, ash tray, napkin rings, utensil holder and utensils, ladle, cream & sugar, and mixing bowls are properly considered kitchen ware and are outside the scope of the order. Further, the casserole, 12-cup coffee pot, 8-cup coffee pot, roasting pan, oval roaster, and butter warmer are within the scope of the order—01/30/91.

Country: Republic of Korea.

A-580-501: Photo Albums and Filler Pages:

Customs—Baseball card albums are not within the scope of the order—01/15/91.

A-580-605: Color Picture Tubes: International Association of Machinists and Aerospace Workers, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried Machine and Furniture Workers, Industrial Union Department, AFL-CIO, and the United Steelworkers of America—the order on color picture tubes (CPTs) from the Republic of Korea is not being circumvented by the assembly of CPTs into color television receivers in Mexico before importation into the United States—02/28/91.

Country: Japan.

A-588-015: Television Receivers, Monochrome and Color:

Manhattan Electric—Dual voltage Hitachi TVs are within the scope of the order—02/07/91.

A-588-405: Cellular Mobile Telephones and Subassemblies:

Mitsubishi—Hands-free device is not within the scope of the order—02/06/91.

A-588-609: Color Picture Tubes: International Association of Machinists and Aerospace Workers, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried Machine and Furniture Workers, Industrial Union Department, AFL-CIO, and the United Steelworkers of America—the order on color picture tubes (CPTs) from Japan is not being circumvented by the assembly of CPTs into color television receivers in Mexico before importation into the United States—02/28/91.

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A-588-809: Certain Small Business Telephone Systems and Subassemblies Thereof:

Iwatsu Electric Co., Ltd., and Iwatsu America, Inc.—Iwatsu ADIX-430 system is not within the scope of the order—01/18/91.

Pending Scope Inquiries as of March 30 1991

Country: Sweden.

A-401-601: Antifriction Bearings:

Lindsay Forest Products, Inc.—Patented design, square wires for debarker rotors.

Country: United Kingdom.

A-412-801: Antifriction Bearings:

Esoco Inc.—"Linear motion bearings"

Country: Federal Republic of Germany.

A-428-801: Antifriction Bearings:

FAG Kugelfischer Georg Schaefer KGaA—Certain textile machinery components.

FAG Kugelfischer Georg Schaefer KGaA—Certain needle roller bearings.

SKF Textilmaschinen-Komponenten GmbH ad SKF Textile Products, Inc.—Textile machinery component (rotor assembly number TE 226-0036225).

Wafios Machinery Corporation—"Machine parts"

Reifenhauser-Van Dorn Co.—Spare parts (bearings) to rebuild gear box.

A-428-802: Industrial Belts:

Ernst Siegling and Siegling America—Nylon core flat belts.

Country: Italy.

A-475-801: Antifriction Bearings:

SKF Component System Co.—7/32" chrome steel balls.

Meter SpA—Load and thrust rollers, chain sheaves, and wheels—preliminary issued 03/07/91.

Country: Thailand.

C-549-501: Pipe and Tube:

Intrepid: British Standard Pipe.

Country: Singapore.

A-559-801: Antifriction Bearings:

SKF—Loose ball rollers used in textile drafting machinery (top rollers).

C-559-802: Antifriction Bearings:

SKF—Loose ball rollers used in textile drafting machinery (top rollers).

Country: People's Republic of China.

A-570-003: Cotton Shop Towels:

Win-Tex Products, Inc.—Towels assembled in Honduras.

A-570-504: Petroleum Wax Candles:

Fabri-centers of America, Inc.—Citronella candles.

Country: Korea.

A-580-008: Color Television Receivers:

Goldstar—TV/Radio model RCV-0615.

Goldstar—TV/VCR model KMV-9002.

Commodore Business Machines—Computer monitor model 1084(D).

Granada Hospital Group—Spectrum C-10 Interactive Receiver.

A-580-605: Color Picture Tubes:

Penn-Ray Sutra Corp.—Video game displays.

A-580-803: Certain Small Business Telephone Systems and Subassemblies Thereof:

TT Systems Corporation—Simtel 420 telephone set.

Cord Electronics, Inc.—Digital Display Set telephone set (DDS).

Country: Japan.

A-588-007: Certain High Capacity Pagers:

Motorola—Components and subassemblies.

A-588-015: Television Receiving Sets, Monochrome and Color:

NEC—Subassemblies: W5A-1 (HE), W4A-1 (HE), W3A-1 (HE), W5A-1, and W4A-1.

Sharp—LCD TV/Radio/Cassette model JC-AV1.

Teknika Electronics Corp.—P.C.B. subassemblies.

Sharp—LCD TV/VCR model VC-V542U.

Casio Computer Co., Ltd., Casio, Inc., Citizen Watch Co., Ltd, Hitachi, Ltd., Hitachi Sales Corporation of America, Hitachi Sales Corporation of Hawaii, Inc., Matsushita Electric Industrial Co., Ltd., Matsushita Electric Corporation of America, NEC Corporation, NEC Home Electronics (U.S.A.), Inc., Seiko Epson Corporation, Toshiba Corporation, and Toshiba America, Inc.—certain hand-held liquid crystal display televisions (Casio Computer Co., Ltd. models TV-400T, TV-500, TV-1400, TV-3100, TV-8500; Citizen Watch Co., Ltd. models 06TA, 08TA, TB20, TA80, TC50, TC53, DD-T126, DD-P226, TC52; Matsushita Electric Industrial Co., Inc., models CT-301E/302B, CT-311E/312B; and Seiko Epson Corporation models LVD-602, LVD-702, LVD-802) and all other LCD TVs under 6" in screen size imported into the United States.

P.T. Imports, Inc.—multiple voltage and receiving system TVs, JVC series "ME and "MU".

A-588-067: Portable Electric Typewriters:

Tokyo Juki—"Office" typewriter models: Juki Sierra 4500, Sierra 3300, Sierra 3400, Sierra 3400C, Sierra 3500, Sierra 3500XL, Sierra Officewriter, Remington Rand 770, Remington Rand 775, Remington Rand 880, Avanti 1400, and Avanti 1500.

Swintec/Nakajima—"Office" typewriter models: 8000, 8000SP, 8011, 8011SP, 8012, 8014S, 8014KSR, 8016, 8017, 1145CM, 1146CM, 1146CMA, 1146CMP, 1146CMSp, 1186CM, and 1186CMP.

Smith Corona Corporation—Anti-circumvention inquiry to determine whether Brother Industries, Ltd. and Brother Industries (USA), Inc., by importing parts and components from Japan, and assembling them into finished portable electric typewriters for sale in the U.S. is circumventing the order.

A-588-804: Antifriction Bearings:

DHL Worldwide Express—Certain bearings.

A-588-405: Cellular Mobile Telephones and Subassemblies:

Mitsubishi Electric Corporation—RF power semiconductor amplifiers.

Murata Manufacturing Co., Ltd., and Murata Erie North America, Inc.—Voltage control oscillators (VCOs), active filters, and duplexers.

A-588-602: 3.5" Microdisks and and Coated Media Thereof:

Kao Infosystems Company—Certain unprepared media.

Teijin Memorimedia—unburnished media.

A-588-808: Electrolytic Manganese Dioxide:

Sumitomo—High-grade chemical manganese dioxide (CMD-U).

A-588-807: Industrial Belts:

Dataplex—Belts for magnetic ink character recognition.

A-588-809: Certain Small Business Telephone Systems and Subassemblies Thereof:

Iwatsu Electric and Iwatsu America—Subassemblies including: common and expansion modules, circuit cards, power supplies, and stations.

Kyushu Matsushita Electric Co., Ltd.—KME 336, certain subassemblies, and accessories.

A-588-810: Mechanical Transfer Presses:

Aida Engineering—Spare and replacement parts.

Customs—Destack sheet feeder.

General Request: Customs requested the Department determine whether ceramic bearings are within the scope of the orders on antifriction bearings.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

Dated: April 25, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-10260 Filed 4-29-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-804]

Postponement of Final Antidumping Duty Determination: Silicon Metal from Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department is postponing its final determination as to whether imports of silicon metal are being, or are likely to be, sold in the United States at less than fair value until not later than August 12, 1991.

EFFECTIVE DATE: April 30, 1991.

FOR FURTHER INFORMATION CONTACT: James Terpstra or James Maeder, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3965 or (202) 377-4929 respectively.

SUPPLEMENTARY INFORMATION: On March 29, 1991, we published a preliminary determination of sales at less than fair value on silicon metal from Argentina (56 FR 13116). That notice stated that if the investigation proceeded normally, we would make our final determination by June 5, 1991.

On April 5, 1991, Electrometalurgica Andina S.A.I.C. (Andina), respondent in this case, requested a postponement of the date of the final determination pursuant to 19 CFR 353.20(b). Andina accounts for all exports of the subject merchandise from Argentina to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, pursuant to 19 CFR 353.20(b) and section 735(a)(2)(A) of the Tariff Act of 1930, as amended, (the Act), we are postponing the date of the final determination until not later than August 12, 1991.

Public Comment

In accordance with 19 CFR 353.38, we will hold a public hearing to afford interested parties an opportunity to comment on the preliminary determination in the antidumping duty investigation of silicon metal from Argentina. The hearing will be held at 1 p.m. on May 29, 1991, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

Interested parties who wish to participate in the hearing must submit ten copies of the business proprietary version and five copies of the public version of case briefs or other written comments to the Assistant Secretary for Import Administration, room B-099, at the above address, no later than May 22, 1991. Rebuttal briefs must be submitted no later than May 27, 1991. In accordance with 19 CFR 353.38(b), oral presentations will be limited to the issues raised in the briefs.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act. This notice is published pursuant to 19 CFR 353.20(b)(2) and section 735(d) of the Act.

Dated: April 24, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10161 Filed 4-29-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-507-501]

In-Shell Pistachios from Iran; Determination Not to Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on in-shell pistachios from Iran.

EFFECTIVE DATE: April 30, 1991.

FOR FURTHER INFORMATION CONTACT: Mark Spellun or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On March 8, 1991, the Department of Commerce ("the Department") published in the **Federal Register** (56 FR 9636) its intent to revoke the countervailing duty order on in-shell pistachios from Iran (51 FR 8344; March 11, 1986). In accordance with 19 CFR 355.25(d)(4) (iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for the last four consecutive annual anniversary months.

On March 25, 1991, the California Pistachio Commission and the Western Pistachio Association (originally the California Pistachio Association) objected to our intent to revoke the order. Therefore, we no longer intend to revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: April 23, 1991.

Roland MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-10162 Filed 4-29-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review; Certain Hot-Rolled D6A Alloy Steel Strip

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Review and Request for Comments on Certain Hot-Rolled D6A Alloy Steel Strip.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 1,985 net tons of certain hot-rolled D6A alloy steel strip under Article 8 of the U.S.-EC steel arrangement for the remainder of 1991.

Short-Supply Review Number: 49.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain hot-rolled D6A alloy steel strip, which is processed into cold-rolled D6A alloy strip for use in the production of bi-metal band saws. On April 24, 1991, the Secretary received an adequate petition from Theis Precision Steel Corporation ("Theis") requesting a short-supply allowance for 1,985 net tons of this product under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products.

The requested product is a certain grade of D6A steel hot-rolled strip (black or descaled as specified by purchase order) that is suitable for

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electron beam welding and meets the following specifications:

Thickness range: 0.080–0.125 inch;
Width range: 19–26 inches;
Chemical Composition (Ladle Analysis):
Carbon (0.45–0.50); Manganese (0.60–0.90); Phosphorus (0.015 max.); Sulfur (0.010 max., aim as low as possible); Silicon (0.10–0.25); Nickel (0.50–0.70); Chromium (0.90–1.10); Molybdenum (0.90–1.10; Vanadium (0.08–0.15); Copper (0.20 max.); Aluminum (0.05–0.10, acid soluble); Hydrogen (15 ppm max.); Nitrogen (300 ppm max.); and Oxygen (150 ppm max.);
Condition: High quality steel made by the best steelmaking practice necessary to produce an extremely clean sound steel required for good electron beam welds;
Quality Requirements of Hot-Rolled Strip:
a. *Non-Metallic Inclusion Rating:* Utilize a sampling plan as outlined under Article 6 of ASTM E45–81.
b. *Surface Quality:* Inspection of the hot acid descaled surface shall reveal no detrimental surface defects such as slivers, shingle seams, laps, cold shuts, etc. which would affect the finished cold-rolled product;
Internal Soundness: A transverse section deep etched in hot acid and examined shall show no primary or secondary pipe, excessive segregation porosity or other injurious internal defects;
Microstructure:
a. *Grain size:* The McQuaid Ehn grain size shall be fine 6–8 as determined in accordance with ASTM E112–81 Annex A–3.
b. *Decarburization:* Shall be determined on transverse specimens taken one inch from the edges and the center of the strip properly polished and etched and microscopically measured for partial and complete decarburization.
c. *General Microstructure:* Shall be typical hot band fine pearlitic structure with minimum martensite;
Edge: Shall be the natural #2 mill edge or #3 slit edge and does not have to conform to any definite contour;
Size Variation Limits:
a. *Width:* The tolerance for mill edge width shall not exceed ±0.062 inch for a width of 10 inches and ±0.094 inch for widths over 10 inches.
b. *Camber:* Shall be measured by placing an 8 foot straight edge on the concave side edge and measuring the greatest distance between the straight edge and the steep strip. The camber shall not exceed ¼ inch in 8 feet;
Size of Coils: The inside diameter shall be 18–24 inches. The outside diameter shall be 54 inches max. with 18 inches I.D.; however, 56 inches max. O.D. shall be allowed with 20–24 inches I.D. if the band is pickled and annealed. There shall be no fish tail ends.

Section 4(b)(4)(B)(i) of the Act and § 357.108(b)(1) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary has made affirmative short-supply determinations for this product in each of the two immediately preceding years; therefore, in accordance with section 4(b)(4)(B)(i)(II) of the Act and § 357.108(b)(1)(ii) of Commerce's Short-Supply Procedures, the Secretary is applying a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice indicating that they can and will supply this product within the requested period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than May 9, 1991.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than May 7, 1991, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above-noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Sally A. Craig or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377–0165 or (202) 377–0159.

Dated: April 26, 1991.

Eric I. Garfinkel,
Assistant Secretary for Import Administration.

[FR Doc. 91–10277 Filed 4–29–91; 8:45 am]

BILLING CODE 3510–DS–M

COMMISSION ON AGRICULTURAL WORKERS

Commission on Agricultural Workers; Meeting

AGENCY: Commission on Agricultural Workers.

ACTION: Announcement of workshop and meeting.

SUMMARY: This notice announces a workshop and meeting of the Commission on Agricultural Workers. The Commission was established by the Immigration Reform and Control Act (IRCA) of 1986 under section 304.

On Thursday May 23, Commissioners will hear a historical report and discussion on the agricultural services of the Federal-State Employment Service system. There will be commentary on these activities from industry and labor perspectives. On Friday, May 24, the Commission will hold a meeting to review its research program.

DATES: 9 a.m.–5 p.m., May 23, 1991 and 10 a.m.–noon, May 24, 1991.

ADDRESSES: Conference Room—Dupont Room, Dupont Plaza Hotel, 1500 New Hampshire Ave., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beth Bickley, Telephone: (202) 673–5348.

Dated: April 24, 1991.

Aaron Bodin,
Executive Director.

[FR Doc. 91–10112 Filed 4–29–91; 8:45 am]

BILLING CODE 6820–33–M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information; Survey of Garage Door Operator Manufacturers for Compliance With Requirements of the Consumer Product Safety Improvement Act of 1990

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a survey of manufacturers of garage door operators to determine compliance with provisions of section 203 of the Consumer Product Safety Improvement Act of 1990. The requested expiration date is May 31, 1992.

SUPPLEMENTARY INFORMATION: Section 203 of the Consumer Product Improvement Act of 1990 (Pub. L. 101–608, 104 Stat. 3110) provides that on and after January 1, 1991, each automatic residential garage door opener shall conform to the entrapment protection requirements of the Underwriters Laboratories standard designated UL 325, third edition, as revised May 4, 1988. That legislation provides further that on and after July 1, 1991, all manufacturers of automatic residential garage door openers shall, after consultation with the Commission, notify the public of the potential entrapment hazard associated with automatic garage door openers, and advise the public to test the entrapment protection features of their openers. The Commission proposes to conduct a survey of the garage door operator industry to determine the level of compliance with the entrapment protection requirements of the standard designated UL 325, as revised May 4, 1988, and other requirements of section 203 of the Improvement Act of 1990. (Section 203 refers to the product as a garage door "opener." However, the term garage door "operator" is used by the industry because the product closes a garage door in addition to opening it.) The Commission will conduct this survey by inspecting each firm which manufacturers or imports residential automatic garage door operators. During this survey, the Commission will request each firm inspected to provide information about the firm's compliance with the performance and labeling requirements of section 203 of the Improvement Act of 1990. This survey will also request information from each firm inspected about the firm's plans for notifying the public about the potential entrapment hazard associated with automatic garage door operators, and for advising the public to test the entrapment protection feature of garage door operators.

During this survey, the Commission will examine records relating to production, testing, and labeling of residential automatic garage door operators. The Commission may collect samples from some manufacturers and importers.

The Commission will use the information obtained from this survey to assess the overall level of compliance with the entrapment provisions of the standard designated UL 325, as revised May 4, 1988. The Commission may also use information obtained from inspections of individual firms in legal actions against any firm which is determined to have manufactured or imported any residential automatic garage door operator after January 1, 1991, not in conformance with the entrapment protection requirements of UL 325, as revised May 4, 1988, or other requirements of section 203 of the Improvement Act of 1990.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Survey of Compliance with the Standard for Automatic Garage Door Operators.

Type of request: Approval of a new plan.

Frequency of collection: One time.

General description of respondents: Manufacturers and importers of automatic garage door operators.

Total number of respondents: 50.

Hours per response: 6.

Total hours for all respondents: 300.

Comments: Comments about this request for approval of a collection of information should be addressed to Elizabeth Harker, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: April 24, 1991.

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 91–10142 Filed 4–29–91; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence)

Executive Level Group for Defense Corporate Information Management; Meeting

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Department of Defense announces a meeting of the Executive Level Group for Defense Corporate Information Management. The agenda for this meeting is to review plans for implementation of Corporate Information Management in the Department of Defense.

DATE AND TIME: May 13, 1991, 1:45 p.m.–4 p.m.

ADDRESS: Hyatt Regency Hotel—Crystal City, room F, 2799 Jefferson-Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: William H. Leary III, Deputy Director for Policy, (703) 695–0561.

Dated: April 25, 1991.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–10120 Filed 4–29–91; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices Advisory Committee, Meeting

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, 8 May 1991.

ADDRESSES: The meeting will be held at the Palisades Institute for Research

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Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky F. Terry, ACED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: April 25, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-10121 Filed 4-29-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Communications Agency

[Regulation Number 226A]

Scientific Advisory Group (SAG); Closed Meeting

The DCA Scientific Advisory Group will hold a closed meeting on May 30-31, 1991, at the center for Naval Analysis Building, 4401 Ford Avenue, Alexandria, Virginia 22302.

The purpose of the meeting is to address technology and management planning issues relating to DoD's information management initiative and DCA's roles and missions.

Any persons desiring information about the Advisory Group may telephone, 202-746-3843, or write Associate Director, Defense Communications Agency, 8th Street and South Courthouse Road, Arlington, Virginia 22204.

This is a closed meeting due to the discussion of classified material which requires protection in the interest of National Defense. (5 U.S.C. 552(c)(1)).

Col. Dennis M. Moen,

Deputy Associate Director.

[FR Doc. 91-10125 Filed 4-29-91; 8:45 am]

BILLING CODE 3810-05-M

Defense Logistics Agency

Privacy Act of 1974; Amend a Record System

AGENCY: Defense Logistics Agency (DLA), DOD.

ACTION: Amend a record system.

SUMMARY: The Defense Logistics Agency proposes to amend one existing record system to its inventory of record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The proposed action will be effective without further notice on May 30, 1991, unless comments are received which would result in a contrary determination.

ADDRESSES: Ms. Susan Salus, DLA-XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100. Telephone (202) 274-6234 or Autovon 284-6234.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974, as amended, have been published in the Federal Register as follows:

50 FR 22897, May 29, 1985 (DoD Compilation, changes follow)
50 FR 51808, Dec. 20, 1985
51 FR 27443, Jul. 31, 1986
51 FR 30104, Aug. 22, 1986
52 FR 35304, Sep. 18, 1987
52 FR 37495, Oct. 7, 1987
53 FR 04442, Feb. 16, 1988
53 FR 09965, Mar. 28, 1988
53 FR 21511, Jun. 8, 1988
53 FR 26105, Jul. 11, 1988
53 FR 32091, Aug. 23, 1988
53 FR 39129, Oct. 5, 1988
53 FR 44937, Nov. 7, 1988
53 FR 48708, Dec. 2, 1988
54 FR 11967, Mar. 23, 1989
55 FR 21916, May 30, 1990 (DLA Address Directory)
55 FR 32284, Aug. 8, 1990
55 FR 34060, Aug. 21, 1990
55 FR 42755, Oct. 23, 1990
55 FR 53178, Dec. 27, 1990
56 FR 5806, Feb. 13, 1991
56 FR 6967, Mar. 4, 1991
56 FR 11207, Mar. 15, 1991

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, in its entirety. This notice is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), which requires the submission of an altered system report.

Dated: April 25, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base, (55 FR 42755, October 23, 1990).

changes:

* * * * *

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Add a new sentence to the sixth paragraph "U.S. Postal Service records will be maintained on a temporary basis for approved computer matching between the U.S. Postal Service and DoD."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Under paragraph three, delete subparagraph three in its entirety, and replace it with the following subparagraphs "3. Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any VA disability compensation paid or waiver of DVA benefit. The law (10 U.S.C. 684) prohibits receipt of reserve pay and VA compensation for the same time period, however, it does permit waiver of VA compensation to draw reserve pay."

4. Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law (38 U.S.C. 3104(c)) requires recoupment of severance payments before DVA disability compensation can be paid.

5. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 3104(c), 3008-3009). The information is to be used to process all VA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments."

Add to the end of the entry the following new paragraphs "To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

1. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that the reserve assignment can be terminated. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

2. Exchanging personnel and financial information on regular military officer retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions."

* * * * *

RETENTION AND DISPOSAL:

Add a new paragraph "U.S. Postal Service records are temporary and are destroyed after the computer matching program results are verified.

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location—W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93920-5000.

Back-up files maintained in a bank vault in Hermann Hall, Naval Postgraduate School, Monterey, CA 93920-5000.

Decentralized segments—Portions of this file may be maintained by the military and non-appropriated fund personnel and finance centers of the military services, selected civilian contractors with research contracts in manpower area, and other Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All uniformed services officers and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired military personnel; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

DoD civilian employees since January 1, 1972. All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey. Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veterans Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors.

Individuals receiving disability compensation from the Department of Veterans Affairs or who are covered by a Department of Veterans Affairs' insurance or benefit program; civilian employees of the Federal Government; dependents of active duty military retirees, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All U.S. Postal Service employees.

All non-appropriated funded individuals who are employed by the Department of Defense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization records; and home and work addresses.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax ID of providers or potential providers of care.

Selective Service System registration data.

Department of Veterans Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

U.S. Postal Service employment/personnel records containing Social Security Number, name, salary, home and work address. U.S. Postal Service records will be maintained on a temporary basis for approved computer matching between the U.S. Postal Service and DoD.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Assistant Secretaries of Defense; Appointment Powers and Duties; 10 U.S.C. 2358; Research Projects; Pub. L. 95-452, as amended (Inspector General Act of 1978); and Executive Order 9397.

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel functions to perform longitudinal statistical analyses, identify

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current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, and to collect debts owed to the United States Government and state and local governments.

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of Veterans Affairs (DVA), Statistical Policy and Research Office, Office of Information Management and Statistics, DVA Management Sciences Division to provide military personnel employment and pay data for the purpose of selection samples for surveys asking veterans about the use of veteran benefits and satisfaction with DVA services, and to validate eligibility for DVA benefits; and to analyze the cost to the individual of military service under the Veteran's Group Life Insurance program.

To the Department of Veterans Affairs (DVA) to provide identifying military personnel data to the DVA and its contractor, the Prudential Insurance Company, for the purpose of notifying members of the Individual Ready Reserve (IRR) of their right to apply for Veteran's Group Life Insurance coverage.

To the Department of Veterans Affairs (DVA) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

1. Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program (38 U.S.C. 3104(c), 3006–3008). The information is used to determined continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting overpayments.

2. Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 106—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

3. Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 684) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

4. Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law (38 U.S.C. 3104(c)) requires recoupment of severance payments before DVA disability compensation can be paid.

5. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 3104(c), 3006–3008). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

To the Office of Personnel Management (OPM) consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

To the Office of Personnel Management (OPM) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

1. Exchanging personnel and financial information on regular military officer retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

2. Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

3. Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the "guaranteed minimum" disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

4. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilizaton. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and deliquent filers.

To the Department of Health and Human Services (DHHS), Office of the Inspector General, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program. To the Office of Child Support Enforcement, DHHS, pursuant to 42 U.S.C. 653 and Pub. L. 94–505, to assist state child support offices in locating absent parents in order to establish and/or enforce child support obligations.

To the Social Security Administration (SSA), Office of Research and Statistics for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

To the Bureau of Supplemental Security Income, SSA, to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of verifying information provided to the SSA by applicants and recipients who are retired military members of their survivors for Supplemental Security Income (SSI) benefits. By law (42 U.S.C. 1383) the SSA is required to verify eligibility factors and other relevant information provided by the SSI applicant from independent or collateral sources and obtain additional information as necessary before making SSI determinations of eligibility, payment amounts or adjustments thereto.

To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

To DoD Civilian Contractors for the purpose of performing research on manpower problems for statistical analyses.

To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states.

To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and overpayments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 10 U.S.C. 2397.

To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the United States Government under the Debt Collection Act of 1982 (Pub. L. 97–365).

To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

1. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

2. Exchanging personnel and financial information on regular military officer retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

The Defense Logistics Agency "Blanket Routine Uses" published at the beginning of the DLA compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

W.R. Church Computer Center—Tapes are stored in a locked cage in a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Back-up location—Tapes are stored in a bank-type vault; buildings are locked after hours and only properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Files constitute a historical data base and are permanent.

U.S. Postal Service records are temporary and are destroyed after the computer matching program results are verified.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

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RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940-2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

CONTESTING RECORD PROCEDURES:

DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, "Personal Privacy and Rights of Individuals Regarding Their Personal Records"; 32 CFR part 1286; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veterans Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, Selective Service System, and the U.S. Postal Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91-10122 Filed 4-29-91; 8:45 am]

BILLING CODE 5010-01-M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement (OERI) Reading Research Planning Agenda

ACTION: Notice to Solicit Written Public Comments on a Reading Research Agenda for the 1990's.

The Secretary is developing a reading research agenda and invites written comments on what research is still needed to improve teaching and learning in reading, content, and related areas. The Secretary is especially interested in comments from education practitioners and researchers. The Department will use the research agenda on reading, content, and related areas to plan grant and contract competitions. The Reading Center award expires in February 1992.

DEADLINE FOR TRANSMITTAL OF COMMENTS: Comments should be received on or before May 13, 1991. All comments should be addressed to Dr. Anne P. Sweet, U.S. Department of Education, OERI, Office of Research, Room 606D, 555 New Jersey Avenue, NW., Washington, DC 20208-5648.

FOR FURTHER INFORMATION: For additional information write to Dr. Anne P. Sweet at the address above or call (202) 219-2021. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1221e.

Dated: April 23, 1991.

Bruno V. Manno,

Acting Assistant Secretary, Educational Research and Improvement.

[FR Doc. 91-10077 Filed 4-29-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Grant to X-Form, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that purusant to 10 CFR 600.14(e)(1), it is making a discretionary financial assistance award based on acceptance of an unsolicited application to X-Form, Inc., under Grant Number DE-FG01-91CE15492.

The proposed grant will provide funding in the estimated amount of $89,392 for X-Form Inc., to design, construct, test, modify and operate an automatic furnace for the production of sintered intermetallic high-performance superalloy powders of nickel and aluminum. The National Institute of Standards and Techology estimates this process will save 98 percent of the energy used to produce similar alloys by standard methods. This could amount to 17,500 barrels of oil in 1995, when production is expected to reach 2,500 tons.

In accordance with 10 CFR 600.14(e)(1), it has been determined that this project represents a unique idea that is not eligible for financial assistance under a recent, current or planned solicitation. The funding program, Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975, to operate without competitive solicitations because the legislation directs ERIP to provide support for worthy ideas submitted by the public. The proposed project and technology have a strong potential of adding to the national energy resources.

The term of this grant shall be twenty-four (24) months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration; Attn: Ms. Joyce P. Gray, PR-322.2; 1000 Independence Avenue, SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-10149 Filed 4-29-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-124-001, et al.]

Missouri Public Service, et al.: Electric Rate, Small Power Production, and Interlocking Directorate Filings

April 22, 1991.

Take notice that the following filings have been made with the Commission:

1. Missouri Public Service

[Docket No. ER91-124-001]

Take notice that on April 12, 1991, Missouri Public Service (Missouri) filed certain revised contract and tariff pages in conformance with the Commission's order issued on March 29, 1991 in this docket. Missouri states that the revised pages conform the existing contracts and tariffs sheets, and the proposed tariff sheets with that Commission directive.

Copies of the filing were served upon the eight Municipal-Resale customers whose rates and charges are affected by the contracts and tariffs, and upon the Public Service Commission of Missouri.

Comment date: May 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Oklahoma Gas and Electric Company

[Docket No. ER91-386-000]

Take notice that on April 16, 1991, Oklahoma Gas and Electric Company (OG&E) tendered for filing a Settlement Agreement with Arkansas Valley Electric Cooperative, Inc. (AVEC) under which delivery served under the Company's Rate Schedule WC-1 and guarantee no increase in base rates for a period of five years. OG&E has also filed revised electric service agreements applicable to AVEC.

Copies of the filing have been served on each cooperative to whom the Company supplies wholesale electric service, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: May 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER91-385-000]

Take notice that Florida Power & Light Company (FPL) on April 17, 1991, tendered for filing a document entitled Agreement to Provide Specified Delivery Services Between Florida Power & Light Company and City of Lake Worth, Florida ("Lake Worth").

FPL states that this Agreement provides for the delivery of capacity and energy from the Downtown Government Center Qualifying Facility ("DGCQF") to Lake Worth pursuant to an agreement between Lake Worth and south Florida Cogeneration Associates for the purchases of capacity and energy from the DGCQF dated April 1, 1991.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Agreement be made effective June 1, 1991. FPL states that a copy of the filing was served on Lake Worth and Florida Public Service Commission.

Comment date: May 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania Power Company

[Docket No. ER91-378-000]

Take notice that on April 15, 1991 Pennsylvania Power Company (Penn Power) pursuant to 18 CFR § 35.13 tendered for filing proposed changes in its FPC Electric Service Tariffs Nos. 30, 31, 32, 33 and 34 to the Pennsylvania boroughs (Boroughs) of New Wilmington, Wampum, Zelienople, Ellwood City and Grove City, (Rider II) to the above Tariffs effective May 4, 1991. The revenue effect of this change is to decrease revenues from the municipal effect of this change is to decrease revenues from the municipal resale class by $75,666 or 1.07% for the test year ending February 28, 1991.

The five municipal resale customers served by Penn Power entered into settlement agreements effective as of September 1, 1984. These agreements provide that these customers will be charged applicable retail rates as may be in effect during the terms of the agreements. Changes in rates were agreed to become effective as to these resale customers simultaneously with changes approved by the Pennsylvania Public Utility Commission (PA. PUC). All of the proposed changes have been implemented as to Penn Power's retail customers and have been approved by the PA. PUC. These settlement agreements were approved by the Federal Energy Regulatory Commission through a Secretarial letter dated December 14, 1984 in Docket Nos. ER77-277-007 and ER81-779-000. Waivers of certain filing requirements have been requested to implement the rate changes in accordance with the settlement agreements.

Copies of the filing were served upon Penn Power's jurisdictional customers and the PA. PUC.

Comment date: May 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. West Texas Utilities Company

[Docket No. ER91-380-000]

Take notice that on April 16, 1991 West Texas Utilities Company (WTU) tendered for filing: (1) A Transmission Service Agreement (The "Tex-La Agreement"), dated November 27, 1990, between WTU and Tex-La Electric Cooperative of Texas (Tex-La); (2) a Transmission Service Agreement (the "Rayburn Agreement"), dated February 13, 1991, between WTU and Rayburn Country Electric Cooperative (Rayburn) and (3) a revised Master ERCOT Transmission Facility Charge Rate Schedule.

Under the terms of the Tex-La Agreement, WTU will provide transmission services to Tex-La for the transfer of up to 27.5 MW of the hydroelectric capacity from the Brazos Electric Cooperative (Brazos) system to Tex-La. Under the terms of the Rayburn Agreement, WTU will provide transmission service to Rayburn for the transfer of up to 42.5 MW of capacity from the Brazos system to Rayburn. WTU will provide such transmission service at rates based on the cost of service data specified in the Master ERCOT Transmission Facility Charge Rate Schedule. The revised Master ERCOT Transmission Facility Charge Rate Schedule reflects the addition of the Tex-La Agreement to the tariffs and contracts specified in appendix A of the schedule.

WTU seeks an effective date of July 1, 1990 for the Tex-La Agreement, the Rayburn Agreement and the revised Master ERCOT Transmission Facility Charge Rate Schedule. Accordingly, WTU seeks waiver of the Commission's notice requirements. Copies of the filing were served upon Tex-La, Rayburn and the Public Utility Commission of Texas.

Comment date: May 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Philadelphia Electric Company

[Docket No. ER91-376-000]

Take notice that on April 18, 1991, Philadelphia Electric Company (PE) tendered for filing as an initial rate under section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, a Agreement between PE and Public Service Electric and Gas Company (PS) dated April 8, 1991.

PE states that the Agreement sets froth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to PS. In order to optimize the economic advantages to both PE and PS, PE requests that the Commission waive its customary notice period and allow this Agreement to become effective on April 15, 1991.

PE states that a copy of this filing has been sent to PS and will be furnished to the Pennsylvania Public Utility Commission and the New Jersey Board of Public Utilities.

Comment date: May 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Public Service Company

[Docket No. ER91-375-000]

Take notice that on April 12, 1991, Iowa Public Service Company tendered for filing an executed Peaking Power Interchange Service and Peaking Capacity Sales Agreement whereby Iowa Public Service Company (IPS) will provide to Iowa Power Inc. (IPS) twenty megawatts (20 MW) of peaking capacity and associated energy in accordance with MAPP Service Schedule X for the six-month period May 1, 1991 through October 31, 1991.

Comment date: May 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER91-384-000]

Take notice that on April 17, 1991, Florida Power & Light Company (FPL), tendered for filing a document entitled Amendment Number Sixteen to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and the City of Vero, Florida (Rate Schedule FERC No. 56).

FPL states that under Amendment Number Sixteen FPL will transmit power and energy for City of Vero Beach, Florida as is required by the City of Vero Beach, Florida in the implementation of its interchange agreements with City of Homestead,

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Kissimmee Utility Authority, Utilities Commission City of New Smyrna Beach, City of Gainesville, and City of Lake Worth.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective May 1, 1991. FPL states that a copy of the filing was served on the City of Vero Beach, Florida.

Comment date: May 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Carolina Power & Light Company

[Docket No. ER91-381-000]

Take notice that Carolina Power & Light Company (Company) on April 16, 1991 tendered for filing changes to Company's Backstand Power and Transmission rates previously filed as Exhibit No. 1 to Appendix A of the "Amendment to the Service Agreement Between the City of Fayetteville and Caroline Power & Light company" (Amendment) dated January 10, 1991. Company states that this filing is made as a result of a change in the Commission's advisory benchmark rate of return on common equity which is a component of Company's Backstand Power and Transmission rates. The changes to the rates are proposed to become effective on July 1, 1991 and are for the period July 1, 1991 through June 30, 1992.

Copies of this filing have been sent to the Fayetteville Works Commission, North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: May 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10069 Filed 4-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-1791-000, et al.]

Northern Natural Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP91-1791-000]

April 19, 1991.

Take notice that on April 10, 1991, Northern Natural Gas Company (Northern Natural), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP91-1791-000, a request pursuant to section 7(b) of the Natural Gas Act and §§ 157.7 and 157.18 of the Commission's Regulations for permission and approval to abandon firm gas transportation service to Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern Natural states that on October 10, 1980, it entered into a service agreement with Natural providing for the transportation of up to 75,000 Mcf of natural gas per day under Northern Natural's T-29 Rate Schedule. Northern Natural further states that the Commission authorized such service to Natural by order issued on April 24, 1981 in Docket No. CP78-123, *et al.* Northern Natural indicates that it has reached agreement with Natural to terminate Rate Schedule T-29 effective February 1, 1991; that this service has been replaced with self-implementing firm and interruptible transportation service; and that the service provided for under Rate Schedule T-29 is no longer required.

Comment date: May 10, 1991, in accordance with Standard Paragraph F at the end of the notice.

2. Trunkline Gas Company; Tennessee Gas Pipeline Company

[Docket No. CP90-1439-000, CP91-1794-000]

April 19, 1991.

Take notice that on April 15, 1991,[1] Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642 and Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket Nos. CP90-1439-000 and CP91-1794-000, respectively, a stipulation and agreement pursuant to 18 CFR 385.602 of the Commission's Regulations and an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act in purported settlement of issues arising from Trunkline's May 9, 1990, application filed in Docket No. CP90-1439-000, in which Trunkline requested a certificate of public convenience and necessity authorizing an expansion of its Bayou Sale Line in southern Louisiana, all as more fully set forth in the stipulation and agreement and application, which are on file with the Commission and open to public inspection.

It is stated that Trunkline filed an application in Docket No. CP90-1439-000 in which it requested authority to construct and operate 51.43 miles of 30-inch loop between Trunkline's existing Centerville compressor station and its Kaplan compressor station. It is further stated that the project, which was to cost approximately $47,200,000, was designed to increase the capacity of Trunkline's Bayou Sale Line from 330,000 Dekatherms per day (Dtd) to 734,000 Dtd. It is explained that the purpose of the project was to eliminate a longstanding bottleneck on Trunkline's Gulf Coast System. It is explained that in the past, Trunkline has used third-party transportation services (provided mainly by Tennessee) as a means to overcome the bottleneck.

It is stated that Tennessee and Trunkline are currently parties to a transportation agreement dated October 31, 1988, under which Tennessee (using a portion of its Muskrat-Kinder/Sabine Line) transports for Trunkline on a firm basis, up to 360,000 Dtd. It is indicated, however, that inasmuch as the facilities proposed by Trunkline in Docket No. CP90-1439-000 were designed to eliminate the need for the Tennessee transportation service, Trunkline has given Tennessee notice of its intention to terminate the transportation agreement, effective November 1, 1991.

It is noted that Tennessee filed a protest and request for hearing in Docket No. CP90-1439-000, claiming that construction of facilities would be duplicative and unnecessary and that it could provide the services in a more economically and environmentally sound manner. As a result of subsequent informal settlement discussions, Trunkline and Tennessee state that they have reached an agreement, the central element of which is an arrangement under which Trunkline would lease certain pipeline facilities from Tennessee in lieu of proposing to construct an expansion of its Bayou Sale Line.

Trunkline and Tennessee state that the stipulation and agreement, which constitutes an offer of settlement, is submitted for the purpose of securing all requisite certificate, abandonment and related authorizations necessary to implement the terms of lease agreement between Trunkline and Tennessee. Specifically, approval of the settlement, as requested by Trunkline and Tennessee, would grant the following authorizations.

(1) Trunkline would acquire, by lease, firm capacity of the Btu equivalent of 400,000 Dtd in the portion of Tennessee's system identified as the Muskrat/Kinder-Sabine pipeline segment which commences at Centerville in St. Mary Parish, Louisiana, and terminates at Kinder. Tennessee would abandon, by lease, the capacity to be required by Trunkline in the pipeline.

(2) The acquisition and abandonment would be implemented pursuant to a Capacity Lease Agreement which, among other things, provides that Tennessee would lease to Trunkline capacity in the pipeline equal to the volumetric equivalent of 400,000 Dtd on a firm basis for a primary term of ten years commencing on the later of June 1, 1991, or when the Commission approves the Settlement. The capacity leased to Trunkline would revert to Tennessee upon expiration of the lease. Trunkline would make monthly payments of $775,017 for an initial three-year period. Either party could request renegotiation of the monthly lease payment for each subsequent three-year period. In the event a mutually acceptable lease payment cannot be agreed on, either party could terminate the lease.

(3) The pipeline facilities to be leased would remain the sole property of Tennessee and Tennessee would continue to maintain and operate the pipeline at its own cost and expense.

(4) Trunkline would have the right to utilize the leased capacity in the pipeline as it would if it were the fee owner of such capacity.

(5) Trunkline would have pre-granted authority to abandon the leased capacity and Tennessee would have pre-granted authority to reacquire the same capacity.

(6) Tennessee and Trunkline would terminate the existing October 31, 1988, firm transportation agreement.

(7) Both Tennessee and Trunkline would treat the Capacity Lease Agreement as an "operating lease" pursuant to the Uniform System of Accounts for natural gas companies.

(8) Trunkline would have authority under section 4 of the Natural Gas Act to utilize its generally applicable rate schedules to charge the applicable rates thereunder for all services rendered by or through its leased capacity in the pipeline.

Comment date: May 9, 1991, in accordance with Standard Paragraph F at the end of this notice.

3. El Paso Natural Gas Company; Southern Natural Gas Company

[Docket No. CP91-1848-000, CP91-1850-000]

April 19, 1991.

Take notice that El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978, and Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88-433-000 and Docket No. CP88-316-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: June 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1848-000 (4-16-91)	Valero Industrial Gas, L. P.	206,000 206,000 75,190,000	Various	AZ	T-1, Interruptible	ST91-7738 3-1-91.
CP91-1850-000 (4-16-91)	Texican Natural Gas Company.	15,000 6,000 2,190,000	Various	AL	IT, Interruptible	ST91-7519 2-9-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

4. Tennessee Gas Pipeline Company; Midwestern Gas Transmission Company; Natural Gas Pipeline Company of America

[Docket Nos. CP91-1842-000, CP91-1843-000, CP91-1844-000]

April 19, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

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[1] The application and offer of settlement were tendered for filing on April 5, 1991; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until April 15, 1991. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

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Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related[2] dockets
CP91-1842-000 (4-16-91)	Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, TX 77252.	Williams Gas Marketing Company.	100,000 100,000 36,500,000	Off LA, LA	LA, NJ, PA, TN, NY	3-6-91, IT	CP87-115-000, ST91-8008-000.
CP91-1843-000 (4-16-91)	Mississippi Gas Transmission Company, P.O. Box 2511, Houston, TX 77252.	Women's Natural Gas Corporation.	48,000 48,000 18,720,000	TN, IL, IN, KY	TN, IL, IN, KY	3-13-91, IT	CP90-174-000, ST91-8160-000.
CP91-1844-000 (4-16-91)	Natural Gas Pipeline Company of America, 701 E. 22nd St., Lombard, IL 60148.	Caspex Gas Company.	30,000 15,000 5,475,000	AR, CO, IO, IL, KS, LA, Off LA, MO, NE, NM, OK, TX, Off TX.	OK, LA, Off LA, KS, TX, Off TX, IL, MO, NM, IO, CO, NE, AR.	2-7-91, ITS	CP86-582-000, ST91-7822-000.

[1] Quantities are shown in dth except CP91-1844-000, which volumes are shown in MMBtu.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Mojave Pipeline Company

[Docket No. CP90-931-000, CP90-932-000]

April 22, 1991.

Take notice that Mojave Pipeline Company (Mojave), on April 8, 1991, tendered for filing its FERC Gas Tariff Original Volume No. 1, in compliance with 18 CFR 154.22 and the Commission's order of January 24, 1990, in Docket Nos. CP90-931-000 and CP90-932-000 (Certificate Order) all as more fully set forth in the compliance that is on file with the Commission and open to public inspection.

Mojave's filed tariff contains firm and interruptible transportation rate schedules, the general transportation terms and conditions, the form of service agreements for firm, interruptible and initial transportation service, the statement of transportation rates, and the index of shippers. The tariff also incorporates the changes to Mojave's tariff as directed by the Certificate Order, as well as changes negotiated with Mojave's customers, corrections of typographical errors, conforming changes, changes to the forms of firm and interruptible service agreements and the addition of the form of service agreements applicable to Mojave's initial service. Pursuant to 18 CFR 154.51, Mojave requests leave to file its tariff more than 60 days prior to the proposed effective date so that Mojave, its customers and lenders to the project can obtain certainty as to the terms of service prior to the pipeline's construction. Mojave proposes that its tariff become effective on the pipeline's in-service date, and states that it will notify the Commission of the precise date at least 30 days prior to such date.

In connection with the filing of its tariff, Mojave has also submitted for the Commission's review the Transportation Service Agreements that Mojave has executed with its customers. Mojave requests that the Commission grant any necessary waivers and/or authorizations in order that the terms of the agreements may be implemented as negotiated.

Copies of this filing have been served upon all of Mojave's jurisdictional transportation customers.

Comment date: June 6, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. Columbia Gas Transmission Corporation

[Docket No. CP91-1853-000, CP91-1854-000, CP91-1855-000, CP91-1856-000, CP91-1857-000]

April 22, 1991.

Take notice that Applicant filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 6, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

[Applicant: Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E. Charleston, WV 25314]

[Blanket Certificate issued in Docket No.: CP86-240-000]

Docket No. (date filed)	Shipper name (type shipper)	Peak day,[1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related dockets[2]
CP91-1853-000 (04-17-91)	Gulf Ohio Corporation (Marketer).	516 413 188,340	WV	OH	03-01-91, FTS	ST91-7976-000.

[Applicant: Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E. Charleston, WV 25314]

[Blanket Certificate issued in Docket No.: CP86-240-000]

Docket No. (date filed)	Shipper name (type shipper)	Peak day,[1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related dockets[2]
CP91-1854-000 (04-17-91)	Woodward Marketing, Inc. (Marketer).	697 594 243,455	OH	OH	03-02-91, FTS	ST91-7985-000.
CP91-1855-000 (04-17-91)	Northeast Ohio Gas Marketing, Inc. (Marketer).	40,000 32,000 14,600,000	KY, OH, WV, PA, NY, MD, VA, NJ.	OH, PA, WV, MD	03-01-91, ITS	ST91-7980-000.
CP91-1856-000 (04-17-91)	Philco Energy, Inc. (Marketer).	360,000 304,000 139,760,000	OH, KY, WV, PA	PA, VA, NJ, CT, NY, RI, MA.	03-01-91, ITS	ST91-7981-000.
CP91-1857-000 (04-17-91)	Jessop Steel Company (End-User).	1,560 1,200 547,500	KY	PA	03-01-91, FTS	ST91-7979-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

7. Trunkline Gas Company, Williams Natural Gas Company, United Gas Pipe Line Company, United Gas Pipe Line Company

[Docket No. CP91-1864-000, CP91-1869-000, CP91-1870-000, CP91-1871-000]

April 22, 1991.

Take notice that the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 6, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related[2] dockets
CP91-1864-000 4-18-91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Equitable Resources Marketing Company.	75,000 Mcf 75,000 Mcf 27,375,000 Mcf	Off. LA, IL, LA, TN, TX, Off. LA.	LA	3-22-91, PT-1	CP86-586-000, ST91-8003-000.
CP91-1869-000 4-18-91	Williams Natural Gas Company, P.O. Box 3288, Tulsa, OK 74101.	Continental Natural Gas, Inc.	40,000 Dth 40,000 Dth 14,600,000 Dth	CO, KS, MO, OK, TX, WY.	KS, OK	3-01-91, ITS-1 & ITS-2.	CP88-691-000, ST91-8002-000.
CP91-1870-000 4-18-91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	Fina Natural Gas Company.	103,000 103,000 37,595,000	LA, TX	TX	3-06-91, ITS	CP88-6-000, ST91-7992-000.
CP91-1871-000 4-18-91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	Arkla Energy Resources.	103,000 103,000 37,595,000	LA	LA	2-20-91, ITS	CP88-6-000, ST91-7130-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

8. Williams Natural Gas Company

[Docket No. CP91-1849-000]

April 22, 1991.

Take notice that on April 18, 1991, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP91-1849-000 pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, to utilize facilities originally installed for the delivery of 311 transportation gas under the authorization issued in its blanket certificate Docket No. CP82-479-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG proposes to utilize the 311 facilities installed to deliver transportation gas to The Kansas Power & Light Company (KPL) for the Masters & Jackson Asphalt Plant in Jasper County, Missouri for any purpose. The

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cost to construct the facilities was $30,600 which was reimbursed by KPL.

WNG states that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: June 6, 1991, in accordance with Standard Paragraph G at the end of this notice.

9. Panhandle Eastern Pipe Line Company

[Docket No. CP91-1851-000]

April 22, 1991.

Take notice that on April 17, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-1851-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Gastrak Corporation, a marketer, under the blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that, pursuant to an agreement dated December 28, 1990, under its Rate Schedule PT, it proposes to transport up to 100,000 DT per day equivalent of natural gas. Panhandle indicates that it would transport 100,000 DT on an average day and 36,500,000 DT annually. Panhandle further indicates that the gas would be transported from Colorado, and would be redelivered in Kansas.

Panhandle advises that service under § 284.223(a) commenced February 8, 1991, as reported in Docket No. ST91-8046.

Comment date: June 6, 1991, in accordance with Standard Paragraph G at the end of this notice.

10. Columbia Gulf Transmission Company

[Docket No. CP91-1876-000, CP91-1877-000]

April 22, 1991.

Take notice that on April 18, 1991, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86-239-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Columbia Gulf and is summarized in the attached appendix.

Comment date: June 6, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1876-000 (4-18-91)	Stellar Gas Company (Marketer).	35,000 15,000 5,475,000	LA	TN, MS	12-1-90, ITS-1, Interruptible.	ST91-7999-000, 12-23-90.
CP91-1877-000 (4-18-91)	C&R Energy, Inc. (Marketer).	80,000 50,000 18,250,000	LA	LA, TN, MS	12-1-90, ITS-1, Interruptible.	ST91-7977-000, 12-23-90.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10095 Filed 4-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-93-000]

Transcontinental Gas Pipe Line Corp.; Technical Conference

April 23, 1991.

Pursuant to the Commission's letter order, issued on March 21, 1991, a technical conference will be held to resolve the issues raised in the above-captioned proceeding. The conference will be held on Wednesday, May 1, 1991 at 2 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10097 Filed 4-29-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-26-NG]

Natgas U.S. Inc.; Application for Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 4, 1991, of an application filed by Natgas U.S. Inc. (Natgas) for blanket authorization to import from Canada up to 730 Bcf of natural gas for a two-year term from July 1, 1991, to June 30, 1993. Natgas requests authority to import the natural gas at any point on the U.S./Canadian border where existing pipeline facilities are located. No new construction would be involved. Natgas also states it will submit quarterly reports to FE detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., May 30, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-9394.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-0503.

SUPPLEMENTARY INFORMATION: Natgas a Delaware corporation and has its principal place of business in Calgary, Alberta, Canada, is a wholly owned subsidiary of Pan-Alberta Gas, Ltd. (Pan-Alberta), a Canadian company. Natgas is currently authorized, under DOE/ERA Opinion and Order No. 290 (1 ERA ¶70,831, December 30, 1988), to import 730 Bcf of Canadian natural gas over a two-year term which will expire June 30, 1991. Natgas is requesting an extension of its blanket authorization to allow it to import up to 730 Bcf of Canadian natural gas over a two-year term from July 1, 1991, to June 30, 1993.

Natgas proposes to continue importing Canadian natural gas either as a broker or agent on behalf of U.S. purchaser and/or Canadian suppliers, or on its own behalf for sale to U.S. purchasers. The natural gas would be supplied by Pan-Alberta or other Canadian suppliers and sold on a short-term basis to U.S. pipelines, local distribution companies, electrical utilities, and industrial or agricultural end-users. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. Natgas would continue to file quarterly reports which provide the details of each transaction made during the quarter. To date Natgas has imported approximately 5.3 Bcf of Canadian natural gas under their existing authorization.

In support of its application, Natgas asserts that the requested extension of its existing blanket authorization under the same terms and conditions as granted in its current blanket authorization will be in the public interest.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under this arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 500. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as

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necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Natgas's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 23, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-10150 Filed 4-29-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-23-NG]

Puget Sound Power & Light Co.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on March 26, 1991, of an application filed by Puget Sound Power & Light Co. (Puget) for blanket authorization to import up to 25 Bcf of Canadian natural gas over a two-year period beginning with the date of first delivery. Puget intends to use existing facilities to import and transport the proposed gas imports and will file quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time, May 30, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-7249.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-6667.

SUPPLEMENTARY INFORMATION: Puget, whose principal place of business is located in Bellevue, Washington, provides retail electric utility service to the Puget Sound region of western Washington state. In this role, Puget owns and operates combustion generating facilities which use natural gas as a fuel for the generation of electricity to serve its customers. The proposed imports would be used in Puget's combustion turbine generating facilities and would be purchased from several different Canadian suppliers and transported over existing pipeline facilities. Puget intends to purchase the gas under short-term or spot agreements.

The decision on this import application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Puget asserts that the proposed import authorization will allow it to obtain the most economical fuel supply for its combustion turbine generating facilities and that the short-term nature of the imports will provide sufficient flexibility to ensure that they remain price-competitive over their term. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received form persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Puget's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 23, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-10151 Filed 4-29-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals Cases Filed During the Week of March 15 Through March 22, 1991

During the Week of March 15 through March 22, 1991, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: April 24, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 15 through March 22, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 20, 1991	Shea & Gardner, Washington, DC	LFA-0107	Appeal of an information request denial. If granted: The February 15, 1991 Freedom of Information Request Denial issued by the Office of Richland Operations would be rescinded, and Shea & Gardner would receive access to all DOE information requested
Mar. 20, 1991	Suburban Propane/Ozona Butane Company, Inc. Hardin, KY.	RR299-1	Request for modification/rescission in the Suburban refund proceeding. If granted: The December 28, 1990 Decision and Order (Case No. RF299-41) issued to Ozona Butane Company, Inc. would be modified regarding the firm's application for refund submitted in the Suburban Propane Refund Proceeding.
Mar. 21, 1991	Gulf/North Middleton Gulf, Pearl River, NY	RR300-15	Request for modification/rescission in the Gulf refund proceeding. If granted: The September 9, 1986 Dismissal Letter (Case No. RF300-130) issued to North Middleton Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Mar. 22, 1991	Texaco/Larry's Texaco, Vincetown, NJ	RR321-56	Request for modification/rescission in the Texaco refund proceeding. If granted: The May 4, 1990 Decision and Order (Case No. RF321-3337 and RF321-3595) issued to Larry's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of March 15 to March 22, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
6/12/89	Weavers Auto Service.	RF307-10176.
3/18/91	Back River Exxon	RF307-10175.
3/18/91	Kent & Sussex Oil Prods., Inc.	RF325-00007.
3/19/91	Mapco, Inc.	RF304-12162.
3/19/91	Ron & Ron Exxon	RF307-10177.
3/20/91	Petro Products, Inc.	RF326-00845.
3/20/91	Shirl Goetz Shell Service.	RF315-10134.
3/20/91	Kerps Car Wash, Inc.	RF307-10178.
3/22/91	Defense Fuel Supply Center.	RF334-00004.
3/15/91 thru 3/22/91.	Crude oil refund applications received.	RF272-86973 thru RF272-87631.
3/15/91 thru 3/22/91.	Gulf oil refund applications received.	RF300-15978 thru RF300-16132.

REFUND APPLICATIONS RECEIVED—Continued

[Week of March 15 to March 22, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
3/15/91	Texaco refund, applications received.	RF321-14568. RF321-14646.

[FR Doc. 91-10153 Filed 4-29-91; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed With the Office of Hearings and Appeals During the Week of March 8 Through March 15, 1991

During the Week of March 8 through March 15, 1991, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purpose of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: April 24, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 8 through March 15, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 11, 1991	City of Columbus, OH Columbus, OH	TIR272-70	Request for modification/rescission in the Crude Oil refund proceeding. If granted: The January 31, 1991 Decision and Order (Case No. RC272-165 & RC272-166) issued to the City of Columbus, Ohio would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
Mar. 12, 1991	Chem-Nuclear Environmental Services	LFA-0106	Appeal of an information request denial. If granted: The February 22, 1991 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Chem-Nuclear Environmental Services would receive access to the proposal of Ecotek, Inc., under RFP No. JD-15520.
Mar. 14, 1991	Amoco/Indiana Indianapolis, IN	RM251-244	Request for Modification/rescission in the Amoco second stage refund proceeding. If granted: Prior Decision and Orders would be modified regarding the State of Indiana's application for refund submitted in the Amoco second stage refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of March 8 to March 15, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case number
3/11/91	Burlington Northern Railroad.	RF315-10133.
3/12/91	Louisiana	RQ251-567.
3/12/91	U.S. Oil Company, Inc.	RF526-242.
3/13/91	Ayden Transit Co., Inc.	RF324-00650.
3/13/91	Aster Service Station.	RF324-00051.
3/13/91	Southland Corporation.	RS24-00052.
3/15/91	Texas Interwest Petroleum Co.	RF328-343.
3/15/91	Summit, Inc.	RF326-344.
3/15/91	Carl's Hillcrest Essso.	RF307-19174.
3/08/91 thru 3/15/91.	Crude Oil refund applications received.	RF272-66968 thru RF272-66972.
3/08/91 thru 3/15/91.	Gulf Oil refund, applications received.	RF300-15962 thru RF300-15977.
3/08/91 thru 3/15/91.	Texaco Oil refund, applications received.	RF321-14464 thru RF321-14567.

[FR Doc. 91-10152 Filed 4-29-91; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3952-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments be submitted on or before May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Database of Innovative Treatment Technology Vendors (EPA ICR# 1583.01). This ICR requests approval of a new collection.

Abstract: The Technology Innovation Office (TIO) of the Office of Solid Waste and Emergency Response (OSWER) is planning a voluntary and ongoing request for information from developers and vendors of new treatment technologies that address contaminated hazardous waste sites. Specifically, TIO will request information concerning technologies to treat soil, sludge, solids, sediments and ground water in situ. Widely available technologies (i.e. incineration, solidification/stabilization, and ex situ aqueous treatment) will be excluded.

The vendor survey form will collect both general company information and technology-specific data. The company information includes name, address, phone numbers, and contact names. Technology data includes technology name, developmental status, media/wastes treated, contaminants and concentration ranges treated, waste limitations, factors affecting performance, summary performance data, range of unit costs, factors impacting cost, available hardware and capacity, treatability study capabilities, permits obtained, clients and references.

TIO plans to use this information to develop an automated database which will allow technology developers to inform potential users of their capabilities. The data base will allow these potential users to assess the technologies for applicability to specific sites.

Burden Statement: The estimated public reporting burden for this collection of information is 14 hours per vendor to prepare part 1—General Information and Technology Overview, which must be completed to be included in the database. Part 2—Pilot and Full-scale Technologies, which is optional and asks for more detailed information and performance data, is estimated to require 27 hours per vendor to prepare. Subsequent annual updates to this data are estimated to require 10 hours for part 1 and 17 hours for part 2. These estimates include time to read the instructions, gather existing information, and prepare and submit the form. Vendors that receive and review the form materials but elect not to participate will each incur approximately 1½ hours of burden.

Respondents: Entities or individuals developing or commercializing new treatment technologies for contaminated site cleanup including individuals/entrepreneurs, remedial contactors, and commercial hazardous or solid waste treaters.

Estimated No. of Respondents: 500.

Estimated Total Annual Burden on Respondents: 31,310 hours.

Frequency of Collection: Annual.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St NW., Washington, DC 20530.

Dated: April 24, 1991.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 91-10145 Filed 4-29-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3952-4]

Management Advisory Group to the Assistant Administrator for Water; Open Meeting

Under section (1)(a)(2) of Public Law 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Management Advisory Group (MAG) to the Assistant Administrator for Water will be held at 9 a.m. May 16, 1991 and at 8:30 a.m. May 17, 1991 at the DAV Headquarters, 807 Maine Ave, SW., Washington, DC.

The purpose of this meeting will be to seek the MAG's advice and comments on issues pertaining to water quality and water resource protection. The agenda includes discussion of how to understand and implement ecological protection programs, and address the problems of combined sewer overflows and nonpoint sources.

The meeting will be open to the public. The MAG encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements will be limited to ten minutes. It is preferred that there be one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the MAG by telephone at (202) 382-3881. The petition should include the topic of the proposed statement and the petitioner's telephone number and should be received by the MAG before May 13, 1991.

Any person who wishes to file a written statement can do so before or after a MAG meeting. Written statements received prior to the meeting will be distributed to the members before any final discussion or vote is completed. Statements received after a meeting will become part of the permanent meeting file and will be forwarded to the MAG members for their information.

Any member of the public wishing to attend the MAG meeting, present an oral statement, or submit a written statement, should contact Ms. Michelle Hiller, Designated Federal Official, U.S. Environmental Protection Agency, Office of the Assistant Administrator, 401 M Street, SW., WH-550, Washington, DC 20460, or at (202) 382-3881.

Dated: April 19, 1991.

Robert Pavlik,

Director, Policy and Resources Management Office.

[FR Doc. 91-10146 Filed 4-29-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3952-6]

Science Advisory Board, Drinking Water Committee, Open Meeting—May 9-10, 1991

Under Public Law 92-463, notice is hereby given that a meeting of the Drinking Water Committee of the Science Advisory Board will be held on May 9-10, 1991 at the USEPA Environmental Research Center, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45219. This meeting will start at 8:30 a.m. on May 9 will adjourn no later than 1 p.m. on May 10, 1991.

Due to recently resolved scheduling conflicts, publication of this notice has had to be made on an emergency basis.

The main purpose of this meeting will be to review the Agency's research program in the area of Corrosion and Corrosion By-Products in drinking water.

Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. C. Richard Cothern, Executive Secretary, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, Washington, DC 20460 by April 26, 1991. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total of ten minutes.

Dated: April 25, 1991.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 91-10289 Filed 4-29-91; 12:00 pm]

BILLING CODE 6560-50-M

[FRL-3951-7]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability ACT; Try-Chem Site

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into a cost recovery settlement agreement under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). This proposed settlement is intended to resolve the liability of over 50 parties for response costs incurred at the Try-Chem Site in Milwaukee, Wisconsin. Section 122(i) of CERCLA requires that notice of proposed settlements under section 122(h) of CERCLA be public in the Federal Register. This notice seeks to elicit public comments to the Try-Chem Site Cost Recovery Settlement Agreement pursuant to section 122(i) of CERCLA.

DATES: Comments must be received on or before May 30, 1991.

ADDRESSES: Comments should be addressed to Steven Siegel, Assistant Regional Counsel (5CS-TUB-3), U.S. Environmental Protection Agency, region V, 230 South Dearborn Street, Chicago, Illinois, 60604, and should refer to: Try-Chem Site in Milwaukee, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Steven M. Siegel, U.S. Environmental Protection Agency, Office of Regional Counsel, 5CS-TUB-3, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 353-1120.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of the CERCLA, notice is hereby given of a proposed administrative cost recovery settlement concerning the Try-Chem site located at 1333 W. Pierce Street in Milwaukee, Wisconsin. The settlement resolves an EPA claim under section 107 of CERCLA against over 50 companies. The settlement requires the settling parties to pay $287,810.59 to the Hazardous Substances Superfund. This agreement was signed by EPA Region V on April 19, 1991. EPA may withdraw its consent if comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper or inadequate.

EPA is entering into this agreement under the authority of section 122(h)(1) of CERCLA. Section 122(h)(1) authorizes compromise and settlement of a claim under section 107 of CERCLA for costs incurred by the United States Government if the claim has not been referred to the Department of Justice for further action. Under this authority, the agreement allows the Settling Parties to reimburse EPA for past response costs at the Try-Chem Site.

For thirty (30) days following the date of publication of this notice, the EPA

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will receive written comments relating to the settlement. The Agency's response to comments received will be available for public inspection at the Office of Regional Counsel (5CS-TUB-3), U.S. Environmental Protection Agency, region V, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Milwaukee Public Library, 814 W. Wisconsin Avenue, Milwaukee, Wisconsin 53233.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region V Office of Regional Counsel. Requests for copies should be addressed to Steven Siegel, Mail Code: 5CS-TUB-3, 230 South Dearborn Street, Chicago, Illinois 60604. The Office of Regional Counsel is currently located on the third floor at 111 West Jackson, Chicago, Illinois 60604. A copy of the proposed administrative settlement agreement will also be available for inspection at the Milwaukee Public Library, 814 W. Wisconsin Avenue, Milwaukee, Wisconsin, 53233. Additional background information relating to the settlement is available for review at the EPA's Region V Office of Regional Counsel.

Authority: Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. section 9601 *et seq.*

Robert Springer,

Acting Regional Administrator.

[FR Doc. 91-10070 Filed 4-29-91; 8:45 am]

BILLING CODE 6560-50-M

Ohio Environmental Protection Agency Water Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Determination of deficiency in State water quality standards.

SUMMARY: Pursuant to section 303 of the Clean Water Act (the Act) and Federal Regulations at 40 CFR part 131, all States must adopt water quality standards which serve as the basis for setting pollution control requirements in surface waters of the State. Water quality standards consist of designated uses and in-stream criteria which protect those designated uses.

In a letter dated February 12, 1991, Mr. Valdas V. Adamkus, Regional Administrator, Region V, United States Environmental Protection Agency (USEPA), rescinded approval of Ohio Administrative Code (OAC) 3745-1-26, specific to the Cuyahoga River Shipping Channel (Channel). This action was taken because there is no designated use on, and standards are reserved from, the Channel, which is inconsistent with sections 101(a)(2) and 303(c) of the Act and Federal Regulations at 40 CFR 131.10. The Ohio Environmental Protection Agency (OEPA) must remove the statement, "The standards for this stream segment are reserved until a field assessment is performed" from Ohio Administrative Code at OAC 3745-1-26 and designate at least the warmwater habitat use, which is the minimum Ohio use designation consistent with section 101(a)(2) of the Act, or provide a use attainability analysis and designate at least the limited resource water use, which is the minimum of all Ohio uses. If OEPA fails to correct this deficiency by September 30, 1991, USEPA intends to exercise its authority under section 303(c)(4)(B) of the Act and Federal Regulations at 40 CFR 131.22(b) to promulgate acceptable water quality standards for the Channel.

Within 30 days of the date of this Federal Register Notice, interested parties may submit written comments regarding today's action at the address given below, and may request that a public hearing be held. Requests for a public hearing should be in writing and should state the nature of the issues proposed to be raised in the hearing.

FOR FURTHER INFORMATION CONTACT: David Allen, Standards Unit (5WQS-TUB8), USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6086.

SUPPLEMENTARY INFORMATION: States are required under Federal Regulations at 40 CFR 131.20 to hold public hearings, at least every 3 years, to review and revise their water quality standards. USEPA is obligated under 40 CFR 131.21 to review and approve or disapprove water quality standards revisions adopted and submitted by States. USEPA is also obligated under 30 CFR 131.22 to propose and promulgate standards to remedy defects in State water quality standards when States fail to make necessary changes on their own accord. A fundamental defect arises in the first instance when State water quality standards fail to address any particular water body with any water quality standards whatsoever. This is the case with the Channel covered by this notice.

On February 14, 1978, Ohio water quality standards at OAC 3745-1-13 for the Cuyahoga River became effective which stated, "Water quality standards for the lower Cuyahoga River will remain the same as regulation 3745-1-09 adopted December 10, 1974, or any subsequent revisions." However, the December 10, 1974 regulation was actually EP-1-09, which had been rescinded, and no subsequent revisions to this regulation had been made. As a result, the February 14, 1978 reference in OAC 3745-1-13, as establishing the applicable water quality standards, was erroneous, and the earlier rescission of EAP-1-09 means that there have been no water quality standards for the lower Cuyahoga River since February 14, 1978. In a letter dated August 13, 1980, Ernest K. Rotering, Chief, Office of Wastewater Pollution Control, OEPA, identified and informed USEPA Region V of this problem and agreed to adopt water quality standards for the Channel. In a subsequent letter dated March 25, 1981, Mr. Rotering indicated that adoption of water quality standards for the Channel would be delayed until a full scale examination of stream uses and criteria could be completed and no schedule was established.

On April 4, 1985, August 19, 1985, and July 28, 1986, Ohio adopted water quality standards at OAC 3745-1-26 for the Cuyahoga River that specifically recognized the result created by revision of EP-1-09 and OAC 3745-1-13 which stated, "The standards for this stream segment are reserved until a field assessment is performed." In letters dated June 12, 1989, and August 28, 1989, Charles H. Sutfin, Director, Water Division, Region V, USEPA, warned OEPA that USEPA intended to disapprove the reservation in the Ohio standards for the Channel and initiate Federal promulgation proceedings if OEPA did not commit to promulgation of appropriate water quality standards for the Channel by September 30, 1991. In a letter dated December 7, 1990, Gary L. Martin, Chief, Division of Water Quality Planning and Assessment, OEPA, indicated that OEPA would not comply with the September 30, 1991 date. Subsequently, the Regional Administrator for Region V formally disapproved Ohio water quality standards for the Channel, pursuant to section 303 of the Act and Federal Regulations at 40 CFR 131.

Ralph Bauer,

Acting Regional Administrator.

[FR Doc. 91-10147 Filed 4-29-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

The Dai-Ichi Kangyo Bank, Limited; Tokyo, Japan; Application to Act as an Intermediary, Principal, and Broker in Interest Rate and Currency Swaps, and Provide Related Advisory Services

The Dai-Ichi Kangyo Bank, Limited, Tokyo, Japan ("Dai-Ichi"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8))("BHC Act") and section 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), to engage through its wholly owned subsidiary, DKB Credit Corporation, New York, New York ("Company"), in the following activities:

(1) Intermediating in the international swap markets by acting as an originator and principal in interest rate swap and currency swap transactions;

(2) Acting as an originator and principal with respect to certain risk-management products such as caps, floors and collars, as well as options on swaps, caps, floors and collars ("swap derivative products");

(3) Acting as a broker or agent with respect to the foregoing transactions and instruments; and

(4) Acting as adviser to institutional customers regarding financial strategies involving interest rate and currency swaps and swap derivative products.

These activities would be conducted domestically and internationally.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Dai-Ichi believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously approved intermediating in the international swap markets by acting as an originator and principal in interest rate swap and currency swap transactions, acting as an originator and principal with respect to swap derivative products, acting as a broker or agent with respect to the foregoing transactions and instruments, and acting as an advisor to institutional customers regarding financial strategies involving the foregoing transactions and instruments. *See, e.g.* April 20, 1991, *The Fuji Bank, Limited*, 78 Federal Reserve Bulletin 788 (1990); *The Sumitomo Bank, Limited*, 75 Federal Reserve Bulletin 592 (1989). Dai-Ichi proposes that Company comply with substantially all of the prudential limitations previously relied upon by the Board in approving these activities. *See id.*

Dai-Ichi states that the proposed activities will benefit the public. It believes that its ability to engage in these activities will promote competition in the market for these services and provide added convenience to customers and gains in efficiency. Dai-Ichi takes the position that Company's entry into the swap market will add a significant amount of additional capital to the swap market as a whole. Moreover, Dai-Ichi believes that the proposed activities will not result in any unsound banking practices.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 28, 1991. Any request for a hearing on this application must, as required by section 262.3(e) of the Board's Rules of Procedure (12 C.F.R. 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, April 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR DOC. 91-10107 Filed 4-29-91; 8:45 am]

BILLING CODE 6210-01-F

Dauphin Deposit Corporation; Harrisburg, Pennsylvania; Application to Acquire a Broker-Dealer, and Thereby Underwrite and Deal in All Types of Securities, Engage in Other Securities Related Activities And Engage in Other Nonbanking Activities

Dauphin Deposit Corporation, Harrisburg, Pennsylvania("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act"), and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for approval to acquire ownership of Hopper, Soliday & Co., Inc., Lancaster, Pennsylvania ("Company"), and thereby engage, through Company, in the following activities:

(1) underwriting and dealing in securities that state member banks are permitted to underwrite and deal in under section 16 of the Banking Act of 1933, 12 U.S.C. 24 (Seventh), (the "Glass-Steagall Act"), (hereinafter "bank eligible securities"), as permitted by § 225.28(b)(16) of Regulation Y, 12 CFR 225.28(b)(16);

(2) underwriting and dealing in, on a limited basis, all other types of debt securities, including without limitation, municipal revenue bonds, mortgage related securities, consumer receivable related securities, commercial paper, sovereign debt securities, corporate debt, debt securities convertible into equity securities, and securities issued by a trust or other vehicle secured by or representing interests in debt obligations ("bank-ineligible debt securities");

(3) underwriting and dealing in, on a limited basis, equity securities, including without limitation, common stock, preferred stock, American Depositary Receipts, options, limited partnership units, warrants, and securities issued by closed-end investment companies but not securities issued by open-end investment companies ("bank-ineligible equity securities");

(4) acting as agent in the private placement of all types of securities, including providing related advisory services, and buying and selling securities on the order of investors as a "riskless" principal;

(5) providing "full-service brokerage" (i.e., investment advisory and brokerage services separately and on a combined basis) to both institutional and retail customers;

(6) providing financial advice to state and local governments, including advice with respect to the issuance of their securities, pursuant to § 225.25(b)(4)(v) of Regulation Y, 12 CFR 225.25(b)(4)(v); and

(7) providing advice in connection with merger, acquisition, divestiture, recapitalization and financing transactions, including feasibility studies and structuring and arranging loan syndications, for financial and non-financial institutions; valuations for financial and non-financial institutions; and fairness opinions in connection with merger, acquisition and similar transactions for financial

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and non-financial institutions (collectively, "financial advisory services").

Applicant proposes to engage in these activities on a nation-wide basis.

Applicant contends that the Board has previously determined that these activities are closely related to banking under section 4(c)(8) of the BHC Act. *J.P. Morgan & Co. Incorporated, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, and Security Pacific*, 75 Federal Reserve Bulletin 192 (1990) ("*J.P. Morgan et al.*") (underwriting and dealing in debt and equity securities); *Banc One Corporation*, 76 Federal Reserve Bulletin 758 (1990) (financial advisory activities); *The Sanwa Bank, Limited*, 77 Federal Reserve Bulletin 64 (privately placing securities and acting as a riskless principal); *Creditanstalt-Bankverein*, 76 Federal Reserve Bulletin 761 (1990) (full-service brokerage), and 12 CFR 225.25(b)(4), (b)(15), and (b)(16) (providing investment advice, offering securities brokerage, and underwriting and dealing in bank-eligible securities).

The Board has previously determined that underwriting and dealing in debt and equity securities is closely related to banking. *See J.P. Morgan et al.* Applicant proposes to conduct these underwriting and dealing activities in accordance with the framework established in *J.P. Morgan et al.* with the following exception. Specifically, Applicant has requested that the Board permit Company to calculate its compliance with the 10 percent revenue limitation in a different manner than that approved by the Board in *J.P. Morgan et al.* During the first year of Company's operations, Applicant proposes that the Board permit Company to calculate compliance with the revenue limitation on an annualized basis, as opposed to a quarterly basis. Thus, Applicant has committed that Company's revenues from underwriting and dealing in bank-ineligible debt and equity securities would not exceed 10 percent of gross revenues for the first year. Thereafter, Company would monitor compliance with the revenue limitation in accordance with *J.P. Morgan et al.* Applicant has requested this modification in order to accommodate outstanding commitments at the time Applicant acquires Company, and to continue to develop underwriting opportunities during the first two quarters of operations.

Applicant proposes that Company act as riskless principal on behalf of its customers. In its orders approving this activity, the Board has not permitted a bank holding company to (i) hold itself out as making a market in the securities that it buys and sells as riskless principal, and (ii) enter quotes for specific securities in the NASDAQ or any other dealer quotation system in connection with riskless principal transactions. *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989).

Applicant has requested that the Board interpret the commitment so that Company may enter (i) bid *or* ask quotations only; or (ii) publish "offering wanting" *or* "bid wanted" on trading systems other than an exchange or the National Association of Securities Dealers Automated Quotation system ("NASDAQ"). Applicant contends that because Company would not enter "two-sided" quotations with respect to a security, it should not be deemed to be making a market in the security or be engaged in the public sale of securities for purposes of the Glass-Steagall Act. In support of its contention, Applicant relies on the Securities Exchange Act of 1934, as amended, which defines a market-maker to be ". . . any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communication system or otherwise) as being willing to buy *and* sell such security for his own account on a regular and continuous basis." 15 U.S.C. 78c(a)(38) (emphasis added).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1337 (DC Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 *Federal Register* 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Applicant asserts that approval of the application would result in public benefits in the form of greater efficiency and that its customers would receive a broader range of services. Applicant further contends that approval would not decrease competition because Applicant and Hopper Soliday do not currently compete. Finally, Applicant maintains that approval would not result in significant adverse effects because Company would operate in substantial compliance with the Board's prior orders.

Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. With regard to the proposed ineligible securities underwriting and dealing activities, Applicant states that, consistent with section 20, it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board. *See* Board's Order dated September 21, 1989, 75 Federal Reserve Bulletin 751 (1989).

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than May 21, 1991. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented in a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Philadelphia.

Board of Governors of the Federal Reserve System, April 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR DOC. 91-10108 Filed 4-29-91; 8:45 am]

BILLING CODE 6210-01-F

The Industrial Bank of Japan, Limited, Tokyo, Japan; Application to Underwrite and Deal in Certain Securities to a Limited Extent; Conduct Private Placements of All Types of Securities As Agent; and Act as "Riskless Principal"

The Industrial Bank of Japan, Limited, Tokyo, Japan ("Applicant"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through its wholly owned subsidiary, IBJ Securities (USA) Inc., New York, New York ("Company"), to engage *de novo* in the following activities:

(1) Underwriting and dealing in United States and Canadian government obligations and money market instruments, including, without limitation, certificates of deposit and bankers acceptances (collectively, "bank-eligible securities") pursuant to § 225.25(b)(16) of the Board's Regulation Y (12 CFR 225.25(b)(16));

(2) Underwriting and dealing, to a limited extent, in commercial paper, municipal revenue bonds (including industrial development bonds that are limited to "public ownership" industrial development bonds, where the issuer or the governmental unit on behalf of which the bonds are issued is the sole owner of the financed facility), 1-4 family mortgage-related securities, and consumer receivable-related securities (collectively, "ineligible securities");

(3) Acting as agent in the private placement of all types of securities, including providing related advisory services; and

(4) Buying and selling all types of securities on the order of customers as a "riskless principal."

Company would conduct the proposed activities on a domestic and international basis.

Applicant also proposes to engage through Company, as an incident to the underwriting activities described above, in hedging its positions by engaging in forward, futures, options, and options on futures contracts. These hedging activities would be conducted in a manner consistent with the *Statement of Policy* in § 225.142 of the Board's Regulation Y (12 CFR 225.142).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. 1843(c)(8).

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1337 (DC Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 *Federal Register* 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8).

The Board has previously approved the proposed underwriting and dealing, to a limited extent, in ineligible securities. *See, e.g., Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation, and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987), *as modified by Order Approving Modifications to Section 20 Orders* (Order dated September 21, 1989). *See also The Sanwa Bank, Limited*, 76 Federal Reserve Bulletin 568 (1990); *The Dai-Ichi Kangyo Bank, Limited*, 77 Federal Reserve Bulletin 164 (1991). Applicant has committed to comply with substantially all of the limitations and conditions set forth in the Board's orders approving these activities. The Board also has approved acting as agent in the private placement of all types of securities, and Applicant has committed to comply with the substantially all of the limitations and conditions set forth in the Board's orders, as modified for foreign banking organizations. *See, e.g., J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990) ("*J.P. Morgan*"); *The Toronto Dominion Bank*, 76 Federal Reserve Bulletin 573 (1990) ("*Toronto Dominion*"); *The Sanwa Bank, Limited*, 76 Federal Reserve Bulletin 568 (1990). In addition, the Board has previously approved the proposed buying and selling of all types of securities on the order of investors as "riskless principal." *See, e.g., J.P. Morgan; Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989). Applicant commits that Company will conduct this proposed activity using substantially the same methods and procedures established by the Board in these orders.

Applicant proposes to have one officer of its New York branch act as an officer and director of Company. The Board has not previously approved such an interlock.

Applicant states that the proposed activities will benefit the public by promoting competition and providing added convenience to customers and gains in efficiency. In addition, Applicant believes that the proposed activities will not result in any unsound banking practices.

Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act. Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than May 24, 1991. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons

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why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, April 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR DOC. 91-10109 Filed 4-29-91; 8:45 am]

BILLING CODE 6210-01-F

National Penn Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 20, 1991.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to acquire 100 percent of the voting shares of Sellersville Savings Bank, Perkasie, Pennsylvania, a *de novo* stock savings bank. Sellersville Savings Bank is being converted from Applicant's current thrift, Sellersville Savings and Loan Association.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Alliance Financial Corporation*, Three Oaks, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Alliance Bank and Trust Company, New Buffalo, Michigan, a *de novo* bank.

2. *First Merchants Corporation*, Muncie, Indiana; to acquire 100 percent of the voting shares of First United Bancorp, Inc., Middletown, Indiana, and thereby indirectly acquire First United Bank, Middletown, Indiana.

3. *Monona Bankshares, Inc.*, Monona, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Monona State Bank, Monona, Wisconsin, a *de novo* bank.

Board of Governors of the Federal Reserve System, April 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-10110 Filed 4-29-91; 8:45 am]

BILLING CODE 6210-01-F

Northern States Financial Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 20, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern States Financial Corporation*, Waukegan, Illinois; to acquire First Federal Bank, FSB, a Federal Savings Bank, Waukegan, Illinois, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-10123 Filed 4-29-91; 8:45 am]

BILLING CODE 6210-01-F

West Bancorporation, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 20, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *West Bancorporation*, West Des Moines, Iowa; to engage *de novo* in lending activities limited to the retention of a vendor's interest in a real estate contract valued at $352,000 pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-10111 Filed 4-29-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. C-3238]

Asics Tiger Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California manufacturer of athletic shoes from making performance and injury-reduction claims about its athletic shoes unless it possesses competent and reliable evidence to substantiate those claims.

DATES: Complaint and Order issued April 17, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Janet Evans, FTC/S-4002, Washington, DC 20580. (202) 326-3068.

SUPPLEMENTARY INFORMATION: On Tuesday, February 5, 1991, there was published in the **Federal Register**, 56 FR 4629, a proposed consent agreement with analysis in the Matter of Asics Tiger Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 91-10136 Filed 4-29-91; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 9233]

Harold Honickman, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violatons of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a major Pepsi bottler for the New York metropolitan area and his beverage corporation, for a ten year period, to seek prior Commission approval before making certain soft drink acquisitions in the New York metropolitan area; or else hold the newly acquired assets separate and apart from ongoing bottling operations. However, the addendum to the agreement would allow Mr. Honickman to distribute and sell the products of Seven-Up Brooklyn to another bottler for a limited time period.

DATE: Comments must be received on or before (July 1, 1991.)

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, FTC/H-374, Washington, DC 20580, (202) 326-2610.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The agreement herein, by and between Harold A. Honickman, individually, and Brooklyn Beverage Acquisition Corporation, a corporation (hereinafter sometimes referred to as "respondents"), by their duly authorized officers and their attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Horald A. Honickman is an individual with a place of residence at 66 Bayview Drive, Loveladies, New Jersey 08008, whose address for purposes of this order is c/o Peter E. Greene, Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York New York 10022.

2. Brooklyn Beverage Acquisition Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal place of business located at 1500 The Fidelity Building, Philadelphia, Pennsylvania 19109.

3. Harold A. Honickman is an officer of Brooklyn Beverage Acquisition Corporation. He formulates, directs and controls the policies, acts and practices of said corporation.

4. Respondents have been served with a copy of the compliant issued by the Federal Trade Commission charging them with violation of section 5 of the Federal Trade Commission Act, as amended, and section 7 of the Clayton Act, as amended, and have filed answers to said compliant denying most of said charges.

5. Respondents admit all the jurisdictional facts set forth in the Commission's compliant in this proceedings.

6. Respondents waive:

A. Any further procedural steps;

B. The requirement that the Commission's decision contain a statement of findings of fact and conclusion of law;

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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C. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

D. Any claim under the Equal Access to Justice Act.

7. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If the agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

8. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

9. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to respondents' addresses as stated in this agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

10. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has become final, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that for purposes of this order, the following definitions shall apply:

A. *Honickman* means Harold A. Honickman, individually, and all entities controlled by Honickman, including but not limited to, Brooklyn Beverage Acquisition Corporation, their predecessors, subsidiaries, divisions, groups and affiliates controlled by Honickman, and their respective directors, officers, employees, agents, representatives, successors and assigns.

B. *BBAC* means Brooklyn Beverage Acquisition Corporation, its predecessors, subsidiaries, divisions, groups and affiliates controlled by BBAC, and their respective directors, officers, employees, agents, representatives, successors and assigns.

C. *Commission* means the Federal Trade Commission.

D. *Person* means any natural person or any corporate entity, partnership, association, joint venture, governmental entity, trust or other organization or entity.

E. *CSDs* means carbonated soft drinks that are produced by adding carbonated water to a syrup consisting of a concentrate flavoring and a sweetener and are classified under the four-digit Standard Industrial Classification industry code 2086. For purposes of this order, CSDs shall not include non-carbonated products, carbonated or still water, iced tea, lemonade, products containing in finished form more than ten (10) percent fruit juice, or isotonic or sport drinks.

F. *Bottling Operation* means any business, person, or other entity that distributes and sells CSDs directly using company-owned or equity distribution to supermarkets pursuant to a franchise, license, distribution contract, or other similar agreement; provided, however, a Bottling Operation shall not include any business, person or other entity that distributes and sells CSDs only by warehouse delivery or through a beer distributor that does not hold a CSD franchise, license or similar distribution agreement.

G. *Warehouse delivery* means the distribution and sales of soft drinks by any business, person or entity other than a Bottling Operation.

H. *Existing Honickman Bottling Operation* means all or any part of the stock, share capital, equity interest or assets of any Bottling Operation owned or controlled by Honickman.

I. *New York Metropolitan Area* means, for purposes of this order, the counties of Westchester, New York, Bronx, Richmond (Staten Island), Kings (Brooklyn), Queens, Nassau, Suffolk, Rockland, Orange, Putnam and Dutchess in the State of New York; and Bergen, Hudson, Passaic, Essex, Union, Morris, Somerset and Sussex in the State of New Jersey.

J. *Equity distributor* means an independent contractor that distributes and sells CSDs on behalf of a Bottling Operation in a specified geographic territory that is within the exclusive licensed territory of that Bottling Operation for such CSD.

II

It is further ordered that for a period of ten (10) years after the date this order becomes final, respondents shall not, without the prior approval of the Commission, acquire directly or indirectly all or any part of the stock of, share capital of, equity interest in, assets of or rights related to any Bottling Operation in any county in the New York Metropolitan Area where at the time of such acquisition any Existing Honickman Bottling Operation distributes CSDs directly using company-owned or equity distributors to supermarkets; provided, however, that such prior approval shall not be required if respondents satisfy the conditions set forth Paragraph III of this order; and provided further that nothing contained in the foregoing provisions shall prohibit respondents from (i) acquiring stock or share capital for investment purposes only that does not exceed five (5) percent of the outstanding stock or share capital of any Bottling Operation, (ii) acquiring rights to equity territories ("equity distributor routes") for any territory in which Honickman holds the right to bottle or distribute CSDs distributed through such equity distributor rights, (iii) acquiring production or distribution equipment, or (iv) acquiring business supplies or raw materials in the ordinary course of business.

III

It is further ordered that:

A. Prior approval of the Commission under Paragraph II of this order shall not be required if respondents satisfy the conditions of this Paragraph III. In order to make such an acquisition without Paragraph II prior approval, respondents shall:

1. Notify the Commission at least thirty (30) days prior to such acquisition. Such notification shall follow the format for filings under section 7A of the Clayton Act, 15 U.S.C. 18a, and the Commission's Premerger Reporting Rules promulgated thereunder, 16 CFR Part 801 *et seq.* Such notification shall be in addition to any reporting requirements applicable to the transaction under said statute and rules; and

2. Divest, absolutely and in good faith within six (6) months after the date of any such acquisition, its business of bottling, distributing and selling CSDs and non-carbonated drinks, except for carbonated and non-carbonated waters, that it then conducts through any Existing Honickman Bottling Operation in those counties in the New York Metropolitan Area in which such newly-acquired Bottling Operation also operates (such Existing Honickman Bottling Operation is hereinafter referred to as "Paragraph III Operation"). Such divestiture may be accomplished by sale, full and complete and irrevocable sublicense agreement, full and complete assignment of rights or otherwise; provided it shall include a transfer of all rights held by such Paragraph III Operation to bottle, distribute and sell CSDs and non-carbonated drinks, except for carbonated and non-carbonated waters, in those New York Metropolitan Area counties in which the Newly-Acquired Bottling Operation also operates (hereinafter the "Geographic Area of Competition"), including without limitation and to the extent such rights pertain to the Geographic Area of Competition, all rights to bottle, distribute and sell CSDs and non-carbonated drinks, except for carbonated and non-carbonated waters, in the Geographic Area of Competition held pursuant to franchises, licenses, bottling appointments, distribution or other agreements; together with all assets that are dedicated to or necessary for such Paragraph III Operation's business of bottling, distributing and selling CSDs and non-carbonated drinks, except for carbonated and non-carbonated waters, in the Geographic Area of Competition, including without limitation, vehicles, vending machines, visi-coolers, fountain equipment, funded employee benefit plans, if any, full-goods inventory, point of sale marketing equipment, supply agreements, customer lists, customer agreements or understandings (whether formal or informal), all customer records and files and all other assets, interests, rights and privileges owned by, dedicated to, or necessary for such Paragraph III Operation.

B. Respondents shall comply with all of the terms of the Agreement to Hold Separate, attached hereto and made a part hereof as appendix I. If respondents shall be required to make any divestiture pursuant to Paragraph III.A.2 of this order, said Agreement to Hold Separate shall become effective as of the date of the acquisition that gave rise to the Paragraph III.A.2 divestiture obligations and shall continue in effect until such time as respondents' divestiture obligations under Paragraph III of this order are satisfied or until such other time as the Agreement to Hold Separate provides.

C. Respondents shall divest all Paragraph III Operations only to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of Paragraphs III–A through III–B of this order is to ensure that respondents' acquisition of any Bottling Operation in the New York Metropolitan Area is not likely to result in any lessening of competition.

D. Pending divestiture respondents shall take such action as is necessary to maintain the viability and marketability of all Paragraph III Operations and shall not cause or permit the destruction, removal or impairment of any Paragraph III Operation or any part thereof, except in the ordinary course of business and except for ordinary wear and tear.

IV

It is further ordered that:

A. If respondents have not divested, as required by Paragraph III, all Paragraph III Operations within six months from the date of the acquisition that gave rise to the Paragraph III.A.2 divestiture obligations, respondents shall consent to the appointment of a trustee by the Commission to divest the Paragraph III Operations. In the event the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission or the Department of Justice for violation of this order, respondents shall similarly consent to the appointment of a trustee in such action to divest the Paragraph III Operation, if any. Neither the appointment of a trustee nor a decision not to appoint a trustee shall preclude the Commission or the Attorney General from seeking civil penalties and any other relief available, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission or the Department of Justice, for any failure by respondents to comply with this order.

B. If a trustee ("trustee") is appointed by the Commission or a court pursuant to this Paragraph IV, the following terms and conditions shall apply:

(1) The Commission or a court shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

(2) The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest the Paragraph III Operations. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended for another eighteen-month period by the Commission, and, in the case of a court-appointed trustee, by the court; provided, however, that the Commission or court may only extend the divestiture period for one additional eighteen-month period.

(3) Respondents shall make available to the trustee, and the trustee shall have full and complete access to, the personnel, books, records and facilities relating to the Paragraph III Operations that the trustee has the duty to divest. Respondents shall develop such financial or other information as the trustee may reasonably request, and respondents shall cooperate with the trustee and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondents shall extend the time for divestiture under this Paragraph IV in an amount equal to that delay, as determined by the Commission or, for a court-appointed trustee, by the court.

(4) Subject to respondents' absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Paragraph III–C of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the Paragraph III Operations. If the trustee receives bona fide offers from more than one prospective acquirer, and if the Commission approves more than one such acquirer, the trustee shall divest to the acquirer selected by respondents

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from among those approved by the Commission.

(5) The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to retain, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, accountants, appraisers and other representatives and assistants as are reasonable necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture(s) and for all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the Paragraph III Operation(s).

(6) Except for cases of misfeasance, negligence, wilful or wanton acts or bad faith by the trustee, the trustee shall not be liable to respondents for any action taken or not taken in the performance of the trusteeship. Respondents shall, consistent with the provisions of this order, indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order.

(7) Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, respondents shall execute a trust agreement consistent with the provisions of this order that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture(s) required by this order.

(8) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in this order.

(9) The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

(10) The trustee shall have no obligation or authority to operate or maintain the Paragraph III Operations.

(11) The trustee shall report in writing to respondents and to the Commission every sixty (60) days after the date of appointment concerning the trustee's efforts to accomplish the divestiture(s).

V

It is further ordered that

A. Within ninety (90) days after the date this order becomes final, and every ninety (90) days thereafter until respondents have fully complied with the provisions of Paragraph II of this order—and if respondents elect to follow the provisions of Paragraph III of this order, within ninety (90) days after the notification required by Paragraph III–A(1) of this order, any every ninety (90) days thereafter until respondents have fully complied with the provisions of Paragraph III of this order—respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, or have complied with those provisions. Respondents shall include in any report concerning compliance with Paragraph III of this order, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestiture(s) of the Paragraph III Operations, including the identity of all parties contacted. Respondents shall also include in such compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture(s).

B. One year after the date this order becomes final and annually thereafter for nine (9) years, respondents shall file with the Commission a verified written report of their compliance with Paragraph II of this order.

VI

It is further ordered that:

A. For a period of ten (10) years after the date this order becomes final, respondents shall notify the Commission at least thirty (30) days prior to any proposed corporate change, such as dissolution, assignment or sale resulting in the emergency of a successor entity, the creation or dissolution of subsidiaries or any other change in respondents or in any entity controlled by Honickman that may affect compliance with the obligations arising out of this order.

B. Respondents shall promptly notify the Commission of the name and address of any successor to Peter E. Greene, Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, New York 10022, with a statement that such successor is empowered on respondents' behalf to accept service for purposes of this order.

VII

It is further ordered that for a period of ten (10) years after the date this order becomes final and for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request and with reasonable notice to respondents, respondents shall permit any duly authorized representative or representatives of the Commission: (1) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in their respective possession relating to any matters contained in this order; and (2) upon five (5) days written notice to respondents and without restraint or interference from respondents, to interview management personnel of any Bottling Operation that they control, who may have counsel present, regarding any matters contained in this order.

Addendum to Agreement Containing Consent Order To Preserve Seven-Up Brooklyn Franchises

This Addendum to Agreement Containing Consent Order to Preserve Seven-Up Brooklyn Franchises ("Addendum") is by and between Harold A. Honickman ("Honickman"), an individual, with a place of residence at 66 Bayview Drive, Loveladies, New Jersey 08008; Brooklyn Beverage Acquisition Corporation ("BBCA"), a corporation, with a principal place of business located at 1500 The Fidelity Building, Philadelphia, Pennsylvania 19019; and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (Honickman and BBAC individually, the "Respondents"; Honickman BBAC and the Commission collectively, the "Parties").

Premises

Whereas, on or about July 30 and August 3, 1987, Respondents acquired interests in certain assets acquired from Seven-Up Brooklyn Bottling Company, Inc. ("Acquisition"), which assets were operated under the name of Seven-Up Brooklyn Bottling Company; and

Whereas, on or about December 13, 1988, Respondents divested all of their interests in the operating assets of Seven-Up Brooklyn Bottling Company ("Seven-Up Brooklyn") to LTF 1987–3, Inc.; and

Whereas, Respondents and Seven-Up Brooklyn were both engaged, and Respondents are still engaged in the bottling or distribution of carbonated soft drinks ("CSDs"), noncarbonated soft drinks, still waters and carbonated waters in certain counties within the New York Metropolitan Area; and

Whereas, Seven-Up Brooklyn is now in a bankruptcy proceeding that has made it incapable of manufacturing or distributing CSDs, noncarbonated soft drinks, still waters and carbonated waters; and

Whereas, the Commission issued a Complaint alleging that the Acquisition was unlawful under section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; and

Whereas, the Commission is concerned that if temporary provision is not made to continue the manufacture and distribution of the CSDs, previously manufactured and distributed by Seven-Up Brooklyn in the franchise territories it served, such product temporarily would be unavailable to consumers in such territories; and

Whereas, the purpose of this Addendum is to:

(i) Maintain the uninterrupted competitive presence of the brands of CSDs previously manufactured or distributed by Seven-Up Brooklyn in the franchise territories previously serviced by it;

(ii) Preserve the CSD businesses of Seven-Up Brooklyn as independent and viable businesses; and

(iii) Prevent anticompetitive effects that might result from any interim arrangement; and

Whereas, Respondent's entering into this Addendum shall in no way be construed as an admission by Respondents that the Acquisition is unlawful; and

Whereas, Respondents understand and agree that no act or transaction contemplated by this Addendum shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Addendum.

Now, Therefore, the parties agree, in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, the Commission will not seek further relief from Respondents with respect to the Acquisition, except relief pursuant to section 7A(g)1 of the Clayton Act, 15 U.S.C. 18a(g)1, and except that the Commission may exercise any and all rights to enforce this Addendum and the Consent Order to which it is annexed and made a part thereof, as follows:

1. Respondents agree to execute and be bound by the Agreement Containing Consent Order, signed by Respondents on January 9, 1991.

2. Respondents waive all rights to contest the validity of this agreement.

3. Respondents may enter into an interim manufacturing and distribution arrangement covering the CSDs previously manufactured and distributed by Seven-Up Brooklyn on the following terms and conditions:

a. The franchisors shall approve Respondent's interim manufacturing and distribution arrangements and may rescind the arrangements, at any time for competitive or other reasons;

b. The manufacturing and distribution arrangement shall continue for a period not to exceed 90 days, unless extended by the Commission;

c. For all brands distributed on an interim basis, Respondents shall use all reasonable efforts to maintain the viability, marketability, market share, and separate identity of all Seven-Up Brooklyn businesses and franchises and the distinct brand identification of Seven-Up Brooklyn brands and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair the marketability, viability, or separate identity of the Seven-Up Brooklyn businesses and franchises.

d. For all brands distributed on an interim basis, Respondents shall use all reasonable efforts to maintain and preserve the shelf space of all Seven-Up Brooklyn businesses and franchises and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair the shelf space of the Seven-Up Brooklyn businesses and franchises. Respondents shall raise no objections to, impose no conditions on returning or refuse to return the shelf space to any new owners of the Seven-Up Brooklyn businesses and franchises, provided that Respondents did not pay a fee for the shelf space or used the shelf space for Respondent's existing brands and businesses before the date that this Addendum was signed.

4. Upon ten days notice, the Federal Trade Commission may rescind this Addendum, and Respondents shall not raise any objections based on the fact that the Commission has approved the manufacturing and distribution arrangement.

5. For the purpose of determining or securing compliance with this Addendum, subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their counsel, Respondents shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of any entity owned or controlled by Respondents and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Respondents relating to compliance with this Addendum;

b. Upon five (5) days notice to Respondents, and without restraint or interference from them, to interview officers or employees of Respondents, who may have counsel present, regarding any such matters.

6. This agreement shall not be binding until approved by the Commission.

Analysis to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Harold A. Honickman and Brooklyn Beverage Acquisition Corporation ("BBAC") in D. 9233.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint alleges that the acquisition by Honickman and BBAC of Seven-Up Brooklyn Bottling Company, Inc., in mid-1987 was anticompetitive; that Honickman controls BBAC; that, at the time of the acquisition, Honickman owned Pepsi-Cola Bottling Company of New York, Inc., and Canada Dry Bottling Company of New York; that Honickman and Seven-Up Brooklyn were horizontal competitors in the alleged markets; and that the effect of the acquisition was to eliminate competition from Seven-Up Brooklyn, increase the likelihood of or facilitate actual or tacit collusion, increase the difficulty of entering the market, and reduce competition among soft drink brands. The proposed consent is intended to eliminate these allegedly anticompetitive effects.

Under the proposed order, Honickman and BBAC need the Commission's prior approval before buying bottlers or franchises in parts of the New York metropolitan area. They could only buy bottlers or franchises without obtaining Commission approval if they held the newly acquired assets separate and

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apart from ongoing bottling operations. The hold separate would not dissolve until Honickman and BBAC divested any competing bottling assets in the same area. This divestiture is subject to Commission approval.

The prior approval provisions would give the Commission an opportunity to look into the competitive effect of a proposed purchase. If Honickman and BBAC elected to use the hold separate procedures instead of seeking prior approval, the hold separate agreement and divestiture requirement would eliminate the common ownership of existing and newly acquired assets.

The consent package also contains an "Addendum to Agreement to Consent Order to Preserve Seven-Up Brooklyn Franchises." The Addendum would allow Honickman to distribute and sell Seven-Up Brooklyn's products for a limited time period while the Commission reviews Honickman's application to purchase Seven-Up Brooklyn. The Addendum is intended to preserve Seven-Up Brooklyn assets and is not intended to suggest any predisposition on the part of the Commission regarding the disposition of Seven-Up Brooklyn after a public comment period on any application by Honickman to purchase Seven-Up Brooklyn. Moreover, the Commission is aware that there are existing contractual provisions between franchisors and franchisees that may be germane to interim distribution. The Commission's approval of the Addendum for public comment is not intended to compromise the rights of any party under any franchise agreement or other contract.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Andrew J. Strenio, Jr.

Harold Honickman, et al., Docket No. 9233

Most Commission orders involving challenged acquisitions contain a provision prohibiting respondents from acquiring without prior Commission approval the stock or assets of any entity in the relevant product and geographic markets. Such prior approval provisions virtually always run for ten years.

The proposed consent in this matter differs from the typical Commission order by providing respondents with two alternative ways to acquire carbonated soft drink bottlers in the relevant geographic market. One is through the standard prior approval mechanism. The other is by holding the newly-acquired assets separate from existing operations until respondents divest any overlapping assets. Under this second mechanism, respondents would have to obtain Commission approval of the divestiture.

Although I generally do not favor departing from standard Commission practices involving acquisitions, the special circumstances here appear to support acceptance of the proposed consent for public comment. The complaint alleges that respondents own Pepsi and Canada Dry bottling operations in the relevant geographic market. The complaint was issued after respondents acquired (and later sold) Seven-Up Brooklyn Bottling Company ("Brooklyn-7Up"), an alleged horizontal competitor of respondents' existing bottling operations.

In settling the administrative litigation, the Commission must be wary of the possibility that respondents may attempt to re-acquire the Brooklyn-7Up assets that gave rise to the litigation. Brooklyn-7Up is in bankruptcy proceedings and may be liquidated. It certainly would be ironic if the failure to reach a settlement here put the antitrust matter back into administrative litigation and, as a result, respondents were able to purchase the Brooklyn-7Up assets as a failing company through the bankruptcy proceedings without prior Commission approval.

The only recourse for the Commission in that event would be to seek a preliminary injunction in federal court. Of course, the outcome of such litigation would hardly be preordained. If a preliminary injunction were not granted, soft drink consumers in the relevant market might come up dry.

Further, the special circumstances of this case appear to make the proposed consent more effective than the typical order. When a typical consent is violated by a prohibited stock or assets acquisition, the Commission can seek to require divestiture of the newly-acquired assets and the payment of civil penalties of up to $10,000 per day. If respondents were to violate this proposed consent, the Commission could seek the payment of the $10,000 per day civil penalties and also seek to require the divestiture of respondents' existing assets. Respondents' existing assets would be at stake in this scenario under the proposed consent because they would not have sought the Commission's prior approval to purchase the newly-acquired assets. In such a situation, the consent would require respondents to hold separate those newly-acquired assets while they divest their overlapping existing assets. Since respondents' existing assets appear to be far more valuable than the Brooklyn-7Up assets in question, the proposed consent seems to have sharp teeth indeed.

Unlike the Brooklyn-7Up franchise, it appears improbable that respondents would have a problem finding buyers for their Pepsi and Canada Dry bottling operations. First, there is no indication that either the Pepsi or the Canada Dry bottling operations are in financial difficulty. Second, at least with respect to Pepsi, that parent company has a history of acquiring its bottling operations and it seems implausible that parent Pepsi would risk having its product come off the shelves in any portion of the New York metropolitan area.

Although this consent, if accepted finally by the Commission, might permit respondents to acquire Brooklyn-7Up, they still would run an enormous risk if the Commission's prior approval is not sought and granted before such acquisition. Also of great importance, the consent provides for both an orderly disposition of the Brooklyn-7Up assets and would provide time for other potential purchasers to make bids for these assets.

For the above reasons, while reasonable individuals could differ on this assessment, I have voted to accept the proposed consent for public comment.

Dissenting Statement of Commissioner Deborah K. Owen in Harold Honickman, et al., D. 9233

This matter was the subject of administrative litigation when the Commission staff and the respondent reached agreement on the proposed consent order. As in many of our cases, deciding whether to accept this agreement for public comment necessarily must involve, among other considerations, weighing the possible (but not certain) benefits of achieving additional relief through further litigation, against the increased litigation costs. While reasonable people devoted to vigorous law enforcement could legitimately differ in their evaluation, I do not believe that the relief obtained through this consent is sufficient in this case to warrant ceasing litigation. Accordingly, when this consent came before the Commission in February, I dissented.

The respondent had already essentially divested his control of the operations of the acquired business, Seven-Up Brooklyn Bottling Company ("Seven-Up Brooklyn"); therefore divestiture of the operations was not at issue. The issue, as I saw it, was what relief is appropriate to prevent possible future violations of the antitrust laws by this respondent, through acquisitions involving the relevant product and geographic markets in this case.

Unlike many of our consent orders, this proposed agreement does not require the respondent to obtain prior Commission approval for all acquisitions involving the relevant product and geographic markets at issue here. Instead, Part III of the order, as an alternative to prior approval, permits the respondent to hold any acquired business separate from his existing soft drink businesses, and then divest (with prior Commission approval) the existing business that generates the competitive overlap. This provision, as I understand it, is designed to allow the respondent to "trade up".

There certainly may be instances where this would be appropriate relief. However, given the facts of this case, and comparing them to other cases where we have not afforded the respondents a similar opportunity to "trade up", I must respectfully dissent from the Commission's decision to accept the consent agreement for public comment. I would prefer a consent order in this case that required Commission approval prior to *any* acquisition by the respondent involving the relevant product and geographic markets.

Seven-Up Brooklyn is now in bankruptcy. Since the Commission voted to accept this consent agreement for public comment in February, the Commission staff has searched for a way to maintain Seven-Up Brooklyn as an independent competitor in the market place. Despite staff's efforts, the only purchaser for Seven-Up Brooklyn, acceptable to its major creditors, apparently was Harold Honickman.

The Commission staff has negotiated an addendum to the consent agreement to allow Mr. Honickman to distribute, on an interim basis, the soft drink brands formerly sold by Seven-Up Brooklyn. Without such an interim agreement, it appears that the brands formerly carried by Seven-Up Brooklyn would be removed from the marketplace, reducing competition to the detriment of producers of soft drink concentrate and consumers of soft drinks.

Since the Commission has already accepted the consent agreement in this case, I agree that the Commission should accept the interim distribution agreement. Rejecting the interim agreement will not enhance competition in the relevant market. However, the failed attempt to locate an alternative buyer for Seven-Up Brooklyn only reinforces my belief that a prior approval requirement is the appropriate relief for the underlying consent agreement.

Under the "trade up" provision of the consent agreement, Mr. Honickman is free to acquire competitor bottlers without the prior approval of the Commission. Mr. Honickman must hold such companies separate until he disposes of his existing, overlapping activities. However, given the current scenario, this raises the not-unlikely prospect that once Mr. Honickman acquires a competitor, there may be no other viable buyer for the business or assets that Mr. Honickman is obligated to divest. This leaves him with *all* of the assets, albeit under a hold-separate arrangement. In such a case, the protection of the consent order appears to be less than what the Commission and the public would be afforded under a prior approval provision. For this reason, I would prefer to reject the consent agreement and litigate to attempt to get a prior approval order.

[FR Doc. 91-10137 Filed 4-29-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 902 3366]

Zipatone, Inc., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Hillside, Ill., based manufacturer of artists' materials from representing that any product containing a Class I ozone-depleting substance will not damage the environment, and from making any unsubstantiated claims that any product containing an ozone-depleting substance offers environmental benefits.

DATES: Comments must be received on or before July 1, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S-4002, Washington, DC 20580. (202) 326-3158.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Zipatone, Inc. (hereinafter "Zipatone"), a corporation, and Benjamin E. Beale Jr., individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Zipatone, by its duly authorized officer, and Benjamin E. Beale, Jr., individually and as an officer of said corporation, and counsel for the Federal Trade Commission that:

1. Proposed Respondent Zipatone is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 150 Fencl Lane, Hillside, Illinois 60162.

Proposed Respondent Benjamin E. Beale, Jr. is an officer of said corporation. He formulates, directs and controls the acts and practices of said corporation, and his address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive: (a) Any further procedural steps.

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law.

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may requires) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint as attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service.

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The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of the Order, the following definitions shall apply:

Competent and reliable scientific evidence means such tests, analyses, research, studies, or other scientific evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

Class I ozone depleting substance means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in title 6 of the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, and any other substance which may in the future be added to the list pursuant to title 6 of the Act. Class 1 substances currently include chlorofluorocarbons, halons, carbon tetrachloride and 1,1,1-Trichloroethane.

Class II ozone depleting substance means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in title 6, of the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, and any other substance which may in the future be added to the list pursuant to title 6 of the Act. Class 11 substances currently include hydrochlorofluorocarbons.

I

It is Ordered that respondents Zipatone, Inc. (hereinafter "Zipatone"), a corporation, its successors and assigns, and its officers, and Benjamin E. Beale, jr., individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols that any product containing any Class I ozone depleting substance, will not damage the environment, or is ecologically safe, or through the use of any substantially similar term or expression, including but not limited to "ozone friendly" or "ozone safe," that any such product will not damage the environment, or that any such product is ecologically safe, or that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

II

It is further ordered that respondents Zipatone, a corporation, its successors and assigns, and its officers, and Benjamin E. Beale, jr., individually and as an officer of said corporation, and respondents's representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions or symbols, that any product containing any Class I ozone depleting substance or any Class II ozone depleting substance, or any other ozone depleting substance, offers any environmental benefits, including but not limited to any environmental benefit claims concerning the ecology, atmosphere, upper atmosphere, stratosphere or the ozone layer, unless at the time of making such representation, respondents possess and rely upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation.

III

It is further ordered that for three years from the date that the representations to which they pertain are last disseminated, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that respondents relied upon in disseminating any representation covered by this order.

2. All tests, reports, studies or surveys in respondents' possession or control or of which they have knowledge that contradict any representation of respondents covered by this order.

IV

It is further ordered that respondents shall distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

V

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VI

It is further ordered that the individual respondent named herein shall promptly notify the Commission in the event of the discontinuance of his present business or employment and of each affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the sale, distribution and/or manufacturing of any cleaning or adhesive products and products or of his affiliation with a new business or employment in which his own duties and responsibilities involve the sale, distribution and/or manufacturing of any cleaning or adhesive products. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VII

It is further ordered that respondents shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Zipatone Corporation, an Illinois corporation, and Benjamin E. Beale, jr., individually and as an officer of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns the labeling and advertising of Zipatone Spray Cement. The Commission's complaint charges that the respondents' labeling and advertising contains false and unsubstantiated representations concerning the environmental consequences of using their product. The complaint alleges that the respondents have represented that Zipatone Spray Cement contains an "ecologically-safe propellant" and that use of the product will not damage the environment, even though the product contains an ozone depleting chemical, 1,1,1-Trichloroethane.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

The proposed order defines ozone depleting substances as either "Class I" or "Class II," incorporating the definitions established in the Clean Air Act Amendments of 1990. Class I substances as currently listed under the Act are cholorfluorocarbons ("CFCs"), halons, carbon tetrachloride and 1,1,1-Trichloroethane. Class II substances as currently listed under the Act are hydrochlorofluorocarbons ("HCFCs").

Part I of the proposed order requires the respondents to cease and desist from representing that products containing any Class I ozone depleting substance will not damage the environment. Part I also requires the respondents to cease and desist from representing that any such product is ecologically safe, ozone safe, ozone friendly, or through the use of substantially similar terms or expressions, that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

Part II of the proposed order requires respondents to cease and desist from representing that products containing a Class I, Class II, or any other ozone depleting substance, offer any environmental benefits, unless they possess a reasonable basis for such representations.

Under the Act, the Environmental Protection Agency has authority to add new chemicals to the Class I or Class II lists. Thus, the definitions of Class I and Class II ozone depleting substances specifically include substances that may be added to the lists. If additional substances are added to the Class I or Class II lists, Parts I and II of the order become applicable for claims made for products containing those substances after they are added to the lists. In addition, Part II applies as well to all unsubstantiated environmental benefit claims made for any product containing an ozone depleting substance, regardless of whether it formally has been listed by the Environmental Protection Agency.

The proposed order also requires respondents to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, to notify the Commission of any changes in the business or employment of the named individual respondent, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-10136 Filed 4-29-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families; Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) for approval an existing information collection, the State Program Report for title III of the Older Americans Act, including revisions in two areas.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Angela Antonelli, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: State Program Report for title III of the Older Americans Act.

OMB No.: 0980-0199.

Description: Title III of the Older Americans Act provides authority for funding of programs under several parts: Part B (Supportive Services and Senior Centers), part C (Nutrition Service), part D (In-Home Services for Frail Older Individuals), Part E (Additional Assistance for Special Needs of Older Individuals), part F (Preventive Health Services), and part G (Prevention of Abuse, Neglect, and Exploitation of Older Individuals).

As part of its Fiscal Year (FY) 1991 allocation for Older Americans Act's title III programs, the Administration on Aging (AoA) has received funding to support activities under section 303(a)(2) (Ombudsman Program) and part G (Prevention of Abuse, Neglect, and Exploitation of Older Individuals). Until FY 1991, Ombudsman activities received federal funding under title III, part B (Supportive Services and Senior Centers), while part G received no funding. Reporting requirements for these two programs have been added to the information collection instrument being submitted to OMB for approval.

The data for title III programs, including part G, relate to the demographic characteristics of the State, unduplicated counts of participants, ethnicity of program participants, types and units of services provided, and service expenditures. The Ombudsman program collects data on the number of persons presenting complaints as well as the number, type, and disposition of complaints. The information collected will be included by AoA in its annual report to the President and Congress on activities carried out under the Older Americans Act. If this information is not collected, AoA will not be able to judge the effectiveness of Title III programs.

Annual Number of Respondents: 57.

Annual Frequency: 1.

Average Burden Hours Per Response: 18.

Total Burden Hours: 1,026.

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Dated: April 25, 1991.

Donna M. Gilmore,

Deputy Assistant Secretary for Children and Families.

[FR Doc. 91-[illegible] Filed 4-29-91; [illegible] am]

BILLING CODE 4150-01-M

Administration for Children and Families; Intent To Reallot Basic Support and Protection and Advocacy Funds to States for Developmental Disabilities Expenditures

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of intent to reallot funds.

SUMMARY: The Administration on Developmental Disabilities herein gives notice of intent to reallot Fiscal Year 1991 funds which are not available to the Trust Territories of the Pacific Islands under the terms of the Compact of Free Association. This notice is given in accordance with section 125(d) of the Developmental Disabilities Assistance and Bill of Rights Act. Any State or Territory which cannot use the additional funds for Fiscal Year 1991 should notify Bettye J. Mobley, Chief, Formula Grants Management Branch, room 341-F, HHH Building, 200 Independence Avenue SW., Washington, DC 20201, within thirty days of the day of this promulgation.

FOR FURTHER INFORMATION CONTACT: Bettye J. Mobley, (202) 245-7229.

The allotments are set forth below:

ADMINISTRATION ON DEVELOPMENTAL DISABILITIES FY 91 FORMULA GRANT

	Basic services	Reallotment	Revised allotment
Total	$64,409,000	$0	$64,409,000
Alabama	1,296,703	4,888	1,301,591
Alaska	350,000	1,319	351,319
American Samoa	200,000	753	200,753
Arizona	776,711	2,928	779,639
Arkansas	752,043	2,835	754,878
California	5,349,910	20,637	5,370,547
Colorado	651,456	2,455	653,911
Connecticut	620,831	2,340	623,171
District of Columbia	350,000	1,319	351,319
Delaware	350,000	1,319	351,319
Florida	2,708,033	10,209	2,718,242
Georgia	1,511,331	6,074	1,517,405
Guam	200,000	753	200,753
Hawaii	350,000	1,319	351,319
Idaho	350,000	1,319	351,319
Illinois	2,625,278	9,897	2,635,175
Indiana	1,443,915	5,443	1,449,358
Iowa	783,114	2,952	786,066
Kansas	588,175	2,217	590,392
Kentucky	1,195,538	4,508	1,200,046
Louisiana	1,378,243	5,195	1,383,438
Maine	355,857	1,341	357,198
Maryland	913,269	3,443	916,712
Massachusetts	1,237,162	4,664	1,241,826
Michigan	2,369,476	8,706	2,378,182
Minnesota	688,642	2,719	690,361
Mississippi	929,543	3,504	933,047
Missouri	1,301,722	4,907	1,306,629
Montana	350,000	1,319	351,319
Nebraska	395,190	1,489	396,679
Nevada	350,000	1,319	351,319
New Hampshire	350,000	1,319	351,319
New Jersey	1,461,872	5,511	1,467,383
New Mexico	423,525	1,596	425,121
New York	3,990,161	15,042	4,005,203
North Carolina	1,798,957	6,763	1,805,720
North Dakota	350,000	1,319	351,319
Northern Mariana	200,000	753	200,753
Ohio	2,802,194	10,564	2,812,758
Oklahoma	657,531	2,232	660,763
Oregon	651,960	2,457	654,417
Pennsylvania	3,089,566	11,652	3,105,218
Puerto Rico	2,253,751	8,496	2,262,247
Rhode Island	350,000	1,319	351,319
South Carolina	1,042,176	3,929	1,046,105
South Dakota	350,000	1,319	351,319
Tennessee	1,421,913	5,360	1,427,273
Texas	3,970,566	14,969	3,985,535
Trust Territories*	283,893	−242,189	41,704
Utah	473,192	1,783	474,975
Vermont	350,000	1,319	351,319
Virginia	1,356,978	5,112	1,362,190
Virgin Islands	200,000	753	200,753
Washington	994,925	3,750	998,675
West Virginia	715,844	2,697	718,541
Wisconsin	1,261,666	4,756	1,266,422

ADMINISTRATION ON DEVELOPMENTAL DISABILITIES FY 91 FORMULA GRANT—Continued

	Basic services	Reallotment	Revised allotment
Wyoming	350,000	1,319	351,319
*Trust Territories consist of:			
Palau	41,704	0	41,704
Micronesia	156,539	−156,539	0
Marshall Islands	85,650	−85,650	0

ADMINISTRATION ON DEVELOPMENTAL DISABILITIES FY 91 FORMULA GRANT

	Protection and advocacy	Reallotment	Revised allotment
Total	$29,982,000	$0	$29,982,000
Alabama	384,207	1,678	385,885
Alaska	200,000	873	200,873
American Samoa	107,000	467	107,467
Arizona	243,774	1,065	244,839
Arkansas	222,922	974	223,896
California	1,587,102	7,030	1,594,132
Colorado	218,207	953	219,160
Connecticut	207,367	906	208,273
District of Columbia	200,000	873	200,873
Delaware	200,000	873	200,873
Florida	803,217	3,510	806,727
Georgia	477,634	2,087	479,721
Guam	107,000	467	107,467
Hawaii	200,000	873	200,873
Idaho	200,000	873	200,873
Illinois	777,394	3,399	781,393
Indiana	428,015	1,870	429,885
Iowa	231,985	1,013	232,998
Kansas	200,000	873	200,873
Kentucky	354,272	1,548	355,820
Louisiana	408,540	1,785	410,325
Maine	200,000	873	200,873
Maryland	270,764	1,183	271,937
Massachusetts	366,366	1,601	367,967
Michigan	694,144	2,989	697,133
Minnesota	292,469	1,278	293,747
Mississippi	275,509	1,203	276,712
Missouri	385,791	1,685	387,476
Montana	200,000	873	200,873
Nebraska	200,000	873	200,873
Nevada	200,000	873	200,873
New Hampshire	200,000	873	200,873
New Jersey	433,102	1,892	434,994
New Mexico	200,000	873	200,873
New York	1,161,616	5,163	1,166,779
North Carolina	531,698	2,323	534,021
North Dakota	200,000	873	200,873
Northern Mariana	107,000	467	107,467
Ohio	830,305	3,628	833,933
Oklahoma	254,388	1,111	255,509
Oregon	208,809	912	209,721
Pennsylvania	916,342	4,004	920,346
Puerto Rico	668,101	2,919	671,020
Rhode Island	200,000	873	200,873
South Carolina	308,926	1,360	310,286
South Dakota	200,000	873	200,873
Tennessee	421,364	1,841	423,205
Texas	1,178,157	5,148	1,183,335
Trust Territories *	107,000	−91,282	15,718
Utah	200,000	873	200,873
Vermont	200,000	873	200,873
Virginia	401,880	1,756	403,636
Virgin Islands	107,000	467	107,467
Washington	295,163	1,289	296,452
West Virginia	223,003	974	223,977
Wisconsin	373,807	1,633	375,440
Wyoming	200,000	873	200,873
* Trust Territories consists of:			
Palau	15,718	0	15,718
Micronesia	59,000	−59,000	0
Marshall Islands	32,282	−32,282	0

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(Catalog of Federal Assistance Programs, Number 93.630 Developmental Disabilities—Basic Support and Advocacy Grants.)

Dated: April 18, 1991.

Deborah L. McFadden,

Commissioner, Administration on Developmental Disabilities.

Approved: April 24, 1991.

Donna N. Greene,

Deputy Assistant Secretary for Children and Families.

[FR Doc. 91-10080 Filed 4-29-91; 8:45 am]

BILLING CODE 4130-01-M

Alcohol, Drug Abuse, and Mental Health Administration

[ADM-91-66]

Center for Research, Knowledge Dissemination, and Technical Assistance on Housing and Residential Supports

INSTITUTE: National Institute of Mental Health.

AGENCY: Notice of request for applications.

INTRODUCTION: This is a reissuance of a previous announcement. This grant will be made under the authority of section 520 of the Public Health Service (PHS) Act which authorizes funds for demonstrations of mental health services for individuals with severe and persistent mental disorders. The National Institute of Mental Health (NIMH) announces the availability of support for one National Center for Research, Knowledge Dissemination, and Technical Assistance on Housing and Residential Supports.

PURPOSE: Meeting the mental health and support service needs related to housing for people with severe and persistent mental disorders has been complicated by the dramatic decline in availability of decent, affordable housing and the insufficient development of outreach and other supportive services to individuals living in scattered sites in communities. To understand the underlying problems and identify the knowledge and information needs of the field, the NIMH Community Support Program (CSP) conducted several meetings during the past decade. Among the problems identified were: confusion regarding the roles and responsibilities of governmental levels and various mental health and other public services agencies, dissatisfaction of individuals living in congregate settings, lack of knowledge on which service and rehabilitation approaches are effective in helping individuals find and maintain housing, and significant conceptual and practical problems with the traditional models of transitional housing.

To address the problems, CSP initiated knowledge development and dissemination activities, including funding five Supported Housing Service Demonstration Projects and a national evaluation of these projects under the Authority of section 504(f) of the Public Health Service Act. Much has been learned from these efforts and related research, evaluation, and programmatic experience during the past 6 years. Using this knowledge, States are developing plans to increase housing for the population. As they begin to implement these plans, States continue to need the best available information on creative financing strategies, effective collaboration between housing and mental health agencies, approaches for linking housing to services and supports, and the role of client choice. The field also needs more knowledge on the specific supported-housing and other residential service approaches that are effective for certain types of individuals, the system changes needed to reorganize services and supports in order to make these accessible to people living in the community, staff training requirements, and consumer and family roles in accessing and providing housing and residential supports.

The purpose of this Center is to provide a research environment and information dissemination center in the area of outreach and other mental health and supportive services related to housing needs for adults diagnosed with a severe and persistent mental disorder. The Center will permit individuals with research and program expertise to develop and conduct research studies, disseminate research findings and other relevant information, and interact with and provide assistance to State mental health directors, local programs, researchers, practitioners, mental health consumers, and family members.

The use of a national center mechanism responds to a recommendation in the *National Plan of Research to Improve Care for Severe Mental Disorders*, a report that was developed under the direction of the National Advisory Mental Health Council. The Plan recommends that NIMH support centers that can effectively bring together researchers, clinicians, and administrators and provide opportunities for developing and maintaining stable linkages with State mental health agencies, consumer and family groups, and other important service entities. As the Plan notes, developing effective outreach and other mental health and supportive services related to housing needs is particularly complicated because of the variety of programs administrated by various agencies and the need to understand entitlements and how all these interrelate at the point of service delivery and at different government levels. It is, therefore, particularly critical in the area of housing to bring together individuals representing different disciplines and having expertise in the wide range of relevant services involving the formal service sectors and natural supports.

A national center focused on outreach and other mental health and supportive services related to housing also responds to objectives 6.8 and 6.12 in *Healthy People 2000: National Health Promotion and Disease Prevention Objectives.*

NIMH intends that the technical assistance provided by the Center will support the housing and service development plans in the State's comprehensive mental health service plan submitted to NIMH for review under Public Law 99-660, The State Comprehensive Mental Health Service Plan Act of 1987, and its subsequent amendments.

Research Issues

It is expected that the Center will be active in research, but the Center's budget itself will support only small scale studies, pilot projects, or methodologic studies. The core Center support will be used to develop proposals for major studies that will be funded by separate applications or by other sources and to assist other potential applicants to develop proposals for major research or research demonstration projects.

Listed below are examples of the range of relevant research areas that might be addressed by the Center. The list is not exhaustive; it is expected that applicants will identify other important topics:

- Studies on where people with mental disorders live, where they want to live, and what mental health and support services they need to succeed in that living situation
- Investigation of the differences and outcomes of alternative types of living arrangements (e.g., supervised residential programs, board-and-care homes, community integrated housing) on the mental health and general well-being of the population
- Studies of effective approaches for meeting the residential support needs of individuals who are currently unserved such as those remaining in institutions, those who are homeless, and those living with families
- Documenting the characteristics of safe, stable, health-engendering living environments that enable individuals to use their own coping skills and adaptive capacities to adjust to community living situations
- Identification of the most effective ways to help people with multiple problems (e.g., mental illness and substance abuse, mental illness and homeless) find and maintain housing in the community
- Research on how to provide housing in the community for individuals with severe mental disorders who require large amounts of support and structure
- Assessment of the most effective ways to help families when the family member with a mental disorder lives at home
- Documenting effective approaches for developing housing and supportive services in rural areas and for assisting such individuals where there are few available supports and services
- Studies to determine which types of psychiatric rehabilitation and independent living skills training help individuals succeed in their community living situations
- Evaluating the impact of supportive services provided by mental health consumers, such as outreach and peer support, on increasing the housing stability of the population

Knowledge Dissemination Issues

Because of the emphasis of NIMH on supporting rigorous research on services for the population, and the increased capacity of scientific and academic centers, State mental health agencies, and local programs to conduct research, the knowledge base on effective mental health services and services in related disabilities is expanding rapidly. This has intensified the need for dissemination to potential users. Additionally, with the likelihood of continuing mental health and housing development budget constraints, States and communities need information on cost-effective approaches. Finally, there will be an increasing need to disseminate the best available information (e.g., findings from all relevant research studies and descriptions of best practices) to the field to support the community integration goals of the recent Americans with Disabilities Act.

Examples of dissemination mechanisms include summaries of recent important articles and critical reviews, newsletters, small conferences or interactive video conferences to present on relevant developments in the field, and easy-to-read fact sheets on topical issues in nontechnical language for the media and advocacy groups.

Technical Assistance Needs

Almost all States and Territories are involved in planning efforts to improve housing, rehabilitation, and other supportive services for individuals with severe and persistent mental disorders. To implement their plans, many States need consultation on clarifying their goals and desired outcomes, identifying financing strategies, using findings from the research and best practices to redesign community support services and restructure mental health service systems, and developing useful program evaluations and quality research projects.

Examples of useful technical assistance approaches include developing materials such as training packages, program development manuals, financing guides, monitoring and evaluation tools, and working with colleges and universities to translate research findings into curricula and training packages. Other examples include the use of individuals or teams experienced in specific innovative services who could meet with State and local officials and practitioners to assist in the diffusion of the innovations.

Assistance could be provided to researchers on identifying the most important research questions that need to be answered and measuring successful community integration. Local programs could be assisted to design research demonstration projects to test alternative approaches to providing housing and supports.

Research Populations

Population of Concern for CSP Grants

The population of concern for the Center includes individuals 18 years and over with a severe and persistent mental disorder that seriously impairs functioning in primary aspects of daily living such as interpersonal relations, living arrangements, or employment. Applicants should attend to the unique needs and special concerns of racial and ethnic minorities and women.

Special Instructions to Applicants Regarding Implementation of ADAMHA Policies Concerning Inclusion of Women and Minorities in Clinical Research Studies Population

Applications/proposals for ADAMHA grants and cooperative agreements are required to include both women and minorities in study populations for clinical research, unless compelling scientific or other justification for not including either women or minorities is provided. This requirement is intended to ensure that research findings will be of benefit to all persons at risk of the disease, disorder, or condition under study. For the purpose of these policies, clinical research involves human studies of etiology, treatment, diagnosis, prevention, or epidemiology of diseases, disorders or conditions, including but not limited to clinical trials; and minorities include U.S. racial/ethnic minority populations (specifically: American Indians or Alaskan Natives, Asian/Pacific Islanders, Blacks, and Hispanics).

ADAMHA recognizes that it may not be feasible or appropriate in all clinical research projects to include representation of the full array of U.S. racial/ethnic minority populations. However, applicants are urged to assess carefully the feasibility of including the broadest possible representation of minority groups.

Applications should include a description of the composition of the proposed study population by gender and racial/ethnic group, and the rationale for the numbers and kinds of people selected to participate. This information should be included in the form PHS 398 in section 2, A-D of the Research Plan and summarized in section 2, E, Human Subjects.

Applications should incorporate in their study design gender and/or minority representation appropriate to the scientific objectives of the work proposed. If representation of women or minorities in sufficient numbers to permit assessment of differential effects is not feasible or is not appropriate, the reasons for this must be explained and justified. The rationale may relate to the purpose of the research, the health of the subjects, or other compelling circumstances (e.g., if in the only study population available there is a disproportionate representation in terms of age distribution, risk factors, incidence/prevalence, etc., of one gender or minority/majority group).

If the required information is not contained within the application, it will be returned. Peer reviewers will address specifically whether the research plan in the application conforms to these policies. If gender and/or minority representation/justification are judged to be inadequate, reviewers will consider this as a deficiency in assigning the priority score to the application.

All applications/proposals for clinical research submitted to ADAMHA are required to address these policies. ADAMHA funding components will not

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award grants that do not comply with these policies.

Eligibility

Applications may be submitted by public or private nonprofit organizations such as universities, colleges, or units of State or local governments.

Application Procedures

Applicants should use the grant application form PHS 398 (Rev. 10/88). The number and title of this Announcement, *MH-91-06, NIMH Center on Housing*, should be typed in item number 2 on the face page of the PHS 398 application form.

Applicants must affix the RFA label available in the 398 kit to the bottom of the face page. Failure to use this label could result in delayed processing of the application such that it may not reach the review committee in time for review. Important—The mailing envelope (including that provided by an express carrier) must be clearly marked, "RFA MH-91-06, NIMH Center on Housing." Applications must be received (not postmarked) by June 24, 1991.

Application kits containing the necessary forms and instructions may be obtained from business offices or offices of sponsored research at most universities, colleges, medical schools, and other major research facilities. If such a source is not available, the following office may be contacted for the necessary application material: Grants Management Branch, National Institute of Mental Health, 5600 Fishers Lane, room 7C-05, Rockville, Maryland 20857, (301) 443-4414.

The signed original and five (5) permanent legible copies of the completed application should be sent to: Division of Research Grants, NIH Westwood Building, room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892.[1]

To facilitate the timely review of your application, it is also requested that one additional copy of the application be sent directly to: Ms. Edna M. Hardy-Hill, Division of Extramural Activities, National Institute of Mental Health, 5600 Fishers Lane, room 9C-15, Rockville, Maryland 20857.

The mailing envelope (including that provided by an express carrier) must also be clearly marked "RFA MH-91-06, NIMH Center on Housing."

Application Characteristics

Applications must be complete and contain all information needed for initial and National Mental Health Advisory Council review. No subsequent addenda will be accepted unless specifically requested by the Scientific Review Administrator of the review committee. The application should be written in a manner that is self-explanatory to objective, outside reviewers who may not be familar with prior related activites of the applicant. The research plan, section 2, A–D, including the additional required information described below, is limited to 20 pages singled-spaced and must contain the necessary informaiton for reviewers to understand the project. Appendices may be attached but must *not* be used to merely extend the narrative; extensive appendices are discouraged.

To ensure that sufficient information is included for scientific and technical merit review, the research plan, section 2, A–D should include the following information:

A. Specific Aims

Discussion of the overall research, dissemination, and technical assistance goals of the Center.

B. Background and Significance

• Discussion of the knowlede base, current service issues and approaches, consumer preferences, informaiton gaps, and technical assistance needs of the field in the area of housing and residential supports and how the Center's activities will address these.

• Discussion of involvement of primary consumers and family members in actiities of the Center.

C. Preliminary Studies

Discussion of previous research, dissemination, and technical assistance efforts that are pertinent to the activities of the proposed center and other information to establish the experience and competence of the principal investigator and key staff.

D. Experimental Design and Methods

This section should contain three subsections, (1) Research objectives, (2) Knowledge Dissemination Plan, and (3) and Technical Assistance Plan.

Research Objectives

• The set of research objectives principal areas of research, and the rationale for selecting these based on public health significance the state of knowledge development, feasibility, and potential impact on improving housing and supports for the population.

• For each research project to be conducted by the Center, discussion of the research issue to be investigated, a brief review of the relevant literature; the methodology for generating, collecting, and analyzing data; staffing; timeframes for anticipated activities; potential research results, and how the individual research projects will interrelate and relate to the other activities of the Center.

• Plans for coordinating the research with the other activities of the Center.

• Where feasible and appropriate for proposed studies, plans to use the data standards recommended by the Mental Health Statistics Improvement Program (MHSIP) as documented in FN-10, *Data Standards for Mental Health Decision Support Systems* (available from the National Institute of Mental, Information Resources and Inquiries Branch, room 15C-07, 5600 Fishers Lane, Rockville, Maryland 20857).

Knowledge Dissemination Plan

• The principal areas of dissemination.

• The sources for obtaining information, e.g., research findings, best practices, literature reviews.

• The individual dissemination projects that the Center will conduct, including for each project a discussion of the information to be disseminated, mechanism for dissemination, intended audience, staffing, timeframes, and potential impact.

Technical Assistance Plan

• The principal areas of technical assistance.

• The technical assistance approaches that the Center will use including a discussion of the specific mechanisms, audience, staffing, timeframes, and potential impact.

Client Safeguards and Protection of Confidentiality

The applicant must satisfactorily address issues regarding protection of confidentiality of the client. If the project will be collecting identifiable information about individual clients or project staff for project evaluation purposes, assurances for protecting client and staff confidentiality and anonymity must be included.

Because of the special sensitivity of conducting research on individuals with severe and persistent mental disorders, applicants must give particular attention to considerations of informed consent, confidentiality, subject rights and welfare, and subject risks.

The grant funded under this announcement is subject to the regulations of 45 CFR 46, Protection of Human Subjects. These can be obtained from: Ms. Anne Cooley, Division of Extramural Activities, National Institute of Mental Health, Parklawn Building, room 9-05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3867.

[1] If an overnight carrier or Express Mail is used, the Zip Code is 20816.

Terms and Conditions of Support

Period of Support

Support may be requested for a period of up to 3 years. Annual direct costs are not expected to exceed $250,000 for the first year, while the Center is being established. Depending on the research and other activities to be conducted by the Center, increased direct costs for subsequent years may be requested but should not exceed $350,000 per year. Annual awards will be made subject to continued availability of funds and progress achieved.

Allowable Costs

Applicants must include the following agreement in their applications: "(Applicant) agrees that not more than 10 percent of any resultant grant award will be expended for administrative purposes."

Funds may be requested for core support of the Center and for indivudual research and dissemination projects. Funds may be used only for those expenses that are directly related and necessary to carry out the project, including both direct and allowable indirect costs. Funds may be used to provide technical assistance and consultation to States. Funds may not be requested to support service costs incurred while conducting research projects.

The grant must be administered in accordance with the *PHS Grants Policy Statement* (Rev. October 1, 1990), which should be available from an office of sponsored research. Federal regulations, 45 CFR parts 74 and 92 and 42 CFR part 52, are applicable to this award.

Review Procedures

Applications received under this announcement will be assigned to an Initial Review Group (IRG) in accordance with established PHS Referral Guidelines.

The IRGs, consisting primarily of non-Federal Scientific and technical experts, will review the applications for scientific and technical merit.

Notification of the review recommendations will be sent to the applicant after the initial review. Applications will receive a second-level review by the National Mental Health Advisory Council whose review may be based on policy considerations as well as scientific merit. Only applications recommended for approval by the Council may be considered for funding.

The intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100, are applicable to this program. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each effected State. A current listing of SPOCs is included in the application kit. The SPOC should send any State process recommendations to: Neal Brown, Chief, Community Support Section, System Development and Community Support Branch, Division of Applied and Services Research, National Institute of Mental Health, Parklawn Building, room 11C-22, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3653.

The due date for State process recommendations is 60 days after the deadline date for receipt of applications. NIMH does not guarantee to accommodate or explain for State process recommendations that are received after the 60-day cut-off date.

Review Criteria

Criteria for sciantific and technical merit include:

• Evidence of indepth understanding of current knowledge base, current service issues and approaches, consumer preferences, information gaps, and technical assistance needs of the field in the area of housing and residential supports

• Reflection of community integration and rehabilitation principles and concepts in the proposed research, dissemination, and technical assistance activities of the Center

• Adequacy of the theoretical and conceptual base for the overall plan of research and the specific projects

• Quality, significance, and feasibility of the overall plan of research and the specific projects

• Quality and feasibility of the dissemination plan and evidence of ability of gather and disseminate relevant knowledge and information to the field

• Quality and feasibility of the technical assistance approaches to be used, including evidence of linkages and credibility with State and local mental health agencies, consumers, family members, and relevant national organizations

• Capability and experience of the Center Director, consultants, and other key staff proposed for the project in research, dissemination, and technical assistance in the areas of community integration, housing, and community supports for adults with severe and persistent mental disorders

• Ability of the Center Director and key staff to devote adequate time to coordinate and conduct the proposed activities of the Center

• Adequacy of facilities and environment to conduct the project

• Potential to generate support for additional resources to conduct major research studies or other relevant projects

• Attention to racial, ethnic, and minority population and gender issues and concerns

• Evidence of involvement of consumers and family members in the activities of the Center

• Adequacy of provisions for confidentiality and protection of human subjects

• Appropriateness of budget estimates for the Center

Receipt and Review Schedule

Receipt of applications	Initial review	Council reviews	Earliest start date
June 24, 1991	July 1991	Sept. 1991	Sept. 1991.

Applications received after the above receipt date will not be reviewed and will be returned to the applicant.

Award Criteria

Applications recommended for approval by the appropriate advisory council will be considered for funding on the basis of overall secintific and technical merit of the proposed Center as determined by peer review, program needs and balance, and availability of funds.

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For Further Information

Neal Brown, Chief, or Jacqueline Parris, Assistant Chief, Community Support Section, System Development and Community Support Branch, Division of Applied and Services Research, National Institute of Mental Health, Parklawn Building, room 11C-22, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3653.

(Catalogue of Federal Domestic Assistance 93.125)

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-10075 Filed 4-29-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BPD-632-FN]

Medicare Program; Withdrawal of Coverage of Certain Investigational Intraocular Lenses

AGENCY: Health Care Financing Administration (HCFA) and the Office of Inspector General (OIG), HHS.

ACTION: Final notice.

SUMMARY: This notice announces the withdrawal of Medicare coverage for certain investigational intraocular lenses (IOLs). Medicare coverage of IOLs that have received approval by the Food and Drug Administration (FDA) will continue to be covered by Medicare, as well as certain other IOLs that are awaiting FDA approval.

EFFECTIVE DATE: This notice is effective May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Sam DellaVecchia, 301-966-5316.

SUPPLEMENTARY INFORMATION:

I. Background

A. Medicare Program: Introduction

The Medicare program was established by Congress in 1965 with the enactment of title XVIII of the Social Security Act (the Act). The program provides payment for certain medical services and supplies for persons 65 years of age or over, disabled beneficiaries, and persons with end-stage renal disease. The program currently covers approximately 29.4 million aged, 3 million disabled individuals, and 130,000 persons with end-stage renal disease.

The Medicare program consists of two separate but complementary insurance programs, a Hospital Insurance program (known as Part A) and a Supplementary Medical Insurance program (known as Part B). Although Part A is called Hospital Insurance, covered benefits also include medical services furnished in skilled nursing facilities (SNFs) or by home health agencies (HHAs) and hospices. For purposes of the Medicare program, we refer to these entities as "providers." These providers must be certified as qualified providers of services and must sign an agreement to participate in the program. Part B covers a wide range of medical services and supplies such as those furnished by physicians, providers, or others in connection with physicians' services, outpatient hospital services, outpatient physical therapy and occupational therapy services, ambulatory surgical centers (ASCs), and home health services. Physicians' services covered under Part B include visits to patients in the home, office, hospital, and other institutions. Part B also covers certain drugs and biologicals, diagnostic x-ray and laboratory tests, purchase or rental of durable medical equipment, ambulance services, prosthetic devices, and certain medical supplies.

The Medicare program was not designed to cover the total cost of providing medical care for its beneficiaries. Under current law, beneficiaries are liable for specified cost-sharing charges, in the form of deductibles and coinsurance amounts, and the cost of the first 3 pints of whole blood (unless replacement blood is furnished). Part B of Medicare generally pays 80 percent of the reasonable charge for physicians and other covered medical services (including drugs used in immunosuppressive therapy furnished within 1 year of a covered organ transplant) after the beneficiary has met the $75 deductible. The beneficiary is then liable for the remaining 20 percent of the reasonable charge (coinsurance). In addition, if a physician does not accept assignment (that is, does not agree to accept Medicare's determinaton of the reasonable charge amount as payment in full for covered services), the beneficiary is liable for the difference between Medicare's reasonable charge and the physician's actual charge, subject to certain limits on that charge.

While the Medicare law does not provide an all-inclusive list of specific items, services, treatments, procedures, or technologies that should be covered by Medicare, it does vest in the Secretary the authority to make coverage decisions based on section 1862(a)(1)(A) of the Act. Specifically, section 1862(a)(1)(A) of the Act states that Medicare payment may not be made for any expense incurred For items or services that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. It making national coverage decisions, HCFA interprets the terms "reasonable" and "necessary" contained in section 1862(a)(1)(A) of the Act to mean that a service is safe, effective, non-investigational, and appropriate as evidenced by available scientific and medical information. We published a proposed rule on January 30, 1989 (54 FR 4302) that would establish in regulations generally applicable criteria and procedures for determining whether a service is "reasonable" and "necessary" under the Medicare program, and to set forth the coverage decisionmaking process that we propose to include in regulations.

B. The Cause and Need for Intraocular Lenses

Medical information indicates that the loss of visual acuity is part of the normal aging process. It has been estimated that in the U.S., 92 percent of people 65 years of age and over have subnormal binocular visual acuity in need of correcting, as compared with 46 percent of the general adult population. Thus, almost all people over age 65 need eyeglasses or some other means to enhance their vision.

With each year of life, the lens of the eye loses some of its elasticity, decreasing the amount of accommodation, most notably for near vision. The optical condition of decreased accommodation is known as presbyopia, which occurs in all individuals, irrespective of their refractive error, and results in an inability to see near work distinctly. This is aggravated in dim illumination and with small print and is treated by means of convex lenses added to the distance correction if such is needed. The absence of the crystalline lens (that is, aphakia), whether due to surgical removal, trauma or disease, causes a severe loss of accommodation (the ability to focus visual images in the retina). The chief symptom is a decrease in both far and near vision. Aphakia may be corrected by means of cataract spectacle lenses, contact lenses, or intraocular lens (IOL) implants.

IOLs are used to replace the lens of the eye. Generally, an IOL is inserted during the same operative procedure when the natural lens of the eye is removed. IOLs seldom need to be replaced, and are usually inserted on an outpatient basis.

C. Current Medicare Coverage for Intraocular Lenses

Section 1861(s)(8) of the Act provides for Part B coverage of prosthetic devices (other than dental) that replace all or part of the function of a permanently inoperative or malfunctioning internal body organ when furnished on a physician's order. Under Medicare policy, the term "internal body organ" includes the lens of the eye. Thus, Medicare covers prosthetic lenses when required by an aphakic individual; that is, an individual lacking the natural lens of the eye because of surgical removal or congenital absence. Current Medicare coverage extends to IOLs, including IOLs considered investigational by the Food and Drug Administration (FDA) as explained below.

Under our program operating guidelines contained in section 65-7 of the Medicare Coverage Issues Manual (HCFA Pub. 6), IOLs, inlcuding investigational ones, are currently covered by Medicare when furnished to aphakic patients. Coverage of investigational IOLs has been an exception to the general rule that Medicare payment may only be made for medical devices that have received FDA approval for marketing.

D. Medical Device Amendments of 1976

Under section 520(g) of the Medical Device Amendments of 1976 (Pub. L. 94-295), Congress directed FDA to collect safety and effectiveness data on certain devices and to decide whether they should be approved for general marketing. Specifically, Congress directed FDA to ensure that IOLs continue to be "reasonably available" to qualified investigators (that is, surgeons who agreed to review IOLs) and patients while FDA reviewed the data that firms collected and made approvals concerning which IOLs should be marketed. (Although IOLs were already widely used, they did not yet have FDA approval.)

To respond to the congressional directive, FDA allowed a dual investigational system involving a small number of intensively studied "core" patients and a larger number of less intensively studied "adjunct" patients. Core studies were traditional, well-controlled clinical investigations with full recordkeeping and reporting requirements intended to establish the basic safety and effectiveness of the IOLs. Adjunct studies were investigations, following core studies, that simply collected data on infrequently-occurring complications (which could be detected only in the larger adjunct study populations). These IOLs, which were the objects of these adjunct studies, are, in some instances, only slightly different from an already approved IOL. Under adjunct studies, manufacturers were able to distribute investigational IOLs without the numerical limits that usually apply to investigational devices.

IOLs have been in use since 1949. By the enactment date of Public Law 94-295 in 1976, their use was widely accepted medical practice. Although IOLs lacked full FDA approval, they were under close review and study by the FDA.

Under the standard premarket approval process, FDA determines the safety and effectiveness of a device by "weighing any probable benefit to health from the use of the device against any probable risk of illness or injury from such use." The FDA determines effectiveness "on the basis of well-controlled investigations, including clinical investigations where appropriate, . . . from which investigations it can fairly and responsibly be concluded by qualified experts that the device will have the effect that it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling of the device."

When the adjunct studies began, there was some routine reporting of patient data. This routine reporting was later discontinued. Some lens models, which were minor variations of other investigational models, were not required to undergo core studies and were allowed to be distributed under adjunct studies alone.

Because the elderly are the recipients of most IOL insertions, the congressional mandate to make IOLs "reasonably available" affected directly the Medicare population. To allow for the use of IOLs by Medicare beneficiaries, Medicare policy was revised to permit coverage of lenses that were being studied by FDA but for which full market approval had not been granted. In accordance with this revised policy, section 65-7 of the Medicare Coverage Issues Manual (HCFA Pub. 6) established instructions to permit payment for investigational IOLs. Coverage of investigational IOLs has been the only exception to the longstanding Medicare policy that requires FDA approval of medical devices before considering Medicare coverage of a device.

Over time, the number of patients receiving IOLs under adjunct status has burgeoned and the assortment of IOL models has proliferated. In 1987, FDA embarked on a three-stage plan for phasing out the use of adjunct studies. During the first two stages, FDA accelerated reviews of pending IOL applications in order to maximize the supply of FDA-approved lenses, after which the initiation of new adjunct investigations was stopped.

Under the third and final phase, IOL manufacturers wishing to continue adjunct studies for given models into 1989 were required to submit premarket applications (PMAs) for those models to FDA before January 1, 1989. If a manufacturer failed to submit a PMA, or if an application was grossly deficient, the manufacturer was precluded from continuing the adjunct study in 1989.

Also, under this final FDA phase-out plan, a manufacturer precluded from conducting an adjunct study in 1989 could have been allowed to continue its ongoing IOL study under a "modified core" program. Unlike the IOLs in an adjunct study, which have a PMA under review for approval with no limit on distribution, the IOLs under a modified core program have restrictions on numbers of allowable lens insertions, and they are subject to some mandatory reporting of data.

Since 1976, FDA has approved for marketing approximately 900 IOL models, most of which are currently available. Many more IOLs are expected to be fully approved in the near future.

On May 23, 1990, we published a notice in the **Federal Register** (55 FR 21250) that proposed withdrawal of Medicare coverage of certain investigational IOLs. That notice provided a 60-day public comment period.

II. Provisions of the Proposed Notice

In the proposed notice we stated our belief that we achieved congressional intent of Public Law 94-295 to maintain the availability of IOLs while IOL manufacturers sought FDA approval for marketing. Since 1976 FDA has approved approximately 900 IOL models with many more expected to be fully approved in the future. The 900 FDA-approved IOLs provide an ample supply to warrant reverting to our longstanding policy of covering only medical devices that have been approved for marketing by the FDA and that are determined to meet the reasonable and necessary criteria in section 1862(a)(1)(A) of the Act.

As proposed, this change in policy would not have a significant effect on current payment for IOL insertions performed in an inpatient hospital setting. Payment for inpatient hospital services are governed by the prospective payment system (see 42 CFR part 412). Under this system, Medicare payment is

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made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). All patients who receive an IOL are assigned to DRG 39, Lens Procedures with or without Vitrectomy. The IOL procedures that are assigned to DRG 39 are (1) insertion of an IOL at the time of a cataract extraction, one stage and (2) secondary insertion of an IOL. If a patient is admitted to have a cataract removed and an investigational (noncovered) IOL is inserted, we proposed that the hospital would receive a full DRG payment because a cataract removal (a covered service) was performed in addition to the insertion of the noncovered IOL. If a patient whose cataract had been removed previously were admitted for the sole purpose of having an investigational IOL inserted, we proposed that the entire admission would be noncovered and no payment would be made to the hospital.

Cataract removal and IOL insertion are done primarily on an outpatient basis (including in ASCs). If an IOL is inserted on an outpatient basis, we proposed to pay for the cataract extraction but not for the insertion of an investigational IOL or the investigational IOL itself. Any secondary insertion of an investigational IOL would be noncovered, that is, there would be no payment to the surgeon or the facility.

Medicare-participating ASCs are paid a prospectively determined standard overhead amount for facility services furnished in connection with covered surgical procedures performed in the facility. These same ASC rates are used, in part, when determining the aggregate amount of payment for covered ASC procedures performed on a hospital outpatient basis. The aggregate amount of payment for facility services furnished by a hospital in connection with covered ASC procedures is based on a comparison of two amounts. That is, Medicare pays the lesser of one of the following amounts:

(1) An amount equal to the hospital's reasonable costs or customary charges (whichever is lower and which has been reduced by the applicable deductibles and coinsurance).

(2) An amount based on a blend of 50 percent of the hospital's reasonable costs or customary charges (whichever is lower and which has been reduced by the applicable deductibles and coinsurance), and 50 percent of an amount equal to 60 percent of the standard overhead amount for ASC facility services, which has been reduced by the applicable deductibles.

Section 4053(b) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203, enacted December 22, 1987) amended section 1833(i)(2)(A) of the Act. As amended, section 1833(i)(2)(A) of the Act requires that payment for an IOL inserted in an ASC during or subsequent to an approved cataract procedure be included in the facility payment rate effective with services furnished after June 30, 1988.

Therefore, in a hospital outpatient or an ASC setting, the payment for an approved IOL is incorporated into the facility rate for the following three approved IOL procedures expressed in Physicians' Current Procedural Terminology, Fourth Edition codes (commonly referred to as CPT-4 codes):

CPT-4	Description
66983	Intracapsular cataract extraction with insertion of IOL prosthesis (one-stage procedure).
66984	Extracapsular cataract removal with insertion of IOL prosthesis, manual or phacoemulsification technique (one-stage procedure).
66985	Insertion of IOL subsequent to cataract removal (separate procedure).

If a removal of lens material is performed on a Medicare beneficiary and an investigational IOL that is not in the adjunct phase is inserted, we proposed to pay the facility for the removal of the lens material. The facility would be paid in accordance with one of the following CPT-4 codes.

CPT-4	Description
66840	Removal of lens material; aspiration technique (one or more stages).
66850	Removal of lens material; phacofragmentation technique (mechanical or ultrasonic, e.g., phacoemulsification), with aspiration (one or more stages).
66915	Expression of lens, linear (one or more stages).
66920	Extraction of lens with or without iridectomy; intracapsular, with or without enzymes.
66930	Extraction of lens with or without iridectomy; intracapsular,for dislocated lens.
66940	Extraction of lens with or without iridectomy; extracapsular, (other than 66840, 66850, 66915).

If CPT-4 code 66985 is performed on a beneficiary and an investigational IOL that is not in the adjunct phase is inserted, under the proposed notice, we would not cover the procedure and there would be no Medicare payment to the facility or the surgeon.

We proposed to phase out payment for investigational IOL models by no longer paying for core and modified core classified IOLs because these IOLs require more intensive studies to obtain FDA approval. Payment would continue for those IOL models in the adjunct study until those are also phased out by the FDA. This would occur as FDA completes its review of the PMA and either approves or disapproves those IOL models. At that time, Medicare payment for adjunct lenses would also cease and we would have ceased paying for any investigational IOLs.

III. Summary and Analysis of Comments

We received comments from seven sources: three manufacturers, two professional organizations and two individuals. The commenters presented varying degrees of concern that the proposal would deter funding for research and development of new IOLs. Specific comments addressed: disincentive for ophthalmologists to participate in clinical trials, stymied economic growth, reduction of research and development funds, reduction in tax base of research and development, decline of employment and loss of the United States' lead in technology development.

We believe comments regarding diminished research and development because Medicare will eventually no longer pay for investigational IOLs are not sufficiently convincing to justify perpetual payment for those IOLs considered by the FDA to be investigational. It was never our intent that Medicare payment for investigational IOLs serve as a subsidy for the research and development of new IOLs. Rather we were simply responding to a congressional mandate that enough IOLs be available. To accomplish this, we made an unusual exception in general Medicare policy to allow payment for those IOLs already developed but not yet fully approved by FDA. As earlier stated, we now believe IOLs are reasonably available. Thus, regarding IOLs, we are attempting to gradually return to our general longstanding policy that precludes payment for investigational devices since their safety and efficacy have not been established.

With respect to the other economic issues addressed by the commenters, and as stated later in this notice, we do not believe discontinuation of payment of investigational IOLs will significantly affect beneficiaries nor do we see it having a substantially adverse affect on ophthalmologists, hospitals, ambulatory surgical centers, or manufacturers. Under our goal to pay for only those items and services considered to be reasonable and necessary, we believe it is in the best interest of the Medicare population to eventually withdraw all

coverage of investigational IOLs. Therefore, we cannot accept the commenters' recommendations.

Additional concerns expressed by commenters and our responses follow:

Comment: Three commenters were concerned about decreased payment to ASCs. They pointed out that facility costs are the same, regardless of the type of IOL inserted. One believes the proposed payment plan is arbitrary, inconsistent, and unfair, particularly in light of the fact that the fee for inpatient hospital insertions would not be affected.

Response: As explained in section V below, section 1833(i)(2)(A) of the Act requires that payment for IOLs be incorporated into the facility rate in a hospital outpatient or ASC setting. Thus, we can identify costs when investigational IOLs that are not covered under Medicare are inserted in an outpatient setting. We are not able to make this determination when IOLs are inserted in the inpatient setting because its prospective payment system is based on diagnosis related groups (DRGs), which do not itemize facility costs.

Comment: Two commenters questioned whether Medicare would decrease payment to an ophthalmologist surgeon who participates in a core study program and who inserts an investigational IOL.

Response: The surgeon who inserts an investigational IOL following cataract extraction would report the procedure using CPT-4 code 66840, 66850, 66915, 66920 or 66930. Generally these are codes that indicate removal of a cataract without the insertion of an approved IOL in the same procedure. According to the most recent data, the average allowed charges for these procedures appear to be less than CPT-4 code 66983 or 66984 (removal of a cataract with an approved IOL insertion in the same procedure). Insertion of an investigational IOL subsequent to cataract removal (separate payment) results in no surgical fee payment.

Comment: Two commenters objected to the use of "obsolete codes". One commenter mentioned that cataract extractions and IOL insertions have been coded as global procedures (CPT-4 66983 or 66984) for 5 years and that our suggested use of other codes is not appropriate. The other commenter stated that infrequent use of alternate code means the fee profile data may be unreliable.

Response: While it is true that fewer and fewer claims for CPT-4 codes 66840, 66850, 66915, 66920, 66930 and 66940 (generally removal of a cataract without the insertion of an approved IOL in the same procedure) are submitted, this can be explained by the more frequent use of CPT-4 codes 66983 and 66984 (removal of a cataract with an approved IOL insertion in the same procedure). More IOLs are inserted now than in earlier times when high strength spectacles rather than IOLs were prescribed to attain acceptable vision following cataract removal. The six codes in question, however, are still valid codes. We do not anticipate the volume of continued use of investigational IOLs to be such that the use of these six codes would be problematic.

Comment: One commenter pointed out that for each IOL approval, the FDA requires 20 physicians to each insert 25 IOLs into a total of 500 patients. The commenter believes payment for modified core lenses should be continued in order not to disrupt ongoing studies.

Response: Requiring each of 20 ophthalmologists to insert 25 investigational IOLs into a total 500 patients in order to obtain FDA approval, does not appear to be particularly burdensome considering the large number of procedures performed annually (that is, over 1,200,000 from February 1, 1989 to January 31, 1990). Therefore, we do not believe paying only for IOLs that have FDA approval will be particularly disruptive to ongoing studies.

IV. Provisions of This Final Notice

We will phase out payment for investigational IOL models by no longer paying for core and modified core classified IOLs. Payment will continue for those IOL models in the adjunct study until those are also phased out by FDA. At that time, Medicare payment for adjunct lenses will also cease and we will no longer pay for any investigational IOL. If it is medically necessary for a patient to be admitted to a hospital to have a cataract removal (a covered service), and at the time of the surgery an investigational IOL (a noncovered service) is inserted, the hospital will receive a full DRG payment. This payment allowance stems from the fact that the primary admission to the hospital was to receive a covered service; that is, a cataract removal. On the other hand, if a patient whose cataract had been removed previously was admitted to the hospital for the sole purpose of having an investigational IOL inserted, then no payment will be made to the hospital because the primary admission was to receive a noncovered service and thus, the entire admission would be noncovered.

If an IOL is inserted on an outpatient basis, payment will be made for the cataract extraction but not for the insertion of an investigational IOL or the investigational IOL itself. Any secondary insertion of an investigational IOL will be noncovered, that is, there will be no payment to the surgeon or the facility.

Medicare-participating ASCs are paid a prospectively determined standard overhead amount for facility services furnished in connection with covered surgical procedures performed in the facility. These same ASC rates are used, in part, when determining the aggregate amount of payment for covered ASC procedures performed on a hospital outpatient basis. The aggregate amount of payment for facility services furnished by a hospital in connection with covered ASC procedures is based on a comparison of two amounts. That is, Medicare will pay the lesser of one of the following amounts: (1) An amount equal to the hospital's reasonable costs or customary charges (whichever is lower and which has been reduced by the applicable deductibles and coinsurance); or (2) an amount based on a blend of 50 percent of the hospital's reasonable costs or customary charges (whichever is lower and which has been reduced by the applicable deductibles and coinsurance), and 50 percent of an amount equal to 60 percent of the standard overhead amount for ASC facility services, which has been reduced by the applicable deductibles.

In accordance with section 1833(i)(2)(A) of the Act, the payment for an approved IOL inserted in a hospital outpatient or an ASC setting is incorporated into the facility rate for the following three approved IOL procedures appearing in the Physicians' current Procedural Terminology, Fourth Edition codes (commonly referred to as CPT-4 codes):

CPT code	Description
66983	Intracapsular cataract extraction with insertion of IOL prosthesis (one-stage procedure).
66984	Extracapsular cataract removal with insertion of IOL prosthesis, manual or phacoemulsification technique (one-stage procedure).
66985	Insertion of IOL subsequent to cataract removal (separate procedure).

If a removal of lens material is performed on a Medicare beneficiary and an investigational IOL that is not in the adjunct phase is inserted, the facility will be paid only for the removal of the lens material. The facility will be paid in accordance with one of the following CPT-4 codes:

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CPT Code	Description
66840	Removal of lens material; aspiration technique (one or more stages).
66850	Removal of lens material; phacofragmentation technique (mechanical or ultrasonic, e.g., phacoemulsification) with aspiration (one or more stages).
66915	Expression of lens, linear (one or more stages).
66920	Extraction of lens with or without iridectomy, intracapsular, with or without enzyme.
66930	Extraction of lens with or without iridectomy, intracapsular, for dislocated lens.
66940	Extraction of lens with or without iridectomy; extracapsular (other than 66920, 66930, 66940).

If CPT-4 code 66985 is performed on a beneficiary and an investigational IOL that is not in the adjunct phase is inserted, the procedure will not be covered and there will be no Medicare payment to the facility or the surgeon.

We could have withdrawn Medicare payments after a number of IOLs has been approved by FDA and IOLs would have been considered "reasonably available". We preferred to coordinate Medicare policy with FDA procedures to ensure that we fulfilled the obligation to make IOLs "reasonably available". We do not believe that manufacturers will be unreasonably disadvantaged by the policy described in this notice. Many manufacturers of IOLs in the core study are the same manufacturers that have gained FDA approval of other IOLs. In addition, manufacturers have had since 1987 to prepare for the FDA phase-out of adjunct studies and ample time to meet the December 31, 1988 application deadline for extension of ongoing adjunct status.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final notice that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in:—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets

This final notice will result in Medicare no longer covering or paying for certain IOLs that are considered investigational by the FDA. Under Public Law 98-369, Congress directed FDA to ensure that IOLs, which were already in wide use, continue to be "reasonably available" to qualified investigators and patients. The purpose was to allow safety and effectiveness data to be collected in order for FDA to decide whether particular models of IOLs should be approved for general marketing. However, the availability of IOLs is markedly different today. There are approximately 900 fully approved IOL models available, and under the FDA revised approval policy, more are expected to be fully approved in the near future. Thus, the mandate to make IOLs reasonably available has been met and there is no valid or compelling need to retain the special exception to the general Medicare rule that payment may not be made for any medical device that has not received FDA approval for marketing. However, Medicare will continue to pay for IOLs under FDA investigational "adjunct" status as of January 1, 1989, provided the IOL manufacturers have filed PMAs by December 31, 1988, and meet other conditions specified by the FDA and HCFA.

Cataract surgery is a common surgical procedure covered by Medicare. Because cataract surgery is performed primarily on the elderly, Medicare pays for about 80 percent of all cataract operations. ("Medicare Reimbursement for Cataract Surgery Hearing Before the Subcomm. on Health of the House Comm. on Ways and Means", 99th Cong., 1st Sess. 121 (1985)). In 1985, 98 percent of all cataract surgery included an IOL insertion (Ibid at 139). In 1987, Medicare paid Part B providers a total of approximately $83.5 million for 257,000 IOLs. The average payment for an anterior chamber lens was $302, the average for a posterior chamber lens was $330. We do not have data concerning the breakdown of payment between investigational and approved lenses.

Because we have no data available that will allow us to estimate the number and cost of IOLs that will be eliminated, we are not able to prepare an estimate of the Medicare program cost or savings. We do not expect that program cost or savings will change significantly because we anticipate that approved IOLs will be used in place of investigational IOLs.

Discontinuation of coverage and payment for investigational IOLs will not significantly affect beneficiaries because FDA approved IOLs are readily available by type and quantity for physicians to use when performing cataract surgery on Medicare patients. We believe that this final policy will not affect the continued availability of safe and effective IOLs.

We do not have data on the effect of this policy on IOL manufacturers. However, any effect will be dependent upon their sales of investigational lenses, whether or not they seek to obtain FDA approval of their investigational lenses, and how quickly FDA approval is obtained. When FDA embarked upon its plan to phase out adjunct studies of IOLs in 1987, reviews of pending IOL applications were accelerated in order to maximize the supply of FDA-approved lenses. Therefore, we believe that many IOLs that were investigational will be approved by the effective date of this notice that implements this policy.

For the reasons discussed above, we believe this Final notice does not meet the $100 million criterion nor does it meet the other E.O. 12291 criteria. Therefore, we have determined that this final notice is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians and manufacturers of IOLs are treated as small entities.

We did not receive any comments on the impact statement in the proposed notice that have caused us to alter or revise the provisions of the proposed notice. Thus, the effects of this final notice are expected to be the same as those presented in the initial impact statement.

We believe this notice will affect only those ophthalmologists who have been extensively inserting investigational IOLs. It is anticipated that these physicians will revise their practice and begin using primarily only approved lenses for their Medicare patients because Medicare will no longer pay for certain unapproved, investigational IOLs.

As stated above, we do not have data to indicate the number of manufacturers of investigational IOLs nor the extent to which manufacturers produce investigational IOLs. We expect that this notice will affect those manufacturers that have significant sales of investigational IOLs. However, we do not believe that a significant number of manufacturers produce primarily only investigational IOLs. Thus, we believe that this final policy will not significantly affect the total revenues of most IOL manufacturers because full coverage and payment will continue for approved models. In addition, certain investigational models will continue to be covered reducing the effect of this notice.

Thus, we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we have not prepared a regulatory flexibility analysis under the RFA.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this final notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VI. Information Collection Requirements

This final notice will not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

Authority: Section 1862 of the Social Security Act (42 U.S.C. 1395y).

(Catalog of Federal Domestic Assistance Program No. 93. 774, Medicare—Supplementary Medical Insurance Program)

Dated: January 30, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: March 27, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-10194 Filed 4-29-91; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-030-01-4212-11;WYW-124472]

Realty Action; Lease and Sale for Recreation and Public Purposes; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; recreation and public purposes classification and application for lease and sale in Albany County.

SUMMARY: The following public lands in Albany County, Wyoming have been examined and found suitable for classification for and/or lease conveyance to the University of Wyoming, Department of Physics and Astronomy under provisions of the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 et seq.

6th Principal Meridian

T. 13 N., R. 77 W.,
Section 13: Lots 1, 2, 3 NE¼NE¼, NW¼SE¼NE¼, S½SE¼NE¼, E½SE¼.

The above land consists of approximately 240 acres more or less.

FOR FURTHER INFORMATION CONTACT: Marilyn Nickerson, Realty Specialist, Great Divide Resource Area, Bureau of Land Management, 812 E. Murray St./P.O. Box 670, Rawlins, Wyoming 82301, 307-324-4841.

SUPPLEMENTARY INFORMATION: The purpose of the classification and application for lease and sale of these lands is for the University of Wyoming, Department of Physics and Astronomy to construct, operate and maintain a visitor center, helipad, hiking trail, picnic/camping spots and future additional telescope sites for public recreation and education. The developments will include a gate to restrict unscheduled vehicle access from the visitor center to the observatory summit (¼ mile) to reduce vehicle-raised dust which is contaminating the very expensive telescope optics. A sign at the gate will describe procedures for tours. The existing road and the hiking trail will allow unimpeded foot travel to the summit; safety zones will be established around existing and proposed facilities restricting firearm use to protect life and property.

The lease and eventual sale will contain reservations to the United States for ditches, canals; and will be subject to all existing reservations and prior rights. The proposed lease and sale is consistent with the Great Divide Resource Management Plan. The land is not needed for Federal purposes.

Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Pubic Purposes Act.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Rawlins District Office, P.O. Box 670, Rawlins, WY 82301. Any adverse comments will be rviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publicaton of this notice.

Date Signed: March 8, 1991.

Bud Hallowell,

Acting District Manager.

[FR Doc. 91-10129 Filed 4-29-91; 8:45 am]

BILLING CODE 4310-02-M

[ID-942-01-4730-12]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., April 3, 1991.

The supplemental plat prepared to show a change in lottings in section 20, T. 4 S., R. 46 E., Boise Meridian, Idaho, was accepted March 28, 1991.

This plat was prepared to meet certain administrative needs of the U.S. Forest Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 26, T. 6 N., R. 1 W., Boise Meridian, Idaho, Group No. 806, was accepted, April 1, 1991.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described lands must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: April 22, 1991.

Robert H. Thompson,

Acting, Chief Cadastral Surveyor For Idaho.

[FR Doc. 91-10130 Filed 4-29-91; 8:45 am]

BILLING CODE 4310-GG-M

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National Park Service

Information Collection Submitted for Review under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget, Paperwork Reduction Project (1024-0026), Washington, DC 20503, telephone 202-395-7340.

Title: Special Park Uses.

Abstract: The National Park Service (NPS) issues permits implementing provisions of agency regulations pertaining to the use of public lands (OMB Control #1024-0026). Form 10-114, Special Use Permit, is the primary form used to document certain privileges, benefits and other special uses of the public lands and waters it administers that are allowed various persons, organizations or agencies, but that are not equally available to all members of the general public. Use of this single permit is intended to streamline and reduce the costs to the Government of administering NPS information collection programs through elimination of numerous separate single-purpose permits. Use of the permit will also reduce significantly the information collection burden on affected persons through the use of a standardized and timesaving checklist format.

Bureau Form Number: None.

Frequency: On Occasion.

Description of Respondents: Individuals, organizations, or agencies.

Estimated Completion Time: .25 hours.

Annual Responses: 498,944.

Annual Burden Hours: 137,633.

Bureau Clearance Officer: Russell K. Olsen, 202-523-5133.

Russell K. Olsen,

Information Collection Clearance Officer.

[FR Doc. 91-10104 Filed 4-29-91; 8:45 am]

BILLING CODE 4310-70-M

General Management Plan, Environmental Impact Statement, Bent's Old Fort National Historic Site, CO

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the General Management Plan, Bent's Old Fort National Historic Site.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan for Bent's Old Fort National Historic Site.

The effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. In cooperation with local interests, attention will also be given to resources outside the boundaries that affect the integrity of the cultural landscape. Alternatives to be considered include no-action, the proposal, and other feasible options.

Major issues include evaluation of alternative access to the historic site; facilities for visitor orientation and comfort, and for park administrative, maintenance, and curatorial functions; the interpretive program, media, and facilities; and preservation or restoration of the cultural landscape and historic scene.

A scoping brochure has been prepared that details the issues identified to date. Copies of that information can be obtained from the Superintendent, Bent's Old Fort National Historic Site.

FOR FURTHER INFORMATION: Contact Superintendent, Bent's Old Fort National Historic Site (719) 384-2596.

Dated: April 11, 1991.

Richard A. Strait,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 91-10096 Filed 4-29-91; 8:45 am]

BILLING CODE 4310-70-M

Comprehensive Management Plan/ Environmental Impact Statement for City of Rocks National Reserve, ID

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the Comprehensive Management Plan for the City of Rocks National Reserve, ID.

SUMMARY: The National Park Service will prepare an environmental impact statement to assess the impacts of alternative management concepts for a comprehensive management plan for City of Rocks National Reserve. The purpose of a comprehensive management plan is to set forth the basic management philosophy for an area and provide the strategies for addressing issues and achieving identified management objectives. The plan will describe strategies for managing natural and cultural resources and for providing for appropriate visitor use and interpretation of those resources. Based on the strategies for resource management and visitor use and interpretation, the plan will identify programs, actions and support facilities necessary for efficient park operation and visitor use. The plan will also identify those areas and zones within the reserve which would most appropriately be devoted to historic and natural preservation, public use and development and private use subject to appropriate local ordinances designed to protect the historic rural setting. A range of alternatives will be formulated to evaluate distinct approaches to management of the area. For example, one alternative could emphasize preservation of natural and cultural resources; another could suggest a balance between preservation and visitor use. A "no action" alternative will be included. Other alternatives that may emerge from public comment will be considered. As a conceptual framework for formulating these alternatives, the reserve's purposes, significant resources, major interpretive themes, and the NPS's management objectives will first be identified.

Persons who may be interested in or affected by the proposed plan/EIS are invited to participate in the scoping process by responding to this Notice with written comments. The scoping process will help define issues and concerns involving natural and cultural resources as well as social and economic impacts. Representatives from Federal, State, and local agencies have provided some input during preliminary scoping. The NPS also held nine public meetings and distributed mail-in public response forms and received many written and oral comments. No additional scoping meetings are anticipated. Analysis of public comment and other data is expected to result in the preparation of a draft plan and environmental impact statement by the Summer of 1992. The final plan, environmental statement and Record of Decision are expected to be completed approximately one year later.

The responsible official is Charles H. Odegaard, Regional Director, Pacific Northwest Region, National Park Service.

DATES: Written comments about the scope of issues and alternatives to be analyzed in the plan/environmental impact statement should be received no later that July 1, 1991.

ADDRESSES: Written comments concerning the plan/EIS should be sent to the Superintendent, City of Rocks National Reserve, 963 Blue Lakes Boulevard, suite 1, Twin Falls, Idaho 83301.

FOR FURTHER INFORMATION CONTACT: Superintendent, City of Rocks National Reserve, at the above address or at telephone number (208) 733-8398.

Dated: April 15, 1991.

Charles H. Odegaard,

Regional Director, Pacific Northwest Region, National Park Service.

[FR Doc. 91-10101 Filed 4-29-91; 8:45 am]

BILLING CODE 4310-70-M

General Management Plan, Environmental Impact Statement, Fort Laramie National Historic Site, WY

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the General Management Plan, Fort Laramie National Historic Site.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan for Fort Laramie National Historic Site.

The planning effort will result in a comprehensive general management plan encompassing the preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. In cooperation with the Bureau of Land Management and the State of Wyoming, attention will also be given to resources outside the boundaries that affect the integrity of the historic site. A full range of alternatives will be considered to address issues identified during the planning process including a no-action alternative. A development concept plan and interpretive prospectus will also accompany the document.

Major issues currently identified included visitor orientation; interpretation; surrounding landscape values, adjacent lands, and uses; visitor services, administrative, operational, and maintenance requirements; and resource protection needs.

A scoping brochure is being prepared that explains issues currently identified in more detail. Copies can be obtained from Superintendent, Fort Laramie National Historic Site, Fort Laramie, Wyoming 82212.

FOR FURTHER INFORMATION: Contact Superintendent, Fort Laramie National Historic Site, Fort Laramie, Wyoming 82212, (307) 837-2221.

Dated: April 18, 1991.

Lorraine Mintzmyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 91-10097 Filed 4-29-91; 8:45 am]

BILLING CODE 4310-70-M

Environmental; Grant

General Management Plan, Environmental Impact Statement, Grant-Kohrs Ranch National Historic Site, MT

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the General Management Plan, Grant-Kohrs Ranch National Historic Site.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the general management plan for Grant-Kohrs Ranch National Historic Site.

The effort will result in a comprehensive general management plan that encompasses preservation of cultural and natural resources, management of visitor use and interpretation, and rehabilitation or construction of facilities. In cooperation with the Montana State Historic Preservation Officer, attention will also be given to management of some 88 historic structures within the national historic site. Alternatives to be considered will include no-action, a proposed action, and other feasible options. Three additional efforts will accompany the general management plan. They are a development concept plan, resource management plan, and interpretive prospectus.

Major issues include the use, rehabilitation, maintenance, and management of historic structures, objects and scenes; the relationship of historic structures and objects to visitor use and interpretation; efficiency of park operations; overall management of natural resources; and the influences of activities on adjacent lands to park values, resources, and visitors. Scoping brochures can be obtained from the Superintendent, Grant-Kohrs Ranch National Historic Site, at the address below.

FOR FURTHER INFORMATION: Contact Superintendent, Grant-Kohrs Ranch National Historic Site, Deer Lodge, Montana 59722, (406) 846-2070.

Dated: April 11, 1991.

Richard A. Strait,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 91-10098 Filed 4-29-91; 8:45 am]

BILLING CODE 4310-70-M

General Management Plan, Environmental Impact Statement, Jewel Cave National Monument, SD

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the General Management Plan, Jewel Cave National Monument.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan for Jewel Cave National Monument.

The effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. In cooperation with the Forest Service, Custer County, and the State of South Dakota, attention will also be given to resources outside the boundaries that affect the integrity of Wind Cave National Park and Jewel Cave National Monument. A full range of alternatives for resolving issues will be considered, including a no action alternative. A development concept plan will accompany the general management plan.

Major issues include the effect of surface facilities on the cave; protection of cave underlying land outside monument boundaries; cultural and resource management; visitor activities; visitor use facilities; and adequacy of administrative facilities.

A scoping brochure has been prepared that details the issues identified to date. Copies of that information can be obtained from: Jewel Cave Planning Team, Denver Service Center, National Park Service, P.O. Box 25287, Denver, Colorado, 80225.

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FOR FURTHER INFORMATION: Contact Superintendent, Jewel Cave National Monument, (605) 673-2288.

Dated: April 18, 1991.

Lorraine Mintzmyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 91-10099 Filed 4-29-91; 8:45 am]

BILLING CODE 4310-70-M

General Management Plan/ Environmental Impact Statement for Lake Chelan National Recreation Area, WA

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for General Management Plan, Lake Chelan National Recreation Area, WA.

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, and with the Consent Decree pursuant to *North Cascades Conservation Council* v. *Lujan*, C-89-1342D (W.D. Wash.), the National Park Service is preparing an environmental impact statement to assess the impacts of alternative management concepts for Lake Chelan National Recreation Area and the Stehekin River watershed. A range of alternatives will be formulated in order to evaluate differing management approaches to resource protection, visitor use, access, operations, and land protection for the area. As a conceptual framework for formulating these alternatives, the Recreation Area's purposes, resources of significance, major visitor experiences, and the NPS's management objectives will first be identified.

Representatives of federal, state and local agencies, private organizations, and individuals from the general public who may be interested in or affected by the proposed plan/EIS are invited to provide initial scoping written comments on the plan and environmental impact statement. Also, it is anticipated that public scoping sessions will be held at a future date to be announced and an additional comment period will be opened at that time. The draft plan and environmental statement are expected to be completed and available for public review by the Spring of 1992. The final plan, environmental statement, and Record of Decision are expected to be completed approximately one year later.

The responsible official is Charles H. Odegaard, Regional Director, Pacific Northwest Region, National Park Service.

DATES: Written comments on the scope of the issues and alternatives to be analyzed in the plan/EIS should be received no later than July 1, 1991.

ADDRESSES: Written comments concerning the plan/EIS should be sent to the Superintendent, North Cascades National Park Service Complex, 2105 Highway 20, Sedro Woolley, WA 98284-1799.

FOR FURTHER INFORMATION CONTACT: Superintendent, North Cascades National Park Service Complex, at the above address or at telephone number (206) 856-5700.

Dated: April 15, 1991.

Charles H. Odegaard,

Regional Director, Pacific Northwest Region, National Park Service.

[FR Doc. 91-10100 Filed 4-29-91; 8:45 am]

BILLING CODE 4310-70-M

General Management Plan, Environmental Impact Statement, Wind Cave National Park, SD

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the General Management Plan, Wind Cave National Park.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park service is preparing an environmental impact statement for the General Management Plan for Wind Cave National Park.

The effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. In cooperation with the Forest Service, Custer State Park, Custer County, and the State of South Dakota, attention will also be given to resources outside the boundaries that affect the integrity of Wind Cave National Park. A full range of alternatives for resolving issues will be considered, including a no action alternative. A development concept plan will accompany the general management plan.

Major issues include the effect of surface facilities on the cave; the adequacy of park administrative areas; management of natural and cultural resources; visitor use facilities; visitor activities; and the park road system.

A scoping brochure has been prepared that details the issues identified to date. Copies of that information can be obtained from: Wind Cave Planning Team, Denver Service Center, National Park Service, P.O. Box 25287, Denver, Colorado 80225.

FOR FURTHER INFORMATION: Contact Superintendent, Wind Cave National Park, (605) 745-4600.

Dated: April 18, 1991.

Lorraine Mintzmyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 91-10102 Filed 4-29-91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 20, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by May 15, 1991.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Calhoun County

Anniston Electric and Gas Company Plant, Old, 2 W. Third St., Anniston, 91000611

COLORADO

Eagle County

Yarmony Archeological Site (Archaic Period Architectural Sites in Colorado MPS,) Address Restricted. Radium vicinity. 91000615

FLORIDA

Hillsborough County

Tampa Free Public Library, Old, 102 E. Seventh Ave., Tampa, 91000618

Palm Beach County

Old Palm Beach Junior College Building, 813 Gardenia Ave., West Palm Beach, 91000601

LOUISIANA

Caddo Parish

Central High School, 1637 Weinstock St., Shreveport, 91000600

MARYLAND

Charles County

Johnsontown, Fairgrounds Rd. E. of Penn Central RR tracks, La Plata vicinity, 91000610

St. Mary's Roman Catholic Church, Newport, St. Mary's Church Rd., Newport vicinity, 91000609

MASSACHUSETTS

Bristol County

Old Town Historic District, SE. of jct. of I-295 and Washington St., North Attleborough, 91000599

Franklin County

Alexander, Simeon, Jr. House, Millers Falls Rd. S. of Pine Meadow Rd., Northfield, 91000598

Worcester County

Elm Hill Farm Historic District, E. Main St. E. of jct. with Brookfield Rd., Brookfield, 91000600

MISSISSIPPI

Clay County

Brogan Mound and Village Site Discontiguous District, Address Restricted, West Point vicinity, 91000607

MISSOURI

Dent County

Lower Parker School (Missouri Ozarks Rural Schools MPS), E bank of Current R. at Parker Hollow, Ozark National Scenic Riverways, Salem vicinity, 91000604

Shannon County

Buttin Rock School (Missouri Ozarks Rural Schools MPS), E bank of Current R., S of Powder Mill Ferry, Ozark National Scenic Riverways, Eminence vicinity, 91000605

NEW JERSEY

Atlantic County

Risley, Jeremiah II or Edward, House, 8 Virginia Ave., Northfield, 91000609

NEW MEXICO

Mora County

Santa Clara Hotel, 111 Railroad Ave., Wagon Mound, 91000602

NEW YORK

Columbia County

Wild, Nathan, House, 3007 Main St., Valatie, 91000612

OKLAHOMA

Marshall County

Haley's Point Site, Address Restricted, Lebanon, 91000613

OREGON

Douglas County

China Ditch, Upper reaches of N. Myrtle Cr., Myrtle Creek vicinity, 91000616

Harney County

Riddle Ranch, Little Blitzen R., E of Donner and Blitzen R., Frenchglen vicinity, 91000614

UTAH

Grand County

Julien, Denis, Inscription, Mouth of Hell Roaring Canyon, Green River Canyon, Moab vicinity, 91000617

WYOMING

Sweetwater County

Reliance Tipple, E of US 187, Reliance, 91000619

[FR Doc. 91-10103 Filed 4-29-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31886]

Illinois Central Railroad Company—Trackage Rights Exemption—Missouri Pacific Railroad Company

Missouri Pacific Railroad Company has agreed to grant overhead trackage rights to Illinois Central Railroad Company over a 5.99-mile line of railroad between mileposts 384.50 and 390.49, in Memphis, TN. The trackage rights were to become effective on or after April 24, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: William C. Sippel, Oppenheimer Wolff & Donnelly, Two Illinois Center, 233 North Michigan Avenue, Chicago, IL 60601.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Dated: April 24, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 91-10139 Filed 4-29-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Meetings and Agenda

The Spring meetings of committees of the Labor Research Advisory Council will be held on May 20, 21, 22, and 23.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows.

Monday, May 20, 1991

1:30 p.m.—Committee on Prices and Living Conditions room 2794—General Accounting Office Bldg., 441 G Street, NW., Washington, DC

1. Federal Economic Indicators Initiative.
   a. Producer Price Indexes,
   b. International Price Indexes,
   c. Consumer Price Indexes.
2. Status of Poverty Level Project.
3. Other business.

Tuesday, May 21, 1991

1:30 p.m.—Committee on Employment and Unemployment Statistics—Room N-3437 A & B Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC

1. Discussion: Boskin Initiatives—Plans for improvements in Federal economic indicators.
2. Project Status Reports
   a. Foreign direct investment project,
   b. Employee turnover and job openings pilot project,
   c. Mass layoff statistics,
   d. Monitoring the impact of Defense cutbacks,
   e. Survey of training in industry.

Wednesday, May 22, 1991

9:30 a.m.—Committee on Wages and Industrial Relations room N-3437 A & B, Frances Perkins Bldg. 200 Constitution Avenue, NW.

1. Review of current activities,
2. Substance abuse treatment and health care plans,
3. Implementing pay reform legislation,
4. Publication of seasonally adjusted employment cost index,
5. Other business.

1:30 p.m.—Committee on Productivity, Technology, and Growth—Room N-3437 A & B, Frances Perkins Bldg., 200 Constitution Avenue, NW.

1. Progress report on work of the Office of Employment Projections,
2. BLS productivity measurement methods for service industries,
3. Labor productivity and multifactor productivity: effects of revisions in underlying data and improvements in methodology.

3 p.m.—Committee on Foreign Labor and Trade—Room N-3437 A & B, Frances Perkins Bldg. 200 Constitution Avenue, NW.

1. Report on BLS Conference on Economic Statistics for Economies in Transition: Eastern Europe in the 1990's, held on February 14-16,
2. Progress report on BLS international comparisons work.

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Thursday, May 23, 1991

10 a.m.—Committee on Occupational Safety and Health Statistics—Room 2457, General Accounting Office Bldg. 441 G Street, NW., Washington, DC

1. Status report on the Safety and Health Statistical Redesign.
   a. Pilot tests.
   b. Impact of changes to recordkeeping system on statistical system.
   c. Mine safety and health statistics.
2. Status report on census of fatal occupational injuries.
3. Other business.

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on (Area Code 202) 523-1327.

Signed at Washington, DC this 24th day of April 1991.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 91-10139 Filed 4-29-91; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of April 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,439; Forest Grove Lumber, Forest Grove, OR

TA-W-25,278; United Technologies Automotive Group, Inc., North Manchester, IN

TA-W-25,279; VCS Puerto Rico Con Co., Mercedita, PR

TA-W-25,281; Walbro Corp., Caro, MI

TA-W-25,281A; Walbro Corp., Cass City, MI

TA-W-25,395; New Jersey Aluminum Co., New Brunswick, NJ

TA-W-25,402; The Permian Corp., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,403; The Permian Corp., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,404; The Permian Corp., Ranger, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,405; The Permian Corp., Tye, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-25,431; Moench Tanning Co., Gowanda, NY

A certification was issued covering all workers separated on or after February 5, 1990.

TA-W-25,407; Geoffrey Beene, New York, NY

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-25,440; U.S. Shoe Corp., Falmouth, KY

A certification was issued covering all workers separated on or after January 29, 1990.

TA-W-25,441; U.S. Shoe Corp., Greenfield, OH

A certification was issued covering all workers separated on or after January 29, 1990.

TA-W-25,459; Ellen L., Inc., Elizabeth, NJ

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,471; Network Product Div., NCR Corp., St. Paul, MN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,418 & TA-W-25,419; Energetics Limited, Marion, MI and Mason, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,443; United Rubber Corp., Linoleum & Plastic Workers of America, Secretarial Staff, Eau Clair, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,406; United Technologies Corp., Carrier Corp., Syracuse, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,432; Dotts Enterprises, Coal Sales, Coalport, PA

U.S. imports of coal were negligible in 1988, 1989 and in the Jan-Sept 1990 period under investigation.

TA-W-25,414; Cambria Mills Coal Co., Coalport, PA

U.S. imports of coal were negligible in 1988, 1989 and in the Jan-Sept 1990 period under investigation.

TA-W-25,442; U.S. Shoe Corp., Harrison, OH

A certification was issued covering all workers separated on or after January 29, 1990.

TA-W-25,394; N & S Fashions, Paterson, NJ

A certification was issued covering all workers separated on or after January 30, 1990.

TA-W-25,548; G.H. Bass & Co., Wilton, ME

A certification was issued covering all workers separated on or after March 4, 1990.

TA-W-25,341; ITT Swf Auto-Electric Cairo, GA

A certification was issued covering all workers separated on or after December 31, 1989.

TA-W-25,340; GE Aerospace, Aircraft Control System Dept, Binghamton, NY

A certification was issued covering all workers separated on or after December 13, 1989.

TA-W-25,423; Hanschel Shoe Co, Div of Athlone Industries, Littleton, NH

A certification was issued covering all workers separated on or after February 5, 1990.

TA-W-25,318; Caraway Manufacturing Corp., Caraway, TX

A certification was issued covering all workers separated on or after January 25, 1990.

TA-W-25,318A; Steele Manufacturing Corp., Steele, MO

A certification was issued covering all workers separated on or after January 25, 1990.

I hereby certify that the aforementioned determinations were issued during the month of April, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: April 22, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-10138 Filed 4-29-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

White House Conference Advisory Committee; Meeting

DATE AND TIME:

May 14, 1991, 9:30 a.m. to 7:30 p.m.
May 15, 1991, 9 a.m. to 4:15 p.m.
May 16 1991, 9:30 a.m. to 4 p.m.

PLACE: Radisson Plaza Hotel at Mark Center, 5000 Seminary Road, Alexandria, VA 22311, Phone (703) 845-1010

STATUS: All meetings are Open.

MATTERS TO BE DISCUSSED: Joint National Commission on Libraries and Information Science (NCLIS) and White House Conference on Library and Information Services Advisory Committee (WHCAC) Meeting:

May 14, 1991

—9:30-10 a.m.
  —Opening and Introduction by NCLIS and WHCAC Chairmen; Showing of D.C. Convention Center Video
—10 a.m.-12:30 p.m.
  —Field Tour of D.C. Convention Center by NCLIS and WHCAC Members
—12:30-1:30 p.m.
  —(Working Lunch)
—1:30-3:30 p.m.
  —Reports from NCLIS and WHCAC Chairmen and WHCLIS Executive Director
—3:30-4 p.m.
  —(Break)
—4-5 p.m.
  —Report from WHCLIS Executive Director
—5 p.m.
  —(Break)
—5:30-7:30 p.m.
  —(Working Dinner)

May 15, 1991

—9 a.m.-9:45 a.m.
  —Joint NCLIS/WHCLIS Report on Interim Activities
—9:45 a.m.-12 Noon
  —Presentation on WHCLIS Schedule and Process
—Noon-1 p.m.
  —(Working Lunch)
—1-2:30 p.m.
  —In Depth WCHLIS Report
—2:30-3 p.m.
  —WHCLIS Assignments for NCLIS and WHCAC Members
—3:00-3:45 p.m.
  —New Business
—3:45-4 p.m.
  —Public Comment Time
—4-4:15 p.m.
  —Closing Remarks by NCLIS and WHCAC Chairmen
—4:15 p.m.
  —Adjourn

May 16, 1991

—9:30-9:45 a.m.
  —Opening Remarks by NCLIS Chairman
—9:45-10:30 a.m.
  —Executive Committee Report
—10:30-Noon
  —NCLIS New Business
—Noon-1:00 p.m.
  —(Working Lunch)
—1-4 p.m.
  —NCLIS Old Business
—4 p.m.
  —Adjourn

Persons appearing before, or submitting only written statements to the Advisory Committee, are asked to hand over to the Committee prior to presenting testimony, 60 copies of their prepared statement. This will ensure that ample copies are available for the members of the Advisory Committee, the attending press, and the observers.

To request further information or to make special arrangements for handicapped individuals, contact Christina Pappas (202) 254-5100, no later than one week in advance of the meeting.

Dated: April 24, 1991.

Mary Alice Hedge Hammer,

Designated Federal Officer for WHCAC NCLIS.

[FR Doc. 91-10084 Filed 4-29-91; 8:45 am]

BILLING CODE 7527-01-M

POSTAL RATE COMMISSION

[Order No. 692; Docket No. A91-3]

Seneca, Michigan 49289 (Irene Raymond, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued April 23, 1991.

In the matter of Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W.H. "Trey" LeBlanc III; Patti Birge Tyson.

Docket Number: A91-3.

Name of Affected Post Office: Seneca, Michigan 49289.

Name(s) of Petitioner(s): Irene Raymond.

Type of Determination: Closing.

Date of Filing of Appeal Papers: April 18, 1991.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(6)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders:

(A) The record in this appeal shall be filed on or before May 3, 1991.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Charles L. Clapp,

Secretary.

April 18, 1991	Filing of petition.
April 23, 1991	Notice and order of filing of appeal.
May 13, 1991	Last day of filing of petitions to intervene (see 39 CFR 3001.111(b)).

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May 23, 1991	Petitioners' Participant Statement or Initial Brief [see 39 CFR 3001.115(a) and (b)].
June 12, 1991	Postal Service Answering Brief [see 39 CFR 3001.115(c)].
June 27, 1991	Petitioners' Reply Brief should Petitioners choose to file one [see CFR 3001.115(d)].
July 5, 1991	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116].
August 15, 1991	Expiration of 120-day decisional schedule [see 39 USC 404(b)(5)].

[FR Doc. 91-10113 Filed 4-29-91; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Over-the-Counter Issues

April 24, 1991.

On March 8, 1991, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act:

File No.	Symbol	Issuer
7-6677	ADBE	Adobe System, Inc., no par value
7-6678	AGREA	American Greeting Corp., $1.00 par value
7-6679	BGEN	Biogen, Inc., $.01 par value
7-6680	BMET	Biomet, Inc., no par value
7-6681	BRNO	Bruno's Inc., $.01 par value
7-6682	CHRS	Charming Shoppes, Inc., $.01 par value
7-6683	ACCOB	Adolph Coors Co., no par value
7-6684	DIGI	DSC Communication Corp., $.01 par value
7-6685	INGR	Intergraph Corp., $.10 par value
7-6686	MEDC	Medical Care International, Inc., $.01 par value
7-6687	MENT	Mentor Graphics Corp., no par value
7-6688	RYAN	Ryan's Family Steak Houses, Inc., $1.00 par value
7-6689	STPL	St. Paul Companies, Inc., $1.00 par value
7-6690	COMS	3COM Corp., no par value
7-6691	TYSNA	Tyson Foods, Inc., $.10 par value

The above-referenced issues are being applied for as an expansion of the exchange's pilot program in which OTC securities are being traded pursuant to a grant of UTP.

The MSE also applied to withdraw UTP from the pilot program pursuant to Section 12(f)(4) on the following issues:

In the case of Liz Claiborne Inc., withdrawal is requested due to its recent listing on the New York Stock Exchange. In the case of First Executive Corp. withdrawal is requested because of the company's deteriorating financial condition.

File No.	Symbol	Issuer
7-6662	LIZC	Liz Claiborne, Inc., $1.00 par value
7-6663	FEXC	First Executive Corp., $2.00 par value

Comments

Interested persons are invited to submit, on or before May 15, 1991, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grants of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for an extension of UTP in OTC securities, the Commission consider, among other matters, the public trading activity in such securities, the character of such trading, the impact of such an extension on the existing markets for such securities and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10091 Filed 4-29-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29121; File No. SR-PHLX-91-04]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Series Opening Request Ticket Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 22, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b-4, submits as a proposed rule change a proposal to amend PHLX Rules 1047 and 1047A relating to equity options and index options trading rotations, respectively, as well as the corresponding Options Floor Procedure Advice A-12. The proposed amendments provide for a Series Opening Request Ticket ("SORT") procedure as an alternative to the rotation procedures presently enumerated in Rule 1047.

In any options class exhibiting little investor interest, the SORT procedure would permit the specialist to open a class of options without rotating each series. Individual options series would go through a rotation only if the specialist received a SORT ticket for that particular series; receipt of a SORT ticket for one series would not require that all series within a particular options class go through a rotation, just that all those series for which a SORT was received must go through rotation before non-SORT series could commence free-trading. In order for this alternative procedure to be utilized, a SORT form must be submitted to the specialist at least five minutes prior to the opening of trading.[1]

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and the Commission.

[1] A specialist receiving a SORT before the opening but not within the 5 minute cut-off period is required, however, to make reasonable efforts to apply a series opening to that series. *See* letter dated February 26, 1991, from Edith Hokman, Law Clerk, PHLX, to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to amend PHLX Rules 1047 and 1047A and add Options Floor Procedure Advice A-12 to provide a quicker method of opening options classes having little investor interest. The proposal is a more efficient manner of realizing "free trading" in options that are thinly traded, as opposed to the current rotation procedures embodied in the Exchange's rules.

Part (a) of Commentary .01 to Rule 1047 sets forth the procedures for an opening rotation. The specialist opens each class of options by series, beginning with the nearest expiring series, and either alternating put and call calsses by series or opening a whole class in rank order by series based on strike price and expiration month before proceeding to the next series. Most importantly, each series does not begin to freely trade until all other series have been rotated. A modified rotation, as provided in part (b) of Commentary .01 to PHLX Rule 1047, permits proceeding in the same manner as an opening rotation except that each series may freely trade once all options with the same expiration month have opened.

The PHLX proposes to add part (c) to Commentary .01 of PHLX Rule 1047 to allow for a new type of opening called SORT. The SORT procedure permits the specialist to open all series in a class simultaneously after each series for which a SORT was submitted has been rotated. The SORT is a form that signals to the specialist that there is interest in a particular series and prevents him from opening the class without rotating that series. In this regard, if any member holds an order he does not wish to book with the specialist but wishes to be executed on the opening, he must place a SORT request with the specialist at least 5 minutes prior to the opening of trading. A specialist receiving a SORT before the opening but not within the 5 minute cut-off period is required, however, to make reasonable efforts to apply a series opening to that series.[2]

In the event the specialist chooses to conduct a SORT opening, the submission of a SORT ensures that in the course of that SORT opening, the specialist rotates that particular series. Before the opening, the specialist must announce to the crowd whether a SORT procedure will be utilized, and in which series, if any, he has received a SORT. Thereafter, the specialist may either (1) begin with the series for which a SORT was submitted, post the market, and then simultaneously open the remaining series in the class, or (2) first update quotations on all the other series and then rotate the individual SORTs. Employing either approach, a quicker, more efficient opening results.

The PHLX proposes to offer the SORT procedure as an improved, efficient method of opening options classes which have little or no expressed investor interest. In the past, time delays in rotation created opportunities for market change to occur before the crowd could respond. As the time delay is eliminated, however, such opportunities should arise less frequently.

The SORT method presumes a quick, efficient opening is preferable, especially where there is little or no trading interest in a particular class. Accordingly, the existing opening procedures provided in part (a) of Commentary .01 to PHLX Rule 1047 is unnecessarily cumbersome for those classes exhibiting little order flow or interest. On the other-hand, the SORT procedure focuses market participant attention on those series where there is expressed interest and permits that interest to be exposed to normal auction rotation procedures without impeding the timely opening of all remaining series in thinly-traded options classes. Therefore, the PHLX expects the proposal to expedite the realization of free trading in options, resulting in a benefit to all investors.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act which provides, in part, that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 21, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[2] *Id.*

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Dated: April 18, 1991.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 91-10080 Filed 4-29-91; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-18119; 812-7666]

The Flex-Funds, et al.; Application

April 23, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Flex-Funds (the "Trust") and R. Meeder & Associates, Inc. ("Meeder").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek an order to permit The Flex-Funds Money Market Fund (the "Fund"), one of the Trust's investment portfolios, to issue and sell an unlimited number of classes of securities that would be identical in all respects except for differences related to expenses incurred solely by a particular class of Fund shares, voting rights, and class designation.

FILING DATE: The original application was filed on July 2, 1990. Amended and restated applications were filed on October 5, 1990, December 14, 1990, March 28, 1991, and April 18, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 20, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, P.O. Box 7177, 6000 Memorial Drive, Dublin, Ohio 43017.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504-2284, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Pennsylvania business trust registered under the Act as an open-end management investment company. The Trust presently consists of four separate investment portfolio (the "Portfolios") with different investment objectives and policies. The Fund is a money market Portfolios of the Trust. The application concerns the Fund only and does not relate to the other Portfolios of the Trust.

2. Meeder is the investment adviser and manager of the Fund. The Fund acts as its own distributor.

3. Shares of the Fund ("Shares") are sold and redeemed at a net asset value computed daily, without a sales or redemption charge. The Fund has adopted a plan pursuant to rule 12b-1 under the Act that permits it to use up to .20% of its net assets annually to pay for the distribution of Shares.

4. The Fund proposes to create an unlimited number of additional classes of Shares, which will be marketed principally to or through groups, organizations, or institutions ("Organizations") acting on behalf of clients, members, or customers. In addition to the Shares sold to Organizations and investors purchasing through Organizations ("New Shares"), the Fund will continue to market Shares through other sales channels.

5. New Shares will be issued in connection with either or both of two plans: a "Services Plan" adopted pursuant to rule 12b-1, and a non-12b-1 "Administrative Plan" (collectively, the "Plans"). Both plans are separate and distinct from the 12b-1 plan referred to above, which will continue to apply to all Shares. With respect to each class of New Shares, the Fund will enter into a Services Plan agreement and/or an Administrative Plan agreement (collectively, "Plan Agreements") with Organizations whereby such Organizations will provide certain services to their clients, members, or customers who beneficially own New Shares of a particular class ("Class Shareholders").

6. The services to be provided by Organizations to their Class Shareholders under the Services Plan could include any one or more of the following: providing facilities to answer questions from prospective investors about the Fund; receiving and answering correspondence, including requests for prospectuses and statements of additional information; preparing, printing and delivering prospectuses and shareholder reports to prospective Class Shareholders; complying with Federal and State securities laws pertaining to the sale of New Shares; and helping investors in New Shares to complete application forms and select dividend and other account options.

7. The services to be provided by Organizations to their Class Shareholders under the Administrative Plan could include any one or more of the following: Receiving, aggregating and processing Class Shareholder orders; shareholder sub-accounting; providing and maintaining elective Class Shareholder services such as check writing and wire transfer services; providing and maintaining pre-authorized investment plans; periodic communications with Class Shareholders; acting as the sole shareholder of record and nominee for Class Shareholders; maintaining account records for Class Shareholders answering questions and handling correspondence from Class Shareholders about their accounts; issuing confirmations for transactions by Class Shareholders; and similar account administrative services.

8. The precise services to be provided by a particular Organization to its Class Shareholders will be specified in the Plan Agreement(s). The services to be provided by Organizations will augment or replace, rather than duplicate, the services provided to the Fund by Meeder and its affiliates. To the extent there is duplication, Meeder and its affiliates will cease providing such services to the affected class of New Shares, and will not be paid therefor. Applicants' proposal, in effect, will "unbundle" the services presently provided to the Fund and permit Organizations to select those services they wish to provide to their Class Shareholders.

9. With respect to each class of New Shares, the Fund will pay an Organization for its services in accordance with the terms of the Plan(s) and the particular Plan Agreement(s), and the cost of such payments ("Plan Payments") will be borne entirely by the beneficial owners of the class of New Shares of the Fund to which each Plan Agreement relates. Plan Payments under either the Services Plan or the Administrative Plan will not exceed .50% per annum of the average daily net asset value of those New Shares beneficially owned by Class Shareholders of the Organization who are covered by such Plan. For any class of New Shares subject to both the Services Plan and the Administrative Plan, Plan Payments will be subject to a cap limiting Plan Payments to a maximum of .75% per annum of the average daily net assets of such class.

10. In addition to the cost of Plan Payments, each class of New Shares will bear certain expenses, listed in condition 1 *infra*, attributable specifically to such class ("Class Expenses"). The determination of which Class Expenses will be allocated to a particular class and any subsequent changes thereto will be determined by the trustees of the Fund in the manner described in condition 3 *infra*.

11. If applicants proposal is implemented, each New Share and each other Share of the Fund, regardless of class, will represent an equal *pro rata* interest in the Fund and will have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations, terms, and conditions, except as set forth in condition 1 *infra*.

12. The net asset value of all outstanding Shares of the Fund will be computed at the same times by adding the value of all portfolio securities and other assets belonging to the Fund, subtracting the liabilities charged to the Fund, and dividing the result by the number of such outstanding Shares. The gross income of the Funds will be allocated on a *pro rata* basis to each class based on the relative net assets of each class.

13. All expenses of the Trust that cannot be attributed directly to any one Portfolio ("Trust Expenses") will be allocated to each Portfolio based on the relative net assets of such Portfolio. Trust Expenses could include, for example, trustees' fees and expenses, audit and legal fees, insurance premiums, SEC and state blue sky registration fees, and dues paid to organizations such as the Investment Company Institute.

14. Certain expenses may be attributable to the Fund, but not to a particular class ("Fund Expenses"). All such Fund Expenses will be borne on a *pro rata* basis by the outstanding Shares of the Fund regardless of class. Fund Expenses could include, for example, advisory fees, accounting fees, Custodian fees, and fees related to preparation of separate documents of the Fund.

15. Plan Payments and Class Expenses will be borne *pro rata* by the shareholders of the applicable class. Because the Plan Payments and Class Expenses to be borne by different classes of Fund Shares may vary, the net income per share of the different classes also may vary.

16. To ensure that the net asset value per share of all Shares of the Fund remains the same regardless of variations in net income from day to day, no Class will bear any Plan Payment or Class Expense that would cause the accrued expense of such Class to exceed allocated gross income. See condition 17 *infra*.

Applicants' Legal Analysis

1. Applicants request an exemptive order pursuant to section 6(c) of the Act because the proposed issuance and sale of New Shares of the Fund might be deemed: (a) To result in a "senior security" within the meaning of section 18(g) of the Act and therefore to be prohibited by section 18 (f)(1) thereof; and (b) to violate the equal voting provisions of section 18(i) of the Act. The implementation of the applicants' proposal may result in one class of Shares having "priority" over another as to payment of dividends and also may result in the various classes of Shares having unequal voting rights, in contravention of the aforementioned provisions of the Act.

2. In support of the requested order, applicants assert that the proposed allocation of expenses and voting rights in the manner described is equitable and will not discriminate against any group of shareholders. Only those investors purchasing New Shares and receiving the services provided under a Plan will bear the costs associated with such services, and only they will enjoy shareholder voting rights with respect to matters affecting the Plan. Applicants also assert that all holders of Shares are expected to benefit from their proposal, since the Fund's fixed costs will be spread over a greater number of shareholders than if the Trust were to create and operate new Portfolios holding the same investment portfolio as the Fund. Finally, applicants assert that their proposal will not lead to any of the abuses that section 18 of the Act was designed to eliminate.

3. Applicants believe that by offering New Shares in connection with Plans as described above, and also by creating and offering Shares independently of Plans, the Fund may be able to achieve added flexibility in meeting the service and investment needs of shareholders and future investors. If New Shares are created and Plans adopted as described above, the Fund will be able to address more precisely the needs of particular investors and cause the associated expenses to be borne by such investors. Applicants acknowledge that this objective might be achieved by organizing a separate investment portfolio for each class of New Shares to be created, but believe that this alternative would be economically and operationally inefficient. Applicants assert that organizing and operating additional investment portfolios would cause the Fund to incur unnecessary accounting and bookkeeping costs and that unless the additional portfolios grew at a sufficient rate and to a sufficient size, they could face liquidity and diversification problems that would prevent them from producing a favorable return.

Applicants' Conditions

Applicants agree that the following conditions will be imposed in any order of the SEC granting the requested relief:

1. Each class of Shares of the Fund will represent interests in the same portfolio of investments, and be identical in all respects, except for differences related to:

(a) The method of financing certain Class Expenses, which are limited to (i) transfer agent fees identified by the transfer agent as being attributable to a specific class of Shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of Shares; (iv) SEC registration fees incurred by a class of Shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of Shares; and (vii) trustees' fees incurred as a result of issues relating to one class of Shares;

(b) Expenses assessed to a class pursuant to a Services Plan or Administrative Plan;

(c) Voting rights as to matters exclusively affecting one class of Shares; and

(d) Class designation differences. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocable to one class of Shares shall not be so allocated until approved by the SEC pursuant to an amended order.

2. The trustees of the Trust, including a majority of the independent trustees, will approve the offering of different classes of New Shares (the "Multi-Class System"). The minutes of the meetings of the trustees regarding the deliberations of the trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the trustees' determination that the

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proposed Multi-Class System is in the best interests of the Trust, the Fund and Shareholders.

3. The initial determination of the Class Expenses that will allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Fund including a majority of the trustees who are not interested persons of the Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to the board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts among the interests of the various classes of Shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Meeder will be responsible for reporting any potential or existing conflicts to the trustees. In addition, Meeder will take the actions necessary to ensure that the Organizations will report any potential or existing conflicts to the trustees. If a conflict arises, Meeder at its own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. Any rule 12b-1 plan adopted or amended to permit the assessment of a rule 12b-1 fee on any class of shares which has not had its rule 12b-1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.

6. The Fund, which acts as its own distributor, will adopt compliance standards as to when each class of Shares may be sold to particular investors. Applicants will require all persons selling Shares of the Fund to agree to conform to such standards.

7. The Administrative Plan will be adopted and operated in accordance with the procedures set forth in rule 12b-1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b-1, except that shareholders need not enjoy the voting rights specified in rule 12b-1. The trustees will evaluate the Administrative Plan and the Services Plan based upon whether (a) such Plans are in the best interest of the applicable classes and their respective shareholders, (b) the services to be performed pursuant to the Plans are required for the operation of the applicable classes, (c) the Organizations can provide services at least equal, in nature and quality, to those provided by others, including the Fund, providing similar services, and (d) the fees for such services are fair and reasonable in the light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

8. Each Plan Agreement will contain a representation by the Organization involved that any compensation payable to the Organization in connection with the investment of its Class Shareholders' assets in the Fund (i) will be disclosed by it to its Class Shareholders, (ii) will be authorized by its Class Shareholders, and (iii) will not result in an excessive fee to the Organization.

9. Any Plan Agreement shall provide that in the event an issue pertaining to a Plan is submitted for shareholder approval, the Organization shall vote any Shares held for its own account in the same proportion as the vote of those Shares held for its Class Shareholders' benefit.

10. The trustees will receive quarterly and annual statements concerning the amounts expended under the Administrative Plan and Services Plan and the related Plan Agreements complying with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of Shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

11. Dividends paid by the Fund with respect to a class of Shares will be calculated in the same manner, at the same time, on the same day, and will be in the same per share amount as dividends paid by the Fund with respect to each other class of Shares of the Fund, except that Plan Payments made by a class under its Plan and any Class Expenses will be borne exclusively by the affected class.

12. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which report has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Trust that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act and the work papers of the Expert with respect to such reports, following request by the Trust (which the Trust agrees to provide), will be available for inspection by the SEC staff upon written request by a senior member of the Division of Investment Management or a regional office of the SEC. Authorized staff members would be limited to the director, an associate director, the chief financial analyst, an assistant director, and any regional administrators or associate and assistant administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

13. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions of the various classes of Shares and the proper allocation of expenses among the classes of Shares and this representation has been concurred with by the Expert in the initial report referred to in condition 12 above and will be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis at least annually in the ongoing reports referred to in that condition. Applicants will take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

14. The prospectuses of each class of the Fund will include a statement to the effect that any person entitled to receive any portion of a Plan Payment may receive different compensation with respect to one particular class of Shares over another in the Fund.

15. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees with respect to the Multi-Class System will be set forth in guidelines to be furnished to the trustees.

16. The Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees and exchange privileges (if any) applicable to each class of Shares in every prospectus, regardless of whether all classes of Shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of Shares in every shareholder report. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of Shares, it will also disclose the respective expenses and/or performance data applicable to all classes of Shares. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset value or public offering price will present each class of Shares separately.

17. To ensure that the net asset value per share of all Shares of the Fund remains the same regardless of variations in net income from day to day, no Class will bear any Plan Payment or Class Expense that would cause the accrued expenses of such Class to exceed allocated gross income. To accomplish this, the Fund will obtain undertakings from all Organizations and service providers stating that, if necessary to prevent the accrued expenses of any class from exceeding the allocated gross income of such class on any given day, they will waive some or all of the Plan Payments and Class Expenses to which they would otherwise have been entitled. If such waivers are not sufficient to prevent the class's expenses from exceeding its gross income on any given day, Meeder will reimburse the Fund for the excess within five business days. Fees and expenses waived by an Organization or service provider or reimbursed to the Fund by Meeder will not be carried forward or recouped at a future time.

18. Applicants acknowledge that the grant of the requested exemptive order does not imply SEC approval, authorization of or acquiescence in any particular level of payments that the Fund may make to Organizations pursuant to any Plan in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10089 Filed 4-29-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area No. 7297]

Oregon; Declaration of Disaster Loan Area

Tillamook County and the contiguous counties of Clatsop, Columbia, Lincoln, Polk, Washington, and Yamhill in the State of Oregon constitute an Economic Injury Disaster Loan Area due to a landslide on April 2, 1991 which resulted in the closure of Highway 6.

Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on January 21, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795 or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 19, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-10180 Filed 4-29-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Middlesex County, MA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Marlborough (Middlesex County), Massachusetts.

FOR FURTHER INFORMATION CONTACT: Anthony J. Fusco, Division Administrator, Federal Highway Administration, Transportation Systems Center, 55 Broadway, 10th Floor, Cambridge, MA 02142. Telephone 617-494-2060.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Massachusetts Department of Public Works, will prepare an Environmental Impact Statement (EIS) on a proposal to construct a new interchange on Interstate Route 495 (I-495) in Marlborough, (Middlesex County) Massachusetts, between State Route 9 and U.S. Route 20.

I-495, when constructed during the 1960s through rural communities and less dense areas of Boston's suburban fringe, was intended to principally serve regional and interstate through travel. Interchange points were limited to major arterial such as state and federal numbered routes. However, to maintain the utility of I-495 and similar highway facilities in an increasingly suburbanized and urbanized environment, and to help reduce congestion on local stress, the need has evolved for a number of additional interchange points with the local roadway network. In June, 1989, the Federal Highway Administration approved the concept of a new break-in-access on I-495 between State Route 9 and Route 20 in Marlborough.

Alternatives to the proposed project under consideration include:

1. Taking no action 2. Trumpet—Type interchange with connecting road to Crane Meadow Road and Simarano Drive on the west side of I-495 3. Diamond-type interchange with a connecting road to Crane Meadow Road and Simarano Drive on the west and Williams Street on the east, and 4. A Cloverleaf-type interchange with a connecting road to Crane Meadow Road and Simarano Drive on the west and Williams Street/Jericho Hill Road on the east. Design variations in profile and alignment will be analyzed in the various alternatives.

A scoping meeting will be held at Memorial Hall Auditorium, in City Hall, Marlborough, Massachusetts on April 25, 1991 at 10 a.m. to receive comments on the range of potential environmental issues associated with the project. The scoping effort is intended to enable appropriate regulatory officials to agree on a scope of work for preparation of an EIS.

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To ensure that the full range of issues related to this proposed action are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assitance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 22, 1991.

Anthony J. Fusco,

Division Administrator.

[FR Doc. 91-10131 Filed 4-29-91; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration; Office of Hazardous Materials Safety

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions—correction.

In notice document 56-70 beginning on page 14728 in the Federal Register Thursday, April 11, 1991, make the following correction:

On page 14727 the Application No. 10572-N, DPC Industries, Inc., Houston, TX should read Application No. 10573-N, DPC Industries, Inc., Houston, TX.

Issued in Washington, DC on April 12, 1991.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91-10132 Filed 4-29-91; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 83
Tuesday, April 30, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, May 1, 1991 (See times below)

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

MATTERS TO BE CONSIDERED:

10:00 a.m.—Open to the Public

Public Hearing—FY 93 Priorities

The Commission will hold a public hearing on the FY 1992 agenda and the FY 1993 agenda and priorities.

2:00 p.m.—Open to the Public

FY 93 Priorities.

The staff will brief the Commission on recommendations for priorities for Fiscal Year 1993.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 492-6800.

Dated: April 24, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91-10289 Filed 4-26-91; 1:57 pm]

BILLING CODE 6355-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, May 2, 1991 (see times below).

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: 10:00 a.m.—Open to the Public.

1. *Cigarette Lighter NPR*

The Commission will consider a notice of proposed rulemaking (NPR) for a mandatory consumer product safety standard to require disposable and novelty cigarette lighters to resist operation by children less than five years old.

2:00 p.m.—Closed to the Public

2. *Enforcement Matter OS# 4293*

The staff will brief the Commission on enforcement matter OS# 4293.

3. *Enforcement Matter OS# 3681*

The staff will brief the Commission on enforcement matter OS# 3681.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492-5709.

CONTACT PERSON FOR ADDITONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492-6800.

Dated: April 25, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91-10290 Filed 4-26-91; 1:57 pm]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: April 22, 1991, 56 FR 16355.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: April 24, 1991, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Items CAG-6 and CAG-13 and PC-3 on the Agenda scheduled for April 24, 1991:

Item No., Docket No., and Company

CAG-6—RP90-107-000 and RP90-108-000, Columbia Gas Transmission Corporation

CAG-13—RP88-000 and RP91-51-000, CNG Transmission Corporation

PC-3—CP88-332-010, El Paso Natural Gas Company

Lois D. Cashell,

Secretary.

[FR Doc. 91-10217 Filed 4-25-91; 5:13 pm]

BILLING CODE 6717-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, May 6, 1991.

PLACE: Mariner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 26, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-10304 Filed 4-26-91; 3:19 pm]

BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-91-13]

TIME AND DATE: Wednesday, May 8, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints.
5. Inv. 731-TA-514 (Preliminary) (Shop Towels from Bangladesh)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: April 23, 1991.

Kenneth Mason,

Secretary.

[FR Doc. 91-10256 Filed 4-26-91; 11:25 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, May 7, 1991.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 31827, *CSX Transportation, Inc.—Acquisition and Lease Exemption—The Pittsburgh and Lake Erie Railroad Company.*

Docket No. 40365, *National Starch and Chemical Corporation v. The Atchison,*

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Topeka and Santa Fe Railway Company, et al.

I&S M-30419, *Consolidated Freightways Corporation—Negotiated Rates Provisions.*

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of External Affairs, Telephone: (202) 275-7252, TDD: (202) 275-1721.

Kathleen M. King,

Acting Secretary.

[FR Doc. 91-10275 Filed 4-26-91; 12:49 pm]

BILLING CODE 7035-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 15959, April 18, 1991.

PREVIOUSLY ANNOUNCED DATES OF MEETING: April 29-30, 1991.

CHANGES: Delete the following from the closed meeting agenda:

2. Consideraton of the Postal Rate Commission's Opinion and Recommended Decision in Docket No. R90-1.

Add the following item to the open meeting agenda.

3. Personnel Matters. (Anthony M. Frank)

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 91-10313 Filed 4-26-91; 3:43 pm]

BILLING CODE 7710-12-1

federal register

Tuesday
April 30, 1991

Part II

Department of Education

Training Personnel for the Education of Individuals With Disabilities; Proposed Priority for FY 1991; Notice

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DEPARTMENT OF EDUCATION

Training Personnel for the Education of Individuals With Disabilities; Proposed Priority for FY 1991

AGENCY: Department of Education.

ACTION: Notice of proposed priority for fiscal year 1991.

SUMMARY: The Secretary proposes to establish an additional priority for fiscal year (FY) 1991 under the Training Personnel for the Education of Individuals with Disabilities program (84.029). This priority is in addition to those previously published on July 13, 1990 (55 FR 28674–5), and on February 6, 1991 (56 FR 4906–11). Under this priority the Secretary will support projects for the training of educational interpreters for students with hearing impairments including deafness.

DATES: Comments must be received on or before May 30, 1991.

ADDRESSES: All comments concerning this priority should be addressed to Max Mueller, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, room 3512–M/S 2651), Washington, DC 20202–2651.

FOR FURTHER INFORMATION CONTACT: Max Mueller. Telephone: (202) 732–1554. (TDD (202) 732–1999).

SUPPLEMENTARY INFORMATION: The Secretary proposes to establish a FY 1991 priority for one discretionary grant program administered by the Office of Special Education Programs. This priority is being proposed to implement language in the Senate appropriations committee report for 1991 concerning additional projects for training interpreters under section 631(a) of part D of the Individuals With Disabilities Education Act (Personnel Preparation).

The publication of this proposed priority does not preclude the Secretary from publishing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority.

Training Interpreters

The Secretary proposes to award 12 to 15 grants to support the preservice training of educational interpreters for children with hearing impairment, including deafness. The Department and the Congress have recognized that one of the most severe problems faced by schools in providing services for these children is obtaining qualified personnel to interpret. The problem is at least two-fold: (1) The availability of interpreters in general is quite limited in relation to the needs of children with hearing impairments; and (2) Even those interpreters who are available are often untrained or inadequately trained to meet the specific demands of interpreting and working in an instructional setting. The problem is exacerbated by the increasing integration of children with hearing impairments into regular education settings. Integration requires more interpreters than the previous practice of placing children with hearing impairments into segregated classes or schools because of the increased interpreter to student ratio required.

In response to this need the Training Personnel for the Education of Individuals with Disabilities program will support projects to increase the supply of educational interpreters. Support will be limited to projects that demonstrate recruitment strategies, specifically adapted curricula, and incentives designed to increase the probability of program graduates' functioning productively as interpreters in instructional settings. These funds must be concentrated on student support, rather than on basic institutional support.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation to Comment:

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection during and after the comment period, in room 3072, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 1431.

(Catalog of Federal Domestic Assistance Number 84.029: Training Personnel for the Education of Individuals with Disabilities)

Dated: March 28, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–10076 Filed 4–29–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
April 30, 1991

Part III

Department of Education

Pell Grant Program; Deadline Dates for Receipt of Applications and Other Documents for the 1990–91 Award Year; Notice

VOL 56 ISS 83 AP 30 1991 UMI

DEPARTMENT OF EDUCATION

Pell Grant Program; Deadline Dates for Receipt of Applications and Other Documents for the 1990–91 Award Year

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the deadline dates for the receipt of documents from persons applying for financial assistance under the Pell Grant Program during the 1990–91 award year.

SUPPLEMENTARY INFORMATION: The Pell Grant Program provides grants to students attending eligible institutions of higher education to help them pay for their educational costs. Authority for the Pell Grant Program is contained in sections 411 through 411F of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070a through 1070a–6. The regulations for the Pell Grant Program are codified in 34 CFR part 690 and 34 CFR part 668. The Secretary will announce the deadline dates for the receipt of documents from institutions participating in the Pell Grant Program during the 1990–91 award year in a subsequent notice.

I. Applications for Determination of Expected Family Contribution—Table I

As a requirement for receiving a Pell Grant, each applicant is responsible for submitting to an institution of higher education, a valid Student Aid Report (SAR) that states the amount of the student's expected family contribution (referred to on the SAR as the "PGI" [Pell Grant Index]) and the information used in calculating that amount. Therefore, each applicant must first submit to an agency listed in table I of this notice or through the Department's Electronic Data Exchange Stage 0 (Zero), as discussed below, his or her application for determining the expected family contribution. That application—hereafter referred to in this notice as an original application—must be submitted on one of the forms shown in Table I or through Stage 0 and be received by the designated agency or facility at the agency's address shown in Table I no later than May 1, 1991.

Stage 0 allows institutions to enter (or have their students enter) Federal student financial aid application data by utilizing software provided by the Department of Education. Stage 0 applications must be received at the Department of Education's Central Processing System facility no later than May 1, 1991

Applications of Students Receiving a "Dependency Override"

If the financial aid administrator at the institution an applicant is attending determines that the applicant qualifies as an independent student under section 411F(12)(B)(vii) of the HEA or that he or she qualifies as a dependent student under section 411F(12)(C) of the HEA, the applicant must submit a correction application to one of the agencies listed in Table I. A Stage 0 applicant who qualifies for a dependency override must submit a correction application coded for the appropriate dependency override through the Stage 0 process. If the applicant has not submitted an original application, then the deadline date for submission of a correction application is May 1, 1991. If the applicant has submitted an original application, the deadline date for the submission of the correction application is July 31, 1991.

Applications of Students Meeting a "Special Condition"

If the applicant meets a special condition as provided in 34 CFR 690.31 and 690.32, the applicant may provide the needed information on a correction application. If the applicant has not submitted an original application, the deadline date for the submission of the correction application is May 1, 1991. If the applicant has submitted an original application, the deadline date for the submission of the correction application is July 31, 1991.

Application forms sent to the Federal Student Aid Programs must be received at the U.S. Postal facility indicated in the table. Individuals at the application processing centers are not authorized to personally accept hand delivered documents. Applications submitted electronically through the Stage 0 process must be received at the Department of Education's Central Processing System facility.

(Approved by the Office of Management and Budget under OMB Control Number Application: 1840–0110)

II. Other Documents—Table I

Once an applicant has filed his or her original application, additional information may be necessary. In some cases the agency receiving the original application may request the information. In other cases, the applicant is responsible for initiating a request that additional or alternative information be considered.

Table I of this notice lists the contact points for form requests and other information requests. Each category designates the addresses to which the specified information or request must be sent, and the deadline date by which that information or request must be received at those addresses. However, the applicant must submit to the Federal Student Aid Programs, any changes that he or she wants to be reflected on his or her SAR. The following explains each category:

Correction Application

In addition to being used when an applicant receives a dependency override or meets a special condition as provided in 34 CFR 690.31 and 690.32, the Secretary will provide a correction application to an applicant if the applicant's original application lacked sufficient information to be processed. The applicant must include on the correction application all the information necessary to process that application.

If an applicant has misreported his or her dependency status, or if that status has changed after the applicant submitted an original application for reasons other than a change in marital status, the applicant must submit a correction application with the correct dependency status.

A correction application may be obtained from a financial aid administrator, an Educational Opportunity Center counselor, or by writing to Federal Student Aid Information Center, P.O. Box 84, Washington, DC 20044 or by calling 1(800) 333–INFO before May 1, 1991 or 1(800) 4 FED AID on or after May 1, 1991. The correction application must be returned to the address listed in Table I and received at that address no later than July 31, 1991, unless the correction application is submitted as an original application, in which case the May 1, 1991 deadline applies. A correction application submitted electronically through the Stage 0 process must be received by the Central Processing System no later than July 31, 1991, unless the correction application is submitted as an original application, in which case the May 1, 1991 deadline applies.

Student Aid Report (SAR)

• *Correction/Verification of Information Requested by the Secretary*—If the Secretary returns an SAR to an applicant for correction or verification of information, the applicant must correct or verify the information and return the SAR to the appropriate address listed in Table I. The SAR must be received at that address no later than July 31, 1991. A student attending an institution participating in the Electronic Data Exchange (EDE) must submit that SAR, with the information corrected or verified, to the institution by July 31, 1991.

• *Correction of Inaccurate Information*—If the SAR reflects information that was inaccurate when the application was signed, the applicant must correct that information on the SAR and send the SAR to the appropriate address listed in Table I. The SAR must be received no later than July 31, 1991. A student attending an institution participating in the EDE must submit that SAR, with the information corrected, to the institution by July 31, 1991.

• *Recomputation of Pell Grant Index*—An applicant may request on the SAR that the Secretary recompute his or her Pell Grant Index, if—(1) the student believes a clerical or arithmetic error has occurred or (2) the student meets a special condition as provided in 34 CFR 690.31 and 690.32. The applicant must send the SAR to the appropriate address listed in Table I. The SAR must be received no later than July 31, 1991. A student attending an institution participating in the EDE must submit a request for recomputation to the institution by July 31, 1991.

• *Request for Duplicate SAR*—If an applicant wishes to receive a duplicate SAR, the applicant may write to one of the addresses listed in Table I, or call one of the phone numbers listed in Table I.

A written request must be received no later than July 31, 1991. All telephone requests must also be made no later than July 31, 1991. It should be noted that a written request sent to the appropriate application processing center must be received at the U.S. Postal facility indicated in Table I. Individuals at the application processing centers are not authorized to personally accept hand delivered documents.

Note—Although the Department of Education's application processing centers will accept and process corrections through July 31, 1991, this does not extend the deadline by which the student must submit his or her SAR with an eligible PGI to the institution's financial aid office. If the student does not submit an SAR with an eligible PGI to the financial aid office, showing that he or she is eligible, by his or her last date of enrollment or June 30, 1991, whichever is earlier, he or she will not be eligible for a Pell Grant payment.

TABLE I

[Deadline Date for Receipt of Original Application Forms for Determining Expected Family Contribution: May 1, 1991. Deadline Date for Receipt of Correction Applications (other than originals) and Other Documents: July 31, 1991.]

Type of form	For information about	Contact federal student aid programs
Application for Federal Student Aid (AFSA)	● Application Request	c/o AFSA Processor: Box 6367, Princeton, New Jersey 08541 Before May 1, 1991: 1 (800) 333–INFO. On or After May 1, 1991: 1(800) 4 FED–AID.
	● Spanish Application Request	Box 6368.
	● Correction Application Request	Box 6369.
	● SAR Corrections	Box 6370.
	● Duplicate Requests/other correspondence	Box 6371.
Family Financial Statement (FFS)	● Application Request	c/o American College Testing Programs (ACT): Box 1000, Iowa City, Iowa 52243. (319) 333–1200.
	● Corrections/other correspondence	Box 4018.
	● Duplicate Request/Address Changes	Box 4017.
Financial Aid Form (FAF)	● Request for MDE Form	Box 1002.
	● Application Request	c/o College Scholarship Service: Box 6300 Princeton, New Jersey 08541, (215) 750–8400.
	● SAR Corrections	Box 6374.
	● Duplicate Requests/Address Changes	Box 6375.
	● Other correspondence	Box 6376.
Application for Federal and State Student Aid (AFSSA).	● Application Request	c/o CSX: Box 52745, Jacksonville, Florida 32201.
	● Other Correspondence	Box 53555.
Pennsylvania Higher Education Assistance Agency (PHEAA).	● Application Request	c/o Pennsylvania Higher Education Assistance Agency (PHEAA): Box 8136, Harrisburg, Pennsylvania 17105 1 (717) 257–2800.
	● Other Correspondence	Box 8135.
Singlefile Form	● Application Request	c/o United Student Aid Funds (USAF): Box 6180, Indianapolis MC7621, Indiana 46206–6180. 1 (800) 448–3530.
	● Duplicate Request	Box 6131.
Stage 0 (electronic)	● Application Request	Central Processing System: via General Electronic Support network.
	● Diskettes and Tape Requests	National Computer Systems Stage 0, Box 30, Iowa City, Iowa 52244.
	● Other Inquiries	National Computer Systems GES Customer Service (319) 339–6642.

III. Verification Procedures and Deadline Dates

The information provided on an application and included on an SAR may be subject to verification. In that case, in order to receive a Pell Grant award for the 1990–91 award year, the applicant—and his or her parents, if applicable—must submit the necessary verification documents in accordance with the following procedures. The documents must be received no later than the deadline dates specified below. These dates do not conflict with nor supersede the deadline dates specified in Table I of this notice.

Verification of Information on Application. If an applicant is selected to have the information on his or her application verified under the verification procedures set forth in Subpart E of the Student Assistance General Provisions, he or she must submit the requested documents as specified below in steps 1–4. The deadline date for the completion of these steps in the verification process is the earlier of: 60 days from the applicant's last date of enrollment in the case of an applicant who leaves school because of graduation, completion of an academic term, or withdrawal; or

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September 3, 1991. (Documents that are hand-delivered must be received by the institution by C.O.B. September 3, 1991. Documents sent by mail must be postmarked or demonstrate other comparable proof of mailing by September 3, 1991.) A student who will still be enrolled in a course of study in the 1990–91 award year after September 3, 1991, must submit the requested documents by September 3, 1991.

This process is complete when the applicant has:

(1) Submitted all requested verification documents to his or her institution;

(2) Made all necessary corrections on Part 2 of the SAR or through the EDE;

(3) Signed and submitted the corrected Part 2 of the SAR to the appropriate address indicated on the back of Part 2 of the SAR—the same address as indicated in Table I, or to the institution for those participating in the EDE—by the deadline date listed in Table I; and

(4) Submitted to the institution the corrected/reprocessed SAR received from the Department of Education's processing center. (34 CFR 668.60)

Application Forms and Information

Student aid application forms, correction application forms, and information brochures may be obtained through college and university financial aid administrators, Educational Opportunity Center counselors, or by writing or calling: Federal Student Aid Programs, P.O. Box 84, Washington, DC 20044. Telephone 1 (800) 333–INFO before May 1, 1991 or 1 (800) 4 FED–AID on or after May 1, 1991.

Applicable Regulations

The regulations applicable to this program are the Pell Grant Program regulations in 34 CFR part 690 and the Student Assistance General Provisions regulations in 34 CFR part 668.

FOR FURTHER INFORMATION CONTACT: Jennifer Radden, Program Specialist, Policy Section, Pell Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, Office of Postsecondary Education, 400 Maryland Avenue SW. (ROB–3, room 4318), Washington, DC 20202. Telephone (202) 708–7888. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1 (800) 877–8339 (in Washington, DC (202) 708–9300) between 8 a.m. and 7 p.m., Eastern time.

(20 U.S.C. 1070a)

(Catalog of Federal Domestic Assistance No. 84.063, Pell Grant Program)

Dated: April 23, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–10074 Filed 4–29–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
April 30, 1991

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Funding Availability; (NOFA) for FY 1991; Notice

VOL 56 ISS 83 APR 30 1991 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3142; FR 2987-N-01]

Funding Availability; Housing Counseling

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability (NOFA) for FY 1991.

DATES: The application kit (Request for Grant Application—RFGA) will specify the application due date. The due date is not known at this time because HUD was still preparing the application kit as of the date of this NOFA. However, the due date for applications will be no earlier than 30 days from the date of publication of this NOFA.

SUMMARY: This Notice announces the availability of funding for Fiscal Year (FY) 1991 for HUD-approved housing counseling agencies to provide housing counseling to homebuyers, homeowners, and renters, as set forth in HUD Handbook No. 7610.1 REV-2, dated September 1990 (the Handbook). An applicant must, as of the date of the grant award, be a HUD-approved housing counseling agency, and must be able and willing to provide, at a minimum: (1) Delinquency and default counseling to renters and homeowners; and (2) related counseling under HUD's single family mortgage assignment program. Exceptions to these two requirements are applicants approved by HUD to provide ONLY tenant counseling or Home Equity Conversion Mortgage counseling, or both. An applicant agency may offer any other aspect(s) of counseling set forth in the Handbook, including Home Equity Conversion Mortgage counseling. Housing counseling services not covered by the Handbook do not qualify for eligibility for funding under this NOFA.

In the body of this document is information concerning: The purpose of this NOFA; eligibility for funding; available funding; selection criteria; and the application process, including how to apply for funding, and how selections will be made.

FOR FURTHER INFORMATION CONTACT: Thomas Miles, Acting Chief, Secretary-held and Counseling Services Branch, U.S. Department of Housing and Urban Development, room 9178, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-1872, or (202) 708-4594 (TDD number). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2535-0084.

I. Purpose and Substantive Description

A. Authority and Background

1. *Authority:* Secs. 106(a)(1)iii, 106(a)(2) and 106(c) of the Housing and Urban Development of 1968, as amended by sec. 811 of the Housing and Community Development Act of 1974; sec. 169 of the Housing and Community Development Act of 1987; sec. 577 of the National Affordable Housing Act of 1990; secs. 235, 237, and 255 of the National Housing Act, as amended; and HUD Handbook 7610.1 REV-2, dated September 1990.

2. *Background.* In accordance with the above statutory provisions, HUD administers a housing counseling program for homeowners and renters. Under this program, HUD contracts with public or private organizations to provide a broad range of housing counseling services to homeowners and renters to assist them in improving their housing conditions, and in meeting the responsibilities of homeownership or tenancy. When the Congress makes funds available to assist HUD's housing counseling program, HUD announces the availability of such funds, and invites applications from eligible agencies, through a notice published in the Federal Register. An agency that is approved by HUD as a housing counseling agency does not automatically receive funding. The agency must apply for such funding under a Request for Grant Application (RFGA) issued by HUD through its Regional Offices. The purpose of the housing counseling program is to promote and protect the interests of HUD, HUD-approved and other mortgagees, and housing consumers participating in HUD approved and other housing programs.

B. Allocation Amounts

1. *Total Available Funding.* A total amount of $6,000,000 was appropriated for housing counseling by the HUD Appropriations Act of 1991. The National Affordable Housing Act of 1990 (the Act) authorizes up to $2,000,000 of the total appropriated amount to be used by the Department for the establishment of a toll-free telephone number through which interested parties may obtain lists of housing counseling agencies. Of the remaining $6,000,000 available for actual counseling activities, HUD will use $425,000 to help resolve a litigation matter that involves housing counseling. HUD will make the remaining $5,575,000 available for the counseling services specified in the Act. This amount will be allocated for counseling activities as follows:

Activities:	Millions
a. Housing counseling services under Section 106(a) of the Housing and Urban Development Act of 1968	*$3.175
b. Emergency Homeownership Counseling under Section 106(c) of the Housing and Urban Development Act of 1968	2.400
Total allocation	5.575

* This amount represents the $3.6 million authorized minus the $425,000 for counseling under the litigation matter.

2. *Allocation of Funds to Regional Offices.* HUD Headquarters will allocate the $5,575,000 available for housing counseling services to its ten Regional Offices. The basis for the allocation is the percentage of HUD-insured single family mortgage defaults within each Region, compared to the nationwide total. The amounts allocated to the Regions for Fiscal Year 1991 (based on the $5,575,000) are as follows:

Region	Defaults	Percentage	Allocation
I	1,248	0.007	$39,025
II	11,753	.063	351,225
III	16,814	.091	507,325
IV	47,292	.255	1,421,625
V	31,791	.171	953,325
VI	33,150	.178	992,350
VII	5,408	.029	161,675
VIII	10,330	.056	312,200
IX	23,994	.129	719,175
X	3,966	.021	119,075
Total	186,748	100	5,575,000

3. *Grant Awards by HUD Regional Offices.* Regional Offices will make an equitable awarding of allocated housing counseling funds to eligible HUD-approved housing counseling agencies based upon documented need in relation to:

a. The amount of funds available; and

b. The number of successful applicants. (A determination of a "successful" applicant is based on the applicant's ability to meet the selection criteria, as specified in Section I.D of this NOFA.)

4. *Announcement of Awards.* HUD will notify all successful applicants upon their selection. Unsuccessful applicants will be notified after the awards have been made. No information will be made available to applicants during the period of HUD review and evaluation, except for notification to those applicants that are declared ineligible or late. In accordance with Section 102(a)(4)(c) of the Department of Housing and Urban Development Reform Act of 1989, HUD will notify the public, by notice published in the Federal Register, of award decisions made by HUD under this funding.

5. *Grantee Reimbursement by HUD.* HUD will reimburse grantees on the basis of not more than $35.00 per "counseling unit" which is defined as a *documented* face-to-face, written, or telephonic contact between:

a. The grantee's housing counselor and a client; or

b. The grantee's housing counselor and a mortgagee, landlord, service agency, creditor, credit reporting agency, governmental agency, realtor or employer, acting on behalf of a client, which results in an action or decision that:

(1) Identifies, clarifies, or assists in meeting or meets the client's housing need; or

(2) Assists in resolving or resolves the client's housing problem.

(See HUD Handbook 7610.1 REV-2 dated September 1990, paragraph 1-7 on page 1-6 for a full definition of "client," "housing need," and "housing problem.")

C. Eligibility

Eligible applicants include public and private nonprofit entities with a current approval by HUD as housing counseling agencies, under the provisions of HUD Handbook No. 7610.1 REV-2, dated September 1990, or its earlier versions. Current approval includes agencies that are on record at the applicable HUD Field Office as having been approved as a HUD counseling agency as of the date of issuance of the RFGA based on this NOFA. Agencies for which HUD has withdrawn this approval or have indicated in writing their withdrawal from the counseling program are NOT eligible. Agencies with "conditional" re-approvals are NOT eligible unless they satisfy HUD's requirements for removal of the "conditional" approval by the due date of applications for funding under this notice.

D. Selection Criteria

1. *General Criteria.* HUD, through its Regional Contracting Officers, will award housing counseling grants in Fiscal Year 1991 to selected eligible agencies. Within each Region, an eligible agency is a HUD-approved housing counseling agency that is:

a. located within the Region's geographical jurisdiction; and

b. provides, or proposes to provide, housing counseling within that Region. (Application eligibility and grant authority do NOT cross regional boundaries.)

2. *Specific Criteria.* Applications for funding under this notice will be reviewed, and grants will be awarded on the basis of an evaluation of *all* of the following criteria:

a. Amount requested by the grantee;

b. If the applicant had a HUD housing counseling grant in 1987, 1988, 1989, or 1990, the applicant's use of those funds;

c. Applicant's documented client workload*

(*"Workload" refers to the number of clients, as defined in HUD Handbook No. 7610.1 REV-2, dated September 1990, reported by the applicant on Form HUD-9902, Housing Counseling Agency Activity Report, for 1990);

d. Client workload total for all applicants within a HUD Regional Office;

e. Amount of housing counseling funds allocated to the HUD Regional Office by Headquarters;

f. Reimbursement of grantees by HUD on the basis of $35.00 per housing counseling unit;

g. Regional Offices' documented need for housing counseling services within the areas served by the applicants;

h. HUD's assessment of the applicant's previous performance as a HUD-approved housing counseling agency, including the submission of the required reports.

i. In the case of previous grantees, the applicant's performance under such grants, including the submission of the required reports.

II. Application Process

A. Obtaining and Submitting Applications

Applicants for grants may obtain copies of the Request for Grant Application (RFGA) from the Regional Contracting Officer in the HUD Regional Office that serves the area in which the applicant agency is located. The RFGA contains the application submission address. A list of the Regional Offices and their addresses follows the text of this NOFA.

B. Application Deadline

The RFGA contains the Application Deadline Date and Time by which HUD must *receive* a grant application. Applicants will have at least 30 days to prepare and submit their applications. "Submit" means delivery to the HUD Regional Office specified in the RFGA and by the delivery date and time specified in the RFGA. A proper submission in response to the RFGA must conform to the specifications in the RFGA.

III. Checklist of Application Submission Requirements

An applicant must submit three different types of written submissions: forms, certifications, and assurances. An applicant must submit three sets of each written submission, as specified below, with supporting documentation ONLY as specified in the RFGA. Applicants must limit the submission of material to that required by the individual form, certification or assurance. HUD will not consider extraneous material and will discard it.

A. Forms

Each applicant will be required to submit the following completed and signed forms:

1. Standard Form 424, Application for Federal Assistance.

2. Standard Form 424B, Assurances—Non-construction Programs.

B. Certifications

Each applicant will be required to submit, at a minimum, the following certifications:

1. Certification of a Drug-Free Workplace, in accordance with the Drug-Free Workplace Act of 1988 and HUD's regulations at 24 CFR part 24, subpart F.

2. Anti-Lobbying certification in accordance with section 319 of Public Law 101-121. Section 319 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. A common rule governing the restrictions on lobbying was published as an interim rule on February 26, 1990 (55 FR 6736) (supplemented by a Notice published June 15, 1990 at 55 FR 24540). The rule requires applicants, recipients, and subrecipients of assistance exceeding

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$100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from applicants, recipients, and subrecipients if nonappropriated funds have been spent or committed for lobbying activities.

C. Assurances

Each applicant will be required to submit, at a minimum, assurances regarding the applicant's housing counseling program to the effect that:

1. The applicant agency received its approval by HUD prior to the date of the applicable RFGA, and currently has approval from HUD.

2. The applicant agency provided housing counseling to clients* during 1990 as indicated on the applicant's Form HUD-9902, Housing Counseling Agency Activity Report, for 1990. The applicant must submit with their response to the RFGA a copy of their 1990 Form HUD-9902. An applicant approved by HUD after December 30, 1990, must submit Form HUD-9902 for 1990 as part of its application. (* See HUD Handbook No. 7610.1 REV-2 (September 1990) for a definition of "client.")

3. HUD has or has not conducted a performance review of the applicant agency's housing counseling program; whether, as a result of the review, HUD re-approved the agency *unconditionally* or *conditionally*; whether, if HUD granted a *conditional* approval because of certain agency performance deficiencies, the applicant agency corrected the deficiencies to HUD's satisfaction.

4. If the applicant agency received a counseling grant from HUD during HUD's fiscal year 1987, 1988, 1989, or 1990, the agency complied with all grant requirements.

5. The applicant agency submitted all reports required during the most recent report year under the Handbook, and the grant document, if any.

6. The number of clients listed as the applicant's *documented* housing counseling client workload for 1990 is correct.

7. The agency can and will commence counseling services *immediately* upon receipt of the notice of the award of a counseling grant to the applicant agency.

8. The applicant will provide, at a minimum, the following types of counseling (Exceptions are agencies approved by HUD to perform *only* Home Equity Conversion Mortgage (HECM) counseling or tenant counseling):

a. Delinquency and default counseling to home buyers and homeowners, and delinquency counseling to renters; and

b. Mortgage assignment counseling to mortgagors with HUD-insured mortgages having potential for assignment to HUD under the assignment program.

9. The agency had an independent financial audit during the past eighteen (18) months.

10. The applicant administers its housing counseling program in accordance with title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

11. The applicant provides its service without any conflict of interest on the part of the applicant, including its staff, that might compromise the agency's ability to represent fully the best interests of the client in accordance with HUD Handbook No. 7610.1 REV-2, dated September 1990.

12. The applicant's clients reside in the U.S. Postal Service ZIP Code areas listed by the applicant.

IV. Corrections to Deficient Applications

Immediately after the deadline for submission of applications, applications will be screened to determine whether all items were submitted. Applicants will be given an opportunity to cure nonsubstantive deficiencies in their applications. The applicant must submit corrections within 14 calendar days from the date of HUD's deficiency notification or the application will not be considered

A. Curable Deficiencies

The kinds of deficiencies which can be cured after the submission date for applications has passed are limited to the following:

1. Lack of required signature(s) on the following documents or certifications:

a. Standard Form 424B, Assurances—Non-Construction Programs.

b. Certification of Drug-free Workplace.

2. Failure to submit either or both of the above documents or certifications.

B. Noncurable Deficiencies

Failure to submit:

1. A completed and signed Standard Form 424, Application for Federal assistance.

2. A signed Housing Counseling Program assurance and all of its required documentation. Failure to submit these items will be considered a non-response to the RFGA.

Note: HUD Will *Not* Notify Applicants Who Fail to Submit Any of the Above Two Required Documents. *Failure to Submit the Documents Constitutes a Non-Response to the RFGA.*

V. Other Matters

A. *Lobbying Activities-Prohibition and Disclosure.* The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (Pub. L. 100-121) and the implementing regulations at 55 FR 6737 (February 26, 1990). These authorities generally prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Additionally, a recipient must file a disclosure if it has made or agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds.

B. *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

C. *Federalism, Executive Order.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government. Specifically, the purpose of the funding under this notice is to provide grants to public and private agencies that assist and advise housing consumers about how to develop competence and responsibility in meeting their housing needs.

D. *Family, Executive Order.* The General Counsel, as the Designated under Executive Order 12606, *The Family*, has determined that this document may have potential for significant beneficial impact on family formation, maintenance, and general well-being to the extent that the activities of grantees will provide families with the counseling and advice they need to avoid rent delinquencies or mortgage defaults, and to develop competence and responsibility in meeting their housing needs. Since the impact on the family is considered beneficial, no further review under the Order is necessary.

(The Catalog of Federal Domestic Assistance Program number is 14.169.)

Authority: Secs. 106(a)(1)iii, 106(a)(2) and 106(c) of the Housing and Urban Development of 1968, as amended by sec. 811 of the Housing and Community Development Act of 1974; sec. 169 of the Housing and Community Development Act of 1987; sec. 577 of the National Affordable Housing Act of 1990; secs. 235, 237, and 255 of the National Housing Act, as amended; and HUD Handbook 7610.1 REV-2, dated September 1990.

Dated: April 18, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

HUD Regional Offices

Address all inquiries to U.S. Department of Housing and Urban Development, Attention: Regional Contracting Officer, in the Regional Office that serves your State. Telephone numbers are NOT toll-free.

Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, MA 02222-1092, (617) 835-5161

Region II—New Jersey, New York
26 Federal Plaza, New York, NY 10278-0068, (201) 349-1845

Region III—Delaware, Maryland, Pennsylvania, Virginia, Washington (D.C.), West Virginia
Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106-3392, (215) 597-6165

Region IV—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee
Richard B. Russell Federal Building, 75 Spring Street S.W., Atlanta, GA 30303-3388, (404) 841-4054

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
626 West Jackson Boulevard, Chicago, IL 60606-5601, (312) 353-6093

Region VI—Arkansas, Louisiana, New Mexico, Oklahoma, Texas
1600 Throckmorton, Post Office Box 2905, Fort Worth, TX 76113-2905, (817) 728-5452

Region VII—Iowa, Kansas, Missouri, Nebraska
Professional Building, 400 State Avenue, Kansas City, KS 66101-2406, (913) 757-2102

Region VIII—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming
Executive Tower Building, 1405 Curtis Street, Denver, CO 80202-2349, (303) 564-3363

Region IX—Arizona, California, Hawaii, Nevada
Phillip Burton Federal Building and U.S. Court House, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, CA 94102-3448, (415) 556-7913

Region X—Alaska, Idaho, Oregon, Washington
Arcade Plaza Building, 1321 Second Avenue, Seattle, WA 98101-2305, (206) 399-7662

[FR Doc. 91-10066 Filed 4-29-91; 8:45 am]
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federal register

Tuesday
April 30, 1991

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

VOL 56 ISS 83 AP 30 1991 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to Tribe-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of the Interior shall publish in the Federal Register notice of approved Tribal-State Compacts for the purposes of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved Amendment I to Tribal State Compact between the Prairie Island Sioux Community Reservation and the State of Minnesota.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS-4614, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION: Joyce Grisham, Bureau of Indian Affairs, Washington, DC, (202) 208-7445.

Dated: April 17, 1991.

William D. Bettenberg,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 91-10126 Filed 4-29-91; 8:45 am]

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federal register

Tuesday
April 30, 1991

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

VOL 56 ISS 83 AP 30 1991 UMI

DEPARTMENT OF THE INTERIOR

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of the Interior shall publish in the Federal Register notice of approved Tribal-State Compacts for the purposes of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved Amendment I to Tribal-State Compact between the Upper Sioux Community Tribe and the State of Minnesota.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS-4614, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION: Joyce Grisham, Bureau of Indian Affairs, Washington, DC, (202) 208-7445.

Dated: April 12, 1991.

William D. Bettenberg,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 91-10127 Filed 4-29-91; 8:45 am]

BILLING CODE 4310-02-M

federal register

Tuesday
April 30, 1991

Part VII

Department of Health and Human Services

Office of Human Development Services

Grants to Indian Tribal Organizations for Supportive and Nutritional Services for Older Indians; Notice

VOL 56 ISS 83 APR 30 1991 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement 13666.911]

Grants to Indian Tribal Organizations for Supportive and Nutritional Services for Older Indians

AGENCY: Administration on Aging (AoA), OHDS, HHS.

ACTION: Announcement of availability of funds and opportunity to apply under the Older Americans Act, title VI, Grants for Native Americans, Part A—Indian Program.

SUMMARY: The Administration on Aging will accept applications for funding in Fiscal Year 1991 under the Older Americans Act, title VI, Grants for Native Americans, Part A—Indian Program, from eligible federally recognized Indian Tribal Organizations that are not now participating in title VI, part A, either as a single entity or as part of a consortium.

DATES: July 1, 1991.

ADDRESSES: See appendix A.

FOR FURTHER INFORMATION CONTACT: Floyd Godfrey, Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Administration on Aging, Department of Health and Human Services, Wilbur J. Cohen Federal Building, room 4752, 330 Independence Avenue, SW., Washington, DC 20201, telephone (202) 619-3657.

SUPPLEMENTARY INFORMATION:

1. Background and Program Purpose

The Administration on Aging (AoA) is responsible for administering title VI, part A of the Older Americans Act, which provides for grants to Indian tribal organizations representing federally recognized Tribes for the provision of nutritional and supportive services to Indian elders.

The 1978 Amendments to the Older Americans Act created a new title, title VI, Grants for Indian Tribal Organizations. The purpose of this title was to promote the delivery of supportive and nutritional services for Indian elders that are comparable to services provided under title III of the Older Americans Act. (Title III of the Older Americans Act, entitled "Grants for State and Community Programs on Aging," is the nationwide program of supportive and nutritional services which serves persons over age 60 of all ethnic groups.)

In the Older Americans Act Amendments of 1978, the name of title VI was changed to Grants for Native Americans, and part B—Native Hawaiian Programs was added.

Nutritional services include congregate meals and home-delivered meals. Supportive services include information and referral, transportation, chore services, and other supportive services which contribute to the welfare of older Native Americans. Nutritional services and information and referral services are required by the Act.

2. Eligibility of an Indian Tribal Organization or Indian Tribe to Receive a Grant

To be eligible to receive a grant, a tribal organization or Indian tribe must meet the application requirements contained in sections 612(a) and 612(b) of the Act, which are: "(1) The tribal organization represents at least 80 individuals who are 60 years of age or older; and (2) the tribal organization demonstrates the ability to deliver supportive services, including nutritional services." For purposes of title VI, part A, the terms "Indian tribe" and "tribal organization" have the same meaning as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

This announcement concerns only those federally recognized Indian Tribal Organizations not now participating in title VI, part A, either as grantees themselves or as members of a consortium where one tribal organization represents one or more eligible Tribes.

3. Available Funds

Funds have been appropriated for Fiscal Year 1991. Funds will be awarded to tribal organizations applying under this announcement based on a formula which considers the number of eligible applicant tribal organizations, and the number of elders over age 60 in each tribal organization's proposed title VI service area.

Information on grant levels in Fiscal Year 1990 is given below as a guide to possible funding levels for Tribes representing the following documented numbers of Indian elders over age 60:

Population range (number of older Indians age 60 years and over, represented by the tribal organization)	Amounts of awards in FY 1990
50 to 100	$42,000
101 to 200	91,000
201 to 300	69,000
301 to 400	67,924
401 to 500	79,248
501 +	84,700

4. Application Process

Applicants should submit applications, describing their proposed plans for nutritional and supportive services for older Indians for Fiscal Years 1991 and 1992, as described in section 5 below, "Content of the Application." One signed original and one copy of the application including all attachments, must be submitted to the Regional Program Director, Regional Office of the Department of Health and Human Services. (See appendix)

5. Content of the Application

The application must meet the criteria in sections 614 (a) and (b) of the Act, and title 45 of the Code of Federal Regulations, § 1326.19. The application may be presented in any format selected by the tribal organization. No standard Federal forms are required. The application must include the following information:

A. Objectives and Need for Assistance

This section must include objectives, expressed in measurable terms, which are related to the needs of the service population.

B. Results or Benefits Expected

The application should describe the results or benefits expected from each service proposed.

C. Approach

(1) Description and Method of Delivery of Each Service

(a) *Nutrition.* Nutrition services are required. There should be a description of the methods, facilities, and staff to be used in preparing, serving, and delivering meals, and the approximate number of persons to be served. Nutrition services must be substantially in compliance with the provisions of part C of title III. If no title VI, part A funds are to be used for nutrition services, the application must state how such services are provided in other ways, and how they are financed.

(b) *Information and Referral.* Information and referral services are required. They must be available for older Indians living in the title VI, part A service area and there should be a description of how they will be provided. The approximate number of individuals to be served should be stated. If no title VI, part A funds are to be used for information and referral services, the application must state how such services are provided in other ways, and how they are financed.

(c) *Other Supportive Services.* The application must describe any other supportive services to be provided wholly or partly by title VI, part A funds. The approximate number of persons to be served by each service should be stated.

Legal assistance and ombudsman services may be provided, but are not required. However, if provided, they should be reported as "Supportive Services."

If a tribal organization elects to provide legal services, it must substantially comply with the requirements in title 45 of the Code of Federal Regulations § 1321.71, and all legal assistance providers must comply fully with the requirements in § 1321.71(d) through § 1321.71(k).

Transportation of persons to nutrition sites or other places is a part of "Supportive Services."

(2) Evaluation Criteria

The application must discuss the criteria to be used to evaluate the results and successes of the program, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in Item B above are being achieved.

D. Geographic Location

The application must include a narrative description of the title VI, part A service area, and a map. The area to be served by title VI, part A must have clear geographic boundaries. There is no prohibition, however, on its overlapping with areas served by title III.

E. Additional Information

(1) Older Indians in the title VI, Part A Service Area

The law requires that, to be eligible for title VI funding, a tribal organization must represent at least 50 persons aged 60 years or over. Therefore, the number of persons aged 60 or over living in the proposed title VI service area must be stated in the application. The amount of the grant is based on this number of persons aged 60 years or over. As a separate matter, the regulations allow a Tribe to define, based on its own criteria, who the Tribe will consider to be an "older Indian" for purposes of eligibility to receive title VI services. If a Tribe selects a different definition of "older Indian" for service delivery, the application must state the age selected, and the number of Indians under age 60 eligible to be served. If more than one Tribe is included in the application, this information must be stated separately for each Tribe. All Tribes in a consortium must use the same age for "older Indian."

(2) Resolution

The tribal organization representing a federally recognized Tribe must submit a copy of the tribal council resolution authorizing participation in title VI, part A. If the tribal organization represents a consortium of more than one Tribe, a resolution is needed from each participating Tribe, specifically authorizing representation for the purpose of title VI, part A of the Older Americans Act.

(3) Program Assurances

Title VI part A Program Assurances must be included in the application. The title VI part A Program Assurances are those provisions identified in section 614(a) of the Older Americans Act, and in title 45 of the Code of Federal Regulations 1326.19(d), issued August 31, 1988 (see Appendix B). The tribal organization must state that it agrees to abide by all the provisions for the entire period being applied for (Fiscal Year 1991).

Copies of the title III and title VI current law and regulations, and of part 92, may be obtained from the Regional Program Director for the Administration on Aging. See addresses and telephone numbers in section 4 above, "Application Process."

(4) Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (c) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

(5) Identifying Information

Applicants must include a list which provides the following information separately, for both the principal official of the tribal organization, and the proposed title VI program director; Name, Title, Address including Zip Code, Telephone number, and, if available, the FAX Number. The tribal organization's EIN (Employer Identification Number) must also be included.

If the applicant tribal organization is a consortium, the application must list the federally recognized Tribes which are included. A copy of each tribal resolution must be enclosed.

(6) Closing Date for Application

To be eligible for consideration, applications must be received or postmarked on or before July 13, 1991. (Applicants are cautioned to request a legible dated U.S. Postal Service postmark, or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

(7) Action on Applications

Awards will be made by the Commissioner on Aging. Funding decisions will be announced as soon as possible.

(Catalog of Federal Domestic Assistance Program #93.655 Grants to Indian Tribes and Native Hawaiians. This Program Announcement is not subject to E.O. 12372)

Dated: April 24, 1991.

Joyce T. Berry,

U.S. Commissioner on Aging.

Appendix A

Regional Offices

Region 1 (CT, MA, ME, NH, RI, VT), Frank P. Ollivierre, RPD, John F. Kennedy Building, room 501, Boston, Massachusetts 02203, (617) 565-1158, FAX (617) 565-1111.

Region II (NY, NJ, PR, VI), Judith Rackmill, RPD, 26 Federal Plaza, room 4149, Broadway and Worth Streets, New York, New York 10278, (212) 264-2976, FAX (212) 264-4328.

Region III (DC, MD, VA, DE, PA, WV), Paul E. Ertel, jr., RPD, 3535 Market Street, P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596-6891, FAX (215) 596-5028.

Region IV (AL, FL, MS, SC, TN, NC, KY, GA), Frank Nicholson, RPD, 101 Marietta Tower, suite 903, Atlanta, Georgia 30323, (404) 331-5900, FAX (404) 841-1740.

Region V (IL, IN, MI, MN, OH, WI), Eli Lipschultz, RPD, 105 West Adams Street, 21st Floor, Chicago, Illinois 60603, (312) 353-3141, FAX (312) 353-2329.

Region VI (AR, LA, OK, NM, TX), John Diaz, RPD, 1200 Main Tower Building, room 1000, Dallas, Texas 75202, (214) 767-3971, FAX (214) 767-2036.

Region VII (IA, KS, MO, NE), William Weisent, Acting RPD, 601 East 12th Street, room 384, Kansas City, Missouri 64106, (816) 426-2955, FAX (816) 426-2888.

Region VIII (CO, MT, UT, WY, ND, SD), John Diaz, Acting RPD, 1961 Stout Street, room 1185, Federal Office Building, Denver, Colorado 80294, (303) 844-2951, FAX (303) 844-3642.

Region IX (CA, NV, AZ, HI, GU, TTPI, CNMI, AS), Jack F. McCarthy, RPD, 50 United Nations Plaza, room 450, San Francisco, California 94102, (415) 556-6003, FAX (415) 556-30446.

Region X (AK, ID, OR, WA), Chisato Kawabori, RPD, Blanchard Plaza, RX-33; room 600, 2201 Sixth Avenue, Seattle, Washington 98121, (206) 553-5341, FAX (206) 553-6700.

Appendix B

Older Americans Act—Section 614(a)—No grant may be made under this part unless the eligible tribal organization submits an application to the Commissioner which meets such criteria as the Commissioner may by regulation prescribe. Each such application shall—

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(1) Provide that the eligible tribal organization will evaluate the need for supportive and nutrition services among older Indians to be represented by the tribal organization;

(2) Provide for the use of such methods of administration as are necessary for the proper and efficient administration of the program to be assisted;

(3) Provide that the tribal organization will make such reports in such form and containing such information, as the Commissioner may reasonably require, and comply with such requirements as the Commissioner may impose to assure the correctness of such reports;

(4) Provide for periodic evaluation of activities and projects carried out under the application;

(5) Establish objectives consistent with the purposes of this part toward which activities under the application will be directed, identify obstacles to the attainment of such objectives, and indicate the manner in which the tribal organization proposes to overcome such obstacles;

(6) Provide for establishing and maintaining information and referral services to assure that older Indians to be served by the assistance made available under this part will have reasonably convenient access to such services;

(7) Provide a preference for Indians aged 60 and older for full or part-time staff positions whenever feasible;

(8) Provide assistance that either directly or by way of grant or contract with appropriate entities nutrition services will be delivered to older Indians represented by the tribal organization substantially in compliance with the provisions of part C of title III, except that in any case in which the need for nutritional services for older Indians represented by the tribal organization may use the funds otherwise required to be expended under this clause for supportive services;

(9) Contain assurance that the provisions of sections 307(a)(14)(A) (i) and (iii), 307(a)(14)(B), and 307(a)(14)(C) will be complied with whenever the application contains provisions for the acquisition, alteration, or renovation of facilities to serve as multipurpose senior centers;

(10) Provide that any legal or ombudsman services made available to older Indians represented by the tribal organization will be substantially in compliance with the provisions of title III relating to the furnishing of similar services; and

(11) Provide satisfactory assurance that fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the tribal organization, including any funds paid by the tribal organization to a recipient of a grant or contract.

45 CFR 1328.19(d) Assurances as prescribed by the Commissioner that:

(1) A tribal organization represents at least 50 individuals who have attained 60 years of age or older;

(2) A tribal organization shall comply with all applicable State and local license and safety requirements for the provision of these services;

(3) If a substantial number of the older Indians residing in the service area are of limited English-speaking ability, the tribal organization shall utilize the services of workers who are fluent in the language spoken by a predominant number of older Indians;

(4) Procedures to ensure that all services under this part are provided without use of any means tests;

(5) A tribal organization shall comply with all requirements set forth in §§ 1328.7 through 1328.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under title III of the Act.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies that the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions, and in all solicitations for lower tier covered transactions.

U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical

descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge " employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)

Check ____ if there are workplaces on file that are not identified here.

Sections 76.630 (c) and (d)(2) and 76.635 (a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, room 517-D, 200 Independence Avenue, SW., Washington, DC 20201.

Signature ____

Date ____

Title ____

Organization ____

DGMO Form #2 Revised May 1990

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Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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NOTE: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001

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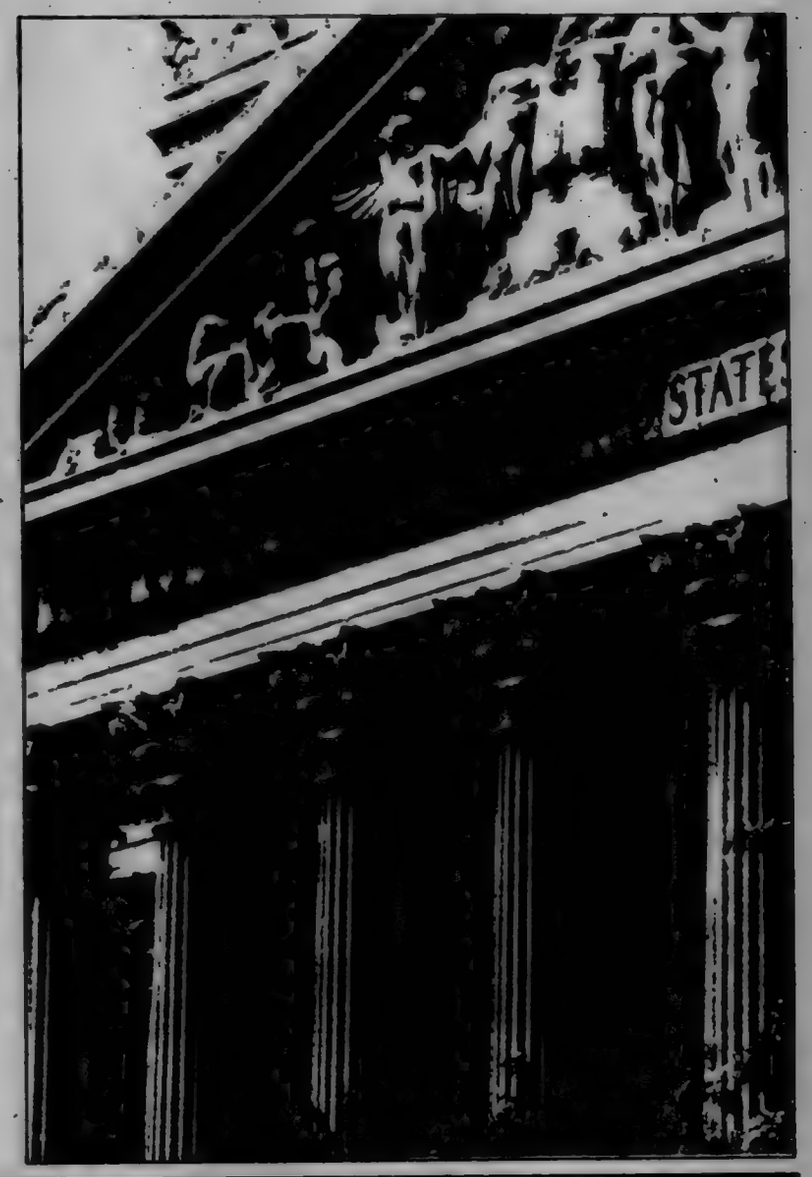

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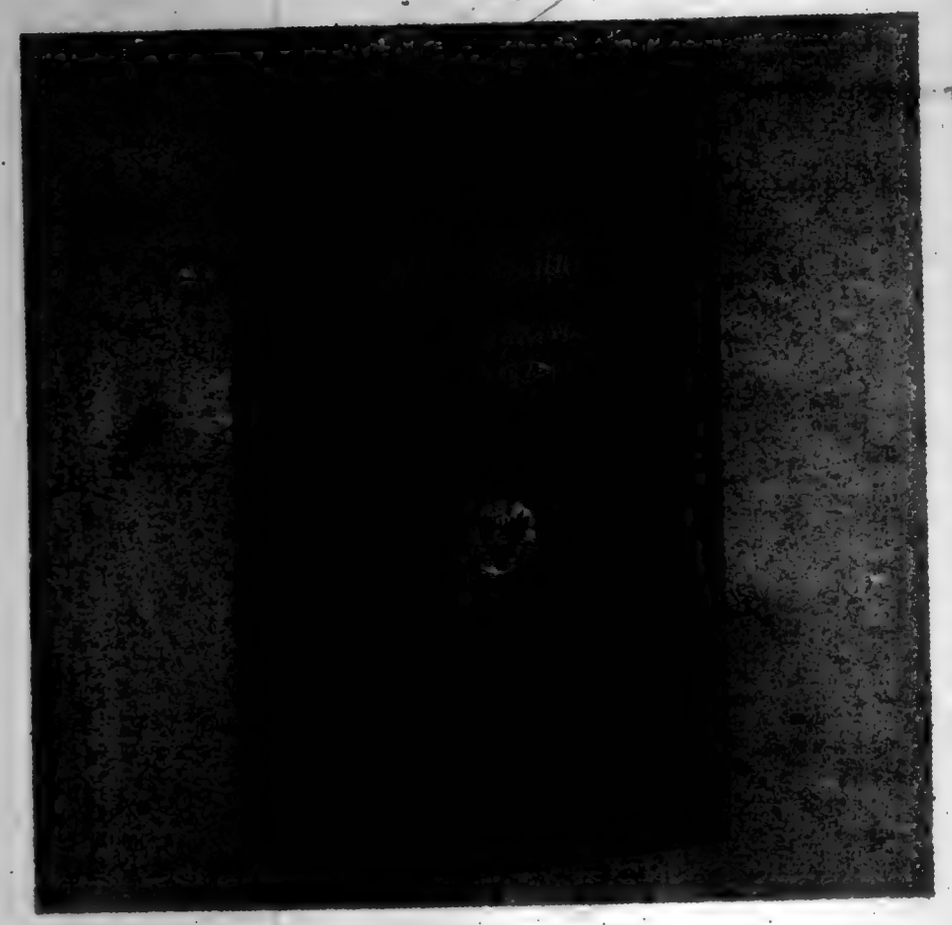

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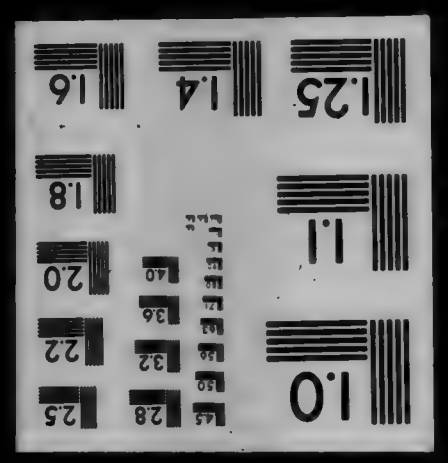
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Presidential Documents

Title 3—

The President

Proclamation 6283 of April 29, 1991

Law Day, U.S.A., 1991

By the President of the United States of America

A Proclamation

On this Law Day, held in the 200th year of our Bill of Rights, we give thanks for our Nation's enduring legacy of liberty under law. This legacy, ensured by our Constitution and Bill of Rights, has made the name "America" virtually synonymous with freedom.

Ratified and adopted as part of the Constitution in December 1791, the Bill of Rights signalled our Founders' determination to uphold their earlier declaration "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." No other document in the history of mankind has enumerated in a more fruitful manner the fundamental liberties to which all people are heirs.

James Madison once noted that the idea of a Bill of Rights was valuable because "political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free government." Indeed, the principles enshrined in our Bill of Rights have proved to be not only the guiding tenets of American government, but also a model for the world. Two hundred years after this great document was adopted by the Congress, we can behold its seminal role in the advancement of human rights around the world. The United Nations General Assembly affirmed the ideals enshrined in our Bill of Rights when it adopted the Universal Declaration of Human Rights in 1948. Those ideals were also affirmed in the 1975 Helsinki Final Act of the Conference on Security and Cooperation in Europe.

The ideals set forth in our Bill of Rights and echoed in each of these later documents have triumphed in nations that once bore the heavy yoke of totalitarianism. In emerging democracies around the world, courageous peoples are striving to bring the tender shoots of freedom into full bloom, and they continue to look to America as a guide. Today we know that our ancestors gave freedom not only a name but also a future when they adopted the Bill of Rights.

On this occasion we do well to honor all those Americans who labor and sacrifice to defend our Bill of Rights and the rule of law. Today we salute with special pride and appreciation our courageous military personnel. Yet, in addition to our Armed Forces, many other Americans work daily to uphold the rule of law; indeed, we owe great thanks to police officers, judges, attorneys, and all those who serve in our Nation's independent judiciary or who otherwise labor to defend our Constitution. Law Day celebrates the efforts of these individuals and reminds each of us of the importance of understanding our rights and meeting our responsibilities as citizens of a free Nation.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, in accordance with Public Law 87–20 of April 7, 1961, do hereby proclaim May 1, 1991, as Law Day, U.S.A. I urge all Americans to observe this day by reflecting upon our rights and our responsibilities under the Constitution. I ask that members of the legal profession, civic associations, and the media, as well as educators, librarians, and government officials, promote the observance of this day through appropriate programs and activities. I also call upon all public officials to display the flag of the United States on all government buildings on this day.

IN WITNESS WHEREOF, I have hereunto set my hand this 29 day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91–10680
Filed 4–29–91; 2:51 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 56, No. 84
Wednesday, May 1, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 733

Political Activity of Federal Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation on the political activity of the Federally employed residents of Frederick County, Maryland. The regulation grants these Federal employees a partial exemption from the political activity prohibitions of the Hatch Act, 5 U.S.C. 7324–7327.

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Jaime Ramon at (202) 606–1700 (FTS 266–1700).

SUPPLEMENTARY INFORMATION: The Hatch Act, at 5 U.S.C. 7324 *et seq.*, controls the political activity of Federal employees, employees of the United States Postal Service, and individuals employed by the District of Columbia. Section 7324 of 5 U.S.C. generally prohibits Federal employees from taking an active part in partisan political management and partisan political campaigns.

Section 7327 of 5 U.S.C., however, authorizes OPM to prescribe regulations permitting certain Federal employees to be politically active to the extent OPM considers it to be in their domestic interest. Under the authority of 5 U.S.C. 7327, OPM may allow Federal employees to participate in political campaigns involving the municipality or political subdivision in which they reside when two conditions relevant to the current request for exemption exist. One condition is met if the municipality or political subdivision is in Maryland or Virginia and is in the immediate vicinity of the District of Columbia. The second condition is met if OPM determines that, because of special or unusual circumstances, the domestic interest of the employees is served by permitting their political participation in accordance with regulations prescribed by OPM.

In regulations at 5 CFR 733.123(b), OPM has designated municipalities and political subdivisions in which Federal employees may participate in local partisan elections. At 5 CFR 733.124(c), OPM has established the following limitations on political participation by employees residing in these designated municipalities and subdivisions:

(1) Participation in politics shall be as an independent candidate or on behalf of, or in opposition to, an independent candidate.

(2) Candidacy for, and service in, a local elective office shall not result in neglect of, or interference with, the performance of the duties of the employee or create a conflict or apparent conflict of interest.

On November 21, 1990, OPM published a proposed regulation (55 FR 48625) to grant the Federally employed residents of Frederick County, Maryland, a partial exemption from the Hatch Act. The comment period, which was 60 days from the date of publication, ended on January 22, 1991. In addition, OPM published the notice of proposed rulemaking in the December 5, 1990, edition of The Mt. Airy Courier-Gazette, and the December 6, 1990, edition of The Frederick News Post.

One individual submitted oral comments, supplemented with written comments, and three individuals submitted written comments. The comments are discussed below.

One comment included the suggestion that partial exemptions are a recent phenomenon and contrary to the Hatch Act. The Act, at 5 U.S.C. 7327, specifically authorized the former United States Civil Service Commission, and currently authorizes OPM, to issue regulations providing for such exemptions. The Civil Service Commission granted the first partial exemption to the Federally employed residents of Arlington County, Virginia, on September 9, 1940. Since then, partial exemptions have been issued to the Federally employed residents of 44 localities in Maryland and 13 localities in Virginia.

Two of the comments included questions concerning the specific criteria required for a partial exemption to issue to Frederick County, and the special or unusual circumstances leading to OPM's proposal to issue an exemption. OPM already has discussed these matters in its proposal to grant a partial exemption to Frederick County. Another question concerned the proximity of Frederick County to Washington, DC. OPM has concluded that while Frederick County does not share a common boundary with the District of Columbia, it is within reasonable commuting distance of that city. Moreover, partial exemptions have been granted to other localities in Maryland and Virginia which do not share a common boundary with the District of Columbia, but are within reasonable commuting distance of that city.

One comment questioned whether any problems might result from a partial exemption if Frederick County became a charter home rule county. The Federally employed residents of Anne Arundel, Howard, Prince George's, and Montgomery Counties already have been granted a partial exemption from the Hatch Act. All of these counties are charter home rule counties. MD. ANN. CODE art. 25A section 1A (Notes) (1990); MD. ANN. CODE [Constitution] art. XI–A sections 1–7 (1981).

One comment included a question about preventing Federal employees from announcing their affiliation with a partisan political party after successfully running for public office as independent candidates. Such conduct could cast doubts on the employee's status as a *bona fide* independent candidate in running for reelection, and might lead to an investigation for alleged violation of the Hatch Act.

Two comments included concerns that allowing Federal employees to run for and hold local public office would result in conflicts of interest. OPM's political activity regulations, at 5 CFR 733.124 (c)(1), specify that candidacy for, and service in, elective office shall not create a conflict, or apparent conflict, of interests with an individual's Federal employment. In addition, Federal employees are subject to the regulations

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concerning employee responsibilities and conduct, at 5 CFR part 735. Federal employees who violate these regulations are subject to disciplinary proceedings.

One comment included the suggestion that the possibility for a conflict of interest would be greater in Frederick County because it includes several Federal installations within its borders. Other partially-exempt localities include Federal installations within their borders. Fairfax County, for example, includes Fort Belvoir. Montgomery County includes the National Naval Medical Center, National Institutes of Health, Uniformed Services University of the Health Sciences, and Food and Drug Administration.

Finally, two comments included concerns that Federal employees who participate in local election campaigns would coerce other Federal employees residing in Frederick County. The Hatch Act, at 5 U.S.C. 7324(a) (1), prohibits Federal employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election. Moreover, it is a prohibited personnel practice under 5 U.S.C. 2301(b)(3) for a Federal employee to coerce the political activity of, or take any action against, another Federal employee or applicant for Federal employment for their refusal to engage in political activity. Federal employees violating sections 7324(a)(1) or 2301(b)(3) many be subject to disciplinary proceedings.

After reviewing the comments submitted in response to its notice of proposed rulemaking, OPM has concluded that there is no reason to reconsider its proposal to grant a partial exemption from the Hatch Act to the Federally employed residents of Frederick County, Maryland. Therefore, OPM is amending 5 CFR 733.124(b) by adding Frederick County to the list of designated Maryland municipalities and political subdivisions in which Federal Government employees may participate in connection with independent candidates in local elections. The addition of Frederick County is listed after Forest Heights and before Garrett Park, Maryland.

A copy of this notice will be published in local newspapers serving Frederick County.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, because the change will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 733

Political activities (Government employees).

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 733 as follows:

PART 733—POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

1. The authority citation for part 733 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, 7301, 7321, 7322, 7323, 7324, 7325, and 7327; Reorganization Plan No. 2 of 1978, 3 CFR, 1978 Comp., P. 323; and E.O. 12107, 3 CFR, 1978 comp., p. 264.

2. Section 733.124(b) is amended by adding Frederick County, Maryland, alphabetically to the list of designated Maryland municipalities and political subdivisions as set forth below.

§ 733.124 Political management and political campaigning; exception of certain elections.

* * * * *

(b)

* * * * *

In Maryland

* * * * *

Frederick County

* * * * *

[FR Doc. 91-10278 Filed 4-30-91; 8:45 am]

BILLING CODE 6325-01-M

NUCLEAR REGULATORY COMMISSION

RIN 3150-AC12

10 CFR Part 34

Safety Requirements for Industrial Radiographic Equipment

CFR Correction

In title 10 of the Code of Federal Regulations, parts 0-50, revised as of January 1, 1991, the text of § 34.33(a), appearing on page 448 and 449 should be interchanged.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-ANE-25; Amdt. 39-6956]

Airworthiness Directives; General Electric Company (GE) CF6-45 and CF6-50 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to GE CF6-45 and CF6-50 series turbofan engines, which requires repetitive inspections of high pressure compressor (HPC) rear shafts, and also requires installation of a certain rear shaft flange bolt configuration. This amendment is prompted by the report of 35 HPC rear shafts found cracked in the bolt hole area. This condition, if not corrected, could result in HPC rear shaft fracture, inflight engine shutdown, and uncontained engine failure.

DATES: Effective June 17, 1991.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of June 17, 1991.

ADDRESSES: The applicable service information may be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 273-7085.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to include an airworthiness directive, applicable to GE CF6-45 and CF6-50 series turbofan engines, which requires repetitive fluorescent penetrant inspections of the HPC rear shaft, and installation of a certain HPC aft shaft flange bolt configuration, was published in the **Federal Register** on November 13, 1990 (55 FR 47339).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received. The commenter expressed no objection to the proposed rule.

After review of the available data, including the one comment received, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, except for minor changes to the compliance section. In particular, the repetitive inspection requirement for shafts equipped with hook bolts has been eliminated, as that configuration was never eligible for continued service use. Also, the tapered turn-around bolt installation requirement of paragraph (c) of the NPRM, has been incorporated into paragraph (a) of the final rule. Other minor changes were also made to the text for added clarity, including mandating the latest GE Service Bulletin 72-958, Revision 1, dated October 18, 1990.

There are approximately 2,158 CF6-45/-50 series turbofan engines of the affected design in the worldwide fleet. It is estimated that 517 engines will be affected by this AD, that it will take approximately 2 manhours per engine per inspection to accomplish the required actions, and that the average labor cost would be $40 per manhour. It is estimated that 625 required inspections will occur annually. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be approximately $50,000 annually.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423, 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric Company: Applies to General Electric Company (GE) CF6-45 and CF6-50 series turbofan engines installed on, but not limited to, McDonnell-Douglas DC-10, Boeing 747, and Airbus A300 aircraft.

Compliance is required as indicated, unless previously accomplished.

To prevent high pressure compressor (HPC) rear shaft failure, inflight engine shutdown, and uncontained engine failure, accomplish the following:

(a) Fluorescent penetrant inspect HPC rear shafts, Part Numbers (P/N) 9127M58P03, 9079M63P12, 9079M63P15, 9079M63P16, 9079M63P17, 9079M63P18, and 9079M63P19, in accordance with the Accomplishment Instructions of GE Service Bulletin (SB) 72-958, Revision 1, dated October 13, 1990, as follows:

(1) For HPC rear shafts currently installed with hook bolts, P/N 9012M99G10, 9114M95G07, and 9114M95G10, inspect in accordance with the following schedule:

(i) For shafts which have not been previously inspected and have 10,000 cycles since new (CSN) or greater on the effective date of this AD, inspect within the next 1,500 cycles in service (CIS) after the effective date of this AD.

(ii) For shafts which have not been previously inspected and have less than 10,000 CSN on the effective date of this AD, inspect within the next 2,500 CIS from the effective date of this AD, or before accumulating 7,500 CSN, whichever occurs later. However, no shaft may exceed 11,500 CSN prior to inspection.

(iii) For shafts that have been previously inspected and have 3,000 cycles since late inspection (CSLI) or less on the effective date of this AD, reinspect within 4,500 CSLI, or before accumulating 7,500 CSN, whichever occurs later.

(iv) For shafts that have been previously inspected and have greater than 3,000 CSLI on the effective date of this AD, reinspect within the next 1,500 CIS from the effective date of this AD, or before accumulating 7,500 CSN, whichever occurs later.

(v) Remove from service, HPC rear shaft hook bolts identified in (a)(1) of this AD, after any inspection performed in accordance with paragraph (a)(1) of this AD, and replace with new tapered turn-around bolts, P/N 1375M69P01.

(2) For HPC rear shafts installed with turn-around bolts, P/N 9249M54P01, or tapered turn-around bolts, P/N 1375M69P01, inspect in accordance with the following schedule:

(i) For shafts which have not been previously inspected and have 6,500 CSN or greater on the effective date of this AD, inspect within the next 2,500 CIS after the effective date of this AD.

(ii) For shafts which have not been previously inspected and have less than 6,500 CSN on the effective date of this AD, inspect prior to accumulating 9,000 CSN.

(iii) For shafts that have been previously inspected and have 3,500 CSLI or less on the effective date of this AD, reinspect within 6,000 CSLI, or before accumulating 9,000 CSN, whichever occurs later.

(iv) For shafts that have been previously inspected and have greater than 3,500 CSLI on the effective date of this AD, reinspect within the next 2,500 CIS from the effective date of this AD, or before accumulating 9,000 CSN, whichever occurs later.

(v) Remove from service, HPC rear shaft turn-around bolts identified in paragraph (a)(2) of this AD, after any inspection performed in accordance with paragraph (a)(2) of this AD, and replace with new tapered turn-around bolts, P/N 1375M69P01.

Note: Information concerning the tapered turn-around bolt noted in paragraph (a) of this AD can be found in GE SB 72-877.

(b) Remove from service, prior to further flight, any shafts found cracked at inspection.

(c) Thereafter, for shafts which have been inspected in accordance with paragraph (a) of this AD, reinspect in accordance with the Accomplishment Instruction of GE SB 72-958, Revision 1, dated October 18, 1990, at intervals not to exceed 6,000 CSLI.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

The initial and repetitive inspection program shall be done in accordance with the following GE document:

Document	Page	Revision	Date
GE SB 72-958.	3,4,5,6	Original	Aug. 15, 1990.
	1,2	Rev. 1	Oct. 18, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. Copies may be

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inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, room 311, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment becomes effective June 17, 1991.

Issued in Burlington, Massachusetts, on March 18, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-10246 Filed 4-30-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-CE-43-AD; Amendment 39-6969]

Airworthiness Directives; O_2 Corporation (Frank McGowan Company) Oxygen Mask Presentation Units

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain O_2 Corporation oxygen mask presentation units. This action requires the inspection of the lanyard pins on these units and the replacement of any faulty deployment lanyard pins. One incident has occurred where an inoperative oxygen supply system occurred because a lanyard pin could not be readily pulled. The actions specified by this AD are intended to prevent a malfunction that could result in an inoperative passenger oxygen system and possible serious physical impairment of passengers during an emergency situation.

EFFECTIVE DATE: June 3, 1991.

ADDRESSES: Replacement parts that might be needed to complete the actions of this AD may be obtained from Mr. Burt Parry, O_2 Corporation, 3522 N. Comotara, Wichita, Kansas 67226; Telephone (316) 634-1240; Facsimile (316) 634-1061. Information that is applicable to this AD may be obtained from the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Roger A. Souter, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain O_2 Corporation oxygen mask presentation units was published in the Federal Register on January 9, 1991 (56 FR 611). The action proposed the inspection of the lanyard pins on these units and the replacement of any faulty deployment lanyard pins.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to two comments received. One commenter recommended that the FAA should require: (1) An inspection of oxygen masks in the field for stress fracture, damage, etc. at the point of the Scott part number (P/N) 289-632 clip attachment to the mask; (2) reidentification of the mask if the mask hose has been modified; (3) changing the means of attaching the lanyard cord to the mask by the use of a P/N 289-649 ring. The FAA is taking AD action on a report of a malfunctioning lanyard pin. The FAA has not received reports of incidents that describe the situations that the commenter is referring to. If the FAA were to receive such reports, further rulemaking in this area could take place at a future date. The other commenter commended the FAA on its action and recommended that it continue to review the situation. No comments were received on the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 200 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1.5 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts are available from the manufacturer at no cost to the airplane owner or operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $16,500.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

O_2 Corporation (Frank McGowan Co.): Amendment 39-6969. Docket No. 90-CE-43-AD.

Applicability: The following Mask Presentation Unit Part Numbers that are installed on, but not limited to, British Aerospace 125-800A airplanes; Challenger CL600-1A11, CL600-2B16, and CL600-2A12 airplanes; Gulfstream G-1159, G-1159A, G-1159B, and G-IV airplanes; and Falcon 20 airplanes, certificated in any category:

121-040-04	150-004-03	151-020
150-002	150-004-04	151-020-02
150-002-01	150-004-05	151-020-04
150-002-02	150-004-06	152-001
150-002-03	150-004-07	152-001-01
150-002-04	150-004-08	152-001-04
150-002-05	150-004-12	152-001-05
150-002-08	150-005	152-001-08
150-003T	150-006	152-001-13
150-003-04T	150-022	152-003
150-004	151-010	152-004
150-004-01	151-010-02	152-004-05
150-004-02	151-010-04	

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent malfunctioning of the lanyard release pin that could prevent the flow of oxygen to a passenger in an emergency situation, accomplish the following:

(a) With the oxygen system activated, perform a test of the lanyard release pins by accomplishing the following:

(1) Open the passenger mask presentation units of the airplane and allow the mask assemblies to drop out.

(2) Make up a 7.5 pound weight with an attached string and hook (e.g., spring, clip, etc.).

(3) Attach the hook to the lanyard attaching point of each actuator pin without dropping the weight and allow the weight to hang from the lanyard attaching point.

(b) If the pin pulls free from the oxygen actuator valve at 7.5 pounds or less of hanging weight, then the pin is satisfactory and the unit may be returned to service.

(c) If the pin does not pull free from the oxygen actuator valve using the test required by paragraph (a) of this AD, prior to further flight accomplish the following:

(1) Replace the pin with either part number 100-111-2 or 100-111-3, which has a 20-degree angle and a rounded nose.

Note 1: The pin is available from the manufacturer by contacting Mr. Burt Parry, O_2 Corporation, 3522 N. Comotara, Wichita, Kansas 67226; Telephone (316) 634-1240; Facsimile (316) 634-1061.

(2) Test the replacement pin installation in accordance with the test requirements of paragraph (a) of this AD to assure that the lanyard pin can be removed with a pull of 7.5 pounds or less. If the pin pulls free from the oxygen actuator valve at 7.5 pounds or less of hanging weight, then the pin is satisfactory and the unit may be returned to service.

(d) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; Telephone (316) 946-4419. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of any information that is applicable to this AD from the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-43-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Replacement parts that might be needed to complete the actions of this AD may be obtained from Mr. Burt Parry, O_2 Corporation, 3522 N. Comotara, Wichita, Kansas 67226; Telephone (316) 634-1240; Facsimile (316) 634-1061.

This amendment becomes effective on June 3, 1991.

Issued in Kansas City, Missouri, on April 19, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10247 Filed 4-30-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ANE-10; Amendment 39-6981]

Airworthiness Directives; Textron Lycoming Model TIO-540-AE2A Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Textron Lycoming Model TIO-540-AE2A reciprocating engines, which requires replacement of exhaust transition flange bolts with longer through-bolts which incorporate lock nuts. This amendment is prompted by an aircraft accident caused by engine power loss resulting from exhaust transition flange bolt loss and flange separation. This condition, if not corrected, could result in engine power loss, engine fire, and possible loss of the aircraft.

EFFECTIVE DATE: May 21, 1991.

ADDRESSES: The applicable service information may be obtained from Textron Lycoming/Subsidiary of Textron Inc., 652 Oliver Street, Williamsport, Pennsylvania 17701. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Nick Minniti or Pat Perrotta, Propulsion Branch, ANE-174, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: The FAA has determined that four engine power loss incidents have occurred which involved separation of the exhaust transition flange because of loose or missing bolts. One incident resulted in a crash landing, loss of aircraft and injuries.

Since this situation is likely to exist or develop on other engines of the same type design, this AD requires replacement of the exhaust transition bolts with longer through-bolts which incorporate lock nuts.

Since this condition can result in engine power loss and possible damage to the aircraft, there is a need to minimize the exposure of these engines to exhaust transition flange bolt loss and flange separation. In addition, based on the above, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Textron Lycoming: Applies to Textron Lycoming Model TIO-540-AE2A engines, with serial numbers up to but not including L8782-61A, except L8157-61A, installed in Piper Malibu Mirage aircraft.

Compliance is required as indicated, unless previously accomplished.

To prevent engine power loss, engine fire, and possible loss of aircraft, accomplish the following:

(a) Remove and replace exhaust transition flange bolts, within the next 10 hours in service, after the effective date of this AD, in accordance with the following procedures:

(1) Apply penetrating oil to existing exhaust transition flange bolts and remove the two bolts.

(2) Install the following hardware in place of the removed bolts:

Lycoming Part No.	Description	Quantity
LW-31368-1.19	Bolt	2
77611	Gasket	1
STD-2049	Nut	2

(3) Torque the bolts to 17 ft.-lbs. (Do not use lockwashers on the bolts.) It may be necessary to start the lock nut prior to torquing.

(4) Install the locknuts on the protruding threads of the bolts, and insure that the bolts do not loosen during installation.

(5) Recheck torque on bolt heads to ensure proper torque is retained (17 ft.-lbs.).

Note: Further information can be obtained from Textron Lycoming Service Bulletin No. 491A, dated February 21, 1980.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, New York Aircraft Certification Office, ANE-170, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Textron Lycoming/Subsidiary of Textron Inc., Williamsport, Pennsylvania 17701. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

This amendment becomes effective May 21, 1991.

Issued in Burlington, Massachusetts, on April 10, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-10248 Filed 4-30-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 90-AGL-16]

Establishment of R-3403C and Alteration of R-3403A Jefferson Proving Ground, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area R-3403C Jefferson Proving Ground, IN, to provide for the safety of aviation activity in the vicinity of essential Department of Defense weapons system testing. The new restricted area is a small area, approximately 4 nautical miles square, extending from the surface to 3,000 feet mean sea level (MSL), with a time of designation of "Continuous." R-3403C is located entirely within an existing Jefferson Proving Ground restricted area, R-3403A, which extends from the surface to 43,000 feet MSL, and has a time of designation of 0630 to 2400 local time daily. R-3403C will be utilized to contain testing of the Family of Scatterable Mines (FASCAM). The testing of these mines requires a "continuous" time of designation since malfunctions may result in an unpredictable number of intermittent detonations during the period 0001 to 0630 hours when the existing R-3403A is not active.

EFFECTIVE DATE: 0901 UTC, May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Rob Bellamy, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9328.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) is to establish a small subdivision within the existing Jefferson Proving Ground restricted airspace to protect air traffic from possible hazards from exploding mines. A small portion of the existing R-3403A is utilized to conduct FASCAM testing. Once placed in the test site field, the mines normally detonate within a programmed period. When the items function as designed, the detonations occur within a short period of time. However, if malfunctions occur, an unpredictable number of intermittent detonations can be expected at any time, possibly during the period from midnight to 0630 in the morning. Mines that do not function will be treated as dud munitions. As such, they must remain on the field for a period of 24 hours beyond the preset self-destruct time and then be destroyed by U.S. Army demolition specialists. Functioning of the mines is unpredictable; therefore, a continuous restricted area is necessary to ensure aviation safety. The Department of Defense has stated that this testing is essential for immediate production acceptance purposes. The location of R-3403C within an existing restricted area, combined with its small lateral size and low vertical limits, results in minimal, if any, impact on the flow of air traffic in the area. Although the probability of detonations actually occurring during the period midnight to 0630 is low, the possibility exists; therefore, this action is necessary to enhance aviation safety. In addition, the description of R-3403A is amended to exclude the airspace within R-3403C when activated. Section 73.34 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

Under the circumstances presented, the FAA concludes that there is a need for a regulation to establish R-3403C and to amend R-3403A Jefferson Proving Ground, IN. I find that notice and public procedure under 5 U.S.C. 553(b) are contrary to the public interest because this action merely subdivides an area already designed as restricted airspace in order to enhance aviation safety.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The Department of the Army has assessed the environmental effects of the Mine Test Facilities at Jefferson Proving Ground. It was determined that these activities would result in no environmental impact. This action does not increase the amount of existing special use airspace.

Restricted Area R-3403C is established as a further subdivision entirely within existing restricted area and is of such small lateral and vertical dimensions that it will impose minimal if any impact on nonparticipating aircraft. Because of these factors, no action is required by the FAA to regulate the flow of nonparticipating aircraft outside R-3403C. On the basis of the Army's Environmental Impact Assessment, and the Army's Record of Environmental Consideration, the FAA finds that the establishment of R-3403C will result in no significant impact on the environment.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.34 [Amended]

2. Section 73.34 is amended as follows:

R-3403A Jefferson Proving Ground, IN [Revised]

Boundaries. Beginning at lat. 39°02'57" N., long. 85°27'42" W.; to lat. 39°02'00" N., long. 85°22'00" W.; to lat. 38°56'06" N., long. 85°22'00" W.; to lat. 38°50'35" N., long. 85°22'50" W.; to lat. 38°50'00" N., long. 85°24'00" W.; to lat. 38°50'00" N., long. 85°27'42" W.; to the point of beginning excluding that airspace designated as R-3403C, when activated.

R-3403C Jefferson Proving Ground, IN [New]

Boundaries. Beginning at lat. 38°55'13" N., long. 85°23'26" W.; to lat. 38°55'13" N., long. 85°22'11" W.; to lat. 38°53'54" N., long. 85°22'23" W.; to lat. 38°53'54" N., long. 85°23'43" W.; to the point of beginning.

Designated altitudes. Surface to 3,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Indianapolis ARTCC.

Using agency. U.S. Army, Commanding Officer, Jefferson Proving Ground, Madison, IN.

Issued in Washington, DC, on April 19, 1991.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-10249 Filed 4-30-91; 8:45 a.m.]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 241, 251 and 271

[Release Nos. 34-29131; 35-25303; IC-18114]

Ownership Reports and Trading by Officers, Directors and Principal Security Holders

AGENCY: Securities and Exchange Commission.

ACTION: Interpretations and technical amendments.

SUMMARY: The Commission today is announcing the publication of a release that sets forth the Commission's interpretive views regarding shareholder approval for amendments to employee benefit plans intended to comply with rule 16b-3 under section 16 of the Securities Exchange Act of 1934. The Commission also is adopting technical amendments necessary to correct the newly adopted rules under section 16.

EFFECTIVE DATE: The interpretations are effective April 26, 1991. The technical amendments are effective May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mark W. Green or Brian J. Lane, Division of Corporation Finance, 450 Fifth Street NW., Washington, DC 20549, (202) 272-2573.

SUPPLEMENTARY INFORMATION: The Commission recently adopted comprehensive revisions [1] to the rules under section 16 [2] of the Securities Exchange Act of 1934 (the "Exchange Act").[3] Largely in recognition of shareholders' interest in the level of compensation, the Commission decided to retain the shareholder approval requirement of former rule 16b-3,[4] the exemptive rule for employee benefit plan transactions by insiders.[5] The interpretive portion of this release, initiated at the Commission's request, is intended to provide guidance to companies in complying with rule 16b-3's plan amendment shareholder approval requirement. The release also includes technical non-substantive corrections to the rules.

Footnotes at end of document.

I. Shareholder Approval Requirements

Rule 16b-3 requires as a condition to exemption that plans and material plan amendments be approved by shareholders.[6] Consistent with the former rules, new rule 16b-3's shareholder approval requirement does not apply to two types of plans, both established as trusts. First, plans in trust form are excluded where less than 20 percent of the total market value of securities held by the trust are employer securities held by insiders.[7] Second, pension and retirement plans in trust form are excluded when they have broad-based employee participation.[8]

In this connection, questions have arisen with respect to the effect of plan withdrawal provisions on a plan's status as a pension or retirement plan. Recognizing the types of withdrawals authorized, the types of withdrawals penalized and the nature of the penalties imposed by the Internal Revenue Code (the "Code") on plans qualified under section 401(k) of the Code,[9] such plans will be considered pension or retirement plans under former rule 16a-8(g)(3) and new rule 16b-3(b)(3)(ii).[10]

II. Interpretation of Plan Amendment Shareholder Approval Requirements

Rule 16b-3 requires shareholder approval of plan amendments in three circumstances. Specifically, "any amendment to the plan shall be . . . approved (by shareholders) if the amendment would: (A) materially increase the benefits accruing to participants under the plan; (B) materially increase the number of securities which may be issued under the plan;[11] or (C) materially modify the requirements as to eligibility for participation in the plan." [12]

Whether an amendment requires shareholder approval depends first, on whether the amendment affects insiders, and second, if it affects insiders, on whether the amendment is "material" as discussed below. A plan amendment requires shareholder approval only where it materially increases the number of securities issuable to insiders, modifies eligibility requirements to add a class of insiders, or increases benefits to insiders.[13]

An objective analysis is appropriate with respect to whether an amendment materially increases the number of shares issuable under a plan. But with respect to whether a plan amendment materially modifies eligibility or increases benefits by, for example, adding a new class of insiders or type of award or grant, a qualitative analysis is

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appropriate. The qualitative analysis should be applied in light of both the plan provisions previously presented to shareholders for their approval and the amendment's purposes and effects.

A. Increase Securities Issuable

Amendments increasing the number of securities issuable to insiders under the plan by more than ten percent are material.[16] The ten percent test is based on the amount of securities issuable under the plan as last expressly approved by shareholders.[16] Increases to reflect stock splits and stock dividends are not included in the ten percent calculation.

B. Modify Eligibility

An amendment that adds a class of insiders is a material amendment regardless of the number in the class added, unless the amendment is needed to comport with changes in the Code, the Employee Retirement Income Security Act of 1974 ("ERISA"),[16] their rules or other laws.[17] For example, where a plan is amended to add outside directors as a new class of insider participants, shareholder approval is required.[18] A new class of insiders also would be added as a consequence of a plan amendment decreasing a plan's minimum length of service eligibility requirement.[19] On the other hand, where the plan is amended to reflect an increase in the number of insiders in a class previously eligible to participate, due to, for example, an acquisition of another company, the amendment does not modify eligibility requirements materially.

C. Increase Benefits

Numerous questions have arisen about whether particular types of plan amendments are deemed to increase benefits materially. When a plan sponsor determines that a plan amendment is necessary or desirable to authorize additional benefits, whether the amendment requires shareholder approval will depend on the nature of the benefits authorized by the amendment and on how comparable they are to those benefits previously authorized by shareholders under the plan.[20] The Commission recognizes that, although the determination of whether a plan amendment requires shareholder approval is therefore usually dependent on the pre-existing terms of the plan, the Commission's concern for shareholders' interest in the level of compensation obliges it to seek to expedite future requests for staff advice as to the applicability of the shareholder approval requirement to proposed plan amendments. The following interpretations address some of the more common shareholder approval questions. The Commission has requested the Division to monitor future interpretive letters with the objective of publishing further interpretive releases on this subject, as appropriate.

In some instances the Division has found that amendments to plans authorize benefits so comparable to those previously authorized under the plan that shareholder approval is not required.[21] For example, shareholder approval was not required where a plan amendment permitted an insider to use previously acquired shares, or to have shares withheld, to satisfy an option exercise payment when the plan previously authorized SARs.[22] Similarly, an amendment to a plan that previously had authorized SARs to permit the employer to make plan-related non-market rate loans to insiders to help them exercise options did not require shareholder approval.[23] These amendments will continue to be viewed as not requiring shareholder approval.

In contrast, there are instances where amendments to plans authorize benefits so unlike those previously authorized under the plan that shareholder approval is required. For example, if a plan amendment is necessary to allow the grant of appreciation rights that are exercisable upon or following certain events, and/or that provide a benefit measured in a manner different from what the plan otherwise permits,[24] shareholder approval of such an amendment will be required.[25] Similarly, an amendment to permit issuance of reload options generally requires shareholder approval notwithstanding other provisions of the plan that authorize SARs or permit insiders to use previously acquired shares or have shares withheld to pay for option exercise.[26] The reload option permits the insider optionee to receive not only the original option spread, but the spread on follow-up grants as well—the aggregate amount of which may approach or exceed the original spread.

As has been the case traditionally, the following amendments also are viewed as not increasing benefits materially and therefore do not require shareholder approval. First, a plan amendment adjusting option terms to reflect a restructuring transaction, such as a holding company formation, stock split or dividend, extraordinary dividend, spin-off or issuance of repurchase rights, does not require shareholder approval where the plan includes an anti-dilution provision.[27] Second, an amendment allowing insider participants to elect to have shares withheld, or to deliver previously owned shares, to satisfy federal (including FICA), state and local tax withholding requirements or liability, up to the amount calculated by applying the insider's maximum marginal rate, arising from (1) the exercise for securities of an option, warrant or similar right related to any shares withheld; or (2) the receipt or vesting of shares or similar securities related to any shares withheld, does not require shareholder approval.[28] Third, plan amendments needed to comport with changes in the Code, ERISA, their rules [29] or other laws do not require shareholder approval.[30] Fourth, shareholder approval is not required for an amendment to permit insider participants to defer and/or direct installment payment of distributions.[31] Finally, a plan amendment to pay benefits to a greater extent in stock and to a lesser extent in cash than previously provided does not require shareholder approval.[32]

Questions also arise as to plan amendments that convert discretionary company contributions to mandatory contributions. Such an amendment does not provide benefits comparable to those under previously authorized provisions approved by shareholders and requires shareholder approval.[33]

Finally, former rule 16b-3 addressed "any amendment to the plan" but also had been applied to amendments affecting outstanding awards, grants or securities. Henceforth, in such cases the determination will turn on whether the amended terms of the outstanding awards, grants or securities would be permitted for new issuances under the plan and whether the plan itself satisfies the shareholder approval requirement. Where an amendment affects outstanding awards, grants or securities, if the amended terms are consistent with the plan and the plan satisfies the shareholder approval requirement, the amendment does not require separate shareholder approval.[34] In essence the change is viewed and analyzed simply as a new grant or award under the plan.[35] Thus, for example, if a stock option originally was awarded with a vesting period of four years, and one year after grant an amendment reduced the vesting period to two years from the original grant, the amendment would be considered a new grant of an option with a one year vesting period. If, at the time of the amendment, the plan permitted the issuance of options with a one year vesting period, the amendment would not require shareholder approval. Likewise, if a plan was amended to permit payment in cash, in whole or in part, of an outstanding award, originally required to be paid in securities, the amendment would not require shareholder approval if the insider could be given a similar type of new award payable in cash.[36]

III. Other Matters

The Commission solicited comment in the Adopting Release concerning "exit boxes" that were included on the final forms 4 and forms 5. The comment period expired March 31, 1991 without any comment being received. As such, the Commission has elected to retain the exit boxes on the forms, as set forth in the Adopting Release.

IV. Technical Amendments to the Final Rules

The Commission is issuing technical amendments to the following rules in part 240: Rule 16a-1(a)(2)(ii); rule 16a-1(c)(3); rule 16a-1(f); rule 16a-4 (b) and (c); rule 16a-8(b); rule 16b-3(c)(2)(i); rule 16b-3(e); and rule 16b-3(g). The technical amendments are intended to correct and clarify these rules by making the changes listed below.

List of Subjects in 17 CFR Parts 240, 241, 251, and 271

Reporting, Recordkeeping requirements, and Securities.

In accordance with the foregoing, title 17 chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a-29, 80a-37, unless otherwise noted.

2. In § 240.16a-1, paragraph (a)(2)(ii)(A) is amended by adding a proviso and cross-reference after the semi-colon, paragraphs (c)(3)(i), (c)(3)(ii), and the first sentence of paragraph (f) are revised as follows:

§ 240.16a-1 Definition of Terms.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(A) * * * provided, however, that the presumption of such beneficial ownership may be rebutted; *see* also § 240.16a-1(a)(4);

* * * * *

(c) * * *

(3) * * *

(i) are awarded pursuant to an employee benefit plan satisfying the provisions of § 240.16b-3 (a)(1), (a)(2) and (c)(2); or

(ii) may be redeemed or exercised only upon a fixed date or dates at least six months after award, or incident to death, retirement, disability or termination of employment;

* * * * *

(f) The term "officer" shall mean an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. * * *

* * * * *

3. By revising the introductory text to paragraph (b) and the introductory text of paragraph (c) of § 240.16a-4 to read as follows:

§ 240.16a-4 Derivative securities.

* * * * *

(b) The exercise or conversion of a call equivalent position, if exempt from section 16(b) of the Act, shall be reported no later than the next Form 4 otherwise required or the Form 5 filed with respect to the fiscal year in which the transaction occurred, whichever is earlier, and all exercises and conversions, whether exempt or not, shall be treated for reporting purposes as:

* * * * *

(c) The exercise or conversion of a put equivalent position, if exempt from section 16(b) of the Act, shall be reported no later than the next Form 4 otherwise required or the Form 5 filed with respect to the fiscal year in which the transaction occurred, whichever is earlier, and all exercises and conversions, whether exempt or not, shall be treated for reporting purposes as:

* * * * *

4. By revising the introductory text of paragraph (b) of § 240.16a-8 as follows:

§ 240.16a-8 Trusts.

* * * * *

(b) *Trust Holdings and Transactions.* Holdings and transactions in the issuer's securities held by a trust shall be reported by the trustee on behalf of the trust, if the trust is subject to section 16 of the Act, except as provided below. Holdings and transactions in the issuer's securities held by a trust (whether or not subject to section 16 of the Act) may be reportable by other parties as follows:

* * * * *

5. In § 240.16b-3, by revising paragraph (c)(2)(i) and the introductory text of paragraph (e) and paragraph (g) as follows (the note following paragraph (g) is not affected):

§ 240.16b-3 Employee benefit plan transactions.

* * * * *

(c) * * *

(2) * * *

(i) *Disinterested Administration.* The grant or award is made pursuant to an employee benefit plan in which the selection of officers and directors for participation and decisions concerning the timing, pricing, and amount of a grant or award, if not determined under a formula meeting the conditions in paragraph (c)(2)(ii) of this section, are made solely by the board of directors, if each member is a disinterested person, or a committee of two or more directors, each of whom is a disinterested person, *i.e.*, a director who is not, during the one year prior to service as an administrator of a plan, or during such service, granted or awarded equity securities pursuant to the plan or any other plan of the issuer or any of its affiliates, except that:

* * * * *

(e) *Cash Settlements of Stock Appreciation Rights and Tax Withholding.* A transaction involving the exercise and cancellation of a stock appreciation right (whether or not the transaction also involves the related surrender and cancellation of a stock option), and the receipt of cash in complete or partial settlement of that right, or the cash settlement of an equity security to satisfy the tax withholding consequences of either the receipt or vesting of the equity security or the exercise of a derivative security related to the equity security, which shall be deemed a stock appreciation right, shall be exempt from section 16(b) of the Act if the plan satisfies the conditions of paragraph (a) and paragraph (b) of this § 240.16b-3, if applicable, and the following conditions are met:

* * * * *

(g) *Distributions of Plan Securities.* A distribution to a participant of securities that have been held pursuant to a plan for the benefit of that participant shall be exempt from section 16(b) of the Act if the plan satisfies the conditions of paragraph (a) and paragraph (b), if applicable, and the acquisition of the securities under the plan satisfied the conditions of either paragraph (c) or (d) of this § 240.16b-3.

* * * * *

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PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

PART 251—INTERPRETIVE RELEASES RELATING TO THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 AND GENERAL RULES AND REGULATIONS THEREUNDER

PART 271—INTERPRETIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Parts 241, 251 and 271 of title 17, chapter II of the Code of Federal Regulations are amended by adding each of the following Release Nos. and the release date of April 28, 1991, to the list of interpretive releases in each part: 34–29131, 35–25303, 1C–16114.

By the Commission.

Dated: April 28, 1991

Margaret H. McFarland,

Deputy Secretary.

FOOTNOTES

[1] Release No. 34–28869 (February 8, 1991) [56 FR 7242] (the "Adopting Release").

[2] 15 U.S.C. 78p (1988).

[3] 15 U.S.C. 78a *et seq.* (1988).

[4] 17 CFR 240.16b–3. References in this release to "Rule 16b–3" include both former and newly adopted ("new") Rule 16b–3 unless otherwise specified.

[5] An "insider" is: (1) pursuant to Section 16(a) of the Exchange Act, an officer or director of an issuer with a class of equity securities registered under Section 12 of the Exchange Act [15 U.S.C. 78*l* (1988)] or a holder of over ten percent of any such class; (2) pursuant to Section 30(f) of the Investment Company Act [15 U.S.C. 80a–29(f) (1988)], an officer, director, member of an advisory board, investment adviser or affiliated person of an investment adviser of a registered closed end investment company or a holder of over ten percent of a class of securities (other than short-term paper) issued by such a company; or (3) pursuant to section 17(a) of the Public Utility Holding Company Act of 1935 [15 U.S.C. 79q(a) (1988)], an officer or director of a registered public utility holding company.

Under the new rules, the term "officer" includes an issuer's president, principal financial officer, principal accounting officer (or controller where there is no principal accounting officer), vice presidents in charge of a principal business unit or function and any other person, whether employed by the issuer or its parent or subsidiary, who performs similar policy-making functions for the issuer. *See* new Rule 16a–1(f), section IV, *infra.*

[6] Issuers also may be required to seek shareholder approval for their benefit plans pursuant to state law or the rules of self-regulatory organizations. *See, e.g.,* N.Y. Bus. Corp. Law Section 505(d); NYSE Company Manual Section 312.03(a).

[7] *See* new rule 16b–3(b)(3)(i). These plans have been exempt under former Rule 16a–8(b) [17 CFR 240.16a–8(b)]. The phrase used in that rule, "consists of equity securities with respect to which reports would otherwise be required," has been replaced with "consists of equity securities held by persons subject to section 16(a) of the Act," which comports with the manner in which the former Rule has been interpreted.

[8] *See* new rule 16b–3(b)(3)(ii). These plans have been exempt under former Rule 16a–8(g)(3) [17 CFR 240.16a–8(g)(3)]. The phrase used in that Rule, "whose employees generally are the beneficiaries of the plan," has been replaced with "providing for broad-based employee participation," which comports with the manner in which the former rule has been interpreted and is essentially the same phrase used in new Rule 16b–3(d)(2)(i)(A). A plan satisfying the conditions of Section 410(b) of the Internal Revenue Code [26 U.S.C. 410(b) (1988)] satisfies the requirement for broad-based employee participation.

[9] 26 U.S.C. 401(k) (1988). Section 72(t) of the Code [26 U.S.C. 72(t) (1988)] generally imposes a ten percent tax on pre-age 59-½ withdrawals. Section 72(t) generally does not impose the tax on pre-age 59 ½ withdrawals in connection with (1) death; (2) disability; (3) an annuity; (4) post-age 55 separation from service; (5) dividends; (6) medical expenses; and (7) qualified domestic relations orders.

[10] This position modifies the position expressed in Release No. 34–16114 (Sept. 24, 1981) [46 FR 46147] (the "1981 Q&A Release") at question and answer ("Q&A") 70 and certain letters issued by the Division of Corporation Finance (the "Division"). Q&A 70 stated that for a plan to be regarded as a pension or retirement plan under former rule 16a–8(g)(3), significant penalties had to accompany early plan withdrawals and cited as examples penalties other than those imposed by the current Code. Letters reflecting the position prior to modification include, for example, *Gainsco, Inc.* (March 19, 1991) (the staff's position granted largely in reliance on the plan's providing a one year participation suspension for any insider making an early plan withdrawal).

[11] Former rule 16b–3(c) and new Rule 16b–3(a)(1) require that plans limit the number of securities issuable by requiring them to specify the amount of securities to be awarded or the method by which the amount is to be determined. *See Thompson, Hine and Flory* (March 29, 1991).

[12] Former rule 16b–3(a) and new Rule 16b–3(b).

[13] To the extent that the 1981 Q&A release and Division letters suggest that insiders are not the sole focus of inquiry in determining whether shareholder approval is necessary, that position is modified.

[14] For purposes of determining the number of shares issued under a plan, the gross rather than net number of shares actually issued must be used. Therefore, shares tendered back by participants could not be added back in determining the number of shares available for issuance under the plan. *See, e.g., Anheuser-Busch Companies, Inc.* (Dec. 20, 1990). Shares underlying expired or cancelled and unexercised options or other derivative securities, however, could be added back.

[15] Historically, shareholder approval has not been required for an amendment extending a plan expiration date if the number of shares issuable is not increased as a result. *See, e.g., South Carolina National Corporation* (Jan. 8, 1991). The Commission intends to continue following this position.

[16] 29 U.S.C. 1001 *et seq.* (1988).

[17] *See, e.g., NCNB Corporation and Designated Subsidiaries Stock/Thrift Plan and Trust* (March 2, 1989) (amendment to decrease two-year eligibility requirement for participation to one-year does not require shareholder approval where decrease required to comport with a change in the Code). Similarly, an amendment needed to comport with the law that increases benefits does not require shareholder approval. *See* Section II.C, *infra.*

[18] Prior letters to the contrary may not be relied on with respect to plan amendments effected after publication of this release. *See, e.g., Transamerica Corporation* (March 30, 1990) (amendment to add a class of 13 non-employee directors did not require shareholder approval).

[19] Q&A 100(d) stated that an amendment waiving a two-year eligibility requirement for participation that significantly increases the number of participants, including insiders, was required to be approved by shareholders. To the extent that Q&A 100(d) suggests that the number of insiders added is significant, this position no longer may be relied upon with respect to plan amendments effected after publication of this release. As to prior letters that no longer may be relied upon with respect to plan amendments effected after publication of this release, *see, e.g., X/L Datacomp, Inc.* (March 2, 1987) (amendment to delete five-month eligibility requirement for participation did not require shareholder approval).

[20] Statements throughout this section on increases in benefits to the effect that shareholder approval is not required for an amendment assume that the amendment does not increase the number of securities issuable or modify eligibility requirements materially.

[21] This analysis of future awards also extends to amendments affecting outstanding awards, grants or securities.

[22] *See, e.g., C.R. Bard, Inc.* (March 3, 1989). This is true because such an amendment may be viewed as creating an SAR by allowing insiders to obtain their options' spread with no cash investment by pyramiding their shares. *See Colema Realty* v. *Bibow,* 555 F. Supp. 1030 (D. Conn. 1983) (amendment permitting insiders to use shares to pay option exercise prices enabled them to pyramid and thereby created the equivalent of an SAR). Pyramiding is the use of shares to exercise options for a greater number of shares which, in turn, are used to exercise even more options until all options sought to be exercised are exercised. Where the plan does not already authorize SARs or allow use of previously owned shares or withholding, shareholder approval would be required. *See also* Release No. 34–19756 (May 24, 1983) [48 FR 23173].

[23] *See, e.g., The Walt Disney Company* (Dec. 28, 1988). Prior letters involving amendments introducing loan programs that did not examine whether SARs were authorized may not be relied on with respect to plan amendments effected after publication of this release. *See Media General, Inc.* (May 8, 1981) (amendment permitting company to make loans to participants to exercise plan options did not require shareholder approval).

[24] For example, plan sponsors often seek to amend plans so that "limited SARs" ("LSARs") that are exercisable only after certain triggering events (typically, a shift in corporate control or commencement of a tender offer) and that pay a benefit measured by a modified price formula (e.g., related to the average market price or the tender offer price for the issuer's securities) may be granted.

[25] 1981 Q&A Release, n.142 and prior inconsistent letters may not be relied on with respect to plan amendments effected after publication of this release. Note 142 indicated that an amendment to permit LSARs to be granted did not require shareholder approval if SARs already were authorized. *See, e.g., Gannett Co., Inc.* (Nov. 3, 1989) (amendment giving administrative committee discretion to grant LSARs to option holders where SARs authorized did not require shareholder approval).

[26] The holder of a reload option can surrender underlying shares to pay the exercise price of the option and, upon exercise, will receive an automatic grant of a new option at current market price for the number of shares surrendered.

[27] *See, e.g., Turner Broadcasting System, Inc.* (Nov. 5, 1990).

[28] *See, e.g., Brunswick Corporation* (Aug. 16, 1990) and *Alberto-Culver Company* (Jan. 22, 1990).

[29] *See Primark Corp.* (Oct. 23, 1987) (amendment to cause a plan to comply with a change in the Code by providing that employer matching contributions will vest after five years rather than the earlier of ten years of service or five years of continuous participation in the plan does not require shareholder approval). This position is consistent with the previously discussed position that amendments to eligibility requirements required by changes in the law do not require shareholder approval. *See* section II.B, *supra.*

[30] In addition, amendments needed to comport with the new Section 16 rules do not require shareholder approval. *See* Adopting Release, n.244.

[31] *See* Q&A 101(m) and *Boeing Co.* (Aug. 2, 1988).

[32] *See, e.g., Texaco, Inc.* (May 22, 1989) (amendment to allow benefits to be paid in stock rather than cash does not require shareholder approval); and *BellSouth Corporation* (March 28, 1987) (amendment to require performance unit awards to be paid in stock rather than stock and cash does not require shareholder approval).

Under the new rules, securities that may be redeemed or exercised only for cash can be acquired exercised and disposed of without Section 16 consequences if they (1) Are awarded pursuant to a plan satisfying the disinterested administration or formula requirement of rule 16b–3(c)(2); or (2) may be redeemed only upon a fixed date or dates at least six months after award or incident to death, retirement, disability or termination of employment. *See* new rule 16a–1(c)(3), section IV, *infra.* Issuers granting such securities are not subject to new Rule 16b–3's shareholder approval requirement.

[33] *See Anderson, Greenwood & Co.* (Dec. 10, 1984).

[34] Prior letters that did not examine the terms of the plan at the time of amendment may not be relied upon with respect to plan amendments effected after publication of this release. *See, e.g., Occidental Petroleum Corporation* (March 30, 1990) (amendment accelerating restricted stock vesting period on a shift in control did not require shareholder approval); *Summit Bancorporation* (Feb. 6, 1989) (amendment extending an outstanding option's expiration date from five years to ten years after grant required shareholder approval, even though the plan had provided that options could have a ten year expiration date); and *C3, Inc.* (March 4, 1985) (amendment giving a committee the discretion to determine vesting periods of options did not require shareholder approval, even though the plan had provided that options must vest at 20 percent per year).

[35] An extension of an option exercise period is deemed to be a redemption of an old security and grant of a new security for purposes of Section 16. *See* Release No. 34–28333 (Dec. 13, 1988) [53 FR 49997, 50009].

[36] Q&A 101(g) is modified to the extent the answer did not take into account the terms of the plan.

[FR Doc. 91–10396 Filed 4–30–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 88F–0055]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of modified kaolin clay as a component of coatings used in paper and paperboard intended for use in contact with food. This action responds to a petition filed by J.M. Huber Corp.

DATES: Effective May 1, 1991; written objections and requests for a hearing by May 31, 1991.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of March 15, 1988 (53 FR 8512), FDA announced that a food additive petition (FAP 8B4063) had been filed by J.M. Huber Corp., Route 4, Macon, GA 31298, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of a modified sodium aluminosilicate (modified kaolin clay) in the manufacture of paper and paperboard for use in contact with food. J.M. Huber Corp. subsequently limited the petition to provide only for the safe use of their modified kaolin clay as a component in coatings used in paper and paperboard products intended for food-contact use.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed use of the additive in the manufacture of paper and paperboard is safe, and that the regulations should be amended in § 176.170 as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting the finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before May 31, 1991, file with the Dockets Management Branch (address above) written objections

thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 376).

2. Section 176.170 is amended in paragraph (b)(2) by alphabetically adding a new entry in the table under the headings "List of Substances" and "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(b) * * *

(2) * * *

List of Substances	Limitations
* * *	* *
Modified kaolin clay (CAS Reg. No. 1344-00-9) is produced by the reaction of sodium silicate (CAS Reg. No. 1344-09-8) and kaolinite clay (CAS Reg. No. 1332-58-7) under hydrothermal conditions. The reaction product has a molecular weight between 246 and 365 and consists of 46 to 65 percent silicon dioxide (SiO_2), 28 to 42 percent aluminum oxide (Al_2O_3), and 2 to 7 percent of sodium oxide (Na_2O). The reaction product will not consist of more than 70 percent modified kaolin clay.	For use only as a component of coatings in paper and paperboard products at a level not to exceed 9 percent by weight of the coating intended for use in contact with food of Types I through IX described in Table 1 of paragraph (c) of this section under conditions of use C through H described in Table 2 of paragraph (c) of this section.
* * *	* *

* * * * *

Dated: April 19, 1991

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-10243 Filed 4-30-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1313

[Docket No. 89-02; Notice 3]

RIN 2127-AD01

Incentive Grant Criteria for Drunk Driving Prevention Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: On January 12, 1990, Congress enacted the 1991 Appropriations Act for the Department of Transportation and Related Agencies. Section 336 of that Act amends 23 U.S.C. 410, signed into law on November 18, 1988, which authorized a new incentive grant program for states with comprehensive drunk driving prevention programs. The amendment made three technical corrections to the statute authorizing the section 410 program. The amendments made in today's final rule revise portions of the agency's regulation implementing section 410, to reflect these statutory changes. These amendments do not change the manner in which states will certify that they are eligible for section 410 incentive grants, or the procedure by which NHTSA will award such grants; they merely implement the changes mandated by section 336.

EFFECTIVE DATE: This rule is effective May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis S. Buchanan, Office of Alcohol and State Programs, NTS-21, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-2753; or Ms. Heidi L. Coleman, Office of Chief Counsel, National Highway Traffic Safety Administration, telephone (202) 366-1834.

SUPPLEMENTARY INFORMATION: On November 18, 1988, the Anti-Drug Abuse Act of 1988, Public Law 100-690, was signed into law by the President. Section 9001 et seq. of the Act, entitled the Drunk Driving Prevention Act of 1988, amended the Highway Safety Act of 1966, 23 U.S.C. 401, et seq., by adding section 410, which authorized a new incentive grant program. Under this grant program a State may qualify for basic and supplemental incentive grants by adopting and implementing comprehensive drunk driving prevention programs which are self-sustaining and which provide for certain specified elements that will improve the effectiveness of the State's enforcement of drunk driving laws. A State may qualify for these grants for up to three fiscal years.

On June 26, 1989 (54 FR 26783), NHTSA issued a Notice of Proposed Rulemaking (NPRM) proposing the manner in which States would certify that they are eligible for the grants, and the procedure by which NHTSA would award such grants. The notice also requested comments on the agency's proposal.

The final rule, which was published in the **Federal Register** on January 12, 1990 (55 FR 1165), has been in place for a full year and NHTSA has not received any applications under the regulation's certification requirements. For this reason, Congress decided to make technical corrections to the statute authorizing the section 410 program.

Section 336 of Public Law 101-516 amends section 410 to make technical corrections to the statute. The corrections address three areas: The period of time by which the administrative review of a license suspension/revocation action must take place; the use of administrative fines in determining self-sufficiency of drunk driving prevention programs; and the amount of funds to be returned to

communities for use in sustaining drunk driving programs.

These corrections eliminate inconsistencies and address certain situations previously not taken into consideration in the section 410 statute. The Conference Report on the measure provided that, "these changes would bring the 410 program in line with congressional intent, and would lead to the expenditure of funds requested by the administration and provided by the Committee." The Report cautions, however, that the changes "are not intended to loosen the rigorous standards of the 410 program."

Each of these technical corrections, and the corresponding regulatory changes being made as a result, are discussed below.

Timing of Administrative Hearings

Prior to this legislative amendment, section 410 required that the eligible states provide for an administrative driver's license suspension or revocation system that contained the following elements:

1. Law enforcement officers take possession of an individual's driver's license on the spot if the driver fails a chemical test or refuses to take one;

2. Officers serve offenders with notice of the suspension of revocation and of their rights, including the right to an administrative review:

3. The officers immediately forward a report to the appropriate licensing agency within the State;

4. Due process is ensured by providing offenders with the right to an administrative review;

5. The period of suspension or revocation is not less than 90 days for first offenders and not less than 1 year for repeat offenders; and

6. The administrative review takes place and the suspension or revocation, if any, takes effect not later than 15 days after the individual receives notice (30 days if the state can show that meeting the 15-day requirement would impose a hardship on the state).

Congress found that States using an administrative suspension/revocation process are finding it difficult to complete the process within the time period now prescribed. While Congress recognized that the process is most effective when completed in as short a time as possible, it determined, particularly for larger States or those with limited computer resources, that allowance should be given in cases where the strict time period cannot be adhered to. Section 410 has, therefore, been revised to reflect this concern.

Section 336 of Public Law 101-516 amends section 410 by removing the requirement that the administrative review must be held within 15 or 30 days of arrest. States must still provide offenders with the right to an administrative review of a license suspension or revocation action and the officer must provide the offender with notice of this right, but the review is no longer required to be conducted within the 15 or 30 day time period required for license action. The suspension/revocation still must occur within the prescribed period of time. This final rule revises the agency's regulation accordingly.

Self-Sustaining Drunk Driving Prevention Program

Prior to this legislation amendment, section 410(e) specified that eligible States must provide also:

"For a self-sustaining drunk driving prevention program under which the fines or surcharges collected from individuals convicted of operating a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided, to those communities which have comprehesive programs for the prevention of such operations of motor vehicles."

NHTSA interpreted the statute to require that all fines and penalties collected through enforcement of drunk driving laws must be returned for use in sustaining drunk driving programs, and included this requirement in its January 12, 1990 final rule. While this is in line with congressional intent to the extent that programs should be as self-sufficient as possible, the Committee states in its Report that this requirement does not take into consideration situations where States would choose to increase drunk driving penalties above and beyond levels needed to sustain their programs.

Accordingly, the amendment to Section 410 removes the requirement the all fines and surcharges must be returned, or an equivalent amount provided. to communities with comprehensive drunk driving prevention programs. It requires instead that a "significant portion of" fines and surcharges collected be returned, or an equivalent amount provided to communities. This final rule revises the agency's section 410 regulation to implement this change. It will leave the term "significant portion" undefined. When reviewing applications from states that do not return all fines and surcharges (or provide an equivalent amount) to communities. the agency intends to consider circumstances such as whether community programs are as self-sufficient as possible and whether the State collects penalties above and beyond levels needed to sustain their programs, to determine State compliance with this criterion.

Section 410(e)(2) specified, prior to its revision, that the fines or surcharges to be returned were those "collected from individuals convicted of operating a motor vehicle while under the influence of alcohol." NHTSA adopted this requirement in its implementing regulation. In its January 12, 1990 final rule, the agency explained, "this provision covers only fines or surcharges imposed on convicted individuals. Based on the statutory language in section 410(e)(2), the regulation provides that the revenues would not include fines or surchages collected from individuals who lose their licenses administratively, but are not convicted of operating a motor vehicle while under the influence of alcohol." The agency further stated, "Minnesota believes this result is inconsistent with the rest of the section 410 statute, which puts such importance on administrative actions. and Mothers Against Drunk Driving (MADD) states that it believes this is not what Congress intended. It is, however, what Congress included in the law.and the agency is, therefore, bound by it."

In section 336 of Public Law 101-516, Congress eliminated this inconsistency, and provided that the fines or surcharges identified in the statute are those that are collected from individuals" apprehended and fined for" rather than convicted of operating motor vehicle while under the influence of alcohol. In this final rule, the agency's implementing regulation has been appropriately revised.

Administrative Procedures

Because this regulation relates to a grant program, the requirements of the Administrative Procedure Act, 5 U.S.C. 553, are not applicable. Moreover, the legislative changes addressed in this final rule involve no discretion on the part of the agency. As a result, the agency does no believe it would benefit by the notice and comment procedures with regard to the amendments made by today's final rule. These amendments merely implement the legislation by making the changes to the agency's regulations about which the agency has no discretion. They are technical corrections implemented to eliminate inconsistency and being the program regulations into conformity with the intent of the congressional authors of the program. Therefore, even if the notice and comment provisions of the Administrative Procedure Act did apply, the agency would have good cause to

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dispense with notice and comments as unnecessary.

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. State participation in the 410 program is voluntary. Accordingly, a full regulatory evaluation is not necessary. Moreover, this rule merely implements non-discretionary changes based on legislative amendments. Thus, if there were any economic impacts associated with this action, they would flow from the law, not this rule.

When the agency promulgated regulations to implement the section 410 program on January 12, 1990 (55 FR 1185), it determined that the rulemaking would be classified as significant under the Department's regulatory policies and procedures. A regulatory evaluation was prepared at that time and placed in public docket (Docket No. 89-02; Notice 2). Persons interested in reviewing this document should request it from the docket section.

As discussed above, since this matter relates to grants, the notice and comment requirements established in the Administrative Procedure Act, 5 U.S.C. 553, are not applicable. Moreover, the agency does not believe it is necessary to afford the public with notice and an opportunity to comment. The revisions in this document merely reflect statutory changes mandated by section 203 of the Surface Transportation and Uniform Relocation Assistance Act of 1987. They require no interpretation and provide the agency with no discretion.

Because the agency is not required to publish a notice of proposed rulemaking regarding this rule, the agency is not required to analyze the effect of this rule on small entities, in accordance with the Regulatory Flexibility Act. The agency has nonetheless evaluated the effects of this rule on small entities. Based on the evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. States will be recipients of any funds awarded under the regulation and, accordingly, no regulatory flexibility analysis is necessary.

The requirements in this rule that States retain and report to the Federal government information which demonstrates compliance with alcohol incentive grant criteria are considered to be information collection requirements as the term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, these requirements have been submitted to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through 11/30/92; OMB No. 2127-0501.

The Agency has also analyzed this action for the purpose of the National Environmental Policy Act. The Agency has determined that this action will not have any effect on the human environment.

Federalism Assessment

The Agency has analyzed this action under the principles and criteria of Executive Order 12612 and has determined that the rule does not have any federalism implications.

Effective Date

Because the amendments are not covered by the Administrative Procedure Act, and since they merely implement legislative changes and do not impose any additional requirements, the amendments are effective upon publication in the **Federal Register**.

List of Subjects in 23 CFR Part 1313

Alcohol and alcoholic beverages, Drug, Grant programs, Transportation, Highway safety.

PART 1313—[AMENDED]

In accordance with the foregoing, part 1313 of title 23 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 1313 is revised to read as follows:

Authority: 23 U.S.C. 410; delegation of authority at 49 CFR 1.50.

§ 1313.3 [Amended]

2. Section 1313.3(c) is amended by removing the word "all".

3. Section 1313.5(a)(1)(i)(F) is revised to read as follows: § 1313.5 Requirements for a basic grant.

(a) * * *
(1) * * *
(i) * * *

(F) The suspension and revocation referred to under paragraph (a)(1)(i)(E) of this section shall take effect not later than 15 days after the individual first received notice of the suspension or revocation.

4. Sections 1313.5(a)(1)(ii)(B) first sentence and 1313.5(a)(1)(iii)(A) first sentence are amended by removing the words "provide the administrative reviews and".

5. In Section 1313.5(a)(2)(i) the words "a significant portion of" are inserted before the words "the fines or surcharges collected" and the words "convicted of" are replaced with the phrase "apprehended and fined for".

6. In Section 1313.5(a)(2)(ii) and 1313.5(a)(2)(iii), in the first sentence the words "convicted of" are replaced with the phrase "apprehended and fined for" and in the third sentence the words "a significant portion of these" are inserted before the word "revenues" the first time it appears.

7. Section 1313.5(b) introductory text is amended by removing the words "the administrative review referred to under paragraph (a)(1)(i)(C) of this section shall take place and" and adding the word "shall" before the phrase "take effect".

8. Section 1313.5(b)(1)(i) second sentence is amended by removing the words "administrative review and".

9. Section 1313.5(b)(1)(ii) and 1313.5(b)(2)(i) is amended in the first sentence by removing the words "provide the administrative reviews and" in the fifth sentence of 1313.5(b)(1)(ii) and the fourth sentence of § 1313.5(b)(2)(i) by removing the phrase "administrative review and".

Issued on April 23, 1991.

Jerry Ralph Curry,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 91-10198 Filed 4-25-91; 4:32 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-91-3077; FR-2938-N-03]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation for All Market Areas, Final Fair Market Rents; Correction

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final fair market rents; Correction.

SUMMARY: On April 24, 1991 (56 FR 18888), the Department published in the **Federal Register**, final Fair Market Rents (FMRs) for New Construction and Substantial Rehabilitation for all market areas. The effective date published in that document erroneously indicated that the final FMRs were to become effective on May 24, 1991, retroactive to September 15, 1989. The FMRs should have been made effective on publication, retroactive to September 15, 1989. The purpose of this document is to correct the effective date for the final FMRs.

EFFECTIVE DATE: April 24, 1991, retroactive to September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 708-0624. (This is not a toll-free number).

Accordingly, in FR Doc. 91-9566, published in the **Federal Register** on Wednesday, April 24, 1991 (56 FR 18888), correct the effective date to read, "**EFFECTIVE DATE:** April 24, 1991, retroactive to September 15, 1989."

Dated: April 24, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 91-10223 Filed 4-30-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8346]

RIN 1545-AH43

Like-kind Exchanges—Limitations on Deferred Exchanges; and Inapplicability of Section 1031 to Exchanges of Partnership Interests

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to limitations on deferred exchanges under section 1031(a)(3) of the Internal Revenue Code of 1986 and to the inapplicability of section 1031 to exchanges of interests in a partnership under section 1031(a)(2)(D). The regulations provide the public with the guidance needed to comply with the Tax Reform Act of 1984 and 1986.

EFFECTIVE DATES: Sections 1.1031-0, 1.1031(b)-2 and 1.1031(k)-1 are effective for transfers of property made by taxpayers on or after June 10, 1991. The amendments to § 1.1031(a)-1 are effective for transfers of property made by taxpayers on or after April 25, 1991.

FOR FURTHER INFORMATION CONTACT: Kathryn K. Nunnie, 202-343-2380, or Thomas E. Carter, 202-343-2382 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1990, the **Federal Register** published a notice of proposed rulemaking (IA-237-84) under section 1031 of the Internal Revenue Code. The notice proposed to add regulations relating to deferred exchanges and exchanges of partnership interests. Pursuant to section 7805(f) of the Code, these regulations were submitted to the Administrator of the Small Business Administration for comment on their impact on small business. The Internal Revenue Service received public comments on the proposed regulations and held a public hearing on September 5, 1990. After full consideration of the public comments and statements regarding the proposed regulations, the Service adopts the proposed regulations as revised by this Treasury decision. Descriptions of the revisions to the proposed regulations are included in the discussion of the public comments below. A more complete explanation of the provisions common to the proposed and final regulations, and of the policy reasons underlying those provisions, is set forth in the preamble to the proposed regulations.

Deferred Exchanges

Exchanges in Which Receipt of Replacement Property Precedes Transfer of Relinquished Property

Section 1031(a)(3) of the Code and § 1.1031(a)-3 of the proposed regulations apply to deferred exchanges. The proposed regulations define a deferred exchange as an exchange in which, pursuant to an agreement, the taxpayer transfers property held for productive use in a trade or business or for investment (the "relinquished property") and subsequently receives property to be held either for productive use in a trade or business or for investment (the "replacement property"). The proposed regulations do not apply to transactions in which the taxpayer receives the replacement property prior to the date on which the taxpayer transfers the relinquished property (so-called "reverse-*Starker*" transactions). *See Starker* v. *United States*, 602 F.2d 1341 (9th Cir. 1979).

The Service requested comments on whether reverse-*Starker* transactions should qualify for tax-free exchange treatment under any provision of section 1031. The comments received ranged from advocating the application of the deferred exchange provisions of section 1031(a)(3) to these transactions to advising that these transactions should not qualify for tax-free exchange treatment under either the general rule set forth in section 1031(a)(1) or section 1031(a)(3). After reviewing the comments and applicable law, the Service has determined that the deferred exchange rules of section 1031(a)(3) do not apply to reverse-*Starker* transactions. Therefore, the final regulations, like the proposed regulations, do not apply to reverse-*Starker* transactions. However, the Service will continue to study the applicability of the general rule of section 1031(a)(1) to these transactions.

Identification and Receipt Requirements

In general

Section 1031(a)(3) provides that any property received by the taxpayer in a deferred exchange is treated as property that is not like-kind property if (a) the property is not identified as property to be received in the exchange on or before the day that is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange (the "identification period"), or (b) the property is received after the earlier of (1) the day that is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or (2) the due date (including extensions) of the taxpayer's tax return for the taxable year in which the transfer of the relinquished property occurs (the "exchange period"). The proposed and final regulations provide additional guidance with respect to these requirements.

Application of section 7503

The proposed regulations provide that in determining the dates on which the identification and exchange periods end, section 7503 does not apply. Section 7503 provides that where the last day for performance falls on a Saturday, Sunday, or legal holiday, performance on the next succeeding day that is not a Saturday, Sunday, or legal holiday will be considered timely.

Some commentators suggested that the proposed regulations should be revised to provide that section 7503 does apply in determining the dates on which the identification and exchange periods end. However, Rev. Rul. 83-116, 1983-2 C.B. 264, provides that secion 7503 is limited to procedural acts required to be performed in connection with the determination, collection, or refund of taxes. Because it is unnecessary to state a special rule for the application of section 7503 to deferred exchanges, the provision regarding application of section 7503 to section 1031 deferred exchanges has been deleted from the

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final regulations. In addition, because the timing requirements relating to the identification and exchange periods are statutory, requests for extension of the identification period or the exchange period through administrative relief under § 1.9100 will not be granted.

Identification of Alternative Properties

When section 1031(a)(3) was added to the Code in 1984, Congress was concerned that the greater the discretion a taxpayer has to vary the replacement property that will ultimately be received in a transaction, the more the transaction appears to be a sale rather than an exchange. *See* H.R. Rep. No. 432, 98th Cong., 2d Sess., pt. 2, at 1232; Staff of Committee on Finance, 98th Cong., 2d Sess., Explanation of the Deficit Reduction Act of 1984 (Comm. Print 1984) at 242. On the other hand, a taxpayer may encounter practical difficulties in trying to identify with precision the replacement property that the taxpayer will ultimately receive. The identification rules provided by the proposed regulations balance these competing concerns in several ways. Under these rules, the maximum number of replacement properties that a taxpayer may identify is (a) three properties of any fair market value (the "3-property rule"), or (b) any number of properties as long as their aggregate fair market value as of the end of the identification period does not exceed 200 percent of the aggregate fair market value of all the relinquished properties (the "200-percent rule"). The proposed regulations also provide that the fair market value of property for purposes of the deferred exchange rules is the property's fair market value without regard to liabilities secured by the property.

Commentators suggested that both the 3-property rule and the 200-percent rule be expanded to give taxpayers more discretion in identifying replacement property in deferred exchanges. To do so, however, would give these transactions more of the character of sales rather than exchanges and therefore would be less consistent with congressional intent. Accordingly, these rules have not been changed in the final regulations.

Commentators also suggested that the fair market value of property for purposes of the 200-percent rule should be its fair market value less liabilities secured by the property (i.e., its net equity value). Use of net equity value would create practical problems, however, because the 200-percent rule is applied at the end of the identification period. At that time, a taxpayer may not know or be able to control unilaterally the amount of the liabilities to which the replacement property will be subject when that property is ultimately received. For this reason, the final regulations, like the proposed regulations, provide that for purposes of the deferred exchange rules the fair market value of property is determined without regard to liabilities secured by the property.

Rules Regarding Safe Harbors

In General

Because taxpayers typically are unwilling to rely on a transferee's unsecured promise to transfer the like-kind replacement property, the use of various guarantee or security arrangements is common in deferred exchanges. In addition, because persons who want to purchase the relinquished property may be unwilling or unable to acquire the replacement property, taxpayers often retain an intermediary to facilitate the exchange. Use of these arrangements, however, raises issues concerning actual receipt, constructive receipt, and agency.

Section 1031(a)(3) leaves unclear the application of the rules of actual and constructive receipt and the implications of the taxpayer's possible agency relationship with an intermediary in deferred exchange transactions. Therefore, the proposed regulations provide taxpayers with four safe harbors based on commonly used security, guarantee, and intermediary arrangements. The first safe harbor permits certain security arrangements. The second permits the use of a qualified escrow account or a qualified trust. The third permits the use of a qualified intermediary, and the fourth permits the taxpayer to receive interest or a growth factor to compensate for the time value of money during the period between transfer of the relinquished property and receipt of the replacement property. Use of these safe harbors will result in a determination that the taxpayer is not, either directly or through an intermediary that may be an agent, in actual or constructive receipt of money or other property for purposes of these regulations. The final regulations retain these four safe harbors, but with certain modifications and clarifications.

Rights to Money or Other Property Outside of Safe Harbors

Under the proposed regulations, the safe harbors generally apply only if the taxpayer has no right to receive, pledge, borrow, or otherwise obtain the benefits of the funds or interest in escrow or trust or held by an intermediary before the occurrence of certain enumerated circumstances. The final regulations clarify that the limitations on a taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of the funds apply only to the money or other property in a qualified escrow account or qualified trust, or held by the qualified intermediary. Under the final regulations, a taxpayer may receive money or other property directly from another party to the transaction, but not from a qualified escrow account, a qualified trust, or a qualified intermediary, without affecting the application of a safe harbor.

Rights Under State Law to Money or Other Property

Some commentators expressed concern that, as a result of certain rights under state law, a taxpayer may be treated as having the immediate right to receive money or other property in an escrow or trust or held by a qualified intermediary. For example, commentators questioned whether a taxpayer would be treated as having the immediate right to receive money or other property held by an intermediary if, under state agency law, the intermediary is the agent of the taxpayer and the taxpayer has the right to dismiss an agent and thereby obtain property held for the taxpayer by the agent.

To assure taxpayers who use the safe harbors that the federal tax treatment of deferred exchanges is not intended to be dependent in this respect upon state law, the final regulations clarify that the terms of the applicable agreement, rather than state law, will determine whether the limitations imposed by a safe harbor with respect to a taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefit of money or other property are satisfied. Thus, the safe harbors require that the applicable agreement expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of the money or other property before the end of the exchange period. The applicable agreement may, but need not, give a taxpayer rights to receive, pledge, borrow, or otherwise obtain the benefits of the money or other property before the end of the exchange period if the exchange is completed or the requirements of section 1031(a)(3) can no longer be met.

The final regulations also provide that rights conferred upon a taxpayer under state agency law to dismiss an escrow holder, trustee, or intermediary will be disregarded in determining whether the taxpayer has the ability to receive or otherwise obtain the benefits of money or other property held by the escrow holder, trustee, or intermediary. Actual or constructive receipt necessarily will occur at the time the taxpayer exercises these rights.

Special Rule for Certain Acquisition and Closing Costs

Commentators pointed out that funds in a qualified escrow account or qualified trust, or held by a qualified intermediary, may be needed to pay closing costs for which the taxpayer is responsible. The taxpayer is in receipt of the funds to the extent the funds are used to pay the taxpayer's closing costs. Commentators questioned whether paying closing costs out of these funds also results in actual or constructive receipt of the remaining funds. The final regulations provide that the use of money or other property in a qualified escrow account or qualified trust, or held by a qualified intermediary, to pay certain specified items will not result in actual or constructive receipt of the remaining funds and, furthermore, will be disregarded in determining whether the applicable agreement properly limits the taxpayer's rights to receive, borrow, pledge, or otherwise obtain the benefits of money or other property. The specified items are transactional items that (a) relate to the disposition of the relinquished property or to the acquisition of the replacement property and (b) are listed as the responsibility of a buyer or seller in the typical closing statement under local standards. Examples of these transactional items include commissions, prorated taxes, recording or transfer taxes, and title company fees. In addition, under the final regulations, a taxpayer's rights to receive items (such as prorated rents) that a seller may receive as a consequence of the disposition of property and that are not included in the amount realized from the disposition of property are disregarded.

Definition of Qualified Intermediary

Under the proposed regulations, a qualified intermediary is defined as a person who is not the taxpayer or a related party and who acts to facilitate a deferred exchange by entering into an agreement with the taxpayer for the exchange of properties. The proposed regulations also require that the qualified intermediary acquire the relinquished property from the taxpayer, acquire the replacement property, and transfer the replacement property to the taxpayer. The final regulations provide that the qualified intermediary must also transfer the relinquished property.

Commentators requested clarification as to what an intermediary must do to acquire property. In response, the final regulations describe limited circumstances under which an intermediary is treated as acquiring and transferring property regardless of whether, under general tax principles, the intermediary actually acquires and transfers the property. First, an intermediary is treated as acquiring and transferring property if the intermediary acquires and transfers legal title to that property. In addition, an intermediary is treated as acquiring and transferring the relinquished property if the intermediary (either on its own behalf or as the agent of any party to the transaction) enters into an agreement with a person other then the taxpayer for the transfer of the relinquished property to that person and, pursuant to that agreement, the relinquished property is transferred to that person. Finally, an intermediary is treated as acquiring and transferring replacement property if the intermediary (either on its own behalf or as the agent of any party to the transaction) enters into an agreement with the owner of the replacement property for the transfer of that property and, pursuant to that agreement, the replacement property is transferred to the taxpayer. Solely for these purposes, an intermediary is treated as entering into an agreement if the rights of a party to the agreement are assigned to the intermediary and all parties to that agreement are notified in writing of the assignment on or before the date of the relevant transfer of property.

Definition of "Related Party"

Under the proposed regulations, a party that is related to the taxpayer cannot be the escrow holder of a qualified escrow account, the trustee of a qualified trust, or a qualified intermediary. The proposed regulations define a person as a related party if: (i) The person and the taxpayer bear a relationship described in section 267(b) or section 707(b) (applied by substituting in each section "10 percent" for "50 percent" each place it appears); (ii) the person acts as the taxpayer's agent (including, for example, by performing services as the taxpayer's employee, attorney, or broker); or (iii) the person and a person who acts as the taxpayer's agent bear a relationship described in section 267(b) or 707(b) (again, substituting in each section "10 percent" for "50 percent" each place it appears). The proposed regulations further provide that, in determining whether a person acts as the taxpayer's agent, the performance of services with respect to exchanges intended to qualify under section 1031 and the performance of routine financial services by a financial institution are not taken into account.

Commentators suggested several changes to the above definition of related party. They pointed out that the term "related party" as used in the proposed regulations is defined differently than the term "related person" as used in section 1031(f). To avoid confusion, they suggested using the section 1031(f) definition. The Services believes that the section 1031(f) related person definition is too narrow for purposes of the safe harbors contained in the deferred exchange regulations. To alleviate any potential confusion, the final regulations substitute the term "disqualified person" for the term "related party."

Commenters also asked for clarification regarding when certain persons, such as attorneys, would be treated as acting as a taxpayer's agent. In this regard, commentators suggested that a person who has not recently acted as the taxpayer's agent should not be disqualified from performing exchange-related services for the taxpayer. Finally, commentators requested that the status of title insurance companies, escrow companies, and certain other persons be clarified.

The final regulations have been revised to address these concerns. Under the final regulations, a person is a disqualified person if: (i) The person is an agent of the taxpayer at the time of the transaction; (ii) the person and the taxpayer bear a relationship described in section 267(b) or section 707(b) (applied by substituting "10 percent" for "50 percent" each time it appears in those sections); or (iii) the person and a person who is an agent of the taxpayer at the time of the transaction bear a relationship described in section 267(b) or 707(b) (again, substituting "10 percent" for "50 percent" in applying those sections). A person who has acted as the taxpayer's employee, attorney, accountant, investment banker or broker, or real estate agent or broker within the 2-year period ending on the date of the transfer of the first of the relinquished properties is treated as an agent of the taxpayer at the time of the transaction.

In addition, the final regulations broaden somewhat the services that are disregarded for purposes of determining if an agency relationship exists. In determining whether a person is an agent of the taxpayer or has acted within the preceding 2-year period as the taxpayer's employee, attorney, accountant, investment banker or broker, or real estate agent or broker, the performance of services with respect

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to exchanges intended to qualify under section 1031 is not taken into account. Furthermore, for these purposes, the performance of routine financial, title insurance, escrow, or trust services by a financial institution, title insurance company, or escrow company is not taken into account.

Extension of Safe Harbor Rules to Simultaneous Exchanges

The rules in the proposed regulations, including the safe harbors, apply only to deferred exchanges. Commentators noted that the concerns relating to actual or constructive receipt and agency also exist in the case of simultaneous exchanges. They requested that the safe harbors be made available for simultaneous exchanges. Upon review, the Service has determined it necessary to make only the qualified intermediary safe harbor available for simultaneous exchanges.

The final regulations provide, therefore, that in the case of simultaneous transfers of like-kind properties involving a qualified intermediary, the qualified intermediary will not be considered the agent of the taxpayer for purposes of section 1031(a). Thus, in such a case the transfer and receipt of property by the taxpayer will be treated as an exchange. This provision is set forth in new § 1.1031(b)–2 of the final regulations and is effective for transfers of property made by taxpayers on or after June 10, 1991.

Application of Section 468B(g) Rules Regarding Interest

Section 468B(g) provides that nothing in any provision of law will be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. It also directs the Secretary to prescribe regulations relating to the taxation of these accounts or funds whether as a grantor trust or otherwise.

The fourth safe harbor provided by the proposed regulations permits taxpayers to receive interest or a growth factor with respect to the deferred exchange, provided that the taxpayer's rights to receive the interest or growth factor are limited to certain specified circumstances. Although the proposed regulations require the interest or growth factor to be treated as interest, regardless of whether it is paid in cash or in property, they do not address the proper manner for reporting interest income earned on money held in an escrow account or trust. Comments were requested concerning whether the Service should exercise its regulatory authority under section 468B(g) with respect to interest earned on escrow accounts and trusts used in deferred exchanges.

After considering the comments on this issue, the Service has concluded that guidance on interest reporting should be provided not in piecemeal fashion under a number of Code sections, but rather in general, comprehensive regulations issued under section 468B(g). Accordingly, the final regulations do not address this issue. Guidance will be published in regulations under section 468B(g).

Coordination with Section 453 Installment Sale Rules

The section of the proposed regulations that coordinates the deferred exchange rules and the installment sale rules is reserved. Commentators suggested that this issue should be addressed in the near future because the two sets of rules often apply to the same transactions. The Service agrees this issue merits prompt attention. The issue remains reserved in the final regulations but will be addressed in forthcoming proposed regulations.

Effective Date Relating to Deferred Exchange Provisions

Section 1.1031(k)–1 of the final regulations applies to transfers of property made by taxpayers on or after June 10, 1991. Transfers of property made by taxpayers after May 16, 1990, but before June 10, 1991, will be treated as complying with section 1031(a)(3) and this section if either the provisions of this section or the provisions of the notice of proposed rulemaking published in the **Federal Register** on May 16, 1990 (55 FR 20278) are satisfied.

Exchanges of Partnership Interests

In General

Section 1031(a)(2)(D) provides that section 1031(a) does not apply to any exchange of interests in a partnership. The Service requested comments on whether an exchange of an interest in an organization which has elected under section 761(a) to be excluded from the application of subchapter K is eligible for nonrecognition of gain or loss under section 1031(a).

Section 11703(d) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, amended section 1031(a)(2) to provide that an interest in a partnership that has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K is treated for purposes of section 1031 as an interest in each of the assets of the partnership and not as an interest in a partnership. The final regulations have been revised to reflect the amendment to section 1031(a)(2).

The final regulations otherwise retain the provisions of the proposed regulations regarding exchanges of interests in a partnership. Under the proposed and final regulations, an exchange of partnership interests will not qualify for nonrecognition of gain or loss under section 1031(a) regardless of whether the interests exchanged are general or limited partnership interests or are interests in the same partnership or different partnerships. No inference is to be drawn from these regulations, however, with respect to the application of other Code sections that allow nonrecognition of gain of loss in an exchange of interests in a partnership. For example, as stated in the preamble to the proposed regulations, these regulations are not intended to affect the applicability of Rev. Rul. 84–52, 1984–1 C.B. 157, concerning conversions of partnership interests. More generally, the regulations are not intended to restrict in any way the application of the rules of subchapter K of the Code to exchanges of partnership interests.

Effective Date Relating to Exchanges of Partnership Interests

The amendments to § 1.1031(a)–1 made in the final regulations with respect to exchanges of partnership interests are effective for transfers of property made by taxpayers on or after April 25, 1991.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore an initial Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is D. Lindsay Russell of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.1031(a)–1 through 1.1042–1T

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

The amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. A new § 1.1031–0 is added to read as follows:

§ 1.1031–0 Table of contents.

This section lists the captions that appear in the regulations under section 1031.

§ 1.1031(a)–1 Property held for productive use in a trade or business or for investment.

(a) In general.
(b) Definition of "like kind."
(c) Examples of exchanges of property of a "like kind."
(d) Examples of exchanges not solely in kind.
(e) Effective date.

§ 1.1031(a)–2 Additional rules for exchanges of personal property.

(a) Introduction.
(b) Depreciable tangible personal property.
(c) Intangible personal property and nondepreciable personal property.

§ 1.1031(b)–1 Receipt of other property or money in tax-free exchange.

§ 1.1031(b)–2 Safe harbor for qualified intermediaries.

§ 1.1031(c)–1 Nonrecognition of loss.

§ 1.1031(d)–1 Property acquired upon a tax-free exchange.

§ 1.1031(d)–1T Coordination of section 1060 with section 1031 (temporary).

§ 1.1031(d)–2 Treatment of assumption of liabilities.

§ 1.1031(e)–1 Exchanges of livestock of different sexes.

§ 1.1031(j)–1 Exchanges of multiple properties.

(a) Introduction.
(b) Computation of gain recognized.
(c) Computation of basis of properties received.
(d) Examples.
(e) Effective date.

§ 1.1031(K)–1 Treatment of deferred exchanges.

(a) Overview.
(b) Identification and receipt requirements.
(c) Identification of replacement property before the end of the identification period.
(d) Receipt of identified replacement property.
(e) Special rules for identification and receipt of replacement property to be produced.
(f) Receipt of money or other property.
(g) Safe harbors.
(h) Interest and growth factors.
(i) [Reserved]
(j) Determination of gain or loss recognized and the basis of property received in a deferred exchange.
(k) Definition of disqualified person.
(l) [Reserved]
(m) Definition of fair market value.
(n) No inference with respect to actual or constructive receipt rules outside of section 1031.
(o) Effective date.

Par. 3. Section 1.1031(a)–1 is amended by adding headings for paragraphs (a), (b), (c), and (d), by revising paragraph (a), and by adding paragraph (e) to read as follows:

§ 1.1031(a)–1 Property held for productive use in a trade or business or for investment.

(a) *In general*—(1) *Exchanges of property solely for property of a like kind.* Section 1031(a)(1) provides an exception from the general rule requiring the recognition of gain or loss upon the sale or exchange of property. Under section 1031(a)(1), no gain or loss is recognized if property held for productive use in a trade or business or for investment is exchanged solely for property of a like kind to be held either for productive use in a trade or business or for investment. Under section 1031(a)(1), property held for productive use in a trade or business may be exchanged for property held for investment. Similarly, under section 1031(a)(1), property held for investment may be exchanged for property held for productive use in a trade or business. However, section 1031(a)(2) provides that section 1031(a)(1) does not apply to any exchange of—

(i) Stock in trade or other property held primarily for sale;
(ii) Stocks, bonds, or notes;
(iii) Other securities or evidences of indebtedness or interest;
(iv) Interests in a partnership;
(v) Certificates of trust or beneficial interests; or
(vi) Choses in action.

Section 1031(a)(1) does not apply to any exchange of interests in a partnership regardless of whether the interests exchanged are general or limited partnership interests or are interests in the same partnership or in different partnerships. An interest in a partnership that has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K is treated as an interest in each of the assets of the partnership and not as an interest in a partnership for purposes of section 1031(a)(2)(D) and paragraph (a)(1)(iv) of this section. An exchange of an interest in such a partnership does not qualify for nonrecognition of gain or loss under section 1031 with respect to any asset of the partnership that is described in section 1031(a)(2) or to the extent the exchange of assets of the partnership does not otherwise satisfy the requirements of section 1031(a).

(2) *Exchanges of property not solely for property of a like kind.* A transfer is not within the provisions of section 1031(a) if, as part of the consideration, the taxpayer receives money or property which does not meet the requirements of section 1031(a), but the transfer, if otherwise qualified, will be within the provisions of either section 1031 (b) or (c). Similarly, a transfer is not within the provisions of section 1031(a) if, as part of the consideration, the other party to the exchange assumes a liability of the taxpayer (or acquires property from the taxpayer that is subject to a liability), but the transfer, if otherwise qualified, will be within the provisions of either section 1031 (b) or (c). A transfer of property meeting the requirements of section 1031(a) may be within the provisions of section 1031(a) even though the taxpayer transfers in addition property not meeting the requirements of section 1031(a) or money. However, the nonrecognition treatment provided by section 1031(a) does not apply to the property transferred which does not meet the requirements of section 1031(a).

(b) *Definition of "like kind."* * * *

(c) *Examples of exchanges of property of a "like kind."* * * *

(d) *Examples of exchanges not solely in kind.* * * *

(e) *Effective date relating to exchanges of partnership interests.* The provisions of paragraph (a)(1) of this section relating to exchanges of partnership interests apply to transfers of property made by taxpayers on or after April 25, 1991.

Par. 3a. A new § 1.1031(b)–2 is added to read as follows:

§ 1.1031(b)–2 Safe harbor for qualified intermediaries.

(a) In the case of simultaneous transfers of like-kind properties involving a qualified intermediary (as defined in § 1.1031(k)–1(g)(4)(iii)), the qualified intermediary is not considered the agent of the taxpayer for purposes of

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section 1031(a). In such a case, the transfer and receipt of property by the taxpayer is treated as an exchange.

(b) This section applies to transfers of property made by taxpayers on or after June 10, 1991.

Par. 4. A new § 1.1031(k)-1 is added to read as follows:

§ 1.1031(k)-1 Treatment of deferred exchanges.

(a) *Overview.* This section provides rules for the application of section 1031 and the regulations thereunder in the case of a "deferred exchange." For purposes of section 1031 and this section, a deferred exchange is defined as an exchange in which, pursuant to an agreement, the taxpayer transfers property held for productive use in a trade or business or for investment (the "relinquished property") and subsequently receives property to be held either for productive use in a trade or business or for investment (the "replacement property"). In the case of a deferred exchange, if the requirements set forth in paragraphs (b), (c), and (d) of this section (relating to identification and receipt of replacement property) are not satisfied, the replacement property received by the taxpayer will be treated as property which is not of a like kind to the relinquished property. In order to constitute a deferred exchange, the transaction must be an exchange (i.e., a transfer of property for property, as distinguished from a transfer of property for money). For example, a sale of property followed by a purchase of property of a like kind does not qualify for nonrecognition of gain or loss under section 1031 regardless of whether the identification and receipt requirements of section 1031(a)(3) and paragraphs (b), (c), and (d) of this section are satisfied. The transfer of relinquished property in a deferred exchange is not within the provisions of section 1031(a) if, as part of the consideration, the taxpayer receives money or property which does not meet the requirements of section 1031(a), but the transfer, if otherwise qualified, will be within the provisions of either section 1031 (b) or (c). See § 1.1031(a)-1(a)(2). In addition, in the case of a transfer of relinquished property in a deferred exchange, gain or loss may be recognized if the taxpayer actually or constructively receives money or property which does not meet the requirements of section 1031(a) before the taxpayer actually receives like-kind replacement property. If the taxpayer actually or constructively receives money or property which does not meet the requirements of section 1031(a) in the full amount of the consideration for the relinquished property, the transaction will constitute a sale, and not a deferred exchange, even though the taxpayer may ultimately receive like-kind replacement property. For purposes of this section, property which does not meet the requirements of section 1031(a) (whether by being described in section 1031(a)(2) or otherwise) is referred to as "other property." For rules regarding actual and constructive receipt, and safe harbors therefrom, see paragraphs (f) and (g), respectively, of this section. For rules regarding the determination of gain or loss recognized and the basis of property received in a deferred exchange, see paragraph (j) of this section.

(b) *Identification and receipt requirements*—(1) *In general.* In the case of a deferred exchange, any replacement property received by the taxpayer will be treated as property which is not of a like kind to the relinquished property if—

(i) The replacement property is not "identified" before the end of the "identification period," or

(ii) The identified replacement property is not received before the end of the "exchange period."

(2) *Identification period and exchange period.* (i) The identification period begins on the date the taxpayer transfers the relinquished property and ends at midnight on the 45th day thereafter.

(ii) The exchange period begins on the date the taxpayer transfers the relinquished property and ends at midnight on the earlier of the 180th day thereafter or the due date (including extensions) for the taxpayer's return of the tax imposed by chapter 1 of subtitle A of the Code for the taxable year in which the transfer of the relinquished property occurs.

(iii) If, as part of the same deferred exchange, the taxpayer transfers more than one relinquished property and the relinquished properties are transferred on different dates, the identification period and the exchange period are determined by reference to the earliest date on which any of the properties are transferred.

(iv) For purposes of this paragraph (b)(2), property is transferred when the property is disposed of within the meaning of section 1001(a).

(3) *Example.* This paragraph (b) may be illustrated by the following example.

Example. (i) M is a corporation that files its Federal income tax return on a calendar year basis. M and C enter into an agreement for an exchange of property that requires M to transfer property X to C. Under the agreement, M is to identify like-kind replacement property which C is required to purchase and to transfer to M. M transfers property X to C on November 18, 1992.

(ii) The identification period ends at midnight on December 31, 1992, the day which is 45 days after the date of transfer of property X. The exchange period ends at midnight on March 15, 1993, the due date for M's Federal income tax return for the taxable year in which M transferred property X. However, if M is allowed the automatic six-month extension for filing its tax return, the exchange period ends at midnight on May 15, 1993, the day which is 180 days after the date of transfer of property X.

(c) *Identification of replacement property before the end of the identification period*—(1) *In general.* For purposes of paragraph (b)(1)(i) of this section (relating to the identification requirement), replacement property is identified before the end of the identification period only if the requirements of this paragraph (c) are satisfied with respect to the replacement property. However, any replacement property that is received by the taxpayer before the end of the identification period will in all events be treated as identified before the end of the identification period.

(2) *Manner of identifying replacement property.* Replacement property is identified only if it is designated as replacement property in a written document signed by the taxpayer and hand delivered, mailed, telecopied, or otherwise sent before the end of the identification period to either—

(i) The person obligated to transfer the replacement property to the taxpayer (regardless of whether that person is a disqualified person as defined in paragraph (k) of this section); or

(ii) Any other person involved in the exchange other than the taxpayer or a disqualified person (as defined in paragraph (k) of this section).

Examples of persons involved in the exchange include any of the parties to the exchange, an intermediary, an escrow agent, and a title company. An identification of replacement property made in a written agreement for the exchange of properties signed by all parties thereto before the end of the identification period will be treated as satisfying the requirements of this paragraph (c)(2).

(3) *Description of replacement property.* Replacement property is identified only if it is unambiguously described in the written document or agreement. Real property generally is unambiguously described if it is described by a legal description, street address, or distinguishable name (e.g., the Mayfair Apartment Building). Personal property generally is unambiguously described if it is described by a specific description of the particular type of property. For example, a truck generally is unambiguously described if it is described by a specific make, model, and year.

(4) *Alternative and multiple properties.* (i) The taxpayer may identify more than one replacement property. Regardless of the number of relinquished properties transferred by the taxpayer as part of the same deferred exchange, the maximum number of replacement properties that the taxpayer may identify is—

(A) Three properties without regard to the fair market values of the properties (the "3-property rule"), or

(B) Any number of properties as long as their aggregate fair market value as of the end of the identification period does not exceed 200 percent of the aggregate fair market value of all the relinquished properties as of the date the relinquished properties were transferred by the taxpayer (the "200-percent rule").

(ii) If, as of the end of the identification period, the taxpayer has identified more properties as replacement properties than permitted by paragraph (c)(4)(i) of this section, the taxpayer is treated as if no replacement property had been identified. The preceding sentence will not apply, however, and an identification satisfying the requirements of paragraph (c)(4)(i) of this section will be considered made, with respect to—

(A) Any replacement property received by the taxpayer before the end of the identification period, and

(B) Any replacement property identified before the end of the identification period and received before the end of the exchange period, but only if the taxpayer receives before the end of the exchange period identified replacement property the fair market vlaue of which is at least 95 percent of the aggregate fair market value of all identified replacement properties (the "95-percent rule").

For this purpose, the fair market value of each identified replacement property is determined as of the earlier of the date the property is received by the taxpayer or the last day of the exchange period.

(iii) For purposes of applying the 3-property rule, the 200-percent rule, and the 95-percent rule, all identifications of replacement property, other than identifications of replacement property that have been revoked in the manner provided in paragraph (c)(6) of this section, are taken into account. For example, if, in a deferred exchange, B transfers property X with a fair market value of $100,000 to C and B receives like-kind property Y with a fair market value of $50,000 before the end of the identification period, under paragraph (c)(1) of this section, property Y is treated as identified by reason of being received before the end of the identification period. Thus, under paragraph (c)(4)(i) of this section, B may identify either two additional replacement properties of any fair market value or any number of additional replacement properties as long as the aggregate fair market value of the additional replacement properties does not exceed $150,000.

(5) *Incidental property disregarded.* (i) Solely for purposes of applying this paragraph (c), property that is incidental to a larger item of property is not treated as property that is separate from the larger item of property. Property is incidental to a larger item of property if—

(A) In standard commercial transactions, the property is typically transferred together with the larger item of property, and

(B) The aggregate fair market value of all of the incidental property does not exceed 15 percent of the aggregate fair market value of the larger item of property.

(ii) This paragraph (c)(5) may be illustrated by the following examples.

Example 1. For purposes of paragraph (c) of this section, a spare tire and tool kit will not be treated as separate property from a truck with a fair market value of $10,000, if the aggregate fair market value of the spare tire and tool kit does not exceed $1,500. For purposes of the 3-property rule, the truck, spare tire, and tool kit are treated as 1 property. Moreover, for purposes of paragraph (c)(3) of this section (relating to the description of replacement property), the truck, spare tire, and tool kit are all considered to be unambiguously described if the make, model, and year of the truck are specified, even if no reference is made to the spare tire and tool kit.

Example 2. For purposes of paragraph (c) of this section, furniture, laundry machines, and other miscellaneous items of personal property will not be treated as separate property from an apartment building with a fair market value of $1,000,000, if the aggregate fair market value of the furniture, laundry machines, and other personal property does not exceed $150,000. For purposes of the 3-property rule, the apartment building, furniture, laundry machines, and other personal property are treated as 1 property. Moreover, for purposes of paragraph (c)(3) of this section (relating to the description of replacement property), the apartment building, furniture, laundry machines, and other personal property are all considered to be unambiguously described if the legal description, street address, or distinguishable name of the apartment building is specified, even if no reference is made to the furniture, laundry machines, and other personal property.

(6) *Revocation of identification.* An identification of replacement property may be revoked at any time before the end of the identification period. An identification of replacement property is revoked only if the revocation is made in a written document signed by the taxpayer and hand delivered, mailed, telecopied, or otherwise sent before the end of the identification period to the person to whom the identification of the replacement property was sent. An identification of replacement property that is made in a written agreement for the exchange of properties is treated as revoked only if the revocation is made in a written amendment to the agreement or in a written document signed by the taxpayer and hand delivered, mailed, telecopied, or otherwise sent before the end of the identification period to all of the parties to the agreement.

(7) *Examples.* This paragraph (c) may be illustrated by the following examples. Unless otherwise provided in an example, the following facts are assumed: B, a calendar year taxpayer, and C agree to enter into a deferred exchange. Pursuant to their agreement, B transfers real property X to C on May 17, 1991. Real property X, which has been held by B for investment, is unencumbered and has a fair market value on May 17, 1991, of $100,000. On or before July 1, 1991 (the end of the identification period), B is to identify replacement property that is of a like kind to real property X. On or before November 13, 1991 (the end of the exchange period), C is required to purchase the property identified by B and to transfer that property to B. To the extent the fair market value of the replacement property transferred to B is greater or less than the fair market value of real property X, either B or C, as applicable, will make up the difference by paying cash to the other party after the date the replacement property is received by B. No replacement property is identified in the agreement. When subsequently identified, the replacement property is described by legal description and is of a like kind to real property X (determined without regard to section 1031(a)(3) and this section). B intends to hold the replacement property received for investment.

Example 1. (i) On July 2, 1991, B identifies real property E as replacement property by designating real property E as replacement property in a written document signed by B and personally delivered to C.

(ii) Because the identification was made after the end of the identification period,

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pursuant to paragraph (b)(1)(i) of this section (relating to the identification requirement), real property E is treated as property which is not of a like kind to real property X.

Example 2. (i) C is a corporation of which 20 percent of the outstanding stock is owned by B. On July 1, 1991, B identifies real property F as replacement property by designating real property F as replacement property in a written document signed by B and mailed to C.

(ii) Because C is the person obligated to transfer the replacement property to B, real property F is identified before the end of the identification period. The fact that C is a "disqualified person" as defined in paragraph (k) of this section does not change this result.

(iii) Real property F would also have been treated as identified before the end of the identification period if, instead of sending the identification to C, B had designated real property F as replacement property in a written agreement for the exchange of properties signed by all parties thereto on or before July 1, 1991.

Example 3. (i) On June 3, 1991, B identifies the replacement property as "unimproved land located in Hood County with a fair market value not to exceed $100,000." The designation is made in a written document signed by B and personally delivered to C. On July 8, 1991, B and C agree that real property G is the property described in the June 3, 1991 document.

(ii) Because real property G was not unambiguously described before the end of the identification period, no replacement property is identified before the end of the identification period.

Example 4. (i) On June 28, 1991, B identifies real properties H, J, and K as replacement properties by designating these properties as replacement properties in a written document signed by B and personally delivered to C. The written document provides that by August 1, 1991, B will orally inform C which of the identified properties C is to transfer to B. As of July 1, 1991, the fair market values of real properties H, J, and K are $75,000, $100,000, and $125,000, respectively.

(ii) Because B did not identify more than three properties as replacement properties, the requirements of the 3-property rule are satisfied, and real properties H, J, and K are all identified before the end of the identification period.

Example 5. (i) On May 17, 1991, B identifies real properties L, M, N, and P as replacement properties by designating these properties as replacement properties in a written document signed by B and personally delivered to C. The written document provides that by July 2, 1991, B will orally inform C which of the identified properties C is to transfer to B. As of July 1, 1991, the fair market values of real properties L, M, N, and P are $30,000, $40,000, $50,000, and $60,000, respectively.

(ii) Although B identified more than three properties as replacement properties, the aggregate fair market value of the identified properties as of the end of the identification period ($180,000) did not exceed 200 percent of the aggregate fair market value of real property X (200% × $100,000 = $200,000). Therefore, the requirements of the 200-percent rule are satisfied, and real properties L, M, N, and P are all identified before the end of the identification period.

Example 6. (i) On June 21, 1991, B identifies real properties Q, R, and S as replacement properties by designating these properties as replacement properties in a written document signed by B and mailed to C. On June 24, 1991, B identifies real properties T and U as replacement properties in a written document signed by B and mailed to C. On June 28, 1991, B revokes the identification of real properties Q and R in a written document signed by B and personally delivered to C.

(ii) B has revoked the identification of real properties Q and R in the manner provided by paragraph (c)(6) of this section. Identifications of replacement property that have been revoked in the manner provided by paragraph (c)(6) of this section are not taken into account for purposes of applying the 3-property rule. Thus, as of June 28, 1991, B has identified only replacement properties S, T, and U for purposes of the 3-property rule. Because B did not identify more than three properties as replacement properties for purposes of the 3-property rule, the requirements of that rule are satisfied, and real properties S, T, and U are all identified before the end of the identification period.

Example 7. (i) On May 20, 1991, B identifies real properties V and W as replacement properties by designating these properties as replacement properties in a written document signed by B and personally delivered to C. On June 4, 1991, B identifies real properties Y and Z as replacement properties in the same manner. On June 5, 1991, B telephones C and orally revokes the identification of real properties V and W. As of July 1, 1991, the fair market values of real properties V, W, Y, and Z are $50,000, $70,000, $90,000, and $100,000, respectively. On July 31, 1991, C purchases real property Y and Z and transfers them to B.

(ii) Pursuant to paragraph (c)(6) of this section (relating to revocation of identification), the oral revocation of the identification of real properties V and W is invalid. Thus, the identification of real properties V and W is taken into account for purposes of determining whether the requirements of paragraph (c)(4) of this section (relating to the identification of alternative and multiple properties) are satisfied. Because B identified more than three properties and the aggregate fair market value of the identified properties as of the end of the identification period ($310,000) exceeds 200 percent of the fair market value of real property X (200% × $100,000 = $200,000), the requirements of paragraph (c)(4) of this section are not satisfied, and B is treated as if B did not identify any replacement property.

(d) *Receipt of identified replacement property*—(1) *In general.* For purposes of paragraph (b)(1)(ii) of this section (relating to the receipt requirement), the identified replacement property is received before the end of the exchange period only if the requriements of this paragraph (d) are satisfied with respect to the replacement property. In the case of a deferred exchange, the identified replacement property is received before the end of the exchange period if—

(i) The taxpayer receives the replacement property before the end of the exchange period, and

(ii) The replacement property received is substantially the same property as identified.

If the taxpayer has identified more than one replacement property, section 1031(a)(3)(B) and this paragraph (d) are applied separately to each replacement property.

(2) *Examples.* This paragraph (d) may be illustrated by the following examples. The following facts are assumed: B, a calendar year taxpayer, and C agree to enter into a deferred exchange. Pursuant to their agreement, B transfers real property X to C on May 17, 1991. Real property X, which has been held by B for investment, is unencumbered and has a fair market value on May 17, 1991, of $100,000. On or before July 1, 1991 (the end of the identification period), B is to identify replacement property that is of a like kind to real property X. On or before November 13, 1991 (the end of the exchange period), C is required to purchase the property identified by B and to transfer that property to B. To the extent the fair market value of the replacement property transferred to B is greater or less than the fair market value of real property X, either B or C, as applicable, will make up the difference by paying cash to the other party after the date the replacement property is received by B. The replacement property is identified in a manner that satisfies paragraph (c) of this section (relating to identification of replacement property) and is of a like kind to real property X (determined without regard to section 1031(a)(3) and this section). B intends to hold any replacement property received for investment.

Example 1. (i) In the agreement, B identifies real properties J, K, and L as replacement properties. The agreement provides that by July 26, 1991, B will orally inform C which of the properties C is to transfer to B.

(ii) As of July 1, 1991, the fair market values of real properties J, K, and L are $75,000, $100,000, and $125,000, respectively. On July 26, 1991, B instructs C to acquire real property K. On October 31, 1991, C purchases real property K for $100,000 and transfers the property to B.

(iii) Because real property K was identified before the end of the identification period and was received before the end of the exchange period, the identification and receipt requirements of section 1031(a)(3) and this section are satisfied with respect to real property K.

Example 2. (i) In the agreement, B identifies real property P as replacement property. Real property P consists of two acres of unimproved land. On October 15, 1991, the owner of real property P erects a fence on the property. On November 1, 1991, C purchases real property P and transfers it to B.

(ii) The erection of the fence on real property P subsequent to its identification did not alter the basic nature or character of real property P as unimproved land. B is considered to have received substantially the same property as identified.

Example 3. (i) In the agreement, B identifies real property Q as replacement property. Real property Q consists of a barn on two acres of land and has a fair market value of $250,000 ($187,500 for the barn and underlying land and $87,500 for the remaining land). As of July 26, 1991, real property Q remains unchanged and has a fair market value of $250,000. On that date, at B's direction, C purchases the barn and underlying land for $187,500 and transfers it to B, and B pays $87,500 to C.

(ii) The barn and underlying land differ in basic nature or character from real property Q as a whole. B is not considered to have received substantially the same property as identified.

Example 4. (i) In the agreement, B identifies real property R as replacement property. Real property R consists of two acres of unimproved land and has a fair market value of $250,000. As of October 3, 1991, real property R remains unimproved and has a fair market value of $250,000. On that date, at B's direction, C purchases 1½ acres of real property R for $187,500 and transfers it to B, and B pays $87,500 to C.

(ii) The portion of real property R that B received does not differ from the basic nature or character of real property R as a whole. Moreover, the fair market value of the portion of real property R that B received ($187,500) is 75 percent of the fair market value of real property R as of the date of receipt. Accordingly, B is considered to have received substantially the same property as identified.

(e) *Special rules for identification and receipt of replacement property to be produced*—(1) *In general.* A transfer of relinquished property in a deferred exchange will not fail to qualify for nonrecognition of gain or loss under section 1031 merely because the replacement property is not in existence or is being produced at the time the property is identified as replacement property. For purposes of this paragraph (e), the terms "produced" and "production" have the same meanings as provided in section 263A(g)(1) and the regulations thereunder.

(2) *Identification of replacement property to be produced.* (i) In the case of replacement property that is to be produced, the replacement property must be identified as provided in paragraph (c) of this section (relating to identification of replacement property). For example, if the identified replacement property consists of improved real property where the improvements are to be constructed, the description of the replacement property satisfies the requirements of paragraph (c)(3) of this section (relating to description of replacement property) if a legal description is provided for the underlying land and as much detail is provided regarding construction of the improvements as is practicable at the time the identification is made.

(ii) For purposes of paragraphs (c)(4)(i)(B) and (c)(5) of this section (relating to the 200-percent rule and incidental property), the fair market value of replacement property that is to be produced is its estimated fair market value as of the date it is expected to be received by the taxpayer.

(3) *Receipt of replacement property to be produced.* (i) For purposes of paragraph (d)(1)(ii) of this section (relating to receipt of the identified replacement property), in determining whether the replacement property received by the taxpayer is substantially the same property as identified where the identified replacement property is property to be produced, variations due to usual or typical production changes are not taken into account. However, if substantial changes are made in the property to be produced, the replacement property received will not be considered to be substantially the same property as identified.

(ii) If the identified replacement property is personal property to be produced, the replacement property received will not be considered to be substantially the same property as identified unless production of the replacement property received is completed on or before the date the property is received by the taxpayer.

(iii) If the identified replacement property is real property to be produced and the production of the property is not completed on or before the date the taxpayer receives the property, the property received will be considered to be substantially the same property as identified only if, had production been completed on or before the date the taxpayer receives the replacement property, the property received would have been considered to be substantially the same property as identified. Even so, the property received is considered to be substantially the same property as identified only to the extent the property received constitutes real property under local law.

(4) *Additional rules.* The transfer of relinquished property is not within the provisions of section 1031(a) if the relinquished property is transferred in exchange for services (including production services). Thus, any additional production occurring with respect to the replacement property after the property is received by the taxpayer will not be treated as the receipt of property of a like kind.

(5) *Example.* This paragraph (e) may be illustrated by the following example.

Example. (i) B, a calendar year taxpayer, and C agree to enter into a deferred exchange. Pursuant to their agreement, B transfers improved real property X and personal property Y to C on May 17, 1991. On or before November 13, 1991 (the end of the exchange period), C is required to transfer to B real property M, on which C is constructing improvements, and personal property N, which C is producing. C is obligated to complete the improvements and production regardless of when properties M and N are transferred to B. Properties M and N are identified in a manner that satisfies paragraphs (c) (relating to identification of replacement property) and (e)(2) of this section. In addition, properties M and N are of a like kind, respectively, to real property X and personal property Y (determined without regard to section 1031(a)(3) and this section). On November 13, 1991, when construction of the improvements to property M is 20 percent completed and the production of property N is 90 percent completed, C transfers to B property M and property N. If construction of the improvements had been completed, property M would have been considered to be substantially the same property as identified. Under local law, property M constitutes real property to the extent of the underlying land and the 20 percent of the construction that is completed.

(ii) Because property N is personal property to be produced and production of property N is not completed before the date the property is received by B, property N is not considered to be substantially the same property as identified and is treated as property which is not of a like kind to property Y.

(iii) Property M is considered to be substantially the same property as identified to the extent of the underlying land and the 20 percent of the construction that is completed when property M is received by B. However, any additional construction performed by C with respect to property M after November 13, 1991, is not treated as the receipt of property of a like kind.

(f) *Receipt of money or other property*—(1) *In general.* A transfer of relinquished property in a deferred exchange is not within the provisions of section 1031(a) if, as part of the consideration, the taxpayer receives money or other property. However, such a transfer, if otherwise qualified, will be within the provisions of either section 1031 (b) or (c). See § 1031(a)-1(a)(2). In addition, in the case of a transfer of relinquished property in a deferred exchange, gain or loss may be recognized if the taxpayer actually or constructively receives money or other property before the taxpayer actually receives like-kind replacement property. If the taxpayer actually or constructively receives money or other property in the

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full amount of the consideration for the relinquished property before the taxpayer actually receives like-kind replacement property, the transaction will constitute a sale and not a deferred exchange, even though the taxpayer may ultimately receive like-kind replacement property.

(2) *Actual and constructive receipt.* Except as provided in paragraph (g) of this section (relating to safe harbors), for purposes of section 1031 and this section, the determination of whether (or the extent to which) the taxpayer is in actual or constructive receipt of money or other property before the taxpayer actually receives like-kind replacement property is made under the general rules concerning actual and constructive receipt and without regard to the taxpayer's method of accounting. The taxpayer is in actual receipt of money or property at the time the taxpayer actually receives the money or property or receives the economic benefit of the money or property. The taxpayer is in constructive receipt of money or property at the time the money or property is credited to the taxpayer's account, set apart for the taxpayer, or otherwise made available so that the taxpayer may draw upon it at any time or so that the taxpayer can draw upon it if notice of intention to draw is given. Although the taxpayer is not in constructive receipt of money or property if the taxpayer's control of its receipt is subject to substantial limitations or restrictions, the taxpayer is in constructive receipt of the money or property at the time the limitations or restrictions lapse, expire, or are waived. In addition, actual or constructive receipt of money or property by an agent of the taxpayer (determined without regard to paragraph (k) of this section) is actual or constructive receipt by the taxpayer.

(3) *Example.* This paragraph (f) may be illustrated by the following example.

Example. (i) B, a calendar year taxpayer, and C agree to enter into a deferred exchange. Pursuant to the agreement, on May 17, 1991, B transfers real property X to C. Real property X, which has been held by B for investment, is unencumbered and has a fair market value on May 17, 1991, of $100,000. On or before July 1, 1991 (the end of the identification period), B is to identify replacement property that is of a like kind to real property X. On or before November 13, 1991 (the end of the exchange period), C is required to purchase the property identified by B and to transfer that property to B. At any time after May 17, 1991, and before C has purchased the replacement property, B has the right, upon notice, to demand that C pay $100,000 in lieu of acquiring and transferring the replacement property. Pursuant to the agreement, B identifies replacement property, and C purchases the replacement property and transfers it to B.

(ii) Under the agreement, B has the unrestricted right to demand the payment of $100,000 as of May 17, 1991. B is therefore in constructive receipt of $100,000 on that date. Because B is in constructive receipt of money in the full amount of the consideration for the relinquished property before B actually receives the like-kind replacement property, the transaction constitutes a sale, and the transfer of real property X does not qualify for nonrecognition of gain or loss under section 1031. B is treated as if B received the $100,000 in consideration for the sale of real property X and then purchased the like-kind replacement property.

(iii) If B's right to demand payment of the $100,000 were subject to a substantial limitation or restriction (e.g., the agreement provided that B had no right to demand payment before November 14, 1991 (the end of the exchange period)), then, for purposes of this section, B would not be in actual or constructive receipt of the money unless (or until) the limitation or restriction lapsed, expired, or was waived.

(g) *Safe harbors*—(1) *In general.* Paragraphs (g)(2) through (g)(5) of this section set forth four safe harbors the use of which will result in a determination that the taxpayer is not in actual or constructive receipt of money or other property for purposes of section 1031 and this section. More than one safe harbor can be used in the same deferred exchange, but the terms and conditions of each must be separately satisfied. For purposes of the safe harbor rules, the term "taxpayer" does not include a person or entity utilized in a safe harbor (e.g., a qualified intermediary). See paragraph (g)(8), *Example 3(v)*, of this section.

(2) *Security or guarantee arrangements.* (i) In the case of a deferred exchange, the determination of whether the taxpayer is in actual or constructive receipt of money or other property before the taxpayer actually receives like-kind replacement property will be made without regard to the fact that the obligation of the taxpayer's transferee to transfer the replacement property to the taxpayer is or may be secured or guaranteed by one or more of the following—

(A) A mortgage, deed of trust, or other security interest in property (other than cash or a cash equivalent),

(B) A standby letter of credit which satisfies all of the requirements of § 15A.453–1 (b)(3)(iii) and which may not be drawn upon in the absence of a default of the transferee's obligation to transfer like-kind replacement property to the taxpayer, or

(C) A guarantee of a third party.

(ii) Paragraph (g)(2)(i) of this section ceases to apply at the time the taxpayer has an immediate ability or unrestricted right to receive money or other property pursuant to the security or guarantee arrangement.

(3) *Qualified escrow accounts and qualified trusts.* (i) In the case of a deferred exchange, the determination of whether the taxpayer is in actual or constructive receipt of money or other property before the taxpayer actually receives like-kind replacement property will be made without regard to the fact that the obligation of the taxpayer's transferee to transfer the replacement property to the taxpayer is or may be secured by cash or a cash equivalent if the cash or cash equivalent is held in a qualified escrow account or in a qualified trust.

(ii) A qualified escrow account is an escrow account wherein—

(A) The escrow holder is not the taxpayer or a disqualified person (as defined in paragraph (k) of this section), and

(B) The escrow agreement expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of the cash or cash equivalent held in the escrow account as provided in paragraph (g)(6) of this section.

(iii) A qualified trust is a trust wherein—

(A) The trustee is not the taxpayer or a disqualified person (as defined in paragraph (k) of this section, except that for this purpose the relationship between the taxpayer and the trustee created by the qualified trust will not be considered a relationship under section 267(b)), and

(B) The trust agreement expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of the cash or cash equivalent held by the trustee as provided in paragraph (g)(6) of this section.

(iv) Paragraph (g)(3)(i) of this section ceases to apply at the time the taxpayer has an immediate ability or unrestricted right to receive, pledge, borrow, or otherwise obtain the benefits of the cash or cash equivalent held in the qualified escrow account or qualified trust. Rights conferred upon the taxpayer under state law to terminate or dismiss the escrow holder of a qualified escrow account or the trustee of a qualified trust are disregarded for this purpose.

(v) A taxpayer may receive money or other property directly from a party to the exchange, but not from a qualified escrow account or a qualified trust, without affecting the application of paragraph (g)(3)(i) of this section.

(4) *Qualified intermediaries.* (i) In the case of a taxpayer's transfer of relinquished property involving a qualified intermediary, the qualified intermediary is not considered the agent of the taxpayer for purposes of section 1031(a). In such a case, the taxpayer's transfer of relinquished property and subsequent receipt of like-kind replacement property is treated as an exchange, and the determination of whether the taxpayer is in actual or constructive receipt of money or other property before the taxpayer actually receives like-kind replacement property is made as if the qualified intermediary is not the agent of the taxpayer.

(ii) Paragraph (g)(4)(i) of this section applies only if the agreement between the taxpayer and the qualified intermediary expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by the qualified intermediary as provided in paragraph (g)(6) of this section.

(iii) A qualified intermediary is a person who—

(A) Is not the taxpayer or a disqualified person (as defined in paragraph (k) of this section), and

(B) Enters into a written agreement with the taxpayer (the "exchange agreement") and, as required by the exchange agreement, acquires the relinquished property from the taxpayer, transfers the relinquished property, acquires the replacement property, and transfers the replacement property to the taxpayer.

(iv) Regardless of whether an intermediary acquires and transfers property under general tax principals, solely for purposes of paragraph (g)(4)(iii)(B) of this section—

(A) An intermediary is treated as acquiring and transferring property if the intermediary acquires and transfers legal title to that property,

(b) An intermediary is treated as acquiring and transferring the relinquished property if the intermediary (either on its own behalf or as the agent of any party to the transaction) enters into an agreement with a person other than the taxpayer for the transfer of the relinquished property to that person and, pursuant to that agreement, the relinquished property is transferred to that person, and

(C) An intermediary is treated as acquiring and transferring replacement property if the intermediary (either on its own behalf or as the agent of any party to the transaction) enters into an agreement with the owner of the replacement property for the transfer of that property and, pursuant to that agreement, the replacement property is transferred to the taxpayer.

(v) Solely for purposes of paragraphs (g)(4)(iii) and (g)(4)(iv) of this section, an intermediary is treated as entering into an agreement if the rights of a party to the agreement are assigned to the intermediary and all parties to that agreement are notified in writing of the assignment on or before the date of the relevent transfer of property. For example, if a taxpayer enters into an agreement for the transfer of relinquished property and thereafter assigns its rights in that agreement to an intermediary and all parties to that agreement are notified in writing of the assignment on or before the date of the transfer of the relinquished property, the intermediary is treated as entering into that agreement. If the relinquished property is transferred pursuant to that agreement, the intermediary is treated as having acquired and transferred the relinquished property.

(vi) Paragraph (g)(4)(i) of this section ceases to apply at the time the taxpayer has an immediate ability or unrestricted right to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by the qualified intermediary. Rights conferred upon the taxpayer under state law to terminate or dismiss the qualified intermediary are disregarded for this purpose.

(vii) A taxpayer may receive money or other property directly from a party to the transaction other than the qualified intermediary without affecting the application of paragraph (g)(4)(i) of this section.

(5) *Interest and growth factors.* In the case of a deferred exchange, the determination of whether the taxpayer is in actual or constructive receipt of money or other property before the taxpayer actually receives the like-kind replacement property will be made without regard to the fact that the taxpayer is or may be entitled to receive any interest or growth factor with respect to the deferred exchange. The preceding sentence applies only if the agreement pursuant to which the taxpayer is or may be entitled to the interest or growth factor expressly limits the taxpayer's rights to receive the interest or growth factor as provided in paragraph (g)(6) of this section. For additional rules concerning interest or growth factors, see paragraph (h) of this section.

(6) *Additional restrictions on safe harbors under paragraphs (g)(3) through (g)(5).* (i) An agreement limits a taxpayer's rights as provided in this paragraph (g)(6) only if the agreement provides that the taxpayer has no rights, except as provided in paragraph (g)(6)(ii) and (g)(6)(iii) of this section, to receive, pledge, borrow, or otherwise obtain the benefits of money or other property before the end of the exchange period.

(ii) The agreement may provide that if the taxpayer has not identified replacement property by the end of the identification period, the taxpayer may have rights to receive, pledge, borrow, or othewise obtain the benefits of money or other property at any time after the end of the identification period.

(iii) The agreement may provide that if the taxpayer has identified replacement property, the taxpayer may have rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property upon or after—

(A) The receipt by the taxpayer of all of the replacement property to which the taxpayer is entitled under the exchange agreement, or

(B) The occurrence after the end of the identification period of a material and substantial contingency that—

(*1*) Relates to the deferred exchange,

(*2*) Is provided for in writing, and

(*3*) Is beyond the control of the taxpayer and of any disqualified person (as defined in paragraph (k) of this section), other than the person obligated to transfer the replacement property to the taxpayer.

(7) *Items disregarded in applying safe harbors under paragraphs (g)(3) through (g)(5).* In determining whether a safe harbor under paragraphs (g)(3) through (g)(5) of this section ceases to apply and whether the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property are expressly limited as provided in paragraph (g)(6) of this section, the taxpayer's receipt of or right to receive any of the following items will be disregarded—

(i) Items that a seller may receive as a consequence of the disposition of property and that are not included in the amount realized from the disposition of property (e.g., prorated rents), and

(ii) Transactional items that relate to the disposition of the relinquished property or to the acquisition of the replacement property and appear under local standards in the typical closing statements as the responsibility of a buyer or seller (e.g., commissions, prorated taxes, recording or transfer taxes, and title company fees).

(8) *Examples.* This paragraph (g) may be illustrated by the following examples. Unless otherwise provided in an example, the following facts are assumed: B, a calendar year taxpayer, and C agree to enter into a deferred exchange. Pursuant to their agreement, B is to transfer real property X to C on May 17, 1991. Real property X, which has been held by B for investment, is unencumbered and has a fair market value on May 17, 1991, of $100,000. On or

before July 1, 1991 (the end of the identification period), B is to identify replacement property that is of a like kind to real property X. On or before November 13, 1991 (the end of the exchange period), C is required to purchase the property identified by B and to transfer that property to B. To the extent the fair market value of the replacement property transferred to B is greater or less than the fair market value property X, either B or C, as applicable, will make up the difference by paying cash to the other party after the date the replacement property is received by B. The replacement property is identified as provided in paragraph (c) of this section (relating to identification of replacement property) and is of a like kind to real property X (determined without regard to section 1031(a)(3) and this section). B intends to hold any replacement property received for investment.

Example 1. (i) On May 17, 1991, B transfers real property X to C. On the same day, C pays $10,000 to B and deposits $90,000 in escrow as security for C's obligation to perform under the agreement. The escrow agreement provides that B has no rights to receive, pledge, borrow, or otherwise obtain the benefits of the money in escrow before November 14, 1991, except that:

(A) if B fails to identify replacement property on or before July 1, 1991, B may demand the funds in escrow at any time after July 1, 1991; and

(B) if B identifies and receives replacement property, then B may demand the balance of the remaining funds in escrow at any time after B has received the replacement property.

The funds in escrow may be used to purchase the replacement property. The escrow holder is not a disqualified person as defined in paragraph (k) of this section. Pursuant to the terms of the agreement, B identifies replacement property, and C purchases the replacement property using the funds in escrow and tranfers the replacement property to B.

(ii) C's obligation to transfer the replacement property to B was secured by cash held in a qualified escrow account because the escrow holder was not a disqualified person and the escrow agreement expressly limited B's rights to receive, pledge, borrow, or otherwise obtain the benefits of the money in escrow as provided in paragraph (g)(6) of this section. In addition, B did not have the immediate ability or unrestricted right to receive money or other property in escrow before B actually received the like-kind replacement property. Therefore, for purposes of section 1031 and this section, B is determined not to be in actual or constructive receipt of the $90,000 held in escrow before B received the like-kind replacement property. The transfer of real property X by B and B's acquisition of the replacement property qualify as an exchange under section 1031. See paragraph (j) of this section for determining the amount of gain or loss recognized.

Example 2. (i) On May 17, 1991, B transfers real property X to C, and C deposits $100,000 in escrow as security for C's obligation to perform under the agreement. Also on May 17, B identifies real property J as replacement property. The escrow agreement provides that no funds may be paid out without prior written approval of both B and C. The escrow agreement also provides that B has no rights to receive, pledge, borrow, or otherwise obtain the benefits of the money in escrow before November 14, 1991, except that:

(A) B may demand the funds in escrow at any time after the later of July 1, 1991, and the occurrence of any of the following events—

(*1*) real property J is destroyed, seized, requisitioned, or condemned, or

(*2*) a determination is made that the regulatory approval necessary for the transfer of real property J cannot be obtained in time for real property J to be transferred to B before the end of the exchange period;

(B) B may demand the funds in escrow at any time after August 14, 1991, if real property J has not been rezoned from residential to commercial use by that date; and

(C) B may demand the funds in escrow at the time B receives real property J or any time thereafter.

Otherwise, B is entitled to all funds in escrow after November 13, 1991. The funds in escrow may be used to purchase the replacement property. The escrow holder is not a disqualified person as described in paragraph (k) of this section. Real property J is not rezoned from residential to commercial use on or before August 14, 1991.

(ii) C's obligation to transfer the replacement property to B was secured by cash held in a qualified escrow account because the escrow holder was not a disqualified person and the escrow agreement expressly limited B's rights to receive, pledge, borrow, or otherwise obtain the benefits of the money in escrow as provided in paragraph (g)(6) of this section. From May 17, 1991, until August 15, 1991, B did not have the immediate ability or unrestricted right to receive money or other property before B actually received the like-kind replacement property. Therefore, for purposes of section 1031 and this section, B is determined not to be in actual or constructive receipt of the $100,000 in escrow from May 17, 1991, until August 15, 1991. However, on August 15, 1991, B had the unrestricted right, upon notice, to draw upon the $100,000 held in escrow. Thus, the safe harbor ceased to apply and B was in constructive receipt of the funds held in escrow. Because B constructively received the full amount of the consideration ($100,000) before B actually received the like-kind replacement property, the transaction is treated as a sale and not as a deferred exchange. The result does not change even if B chose not to demand the funds in escrow and continued to attempt to have real property J rezoned and to receive the property on or before November 13, 1991.

(iii) If real property J had been rezoned on or before August 14, 1991, and C had purchased real property J and transferred it to B on or before November 13, 1991, the transaction would have qualified for nonrecognition of gain or loss under section 1031(a).

Example 3. (i) On May 1, 1991, D offers to purchase real property X for $100,000. However, D is unwilling to participate in a like-kind exchange. B thus enters into an exchange agreement with C whereby B retains C to facilitate an exchange with respect to real property X. C is not a disqualified person as described in paragraph (k) of this section. The exchange agreement between B and C provides that B is to execute and deliver a deed conveying real property X to C who, in turn, is to execute and deliver a deed conveying real property X to D. The exchange agreement expressly limits B's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by C as provided in paragraph (g)(6) of this section. On May 3, 1991, C enters into an agreement with D to transfer real property X to D for $100,000. On May 17, 1991, B executes and delivers to C a deed conveying real property X to C. On the same date, C executes and delivers to D a deed conveying real property X to D, and D deposits $100,000 in escrow. The escrow holder is not a disqualified person as defined in paragraph (k) of this section and the escrow agreement expressly limits B's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property in escrow as provided in paragraph (g)(6) of this section. However, the escrow agreement provides that the money in escrow may be used to purchase replacement property. On June 3, 1991, B identifies real property K as replacement property. On August 9, 1991, E executes and delivers to C a deed conveying real property K to C and $80,000 is released from the escrow and paid to E. On the same date, C executes and delivers to B a deed conveying real property K to B, and the escrow holder pays B $20,000, the balance of the $100,000 sale price of real property X remaining after the purchase of real property K for $80,000.

(ii) B and C entered into an exchange agreement that satisfied the requirements of paragraph (g)(4)(iii)(B) of this section. Regardless of whether C may have acquired and transferred real property X under general tax principles, C is treated as having acquired and transferred real property X because C acquired and transferred legal title to real property X. Similarly, C is treated as having acquired and transferred real property K because C acquired and transferred legal title to real property K. Thus, C was a qualified intermediary. This result is reached for purposes of this section regardless of whether C was B's agent under state law.

(iii) Because the escrow holder was not a disqualified person and the escrow agreement expressly limited B's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property in escrow as provided in paragraph (g)(6) of this section, the escrow account was a qualified escrow account. For purposes of section 1031 and this section, therefore, B is determined not to be in actual or constructive receipt of the funds in escrow before B received real property K.

(iv) The exchange agreement between B and C expressly limited B's rights to receive, pledge, borrow, or otherwise obtain the benefits of any money held by C as provided in paragraph (g)(6) of this section. Because C was a qualified intermediary, for purposes of section 1031 and this section B is determined not to be in actual or constructive receipt of any funds held by C before B received real property K. In addition, B's transfer of real property X and acquisition of real property K qualify as an exchange under section 1031. See paragraph (j) of this section for determining the amount of gain or loss recognized.

(v) If the escrow agreement had expressly limited C's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property in escrow as provided in paragraph (g)(6) of this section, but had not expressly limited B's rights to receive, pledge, borrow, or otherwise obtain the benefits of that money or other property, the escrow account would not have been a qualified escrow account. Consequently, paragraph (g)(3)(i) of this section would not have been applicable in determining whether B was in actual or constructive receipt of that money or other property before B received real property K.

Example 4. (i) On May 1, 1991, B enters into an agreement to sell real property X to D for $100,000 on May 17, 1991. However, D is unwilling to participate in a like-kind exchange. B thus enters into an exchange agreement with C whereby B retains C to facilitate an exchange with respect to real property X. C is not a disqualified person as described in paragraph (k) of this section. In the exchange agreement between B and C, B assigns to C all of B's rights in the agreement with D. The exchange agreement expressly limits B's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by C as provided in paragraph (g)(6) of this section. On May 17, 1991, B notifies D in writing of the assignment. On the same date, B executes and delivers to D a deed conveying real property X to D. D pays $10,000 to B and $90,000 to C. On June 1, 1991, B identifies real property L as replacement property. On July 5, 1991, B enters into an agreement to purchase real property L from E for $90,000, assigns its rights in that agreement to C, and notifies E in writing of the assignment. On August 9, 1991, C pays $90,000 to E, and E executes and delivers to B a deed conveying real property L to B.

(ii) The exchange agreement entered into by B and C satisfied the requirements of paragraph (g)(4)(iii)(B) of this section. Because B's rights in its agreements with D and E were assigned to C, and D and E were notified in writing of the assignment on or before the transfer of real properties X and L, respectively, C is treated as entering into those agreements. Because C is treated as entering into an agreement with D for the transfer of real property X and, pursuant to that agreement, real property X was transferred to D, C is treated as acquiring and transferring real property X. Similarly, because C is treated as entering into an agreement with E for the transfer of real property K and, pursuant to that agreement, real property K was transferred to B, C is treated as acquiring and transferring real property K. This result is reached for purposes of this section regardless of whether C was B's agent under state law and regardless of whether C is considered, under general tax principles, to have acquired title or beneficial ownership of the properties. Thus, C was a qualified intermediary.

(iii) The exchange agreement between B and C expressly limited B's rights to receive, pledge, borrow, or otherwise obtain the benefits of the money held by C as provided in paragraph (g)(6) of this section. Thus, B did not have the immediate ability or unrestricted right to receive money or other property held by C before B received real property L. For purposes of section 1031 and this section, therefore, B is determined not to be in actual or constructive receipt of the $90,000 held by C before B received real property L. In addition, the transfer of real property X by B and B's acquisition of real property L qualify as an exchange under section 1031. See paragraph (j) of this section for determining the amount of gain or loss recognized.

Example 5. (i) On May 1, 1991, B enters into an agreement to sell real property X to D for $100,000. However, D is unwilling to participate in a like-kind exchange. B thus enters into an agreement with C whereby B retains C to facilitate an exchange with respect to real property X. C is not a disqualified person as described in paragraph (k) of this section. The agreement between B and C expressly limits B's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by C as provided in paragraph (g)(6) of this section. C neither enters into an agreement with D to transfer real property X to D nor is assigned B's rights in B's agreement to sell real property X to D. On May 17, 1991, B transfers real property X to D and instructs D to transfer the $100,000 to C. On June 1, 1991, B identifies real property M as replacement property. On August 9, 1991, C purchases real property L from E for $100,000, and E executes and delivers to C a deed conveying real property M to C. On the same date, C executes and delivers to B a deed conveying real property M to B.

(ii) Because B transferred real property X directly to D under B's agreement with D, C did not acquire real property X from B and transfer real property X to D. Moreover, because C did not acquire legal title to real property X, did not enter into an agreement with D to transfer real property X to D, and was not assigned B's rights in B's agreement to sell real property X to D, C is not treated as acquiring and transferring real property X. Thus, C was not a qualified intermediary and paragraph (g)(4))(i) of this section does not apply.

(iii) B did not exchange real property X for real property M. Rather, B sold real property X to D and purchased, through C, real property M. Therefore, the transfer of real property X does not qualify for nonrecognition of gain or loss under section 1031.

(h) *Interest and growth factors*—(1) *In general.* For purposes of this section, the taxpayer is treated as being entitled to receive interest or a growth factor with respect to a deferred exchange if the amount of money or property the taxpayer is entitled to receive depends upon the length of time elapsed between transfer of the relinquished property and receipt of the replacement property.

(2) *Treatment as interest.* If, as part of a deferred exchange, the taxpayer receives interest or a growth factor, the interest or growth factor will be treated as interest, regardless of whether it is paid to the taxpayer in cash or in property (including property of a like kind). The taxpayer must include the interest or growth factor in income according to the taxpayer's method of accounting.

(i) [Reserved]

(j) *Determination of gain or loss recognized and the basis of property received in a deferred exchange*—(1) *In general.* Except as otherwise provided, the amount of gain or loss recognized and the basis of property received in a deferred exchange is determined by applying the rules of section 1031 and the regulations thereunder. See §§ 1.1031(b)–1, 1.1031(c)–1, 1.1031(d)–1, 1.1031(d)–1T, 1.1031(d)–2, and 1.1031(j)–1.

(2) *Coordination with section 453.* [Reserved].

(3) *Examples.* This paragraph (j) may be illustrated by the following examples. Unless otherwise provided in an example, the following facts are assumed: B, a calendar year taxpayer, and C agree to enter into a deferred exchange. Pursuant to their agreement, B is to transfer real property X to C on May 17, 1991. Real property X, which has been held by B for investment, is unencumbered and has a fair market value on May 17, 1991, of $100,000. B's adjusted basis in real property X is $40,000. On or before July 1, 1991 (the end of the identification period), B is to identify replacement property that is of a like kind to real property X. On or before November 13, 1991 (the end of the exchange period), C is required to purchase the property identified by B and to transfer that property to B. To the extent the fair market value of the replacement property transferred to B is greater or less than the fair market value of real property X, either B or C, as applicable, will make up the difference by paying cash to the other party after the date the replacement property is received. The replacement property is identified as provided in paragraph (c) of this section and is of a like kind to real property X (determined without regard to section 1031(a)(3) and this section). B intends to hold any replacement property received for investment.

Example 1. (i) On May 17, 1991, B transfers real property X to C and identifies real

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property R as replacement property. On June 3, 1991, C transfers $10,000 to B. On September 4, 1991, C purchases real property R for $90,000 and transfers real property R to B.

(ii) The $90,000 received by B is "money or other property" for purposes of section 1031 and the regulations thereunder. Under section 1031(b), B recognizes gain in the amount of $10,000. Under section 1031(d), B's basis in real property R is $40,000 (i.e., B's basis in real property X ($40,000), decreased in the amount of money received ($10,000), and increased in the amount of gain recognized ($10,000) in the deferred exchange).

Example 2. (i) On May 17, 1991, B transfers real property X to C and identifies real property S as replacement property, and C transfers $10,000 to B. On September 4, 1991, C purchases real property S for $100,000 and transfers real property S to B. On the same day, B transfers $10,000 to C.

(ii) The $10,000 received by B is "money or other property" for purposes of section 1031 and the regulations thereunder. Under section 1031(b), B recognizes gain in the amount of $10,000. Under section 1031(d), B's basis in real property S is $30,000 (i.e., B's basis in real property X ($40,000), decreased in the amount of money received ($10,000), increased in the amount of gain recognized ($10,000), and increased in the amount of the additional consideration paid by B ($10,000) in the deferred exchange).

Example 3. (i) Under the exchange agreement, B has the right at all times to demand $100,000 in cash in lieu of replacement property. On May 17, 1991, B transfers real property X to C and identifies real property T as replacement property. On September 4, 1991, C purchases real property T for $100,000 and transfers real property T to B.

(ii) Because B has the right on May 17, 1991, to demand $100,000 in cash in lieu of replacement property, B is in constructive receipt of the $100,000 on that date. Thus, the transaction is a sale and not an exchange, and the $60,000 gain realized by B in the transaction (i.e., $100,000 amount realized less $40,000 adjusted basis) is recognized. Under section 1031(d), B's basis in real property T is $100,000.

Example 4. (i) Under the exchange agreement, B has the right at all times to demand up to $30,000 in cash and the balance in replacement propertry instead of receiving replacement property in the amount of $100,000. On May 17, 1991, B transfers real property X to C and identifies real property U as replacement property. On September 4, 1991, C purchases real property U for $100,000 and transfers real property U to B.

(ii) The transaction qualifies as a deferred exchange under section 1031 and this section. However, because B had the right on May 17, 1991, to demand up to $30,000 in cash, B is in constructive receipt of $30,000 on that date. Under section 1031(b), B recognizes gain in the amount of $30,000. Under section 1031(d), B's basis in real property U is $70,000 (i.e., B's basis in real property X ($40,000), decreased in the amount of money that B received ($30,000), increased in the amount of gain recognized ($30,000), and increased in the amount of additional consideration paid by B ($30,000) in the deferred exchange).

Example 5. (i) Assume real property X is encumbered by a mortgage of $90,000. On May 17, 1991, B transfers real property X to C and identifies real property V as replacement property, and C assumes the $90,000 mortgage on real property X. Real property V is encumbered by a $20,000 mortgage. On July 5, 1991, C purchases real property V for $90,000 by paying $70,000 and assuming the mortgage and transfers real property V to B with B assuming the mortgage.

(ii) The consideration received by B in the form of the liability assumed by C ($90,000) is offset by the consideration given by B in the form of the liability assumed by B ($20,000). The excess of the liability assumed by C over the liability assumed by B, $10,000, is treated as "money or other property." See § 1.1031(b)-1(c). Thus, B recognizes gain under section 1031(b) in the amount of $10,000. Under section 1031(d), B's basis in real property V is $40,000 (i.e., B's basis in real property X ($40,000), decreased in the amount of money that B is treated as receiving in the form of the liability assumed by C ($30,000), increased in the amount of money that B is treated as paying in the form of the liability assumed by B ($20,000), and increased in the amount of the gain recognized ($10,000) in the deferred exchange).

(k) *Definition of disqualified person.* (1) For purposes of this section, a disqualified person is a person described in paragraph (k)(2), (k)(3), or (k)(4) of this section.

(2) The person is the agent of the taxpayer at the time of the transaction. For this purpose, a person who has acted as the taxpayer's employee, attorney, accountant, investment banker or broker, or real estate agent or broker within the 2-year period ending on the date of the transfer of the first of the relinquished properties is treated as an agent of the taxpayer at the time of the transaction. Solely for purposes of this paragraph (k)(2), performance of the following services will not be taken into account—

(i) Services for the taxpayer with respect to exchanges of property intended to qualify for nonrecognition of gain or loss under section 1031; and

(ii) Routine financial, title insurance, escrow, or trust services for the taxpayer by a financial institution. title insurance company, or escrow company.

(3) The person and the taxpayer bear a relationship described in either section 267(b) or section 707(b) (determined by substituting in each section "10 percent" for "50 percent" each place it appears).

(4) The person and a person described in paragraph (k)(2) of this section bear a relationship described in either section 267(b) or section 707(b) (determined by substituting in each section "10 percent" for "50 percent" each place it appears).

(5) This paragraph (k) may be illustrated by the following examples. Unless otherwise provided, the following facts are assumed: On May 1, 1991, B enters into an exchange agreement (as defined in paragraph (g)(4)(iii)(B) of this section) with C whereby B retains C to facilitate an exchange with respect to real property X. On May 17, 1991, pursuant to the agreement, B executes and delivers to C a deed conveying real property X to C. C has no relationship to B described in paragraphs (k)(2), (k)(3), or (k)(4) of this section.

Example 1. (i) C is B's accountant and has rendered accounting services to B within the 2-year period ending on May 17, 1991, other than with respect to exchanges of property intended to qualify for nonrecognition of gain or loss under section 1031.

(ii) C is a disqualified person because C has acted as B's accountant within the 2-year period ending on May 17, 1991.

(iii) If C had not acted as B's accountant within the 2-year period ending on May 17, 1991, or if C had acted as B's accountant within that period only with respect to exchanges intended to qualify for nonrecognition of gain or loss under section 1031, C would not have been a disqualified person.

Example 2. (i) C, which is engaged in the trade or business of acting as an intermediary to facilitate deferred exchanges, is a wholly owned subsidiary of an escrow company that has performed routine escrow services for B in the past. C has previously been retained by B to act as an intermediary in prior section 1031 exchanges.

(ii) C is not a disqualified person notwithstanding the intermediary services previously provided by C to B (see paragraph (k)(2)(i) of this section) and notwithstanding the combination of C's relationship to the escrow company and the escrow services previously provided by the escrow company to B (see paragraph (k)(2)(ii) of this section).

Example 3. (i) C is a corporation that is only engaged in the trade or business of acting as an intermediary to facilitate deferred exchanges. Each of 10 law firms owns 10 percent of the outstanding stock of C. One of the 10 law firms that owns 10 percent of C is M. J is the managing partner of M and is the president of C. J, in his capacity as a partner in M, has also rendered legal advice to B within the 2-year period ending on May 17, 1991, on matters other than exchanges intended to qualify for nonrecognition of gain or loss under section 1031.

(ii) J and M are disqualified persons. C, however, is not a disqualified person because neither J nor M own, directly or indirectly, more than 10 percent of the stock of C. Similarly, J's participation in the management of C does not make C a disqualified person.

(l) [Reserved]

(m) *Definition of fair market value.* For purposes of this section, the fair market value of property means the fair market value of the property without regard to any liabilities secured by the property.

(n) *No inference with respect to actual or constructive receipt rules outside of section 1031.* The rules provided in this section relating to actual or constructive receipt are intended to be rules for determining whether there is actual or constructive receipt in the case of a deferred exchange. No inference is intended regarding the application of these rules for purposes of determining whether actual or constructive receipt exists for any other purpose.

(o) *Effective date.* This section applies to transfers of property made by a taxpayer on or after June 10, 1991. However, a transfer of property made by a taxpayer on or after May 16, 1990, but before June 10, 1991, will be treated as complying with section 1031 (a)(3) and this section if the deferred exchange satisfies either the provision of this section or the provisions of the notice of proposed rulemaking published in the **Federal Register** on May 16, 1990 (55 FR 20278).

Dated: April 12, 1991.

Approved:

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-10170 Filed 4-25-91; 3:40 pm]

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26 CFR Part 301

[T.D. 8347]

RIN 1545-AN07

Administrative Appeal of the Erroneous Filing of Notice of Federal Tax Lien

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide for the administrative appeal of the erroneous filing of a notice of federal tax lien. The right to an administrative appeal of the erroneous filing of a notice of federal tax lien was established by the Technical and Miscellaneous Revenue Act of 1988. The regulations set forth the situations in which persons may appeal the erroneous filing of a notice of federal tax lien, the office to which appeals may be made, and the information and documents that must be submitted with an appeal.

EFFECTIVE DATE: The regulations providing the right to an administrative appeal of the erroneous filing of a notice of federal tax lien are effective July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, 202-535-9682 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6326 of the Internal Revenue Code. The regulations reflect the amendment of section 6326 by section 6238 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647).

Explanation of Provisions

The Internal Revenue Service published a temporary regulation and a notice of proposed rulemaking by cross-reference to the temporary regulation in the **Federal Register** on May 8, 1989 [54 FR 19568, 19578]. The Internal Revenue Service gave the Small Business Administration the opportunity to comment prior to publication of the regulation.

Numerous parties submitted written comments concerning the regulation. Each of the issues raised in the public comments either had been considered prior to the publication of the temporary regulation, or falls outside the scope of the regulation. Several of the comments received by the Internal Revenue Service are discussed below. No changes have been made in the final regulation.

Section 6238 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647, 102 Stat. 3342) redesignated section 6326 of the Internal Revenue Code as section 6327 and added a new section 6326. Section 6326(a) provides that the Secretary shall prescribe regulations that provide for the administrative appeal of the erroneous filing of a notice of federal tax lien. Section 6326(b) provides that if the Secretary determines that the Internal Revenue Service has erroneously filed a notice of federal tax lien, the Secretary must expeditiously, and, to the extent practicable, within 14 days after such determination, issue a certificate of release of the lien. This certificate must include a statement that the filing was erroneous.

The regulations provide that a person may file an administrative appeal of the erroneous filing of a notice of federal tax lien in any of the following situations: (1) The tax liability that gave rise to the lien was satisfied in full prior to the filing of notice; (2) the underlying liability was assessed in violation of the deficiency procedures set forth in section 6213 of the Internal Revenue Code; (3) the underlying liability was assessed in violation of title 11, *i.e.*, the Bankruptcy Code; or (4) the statute of limitations for collection expired prior to the filing of notice.

The legislative history of section 6326 indicates that the administrative appeal is intended to be used only for the purpose of correcting publicly the erroneous filing of a notice of federal tax lien, not to challenge the underlying deficiency that led to the filing of a lien. In addition to the three situations specifically enumerated in the legislative history, to which section 6326 is meant to apply, the Internal Revenue Service considers it in keeping with the spirit of the Taxpayer Bill of Rights also to allow an appeal when the statute of limitations on collection expired prior to the filing of notice of federal tax lien. This additional situation also involves an erroneous filing of a notice of federal tax lien.

Some situations that commenters suggested should be covered by section 6326 already are covered under other sections of the Internal Revenue Code. For example, several parties who submitted comments suggested that the filing of a federal tax lien against a person with the same or a similar name as the liable taxpayer is erroneous and should be covered by section 6326 and these regulations. As discussed in the preamble to the temporary regulations, however, this situation is covered by section 6325(e) of the Internal Revenue Code, which gives the Secretary the authority to issue a certificate of nonattachment of lien if, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 of the Code refers to such person. Section 6325(e) is available to a nonliable spouse who has been named on a notice of federal tax lien filed against a liable spouse as well as to same or similar name situations.

Several of the comments received by the Internal Revenue Service involved substantive challenges to the lien, which Congress did not intend to include under section 6326. For example, two parties suggested that the final regulations should provide the right to appeal the filing of nominee liens. However, whether or not a nominee lien is properly filed depends upon who actually owns the property in question, the liable taxpayer or the nominee. This is a substantive issue. Another party

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suggested that the regulation should allow appeals by taxpayers who are in the process of questioning their liability for a 100 percent penalty under section 6672 of the Internal Revenue Code. This too is a substantive issue.

The regulations provide that appeals under section 6326 shall be made to the district director, attention Chief, Special Procedures Function, of the district in which the lien was filed.

Several parties questioned the decision to give the Special Procedures function jurisdiction over administrative appeals of erroneous filings of Federal tax liens. One party suggested that jurisdiction should lie with the Office of Appeals. Another party suggested that jurisdiction should lie either with the Office of Appeals or with Chief Counsel. During the formulation of the temporary regulations it was determined that Special Procedures should be given jurisdiction because Special Procedures: (1) Is intimately familiar with the issues that are appealable under section 6326; (2) is in close proximity to the information on which decisions will be based under section 6326; and (3) is currently handling very similar appeals under § 401.6325–1 of the Code of Federal Regulations.

Other parties further suggested that the regulation should provide for a hearing and a written decision. During the formulation of the temporary regulations, it was determined that the appealable issues under this statute are straightforward and relatively simple, thus obviating the need for a hearing. A provision requiring a formal hearing and a formal written opinion would needlessly delay the appeal process.

The regulations provide that a request for appeal under section 6326 is to be submitted in writing, and is to include the identity of the appealing party, a copy of the notice of lien affecting the property, if available, and the ground upon which the release of lien is sought. If the ground for release is that the liability was paid prior to the filing, the written request must include proof of full payment. If the ground upon which the filing of notice is being appealed is that the tax liability that gave rise to the lien was assessed in violation of the deficiency procedures set forth in section 6213 of the Internal Revenue Code, the appealing party must explain how the assessment was erroneous. If the ground for appeal is that the tax liability that gave rise to the lien was assessed in violation of title 11, the appealing party must identify the court and the district in which the bankruptcy petition was filed and provide the docket number and the date of filing of the bankruptcy petition.

Finally, the regulations provide that the appeal provided by section 6326 and these regulations shall be a person's exclusive administrative remedy for the erroneous filing of a notice of Federal tax lien.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. Chapter (5) and the Regulatory Flexibility Act (5 U.S.C. chapter (6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Kevin B. Connelly of the General Litigation Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift tax, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Addition to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is amended as follows.

PART 301—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 301.6326–1 is issued under 26 U.S.C. 6326.

§ 301.6326–1T [Amended]

Para. 2. Section 301.6326–1T is redesignated as § 301.6326–1, and the word "(temporary)" is removed from the section heading.

Approved: April 15, 1991.

Fred T. Goldberg, Jr.

Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–10177 Filed 4–30–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219–AA17

Safety Standards for Explosives at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public meetings.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold two public meetings to answer questions about the Agency's new explosive standards which become effective on May 20, 1991.

DATES: The public meetings will be held on May 14, 1991 in Reno, Nevada and May 16, 1991 in Birmingham, Alabama. Each meeting will begin at 9 a.m.

ADDRESSES: The public meetings will be held at the following locations:

1. May 14, 1991—Flamingo Hilton, Reno, 3rd Floor Convention Center, 255 N. Seirra Street, Reno, NE. 89503.
2. May 16, 1991—Birmingham Civic Center, North Meeting Room—DJ, 1 Civic Center Plaza, Birmingham, AL 35203.

FOR FURTHER INFORMATION CONTACT: Frank Delimba, Division of Safety, Metal and Nonmetal Mine Safety and Health, (MSHA), phone (703) 235–8647.

SUPPLEMENTARY INFORMATION: On January 18, 1991, MSHA published a final rule in the Federal Register (56 FR 2070) revising its safety standards for explosives at metal and nonmetal mines. With the exception of the following provisions: The definition of the term "blast site" in § 56.6000 and § 57.6000; paragraph (b) of §56.6306 and § 57.6306, loading and blasting; the first sentence of paragraph (b) of § 56.6130 and § 57.6130, explosive material storage facilities; paragraph (a)(1) of § 56.6131 and § 57.6131, location of explosive material storage facilities and Appendix I to Subpart E—MSHA Tables of Distances; and paragraph (a) of § 56.6501 and § 57.6501, nonelectric initiating systems, these standards will take effect on May 20, 1991. The final rule changed several provisions in the existing standards to accommodate advances in mining technology. In addition, alternative methods of compliance were provided for many standards. In response to requests from the mining community, MSHA has scheduled two public meetings to provide individuals with an opportunity to informally discuss the revised standards with representatives of the agency. Each meeting is scheduled to begin at 9 a.m., local time.

Dated: April 29, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91–10278 Filed 4–30–91; 8:45 am]

BILLING CODE 4510–43–M

POSTAL SERVICE

39 CFR Part 20

Pickup Services for Express Mail International Service and International Parcel Post

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service announces implementation of on-call pickup service for Express Mail International Service and scheduled pickup service for international parcel post. The fee for each of these services is $4.50 per pickup.

EFFECTIVE DATE: 12:01 a.m., May 5, 1991.

FOR FURTHER INFORMATION CONTACT: John F. Alepa (202) 268–2650.

SUPPLEMENTARY INFORMATION: Pursuant to its authority under 39 U.S.C. 407, the Postal Service is implementing on-call pickup service for Express Mail International Service (EMS) and scheduled pickup service for international parcel post.

As required by the Postal Reorganization Act, the pickup fees established by this notice are fair and reasonable, are not unduly or unreasonably discriminatory or preferential, apportion the costs of the service to mailers on a fair and equitable basis, and do not apportion the costs of pickup service so as to impair the overall value of the service to the users.

I. Express Mail International On-Call Pickup Service—Fee $4.50.

Current postal regulations provide for scheduled pickup service for Express Mail International Service (EMS), and scheduled or on-call pickup service for domestic Express Mail Service. This notice adds the on-call pickup service option to EMS. On-call pickup service for EMS may be requested during the normal business hours of the serving postal facility. The pickup will be made within 2 hours before the end of any business day or may be deferred until the next day if sufficient time is not available.

The service will be available only at post offices with city delivery (see Publication 65, National Five-Digit ZIP Code and Post Office Directory) and at other post offices, at the discretion of the local postmaster, where adequate resources are available. The charge for on-call pickup of EMS will be $4.50. If domestic Express Mail Service, international parcel post, domestic Priority Mail, or domestic parcel post is being picked up in the same pickup stop, only one pickup charge applies. The fee does not apply if the pickup is made during a regular mail delivery or collection (e.g. rural mail box, city mail box, etc.). Furthermore, the pickup fee is waived if the pickup is canceled by the customer prior to the dispatch of the pickup employee.

When calling for a pickup, the mailer must advise the serving postal facility of the volume of mail to be picked up. The Postal Service reserves the right to defer pickup or to make multiple pickups at no additional charge to the mailer when the volume to be picked up exceeds available vehicle capacity or when otherwise necessary. In addition, the Postal Service may refuse to provide on-call pickup service if bad weather or road conditions exist, if facility (mailer or postal premises) emergencies occur, if unforseen personnel or vehicle shortages exist, or when other exceptional situations occur.

II. International Parcel Post Scheduled Pickup Service—Fee $4.50.

Current postal regulations provide for scheduled pickup service for domestic Priority Mail and parcel post. This notice establishes scheduled pickup service for international parcel post.

Scheduled pickup service for international parcel post is to be performed in accordance with a service agreement between the Postal Service and the mailer. The service agreement must specify the time, place, day or date, frequency of pickup service, and approximate volume per pickup. (Form 5631, Express Mail Service Agreement, may be adapted for this use.) There will be a charge of $4.50 for each pickup stop, regardless of the number of pieces picked up. If domestic Express Mail Service, Express Mail International Service, domestic Priority Mail, or domestic parcel post is being picked up in the same pickup stop, only one pickup charge applies. The fee does not apply if pickup is made during a regular mail delivery or collection run (e.g. rural mail box, city mail box, etc.). No on-call pickup service is provided for international parcel post.

Scheduled international parcel post pickup will be available at post offices with city delivery (see Publication 65) and at other post offices where mutually satisfactory service agreements can be reached with the mailer. The mailer must notify the serving post office at least 24 hours in advance of the scheduled pickup if the pickup is not needed (canceled) or if the volume of mail to be picked up exceeds the amount specified in the service agreement by more than 20%. Failure to do so will result in the mailer being charged the pickup fee for each additional trip required.

The Postal Service reserves the right to defer pickup, to make multiple pickups and to establish plant-load service, at no additional charge to the mailer, when necessary even if not specified in the service agreement.

Accordingly, the Postal Service adopts the following amendments to sections 212 and 272 of the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Postal Service, Foreign relations, Incorporation by reference.

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. In the International Mail Manual, revise 212.24 and 272.3 to read as follows:

212.24 Pickup service.

On-call and scheduled pickup service is available for an added charge of $4.50 for each pickup stop, regardless of the number of pieces picked up. Only one pickup fee will be charged if domestic Express Mail, domestic Priority Mail, International parcel post, and/or domestic parcel post is also picked up at the same time. No pickup fee will be charged when international Express Mail is picked up during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee. Pickup service is provided in accordance with DMM 224.3.

* * * * *

272.3 Pickup service.

Scheduled pickup service is available for an added charge of $4.50 for each pickup stop, regardless of the number of pieces picked up. Only one pickup fee will be charged if domestic Express Mail, international Express Mail, domestic Priority Mail, and/or domestic parcel post is also picked up at the same

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time. No pickup fee will be charged when international parcel post is picked up during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee. Pickup service is provided in accordance with DMM 722.5.

A transmittal letter making the changes in the pages in the International Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the Federal Register as provided by 39 CFR 20.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-10169 Filed 4-30-91; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9E3711/R1106; FRL-3960-8]

Pesticide Tolerances For Inorganic Bromide Resulting From Fumigation With Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends the tolerances for residues of inorganic bromide in or on ginger roots to allow preplant soil fumigation with methyl bromide. The amendments to the tolerances for inorganic bromide were requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective May 1, 1991.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3711/R1106], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 16, 1991 (56 FR 1591), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 9E3711 to EPA on behalf of the Agricultural Experiment Station of Hawaii.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose an amendment to 40 CFR 180.123 by revising the existing tolerance for residues of inorganic bromide in or on ginger roots resulting from postharvest fumigation with methyl bromide to allow preplant soil fumigation. The existing tolerance for residues of inorganic bromide on ginger roots at 100 parts per million resulting from postharvest commodity fumigation with methyl bromide would remain in effect. No increase in the existing tolerance for residues of inorganic bromide on ginger roots was proposed to cover residues resulting from both preplant soil fumigation and postharvest commodity fumigation.

The petitioner proposed that this use of methyl bromide be limited to Hawaii based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

To make the regulations consistent, EPA also proposed to add a tolerance with regional registration under 40 CFR 180.199 for residues of inorganic bromide in or on ginger roots at 100 ppm resulting from soil fumigation with methyl bromide and chloropicrin. Tolerances under 40 CFR 180.199 are established for residues of inorganic bromide resulting from soil fumigation with combinations of chloropicrin, methyl bromide, or propargyl bromide. Chloropicrin is used in combination with methyl bromide as a warning agent. No tolerance is needed for chloropicrin, since the Agency has concluded that no residues of chloropicrin will remain in or on ginger roots as a result of preplant soil fumigation with formulations containing chloropicrin at 2 percent or less.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 12, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.123, by designating the current text as paragraph (a) and revising its introductory text and adding new paragraph (b), to read as follows:

§ 180.123 Inorganic bromides resulting from fumigation with methyl bromide; tolerances for residues.

(a) Tolerances are established for residues of inorganic bromides (calculated as Br) in or on the following raw agricultural commodities which have been fumigated with the antimicrobial agent and insecticide methyl bromide after harvest (with the exception of strawberries):

* * * * *

(b) A tolerance with regional registration, as defined in § 180.1(n), is established for residues of inorganic bromides (calculated as Br) in or on the following raw agricultural commodity grown in soil fumigated with methyl bromide.

Commodity	Parts per million
Ginger, roots (Pre- and Post-H)	100

3. In § 180.199, by adding new paragraph (c), to read as follows:

§ 180.199 Inorganic bromides resulting from soil treatment with combinations of chloropicrin and methyl bromide, or propargyl bromide; tolerances for residues.

* * * * *

(c) A tolerance with regional registration, as defined in § 180.1(n), is established for residues of inorganic bromides (calculated as Br) in or on the following raw agricultural commodity grown in soil fumigated with combinations of methyl bromide and chloropicrin. No tolerance is established for chloropicrin since it has been established that no residue of this substance remains in the raw agricultural commodity when formulations containing chloropicrin at 2 percent or less are used.

Commodity	Parts per million
Ginger, roots (Pre- and Post-H)	100

[FR Doc. 91-9968 Filed 4-30-91; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR PART 261

[FRL-3951-1]

Hazardous Waste Management Systems: Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Administrative stay.

SUMMARY: The Environmental Protection Agency is today announcing an administrative stay of a portion of the hazardous waste listing K069 so that the listing does not apply to slurries generated from air pollution control devices that are intended to capture acid gases and are not dedicated chiefly to control of particulate air emissions.

EFFECTIVE DATE: May 1, 1991.

ADDRESSES: The RCRA regulatory docket for this administrative stay is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-91-K69S-FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Narendra Chaudhari, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4787.

SUPPLEMENTARY INFORMATION: In the initial hazardous waste regulations implementing section 3001 of RCRA, the Agency listed as hazardous "emission control dust/sludge from secondary lead smelting" (EPA Hazardous Waste No. K069). This listing was intended to apply to the lead-rich particulate captured by secondary lead smelting air pollution control devices utilized for control of particulate matter. See Background Document for Listing of Hazardous Wastes, November 14, 1980, pp. 835-37; 840-42. The literal language of the listing regulation, however, encompasses not only this lead-rich residue, but sludges captured by other types of air emission control equipment, which sludges are unlike the waste EPA intended to list in terms of physical form, volume generated, and toxicity.

One secondary lead smelter, Exide/General Battery Corporation, located in Reading, Pennsylvania, operates air pollution control devices that capture particulate matter and a second control device utilized for acid gas control. This acid gas scrubber generates a slurry containing some lead and other toxic metals, although at levels that do not exhibit any characteristic of hazardous waste as measured by the Toxicity Characteristic Leaching Procedure (TCLP), and previously measured by Extraction Procedure (EP); see docket to today's rule for historical and recent analytical data. To the Agency's knowledge, Exide is the only secondary lead smelter that generates this type of slurry.

However, the language of the K069 listing regulation captures the slurry since it is a type of "sludge", i.e. a residue of a pollution control process (see § 260.10)). The slurry is not the waste the Agency meant to list. It is not generated by an air emission control device used chiefly to control lead emissions and other particulate, it is not amenable to recovery in the secondary lead process, it is not a dust, it is generated in lower volumes than the typical K069 waste, and it contains significantly lower concentrations of lead and other toxic metals than the typical K069 waste. Exide provided data showing that the levels of lead (310 ppm) and cadmium (12.7 ppm) in its sludge are far below the level given in the Agency's Background Document for listing K069 (53,000 to 120,000 ppm lead, and 340 to 900 ppm cadmium).

Leachable concentrations of lead and other toxic metals in the slurry are also significantly less than in the usual K069 waste. Exide provided extensive analytical data collected from 1989 to 1991 clearly demonstrating that leachable levels of toxic metals are low. Specifically, approximately 100 EP measurements of leachable metals taken in 1989 show that cadmium, lead, and chromium are usually far below the toxicity characteristic levels; the mean EP value (at the 95th percentile upper confidence limits) for these metals are less than one tenth (i.e., 10-fold less than) the characteristic levels. The levels of leachment metals for typical K069 wastes given in the Background Document exceeded the characteristic levels by factors of 5 to 230 for cadmium, 50 to 480 for lead, and 1 to 240 for chromium. Exide also provided more recent TCLP measurements of its waste obtained in 1990 and 1991 that show even longer levels of leachable cadmium and lead. Of nineteen TCLP samples, all were less than one tenth of the characteristic levels. See the docket to today's rule for further details of this analysis.

EPA intends in the near future to propose to amend the language of the K069 listing to clarify the scope of the listing to excluded sludges generated by air pollution devices that are not a plant's chief means of controlling lead emissions. In the interim, however, the Agency has determined to grant a limited administrative stay of the K069 listing pursuant to 5 U.S.C. 705,[1] in order that the listing not apply to the slurry waste generated by the Exide acid gas scrubber or to any other similar waste (if such a waste should exist). The Agency is taking this action not only because it appears that the listing was not intended to apply to this waste and that the waste does not exhibit any characteristic of hazardous waste and

[1] Exide has raised this issue in its petition for review challenging and land disposal restrictions regulations promulgated on June 1, 1990 (55 FR 22520).

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would not be listed if the Agency were approaching the issue *de novo*, but also because Exide is presently incurring significant treatment and disposal costs for this slurry (particularly as a result of recently-promulgated treatment standards issued as part of the Land Disposal Restriction Third regulation, at (55 FR 22568) (June 1, 1990)) which potentially jeopardize the company's continued ability to operate. Given that the listing appears to also apply inappropriately to the waste, and other lead-bearing materials, and that Exide's recovery process specifically aids in meeting the Land Disposal Restriction treatment standards for lead acid batteries, EPA finds that justice requires issuance of a limited administrative stay. See 5 U.S.C. 705. For the same reasons, EPA finds that grant of a stay is necessary to prevent irreparable harm to Exide, will not impede EPA's administration of the subtitle C program (which will continue to apply to all K069 wastes that EPA intended to list), and is in the public interest.

Accordingly, the Agency is issuing this administrative stay of the K069 listing so that it does not apply to the slurry generated by acid gas air pollution control devices at Exide/General Battery Reading, Pennsylvania facility. The listing continues to apply to Exide's (and all other secondary lead smelters') dusts generated by particulate matter air pollution control devices. The administrative stay will remain in effect until 30 days after completing of rulemaking dealing with the scope of the K069 listing. If EPA takes further action effecting this stay, EPA will publish a notice of the action in the Federal Register.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling and Reporting and Recordkeeping Requirements.

Dated: April 18, 1991.

F. Henry Habicht II,

Deputy Administrator.

For the reasons set at in the preamble, title 40, chapter I, part 261 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.32 is amended by revising the K069 listing to read as follows:

§ 261.32 Hazardous wastes from specific sources

* * * * *

Industry and EPA hazardous waste no.	Hazardous waste	Hazard code
* * *	* * *	
Secondary lead:		
K069	Emission control dust/sludge from secondary lead smelting. (NOTE: This listing is stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further administrative action is taken. If EPA takes further action effecting this stay, EPA will publish a notice of the action in the Federal Register.	(T)

* * * * *

[FR Doc. 91-9902 Filed 4-30-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6855

[NM-940-4214-10; NMNM 055653]

Partial Revocation of Public Land Order No. 2051; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects 566.30 acres of public land withdrawn for research programs in connection with Federal programs. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through land exchange as directed by Public Law 100-559.

EFFECTIVE DATE: May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504-1449, 505-988-6071.

By virtue of the authority vested in the Secretary of the Interior by Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and as directed by Public Law 100-559, it is ordered as follows:

1. Public Land Order No. 2051, which withdrew public land and reserved it under the jurisdiction of the Secretary of the Interior for use by the New Mexico College of Agriculture and Mechanic Arts, now New Mexico State University, for research programs in connection with Federal programs, is hereby revoked insofar as it affects the following described land:

New Mexico Principal Meridian

T. 23 S., R. 2 E.,
sec. 22, lots 5 and 6;
sec. 23, lots 1 and 2, and 5 to 16, inclusive.

The area contains 566.30 acres in Dona Ana County.

2. The land described above is hereby opened to the land exchange as authorized and directed by Section 502 of Public Law 100-559.

Dated: April 26, 1991.

Dave O'Neal

Assistant Secretary of the Interior.

[FR Doc. 91-10339 Filed 4-30-91; 8:45 am]

BILLING CODE 4310-FB-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580, 581 and 583

[Docket No. 91-1]

Bonding of Non-Vessel-Operating Common Carriers

AGENCY: Federal Maritime Commission.

ACTION: Notice of extension of time.

SUMMARY: The Federal Maritime Commission is extending until May 24, 1991, the time by which non-vessel-operating common carriers ("NVOCCs") may file new tariffs to become effective on one day's notice. The granting of this authority does not constitute an exemption from the penalty provisions of the Shipping Act of 1984 for those NVOCCs that may be operating without a tariff on file as required by section 8 of the 1984 Act.

EFFECTIVE DATE: April 24, 1991.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Deputy Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: On January 15, 1991, the Commission published in the Federal Register, 56 FR 1493, an Interim Rule and Request for Comments in Docket No. 91-1, *Bonding of Non-Vessel-Operating Common Carriers*, to implement the Non-Vessel-Operating Common Carrier Amendments of 1990 ("1990 Amendments"), section 710 of Public Law No. 101-595. Due to the limited time between publication of the Interim Rule and the effective date of the 1990 Amendments on February 14, 1991, the Interim Rule provided authority for new tariffs filed by NVOCCs on or before February 14, 1991, to become effective on one day's notice. By Order dated February 13, 1991, the Commission deferred the effective date of the Interim Rule until April 15, 1991. That Order also extended until April 15, 1991, the authority for new NVOCC tariffs to be filed on one day's notice.

In a special permission application requesting extension of the one day's notice authority, the Commission has been advised by Effective Tariff Management ("ETM") that articles in the trade press and statements by freight forwarding industry leaders have led a significant number of foreign NVOCCs to believe that the bonding requirement would be further stayed beyond the April 15, 1991, effective date. ETM contends that this confusion has resulted in the failure of many companies to properly file a bond. ETM also alleges that due to a fear that a new tariff would be rejected if a bond was not on file, many NVOCCs have held off filing their new tariffs.

In view of the foregoing, the Commission has determined to extend the period during which NVOCCs may file new tariffs on one day's notice until May 24, 1991. This action does not constitute a waiver by the Commission of the prohibition against operating as a common carrier without having an effective tariff on file or of the penalty provisions of section 13 of the Shipping Act of 1984 and the Commission's implementing regulations.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-10180 Filed 4-30-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-127; RM-7203]

Radio Broadcasting Services; Erath, Louisiana

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Solo Music Company, permittee of Station KXKW(FM) (formerly KRAR(FM)), substitutes Channel 299C3 for Channel 299A at Erath, Louisiana, and modifies its authorization to specify operation on the higher powered channel. See 55 FR 10790, March 23, 1990. Channel 299C3 can be allotted to Erath, Louisiana, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 kilometers (4.3 miles) northwest to avoid a short-spacing to Station KCIL(FM), Channel 298C1, Houma, Louisiana. The coordinates for the allotment of Channel 299C3 at Erath are North Latitude 29-59-30 and West Longitude 92-05-47. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-127, adopted April 15, 1991, and released April 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 299A and adding Channel 299C3 at Erath.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-10229 Filed 4-30-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Dalea Foliosa (Leafy Prairie-Clover) Determined To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Dalea foliosa* (leafy prairie-clover), a rare plant presently known from only two sites in Alabama, nine sites in Tennessee, and three sites in Illinois, to be an endangered species under the authority of the Endangered Species Act (Act) of 1973, as amended. It is endangered throughout its range by habitat alteration; residential, commercial, or industrial development; livestock grazing; and conversion of its limited habitat to pasture. This action extends Federal protection under the Act to leafy prairie-clover.

EFFECTIVE DATE: May 31, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Dalea foliosa (Gray) Barneby (leafy prairie-clover) is a perennial member of the pea family (Fabaceae) that has only been collected from Illinois, Tennessee, and Alabama. The erect 0.5-meter- (1.5-foot-) tall stems arise from a hardened root crown. The plant's pinnately compound alternate leaves are 3.5 to 4.5 centimeters (1.4 to 1.8 inches) long and are composed of 20 to 30 leaflets. The small purple flowers are borne in dense spikes at the end of the stems (Smith and Wofford 1980). Flowering begins in late July and continues through August. Seeds ripen by early October, and the above-ground portion of the plant dies soon afterward. The dead stems remain erect and disperse ripened seeds from late fall to early spring (Baskin and Baskin 1973).

Leafy prairie-clover was described by Gray in 1868 as *Petalostemum foliosum* (Gray 1868). Barneby (1977) included the species of the genus *Petalostemon*

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(alternative spelling) within his concept of the genus *Dalea*, and his treatment of the group is followed by the Service.

Leafy prairie-clover is typically found growing in close association with the cedar glades of central Tennessee and northern Alabama. However, it seems to prefer the deeper soil of the prairielike areas along the boundaries of and within the rocky cedar glades (Smith and Wofford 1980). In Illinois, the species is now found only along the Des Plaines River, growing in prairie remnants that occur on thin-soil areas overlying dolomite (Kurz and Bowles 1981). A description of the species' status within each State where it occurs is provided below.

Alabama. There are four known locations for leafy prairie-clover in Alabama. Two of these were discovered in the late 1960s (Baskin and Caudle 1967). At the time of their discovery, one population (Franklin County) was small and contained only a few plants. The other population (Morgan County) was relatively larger and contained several hundred individuals. Smith and Wofford (1980) reported that no plants were found at the Franklin County site during the 1980 field season. They further reported that while the Morgan County population only supported about 50 individuals, it appeared to be a healthy reproducing population. In 1989 a third population was discovered in Lawrence County. This population is small and is located within the right-of-way of a Tennessee Valley Authority (TVA) power transmission line (Leo Collins, TVA, personal communication, 1990). The fourth Alabama population was discovered in 1984 in Jefferson County. This site was searched twice by botanists, once in 1989 and again in 1990, and it apparently no longer supports the species. At the present time there are believed to be two extant and two extirpated populations in the State (Scott Gunn, Alabama Natural Heritage Program, personal communication, 1990).

Illinois. Leafy prairie-clover was originally known from six counties in the northeastern portion of the State (Kurz and Bowles 1981). Only three populations are now known in the State. All are in Will County and are in prairie remnants along the Des Plaines River. Historically, the species was also found in Boone, Ogle, Kane, La Salle, and Kankakee Counties. The Illinois Department of Conservation recently attempted to reestablish the species at one of the historic Kankakee County sites. In the spring of 1988, 105 individuals were planted in suitable habitat at this historic location. The spring and summer of 1988 were very dry in northern Illinois, and only six individuals survived to the fall of 1988 (John Schwegman, Illinois Department of Conservation, personal communication, 1989). It is not known whether a viable, reproducing population will become reestablished at this site.

Two of the known Illinois sites are protected and/or managed by the Will County Forest Preserve District. A third site, recently rediscovered by the Illinois State Natural History Survey Division, is adjacent to the right-of-way for a proposed new highway. All of a fourth Will County location was recently bulldozed, and all of the *Dalea foliosa* at the site were destroyed. The Will County Forest Preserve District will attempt to acquire this area and reintroduce leafy prairie-clover to the site, provided suitable habitat still exists (De Mauro *in litt.*).

Tennessee. The following information on leafy prairie-clover in Tennessee was primarily derived from Smith and Wofford (1980) and Dr. Paul Somers (Tennessee Department of Conservation, personal communication, 1989, and Somers *in litt.*).

The Service believes that there are currently only nine viable leafy prairie-clover populations in Tennessee. Most of these populations are small and contain fewer than 50 individual plants. Historically, the plant was known from seven Rutherford County sites. One of these sites was destroyed by industrial construction, and the species has not been observed on three other Rutherford County sites in the recent past. In Rutherford County the only currently known viable population is in a State park and consists of 25 to 30 individuals. Two additional Rutherford County sites support two individuals each; the Service does not consider these to represent viable populations.

There are two records of the species in Wilson County located on lands managed by the Tennessee Department of Conservation. One of these was discovered in 1979 and supported about 30 individuals in 1990. The other was discovered in 1990 and contained about 20 individuals. In June 1990, Marshall County was found to support two leafy prairie-clover populations; one of these contained 21 plants, while the other contained 15 plants (Baskin and Wofford *in litt.*). In late May 1990, a healthy population of leafy prairie-clover was discovered in Bedford County by Mr. J. Raveill of the Tennessee Department of Conservation. This population contained about 250 plants in June 1990. The glades supporting this population are privately owned and exhibit little evidence of disturbance (Baskin and Wofford *in litt.*).

Davidson County once supported four populations. One of the sites was bulldozed for development and is or soon will be lost to the species. Another site is slated for development and is expected to be lost, and two very small populations, discovered in 1985, have not been observed since their discovery. None of the Davidson County populations are considered by the Service to be viable.

Williamson County supports one population of the species; most of this site was acquired through donation by The Nature Conservancy and is protected. However, a small portion remains in private ownership and could be lost.

Maury County once supported three populations of leafy prairie-clover. In June 1990 it was determined that one population was extirpated, and a second only supported about 50 plants. The third population is the largest and healthiest in Tennessee and is owned by TVA. This site is within the floodpool of the proposed Columbia Dam project, and half of the 630 plants found there will be flooded if the project is constructed as originally proposed. (See the "Summary of Factors Affecting the Species" section of this rule for further discussion of this project).

The Tennessee Department of Conservation conducted a survey of several hundred cedar glades and cedar glade remnants in the central basin of Tennessee during the 1987 through 1990 field seasons. Despite this thorough search of much of the available habitat for leafy prairie-clover, only two new populations of the species were found.

Federal government actions on this species began with Section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, the Service also acknowledged its intention to review the status of those plant taxa named within the report. *Dalea foliosa (Petalostemum foliosum)* was included in the Smithsonian report and in the July 1, 1975, notice of review. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangerd species pursuant to section 4 of the Act; *Dalea foliosa* was included in this proposal.

The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing plants proposed on June 16, 1976. *Dalea foliosa* was included as a category 1 species in the revised notice of review for native plants published on December 15, 1980 (45 FR 82480). Category 1 species are those for which the Service has information that indicates that proposing to list them as endangered or threatened is appropriate. This species was changed to a category 2 species for the revised plant notices of review published in 1983 (48 FR 53640) and in 1985 (50 FR 39526).

Category 2 species are those for which the Service has information that indicates that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats are not currently known or on file to support the preparation of rules. This was the case with *Dalea foliosa*. The Service believed that additional searches of potential habitat in central Tennessee were needed before a decision could be made as to whether to prepare a proposed rule to add the species to the list. The Service funded a survey in 1979 to determine the status of *Dalea foliosa* in Alabama and Tennessee; a final report on this survey was accepted by the Service in 1980. A report summarizing the status of the species in Illinois was completed by Kurz and Bowles in 1981. During the 1987, 1988, 1989, and 1990 field seasons, personnel with the Tennessee Department of Conservation conducted an extensive inventory of cedar glades in central Tennessee. Several hundred sites were visited during this inventory, and only two additional populations of *Dalea foliosa* were discovered. Based on the additional information, *Dalea foliosa* was changed to a category 1 species in the plant notice of review published February 21, 1990 (55 FR 6184).

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Dalea foliosa* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, and in October of each year thereafter, through 1989, the Service found that the petitioned listing of *Dalea foliosa* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats were still being gathered. The March 27, 1990, proposal to list leafy prairie-clover as endangered (55 FR 11230) constituted the final 12-month finding for this species.

Summary of Comments and Recommendations

In the March 27, 1990, proposed rule; the October 1, 1990, notice of public hearing and extension of the comment period (55 FR 39988); the October 16, 1990, public hearing; and notifications associated with these activities, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the following newspapers: Daily Herald, Columbia, Tennessee; Nashville Banner, Nashville, Tennessee; Lebanon Democrat, Lebanon, Tennessee; Daily News Journal, Murfreesboro, Tennessee; Daily Journal, Kankakee, Illinois; Joliet Herald, Joliet, Illinois; Decatur Daily, Decatur, Alabama; and Franklin County Times, Russellville, Alabama. In response to two formal requests, a public hearing on the proposal to list *Dalea foliosa* as an endangered species was held on October 16, 1990, at Columbia State Community College in Columbia, Tennessee. A notice of the hearing and reopening of the comment period to November 1, 1990, was published in the **Federal Register** on October 1, 1990 (55 FR 39988). The public hearing notice announced the purpose, time, and location of the hearing and extended the formal comment period on the proposal in order to ensure that all interested parties had ample time to provide information on the proposed rule.

All written comments and oral statements presented at the public hearing and those received during comment periods are covered in the following discussion. Comments of similar content are grouped together. These issues and the Service response to each, are discussed below.

Nine written responses to the proposed rule were received during the initial comment period. Three State agencies, one county agency, one city official, and four private individuals or organizations provided comments.

The Illinois State Natural History Survey Division, the Illinois Department of Conservation, and the Forest Preserve District of Will County, Illinois, strongly supported the addition of leafy prairie-clover to the Federal list of endangered species, provided additional information on the status of the species in Illinois, and provided updated information on conservation activities in Illinois. The Service has incorporated the additional information on the status and conservation of the species, as appropriate, into this document.

Three individuals and the Center for Plant Conservation supported the proposed addition of the species to the Federal list of endangered species or requested additional information on the species. The Service provided the requested information.

The Tennessee Upper Duck River Development Agency and the City of Columbia, Tennessee, requested a public hearing on the Service's proposal but provided no comments on the proposal in their requests.

The public hearing on the proposed rule to list leafy prairie-clover as an endangered species was held on October 16, 1990, in the auditorium of the Clement Building at Columbia State Community College, Columbia, Tennessee. Seven verbal statements were made at the public hearing, and six written statements were provided, three of which were copies of verbal statements given. Eighteen written comments were received during the comment period extension.

Statements at Public Hearing

The Mayor of the City of Columbia expressed opposition to the proposed addition of leafy prairie-clover to the Federal list. The Mayor also suggested that in lieu of Federal protection the Service permit area residents to cultivate the species and thereby ensure that it does not become extinct. The Service believes that cultivation of leafy prairie-clover without protecting the natural ecosystems upon which it depends would not meet the requirements of the Act. One of the Act's primary purposes, as stated in section 2(b) of the Act, is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." Cultivation of endangered and threatened species can be a positive conservation tool, and it is often listed as a task to be completed before recovery can be achieved. However, the

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purpose of this cultivation is to ensure that, if the species is lost from the wild, plants will be available to reintroduce the species back into the natural ecosystem. Additionally, cultivation of endangered and threatened species can provide wildflower gardeners with a source of rare plants for home gardens without adversely affecting the species in the wild.

The Columbia City Manager endorsed efforts to preserve leafy prairie-clover provided that those efforts did not impede the completion of the proposed Columbia Dam. The City Manager concurred that the species is rare, but did not believe it should be listed unless other conservation efforts, such as those proposed by the Mayor, prove inadequate. He also endorsed the Mayor's proposal to cultivate the species. The Service response to the cultivation issue is provided above. The Columbia Dam project and its potential effects on the plant are discussed in the "Summary of Factors Affecting the Species" section of this rule. The procedures followed by the Service in reviewing the potential impact of Federal projects on listed species are outlined in the "Available Conservation Measures" section of this rule.

The Chairman, Board of Directors, Upper Duck River Development Agency (Agency) stated that, based upon the information provided by their consultant, he did not believe that leafy prairie-clover needed Federal protection to ensure its survival. The Service, however, believes that Federal protection for leafy prairie-clover is merited based upon the information outlined in the "Summary of Factors Affecting the Species" section of this rule.

The Agency's Executive Director stated that the Agency supported ensuring that species do not become extinct and would attempt to take any actions necessary to ensure that end. He also stated that, based on information in the public record, he believed leafy prairie-clover is in better condition now than it was historically. The Service does not concur with this conclusion based upon the information provided in the "Background" and "Summary of Factors Affecting the Species" sections of this rule.

The Agency's consultant stated that, based on his review of the available data, he concurred that leafy prairie-clover is indeed a rare and sporadically occurring species. However, he believed the species was not threatened, was likely more common than present distribution data suggest, and argued that it did not need Federal protection. He stated that the species can remain dormant during adverse climatic conditions, and this may account to some degree for the sporadic nature of its distribution. He noted that, based on work performed in Illinois and elsewhere, the leafy prairie-clover is easily cultivated and has seeds that often germinate several years after they fall to the soil. He stated that there appeared to be more individuals of the species now than previously reported and that at least one population in each State is protected through public ownership. In conclusion, he stated that if there is concern about the species' survival, the Service should cooperate with the Mayor's suggested volunteer citizen cultivators to ensure that the species does not disappear. The Service does not concur with the consultant's conclusions regarding the present vulnerability of the species. Based upon the data outlined in the "Background" and "Summary of Factors Affecting the Species" sections of this rule, it is the Service's conclusion that the leafy prairie-clover qualifies for protection under the Act. The observed rarity and sporadic distribution cannot be fully accounted for merely by the species' ability to remain dormant during drought and other adverse climatic conditions. In Illinois the species was originally known from six counties. It is now restricted to three sites in one county. In Alabama, two of the four known sites have been destroyed, and in Tennessee most sites are small and vulnerable to loss due to the factors discussed in the rule sections referenced above. Although the species is readily cultivated, several attempts in Illinos to reintroduce the species to a site have been unsuccessful (De Mauro *in litt.*). The range of environmental requirements for successful reestablishment in the wild is not fully understood and will require additional research before anyone can reintroduce the species with confidence that the reintroduction will be successful.

One private individual supported listing of the species and supported completion of the Columbia Dam project. Another private individual stated that the population in the Columbia Dam project area could be better managed if the dam were completed.

Written Statements Received After the Public Hearing

Eighteen written comments were received during the comment extension period—3 from State or county agencies, 1 from a private conservation organization, and 14 from private individuals.

The Tennessee Department of Conservation supported protection of leafy prairie-clover under the Act and provided additional information on the distribution of the species in Tennessee. The Forest Preserve District of Will County, Illinois, reiterated their support for the species' proposed addition to the Federal endangered species list and provided additional information on the current species' status in Illinois and their efforts to reintroduce the species in the wild. The Service concurs with the conclusion that the species merits addition to the Federal list. The information on the status of the species and reintroduction efforts has been incorporated, where appropriate, into this rule.

The Agency's Executive Director expressed regret that they had not been allowed to accompany the group that surveyed the proposed Columbia Dam project area population in June 1990. It was not the Service's intent to exclude the Agency from the site visit; through an oversight by the Service, the Agency was not notified of the planned survey. As soon as the oversight was brought to the Service's attention, a Service representative provided an Agency employee with a tour of the site. The Executive Director and another individual pointed out that the written survey report (Wofford and Baskin 1990) stated that this population contained 630 individuals while a Service employee stated at the public hearing that the population contained 750–1,000 individuals. The Service believes that the correct figure for the size of this population is 630, and the employee's statement at the hearing was in error. The Executive Director stated that it was his belief that the Service did not want help from others in meeting its responsibilities under the Act. This belief was based upon the Service's reluctance to utilize cultivation rather than Federal listing to protect leafy prairie-clover. The Service does not believe that cultivation is appropriate in lieu of listing for the reasons stated above. The Service recognizes the value of and welcomes the conservation efforts made by the private sector and Federal, State, county, and city governments and agencies. However, these efforts must contribute to species' conservation and meet the goals of the Act. Cultivation without habitat protection does not contribute to conservation of the species or meet the mandates of the Act.

The Executive Director questioned why the Service chose to propose the leafy prairie-clover from the extensive list of category 1 species in the February 21, 1990, notice to review plant taxa for listing as endangered or threatened species (55 FR 6184). The decision to propose this plant was based upon the threats to the species, its limited distribution, availability of data on its status, and the support for the action expressed by the State conservation agencies responsible for the protection of the flora in their respective States. In conclusion, the Executive Director offered the Agency's assistance in protecting leafy prairie-clover. The Service appreciates their willingness to conserve this species and looks forward to a successful effort to ensure that the populations managed for TVA by the Agency is not lost.

One individual expressed concern about past difficulties in meeting the Act's requirements for conserving endangered and threatened species, specifically the limited amount of money available for these efforts. The Service acknowledges that the present needs for protection and recovery of listed species exceed the currently available funds. However, availability of recovery funds is not a criterion used to determine if listing is warranted. He suggested that the Service move all of the known leafy prairie-clovers now growing on cedar glades to shallow-soiled prairie sites because, if left undisturbed, most cedar glades will eventually be covered so densely with cedars that leafy prairie-clover will be shaded out. The Service recognizes that the vegetation at the cedar glade populations will need to be managed in order to ensure that the habitat remains suitable for leafy prairie-clover and other rare cedar glade species. It should be noted that the populations occurring on shallow-soiled prairies also require management in order to maintain the habitat in a condition conducive to leafy prairie-clover. In conclusion, this individual stated that he believed the Service wanted to use the leafy prairie-clover to stop the Columbia Dam project. The Service responds that the purpose of Federal listing is not to stop projects but to ensure that species do not become extinct. The Service is generally able to work with project advocates to both protect the species and allow for project objectives to be met. The criteria for adding species to the Federal list are contained in Section 4 of the Act. These criteria, as they relate to the currently known status of leafy prairie-clover, are specifically addressed in the "Summary of Factors Affecting the Species" section of this rule. This project and its relationship to federally listed endangered species is addressed in Section A of this summary. Section 7 of the Act, which addresses consultation with Federal agencies to protect listed species, is addressed in the "Available Conservation Measures" section of this rule.

Three individuals and a conservation organization expressed support for the proposed addition of leafy prairie-clover to the Federal list.

Ten individuals expressed opposition to the proposed addition of leafy prairie-clover to the Federal list stating their belief that it is more numerous than is currently known or that with the currently known populations it is not actually endangered. Most also expressed support for the completion of the Columbia Dam project. The Service believes that the current information on the status of leafy prairie-clover is accurate and reflects the actual distribution of the species. Additional populations may be found in the future; however, it is not anticipated that the discovery of additional sites will significantly affect the species' status. The Columbia Dam project and its relationship to this species is addressed above.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that leafy prairie-clover should be classified as an endangered species. Procedures found at Section 4(a)(1) of the act (16 U.S.C. 1533 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement these listing provisions were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Dalea foliosa* (Gray) Barneby (leafy prairie-clover) (Syn: *Petalostemum foliosum* Gray) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Most of the known populations of Dalea foliosa are threatened with destruction or adverse modification of their habitat. The plant is best protected in Illinois, where two of the three known extant sites are being managed to protect the species. The third Illinois site could be adversely affected by construction of a proposed highway. However, with proper planning and appropriate care during actual construction, it should be possible to protect this population. A fourth Illinois population was recently destroyed; it is not known if the site can be acquired and the *Dalea foliosa* restored (De Mauro *in litt.*, Kass and Bowles 1983).

The Franklin County, Alabama, population was apparently destroyed by a series of construction activities that included road-widening and associated construction and, later, installation of an underground pipeline (Cary Norquist, U.S. Fish and Wildlife Service, personal communication, 1988). The small Morgan County, Alabama, population is vulnerable to loss or alteration by residental construction or conversion to livestock pasture (Smith and Wofford 1980). It is not known what caused the extirpation of the species from Jefferson County. The Lawrence County site is within the right-of-way of a power transmission line managed by TVA, and with proper management this population should be secure.

Two of Tennessee's nine currently confirmed visible populations are partially protected. Most of the Williamson County population was acquired by The Nature Conservancy through donation and is protected from outright destruction by construction or other mechanical habitat alteration. A portion of this population is still privately owned and is thereby vulnerable to loss in the future.

The best and largest Tennessee population is located on land owned by the Tennessee Valley Authority (TVA) in Maury County. This site was acquired as a part of the proposed Columbia Dam project area. Completion of this project has been delayed while TVA has been pursuing a mussel conservation plan aimed at avoiding jeopardy to federally listed endangered mussels that inhabit the project impact area. Several alternatives to the original project are currently being evaluated by the TVA (Tennessee Valley Authority 1988). These alternatives could involve lower floodpool levels than originally proposed. Should they be chosen, the altered project would have no impact on the *Dalea foliosa* population. If the full-pool alternative is implemented, approximately 50 percent of the 660 plants in this Maury County population would be inundated.

Davidson County has four recorded occurrences for *Dalea foliosa*. One of these has recently been bulldozed in preparation for development of the site. The Tennessee Department of Conservation and the Center for Plant Conservation are attempting to put the few plants remaining at this location into cultivation in order to ensure that the genetic material they contain is not lost. Two sites discovered in 1985 are very small and have not been observed to support any plants since the original

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discovery. The Service does not consider any of the Davidson County sites to be viable.

An early report that the species occurred in Knox County was apparently based on the collection of a specimen from a transplanted population. The species was not native to Knox County, and the transplanted population has died out.

All of the known *Dalea foliosa* locations are threatened by the encroachment of more competitive herbaceous vegetation and/or woody plants, such as cedar, that produce shade and compete for limited water and nutrients. Active management is required to ensure that the species continues to survive at all sites. In Illinois, experiments on the use of fire to maintain the available habitat in a condition conducive to *Dalea foliosa* are being evaluated. The species does not survive intensive livestock grazing (Kral 1983), and this factor remains a threat at all but the three protected and the two urban populations. Direct destruction of habitat for commercial, residential or industrial development, and intensive right-of-way maintenance activities are the most significant threats to the species at this time (Smith and Wofford 1980).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

The Illinois Department of Conservation (D. Glosser *in litt.*) indicates that there is some horticultural interest in the species in their State. Most populations are very small and cannot support the collection of plants for scentific or other purposes. Inappropriate collecting for scientific purposes or as a novelty is a threat to the species.

C. Disease or Predation.

Disease and predation are not known to be factors affecting the continued existence of the species at this time.

D. The Inadequacy of Existing Regulatory Mechanisms.

Dalea foliosa is listed as an endangered plant in Tennessee under that State's Rare Plant Protection and Conservation Act. This protects the species from taking without the permission of the landowner or land manager. In Illinois, the species is listed as endangered by the Illinois Department of Conservation's Order 154. Illinois law prohibits taking listed plants from the land of another without the written permission of the landowner. Selling or offering to sell listed plants or plant parts is also prohibited without a permit. In Alabama, the species does not receive any protection by the State. The Act will provide additional protection from taking for the population that occurs on Federal land, and to the other populations when the taking is in violation of any State law, including State trespass laws. Protection from inappropriate interstate commercial trade will also be provided.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The only other additional factors that threaten *Dalea foliosa* are the extended drought conditions which the species has faced during the past few years. The extremely dry summer of 1988 is probably responsible for the low survival rate of plants reintroduced to one of the Kankakee County, Illinois, locations. Only 6 of 105 plants transplanted to the site survived to the end of the summer. These conditions can be expected to be causing higher than normal mortality of seedlings in the natural populations and could, if they continue over an extended period of time, have an adverse effect on the survival of *Dalea foliosa*.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. With only 14 relatively small populations, and most of these threatened with destruction or adverse modification of habitat, and with all populations in need of long-term management, the preferred action is to list *Dalea foliosa* as an endangered species rather than as a threatened species. An endangered species, as defined under section 3(6) of the Act, is a species that is in danger of extinction throughout all or a significant portion of its range. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Most populations of this species are small, and loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from some locations. Taking of endangered plants, without permits, is prohibited by the Act from locations under Federal jurisdiction; however, only one of the known populations is under Federal jurisdiction. Therefore, publication of critical habitat descriptions and maps would increase the vulnerability of the species without significantly increasing protection. The owners and managers of all the known populations of *Dalea foliosa* have been made aware of the plant's location and of the importance of protecting the plant and its habitat. No additional benefits would result from a determination of critical habitat. Therefore, it would not now be prudent to designate critical habitat for *Dalea foliosa*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All but one of the known populations of *Dalea foliosa* is on privately owned or State-owned land. One Tennessee population is on land owned by the Tennessee Valley Authority. Approximately 50 percent of this population is within the impoundment area of a proposed dam project. For further information on this project and its effects on *Dalea foliosa*, see the "Background" and "Summary of Factors Affecting the Species" sections of this rule. One of the Illinois populations is near the right-of-way of a federally funded highway. The Illinois Department of Conservation and the Will County Forest Preserve District are working with the Illinois Department of Transportation to ensure that construction of the highway does not result in the loss or significant alteration of this population.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or resolution, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

Although the species is not common in cultivation or in the wild it has generated some commercial trading interest, and a limited number of trade permits may be sought and issued. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits should be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 (703/358-2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Asheville Field Office (see "Addresses" section).

Author

The primary author of this final rule is Mr. Robert R. Currie, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Fabaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Fabaceae—Pea family:						
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Dalea foliosa (=*Petalostemum foliosum*)	Leafy prairie-clover	U.S.A. (AL, IL, TN)	E	422	NR	NA
* * *	* * *	* * *	* * *	* * *	* * *	* * *

Dated: April 10, 1991.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 91-10284 Filed 4-30-91; 8:45 am]

BILLING CODE 4310-55-M

VOL 56 ISS 84 MY 1 1991 UMI

Proposed Rules

Federal Register
Vol. 56, No. 84
Wednesday, May 1, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-90-AD]

Airworthiness Directives; Airbus Industrie Model A300, A310, and A300-600 Series Airplanes Equipped With Escape Slides

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Airbus Industrie Model A300, A310, and A300-600 series airplanes equipped with escape slides, which would require a one-time visual inspection of the escape slide girt bars for correct installation, and repair, if necessary. This proposal is prompted by a recent report of an incorrectly installed escape slide girt bar. This condition, if not corrected, could result in passengers' tripping over the raised bar and passengers being delayed during an emergency evacuation.

DATES: Comments must be received no later than June 24, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, attention: Airworthiness Rules Docket No. 91-NM-90-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-90-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: The Direction Générale de l'Aviation Civile (DGAC) which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Airbus Industrie Model A300, A310, and A300-600 series airplanes equipped with escape slides. There has been a recent report of an incorrectly installed escape slide girt bar which lifted four inches (100 mm) after deployment of one escape slide during a cabin evacuation training exercise. This condition, if not corrected, could result in passengers' tripping over the raised bar and passengers being delayed during an emergency evacuation.

Airbus Industrie has issued All Operators Telex (AOT) 25-01, dated July 30, 1990, which describes procedures for performing a one-time visual inspection of the escape slide girt bars for correct installation, and repair, if necessary. The French DGAC has classified this service bulletin as mandatory and has issued Airworthiness Directive 90-218-120(B), dated November 28, 1990, addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this conditioin is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time visual inspection of the escape slide girt bars for correct installation, and repair, if necessary, in accordance with the All Operators Telex previously described.

It is estimated that 113 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,215.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Model A300, A310, and A300-600 series airplanes equipped with escape slides, certificated in any category. Compliance is required as indicated unless previously accomplished.

To prevent delayed passenger evacuation during an emergency, accomplish the following:

A. Within 30 days after the effective date of this AD, or prior to the accumulation of 300 hours time-in-service after the effective date of this AD, whichever occurs first, perform a close visual inspection of the escape slide girt bars for correct installation, in accordance with paragraph 4 of Airbus Industrie All Operators Telex (AOT) 25-01, dated July 30, 1990. If the girt bars are incorrectly installed, prior to further flight, repair in accordance with the AOT.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 23, 1991.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 91-10250 Filed 4-30-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-79-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes Equipped with Smiths Industries Altimeter Repeater Unit, Part No. 1205AM1

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which would require modification of the Smiths Industries Altimeter Repeater Units. This proposal is prompted by reports of jamming of the baro set knob and the pilot's inability to adjust the baro setting. This condition, if not corrected, could result in the pilot not receiving accurate altitude data that is necessary for safe operation of the airplane.

DATES: Comments must be received no later than June 24, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, attention: Airworthiness Rules Docket No. 91-NM-79-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-79-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model ATP series airplanes. There have been recent reports of jamming of the baro set knob and the pilot's inability to adjust the baro setting. This condition, if not corrected, could result in the pilot not receiving accurate altitude data that is necessary for safe operation of the airplane.

British Aerospace has issued Service Bulletin ATP-34-40, dated October 20, 1990, which describes procedures for modification of the Smiths Industries Altimeter Repeater Units. The modification consists of installation of a hardened knobshaft and remounting of the micro switch. The British Aerospace service bulletin references Smiths Industries Aerospace and Defense Systems Service Bulletin 1205AM-34-756, dated August 20, 1990, for additional instructions. The United Kingdom CAA has classified these service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

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Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the Smiths Industries Altimeter Repeater Units in accordance with the service bulletins previously described.

It is estimated that 6 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The modification parts will be supplied by Smiths Industries at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $330.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model ATP series airplanes, equipped with Smiths Industries Altimeter Repeater Units, Part Number 1205AM1, certificated in any category. Compliance is required within 120 days after the effective date of this AD, unless previously accomplished.

To ensure the pilot receives accurate altitude data, accomplish the following:

A. Install a hardened knobshaft Part Number AM10588, in place of Part Number AM10454, and remount the microswitch (Smiths Industries Modification No. 02), in accordance with British Aerospace Service Bulletin ATP-34-40, dated October 20, 1990.

Note: The British Aerospace service bulletin references Smiths Industries Service Bulletin 1205AM-34-756 for additional instructions.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

Issued in Renton, Washington, on April 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10251 Filed 4-30-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Ch 1

[Docket No. RM91-5-000]

Preferences at Relicensing of Units of Development; Extension of Time for Comments

April 24, 1991.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of inquiry; extension of time for initial and reply comments.

SUMMARY: On February 20, 1991, the Commission issued a Notice of Inquiry concerning preferences at relicensing of units of development (56 FR 8164, February 27, 1991). The dates for filing initial comments and reply comments are being extended at the request of the interested parties.

DATES: The date for filing initial comments is extended to May 29, 1991. The date for filing reply comments is extended to June 28, 1991.

ADDRESSES: Office of the Secretary, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary, (202) 208-0400.

SUPPLEMENTARY INFORMATION:

Extension of Time

April 24, 1991.

On April 19, 1991, Edison Electric Institute (EEI) filed a motion for an extension of time to file initial and reply comments in response to the Commission's Notice of Inquiry issued February 20, 1991, in the above-docketed proceeding. In its motion, EEI states that additional time is needed because of the complex nature of the subject matter addressed in the Notice of Inquiry and because EEI must coordinate the preparation of its comments with numerous, interested members, who are geographically dispersed and whose views on relevant questions must be integrated. On April 23, 1991, Pacific Gas and Electric Company filed a motion in support of EEI's request for additional time. On April 24, 1991, additional time was requested by Niagara Mohawk Power Corporation and the National Hydropower Association.

Upon consideration, notice is hereby given that an extension of time for filing initial comments is granted to and including May 29, 1991. Reply comments shall be filed on or before June 28, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10218 Filed 4-30-91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[GL-172-89]

RIN 1545-AN45

21-Day Holding Period for Bank Accounts Subject to Levy

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulatory amendment regarding the surrender of property subject to levy in the case of banks. The Technical and Miscellaneous Revenue Act of 1988 provides that banks shall surrender deposits in taxpayers' accounts (including interest thereon) only after 21 days after service of a levy. The proposed regulations set forth the rules for compliance by banks, and also contain conforming amendments reflecting the new provision.

DATES: Written comments and requests for a public hearing must be received by June 17, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (GL-172-89), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, 202-566-4557 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6332 of the Internal Revenue Code. The regulations reflect the amendment of section 6332 by section 6236(e)(1) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647).

Explanation of Provisions

Section 6236(e)(1) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647, 102 Stat. 3342) amended section 6332 of the Internal Revenue Code by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by adding new subsection (c). Section 6332(c) now provides that banks (as defined in section 408(n) of the Internal Revenue Code) shall surrender levied upon deposits, together with the interest accruing thereon, only after 21 days from the service of a levy. The legislative history of section 6332(c) indicates that the requirement of a 21-day holding period was intended to provide taxpayers an opportunity to notify the Internal Revenue Service of errors with respect to levied upon accounts.

The proposed regulations provide that a levy on a bank account applies to those funds on deposit at the time the levy is received, up to the amount of the levy. No withdrawals may be made against the funds reached by the levy during the 21-day holding period. The bank must surrender the deposits on the first business day following the 21st calendar day after receipt of the levy, unless the bank receives notification from the district director of a release of levy or unless the district director has requested an extension of the holding period. In addition, the bank must surrender any interest which accrued on the deposits under the terms of its agreement with its customer, but in no event must the bank surrender an amount greater than the amount of the levy. Any such interest is considered to be paid to the bank's depositor and must be reported by the bank to the Internal Revenue Service as interest paid to the depositor. The depositor may waive the 21-day holding period by notifying the bank of his or her intention to do so. However, where more than one depositor is listed as the owner of an account, all of the listed owners must agree to a waiver of the holding period. The proposed regulations set forth examples illustrating the requirements for compliance with section 6332(c) under various factual scenarios, and the proposed regulations define the term "bank" pursuant to section 408(n) of the Internal Revenue Code.

The proposed regulations further provide that the bank's depositor may notify the district director to whom the assessment is charged of any errors with respect to the levied upon account by telephone to the telephone number listed on the face of the notice of levy, so that the district director may undertake an expeditious review of the alleged error. The district director may require any supporting documentation necessary to undertake such a review. However, the proposed regulations clarify that the notification by telephone provided for in the regulations does not constitute or substitute for the filing by a third party of a written request for the return of wrongfully levied upon property.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits timely written comments on the proposed rules. Notice of the time, place and date for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Anne P. Rosselot, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects—26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is proposed to be amended as follows:

Par. 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805.

Par. 2. Section 301.6332-1 is amended as follows:

§ 301.6332-1 [Amended]

1. In paragraph (a)(1) the language "and in § 301.6332-3, relating to property held by banks," is added immediately

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following the language "endowment contracts," and immediately before the language "any person".

2. The heading of paragraph (a)(2) is revised to read as follows: "*Levy on bank deposits held in offices outside the United States.*"

3. In paragraph (b)(2), in the first sentence, the language "6332(c)(1)" is removed and the language "6332(d)(1)" is added in its place.

Par. 3. New section § 301.6332-3 is added to read as follows:

§ 301.6332-3 Surrender of property held by banks.

(a) *In general.* This section provides special rules relating to the surrender of property subject to levy which is held by banks. The provisions of § 301.6332-1 which relate generally to the surrender of property subject to levy apply, to the extent not inconsistent with the special rules set forth in this section, to a levy on property held by banks.

(b) *Definition of bank.* For purposes of this section, the term "bank" means:

(1) A bank or trust company or domestic building and loan association incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any State, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State or Federal authority having supervision over banking institutions.

(2) Any credit union the member accounts of which are insured in accordance with the provisions of title II of the Federal Credit Union Act, 12 U.S. C. 1761 *et seq.*, and

(3) A corporation which, under the laws of the State of its incorporation, is subject to supervision and examination by the Commissioner of Banking or other officer of such State in charge of the administration of the banking laws of such State.

(c) *21-day holding period*—(1) *In general.* When a levy is made on property which consists of deposits held by a bank, the bank shall surrender such deposits (not otherwise subject to an attachment or execution under judicial process) only after 21 calendar days after the date the bank receives the levy. During the 21-day holding period, the levy shall be released only upon notification to the bank by the district director of a decision to release the levy. If the bank does not receive such notification from the district director within the 21-day holding period, the bank must surrender the deposits, including any interest thereon (up to the amount of the levy) on the first business day after the 21-day holding period, unless the district director requests an extension of the holding period.

(2) *Payment of interest on deposits.* When a bank surrenders levied upon deposits at the end of the 21-day holding period (or at the end of any longer period as requested by the district director), the bank must include any interest which has accrued on the deposits prior to and during the holding period under the terms of the bank's agreement with its depositor, but the bank must not surrender an amount greater than the amount of the levy. If the deposits are held in a non-interest bearing account at the time the levy is made, the bank need not include any interest on the deposits at the end of the holding period. To the extent that interest is accrued on the deposits and surrendered to the district director at the end of the holding period, such interest is considered to be paid to the bank's customer and must be reported by the bank to the Internal Revenue Service as interest paid to the bank's depositor.

(3) *Transactions affecting accounts.* A levy on deposits held by a bank applies to those funds on deposit at the time the notice of levy is received, up to the amount of the levy, and is effective as of the time the notice of levy is received. No withdrawals may be made on levied upon deposits during the 21-day holding period.

(4) *Waiver of 21-day holding period.* A depositor may waive the 21-day holding period by notifying the bank of the depositor's intention to do so. Where more than one depositor is listed as the owner of a levied upon acount, all depositors listed as owners of the account must agree to a waiver of the 21-day holding period. If the depositor does waive the 21-day holding period, the bank must include with the surrendered deposits a notification to the district director that the depositor has waived the holding period.

(5) *Examples.* The provisions of this subsection may be illustrated by the following examples:

Example 1. On April 2, 1992, a notice of levy for an unpaid income tax assessment due from A in the amount of $10,000.00 is served on X Bank with respect to A's savings account. At the time the notice of levy is received, X Bank holds $5,000.00 on deposit in A's interest-bearing savings account. On April 24, 1992 (the first business day after the 21-day holding period), X Bank must surrender $5,000.00 plus any interest that accrued on the account under the terms of A's contract with X Bank up through April 23, 1992 (the last day of the holding period).

Example 2. Assume the same facts as in Example 1 except that on April 3, 1992, A deposits an additional $5,000.00 into the account. On April 24, 1992, X Bank must still surrender only $5,000.00 plus the interest which accrued thereon until the end of the holding period, since the notice of levy received on April 2, 1992, attached only to those funds on deposit at the time of receipt of the levy and not to any subsequent deposits.

Example 3. Assume the same facts as in Example 1 except at the time X Bank receives the notice of levy, A's savings account contains deposits in the amount of $50,000. On April 24, 1992, X Bank must surrender $10,000, which is the amount of the levy. The levy will not apply to the interest which accrues on the $10,000 during the 21-day holding period, since the entire amount of the levy is satisfied by the deposits existing at the time the levy is served.

Example 4. Assume the same facts as in Example 1 except that the amount of the levy is $5,002.00. Under the terms of A's contract with the bank, the account will earn more than $2.00 of interest during the 21-day holding period. On April 24, 1992, X Bank must surrender $5,002.00 to the district director. The remaining interest which accrued during the 21-day holding period remains in A's savings account.

Example 5. On September 3, 1992, A opens a $5,000.00 six-month certificate of deposit account with X Bank. Under the terms of the account, the depositor must forfeit up to 30 days of interest on the account in the event of early withdrawal. On January 4, 1993, the bank receives a levy in the amount of $10,000.00 with respect to A's certificate of deposit account. On January 26, 1993, the bank must surrender $5,000.00 plus the interest which accrued on the account through January 25, 1993, minus the penalty of 30 days of interest.

(d) *Notification to the district director of errors with respect to levied upon bank accounts*—(1) *In general.* If a depositor who receives notification of a levy upon a bank account believes that there is an error with respect to the levied upon account which the depositor wishes to have corrected, the depositor shall notify the district director to whom the assessment is charged by telephone to the telephone number listed on the face of the notice of levy in order to enable the district director to conduct an expeditious review of the alleged error. The district director may require any supporting documentation necessary to the review of the alleged error. The notification by telephone provided for in this section does not constitute or substitute for the filing by a third party of a written request under § 301.6343-1(b)(2) for the return of property wrongfully levied upon.

(2) *Disputes regarding the merits of the underlying assessment.* This section does not constitute an additional procedure for an appeal regarding the merits of an underlying assessment. However, if in the judgment of the district director a genuine dispute regarding the merits of an underlying assessment appears to exist, the district director may request an extension of the 21-day holding period.

(3) *Notification of errors from sources other than the depositor.* The district director may take action to release the levy on the bank account based on information obtained from a source other than the depositor, including the bank in which the account is maintained.

(e) *Effective date.* These provisions are effective with respect to levies issued on or after May 31, 1991.

Fred T. Goldberg, Jr.

Commissioner of Internal Revenue.

[FR Doc. 91-10178 Filed 4-30-91; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 715]

RIN 1512-AA07

Texas Hill Country Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms proposes to establish a viticultural area located in south central Texas to be known by the appellation "Texas Hill Country." The proposal is the result of a petition filed by Mr. Hugo Edwin Auler of Fall Creek Vineyards. The approved viticultural areas of "Bell Mountain" and "Fredericksburg in the Texas Hill Country" are located in the proposed area. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they purchase. The establishment of viticultural areas also allows wineries to specify further the origin of wines they offer for sale to the public.

DATE: Written comments must be received by June 17, 1991.

ADDRESSES: Send written comments to:

Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 REF: Notice No.

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6300, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Marjorie Dundas, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR, part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas.

Section 4.25a(e)(1), title 27 CFR defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2), title 27 CFR outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/ or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy or copies of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF received a petition proposing a viticultural area in south central Texas to be known as Hill country. The proposal was submitted by Mr. Hugo Edwin Auler, on behalf of a group of winery and vineyard owners in the proposed viticultural area. Since the name "Hill Country" could apply to many areas, ATF suggested the name might be more meaningful to consumers outside the State of Texas if it were more specific. The petitioner subsequently amended the name to "Texas Hill Country."

The proposed viticultural area is located in south central Texas, with a land area of approximately 15,000 square miles. The petition indicates that the area known as "Hill Country" covers the eastern two-thirds of the Edwards Plateau. According to the petition, the Edwards Plateau lies north and west of the portion of the Balcones Fault which runs near the cities of San Antonio and Austin, respectively. The Balcones Fault, a significant geological fault which extends from Mexico into Texas and up to Canada, separates the Edwards Plateau from the Rio Grande Plains to the south and west and from the Blackland Prairies on the east and northeast. The Edwards Plateau is bounded on the north and northwest by the North Central or Low Rolling Plains. The petition states that the western portion of the Edwards Plateau is not included within the proposed viticultural area.

Evidence of Name

In An Insider's Guide to the Texas Hill Country, 1980 Edition, an article stated "the Texas Hill Country extends roughly as far west as Sonora; as far south as Uvalde and San Antonio; as far north as Menard, Brady, and Lampasas; and as far east as Austin and San Marcos." With the exception of Sonora, each of these towns and cities is located on the boundary of the proposed area. A brochure prepared by the Texas Hill Tourism Association, Experience it. The Texas Hill Country, features descriptions of towns within the proposed area, and a map which roughly coincides with the boundary described by the petitioner.

Viticultural History

The petitioner states that grape growing and wine making have existed on a small scale "for the better part of the last 150 years." However, vitis vinifera varieties have only been grown since the mid-1970's. There are currently ten wineries and 40 "commercial and/or significant experimental" vineyards in the proposed viticultural area, according to the petitioner. There are two approved viticultural areas which are entirely within the proposed area; both

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are in Gillespie County, Texas. "Bell Mountain" consists of approximately 5 square miles on the south and southwest slopes of the mountain of the same name. The area is distinguished from the surrounding areas by its slightly acid soil and by the topographical limits of its location, which result in cooler and drier air than in the nearby valleys.

"Fredericksburg in the Texas Hill Country" is a 110 square mile "bowl" shaped area which ranges from 1500 to 1900 feet in elevation. Its altitude provides cooler night time temperatures in summer and a longer winter dormancy period. These features, along with soil composed of a sandy loam topsoil over a nutrient rich reddish clay, distinguish it from the immediately surrounding areas.

Proposed Boundary

Highways are used as the boundary for the proposed area. Evidence was presented by the petitioner that these man-made features closely follow a change in the geographical characteristics of the area. According to the petitioner, the southern and eastern portions of the boundary for the Texas Hill Country coincide with the portion of the Balcones Fault, "which crosses out of Mexico * * * just northwest of the city of Del Rio, Texas; then runs generally eastward to the north and west side of San Antonio, Texas; then runs northeastward to the west side of Austin, Texas." Although there is not such a clear natural boundary on the north and west sides of the proposed area, the U.S.G.S. maps provided by the petitioner reflect gradual leveling of the terrain near the highways which were proposed as boundaries.

As stated in the proposed § 9.136, the beginning and end point for the boundary of the proposed viticultural area is the intersection of U.S. Highway 183 and a highway with no route designation to the north of the city of Austin on the Austin, Texas U.S.G.S. map. As shown on the U.S.G.S. map, there is a gap in the undesignated highway as it proceeds in a southerly direction to the west of the city of Austin. The undesignated highway then resumes its course southwest of the city of Austin until it intersects with State Highway 71.

The petitioner has supplemented the Austin, Texas U.S.G.S. map (which was last revised in 1974), with an official highway travel map published by the Texas State Department of Highways and Transportation. This map shows that the undesignated highway referred to above is now designated as "Loop 360" and further indicates that the gap in the highway has been closed. In view of the fact that "Loop 360" has been completed since the last revision of the Austin U.S.G.S. map and since the petitioner has identified the completed "Loop 360" as coinciding with the relevant geographical characteristics of the area, this Notice proposes to accept the Texas State highway map as a supplement to the Austin, Texas U.S.G.S. map to show the path and route designation of the highway which forms the closing boundary of the proposed viticultural area.

Distinguishing Features

The petitioner provided the following evidence relating to features which distinguish the proposed viticultural area from the surrounding areas:

Topography

The petitioner states that the terrain of the proposed area varies from about 650 to 2550 feet above sea level. As indicated above, the Texas Hill Country covers the eastern two-thirds of the Edwards Plateau, which ends at the Balcones Fault. The petitioner asserts that the name Balcones (for balcony, in Spanish) is suggested by the pronounced drop in elevation from the Edwards Plateau to the Blackland Prairie, to the east of the proposed area. Furthermore, the petition states that the higher land of the southeast edge of the Edwards Plateau has been severely eroded by the flow of numerous rivers and streams, and that portions were raised by volcanic activity and geological upheavals. This has left the Texas Hill Country as "a region of low mountains, hills, canyons and valleys." The petitioner contrasts this hilly terrain with the surrounding areas (the Rio Grande Plains, the Blackland Prairies, and the North Central Plains) which are all characterized by flatter terrain.

Soils

According to the petitioner, "most of the hills of the region are limestone, sandstone or granite in nature, while the valleys usually contain varying types of sandy and/or clay loam, most of a calcareous nature, but many with different underlying characters due to the complex geology of the region." The petitioner enclosed a U.S. Department of Agriculture description of various soils in the area. According to this document, the main soil series associated with the eastern two-thirds of the Edwards Plateau (*i.e.*, the Texas Hill Country) are the Tarrant, Eckrant, Brackett and Tobosa, with Frio, Oakalla and Dev in the bottomlands. By way of comparison, the main soil series associated with the western portion of the Edwards Plateau are Ector, Upton and Reagan. In addition, the petition identifies Claresville, Elmendorf, Floresville, Miguel and Webb as the main soils associated with the Rio Grande Plains to the south of the proposed area. The Blackland Prairies to the east and northeast are comprised mainly of the Houston Black, Heiden, and Austin soil series, while the main soil series for the Low Rolling Plains to the north are Abilene, Rowena, Meréta, and Lueders.

Climate

The petitioner asserts that the climate of the Texas Hill Country is distinguished from the surrounding areas by a number of different factors. The Blackland Prairies and Rio Grande Plains which border the proposed area on the east and south are classified as "humid subtropical" characterized by "hot days, warm nights, and usually humid" weather. The petitioner attributes this to the influence of warm, moist winds off the Gulf of Mexico during the growing season. Since the Texas Hill Country is located further inland and at a higher altitude than the Blackland Prairies and Rio Grande Plains, the air is drier and has a "greater proclivity for giving up heat at night." The resulting cooler, drier nights within the proposed area are beneficial in the growing of vinifera grapes, according to the petitioner.

The petitioner further states the proposed area is subject to winds which "flow over the deserts of Chihuahua and Coahuila in Mexico and north over the Edwards Plateau and the Hill Country during much of the growing season." These desertlike winds subside and cool at night, and tend to "pool." Since the Texas Hill Country slopes from west to east, the cool, dry air which collects in the evening flows, or drains, across the area very rapidly, resulting in cooler nighttime temperatures. Although these same desert winds flow over the Low Rolling Plains to the north of the proposed area, the plains are "flat to rolling" in topography with the result that the air movement and nighttime cooling are less rapid than in the proposed area. Finally, the petitioner indicates that while the climate of the proposed area is similar to the rest of the Edwards Plateau, the proposed area is distinguishable in that it has a higher average rainfall. The petition states that the western portion of the Edwards Plateau averages 16 to 22 inches of rainfall per year, while the Texas Hill Country averages 24 to 28 inches per year.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested persons concerning this proposed viticultural area. Furthermore, in view of the large size of the proposed Texas Hill Country area, ATF is especially interested in receiving comments concerning the boundaries of the area. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure. Any interested person who desires an opportunity to comment orally at a public hearing on the proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal authors of this document are James A. Hunt and Marjorie Dundas, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of subjects in 27 CFR part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The Table of contents in subpart C is amended to add the title of § 9.136 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.136 Texas Hill Country.

Par. 3. Subpart C is amended by adding § 9.136 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.136 Texas Hill Country.

(a) *Name.* The name of the viticultural area described in this section is "Texas Hill Country."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the "Texas Hill Country" viticultural area are 7 U.S.G.S. (scale 1:250,000) maps. They are titled:

(1) Brownwood, Texas, 1954 (revised 1974);

(2) Sonora, Texas, 1954 (revised 1978);

(3) Llano, Texas, 1954 (revised 1975);

(4) Austin, Texas, 1954 (revised 1974);

(5) Del Rio, Texas, 1956 (revised 1969);

(6) San Antonio, Texas, 1964 (revised 1969);

(7) Seguin, Texas, 1963 (revised 1975).

(c) *Boundary.* The Texas Hill Country viticultural area is located in portions of McCulloch, San Saba, Lampasas, Burnet, Travis, Williamson, Llano, Mason, Menard, Kimble, Gillespie, Blanco, Hays, Kendall, Kerr, Edwards, Real, Bandera, Bexar, Comal, Guadalupe, Medina, and Uvalde counties, in the State of Texas. The boundary is as follows:

(1) The beginning point is the intersection of U.S. Highway 183 and a highway with no route designation (subsequently designated Loop 360, according to the official highway travel map published by the Texas State Department of Highways and Transportation) to the north of the city of Austin, on the Austin, Texas, U.S.G.S. map;

(2) From the beginning point, the boundary follows U.S. Highway 183 in a northwesterly direction to the top of the Austin map and across the northeast corner of the Llano, Texas, U.S.G.S. map, to the intersection with State Highway 190 in Lometa, on the Brownwood, Texas, U.S.G.S. map;

(3) The boundary then follows State Highway 190 in a southwesterly direction through San Saba and Brady on the Brownwood map, to the intersection of U.S. Highway 83 at Menard, on the Llano, Texas, U.S.G.S. map;

(4) The boundary follows U.S. Highway 83 in a southerly direction to the town of Junction, where it meets U.S. Highway 377 (Llano map);

(5) The boundary then follows U.S. Highway 377 southwest to the town of Rocksprings, on the Sonora, Texas, U.S.G.S. map, where it meets State Highway 55;

(6) The boundary then follows State Highway 55 in a southeasterly direction across the southeast portion of the Del Rio, Texas, U.S.G.S. map, and continues to the town of Uvalde, on the San Antonio, Texas, U.S.G.S. map, where it meets U.S. Highway 83;

(7) The boundary then follows U.S. Highway 83 south for approximately 2 miles, until it meets U.S. Highway 90;

(8) The boundary then follows U.S. Highway 90 east across the San Antonio map to its intersection with Loop 410 in the city of San Antonio;

(9) The boundary then follows Loop 410 to the west of San Antonio, until it meets Interstate Highway 35;

(10) The boundary then follows Interstate Highway 35 in a northeasterly direction across the San Antonio map and then across the northwest corner of the Seguin, Texas, U.S.G.S. map until it meets State Highway 71 on the Austin, Texas, U.S.G.S. map;

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(11) The boundary then follows State Highway 71 in a northwesterly direction approximately 3 miles, until a highway with no route designation (but designated as Loop 360 in the official highway travel map published by the Texas State Department of Highways and Transportation) diverges in a northwesterly direction from State Highway 71;

(12) The boundary follows the undesignated highway until it ends, then continues in an approximately semicircular path until it meets the continuation of that undesignated highway to the north. (The two sections of undesignated highway were connected and the entire stretch of highway was designated as Loop 360 after the 1974 revision of the Austin U.S.G.S. map, according to the official highway travel map published by the Texas State Department of Highways and Transportation. The boundary actually follows Loop 360.) The boundary follows this highway northeast, back to the beginning point at the intersection with U.S. Highway 183 north of Austin, on the Austin, Texas, U.S.G.S. map.

Approved: March 29, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91-10221 Filed 4-30-91; 8:45 am]

BILLING CODE 4910-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 91-121; FCC 91-121]

Air-ground Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Proposal to add location and channel for Laurel Run, PA, and channels for Pittsburgh, PA; and Seattle, WA; to remove channels from Newark, NJ; Pittsburgh, PA; Seattle, WA; and Washington, DC; and to relocate a channel from Grand Canyon, AZ to Williams, AZ, in order to eliminate actual and potential interference and provide service to previously unserved areas to insure improved air ground service to the public.

DATES: Comments must be filed by June 17, 1991. Reply comments are due by July 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew L. Nachby, Mobile Services Division, Common Carrier Bureau at (202) 632-6450.

SUPPLEMENTARY INFORMATION:

Summary of Notice of Proposed Rulemaking

In view of the apparent need for air-ground communications service the Commission proposes to amend 47 CFR 22.521(b) to assign working channel 9 to Laurel Run, Pennsylvania and working channel 10 to Pittsburgh, Pennsylvania; to delete working channel 10 from Washington, DC, working channel 12 from Pittsburgh, Pennsylvania, working channel 9 from Newark, New Jersey, and working channel 9 from Seattle, Washington; to relocate working channel 12 from Grand Canyon, Arizona to Williams, Arizona.

Procedures for Amendment of Air-Ground Table of Allotments

The Commission invites comments on this proposal. The procedures to be followed in submitting comments in this proceeding are similar to those followed in proceedings to amend the FM or Television Table of Assignments in § 1.420 of the Commission's rules. The procedures are discussed below.

Cut-off Procedures

The following procedures govern the consideration of filings in this proceeding:

(a) Counterproposals made in this proceeding will be considered if they are made in initial comments so that parties may comment on them in reply comments. Counterproposals will not be considered if made in reply comments (See § 1.420(d) of the Commission's rules).

(b) Petitions for Rulemaking which conflict with the proposal of this Notice will be considered as comments. Public notice of such treatment will be given so long as the petitions are filed before the date for filing initial comments. If they are filed after that date, they will not be considered in connection with the decision in this proceeding.

Dates and Service

Under the procedures set out in §§ 1.415 and 1.420 of the Commission's rules, interested parties may file comments on or before June 17, 1991 and reply comments on or before July 2, 1991. All submissions made by parties to this proceeding or in behalf of such parties must be made in written comments, reply comments or other appropriate pleadings. These comments and reply comments must be accompanied by a certificate of service (see § 1.420 (a)-(c) of the Commission's rules). Reply comments must be served on the person(s) who filed comments.

Number of Copies

Under § 1.420 of the Commission's rules, an original and four copies of all comments, reply comments, pleadings, briefs or other documents must be submitted to the Commission.

Public Inspection of Filing

All findings made in this proceeding are available for inspection during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC. Copies may be purchased from International Transcription Service, 2100 M Street, NW., First Floor, Washington, DC 20036, (202) 857-3800.

List of Subjects

47 CFR Part 22

Table of air ground radiotelephone service, Communications common carriers, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-10230 Filed 4-30-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-127, RM-6577; RM-7346; RM-7375; RM-7537; RM-7445]

Radio Broadcasting Services; Blackville, Branchville, Estill, Georgetown, Moncks Corner and Walterboro, SC, and Richmond Hill, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on five mutually exclusive or interrelated petitions for rule making for allotments in South Carolina and Georgia. Cedar Carolina Limited Partnership, licensee of Station WJYQ(FM), Moncks Corner, seeks the substitution of Channel 287C2 for Channel 288A at Moncks Corner, SC, and the modification of Station WJYQ(FM)'s license accordingly. Eutaw Broadcast Associates seeks the allotment of Channel 286A to Branchville, SC, as the community's first local FM service. Richmond Hill Broadcasting requests the substitution of Channel 287C3 for Channel 287A at Richmond Hill, Georgia, and the modification of Station WRHQ's construction permit to specify the higher powered channel. To accommodate the requested allotments at Moncks Corner, Branchville and Richmond Hill, Cedar Carolina Limited Partnership, Eutaw Broadcast Associates and Richmond Hill Broadcasting also request the subsitution of Channel 249A for Channel 287A at Walterboro, SC, and the modification of TBJ Broadcasting Partnership's construction permit to specify the alternate Class A channel. Williams Communications requests the allotment of Channel 250C3 to Estill, SC, as the community's first local FM service, and the substitution of Channel 239A for unoccupied but applied for Channel 250A at Blackville, South Carolina. Coastline Communications of Carolina, Inc., requests the substitution of Channel 249C1 for Channel 249C2 at Georgetown, South Carolina, and the modification of its license for Station WBPR to specify the higher powered channel. *See* Supplementary Information, *infra.*

DATES: Comments must be filed on or before June 17, 1991, and reply comments on or before July 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian M. Madden, Esq., Richard A. Helmick, Esq., Cohn and Marks, 1333 New Hampshire Avenue, NW., Suite 600, Washington, DC 20036-1573 (Counsel to Cedar Carolina Limited Partnership); William E. Kennard, Esq., Michael E. Beller, Esq., Verner, Liipfert, Bernard, McPherson and Hand, Chartered, 901-15th Street, NW., Suite 700, Washington, DC 20005-2302 (Counsel to Richmond Hill Broadcasting); Robert C. Rickenbacker, Jr., President, Eutaw Broadcast Associates, P.O. Box 175, Holly Hill, South Carolina 29059 (Petitioner for Branchville); Edward W. Hummers, Jr., Esq., Anne Goodwin Crump, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036-2679 (Counsel to Coastline Communications of Carolina, Inc); John E. Fiorini III, Esq., Gardner, Carton & Douglas, 1001 Pennsylvania Avenue, NW., Suite 750, Washington, DC 20005 (Counsel to Williams Communications).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-127, adopted April 17, 1991, and released April 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

The allotment of Channel 287C2 of Moncks Corner is mutually exclusive with the allotment of Channel 286A at Branchville, SC, and Channel 287C3 at Richmond Hill, GA. The allotment of Channel 249A to Walterboro conflicts with the allotment of Channel 249C1 to Georgetown, SC, and Channel 250C3 at Estill, SC. Channel 239A at Blackville, SC, does not conflict with any pending proposal.

Channel 287C2 can be allotted to Moncks, SC, with a site restriction of 30.1 kilometers (18.7 miles) south, at coordinates North Latitude 32-55-20 and West Longtitude 80-00-00. This allotment is proposed as a result of a petition for rule making filed prior to October 2, 1989. Therefore, if adopted, Cedar Carolina Limited Partnership may be able to avail itself of the provisions of Section 73.213(c) of the Commission's Rules. Channel 249A can be allotted to Walterboro, SC, at the transmitter site specified in TBJ Broadcasting Partnership's outstanding construction permit, at coordinates North Latitude 32-49-54 and West Longitude 80-43-30. Channel 286A can be allotted to Branchville, SC, without the imposition of a site restriction, at coordinates North Latitude 33-15-06 and West Longitude 80-49-00. Channel 250C3 can be allotted to Estill, SC, with a site restriction of 18.6 kilometers (11.6 miles) north at coordinates North Latitude 32-55-18 and West Longitude 81-15-52. Channel 239A can be allotted to Blackville, SC, without the imposition of a site restriction at coordinates North Latitude 33-21-48 and West Longitude 81-16-06. Channel 249C1 can be allotted to Georgetown, SC, with a site restriction of 35 kilometers (21.8 miles) northeast to accommodate petitioner's desired transmitter site, at coordinates North Latitude 33-35-27 and West Longitude 79-00-50. Channel 287C3 can be allotted to Richmond Hill, GA, with a site restriction of 19.3 kilometers (12 miles) northeast, at coordinates North Latitude 31-59-42 and West Longitude 81-08-40.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-10231 Filed 4-30-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Finding on a Petition To List the Lee Creek Population of the Fish, the Longnose Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of finding on petition.

SUMMARY: The Fish and Wildlife Service announces a 90-day petition finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petitioners did not present substantial information that listing the Lee Creek population of the longnose darter (*Percina nasuta*) may be warranted. Although the threats to the Lee Creek population are sufficient to warrant concern about its continued existence, the Service finds that the population is not eligible for consideration for protection under the Endangered Species Act. Vertebrate populations are eligible for protection only if they are biologically distinct. The evidence suggests that the Lee Creek population is simply one subset of a larger undifferentiated gene pool occupying nine other streams.

DATES: The finding announced in this notice was made on June 22, 1990. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be sent to the Complex Field Supervisor, Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, suite 316, 300

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Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: James H. Stewart at the above address (telephone: 601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended in 1982, (16 U.S.C. 1531 et seq.) requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the funding is positive, the Service is also required to promptly commence a review of the status of the involved species.

The Service has received and made a finding on a petition to emergency list the Lee Creek population of the longnose darter, *Percina nasuta*, that was submitted by the Native Americans for a Clean Environment. The petition is dated September 29, 1989, and was received by the Service on October 4, 1989. The petition cited the known distribution as Lee Creek, Arkansas and Oklahoma, and, based on apparently incomplete research, indicated that the Lee Creek population was "* * * an entirely separate (sic) species from the single other known population of Longnose darter identified in Louisiana." In addition to citing the potential taxonomic difference, the petition cited the ongoing construction of a dam on Lee Creek that endangered "* * * the most significant sized population and habitat in the world for this species."

The Service has reviewed the petition and gathered other available scientific information through a search of the literature and communication with knowledgeable biologists. The longnose darter was described by Bailey in 1941 from the Middle Fork of the Little Red River, Searcy County, Arkansas (Bailey 1941). Subsequent populations were discovered in the drainages of the White River, Arkansas and Missouri; Spring, Strawberry, Fourche la Fave, Ouachita, Caddo, and Little Missouri Rivers of Arkansas; the Arkansas River, Arkansas and Oklahoma; and the St. Francis River, Missouri (Pflieger 1975, Thompson 1977, Buchanan 1984, Robison and Buchanan 1988). The population in Louisiana as cited in the petition is erroneous. The longnose darter has never been reported from Louisiana.

There is a question about the taxonomy of some populations of *Percina nasuta*. The Ouachita, Little Missouri, and Caddo Rivers populations are considered an undescribed species, now referred to as *Percina* sp. (Robison and Buchanan 1988, Dr. Bruce Thompson, Louisiana State University, pers. comm. 1990). A description of this form is in preparation. The taxonomic status of the Spring and Strawberry River populations is questionable and warrants further study (Buchanan 1984, Thompson, pers. comm., Dr. Henry Robison, Southern Arkansas University, pers. comm. 1990). Dr. Robison also states that the Fourche la Fave River form may be distinct from *Percina nasuta* at some taxonomic level.

The St. Francis River population of *Percina nasuta* has not been found since 1969 (Pflieger 1975) and may have been extirpated. This species has not been collected from the White River in Missouri since the impoundment of Table Rock Lake (Pflieger 1975). The known range of populations that are considered by Robison and Thompson to be *Percina nasuta* is the Middle Fork of the Little Red River, Arkansas; the headwaters of the White River and a tributary, War Eagle Creek, Arkansas; and the Arkansas River tributaries of Big Piney Creek, Illinois Bayou, and Mulberry River, in Arkansas, and Lee Creek, Arkansas and Oklahoma. Current scientific literature also attributes the Fourche la Fave, Spring, and Strawberry River forms to *Percina nasuta*, and under the requirements of the Act, must be considered as such. In summary, *Percina nasuta* is known from nine streams in addition to Lee Creek.

On the basis of the best scientific and commercial information available, the Service finds that this petition does not present substantial information indicating that the action requested may be warranted. For the Lee Creek population to be eligible for listing, it must be biologically distinct from other populations of *Percina nasuta*. There is no documentation to suggest that differences exist among the populations, nor is there any apparent need for emergency protection of the species when considered on a rangewide basis.

In the review of this petition, the Service has determined that *Percina nasuta*, as a species, warrants further review for protection under the Act. Information is needed on the current range and abundance of the species and the taxonomic question needs to be resolved. Over the next several months, the Service will gather information on the status of and threats to this species and seek to clarify the taxonomic issue. On the basis of this information, the status of the species will be reviewed and a determination made on the need for its protection.

References Cited

Buchanan, T.M. 1984. Status of the longnose darter, *Percina nasuta* (Bailey), in Arkansas. Report to Arkansas Natural Heritage Commission. 29 pp.

Pflieger, W.L. 1975. The fishes of Missouri. Missouri Dept. Conservation. p. 302.

Robison, H.W., and T.M. Buchanan. 1988. Fishes of Arkansas. Univ. Arkansas Press. p. 452-454.

Thompson, B.A. 1977. An analysis of three subgenera (*Hypohomus*, *Odontopholis* and *Swainia*) of the genus *Percina* (Tribe Etheostomatini, Family Percidae). PhD dissertation to Tulane University, 399 pp.

Author

This notice was prepared by James Stewart (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531-1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: April 4, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-10295 Filed 4-30-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 910492-1092]

Subsistence Taking of Northern Fur Seals

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Notice of proposed harvest levels and notice of public meeting.

SUMMARY: Regulations on subsistence taking of northern fur seals require NMFS to publish a summary of the previous year's fur seal harvest and a projection of the number of seals expected to be taken in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands, Alaska. This notice summarizes the 1990 harvest and estimates the number of seals that may be taken in 1991.

Following a public meeting and the expiration of a 30-day public comment period, a final notice of harvest levels will be published before the start of the harvest season on June 30, 1991.

DATES: A public meeting will be held in Anchorage, Alaska, on May 29, 1991, at 9 a.m., and in Silver Spring, Maryland, on May 20, 1991, at 10 a.m. Written comments must be received on or before May 31, 1991.

ADDRESSES: The public meeting in Alaska will be held at the Federal Building, room 154, 222 W. 7th Avenue, Anchorage, Alaska. The public meeting in Maryland will be held at SSMC2, Second Floor Conference Room, 1325 East-West Highway, Silver Spring, Maryland. Written comments should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources (F/PR), 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Zimmerman, 907-586-7235, Dr. Aleta A. Hohn or Lynne Harris, 301-427-2289.

SUPPLEMENTARY INFORMATION:

Background

The subsistence harvest of northern fur seals, *Callorhinus ursinus*, on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 215 subpart D—Taking for Subsistence Purposes. Those regulations were published under the authority of the Fur Seal Act, 15 U.S.C. 1151 *et seq.*, and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* (see 51 FR 24828, July 9, 1986). The purpose of the regulations is to limit the take of fur seals to a level providing for the legitimate subsistence needs of the Pribilovians using humane harvesting methods, and to restrict taking by sex, age, and season for herd management purposes. As required by 50 CFR 215.32(b), this notice summarizes the 1990 harvest and estimates the number of seals that may be needed for subsistence in 1991.

Summary of Data on the 1990 Harvest Season

Subsistence harvesting of northern fur seals was conducted on St. George Island on 7 days between July 10, 1990, and August 7, 1990, and on St. Paul Island on 16 days between July 5, 1990, and August 8, 1990. During the 1990 season, a total of 164 seals were harvested on St. George Island and 1076 seals were harvested on St. Paul Island. An additional seal that died of heat stress subsequent to one of the harvests on St. Paul brought the total number of seals taken on that island to 1077. Since 1985, detailed information has been compiled on subsistence taking and use of seal meat on St. Paul Island only. No comparable information is available for St. George Island where, on average, less than 10 percent of the Pribilof subsistence harvest is conducted. The following table provides a comparison of the 1990 harvest data with summary information from previous years. Although these regulations prohibit the killing of female seals, small numbers were taken accidentally from 1985-1987. No females were killed in 1988-1990. Percent-use is the percent by weight of meat removed per carcass. The maximum possible percent use for food is about 53.3.

NMFS is concerned about the apparent decline in the efficiency of the 1989 and 1990 subsistence harvests on St. Paul Island compared to previous years. Detailed discussions of "substantial use" of seal meat and calculations and comparisons of percent-use estimates for harvests since 1985 can be found in the 1989 harvest notices (see especially 54 FR 23234, May 31, 1989, and 54 FR 32347, August 7, 1989). Comments and discussion are invited on this aspect of the subsistence harvest, as well as on the proposed harvest levels discussed below.

Estimated Number of Seals Needed for Subsistence in 1991

NMFS is required by its regulations to include in this notice a prediction of the fur seal harvest levels for 1991 that will satisfy the subsistence needs of the residents of the Pribilof Islands. Previous harvest levels, current economic conditions, and community population size need to be considered when establishing future harvest levels. A review of the previous years' subsistence usage on St. Paul Island indicates that over the last 5 years, harvest levels have fluctuated from a low of 1,077 (1990) to a high of 1,710 (1987). The average number of seals harvested over this time period was 1,314 (standard deviation = 246). Over the past 2 years, however, unemployment levels on St. Paul have increased from 20-30 percent to 60-80 percent, due to reductions in the city work force, completion of capital construction projects, and bankruptcies of local fish processing facilities. The population meanwhile, has remained relatively stable. Consequently, it is reasonable to expect that a larger number of seals may be required this year to satisfy the subsistence needs of the community. Trends in abundance of fur seals on St. Paul Island indicate that the population is stable and possibly increasing. Based on this information, NMFS proposes that the harvest level for northern fur seals on St. Paul Island in 1991 be set at 1314 seals. Should this quota be reached before August 8, 1991, the Aleut Community of St. Paul may request a specific number of additional seals for harvest that are necessary to satisfy the subsistence needs of the community. The additional number of seals to be made available for harvest in 1991 shall not exceed 246.

St. George Island seal harvests have ranged from a low of 92 (1987) up to a high of 161 (1989) over the past 5 years. The average number of seals harvested over this time period was 135 (standard deviation=37). The economic conditions that currently prevail on St. George Island are similar to those of St. Paul Island, and the population size has also remained stable. Trends in abundance of fur seals on St. George Island indicate that the fur seal population is declining. However, considering the age and sex classes being removed, i.e., subadult males, the subsistence harvest is not contributing to this decline. NMFS proposes to set the number of seals to be harvested on St. George Island in 1991 at 135. Should this quota be reached before August 8, 1991, the Aleut Community of St. George may request the harvest of a specific number of additional seals that are necessary to satisfy the subsistence needs of the community. The additional number of seals to be made available shall not exceed 37.

Dated: April 26, 1991.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

TABLE 1.—A COMPARISON OF 1990 LEVELS OF SUBSISTENCE HARVEST OF NORTHERN FUR SEALS WITH THAT OF THE PREVIOUS 5 YEARS FOR ST. PAUL ISLAND

	1985	1986	1987	1988	1989	1990
Number of harvest days	15	20	20	12	16	16
Number of seals taken	3,384	1,299	1,710	1,145	1,340	1,077
Number of females taken	5	9	6	0	0	0

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TABLE 1.—A COMPARISON OF 1990 LEVELS OF SUBSISTENCE HARVEST OF NORTHERN FUR SEALS WITH THAT OF THE PREVIOUS 5 YEARS FOR ST. PAUL ISLAND—Continued

	1985	1986	1987	1988	1989	1990
Percent-use of carcasses	43.8	47.2	40.7	43.5	38.2	39.9
Pounds of meat taken	93,400	31,700	38,800	26,500	26,800	21,800

[FR Doc. 91-10288 Filed 4-30-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 84
Wednesday, May 1, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 26, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

• Agricultural Stabilization and Conservation Service, 7 CFR parts 1413 and 1414—Forms for Participation in Price Support and Production Adjustment Programs, CCC-477, 477 appendix, 477A, 477B, 505, 506, 507A, 406, 406, Appendix, ASCS-503, 658-1, Annually, Farms; 1,726,000 responses; 426,500 hours, Bruce Hiatt, (202) 245-4798.

Extension

• Forest Service, Interpretive Association Annual Report, FS-2300-5, Annually, Non-profit institutions; 60 responses; 60 hours, Gerald J. Coutant, (202) 447-6477.

• Foreign Agricultural Service, Product Review Application Form, FAS-633, On occasion, Businesses or other for-profit; 100 responses; 33 hours, Audrey B. Talley, (202) 475-3408.

• Food and Nutrition Service, Multi-Food Requisition, FNS-53, On occasion, State or local governments; 1,104 responses; 3,312 hours, Diane Berger or Robert DeLorenzo, (703) 756-3660.

• Food and Nutrition Service, Food Requisition, FNS-52, On occasion, State local governments; 9,072 responses; 18,144 hours, Diane Berger or Robert DeLorenzo (703) 756-3660.

Larry K. Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 91-10212 Filed 4-30-91; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Research Service

Intent To Grant an Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to EcoScience Laboratories, Inc., Amherst, Massachusetts, on U.S. Patent Application S. No. 07/618,437, "Biological Control of Postharvest Diseases of Pome Fruit with *Psuedomonas syringae* pr. *lachrymans*," filed November 27, 1990.

DATES: Comments must be received by July 1, 1991.

ADDRESSES: Send comments to: USDA-ARS—Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 401-A, BARC-W, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/344-2786, (FTS) 344-2786.

SUPPLEMENTARY INFORMATION: The USDA-ARS intends to grant to EcoScience Laboratories, Inc., as exclusive license to practice the aforementioned invention. Notice of Availability was given in the Federal Register on February 1, 1991. Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as EcoScience Laboratories, Inc., has submitted a complete and sufficient application for a license and is collaborating with the Agricultural Research Service under the terms of a Cooperative Research and Development Agreement providing for further development of the invention.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, ARS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

William H. Tallent,
Assistant Administrator.

[FR Doc. 91-10215 Filed 4-30-91; 8:45 am]

BILLING CODE 3410-03-M

Agricultural Stabilization and Conservation Service

1991-92 National Marketing Quota and Price Support Level for Burley Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

ACTION: Notice of determination.

SUMMARY: The purpose of this notice is to affirm determinations made by the Secretary of Agriculture with respect to the 1991 crop of burley tobacco in accordance with the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended. In addition to other determinations, the Secretary of Agriculture determined the 1991 marketing quota for burley tobacco to be 726.0 million pounds and that the price support level for the 1991 crop would be $1.584 per pound.

EFFECTIVE DATE: January 30, 1991.

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FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, room 3736-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-6839. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since neither the ASCS nor the CCC are required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This notice of determination is issued in accordance with the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), and the Agricultural Act of 1949, as amended (the "1949 Act"), in order to announce for the 1991 marketing year for burley tobacco the following:

1. The amount of domestic manufacturers' intentions;
2. The amount of the average exports for the 1988, 1989, and 1990 crop years;
3. The amount of the reserve stock level;
4. The amount of adjustment needed to maintain loan stocks at the reserve stock level;
5. The amount of the national marketing quota;
6. The national reserve:
   A. For establishing marketing quotas for new farms, and
   B. For making corrections and adjusting inequities in old farms;
7. The national factor; and
8. The price support level.

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government.

Marketing Quotas

Section 319 of the 1938 Act provides, in part, that the national marketing quota for a marketing year for burley tobacco is the quantity of such tobacco that is not more than 103 percent and not less than 97 percent of the total of: (1) The amount of burley tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, necessary to adjust loan stocks to the reserve stock level. Section 319(a)(3)(B) further provides that, with respect to the 1990 through 1993 marketing years, any reduction in the national marketing quota being determined shall not exceed 10 percent of the previous year's national marketing quota. The "reserve stock level" is defined in section 301(b)(14)(D) of the 1938 Act as the greater of 50 million pounds or 15 percent of the national marketing quota for burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1991 crop of burley by January 15, 1991. Six such manufacturers were required to submit such a statement for the 1991 crop and the total of their intended purchases for the 1991 crop was 510.5 million pounds.

The three-year average of exports is 167.6 million pounds.

In accordance with section 301(b)(14)(D) of the 1938 Act, the reserve stock level is the greater of 50 million pounds or 15 percent of the 1990 marketing quota for burley tobacco. The national marketing quota for the 1990 crop year was 602.3 million pounds (55 FR 29242). Accordingly, the reserve stock level for use in determining the 1991 marketing quota for burley tobacco is 90.3 million pounds.

As of January 25, 1991, the two loan associations had in their inventory 42.4 million pounds of the 1985-89 crops which remained unsold (net of deferred sales). The 1990 crop is expected to be nil. Accordingly, the adjustment to maintain loan stocks at the reserve supply level is an increase of 47.9 million pounds.

The total of the three marketing quota components for the 1991-92 marketing year is 726 million pounds. Section 319 of the 1938 Act further provides that the Secretary may increase or decrease the total by 3 percent. Since the three-component total has already been increased substantially via the intentions component of the formula, the Secretary did not exercise his discretionary authority in determining the quota. Accordingly, the national marketing quota for the marketing year beginning October 1, 1991, for burley tobacco is 726.0 million pounds.

In accordance with section 319(c) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 1 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1991 crop of burley tobacco of 571,000 pounds is adequate for these purposes.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level which is determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1991 crop of burley tobacco, the level of support is determined in accordance with sections 106 (d) and (f) of the 1949 Act.

Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 1991 crop of burley tobacco shall be: (1) The level in cents per pound at which the 1990 crop of burley tobacco was supported, plus or minus, respectively, (2) an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(i) 66.7 percent of the amount by which:

(I) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than.

(II) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(ii) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by burley tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

For the purpose of calculating the market-price component of the support level, section 106(F)(7)(B) of the 1949 Act provides that the average market price be reduced 3.9 cents per pound for the 1985 marketing year.

The difference between the two 5-year averages (the difference between (A)(I) and (A)(II), is 3.7 cents per pound. The difference in the cost index from January 1 to December 31, 1990, is 4.4 cents per pound.

Applying these components to the price support formula (3.7 cents per pound, two-thirds weight; 4.4 cents per pound, one-third weight) result in a 3.9 cent increase in the level of price support from the previous year.

However, section 106 further provides that the Secretary may limit the change in the price support level to no less than 65 percent of the change that otherwise would have occurred due to supply and demand conditions for such kind of tobacco. An upswing in imports has helped to balance supply and demand. However, to maintain export markets and discourage additional overseas production, the Secretary used his discretion to limit the increase to 67 percent of the increase that otherwise would be established. Accordingly, the 1991 crop of burley tobacco will be supported at 158.4 cents per pound, 2.6 cents higher than in 1990.

The level of support and the national marketing quota for the 1991 burley marketing year was announced on February 1, 1991, by the Secretary of Agriculture. This notice affirms these determinations.

Determinations 1991-92 Marketing Year

Accordingly, the following determinations have been made for burley tobacco for the marketing year beginning October 1, 1991:

(a) *Domestic manufacturers' intentions.* Manufacturers' intentions to purchase for the 1991 year totaled 510.5 million pounds.

(b) *3-year average exports.* The 3-year average of exports is 167.6 million pounds, based on exports of 164.0 million pounds, 168.7 million pounds and 170.0 million pounds for the 1988, 1989, and 1990 crop years, respectively.

(c) *Reserve stock level.* The reserve stock level is 90.3 million pounds, based on 15 percent of 1990 national marketing quota of 602.3 million pounds.

(d) *Adjustment for the reserve stock level.* The adjustment for the reserve stock level is plus 47.9 million pounds, based on a reserve stock level of 90.3 million pounds less anticipated loan stocks of 42.4 million pounds.

(e) *National marketing quota.* the national marketing quota is 726.0 million pounds, based on the three component total.

(f) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm marketing quotas for establishing marketing quotas for new farms has been determined to be 571,000 pounds.

(g) *National factor.* The national factor is determined to be 1.207.

(h) *Price support level.* The level of support for the 1991 crop of burley tobacco is 158.4 cents per pound.

Authority: 7 U.S.C. 1301, 1313, 1314c, 1375, 1445, 1421.

Signed at Washington, DC on April 25, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-10298 Filed 4-30-91; 8:45 am]

BILLING CODE 3410-05-M

1991-92 National Marketing Quota and Price Support Level for Flue-Cured Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

ACTION: Notice of determination.

SUMMARY: The purpose of this notice is to affirm determinations made by the Secretary of Agriculture with respect to the 1991 crop of flue-cured tobacco in accordance with the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended. In addition to other determinations, the Secretary of Agriculture determined the 1991 marketing quota for flue-cured tobacco to be 677.7 million pounds and that the price support level for 1991 would be $1.528 per pound.

EFFECTIVE DATE: December 14, 1990.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, room 3736-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-6839. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) are required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This notice of determination is issued in accordance with the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), and the Agricultural Act of 1949, as amended (the "1949 Act"), in order to announce for the 1991 marketing year for flue-cured tobacco the following:

1. The amount of domestic manufacturers intentions;
2. The amount of the average exports for the 1988, 1989, and 1990 crop years;
3. The amount of the reserve stock level;
4. The amount of adjustment needed to maintain loan stocks at the reserve stock level;

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5. The amount of the national marketing quota;
6. The national average yield goal;
7. The national acreage allotment;
8. The national acreage reserve:
   A. For establishing acreage allotments for new farms, and
   B. For making corrections and adjusting inequities in old farms;
9. The national acreage factor;
10. The national yield factor; and
11. The price support level.

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government.

Marketing Quotas

Section 317(a)(1)(B) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, necessary to adjust loan stocks to the reserve stock level. Section 317(a)(1)(C) further provides that, with respect to the 1990 through 1993 marketing years, any reduction in the national marketing quota being determined shall not exceed 10 percent of the previous year's national marketing quota. The "reserve stock level" is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 100 million pounds or 15 percent of the national marketing quota for flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1991 crop of flue-cured tobacco by December 1, 1990. Six such manufacturers were required to submit such a statement for the 1991 crop and the total of their intended purchases for the 1991 crop was 483.5 million pounds.

The three-year average of exports is 380.3 million pounds. For the 1990 quota determination, actual Census data was used. However, a 1989 Office of Inspector General investigation of General Sales Manager (GSM) program documents reported that certain tobacco shipments (both flue-cured and burley) that had been declared as U.S.-origin tobacco were actually foreign-grown. Accordingly, 1988 Census exports were adjusted downward to reflect this misclassification.

In accordance with section 301(b)(14)(C) of the 1938 Act, the reserve stock level is the greater of 100 million pounds or 15 percent of the 1990 marketing quota for flue-cured tobacco. The national marketing quota for the 1990 crop year was 877.7 million pounds (55 F.R. 36674). Accordingly, the reserve stock level for use in determining the 1991 marketing quota for flue-cured tobacco is 131.7 million pounds.

As of December 11, the Flue-Cured Tobacco Stabilization Corporation had in its inventory 140.8 million pounds of flue-cured tobacco (excluding pre-1985 stocks committed to be purchased by manufacturers and covered by deferred sales). Accordingly, the adjustment to maintain loan stocks at the reserve supply level is a decrease of 9.1 million pounds.

The total of the three marketing quota components for the 1991–92 marketing year is 854.7 million pounds. Section 317(a)(1)(B) of the 1938 Act further provides that the Secretary may increase or decrease the total by 3 percent. Because the Secretary determined that supplies were inadequate to satisfy export markets at the 854 million-pound quota level, he used his discretionary authority to increase the three-component total by about 2.7 percent. Accordingly, the national marketing quota for the marketing year beginning July 1, 1991 for flue-cured tobacco is 877.7 million pounds.

Section 317(a)(2) of the 1938 Act provides that the national average yield goal be set at a level, which on a national average basis, the Secretary determines will improve or insure the usability to the tobacco and increase that net return per pound to the growers. Since yields in crop year 1990 did not change significantly from the previous year, no change in the national average yield goal is contemplated at this time. Accordingly, it has been determined that the national average yield goal for the 1991–92 marketing year will be 2,088 pounds per acre, the same as last year.

In accordance with section 317(a)(3) of the 1938 Act, the national acreage allotment for the 1991 crop of flue-cured tobacco is determined to be 420,354.41 acres, which is the result of dividing the national marketing quota by the national average yield goal.

In accordance with section 317(e) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1991 crop of flue-cured tobacco of 918 acres is adequate for these purposes.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level which is determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1991 crop of flue-cured tobacco, the level of support is determined in accordance with sections 106 (d) and (f) of the 1949 Act. Section 106(f)(A) of the 1949 Act provides that the level of support for the 1991 crop of flue-cured tobacco shall be: (1) The level in cents per pound at which the 1990 crop of flue-cured tobacco was supported, plus or minus, respectively, (2) an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than

(II) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

For the purpose of calculating the market-price component of the support level, the 1949 Act provides that the average market price be reduced 25 cents per pound for the 1985 marketing year.

The difference between the two 5-year averages (the difference between (A)(I) and (A)(II) is 4.7 cents per pound. The difference in the cost index from January 1 to December 31, 1990 is 8.5 cents per pound. Applying these components to the price support formula (4.7 cents per pound, two-thirds weight; 8.5 cents per pound, one-third weight) result in an increase in the price support level of 6.0 cents per pound. However, section 106 further provides that the Secretary may limit the change in the price support level to no less than 65 percent of the change that otherwise would have occurred due to supply and demand conditions for such kind of tobacco. Supply and demand are reasonably in balance. However, in order to maintain export markets, the Secretary used his discretion to limit the increase to 67 percent of the increase that otherwise would have been. Acordingly, the 1991 crop of flue-cured tobacco will be supported at 152.8 cents per pound. 4.0 cents higher than in 1990.

The level of support for the 1991 crop of flue-cured tobacco and the national marketing quota for the 1991 flue-cured marketing year were announced on December 14, 1990 by the Secretary of Agriculture. This notice affirm these determinations.

Accordingly, the following determinations have been made for flue-cured tobacco for the marketing year beginning July 1, 1991:

(a) *Domestic manufacturers' intentions.* Manufacturers' intentions for the 1991 year totaled 483.5 million pounds.

(b) *3-year average exports.* The 3-year average of exports is 380.3 million pounds, based on exports of 358.3 million pounds, 387.8 million pounds and 395.0 million pounds for the 1988, 1989, and 1990 crop years, respectively.

(c) *Reserve stock level.* The reserve stock level is 131.7 million pounds, based on 15 percent of 1990's national marketing quota of 878 million pounds.

(d) *Adjustment for the reserve stock level.* The adjustment for the reserve stock level is minus 9.1 million pounds, based on a reserve stock level of 131.7 million pounds and anticipated loan stocks of 140.8 million pounds.

(e) *National marketing quota.* The national marketing quota is 877.7 million pounds, based on 102.7 percent of the three component total of 854.7 million pounds.

(f) *National average yield goal.* The national average yield goal is determined to be 2,088 pounds.

(g) *National acreage allotment.* The national acreage allotment on an acreage-poundage basis is determined to be 420,354.41 acres. This allotment is determined by dividing the national marketing quota of 877.7 million pounds by the national average yield goal of 2,088 pounds.

(h) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm acreage allotments and for establishing allotments for new farms has been determined to be 918 acres.

(i) *National acreage factor.* The national acreage factor is determined to be 1.0.

(j) *National yield factor.* The national yield factor is determined and announced to be .9266.

(k) *Types of tobacco.* It has been determined that types 11, 12, 13, and 14 shall constitute one kind of tobacco for the 1989–90, and 1990–91, 1991–92 marketing years. It has been determined also that no substantial difference exists in the usage or market outlets for any one or more of the types of flue-cured tobacco.

(l) *Price support level.* The level of support for the 1991 crop of flue-cured tobacco is 152.8 cents per pound.

Authority: Secs. 7 U.S.C. 1301, 131[illegible] 1314c, 1375, 1445, 1421.

Signed at Washington, DC on April 25, 1991.

Keith D. Bjerke

Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-10297 Filed 4-30-91; 8:45 am]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

Request for Designation Applicants to Provide Official Services in the Geographic Areas Currently Assigned to the Los Angeles (CA) and Little Rock (AK) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as Amended (Act), provides that official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies, the Little Rock Grain Exchange Trust (Little Rock), and the Los Angeles Grain Inspection Service, Inc. (Los Angeles), will terminate, according to the Act, and requests applications from parties interested in being designated to provide official services in the specified geographic areas.

DATES: Applications must be postmarked on or before May 31, 1991.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services in a specified area after a determination is made that the applicant is better able than any other applicant to provide such official services.

Little Rock, located at 622 Main Street, North Little Rock, AR 72119, and Los Angeles, located at 1625 Bluff Road, Montebello, CA 90640, were designated to provide official inspection services under the Act on November 1, 1988.

The designations of these official agencies will terminate on October 31, 1991. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Little Rock, in the States of Arkansas and Texas, pursuant to Section 7(f)(2) of the Act, that will be assigned to the applicant selected for designation is as follows:

In Arkansas:

Bounded on the North by the northern Arkansas State line from the western Benton County line east to the eastern Clay County line;

Bounded on the East by the eastern Clay, Greene, Lawrence, Jackson, Woodruff, Monroe, Arkansas, Desha, and Chicot County lines;

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Bounded on the South by the southern Arkansas State line from the eastern Chicot County line west to the western Miller County line; and

Bounded on the West by the western Arkansas State line from the southern Miller County line north to the northern Benton County line.

In Texas: Bowie and Cass Counties.

An exception to Little Rock's assigned geographic area is the following location inside that area, which has been and will continue to be serviced by the following official agency: Memphis Grain and Hay Association: Lockhart-Coleman Grain Company, Augusta, Woodruff County, Arkansas.

The geographic area presently assigned to Los Angeles, in the State of California, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the Angeles National Forest southern boundary from State Route 2 east; the San Bernardino National Forest southern boundary east to State Route 79;

Bounded on the East by State Route 79 south to State Route 74;

Bounded on the South by State Route 74 west-southwest to Interstate 5; Interstate 5 northwest to Interstate 405; Interstate 405 northwest to State Route 55; State Route 55 northeast to Interstate 5; Interstate 5 northwest to State Route 91; State Route 91 west to State Route 11; and

Bounded on the West by State Route 11 north to U.S. Route 66; U.S. Route 66 west to Interstate 210; Interstate 210 northwest to State Route 2; State Route 2 north to the Angeles National Forest boundary.

Interested parties, including Little Rock and Los Angeles, are hereby given the opportunity to apply for official agency designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning November 1, 1991, and ending October 31, 1994. Parties wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 24, 1991

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 91-10305 Filed 4-30-91; 8:45 am]

BILLING CODE 3410-EN-F

Request for Comments on the Designation Applicant in the Denver (CO) Geographic Area

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests interested persons to submit comments on the applicant for designation in the Denver, Colorado, geographic area.

DATES: Comments must be postmarked on or before June 17, 1991.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to [HDUNN/FGIS/USDA]. Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 8, 1991, **Federal Register** (56 FR 9933), the Service requested applications from persons interested in being designated to provide official services within the geographic area assigned to Hutchings, Inc., dba Denver Grain Inspection. Applications were to be postmarked by April 8, 1991. Randy J. McCormick, proposing to incorporate and to do business as Denver Grain Inspection, the only applicant, applied for the entire geographic area.

This notice provides to interested persons the opportunity to present comments concerning the applicant for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to this designation action. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 24, 1991

J.T. Abshier

Director, Compliance Division

[FR Doc. 91-10306 Filed 4-30-91; 8:45 am]

BILLING CODE 3410-EN-F

Request for Comments on the Designation Applicants in the Geographic Areas Currently Assigned to the East Indiana (IN) Agency and the State of Kansas (KS)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests interested persons to submit comments on the applicants for designation in the geographic areas currently assigned to East Indiana Grain Inspection, Inc. (East Indiana), and the Kansas State Grain Inspection Department (Kansas).

DATES: Comments must be postmarked on or before June 17, 1991.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to [HDUNN/FGIS/USDA]. Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 8, 1991, **Federal Register** (56 FR 9933), the Service requested applications for designation to provide official services within the East Indiana and State of Kansas geographic areas. Applications were to be postmarked by April 8, 1991. East Indiana and Kansas, the only applicants, each applied for the entire area currently assigned to them.

This notice provides to interested persons the opportunity to present comments concerning the applicants for designation. Commenters are encouraged to submit reasons and pertinent sustaining data for support or objection to this designation action. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 24, 1991

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 91-10307 Filed 4-30-91; 8:45 am]

BILLING CODE 3410-EN-F

Designation Renewal of the Memphis (TN) Agency and the State of Alaska (AK)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Memphis Grain and Hay Association (Memphis), and the Alaska Department of Natural Resources, Division of Agriculture (Alaska), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: June 1, 1991.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 3, 1990, **Federal Register** (55 FR 49926), the Service announced that the designations of Alaska and Memphis will terminate on May 31, 1991, and requested applications for designation to provide official services within the specified geographic areas. Applications were to be postmarked by January 2, 1991. Alaska and Memphis, the only applicants, each applied for the entire area currently assigned to them.

The Service named and requested comments on the applicants for designation in the February 6, 1991, **Federal Register** (56 FR 4767). Comments were to be postmarked by March 25, 1991. The Service received no comments by that deadline.

The Service evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Alaska and Memphis are able to provide official services in the specified geographic areas.

Effective June 1, 1991, and terminating May 31, 1994, Alaska and Memphis are designated to provide official inspection services in the geographic areas specified in the December 3 **Federal Register**.

Interested persons may obtain official services by contacting Alaska at 907-376-3276 and Memphis at 901-942-3216.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 24, 1991.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 91-10308 Filed 4-30-91; 8:45 am]

BILLING CODE 3410-EN-F

Cancellation of Ohio Valley's Designation and Request for Designation Applicants to Provide Official Services in Portions of Indiana, Kentucky, and Tennessee

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces that James L. Goodge, Sr., dba Ohio Valley Grain Inspection (Ohio Valley), has requested cancellation of his designation, effective October 31, 1991. The notice also requests applications from parties interested in being designated to provide official services in the geographic area currently assigned to Ohio Valley.

DATES: Applications must be postmarked on or before May 31, 1991.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act) specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services in a specified area after a determination is made that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act.

Ohio Valley, located at Robin Hill Road, Plaza South, Newburgh, IN 47630, was designated to provide official inspection services on April 1, 1989, and its designation was scheduled to terminate on March 31, 1992. Ohio Valley requested voluntary cancellation of its designation, effective October 31, 1991.

The geographic area presently assigned to Ohio Valley, in the States of Indiana, Kentucky, and Tennessee, pursuant to Section 7(f)(2) of the Act, that will be assigned to the applicant selected for designation is as follows:

Daviess, Dubois, Gibson, Knox (except the area west of U.S. Route 41 (150) from Sullivan County south to U.S. Route 50), Pike, Posey, Vanderburgh, and Warrick Counties, Indiana;

Caldwell, Christian, Crittenden, Henderson, Hopkins (west of State Route 109 south of the Western Kentucky Parkway), Logan, Todd, Union, and Webster (west of Alternate U.S. Route 41 and State Route 814) Counties, Kentucky; and

Cheatham, Davidson, and Robertson Counties, Tennessee.

Interested parties are hereby given an opportunity to apply for official agency designation to provide official services in the Ohio Valley geographic area, as specified above, under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the Ohio Valley geographic area is for the period beginning November 1, 1991, and ending October 31, 1994. Parties wishing to apply for designation should contact the

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Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in the Ohio Valley geographic area.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 24, 1991.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 91-10308 Filed 4-30-91; 8:45 am]

BILLING CODE 3410-EN-F

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR part 217. This action is necessary to implement the Secretary of Agriculture's rule amending the Forest Service administrative appeal procedures, which was published in the **Federal Register** on February 6, 1991. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after April 30, 1991. The list of newspapers will remain in effect until October 1991, when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephen Solem; Regional Appeals Coordinator; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone (406) 329-3200.

SUPPLEMENTARY INFORMATION: On February 6, 1991, the Secretary of Agriculture signed a rule amending the administrative appeal procedures 36 CFR 217 of the Forest Service to require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing, and to those known to be interested and affected by a specific decision.

The legal notice is to identify: The decision by title and subject matter, the date of the decision, the name and title of the official making the decision, and how to obtain copies of the decision. In addition, the notice is to state that the date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some Forest Supervisors and District Rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana:
The Missoulian, Missoula, Montana
Great Falls Tribune, Great Falls, Montana
The Billings Gazette, Billings, Montana
Regional Forester decisions in Northern Idaho and Eastern Washington:
The Spokesman Review, Spokane, Washington
Regional Forester decisions in North Dakota:
Bismarck Tribune, Bismarck, North Dakota
Regional Forester decisions in South Dakota
Rapid City Journal, Rapid City, South Dakota

Montana National Forests

Beaverhead National Forest

Beaverhead Forest Supervisor decisions:
Montana Standard, Butte, Montana
Wise River Ranger District decisions:
Montana Standard, Butte, Montana
Wisdom Ranger District decisions:
Montana Standard, Butte, Montana
Sheridan Ranger District decisions:
Montana Standard, Butte, Montana
Madison District Ranger Decisions:
Montana Standard, Butte, Montana
Bozeman Chronicle, Bozeman, Montana

Bitterroot national Forest

Bitterroot Forest Supervisor and Ranger District decisions:
Ravalli Republic, Hamilton, Montana

Clearwater National Forest

Clearwater Forest Supervisor and District Ranger decisions:
Lewiston Morning Tribune, Lewiston, Idaho

Custer National Forest

Custer Forest Supervisor decisions in North Dakota:
Bismarck Tribune, Bismarck, North Dakota
Custer Forest Supervisor decisions in South Dakota:
Rapid City Journal, Rapid City, South Dakota
Custer Forest Supervisor decisions in Montana:
Billings Gazette, Billings, Montana
Sheyenne District Ranger decisions:
Fargo Forum, Fargo, North Dakota
Beartooth District Ranger decisions:
Carbon County News, Red Lodge, Montana
Sioux District Ranger decisions:
Nation's Center News, Buffalo, South Dakota
Ekalaka Eagle, Ekalaka, Montana
Ashland District Ranger decisions:
Billings Gazette, Billings, Montana
Grand River District Ranger decisions:
Lemmon Leader, Lemmon, South Dakota
Adams County Record, Hettinger, North Dakota
Medora District Ranger decision:
Dickenson Press, Dickinson, North Dakota
McKenzie District Ranger decisions:
Williston Daily Herald, Williston, North Dakota

Deerlodge National Forest

Deerlodge Forest Supervisor and Ranger District decisions:
Montana Standard, Silver Bow County Montana

Flathead National Forest

Flathead Forest Supervisor and District Ranger decisions:
The Daily Inter Lake, Kalispell, Montana (Only in the Sunday Edition)

Gallatin National Forest

Gallatin Forest Supervisor decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Billings Gazette, Billings, Montana
Bozeman District Ranger decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Hebgen Lake District Ranger decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Billings Gazette, Billings, Montana
West Yellowstone News, West Yellowstone, Montana
Livingston District Ranger decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Billings Gazette, Billings, Montana
Livingston Enterprise, Livingston, Montana
Gardiner District Ranger decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Billings Gazette, Billings, Montana
Livingston Enterprise, Livingston, Montana
Big Timber District Ranger decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Billings Gazette, Billings, Montana
Big Timber Pioneer, Big Timber, Montana

Helena National Forest

Helena Forest Supervisor and District Ranger decisions:
Independent Record, Helena, Montana

Idaho Panhandle National Forests

Idaho Panhandle Forest Supervisor and District Ranger decisions:
Spokesman Review, Spokane, Washington
Coeur d'Alene Press
Coeur d'Alene, Idaho

Kootenai National Forest

Kootenai Forest Supervisor decisions:
Western News, Libby, Montana
Tobacco Valley News, Eureka, Montana
Sanders County Ledger, Thompson Falls, Montana
Bonners Ferry Herald, Bonner Ferry, Idaho
Rexford District Ranger decisions:
Tobacco Valley News, Eureka, Montana
, Fortine District Ranger decisions:
Tobacco Valley News, Eureka, Montana
Western News, Libby, Montana
Daily Inter Lake, Kalispell, Montana
Three Rivers District Ranger decisions:
Western News, Libby, Montana
Bonners Ferry Herald, Bonners Ferry, Idaho
Libby District Ranger decisions:
Western News, Libby, Montana
Fisher River District Ranger decisions:
Western News, Libby, Montana
Cabinet District Ranger decisions:
Sanders County Ledger, Thompson Falls, Montana

Lewis and Clark National Forest

Lewis and Clark Forest Supervisor decisions:
Great Falls Tribune, Great Falls, Montana
Rocky Mountain District Ranger decisions:
Great Falls Tribune, Great Falls, Montana
Choteau Acontha, Choteau, Montana
Sun Valley Sun, Augusta, Montana
Glacier Reporter, Browning, Montana
Judith District Ranger decisions:
Great Falls Tribune, Great Falls, Montana
Judith Basin Press, Stanford, Montana
News Argus, Lewiston, Montana
River Press, Fort Benton, Montana
Independent Record, Helena, Montana
Billings Gazette, Billings, Montana
Meagher County News, White Sulphur Springs, Montana
Havre Daily News, Havre, Montana
The Eagle, Stockett, Montana
Musselshell District Ranger decisions:
Great Falls Tribune, Great Falls, Montana
Times Clarion, Harlowton, Montana
Billings Gazette, Billings, Montana
Kings Hill District Ranger decisions:
Great Falls Tribune, Great Falls, Montana
Meagher County News, White Sulphur Springs, Montana
The Eagle, Stockett, Montana

Lolo National Forest

Lolo Forest Supervisor decisions:
Missoulian, Missoula, Montana
Missoula District Ranger decisions:
Missoulian, Missoula, Montana
Ninemile District Ranger decisions:
Missoulian, Missoula, Montana
Seeley Lake District Ranger decisions:
Missoulian, Missoula, Montana
Plains/Thompson Falls District Ranger decisions:
Sanders County Ledger, Thompson Falls, Montana
Superior District Ranger decisions:
Mineral Independent, Plains, Montana

Nezperce National Forest

Nezperce Forest Supervisor decisions:
Idaho County Free Press, Grangeville, Idaho
Salmon River District Ranger decisions:
Idaho County Free Press, Grangeville, Idaho
Clearwater District Ranger decisions:
Idaho County Free Press, Grangeville, Idaho
Red River Ranger District decisions:
Idaho County Free Press, Grangeville, Idaho
Moose Creek Ranger District decisions:
Idaho County Free Press, Grangeville, Idaho
Selway District Ranger decisions:
Idaho County Free Press, Grangeville, Idaho
Clearwater Progress, Kamiah, Idaho

Dated: April 24, 1991.

John M. Hughes,

Deputy Regional Forester.

[FR Doc. 91-10182 Filed 4-30-91; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Alaska Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3:30 p.m. on Wednesday, June 5, 1991, at the Federal Building, room 139, 701 "C" Street, Anchorage, Alaska 99513. The purpose of the meeting is to plan Committee projects and future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Rosalee Walker, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894/0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 22, 1991.

Carol-Lee Hurley;

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-10234 Filed 4-30-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey--October 1991 School Enrollment Supplement.

Form Number(s): CPS-1.

Agency Approval Number: 0607-0464.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 7,125 hours.

Number of Respondents: 57,000.

Avg Hours Per Response: Seven and one-half minutes.

Needs and Uses: This supplement to the October collection of the Current Population Survey (CPS) is collected annually from the entire CPS sample. It provides basic information on enrollment status of various segments of the population for persons 3 years and older enrolled in nursery school/kindergarten, elementary school, high school, college, and vocational/technical schools. These data are used by Federal agencies; state, county, and city governments; and private organizations responsible for education to formulate and implement education policy. They are also used by employers and analysts to anticipate the composition of the labor force in the future.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 23, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-10028 Filed 4-30-91; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for

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collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1991 Company Organization Survey.

Form Number(s): NC-9901, NC-9907.

Agency Approval Number: 0607-0444.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 76,899 hours.

Number of Respondents: 93,000.

Avg Hours Per Response: 50 minutes.

Needs and Uses: The Bureau of the Census uses the Company Organization Survey (COS) annually to update and maintain the Standard Statistical Establishment List (SSEL). The SSEL is a computerized list of companies containing such information as name, address, physical location, Standard Industrial Classification (SIC) code, employment size code, and company affiliation. The basic purposes of the SSEL are to (1) provide a single universe for the selection and maintenance of statistical samples of establishments, legal entities, or enterprises; (2) provide a standard basis for assigning SIC codes to establishments engaged in all areas of economic activity; and (3) provide establishment level data from multiestablishment companies that are summarized and published in the annual County Business Patterns series of reports. The updated SSEL provides a current directory of business locations for use in economic monthly, quarterly, and annual surveys, most of which are conducted on a sample basis. It is also used to develop the mailing list for the economic censuses. Government agencies use the tabulated data in various economic development programs, and businesses use it for economic analysis and planning.

Affected Public: Businesses or other for-profit organizations; Non-profit institutions; Small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 23, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-10030 Filed 4-30-91; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Cognitive Research and Development Program for the Survey of Income and Program Participation.

Form Number(s): SIPP-11100(X)A, SIPP-11105(X)A.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 1,680 hours.

Number of Respondents: 1,680.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Bureau of the Census has devised this data collection to reduce measurement errors in the Survey of Income and Program Participation (SIPP) by improving the SIPP questionnaire and interviewing procedures. The Bureau is seeking OMB approval to use revisions of the SIPP 1991 Panel Wave 1 form to test the quality of answers given by respondents against actual employment and income data for a portion of the study. We will conduct 2 feasibility studies of 100 respondents each, revising the form and procedures as required. Using the results of the feasibility studies, The Bureau will conduct an evaluation study of 600 respondents (300 each) to compare the quality of responses obtained using the cognitive strategy to those using standard procedures. The research program will also test the feasibility of introducing the redesigned questionnaire and interviewing procedures with the implementation of the SIPP sample redesign scheduled for 1995.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 23, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-10031 Filed 4-30-91; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Pilot Survey for Local Education Agency Financial Information, 1990.

Form Number(s): F-33(Pilot).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 625 hours.

Number of Respondents: 50.

Avg Hours Per Response: 1 hour and 15 minutes.

Needs and Uses: The Bureau of the Census presently collects data on the finances of local education agencies in the Survey of Local Government Finances (School Systems) [OMB number 0607-0700]. The Census Bureau will use this pilot survey to determine if selected additional data is available on the finances of local school systems. State education agencies will be asked to report for a sample of the local school systems under their jurisdiction. The additional data is needed by the National Center for Economic Statistics to satisfy requirements of data users such as Congress, State and local education agencies, universities, Federal Government agencies, and research groups.

Affected Public: State or local governments.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 25, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-10299 Filed 4-30-91; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1990 Re-interview of Participants in the Survey of 1990 Census Participation.

Form Number(s): D-1406(A).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 620 hours.

Number of Respondents: 2,478.

Avg Hours Per Response: 15 minutes.

Needs and Uses: One of the guidelines for considering whether a statistical adjustment should be made to the 1990 Census stipulates that the Census Bureau consider the effects of such a decision on participation in future censuses. Currently, there are no data available to predict what effects a decision to adjust or not to adjust the census figures would have on the public's participation in future censuses. To meet this information need, the Bureau proposes a telephone re-interview of 2,478 households from the Survey of 1990 Census Participation. Items in the proposed survey question the public's awareness of the adjustment issue, the perceived effects of adjusting or not adjusting the 1990 census on participation in the next census, and their likelihood of participating given the adjustment decision, both in isolation and in comparison with other conditions or circumstances.

Affected Public: Individuals or households.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 25, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-10300 Filed 4-30-91; 8:45 am]

BILLING CODE 3510-07-F

International Trade Administration

Change in Administrative Protective Order Practice

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of change in administrative protective order practice.

SUMMARY: The Department of Commerce will no longer contact parties to antidumping and countervailing duty proceedings prior to issuing amendments to administrative protective orders.

EFFECTIVE DATE: May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Carrella Q. Jubilee, Office of the Deputy Assistant Secretary for Compliance, Import Administration, U.S. Department of Commerce, room 3089A, Washington, DC 20230: telephone: (202) 377-5289, or Ann M. Sebastian, Office of the Deputy Assistant Secretary for Investigations, Import Administration, U.S. Department of Commerce, room 3099, Washington, DC 20230; telephone: (202) 377-3354.

SUPPLEMENTARY INFORMATION: This is to notify the public that, effective thirty days from the date of publication of this notice, the Department will no longer contact parties by telephone to determine if they have any objections to amendments to administrative protective orders. Parties are on notice that an amendment to an administrative protective order has been requested when they are served with a copy of the request. Parties who wish to object to a request for an amendment to an administrative protective order should do so in a timely manner in order for the Department to rule on a requested amendment within fourteen days of the request.

When an amendment to an administrative protective order is granted, the Department will place the amended administrative protective order in the pertinent public file in Central Records Unit, room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10261 Filed 4-30-91; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review: Certain Continuous Cast Steel Billets

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Review and Request for Comments; Certain Continuous Cast Steel Billets.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 10,000 metric tons of certain 130mm square welding quality continuous cast steel billets for May-June of 1991 under Article 8 of the Arrangement Between the Government of Finland and the Government of the United States of America Concerning Trade in Certain Steel Products ("the U.S.-Finland Arrangement").

SHORT-SUPPLY REVIEW NUMBER: 48.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and section 357.104(b) of the Department of Commerce's Short-Supply Procedures, (19 CFR 357.104(b)) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain 130mm square welding quality continuous cast steel billets. On April 23, 1991, the Secretary received an adequate petition from American Steel & Wire Corporation ("ASW") requesting a short-supply allowance for 10,000 metric tons of this product during May-June 1991 under Article 8 of the U.S.-Finland Arrangement. ASW is requesting short supply for this material because the potential foreign supplier has no available quota to export this product, and domestic producers are either unable to meet the specifications or have no available capacity to produce this material.

The quantity requested by grade, physical specifications, and method of manufacture of the subject billets are as follows:

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		Metric tons
Grade/quantity requested:	708–3	2,700
	706–6	6,300
	KR 706–7	1,000
Total		10,000

Cross-section: 130mm (± 2mm);
Length: 9.4M–10.3M (no shorts);
Twist: 5 degrees maximum over length of billet;

Straightness: 13mm maximum out-of-straight in any 1.5m, 76mm maximum out-of-straight over billet length;

Ends: Perpendicular to longitudinal axis. Tapered cuts are unacceptable. Mushroomed ends must not exceed 6mm per side. No open or split ends. Detachable saw burrs, fins, or shear lips must be minimized;

Surface: Billet must be commercially free of cracks, mechanical defects and other melting/casting type surface discontinuities. Pinhole defects shall not exceed 2mm in depth;

Squareness: Rhomboid sections with uneven diagonals more than 8mm are unacceptable;

Corner Radius: 6mm (± 2mm).
Cast: Must be continuous (direct) cast billets;
Other: Must be B.O.F. steel.

Section 4(b)(4)(B) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist:

(1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than May 23, 1991.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than May 8, 1991 to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after May 8, 1991. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Jim Rice or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. (202) 377–2867 or 377–0159.

Eric I. Garfinkel,
Assistant Secretary for Import Administration.

[FR Doc. 91–10281 Filed 4–30–91; 8:45 am]
BILLING CODE 3510–DS–M

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee; Third Renewal

The Commodity Futures Trading Commission has determined to renew for a period of two years its advisory committee designated as the "Commodity Futures Trading Commission Financial Products Advisory Committee." As required by section 14(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, Section 14(a)(2)(A), and 41 CFR 101–6.1007 and 101–6.1029, the Commission has consulted with the Committee Management Secretariat of the General Services Administration, and the Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, as amended.

The objectives and scope of activities of the Financial Products Advisory Committee are to conduct public meetings and submit reports and recommendations on issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission.

Commissioner William P. Albrecht serves as Chairman and Designated Federal Official of the Financial Products Advisory Committee. The Committee's membership represents a cross-section of interested and affected persons and groups including representatives of newer institutional market participants, such as broker-dealers, pension sponsors and investment companies; traditional market participants, such as futures commission merchants, commodity pool operators and commodity trading advisors; and representatives of the academic, legal and accounting communities and other appropriate public participants.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Issued in Washington, DC on April 25, 1991, by the Commission.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91–10208 Filed 4–30–91; 8:45 am]
BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive or Partially Exclusive Licensing

AGENCY: Office of the Judge Advocate General, DOD.

ACTION: Notice of availability.

SUMMARY: This is a notice of availability for non-exclusive, exclusive, or partially exclusive licensing of U.S. Patent Application SN 07/601,090, filed on 22 October 1990, entitled Encapsulated High Concentration Lipid a Compositions as Immunogenic Agents To Produce Human Antibodies To Prevent or Threat Gram-Negative Bacterial Infections.

FOR FURTHER INFORMATION CONTACT: Mr. Earl T. Reichert, Department of the Army, Office of the Judge Advocate General, Intellectual Property Law Division, 5611 Columbia Pike, ATTN: JALS–IP, Falls Church, VA 22041–5013, (703) 756–2833.

Kenneth L. Denton,
Alternate Army Federal Register Liaison Officer.

[FR Doc. 91–10239 Filed 4–30–91; 8:45 am]
BILLING CODE 3710–08–M

Armed Forces Epidemiological Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.
Date of Meeting: June 18, 1991.
Time: 0800–1600.
Place: Walter Reed Army Institute of Research, Washington, DC.
Proposed Agenda: Review of service vaccination policies, deliberations and recommendations to retain, delete, replace or modify vaccine or immunization policy as appropriate.

This meeting will be open to the public but limited space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258. (703) 756–6012.

Kenneth L. Denton,
Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 91–10163 Filed 4–30–91; 8:45 am]
BILLING CODE 3710–08–M

Armed Forces Epidemiological Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.
Date of Meeting: 19 June 1991.
Time: 0800–1600.
Place: Walter Reed Army Institute of Research, Washington, DC.
Proposed Agenda: Defense strategy into the 21st century, deliberations and recommendations on future vaccine research and development programs.

This meeting will be open to the public but limited space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041–3258. (703) 756–6012.

Kenneth L. Denton,
Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 91–10184 Filed 4–30–91; 8:45 am]
BILLING CODE 3710–08–M

Armed Forces Epidemiological Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.
Date of Meeting: 20 June 1991.
Time: 0800–1600.
Place: Walter Reed Army Institute of Research, Washington, DC.
Proposed Agenda: Lessons Learned, Update on Lyme Disease, Report on Cholera Epidemic in Peru, Report on the Review of the DOD Immunization Policy, Report on DOD Overseas Infectious Disease Program Review.

This meeting will be open to the public but limited space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041–3258. (703) 756–6012.

Kenneth L. Denton,
Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 91–10185 Filed 4–30–91; 8:45 am]
BILLING CODE 3710–08–M

Armed Forces Epidemiological Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.
Date of Meeting: 21 June 1991.
Time: 0800–1400.
Place: Walter Reed Army Institute of Research, Washington, DC.
Proposed Agenda: OSBREM Overview, Report on Laboratory Consolidation Progress, Report on Kuwaiti Oil Well Fires Hazard Assessment.

This meeting will be open to the public but limited space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041–3258. (703) 756–6012.

Kenneth L. Denton,
Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 91–10186 Filed 4–30–91; 8:45 am]
BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of the Committee: Army Science Board (ASB).
Dates of meeting: 17 MAY 1991.
Time: 0800–1430.
Place: Society of American Military Engineers Headquarters, 607 Prince Street, Alexandria, Virginia.
Agenda: The Army Science Board Infrastructure and Environment Issue Group study on Requirements for Predicting Outyear Resource Requirements for Maintaining, Repairing and Operating Army Facilities will conduct their first meeting to develop the groundwork for the conduct of this study. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,
Administrative Officer, Army Science Board.

[FR Doc. 91–10235 Filed 4–30–91; 8:45 am]
BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of the Committee: Army Science Board (ASB).
Dates of meeting: 7 June 1991.
Time: 0800–1630.
Place: Harry Diamond Laboratories, 2800 Powder Mill Road, Adelphi, MD.
Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Improving the Quality of Science and Engineering in the Army will meet with the Commander, Directors and staff of the U.S. Army Laboratory Command to discuss their efforts to capture indicators of quality of R&D work and personnel. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the

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committee. The ASB Administrative Officer, Sally Warner, may be contacted.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-10236 Filed 4-30-91; 8:45 am]

BILLING CODE 3710-08-M

Patent Licenses

AGENCY: U.S. Army Communications-Electronics Command, DOD.

ACTION: Notice of availability.

SUMMARY: This is a notice of availability for non-exclusive, exclusive, or partially exclusive licensing of U.S. Patents concerning antenna technology and applications.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, U.S. Army Communications-Electronics Command, attn: AMSEL-LG-L, Fort Monmouth, New Jersey 07703-5000. (908) 532-4112.

SUPPLEMENTAL INFORMATION: In accordance with 37 CFR part 404.6, announcement is made of the availability of U.S. Patent Nos. 4,580,141; 4,500,883; 4,498,083; 4,431,999; and 4,275,397 for licensing. These patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents involve direct antenna pattern control that provides products and or sums of sin m x/sin x functions by controlling both the amplitudes and spacing of an array antenna or by controlling the phase of the antenna elements. General conceptually different antenna design techniques are employed to simultaneously and independently locate, track and completely cancel (with infinite dBrulls) multiple interference arriving from different spatial directions or to simultaneously cancel interference arriving from all directions except over a small angular sector. Complete cancellation of interfering sources are obtained while either retaining the ability to receive the desired signal at its peak received value or (when phase control is employed) to constrain the signal loss to an acceptable value. Besides having general application in communications systems to reduce or eliminate external interference arriving from spatial directions different than that of the desired signal, one concept is employed in a multiple access application to reduce or eliminate self interference in a dense communications mobile access environment.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of title 35, U.S. Code, the Department of the Army as represented by the United States Army Communications-Electronics Command wishes to license the above mentioned United States Patents in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing and selling devices and systems covered by the above mentioned patents.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-10188 Filed 4-30-91; 8:45 am]

BILLING CODE 3710-08-M

Prospective Exclusive and Partially Exclusive Licenses

AGENCY: U.S. Army Communications-Electronics Command, DOD.

ACTION: Notice of prospective exclusive and partially exclusive licenses.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of prospective exclusive and partially exclusive licenses of the following United States Patent Numbers:

4,599,733, 4,566,915, 4,566,914, 4,549,303, 4,542,515, 4,529,963, 4,514,853, 4,512,024, 4,511,885, 4,494,228, 4,475,214, 4,475,214, 4,475,186, 4,472,815, 4,472,814, 4,471,342, 4,470,138, 4,455,662, 4,301,530, 4,293,953, 4,279,207, 4,215,244, 3,917,909, 3,906,088

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, U.S. Army Communications-Electronics Command, ATTN: AMSEL-LG-L, Fort Monmouth, NJ 07703-5000, (908) 532-4112.

SUPPLEMENTARY INFORMATION: The above mentioned United States Patents involve the generation and compression (detection) of spread spectrum multiplexed noise codes and applications of these codes in communications, switching and control systems. Rights to these patents are owned by the United States Government, as represented by the Secretary of the Army. Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of title 35, U.S. Code, the Department of the Army, as represented by the Communications-Electronics Command, intends to grant exclusive or partially exclusive licenses for the above mentioned United States Patents to the following entities: Hiller Technologies, a Limited Partnership, 500 Alexander Park, CN23, Princeton, New Jersey 08543-0023 and Thomas H. Barham Co., Inc., 4239 Highway #33, Tinton Falls, New Jersey 07753.

Pursuant to 35 CFR 404.7(a)(1)(i), any interested party may file written objections to these prospective exclusive or partially exclusive license arrangements. Written objections should be directed to: Mr. William H. Anderson, Intellectual Property Law Division, U.S. Army Communications-Electronics Command, ATTN: AMSEL-LG-L, Fort Monmouth, NJ 07703-5000.

Written objections must be filed within 60 days from the date of the publication of this notice in the **Federal Register.**

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-10237 Filed 4-30-91; 8:45 am]

BILLING CODE 3710-08-M

Exclusive License

AGENCY: U.S. Army Laboratory Command, DoD.

ACTION: Notice of Exclusive License.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of a prospective exclusive license of U.S. Patent No. 4,410,902, entitled, "Planar Doped Barrier Semiconductor Device."

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, U.S. Army Communications-Electronics Command, ATTN: AMSEL-LG-L, Fort Monmouth, NJ 07703-5000, (908) 532-4112.

SUPPLEMENTARY INFORMATION: The Planar Doped Barrier Semiconductor Device was invented by Rojer J. Malik (US. Patent Application No. 246,787; U.S. Patent No. 4,410,902; filing date, March 23, 1981; issue date, October 18, 1983). Rights to this United States Patent are owned by the United States Government as represented by the Secretary of the Army. Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of title 35, U.S. Code, the Department of the Army, as represented by the U.S. Army Laboratory Command, intends to grant an exclusive license for the above mentioned patent to Alpha Industries, Inc., 20 Sylvan Road, P.O.a Box 1044, Woburn, Massachusetts 01801.

Pursuant to 37 CFR 404.7(a)(1)(i), any interested party may file written objections to this prospective excusive license arrangement. Written objections should be directed to: Mr. William H. Anderson, Intellectual Property Law Division, U.S. Army Communications-Electronics Command, ATTN: AMSEL-LG-L, Fort Monmouth, New Jersey 07703-5000.

Written objections must be filed within 60 days from the date of the publication of this notice in the **Federal Register.**

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-10238 Filed 4-30-91; 8:45 am]

BILLING CODE 3710-08-M

Patent Licenses; Availability

AGENCY: U.S. Army Communications—Electronics Command, DoD.

ACTION: Notice of availability.

SUMMARY: This is a notice of availability for non-exclusive, exclusive, or partially exclusive licensing of U.S Patents concerning time dissemination, frequency control, and interference reduction.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, U.S. Army Communicatione—Electronics Command, ATTN: AMSEL-LG-L, Fort Monmouth, New Jersey 07703-5000. (908) 532-4112.

SUPPLEMENTARY INFORMATION: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent Nos. 4,457,007; 4,361,888; and 3,783,389 for licensing. These patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

—Patent No. 4,361,888 is related to time dissemination and provides a means whereby a precise time reference can be disseminated to any desired location completely free of timing error due to doppler effects. This is accomplished using either a satellite or an airborne relay.

—Patent No. 3,783,389 is related to frequency control and establishes a unique method of generating a median frequency from two frequency sources. This can be used in a repeated fashion to provide a group of frequencies (for a frequency synthesizer) that are all coherently related to a single stable clock reference.

—Patent No. 4,457,007 is related to interference reduction and identifies how multipath returns can be canceled to prevent intersymbol interference. This would increase the capacity of a TDMA mobile subscriber access system.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of title 35, U.S. Code, the Department of the Army as represented by the United States Army Communications—Electronics Command wishes to license the above mentioned United States Patents in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing and selling devices and systems covered by the above mentioned patents.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-10187 Filed 4-30-91; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS)

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: An Environmental Impact Statement will be prepared to evaluate project alternatives and the public interest review factors for the proposed highway widening/relocation in the Northwest River and non-tidal wetlands in the City of Chesapeake, Virginia.

FOR FURTHER INFORMATION CONTACT: For further information contact Alice Allen-Grimes, U.S. Army Engineer District, Norfolk, 803 Front Street, Norfolk, Virginia 23510. (804) 441-7219.

SUPPLEMENTARY INFORMATION:

1. Proposed Action. The Virginia Department of Transportation proposes to widen and/or relocate route 168 (Battlefield Boulevard) in Chesapeake, Virginia, which will involve the filling of an estimated 57 to 254 acres of non-tidal palustrine forested wetlands in the drainage areas of the Albermarle Chesapeake Canal and the Northwest River, tributaries of the North Landing River. The portion of the roadway under consideration for improvement extends from the south end of Great Bridge Bypass to the North Caroline State Line, a distance of approximately 10 miles. This portion of route 168 is a major north/south primary arterial in the city of Chesapeake and links the Hampton Roads region of Virginia with the coastal areas of North Carolina. It is currently a two-lane road crossing a primarily agricultural area with significant areas of residential and commercial development.

2. Alternatives. Alternatives which will be investigated include, but will not be limited to, the No Build alternative. Transportation Systems Management, widening the existing roadway, and five other build alternatives that involve combinations of widening of the existing roadway plus construction on new alignment.

3. Scoping Process. A pre-application scoping meeting was held with state and Federal agencies in September 1990 and formal agency scoping comments were requested. Significant issues which have been identified thus far include wetland destruction, potential impacts to a federally listed threatened species (the Dismal Swamp Southeastern Shrew), and residential and commercial displacements. A public notice requesting written public comments will be published upon submission of an Environmental report by the Virginia Department of Transportation.

4. Public Scoping Meeting. If it is determined that a public scoping meeting is necessary to assist the Corps in identifying significant issues which should be addressed in the DEIS, the date and location of the meeting will be announced by separate public notice when schedule.

5. DEIS Availability. It is estimated that the DEIS will be available to the public for review and comment in the fall of 1991.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-10282 Filed 4-30-91; 8:45 am]

BILLING CODE 3710-EN-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Coal Ground Storage Facility Proposed by Norfolk & Western Railway in Windsor, Isle of Wight County, VA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: An Environmental Impact Statement will be prepared to evaluate environmental impacts, project alternatives, and other public interest review factors for a proposed coal ground storage facility.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS may be directed to: Kenneth M. Kimidy U.S. Army Engineer District (USAED), Norfolk, 803 Front Street Norfolk, Virginia 23510-1096, (804) 441-7832.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* Norfolk and Western Railway proposes to construct a coal ground storage facility in Windsor, Isle of Wight County, Virginia for the purpose of providing more efficient transportation of coal by

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reducing the turnaround time for coal between the mining areas and its export from the Lamberts Point Terminal in Norfolk, Virginia. The capacity for storage at the proposed facility would be 40 million gross tons (mgt) annually. This activity will require a Corps of Engineers permit pursuant to section 404 of the Clean Water Act (Pub. L. 95–217).

2. *Alternatives:* Alternatives which will be investigated will include, but will not be limited to sites adjacent to the main corridor of the Norfolk and Western Railway line within a 12 hour loop of the Lamberts Point Terminal. Alternative construction and access methods which would avoid or minimize wetland impacts will be investigated.

3. *Scoping Process:* Several pre-scoping meetings have been held with Federal, state, and local agency representatives. Some of the alternatives developed during this process included a facility located off of the main line, alternative sites along the main line, and no action. The public scoping process may add to or subtract from this list.

4. *Public Scoping Meeting:* Because of the numerous pre-scoping meetings held with the Federal, State, and local representatives, no additional scoping meetings are anticipated at this time. Since there has been no opportunity for public input to this point, a public notice and the pertinent maps will be sent to the adjacent property owners, newspapers having circulation in the area, and individuals and organizations having previously asked to receive copies of Corps public notices. Written comments on the scope of the DEIS will be accepted from any interested agency, organization, or individual through July 19, 1991.

5. *DEIS Availability:* It is estimated that the DEIS will be available to the public for review and comment in the fall of 1991.

Dated: April 19, 1991.

R. F. Sliwoski,

Lieutenant Colonel, Corps of Engineers, District Engineer.

[FR Doc. 91–10266 Filed 4–30–91; 8:45 am]

BILLING CODE 3710–GN–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 91–3]

DOE's Comprehensive Readiness Review Prior to Initiation of the Test Phase at the Waste Isolation Pilot Plant (WIPP)

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning the need for a comprehensive readiness review by the United States Department of Energy (DOE) prior to initiation of the test phase at the Waste Isolation Pilot Plant (WIPP). The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before May 31, 1991.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated: April 26, 1991.

John T. Conway,

Chairman.

The Board and its staff have received several status briefings and have conducted several site visits to the Waste Isolation Pilot Plant (WIPP). These reviews were directed at ensuring adequate protection of public health and safety during conduct of the test phase at the WIPP facility.

During the recent briefing on the WIPP Project, Department of Energy (DOE) personnel described twelve separate reviews, appraisals, and assessments by various DOE offices, contractor, and State oversight organizations that have been conducted at WIPP since October 1988. Since DOE's review of the readiness at WIPP was spread over approximately a three year period, the Board is concerned that DOE does not intend to perform a final comprehensive readiness review, after completion of the contractor's readiness review, prior to the initiation of the test phase.

Therefore, the Board recommends:

1. That an independent and comprehensive DOE readiness review be carried out at WIPP prior to initiation of the test phase. As indicated in item 2, members of the review team may include some personnel from the line organization;

2. That the team constituted to carry out the readiness review consist of experienced individuals whose backgrounds collectively include all important facets of the unique operations involved and that the majority of the team members be independent of WIPP programmatic or line management responsibilities to ensure an independent and unbiased assessment;

3. That the DOE readiness review team confer with the DOE teams that are currently performing readiness reviews at other DOE facilities to determine what procedures for conducting readiness reviews have or have not been effective, recognizing that a tailored approach is required for WIPP; and

4. That the review include, but not be limited to, the following items:

a. Assessment of the adequacy and correctness of waste handling and utility systems normal and abnormal operating, and emergency procedures;

b. Assessment of level of knowledge achieved during operator qualification as evidenced by review of examination questions and examination results, and by selective oral examinations of operations by members of the review team;

c. Assessment of conduct of operations of observation of actual waste handling operations using simulated waste containers, and the response to simulated abnormal and emergency situations;

d. Assessment of the interrelationships and the delineation of roles and responsibilities among the various DOE (Carlsbad and Albuquerque) and contractor (Westinghouse and Sandia National Laboratory) organizations involved in the test phase;

e. Examination of records of tests and calibration of safety systems and other instruments monitoring Limiting Conditions of Operations or that satisfy Operating Safety Requirements; and

f. Verification of safety system as-built drawings by walkdown of selective systems.

John T. Conway,

Chairman.

Appendix—Transmittal Letter to the Secretary of Energy

April 26, 1991.

The Honorable James D. Watkins,
Secretary of Energy, Washington, D.C. 20585.

Dear Mr. Secretary: On April 25, 1991, the Defense Nuclear Facilities Safety Board, in accordance with Section 312(5) of Public Law 100–456, approved Recommendation 91–3, which is enclosed for your consideration.

Section 315(A) of Public Law 100–456 requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. Please arrange to have this recommendation placed on file in your regional public reading rooms as soon as possible.

The Board will publish this recommendation in the Federal Register.

Sincerely,

John T. Conway,
Chairman.

Enclosure

[FR Doc. 91–10274 Filed 4–30–91; 8:45 am]

BILLING CODE 6820–KD–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.040]

Invitation for Fiscal Year 1991 Applications Under the School Construction in Areas Affected by Federal Activities Program for Fiscal Year 1992 Funds

Purpose of Program: To help compensate school districts for the cost of educating children when enrollment and the availability of revenues from local sources have been adversely affected by Federal activities, the Secretary provides direct grants for the construction, or remodeling of urgently needed minimum school facilities. Section 5 of Public Law 81–815 authorizes assistance for school construction in local educational agencies experiencing an increase in membership due to Federal activity carried on either directly or through a contractor. Eligibility is determined by the increase in the number of children residing on Federal property or with a parent employed on Federal property. Section 9 authorizes construction assistance to school districts experiencing a temporary Federal impact, either directly or through a contractor. Section 14 authorizes assistance for certain school districts that serve children residing on Indian lands, or that are significantly burdened by the presence of nontaxable Federal property and have a substantial number of inadequately housed pupils. Section 8 authorizes assistance that supplements certain awards made under sections 5, 9, and 14 of Public Law 81–815.

Notice is given that the Secretary of Education has established a closing date for the transmittal of applications for assistance under sections 5 and 9 of Public Law 81–815, based on increase periods ending June 1991 or June 1992. (An increase period is a period of four consecutive regular school years during which a school district has experienced a substantial increase in school membership as a result of new or increased Federal activities.) This closing date also applies to applications for assistance under section 14 and for supplemental assistance under section 8 of Public Law 81–815.

Approval of these applications is subject to availability of funds.

Deadline for Transmittal of Applications: July 2, 1991.

Deadline for Intergovernmental Review: September 3, 1991.

Available Funds: For fiscal year 1992, the Administration has requested $5,000,000 for sections 5 and 14(c), and $5,000,000 for sections 14(a) and 14(b). However, the actual level of funding is contingent upon final Congress action. The fiscal year 1991 appropriation was $9,759,000 for sections 14(a) and 14(b) and $6,831,000 for sections 5 and 14(c).

Applications available: Application forms may be obtained from the State educational agency that serves the applicant local educational agency.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 82, 85 and 86; and (b) the regulations for this program in 34 CFR part 221.

For Information Contact: School Facilities Branch, Impact Aid Program, Program Operations Division, U.S. Department of Education, 400 Maryland Avenue, SW., room 2117, Washington, DC 20202–6244. Telephone: (202) 401–0660. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 631–645.

(Catalog of Federal Domestic Assistance No. 84.040 School Assistance in Federally Affected Areas—Construction)

Dated: April 25, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91–10334 Filed 4–30–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

Renewable Energy and Energy Efficiency Joint Ventures Advisory Committee, Open Meeting

Under the Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770), notice is hereby given of the following meeting:

Name: Renewable Energy and Energy Efficiency Joint Ventures Advisory Committee (REEEJVAC).

Date and Time: May 21, 1991, 9 a.m.–5 p.m.; May 22, 1991, 9 a.m.–12 p.m.

Place: Key Bridge Marriott, 1401 Lee Highway, Rosslyn, VA.

Contact: Elaine S. Guthrie, Office of Technical Assistance (CE–54), Conservation and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone: 202/586–1719.

Purpose of Committee: To advise the Secretary of Energy on the development of the solicitation and evaluation criteria for joint ventures, and on otherwise carrying out his responsibilities under the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Pub. L. 101–218, 42 U.S.C. 12005).

Tentative Agenda: Briefings and discussions of:

- Introduction of Committee Members and Appointment of Committee Chair;
- Board's statutory responsibilities;
- Committee Procedures;
- Background Information on Public Law 101–218, Joint Ventures, Procurement, and Specific Technologies;
- Establishment of a Working Executive Committee;
- Criteria for Selection of Joint Venture Projects;
- Other Matters Requiring Board Consideration and Public Comment Period (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Elaine Guthrie at the address or telephone number listed above. Requests to make oral presentations must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on April 26, 1991.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 91–10286 Filed 4–30–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 90–83–NG]

Chippewa Gas Corp.; Order Granting Blanket Authorization To Import Canadian Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import Canadian natural gas.

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SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order authorizing Chippewa Gas Corporation to import up to 150 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 24, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-10294 Filed 4-30-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-28-000, et al.]

UtiliCorp United Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

April 23, 1991.

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ER91-28-000]

Take notice that on April 16, 1991, UtiliCorp United Inc. (Applicant) filed an application pursuant to 204 of the Federal Power Act seeking authority to enter into a Reimbursement Agreement and a Pledge Agreement to secure a long/term letter of credit and an exemption from the Commission's competitive bidding requirements.

Comment date: May 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Power Company

[Docket No. ER91-377-000]

Take notice that on April 15, 1991, Pennsylvania Power Company (Pennsylvania) tendered for filing revised, decreased, rates for electric service to five municipal resale customers, along with a petition for permission to charge its five municipal resale customers the decreased electric rates pending Commission action on the revised rates under section 205 of the Federal Power Act. The rate filing has been docketed as ER91-377-000.

Comment date: May 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. UtiliCorp United Inc.

[Docket No. ES91-27-000]

Take notice that on April 16, 1991, UtiliCorp United Inc. (Applicant) filed an application pursuant to 204 of the Federal Power Act seeking authority to issue notes pursuant to a $400 million Credit Agreement and an exemption from the Commission's competitive bidding requirements.

Comment date: May 15, 1991, in accordance with Standard Paragraph E end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10219 Filed 4-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-1827-000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

April 23, 1991.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP91-1827-000]

Take notice that on April 15, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP91-1827-000, a request, pursuant to 18 CFR 157.205, 157.211 and 284.223(b) for authorizations to provide interruptible transportation service under its blanket transportation certificate for the account of Vanalco Inc. (Vanalco) and to construct and operate delivery facilities to provide direct deliveries to Vanalco, consisting of approximately 1.65 miles of pipeline to partially loop its existing Vancouver Lateral, and a new delivery meter at the terminus of the Vancouver Lateral in Clark County, Washington, hereinafter referred to collectively as the "Vanalco Facilities"; all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that Vanalco presently purchases natural gas from Development Associates, Inc. (DA), a shipper having firm transportation capacity on the Northwest system and arranges for Northwest Natural Gas Company (Northwest Natural), a local distribution company, to provide transportation service to its plant. Northwest explains that it transports and delivers gas under a firm transportation agreement with DA to Northwest Natural at its Vancouver Meter Station in Clark County, Washington. Northwest Natural then transports the gas 3,000 feet on its distribution pipeline to Vanalco's plant.

Northwest further states that Vanalco has requested a direct delivery connection from Northwest. To accommodate that request, Northwest proposes to construct and operate the Vanalco Meter, consisting of a 3-inch turbine meter and appurtenances, on the site of Northwest's existing Vancouver Meter Station in Clark County, Washington which will be used to deliver up to 2,500 MMBtu per day and 912,500 MMBtu annually to a new pipeline to be constructed by Vanalco as part of its plant facilities. To accommodate Vanalco's volumes in addition to existing delivery commitments to Northwest Natural on the Vancouver Lateral, Northwest also proposes to upgrade its Vancouver Lateral by constructing and operating 1.65 miles of 6-inch pipeline that would loop portions of the existing Vancouver Lateral in Clark County, Washington.

It is said that Vanalco has agreed to reimburse Northwest for all actual costs incurred by Northwest in constructing the proposed Vanalco Facilities, plus the grossed up income tax liability which Northwest will incur. Northwest estimates that the meter and looping will cost about $391,694, with an additional income tax liability of $114,111, for a total cost estimate of $505,805.

Northwest states that, pursuant to an agreement dated December 10, 1990, under its Rate Schedule TI-1, it proposes to transport up to 2,500 MMBtu per day of natural gas for Vanalco. Northwest indicates that the gas would be transported from any mainline receipt point, and would be redelivered to any mainline delivery point, including the proposed new Vanalco Meter. Northwest further indicates that it would transport up to 2,500 MMBtu on an average day and up to 912,500 MMBtu annually.

Northwest states that, in addition to the proposed interruptible transportation service under the Vanalco Transportation Agreement, once the Vanalco Facilities are authorized and constructed, the flexible delivery point authority (18 CFR 284.221(h)) under Northwest's blanket transportation certificate will be invoked to provide deliveries to Vanalco at the new Vanalco Meter Station under the existing firm transportation agreement with DA.

It is averred that the requested Vanalco Facilities will provide Vanalco an economic alternative to the transportation service currently provided by Northwest Natural to its aluminum processing plant.

Comment date: June 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Company

Docket Nos. CP91-1880-000, CP91-1881-000, CP91-1882-000, CP91-1883-000]

Take notice that on April 19, 1991, ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

[1] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: June 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name	Peak day,[1] average, annual	Points of[2]		Start up date, rate schedule, service type	Related docket[3] contract date
			Receipt	Delivery		
CP91-1880-000 (4-19-91)	Chevron U.S.A. Inc., Marketing Inc.	20,000 20,000 7,300,000	LA, OLA	LA	3-1-91, ITS, Interruptible.	ST91-7577-000, 12-7-90.
CP91-1881-000 (4-19-91)	Fuel Services, Inc	4,000 4,000 1,460,000	KS, LA, MI, OK, TX, WI, OLA, OTX.	IN	3-1-91, ITS, Interruptible.	ST91-7672-000, 12-7-91.
CP91-1882-000 (4-19-91)	Hunt Oil Company	30,000 30,000 10,950,000	OLA	LA	3-1-91, ITS, Interruptible.	ST91-7675-000, 1-11-91.
CP91-1883-000 (4-19-91)	Exxon Corporation	15,000 15,000 5,475,000	LA, OLA	LA	3-1-91, ITS, Interruptible.	ST91-8009-000, 1-24-91.

[1] Quantities are shown in Dth.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation services was reported in it.

3. Colorado Interstate Gas Company; Panhandle Eastern Pipe Line Company; Northern Natural Gas Company

[Docket Nos. CP91-1886-000; CP91-1887-000; CP91-1888-000; CP91-1889-000; CP91-1890-000; CP91-1891-000]

Take notice that on April 22, 1991, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: June 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No., (date filed)	Shipper name (type)	Peak day average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1886-000 (4-22-91)	Rangeline Corporation (marketer).	10,000 5,000 1,825,000[1]	WY, CO, KS, OK	WY	3-1-91, TI-1, Interruptible.	ST91-7851-000, 3-1-91.
CP91-1887-000 (4-22-91)	Shell Gas Trading Company (marketer).	100,000 100,000 36,500,000	CO, IL, KS, MI, OH, OK, TX	IN	2-22-91, PT, Interruptible.	ST91-7863-000, 3-1-91.

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Docket No., (date filed)	Shipper name (type)	Peak day average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1858-000 (4-22-91)	NGC Transportation Inc. (marketer).	5,000 5,000 1,825,000	CO, IL, KS, MI, OH, OK, TX, WY.	IN	3-1-91, PT, Interruptible.	ST91-7966-000, 3-1-91.
CP91-1859-000 (4-22-91)	Indiana Gas Company (LDC).	51,431 51,431 18,772,315	OK, TX, KS [3]	Various [3]	3-1-91, PT, Firm	ST91-7965-000, 3-1-91.
CP91-1860-000 (4-22-91)	Access Energy Corporation (marketer).	10,000 10,000 3,650,000	CO, IL, KS, MI, OH, OK, TX.	IN	12-4-91, PT, Interruptible.	ST91-7964-000, 3-1-91.
CP91-1861-000 (4-22-91)	V.H.C. Gas Systems, L.P. (marketer).	250,000 187,500 91,250,000 [4]	Various	Various	3-28-91, IT-1, Interruptible.	ST91-8054-000, 3-28-91.

[1] CIG's quantities are in Mcf.
[2] The delivery points are listed on Exhibit A—Transportation Agreement for firm service under Rate Schedule PT.
[3] Panhandle would also receive gas on an interruptible basis from the interruptible points of receipt as listed in Exhibit A of the Master Receipt Point List.
[4] Northern's quantities are in MMBtu.

Applicant's address	Blanket docket
Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944	CP88-599, *et al.*
Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188	CP86-435-000.
Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251-1642	CP86-585-000.

ANR Pipeline Company

[Docket No. CP91-1878-000, Docket No. CP91-1879-000]

Take notice that on April 19, 1991, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed prior notice requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the NGA, all as more fully set forth in the requests that are open to public inspection.[3]

ANR has provided information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day, and annual volumes; the service initiation date; and related ST docket number of the 120-day transaction under § 284.223 of the Commission's Regulations, as summarized in the appendix.

Comment date: June 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No.	Shipper name (type)	Peak day, average day, annual Dth	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up
CP91-1876-000	Kaztex Energy Management, Inc. (marketer).	995 995 363,175	LA, OLA	WI	2-21-90, FTS-1, Firm.	ST91-7873, 3-1-91.
CP91-1879-000	Triumph Gas Marketing Co. (marketer).	2,000 2,000 730,000	LA, OLA	WI	2-26-91, FTS-1, Firm.	ST91-7878, 3-1-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

5. Equitrans, Inc., El Paso Natural Gas Company, Midwestern Gas Transmission, Viking Gas Transmission Company

[Docket Nos. CP91-1858-000, CP91-1859-000, CP91-1860-000, CP91-1861-000]

Take notice that Applicants filed in the above-referenced docket prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: June 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1858-000 (4-17-91)	Polaris Pipeline Corporation.	50,604 100 12,000	Various	Various	ITS, Interruptible	ST91-8042, 3-29-91.
CP91-1859-000 (4-18-91)	Shell Western E&P, Inc. (producer).	25,750 25,750 9,398,750	Various	Various	T-1, Interruptible	ST91-7841, 3-8-91.
CP91-1860-000 (4-18-91)	North Canadian Marketing (marketer).	150,000 150,000 54,750,000	Various	Various	IT, Interruptible	ST91-8229, 4-1-91
CP91-1861-000 (4-18-91)	Mobil Oil Canada, As Partnership (producer).	100,000 100,000 36,500,000	Various	Various	IT-2, Interruptible	ST91-8229, 3-19-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

Applicant's address	Blanket docket
El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978	CP88-433-000.
Equitrans, Inc., 3500 Park Lane, Pittsburgh, Pennsylvania 15275	CP88-553-000.
Midwestern Gas Transmission, P.O. Box 2511, Houston, Texas, 77252	CP90-174-000.
Viking Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252	CP90-273-000.

6. United Gas Pipe Line Company, Southern Natural Gas Company

[Docket No. CP82-383-004]

Take notice that on March 8, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, and Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563 (collectively referred to as Applicants), filed in Docket No. CP82-383-004 pursuant to section 7(c) of the Natural Gas Act a petition to amend the order of January 19, 1983, 22 FERC 62,056 authorizing the exchange of natural gas between United and Southern. Applicants state that the amendment requested herein would authorize Applicants to add an additional firm exchange point and authorize pre-granted abandonment of the exchange, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Applicants state that by order issued January 19, 1983, in Docket No. CP82-383-000, Applicants were authorized to transport and exchange up to 115,000 Mcf of natural gas per day at eight delivery points pursuant to the terms of an exchange agreement dated June 1, 1981. Applicants state that by letter agreement dated December 13, 1990, Applicants agreed to extend the term of the exchange agreement until June 1, 1994. Applicants request pre-granted abandonment authorization of the exchange, effective June 1, 1994. Applicants also propose to add as an additional firm exchange point the Bayou Sale Exchange Point for delivery by United to Southern to enable Southern to receive on a firm basis up to 75,000 Mcf of gas per day at either the St. Martin or the Bayou Sale Exchange Point. Applicants state that Southern will not be obligated to receive at the St. Martin Exchange Point in excess of a total of 7 Bcf of gas in any calendar year, or 2.9 Bcf of gas during the period from January 1, 1994 to May 31, 1994. Applicants state that the addition of the Bayou Sale Exchange Point will not require the construction of any new facilities.

Comment date: May 14, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP91-1862-000]

Take notice that on April 18, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed an application in Docket No. CP91-1862-000 pursuant to section 7(b) of the Natural Gas Act and § 157.7 of the Commission's Regulations under the Natural Gas Act for authorization to abandon transportation and sales service for Northern Natural Gas Company (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation and sales agreement dated May 24, 1977, as amended, on file with the Commission as Trunkline's Rate Schedule T-20, Trunkline agreed to transport on a firm basis on behalf of Northern up to 25,000 Mcf per day. It is indicated that Trunkline would receive the gas in West Cameron, South Addition Block 616, Offshore Louisiana, and redeliver the gas at three specified points located at Olla, Centerville, and Garden City, Louisiana. It is also indicated that Trunkline had the option to purchase twenty percent of the volumes received from Northern.

Trunkline states that, in accordance with the terms of the agreement, Northern gave Trunkline written notice of Northern's election to terminate the agreement under Rate Schedule T-20. By this application Trunkline requests authority to abandon the service covered under its Rate Schedule T-20 effective on December 14, 1989. No abandonment of facilities is proposed.

Comment date: May 14, 1991, in accordance with Standard Paragraph F at the end of the notice.

8. Williams Natural Gas Company

[Docket No. CP91-1807-000]

Take notice that on April 12, 1991, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP91-1807-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the Boyer Storage Field located in Butler County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williams proposes to abandon the Boyer Storage Field which was originally certificated in Docket No. G-298. Williams states that the facilities it proposes to abandon would consist of 14 injection/withdrawal wells, three observation wells, and approximately

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7.2 miles of one-inch, two-inch, three-inch, four-inch and eight-inch pipeline and appurtenant facilities. Williams states that the Boyer Storage Field has been shut-in since October of 1982 except for deliveries of minor volumes of domestic gas.

It is indicated that the 14 wells would be plugged and abandoned and that all above ground facilities (approximately 1.5 miles of surface piping and 440 feet of four-inch pipeline) would be reclaimed. It is further stated that the remainder of the pipe would be abandoned in place. Williams estimates that the cost to abandon the facilities would be $104,440 with an estimated salvage value of $19,738.

Williams indicates that there are four domestic customers currently receiving free gas pursuant to gas storage leases and that these customers have been notified of the proposed abandonment and offered conversion to propane or have excused Williams from any further obligation upon abandonment of the field.

Comment date: May 14, 1991, in accordance with Standard Paragraph F at the end of this notice.

9. Southern Natural Gas Company

[Docket No. CP91-1809-000]

Take notice that on April 12, 1991, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563 filed in Docket No. CP91-1809-000 an application pursuant to section 7(c) of the Natural Gas Act for authority to partially abandon its natural gas sales service to the Town of Livingston, Alabama (Livingston), effective October 1, 1990, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that the service agreement reflecting the currently authorized service level for Livingston expired on September 30, 1990. Southern further states that it executed a new service agreement with Livingston on March 1, 1991, that reduces its Maximum Daily Obligation to Livingston from 4,445 to 2,000 Mcf per day. Southern advises that the new service agreement would be for a one year term, beginning October 1, 1990 and ending October 1, 1991. Prompted by the execution of the new service agreement, Southern requests authority to abandon 2,445 Mcf per day of its firm sales service to Livingston, effective October 1, 1990. The abandonment is not expected to adversely impact Livingston's ability to service its existing customers. No facilities are proposed to be abandoned herein.

Comment date: May 14, 1991, in accordance with Standard Paragraph F at the end of this notice.

10. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP91-1847-000]

Take notice that on April 16, 1991, Northern Natural Gas Company, Division of Enron Corp., (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP91-1847-000 a request pursuant to § 157.205 of the commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate and maintain the Withrow, Minnesota town border station (TBS) #1a as a sales facility and to increase delivery capacity of the Faribault, Minnesota TBS #4 both to accommodate natural gas deliveries to Northern States Power (NSP), under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is said that the volumes proposed to be delivered to NSP at the Withrow, Minnesota TBS #1a and the Faribault, Minnesota TBS #4 would be within the currently authorized level of firm entitlements for NSP as set forth in Northern's currently effective CD-1, SS-1, and PS-1 Service Agreements.

It is further said that the proposed volumes for Withrow TBS #1a would be served from the total firm entitlements currently assigned to the community of Stillwater, Minnesota and the proposed volumes for Faribault TBS #4 would be served from the total firm entitlements currently assigned to the community of Faribault, Minnesota. It is stated that Withrow TBS #1a and Faribault TBS #4 would not be assigned any firm entitlements. It is further stated that delivery of such volumes would enable NSP to more fully utilize its existing firm entitlements currently authorized.

11. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP87-190-012]

Take notice that on April 22, 1991, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP87-190-012 a petition to amend its certificate issued in Docket No. CP87-190-000, as amended, to extend the authorized term to expire on September 30, 1999, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued June 30, 1987, in Docket No. CP87-190-000, 39 FERC ¶ 61,380 (1987), Lone Star was granted authorization to provide firm transportation service for Coastal States Gas Transmission Company (Coastal), and to construct and operate certain facilities in interstate commerce necessary to perform the transportation service for a period of one year from the date of the order. Lone Star indicates that by orders issued on June 6, 1988, in Docket No. CP87-190-005, June 5, 1989, in Docket no. CP87-190-007 and June 5, 1990, in Docket No. CP87-190-009, Lone Star's authorization to transport for Coastal was amended to allow continued transportation for a term expiring on the earlier of one year from the date of the respective order or the date Lone Star accepts a blanket certificate pursuant to § 284.221 of the Commission's Regulations. Lone Star in its current petition to amend requests authority to extend this authorization to expire the earlier of September 30, 1999, the expiration date of the transportation agreement, or the date the Commission issues authorization for the sale of Lone Star's interstate facilities, as requested in Docket No. CP90-2287-000. Lone Star proposes no other changes.

Comment date: May 14, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10220 Filed 4-30-91; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Intent To Prepare an Environmental Impact Statement on the Proposal To Establish an Energy Planning and Management Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Western Area Power Administration (Western) proposes to establish an Energy Planning and Management Program (Program) to replace its Guidelines and Acceptance Criteria (GAC) for the Conservation and Renewable Energy (C&RE) Program. Western's C&RE Program was reviewed during the past year. This review indicated that Western should consider a more comprehensive approach than that represented by the existing C&RE Program G&AC. The goal of the Energy Planning and Management Program is to link Western's power resource allocations with long-term energy planning and efficient electric energy use by Western's customers. Western is preparing an informational brochure fully describing the Energy Planning and Management Program. Copies of the brochure may be obtained by contacting any of the individuals identified later in this notice.

The proposed Energy Planning and Management Program may involve potentially significant environmental and economic issues and impacts that may be of interest to the public. Therefore, Western intends to prepare a programmatic EIS on the proposed Program within the framework of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4347, and pursuant to the Council on Environmental Quality regulations for implementing NEPA, 40 CFR parts 1500-1508. Western wants to receive comments on the Program and EIS process. The contents of the Program are contained in a separate Federal Register, notice [published at 56 FR 16093, April 19, 1991]. The scope of the EIS may be limited or modified depending on the outcome of the public process.

SCHEDULE AND NEPA COMPLIANCE: The EIS will be prepared according to NEPA requirements, Council on Environmental Quality regulatons and DOE NEPA Regulations, 10 CFR part 1021. Full public disclosure and participation are encouraged and planned for throughout the EIS process.

The EIS process will take about 24 months. It includes public information meetings, scoping meetings, coordination and involvement with appropriate Federal and State government agencies, public review and public hearings on the published draft EIS, a published final EIS, a review period, publication of a record of decision (ROD), and a final rule to document Western's decision whether or not to proceed with a Energy Planning and Management Program. Public information and scoping meetings will begin in June 1991, following the schedule identified below. Public comment forums and hearings will be scheduled before issuing a final Federal Register notice. Publication of the ROD and final rule are anticipated in 1993.

PUBLIC MEETINGS: Western will conduct public information/scoping meetings to: (1) Inform the public and Federal, State, and local agencies of the proposed action; (2) receive information and comments to help identify environmental issues to be addressed in the EIS; and (3) gather information and comments about the proposed Program. Locations, dates, and times of these initial meetings are:

Locations	Facility	Date
Phoenix Area:		
Phoenix, AZ	Embassy Suites, 1515 N. 44th St., Phoenix, AZ	June 13, 1991.
Salt Lake City Area:		
Salt Lake City, UT	Red Lion Hotel, 255 South West Temple, Salt Lake City, UT	June 17, 1991.
Loveland Area:		
Northglenn, CO	Holiday Inn Holidome, 10 E. 120th Ave., Northglenn, CO	June 19, 1991.
Sacramento Area:		
Sacramento, CA	Holiday Inn Holidome, 5321 Date Ave., Sacramento, CA	June 24, 1991.
Billings Area:		
Lincoln, NE	Hilton Hotel, 141 North 9th St., Lincoln, NE	June 25, 1991.
Sioux Falls, SD	Townhouse, 400 South Main, Sioux Falls, SD	June 26, 1991.
Fargo, ND	Holiday Inn, I-29 & 13th Ave., South, Fargo, ND	June 27, 1991.

Public information/scoping meetings are proposed to begin at 1 p.m., and end by 9 p.m., with a dinner break. Depending on participation, Western may extend or shorten these times. Written comments will be accepted through July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Western will keep a mailing list of interested parties and persons who wish to be kept informed of the progress of

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the EIS. If you are interested in receiving future informaton, or wish to submit written comments, please call or write:

Warren L. Jamison, Assistant to the Administrator for Conservation, Environment, and Safety, 1627 Cole Boulevard, P.O. Box 3402, Golden, CO 80401-3398 (303) 231-7945.

James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107-5800 (406) 657-6532.

Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AX 85005-6457 (602) 352-2525.

Stephen A. Fausett, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539-3003 (303) 490-7201.

David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, suite 105, Sacramento, CA 95825-1097 (916) 649-4418.

Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147-0606 (801) 524-5493.

Issued at Golden, Colorado, April 19, 1991.

William H. Clagett,

Administrator.

[FR Doc. 91-10154 Filed 4-30-91; 8:45 am]

BILLING CODE 6450-01-M

Environmental Impact Statement (EIS) Salt Lake City Area Integrated Projects (SLCA/IP) Post-1989 General Power Marketing and Allocation Criteria; Change of EIS Name, Availability of Statement of Scope, Public Information Meetings

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of name change, availability of Statement of Scope, and public information meetings.

SUMMARY: The Western Area Power Administration (Western) announced its intent to prepare an EIS on its Post-1989 General Power Marketing and Allocation Criteria in the Federal Register on April 4, 1990 (55 FR 12550). The public comment period began April 4. In a subsequent Federal Register notice published September 20, 1990 (55 FR 38747), Western announced that the comment period would end November 16, 1990. That notice also announced five scoping meetings, which were held in October. By Federal Register dated November 9, 1990 (55 FR 47125), Western held two additional scoping meetings and extended that scoping period until December 31, 1990.

In response to the comments received during the scoping period, Western has decided to clarify the scope for its EIS. Western has also decided to change the name of its EIS to reflect more correctly this clarified scope. Henceforth, the SLCA/IP Post-1989 General Power Marketing and Allocation Criteria EIS will be titled the SLCA/IP Electric Power Marketing EIS.

Western will issue the Statement of Scope detailing the clarified scope for the EIS to be mailed to all interested parties on its EIS mailing list. Also, copies of the Statement of Scope may be obtained from Mr. David Sabo at the addresss given below. Additionally, Western will hold three public information meetings to discuss the results of the scoping process, to provide a status of the overall EIS process, and to explain and answer questions on the Statement of Scope.

DATES: Public information meetings will be held at the following dates and locations. All meetings begin at 7 p.m..

May 6, 1991, Flagstaff High School, 400 West Elm, Flagstaff, Arizona.

May 7, 1991, YWCA Leadership Development Center, 9440 North 25th Avenue, Phoenix, Arizona.

May 9, 1991, Skyline High School Chorus Room, 3251 East 3760 South, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Mr. David Sabo, EIS Coordinator, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147-0606 (801) 524-5493.

Issued at Golden, Colorado, April 19, 1991.

William H. Clagett,

Administrator.

[FR Doc. 91-10155 Filed 4-30-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3952-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. the ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitte or before May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Fuel and Fuel Additives Registration Program (EPA ICR # 0309.04; OMB # 2060-0150). This ICR requests renewal of the existing clearance.

Abstract: Fuel manufacturers are required to register their products and provide quarterly and annual reports on production volume and additive usage. Additive manufacturers must register their products and provide annual reports on production volume. This program provides EPA with an inventory of automotive fuels, fuel composition and fuel additives. The information is used to protect the public from exposure to evaporative emissions and products of combustion, and to prevent damage to automotive emission controls systems.

Burden Statement: The public reporting burden for this collection of information is estimated to average 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Manufacturers of fuels and fuel additives.

Estimated Number of Respondents: 2000.

Estimated Total Annual Burden on Respondents: 14,560 hours.

Frequency of Collection: One time registration, quarterly and annual reports.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

OMB Response to Agency PRA Clearance Requests

EPA ICR # 1578.01; 1991 Waste Treatment Industry Questionnaire and 1991 Detailed Monitoring Questionnaire; was approved 04/08/91; OMB # 2040-0151; expires 04/30/93.

EPA ICR # 0857.04; Polychlorinated Biphenyls (PCB's): Manufacturing, Processing and Distribution in Commerce Exemptions; was approved 04/08/91; OMB # 2070-0021; expires 04/30/94.

Dated: April 24, 1991.

David Schwartz,

Acting Director, Regulatory Management Division.

[FR Doc. 91-10207 Filed 4-30-91; 8:45 am]

BILLING CODE 6560-50-M

[PF-545; FRL-3954-6]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings for pesticide petitions (PP) and for food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H-7505C), Attention: [Product Manager (PM) named in the petition], Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product Manager	Office location/telephone number	Address
George LaRocca (PM 15).	Rm. 204, CM #2, 703-557-2400.	1921 Jefferson Davis Hwy., Arlington, VA.
Phil Hutton (PM 17).	Rm. 207, CM #2, 703-557-2690.	Do.
Susan Lewis (PM 21).	Rm. 227, CM #2, 703-557-1900.	Do.
Joanne Miller (PM 23).	Rm. 237, CM #2, 703-557-1830.	Do.
Robert Taylor (PM 25).	Rm. 245, CM #2, 703-557-1800.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) and/or food/feed additive petitions (FAP) as follows, proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 1F3955.* BASF Corp., Agricultural Chemicals, P.O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to amend 40 CFR 180.384 by establishing a regulation to permit residues of mepiquat chloride (N,N-dimethylpiperidinium chloride) in or on grapes at 1.0 part per million (ppm). The analytical method used is gas chromatography with nitrogen-specific detector. (PM 25)

2. *PP 1F3963.* Mycogen Corp., 5451 Oberlin Drive, San Diego, CA 92121. proposes to amend 40 CFR part 180 by establishing a regulation to exempt encapsulated delta endotoxin of *Bacillus thuringiensis* variety *kurstaki* on all raw agricultural commodities. (PM 17)

3. *PP 1F3967.* E.I. du Pont de Nemours & Co., Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR 180.398 by establishing a regulation to permit residues of the herbicide hexazinone (3-cyclohexyl-6-dimethylamino-1-methyl-1,3,5-triazine-2-4 (1H,3H)-dione) in or on pasture and rangeland hay at 30.0 ppm. The analytical method used is nitrogen-selective gas chromatography. (PM 23)

4. *PP 1F3968.* Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of microbial fungicide *Bacillus subtilus* in or on seed treatment on growing agricultural crops. (PM 21)

5. *PP 1H5609.* Hoechst-Roussel Agri-Vet Co., Route 202-206, P.O. Box 2500, Somerville NJ 08876-1258, proposes to amend 40 CFR 185.5200 by establishing a food additive regulation to permit combined residues of the insecticide deltamethrin ([1R,3R)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester) and its major metabolite, trans-deltamethrin, in or on dried spent hops at 5.0 ppm. The analytical method used is gas-liquid chromatography. (PM 15)

6. *PP 1H5610.* BASF Corp., Agricultural Chemicals, P.O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to amend 40 CFR part 185 by establishing a regulation for a food additive tolerance and amend 40 CFR part 186 by establishing a regulation for feed additive tolerances to permit residues of mepiquat chloride (N,N-dimethylpiperidinium chloride) in or on raisins at 5.0 ppm, raisin waste at 25.0 ppm, and grape pomace (wet and dry) at 3.0 ppm. The analytical method used is gas chromatography with nitrogen-specific detector. (PM 25)

Authority: 7 U.S.C. 136a.

Dated: April 10, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-9970; Filed 4-30-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50724; FRL-3958-2]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Genetically Modified Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Agricultural Research Service, U.S. Department of Agriculture, a notification of intent to conduct small-scale field testing in Maryland of a UV-induced mutant strain of *Verticillium lecanii.*

DATES: Comments must be received on or before May 15, 1991.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7505C), Office of Pesticide Programs, Environmental

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Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM-21), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), dated February 11, 1991, has been received from the Agricultural Research Service, U.S. Department of Agriculture. The purpose of the proposed testing is to evaluate the efficacy of a UV-induced mutant strain of *Verticillium lecanii* for the control of soybean cyst nematodes on soybean plants. The proposed field tests would be conducted in the State of Maryland in cooperation with Crop Genetics International, on a total area of less than 10 acres. The proposed testing of this organism is a continuation of testing which was previously approved under EPA's notification procedures; receipt announced in the **Federal Register** of April 3, 1990 (55 FR 12418).

Dated: April 16, 1991.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-9969 Filed 4-30-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50723; FRL-3969-9]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from E.R. Butts International, Inc., representing Kemira Oy of Finland, a notification of intent to conduct small-scale field testing in California, Colorado, Florida, Iowa, Illinois, Maryland, New Jersey, New York, Oregon, and Texas of a strain of *Streptomyces griseoviridis* isolated from peat in Finland.

DATES: Comments must be received on or before May 15, 1991.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM-21), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from E.R. Butts International, Inc., on behalf of Kemira Oy of Helsinki, Finland. The purpose of the proposed testing is to evaluate the efficacy of a nonindigenous strain of *Streptomyces griseoviridis* for the control of *Fusarium*-incited diseases of a variety of crops and on trees and peat. The proposed field tests would be conducted in the following States on the crops indicated: California (celery, carnation, and cyclamen), Colorado (carnations and chrysanthemums), Florida (tomato, pepper, watermelon, cantaloupe, cabbage, broccoli, carrots, parsley, petunia, pansy, chrysanthemums, and azaleas), Iowa (field corn, sweet corn, tomatoes, beans, and peppers), Illinous (peat), Maryland (watermelon or canteloupe), New Jersey (watermelon and cantaloupe), New York (cyclamen), Oregon (Douglas fir), and Texas (field corn, sweet corn, tomatoes, beans, and peppers). The total area of the test sites is less than 10 acres. Small-scale field testing of this organism was previously approved by EPA for use in the State of Virginia; receipt announced in the **Federal Register** of March 12, 1990 (55 FR 9214).

Dated: April 16, 1991.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-9966 Filed 4-30-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50722; FRL-3969-1]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Genetically Modified Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Sandoz Crop Protection Corp. a notification of intent to conduct small-scale field testing of *Sclerotinia sclerotiorum* on turf grasses in the States of Florida, Ohio, Maryland, and Mississippi.

DATES: Comments must be received on or before May 15, 1991.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM-21), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), dated March 7, 1991, has been received from Sandoz Crop Protection Corp. of Des Plaines, IL. The purpose of the proposed testing is to evaluate the efficacy of three isolates of *Sclerotinia sclerotiorum* as a mycoherbicide on turf grass for the control of common broadleaf weeds. One of the isolates is an unaltered wild type; the other two are chemical and UV-induced deletion mutants. The use of *Sclerotinia sclerotiorum* on turf was the subject of previous notifications submitted to EPA by Montana State University and announced in the **Federal Register** of June 21, 1989 (54 FR 26084) and by Sandoz Crop Protection Corp. and announced in the **Federal Register** of August 29, 1990 (55 FR 35354). In reponse to those notifications, small-scale testing of the fungus in Montana in 1989 and in Ohio, Pennsylvania, Maryland, and Delaware in 1990 was approved by EPA without the requirement for an experimental use permit. The currently proposed field tests would be conducted in the States of Florida, Ohio, Maryland, and Mississippi. The total area of the proposed test sites would be less than 10 acres.

Dated: April 16, 1991.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-9965 Filed 4-30-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-211029; FRL-3975-6]

2,3,7,8-Tetrachlorodibenzo-p-dioxin; Response to Citizen's Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of response to citizen's petition.

SUMMARY: This Notice announces EPA's denial of a citizen's petition filed on November 30, 1990, by Greenpeace USA relating to the chemical pollutant 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD or TCDD). The petition was submitted under sections 8 and 21 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2607 and 2620), section 555(e) of the Administrative Procedure Act (APA) (5 U.S.C. 555(e)), section 2(c) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(c)), and the Agency's regulations for implementing the cited statutes.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of Petition

Greenpeace USA specifically requests that the Agency: (1) Investigate whether any of certain epidemiology studies, claimed by the petitioner as fraudulent or invalid, have been submitted to the Agency in support of permits, licenses, or registrations, or pursuant to TSCA section 8, and if any such submissions have been made, to revisit the relevant decisions and to refer such matters to the U.S. Justice Department for criminal investigation; (2) immediately promulgate a rule prohibiting any Agency staff or State permitting authority from relying upon the identified studies; (3) immediately promulgate a rule requiring the Agency to consider the evidence contained within the petition and prior Greenpeace USA comments on the Agency's TCDD risk assessment in any proposal to alter the Agency's current carcinogenic potency factor and risk-specific dose for TCDD; and (4) immediately establish a national dioxin elimination program to address every facility that has been identified as a source of TCDD releases to any media, waste or product and to eliminate these sources, or require their modification so as to end their generation of TCDD, by the year 2000. Greenpeace USA does not specify which of the provisions cited in its petition apply to each specific request for relief.

Greenpeace USA claims that certain identified epidemiology studies on TCDD are now known to be fraudulent or at the very least to be invalid and that these studies were key to EPA's determination of the risk of TCDD and to its regulation of TCDD. The petitioner asserts that, because the Agency used these studies in its risk assessment on TCDD, it is underestimating the risk of this chemical. Greenpeace USA also contends that a panel of independent experts has found a significant association between TCDD exposure and a wide range of human health effects and that this finding has been verified by even more recent scientific studies. The petition is premised upon the belief that human health effects of TCDD may be far worse than originally concluded by the Agency because of its use of the alleged fraudulent/invalid studies.

B. Authorities for Citizen's Petitions

1. *TSCA Section 21.* Under section 21(a) of TSCA, any citizen may petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4 (chemical testing rules), section 6 (regulatory control rules), or section 8 (information reporting or retention rules) of TSCA. Section 21 also authorizes a petitioner to request the issuance, amendment, or repeal of an order under section 5(e) (new chemical substances and significant new uses) or section 6(b)(2) (quality control) of TSCA. The petitioner must set forth the facts which he/she claims establish that it is necessary for the Agency to issue, amend, or repeal a rule or order under one of the specified sections of TSCA.

Section 21(b)(3) directs that within 90 days after a petition is filed, EPA must decide to either grant or deny the petition. If EPA denies a petition, it must publish its reasons in the **Federal Register**. If EPA grants a petition, it must promptly initiate an appropriate proceeding in accordance with section 4, 5, 6, or 8.

If EPA denies a petition, or fails to make a decision within the 90-day review period, the petitioner has 60 days from the date of the decision or from the end of the review period, whichever is

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first, to commence a civil action against EPA. Section 21(b)(4) identifies petitioners' rights and the procedures to be followed under such civil actions.

2. *APA section 555(e).* Section 555(e) of the APA requires federal agencies, in general, to give prompt notice of the denial of any application, petition, or other request by an interested party made in connection with any agency proceeding (defined as a rulemaking, adjudication, or licensing). This section does not establish a separate citizen's petition right. It only directs federal agencies to give prompt notice of a denial of any request made in the context of a specific proceeding.

3. *APA Section 553(e).* Section 553(e) of the APA requires federal agencies to give citizens the right to petition for the issuance, amendment, or repeal of a rule. Under this provision, a citizen may petition EPA for the issuance, amendment, or repeal of a rule under any statute it implements. This section does not contain a deadline for responding as is found in section 21 of TSCA.

II. EPA Decision

A. Petitioning Authority

Greenpeace USA cites as authorization for its petition sections 8 and 21 of TSCA, section 555(e) of the APA, section 2(c) of NEPA, and the Agency's regulations for implementing the cited statutes. However, EPA finds that only the three statutory provisions noted in Unit I.B. of this notice arguably could authorize this petition. EPA finds no applicable citizen's petition rights in section 8 of TSCA, NEPA, or the Agency regulations. Section 8 of TSCA allows the Agency to promulgate information reporting and retention rules. NEPA requires federal agencies to prepare environmental impact statements for certain actions.

Upon examining section 555(e) of the APA, the Agency has determined that this section confers no right to petition that would apply to the requests of Greenpeace USA. Section 555(e) only applies in the context of specific proceedings. There is no indication in the petition that Greenpeace USA is an interested party in any proceeding whatsoever, nor has Greenpeace USA identified a specific proceeding.

B. Basis for Denial under TSCA Section 21

EPA is denying the first three requests of Greenpeace USA which involve the review of the studies found questionable by the petitioner. These requests are not authorized under section 21 of TSCA because none of them pertains to the issuance, amendment, or repeal of a rule or order under TSCA.

Greenpeace USA's fourth request regarding development of a TCDD elimination program is authorized under section 21 of TSCA because EPA has broad authority under TSCA to regulate chemical substances, including TCDD. In substance, Greenpeace USA's petition actually appears to request rules under EPA's other enabling statutes—the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act. Section 21, however, does not authorize petitioners to request issuance, amendment, or repeal of rules or orders under other EPA authorities.

The Agency is denying the petitioner's request for a TCDD elimination program under section 21 of TSCA. The basis for this denial is that EPA is currently engaged in a major reexamination of TCDD toxicity and an extensive effort to manage dioxin risks under several of EPA's statutes, including TSCA. Therefore, EPA deems it premature to consider any significant changes in its current efforts to manage TCDD risk. Dioxin risk management efforts are part of an extensive program under court supervision by virtue of a July 27, 1988, Consent Decree issued in *Environmental Defense Fund (EDF) & National Wildlife Federation (NWF) v. Thomas* (D.D.C., No. 85-0793), litigation resulting from another TSCA section 21 petition which had requested EPA to issue comprehensive rules on dioxin. Additionally, Greenpeace has not provided any information in its petition on sources of TCDD beyond those EPA is already addressing in its current program. For EPA to judge whether any action is necessary on additional sources, more information is needed on the current levels of human exposure and the benefits to be gained or lost as a result of such action.

The potential of TCDD and related compounds to cause cancer in humans remains an issue of considerable scientific controversy. The Agency originally evaluated the toxicity of dioxin in 1985 and published its determinations in a document entitled "Health Assessment Document for Polychlorinated Dibenzo-p-dioxins" (EPA/600/8-84/014f). In this document, EPA presented the scientific evidence for its decision to classify TCDD as a probable human carcinogen and provided an estimated upper-limit potency slope factor. This estimate of TCDD potency is greater than that estimated by any other government agency, foreign or domestic. Since 1985, EPA has based all of its risk-related dioxin decisions on this 1985 upper-limit estimate.

In 1988, EPA published a draft report based upon a reexamination of TCDD toxicity entitled "A Cancer Risk-Specific Dose Estimate for 2,3,7,8,-TCDD." This report was reviewed by the Agency's Science Advisory Board (SAB). The SAB concluded "that at the present time the important new scientific evidence about TCDD does not compel a change in the current assessment of the carcinogenic risk of dioxin to humans," and found "no scientific basis at this time for the proposed change in [the upper limit potency factor] for the causation of cancer by TCDD." The SAB also made several recommendations to the Agency regarding additional efforts for improving its TCDD risk estimate. EPA is in the process of implementing these recommendations.

In addition, three significant events have recently occurred that relate to dioxin toxicity. First, a report will soon be issued that summarizes the findings on dioxin toxicity from an international conference (Banbury Conference) held in October 1990. This conference was established to review the current state of knowledge on dioxin toxicity and its implications for risk assessment. Second, the National Institute of Occupational Safety and Health (NIOSH) has recently published the results of a major epidemiology study of approximately 5,000 workers exposed occupationally to TCDD (Fingerhut, M. A. et al, "Cancer mortality in workers exposed to 2,3,7,8-tetrachlorodibenzop-dioxin." *New Engl. J. Med.* 324(4) (1990): 212–218). This is the largest and most comprehensive epidemiology study to date of a TCDD-exposed population. In addition, a 34-year mortality follow-up study of German workers exposed accidentally to 2,3,7,8-TCDD in 1953 has also been published (Zober, A., et al., "Thirty-four-year mortality follow-up of BASF employees exposed to 2,3,7,8-TCDD after the 1953 accident." *Int. Arch. Occup. Environ. Health.* 62 (1990): 139–157).

EPA intends to incorporate the information gathered from these sources into its ongoing dioxin toxicity reevaluation as well as other information as it becomes available. EPA will also consider all of the materials provided by Greenpeace USA in support of its petition and its previous comments on the Agency's risk assessment documents.

As indicated above, EPA has an extensive dioxin management program under the Consent Decree in *EDF/NWF v. Thomas*. Under this program EPA has issued, plans to issue, or will consider

issuing rules affecting dioxin under almost every one of its enabling statutes—the Clean Air Act (municipal waste combustors), the Clean Water Act (pulp and paper mill effluents), the Resource Conservation and Recovery Act (wood preservatives, pulp and paper mill sludges), and TSCA (pulp and paper mill sludges and chemical products). In addition to the Consent Decree efforts, EPA deals with dioxin contaminants in pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act. If Greenpeace USA disagrees with an action EPA is taking in connection with any ongoing individual rulemaking, the appropriate course of action is not to petition under section 21 of TSCA, but rather to participate in the rulemaking process and, if necessary, seek judicial review at the appropriate time.

In developing and implementing EPA's dioxin risk management program, the Agency continues to use the 1985 report as its basis for dioxin risk estimates. Because of the need to evaluate all of the new evidence on TCDD, EPA concludes that it is inappropriate to initiate a major expansion or reevaluation of its current dioxin risk management efforts at this time. EPA will carefully consider any information developed during its risk assessment or risk management activities that indicates the Agency should change its program direction, including changes suggested by Greenpeace USA. The petition, however, presents no new evidence in this regard.

C. Basis for Denial under APA Section 553(e)

Although Greenpeace USA did not petition the Agency under section 553(e) of the APA, this section would appear applicable to the requests in the petition pertaining to the studies in question. This is especially relevant because, as discussed in Unit II.B. of this notice, these requests are not authorized under section 21 of TSCA. In these requests, the petitioner is actually petitioning EPA to institute general policies regarding the identified studies. An APA 553(e) petition may arguably be appropriate for this purpose because these types of policies may be considered rules under section 551 of the APA. Accordingly, EPA is responding to Greenpeace USA's requests regarding the questioned studies as a petition under section 553(e) of the APA. While EPA is not required to respond under this section within a 90-day period as required by section 21 of TSCA, it has chosen to do so in this case.

In its first request, Greenpeace USA has asked that EPA "investigate whether any of the fraudulent/invalid studies have been submitted in support of Agency permits, licenses, or registration, or submitted to the Agency pursuant to 15 U.S.C. 2607, and if so, to revisit the relevant decisions and to refer such matters to the U.S. Justice Department for criminal investigation." EPA has interpreted this as a request for commencement of a criminal enforcement proceeding.

In the context of a citizen's petition under section 553(e) of the APA it is not proper to request an investigation into allegations of criminal conduct, nor is it proper to request that a matter be referred to the Justice Department for investigation or prosecution. As a matter of policy, EPA does investigate allegations of false statements and/or misrepresentation, and if appropriate, will evaluate the full range of enforcement options available to address legitimate charges of misconduct. However, this activity is a matter of enforcement discretion, and is not conducted through any petitioning process under the APA or TSCA.

With regard to Greenpeace USA's second and third requests, EPA in general does not, and has no need to, formally promulgate rules dealing with the type of studies any Agency staff or delegated State authority may consider. Whether, and to what extent, specific information is used by the Agency as a basis for risk assessment is a question of scientific merit. The Agency will not, on request, prohibit the use of any information. EPA will include consideration of all relevant materials on dioxin toxicity provided by Greenpeace USA in the present petition and information submitted during prior risk assessment activities in any revision of the Agency's weight-of-evidence classification, slope factor, or overall cancer policy on dioxin. Greenpeace USA will have the opportunity to present, during applicable public comment periods for any of these activities, any claims it may have on the validity of information used by EPA.

With regard to the petitioner's fourth request, Greenpeace USA may have requested rules under EPA's other enabling statutes for a TCDD elimination program. However, under applicable case law, a petitioner must choose either TSCA section 21 or the APA under which to petition for rule issuance, amendment or repeal. As discussed in Unit II.B of this notice, Greenpeace USA's fourth request is the only one that is applicable under section 21 of TSCA, and as a result, section 553(e) of the APA is not applicable to the request for a TCDD elimination program. The result of this interpretation is that EPA is denying the petitioner's fourth request under the APA because it has interpreted the petitioner's request for a national TCDD elimination program as a request under section 21 of TSCA. To the extent that EPA could have any obligation to respond to this request under section 553(e), the Agency's reasons for denial in its section 21 response also apply.

III. Public Record

EPA has established a public record of its response to this petition (Docket Number OPTS-211029). The public record contains the petition and the basic information considered by EPA in reaching its decision in this matter. All documents, including the index of the docket, are available to the public in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

IV. Conclusion

For the above reasons, EPA is denying Greenpeace USA's November 30, 1990 petition relating to TCDD under section 21 of TSCA and section 553(e) of the APA. In addition, EPA finds that it was not appropriate for Greenpeace USA to file the petition under section 8 of TSCA, section 555(e) of the APA, NEPA, and the Agency's regulations.

Dated: April 23, 1991.

F. Henry Habicht,

Acting Administrator.

[FR Doc. 91-10286 Filed 4-30-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Low Power Television/Television Translator Window Applicants

Released: April 25, 1991.

On March 12, 1991, the Commission announced the opening of a limited window to permit the filing of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations. This filing window is to commence April 29, 1991 and continue to and including May 3, 1991. See Public Notice, Mimeo No. 12124, 56 FR 11556 (March 19, 1991).

At that time, it was stated, among other things, that window application filings could be made in person only at the following location: Federal

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Communications Commission, Low Power Television Window Filing, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th floor, room 153-2713, Pittsburgh, PA 15259-0001, Attn: Wholesale Lockbox Shift Supervisor.

It was also announced that hand-carried or couriered applications could be delivered daily at the above location during normal business hours and until the close of business (5 p.m.) on Friday, May 3, 1991. This office, however, is also used by the Mellon Bank for the receipt of other Mass Media Bureau application filings and is, for that purpose, open for business twenty-four hours a day. To afford all Mass Media Bureau applicants comparable treatment and avoid any unnecessary filing scheduling difficulties, the Commission will accept as timely filed all hand-carried or couriered low power television and television translator applications submitted at the above Mellon Bank location at anytime daily during the window period, up through 11:59 p.m. on Friday, May 3, 1991.

For further information concerning the filing window, contact Keith A. Larson or Molly Fitzgerald, Low Power Television Branch, Mass Media Bureau at Telephone No. (202) 632-3894.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-10232 Filed 4-30-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; Extension of Deadline for Use of Certified or Licensed Appraisers in Federally Related Transactions

AGENCY: Federal Financial Institutions Examination Council.

SUBAGENCY: Appraisal Subcommittee.

ACTION: Notice extending effective date.

SUMMARY: Notice is hereby given that the Appraisal Subcommittee ("ASC"), with the approval of the Federal Financial Institutions Examination Council ("FFIEC"), ordered the extension until December 31, 1991, of the effective date for use of certified or licensed appraisers for all appraisals performed in connection with federally related transactions under title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA").[1] This extension is effective in 54 of the ASC's 57 jurisdictions.

DATES: This action is effective on May 1, 1991.

ADDRESSES: Copies of this notice are available upon request to the Appraisal Subcommittee, Federal Financial Institutions Examination Council, 1776 G Street NW., suite 850B, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel to the Appraisal Subcommittee, at the address given above; telephone (202) 357-0133.

SUPPLEMENTARY INFORMATION: Title XI of FIRREA provides for the adoption and implementation by the various States of standards and procedures for the certification and licensing of appraisers. The ASC is required to monitor these State appraiser certification and licensing programs. Federally regulated depository institutions are to use these appraisers in federally related real estate transactions. However, the ASC is authorized in section 1119(a)(2) (12 U.S.C. 3348(a)(2)) to extend from July 1, 1991, to December 31, 1991, the effective date for using certified or licensed appraisers in connection with federally related transactions. That authority is premised upon "a written finding that a state has made substantial progress in establishing a State certification and licensing system that appears to conform to the provisions of this title."

During the more than eighteen months since enactment of FIRREA, the ASC has closely monitored the development of appraiser qualification standards in the various states and other jurisdictions subject to title XI. This effort has included the careful review of State legislative and regulatory proposals designed to implement title XI's requirements, as well as the providing of comments, suggestions, guidance and direction in this regard, both general and specific, oral and written. The ASC, however, has not received any formal communications from American Samoa and Palau. In addition, the ASC has learned that the Northern Mariana Islands are only in the initial phases of preparing legislation. Therefore, the ASC at this time has no basis to extend the effective date from July 1, 1991, for these three jurisdictions.

On the basis of this extended and ongoing review, the ASC hereby finds that each State, the District of Columbia, Puerto Rico, Guam and the Virgin Islands have made substantial progress toward establishing an appraiser certification and licensing system in conformity with title XI. Statutes have been or are being enacted as required by title XI.[2] The ASC commends each of these jurisdictions and encourages each to implement its system before the end of the extension period. Moreover, the ASC encourages lenders to use appraisers certified or licensed by these systems as soon as possible.

The ASC further finds that such an extension forwards Congress's intention to implement title XI's new regulatory scheme with minimal disruption and confusion at the state and Federal levels. The ASC recognizes that less than two years have passed since title XI was adopted on August 9, 1989, and, while the States and other jurisdictions have made significant progress, they have had relatively little time to create from scratch an appraiser licensing and certification system. Many tasks are involved in that effort, including an analysis and determination of title XI's requirements, proposing and adopting legislation, creating valid testing and qualification standards, establishing agencies to administer the various aspects of the regulatory program, and coordinating these and other tasks with the ASC, other Federal agencies and entities, and various industry groups. By extending title XI's effective date for use of certified and licensed appraisers in federally related transactions until December 31, 1991, the ASC fully anticipates that, on January 1, 1992, all aspects of a nationwide, comprehensive and uniform real estate appraiser regulatorly system will be in place, as contemplated by Congress when it adopted title XI.

For these reasons, the ASC, with the approval of the FFIEC, hereby extends to December 31, 1991, the deadline for use of certified or licensed appraisers in federally related transactions, pursuant to its authority in section 119(a)(2) of FIRREA (12 U.S.C. 3348(a)(2)), in all fifty States and in the District of Columbia, Puerto Rico, Guam and the Virgin Islands.

By order of the ASC, with the approval of the FFIEC.

Dated at Washington, DC, this 25th day of April, 1991.

[1] Public Law No. 101-73, 103 Stat. 183 (1989); 12 U.S.C. 3310, 3331-3351.

[2] The ASC requests that the States and other jurisdictions continue to facilitate the orderly implementation of the title XI regulatory program by promptly forwarding to the ASC staff all pertinent proposed and enacted legislation.

Federal Financial Institutions Examination Council, Appraisal Subcommittee.

Edwin W. Baker,

Executive Director.

[FR Doc. 91-10233 Filed 4-30-91; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Argentina/U.S. Gulf Ports et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-010382-018.

Title: Argentina/U.S. Gulf Ports Agreement.

Parties: American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacao C.F.I.I., Companhia Maritima Nacional, Companhia de Navegacao Lloyd Brasilerio, Reefer Express Lines Pty., Ltd.

Synopsis: The proposed amendment would delete Reefer Express Lines Pty., Ltd. as a party to the Agreement.

Agreement No.: 212-010382-019.

Title: Argentina/U.S. Gulf Ports Agreement.

Parties: American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacao, C.F.I.I., Companhia Maritima Nacional, Companhia de Navegacao Lloyd Brasileiro.

Synopsis: The proposed amendment would delete provisions of the agreement which conflicted with the Commission's rules concerning notice and waiting period prior to the effectiveness of modifications to the agreement.

Agreement No.: 212-010382-020.

Title: Argentina/U.S. Gulf Ports Agreement.

Parties: American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacao C.F.I.I., Companhia Maritima Nacional, Companhia de Navegacao Lloyd Brasileiro.

Synopsis: The proposed amendment would provide criteria for crediting a party's sailing obligations when carrying cargo under space charter, and it would clarify that charter revenue earned from space charter will not be subject to the pool.

Agreement No.: 212-010382-021.

Title: Argentina/U.S. Gulf Ports Agreement.

Parties: American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacao C.F.I.I., Companhia Maritima Nacional, Companhia de Navegacao Lloyd Brasileiro.

Synopsis: The proposed amendment would provide additional detail with respect to the procedure (and liability) for chartering space as permitted under the authority of the agreement.

Dated: April 25, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-10161 Filed 4-30-91; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200602

Title: Tampa Port Authority/Tampa Bay, International Terminals, Inc., Terminal Agreement.

Parties:

Tampa Port Authority (Authority), Tampa Bay International Terminals, Inc. (TBIT).

Filing Party: H.E. Welch, Director of Traffic, Tampa Port Authority, P.O. Box 2192, 811 Wynkoop Road, Tampa, FL 33601.

Synopsis: The Agreement, filed April 22, 1991, provides for: TBIT's operation and maintenance of the Authority's P & H 140 ton truck crane and any future equipment purchased by the Authority; the Authority to reimburse TBIT for costs of operation and maintenance of the crane; and, the Authority to pay TBIT 15 percent of net annual proceeds derived from operation of the equipment after maintenance and operation costs are deducted.

By Order of the Federal Maritime Commission.

Dated: April 26, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-10273 Filed 4-30-91; 8:45 a.m.]

BILLING CODE 6730-01-M

[Docket No. 91-14]

Inquiry Concerning Use and Effect of Surcharges by Common Carriers and Conferences

Notice of extension of time for filing comments.

Notice is given that a thirty day extension of time for filing comments, requested by the Agriculture Ocean Transportation Coalition, has been granted. Comments now are due June 21, 1991.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-10272 Filed 4-30-91; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Multiple Award Federal Supply Schedule

ACTION: Notice.

The General Services Administration, Office Supplies and Paper Products Commodity Center is reviewing items under the Multiple Award Federal Supply Schedule Program for the purpose of changing the method of supply to competitive award. These items currently include: diskettes, erasable ball point pens, ribbons, liftoff tape, note trays, tape flags (repositionable), writing paper pads

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(repositionable), suspended file folders and colored folders. Some sizes, colors, types, styles, etc. within an item category may be removed from the Multiple Award Schedule for competitive award while other sizes, colors, types, styles, etc., may continue being supplied from the Schedule. Comments regarding this matter may be directed to Mr. Allan Sigall, Engineering and Commodity Management Division (2FYEM) Room 20-130, 26 Federal Plaza, New York, NY., 10278. Comments should be made within thirty days from the date of this notice and should address the potential impact on small business concerns.

Dated: April 11, 1991.

Harold E. Murrell,

Director, Office Supplies and Paper Products Commodity Center.

[FR Doc. 91-10240 Filed 4-30-91; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90A-0416]

Calgene, Inc.; Request for Advisory Opinion

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Calgene, Inc., has requested an advisory opinion regarding whether the kanamycin resistance gene, a selectable marker, may be used in the production of genetically engineered tomato, cotton, and rapeseed plants intended for human food and animal feed use.

DATES: Written comments by July 30, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James H. Maryanski, Center for Food Safety and Applied Nutrition (HFF-300), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: FDA is announcing that Calgene, Inc., 1920 Fifth St., Davis, CA 95616, has requested an advisory opinion (Docket No. 90A-0416) from the Commissioner of Food and Drugs regarding whether the kanamycin resistance gene, a selectable marker, may be used in the production of genetically engineered tomato, cotton, and rapeseed plants intended for human food and animal feed use. The request contains information that pertains to the safety of the use of the kanamycin resistance gene for human and animal health and for the environment.

The techniques of gene transfer (e.g., recombinant deoxyribonucleic acid (DNA) techniques) permits scientists to introduce specific, well-characterized genes into plants to develop new varieties that exhibit useful traits. In gene transfer experiments, only a small percentage of the recipient plant cells will actually take up the introduced genes and many desirable traits (i.e., those that specify the intended technical effect) are not easy to detect before the plant has fully developed. Scientists, therefore, enhance their ability to detect plant cells that have taken up the desired genes by linking the desired gene to a selectable marker gene, such as the kanamycin resistance gene.

In the cell, the kanamycin resistance gene specifies the information for the production of the enzyme, aminoglycoside 3-phosphotransferase II. The common name for this enzyme is kanamycin (or neomycin) phosphotransferase II. The kanamycin phosphotransferase II enzyme chemically modifies aminoglycoside antibiotics, including kanamycin, neomycin, and geneticin (G418), inactivating the antibiotic and rendering the cells that produce the kanamycin resistance gene product refactory or resistant to the antibiotic. Plant cells that have received the kanamycin resistance gene survive and grow on laboratory medium in the presence of the antibiotic, kanamycin. Plant cells that did not take up the introduced kanamycin resistance gene will be killed by the antibiotic. By linking the kanamycin resistance gene, the selectable marker gene, to another gene that specifies a desired trait, scientists can identify and select the plants that have taken up and will express the desired genes.

The kanamycin resistance gene has been used as a selectable marker in more than 30 crops, including tomato, cotton, and rapeseed, to develop varieties that exhibit improved nutritional and processing properties, resistance to pests and diseases, tolerance to chemical herbicides, and other agronomic properties. Once the desired plant variety has been selected, the kanamycin resistance gene serve no further useful purpose, although it continues to produce the kanamycin phosphotransferase II enzyme in the plant tissues. the kanamycin resistance gene is a research tool that is important for developing new crop varieties through the current recombinant DNA techniques of gene transfer. However, the gene persists beyond the research stage, in that low levels of both the kanamycin resistance gene and the kanamycin phosphotransferase II enzyme protein are expected to be present in foods derived from such plants.

The act provides FDA with broad authority to ensure the safety and wholesomeness of food, empowering the agency to initiate legal action against a food that is found to be adulterated or misbranded within the meaning of the act. Consequently, firms frequently consult with the agency concerning potential safety and regulatory issues that may be associated with food products developed through new technology. FDA believes that such consultations are essential in order for the agency to be knowledgeable about current methods of food production and to carry out its responsibility to protect public health.

In discussions with FDA on food products under development, representatives of Calgene, Inc., raised the issue of the use of the kanamycin resistance gene, pointing out that it will be used in most new crops developed through gene transfer and inquired about administrative procedures by which FDA could evaluate information on its use. FDA advised the firm to submit initially the information to be reviewed as a request for advisory opinion. FDA believes that the advisory opinion approach is appropriate in these circumstances because: (1) The kanamycin resistance gene is used by most firms, including Calgene, Inc., to develop improved food crops by new methods of gene transfer and may raise a broad policy issue concerning how the agency should interpret the act with respect to added substances in food, (2) the request does not pertain to the approval of a food or food ingredient, and (3) it permits the agency to utilize an evaluation process that is open to public comment and to make its decision known to the public.

FDA encourages interested parties to submit comments on the request regarding both human and animal food safety and environmental safety, particularly with respect to the following:

1. Any relevant scientific issues that have not been addressed in the submission;

2. Any available substantive information that bears on the relevant scientific issues;

3. The scope of food crops and crop byproducts covered by the petition. Calgene's request identifies tomato, cotton, and rapeseed as the only food crops that are the subject of the request; and

4. The environmental assessment.

Calgene's request has been placed on display at the Dockets Management Branch (address above).

FDA has filed Calgene's request for an advisory opinion. The filing by the agency of an advisory opinion request is a procedural matter and does not necessarily obligate the agency to issue such an opinion, nor does such filing reflect an agency decision on the substantive merits of the request. The agency will publish a notice of availability of its findings in this matter in the **Federal Register**.

The agency is not required to publish a notice of filing of a request for an advisory opinion and, therefore, does not routinely publish such notices. However, FDA believes that publication of this notice is in the public interest because the agency wishes to receive comments from interested members of the public, industry, and other governmental agencies and because this is the first request made to FDA regarding the use of the new methods of gene transfer to produce foods derived from agricultural crops.

Interested persons may, on or before July 30, 1991, review the request for an advisory opinion and/or file comments (four copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). A copy of the request and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 23, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-10244 Filed 4-30-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91F-0139]

Eastman Kodak Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a food additive petition has been filed by Eastman Kodak Co. proposing that the food additive regulations be amended to provide for the safe use of 1,3-benzenedicarboxylic acid, 5-sulfo-, monosodium salt in polyester resins (including alkyd type) intended as components of adhesives in contact with food.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4251) has been filed by Eastman Kodak Co., P.O. Box 511, Kingsport, TN 37662, proposing that § 175.105 Adhesives (21 CFR 175.105) be amended to provide for the safe use of 1,3-benzenedicarboxylic acid, 5-sulfo-, monosodium salt in polyester resins (including alkyd type) intended as components of adhesives in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 19, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-10245 Filed 4-30-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HFCA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request:* Extension; *Title of Information Collection:* Peer Review Organization (PRO) Contracts, Solicitation of Statements of Interest from In-State Organizations; *Form Number:* HCFA-R-118; *Use:* This information is required for potential contractors to demonstrate that they meet the statutory requirements as Peer Review Organizations; *Frequency:* On occasion; *Respondents:* Small businesses/organizations; *Estimated Number of Responses:* Not applicable; *Average Hours per Response:* Not applicable; *Total Estimated Burden Hours:* 1.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Health Maintenance Organization (HMO) National Data Reporting Requirements (NDRR); *Form Number:* HCFA-908; *Use:* This information is needed to effectively monitor and evaluate the progress and effectiveness of the HMO/Competitive Medical Plan (CMP) program and to seek corrective action by HMO/CMP, as appropriate. This ensures the protection of Federal investment and enrolled members of HMO/CMPs. Additionally, the NDRR provides statistical data for continued regulation; *Frequency:* Annually; *Respondents:* State/local governments, businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 1,760; *Average Hours per Response:* 4; *Total Estimated Burden Hours:* 7,040.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* Requirement to Disclose Health Maintenance Organization (HMO) Financial Information to Members; *Form Number:* HCFA-R-97; *Use:* This requirement provides that HMOs must disclose specific information to members, potential members, employees and contractors; *Frequency:* On occasion/annually; *Respondents:* Businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 412; *Average Hours per Response:* .5; *Total Estimated Burden Hours:* 206.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Qualification Application; Competitive Medical Plan (CMP) Medicare Contract Application Qualified Health Maintenance Organization (HMO) Medicare Contract Application; *Form Numbers:* HCFA-901-1, 901-3; *Use:* These forms are used as instruments through which entities will apply and furnish information in order to obtain qualification status, Competitive Medical Plan (CMP) eligibility/Medicare contract status, a Medicare contract (risk-based or cost-based) or service area expansions; *Frequency:* On occasion; *Respondents:* State/local governments, businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 60; *Average*

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Hours per Response: 100; *Total Estimated Burden Hours:* 6,000.

5. *Type of Request:* Revision; *Title of Information Collection:* Uniform Hospital Bill (HFCA–1450) and Related Electronic Media Claim Format—Medicaid System Requirements; *Form Number:* HCFA–R–59; *Use:* These hospital billing requirements enable the Medicaid program to develop meaningful data for reducing medical care costs. This form improves compatibility in hospital claim filing for the Medicaid and Medicare programs and simplifies claims for providers; *Frequency:* On occasion; *Respondents:* State/local governments, businesses/other for profit, and non-profit institutions; *Estimated Number of Responses:* 70 million; *Average Hours per Response:* .05; *Total Estimated Burden Hours:* 3,558,834.

6. *Type of Request:* Extension; *Title of Information Collection:* Medicaid Drug Rebate Program; *Form Numbers:* HCFA–367,(a)(b)(c); *Use:* The Omnibus Budget Reconciliation Act of 1990 requires drug manufacturers to enter into and have in effect a rebate agreement with the Federal government for States to receive funding for drugs dispensed to Medicaid recipients; *Frequency:* Quarterly; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 10,000; *Average Hours per Response:* 3.41; *Total Estimated Burden Hours:* 34,167.

Note: Notice of emergency submission to OMB was published in the **Federal Register** on March 4, 1991 (Volume 56, No. 42). Page 9020 contained an additional "NOTE" in the middle of the second column of text after *"Data Element Name:* Best Price." That "NOTE" was in error and should be removed.

7. *Type of Request:* New; *Title of Information Collection:* Medicaid State Drug Rebate—Administrative and Quarterly Report Data; *Form Numbers:* HCFA–368 and HCFA–R–144; *Use:* These requirements implement provisions of the Omnibus Budget Reconciliation Act of 1990 in that State Medicaid agencies report to drug manufacturers and HCFA on the drug utilization for their States and the amount of rebate to be paid by the manufacturers; *Frequency:* Quarterly; *Respondents:* State/local governments; *Estimated Number of Responses:* 255; *Average Hours per Response:* 24.2; *Total Estimated Burden Hours:* 6,171. The HCFA has requested emergency review by the Office of Management and Budget. In keeping with the requirements for emergency reviews, we are attaching a copy of the forms and instructions. Comments may be sent to OMB at the address below for 15 days after the date of this notice.

Additional Information or Comments: Call the Reports Clearance Officer on 301–966–2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: April 18, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Supporting Statement for the State Drug Rebate: HCFA–368 (Administrative Data) and HCFA–R–144 (Quarterly Report Data)

A. Background

Section 4401 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 (Pub. L. 101–508), enacted November 5, 1990, requires drug manufacturers to enter into and have in effect a rebate requirement with the Federal government for States to receive funding for drugs dispensed to Medicaid recipients. For purposes of this legislation, a drug manufacturer is defined as one who holds legal title to the National Drug Code number for a prescription drug, non-prescription drug or biological product.

Drug manufacturers who have drug rebate agreements with the Federal Government supply information to HCFA within 30 days after the end of each calendar quarter. This information consists of the average manufacturer price of the drugs, and, for some drugs, the best price at which they were sold. The drug rebate amount is calculated by HCFA and distributed to States. States are required to submit quarterly utilization data reports to the drug manufacturers (and a copy of HCFA) in order to receive a rebate on the drugs dispensed to Medicaid recipients. In turn, States must reimburse HCFA via Federal financial participation for that portion of their rebate previously paid to them.

The Medicaid Bureau (MB) is requesting a 3-year approval of the State reporting requirements under the drug rebate program. A one-time submittal by the States is required to report administrative data, i.e., contact individuals involved in the program and a list of drug manufacturers with which the State has a current rebate agreement. In addition, listed below is a line-by-line justification of the quarterly data reporting required (electronic record layout and hard copy format attached).

Data Element Name: State Code—Two character post office abbreviation for State with individual agreement with labeler. Alpha-numeric, 2 digits.

Data Element Name: Period Covered—Calendar quarter and year covered by data submission. Numeric 3 digit field, QYY.

Valid Values for Q: 1=January 1–March 31; 2=April 1–June 30; 3=July 1–September 30; 4=October 1–December 31.

Valid Values for YY: Last two digits of calendar year covered.

Data Element Name: Labeler Code—First segment of National Drug Code that identifies the manufacturer, labeler, or distributor of the drug. Numeric values only, 5 digit field, right justified and 0–filled for 4 digit labeler codes.

Data Element Name: Product Code—Second segment of National Drug Code. Numeric values only, 4 digit field, right justified, 0–filled.

Data Element Name: Package Size Code—Third segment of National Drug Code. Numeric values only, 2 digit field, right justified, 0–filled.

Data Element Name: Product FDA Registration Name (abbreviated)—First 10 characters of product FDA registration name. Alpha-numeric values, 10 digits.

Data Element Name: Rebate Amount Per Unit—The HCFA calculated amount per unit type to be claimed as a rebate by the State. Numeric values, 11 digits: 5 whole numbers and 6 decimals. Calculate to 7 decimals and round to 6.

Data Element Name: Total Units Reimbursed—The total number of unit types of the drug reimbursed by the State during the period covered. Multiply by the per unit rebate amount reported to the State by HCFA to get the total rebate amount for this drug for the quarter. Numeric values, 12 digits: 9 whole numbers and 3 decimals.

Data Element Name: Total Rebate Amount Claimed—The total rebate amount that the State agency claims it is owed by the labeler for the quarter covered. It is calculated by multiplying the total units reimbursed by the rebate amount per unit. Numeric values, 9 digits: 7 whole numbers and 2 decimal places.

Data Element Name: Number of Prescriptions—The number of prescriptions reimbursed for the drug during the quarter. Numeric values, 6 digits, whole numbers only.

Data Element Name: Total Amount Reimbursed by the State—The total amount the State reimbursed to pharmacists for the drug for the quarter

covered. Numeric values, 10 digits: 8 whole numbers and 2 decimals.

Data Element Name: Correction Record Flag—Indicator that this record is a correction. Numeric values, 1 digit.

Valid Values: 0=original record; 1=correction record.

B. Justification

1. Need and Legal Basis

The authority for requiring States to submit the quarterly data report is section 4401 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), enacted November 5, 1990.

2. Information Users

HCFA develops the rebate amount per drug unit from information supplied by the drug manufacturers and distributes this data to the States. States then must report quarterly to the drug manufacturers and HCFA the total number of units of each dosage form/strength of their covered outpatient drugs reimbursed during a quarter and the rebate amount to be refunded. This report is due within 60 days after the end of each calendar quarter. The information in the report is based on claims paid by the State Medicaid agency during a calendar quarter and not drugs that were dispensed during a calendar quarter.

3. Improved Information Technology

The States are required to submit their quarterly reports to HCFA via magnetic media. However, States will determine the vehicle by which they submit the same reports to the drug manufacturers. State agencies have not yet committed to a permanent method for quarterly reporting to their respective drug manufacturers. Each agency will determine whether to use electronic media or hard copy. The States have developed a hard copy layout of the required reporting data which contains the same data as that developed for electronic record layout. This layout was agreed upon by the States and HCFA for those instances where electronic media is not used for quarterly reporting to drug manufacturers.

4. Duplication

The MB is the only HCFA component collecting drug rebate data on the Medicaid program. Therefore, there are no existing data which duplicate this data and could be used in place of drug rebate program data.

5. Similar Information

The MB is the only HCFA component collecting data on the drug rebate program in the Medicaid program. Therefore, there are no existing similar data which could be used in place of the data collected on the drug rebate program forms.

6. Small Business

This collection of information does not involve small businesses or other small entities.

7. Less Frequent Collection

OBRA 1990 requires the quarterly reporting by States of the drug identification and rebate data.

8. General Collection Guidelines

This data collection is conducted in a manner consistent with 5 CFR 1320.6.

9. Outside Consultations

States have been given the opportunity to comment and offer input regarding the drug rebate program via weekly teleconferences conducted by HCFA. Representatives from the State Technical Advisory Group and the American Public Welfare Association were participants in the teleconferences. Discussions included all aspects of the drug rebate program including the quarterly reporting process. There are no major issues unresolved.

10. Confidentiality

Confidentiality has been assured in accordance with section 1927(b)(3)(D) of the Social Security Act.

11. Sensitive Questions

There are no questions of a sensitive nature.

12. Cost Estimates

The estimate of annualized cost to the Federal Government is $79,652. The cost estimate is computed as 75 percent (Federal share) of the States' costs.

The estimate of annualized cost to the State governments is $106,203. The State employee hourly wage figure is computed as 80 percent of a GS–12, step 1 annual salary, plus 20-percent retirement/insurance. The State cost is computed as follows:

$37,294×80 percent=$29,835+$5,967 (20-percent retirement/insurance)+$35,802−2,080 hours per year=$17.21 per hour

$17.21 per hour×6,171 hours per year=$106,203 per year

13. Estimate of Burden

The State burden associated with the drug rebate program includes the reporting of administrative data (one-time submittal of contact persons and a list of drug manufacturers with which the State has a current rebate agreement). In addition, a burden is associated with the quarterly drug utilization reports.

All State agencies will be reporting drug utilization data to drug manufacturers and HCFA. These reports will be submitted to HCFA via magnetic media. However, HCFA has no control over the vehicle by which States report to the drug manufacturers. The States and the drug manufacturers must come to an agreement on data transmission. Some States are opting for the use of hard copy reports while others are planning to use magnetic media. States which opt to report via hard copy are required to use the format associated with the HCFA–R–144.

The burden hours below for quarterly reports are a total average for both types of data transmission. (A revised burden estimate will be calculated when the States have established a permanent vehicle for data transmission.)

The following is a calculation of the burden estimates.

One-time submittal data	
Administrative data reports: 51 States×1 hour each	51
Quarterly Utilization Reports	
51 States×30 hours×4 quarters	6,120
Total Annual Hours	6,171

14. Changes in Burden

There is no change in the burden estimate.

15. Publication and Tabulation Data

There are no plans to publish the information for statistical use.

16. Collections of Information Employing Statistical Methods

There are no statistical methods employed with this data collection.

BILLING CODE 4120-03-M

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MEDICAID DRUG REBATE PROGRAM
STATE AGENCY CONTACT FORM

PAGE 1 OF 2

STATE AGENCY NAME

TECHNICAL CONTACT: Person responsible for sending and receiving data.

NAME OF CONTACT

AREA PHONE NUMBER EXT.

NAME OF FISCAL AGENT (if applicable)

STREET ADDRESS

CITY STATE ZIP CODE

PROGRAM POLICY CONTACT: Person responsible for policy decisions.

NAME OF CONTACT

AREA PHONE NUMBER EXT.

NAME OF FISCAL AGENT (if applicable)

STREET ADDRESS

CITY STATE ZIP CODE

MEDICAID DRUG REBATE PROGRAM
STATE AGENCY CONTACT FORM

PAGE 2 OF 2

STATE AGENCY NAME

FOR EACH LABELER WITH WHOM THE STATE HAS SIGNED AN EXISTING REBATE AGREEMENT:

LABELER	EFFECTIVE DATE (MMDDYY)	* ENDING DATE (MMDDYY)

IF THERE ARE MORE THAN 20 EXISTING AGREEMENTS PLEASE MAKE COPIES OF THIS PAGE.

* Date on which initial termination of agreement occurs

BILLING CODE 4120-03-C

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HCFA RECORD SPECIFICATION MEDICAID DRUG REBATE DATA RECORD FORMAT

Field	Size	Position	Remarks
Record ID	4	1–4	Constant of "01**"
State Code	2	5–6	P.O. Abbreviation
Labeler Code	5	7–11	NDC No. 1
Product Code	4	12–15	NDC No. 2
Package Size Code	2	16–17	NDC No. 3
Period Covered	3	18–20	QYY
Prd. FDA Reg. Name	10	21–30	
Rebate Amt. per Unit	11	31–41	99999V999999
Total Units Reimbursed	12	42–53	999999999V999
Total Rebate Amt. Claimed	9	54–62	9999999V99
No. of Prescriptions	6	63–68	999999
Total Reimbursement Amt	10	69–78	99999999V99
Correction Flag	1	79–79	See Data Element Definitions
Filler	1	80–80	

Source: State Agencies.
Target: HCFA & Manufacturers.
Version 1, 2/13.

Page _____ of _____
State of _____
_____ Medicaid agency
Date:
Source: State agencies

Target: Manufacturers
Medicaid Drug Rebate Invoice
Manufacturer: _____
Address 1: _____
Address 2: _____

City: _____ State: _____
Zip: _____
State code: _____
Invoice #: _____
Period covered: _____

NDC Number	Drug name	Rebate amt. per unit	Total units reimb.	Total rebate amt. claimed	No. of Scripts	Total reimb. amount	Cor. flg.
		Totals:		*			

*Please remit this amount to: _____
Medicaid Agency
Address: _____

Note: NDC# = Labeler Code (5): Product Code (4); Pkg. Size Code (2).

Public reporting burden for this collection of information is estimated to average 30 hours per response. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Health Care Financing Administration, P.O. Box 26684, Baltimore, Maryland 21207, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Paperwork Reduction Project (0938–)

States' Magnetic Tape Media Survey

HCFA needs to determine what characteristics the format of drug rebate data will take. HCFA operates in an IBM MVS/XA environment and supports both 3480 cartridge and 1600/6250 bpi round tape media. The use of 3480 cartridge is the more preferable method of transmitting portable media to and from HCFA.

HCFA is interested in your systems capabilities to produce and receive magnetic tape media.

Please complete this questionnaire and return to HCFA.

A. Make and model of your mainframe computer _____

B. Operating System _____

C. Magnetic Tape Media Information
1. Tape Cartridge _____ Yes _____ No
2. Round Tape Reel _____ Yes _____ No
If Yes to C2: _____ Mini _____ Full Reel
Tape Density: _____ 1600 pbi _____ 6250 bpi

D. Given a preference, which of the above options would you choose to produce and receive drug rebate data to and from HCFA?

[FR Doc. 91–10039 Filed 4–30–91; 8:45 am]

BILLING CODE 4120–03–M

Health Care Financing Administration

[IOA–030–N]

Medicare Program; Advisory Committee on Medicare-Physician Relationships; Meetings

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces meetings of the Advisory Committee on Medicare-Physician Relationships on May 16 and May 17, 1991 and on June 6 and June 7, 1991.

DATES: The meetings will be open to the public on May 16, 1991 from 9 a.m. until 5 p.m.; on May 17, 1991 from 9 a.m. until 1 p.m.; on June 6, 1991 from 9 a.m. until 5 p.m.; and on June 7, 1991 from 9 a.m. until 1 p.m. Attendance by the public is limited to space available.

ADDRESSES: The meetings will be held in the Main Auditorium, Lobby Level, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington DC 20201.

FOR FURTHER INFORMATION CONTACT: Matthew Crow, Executive Director, Advisory Committee on Medicare-Physician, Relationships, room 425–H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, telephone (202) 245–7874.

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act (Pub. L. 92–463, enacted on October 6, 1972) the Secretary of the Department of Health and Human Services established the Advisory Committee on Medicare-Physician Relationships. The Committee advises the Secretary on the existing Medicare policies and procedures that directly relate to physicians' provision of services to Medicare's beneficiaries and on Peer Review Organization (PRO) and carrier policies and procedures. The Advisory Committee looks at the methods to improve Medicare carrier services, responsiveness to physicians, and the cost and administrative burden the Medicare program places on physicians. This Committee does not consider payment issues.

The Committee consists of the Senior Medical Advisor of the Health Care Financing Administration (HCFA) as chair, and seven members selected by the Secretary who are practicing physicians representing the primary care, internal medicine, and surgical disciplines. Members are invited to serve for the duration of the Committee. The members are: Lanny R. Copeland, M.D., Ulton G. Hodgin, Jr., M.D., Edward A. Rankin, M.D., Barbara Ann P. Rockett, M.D., Mark C. Rogers, M.D., Richard B. Tompkins, M.D., and Susan L. Turney, M.D. The chairperson is Nancy Gary, M.D.

The agenda for the May 16 meeting is an orientation. For the May 17 meeting, the agenda includes: Medicare claims submittals and claims adjudication requirements, including codes, mandatory claims submission, electronic billing, durable medical equipment necessity form, fee disclosure for non-emergency surgery, and the unique physician identifier number.

The tentative agenda for the June 6 meeting will include discussion of the following topics: Committee review; coverage and medical review, including coverage variation, coverage for new procedures, carrier notice and comment process for medical review policy, release of medical review parameters, medical necessity denials and downcoding, documentation requests, rebundling CPT–4 codes, and post-payment audits of physician claims; and the carrier appeals process, including notification, documentation, and timeliness of decision.

Tentatively, the agenda for the June 7 meeting will include discussion of the following issues: Carrier communications, including written and telephone communications, beneficiary explanation of Medicare benefits, notices, carrier newsletters and bulletins, and the medical director's role and responsibility.

Those individuals or organizations who wish to make 10-minute oral presentations on the topics listed above must contact the executive director to be scheduled. For the name, address, and telephone number of the executive director, see the "FOR FURTHER INFORMATION CONTACT" section at the beginning of this notice. A written copy of the oral remarks must be presented to the executive director at the time of the presentation. Anyone who is not scheduled to speak may submit written comments to the executive director.

The Committee is to report to the Secretary through the Administrator, HCFA, not later than December 31, 1991.

Authority: Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. app. I)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 25, 1991.

Matthew Crow,

Executive Director, Advisory Committee on Medicare-Physician Relationships.

[FR Doc. 91–10413 Filed 4–30–91; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting of Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on June 3–5, 1991. The meeting will be held in the 11th floor solarium, Building 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on June 3 from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 2:30 p.m. On June 4 the meeting will be open from 8 a.m. until 9:40 a.m. During the open sessions, the permanent staff of the Laboratory of Immunology and the Biological Resources Branch will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on June 3 from 8:30 a.m. until 9 a.m., from 12:30 p.m. until 1:30 p.m., from 2:30 p.m. until 5 p.m., on June 4 from 9:45 a.m. until recess and on June 5 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John I. Gallin, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, room 11C103, telephone (301–496–3006), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13–301, National Institutes of Health.)

Dated: April 17, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–10196 Filed 4–30–91; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Dental Research; Meeting of NIDR Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on June 6–7, 1991, in the H. Trendley Dean Conference Room, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9 a.m. to recess on June 6 and from 9 a.m. until 1 p.m. on June 7. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public

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from 1 p.m. until adjournment on June 7 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Abner Notkins, Director of Intramural Research, NIDR, NIH Building 30, room 132, Bethesda, Maryland 20892 (telephone 301-496-1483) will provide a summary of the meeting, roster of committee members and substantive program information.

Dated April 17, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-10197 Filed 4-30-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), May 16, 17, and 18, 1991, National Institutes of Health, Building 2, room 102, Bethesda, Maryland 20892. This meeting will be open to the public on May 16 from 8:50 p.m. to 9:30 p.m., May 17 from 9 a.m. to 12 noon and again from 2 p.m. to 4:30 p.m., and May 18 from 9 a.m. to 10:30 a.m. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIDDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on May 16 from 8:20 p.m. to 8:50 p.m., May 17 from 12 noon to 2 p.m. and again from 4:30 p.m. to recess, and May 18 from 10:30 a.m. to adjournment for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, Building 31, room 9A19, Bethesda, Maryland 20892. Further information concerning the meeting may be obtained by contacting the office of Dr. Allen Spiegel, Scientific Review Administrator, Board of Scientific Counselors, National Institutes of Health, Building 10, room 9N-222, Bethesda, Maryland 20892, (301) 496-4120.

Dated: April 17, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-10196 Filed 4-30-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Committee to Coordinate Environment Health and Related Programs Ad Hoc Subcommittee on the Benefits of Dental Amalgam

Notice is hereby given that the Committee to Coordinate Environmental Health and Related Programs (CCEHRP) Ad Hoc Subcommittee on Benefits of Dental Amalgam is soliciting copies of peer reviewed scientific studies of the health benefits of dental amalgams.

CCEHRP is a standing internal committee of the Public Health Service (PHS) established by the Assistant Secretary for Health to coordinate and promote the exchange of environmental health information; to carry out efforts which encourage consensus on environmental health related research, exposure assessments, risk assessments, and risk management procedures; and to serve as the primary focal point within the Department of Health and Human Services for information coordination within and outside the Department on environmentally related issues. The Committee is composed of agency heads and subagency heads of the Public Health Service and is chaired by the Assistant Secretary for Health.

The Assistant Secretary for Health has established a process by which the CCEHRP will review the health risks and health benefits of dental amalgams. To accomplish the benefit portion of this task, the Ad Hoc Subcommittee on Benefits of Dental Amalgam requests copies of peer reviewed research publications and/or research for which articles are pending publication in peer reviewed journals.

All materials should be submitted within 30 days of the publication of this notice. Please send all responses to Dr. William G. Kohn, National Institute of Dental Research, National Institutes of Health, 9000 Rockville Pike, Building 31, room 2C34, Bethesda, Maryland 20892, telephone 301/496-0469.

Dated: April 19, 1991.

Bernadine Healy,

Director, NIH.

[FR Doc. 91-10199 Filed 4-30-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

[Docket No. N-91-3257]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments on the proposed requirements must be received by May 13, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin Swire, OMB Desk Officer, Office of Management and Budget, New Executive Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708-0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C., chapter 35). It is also requested that OMB complete its review within five (5) days, after the end of the public comment period.

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, or reinstatement, and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 18, 1991.

Ronald Rosenfeld,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

Proposal: Collection information from lenders for section 325 program using the Single Family Insurance Premium Remittance Summary form HUD-2748.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: In accordance with the Omnibus Budget Reconciliation Act of 1990 and the National Affordable Housing Act of 1990, the Department of Housing and Urban Development will begin to collect risk-based premiums for mortgages insured under the provisions of the Mutual Mortgage Insurance Fund. Section 325 dictates the collection of up-front premiums and the collection of annual periodic premiums for a particular number of years. The fiscal year in which the loan goes to closing as well as the loan-to-value ratio determine the period over which annual premiums will be collected.

Forms: HUD-2748.

Respondents: HUD-approved mortgages will hold mortgages insured under section 325 of the Mutual Mortgage Insurance Fund.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD-2748: (Sec. 530)	8,000		12		.5		48,000
Form HUD-2748: (Sec. 325)	8,000		12		.25		24,000

	Number of recordkeepers	×	Annual hrs per recordkeeper	×	Total recordkeeping hrs
Form HUD-2748: (Sec. 530)	8,000		1.5		12,000
Form HUD-2748: (Sec. 325)	8,000		.75		6,000

Status: Revision.

Contact: Lisa Giarrusso, SFIOD (202) 708-1696, Wendy Sherwin, OMB (202) 395-6880.

Justification and Supporting Statements

The following justification conforms with the SF83A specific Instructions under A. Justification.

1. A new premium method was instituted by both the Omnibus Budget Reconciliation Act of 1990 (approved 11/5/90) and the Cranston-Gonzalez National Affordable Housing Act of 1990 (approved 11/28/90). It addresses the concern for the financial health of the FHA fund, pertains to all new MMI cases, and will become effective during June 1991, on a date to be announced by rule published in the **Federal Register**.

Section 325 of the Cranston-Gonzalez National Affordable Housing Act dictates the collection of up-front premiums and the collection of annual periodic premiums for a particular number of years The fiscal year in which the loan goes to closing, as well as the loan-to-value ratio, determine the period over which annual periodic premiums will be collected. OMB has required that these annual periodic premiums be remitted to the Department on a monthly basis.

Form HUD-2748 is the currently approved Remittance Summary document which is completed by each remitting mortgagee to document and allocate each month's portion of their annual MIP remittance under the section 530 program.

This existing form can be used to address, in part, reporting requirements for the new section 325 collection program. Mortgagees will also be required to submit, under separate cover, monthly listings of section 325 cases for which payment was made and the payment amount. This information may be provided in tape format or hard copy at the lenders option, and will be addressed in a separate Mortgagee Letter. Reporting burden associated with this data submission is included in the annual reporting or disclosure burden shown in block 17 on the SF83.

2. The information is used to ensure compliance on the part of the mortgagee and to ensure that HUD receives all income due. Without this remitting information HUD could not ensure compliance with the requirements of the section 325 program nor could HUD ensure that all income due the government was being remitted.

3. HUD's Single Family Monthly Premium Collection System is automated. This system was implemented in September 1982, and is reviewed annually. No technical or legal obstacles have been identified.

4. There will be no duplication of collection of this data information since this is the only system under which the particular information will be gathered.

5. There is no similar information currently available.

6. Most participants are large mortgage bankers or mid-size bankers who utilize computer service bureaus. The remittance system features numerous options for the mortgagee, manual or automated form completion and lockbox check depositing or wire transfers of funds. For non-automated mortgagees, the form requires little completion time and does not represent a substantial burden.

7. Legislation requires prompt remittance of mortgage insurance premiums. HUD would be in violation of the law if less frequent collection were made.

8. The information is not being collected in a manner inconsistent with the guidelines in 5 CFR 1320.6.

9. Not applicable.

10. Not applicable.

11. Not applicable.

12. This form is part of the mortgagee's overall mortgage servicing operations which produce a profit for the mortgagee. Costs for processing and record keeping for form HUD-2748 are estimated at $828,000 annually (based on 138,000 burden hours at $6.00 per hour). Other costs, such as reproduction of the form HUD-2748, are negligible.

Estimate of annualized cost to the Federal Government is as follows:

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	Sec. 530	Sec. 325
Cost of data entry, and automated processing	$300,000	$150,000
Cost of receiving and filing of the forms (estimated eight staff years at the GS-9 step 5 level)	151,848	113,886
	451,848	263,886
Cost to Government	715,734	

13. The number of participating mortgagees varies, but averages at 8,000. Each mortgagee must submit a separate form HUD-2748 for remittances under the section 530 program and the new (Risk-base) section 325 program each month. Total responses will amount to 192,000 annually. The time required to complete these forms is based upon manual form completion.

14. Section 325 is a new Mortgage Insurance Premium collection program for the Department, but contains a periodic collection requirement similar to the existing section 530 program. Form HUD-2748 will support both the existing section 530 and section 325 Mortgage Insurance Premium collection activities. Section 530 activity and section 325 activity cannot be combined due to the new case level reporting and reconciling requirements for section 325.

15. Not applicable.

Attachment: Form HUD-2748

BILLING CODE 4210-27-M

ATTACHMENT

Premium Remittance Summary

Single Family Mortgage Insurance

U.S. Department of Housing and Urban Development
Office of Housing

Please refer to the instructions on the back of this form.

OMB Approval No. 2502-0421 (exp. 8/28/93)

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535-0075), Washington, D.C. 20503.

1. Mortgagee or Servicer:
Code No. | Name and Address

2. Prepared by | Phone No.

3. Remittance for
(Month) , 19

4. Remittance Summary. Premium remittance enclosed is allocated to premium anniversary dates as shown below.

	Month	Year	
a.	0 1	Jan.	$
b.	0 2	Feb.	$
c.	0 3	Mar.	$
d.	0 4	Apr.	$
e.	0 5	May	$
f.	0 6	Jun.	$
g.	0 7	Jul.	$
h.	0 8	Aug.	$
i.	0 9	Sep.	$
j.	1 0	Oct.	$
k.	1 1	Nov.	$
l.	1 2	Dec.	$
m.			$
n.			$
o.			$
p.	Total Premiums Remitted (Sum of a. through o., above)		$
q.	Plus Late Charge @ 4% (if submitted after the 10th)		$
r.	Interest Charge included (see instructions)		$
s.	Total Remittance Enclosed		$
t.	Number of checks accompanying this form		

HUD Use Only
Date Received

5. Mortgage Activity Summary. Count of mortgages for which your organization was the holder and servicer or servicer only, during the month being reported.

a. Beginning Balance (must equal last month's *Ending Balance*)
b. New Mortgages Serviced This Month +
c. Mortgages Transferred In This Month +
d. Mortgages Transferred Out This Month -
e. Mortgages Terminated This Month -
f. Balance of Mortgages on Hand at End of Month (sum of a through e, above)
g. Total Number of Individual Mortgages Represented by This Remittance

6. Have you previously submitted other remittance forms for this same accounting period?
☐ No ☐ Yes If "Yes", how many? _____

6. Certifications. (Important - See instructions)

☐ a. I certify that this remittance represents the total of all Single Family premium payments collected from mortgagors during the preceding calendar month plus the total annual premium payments due to HUD during this reporting period for Single Family mortgage insurance under the HUD program. I further certify that the mortgage summary information given on this form is true and correct.

Authorized Signature | Date Signed
X

☐ b. I certify that this remittance represents 1/12th of the total annual premiums for all HUD-insured Single Family mortgages serviced by my organization during the preceding calendar month, plus the total annual premium payments due to HUD during this reporting period for Single Family mortgage insurance under the HUD program. I further certify that the mortgage summary information given on this form is true and correct.

Authorized Signature | Date Signed
X

form HUD-2748 (8/89)
ref. handbook 4110.1

Instructions

This form shall be completed and sent to HUD monthly by each mortgagee servicing Single Family HUD Mortgages, whether or not any payment is to accompany the form.

Mailing Instructions. This form and payment must be mailed to the address specified in the Supplemental Instructions, Mailing of Remittances. Those instructions provide remittance addresses which correspond to the remitter's ZIP code. Only remittances should be mailed to these addresses; do not include other mortgage action forms.

1. Mortgagee or Servicer Code Number, Name and Address. Enter the servicing mortgagee's 5-digit identification code. The organization's name, street address, city, state and ZIP code must be typed, printed or stamped.

2. Prepared by. Enter the name and telephone number of a person to contact with questions about the form.

3. Remittance for the month of. Enter the calendar month and year inwhich the MIP payments were collected.

4. Remittance Summary.

Lines a. through l. These lines are to be used to allocate, by amortization anniversary month and year, all premium amounts being remitted. Enter amounts remitted for all mortgages in your portfolio by the month and year in which the annual premium for these cases are due.

Example: Remittance for month of April 1989.

a.	0	1	Jan.	8	9	$1000.00
b.	0	2	Feb.	8	9	$1000.00
c.	0	3	Mar.	8	9	-0-
d.	0	4	Apr.	8	9	$500.00

The zero premium amount in month 03 indicates one of the following:

The mortgagee services no cases that bear an amortization anniversary month of March; or

The mortgagee collected no payments for cases having this anniversary month and March is not the current month.

Lines m. through o. These lines are used to allocate premium remittances for mortgages whose annual premiums are due in months and years other than those reflected in lines a. through l. Enter the annual premium anniversary month(s) and year(s) and the amount(s) remitted

Example:

m.	1	1		8	8	$ 600.00
n.	0	4		8	7	$1500.00
o.						

Line p. Enter the sum of lines a. through o.

Line q. If the postmark date of this remittance will be later than the 10th of the month, enter 4% of the amount on line p.

Line r. Enter the amount of interest charges enclosed for amounts remitted 30 or more calendar days after payment due date. Interest charge at rate established by HUD applied to "Total Premiums Remitted" amount on line n for each such 30 day period or fraction thereof.

Line s. Enter the sum of lines p., q., and r. The amount of the check or checks enclosed with this form must equal the amount on line s.

Line t. Enter the number of payment checks enclosed with this form. Except under unique circumstances, only one check should be used.

5. Mortgage Activity Summary. This block is a monthly inventory of the portfolio counts of HUD Single Family Mortgages serviced by your organization and the activity for the month. The information must be submitted each month whether or not any monies are remitted.

Lines a. to f. Counts are for the remittance month only.

Line g. Enter the number of uniquely identified mortgages being paid. For example, if two monthly payments are included for a single mortgage, the mortgage is counted only once.

6. If you have previously submitted a Remittance Form for the same month ("Remittance for the Month" in block 2), indicate by checking the "Yes" box. If yes, indicate total number of such forms previously submitted.

7. Certifications. Two certifications are available to the servicing mortgagee. The one chosen indicates the method of remittance selected by the servicer:

remittance of all premiums collected in one month; or

remittance of 1/12th of all annual premiums for all cases serviced each month.

Once selected, the servicing mortgagee cannot change the method of remitting monthly premiums without prior approval from the Department of Housing and Urban Development (HUD). Therefore, the certification chosen on the mortgagee's first remittance form must be the one attested to each month by an official. Check the box beside the certification statement selected for signature by an authorized official of the servicing organization. The official should sign and record the date such certification was made.

[FR Doc. 91-10225 Filed 4-30-91; 8:45 am]
BILLING CODE 4210-27-C

Office of Administration

[Docket No. N-91-3259]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposd information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35)..

The Notices list the following information: (1) The title of the information collection proposal: (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submissions including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 15, 1991.

John T. Murphy,
Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to MOB

Proposal: Relocation and Acquisition Recordkeeping requirements under the uniform relocation assistance and real property acquisition policies act of 1970, as amended (URA), implementing regulations at 49 CFR part 24, and related HUD program regulations.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: Agencies that acquire real property or displace property occupants must collect information to process claims, make payments and document compliance with 49 CFR part 24 and HUD program rules. Expanded URA coverage (effective April 2, 1989) and new HUD-assisted programs have increased the overall reporting burden.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	2,000		1		85		170,000

Total Estimated Burden Hours: 170,000.

Status: New.

Contact: Harold J. Huecker, HUD, (202) 708-0336, Wendy Sherwin, OMB, (202) 395-6880.

Dated: April 15, 1991.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public Housing Management Assessment Program: Indicators and Standards.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Indicators and Standards will be used to assess the Management Performance of PHAs, designate troubled PHAs and MOD troubled PHAs, address deficiencies through a Memorandum of Agreement for each troubled PHA, and annually submit to Congress a report on the status of troubled and MOD troubled PHAs.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	3,266		1		3,41		11,162

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Total Estimated Burden Hours: 11,162.
Status: New.
Contact: Wanda Funk, HUD, (202) 708-0970, Wendy Sherwin, OMB, (202) 395-6880.

Dated: April 15, 1991.

[FR Doc. 91-10224 Filed 4-30-91; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-030-91-4410-08; GP1-196]

Planning Amendment; Baker Resource Management Plan

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an amendment to the Baker Resource Management Plan.

SUMMARY: In accordance with 43 CFR 1610.2, the Baker Resource Area, of the Vale District, on the date of this notice, announces that an environmental analysis to designate 1,288 acres of public land on the South Fork of the Walla Walla River as an Area of Critical Environmental Concern (ACEC) is being prepared. The proposed ACEC would be designed to protect outstanding scenic qualities, fisheries and riparian values, Threatened/Endangered and/or sensitive plant species, and biodiversity while providing for existing and future recreation opportunities. Factors which will be included in the analysis include the Bull trout, a Category 2 Candidate under the Endangered Species Act; margined sculpin, a State of Oregon listed sensitive species; and critical winter range for Rocky Mountain elk.

The area under consideration for designation is between Harris Park and Elbow Creek on the South Fork of the Walla Walla River in Umatilla County, Oregon. Public comments on the adequacy of the analysis will be accepted for 30 days from the date of this notice. Documents pertinent to this proposal may be examined at the address shown below.

Upon designation of this area as an ACEC, a site specific Recreation Area Management Plan (RAMP) is proposed to be developed which will analyze and define public recreational use zones and establish a plan for recreational development as well as protection of the ACEC values.

The following disciplines are represented on the BLM planning team: Wildlife management, recreation management, fisheries management, range management, forestry, botany, cultural resource management, and hydrology. Planning criteria include: Policy, legal and regulatory constraints, as well as, requirements to maintain riparian vegetation quality, maintain scenic values, maintain recreational values and meet recreation demands, and set management objectives to protect the resources identified within the proposed ACEC.

FOR FURTHER INFORMATION CONTACT: Dorothy Mason, Bureau of Land Management, Baker Resource Area, P.O. Box 987, Baker, Oregon 97814; Telephone (503) 523-6391.

Geoffrey B. Middaugh,
Associate District Manager.

[FR Doc. 91-10191 Filed 4-30-91; 8:45 am]

BILLING CODE 4310-33-M

[CO-050-4830-12]

Canon City District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 that the Canon City District Advisory Council (DAC) Meeting will be held Thursday, May 30, 1991, 10 a.m. to 4:30 p.m. at the Canon City District Office, 3170 East Main, Canon City, Colorado.

The meeting agenda will include:

1. Briefing on the Arkansas River Wild and Scenic River Study;
2. Wild and Scenic River Workshop;
3. Update on current programs/projects in the Canon City District;
4. Public presentations to the council (open invitation).

The meeting is open to the public. Persons interested may make oral presentations to the council at 11:30 a.m. or they may file written statements for the council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

ADDRESSES: Anyone wishing to make an oral or written presentation to the council should notify the District Manager, Bureau of Land Management, P.O. Box 2200, 3170 East Main, Canon City, Colorado 81215-2200, by May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (710) 275-0631.

SUPPLEMENTARY INFORMATION: Summary of minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office approximately 30 days following the meeting.

Stuart L. Freer,
Associate District Manager.

[FR Doc. 91-10241 Filed 4-30-91; 8:45 am]

BILLING CODE 4310-JB-M

[CA-050-4212-13; CA-27838]

Realty Action; California

AGENCY: Bureau of Land Mangement, Department of the Interior.

ACTION: Correction to Notice of Realty Action CA-27838, in Lake, Colusa, Napa, Yolo and Medocino Counties, California.

SUMMARY: The Notice of Realty Action published on Thursday, January 31, 1991, in Volume 56, No. 21 of the **Federal Register**, Page 3839 and Page 3840, is hereby corrected as follows:

1. on line 65 in column 1 on page 3839 which reads section 18: "W½NE¼, SE¼NE¼, W½, SE¼" should read section 16: "All" located in T. 12 N., R. 5 W.

2. On line 20 in column 2 on page 3839 which reads section 30: "S½" should read Sec 30: "Lot 3 & 4, E½SW¼, SE¼." located in T. 14 N., R. 5 W.

3. On line 30 in column 1 on page 3840 which reads by right-of-way No. "* * * CA-14770* * *" should read * * CA-14470 * * *" These were error and are being corrected.

FOR FURTHER INFORMATION CONTACT: Cathrine Robertson, Clear Lake Resource Area Manager, Bureau of Land Management, 555 Lesslie Street, Ukiah, California 94582: Phone (707) 462-3873.

Dated: April 1, 1991.

Cathrine Robertson,
Clear Lake Resource Area Manager.

[FR Doc. 91-10242 Filed 4-30-91; 8:45 am]

BILLING CODE 4310-40-M

[ID-020-4760-02]

Burley District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting for Burley District Advisory Council.

SUMMARY: Notice is hereby given that the Burley District Advisory Council will meet on June 5, 1991. The meeting will convene at 9 a.m. in the Conference Room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items are: (1) Review New Charter, (2) Reorganization of the Council, (3) Drought Report, (4) Clean Water Act, (5) Geographic Information System/Global Positioning System Demonstration, (6) Sharptailed Grouse Research Study Update, (7) Recreation and Wildlife 2000 Initiatives, (8) FY-1993 Program Year Budget Issues/FY-1992 Budget Proposals, (9) Range Management Update.

The meeting is open to the general public. The comment period for persons or organizations wishing to make oral statements to the Council will begin at 11:30 a.m. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, Idaho 83318, prior to the start of the meeting. Depending upon the number of persons wishing to make statements, a per time limit may be established by the District Manager. Written statements may also be filed.

Minutes of the Council meeting will be maintained in the District Office and will be available for public inspection during regular business hours.

DATES: April 22, 1991.

ADDRESSES: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Gerald L. Quinn, Burley District Manager, (208) 678-5514.

Dated: April 22, 1991.

Gerald L. Quinn,
District Manager.

[FR Doc. 91-10189 Filed 4-30-91; 8:45 am]

BILLING CODE 4310-GG-M

[WY-010-01-4212-14; W-119049]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Sale of Public Lands in Park County, Wyoming.

SUMMARY: The Bureau of Land Management has determined that the following land is suitable for direct sale to The King's Ranch under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 2757), (43 U.S.C. 1713, 1719), (43 CFR 2711.3-3 (1) and (5)), and (43 CFR part 2720) at not less than the estimated fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

Sixth Principal Meridian,

T. 52 N., R. 105 W.,
Sec. 25, lot 4.
The above lands aggregate 39.09 acres.

FOR FURTHER INFORMATION CONTACT: Duane Whitmer, Area Manager, Bureau of Land Management, Cody Resource Area, P.O. Box 518, Cody, Wyoming 82414, 307 587-2216.

SUPPLEMENTARY INFORMATION: The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

The land is being offered by direct sale to The King's Ranch, a nonprofit organization. The sale will allow expansion of the organization, as well as clear up a need to resolve inadvertent occupancy use of the land which clouds title to both the public and private lands. The sale is in conformance with the Cody Resource Management Plan approved November 8, 1990.

The King's Ranch will be required to submit a nonrefundable application fee of $50.00 in accordance with 43 CFR part 2720, for conveyance of all unreserved mineral interests in the lands. Grazing privileges of The King's Ranch will be reduced upon completion of the sale. The King's Ranch waived its right to a 2-year continuance of this privilege on February 20, 1991.

Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.
2. Reservation of oil and gas to the United States and any existing leases.
3. All other existing rights of record.

Detailed information concerning the sale are available for review at the Cody Resource Area Office, Worland District, Bureau of Land Management, 1714 Stampede Avenue, Cody, Wyoming 82414.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Worland District Office, P.O. Box 119, Worland, Wyoming 82401. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

R. Gregg Berry,
Associate District Manager.

[FR Doc. 91-10228 Field 4-30-91; 8:45 am]

BILLING CODE 4310-22-M

[NV-930-01-4212-13; N-39112]

Nevada; Opening of Public Lands

April 19, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; issuance of land exchange conveyance document and order providing for opening of land, Nevada.

SUMMARY: This notice identifies Federal and non-Federal land involved in a recently completed exchange transaction. The mineral estates in the Federal and non-Federal land are owned by the United States.

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, Bureau of Land Management, P.O. Box 12000, Reno, NV 89520, (702) 785-6530.

SUPPLEMENTARY INFORMATION: On April 10, 1991, the United States issued Patent No. 27-91-0083 to Kenneth R. Gragson, Trustee, for the following described land pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 21 S., T. 60 E.,
Sec. 24, SE¼SW¼NW¼.
The area described contains 10 acres in Clark County, Nevada.

In exchange for that land, the United States acquired the following described land from the above-named party:

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 24, SE¼SE¼NW¼.
The area described contains 10 acres in Clark County, Nevada.

Title to the non-Federal land was accepted on April 5, 1991. This was an equal value exchange.

The purpose of the exchange was to rectify an oversight on the part of the United States. When the non-Federal land was originally conveyed out of Federal ownership, the patent failed to identify the existence of a right-of-way for flood control channel purposes that had been granted to Clark County Department of Public Works.

At 10 a.m. on May 31, 1991, the land acquired by the United States will be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

All valid applications received at or prior to 10 a.m. on May 31, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

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At 10 a.m. on May 31, 1991, the land acquired by the United States will be open to location under the United States mining laws and to applications under the material sale laws.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The land has been and will remain open to applications and offers under the mineral leasing laws.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 91-10190 Filed 4-30-91; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

North American Datum 1983 Implementation Plan

Within the continental United States, horizontal positioning data (latitude, longitude, and plane coordinate systems) have been successively based on a series of datums. On December 6, 1988, the Federal Geodetic Control Committee (FGCC) adopted a policy mandating that Federal civilian agencies engaged in surveying and mapping activities convert from the existing North American Datum (NAD) 27 to the new NAD 83. The FGCC provided for an orderly transition by stating that the conversion effort is to be implemented to the extent practicable, legally allowable, and feasible.

MMS NAD 83 Implementation Plan

The Minerals Management Service (MMS) will begin a three-phased conversion to the new official U.S. horizontal control datum, NAD 83 in Fiscal Year 1991. This approach, which should minimize transition difficulties, may require more than 10 years to complete. The goals of this implementation are for the MMS to remain conversant with its constituencies and to develop a uniform cadastre throughout the Outer Continental Shelf (OCS).

Implementation timeframes will be developed on a Region specific basis.

Implementation Phase I

The initial implementation phase will require approximately 3 years. It is intended to identify the survey datum of existing data held by the MMS in each OCS Region (Alaska, Atlantic, Gulf of Mexico, and Pacific), and to ensure that new information submitted to the MMS is compatible with preexisting data.

Phase I will establish control over the flow of information used within the agency. In addition, federally-endorsed datum transformation computer software known as NADCON will be used to convert existing NAD 27-based cadastre coordinates into NAD 83 equivalents. The resulting NAD 83 coordinate equivalents will be made available to the public for orientation and convenience. However, the NAD 83 cadastre equivalents (e.g., block corners and boundary intersections) will not be considered official for legal purposes. An NAD 27 leasehold will continue to reference that datum until the lease is terminated, relinquished, or expires. Further, depending upon the implementation phase of the OCS Region at the time the leasehold is terminated, relinquished, or expires, the block may be redefined on the NAD 83 cadastre. All leasing will be performed on NAD 27 until a Region implements Phase III of this plan or implements it for a standard subdivision of the Region (e.g., a planning area).

During Phase I, NAD 83 will become the datum of preference; however, NAD 27-based information will be permitted provided that the datum (i.e., NAD 27) is explicitly identified. Whenever the datum is unknown, that data will be unacceptable. The MMS will notify their constituencies within the oil and gas industries through notices in the Federal Register and Notices to Lessees, as well as other mailing lists, in an attempt to inform the public of this requirement. Furthermore, all permits to perform geophysical surveys will require the permittee specify the geodetic datum when data are submitted to the MMS.

The end of Phase I, in approximately 1993, coincides with the establishment of a full constellation of Global Positioning System satellites. At that time, it is expected that NAD 83 will be the dominant navigation and positioning system on the OCS.

Implementation Phase II

Phase II will solidify the usage of NAD 83 as the primary survey datum for the agency. The MMS's automated systems such as the Outer Continental Shelf Information System and the Offshore Block, Boundary, and MAP/OPD Information System are scheduled for completion during this phase. These systems are the foundation which facilitate the development of the NAD 83-based cadastre.

Phase II will require that all data submitted to the agency must be referenced to NAD 83. Data based on NAD 27 will be unacceptable without the explicit written permission of the appropriate Regional Director or Program Officer on a case-by-case basis. In Phase II, the offshore cadastre will continue to be defined on NAD 27, with NAD 83 equivalents being made available when appropriate.

Implementation Phase III

Phase III will bring the MMS into full compliance with NAD 83 usage and includes the establishment of a new NAD 83-based OCS cadastre (regridding). The NAD 83 cadastre offshore of the continental United States will strictly adhere to the definitive parameters of the Universal Transverse Mercator (UTM) Projection, using the Geodetic Reference System of 1980 (GRS 80) as the reference ellipsoid. Official Protraction Diagrams (OPD's) will depict a metric grid with full grid blocks being 4800-by-4800 meters throughout the OCS.

The OPD's for Hawaii and the U.S. dependencies will also portray a metric cadastre based upon a strict adherence to the definitive parameters of the UTM. However, due to the physical separation of these areas from the continental United States, the World Geodetic System of 1984 may be used as the reference ellipsoid instead of GRS 80. Since the offshore program in these areas may not be the same as for offshore of the continental United States, a different sized grid (block size) may be used.

Timeframes

Each Regional Director will determine their own NAD 83 implementation timeframes based upon MMS conversion experiences, leased areas, sale activities, and the 5-year schedule. Implementation will proceed on a planning area and/or sale area basis. The timeframes shown below are the current recommendations for implementing NAD 83.

PROJECTED IMPLEMENTATION TIMEFRAMES

OCS region	Phase I	Phase II	Phase III
Alaska	Present–1992	1992–1993	1993–1996.
Atlantic	Present–1992	1992	1992–1997.
Gulf of Mexico	Present–1993	1993–1995	1995–until completed.
Pacific	Present–1993	1993–1995	1995–until completed.

Additional Information

The MMS implementation of NAD 83 is expected to be a long-term, dynamic process, requiring periodic updates or supplementary information. Technical NAD 83-related questions and requests for information should be directed to:

Department of the Interior, Minerals Management Service, Mapping and Survey Group, P.O. Box 25165, MS-4421, Denver, CO 80225, Attn: Leland F. Thormahlen, Phone: (303) 236-7050, FTS: 776-7050.

As official updates to the MMS NAD 83 Implementation Plan become available, they can be obtained from the Public Affairs office in each OCS Region:

Minerals Management Service, Alaska OCS Region, 949 East 36th Ave., rm. 110, Anchorage, AK 99508-4302, Phone: (907) 261-4010, FTS: 869-4010.

Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Blvd., New Orleans, LA 70123-2394, Phone: (504) 736-0557, FTS: 686-0557.

Minerals Management Service, Atlantic OCS Region, 381 Elden St., suite 1109, Herndon, VA 22070-4817, Phone: (703) 787-1113, FTS: 393-1113.

Minerals Management Service, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, CA 93010, Phone: (805) 389-7520, FTS: 663-7520.

Dated: April 23, 1991.

Approved:

Barry A. Williamson,

Director, Minerals Management Service.

[FR Doc. 91-10255 Filed 4-30-91; 8:45 a.m.]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-310]

Alfalfa Products: Conditions of Competition Between the U.S. and Canadian Industries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt on March 27, 1991 of a request from the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332-310, Alfalfa Products: Conditions of Competition Between the U.S. and Canadian Industries in Overseas Markets, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). As requested, the study will focus on the conditions of competition between the United States and Canada in hay products, including alfalfa pellets and cubes (dehydrated and sun-cured). The letter said that USTR was specifically interested in receiving information regarding the competitive conditions of the U.S. and Canadian alfalfa industries in overseas markets, especially in the Pacific Rim countries, and the effects of Canadian government programs on those competitive conditions. As requested by the USTR, the Commission will submit its report not later than December 31, 1991.

EFFECTIVE DATE: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: For information on other than the legal aspects of the study, contact John Pierre-Benoist (202-252-1320) or David Ingersoll (202-252-1309), Agriculture Division, Office of Industries, U.S. International Trade Commission. For information on the legal aspects of the study, contact William Gearhart (202-252-1091), Office of the General Counsel, U.S. International Trade Commission.

BACKGROUND: As requested by the USTR, the Commission will seek to provide in its report, to the extent possible, the following information:

(1) A description of the U.S. and Canadian dehydrated and sun-cured alfalfa products industries, including patterns of production, processing, and consumption since 1981;

(2) A description of the current conditions of trade in dehydrated and sun-cured alfalfa products between the United States, Canada, and the rest of the world, especially the Pacific Rim countries, and any recent changes in such conditions, including information on prices, exchange rates, transportation costs, and marketing practices (to the extent such practices have measurable effects);

(3) A description of the purpose, nature, and use of Federal, State, or Provincial Government (either U.S. or Canadian) programs and policies to assist alfalfa products producers and processors.

(Examples of such programs identified by the USTR) include programs that reduce fixed costs, programs that enhance revenues, and transportation assistance programs. When examining Canadian programs and policies, the Commission, as requested by the USTR, will give special attention to:

(a) Programs affecting transportation costs, including the Western Grain Transportation Act;

(b) Government-funded assistance for conversion of processing facilities, including the Western Economic Diversification Act;

(c) Tax rebates available to Canadian exporters of alfalfa products;

(d) Government-subsidized loans to Canadian alfalfa growers, processors, or exporters; and

(e) Other production, processing, transportation, and export assistance offered by Canada's national or Provincial Governments.

(4) An analysis of the competitive factors in the U.S. and Canadian industries, including a comparison by market regions wherever obtainable, of prices and production costs.

WRITTEN SUBMISSIONS: No public hearing is planned in this investigation. However, interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission should be received by the close of business on August 2, 1991. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

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Hearing impaired persons may obtain information on this study by contacting the Commission's TDD terminal on (202-252-1810).

By order of the Commission.

Issued: April 26, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10279 Filed 4-30-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-300]

Certain Doxorubicin and preparations containing same; Commission Decision To Terminate Remanded Investigation by Dismissing Complaint as Moot

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided to terminate the above-captioned remanded investigation by dismissing the complaint as moot.

ADDRESSES: Copies of the Commission's order and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1092.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: Notice of institution of this investigation was published in the **Federal Register** on June 21, 1989. 54 FR (June 21, 1989). On October 9, 1990, the Commission terminated the investigation with a final determination of no violation of section 337. 55 FR 42077 (October 17, 1990). On motion of the Commission, complainants appeal was terminated for mootness by the United States Court of Appeals for the Federal Circuit because of the expiration of the involved patent. *Erbamount, Inc.* v. *U.S. International Trade Commission* (Appeal No. 91-1072, Orders of March 26 and April 9, 1991). The Federal Circuit vacated the Commission's final determination of October 9, 1990, and remanded the case to the Commission with directions to dismiss the complaint as moot.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and the above-noted orders of the United States Court of Appeals for the Federal Circuit.

By order of the Commission.

Issued: April 22, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10257 Filed 4-30-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-327]

Certain Food Trays With Lockable Lids; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 27, 1991, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Inline Plastics Corporation, 40 Seemans Lane, P.O. Box 290, Milford, Connecticut 06460. Amendments to the complaint were filed on April 10 and April 15, 1991. The complaint, as amended, alleges violations of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain food trays with lockable lids that infringe claims 1 through 8 of U.S. Letters Patent 4,576,330 and claims 1 through 12 of U.S. Letters Patent 4,771,934; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

FOR FURTHER INFORMATION CONTACT: James M. Gould, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1578.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on April 23, 1991, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain food trays with lockable lids, by reason of alleged direct infringement of claims 1 through 8 of U.S. Letters Patent 4,576,330 or claims 1 through 12 of U.S. Letters Patent 4,771,934; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Inline Plastics Corporation, 40 Seemans Lane, P.O. Box 290, Milford, Connecticut 06460.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Par-Pak, Ltd., 65 Duncan Road, Richmond Hill, Ontario, Canada L4C 6J4.

(c) James M. Gould, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401I, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the Notice of Investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint and the Notice of Investigation. Extensions of time for submitting responses to the complaint and Notice of Investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this Notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this Notice, and to authorize the administrative law judge and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this Notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: April 23, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10528 Filed 4-30-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-516 (Preliminary)]

Fresh Kiwifruit From New Zealand; Institution and Scheduling of a Preliminary Antidumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-516 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from New Zealand of fresh kiwifruit, provided for in subheading 0810.90.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 10, 1991.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 F.R. 11918, Mar. 21, 1991), and part 207, subparts A and B (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: April 25, 1991.

FOR FURTHER INFORMATION CONTACT: Jeff Doidge (202-252-1183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on April 25, 1991, by the Ad Hoc Committee for Fair Trade of the California Kiwifruit Commission and Individual California Kiwifruit Growers, Sacramento, CA.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on May 15, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jeff Doidge (202-252-1183) not later than May 10, 1991, to arrange for their appearance. Parties in support of the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submission

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 20, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 26, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10280 Filed 4-30-91; 8:45 am]

BILLING CODE 7020-02-M

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[Investigations Nos. 701-TA-305 (Final) and 731-TA-476 and 478-482 (Final)]

Steel Wire Rope From Argentina, India, Mexico, The People's Republic of China, Taiwan, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations and scheduling of the ongoing countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-476 and 478-482 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina, India, Mexico, the People's Republic of China, Taiwan and Thailand of steel wire rope, provided for in subheadings 7312.10.60 and 7312.10.90 of the Harmonized Tariff Schedule of the United States.[1] the Commission also gives notice of the schedule to be followed in these antidumping investigations and the ongoing countervailing duty investigation regarding imports of steel wire rope from India (inv. No. 701-TA-305 (Final)), which the Commission instituted effective February 4, 1991 (56 FR 8217, February 27, 1991). The schedules for the subject investigations will be identical, pursuant to Commerce's alignment of its final subsidy and dumping determinations (56 FR 11408, March 18, 1991).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202-252-1184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

The subject antidumping investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of steel wire rope from Argentina, India, Mexico, the People's Republic of China, Taiwan and Thailand are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The Commission instituted the subject countervailing duty investigation on February 4, 1991 (56 FR 8217, February 27, 1991). These investigations were requested in a petition filed on November 5, 1990, by The Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers.

Participation in the Investigations and Public Service List

Any person have already filed an entry of appearance in the countervailing duty investigation is considered a party in the antidumping investigations. Any other persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on June 25, 1991, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on July 9, 1991, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 1, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 2, 1991, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is July 5, 1991. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is July 17, 1991; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 17, 1991. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: April 23, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10259 Filed 4-30-91; 8:45 am]

BILLING CODE 7020-02-M

[1] The imported steel wire rope covered by these investigations consists of ropes, cables and cordage, of iron or steel, other than stranded wire, not fitted with fittings or made into articles, and not made of brass plated wire. Such steel wire rope was previously provided for in items 642.14 and 642.16 of the former Tariff Schedules of the United States (TSUS)).

LEGAL SERVICES CORPORATION

Grant Award for Provision of Civil Legal Services to Migrant Farmworkers

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant award.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a grant to provide civil legal assistance to LSC-eligible migrant farmwork clients in Arkansas. Pursuant to the Corporation's announcement of funding availability in Volume 6, No. 49, pages 10577 and 10578 of the **Federal Register** of March 13, 1991, a total of $49,140 will be awarded to Arkansas Legal Services.

This one-year grant is awarded pursuant to authority conferred by sections 1006(a)(1)(B) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 107(f) of this Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATES: All comments and recommendations must be received on or before the close of business on May 31, 1991, at the Office of Field Services, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024-2751.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Manager, Grants & Budget Division, Office of Field Services, (202) 863-1837.

Date Issued: April 26, 1991.

Dated: April 26, 1991.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 91-10282 Filed 4-30-91; 8:45 am]

BILLING CODE 7050-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission/NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 8, 1991 through April 19, 1991. The last biweekly notice was published on April 17, 1991 (56 FR 15637).

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 31, 1991 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the

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subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: February 26, 1991

Description of amendments request: In accordance with NRC Generic Letter 86-10, "Implementation of Fire Protection Requirements," Alabama Power Company (APCO) has incorporated the Joseph M. Farley Nuclear Plant, Units 1 and 2, fire protection program into the Final Safety Analysis Report (FSAR). Based on the guidance provided in NRC Generic Letter 88-12, "Removal of Fire Protection Requirements from Technical Specifications," APCO has proposed changes to the fire protection license conditions and the fire protection portions of the Technical Specifications.

The proposed changes revise the fire protection license conditions 2.C.(4) for Unit 1 and 2.C.(6) for Unit 2 to provide consistency with the standard fire protection license condition contained in Generic Letter 86-10. The proposed changes also (1) delete Unit 1 and Unit 2 fire protection Technical Specifications 3/4.3.3.9, 3/4.7.11.1, 3/4.7.11.2, 3/4.7.11.3, 3/4.7.11.4, 3/4.7.11.5, 3/4.7.12 and associated bases; and (2) delete the minimum fire brigade staffing requirement, Technical Specification 6.2.2(e), for both Units 1 and 2, and revise the footnotes to delete reference to fire brigade staffing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Deletion of Technical Specifications 3/4.3.3.9, "Fire Detection Instrumentation"; 3/4.7.11.1, "Fire Suppression Water System"; 3/4.7.11.2, "Spray and/or Sprinkler Systems"; 3/4.7.11.3, "CO_2 Systems"; 3/4.7.11.4, "Fire Hose Stations"; 3/4.7.11.5, "Yard Fire Hydrants and Hydrant Hose Houses"; 3/4.7.12, "Fire Barrier Penetrations"; and associated bases:

a. The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated because the Technical Specification requirements to maintain the fire protection systems have been replaced with the requirements which appear in

Attachment C to Appendix 9B to the FSAR. The following changes to these Technical Specification requirements have been made to the requirements which appear in Attachment C to Appendix 9B to the FSAR.

* The special reporting requirement was deleted for inoperable fire protection equipment.

* The reference to Specifications 3.0.3 and 3.0.4 was deleted.

* The shutdown and startup requirements of Technical Specifications 3.0.3 and 3.0.4 which apply to Technical Specification 3/4.7.11.1, Action Statement b will be incorporated into plant procedures.

* The lists of fire detection instrumentation were updated to reflect Appendix R commitments.

* The requirement to provide an alternate backup pump or supply in the event that a backup pump or supply is not available was added.

* The requirement that each fire pump develop at least 2500 gpm at a system head of 125 psi was revised to specify at least 2500 gpm at a differential head of 125 psi.

* The lists of fire suppression systems were updated to reflect Appendix R commitments.

The operability and surveillance requirements will be maintained in the FSAR and plant procedures where changes must be evaluated in accordance with 10 CFR 50.59. The provisions of 10 CFR 50.59 allow changes to be made to the FSAR and plant procedures without prior NRC approval. Changes to the fire protection program in the FSAR and plant procedures may be made only if the changes will not adversely affect the ability to achieve and maintain safe shutdown. Per Technical Specifications 6.5.1.6(b) and 6.5.1.7(a), the Plant Operations Review Committee (PORC) will continue to review safety evaluations prepared in accordance with the provisions of 10 CFR 50.59 for changes to the fire protection program implementation and recommend in writing approval or disapproval of such safety evaluations to the General Manager-Nuclear Plant. Additionally, Technical Specification 6.8.1(f) requires that written procedures be established, implemented and maintained covering the fire protection program implementation. These administrative controls will ensure that changes to the operability and surveillance requirements are performed in accordance with 10 CFR 50.59 and will not involve an increase in the probability or consequences of an accident or adversely affect the ability to achieve and maintain safe shutdown. Therefore, the deletion of Technical Specifications 3/4.3.3.9, 3/4.7.11.1, 3/4.7.11.2, 3/4.7.11.3, 3/4.7.11.4, 3/4.7.11.5 and 3/4.7.12 and the placement of the same operability and surveillance requirements into the FSAR and plant procedures will not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The requirements to maintain operability of the detection instrumentation, the fire suppression water system, the spray and/or sprinkler systems, the CO_2 systems, the fire hose stations, the yard fire hydrants and hydrant hose houses, and the fire barrier penetrations and to perform surveillance requirements to ensure operability of these systems are retained; these requirements have simply been moved from the Technical Specifications to the FSAR. Plant procedures will be developed from the existing procedures that implement this Technical Specification to provide specific instructions for implementing the operability and surveillance requirements. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated will not be created by these changes.

c. The proposed changes will not involve a significant reduction in the margin of safety because the operability and surveillance requirements will be maintained in the FSAR and plant procedures where changes must be evaluated in accordance with 10 CFR 50.59.

The provisions of 10 CFR 50.59 allow changes to be made to the FSAR and plant procedures without prior NRC approval. Changes to the fire protection program in the FSAR and plant procedures may be made only if the changes will not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. Additionally, the administrative controls discussed in item (a) above will ensure that changes to these operability and surveillance requirements are performed in accordance with 10 CFR 50.59 and will not involve a reduction in a margin of safety or adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. Therefore, the deletion of these technical specifications and the placement of the same operability and surveillance requirements into the FSAR and plant procedures will not involve a significant reduction in the margin of safety.

2. Deletion of the Fire Brigade Minimum Staffing Requirement, Technical Specification 6.2.2(e):

a. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated because the Technical Specification requirements to maintain the Fire Brigade staffing will be replaced by the requirements which are discussed in detail in Appendix 9B to the FSAR. This administrative control will be maintained in the FSAR where changes must be evaluated in accordance with 10 CFR 50.59. The provisions of 10 CFR 50.59 allow changes to be made to the FSAR without prior NRC approval. Changes to the fire protection program in the FSAR may be made only if the changes will not adversely affect the ability to achieve and maintain safe shutdown. Per Technical Specifications 6.5.1.6(b) and 6.5.1.7(a), the PORC will continue to review safety evaluations prepared in accordance with the provisions of 10 CFR 50.59 for changes to the fire protection program implementation and recommend in writing approval or disapproval of such safety evaluations to the General Manager-Nuclear Plant. Additionally, Technical Specification 6.8.1(f) requires that written procedures be established, implemented and maintained covering the fire protection program implementation. These established administrative controls will ensure that changes to this requirement are performed in accordance with 10 CFR 50.59 and will not involve an increase in the probability or consequences of an accident or adversely affect the ability to achieve and maintain safe shutdown. Therefore, the deletion of Technical Specification 6.2.2(e) and the placement of the same requirement into the FSAR will not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The requirement to maintain minimum fire brigade staffing is retained; this requirement has simply been moved from the Technical Specifications to the FSAR. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated will not be created by this change.

c. The proposed change will not involve a significant reduction in the margin of safety because this administrative control will be maintained in the FSAR where changes must be evaluated in accordance with 10 CFR 50.59. The provisions of 10 CFR 50.59 allow changes to be made to the FSAR without prior NRC approval. Changes to the fire protection program in the FSAR may be made only if the changes will not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. Additionally, the established administrative controls discussed in item (a) above will ensure that changes to this requirement are performed in accordance with 10 CFR 50.59 and will not involve a reduction in the margin of safety or adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. Therefore, the deletion of this technical specification and the placement of the same operability and surveillance requirements into the FSAR will not involve a significant reduction in the margin of safety.

3. Revision of Minimum Staffing Requirements Footnote on Technical Specification Page 6-2:

a. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated because the change is an editorial clarification. The footnote provides an exception to the minimum staffing requirements for the fire brigade and the health physics technician. The exception to the minimum staffing requirements for the fire brigade has been replaced by the requirements which are discussed in Appendix 9B to the FSAR, along with the minimum fire brigade staffing requirements. The changes to the exception to the health physics technician staffing requirements (Footnote on Page 6-2) are necessary as a result of the removal of the fire brigade from the footnote. These changes are strictly editorial. Therefore, this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The requirement to maintain

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minimum fire brigade staffing is retained; this requirement has simply been moved from the Technical Specifications to the FSAR. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated will not be created by this change.

c. The proposed change will not involve a significant reduction in the margin of safety because this administrative control will be maintained in the FSAR where changes must be evaluated in accordance with 10 CFR 50.59. The provisions of 10 CFR 50.59 allow changes to be made to the FSAR without prior NRC approval. Changes to the fire protection program in the FSAR may be made only if the changes will not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. Additionally, the established administrative controls discussed in item (a) above will ensure that changes to this requirement are performed in accordance with 10 CFR 50.59 and will not involve a reduction in the margin of safety or adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. Therefore, the deletion of this technical specification and the placement of the same operability and surveillance requirements into the FSAR will not involve a significant reduction in the margin of safety.

4. Revision of Unit 1 license condition 2.C.(4) and Unit 2 license condition 2.C.(6):

a. The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated. The existing license conditions require all provisions of the approved fire protection program to be maintained in effect, and require that any changes which would decrease the effectiveness of the fire protection program receive prior Commission approval. The new license conditions also require all provisions of the approved fire protection program to be maintained in effect, and that changes to the fire protection program be made under the provisions of 10 CFR 50.59 only if the changes will not adversely affect the ability to achieve and maintain safe shutdown. The new license conditions simply change the criteria by which Alabama Power Company is authorized to make changes to the program without prior NRC approval. These new criteria preserve the ability to achieve and maintain safe shutdown of the plant in the event of a fire. The overall objective of the existing fire protection program and license conditions is to ensure safe shutdown of the plant in the event of a fire. Therefore, the new license conditions are consistent with the objective of the existing license conditions and NRC Generic Letter 86-10. Consequently, these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The new license conditions will ensure that the ability to achieve and maintain safe shutdown in the event of a fire is preserved. Since these new license conditions are consistent with the objective of the old license conditions, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. The proposed changes will not involve a significant reduction in the margin of safety. All modifications identified in Tables 1, 2 and 3 of the NRC's Joseph M. Farley Safety Evaluation Report, Fire Protection Review, Unit Nos. 1 and 2 dated February 12, 1979 have been dispositioned, as required by the existing Unit 1 and Unit 2 license conditions. Administrative control changes and procedure revisions discussed in the February 12, 1979 SER have been completed and Commission approval of design modifications which would allow the reactor to be taken to cold shutdown without reliance on the cable spreading room or control room was obtained, as required by the existing Unit 1 license condition. Appendix 9B to the FSAR documents Alabama Power Company's compliance with the fire protection program set forth in Appendix R to 10 CFR Part 50 in accordance with the requirements of paragraph 50.48 of 10 CFR Part 50, which is required by the existing Unit 2 license condition. Therefore, all provisions of acceptance in the existing license conditions have been addressed and the adoption of the proposed new license conditions simply changes the criterion by which Alabama Power Company is authorized to make changes to the approved program. As discussed in a. above, the new license conditions are consistent with the objective of the existing license conditions. Accordingly, these proposed changes will not involve a significant reduction in the margin of safety.

The licensee has concluded that the proposed amendments meet the three standards in 10 CFR 50.92 and, therefore, involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302.

Attorney for licensee: Mr. James H. Miller, III, Esq., Balch and Bingham, P. O. Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Project Director: Anthony J. Mendiola, Acting

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: March 28, 1991, as supplemented on April 16, 1991.

Description of amendments request: The proposed amendments will make editorial changes and administrative corrections to the Licenses and Technical Specifications (TSs) for both Calvert Cliffs Units 1 and 2 (CC-1/2). The original TSs for CC-1/2 had many pages which were identical in content and annotated with both unit numbers. As changes have been made to the TSs, the annotations remain on pages which are not identical anymore. Many pages throughout the TSs are also double-sided. This situation has contributed to copying and amendment numbering problems. The proposed amendments were submitted in an effort to eliminate the administrative problems that both of these situations have created and to make several editorial changes. In addition, several administrative corrections have been identified and are included in the proposed amendments.

These amendments will make the following editorial changes throughout the Licenses and Technical Specifications for Units 1 and 2:

Make all pages Unit specific

Make all pages single-sided

Remove all intentionally blank pages

Renumber pages which are alpha-numeric

Place Defined Terms (Section 1.0) in alphabetical order

Capitalize the first letter of system names

Change the Index to the Table of Contents

Place numbers by the LCOs so they are consistent with the Table of Contents

Renumber the Figures and Tables so they are in numerical order and change references accordingly

Remove outdated footnotes

In addition to the editorial changes, the proposed amendments will make several corrections involving discrepancies in both sets of TSs. These were determined to be administrative in nature after being researched to ensure that they do not constitute a substantive change to the TSs. The requested corrections are briefly described below with detailed justification provided in the submittal requesting the amendments.

1.Table 2.2-1 (Units 1 & 2) Correct the typographical error which changed the units for the Thermal Margin/Low Pressure Allowable Value Limit from "psia" to "psig."

2.Bases 2.1.2 (Unit 1) Correct the typographical error which transposed the hydrotest pressure for the Reactor Coolant System from "3125 psia" to "3215 psia" in Bases 2.1.2.

3.Section 3/4.1.1.1 Reinsert the asterisk (*) that provide (Units 1 &2)application of the footnote in 3/4.1.1.1 to each of the three references to "the limit line of Figure 3.1-1b."

4.Specification 4.1.1.1.1 Add the word "line" after limit in this (Unit 1) Surveillance Requirement.

5.Table 3.3-3 (Unit 2) Make a more complete entry for Auxiliary Feedwater Actuation System of Table 3.3-3.

6.Table 3.3-5 (Unit 2) Reinsert note (1) of Table 3.3-5 as referenced by item 4.a of the Table.

7 Table 3.3-6 (Units 1 & 2) Correct the typographical error which transposed the trip setpoint of the Containment Purge and Exhaust Isolation Area Radiation Monitor from 220 mr/hr to 200 mr/hr in Table 3.3-6.

8.Table 4.3-4 (Units 1 & 2) Make "Seismic Acceleration Recorder" the title of item 3.

9.Table 3.3-11 (Units 1 & 2) Correct transcription errors in Table 3.3-11. These include an incorrect room number, transposed detector numbers, and a duplicate listing.

10.Table 3.6-1 (Unit 2) Add the isolation times associated with Containment Isolation Valves for Penetration 1A in Table 3.6-1.

11.Specification 4.6.5.1Renumber the Surveillance Requirement (Units 1 & 2) 4.6.5.1 and 4.6.5.2 to 4.6.5.1.1 and 4.6.5.1.2.

12.Specification 3.7.1.1.a Reinsert the phrase "next 6 hours and in (Unit 1) COLD SHUTDOWN within the" into the last sentence of 3.7.1.1.a.

13.Section 3/4.7.8 (Unit 1) Correct references to Surveillance Requirements.

14.Specification 4.9.12.c Add the "1.52" to a reference to (Units 1 & 2) Regulatory Guide 1.52.

15.Section 3/4.12.1Restore the title "Monitoring Program" (Units 1 & 2) to LCO 3/4.12.1.

16.Bases 3/4.2.2, 3/4.2.3,Delete duplicate, incorrect Bases text. 3/4.2.4 (Unit 1)

17.Bases 3/4.7.1.6 Remove Bases for deleted LCO 3.7.1.6 and (Units 1 & 2) SR 4.7.1.6.

18.Specification 6.4.1Change Appendix "A" of 10 CFR Part 55 to (Units 1 & 2) 10 CFR 55.59(c).

19.Specification 6.5.2.2Add phrase "and shall collectively have (Unit 2) expertise in all of the areas of 6.5.2.1" to the last sentence of 6.5.2.2.

20.Specification 6.10.2Delete 6.10.2 Item 1, as it refers to (Units 1 & 2) requirements for Records of Environmental Qualification which no longer exist in Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Would not involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed changes and corrections are editorial and administrative and do not constitute a substantive change to the Technical Specifications. Therefore, the changes and corrections do not involve a significant increase in the probability or consequence of an accident previously evaluated.

(2) Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed changes and corrections do not modify the plant's configuration or operation as they are editorial and administrative. As a result, no new accident initiators are introduced. Therefore, the changes and corrections do not create the possibility of a new or different type of accident from any accident previously evaluated.

(3) Would not involve a significant reduction in a margin of safety.

As the proposed changes and corrections are editorial and administrative and do not constitute a substantive change to the Technical Specifications, the margin of safety is not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC. 20037.

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: March 27, 1991

Description of amendments request: The proposed amendment would relocate certain cycle specific core operating limits from the Technical Specifications, to a Core Operating Limits Report (COLR). This request is in response to NRC Generic Letter 88-16, "Removal of Cycle-Specific Parameter Limits from Technical Specification."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The removal of the cycle-specific core operating limits from the Zion Station Technical Specifications has no influence or impact on the probability or consequences of any accident previously evaluated. The cycle-specific core operation limits, although not in Technical Specifications, will be followed in the operation of the Zion Station. The proposed amendment still requires exactly the same actions to be taken when or if limits are exceeded as is required by current Technical Specifications. The cycle-specific limits within the COLR will be implemented and controlled per Zion procedures. Each accident analysis addressed in the Zion Final Safety Analysis Report (FSAR) will be examined with respect to changes in cycle dependent parameters, which are obtained from application of the NRC approved reload design methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analysis. This examination, which will be performed per the requirements of 10 CFR 50.59, ensures that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated. Since this examination will be performed per the requirements of 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The removal of the cycle specific variables has no influence or impact, nor does it contribute in any way to the probability or consequences of an accident. No safety related equipment, safety function, or plant operations will be altered as a result of this proposed change. The cycle specific variables are calculated using the NRC approved methods and submitted to the NRC to allow the Staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken, when or if limits are exceeded.

Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is not affected by the removal of cycle specific core operating limits from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remains unchanged. Appropriate measures exist to control the values of these cycle specific limits. The proposed amendment continues to require operation within the core limits as obtained from the NRC approved reload design methodologies and appropriate

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actions to be taken, when or if limits are exceeded.

The development of the limits for future reloads will continue to conform to those methods described in the NRC approved documentation. In addition, each future reload will involve a 10 CFR 50.59 safety review to assure that operation of the unit within the cycle specific limits will not involve a significant reduction in a margin of safety. Since each future reload will involve a 10 CFR 50.59 safety review, no reduction (significant or insignificant) in a margin of safety will be allowed.

Therefore, the proposed changes are administrative in nature and do not impact the operation of the Zion Station in a manner that involves a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: April 1, 1991

Description of amendments request: The proposed change would add a new section to the Technical Specifications to provide an alternate method of controlling high radiation areas, in lieu of the requirements of 10 CFR 20.203(c)(2) and (4).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects administrative controls exercised to restrict access to high radiation areas by plant personnel and does not affect the operations of plant systems. Since the proposed change affects administrative controls, accident initiators, accident assumptions, and off-site dose consequences will not be affected. This change, therefore, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change affects administrative controls exercised to restrict access to high radiation areas by plant personnel and does not affect the operations of plant systems. The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated for the Zion Nuclear Generating Station.

3. The proposed changes do not represent a significant reduction in a margin of safety.

The proposed change is administrative in nature and does not alter the manner in which equipment required for safe operation of the plant is operated. There are no setpoint, or operational limitations being altered or changed as a result of these revisions. As such, these changes do not represent a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: March 22, 1991

Description of amendment request: The proposed amendment reflects the addition of another weld location on a feedwater line that is addressed in Table 4.0-1 of Technical Specification 4.0.6, "Augmented In-Service Inspection Program."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *Involve a significant increase in the probability or consequences of an accident previously evaluated.*

The proposed Technical Specification change does not alter the inspection of high-energy break locations in accordance with the Augmented In-Service Inspection Program. This change simply adds an additional weld that will require the same inspections that are listed in Table 4.0-1, volumetric and visual examinations.

The feedwater and the auxiliary feedwater system parameters and performance are not affected by the volumetric or visual examinations of pipe welds. Therefore, the Technical Specification revision will not adversely affect the operability or reliability of the feedwater system at the Haddam Neck Plant.

No design basis accidents are affected by this change. Therefore, there is no impact on the probability of occurrence or the consequences of any design basis events. No safety systems are adversely affected by the change.

2. *Create the possibility of a new or different kind of accident from any previously evaluated.*

Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. There is no impact on plant response to the point where it can be considered a new accident, and no new failure modes are introduced.

The proposed change specifies that an inspection be performed on a weld in the feedwater system. The inspection will help ensure the integrity of that weld and at the same time will in no way adversely affect the weld or the piping.

3. *Involve a significant reduction in margin of safety.*

This proposed change will not decrease the margin of safety. The Technical Specification directed Augmented In-Service Inspection Program is intended to maintain the margin of safety by monitoring weld integrity. Adding this additional inspection location is consistent with this purpose. Testing as specified contributes to rather than detracts from the margin of safety.

There are no adverse impacts on the protective boundaries, safety limits, or margins to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: April 12, 1991

Description of amendment request: The proposed amendment would reissue all pages of the Big Rock Point Technical Specifications (TS), correcting a number of editorial errors, such as formatting and page numbering, which have occurred in the TS due to various causes. The accumulation of a great number of these minor errors has necessitated the reissuance of the entire text of the TS, as opposed to a number of corrected pages. The changes proposed by the licensee are all of an administrative nature and would not significantly change any of the existing TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) All of these proposed changes are administrative in nature. They do not involve modification to any existing equipment, systems, or components, and do not change any existing administrative controls or revise any limitations on existing equipment.

(2) These proposed changes correct editorial and typographical errors; correct errors made in prior amendments; and correct minor administrative differences involving format such as elimination of blank pages and changes to page numbering. These proposed changes, therefore, do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(3) Because these changes do not involve any equipment modifications or revise any limitations on existing equipment, they also do not create the possibility of a new or different kind of accident previously evaluated nor do they involve a significant reduction in a margin of safety.

Consequently, these proposed modifications do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: L. B. Marsh.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: January 9, 1991

Description of amendment request: This amendment would modify the Technical Specifications (TS) to reflect fuel reloading for Catawba Unit 1's Cycle 6 operation with fuel manufactured by the B&W Fuel Company (BWFC Mark BW fuel assemblies). Cycle 6 operation would then be based on a mixed core containing 72 fuel assemblies of the Mark BW design and 121 of the Westinghouse OFA design. The TS would be modified to accommodate the influence of the Cycle 6 core design on power peaking, reactivity, and control rod worths in conjunction with changes in the reload analysis methodology. The changes in methodology have been or will be reviewed separately by the NRC staff in its review of numerous B&W and Duke Power Company (DPC) sponsored topical reports which are identified in the references for the amendment application.

The current TS will continue to be applicable to Unit 2. Therefore, separate sections of parts of the combined TS for the two units will be created for each unit. Specifically, the TS changes would include those to TS 2.1, Core Safety Limit, to reflect the changed critical heat flux correlation, the increased F (delta H) for Mark-BW fuel, reduced minimum reactor coolant system (RCS) flow; to TS 2.2.1, RTS Instrumentation Trip setpoints to reflect completion of the RTD bypass removal, reduced minimum measured RCS flow and increased error allowances on certain reactor trip instrumentation; to TS 3/4.2.1, Axial Flux Difference, to delete reference to baseload operation; to TS 3/4.2.2, Heat Flux Hot Channel Factor, to reflect the changed methodology for this parameter; to TS 3/4.2.3, Nuclear Enthalpy Rise Hot Channel Factor, to reflect the changed methodology for this parameter and the separation of the RCS flowrate from it; to TS 3/4.2.4, Quadrant Power Tilt Ratio, to reflect increase of the tilt ratio at which a power reduction is required and to rewrite the LCO to be consistent with the Westinghouse Standard Technical Specification; to TS 3/4.2.5, DNB parameters, to incorporate RCS flowrate as a DNB parameter, to remove the power/flow tradeoff dependance on thermal power and to reflect the reduced measured RCS flowrate; TS 4.5.2.h, ECCS subsystem operability, to change the requirements for flow and developed pressure to be consistent with the revised accident analysis flow assumptions; associated changes in the BASES for the TS discussed above; and changes to the Reporting Requirements of TS 6.9.1.9 to reflect the changes to the BWFC operating limit methodology that must be included in the Core Operating Limits Report.

Basis for proposed no significant hazards consideration determination:

I. SAFETY LIMITS (TS 2.1, 2.2) AND POWER DISTRIBUTION (TS 3/4.2.1, 3/4.2.2, 3/4.2.3, 3/4.2.4, and 3/4.2.5)

The fuel for Catawba Nuclear Station Cycles 1-5, for both Units 1 and 2, is Westinghouse supplied. The fuel for at least Cycles 6-9 of Catawba Unit 1 will be supplied by B&W Fuel Company. The Catawba Unit 1, Cycle 6 Reload Safety Evaluation Report attached to the TS amendment application demonstrates that the core reload using Mark-BW fuel will not adversely impact the safety of the plant. Methods and models have been developed to support Catawba Unit 1 operation during both normal and off normal operation. These methods and models ensure safe operation with an entire core of Mark-BW fuel and with a core of mixed Westinghouse and Mark-BW fuel. The analysis methods are documented in Topical Reports which are identified in the amendment application.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

For the reload-related Technical Specifications the probability or consequences of an accident previously evaluated is not significantly increased.

A LOCA evaluation for operation of Catawba Nuclear Station with Mark-BW fuel has been completed (BAW 10174, Mark-BW Reload LOCA Analysis for the Catawba and McGuire Units). Operation of the station while in transition from Westinghouse supplied OFA fuel to B&W supplied Mark-BW fuel is also justified in this topical.

BAW 10174 demonstrates that Catawba Nuclear Station continues to meet the criteria of 10 CFR 50.46 when operated with Mark-BW fuel.

Large Break LOCA calculations completed consistent with an approved evaluation model (BAW 10168P and revisions) demonstrate compliance with 10 CFR 50.46 for breaks up to and including the double ended severance of the largest primary coolant pipe. The small break LOCA calculations used to license the plant during previous fuel cycles are shown to be bounding with respect to the new fuel design. This demonstrates that the plant meets 10 CFR 50.46 criteria when the core is loaded with Mark-BW fuel.

During the transition from Westinghouse OFA fuel to Mark-BW fuel, both types of fuel assemblies will reside in the core for several fuel cycles. Appendix A to BAW-10174 demonstrates that results presented above apply to the Mark-BW fuel in the transition core, and that insertion of the Mark-BW fuel will not have an adverse impact on the cooling of the Westinghouse fuel assemblies.

BAW 10173P, Mark-BW Reload Safety Analysis for the Catawba and McGuire Units, provides evaluations and analyses for non-LOCA transients which are applicable to

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Catawba. The scope of BAW 10173P includes all events specified by sections 15.1-15.6 of Regulatory Guide 1.70 (Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants) and presented in the Final Safety Analysis Report for Catawba. The analysis and evaluations performed for BAW 10173P confirm that operation for Catawba Nuclear Station for reload cycles with Mark-BW fuel will continue to be within the previously reviewed and licensed safety limits.

One of the primary objectives of the Mark-BW replacement fuel is compatibility with the resident Westinghouse fuel assemblies. The description of the Mark-BW fuel design, and the thermal-hydraulics and core physics performance evaluation demonstrate the similarity between the reload fuel and the resident fuel. The extensive testing and analysis summarized in BAW 10173P shows that the Mark-BW fuel design performs, from the standpoint of neutronics and thermal-hydraulics, within the bounds and limiting design criteria applied to resident Westinghouse fuel for the Catawba plant safety analysis.

Each FSAR accident has been evaluated to determine the effects of Cycle 6 operation and to ensure that the radiological consequences of hypothetical accidents are within applicable regulatory guidelines, and do not adversely affect the health and safety of the public. The design basis LOCA evaluations assessed the radiological impact of differences between the Mark-BW fuel and Westinghouse OFA fuel fission product core inventories. Also, the dose calculation effects from non-LOCA transients reanalyzed by BWFC utilizing Cycle 6 characteristics were evaluated.

Differences in the current FSAR dose values that are not related to the insertion of Mark-BW fuel reflect the application of the latest revisions to Standard Review Plan dose assessment methodology. The calculated radiological consequences are all within specified regulatory guidelines and contain significant levels of margin.

The analyses contained in the referenced Topical Reports indicate that the existing design criteria will continue to be met. Therefore, these TS changes will not increase the probability or consequences of an accident previously evaluated.

As stated in the above discussion, normal operational conditions and all fuel-related transients have been evaluated for the use of Mark-BW fuel at Catawba Nuclear Station. Testing and analysis were also completed to ensure that from the standpoint of neutronics and thermal-hydraulics the Mark-BW fuel would perform within the limiting design criteria. Because the Mark-BW fuel performs within the previously licensed safety limits, the possibility of a new or different accident from any previously evaluated is not created.

The safety analyses performed in support of any reload necessarily involve the assumption of a number of input parameter values. Because of the differences in methodologies between vendors, and the proprietary nature of the analyses, a side-by-side comparison of input assumptions is generally neither possible nor useful. Reactor Coolant System flow is an exception, because it is a TS constrained and measurable value. The B&W analyses referenced in the above discussion assumed an RCS flow of 385,000 gpm. TS have been changed to reflect this new value (in Table 2.2-1, footnote, loop minimum measured flow = 96,250 gpm, and Figure 3.2-1, Rated Thermal Power vs. Flow). The change also affects Figure 2.1-1, Reactor Core Safety Limits. Because the new safety limits continue to provide assurance that DNB, and hot leg boiling will not occur, this change does not represent a significant decrease in the margin of safety.

The reload-related changes to the TS do not involve a significant reduction in the margin of safety. The calculations and evaluations documented in BAW 10174 show that Catawba will continue to meet the criteria of 10 CFR 50.46 when operated with Mark-BW fuel. The evaluation of non-LOCA transients documented in BAW-10173P also confirms that Catawba will continue to operate within previously reviewed and licensed safety limits. Because of this, the TS changes to support the use of Mark-BW fuel will not involve a significant reduction in the margin of safety.

Several changes have been made to Table 2.2-1. These changes reflect updated plant specific instrument uncertainty calculations. The allowable values for both the power range neutron flux high setpoint and the low RCS flow trips are conservatively being made more restrictive as a result of this error calculation. The S and Z terms are used to determine the operability of a channel if the trip setpoint exceeds its allowable value. The modification to the S and Z values for high pressurizer pressure permit a larger rack drift before the channel must be declared inoperable. The changes to the S and Z values for the high and low neutron flux trips conservatively restrict the rack drift.

The changes to Table 2.2-1 will not significantly increase the probability or consequences of an accident previously evaluated. The changes to the allowable values for the power range neutron flux (high setpoint) and low RCS flow, and the S and Z values for power range neutron flux (both setpoints), are conservative. The modification to the Z value permits a larger rack drift for pressurizer pressure, low RCS flow, and overtemperature delta-T before the channel becomes inoperable, however, these changes more accurately represent expected values, and are within the safety analysis assumptions. For similar reasons, it can be concluded that these changes will not create the possibility of any new accident from those previously evaluated. It can also be concluded that since all new TS values are bounded by safety analysis assumptions that this change will not significantly decrease the margin of safety.

Several of the requested amendments are administrative in nature. The requested change which updated Table 2.2-1 for deletion of the RTD Bypass System, reflects a change which has been previously approved by the NRC (Amendment No. 40 to Facility Operating License NPF-35 and Amendment No. 33 to Facility Operating License NPF-52). Since the needed modifications have been completed on both Catawba Units 1 and 2 the TSs which no longer apply are being deleted. Since there is no change in requirements this change does not involve significant hazards considerations.

An administrative change has been requested for TS 3.2.4 to delete "above 50% of RATED THERMAL POWER" from the LCO, and add it to the Applicability section. A statement that "The provisions of 3.0.4 are not applicable" was also added which would clarify that the surveillance requirement would be completed above 50% RATED THERMAL POWER. This change is consistent with both the Westinghouse Standard Technical Specifications and the way the plant is currently operated. Since there is no change to the current requirements this change is administrative in nature, and involves no significant hazards considerations.

An administrative change is being made to the TS which apply to Unit 2, and no longer apply to Unit 1 after the reload. The current Figure 2.1-1 has been relabeled as applicable to Unit 2 only. Table 2.2-1 also notes that the existing Reactor Coolant flow applies only to Unit 2 and the new Reactor Coolant flow (96,250) applies to Unit 1. The Applicability Section of the Power Distribution TS (3/4.2.1, 3/4.2.2, 3/4.2.3, 3/4.2.4) have also been revised to show that the existing TS still apply to Unit 2. The existing TS will be copied on yellow paper to further distinguish them from the new TS which apply to Unit 1 only. The Power Distribution TS will have an "A" in the page number for Unit 1 and a "B" for Unit 2, the pages will also be marked "Unit 1" or "Unit 2". This change is administrative only, and is being made to distinguish between the TS for Unit 1, which will be operated with TS revisions which reflect the use of Mark-BW fuel, and Unit 2 which will continue to operate with Westinghouse supplied fuel.

II. EMERGENCY CORE COOLING SYSTEMS (TS 3/4.5)

The proposed changes to TS 3/4.5 (Emergency Core Cooling Systems) consist of an administrative change to remove TS related to the Upper Head Injection System and revisions to the required flowrates for the centrifugal charging pumps and safety injection pumps.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no siginficant hazards consideration which is presented below:

The proposed revisions to the required flowrates for the centrifugal charging pumps and safety injection pumps do not involve a significant increase in the probability or consequences of an accident previously evaluated. The new pump flowrates represent a change in the assumptions made in the LOCA analysis, not a physical change in the plant. The increase in the required centrifugal charging pump flows is small, and both Catawba Units currently meet the new requirement. The required flowrate for the safety injection pumps has been lowered to allow for instrument uncertainty and to allow for a reasonable tolerance in the acceptance criteria for injected flow imbalance between the four injection lines. Lowering the safety injection pump flows will be acceptable with respect to the existing LOCA analysis, because as discussed above there is excess flow available from the centrifugal charging pumps. Since a total ECCS flow value is assumed in the LOCA analysis, lowering the required flow for the safety injection pumps is acceptable for the current LOCA analysis, as long as the total ECCS flow assumed in the LOCA analysis remains available. Because the new TS requirements are consistent with both the new and the existing LOCA analyses, neither the probability or the consequences of an accident previously evaluated will be significantly increased.

The proposed Technical Specifications meet the criteria of both the new and the existing LOCA analysis. No changes have been made in the plant, and both Catawba units are currently operating within the proposed TS. Since a total ECCS flow is assumed in the LOCA analysis increasing the required centrifugal charging pump flow to account for a decrease in required safety injection flow insures that the existing LOCA analysis remains valid with the new TS requirements. Because the new TS values ensure that both the new and existing LOCA analysis remain valid, this change will not create the possibility of a new or different accident from any previously evaluated.

The LOCA analysis assumes a minimum ECCS flow. Both the new and the existing LOCA analyses remain valid with the proposed TS changes. Because the LOCA analysis remains valid, this change will not involve a significant reduction in the margin of safety.

The following changes are administrative in nature. The deletion of Specifications in Section 3/4.5.1 which require the UHI System to be operable in the applicability, and 3.5.1.2 which is marked in the TS to be deleted when UHI is physically disconnected from the Reactor Coolant System, also reflects a change which was previously approved by the NRC (Amendment No. 32 to Facility Operating License NPF-35 and No. 23 to Facility Operating License NPF-52). Since the needed modifications have been completed on both Catawba Units 1 and 2, the TSs which no longer apply are being deleted. Another adminstrative change is changing "pressurizer" pressure to "Reactor Coolant System" pressure in ACTION C.1, C.2, and C.3 to TS 3.5.1.1.2. This change is administrative because it reflects the instrument used by the plant to complete the required ACTIONS. Since Pressurizer pressure goes off scale low at 1700 psig, it cannot be used to measure pressure below 1000 psig as stated in the current TS. Since there is no change in requirements, this change does not involve significant hazards considerations.

III. REPORTING REQUIREMENTS (TS 6.9.1.9)

There has been an administrative change proposed to TS 6.9.1.9, Core Operating Limits Report (COLR) to reflect the use of BWFC methodology and analyses. Notes on Attachment 1 for Specification 6.9.1.9 are added to provide clarifications. The BWFC references added as Attachment 2 to TS 6.9.1.9 reflect the use of BWFC methodology to determine the cycle specific limits in the COLR.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

This change is administrative in nature, reflecting the use of NRC approved methodology to determine the operating limits in the COLR. The use of BWFC methodology and analysis has been previously justified in this submittal. The administrative change to the references for the COLR will not increase the probability or consequences of an accident previously evaluated. For the above reasons, it can also be concluded that this change will not create the possibility of a new or different accident from any previously evaluated.

The use of BWFC methodology and analyses have been previously determined to be acceptable by the NRC, and their use to determine the operating limits for Catawba, Unit 1, Cycle 6, is previously justified in this submittal. Because this change is administrative, simply listing the methodologies already determined to be acceptable, it does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis as discussed in Sections I, II and III above, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: February 05, 1991

Description of amendment request: The amendment would make schedular changes to conditions numbered 2.c(12)(a) for Unit 1 and 2.c(8)(a) for Unit 2 to allow several additional fuel cycles for the generic resolution of the cold leg accumulator pressure and level instrumentation issue. This would allow the NRC staff's generic review of the need for environmentally qualified category 2 instrumentation to monitor accumulator tank level and pressure to be completed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment would not involve a significant increase in the probability of an accident previously evaluated because the accumulator level and pressure are provided for preaccident monitoring of the status of the cold-leg accumulators and as such have no effect on cause mechanisms.

The proposed amendment would not create the possibility of a new or different kind of accident than previously evaluated since the design and operation of the unit will not be affected.

The proposed amendment would not cause a significant reduction in a margin of safety. The extension of time in which to resolve the accumulater instrumentation issue would have no impact on safety margins since the instrumentation is fully qualified for its intended function of preaccident monitoring of the cold-leg accumulators.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 02, 1991

Description of amendment request: The proposed amendment would change the visual inspection requirements for snubbers in Technical Specification 4.7.8 in response to the guidance provided in the NRC's Generic Letter 90-09 'Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions." The licensee states that the proposed changes would replace the current snubber visual inspection schedule with a new snubber visual inspection schedule and would revise the visual inspection acceptance criteria to mirror the visual inspection acceptance criteria contained in the generic letter.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

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The proposed amendment does not involve an increase in the probability or consequences of any previously evaluated accident. This amendment provides an alternate schedule for the visual inspection of snubbers which maintains the same confidence level in the snubbers ability to operate within a specified acceptance level. The accident analyses are therefore unaffected by this proposal.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated since the confidence level in the number of snubbers available has not been changed.

The proposed amendment does not involve a significant reduction in a margin of safety. This amendment provides an alternate schedule for the visual inspection of snubbers which maintains the same confidence level in the snubbers ability to operate within a specified acceptance level. The margin of safety is therefore unaffected by this proposal.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: February 11, 1991

Description of amendment request: The proposed amendment would revise the value for the containment free volume (CFV) specified in Technical Specification (TS) 5.2.1 and associated bases. The proposed change identifies a CFV based on the as-built drawings instead of the preliminary estimate made prior to the completion of the Oconee Nuclear Station. This change is also reflected in Section 3.6.1.1 and Table 15.16 of the Oconee Final Safety Analysis Report (FSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Each accident analysis addressed within the Oconee FSAR has been examined with respect to changes proposed within this amendment request. The change in CFV is not considered to be an initiator of any event discussed within Chapter 15 of the FSAR.

Accordingly, the probability of an accident previously evaluated occurring is not impacted. As discussed in Attachment 3, the proposed change which would revise the value for the CFV based on the as-built drawings would result in a slight increase in the reactor building pressure for the worst postulated LOCA analyzed in the Oconee FSAR. However, this would not significantly affect the probability or consequences of any accident previously evaluated since the building design pressure is still not reached for the worst LOCA analysis.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The CFV value is not considered to be an initiator for accidents or other types of events. Thus, operation of Oconee in accordance with this proposed Technical Specification will not create any failure modes not bounded by previously evaluated accidents. As such, this change will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

(3) Use of the modified specifications would not involve a significant reduction in a margin of safety.

The proposed amendment to revise the current value for the CFV in Technical Specification 5.2.1 to a more accurate value based on the as-built drawings does not reduce any margin of safety. The design limits for peak pressure and temperature are not challenged by this change. No other margin of safety is affected by this change and all safety functions required to mitigate the consequences of the worst analyzed LOCA case are unaffected.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the Commission's staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: February 28, 1991

Description of amendment request: The proposed amendment would revise the Appendix A Technical Specification Surveillance Requirement 4.7.1.5 by deleting the requirement for periodic part-stroke testing of each main-steam isolation valve (MSIV) and by deleting reference to specific testing requirements. These would be replaced by the requirement to verify the full closure of each MSIV within 5 seconds when tested in accordance with the requirements of Specification 4.0.5 (which references Section XI of the ASME Boiler and Pressure Vessel Code). The modified surveillance requirement would be in accordance with the Standard Technical Specifications for Westinghouse pressurized water reactors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes merely eliminate the requirement to part-stroke exercise the MSIVs periodically and other requirements that are redundant. The proposed change retains the requirement to demonstrate operability of the MSIVs periodically through full closure of the MSIVs within 5 seconds, but replaces the specified testing conditions with reference to Surveillance Requirement 4.0.5 (which references the ASME Code). The changes do not affect the operation or function of the MSIVs, do not involve any physical modification to the facility, and do not affect the manner by which the facility is operated.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility is operated. The proposed changes merely change the surveillance requirements for the MSIVs.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Dockets Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit No. 1 and Unit No. 2, Shippingport, Pennsylvania Date of amendment request: February 20, 1991

Description of amendment request: The proposed amendment would modify the Appendix A Technical Specifications for determining containment leakage. Specifically, the amendment would modify surveillance requirement (TS 4.6.1.2) to delete the reference to ANSI N45.4 - 1972.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes prescribe the containment leakage rate be determined in accordance with Appendix J of 10 CFR 50. Appendix J of 10 CFR 50 includes both ANSI N45.4 - 1972 and alternate method ANSI/ANS 56.8 -1987 for determining containment leakage rates.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because neither plant configuration nor the manner by which the facility is operated would be affected. The proposed changes merely modify the Technical Specification to conform with Appendix J of 10 CFR 50.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the same containment integrity and leaktightness assumed for the original design would still be assured.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John F. Stolz

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: February 25, 1991

Description of amendment request: The proposed change to the Arkansas Nuclear One, Unit 2 Technical Specification 3/4.1.1.3 would reduce the required minimum flow rate of reactor coolant through the reactor coolant system from greater than or equal to 3000 gpm to greater that or equal to 2000 gpm. Additionally, a proposed change to the bases for this specification is included to change the flow rate from 3000 gpm to 2000 gpm and the number of cubic feet of reactor coolant circulated in 25 minutes from 9,975 to 6,650. Also being proposed is the change from "low pressure safety injection pump" to "low pressure safety injection pump or containment spray pump as shutdown cooling pump."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The RCS [reactor coolant system] flow rate affects the amount of reactor coolant circulating through the core during Mode 5 operations. This flow rate determines the amount of mixing which occurs in the RCS during a postulated boron dilution event. The boron dilution event analysis are well understood, and adequate mixing is provided by any flow rate which is significantly larger than the dilution flow, which is analyzed to be 132 gpm from all three charging pumps. In fact the specific RCS flow is not an input parameter to these analyses. The proposed 2000 gpm minimum flow from either the low pressure safety injection pump or containment spray pump will continue to provide adequate RCS mixing and will maintain the acceptance criteria of the present analyses. The 2000 gpm minimum flow is adequate to prevent premature pump failure. Therefore this change does not involve an increase in the probability or consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New of Different Kind of Accident from any Previously Evaluated.

The reduced flow rate has been evaluated and found acceptable for the SDC [shutdown cooling] pump minimum continuous flow requirements, therefore no possibility of a different kind of accident related to equipment failure is created. The reduced flow requirement from either shutdown cooling pump provides sufficient flow for core cooling during Mode 5 operations, therefore this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The NRC evaluated various improvements in equipment and procedures relating to SDC operation from a balanced risk perspective during preparation of Generic Letter 88-17. It was identified that during certain plant conditions, i.e. reduced inventory, the potential for vortexing in the SDC suction drop line was increased significantly at higher RCS flow rates. This has been verified by ANO's own vortexing test during the 2R7 Refueling Outage. When the cooling requirements are met with either shutdown cooling pump, as in the proposed change, a reduction in the required flow rate has been determined to significantly improve the margin to safety with respect to potential loss of DHR [decay heat removal] events.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: August 14, 1990

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Tables 2.2-1, 3.3-1, and 4.3-1 and Bases 2.2.1 regarding reactor trip system instrumentation requirements to delete the Negative Flux Rate Trip (NFRT) function.

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Basis for proposed no significant hazards consideration determination: On October 23, 1989, the Commission accepted Westinghouse report WCAP-11394-P-A (proprietary) and WCAP-11395-A (Non-proprietary), "Methodology for the Analysis of the Dropped Rod Event." To support deletion of the NFRT function at Vogtle, Westinghouse has performed plant specific evaluations using this methodology to demonstrate that the Departure from Nucleate Boiling (DNB) design basis is met during the transient associated with the dropping of one or more dropped rods with no credit taken for any actuation of power reduction features. The licensee has also evaluated the impact of the change upon other non-LOCA transients, including steam generator tube rupture; LOCA and LOCA-related conditions; fluid systems; containment integrity; and systems interaction.

As required by 10 CFR 50.91(a) and based on the above evaluations, the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Elimination of the NFRT function will be implemented such that no new performance requirements will be imposed on any system or component; therefore, no design criteria will be exceeded. Since the NFRT function is not an initiator for any of the postulated accidents analyzed in the FSAR, removal of the NFRT will have no effect on the probability of occurrence of any accident. With respect to the LOCA accidents, the mass/energy analyses are unaffected by the elimination of the NFRT function. The evaluations and analyses to determine the effects of removing the NFRT function on the non-LOCA transients have shown that the design basis conclusions are met. As such, the conclusions presented in the FSAR remain valid such that no increase in radiological consequences will occur. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety. The evaluation for elimination of the NFRT function has taken into account the applicable TSs and has bounded the conditions under which the TSs permit safe plant operation. The DNB design criteria and all acceptable LOCA and non-LOCA safety analysis acceptance criteria continue to be met. All other safety analysis assumptions remain valid. Therefore, the safety analysis results as presented in the FSAR remain bounding. In addition, deletion of the NFRT function will enhance plant safety by eliminating unnecessary automatic reactor trips and resulting challenges to safety systems.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425 Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: September 20, 1990

Description of amendment request: Technical Specification (TS) 3.4.1.3 prohibits the starting of a reactor coolant pump (RCP) with the reactor coolant system (RCS) in Hot Shutdown (Mode 4) unless the secondary water temperature of each steam generator is less than 50 degrees F above each of the RCS cold leg temperatures. The proposed amendments would supplement this TS requirement by adding that, with no reactor coolant pump running, this value of 50 degrees F is reduced to 25 degrees F at an RCS temperature of 350 degrees F and varies linearly to 50 degrees F at an RCS temperature of 200 degrees F.

Corresponding TS Bases discussing the 50 degrees F value would also be supplemented accordingly. Bases 3/4.4.1, Reactor Coolant Loops and Coolant Circulation, would reflect that in Mode 4 the starting of a RCP, when no other RCP is operating, is restricted to a range of temperatures that are consistent with analysis assumptions used to demonstrate that the residual heat removal (RHR) design pressure is not exceeded when RHR relief valves are used for RCS overpressure protection. Bases 3/4.4.9, Cold Overpressure Protection Systems, would reflect that additional temperature limitations are placed on the starting of a RCP to ensure that the RHR system remains within ASME design limits when the RHR relief valves are used to prevent RCS overpressurization.

Basis for proposed no significant hazards consideration determination: The licensee has recently discovered that the existing TSs are not sufficient to prevent overpressurization of the RHR system in Mode 4 with the RCS water solid when heat is transferred from the secondary to the primary system due to starting the first RCP. The deficiency occurred because the existing TS is based on analyses for the Cold Overpressure Mitigation System (COMS), but the design basis assumptions used to design the COMS included events that were not included in the analysis used to size the RHR relief valves for protection of the RHR pressure boundary. The proposed TS change would correct this deficiency by prohibiting starting of an idle RCP with the combination of temperatures that could result in exceeding the RHR design pressure during the time when COMS protection is being provided by the power operated relief valves and only one RHR relief valve is available.

Accordingly, the change constitutes an additional limitation, restriction or control not presently included in the TSs.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed change to the TS will not result in a significant increase in the probability of an accident previously evaluated because it does not alter the functional requirements of any piece of equipment. It adds an additional restriction for starting of an idle RCP when no other RCP is operating. The change will expand the TS to cover the analysis assumptions for demonstrating that the RHR pressure limits are met.

This change to the TS will not introduce the possibility of a new or different kind of accident from any accident previously evaluated because it does not affect the causes of overpressurization events. It recognizes the need for consistency between the COMS analysis for RCS overpressurization and the design basis for prevention of overpressurization of the RHR system. It expands the TS to be consistent with a set of analysis assumptions that include an unlikely combination of operating conditions.

This revision to the TS will not result in a significant reduction in the margin of safety because it assures that the plant will continue to be operated within the parameters used for analyses that demonstrate that the RHR system pressure limits will not be exceeded. These limits are slightly more conservative than those currently allowed to prevent overpressurization of the RCS.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the Commission's staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 29, 1990; as supplemented January 29, March 6, 27, and 29, 1991

Description of amendment request: The proposed amendments would change the Technical Specifications (TSs) to provide for a long-term fuel management strategy based upon the use of reload fuel assemblies of a different design. Specifically, future reloads would be with Westinghouse VANTAGE-5 fuel assemblies, a modification of the current Westinghouse 17X17 low-parasitic (LOPAR) fuel assemblies. VANTAGE-5 fuel design features include smaller diameter fuel rods, mid-span Zircaloy grids, intermediate flow mixer (IFM) grids, natural uranium oxide axial blankets, integral fuel burnable absorbers, extended fuel burnup, and reconstitutable top nozzles. The new fuel management strategy would implement high energy 18-month fuel cycles with high capacity factors and low leakage loading patterns, and would extend discharged fuel burnup to support lead rod exposures up to 60,000 MWD/MTU. Operating characteristics and limits for the new fuel would be based upon analyses performed by Westinghouse with new computer codes and methodologies previously approved by the Commission's staff (or presently near completion of review by the Commission's staff). These new codes and methodologies include BART/BASH (used for large-break LOCA), NOTRUMP (for small-break LOCA), an improved thermal-hydraulics computer code called THINC-IV (for non-LOCA transients), a revised thermal design procedure (RTDP), a DNB correlation known as WRB-2, and a relaxed axial offset control (RAOC) strategy. Margins gained from the design features of the new fuel and from the use of new computer codes and methodologies would also be applied to changes in plant parameters such as pressurizer pressure (the P-11 setpoint) and accumulator water level range to provide increased operational flexibility.

The transition from LOPAR to VANTAGE-5 fuel would be made by replacing about one-third of the core during sucessive refueling outages, beginning with the outage to reload Cycle 4 into Vogtle Unit 1 (about September 1991). Vogtle Unit 2 would begin the transition with its Cycle 3 (about February 1992). Accordingly, the proposed amendments would contain appropriate TS change pages to be applied during the transition to a core fully loaded with VANTAGE-5 fuel.

The proposed TS revisions can be grouped into the following different changes:

1. REACTOR CORE SAFETY LIMITS, REACTOR TRIP SYSTEM INSTRUMENTATION SETPOINTS, AND DNB PARAMETERS

These changes would provide for higher design peaking factors ($F_{Q(z)}$), fuel rod bow, thimble plug deletion, transition core DNBR penalty, and wider axial offsets at rated thermal power associated with RAOC:

A. TS Figure 2.1-1 - The Reactor Core Safety Limit Lines would be revised based upon use of the revised DNB methods.

B. TS Table 2.2-1 - The revised reactor core safety limit lines provide for changes in the Overtemperature Delta-T and Overpower Delta-T Reactor Trip System Instrumentation Setpoints. Specifically, changes would be made to the total allowance, Z value, sensor error, K_1, K_2, K_3, K_4, K_5, nominal T_{avg}, and the f_1 (Delta-I) function.

C. TS Bases 2.1.1, 3/4.2, 3/4.2.2, 3/4.2.3, 3/4.2.5, and 3/4.4.1 - Changes in the Bases would reflect the use of the revised methods and correlations. TS Bases 3/4.2.5 would also add that the measurement uncertainty of RCS flow includes an allowance of 0.1% to account for feedwater venturi fouling.

D. TS 3/4.2.5 - Changes would be made in the limiting values of Reactor Coolant System T_{avg}, Pressurizer Pressure, and Reactor Coolant System Flow, and flow measurement uncertainty.

2. AXIAL FLUX DIFFERENCE AND PEAKING FACTOR SURVEILLANCE

TS 3/4.2.1 for Axial Flux Difference would be revised to reflect use of RAOC methodology. Since RAOC allows direct surveillance of the heat flux hot channel factor, F_Q, the surveillance requirements of TS 3/4.2.2 would be revised to reflect appropriate F_Q surveillance requirements. Additionally, in Action A of TS 3.2.2 the phrase 'Overpower Delta-T Trip Setpoints have been reduced at least 1%' would be clarified to read 'Overpower Delta-T Trip Setpoints (Value of K_4) have been reduced at least 1% (in Delta-T span)'. TS 6.8.1.6 would be revised to reflect use of RAOC methodology by substituting reference to WCAP-10216-P-A in lieu of the present reference for axial offset control.

3. INCREASE IN SHUTDOWN AND CONTROL ROD DROP TIME

TS 3/4.1.3.4 would be changed to reflect an allowable shutdown and control rod drop time of 2.7 seconds instead of the present 2.2 seconds. This change accounts for the slower drop time expected with VANTAGE-5 fuel because of the higher pressure drop due to its IFM grids and smaller guide thimble diameter.

4. WIDENED ACCUMULATOR WATER LEVEL RANGE

TS 3.5.1 would be changed to widen the limiting condition for operation defined for the range of water volume within the ECCS accumulators. The range would be changed from a minimum of 36% span (6616 gallons) to a minimun of 29.2% span (6555 gallons) and from a maximum of 64% span (6854 gallons) to a maximum of 70.7% span (6909 gallons).

5. P-11 SETPOINT

TS Table 3.3-3 specifies a P-11 setpoint of 1970 psig and an allowable value of 1960 psig. The P-11 setpoint would be changed to 2000 psig with an allowable value of 2010 psig. In addition to the above changes, the licensee proposed changes to reduce the minimum solution temperature of the refueling water storage tank and the associated surveillance limit. The licensee also proposed changes associated with the removal of the resistance temperature detector bypass manifold. These proposed changes are outside the scope of this notice.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. REACTOR CORE SAFETY LIMITS, REACTOR TRIP SYSTEM INSTRUMENTATION SETPOINTS AND DNB PARAMETERS

The proposed safety limits, reactor trip setpoints, and DNB-related parameters TS changes do not increase the probability or consequences of an accident previously evaluated in the FSAR. The core safety limits, trip setpoints and DNB parameters were determined using NRC reviewed and approved DNB methodologies; namely RTDP, improved THINC-IV model and the WRB-1 and WRB-2 DNB correlations. No new performance requirements are being imposed on any system or component in order to support the revised DNBR analysis assumptions. Overall plant integrity is not reduced. The DNBR design criterion continues to be met. None of these changes

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offset parameters that could directly initiate an accident, therefore the probability of an accident has not increased. The acceptance criteria for the analyses reperformed with these revised DNB parameters continue to be met, therefore the of accidents previously evaluated in the FSAR are not significantly changed.

The proposed safety limits, reactor trip setpoints, and DNB-related parameters TS changes do not create the possibility of a new or different kind of accident than any already evaluated in the FSAR. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes. The proposed TS changes have no adverse effects and do not challenge the performance or integrity of any safety related system. The DNBR design criterion continues to be met. Therefore, the possibility of a new or different kind of accident is not created.

The proposed TS changes do not involve a significant reduction in a margin of safety. The change in the DNBR design limits are associated with the use of NRC approved methodologies (RTDP, the NRC reviewed WRB-1 and WRB-2 DNB correlations and the NRC reviewed improved THINC-IV model). In addition, the VANTAGE-5 fuel design, including IFM grids, assumes use of the WRB-2 correlation and has been generically approved by the NRC. The DNB design criterion (i.e., that there is at least a 95% probability at a 95% confidence level that DNB will not occur on the most limiting rod for any Condition I or II event) remains unchanged even with the changes in DNBR design limit values. Therefore, the new DNBR design limit values associated with the DNB methodology and correlation changes, upon which the TS changes are based, do not result in a reduction in the margin of safety because the DNB design criterion continues to be met.

2. AXIAL FLUX DIFFERENCE AND PEAKING FACTOR SURVEILLANCE

The use of RAOC and F_Q surveillance does not increase the probability or consequences of an accident previously evaluated in the FSAR. The TS changes do not result in any physical changes in the plant or any other changes that could initiate an accident. The accidents previously evaluated in the FSAR have been reevaluated and the results indicate that the consequences have not significantly increased. The results of these analyses are presented in Enclosure 4 and Appendices A and B [of the licensee's letter of November 29, 1990].

The use of RAOC and F_Q surveillance does not introduce the possibility of a new or different kind of accident than any previously evaluated in the FSAR. The operating limitations remain consistent with the analyses. The changes in the TSs do not result in the introduction of a new accident scenario, failure mechanism or limiting single failure.

The margin of safety provided by the TSs will not change significantly due to the use of the RAOC methodology and F_Q surveillance. This has been demonstrated by the reanalysis of transients and accidents presented in Enclosure 4 and Appendices A and B. The use of F_Q surveillance instead of F_{xy} provides a more direct method of demonstrating compliance with the Limiting Condition for Operation. The combination of RAOC and F_Q surveillance will continue to demonstrate that operation will remain within the constraints of the axial flux difference limits and will not result in total peaking factors that exceed the limit.

3. INCREASE IN SHUTDOWN AND CONTROL ROD DROP TIME

The increase in rod drop time will not result in an increase in the probability or consequences of any accident previously evaluated in the FSAR since the same surveillance requirements will be used to detect inoperable rods. The consequences of increased rod drop times have been evaluated and analyzed as reported in Enclosure 4 [of the licensee's letter of November 29, 1990] and determined to be within the acceptance limits.

The possibility of a new or different type of accident is not involved because the increase in rod drop time used in the analyses and in the TS is consistent with the design of the VANTAGE-5 fuel and does not indicate any new or different failure mechanism. Therefore, it does not indicate the possibility of a new or different type of accident.

The effects of the increased rod drop time has been included in the analyses and evaluations of accidents and transients included in Enclosure 4. These analyses demonstrated that the plant will remain within previously accepted limits, therefore the increase in the allowable rod drop time does not result in a significant reduction in a margin of safety.

4. WIDENED ACCUMULATOR WATER LEVEL RANGE

The proposed TS change identified above will provide additional operating flexibility to accommodate potential changes in accumulator water level which may be experienced over an eighteen month operating cycle. Large break LOCA analyses (FSAR 15.6.5) which must account for variations in accumulator water from the nominal level have been performed as part of the VANTAGE-5 fuel transition program. The large break LOCA was reanalyzed using the NRC approved BART/BASH methodologies. The results confirm that acceptable peak clad temperatures are still achieved assuming the modified accumulator water level range with no violation of any acceptance criteria. The variation in accumulator water volume would have an insignificant effect on sump level and boron concentration.

The widened accumulator water level range does not increase the probability or consequences of an accident previously evaluated in the FSAR. Accumlator water level is a parameter assumed for mitigation of the Large Break LOCA evaluated in the FSAR. Since accumulator water level is used in the role of a mitigator for this event, it does not contribute as an initiator to the probability of occurrence.

The consequences of an accident previously evaluated in the FSAR are not increased due to the widened accumulator water level range. The radiological consequences of a Large Break LOCA have been evaluated as part of the VANTAGE-5 fuel program and are bounded by the doses currently reported in the FSAR. Therefore, the conseqences to the public resulting from a LOCA previously evaluated in the FSAR have not been affected.

The widened accumulator water level range does not create the possibility of a new or different kind of accident than any already evaluated in the FSAR. No new accident scenarios, failure mechanisms or limiting single failres associated with the accumulator are introduced as a result of the widened accumulator water level range. The change in water level range has no adverse effect and does not challenge the performance or integrity of any other safety related system. Therefore, the possibility of a new or different kind of accident is not created.

The margin of safety provided by the TSs relative to the water level in the accumulators ensures that a sufficient volume of borated water will be immediately forced into the reactor core if the RCS pressure falls below the pressure of the accumulators, providing the initial cooling mechanism during large RCS pipe ruptures. The values of accumulator water level range defined by TS 3.5.1(b) have been used in the revised LOCA analysis. The revised LOCA analysis continues to demonstrate that the acceptance criteria are met. Therefore, the operating envelope defined by the TSs continues to be bounded by the revised analytical basis and the margin of safety provided by the revised accumulator water level range is not significantly changed.

5. P-11 SETPOINT

None of the safety analyses in the FSAR use the P-11 setpoint. Therefore, there are no effects on the safety analyses as a result of this small change to the P-11 setpoint. The 30 psi increase in the difference between the P-11 setpoint and the SI [Safety Injection] will reduce the probability of an inadvertent SI acutation. The P-11 setpoint assures that the block of the SI signal is removed when pressurizer pressure is above the P-11 setpoint.

The P-11 setpoint change does not increase the probability or consequences of an accident previously evaluated in the FSAR. The P-11 setpoint is not an input parameter to any transient in the FSAR. The P-11 setpoint in not an initiator for any transient. No new performance requirements are being imposed on any system or component. Consequently, overall plant integrity is not reduced. Therefore, the probability or consequences of an accident will not increase.

The P-11 setpoint change does not create the possibility of a new or different kind of accident from any previously evaluated in the FSAR. No new accident scenarios, failure result of the P-11 setpoint change. The P-11 setpoint change does not challenge or prevent the performance of any safety related system during plant transients. Therefore, the possibility of a new or different kind of accident is not created.

The P-11 setpoint change does not involve a significant reduction in the margin of safety. It is only a convenience interlock to allow SI to be blocked when below the P-11 setpoint pressure during planned cooldowns and depressurizations. The P-11 setpoint defeats the SI block when the pressurizer pressure is above the P-11 setpoint. The P-11 setpoint remains well below the initial operating pressure assumptions of the safety analyses. Therefore, the small change to the P-11 setpoint does not affect the operating envelope defined by the TSs. Therefore, the margin of safety provided by the P-11 setpoint is maintained and not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425 Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: January 25, 1991

Description of amendment request: The proposed amendments would change Technical Specification (TS) 6.4.1.2 regarding the composition of the Plant Review Board (PRB) by substituting the Technical Support department for the Quality Control (QC) and the Nuclear Safety and Compliance (NSAC) departments.

Basis for proposed no significant hazards consideration determination: The proposed change affects only the Administrative Controls section of the TS. The change is needed to reflect the licensee's recent decision to upgrade the PRB membership by replacing supervisors with department managers. At Vogtle, the supervisors of the QC and NSAC departments report directly to the Manager of Technical Support. The change, therefore, allows this manager to represent both QC and NSAC on the PRB membership.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The revised description of the PRB composition does not increase the probability or consequences of accidents previously evaluated in the FSAR because the make-up of the PRB does not directly affect any material condition of the plant that could directly contribute to causing or mitigating the effects of an accident. The change to the PRB composition will not diminish its ability to review plant activities. Therefore, this change will not diminish the PRB's role in reviewing changes that could affect the probability or consequences of accidents.

The revision to the composition requirements of the PRB does not create the possibility of a new or different kind of accident other than those already evaluated in the FSAR. Since no physical change is being made in the plant or its operating parameters, it does not introduce the possibility of a new or different type of accident.

The margin of safety provided by the Technical Specification is not altered because the responsibilities, quorum, meeting frequency and functions of the PRB remain unchanged. The qualifications of the PRB members is unchanged. The composition of the PRB is upgraded. Therefore, the current level of safety, contributed by the PRB function will not be diminished by the proposed Technical Specification revision.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: March 29, 1991

Description of amendment request: The proposed amendment would correct references given in Technical Specifications (TSs) 3.1.2.2, 3.1.2.4 and 3.1.2.6 and in associated Bases 3/4.2.2 and 3/4.2.3. Specifically, in the Action statements of TSs 3.1.2.2, 3.1.2.4, and 3.1.2.6, it would replace the phrase "...SHUTDOWN MARGIN as required by Figure 3.1-2 at 200 degrees F..." with the phrase "...SHUTDOWN MARGIN as specified in the CORE OPERATING LIMITS REPORT for MODE 5 at 200 degrees F..." Similarly, in Bases 3/4.2.2 and 3/4.2.3, it would replace the phrase "...as defined by Figure 3.1-3" with the phrase "...as described in Specification 3.1.3.6."

Basis for proposed no significant hazards consideration determination: Previous License Amendments, No. 32 (Vogtle Unit 1) and No. 12 (Vogtle Unit 2), revised the TSs by removing reactor physics data that is cycle specific and relocating it to a Core Operating Limits Report (COLR). Figure 3.1-2 which provides shutdown margin requirements for Mode 5, and Figure 3.1-3 which provides control rod bank insertion limits, were removed from the TSs and placed in the COLR. However, the prior changes failed to revise references to these figures within certain TSs and Bases. The proposed amendments would correct this oversight by a purely administrative change to denote the correct location of the figures. No changes in the requirements of the Action statements are proposed.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The revisions to the Technical Specifications will not increase the probability or consequences of accidents previously evaluated in the FSAR because they do not alter any of the requirements of the Technical Specifications. The only change is in the location of the information.

The revisions to the Technical Specifications do not create the possibility of a new or different kind of accident other than those already evaluated in the FSAR because they do not create a change to the previous requirements. The changes do not involve any physical change to the plant or to the requirements for plant operation.

The proposed changes will not affect the margin of safety provided by the Technical Specifications because they do not result in any change to the previous requirements.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the proposed changes are purely administrative and that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

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Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: March 29, 1991

Description of amendment request: The proposed amendment would revise surveillance requirements of the Technical Specifications (TSs) regarding visual inspection of snubbers. Specifically, the visual inspection schedule of TS 4.7.8b and the visual inspection acceptance criteria of TS 4.7.8c would be revised consistent with NRC Generic Letter 90-09, "Alternative Requirements For Snubber Visual Inspection Intervals And Corrective Actions," dated December 11, 1990. The change would be accomplished, in part, by adding and referencing a new Table 4.7-2 to specify the snubber visual inspection interval consistant with the Generic Letter. Appropriate changes to the TS Bases and TS Index would also be made.

Basis for proposed no significant hazards consideration determination: The TS presently specifies a schedule for snubber visual inspections that is based on the number of inoperable snubbers found during the previous visual inspection. The present schedules for visual inspections and for the functional testing assume that refueling intervals will not exceed 18 months. In GL 90-09, the Commission's staff proposed an alternative inspection schedule based on the number of umacceptable snubbers found during the previous inspection in proportion to the sizes of the various snubber populations or categories. GL 90-09 also included specific acceptance criteria for the visual inspection; a snubber will be considered unacceptable if it fails this acceptance criteria. The alternative inspection interval is based on a fuel cycle of up to 24 months and may be as long as two fuel cycles, or 48 months, depending on the number of unacceptable snubbers found during the previous visual inspection.

In GL 90-09 the Commission's staff noted that the alternative schedule for visual inspections maintains the same confidence level as the existing schedule, should assist in reducing occupational radiological exposure, and is consistent with the Commission's policy statement on TS Improvements.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change involves the requirements that ensure the operability of snubbers is maintained through visual, as well as functional, testing. Operation of the plant under the provisions of the proposed amendment will continue to ensure that snubber operability is maintained. Technical Specification requirements for visual inspection will continue to be met but on a schedule based on the number of unacceptable snubbers found during the previous inspection in proportion to the size of various snubber populations or categories vice the number of unacceptable snubbers found during the previous inspection, irrespective of the size of the snubber population. The alternate inspection schedule for the visual inspection of snubbers maintains the same confidence level as the existing schedule. Therefore, the probability or consequences of any accident previously evaluated will not be affected.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not introduce any new equipment into the plant or require any existing equipment to be operated in a manner different than that in which it was designed to be operated. Snubber operability will continue to be maintained under the proposed surveillance requirements by visual, as well as functional, testing.

The proposed change does not involve a significant reduction in the margin of safety. Snubber operability will continue to be maintained through visual inspection and functional testing. The alternate visual inspection schedule proposed by this change maintains the same confidence level of snubber operability as the existing schedule and replaces it. Based on the foregoing, there will be no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: March 12, 1991

Description of amendment request: The proposed amendment would add an action to Technical Specification 3.6.2.3 which would permit plant personnel to enter the drywell for maintenance work with the plant in Operational Condition 3 rather than cold shutdown when one of the drywell airlock door seals is inoperable. Entry into the drywell requires that the operable airlock door be open for approximately three minutes as personnel enter and exit, allowing the leakage through the inoperable seals to bypass the drywell. The proposed amendment also stipulates that the operable door be locked closed after each entry and exit and that a designated person ensure that both doors in the airlock are not open simultaneously.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. The proposed change would not increase the probability or consequences of a previously evaluated accident because:

The proposed Technical Specification (TS) change would allow the operable door to be open for short periods of time when air is leaking past the inoperable door seals. The total equivalent drywell bypass flow in the event of total failure of the seals and assuming the operable door is open is 12,876 standard cubic feet per minute (SCFM) which is less than the safety analysis assumption of 40,110 SCFM for the accident involving a small break loss-of-coolant accident (LOCA) in the drywell. Therefore, the consequences of total failure of the seals on the inoperable door with the operable door open is encompassed by a previously analyzed accident.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated because:

No changes are being made to the design of River Bend Station (RBS). The consequence of an open drywell door is the same as that evaluated in the safety analysis which is leakage out of the drywell. Therefore, no new or different accidents will result from the proposed TS change.

3. The proposed change would not involve a significant reduction in the margin of safety because:

Plant operation under the proposed change is within the existing safety analysis which assumes a total bypass flow of 40,110 SCFM for a LOCA inside the drywell. The proposed change does not alter any part of the analysis. The probability of a small break LOCA during the time that the operable door is open is small (estimated at 1.7×10^{-9}). The reduction in the margin of safety is also minimized by monitoring entry and exit through the airlocks and assuring that the doors are not opened simultaneously. After each entry, the operable door will be locked closed. Containment integrity is maintained by continued compliance with Technical Specification 3.6.1.1, which verifies that containment air locks are operable and leakage rate from primary containment is within its limits.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, N.W., Washington, D.C. 20005

NRC Project Director: George F. Dick, Acting Director

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: May 26, 1989, as amended January 5, 1990

Description of amendment request: The May 26, 1989, submittal would revise Technical Specification 3.4.3a. from its current requirements that only one door in each of the double-doored access ways to the Reactor Building may be opened at one time to a specification that would permit both doors in an access way to be open simultaneously during normal entry and exit operations. The May 26, 1989, submittal would also revise Technical Specification Figure 3.4.1 to correct errors of omission in the labeling of the graph on the figure. The revisions to Figure 3.4.1 would clarify that the Reactor Building pressures specified thereon are actually differential pressures. The January 5, 1990, submittal withdrew the proposed change to Technical Specification 3.4.3a. but retained the proposed changes to Figure 3.4.1. Therefore, the proposal to revise Figure 3.4.1 is the only remaining change being proposed in this proposed license amendment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

The NRC staff agrees that the proposed changes to Figure 3.4.1 would correct errors of omission in the labeling of the graph on the figure. These proposed changes are similar to example (i) of the Commission's Examples of Amendments That Are Considered Not Likely To Involve Significant Hazards Considerations published in the **Federal Register** on March 6, 1986 (51 FR 7744) in that these proposed changes would be a purely administrative change to correct errors, and therefore does not involve significant hazard consideration. Based on this review, the NRC staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC. 20005-3502.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket Nos. 50-220 and 50-410, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2, Scriba, New York

Date of amendments request: March 13, 1991

Description of amendments request: The proposed amendments would revise Technical Specifications Section 6.0, Administrative Controls, to further reflect management changes approved in License Amendments Nos. 120 and 25 issued on December 31, 1990. Those license amendments approved unitized management organizations for each of the Nine Mile Point units. The proposed changes would replace the Manager Health Physics, whose responsibilities extend to both units, with a separate Manager Radiation Protection responsible for each unit and who would report directly to the Plant Manager for his unit. As part of this change, the title Manager Health Physics would be replaced by the title Manager Radiation Protection in Technical Specifications 6.5.1.2, 6.12.1c, and 6.12.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The operation of Nine Mile Point Unit 1 [and Unit 2], in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes enhance the Radiation Protection management capability and performance of Nine Mile Point Unit 1 [and Unit 2]. The proposed change does not decrease staffing levels or decrease levels of expertise and enhances the line of authority of the Plant Manager over the Radiation Protection Program.

The operation of Nine Mile Point Unit 1 [and Unit 2], in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed changes are administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

The operation of Nine Mile Point Unit 1 [and Unit 2], in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed amendment will not cause existing Technical Specification operational limits or system performance criteria to be exceeded. The change enhances organizational effectiveness and maintains only qualified personnel in positions of responsibility. Therefore, the proposed administrative changes to the Technical Specifications will not affect the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC. 20005-3502.

NRC Project Director: Robert A. Capra

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: March 18, 1991

Description of amendment request: The proposed amendment would incorporate into the Technical Specifications additional fire detection

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and suppression systems resulting from various 10 CFR 50, Appendix R, modifications, design changes, and other changes, including proposed changes to correct errors in the current Technical Specifications and to provide consistency with these changes made in response to Generic Letter 87-09 and Amendment No. 51, as described in the licensee's submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed changes in accordance with the

requirements of 10 CFR 50.92 and has concluded that the proposed

changes do not involve a significant hazards consideration in that

these changes would not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously analysed. The proposed changes offer greater coverage and provide for an enhanced capability for automatically controlling and/or extinguishing postulated fires and actually increase the level of fire protection for the plant. Consequently, the changes do not adversely affect the probability or consequences of any design basis accident and therefore previously analysed accidents are not affected.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The proposed changes will increase the plants capability to detect, control, and extinguish fires. No new failure modes are introduced which would create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety. The proposed changes do not have any adverse impact on any protective boundary. Since the proposed changes also do not affect the consequences of any accident previously analyzed, there is no reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: April 12, 1991

Description of amendment request: The amendments would revise Section 4.7.4 and the associated Bases in the Technical Specifications regarding visual inspection of snubbers as suggested in NRC Generic Letter 90-09.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The performance of visual examinations is a separate process that complements the functional testing program and provides additional confidence in snubber operability. Changing the inspection interval to enhance ALARA will not cause nor affect the results of an accident previously evaluated.

II. This proposal does not create the possibility of a new or different type of accident from any accident previously evaluated.

Neither the design, installation, function nor operation of a snubber is proposed to be modified. Providing an alternate visual inspection interval will not create the possibility of a new or different event.

III. This change does not involve a significant reduction in a margin of safety.

Functional testing of snubbers remains the basis for the established margin of safety. The proposed schedule for visual inspection will not impact the confidence level provided by functional testing. Furthermore, it generally will not allow performance of visual inspections and corrective actions during plant outages, thereby reducing unnecessary radiation exposure.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, D.C. 20037

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: March 28, 1991

Description of amendment request: The amendments would change the Technical Specifications (TS) to modify the pressure-temperature limits for the reactor pressure vessels (Category 1 changes) and to remove the schedule for withdrawal of material specimens (Category 2 changes). A surveillance capsule was removed from the Peach Bottom Atomic Power Station, Unit 3 reactor vessel at the end of Fuel Cycle 7 (removed in June 1989). The capsule contained flux wires for neutron fluence measurement, and Charpy and tensile test specimens for material property evaluation. A combination of flux wire testing and computer analysis was used to establish the vessel peak flux location and magnitude. Charpy V-Notch impact testing and uniaxial tensile testing were performed to establish the material properties of the irradiated vessel beltline (core region).

The irradiation effects were projected in accordance with the guidance in Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials", to conditions for 32 effective full power years (EFPY) of operation.

This amendment reflects the results of material analyses conducted as part of the reactor coolant pressure boundary material surveillance program pursuant to 10 CFR 50, Appendix G and Appendix H. The requested changes will alter the reactor vessel pressure-temperature operating limits for Unit 3. Additionally, a curve for the bottom head limits is being added to the PBAPS Units 2 and 3 Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below: The licensee has discussed the Category 1 changes and the Category 2 changes, which they classify as administrative changes, separately.

Category 1 Changes

The Category 1 changes requested herein do not involve a significant hazards consideration based on the foregoing Safety Assessment for the following reasons:

i) The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated because the revised thermal and pressurization limits prohibit conditions where brittle fracture of reactor vessel materials is possible. Consequently, there will be no increase in the probability or consequences of previously evaluated accidents since the primary coolant pressure boundary integrity will be maintained as assumed in the safety design analyses.

The RT_{NDT} used to evaluate the new Unit 3 pressure-temperature limits for the beltline material and the Units 2 and 3 bottom head limits was based on the guidance in Regulatory Guide 1.99, Revision 2, which is the latest guidance on RT_{NDT} determinations. The revised Unit 3 pressure-temperature limit curves and bottom head curve for Units 2 and 3 were conservatively generated in accordance with the fracture toughness requirements of 10 CFR 50, Appendix G, as supplemented by Appendix G to Section XI of the ASME Boiler and Pressure Vessel Code. The proposed Unit 3 minimum allowable temperature at which head bolting studs may be under tension is also in accordance with 10 CFR 50, Appendix G, as supplemented by Appendix G to Section XI of the ASME Boiler and Pressure Vessel Code.

Removal of Figure 3.6.4 is of no safety significance because it was for information only and is no longer appropriate.

ii) The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated because the revised Unit 3 thermal and pressurization limits and the addition of the Units 2 and 3 bottom head curve[s] do not create any new kind of operating mode or introduce any new potential failure mode. Conditions where brittle fracture of primary coolant pressure boundary materials is possible will be avoided by use of the revised and new curves.

iii) The proposed revisions do not involve a significant reduction in a margin of safety because the proposed pressure-temperature limits provide sufficient safety margin. The revised Unit 3 pressure-temperature limits and the new Units 2 and 3 head curves, were established in accordance with current regulations and the latest regulatory guidance on RT_{NDT} determinations. Although there is some reduction in safety margin, operation within the new limits will ensure that the reactor vessel materials will behave in a non-brittle manner and will remain conservative in that the original safety design bases will be preserved.

Category 2 Changes:

The NRC provided guidance concerning the application of the standards for determining whether license amendments involve significant hazards considerations by providing examples in 51 FR 7751. An example (Example i) of a change that involves no significant hazards considerations is "a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The Category 2 changes requested herein conform to this example and do not involve a significant hazards consideration based on the foregoing Safety Assessment for the following reasons:

i) The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect operations, equipment, or any safety-related activity. Thus, these administrative changes cannot affect the probability or consequences of any accident.

ii) The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated because these changes are purely administrative and do not affect the plant. Therefore, these changes cannot create the possibility of any accident.

iii) The proposed revisions do not involve a significant reduction in a margin of safety because the changes do not affect any safety related activity or equipment. These changes are purely administrative in nature and increase the probability that the Technical Specifications are correctly interpreted by adding clarifying information, deleting inappropriate information, and correcting errors. Thus, these changes cannot reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Walter R. Butler

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: April 1, 1991

Description of amendment request: This amendment revises numerous areas of the Trojan Technical Specifications as a result of the transition to Babcock and Wilcox nuclear fuel. This change of nuclear fuel supplier for Trojan Nuclear Plant provides advanced fuel design features, improved access to the vendor's analysis, and reduced cost. Operation with the new fuel design results in increased neutron efficiency and better economy.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

A determination of no significant hazards considerations may be made if operation in accordance with the proposed change would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated;

2. create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. involve a significant reduction in margin of safety.

The specific concerns of the above items are addressed as follows:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The analyses provided in Topical Reports BAW-10176, BAW-10177, and BAW-10178 show that the change does not significantly change the results of previously evaluated events. These analyses provide the template for accident analyses assumptions that must be met by the cycle-specific reload analysis.

The Trojan Cycle 14 reload core with Mark-BW fuel will be evaluated to operate within the approved limits for accident analysis. The limits provided in the TTS and described in the FSAR provide the framework for accident analyses. By maintaining these limits, the probability or consequences of accidents related to the core changes do not significantly change. Thus, it is concluded that there is no significant increase in the probability or consequences of previously evaluated accidents.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The change to Mark-BW fuel cores and mixed (transition) cores has been evaluated in the Topical Reports, and it was concluded that the change did not create new or different kinds of accidents. The changes in fuel suppliers has been evaluated for consideration of the effects of power distribution and peaking factors such that there are no restrictions on the use of Mark-BW fuel assemblies beyond those already established in the FSAR and TTS. Adherence to the safety analysis limits restricts the possibility of new or different accidents. Historically, new accidents have not been associated with changes in fuel suppliers as long as safety analysis limits continue to be met. It is concluded that transition to Mark-BW fuel does not create the possibility of a new or different kind of accident from those previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety is established by the acceptance criteria used by the NRC. Meeting the acceptance criteria assures that the consequences of accidents are within known and acceptable limits. The LOCA acceptance criteria are unchanged: peak cladding temperature of [less than or equal to] 2200° F, peak cladding oxidation of [less than or equal to] 17 percent, average clad oxidation of [less than or equal to] 1 percent, and long-term coolability. These requirements continue to

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be met. The methods used to demonstrate conformance with these limits have changed, and are reviewed to assure that the methods, as well as the results, are acceptable. The acceptance criteria for DNB events has not changed and is still the 95:95 probability and confidence interval that DNB is not occurring during the transient. The DNB correlation, and methods used to demonstrate that DNB limits are met, have changed, and these changes are reviewed to assure conformance with acceptable practices. The shutdown margin change appears to affect a margin of safety, but the analysis results in BAW-10176 show that acceptable consequences are maintained. Thus, the new shutdown margin does not intrude on the margin of safety provided by the acceptance criteria. Other changes, as well as the changes discussed above, have been evaluated in the referenced safety analyses and are shown to meet applicable acceptance criteria. Other margins such as avoiding fuel centerline melting are not significantly changed. Based on these results, it is concluded that the margin of safety is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Miller Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRR Project Director: James E. Dyer

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 1, 1991

Description of amendment request: Public Service Electric and Gas Company (PSE&G) requests that Technical Specification (TS) Surveillance 4.8.1.1.2.h.6, A.C. Sources - Operating, be revised by removing the following requirement:

Within 5 minutes after completing this 24 hour test, perform Surveillance Requirement 4.8.1.1.2.h.4.b).

The associated "*" footnote would also be removed.

Additionally, Surveillance Requirement 4.8.1.1.2.h.4.b would be modified by revising its "*" footnote to read:

"This diesel generator start (10 sec) and subsequent loading (130 sec) shall be preceded by an engine prelube period and operation at rated load for one hour, or until operating temperatures have stabilized.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Hope Creek Generating (HCGS) in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident or malfunction of equipment important to safety previously evaluated.

The proposed amendment does not involve a physical or procedural change to any structure, component or system that significantly affects accident/malfunction probabilities or consequences previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The proposed change involves the testing of the Emergency Diesel Generator (EDG) start and loading capabilities at normal operating temperatures. By requiring that the EDG has been run and loaded for at least 1 hour and/or that operating temperatures have stabilized prior to performing the start and load test, we ensure that the surveillance test is conducted at nominal operating temperatures. Removing the requirement that the test be initiated within 5 minutes of completing the 24 hour test run does not adversely impact the probability of equipment malfunction or that of any accident. TS 4.8.1.1.2.h.6 demonstrates the EDG's ability to start from ambient conditions on loss-of-power in conjunction with an ECCS actuation signal. Initiating the loss-of-offsite-power prescribed in TS 4.8.1.1.2.h.4 from normal operating temperature demonstrates loss-of-power detection, emergency bus deenergization and load shedding, diesel start with permanently connected loads, auto-sequencing of shutdown loads, etc., regardless of the EDG's starting temperatures. Therefore, performing this test from ambient conditions (in the current TS 4.8.1.1.2.h.4) and then again from normal operating temperatures at the end of the current TS 4.8.1.1.2.h.8 is an additional cycling of the EDG's (with its attendant mechanical stress and wear) that provides no meaningful test information.

The proposed revision will provide operational testing flexibility and reduce mechanical stress and wear while ensuring the same level of emergency diesel generator performance.

The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change involves testing requirements for the EDGs, wherein there is no change to the actual capabilities tested. There is no change in any plant equipment or method of operating that can create any accident.

The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change does not involve a significant reduction in a margin of safety.

The proposed revisions will, by eliminating one additional start and load cycle on the EDGs, reduce mechanical stresses and wear on that equipment; thereby enhancing their reliability. This revision will not eliminate the testing of any currently tested operating function and will have no negative impact on any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Walter R. Butler

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: February 15, 1991

Description of amendment request: The proposed amendment would revise Technical Specifications to reflect a change and an addition to Tables 3.5-5 and 4.1-5 concerning radiation monitors in the service water line discharges from the spent fuel pool heat exchangers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.91, these changes to the Technical Specifications have been evaluated to determine if the operation of the facility in accordance with the proposed amendment would:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

These proposed changes do not increase the probability or consequences of a previously evaluated accident or create a new or different type of accident, and there is no reduction in the margin of safety for any particular Technical Specification, since these are administrative changes only.

Therefore, Rochester Gas and Electric submits that the issues associated with this Amendment request are outside the criteria of 10 CFR 50.91; and a no significant hazards finding is warranted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Bishop, Winston & Strawn, 1400 Street, N.W., Washington, D.C. 20005

NRC Project Director: Richard Wessman

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: February 15, 1991

Description of amendment request: The proposed amendment would modify the method of locking open motor operated valve 856, the refueling water storage tank (RWST) delivery valve, when the Reactor Coolant System temperature is at or above 350° F. This amendment will be reviewed with respect to a loss of coolant accident (LOCA).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant change in the probability or consequences of an accident previously evaluated, because the proposed modification does not degrade the capability of any safety system to perform its function. The open position of valve MOV-856 is assured through the key lock switch arrangement. Emergency core cooling functions during the injection phase of a LOCA would be unaffected since the valve is designed to fail as is (OPEN position). Prior to initiation of the recirculation phase of a LOCA, the proposed modification will allow operation of the valve from the control room to isolate the RWST. Therefore, a decrease in the radiological risk to personnel is achieved through elimination of a mandatory entry into a radiologically controlled area to unlock and close the breaker for the valve. This mandatory entry would also be eliminated when isolating the RWST from the reactor coolant system prior to placing the residual heat removal system into operation for plant cooldown.

The proposed change does not create the possibility of a new or different accident from any previously evaluated, because the proposed modification involves a change to the method of locking open the motor operated valve. No new safety functions will be provided and no new failure modes were identified.

The proposed change does not involve a significant reduction in the margin of safety, because the safety function of the valve to be maintained in the OPEN position will continue to be achieved and be required by the plant Technical Specifications. The proposed change will add control of the valve from the control room to achieve the CLOSE safety function to isolate the RWST. Hence, plant operability will be increased.

Therefore, Rochester Gas and Electric submits that the issues associated with this Amendment request are outside the criteria of 10 CFR 50.91 and a no significant hazards finding is warranted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Bishop, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: Richard Wessman

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: April 6, 1990

Description of amendment requests: The licensee has requested to revise Technical Specification 3/4.6.1.2, "Containment Leakage." The proposed change would revise Surveillance Requirement 4.6.1.2.a and the associated Bases to permit the third Type A Test of each 10-year inservice interval to be conducted during a separate plant outage from the 10-year plant inservice Inspection.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No

The proposed change would revise the requirement of TS 3/4.6.1.2 to perform the third Containment ILRT of each 10-year service period concurrent with the third IST of each 10-year service period. This would allow the third set of each test to be conducted during separate outages. The requirement to perform the two tests during the same outage stems from 10 CFR 50, Appendix J. The apparent basis for the coupling of the two types of tests, is to assure that the three Type A tests are not grouped together during the first 20 months of each 10-year operation cycle.

The proposed change would allow the 10-year Containment ILRT to be performed independent of the 10-year ISI. The manner in which the tests are performed, would remain unchanged. The acceptance criteria for the tests would also remain unchanged. Operation of the facility in accordance with the proposed change remains bounded by existing plant safety analyses. Furthermore, the proposed change would only affect the scheduling of one of the three Type A tests during each 10-year service period. The scheduling and performance of the remaining Type A tests would not be affected. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed change would revise the surveillance to perform the third Containment ILRT during the shutdown for the 10-year plant ISI. The proposed change would allow the third Containment ILRT during each 10-year service period to be conducted during a separate outage from the ISI. The actual test to demonstrate Containment leakage rates are within their limits, would not be affected and will be conducted in the same manner. The Appendix J requirements will continue to be met with an exception to the schedular requirements of Section III.D.1(a). Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: April 6, 1991

Description of amendment requests: The licensee has requested to revise the Updated Final Safety Analysis Report to

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allow the shutdown cooling system (SDC) to be used as the primary means of cooling the spent fuel pool. This changes the use of the SDC system as a credited backup system when available, to a primary means of spent fuel pool cooling. This change is needed to allow systems that normally provide cooling for the spent fuel pool to be removed from service for maintenance activities. Equipment which must be maintained includes cross train isolation valves of the component cooling water system and components common to both trains of the spent fuel pool cooling system. The shutdown cooling system will not be used as the primary means of spent fuel pool cooling when Technical Specifications require the shutdown cooling system to be operable for cooling the reactor core.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

There will be no increase in any accident probability as a result of this change because cooling to the SFP [spent fuel pool] is maintained available at all times. * * * * * * *

The SDC [shutdown cooling] system is only to be used during a complete core offload when current Technical Specifications do not require SDC system operability for reactor core cooling.

The only potential accident remains to be a release of radioactivity from damaged fuel assemblies in the SFP. Both the SFP cooling system and the SDC systems are designed to maintain cooling capabilities to both the SFP and the core, respectively, which prevents this potential accident from occurring. In addition, the cooling capacity of each train in the SDC system is greater than the cooling capacity of the SFP cooling system.

During refueling outages there is only one complete train to provide a heat path from the SFP to the ultimate heat sink: one or two train(s) of the SFP cooling system, one train of CCW [component cooling water], one train of SWC [salt water cooling], and the associated emergency diesel generator. The above is true whether or not the SDC system is available for backup.

The proposed change will only affect the first component in the above chain. Thus SFP cooling will be provided by one train of SDC, one train of CCW, one train of SWC and the associated emergency diesel generator. This is allowable since during complete core offloads the single active failure criteria is not applicable for SFP cooling and Technical Specifications for the component cooling water system and salt water cooling system allow system outages, requiring only one train to be in service in other than MODES 1-4.

Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

All systems are being used as they were designed to be used. No new systems or design changes are being implemented. * * * The only change we are proposing is the use of the SDC system as the primary mode of cooling the SFP during maintenance of the normal SFP cooling systems.

Therefore, the possibility of a new or different kind of accident than previously evaluated is not being introduced by this change.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in margin of safety?

Response: No

This proposed change does not cause a reduction in a margin of safety because, as before the change, only one train of cooling is relied upon from the Spent Fuel Pool to the Ultimate Heat Sink during a full core off load.

The proposed change does not reduce the capability of heat transfer, and it does not change the number of trains required to be available to cool either the core or the SFP. * * * In addition, the cooling capacity of the SDC system is greater than the cooling capacity of the SFP cooling system. Therefore, the margin [of] safety is increased, not reduced.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: April 15, 1991

Description of amendment requests: The licensee has requested to revise Technical Specification 3/4.5.2, "ECCS SYSTEMS - T_{avg} GREATER THAN OR EQUAL TO 350° F." This proposed change will remove the Shutdown Cooling (SDC) system Auto-Closure Interlock (ACI) surveillance requirement. This ACI will be removed when this proposed change is approved by the NRC. Removal of the ACI is consistent with the recommendation in Generic Letter 88-17, "Loss of Decay Heat Removal." One result of an analysis performed in response to Generic Letter 88-17 is that spurious ACI actuation throughout the industry contributes approximately 39 percent to SDC system unavailability. Removal of the ACI will enhance plant safety during mid-loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The ACI is intended to guard against an overpressure condition of the SDC system due to operator error (i.e., the closure of only one SDC system isolation valve followed by a reactor coolant system pressurization). The reason for removing the ACI is to minimize potential loss of SDC due to inadvertent actuation.

Protection of the SDC system from an overpressure condition will still be provided by the open permissive interlock design to prevent opening of its associated isolation valve whenever system pressure is greater than or equal to 376 psia. Other protective features are the low temperature overpressure protection (LTOP) provided by the SDC system relief valve, individual valve position indication, and alarms to notify operators of valve misposition.

The potential loss of SDC due to the inadvertent operation of the ACI outweighs the redundant protection the ACI provides. Therefore, removal of the SDC system ACI will provide a significant decrease in the probability of a loss of SDC and will not increase the probability or the consequences of SDC system overpressure.

Therefore, this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

SDC system overpressure and loss of decay heat removal are the only accidents ACI impacts. The ACI is intended to guard against SDC system overpressure due to operator error; it does not protect against hardware failure. The valve misposition alarms will warn against both operator error and hardware failure.

The ACI does not protect against an overpressure transient since the stroke times of these large motor operated valves are too long compared to a pressure transient event.

The chance of the loss of decay heat removal accident is reduced by this change because the potential of the SDC system isolation valves being closed by a spurious signal will be eliminated.

Therefore, the possibility of a new or different kind of accident is not created by the removal of the ACI.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in margin of safety?

Response: No

Protection of the SDC system from an overpressure condition will still be provided by the open permissive interlock designed to prevent opening of its associated isolation valve whenever system pressure is greater than or equal to 376 psia. Other protective features are the low temperature overpressure protection (LTOP) provided by the SDC system relief valve, individual valve position indication, and alarms to notify operators of valve misposition.

SCE is following the NRC guidelines and the CEOG recommendations. The protection discussed above ensures that the removal of the ACI will not result in a significant reduction in margin of safety. Furthermore, the removal of the ACI will increase the reliability of the SDC system, which will increase the margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 20, 1991

Description of amendment request: This license amendment request proposes revising Technical Specification 3.1.3.2 and its associated Bases to add a new Action Statement to address the situation where more than one digital rod position indicator (DRPI) per control rod bank may be inoperable. The new Action Statement would avoid unnecessary plant shutdowns per Technical Specification 3.0.3 yet is consistent with the overall protection provided by related Technical Specifications. Additionally, a proposed change to Technical Specification 3.1.3.1 is being transmitted to correct an erroneous figure reference.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1 -Involves a Significant Increase in the Probability or of an Accident Previously Evaluated

The proposed change to Technical Specification 3.1.3.2 does not involve a significant increase in the probability or consequences of an accident previously evaluated. The potential for the new Action Statement to impact the probability or consequences of safety analyses for the plant lies only in the area of operator-exacerbated reactivity events due to a loss of RCCA position indication. RCCA events such as:

a) One or more dropped RCCAs within the same group (Updated Safety Analysis Report (USAR) Section 15.4.3)

b) Dropped RCCA bank (USAR Section 15.4.3)

c) RCCA ejection (USAR Section 15.4.8)

are not impacted since the new Action Statement does not involve a design change that would affect the probability of these events occurring nor their consequences. As such, the events of interest are:

a) Uncontrolled RCCA bank withdrawal at power (USAR Section 15.4.2)

b) Statically misaligned RCCA (USAR Section 15.4.3)

c) Withdrawal of a single RCCA (USAR Section 15.4.3)

The first of these events is a ANS Condition II transient that has been analyzed using a positive reactivity insertion rate greater than that for the simultaneous withdrawal of the two control banks having the maximum combined worth at maximum speed. Whether the event is caused by a failure in the rod control system or by operator error has no effect on the positive reactivity insertion rate assumed in these analyses. The protection systems assumed in the analysis of these events (power range neutron flux-high and low settings and Overtemperature-Delta T) are unaffected. Also, loss of DRPI would not result in more frequent control rod movement by the plant operators. Therefore, the new Action Statement would have no effect on the analysis of this event and the departure from nucleate boiling ratio (DNBR) design basis would still be met.

The most severe misalignment situation with respect to DNB arise from cases in which one RCCA is fully inserted, or where bank D is fully inserted to its insertion limits with one RCCA fully withdrawn. For these cases, as discussed in USAR Section 15.4.3, the DNBR remains above the safety analysis limit values. Also, the control bank insertion alarms remain available to warn the operator that bank insertion limits have been reached. The new Action Statement proposed herein does not alter these results.

The compensatory actions associated with this new Action Statement: placing the control rods under manual control addresses concerns associated with automatic rod motion due to the rod control system and inadvertent operator contribution to these events.

The worst case event of the above, the withdrawal of a single RCCA, is a ANS Condition III event. It has been analyzed in USAR Section 15.4.3 assuming that the operators ignore RCCA position indication or that multiple rod control system failures occur. No single electrical or mechanical failure in the rod control system could cause the accidental withdrawal of a single RCCA from a partially inserted bank at full power operation. The operator could deliberately withdraw a single RCCA in the control bank; this feature is necessary in order to retrieve a rod, should one be accidentally dropped. This new Action Statement does not change the plant design; therefore, there would be no change in the probability of this event being induced by unlikely, simultaneous electrical failures (USAR Section 7.7.2.2).

The proposed change to Technical Specification 3.1.3.1 does not involve a significant increase in the probability or consequences of an accident previously evaluated as this change is an administrative change to correct an erroneous reference.

Standard 2 -Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The proposed change to Technical Specification 3.1.3.2 does not create the possibility of a new or different kind of accident from any accident previously evaluated. This conclusion is based on the fact that no design changes are involved. The proposed change involves a loss of the digital rod position indicating system and establishes compensatory measures to maintain control rod position consistent with the assumptions used in existing accident and transient analyses. The new Action Statement provides sufficient time for troubleshooting while avoiding unnecessary plant shutdowns per Technical Specification 3.0.3. The compensatory actions require that rod position be inferred from flux maps, that RCS temperature be monitored and recorded, and that rod position changes be limited by placing the rod control system in manual control. Therefore, the potential for a new or different accident or event occurring is not created.

The proposed change to Technical Specification 3.1.3.1 is an administrative change and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3 -Involve a Significant Reduction in the Margin of Safety

The proposed change to Technical Specification 3.1.3.2 does not involve a significant reduction in a margin of safety. As discussed under Standard 1 above, the results of the Chapter 15 safety analyses for the applicable events are not affected by the proposed changes. Therefore, the safety margins demonstrated by these analyses remain unchanged. Technical Specification

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Bases Section 3/4.1.3 states that the Specifications of this section ensure that:

a) acceptable power distribution limits are maintained

b) the minimum SHUTDOWN MARGIN is maintained,

c) the potential effects of rod misalignment on associated accident analyses are limited.

The compensatory actions require that rod position be determined indirectly via the movable incore flux detectors and that RCS temperature be monitored and recorded. This addresses a) and b) above. Also, rod control is placed in manual which limits automatic rod motion. This addresses c) above. Asymmetric power distributions can be detected by the excore neutron flux detectors and core exist thermocouples.

The proposed change to Technical Specification 3.1.3.1 is an administrative change and does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W., Washington, D. C. 20037

NRC Project Director: George F. Dick, Acting Director

Previously Published Notices of Consideration of Issuance of Amendments to Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendment: March 27, 1991

Brief description of amendment: The proposed amendment would change the Zion Technical Specifications (TS), section 3.6, Containment Spray; section 3.8, Emergency Core Cooling and Core Cooling Support; section 3.15, Auxiliary Electrical Power System; section 6.6.3.B, Special Reports; and remove the Zion Confirmatory Order of February 29, 1980, Item B.6.

Date of individual notice in Federal Register: April 9, 1991 (56 FR 14392)

Expiration date of individual notice: May 9, 1991

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Notice of Issuance of Amendment to Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Commonwealth Edison Company, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: July 31, 1989, as supplemented August 27, 1990.

Brief description of amendments: The free field seismic monitor has been relocated due to the construction of a training building. This amendment request changes the Technical Specification to provide a new location for the free field seismic monitor for the time-history accelerograph.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment Nos.: 28 and 28

Facility Operating License Nos. NPF-72 and NPF-77: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 20, 1991 (56 FR 6869) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 11, 1991. No significant hazards consideration comments received: No.

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: June 4, 1990

Brief description of amendments: The amendments proposed a change to Technical Specification 4.0.2 and its associated bases, based on the guidance provided in Generic Letter 89-14, "Line-Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals". The current Byron and Braidwood Technical Specification 4.0.2 allows a surveillance interval to be extended by up to 25 percent of the interval. However, the combined interval for any three consecutive surveillances cannot exceed 3.25 times the original surveillance interval. This Technical Specification change request proposes to remove the 3.25 limitation for consecutive surveillances. The revised specification would allow a maximum of 25 percent extension for each surveillance period. The intent of this change is not to increase the time between the performance of surveillances. Rather, the purpose of this change is to allow for more operational flexibility when scheduling surveillances.

Date of issuance: April 8, 1991

Effective date: April 8, 1991

Amendment Nos.: 40 and 40, 27 and 27

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revise the Technical Specifications.

Date of initial notice in Federal Register: December 12, 1990 (55 FR 51176) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 8, 1991

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois.

Date of application for amendments: November 28, 1990

Brief description of amendments: These amendments would revise Section 6, Administrative Controls, of the Technical Specifications in three areas: 1) deletes all references to interim minimum shift manning requirements, 2) changes the title Assistant Vice President Quality Programs and Assessment to General Manager Quality Programs and Assessment, and 3) updates the analytical methodologies used to determine core operating limits for a reload cycle.

Date of issuance: April 19, 1991

Effective date: April 19, 1991

Amendment Nos.: 41 and 41 for Byron 1 & 2, 29 and 29 for Braidwood 1 & 2

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 20, 1991, (56 FR 6870) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: January 18, 1991 and supplemented February 4, 1991.

Brief description of amendments: The amendments revise the Administrative Controls section of the Technical Specifications to change the title of Assistant Vice President Quality Programs and Assessment to General Manager Quality Programs and Assessment and to provide clarification of the STA staffing options and the actions performed to assure proper STA availability.

Date of issuance: April 8, 1991

Effective date: April 8, 1991

Amendment Nos.: 78 and 62

Facility Operating License Nos. NPF-11 and NPF-18. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 6, 1991 (56 FR 9377) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 8, 1991

No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogleaby, Illinois 61348

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 25, 1990, as supplemented February 21, 1991

Brief description of amendment: This amendment revises the Technical Specifications by removing the existing cycle-specific parameters and placing them in a Core Operating Limits Report under the control of the licensee. The proposed changes are consistent with guidance provided in the NRC Generic Letter 88-16.

Date of issuance: April 11, 1991.

Effective date: April 11, 1991.

Amendment No.: 64

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: November 14, 1990 (55 FR 47569) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 28, 1990.

Brief description of amendment: This amendment revises the Technical Specifications (TS) by removing the provisions of Specification 4.0.2 that limits the combined time interval for three consecutive surveillance intervals to less than 3.25 time the specified interval. The proposed amendment follows the guidance provided by Generic Letter 89-14, dated August 21, 1989.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment No.: 65

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in Federal Register: February 20, 1991 (56 FR 6871) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: August 1, 1990

Brief description of amendment: This amendment revises the Technical Specification (TS) description of control rod assemblies to address the use of hafnium as a neutron absorber material.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment No.: 66

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Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in Federal Register: February 20, 1991 (56 FR 6872) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: May 18, 1990.

Brief description of amendment: This amendment revises the TS by eliminating the requirement for use of the Rod Sequence Control System and decreasing the power level setpoint above which the Rod Worth Minimizer System would no longer be required.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment No.: 57

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in Federal Register: March 6, 1991 (56 FR 9367) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: August 1, 1990

Brief description of amendment: This amendment revises the TS to clarify the reference points for setting the uptravel and downtravel stops on the refueling platform's hoists.

Date of issuance: April 19, 1991

Effective date: April 19, 1991

Amendment No.: 58

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in Federal Register: February 20, 1991 (56 FR 6871) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: October 24, 1990

Brief description of amendments: The amendments revise the in-place penetration and bypass leakage requirement in TS 4.7.6.c.1, 4.7.6.f, and 4.7.6.g from less than 1% to less than 0.05%. The revision places a more restrictive limit in the TSs.

Date of issuance: April 5, 1991

Effective date: April 5, 1991

Amendment Nos.: 118 and 100

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 6, 1991 (56 FR 9577) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 5, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: January 29, 1991

Brief description of amendment: The amendment revised Technical Specifications (TSs) 3.3 and 4.5.2 regarding the reactor building emergency cooling system. Specifically, the TSs are clarified by defining a reactor building cooling train in terms of equivalent cooling capacity to meet the design requirements as specified in the Safety Analysis Report.

Date of issuance: April 10, 1991

Effective date: 30 days from the date of issuance

Amendment No.: 145

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 6, 1991 (56 FR 9378) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: October 19, 1989, as supplemented January 15, 1991.

Brief description of amendment: The amendment changed Arkansas Nuclear One, Unit 2 Technical Specification 4.7.12.1.a on surveillance requirements for the spent fuel pool inspection frequency from once per 18 months to once per 5 years.

Date of issuance: April 8, 1991

Effective date: 30 days from date of issuance.

Amendment No.: 117

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 7, 1990 (55 FR 8218) The additional information contained in the supplemental letter dated January 15, 1991, was clarifying in nature and thus, within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 9, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: October 31, 1989, as supplemented January 25, March 6, June 21, August 23, November 6, and November 28, 1990.

Brief description of amendment: This amendment revises the TS to permit an increase in the capacity of spent fuel storage pool B and in the allowable fuel enrichment in fuel pool B.

The licensee's application included a one-time relief allowing removal of the missile shields over spent fuel pool B while modifying fuel racks. This modification is no longer necessary, and, as agreed to in discussions with the licensee, is not part of this amendment. The Notice of Withdrawal was issued with the amendment.

The application also included TS in both the current and new format of the Technical Specification Improvement Program. Only the current format TS changes have been reviewed and approved by the staff in this amendment.

Date of issuance: April 16, 1991

Effective date: April 16, 1991

Amendment No.: 134

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 12, 1990 (55 FR 9230) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 16, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: January 3, 1991

Brief description of amendments: These amendments modify the licenses of Turkey Point Units 3 and 4 by extending the effectiveness of the Integrated Scheduling of Plant Modifications from December 31, 1990 to December 31, 1991.

Date of issuance: April 12, 1991

Effective date: April 12, 1991

Amendment Nos. 139, 134 Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the licenses.

Date of initial notice in Federal Register: February 6, 1991 (56 FR 4864) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 12, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of application for amendment: June 15, 1989, revised October 19, 1990

Brief description of amendment: The amendment modifies Appendix B Technical Specifications by deleting the remaining requirements for nonradiological environmental monitoring studies and reporting requirements.

Date of Issuance: March 6, 1991

Effective date: March 6, 1991

Amendment No.: 40

Facility Operating License No. DPR-73. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 9, 1991 (56 FR 892) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 6, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: March 1, 1991

Brief description of amendment: The amendment revised Technical Specification Table 3.3.2-1, "Isolation Actuation Instrumentation," to correctly identify actuation of the emergency mode of the main control room area ventilation system at reactor water low, low level 2, instead of low, low, low level 1, as currently reflected in the table.

Date of issuance: April 18, 1991

Effective date: April 18, 1991

Amendment No.:

Amendment No. 56

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 13, 1991 (56 FR 10582). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1991

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 22, 1990 (three applications)

Brief description of amendments: The amendments change the Appendix A Technical Specifications by eliminating the requirement to shut down the plant in the event that one of four channels is inoperable in the post accident monitoring instrumentation for the steam generator level narrow range, containment pressure, and steamline pressure channels.

Date of issuance: April 15, 1991

Effective date: April 15, 1991

Amendment Nos. 23 and 13

Facility Operating License Nos. NPF-76 and NPF-80. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 31, 1990 (55 FR 45883 and 55 FR 45884). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 15, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: March 14, 1989

Brief description of amendments: These amendments make editorial and technical changes to Technical Specification (TS) 3/4.3.2.1, "Engineered Safety Features. Actuation System Instrumentation," with respect to surveillance requirements for manual actuation circuitry.

Date of issuance: April 5, 1991.

Effective date: April 5, 1991.

Amendments Nos.: 158/137

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 4, 1990 (55 FR 12594). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 5, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: August 25, 1989 as modified December 12, 1989, June 1, and October 26, 1990.

Brief description of amendments: These amendments make various changes to the Technical Specifications

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(TS) Section 6.0 including title changes, editorial changes, changes to the qualifications, structure, and quorum requirements of the Plant Nuclear Safety Review Committee, and changes to reporting requirements. Additionally, editorial changes are being made to Sections 3.0 and 4.0 of the TS to remove obsolete references to Section 6.0 TS or add new references.

Date of issuance: April 9, 1991

Effective date: Immediately to be implemented within 180 days of date of issuance.

Amendments Nos.: 154 and 138

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 15, 1989 (54 FR 47606) and November 28, 1990 (55 FR 49453). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 9, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: January 15, 1991

Brief description of amendments: The proposed amendments modify TS 3/4.8.2.3 and TS 3/4.8.2.5 to reflect Regulatory Guide 1.129 by removing the requirement for a differential acceptance test for the DC bus trains (Train AB, Train CD, and Train N) during the 92-day surveillance.

Date of issuance: April 10, 1991

Effective date: April 10, 1991

Amendments Nos.: 135/130

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 6, 1991 (56 FR 4666). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 10, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: November 30, 1989

Brief description of amendment: The amendment clarifies the surveillance requirements for the emergency power sources (the diesel generator and the gas turbine generator), defining the surveillance loading requirements and run times. In addition, the option of allowing the use of the gas turbine generator peaking operation to demonstrate operability in lieu of the monthly surveillance test run is eliminated.

Date of issuance: April 5, 1991

Effective date: April 5, 1991

Amendment No.: 50

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 6, 1991 (56 FR 4867) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 5, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: January 16, 1991, as supplemented by letter dated February 15, 1991.

Brief description of amendment: The amendment changes Technical Specification (TS) 4.7.A.3 "Containment Systems," to allow the use of the "mass point" methodology, in addition, or as an alternative to, the presently approved "total time" methodology.

Date of issuance: April 10, 1991

Effective date: April 10, 1991

Amendment No.: 51

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 6, 1991 (56 FR 4866) as renoticed on March 6, 1991 (56 FR 9361). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: August 2, 1990

Brief description of amendments: The amendments revised the licenses by deleting License Conditions 2.C.(26) and 2.C.(9) in Operating License Nos. NPF-14 and NPF-22, respectively.

Date of issuance: April 10, 1991

Effective date: April 10, 1991

Amendment Nos.: 106 and 74

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Licenses.

Date of initial notice in Federal Register: December 12, 1990 (55 FR 51182) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 10, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: March 16, 1990, as supplemented by letters dated April 2, August 7 and December 19, 1990.

Brief description of amendments: These amendments revised a footnote and test load ranges related to surveillance testing of the emergency diesel generators.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment Nos.: 107 and 75

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 23, 1991 (56 FR 2554) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 28, 1990, as supplemented on February 13, 1991. The supplemental letter proposed to add the title of "President" in TS 6.2.3.4. The staff has determined that this additional change does not affect the proposed no significant hazards determination.

Brief description of amendments: These amendments changed the Technical Specifications to add requirements for the Independent Safety Engineering Group and to revise Nuclear Review Board membership and meeting frequency requirements.

Date of issuance: April 10, 1991

Effective date: April 10, 1991

Amendment Nos.: 158 and 160

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 18, 1990 (55 FR 14516). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 10, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: January 25, 1990

Brief Description of amendment: This amendment revises job titles and makes other administrative changes in the Technical Specifications.

Date of issuance: April 5, 1991

Effective date: April 5, 1991

Amendment No.: 83

Facility License No. DPR-34: Amendment revised the license.

Date of initial notice in Federal Register: April 4, 1990 (55 FR 12509) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 5, 1991. No significant hazards consideration comments received: No.

Local Public Document Room Location: Greeley Public Library, City Complex Building, Greeley, Colorado 80631

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 2, 1990

Brief description of amendments: These amendments modified Technical Specification Table 4.3-1, Reactor Trip System Instrumentation Surveillance Requirements, by adding a reference to Note 5 in the Channel Functional Test Column for Functional Unit 19. Note 5 allows the channels to be tested every 62 days on a STAGGERED TEST BASIS. Also, Functional Unit 19 on Table 3.3-1 and 3.4-1 was changed from "Safety Injection Input from SSPS" to "Safety Injection Input from ESF."

Date of issuance: April 5, 1991

Effective date: April 5, 1991

Amendment Nos.: 125 and 103

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 6, 1991 (56 FR 9366) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 5, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: February 1, 1991 supplemented by letters dated March 19, 1991 and April 2, 1991. The March 19, 1991 and April 2, 1991 letters provided clarifying information and did not change the initial proposed no significant hazards consideration determination.

Brief description of amendment: This amendment allowed the use of an eight-second closure time for the main steam isolation valves at Salem 1 for the tenth operating cycle.

Date of issuance: April 18, 1991

Effective date: April 18, 1991

Amendment No.: 124

Facility Operating License No. DPR-70: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 20, 1991 (56 FR 6900) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: February 4, 1991

Brief description of amendment: The amendment changes the Technical Specifications to allow a one-time extension of the test interval for the third Type A test in the first 10-year service period, provided the unit shutdown occurs by June 1, 1993, and provided the Type A test is performed before restart from Refueling Outage No. 7.

Date of issuance: April 10, 1991.

Effective date: April 10, 1991.

Amendment No.: 97

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: March 6, 1991 (56 FR 9366) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendment: July 3, 1990 (TS 284)

Brief description of amendment: The Browns Ferry, Unit 2 Technical Specifications, Table 3.7.A is being revised to include containment isolation valves for Post Accident Sampling System (PASS), Drywell Control Air and Containment Atmosphere Dilution crosstie. Section 6.0 is being revised to provide administrative controls for PASS to ensure that samples of gaseous effluents and containment atmosphere can be obtained under accident conditions.

Date of issuance: April 10, 1991

Effective date: April 10, 1991, and shall be implemented within 30 days

Amendment No.: 194

Facility Operating License No. DPR-52: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 5, 1990 (55 FR 36250) By letter dated February 27, 1991, TVA supplemented its original TS amendment application with additional

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commitments regarding the primary containment isolation design scheme at BFN. This letter did not revise any proposed TS changes and was considered to be within the scope of the original no significant hazards determination. The Commission's related safety evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Toledo Edison Company, Canterior Service Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: February 6, 1991

Brief description of amendment: The amendment changed the technical specifications to allow a moderator temperature coefficient (MTC) to be more negative than the current limit of -3.0 x 10^{-4} delta k/k/° F. The future limits of the negative MTC will be fuel-cycle specific and are permitted to appear in the Core Operating Limits Report as per the NRC Generic Letter 88-16.

Date of issuance: April 10, 1991

Effective date: April 10, 1991

Amendment No. 154

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 25, 1991 (56 FR 7734) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: December 21, 1990, as supplemented February 8, 1991.

Brief description of amendments: These amendments increase the boron concentration in the refueling water storage tank and in the safety injection accumulators, and require the minimum boron concentration in the spent fuel pool to be 2300 ppm. In addition, a TS has been added to lock out the primary grade water flow path during refueling and cold shutdown conditions.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment Nos. 153, 150

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9380) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Virginia Electric and Power Company, Docket No. 50-281, Surry Power Station, Unit No. 2, Surry County, Virginia.

Date of application for amendment: February 6, 1991

Brief description of amendment: The amendment eliminates the present operational restrictions on the main control room and emergency switchgear room air handling units, which were imposed by

Amendment No. 129 dated May 30, 1989.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment No. 151

Facility Operating License No. DPR-37: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9388) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Virginia Electric and Power Company, Docket No. 50-281, Surry Power Station, Unit No. 2, Surry County, Virginia.

Date of application for amendment: February 15, 1991

Brief description of amendment: This amendment allows a one-time change to the inspection interval for the low pressure turbine blades from the April 1991 refueling outage to the 1993 refueling outage.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment No. 152

Facility Operating License No. DPR-37: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9389) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: May 25, 1990

Brief description of amendments: These amendments modify the requirements for explosive gas concentration to conform to the applicable section of NUREG-0472, Section 3.11.2.5B.

Date of issuance: April 17, 1991

Effective date: April 17, 1991

Amendment Nos. 154 & 153

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 11, 1990 (55 FR 28484) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 17, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: June 29, 1990

Brief description of amendments: These amendments relocate the Radiological Effluent Technical Specifications to the offsite Dose Calculation Manual or the Process Control Program, as appropriate.

Date of issuance: April 17, 1991

Effective date: April 17, 1991

Amendment Nos. 155 & 154

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 20, 1991 (56 FR 6882) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 17, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application amendment: January 18, 1991

Brief description of amendment: The amendment revised the Technical Specification 3/4.7.4, "Snubbers," to reflect the recommendations of Generic Letter (GL) 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions." The GL proposes an alternative inspection schedule based on the number of unacceptable snubbers found during the previous inspection in proportion to the sizes of various snubber populations or categories.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment No.: 91

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 20, 1991 (56 FR 6884) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments requested: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station Franklin County, Massachusetts

Date of application for amendment: January 28, 1991 as supplemented February 28, 1991

Brief description of amendment: The amendment would allow YNPS to operate with fewer detector thimbles while maintaining sufficient data collection capability to ensure that operation of the YNPS core remains within licensed limits. The current Technical Specification governing operability of the Incore Instrumentation System requires that a minimum of 12 neutron detector thimbles be operable with at least two per core quadrant whenever the system is used for core power distribution measurements. This change reduces the minimum number of thimbles to nine and reduces the minimum number of thimbles per quadrant to one.

Date of issuance: April 18, 1991

Effective date: April 18, 1991

Amendment No.: 132

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 19, 1991 (56 FR 6921) The February 28, 1991, letter provided clarifying information, but did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 18, 1991.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Notice of Issuance of Amendment to Facility Operating License and Final Determination of No significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By May 31, 1991, the licensee may file a

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request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendment: March 9, 1991

Brief description of amendment: The amendments to the Technical Specifications temporarily exclude four containment pathways from the requirement to perform Type C leak testing in accordance with 10 CFR 50, Appendix J, during current operating cycles Z1C12 and Z2C12, for Zion Units 1 and 2, respectively.

Date of issuance: April 5, 1991

Effective date: The exclusions provided by the amendments remain effective until startup for the next operating cycle for each unit.

Amendment Nos.: 122 and 111

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 5, 1991.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

NRC Project Director: Richard J. Barrett

Dated at Rockville, Maryland, this 24th day of April 1991.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 91-10140 Filed 4-30-91; 8:45 am]

BILLING CODE 7590-01-D

[Docket Nos. 50-440A AND 50-346A]

Ohio Edison Co.; The Cleveland Electric Illuminating Co.; The Toledo Edison Co.; Notice of Denial of Applications for Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied requests by the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (the licensees) for amendments to Facility Operating License Nos. NPF-58 and NPF-3, issued to the licensees for the operation of the Perry Nuclear Power Plant, Unit 1, and the Davis-Besse Nuclear Power Station, Unit 1, located in Lake County and Ottawa County, Ohio, respectively. The application of Ohio Edison, dated September 18, 1987, pertained solely to License No. NPF-58, while the joint application of Cleveland Electric Illuminating and Toledo Edison, dated May 2, 1988, related to both licenses. Notifications of receipt of these amendment requests were published in the **Federal Register** on December 22, 1987 (52 FR 48473) and on June 16, 1988 (53 FR 22589).

The purpose of the licensees' amendment requests were to suspend the antitrust conditions in the two operating license as they apply to these respective licensees. The NRC staff has advised the licensees that the proposed amendments are denied, based on the staff's evaluation of the arguments made in support of the applications, the extensive public comments received on the proposed amendments, and the views expressed by the Department of Justice in a June 13, 1990 letter to the NRC. The licensees were notified of the Commission's denial of the proposed amendments in a letter dated April 24, 1991.

By May 31, 1991, the licensees, may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555 and to Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N. Street, NW., Washington, DC 20037 (attorneys for Ohio Edison), and to Michael T. Mishkin, Esq., Squire, Sanders and Dempsey, 1201 Pennsylvania Avenue NW., P.O. Box 407, Washington, DC 20044 (attorneys for Cleveland Electric Illuminating and Toledo Edison).

For further details with respect to this action, see (1) the applications for amendment dated September 18, 1987 and May 2, 1988, (2) the Department of Justice letter to the NRC, dated June 13, 1990, and (3) the Commission's letter to the licensees, dated April 24, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.; at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081; and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606. A copy of item (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 24th day of April 1991.

John N. Hannon,

Director, Project Directorate III-3, Division of Rector Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-10287 Filed 4-30-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Advisory Committee on Semiconductors

The purpose of the National Advisory Committee on Semiconductors (NACS) is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy will assure the continued leadership of the United States in semiconductor technology. The Committee will meet on Wednesday, May 15, 1991 at Science Applications International Corporation (SAIC), 1555 Wilson Boulevard, 7th Floor, Rosslyn, Virginia. The proposed agenda is:

1. Briefing of the Committee on its organization and administration.

2. Presentations to the Committee by OSTP personnel and personnel of other agencies on proposed and ongoing studies regarding semiconductors.

3. Discussion of Working Group actions.

A portion of the May 15th session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of those briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b.(c)(1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b.(c)(6).

Because of advance security arrangements, persons wishing to attend the open portion of the meeting should contact Ms. Kathleen Elim, at (703) 528-6090 prior to May 14, 1991. Ms. Elim is also available to provide specific information regarding time, place and agenda for the open session.

Dated: April 26, 1991.

Damar W. Hawkins,

Executive Assistant to D. Allan Bromley, Office of Science and Technology Policy.

[FR Doc. 91-10333 Filed 4-26-91; 4:52 pm]

BILLING CODE 3170-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-69A]

Japanese Government Procurement Policies Affecting Architectural, Engineering and Construction-Related Services

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of proposed determination pursuant to section 306 of the Trade Act of 1974 (the "Trade Act"), as amended, 19 U.S.C. 2416; and request for public comment on proposed U.S. action under section 301 of the Trade Act.

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SUMMARY: On November 21, 1989, the USTR determined, pursuant to section 304(a)(1)(A) of the Trade Act, that certain acts, policies and practices of the Government of Japan with respect to the procurement of architectural, engineering and construction services and related consulting services by the Japanese Government are unreasonable and burden or restrict U.S. commerce. The USTR further determined, pursuant to section 304(a)(1)(B) of the Trade Act, that no responsive action under section 301 of the Act was appropriate at the time in light of certain commitments made by the Government of Japan. The USTR has been monitoring Japan's implementation of these commitments pursuant to section 306 of the Trade Act, and has been seeking a satisfactory resolution of all remaining concerns in bilateral negotiations, which have included a full review of the "Major Projects Arrangements" concluded by the United States and Japan in 1988. On November 21, 1988, the USTR announced that if Japan's implementation of its undertakings or progress in ongoing negotiations were unsatisfactory, the USTR would consider at that time what further action may be appropriate under section 301 of the Trade Act.

Negotiations with the Government of Japan since the end of 1989 have not yet resulted in a satisfactory resolution of remaining U.S. concerns regarding the Japanese Government procurement policies affecting architectural, engineering and construction-related services identified in the USTR's determination of November 21, 1989. Therefore, the USTR is considering taking action in response under section 301 of the Trade Act. Public comment is invited on the proposed determinations and action described below.

DATES: Public comments are due by noon on Friday, May 31, 1991.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Piez, Deputy Assistant USTR for Japan and China, (202) 395-5070.

SUPPLEMENTARY INFORMATION: On November 21, 1988, pursuant to section 1305 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100-418, 102 Stat. 1182), the United States Trade Representative initiated an investigation under section 302 of the Trade Act of 1974, as amended, regarding those acts, policies and practices of the Government of Japan, and of entities owned, financed, or otherwise controlled by the Government of Japan, that are barriers in Japan to the offering or performance in Japan by United States persons of architectural, engineering, and construction services, and related consulting services.

On the basis of the investigation and after consultations with the Government of Japan and the affected U.S. industry, the USTR determined, on November 21, 1989, pursuant to section 304(a)(1)(A) of the Trade Act, that certain acts, policies and practices of the Government of Japan with respect to the procurement of architectural, engineering and construction services and related consulting services by the Japanese Government are unreasonable and burden or restrict U.S. commerce.

The USTR further determined, pursuant to section 304(a)(1)(B) of the Trade Act, that no responsive action under section 301 of the Act was appropriate at that time in light of (a) written commitments made by the Government of Japan regarding actions the Government of Japan intended to take to improve access for U.S. firms to its market, and (b) written commitments made by the Government of Japan to ongoing bilateral consultations on all unresolved matters regarding access to the construction market, including consultations that had been scheduled for spring 1990 in the context of a review of the Major Projects Arrangements concluded by the Governments of Japan and the United States in May 1988.

The USTR found it unreasonable, and a burden or restriction on U.S. commerce, that the Government of Japan implements procurement policies in the construction sector in a way that limits competition and facilitates collective bidding practices ("dango"), including inadequate use of administrative measures restricting collusive bidding activities, and operation of the designated bidder system. Specific reasons for the USTR's determination were set forth in a Federal Register notice published on November 29, 1989 (54 FR 49150).

In addition, the USTR found it unreasonable, and a burden or restriction on U.S. commerce, that the Government of Japan uses open bidding procedures only in the 14 construction projects covered by the Major Projects Arrangements. In negotiations with the Government of Japan following these determinations, the United States has sought to expand the coverage of those Arrangements to additional public works projects, and to revise the Arrangements to address existing problems. However, those negotiations have not yet resulted in a satisfactory agreement.

The USTR's determination that no responsive action under section 301 of the Trade Act was appropriate at that time took into account several commitments made by the Government of Japan. In consultations with the Government of Japan on November 8-9, 1989, Japanese Government officials gave the United States written commitments, amplified by the USTR's subsequent discussions with Japanese Government officials in Tokyo and by a letter dated November 17, 1989, from the Minister of Construction, regarding actions the Government of Japan intended to take immediately to improve access for U.S. firms to its market. (See 54 FR 49150). The Government of Japan also committed in the November 17 letter, and again subsequent thereto, to ongoing bilateral consultations on all unresolved matters regarding access to the construction market, including those scheduled for spring 1990 in the context of a review of the Major Projects Arrangements.

Proposed Determinations and Action

As a result of monitoring pursuant to section 306 of the Trade Act, the USTR proposes to determine that Japan is not satisfactorily implementing measures to address the practices determined on November 21, 1989, to be unreasonable and to burden or restrict U.S. commerce. Therefore, the USTR proposes to take the following action, pursuant to the USTR's authority under section 301(c)(1)(B) of the Trade Act: To impose restrictions on the provision in the United States of architectural, engineering and construction-related services of Japan, by determining that no Japanese contractor or subcontractor shall be eligible to enter into such services contracts with certain federal agencies for the construction, alteration, or repair of any public buildings or public works in the United States. Specifically, the proposed action would bar Japanese contractors or subcontractors from federal or federally-funded public buildings or public works procurements by the U.S. Departments of Energy, Transportation, and Defense, including the U.S. Army Corps of Engineers, and the Bureau of Reclamation of the Department of Interior, in a manner consistent with the obligations of the United States under the General Agreement on Tariffs and Trade (GATT) and the Agreement on Government Procurement negotiated under the auspices of the GATT.

Public Comment

In accordance with section 306(c)(2) of the Trade Act, interested persons are invited to submit written comments on the proposed USTR determinations and action described above. Comments must be filed in accordance with the requirements set forth in 15 CFR § 2006.8(b) (55 FR 20593) and are due by noon on Friday, May 31, 1991. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, Room 223 USTR, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301-69A) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. (Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the Docket which is open to public inspection.)

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 91-10292 Filed 4-29-91; 8:45 am]

BILLING CODE 3190-01-M

Notice With Respect to List of Countries Denying Market Opportunities for Government-Funded Construction Projects

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with respect to a list of countries denying market opportunities for U.S. products, suppliers or bidders for government-funded construction projects.

SUMMARY: Pursuant to section 533 of the Airport and Airway Improvement Act of 1982, as amended, section 511 of the Energy and Water Development Appropriations Act of 1991, and section 340 of the Department of Transportation and Related Agencies Appropriations Act of 1991, the United States Trade Representative ("USTR") has decided not to include any countries at this time on the list of countries that deny market opportunities for products, suppliers or bidders for government-funded construction projects.

DATES: Effective April 28, 1991.

ADDRESS: Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Piez, Deputy Assistant USTR for Japan and China, (202) 395-5070.

SUPPLEMENTARY INFORMATION: Section 115 of Public Law No. 100-223, the Airport and Airway Safety and Capacity Expansion Act of 1987, amended the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2201-2225) ("Airport Act"), by adding section 533. Section 533(a) provides certain requirements and prohibitions applicable to use of funds from the Airport and Airway Trust Fund. Section 533(b) requires the USTR to make determinations with respect to whether foreign countries deny fair and equitable market opportunities for U.S. products, suppliers or bidders for construction projects of $500,000 or more and are funded (in whole or in part) by the governments of such foreign countries. Section 533(c) requires the USTR to maintain a list of countries identified under section 533(b) and to publish such list annually in the Federal Register.

Section 553(b)(2) specifies that the USTR, in considering which countries to list, shall take into account those foreign countries that are listed in the annual report on foreign trade barriers required under section 181(b) of the Trade Act of 1974, as amended ("Trade Act"), as maintaining barriers to U.S. construction services for certain construction projects. The only foreign country listed in the 1991 report on foreign trade barriers with a section on barriers to U.S. construction, architectural and engineering services is Japan.

Section 511 of the Energy and Water Development Appropriations Act of 1991 ("Energy and Water Act"), Public Law No. 101-514, 104 Stat. 2074, 2098-2100, and section 340 of the Department of Transportation and Related Agencies Appropriations Act of 1991 ("Transportation Department Act"), Public Law No. 101-516, 104 Stat. 2155, 2187-89, apply restrictions, with respect to funds appropriated under those acts, based on determinations essentially identical to that required by section 533(b) of the Airport Act.

On November 21, 1989, pursuant to section 1305 of the Omnibus Trade and Competitiveness Act of 1988, Public Law No. 100-418, 102 Stat. 1107, 1182, I determined under section 304(a)(1)(A) of the Trade Act, 19 U.S.C. 2414(a)(1)(A), that certain acts, policies and practices of the Government of Japan with respect to barriers to the procurement of architectural, engineering and construction services, and related consulting services, were unreasonable and burdened or restricted U.S. commerce.

At the same time, I determined, under section 304(a)(1)(B) of the Trade Act, 19 U.S.C. 2414(a)(1)(B), that no responsive action under section 301 of that act was appropriate at that time in light of Japanese Government commitments to improve access by U.S. firms to its market and to consult with the United States on all unresolved matters regarding access to the construction market.

In view of certain commitments that the Government of Japan had made in response to the section 1305 investigation, and given the award of some contracts to U.S. firms, I did not determine last year that Japan denied fair and equitable market opportunities for U.S. products, suppliers or bidders for construction projects in Japan for the purposes of section 533(b) of the Airport Act.

Nevertheless, I stated that specific difficulties remained in access by U.S. firms to the Japanese Government-funded construction market. I also noted that the United States was monitoring the Government of Japan's implementation of its undertakings regarding access to its government-funded construction market and intended to seek a satisfactory resolution of all remaining concerns. Finally, I stated that I would take into account Japan's implementation of its undertakings and progress in negotiations in making my determination under section 533(b) of the Airport Act this year.

Since May 1990, U.S. negotiators have held eight meetings with the Japanese Government to review the 1988 Major Projects Arrangements and to discuss means of improving access to the market in Japan for foreign construction companies. Those meetings have failed to produce satisfactory results.

In light of the lack of substantial progress in ensuring greater access by U.S. firms to the Japanese Government-funded construction market, I have proposed to apply restrictions under section 301(c)(1)(B) of the Trade Act with respect to the provision in the United States of architectural, engineering and construction-related services of Japan. Specifically, I have proposed to determine that no Japanese contractor or subcontractor shall be eligible to enter into such services contracts with certain federal agencies for the construction, alteration or repair of any public building or public work in the United States. In particular, the proposed action would bar Japanese contractors and subcontractors from federal or federally funded public building or public works procurements by the U.S. Departments of Energy, Transportation and Defense, including the U.S. Army Corps of Engineers, and

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the Bureau of Reclamation of the Department of the Interior.

The action that I have proposed taking under the Trade Act with respect to the procurement of Japanese construction services parallels and subsumes the funding prohibitions that would apply in the event that Japan were listed under section 538 of the Airport Act, section 511 of the Energy and Water Act, and section 340 of the Transportation Department Act. Application of funding prohibitions under the latter three statutes at the same time that such prohibitions apply under the Trade Act would be redundant.

Under these circumstances, I do not now determine that Japan denies fair and equitable market opportunities for U.S. products, suppliers or bidders for construction projects in Japan for purposes of these statutes.

List pursuant to section 533(c) of the Airport Act: None.

List pursuant to section 511(c) of the Energy and Water Act: None.

List pursuant to section 340(c) of the Transportation Department Act: None.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 91-10288 Filed 4-29-91; 8:45 am]

BILLING CODE 3190-01-M

Notice of Countries Identified as Priority Foreign Countries

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of countries identified as priority foreign countries under section 182(a) of the Trade Act of 1974, as amended ("the Trade Act").

SUMMARY: Pursuant to section 182 of the Trade Act, 19 U.S.C. 2242, the United States Trade Representative (USTR) has identified India, the People's Republic of China, and Thailand as priority foreign countries.

EFFECTIVE DATE: USTR identified these countries as priority foreign countries on April 26, 1991.

ADDRESSES: Office of the United States Trade Representative, Room 409, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Carmen Suro-Bredie, Deputy Assistant U.S. Trade Representative for Investment and Intellectual Property, (202) 395-7320, Peter Collins, Director for India and Asean Affairs (202) 395-6813, Howard Krawitz, Director for the People's Republic of China (202) 395-5050, or Catherine Field, Associate General Counsel, (202) 395-3432.

SUPPLEMENTARY INFORMATION: Under the Trade Act, as amended by the 1988 Omnibus Trade and Competitiveness Act, the USTR must identify annually those foreign countries that deny adequate and effective protection of intellectual property rights, or deny fair and equitable market access to United States persons that rely upon intellectual property, and those foreign countries that are determined to be priority foreign countries. Priority foreign countries are those countries (1) whose acts, policies and practices are the most onerous and egregious and have the greatest adverse impact (actual or potential) on relevant U.S. products, and (2) that are not entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective intellectual property protection. With respect to countries that deny fair and equitable market access for persons relying on intellectual property protection, priority foreign countries are those countries for which there is a factual basis for finding that the denial of market access results from the violation of international law or agreement, or the existence of discriminatory nontariff trade barriers.

Section 182(e) of the Trade Act requires that a list of foreign countries so identified be published in the Federal Register. Accordingly, notice is hereby given that the USTR has identified India, the People's Republic of China, and Thailand as priority foreign countries within the meaning of section 182 of the Trade Act. Pursuant to section 302(b)(2)(A) of the Trade Act, the USTR must decide, no later than May 26, 1991, whether to initiate an investigation of each of these countries' acts, policies or practices that was the basis for the identification of that country as a priority foreign country.

S. Bruce Wilson,

Assistant U.S. Trade Representative for Investment, Services and Intellectual Property.

[FR Doc. 91-10294 Filed 4-29-91; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash, (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

New Notification Requirements for Certain Exemptions From Rules 10b-6, 10b-7, and 10b-8, File No. 270-351.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval a condition of exemptive relief requiring notification to the Commission by persons relying on certain exemptions from rules 10b-6 (17 CFR 240.10b-6), 10b-7 (17 CFR 240.10b-7), and 10b-8 (17 CFR 240.10b-8) under the Securities and Exchange Act of 1934 (15 U.S.C. 78 *et seq.*). Specifically, the condition requires that certain distribution participants distributing foreign securities eligible under rule 144A (17 CFR 230.144A) under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77 *et seq.*), in the United States ("U.S.") to Qualified Institutional Buyers ("QIBs") as defined in rule 144A(a)(1), pursuant to section 4(2), rule 144A, or Regulation D under the Securities Act, notify the Commission when relying on the exemptions. The Commission anticipates the required notification to occur by telefax or letter. The same notice requirement would apply to certain distribution participants in a distribution of foreign securities in the U.S. through rights, exempt from registration under the Securities Act, to institutional accredited investors. An additional notice requirement would apply to underwriters (or other entities performing similar functions) if, during the rights offering, the required discount level, discussed below, is narrowed. The Commission estimates that 20 broker-dealers annually will rely on the exemptions.

Subject to certain conditions, the exemptions permit distribution participants, other than issuers and their affiliated purchasers, to effect non-U.S. transactions during the period when certain foreign securities eligible under rule 144A are being distributed to QIBs, in transactions exempt from registration under the Securities Act pursuant to section 4(2), rule 144A or regulation D thereunder. Additionally, subject to certain conditions, the exemptions permit non-U.S. transactions to foreign securities during the period when securities are being distributed through rights to institutional accredited investors in transactions exempt from registration under the Securities Act.

Rule 10b-8 prohibits persons participating in a distribution from bidding for or purchasing the security being distributed, or a related security, during the distribution. Rule 10b-7 applies to "any person who, either alone or with one or more other persons, directly or indirectly, stabilizes the price of a security to facilitate an offering of any security." Stabilization transactions are those involving the "the placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing, or stabilizing the price of any security." Rule 10b-7(c) provides: "No stabilizing bid shall be made except for the purpose of preventing or retarding a decline in the open market of a security." Stabilization does not contemplate transactions in excess of those required to prevent or retard a decline in the market price, or those which raise the market price of a security or which create a false or misleading appearance of active trading in a security, or a false or misleading appearance with respect to the market for a security. Transactions conducted in compliance with rule 10b-7 are excepted from rule 10b-6. Rule 10b-8 applies to "any person participating in a distribution of securities being offered through rights on a pro rata bases to security holders." Rule 10b-8 establishes conditions pursuant to which bids and purchases of the rights, and offers and sales of the security being distributed, may be made. Transactions effected in compliance with rule 10b-8 are excepted from rule 10b-6.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 24, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10205 Filed 4-30-91; 8:45 am]

BILLING CODE 8010-01-M

Requests Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash (202) 272-2142.

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002

Extension, File No. 270-298, Rule 17Ac2-2 and Form TA-2

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval rule 17Ac2-2 (17 CFR 240.17Ac2-2) and Form TA-2 under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*), which requires registered transfer agents to file an annual report of their business activities. Approximately 1,000 respondents that are exempt from providing certain information contained in the form incur an estimated average burden of one hour annually to comply with the rule. An additional 400 respondents incur an estimated average burden of five hours annually to comply with the rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 16, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10206 Filed 4-30-91; 8:45 am]

BILLING CODE 8010-01-M

Requests Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash (202) 272-2142.

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

Extension, File No. 270-95, Rule 17Ac2-1(c) and Form TA-1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17Ac2-1(c) [17 CFR 240.17A2-1(c)] under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*), which is used by transfer agents to register with the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, and to amend their registration. Approximately 350 respondents incur an estimated average burden of one and one-half hours annually to comply with the rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 19, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10207 Filed 4-30-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 1399]

Certain Foreign Passports Validity

Barbados and Dominica are added to the list of countries which have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign issuing authority for a period of at least six months beyond the expiration date specified in the passport. This Notice amends Public Notice 1198 of May 15, 1990 (55 FR 20234).

Dated: April 23, 1991.

James L. Ward,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 91-10201 Filed 4-30-91; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice NO. PE-91-18]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part

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11, this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 16, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on April 25, 1991.

Deborah E. Swank,

Acting Manager, Program Management Staff Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26532.
Petitioner: McCall Air Taxi, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow petitoner's properly trained pilots to perform the task of converting the cabins of petitoner's aircraft from passenger to cargo or cargo to passenger configurations.

Dispositions of Petitions

Docket No.: 13199.
Petitioner: American Airlines.
Sections of the FAR Affected: 14 CFR 6.156(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part appendix H.
Description of Relief Sought/ Disposition: To extend Exemption No. 4652, as amended, which allows pilots contracting with petitioner who are applicants for an airline transport pilot certificate or a type rating to be added to any grade of pilot certificate to complete a portion of that practical test in a visual simulator.
Grant, May 31, 1990, Exemption No. 4652B.

Docket No.: 2456.
Petitioner: Dalfort Corporation.
Sections of the FAR Affected: 14 CFR 6.156(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part 121, appendix H.
Description of Relief Sought/ Disposition: To extend Exemption No. 4955A, which allows pilots contracting with petitioner who are applicants for an airline transport pilot certificate or a type rating to be added to any grade of pilot certificate to complete a portion of that practical test in a visual simulator.
Grant, May 31, 1990, Exemption No. 4955B.

Docket No.: 25080.
Petitioner: Aeroservice Aviation Center, Inc.
Sections of the FAR Affected: 14 CFR 6.156(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part 121, appendix H.
Description of Relief Sought/ Disposition: To extend Exemption No. 4745A, which allows petitioner and persons who contract with petitioner to use FAA-approved simulators to meet certain training and testing requirements.
Grant, March 29, 1991, Exemption No. 4745B.

Docket No.: 25126.
Petitioner: Executive Air Fleet, Inc.
Sections of the FAR Affected: 14 CFR 91.191(a)(4); and 135.165 (a)(1), (b)(5), and (b)(6).
Description of Relief Sought/ Disposition: To extend Exemption No. 4821, as amended, which allows petitioner to operate airplanes in extended overwater operations with one long-range navigation system and one high-frequency communication system within certain named areas subject to certain conditions and limitations.
Grant, March 26, 1991, Exemption No. 4821B.

Docket No.: 25242.
Petitioner: International Aerobatic Club.
Sections of the FAR Affected: 14 CFR 61.58(c) and 91.4.
Description of Relief Sought/ Disposition: To extend Exemption No. 4941, which allows Experimental Aircraft Association pilots and petitioner's member pilots to complete a training course in lieu of a pilot proficiency check as required by § 61.58(c).
Grant, July 2, 1990, Exemption No. 4941A.

Docket No.: 25785.
Petitioner: Western Oklahoma State College.
Sections of the FAR Affected: 14 CFR 141.91(a).
Description of Relief Sought/ Disposition: To allow petitioner to conduct part 141 ground training at Erick High School in Erick, Oklahoma, approximately 40 miles from its main operations base in Altus, Oklahoma.
Grant, June 13, 1990, Exemption No. 5193.

Docket No.: 25942.
Petitioner: Gerard A. Preiser.
Sections of the FAR Affected: 14 CFR 91.42 (a)(1) and (a)(2).
Description of Relief Sought/ Disposition: To allow petitioner to operate five aircraft with an airworthiness certificate issued under the experimental category to be used for the purpose of skywriting.
Denial, June 22, 1990, Exemption No. 5201.

Docket No.: 26056.
Petitioner: Accelerated Ground Training, Inc.
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (d)(2) and (d)(3); 61.67(d)(2); 61.157 (d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part 121, appendix H.
Description of Relief Sought/ Disposition: To allow petitioner to use FAA-approved simulators to meet certain training and testing requirements.
Grant, April 3, 1990, Exemption No. 5169.

Docket No.: 26245.
Petitioner: Airline Crew Training, Incorporated.
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (d)(2) and (d)(3); 61.67(d)(2); 61.157 (d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part 121, appendix H.
Description of Relief Sought/ Disposition: To allow petitioner to use FAA-approved simulators to meet certain training, checking, and testing requirements.
Grant, May 31, 1990, Exemption No. 5294.

Docket N.: 26479.
Petitioner: Business Express, Inc.
Sections of the FAR Affected: 14 CFR 121.580.
Description of Relief Sought/ Disposition: To allow petitioner, an air carrier operating under part 121, to continue to operate its Saab 240 airplanes into Sikorsky Memorial Airport even though that airport does not hold an airport certificate issued under part 139 of the Federal Aviation Regulations.
Denial, April 4, 1991, Exemption No. 5294.

[FR Doc. 91-10253 Filed 4-30-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Monroe County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Monroe County, New York.

FOR FURTHER INFORMATION CONTACT: Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 472-3616

or

J. Robert Lambert, Director, Facilities Design Division, New York State Department of Transportation, State Campus, 1220 Washington Avenue, Albany, New York 12252. Telephone: (518) 457-6452

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) and the County of Monroe, will prepare an environmental impact statement (EIS) on a proposal to construct a moveable bridge across the Irondequoit Bay outlet to Lake Ontario in the Towns of Irondequoit and Webster.

This project is considered necessary to restore a transportation link between the Towns of Irondequoit and Webster which was severed when the original low level fixed bridge was removed by the U.S. Corps of Engineers in 1985. Alternatives under consideration include: (1) Taking no action, and (2) construction of a two lane moveable bridge across the outlet. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

The scoping process for this project has been completed and included contact with all parties and agencies known to have an interest or regulatory authority with respect to the proposed project. Scoping meeting were held on:

August 16, 1989 in the Town of Irondequoit at East Ridge Sr. High School;

August 17, 1989 in the Town of Webster at the Webster Jr. High School;

August 24, 1989 at the Irondequoit Town Hall.

A public hearing will be held later this year. The draft EIS will be available for public and agency review and comment prior to the public hearing. Public notice will be given of the time and place of the public hearing.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and EIS should be directed to the FHWA at the address provided above.

Issued on: April 22, 1991.

Harold J. Brown,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. 91-10192 Filed 4-30-91; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 91-36]

Cancellation "With Prejudice" of Broker License No. 3648, Angelo Cammarano

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Commissioner of Customs, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and part 111.51(b) of the Customs Regulations, as amended (19 CFR 111.51(b)), cancelled with prejudice the individual broker license no. 3648 issued to Angelo Cammarano, effective December 20, 1990, the date that Mr. Cammarano voluntarily surrendered his license.

Dated: April 11, 1991.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 91-10171 Filed 4-30-91; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 91-40]

Cancellation "With Prejudice" of Broker License No. 6264, John Cammarano, Sr.

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Commissioner of Customs, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and part 111.51(b) of the Customs Regulations, as amended (19 CFR 111.51(b)), cancelled with prejudice the individual broker license no. 6264 issued to John Cammarano, Senior, effective December 20, 1990, the date that Mr. Cammarano voluntarily surrendered his license.

Dated: April 11, 1991.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 91-10172 Filed 4-30-91; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 91-37]

Cancellation "With Prejudice" of Broker License No. 4776, Joseph R. Lyons

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Commissioner of Customs, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and part 111.51(b) of the Customs Regulations, as amended (19 CFR 111.51(b)), cancelled with prejudice the individual broker license no. 4776 issued to Joseph R. Lyons, effective January 7, 1991, the date that Mr. Lyons voluntarily surrendered his license.

Dated: April 11, 1991.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 91-10173 Filed 4-30-91; 8:45 am]

BILLING CODE 4820-02-M

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[T.D. 91-39]

Cancellation "With Prejudice" of Broker License No. 5382; Mark Andrew Parsons

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Commissioner of Customs, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and part 111.51(b) of the Customs Regulations, as amended (19 CFR 111.51(b)), cancelled with prejudice the individual broker license no. 5382 issued to Mark Andrew Parsons, effective January 15, 1991, the date that Mr. Parsons voluntarily surrendered his license.

Dated: April 11, 1991.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 91-10174 Filed 4-30-91; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 91-38]

Revocation of Individual Broker License No. 6068; Roberto Salinas

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury on February 2, 1991, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and part 111.53 of the Customs Regulations, as amended (19 CFR 111.53), revoked the individual broker license No. 6068 issued to Roberto Salinas. In accordance with 19 CFR 111.74, this revocation became effective on April 3, 1991.

Dated: April 11, 1991.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 91-10175 Filed 4-30-91; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 91-41]

Suspension of Individual Broker License No. 7045; Thomas J. Steinbach

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury on February 2, 1991, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and part 111.53 of the Customs Regulations, as amended (19 CFR 111.53), suspended for a period of 3 years the individual broker license No. 7045 issued to Thomas J. Steinbach. In accordance with 19 CFR 111.74, this suspension became effective on April 3, 1991.

Dated: April 11, 1991.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 91-10176 Filed 4-30-91; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 84
Wednesday, May 1, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Cancellation of Closed Meeting

The previously announced closed meeting (**Federal Register**, April 24, 1991, 56 FR 18877) of the National Credit Union Administration scheduled for 9:00 a.m. Tuesday, April 30, 1991, has been canceled.

The Board voted unanimously to delete the following and only item on the agenda of the previously announced closed meeting and to cancel that meeting because consideration of the scheduled item would have been premature.

The previously announced item was:

1. Office Space Evaluation. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91-10415 Filed 4-29-91; 1:52 pm]

BILLING CODE 7535-01-M

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Corrections

Federal Register
Vol. 56, No. 84
Wednesday, May 1, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the [illegible].

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-614]

Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Japan

Correction

In notice document 91-9385 beginning on page 16300 in the issue of Monday, April 22, 1991, make the following correction:

On page 16303, in the second column, under *DOC Position* at the bottom, in the first line, "no" should read "an".

BILLING CODE 1505-01-D

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

Correction

In notice document 91-8037 appearing on page 14058, in the issue of Friday, April 5, 1991, in the third column, under *Commodities*, in the first line, "Ear Plub Inserter, 6516" should read "Ear Plug Inserter, 6515".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6844

[MT-930-4214-10; MTM 78802]

Withdrawal of Public Lands for the Upper Missouri National Wild and Scenic River Corridor; Montana

Correction

In rule document 91-6354 beginning on page 14476 in the issue of Wednesday, April 10, 1991, make the following corrections:

1. On page 14476, in the third column, in the land description, under **Principal Meridian Montana**, in the fifth line, after "NW¼;" the ";" should be removed.

2. On page 14477, in the third column, in the land description, under T. 22 N., R. 18 E., in the fifth line, after "S½NE¼" insert a ",".

3. On page 14478, in the third column, in the land description, under T. 23 N., R. 14 E., in the seventh line, after "Sec. 6," insert "E½,".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-13]

Alteration of the Chicago Terminal Control Area; IL

Correction

In rule document 91-7632 beginning on page 13526, in the issue of Tuesday, April 2, 1991, make the following corrections:

On page 13528, in the third column, under **REGULATORY FLEXIBILITY DETERMINATION**, in the sixth line "review which" should read "review rules which".

§71.401(b) [Corrected]

On page 13529, in the first column, the heading "§ 71.401 [Amended]" should read "§ 71.401(b) [Amended]".

BILLING CODE 1505-01-D

federal register

Wednesday
May 1, 1991

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Technical Assistance To Aid Residents of Public Housing Sites (in CDBG Entitlement Communities) To Become Self-Employed; Notice of Funding Availability

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-325; FR 2984-N-01]

Funding Availability (NOFA) for Technical Assistance To Aid Residents of Public Housing Sites (in CDBG Entitlement Communities) To Become Self-Employed

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA) for FY 1991.

DATES: The application due date will be specified in the application kit. Applicants will have at least 60 days to prepare and submit their proposals. Further, the 60-day (or more) response period shall begin to run from the first date upon which applications are made available.

SUMMARY: This NOFA announces the availability of $2 million in grants to provide technical assistance in support of local self-employment projects, to assist residents of public housing sites to become self-employed. The technical assistance must be for activities being carried out, or to be carried out, in metropolitan cities or urban counties entitled to receive Community Development Block Grant (CDBG) assistance. In the body of this NOFA is information concerning:

(a) The principal objective of this technical assistance competition, the funding available, eligible applicants and activities, and factors for award;

(b) The application process; and

(c) A checklist of application submission requirements.

FOR MORE INFORMATION AND A COPY OF THE APPLICATION KIT, CONTACT: Mr. George Chabot, Office of Procurements and Contracts (ACS–GC), Department of Housing and Urban Development, 451 Seventh Street, SW., room 5256, Washington, DC 20410, (202) 708–1585. Requests for application kits must be in writing, but may be faxed to (202) 401–2032. The TTD number for the hearing impaired is (202) 708–2526. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2535–0084.

I. Purpose and Substantive Description

A. Authority

This competition is authorized under title I, section 107(b)(4) of the Housing and Community Development Act of 1974, as amended.

Program requirements (including eligible activities) applicable to awards made under this competition are contained in 24 CFR 570.400 and 570.402 (the Community Development Technical Assistance Program).

B. Allocation Amount and Form of Award

For this competition, HUD is making available up to $2 million in Community Development Technical Assistance Program funds for individual awards ranging between $100,000 and $200,000. Each award will be funded as a grant. Specific work activities and project budgets will be negotiated at the time of the grant award. Each award will be subject to the requirements of 24 CFR 570.400, 24 CFR 570.402, and 24 CFR part 570, subparts A, C, J, K, and O.

C. Description of Technical Assistance Competition

1. Background and Purpose

The primary objective of title I of the Housing and Community Development Act of 1974, as amended (the Act), and of the community development program of each grantee under title I of the Act, is the development of viable urban communities, by providing decent housing and a suitable living environment, and by expanding economic opportunities, principally for persons of low and moderate income. Section 107(b)(4) of the Act authorizes the Secretary of HUD to award technical assistance grants to eligible applicants to assist in planning and carrying out local CDBG programs to achieve the objective of title I.

The purpose of the competition announced by this NOFA (consistent with the primary objective of title I—to expand the economic opportunities of low-income persons) is to provide technical assistance to CDBG-funded activities which help low-income residents of public housing (sometimes referred to as "PHA residents") acquire the skills and knowledge they need to start and successfully operate small businesses.

HUD has found that, generally, conventional financial intermediaries are disinclined to finance the ventures of low-income persons, including PHA residents, who need modest amounts of money to start and maintain small businesses.

Further, the Secretaries of HUD and the Department of Health and Human Services (HHS) are aware that disincentives to self-employment exist. The Secretaries have jointly pledged to explore and identify regulations of certain HUD and HHS programs that may hinder self-employment opportunities (e.g., income limitations in the Aid to Families with Dependent Children Program, rent ceilings, and asset limitations). To the extent permissible, the Secretaries will seek to grant to organizations, participating in local self-employment projects funded under this competition, waivers of HUD and HHS rules that may restrict the successful operation of these local projects.

Thus, successful applicants will be, or will obtain, technical assistance providers who will facilitate skills and knowledge in planning and carrying out CDBG–assisted local self-employment projects to benefit residents of PHA sites.

Generally, these local projects are to be designed to recruit and screen prospective small business candidates; train and counsel them throughout the project; conduct market research in and nearby the PHA sites; help the candidates to get a product or service to market; obtain venture financing, where necessary; seek waivers of welfare or other program requirements that inhibit income production by low-income persons; and arrange supportive services for the low-income participants in this project.

The following presents examples of small businesses that low-income, PHA residents may start:

- For family and personal care: Food cooperative, barber and beautician services, child- and elder-care center within a PHA, food service and catering, escort services.
- For business services: Small appliance sales and repairs; furniture repair and reconditioning; upholstery; shoe repair; telemarketing; small business administration and office services; telephone answering service.
- For building management and services: Apartment cleaning; furniture moving; lawn care and maintenance, routine minor building repairs; repainting and plastering; weatherization; trash hauling and waste management and recycling;
- For performing arts: Small bands and combos; entertainment services.

In a number of demonstration projects around the country, low-income residents are now providing many of the small business services, noted above, under contract to public housing authorities for work previously contracted out by those authorities to the larger business community.

2. Eligible Activities

Eligible technical assistance activities are specified in 24 CFR 570.402.

Technical assistance activities eligible for funding under this NOFA include the provision of skills and knowledge to facilitate in the planning, development and administration of these types of CDBG-assisted activities, for example:

- Recruiting, screening, testing low-income PHA candidates in order to select promising future business owners;
- Training, and serving as mentors to, small business candidates throughout the entire cycle of business start-up and one year of operation;
- Conducting market research on the types of small business products or services, and market areas, that would be economically feasible in and nearby the PHA sites, or teaching candidates how to do market research;
- Assisting candidates to accomplish the entire cycle of product/service design, development, and marketing;
- Assisting them to identify sources of venture capital and to secure start-up and operating financing;
- At local option and on behalf of the candidates, identifying financial intermediaries committed to economic development in low-income areas and securing venture capital for the candidates;
- Analyzing rules and requirements of HUD and/or HHS programs that are disincentives for the candidates to commit to economic self-sufficiency; seeking waivers of such rules and regulations that would be applicable to the candidates participating in local self-employment projects funded under this competition;
- Analyzing and securing supportive services (such as day care and transportation), as needed, in order to enable candidates to commit fully the time and energy required to start and operate small businesses; and
- Coordinating activities with all relevant Federal, State, and local agencies.

Applications may focus on the establishment of new local projects, or on the enhancement of existing projects, designed to help low-income residents of PHA sites to become self-employed.

Applications must focus the provision of technical assistance on activities underway or to be carried out at the PHA sites with CDBG funds to assist PHA residents to start and operate small businesses.

Technical assistance is not available for the carrying out of public services or any of the other eligible activities under the CDBG Program, except for those specified in 24 CFR 570.402.

3. Eligible Applicants

Communities that are metropolitan cities or urban counties receiving CDBG entitlement grants and non-profit organizations (including resident management corporations and resident councils), for-profit organizations, and public housing authorities, proposing to provide technical assistance to such metropolitan cities or urban counties, are eligible to apply under this NOFA.

Respondents to this NOFA should be alert to two statutory provisions in the community development technical assistance program. The Request for Grant Application (RFGA) will contain specific instructions for satisfying these provisions.

The first statutory provision is that activities funded under the technical assistance program clearly relate to activities funded under the CDBG Program. Technical assistance is defined as facilitating skills and knowledge in planning, developing, and administering activities under title I of the Act in entities that may need but do not possess such skills and knowledge.

Accordingly, the RFGA will specify that all applications must include a statement identifying the amount of CDBG funds committed, or to be committed, to the activities for which the technical assistance is to be provided; the dates of commitment or planned commitment; the specific activities undertaken or planned to be undertaken with the CDBG assistance; the location of the PHA site(s); and the relationship between the CDBG activities and the proposed self-employment technical assistance activities. The statement of commitment must be signed by the chief executive officer of the CDBG-funded entitlement community which is the applicant or, in the case of other applicants, wherein the public housing is located.

The second statutory provision requires an entity proposing to provide technical assistance within a community to be designated by that community as a technical assistance provider. Accordingly, the RFGA will specify that applicants which are non-profit or for-profit organizations, or PHAs, must obtain and submit with the application a designation letter from the CDBG-funded entitlement community where the public housing is located. The letter must be signed by the chief executive officer and must designate the applicant as a technical assistance provider to the community's CDBG program for purposes of the technical assistance to be provided.

Applicants whose statement of CDBG funding commitment or designation letter is pending must provide written evidence that a request for the statement of commitment, or for the letter of designation, is awaiting official action and sign-off by the chief executive officer. In such cases, applicants must submit the required letter or statement to HUD within 30 days following the application deadline date. Failure to do so within 30 days following the deadline date may disqualify the applicant.

4. Factors For Award

HUD will use the following criteria to evaluate and score applications received in response to this NOFA. HUD will rank the applications according to score and will fund them in rank order, reserving the option, if needed, to establish a minimum score for funding. Grants will be awarded based upon the highest scores which represent the best overall assessment of the potential of the proposed work activities for achieving the principal objective of this competition: to help low-income PHA residents to become self-employed. The factors and the corresponding maximum number of points for each subfactor (out of a total of 100 points) are as follows:

(a) The probable effectiveness of the application to facilitate skills and knowledge in planning, developing, and administering local CDBG-funded activities to help PHA residents become self-employed. (20)

(1) The extent to which the proposed technical assistance activities will facilitate skills and knowledge in planning, developing, and administering the CDBG-funded local self-employment project. (7)

(2) The extent to which CDBG funds have been, or will be, committed to self-employment project activities for the selected PHA residents. (7)

(3) The extent to which the proposed activities represent a technically sound approach for implementing the local self-employment project. (6)

(b) The extent to which proposed activities significantly affect key problems identified in the application. (40)

(1) The extent to which the application adequately describes procedures (i) for analyzing small business market potentials in or nearby the PHA site(s), (ii) for determining economically feasible products or

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services to be marketed, (iii) for determining the employment needs of, and HUD/HHS regulatory barriers to self-employment faced by, PHA residents, and (iv) for screening, testing, and recruiting suitable candidates for small businesses from among PHA residents. (8)

(2) The extent to which the application's technical assistance activities effectively prepare and assist the small business candidates to start-up and maintain a small business through a one year cycle. (6)

(3) The extent to which the proposed project will assist candidates to locate and acquire the venture capital needed to start-up a small business and operating capital to sustain it. (6)

(4) The extent to which the applicant proposes to create financial intermediaries, or to use existing ones, committed to aiding low-income PHA residents to obtain venture capital. (6)

(5) The potential effectiveness of applicant's proposed public-private-academic partnership of entities (such as government agencies, business development groups, corporations, and vocational training schools, high schools and universities) necessary to carry out the proposed project. (5)

(6) The extent to which the applicant commits or arranges the commitment of cash or in-kind contributions from participating members of the partnership. (6)

(7) The applicant's commitment and proposed procedure to identify and seek waivers of Federal or State regulatory barriers and disincentives to self-employment by PHA residents. (5)

(c) The extent to which the proposed activities would be replicable at other PHA sites, either within the applicant's community or in other CDBG-funded communities. (5)

(1) The effectiveness of the technical plan whereby the applicant will collect and analyze data that would be useful to other communities in creating and implementing self-employment projects. (2)

(2) The effectiveness of the applicant's proposed method for disseminating the experiences gained through this project to other organizations and communities. (3)

(d) The extent to which the applicant's organizational and management plan and project work plan can ensure that the technical assistance project will be well-managed and protected from waste, fraud, or other abuse of funds. (15)

(1) The extent to which the organization and management plan delineates staff responsibilities and specifies staff accountability for all work tasks. (4)

(2) The extent to which the project work plan specifies tasks clearly and substantively, and presents a feasible schedule for conducting and completing all tasks on time and within budget. (4)

(3) The extent to which the application provides for (i) internally coordinating the work activities and roles of each participating entity (such as the applicant itself, the PHA, local corporations contributing funds and/or employees to be teachers or mentors, local or State financial institutions providing venture capital, State and Federal liaisons seeking to arrange waivers of regulations that hinder self-employment), and (ii) externally coordinating the proposed project with any other self-employment programs underway at the PHA site(s). (4)

(4) Adequate evidence of the applicant's sound financial management and its capacity to safeguard and wisely use Federal funds, as determined from appropriate audits or other financial statements. (3)

(e) The ability of the applicant, and any paid and volunteer/contributed staff assigned by the participating entities, to provide the technical assistance and to conduct the proposed activities effectively. (15)

(1) The credentials and recent experience of the proposed project manager relevant to: (i) Providing technical assistance for a local self-employment project; (ii) managing and supervising staff; (iii) managing, safeguarding and accounting for project funds; and (iv) completing projects on time within budget. (7)

(2) The credentials and recent experience of key staff relevent to providing technical assistance in all aspects of a local self-employment project, such as market analysis, business development, recruitment and entrepreneurial training, and acquisition of venture capital. (8)

(f) Potential for the local self-employment project to be continued beyond the period of the technical assistance grant, based upon the following. (5)

(1) The extent to which the applicant proposes commitment or targeting of additional funding (from any sources) to continue or expand the self employment project. (3) *and*

(2) The extent to which the applicant proposes a continuing local organization to sustain the project. (2) *or*

(3) Alternatively, the extent to which the applicant proposes incorporating a self-employment project for PHA residents into other ongoing small business development programs operating within the applicant's jurisdiction. (5)

II. Application Process

A. Obtaining Applications

For an application kit, contact the person identified in the section entitled "For More Information * * *" at the beginning of this NOFA.

B. Submitting Applications and Deadline Date

Applications for funding under this NOFA must be received in the place designated for receipt and by the deadline date specified in the RFGA. No application received after the deadline date will be considered.

III. Checklist of Application Submission Requirements

A. Application Content

Applicants must complete and submit applications in accordance with instructions contained in the RFGA. Following is a checklist of the application content that will be specified in the RFGA.

1. Trasmittal letter.
2. OMB Standard Forms 424 (Request for Federal Assistance) and SF 424B (Non-Construction Assurances)
3. Description of PHA sites selected for local self-employment project.
4. Description of entities participating in local self-employment project.
5. Letters of participation from the entities identified in Item 4.
6. Narrative statement addressing the factors for award.
7. Organization and management plan.
8. Project budget-by-task.

B. Certifications and Exhibits

Applications must also include the following:

1. Drug-Free Workplace Certification.
2. Certification Regarding Lobbying, pursuant to section 319 of the Department of Interior Appropriations Act of 1989, generally prohibiting use of appropriated funds for lobbying.
3. Certification prohibiting excessive force against nonviolent civil rights demonstrators, pursuant to title IX, section 906 of the National Affordable Housing Act of 1990.
4. Statement regarding the commitment of CDBG Funds.
5. Letter designating the applicant as a technical assistance provider, if applicable.
6. Assurances.

IV. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether or not it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has fourteen (14) calendar days from the date of written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the fourteen day cure period, HUD may disqualify the application.

This fourteen day cure period applies only to nonsubstantive deficiencies or errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

V. Other Matters

A. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures in this document relate only to the provision of technical assistance, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government. Specifically, the NOFA solicits participation in an effort to provide technical assistance to help residents of PHA sites become self-employed. The NOFA does not impinge upon the relationships between the Federal government, and State and local governments.

C. Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this document may have potential for significant beneficial impact on family formation, maintenance, and general well-being. The technical assistance to be provided by the funding under this NOFA is expected to help residents of PHA sites to become successfully self-employed, which in turn will help them become economically self-sufficient. Since the impact on the family is considered beneficial, no further review under the Order is necessary.

(The Catalog of Federal Domestic Assistance Program number is 14.227)

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR 570.402.

Dated: April 23, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91–10228 Filed 4–30–91; 8:45 am]

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Part III

Department of Education

Rehabilitation Training Program; Request for Public Comment

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DEPARTMENT OF EDUCATION

Rehabilitation Training Program

AGENCY: Department of Education.

ACTION: Notice of request for public comment on issues regarding the Rehabilitation Training Program.

SUMMARY: The Secretary of Education invites written comments from the public on issues regarding the Rehabilitation Training Program, authorized by section 304 of the Rehabilitation Act of 1973, as amended. The comments will assist in a review of the policies and practices of the Department in administering the program and will assist the Secretary in targeting fiscal year 1992 rehabilitation training funds.

DATES: Written comments must be received on or before May 31, 1991.

ADDRESSES: Written comments should be addressed to Neil C. Carney, Commissioner, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue SW., (room 3024 Switzer), Washington, DC 20202–2531.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Melia, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SE., (room 3324 Switzer), Washington, DC 20202–2649. Telephone (202) 732–1400. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION: The Secretary is requesting public comment on issues regarding the Rehabilitation Training Program. The program is authorized by title III, section 304 of the Rehabilitation Act of 1973, as amended, and provides grants to and contracts with States and public or nonprofit agencies and organizations, including institutions of higher education, to pay part of the costs of projects for training, traineeships, and related activities designed to assist in increasing the numbers of qualified personnel trained in providing vocational, medical, social, and psychological rehabilitation and independent living services to individuals with disabilities. Funding through the Rehabilitation Training Program supports the following areas of training:

(1) Long-Term Training.

(2) Experimental and Innovative Training.

(3) Rehabilitation Continuing Education Programs.

(4) Short-Term Training.

(5) In-Service Training.

(6) Training Interpreters for Individuals Who Are Deaf.

Section 304(c) of the Rehabilitation Act of 1973, as amended, requires the Rehabilitation Services Administration (RSA) to target rehabilitation training funds to areas of personnel shortage. Specifically, section 304(c) requires that RSA:

(1) Determine training needs of qualified personnel necessary to provide services to individuals with disabilities;

(2) Develop a long-term rehabilitation manpower plan designed to target resources on areas of personnel shortage; and

(3) Develop an annual report containing:

(i) Findings on personnel shortages;

(ii) Funding allocations by professionals discipline and program area; and

(iii) The justification for these allocations, based on personnel shortages.

On March 18, 1991, the Secretary published in the Federal Register a notice of public meeting (56 FR 11411) to solicit public comment regarding the Rehabilitation Training Program. This meeting is scheduled for May 9, 1991, in Washington, DC.

Issues for Public Comment

The Secretary solicits comments and suggestions regarding the Rehabilitation Training Program. Comments are especially invited on the following issues:

General Issues

Are there emerging needs or trends in practice in the vocational rehabilitation field that the Rehabilitation Training Program could address? Should RSA training funds target the initiation of new training programs or expand and continue ongoing programs?

Doctoral and Leadership Training Program Needs

Should RSA emphasize fellowships and related methods of encouraging rehabilitation education leadership development? If so, in which fields? Is this strategy appropriate for rehabilitation medicine and allied health disciplines?

Curriculum Requirements

Should RSA publish priorities that have implications for the content of curriculum? Should the level of training (certificate, associates, bachelors, masters, doctoral) be specified? Should RSA training prepare persons for "technical support" positions as well as "professional" positions?

Short-Term Training

Are short-term training needs being adequately addressed through present training programs (Regional Rehabilitation Continuing Education Programs, in-service training grants, post-employment emphasis in long-term training)? What program areas and disciplines require new approaches to short-term training?

Regional and Geographic Needs

Should training priorities be targeted for specific geographic areas? What criteria should define a regional or geographic training need? What program areas or disciplines have acute geographic or distribution needs? Do recipients of rehabilitation training tend to accept employment in the same geographic area in which training was provided?

Consolidation of Program Areas

Are there program categories that are duplicative, outdated, or unclear? Which areas should be changed? Why? Are personnel in areas such as "Rehabilitation Facility Workshop Personnel," "Vocational Evaluation and Work Adjustment," "Job Development and Placement," and "Supported Employment" interchangeable to some extent in meeting program needs?

Multiple Disabilities and Special Populations

Should priorities be developed that target specific disabilities (such as individuals who are deaf-blind) or should they be incorporated within a larger category? How should special populations based on functional capacity or diagnostic groupings such as "hard-of-hearing" and "low vision" be addressed in planning and priorities?

Purchase of Services by Rehabilitation Agencies

Can problems of inadequate availability of "vendors" be addressed in the training program? Are problems of access to services in specific program areas or disciplines (such as rehabilitation engineering) directly related to training?

Rehabilitation Counseling

Should masters degree rehabilitation counseling programs funded under this program category be limited to generalist counselors, with specialist counselors being trained under other program areas? Is training for certain specialty areas better provided during post-employment?

Attracting Individuals With Disabilities and Culturally Diverse Populations to Rehabilitation

How can training priorities improve the access to training and increase the number of persons from special groups who participate in the training?

Americans With Disabilities Act (ADA)

Are there new training needs among rehabilitation professionals regarding the ADA?

Format for Comments

This request for comments is designed to elicit views of interested parties on the Rehabilitation Training Program and to provide the Department with knowledge of program areas that could be improved. It is not intended to express any view on any issue or to represent the intention of the Secretary to propose legislative changes in the program.

The Secretary requests that each respondent identify his or her role in rehabilitation and rehabilitation training, if any. In proposing modification or alternatives, the respondents may want to address the issues listed under Issues for Public Comment, as well as other rehabilitation training issues.

The Secretary urges each commenter to be specific regarding his or her suggestions.

Dated: April 25, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–10211 Filed 4–30–91; 8:45 am]

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Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

Annual Rent Adjustments for Section 8 Assisted Housing; Retroactive Housing Assistance Payments; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. R-91-1494; FR-2745-F-03]

RIN 2502-AE91

Annual Rent Adjustments for Section 8 Assisted Housing; Retroactive Housing Assistance Payments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final a proposed rule published on June 19, 1990 at 55 FR 25054 (as corrected on July 2, 1990 at 55 FR 27251). The rule implements portions of Section 801 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) (Reform Act), by providing the criteria under which HUD will make retroactive Housing Assistance Payments to owners of section 8 projects for which the use of comparability studies as an independent limitation on annual rent adjustments, for the period from October 1, 1979 until the effective date of this rule, resulted in the reduction of rents or the failure to increase the rents to the entire amount permitted by Annual Adjustment Factors; or to owners of section 8 projects whose contracts require them to request annual adjustments and who will certify that they did not request such adjustments because they anticipated reductions in rents. Under this rule, owners eligible for retroactive payments also have the opportunity to request a one-time determination of the contract rent upon which to base future rent adjustments.

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Moderate Rehabilitation program: Madeline Hastings, Room 6138, telephone (202) 708-0420; all other programs: James Tahash, Room 6182, telephone (202) 708-3944; Department of Housing and Urban Development, 451 Seventh Street, Washington, DC 20410. TDD number for the hearing- and speech-impaired (202) 708-4594). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, and assigned OMB control number 2502-0042.

I. Background

This rule makes final a proposed rule published by the Department on June 19, 1990 (55 FR 25054) (as corrected on July 2, 1990 at 55 FR 27251). The rule implements section 801(a) and (d) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) (Reform Act). The rule provides the criteria under which HUD will make retroactive Housing Assistance Payments to owners of section 8 projects for which the use of comparability studies as an independent limitation on annual rent adjustements, for the period from October 1, 1979 until the effective date of this rule, resulted in the reduction of rents or the failure to increase the rents to the entire amount permitted by Annual Adjustment Factors; or to owners of section 8 projects whose contracts require them to request annual adjustments and who certify that they did not request adjustments because they anticipated reductions in rents. Under this rule, owners eligible for retroactive payments also have the opportunity to request a one-time determination of the contract rent upon which to base future rent adjustments.

(Section 801(c) of the Reform Act amends section 8 of the U.S. Housing Act of 1937 (1937 Act), clarifying and reaffirming HUD's ability to use comparability studies in the future as a basis for adjusting contract rents. A proposed rule implementing section 801(c) will be published at a later date. Until a final rule is published on the future use of comparability studies, section 8 contract rents will be adjusted by applying the full AAF.)

II. Public Comments

HUD received 24 public comments on the proposed rule. Two commenters supported the rule without further comment on its provisions, and another commenter stated its opposition to making retroactive payments at all. The other comments focused on particular provisons of the rule, as described below.

Applicability/Eligibility (§§ 888.301(b)-(c) and 888.401(b)-(c))

The rule, as stated in the proposed rule, applies to all projects receiving project-based section 8 assistance whose contract rents are adjusted by AAFs. These include section 8 contracts under New Construction (Part 880); Substantial Rehabilitation (Part 881); State Finance Agencies (Part 883); Section 515 Farmers Home Administration (Part 884); Section 202 Elderly or Handicapped Housing (Part 885); Loan Management Set-Aside (Part 886, Subpart A); Property Disposition (Part 886, Subpart C); and Moderate Rehabilitation (Part 882, Subparts D, E, and H). The proposed rule further stated, as does this final rule, that it does not apply to project-based section 8 contracts whose rents are adjusted using the budget approach (*e.g.*, some section 202 projects and Special Allocation projects), nor would it apply to tenant-based assistance programs, such as the section 8 Certificate and Housing Voucher programs.

One commenter questioned how the rule would apply to Farmers Home Administration (FmHA) projects whose rents have been established without benefit of the use of the AAFs, but rather on a budget approach basis when a rent increase has been approved by FmHA. Section 801(a) applies only where HUD limited or reduced contract rents based on a comparability study conducted by HUD. If HUD granted a rent adjustment based on the full AAF that was subsequently modified by FmHA, this rule does not apply. However, where contract rents were reduced or limited by HUD as a result of a comparability study conducted by HUD, the rule does apply.

A commenter expressed concern that owners of 80-20 split projects developed under section 221(d)(3) and (d)(4) of the National Housing Act were excluded from the rule. Certain projects insured under section 221(d)(3) and (d)(4) receive rental assistance payments for less than 100 percent of their units under various section 8 programs (*e.g.*, New Construction or Substantial Rehabilitation). The rule applies to those projects to the extent that it applies to the section 8 program under which the projects receive assistance payments and are regulated.

Another commenter questioned the rule's application to Loan Management Set-Aside (LMSA) projects using the budgeted increase approach to rent adjustments. The rule does not apply to those projects. Only projects whose rents are adjusted by the AAFs, which includes some LMSA projects, are covered by the rule; any project whose rents are adjusted by the budgeted rent increase method is not covered by this rule. This latter includes not only some LMSA projects, but also Section 202/8 projects that currently use the budgeted rent increase approach, even though those projects may have previously used the AAFs to adjust rents.

One commenter questioned whether the rule would apply only to those projects whose rents were identified as incomparable and adjusted solely on the basis of comparability studies, or would also apply to projects whose rents were identified as excessive because their profits exceeded the net profit distribution allowance. Section 801(a) is clear in its application to projects where the rent reduction or limitation was based on the results of a comparability study. If the latter project's rents were, in the end, adjusted on the basis of a comparability study, the rule will apply.

Two commenters suggested that the rule include owners with anniversary dates in September or August 1979, rather than beginning with October 1, 1979. The calculations for retroactive payments and the one-time contract rent determination will be for the period beginning October 1, 1979 and ending on the effective date of this rule. Section 801(a) specifies that the retroactive payments are for rental adjustments for fiscal year 1980. The Department interprets this to mean the Federal Government fiscal year 1980, which began October 1, 1979. Any project owner whose rents were reduced or limited as a result of a comparability study during the period beginning on October 1, 1979 and ending on the effective date of this rule is eligible for a retroactive payment, regardless of the anniversary date of the project.

Three commenters expressed a concern regarding notification to owners, and asked whether HUD would determine eligibility. They also believed the rule should provide more guidance on what HUD would accept with the certification of those owners who claim they did not request adjustments because they anticipated rent decreases.

Either HUD or the Contract Administrator will give written notice to all current owners about the retroactive payments to be made under this rule. The notification will inform owners of the eligibility requirements and request owners who believe they meet the eligibility requirements to respond with a request for the calculation within the timeframe set forth in §§ 888.310(a) and 888.410(a). (Project owners, however, who have obtained in Federal district court judgments declaring that section 801 is unconstitutional are free to disregard such notices, as well as the implementing regulations, unless those judgments are vacated.) When the calculations have been completed by HUD or the Contract Administrators, owners who responded to the initial notification will be informed of the results of the calculations.

Owners who are required to request rent adjustments and who are applying for retroactive payments and/or a one-time rent determination must submit a certification that they anticipated a rent reduction, accompanied by a statement of the basis for the belief. The statement should set forth the circumstances that led the owner to believe project rents would be reduced if a rent increase was requested.

Calculating the Total Rent Adjustment and Retroactive Payment (§ 888.305)

As set out in both the proposed rule and this final rule in § 888.305(a), HUD (or the Contract Administrator) will recalculate the total rent adjustments by applying the applicable AAF for FY 1980 to the FY 1979 contract rent minus the debt service. (This method of calculation applies to New Construction, Substantial Rehabilitation, State Finance Agencies, FmHA, Section 202, Property Disposition, and LMSA projects. Calculations for the Moderate Rehabilitation program differ in that the base rent, to which the AAF is normally applied in adjusting rents and will be applied in calculations under this rule, already has had the debt service subtracted. See § 888.405(a).) The debt service will then be added back into the formula to provide the adjusted contract rent for FY 1980. The recalculated FY 1980 contract rent (again minus debt service) will then be used to calculate the rent adjustment for the next year (FY 1981). The same process will continue for each year until the effective date of this rule. Under § 888.305(e), any special adjustments granted by HUD during the relevant time period will also be deducted from the Contract Rent before applying the AAF. (Section 888.405(e) provides the same procedure for Moderate Rehabilitation projects.)

As retroactive payment, HUD will pay the amount, if any, by which the total rent adjustments, calculated in the manner described above, exceed the total adjustments actually approved. However, no eligible project owner will be paid an amount less than 30 percent of the aggregate of the full contract rent (*i.e.*, including debt service) multiplied by the applicable AAF minus the amount of rent adjustments actually approved, for the same time period. (See §§ 888.305(b) and 888.405(b).) As set forth in §§ 888.305(c) and 888.405(c), payments will be based on the number of units occupied (including vacancies eligible for payment, in accordance with HUD regulations) during the time period for which the retroactive payments are made.

Several commenters requested that examples be included for projects with special adjustments and less than 100% occupancy. The following example calculation shows how special adjustments and occupancy rates will be used in the calculation:

Project X was given a special adjustment of $10 per-unit per-month in 1984. The per-unit per-month debt service is $250. In FY 1985, the applicable AAF was 1.064. The recalculated rent (contract rent minus debt service times AAF plus debt service) in 1984 is $520 per unit. To find the recalculated rent for 1985, the special adjustment of $10, as well as the debt service, will be subtracted before applying the AAF.

Example calculation:

($520−$250−$10)×1.064=$277

$277+$250+$10=$537 (1985 recalculated rent)

After completing all calculations for Project X, the retroactive payment, based on 100 percent occupancy is $200,764. However, the average occupancy rate for the project throughout the 10-year period was 98 percent. Under the regulations, HUD pays 80 percent of the contract rent for eligible vacant units.

Example calculation:

98 percent of $200,764 @ 100 percent=	$196,749
2 percent of $200,764 @ 80 percent=	3,212
Payment (adjusted for occupancy)	$199,961

One commenter considers the 30 percent recovery to be unfair, and is currently involved in litigation to recover the full amount. Four other commenters believe the rule should state that owners are to precluded from pursuing full payment through the courts. Project owners do not need HUD's authority to institute lawsuits. Indeed, some already have sued and obtained Federal district court judgments declaring section 801 unconstitutional. HUD believes those judgments are erroneous and has sought to appeal them. Accordingly, HUD will continue to implement section 801 with its specified limits on recovery. As stated above, owners who have obtained declaratory judgments are not bound by this regulation unless those judgments are vacated. If such a judgment is vacated, affected owners will have 60 days from the date of the order vacating the judgment to respond to the written notification that will be sent by HUD.

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One commenter stated that HUD should not expect owners and managers to know the AAF rent or the rent approved and paid for all past years. HUD field offices will use project files to determine the approved rent and AFFs applied during the relevant time period.

Five commenters questioned what the "applicable AAF" is. They stated that in years when AAFs were published late, *i.e.*, after November 8, owners with anniversary dates falling between November 8 and the publication date were given the option to use the higher of the factor published prior to the anniversary date ("available factor") or subsequent to the anniversary ("applicable factor"). The commenters believe that in determining the payment HUD should continue to allow the owner to choose the factor to be applied. The final rule now provides in §§ 888.305(h) that, where factors were published late by the Department, the applicable AAF is the factor that was chosen by the owner. (This provision does not apply to Moderate Rehabilitation projects.)

Another commenter suggested that the applicable AAF should be that factor that would be applied to a rent at the level of the contract rent minus the debt service. The applicable AAF, when calculating the adjustments to the contract rent minus the debt service, is the factor that applies to the full contract rent (including the debt service). Section 801(a)(1) clearly refers to the application of "the annual adjustment factor" in calculations both including and excluding debt service. HUD interprets this to mean that the same factor is to be applied in these calculations.

With regard to subtracting the debt service before applying the AAF, two commenters were opposed. The subtraction of debt service from rents for purposes of calculating the retroactive payment is a statutory requirement included in the formula set out in section 801(a).

One commenter objected to the inclusion of the mortgage insurance premium in the definition of debt service, and another objected to the inclusion of the financial adjustment factor (FAF) for State Finance Agencies projects.

HUD disagrees that mortgage insurance premiums should not be included as part of the debt service. The definition of "debt service" contained in section 801(a) provides that mortgage insurance premiums, if any, are to be included along with principal and interest. However, HUD has determined that the FAF (or called FA in the case of some projects) should not be included as a part of the debt service. The FAF, which allowed for an increase in contract rents to cover increased interest rates on loans, will be included in the contract rent for those projects that benefited from such an adjustment. The final rule has been changed to eliminate the reference to the FAF as a part of debt service.

Two commenters believe the rule should give guidance on what constitutes debt service for projects financed with non-standard financing, such as 11(b) bond financing or non-HUD insured where credit enhancement costs take the place of the MIP. Generally, debt service should be computed the same way in projects with non-standard financing as it is in projects with standard financing. A mortgage is almost always present, and payments on that mortgage include principal and interest, which may or may not include a mortgage insurance premium. For projects with no mortgage or debt service, no subtraction will be made.

Two other commenters felt the rule should be more explicit about how to calculate the debt service, and another was concerned that Contract Administrators may not know what the debt service of a project is. HUD agrees, and the final rule now provides that the monthly debt service set forth in the original mortgage documents will be used to compute the debt service. Field Offices will compute the debt service portion of the contract rent by comparing the debt service to the spread of unit sizes included in the original HAP contract. For example, if the debt service per month is determined to be $6,480 and the original HAP contract covers 20 one-bedroom units with rents of $250 per month and 20 two-bedroom units with rents of $290 per month, the debt service for the one-bedroom units is $150 per month, while the debt service for the two-bedroom units is $174 per month. If, in some cases, the Contract Administrator or HUD does not know and cannot determine the debt service for particular projects, project owners will be asked to provide documentation of the debt service as calculated above. Owners in this category will be notified by HUD or the Contract Administrator of the need for documentation of the debt service, and will be given 30 days to respond. Exceptions to the 30-day response deadline may be granted on a case-by-case basis. If an owner does not provide the requested debt service information, the calculations necessary to make retroactive payments cannot be made.

One commenter stated that debt service should be based on the size of the unit in relation to the whole project, and another on the number of bedrooms in a unit. Debt service will be based on the percentage of total rent potential of the various unit types. Field offices will use the unit type spread set forth in the original HAP contract in determining the debt service portion of the contract rents. This is also included in the final version of the rule.

Two commenters expressed concern about project owners who had been notified by HUD that they were due back payments in accordance with section 1004 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved Nov. 8, 1988) and had not yet been paid. They do not believe that the statutory formula should apply to that payment. HUD agrees, and all payments made in accordance with the McKinney Act provision will be made separate from the retroactive payments described in this rule. The rents as restored according to the McKinney Act provisions will be used in the calculations for retroactive payments and the one-time contract rent determination under this rule.

Occupancy Rates (§§ 888.305(c) and 888.405(c))

A commenter felt that the use of an annual or monthly vacancy factor would be simpler. (The proposed rule provided that owners may submit occupancy rates for the period from October 1, 1979 to the effective date of the rule, but did not specify whether this should be an annual or monthly rate.) The final rule clarifies that HUD will accept documentation of either a monthly or annual occupancy rate.

A second commenter stated that owners should have the right to document the occupancy rate as well as the right to appeal a HUD-determined average. The commenter also questioned what constitutes an "eligible" vacancy. Other commenters questioned what HUD will use to establish an average occupancy rate. HUD is requesting that project owners document occupancy rates by submitting official monthly or annual records indicating the level of occupancy. If full documentation is not available, HUD will utilize the available data from the three years preceding the effective date of this rule. Field Offices will simply average the monthly occupancy rate figures that have been submitted to HUD. The determination is subject to correction if it is found that an error was made in the calculation of the average. Vacant units eligible for vacancy payments (80 percent of the contract rent) are also eligible for retroactive payments. An "eligible" vacancy is a unit that meets the requirements specified in the relevant HUD regulations at 24 CFR 880.611, 881.611, 882.411, 883.712, 884.106, 885.985, 886.109, or 886.309.

Finally, a commenter stated that Section 801 does not authorize adjusting the payments for vacancies, but if HUD does so, the method used and the definition of vacancy should be included in the rule. HUD interprets section 801(a) as requiring retroactive payments to be made on the basis of rents that would have resulted if the full AAF had been applied and comparing these to the payment that was actually approved. Units vacated by eligible tenants may, in most cases, receive vacancy payments equal to only 80 percent of the contract rent. The absence of manageable documentation makes it difficult, if not impossible, to determine the exact amount of vacancy payments made. The use of an average occupancy rate ensures that owners are fully compensated for adjustments on those units receiving vacancy payments.

Special Adjustments (§§ 888.305(e) and 888.405(e))

Three commenters wrote that special adjustments should not be deducted from the contract rent before applying the AAF when recalculating the total rent adjustment and amount of retroactive payments, and five suggested that the rule be more specific on this issue. Two commenters asked whether a request for a special adjustment that was denied because of a comparability study or a "rent reasonableness" test is eligible to be included as a reduced or limited rent adjustment for purposes of eligibility for a retroactive payment. Another commenter asked whether comparability studies will be required for special adjustments after the rule becomes effective.

Special adjustments are typically granted, to the extent determined necessary by HUD, to reflect increases in expenses that have resulted from substantial general increases in property taxes, assessments, utility rates, and utilities not covered by regulated rates, and that are not adequately compensated for by the AAFs. The amount approved for the special adjustment is a fixed amount and, as such, HUD believes should not be adjusted each year by the AAF. For example, a special adjustment of $10 per unit per month, granted because of an increase in taxes, should not be adjusted each year, because the tax itself does not increase accordingly. Future AAFs for the area should account for this tax with higher rent adjustments.

A request for a special adjustment that was denied because of a comparability study is not eligible for inclusion in the retroactive payment. Section 801(a) is clear that retroactive payments are to be made only in cases where the use of a comparability study acted as a independent limitation on the amount of rental adjustment that would have resulted from the application of an AAF.

A rule for the future conduct of comparability studies, as authorized by section 801(c), has not been developed. HUD will publish a proposed rule implementing section 801(c) for public comment at a later date. No comparability studies will be conducted until a final rule implementing section 801(c) has been published.

60-day Deadline for Request for Payment (§§ 888.310(a) and 888.410(a))

One commenter believes that the 60 days allowed after notice of eligibility to request payment or a rent determination is an unfair limitation. The commenter is involved in litigation for 100 percent recovery, and stated that if the suit is unsuccessful, the 60-day period would be over. HUD believes that the 60-day deadline is necessary so that field offices can carry out the research and calculations for all requests at the same time for two reasons. First, the complexity of the process requires that field offices focus on the collection of data and the accuracy of computations at one time. Secondly, section 801(b) requires that HUD make payments within a certain time frame. However, owners involved in litigation filed before the effective date of this rule will be given 60 days from the date of a final judgment in those suits in which to request retroactive payments under this rule.

Eight commenters believe that HUD should also have a deadline for making the payments or notifying owners of the amount due. (The rule does not give a deadline for HUD, but provides that payments will be made over a three-year period as funds are appropriated. The preamble to the proposed rule stated that owners will be notified by HUD of the amount of the payment or the contract rent determination "in as timely a manner as possible.") The calculations required under this rule are complex and time- and staff-intensive. Because the Department cannot predict with any degree of accurancy the number of respondents who will request payments and rent determinations, it cannot estimate the amount of time required to complete the processing. However, the Department is committed to carry out its obligations under the legislation and this rule in a timely manner.

Miscellaneous Comments With Regard to Payment

One commenter asked whether owners who are to receive large sums will be paid interest on the unpaid balance, since the rule indicates the payments will be made over a three-year period as appropriations become available. The Department does not interpret any provision in section 801 as authorizing the payment of interest.

A commenter asked whether any consideration had been given to the possibility that funds would not be appropriated for the payments, and another urged HUD to include a request for funds for the payments in its appropriations requests to Congress. Section 801(b) specifies that the retroactive payments must be made from funds appropriated by Congress for this purpose. HUD requested and Congress appropriated $70 million for payments in 1991. While the Department has no control over the appropriations process, it intends to request the funds necessary to comply with Section 801(b) in its 1992 and 1993 budget submissions.

Transfer of Ownership (§§ 888.310(d) and 888.410(d))

A commenter suggested that the rule more clearly define the postion of HUD if owners disagree or protest a proportionate award. The commenter asked where HUD's financial responsibility would end and, in the event of a dispute, what would govern. The Department will not become involved in any dispute arising between past and present owners over rights to the payments. As the rule states, the payment will not be made until the current owner either certifies that it is entitled to the entire amount or provides documentation of an agreement between it and the past owner regarding the proportinate share to which each is entitled.

Use of Payment (§ 888.315(a))

One commenter proposed that Section 202/8 projects be allowed to deposit 50 percent of the payment into a special account set up to provide supportive services for tenants who are aging in place or the frail elderly. The commenter suggested that those projects need greater flexibility to use the reserve for replacements and residual receipts to finance retrofit or supportive services. The commenter stated that it understood that residual receipts in excess of the

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amount necessary for emergency debt servicing may be used for "amenities consistent with the program under which the project was developed," and urged HUD to recognize the need to use excess reserves for meeting the needs of the frail elderly in assisted housing.

The retroactive payments, as contemplated by section 881, represent past housing assistance payments. Non-profit sponsors who receive retroactive payments for Section 202/8 projects must deposit those payments into the project accounts appropriate for housing assistance payments, as required by current HUD regulations, and the payments may then be used in a manner consistent with the regulations or contract. While the Department understands and appreciates the responsibility sponsors feel toward meeting the special needs of their tenants, it believes that this rule is not the appropriate place for addressing these suggestions.

Reserve for Replacements (§ 888.315(b))

Several commenters objected to the proposed rule's treatment of the percentage of the retroactive payment to be paid into the reserve for replacements account. The commenters all stated that the deposit should not vary according to the amount of the payment, but rather that the reserve deposit should be increased by the same percentage as the rent potential is increased. For example, if the percentage of the rent potential that must be deposited in the reserve for replacement account is 3 percent, then 3 percent of the retroactive payment must be deposited in the account. HUD agrees with the commenters. Although the example used in the preamble of the proposed rule was incorrect, the provision dealing with this issue in the rule text requires no change.

Physical Inspection of Projects (§§ 888.315(c) and 415(c))

One commenter questioned the appropriateness of requiring owners to correct deficiencies before they may receive the payment, since the deficiency is a present liability, and the payment represents past income. The commenter also argued that deposits to the Reserve for Replacement Account, combined with routine maintenance, are sufficient for compliance.

HUD does not agree that the retroactive payments should not be utilized to address current physical deficiencies. The payments are project income and must be used as such to address physical deficiencies and ensure proper maintenance of the project. If no physical deficiencies have been identified, then the requisite deposit to the Reserve for Replacement Account, accompanied by appropriate routine maintenance, is sufficient for compliance with the requirement that physical deficiencies be resolved prior to the inclusion of the payments in the surplus cash computation.

Two commenters suggested that the rule be more specific on what will be expected to satisfy HUD in the correction of deficiencies. According to HUD regulations at 24 CFR 880.601(b), 881.601(b), 882.516(a), 883.702(b), 884.217(a), 886.123(a), and 886.323(a), owners are responsible for the maintenance and repair of the property. Deficiencies, if any, included on the current physical inspection performed by the mortgage, or by HUD or the Contract Administrator if a current mortgagee inspection is not present, must be addressed. All deficiencies, whether marked for immediate repair or repair within one year, must be addressed either through repair or through submitting a plan for repair. HUD will follow current instructions regarding acceptable corrections and plans for corrections.

One commenter suggested that owners should be required to repair only where the deficiency is of such serious nature that it clearly and directly affects habitability. The commenter also noted that payments may be withheld from surplus cash distribution only after proper notification to the owner and in accordance with current HUD requirements and procedures, and, if the owner fails to respond or to exercise due diligence in correcting the deficiencies, sanctions may be imposed. However, the commenter pointed out, the sanctions listed do not include withholding of distribution.

The Department disagrees with both of these assertions. First, section 8 of the 1937 Act requires that projects must be decent, safe, and sanitary to be eligible for assistance, not merely habitable. Secondly, HUD regulations for insured and state agency projects specify the requirements that must be met for an owner to take a distribution from surplus cash. Based on these sections, including §§ 880.205, 881.205, and 883.308, retroactive payments will not be made available for distribution until deficiencies noted in the physical inspection report have been answered. With regard to Moderate Rehabilitation projects, § 882.516(c) clearly states that abatement of housing assistance payments is a remedy that may be exercised when a project is not maintained in decent, safe and sanitary condition.

One-time Contract Rent Determination (§§ 888.320 and 888.420)

Several comments were submitted on the provision in the rule on the one-time contract rent determination. Some commenters seemed confused about whether an owner had to choose between requesting the rent determination or the payments, or whether an owner not eligible for retroactive payments was required to request a rent determination. An owner must meet the eligibility requirements described in §§ 888.301(c) or 888.401(c) to be eligible for either retroactive payments or a one-time rent determination. An owner may request both a retroactive payment and a one-time contract rent determination, or may choose to request either the payment or the rent determination.

One commenter stated that the rule should provide that the payments and the rent determination will be effective on the first anniversary date following the effective date of the rule regardless of the date the calculation is completed.

Section 801(a)(1) specifies that the calculation with regard to the retroactive payments should cover the period from 1980 "until regulations implementing this section take effect." Thus, HUD is precluded from extending the calculation for the retroactive payments beyond the effective date of this final rule.

With regard to the effective date of any increased rent as a result of the one-time contract rent determination, the new rent will become effective on the effective date of this rule. The proposed rule provided for the new rents to become effective on the first of the month following notification to the owners. HUD has revisited this issue, and has changed the final rule to provide that the rents will be effective on the effective date of the rule. Because there will be lag-time between the effective date of the rule and the one-time rent determination, it will be necessary for the HAP payments covering that time to be made retroactively.

Finally, one commenter asked whether HUD Form 92458 (Rental Schedule) may be used where there is no formal HAP contract amendment from which to obtain the currently approved rent. HUD agrees that this form may serve as documentation if the owner or HUD cannot locate the formal amendment to the HAP contract.

Appeals From HUD Determination

Three commenters stated that the rule should provide for an appeal process for owners who disagree with HUD's determination of the amount due for retroactive payments or the new contract rent. Since the retroactive payments represent past housing assistance payments for contract rents, any challenges to a determination by HUD (or the PHA, in the case of Moderate Rehabilitation projects) under this rule may be appealed in the same manner an owner would appeal any contract rent determination. Decisions at the Regional Office level will be considered a final administrative decision.

Reviews of Initial Mod Rehab Rents (§ 888.415(b))

Four commenters objected to the provision of the rule providing that, before calculating the amount of a retroactive payment, the PHA will review whether rents in Mod Rehab projects were excessive when initially set, if directed by HUD. The commenters stated that any modification would violate the contract where an owner has relied on the initial approval, and could result in a serious adverse effect. The Department believes that a review of initial contract rents is consistent with the terms of the HAP contract, which explicitly authorizes a change of contract rents to correct errors in the computation of the initial rents. Further, the contract provides that rents are subject to post-audit and change in accordance with HUD requirements, including the correction of errors in computation and adherence to HUD procedures. The contention that reviewing and modifying rents, if appropriate, in connection with the calculation of retroactive payments is in violation of the contract is without legal basis.

Present or Future Use of Comparability Studies

A PHA submitted a comment asking whether the rule eliminates the use of comparability studies after its effective date, or could studies still be used as a basis to deny or limit rent adjustments. Field offices and PHAs (as Contract Administrators) were instructed by HUD to discontinue all comparability studies for purposes of limiting AAFs, effective December 15, 1989, the date of enactment of the HUD Reform Act. A project for which a comparability study was conducted after that date that resulted in a reduction or limitation of AAFs is eligible for retroactive payments and a one-time determination under this rule. Section 801(c) of the Reform Act, which amends section 8(c)(2)(C) of the 1937 Act by clarifying and reaffirming HUD's authority to conduct comparability studies for use with AAFs, must be implemented by rulemaking before studies may be conducted in the future.

III. Other Matters

The information collection requirements contained in this rule were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, and assigned OMB control number 2502-0042.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An environmental assessment is unnecessary, since statutorily required establishment and review of rent schedules that do not constitute a development decision affecting the physical condition of specific project areas or building sites is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(*l*).

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that this rule will not have a potential significant impact on the formation, maintenance, and general well-being of the family and, thus, is not subject to review under that Order. Adjustments in contract rents do not affect the amount of rent a tenant family in Section 8 assisted housing is required to pay, which is an amount based on the tenant family's income.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under that Order. The rule would affect the amount of housing assistance payments paid by HUD to owners of Section 8 assisted projects.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule governs the procedures under which HUD will make retroactive housing assistance payments to owners of Section 8 assisted projects.

This rule was listed as item number 1309 in the Department's Semiannual Agenda of Regulations published at 56 FR 17360, 17390 on April 22, 1991, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 888

Grant programs; housing and community development, Rent subsidies.

For the reasons stated in the preamble, part 888 of title 24 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 888 continues to read as follows:

Authority: Secs. 5 and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437c and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In part 888, the heading for part 888 and for subpart B is revised, and subparts C and D are added, to read as follows:

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS

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Subpart B—Contract Rent Annual Adjustment Factors

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Subpart C—Retroactive Housing Assistance Payments for New Construction, Substantial Rehabilitation, State Finance Agencies, Section 515 Farmers Home Administration, Section 202 Elderly or Handicapped, and Special Allocations Projects

Sec.
888.301 Purpose and scope.
888.305 Amount of the retroactive Housing Assistance Payments.
888.310 Notice of eligibility requirements for retroactive payments.
888.315 Restrictions on retroactive payments.
888.320 One-time Contract Rent determination.

Subpart D—Retroactive Housing Assistance Payments for Moderate Rehabilitation Projects

Sec.
888.401 Purpose and scope.
888.405 Amount of the retroactive Housing Assistance Payments.
888.410 Notice of eligibility requirements for retroactive payments.

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Sec.
888.415 Restrictions on retroactive payments.
888.420 One-time Contract Rent determination.

* * * * *

Subpart C—Retroactive Housing Assistance Payments for New Construction, Substantial Rehabilitation, State Finance Agencies, Section 515 Farmers Home Administration, Section 202 Elderly or Handicapped, and Special Allocations Projects

§ 888.301 Purpose and scope.

(a) *Purpose.* This subpart describes the basic policies and procedures for the retroactive payment of Housing Assistance Payments to eligible project owners for the period from October 1, 1979 to May 31, 1991 and for one-time Contract Rent determinations for such eligible project owners.

(b) *Applicability.* This subpart applies to all project-based Section 8 Housing Assistance Payments Contracts under New Construction (Part 880); Substantial Rehabilitation (Part 881); State Finance Agencies (Part 883); and Section 515 Farmers Home Administration (Part 884). It also applies to those projects under Section 202 Elderly or Handicapped (Part 885) and Special Allocations (Part 886, Subparts A and C) whose Contract Rents are adjusted by use of the Annual Adjustment Factors (AAFs), as described in subpart B of this part.

(c) *Eligible project owners.* Project owners may be eligible for retroactive payments if, during the period from October 1, 1979 to May 31, 1991:

(1) The use of a comparability study by HUD (or the Contract Administrator), which was conducted as an independent limitation on the amount of rent adjustment that would have resulted from use of the applicable AAF, resulted in the reduction of the maximum monthly Contract Rents for units covered by a Housing Assistance Payments (HAP) contract or resulted in less than the maximum increase for those units than would otherwise be permitted by the AAF; or

(2) The HAP contract required a project owner to request annual rent adjustments, and the project owner certifies that a request was not made because of an anticipated reduction of the maximum monthly Contract Rents resulting from a comparability study.

§ 888.305 Amount of the retroactive Housing Assistance Payments.

(a) *Recalculating the total rent adjustment.* To establish the amount of the retroactive HAP payment for which a project owner meeting the criteria in § 888.301(c) is eligible, the total rent adjustment will be recalculated for the period from October 1, 1979 to May 31, 1991. For purposes of establishing the amount of the retroactive payment only, the total rent adjustment will be an amount equal to the Contract Rent, minus the amount of the Contract Rent attributable to debt service, multiplied by the applicable AAF, for each year.

(b) *Calculating the retroactive payment.* HUD (or the Contract Administrator) will pay, as a retroactive Housing Assistance Payment, the amount, if any, by which the total rent adjustment, calculated under paragraph (a) of this section, exceeds the rent adjustments actually approved for the same time period, except that in no event will any payment be an amount less than 30 percent of the aggregate of the full Contract Rent multiplied by the applicable AAF, minus the sum of the rent adjustments actually approved for the same time period, adjusted by the average occupancy rate.

(c) *Occupancy rates.* (1) Retroactive payments will be made only for units that were occupied, based on average occupancy rate, including units qualifying for vacancy payments under 24 CFR 880.611, 881.611, 883.712, 884.106, 885.985, 886.109, or 886.309, during the time period from October 1, 1979 to May 31, 1991.

(2) When requesting retroactive payment, a project owner must, if the information is available, submit documentation of occupancy rates, on either an annual or monthly basis, for the same time period. The average occupancy rate will be based on these records. If records are unavailable for the full time period, HUD (or the Contract Administrator) will establish an average occupancy rate, to be used for the entire period, from the occupancy rate for the three years immediately preceding May 31, 1991.

(d) *Revised AAFs.* For any year during the period from October 1, 1979 to May 31, 1991, where a HUD field office published a revised Annual Adjustment Factor that replaced the applicable AAF for a specific locality under 24 CFR 888.204, the revised Annual Adjustment Factor, which applied to all projects in that area, will be used to recalculate the total rent adjustment under paragraph (a) of this section, and to establish the amount of the retroactive payments.

(e) *Special adjustments.* When calculating the total rent adjustments and establishing the amount of the retroactive payments under paragraphs (a) and (b) of this section, any special adjustments granted under 24 CFR 880.802(b), 881.602(b), 883.710(b), 884.109(c), 886.112(c), or 886.312(c) during the time period from October 1, 1979 to May 31, 1991, to reflect substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates, or for special adjustments for any other purpose authorized by a waiver of the regulations, will be deducted from the Contract Rent before applying the AAF.

(f) *AAFs less than 1.0.* For any area where an AAF of less than 1.0 was published, a factor of 1.0 will be used to recalculate the total rent adjustments and to establish the amount of the retroactive payments under paragraphs (a) and (b) of this section.

(g) *Debt service.* (1) For purposes of this section, debt service includes principal, interest, and the mortgage insurance premium, if any.

(2) The monthly debt service set forth in the original mortgage documents for a project will be used to compute the debt service portion of the contract rent. The debt service will be compared to the spread of unit sizes included in the original HAP contract, and the amount used in the calculation will be based on the percentage of total rent potential of the various unit types.

(3) If, in some cases, HUD or the Contract Administrator cannot determine the debt service for a project, the project owner will be asked to provide documentation of the debt service. The project owner will be notified by the HUD Field Office or the Contract Administrator of the need for documentation of the debt service, and allowed 30 days to respond, or for such longer period as appeared by HUD or the Contract Administrator on a case-by-case basis. Where the debt service is not available to HUD or the Contract Administrator and the owner is unable to provide the necessary information, retroactive payments cannot be made.

(h) *Applicable AAF.* The applicable AAF is the factor in effect on the anniversary date of the contract and appropriate for the area, for the size of the unit, and for the treatment of utilities; except where, for any year when AAFs were published after November 8 and made retroactive to November 8, a project owner was given the option to choose the factor in effect on the anniversary date or the retroactive factor, the applicable AAF is the factor chosen by the project owner in that year.

(Approved by the Office of Management and Budget under control number 2502-0042)

§ 888.310 Notice of eligibility requirements for retroactive payments.

(a) *Notice of eligibility requirements.* HUD (or the Contract Administrator) will give written notice to all current owners of projects of the eligibility requirements for retroactive payments. Eligible project owners must make a request for payment and a request for a one-time contract determination within 60 days from the date of the notice.

(b) *Request for payment.* (1) Owners eligible for retroactive payments under § 888.301(c) must submit a request for a calculation of the total rent adjustments and the establishment of the amount of the retroactive payment, as described in § 888.301 (a) and (b), and documentation of the occupancy rate for the period from October 1, 1979, to May 31, 1991, if available.

(2) Owners whose HAP contract requires a request to be made for annual rent adjustments must certify that a request was not made because of an anticipated reduction in the Contract Rents as a result of a comparability study. The certification must contain the year or years upon which the request for payment is based and a statement of the basis for the belief that rents would have been reduced.

(3) Retroactive payments will be made to owners over a three-year period as funds are appropriated for that purpose. When funds are available for payment, HUD will publish a Federal Register notice containing procedures for claiming payments.

(c) *Request for one-time contract rent determination.* When making a request for payment, eligible owners may also request a one-time contract rent determination, as described in § 888.320. Eligible owners may request a one-time contract rent determination even if they choose not to request retroactive payments, provided they are eligible for retroactive payments.

(d) *Transfer of ownership since October 1, 1979.* Eligible owners who request retroactive payments must certify that they are entitled to the entire amount of the payment. Any owner who is unable to certify must present documentation of an agreement between the current and former owners of the proportionate share of the payment for which each is eligible.

(Approved by the Office of Management and Budget under control number 2502-0042)

§ 888.315 Restrictions on retroactive payments.

(a) *Restrictions on distribution of surplus cash.* Retroactive payments for HUD-insured projects and other projects subject to limitations on the distribution of surplus cash will be deposited, in the manner of Housing Assistance Payments, into the appropriate project account. The payments will be subject to HUD rules and procedures (or rules and procedures of other agencies, as appropriate), described in the applicable regulations and the HAP contracts, for distribution of surplus cash to project owners.

(b) *Replacement reserve.* Projects required by HUD regulations to maintain a reserve for replacement account and to adjust the annual payment to the account each year by the amount of the annual rent adjustment must deposit into the account the proportionate share of any retroactive payment received, in accordance with HUD regulations and the HAP contract.

(c) *Physical condition of HUD-insured or State-financed projects.* If the most recent physical inspection report of a HUD-insured project, completed by the mortgagee, or by HUD or the Contract Administrator if a mortgagee inspection is not present, shows significant deficiencies that have not been addressed to the satisfaction of HUD by the date the retroactive payment is deposited into the project account, the payment will not be made available for surplus cash distribution until the deficiencies are resolved or a plan for their resolution has been approved by HUD.

§ 888.320 One-time Contract Rent determination.

(a) *Determining the amount of the new Contract Rent.* Project owners eligible for retroactive payments, as described in § 888.301(c), may request a one-time Contract Rent determination, to be effective as described in paragraph (c) of this section. The request for a one-time rent determination must be made when submitting a request for retroactive payments, as described in § 888.315. If no claim for retroactive payments is made, an owner may submit only the request for a one-time rent determination, provided the owner is eligible for retroactive payments. The new Contract Rent under this provision will be the greater of:

(1) The Contract Rent currently approved by HUD (or the Contract Administrator); or

(2) An amount equal to the applicable AAF multiplied by the Contract Rent minus debt service, calculated for each year from October 1, 1979, to May 31, 1991.

(b) *Currently approved rent.* The Contract Rent currently approved by HUD (or the Contract Administrator) is the Contract Rent stated in the most recent amendment to the HAP Contract signed by both HUD (or the Contract Administrator) and the owner, or as shown on HUD Form 92458 (Rental Schedule) if the most recent amendment to the HAP Contract cannot be located.

(c) *Effective date of new Contract Rent.* The new Contract Rent, determined under paragraph (a) of this section, will be effective on May 31, 1991.

(Approved by the Office of Management and Budget under control number 2502-0042)

Subpart D—Retroactive Housing Assistance Payments for Moderate Rehabilitation Projects

§ 888.401 Purpose and scope.

(a) *Purpose.* This subpart describes the basic policies and procedures for the retroactive payment of Housing Assistance Payments to eligible project owners for the period from October 1, 1979 to May 31, 1991 and a one-time Contract Rent determination for such eligible project owners.

(b) *Applicability.* This subpart applies to all Moderate Rehabilitation projects under 24 CFR part 882, subparts D, E, and H.

(c) *Eligible project owners.* Project owners may be eligible for retroactive payments if, during the period from October 1, 1979 to May 31, 1991:

(1) The use of a comparability study by the Public Housing Agency (PHA) as contract administrator, which was conducted as an independent limitation on the amount of rent adjustment that would have resulted from use of the applicable AAF, resulted in the reduction of the maximum monthly Contract Rents for units covered by a Housing Assistance Payments (HAP) contract or resulted in less than the maximum increase for those units than would otherwise be permitted by the AAF; or

(2) The project owner certifies that a request for an annual rent adjustment was not made because of an anticipated reduction of the maximum monthly Contract Rents resulting from a comparability study.

§ 888.405 Amount of the retroactive Housing Assistance Payments.

(a) *Recalculating the total rent adjustment.* To establish the amount of the retroactive HAP payment for which a project owner meeting the criteria in § 888.401(c) is eligible, the total rent adjustment will be recalculated for the period from October 1, 1979 to May 31, 1991. Rents for that period will be recalculated, under the procedures set out in 24 CFR 882.410(a)(1), by applying the AAF for any affected year, and recalculating the rents for the remainder of the period as necessary. For each year thereafter, all rent adjustments made at the request of the owner at the time will be recalculated, under the

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procedures in 24 CFR 882.410(a)(1), to account for the new adjustments.

(b) *Calculating the retroactive payment.* HUD will pay, through the PHA, as a retroactive Housing Assistance Payment the amount, if any, by which the total rent adjustment, calculated under paragraph (a) of this section exceeds the rent adjustments actually approved for the same time period.

(c) *Occupancy rate.* (1) Retroactive payments will be made only for units that were occupied, based on average occupancy rate, including units qualifying for vacancy payments under 24 CFR 882.411, during the time period from October 1, 1979 to May 31, 1991.

(2) When requesting a retroactive payment, a project owner must, if the information is available, submit documentation of occupancy rates, on either an annual or monthly basis, for the same time period. The average occupancy rate will be based on these records. If records are unavailable for the full time period, the PHA will establish an average occupancy rate, to be used for the entire period, from the occupancy rate for the three years immediately preceding May 31, 1991.

(d) *Revised AAFs.* For any year during the period from October 1, 1979 to May 31, 1991, where a HUD field office published a revised Annual Adjustment Factor that replaced the applicable AAF for a specific locality under 24 CFR 888.204, the revised Annual Adjustment Factor, which applied to all projects in that area, will be used to recalculate the total rent adjustment under paragraph (a) of this section, and to establish the amount of the retroactive payments.

(e) *Special adjustments.* When calculating the total rent adjustments and establishing the amount of the retroactive payments under paragraphs (a) and (b) of this section, any special adjustments granted under 24 CFR 882.410(a)(2) during the period from October 1, 1979 to May 31, 1991, to reflect substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates, or for special adjustments for any other purpose authorized by a waiver of the regulations, will be deducted from the base rent before applying the AAF.

(f) *AAFs less than 1.0.* For any area where an AAF of less than 1.0 was published, a factor of 1.0 will be used to recalculate the total rent adjustments and to establish the amount of the retroactive payments under paragraphs (a) and (b) of this section.

(Approved by the Office of Management and Budget under control number 2502-0042)

§ 888.410 Notice of eligibility requirements or retroactive payments.

(a) *Notice of eligibility requirements.* PHAs will give written notice to all current owners of projects, for which they are the Contract Administrators, of the eligibility requirements for retroactive payments. Eligible project owners must make a request for payment or a request for a one-time contract determination within 60 days from the date of the notice.

(b) *Request for payment.* (1) Owners eligible for retroactive payments under §§ 888.401(c) must submit a request for a calculation of the total rent adjustments and the establishment of the amount of the retroactive payment, as described in § 888.401 (a) and (b), and documentation of the occupancy rate for the period from October 1, 1979 to May 31, 1991, if available.

(2) Owners claiming eligibility under § 888.401(c)(2) must certify that a request was not made because of an anticipated reduction in the Contract Rents as a result of a comparability study. The certification must contain the year or years upon which the request for payment is based and a statement of the basis for the belief that rents would have been reduced.

(3) Retroactive payments will be made to owners over a three-year period as funds are appropriated for that purpose. When funds are available for payment, HUD will publish a **Federal Register** Notice containing procedures for claiming payments.

(c) *Request for one-time contract rent determination.* When making a request for payment, eligible owners may also request a one-time contract rent determination, as described in § 888.420. Eligible owners may request a one-time contract rent determination even if they choose to forgo receiving retroactive payments, provided they are eligible for retroactive payments.

(d) *Transfer of ownership since October 1, 1979.* Eligible owners requesting retroactive payments must certify that they are entitled to the entire amount of the payment. Any owner who is unable to certify must present documentation of an agreement between the current and former owners of the proportionate share of the payment for which each is eligible.

(Approved by the Office of Management and Budget under control number 2502-0042)

§ 888.415 Restrictions on retroactive payments.

(a) *Restrictions.* Retroactive payments are subject to all regulations, procedures, or restrictions that apply to Housing Assistance Payments.

(b) *Review of initial rents.* Before calculating the amount of any retroactive payment, the PHA, if directed by HUD, will review whether rents were excessive when initially set.

(c) *Physical condition of projects.* If the most recent physical inspection report by the PHA shows significant deficiencies that have not been addressed to the satisfaction of the PHA by the date the retroactive payment is deposited into the project account, the payment will not be made available until the deficiencies are resolved or a plan for their resolution has been approved by the PHA.

§ 888.420 One-time Contract Rent determination.

(a) Determining the amount of the new Contract Rent. Project owners eligible for retroactive payments, as described in § 888.401(c), may request a one-time Contract Rent determination, to be effective as described in paragraph (c) of this section. The request for a one-time rent determinaton must be made when submitting a request for retroactive payments, as described in § 888.415. If no claim for retroactive payments is made, an owner may submit only the request for a one-time rent determinaton, provided the owner is eligible for retroactive payments. The new Contract Rent under this provision will be the greater of:

(1) The Contract Rent currently approved by the PHA; or

(2) An amount equal to the Contract Rent as adjusted to May 31, 1991 under § 888.405(a).

(b) Currently approved rent. The Contract Rent currently approved by the PHA is the Contract Rent stated in the most recent amendment to the HAP Contract signed by both the PHA and the owner.

(c) Effective date of new Contract Rent. The new Contract Rent, determined under paragraph (a) of this section, will be effective on May 31, 1991.

(Approved by the Office of Management and Budget under control number 2502-0042)

Dated: April 12, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-10222 Filed 4-30-91; 8:45 am]

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Wednesday
May 1, 1991

Part V

Department of Justice

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Literacy Program (GED Standard); Final Rule

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Literacy Program (GED Standard)

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its rule on Adult Basic Education by renaming it the Literacy Program and by raising the current 8.0 academic grade level literacy standard to a General Educational Development (GED) or high school diploma level. This amendment is being made in recognition of the higher standards of literacy required in the workplace.

EFFECTIVE DATE: May 1, 1991.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on the Adult Basic Education (ABE) program. The existing regulations on the ABE program were in compliance with the mandatory functional literacy requirement in section 2908 of the Crime Control Act of 1990 (Pub. L. 101-647), which defines functional literacy as an eighth grade equivalence in reading and mathematics on a nationally recognized standardized test, functional competency or literacy on a nationally recognized criterion-referenced test, or a combination thereof. On June 13, 1990 (55 FR 24064), a notice was published in the **Federal Register** announcing a pilot program in selected Bureau institutions to assess the merits of raising the literacy standard from an 8.0 academic grade level to a GED or high school diploma level. A proposed rule on the subject was then published in the **Federal Register** January 17, 1991 (56 FR 1898).

The Bureau received public comment from a state education department. The commenter, who approved of the provisions in § 544.70 which require inmates to attend instruction leading to a GED diploma for 120 days, recommended that the length of a session be specified to ensure that one inmate could not receive considerably less instruction than another in 120 days and still be prohibited from promotion if he or she did not earn a GED diploma during the period. The Bureau believes that it would be inappropriate to provide specifics on the length of a session in the regulation. This information is best addressed in the implementing instructions to staff on the Bureau's rule on Education, Training and Lesiure-Time Program Standards (28 CFR part 544, subpart I). The individual institution may then allocate its educational resources (e.g., use of tutors and computer-assisted instruction in addition to classroom instruction) in the most appropriate manner so as to best afford the inmate the opportunity to complete the program successfully within the 120 days (as noted in § 544.73(c), days absent are excluded from the 120 day period). Additionally, the Bureau conducts program reviews of the educational activities in individual institutions in order to ensure their quality and consistency.

The commenter also endorsed the policy of encouraging inmates who do not receive a GED diploma in 120 days or less to continue to receive instruction. The commenter, however, believed that some inmates, particularly those who may have a high school education in a native country but who have limited proficiency in English, may be able to perform the duties of work postions above grade 4. The commenter recommended that the proposed exception in § 544.74(a) allowing for employment of inmates who do not meet the literacy standard be broadened to include such inmates. As provided in § 544.70, an inmate who does not have a verified General Educational Development (GED) or high school diploma is required to attend the literacy program. In its implementing instructions to staff, the Bureau confirms that a non-English speaking inmate who has a verified high school diploma or equivalent in his or her native language meets the GED literacy standard, and is consequently eligible for promotion above pay grade 4 UNICOR and Inmate Performance Pay assignments. Section 544.74(a) also allows the Warden to exempt inmates from the requirement for good cause. Further concerns on inmates with limited proficiency in English will be addressed in a separate rulemaking under development by the Bureau on its English as a Second Language program.

In light of the above comment and response, the Bureau is adopting this proposed rule as a final rule with one change. As proposed, paragraph (b) of § 544.73 specified that the literacy coordinator place documentation of interviews in the Literacy Program Record in the inmate's education file. In this final rule, paragraph (b) specifies that the literacy coordinator place this documentation in the inmate's record. This change is administrative in nature, and does not change the intent of the rule. Members of the public may submit further comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**. Upon consideration of the nature of the public comment on the proposed rule and in order to allow the Bureau to implement these changes during the beginning of the second half of the educational program year, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring a full thirty day delay in effective date.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 444

Prisoners.

Dated: April 24, 1991.

J. Michael Quinlan,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), part 544 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

1. The authority citation for 28 CFR 544 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. Subpart H of part 544, consisting of §§ 544.70 through 544.76, is revised to read as follows:

Subpart H—Literacy Program

Sec.
544.70 Purpose and scope.
544.71 Applicability: Who must attend the literacy program.
544.72 Applicability: Who may be promoted.
544.73 Procedures.

Sec.
544.74 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) assignments.
544.75 Incentives.
544.76 Disciplinary action.

Subpart H—Literacy Program

§ 544.70 Purpose and scope.

An inmate confined in a federal institution who does not have a verified General Education Development (GED) or high school diploma is required to attend an adult literacy program for a minimum of 120 calendar days or until a GED is achieved, whichever occurs first. The Warden shall establish incentives to encourage an inmate to complete the literacy program.

§ 544.71 Applicability: Who must attend the literacy program.

(a) All inmates in federal institutions must attend the literacy program except:

(1) Pretrial inmates;

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c) or, effective November 1, 1987, 18 U.S.C. 3552(b);

(3) Sentenced aliens with a deportation detainer;

(4) Other inmates who, for good cause, the Warden may excuse from attending the literacy program.

(b) Staff shall document in the inmate's education file and central file the specific reasons for not requiring the inmate to participate in the literacy program.

§ 544.72 Applicability: Who may be promoted.

(a) An inmate must show prior attainment of a GED or high school diploma in order to be promoted above grade 4 UNICOR and Inmate Performance Pay (IPP) assignments except:

(1) An inmate already in a UNICOR or IPP position above pay grade 4 at the time of implementation of this rule (May 1, 1991), who does not have a GED or a high school diploma but was previously approved for promotion above grade 4.

(2) Other inmates who, for good cause, the Warden may determine are exempt from completing the academic requirements for promotion above grade 4. An inmate who is exempted from attending the literacy program under § 544.71(a) ordinarily may not be promoted above the fourth grade of compensation unless he or she meets the GED requirement.

(b) staff shall document in the inmate's education file and central file the specific reasons for allowing pay promotion exemptions.

§ 544.73 Procedures.

(a) The Warden at each federal institution shall ensure that an inmate who does not have a verified GED or high school diploma is enrolled in the literacy program.

(b) The Warden or designee shall assign to an education staff member the responsibility to coordinate the institution's literacy program. The literacy coordinator or designated education staff shall meet initially with the inmate for the purpose of enrolling the inmate in the literacy program. Subsequently, the literacy coordinator or designated education staff shall formally interview each inmate involved in the literacy program at least once every 30 days during the mandatory 120 day period, to review and record the inmate's progress in this program. The literacy coordinator shall place documentation of these interviews in the inmate's record.

(c) At the end of 120 calendar days, excluding sick time, furloughs, or other absences from scheduled classes, the unit team shall meet with the inmate to encourage continued participation in the literacy program until the inmate attains a GED or high school diploma. At this time, the inmate may elect not to continue in the literacy program, and no disciplinary action will be taken. The inmate may not discontinue this program where participation is mandated by statute.

§ 544.74 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) Assignments.

(a) Inmates who wish to secure a UNICOR or IPP work assignment above grade 4 of compensation or who wish to work in non-graded incentive pay (piece-rate) positions must be able to demonstrate the prior obtainment of a GED or high school diploma. However, if labor force needs require, inmates who do not meet the literacy requirements may be employed in UNICOR incentive pay positions if they are simultaneously enrolled in a literacy or related program, and provided they are found to be progressing at an acceptable level as defined by the supervisor of education. Failure to maintain satisfactory progress shall result in termination of UNICOR incentive pay employment. Local UNICOR management may elect to place the terminated piece-rate employee in an hourly rated 4th grade position. The Warden may, for good cause, exempt inmates from this requirement.

(b) An inmate may be assigned to the fourth grade of compensation in a UNICOR or IPP work assignment contingent on the inmate's enrollment, and satisfactory participation, in the literacy program. Failure of an inmate to make adequate progress in the literacy program may be used as the basis to remove the inmate from the UNICOR or IPP work assignment.

§ 544.75 Incentives.

The Warden shall establish a system of incentives to encourage an inmate to obtain a GED.

§ 544.76 Disciplinary action.

As with other mandatory programs, such as work assignments, staff may take disciplinary action against an inmate whose academic level is below GED or high school level when that inmate refuses to enroll in, or to complete, the mandatory 120 calendar days literacy program.

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Part VI

Department of Education; National Science Foundation

National Science Scholars Program; Final Selection Criteria; Notice

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DEPARTMENT OF EDUCATION

National Science Foundation

National Science Scholars Program

AGENCY: Department of Education and National Science Foundation.

ACTION: Notice of Final Selection Criteria for Implementing the National Science Scholars Program in Fiscal Year 1991.

SUMMARY: The Secretary and Director establish the selection criteria necessary to implement the newly enacted National Science Scholars Program (NSSP) in fiscal year 1991 in accordance with the provisions of the NSSP authorizing legislation in title IV, part A, of the Excellence in Mathematics, Science and Engineering Education Act of 1990, Public Law 101-589, 20 U.S.C. 5381 *et seq.* In addition to the program statute, the General Education Provisions Act, and the selection criteria in this notice, in fiscal year 1991, the Secretary will apply the following regulations to the NSSP: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (with the exception of subparts C and D, and §§ 75.580-75.592), 77, 79, 81, 82, 85, and 86. For the purpose of the NSSP, the terms "grantee" and "recipient," as used in EDGAR, mean an institution of higher education that administers a NSSP award received on behalf of a NSSP Scholar. The Secretary plans to publish a notice of proposed rulemaking for the program that will contain the selection criteria for future fiscal years.

EFFECTIVE DATE: These criteria take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. These selection criteria will become effective after the information collection requirements contained in this notice have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these criteria, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Fred H. Sellers, Chief, State Student Incentive Grant Section (room 4018, ROB #3), Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-5447, telephone (202) 708-4607. Deaf and hearing impaired individuals may call: the Federal Dual Party Relay Service at 1-800-877-8339 (in Washington, DC, 202 area code, telephone 708-9300) between 8 a.m., and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Under the National Science Scholars Program, the Secretary is authorized to award scholarships to students for the undergraduate study of the life, physical, or computer sciences, mathematics, or engineering. The program's purpose is to recognize student excellence and achievement in the physical, life, and computer sciences, mathematics, and engineering by providing scholarships to meritorious graduating high school students to encourage and enable them to continue their studies at the postsecondary level. Once implemented, the program will strengthen the leadership of the United States in the sciences, mathematics, and engineering fields by attracting both men and women into these fields and by encouraging them to pursue teaching careers in these areas. The Secretary is authorized to award initial scholarships of up to $5,000 for the first year of undergraduate study at institutions of higher education to students who: (1) Are graduating from high school, (2) are nominated by State nominating committees, and (3) are selected by the President. A National Science Scholar who maintains eligibility may receive additional awards in subsequent years in order to complete his or her undergraduate course of study. Actual award amounts will depend on the availability of appropriated funds, the number of States that elect to participate, and the statutory prohibition against an award exceeding a scholar's cost of attendance. In the Excellence in Mathematics, Science and Engineering Education Act of 1990 (Pub. L. 101-589), Congress authorized $4.5 million for the NSSP; and in the Department of Education Appropriations Act, 1991 Pub. L. 101-517), Congress appropriated $976,000. Section 603(b)(4) of the Act requires that the President announce the selection of scholars prior to January 1 of each fiscal year. However, the enactment date of the Act and the statutorily required procedures for establishing criteria and nominating and selecting recipients precluded announcing the names of scholars prior to January 1 for fiscal year 1991.

A State nominating committee must use the selection criteria in this notice, developed by the Director of the National Science Foundation (the Director of the NSF) in the conjunction with the Secretary, to select and prioritize nominees from among those eligible students who submit applications for NSSP scholarships. The eligibility criterion in section 606(a)(3) of the statute requires a demonstration by each applicant of outstanding achievement in the scholarships disciplines at the secondary level. Moreover, under these selection criteria a successful applicant must have clearly demonstrated in his or her application that he or she has the potential and motivation to complete a postsecondary education at a high level of academic achievement in one of the scholarship disciplines. However, through the publication of these selection criteria, the Secretary and Director seek to encourage and attract to a career in the sciences, mathematics, or engineering, not only those individuals who have excelled specifically in the scholarship disciplines during their secondary education and are already committed to a career in the scholarship disciplines, but also those academically superior individuals who have not yet decided on the direction of their postsecondary education and professional career. The Secretary and the Director believe that selection criteria that place primary or exclusive emphasis on evidence of outstanding academic achievement in the scholarship disciplines would not only be redundant, in light of the eligibility requirement in section 604(a)(3), but might also discourage an otherwise excellent student from considering a career in the sciences, mathematics, or engineering and applying for a NSSP scholarship. Under the application scoring methodology below, the Secretary and the Director direct the State nominating committee to review, and score accordingly, those applications where a student provides clear and specific evidence that demonstrates his or her potential and motivation to succeed at a high level of academic achievement at the postsecondary level in the sciences, mathematics, and engineering.

Under the statute authorizing the National Science Scholars Program, the nominating committee of each participating State must implement procedures for the nomination of students who, in addition to meeting the specific eligibility criteria in section 604(a) of the statute: (1) Demonstrate the potential to successfully complete a postsecondary program in the physical, life or computer sciences, mathematics, or engineering academic disciplines; and (2) demonstrate the motivation to pursue a career in the physical, life, or computer sciences, mathematics, or engineering. As provided in the authorizing legislation, State nominating committees may develop a selection process that serves to promote participation by minorities and persons with disabilities and gives consideration to the financial need of an applicant.

Each State nominating committee must establish operating procedures governing the scholarship nomination process that include: (1) Procedures for the dissemination of program information and application materials to the State's public and private secondary schools; and (2) the establishment of internal State administrative procedures for the timely submission, processing, and review of applications submitted by eligible students. After completing their review of the applications, State nominating committee must submit for consideration the names and pertinent information for each of at least four nominees from each congressional district. The Act provides that at least one half of the nominees from each congressional district must be female, and all of the nominees must be ranked in order of priority within each congressional district. The Department will accept nominations on behalf of the President, and, therefore, State nominating committees should send their nominations to the following address: National Science Scholars Program, United States Department of Education, Office of Student Financial Assistance, ROB-3, room 4651, 400 Maryland Avenue, SW. Washington, DC 20202-5453.

Through consultation with appropriate Presidential staff, the Secretary and the Director will provide their selection recommendation to the President. The President will then select two scholarship recipients from each congressional district.

The Secretary of Education and the Director of the National Science Foundation announce the following selection criteria for use by each nominating committee in the selection of nominees for fiscal year 1991 National Science Scholar Awards:

Selection Criteria

(a)(1) The State nominating committee shall use the following equally weighted selection criteria to evaluate and rate student applications under this scholarship progam.

(2) In selecting student nominees, the nominating committee shall score each of the following criteria on each application using this scale: 5 (truly exceptional), 4 (outstanding), 3 (excellent), 2 (good), 1 (fair). Each applicant may receive a maximum of 25 points.

(b) *The criteria.*—(1) *Evidence of exceptional academic achievement at the secondary level.* (i) The nominating committee shall review each student application and rate the student's overall academic achievement at the secondary level by considering high school class rank and grades and either the composite score on the ACT Assessment or the sum of the student's verbal and quantitative scores on the Scholastic Aptitude Test.

(ii) For student applicants who are earning high school equivalency diplomas in lieu of graduating from high school, the nominating committee shall review and rate the applicant's score on the high school equivalency exam.

(2) *Evidence of exceptional nonacademic accomplishment in extracurricular areas and in the physical, life or computer sciences, mathematics, or engineering.* The nominating committee shall review each application and rate the student's achievement in activities in areas such as community service, leadership, and artistic and athletic performance along with achievement outside the classroom in the sciences, mathematics, and engineering.

(3) *Letters of reference.* The nominating committee shall rate letters of reference written by three individuals chosen by the applicant and determine the degree to which these letters reflect the applicant's qualifications for a National Science Scholarship, based upon relevant factors such as: (i) The author's qualification to provide a recommendation for the particular applicant; (ii) the extent to which each letter of reference describes the applicant's motivation and potential to pursue a career in the physical, life, or computer sciences, mathematics, or engineering; or (iii) the extent to which each letter of reference describes the applicant's overall potential and abilities.

(4) *Student essay.* The nominating committee shall review each application and rate a student essay or personal statement, of 500 words or less, on a topic chosen by the student and deemed by the student to be of interest to the nominating committee. The essay must reflect the student's motivation to pursue a career in the physical, life, or computer sciences, mathematics, or engineering, and otherwise be of relevance to the committee's determination of the student's qualification for a National Science Scholarship.

(5) *Meeting the purposes of the authorizing statute.* The nominating committee shall rate each student's application to determine how well it meets the purposes of the National Science Scholars Program as discussed in this notice and as set forth in section 601(a) of the NSSP statute.

Paperwork Reduction Act of 1980

The use of these criteria creates an information collection requirement. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these criteria to the Office of Management and Budget (OMB) for its review (44 U.S.C. 3504(h)).

Annual public reporting burden for the two collections of information required in this notice are estimated as follows:

1. Applicant responses to selection criteria are estimated to average 16 hours per applicant response for 15,435 respondents, including the time for reviewing instructions and selection criteria, requesting the required information, writing the essay, and reviewing and transmitting the collection of information.

2. State nominating committee submission of nominations to the President are estimated to average 40 hours to review an estimated 35 applications from each congressional district per 441 congressional districts and other eligible participating entities, for a total of 17,640 hours if all 56 State respondents participate. The estimated hours include the time for reviewing and rating student applications, prioritizing nominees, and transmitting the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements contained in this notice should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington DC, 20503; Attention: Daniel Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an integovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the

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opportunity to comment on proposed regulations. In order to implement fully the National Science Scholars Program in fiscal year 1992 and future years, the Secretary will soon publish a Notice of Proposed Rulemaking. However, for the following reasons, the Secretary finds that there is good cause under 5 U.S.C. 553(b)(B) to waive public comment on the selection criteria for the National Science Scholars Program for scholarship awards in fiscal year 1991.

The Excellence in Mathematics, Science and Engineering Education Act of 1990 authorizing the National Science Scholars Program was enacted on November 16, 1990. Following the enactment, pursuant to section 603(a)(1) of the statute, the Director of the National Science Foundation expedited the development of program selection criteria and provided these selection criteria to the Secretary of Education on March 14, 1991. Due to the recent date of enactment of this legislation and the required procedures for establishing criteria and nominating and selecting recipients, the January 1 statutory due date for the President's selection of National Science Scholars was not met for fiscal year 1991. The Secretary is waiving public comment on this notice of final selection criteria in order that scholarship recipients may be properly nominated and scholarship awards made for fiscal year 1991 as quickly as possible.

Without prompt publication of these final selection criteria, the States cannot impart to interested graduating high school students the information they need in order to submit applications and compete for National Science scholarships in fiscal year 1991. Similarly, without publication of these final selection criteria, State nominating committees cannot begin the process of soliciting student applications, reviewing these applications, and rating them in order to provide nominations for fiscal year 1991 scholarships to the President. Scholars must be selected soon so that they can plan for the coming academic year. Moreover, in order to avoid the lapse of funds appropriated for the NSSP for fiscal year 1991, the President must announce scholarship recipients and the Secretary must obligate funds to institutions of higher education on behalf of the recipients by September 30, 1991, the end of fiscal year 1991. Accordingly, the Secretary has determined that there is good cause under 5 U.S.C. 553(b)(B) to waive public comment prior to the publication of this notice of selection criteria for fiscal year 1991 on the grounds that doing otherwise would be impracticable and contrary to the public interest.

(Catalog of Federal Domestic Assistance No. 84.242, National Science Scholars Program)

Authority: 20 U.S.C. 5381 *et seq.*

Dated: April 10, 1991.

Dr. Walter E. Massey,

Director, National Science Foundation.

Dated: April 3, 1991.

Lamar Alexander,

Secretary of Education.

[FR. Doc. 91-10332 Filed 4-30-91; 8:45 am]

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federal register

Wednesday
May 1, 1991

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Alteration of St. Louis Terminal Control Area, MO; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWA-3]

Alteration of the St. Louis Terminal Control Area; MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the St. Louis, MO, Terminal Control Area (TCA). This amendment maintains the altitude of the upper limit of the TCA at 8,000 above feet mean sea level (MSL) and redefines several existing subareas to improve air traffic procedures and simplify visual flight rules (VFR) operations outside the TCA. The primary aim of this modification to the TCA is to improve the degree of safety while providing the most efficient use of the terminal airspace. This action improves the flow of traffic and increases safety in the St. Louis terminal area.

EFFECTIVE DATE: 0901 u.t.c., May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On September 13, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the St. Louis, MO, TCA (55 FR 37834). The proposal cited the inability of the present TCA airspace configuration to accommodate the volume of traffic that had increased from 337,000 in 1980 to 426,000 in 1989. As of December 31, 1989, the number of enplaned passengers had risen to 10 million. Projections indicate that by the year 2000 annual operations will have reached 508,000. To accommodate the increased traffic, aircraft have been routinely vectored beyond the boundaries of the current TCA. The proposed amendment maintained the altitude of the upper limit of the TCA at 8,000 feet MSL nad redefined several existing subareas to improve air traffic procedures and to simplify VFR operations outside the TCA.

On December 7, 1990, the FAA published a supplemental Notice of Proposed Rulemaking (NPRM) to lower the altitude of the approach/departure wings of Area F of the St. Louis TCA from 5,000 feet MSL to 4,500 feet MSL (55 FR 50856). The proposed amendment was warranted because some aircraft, upon reaching the lateral boundaries, could not reach 5,000 feet. To ensure that those aircraft would be within Area F in the TCA, the floor was lowered to 4,500 feet. Section 71.401 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

User Group Participation

The St. Louis TCA modification is being adopted after discussions with a broad representation of the aviation community. In conjunction with this action, the FAA will continue to work cooperatively with local user groups to provide that the TCA is effective for all users by identifying any adjustments or additional modifications that appear necessary. Through joint FAA and user cooperation, any problems that arise can be identified and corrective action taken when necessary.

The TCA configuration established in the final rule has been developed through substantial public participation. Initially, informal airspace meetings were held in the St. Louis area to allow local aviation interests and airspace users an opportunity to provide input for the design of this TCA modification. Technical assistance and support were provided by St. Louis air traffic control (ATC) personnel.

After those meetings and further coordination with the St. Louis Airspace Users Advisory Committee representatives, a modified TCA configuration was prepared for public discussion. As a result of those efforts, further adjustments to the TCA configuration were made and were reflected in the FAA's modified configuration proposed for adoption. An additional opportunity for public comment was granted because of minor changes made to the proposed description of the TCA.

Discussion of Comments

The FAA received 15 comments pertaining to the St. Louis TCA proposal. All comments were carefully studied before developing the final design of the modified TCA. The FAA believes that the final TCA design best meets ATC and users' requirements and promotes the safe and efficient use of available airspace.

All 15 commenters, including the Aircraft Owners and Pilots Association (AOPA) and the Airline Pilots Association (ALPA), concurred with the design of the modified TCA and added the following recommendations:

AOPA recommended using the 175° radial in lieu of the 180° radial in Area B. It stated that no basis exists for using the 180° radial and that airspace could be used outside the TCA.

The FAA notes that the 180° radial, as mentioned in the description of Area B of the St. Louis TCA, is the true radial. When printed on navigational charts, the 180° true radial will be shown as the 175° magnetic radial.

In addition, AOPA, as well as the Greater St. Louis Flight Instructors Association and ALPA, recommended the addition of a very high frequency omnidirectional radio range and distance measuring equipment (VOR/DME) facility on the surface of the Lambert-St. Louis International Airport. The FAA has included provisions for a terminal VOR/DME facility for the Lambert-St. Louis International Airport in the fiscal year 1992 budget.

ALPA recommended that the St. Louis TCA be established up to 10,000 feet MSL to allow additional airspace for positive separation from non-Mode C aircraft.

The FAA agreed with the users committee members to establish the upper limits of the TCA at 8,000 feet MSL. General aviation pilots concurred that the lower TCA upper limits would permit them to transit above the TCA without the use of oxygen equipment.

The Scott Air Force Base (AFB) operations chief expressed concern that the airspace beyond 27 miles at 5,000 feet and below is used by the Scott Radar Approach Control to support military missions in Scott's terminal area. Further, control of a portion of that airspace is routinely assumed by the St. Louis Terminal Radar Approach Control Facility (TRACON) whenever Runways 30 left and right at Lambert-St. Louis International Airport have extended downwind legs. Because of the situation, the St. Louis TRACON and Scott AFB have negotiated a tentative agreement that will accommodate the TCA airspace changes that concern Scott AFB. The current letter of agreement between St. Louis TRACON and Scott AFB will be amended to satisfy Scott AFB operational concerns.

The Missouri Pilots Association and AOPA recommended that the FAA adopt a flyway and planning chart as a useful tool for conducting VFR operations in the St. Louis TCA area.

The FAA is currently developing a VFR flyway and planning chart to aid

pilot operations in the St. Louis TCA area.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations modifies the St. Louis TCA located at the Lambert-St. Louis International Airport, St. Louis, MO. The increased volume of traffic cannot be accommodated by the present configuration of TCA airspace. Aircraft are routinely vectored beyond the boundaries of the current TCA into airspace where ATC services are not provided to all aircraft. This alteration of the TCA better serves the users, as well as the FAA. The FAA's responsibility is to efficiently manage the airspace surrounding the St. Louis area, while providing a level of safety expected by the flying public. This responsibility is met by modifying the TCA to accommodate the volume of traffic experienced today and projected for the future.

In the proposed rulemaking, Area F was described as that airspace extending upward from 5,000 feet MSL up to and including 8,000 feet MSL. Area F is now described as that airspace extending upward from 4,500 feet MSL to 8,000 feet MSL. The airspace segment with a lower limit of 5,000 feet MSL upper limit of 8,000 feet MSL, which was separated from the TCA extensions, now becomes Area G.

Area G covers the same airspace as in the original design except for the addition of the extensions to protect departure/arrival traffic. That segment with the lower limit of 4,500 feet MSL and an upper limit of 8,000 feet MSL is now called Area F.

The landmarks selected to identify the St. Louis TCA boundaries were identified by the users committee and are considered by the FAA as satisfactory.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides detailed estimates of the economic consequences of this action. This summary and the full evaluation quantify costs and benefits, to the extent practicable, to the private sector, consumers, Federal, State and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. This Order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this rule is not "major" as defined in Executive Order 12291. Therefore, a full regulatory analysis has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes this rule. In addition to a summary of the regulatory evaluation, this section also contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. The complete regulatory evaluation is contained in the docket.

Costs

The FAA believes that the rule will impose negligible costs on the agency and the aviation community. The basis of this assessment for each of these groups is discussed below.

The rule will not impose any administrative costs on the FAA. Current personnel and equipment resources already in place at the St. Louis TCA will absorb any additional operations workload generated by the rule.

One of the operational rules of a TCA requires pilots to establish two-way radio contact with ATC. The rule could adversely affect aircraft operators who currently fly in areas that would become part of the TCA since they may have to acquire two-way radios. However, aircraft operators who fly under instrument flight rules (IFR) routinely operate inside TCA's and their aircraft are assumed to be already equipped with the necessary avionics equipment. These aircraft primarily consist of large air carriers, business jets, commuters, and air taxis. Thus, operators of these aircraft will not have to acquire additional equipment as a result of this rule. The FAA does not believe that operators who fly aircraft under VFR, usually small general aviation (GA) airplanes, will have to acquire two-way radios. The FAA believes affected GA aircraft are already equipped with two-way radios and therefore, will not incur such a cost.

General aviation operators who do not routinely fly inside the TCA could be potentially inconvenienced by having to participate (contact ATC and follow TCA operational rules) in the TCA, but only if they routinely operate in the areas of TCA expansion. However, the FAA believes that GA operators will not be significantly inconvenienced because these GA operators are assumed to be already participating in the TCA to the degree that they at least monitor traffic advisories. Affected GA aircraft operators also could potentially face circumnavigation costs. Still, the FAA does not believe that these costs would be significant since the TCA will be expanding only 5 nautical miles and GA operators will still be able to fly above or below the TCA.

Antique airplanes, sports aviation aircraft (gliders, balloonists, parachutists), helicopters, and aircraft flown by student pilots are prevalent within a 30-nautical mile radius of Lambert-St. Louis International Airport and could potentially incur circumnavigation costs. This is predominantly true for those currently operating in the areas of TCA expansion of Area F. However, as long as these operators fly below Area F's floor at 4,500 feet MSL, the rule would not affect them. If they wish to fly above 4,500 feet MSL, they will have to circumnavigate 5 nautical miles to remain clear of the TCA. Because of this relative short distance, the FAA estimates that the final rule will have a negligible cost impact on antique and sports aviation operations.

Benefits

The rule is expected to generate benefits primarily in the form of enhanced safety to the aviation community and the flying public. There would be a lowered likelihood of midair collisions due to the increased positive control of airspace around the St. Louis TCA.

Because of the proactive nature of the changes, the potential safety benefits are difficult to quantify. Proactive means that the FAA acts to prevent a safety problem from occurring when the earliest symptoms appear. In this case, the symptoms are the increased complexity (or density) of aircraft operations within the present configuration of the St. Louis TCA. When the FAA last modified the St. Louis TCA in 1980, annual operations were 337,000 and passenger enplanements were 5.4 million. Since that time, annual operations have increased 31 percent to 443,000 and are projected to reach 508,000 by the year 2000. Similarly, annual passenger enplanements have increased 91 percent to 10.3 million and are projected to reach 15.8 million by the year 2000.

The number of operations at GA airports surrounding St. Louis is increasing as well. Currently, there are 10 public airports, 2 public heliports, 6

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private airports, and at least 19 private heliports within the lateral boundaries of the TCA. The FAA estimates that the combined total annual operations of these air facilities were approximately 630,000 in 1990 and are expected to rise to 772,000 by the year 2000. Only a fraction of these GA operations ever enter the St. Louis TCA. Nevertheless, the FAA believes that the increase in GA operations outside the TCA translates into an increase in GA operations within the TCA.

The current level of operations has congested the airspace to the point that ATC must now routinely vector aircraft beyond the boundaries of the existing TCA into airspace where positive control is not provided to all aircraft. ATC has maintained safety in and around the existing St. Louis TCA through measures such as special aircraft landing procedures and metering the traffic flow. Although these measures have been successful thus far, as evidenced by a record of no midair collisions within the St. Louis TCA, the FAA believes that they may no longer be adequate.

Without document evidence of midair collisions in the St. Louis TCA, estimating the probability of such collisions in the absence of the rule cannot be determined with a reliable degree of certainty. Despite this difficulty, the FAA believes that there is an emerging safety problem, though not yet critical. Without this rule, the FAA believes that aviation safety in the St. Louis area would be reduced significantly in the future.

Another benefit of the final rule would be the repositioning of many of the TCA boundaries along surface features such as highways and rivers. This will enhance the visual means for TCA boundary identification. The rule will also release TCA airspace by raising the floor of a section of the "core" to 1,700 feet MSL (Area B). This will provide more airspace to users who operate under VFR conditions, especially around the Creve Coeur and Arrowhead Airports.

In view of the estimated negligible costs to some GA operators, coupled with benefits in the forms of enhanced aviation safety and increased airspace for GA aircraft operators, the FAA believes that this rule is cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities that the rule could affect are unscheduled operators of aircraft for hire owning nine or fewer aircraft. The rule would only potentially affect those unscheduled air taxi operators who are not able to operate under IFR conditions. The FAA believes that all of the potentially affected unscheduled aircraft operators are already equipped to operate under IFR conditions. This is because such operators regularly use airports where the FAA has established radar approach control services. Therefore, the FAA believes that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The final rule will neither have an effect on the sale of foreign aviation products or services in the United States nor have an effect on the sale of U.S. products or services in foreign countries. This is because the rule will neither impose costs on aircraft operators nor on U.S. or foreign aircraft manufacturers.

Federalism Implications

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted. An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation (1) is not "major" under Executive Order 12291; and (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this regulation will not have a significant economic impact, either positive or negative, on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.403(b) [Amended].

2. Section 71.403(b) is amended to read as follows:

St. Louis, MO [Revised]

Primary Airport, Lambert-St. Louis International Airport (lat. 38°44'52" N., long. 90°21'36" W.).

Boundaries

Area A. That airspace extending from the surface up to and including 8,000 feet MSL within a 6-mile radius of the Lambert-St. Louis International Airport, excluding that airspace south of Interstate 70 and West of Interstate 270; and west of the west bank of the Missouri River from Interstate 70 clockwise to the point where the river intersects with the 6-mile arc, directly north of the Lambert-St. Louis International Airport.

Area B. That airspace extending upward from 1,700 feet MSL to and including 8,000 feet MSL bounded by Interstate 270 on the east, Interstate 70 on the north, the 180° radial of the St. Louis VOR on the west, and the 6-mile arc on the south.

Area C. That airspace extending upward from 2,000 feet MSL to and including 8,000 feet MSL within a 10-mile radius arc of the Lambert-St. Louis International Airport, excluding the area south of Interstate 64 (formerly Highway 40).

Area D. That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL within a 15-mile radius arc of the Lambert-St. Louis International Airport, excluding that airspace bounded by Interstate 55/70 on the north and the east bank of the Mississippi River from Interstate 55/70 to the 15-mile arc on the south.

Area E. That airspace extending upward from 3,500 feet MSL to and including 8,000 feet MSL that was excluded from Area D.

Area F. That airspace extending upward from 4,500 feet MSL to and including 8,000 feet MSL in 3 areas: (1) with 8 miles each side of the Lambert-St. Louis International Airport Runway 12R ILS localizer northwesterly course extending outward from the 15-mile arc to the 30-mile radius arc of the Lambert-St. Louis International Airport; and (2) within 8 miles each side of the Lambert-St. Louis International Airport Runway 30L ILS localizer southeasterly course extending outward from the 15-mile radius arc to the 30-mile radius arc of the Lambert-St. Louis International Airport.

Area G. That airspace extending upward from 5,000 feet MSL to and including 8,000 feet MSL within a 20-mile radius arc of the Lambert-St. Louis International Airport, excluding that airspace included in Area F.

Issued in Washington, DC, on April 26, 1991.

Richard Huff,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

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ST LOUIS, MISSOURI
TERMINAL CONTROL AREA
LAMBERT-ST LOUIS INTERNATIONAL AIRPORT
FIELD ELEVATION - 605 FEET

(not to be used for navigation)

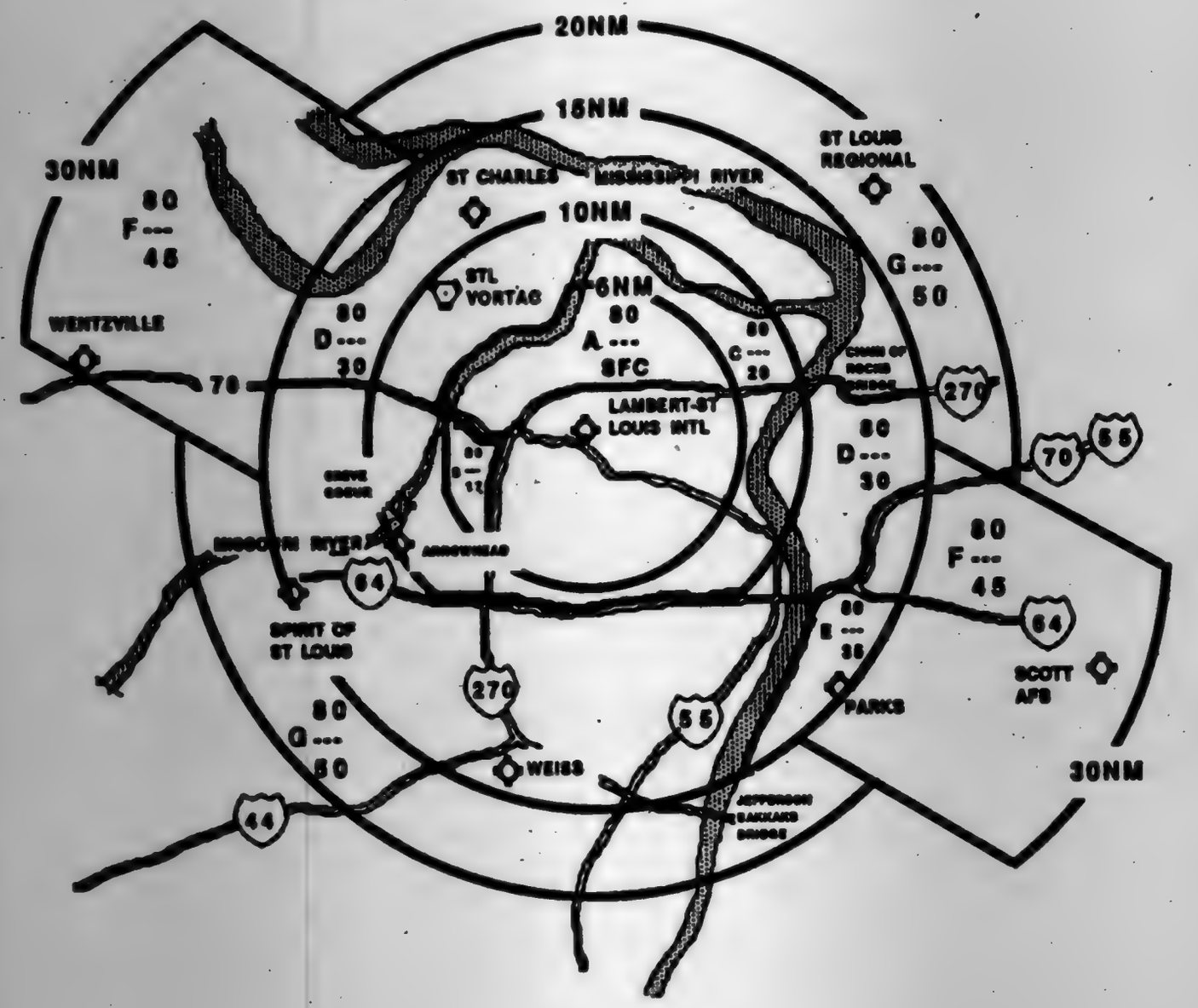

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CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

H.J. Res. 216/Pub. L. 102-36

To designate the week beginning April 21, 1991, and the week beginning April 19, 1992, each as "National Organ and Tissue Donor Awareness Week". (Apr. 26, 1991;105 Stat. 182; 1 page) Price: $1.00

S.J. Res. 64/Pub. L. 102-37

To authorize the President to proclaim the last Friday of April 1991, as "National Arbor Day". (Apr. 26, 1991; 105 Stat. 183; 1 page) Price: $1.00

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—MAY 1991

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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Public Laws

102d Congress, 1st Session, 1991

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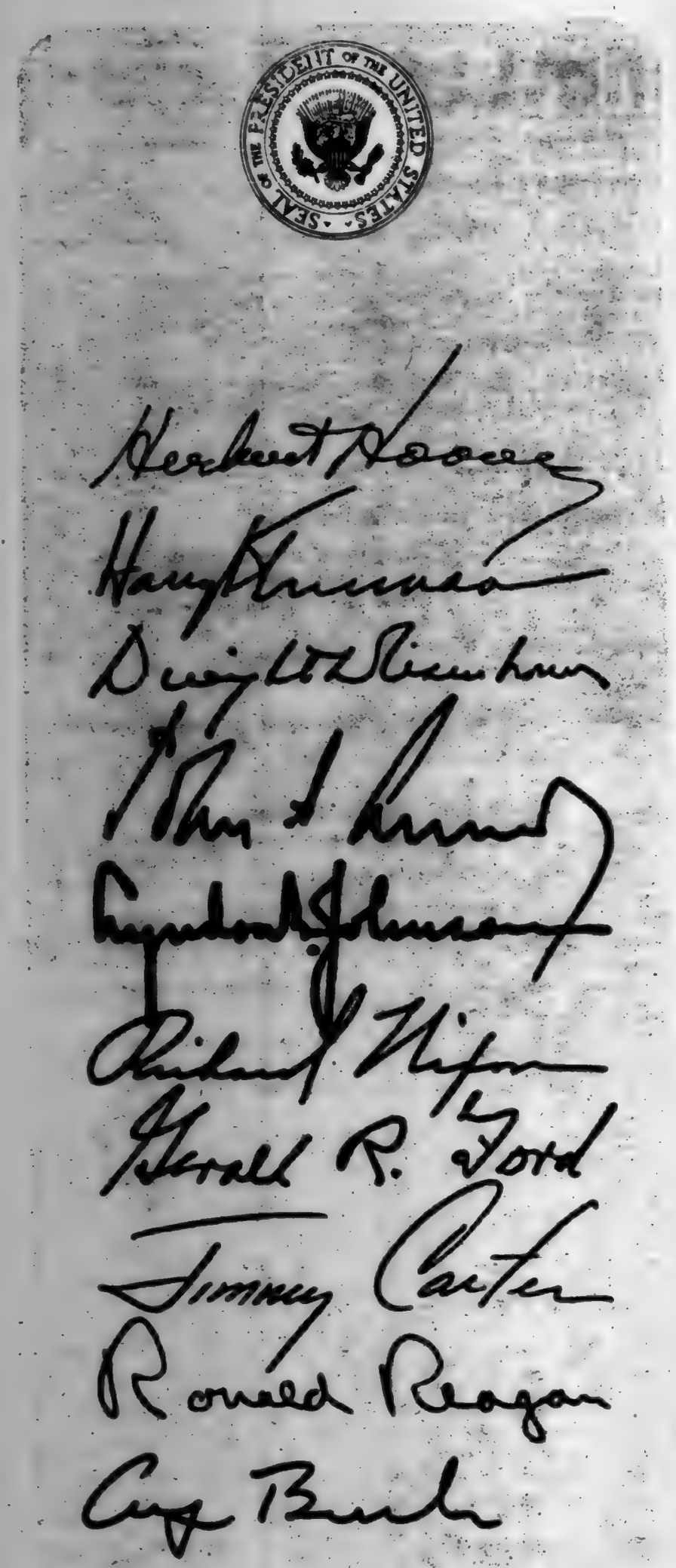

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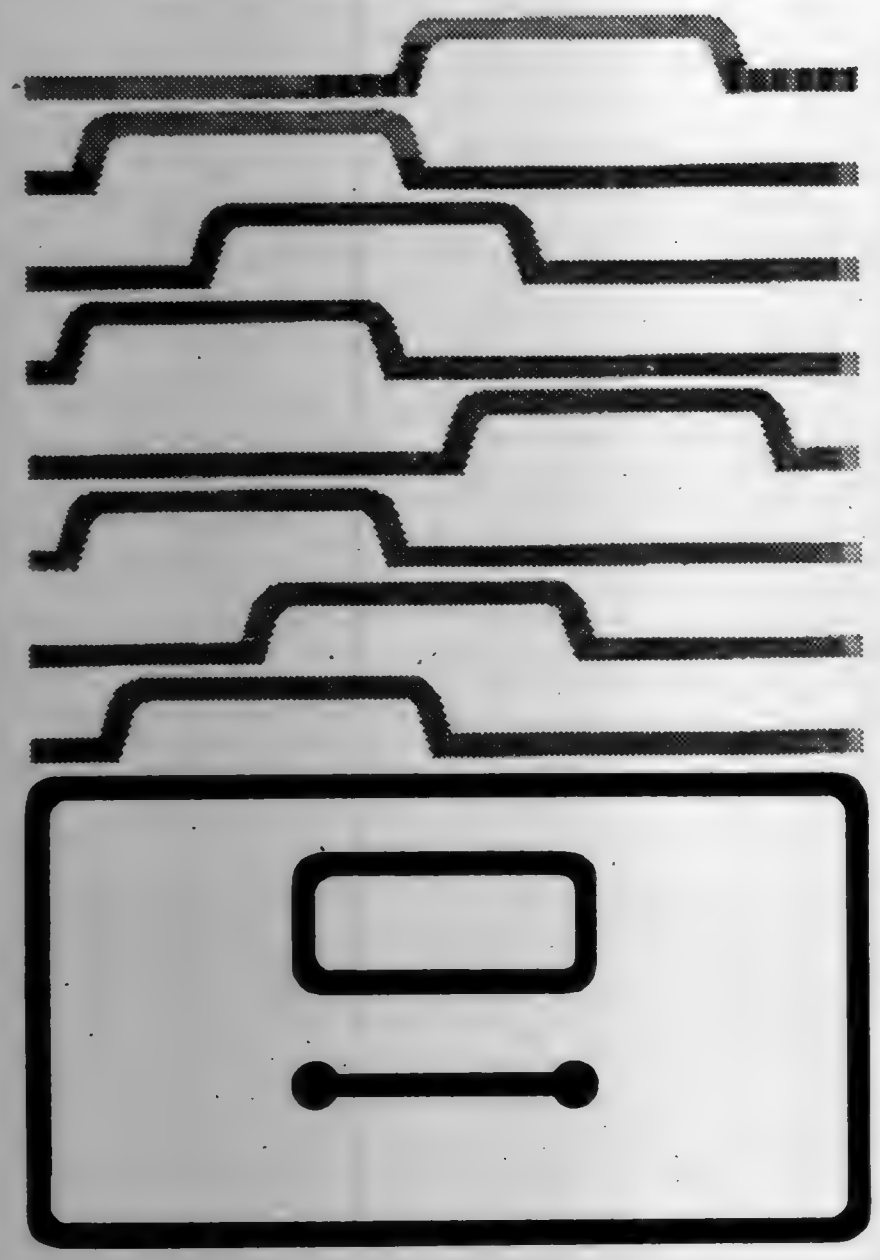

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Rules and Regulations

Federal Register
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Thursday, May 2, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Grain and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On March 11, 1991, the Commodity Credit Corporation (CCC) issued proposed rules with respect to the price support programs for wheat, feed grains, rice, oilseeds, and farm-stored peanuts which are conducted by the CCC in accordance with the Agricultural Act of 1949, as amended (the 1949 Act). The rule is necessary in order to amend the regulations at 7 CFR part 1421 to implement the changes made by the Food Agriculture, Conservation and Trade Act of 1990 (the 1990 Act) and the Omnibus Budget Reconciliation Act of 1990 (1990 Budget Act). Generally, this rule amends the manner in which producers may participate in CCC price support programs for wheat, feed grains, rice, oilseeds (including soybeans) and farm-stored peanuts and the terms and conditions of CCC price support programs for wheat, feed grains, rice, oilseeds, and farm-stored peanuts, and specifies the CCC price support loan eligibility quality requirements for the 1991 and subsequent year's crops.

EFFECTIVE DATE: May 2, 1991.

FOR FURTHER INFORMATION CONTACT: Alex King, Supervisory Program Specialist, Cotton, Grain, and Rice Price Support Division (OGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA) P.O. Box 2415, Washington, DC 20013, telephone (202) 447-8229.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under United States Department of Agriculture (USDA) procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and it has been determined to be "non-major" because these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance program, as found in the catalogue or Federal Domestic Assistance, to which this final rule applies is Commodity Loans and Purchases, 10.051.

It has been determined that the Regulatory Flexibility Act is not applicable because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of these determinations.

It has been determined by environmental evaluations for the wheat, feed grain, rice, oilseed, and farm-stored peanuts CCC price support programs that these programs will have no significant impact on the quality of the human environment.

These programs are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

Public reporting burden for the information collections contained in this final rule with respect to price support programs for wheat, feed grain, rice, oilseeds, and farm-stored peanuts is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collection has previously been cleared by OMB, assigned number 0560-0067.

A proposed rule was published in the Federal Register on March 11, 1991, at 56 FR 10192 which would amend regulations found at 7 CFR part 1421 with respect to the price support program for wheat, feed grains, rice, oilseeds, and farm-stored peanuts which is conducted by CCC. The proposed rule provided a 15-day public comment period which ended March 26, 1991.

Discussion of Comments

Eleven respondents commented on the proposal to provide that a producer shall be considered to have divested beneficial interest in a commodity if the purchaser or intended purchaser pays the producer any advance payment amount which CCC determines has provided the purchaser or intended purchaser a beneficial interest in the commodity except with respect to approved cooperative marketing associations. Generally, respondents believed that this would eliminate an effective marketing tool producers have in getting the best price for their commodity and the elimination of this tool would result in lower producer prices. The proposed rule did not propose to change the manner in which CCC operates these programs but merely set forth more clearly the policy of CCC which has been in place since enactment of the Food Security Act of 1985. However, as a result of the comments received, CCC has re-examined its current policy to determine if a more effective program can be achieved. CCC agrees that it is in the best interest of producers and users of commodities to have efficient marketings which are not disrupted by CCC programs. Accordingly, after reviewing the comments received, it has been determined that § 1421.5(c) of the proposed rule should be changed to permit producers to execute an option to purchase contract and to receive an advance payment in return for such option if the option to purchase contains a specific provision allowing the producer to retain title, risk of loss, and beneficial interest until the earlier of the expiration of the option or the date CCC claims title to the commodity. This will adequately protect CCC's interest in commodities pledged as collateral for price support loans while allowing producers and buyers of commodities to arrange for the potential sale of the

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commodity prior to the expiration of the loan.

There were nine comments concerning the proposed formulas for calculating the adjusted world price for the oilseed crops. Respondents generally stated that CCC was not specific in the locations to be used for determining the adjusted world price. Because of limited pricing data available for determining the world market price and the ever-changing dynamics of world prices, CCC must have the flexibility to determine the most accurate price possible. Accordingly, it is not possible to specify the exact locations which will be used during the entire 5 year period of the authorized programs. Accordingly, these suggestions are not adopted.

There were eight respondents about CCC's proposed elimination of additional loan disbursements commonly referred to as "transportation assistance". Respondents declared that CCC was eliminating a vital tool which facilitates orderly marketing. "Transportation assistance" was initially made available when commercial storage capacity was tight and producers were not able to readily forfeit commodities to CCC under price support loan agreements. As a result, CCC increased the loan rate for these producers to reflect increased transportation charges which were incurred at the time of delivery. Since that time, truck and rail rates have been deregulated and storage facilities are available for forfeiting CCC collateral. Accordingly, "transportation assistance" will no longer be made available. However, CCC has determined to provide producers of all commodities subject to 7 CFR part 1421 the loan rate applicable to the county where the commodities is forfeited. Accordingly, since county loan rates vary depending primarily upon transportation costs, this rate will reflect any location ajustment without the need to further adjust the loan rate for transportation.

There were three respondents that disagree with CCC's proposed requirement that producers be responsible for all loss in the quality and quantity of loan collateral since this would eliminate CCC assuming any loss of loan collateral. As the result of a final rule published on March 1, 1988, CCC has assumed the loss of only a minimal number of these losses; however, many producers are unable to obtain insurance for these and other types of losses on CCC loan collateral because of this policy. Accordingly, based upon CCC's review of this issue, it has been determined that producers will be better protected through insurance from private sources if the proposed rule is adopted. Further, this determination will promote quality in the marketing of crops produced in the United States as intended by section 2518 of the 1990 Act. Accordingly, these suggestions are not adopted.

There were two respondents to CCC's proposal to provide that ground ear corn is ineligible to be pledged as collateral for a price support loan. It has been CCC's historical policy that for price support purposes, corn must meet the Federal Grain Inspection Standards definition of corn which states that corn must contain at least 50 percent whole kernels. Further, in the event CCC takes possession of corn pledged as collateral for a price support loan, CCC must be able to store and dispose of the commodity. Since this can not be accomplished with ground ear corn, these suggestions are not adopted.

There were two respondents to CCC's proposal to deduct applicable marketing fees, loan origination fees, and loan service fees. In review of the comments, it has been determined that the marketing assessment as provided in § 1421.12(d) of the proposed rule will result in the producer paying the assessment twice, once when the loan is made and once when the peanuts are sold. Consequently, this final rule deletes the provision for deducting the marketing assessment from farm-storeed peanut loans. However, for all other assessments and the loan origination fee for oilseeds, the 1949 Act requires CCC to deduct such fees from the loan proceeds. For the loan service fee, CCC has historically charged this fee to recover some of the administrative costs associated with loan processing. Accordingly, these fees will continue to be deducted as proposed.

There were two respondents to CCC's proposal to limit the quantity that can be transferred from a farm-stored loan to a warehouse-stored loan. This limit was proposed in order to be consistent with the limit CCC imposes on all farm-stored loans. By not imposing this limit, producers who transfer farm-stored loans to a warehouse-stored could receive an additional disbursement not allowed with respect to a farm-stored loan that is not so transferred. Accordingly, in order to provide equitable treatment to all producers, the proposed provision is adopted without change.

There was one respondent to CCC's proposal to eliminate adjusting the loan rate for farm-stored wheat based on the percent of protein. Because of the inability of CCC to accurately determine protein content on such wheat, CCC proposed to only adjust the loan rate for warehouse-stored wheat. Although CCC has reviewed this issue in an attempt to provide such an adjustment, CCC has not been able to determine a method which will accurately reflect such protein content on farm stored loans and still protect CCC's interests. Accordingly, only warehouse-stored loans will be disbursed based upon protein content.

There was one respondent to CCC's proposal to allow the extension of wheat and feed grain loans for farmer owned reserve loan eligibility. CCC is required to announce the level of any farmer owned reserve program (FOR) for wheat, January 15 and for feed grains, March 15. Because some loans will mature before the intentions to participate in any such announced FOR, such loans may be extended to allow producers with such loans to participate in the FOR.

There was one respondent to CCC's proposal to restrict the authority for county committees to waive administrative penalties for producers who move or dispose of loan collateral without proper authorization. County committees have the authority to waive certain administrative penalties in accordance with § 1421.17(g); however, such authority is limited to situations where it is the producer's first offense. In cases where it is the producer's subsequent offense, in order to ensure uniform treatment of all producers who have impaired CCC's security interest in prior instances and in order to evaluate whether criminal action should be instigated as the result of conversion of CCC's security interest, only the administrator, Agricultural Stabilization and Conservation Service, or a designee will be authorized to waive administrative penalties.

There was one respondent to CCC's proposal to eliminate allowing producers to substitute loan collateral at delivery. The 1949 Act specifically states that the loan collateral must be a commodity produced by an eligible producer on the farm. Allowing quantities other than the loan collateral to be delivered in satisfaction of the loan would result in ineligible commodities being delivered in satisfaction of the loan. Accordingly, this proposed provision is adopted without change.

There was one respondent to CCC's proposal requiring producers to provide acceptable production evidence in the form of warehouse receipts, load summary statements, or sales documents. The respondent requested

that scale tickets be included. While scale tickets will provide evidence of weight, there is no assurance as to the commodity, class, variety, condition, or other such factors CCC determines necessary to make a positive determination of the production. Accordingly, this suggestion is not adopted.

There was one respondent to CCC's proposal to transfer delinquent matured loans to claims, stating that the producer should be allowed at least 30 days from the date the loan matures. Because it is the intent of CCC to allow at least 30 days and, in most cases, at least 45 days, from the date the loan matures before outstanding delinquent matured loans are transferred to a claim status, the proposed provision is adopted without change.

There were three respondents that stated that the comment period was insufficient to adequately publicize the proposed rule. Because producers are making major decisions regarding the planting of 1991 crops at this time, the comment period was limited to 15 days in order that this final rule could be issued in a timely manner.

A proposed rule was also published on March 11, 1991, at 56 FR 10189 which would amend the regulations at 7 CFR part 1421 with respect to the oilseed price support program.

The proposed rule provided that canola, flaxseed, rapeseed, and safflower seed must contain a minimum oil content of 38% and sunflower seed a minimum oil content of 35%. A total of 83 comments were received with respect to the minimum oil content provision. With respect to canola, flaxseed, rapeseed, and safflower, 31 respondents recommended the provision be deleted, 38 respondents recommended the proposed minimum oil content of 38% be reduced, and 4 respondents commented that the minimum oil content percentage was too high. With respect to sunflower seeds, 5 respondents recommended the provision be deleted, 2 respondents commented that the percentage was too high, 1 respondent supported the proposed amendment, 1 respondent recommended the minimum oil content be reduced from 35% to 25%, and 1 respondent suggested that CCC retain the 35% oil content provision for "oil" sunflower seeds and establish a "non" oil subclass for other sunflower seeds.

The respondents recommending the oil content provision for canola, flaxseed, rapeseed, and safflower seed be deleted commented that these commodities are not traded commercially on the basis of oil content. Some respondents suggested that the proposed minimum oil content levels would eliminate the majority of oilseed growers from participating in the price support program if such levels were not reduced. It was suggested that if CCC were to retain the minimum oil provision, then these commodities should have the same minimum oil content level as sunflower seed, 35%. With respect to sunflower seeds, the majority of the respondents suggested the 35% minimum oil content would eliminate sunflower seeds which are used for purposes other than for making oil from the price support program.

With respect to establishing a minimum oil content requirement for price support eligibility, it is CCC's position that oil content is a significant factor in determining the quality of the oilseed, except for flaxseed and mustard seed. Also, the level of national average loan rate established in the 1949 Act contemplates a high quality oilseed for the price support program. Accordingly, it has been determined that the proposed minimum oil content provision for canola, rapeseed, and safflower seed should be adopted in the final rule. However, CCC concurs with the respondents that the minimum oil content level for canola, rapeseed, and safflower seed should be reduced to more closely reflect the oil content used in the trading of these commodities. Accordingly, the minimum oil content levels for these commodities will be established as follows: Canola, 35%, rapeseed, 35%; and safflower seed, 35%.

With respect to sunflower seeds, CCC concurs with the respondents that to require a minimum oil content level for sunflower seeds used for purposes other than for oil will effectively eliminate such sunflower seeds from the price support program. Accordingly, CCC has determined to established quality requirements for sunflower seeds intended to be used primarily for oil and quality requirements for sunflower seeds whose intended use is primarily for a purpose other than oil.

The proposed rule provided that test weights be used as grading factors to determine price support eligibility. Accordingly, it was proposed that canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed must contain a minimum test weight of 50 pounds, 49 pounds, 54 pounds, 50 pounds, 40 pounds, and 28 pounds, respectively.

The proposed rule also provided that test weights be used to determine the measured quantities of farm-stored loans. Accordingly, it was proposed, for measurement purposes, that a bushel would consist of the following: for canola, 50 pounds free of dockage; for flaxseed, 56 pounds free of dockage; for mustard seed, 54 pounds free of dockage; for rapeseed, 50 pounds free of dockage; for safflower seed, 40 pounds free of dockage; and for sunflower seed, 28 pounds free of dockage.

A total of 58 comments were received with respect to the minimum test weight provisions. 25 respondents commented that the proposed levels were too high, 21 respondents recommended the levels be reduced, and 12 respondents suggested the provision be deleted.

A general consensus of the respondents is that test weights are not used as grading factors in the marketplace and therefore should not be used as eligibility criteria for price support purposes. Also, some respondents suggested the proposed levels would eliminate a large percentage of growers from participating in the price support program. These respondents suggested that if CCC retains this provision, then CCC should reduce the minimum levels.

CCC concurs with the respondents that test weights should not be used as price support eligibility criteria, except for flaxseed and sunflower seed. The exception for flaxseed and sunflower seed is provided because test weights for these two commodities are grading factors under the Official U.S. Standards for Grain. Accordingly, it has been determined to delete minimum test weights as a provision for price support eligibility, except for the aforementioned commodities. In addition, to more accurately recognize the appropriate factor used to determine a bushel of sunflower seed, a bushel of sunflower seed shall be 28 pounds of sunflower seed free of foreign material.

The proposed rule provided that the oilseeds must not contain moisture in excess of 8%. A total of 57 comments were received with respect to the maximum moisture levels. 36 respondents recommended the maximum levels be increased to 10%, 13 respondents commented that the levels were too low, 8 respondents recommended the maximum levels be increased to 9%, and 2 respondents suggested the 8% maximum levels be adopted as proposed.

The general consensus of the respondents is that oilseeds can be safely handled and stored at higher levels than that proposed by CCC. Some respondents suggested that the proposed 8% level may cause inexperienced people to over-dry the oilseed thereby causing the oilseed to be downgraded due to heat damage. It was further suggested the proposed 8% level would increase costs and discourage growers from participating in the program.

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CCC concurs with the respondents in that the 8% moisture level may discourage growers from participating in the program. Accordingly, it has been determined to increase the maximum moisture levels as follows: canola, 10%; flaxseed, 9%; mustard seed, 10%; rapeseed, 10%; safflower seed, 10%: and sunflower seed, 10%.

The proposed rule provided that: (1) The glucosinolate content for canola must not exceed 30 micro moles per gram and 2% for erucic acid; (2) rapeseed must not contain less than 45% erucic acid; and (3) safflower seed must not exceed a free fatty acid level of 4% and contain less than 140 or more than 148 WIJS iodine value.

A total of 52 comments were received with respect to the aforementioned requirements. With respect to the glucosinolate requirement, 3 respondents suggested the requirement be deleted. With respect to the erucic acid requirement, 7 respondents suggested the requirement be deleted and 1 resondent recommended that in lieu of requiring a chemical test, permit producers to certify to canola and rapeseed based on the seed planted. With respect to the free fatty acid requirement, 3 respondents suggested the requirement be deleted, 1 respondent recommended the tolerance level be reduced from 4% to 2%, and 1 respondent recommended the tolerance level be reduced from 4% to 1%. With respect to the iodine value requirement, 22 respondents suggested the requirement be deleted, 6 respondents recommended the iodine value range be revised from 140–148 to 80–155, 5 respondents recomended the range be revised to 85–155, 2 respondents recommended the range be revised to 140–155, and 1 respondent recommended the range be revised to 80–160.

The respondents suggesting the quality requirements be deleted argued that to require a determination of these precise levels would require the use of near infrared reflectance instruments and other costly chemical-based testing equipment. The respondent recommending that producers be permitted to certify to canola and rapeseed in lieu of an erucic acid chemical test argued that the certification method will be used by warehousemen for purposes of segregating these two oilseeds. The respondents suggesting that CCC revise its tolerance level on the free fatty acid requirement were concerned the proposed 4% level would allow for a lesser quality of safflower seed into the price support program. The respondents recommending the iodine value range be revised argued that the proposed range did not take into account new varieties of high oleic safflower seed and high linoleic safflower seed, thus, in effect, eliminating such safflower seed from the price support program.

After careful review of the comments received, CCC has determined to retain the aforementioned quality requirements. CCC believes that these quality requirements are necessary to distinguish the types, varieties, and proper use of each oilseed. Inasmuch that the ultimate user of the oilseed must know these factors, it is necessary that CCC establish requirements deemed appropriate for prudent management of its inventories. With respect to the testing equipment needed to determine such quality levels, the Federal Grain Inspection Service will provide quality factor determinations upon request. The costs associated with determining quality levels shall be paid by the producer.

CCC concurs with resondents suggesting that the proposed iodine value range would eliminate new varieties of safflower seed from the price support program. Accordingly, it has been determined to revise the iodine value range from 140–148 to 80–155.

The proposed rule provided that flaxseed and sunflower seed pledged as collateral for price support loans must grade U.S. No. 1 or better. A total of 11 comments were received with respect to the U.S. No. 1 grade requirement. 7 respondents stated that the requirement was too restrictive and 4 respondents recommended the requirement be reduced from U.S. No. 1 or better to U.S. No. 2 or better.

The general consensus of the respondents is that establishing a U.S. No. 1 grade or better requirement for flaxseed and sunflower seed will eliminate a large percentage of producers from participating in the program. In addition, the respondents argued the proposed requirement was not consistent with the wheat and feed grain programs which allow for lower grades of grain to be eligible fpr price support.

CCC concurs, in part, with the respondents. Establishing a quality requirement of U.S. No. 1 or better may eliminate some flaxseed and sunflwoer seed producers from participating in the price support program. Accordingly, it has been determined to reduce the quality requirement from U.S. No. 1 or better to U.S. No. 2 or better for flaxseed and for sunflower seed intended to be used for oil.

In reviewing this provision with other oilseed quality requirements, it was determined that some of the mustard seed quality requirements were also too restrictive. Accordingly, some quality requirements for mustard seed have been revised for purposes of not eliminating producers from the program.

The reduced quality requirements may be viewed by some as still being too restrictive in comparison to the requirements found under the wheat and feed grain programs. However, it has been determined that for purposes of administrating an oilseed program as provided int he 1949 Act and with limited uses for oilseeds, it becomes necessary to establish quality requirements consistent with the ultimate disposition and use of the respective oilseed.

It has also been determined that all other provisions of the proposed rule should be adopted as the final rule with certain technical and grammatical correctoins.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Warehouses.

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 144f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. The subpart consisting of §§ 1421.1 through 1421.32 and the subpart heading are revised and the subpart consisting of §§ 1421.320 through 1421.325 is revised as follows:

Subpart—Price Support Regulations for the 1991 and subsequent crops of Wheat, Feed Grains, Rice, Oilseeds (Canola, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts

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Subpart—Rice Marketing Certificate Program

Sec.
1421.320 General provisions.
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Subpart—Price Support Regulations for the 1991 and subsequent crops of Wheat, Feed Grains, Rice, Oilseeds (Canola, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts

§ 1421.1 Applicability.

(a) The regulations of this subpart are applicable to the 1991 and subsequent crops of barley, corn, grain sorghum, oats, peanuts, rice, rye, soybeans, wheat, and oilseeds as set forth in § 1421.3. These regulations set forth the terms and conditions under which price support loans and purchase agreements shall be entered into and loan deficiency payments made by the Commodity Credit Corporation ("CCC"). Additional terms and conditions are set forth in the note and security agreement, loan deficiency payment application, and the purchase agreement which must be executed by a producer in order to receive price support. With respect to warehouse-stored loans for peanuts, such loans shall be made in accordance with part 1446 of this title.

(b) Basic county price support rates, the schedule of premiums and discounts, and forms which are used in administering the price support program for a crop of a commodity are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively). The forms for use in connection with the programs in this section shall be prescribed by CCC.

(c)(1) Price support loans and purchase agreements shall be available as provided in this Part with regard to barley, corn, grain sorghum, oats, rye, and wheat produced in the United States.

(2) Price support loans, loan deficiency payments, and purchase agreements shall be available only with respect to rice produced in the continental United States.

(3) Farm-stored price support loans and purchase agreements shall be available only with respect to farmer stock peanuts, as defined in part 1446 of this title, which are produced in the United States and which are also of a type specified in part 729 of this title.

(4) Price support loans and loan deficiency payments shall be available as provided in this Part with respect to oilseeds produced in the United States.

(d) Price support loans, loan deficiency payments, and purchase agreements shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1421.2 Administration.

(a) The price support and loan deficiency payment program which is applicable to a crop of a commodity shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees", respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee or the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans, loan deficiency payment applications, and purchase agreements and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1421.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in parts 719 and 1413 of this title shall also be applicable.

Basic support rate means the price support rate established by CCC for a commodity before any adjustment for premiums and discounts.

Charges means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the commodity tendered to CCC for price support. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such commodity.

Loan deficiency quantity means the eligible quantity which was certified by the producer as eligible to be pledged as collateral for a price support loan, for which the producer elected to forgo obtaining price support.

Loan quantity means the quantity on which the price support loan was disbursed shown on the note and security agreement.

Oilseeds means any crop of soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, and other oilseeds as determined and announced by CCC.

Purchase quantity means the eligible quantity designated on Form CCC–614, Purchase Agreement for purchase by CCC.

§ 1421.4 Eligible producers.

(a) An eligible producer of a crop of a commodity shall be a person (i.e., an

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individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity) which:

(1) Produces such a crop as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12, 718, 1413, and 1446 of this title.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the executor or administrator. Loan, loan deficiency payment, or purchase agreement documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive price support or loan deficiency payment only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable price support documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) *Joint loans.*

(1) Two or more producers may obtain a single joint loan with respect to commodities which are stored in the same farm storage facility. Two or more producers may obtain individual loans with respect to their share of the commodity which is stored commingled in a farm storage facility with commodities owned by other producers if such other producers execute Form CCC-666 which provides that such producers shall obtain the permission of a representative of the county committee prior to removal of any quantity of the commodity from the storage facility. All producers who store a commodity in a farm storage facility in which commodities which have been pledged as collateral for a loan shall be liable for any damage incurred by CCC with respect to the deterioration or unauthorized removal or disposition of such commodities in accordance with § 1421.17.

(2) Two or more producers may obtain a single joint loan with respect to commodities which are stored in an approved warehouse if the warehouse receipt which is pledged as collateral for the loan is issued jointly to such producers.

(3) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.

(e) *Denial of farm-stored loans.*

(1) The county committee may deny a producer price support on farm-stored commodities if the producer has:

(i) Been convicted of a criminal act, or has made a misrepresentation, with respect to:

(A) Acquiring a farm-stored loan or

(B) In the maintenance of the commodity pledged as security for a farm-stored loan; or

(ii) Failed to protect adequately the interests of CCC in the commodity pledged as security for a farm-stored loan.

(2) In such cases, the producer shall be ineligible for subsequent farm-stored loans unless the county committee determines that the producer will adequately protect CCC's interest in the commodity which would be pledged as collateral for such a loan. A producer who is denied a farm-stored loan will be eligible to pledge a commodity as collateral for a warehouse-stored loan.

(f) *Warehouse-stored loans to warehousemen.* Except as provided in § 1421.746, warehouse-stored loans may be made to a warehouseman who, in the capacity of a producer, tenders to CCC warehouse receipts issued by such warehouseman on a commodity produced by such warehouseman only in those States where the issuance and pledge of such warehouse receipts is valid under State law.

(g) *Approved cooperative.* A cooperative marketing association which has been approved in accordance with part 1425 of this title may obtain price support on the eligible production of such commodity or loan deficiency payment with respect to such commodity on behalf of the members of the cooperative who are eligible to receive price support with respect to a crop of a commodity. For purposes of this subpart and in applicable price support and loan deficiency payment forms, the term "producer" includes an approved cooperative marketing association.

(h) *Peanut producer.* With respect to peanuts tendered to CCC for price support, a producer must also meet the provisions of part 1446 of this title. Prior to obtaining a farm-stored loan with respect to additional peanuts, a producer must register as a handler with the State ASCS office of the State in which the producer's farm is located.

(i) *Restrictions in use of agents.* A producer shall not delegate to any person (or the person's representative) who has any interest in storing, processing, or merchandising any commodity which is otherwise eligible for price support or a loan deficiency payment under a program to which this section is applicable authority to exercise on the behalf of the producer any of the producer's rights or privileges under such program, including the authority to execute any note and security agreement or other price support document, unless the person (or the person's representative) to whom authority is delegated, is serving in the capacity of a farm manager for the producer or unless the authority delegated is restricted specifically for the purpose of repaying the loan amount and charges plus interest or, for the purpose of obtaining loan deficiency payments, and such delegation is filed through the execution of Form ASCS-211, Power of Attorney, or other form as approved by CCC, with the county office and accepted by CCC.

§ 1421.5 General eligibility requirements.

(a) A producer must, unless otherwise authorized by CCC, request price support and a loan deficiency payment at the county office which, in accordance with part 719 of this title, is responsible for administering programs for the farm on which the commodity was produced. An approved cooperative marketing association must, unless otherwise authorized by CCC, request price support and loan deficiency payments at the county office for the county in which the principal office of the cooperative is located. In order to receive price support or loan deficiency payments for a crop of a commodity, a producer must execute a note and security agreement, loan deficiency payment application, or purchase agreement on or before:

(1) January 31 of the year following the year in which the crop of peanuts is normally harvested for additional peanuts pledged as collateral for a farm-stored loan;

(2) March 31 of the year following the year in which the following crops are normally harvested: Quota peanuts pledged as collateral for a farm-stored loan; barley; canola; flaxseed; oats; rapeseed; rye; and wheat;

(3) April 30 of the year following the year in which the crop of peanuts is harvested for quota peanuts tendered for purchase; and

(4) May 31 of the year following the year in which the following crops are normally harvested: Corn; grain sorghum; mustard seed; rice; safflower; soybeans; and sunflower seed.

(b)(1) Commodities must be tendered to CCC by an eligible producer and must be eligible, in existence, and in approved storage at the time of disbursement of loan, loan deficiency payment, or purchase agreement proceeds. Such commodities must also be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals. Wheat must not contain more than two rodent pellets or comparable amounts of other filth per 1,000 grams of wheat.

(2) The determination of class, grade, grading factors, milling yields, and other quality factors, including the determination of type, quality and quantity for peanuts:

(i) With respect to barley, corn, flaxseed, grain sorghum, oats, rice, rye, soybeans, sunflower seed for extraction of oil, and wheat, shall be based upon the Official United States Standards for Grain and the Official United States Standards for Rice as applied to rough rice whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination shall not be paid by CCC.

(ii) With respect to a crop of canola, mustard seed, rapeseed, safflower seed, and sunflower seed used for a purpose other than to extract oil, shall be based on quality requirements established and announced by CCC, whether or not such determinations are made on the basis of an official inspection. The costs of an official quality determination shall not be paid by CCC. The quality requirements which are used in administering the price support program for the oilseeds in this subparagraph are available in State and county ASCS offices.

(iii) With respect to peanuts, shall be determined at the time of delivery to CCC by a Federal-State Inspector authorized or licensed by the Secretary.

(3) Corn pledged as collateral for a farm-stored loan may be ear or shelled corn, but may not be ground ear corn. If the collateral is ear corn, the producer must:

(i) Before delivery to CCC, shell such corn without cost to CCC; and

(ii) Before removal of the commodity for shelling, have the approval of CCC in accordance with § 1421.20. Corn pledged as collateral for a warehouse-stored loan or tendered in accordance with a purchase agreement must be shelled corn.

(4) When a quantity of a commodity is determined by weight, the following shall apply:

(i) A bushel of barley shall be 48 pounds of barley free of dockage;

(ii) A bushel of corn shall be 56 pounds of corn free of dockage;

(iii) A bushel of oats shall be 32 pounds of oats;

(iv) Quantities of peanuts shall be in tons and tenths of a ton;

(v) Quantities of farm-stored rice shall be in whole units of 100 pounds of rice;

(vi) A bushel of rye shall be 56 pounds of rye free of dockage;

(vii) A bushel of soybeans shall be 60 pounds of soybeans that contain no more than one percent foreign material.

(viii) A bushel of grain sorghum shall be 56 pounds of grain sorghum free of dockage; and

(ix) A bushel of wheat shall be 60 pounds of wheat free of dockage.

(x) Quantities off farm-stored canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed shall be in whole units of 100 pounds of the respective commodity.

(A) A bushel of canola shall be 50 pounds of canola free of dockage.

(B) A bushel of flaxseed shall be 56 pounds of flaxseed free of dockage.

(C) A bushel of mustard seed shall be 54 pounds of mustard seed free of dockage.

(D) A bushel of rapeseed shall be 50 pounds of rapeseed free of dockage.

(E) A bushel of safflower seed shall be 40 pounds of safflower seed free of dockage.

(F) A bushel of sunflower seed shall be 28 pounds of sunflower seed free of foreign material.

(5) With respect to farm-stored loans, purchase agreements, and loan deficiency payments, all determinations of weight and quality, except as otherwise agreed to by CCC, shall be determined at the time of delivery of the commodity to CCC or at the time the loan deficiency payment application is filed.

(c)(1) To be eligible to receive price support, a producer must have the beneficial interest in the commodity which is tendered to CCC for a loan, loan deficiency payment, or purchase. The producer must always have had the beneficial interest in the commodity unless, before the commodity was harvested, the producer and a former producer whom the producer tendering the commodity to CCC has succeeded had such an interest in the commodity. Commodities obtained by gift or purchase shall not be eligible to be tendered to CCC for price support. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan, loan deficiency payment, or purchase agreement shall be eligible to receive price support whether succession to the commodity occurs before or after harvest so long as the heir otherwise complies with the provisions of this part.

(2) A producer shall not be considered to have divested the beneficial interest in the commodity if the producer retains control of the commodity, including the right to make all decisions regarding the tender of such commodity to CCC for price support, and the producer:

(i) Executes an option to purchase whether or not an advance payment is made by the potential buyer with respect to such commodity if the option to purchase contains the following provision:

"Notwithstanding any other provision of this option to purchase, title; risk of loss; and beneficial interest in the commodity, as specified in 7 CFR part 1421, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: (1) The maturity of any Commodity Credit Corporation price support loan which is secured by such commodity; (2) the date the Commodity Credit Corporation claims title to such commodity; or (3) such other date as provided in this option."; or

(ii) Enters into a contract to sell the commodity if the producer retains title, risk of loss, and beneficial interest in the commodity and the purchaser does not

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pay to the producer any advance payment amount or any incentive payment amount to enter into such contract except as provided in part 1425 of this title.

(3) If price support is made available to producers through an approved marketing cooperative in accordance with part 1425 of this title, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the cooperative or its member cooperatives, except as otherwise provided in this subsection. Commodities delivered to such a cooperative shall not be eligible to receive price support if the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in part 1425 of this title.

(d)(1) A producer may, before the final date for obtaining a price support loan for a commodity, reoffer as collateral for such a loan any commodity that had been previously pledged as collateral for a price support loan, except with respect to:

(i) Commodities which have been acquired in accordance with part 1470 of this title,

(ii) Commodities which have been redeemed at a rate which is less than the original price support level in accordance with § 1421.25, and

(iii) Commodities for which a payment has been made in accordance with § 1421.29.

(2) With respect to loans transferred in accordance with § 1421.17(c) and (d), the subsequent loan shall have the same maturity date as the original loan.

(e) Producers who redeem loan collateral at the lower loan repayment level in accordance with § 1421.25 or, in lieu of receiving price support receive a loan deficiency payment in accordance with § 1421.29, shall provide CCC with:

(1) Evidence of production of the collateral such as sales receipts or other written documentation acceptable to CCC, or

(2) The storage location of the collateral which has not been otherwise disposed of and allow CCC access to such collateral.

(f) Producers who receive a loan deficiency payment for a commodity in accordance with paragraph (e) of this section must provide evidence of production acceptable to CCC within 12 months from the final loan availability date for crop year for such commodity. Production evidence shall include but is not limited to:

(1) Evidence of sales,

(2) Load summary sheets, and

(3) Warehouse receipts from approved or unapproved warehouses.

(g) If the producer fails to provide acceptable evidence of production as required in paragraph (e)(1) of this section, such producer shall be required to repay the market gain or loan deficiency payment and charges, plus interest.

(h) The loan documents shall not be presented for disbursement unless the commodity subject to the note and security agreement is an eligible commodity, in existence, and is in approved storage. If the commodity was not either an eligible commodity, in existence, or in approved storage at the time of disbursement, the total amount disbursed under the loan and charges plus interest shall be refunded promptly by the producer.

(i) CCC shall limit the total loan quantity for a loan disbursement, purchase quantity for a purchase agreement disbursement, or loan deficiency quantity for a loan deficiency payment disbursement based on a subsequent increase in the quantity of eligible commodity by the final loan availability date to 120 percent of the outstanding quantity of such loan, purchase agreement, or loan deficiency payment application. A producer may obtain a separate loan, loan deficiency payment, or purchase agreement before the final loan availability date for quantities in excess of 120 percent of such quantity if such quantities are an otherwise eligible commodity.

§ 1421.6 Maturity and expiration dates.

(a)(1) All loans shall mature on demand by CCC and with respect to:

(i) All commodities except peanuts and loan collateral transferred in accordance with § 1421.17(c) and (d), no later than the last day of the ninth calendar month following the month in which the note and security agreement is filed in accordance with § 1421.5(a) and approved; and

(ii) Peanuts, April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 15 days in advance of the accelerated maturity date.

(3) The request for a loan shall not be approved until all producers having an interest in the collateral sign the note and security agreement and CCC approves such note and security agreement.

(b)(1) With respect to all eligible commodities except peanuts, purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved. With respect to peanuts, purchase agreements expire on April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the expiration date of the purchase agreement by providing the producer notice of such acceleration at least 15 days in advance of the accelerated expiration date.

(c) 1991 and subsequent year wheat, corn, grain sorghum, barley and oat loans may only be extended by CCC beyond the maturity date specified in paragraph (a) of this section as CCC determines necessary for allowing producers an opportunity to participate in the farmer owned reserve program conducted in accordance with §§ 1421.200 through 1421.216. In such cases only, CCC may extend a price support loan:

(1) For wheat to the last day in February following the year in which the crop is normally harvested, and

(2) For corn, grain sorghum, barley, and oats, to May 31 following the year in which the crop is normally harvested.

(d) If a producer fails to settle the loan in accordance with paragraph (a) of this section within 30 days from the maturity date of such loan, or other reasonable time period as established by CCC, a claim for the loan amount and charges plus interest shall be established. CCC shall:

(1) Inform the producer before the maturity date of the loan of the date by which the loan must be settled or a claim will be established in accordance with part 1403 of this title, and

(2) If the producer delivers the loan collateral in accordance with § 1421.22 after a claim is established:

(i) Determine the value of such collateral in accordance with § 1421.22,

(ii) Waive interest on the loan amount which accrued prior to the establishment of the claim with respect to the settlement value of the quantity delivered from the date such loan proceeds were disbursed through the loan maturity date. Interest which accrues after the establishment of the claim shall not be waived, and

(iii) Reduce the outstanding claim amount arising from the loan by the amount of the settlement value of the quantity delivered plus the amount of interest that was waived.

§ 1421.7 Adjustment of basic support rates.

(a) Basic support rates for a commodity may be established on a State, regional, or county basis and may be adjusted by CCC to reflect quality and location applicable to the commodity and as otherwise provided in this section.

(b) If CCC determines that State, district, or county weed control laws affect the value of a commodity, the basic support rate shall be reduced to reflect the reduction in value of the commodity unless the producer or storing warehouseman furnishes a certification from the appropriate weed control official that the commodity complies with weed control laws. The storing warehouseman must also agree to hold CCC harmless for any loss or penalty which arises from the violation of such laws. The certification by the warehouseman shall be in substantially the following form:

Certification

This is to certify that the commodity evidenced by warehouse receipt No. XX issued to XX is not subject to seizure or other action under weed control laws or regulations in effect at the point of storage. It is further certified and agreed that if such commodity is acquired by CCC in settlement of a loan or purchase agreement, the undersigned will save CCC from loss or penalty under weed control laws or regulations in effect at the point the commodity was stored under the above warehouse receipt. (Signature) XXXX

(c)(1) With respect to all commodities except peanuts, farm-stored loans shall be disbursed at the basic county support rate for the county where the commodity is stored adjusted for weed control law discounts.

(2) With respect to quota and additional peanuts, farm-stored loans shall be disbursed at the basic support rates established by CCC for such peanuts.

(d)(1) With respect to all commodities except peanuts, warehouse-stored loans and purchase agreement payments shall be disbursed on the basis of the basic county support rate for the county where the commodity is stored adjusted for:

(i) Weed control law discounts, and

(ii) The schedule of premiums and discounts established for the commodity on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

(2) With respect to quota and additional peanuts, payments made in accordance with a purchase agreement shall be at the basic support rate established by CCC for such peanuts.

(3) With respect to commodities moved from one warehouse to another in accordance with the terms and conditions prescribed by CCC on Form CCC-699, Reconcentration Agreement and Trust Receipt, the support rate will be adjusted to reflect the new storage location.

§ 1421.8 Approved storage.

(a) Approved farm storage shall consist of a storage structure located on or off the farm (excluding public or commercial warehouses) which is determined by CCC to be under the control of the producer and to afford safe storage of the commodity pledged as collateral for a price support loan. As may be determined and announced by the Executive Vice President, CCC, approved farm storage may also include on-ground storage, temporary storage structures, or other storage arrangements. If the commodity which is to be pledged as collateral for a price support loan is stored on leased space:

(1) A copy of the lease shall be obtained by the county office before a loan is made. The lease shall authorize the producer and any person having an interest in the commodity, including CCC, to enter the premises to inspect and examine the commodity and shall permit a reasonable time to such persons to remove the commodity from the premises upon the termination of the lease, and

(2) The county office may require from the lessor, a lien waiver that fully protects the interest of CCC.

(b) Approved warehouse storage shall consist of:

(1) A public warehouse for which a CCC storage agreement for the commodity is in effect and which is approved by CCC for price support purposes. Such a warehouse is referred to in this subpart as an "approved warehouse". The names of approved warehouses may be obtained from the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141-6205, or from State and county offices.

(2) A warehouse operated by an approved cooperative as defined in part 1425 of this chapter and licensed to store the commodity under the United States Warehouse Act.

(c) The approved storage requirements provided in this section may be waived by CCC if the producer agrees to redeem the loan collateral pursuant to the lower loan repayment provisions contained in § 1421.25 or, requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1421.29.

§ 1421.9 Warehouse receipts.

(a) Warehouse receipts tendered to CCC with respect to a loan, loan deficiency payment, or purchase agreement must meet the provisions of this section and all other provisions of this part, and CCC program documents.

(b) Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank in order to vest title in the holder. Receipts must be issued by an approved warehouse and must represent a commodity which is deemed to be stored commingled. The receipts must be negotiable and must represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the warehouse of the original deposit. However, warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated in accordance with the provisions of § 1421.20(c).

(c) If the receipt is issued for a commodity which is owned by the warehouseman either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseman on the warehouseman's commodity is invalid, the warehouseman may offer the commodity to CCC for loan or purchase if such warehouse is licensed and operating under the U.S. Warehouse Act. In such States, if the warehouseman is not licensed and operating under the U.S. Warehouse Act, the warehouseman may deliver the commodity to CCC for purchase if the warehouse receipt is issued in the name of CCC.

(d) Each warehouse receipt or accompanying supplemental certificate representing a commodity stored in an approved warehouse which has a storage agreement with CCC shall indicate that the commodity is insured in accordance with such agreement. The cost of such insurance shall not be for the account of CCC.

(e) A separate warehouse receipt must be submitted for each grade and class of any commodity tendered to CCC and, with respect to rice, such receipt must also state the milling yield of the rice.

(f)(1) Each warehouse receipt, or a supplemental certificate (in duplicate) which properly identifies the warehouse receipt, must be issued in accordance with the Uniform Grain Storage Agreement, Uniform Rice Storage Agreement, or the U.S. Warehouse Act for warehouses licensed under U.S. Warehouse Act, as applicable, and must indicate:

(i) The name and location of the storing warehouse;

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(ii) The warehouse code assigned by CCC;
(iii) The warehouse receipt number;
(iv) The date the receipt was issued;
(v) The date the commodity was deposited or received;
(vi) The date to which storage has been paid or the storage start date;
(vii) Whether the commodity was received by rail, truck or barge;
(viii) The amount per bushel, pound, or hundredweight of prepaid in or out charges;
(ix) The signature of the warehouse operator or the authorized agent; and
(x) For warehouses operating under a merged warehouse code agreement (KCFL-614), the location and county to which the producer delivered the commodity.

(2) In addition to the information specified in paragraph (f)(1) of this section, the following information must be provided with respect to the specified commodity:
(i) Barley:
(A) Gross weight in pounds and net bushels;
(B) Class and subclass;
(C) Grade (including special grades);
(D) Test weight;
(E) Moisture;
(F) Dockage; and
(G) Any other grading factor when such factor (not test weight) determines the grade.
(ii) Corn:
(A) Kind of Corn;
(B) Gross weight in pounds, and net bushels;
(C) Class;
(D) Grade (including special grades);
(E) Test weight;
(F) Moisture;
(G) Broken corn and foreign material; and
(H) Any other grading factor when such factor (not test weight) determines the grade.
(iii) Oats:
(A) Net weight and bushels;
(B) Grade (including special grades);
(C) Test weight;
(D) Moisture; and
(E) Any other grading factor when such factor (not test weight) determines the grade.
(iv) Rice:
(A) Grade;
(B) Net weight and net hundredweight;
(C) Class;
(D) Grading factors, including color, smut, and heat damage;
(E) Milling yield;
(F) Moisture; and
(G) If the rice is stored commingled.
(v) Rye:
(A) Gross weight and net bushels;
(B) Grade (including special grades);
(C) Test weight;
(D) Moisture;
(E) Dockage; and
(F) Any other grading factor when such factor (not test weight) determines the grade.
(vi) Grain sorghum:
(A) Gross weight in pounds and net weight in hundredweight;
(B) Class;
(C) Grade;
(D) Test weight;
(E) Moisture;
(F) Dockage; and
(G) Any other grading factor when such factor (not test weight) determines the grade.
(vii) Soybeans:
(A) Net weight and bushels;
(B) Gross weight and bushels;
(C) Grade (including special grades);
(D) Test weight;
(E) Moisture;
(F) Percentage of foreign material; and
(G) Any other grading factor when such factor (not test weight) determines the grade.
(viii) Wheat:
(A) Gross weight and net bushels;
(B) Class and Subclass;
(C) Grade;
(D) Test weight;
(E) Moisture;
(F) Dockage;
(G) Protein content; and
(H) Any other grading factor when such factor (not test weight) determines the grade.
(ix) Canola:
(A) Gross weight and net weight in hundredweight;
(B) Oil Content;
(C) Moisture;
(D) Dockage;
(E) Glucosinolate;
(F) Percentage of:
(1) Heat damage;
(2) Distinctly green seeds;
(3) Total damage;
(4) Stones;
(5) Ergot;
(6) Sclerotinia bodies;
(7) Total conspicuous admixtures;
(8) Inconspicuous admixtures;
(9) Erucic acid;
(G) Count of:
(1) Garlic bulbs;
(2) Animal filth;
(3) Glass; and
(4) Unknown foreign substance.
(x) Flaxseed:
(A) Gross weight and net weight in hundredweight;
(B) Grade;
(C) Test Weight;
(D) Moisture;
(E) Dockage; and
(F) Any other grading factor when such factor (not test weight) determines the grade.
(xi) Mustard Seed:
(A) Gross weight and net weight in hundredweight;
(B) Class;
(C) Moisture;
(D) Dockage;
(E) Percentage of:
(1) Class purity;
(2) Heat damage;
(3) Distinctly green seeds;
(4) Total damage;
(5) Other weed seed;
(6) Stones;
(7) Ergot;
(8) Sclerotinia bodies;
(9) Inconspicuous admixtures;
(F) Count of:
(1) Animal filth;
(2) Glass; and
(3) Unknown foreign substance.
(xii) Rapeseed:
(A) Gross weight and net weight in hundredweight;
(B) Oil Content;
(C) Moisture;
(D) Dockage;
(E) Percentage of:
(1) Heat damage;
(2) Distinctly green seeds;
(3) Total damage;
(4) Stones;
(5) Ergot;
(6) Sclerotinia bodies;
(7) Total conspicuous admixtures;
(8) Inconspicuous admixtures;
(9) Erucic acid;
(F) Count of:
(1) Animal filth;
(2) Glass; and
(3) Unknown foreign substance.
(xiii) Safflower Seed:
(A) Gross weight and net weight in hundredweight;
(B) Oil Content;
(C) Moisture;
(D) Dockage;
(E) Percentage of:
(1) Heat damage;
(2) Total damage;
(3) Other grains;
(4) Free fatty acid;
(F) Count of:
(1) Animal filth;
(2) Glass;
(3) Unknown foreign substance; and
(G) WIJS Iodine Value.
(xiv) Sunflower Seed:
(A) Used to extract oil:
(1) Gross weight and net weight in hundredweight;
(2) Grade;
(3) Test Weight;
(4) Oil Content;
(5) Moisture;
(6) Foreign Material;
(7) Any other grading factor when such factor (not test weight) determines the grade;

(B) Used for a purpose other than to extract oil:
(1) Gross weight and net weight in hundredweight;
(2) Moisture;
(3) Test Weight;
(4) Dockage;
(5) Admixtures;
(6) Foreign material;
(7) Heat Damage;
(8) Total Damage;
(9) Insect Damage;
(10) Sieve Size;
(11) Sclerotinia Bodies; and
(12) Black Seeds.

(g) If a warehouse receipt indicates that the commodity tendered for price support grades "Infested" or contains excess moisture, or both, the receipt must be accompanied by a supplemental certificate as provided in § 142.18 in order for the commodity to receive price support. The grade, grading factors, and quantity to be delivered must be shown on the certificate as follows:

(1) When the warehouse receipt shows "Infested" and the commodity has been conditioned to correct the "Infested" condition, the supplemental certificate must show the same grade without the "Infested" designation and the same grading factors and quantity as shown on the warehouse receipt.

(2)(i) When the warehouse receipt shows that the commodity contained excess moisture and the commodity has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending of the commodity. Such entries shall reflect a drying or blending shrinkage as provided in paragraph (g)(2)(iv) of this section.

(ii) When a supplemental certificate is issued in accordance with paragraphs (g)(1) and (2)(i) of this section, the grade, grading factors and the quantity shown on such certificate shall supersede the entries for such items on the warehouse receipt.

(iii) If the commodity has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate shall represent the quantity after drying or blending.

(iv) For commodities dried or blended in accordance with paragraph (g)(2)(iii) of this section, such quantity shall reflect a minimum shrinkage in the receiving weight excluding dockage:

(A) For the following commodities, 1.2 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:
(1) Barley: 14.5 percent;
(2) Corn: 15.5 percent;
(3) Grain sorghum: 14.0 percent;
(4) Oats: 14.0 percent;
(5) Rice: 14.0 percent;
(6) Rye: 14.0 percent;
(7) Soybeans: 14.0 percent; and
(8) Wheat: 13.5 percent.

(B) For the following commodities, 1.1 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:
(1) Canola: 10.0 percent;
(2) Flaxseed: 9.0 percent;
(3) Mustard Seed: 10.0 percent;
(4) Rapeseed: 10.0 percent;
(5) Safflower Seed: 10.0 percent; and
(6) Sunflower Seed: 10.0 percent.

(h)(1) If, in accordance with paragraph (g) of this section, a supplemental certificate is issued in connection with a warehouse receipt, such certificate must state that no lien for processing will be asserted by the warehouseman against CCC or any subsequent holder of such receipt.

(2) Warehouse receipts and the commodities represented by such receipts which are stored in an approved warehouse which is operating in accordance with a Uniform Grain Storage Agreement ("UGSA") or a Uniform Rice Storage Agreement ("URSA") may be subject to a lien for warehouse charges only to the extent provided in § 1421.10. In no event shall a warehouseman be entitled to satisfy such a lien by sale of the commodities when CCC is the holder of such receipt.

(i) Warehouse receipts representing commodities which have been shipped by rail and/or by barge, must be accompanied by supplemental certificates completed in accordance with paragraph (f) of this section.

§ 1421.10 Warehouse charges.

(a) CCC-approved handling and storage rates that may be deducted from loan and purchase proceeds are available in State and county offices. Such deductions shall be based upon the entries on the warehouse receipt or supplemental certificate, but in no case shall be higher than the CCC approved rate. No storage deduction shall be made if written evidence acceptable to CCC is submitted that:

(1) Storage charges through the maturity or expiration date have been prepaid; or

(2) The producer has arranged with the warehouseman for the payment of storage charges through the maturity or expiration date and the warehouseman enters an endorsement in substantially the following form on the warehouse receipt:

Warehouse storage charges accrued or to accrue prior to the acquisition by CCC of the commodity represented by this warehouse receipt have been paid or otherwise provided for through the applicable maturity or expiration date and a lien for such charges will not be asserted by the warehouseman against CCC or against any subsequent holder of the warehouse receipt.

(b) The beginning date to be used for computing storage deductions on the commodity stored in an approved warehouse shall be the later of the following:

(1) The date the commodity was received or deposited in the warehouse;

(2) The date the storage charges start; or

(3) The day following the date through which storage charges have been paid.

(c) For commodities delivered to CCC in settlement for a loan, CCC shall pay to the producer the warehouse charges for receiving the commodity, or in-charges. If the warehouse receipt delivered to CCC in settlement for a loan shows that such charges:

(1) Have been paid, CCC shall issue such payment to the producer, or

(2) Have not been paid, the producer agrees to assign such payment to the warehouse and CCC shall issue such payment to the warehouse for the producer's account.

§ 1421.11 Liens.

(a) The country office shall file or record, as required by State law, all security agreements which are issued with respect to commodities pledged as collateral for price support loans. The cost of filing and recording shall be paid for by CCC.

(b) If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan or purchase proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

§ 1421.12 Fees, charges, and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC. The amount of such fees are available in State and county offices and are shown on the note and security agreement.

(b) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this title. All or a portion of such interest may be waived with respect to a quantity of commodity which has been redeemed in accordance with § 1421.25 at a level which is less than the principal amount of the loan plus charges and interest.

(c) For each crop of oilseeds, the producer must pay a nonrefundable loan

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origination fee to CCC which shall be deducted from the loan proceeds and shall be at a rate equal to two percent of the loan level for the crop multiplied by the quantity of such crop for which the loan is made. In addition, for each crop of oilseeds on which a loan deficiency payment is made in accordance with § 1421.29, the producer must pay a nonrefundable amount equal to the loan origination fee in accordance with this subsection, that such producer would have been required to pay for the quantity on which the payment is made had such quantity been pledged as collateral for a price support loan. CCC shall deduct such amount from the loan deficiency payment amount.

(d) For each crop of soybeans, the producer, as defined in the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301), shall remit to CCC an assessment which shall be deducted from the loan proceeds for a crop of soybeans, and shall be at a rate equal to one-half of one percent of the principal amount of the loan.

(e) Additional fees representing amounts voted on by producers for marketing or promotional fees may be deducted from price support proceeds by CCC as requested and agreed to by the governing body of such marketing or promotional fee and CCC. Deduction of such fees from amounts due producers and the payment of such fees to such governing body shall be made by CCC in a manner and at such time as determined by CCC.

§ 1421.13 Insurance on farm-stored loans.

CCC does not require the producer to insure the commodity placed under a farm-stored loan, however, if the producer insures such commodity and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest.

§ 1421.14 Offsets.

(a) If any installment on any loan made in accordance with part 1474 of this title by CCC on farm storage facilities or drying equipment is due and payable, the amount of such installment shall be deducted from the loan proceeds or payments made to the producer under this subpart.

(b) If the producer is indebted to CCC or to any other agency the United States and such indebtedness is listed on the county claim control record, amounts due the producer under the regulations in this subpart after deductions made for amounts provided in paragraph (a) of this section shall be applied as provided in parts 13 and 1403 of this title, to such indebtedness.

§ 1421.15 Loss or damage to the commodity.

The producer is responsible for any loss in quantity or quality of the commodity placed under a farm-stored loan or identity preserved warehouse-stored loan, or for any loss in quality of the commodity pledged as collateral for a modified commingled warehouse-stored loan. CCC shall not assume any loss in quanity or quality of the loan collateral.

§ 1421.16 Personal liability of the producers.

(a)(1) If a producer:

(i) Makes any fraudulent representation in obtaining a loan, purchase agreement, or loan deficiency payment, maintaining, or settling a loan; or

(ii) Disposes or moves the loan collateral without the approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(A) The amount of the loan, purchase agreement, or loan deficiency payment;

(B) Any additional amounts paid by CCC with respect to the loan, purchase agreement, or loan deficiency payment;

(C) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral; and

(D) Interest on such amounts; and

(E) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of commodities with a settlement value that is less than the total of such amounts or by repayment of such loan at the lower loan repayment rate as prescribed in § 1421.25.

(2) Notwithstanding any provisions of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC in accordance with § 1421.20, the value of such collateral delivered to or removed by CCC shall be determined by CCC on the following basis:

(i) With respect to farm-stored loans, the lower of:

(A) The market value of the commodity, as determined by CCC, as of the date of delivery to, or removal by, CCC; or

(B) The loan settlement value of the commodity.

(ii) With respect to warehouse-stored loans, the lower of:

(A) The market value of the commodity at the close of market on the final date for repayment; or

(B) The loan settlement value of the commodity.

(iii) Notwithstanding the provisions of paragraphs (a)(2)(i) and (ii) of this section, if CCC sells the loan collateral in order to determine the market value of the commodity, the value of the commodity shall be the lower of:

(A) The sales price of the commodity less any costs incurred by CCC in completing the sale; or

(B) The loan settlement value of the commodity.

(b)(1) If a producer makes any fraudulent representation with respect to obtaining a purchase agreement or delivery of a commodity in accordance with such an agreement, the producer shall be liable for:

(i) The purchase amount paid to the producer by CCC;

(ii) All other costs which CCC would not have incurred but for the producer's fraudulent representation; and

(iii) Interest of such amounts. The payment of such amounts may not be satisfied by the delivery, in accordance with such an agreement, of commodities to CCC with a settlement value that is less than the total of such amounts.

(2) If a producer has made any such fraudulent representation, the value of the commodity shall be the lowest of the following, as determined by CCC:

(i) The market value of the commodity, as determined by CCC, at the close of the market on the date of delivery to CCC;

(ii) The sales price of the commodity less any costs incurred by CCC if the commodity is sold by CCC in order to determine the market value of the commodity; or

(iii) The basic support rate applicable to the commodity.

(c) A producer shall be personally liable for any damages resulting from a commodity delivered to or removed by CCC containing mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals.

(d) If the amount disbursed under a loan or purchase agreement, or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess and charges, plus interest.

(e) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges, plus interest.

(f) In the case of joint loans or loan deficiency payments the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the note or loan deficiency payment application.

§ 1421.17 Farm-stored commodities.

(a) The quantity of a commodity which shall be used to determine the amount of a farm-stored loan shall not exceed a percentage (the "loan percentage"), as established by the State committee which shall not exceed a percentage established by CCC, of the certified or measured quantity of the eligible commodity stored in approved farm storage and covered by the note and security agreement. The quantity of a commodity pledged as security for a farm-storage loan shall be measured or certified in accordance with paragraph (e) of this section. Farm-stored loans may be made on less than the maximum quantity eligible for loan at the producer's request. If the loan quantity is reduced by the State committee the county committee, or by request of the producer, the note and security agreement shall cover all of the commodity in a bin, crib, or lot on which the loan is made.

(1) With respect to additional peanuts, loans shall be made on 100 percent of the estimated quantity pledged as collateral for a farm-stored loan.

(2) With respect to all other commodities, the State committee may establish a loan percentage, which does not exceed a percentage established by CCC, each year for each commodity on a Statewide basis or for specified areas within the State. Before the establishment of a loan percentage, the State committee shall consider conditions in the State or areas within a State to determine if the loan percentage should be below the maximum loan percentage in order to provide CCC with adequate protection. Loan percentages previously determined shall be lowered if warranted by changed conditions in the State or areas within a State, but new loan percentages shall apply only to new loans and not to outstanding loans. The factors to be considered by the State committee in determining loan percentages shall include but are not limited to:

(i) General crop conditions;

(ii) Factors affecting quality peculiar to an area within the State; and

(iii) Climatic conditions affecting storability.

(3) The loan percentages established by the State committee may be reduced by the county committee on an individual farm or producer basis when determined to be necessary in order to provide CCC with adequate protection. The factors to be considered by the county committee in reducing the loan percentages shall include but not be limited to:

(i) The condition or suitability of the storage structure;

(ii) The condition of the commodity; and

(iii) The hazardous location of the storage structure, such as a location which exposes the structure to danger of flood, fire, and theft by a person not entrusted with possession of the commodity.

(iv) Any disagreement with respect to the quantity of the commodity to be pledged as collateral for a loan; and

(v) Such other factors which relate to the preservation or safety of the loan collateral.

(b) If an eligible quantity of a commodity except peanuts, has been commingled with an ineligible quantity of the commodity, the commingled commodity is not eligible to be pledged as collateral for a loan unless:

(1) The producer before commingling has received prior approval from the county office to commingle the commodity as evidenced by an approved form CCC-687-1, Approval to Commingle or Move Loan Collateral, and the eligible or ineligible commodity has been measured by a representative of the county office at the producer's expense, before commingling; or

(2) The producer has made a certification with respect to the acreage planted to the commodity which is to be commingled for all farms in which the producer has an interest. When certifying to the acreage on all farms in which interest is held, the producer must provide acceptable evidence of the production and purchase of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable in relation to the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county office at the producer's expense, before commingling. Peanuts pledged as collateral for a loan must be stored separately from peanuts produced on any other farm and handled in such a manner that only the actual peanuts produced on the farm and on no other farm will be delivered to CCC.

(c) Upon request by the producer before transfer, the county committee may approve the transfer of a commodity or part thereof which is pledged as collateral for a farm-stored loan to a warehouse-stored loan at any time during the loan period. The producer must immediately repay the amount by which the farm-stored loan is less than the warehouse-stored loan and charges plus interest on the shortage. The maturity date of the warehouse-stored loan shall be the maturity date applicable to the farm-stored loan which was transferred.

(1) Liquidation of the farm-stored loan or part thereof shall be made through the pledge of warehouse receipts for the commodity placed under warehouse-stored loan and the immediate payment by the producer of the amount by which the warehouse-stored loan is less than the farm-stored loan or part thereof and charges plus interest. The loan quantity for the warehouse-stored loan cannot exceed:

(i) 120 percent of the loan quantity for the farm-stored loan for transfers completed before the final loan availability date; or

(ii) 110 percent of the loan quantity for the farm-stored loan for transfers completed after the final loan availability date.

(2) Any amounts due the producer shall be disbursed by the county office. The maturity date of the warehouse-stored loan shall be the maturity date applicable to the farm-stored loan which was transferred.

(3) For loans extended in accordance with §§ 1421.200 through 1421.216, CCC shall limit the quantity for a warehouse-stored loan to the quantity approved on the farmer owned reserve agreement loan.

(d) Upon request by the producer before the transfer, the county committee may approve the transfer of a warehouse-stored loan or part thereof to a farm-stored loan at any time during the loan period. Quantities pledged as collateral for a farm-stored loan shall be based on a measurement by a representative of the county office before approving the farm-stored loan. The producer must immediately repay the amount by which the farm-stored loan is less than the warehouse-stored loan and charges plus interest on the shortage. The maturity date of the farm-stored loan shall be the maturity date applicable to the warehouse-stored loan which was transferred.

(e) The quantity of a commodity pledged as security for a farm-stored loan or for which a loan deficiency payment is requested may be determined on the basis of the quantity of the commodity which an eligible producer certifies in writing on Form CCC-666 is eligible to be pledged as collateral and is otherwise available for loan purposes.

(f)(1) If the county committee determines, by measurement or

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otherwise, that the actual quantity serving as collateral for a loan based on certification by the producer is less than the loan quantity, the county committee shall call the loan.

(i) The producer shall have 15 days to settle the loan; however, the producer may request reconsideration of the call and provide information regarding the circumstances leading to the incorrect certification. The county committee may approve the producer's request if:

(A) The circumstances are of a highly meritorious nature,

(B) The producer acted in good faith,

(C) The producer did not knowingly provide an incorrect certification and made a reasonable attempt to determine the quantity and,

(D) The producer repays the overdisbursement and charges, plus interest.

(ii) If the loan is called, the county committee may refuse to approve any further farm-stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made.

(2) If the county committee determines, by measurement or otherwise, that the actual quantity for a loan deficiency payment based on certification by the producer is less than the quantity eligible for such payment, the county committee may refuse to approve any further loan deficiency payment without evidence of production acceptable to CCC, on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made. However, the producer may request reconsideration of the refusal and provide information regarding the circumstances leading to the incorrect certification. In such cases, the county committee may approve the producer's request if:

(i) The circumstances are of a highly meritorious nature,

(ii) The producer acted in good faith,

(iii) The producer did not knowingly provide an incorrect certification and made a reasonable attempt to determine the quantity and,

(iv) The producer repays the overdisbursement and charges, plus interest for the shortage.

(3) If the producer has incorrectly certified quantities for a loan or a loan deficiency payment on more than one occasion, the county committee shall call the loan or loans involved and approve no further loan deficiency payment without acceptable production evidence for farm-stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made. If the county committee feels the seriousness of the matter so justifies, they may deny loan deficiency payments without acceptable production evidence or farm-stored loans to the producer for more than one year. They may also refer the case to the State committee which may request OIG to make an investigation.

(4) If the loan is called in accordance with this subsection, the producer may not repay the loan at the lower loan repayment rate in accordance with § 1421.25.

(g) Producers obtaining a loan for a crop of a commodity shall agree not to move or dispose of the commodity pledged as collateral for such loan without obtaining prior written approval for such action from the county committee in accordance with § 1421.20.

(1) Unauthorized removal is the movement of any loan collateral from the storage structure in which the commodity was stored when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm without prior written consent from the county committee is accordance with § 1421.20. In such cases:

(i) On the first offense:

(A) If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds and no additional liens or encumbrances shall be placed on the commodity. If such waivers cannot be obtained, CCC shall call the loan in accordance with paragraph (f)(1) of this section, and

(B) The county committee may refuse to approve any loan deficiency payment without acceptable production evidence and any farm-stored loans for any commodity produced by the producer through the end of the next crop year after the crop year in which the unauthorized removal occurred.

(ii) On the second and subsequent offense, the county committee shall:

(A) Call the loan, and

(B) Not approve any loan deficiency payment without acceptable production evidence and any farm-stored loans for any commodity produced by the producer through the end of the next crop year after the crop year in which the unauthorized removal occurred.

(2) Unauthorized disposition is the conversion of collateral pledged as collateral for a loan without prior written consent from the county committee in accordance with § 1421.20. In such cases, the regulations concerning penalties in paragraph (3) of this section shall be applicable.

(3) If unauthorized disposition of a quantity of a commodity occurs, liquidated damages shall be assessed, in addition to any other amount and applicable interest with respect to the loan, on the quantity so disposed of beginning on the date the county committee has determined the unauthorized disposition occurred and shall continue until the loan is repaid. In such cases:

(i) If the date of the unauthorized disposition of the loan collateral cannot be determined, such disposition shall be considered to have occurred on the later of:

(A) The day following the latest inspection of the collateral by a representative of the county committee, or

(B) The day following disbursement of the loan.

(ii) In agreeing to the note and security agreement, the producer agrees that the conversion of the collateral pledged as collateral for a loan without prior written consent from the county committee in accordance with § 1421.20 will cause serious and substantial damages to CCC, including damages to CCC's price support programs and the incurring of substantial administrative and other costs. The producer and CCC agree that it will be difficult if not impossible, to prove the amount of such damages. Accordingly, in such case, the producer shall pay to CCC liquidated damages computed by multiplying the loan principal which represents the quantity so disposed at the rate of 6.5 percent per annum for the period specified in this subparagraph (3).

(iii) The county committee may refuse to approve any loan deficiency payment without acceptable production evidence and any farm-stored loans for any commodity produced by the producer through the end of the next crop year after the crop year in which the unauthorized disposition occurred.

(4) If liquidated damages are assessed in accordance with paragraph (g)(3) of this section, the county committee:

(i) On the first offense:

(A) May waive some or all such liquidated damages if the county committee determines that:

(1) The violation occurred inadvertently or because the producer acted to prevent spoilage of the commodity,

(2) The violation did not result in harm or damage to the right or interest of any person or government agency, and

(3) The producer repays the loan and charges plus interest with respect to the quantity of the collateral which has been disposed.

(B) In such cases, shall furnish a copy of its determination to the Administrator, ASCS, and the State committee. If the determination of the county committee is not disapproved by either the Administrator, ASCS, or his designee, or the State committee within sixty days from the date the determinations are received, such determination shall be considered to have been approved.

(ii) On the second and subsequent offense,

(A) Shall not waive liquidated damages, and

(B) Shall not approve any loan deficiency payment without acceptable production evidence and any farm-stored loans for any commodity produced by the producer through the end of the next crop year after the crop year in which the unauthorized disposition occurred.

(iii) Shall not consider the following acts as inadvertent acts, unless prior written approval is obtained from CCC, for the purposes of determining if some or all of the liquidated damages or require repayments and charges plus interest or other administrative actions may be waived:

(A) Movement of loan collateral off the farm,

(B) Movement of loan collateral from one storage structure to another on the farm, and

(C) Feeding of loan collateral.

(h) If the loan is called in accordance with this subsection, the producer may not repay the loan at the lower loan repayment rate in accordance with § 1421.25.

(i) Producers who have been refused a farm-stored loan may apply for a warehouse-stored loan.

§ 1421.18 Warehouse-stored loans.

(a) The quantity of a commodity which may be pledged as collateral for a loan shall be the quantity of any eligible commodity delivered to, or acquired by, CCC at an approved warehouse. Such quantity shall be the net weight specified on the warehouse receipt or supplemental certificate.

(b)(1) In order to be eligible to be pledged as collateral for a loan, the commodity must not be "Sample Grade" and must meet the requirements of § 1421.5 and this section.

(2) Barley must grade No. 5 or better except that:

(i) The barley must not grade "Infested" or have moisture in excess of 14.5 percent unless a supplemental certificate is provided in accordance with § 1421.9; and

(ii) The barley may not have any of the following special grade designations:

(A) Blighted.

(B) Ergoty.

(C) Smutty.

(3)(i) Corn must grade No. 3 or better; and

(ii) The corn must not grade "Infested" or have moisture in excess of 15.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(4)(i) Oats must grade No. 3 or better;

(ii) The oats must not grade "Smutty"; "Ergoty"; Bleached"; "Thin"; "Tough"; or otherwise be of distinctly low quality; and

(iii) The oats must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(5) Rice must grade No. 5 or better and must not have moisture in excess of 14.0 percent. Rice of special grades shall not be eligible.

(6)(i) Rye must grade No. 2 or better except that the rye may grade No. 3 because of "Thin" rye, or grade No. 3 or No. 4 on the factors of test weight or damaged kernels (total) or both;

(ii) The rye must not grade "Smutty"; "Light Smutty"; "Garlicky"; "Light Garlicky"; "Ergoty"; and

(iii) The rye must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(7)(i) Grain sorghum must grade No. 4 and

(ii) The grain sorghum must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(8)(i) Soybeans must grade No. 4 or better;

(ii) The soybeans must be adjusted for foreign material exceeding 1 percent;

(iii) The soybeans may not grade "Garlicky"; and

(iv) The soybeans may not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(9)(i) Wheat must grade No. 5 or better;

(ii) If the wheat is of the class "Mixed Wheat", the wheat must consist of mixtures of grades of eligible wheat as provided in paragraph (b)(9)(i) of this section, if such mixtures are the result of natural conditions;

(iii) The wheat must not grade "Ergoty", or "Treated"; and

(iv) The wheat must not grade "Infested," have 32 or more insect damaged kernels per 100 grams, or have moisture in excess of 13.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(v) The wheat must not be "unclassed."

(10)(i) Canola must contain not less than 35 percent oil content;

(ii) The canola must not grade "Infested" or have moisture in excess of 10.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(iii) The canola must not grade "Musty"; "Sour"; "Heating"; "COFO"; "Distinctly Low Quality";

(iv) The canola must not exceed the following percentages:

(A) For heat damage, 0.5 percent;

(B) For distinctly green seeds, 6.0 percent;

(C) For total damage, 10.0 percent;

(D) For admixtures:

(1) For stones, 0.05 percent;

(2) For ergot, 0.05 percent;

(3) For sclerotinia bodies, 0.2 percent;

(4) For total conspicuous admixtures, 1.5 percent;

(5) For inconspicuous admixtures, 5.0 percent;

(E) For erucic acid, 2.0 percent;

(v) The canola must not contain more than the following count of other material per 1,000 grams:

(A) For animal filth, 3;

(B) For glass, 0;

(C) For unknown foreign substance, 1;

(vi) The glucosinolate content in canola must not exceed 30 micro moles per gram;

(vii) The canola must not contain in excess of 30.0 garlic bulbs per 1,000 grams; and

(viii) The canola gross weight must be adjusted downward to reflect dockage and for the presence of any admixtures.

(11)(i) Flaxseed must grade U.S. No. 2 or better except that:

(ii) The flaxseed must not grade "Infested" or have moisture in excess of 9.0 percent unless a supplemental certificate is provided in accordance with § 1421.9; and

(iii) The flaxseed gross weight must be adjusted downward to reflect dockage.

(12)(i) Mustard seed must not grade "Infested" or have moisture in excess of 10.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(ii) The mustard seed must not grade "Musty"; "Sour"; "Heating"; "COFO"; "Distinctly Low Quality";

(iii) The mustard seed class must not contain more than 0.5 percent of other mustard seed class;

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(iv) The mustard seed must not exceed the following percentages:
(A) For heat damage, 0.2 percent;
(B) For distinctly green seeds, 1.5 percent;
(C) For total damage, 3.0 percent;
(D) For other weed seed, 0.5 percent;
(E) For sclerotinia bodies, 0.2 percent;
(F) For stones, 0.05 percent;
(G) For ergot, 0.05 percent;
(H) For inconspicuous admixtures including cockle, yellow wild mustard, and rapeseed, 0.2 percent;
(v) The mustard seed must not contain more than the following count of other material per 1,000 grams:
(A) For animal filth, 3;
(B) For glass, 0;
(C) For unknown foreign substance, 1; and
(vi) The mustard seed gross weight must be adjusted downward to reflect dockage.
(13)(i) Rapeseed must contain not less than 35 percent oil content;
(ii) The rapeseed must not grade "Infested" or have moisture in excess of 10.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;
(iii) The rapeseed must not grade "Musty"; "Sour"; "Heating"; "COFO"; "Distinctly Low Quality";
(iv) The rapeseed must not exceed the following percentages:
(A) For heat damage, 0.5 percent;
(B) For distinctly green seeds, 6.0 percent;
(C) For total damage, 10.0 percent;
(D) For admixtures;
(*1*) For stones, 0.05 percent;
(*2*) For ergot, 0.05 percent;
(*3*) For sclerotinia bodies, 0.2 percent;
(*4*) For total conspicuous admixtures, 1.5 percent;
(*5*) For conspicuous admixtures, 5.0 percent;
(v) The rapeseed must not contain more than the following count of other material per 1,000 grams:
(A) For animal filth, 3;
(B) For glass, 0;
(C) For unknown foreign substance, 1;
(vi) The rapeseed must not contain less than 45 percent erucic acid; and
(vii) The rapeseed gross weight must be adjusted downward to reflect dockage and for the presence of any admixtures.
(14)(i) Safflower seed must contain not less than 35 percent oil content;
(ii) The Safflower seed must not grade "Infested" or have moisture in excess of 10.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;
(iii) The Safflower seed must not grade "Musty"; "Sour"; "Heating"; "COFO"; "Distinctly Low Quality";
(iv) The safflower seed must not exceed the following percentages:
(A) For heat damage, 0.1 percent;
(B) For total damage, 3.0 percent;
(C) For other grain, 3.0 percent;
(D) For free fatty acid, 4.0 percent;
(E) For dockage, 6.0 percent;
(v) The safflower seed must not contain more than the following count of other material per 1,000 grams:
(A) For animal filth, 3;
(B) For glass, 0;
(C) For unknown foreign substance, 1;
(vi) The safflower seed must not contain less than 80 or more than 158 WIJS iodine value; and
(vii) The safflower seed gross weight must be adjusted downward to reflect dockage.
(15)(i) For sunflower seed used to extract oil, the sunflower seed must grade U.S. No. 2 or better except that:
(A) The sunflower seed must contain not less than 35 percent oil content;
(B) The sunflower seed must not grade "Infested" or have moisture in excess of 10.0 percent unless a supplemental certificate is provided in accordance with § 1421.9; and
(C) The sunflower seed gross weight must be adjusted downward to reflect the presence of any foreign material.
(ii) For sunflower seed used for a purpose other than to extract oil:
(A) Sunflower seed must be sized using a 20/64 sieve;
(B) The sunflower seed must not grade "Infested" or have moisture in excess of 10.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;
(C) The sunflower seed must not contain less than 30 pounds per bushel;
(D) The sunflower seed must not exceed the following percentages;
(*1*) Heat damage, 1.0 percent;
(*2*) Black seeds, 2.0 percent;
(*3*) Insect damage, 5.0 percent;
(*4*) Combination of frost damage, badly-weathered damage, disease damage, otherwise materially damage, and immature, 1.0 percent;
(E) The sunflower seed must not contain more than a count of 5 sclerotinia bodies per pound;
(F) The sunflower seed must not grade "Musty"; "Sour"; "COFO"; "Sprout"; "Moldy"; and
(G) The sunflower seed gross weight must be adjusted downward to reflect undersized seed, dockage, and for the presence of any admixtures and foreign material.

§ 1421.10 Liquidation of loans.

(a) If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall have the right to acquire title to the loan collateral and to sell or otherwise take possession of such collateral without any further action by the producer. With respect to farm-stored loans, the producer may, as CCC determines, deliver the collateral for such loan, or other eligible commodities of the same class and kind, in accordance with instructions issued by CCC. CCC will not accept delivery of any quantity of a commodity in excess of the larger of:
(1) 110 percent of the loan quantity; or
(2) A sufficient quantity having a settlement value equal to the loan amount and charges plus interest.
(b) If the producer desires to deliver eligible commodities to CCC in satisfaction of the loan, the producer must notify CCC of such intention before the loan maturity date by giving written notice to the county office which disbursed the proceeds for such loan. If the producer fails to deliver such commodities to CCC by the date specified on Farm CCC-691, Commodity Delivery Notice, and the producer subsequently redeems the commodity pledged as collateral for the loan before delivery is completed, interest shall continue to be assessed on such amount in accordance with part 1405 of this title.
(c) If, either before or after maturity, the commodity is going out of condition or is in danger of going out of condition, the producer shall so notify the county office and confirm such notice in writing. If the county committee determines that the commodity is going out of condition or is in danger of going out of condition and the commodity cannot be satisfactorily conditioned by the producer and delivery cannot be accepted within a reasonable length of time, the county committee shall arrange for an inspection and grade and quality determination. When delivery is completed, settlement shall be made on the basis of such grade and quality determination or on the basis of the grade and quality determination made at the time of delivery, whichever is higher, for the quantity actually delivered.
(d) If the producer loses control of the storage structure, or if there is insect infestation that cannot be controlled, danger of flood, or damage to the storage structure making it unsafe to continue storage of the commodity on the farm, the comodity may be delivered before the maturity date of the loan upon prior approval of the county committee in accordance with paragraph (a) of this section. Settlement will be made with the producer as provided in § 1421.22.

§ 1421.20 Release of the commodity pledged as collateral for a loan.

(a) A producer shall not move or dispose of any commodity which is pledged as collateral for a loan until prior written approval for such removal or disposition has been provided by the county committeee in accordance with this section. A producer may at any time obtain the release of all or any part of the commodity remaining as loan collateral by paying to CCC, with respect to the quantity of the commodity released:
(1) The principal amount of the loan which is outstanding and charges plus interest, or
(2) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25. The producer may request and CCC may approve removal of a quantity of the commodity from storage, without the payment of CCC of the loan amount, if the principal amount outstanding on such loan does not exceed the maximum loan value of the quantity of the commodity remaining in storage after removal of the quantity requested by the producer before removal. When the proceeds of the sale of the commodity are needed to repay all or a part of a farm-stored loan, the producer must request and obtain prior written approval of the county office on a form prescribed by CCC in order to remove a specified quantity of the commodity from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by the county office. If a producer fails to repay a loan within the time period prescribed by CCC for a farm-storage loan and commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC-681-1, Marketing Authorization, such producer may not repay the loan at the level that is less than the loan level determined in accordance with § 1421.25 (a)(1)(i) or (b)(1).
(b) The note and security agreement shall not be released until the loan has been satisfied in full.
(c)(1) The producer may arrange with the county office for trhe release of all or part of the commodity which is pledged as collateral for a warehouse-stored loan at or prior to the maturity of such loan by, with respect to the quantity of the commodity to be released, paying to CCC:
(i) The principal amount of the loan and charges plus interest, or
(ii) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25. Each partial release of the loan collateral must cover all of the commodity represented by one warehouse receipt. Subject to the provision of § 1421.4(i), warehouse receipts redeemed by repayment shall be released only to the producer or the producer's authorized agent, except that redeemed warehouse receipts may be released to persons who may be designated in a written authorization which is filed with the county office by the producer or the producer's authorized agent and which is dated within 15 days prior to the date of repayment.
(2) Upon the filing of Form CCC-699, Reconcentration Agreement and Trust Receipt, by the producer and warehouseman, CCC may during the loan period approve the reconcentration in another CCC-approved warehouse of all or part of a commodity which is pledged as collateral for a warehouse-stored loan. Any such approval shall be subject to the terms and conditions set forth in Form CCC-699, Reconcentration Agreement and Trust Receipt.
(3) A producer may, before the new warehouse receipt is delivered to CCC, pay to CCC:
(i) The principal amount of the loan and charges plus interest and applicable charges, or
(ii) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25.
(d) The note and security agreement shall not be released until the loan has been satisfied in full.

§ 1421.21 Purchase agreements.

(a) An eligible producer may sell to CCC any or all of the producer's eligible commodity which is not pledged as collateral for a price support loan. A producer who has executed a price support purchase agreement may execute a price support loan with respect to the same quantity of such commodities prior to the final loan availability date. In such event, the loan shall have a maturity date which is the last day of the ninth calendar month following the month in which the loan application is approved. CCC will not accept delivery of any quanity in excess of 110 percent of the quantity stated in the purchase agreement. Settlement of the quantity not in excess of 110 percent of the quantity stated in the purchase agreement shall be made in accordance with § 1421.22.
(b)(1) In the case of an eligible commodity not in an approved warehouse, the producer must make delivery of the commodity the producer desires to sell to CCC within the period of time after the expiration date of the purchase agreement as specified in delivery instructions issued by the county office.
(2) In the case of eligible commodities stored in an approved warehouse, the producer must submit to the county office, not earlier than 15 days before the expiration date of the purchase agreement nor later than the day after such date, warehouse receipts for the quantity of the commodity the producer elects to sell to CCC. Notwithstanding any of the provisions of this section, in the case of an eligible farm-stored commodity covered by an approved purchase agreement the county committee may, on request of the producer, authorize early delivery of the commodity if the producer loses control of the storage structure or if there is insect infestation that cannot be controlled, danger of flood or damage to the storage structure, making it unsafe to continue storage of the commodity on the farm.

§ 1421.22 Settlement.

(a) The settlement of loans and purchase agreements shall be made by CCC on the basis of the quality and quantity of the commodity delivered to CCC by the producer.
(b) Settlements made by CCC with respect to eligible commodities which are acquired by CCC and which are stored in an approved warehouse shall be made on the basis of the entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.
(c)(1) All eligible commodities which are stored in other than approved warehouses shall be delivered to CCC in accordance with instructions issued by CCC. Settlement for such commodities shall be made on the basis of entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

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(2) With respect to all commodities except peanuts, which are delivered from other than an approved warehouse, settlement shall be made by CCC on the basis of the basic support rate which is in effect for the commodity at the producer's customary delivery point, as determined by CCC.

(3)(i) With respect to peanuts, settlement values for quota and additional peanuts shall be determined and announced annually by CCC. Settlement shall be made by CCC on the amount computed on the basis of net weight and quality of such peanuts with an allowance of 4 percent for Virginia type peanuts and an allowance of 3.5 percent for other types of peanuts in order to compensate producers for shrinkage during storage on peanuts delivered on or after January 31 of the year following the year in which the crop was produced less discounts of:

(A) $2 per ton, net weight, for each full 1 percent of foreign material in excess of 10 percent; and

(B) $10 per ton, net weight, for peanuts containing more than 10 percent moisture.

(ii) No allowance for shrinkage shall be made for storage with respect to peanuts delivered before February 1 of the year following the year in which the crop was produced.

(iii) If a producer delivers peanuts from a farm to CCC in a quantity that would exceed the farm poundage quota when added to the peanuts marketed, and considered marketed from the farm as quota peanuts, the additional peanut support rate shall be used with respect to such peanuts if CCC determines that the producer made an inadvertent error in determining the quantity of peanuts pledged as collateral as quota peanuts. If CCC determines that such error was not inadvertent, price support shall not be made available with respect to such quantity and marketing quota penalties shall be assessed in accordance with part 729 of this title.

(iv) The support rate for additional peanuts shall be used for all peanuts which do not grade "Segregation 1" at the time of delivery to CCC if the producer does not elect to settle such additional peanuts as quota peanuts. If the producer elects to settle such peanuts as quota peanuts, the quantity shall not exceed the lesser of:

(A) The difference between the production of Segregation 1 peanuts on the farm and the farm poundage quota; or

(B) The amount of the undermarketings of quota peanuts as shown on the farm marketing card.

(4) With respect to rice acquired by CCC at a location other than an approved warehouse, settlement shall be made on the basis of the class, grade, and quality entries set forth in the Federal-State inspection certificate and on the basis of the quantity set forth in the weight certificates. If rice is pledged as collateral for a farm-stored loan in an area where a location differential is in effect and such rice is delivered to CCC in an area where a differential is not applicable, settlement shall be made by CCC on the basis of the basic support rate which is in effect for the area in which delivery is made.

§ 1421.23 Foreclosure.

(a) Upon maturity and nonpayment of a warehouse-stored loan, title to the unredeemed collateral securing the loan shall immediately vest in CCC. Upon maturity and nonpayment of farm-stored loan, title to the unredeemed collateral securing the loan shall vest in CCC upon demand. When CCC acquires title to the unredeemed collateral, CCC shall have no obligation to pay for any market value which such collateral may have in excess of the loan indebtedness, (the unpaid amount of the note and charges plus interest).

(b) If the total amount due on a farm-stored loan (the unpaid amount of the note and charges, plus interest) is not satisfied upon maturity, CCC may remove the commodity from storage, and assign, transfer, and deliver the commodity or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine, at public or private sale. Any such disposition may also be effected without removing the commodity from storage. The commodity may be processed before sale and CCC may become the purchaser of the whole or any part of the commodity at either a public or private sale.

(c) If a farm-stored commodity removed by CCC from storage is sold at less than the amount due on the loan (excluding charges and interest) the producer shall pay to CCC the difference between the amount due on the loan and the higher of the sales proceeds or the settlement value of the commodity removed by CCC and charges plus interest on such difference. The amount of the deficiency may be set off against any payment which would otherwise be due the producer from CCC or any other agency of the United States.

§ 1421.24 Protein determinations.

(a) With respect to Hard Red Winter and Hard Red Spring wheat tendered to CCC which is stored in an approved warehouse, producers must obtain "Official" protein content determinations or, if determined acceptable by CCC, protein content determinations arrived at by mutual agreement between the producer and the warehouseman. Costs of such determinations shall not be paid by CCC.

(b) With respect to farm-stored wheat, the basic support rate shall not be adjusted to reflect the protein content.

§ 1421.25 Market price repayments.

(a) Rice market repayments.

(1) A producer may repay a loan for a crop of rice at a level that is the lesser of:

(i) The loan level and charges, plus interest determined for a crop; or

(ii) The higher of:

(A) The loan level determined for such crop multiplied by 70 percent for the 1991 and subsequent years crop; or

(B) The prevailing world market price, as determined by CCC.

(2) The prevailing world market price for a class of rice shall be determined by the CCC based upon a review of prices at which rice is being sold in world markets and a weighting of such prices through the use of information such as changes in supply and demand of rice, tender offers, credit concessions, barter sales, government-to-government sales, special processing costs for coatings or premixes, and other relevant price indicators, and shall be expressed in U.S. equivalent values f.o.b. vessel, U.S. port of export, per hundredweight as follows:

(i) U.S. grade No. 2, 4 percent broken kernels, long grain milled rice;

(ii) U.S. grade No. 2, 4 percent broken kernels, medium grain milled rice; and

(iii) U.S. grade No. 2, 4 percent broken kernels, short grain milled rice.

(3) Export transactions involving rice and all other related market information will be monitored on a continuous basis for the purposes of paragraph (2) of this section. Relevant information may be obtained for this purpose from U.S. Department of Agriculture field reports, international organizations, public or private research entities, international rice brokers, and any other source of reliable information.

(4) The prevailing world market price for a class of rice adjusted to U.S. quality and location (the "adjusted world price" (AWP)), which is determined in accordance with paragraph (5) of this section, shall be applicable to the provisions in this section.

(5) The AWP for each class of rice shall equal the prevailing world market price for a class of rice (U.S. equivalent value) as determined in accordance with paragraphs (a) (2) and (3) of this section and adjusted to U.S. quality and location as follows:

(i) The prevailing world market price for a class of rice shall be adjusted to reflect an f.o.b. mill position by deducting from such calculated price an amount which is equal to the estimated national average costs associated with:

(A) The use of bags for the export of U.S. rice, and

(B) The transfer of such rice from a mill location to f.o.b. vessel at the U.S. port of export with such costs including, but not limited to, freight, unloading, wharfage, insurance, inspection, fumigation, stevedoring, interest, banking changes, storage, and administrative costs.

(ii) The price determined in accordance with paragraph (a)(5)(i) of this section shall be adjusted to reflect the market value of the total quantity of whole kernels contained in such milled rice by deducting the value of broken kernels contained therein, with such value of the broken kernels to be determined by multiplying the quantity of such broken kernels (4% per hundredweight) by the market value of such broken kernels. The market value of broken kernels shall be based upon the estimated domestic market values of all sizes of broken kernels.

(iii) The price determined in accordance with (a)(5)(ii) of this section shall be adjusted to reflect the per pound market value of whole kernels by dividing the price by the quantity of whole milled kernels contained in the milled rice (96% per hundredweight).

(iv) The price determined in accordance with paragraph (a)(5)(iii) of this section shall be adjusted to reflect the market value of whole kernels contained in 100 pounds of rough rice by multiplying such price by the estimated national average quantity of whole kernel rice by class obtained from milling 100 pounds of rough rice.

(v) The price determined in accordance with paragraph (a)(5)(iv) of this section shall be adjusted to reflect the total market value of rough rice by:

(A) Adding to such price:

(*1*) The market value of bran contained in the rough rice, computed by multiplying the domestic unit market value of bran by the estimated national average quantity of bran produced in milling 100 pounds of rice; and

(*2*) The market value of broken kernels contained in the rough rice, computed by multiplying the estimated domestic market values of all sizes of broken kernels by the estimated national average quantity of broken kernels produced in milling 100 pounds of rice;

(B) Deducting from such price an estimated cost of milling rough rice; and

(C) Deducting from such price an estimated cost of transporting rough rice from farm to mill locations.

(vi) The price determined in accordance with paragraph (a)(5)(v) of this section shall be adjusted to a whole kernel loan rate basis by deducting the estimated domestic market value of the total quantity of broken kernels contained in such rice and dividing the resulting value by the estimated national average quantity of milled whole kernels produced in milling 100 pounds of rice.

(6) The AWP for each class for rice, loan rate basis, shall be determined by CCC and shall be announced, to the extent practicable, on or after 3 p.m. Eastern time each Tuesday continuing through the last Tuesday of July 1996, but may be announced more or less frequently, as determined by CCC. In the event that Tuesday is a non-workday, the determination will be announced the next workday, on or after 3 p.m. Eastern time. The announced prices will be effective upon announcement and will remain effective until the next world price is announced.

(7) As a condition of permitting a producer to repay such a loan, CCC may require the producer to purchase CCC commodity certificates equal in value to an amount that does not exceed one-half the difference between the loan level and charges, plus interest, and the loan repayment amount.

(b) For 1991 through 1995 crops of oilseeds, a producer may repay a loan at a level that is the lesser of:

(1) The loan level and charges, plus interest determined for such crop; or

(2) Such other level determined by CCC, not to be in excess of the loan level for such crop that will minimize potential loan forfeitures, accumulation of oilseed stocks by CCC, and the cost incurred by CCC in storing oilseeds, and to allow oilseeds produced in the United States to be marketed freely and competitively.

(c)(1) CCC may, in lieu of the repayment level determined in accordance with paragraph (b)(2) of this subsection, allow producers to repay a loan at the adjusted world price of the oilseed.

(2) The adjusted world price (AWP) for soybeans will be determined as follows:

(i) The prevailing world price for soybeans will be established at least weekly based upon the prior week's Thursday f.o.b. quotes in U.S. dollars for soybeans in the major export markets, as determined by CCC, weighted against the total volume of soybeans shipped from these markets using the prior 4-week average of weekly shipments.

(ii) If no price quotations are available for the prior Thursday, the prevailing world price will be based upon the most recent price information available.

(iii) The AWP will be the prevailing world price adjusted to U.S. location, reflecting freight, other costs, and quality as appropriate.

(iv) The AWP for soybeans will be determined and announced by CCC at least weekly.

(3) The adjusted world price (AWP) for flaxseed will be determined as follows:

(i) The prevailing world price for flaxseed will be established at least monthly based on a monthly average of the major f.o.b. export market prices, as determined by CCC. If price quotations are not available for one or more days in the 30 day period ending the Friday prior to the announcement, the available quotations during the period will be used. If no price quotations are available during the 30-day period, the prevailing world price will be based upon the previous 30-day period available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location and exchange rate, reflecting freight costs, other costs, and quality as appropriate.

(iii) The adjusted world price for flaxseed will be determined and announced by CCC at least monthly.

(4) The adjusted world price (AWP) for sunflower seed will be determined as follows:

(i) The prevailing world price for sunflower seed will be established at least monthly based on a monthly average of the major f.o.b. export market prices, as determined by CCC, for the month prior to the announcement. If no price quotations are available during the period, the prevailing world price will be based upon the previous monthly average available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location, reflecting freight costs, other costs, and quality, as appropriate.

(iii) The AWP for sunflower seed will be determined and announced by CCC at least monthly.

(5) The adjusted world price (AWP) for canola will be determined as follows:

(i) The prevailing world price for canola will be established at least monthly based on a monthly average of the major f.o.b. export market prices, as determined by CCC. If price quotations are available for one or more days in the

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30-day period ending the Friday prior to announcement, the available quotations during the period will be used. If no price quotations are available during the 30-day period, the prevailing world price will be based upon the previous 30-day period available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location and exchange rate, reflecting freight, other costs, and quality, as appropriate.

(iii) The AWP for canola will be determined and announced by CCC at least monthly.

(6) The adjusted world price (AWP) for rapeseed will be determined as follows:

(i) The prevailing world price for rapeseed will be established at least monthly based upon a representative average of available U.S. prices, as determined by CCC, weighted by acreage. The prevailing world price will be based on the most recent price information available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location reflecting freight, other costs and quality as appropriate.

(iii) The AWP for rapeseed will be determined and announced by CCC at least monthly.

(7) The adjusted world price for mustard seed will be determined as follows:

(i) The prevailing world price for mustard seed will be established at least monthly based upon a monthly average of available market prices, as determined by CCC, such as contract prices and spot market prices. If no price quotations are available for one or more days in the 30-day period ending the Friday prior to the announcement, the available quotations during the period will be used. If no price quotations are available during the 30-day period, the prevailing world price will be based upon the previous 30-day period available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location, reflecting freight, other costs, and quality, as appropriate.

(iii) The AWP for mustard seed will be determined and announced by CCC at least monthly.

(8) The adjusted world price for safflower seed will be determined as follows:

(i) The prevailing world price for safflower seed will be established at least monthly based upon a representative average of available U.S. contract prices, as determined by CCC, weighted by acreage. The prevailing world price will be based upon the most recent price information available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location reflecting freight, other costs, and quality, as appropriate.

(iii) The AWP for safflower seed will be determined and announced by CCC as least monthly.

(d) CCC may allow producers with rice or oilseed loans to request to lock in a loan repayment rate which has been announced by CCC in accordance with paragraphs (a) and (b) of this section, for not more than 30 days from the date of such request. In such cases:

(1) The producer shall file, on a form prescribed by CCC, an agreement to redeem all or a portion of the loan quantity for a loan at the announced price entered on the form,

(2) If such request is approved by CCC, the rate specified on such form shall be in effect for such producer for not more than 30 days from the date such request is made for such loan, and

(3) If the producer fails to redeem the specified loan quantity within the 30-day period, CCC will require the producer to redeem the loan quantity at not less than the loan level determined for such crop in accordance with paragraphs (a)(1)(i) or (b)(1) of this section, as applicable for the crop.

(e) To the extent practicable, CCC shall determine and announce the repayment levels for each crop of a commodity as follows:

(1) On a weekly basis for rice and oilseeds, except soybeans, and

(2) On a daily basis for soybeans.

(f) The difference between the loan level, excluding charges and interest, and the loan repayment level is the market gain. The total amount of any market gain realized by a producer is limited in accordance with the regulations at part 1497 of this title.

§ 1421.26 Transfer of farm-stored loan to warehouse-stored association loan.

Producers may deliver peanuts under a farm-stored loan to the association and obtain loan advances on such peanuts with the prior approval of the county office anytime on or before January 31 following the calendar year in which the crop was grown. Association advances shall be payable jointly to the producer and the CCC and shall be used to settle the farm-stored loan.

§ 1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.

(a) Producer-handlers may, at any time before loan maturity, forfeit their additional peanuts to CCC and immediately repurchase such peanuts from CCC by paying the amount necessary under the following sales policies:

(1) For unrestricted use, at a price determined by CCC but, for the applicable type, not less than 105 percent of the quota loan rate, if purchased before December 31 of the calendar year in which the crop was grown, and at not less than 107 percent of the quota loan rate, if purchased after December 31 of the calendar year in which the crop was grown.

(2) For edible export, at a price determined by CCC but not less than any minimum sales price determined and announced by CCC.

(3) For crushing (either domestic or export), at a price determined by CCC but not less than the additional support level for the applicable type.

(b) For purchases on or before January 31 following the calendar year in which the crop was grown, the county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a) of this section. Loans will be settled at the county office, and amounts collected in excess of that necessary to settle loans will be remitted to the association for the respective area. The association will credit such amounts to the appropriate price support loan pool. The producer should be listed as a participant in the loan pool for the purpose of determining and distributing net gains from the loan pool.

(c) For purchases after January 31 following the calendar year in which the crop was grown, the county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a) of this section. Any amount collected in excess of the loan indebtedness shall accrue to CCC.

§ 1421.28 Required producer-handler records and supervision of farm-stored additional peanuts pledged as collateral for a loan or purchased by a producer-handler from loan.

(a)(1) Each producer-handler shall maintain records as required in 7 CFR part 1446 for all additional peanuts which are purchased and sold for which an ASCS-1007, Inspection Certificate and Sales Memorandum, is issued.

(2) The following records shall be maintained for all peanuts purchased from CCC which are not inspected. Each producer-handler shall maintain records which show all sales and other disposals of peanuts. Such records shall show date of sale, quantity, type, and to whom sold. Records shall be maintained in such a manner which will enable the county office to readily reconcile quantities sold with all peanuts

produced by the producer. All records shall be maintained for a period of three years following the end of the marketing year in which the peanuts were produced.

(b)(1) The county office shall inspect and account for all additional peanuts pledged as collateral for a loan as determined necessary by the county committee.

(2) The county office shall supervise the disposition of all additional peanuts purchased for use as seed and not inspected. The identical peanuts pledged as collateral for a loan must be disposed of and the producer must account for all peanuts which were under additional loan. The producer-handler shall request a county office representative to supervise the disposition of the peanuts and shall give the county office at least 3 working days notice of the date of such disposition. The county office shall determine the extent to which supervision is needed.

(3) With respect to additional peanuts on which ASCS-1007 is issued, the producer-handler shall be subject to all provisions in part 1446 relating to the disposition of additional peanuts.

(c) The producer-handler shall pay all costs of supervision, as determined by the county committee for county office supervision when county office supervision is completed, and or determined by the association for peanuts supervised by association representatives when association supervision is completed.

(d) The producer-handler is subject to penalties as provided in part 1446 of this title with respect to any peanuts purchased in accordance with § 1421.27.

§ 1421.29 Loan deficiency payments.

(a) CCC will announce whether loan deficiency payments will be made available to producers on a farm for a specific crop for a crop year.

(b) In order to be eligible to receive loan deficiency payments if such payments are made available for a crop, the producer of such commodity must:

(1) Comply with all of the program requirements to be eligible to obtain loans or purchases in accordance with this part;

(2) Agree to forego obtaining such loans or purchases; and

(3) Otherwise comply with all program requirements.

(c) The loan deficiency payment rate for a crop shall be the amount by which the price support loan level for the crop exceeds the level at which CCC has announced that producers may repay their price support loans in accordance with § 1421.25. Such rate shall be the amount determined on the day the producer provides a complete request for a loan deficiency payment to the county office.

(d) The loan deficiency payment applicable to such crop shall be computed by multiplying the loan deficiency payment rate, as determined in accordance with paragraph (c) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a price support loan for which the loan deficiency payment is requested.

(e) The total amount of loan deficiency payment a producer may receive is limited in accordance with the regulations at part 1497 of this chapter.

(f) CCC will make 90 percent of the loan deficiency payment in accordance with paragraph (d) of this section. Notwithstanding any provisions in this part, a loan deficiency payment may be based on 100 percent of the net quantity specified on acceptable evidence of production of the commodity certified as eligible for loan deficiency payment if such production evidence is provided on or before the final loan availability date for such commodity. If such production evidence is provided after the final loan availability date, CCC shall limit such increase in loan deficiency payment quantity to 110 percent of the quantity certified as eligible for such payment.

§ 1421.30 Death, incompetency, or disappearance.

In case of the death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan, loan deficiency payment, or a purchase agreement, payment shall, upon proper application to the county office which made the loan, loan deficiency payment, or purchase agreement, be made to the persons who would be entitled to such producer's payment under the regulations contained in part 707 of this title.

§ 1421.31 Recourse loans.

(a) CCC shall make recourse loans available to eligible producers of high moisture barley, high moisture corn, and high moisture grain sorghum. Repayment or settlement of such recourse loans shall be in accordance with the terms and conditions set forth by CCC.

(b) CCC may make recourse loans available to eligible producers with respect to commodities not specified in paragraph (a) of this section. Repayment or settlement of such recourse loans shall be in accordance with the terms and conditions set forth by CCC when the availability of such recourse loans is announced.

§ 1421.32 Handling payments and collections not exceeding $9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less which are due the producer will be paid only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

Subpart—Rice Marketing Certificate Program

Authority: 7 U.S.C. 1441–2; 15 U.S.C. 714b and 714c.

§ 1421.320 General provisions.

(a) This subpart sets out the terms and conditions under which the Commodity Credit Corporation (CCC) shall make payments, in the form of commodity certificates, to eligible persons who have entered into a Rice Marketing Certificate Agreement with CCC to participate in the rice marketing certificate program.

(b) If, beginning August 1, 1991, and ending July 31, 1996, CCC determines that the adjusted world price for a class of rice determined in accordance with § 1421.25(a)(1)(ii) of this part is below the current loan repayment rate for that class of rice determined in accordance with § 1421.25 of this part, then CCC, in order to make domestically-produced rice competitive in world markets and to maintain and expand exports of domestically produced rice, shall make payments available to eligible persons in accordance with the provisions of this subpart.

(c) Such payments shall be based upon the quantity of eligible rice which an eligible person has:

(1) Redeemed from a price support loan with cash or;

(2) With respect to eligible rice which has not been and will not be pledged as collateral for a price support loan, sold as evidenced by documentation acceptable to CCC.

§ 1421.321 Eligible persons.

For the purposes of this subpart, the following persons shall be considered to be eligible to enter into a Rice Marketing Certificate Agreement with CCC and to receive payment in accordance with this subpart:

(a) Producers of eligible rice, and

(b) Cooperative Marketing Associations which acquire the eligible rice production of their members and which have been approved in accordance with part 1425 of this title to obtain price support from CCC on behalf of their members.

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§ 1421.322 Eligible rice.

For the purposes of this subpart, eligible rice is 1991 and subsequent crop rice (Oryza Sativa L.), unmilled and unprocessed, which consists of 50 percent or more of paddy kernels of rice and which is eligible to be pledged as collateral for price support loan as provided in this title, and with respect to which a payment in accordance with the provisions of this subpart has not been made available.

§ 1421.323 Rice marketing certificate agreement.

(a) Payments in accordance with this subpart shall be made available to eligible persons who have entered into a Rice Marketing Certificate Agreement with CCC and who have complied with the terms and conditions set forth in this subpart and the Rice Marketing Certificate Agreement.

(b) Rice Marketing Certificate Agreements may be obtained from local county Agricultural Stabilization and Conservation Service offices.

§ 1421.324 Payment rate.

The payment rate for the purposes of calculating payments made available in accordance with this subpart shall be based upon the difference between the adjusted world price for the class of rice and the loan repayment level as specified in the rice Marketing Certificate Agreement in accordance with § 1421.25 of this title.

Signed this 25th day of April, 1991 in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-10314 Filed 5-1-91; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

9 CFR Part 114

[Docket No. 91-007]

Production Requirements for Biological Products; Outline Guide for Diagnostic Test Kits

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations by adding an outline guide which contains the requirements for the preparation of Outlines of Production for diagnostic test kits. The current Standard Requirements contain such guides for other biological products but not for diagnostic test kits. The purpose of this action is to codify uniform requirements for the preparation of Outlines of Production for diagnostic test kits which could be used by all producers of veterinary biologics.

EFFECTIVE DATE: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Senior Staff Veterinarian, Veterinary Biologics, BBEP, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8245.

SUPPLEMENTARY INFORMATION:

Background

Veterinary biological products subject to the provisions of the Virus-Serum-Toxin Act as amended by the Food Security Act of 1985 (21 U.S.C. 151-159), including diagnostic test kits, are required to be prepared in accordance with the production requirements for biological products contained in 9 CFR, part 114. An Outline of Production must be filed with the Animal and Plant Health Inspection Service (APHIS) for each product. The Outline of Production contains a detailed protocol of methods to be followed in the preparation of a biological product.

Currently, the regulations contain outline guides for the preparation of Outlines of Production for antisera, antitoxins, and normal sera; vaccines, bacterins, antigens, and toxoids; and for allergenic extracts. However, there is no such guide in the regulations for diagnostic test kits.

This amendment adds a regulation developed through the cooperative efforts of licensees and applicants, research organizations, academic institutes, and the National Veterinary Services Laboratories, for the preparation of Outlines of Production for diagnostic test kits. The requirements in the regulation are like those for the other categories of veterinary biological products listed in part 114, including guides for vaccines, bacterins, and antisera. Codifying the outline guide for diagnostic test kits in the regulations creates a uniform standard and helps to assure the purity, safety, potency and efficacy of these products.

On August 13, 1990, we published a proposed rule in the **Federal Register** (55 FR 32920-32922, Docket No. 90-003) discussing this amendment. The proposed rule provided that comments would be accepted for 60 days, until October 12, 1990.

We received comments from two licensed manufacturers, and one national trade association representing U.S. manufacturers of animal health products. While generally supporting the proposal, all those commenting suggested changes in one or more sections as proposed.

Based on the rationale set forth in the proposed rule and in this document, we are adopting this final rule.

One commenter suggested that 9 CFR 113.9(f) clarify that the regulation is for diagnostic kits based on an antigen antibody reaction. The Animal and Plant Health Inspection Service agreed with this comment, and appropriate changes have been made in the final rule.

Two respondents commented on the introductory section of the guide. Each felt that including a brief description of the kit in the introduction and a full description within the body of the text was redundant. The Animal and Plant Health Inspection Service does not agree with this comment. By asking for summary information in the introduction, APHIS is able to expedite the review and approval process. For example, in the introduction, the summary statement may interpret the meaning of the test result as applied to a disease situation in a particular animal or flock i.e., disease or no disease; whereas, more detail is required to explain the significance of the potency test as it relates to determining the efficacy of a particular serial of product and ultimately the accuracy of the individual test result. Therefore, APHIS does not agree that requiring both descriptions will detract from the purpose of the outline guide. However, as a result of this comment APHIS has determined that sections VI.A. and VI.B. in the proposed rule could be a combined into a single description of final container packaging. Therefore, in the final rule, we have made editorial changes in section VI. to provide for a single description of final container packaging in section VI.A. with the remainder of section VI. being redesignated accordingly.

Two respondents commented that section II.A. requesting information regarding the isolation, passage history, and characterization of the microorganism used as Master Seed was confusing since there is no Master Seed requirement for antigens used in diagnostics. We disagree with this comment. Microorganisms used in the preparation of biological products are referred to as seed. When tested and characterized in accordance with 9 CFR 113.55 and 113.64(c), they are called Master Seeds. Title 9, Code of Federal Regulations, § 114.5 requires that all microorganisms used in the preparation of biological products at licensed establishments shall be free from the causative agents of other diseases or conditions. This requirement applies to microorganisms used to produce all biological products including diagnostics and is usually met by testing the microorganism in accordance with the above cited reference(s). The Animal and Plant Health Inspection Service has observed that producers frequently use the same microorganisms (Master Seeds) or antigen extracted from them to produce vaccines, bacterins, or diagnostic products. In recognition of this, APHIS structured section II.A. to allow producers who follow this practice to use the Master Seed reference, when appropriate, to describe the characteristics of the antigen; thereby avoiding redundant descriptions in the Outline of Production. Regardless of whether the producer is using seed, Master Seed, or extracted antigen, the applicant must show it to be free from the causative agents of other diseases (extraneous agents) or, in the case of extracted antigens, the applicant must demonstrate the characteristics of the antigen considered key to the performance of the product. The Animal and Plant Health Inspection Service considers such descriptions, data, and characteristics essential to predicting the performance of the product and requires that they be included in the Outline of Production.

One respondent commented that section II.B., which reads, "If an approved cell line is used, give dates of testing and approval," was ambiguous and suggested that it could lead to the interpretation that approved cell lines are not required to be used in conjunction with the production of diagnostics.

Another respondent commented that section II.B. should include the requirements for antigen produced in eggs. The Animal and Plant Health Inspection Service agrees with both comments, and appropriate changes have been made in the final rule.

One respondent commented that the reference to positive and negative reference standards in section III.A. be changed to positive and negative controls. The Animal and Plant Health Inspection Service agrees with this comment and has made editorial changes in sections III. and IV. in the final rule because each section refers to positive and negative controls. These changes further specify the information to be provided in each section.

One commenter inquired as to wnether APHIS is now requiring a description of the production processes for all components included in diagnostic kits, or if only critical components need be described. The commenter identified buffers, substrates, and nonbiological solutions as preparations not covered under the Virus-Serum-Toxin Act, and observes that there is no requirement that they be described in the Outline of Production. The Animal and Plant Health Inspection Service does not agree with this comment. Title 9, Code of Federal Regulations, 113.50 requires that all ingredients used in biological products shall meet accepted standards for purity and quality and shall not denature the specific substances in the product. Thus, considering that the components (ingredients) are necessary to the proper functioning of the kit they are subject to the provisions of the Act. The Animal and Plant Health Inspection Service considers all components in diagnostics to be critical components in that inferior components may result in a malfunctioning test and lead to an incorrect diagnosis. Therefore, APHIS requires that each component be described in the outline. When the same component is used in multiple diagnostics, the producer may file Special Outlines as provided by § 114.9(b), and avoid redundant descriptions. In order to clarify this point, APHIS has made editorial changes in section III.D. of the final rule.

Another respondent commented that a description of test interpretations and results should be included in section V. The Animal and Plant Health Inspection Service has always considered that a description of the test and the interpretation of the result belong in section V. The regulation as written requires these data. However, in response to this comment and for purposes of clarification we have rewritten section V. in the final rule to specify what should be included.

One respondent commented that several nonregulated entities, e.g., State diagnostic laboratories, research organizations, and academic institutes should be regulated. The regulatory authority of APHIS is limited to biological products shipped in or from the United States that are intended for use in the diagnosis, treatment, or prevention of diseases of animals. Diagnostic tests prepared and/or conducted at State diagnostic laboratories, research organizations, and academic institutions for their own use that are not shipped in or from the United States are not subject to the provisions of the Virus-Serum-Toxin Act. Thus, no change in the regulations has been made in response to the comment.

One respondent commented that there is no requirement in section I., Antibody Components, to differentiate between primary antibodies and secondary antibodies (conjugates). When organizing the guide, the Agency chose to have the preparation of primary antibodies described in section I., and secondary antibodies (conjugates) described in section III.B. This structure was chosen because the Agency has observed that many producers purchase prepared conjugates from firms that also supply them with other reagents. Thus, for the purpose of organization, the description of conjugates has been included in section III.B. with the other reagents. Regardless of where its preparation is described, APHIS considers the conjugate a critical component whose preparation must be described in the outline.

Executive Order 12291 and Regulatory Flexibility Act

This final rule is issued in conformance with Executive Order 12291 and Department Regulation 1512-1 and has been determined not to be a "major rule." Based on information compiled by the Department, it has been determined that this final rule has an effect on the economy of less than $100 million; does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions and does not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Its purpose is to publish in the regulations a guideline for preparing Outlines of Production for diagnostic test kits which are required to be submitted to APHIS for filing. Prior to the implementation of these regulations licensees were required to prepare Outlines of Production in support of product license applications. However, no specific requirements were available to assist firms in the preparation of an outline for a diagnostic product. This often resulted in several revisions of an outline having to be made before an outline could be approved. This regulation will assist licensees in outline preparation and should make the licensing process more efficient. This regulation imposes no additional costs beyond what firms are already required to submit.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579-0013.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 114

Animal biologics.

Accordingly, title 9 of the Code of Federal Regulations is amended as follows:

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

1. The authority citation for 9 CFR part 114 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 114.9 is amended by adding paragraph (f) to read as follows:

§ 114.9 Outline of Production Guidelines.

* * * * *

(f) Outlines of Production for diagnostic test kits based on antigen-antibody reactions, and other diagnostics whose production methods are amenable to description as described herein shall be written according to the following requirements:

Outline Guide for Diagnostic Test Kits

License No.	Name of product	Date

Introduction

Provide a brief description of the kit as follows:

1. Principle of the test (ELISA, latex agglutination, etc.).
2. Antigen or antibody detection test.
3. Sample(s) used for testing (serum, whole blood, tears, etc.).
4. List reagents, references, and equipment included.
5. Identify materials obtained under split manufacturing agreements.
6. General description of test interpretations and their limitations, including followup tests.

I. *Antibody Components*

A. Production of polyclonal antibody components.

1. If purchased, list suppliers, criteria for acceptability, and describe all tests performed after receipt to determine that specifications have been met.

2. If produced in-house, describe the species, age, weight, conditions, and general health of all animals used in antiserum production.

a. Preinjection considerations:

Describe the examination, preparation, care, quarantine procedures, and treatments administered before immunization(s). Describe all tests used to determine suitability for use. Describe the preparation of any standard negative serum(s) collected prior to immunization.

b. Immunization of animals.

i. Describe the character and dose of the antigen; if adjuvant is used provide details on its preparation. If commercial product is used include its true name as shown on the label, the manufacturer, serial number, and expiration date.

ii. Describe the method and schedule for immunizations.

iii. Describe the method for harvesting and evaluating the immunization product, including tests for acceptability.

iv. Provide number and intervals between harvests, volume obtained, and any other pertinent information.

B. Production of Monoclonal Antibody Components.

1. Hybridoma components:

a. If hybridoma components are purchased, list suppliers and criteria for acceptability; if tests are performed after receipt, describe fully.

b. If hybridomas are prepared inhouse, identify the antigen(s) used, describe the immunization scheme, and the species of animal used.

c. Identify the tissue of origin, and the procedures for harvesting, isolating, and identifying the immune cells.

d. Describe the source, identity, and the product secreted (light or heavy chain) by the parent Myeloma Cell Line.

e. Summarize cloning and recloning procedures, including clone characterization and propagation, if appropriate.

f. If appropriate, describe procedures for establishing and maintaining seed lots.

g. Describe any other pertinent tests or procedures performed on the hybridoma cell line.

2. Antibody production:

a. Describe the production method. If produced in cell culture, animal serum additives must conform to 9 CFR 113.53. If produced in animals, describe fully including husbandry practices and passage procedures.

b. Provide the criteria for acceptable monoclonal antibody, including tests for purity.

c. Describe all tests or other methods used to ensure uniformity between production lots of monoclonal antibody. Include all reaction conditions, equipment used, and reactivity of the component.

d. Describe all characterization procedures and include the expected reactivity of all reference monoclonal antibodies.

II. *Antigen Preparation*

A. Identify the microorganism(s) or antigen being used. If previously approved Master Seed virus, bacteria, or antigen derived therefrom is used, provide pertinent information on the testing performed, and details of dates of United States Department of Agriculture confirmatory tests and approval, as appropriate.

B. Describe all propagation steps, including identification of cell cultures, media ingredients, cell culture conditions, and harvest methods. For antigen produced in eggs, give the egg source, age, and route of inoculation. If cell lines are being used, give dates of testing and approval as specified in 9 CFR 113.52.

C. Describe procedures used for extracting and characterizing the antigen.

D. Describe the method used to standardize the antigen.

E. If the antigen is purchased, identify the supplier and describe the criteria for acceptable material, including all tests performed by the producer and/or the recipient to determine acceptability.

III. *Preparation of Standard Reagents*

A. Describe the positive and negative controls included in the kit. If purchased, list suppliers and criteria for acceptance.

B. Describe the preparation and standardization of the conjugate(s). If purchased, list suppliers and criteria for acceptance.

C. Describe the preparation and standardization of the substrate(s). If purchased, list suppliers and criteria for acceptance.

D. Identify buffers, diluents, and other reagents included in the kit. The preparation of these components may be described in this section or in filed Special Outlines.

IV. *Preparation of the Product*

Fully describe methods used to standardize antigens, reference standards, positive control serum, negative control serum, and standard reagents from production/purchase to completion of finished product in final containers, including the following:

1. Composition and quantity of preservative in each.

2. Method of filling, plating, or attaching the antigen or antibody component to a solid phase.

3. Minimum and maximum acceptable fill volumes for each final container of reagent included in the kit.

4. The disposition of unsatisfactory material.

V. *Testing*

Refer to all applicable standard requirements.

A. Purity.

Describe all tests of the kit for purity or specify the exemption as provided in 9 CFR 113.4.

B. Safety.

In vitro products are exempt from safety tests.

C. Potency.

Provide details of tests used to determine the relative reactivity of the kit including minimum requirements for a satisfactory test.

Reference standards and control serum used for this purpose should be identified by unique codes or lot numbers.

VI. *Postpreparatory Steps*

A. Describe the form and size of final containers of each reagent/component included in the kit.

B. Describe the collection, storage, and submission of representative samples. Refer to 9 CFR 113.3(b)(7).

C. Specify the expiration date. Refer to 9 CFR 114.13.

D. Provide details of recommendations for use, including all limitations, qualifications, and interpretation of results.

E. Submit confidentiality statement identifying specific parts of the outline containing information, the release of which would cause harm to the submitter.

Done in Washington, DC, this 26th day of April 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-10416 Filed 5-1-91; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-13]

Alteration of the Chicago Terminal Control Area; IL

AGENCY: Federal Aviation Administration.

ACTION: Final rule; Correction.

SUMMARY: This action corrects the description of the Chicago O'Hare International Airport Terminal Control Area (TCA). The final rule, published in the Federal Register, contained an error in the coordinates for the airport reference point. This action corrects that error.

EFFECTIVE DATE: May 2, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

A final rule (Federal Register Document 91-7632), published April 2, 1991, modified the TCA at Chicago O'Hare International Airport (56 FR 13526). That rule contained an inadvertent error in the coordinates for the airport reference point for the Chicago O'Hare International Airport. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, Federal Register Document 91-7632, as published in the Federal Register on April 2, 1991, (56 FR 13526) is corrected as follows:

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C.106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.401(b) [Amended]

2. Section 71.401 (b) is corrected to read as follows:

Chicago, IL [Corrected]

Under the title, "Primary Airport," remove "Chicago O'Hare International Airport (lat. 41°58'57" N. Long. 87°54'25" W.)", and substitute "Chicago O'Hare International Airport (lat. 41°58'46" N. long 87°54'16" W.)"

Issued in Washington, DC, on April 19, 1991

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-10365 Filed 5-1-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 90-ASW-30]

Alteration of Jet Route J-66; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters Jet Route J-66 by extending that route from Dallas, TX, to Newman, TX, via Abilene, TX. This jet route improves sector coordination and eliminates a point of congestion with the J-4 crossing point at Wink, TX. This action improves traffic flow and reduces controller workload.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 13, 1990, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to extend Jet Route J-66 from Dallas, TX, to Newman, TX, via Abilene, TX (55 FR 28775). The majority of traffic departing Dallas International Airport proceed via El Paso, TX. However, all aircraft proceeding westbound are given radar vectors to Abilene, and then proceed direct to Newman. This alteration of J-66 eliminates the congestion caused by J-4 traffic proceeding over Wink, TX. Also, this shortened route saves fuel. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 75 of the Federal Aviation Regulations alters Jet Route J-66 by extending that route from Dallas, TX, to Newman, TX, via Abilene, TX. This jet route improves sector coordination and eliminates a point of congestion with the J-4 crossing point at Wink, TX. This action improves traffic flow and reduces controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 75 of the Federal Aviation Regulations (14 CFR part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

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Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-68 [Amended]

By removing the words "From Dallas-Fort Worth, TX, via" and substituting the words "From Newman, TX; Abilene, TX; Dallas-Fort Worth, TX;"

Issued in Washington, DC, on April 25, 1991.

Richard Huff,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-10366 Filed 5-1-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 546

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Boehringer Ingelheim Animal Health, Inc., to Pennfield Oil Co. (formerly Pennfield Chemical Corp.).

EFFECTIVE DATE: May 2, 1991.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Animal Health, Inc., 2621 North Belt Highway, St. Joseph, MO 64502, informed FDA of the change of sponsor of NADA 65-480 to Pennfield Oil Co. (formerly Pennfield Chemical Corp.), 14040 Industrial Rd., Omaha, NE 68144. The NADA provides for use of chlortetracycline hydrochloride soluble powder to treat swine and calves as in 21 CFR 546.110c (c)(5)(iii) and (c)(5)(iv). FDA is amending the regulations to reflect the change of sponsor.

The agency is amending the table in 21 CFR 510.600 (c)(1) and (c)(2) to reflect a name change from "Pennfield Chemical Corp." to "Pennfield Oil Co." and 21 CFR 546.110c(c)(2) to reflect the change of sponsor.

List of Subjects in 21 CFR

Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Part 546

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 546 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "Pennfield Chemical Corp." and in the table in paragraph (c)(2) in the entry for "053389" by removing "Pennfield Chemical Corp." and inserting in its place "Pennfield Oil Co.".

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

3. The authority citation for 21 CFR part 546 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 546.110c [Amended]

4. Section 546.110c *Chlortetracycline powder (chlortetracycline hydrochloride powder)* is amended in paragraph (c)(2) by removing "000010" and replacing it with "053389".

Dated: April 26, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 91-10371 Filed 5-1-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 216

RIN 1010-AB61

Amendment of Production Accounting Regulations

March 12, 1991.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its royalty production accounting regulations to specify the addresses required for receipt of information collection reports and forms submitted by reporters of mineral production from Federal and Indian leases and federally approved agreements. This final rulemaking also establishes the date of receipt of reports and forms received at the required MMS address(es) after 4 p.m. mountain time as next day receipts.

EFFECTIVE DATE: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Minerals Management Service, Royalty Management Program, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3910, Denver, Colorado 80225 (303) 231-3432 or (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal author of this final rule is Marvin D. Shaver of the Rules and Procedures Branch, Royalty Management Program, Minerals Management Service, Lakewood, Colorado.

I. Introduction

Part 216 of title 30 of the Code of Federal Regulations (30 CFR part 216) contains regulations governing the reporting of oil, gas and solid minerals operations information on Federal and Indian leases or federally approved agreements, including the Outer Continental Shelf. Section 216.10, "Information Collection," identifies the various information collection reports and forms that are required to be submitted to MMS by the reporter for mineral production. The information collected is used by MMS to permit accounting and auditing of reported production information. Section 216.15, "Reporting Instructions," refers to the *Production Accounting and Auditing System (PAAS) Reporter Handbook* and the *PAAS Onshore Oil and Gas Reporter Handbook* for specific guidance on how to prepare and submit the mandatory information collection reports and forms to MMS.

Although the PAAS Reporter Handbooks identify the specific MMS address to which the completed reports and forms must be mailed, there are many instances when the documents are mailed or delivered by the reporter to the wrong address, such as to the address of a contractor performing work for MMS. Consequently, there is a delay in receipt of the document by the appropriate MMS office, which could result in assessments for late reporting. The inclusion of the appropriate MMS address in the regulations covering PAAS is needed to provide clear direction to the reporter, improve timely reporting by companies, and establish consistency with the Auditing and Financial System (AFS) which already has address information in the regulations (see 30 CFR 218.51(f)).

Because responsible MMS employees may not be available to record the receipt of documents after normal MMS working hours, MMS considers documents received after 4 p.m. as next day receipts. There have been instances where this policy has resulted in late reporting assessments or rejection of administrative appeals as untimely. The PAAS Reporter Handbooks do not state this policy and there is a need to codify the policy in MMS's regulations to avoid misunderstandings on the part of reporters.

The rule will also expressly provide that a report is considered "received" when it is delivered to the specified MMS address. Mailing a report or depositing it for delivery with a courier does not constitute receipt by MMS.

II. Final Rulemaking

The purpose of this final rulemaking is to codify the MMS address(es) to which the reports and forms should be mailed or delivered. Different addresses are specified depending on whether the report is mailed, including U.S. Postal Service express mail, or sent by courier or overnight mail. The final rule also establishes the date of receipt of reports received at the established MMS addresses after 4 p.m. mountain time as next day receipts. This final rulemaking is consistent with regulations on the appropriate address for the AFS reports in 30 CFR 218.51(f), which establishes the address for payors to mail or deliver the Report of Sales and Royalty Remittance (Form MMS-2014 or Form MMS-4014) and the applicable payment.

III. Procedural Matters

Administrative Procedure Act

The changes included in this rulemaking are to codify administrative procedures and are not substantive changes. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final regulation.

Executive Order 12291 and the Regulatory Flexibility Act

Because this rulemaking is to codify administrative procedure, the Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This final rule codifies Agency addresses to which mandatory reports and forms should be mailed with no additional reporting or other requirements from industry.

Executive Order 12630

This final rulemaking does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Paperwork Reduction Act of 1980

This final rulemaking does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

The Department has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

List of Subjects in 30 CFR Part 216

Coal, Continental shelf, Goethermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, and Reporting and recordkeeping requirements.

Dated: April 8, 1991.

Jennifer A. Salisbury,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, 30 CFR part 216 is amended as follows:

PART 216—PRODUCTION ACCOUNTING

1. The authority citation for part 216 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 5 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. A new § 216.16 is added under subpart A, General Provisions, to read as follows:

§ 216.16 Where to report.

(a) All reporting forms listed in § 216.10 of this subpart that are mailed or sent by U.S. Postal Service express mail shall be mailed to the following address: Minerals Management Service, Royalty Management Program, P.O. Box 17110, Denver, Colorado 80217.

(b) Reports delivered to MMS by special couriers or overnight mail, except U.S. Postal Service express mail, shall be addressed as follows: Minerals Management Service, Royalty Management Program, Building 85, Denver Federal Center, room A-212, Revenue and Document Processing, Denver, Colorado 80225.

(c) A report is considered received when it is delivered to MMS at the addresses specified in paragraphs (a) and (b) of this section. Reports received at the MMS addresses specified in paragraphs (a) and (b) of this section after 4 p.m. mountain time are considered received the following business day.

* * * * *

[FR Doc. 91-10437 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-MR-M

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30 CFR Part 250

RIN 1010-AB53

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Reports and Investigations of Apparent Violations

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing oil and gas and

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sulphur operations in the Outer Continental Shelf (OCS) by adding a provision specifying that any person having knowledge of an apparent violation of Minerals Management Service (MMS) laws, regulations, or lease requirements can report the apparent violation, and MMS will investigate the allegation. The provision was included in the regulations in effect prior to 1988 but was dropped when the offshore operating rules were revised in 1988. Although MMS routinely investigates allegations of violations as a matter of established procedure in fulfilling its responsibilities under the Outer Continental Shelf Lands Act (OCSLA), the reinstatement of a specific regulatory provision declaring that MMS will investigate reports of apparent violations will reinforce the public's awareness of this procedure and reassure the public that apparent violations reported to MMS will be investigated.

EFFECTIVE DATE: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella, Acting Chief, Engineering and Standards Branch, telephone (703) 787-1600.

SUPPLEMENTARY INFORMATION: The regulations at 30 CFR part 250, subpart A, are being amended by the addition of § 250.25 to specify that MMS will investigate allegations of apparent violations that may be submitted to MMS. This amendment was published as a proposed rule in the **Federal Register** on August 16, 1990 (55 FR 33539). In proposing this addition to the regulations, MMS noted that it uses all possible sources of information to identify situations where lessees are not in full compliance with requirements of the law, the regulations, or the lease. This approach reflects MMS's commitment to diligently pursue its responsibilities to ensure the operational and environmental safety of OCS oil and gas operations. This amendment is not necessary for MMS to investigate allegations of apparent violations since that authority is provided in section 22(e) of the OCSLA; however, the regulation is being promulgated in order to increase public awareness that an alleged violation may be reported to and will be investigated by MMS.

Three comment letters were received on the proposed amendment. All were from companies in the oil and gas industry. One commenter questioned the promulgation of the regulation without a showing of need. This comment was based on a conern about proliferation of unnecessary regulations. The concern appears to be based on a perception that the regulation would add a regulatory procedure not presently in force and thereby contribute to an expansion of the regulation of offshore oil and gas activities. Since the amendment only incorporates a procedure already available, MMS does not believe that the addition of this rule to the regulations contributes to unnecessary proliferation of regulations as described by the commenter.

Another commenter suggested that the rule provide for timely notification to the lessee and affected operator that a report of an alleged violation had been received or that an apparent violation had been detected and would be investigated. The MMS believes such notification to be unnecessary for the protection of a party alleged to have committed a violation in view of the fact that, prior to assessment of a penalty, ample safeguards exist for a party to request a hearing, provide evidence and arguments, respond to and rebut material concerning the case, and utilize other available safeguards. Furthermore, when warranted, the proper authorities need to be able to investigate alleged violations of a criminal nature without notifying the alleged violator in order to ensure preservation of evidence and reduce the possibility for concealment of serious violations.

A final commenter suggested that the rule be revised to require that persons reporting apparent violations submit allegations in writing accompanied by a factual statement citing the concerns and observations of wrongdoing. This commenter further proposed that if the allegations prove false, MMS should be required to send a letter to the operator identifying the individual who submitted the allegations and stating that the allegations had been proven false. The commenter maintained that individuals may allege violations without supporting data or observations in order to injure an operator's reputation, and that an operator is at a disadvantage because there is little or no documentation to identify the person making the allegation or the basis for it. The MMS does not believe that the matter about which this commenter is concerned (e.g., damage to the operator's reputation) would arise due to lack of knowledge as to the identity of a person alleging a violation by that operator and, conversely, such damage would not necessarily be avoided merely by disclosure of the identity of a party reporting an apparent violation. As MMS noted in the proposed rule, on the whole, OCS lessees conduct their leasehold operations in compliance with MMS requirements. In view of this and the fact that, in and of itself, an MMS investigation is not a indication of wrongdoing, it does not appear that an allegation of an apparent violation would, by itself, damage a lessee's or operator's reputation. Furthermore, no determination that an operator or lessee has committed a violation can be made without clear supporting evidence. The MMS does not agree that persons reporting apparent violations should be required to identify themselves. The MMS will look into all allegations received, including those reported anonymously and those allegations for which no supporting documentation or facts are provided. This determination was made in recognition that occasionally parties having information about violations cannot report such violations without risking loss of employment or other damage unless they do so without identifying themselves. Furthermore, in no case can any action be taken against the alleged violator without verification of the allegations and acquisition of supporting evidence. The extensive safeguards available to the lessee or operator under current regulations and laws remain fully operable.

Author

This document was prepared by Mary B. McDonald, Engineering and Standards Branch, MMS.

Executive Order (E.O.) 12291

The Department of the Interior (DOI) has determined that this rule will not have a significant effect on the economy and is not a major rule under E.O. 12291; therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The DOI has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

Paperwork Reduction Act

The rule does not contain any information collection requiring approval by the Office of Management and Budget pursuant to 44 U.S.C. 3501 *et seq.*

Takings Implication Assessment

The DOI certifies that the rule does not represent a Government action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment has not been prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The DOI has determined that this does not constitute a major Federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: April 2, 1991.

Barry Williamson,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR part 250 is amended as follows:

PART 250—[AMENDED]

1. The authority for 30 CFR part 250 continues to read as follows:

Authority: Sec. 204, Public Law 95-372, 92 Stat. 629 (43 U.S.C. 1334).

2. A new § 250.25 is added to subpart A to read as follows:

§ 250.25 Reports and investigations of apparent violations.

Any person may report to MMS an apparent violation or failure to comply with any provision of the Act, or any provision of a lease, license, or permit issued pursuant to the Act, or any provision of any regulation or order issued under the Act. When a report of an apparent violation has been received or when an apparent violation has been detected by MMS personnel, the matter will be investigated in accordance with MMS procedures.

[FR Doc. 91-10438 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AD63

Veterans Education; The Veterans' Benefits and Programs Improvement Act of 1988 and the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Veterans' Benefits and Programs Improvement Act of 1988 contains several provisions which affect the Montgomery GI Bill—Active Duty. These include liberalizing the eligibility requirements, providing a death benefit, permitting cooperative training, permitting refresher, remedial and deficiency training, providing tutorial assistance to veterans and servicemembers in this program and liberalizing the standards for determining extensions to a veteran's basic period of eligibility. These final regulations will acquaint the public with the way in which the Department of Veterans Affairs will administer these provisions of law.

EFFECTIVE DATE: Except for the following, the effective date of this regulation is November 18, 1988. The revisions to these regulations and the new regulations are effective on the same date as the provisions of law on which they are based. Consequently, the revisions to the following regulations are retroactively effective on July 1, 1985: That portion of § 21.7042(a)(5), those portions of § 21.7042(b) (6) and (7), that portion of § 21.7072 dealing with discharges for a preexisting medical condition, § 21.7140(g), and § 21.7280. The revisions to the following regulations are retroactively effective on October 1, 1987: That portion of § 21.7042(a)(5), those portions of § 21.7042(b) (6) and (7) and that portion of § 21.7072 dealing with involuntary discharges for the convenience of the government as the result of a reduction in force. The revisions to the following sections are retroactively effective on November 18, 1988: § 21.7020(b)(38), § 21.7042(a)(3), § 21.7042(b) (2), (3) and (4), § 21.7042 (d), (e) and (f), § 21.7044(a), that portion of § 21.7044(b) dealing with eligibility criteria for veterans who are committed to serve four years in the Selected Reserve before they begin serving on active duty, § 21.7044(c), § 21.7050, § 21.7051 and § 21.7072(c). The new regulations, § 21.7141 and § 21.7073 are retroactively effective on November 18, 1988. The revisions to the following regulations are retroactively effective on January 1, 1989: § 21.7020(b)(39), that portion of § 21.7076 dealing with cooperative training, § 21.7136, § 21.7137, § 21.7138, § 21.7220 and that portion of § 21.7222 dealing with cooperative training. The revisions to the following regulations are retroactively effective on June 1, 1989: § 21.7020(b)(19) and § 21.7122(e). The following regulations are retroactively effective on August 15, 1989: § 21.7020(b)(26), that portion of § 21.7076 dealing with tutorial assistance, § 21.7110, § 21.7112(b), and that portion of § 21.7222 dealing with refresher and deficiency training.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 42208 through 42216 of the **Federal Register** of October 16, 1990, VA proposed amending certain regulations in part 21, 38 CFR and also proposed adding some regulations to that part. The purpose of this proposal was to implement those provisions of the Veterans' Benefits and Programs Improvement Act of 1988 (Pub. L. 100-689) which affect the Montgomery GI Bill—Active Duty. Interested people were given 32 days to submit comments, suggestions or objections. VA received two letters, both from officials of State governments.

One letter thanked VA for publishing these regulations for comment, but the letter writer had no comments to make. The second letter writer stated he found nothing that could be construed as divergent from the intent of the act, nothing that is obviously inimical to the welfare and best interests of the veteran, and nothing that impacts the function of the State approving agencies in a significant manner. Inasmuch as neither letter writer wanted the proposal changed, VA is making final the revised regulations and new regulations that were contained in the proposal. However, corrections are being made to add § 21.7020, paragraph (b)(19)(i)(B) which was inadvertently omitted on page 42209 of the proposed rule, and to correct § 21.7051 to add missing text, which was inadvertently omitted at the end of paragraph (a)(2) of that section on page 42213.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule

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as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 21, Vocational Rehabilitation and Education is amended as follows:

PART 21—[AMENDED]

1. In § 21.7020 paragraphs (b)(19) and (b)(26) are revised and paragraphs (b)(38) through (b)(40) are added to read as follows:

§ 21.7020 Definitions.

* * * * *

(b) *Other definitions.*

* * * * *

(19) *Mitigating circumstances.* (i) The term "mitigating circumstances" means circumstances beyond the veteran's or servicemember's control which prevent him or her from continuously pursuing a program of education. The following circumstances are representative of those which VA considers to be mitigating. This list is not all-inclusive.

(A) An illness of the veteran or servicemember,

(B) An illness or death in the veteran's or servicemember's family,

(C) An unavoidable change in the veteran's conditions of employment,

(D) An unavoidable geographical transfer resulting from the veteran's employment,

(E) Immediate family or financial obligations beyond the control of the veteran which require him or her to suspend pursuit of the program of education to obtain employment,

(F) Discontinuance of the course by the educational institution,

(G) Unanticipated active duty military service, including active duty for training,

(H) Unanticipated difficulties in caring for the veteran's or eligible person's child or children.

(ii) In the first instance of a withdrawal after May 31, 1989, from a course or courses for which the veteran received educational assistance under title 38, U.S. Code, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent.

(Authority: 38 U.S.C. 1434, 1780(a)(1); Pub. L. 100–689) (June 1, 1989)

* * * * *

(26) *Refresher course.* The term "refresher course" means—

(i) Either a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed, or

(ii) A course which permits an individual to update knowledge and skills or be instructed in the technological advances which have occurred in the individual's field of employment and which is necessary to enable the individual to pursue an approved program of education.

(Authority: 38 U.S.C. 1434(a); Pub. L. 100–689) (Nov. 18, 1988)

* * * * *

(38) *Disabling effects of chronic alcoholism.* (i) The term "disabling effects of chronic alcoholism" means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case—

(A) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and

(B) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(ii) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(iii) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 1431(d); Pub. L. 100–689) (Nov. 18, 1988)

(39) *Cooperative course.* The term "cooperative course" means a full-time program of education which consists of institutional courses and alternate phases of training in a business or industrial establishment with the training in the business of industrial establishment being strictly supplemental to the institutional portion.

(Authority: 38 U.S.C. 1402, 1662(a); Pub. L. 100–689) (Jan. 1, 1989)

(40) *Open period.* The term "open period" means a period of time beginning on December 1, 1988, and ending on June 30, 1989.

(Authority: 38 U.S.C. 1418; Pub. L. 100–689) (Nov. 18, 1988)

2. In § 21.7042 paragraphs (a)(3) and (a)(5) (i) through (v) are revised to read as follows:

§ 21.7042. Basic eligibility requirements.

(a) * * *

(3) The individual must complete the requirements of a secondary school diploma (or an equivalency certificate) before completing the service requirements of this paragraph, and

(Authority: 38 U.S.C. 1411) (Nov. 18, 1988)

(5) * * *

(i) For a service-connected disability, or

(ii) For a medical condition which preexisted service on active duty and which VA determines is not service connected, or (July 1, 1985)

(iii) Under 10 U.S.C. 1173 (hardship discharge), or

(iv) For convenience of the government—

(A) After completing at least 20 continuous months of active duty if his or her initial obligated period of active duty is less than three years, or

(B) After completing 30 continuous months of active duty if his or her initial obligated period of active duty is at least three years, or

(v) Involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 1411; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689) (Oct. 1, 1987)

3. In § 21.7042 paragraphs (b)(2) through (b)(4) and (b)(6) through (b)(8) are revised and (b)(9) is added to read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(b) * * *

(2) The individual must complete the requirements of a secondary school diploma (or an equivalency certificate) before completing the service requirements of this paragraph.

(3) Except as provided in paragraph (b)(6) of this section, the individual must serve at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service.

(4) Except as provided in paragraph (b)(7) of this section, after completion of active duty service the individual must serve at least four continuous years service in the Selected Reserve, during which the individual must satisfactorily participate in training as prescribed by the Secretary concerned.

(Authority: 38 U.S.C. 1412; Pub. L. 100–689) (Nov. 18, 1988)

* * * * *

(6) An individual is exempt from serving two years on active duty as provided in paragraph (b)(3) of this section when the individual is discharged or released from the Armed Forces during those two years—

(i) For a service-connected disability, or

(ii) For a medical condition which preexisted such service on active duty and which VA determines is not service connected, or (July 1, 1985)

(iii) Under 10 U.S.C. 1173 (hardship discharge), or

(iv) In the case of an individual discharged or released after 20 months of such service, for the convenience of the Government, or

(v) Involuntarily for convenience of the Government as a result of a reduction in force as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy. (Oct. 1, 1987)

(7) An individual is exempt from serving four years in the Selected Reserve as provided in paragraph (b)(4) of this section when—

(i) After completion of the active duty service required by this paragraph the individual serves as continuous period of service in the Selected Reserve and is discharged or relesed from service in the Selected Reserve—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted the individual's becoming a member of the Selected Reserve and which VA determines is not service connected, or (July 1, 1985)

(C) Under 10 U.S.C. 1173 (hardship discharge), or

(D) After a minimum of 30 months of such service for the convenience of the Government, or

(E) Involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(ii) The individual is obligated at the beginning of the two years active duty described in paragraph (b)(3) of this section to serve the four years in the Selected Reserve as described in subparagraph (b)(4) of this section, and during the two years of active duty service he or she is discharged or released from active duty in the Armed Forces—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted that period of active duty and which VA determines is not service connected. (Oct. 1, 1987)

(8) For purposes of determining continuity of Selected Reserve service, the Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she—

(i) Is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy, or

(ii) Is not attached to a unit of the Selected Reserve for any reason prescribed by the Secretary concerned by regulation other than those stated in paragraph (b)(8)(i) of this section.

(9) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in subparagraph (8) of this subparagraph shall be binding upon VA.

(Authority: 38 U.S.C. 1411, 1412; Pub. L. 98–525, Pub. L. 100–689) (July 1, 1985, Oct. 1, 1987)

4. In § 21.7042 paragraphs (c) through (f) are redesignated as paragraphs (d) through (g) and a new paragraph (c) is added to read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(c) *Eligibility based on withdrawal of election not to enroll.* As stated in paragraph (f) of this section, a veteran or servicemember who elects not to enroll in this educational assistance program is generally not eligible for educational assistance. However, such a person may establish eligibility by meeting the requirements of this paragraph.

(1) The individual must withdraw an election not to enroll. Only someone who meets the provisions of this subparagraph may make this withdrawal. Such a withdrawal is irrevocable. The withdrawal may only be made during the period beginning on December 1, 1988, and ending on June 30, 1989, by a servicemember who—

(i) Must have first become a member of the Armed Forces or first entered on active duty as a member of the Armed Forces during the period beginning July 1, 1985, and ending June 30, 1988;

(ii) As of the day of withdrawal of the election must have served continuously on active duty without a break in service since the date the individual first became a member of the Armed Forces or first entered on active duty as a member of the Armed Forces;

(iii) Must be serving on active duty on the day he or she withdraws the election;

(iv) Withdraws the election in the form prescribed by the Secretary of Defense or in the case of the Coast Guard by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) The individual must continue to serve the period of service that the individual was obligated to serve on December 1, 1988.

(3) The individual must either—

(i) Complete the period of service that he or she was obligated to serve on December 1, 1988, which, if an individual's initial obligated period of service was scheduled to end after November 30, 1988, but he or she extended an enlistment or reenlisted, before December 1, 1988, VA will

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require that the individual complete the extension of reenlistment; or

(ii) Before completing the period of service he or she was obligated to serve on December 1, 1988, the individual is discharged or released from active duty for—

(A) A service-connected disability, or

(B) A medical condition which preexisted that period of service and which the Secretary determines is not service connected, or

(C) Hardship (10 U.S.C. 1173); or

(iii) Before completing the period of service he or she was obligated to serve on December 1, 1988, have been—

(A) Discharged or released from active duty for the convenience of the Government after completing not less than 20 months of that period of service, if such period was less than three years, or 30 months, if that period was at least three years, or

(B) Involuntarily discharged or released from active duty for the convenience of the government as a result of a reduction in force as determined by the Secretary concerned in accordance with regulations prescribed by the Secretary of Defense.

(4) Before completing the service he or she was obligated to serve on December 1, 1988, the individual must complete the requirements of a secondary school diploma (or an equivalency certificate).

(5) Upon completion of the period of service he or she was obligated to serve on December 1, 1988, the individual must—

(i) Be discharged from service with an honorable discharge, be placed on the retired list, be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or be placed on the temporary disability retired list; or

(ii) Continue on active duty; or

(iii) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(Authority: 38 U.S.C. 1418) (Nov. 18, 1988)

* * * * *

5. In § 21.7042 the title of newly redesignated paragraph (a), and newly redesignated paragraphs (e)(1)(ii), (e)(2), (f)(1), and (g)(2) through (g)(3) are revised and paragraph (g)(4) is added to read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(e) *Eligibility to receive educational assistance while serving a qualifying period of active duty.*

(1) * * *

(ii) Has completed the requirements of a secondary school diploma (or an equivalency certificate) before beginning training;

* * * * *

(2) Subject to paragraph (e)(3) of this section, VA will consider an individual to have met the requirements of paragraph (b) of this section when he or she—

(i) Has met the active duty requirements of paragraph (b) of this section;

(ii) Is committed to serve 4 years in the Selected Reserve; and

(iii) Has completed the requirements of a secondary school diploma (or an equivalency certificate) before beginning the training for which he or she wishes to receive educational assistance.

* * * * *

(f) *Restrictions on establishing eligibility.* (1) An individual who, after June 30, 1985, first becomes a member of the Armed Forces, may elect not to receive educational assistance under 38 U.S.C. ch. 30. This election must be made at the time the individual initially enters on active duty as a member of the Armed Forces. An individual who makes such an election is not eligible for educational assistance under 38 U.S.C. ch. 30 unless he or she withdraws the election as provided in paragraph (c) of this section.

(Authority: 38 U.S.C. 1418; Pub. L. 100-689) (Nov. 18, 1988)

* * * * *

(g) * * *

(2) The basic pay of an individual who withdraws an election not to receive educational assistance under 38 U.S.C. ch. 30 as described in paragraph (c) of this section shall be reduced by

(i) $1,200, or

(ii) In the case of an individual whose discharge or release from active duty prevents the reduction of the individual's basic pay by $1,200, an amount less than $1,200.

(3) The basic pay of any individual who makes the election described in paragraph (e)(1) of this section and who does not withdraw that election will not be subject to the reduction described in either paragraph (g)(1) or paragraph (g)(2) of this section.

(4) If through administrative error or other reason the basic pay of an individual described in paragraph (a), (b), (c) or (d) of this section is not reduced as provided in paragraph (g) (1) or (2) of this section, the failure to make the reduction will have no effect on his or her eligibility, but may negate or reduce the entitlement to educational assistance under 38 U.S.C. ch. 30 determined as provided in § 21.7073 for an individual described in paragraph (c) of this section.

(Authority: 38 U.S.C. 1411, 1412, 1418; Pub. L. 98-525, Pub. L. 100-689) (Nov. 18, 1988)

6. In § 21.7044 paragraphs (a)(3), (a)(4), (b)(3) through (b)(9), the title of paragraph (c), paragraph (c)(1)(ii) through (iv), (c)(2) introductory text and (c)(2)(iii) are revised and paragraphs (b)(10) and (b)(11) are added to read as follows:

§ 21.7044 Persons with 38 U.S.C. chapter 34 eligibility.

(a) * * *

(3) The individual must either—

(i) Complete the requirements of a secondary school diploma or an equivalency certificate before January 1, 1990, or

(ii) Successfully complete the equivalent of 12 semester hours in a program leading to a standard college degree. This may be done at any time.

(4) After June 30, 1985—

(i) The individual must serve at least three years continuous active duty in the Armed Forces, or

(ii) The individual must be discharged or released from active duty—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted the individual's service on active duty and which VA determines is not service connected, or

(C) Under 10 U.S.C. 1173 (Hardship discharge), or

(D) For the convenience of the Government provided the individual completes at least 30 months of active duty, or

(E) Involuntarily for convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 1411(a)(1)(B))

* * * * *

(b) * * *

(3) The individual must either—

(i) Complete the requirements for a secondary school diploma (or an equivalency certificate) before completing the service requirements of this paragraph; or

(ii) Successfully complete the equivalent of 12 semester hours in a program of education leading to a standard college degree. This may be done at any time.

(4) The individual must have been on active duty on October 19, 1984, and have served without a break in service from October 19, 1984 through June 30, 1985.

(5) After June 30, 1985, the individual must—

(i) Except as provided in paragraph (b)(6) of this section, serve at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service, and

(ii) Except as provided in paragraph (b)(7) of this section, after completion of this active duty service, the individual must serve at least four continuous years service in the Selected Reserve, during which the individual must participate satisfactorily in training as prescribed by the Secretary concerned.

(Authority: 38 U.S.C. 1412(b))

(6) The individual also must—

(i) Be discharged from service with an honorable discharge, or

(ii) Be placed on the retired list, or

(iii) Be transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service, or

(iv) Continue on active duty, or

(v) Continue in the Selected Reserve.

(7) An individual is exempt from serving two years on active duty as provided in paragraph (b)(3) of this section when he or she is discharged or released during those two years—

(i) For a service-connected disability, or

(ii) For a medical condition which preexisted such service on active duty and which VA determines is not service-connected, or

(iii) Under 10 U.S.C. 1173 (hardship discharge), or

(iv) For convenience of the government provided the individual completes at least 20 months of active duty, or

(v) Involuntarily, for the convenience of the Government as a result of a reduction in force as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(8) An individual is exempt from serving four years in the Selected Reserve as provided in paragraph (b)(5) of this section when—

(i) After completion of the active duty required by this paragraph he or she serves a continuous period of service in the Selected Reserve, and

(A) Is discharged for a service-connected disability, or

(B) Is discharged for a medical condition which preexisted the individual's becoming a member of the Selected Reserve and which VA determines is not service connected, or

(C) Is discharged for hardship, or

(D) Is discharged or released after a minimum of 30 months service in the Selected Reserve for convenience of the Government, or

(E) Is discharged involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(ii) The individual is obligated at the beginning of the two years active duty described in paragraph (b)(3) of this section to serve the four years in the Selected Reserve as described in paragraph (b)(5) of this section, and during the two years of active duty service he or she is discharged or released from active duty in the Armed Forces—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted that period of active duty and which VA determines is not service connected.

(9) A veteran who has completed the active duty service required by this paragraph and has made a commitment (as determined by the Secretary concerned) to serve four continuous years in the Selected Reserve may pursue a program of education with basic educational assistance while performing the required Selected Reserve service.

(10) For the purpose of determining continuity of Selected Reserve service, the Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even through he or she—

(i) Is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy, or

(ii) Is not attached to a unit of the Selected Reserve for any reason prescribed by the Secretary concerned by regulation other than those stated in subdivision (i) of this subparagraph.

(11) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in paragraph (b) (9) or (10) of this section shall be binding upon VA.

(Authority: 38 U.S.C. 1411, 1412, 1418; Pub. L. 98-525, Pub. L. 100-689) (Jul. 1, 1985)

(c) *Eligibility to receive educational assistance while serving a qualifying period of active duty.*

(1) * * *

(ii) Completes the requirements of a secondary school diploma (or an equivalency certificate) before January 1, 1990, or successfully completes the equivalent of 12 semester hours in a program of education leading to a standard college degree.

(iii) Serves at least two years of continuous active duty in the Armed Forces; and

(iv) Remains on active duty.

(2) Subject to paragraph (c)(3) of this section, VA will consider an individual to have met the requirements of this section when he or she—

(Authority: 38 U.S.C. 1411, 1412, 1418; Pub. L. 100-689) (Nov. 18, 1988)

* * * * *

(iii) Has completed the requirements of a secondary school diploma (or equivalency certificate) or successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree before beginning the training for which he or she wishes to receive educational assistance.

(Authority: 38 U.S.C. 1411, 1412, 1418; Pub. L. 100-689) (Nov. 18, 1988)

* * * * *

7. In § 21.7050 paragraph (a)(2) is revised to read as follows:

§ 21.7050 Ending dates of eligibility.

(a) * * *

(2) 10 years from the date on which the veteran meets the requirement for four years service in the Selected Reserve found in § 21.7042(b) and § 21.7044(b).

(Authority: 38 U.S.C. 1431(a); Pub. L. 98-525, Pub. L. 100-689) (Nov. 18, 1988)

* * * * *

8. In § 21.7051 paragraph (a)(2) is revised to read as follows:

§ 21.7051 Extended period of eligibility.

(a) * * *

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable eligibility period because of a physical or mental disability that did not result from the veteran's willful misconduct. VA will not consider the disabling effects of

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chronic alcoholism to be the result of willful misconduct. (See § 21.7020(b)(38)) It must be clearly established by medical evidence that such a program of education was medically infeasible. VA will not consider a veteran who is disabled for a period of 30 days or less as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the veteran was prevented from enrolling or reenrolling in the chosen program or was forced to discontinue attendance, because of the short disability.

(Authority: 38 U.S.C. 106, 1431(d); Pub. L. 98-525, Pub. L. 100-689) (Nov. 18, 1988)

* * * * *

9. In § 21.7072 introductory text is added and paragraphs (a), (b)(1), and (c)(1) introductory text are revised to read as follows:

§ 21.7072 Entitlement to basic educational assistance.

The provisions of this section apply to all veterans and servicemembers except to those to whom § 21.7073 applies.

(a) *Most individuals are entitled to 36 months of assistance.* Except as provided in paragraphs (b), (c) and (d) and in § 21.7073, a veteran or servicemember who is eligible for basic educational assistance is entitled to 36 months of basic educational assistance (or the equivalent thereof in part-time educational assistance).

(Authority: 38 U.S.C. 1413; Pub. L. 98-525) (Nov. 18, 1988).

(b) * * *

(1) Except as provided in § 21.7073, when the provisions of this subparagraph are met an eligible individual is entitled to one month of basic educational assistance (or equivalent thereof in part-time basic educational assistance) for each month of the individual's continuous active duty service which the individual serves after June 30, 1985, and, in the case of an individual who had no previous eligibility under 38 U.S.C. ch. 34, is part of the individual's initial obligated period of active duty. Except as provided in § 21.7073, VA will apply this subparagraph when the individual—

(i) Establishes eligibility through meeting the eligibility requirements of § 21.7042 or § 21.7044,

(ii) Serves less than 36 months of continuous active duty service after June 30, 1985, (or less than 24 continuous months of a qualifying obligated period of active duty service after June 30, 1985, if his or her initial obligated period of active duty is less than 3 years), and

(iii) Is discharged or released from active duty either—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted the individual's service on active duty and which VA determines is not service connected,

(C) Under 10 U.S.C. 1173 (hardship discharge), or

(D) Involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 1413(a); Pub. L. 100-689) (Jul. 1, 1985) (Oct. 1, 1987).

* * * * *

(c) * * *

(1) Except as provided in § 21.7073, when the provisions of this subparagraph are met, an individual is entitled to one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each month of the individual's active duty service after June 30, 1985, and in the case of an individual who had no previous eligibility under 38 U.S.C. ch. 34, is the individual's initial obligated period of active duty. An individual is entitled to one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each four months served by the individual in the Selected Reserve after June 30, 1985, (other than a month in which the individual serves on active duty). VA will apply the provisions of this subparagraph when the individual—

* * * * *

(Authority: 38 U.S.C. 1413(b); Pub. L. 100-689) (Jul. 1, 1985).

* * * * *

10. Section 21.7073 is added to read as follows:

§ 21.7073 Entitlement for some individuals who establish eligibility during the open period.

(a) *Individuals to whom this section applies.* The provisions of this section apply to a veteran or servicemember who—

(1) Establishes eligibility by withdrawing an election not to enroll as provided in § 21.7042(c);

(2) Has less than $1,200 deducted from his or her military pay; and

(3) Before completing the period of service which the individual was obligated to serve on December 1, 1988, the individual—

(i) Is discharged or released from active duty for—

(A) A service-connected disability, or

(B) A medical condition which preexisted that service, or

(C) Hardship; or

(ii) Is discharged or released from active duty for the convenience of the Government after completing not less than 20 months of that period of service, if that period was less than three years, or 30 months, if that period was at least three years; or

(iii) Is involuntarily discharged or released from active duty for the convenience of the Government as a result of a reduction in force, as determined by the Secretary concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy

(Authority: 38 U.S.C. 1413(c); Pub. L. 100-689) (Nov. 18, 1988).

(b) *Entitlement.* A veteran described in paragraph (a) of this section is entitled to a number of months of basic educational assistance (or equivalent thereof in part-time basic educational assistance) equal to the lesser of—

(1) A number of months determined by multiplying 36 by a fraction the numerator of which is the amount by which the basic pay of the individual has been reduced as provided in § 21.7042(e)(2) and the denominator of which is $1,200, or

(2) The number of months the veteran has served on continuous active duty after June 30, 1985.

(Authority: 38 U.S.C. 1413(c); Pub. L. 100-689) (Nov. 18, 1988)

§ 21.7076 [Amended]

11. In § 21.7076(b)(1) remove the words "VA will make a charge against entitlement" and add, in their place, the words "Except for those pursuing correspondence training, cooperative training or apprenticeship or other on-job training, and those receiving tutorial assistance VA will make a charge against entitlement— (Nov. 18, 1988, Jan. 1, 1989)"

12. In § 21.7076 add paragraphs (d)(7) and (d)(8) to read as follows:

§ 21.7076 Entitlement charges.

* * * * *

(d) * * *

(7) When a veteran is pursuing a program of education through cooperative training, VA will make a charge against entitlement of 80 percent of a month for each month in which the veteran is receiving payment at the rate for cooperative training. If the veteran is pursuing cooperative training for a portion of a month, VA will make a charge against entitlement on the basis of total elapsed time (80 percent of a day for each day of pursuit).

(Authority: 38 U.S.C. 1432(d); Pub. L. 100-689) (Jan. 1, 1989)

(8) If an individual is paid tutorial assistance as provided in § 21.7141, the following provisions will apply.

(i) There will be no charge to entitlement for the first $600 of tutorial assistance paid to an individual under 38 U.S.C. ch. 30.

(ii) VA will make a charge against the period of entitlement of one month for each amount of tutorial assistance paid under 38 U.S.C. ch. 30, to the individual in excess of $600 that is equal to the amount of monthly educational assistance the individual is otherwise eligible to receive for full-time pursuit of a residence course as provided in §§ 21.7136, 21.7137 and 21.7138, as appropriate. When the amount of tutorial assistance paid to the individual in excess of $600 is less than the amount of monthly educational assistance the individual is otherwise eligible to receive, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 1419; Pub. L. 100-689) (Nov. 18, 1988)

13. In § 21.7110 paragraph (a) is revised to read as follows:

§ 21.7110 Selection of a program of education.

(a) *General requirement.* In order to receive educational assistance an individual must either be pursuing an approved program of education or be pursuing refresher or deficiency courses, or other preparatory or special education or training courses necessary to enable the individual to pursue an approved program of education.

(Authority: 38 U.S.C. 1414, 1423, 1434; Pub. L. 98-525, Pub. L. 100-689) (Aug. 15, 1989)

* * * * *

14. In § 21.7122 paragraphs (b) and (e)(5) are revised to read as follows:

§ 21.7122 Courses precluded.

* * * * *

(b) *Courses outside a program of education.* VA will not pay educational assistance for an enrollment in any course which is not part of a veteran's or servicemember's program of education unless the veteran or servicemember is enrolled in refresher courses (including courses which will permit the veteran or servicemember to update knowledge and skills or be instructed in the technological advances which have occurred in the veteran's or servicemember's field of employment), deficiency courses, or other preparatory or special education or training courses necessary to enable the veteran or servicemember to pursue an approved program of education.

(Authority: 38 U.S.C. 1402(3), 1434, 1652(b); Pub. L. 98-525) (Aug. 15, 1989)

* * * * *

(e) * * *

(5) Except as provided in § 21.4252(j), a course from which the veteran or servicemember withdrew without mitigating circumstances, or

(Authority: 38 U.S.C. 1780(a)(4): Pub. L. 100-689) (Jun. 1, 1989)

* * * * *

15. In § 21.7136 paragraphs (a)(3), (b)(3) and (d)(3) are added and paragraph (c)(1) introductory text is revised to read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

(a) * * *

(3) Except as otherwise provided in this section, the monthly rate of basic educational assistance payable to a veteran who is pursuing a cooperative course in $240.

(Authority: 38 U.S.C. 1432(d); Pub. L. 100-689) (Jan. 1, 1989)

* * * * *

(b) * * *

(3) Except as otherwise provided in this section, the monthly rate of basic educational assistance payable is $200 when—

(i) The veteran's initial obligated period of active duty is less than three years,

(ii) The veteran has not served and is not committed to serve in the Selected Reserve for a period of four years, and

(iii) The veteran is pursuing a cooperative course.

(Authority 38 U.S.C. 1432(d); Pub. L. 100-689) (Jan. 1, 1989)

* * * * *

(c) * * *

(1) For individuals other than those pursuing cooperative training, or apprenticeship or other on-job training it may not exceed—

* * * * *

(d) * * *

(3) For individuals pursuing cooperative training, it may not exceed $320 per month.

(Authority: 38 U.S.C. 1432(d))

16. In § 21.7137 paragraphs (a)(1), (d)(1) and (d)(3) are revised to read as follows:

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. chapter 34.

(a) *Minimum rates.* (1) Except as otherwise provided in this section, the monthly rate of basic educational assistance will be the rate taken from the following table.

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$488.00	$524.00	$555.000	$16.00.
¾ time	366.50	393.000	416.000	12.00.
½ time	244.00	262.000	277.50	8.50.
Less than ½ but more than ¼ time.	244.00	See paragraph (b).		
¼ time or less	122.00	See paragraph (b)		
Cooperative	361.60	382.00	401.60	9.20.

(Authority: 38 U.S.C. 1415(c), 1432(d); Pub. L. 98-525, Pub. L. 100-689) (Jan. 1, 1989)

* * * * *

(d) * * *

(1) For individuals other than those pursuing cooperative training, and apprenticeship or other on-job training it may not exceed—

* * * * *

(3) For individuals pursuing cooperative training, it may not exceed $320 per month.

(Authority: 38 U.S.C. 1432(d)) (Jan. 1, 1989)

* * * * *

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17. In § 21.7138 paragraphs (a)(1) and (b)(1) are revised and paragraph (b)(3) is added to read as follows:

§ 21.7138 Rates of supplemental educational assistance.

(a) *Rates for veterans.* (1) Except for a veteran pursuing apprenticeship or other on-job training, the rate of supplemental educational assistance payable to a veteran is at least the rate stated in this table.

Training	Monthly Rate
Full time	$300.
¾ time	225.
½ time	150.
Less than ½ but more than ¼ time.	150 See paragraph (c).
¼ time or less	75 See paragraph (c).
Cooperative	240.

(Authority: 38 U.S.C. 1415(d), 1422, 1432(d); Pub. L. 98-525, Pub. L. 100-689) (Jan. 1, 1989)

* * * * *

(b) *Increase in supplemental educational assistance rates (Kicker).* (1) For an individual other than one pursuing an apprenticeship or other on-job training or cooperative training it may not exceed—

(Authority: 38 U.S.C. 1432(d)) (Jan. 1, 1989)

* * * * *

(3) For an individual pursuing cooperative training, it may not exceed $240 per month.

(Authority: 38 U.S.C. 1422(b), 1432(d)) (Jan. 1, 1989)

* * * * *

18. In § 21.7140 paragraph (g) is added to read as follows:

§ 21.7140 Certifications and release of payments.

* * * * *

(g) *Payments of accrued benefits.* Educational assistance remaining due and unpaid at the date of the servicemember's or veteran's death is payable under the provisions of § 3.1000 of this chapter.

(Authority: 38 U.S.C. 1417(b); Pub. L. 100-689) (Jul. 1, 1985).

19. Section 21.7141 is added to read as follows:

§ 21.7141 Tutorial assistance.

(a) *Entitlement to tutorial assistance.* (1) An individual who is otherwise eligible to receive benefits under the Montgomery GI Bill—Active Duty may receive supplemental monetary assistance to provide tutorial services if he or she—

(i) Is pursuing a post-secondary educational program on a half-time or greater basis at an educational institution, and

(ii) Has a deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education.

(2) This supplemental monetary assistance shall be termed tutorial assistance.

(Authority: 38 U.S.C. 1419, 1692; Pub. L. 100-689) (Nov. 18, 1988).

(b) *Application for tutorial assistance.* The application for tutorial assistance shall be in the form prescribed by the Secretary and shall contain such information as the Secretary may require.

(Authority: 38 U.S.C. 1419, 3001; Pub. L. 100-689) (Nov. 18, 1988).

(c) *Approval of tutorial assistance.* The Department of Veterans Affairs will approve an application for tutorial assistance when—

(1) The educational institution where the individual is pursuing a program of education certifies that—

(i) Individualized tutorial assistance is essential to correct a deficiency in a specified subject or subjects required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of an approved program of education;

(ii) The tutor selected—

(A) Is qualified, and

(B) Is not the parent, spouse, child, brother or sister of the individual; and

(iii) The charges for this assistance do not exceed the customary charges for such tutorial assistance; and

(2) The assistance is furnished on an individual basis.

(Authority: 38 U.S.C. 1419; 1692; Pub. L. 100-689) (Nov. 18, 1988).

(d) *Limitations on tutorial assistance.* (1) The Department of Veterans Affairs will authorize tutorial assistance in an amount not to exceed $100 per month.

(2) Tutorial assistance provided under this section will not exceed a maximum of $1,200.

(Authority: 38 U.S.C. 1419, 1692; Pub. L. 100-689) (Nov. 18, 1988).

20. In § 21.7220 paragraph (b)(9) is revised to read as follows:

§ 21.7220 Course approval.

* * * * *

(9) Section 21.4285—Practical training approved as institutional training. (Jan. 1, 1989).

* * * * *

21. In § 21.7222 paragraphs (f) and (g) are removed, paragraphs (h) and (i) are redesignated (f) and (g) and paragraphs (d) and (e) are revised to read as follows:

§ 21.7222 Courses and enrollments which may not be approved.

* * * * *

(d) A course, or a combination of courses consisting of institutional agricultural courses and concurrent agricultural employment commonly called a farm cooperative course; or

(e) An independent study course which does not lead to a standard college degree.

(Authority: 38 U.S.C. 1434, 1673; Pub. L. 98-525, Pub. L. 99-576, Pub. L. 100-689) (Jan. 1, 1989, Aug. 15, 1989)

* * * * *

22. Paragraph 21.7280 is added to read as follows:

§ 21.7290 Death benefit.

(a) *Overview.* VA will pay a death benefit under 38 U.S.C. ch. 30 when an individual's death meets the criteria of this section; the individual is survived by someone described in this section; and the amount of educational assistance paid or payable to the individual is less than the amount reduced from the individual's basic pay.

(Authority: 38 U.S.C. 1417; Pub. L. 100-689) (Jul. 1, 1985)

(b) *Necessary criteria for death benefit.* VA may pay a death benefit under 38 U.S.C. ch. 30 only if—

(1) The individual dies while on active duty,

(2) The death of the individual is service connected. In determining if the death is service connected, VA will apply the provisions of § 3.312 of this chapter; and

(3) Either—

(i) At the time of the individual's death he or she is entitled to basic educational assistance through having met the eligibility requirements of § 21.7042, or

(ii) At the time of the individual's death he or she is on active duty with the Armed Forces and but for the minimum service requirements of § 21.7042(a)(2) of § 21.7042(b) (3) or (4) would be entitled to basic educational assistance through having met the eligibility requirements of § 21.7042.

(Authority: 38 U.S.C. 1417(a); Pub. L. 100-689) (Jul. 1, 1985)

(c) *Payee.* (1) VA shall pay a death benefit to the living person or persons in the order listed in this paragraph.

(i) The beneficiary or beneficiaries designated by the individual under the individual's Servicemen's Group Life Insurance Policy,

(ii) The surviving spouse of the individual,

(iii) The surviving child or children of the individual, in equal shares,

(iv) The surviving parent or parents of the individual in equal shares.

(2) If none of the persons listed in this paragraph is living, VA shall not pay a death benefit under this section.

(Authority: 38 U.S.C. 1417(a)(2); Pub. L. 100-689) (Jul. 1, 1985)

(d) *Amount of death benefit.* (1) The amount of any payment made under this section shall be equal to—

(i) The amount reduced from the individual's basic pay as provided in § 21.7042(f) less—

(ii) The total of—

(A) The amount of educational assistance that has been paid to the individual under 38 U.S.C. ch. 30, and

(B) The amount of accrued benefits paid or payable with respect to the individual.

(2) VA shall pay no death benefit when the amount determined by subparagraph (1) of this paragraph is zero or less than zero.

(Authority: 38 U.S.C. 1417 (b) and (c); Pub. L. 100-689) (Jul. 1, 1985)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3924-8]

Approval and Promulgation of Implementation Plans States of Arkansas, Louisiana, and New Mexico; Revisions to the States' Prevention of Significant Deterioration Rules for Nitrogen Dioxide Increment Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This Federal Register notice approves several revisions to the State Implementation Plans (SIP) submitted by the States of Arkansas, Louisiana, and New Mexico for incorporating the nitrogen dioxide (NO_2) increment standards. These revisions are in response to the requirements of the Prevention of Significant Deterioration (PSD) rules for NO_2 increment standards that were promulgated by the EPA in the Federal Register notice of October 17, 1988 (53 FR 40656).

Today's notice is published to advise the public that EPA is approving the Arkansas, Louisiana, and New Mexico SIP revisions for the PSD nitrogen dioxide increment standards. The rationale for this approval is contained in this notice.

DATES: This action will be effective on July 1, 1991, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the States' submittals and other information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

For all three States: Planning Section, Air Programs Branch, Air, Pesticides, and Toxics Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone: (214) 655-7214.

For Arkansas: Division of Air Pollution Control, Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209, telephone: (501) 562-7444.

For Louisiana: Air Quality Division, Louisiana Department of Environmental Quality, 625 North 4th Avenue, Baton Rouge, Louisiana 70804, telephone: (504) 342-1206.

For New Mexico: Air Quality Bureau, New Mexico Environmental Improvement Division, 1190 St. Francis Drive, Santa Fe, New Mexico 87503, Telephone: (505) 827-0042.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E.; Planning Section, Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone: (214) 655-7214.

SUPPLEMENTARY INFORMATION:

Background

The EPA promulgated the nitrogen dioxide increments in the Federal Register notice of October 17, 1988. The increment standards were promulgated for class I, II, and III as 2.5, 25.0 and 50.0 $\mu g/m^3$ (based on annual averaging time), respectively. The PSD increments for nitrogen dioxide were developed pursuant to the provision of section 166 of the Act. Specifically, this section requires the adoption of PSD regulations for nitrogen oxides [as well as for other pollutants] to provide "numerical measures against which permit applications may be evaluated, a framework for stimulating improved control technology, [and] protection of air quality values." Further, section 166 requires that the regulation include "specific measures at least as effective as" the existing increments established by Congress in section 163 of the Act for particulate matter and sulfur dioxide in meeting the goals and purposes of the PSD program.

The section 166 regulations for nitrogen oxides promulgated are based on an ambient increment requirement for nitrogen dioxide as the numerical measure of significant deterioration in air quality. The nitrogen dioxide increments follow the pattern enacted by Congress for the particulate matter and sulfur dioxide increments. These increments establish maximum increases in ambient air concentrations of nitrogen dioxide (expressed in micrograms per cubic meter ($\mu g/m^3$)) allowed in a PSD area over a baseline concentration. These increments are applicable to both stationary and mobile sources, and are implemented through a series of permit review requirements that are already in place for major new stationary sources or major modifications, as defined in 40 CFR parts 51 and 52. The States are required to adopt these rules and submit a SIP revision to the EPA for approval.

Evaluation of States Submissions

The PSD NO_2 SIP submittals for states of Arkansas, Louisiana, and New Mexico are discussed individually and have been reviewed for their adequacy and consistency with the requirements of Federal regulations (40 CFR 51, § 51.166).

Arkansas

The State of Arkansas has an existing approved SIP for implementing and enforcing the PSD program in the State (except for Indian lands). The EPA initially approved the State PSD SIP on February 16, 1982. The Arkansas Department of Air Pollution Control and Ecology (the agency responsible for air quality planning and control) adopted the Federal PSD regulations (40 CFR 52.21) by incorporation by reference. The last PSD SIP revision (54 FR 18494) contained the provisions for particulate matter (PM_{10}).

The State has revised its PSD SIP to incorporate the requirements and revisions which were promulgated by the EPA on October 17, 1988, for the PSD NO_2 increment standards. The Arkansas Department of Air Pollution Control and Ecology has effectuated the Federal NO_2 increment standards in its SIP by adopting the Federal regulations (40 CFR

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52.21), as in effect on June 28, 1988, by reference. By revising the PSD SIP adoption date, the State will have authority to implement and enforce all of the Federal PSD rules, including the PSD NO_2 increments, in the State as in effect through June 28, 1988.

The Arkansas Commission on Pollution Control and Ecology adopted the PSD NO_2 SIP revision on May 25, 1990, and the Governor submitted this revision to the EPA on June 19, 1990. The State has conducted appropriate public participation in accordance with the requirements of 40 CFR 51.102, and received no comment from the public. Based on evaluation of the documents submitted by the Governor, EPA has determined that the State of Arkansas has appropriately incorporated the PSD NO_2 rules into the State regulations and has authority to implement the PSD program as well as issuance and enforcement of the PSD permits in Arkansas.

Louisiana

The State of Louisiana has an existing approved SIP for implementing and enforcing the PSD program in the State (except for Indian lands). The EPA initially approved the State PSD SIP on April 24, 1987. This approval was based on review of a set of State generated regulations (LAC 33:Part III. Chapter 5. Permit Procedures; § 509. Prevention of Significant Deterioration) which EPA determined to be equivalent to the Federal PSD regulations in 40 CFR 52.21 and consistent with the requirements of 40 CFR 51.166. The last PSD SIP revision (54 FR 25449) contained the provisions for particulate matter (PM_{10}).

In response to the requirements of the PSD NO_2 increment rules (53 FR 40656), the State has revised the affected sections of its PSD SIP to incorporate the provisions of the NO_2 increments promulgated by the EPA on October 17, 1988. The affected sections of the State regulations (Federal regulations are given in the bracket for reference) are: Section 509(B) (Baseline Area) (40 CFR 51.166(b)(15)(i)), section 509(B)(Baseline Concentration (40 CFR 51.166(b)(13)), section 509(B)(Baseline Date) (40 CFR 51.166(b)(14)), section 509(B)(Net Emission Increases) (40 CFR 51.166(b)(3)(iv)), section 509(B) (Ambient Air Increment) (40 CFR 51.166(c)), and section 509(P)(4) (40 CFR 51.166 (p)(4)). The State has revised these sections to incorporate the requirements of Federal PSD NO_2 provisions into the State regulations.

The Secretary of Louisiana Department of Environmental Quality (LDEQ) amended and approved the foregoing revisions to LAC 33.III. 509 on July 20, 1990. The Governor of Louisiana submitted this SIP revision to the EPA on October 26, 1990, for approval. The State has conducted appropriate public participation in accordance with the requirements of 40 CFR 52.102, and the LDEQ received two oral and no written comments. The comments were non-controversial and the LDEQ responded to these adequately. Based on the documents submitted by the Governor and review of the State regulations, EPA has determined that the State of Louisiana has appropriately revised the State PSD regulations for incorporating the Federal NO_2 increment provisions.

New Mexico

The State of New Mexico has an existing approved SIP for implementing and enforcing the PSD program in the State (except for Bernalillo County and Indiana lands). The EPA initially approved the New Mexico PSD SIP on February 27, 1987. This approval was based on review of a set of State generated regulations (New Mexico Air Quality Control Regulation (AQCR) 707—Permits, Prevention of Significant Deterioration (PSD)) which EPA determined to be equivalent to the Federal PSD regulations in 40 CFR 52.21 and consistent with the requirements of 40 CFR 51.166. The last PSD SIP revision (55 FR 34013) contained the provisions for particulate matter (PM_{10}).

In response to the requirements of the PSD NO_2 increment rules (53 FR 40656), the State has revised the affected sections of its PSD regulations to incorporate the provisions of the NO_2 increments promulgated by the EPA on October 17, 1988. The affected sections of the State regulations (Federal regulations are given in the bracket for reference) are: AQCR 707(O)(4)(5) and Table 5 (40 CFR 51.166(p)(4)), AQCR 707(P)(8)(40 CFR 51.166(b)(15)(i)), AQCR 707(P)(8)(40 CFR 51.166(b)(13)), AQCR 707(P)(25)(40 CFR 51.166(6)(14)), AQCR 707(P)(28)(40 CFR 51.166(b)(14)), AQCR 707(P)(31)(40 CFR 51.166(b)(3)(iv), AQCR 707 Table 4. Allowable PSD Increment (40 CFR 51.166(c)), AQCR 707(P)(21)(40 CFR 51.166(b)(28)), and AQCR 707(P)(28)(e)(40 CFR 51.166(b)(1)(iii)). The last two sections listed above were revised to clarity and enhance the State regulations, and they are not subject to the PSD NO_2 requirements, however, they are consistent with 40 CFR 51.166.

The New Mexico Environmental Improvement Board adopted the revisions cited in this notice on March 9, 1990. The PSD regulation was filed with the State Records Center on May 29, 1990, and became effective on June 28, 1990. The Governor of New Mexico submitted this SIP revision to the EPA on July 16, 1990, for approval. The State has conducted appropriate public participation in accordance with the requirements of 40 CFR 51.102, and the State received two public comments. Based on the documents submitted by the Governor and review of the State regulations, EPA has determined that the State of New Mexico has appropriately revised and adopted the State PSD regulations for incorporating the Federal NO_2 increment provisions.

Final Action

The EPA has reviewed the PSD NO_2 SIP revision submittals from the States of Arkansas, Louisiana, and New Mexico, and determined that these States have adequately revised their existing PSD SIPs to incorporate the provisions of the NO_2 increments promulgated by the EPA on October 17, 1988 (53 FR 40656). The revised State regulations are: (1) Prevention of Significant Deterioration Supplement—Arkansas Plan of Implementation for Air Pollution Control for the State of Arkansas; (2) LAC 33: Part III. Chapter 5. Permit Procedures section 509. Prevention of Significant Deterioration for the State of Louisiana; and (3) New Mexico AQCR 707—Permits, Prevention of Significant Deterioration for the State of New Mexico. In addition, each State has conducted appropriate public participation in accordance with the requirements of 40 CFR 51.102. Therefore, the EPA is approving the revised States' PSD regulations as cited above for the States of Arkansas, Louisiana, and New Mexico. The actions approved in this notice are applicable to the entire States of Arkansas and Louisiana outside the boundaries of Indian lands. In the State of New Mexico, the approved action is applicable to the entire State outside the boundaries of Indian lands and Bernalillo County. At present, Bernalillo County does not have an approved PSD SIP and the Federal implementation plan is applicable in this area. The applications and inquiries concerning permits and PSD program, outside of Indian lands and Bernalillo County (New Mexico), should be directed to each State at the addresses listed earlier in this notice. The application and questions concerning Indian lands and Bernalillo County (New Mexico) should be directly addressed to the EPA Region 6 Air Programs Branch at the address given in this notice.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective

60 days from the date of publication unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on July 1, 1991.

The EPA has reviewed these requests for revision of the federally approved State Implementation Plans for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirement.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 until April 1991.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 1, 1991. Filing a petition for reconsideration by the Administrator for this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on substantial number of small entities (See 46 FR 8709).

Incorporation by reference of the Arkansas, Louisiana, and New Mexico Implementation Plans were approved by the Director of the Federal Register on July 1, 1982.

This rulemaking is issued under the authority of section 110 of the Clean Air Act, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Air Pollution Control, Nitrogen Oxides, and Nitrogen Dioxide.

Dated: April 12, 1991.

Joe D. Winkle,

Acting Regional Administrator.

PART 52—[AMENDED]

Title 40 part 52 of the code of Federal Regulations is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: U.S.C. 7401–7642.

Subpart E—Arkansas

2. Section 52.170 is amended by adding paragraph (c)(28) to read as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

(28) Revisions to the Arkansas State Implementation Plan for Prevention of Significant Deterioration (PSD) of Air Quality Supplement Arkansas Plan of Implementation for Air Pollution Control (PSD nitrogen dioxide increments), as adopted on May 25, 1990, by the Arkansas Commission on Pollution Control and Ecology, were submitted by the Governor on June 19, 1990.

(i) Incorporation by reference.

(A) Prevention of Significant Deterioration Supplement Arkansas Plan of Implementation For Air Pollution Control as amended on May 25, 1990.

(ii) Additional Material—None.

3. Section 52.181 is revised to read as follows:

§ 52.181 Significant deterioration of air quality.

(a) The plan submitted by the Governor of Arkansas on April 23, 1981 [as adopted by the Arkansas Commission on Pollution Control and Ecology (ACPCE) on April 10, 1981], June 3, 1988 (as revised and adopted by the ACPCE on March 25, 1988), and June 19, 1990 (as revised and adopted by the ACPCE on May 25, 1990), Prevention of Significant Deterioration (PSD) Supplement Arkansas Plan of Implementation For Air Pollution Control, is approved as meeting the requirements of Part C, Clean Air Act for preventing significant deterioration of air quality.

(b) The requirements of sections 160 through 165 of the Clean Air Act are not met for Federally designed Indian lands. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated by reference and made a part of the applicable implementation plan and are applicable to sources located on land under the control of Indian governing bodies.

Subpart T—Louisiana

4. Section 52.970 is amended by adding paragraph (c)(57) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(57) Revisions to the Louisiana State Implementation Plan for LAC:33:III: Section 509 Prevention of Significant Deterioration (PSD) sections (509)(B) (Baseline Area) (1), 509(B) (Baseline Area) (2), 509(B) (Baseline Concentration) (1), (509)(B) (Baseline Concentration) (1)(b), 509(B) (Baseline Concentration) (2)(a), 509(B) (Baseline Concentration) (2)(b), 509(B) (Baseline Date) (1)(a), 509(B) (Baseline Date) (1)(b), 509(B) (Baseline Date) (2), 509(B) (Baseline Date) (2)(a), 509(B) (Baseline Date) (2)(b), 509(B) (Net Emission Increases) (4), 509(D), and 509(P)(4), as adopted by the Secretary of Louisiana Department of Environmental Quality (LDEQ) on July 20, 1990, were submitted by the Governor on October 26, 1990.

(i) Incorporation by reference.

(A) LAC:33:III: Section 509 Prevention of Significant Deterioration Sections (509)(B) (Baseline Area) (1), 509(B) (Baseline Area) (2), 509(B) (Baseline Concentration) (1)(a), (509)(B) (Baseline Concentration) (1)(b), 509(B) (Baseline Concentration) (2)(a), 509(B) (Baseline Concentration) (2)(b), 509(B) (Baseline Date (1)(a), 509(B) (Baseline Date) (1)(b), 509(B) (Baseline Date) (2), 509(B) (Baseline Date) (2)(a), 509(B) (Baseline Date) (2)(b), 509(B) (Net Emission Increase) (4), 509(D), and 509(P)(4) as amended on July 20, 1990.

(ii) Additional Material—None.

5. Section 52.986 is revised to read as follows:

§ 52.986 Significant deterioration of air quality.

(a) The plan submitted by the Governor of Louisiana on August 14, 1984 (as adopted by the Secretary of Louisiana Department of Environmental Quality (LDEQ) on May 23, 1985), July 26, 1988 (as revised and adopted by the LDEQ on May 5, 1988), and October 26, 1990 (as revised and adopted by the LDEQ on July 20, 1990), LAC:33:III: § 509 Prevention of Significant Deterioration (PSD) and its Supplement documents, is approved as meeting the requirements of Part C, Clean Air Act for preventing significant deterioration of air quality.

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(b) The requirements of Section 160 through 165 of the Clean Air Act are not met for Federally designated Indian lands since the plan (specifically LAC:33:III:509.A.1) excludes all Federally recognized Indian lands from the provisions of this regulation. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated by reference and made a part of the applicable implementation plan, and are applicable to sources located on land under the control of Indian governing bodies.

Subpart GG—New Mexico

6. Section 52.1620 is amended by adding paragraph (c)(46) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(46) Revisions to the New Mexico State Implementation Plan for Air Quality Control Regulation (AQCR) 707—Permits, Prevention of Significant Deterioration (PSD) (for PSD nitrogen dioxide increments) Sections O(4), P(7) through P(41), Table 4, and Table 5, as adopted by the New Mexico Environmental Improvement Board (NMEIB) on March 9, 1990, and filed with State Records Center on May 29, 1990, were submitted by the Governor on July 16, 1990.

(i) Incorporation by reference.

(A) AQCR 707—Permits, Prevention of Significant Deterioration (PSD) sections O(4), P(7) through P(41), Table 4, and Table 5, as filed with State Records Center on May 29, 1990.

(ii) Additional Material—None.

7. Section 52.1634 is revised to read as follows:

§ 52.1634 Significant deterioration of air quality.

(a) The plan submitted by the Governor of New Mexico on February 21, 1984 (as adopted by the New Mexico Environmental Improvement Board (NMEIB) on January 13, 1984), August 19, 1988 (as revised and adopted by the NMEIB on July 8, 1988), and July 16, 1990 (as revised and adopted by the NMEIB on March 9, 1990), Air Quality Control Regulation 707—Permits, Prevention of Significant Deterioration (PSD) and its Supplemental document, is approved as meeting the requirements of part C, Clean Air Act for preventing significant deterioration of air quality.

(b) The requirements of section 160 through 165 of the Clean Air Act are not met for Federally designated Indian lands. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated by reference and made a part of the applicable implementation plan, and are applicable to sources located on land under the control of Indian governing bodies.

(c) The plan submitted by the Governor in (a) for Prevention of Significant Deterioration is not applicable to Bernalillo County. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated by reference and made a part of the applicable implementation plan and are applicable to sources located within the boundaries of Bernalillo County (including the City of Albuquerque).

[FR Doc. 91-10271 Filed 5-1-91; 8:45 am]

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40 CFR Part 52

Approval and Promulgation of Implementation Plans North Carolina; Forsyth County, Western North Carolina, and Mecklenburg County Regulations

[NC-045; FRL-3917-6]

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The State of North Carolina has four federally-funded air pollution control agencies. One of these is a State agency and the other three are local programs which operate in major metropolitan areas of the State. All four agencies have been authorized by the North Carolina Environmental Management Commission (EMC) to run independent and comprehensive air pollution programs in their respective jurisdictions. Each local agency is responsible for adopting and enforcing its own regulations, as well as, for issuing source permits. The regulations adopted by the local programs are required (by State law) to be comparable and consistent with those adopted by the State agency. To date, EPA has approved only the State's version of the North Carolina air quality regulations. Since EPA requires local programs implementing a SIP to have the legal authority to do so, and since the local programs can only enforce the rules they adopt, the State submitted the local programs' rules to EPA for approval as part of the SIP on July 14, 1990. Today's action in no way negates any SIP calls or overrides any SIP deficiencies.

DATES: This action will be effective July 1, 1991 unless notice is recieved within 30 days that adverse or critical comments will be submitted. If the effective date is delayed timely notice will be published in the Federal Register.

ADDRESSES: Comments may be submitted to Rosalyn D. Hughes at the EPA Regional Office address listed below. Copies of the documents relevant to this action are available for public inspection at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611

Forsyth County Environmental Affairs Department, 537 North Spruce Street, Winston-Salem, North Carolina 27101

Mecklenburg County Department of Environmental Protection, 1200 Blythe Boulevard, Charlotte, North Carolina 28203

Western North Carolina Regional Air Pollution, Control Agency, Buncombe County Courthouse, Asheville, North Carolina 28801-3569

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Rosalyn D. Hughes of the EPA Region IV Air Programs Branch at the above address and telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: The State of North Carolina has four federally-funded air pollution control agencies. One of these is a State agency and the other three are local programs which operate in major metropolitan areas of the State. All four agencies have been authorized by the North Carolina Environmental Management Commission (EMC) to run independent and comprehensive air pollution programs in their respective jurisdiction. Each local agency is responsible for adopting and enforcing its own regulations, as well as for issuing source permits. The regulations adopted by the local programs are required (by State law) to be comparable and consistent with those adopted by the State agency. To date, EPA has approved only the State's version of the North Carolina air quality regulations. Since EPA requires local programs implementing a SIP to have the legal authority to do so, and since the local programs can only enforce the rules they adopt, the State submitted the local programs' rules to EPA for approval as part of the SIP. Deficiencies in the North Carolina

regulations that are in the local regulations must be addressed at another time.

On June 14, 1990, the North Carolina Environmental Managment Commission (EMC) submitted regulations for Forsyth County, Mecklenburg County, and Western North Carolina as part of the North Carolina SIP to EPA for review and approval. EPA found the Forsyth County rules and regulations to be equivalent to but not less stringent than the federally approved title 15 of the North Carolina Administrative Code (State regulations for North Carolina).

The rules and regulations are being approved so that they become federally-enforceable and now are incorporated into the State Implementation Plan for the State of North Carolina. Forsyth County will follow the air quality control strategy contained in the existing North Carolina SIP. This strategy has been successful in Forsyth County as that area of the State (Winston-Salem) is classified as attainment for all National Ambient Air Quality Standards (NAAQS). However, on November 7, 1988, the Winston-Salem area received an ozone SIP call.

The Western North Carolina portion of the SIP contains regulations which apply to sources in Buncombe and Haywood Counties (Asheville). All of the rules are consistent with the federally-approved SIP for the State of North Carolina and the requirements of the Clean Air Act, except for Rule 1-139, Utility Boilers. EPA disapproved the comparable State regulation that dealt with utility boilers in Buncombe and Haywood Counties on June 16, 1988 (53 FR 22485); therefore, the Western North Carolina Rule 1-139 is not approvable. Western North Carolina is also relying on the State's existing air quality control strategy. This is acceptable because Buncombe and Haywood counties are currently attaining all NAAQS.

The Mecklenburg County rules and regulations are consistent with the federally-approved SIP for the State of North Carolina (Title 15 North Carolina Administrative Code) and the Clean Air Act. Mecklenburg County is, like the other agencies in North Carolina, relying on the State's existing air quality control strategy. This is acceptable because Mecklenburg County is currently attainment for all the NAAQS, except ozone. A SIP call which addressed ozone nonattainment was issued in May 1988.

Several of the local programs' regulations require additional explanation. Each agency has a regulation entitled, Sulfur Dioxide Emissions From Fuel Burning Installations. This regulation is equivalent to the federally approved State regulations, but it does not apply to all the sources in the local programs' jurisdiction. Three sources, R.J. Reynolds-Whitaker Park in Forsyth County and BASF (formerly American Enka) and Dayco Southern in Western North Carolina, are not affected by this regulation. Those sources were on a list of sources (47 FR 54994) which were required to remain at 1.6 lb SO_2/million BTU (mmBTU) unless they could demonstrate that the (NAAQS) would be protected at the higher limit (2.3 lb SO_2/mmBTU). The regulation, Sulfur Dioxide Emissions From Fuel Burning Installations, is approvable for all SO_2 sources in Mecklenburg County, Forsyth County, and Western North Carolina, except R.J. Reynolds-Whitaker Park, BASF (formerly American Enka), and Dayco Southern. R.J. Reynolds-Whitaker Park, BASF (formerly American Enka), and Dayco Southern will be subject to the 1.6 lb SO_2/mmBTU limit previously approved in the SIP.

Each agency has regulations entitled New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants. These regulations are technology and health/risk based standards, respectively, rather than emission limits relied upon to attain and maintain the NAAQS which are promulgated under sections 111 and 112 of the Clean Air Act. Since these regulations are not required under section 110 of the Clean Air Act, State Implementation Plans, EPA will not take action on Forsyth County regulations 3-158 and 3-159, Western North Carolina regulations 1-156 and 1-159, and Mecklenburg County regulations 2.0524 and 2.0525.

The local agencies have adopted regulations which were not required under section 110 of the Clean Air Act, but under section 111(d). The local agencies do not have any sources in their jurisdiction to which these regulations apply. Therefore, no action will be taken on the following regulations:

Emissions From Plants Producing Sulfuric Acid

Forsyth County Regulation 3-152(2)
Western North Carolina Regulation 1-152(2)

Total Reduced Sulfur From Kraft Pulp Mills

Forsyth County Regulation 3-155
Mecklenburg County Regulation 2.0528

Particulate Matter and Reduced Sulfur Emission From Pulp and Paper Mills

Western North Carolina 1-144

Fluoride Emissions From Primary Aluminum Reduction Plants

Forsyth County Regulation 3-169
Mecklenburg County Regulation 2.0529

Also, EPA will not take any action on the following regulations because they are not federally approved for the State:

Control of Mercury Emissions

Forsyth County Regulation 3-169
Mecklenburg County Regulation 2.0537

Fluoride Emissions From Phosphate Fertilizer Industry

Mecklenburg County Regulation 2.0534

The ozone SIP calls for Forsyth County in November 1989 and for Mecklenburg County in May 1988 do not affect the approvability of those local programs' regulations that this notice addresses. Also the approval of those local programs' regulations does not negate the SIP calls.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective July 1, 1991.

Final Action

EPA is approving the material submitted on June 14, 1990 as the Forsyth County portion of the North Carolina SIP, except 3-152(2), 3-155, 3-158, 3-159, 3-169, and 3-169; the Western North Carolina portion of the North Carolina SIP, except 1-137(g), 1-139, 1-144 (a)-(i), 1-152(2), 1-156 and 1-159; and the Mecklenburg County portion of the North Carolina SIP, except 2.0524, 2.0525, 2.0528, 2.0529, 2.0534, and 2.0537.

To the extent EPA has issued any SIP calls to the local programs with respect to the adequacy of any rules subject to this action, EPA will continue to require the local programs to correct any such rule deficiencies despite EPA's approval of this submittal.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

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circuit by July 1, 1991. This action may not be challenged later in proceedings to enforce its requirements.

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

The Agency has reviewed this request for revisions of the federally-approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. This Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting, recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 18, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of Chapter I, title 40, Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(65) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(65) Revisions to the North Carolina SIP which include the Forsyth County, Western North Carolina and Mecklenburg County regulations which were submitted on June 14, 1990.

(i) Incorporation by reference.

(A) The entire set of Forsyth County Air Quality Control Code regulations effective December 19, 1988, except for section 3–152(2), 3–155, 3–158, 3–159, 3–160 and 3–169.

(B) The entire set of Western North Carolina regulations effective March 13, 1985 and November 9, 1988, except for Sections 1–137(g), 1–139, 1–144, 1–152(2), 1–158 and 1–159.

(C) The entire set of Mecklenburg County regulations effective April 3, 1989, except for Sections 2.0517(2), 2.0524, 2.0525, 2.0528, 2.0529, 2.0534, 2.0537.

(ii) Additional material—none.

[FR Doc. 91–10288 Filed 5–1–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 900941–0342]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restriction, and request for comments.

SUMMARY: NOAA announces reductions in the trip limits for widow and yellowtail rockfish caught in the groundfish fishery off Washington, Oregon, and California. These actions are authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The trip limits are designed to keep landings within the harvest guidelines for these species while extending the fishery as long as possible during the year and minimizing discards.

EFFECTIVE DATE: April 24, 1991 through December 31, 1991, unless modified, superseded, or rescinded. Comments will be accepted through May 17, 1991.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206–526–6140; or Rodney R. McInnis (Southwest Region, NMFS) 213–514–6199.

SUPPLEMENTARY INFORMATION: Amendment 4 to the Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on November 15, 1990 and final implementing regulations were published at 56 FR 736 on January 8, 1991 (correction 56 FR 13365), April 1, 1991). The amended FMP provides for rapid changes to specific management measures if they first have been designated as "routine." This designation means that the identified management measure may be implemented and adjusted for a specified species or species groups and gear type after consideration at a single meeting of the Pacific Fishery Management Council (Council) as long as the purpose of the limit is the same as originally established when the measure was designated as routine. Trip landing and frequency limits for the *Sebastes* complex (including yellowtail rockfish), and widow rockfish are among those management measures designated as routine (56 FR 736, January 8, 1991).

At its April 1991 meeting, the Council recommended the following adjustments to the routine management measures for yellowtail and widow rockfish. The Secretary of Commerce (Secretary) concurs in these recommendations and announces the following changes to the trip limits announced at 56 FR 645 (January 8, 1991).

Widow Rockfish

The 1991 harvest guideline for widow rockfish is 7,000 metric tons (mt), about 29 percent lower than the 1990 quota of 9,800–10,000 mt. The landed catch through March 16, 1991, is 2,420 mt. If the average 1989–90 catch rates occur during April–September 1991, then the 7,000 mt level will be reached on August 30. If the fishery were to continue after August 30 at 1990 catch rates, the total catch for the year would be 10,600 mt if no further restrictions are applied. The Council recommended that the current weekly trip limit of 10,000 pounds (which allows one landing of widow rockfish above 3,000 pounds per week) be lowered to 3,000 pounds (with no limit on the number of landings) on the date that the Council's Groundfish Management Team (GMT) projects necessary to extend the fishery as long as possible in 1991. Because there is no limit on the number of landings that may be made in a one-week period, the biweekly trip limit option also will be removed. The effective date for this 3,000 pounds per week trip limit will be announced in the Federal Register when more landings data are available. Until then, the provisions regarding management of widow rockfish announced at 56 FR 645, January 8, 1991, remain in effect.

Yellowtail Rockfish North of Coos Bay, Oregon

The 1991 harvest guideline for yellowtail rockfish caught in the Vancouver and Columbia subareas is 4,300 mt, about 10 percent higher than in 1990. Yellowtail rockfish is a large and unavoidable component of the *Sebastes* complex of rockfish. The *Sebastes* complex is managed with trip landing and frequency limits that include a specific landing limit for yellowtail rockfish.

At its April Council meeting, the GMT reported that the landed catch of the *Sebastes* complex in the Vancouver and Columbia areas through March 16, 1991, has been similar to 1989 and 1990 levels and no further adjustment to landings of the complex is warranted at this time. However, landings of yellowtail rockfish are 934 mt, about 20 percent greater than in 1990.

In addition, the GMT noted that there has been no adjustment for discarded catch in the stock assessment of yellowtail rockfish and the determination of ABC. However, a substantial fraction of the trips now land near the trip limit of yellowtail rockfish, indicating that some of these trips exceeded the trip limit and were forced to discard some catch. The GMT recommended applying the same discard rate used in the widow rockfish fishery, 16 percent, as an estimated of the discards of yellowtail rockfish until better information becomes available.

If the 20 percent increased rate of landings holds, and a 16 percent discard factor is applied, the total projected catch (landings plus discard) is 5,662 mt for the year and the harvest guideline would be reached by July 30, 1991. The monthly rate of landed catch will need to be reduced to 350 mt per month as soon as possible in order for the annual catch (landings plus discards) to stay within the harvest guideline for yellowtail rockfish in 1991.

The current weekly trip limit for the *Sebastes* complex is 25,000 pounds (including no more than 5,000 pounds of yellowtail rockfish). The biweekly trip limit is 50,000 pounds of the *Sebastes* complex (including no more than 10,000 pounds of yellowtail rockfish). The twice-weekly trip limit is 12,500 pounds of the *Sebastes* complex (including no more than 2,500 pounds of yellowtail rockfish). The frequency restrictions apply only to landings of the *Sebastes* complex that exceed 3,000 pounds; there is no limit on the number of landings less than 3,000 pounds.

The trip limitations for yellowtail rockfish in the 1991 Management Measures (56 FR 645, January 8, 1991) are for yellowtail taken coincidentally with other fish in the *Sebastes* complex and landed as a mixed catch. In order to reduce yellowtail landings, the Council recommended that trip limits for yellowtail be reduced from 10,000 to 5,000 pounds, under the biweekly trip limit option for the *Sebastes* complex (1991 Management Measures, Commercial Fishing (B)(2)(b)). At the same time, the Council recommended continuation of the weekly and twice-weekly trip limits for the *Sebastes* complex (1991 Management Measures, Commercial Fishing (B)(2)(a) and (c)), but did not specify the amount of yellowtail that could be retained. After consultation with state fishery managers from Washington and Oregon, and with Council staff, NOAA has determined that the appropriate landing limit for yellowtail landings under the weekly and twice-weekly *Sebastes* options is 3,000 pounds. The affected yellowtail limit under the twice-weekly option is being increased from 2,500 to 3,000 pounds in order to reduce the level of discards and waste that could occur under a 2,500 pound twice-weekly limit. All other provisions regarding the management of the *Sebastes* complex and yellowtail rockfish published in the Federal Register at 56 FR 645, January 8, 1991, remain in effect.

Secretarial Action

The Secretary concurs with the Council's recommendation and modifies the 1991 groundfish fishery management measures published at 56 FR 645 by making the following changes to the paragraph B.2. titled "Restrictions on the *Sebastes* Complex Caught North of Coos Bay" to read as follows:

(2) *Restrictions on the Sebastes Complex Caught North of Coos Bay.*

(a) *Weekly trip limit.* Except for the biweekly and twice-weekly trip limits provided in paragraphs (2)(b) and (2)(c), the trip limit for the *Sebastes* complex north of Coos Bay is 25,000 pounds (including no more than 3,000 pounds of yellowtail rockfish) in a one-week period. Only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that one-week period, and that landing may not exceed the weekly trip limit in this paragraph.

(b) *Biweekly trip limit.* If the fishery management agency of the state where the fish will be landed is notified as required by state law (WAC 220–44–050; OAR 635–04–033), the trip limit for the *Sebastes* complex north of Coos Bay is 50,000 pounds (including no more than 5,000 pounds of yellowtail rockfish) in a two-week period. After notification is given, and while it remains in effect, only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in each two-week period, and that landing may not exceed the biweekly trip limit in this paragraph. Notification and revocation procedures appear in paragraph E.

(c) *Twice-weekly trip limit.* If the fishery management agency of the state where the fish will be landed is notified as required by state law (WAC 220–44–050; OAR 635–04–033), the trip limit for the *Sebastes* complex north of Coos Bay is 12,500 pounds (including no more than 3,000 pounds of yellowtail rockfish). After notification is given, and while it remains in effect, only two landings of the *Sebastes* complex above 3,000 pounds may be made per vessel in a one-week period, and each landing may not exceed the twice-weekly trip limit in this paragraph. Notification and revocation procedures appear in paragraph E.

(d) Unless retention or landing of the *Sebastes* complex or yellowtail rockfish has been prohibited, a vessel which has landed a weekly (or biweekly or twice-weekly) limit may continue to fish on the limit for the next fishing period (weekly, biweekly, or twice-weekly) so long as the fish are not landed (offloaded) until the next fishing period.

Classification

This action is taken under the authority of and in accordance with the regulations implementing Amendment 4 to the FMP at 50 CFR 663.23(c)(1)(i) (A) and (C).

This action is authorized by Amendment 4 to the FMP for which a Supplemental Environmental Impact Statement (SEIS) was prepared in accordance with the National Environmental Policy Act (NEPA). Because this action and its impacts have not changed significantly from those considered in the SEIS, this action is categorically excluded from the NEPA requirements to prepare an environmental assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02–10.

This action is in compliance with Executive Order 12291, and is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

The public has had the opportunity to comment on this action. The public participated in GMT, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in April 1991 that resulted in these recommendations from the Council. Additional public comments will be accepted for 15 days after publication of this notice in the Federal Register.

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List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 26, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-10326 Filed 4-26-91; 4:43 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure; request for comments.

SUMMARY: The Regional Director, Alaska Region, NMFS, (Director), is establishing a directed fishing allowance and prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska. This action is necessary to prevent the total allowable catch (TAC) for Pacific ocean perch in the Western Regulatory Area from being exceeded before the end of the fishing year. The intent of this action is to promote optimum use of groundfish while conserving Pacific ocean perch stocks.

DATES: Effective from noon, Alaska local time (A.l.t.), April 27, 1991, through midnight, A.l.t., December 31, 1991. Comments are invited on or before May 13, 1991.

ADDRESSES: Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

In accordance with § 672.20(c)(2), if the Director determines that the amount of a target species category apportioned to a fishery is likely to be reached, the Director may establish a directed fishing allowance for that species or species group. In establishing a directed fishing allowance, the Director shall consider the amount of that target species or species group that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Director establishes a directed fishing allowance and that allowance is or will be reached, he will prohibit directed fishing for that species or species group in the specified regulatory area or district.

The amount of a species or species group apportioned to a fishery is TAC, as defined in § 672.20(a)(2) and § 672.20(c)(1). The 1991 TAC for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska is 1,624 metric tons (mt) (56 FR 8723; March 1, 1991). The Director has determined that 624 mt of Pacific ocean perch are necessary as bycatch in anticipated groundfish fisheries in the Western Regulatory Area. The Director is establishing a directed fishing allowance of 1,000 mt for Pacific ocean perch in the Western Regulatory Area. At current harvest rates, the Director anticipates the entire directed fishing allowance will be taken by April 27. Therefore, the Director is prohibiting directed fishing for Pacific ocean perch in that area, effective beginning 12:00 noon, A.l.t., April 27, 1991.

After 12:00 noon, A.l.t., April 27, 1991, in accordance with § 672.20(g)(3), amounts of Pacific ocean perch retained on board vessels in the Western Regulatory Area must be less than 20 percent of the amount of all other fish species as measured in round weight equivalents, retained at any time by the vessel during the same trip. This closure is in effect for the remainder of the fishing year.

Classification

This action is taken under Section 672.20 and is in compliance with Executive Order 12291. Immediate effectiveness of this notice is necessary to prevent wastage of groundfish that will occur if TACs are exceeded and retention of Pacific ocean perch is prohibited. The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. However, interested persons are invited to submit comments in writing to the address above on or before 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 26, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-10325 Filed 4-26-91; 4:43 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure; request for comments.

SUMMARY: The Director, Alaska Region, NMFS, (Regional Director), has determined that the remainder of the total allowable catch (TAC) specified for Pacific cod in the Central Regulatory Area of the Gulf of Alaska is necessary to support other anticipated groundfish fisheries in that area. He is establishing a directed fishing allowance and is prohibiting further directed fishing for Pacific cod by vessels fishing in that area with any gear. These actions are necessary to prevent the TAC of Pacific cod from being exceeded. The intent of this action is to ensure optimum use of groundfish while conserving Pacific cod stocks.

DATES: Effective from 12 noon Alaska local time (A.l.t.), April 29, 1991, through December 31, 1991. Comments are invited on or before May 13, 1991.

ADDRESSES: Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, Suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is

implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

The amount of a species or species group apportioned to a fishery, the TAC, is defined at § 672.20(a)(2) and § 672.20(c)(1). The final notice of 1991 initial specifications of groundfish established the Pacific cod TAC in the Central Regulatory Area at 45,000 metric tons (mt) (March 1, 1991, 56 FR 8723).

Under § 672.20(c)(2), if the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached, he will prohibit directed fishing for that species or species group in the specified regulatory area or district.

The Regional Director has determined that 3,000 mt of Pacific cod in the Central Regulatory Area is necessary as bycatch to support anticipated groundfish fisheries. Therefore, he is establishing a directed fishing allowance of 42,000 mt of Pacific cod for the Central Regulatory Area. Furthermore, he has determined that the directed fishing allowance will be taken by April 29, 1991, and is prohibiting directed fishing for Pacific cod in that area on that date.

In accordance with § 672.20(g), vessels fishing in the Central Regulatory Area after the closure may retain Pacific cod at any particular time during a trip in amounts less than 20 percent of the amount of all other fish species retained on board the vessel, as measured in round weight equivalents, at any time during the same trip.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay the effective date of this notice. Immediate effectiveness of this notice is necessary to benefit U.S. fishermen participating in DAP Pacific cod operations who would otherwise unnecessarily be prohibited from fishing due to a premature closure. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 29, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-0439 Filed 4-29-91; 4:45 pm]

BILLING CODE 3510-22-M

VOL 56 ISS 85 MY 2 1991 UMI

Proposed Rules

Federal Register
Vol. 56, No. 85
Thursday, May 2, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 75

[No. LS-90-112]

Increase Testing Fees for Inspection and Certification of Quality of Agricultural and Vegetable Seeds Under the Agricultural Marketing Act of 1946

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to amend 7 CFR part 75 by increasing the applicable fees for testing seed under the voluntary seed inspection and certification program. The fees which are to be paid by the users of the service are necessary because of increased costs of operating the program. The fee increase is intended to generate sufficient revenue to offset the costs of operating the program. In addition, a new section would be added to display the OMB control number assigned to the information collection requirements contained in part 75.

DATES: Comments must be received on or before June 3, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to Seed Regulatory and Testing Branch, Livestock and Seed Division, AMS, USDA, Building 506, BARC-E, Beltsville, Maryland 20705, and should bear a reference to the date and page number of this issue of the Federal Register. Comments submitted in reference to this document will be made available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: James P. Triplitt, Chief, Seed Regulatory and Testing Branch, 301-344-4430.

SUPPLEMENTARY INFORMATION: This proposed rule is authorized by the Agricultural marketing Act (AMA) of 1946, as amended, 7 U.S.C. 1621 *et seq.*, which provides for voluntary seed inspection and certification services. Section 203(h) of the AMA authorizes the Secretary to inspect, and certify the quality of agricultural products and collect such fees as reasonable to cover the cost of service rendered. This proposed revision is to increase the fees to be charged for the inspection and certification of agricultural and vegetable seeds to reflect the Department's cost of operating the program.

This proposed action has been reviewed under Executive Order No. 12291 and Departmental Regulation 1512-1 and has been determined to be a non-major rule under the criteria contained therein. This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Administrator of AMS has determined that this action will not have a substantial economic impact on a significant number of small entities. Although some seed growers and shippers using this service may be classified as small entities, the effect of the increased fees will be minimal. Under the proposal the average cost for a test will increase from $41.26 to approximately $49.98. It is estimated that the total revenue generated by this increase will be approximately $20,000 annually.

The Agricultural Marketing Act (AMA) of 1946, as amended, provides for the inspection and certification of quality of agricultural and vegetable seeds in order to bring about efficient, orderly marketing and to assist the development of new or expanding markets. The AMA provides for the collection of fees and charges equal to the cost of providing the service. The service is voluntary and available to anyone.

Under the voluntary program samples of agricultural and vegetable seeds submitted are tested for factors such as purity and germination at the request of the applicant for the service. In addition, grain samples, submitted at the applicant's request, by the Federal Grain Inspection Service are examined for the presence of certain weed and crop seed. A Federal Seed Analysis, Sample Inspection, Certificate is issued giving the test results. Of 2,000 samples tested in 1990, most represented seed or grain scheduled for export. Many importing countries require a Federal Seed Analysis Certificate on U.S. seed.

The present fee of $23.40 per hour has been in effect since June 1, 1984. Since that time there have been increases in salaries and fringe benefits of botanists, clerical, and supervisory personnel as well as all administrative costs of operating the program. In addition, some aging testing equipment such as seed germinators must be replaced in order to continue to provide accurate, timely test results. After reviewing the current costs the department has determined that the present fee is insufficient to cover the department's cost of operation. In view of the above, the Agency proposes to increase the hourly rate for voluntary seed inspection and certification services from $23.40 to $29.40. In addition, the cost of issuing additional duplicate original certificates will be increased from $3.30 to $7.35. Approximately one-fourth hour is required to issue additional duplicate certificates.

In addition, this action would add a new section 75.49 to display the OMB control number assigned to the information collection requirements in part 75. The information collection requirements contained in part 75 have been previously approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), and has been assigned OMB Control No. 0581-0140.

List of Subjects in 7 CFR Part 75

Administrative practice and procedure, Agricultural commodities, Reporting and recordkeeping requirements, Seeds, Vegetables.

For reasons set forth in the preamble, it is proposed that 7 CFR part 75 be amended as follows:

PART 75—REGULATIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS.

1. The authority citation for part 75 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, sec. 203, 60 Stat. 1087, as amended (7 USC 1622).

§ 75.41 [Amended]

2. In § 75.41, remove "$23.40" and add in its place "$29.40".

§ 75.47 [Amended]

3. In § 75.47, remove "$3.30" and add in its place "$7.35".

4. A new § 75.49 is added to read as follows:

§ 75.49 OMB Control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 is as follows: OMB Control No. 0581-0140.

Done at Washington, DC, on: April 25, 1991.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 91-10214 Filed 5-1-91; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1786

RIN 0572-AA53

Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Electric Borrowers

AGENCY: Rural Electrification Administration; USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR chapter XVII part 1786, Discounted Prepayments on REA Notes, by adding a new subpart E, Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Electric Borrowers. The addition to part 1786 establishes policies and procedures to implement the provisions of 306B of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) ("Act"). Section 306B(b) authorizes the Administrator of REA to permit certain borrowers to prepay loans made under the Act at the lesser of the outstanding principal balance due on the loan or the loan's present value discounted from the face value at maturity at a rate set by the Administrator. These borrowers are defined as electrical organizations resulting from a merger or consolidation between a borrower and an organization which, prior to October 1, 1987, prepaid its direct or insured loans pursuant to sectin 306B(a) (See appendix A) (See 7 CFR part 1786 subpart C, Discounted Prepayments on REA Notes). Prepayments by a borrower hereunder shall be made not later than one year after the effective date of the merger, consolidation, or other transaction. This proposed regulation provides a formula for computing the amount which the borrower must pay and establishes certain other requirements which borrowers must meet in order to prepay loans.

DATES: Comments must be received by REA June 3, 1991.

ADDRESSES: Comments should be addressed to: Acting Chief, Finance and Management Staff, Rural Electrification Administration, room 1270-S, 14th and Independence Avenue SW., Washington, DC 20250. REA requests an original and three copies of all comments.

FOR FURTHER INFORMATION CONTACT: David J. Lessels, Acting Chief, Finance and Management Staff, U.S. Department of Agriculture, Rural Electrification Administration, 14th and Independence Avenue SW., Washington, DC 20250 (202) 382-0094.

SUPPLEMENTARY INFORMATION: Pursuant to the RE Act (the Act), REA hereby proposes to amend 7 CFR chapter XVII part 1786 by adding subpart E concerning discounted prepayments on REA notes. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and therefore has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environment Policy Act of 1969 (42 U.S.C. 432 et seq.(1976)), and therefore, does not require an environmental impact statement or environment assessment. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electric Loans and Guarantees. For the reasons set forth in the final rule and related notice to 7 CFR part 3015, subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The reporting and/or recordkeeping requirements contained in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). They will not be effective until approved by OMB. The public reporting burden for this collection of information is estimated to average 45 hours per response including time for reviewing instructions, searching data sources, gathering and maintaining the date needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to Department of Agriculture, Clearance Officer, Office of Information Resources Management, room 404-W, Washington, DC 20250 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background

REA provides long-term low interest rate loans to eligible borrowers for the purpose of furnishing and improving electric and telephone service in rural areas. The notes evidencing such loans bear interest at either two or five percent. The notes, as well as the proceeds from the sale, assignment or prepayment of the notes are assets of the Rural Electrification and Telephone Revolving Fund ("Fund") to be used for such purposes as are permitted by the Act. Section 2387 of Public Law 101-624, enacted November 28, 1990, amended the Act by adding section 306B(b) which provides that an REA loan may be prepaid by certain electric borrowers at the lesser of the outstanding principal balance due on such loan or the loans's present value discounted from the face value at maturity at a rate set by the Administrator (Discounted Present Value). These borrowers are defined as electrical organizations resulting from a merger or consolidation between a borrower and an organization which, prior to October 1, 1987, prepaid its direct or insured loans pursuant to section 306B(a). There were 29 electric borrowers that prepaid their direct and/or insured loans under Section 306B(a), and these borrowers are listed in appendix A to subpart E.

The proposed regulations would implement section 306B(b) establishing terms and conditions of prepayment. The proposed formula to determine the Discounted Present Value of the notes uses, as the discount rate, the current cost of funds to the U.S. Treasury. This rate will be based on market yields and estimated for comparable maturities.

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Among the terms and conditions of prepayment are the following:

(a) The borrower must be current on all payment due on its outstanding REA Notes and all other payment obligations owed to REA.

(b) The borrower must agree to prepay all of its outstanding REA Notes.

(c) The borrower must identify the source of financing that will be used to refinance its outstanding REA notes. The borrower must certify in writing whether the financing will be tax exempt; and, if so, shall furnish all information on the financing sufficient to enable REA to adjust the discount to the equivalent to fully taxable financing.

(d) The borrower must have expended all funds advanced on account of the REA Notes for the purposes for which such funds were advanced or have repaid REA for all unexpended funds.

(e) The borrower must agree to a rescission of the unadvanced balance of the REA Notes, outstanding as of the date of its application for prepayment.

(f) The borrower must agree that the borrower, its successors and assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to titles I and III of the Act, an amount equal to the aggregate of the difference with respect to each of the REA Notes between (1) the amount outstanding on the REA Note and (2) the Discounted Present Value of the prepaid REA Note; with interest accruing quarterly. The interest rates shall be the rates provided in the respective REA Notes.

(g) If the borrower is a party to a wholesale power contract with a power supplier financed pursuant to the Act, the borrower must provide the Administrator with such assurances as the Administrator may request that it will meet its obligations to the power supplier.

List of Subjects in 7 CFR Part 1786

Electric power, Federal Financing Bank, Loan programs—communication, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas, Telephone.

In view of the above, REA proposes to amend 7 CFR chapter XVII, part 1786 as follows:

1. The authority citation for part 1786 is added to read as follows:

Authority: 7 U.S.C. 901–950b; title I, subtitle B, Public Law 99–509; Public Law 101–624, 104 Stat. 4051; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23, delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72, unless otherwise noted.

PART 1786—[AMENDED]

Subpart D—REA Privatization Demonstration Prepayment Program for the State of Alaska

2. Subpart D is amended by adding and reserving sections 1786.87–1786.94.

3. A new Subpart E is added to part 1786 to read as follows:

Subpart E—Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Electric Borrowers

Sec.
1786.95 Purpose.
1786.96 Definitions.
1786.97 Prepayment.
1786.98 Discounted present value.
1786.99 Eligibility criteria.
1786.100 Application procedure.
1786.101 Approval of application.
1786.102 Prepayment agreement.
1786.103 Security.
1786.104 Loan fund audit.
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1786.106 Other prepayments.

Appendix A to Subpart E of Part 1786—Listing of Eligible Borrowers

Appendix B to Subpart E of Part 1786—Federal Reserve Statistical Release.

Subpart E—Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Electric Borrowers

§ 1786.95 Purpose.

This subpart sets forth the policies and procedures of REA whereby certain electric borrowers may prepay outstanding REA Notes at the Discounted Present Value of the REA Notes with private financing.

§ 1786.96 Definitions.

As used in this subpart:

Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

Administrator means the Administrator of REA.

Consolidation means:

(1) The combination of two or more borrower or nonborrower organizations, pursuant to state law, into a new successor organization that takes over the assets and assumes the liabilities of those organizations; or

(2) Any other transaction including an acquisition which has substantially the same effect.

Discounted Present Value shall have the meaning specified in § 1786.98.

Fund means the Rural Electrification and Telephone Revolving Fund pursuant to the Act.

Merger means:

(1) The combining, pursuant to state law, of borrower or nonborrower organizations into an existing survivor organization that takes over the assets and assumes the liabilities of the merged organizations; or

(2) Any other transaction including an acquisition which has substantially the same effect.

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

REA Loan Agreement means the agreement between the borrower and REA providing for loans pursuant to the Act.

REA Notes means those notes, bonds or other obligations evidencing indebtedness created by loans pursuant to titles I and III of the Act (7 U.S.C. 901–940).

§ 1786.97 Prepayment.

There were 29 former REA electric borrowers that prepaid their direct or insured loans under section 306B(a) of the Act prior to October 1, 1987. (See subpart C of this part.) These borrowers are listed in appendix A subpart E of this part. Any REA electric borrower which is the result of a merger or consolidation involving any of these 29 former borrowers and a borrower with outstanding Notes may, after meeting all requirements of this subpart, prepay all outstanding REA Notes issued or assumed by the borrower upon paying the lesser of the outstanding balance or the Discounted Present Value. Such prepayment must be made not later than one year after the effective date of the merger or consolidation.

§ 1786.98 Discounted present value.

(a) The Discounted Present Value shall be calculated by the Fiscal Accounting Division of REA before prepayment is made by summing the present values of all remaining payments on all outstanding notes according to the following formula to compute the discounted present value of each note and adjusting as here and after provided for tax exempt financing.

$$\text{Present value} = \sum_{k=1}^{n} \frac{P_k}{\prod_{i=1}^{k} \left[1.0 + \left(\frac{D1_i}{365} + \frac{D2_i}{366}\right) * I\right]}$$

Where:

P_k = Total payment, including interest, due on the kth payment date following the prepayment date.

n = Total number of remaining payments dates.

I = The discount rate applied to each transaction will be ascertained by using data specified in the "Federal Reserve Statistical Release" which is published each Monday. (See Appendix b to Subpart e of this part.) The specific discount rate will be the discount rate(s) specified in the "Treasury Constant Maturities" section of this publication eight working days prior to the closing. In applying the discount rate, the 1-year Treasury rate will be used for all notes with a remaining term of less than 2 years; the 2-year Treasury rate for notes with maturities between 2 and 3 years; the 3-year Treasury rate for all notes with maturities years; the 3-year Treasury rate for all notes with maturities between 3 and 5 years; the 5-year Treasury rate for all notes with maturities between 5 and 7 years; the 7-year Treasury rate for all notes with maturities between 7 and 10 years; the 10-year Treasury rate for all notes with maturities between 10 and 30 years; and the 30-year Treasury rate for all notes with maturities longer than 30 years.

$D1_i$ = Number of days in the ith payment period that are in a non-leap year (365 day year).

$D2_i$ = Number of days in the ith payment period that are in a leap year (366 day).

(b) Notwithstanding paragraph (a) of this section, in the event that the borrower shall elect to prepay using tax exempt financing, the calculation of the Discounted Present Value shall be adjusted to make the discount the equivalent of fully taxable financing.

§ 1786.99 Eligibility criteria.

To be eligible to prepay REA Notes at the Discounted Present Value, a borrower must comply with the following criteria:

(a) The borrower must be current on all payments due on its outstanding REA Notes and all other payment obligations owed to REA;

(b) The borrower must agree to prepay all of its outstanding REA Notes;

(c) The borrower must identify the source of financing that will be used directly or indirectly to refinance its outstanding REA Notes. The borrower must certify in writing whether such financing will be tax exempt and, if so, shall furnish all information on the financing as REA may request to enable REA to adjust the discount to the equivalent to fully taxable financing;

(d) The borrower must have expended all funds advanced on account of the REA Notes for the purposes for which such funds were advanced or repaid REA for all unexpended funds;

(e) The borrower must agree to a rescission of the unadvanced balance of any REA Notes outstanding as of the date of its application for prepayment;

(f) The borrower must agree that the borrower, its successors and assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to titles I and III of the Act, an amount equal to the aggregate of the difference with respect to each of the REA Notes between the amount outstanding on the REA Note and the Discounted Present Value of the REA Note upon prepayment with interest accruing quarterly; the interest rates shall be the rates provided in the respective Notes; and

(g) If the borrower is a party to a wholesale power contract with a power supplier financed pursuant to the Act, the borrower must provide the Administrator with such assurances as the Administrator may request that it will meet its obligations to the power supplier. The borrower must also specifically agree to the following limitation: The borrower agrees that, for so long as the Wholesale Power Contract shall be in effect between the borrower and the power supplier, the borrower will not, without the approval in writing of the power supplier and the Administrator, take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation or any other public power district, or to sell, lease or transfer (or make any agreement therefore) all or a substantial portion of its assets, whether now owned or hereafter acquired. Notwithstanding the foregoing, the borrower may take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation or any other public power district, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired, so long as the borrower shall pay such portion of the outstanding indebtedness evidenced by the Power Supplier Notes at the time outstanding as shall be determined by the Power Supplier with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and the Power Supplier shall require.

§ 1786.100 Application procedure.

Any borrower seeking to prepay its REA Notes under this subpart should apply to the appropriate REA Area Director not less than 60 days prior to one year after the effective date of the merger or consolidation by submitting:

(a) A board resolution that:

(1) Requests approval of the prepayment of the borrower's outstanding REA Notes;

(2) States the intent of the borrower to comply with all eligibility criteria set forth in § 1786.99 of this subpart; and

(3) Identifies the source of financing.

(b) A list of all REA Notes together with the outstanding amount on such notes.

(c) An opinion of counsel as to the effective date of the merger or consolidation.

(d) Such additional information as the Administrator will request.

§ 1786.101 Approval of application.

The applications will be reviewed and, if satisfactory, approved. Closing will be scheduled upon approval.

§ 1786.102 Prepayment agreement.

Upon approving an application for prepayment under this Subpart, the Administrator shall notify the borrower and deliver to the borrower for its execution a prepayment agreement which shall set forth and provide:

(a) The REA Notes to be prepaid and when the Discounted Present Value will be calculated.

(b) The place, date and conditions for closing.

(c) Agreement that the unadvanced balance of REA Notes shall be rescinded.

(d) Agreement that the borrower, or its successors or assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to titles I and III of the Act, an amount equal to the aggregate of the difference with respect to each of the REA Notes between the amount outstanding on the REA Note and the Discounted Present Value of the prepaid REA Note; with interest accruing quarterly. The interest rates shall be the rates provided in the respective REA Notes.

(e) Assurances that the borrower will meet its obligations to any power supplier financed pursuant to the Act.

(f) Such other terms and conditions as the Administrator deems appropriate.

§ 1786.103 Security.

If, after prepayment of REA Notes, the Government should continue to hold liens on the borrower's property that secure guarantees pursuant to the Act, the Administrator of REA will consider a request for the accommodation of such liens for the purpose of providing security for loans the proceeds of which were used to prepay REA Notes. Such lien accommodations shall be limited in amount to the Discounted Present Value

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of the REA Notes plus such costs, as the Administrator shall determine to be reasonable, incurred by the borrower in obtaining such loans.

§ 1786.104 Loan fund audit.

REA shall have the right to audit within 6 months of closing, transactions involving the REA construction fund established and maintained by the borrower pursuant to the terms of the REA Loan Agreement and to inspect all books, records, accounts and other documents and papers of the borrower. Should REA determine that the borrower has made disbursements of funds advanced pursuant to REA Notes which do not comply with the requirements of the REA Loan Agreement, the borrower shall be required to pay the Government an amount equal to the difference between the amount which the borrower prepaid on such REA Notes evidencing REA loans funds which were improperly disbursed and the amount which the borrower would otherwise have been required to return to the Government as a result of noncompliance if the borrower had not prepaid such REA Notes. (See 7 CFR part 1721, Post-Loan Policies and Procedures for Insured Electric Loans.)

§ 1786.105 Closing.

(a) The borrower shall be responsible for obtaining all approvals necessary to consummate the transaction as required by the prepayment agreement including such approvals as may be required by regulatory bodies and other lenders.

(b) The REA Notes shall be prepaid at a closing to be held in accordance with the prepayment agreement. REA shall designate the date of closing which in no event shall be later than one year after the effective date of the merger or consolidation. At closing, in addition to paying all current interest due on the date of prepayment, a borrower shall prepay the REA Notes by paying to the Government an amount equal to the lesser of the outstanding balance or the Discounted Present Value of the REA Notes. The closing shall otherwise be conducted as prescribed in the prepayment agreement.

§ 1786.106 Other prepayments.

REA loan documentation generally permits borrowers to prepay REA Notes by paying the outstanding balance due thereon. Nothing in this Subpart shall prohibit any borrower from prepaying its outstanding REA Notes in accordance with the terms thereof. The provisions of this Subpart shall not be applicable to such prepayment.

Appendix A to Subpart E of Part 1786—Listing of Eligible Borrowers

State	Borrower name and address
Colorado	Colorado-Ute Electric Assn., Inc., Montrose
Florida	Lee County Electric Coop. Inc., North Fort Myers
Indiana	Clark County Rural Elec. Memb. Corp., Sellersburg
Louisiana	Beauregard Electric Cooperative, Inc., Deridder
Missouri	Cuivre River Electric Cooperative, Inc., Troy
Nebraska	Roosevelt Public Power District, Mitchell
Nebraska	Howard Greely Rural Public Power Dist., St. Paul
Nebraska	Cuming County Public Power District, West Point
Nebraska	York County Rural Public Power District, York
Nebraska	Elkhorn Rural Public Power District, Battle Creek
Nebraska	Southern Nebraska Rural P.P.D., Grand Island
Nebraska	McCook Public Power District, McCook
Nebraska	Niobrara Valley Electric Memb. Corp., O'Neill
Nebraska	Cornhusker Public Power District, Columbus
Nebraska	Custer Public Power District, Broken Bow
Nebraska	Northwest Rural Public Power Dist., Hay Springs
Nebraska	Southwest Public Power District, Palisade
Nebraska	Loup Valleys Rural Public Power District, Ord
Nebraska	South Central Public Power District, Nelson
Oklahoma	Peoples' Electric Cooperative, Ada
Texas	Deaf Smith County Electric Coop. Inc., Hereford
Texas	Pedernales Electric Coop. Inc., Johnson City
Texas	Bandera Electric Cooperative, Inc., Bandera
Texas	Guadalupe Valley Electric Coop., Inc., Gonzales
Texas	Bluebonnet Electric Cooperative, Inc., Giddings
Texas	Cap Rock Electric Cooperative, Inc. Stanton
Texas	San Bernard Electric Cooperative, Inc., Bellville
Washington	Inland Power & Light Company, Spokane
Washington	Pub. Util. Dist. No. 1 Grays Harbor Co., Aberdeen

BILLING CODE 3410-15-M

Appendix B to Subpart E of Part 1786—Federal Reserve Statistical Release

FEDERAL RESERVE statistical release

These data are released each Monday. The availability of the release will be announced when the information is available, on (202) 452-3206.

H.15 (519)

For immediate release
February 4, 1991

SELECTED INTEREST RATES

Yields in percent per annum

Instruments	1991 JAN 28	1991 JAN 29	1991 JAN 30	1991 JAN 31	1991 FEB 1	This week	Last week	1991 JAN
FEDERAL FUNDS (EFFECTIVE)[1 2 3]	7.61	7.16	6.96	8.18	6.30	7.46	6.88	6.91
COMMERCIAL PAPER[3 4 5]								
1-MONTH	6.88	6.96	6.95	6.99	6.73	6.90	6.83	7.12
3-MONTH	6.92	6.96	6.94	6.95	6.67	6.89	6.92	7.10
6-MONTH	6.87	6.91	6.88	6.88	6.58	6.82	6.86	7.02
FINANCE PAPER PLACED DIRECTLY[3 4 6]								
1-MONTH	6.76	6.85	6.83	6.83	6.55	6.76	6.68	6.95
3-MONTH	6.75	6.83	6.83	6.76	6.46	6.73	6.77	6.92
6-MONTH	6.53	6.53	6.59	6.53	6.19	6.47	6.55	6.59
BANKERS ACCEPTANCES (TOP RATED)[3 4 7]								
3-MONTH	6.80	6.82	6.77	6.68	6.30	6.67	6.76	6.96
6-MONTH	6.67	6.70	6.65	6.55	6.15	6.54	6.63	6.84
CDS (SECONDARY MARKET)[3 8]								
1-MONTH	6.78	6.85	6.87	6.82	6.52	6.77	6.77	7.10
3-MONTH	6.94	6.95	6.93	6.88	6.51	6.84	6.94	7.17
6-MONTH	6.95	6.98	6.95	6.88	6.51	6.85	6.97	7.17
EURODOLLAR DEPOSITS (LONDON)[3 9]								
1-MONTH	6.81	6.88	6.88	6.88	6.88	6.86	6.81	7.13
3-MONTH	6.94	7.06	7.00	6.94	6.94	6.98	7.01	7.23
6-MONTH	7.00	7.00	7.00	6.94	6.94	6.98	7.04	7.23
BANK PRIME LOAN[2 3 10]	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.52
DISCOUNT WINDOW BORROWING[2 11]	6.50	6.50	6.50	6.50	6.00	6.50	6.50	6.50
U.S. GOVERNMENT SECURITIES								
TREASURY BILLS								
AUCTION AVERAGE[3 4 12]								
3-MONTH	6.22					6.22	6.14	6.30
6-MONTH	6.28					6.28	6.21	6.34
1-YEAR								6.22
AUCTION AVERAGE (INVESTMENT)[12]								
3-MONTH	6.41					6.41	6.32	6.49
6-MONTH	6.58					6.58	6.50	6.64
SECONDARY MARKET[3 4]								
3-MONTH	6.25	6.22	6.20	6.19	6.00	6.17	6.12	6.22
6-MONTH	6.26	6.26	6.24	6.20	5.97	6.19	6.20	6.28
1-YEAR	6.24	6.20	6.17	6.13	5.91	6.13	6.19	6.25
TREASURY CONSTANT MATURITIES[13]								
1-YEAR	6.64	6.59	6.56	6.51	6.27	6.51	6.58	6.64
2-YEAR	7.12	7.10	7.07	7.05	6.83	7.03	7.09	7.13
3-YEAR	7.38	7.35	7.34	7.30	7.10	7.29	7.35	7.38
5-YEAR	7.67	7.64	7.64	7.62	7.45	7.60	7.66	7.70
7-YEAR	7.93	7.90	7.90	7.89	7.75	7.87	7.92	7.97
10-YEAR	8.06	8.05	8.05	8.03	7.91	8.02	8.04	8.09
30-YEAR	8.23	8.20	8.23	8.21	8.09	8.19	8.22	8.27
COMPOSITE								
OVER 10 YEARS (LONG-TERM)[14]	8.29	8.26	8.29	8.27	8.15	8.25	8.28	8.33
CORPORATE BONDS								
MOODY'S SEASONED								
AAA	9.03	9.01	9.00	8.99	8.96	9.00	9.05	9.04
BAA	10.43	10.37	10.35	10.33	10.24	10.34	10.44	10.45
A-UTILITY[15]					9.65	9.65	9.80	9.83
STATE & LOCAL BONDS[16]				7.00		7.00	7.06	7.08
CONVENTIONAL MORTGAGES[17]					9.56	9.56	9.61	9.64

FOOTNOTES

1. The daily effective federal funds rate is a weighted average of rates on trades through N.Y. brokers.
2. Weekly figures are averages of 7 calendar days ending on Wednesday of the current week; monthly figures include each calendar day in the month.
3. Annualized using a 360-day year or bank interest.
4. Quoted on a discount basis.
5. An average of offering rates on commercial paper placed by several leading dealers for firms whose bond rating is AA or the equivalent.
6. An average of offering rates on paper directly placed by finance companies.
7. Representative closing yields for acceptances of the highest rated money center banks.
8. An average of dealer offering rates on nationally traded certificates of deposit.
9. Bid rates for Eurodollar deposits at 11 a.m. London time.
10. One of several base rates used by banks to price short-term business loans.
11. Rate for the Federal Reserve Bank of New York.
12. Auction date for daily data; weekly and monthly averages computed on an issue-date basis.
13. Yields on actively traded issues adjusted to constant maturities. Source: U.S. Treasury.
14. Unweighted average of rates on all outstanding bonds neither due nor callable in less than 10 years, including one very low yielding "flower" bond.
15. Estimate of the yield on a recently offered, A-rated utility bond with a maturity of 30 years and call protection of 5 years; Friday quotations.
16. Bond Buyer Index, general obligation, 20 years to maturity, mixed quality; Thursday quotations.
17. Contract interest rates on commitments for fixed-rate first mortgages. Source: FHLMC.

Note: Weekly and monthly figures are averages of business days unless otherwise noted.

DESCRIPTION OF THE TREASURY CONSTANT MATURITY SERIES

Yields on Treasury securities at 'constant maturity' are interpolated by the U.S. Treasury from the daily yield curve. This curve, which relates the yield on a security to its time to maturity, is based on the closing market bid yields on actively traded Treasury securties in the over-the-counter market. These market yields are calculated from composites of quotations reported by five leading U.S. Government securities dealers to the Federal Reserve Bank of New York. The constant maturity yield values are read from the yield curve at fixed maturities, currently 1, 2, 3, 5, 7, 10, and 30 years. This method provides a yield for a 10-year maturity, for example, even if no outstanding security has exactly 10 years remaining to maturity.

BILLING CODE 3410-15-C

George E. Pratt
Acting Administrator.

[FR Doc. 91-10073 Filed 5-1-91; 8:45 am]
BILLING CODE 3410-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-89-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10 and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes, which would require modification to the Master Caution Indicating System to indicate when the hydraulic system number 3 automatic shutoff valve has closed. This proposal is prompted by a report that a Model DC-10 descended below the glide path after the automatic shutoff valve had closed, and the flight engineer's annunciation light was not noticed. This condition, if not corrected, could result in an airplane descending below the glide slope and consequently contacting the ground prior to reaching the runway.

DATES: Comments must be received no later than June 24, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-89-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801, ATTN: Group Leader, MD-11/DC-10 and DC-3/-8, Service Change Operations, Mail Code 73-30. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Kevin S. Kuniyoshi, Aerospace Engineer, LAACO, ANM-131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5337.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-89-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: The FAA has received a report that a Model DC-10 series airplane descended below the glide path during landing approach. This instrument approach was made using the number 2 autopilot. The airplane involved in this incident had been modified in accordance with AD 90-13-07, Amendment 39-6616 (55 FR 23892, June 13, 1990), which requires the installation of a hydraulic system number 3 automatic shutoff valve. (This installation is described in McDonnell Douglas DC-10 Service Bulletin 29-128, dated February 22, 1990.) Investigation revealed that the hydraulic system number 3 automatic shutoff valve had closed and the "HYD SYS 3 ELEV OFF" light on the flight engineer's annunciator panel illuminated but was not noticed immediately. (In this phase of flight, the flight engineer monitors instruments on the pilot's instrument panel.) The airplane continued to a safe landing. An unobserved indication that the hydraulic system number 3 shutoff valve has closed, if not corrected, could result in an airplane descending below the glide slope and consequently contacting the ground prior to reaching the runway.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 29-132, dated February 15, 1991, which describes a modification of the Master Caution Indicating System wiring which adds a wire between the flight engineer's annunciator panel and the warning and caution system logic controller unit. This modification will cause the master caution lights on the captain's and first officer's glare shield to illuminate simultaneously with the "HYD SYS 3 ELEV OFF" on the flight engineer's annunciator panel.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification in accordance with the service bulletin previously described.

There are approximately 428 McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 243 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost of parts to accomplish this modification is estimated to be $70 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $57,105.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

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The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-10-10, -10F, -15, -30, -30F, -40, -40F, and KC-10A (Military) series airplanes, modified in accordance with AD 90-13-07 (ref: McDonnell Douglas DC-10 Service Bulletin 29-128, dated February 22, 1990), certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent an unobserved indication that the hydraulic system number 3 shutoff valve has closed, accomplish the following:

A. Within 6 months after the effective date of this AD modify the Master Caution Warning System by installing a wire in accordance with paragraph 2, Accomplishment Instructions, of McDonnell Douglas DC-10 Service Bulletin 29-132, dated February 15, 1991.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801, ATTN: Group Leader, MD-11/DC-10 and DC-3/-8, Service Change Operations, Mail Code 73-30. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on April 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 91-10997 Filed 5-1-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 771, 772, 773, 774, and 775

[Docket No. 910495-1085]

Revisions to the Special License Procedures; Elimination of Supplement No. 1 to Part 773 and Creation of a Certified Exporter and Consignee Procedure

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Proposed rule, with request for comments.

SUMMARY: The Bureau of Export Administration (BXA) is proposing to amend the Export Administration Regulations (EAR) to establish a Certified Exporter and Consignee Procedure (CEC) that would authorize exports and reexports of certain commodities by approved parties in the United States and abroad. The Certified Exporter and Consignee Procedure is an individualized special licensing mechanism developed in response to the rapidly changing export control environment.

This rule also provides notice of BXA's intention to eliminate Supplement No. 1 to part 773, which lists commodities excluded from certain special license procedures. In addition, this rule proposes to amend General License G-TEMP by removing the special restrictions for commodities listed in Supplement No. 1 to part 773 (§ 771.22(c)(2)(iv)).

This rule would implement the President's November 16, 1990, commitment to increase the threshold for Distribution Licenses.

DATES: Comments must be received by June 17, 1991.

ADDRESSES: Written comments (six copies) should be sent to: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Gene Petersen-Beard, Office of Export Licensing, Bureau of Export Administration, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-4196.

SUPPLEMENTARY INFORMATION:

Background

Since 1968, the Commerce Department has permitted exports of controlled items without review of individual transactions by the United States Government through a distribution license procedure (DL). The DL is issued to approved U.S. exporters and permits the export of a pre-approved list of commodities to a pre-approved list of foreign consignees (often a distributor or "middleman"). DL holders are required to maintain a rigorous internal control program, including training of company employees, record retention, and special procedures for processing orders. DL holders are also required to train and audit their foreign consignees. There are limitations to the use of the DL. DL exports are not permitted to controlled countries or to countries embargoed for foreign policy purposes (e.g., Cuba, Libya, Iran, etc.). In addition, the Export Administration Regulations prohibit the shipment under the DL procedure of items listed in Supplement No. 1 to part 773.

Consistent with the Presidential directive in the memorandum of disapproval of November 16, 1990 [1], the Bureau of Export Administration proposes revising the Distribution license procedure and implementing a new Certified Exporter and Consignee procedure.

Revision to the Distribution License Procedure; Proposed Elimination of Supplement No. 1 to Part 773

Rapid changes in technology and export control policies have dated the list of excluded commodities in Supplement No. 1 to part 773. The Bureau of Export Administration will eliminate Supplement No. 1, thereby permitting the export of any controlled item under the Distribution license procedure, except supercomputers, commodities listed in Supplement No. 4 to part 773, commodities subject to short supply controls, nuclear, chemical/biological, and missile technology nonproliferation controls, and certain foreign policy controls. BXA will reevaluate DL applications to ensure that the only commodities approved for export are those that are consistent with the exporter's line of business and market, and with the overall objectives of U.S. export controls.

In order to take advantage of the new commodity eligibility requirements, DL holders will be required to submit an amendment (Form BXA-685P) to the Office of Export Licensing (OEL), providing a description of the equipment they wish to export and listing the countries involved (including sales territories and approved consignees). The amendments must be submitted by a date that will be specified in the final rule or the exporter's DL privileges will lapse. Until each DL holder is given new authorization, Supplement No. 1 to part 773 will continue to apply to such DL holder and its approved foreign consignees. Once all DL holders have been authorized to export under the new procedure, BXA will eliminate Supplement No. 1 to part 773. Comments on this requirement are particularly encouraged.

Complementary System to the Distribution License Procedure; Certified Exporter and Certified Consignee Procedure

The Certified Exporter and Consignee (CEC) Procedure would authorize exports and reexports of commodities under an international marketing program for shipments within eligible destinations and for eligible recipients. This procedure would grant participating firms broad authorization to facilitate exports and reexports under a system of controls that are consistent with our national security and foreign policy interests. In addition, the procedure will permit smaller firms to ship to or for these reliable, participating firms with a minimum of paperwork.

Under the DL procedure, license holders are required to ship through or on behalf of an approved consignee to deliver goods to the ultimate end-user(s). The Certified Exporter and Consignee procedure will authorize Certified Exporters (CE) and Certified Consignees (CC) to export approved commodities directly to their customers within an approved sales territory. Shipments may be made only to customers that either the Certified Exporter or the Certified Consignee has determined to be eligible to receive products under this procedure. This determination will be based upon an enhanced internal control program, patterned after the existing DL internal control program. In addition, Certified Consignees will be authorized to designate suppliers in the United States and other countries to effect exports of products directly to the approved Certified Consignee's location, without first obtaining U.S. export licenses in the name of the supplier.

Participation in the Certified Exporter and Consignee procedure is a privilege reserved for firms with a thorough knowledge of, and experience with, the Export Administration Regulations (EAR). Only firms that demonstrate the ability to adhere strictly to the requirements of the EAR (e.g., ability to maintain an effective Internal Control Program (ICP)) will be eligible to participate in this procedure. Applicants will have to establish their eligibility for the Certified Exporter and Consignee procedure by demonstrating their ability to assume the responsibilities involved in controlling and monitoring all of the activities that would take place under their authorization. In particular, applicants will be required to show that they have developed controls adequate to insure full compliance with this special licensing procedure and with all other provisions of the EAR.

Exporters and consignees interested in participating in this special licensing procedure must apply to the Office of Export Licensing (OEL). Applicants should include, in their submission, a description of all the commodities they wish to export and the countries where their customers are located. BXA will review each application to determine which commodities and countries are eligible for this special licensing procedure.

All commodities listed on the Commodity Control List (Supplement No. 1 to § 799.1 of the EAR) will be considered for eligibility for this procedure *except* the following:

(1) Supercomputers;
(2) Commodities that will be used outside of the countries listed in Supplement No. 2 to part 773 either directly or indirectly in any sensitive nuclear activity as described in § 778.3;
(3) Commodities listed in Supplement No. 4 to part 773, except for shipments to specific end-users that have been approved by the Office of Export Licensing;
(4) Commodities subject to short supply controls (part 777 of the EAR);
(5) Aircraft parts and accessories destined for Libyan, Iranian, or Syrian aircraft;
(6) Communications intercepting devices (§ 776.13);
(7) Crime control and detection equipment (§ 776.14);
(8) Commodities subject to regional stability controls (§ 776.16);
(9) Commodities related to the design, development, production, or use of missiles capable of delivering nuclear weapons (§ 776.18);
(10) Chemical weapons precursors and biological agents (§ 776.19);
(11) Chemical processing equipment and intermediates (§ 776.20);
(12) Commodities that will be used either directly or indirectly in the design, development, production, or use of missiles or in the design, development, production, stockpiling, or use of chemical or biological weapons (§ § 778.6 and 778.7, as newly designated in the proposal of March 13, 1991 (56 FR 10765);
(13) Commodities subject to nuclear nonproliferation controls (§ 778.2), except that the CEC limit for ECCN 1565A to countries identified in Supplement No. 3 to part 773 is 100 MFLOPS, not a Processing Data Rate of 2.000 million bits/sec.; and
(14) Other commodities specifically excluded or restricted by the Bureau of Export Administration in issuing the license.

Exports under the Certified Consignee procedure of foreign-made products that incorporate U.S.-origin parts and components above the *de minimus* levels indicated in § 776.12(b) of the EAR are also subject to the restrictions described above.

Only firms located within the United States are eligible to be approved as "certified exporters". In order to be eligible for approval as a "certified consignee", a firm must be located in Canada or in a country in Country Group T or V (except Afghanistan, Iran, Iraq, Syria, and the People's Republic of China). Approved sales territories for certified exporters and certified consignees will be limited to destinations located in Canada or countries in Country Group T or V (except Afghanistan, Iran, Iraq, Syria, and the People's Republic of China). Consideration may be given at a later date to allow participation to include currently proscribed countries that present a lesser strategic threat and that have adopted effective export safeguards, consistent with U.S. obligations in COCOM.

Certified consignees may designate, as suppliers, firms located in any country except for Country Group S or Z. These suppliers may ship directly to the certified consignee, provided that:

(1) The shipment is at the direction of the certified consignee;
(2) The supplier verifies that the authorization number of the certified consignee is valid; and
(3) The authorization number is indicated on all shipping documents.

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[1] The President's memorandum of disapproval of H.R. 4653, the Omnibus Export Amendments Act of 1990, was published in the Weekly Compilation of Presidential Documents Vol. 26, No. 46, November 19, 1990, p. 2038.

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Certified exporters and certified consignees may also designate suppliers in the U.S. or other countries within the suppliers territory and for the purpose of authorizing exports/reexports from these suppliers to customers located in the sales territories of the certified exporters/consignees. This type of drop shipment is permitted only if specifically authorized on the license of the certified exporter/consignee.

Exporters and consignees that are approved for the Certified Exporter and Consignee procedure will be required to maintain their eligibility by demonstrating that they have established and are following procedures that provide them with effective control over all exports and reexports (and other related activities) effected under their licenses. In addition to the special requirements for the Certified Exporter and Consignee procedure, approved parties will be subject to the special license limitations and conditions described in § 773.1, as well as all other relevant provisions of the EAR.

The Bureau of Export Administration specifically requests comments regarding the administration of the verification process required under § 773.4(f). Under this provision, parties designated by certified exporters or certified consignees as suppliers must themselves contact BXA to verify that their certified exporter's or certified consignee's license number represents a valid license. BXA will respond that a license remains valid. BXA has not yet determined whether the designated supplier may rely upon the verification for one shipment, multiple shipments under a purchase order, multiple shipments for 60 days or 180 days, or the remaining term of the license held by the certified exporter or certified consignee. In addition, BXA has not yet determined the information the designated supplier must provide BXA under the verification procedure of § 773.4

Rulemaking Requirements.

1. This rule is consistent with Executive Orders 12291 and 12861.

2. This rule involves collections of information subject to the requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694-0005, 0694-0007, 0694-0010, and 0694-0015. This rule also imposes new recordkeeping requirements that have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. Public burden for the collection contained within the rulemaking is estimated to average from 25 to 50 hours. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestion for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Paperwork Reduction Project—0694-XXXX).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issue raised by these regulations, this rule is being issued in proposed form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. In particular, comments on the requirement for each DL holder to submit an amendment to retain eligibility are encouraged.

The period for submission of comments will close June 17, 1991. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of export Administration Freedom of Information Officer, at the above address or by calling (202) 377-2593.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Parts 771, 772, 773, 774, and 775

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 770, 771, 772, 773, 774, and 775 of the Export Administration Regulations (15 CFR parts 730-799) are proposed to be amended as follows:

1. The authority citations for parts 770, 771, 772, 773, 774, and 775 are revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 et seq.), as amended, Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 et seq.); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

PART 770—[AMENDED]

2. Section 770.2 is amended by adding a definition of the term *Certified exporter and consignee procedure* immediately following the definition for *Canadian airline* to read as follows:

§ 770.2 Definition of terms.

* * * * *

Certified exporter and consignee procedure § 773.4 of this subchapter). A special procedures authorizing exports and reexports of certain commodities by approved parties in the United States and abroad. Parties must establish and maintain eligibility and assume responsibility for their activities under the license.

* * * * *

PART 771—[AMENDED]

3. Section 771.22 is amended by replacing the period at the end of paragraph (c)(2)(ii) with the words "; and", by replacing the words "; and" at the end of paragraph (c)(2)(iii) with a period, and by removing paragraph (c)(2)(iv).

PART 772—[AMENDED]

4. Section 772.2(b) is amended by adding a new paragraph (b)(5) (formerly reserved) to read as follows;

§ 772.2 Type of validated licenses.

* * * * *

(b) * * *

(5) *A "Certified Exporter and Consignee Procedure* (CEC)" (§ 773.4 of this subchapter) authorizes exports and reexports of certain commodities by or at the direction of approved parties in the United States and abroad.

PART 773—[AMENDED]

5. Section 773.3 is amended by revising paragraph (b)(1); by redesignating paragraphs (e)(1)(viii) through (e)(1)(xiii), as paragraphs (e)(1)(x) through (e)(1)(xv), respectively; by adding new paragraphs (e)(1)(viii) and (e)(1)(ix); and by revising paragraphs (e)(2)(v) to read as follows:

§ 773.3 Distribution license.

* * * * *

(b) * * *

(1) *Commodities.* All commodities listed in the Commodity Control List (Supplement No. 1 to § 799.1 of this subchapter) will be considered for eligibility under the Distribution License procedure, except those listed in paragraphs (b)(1)(i) through (b)(1)(xv) of this section. The following ineligible commodities require an individual validated license or written reexport authorization, except when the commodities are otherwise eligible for a general license or permissive reexport authorization.

(i) Supercomuters;

(ii) Commodities that will be used outside of the countries listed in Supplement No. 2 to part 773 either directly or indirectly in any sensitive nuclear activity as described in § 778.3 of this subchapter;

(iii) Commodities listed in Supplement No. 4 to part 773, except where shipments to a specific end-user have been approved by the Office of Export Licensing;

(iv) Commodities subject to short supply controls (see part 777 of this subchapter);

(v) Aircraft parts and accessories destined for Libyan, Iranian, or Syrian aircraft, whenever located;

(vi) Communications intercepting devices (see § 778.13 of this subchapter);

(vii) Crime control and detection equipment (see § 778.14 of this subchapter);

(viii) Commodities subject to regional stability controls (see § 778.16 of this subchapter);

(ix) Commodities related to the design, development, production, or use of missiles capable of delivering nuclear weapons (see § 778.18 of this subchapter);

(x) Chemical precursors and biological agents (see § 778.19 of this subchapter);

(xi) Chemical processing equipment and intermediates (see § 778.20 of this subchapter);

(xii) Commodities that will be used either directly or indirectly in the design, development, production, or use of missiles or in the design, development, production, stockpiling, or use of chemical or biological weapons (see §§ 778.6 and 778.7 [1]);

(xiii) Commodities subject to nuclear nonproliferation controls (see § 778.2 of this subchapter), except that the Distribution License limit for ECCN 1565A to countries identified in Supplement No. 3 to part 773 is 100 MFLOPS, not a Processing Data Rate of 2,000 million bits/sec. (Exporters should consult the Reason for Control paragraphs on the Commodity Control List to determine whether nuclear nonproliferation controls apply.);

(xiv) Other commodities specifically excluded or restricted by the Office of Export Licensing in issuing the license; and

(xv) Commodities listed on Supplement No. 1 to part 773 of this subchapter (except as authorized by a footnote in Supplement No. 1), until the Distribution License holder has requested an amendment to the distribution license by submitted a Form BXA-685P (Request for Amendment Action), along with a description of the commodities intended for export and a list of the countries involved (including sales territories of approved consignees), and the amendment has been approved by the Office of Export Licensing. The amendment must be submitted to OEL by a date to be specified in the final rule, or the exporter's DL privileges will lapse. The Bureau of Export Administration will review each amendment request in accordance with the eligibility restrictions listed in § 773.4(c)(1)(i) of this subchapter.

* * * * *

(e) * * *

(1) * * *

(viii) A system for assuring compliance with controls over commodities restricted under the Missile Technology Control regime (see § 778.16 of this subchapter);

(ix) A system for assuring compliance with controls over commodities restricted udner the Chemical and Biological Weapons regime (see § 778.19 and § 778.20 of this subchapter);

* * * * *

(2) * * *

(v) A system for complying with the nuclear, missile, or chemical and biological restrictions under the procedure.

* * * * *

6. Section 773.4 (formerly reserved) is added to read as follows:

§ 773.4 Certified exporter and consignee procedure.

A Certified Exporter and Consignee Procedure (CEC) is established that authorizes exports and reexports of certain commodities by approved parties in the United States and abroad. Only firms that demonstrate the ability to adhere to the CEC requirements and maintain an effective Internal Control Program (ICP) may participate. Parties must establish and maintain eligibility and assume responsibility for their activities under the license. The CEC procedure is subject to the limitations set forth in § 773.1.

(a) *Eligible activities under the procedure.* (1) Certified exporters may:

(i) Export commodities directly to customers within their sales territory. To be eligible, all commodities and

[1] Note: As added in the proposed rule of March 13, 1991 (56 FR 10766). BXA expects shortly to publish a final rule adding these sections.

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destinations must be authorized under the CEC procedure. The certified exporter is responsibile for assessing the eligibility of its customers in accordance with the standards set forth in §773.4(c)(4).

(ii) Export to certified consignees in eligible countries when the certified consignee states that the country is part of an authorized sales territory. These transactions must be cleared in accordance with the vertification procedures specified in § 773.4(f)(1).

(2) Certified consignees may:

(i) Reexport approved commodities from their inventory to eligible customers within their approved sales territory. The certified consignee is responsible for assessing the eligibility of its customers in accordance with § 773.4(c)(4). These commodities may have been received by the certified consignee under any type of license: individual validated license (IVL), Special License, General License, or as provided in paragraph (a)(3) of this section.

(ii) Reexport approved commodities from their inventory to other certified consignees, in eligible countries when the certified consignee states that the country is part of an authorized sales territory. These transactions must be cleared in accordance with the verification procedures of § 773.4(f)(1), unless the certified consignee is located in the authorized sales territory of the certified consignee making the shipment.

(3) *Designation of suppliers.* (i) Certified consignees may designate suppliers in the United States or other countries for the purpose of authorizing the export or reexport of controlled commodities from those locations directly to the certified consignee. These transactions must be cleared in accordance with the verification procedures in § 773.4(f)(1).

(ii) Certified exporters and certified consignees may designate suppliers in the U.S. and other countries for the purpose of authorizing the export or reexport from those locations to a customer designated by a certified exporter or certified consignee and located in the sales territory of the certified exporter or certified consignee. This type of drop shipment must be specifically authorized on the license. The applicant for this authorization must describe in the license application the controls in place for these transactions. These transactions must be cleared in accordance with the verification procedures in § 773.4(f)(1).

(iii) A party is designated as exporter or reexporter by a certified exporter or certified consignee when the certified exporter or certified consignee places an order with the party to be designated and informs the party that he is designated as exporter or reexporter under the certified exporter's or certified consignee's license and is authorized to export or reexport items described on the order to described destinations. Within this order, the certified exporter or certified consignee must also inform the party to be designated as exporter or reexporter of the party's responsibilities under § 773.4(f)(1) and the certified exporter's or certified consignee's license number plus a unique "transaction" number. The certified exporter or certified consignee need not provide such communications to OEL unless a specific request is made.

Note: Suppliers under this procedure become the exporter, and are responsible for export clearance and submission of Shipper's Export Declarations. The certified exporter or certified consignee, however, is responsible for assuring proper disposition of the goods.

(b) *Eligibility standards for participants.* An applicant must establish and maintain its eligibility to participate in the CEC program. Exporters and consignees who participate in the program must be deemed reliable by the Office of Export Licensing. The Office of Export Licensing will consider the following as evidence of the eligibility and reliability of the applicant:

(1) *Licensing experience.* (i) An established licensing history under the Distribution License procedure; or

(ii) Extensive experience under the Project License procedure or under IVL's provided an examination shows the applicant has established an effective internal control program for compliance within the Export Administration Regulations (15 CFR parts 730–799) and the terms or conditions of these licenses.

(2) *Previous record of compliance.* The Bureau of Export Administration will consider all relevant information in evaluating the applicant's reliability and previous record of compliance. Firms with a record of export-related violations, firms that fail to maintain appropriate records, or firms that hire individuals with such background, may be denied participation under the procedure. At a minimum, applicants that have a record of previous violations of U.S. export controls, or a lack of diligence in compliance with the Export Administration Regulations, will be required to show what corrective measures have been taken to prevent violations in the future. Failure to acknowledge or address violations or deficiencies will result in a denial of the application.

(3) *Internal control program.* All applicants must provide a copy of their written internal control program that takes into account each of the control elements specified in § 773.4(e), and information concerning their ability to implement and maintain the program in practice.

(c) *Eligible commodities, participants, destinations, and recipients—(1) Commodities.* All commodities listed in the Commodity Control List (Supplement No. 1 to § 799.1 of this subchapter) are eligible for export or reexport under the Certified Exporter and Consignee procedure, except those listed in paragraph (c)(1)(i) of this section. These ineligible commodities require an individual validated license or reexport authorization, except when the commodities are otherwise eligible for a general license or permissive reexport authorization.

(i) *Commodities not eligible for this procedure. (A) Supercomputers;*

(B) Commodities that will be used outside of the countries listed in Supplement No. 2 to part 773 either directly or indirectly in any senstive nuclear activity as described in § 778.3 of this subchapter;

(C) Commodities listed in Supplement No. 4 to part 773, except were shipments to a specific end-user have been approved by the Office of Export Licensing;

(D) Commodities subject to short supply controls (see part 777 of this subchapter);

(E) Aircraft parts and accessories destined for Libyan, Iranian, or Syrian aircraft, wherever located;

(F) Communications intercepting devices (see § 776.13 of this subchapter).

(G) Crime control and detection equipment (see § 776.14 of this subchapter);

(H) Commodities subject to regional stability controls (see § 776.16 of this subchapter);

(I) Commodities related to the design, development, production, or use of missiles capable of delivering nuclear weapons (see § 776.18 of this subchapter;

(J) Chemical precursors and biological agents (see § 776.19 of this subchapter);

(K) Chemical processing equipment and intermediates (see § 776.20 of this subchapter);

(L) Commodities that will be used either directly or indirectly in the design, development, production, or use of missiles or in the design, development, production, stockpiling, or use of chemical or biological weapons (see §§ 778.6 and 7787.7 [2];

(M) Commodities subject to nuclear non-proliferation controls (see § 778.2 of this subchapter), except that the CEC procedure limit for ECCN 1565A to countries identified in Supplement No. 3 to part 773 is 100 MFLOPS, not a Processing Data Rate of 2,000 million bits/sec. (Exporters should consult the Reason for Control paragraphs on the Commodity Control List to determine whether nuclear nonproliferation controls apply.); and

(N) Other commodities especifically excluded or restricted by the Office of Export Licensing in issuing the license.

(ii) *Foreign-made products incorporating U.S.-origin parts and components.* Foreign-made products that incorporate U.S.-origin controlled parts or components above the de minimis levels indicated in § 776.12(b) of this subchapter are subject to the eligibility restrictions listed in paragraph (c)(1)(i) of this section.

(iii) *Determination of eligibility.* The Bureau of Export Administration determines which commodities are eligible for the Certified Exporter and Consignee procedure by reviewing each application for conformity with the commodity exclusions listed in paragraph (c)(1)(i) of this section and other relevant provisions of the Export Administration Regulations (15 CFR parts 730–799). Exporters interested in participating in the Certified Exporter and Consignee procedure should apply with the Office of Export Licensing in accordance with the procedures described in paragraph (d) of this section.

(2) *Eligible participants.* (i) *Certified exporters.* Only parties located within the United States are eligible to be approved as "Certified Exporters".

(ii) *Certified consignees.* Parties located in Canada and in Country Groups T and V, except Afghanistan, Iran, Iraq, Syria, and the People's Republic of China are eligible to be approved as "Certified Consignees".

(3) *Eligible destinations.* (i) *Sales territories.* Certified exporters and certified consignees may request authorization to export or reexport approved commodities to those eligible countries in which they are actively pursuing sales. Countries eligible for a sales territory include countries in Country Groups T and V except, Afghanistan, Iran, Iraq, Syria, and the People's Republic of China.

[2] Note: As added in the proposed rule of March 13, 1991 (56 FR 10766). BXA expects shortly to publish a final rule adding these sections.

(ii) *Sourcing territories.* Certified exporters and certified consignees may designate suppliers worldwide, except those located in Country Group S or Z, to supply approved commodities under the provisions of § 773.4(a)(3).

(4) *Eligible customers.* Certified exporters and certified consignees are responsible for determining the eligibility of their customers to receive approved commodities under this procedure. The following customers are not eligible to receive products under the CEC procedure:

(i) Denied parties;

(ii) Parties engaged either directly or indirectly in any nuclear activity when located outside countries listed in Supplement No. 2 or Supplement No. 3 to part 773. (See § 773.3(a)(2) for definition of "nuclear end use".);

(iii) Military and police entities in South Africa. Government entities enforcing apartheid in South Africa are not eligible to receive computers, computer related equipment, software, or goods to service or manufacture computers. (See Supplement No. 2 to part 785 of this subchapter for a partial listing of military and police entities.); and

(iv) Parties fitting the high diversion risk profile set forth in § 773.3(e)(1)(ix).

(d) *Application procedures—(1) Prior consultation for new applicants.* The preparation of the initial application for this procedure requires a substantial amount of work by the applicant. Since strong evidence of reliability is required for approval, the applicants should consult with the Special Licensing Branch of the Office of Export Licensing before preparing and submitting their applications.

(i) *Examination of reliability.* New applicants may be required to cooperate in pre-license reviews to establish evidence of the party's credentials and reliability to participate in this CEC procedure. The Office of Export Licensing may, at its option, accomplish such examinations by conducting an on site review.

(ii) *For Certified Consignees.* In addition to the previously mentioned option, the Office of Export Licensing may consider other evidence of reliability such as reviews submitted by a certified exporter, or other authorized independent parties. Such reviews may be accepted in lieu of an on site review by the Office of Export Licensing, where a business relationship exists between two parties.

(2) *Submission procedure.* Each submission under this procedure shall include the following:

(i) *Application form.* Applicants for certified exporter status must submit Form BXA–622P, Application for Export License. Applicants for certified consignee status must submit Form BXA–699P, Request for Reexport Authorization;

(ii) *Comprehensive narrative statement.* A comprehensive narrative statement must be included in the submission. This statement shall describe:

(A) How the applicant meets the eligibility standards set forth in § 773.4(b). Applicants filing for an extension of their validity period must describe their continued eligibility for participation in light of the eligibility standards in § 773.4(b);

(B) The applicant's proposed utilization of the procedure, including: A description of the business activity of the applicant, the estimated annual volume of exports or reexports, and the relationships to, and primary activities of, the various types of customers with whom the applicant expects to deal;

(iii) A list of the products, identified by Export Control Commodity Number (ECCN) and paragraph within the ECCN, that the applicant proposes to sell;

(iv) A list of countries to which the applicant proposes to sell under the license;

(v) *Internal control program.* Applicants must submit a copy of their internal control program that incorporates the elements set forth in § 773.4(e);

(vi) *Certifications.* All applications must certify that the applicant will do the following:

(A) Comply with all applicable provisions of the Export Administration Regulations (15 CFR parts 730–799) and particularly with § 773.4;

(B) Waive those confidentiality rights under section 12(c) of the Export Administration Act, as amended, necessary to allow the Office of Export Licensing to either confirm or deny the current validity of the authorization (see § 773.4(f)(1) for verification procedures); and

(C) Permit on-site reviews by the Office of Export Licensing.

(3) *Validity period.* A license is valid for 4 years and may be extended for additional 4 year periods as long as the applicant can demonstrate ongoing activities under the license. The initial two-years of the authorization will be considered a probationary period. During this interval, the Office of Export Licensing may require certified exporters or certified consignees to conduct training programs or on-site reviews of their major customers. Such

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requirements will be specified at the time the license is approved.

(4) *Changes in fact.* To add commodities or sales territories or to modify the narrative statement, the licensee must submit a letter request to this effect. If the licensee's name changes, a new application must be submitted that satisfies the requirements of this paragraph (d).

(e) *Internal control program.* Each applicant under the certified exporter and consignee procedure is required to have an internal control program (ICP) in place to ensure compliance with all conditions of the license and the Export Administration Regulations. The applicant must submit a copy of its internal control program for evaluation with its application. The ICP must include the following elements:

(1) Clear statement of corporate policy communicated to all levels of the firm involved in export and/or reexport sales, traffic, and related functions emphasizing the importance of compliance;

(2) Identification of positions (and maintenance of current listing of individuals occupying the positions) in the license holder firm responsible for compliance;

(3) A system for timely receipt, verification of receipt, and distribution of the Table of Denial Orders (TDO), the list (where appropriate) of South African entities enforcing apartheid (as defined in Supplement No. 1 to part 785 of this subchapter), and other regulatory material necessary to ensure compliance;

(4) A system for screening orders/shipments to customers against the TDO that covers servicing, sales, and customer training;

(5) A system for assuring compliance with the limits on delivery to nuclear end uses/users;

(6) A system for assuring compliance with controls over commodities restricted under the Missile Technology Control regime (see § 776.18 of this subchapter);

(7) A system for assuring compliance with controls over commodities restricted under the Chemical and Biological Weapons regime (see § 776.19 and § 776.20 of this subchapter);

(8) A system for assuring compliance with controls over commodities that will be used either directly or indirectly in the design, development, production, or use of missiles or in the design, development, production, stockpiling, or use of chemical or biological weapons (see §§ 778.6 and 778.7); [3]

(9) A system for assuring compliance with product and country restrictions, including controls over direct shipments to customers and over reexports;

(10) A system for screening customers against the diversion risk profile described in § 773.3(e)(1)(ix);

(11) An order processing system affixing responsibility for all required internal control reviews;

(12) A system for the conduct of internal compliance reviews;

(13) A continuing program for informing and educating staff of applicable regulations, limits and restrictions of the license;

(14) A system for recordkeeping as required under §§ 773.4(g)(2) and 787.13 of this subchapter; and

(15) A system for notifying the Office of Export Licensing promptly if the license holder has knowledge that a customer is not in compliance with the terms of the license.

(f) *Verification and clearance procedures.*—(1) Verification of authorization.

(i) Firms designated by certified exporters or certified consignees who are relying on the certified exporter's or certified consignee's authorization to export or reexport, must verify that the certified consignee's authorization number is valid. This authorization number must be indicated on all shipping documents.

(ii) Firms designated by a certified exporter or certified consignee, in accordance with § 773.4(a)(3)(ii), to export or reexport to a customer designated by such certified exporter or certified consignee and located in the authorized sales territory of the certified exporter or certified consignee, must verify that the certified exporter's or certified consignee's authorization number is still valid. The number must be indicated on all sales documents.

(iii) To verify the authorization number, the supplier must contact the Special Licensing Branch at (202) 377-3287, by facsimile at (202) 377-4094, or by writing to OEL, P.O. Box 273, Washington, DC 20044, attention: Certified Exporter and Consignee Procedure. Verification by OEL may include assignment of a discrete number code and may be valid only for a limited time.

(2) *Destination Control Statement.* Licensees must advise their customers of U.S. laws pertaining to prohibited reexports and prohibited in-country transfers. This notification may be transmitted as a part of a contractual agreement or may appear as a statement on the invoice.

(i) The notification shall read as follows:

These commodities were authorized for (specify export or reexport) under a special U.S. export licensing procedure. They may not be reexported without prior authorization from U.S. authorities. Change of title or control within the importing country may also require approval when the new recipient is engaged in proliferation activities or when there is reason to believe the recipient will not comply with applicable restrictions. Sales to parties who have been denied U.S. export privileges are prohibited.

(ii) The licensee must obtain a written acknowledgement of receipt of this statement on transactions that require end-user approval because they involve products listed on Supplement No. 4 to part 773.

(iii) *Exemptions.* This destination control statement is not required on shipments to:

(A) Customers located in countries listed in Supplement No. 2 or 8 to part 773;

(B) Certified consignees;

(C) Government agencies; and

(D) Retail establishments. (For purposes of this § 773.4(f)(2)(iii)(D), a retail establishment is defined as a facility selling from stock by means of over-the-counter transactions, mail order transactions, or telephone call transactions).

(iv) When exports from the United States are exempt under paragraph (f)(2)(iii) of this section, an appropriate Destination Control Statement as required by § 786.6 of this subchapter shall be substituted.

(3) *Permissive reexports.* Approved consignees may make permissive reexports in accordance with § 774.2 of this subchapter, provided that accurate records are maintained.

(g) *Supporting documentation and recordkeeping requirements.* (1) *Additional documentation.* Additional support documentation, such as an Import Certificate (IC), is not required for shipments under the CFC procedure, except when the export or reexport is destined to Switzerland or Yugoslavia.

(2) *Recordkeeping requirements.* Approved participants must maintain records in accordance with the provisions of § 787.13 of this subchapter. In addition, the following records must be maintained:

(i) A current copy of the licensee's internal control programs; and

[3] Note: As added in the proposed rule of March 13, 1991 (56 FR 10765). BXA expects shortly to publish a final rule adding these sections.

(ii) A current copy of the Export Administration Regulations, including the Table of Denial Orders.

(3) *Availability of records.* All records retained under this provision shall be made available in accordance with § 787.13 of this subchapter, either through inspection on-site or by forwarding the records upon request.

(h) *Office of export licensing review program for participants.* (1) *On-site reviews.* All certified parties are subject to reviews by the Office of Export Licensing. Such reviews will be conducted at the discretion of the Office of Export Licensing and reasonable notice will be given to license holders in advance of such reviews. The reviews will involve interviews with officials familiar with, or responsible for, compliance with the terms of the license, the inspection of records, and a review of the internal control mechanisms.

(2) *Desk audits.* A license holder may be required to submit information to the Office of Export Licensing, at any time, covering any aspect of the authorization granted under this procedure.

PART 774—[AMENDED]

7. Section 774.2 is amended by revising paragraph (e) to read as follows:

§ 774.2 Permissive reexports.[3]

* * * * *

(e) Reexports as provided by the terms of the Project License procedure (see § 773.2(g) of this subchapter), the Distribution License procedure (see § 773.3(j) of this subchapter), or the Certified Exporter and Consignee Procedure (see § 773.4(f) of this subchapter).

* * * * *

PART 775—[AMENDED]

8. Section 775.2(9) is amended to add the phrase "Certified Exporter and Certified Consignee Procedure (§ 774.3 of this subchapter)." immediately before the phrase "Service Supply License (§ 773.7),".

Dated: April 24, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91-10105 Filed 5-1-91; 8:45 am]

BILLING CODE 3510-DT-M

[3] See § 774.9 for effect on foreign laws.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-139-86]

RIN 1545-AJ51

Discounted Unpaid Losses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the discounting of unpaid losses of insurance companies for Federal income tax purposes. Changes to the applicable law were made by the Tax Reform Act of 1986. The regulations affect insurance companies and provide them with guidance needed to comply with the changes to the law.

DATES: Written comments must be received by July 31, 1991. Requests to speak (with outlines of oral comments) at a public hearing scheduled for Tuesday, September 24, 1991, at 10 a.m., must be received by July 31, 1991. See the notice of hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: Send comments and requests to speak (with outlines of coral comments) at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (FI-139-86), Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Katherine A. Hossofsky of the Office of the Assistant Chief Counsel (Financial Institutions and Products), (202) 566-4336 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to provide rules relating to the discounting of unpaid losses under section 846 of the Internal Revenue Code of 1986. The proposed regulations reflect the addition of section 846 to the Code by section 1023(c) of the Tax Reform Act of 1986 (100 Stat. 2399). Guidance on certain issues relating to section 846 was provided in Notice 88-100, 1988-2 C.B. 439.

Explanation of Provisions

The deduction for losses incurred provided to property and casualty insurance companies under section 832(b)(5) of the Code takes into account changes in the amount of discounted unpaid losses. In addition, section 807(c) requires life insurance companies to discount unpaid losses (other than losses on life insurance contracts) deductible under sections 807(c)(2) and 805(a)(1). Section 846 provides rules for the discounting of unpaid losses. These proposed regulations provide guidance on certain issues arising under section 846.

Requirements for Election To Use Own Experience

Although taxpayers generally must discount unpaid losses using loss payment patterns determined by the Secretary, section 846(e) allows a taxpayer to elect to discount unpaid losses using its own historical loss payment pattern. Under section 846(e), this payment pattern must be determined using the loss payment pattern on the most recent annual statement filed before the beginning of the accident year for which the payment pattern is computed. The election is made separately for each determination year (1987 and each fifth calendar year thereafter) and applies to all of the taxpayer's lines of business. Section 846(e)(4) directs the Secretary to provide that the election is not available for a line of business for which the taxpayer does not have sufficient historical experience to determine a loss payment pattern.

Beginning with the 1992 determination year, the proposed regulations provide that a taxpayer has sufficient historical experience for a line of business if, on the most recent annual statement filed before the beginning of the determination year, the taxpayer reports unpaid losses for each accident year for which unpaid losses for that line are required to be separately reported on that annual statement. Unless unpaid loss information for each of these accident years is provided on the most recent annual statement filed before the determination year, it would be necessary to use assumptions other than historical experience in order to compute payment patterns. The use of such assumptions is not permitted because section 846 provides for discounting on the basis of historical experience, not on the basis of actuarial predictions of the rate at which losses will be paid.

For the 1987 determination year, the regulations provide that a taxpayer has sufficient historical experience for a line of business if the taxpayer reports written premiums for at least the number of accident years for which unpaid losses for that line are required to be separately reported on the annual

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statement. Because a taxpayer may write premiums for several years before having unpaid losses relating to those premiums, this rule, taken from Notice 88-100, does not ensure the availability of unpaid loss information for each of those accident years. Thus, the rule is not adopted for determination years after 1987.

Notice 88-100 also required that the amount of unpaid losses that a taxpayer reports on its annual statement for a line of business be equal to or greater than the amounts reported by at least 10% of all other companies that report unpaid losses for that line of business. The regulations do not adopt this rule because of its potentially adverse impact on small companies and because determination of the 10th percentile threshold amount was unduly burdensome for taxpayers.

Use of Composite Schedule in Certain Cases

The proposed regulations generally provide for application of a composite schedule of discount factors to unpaid losses of a line of business for which the Commissioner has not published discount factors. In certain cases, however, the regulations specify that other factors may, or must, be applied to these losses. For example, reinsurance allocated to the underlying line of business on the annual statement must be discounted using discount factors applicable to the underlying line.

Fresh Start

The proposed regulations provide rules relating to the computation of the "fresh start" provided by section 1023(e)(3) of the Tax Reform Act of 1986. The fresh start relieves a taxpayer from taking into account the difference between undiscounted and discounted losses as of the end of the last tax year beginning before January 1, 1987. However, under section 1023(e)(3)(B) of the Act, the fresh start does not apply to any reserve strengthening in a tax year beginning in 1986. The regulations provide rules for the determination of the amount that must be included in income for the first tax year beginning after December 31, 1986, as a result of reserve strengthening.

The regulations adopt, with certain modifications, the test of Notice 88-100 for determining the existence of reserve strengthening. Under the regulations, this test is applied separately to each unpaid loss reserve. An unpaid loss reserve is the aggregate of the unpaid loss estimates for losses incurred (whether or not reported) in an accident year of a line of business. In general, the test is applied by comparing the amount of an unpaid loss reserve as of the end of a tax year beginning in 1986 with the amount that was in the same reserve at the end of the immediately preceding tax year, taking into account loss payments made during the 1986 tax year.

Applying the test for reserve strengthening to each unpaid loss reserve avoids significant compliance and administrative burdens. Because taxpayers must report unpaid losses to state regulators as a reserve for aggregated loss estimates, not as a list of estimates for each separate loss, a test applied to each separate loss would require taxpayers to use unreported data to trace each loss payment made during the 1986 tax year to the initial estimate of the underlying loss.

Because the test is applied to each unpaid loss reserve, rather than to each separate loss, the test does not take into account the fact that a particular loss payment may exceed, or be less than, the initial estimate of the amount of the loss for which payment was made. This may result in a failure to include, or an erroneous inclusion of, certain amounts in the computation of reserve strengthening for a particular reserve. For most unpaid loss reserves, however, any potential inaccuracies are likely to offset each other in the aggregate. Further, the absence of total accuracy is justified by the reduction in compliance and administrative burdens.

The test described above is not applied to determine reserve strengthening in the case of reserves for the 1986 accident year (and, in the case of certain fiscal year taxpayers, reserves for the 1987 accident year). If the test were applied to those reserves, it would treat as reserve strengthening any amount added to the reserves for losses incurred in a tax year beginning in 1986. Rather, the proposed regulations identify reserve strengthening as the excess (if any) of a reserve for the 1986 (or 1987) accident year, at the end of the last tax year beginning in 1986, over a hypothetical reserve for that accident year. The hypothetical reserve is computed using the same assumptions (other than the assumed interest rates, if any) used to compute the 1985 accident year reserve for the relevant line of business. Under the regulations, there can be no reserve strengthening or weakening of a 1986 (or 1987) accident year reserve if no 1985 accident year reserve was established for the relevant line of business.

To simplify the reserve strengthening rules of Notice 88-100, the regulations drop the requirement that strengthenings be allocated to one of three categories and provide less complex rules relating to the interaction between reinsurance transactions and reserve strengthening.

Notice 88-100

When the proposed regulations become effective, sections II, III, and VI of Notice 88-100, 1988-2 C.B. 439, become obsolete.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the rules will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. Because the Treasury Department expects to issue final regulations on this matter as soon as possible, a public hearing will be held at 10 a.m., on September 24, 1991, in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224. See notice of hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these regulations is William L. Blagg of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. Other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.801-1 through 1.832-7T

Income taxes; Insurance companies.

Proposed Amendments to the Regulations

For the reasons set forth in the preamble, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Sections 1.846-1 through 1.846-3 also issued under 26 U.S.C. 846. Section 1.846-3 also issued under sec. 1023(e), Public Law 99-514, 100 Stat. 2404.

Par. 2. Part 1 is amended by adding §§ 1.846-1 through 1.846-3 to read as follows:

§ 1.846-1 Application of discount factors.

(a) *In general*—(1) *Rules.* A separate series of discount factors is computed for, and applied to, undiscounted unpaid losses attributable to each accident year of each line of business. See paragraph (b) of this section for rules relating to applicable discount factors and § 1.846-3(b) for guidance relating to discount factors applicable to accident years prior to the 1987 accident year. Once a taxpayer applies any part of a series of discount factors to losses attributable to an accident year of a line of business, that series must be applied without change to discount those losses from one tax year to the next until the losses are completely paid. For example, the discount factors cannot be changed to reflect a taxpayer's actual experience with claims incurred during the year or to reflect a subsequent redetermination of an interest rate.

(2) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. A taxpayer discounts unpaid losses attributable to all accident years prior to 1992 using discount factors published by the Commissioner. In 1992, the taxpayer elects, under § 1.846-2, to compute discount factors using its own historical loss payment pattern. The taxpayer must continue to discount unpaid losses attributable to pre-1992 accident years using the discount factors published for those accident years by the Commissioner.

Example 2. On its annual statements through 1987, a taxpayer did not allocate proportional reinsurance unpaid losses to the line of business being reinsured. Beginning with the 1988 annual statement, the taxpayer did so allocate those losses. The taxpayer must continue to discount the reinsurance unpaid losses attributable to pre-1988 accident years using discount factors applicable to unallocated reinsurance unpaid losses. (See paragraph (b)(3) of this section for rules relating to the application of discount factors to reinsurance unpaid losses.)

(b) *Applicable discount factors.*—(1) *In general.* Except as otherwise provided in section 846(f)(6) (relating to certain accident and health lines of business), in § 1.846-2 (relating to a taxpayer's election to use its own historical loss payment pattern), in this paragraph (b), or in other guidance published by the Commissioner in the Internal Revenue Bulletin—

(i) If the Commissioner has published discount factors for a line of business, a taxpayer must discount unpaid losses attributable to that line by applying those discount factors; and

(ii) If the Commissioner has not published discount factors for a line of business, a taxpayer must discount unpaid losses attributable to that line by applying those discount factors.

(2) *Title insurance company reserves.* The case reserves (known claim reserves) of a title insurance company are subject to the discounting rules of section 846 and the regulations thereunder. Unless the company has made a valid election under section 846(e) and § 1.846-2 that applies to these reserves, the reserves must be discounted using the "Miscellaneous Casualty" discount factors published by the Commissioner. Section 832(b)(8) provides rules for determining the discounted unearned premiums of a title insurance company.

(3) *Reinsurance business*—(i) *Accident years after 1987*—(A) *Proportional reinsurance.* For the 1988 accident year and subsequent accident years, unpaid losses for proportional reinsurance must be discounted using discount factors applicable to the line of business to which those losses are allocated as required on the annual statement.

(B) *Non-proportional reinsurance.* For the 1988 accident year and subsequent accident years, unpaid losses for non-proportional reinsurance must be discounted using composite discount factors, except as otherwise provided in guidance published by the Commissioner in the Internal Revenue Bulletin.

(ii) *Accident years before 1988*—(A) *Unallocated losses.* If on its annual statement a taxpayer does not allocate to the underlying line of business reinsurance unpaid losses that are attributable to the 1987 accident year or a prior accident year—

(*1*) Those losses must be discounted using composite discount factors; or

(*2*) If over 90% of all such unallocated losses of a taxpayer cover one underlying line of business, the taxpayer must discount all unallocated reinsurance unpaid losses attributable to the accident year using discount factors published by the Commissioner for the underlying line of business.

(B) *Allocated losses.* If on its annual statement a taxpayer allocates to the underlying line of business reinsurance unpaid losses that are attributable to the 1987 accident year or a prior accident year, those losses must be discounted using discount factors applicable to the underlying line of business.

(4) *International business.* The rules of paragraphs (b)(3)(ii) (*1*) and (*2*) of this section apply for any accident year in the case of unpaid losses representing international business.

(5) *Composite discount factors.* For purposes of the regulations under section 846, "composite discount factors" means the series of discount factors published annually by the Commissioner on the basis of the composite loss payment pattern described in section 846(d)(3)(E).

§ 1.846-2 Election by taxpayer to use its own historical loss payment pattern.

(a) *In general.* If a taxpayer has one or more eligible lines of business in a determination year, the taxpayer may elect to discount unpaid losses using its own historical loss payment pattern instead of the industry-wide pattern determined by the Secretary. A taxpayer making the election must use its own payment pattern in discounting unpaid losses for each line of business that is an eligible line of business in that determination year. The election applies to accident years ending with the determination year and to each of the four succeeding accident years. If a taxpayer makes the election for the 1987 determination year, the taxpayer also must use its own payment pattern to discount unpaid losses attributable to all accident years prior to 1987.

(b) *Eligible line of business*—(1) *In general.* A line of business is an eligible line of business in a determination year if, on the most recent annual statement filed by the taxpayer before the beginning of that determination year, the taxpayer reports unpaid losses for the line of business for at least the number of accident years that unpaid losses for that line of business are required to be separately reported on that annual statement.

(2) *Special rule for 1987 determination year.* A line of business is an eligible line of business in the 1987 determination year if, on the most recent annual statement filed by the taxpayer before the beginning of that determination year, the taxpayer reports written premiums for the line of business for at least the number of accident years that unpaid losses for that line of business are required to be separately reported on that annual statement.

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§ 1.846-3 Fresh start and reserve strengthening.

(a) *In general.* Section 1023(e) of the Tax Reform Act of 1986 ("the 1986 Act") provides rules for computing fresh start, reserve strengthening, and the deduction for any increase in discounted unpaid losses for the first tax year beginning after December 31, 1986. For purposes of section 1023(e), a taxpayer must discount its unpaid losses as of the end of the last tax year beginning before January 1, 1987. The excess of undiscounted unpaid losses over discounted unpaid losses as of that time is not required to be included in income, except (as provided in paragraph (e) of this section) to the extent of any "reserve strengthening" in a tax year beginning in 1986. The exclusion from income of this excess is known as "fresh start." The amount of fresh start is, however, included in earnings and profits for the first tax year beginning after December 31, 1986.

(b) *Applicable discount factors*—(1) *Rule.* For purposes of section 1023(e) of the 1986 Act, a taxpayer discounts unpaid losses as of the end of the last tax year beginning before January 1, 1987—

(i) By using the same discount factors that are used in the immediately succeeding tax year to discount unpaid losses attributable to the 1987 accident year and prior accident years (see section 1023(e)(2) of the 1986 Act); and

(ii) By applying those discount factors as if the 1986 accident year were the 1987 accident year.

(2) *Example.* The following example illustrates the principles of this paragraph (b):

Example. X, a calendar year taxpayer, does not make a valid election in 1987 to use its own historical loss payment pattern. When X computes discounted unpaid losses for its last tax year beginning before January 1, 1987, the discount factor for AY+0 published by the Commissioner in Rev. Rul. 87-34, 1987-1 C.B. 168, must be applied to unpaid losses attributable to the 1986 accident year; the discount factor for AY+1 is applied to unpaid losses attributable to the 1985 accident year; etc.

(c) *Rules for determining reserve strengthening (weakening)*—(1) *In general.* A reserve strengthening (weakening) is an amount that, in a tax year beginning in 1986, was added to (subtracted from) an unpaid loss reserve. For purposes of section 1023(e)(3)(B) of the 1986 Act, reserve strengthening (weakening) must be determined separately for each unpaid loss reserve by applying the rules of this paragraph (c). Thus, for example, this determination is made without regard to the reasonableness of the amount of the unpaid loss reserve and without regard to the taxpayer's discretion, or lack thereof, in establishing the amount of the unpaid loss reserve. However, reserve strengthening for an unpaid loss reserve may not exceed the amount of the reserve, including any undiscounted strengthening amount, as of the end of the last tax year beginning before January 1, 1987. For purposes of this section, an "unpaid loss reserve" is the aggregate of the unpaid loss estimates for losses (whether or not reported) incurred in an accident year of a line of business.

(2) *Accident years after 1985*—(i) *In general.* Reserve strengthening (weakening) for an unpaid loss reserve for an accident year after 1985 is the amount by which that reserve at the end of the last tax year beginning in 1986 exceeds (is less than) a hypothetical unpaid loss reserve.

(ii) *Hypothetical unpaid loss reserve.* For purposes of this paragraph (c)(2), the term "hypothetical unpaid loss reserve" means a reserve computed for losses the estimates of which were included, at the end of the last tax year beginning in 1986, in the unpaid loss reserve for which reserve strengthening (weakening) is being determined. The hypothetical unpaid loss reserve must be computed using the same assumptions, other than the assumed interest rates in the case of reserves determined on a discounted basis for annual statement reporting purposes, that were used to determine the 1985 accident year reserve, if any, for the line of business for which the hypothetical reserve is computed. If there was no 1985 accident year reserve for that line of business, the hypothetical unpaid loss reserve is the reserve, at the end of the last tax year beginning in 1986, for which reserve strengthening (weakening) is being determined (and thus there is no reserve strengthening or weakening).

(3) *Accident years before 1986*—(i) *In general.* For each tax year beginning in 1986, reserve strengthening (weakening) for an unpaid loss reserve for an accident year before 1986 is the amount by which the reserve at the end of that tax year exceeds (is less than)—

(A) The reserve at the end of the immediately preceding tax year; reduced by

(B) Claims and loss adjustment expenses paid ("loss payments") in the tax year beginning in 1986 with respect to losses that are attributable to the reserve. The amount by which a reserve is reduced as a result of reinsurance ceded during a tax year beginning in 1986 is treated as a loss payment made in that tax year.

(ii) *Exceptions.* Notwithstanding paragraph (c)(3)(i) of this section, reserve strengthening for an unpaid loss reserve for an accident year before 1986 does not include—

(A) An amount added to the reserve in a tax year beginning in 1986 as a result of a loss reported to the taxpayer from a mandatory state or federal assigned risk pool if the amount of the loss reported is not discretionary with the taxpayer; or

(B) An amount added to the reserve to take into account reinsurance assumed for a line of business during a tax year beginning in 1986, but only to the extent that the amount does not exceed the amount of a hypothetical reserve for the reinsurance assumed. The amount of the hypothetical reserve is determined using the same assumptions (other than the assumed interest rates) that were used to determine a reserve for reinsurance assumed for the line of business in a tax year beginning in 1985.

(iii) *Certain transactions deemed to be reinsurance assumed (ceded) in 1986.* For purposes of this paragraph (c)(3), reinsurance assumed (ceded) in the final quarter of a tax year beginning in 1985 is treated as assumed (ceded) during the immediately succeeding tax year if the appropriate unpaid loss reserve is not adjusted to take into account the reinsurance until that immediately succeeding tax year.

(d) *Section 845.* Any reinsurance transaction that has as one of its purposes the avoidance of the reserve strengthening limitation is subject to section 845.

(e) *Treatment of reserve strengthening.* The fresh start provision of section 1023(e)(3)(A) of the 1986 Act does not apply to reserve strengthenings. Thus, reserve strengthenings must be included in income and, therefore, included in earnings and profits for the first tax year beginning after December 31, 1986. The amount that a taxpayer must include in income for its first tax year beginning after December 31, 1986, as a result of reserve strengthening is equal to the excess (if any) of—

(1) The sum of each reserve strengthening multiplied by the difference between 100% and the discount factor that, under paragraph (b) of this section, is applicable to the unpaid loss reserve to which the strengthening was made; over

(2) The sum of each reserve weakening multiplied by the difference between 100% and the discount factor that, under paragraph (b) of this section, is applicable to the unpaid loss reserve from which the weakening was made.

(f) *Examples.* The following examples illustrate the principles of this section. For purposes of these examples, it is assumed that the taxpayers are property and casualty insurance companies that in 1987 did not elect to use their own historical loss payment patterns.

Example 1. As of the end of 1985, X, a calendar year taxpayer, had undiscounted unpaid losses of $1,000,000 in the workers' compensation line of business for the 1984 accident year. The same reserve had undiscounted unpaid losses of $900,000 at the end of 1986. During 1986, X's loss payments for this reserve were $300,000. Accordingly, under paragraph (c)(3)(i) of this section, X has a reserve strengthening of $200,000 ($900,000−($1,000,000−$300,000)).

This was X's only reserve strengthening or weakening. Thus, under paragraph (e) of this section, for 1987 X must include in income $54,361.40 ($200,000×(100%−72.8193%))−0. The factor of 72.8193% is the AY+2 factor from the workers' compensation series of discount factors published in Rev. Rul. 87-34, 1987-1 C.B. 168.

Example 2. The facts are the same as in *Example 1*, except that X's 1986 loss payments for the reserve were $1,100,000. If only paragraph (c)(3)(i) of this section were applied, X would have a $1,000,000 reserve strengthening ($900,000−($1,000,000−$1,100,000)). Under paragraph (c)(1) of this section, however, the amount of reserve strengthening for the reserve is limited to the amount of the reserve at the end of 1986. Accordingly, X has a reserve strengthening of $900,000 and for 1987 must include in income $244,628.30 ($900,000×(100%−72.8193%)).

Example 3. As of the end of 1985, Y, a calendar year taxpayer, had undiscounted unpaid losses of $1,000,000 in the auto physical damage line of business for the 1985 accident year. The same reserve included undiscounted unpaid losses of $800,000 at the end of 1986. During 1986, Y had loss payments of $300,000 for the reserve. Under paragraph (c)(3)(i) of this section, Y has a $100,000 reserve weakening ($800,000−($1,000,000−$300,000)).

Under paragraph (e) of this section, the only effect of the reserve weakening is to reduce the amount that Y is required to include in income as a result of any strengthening of another reserve.

Example 4. The facts are the same as in *Example 1* except that X also has a $180,000 reserve weakening for the 1985 accident year in its auto physical damage line of business. Under paragraph (b) of this section, the reserve discount factor for this reserve is 93.3400, the AY+1 factor from the auto physical damage series of discount factors published in Rev. Rul. 87-34. Thus, under paragraph (e) of this section, the amount that X is required to include in income in 1987 is reduced by $6,666 ($100,000×(100%−93.3400%)), resulting in an amount of $47,761.40 ($54,361.40−$6,600).

Example 5. At the end of 1985, Z, a calendar year taxpayer, had undiscounted unpaid losses of $1,000,000 in the workers compensation line of business for the 1984 accident year. The same reserve included $1,100,000 of undiscounted unpaid losses at the end of 1986. During 1986, Z added $230,000 to the reserve to take into account reinsurance that Z assumed on September 1, 1986. Z had $230,000 of 1986 loss payments related to the reserve $80,000 of which was attributable to the reinsurance assumed by Z. In addition, on May 1, 1986, Z ceded $130,000 of the reserve to an unrelated reinsurer. Z wrote no new business in 1986 other than the reinsurance.

If only paragraph (c)(3)(i) of this section were applied, Z would have a $460,000 reserve strengthening ($1,100,000−($1,000,000−($230,000+$130,000))). Under paragraph (c)(3)(ii)(B) of this section, however, reserve strengthening does not include an amount added to a reserve to take into account reinsurance assumed during 1986. Accordingly, Z has a $210,000 reserve strengthening ($460,000−$250,000). If this is Z's only reserve strengthening or weakening, then the amount that Z must include in income for 1987 under paragraph (e) of this section is $57,079.47 ($210,000×(100%−72.8193%)). The factor of 72.8193% is the AY+2 factor from the workers' compensation series of discount factors published in Rev. Rul. 87-34.

Example 6. X was a calendar year taxpayer before July 1, 1986, the date X became a member of an affiliated group of corporations that files a consolidated return. At that time, X adopted the tax year ending June 30 of the group's common parent. Thus, X had two tax years beginning in 1986: a short tax year ending June 30, 1986, and a fiscal tax year ending June 30, 1987.

As of the end of 1985, X had undiscounted unpaid losses of $800,000 in the automobile liability line of business for the 1983 accident year. At the end of the short tax year, X had $700,000 of undiscounted unpaid losses in that reserve, and on June 30, 1987, there was $600,000 of undiscounted unpaid losses in the reserve. During the short tax year, X's loss payments for this reserve were $120,000. During the tax year ending June 30, 1987, X's loss payments for this reserve were $180,000. Under paragraph (c)(3)(i) of this section, X has a $100,000 reserve strengthening: ($700,000−($800,000−$120,000))+($600,000−($700,000−$180,000))−($600,000−($800,000−$300,000))=$100,000.

Reserve strengthening for the 1986 and 1987 accident year reserves for this line of business is determined pursuant to the principles of paragraph (c)(2) of this section.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-10230 Filed 5-1-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Arkansas permanent regulatory program (hereinafter, the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Arkansas rules pertaining to the definition of "mine plan area" and the use of the term regarding requirements of information outside the permit area, existing structures, the definition of "public road," the definition of "valid existing rights," the two-acre exemption allowance and the use of the term regarding requirements for exploration and mining operations, soil surveys, geological descriptions, cross sections, maps, and plans for underground mining permit applications, prime farmland (soil compaction, estimated yields, and target yields), the definition of "irreparable damage to the environment," bond liability period (revegetation exemption), bond terms and conditions, bond procedures, and bond forfeiture, water rights and replacement, blasting, post-mining land use (grazing, requirements for a higher use, and letters of commitment), and prime farmland (surface facilities on underground mining operations). The amendment is intended to revise the State program to be consistent with the corresponding Federal standards and to clarify ambiguities.

This notice sets forth the times and locations that the Arkansas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.d.t., June 3, 1991. If requested, a public hearing on the proposed amendment will be held on May 27, 1991. Requests to present oral

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testimony at the hearing must be received by 4 p.m., c.d.t., on May 17, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Arkansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, OK 74135, telephone: (918) 581-6430.

Arkansas Department of Pollution Control and Ecology, Mining Reclamation Division, 8001 National Drive, Little Rock, AR 72209, telephone (501) 562-7444.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, telephone number (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980 the Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program can be found in the November 21, 1980 **Federal Register** (45 FR 77003). Subsequent actions concerning Arkansas program and program amendments can be found at 30 CFR 904.12 and 904.15.

II. Proposed Amendment

By letter dated April 11, 1991 (Administrative Record No. AR-447), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas submitted the proposed amendment at its own initiative. Arkansas proposes to amend Arkansas Surface Coal Mining and Reclamation Code sections: 701.5, 764.15(a)(7), 770.5, 771.23(a) (1) and (2), 779.11, 779.12 (a) and (b), 779.15(a), 779.16 (a) and (b)(2), 779.18(a), 779.20(a), 779.22 (a) and (c), 779.24 (g) and (k), 779.25 (d) through (h) and (j), 779.27 (a), (b)(5), and (d) (1) and (2), 780.11, 780.14 (b) and (b)(2), 780.16(a)(1), 780.23(b), 780.25 (a) and (b), 780.37(e), 786.14(b)(3), 786.19(c), 788.13(b), 816.13, 816.41(a), 816.51(b), 816.52(a) (1) and (2), 816.104 (a) (b), and (b)(3), 828.11(e), 828.12(a), and 1000(d) (1), (8), (12) and (14), the definition of "mine plan area" and the use of the term regarding requirements of information outside the permit area;

701.11(c)(1) (i) and (ii), and 1000(d)(3), existing structures;

761.5 and 1000(d)(4), the definition of "public road;"

761.5 and 1000(d)(5), the definition of "valid existing rights;"

772,707.12, 770.8(b), 770.11 (a) and (e), 810.11, 815, 815.2 (b) and (c), 815.11(e), 815.15 (a) through (d), and (f) through (k), and 1000(d)(7), the two-acre exemption allowance and the use of the term regarding requirements for exploration and mining operations;

779.21(a) and 1000(d) (11) and (17), soil surveys;

783.14 (a) through (d) and 1000(d)(15), geological descriptions;

779.25 and 1000(d)(18) cross sections, maps, and plans for underground mining permit applications;

785.17(a) (1) through (4), 785.17(b) (3) and (8), 823.14(c) and 1000(d) (20), (21), (22), and (49), prime farmland (soil compaction, estimated yields, and target yields);

786.5(b) and 1000(d)(23), the definition of "irreparable damage to the environment;"

805.13(d) and 1000(d)(24), bond liability period (revegetation exemption);

806.12 (e)(6)(iii) and (g)(7)(iii) and 1000(d) (25) and (26), bond terms and conditions;

806.12(c) and 1000(d) (27) and (28), bond procedures;

806.14 (a) and (b) and 1000(d)(29), bond forfeiture;

816.54 and 1000(d)(37), water rights and replacement;

816.65(f) and 1000(d) (38) and (39), blasting;

816.95 (a) and (b), 816.106, and 1000(d)(40), stabilization of surface areas;

780.18(b)(3), 785.16(a), 816.43(e), 816.107, 826.12(b), 827.12(m), 816.101(b)(1), 816.102 (a) and (g), 816.103, and 1000(d) (41) and (42), backfilling and grading;

816.115, 816.133(c), and 1000(d) (43), (45), and (46), postmining land use (grazing, requirements for a higher use, and letters of commitment);

and 823.1 and 1000(d)(48), prime farmland (surface facilities on underground mining operations).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., c.d.t. on June 3, 1991. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM respresentatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made part of the administrative record.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated April 24, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91-10303 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 906

Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Colorado permanent regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Colorado rules pertaining to termination of jurisdiction, diversions, acid-forming and toxic-forming spoil, impoundments, backfilling and grading, inspections, and individual civil penalties. The amendment is intended to revise the Colorado program to be consistent with the corresponding Federal regulations and to satisfy required program amendments.

This notice sets forth the times and locations that the Colorado program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t. June 3, 1991. If requested, a public hearing on the proposed amendment will be held on May 27, 1991. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on June 3, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Colorado program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, NM 87102, telephone: (505) 766-1486.

Colorado Mined Land Reclamation Division, 423 Centennial Building, 1313 Sherman Street, Denver, CO 80203, telephone: (303) 866-3567.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, or telephone number (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated April 11, 1991 (Administrative Record No. CO-517), Colorado submitted a proposed amendment to its program pursuant to SMCRA. Colorado submitted the proposed amendment to satisfy required program amendments at 30 CFR 906.16 (b), (c), (d), (e), (f), (g), and (h). The provisions of 2 Code of Colorado Regulations 407-2, the rules of the Colorado Mined Land Reclamation Board, that Colorado proposes to amend are: Rule 3.03.3, termination of jurisdiction; Rules 4.05.3(1) (c), (d), and (e), diversions; Rule 4.05.8(1), acid-forming and toxic-forming spoil; Rule 4.05.9(2), impoundments; Rule 4.14.1(e), backfilling and grading; Rules 5.02.2 (8) and (9), inspections; and Rule 5.04.7(1), individual civil penalties.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

Written Comments

Written comments should be specific, pertain only to the issues proposed to this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., m.d.t. on June 3, 1991. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 23, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91-10301 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-05-M

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AF24

Schedule for Rating Disabilities—The Digestive System

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) concerning that portion of the Schedule for Rating Disabilities which deals with disabilities of the digestive system. This ANPRM is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect of this ANPRM is to solicit and obtain the comments and suggestions of various interest groups and the general public on necessary additions, deletions and revisions of terminology and how best to proceed with a systematic review of the medical criteria used to evaluate disabilities of the digestive system. Other body systems will be subsequently scheduled for review until the medical criteria in the entire rating schedule have been analyzed and updated.

DATES: Written comments and submissions in response to this ANPRM must be received by VA on or before July 1, 1991.

ADDRESSES: Interested persons and organizations are invited to submit written comments and suggestions regarding this ANPRM to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written submissions will be available for public inspection only in the Veterans Service Unit, room 132, at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Manchester, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In December 1988, GAO published a report entitled Veterans' Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD-89-28). After consulting numerous medical professionals and VA rating specialists GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. VA rating specialists noted that for some disorders they would prefer more medical criteria for distinguishing between various levels of severity and that inconsistent ratings may result when unlisted conditions had to be rated by analogy to other listed disorders. GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. It also recommended that VA implement a procedure for systematically reviewing the rating schedule to keep it updated. VA agreed to both recommendations, and this ANPRM is one step in a comprehensive rating schedule review plan which will ultimately be converted into a systematic, cyclical review process.

This ANPRM is the first stage in VA's consideration of what regulatory action to take, if any, with respect to revising and updating that portion of the rating schedule dealing with disabilities of the digestive system (38 CFR 4.114). Interested organizations and individuals are invited to submit comments and suggestions for revising current medical criteria, adding additional disabilities and/or deleting certain rarely encountered disorders or transferring them to other sections of the rating schedule. Submissions may run the gamut from narrative discussions of individual rating criteria to wholesale format changes and substitute rating schedules. Where changes are suggested, we would also appreciate a recitation as to the scientific or medical authority for such changes. Early submissions will expedite the comment review process and are encouraged.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: April 16, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-10409 Filed 5-1-91; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 4

RIN 2900-AF02

Schedule for Rating Disabilities—The Hemic and Lymphatic Systems

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) concerning that portion of the Schedule for Rating Disabilities which deals with disabilities of the hemic and lymphatic systems. This ANPRM is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect of this ANPRM is to solicit and obtain the comments and suggestions of various interest groups and the general public on necessary additions, deletions and revisions of terminology and how best to proceed with a systematic review of the medical criteria used to evaluate disabilities of the hemic and lymphatic systems. Other body systems will be subsequently scheduled for review until the medical criteria in the entire rating schedule have been analyzed and updated.

DATES: Written comments and submissions in response to this ANPRM must be received by VA on or before July 1, 1991.

ADDRESSES: Interested persons and organizations are invited to submit written comments and suggestions regarding this ANPRM to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. All written submissions will be available for public inspection only in the Veterans Service Unit, room 132, at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In December 1988 the GAO published a report entitled *Veterans' Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule* (GAO/HRD-89-28). After consulting numerous medical professionals and VA rating specialists GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. VA rating specialists noted that for some disorders they would prefer more medical criteria for distinguishing between various levels of severity and that inconsistent ratings may result when unlisted conditions had to be rated by analogy to other listed disorders. The GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. It also recommended that VA implement a procedure for systematically reviewing the rating schedule to keep it updated. VA agreed to both recommendations, and this ANPRM is one step in a comprehensive rating schedule review plan which will ultimately be converted into a systematic, cyclical review process.

This ANPRM is the first stage in VA's consideration of what regualtory action to take, if any, with respect to revising and updating that portion of the rating schedule dealing with disabilities of the hemic and lymphatic systems (38 CFR 4.117). Interested organizations and individuals are invited to submit comments and suggestions for revising current medical criteria, adding additional disabilities and/or deleting certain rarely encountered disorders or transferring them to other sections of the rating schedule. Submissions may run the gamut from narrative discussions of individual rating criteria to wholesale format changes and substitute rating schedules. Where changes are suggested, we would also appreciate a recitation as to the scientific or medical authority for such changes. Early submissions will expedite the comment review process and are encouraged.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: April 2, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-10412 Filed 5-1-91; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 4

RIN 2900-AF23

Schedule for Rating Disabilities—Neurological Conditions and Convulsive Disorders

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) concerning that portion of the Schedule for Rating Disabilities which deals with neurological conditions and convulsive disorders. This ANPRM is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect of this ANPRM is to solicit and obtain the comments and suggestions of various interest groups and the general public on necessary additions, deletions and revisions of terminology and how best to proceed with a systematic review of the medical criteria used to evaluate neurological conditions and convulsive disorders. Other body systems will be subsequently scheduled for review until the medical criteria in the entire rating schedule have been analyzed and updated.

DATES: Written comments and submissions in response to this ANPRM must be received by VA on or before July 1, 1991.

ADDRESSES: Interested persons and organizations are invited to submit written comments and suggestions regarding this ANPRM to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written submissions will be available for public inspection only in the Veterans Service Unit, room 132, at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Joel Drembus, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In December 1988, GAO published a report entitled Veterans' Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD-89-28). After consulting numerous medical professionals and VA rating specialists, GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. VA rating specialists noted that for some disorders they would prefer more medical criteria for distinguishing between various levels of severity and that inconsistent ratings may result when unlisted conditions had to be rated by analogy to other listed disorders. GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. It also recommended that VA implement a procedure for systematically reviewing the rating schedule to keep it updated. VA agreed to both recommendations, and this ANPRM is one step in a comprehensive rating schedule review plan which will ultimately be converted into a systematic, cyclical review process.

This ANPRM is the first stage in VA's consideration of what regulatory action to take, if any, with respect to revising and updating that portion of the rating schedule dealing with neurological conditions and convulsive disorders (38 CFR 4.120 through 4.124a).

Interested organizations and individuals are invited to submit comments and suggestions for revising current medical criteria, adding additional disabilities and/or deleting certain rarely encountered disorders or transferring them to other sections of the rating schedule. Submissions may run the gamut from narrative discussions of individual rating criteria to wholesale format changes and substitute rating schedules. Where changes are suggested, we would also appreciate a recitation as to the scientific or medical authority for such changes. Early submissions will expedite the comment review process and are encourged.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: April 11, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-10406 Filed 5-1-91; 8:45 am]

BILLING CODE 8320-01-M

VOL 56 ISS 85 MY 2 1991 UMI

38 CFR Part 4

RIN 2900-AF01

Schedule for Rating Disabilities—Mental Disorders

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) concerning that portion of the Schedule for Rating Disabilities which deals with mental disorders. This ANPRM is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect of this ANPRM is to solicit and obtain the comments and suggestions of various interest groups and the general public on necessary additions, deletions and revisions of terminology and how best to proceed with a systematic review of the medical criteria used to evaluate mental disorders.

DATES: Written comments and submissions in response to this ANPRM must be received by VA on or before July 1, 1991.

ADDRESSES: Interested persons and organizations are invited to submit written comments and suggestions regarding this ANPRM to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington DC 20420. All written submissions will be available for public inspection only in the Veterans Service Unit, room 132, at the above address and only between the hours of 8 am. and 4:30 p.m. Monday through Friday (except holidays) until July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In December 1988 the GAO published a report entitled Veterans' Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD-89-28). After consulting numerous medical professionals and VA rating specialists, GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. VA rating specialists noted that for some disorders they would prefer more medical criteria for distinguishing between various levels of severity and that inconsistent ratings may result when unlisted conditions had to be rated by analogy to other listed disorders. The GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. It also recommended that VA implement a procedure for systematically reviewing the rating schedule to keep it updated. VA agreed to both recommendations, and this ANPRM is one step in a comprehensive rating schedule review plan which will ultimately be converted into a systematic, cyclical review process.

This ANPRM is the first stage in VA's consideration of what regulatory action to take, if any, with respect to revising and updating that portion of the rating schedule dealing with mental disorders (38 CFR 4.125 through 4.132). Interested organizations and individuals are invited to submit comments and suggestions for revising current medical criteria, adding additional disabilities and/or deleting certain rarely encountered disorders or transferring them to other sections of the rating schedule. Submissions may run the gamut from narrative discussions of individual rating criteria to wholesale format changes and substitute rating schedules. Where changes are suggested, we would also appreciate a recitation as to the scientific or medical authority for such changes. Early submissions will expedite the comment review process and are encouraged.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: April 11, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-10411 Filed 5-1-91; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 4

RIN 2900-AF22

Schedule for Rating Disabilities; Impairments of the Eye, Ear, and Other Sense Organs

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) concerning that portion of the Schedule for Rating Disabilities which deals with impairments of the eye, ear and other sense organs. This ANPRM is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect of this ANPRM is to solicit and obtain the comments and suggestions of various interest groups and the general public on necessary additions, deletions and revisions of terminology and how best to proceed with a systematic review of the medical criteria used to evaluate impairments of the eye, ear and other sense organs.

DATES: Written comments and submissions in response to this ANPRM must be received by VA on or before July 1, 1991.

ADDRESSES: Interested persons and organizations are invited to submit written comments and suggestions regarding this ANPRM to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written submissions will be available for public inspection only in the Veterans Service Unit, room 132, at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In December 1988, GAO published a report entitled Veterans' Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD-89-28). After consulting numerous medical professionals and VA rating specialists GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. VA rating specialists noted that for some disorders they would prefer more medical criteria for distinguishing between various levels of severity and that inconsistent ratings may result when unlisted conditions had to be rated by analogy to other listed disorders. GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. It also recommended that VA implement a procedure for systematically reviewing the rating schedule to keep it updated. VA agreed to both recommendations, and this ANPRM is one step in a comprehensive rating schedule review plan which will ultimately be converted into a systematic, cyclical review process.

This ANPRM is the first stage in VA's consideration of what regulatory action to take, if any, with respect to revising and updating that portion of the rating schedule dealing with impairments of the eye, ear and other sense organs (38 CFR 4.75 through 4.87b). Interested organizations and individuals are invited to submit comments and suggestions for revising current medical criteria, adding additional disabilities and/or deleting certain rarely encountered disorders or transferring them to other sections of the rating schedule. Submissions may run the gamut from narrative discussions of individual rating criteria to wholesale format changes and substitute rating schedules. Where changes are suggested, we would also appreciate a recitation as to the scientific and medical authority for such changes. Early submissions will expedite the comment review process and are encouraged.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: April 11, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-10407 Filed 5-1-91; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 4

RIN 2900-AF00

Schedule for Rating Disabilities—The Skin

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) concerning that portion of the Schedule for Rating Disabilities which deals with disabilities of the skin. This ANPRM is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect of this ANPRM is to solicit and obtain the comments and suggestions of various interest groups and the general public on necessary additions, deletions and revisions of terminology and how best to proceed with a systematic review of the medical criteria used to evaluate disabilities of the skin. Other body systems will be subsequently scheduled for review until the medical criteria in the entire rating schedule have been analyzed and updated.

DATES: Written comments and submissions in response to this ANPRM must be received by VA on or before July 1, 1991.

ADDRESSES: Interested persons and organizations are invited to submit written comments and suggestions regarding this ANPRM to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. All written submissions will be available for public inspection only in the Veterans Service Unit, room 132, at the above addresses and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In December 1988 the GAO published a report entitled Veterans' Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD-89-28). After consulting numerous medical professionals and VA rating specialists GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. VA rating specialists noted that for some disorders they would prefer more medical criteria for distinguishing between various levels of severity and that inconsistent ratings may result when unlisted conditions had to be rated by analogy to other listed disorders. The GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. It also recommended that VA implement a procedure for systematically reviewing the rating schedule to keep it updated. VA agreed to both recommendations, and this ANPRM is one step in a comprehensive rating schedule review plan which will ultimately be converted into a systematic, cyclical review process.

This ANPRM is the first stage in VA's consideration of what regulatory action to take, if any, with respect to revising and updating that portion of the rating schedule dealing with disabilities of the skin (38 CFR 4.118). Interested organizations and individuals are invited to submit comments and suggestions for revising current medical criteria, adding additional disabilities and/or deleting certain rarely encountered disorders or transferring them to other sections of the rating schedule. Submissions may run the gamut from narrative discussions of individual rating criteria to wholesale format changes and substitute rating schedules. Where changes are suggested, we would also appreciate a recitation as to the scientific or medical authority for such changes. Early submissions will expedite the comment review process and are encouraged.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: April 2, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-10410 Filed 5-1-91; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 69-26; Notice 2]

RIN 2127-AD24

Federal Motor Vehicle Safety Standards; Cross View Mirrors on School Buses

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amending Federal Motor Vehicle Safety Standard No. 111, Rearview Mirrors, with respect to the field-of-view around school buses. The notice proposes to amend the standard to require a bus driver to be able to see, either directly or through mirrors, certain specified areas in front of and along the side of school buses; to specify certain criteria for convex cross view mirrors; and to establish test conditions designed to ensure that the image of an object is not unreasonably distorted.

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The notice also announces the agency's decision not to proceed further with rulemaking to require school buses to be equipped with other devices such as crossing control arms, sensors, or video monitors. Since these devices would increase the costs of school buses without significant corresponding benefits, the agency has determined that States and local school districts should decide whether to use them.

DATES: Comments on this notice must be received on or before June 17, 1991.

The amendments would be effective one year after publication of the final rule.

ADDRESSES: All comments on this notice should refer to Docket No. 88-20; Notice 2 and be submitted to the following: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (Docket hours 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gauthier, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202) 366-4799.

SUPPLEMENTARY INFORMATION:

Background

School buses provide an extremely safe means of transportation. On a vehicle-mile basis, school buses are about four times safer than passenger cars. Despite this outstanding safety record, injuries and fatalities involving school buses do occur. In its May 1989 report, "Improving School Bus Safety," the National Academy of Sciences (NAS) noted that an average of 15 school bus passengers are fatally injured each year in school bus crashes. In addition, 38 pedestrians are killed in school-bus-related incidents. Of these 38 pedestrian fatalities, an average of 26 result from students being struck by their own school bus and 12 result from students being struck by another vehicle. NAS further estimated that 253 children are injured each year when struck by their own bus. While most of these injuries are minor, about 20 percent are classified as "incapacitating," i.e., an injury that prevents the injured person from walking, driving or normally continuing activities he or she was capable of performing before the injury occurred. Because of the larger safety risk to children as pedestrians around school buses, the NAS report concluded that "(i)f the cost and effectiveness of the various safety measures are the same, those measures designed to reduce or prevent pedestrian fatalities are better safety investments than measures designed to prevent passenger fatalities."

The agency has attempted to increase the safety of student pedestrians in the vicinity of school buses through Federal Motor Vehicle Safety Standard No. 111, Rearview Mirrors, (49 CFR 571.111). That standard requires each school bus that is not a forward control vehicle, i.e., a transit style bus, to have an outside cross view mirror of a specified size and shape (S9.2), "mounted so as to provide the driver a view of the front bumper and the area in front of the bus." (S9.2(b)) The standard also requires each school bus to have outside rear-view mirrors of unit magnification on each side of the bus, to provide the driver with a view to the rear along both sides of the bus (S9.1). While the requirements in FMVSS No. 111 establish a minimum level of safety performance for mirrors on school buses, nearly every State requires school buses to be equipped with more mirrors, particularly cross view mirrors, than are required by these minimum requirements.

As noted earlier, approximately two-thirds of student pedestrians killed in school-bus-related incidents are struck by their own bus. According to the May 1989 NAS study, "two-thirds are struck by the front of the bus and one-third by the rear of the bus, usually the rear wheels." A review of the individual incidents reveals that the fatalities occurred because the driver did not see the child in front of, or to the side of, the bus. In many cases in which the child was run over by the bus's rear wheels, the bus had already left the school bus stop. In these cases, the children were often running after the moving bus and fell under the rear wheels. It is not clear that such incidents can be totally avoided through changes to the mirror requirements, since once the school bus is moving, the driver must focus on other driving actions, not just looking at mirror systems to check for pedestrians around the bus. However, to prevent students from being struck by their own bus while the bus is leaving the school bus loading zone, it appears desirable to improve the means available for the school bus driver to detect their presence.

The annual nationwide "School Bus Loading and Unloading Survey" conducted by the Kansas Department of Transportation (Kansas) confirms that a significant, although decreasing, number of pedestrians are killed by school buses. The Kansas data indicate that the number of pupils killed nationwide in school bus loading zones was 45 in 1985, 42 in 1986, 32 in 1987, 16 in 1988, and 17 in 1989. The agency believes that the decrease in the number of school bus loading fatalities is due to a combination of factors, including the use of more and better mirrors, the increased use of stop signal arms, and improved school bus driver and student training. Despite this trend, this type of incident remains the most common way students are killed in school-bus-related incidents. The Kansas survey further reveals that 68 percent of the fatalities were children eight years old or less.

The NAS report evaluated a number of measures to determine their potential safety benefit in reducing pedestrian fatalities and injuries caused by school buses. The report concluded that the best way to improve safety relies on the combined efforts of parents, local schools and communities, local and Federal governments, and the school bus industry. In addition to evaluating the potential safety benefit of mirrors and other items of equipment, the NAS report recommended a number of changes in bus operating practices, including (1) improved driver training with an emphasis on loading zone safety; (2) improved programs to educate children about walking to and from the bus stop and loading zone behavior; and (3) improved planning of school bus routes to reduce the number of children who must cross in front of a stopped school bus.

As directed by Congress, NHTSA reviewed the findings of the NAS report and published a notice discussing which of these measures were potentially most effective in protecting school children in and around school buses. (54 FR 29629, July 13 1989). Measures that relate to operating practices are being addressed through NHTSA's State and community highway safety grant program (23 U.S.C. 402). Measures deemed "most effective" that relate to changes to the school bus itself included additional outside cross view mirrors. NAS also indicated the availability of other devices designed to prevent pedestrian fatalities with school buses. One such device is the crossing control arm which mechanically swings out from the bus's front bumper to create an obstacle that children must walk around, forcing them to stay far enough from the bumper so that they remain within the driver's direct field-of-view. Other devices rely on radar, microwave, ultrasonic, and video systems to detect children that might be struck by a bus as it leaves the loading zone. There are still other devices which automatically apply the brakes of the bus when a sensor detects a child immediately in front of a wheel. The NAS report recommended that NHTSA, the States, and local school districts test these devices to assess their benefits and costs.

Advance Notice of Proposed Rulemaking

General

On December 27, 1989, NHTSA issued an Advance Notice of Proposed Rulemaking (ANPRM) announcing the agency's interest in measures designed to prevent children from being struck by school buses during and after loading and unloading operations. (54 FR 53127). The notice requested information about the safety need for amending the requirements for convex cross view mirrors on school buses in FMVSS No. 111, and for possible requirements for crossing control arms, sensors, or video monitors. The agency was particularly interested in the effects of these devices on the safety of school children and in the costs and possible negative effects of such devices.

The ANPRM also asked questions about pedestrian safety around school buses to assist the agency in deciding whether to issue this proposal about cross view mirror systems and other devices designed to protect pedestrians from being struck by the school bus. Among the issues presented were: (1) The safety need for amending the mirror requirements or for requiring additional equipment such as crossing control arms; (2) the need to develop performance requirements to ensure that a driver sees or is otherwise aware of pedestrians in school bus loading zones; (3) the costs of requiring different types of or additional mirror systems and of requiring other types of equipment; and (4) the potential impact of new requirements on school bus users currently in compliance with FMVSS No. 111 and on current State laws that would differ from the Federal requirements that might be proposed.

The agency received comments from State and local governmental organizations, school bus manufacturers, mirror and other equipment manufacturers, associations, and individuals. The commenters generally agreed that measures should be taken to reduce the number of children struck by school buses and to improve the view of school bus drivers around the school bus while it is in the school bus loading zone. Commenters also addressed other issues raised in the ANPRM, including the need for devices other than mirror systems for increasing school bus drivers' awareness of children outside of school buses, the benefits from training programs, and the costs of the equipment addressed in the ANPRM.

Safety Need

The ANPRM first asked whether there was a safety need to propose amending the requirements for school bus mirrors or to introduce new requirements to prevent such injuries. The notice asked for detailed information about the circumstances of crashes in which pedestrians were injured by their own school bus. This included information about the type of school bus, the type of mirrors and other crash avoidance equipment on the school bus, the victim, and the environmental and locational circumstances of the incident.

The commenters provided general information supporting the NAS recommendation for the agency to consider amending FMVSS No. 111 to provide the school bus driver with a better view of the area in front of and immediately beside the school bus. The Connecticut Department of Motor Vehicles (Connecticut), the Minnesota School Bus Safety Committee (Minnesota), and the Virginia Department of Education (Virginia) provided data and descriptions of fatal crashes involving school buses and pedestrians. In addition, as noted earlier, the data from the Kansas DOT survey indicate that this type of fatality remains the largest cause of death associated with school buses. The data provide evidence that such incidents occur in a wide variety of situations. However, in some instances, fatalities result because the driver was distracted or the fatality occurred outside of the loading zone, such as along the bus route. In such cases, additional mirrors or other devices would not have prevented the fatality. Nevertheless, a significant number of fatalities and injuries do occur in the loading zone. This led the California Association of School Transportation Officials to comment that given "the pupil accident rate outside of the school bus, it is apparent that Federal Safety Sandard 111 certainly needs to be scrutinized."

Field-of-View and Mirror Requirements

The ANPRM asked about the need for generalized performance requirements to improve a driver's ability to detect pedestrians in school bus loading zones. This included questions about a mirror image's size and clarity, general field-of-view requirements for direct and indirect visibility, State and local mirror requirements, mirror designs, mirror location and aim, and potentially negative aspects of additional requirements. The ANPRM explained that field-of-view inversely relates to image size and quality; that is, the larger the field-of-view, the smaller and more distorted the image generally becomes.

Several commenters supported having a field-of-view requirement, instead of a requirement setting forth mirror specifications. The Superintendent of Public Instruction in Washington (Washington), which has the former type of requirement, favored a requirement delineating "what a driver must be able to view from a properly adjusted driver's seat, either directly or indirectly with mirrors or other devices." Wisconsin stated that adopting a field-of-view requirement is better than forcing the States to adhere to a strict inflexible requirement. The National School Transportation Association (NSTA) stated that manufacturers and operators should determine how to meet a visibility requirement. Mirror Lite commented that field-of-view requirements for each bus are necessary. Blue Bird believed that FMVSS No. 111 should be amended to establish field-of-view requirements and test procedures instead of having a uniform Federal specification for specific mirror designs, believing that a mirror design specification would hinder future innovations.

Several States and school bus manufacturers commented about the areas that a field-of-view requirement should encompass. Connecticut, Washington, and Blue Bird agreed that the driver should be able to see along the front of the bus, the front tires, the entrance door, and the sides of the bus, including the rear wheels. Such a field-of-view requirement is consistent with the recommendation of the Eleventh National School Bus Conference, detailed below. While no commenter supported a more limited field-of-view, several commenters, including Michigan, Virginia, and Thomas Built, warned that mirrors are passive devices that will not ensure the safety of student pedestrians. Blue Bird and Thomas Built noted that drivers may get confused or not use all the mirrors if buses are equipped with too many mirrors.

Even with this general preference for a field-of-view requirement, commenters emphasized that specific requirements are necessary to ensure that a driver can recognize that the image of a child is in a mirror. Blue Bird commented about acceptable limits for the amount of distortion, depth perception, minification and other optical changes. However, they continued by stating that, in the absence of established performance standards, the acceptable limits can only be based on personal opinion. Thomas Built agreed that a

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trade-off exists between image distortion and field-of-view. Washington agreed that the image should be as distortion free as possible.

Blue Bird, Thomas Built, Virginia, and Washington stated that all school buses, including transit style school buses, should be subject to the requirements. (As noted above, transit style school buses are currently excluded from the FMVSS No. 111 requirement for an outside cross view mirror.) No commenters believed transit style school buses should be exempt from the requirements, although several praised these buses for providing the best direct visibility.

Given NHTSA's decision to propose establishing a field-of-view standard for school buses under FMVSS No. 111, the agency tentatively concludes that it should not have different requirements for transit style buses. In addition, despite the increased direct visibility provided by transit style buses, some areas near them can only be seen through the use of mirrors. Details about these performance requirements are explained later in this notice.

A number of mirror manufacturers submitted information on mirror performance. Each offered opinions that appear to favor its product. Moto Mirror offers an electrically-controlled, rotating, distortion free, flat glass mirror that can be heated to remove rain and ice from its surface. Multivex offers an aspheric (variable curvature) mirror, which it claimed provides a large field-of-view with larger and clearer images than a spherical mirror. Mirror Lite claimed that its "bus-boy" mirror provides the largest field-of-view with distortion free images.

NHTSA believes that the claims by the mirror manufacturers indicate the highly competitive nature of the mirror industry. The numerous mirror designs n the market provide additional pport for establishing field-of-view requirements, rather than mirror specifications, which may be overly restrictive and thus hinder development of new mirror technologies. Nevertheless, given that convex mirrors inherently provide smaller and more distorted images than flat mirrors, the agency has tentatively decided that certain minimum mirror specifications are necessary to ensure that size and image quality are good enough to enable a driver to recognize that an image in the mirror is that of a child. Specific mirror requirements are discussed later in this proposal.

Recent Developments About Mirrors

Since the issuance of the ANPRM, there have been several developments relating to school bus mirrors. In May 1990, the 11th National Standards Conference on School Transportation met to establish "standards" for school bus bodies, chassis, and operations. These "standards" are voluntary guidelines, which serve as recommendations to State and local school bus operators. After approving a "standard" for exterior school bus mirrors, the Conference forwarded it to NHTSA for further consideration. That standard recommends the following:

A. Rear Vision Mirror: "The mirror system shall be capable of providing a view along the left and right sides of the vehicle which will provide the driver with a view of the rear tires at ground level, a minimum distance of 200 feet to the rear of the bus, and at least 12 feet perpendicular to the side of the bus at the rear axle line.

B. Crossview Mirror System: The crossview mirror system shall provide the driver with indirect vision of an area at ground level from the front bumper forward and the entire width of the bus to a point where the driver can see by direct vision. The cross view system shall also provide the driver with indirect vision of the area at ground level around the left and right front corners of the bus to include the tires and service entrance on all types of buses to a point where it overlaps with the rear vision mirror system.

C. This system of mirrors shall be easily adjustable but be rigidly braced so as to reduce vibration."

In addition, new mirror requirements became effective for school buses in Ohio on January 1, 1990. Even though these requirements contain design criteria, they also include field-of-view specifications for side view and cross view mirrors, as follows:

Side View Mirrors "The exterior side view mirror systems shall meet all federal standards including FMVSS 111, and shall provide a field of view from behind the entrance door to the rear-most part of the school bus. The mirror shall also make the area from the top of the side windows to the ground clearly visible to the school bus driver. Any object or twelve-inch traffic cone located within six inches of the rear dual wheels shall be visible and clearly identifiable to the seated school bus driver on either side of the bus."

Cross View Mirrors "The crossview mirror system shall provide the seated driver with indirect observation of the front bumper and the area in front of the front bumper of the bus not under direct observation of the seated driver. The mirror system shall include a clear view around the front wheels and shall include the area from the front bumper back to the entrance door on the right and from the front bumper to the driver's window on the left side of the bus."

Research on Mirror Systems

In the fall of 1989, NHTSA initiated a research study to identify problems in using school bus cross view mirror systems to detect children near the front of a school bus. The study was designed to ascertain objectively the field-of-view provided by seven mirror systems on three bus configurations and to confirm laboratory test results by measuring the performance of bus drivers using those mirror systems in simulated object detection studies. The study evaluated elliptical, quadra-spherical, banana, and other cross view mirrors on a traditional school bus, a transit style school bus, and a van style school bus. The results of that research are contained in the report. "Ergonomic Research on School Bus Cross View Mirror Systems," by the Vehicle Research & Test Center and R&R Research Inc. ("VRTC report").

Among the VRTC report's conclusions were that—

1. It is better to have a "distorted" object in the mirror than no object at all.

2. Based on subjective evaluations by school bus drivers, larger surface area mirrors with a higher radius of curvature are preferable to mirrors with small surface areas with numerically low radii of curvature. However, test subjects missed detecting some objects in the former types of mirrors, notwithstanding their large field-of-view.

3. The amount of minification of image size that can be tolerated in a convex mirror is an important ingredient in determining the useful field-of-view of that mirror. This is especially important given that drivers tend to use fender-mounted mirrors for driving and for detecting children at the side of the bus, especially near the rear right wheel.

4. Establishing minimum detectable image size may effectively control the minification of objects viewed in a mirror. The radius of curvature affects the visual angle subtended by an object seen by a driver in a mirror.

5. Image degradation and minification appear related to the radius of curvature; that is, as the radius decreases, image degradation and minification increases.

6. Using standard discrimination measures for drivers with 20/40 acuity and visual angle detection criteria, a minimum allowable radius of curvature can be established for school bus mirror configurations.

NHTSA staff conducted tests which appeared to verify the conclusions of the VRTC report. In the agency's tests, a three-foot high object simulating a child was placed at various locations alongside and in front of a conventional school bus. The ability of various persons to detect and recognize the object was recorded for five different mirror systems. That activity emphasized that image size is critical to detection and recognition and confirmed the VRTC report's findings that objects near the rear axle area pose special problems for drivers. The agency's tests also studied the space necessary between the object's image and the edge of the mirror because for some mirrors, the image may be visible, but difficult to detect.

Agency Proposal

NHTSA has decided to issue this notice of proposed rulemaking (NPRM) to amend the requirements for mirrors on school buses based on the NAS report, the VRTC report, the agency's review of the comments to the ANPRM, and other available information. However, the agency has decided not to propose requirements for other devices discussed in the ANPRM.

Based on the available information, NHTSA has decided to propose requirements regarding the field-of-view around school buses. The requirements would require a school bus driver to able to see, directly or through mirrors, critical areas around the school bus. The agency has tentatively determined that a driver should be able to see at least the area at ground level from the front bumper forward and an area around the left and right front corners of the bus, including the tires and service door to the right rear of the bus. As elaborated below, cylinders representing children would be placed at such critical locations, as specified in S13.1 and Figure 2.

The agency notes that compared with the current requirement in Standard No. 111, which requires the driver to have a "view of the front bumper and the area in front of the bus," this proposal would extend the areas which must be visible, provide field-of-view requirements applicable to any school bus configuration, and provide greater objectivity. NHTSA welcomes comments about whether such a field-of-view oriented requirement is appropriate. The agency also requests information about whether the proposed field-of-view requirements, as expressed through the placement of the cylinders, would reasonably reflect the locations at which school bus pedestrian are struck.

The proposal would require school buses to be equipped with two outside rearview mirror systems: Flat driving mirrors of unit magnification (designated as "System A") and convex cross view mirrors for student detection (designated as "System B"). Each mirror system would be required to have mirrors on both the left and right sides of the school bus. The areas viewable along the bus's sides via the two mirror systems would required to overlap, providing the driver with a view of the ground in front of and alongside the bus and extending at least 200 feet rearward from the mirror.

The proposal regarding "System A" would modify the current requirements for outside rearview mirrors of unit magnification, i.e., flat mirrors that do not distort images. The standard currently requires these mirrors to be on each side of the bus, to have at least 50 square inches of reflective surface, and to provide the driver a view to the rear along both sides of the vehicle. While these mirrors are primarily intended to serve as driving mirrors, they are used by drivers to see students in the loading zone along the sides of buses. As detailed in S9.2, the agency has tentatively determined that the requirements for these mirrors should be more objective and should expand the field-of-view to include a larger area. This proposal reflects the findings of the 11th National Conference on School Transportation and accounts in the NAS report and docket that a significant number of incidents occur by the right rear wheels of school buses. Such incidents were not found to occur by the left rear wheels of school buses. Accordingly, S9.2 would be amended to require that the driver have a view at least 200 feet to the rear and at least 2 feet perpendicular to the right side of the bus. The agency welcomes comments about the need for, appropriateness of, and the feasibility of this proposed requirement.

The proposal in S9.3(a) would require that if the entire top surface of each cylinder placed in front of or by the front wheels of the bus is not directly visible, it must be visible in one of the convex cross view mirrors. The agency has tentatively determined that such a field-of-view approach would permit the applicability of the proposed requirements to any school bus configuration. The agency requests comments about the feasibility of requiring observation of the entire top surface of the cylinders.

The agency also is proposing to modify the requirements in current S9.2 for outside convex cross view mirrors. Along with the specifications of areas to be viewed, section S9.2(a) currently contains detailed specifications about convex mirror characteristics, including minimum and maximum permissible radii of curvature, minimum surface areas, and restrictions for convex mirrors with non-uniform radii. The agency notes that the proposal in S9.3(b)(1) to require a minimum projected area of at least 40 square inches essentially restates a current requirement in S9.2(a). The agency has tentatively determined that retaining this provision would be worthwhile since it helps enable convex cross view mirrors to provide an adequate field-of-view.

NHTSA is proposing to delete several of the other requirements for convex cross view mirrors and replace them with the field-of-view requirements explained earlier. The agency has determined that focusing on field-of-view rather than mirror design would remove artificial restrictions to new mirror systems and promote the development of new designs. In turn, removing these restrictions would permit States and local school districts to use a wider variety of mirrors.

The agency is proposing a new requirement in S9.3(b)(2) which would require each mirror to be located such that the distance from the center point of the eye location of a 25th percentile adult female driver to the center of the mirror plus one-half the smallest radius or curvature on the mirror surface be at least 39 inches. This proposal is based on the VRTC report's findings about accommodation distances, i.e., the finding that older people have greater difficulty focusing on nearly objects, especially in convex mirrors. According to the VRTC report, if the distance between the driver and the image in the mirror is less than 40 inches, drivers over 40 years old may see a blurred image. The agency therefore is proposing to require any convex cross view mirror to be at least 39 inches from the seated driver. The agency welcomes comments about the proposed requirement and problems associated with accommodation distance.

The agency notes that the proposal in S9.3(b)(3) to prohibit discontinuities in a mirror surface's slope essentially restates current requirements in S9.2(a). Based on the VRTC report and docket comments, the agency has tentatively determined that this provision continues to be worthwhile. Retaining the prohibition on mirror discontinuities would prevent mirrors in which the angle was reserved, thus protecting against unreasonable image distortion. The agency welcomes comments about the merits of this provision.

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The agency is also proposing in S9.3(b)(4) to require each mirror system to be installed with a stable support designed to dampen vibration. The purposes of this proposal is to ensure a clear and properly focused image by preventing mirrors from vibrating unreasonably and by reducing the likelihood that mirrors become misaligned. Several commenters explained that such misalignment reduces a driver's ability to see children in potentially dangerous locations around a stopped school bus. The agency requests comments on whether this proposed requirement is necessary and whether it could be made more precise.

NHTSA is proposing in S9.3(b)(5) to require each convex cross view mirror with a radius of curvature less than 35 inches to be marked with a warning that these mirrors are not designed to be used while the vehicle is in motion. This proposal is based on the VRTC report's finding that school bus drivers frequently use cross views mirrors as driving mirrors as well as pedestrian detection mirrors, even though these mirrors are only designed to see pedestrians while the bus is stopped. Given the distortion and minification inherent with such mirrors, the agency has tentatively determined that a warning is necessary to inform drivers that these mirrors are not designed for use while the vehicle is in motion. While the agency is proposing to require this message be between 1/2 to 3/4 of an inch high along the top of the mirror, it welcomes comments about the content, size and location for this warning. Other places the agency has considered for the warning include near the bus' instrument panel, near the interior rearview mirror, and near the driver's window. The agency also requests comments about whether a seated driver would be able to see lettering ½ to ¾ inches high on the mirror.

Along with those requirements, the agency is proposing performance requirements in S9.4 to ensure that a driver can recognize that an image in a mirror represents a child. These proposed provisions are designed to prevent mirror designs that would result in images that were too distorted to assist the driver in detecting the presence of student pedestrians around the school bus. According to the VRTC report and other available information, while a high level of image quality is not necessary for a bus driver to become aware that the school bus should not be moved because a child is in the danger zone, the image nevertheless must be of a minimum quality. To address the agency's concern about image quality, S9.4(a) would specify criteria to ensure that a driver could detect that an image in a mirror is a child. Section S9.4(a) would require that the separation between the edge of each image of a cylinder and the edge of the effective mirror surface must be not less than 3.0 minutes of arc. This proposal stems from the agency's finding that the most difficult images to recognize are elongated ones near the mirror's curved reflective edge.

In addition, section S9.4(b) would require that for the image of cylinder N (the cylinder perpendicular to and 12 feet away from the rear right axle), the angular size of its longest dimension must be not less than 9 minutes of arc and the angular size of its shortest dimension be not less than 3 minutes of arc. The purpose of this requirement would be to ensure that the image was not unreasonably elongated, thus preventing the driver from being able to identify an image of a child in the mirror. According to the VRTC report and the agency's in-house study, drivers have the most difficulty seeing images of objects near the rear right wheel because certain convex crossview mirrors unreasonably elongate the image. The agency thus has tentatively determined that this provision focusing on Cylinder N is necessary to ensure that a driver can identify students near the rear right of the bus.

NHTSA requests comments about the proposals in S9.4 addressing image quality. Would the proposed requirements protect against unreasonable distortion? Would existing convex crossview mirror systems be able to comply with these proposals? Are there alternative ways to specify requirements that would protect against unreasonable distortion?

Based on the VRTC report and other agency findings, the agency is proposing certain test procedures to test mirror systems. In S13.1(a) through (g), the agency proposes that the test cylinders used to represent student pedestrians be placed at specified locations near the bus's front wheels, front bumper, and locations forward of the bus. Cylinders would also be placed near the front right and left wheels and near the right wheel. The agency selected these locations based primarily on narratives in the NAS report and docket comments, the VRTC report, Ohio's new requirement, and the Eleventh National Conference of School Transportation. The principal difference between NHTA's proposal and the requirement of Ohio and the Eleventh National Conference on School Transportation is that the agency's proposal sets forth specific locations, as illustrated in Figure 2 and explained in S13.1, and contains test procedures for showing compliance with the requirements. The agency requests comments about whether the placement of the cylinders reasonably represent locations where student pedestrians are struck by school buses. In particular, even though the agency tentatively decided not to require cylinders by the rear left wheels because such incidents apparently do not occur there, the agency welcomes comments about whether this area poses a safety problem.

In S13.1, the agency proposes that the test cylinders used to represent student pedestrians generally be one foot high and one foot in diameter. This proposed size is based on the VRTC report's recommendation that explaining that children struck by school buses were low to the ground. An exception would be that cylinder N, the cylinder placed 12 feet to the right of the rear right wheel, would be three feet high and one foot in diameter. The agency has tentatively determined that it is necessary to have this cylinder have such proportions to measure the elongation effects addressed in S9.4. The agency welcomes comments about the dimensions of the test cylinders.

Section S13.1 also proposes that the test cylinder be a color which provides a high contrast with the surface on which the bus is parked. According to the VRTC report, such a color would facilitate compliance testing. The agency requests comments about what color would provide a high contrast with the ground and whether a specific color should be specified.

In S13.2, the agency proposes to specify that testing be done relative to the center point of the eye location of a 25th percentile adult female represented by a two dimensional manikin. The agency selected this size of driver because such a driver tends to have a poorer direct field-of-view near the bus than a taller driver does. In addition, pursuant to S13.4 and S13.5, observations and photographs would be taken of the cylinders 6 inches forward, left, and right of the center of driver's eye location to account for head movements. The agency invites comments about the appropriateness of this specification.

The agency is proposing to specify test procedures in S13.4 and S13.5 to determine that a seated driver can see, either directly or through mirrors, at least the tops of cylinders placed at critical areas around the bus. These provisions would be consistent with the

standard's underlying purpose which is to ensure that a school bus driver is aware of student pedestrians around his or her bus when it is stopped. The agency has tentatively determined that the test procedures would implement the proposal's field-of-view and image quality requirements. The VRTC report indicated that different school bus designs afford different levels of direct visibility. Accordingly, a school bus would be tested first pursuant to S13.4 to determine the extent to which the cylinders are directly visible from the driver's eye location.

A school bus would then be tested according to section S13.5 to determine whether cylinders not directly visible are nevertheless visible when viewed from the driver's eye location through the bus's mirror system. Section S13.5(a) would require that a chart (as described in Figure 3) be placed above each appropriate mirror. The comparison chart would serve as a point of reference in evaluating the image size and amount of distortion of cylinders visible in a mirror. A photograph of the appropriate mirror and the adjacent comparison chart would then be taken pursuant to S13.5(b). The agency welcomes comments about the proposed test procedure.

Additional Questions About Mirror Systems

NHTSA seeks comments on all aspects of the proposed rule to assist the agency in developing a final rule for field-of-view requirements around school buses. In addition to questions posed earlier in the notice, the agency invites comments about the following matters:

1. The agency is especially interested in comments about the proposed test requirements. Is the camera's location appropriate? Can the driver's eye location be established for all types of school bus driver seats? Are the criteria in S9.4 about image distortion reasonable?

2. Since some convex cross view mirrors are used as driving mirrors, should the part of the mirror used for driving, i.e., the surface providing fields-of-view of the left and right sides of the bus, have a minimum permissible radius of curvature so that drivers can better judge location and closing velocity of other vehicles? If so, what should the minimum radius of curvature be?

3. Since the upper portion of some cross view mirrors have no advantage as far as student detection or as a driving aid, should it be blackened out or cut off to reduce the amount of glare reflected to the drivers eyes? Are there any benefits for permitting the retaining of this part of the mirror?

4. Given the size and location of some convex cross view mirrors, would dangerous blind spots in the driver's direct field-of-view be created by the mirrors?

5. Given the location of some cross view mirror designs relative to turn signals and other school bus lights, would there be reflective light from turn signals flashing into the driver's eye?

6. Is it necessary to require adjustable mounting brackets for all types of cross view mirrors? Do non-adjustable brackets reduce the amount of vibration of the mirror while driving or idling?

Costs

In the ANPRM, the agency made initial cost estimates for the various devices, including mirror systems, based on supplier aftermarket price quotations. The ANPRM stated that the unit cost for a convex cross view mirror with a bracket plus installation would range from $52 to $107.

While the docket comments provided little specific cost data, the agency has obtained the following list of approximate mirror and bracket prices (and in parenthesis the number of items with which a bus is usually equipped) for various types of mirrors:

• 8" (26" ROC) convex mirror heads	$13.50	(4)	
Cross view brackets	$13.10	(2)	
Side view brackets	$2.50	(2)	
	$85.20		
• 8" (17" ROC) convex mirror heads	($5.70)	(4)	
Cross view brackets	$13.10	(2)	
Side view brackets	$2.50	(2)	
	$58.00		
• 8" × 14" banana-shaped mirror and bracket	$38.21	(2)	= $76.42
• 8" × 12" quardrispheric "Bus Boy" mirror heads	$19.90	(2)	
brackets	$40.60	(2)	
	$121.40		
• 8" elliptical mirror heads	$15.95	(2)	
brackets	$13.10	(2)	
	$58.10		

The agency notes that given the proposal's field-of-view approach, the choice of how to achieve compliance is at the manufacturer's or school bus user's discretion. Since nearly all States currently require their school buses to have more mirrors than required by FMVSS No. 111, the cost of complying with the proposed changes should be minimal depending on the selection of mirrors by the States and local users and on the current State mirror specifications. For example, States currently specifying four 8" (18" ROC) convex mirrors on cross view tripods, at a cost of $58.00, could switch to a pair of eliptical mirrors which cost nearly the same—$58.10.

In the fall of 1989, Blue Bird and Thomas Built provided the agency with information about current State requirements for school bus mirrors. Based on this information, 26 States require left and right hand 8" convex cross view mirrors; 27 States currently require left and right hand 8" convex rear view mirrors (21 of these States are also included in the 26 States that require dual convex cross view mirrors); 7 States currently require either 10" convex mirrors or elliptical mirrors on each side of the bus; and 2 States currently require an elliptical mirror on one side and an 8" convex mirror on the other side as cross view mirrors.

NHTSA requests comments about the costs of this proposal to school bus users. It also requests information about current State requirements for school bus mirrors.

Leadtime Requirements

The agency believes that many mirror systems are now available which would comply with the proposed field-of-view requirements. Therefore, there do not appear to be leadtime constraints from that perspective. Nevertheless, manufacturers and school bus users should be afforded time to investigate and select how they wish to comply with the new field-of-view requirements. Accordingly, the agency is proposing an effective date of 12 months after publication of the final rule.

Equipment Discussed in the ANPRM But Not Proposed in this Notice: Crossing Control Arms and Sensors

In response to the ANPRM, commenters discussed two general categories of equipment other than mirrors. The first category included crossing control arms that are designed to keep children within a school bus driver's direct field-of-view. The second category included various sensing devices designed to alert the driver to the presence of children around the school bus.

Commenters had mixed views about requiring crossing control arms on school buses. Virginia, which uses these devices as a "backup" means of helping drivers keep students in direct field-of-

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view, stated that they are helpful, but not perfect in compensating for human failures. Thomas Built's experience with these devices was favorable. In contrast, Connecticut, Washington, and Volusia County were wary about requiring these devices. Other commenters cautioned the agency about operational problems with crossing control arms. Blue Bird stated that malfunctions and misuse with these devices would likely occur.

While NHTSA estimated that the unit cost for crossing control arms would range between $184 and $360, Blue Bird estimated that each crossing control arm would cost between $185 and $310.

After reviewing these comments, the agency has determined not to propose requiring these devices on school buses. The agency notes that a crossing control arm does not provide school bus drivers with a positive means for detecting the presence of a pedestrian. Instead, a crossing control arm merely offers a backup device to help keep children in areas more easily observable by the driver. The agency believes that improving mirror systems offers a larger potential benefit to improving school bus pedestrian safety. Nevertheless, States which favor this device should continue to install them on school buses.

Several commenters, typically equipment manufacturers, submitted information on various types of sensing devices and video systems. This information was generally of a marketing nature suggesting that their device was the best or only way of providing school bus drivers with complete awareness of children outside of school buses. Another device, an automatic braking system, was touted, as a "fail-safe system" for reducing the potential for personal injury.

Other commenters, especially States and bus manufacturers, commented that these systems are not so effective or reliable as claimed. Maine, Virginia, and Washington opposed these systems as being costly and potentially ineffective. Based on its evaluations of proximity sensors, including motion detectors, doppler radar detectors, and ultrasonic detectors, Blue Bird reported problems such as limited range of coverage, limited or excessive sensitivity, unreliability, and poor durability. Based on similar testing, Thomas Built concluded that each system has significant drawbacks.

Based on its review of the comments, the agency has determined that it would be inappropriate to require sensing devices, video monitors, or similar crash avoidance equipment on school buses. Requiring these devices, in addition to requiring improved mirror systems, would substantially increase compliance costs without significantly increasing safety benefits. As for audible back-up alarms to alert people that a bus is in reverse, there are insufficient data to indicate that children are being struck in such situations, especially since school bus routes are designed to have the bus travel forward only. Nevertheless, if States investigate and pilot test these devices, the resulting information may be prove useful for school bus safety.

Comments on Behavioral and Training Programs

In response to the ANPRM's questions about training programs for drivers and students, several commenters expressed support for such programs. The Volusia County Schools believed that driver training provides a better return for the money than purchasing crossing control arms and sensors. The Michigan Department of Education (Michigan) requested that NHTSA review California's program requiring elementary school children be escorted when crossing in front of school buses. In comments on the stop signal arm proposal (55 FR 3620, February 2, 1990), the California Association of School Transportation Officials stated that its driver training program provides the best method of protecting student pedestrians. NSTA supported driver and pupil training programs.

NHTSA continues to support driver, student, and public education programs as a means of reducing school bus pedestrian injuries and fatalities. Given the limited nature of school budgets and the sentiments expressed by California, the agency does not think it appropriate to mandate a large amount of expensive equipment on school buses since doing so could reduce the funds available for education and training. The agency requests information on the extent to which school bus drivers need special training in the use of mirrors.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the costs and other impacts of this proposal, and a Preliminary Regulatory Evaluation (PRE) has been prepared and placed in the docket. Based on this evaluation, the agency has determined that the proposal is not "major" within the meaning of Executive Order 12291. However, it is "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

As explained in the PRE, the additional cost of installing a pair of convex cross view mirrors on a new school bus would range from $0 to $63 per school bus. Given that 38,000 new school buses are produced each year, the aggregate additional cost of installing a pair of convex cross view mirrors on the fleet of new school buses would range from $0 to $2,394,000. The agency further notes that since nearly all States now require school buses to have more mirrors than required by FMVSS No. 111, the costs of complying with this proposal could even result in a cost savings, if mirrors currently being selected cost more than mirrors only permissible under the proposed standard. As elaborated in the "background" section of this notice, an average of 25 students are fatally injured and another 283 are injured when struck by their own school bus. While the effectiveness of upgrading the requirements for school bus mirrors cannot be conclusively established, accounts in the NAS report and docket comments indicate that some injuries would be avoided.

Regulatory Flexibility Act

NHTSA has considered the effects of this action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. School bus manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new school buses. However, this proposal would not typically increase the cost of school buses, since these entities currently purchase school buses with comparably priced mirror systems. In addition, some mirror manufacturers may qualify as small businesses within the meaning of the Regualtory Flexibility Act. However, any adverse impact from this proposal on small entities via increased cost would be minimal at most. The rulemaking might even be beneficial to them since it would provide manufacturers and school bus owners and opreators greater flexibility in determining which mirror systems to use. Accordingly, the agency has determined that preparation of an initial regulatory flexibility analysis is unnecessary.

Executive Order 12612 (Federalism)

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that it does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

In its analysis, the agency considered the proposal's likely effect on the States and possible alternatives to the rulemaking. The agency has determined that virtually all States require school buses to be equipped with more mirrors than the current FMVSS No. 111 requires. As this preamble explained earlier, the proposal would provide general performance oriented requirements that the States may exceed. Although the proposal would supercede the current school bus mirror requirements of 47 States, any required State regulatory changes will only involve a relatively minor administrative or legislative action that should not require extensive discussion or debate, since the change would improve the level of driver visibility. In addition, because the proposal would eliminate current specific requirements which serve to prohibit certain mirror designs, the proposal would provide additional flexibility to the States. The agency further notes that the proposal is similar to the recommendation approved by 86 percent of the State representatives at the 11th National conference on School Transportation. In addition, State commenters to the ANPRM favored such field-of-view oriented requirements. NHTSA accordingly does not expect any significant adverse impact on the States as a result of this rulemaking.

National Environmental Policy Act

NHTSA has also analyzed this proposed rulemaking action for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions or further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicle.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR Part 571 would be amended, as follows:

1. The authority citation for part 571 of title 49 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.111, S4 would be amended by adding the following definition in alphabetical order.

§ 571.111 Standard No. 111; Rearview mirrors

* * * * *

Effective mirror surface means the portions of a mirror that reflect images, excluding the mirror rim or mounting brackets.

* * * * *

§ 571.111 [Amended]

3. In § 571.111, S9 would be revised to read as follows:

S9 Requirements for School Buses. When a school bus is tested in accordance with the procedures of S13, it shall meet the requirements of S9.1 through S9.4.

S9.1 Outside Rearview Mirrors. Each school bus shall have two outside rearview mirror systems: System A and System B.

S9.2 System A shall be located so that the portion of the system on the bus's let side, and the portion on its right side, each:

(a) Includes at least one mirror of unit magnification;

(b) Includes one or more mirrors which together have not less than 50 square inches of reflective surface; and

(c) Provides, at the driver's eye location, a view of:

(1) For the mirror on the right side of the bus, the entire top surface of cylinder L in Figure 2, and of

(2) That area of the ground which extends rearward from the mirror surface not less than 200 feet.

(3) For the mirror on the left side of the bus, that area of the ground which extends rearward from the mirror surface not less than 200 feet.

S9.3(a) For each of cylinder A through L whose entire top surface is not directly visible from the driver's eye location, System B shall provide, at that location:

(1) A view of an image of the entire top surface of that cylinder.

(2) The view of the ground provided at the driver's eye location by system B shall overlap with the view of the ground provided by system A.

(b) Each mirror installed in compliance with S9.3(a)(1) shall meet the following requirements:

(1) Each mirror shall have a projected area of at least 40 square inches, as measured on a plane at a right angle to the mirror's axis.

(2) Each mirror shall be designed and located such that the distance from the center point of the eye location of a 25th percentile adult female to the center of the mirror plus one-half the smallest radius of curvature on the mirror surface shall be at least 39 inches.

(3) Each mirror shall have no discontinuities in the slope of the surface of the mirror.

(4) Each mirror system shall be installed with a stable support designed to dampen vibration.

(5) Each mirror with an average radius of curvature less than 35 inches shall be permanently and indelibly marked at the upper edge of its reflective surface in letters not less than ½ of an inch nor more than ¾ of an inch high with the words "THIS MIRROR IS NOT DESIGNED FOR USE WHILE THE VEHICLE IS IN MOTION."

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S9.4(a) Each image required by S9.2(c)(1) or S9.3(a)(1) to be visible at the driver's eye location shall be separated from the edge of the effective mirror surface of the mirror providing that image by a distance of not less than 3 minutes of arc.

(b) The image required by S9.3(a)(1) of cylinder N shall meet the following requirements:

(1) The angular size of the shortest dimension of that cylinder's image shall be not less than 3 minutes of arc; and

(2) The angular size of the longest visible dimension of that cylinder's image shall be not less than 9 minutes of arc.

§ 571.111 [Amended]

5. Section 571.111 would be amended by adding S13, which would read as follows:

S13 School bus mirror test procedures. The requirements of S9.1 through S9.4 shall be met when the vehicle is tested in accordance with the following conditions.

S13.1 Place cylinders at locations as specified in S13.1(a) through S13.1(g) and illustrated in Figure 2. Measure the distances shown in Figure 2 from a cylinder to another object from the center of the cylinder. The cylinders are any color which provides a high contrast with the surface on which the bus is parked. Except for cylinder N, which is 3 feet high and 1 foot in diameter, the cylinders are 1 foot high and 1 foot in diameter.

(a) Place cylinder G, H, and I so that they are tangent to a transverse vertical plane tangent to the forward-most sruface of the bus's front bumper. Place cylinders D, E, F so that their centers are located in a transverse vertical plane that is 6 feet forward of a transverse vertical plane passing through the centers of cylinders G, H, and I. Place cylinders A, B, and C so that their centers are located in a Transverse vertical plane that is 12 feet forward of the transverse vertical plane passing through the centers of cylinders G, H, and I.

(b) Place cylinders, B, E, and H so that their center are in a longitudinal vertical plane that passes through the bus's longitudinal centerline.

(c) Place cylinders A, D, and G so that their centers are in a longitudinal vertical plane that is tangent to the outboardmost edge on the left side of the bus's front bumper.

(d) Place cylinders C, F, and I so that their centers are in a longitudinal vertical plane that is tangent to the outboardmost edge on the right side of the bus's front bumper.

(e) Place cylinder J so that its center is in a longitudinal vertical plane two feet to the left of the longitudinal vertical plane passing through the centers of cylinders A, D, and G and is in the transverse vertical plane that passes through the centerline of the bus's front axle.

(f) Place cylinder K so that its center is in a longitudinal vertical plane two feet to the right of the longitudinal vertical plane passing through the centers of cylinders C, F, and I and is in the transverse vertical plane that passes through the centerline of the bus's front axle.

(g) Place cylinders L, M, and N so that their centers are in the transverse vertical plane that passes through the centerline of the bus's rear axle. Place cylinder L so that its center is in a longitudinal vertical plane that is two feet to the right of the longitudinal vertical plane tangent to the right side of the bus. Place cylinder M so that its center is in a longitudinal vertical plane that is six feet to the right of the longitudinal vertical plane tangent to the right side of the bus. Place cylinder N so that its center is in a longitudinal vertical plane that is twelve feet to the right of the longitudinal vertical plane tangent to the right side of the bus.

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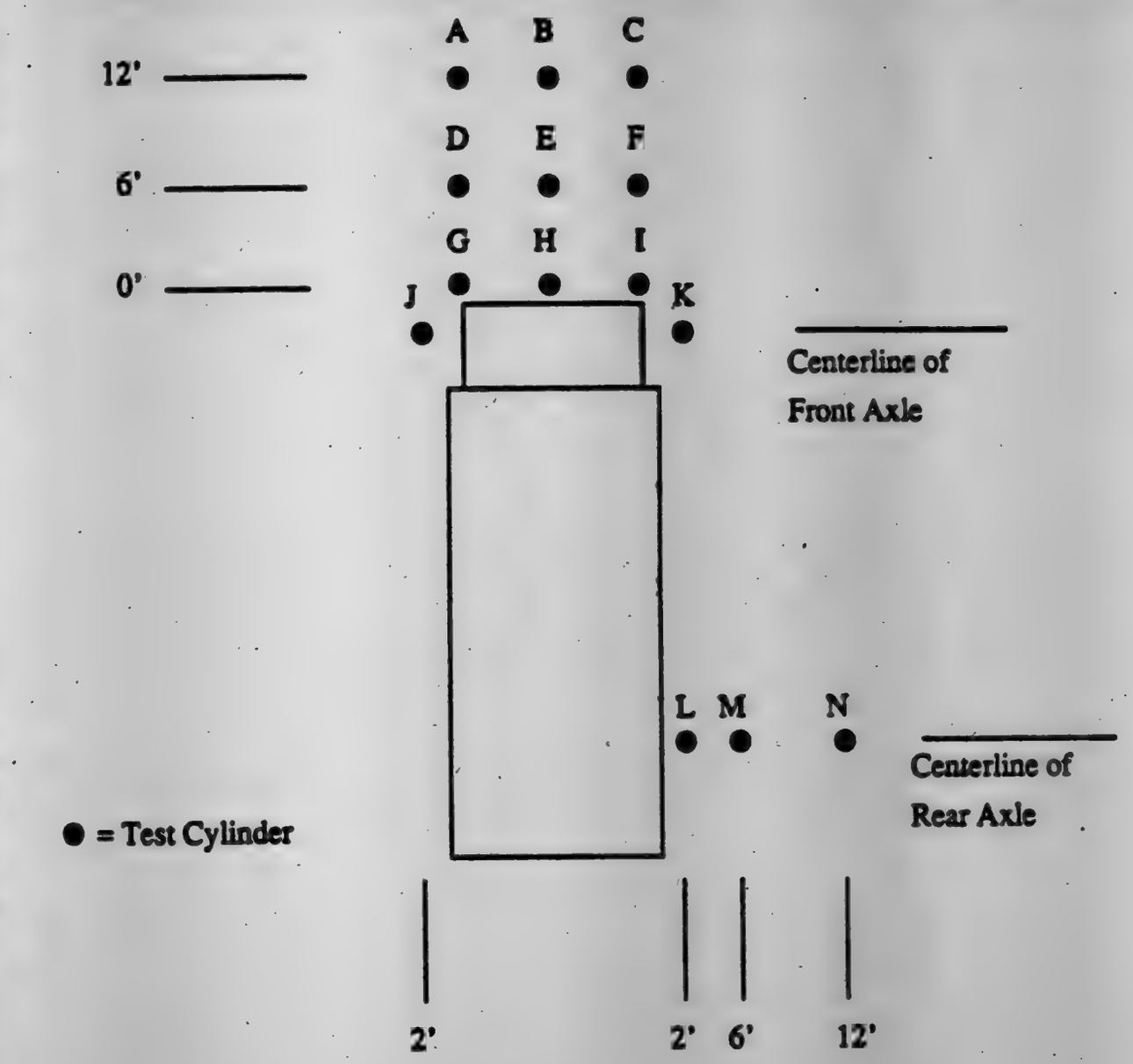

Figure 2.

Location of Test Cylinders for School Bus Field-of-View Test

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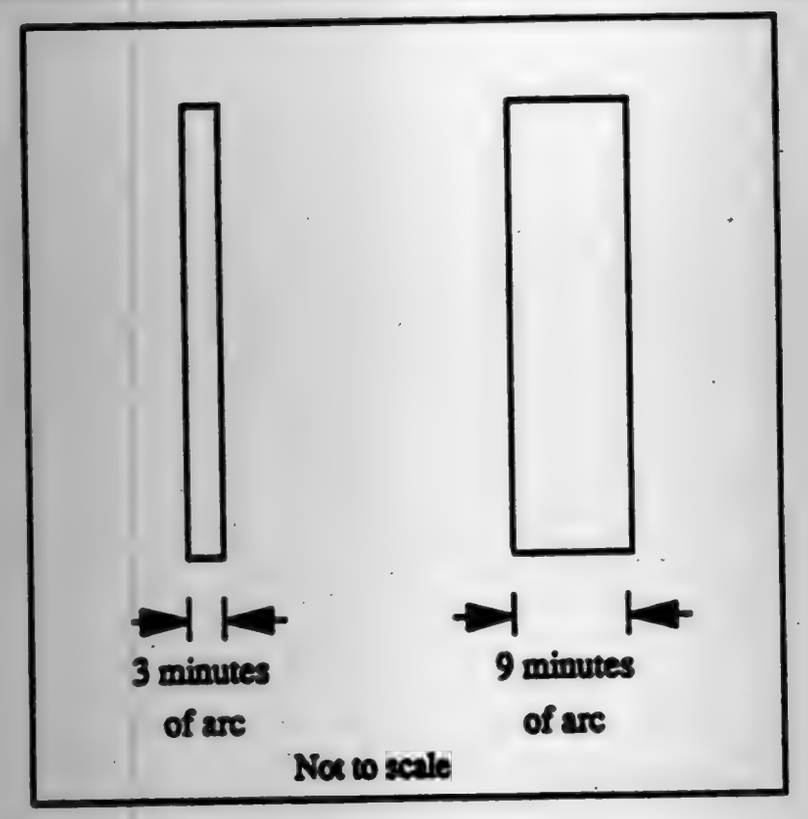

Figure 3.

Comparison Chart for Indirect Field-of-View Measurements

BILLING CODE 4910-59-C

S13.2 The driver's eye location is the eye location of a 25th percentile adult female, when seated in the driver's seat as follows: The center point of the driver's eye location is the point located 27 inches perpendicular, relative to the floor of the bus, to the intersection of the seat cushion and the seat back at the longitudinal centerline of the seat. Adjust the driver's seat to the midway point between the forward-most and rear-most positions, and if separately adjustable in the vertical direction, adjust to the lowest position. If an adjustment position does not exist at the midway point, use the closest adjustment position to the rear of the midpoint. If a seat back is adjustable, adjust the seat back angle to the manufacturer's nominal design riding position in accordance with the manufacturer's recommendations.

S13.3 Adjust the mirrors in accordance with the manufacturer's recommendations.

S13.4 Using a 35 mm or larger format camera with its film plane located at the driver's eye location, look through the camera and the windows of the bus and determine that the entire top surface of any cylinder can be directly seen. Observations of the cylinders are also made with the film plane of the camera in three locations, 6 inches forward of the center point, as measured on a longitudinal, horizontal line passing through that point, and 6 inches to the left, and to the right of the center point, as measured on a transverse, horizontal line passing through the point.

S13.5 For each cylinder whose entire top surface is determined under paragraph 13.4 of this section not to be directly visible at the driver's eye location.

(a) Place a comparison chart (see Figure 3) above the mirror used to view the cylinder.

(b) Photograph the cylinder through the appropriate mirror with the camera located so that the view through its film plane is located at the center point of the driver's eye location, ensuring that the image of the mirror and comparison chart fill the camera's view finder to the extent possible. Photographs are also made with the film plane of the camera in three other locations, 6 inches forward of the center point, as measured on a longitudinal, horizontal line passing through that point, and 6 inches to the left, and to the right of the center point, as measured on a transverse, horizontal line passing through that point.

Issued on: April 25, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-10195 Filed 5-1-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910102-0002]

Atlantic Bluefin Tuna Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: NOAA issues this notice to reopen until May 10, 1991, the public comment period on the proposed rule to amend the regulations governing the Atlantic bluefin tuna fishery. A proposed rule was published in the **Federal Register** on March 11, 1991 (56 FR 10227). NOAA proposes to: (1) Require specified amounts of other species to be landed as a condition for landing an incidental bycatch of Atlantic bluefin tuna in the southern longline fishery; (2) prohibit retention of Atlantic bluefin tuna harvested from the Gulf of Mexico, except by vessels permitted in the Incidental Catch category; (3) reduce the daily catch limit in the Angling category from four to one young school, school, or medium tuna per day; and (4) make other technical revisions to the regulations. The intent of this notice is to ensure that interested persons have sufficient time to comment on the proposed rule.

DATES: Written comments must be received by May 10, 1991.

ADDRESSES: Written comments should be sent to Richard Roe, Northeast Regional Director, NMFS, 1 Blackburn Dr., Gloucester, MA 01930. Clearly mark the outside of the envelope "Tuna Comments." Copies of the proposed rule are also available from this address.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508-281-9324.

SUPPLEMENTARY INFORMATION: The public comment period on the proposed rule as published March 11, 1991 (56 FR 10227) is reopened until May 10, 1991, in order to receive comments on the proposed rule and a request to change the commencement date of the General category season. NMFS is seeking information and comment on this request on behalf of North Carolina fishermen who contend that they are precluded from an opportunity to fish for and retain giant bluefin because the season begins after giant bluefin migrate from the area. These fishermen argue that their level of catch is expected to be low and, therefore, will not result in early harvest of the General category quota, which has not been fully harvested for several years.

The request to change the commencement date is not a part of the proposed rule but may become the subject of a rulemaking in the future depending on the comments received during the public comment period.

A complete description of the proposed measures and the purpose and need for the proposed action are contained in the proposed rule and are not repeated here. Copies of the proposed rule may be obtained by writing (See **ADDRESSES**) or calling (See **FOR FURTHER INFORMATION CONTACT**).

Authority: 16 U.S.C. 971 *et seq.*

Dated: April 26, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-10331 Filed 5-1-91; 8:45 am]

BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 56, No. 85
Thursday, May 2, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 91-018N]

SLD Policy Memoranda; Semi-Annual Listing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document lists and makes available to the public memoranda issued by the Standards and Labeling Division (SLD), Regulatory Programs, Food Safety and Inspection Service (FSIS), which contain significant new applications or interpretations of the Federal Meat Inspection Act, the Poultry Products Inspection Act, the regulations promulgated thereunder, or departmental policy concerning labeling.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-6042.

SUPPLEMENTARY INFORMATION: FSIS conducts a prior approval program for labels or other labeling (specified in 9 CFR 317.4, 317.5, 381.132 and 381.134) to be used on federally inspected meat and poultry products. Pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and the regulations promulgated thereunder, meat and poultry products which do not bear provided labels may not be distributed in commerce.

FSIS's prior label approval program is conducted by label review experts within SLD. A variety of factors, such as continuing technological innovations in food processing and expanded public concern regarding the presence of various substances in foods, has generated a series of increasingly complex issues which SLD must resolve as part of the prior label approval process. In interpreting the Acts or regulations to resolve these issues, SLD may modify its policies on labeling or develop new ones.

Significant or novel interpretations or determinations made by SLD are issued in writing in memorandum form. This document lists two SLD policy memoranda which were issued during the period of October 1, 1990, through April 1, 1991.

Persons interested in obtaining copies of the following SLD policy memoranda, or in being included on a list for automatic distribution of future SLD policy memoranda, may write to: Printing and Distribution Section, Paperwork Management Branch, Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Memo No.	Title and date	Issue	Reference
041B	Labeling of boneless ham products, whole muscle roast beef products, and boneless poultry products [except turkey ham (9 CFR 381.171)] containing ground and/or emulsified trimmings, February 15, 1991.	Under what circumstances are the product names for boneless ham products, whole muscle beef products for roasting, and boneless poultry products acceptable without qualification, and when must the product names be qualified to reflect the use of like ground and emulsified trimmings?	(Supersedes Policy Memo 041A); 9 CFR 317.2(b)(13), 381.117 and 381.118.
090B	Protective Coverings, December 18, 1990.	Under what circumstances can immediate containers be considered protective coverings?	(Supersedes Policy Memo 090A); 9 CFR 317.1, 318.17, FSIS Form 7227-1.

The SLD policy specified in these memoranda will be uniformly applied to all relevant labeling applications unless modified by a future memoranda or more formal Agency actions. Applicants retain all rights of appeal regarding decisions based upon these memoranda.

Done at Washington, DC, on April 26, 1991.

Ashland L. Clemons,

Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service.

[FR Doc. 91-10319 Filed 5-1-91; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Expanded Animal Damage Control Proposal, Dixie National Forest, UT

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: The Notice of Intent to prepare an Environmental Impact Statement for expanded animal damage control methods on the Dixie National Forest, Utah, published in the December 11, 1989 **Federal Register** (54 FR 50786), is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Robert H. Meinrod, Range/Wildlife Branch Chief, Dixie National Forest, P.O. Box 580, Cedar City, UT 84721; telephone (801) 865-3700.

Dated: April 22, 1991.

Robert H. Meinrod,

Acting Forest Supervisor.

[FR Doc. 91-10323 Filed 5-1-91; 8:45 am]

BILLING CODE 3410-11-M

Easton Ridge Timber Sale, Wenatchee National Forest, Kittitas County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site-specific proposal for the Easton Ridge Timber Sale. The project is located within the Thorp Mountain Roadless Area in portions of the Yakima River, Dommery and Silver Creek drainages on the Cle Elum Ranger District of the Wenatchee National Forest. The purpose of the EIS will be to develop and evaluate a range of alternatives for timber and road construction levels. The alternatives will include a no action alternative, involving no harvest or construction, and additional alternatives to respond to issues generated during the scoping process. The proposed project will be in compliance with the direction in the Wenatchee National Forest Land and Resource Management Plan which provides the overall guidance for management of the area and the proposed projects of the next ten years. This Forest Service proposal is scheduled in the Forest Plan for a fiscal year 1991 timber sale. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the management of this project area should be received by May 1, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to John W. Lowery, District Ranger, Cle Elum Ranger District, 803 West Second, Cle Elum, WA 98922.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to John W. Lowery, District Ranger, Cle Elum Ranger District, 803 West Second, Cle Elum, WA 98922; phone (509) 674-4411.

SUPPLEMENTARY INFORMATION: The Easton Ridge Timber Sale is displayed in the Wenatchee National Forest Lanc and Resource Management Plan, page A-28. The major issues that have been identified to date reflect the meeting of visual quality objectives, effects on wildlife habitat, effects on dispersed recreation, and on adjacent landowners. The project is also within the Thorp Mountain roadless area which is approximately 15,000 acres. The proposed action involves approximately 4.8 million board feet of timber and 2.4 miles of road construction. There are approximately 147 acres proposed for harvest in a 500 acre planning area. Harvesting methods proposed include 25 acres of clearcut and 122 acres of extended shelterwood to meet visual resource management objectives. Proposed logging systems include skyline and tractor yarding.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals of organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the drafts EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental process.
4. Exploring additional alternatives.
5. Identifying potenitial environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The drafts EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by August 15, 1991. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is very important that those interested in the management of the Wenatchee National Forest participate at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980) Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible.

The final EIS is scheduled to be completed by September, 1991. In the final EIS, The Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. John W. Lowery, District Ranger, Cle Elum Ranger District, Wenatchee National Forest, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: April 5, 1991.

John W. Lowery,

District Ranger.

[FR Doc. 91-10374 Filed 5-1-91; 8:45 am]

BILLING CODE 3410-11-M

Stafford-Bear Timber Sale, Wenatchee National Forest, Kittitas County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site-specific proposal for the Stafford-Bear Timber Sale. The project is located within the Teanaway Roadless Area in portions of the Stafford and Jack Creek

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drainages on the Cle Elum Ranger District of the Wenatchee National Forest. The purpose of the EIS will be to develop and evaluate a range of alternatives for timber harvest and road construction levels. The alternatives will include a no action alternative, involving no harvest or construction, and additional alternatives to respond to issues generated during the scoping process. The proposed project will be in compliance with the direction in the Wenatchee National Forest Land and Resource Management Plan which provides the overall guidance for management of the area and the proposed projects for the next ten years. This Forest Service proposal is scheduled in the Forest Plan for a fiscal year 1991 timber sale. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope and implementation of this proposal must be received by June 15, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to John W. Lowery, District Ranger, Cle Elum Ranger District, 803 West Second, Cle Elum, WA 98922.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to John W. Lowery, District Ranger, Cle Elum Ranger District, 803 West Second, Cle Elum, WA 98922; phone (509) 674-4411.

SUPPLEMENTARY INFORMATION: The Stafford-Bear Timber Sale is displayed in the Wenatchee National Forest Land and Resource Management Plan, page A-29. The major issues that have been identified to date reflect the meeting of visual quality objectives, effects on wildlife habitat, effects on dispersed recreation, and on adjacent landowners. The project is also within the Teanaway roadless area which is approximately 66,000 acres. The proposed action involves approximately 1.3 million board feet of timber and 3.5 miles of road construction. There are approximately 54 acres proposed for harvest in a 1000 acre planning area. Harvesting methods proposed include 39 acres of clearcut and 15 acres of commercial thinning. Proposed logging systems include skyline and tractor yarding.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevent previous environmental process.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by August 15, 1991. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is very important that those interested in the management of the Wenatchee National Forest participate at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible.

The final EIS is scheduled to be completed by September, 1991. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. John W. Lowery, District Ranger, Cle Elum Ranger District, Wenatchee National Forest, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: April 5, 1991.

John W. Lowery,

District Ranger.

[FR Doc. 91-10375 Filed 5-1-91; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Strawberry School Critical Area Treatment RC&D Measure Plan, Lawrence, County, AR

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR part 1500), the Soil Conservation Service Guidelines (7 CFR part 650), and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Strawberry School RC&D Measure Plan, Lawrence County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Ronnie Murphy, State Conservationist, Soil Conservation Service, room 5404 Federal Office Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201. Telephone: (501) 324-5445.

Strawberry School Criterial Area Treatment RC&D Measure Plan, Arkansas, Notice of Finding of No Significant Impact

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ronnie Murphy, state conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The plan consists of 1.0 acre of criterial area treatment which includes contoured level benches on the playground area. These benches will be filled, shaped and slightly graded to safely dispose of water. Suitable material will be applied to the surface around playground equipment for erosion control. Installation of a box culvert will be done to safely conduct water from higher elevations to a waterway and reduce the amount of water running over the playground area.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ronnie Murphy.

Strawberry School Critical Area Treatment RC&D Measure Plan, Arkansas, Notice of a Finding of No Significant Impact

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: April 25, 1991.

William H. Mano,

State Administrative Officer.

[FR Doc. 91-10389 Filed 5-1-91; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the California Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 10 a.m. on May 18, 1991, at the El Paso Marriott Hotel, 1600 Airway Boulevard, El Paso, Texas 79925. The purpose of the meeting is to discuss border violence and the California State University system project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Michael Carney or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 26, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-10368 Filed 5-1-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-605]

Certain Carbon Steel Butt-Weld Pipe Fittings From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 11, 1991, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on carbon steel butt-weld pipe fittings from Taiwan. The review covers shipments of this merchandise to the United States from two exporters during the period December 1, 1987 through November 30, 1988. As a result of this review, the Department has determined that dumping margins exist with respect to the two exporters.

EFFECTIVE DATE: May 2, 1991.

FOR FURTHER INFORMATION CONTACT: James Rice or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-3793 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1991, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on butt-weld pipe fittings from Taiwan (56 FR 10234). We gave interested parties an opportunity to comment on the preliminary results of the administrative review. We received no comments. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

This review covers shipments made by two exporters of carbon steel butt-weld pipe fittings from Taiwan to the United States during the period December 1, 1987 through November 30, 1988. The exporters covered by this review are C.M. Pipe Fittings Mfg. Co., Ltd. ("C.M.") and Rigid Industries Co., Ltd. ("Rigid").

Scope of the Review

Imports covered by this review are shipments of carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers and caps, and if forged, have been advanced after forging. These advancements may include one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping or painting.

Until January 1, 1989, this merchandise was classifiable under item number 610.8800 of the TSUSA. Since that date, these products have been classifiable under HTS item number 7307.93.3000. As with the TSUSA number, the HTS number is provided for convenience and customs purposes. The written product description remains dispositive.

Fair Value Comparisons

To determine whether sales in the United States of carbon steel butt-weld pipe fittings from Taiwan were made at less than fair value, we compared the

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United States price with the foreign market value. Since Rigid had no home-market sales, and C.M. did not have a viable home market, we compared each company's U.S. sales to sales in the largest third-country market, which in both cases was Canada.

United States Price

In accordance with section 772(b) of the Act, we based United States price on purchase price, because the merchandise was sold to unrelated purchasers in the United States prior to its importation. We calculated purchase price based on c. & f., c.i.f., or f.o.b., duty-paid, packed prices to U.S. customers.

We made deductions from purchase price, where appropriate, for foreign inland freight, foreign inland insurance, ocean freight, brokerage and handling charges, and bank charges.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on delivered or ex-factory packed prices to unrelated purchasers in Canada. We made deductions to foreign market value, as appropriate, for foreign inland freight, foreign inland insurance, ocean freight, brokerage and handling charges, and bank charges. In order to adjust for differences in packing between the two markets, we deducted the packing costs for Canada and added U.S. packing costs. We made adjustments for differences between Canadian and U.S. commissions. Where there was no identical product in the third country with which to compare a product sold in the U.S. market, the Department selected the most similar product for fair value comparisons. We made no adjustment for differences in the physical characteristics of the merchandise because neither C.M. nor Rigid claimed any.

Petitioners alleged that sales in the third-country market were made at prices below the cost of producing the merchandise.

C.M.

For purposes of determining whether third-country sales were above the cost of production, we calculated the COP on the basis of C.M.'s cost of materials, labor, factory overhead, and general expenses. We relied upon the COP data submitted by C.M. in our analysis, except in the following instances where the costs were not appropriately quantified or valued.

We adjusted material costs for all four products under review, *i.e.*, caps, elbows, reducers, and tees, to reflect the material unit cost and actual yield experienced by the company after deduction of the revenue earned from scrap sales. Company-wide direct labor and factory overhead allocations to each cost center were inappropriate because they were based on a calculation involving 1984 machine time standards. Because C.M. only produces the type of products under review, we used, as best information available, the total machine time used for total production during 1988 by each cost center in allocating direct labor and factory overhead costs to the cost centers. Additionally, we adjusted total factory overhead by deducting the cost of packing materials, because these costs were also included in the submission as packing costs. We adjusted selling, general and administrative (SG&A) expenses by reclassifying certain G&A expenses that were previously misclassified as selling expenses. Because C.M. did not report its interest expense, we included net interest expense as reported in the company's accounting records as best information available. We found all of C.M.'s sales in the third-country to have been above the cost of production.

Rigid

For purposes of determining whether third-country sales were above the cost of production, we calculated the COP on the basis of Rigid's cost of materials, labor, factory overhead, and general expenses. We relied upon the COP data submitted by Rigid in our analysis, except in the following instances where the costs were not appropriately quantified or valued.

We adjusted the allocation of direct labor and factory overhead costs for caps to reflect actual production quantities. Due to clerical errors, standard machine times were incorrectly recorded on factory documents for certain models in the elbow, reducer, and tee cost centers. Therefore, within each cost center, we adjusted the allocation of direct labor and factory overhead costs to each model to agree with the appropriate machine-time standards. Because Rigid did not report its interest expense, we included net interest expense as reported in the company's accounting records as best information available.

We found that 20 percent of Rigid's sales of the subject merchandise in the third-country were at prices below the cost of production, within the meaning of section 773(b) of the Act. We disregarded those sales and used the remaining 80 percent to determine foreign market value.

Verification

We verified the cost-of-production information used in determining whether sales were made at less than the cost of production, in accordance with section 776(b) of the Act. We used standard verification procedures including on-site inspection of the manufacturers' operations and examination of accounting records and other documents containing relevant information.

Final Results of the Review

As a result of our comparison of the United States price to foreign market value, we determine that the following dumping margins exist:

Manufacturer/producer/exporter	Margin percent
C.M.	8.31
Rigid	6.89
Gei Bei [1]	87.30
Chup Hsing [1]	67.30
All Other Manufacturers/Producers/Exporters	8.31

[1] Not subject to this review, margins retained from original investigation.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries.

Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service upon completion of this administrative review.

Further, as provided by section 751(a)(1) of the Tariff Act, the Customs Service shall require a cash deposit of estimated antidumping duties based on the above margins for these firms. For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the antidumping duty order for those firms. For any future entries of this merchandise from a new producer and/or exporter not covered in the original investigation or this administrative review, whose first shipment occurred after November 30, 1988, and who is unrelated to the reviewed firms or any previously investigated firm, the Customs Service will require a cash deposit of 8.31 percent *ad valorem*.

These deposit requirements are effective for all shipments of carbon steel butt-weld pipe fittings from Taiwan which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: April 25, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10442 Filed 5-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-601]

Preliminary Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Mexico

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In response to a request by the Floral Trade Council (the petitioner) and four producers/exporters in Mexico, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain fresh cut flowers from Mexico. The review covers exports of this merchandise to the United States during the period April 1, 1989 through March 31, 1990. Based on our review of these exports, we preliminarily find the existence of dumping margins for five firms included in this review.

EFFECTIVE DATE: May 2, 1991.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, Steve Alley, or Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-8830, 377-1766, or 377-1776, respectively.

SUPPLEMENTARY INFORMATION:

Scope of Review

Certain fresh cut flowers are defined as standard carnations, standard chrysanthemums, and pompom chrysanthemums. During the period of review, such merchandise was classifiable under Harmonized Tariff Schedule (HTS) numbers 0603.10.7010 (pompom chrysanthemums), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Background

On April 23, 1987, the Department of Commerce (the Department) published in the Federal Register (52 FR 13491) an antidumping duty order on certain fresh cut flowers from Mexico.

In accordance with 19 CFR 353.22(a), the following four producers/exporters requested that the Department conduct an administrative review of this order: Rancho el Aguaje, Rancho el Toro, Florex and Tzitzic Tareta. In addition, the petitioner requested an administrative review for Visaflor and Rancho Mision el Descanso (Rancho Mision). We published a notice of initiation on June 1, 1990 (55 FR 22366). The Department is now conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Sales questionnaires were issued to all companies on October 2, 1990. In addition, the Department issued cost of production questionnaires to Tzitzic Tareta and Florex. A constructed value questionnaire was issued to Rancho el Toro and Rancho el Aguaje on October 5, 1990, after each informed the Department that it had no sales during the period of review (POR) of export quality merchandise in either the home or third-country markets.

Responses to the Department's questionnaire were received from Rancho el Toro on November 16, 1990, Rancho el Aguaje on December 3, 1990, Visaflor on December 5, 1990, Florex and Tzitzic Tareta on December 6, 1990, and Rancho Mision on December 7, 1990. On December 19, 1990, we issued deficiency letters to all companies. Responses to these letters were received on January 14, 1991.

On January 9, 1991, Rancho Mision requested a constructed value questionnaire because it had no sales of standard chrysanthemums in the home or third-country markets. On January 10, 1991, the Department issued that questionnaire to Rancho Mision and gave the company until January 21, 1991, to respond. Rancho Mision never submitted a response to the constructed value questionnaire. Accordingly, on February 4, 1991, we informed this respondent that we would use best information available (BIA) to calculate estimated margins for standard chrysanthemums. See the "Best Information Available" section of this notice for further discussion.

Tzitzic Tareta also failed to respond to the cost of production questionnaire, despite numerous requests that it do so. Therefore, on February 4, 1991, we informed Tzitzic Tareta that we would not verify its responses to the sales questionnaire and that we would use BIA to determine its margin for this review. See the "Best Information Available" section of this notice for further discussion.

The Department conducted verification of the questionnaire responses submitted by four of the respondents (Florex, Rancho el Aguaje, Rancho el Toro, and Rancho Mision) from February 18, 1991, through March 7, 1991. We did not verify the response submitted by Visaflor because it informed the Department on February 24, 1991, the night before verification was scheduled to begin, that it would not participate in the verification. See the "Best Information Available" section of this notice for further discussion.

At verification we discovered that both Rancho el Aguaje and Rancho el Toro maintained cash-based accounting systems. As a result, we were unable to utilize our normal verification techniques to test the completeness of their cost responses. For purposes of this review, we are accepting the data reported by these companies because: (1) Under Mexican law, these companies, as agricultural producers, were not required to maintain their records in a more formal manner, (2) these companies did maintain at least an internal record system which supported the questionnaire responses, (3) at verification, we found no evidence of systematic underreporting of costs, (4) we were able to verify the completeness of other sections of their responses (specifically, we were able to test that all sales were reported because we obtained consecutive growers reports which accounted for all sales to the United States during the POR), and (5) although these companies had never been the subject of a previous review or investigation, they were well prepared for verification and cooperative throughout the process. We note, however, that we may reconsider our decision to accept such data in future review, especially if the manner in which the records are maintained significantly limits our ability to conduct a thorough verification.

Best Information Available

Pursuant to section 776(c) of the Act, the Department is required to use BIA whenever a party to the proceeding refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes the proceeding. In accordance with this

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section, we have determined that the use of BIA is appropriate for sales of subject merchandise made by three of the six respondents in this review, as described below. In deciding what to use as best information available, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is best information available. When a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's review, the Department will normally assign to that company the highest margin for the subject merchandise of either (1) The highest margin calculated for that company in any previous review or the original investigation; or (2) the highest calculated margin for any respondent that supplied adequate responses for the current review.

When a company has cooperated with the Department's request for information but fails to provide the information requested in a timely manner or in the form required, the Department will normally assign the affected company the highest margin assigned that company in any previous review or the original investigation.

Tzitzic Tareta

As stated in the "Background" section of this notice, the Department issued the cost of production (section D) questionnaire to Tzitzic Tareta on October 2, 1990 and informed it that it would have to respond to this section of the questionnaire by November 16, 1990. On December 19, 1990 the Department issued a deficiency letter to Tzitzic Tareta in which it repeated the request that Tzitzic Tareta respond to section D. Furthermore, in a meeting held with counsel for Tzitzic Tareta on December 28, 1990 the Department again pointed out that a Section D response was required. Despite these repeated requests, Tzitzic Tareta never responded to section D. Absent the information required in section D, we were unable to determine whether home market sales were made at prices above the cost of production, nor could we assume that all home market sales were made at prices below the cost of production and base foreign market value on construction value. As a result, we did not verify Tzitzic Tareta's response to the sale questionnaire, and have based Tzitzic Tareta's margin on BIA.

Because Tzitzic Tareta failed to respond to our cost questionnaire, and was therefore considered uncooperative, we would normally assign to this company the rate calculated for Florex in this review, (*i.e.*, the highest margin calculated in this review for any company that supplied an adequate response, a margin which is higher than any calculated margin for Tzitzic Tareta in any previous review or the original investigation). However, given (1) the enormous disparity between the verified rate for Florex in this review and the verified rates for other companies in this review, prior reviews, and the original investigation (more than 200 percentage points), and (2) Florex's extraordinarily high business expenses resulting from investment activities during this review period which are uncharacteristic of the other companies subject to this review, we find it inappropriate to use Florex's rate as BIA in this review. Although Florex capitalized much of its unusually high costs in accordance with Mexican Generally Accepted Accounting Principles (MGAAP), it appears that there may still be significant residual effect on Florex's margin. Therefore, we are assigning to Tzitzic Tareta the next margin in the BIA hierarchy, which is Tzitzic Tareta's margin from the final results of the 1988–1989 administrative review.

Visaflor

As stated in the "Background" section of this notice, Visaflor refused to allow the Department to verify its response, and as such, significantly impeded this review. It would, thus, be our general practice to assign to this company the rate calculated for Florex in this review. However, for the reasons stated above for Tzitzic Tareta, we find it inappropriate to use Florex's rate as BIA in this review. Accordingly, we are assigning to Visaflor the next margin in the BIA hierarchy, which is Visaflor's margin from the final determination of the original investigation.

Rancho Mision el Descanso

At verification, we found a significant portion of Rancho Mision's response to be incomplete and/or inaccurate. Because Rancho Mision failed to provide sufficient documentation for most elements of its response, we were unable to establish its completeness. Most importantly, Rancho Mision failed to substantiate the total volume and value of exporter's sales price (ESP) sales. Not only could Rancho Mision not explain how it calculated the aggregate ESP sales totals reported in its Section A questionnaire response, but it also presented no documentation to demonstrate that the ESP sales it reported were complete.

In addition, we noted at verification that Rancho Mision failed to report commissions paid on consignment sales and imputed credit expenses for all sales. We also noted that Rancho Mision did not report freight, brokerage, packing or border charges incurred on ESP sales.

Furthermore, we were unable to establish the relationship between Rancho Mision and its U.S. "subsidiary" during the POR. Rancho Mision claims that at some time between 1988 and 1991 it sold its "subsidiary" but was unable to provide the verification team with any sales or legal documentation related to this alleged sale. Therefore, we were unable to determine the identity of the first unrelated U.S. purchaser in those cases.

Regarding inaccuracies found in the data reported by Rancho Mision, these include the following: Rancho Mision reported all pompom chrysanthemums as standard chrysanthemums and vice-versa; the percentages used to allocate freight, brokerage, packing and border charges to each flower type for U.S. consignment and direct sales were incorrectly calculated; it estimated indirect selling expenses for its U.S. subsidiary because it could not locate the expense ledgers for the last four months of the POR (however, in examing the estimated indirect selling expenses, we found that the actual expenses for the eight-month period for which it had expense ledgers exceeded the estimated expenses for the entire 12-month POR); and it included in its direct sales listing sales to its U.S. subsidiary, despite previous statements that it had not done so, and included sales of flowers purchased from U.S. producers in its ESP sales listing.

In addition, at verification we found that the sales prices and quantities for a number of the sales that it reported (both ESP and direct) were incorrect. Although it was given an opportunity subsequent to verification to submit a revised computer tape containing the corrected information, Rancho Mision claimed it was unable to do so.

Based on the totality of the problems that we found with Rancho Mision's reported information and the fact that it did not submit a corrected computer tape subsequent to verification, we have determined that it is appropriate to use BIA for the preliminary results. However, in determining what is appropriate to use as BIA, we have taken into consideration that Rancho Mision attempted to cooperate with the Department, in that it complied with all of the Department's requests for information (with the exception of the response to Section D of the questionnaire for one flower type which

accounted for a very small percentage of its total sales). Consequently, we are assigning to Rancho Mision its margin calculated in the final determination of the original investigation, in accordance with the hierarchy described above.

United States Price

As in the original fair value investigation and in all prior administrative reviews of this merchandise, we calculated monthly weighted-average United States prices in order to account for the perishability of the product.

Florex

We based United States price on both purchase price and ESP because sales were made to unrelated purchasers both before and subsequent to importation. The sales made subsequent to importation were made through an unrelated consignment agent in the United States.

When sales were made to an unrelated purchaser prior to importation, we calculated purchase price for Florex based on packed, f.o.b. Mexico City airport prices and f.o.b. farm prices. Since Florex did not incur charges in delivering the merchandise from its farm in Puebla to the Mexico City airport, no foreign inland freight was deducted. At verification, we discovered that Florex incurred brokerage charges in Mexico City that it did not report. As BIA, we allocated brokerage expenses found in Florex's expense ledger over the sum of the total quantity of merchandise shipped to the United States, less the quantity for the sale with terms f.o.b. farm, and the total quantity of sales that appear to have been shipped to Canada, and deducted this per stem amount for all purchase price sales with terms of sale f.o.b. Mexico City airport. In addition, we adjusted the prices of three purchase price sales based on information found at verification.

Where sales were made subsequent to importation, we calculated ESP based on f.o.b. Houston airport prices. At verification we found that Florex had not reported charges which were, in fact, incurred in delivering the merchandise from its farm in Puebla to the Mexico City airport. Therefore, as BIA, we allocated Florex's total freight costs taken from its expense ledger for the POR over the total quantity of subject merchandise sold in the home market and the total quantity of both subject and non-subject merchandise sold in the United States for all sales made f.o.b. Mexico City airport or f.o.b. Houston airport during the POR, and deducted this amount from U.S. price. As with purchase price sales, we deducted foreign brokerage charges that respondent did not report. We used BIA to estimate this charge (see paragraph above for a description of the calculation of this charge). We also made deductions for air freight, U.S. brokerage and handling and U.S. Customs user fees. We made no deductions for the reported U.S. antidumping duty deposits made in connection with these sales.

Florex reported gross revenue received over all merchandise shipped to the United States, regardless of whether that merchandise was sold. We adjusted the gross unit prices reported by Florex by allocating total revenue for each sale over only the quantity of merchandise actually sold.

In accordance with 19 CFR 353.41(e), we made further deductions to ESP for credit expenses and commissions. To calculate credit expenses for the first nine months of the POR, we used publicly-available monthly FOMEX interest rates provided by another respondent in this review. These interest rates were the rates in effect during the POR on loans made by the Mexican government to exporters. As the FOMEX program was discontinued at the end of 1989, we used U.S. short-term prime rates for the remaining three months of the POR.

Rancho el Aguaje

We based United States price on ESP, in accordance with section 772(c) of the Act, because all sales to the first unrelated purchaser took place after importation into the United States. These sales were made through unrelated consignment agents in the United States.

To calculate ESP, we used the packed, f.o.b. prices delivered to the consignment agent's offices in the United States. We adjusted ESP for errors and omissions found at verification. We then made deductions for inland freight, brokerage and handling, and U.S. Customs user fees. We adjusted the reported amounts as follows. Regarding inland freight, we reclassified highway tolls reported as part of general and administrative expenses (G&A) as inland freight. In addition, we adjusted the percentage used to allocate the reported inland freight expenses to subject merchandise by excluding sales made outside the period. Concerning brokerage and handling and U.S. Customs user fees, Rancho el Aguaje did not report expenses for certain months of the POR. At verification, however, we found that Rancho el Aguaje did, in fact, incur expenses for these months. As BIA for brokerage and handling, we calculated the expense for the entries during the month for which no expenses were reported based on the fee paid for each entry and the number of entries during the month. As BIA for U.S. Customs user fees, we calculated expenses for the month for which no expenses were reported based on the highest percentage of U.S. price reported for any of the other months during the POR.

In accordance with § 353.41(e) of the Department's regulations, we made further deductions to ESP for credit expenses and commissions. Concerning credit expenses, we increased the credit period reported for each consignment agent in order to account for the time between issuance of checks and their deposit into the account of the exporter. We calculated the additional time based on our observations at verification.

Rancho el Toro

We based United States price on ESP, in accordance with section 772(c) of the Act, because all sales to the first unrelated purchaser took place after importation into the United States. These sales were made through an unrelated consignment agent in the United States.

To calculate ESP, we used the packed, ex-warehouse prices at the consignment agent's warehouse in the United States. We adjusted ESP for errors and omissions found at verification. We then made deductions for inland freight, brokerage and handling, and U.S. Customs user fees. We adjusted the reported amounts as follows. Regarding inland freight, we reclassified certain expenses reported as part of G&A as inland freight. We also reclassified certain expenses reported as part of inland freight as G&A. Finally, we allocated the vehicle liability insurance reported for two months over the POR.

In accordance with 19 CFR 353.41(e), we made further deductions to ESP for credit expenses and commissions. Concerning credit expenses, we increased the reported credit period in order to account for the time between issuance of checks and their deposit into the account of the exporter. We calculated the additional time based on our observations at verification. Finally, we used the monthly FOMEX interest rates provided by respondent to calculate credit for the first nine months of the POR. As the FOMEX program was discontinued at the end of 1989, we used U.S. short-term prime rates for the remaining three months of the POR.

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Foreign Market Value

Foreign market value (FMV) was based on constructed value (CV) for those companies with calculated margins.

Florex

We gathered and analyzed data on Florex's production costs for this review. Consistent with our past practice concerning perishable products, if less than 50 percent of respondent's sales were at prices below the COP, we did not disregard any below-cost sales because we determined that the below-cost sales were not made in substantial quantities over an extended period of time. If between 50 and 90 percent of respondent's sales were at prices below the COP, we disregarded only the below cost sales. In such cases, we determined that the respondent's below-cost sales were made in substantial quantities over an extended period of time. If more than 90 percent of a respondent's sales were at prices below the COP, we determined that there were an insufficient number of sales to serve as the basis for determining FMV. Instead, we used CV as the basis for determining FMV for these sales.

In order to determine whether home market sales were above the COP, we calculated the COP based on costs reported by Florex except as noted below. Specifically, we:

(1) Included in the total quantity of sales made by Florex over which COP was allocated, the quantity of sales made to Canada that were not reported by Florex in its questionnaire response;

(2) Based costs on the cultivated area only;

(3) Increased plant costs for differences noted at verification;

(4) Calculated plant costs based on the quantity produced to reflect the costs associated with plants lost during cultivation;

(5) Revised the cost of manufacturing to eliminate an adjustment which related to costs incurred outside the POR;

(6) Added the costs associated with the revaluation of assets as this was a normal accounting practice of Florex;

(7) Allocated 1989 G&A expenses based on cost of sales rather than as a percentage of cultivation;

(8) Increased G&A costs to include miscellaneous expenses and professional services; and

(9) Included the finance costs as reflected on the 1989 financial statements.

We found that more than 90 percent of Florex's sales of pompom chrysanthemums in Mexico were made at prices below the COP. Accordingly, we disregarded all sales as the basis for determining FMV. In accordance with section 733(e) of the Act, we calculated FMV based on CV. CV includes cost of materials, fabrication, general expenses, profit, and packing. In all cases we used:

(1) Actual general expenses, in accordance with section 773(e)(1) of the Act, since these exceeded the statutory minimum requirement of ten percent of the sum of materials and fabrication;

(2) The statutory eight percent minimum profit, in accordance with section 773(e)(1)(B)(ii) of the Act, because this exceeded actual profit; and

(3) Imputed credit, which was included in selling expenses. We did not reduce interest expense incurred during the period of review because the effect on CV would be insignificant.

The CV data submitted by Florex was relied on, except in the instances where costs were not appropriately quantified or valued. See the discussion of Florex's COP above.

Where U.S. price was based on ESP, we deducted from CV home market commissions paid to unrelated parties, in accordance with 19 CFR 353.56(a)(2). We also deducted home market credit expenses from CV.

Where U.S. price was based on purchase price, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses and commissions. To calculate U.S. credit expenses for the first nine months of the POR, we used publicly-available monthly FOMEX interest rates provided by another respondent in this review. These interest rates were the rates in effect during the POR on loans made by the Mexican government to exporters. As the FOMEX program was discontinued at the end of 1989, we used public home market interest rates provided by another respondent for the last three months of the POR.

Rancho el Aguaje

Rancho el Aguaje did not have a home market or third country market for export quality grade flowers. Accordingly, we calculated FMV based on CV, in accordance with section 773(e)(1) of the Act. CV includes materials, fabrication, general expenses, profit, and packing. In all cases we used:

(1) Actual general expenses, in accordance with section 773(e)(1) of the Act, since these exceeded the statutory ten percent minimum of materials and fabrication;

(2) The statutory eight percent minimum profit, in accordance with section 773(e)(1)(B)(ii) of the Act, because Rancho el Aguaje did not have a home or third country market; and

(3) Imputed credit, which was included in selling expenses. We then reduced interest expense incurred during the period for the portion of the expense related to these imputed credit costs in order to avoid double counting.

Because Rancho el Aguaje did not have a home market or third country market, we included in CV general expenses and packing expenses based on reported U.S. experience.

The CV data submitted by Rancho el Aguaje was relied on, except in the following instances where costs were not appropriately quantified or valued. Specifically, we:

(1) Increased material, labor and overhead to reflect costs incurred but not reflected in the submission;

(2) Increased electricity costs to reflect the costs for the 12-month period of review rather than the six-month costs reported;

(3) Revised plant costs to reflect findings at verification;

(4) Increased G&A costs to reflect costs in the financial statements, but not included in the submission;

(5) Allocated G&A expenses based on cost of sales rather than cultivation area; and

(6) Used best information available to reflect finance costs which were not reported in the submission.

We deducted from CV commissions paid to unrelated parties and credit expenses, in accordance with 19 CFR 353.56(a)(2).

Rancho el Toro

Rancho el Toro did not have a home market or third country market for export quality grade flowers. Accordingly, we calculated FMV based on CV, in accordance with section 773(e)(1) of the Act. CV includes materials, fabrication, general expenses, profit, and packing. In all cases we used:

(1) Actual general expenses, in accordance with section 773(e)(1) of the Act, since these exceeded the statutory ten percent minimum of materials and fabrication;

(2) The statutory eight percent minimum profit, in accordance with section 773(e)(1)(B)(ii) of the Act, because Rancho el Toro did not have a home or third country market; and

(3) Imputed credit, which was included in selling expenses.

Because Rancho el Toro did not have a home market or third country market, we included in CV general expenses and packing expenses based on reported U.S. experience.

The CV data submitted by Rancho el Toro was relied on, except in the following instances where costs were not appropriated quantified or valued. Specifically, we:

(1) Based costs on the cultivation area only;

(2) Based plant costs on the quantity of plants reported by company officials rather than the quantity reflected in the accounting records as BIA;

(3) Increased fertilizer costs for costs incurred but not reflected in the submission;

(4) Used BIA to reflect depreciation costs of assets noted in the plant tour, but not reflected in the accounting records;

(5) Reclassified certain G&A costs to labor expense as these costs related to hourly workers;

(6) Increased G&A costs to reflect G&A costs reflected in the financial statements but not included in the submission;

(7) Adjusted G&A expenses to account for expenses incorrectly reported as indirect selling expenses;

(8) Allocated G&A expenses based on cost of sales rather than cultivation area; and

(9) Corrected two clerical errors in the calculation of plant and labor costs.

We deducted from CV commissions paid to unrelated parties and credit expenses, in accordance with 19 CFR 353.56(a)(2).

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period April 1, 1989, through March 31, 1990:

Manufacturer/Exporter	Margin (Percent)
Florex	264.43
Rancho el Aguaje	0.57
Rancho el Toro	0.00
Rancho Mision el Descanso	24.33
Tzitzic Tareta	39.95
Visaflor	29.40

The Department will issue appraisement instructions concerning these companies directly to the Customs Service upon completion of this administrative review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of the subject merchandise from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipments of this merchandise produced or exported by any of the reviewed companies will be that established in the final results of this review; (2) if the exporter is not a firm covered in this review or any previous review, or the original investigation, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in the final results of this review; (3) the cash deposit rate for all other producers/exporters shall be 0.57 percent.

Generally, it is our practice to assign the highest rate calculated for any responding firm in the current review to future entries of the subject merchandise from a new producer and/or exporter. However, given the enormous disparity between the verified rate for Florex in this review and the verified rates for other companies in this review, prior reviews, and the original investigation, and Florex's extraordinarily high business expenses resulting from investment activities during this review period which are uncharacteristic of the other companies subject to this review, we find it inappropriate to use Florex's rate as the cash deposit rate for producers and/or exporters not related to Florex. Accordingly, we are using the next highest verified rate calculated for a responding company.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administration review.

Public Comment

In accordance with 19 CFR 353.38, case briefs or any other written comments must be submitted in at least ten copies to the Assistant Secretary for Import Administration no later than May 24, 1991, and rebuttal briefs no later than 10 a.m. on May 31, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, such hearing will be held on May 31, 1991, at 3 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Persons interested in attending the hearing should ascertain with the Department the date and time of the hearing as the scheduled date approaches to ensure that circumstances have not required a change in plans.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), an interested party may make an affirmative oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: April 25, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10433 Filed 5-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-505]

Malleable Cast Iron Pipe Fittings From Brazil, Intent To Revoke Antidumping Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping order on malleable cast iron pipe fittings from Brazil. Interested parties who object to this revocation must submit their comments in writing not later than May 31, 1991.

EFFECTIVE DATE: May 2, 1991.

FOR FURTHER INFORMATION CONTACT: John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1986, the Department of Commerce published an antidumping finding on malleable cast iron pipe fittings from Brazil (51 FR 18640). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

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Opportunity to Object

Not later than May 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by May 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by May 31, 1991, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: April 24, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-10434 Filed 5-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-247-003]

Portland Cement, Other Than White, Nonstaining Portland Cement, From the Dominican Republic, Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on Portland cement, other than white, nonstaining Portland cement, from the Dominican Republic. Interested parties who object to this revocation must submit their comments in writing not later than May 31, 1991.

EFFECTIVE DATE: May 2, 1991.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 1983, the Department of Treasury published an antidumping finding on Portland cement, other than white, nonstaining Portland cement, from the Dominican Republic (28 FR 4507). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than May 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by May 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by May 31, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: April 26, 1991.

Roland L. MacDonald.

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-10435 Filed 5-1-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination: Certain Type 302 HQ Stainless Steel Wire Rod

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain type 302 HQ stainless steel wire rod.

SHORT-SUPPLY REVIEW NUMBER: 47.

SUMMARY: The Secretary of Commerce ("Secretary") hereby denies a short-supply allowance for 700 metric tons of certain Type 302 HQ stainless steel wire rod for May—December 1991 under the U.S.-EC, U.S.-Brazil, U.S.-Korea, and U.S.-Japan steel arrangements.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mark Brechtl or Richard Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377-1386 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On March 26, 1991, the Secretary of Commerce ("Secretary") received an adequate petition from Techalloy, Inc. ("Techalloy") requesting short supply for 700 metric tons of certain Type 302 HQ stainless steel wire rod for May—December 1991 under article 8 of the U.S.-Brazil, U.S.-EC, U.S.-Korea steel arrangements, and paragraph 8 of the U.S.-Japan steel arrangement. Techalloy requested short supply for certain Type 302 HQ rod because it cannot obtain this material from potential domestic sources, and its possible foreign suppliers have insufficient available quota to provide this product. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures. (19 CFR 357.102) ("Commerce's Short-Supply Procedures").

The requested product is stainless steel wire rod, Type 302 HQ (S30430) coil, A.O.D. quality, hot rolled, annealed and pickled, that meets the following specifications:

Diameters: 0.217 inch, 0.250 inch, 0.276 inch, 0.312 inch, 0.437 inch, 0.531 inch;

Chemical Composition:

C—0.03 maximum
Mn—2.00 maximum
Si—1.00 maximum
P—0.045 maximum
S—0.030 maximum
*Cr—17.5-19.0
*Ni—8.5-10.0
Cu—3.0-4.0
N—0.10 maximum
*Note difference from standard.

Application: Unless otherwise specified herein, or on the purchase order, the material shall be certified to the chemistry of ASTM-A-493 Type Xm-7 (latest revision);

Mechanical Properties: The as-shipped tensile strength shall not exceed 72,000 P.S.I.;

Surface: Uniform in quality and condition; surface defects such as seams, laps, cracks, gouges, pits, and other imperfections detrimental to the production of cold-heading quality wire shall not exceed one percent of the diameter;

Quality: The material shall be internally clean and free of foreign materials, excessive inclusions, piping and other imperfections detrimental to the production of high-quality wire products.

On March 29, 1991, the Secretary established an official record on this short-supply request (Case Number 47) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce at the above address. On April 9, 1991, the Secretary published a notice in the **Federal Register** announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than April 16, 1991, and interested parties were invited to file replies to any comments no later than five days after that date. In order to determine whether this product could be supplied by U.S. producers in May—December 1991, the Secretary sent questionnaires to AL Tech Specialty Steel Corporation ("AL Tech"), Baltimore Specialty Steels Corporation ("BSSC"), and Carpenter Technology Corporation ("CarTech"). The Secretary received timely questionnaire responses from AL Tech and BSSC, and Talley Metals Technology, Inc. ("Talley") responded to the notice in the **Federal Register**.

Questionnaire Responses: AL Tech indicated in its questionnaire response that it is currently supplying Techalloy with this grade of stainless wire rod, and that it's product meets Techalloy's specifications with the exception of the maximum tensile strength. Nevertheless, AL Tech notes that Techalloy continues to purchase this material from AL Tech, suggesting that Techalloy allows some flexibility in this specification, and material exceeding this specification is acceptable. AL Tech states that it can supply 40 net tons per month, or 280 net tons (256 metric tons) for June-December 1991. AL Tech has no limitations on the sizes it can supply. Talley responded to the **Federal Register** notice by stating that it is capable and willing to supply the total quantity of this type of wire rod in all rod sizes 0.385 inch and below. BSSC stated in its response that it cannot meet the specifications required by Techalloy.

Analysis: The major issue in this short-supply review is whether there is a shortage of supply for the requested sizes of the subject product. Techalloy requested short supply for 700 metric tons of this product but gave no breakdown of the quantity sought in each of the six sizes.

Regarding the four smallest sizes of rod (0.217 inch, 0.250 inch, 0.276 inch, and 0.312 inch), Talley and AL Tech can produce the requested product. Talley indicates that it is fully capable of meeting all of Techalloy's quantity needs for these sizes, which are believed to be the major sizes consumed. AL Tech is also capable of producing these four sizes but only can supply up to 256 of the 700 metric tons sought for all six sizes. Hence, there is no shortage of supply in these four sizes as there are two potential suppliers for this material.

Regarding the two largest sizes (0.437 inch and 0.531 inch), AL Tech is the only potential supplier. However, AL Tech again is limited on the total quantity of Type 302 HQ rod it can supply. Although AL Tech can supply only 256 metric tons for all six sizes included in this review, Techalloy provided no information indicating AL Tech has refused to accept purchase orders from Techalloy for any material in these two larger sizes, suggesting that a condition of short supply also does not exist for these two sizes.

Conclusion: Because both AL Tech and Talley have expressed a willingness and ability to supply the requested product, and Techalloy has provided no evidence to the contrary that the product these companies produce is not acceptable or cannot meet Techalloy's quantity requirements, both AL Tech and Talley must be regarded as adequate suppliers. Therefore, the Secretary denies, pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Procedures, the short-supply request for 700 metric tons of the requested Type 302 HQ stainless steel wire rod for May-December 1991 under the U.S.-EC, U.S.-Brazil, U.S.-Korea, and U.S.-Japan steel arrangements. However, if the Secretary determines that his decision in this review was based on inaccurate information submitted by a private party, the Secretary may reconsider his decision.

Dated: April 26, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10436 Filed 5-1-91; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), United States Department of Commerce, is contemplating the grant of an exclusive license in the United States and certain foreign countries to practice the invention embodied in United States Patent Application Serial Number 7-602,491 for "Scrap Treatment Method" to Ames Specialty Metals, Inc. having a place of business at 2625 North Loop Drive, Ames, Iowa. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention discloses a method of treating rare earth-transition metal alloy scrap. In one embodiment of the invention the scrap is dissolved in an aqueous sulfuric acid solution, the solution is reacted with a hydroxide of an alkali element (e.g., Na or K) or ammonium to precipitate a double sulfate salt of the rate earth and the alkali element or ammonium, and the salt is separated from the solution. The double sulfate salt is converted to a rare earth salt, such as rare earth fluoride, amenable for use in metallothermic reduction processes to produce rare earth metal or alloys.

The availability of the invention for licensing was published on Wednesday, April 3, 1991 in the **Federal Register** Vol. 56, No. 64, P. 13,629. A copy of the patent application may be purchased from the NTIS Sales Desk by telephoning 800-553-NTIS, 703-487-4650 in Virginia, or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Charles A. Bevelacqua, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Patent Licensing Specialist Center for Utilization of Federal Technology.

[FR Doc. 91-10324 Filed 5-1-91; 8:45 am]

BILLING CODE 3510-04-M

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Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 7/432,044, "cDNA and Protein Sequences of Human Bone Matrix Proteins" to Matrix Biosystems, Inc., having a place of business at 3181 Porter Drive, Palo Alto, California 94304. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention covers certain bone and connective tissue disease processes detectable by *in vitro* and *in vivo* monitoring of the level of certain marcromolecules. It describes the cDNA and amino acid sequences of macromolecules that account for the majority (70% of the noncollagenous proteins in the human skeleton) of macromolecules that are truly of bone cell origin. The invention includes diagnostics methods to detect these genes and gene products. A shift in their levels from the normal values would be indicative of skeletal and/or connective tissue disease states. The application also describes methods of therapeutic intervention, including the use of monoclonal antibodies, gene amplification or anti-sense DNA.

The availability of the invention for licensing was published in the **Federal Register** Vol. 55, No. 64, p. 12400 (1990). A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 1-800-553-NTIS or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Girish C. Barua, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Patent Licensing Specialist, Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 91-10388 Filed 5-1-91; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Health Insurance Futures and Futures Options Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in health insurance futures and as a contract market in health insurance futures options. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation § 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before June 3, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT health insurance futures contract or health insurance option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254-7303.

SUPPLEMENTARY INFORMATION: In addition to requesting comment on the terms and conditions of the proposed futures and futures option contracts, the Division also is requesting comment on the merits of a petition filed by the CBT pursuant to § 33.11 of the Commission's option rules. The petition requests exemptive relief from the trading volume tests for options on futures as set forth in Commission Rule 33.4(a)(5)(iii).

Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the CBT in support of the applications, should send comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC., 20581, by the specified date.

Issued in Washington, DC on April 26, 1991.

Gerald Gay,

Director.

[FR Doc. 91-10352 Filed 5-1-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure and Realignment Commission; Public Hearing

ACTION: Announcement of public hearings of the Defense Base Closure and Realignment Commission.

SUMMARY: Open public meetings of the Defense Base Closure and Realignment Commission will be held in Washington, DC in accordance with the following dates and times, with specific meeting locations to be determined and published in the **Federal Register**: Friday, May 10, 9:30 a.m., hearings on land value and the environmental and economic impacts associated with the proposed base closures/realignments; Friday, May 17, 9:30 a.m., hearings on the General Accounting Office assessment of the DoD process for determining candidate bases for closure/realignments; Tuesday/Wednesday, May 21-22, 9:30 a.m., Congressional testimony from federal representatives of communities potentially affected by closures/realignments; Thursday/Friday, June 6-7, 9:30 a.m., Commission deliberation hearings on closure realignment candidates; Thursday/Friday, June 13-14, 9:30 a.m, Commission deliberation hearings on closure/realignment candidates; Thursday/Friday, June 20-21, 9:30 a.m., Commission deliberation hearings on closure/realignment candidates.

As previously published in the **Federal Register**, regional hearings outside the Washington, DC area will be held in accordance with the following schedule:

San Francisco, California: The first regional hearing will be on Monday and Tuesday, May 6th and 7th, 1991, at the California Palace of the Legion of Honor Florence Gould Theatre, Lincoln Park, 34th & Clement Streets, San Francisco, CA from 9:30 to 4:30 p.m. Testimony is invited on the following facilities: Sacramento Army Depot, CA; Fort Ord, CA; Castle AFB, CA; Hunters Point Annex, CA; Moffett Field Naval Air Station, CA; Naval Electronic Systems Engineering Center, Vallejo, CA; Whidby Island Naval Air Station, WA; Sand Point (Puget Sound) Naval Station, WA; and Naval Undersea Warfare Engineering Station, WA.

Los Angeles, California: The second regional hearing will be held on May 8, 1991 at the Los Angeles Museum of Science and Industry at Harbour Freeway and Exposition Blvd., Exposition Park, Los Angeles. Testimony is invited on the following facilities: Naval Weapons Center, China Lake, CA; Pacific Missile Test Center Pt., Mugu, CA; Long Beach Naval Station, CA; Marine Corps Air Station, Tustin, CA; Integrated Combat Systems Test Facility, San Diego, CA; Naval Electronic System Engineering Center, San Diego, CA; Naval Space Systems Activity, Los Angeles, CA; and Naval Ocean System Center Detachment, Kaneohe, Hawaii.

Denver, Colorado: The third regional hearing will be on Monday, May 13, 1991 in Denver, Colorado at the Denver Auditorium, 131 Champa Street (3rd floor auditorium), beginning at 9:30 a.m. Testimony is invited on facilities in the following states: Colorado, Arizona, Idaho, New Mexico, and Missouri.

Fort Worth, Texas: The fourth regional hearing will be on Tuesday, May 14, 1991 in Forth Worth, Texas, at a time and place to be determined and published in the **Federal Register**. Testimony is invited on facilities in the following states: Texas, Louisiana, and Arkansas.

Jacksonville, Florida: The fifth regional hearing will be on Thursday, May 23, 1991, in Jacksonville, Florida at a time and place to be determined and published in the **Federal Register**. Testimony is invited on facilities in the following states: Florida, Georgia, Alabama, and South Carolina.

Philadelphia, Pennsylvania: The sixth regional hearing will be on Friday, May 24, 1991, in Philadelphia, Pennsylvania, at a time and place to be determined and published in the **Federal Register**. Testimony is invited on facilities in the following states: Pennsylvania, New Jersey, and Maryland.

Boston, Massachusetts: The seventh regional hearing will be on Tuesday, May 28, 1991, in Boston, Massachusetts, at a time and place to be determined and published in the **Federal Register**. Testimony is invited on facilities in the following states: Massachusetts, Maine, Rhode Island, and Connecticut.

Indianapolis, Indiana: The eighth regional hearing will be held on Thursday, May 30, 1991, in Idianapolis, Indiana, at a time and place to be determined and published in the **Federal Register**. Testimony is invited on facilities in the following states: Indiana, Michigan, Illinois, Ohio, and Kentucky.

Washington, DC: Hearings will be held in Washington, DC on Tuesday and Wednesday, May 21st and 22nd at a time and place to be determined and published in the **Federal Register**. Testimony is invited on facilities in the following states: Virginia, and the District of Columbia.

The Commission will consider all written testimony during its deliberations. All interested individuals and groups are invited to submit their testimony or comments in writing to: Defense Base Closure Commission, 1625 "K" Street, NW., suite 400, Washington, DC 20006. In order to ensure all written comments may be considered, please submit them so as to arrive at the Commission offices by May 30, 1991.

In some instances, less than 15 days notice is being given due to difficulties in confirming appropriate locations in San Francisco and Los Angeles to accommodate large public hearings.

FOR FURTHER INFORMATION: Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, 202-653-0823.

Dated: April 29, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-10369 Filed 5-1-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Notice of Intent; Draft Environmental Impact Statement for the Operation of the Multipurpose Range Complex, Pohakuloa Training Area, Hawaii

AGENCY: Department of Defense, Department of the Army, U.S. Army Pacific, U.S. Army Support Command.

ACTION: Notice of intent to prepare a draft environmental impact statment (DEIS) for the operation of the Multipurpose Range Complex, Pohakuloa Training Area, Hawaii.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the U.S. Army will prepare a DEIS to assess the effects of operating the Multipurpose Range Complex (MPRC) at Pohakuloa Training Area (PTA), HI. The MPRC, located in the southwest corner of PTA, is an automated range designed for battalion-sized firing exercise using a variety of weapons. Construction of the range began in 1988 and is now over 95 percent completed.

Alternatives

The alternatives to be considered will be developed during the EIS scoping process, but will include a No-use alternative. The action alternatives are expected to include a range of intensities of use developed in relation to the various environmental constraints of the area. The alternatives will be developed considering operational factors such as different combinations of military equipment, weapons and types of ammunition, and spatial distribution and seasonal frequency of training.

Need for EIS

The Army decided to prepare an EIS because information indicated that operation of the MPRC could impact Category 1 and 2 candidate endangered plant species now believed to be present in the MPRC area. Category 1 species are expected to be proposed for listing as an Endangered Species by the U.S. Fish and Wildlife Service within the next two years. In addition to plant species and ecosystems, the following resources or impacts will be examined: animal species including birds and selected invertebrates, archaeological sites, and possible light pollution

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relative to the Mauna Kea Observatory Complex. Environmental issues such as air quality, water quality, toxic and hazardous wastes, adequacy of utilities, and general socioeconomic concerns are not presently believed to be of potential significance, but will be examined during the EIS scoping process.

Scoping Process

Scoping of the EIS will help the Army identify what resources and impacts may need to be examined and identify a range of management options to consider in developing the alternatives. Information will be obtained through the Areawide and State Clearinghouse; local advertisement of the NOI; and through various telephone conversations, meetings and correspondence with government agencies and private organizations and individuals. Public workshops will be held on Hawaii and Oahu Islands. These workshops will be held approximately 30 days after publication of this notice in the Hawaii Office of Environmental Quality Control Bulletin. Specific meeting times and places will be publicized in local newspapers and other forums. All interested government agencies, quasi-government planning advisory committees, and private organizations and individuals are strongly encouraged to participate in the scoping process and provide written comments.

Coordination

Formal coordination will be undertaken with the following entities, among others: the Advisory Council on Historic Preservation, the U.S. Department of Agriculture's Denver Wildlife Research Center (Hawaii Field Station), the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service (Honolulu Office and Hawaii Field Research Station), and other Federal agencies; Oahu and Hawaii offices of the State of Hawaii Legislature, Departments of Health, Land and Natural Resources (including the Historic Preservation Office), and Transportation, and Offices of State Planning, Hawaiian Affairs, and Environmental Quality Control, and the University of Hawaii at Hilo and University of Hawaii at Manoa; the County of Hawaii Mayor's Office, County Council, Fire Department, Planning Department, Public Works Department and Water Supply Department; and other organizations such as the Audubon Society, Conservation Council for Hawaii, Sierra Club, hunting associations, and the adjoining land owners.

The Draft EIS is expected to be available for public review in the Summer of 1992.

ADDRESSES: For additional information, contact Mr. David G. Sox, Installation Support Section, Military Branch, U.S. Army Engineer District, Honolulu, building 230, Fort Shafter, Hawaii 96858-5440, Tele: (808) 438-5030.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 91-10380 Filed 5-1-91; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers; Department of the Army

Coastal Engineering Research Board, Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: June 4-6, 1991.

Place: Holiday Inn Crowne Plaza, New Orleans, Louisiana.

Time: 8:15 a.m. to 5 p.m. on June 4; 8 a.m. to 3 p.m. on June 5; 9 a.m. to 11 a.m. on June 6.

Theme: Coastal Flood Protection.

Proposed Agenda: The morning session on June 4 will consist of a review of CERB business; presentations including Update of Dredging Research Program (DRP); DRP Monitoring of Dredged Material Plumes; Plume Monitoring Experience for Miami Harbor Project; Technical Issues in Plume Monitoring; Wetlands Research Program Overview/Coastal Initiative; and an Oil Spill Update.

The afternoon of June 4 will be devoted to a panel discussion on Coastal Flooding/Erosion—Gulf Coast Perspective and Initiatives. Presentations include Gulf of Mexico Program—Coastal Erosion Subcommittee—Coastal Erosion Gulfwide; Coastal Erosion and Wetland Loss in Louisiana—Status of U.S. Geological Survey Research Activities; Non-Fuel Mineral Resources in the EEZ Gulf of Mexico Task Force Activities; Coastal Erosion in Louisiana—Status of Louisiana Geological Survey Research Activities; Erosion, Flooding and Planning in the Coastal Parishes of Louisiana; Coastal Erosion in Texas; Corps O&M Activities and Programs to Reduce Coastal Erosion; and Corps Studies Under Way that Address Coastal and Shoreline Erosion.

The session on June 5 will consist of the Chief's Charge to the Board and two panels with several presentations addressing a specific topic for each panel. The first topic to be addressed is "Waves and Storm Surge due to Hurricanes." Presentations include Corps Uses of Hurricane Information; Lower Mississippi Valley Division Experience; Corps of Engineers Procedures and State of the Art in Modeling Hurricane Effects (Wind Prediction, Storm Surge Water Levels, Wave Predictions, Beach Modification); and Summary of Capabilities and Research Requirements. The second topic to be addressed is "Coastal Flooding Emergencies." Presentations include Corps Authority/Role in Disaster Response; FEMA Authority/Role in Disaster Response; R&D Needs Identified from Hurricane Hugo and other Disasters; Ongoing R&D Efforts; and Potential R&D Needs.

On June 6 the Board will report on their recommendations and response to the Chief's Charge.

This meeting is open to the public; participation by the public is scheduled for 9:15 a.m. on June 6.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Larry B. Fulton, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180-6199.

Larry B. Fulton,

Colonel, Corps of Engineers Executive Secretary.

[FR Doc. 91-10396 Filed 5-1-91; 8:45am]

BILLING CODE 3710-GX-M

DELAWARE RIVER BASIN COMMISSION

Amendment of Project Review Filing Fee Schedule

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its April 24, 1991 business meeting the Delaware River Basin Commission amended its schedule of project review filing fees for review of water resources projects. On June 28, 1972, the Commission adopted a resultion requiring that a filing fee be paid to the Commission at the time of filing applications pursuant to section 3.8 of the Delaware River Basin Compact. On April 23, 1975, the Commission amended the filing fee regulation by increasing the level of filing fees in recognition of the fact that revenues obtained from the filing fees since 1972 amounted to considerably less than the cost of administering the Commission's project review program.

The Commission once again proposed amendments to its filing fee schedule in 1990 to make the project review program more self-sustaining and held a public hearing on the proposal on December 12, 1990. Based on testimony received, the Commission revised its latest proposal and scheduled on April 24, 1991 public hearing to receive comments from the public. The amendments adopted following the April 24, 1991 hearing continue the long-standing exemption from filing fees for government agencies; establish a minimum fee of $250 for any project requiring Commission action and increase by 50% fees for projects which would result in an out-of basin diversion. All other aspects of the proposal which was the subject of the December 12, 1990 public hearing were adopted as proposed with the exception of the effective date, which is now May 1, 1991.

EFFECTIVE DATE: May 1, 1991.

ADDRESSES: Copies of the Commission's schedule of project review filing fees are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883-9500.

SUPPLEMENTARY INFORMATION: The Commission held a public hearing on these amendments on April 24, 1991 as noticed in the March 14, 1991 and April 17, 1991 issues of the **Federal Register** (56 FR 10862 and 56 FR 15604).

The Commission's Project Review Filing Fee Schedule is amended as follows:

1. A filing fee shall be paid to the Commission, according to the schedule herein, at the time of filing each application for project review, pursuant to section 3.8 and Article 10 of the Delaware River Basin Compact. Government agencies shall be exempt from such filing fees.

2. The project review filing fee is the greater of (a) or (b) as follows, and (c), if and as applicable:

(a) Minimum fee: $250 for any project that requires Commission action;

(b) Alternative fee:

(1) 1/10 of 1% of project cost to $10,000,000;

(2) 1/25 of 1% of remaining cost above $10,000,000 but not to exceed a maximum fee of $50,000 as to any one project.

(c) For any project that results in an out-of-basin diversion, the fee as described above is increased by 50%.

3. The project cost shall include the estimated costs of design, supervision of construction, legal services, contract administration, land, materials, equipment, construction and fabrication.

4. Revenues received pursuant to this regulation shall go into the Commission's general fund and be subject to specific appropriation by the Commission.

5. Each substantial project revision or modification following Commission action requires an additional filing fee.

6. These amendments become effective May 1, 1991.

Authority: Delaware River Basin Compact, 75 Stat. 688.

Dated: April 25, 1991.

Susan M. Weisman,

Secretary.

[FR Doc. 91-10387 Filed 5-1-91; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.117G and 84.215A]

Research and Development Centers Program and Fund for Innovation in Education: Innovation in Education Program

ACTION: Notice of cancellation of competitions.

The Secretary published a notice in the **Federal Register** on March 11, 1991 (56 FR 10946), inviting applications for a new award for fiscal year 1991 for operation of a center under the Research and Development Centers Program to conduct research on dissemination and knowledge utilization. On March 19, 1991, the Secretary published a notice in the **Federal Register** (56 FR 11549) inviting applications under the Fund for Innovation in Education: Innovation in Education Program for new awards for fiscal year 1991. Those notices are hereby withdrawn, and the competitions are hereby canceled.

On April 18, 1991, the President announced AMERICA 2000: An Education Strategy, a bold, complex, and comprehensive strategy to move America toward the National Education Goals. The Secretary plans to redirect funds under these programs in order to implement the strategy, which is to (1) create better and more accountable schools for today's students; (2) help invent a new generation of American schools for tomorrow's students; (3) transform America's adults into a nation of students; and (4) help make communities places where learning can happen. High priority research, development, dissemination, and training activities will be funded to support the strategy.

FOR FURTHER INFORMATION CONTACT: Regarding the Research and Development Centers Program: Milton Goldberg, U.S. Department of Education, 555 New Jersey Avenue, NW., room 610, Washington, DC 20208-5573. Telephone (202) 219-2079. Regarding the Fund for Innovation in Education: Margo Anderson, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208-5524. Telephone (202) 219-1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Dated: April 29,1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91-10462 Filed 5-1-91; 8:45 am]

BILLING CODE 4000-01-M

Advisory Council on Education Statistics; Meeting

AGENCY: Advisory Council on Education Statistics, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: June 13, 1991, 9 a.m.-4:30 p.m. and June 14, 1991, 9 a.m.-Noon.

ADDRESSES: 555 New Jersey Avenue, NW., room 328, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Suellen Mauchamer, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, room 400B, Washington, DC 20208-7575, telephone: (202) 219-1839.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics (ACES) is established under section 406(c)(1) of the Education Amendments of 1974, Public Law 93-380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high

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quality and are not subject to political influence. The meeting of the Council is open to the public.

The proposed agenda includes the following:

- Release of Data from NAEP Trail State Assessment.
- Progress Toward Reaching the NCES Vision.
- Education Indicators and Implications of the National Education Goals Panel.
- Data Confidentiality and CD-ROM Applications.
- Work in Progress: Statistical Standards.
- Council Business.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., room 400B, Washington, DC 20208-7575.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91-10311 Filed 5-1-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award a Grant to the American Petroleum Institute Production Department

AGENCY: Metarie Site Office, U.S. Department of Energy.

ACTION: Notice of Non-Competitive Financial Assistance (grant) Award with American Petroleum Institute (API) Production Department.

SUMMARY: The Department of Energy (DOE), Metarie Site Office announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (B), it intends to make a Non-Competitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center to API for a series of workshops entitled "Developing Area Specific Waste Management Plans for Oil and Gas Exploration and Production Operations."

SCOPE: The objective of the grant project is to cofund up to 40 workshops entitled "How to develop Area Specific Exploration and Production Waste Management Plans" throughout the United States. The primary objective of these workshops is to train and motivate applicable independent and major oil and gas operating company personnel to develop and use an area-specific waste Management Plan for exploration and production operations. The workshops provide practical training focusing on the methodology for developing area specific waste management plans. They emphasize wastes generated in onshore oil and gas production lease operations, onsite drilling and servicing operations for offshore waste management plans.

In accordance with 10 CFR 600.7(b)(2)(i) criteria (B), a noncompetitive Financial Assistance Award to API has been justified.

This effort would be conducted by the API using their own resources; however, DOE support of the activity would enhance public benefits to be derived by making these workshops available to a wider audience than would otherwise be able to afford to atttend. DOE knows of no other entity which is conducting or planning to conduct such an effort. This effort is considered suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a solicitation, and a competitive solicitation would be inappropriate.

The grant is for an estimated total value of $400,000. The DOE share of cofunding for the workshops is estimated at $100,000 and shall be used to pay for the reasonable and allowable costs pursuant to OMB Circular A-122 is as necessary for the workshops.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. box 10940, MS 921-118, Pittsburgh, PA 15236-0940, Attn: Rhonda L. Dupress, Telephone: AC (412) 892-4949.

Carroll Lambton,

Deputy Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 91-10427 Filed 5-1-91; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Form EIA-846A/C, "Manufacturing Energy Consumption Survey"

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed revision of forms EIA-846A/C, "Manufacturing Energy Consumption Survey," and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 44 U.S.C. 3501 et seq.), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revision to forms EIA-846A/C, "Manufacturing Energy Consumption Survey."

DATES: Written comments must be submitted on or before June 3, 1991. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Mr. John L. Preston, Energy End Use Division, Energy Information Administration, Mail Stop 2F-049, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Preston's telephone number is (202) 586-1128, FAX number (202) 586-9753.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORMS AND INSTRUCTIONS: Requests for additional information or copies of the forms and instructions should be directed to John L. Preston at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

II. Request for Comments

I. Background

Comments on the 1988 MECS were solicited in an August 2, 1988 **Federal Register** notice (53 FR 148). That version of the MECS was modified on the basis of those comments. The proposed 1991 MECS design utilizes experience gained from the administration and processing of the two previous surveys and consultations with respondents, trade association representatives, and data users.

II. Current Actions

In response to needs for additional data that were identified in the preparation of the National Energy Strategy (NES), and through feedback from the users of past MECS reports and data files, EIA proposes to make the changes described below to the 1988 MECS survey forms for use in 1991. These changes are being made to better serve the needs of data users, streamline the administration and processing of the survey, and reduce respondent burden where possible. The sample size for the 1991 MECS has been increased above that required for the 1988 MECS to permit more extensive coverage of high energy consuming industries (approximately 29 additional four digit Standard Industrial Classification codes) and industry groups (approximately two three digit Standard Industrial Classification codes), as well as to improve the reliability of estimates.

For the 1991 MECS, each of the three survey forms will contain five sections: Section I, Non-Combustible Energy Sources; Section II, Combustible Energy Sources; Section III, Fuel Switching Capability; Section IV, Estimated Percent Consumption by End Use; and Section V, Energy Technology/Program Checklist. Sections IV and V were not part of the 1988 survey questionnaire.

As in the 1988 survey, separate forms will be used to meet the special needs of three major groups of manufacturers. EIA-846A will be sent to the majority of the manufacturing establishments; EIA-846B will be sent to establishments in SIC 2911 (Petroleum Refining); and EIA-846C will be sent to all other establishments in SIC 29 (Petroleum Refining and Related Industries), as well as establishments in SIC 24 (Lumber and Wood Products), SIC 26 (Paper and Allied Products), SIC 28 (Chemicals and Allied Products), and SIC 3312 (Blast Furnaces and Steel Mills). EIA-846A is the most general form and collects the basic consumption and fuel-switching data. EIA-846B minimizes burden for the refining industry by taking advantage of data already collected by other EIA surveys. Finally, EIA-846C is very similar to EIA-846A except that it contains an additional column on energy source shipments.

Specific changes in data items from the 1988 MECS are discussed section by section below.

Section I (Noncombustible Energy Sources). This section will not differ among the three forms. The noncombustible energy sources (electricity, steam, and industrial hot water) will remain as the column headings with desired quantities forming the rows of the table. Knowledge gained from the 1988 survey has permitted the consolidation of several questions on the 1991 forms. These include merging purchased quantities from utilities and nonutilities into a single question, merging expenditures for utility purchases and nonutility purchases into a single question, and merging sales or transfers offsite to utility or nonutility purchasers into a single question. Additional questions not on the 1988 forms include:

1. Total quantities of steam and hot water received onsite. This quantity was obtained on the 1988 form for electricity only.

2. Quantity of steam generated by cogeneration and by other sources of onsite production. For purposes of the MECS, the definition of cogeneration includes both top-cycling and bottom-cycling generation.

3. Total onsite generation of electricity and steam. This represents a summation of three previously answered questions.

4. Total sales and transfers offsite of steam and hot water. The 1988 quantities omitted sales and transfers of steam and hot water to utilities.

5. Total quantity of onsite consumption of electricity and steam. This is determined by adding total quantities received to total onsite generation minus total sales and transfers offsite. This quantity is required for completion of section IV—Percent Consumption by End Use.

Proposed to be dropped fom the 1991 MECS Section I is the requirement that establishments which received transfers of noncombustible energy sources from outside establishments indicate the name, address and telephone number of the supplier. This would result in the removal of the 1988 EIA-846D form from the MECS.

Section II (Combustible Energy Sources). Each version of the MECS form will be revised to contain those combustible energy sources most commonly used by respondents to that version. On all forms, certain energy sources (e.g., liquid petroleum gas, distillate fuel oil and petroleum coke) will be partially separated into their individual components. This revision responds to data user requests, and eliminates potential duplication of purchased, produced onsite and shipped offsite energy sources. A new column has been added to the EIA-846A and EIA-846C forms which identifies storage capacity for specified liquid sources. This will replace a three-part question on the 1988 form and provide more detail than that obtained for the three energy sources identified on the 1988 forms.

Form EIA-846C will contain a new column for the quantity of specified energy sources shipped offsite. The 1988 EIA-864C required respondents to identify and convert physical quantities of energy sources shipped offsite to Btu equivalents for a single total. The 1991 version will identify the specific energy sources of interest and will allow reporting in physical quantities.

Section III (Fuel Switching). This section will no longer require respondents to indicate the lead time to switch fuels. To reduce respondent burden, the single time constraint to fuel switching capability will be 30 days.

Section IV (Estimated Percent Consumption by End Use). The purpose of this section is to acquire information on how energy is used within an establishment. This section is being added to each version of the questionnaire in response to data user requests and the requirements of the NES. As with Section III (Fuel Switching), only "best guess" estimates, rather than actual data, are required. This question was developed only after the completion of extensive consultations with representatives of several manufacturing industries through a series of Industrial Roundtables held by the EIA. One of the purposes of those Roundtables was to determine how EIA could acquire usable end-use energy consumption data for manufacturing industries while keeping respondent burden to a minimum. The Roundtable participants informed EIA that, even though detailed records of end-use energy consumption were not typically maintained by an establishment, knowledgeable individuals (such as an energy manager) within those establishments could provide reasonably accurate estimates (in percentages) of end-use energy consumption. (Summaries of these Industrial Roundtables will be available at a later date.) To further simplify this section, the 13 specified end uses are separated into energy transformation, process, and non-process categories. Consumption is to be reported as an estimated percent of total consumption for each energy source. Using data obtained in Section IV with that in Sections I and II (Non-combustible and Combustible Energy Sources respectively) it will be possible for the first time to estimate energy use within manufacturing establishments for specific end uses. Energy sources will be listed across the page and include electricity, steam, total coal and coke, natural gas, total distillate fuel oil and diesel, total LPG and LNG (liquid natural gas), and residual fuel oil. The end uses of interest will be listed down the page and include the following:

A. Energy Transformation

1. Onsite steam production only (boiler use)
2. Onsite electricity generation only
3. Onsite cogeneration

B. Process

1. Direct process heating (e.g., kilns, furnances, ovens)
2. Direct process cooling and refrigeration

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3. Direct machine drive (e.g., motors, pumps etc. associated with manufacturing process equipment)
4. Electro-chemical processes
5. Other (specify)

C. Non-Process

1. Facility heating, ventilation, and air conditioning
2. Facility lighting
3. Facility support other than numbers C1 and C2 above (e.g., cooking, water heating, and operation of other appliances not directly associated with manufacturing processes)
4. Onsite transportation
5. Other (specify)

Section V (Energy Technology/Program Checklist). Again in response to data user requests and the requirements of the NES, each version of the questionnaire will contain this new section. The purpose of section V is to identify energy-efficient technologies and programs that are currently employed by the manufacturing sector. There are three versions of section V, one for each questionnaire version. Each version contains identical requests for data on the estimated square footage of buildings located at the establishment site (part A), participation in utility-sponsored Demand Side Management (DSM) programs (part B), and general technologies that could be implemented by any manufacturing establishment (part C). For part A, respondents are required to estimate which of 11 size categories best describes the total building square footage of their establishment and check the appropriate category. In addition, they are required to estimate which of four categories best identifies the heated and/or cooled proportion of square footage. For Part B, respondents are required to check whether or not their establishment took any action to improve energy efficiency or reduce energy costs in 1991, and, if so, check which of three categories most appropriately describes that action.

In addition to the list of general technologies included on all three versions of the questionnaire (part C), the EIA-846A version of the technology checklist identifies separate lists of technologies that are more specific to the food, textile and stone, clay, and glass industries. The EIA-846C version of the checklist identifies separate lists of technologies specific to the paper, chemical, and primary metal industries. The EIA-846B version contains only the general technologies.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed revisions. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Is it sufficiently clear that section IV, Estimated Percent Consumption by End use, requires only an estimate rather than recorded data? If not, how should the form and instructions be modified?

C. Is it sufficiently clear that section V, Energy Technology/Program Checklist, requires only an estimate of square footage, DSM participation, and current technologies? If not, how should the form and instructions be modified?

D. Can the data be submitted using the definitions included in the instructions?

E. Can data be submitted in accordance with the response time specified in the instructions?

F. Public reporting burden for this collection is estimated to average eight hours per response. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form(s)?

G. What is the estimated cost of completing these forms, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

H. How can be form(s) be improved?

I. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form(s)?

B. For what purpose would you use the data? Be specific.

C. How could the form(s) be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the Manufacturing Energy Consumption Survey.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form(s); they also will become a matter of public record.

Statutory Authorities: Sections 5(a), 5(b), 13(b), and 52 of Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b) and 790a.

Issued in Washington, DC April 26, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91-10429 Filed 5-1-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 91-03-NG]

Hadson Gas Systems, Inc.; Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Hadson Gas Systems, Inc. blanket authorization to import up to 50 Bcf of natural gas from Canada over a two-year period beginning on the date of first delivery.

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 26, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-10428 Filed 5-1-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-381-000, et al.]

Mid-Continent Area Power Pool, et al.; Electric Rate, Small Power Production and Interlocking Directorate Filings

April 25, 1991.

Take notice that the following filings have been made with the Commission:

1. Mid-Continent Area Power Pool

[Docket No. ER89-391-000]

Take notice that on April 15, 1991, the Mid-Continent Area Power Pool (MAPP) filed on behalf of the investor-owned public utility members of MAPP supplemental and amendatory information regarding proposed revisions to several of the Pool rate schedules for the purpose of incorporating formula rates. The schedules affected include Schedule B (Seasonal Participation Power), Schedule C (Emergency and Scheduled Outage Energy Service), Schedule E (Economy Energy), Schedule G (Operational Control Energy), Schedule H (Peaking Power), Schedule I (Short Term), Schedule K (System Participation Power), and Schedule M (General Purpose Energy) which is being added.

MAPP requests a retroactive effective date of May 1, 1989 for the rate change.

Comment date: May 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Montaup Electric Company

[Docket No. ER-91-387-000]

Take notice that on April 17, 1991, Montaup Electric Company filed a "Notice of Cancellation" of its Rate Schedule FERC No. 85. The Notice of Cancellation provides that the effective date of cancellation of the rate schedule is October 31, 1988.

Rate Schedule FERC No. 85 was an agreement effective November 1, 1987 pursuant to which Montaup agreed to sell to Taunton Municipal Lighting Plant (Taunton) capacity and energy from the Canal No. 2 unit in exchange for capacity and energy from Taunton's Cleary No. 9 unit. Rate Schedule FERC No. 85 was accepted for filing by letter order issued February 18, 1988 in Docket No. ER88-193-000 and expired by its own terms on October 31, 1988.

Rate Schedule FERC No. 85 was superseded by Rate Schedule FERC No. 94 and Supplement No. 9 to Rate Schedule FPC No. 15, which were accepted by letter order dated April 12, 1991 in Docket No. ER91-305-000, to become effective November 1, 1988.

Comment date: May 10, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. PSI Energy, Inc.

[Docket No. ER91-379-000]

Take notice that PSI Energy, Inc. (PSI), formerly named Public Service Company of Indiana, Inc. on April 16, 1991, tendered for filing a supplement to Service Schedule D—Supplemental Power and Energy of the Power Coordination Agreement, dated August 27, 1982, as amended, between PSI and the Indiana Municipal Power Agency (IMPA), in order to provide certain Economic Development incentives under section 5 of said Service Schedule.

Such Economic Development incentives are for a new Kokoku Steel Cord Corporation manufacturing facility in Scottsburg, Indiana. The City of Scottsburg is a member of IMPA. The Economic Development incentives are limited to 10.5 megawatts, the expected load of the new facility.

PSI has requested waiver of the Commission's applicable requirements of part 35 of its Regulations not complied with, including any notice requirements of section 35.3. The requested effective date for such Economic Development incentives applicable to Kokoku Steel Cord Corporation is November 5, 1990.

Copies of the filing were served on the Board of Public Works and Safety, City of Scottsburg, the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: May 10, 1991, in accordance with Standard Paragraph E at the end of this notice.

Southern California Edison Company

[Docket No. ER91-382-000]

Take notice that on April 17, 1991, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following agreement, executed on March 22, 1991 by the respective parties:

Edison-IID Interruptible Transmission Service Agreement (Matrix) Between Southern California Edison Company (Edison) and The Imperial Irrigation District (IID)

The Agreement establishes the terms and conditions whereby Edison shall make available interruptible transmission service for IID's purchase of energy from a supplier or for IID's sale of energy to a purchaser.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 10, 1991, in accordance with Standard Paragraph E at the end of this notice.

Panda-Brandywine, L.P.

[Docket No. QF91-117-000]

On April 19, 1991, Panda-Brandywine, L.P. of 4100 Spring Valley, suite 1001, Dallas, Texas 75244, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in the proximity of U.S. Highway 301 and Cedarville Road, approximately 1.5 miles south of Brandywine, Prince Georges County, Maryland, and will consist of two combustion turbine generators, two heat recovery boilers (HRBs) and an extraction/condensing steam turbine generator (STG). Steam recovered from the HRB and STG will be utilized in Carbon Dioxide plant. The net electric power production capacity of the facility will be 236.144 MW. The primary energy source will be natural gas. Installation of the facility is expected to commence in August 1992.

Comment date: On or before June 13, 1991, in accordance with Standard Paragraph E at the end of this notice

6. Bonneville Yuma Corporation

[Docket No. QF90-143-000]

On April 18, 1991, Bonneville Yuma Corporation (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment revises the thermal requirement of Applicant's proposed greenhouse facility to reflect a reduction in the absorption cooling requirement, the elimination of an evaporative water treatment process and a reduction in the net electrical capacity of the facility from 53.5 MW to 52.89 MW.

Comment date: On or before May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Terra Comfort Corporation

[Docket No. ER91-370-000]

Take notice that Terra Comfort Corporation (TC) on April 8, 1991, tendered for filing as an initial rate schedule an Operation, Maintenance and Dispatching Agreement wherein TC will provide black start services, emergency voltage and transmission support and emergency energy to Iowa Southern Utilities Company (ISU). TC proposes an effective date of January 1, 1990, and requests waiver of the Commission's notice requirement.

Copies of the filing were served upon ISU and upon the Iowa State Utilities Board.

Comment date: May 10, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211

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and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10837 filed 5-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-1863-000, et al.]

Florida Gas Transmission Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Co.

[Docket No. CP91-1863-000]

April 24, 1991.

Take notice that on April 18, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-1863-000 a request pursuant to §§ 157.205, 157.212 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to add two delivery points to an existing interruptible transportation service whereby FGT is transporting natural gas on behalf of Florida Power & Light Company (FPL) under its blanket certificate issued in Docket No. RP89-50, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT states that FGT and FPL are not proposing any changes in the current authorized levels of interruptible transportation service. FGT states that the total volumes to be delivered to FPL under the existing interruptible transportation service agreement dated February 23, 1990 after this request will not exceed the total volumes authorized prior to this request. FGT indicates that the volumes to be delivered at the two added delivery points will be within the currently authorized maximum daily transportation quantity of 662,898 MMBtu under the existing interruptible transportation dated February 23, 1990 and will have no impact on peak day and annual gas deliveries to other FGT gas customers. FGT further states that the service proposed herein will be accomplished without constructing new facilities or rearranging presently authorized facilities.

FGT states that it will provide the service for FPL under the existing interruptible transportation service agreement dated February 23, 1990, as amended, by and between FGT and FPL, and that FGT would charge rates and abide by the terms and conditions of its Rate Schedule ITS-1.

Comment date: June 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Co.

[Docket No. CP91-1885-000]

April 24, 1991.

Take notice that on April 19, 1991, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed a request in Docket No. CP91-1885-000 with the Commission pursuant to § 157.205 of the Commission's Regulations for authorization to construct and operate a two-inch delivery tap and related facilities under United's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act (NGA), all as more fully set forth in the request which is open to public inspection.

United states that it would construct and operate the proposed facilities in Plaquemines Parish, Louisiana, to transport an estimated average of 250 Mcf of natural gas per day for LaSER Marketing Company (LaSER) to serve Shamrock Turbines under United's Rate Schedule ITS. United estimates that the proposed facilities would cost $35,000. United also states that LaSER would reimburse United for all costs resulting from the proposed facilities. United indicates that it is authorized in Docket No. CP89-136-000 to provide all of LaSER's natural gas requirements for resale and distribution through LaSER's billing area and the adjoining area. United would transport LaSER's gas under its blanket certificate in Docket No. CP88-6-000.

United states that it has sufficient capacity to provide the additional service without detriment or disadvantage to its other existing customers and that its FERC Gas Tariff does not prohibit the addition of new delivery points.

Comment date: June 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Midwestern Gas Transmission Co.

[Docket No. CP91-1908-000]

April 25, 1991.

Take notice that on April 24, 1991, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-1908-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for North Canadian Marketing Corporation, a marketer, under the blanket certificate issued in Docket No. CP90-174-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Midwestern states that, pursuant to an agreement dated March 27, 1991, under its Rate Schedule IT, it proposes to transport up to 150,000 dekatherms (Dt) per day equivalent of natural gas. Midwestern indicates that it would tranport 150,000 Dt on an average day and 54,750,000 Dt annually. Midwestern further indicates that the gas would be transported from Tennessee, Indiana, Illinois, and Kentucky, and would be redelivered in Tennessee, Illinois, Indiana, and Kentucky. Midwestern states that the ultimate point of delivery is located in the State of Illinois.

Midwestern advises that service under § 284.223(a) commenced April 10, 1991, as reported in Docket No. ST91-8294-000.

Comment date: June 10, 1991, in accordance with Standard paragraph G at the end of this notice.

4. Enron Gas Marketing, Inc.

[Docket No. CI87-547-010]

April 25, 1991.

Take notice that on April 18, 1991, Enron Gas Marketing, Inc. (Applicant) of P.O. Box 1188, Houston, Texas 77251-1188 filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its limited-term blanket certificate with pregranted abandonment previously issued by the Commission in Docket No. CI87-547-009 to include authorization to make sales for resale in interstate commerce of natural gas purchased from local distribution companies or intrastate pipelines or other non-first sellers, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 16, 1991, in accordance with Standard paragraph J at the end of this notice.

Texas Gas Transmission Corporation

[Dockets Nos. CP91-1898-000 [1], CP91-1899-000]

April 25, 1991.

Take notice that on April 23, 1991, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street Owensboro, Kentucky 42301, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of various shippers under its blanket certificates issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the date of the interruptible transportation agreement between Texas Gas and the respective shipper, the contract number of the gas transportation agreement, function of the shipper, i.e., marketer, intrastate pipeline etc., the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Texas Gas and is included in the attached appendix.

Texas Gas alleges that it would provide the proposed service for each shipper under an executed gas transportation agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No., trans. agree., (contract no.)	Shipper name	Shipper's function	Peak Day,[1] avg, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule, service type	Related[2] dockets
CP91-1898-000 10-10-90 (T3681)	K N Gas Marketing Inc.	Marketer	150,000 60,000 1,900,000	Existing Receipt Points	Existing Delivery Points	3-12-91 IT, Interruptible.	ST91-7796-000.
CP91-1899-000 11-15-90 (T3724)	K N Gas Marketing Inc.	Marketer	150,000 70,000 1,800,000	Existing Receipt Points	Existing Delivery Points	3-12-91, IT, Interruptible.	ST91-7797-000.

[1] Quantities are shown in MMBtu.

[2] The ST docket indicates that 120-day transportation service was initiated under Section 284.223 (a) of the Commission's Regulations.

National Fuel Gas Supply Corporation

[Docket Nos. CP91-1763-000, CP91-1764-000, CP91-1765-000, CP91-1766-000, CP91-1767-000]

April 25, 1991.

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under §284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment Date: June 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] avg., annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related[2] dockets
CP91-1763-000 4-9-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	The Electric Materials Co.	400 400 146,000	NY, PA, OH	NY, PA, OH	2-1-91, IT-1	CP89-1582-000, ST91-7341-000.
CP91-1764-000 4-9-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Highland Land & Minerals, Inc.	33 33 12,045	NY, PA, OH	NY, PA, OH	2-1-91, IT-1	CP89-1582-000, ST91-7396-000.
CP91-1765-000 4-9-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Commodore Gas Co.	3,000 3,000 1,095,000	NY, PA, OH	NY, PA, OH	2-13-91, IT-1	CP89-1582-000, ST91-7483-000.

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Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] avg., annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related[2] dockets
CP91-1766-000 4-9-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Westvaco Corporation.	500 500 182,500	NY, PA, OH	NY, PA, OH	2-1-91, IT-1	CP89-1582-000, ST91-7413-000.
CP91-1767-000 4-9-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Entrade Corporation.	100,000 100,000 36,500,000	NY, PA, OH	NY, PA, OH	2-1-91, IT-1	CP89-1582-000, ST91-7424-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

7. United Gas Pipe Line Co.

[Docket Nos. CP91-1894-000[3], CP91-1985-000]

April 25, 1991.

Take notice that on April 22, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas, 77251-1478, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of various shippers under its blanket certificates issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the date of the interruptible transportation agreement between United and the respective shipper, the contract number of the interruptible transportation agreement, function of the shipper, i.e., marketer or intrastate pipeline, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations have been provided by United and is included in the attached appendix.

United alleges that it would provide the proposed service for each shipper under an executed transportation service agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No., trans. agree. (contract No.)	Shipper name	Shipper's function	Peak day,[1] avg. annual	Point of Receipt	Point of Delivery	Start up date, rate schedule, service type	Related[2] dockets
CP91-1894-000 1-13-88 (1422)	Tejas Hydrocarbons Company.	Marketer	154,500 154,500 56,392,500	Existing Receipt Point	Existing Delivery Points	3-19-91, ITS, Interruptible.	ST91-8189-000.
CP91-1895-000 12-31-86 (2325)	Pennzoil Gas Marketing Company.	Intrastate Pipeline.	206,000 206,000 75,190,000	Existing Receipt Points	Existing Delivery Points	3-6-91, ITS Interruptible.	ST91-8041-000.

[1] Quantities are shown in MMBtu.
[2] The ST docket indicates that 120-day transportation service as initiated under Section 284.223(a) of the Commission's Regulations.

Texas Gas Transmission Corporation
Colorado Interstate Gas Co.

[Docket Nos. CP91-1900-000, CP91-1901-000]

April 25, 1991.

Take notice that on April 23, 1991, Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301, and Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88-686-000 and Docket No. CP86-589, *et al.*, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix:

Comment date: June 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (dated filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket; start up date
CP91-1900-000 (4-23-91)	K N Gas Marketing Inc. (Marketer).	152,000 75,000 1,800,000	Various	IN, KY, IL	11-5-90, IT, Interruptible.	ST91-7796-000, 3-12-91.
CP91-1901-000 (4-23-91)	Coastal Gas Marketing Company (Marketer).	50,000 20,000 7,300,000[1]	CO, OK, TX, WY, KS	WY	1-15-91, IT, Interruptible.	ST91-6851-000, 1-15-91.

[1] CIG's quantities are in Mcf.

Chevron U.S.A. Inc.

v.

9. Southern Natural Gas Company

[Docket No. CP91-1852-000]

April 25, 1991.

Take notice that on April 16, 1991, Chevron U.S.A. Inc. (Chevron), P.O. Box 3725, Houston, Texas 77253-3725, filed in Docket No. CP91-1852-000 a complaint against Southern Natural Gas Company (Southern) in response to Southern's recently announced intent to discontinue the receipt of Chevron's West Delta Block 27 gas on Southern's Venice-Lake Washington line and Southern discontinuous open access transportation of processed gas on said line as well, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

In its complaint proceeding, Chevron seeks a Commission order that:

(1) Southern may not discontinue the receipt of West Delta Block 27 Field gas on the Venice-Lake Washington line unless and until Southern first obtains the Commission's approval after due hearing, under 7(b) of the Natural Gas Act, 15 U.S.C. 717f(b).

(2) The refusal to provide part 284 transportation of processed gas on the Venice-Lake Washington line constitutes discrimination in violation of 18 CFR 284.8(b) and 284.9(b). In this connection, Chevron requests the Commission to issue an order barring the enforcement and directing the removal of the last sentence of section 13.2 of the General Terms and Conditions for Rate Schedules FT and IT from Southern's FERC Gas Tariff.

Chevron contends that Southern's threatened change in usage of its Venice-Lake Washington line forms the basis for Chevron's complaint. Chevron asserts that Southern was authorized to construct and operate the Venice-Lake Washington line for the transportation and sale for resale of gas produced from the West Delta Block 27 Field in Docket Nos. CP63-26, *et al.*[5] Chevron alleges that the June 22, 1962, gas purchase agreement between Southern and Gulf Oil Corporation (subsequently renamed Chevron U.S.A. Inc.) reserved the right for Chevron to process gas produced from the West Delta Block 27 Field. While Chevron admits that the Commission did not expressly limit the certificate for the Venice-Lake Washington line to the transportation of West Delta Block 27 Field gas, the certificate was granted upon the terms "as hereinbefore set forth and as more fully described in [Southern's] application."

The application alleges that Southern does not want to transport Chevron's gas on the Venice-Lake Washington line in order to open up capacity for Southern to move offshore volumes purchased under a new gas purchase agreement with Exxon Corporation (Exxon). Southern filed in Docket No. CP91-2155-000 to construct a 59.3 mile pipeline to connect an Exxon platform around the Mississippi Canyon Area blocks in Federal offshore waters with the Venice-Lake Washington line. Chevron contends that Southern's transportation of Exxon's "wet" gas will displace the transportation of Chevron's "dry" gas in the Venice-Lake Washington line.

The application contends that Southern can not stop taking Chevron's West Delta Block 27 volumes without first obtaining an abandonment order from this Commission. The application further contends that terminating the transportation of processed gas from other production areas does not fall within the category of "wet" lines as described in Southern's tariff as filed with the FERC. The application asserts that Southern believes it has the unfettered right at any time of its choosing to declare a line to be "wet" by fiat, notwithstanding that the Venice-Lake Washington line having been dry for nearly 30 years. Chevron avers that under the pretext of transporting only "wet" gas, the result would be that Southern's own merchant gas is accorded preference over the gas of competing sellers such as Chevron. To correct this situation, Chevron requests that the Commission issue an order barring enforcement and directing removal of the tariff language cited by Southern to justify converting the Venice-Lake Washington from a "wet" to a "dry" line.

Comment date: May 10, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[5] See, Southern Natural Gas Company, *et al.*, 31 FPC 789 (1964).

10. ALG Gas Supply Company et al., K N Gas Marketing, Inc.

[Docket Nos. CI89-452-003,[6] CI89-382-002]

April 25, 1991.

Take notice that on April 15, 1991, K N Gas Marketing, Inc. of P.O. Box 281304, Lakewood, Colorado 80228-9304, and on April 19, 1991, ALG Gas Supply Company, *et al.*[7] of 400 East Capitol Street, Little Rock, Arkansas 72202 (Applicants) each filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend their blanket limited-term certificates with pregranted abandonment previously issued by the Commission in Docket Nos. CI88-452-002 and CI89-382-001 for terms expiring March 31, 1991, to extend the term of such authorizations, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Comment date: May 2, 1991, in accordance with Standard Paragraph J at the end of the notice.

11. South Georgia Natural Gas Co., South Georgia Natural Gas Co., Southern Natural Gas Co.

[Docket Nos. CP91-1905-000, CP91-1906-000, CP91-1907-000]

April 25, 1991.

Take notice that on April 23, 1991, the above referenced companies (Applicants) filed in their respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the

[6] This notice does not provide for consolidation for hearing of the several matters covered herein.

[7] The *et al.* parties are ALG Gas Supply Company of Arkansas, ALG Gas Supply Company of Kansas, ALG Gas Supply Company of Louisiana, ALG Gas Supply Company of Oklahoma and ALG Gas Supply Company of Texas.

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Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[6]

[6] These prior notice requests are not consolidated.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No.	Applicant	Shipper name	Peak day,[1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related[3] dockets
CP91-1905-000	South Georgia Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202-2563.	City of Dawson, GA.	606 606 221,190	AL	GA	3-1-91, FT	CP90-2125-000, ST91-7988-000.
CP91-1906-000	South Georgia Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202-2563.	Gold Kist, Inc.	[2] 10,000 10,000 3,650,000	AL	FL	3-11-91, IT	CP90-2125-000, ST91-7989-000.
CP91-1907-000	Southern Natural Gas Company, P.O. Box 2563 Birmingham, AL 35202-2563.	Cullman-Jefferson Counties Gas District.	6,000 6,000 2,190,000	TX, MS, LA, AL, Off TX, Off LA.	AL	3-1-91, FT	CP88-316-000, ST91-7990-000.

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
[3] Volumes in MMBtu.

12. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP91-1884-000]

April 25, 1991.

Take notice that on April 19, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, suite 1600, Detroit, Michigan 48226, filed in Docket No. CP91-1884-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Great Lakes to provide gas transportation service on a firm basis, for Rochester Gas and Electric Corporation (Rochester), a New York gas distribution company, and to construct and operate facilities necessary to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In particular, Great Lakes states that Rochester has requested that Great Lakes transport up to 55,500 Mcf per day (Rochester volumes) from various points of interconnection between the facilities of Great Lakes and ANR Pipeline Company (ANR Pipeline), located at Capac, Farwell, and Muttonville, Michigan (respectively, the Capac, Farwell, and Muttonville Receipt Points) to a point of interconnection between the facilities of Great Lakes and TransCanada Pipelines Limited (TransCanada) located on the international boundary, near St. Clair, Michigan (St. Clair Delivery Point).

The Rochester volumes received at the Capac, Farwell, and Muttonville Receipt Points would come from various domestic suppliers and from storage. Upon transportation and delivery by Great Lakes of the Rochester volumes to the St. Clair Delivery Point, TansCanada will tranport the volumes through its facilities and those of Union Gas Limited (Union) and deliver the volumes to a proposed point of interconnection between the facilities of TransCanada and Empire State Pipeline (Empire), on the international boundary near Niagara Falls, New York. The gas will be transported by Empire to proposed points of interconnection between the facilities of Rochester and Empire.

To implement the arrangements, Great Lakes and Rochester have entered into a Transportation Service Agreement (Agreement) dated April 2, 1991. The Agreement provides for a 14-year initial term for the firm service. To provide the service, Great Lakes proposes to construct 8.0 miles of 36-inch diameter pipeline loop. The estimated cost of the proposed transmission facilities is $9,000,000. The facilities proposed in this application will be financed with funds generated internally, together with borrowings from banks or commercial paper if required. It is contemplated that any short term borrowings would be retired with funds generated internally.

The Agreement states that the reservation fee and utilization fee for the firm transportation rate will be the equivalent of a maximum rate under Rate Schedule FT of Great Lakes' FERC Gas Tariff, Original Volume No. 3 for service similar to that provided to Rochester.

It is stated that the proposed transportation service will permit Rochester to diversify its system supply, to meet projected increasing needs, and to use its storage services more efficiently.

Comment date: May 15, 1991, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene, is filed within the time required herein, if the Commisson on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 91-10338 Filed 5-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-103-002]

Alabama-Tennessee Natural Gas Company; Tariff Filing

April 25, 1991.

Take notice that Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee") on April 23, 1991, tendered for filing a second amendment to its February 28, 1991 filing in this proceeding proposing changes to its FERC Gas Tariff, First Revised Volume No. 1 concerning the implementation of a new take-or-pay cost recovery mechanism in compliance with Order Nos. 528 and 528-A. Alabama-Tennessee has requested that the April 23, 1991 filing become effective July 1, 1991 instead of May 1, 1991 as it requested in its first amendment to this filing which it submitted on March 28, 1991. Alabama-Tennessee states that it is seeking this additional time of approximately sixty days in order to provide the parties sufficient time to complete the drafting for filing of a settlement agreement which Alabama-Tennessee has achieved with its affected jurisdictional sales customers. Alabama-Tennessee proposes no other changes to either its March 28, 1991 filing or its February 28, 1991 filing.

Alabama-Tennessee states that this second amendment is being made contingent upon the Commission's approval of the request sought in its filing. In the event the Commission issues an order accepting Alabama-Tennessee's March 28, 1991 filing, Alabama-Tennessee states that its second amendment should be deemed withdrawn and no action should be taken on the revised tariff sheets submitted therewith. In such case, Alabama-Tennessee requests that its March 28, 1991 filing be accepted and made effective May 1, 1991, as proposed therein.

Alabama-Tennessee states that due to unanticipated software problems, Alabama-Tennessee has been unable to submit its filing on electronic media as required under the Commission's Regulations. Alabama-Tennessee requests that the Commission grant a limited, one-week waiver of its regulations in order to submit this information on or before April 30, 1991. Alabama-Tennessee also requests that the Commission grant it any other waiver of the Commission's Regulations which may be required in order to accept its revised tariff sheets as requested.

Alabama-Tennessee states that copies of this amendment have been mailed to its jurisdictional customers, interested public bodies and all persons on the Commission's official service list in the captioned docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-10341 Filed 5-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-20-001]

Algonquin Gas Transmission Company, Proposed Changes in FERC Gas Tariff

April 25, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on April 19, 1991, tendered for filing proposed changes in its FERC Gas

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Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective March 1, 1991

Sub 1 Rev Sheet No. 21
Sub 1 Rev Sheet No. 22
Sub 1 Rev Sheet No. 26
Sub 1 Rev Sheet No. 27
Sub 1 Rev Sheet No. 28
Sub 1 Rev Sheet No. 29

Proposed to be effective March 7, 1991

2 Rev Sheet No. 21
2 Rev Sheet No. 22
2 Rev Sheet No. 26
2 Rev Sheet No. 27
2 Rev Sheet No. 28
2 Rev Sheet No. 29

Algonquin states that it is making the instant filing to revise the proposed Surcharge Adjustment for the one year period beginning on March 1, 1991 to implement the Commission's approval of Algonquin's revised working papers used in calculating the one time exchange adjustment and the appropriate treatment of its monthly exchange activity for the period May 1, 1987 through October 31, 1989. In addition, the calculation of the monthly interest rate factor has been revised from an accuracy of six decimal places to four decimal places to more closely comply with the requirements of Form 542–PGA, Schedule C2. The adjusting entries to Account No. 191 total $614,679 are to be amortized over the one year period beginning March 1, 1991. Proper amortization of the Adjustments requires a revision to the demand surcharge of Rate Schedules F–1, F–2, F–3, F–4 and WS–1 to $0.034 per MMBtu and a commodity surcharge of $0.0064¢ per MMBtu. The commodity surcharges for Rate Schedules I–1, E–1, and WS–1 Excess are proposed to be $0.0064, $0.0096 and $0.0152 per MMBtu, respectively.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary

[FR Doc. 91–10342 Filed 5–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–8–20–000]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

April 25, 1991

Take notice that Algonquin Gas Transmission Company ("Algonquin") on April 23, 1991, filed proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets, to be effective on May 27, 1991.

Appendix A Tariff Sheets

First Revised Sheet No. 92.
First Revised Sheet No. 93.
First Revised Sheet No. 674D.
First Revised Sheet No. 674G.
First Revised Sheet No. 674K.
First Revised Sheet No. 674L.
First Revised Sheet No. 674M.
First Revised Sheet No. 674N.
First Revised Sheet No. 674O.

Appendix B Tariff Sheets

First Revised Sheet No. 91.
Sub. First Revised Sheet No. 92.

Algonquin states that the purpose of this filing is to update the amount of take-or-pay charges to be billed to Algonquin by its pipeline suppliers and to be recovered by Algonquin by operation of section 33.7 of the General Terms and Conditions to Algonquin's FERC Gas Tariff, Third Revised Volume No. 1. Algonquin also states that the revised take-or-pay surcharges are the result of revised allocation methods imposed by its pipeline suppliers in response to the Commission's Order No. 528. Algonquin further states that its pipeline suppliers which have received approval to bill revised take-or-pay surcharges, as reflected in Algonquin's filing herein, are: CNG Transmission Corporation, National Fuel Gas Supply Corporation and Texas Eastern Transmission Corporation.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91–10343 Filed 5–1–91; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. RP91–92–001]

Colorado Interstate Gas Company Tariff Filing

April 25, 1991.

Take note that on April 22, 1991, Colorado Interstate Gas Company ("CIG") tendered for filing the following tariff sheets to its FERC Gas Tariff Original Volume No. 3, to be effective as shown:

Tariff sheets	Effective date
Substitute Third Revised Sheet No. 4 and Substitute Second Revised Sheet No. 5.	March 21, 1991.
Substitute Fourth Revised Sheet No. 4 and Substitute Third Revised Sheet No. 5.	April 21, 1991.
Substitute First Revised Sheet No. 7.	March 21, 1991.
Substitute First Revised Sheet No. 23.	March 21, 1991.
Substitute First Revised Sheet No. 27.	March 21, 1991.
Substitute First Revised Sheet No. 79.	March 21, 1991.

CIG states that the purposes of this filing are (1) To comply with the Order issued March 21, 1991 in Docket No. RP91–92–000 and (2) to change the method of presentation of the annual charge adjustment to that authorized prior to such changes as authorized by the March 21, 1991 Order in Docket No. RP91–92–000.

CIG requests any necessary waiver of the Commission's regulations to permit such tariff sheets to become effective as proposed.

CIG states that copies of the filing were served upon all of the parties listed on the official service list complied by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street, NE., Washington, DC. 20426 by May 2, 1991, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91–10344 Filed 5–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–2–23–002]

Eastern Shore Natural Gas Company; Proposed Changes in FERC Gas Tariff

April 25, 1991.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on April 19, 1991 certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective May 1, 1991.

ESNG states that such tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and sections 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. ESNG inadvertently used an incorrect docket when tracking Transcontinental Gas Pipe Line Corporation's most currently effective storage rates. The substitute tariff sheets are being filed hereto to correct the LSS Quantity Injected Charge from $.1011 to $.1007, which properly tracks most current storage rates.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested States Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practrice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary

[FR Doc. 91–10345 Filed 5–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–139–000]

El Paso Natural Gas Company; Compliance Tariff Filing

April 25, 1991

Take notice that on April 23, 1991, El Paso Natural Gas Company ("El Paso") tendered for filing and acceptance, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with ordering paragraph (J) of the Commission's "Order Accepting in Part and Modifying in Part Amended Offer of Settlement" issued March 20, 1991 at Docket No. RP88–44–000, *et al.*, certain tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1. El Paso has requested that the tendered tariff sheets be accepted for filing and permitted to become effective May 1, 1991.

El Paso states that ordering paragraph (J) of the Commission's order issued March 20, 1991 at Docket No. RP88–44–000, *et al.*, directs El Paso to file a City of Willcox, Arizona ("Willcox") specific take-or-pay cost recovery filing pursuant to the procedures set out in Order No. 528 within forty-five (45) days of the issuance of the order.

El Paso states that is has revised section 21, Take-or-Pay Buyout and Buydown Cost Recovery, contained in its Second Revised Volume No. 1 Tariff to establish the method of allocating the Monthly Direct Charge for take-or-pay cost recovery to Willcox, and the Statement of Rates tariff sheets to reflect the percentage and direct bill amount for willcox utilizing the new allocation. El Paso states that it has incorporated revisions to section 21 of its Volume No. 1 Tariff filed April 16, 1991 at Docket No. RP91–26–003, which remove all references to the purchase deficiency method providing in lieu thereof an allocation percentage the supporting parties in Docket No. RP88–44–000, *et al.*, agreed on for direct billing fixed take-or-pay costs. El Paso states that the allocation proposed is unrelated to the purchase deficiency method that Willcox strongly opposed and is in compliance with the directives of the Commission's Order Nos. 528 and 528–A and will resolve the outstanding issue of Willcox's obligation to pay their equitable share of take-or-pay buyout and buydown direct bill costs, originally filed at Docket Nos. RP88–184–000, RP89–132–000, *et al.*, and RP90–81–000 as well as the cost recovery filed at Docket No. RP91–26–000 and any subsequent take-or-pay costs El Paso may file to recover.

El Paso has proposed an allocation method utilizing Billing Determinants which have been established at Docket No. RP88–44–000, *et al.*, for each of El Paso's sales customers. El Paso states that in converting firm sales entitlements to firm transportation as set forth in its Settlement at Docket No. RP88–44–000, *et al.*, the Billing Determinants for full requirements are a proxy for contract demand but nevertheless do not constitute limitation on peak-day requirements. El Paso states that it has calculated a Billing Determinant Percentage by dividing Willcox's Billing Determinant (established in Settlement) by the aggregate of all Billing Determinants of its customers to allocate Willcox's monthly direct charge for take-or-pay costs.

El Paso states that copies of the filing were served upon all interstate pipeline system sales customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but all not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary

[FR Doc. 91–10346 Filed 5–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–26–004]

El Paso Natural Gas Co.; Motion to Place Tariff Sheets Into Effect

April 25, 1991.

Take notice that El Paso Natural Gas Company (El Paso), on April 19, 1991, tendered for filing a motion to place into effect on May 1, 1991 certain tariff

sheets to its Second Revised Volume No. 1, First Revised Volume No. 1-A, Third Revised Volume No. 2 and Original Volume No. 2A FERC Gas Tariffs, which were suspended until May 1, 1991 by the Commission's order issued in this proceeding on December 14, 1990, as modified by order issued April 17, 1991 at Docket No. RP91-36-001.

El Paso states that copies of the filing were served upon each person designated on the official service list compiled by the Secretary in Docket No. RP91-28-000, and, otherwise, upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10347 Filed 5-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC91-12-000]

Georgia Power Co.; Filing of Application to Sell Jurisdictional Facilities

April 24, 1991.

Take notice that on April 22, 1991, Georgia Power Company ("GPC") tendered for filing an application for an Order pursuant to section 203 of the Federal Power Act authorizing it to sell certain undivided ownership interests in Plant Robert W. Scherer Unit No. 4 substation and switchyard facilities and certain undivided ownership interests in the common switchyard facilities of Plant Robert W. Scherer to Jacksonville Electric Authority. GPC proposes to sell the facilities at two closings beginning in 1991.

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than May 17, 1991. All such protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10340 Filed 5-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-115-000, RP90-104-000 and RP90-162-000.]

Texas Gas Transmission Corp.; Informal Settlement Conference

April 26, 1991.

Take notice that an informal settlement conference will be convened in these proceedings on May 21, 1991, at 10:30 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will continue on May 22, if necessary.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald A. Heydt (202) 208-0248 or Joanne Leveque (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10349 Filed 5-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-4-49-003]

Williston Basin Interstate Pipeline Co.; Amendment to Purchased Gas Adjustment Filing and Compliance Filing

April 25, 1991.

Take notice that on April 22, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing, as part of its FERC Gas Tariff the revised tariff sheets listed on appendix A attached to the filing.

The proposed effective date of the tariff sheets is May 1, 1991.

Williston Basin states that Substitute Thirty-fourth Revised Sheet No. 10 (First Revised Volume No. 1) and Substitute Thirty-fifth Revised Sheet No.10 (Original Volume No. 2) reflect a decrease in the Current Gas Cost Adjustment applicable to Rate Schedules G-1, SGS-1, E-1 and X-1 of 18.561 cents per dkt as compared to that contained in the Company's December 31, 1990 PGA filing in Docket No. TQ91-2-49-000, which became effective February 1, 1991.

Williston Basin also states that Substitute Twenty-seventh Revised Sheet No. 11 and Substitute Thirty-third Revised Sheet No. 12 (Original Volume No. 1-A) and Substitute Thirty-fifth Revised Sheet No.10 (Original Volume No. 2), reflect a revised fuel reimbursement percentage of 2.652% applicable to certain transportation rate schedules.

Williston Basin further states that Substitute Twenty-seventh Revised Sheet No. 11, Substitute Thirty-third Revised Sheet No.12 and Substitute Sixteenth Revised Sheet No. 97A (Original Volume No. 1-A), Substitute Twenty-second Revised Sheet Nos. 10 and 11 (Original Volume No. 1-B), Substitute Thirty-fifth Revised Sheet No. 10 and Substitute Twenty-eight Revised Sheet No. 11B (Original Volume No. 2) reflect a increase of .00175 cents per dkt in the fuel reimbursement charge component of the Company's relevant transportation rates as compared to that contained in the Company's December 31, 1990 filing in Docket No. TQ-91-2-49-000. Such increase in the fuel reimbursement charge is a result of the changes in Williston Basin's average cost of purchased gas.

Williston Basin states that it is submitting the instant filing, without prejudice to rights on rehearing, in compliance with the Commission's March 20, 1991 "Order Terminating Technical Conference" in Docket Nos. TQ90-4-49-000 and RP90-113-000 and as an amendment to its quarterly Purchased Gas Adjustment (PGA) filing, filed on April 1, 1991 in Docket No. TQ91-3-49-000. Pursuant to the Commission's March 20, 1991 Order, Williston Basin states it has filed revisions to its PGA tariff clause to eliminate from the calculation of its PGA current and surcharge gas cost adjustments, the effects of the non-sales-related (transportation) Company Use and Lost and Unaccounted For gas quantities. Williston Basin states that a concomitant revision was made to its Original Volume Nos. 1-A, 1-B and 2 transportation tariffs to reflect the implementation of a new Company Use and Lost and Unaccounted For gas tracking tariff provision.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10350 Filed 5-1-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $8,709,956.76 , plus accrued interest, in overcharges to the customers of the New England Petroleum Co. (NEPCO), during the period January through July 1974. These overcharges were caused by Citronelle-Mobile Gathering, Inc. Citmoco Services, Inc., and Bart B. Chamberlain (collectively Citronelle) (Case No. KEF-0139). The overcharge funds were obtained by the DOE pursuant to an order of the United States District Court for the Southern District of Alabama. The OHA intends to submit a final report and recommendation to the Court concerning the distribution of the Citronelle overcharges. If the report meets with the Court's approval, the Court may order distribution in accordance with OHA's recommendations. This Decision and Order establishes the procedures which OHA will employ in this proceeding.

DATES AND ADDRESSES: Applications for Refund must be filed in duplicate and should be addressed to: Citronelle Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

All Applications for Refund should display a prominent reference to Case No. KEF-0139, and be postmarked by November 15, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $8,709,956.76, plus accrued interest, in overcharges caused by Citronelle-Mobile Gathering, Inc., Citmoco Services, Inc., and Bart B. Chamberlain (collectively Citronelle) (Case No. KEF-0139). These funds were obtained by the DOE pursuant to an order of the United States District Court for the Southern District of Alabama. To carry out the Court's mandate in this case, OHA will identify eligible claimants, resolve any factual or legal contentions presented in the claims process, and submit a final report and recommendation to the Court concerning the distribution of the Citronelle overcharges. If the report meets with the Court's approval, the Court may order distribution in accordance with the recommendations in the final report.

During the period January through July 1974, Citronelle contracted with Grand Bahamas Petroleum Company (PETCO), a Bahamian refiner, to sell to PETCO certain barrels of Citronelle crude oil which PETCO agreed to refine and sell back to the United States-based affiliate, New England Petroleum Company (NEPCO). These sales to PETCO were at prices substantially higher than the prices Citronelle could have charged under the mandatory pricing regulations governing the sale of domestic crude oil. Under this scheme, Citronelle and PETCO attempted to bypass these regulations by labeling sales of Citronelle crude oil to PETCO "export sales." PETCO passed on the price increases to NEPCO, which, in turn, charged its customers a higher price for its refined petroleum products. Thus, NEPCO customers during that period ultimately bore the burden of Citronelle's overcharges.

The OHA has determined that it will accept claims from identifiable purchasers of petroleum products from NEPCO who may have been injured by Citronelle's overcharges. Applicants who claim that they purchased NEPCO products indirectly must show that their purchasers originated with NEPCO. In general, NEPCO sold petroleum products to customers in New England, New York, New jersey, and Florida, including many public utilities. Appended to the Decision set forth below is a partial list of NEPCO customers. All NEPCO customers are advised that they should consider filing a refund claim.

The specific requirements which an applicant must meet in order to receive a refund are set out in Section IV of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of refined petroleum products which they purchased from NEPCO.

If any funds remain after meritorious claims are paid in the first stage, they will be used for indirect restitution in accordance with paragraph IV.B.2 of the Stripper Well Settlement Agreement, i.e., fifty percent to the States and fifty percent to the Federal Government.

Purchasers of regulated petroleum products from NEPCO during the period January through June 1974 may file Applications for Refund from the Citronelle fund. Applications for Refund must be postmarked by November 15, 1991. Instructions for the completion of refund applications are set forth in the Decision that immediately follows this notice. Applications for Refund should be sent to the address listed at the beginning of this notice.

Unless labeled as "confidential," all submissions will be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: April 26, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order—Implementation of Special Refund Procedures

April 26, 1991.

Name of Case: Citronelle-Mobile Gathering, Inc.

Date of Filing: August 17, 1988.

Case Number: KEF-0139.

On March 17, 1988, the United States District Court for the Southern District of Alabama issued an order in *Citronelle-Mobile Gathering, Inc., et al.* v. *John Herrington, et al., and United States* directing the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) to make certain determinations and recommendations,

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in compliance with the DOE's special refund procedures, 10 CFR part 205, subpart V (subpart V), concerning the distribution of $6,769,956.76, plus interest, in overcharges caused by Citronelle. On March 14, 1989, OHA filed a Report with the District Court in which it outlined its proposal to distribute the Citronelle overcharges in accordance with Subpart V. To carry out the Court's mandate in this case, OHA will identify, through the record in the litigation and through public notice, all eligible claimants. OHA will consider questions of injury and resolve any factual or legal contentions presented in the claims process. It will then submit to the Court a final report and recommendation as to the distribution of the Citronelle overcharges. If the report meets with the Court's approval, the Court may order distribution in accordance with the recommendations in the final report. This Decision and Order establishes the procedures which OHA will employ in this proceeding.

I. Background

This proceeding arises out of protracted litigation originally instituted between Citronelle-Mobile Gathering, Inc. (Citronelle) and the Federal Energy Administration (FEA), a predecessor of the DOE. The original plaintiffs (now counterclaim defendents) in the litigation include Citronelle, Citmoco Services, Inc. (Citmoco), and Bart B. Chamberlain (Chamberlain), the president, a director, and 90 percent shareholder of Citronelle, and president, a director, and 87.5 percent shareholder of Citmoco (collectively, the Citronelle entities). Chamberlain is also the owner of certain crude oil produced from the Citronelle Field located in Mobile County, Alabama. At all times relevant to this proceeding, Citronelle purchased crude oil produced from the Citronelle Field. Citmoco stored crude oil purchased, transported, and sold by Citronelle.

During the period January through July 1974, Chamberlain contracted with Grand Bahamas Petroleum Company (PETCO), a Bahamian refiner, to sell to PETCO certain barrels of Citronelle crude oil which PETCO agreed to refine and sell back to its United States-based affiliate, New England Petroleum Company (NEPCO).[1] The first three shipments of crude oil were sold for $14.00 per barrel and the fourth for $13.00—prices substantially higher than the prices Citronelle could have charged under the regulations governing domestic sales of crude oil.[2]

The FEA initiated an audit of the above stated transactions to determine whether Citronelle had violated federal regulations governing the price of crude oil. That audit led to the filing of a declaratory action by Citronelle in which it sought a ruling that sales from Citronelle to PETCO were "export sales" and therefore exempt from the domestic petroleum pricing regulations. The United States counterclaimed, seeking restitution from Citronelle and Chamberlain personally for the alleged overcharges, *i.e.*, the difference between the price it charged for crude oil and the ceiling price. After more than a decade of litigation, the District Court entered judgement against the Citronelle entities and Chamberlain personally for $6,769,956.76 plus interest.[3] See March 17 Order. On January 7, 1991, the judgement was extended to Douglas Oil Purchasing Co., Inc., which is entirely owned by Chamberlain. The United States is now in the process of enforcing that judgement through garnishments and the sale of assets owned by the Citronelle entities, and has collected $6,541,074.87 as of April 11, 1991.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which are used by OHA in formulating and implementing a plan to distribute funds received as a result of enforcement proceedings. See *Petroleum Overcharge Distribution and Restitution Act of 1986*, 15 U.S.C. 4501 *et seq.*, *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). After reviewing the relevant litigation papers which constitute the record for this subpart V proceeding, OHA issues this Decision and Order which sets forth a plan to distribute the Citronelle overcharges to "injured persons," who in this case were certain of NEPCO's customers during the first six months of 1974. 10 CFR 205.280.

III. The Proposed Decision and Order and Analysis of Comments Received

On March 9, 1990, OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Citronelle overcharges. This PD&O was published in the Federal Register and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 55 FR 10106 (March 19, 1990). In addition, OHA mailed the PD&O to many interested parties. This generated several written comments regarding our proposed refund procedures. These comments focused primarily on three areas: the application procedures for those NEPCO customers with known purchase volumes; the records required to file a refund in this proceeding; and, the possibility of periodic future payments for valid claims as additional funds are obtained from the Citronelle entities. We will address the comments regarding these issues below.

Appendix A to the PD&O listed 19 NEPCO customers whose purchase volumes for the refund period were provided to the FEA during its audit of Citronelle. Purchases by this group account for approximately 49 percent of NEPCO's sales during the period. The PD&O stated that these firms would be required to provide the same type of information documenting their purchase volumes as other NEPCO customers in order to qualify for a refund. Three firms provided comments to OHA suggesting that the proposed procedures be amended to allow NEPCO customers listed in Appendix A, who are in agreement with the purchase volumes set forth therein, to qualify for refunds without submitting the typical month-by-month list of purchases. OHA agrees that the adoption of this revised procedure will result in a more equitable claims process. Therefore, any firm which appears in Appendix A to this Decision, and which is willing to accept the purchase volume stated, will not be required to submit any additional evidence of its purchases of NEPCO covered products.[4]

Comments were also received from several firms stating that OHA should take into account the age of this proceeding when considering the detail of records that claimants will be required to provide in order to obtain a refund. These commentors note the fact that all eligible purchases of NEPCO refined petroleum products took place in 1974. OHA is generally willing to accept any reasonable estimation method. The method which is most accurate for individual claimants will depend on the particular business and method of recordkeeping. A full description of any estimation technique must accompany the Application for Refund, and should include the location and types of records used to prepare the estimate. See Application Requirements *infra*.

In response to these comments, however, OHA has decided to make one amendment to the proposed refund procedures *sua sponte*. In the PD&O we proposed that under the "small claims" presumption, a refiner, reseller, or retailer seeking a refund of $5,000 or less, exclusive of interest, will not be required to submit evidence of injury beyond documentation of the volume of NEPCO products it purchased during the period of overcharges. In order to reduce the burden on smaller claimants, and in view of the relatively large volumetric refund, we have decided to raise the limit of the small claims presumption to $10,000. See *Texcao Inc.*, 20 DOE ¶ 85,147, at 88,320 (1990); see also Refund Procedures *infra*.

Two commentors also suggested that the final refund procedures should provide for an immediate payment to each claimant deemed eligible for a refund, out of the funds already collected from the Citronelle entities, and periodic distributions of any monies subsequently collected. That suggestion will not work in this case, since OHA must obtain the Court's approval before paying any refunds. OHA will wait at least 180 days after issuing this Decision, *i.e.* until the close of the period for submitting claims, to submit its report to the Court recommending the distribution of available funds. However, that report will include a request that OHA be given the authority to make future periodic payments out of additional monies obtained from the Citronelle entities.

Therefore, except for the revisions discussed, we will adopt the refund procedures of the PD&O, set forth below, in final form.

IV. The Refund Procedures

In its March 14, 1989 Report to the District Court, OHA determined that during the first six months of 1974, the cost of Citronelle crude oil, including the Citronelle overcharges, was reflected in the prices NEPCO charged to its customers. We will implement a two-stage refund process by which purchasers of NEPCO refined products during the period January through June 1974 (the refund period) may submit Applications for Refund in this initial stage, and any monies remaining after the payment of all valid first-stage claims will be distributed in accordance with the DOE's *Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges*, 51 FR 27899 (1986). From our experience with Subpart V proceedings, we expect that potential applicants generally will fall into the following categories: (1) end-users; (2) regulated entities, such as public utilities, and cooperatives; and (3) refiners, resellers, and retailers (hereinafter collectively referred to as "resellers").

A. Claims Based Upon Citronelle's Overcharges

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of NEPCO refined petroleum products during the refund period.[5] If the product was not purchased directly from NEPCO, the claimant must establish that the product originated with NEPCO. Additionally, a reseller claimant, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by Citronelle's alleged overcharges. *See* Showing of Injury *infra*.

1. The Use of Presumptions

Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See, *e.g.*, *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986) (*Marathon*). The use of presumptions in refund cases is specifically authorized by the applicable Subpart V regulations at 10 CFR 205.282(e). Accordingly, we adopt the presumptions set forth below.

a. *Calculation of Refunds.* First, we will adopt a presumption that the alleged overcharges were dispersed equally in all of NEPCO's sales of refined petroleum products during the refund period. In accordance with this presumption, refunds are made on a per gallon or volumetric basis.[6] In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of the overcharge fund is equal to the number of gallons purchased from NEPCO during the refund period multiplied by the per gallon refund amount. In the present case, the per gallon refund amount is $.0029, exclusive of interest. We derived this figure by dividing the principal amount of the Citronelle overcharges, $6,769,956.76, by 2,323,649,160 gallons (55,324,980 barrels), the approximate number of gallons of covered refined products which NEPCO sold from January through June 1974. A firm that establishes its eligibility for a refund will receive all or a portion of its allocable share of principal. To further our goal of restitution to injured parties, each claimant will also receive interest to the extent that sufficient funds are collected. As noted in section V *infra*, each successful claimant will receive a *pro rata* share if the sum of valid claims exceeds the amount collected.[7]

In addition to the volumetric presumption, we will adopt a number of presumptions regarding injury for claimants in each category listed below

a. *End-Users.* The first presumption will be that an end-user or ultimate consumer of NEPCO petroleum products whose business is unrelated to the petroleum industry was injured by payment of prices which included the Citronelle overcharges. See *Murphy Oil Corp.*, 17 DOE ¶ 85,782, at 89,471–72 (1988). Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the relevant time period and were not required to keep records which justified selling price increases by reference to

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[1] Under this scheme, Citronelle and PETCO attempted to bypass the mandatory pricing regulations governing the sale of domestic crude oil by labeling sales of Citronelle crude oil to PETCO "export sales."

[2] PETCO passed on the price increase to NEPCO, which, in turn, charged its customers a higher price for its refined petroleum products. Thus, NEPCO customers ultimately bore the burden of Citronelle's overcharges.

[3] See *Citronelle-Mobile Gathering, Inc.* v. *O'Leary*, 499 F. Supp. 871 (S.D. Ala. 1980), aff'd sub nom. *Citronelle-Mobile Gathering, Inc.* v. *Edwards*, 669 F. 2d 717 (Temp. Emer. Ct. App. 1982), cert. denied, 459 U.S. 877 (1982). See also *Citronelle-Mobile Gathering, Inc.* v. *Herrington*, 826 F. 2d 16 (Temp. Emer. Ct. App. 1987), cert. denied sub nom. *Chamberlain* v. *United States*, 484 U.S. 943 (1987).

[4] A NEPCO customer appearing in appendix A may disagree with the stated purchase volume. In order for such a customer to qualify for a refund based on its NEPCO purchases in excess of the stated purchase volume, it will be required to provide a monthly schedule of its purchases for the entire refund period.

[5] As we stated previously, those NEPCO customers listed in appendix A to this Decision and Order may rely on the stated purchase volumes provided to the DOE during its audit of the Citronelle entities.

[6] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of the Citronelle overcharges. See, *e.g.*, *Mobil Oil Corp./Atchison, Topeka and Santa Fe Railroad Co.*, 20 DOE ¶ 85,788 (1990); *Mobil Oil Corp./Marine Corps Exchange Service*, 17 DOE ¶ 85,714 (1988). Such a claim will only be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and that it absorbed those overcharges. See *Panhandle Eastern Pipeline Co./Western Petroleum Co.*, 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[7] As in previous cases, we will establish a minimum refund amount of $15. In this determination, any potential claimant which purchased less than 5,172 gallons of petroleum products would have an allocable share of less than $15. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15 are sought outweighs the benefits of restitution in those instances. See *Exxon Corp.*, 17 DOE ¶ 85,500 at 89,150 (1988) (*Exxon*).

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cost increases. Consequently, analysis of the impact of overcharges on the final prices of goods and services produced by end-users would be beyond the scope of a refund proceeding. *Id.* Therefore, end-user purchasers of NEPCO petroleum products need only document their purchase volumes from NEPCO during the period January through July of 1974 to make a sufficient showing that they were injured by the overcharges.

b. *Regulated Firms and Cooperatives.* The second presumption will be applied to claims by regulated firms. In order to receive a full refund, a claimant whose prices for goods and services is regulated by a governmental agency, *i.e.*, a public utility or an agricultural cooperative which is required by its charter to pass through cost savings to its member-purchasers, need only submit documentation of its purchase volumes. However, a regulated firm or a cooperative will also be required to certify that it will pass any refund received through to its customers or member-purchasers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the approrpiate regulatory body or membership group of its receipt of the refund. *See Marathon*, 14 DOE at 88,514–15. These requirements reflect the fact that any overcharges incurred were typically passed through by the reuglated firm or cooperative to its customers through the operation of automatic price adjustment mechanisms. Similarly, any refunds they receive should be passed through automatically to their customers. With respect to a cooperative, in general, the cooperative agreement which controls its business operations would ensure that the alleged overcharges, and similarly refunds, would be passed through to its member-purchasers. Accordingly, these firms will not be required to make a detailed demonstration of injury.[8]

c. *Refiners, Resellers, and Tetailers.* A refiner, reseller, or retailer claimant had an opportunity under DOE regulations in effect at the time to pass through the Citronelle overcharges to its customers and will therefore be required to make a detailed showing that it was injured by the overcharges, unless it chooses to rely on either the "small claims" or "mid-level claims" presumption decribed below.

i. Showing of Injury—This showing will generally consist of two distinct elements. First, a reseller claimant will be required to show that it had "banks" of unrecouped increased product costs in excess of the refund claimed.[9] Second, because a showing of banked costs alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. See *National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co.* v. *DOE*, 618 F. Supp. 1199 (D. Del. 1985). Such a showing could consist of a demonstration that a firm suffered a competitive disadvantage as a result of its purchases from NEPCO. *Id.; Sid Richardson Carbon & Gasoline Co./ Shupbach & Streitmatter Gas Co.*, 14 DOE ¶ 85.186 (1986).

ii. Small Claims Presumption—We will adopt a "small claims" presumption that a firm which resold NEPCO products and requests a small refund was injured by the Citronelle overcharges. Under the small claims presumption, a refiner, reseller, or retailer seeking a refund of $10,000 [10] or less, exclusive of interest, *i.e.*, claimants who purchased 3,448,276 gallons or less, will not be required to submit evidence of injury beyond documentation of the volume of NEPCO products it purchased during the period of overcharges. See *Texaco Inc.*, 20 DOE ¶ 85,147, at 88,320 (1990). This presumption is based on the fact that there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; for small claims the expense might possibly exceed the potential refund. Consequently, failure to allow simplified refund procedures for small claims could deprive injured parties of their opportunity to obtain a refund.

iii. Mid-Level Claims Presumption—In addition, a refiner, reseller, or retailer claimant whose allocable share of the refund pool exceeds $10,000, excluding interest, may elect to receive as its refund the larger of $10,000 or 40 percent of its allocable share, up to $50,000, *i.e.*, claimants who purchased between 3,448,276 gallons and 43,103,448 gallons of NEPCO refined petroleum products during the period of overcharges may elect to utilize this presumption Claimants who purchased more than 43,103,448 gallons may elect to limit their claims to $50,000. The use of this presumption reflects our conviction that these larger, mid-level claimants were likely to have experienced some injury as a result of the overcharges. See *Marathon*, 14 DOE at 88,515. In some prior special refund proceedings, we have performed detailed analyses in order to determine product-specific levels of injury. See *e.g., Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). However, in *gulf Oil Corp.*, 16 DOE ¶ 85,381, at 88,737 (1987), we determined that based upon the available data, it was more accurate and efficient to adopt a single presumptive level of injury for all mid-level claimants, regardless of the refined product that they purchased, based upon the results of our analyses in prior proceedings. We believe that approach generally to be sound, and we therefore will adopt a 40 percent presumptive level of injury for all mid-level claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of NEPCP refined petroleum products during the refund period in order to be eligible to receive a refund of 40 percent of its total allocable share, up to $50,000, or $10,000, whichever is greater.[11]

3. Claims for More Than the Volumetric Amount

As noted above, certain of NEPCO's customers may attempt to submit claims for refunds in excess of the volumetric amount. Under established Subpart V caselaw, an individual claimant bears the burden of submitting detailed evidence to prove how the overcharges injured it by an amount greater than the

[8] A cooperative's purchases of NEPCO petroleum products which were resold to non-members will be treated in a manner consistent with purchases made by other resellers. See *Total Petroleum, Inc./ Farmers Petroleum Cooperative, Inc.*, 19 DOE¶ 85.215 (1989).

[9] Claimants who have previously relied upn their banked costs in order to obtain refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. See *Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶ 85,090, at 88,179 (1987). Additionally, a claimant attempting to show injury may not receive a refund for any month in which it has a negative cumulative bank (for that product) or for any prior month. See *Standard Oil Co. (Indiana)/Suburban Propane Gas Corp.*, 13 DOE ¶ 85.030 at 88.082 (1985). If a claimant no longer has records showing its banked costs, OHA may exercise its discretion to allow the claimant to approximate those cost banks. See *e.g., Gulf Oil Corp./Sturdy Oil Co.*, 15 DOE ¶ 85.187 (1986).

[10] In our proposed Decision and Order, issued March 9, 1990, OHA stated that the small claims presumption limit would be set at $5,000. We have determined that increasing that limit to $10,000 would be more equitable to the claimants in this proceeding.

[11] A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the alleged overcharges, or that it is eligible for a refund of less than the applicable presumption-level refund may not then be eligible for a presumption-based refund. Instead, such a claimant may receive a refund which reflects the level of injury established in its application. No refund will be approved if its submission indicates that it was not injured as a result of its purchases from Citronelle. See *Exxon*, 17 DOE at 89,150 n.10.

generally applicable, per-gallon volumetric level. See *Texaco Inc.*, 20 DOE ¶ 85,147 (1990); *Mobile Oil Corp./ Marine Corps Exchange Serv.*, 17 DOE ¶ 85,714, at 89,359 (1988), and cases cited therein.

A claimant may use either the volumetric method or an alternative method to attempt to prove the amount of its injury. However, a claimant may use only one method for the entire overcharge period.

B. Refund Application Requirements

To apply for a refund from the Citronelle overcharge fund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, address, social security number or employer identification number, an indication whether the claimant is a corporation, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check;

(2) The applicant's use(s) of the NEPCO petroleum products: e.g., retail gasoline station, petroleum jobber, petroleum refiner, consumer (end-user), cooperative, or public utility;

(3) A schedule showing covered products purchased from NEPCO during the period January through July 1974.[12] The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its petroleum purchases, but the estimation methodology must be reasonable and must be explained in detail;

(4) If the applicant was an indirect purchaser from NEPCO (*e.g.*, it purchased NEPCO petroleum products through another supplier), it should submit the name, address, and telephone number of its immediate supplier and should specify why it believes that the petroleum products claimed were originally sold by NEPCO;

(5) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(6) If the applicant is a retailer, reseller, or refiner whose allocable share exceeds $10,000 (*i.e.*, whose purchases equal or exceed 3,448,276 gallons), it must indicate whether it elects to rely on the appropriate reseller injury presumption and receive the larger of $10,000 or 40% of its allocable share. If it does not elect to rely on the injury presumption, it must submit a detailed showing that it absorbed Citronelle's overcharges. See section IV.A.1.c.i. *supra*;

(7) A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Citronelle refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(8) If the applicant is or was partially or entirely owned by Citronelle or NEPCO, it should explain this affiliation, including the years in which it was affiliated with Citronelle or NEPCO;[13]

(9) A statement as to whether the ownership of the applicant a firm changed during or since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the type of sale (*e.g.*, sale of corporate stock, sale of company assets);

(10) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private Section 210 action. If so, an explanation should also be provided;

(11) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicated of this entire application which will be placed in OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Citronelle Special Refund Proceeding, Case No. KEF–0139." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than November 15, 1991, and sent to: Citronelle Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

V. Proration of Refunds or Distribution of Unclaimed Funds

It is possible that the sum of valid claims submitted and ultimately approved by the Court will not match the amount of the Citronelle overcharges the Government will be able to collect. In the event that the approved claims exceed the amount recovered, each claimant will receive a *pro rata* share of the amount recovered.

If the amount recovered exceeds the sum of approved claims, OHA recommends taht any Citronelle overcharge funds that remain after all valid refund claims have been calculated and paid in accordance with these refund procedures be distributed in accordance with the DOE's *Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges*, 51 FR. 27899 (1986). That policy adopts Paragraph IV.B.2 of the Stripper Well Settlement Agreement. It specifies that fifty percent of any unclaimed funds will be distributed to the states and territories in proportion to their consumption of refined products during the period of price controls as set forth in Exhibit H to the Settlement Agreement, to be used and administered in accordance with the Agreement, and fifty percent will be distributed to the DOE for the Federal Government.

VI. Identification of Claimants

OHA has identified three groups of persons who may have been injured by overcharges on the Citronelle crude oil that were passed through to purchasers

[12] As we stated previously, those NEPCO customers listed in appendix A to this Decision and Order may relay on the stated purchase volumes provided to the DOE during its audit of the Citronelle entities.

[13] As in other refund proceedings involving alleged refined product violations, OHA will presume that affiliates or subsidiaries of Citronelle or NEPCO were not injured by Citronelle's alleged overcharges. See, *e.g., Marathon Petroleum Co./ EMRO Propane Co.*, 15 DOE ¶ 85,228 (1987).

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of NEPCO's products.[14] The first group consists of NEPCO customers for whom purchase volume information is available. OHA has made a preliminary estimate of the amount of the refund, plus interest, that each member of this group may receive if that party satisfies the requirement for a refund set forth above. (See appendix A) Purchases by this group account for approximately 49 percent of NEPCO's sales during the period.

The second group consists of additional NEPCO customers that OHA has identified, but for whom no purchase volume information is presently available. (See Appendix B) Since refund amounts will be determined based on purchase volumes, we are presently unable to estimate the amount of the refunds claimants in this group will receive.

The third group of potential Citronelle refund recipients consists of NEPCO customers during the period of overcharges who have not yet been identified and whose purchase volumes are also unknown. For example, the record indicates that there were additional sales by NEPCO of naphtha and kerosene during the relevant period. However, there is no information currently known to OHA identifying the purchasers of these products. The information shows only that these products were sold to refiners, either small independents or major integrated oil companies.

It is Therefore Ordered That:

(1) Applications for refined product refunds from funds remitted to the Department of Energy pursuant to the March 17, 1988 Order of the U.S. District Court for the Southern District of Alabama may now be filed.

(2) Applications for Refund must be postmarked no later than November 15, 1991.

Dated: April 26, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[14] OHA has attempted to identify all NEPCO customers who were injured by the Citronelle overcharges. In addition to publishing this Decision in the Federal Register we are forwarding by direct mail a copy to most of the NEPCO customers included on the customer lists NEPCO produced in the Citronelle litigation. However, we have found that the NEPCO customer lists contain some names which are illegible; in addition, the lists do not include the complete address for each customer. We have attempted to find current addresses for these potential claimants. Since NEPCO's customers are principally found in New York, New Jersey, Florida, and the New England area, we will send a press release and copy of this Decision to newspapers in the former NEPCO market area. We will also send copies of the press release and Decision to several oil industry trade journals. (See appendix C for list of publications.)

Appendix A—NEPCO Customers With Known Purchase Volumes

Name of firm	Purchases (barrels)	Purchases (gallons)	Principal refund amount
Alfa Port [1]	168,100	7,060,200	$20,475
Agway, Inc., 363 Butternut Drive, Syracuse, NY 13214	20,100	844,200	2,448
Conoco, Box 2197, Houston, TX 77252	434,500	18,249,000	52,922
Consolidated Edison Co., Attn: Donal F. McCarthy, 4 Irving Place, New York, NY 10003	6,312,500	265,125,000	768,863
Fort Pierce [2]	217,400	9,130,800	26,479
General Motors Corp., 767 Fifth Avenue, New York, NY 10153	85,800	3,603,600	10,450
Georgia Power Co., c/o Robert P. Williams II, Trautman, Sanders, Lockerman & Ashmore, Suite 1400, 127 Peachtree Street, NE., Atlanta, GA 30303	724,200	30,416,400	88,208
Howard [3]	184,900	7,765,800	22,521
Hudson [4]	214,900	9,025,800	26,175
Long Island Lighting Co., Attn: Elizabeth Biging, 175 E. Old Country Road, Hicksville, NY 11801	10,880,300	456,132,600	1,322,785
Mobil Oil Corp., Attn: W.C. Steele, 3925 Gallows Road, Fairfax, VA 22037	72,800	3,057,600	8,867
Niagara [5]	4,163,300	174,858,600	507,090
Orange [6]	317,700	13,343,400	38,686
Orlando [7]	3,183,600	62,131,200	267,180
Patchogue [8]	120,080	5,040,000	14,616
Philadelphia Electric Co., Attn: W.J. Lenard, 2301 Market Street (S18-3), Philadelphia, PA 19101	337,400	14,170,800	41,095
Shell Oil Co., 900 Louisiana Street, Houston, TX 77002	197,700	8,303,400	24,080
U Western [9]	142,800	5,997,600	17,393
Westfuel [10]	443,300	18,618,600	53,994
Totals	27,211,300	1,142,874,600	3,314,337

[1] OHA has been unable to determine the actual name and/or address of certain NEPCO customers. This note, and those that follow, identify one or more companies whose names bear some resemblance to the names on NEPCO's abbreviated customer list. We are forwarding by direct mail a copy of the Proposed Decision and Order to these companies. OHA has identified two companies whose names resemble "Alfa Port": Alpha Portland Industries, Inc., 15 S. Third Street, Easton, PA 18042; and Alpha Portland Cement, P.O. Box 20140, St. Louis, MO 63123.

[2] OHA has tentatively identified "Fort Pierce" as Fort Pierce Gas, 601 N. Fourth, Fort Pierce, FL 33450.

[3] OHA has tentatively identified "Howard" as Howard Oil Co., Inc., 48-02 54th Avenue, Maspeth, NY 11378.

[4] OHA has identified two companies whose names resemble "Hudson": Hudson General Corp., 111 Great Neck Road, Great Neck, NY 11022; and Hudson General Corp., 300 Terminal Drive, Fort Lauderdale, FL 33315.

[5] OHA has tentatively identified "Niagara" as Niagara Mohawk Power Corp., 300 Erie Boulevard W, Syracuse, NY 13202.

[6] OHA has tentatively identified "Orange" as Orange & Rockland Utils., 75 W. Rt. 59, Spring Valley, NY 10977.

[7] OHA has tentatively identified "Orlando" as Orlando Utils. Comm'n Co., Attn: John Hearn, 500 South Orange Avenue, Orlando, FL 32801.

[8] OHA has tentatively identified "Patchogue" as Patchogue Advance, 20 Medford Avenue, Patchogue, NY 11772.

[9] OHA has tentatively identified "U Western" as United Western Energy, 201 Northeast Expressway, Oklahoma City, OK 73105.

[10] OHA has tentatively identified "Westfuel" as Western Fuels, 5835 E. Powhattan Avenue, Tampa, FL 33601.

Appendix B—NEPCO Customers for Whom No Purchase Volume Information Is Presently Available

Firms With Known Addresses

Acushnet Company, Mr. Frederick H. Wendling, Purchasing Manager, P.O. Box E916, New Bedford, MA 02742-0916

Allied Chemical Corp., Allied Signal, Inc., G. Cooper, P.O. Box 057R, Morristown, NJ 07960

American Biltrite Rubber, 57 River St., Wellesley Hills, MA 02181

American Cyanamid Co., One Cyanamid Plaza, Wayne, NJ 07470

Anheuser-Busch, Inc., Mr. Patrick T. Dermody, Manager, Plant Procurement/Material Control, 200 U.S. Highway 1, Newark, NJ 07101-0879

Arkwright Finishing Co., Division of United Merchants and Manufacturers, Inc., Mr. Michael Harris, 1407 Broadway, New York, NY 10018

Arsynco, Inc., Aceto Chemical Co., Inc., 128-02 Northern Blvd., Flushing, NY 11368

Ashworth Bros., Inc., P.O. Box 670, Fall River, MA 02724

Atlas Tack Corp., Pleasant Road, Fairhaven, MA 02719

Berkeley Chemical [1]

Blakely Laundry, 156 Brunswick Avenue, Trenton, NJ 08618

Cavallaro Bros. Inc.[2]

Celanese Coatings Co., One Riverfront Plaza, Louisville, KY 40201

CF & I Steel Corp., 300 Park Avenue, New York, NY 10022

Champale, Inc., 1024 Lamberton Street, Trenton, NJ 08611

Cornell Dubilier Electronics, Mr. Charles Peruzzi, Wayne Interchange Plaza I, Wayne, NJ 07470

CPS Chemical Company, P.O. Box 162, Old Bridge, NJ 08857

Cranston Street Armory, Dexter and Parade Streets, Providence, RI 02909

D & S Processing Co., P.O. Box 175, Yarmouth, ME 04096

Dartmouth High School, Lebanon Road, Hanover, NH 03755

Dartmouth Middle School, Reservoir Road, Hanover, NH 03755

Davis Mills, Division of United Merchants and Manufacturers, Inc., Mr. Michael Harris, 1407 Broadway, New York, NY 10018

De Laval Turbine Co., 853 Nottingham Way, Trenton, NJ 08602

Delco-Remy, Division of General Motors, Mr. David Monroe, P.O. Box 2439, Anderson, IN 46011

Paul A. Dever State School, 1380 Bay Street, P.O. Box 631, Taunton, MA 02780

Duro Finishing Corp., Duro Industries, Inc., Mr. Louis D'Amico, 110 Chace Street, Fall River, MA 02724

East Providence High School, 80 Burnside Ave., Providence, RI 02915

Elbe File & Binder [3]

Essex Chemical Corp., 1401 Broad St., Clifton, NJ 07015

Express Container, Mr. Brian Mazal, 105 Avenue L, Newark, NJ 07105

F____ st Brewing Co.[4]

Fabricolor Manufacturing Corp., 24½ Van Houten St., Paterson, NJ 07502

Fall River Housing [5]

Fall River Knitting Mills, 69 Alden St., Fall River, MA 02723

Federal Paper Board Co., 75 Chestnut Ridge Road, Montvale, NJ 07645

F H C [6]

Franconia Fuel, Mr. John R. Nelson, 379 Main Street, Wareham, MA 02571

General Electric, Power Transformer Dep't., Mr. Raymond P. Tuggey, 100 Woodlawn Ave., Pittsfield, MA 01201

General Motors Corp., Mr. Gary Applegate, General Supervisor—Financial, 1016 W. Edgar Road, Linden, NJ 07036

General Work Clothes, 103 Old Colony, Taunton, MA 02718

Giusti Baking Co., Inc. of N.B., 1707 Purchase St., New Bedford, MA 02740

Glass Containers Corp., Cherry Street, Marienville, PA 16238

Glen Petroleum Corp., Mr. Richard Cobb, 222 Lee Burbank Highway, Revere, MA 02151

Glenbrook Laboratories, 100 Lafayette Street, Pawtucket, RI 02860

Globe Manufacturing Co., Mr. Lester Allen, P.O. Box 1751, Fall River, MA 02722

Globe Products Co., Inc., Ms. Linda Burger, 750 Bloomfield Ave., Clifton, NJ 07012

Goodall Rubber Company, A. J. Russo, P.O. Box 8237, Trenton, NJ 08650

Gray Textile, Mr. Louis E. D'Amico, 206 Globe Mills Avenue, Fall River, MA 02724

A. Gross Co., Inc.[7]

Hackensack Water Co., Ms. Maria Laurino, 200 Old Hook Rd., Harrington Park, NJ 07640

Louis Hand, Inc.[8]

H.N. Hartwell & Son, Inc., Park Square Building, Boston, MA 02116

Hatco Chemical Corp., Mr. Jeffrey G. Weiss, King George Post Road, Fords, NJ 08863

Hatfield Township, Mr. Sydney C. Brittin, Township Manager, School Road & Chestnut Street, Hatfield, PA 19440

Hathaway Oil Co., Inc., 23 State Road, N. Dartmouth, MA 02747

Hercules, Inc., Mr. Everett D. Dudley, S. Minnisink Ave., Parlin, NJ 08859

Hills Bros. Coffee Co., #2 Harrison St., San Francisco, CA 94119

Holy Name Hospital, 718 Teaneck Road, Teaneck, NJ 07666

Homasote Co., P.O. Box 7240, West Trenton, NJ 08628

Horizon House, 685 Canton, Norwood, MA 02062

Independent Laundry, 870 West Main Road, Middletown, RI 02840

Kennedy & Decker Coal Corp., 6½ Roos Ave., Chatham, MA 02633

Dr. Joseph H. Ladd School, School Land Road—Exeter, North Kingstown, RI 02852

Manufacturers Realty Corp., 18 Pocasset, Fall River, MA 02721

New Bedford Gas and Edison Light Co., 675 Massachusetts Ave., Cambridge, MA 02139

Ocean Spray Cranberries, Water St., Plymouth, MA 02360

Old Rochester Regional [9]

Parks Shellac Co. [10]

Peerless Laundry, 1668 Pleasant Street, Fall River, MA 02723

Pfizer, Inc., Mr. J. Michael Niebert, 230 Brighton Road, Clifton, NJ 07012

Plymouth Rubber Company, 104 Revere, Canton, MA 02360

Polaroid Corp., 549 Technology Square, Cambridge, MA 02139

Providence County, County Courthouse, Providence, RI 02903

Providence State House, 82 Smith Street, Providence, RI 02903

Quaker Oats, K.A. Vickroy, P.O. Box 520, Pekin, IL 61554

Quincy Plating Works [11]

[1] OHA has been unable to determine the actual name and/or address of certain NEPCO customers. This note, and those that follow, identify one or more companies whose names bear some resemblance to the names on NEPCO's abbreviated customer lists. We are forwarding by direct mail a copy of the Proposed Decision and Order to these companies. OHA has identified three companies whose names resemble "Berkeley Chemical": Berkeley Plastics & Manufacturing, 273 Snyder Avenue, Berkeley Heights, NJ 07922; Berkley Group, Inc., 3015 N. Ocean Blvd., Fort Lauderdale, FL 33308; and Berkley Holdings Corp, 165 Mason Street, Greenwich, CT 06830.

[2] OHA has tentatively identified "Cavallaro Bros., Inc." as Cavallaro Motors, 41 Clifton Avenue, Ansonia, CT 06401.

[3] OHA has tentatively identified "Elbe File & Binder" as Elbe Products, 649 Alden Street, Fall River, MA 02723.

[4] OHA has tentatively identified "F ____ st Brewing Co." as Falstaff Brewing Co., S & P Company, 100 Shoreline Highway, Building B—Suite 395, Mill Valley, CA 94941.

[5] OHA has tentatively identified "Fall River Housing" as Fall River Housing Authority, P.O. Box 989, Fall River, MA 02722.

[6] OHA has tentatively identified "F H C" as FMC Corp., 200 East Randolph Street, Chicago, IL 60601.

[7] OHA has tentatively identified "A. Gross Co., Inc." as A. Gross, 652 Doremus Avenue, Newark, NJ 07105.

[8] OHA has tentatively identified "Louis Hand, Inc." as Louis Handy, 847 Pleasant Street, Fall River, MA 02732.

[9] OHA has tentatively identified "Old Rochester Regional" as Rochester Regional Hospital, P.O. Box 23239, Rochester, NY 14692.

[10] OHA has tentatively identified "Parks Shellac Co." as Parks Corp., Main Street, Somerset, MA 02726.

[11] OHA has tentatively identified "Quincy Plating Works" as Quincy Steel Casting, 128 Bay State Road, Rehoboth, MA 02769.

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Reed and Barton Silver Co., Mr. Frank Souza, 144 W. Brittania St., Taunton, MA 02780
Revere Copper and Brass, Inc., Rome Div., Mr. Leonard D. Summa, P.O. Box 151, Rome, NY 13440
Rhode Island College, 600 Mt. Pleasant Ave., Providence, RI 02908
Rogers Corporation, One Technology Drive, Rogers, CT 06263
Slater Paper Box, Inc. [12]
Southeastern Mass Univ., Old Westport Road, N. Dartmouth, MA 02747
C.H. Sprague & Son Co., 375 Allens Ave., Providence, RI 02866
Stevens Realty Company, 168 Stevens, Fall River, MA 02721
Township Manager, Town of Swansea, Swansea, MA 02777
Uniroyal-Goodrich Tire Co., 600 S. Main St., Akron, OH 44318
University of Rhode Island, Purchasing Dep't., Kingston, RI 02881
Veterans Memorial Building [13]
Wampanoag Realty [14]
Washburn Wire Company, Brenco, Inc., P.O. Box 388, Petersburg, VA 23804
Whitin Machine Works [15]
Wilson Jones Co., 6150 W. Touhy Avenue, Niles, IL 60648
Witco Chemical, Ms. Rosemary J. Kaser, 155 Tice Blvd., Woodcliff Lake, NJ 07675
Xcel Plastics Corp., Daulton Place, West Peabody, MA 01962
Youngs Rubber Corp. [16]
Dr. U.E. Zambarano Memorial Hospital, Rt. 100, Wallum Lake, RI 02894

Firms with Unknown Addresses and Unknown Firms

Advance Piece Dye Works
Agawam Dyeing & Bleaching
Baker Castor Oil Co.
Bayview Realty Co.
The Beattie Mfg.
Beckwith Madison Maint.
Carlton (Carlson, Capitol ?) Hill Construction
Central Power Plant
Charles V. Chapin Hospital
Chemica-Land Corp.
Engbert Dye Co.
Faber Laundry
Globe Superior Products
Harmony Industry Realty
Lulu Realty

Appendix C—Publications To Be Notified of Citronelle Proceeding

Oil Industry Trade Journals

Inside Energy
Oil Daily
U.S. Oil Week

Newspapers

Connecticut:
Bridgeport Post
Hartford Courant
New Haven Register
Florida:
Fort Lauderdale News
Sun-Sentinel
Jacksonville Journal
Orlando Sentinel
Stuart News
Tampa Tribune
Massachusetts:
Boston Globe
Enterprise
Standard Times
New Jersey:
Newark Star Ledger
Times Newspaper
Trentonian
New York:
Long Island Newsday
New York Daily News
New York Times
Rhode Island:
Providence Evening Bulletin
Providence Journal

[FR Doc. 91-10430 Filed 5-1-91; 8:45 am]

BILLING CODE 6820-01-M

[12] OHA has identified two companies whose names resemble "Slater Paper Box, Inc.": Slater AC Manufacturing Corp., 321 1st Street, Elizabeth, NJ 07206; and Slater Dye Works Corp., 727 School Street, Pawtucket, RI 02860.

[13] OHA has tentatively identified "Veterans Memorial Building" as Veterans Memorial Auditorium, Brownell Street, Providence, RI 02908.

[14] OHA has identified two companies whose names resemble "Wampanoag Realty": Wampanoag Village Apartments, 850 Warren Avenue, East Providence, RI 02914; and Wampanoag Mall Office, 1925 Pawtucket Avenue, East Providence, RI 02914.

[15] OHA has tentatively identified "Whitin Machine Works" as Whitin Casting, Main Street, P.O. Box 300, Whitinsville, MA 01588.

[16] OHA has tentatively identified "Youngs Rubber Corp." as Young Rubber, 29 W. 491 North Aurora Road, Naperville, IL 60540.

Office of Hearings and Appeals,

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $8,907,350.36 (plus accrued interest) which was remitted by four firms: Seneca Oil Company, West Texas Marketing Corporation, Grace Petroleum Corporation and Thums Long Beach Company. The DOE has tentatively determined that funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days from the date of publication of this notice in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to the applicable Case Number(s): LEF-0025 (Seneca); LEF-0026 (West Texas); LEF-0027 (Grace); and/or LEF-0028 (Thums).

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute funds obtained from Seneca Oil Company, West Texas Marketing Corporation, Grace Petroleum Corporation and Thums Long Beach Company. The funds are being held in interest-bearing escrow accounts pending distribution by the DOE.

The DOE has tentatively determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: April 26, 1991.

George B. Breznay,
Director, Office of Hearings and Appeals.
April 26, 1991.

Proposed Decision and Order—Implementation of Special Refund Procedures

Names of Firms: Seneca Oil Company, West Texas Marketing Corporation, Grace Petroleum Corporation, Thums Long Beach Company.

Date of Filing: March 5, 1991.

Case Numbers: LEF-0025, LEF-0026, LEF-0027, LEF-0028.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

On March 5, 1991, the ERA filed petitions for the Implementation of Special Refund Procedures for the distribution of funds which the DOE has obtained from Seneca Oil Company (Seneca), West Texas Marketing Corporation (West Texas), Grace Petroleum Corporation (Grace) and Thums Long Beach Company (Thums). These four firms remitted a total of $8,907,350.36 to the DOE,[1] which deposited the funds in interest-bearing escrow accounts maintained at the Department of the Treasury. The funds paid by Seneca, West Texas and Grace were in settlement of enforcement proceedings brought by the ERA which alleged that the firms had violated the DOE regulations regarding the production or resale of crude oil. The funds received from Thums represent revenues that exceeded recoupable allowed expenses for projects qualifying under the Tertiary Incentive Program, 10 CFR 212.78.[2] An additional $371,192.71 has accrued in interest on these four escrow accounts as of March 31, 1991.[3] This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds.

The procedural regulations of the DOE establish general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive.[4] After reviewing the record in the present cases, we have concluded that a subpart V proceeding is an appropriate mechanism for distributing the four remittances. Therefore, we propose to grant the ERA's petitions and assume jurisdiction over distribution of the funds.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in In re: The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378 (D. Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of these funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice and analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987). The Notice set forth generalized procedures and provided guidance to assist claimants who wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the statement and a portion of the escrow funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 notice, see, *e.g., Shell Oil Co.*, 17 DOE ¶85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶85,079 (1988) *(Allerkamp)* and the procedures have been approved by the United States District Court for the District of Kansas. Various States filed a Motion with that court claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. In denying the Motion, the court concluded that the Settlement Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." In re: The Department of Energy Stripper Well Exemption Litigation, 671 F. Supp. 1318, 1323 (D. Kan. 1987), aff'd, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988). The court also held that the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323-24.

[1] Seneca, a crude oil producer, remitted $1,943,945.36 (Consent Order Number 699C90019W). West Texas, a crude oil reseller, remitted $6,000,000 (Consent Order Number 650X90314W). Grace, a crude oil producer, remitted $269,098 (Consent Order Number T00T00006W). Thums, a crude oil producer remitted $1,694,307 (Consent Order Number T00T00005W).

[2] These funds represent restitution for crude oil sales made at higher prices than would otherwise have been permissible if the projects had not qualified under § 212.78. Since the effect of those higher prices was spread throughout the country, see n.5, *infra*, it is appropriate to combine these funds with crude oil overcharge funds.

[3] As of March 31, 1991, accrued interest on each of the escrow accounts is as follows: Seneca, $37,852.09; West Texas, $188,291.59; Grace $14,890.30; Thums, $132,258.68.

[4] For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

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II. The Proposed Refund Procedures

A Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil Subpart V proceedings that are the subject of the present determination. As noted above, $8,907,350.36 plus interest in crude oil funds is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of these funds, or $1,781,470.07 (plus interest), for direct refunds to claimants, in order to ensure to sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant.

The process which the OHA will use to evaluate claims for crude oil refund monies will be modeled after the process that OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. See Mountain Fuel Supply Co., 14 DOE ¶85,475 (1986) (Mountain Fuel).

Applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations, are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond the volumes of products purchased during the period of crude oil price controls. A Tarricone, Inc., 15 DOE ¶85,495 at 88,893–96 (1987). The end-user presumption of injury may be rebutted if evidence shows that the specific end-user in question was not injured by the crude oil overcharges. Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilizing in refund cases involving refined petroleum products. Id. They may, however, use econometric evidence of the type employed in the OHA Report on Stripper Well Oil Overcharges, 6 Fed. Energy Guidelines ¶90,507 (June 19, 1985). See Petroleum Overcharge Distribution and Restitution Act § 3003(b)(2), 15 U.S.C. 4502(b)(2). Applicants who executed and submitted a valid waiver prusuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under subpart V. See Mid-America Dairymen, Inc. versus Herrington, 878 F.2d 1446 (Temp. Emer. Ct. App. 1989); accord, Boise Cascade Corp., 18 DOE ¶85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil refund amounts involved in this determination ($8,907,350.36) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). See *Mountain Fuel*, 104 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program, 10 CFR 211.67.[5] This yields a volumetric refund amount of $.0000044 per gallon.

As we have stated in previous decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. The deadline for filing an application for refund for crude oil implementation orders issued since January 18, 1991 is June 30, 1992. *Quintana Energy Corp.*, 21 DOE ¶ 85,032 (1991). It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1992, at the rate of $.0008 per gallon. However, while we anticipate that applicants which filed their claims by June 30, 1988 will receive a supplemental refund payment, we will decide in the future whether claimants that filed later Applications should receive additional refunds.

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $7,125,880.29, plus interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the Federal Register.

It Is Therefore Ordered That: The refund remitted to the Department of Energy by Seneca Oil Company, West Texas Marketing Corporation, Grace Petroleum Corporation and Thums Long Beach Company pursuant to Consent Orders 999C90019W, 850X90314W, T00T00006W and T00T00005W shall be distributed in accordance with the foregoing Decision.

[FR Doc. 91-10431 Filed 5-1-91; 8:45 am]

BILLING CODE 6450-01-M

[5] The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly dispersing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. See *Amber Refining Inc.*, 13 DOE ¶ 85,217 at 88,504 (1985).

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3953-1]

Great Lakes National Program Office; Sediment Remediation Technologies Selection

AGENCY: USEPA, Great Lakes National Program Office.

ACTION: Notice.

SUMMARY: The Great Lakes National Program Office announces its selection of preferred sediment remediation technologies for Pilot Demonstrations at five Assessment and Remediation of Contaminated Sediments (ARCS) sites. In accordance with section 102(B)(ii) of the Great Lakes Critical Programs Act (Act) of 1990, the U.S. Environmental Protection Agency (U.S. EPA) is announcing the selection of treatment technologies and demonstration project locations required under the Act. The work will be conducted by the Great Lakes National Program Office, under the Assessment and Remediation of Contaminated Sediments (ARCS) program. Attached is a brief description of the technologies selected and the associated sites for the demonstration projects.

FOR FURTHER INFORMATION CONTACT: Christopher Gundler, Director, Great Lakes National Program Office (312) 353-2117.

SUPPLEMENTARY INFORMATION: Pilot scale demonstrations of treatment technologies will be conducted at five sites during Fiscal Years 1991 and 1992. These sites are: Ashtabula River, Ohio; Buffalo River, New York, Grand Calumet River, Indiana; Saginaw River, Michigan; and, Sheboygan River, Wisconsin.

The U.S. EPA has screened available technologies and has selected the most promising ones, based upon the contaminants present and their concentrations. The technologies selected for the pilot scale demonstrations are now being conducted on a very small scale in a variety of laboratories. The field demonstrations will focus on processes that may be scaled up for an actual clean up of a site. Pilot demonstrations will begin this summer and will be completed in 1992. Extensive monitoring will be part of the demonstrations in order to determine the effectiveness of each process. A final report of our findings will be available in 1993.

The Act also calls for the specification of the "numerical standard of protection intended to be achieved at each location." The U.S. EPA currently has a significant national effort underway to develop sediment quality criteria, which entails a considerable amount of research. Our approach to demonstrating available treatment options is to use the best available technology that can be applied to contaminated sediment in the Great Lakes. When sediment quality criteria are promulgated, we will then be able to compare the results achieved with these criteria.

The following are the pilot demonstration technologies selected for each ARCS site.

Ashtabula River: ARCS will conduct a pilot demonstration of a low temperature thermal stripping process, to extract organic contaminants from the sediments. This process is a thermal desorption process that removes semivolatile organic contaminants (such as polynuclear aromatic hydrocarbons, or PAHs) by heating the sediments to temperatures lower than those used in the destructive incineration process.

Buffalo River: ARCS will conduct a pilot demonstration of a low temperature thermal extraction process, to extract organic contaminants from the sediment. This process, like the low temperature thermal striping process, is a thermal desorption process that removes semivolatile organic contaminants (such as polynuclear aromatic hydrocarbons, or PAHs) from sediments. Organic contaminants are removed from sediments by heating sediments to temperatures high enough to volatilize the contaminants, but lower than those used in the destructive incineration process.

Grand Calumet River/Indiana Harbor Canal: ARCS will conduct a pilot demonstration applying solvent extraction to contaminated sediments. This process involves exposing the sediment to a particular solvent that will separate the organic contaminants from the sediment.

Saginaw River: ARCS will conduct a particle size separation pilot demonstration, using hydrocyclone or another physical separation technology. This technology is expected to result in a reduction in volume of the heavily contaminated sediment fraction. This heavily contaminated sediment fraction will then undergo a solvent extraction process, to remove organic contaminants from the sediment. This heavily contaminated fraction will also be subjected to a bioremediation demonstration.

Sheboygan River: ARCS will provide technical support and assistance to the Superfund efforts currently underway at Sheboygan, Wisconsin, through USEPA's Environmental Research Laboratory in Athens, Georgia. Technical support will involve a scientific review of the Sheboygan bioremediation pilot project already underway, including recommendations for enhancing the experimental design of the project, and the sampling required to achieve a statistically supportable documentation of its effectiveness.

Chris Grundler,

Director, GLNPO.

[FR Doc. 91-10418 Filed 5-1-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3952-8]

Workshop on a Framework for Ecological Risk Assessment

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: This notice announces a workshop sponsored by the Environmental Protection Agency's (EPA) Risk Assessment Forum to obtain scientific peer review of an EPA report that describes general principles for ecological risk (ecorisk) assessment. The meeting will be held at the Sheraton Potomac, 3 Research Court, Rockville, MD.

DATES: The workshop will begin on Tuesday, May 14, 1991 at 8:30 a.m. and end on Thursday, May 16, at 12 noon. Members of the public may attend as observers.

ADDRESSES: Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, call Eastern Research Group at (617) 641-5372 or contact Susan Brager, Eastern Research Group, 6 Whittemore Street, Arlington, Massachusetts, 02174, telephone (617) 641-5347. Space is limited.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Thomas, U.S. Environmental Protection Agency, (RD-689), 401 M Street, SW., Washington, DC, 20460, Telephone (202) 475-6743 (FTS: 475-6743).

SUPPLEMENTARY INFORMATION: EPA is presently developing ecological risk (ecorisk) assessment guidelines. The first guideline that has been prepared proposes general principles for EPA ecorisk assessment and provides a "framework" for conducting such evaluations.

To provide a scientific peer review of this framework document, EPA's Risk Assessment Form has organized a workshop of approximately 22 experts in areas relevant to ecorisk assessment. The workshop will be organized around the major sections of the document, including:

- A proposed paradigm for ecorisk assessment,
- Procedures for planning an ecorisk assessment,
- Hazard assessment, which includes both hazard identification and stressor-response analysis,
- Exposure assessment, and
- Risk characterization.

The framework document will promote consistent Agency approaches to ecorisk assessments, identify issues and research needs, and aid in the subsequent development of future ecorisk guidelines. A proposal for public comment will appear in a future issue of the **Federal Register**.

Dated: April 15, 1991.

Erich Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 91-10419 Filed 5-1-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3953-3]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: U.S. Environmental Protection Agency.

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ACTION: Notice of meeting of the Citizens Advisory Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program Citizens Advisory Committee will hold a meeting on May 15–18, 1991, at the Holiday Inn, 2400 Beach Blvd, Biloxi, MS.

FOR FURTHER INFORMATION CONTACT: Mr. William Whitson, Gulf of Mexico Program Office, Stennis Space Center, MS 39529 at (601) 688–3726, FTS 494–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Citizens Advisory Committee of the Gulf of Mexico Program will be held on May 16–18, 1991 at the Holiday Inn in Biloxi, Mississippi. Agenda items will include status reports to the Committee on 1992 Year of the Gulf planning, Coastal America Budget Initiative, Boater's Pledge, Take Pride Gulfwide, Gulf Symposium '92, a briefing on the Sunbelt Caucus meeting, a status report on the Gulf of Mexico Foundation, and the current Action Plans status. The meeting is open to the public.

Joseph R. Franzmathes,

Assistant Regional Administrator for Policy and Management.

[FR Doc. 91–10420 Filed 5–1–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3963–2]

Gulf of Mexico Program Policy Review Board Meeting

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Policy Review Board of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program Policy Review Board will hold a meeting on Wednesday, May 29, 1991, at the Tampa Airport Marriott Hotel, Tampa International Airport, Tampa, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. William Whitson, Gulf of Mexico Program Office, Building 1103, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726, FTS 494–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Policy Review Board (PRB) of the Gulf of Mexico Program will be held on May 29, 1991 at the Tampa Marriott Hotel in Tampa, Florida starting at 8:30 a.m. and ending at 2:30 p.m. Agenda items will include reports to the Committee on 1992 Year of the Gulf planning, future PRB meeting schedules, PRB membership, the Mobile Bay Demonstration Project, a briefing on the Sunbelt Caucus meeting, status, report on the Gulf of Mexico Foundation, and current Action Plans status. The meeting is open to the public.

Joseph R. Franzmathes,

Assistant Regional Administrator for Policy and Management.

[FR Doc. 91–10421 Filed 5–1–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–44568; FRL 3891–7]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on isopropanol (CAS No. 67–63–0), submitted pursuant to a final test rule. Test data was also received on octamethylcyclotetrasiloxane (OMCTS) (CAS No. 556–57–2), submitted pursuant to a consent order. All test data were submitted under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for isopropanol were submitted by the Chemical Manufacturers Association Isopropanol Panel on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.2325. They were received by EPA on February 27, 1991. The submissions describe a 2–week repeated dose limb grip strength validation study with acrylamide in rats, and a 2–week repeated dose functional observational battery validation study with acrylamide and iminodipropionitrile in rats. Neurotoxicity testing is required by this test rule. This chemical is used as a solvent in consumer products and industrial products.

Test data for OMCTS were submitted by the Silicones Health Council on behalf of the SHC member companies that sponsored the studies, and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on April 10, 1991. The submissions describe a subchronic toxicity to midge larvae chironomus tentans under flow-through conditions. Environmental effects testing is required by this consent order. This chemical is used primarily as an intermediate in the production of polydimethylsiloxane.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44568). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: April 23, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91–10422 Filed 5–1–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS–59907; FRL 3893–5]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46086) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 8 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 91–127, April 22, 1991.
Y 91–129, 91–130, April 24, 1991.
Y 91–133, April 28, 1991.
Y 91–134, April 29, 1991.
Y 91–135, May 7, 1991.
Y 91–136, May 2, 1991.
Y 91–137, May 6, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 91–127

Manufacturer. Confidential.

Chemical. (G) Hydroxyl terminated, linear saturated polyester.

Use/Production. (G) Component of a formulated adhesive. Prod. range: Confidential.

Y 91–129

Manufacturer. Confidential.

Chemical. (G) Norbornene polymer derivative.

Use/Production. (G) Resin for injection and extrusion molding. Prod. range: Confidential.

Toxicity Data. Mutagenicity: negative.

Y 91–130

Manufacturer. Confidential.

Chemical. (G) Acrylic acid, acrylate copolymer.

Use/Production. (G) Processing and for surfactant system. Prod. range: Confidential.

Toxicity Data. Mutagenicity: negative. Skin sensitization: negative species (guinea pig).

Y 91–133

Manufacturer. Moore Business Forms, Inc.

Chemical. (G) Polyisoprene Cis-1,4 grafted with methyl methacrylate and styrene.

Use/Production. (S) Paper adhesive component. Prod. range: 11,000–18,600 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > g/kg species (rat). Eye irritation: none species (rabbit). Skin sensitization: negligible species (rabbit).

Y 91–134

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Amine reacted polymer of an aliphatic isocyanate with a polycaprolactone diol.

Use/Production. (G) A polyurethane elastomer to be used in an open nondispersive manner. Prod. range: Confidential.

Y 91–135

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Amine reacted polymer of aliphatic isocyanate with polyester diol.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 91–136

Importer. Powdertech Corporation.

Chemical. (G) Alkyd resin, polymer.

Use/Import. (G) Open, nondispersed. Import range: 1,500–2,000 kg/yr.

Y 91–137

Manufacturer. Confidential.

Chemical. (G) Modified vegetable oil.

Use/Production. (G) Coating. Prod. range: Confidential.

Dated: April 25, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–10423 Filed 5–1–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1844]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

April 26, 1991.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452–1422. Oppositions to these petitions must be filed May 20, 1991.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of parts 15 and 68 of the Commission's Rules Regarding Cordless Telephones. (Gen Docket No. 89–605, RM–6537) Number of Petitions Received: 1

Subject: Amendment of part 94 of the Commission's Rules to Permit Private Video Distribution Systems of Video Entertainment Access to the 18 GHz Band. (PR Docket No. 90–5) Number of Petitions Received: 2

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–10318 Filed 5–1–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Port Authority of New York & New Jersey et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200501.

Title: Port Authority of New York & New Jersey/Hapag Lloyd (America) Inc. Container Incentive Agreement.

Parties: Port Authority of New York & New Jersey (Port Authority), Hapag–Lloyd (America) Inc. (Carrier).

Synopsis: The Agreement provides for the Port Authority to pay the Carrier $25.00 per import container and $50.00 per export container with cargo loaded or unloaded from a vessel at a marine terminal in the Port of New York/New Jersey. The Carrier shall submit to the Port Authority an invoice for all containers for which it seeks payment pursuant to the terms and conditions under this agreement.

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Agreement No.: 224-200500-001.
Title: South Carolina State Ports Authority/ABC Containerline Terminal Agreement.
Parties: South Carolina State Ports Authority ABC Containerline (ABC).
Synopsis: The Agreement, filed April 22, 1991, amends the parties' basic agreement to allow ABC to pay a reduced rate of $50 per empty container for 300 empty containers to be discharged from ABC vessels through October 15, 1991.

Agreement No.: 224-200506.
Title: Indiana Port Commission/Lakes and Rivers Transfer, A Division of Jack Gray Transport, Inc. Terminal Agreement.
Parties: Indiana Port Commission (Port), Lakes and Rivers Transfer, A Division of Jack Gray Transport, Inc. (L & R).
Synopsis: The Agreement, filed April 22, 1991 provides for L & R to operate and provide public services at the Port's general cargo terminal facilities at the Port of Indiana at Burns International Harbor. The Agreement's term expires December 31, 1994.

Agreement No.: 224-200503, 224-200503-001, 224-200503.002, 224-200504 and 224-200504-001.
Title: Port of Galveston/Del Monte Fresh Fruit Company Terminal Agreement.
Parties: Port of Galveston, Del Monte Fresh Fruit Company.
Synopsis: The Agreements provide for incentive rates for wharfage, dockage, truck parking, installation of reefer plugs, and preferential first call and shed space at Pier 18 at the Port of Galveston.

Agreement No.: 224-200507.
Title: Port Authority of New York & New Jersey/Bermuda Container Line, Ltd. Container Incentive Agreement.
Parties: Port Authority of New York & New Jersey (Port Authority), Bermuda Container Line, Ltd. (Carrier).
Synopsis: The Agreement provides for the Port Authority to pay the Carrier $25.00 per import container and $50.00 per export container with cargo loaded or unloaded from a vessel at a marine terminal in the Port of New York/New Jersey. The Carrier shall submit to the Port Authority an invoice for all containers for which it seeks payment pursuant to the terms and conditions under this agreement.

Agreement No.: 224-200505.
Title: State of Hawaii/Matson Terminals, Inc. Terminal Agreement.
Parties: State of Hawaii, Matson Terminals, Inc. (Matson).
Synopsis: The Agreement provides for Matson's lease of certain electrical power easements at the Container Handling Facility Kawaihae Harbor, Hawaii, Hawaii.

By Order of the Federal Maritime Commission.

Dated: April 26, 1991.

Joseph C. Polking,
Secretary.

[FR Doc. 91-10312 Filed 5-1-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bancorp Hawaii, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that has been determined to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 21, 1991.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Bancorp Hawaii, Inc.*, Honolulu, Hawaii; to engage *de novo* through its subsidiary, Bancorp Investment Group, Ltd, Honolulu, Hawaii, in providing securities brokerage services pursuant to § 225.25(b)(15); providing investment advisory services pursuant to § 225.25(b)(4); providing securities brokerage and investment advice on a combined basis to institutional and retail customers; and providing services incidental to the above.

Board of Governors of the Federal Reserve System, April 26, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 91-10353 Filed 5-1-91; 8:45 am]

BILLING CODE 6210-01-F

DNB Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 21, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *DNB Financial Corporation*, Mullins, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Davis National Bank, Mullins, South Carolina.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Colony Bankcorp, Inc.*, Fitzgerald, Georgia; to acquire 100 percent of the voting shares of Worth Federal Savings and Loan Association, Sylvester, Georgia ("Worth"). Worth's charter will be converted to a bank charter, and the institution will be known as The Bank of Worth.

2. *Synovus Financial Corporation*, Columbus, Georgia, and TB&C Bancshares, Inc., Columbus, Georgia; to merge with CB Bancshares, Inc., Fort Valley, Georgia, and thereby indirectly acquire The Citizens Bank, Fort Valley, Georgia, and The Citizens Bank of Cochran, Cochran, Georgia.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Bankshares-Luxemburg, Inc.*, Luxemburg, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank-Luxemburg, Luxemburg, Wisconsin, a *de novo* bank.

2. *Great Lakes Financial Resources, Inc. Employee Stock Ownership Plan*, Homewood, Illinois; to acquire an additional 1.26 percent of the voting shares of Great Lakes Financial Resources, Inc., Homewood, Illinois, for a total of 40.6 percent, and thereby indirectly acquire First National Bank of Blue Island, Blue Island, Illinois; Bank of Homewood, Homewood, Illinois; and Community Bank of Homewood-Flossmoor, Homewood, Illinois.

3. *Summcorp*, Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Parker Bank Holding Corporation, Indianapolis, Indiana, and thereby indirectly acquire The Parker Banking Company, Parker City, Indiana.

Board of Governors of the Federal Reserve System, April 26, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 91-10354 Filed 5-1-91; 8:45 am]

BILLING CODE 6210-01-F

FEO Investments, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 21, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FEO Investments, Inc.*, Hoskins, Nebraska; to acquire Hoskins Insurance Agency, Hoskins, Nebraska, and thereby engage in the sale of general insurance in Hoskins, a town with a population of less than 5,000, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 26, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 91-10355 Filed 5-1-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Personnel Administration; Statement of Organization Functions and Delegations of Authority

This notice amends part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) by realigning functions in the Office of the Assistant Secretary for Personnel Administration, Chapter AH-20 Functions (50 FR 20853, 5/20/85). These changes redistribute the functions of three Divisions and two Staff Offices in chapter AH, section AH-20 Functions, paragraph E. Office of Human Relations (OHR) into two Divisions and one Staff Office. The revised statement is as follows:

Delete paragraph "E. The Office of Human Relations in its entirety and replace with the following:

E. The Office of Human Relations (OHR). Provides Leadership in assuring the integrity, effectiveness and impartiality of the Department's discrimination complaints, investigations and alternative dispute resolution programs; non-bargaining unit employee conduct and discipline; grievances; and merit systems program. Participates in the formulation and implementation of personnel policies, practices and matters affecting bargaining unit employees' working conditions by assuring management's compliance with the Federal Labor Relations program (5 U.S.C. chapter 71). Provides staff support and counsel to the Operating Divisions, Regional Offices, the ASPER, the Deputy Secretary, and the Secretary on the operation of these processes.

Formulates and implements regulations and operating instructions governing discrimination complaint intake, investigation and alternative dispute resolution methods; employee conduct and discipline; grievance reconsiderations; and for disposition of complaints involving alleged prohibited personnel practices and merit systems violations. Provides leadership in the identification and implementation of methods of resolving management-employee conflicts. Conducts reviews and other assessments of existing conflict resolution processes to identify opportunities for improvement of human relations within the Department; recommends changes to, or

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modifications of, existing processes where appropriate.

Monitors and disseminates administrative and judicial case law concerning employment discrimination and labor-management matters. Provides legal assistance and guidance to the ASPER on matters under the functional jurisdiction of OHR. Carries out responsibilities under Civil Rights Reviewing Authority.

1. Program Support Staff. Provides centralized management support services to OHR organizational components, among them: Serves as a focal point for the receipt, control and distribution of all office mail, including formal complaints and related correspondence, hearing requests and related correspondence, requests for grievance reconsideration, and Reports of Investigation. Maintains liaison with the ASPER Administrative Office and carries out resource management activities relative to budget justification, preparation, and execution; procurement; inventory control; space management; performance management, etc. Serves as focal point for annual and *ad hoc* reports; and other guidelines governing OHR's functions.

Prepares final agency action on EEO complaints presenting conflicts of interest involving OPDIV/STAFFDIV officials. Receives and refers to EEOC for necessary action all class complaints of discrimination. Provides all necessary liaison with EEOC regarding class complaints and prepares final decisions on class complaints.

2. Complaints Division. Identifies issues in EEO complaints that are acceptable for processing; develops and maintains capability for investigation of discrimination complaints through use of contract investigators, through other Federal agencies on a reimbursable basis, and through use of in-house staff; investigates and makes recommendations for disposition of complaints involving alleged prohibited personnel practices and merit systems violations. Responsible for the implementation of initiatives designed to use mediation techniques directed toward expeditious and amicable resolution of discrimination complaints. Where appropriate, conducts analysis of complaint file and recommends final agency action. Drafts final Departmental action on complaints of discrimination; negotiates and coordinates settlements with OGC and, where appropriate, with OPDIVs and STAFFDIVs; recommends corrective and remedial actions. Ensures necessary compliance with EEOC and Departmental decisions. Serves as contact point with EEOC on all hearings and appellate matters.

Develops, coordinates and provides guidance on discrimination complaints, hearings, appeals, remands, and attorney's fees. Participates in Departmental training initiatives with respect to EEO Counselors', investigation and mediation training. Reviews OPDIV/STAFFDIV proposed issuances and final actions on matters under the Division's functional program jurisdiction.

Develops and/or maintains systems for electronic tracking of workload and related activities.

3. Labor-Management and Employee Relations Division. Formulates and oversees the implementation of Department-wide policies, regulations, instructions, delegations and procedures pertaining to labor-management and employee relations; serves as the HHS central focal point for inquiries, guidance, research and interpretation of labor-management and nonbargaining unit employee conduct and discipline issues; acts as HHS representative with the Office of Personnel Management, the Federal Labor Relations Authority, management officials in Federal, state, local, and private sector organizations and labor unions and other employee organizations at the international and national levels. Receives and impartially examines requests for reconsideration of decisions issued under the Department's formal grievance system.

Administers HHS national consultation program with appropriate unions under 5 U.S.C. 7113; administers HHS labor agreement approval process as required by 5 U.S.C. 7114; coordinates HHS dues withholding program as required by 5 U.S.C. 7115; coordinates HHS level duty to bargain obligation including developing and arguing compelling need and Agency Head negotiability determination as required by 5 U.S.C. 7117.

Participates in development and implementing of cooperative labor-management employee relations programs throughout HHS to achieve HHS management and OHR objectives; identifies information and coordinates indexing and dissemination through OHR management information systems; acts as representative for HHS in third party processes involving Department-wide labor-management and employee relations issues; provides leadership in developing and maintaining effective and innovative management representation by labor-management and employee relations professionals Department-wide.

Develops innovative dispute resolution approaches to resolve and prevent disputes and conflict in the DHHS workforce. Participates in initiatives directed toward expeditious and amicable resolution of complaints, grievances and labor-management disputes. Conducts mediation and negotiation training for Departmental and outside participants through cooperative arrangements.

Dated: April 23, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-10414 Filed 5-1-91; 8:45 am]

BILLING CODE 4150-04-M

Administration for Children and Families

Meeting of the U.S. Advisory Board on Child Abuse and Neglect

Agency Holding the Meeting: Administration for Children, Youth, and Families.

Times and Dates: 9 a.m.–12 p.m., April 29, 1991.

Place: Humbert H. Humphrey Building, room 337A, 200 Independence Avenue, SW., Washington, DC.

Status: The meeting is closed to public observation.

Matters to be considered: At this meeting the U.S. Advisory Board will review the material on which the May 9 testimony of the Chairperson before the House Select Subcommittee on Education will be based. Accordingly, the meeting will be concerned with a document that is exempt from mandatory disclosure under section 552(b)(5) of title 5, United States Code and it is essential to close the meeting in order to protect the free exchange of internal views among Advisory Board members and to avoid undue interference with the operation of the Advisory Board.

This notice is being published less than 15 days before the meeting because the Advisory Board members have only now learned that a majority of the membership will be in Washington on April 29 for other purposes and additional input is needed to prepare the Chairperson's testimony for May 9.

Contact Person for More Information: Eileen H. Lohr, Program Assistant, U.S. Advisory Board on Child Abuse and Neglect, room 2433 Switzer Building, Washington, DC 20201, (202) 245-6670.

Dated: April 25, 1991.

Byron D. Metrikin-Gold,

Executive Director U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 91-10316 Filed 5-1-91; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Request for Nominations for Members of Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on certain public advisory committees in the Center for Biologics Evaluation and Research. Nominations will be accepted for current vacancies and vacancies that will or may occur on the committees during the next 12 months and beyond.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for receipt of nominations.

ADDRESSES: All nominations for membership, except for consumer-nominated members, should be sent to Jack Gertzog (address below). All nominations for consumer-nominated members should be sent to Naomi Kulakow (address below).

FOR FURTHER INFORMATION CONTACT: Regarding all nominations for membership, except for consumer-nominated members: Jack Gertzog, Center for Biologics Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

Regarding all nominations for consumer-nominated members: Naomi Kulakow, Office of Consumer Affairs (HFE-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of members for the following three advisory committees for vacancies listed below. Individuals should have expertise in the activity of the committee.

1. *Allergenic Products Advisory Committee:* Three vacancies occurring August 31, 1991.

2. *Blood Products Advisory Committee:* Four vacancies occurring September 30, 1991.

3. *Vaccines and Related Biological Products Advisory Committee:* Three vacancies occurring January 31, 1992.

The functions of the committees listed above are: (1) to review and evaluate available scientific, technical, and medical data concerning the safety, effectiveness, and appropriate use of allergenic products, blood and products derived from blood and serum, vaccines, immunological products, and other biological products intended for use in the diagnosis, prevention, or treatment of human diseases; and (2) to make appropriate recommendations to the Commissioner. These three committees also review and evaluate intramural research programs.

Criteria for Members

Persons nominated for membership on the committees described above must have adequately diversified research and/or clinical experience appropriate to the work of the committee in such fields as allergenic products, infectious diseases, internal medicine, epidemiology, statistics, hematology, immunology, blood banking, virology, bacteriology, pediatrics, microbiology, nuclear biology, and biochemistry, or other appropriate areas of expertise.

The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but my include experience in medical practice, teaching, research, and/or public service relevant to the field of activity of the committee. The term of office is 4 years.

Criteria for Consumer-Nominated Members

FDA currently attempts to place on each of the committees described above one voting member who is nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations which has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. This would involve, for example, an understanding of research design, benefit/risk, and the legal requirements for safety and efficacy of the products under review, and considerations regarding individual products. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is 4 years. Nominations for all committees listed above are invited for consideration for membership as openings become available.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Nominations shall specify the committee for which the nominee is recommended. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. App. 2) and 21 CFR part 14, relating to advisory committees.

Dated: April 25, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-10373 Filed 5-1-91; 8:45 am]

BILLING CODE 4160-01-M

Request for Nominations for Members and Public Advisory Committees in the Center for Drug Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on certain public advisory committees in the Center for Drug Evaluation and Research. Nominations will be accepted for current vacancies and vacancies that will or may occur on the committees during the next 12 months and beyond.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees.

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Therefore, FDA extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to met specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for receipt of nominations.

ADDRESSES: All nominations for membership, except for consumer-nominated members, should be sent to Jack Gertzog (address below). All nominations for consumer-nominated members should be sent to Naomi Kulakow (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding all nominations for membership, except for consumer-nominated members:

Jack Gertzog, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

Regarding all nominations for consumer-nominated members:

Naomi Kulakow, Office of Consumer Affairs (HFE-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of members for the following 12 advisory committees for vacancies listed below. Individuals should have expertise in the activity of the committee.

1. *Anti-Infective Drugs Advisory Committee:* One vacancy occurring immediately, and four vacancies occurring November 30, 1991.

2. *Antiviral Drugs Advisory Committee:* One vacancy occurring immediately, and three vacancies occurring October 31, 1991.

3. *Arthritis Advisory Committee:* Three vacancies occurring September 30, 1991.

4. *Dermatologic Drugs Advisory Committee:* Three vacancies occurring August 31, 1991.

5. *Endocrinologic and Metabolic Drugs Advisory Committee:* One vacancy occurring June 30, 1991.

6. *Fertility and Maternal Health Drugs Advisory Committee:* Two vacancies occurring June 30, 1991.

7. *Gastrointestinal Drugs Advisory Committee:* Three vacancies occurring June 30, 1991, including that of the consumer-nominated member.

8. *Medical Imaging Drugs Advisory Committee:* Three vacancies occurring June 30, 1991.

9. *Oncologic Drugs Advisory Committee:* Two vacancies occurring June 30, 1991.

10. *Psychopharmacologic Drugs Advisory Committee:* Two vacancies occurring June 30, 1991.

11. *Pulmonary-Allergy Drugs Advisory Committee:* Three vacancies occurring June 30, 1991.

The functions of the 11 committees listed above are to review and evaluate available scientific, technical, and medical data concerning the safety and effectiveness of marketed and investigational human drugs for use in the area of medical specialties, indicated by the title of the committee, and to make appropriate recommendations to the Commissioner of Food and Drugs.

12. *Drug Abuse Advisory Committee:* Four vacancies occurring June 30, 1991.

The functions of the Drug Abuse Advisory Committee are to: (1) Advise the Commissioner regarding the scientific and medical evaluation of all information gathered by the Department of Health and Human Services (DHHS) and the Department of Justice regarding the safety, efficacy, and abuse potential of drugs or other substances; and (2) recommend actions to be taken by DHHS regarding the marketing, investigation, and control of such drugs or other substances.

Criteria for Members

Persons nominated for membership on the committees described above must have adequately diversified research and/or clinical experience appropriate to the work of the committee in such fields as allergy, anesthesiology, surgery, infectious diseases, rheumatology, cardiology, dermatology, endocrinology, obstetrics and gynecology, gastroenterology, oncology, neurology, psychiatry, nuclear medicine, internal medicine, epidemiology, statistics, hematology, pediatrics, microbiology, nuclear biology, biochemistry, or other appropriate areas of expertise.

The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, research, and/or public service relevant to the field of activity of the committee. The term of office is 4 years.

Criteria for Consumer-Nominated Members

FDA currently attempts to place on each of the committees described above one voting member who is nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations which has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. This would involve, for example, an understanding of research design, benefit/risk, and the legal requirements for safety and efficacy of the products under review, and considerations regarding individual products. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technial qualifications and specialized training required of other expert members of the committee. The term of office for these members is 4 years. Nominations for all committees listed above are invited for consideration for membership as openings become available.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Nominations shall specify the committee for which the nominee is recommended. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. App. 2) and 21 CFR part 14, relating to advisory committees.

Dated: April 25, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-10372 Filed 5-1-91; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Meeting of the Program Advisory Committee on the Human Genome

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Program Advisory Committee on the Human Genome and the NIH-DOE Joint Subcommittee on June 25, 1991, at the National Institutes of Health, Bethesda, Maryland. The meeting will take place from 9:30 a.m. to 5 p.m. on June 25, in Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland. The meeting will be open to the public.

This will be the sixth meeting of the Program Advisory Committee on the Human Genome and the fourth meeting of the NIH-DOE Joint Subcommittee. The purpose of the meeting is to discuss the planning, organization, and progress of the human genome project.

Dr. Elke Jordan, Deputy Director of the National Center for Human Genome Research, National Institutes of Health, Building 38A, room 609, Bethesda, Maryland 20892 (301) 496-0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Dated: April 29, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-10496 Filed 5-1-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Deafness and Other Communicative Disorders; Meeting of the Research Priorities Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Research Priorities Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on May 14, 1991. The meeting will take place from 10 a.m. to 12 noon in Conference Room 8, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting which will be open to the public is being held to discuss the research priorities of the National Institute on Deafness and Other Communication Disorders. Attendance by the public will be limited to space available.

Summaries of the Board's meeting and a roster of members may be obtained from Mrs. Monica Davies, National Institute on Deafness and Other Communication Disorders, Building 31, room B2C06, National Institutes of Health, Bethesda, Maryland 20892, 301-402-1129, upon request.

Notice of the meeting has not been published the requisite 15 days in advance due to scheduling difficulties.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communicative Disorders.)

Dated: April 29, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-10495 Filed 5-1-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-91-3290]

The Performance Review Board

AGENCY: Office of the Secretary, Department of Housing and Urban Development.

ACTION: Notice of appointment.

SUMMARY: The Department of Housing and Urban Development announces the appointment of Jim E. Tarro as Vice-Chairperson to the Departmental Performance Review Board. The Board's address is: Department of Housing and Urban Development, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Elmer Lee, Acting Director, Office of Personnel and Training, Department of Housing and Urban Development, Washington, DC 20410, telephone (202) 708-2000. (This is not a toll free number.).

Dated: April 24, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91-10401 Filed 5-1-91; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Mississippi Sandhill Crane for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the Mississippi sandhill crane. The crane occurs on private and federal lands in Jackson County, Mississippi. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before July 1, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Complex Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, MS 39213 (601-965-4900). Written comments and materials regarding the plan should be addressed to the Complex Field Supervisor at the above address. The plan, and comments and materials received, are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ren Lohoefener at the above address (601-965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Mississippi sandhill crane (*Grus canadensis pulla*) is an endangered species under the Endangered Species Act of 1973, as amended. Today, this population of cranes is only found on or near the Mississippi Sandhill Crane

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National Wildlife Refuge in Jackson County, Mississippi. It is endangered because of loss of habitat, small population, and low natural recruitment. The plan is a draft of the third revision of the original plan, which was approved in 1976. The third revision updates what is known about the crane's life history and defines new recovery tasks and criteria to recover the species.

Public Comments Solicited

The Service solicits written comments on recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Robert G. Bowker,

Complex Field Supervisor

[FR Doc. 91-10382 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Indian Affairs

Facilities Improvement and Repair Priority List for Fiscal Year 1991

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

The Facilities Improvement and Repair (FI&R) list has been prepared for Fiscal Year 1991. The list is published in accordance with House Report Number 98-886, page 52, which directs the Bureau to revise the FI&R priority system by publishing in the Federal Register each fiscal year, the national list of projects expected to be accomplished that year within the available funds.

The notice for FY 1991 provides the approved list of FI&R projects. The list is not in priority order. Construction of these projects is subject to availability of funds. The list is based upon the Bureau's criteria for ranking projects as published in the Federal Register, volume 51, number 30, February 13, 1986, page 5415.

The projects for FY 1991 are:

Mitigation of Code Deficiencies
Roof Repair/Replacement
Flandreau Indian School (Phase II) (SD)
Lower Brule High School (SD)
Ft. Thompson Elementary School (SD)
Jicarilla Agency (NM)
Kickapoo Nation School (KS)
Haskell Indian Junior College (KS)
Crow Agency (MT)
Oneida Tribal School (WI)
Sequoyah High School (OK)
Crownpoint Community School (NM)
Pine Springs Boarding School (AZ)
Navajo Gas Lines (NM, AZ)
Richfield Dormitory (UT)
Sells Headquarters and Santa Rosa School (AZ)
Salt River Headquarters and School (AZ)
Quileute Tribal School (WA)
Paschal Sherman Kitchen-Dining (WA)

FOR FURTHER INFORMATION CONTACT: Virgil Pochop, Director, FAcilities Management and Construction Center, Bureau of Indian Affairs, P.O. Box 1248, Albuquerque, NM 87103 (505) 766-2825.

Patrick A. Hayes,

For Stanley Speaks, Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 91-0383 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

[AK-964-4230-15, F-14851-D, F-14851-E]

Alaska Native Claims Selection; Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to NANA Regional Corporation, Inc., successor in interest to Deering Ipnatchiak Corporation, for approximately 1,230 acres. The lands involved are in the vicinity of Deering, Alaska, within Tps. 6N., Rs. 20 and 21 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Times. Copies of the decision may be obtained by contracting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Archorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation shall have until June 3, 1991 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file and appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 91-10404 Filed 5-1-91; 8:45am]

BILLING CODE 4310-JA-M

[CA-010-01-4212-13, CACA 28113]

Realty Action: Acquisition of Land by Exchange: 25-Year Renewable Lease to the State of California Wildlife Conservation Board, CA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described land is being considered for acquisition, through exchange, and lease under sections 206 and 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716, 43 U.S.C. 1732).

Offered private land:

A parcel of land located in Section 21, Township 5 North, Range 5 East, Mount Diablo Meridian, Sacramento County, California, more particularly described as follows:

From the Northeast corner of Section 21, Township 5, North, Range 5 East, Mount Diablo Meridian, South 43°41'06" West 4895.57 feet to the POINT OF BEGINNING; thence from the POINT OF BEGINNING south 80°54'30" East 464.36 feet to a point; thence South 23°51'19" East 196.00 feet to a point; thence South 60°59'02" West 223.54 feet to a point; thence North 16°02'47" West 278.34 feet to a point; thence North 78°32'00" West 283.07 feet to a point; thence North 17°54'52" East 39.19 feet to the POINT OF BEGINNING.

The parcel of land to which this description applie contains 1.50 acres, more or less.

The above-described parcel would be acquired from the Nature Conservancy (TNC) to provide the site for a Visitors Center at the Consumnes River Preserve, a cooperative conservation effort between Bureau of Land Management (BLM), Ducks Unlimited and TNC, dedicated to the preservation and restoration of the native communities found along the river corridor, including valley oak and wetland habitats. The Visitors Center would be jointly funded and develop by the BLM, TNC, and the State of California Wildlife Conservation Board (WCB).

Following transfer of title to the United States, the 1.5-acre site would be leased to WCB to administratively enable the appropriation of available funds from WCB for construction of the facility. Operation and maintenance of the center would meet the terms of the lease and the center would be managed according to the Cosumnes River Preserve Management Plan.

SUPPLEMENTARY INFORMATION: Acquisition and lease of the subject 1.5-acre parcel would make it possible to construct a visitor center on the periphery of the preserve using funds available from the WCB. The center would serve as the main visitor gathering place, providing parking, picnic tables, restrooms, drinking fountain, interpretative displays and brochures, a canoe-launch area, trailhead access, a docent center, and staff offices. The building site would be located off Franklin road on an existing pad, providing excellent access and visibility. While there would be expansive views of the preserve from the center, it is removed from the primary roosting areas to avoid unnecessary disturbance to sensitive species.

Acquisition of the parcel would be at fair market value under the "TNC/BLM Statewise Exchange Pooling Agreement." The public lands conveyed to TNC to balance the Pooling Agreement accounts have been or will be identified in Notices of Realty Action published in the Federal Register as required by 43 CFR 2201.1.

FOR ADDITIONAL INFORMATION: Contact Kay Miller, (916) 4474 or at the address below.

ADDRESSES: For a period of 45 days from publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

Dated: April 5, 1991.

D.K. Swickard,

Area Manager.

[FR Doc. 91-10406 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-40-M

[UT-020-01-4212-10; U-54826, U-54827, U-54167, U-51469]

Salt Lake District; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Termination of Desert Land Classifications; Utah.

SUMMARY: This action terminates desert land classifications U-51467, U-51469, U-54826, and U-54827.

EFFECTIVE DATE: Termination of the classifications is effective with the publication of this document.

FOR FURTHER INFORMATION CONTACT: Terry Catlin, Pony Express Resource Area, Salt Lake District, 2370 South 2300 West, Salt Lake City, Utah 84119.

SUPPLEMENTARY INFORMATION: The following described lands in Tooele County, Utah were classified as suitable for Desert Land Entry under the act of March 13, 1877 (19 Stat. 377; 43 U.S.C. 321-323 as amended):

	Acres
U-51467, classified Oct. 19, 1965:	
T. 5S., R. 5W., S.L.M. Utah. Section 6, Lots 1-5, S½NE¼, SE¼NE¼	315.20
U-51469, Classified October 19, 1965:	
T. 5S., R.R. 5W., S.L.M., Utah. Section 6, Lots 6 and 7, E½SW¼SE¼	315.69
U-54826, Classified September 13, 1965:	
T. 8S., R. 6W., S.L.M., Utah. Section 14, W½	320.00
U-54827, Classified September 13, 1965.	
T. 8 S., R. 6W., S.L.M., Utah. Section 15, E½	320.00

The lands described above were classified as suitable for Desert Land Entry subject to obtaining sufficient water and an economic study to determine the feasibility of cultivating the land at a profit. It was determined that there was not sufficient water to irrigate the entries and that they could not be cultivated at a profit.

Subsequently, Desert Land Application U-51467 was withdrawn and the remaining entries were rejected. The classifications are no longer considered to be appropriate and are hereby terminated.

The cancellations and rejections were noted to the official records on November 29, 1990 and on the date the lands became open to the operation of the public land laws and location under the mining laws.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 91-10376 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-DQ-M

DEPARTMENT OF THE INTERIOR

[CO-070-01-4212-13]

Intent to Consider Amendment of the Grand Junction Resource Area, Resource Management Plan, 1987, to Address a Proposed Exchange of Bureau of Land Management and Private Lands Near Grand Junction, CO.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to consider Amendment of the Grand Junction Resource Area Resource Management Plan, 1987, and notice of Public Meetings and Public Comment Period to identify issues to be addressed in an Environmental Assessment on the proposed Amendment.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969, and section 202 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Grand Junction Resource Area, will consider an amendment of the Grand Junction Resource Area Resource Management Plan, 1987, and will prepare an Environmental Assessment on the proposed amendment.

SUPPLEMENTARY INFORMATION: The Plan Amendment and Evironmental Assessment are being developed to consider a proposed land exchange in Mesa County, Colorado. The proposal being considered involves exchange of up to 6,440 acres of Bureau of Land Management land in the Hawxhurst Creek area four miles northeast of Collbran, Colorado, for approximately 640 acres of private land along the Colorado River two miles south of Loma, Colorado. The exchange proposal has been made to consolidate public ownership for public recreation along the Colorado River.

Two public meetings will be held concerning this proposal: 7 p.m., June 4, 1991 at the Bureau of Land Management office, 764 Horizon Drive, Grand Junction, Colorado, and 7 p.m., June 5, 1991 at the Collbran Auditorium, corner of Main and High Street, Collbran, Colorado. Written comments on the proposal will be accepted until June 10, 1991. The purpose of these public meetings and public comment period is to identify issues and accept comments concerning the proposed land exchange. An Environmental Assessment and Record Of Decision concerning the proposed Plan Amendment will be prepared following the public comment period.

A Plan Amendment and Environmental Assessment with favorable Record of Decision must be completed prior to proceeding with the proposed land exchange. If the decision is to proceed with a land exchange, a concurrent Notice of Realty Action would also be filed with the Environmental Assessment and Record of Decision. A 30 day public comment and protest period would follow the filing of the Record Of Decision.

All persons who were involved in the initial Plan Amendment process will receive a letter outlining the Record of Decision and may receive copies of the Environmental Assessment upon request.

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FOR FURTHER INFORMATION: Any additional information concerning this proposed land exchange and Amendment of the Grand Junction Resource Area Resource Management Plan, 1987, is available for review in the Grand Junction Resource Area Office, 764 Horizon Drive, Grand Junction, Colorado 81506, or by contacting Carlos Sauvage, Realty Specialist, at (303) 243-6561.

Bruce Conred,

Director Manager.

[FR Doc. 91-40466 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-GD-M

[CO-942-91-4730-12]

Colorado: Filing of Plats of Survey

April 17, 1991.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., April 17, 1991.

The plat (in 10 sheets) representing the dependent resurvey of mineral claims in sections 19 and 20, T. 3 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 679, was accepted February 14, 1991.

This survey was executed to meet certain administrative needs of this Bureau and the Forest Service.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision lines of sections 25, 26, and 35, the subdivision of sections 25 and 26, and the metes-and-bounds survey in section 26, T. 50 N., R. 8 W., New Mexico Principal Meridian, Colorado, Group No. 916, was accepted April 2, 1991.

This survey was executed to meet certain administrative needs of the Park Service.

The plat representing the dependent resurvey of Homestead Entry Survey (H.E.S.) No. 343, T. 10 N., R. 84 W., Sixth Principal Meridian, Colorado, Group No. 932, was accepted March 20, 1991.

This survey was executed to meet certain administrative needs of the Forest Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 5, and a metes-and-bounds survey of lots 6 and 7, in section 5, T. 42 N., R. 4 W., New Mexico Principal Meridian, Colorado, Group No. 961, was accepted April 2, 1991.

This survey was executed to meet certain administrative needs of this Bureau.

The supplemental plat amending lots 5 and 9 and creating new lots 13, 14, 15, 16, 17, 18, and 19, T. 21 S., R. 71 W., Sixth Principal Meridian, Colorado, was accepted March 14, 1991.

This supplemental plat as prepared to meet certain administrative needs of the Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 91-10377 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Notice To Lessees and Operators and Pipeline Right-of-Way Holders

AGENCY: Minerals Management Service, Interior.

ACTION: Notice to Lessees (NTL) and operators of federal oil, gas, sulphur and salt leases and pipeline right-of-way holders in the Outer Continental Shelf, Gulf of Mexico Region.

SUMMARY: Notice is hereby given that the Minerals Management Service (MMS), Gulf of Mexico OCS Region (GOMR), proposes to change its historic shipwreck survey requirements and the areas on the Outer Continental Shelf (OCS) where such surveys will be required. These proposed changes are based on a recently completed study that has better defined and concentrated areas on the Gulf of Mexico OCS where historic shipwrecks are likely to occur. The proposed requirements significantly reduce (approximately 50 percent) the area where historic shipwreck surveys will be required. Based on the study, the GOMR also proposes a more concentrated survey interval (i.e., from 150 meters to 50 meters) in high probability areas of historic shipwrecks to better locate, evaluate, and protect historic period wrecks that may occur in these high probability areas. These proposed changes are specifically described herein and presented as a new NTL which, if adopted, would supersede all previous archaeological NTL's and Letters to Lessees (LTL).

DATES: Comments on the subject proposed NTL must be received on or before June 17, 1991.

ADDRESSES: Comments should be submitted to: Dr. Richard J. Anuskiewicz or Mr. John R. Greene, Office of Leasing and Environment (MS 5400), Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed NTL is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). Dr. Richard J. Anuskiewicz or Mr. John R. Greene, Minerals Management Service, Gulf of Mexico OCS Region, Leasing and Environment, Environmental Operations, Unit 2, MS 5442, telephone (504) 736-2796 or 736-2865.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to the National Historic Preservation Act of 1966 (Pub. L. 89-665), as amended, the National Environmental Policy Act of 1969 (Pub. L. 91-190), and the Outer Continental Shelf Lands Act of 1978 (Pub. L. 95-372), as amended, that the Minerals Management Service, Gulf of Mexico OCS Region, is proposing to amend its historic shipwreck survey requirements. Historic shipwreck survey requirements are currently contained in the GOMR NTL 75-3, Revision No. 1, dated October 1, 1982, titled Outer Continental Shelf, Cultural Resource Requirements for the Gulf of Mexico Region. The NTL proposed herein will supersede all previous archaeological NTL's. The MMS will sponsor a workshop to present background data related to this proposed NTL. The workshop is scheduled for the fourth Thursday from the initial issuance of this Public Notice, and will be held at the MMS Gulf of Mexico Regional Office, at 1201 Elmwood Park Boulevard, New Orleans, Louisiana, in room 111, from 1 to 4 p.m.

Dated: April 24, 1991.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico Region.

Outer Continental Shelf Archaeological Resource Requirements for the Gulf of Mexico OCS Region

April 1991.

The Federal Government's responsibilities in archaeological resource management and protection on the Outer Continental Shelf (OCS) are based on the requirements of the National Historic Preservation Act of 1966, as amended, and on other applicable laws and regulations. The Minerals Management Service (MMS) has issued regulations at 30 CFR 250.33(b)(15), 250.33(o), 250.34(b)(8)(v)(A), 250.34(s), 250.187(a)(5), as well as lease stipulations which, if invoked, require OCS operators to conduct surveys and prepare reports designed to fulfill these archaeological resource legal responsibilities. Notices to Lessees and Operators (NTL) Nos. 74-10 and 75-3 were issued by the Gulf of Mexico OCS Region (GOMR) to implement the provisions of the lease stipulations. On October 1, 1982, NTL No. 75-3 was revised and issued by the GOMR to provide guidance on uniformity and consistency of archaeological resource field surveys and reports.

In June 1987, the MMS contracted with Texas A & M University to update and improve a 1977 historic resources study and to broaden the historic shipwreck database. This study was specifically designed to reevaluate the zone of historic shipwreck high probability. In November 1989 the study was completed. Based on the study results, the MMS has redefined the high probability areas for the occurrence of historic shipwrecks. This has resulted in a substantial reduction in the number of lease blocks in the Gulf of Mexico (i.e., approximately 50 percent) requiring a magnetometer survey. The study also demonstrated a compelling need to increase magnetometer data density in the high probability areas in order that historic shipwreck magnetometer patterns may be recognized. This shall be accomplished by reducing the survey linespacing interval, in the historic shipwreck high probability areas, from 150 meters (m) to 50 m. The NTL is presented as a series of enclosures. Enclosure 1 is titled Requirements for Archaeological Field Surveys. Enclosure 2 is titled Standards for Archaeological Resource Reports. Enclosure 3 is titled Requirements for Mitigation and Operational Restrictions.

The proposed NTL shall be finalized upon completion of the **Federal Register** review and comment period.

Enclosures.

J. Rogers Pearcy,

Regional Director.

Enclosure No. 1.

Requirements for Archaeological Resource Field Surveys

I. Introduction

After a lease is issued the GOMR will:

(1) Notify the operator in writing if the decision is made to invoke the archaeological resource report requirement portion of the stipulation.

(2) Identify to the operator the type of report (historic shipwreck, historic shipwreck/prehistoric site, or prehistoric site) and the standards that shall be required for compliance.

After notification from the GOMR of the decision to invoke the report requirement of the stipulation, the operator shall conduct the appropriate high-resolution remote sensing survey to determine the potential existence of archaeological resources that may be affected by future lease operations. In most cases, the archaeological resource field survey requirements will be similar to those for surveys conducted for shallow hazards or other purposes. The operator in encouraged to conduct the surveys concurrently. Pipeline right-of-way holders are directed to contact the Regional Supervisor, Leasing and Environment, GOMR, for determination of the type of archaeological resource field survey and report that will be required.

In the letter of invocation, the GOMR may reguest to be notified at least 72 hours prior to commencement of the survey so that arrangements can be made for observation of field procedures. An archaeologist and geophysicist need not be present while the archaeological resource field survey is being conducted, but they should be involved in survey planning. The survey shall be conducted prior to submitting an Exploration Plan, Development Operations Coordination Document, or pipeline application which proposes bottom disturbing operations.

When any of the following requirements cannot be met for technical or logistical reasons, an explanation of the problem shall be provided in the archaeological resource report.

II. Data Acquisition Instrumentation

Geophysical instrumentation for archaeological resource field surveys shall be representative of the state-of-the-art in technological development and shall be deployed in a manner which minimizes interference among the instrumentation systems. All data recorders shall be interfaced into the navigation system to assure proper integration of information. The equipment operator shall ensure that all instrumentation is adequately tuned and that all recorded data are readable, accurate, and properly annotated.

The following instrumentation shall be utilized in conducting archaeological resource field surveys:

A. *Magnetometer.* A magnetometer need be used only for historic shipwreck (HS) and historic shipwreck/prehistoric site (HS/PS) surveys. Total field intensity instruments shall be used to determine the possible presence of historic shipwrecks. Data obtained shall be of such quality so as to permit detection and evaluation of magnetic anomalies within the survey area.

The sensor of the magnetometer shall be towed as near as possible to the seafloor; a distance of six meters or less is required. A mechanical or digital depth sensor shall be attached to the magnetometer sensor, and each survey line shall be annotated with tow sensor depth and with the start of the line (SOL) and end of the line (EOL) times.

Magnetometer sensitivity shall be one gamma or less, with the data sampling rate not to exceed one-second intervals. The use of the "zero-mode" setting during magnetometer surveying is prohibited. This surveying mode does not measure the ambient magnetic field as required. Background noise level shall not exceed three gammas peak to peak. Analog strip chart recorders shall be equipped with dual trace pens. Recording scales shall include both 1,000-gamma and 100-gamma full scale, respectively. Shot points and recorder speed must be annotated on the strip charts for each survey line. The GOMR recommends that the strip chart recorder speed be approximately two inches per minute. Whenever possible, the magnetometer should be towed a minimum distance of two and one-half vessel lengths behind the vessel to eliminate the magnetic influence and effect of the vessel.

B. *Dual Channel Side-Scan Sonar.* A dual channel side-scan sonar system shall be used to record continuous planimetric images of the seafloor. The system shall be operated in a manner that provides 100 percent coverage of the seafloor in the survey area. Data obtained should be of such quality so as to permit detection and evaluation of seafloor objects and features within the survey area.

Whenever possible, the side-scan sonar sensor shall be towed above the seafloor at a distance of 10 to 20 percent of the range of the instrument. The vertical sound beam width shall be appropriate to the water depth, and the horizontal sound beam width shall provide optimum resolution. Tuning should be accomplished in a manner that enhances the echo returns from small nearby objects and features without sacrificing the quality of echo returns from more distant objects and features.

C. *Subbottom Profiler.* A subbottom profiler system shall be used to determine the character of near-surface geological features. Data obtained should be of such quality so as to permit evaluation of these features for determining any possible prehistoric archaeological significance. The system

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used shall be capable of providing at least one to two meters of resolution within the upper 15 meters of sediment.

D. *Depth Sounder.* Continuous water depth measurements shall be made using a high-frequency narrow-beam depth sounder. Bathymetric data shall be recorded with a recording sweep appropriate to topography and water depth.

E. *Additional Investigations.* Under certain conditions, MMS may require additional instrumentation and methods such as underwater television; still, video or movie cameras; divers; remote or manned submersibles; coring; and additional geophysical survey lines. The operator will be notified by letter of such requirements at the time of stipulation invocation. Right-of-way pipeline holders are directed to contact the Regional Supervisor, Leasing and Environment to ascertain whether additional instrumentation and methods are required.

III. Survey Parameters

The following navigation and survey pattern requirements shall be adhered to when conducting archaeological resource field surveys:

A. *Navigation.* Navigation for the survey shall be accomplished by using a state-of-the-art continuous positioning system correlated to annotated geophysical records. The system shall have an accuracy of 5 meters or less. The nominal fix spacing shall be no more than 150 meters.

B. *Survey Pattern*—1. *Lease Surveys.* When multiple operations on the lease are planned or probable, it may be advantageous to conduct a lease survey. This survey shall cover the entire area of the lease, as well as that protion external to the lease within which operational activities may cause physical and/or long-term magnetic disturbances. The area of physical disturbances includes, but is not limited to, the area within which drilling vessel anchors may be placed, but does not include the area within which work boat anchors may be placed or the area within which similar minimal disturbances may occur. The survey shall be run along parallel primary lines spaced at a maximum of 50 meters for HS or HS/PS surveys and at a maximum of 300 meters for prehistoric site (PS) surveys with cross-tie lines spaced at a maximum of 900 meters for each type of survey. Tighter line spacing may be required by the GOMR in areas of known significant or potentially significant archaeological resources. The operator will be notified by letter of such requirements at the time of stipulation invocation.

Lease HS and HS/PS surveys which are conducted on lease blocks that have been identified by the letter of invocation as being in water depths greater than 60 m shall have the same survey pattern as lease PS surveys.

2. *Single Drill Site/Platform Surveys (Site Specific Surveys).* These surveys shall be run in an area approximately 914 meters (3,000 ft) square centered upon the proposed drill site with primary lines spaced at a maximum of 50 meters for HS or HS/PS surveys or at a maximum of 300 meters for PS surveys with three equidistant cross-tie lines. Additional survey lines may be necessary so that the area surveyed includes the area within which operations may cause physical and/or long-term magnetic disturbances. Tighter line spacing may be required by the GOMR in areas of known significant or potentially significant archaeological resources. The area of physical disturbances includes, but is not limited to, the area within which drilling vessel anchors may be placed, but does not include the area within which work boat anchors may be placed or the area within which similar minimal disturbances may occur. Single drill site/platform surveys are not required in areas where lease surveys have already provided sufficient archaeological coverage of the area.

Site-specific HS and HS/PS surveys which are conducted on lease blocks that have been identified by the letter of invocation as being in water depths greater than 60 m shall have the same survey pattern as site-specific PS sureys.

3. *Pipeline Surveys*—(a) *Right-of-Way Pipelines.* The survey pattern for all right-of-way pipelines shall include a line along the proposed pipeline route (center line) and offset parallel lines (on either side of the center line) spaced at a maximum of 50 meters of HS and HS/PS surveys. For PS surveys, the survey shall include a line along the proposed centerline with offset parallel lines spaced at a maximum of 300 meters. The number of offset parallel lines must be sufficient to provide adequate survey coverage of the area within which operations may cause physical and/or long-term magnetic disturbances. A minimum of two offset parallel lines shall be required. The area of physical disturbances includes, but is not limited to, the area where pipeline lay barge anchors will be placed.

A survey of a right-of-way pipeline which will be laid in an area where an HS or HS/PS survey is required and will be in water depths greater than 60 meters shall include a center line with offset parallel lines spaced at a maximum of 300 meters. The number of offset parallel lines must be sufficient to provide adequate survey coverage of the area within which operations may cause physical and/or long-term magnetic disturbances. A minimum of two offset parallel lines shall be required.

(b) *Lease-Term Pipelines.* Archaeological resource surveys for lease-term pipelines which will be laid within leases that have been previously surveyed at 50 m line spacing interval (i.e. HS, or HS/PS) are not required. Surveys for lease-term pipelines which will be laid within block(s) that have been previously surveyed and are exclusively considered to have a high potential for prehistoric archaeological resources (i.e. PS) are also not required.

In water depths shallower than 60 meters, surveys for lease-term pipelines on leases designated to have a high probability for historic period shipwrecks (i.e. HS, HS/PS) shall be conducted using the survey pattern discussed in paragraph 3(a) for right-of-way pipelines. Previous surveys of these leases at 150 or 300-meter linespacing will not be adequate.

Surveys for lease-term pipelines which will be laid within leases in water depths greater than 60 meters are not required. However, for these pipelines, an archaeological resource report based on data obtained from a previous shallow hazard survey shall be required.

Enclosure No. 2

Standards for Archaeological Resource Reports

I. Introduction

An evaluation and synthesis of data gathered during an archaeological resource survey shall be included in a report prepared and signed by an archaeologist and a geophysicist. Professional personnel in these fields should have credentials and experience sufficient to ensure that they are able to adequately perform the necessary work. As needed, specialists in other fields may participate in data analysis and report preparation.

All original data used to prepare the archaeological resource report shall be maintained by the lessee or permittee and be made available to the GOMR upon request at any time prior to lease termination or pipeline right-of-way relinquishment.

Prior to commencing any drilling, production, or construction operations, the operator/applicant/permittee shall submit to the Regional Supervisor, Field Operations, an original report and three (3) copies to determine the potential existence of any archaeological resource that may be affected by the operations.

The report shall be based on an assessment of the data from remote-sensing surveys in accordance with the specifications of this NTL, subsequent appropriate LTL's, and other pertinent archaeological and environmental information. Data required for shallow hazard surveys and platform foundation analyses shall generally be sufficient for PS resource reports.

II. Contents of Archaeological Resource Reports

Archaeological resource reports shall include the following information:

A. A description of the area surveyed including lease number(s), block number(s), OCS lease area(s), and water depths.

B. A listing of personnel and duties for individuals involved in survey planning, survey conduct, and report preparation.

C. A discussion of the archaeological resource field survey including the following:

(1) A brief description of the navigation system with a statement of its estimated accuracy for the area surveyed.

(2) A brief description of survey instrumentation including scale, sensitivity settings, sampling rate per second, and tow depths where required.

(3) A description of the survey vessel including vessel size, sensor configuration, navigation antenna locations, and cable lengths.

(4) Vessel speed and course changes.

(5) Sea state and weather conditions.

(6) A copy of the original daily survey operations log.

(7) A description of survey procedures including a statement of survey and record quality, a comparison of survey line crossings, and a discussion of any problems which may affect the ability of the report preparation personnel to determine the potential for archaeological resources in the survey area.

D. A navigation postplot map of the survey area at a scale of 1:12,000 showing survey lines, shot points at *152 meter* (500 foot) intervals, and line direction with Universal Transverse Mercator coordinates, X and Y coordinates, and latitude-longitude reference points from appropriate regional systems. This map, or separate maps at the same scale which also show survey lines, shot points, and line direction, shall be oriented to true north and shall delineate the following, as appropriate:

(1) The horizontal and vertical extent of all relict geomorphic features having potential for associated prehistoric sites. Such areas include, but are not limited to, tidal estuaries, embayments, barrier islands, beach ridge sequences, spits, alluvial terraces, and stream channels. When relict fluvial systems are recorded, the map shall:

(a) Differentiate between generations of channeling when more than one generation is present;

(b) Show any internal channel features such as point bar deposits and terraces;

(c) Delineate any channel margin features such as natural levee ridges; and

(d) Indicate all depths of channel banks and channel axes.

Note: An isopach mat of channel fill sediments is often the most efficient means of conveying the above information, but this method alone will not allow differentiation between more than one generation of channeling.

(2) Bathymetry.

(3) All magnetic anomalies and seafloor side-scan sonar contracts of unknown source (i.e., magentic anomaly, map symbol = ▲; side-scan sonar contact, map symbol = (SSS). The duration of all magnetic anomalies shall be plotted on the survey map at a scale of 1:12,000.

(4) Sites of proposed oil and gas operations (i.e., proposed well locations, platform sites, and/or pipelines), when available at the time of report preparation.

(5) Sites of former oil and gas operations (i.e., abandoned well locations, platform sites, and/or pipelines).

E. If an analysis of the potential for prehistoric sites within the survey area is required, the report shall include:

(1) a review of current existing literature on the late Pleistocene and Holocene geology, paleogeography and sea level change in the area, marine and coastal prehistory, and previous archaeological resource reports in the area, when available. A list of suggested references will be made available upon request.

(2) A discussion of relict geomorphic features and their archaeological potential to include the following:

(a) The type, age, and association of the features mapped;

(b) The acoustic characteristics of channels and their fill material;

(c) Evidence for preservation or erosion of channel margins;

(d) Evidence for more than one generation of fluvial downcutting; and

(e) The sea level curves used in the assessment.

(3) A discussion of the potential for identification and evaluation of buried prehistoric sites based on the capabilities of current technology in relation to the thickness and composition of sediments overlying the area of a potential site.

F. If an analysis of the potential for historic shipwrecks within the survey area is required, the report shall include, as appropriate, the following:

(1) A current review of existing records for reported shipwreck locations in the survey area and adjacent areas;

(2) A list of the magnetic anomalies with the lease block and survey line location (corrected for sensor offset), gamma intensity, lateral extent (duration), whether the anomaly is characterized by a dipolar or monopolar signature, and magnetometer sensor tow depth of each;

(3) A list of side-scan sonar contacts with the lease block and survey line location (corrected for sensor offset), size, shape, and height of protrusion above the seafloor of each;

(4) A discussion of any magnetic anomalies and side-scan sonar contacts of unknown source in terms of their potential as historic shipwrecks;

(5) A discussion of any correlation between magnetic anomalies or side-scan sonar contacts and known or probable sources;

(6) A discussion of the potential for shipwreck preservation in terms of the effects of past and present marine processes; and

(7) A discussion of the potential for identification and evaluation of potential shipwrecks based on the capabilities of current technology in relation to the water depth, probable thickness and composition of sediments overlying the potential shipwreck location, and the preservation potential.

G. Representative data samples, as appropriate, shall be submitted for the following:

(1) A representative sample of subbottom profiler data for each type of relict landform identified. When more than one generation of fluvial channeling is evident, a sample depicting each shall be submitted. Each sample must be readable and include horizontal and vertical scales. Any highlighting of the sample data shall be on a separate overlay rather than directly on the copy. In no instance should original survey data be highlighted. If relict channel features are referenced in the text of the archaeological report, representative copies of the subbottom profiler record of these geologic features shall be included in the report.

(2) A copy of the side-scan sonar data where contacts representing unidentified objects are recorded. The copies must be readable and shall

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include the scale. Any highlighting of the sample data shall be on a separate overlay rather than directly on the copy. In no instance should original survey data be highlighted.

(3) Magnetometer data as follows:

(a) For lease surveys and site specific surveys, a clear copy of three complete lines of magnetometer data. Two of these lines shall be representative data samples of primary survey lines and the third survey line shall be a cross-tie line. The primary survey lines shall be adjacent lines and run in two different cardinal directions (e.g., one survey line heading north and the other heading south). Whenever possible these survey lines shall include unindentified magnetic anomalies.

(b) For pipeline surveys (i.e. lease term or right-of-way) that are three (3) miles or longer in length, a clear copy of approximately one-quarter (25%) of the magnetometer data (analog strip chart) for the center line of the survey. For pipeline surveys less than three (3) miles in length, the entire centerline magnetometer survey shall be submitted. These data shall include representative samples of unidentified magnetic anomalies (if any) that were recorded on the center line. Sample data may be reduced in size for report reproduction. Data quality must be sufficient to clearly depict both the 1000-gamma and 100-gamma scale traces of the analog strip chart recorder.

H. A summary of conclusions and recommendations supported by the archaeological resource field survey data and archaeological analyses including:

(1) A discussion of known or potential archaeological resources;

(2) Recommendations for avoidance or for further archaeological investigations; and/or

(3) Recommendation that operations be permitted because data recovery negates adverse effects to archaeological resources.

I. A discussion of the data and results from any additional investigations that may be required by the GOMR shall be appended to the archaeological resource report.

III. Review of Archaeological Resource Reports

A. The GOMR will determine whether a report meets the requirements contained in the invocation notification and/or this NTL. The review will be conducted by personnel with archaeological, geophysical, and other appropriate expertise. The GOMR will determine if the survey was performed properly and will evaluate the geophysical interpretations and archaeological conclusions.

B. If the report is not adequate or complete, the GOMR will notify the operator or right-of-way holder in writing of the problems and identify what data or information are necessary to correct or complete the report.

C. Based on the GOMR review of the report findings, the GOMR will notify the operator or right-of-way holder in writing of any mitigating measures or operational restrictions which may be required.

D. A previously submitted archaeological resource report may be acceptable for satisfying the archaeological resource report requirements under a new lease agreement, particularly if the lease falls exclusively within the area of high probability for the occurrence of prehistoric archaeological resources. Prior to submittal of an Exploration Plan or Development Operations Coordination Document, the operator shall submit to the Regional Supervisor, Leasing and Environment, a written request for review of an archaeological report prepared for an expired lease to determine its compliance with current MMS requirements. A clean copy of the report to be reviewed shall be included with the operator's request.

Enclosure No. 3

Requirements for Mitigation and Operational Restrictions

A. When an archaeological resource field survey and report indicate that a potential archaeological resource may be present and lease operations or pipeline right-of-way operations are proposed within its immediate area, the GOMR will require the operator or right-of-way holder to either:

1. Locate the operation so as not to adversely affect the area of the archaeological resource; or

2. Establish to the satisfaction of the GOMR that an archaeological resource does not exsit or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the GOMR. A report on the investigation shall be submitted to the GOMR for review.

B. If the GOMR determines that an archaeological resource is present in the area and may be adversely affected by operations, the operator or right-of-way holder will be notified immediately. Under these circumstances, the GOMR is required to engage in additional consultations in accordance with 36 CFR 800.4. The operator or right-of-way holder shall take no action that may adversely affect the archaeological resource until the GOMR has concluded these consultations and has provided the operator with instructions on how to protect the resource.

C. If the operator or right-of-way holder discovers any archaeological resource while conducting operations, a report of the discovery shall be immediately made to the GOMR. The operator or right-of-way holder shall make every reasonable effort to preserve the archaeological resource until the GOMR has issued instructions on how to protect it.

[FR Doc. 91-10370 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Vancouver Historical Study Commission; Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of Vancouver Historical Study Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that a meeting of the Vancouver Historical Study Commission will be held on May 21, 1991 in Vancouver, Washington. The meeting will be held in the Vancouver City Council Chambers, 210 East 13th Street, Vancouver, Washington. It will start at 1 p.m. and is planned to conclude by 5 p.m.

The purpose of the meeting is for the Commission to discuss the scope of its responsibilities and plan what actions are necessary to meet the requirements of Public Law 101-523.

The meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Commission a written statement concerning matters to be discussed. The Chairman may also permit attendees to address the Commission, but may restrict the length of presentations as necessary to allow the Commission to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Ms. Linda Baker, Pacific Northwest Region, National Park Service, 83 South King Street, suite 212, Seattle, Washington 98104 (telephone 206-553-1002). Draft summary minutes of the meeting will be available for public inspection approximately 3 weeks after the meeting, in Park Headquarters, Fort Vancouver National Historic Site, 612 East Reserve Street, Vancouver, Washington.

Dated: April 23, 1991.

William J. Briggle,

Acting Regional Director.

[FR Doc. 91-10302 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-25,560]

Central Sportwear, Norlina, NC; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 18, 1991 in response to a worker petition which was filed on behalf of workers at Central Sportswear, Norlina, North Carolina.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA-W-25,452). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 24th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-10360 Filed 5-1-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,316]

Hercules, Inc., Radford Army Ammunition Plant, Radford, VA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 15, 1990 applicable to all workers producing 120mm ammunition propellant at Hercules, Inc., Radford Army Ammunition Plant, Radford Virginia. The Certification was published in the **Federal Register** on June 28, 1990 (55 FR 26935). The Certification was corrected on April 17, 1991 because the Department inadvertently set the wrong impact date and left out the termination date.

At the request of the State Agency the Department reviewed its corrected certification for workers at the Radford Army Ammunition Plant of Hercules, Inc., and found that workers were covered who were not trade impacted. Accordingly, the Department is amending its certification to include only workers producing DIGL propellant for 120mm ammunition for the tank program. The amended notice applicable to the subject firm is hereby issued as follows: "All workers producing DIGL ammunition propellant at Hercules, Inc., Radford Army Ammunition Plant, Radford, Virginia who became totally or partially separated from employment on or after January 1, 1990 and before January 1, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 25th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-10364 Filed 5-1-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,537]

Megastar Apparel Group Distribution Center, Chester, SC; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 11, 1991 in response to a worker petition which was filed on behalf of workers at Megastar Apparel Group Distribution Center, Chester, South Carolina.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA-W-25,508). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 24th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-10361 Filed 5-1-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,567]

St. Paul Sportwear, St. Paul, VA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 18, 1991 in response to a worker petition which was filed on behalf of workers at St. Paul Sportswear, St. Paul, Virginia.

An active certification covering the petitioning group of workers remains in effect (TA-W-25,104). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 24th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-10362 Filed 5-1-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,071]

Southern Triangle Oil Co., Mt. Carmel, IL and Operating at Various Locations in the Following States: TA-W-22,071A Illinois, TA-W-22,071C Ohio, TA-W-22,071B Indiana, TA-W-22,071D West Virginia; Revised Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

The Department is revising its original certification issued on January 31, 1989 to restore certification coverage inadvertently removed as a result of the additional determination issued on March 1, 1991.

On March 1, 1991 the Department issued a revised certification on reconsideration covering additional workers under the retroactive provisions of the 1988 amendments to the Trade Act. The revised certification had a termination date of November 15, 1987 which inadvertently negated the coverage provided under the original certification, which had an impact date of November 15, 1987. This revised certification was published in the **Federal Register** on March 18, 1991 (56 FR 10575). Accordingly, the Department is revising the certification again by deleting the termination date of November 15, 1987.

The amended notice applicable to TA-W-22071 is hereby issued as follow: "All workers of Southern Triangle Oil Company, Mt. Carmel, Illinois and operating at various other locations in the States listed below who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

TA-W-22,071A Illinois

TA-W-22,071B Indiana

TA-W-22,071C Ohio,

TA-W-22,071D West Virginia

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Signed at Washington, DC this 24th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-10558 Filed 5-1-91; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjstment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than May 13, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 13, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 22nd day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
A.O. Smith Electrical Motors Div. (IBEW)	Mt. Sterling, KY	04/22/91	04/08/91	25,697	Motors.
Andriz Sprout-Bauer (Workers)	Muncy, PA	04/22/91	04/11/91	25,698	Food Processor.
Barclay Sportswear Inc. (Workers)	Waterville, NY	04/22/91	04/12/91	25,699	Sweaters.
Bitwell (ACTWU)	Salisbury, MO	04/22/91	04/09/91	25,700	Slacks.
Capitol Circuits Corp. Printer (Workers)	Boston, MA	04/22/91	04/11/91	25,701	Printers.
Capitol Circuits Corp., Westrex (Workers)	Falls River, MA	04/22/91	04/11/91	25,702	Perinters & Terminals.
CB North American (Workers)	Glens Falls, NY	04/22/91	03/27/91	25,703	Ski/Outerwear.
CB North America (Workers)	North Adams, MA	04/22/91	03/27/91	25,704	Ski/Outerwear.
Chicago Cutlery Co. (Workers)	New Hope, MN	04/22/91	04/12/91	25,705	Cutlery.
Durham Knitting Mills, Inc. (Workers)	Rutledge, TN	04/22/91	04/09/91	25,706	Apparel.
ELCO Processors, Inc. (UFCW)	Bronx, NY	04/22/91	04/10/91	25,707	Fur.
GE Government Comm. System Systems (Workers).	Camden, NJ	04/22/91	03/25/91	25,708	Communication.
Gray Envelope Mfg. (company)	Avenel, NJ	04/22/91	04/10/91	25,709	Envelopes.
Hestoco (Workers)	Elizabethtown, PA	04/22/91	03/28/91	25,710	Sportswear.
Hurd Sales Co., Inc. (Workers)	Utica, NY	04/22/91	03/21/91	25,711	Shoes.
Leonard Electronics Products Co. (Workers)	Brownsville, TX	04/22/91	04/04/91	25,712	Components.
Lowrance Electronics (Workers)	Tulsa, OK	04/22/91	04/12/91	25,713	Sonar Equip.
Marlane Industries, Decaturville Sprts	Decaturville, TN	04/22/91	04/08/91	25,714	Sportswear.
Marlane Industries, Decaturville Sprts	Lexington, TN	04/22/91	04/08/91	25,715	Sportswear.
Marlane Industries, Trousdale Mfg.	Hartsville, TN	04/22/91	04/08/91	25,716	Sportswear.
Mamli Fashions (Workers)	Gleasboro, NJ	04/22/91	04/02/91	25,717	Apparel.
N.R.M. Steelastic (Workers)	Akron, OH	04/22/91	04/02/91	25,718	AC/DC Panels.
OPTO Generic Devices, Inc. (Workers)	Van Horneseville, NY	04/22/91	04/12/91	25,719	Copy Machines.
P.I.E. Nationwide, Inc. (Workers)	Kansas City, MO	04/22/91	04/07/91	25,720	Auto Components.
Reading & Bates Drilling Co. (Workers)	Houston, TX	04/22/91	03/07/91	25,721	Oil & Gas.
Shelby Group Intl., Inc. (Workers)	Houlka, MS	04/22/91	04/09/91	25,722	Gloves.
Sullcraft Industries (Workers)	Rahway, NJ	04/22/91	04/06/91	25,723	Clothing.
Syntrex, Inc. (Workers)	Eatontown, NJ	04/22/91	04/05/91	25,724	Word Processors.
Twin Disc, Inc. (Workers)	Racine, WI	04/22/91	04/08/91	25,725	Auto Parts.
Unitog Inc (ACTWU)	Clinton, MO	04/22/91	04/09/91	25,726	Shirts.
Weather Tamer (Workers)	Columbia, TN	04/22/91	04/01/91	25,727	Outerwear.
Weyerhaeuser Co. (IWA)	North Bend, OR	04/22/91	04/08/91	25,728	Logs.

[FR Doc. 91-10559 Filed 5-1-91; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Native American Programs' Advisory Committee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, and section 401(h)(1) of the Job Training Partnership Act, as amended (29 U.S.C. 1671(h)(1)), notice is hereby given of a meeting of the Job Training Partnership Act Native American Programs' Advisory Committee.

Time and Date: The meeting will begin at 10 a.m. on May 21, 1991, and continue until close of business that day; and will reconvene at 8:30 a.m. on May 22, 1991, and adjourn at 12 p.m. that day. The final hour of the meeting on May 22 will be reserved for participation and presentation by members of the public.

Place: South A and B Meeting Rooms, Sheraton Spokane, North 322 Spokane Falls Court, Spokane, Washington.

Status: The meeting will be open to the public.

Matters to be Considered: The agenda will focus on feedback from the three subcommittees—Performance Standards, Economic Development and Long-Term Planning, and Policy Issuances and Technical Assistance and Training—in addition to a report from the Census Issues Work Group.

CONTACT PERSON FOR MORE INFORMATION: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, United States Department of Labor, room N-4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-535-0500 (this is not a toll-free number).

Signed at Washington, DC, 26th day of April, 1991.

Robert T. Jones

Assistant Secretary of Labor.

[FR Doc. 91-10356 Filed 5-1-91; 8:45 am]

BILLING CODE 4510-30-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 90-7]

Registrability of Costume Designs

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office issues this Notice of Inquiry to advise the public that the Copyright Office is reviewing its practices regarding the registrability of three-dimensional garment or costume designs and to invite public comment, views, and information that will assist the Copyright Office in examining the bases on which copyright protection may inhere in such works. Such an examination may lead to a revison of Copyright Office practices regarding the registration of the three-dimensional aspects costume designs.

DATES: Initial comments should be received on or before July 1, 1991. Reply comments should be received on or before July 31, 1991.

ADDRESSES: Interested persons should submit ten copies of their written comments to the Office of the General Counsel, Copyright Office, Library of Congress, Department 17, Washington, DC 20540. Comments delivered by hand should be submitted to the Office of the Register of Copyrights, Copyright Office, James Madison Memorial Building, room 407, First Street and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

Registration may be obtained for original pictorial, graphic, and sculptural works. Copyright Act of 1976, title 17 U.S.C. 102(a)(5), 408. The category of pictorial, graphic, and sculptural works includes works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned. The designs of useful articles are considered protectible pictorial, graphic, or sculptural works only if, and only to the extent that, such designs incorporate pictorial, graphic, or sculptural features that can be identified separately from, and can exist independently of, the utilitarian aspects of the article. 17 U.S.C. 101 (definition of "pictorial, graphic, and sculputral works").

The Copyright Act defines a "useful article" as "an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information." An article that is normally a part of a useful article is also considered a "useful article." *Id.*

The House Judiciary Committee report accompanying the 1976 Copyright Act explained that through the above definitions of protected subject matter Congress sought to "draw as clear a line as possible between copyrightable works of applied art and uncopyrightable works of industrial design." H.R. REP. NO. 94-1476, 94th Cong. 2d Sess. 55 (1976). The report provided further guidance in a lengthy but invaluable passage:

> A two-dimensional painting, drawing, or graphic work is still capable of being identified as such when it is printed on or applied to utilitarian articles such as textile fabrics, wallpaper, containers, and the like. The same is true when a statue or carving is used to embellish an industrial product or, as in the *Mazer* case, is incorporated into a product without losing its ability to exist independently as a work of art. On the other hand, although the shape of an industrial product may be aesthetically satisfying and valuable, the Committee's intention is not to offer it copyright protection under the bill. Unless the shape of an automobile, airplane, *ladies' dress*, food processor, television set, or any other industrial product contains some element that, *physically or conceptually*, can be identified as separable from the utilitarian aspects of that article, the design would not be copyrighted under the bill. The test of separability and independence from the 'utilitarian aspects of the article' does not depend upon the nature of the design—that is, even if the appearance of an article is determined by esthetic (as opposed to functional) considerations, only elements, if any, which can be identified separately from the useful article as such are copyrightable. *Id.*

(Emphasis added.)

The Copyright Office has generally refused to register claims to copyright in the three-dimensional aspects of clothing or costume design on the ground that articles of clothing and costumes are useful articles that ordinarily contain no artistic sculpture separable from their overall utilitarian shape. Two dimensional design applied to the surface of the clothing may be registered, but this claim to copyright is generally made by the fabric producer rather than the garment or costume designer. Moreover, this claim to copyright is ordinarily made when the two-dimensional design is applied to the textile fabric and before the garment is cut from the fabric.

The 1976 House Report confirms that "ladies' dress" and other clothing cannot be protected by copyright merely on the ground that the appearance of the useful article is determined by esthetic considerations. Over the last few years, however, the Office registered a few narrowly drawn claims [1] in certain three-dimensional fanciful or animal-shaped items that can be worn. Some of these claims have been the subject of litigation.

In *National Theme Productions, Inc.* v. *Jerry B. Beck, Inc.*,[2] the court decided that the costumes before it contained separable artistic authorship sufficient to support a copyright. At the same time, the court acknowledged that the primary purpose of masquerade costumes was to permit the wearer to "masquerade" and that the costumes "lie on the margin of utility."

Recently, the Second Circuit Court of Appeals affirmed on other grounds a district court that held that copyrightable design requires artistic authorship unifluenced by functional considerations. *Whimsicality, Inc.* v. *Rubie's Costumes Co., Inc.*[3] The costumes were, according to this district court, "dominated by utilitarian concerns," with the result that there were no artistic elements apart from the utilitarian shape of the useful article.[4]

The Coppyright Act of 1976 accords no copyright protection to the overall shape of designs if the article has "an utilitarian function that is not merely to portray the appearance of the article or to convey information." [5] As confirmed in the Whimsicality case, the relevant inquiry is whether there is an intrinsic useful purpose, not merely a possible incidental useful purpose.

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[1] No claim, for instance, can be made on the functional design of clothing.

[2] 696 F. Supp. 1348 (S.D.Cal. 1988).

[3] 721 F. Supp. 1566 (E.D.NY. 1989), *aff'd*, 891 F.2d 452 (2d Cir. 1989).

[4] 721 F. Supp. at 1574.

[5] 17 U.S.C. 101 (definition of "useful article"). *Fabrica Inc.* v. *El Dorado Corp.*, 697 F.2d 890, 893 (9th Cir. 1983).

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Subsequently, the Third Circuit reverse a district court's finding that animal nose masks are uncopyrightable as useful articles.[6] The court of appeals found, instead, that the masks were not useful articles because the only function was simply to portray their appearance. Therefore, the novelty masks were excluded from the statutory definition of useful articles. Similarly, the Eighth Circuit upheld copyright in animal bear claw slippers,[7] and a district court in New York upheld copyright in animal shaped children's backpacks,[8] before the Whimsicality case was decided.

Although not a costume design case, the Second Circuit's decision in *Carol Barnhart Inc.* v. *Economy Cover Corp.*,[9] represents an important interpretation of the separability test of the Copyright Act. The Carol Barnhart court denied copyright protection to life-size anatomically correct mannequins because the configurations were "inextricably intertwined with their function to display clothes, and thus the artistic features were inseparable from their utilitarian dimension."[10]

2. Policy Issues Relating to Registration of Costume Designs

In view of the recent case law affecting costume designs, the Copyright Office is reviewing its registration standards as applied to designs of garments and costumes. To maintain consistency with settled copyright principles, we will avoid adopting standards that take marketability, or aesthetic quality, into consideration.

To help us in developing our registration practices, the Office solicits general views about the correct interpretation of the Copyright Act in the case of three-dimensional design of garments and costumes. The Office specifically solicits the public's views and comments on the following:

1. Are all costumes useful articles? If not, which costumes are not useful articles and how can the Copyright Office distinguish between those that are and those that are not useful? Can the Copyright Office register masks of a fanciful character but not a full body costume of the same character? Does it matter if the costume is intended to be worn over clothing?

2. Can a line be drawn by the Copyright Office permitting registration of three-dimensional aspects of some costume designs, perhaps in the case of highly fanciful or animal-like designs, while denying registration of designs of clothing, theatrical costumes, and nonfanciful costumes?

3. If certain three-dimensional design elements of garments or costumes should be protected, what standards should be applied in determining the copyrightability of these elements. How should the Copyright Office apply the separability test of the definition of pictorial, graphic, or sculptural works in the case of garment or costume designs.

4. Does the intention of the artist or designer have any relevance in determining whether a costume contains aesthetic features separate from the functional purpose?

Dated: April 16, 1991.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 91-10310 Filed 5-1-91; 8:45 am]

BILLING CODE 1410-07-M

[6] *Masquerade Novelty, Inc.* v. *Unique Industries, Inc.*, 912 F.2d 663 (3rd Cir. 1990).

[7] *Animal Fair, Inc.* v. *Amfesco Industries, Inc.*, 620 F. Supp. 175 (D. Minn. 1985), *aff'd mem.* 794 F.2d 678 (8th Cir. 1986).

[8] *Act Young Imports, Inc.* v. *Band E Sales Co.*, 673 F. Supp. 672 (S.D.N.Y. 1987).

[9] 773 F.2d 411 (2d Cir. 1985).

[10] 773 F.2d at 41

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[91-35]

NASA Advisory Countil (NAC), Space Science and Applications Advisory Committee (SSAAC), Solar System Exploration Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Solar System Exploration Subcommittee.

DATES: May 20, 1991, 8:30 a.m. to 5:30 p.m.; May 21, 1991, 8:30 a.m. to Noon.

ADDRESSES: National Aeronautics and Space Administration, room 228, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Wesley Huntress, Code SL, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1588).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Solar System Exploration Subcommittee (SSES) provides advice to the Solar System Exploration Division concerning long-range planning in solar system exploration. The SSES will meet to discuss OSSA and exploration strategic planning, and receive reports from the SSES working groups. The Subcommittee is chaired by Dr. Jonathan Lunine and is composed of 25 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

TYPE OF MEETING: Open.

Agenda:

Monday, May 20

8:30 a.m.—Opening Remarks.
8:45 a.m.—Exploration Outreach Synthesis Group Report.
9:30 a.m.—SSES Working Group Reports.
1:30 p.m.—Solar System Exploration Strategic Plan.
4:30 p.m.—Subcommittee Assignments.
5:30 p.m.—Adjourn.

Tuesday, May 21

8:30 a.m.—Program Status Update.
9:30 a.m.—Report of the SSES Instrument Group.
10 a.m.—Technology Strategic Planning.
Noon—Adjourn.

Dated: April 26, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-10402 Filed 5-1-91; 8:45 am]

BILLING CODE 7510-01-M

[91-36]

NASA Wage Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Wage Committee.

DATES: June 24, 1991, 1 p.m. to 3:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 5026, Federal Building 6, 400 Maryland Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John N. Remissong, Code NHM, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2593).

SUPPLEMENTARY INFORMATION: The Committee's primary responsibility is to consider and make recommendations to the NASA Assistant Associate Administrator for Human Resources, on all matters involved in the development and authorization of a Wage Schedule for the Cleveland, Ohio, wage area, pursuant to Public Law 92-392.

TYPE OF MEETING: Closed.

PURPOSE OF MEETING: The Committee will consider wage survey data, local reports, recommendations, and statistical analyses and proposed wage schedule review therefrom.

Dated: April 26, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-10403 Filed 5-1-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome (AIDS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on AIDS announces a small group meeting of Commission members and staff.

DATE AND TIME: Saturday, May 18, 1991, 9 a.m. to 12 noon.

PLACE: San Francisco Hilton on Hilton Square, 333 O'Farrell Street, San Francisco, California 94102, (415) 771-1400.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on AIDS, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: Commission members and staff will meet to discuss the scientific and regulatory aspects of HIV-related research and drug development.

Interpreting services are available for deaf people. Please call out TDD number (202) 254-3816 to request services no later than May 9, 1991.

Dated: April 26, 1991.

Maureen Byrnes,

Executive Director.

[FR Doc. 91-10357 Filed 5-1-91; 8:45 am]

BILLING CODE 6820-CN-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92-463; 86 Stat. 770) notice is hereby given of a public meeting and a closed executive session (pursuant to 5 U.S.C. APP. I, Sections 10(d) and 5 U.S.C. Section 552b(c)). It has been determined that sensitive personal and personnel matters concerning staffing at the Commission will be discussed. The meeting is to be held in Ballroom North, located on the First Floor of the Annapolis Marriott, Annapolis, MD.

DATES: Monday May 20, 1991, 10 a.m.-3 p.m.; Executive Session (closed), 3:15 p.m.-5 p.m.; Tuesday May 21, 1991, 8:30 a.m.-12:30 p.m. Meeting and site visit will be held on Tuesday.

STATUS: The meeting is to be open to the public.

MATTERS TO BE DISCUSSED: The purpose of this public meeting is to enable the Commission members to discuss progress on the research agenda, findings received from prior hearings, and budget and administrative matters.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., suite 300, Washington, DC 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV-F of the Job Training Partnership Act (Pub. L. 97-300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., suite 300, Washington, DC 20005.

Signed at Washington, DC, this 29th day of April, 1991.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 91-10363 Filed 5-1-91; 8:45 am]

BILLING CODE 4510-23-M

OFFICE OF MANAGEMENT AND BUDGET

Transmittal of Within-Session Sequester Report for Fiscal Year 1991 to the President and Congress

April 26, 1991.

Pursuant to the Omnibus Budget Reconciliation Act of 1990, sections 251 and 254, the Office of Management and Budget hereby provides notice that it has submitted a Within-Session Sequester Report for Fiscal Year 1991 to the President, the Speaker of the House of Representatives, and the President of the Senate.

Darrell A. Johnson,

Assistant Director for Administration.

[FR Doc. 91-10417 Filed 5-1-91; 8:45 am]

BILLING CODE 3110-01-M

OVERSIGHT BOARD

Oversight Board Meeting

AGENCY: Oversight Board.

ACTION: Meeting.

DATES: Wednesday, May 15, 1991, 12:30 p.m..

ADDRESSES: Office of Thrift Supervision, 1700 G Street, NW., Washington, DC, Amphitheater, 2nd floor.

FOR FURTHER INFORMATION CONTACT: Brian Harrington, Press Officer, Office of Public Affairs, 1777 F Street, NW., Washington, DC 20232, (202) 786-9672.

SUPPLEMENTARY INFORMATION:

Discussion Agenda:

- Thrift Industry Conditions and Trends.
- National Advisory Board Recommendations.
- Other agenda items to be determined.
- Closed session to follow.

Dated: April 29, 1991.

Jill Nevius,

Committee Management Officer.

[FR Doc. 91-10428 Filed 5-1-91; 8:45 am]

BILLING CODE 2222-01-M

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SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

Rev., Form S-1, File No. 270-58
Rev., Form S-18, File No. 270-119

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed revisions to forms S-1 and S-18, used to register securities pursuant to the Securities Act of 1933. The proposed revisions would not affect the number of filings on either form but may result in a slight increase in the burden hours associated with the filing of form S-18.

Currently, approximately, 1,416 form S-1 registration statements are filed each year and an estimated average of 1,284 burden hours are required per form. Approximately 632 form S-18 registration statements are filed each year and an estimated 1,280 burden hours are required per form. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0065, and 0006), New Executive Office Building, room 3228, Washington, DC 20503.

Dated: April 15, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10997 Filed 5-1-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29122; File No. SR-Amex-90-32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Its Procedures for Handling and Executing Market-On-Close Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 18, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the revised proposed rule change as described in items I, II and III below, which items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its rule 109 to make the procedures currently used to execute market-on-close ("MOC") orders [2] in certain stocks on expiration Fridays applicable to all MOC orders on every trading day.[3] The Amex has requested that the proposal be effective for a one year pilot period.[4]

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] The original proposed rule change, which was filed with the Commission on December 11, 1990, was revised by the Exchange to include a more detailed description of the proposed procedures for handling market-on-close orders. *See* letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Mary Revell, Esq., Branch Chief, SEC, dated April 18, 1991.

[2] An MOC order is a market order that is to be executed in the stock's closing transaction.

[3] *See* exhibit A to File No. SR-Amex-90-32 for the exact language of the text of the proposed rule change.

[4] *See* letter from Claire P. McGrath, Senior Counsel, Amex to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated January 3, 1991.

A. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange proposes to amend its rule 109 to extend to all stocks, every day, the procedure it currently uses to execute MOC orders in certain stocks on expiration Fridays. In 1987, Exchange Rule 109 was amended to implement a specific procedure for handling MOC orders on expiration Fridays in Amex-listed stocks that are components of a stock index on which an option and/or futures contract is traded (*e.g.*, the Standard & Poor's 500 Stock Index).[5] Many trading strategies involving such stock indices require the unwinding of positions in the component stocks at the closing price on expiration Friday, since this is the price upon which index options and some future contracts base their settlement.

On a daily basis, the procedure currently used for handling MOC orders requires in many cases—indeed in all cases when the closing spread is no wider than the minimum fractional change in which the stock in question trades—that MOC orders to buy be executed against the offer, and MOC orders to sell be executed against the bid, assuring that one type of order will *not* receive the final closing price.

The Exchange has become aware that a number of trading techniques and strategies used by institutional investors have been developed which call for a single closing price on a daily basis, not just on expiration Friday.[6] Accordingly, the Exchange proposes to amend Rule 109 to extend to all stocks, every day, the procedure now used to handle MOC orders only in select stocks and only on expiration Fridays.

The proposed procedure provides that all buy and sell MOC orders be paired-off against each other, and if there is an imbalance, that the imbalance be executed against the closing bid if it is on the sell side and against the closing offer if it is on the buy side. The paired-off orders are executed at the same price as the imbalance. If there is no imbalance, the paired-off orders are executed at the last sale on the Exchange prior to the close of trading in that stock. Thus, the procedure assures that all MOC orders in a particular stock will be executed at the same price. In addition, those orders that are paired-off in implementing the procedure are reported as "stopped stock," so that customers with unexecuted limit orders on the specialist's book will know that the MOC transaction was executed outside the regular auction market, and that for this reason their orders may not have participated.

[5] *See* Securities Exchange Act Release No. 34816 (June 19, 1987), 52 FR 23909 (Commission order granting accelerated approval to File No. SR-Amex-87-14).

[6] The Commission approved a New York Stock Exchange, Inc. ("NYSE") proposal to amend its procedures for handling and executing MOC orders (*see* Securities Exchange Act Release No. 28167 (June 20, 1990), 55 FR 26117 (order approving File No. SR-NYSE-89-10 for a one year pilot period)). The Amex proposal to amend its MOC procedures set forth herein is similar in many respects to the NYSE's proposal.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

B. Self Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-90-32 and should be submitted by Mary 23, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 24, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10990 Filed 5-1-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29127; File No. SR-DTC-91-5]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to DTC's Receiver-Authorized Delivery Facility

April 24, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 11, 1991, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a limited revision of the Receiver-Authorized Delivery ("RAD") facility of DTC's Same-Day Funds Settlement ("SDFS") system. As a result of the subject revision, all valued deliveries of commercial paper ("CP") attempted during the final half hour prior to DTC's cutoff time for such deliveries would no longer be subjected programmatically to receiver authorization before being acted upon by DTC.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's SDFS system, for which a number of securities, including CP, are eligible, is a tightly controlled system requiring receivers of attempted securities deliveries to have collateral in their accounts adequate to support settlement debits that would result from the deliveries. In order to reduce reclamations [2] of erroneous deliveries and to limit a receiving participant's exposure to the possibility that its reclamation might be blocked by system controls on the deliverer's account, the SDFS system includes the RAD facility.[3] RAD provides a receiving participant with the option of authorizing deliver orders [4] and payment orders [5] before they are posted to its account. The RAD facility enables each SDFS participant that is a potential receiver to consider and approve or cancel incoming securities deliveries and payment orders above a bilateral dollar limit it selects for each other participant. Additionally, the SDFS system itself programmatically steers certain transactions into the RAD facility for receiving participant consideration. These include substantially overvalued CP deliveries,[6]

[2] A reclamation is the return of securities from the receiving party to the delivering party.

[3] *See* Securities Exchange Act Release No. 25666 (July 6, 1988), 53 FR 26666 (notice of filing and immediate effectiveness of the RAD facility).

[4] A delivery order is an instruction from a participant to DTC directing DTC to deliver securities from the instructing participant's account to the account of another participant.

[5] A payment order is an instruction from a participant to DTC directing DTC to credit the account of the instructing participant and debit the account of another participant.

[6] DTC's criteria for deeming a valued delivery of CP to be overvalued are based upon (1) the difference between the settlement value and the fair market value of the CP being delivered ("settlement difference") and (2) the relationship between the

Continued

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payment orders over $50,000, substantially undervalued and unvalued (*i.e.*, "free") CP deliveries,[7] and all valued transactions entered into the SDFS system during the last half hour, 2:30 p.m. to 3 p.m. eastern time, of the participant data entry day.

Under the proposed rule change, DTC would discontinue programmatically steering valued CP deliveries that are neither substantially overvalued nor substantially undervalued into the RAD facility during the last half hour of the data entry day. CP deliveries will continue to be subject to all other applications of the RAD facility described above. Further, all valued deliveries of SDFS securities other than CP attempted during the final half hour of the data entry day will continue to be programmatically steered into the RAD facility.

As DTC's CP program, inaugurated October 5, 1990, continues to grow, the volume of CP deliveries entered into the SDFS system between 2:30 p.m. and 3 p.m. will also continue to grow. If all CP deliveries entered between 2:30 p.m. and 3 p.m. were to continue to be programmatically steered into the RAD facility, the mechanics of receiver authorization alone would significantly increase the possibility that large numbers of CP transactions that participants expected to settle through DTC could not. This would introduce inefficiencies and the possibility of gridlock into DTC's CP program.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

DTC's CP program was developed in close consultation with the CP Task Force established by the Public Securities Association's Money Market Committee. The CP Task Force, which is composed of representatives of CP broker-dealers, New York Clearing House banks, banks headquartered outside New York, and CP issuers, has continued to meet regularly with DTC to help monitor implementation of the program. The CP Task Force has strongly urged DTC to make the subject revision to the RAD facility. The CP Task Force has advised DTC that because CP transactions tend to be uncomplicated, few deliveries are likely to be erroneous. The CP Task Force also has represented to DTC that in the unlikely event of an erroneous delivery that cannot be reclaimed by 3 p.m., participants in the CP market would be willing to cooperate with one another by accepting free reclamations up to the 6:15 p.m. SDFS free transaction deadline with money settlement taking place outside DTC. The CP Task Force has concluded that the potential benefits of programmatically subjecting to receiver authorization all valued CP deliveries entered during the last half hour of processing are far outweighed by the resulting inefficiencies and risks.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) (A) of the Act and paragraph (e) of rule 19-4 [8] because it constitutes a stated policy with respect to the administration of an existing rule of DTC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, at the address above. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File Number SR-DTC-91-5 and should be submitted by May 23, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10302 Filed 5-1-91; 8:45 am]

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settlement difference and the fair market value of the CP. The criteria are as follows:

(1) If the settlement difference of a valued delivery is less than $50,000, DTC will not automatically send this delivery through RAD;

(2) If the settlement difference of a valued delivery is between $50,000 and $150,000 and if the settlement difference is equal to or greater than 50% of the fair market value of the CP, DTC will automatically send this delivery through RAD;

(3) If the settlement difference of a valued delivery is between $150,000 and $250,000 and the settlement difference is equal to or greater than 25% of the fair market value of the CP, DTC will automatically send this delivery through RAD;

(4) If the settlement difference of a valued delivery is between $250,000 and $500,000 and the settlement difference is equal to or greater than 10% of the fair market value of the CP, DTC will automatically send this delivery through RAD; and

(5) If the settlement difference of a valued delivery is over $500,000 and the settlement difference is equal to or greater than 3% of the fair market value of the CP, DTC will automatically send this delivery through RAD.

Telephone conversation between Richard B. Neeson, General Counsel, DTC, and Rose Pazzol, Staff Attorney, Division of Market Regulation, Commission, (April 3, 1991).

[7] DTC will deem a valued delivery of CP to be undervalued when its settlement value is less than 90% of its fair market value. *ID.*

[8] 17 CFR 240.19b-4.

[Release No. 34-29129; File No. SR-NSCC-90-15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Regarding a Modification to its Fund/SERV Rules

April 24, 1991.

On August 16, 1990, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. NSCC-90-15) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposed rule change is to enable NSCC to delete pending items from Fund/SERV, with the exception of ACAT-Fund/SERV items,[2] upon the withdrawal by a member from participation in Fund/SERV when such member continues as an NSCC member or is merged into or

[1] 15 U.S.C. 78s(b)(1).

[2] The Automated Customer Account Transfer Service ("ACAT") enables an NSCC member to transfer customer accounts to another member. The ACAT-Fund/SERV link is used to expedite the transfer of a customer's mutual fund account to another member.

acquired by another member which is not a participant in Fund/SERV. On April 5, 1991, NSCC amended the proposed rule change to clarify that NSCC will not delete pending items earlier than five business days following notification to members of the withdrawing member's intention to withdraw from Fund/SERV.[3] Notice of the proposed rule change appeared in the **Federal Register** on September 25, 1990.[4] No comments were received regarding the proposed rule change. This order approves the proposed rule change as amended.

I. Description of the Proposal

This proposal amends NSCC's rules to enable NSCC to delete a member's confirmed pending orders from the Fund/SERV system, with the exception of ACAT-Fund/SERV items, after the withdrawal of the member from participation in Fund/SERV when that member continues as an NSCC member or is merged into or acquired by another member.[5] NSCC will work with the withdrawing settling member to establish a date for deleting pending items to allow members adequate time in which to complete their pending transactions. NSCC, however, will not delete pending items prior to five business days following notification to members of the withdrawing member's intention to withdraw form Fund/SERV.[6]

Under NSCC's Fund/SERV procedures, redemption orders of physical or book-entry shares registered in the customer's name pend in the Fund/SERV system until the mutual fund receives the physical shares or the proper instructions from the customer. Upon receipt of the physical shares or the proper instructions, the mutual fund submits to NSCC a release to settlement so that redemptions of physical shares or book shares registered in the customer name can settle the following business day. The proposed rule change will enable NSCC to delete a settling member's redemption orders for which releases to settlement have not been received from the mutual fund when such member withdraws from participation in Fund/SERV.

Exchange orders also pend in the Fund/SERV system until the mutual fund processor or mutual fund confirms or rejects the orders.[7] Because exchange orders are predicated on the fact that the customer has securities in one fund and is seeking to switch to another fund within the same family of funds, NSCC pends the transaction until the transaction is confirmed or rejected by the mutual fund or the mutual fund processor. The proposal will allow NSCC to delete pending exchange orders when a member withdraws from participation in Fund/SERV.

II. Discussion

The Commission believes that NSCC's proposed rule change is consistent with section 17A of the Act and, specifically, with section 17A(b)(3)(A) and (F).[8] Sections 17(b)(3)(A) and (F) of the Act provide that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. The Commission believes that NSCC's proposal furthers this goal by reducing the costs associated with clearance and settlement in NSCC's Fund/SERV system.

NSCC's proposed rule change will enable NSCC to delete a member's confirmed pending items from Fund/SERV upon the member's withdrawal from Fund/SERV. This will reduce NSCC's costs associated with issuing reminders of pending confirmed orders to members that no longer participate in the Fund/SERV system. As with deletions of other orders in the Fund/SERV system, NSCC's rules hold the two parties to the transaction rsponsible for completion of pending transactions upon a member's withdrawal from participation in Fund/SERV. Deletion of these pending transactions between a member and a fund member or mutual fund processor does not change this obligation.

NSCC will not delete pending items prior to five business days following notification to members of the withdrawing member's intention to withdraw from Fund/SERV. In addition, NSCC has stated that it will work with the withdrawing settling member to establish a date for deleting pening items to allow members adequate time in which to complete their pending transactions. Thus the Commission believes that the proposal adequately balances the need to provide withdrawing settling members and mutual funds and mutual fund processors prompt and accurate clearance and settlement of Fund/SERV transactions and the cost savings from deleting such pending transactions from the Fund/SERV system.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, prusuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-90-15) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10301 Filed 5-1-91; 8:45 am]

BILLING CODE 8010-01-M

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[3] *See* letter from Karen Saperstein, Associate General Counsel, NSCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, dated April 5, 1991.

[4] Securities Exchange Act Release No. 28436 (September 14, 1990), 55 FR 38222.

[5] In 1988, NSCC implemented Fund/SERV to provide a centralized order entry, confirmatin and settlement system for mutual funds. Securities Exchange Act Release No. 23628 (February 20, 1986), 51 FR 6654; Securities Exchange Act Release No. 25149 (November 20, 1987), 52 FR 45416.

[6] NSCC Rules, R. 52 sec. 17.

[7] An exchange order is an order which enables the settling member to change funds within a family of funds.

[8] 15 U.S.C. 78q-1(b)(3)(A) and (F).

[Release No. 34-29130; File No. SR-NASD-91-04]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Data Services and Related Subscriber Fees

On January 22, 1991, the National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-NASD-91-04), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] to expand service offerings and establish subscriber fees for receipt of broadcast feeds of either NASDAQ/National Market System ("NASDAQ/NMS") last sale data or National Quotation Data Service ("NQDS") quotation information into their internal processing systems for development of analytic information based upon the transaction or quotation data received. The proposed rule change was noticed in the **Federal Register** for public comment.[2] No comments were received in response to this proposal. This order approves the proposed amendment.

[1] 15 USC 78s(b)(1) (1982).

[2] *See* Securities Exchange Act Release No. 28947 (March 6, 1991), 56 FR 10333.

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This proposed rule change would expand service offerings and establish a monthly charge of $500 for the receipt of a data stream (*i.e.*, a broadcast stream of information from the NASD's central processor) consisting of either NASDAQ/NMS last sale information or NQDS quotation information. The uses made of data stream information and the manner of their communication are distinguishable from vendor feeds provided by the NASD to support terminal devices capable of displaying real-time market data on demand or in a dynamic update mode. More specifically, data streams covered by this filing would be used to perform a variety of computerized analyses and computations that may be integral to a subscriber's business functions. These analyses/computations may be disseminated in some graphic or other derivative form via a screen display or in a hard copy format, depending upon the subscriber's business needs. As such, the NASD believes that pricing of data streams based upon a flat fee is more appropriate than the device-based charges levied on subscribers receiving real-time access to NASDAQ/NMS last sale and NQDS quotation information solely via screen displays. Approximately 30 subscribers are interested in receiving data streams of either NASDAQ/NMS last sale information or NQDS quotation information to perform proprietary analytics. The NASD intends to furnish the requested data streams subject to a subscriber's payment of the fees set forth in the filing.

The Commission has determined that it is appropriate to approve the NASD's proposed rule change because the Commission believes it is consistent with sections 11A(c)(1),[3] 15A(b) (5), (6) and (9).[4] The NASD collects and disseminates an array of information including market makers' quotations. The NASD's distribution of such information, especially the terms under which it is distributed to different classes of users, must be guided by certain principles set forth in section 11A(c)(1). That section requires prompt, accurate, reliable and fair collection, processing, distribution and publication of information,[5] and that all securities information processors may obtain such information on fair and reasonable terms,[6] which are not unreasonably discriminatory.[7] In addition, section 15A(b)(5) requires that the NASD's rules provide an equitable allocation of reasonable charges among members for the use of any facility or system that the NASD operates. Section 15A(b)(6) requires, among other things, that the NASD's rules be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to protect investors and the public interest; and that the NASD's rules not be designed to permit unfair discrimination between customers, brokers or dealers. Further, section 15A(b)(9) requires that the NASD rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Based on the Commission's review of the NASD's submission, the Commission finds that the flat fee of $500 per month for the data streams is a reasonable charge that provides an equitable allocation among users. Thus, the Commission believes that it is appropriate to approve the proposed rule change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: April 25, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10393 Filed 5-1-91; 8:45 am]

BILLING CODE 8010-01-M

[3] 15 USC 78k-1 (1982).

[4] 15 USC 78o-3 (1982).

[5] Section 11A(c)(1)(B).

[6] Section 11A(c)(1)(C).

[7] Section 11A(c)(1)(D).

[8] 17 CFR 200.30-3(a)(12).

[Release No. 34-29128; File No. SR-PHLX 90-28]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Partially Approving Proposed Rule Change Relating to Registered Options Traders Entering Orders for Execution From On-Floor and Off-Floor Locations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change which, among other things, would clarify an Exchange Options Floor Advice Procedure ("OFPA" or "Procedure") relating to Registered Options Traders ("ROTs") entering orders from on-floor and off-floor for execution on the Exchange. The proposal was published for comment in the **Federal Register.**[1] The Commission did not receive any comments on the proposal. The Commission is approving the remaining portion of the proposal as described below.[2]

The proposal conforms OFPA B-4: Trading from Off-Floor [3] with recently approved amendments to the Exchange's parity and priority rules.[4] Those amendments require that an equity or equity index options order of a controlled account must yield priority to customer orders, except that an ROT closing order executed in person is not required to yield priority to customer orders.[5] Moreover, the PHLX amendments provide that controlled account orders are not required to yield priority to other controlled account orders with one exception. Specifically, PHLX provides that when a closing ROT order to be executed in person and another controlled account order are established in the trading crowd at the same price and time, and, thereafter, a customer order is established at that price, then the controlled account order must yield to the customer order while the closing order of a ROT trading in person does not have to so yield. PHLX specialist accounts, however, because of the market making responsibilities imposed on specialists, will continue not to be subject to these particular priority and parity requirements.[6]

The proposal makes several changes to OFPA B-4, which, with one exception, do not change the substance of the Procedure. First, the proposal substantively amends the proposal by stating that an ROT who enters an order from off the floor must advise the person receiving the order that it is an order for an ROT and must state whether the order is opening or closing and whether it is for a customer or market maker account. Second, the proposal continues to state that an ROT may enter from on the floor or off the floor opening or closing orders for his customer account. Third, the proposal still provides that an ROT may cancel from off the floor opening or closing orders for his market maker or customer accounts but if he wishes to effect a change in the terms of an opening order (e.g., security, price, volume, series, class or contingencies) from off the floor such changed order must be executed in his customer account. Finally, the proposal makes numerous non-substantive grammatical changes to clarify the Procedure.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular the requirements of sections 6 and 11(a). Specifically, the proposed rule change is designed to provide procedures, that along with other OFPAs, will ensure the integrity of Exchange rules regarding priority and parity. In addition, the proposal will enhance the ability of public customer orders to receive a timely execution and could promote greater individual investor confidence in the PHLX options market.

Finally, the Commission believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices. Specifically, the proposal requires that an ROT who enters an order from off the floor must advise the person receiving the order that it is an order for an ROT and whether it is opening or closing and whether it is for the ROT's customer or market maker account. This will assist the Exchange in ensuring that public customer options orders are accorded priority over most orders on behalf of PHLX members as provided for by the Exchange's rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR-PHLX-90-28) is approved with respect to the portion regarding OFPA B-4.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.[8]

Dated April 24, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10394 Filed 5-1-91; 8:45 am]

BILLING CODE 8010-01-M

[1] Securities Exchange Act Release No. 28565 (October 22, 1990) 55 FR 43428.

[2] The proposal also contained changes relating to an OFPA regarding changes or corrections to material terms of a cleared options trade. That portion of the proposal was approved in Securities Exchange Act Release No. 28634 (January 29, 1991), 56 FR 4665.

[3] Under the proposal, the title of OFPA B-4 would become "PHLX ROTs Entering Orders from On-Floor and Off-Floor for Execution on the Exchange."

[4] In general, the priority and parity rules provide that an order to buy or sell on behalf of a customer will be executed before a member's order to buy or sell at the same price, even if the member's order was placed before the non-member's order.

[5] PHLX classifies orders as either from a customer account or a controlled account for purposes of its equity and equity index option priority and parity rules. A controlled account includes any account controlled by or under common control of a member broker-dealer.

[6] For more detail regarding the recent changes to the priority and parity rules, *see* Securities Exchange Act Release Nos. 29065 (April 10, 1991), 56 FR 15394; 28934 (March 4, 1991), 56 FR 10005.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1990).

[Rel. No. IC-18113; 811-3312]

Tower Series Funds; Application

April 25, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Tower Series Funds.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 1, 1990, and amended on January 28, 1991, and on April 25, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 20, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 429 North Pennsylvania Street, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. According to SEC records, Tower Series Funds, an open-end investment company organized as a Kentucky business trust, registered under the 1940 Act on November 5, 1981. On the same date, it filed a registration statement with respect to an indefinite number of shares under the Securities Act of 1933, which registration statement was declared effective on May 20, 1982. The securities registered consisted of two classes: Equity Income Series [1] and Bond Series.

2. On October 26, 1989, applicant's board of trustees recommended that the applicant be dissolved after having considered the difficulties associated with applicant's small asset base, such as meeting redemption requests and maintaining an efficient expense ratio. At October 31, 1989, applicant had aggregate net assets of $3,661,814 with 492,726.43 shares outstanding. In a notice dated January 10, 1990, applicant informed shareholders of the board of trustees' recommendation and on January 30, 1990 sent shareholders notice of a special shareholders meeting to be held February 12, 1990. Applicant had experienced massive redemptions and was left with only 40 shareholders. Unified Management Corporation, applicant's transfer agent and administrator, was the majority shareholder and the only shareholder present at the special meeting at which it approved the dissolution of applicant.

3. On February 13, 1990, applicant liquidated its portfolio and made a liquidating distribution of $188,846 to shareholders at their relative net asset value per share. Liquidation expenses, including transfer agency, accounting, and legal fees, totalled $8,000 and were borne by the applicant.

4. Applicant has filed articles of dissolution with the state of Kentucky and has no other assets or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant has no remaining shareholders and is not now engaged, nor proposes to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10395 Filed 5-1-91; 8:45 am]

BILLING CODE 8010-01-M

[1] In 1989 the Equity Income Series merged with Unified Mutual Shares, Inc. which subsequently merged with Unified Mutual Shares, a series of Unified Funds. Unified Mutual Shares, Inc. has since deregistered under the 1940 Act. See Investment Company Act Release No. 18037 (March 13, 1991).

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DEPARTMENT OF STATE

[Public Notice 1363]

Study Group 7 of the U.S. Organization International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 7 (formerly Study Groups 2 & 7) of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting June 7, 1991 at NASA Headquarters, 600 Independence Avenue, SW., Washington, DC in room 521J commencing at 10 a.m.

Study Group 7 deals with matters relating to the space research systems and standard frequency and time systems. The purpose of the meeting is to review the Report of the recently completed meeting of Joint Interim Working Party WARC-92 and develop 1991 work plans for each of the Working Parties in Study Group 7.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Mr. Rodger Andrews, ARC Professional Services Group, Herndon, Virginia 22070, phone (703) 834-5600.

Dated: April 17, 1990.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 91-10378 Filed 5-1-91; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1362]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group C Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 3, 1991 at the Newark Airport Marriott Hotel, Newark International Airport, Newark, New Jersey 07114. The room will be posted in the lobby. The meeting will begin at 9:30 a.m. and end at 4 p.m.

The agenda for the June 3rd meeting will include consideration of optical fiber system issues in preparation of the CCITT SG XV meeting in Geneva, Switzerland beginning November 11, 1991. Other matters relevant to the competence of Study Group C may be raised and considered.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should so advise Ellen Bradley on (908) 234-8624.

Dated April 22, 1991.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT, National Committee.

[FR Doc. 91-10379 Filed 5-1-91; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, a subject-matter index, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. These indexes and digests will increase the public's awareness of the Administrator's decisions and orders and will assist litigants and practitioners in their research and review of decisions and orders that have precedential value in a particular civil penalty action. Publication of the index by order number ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC-400), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591: telephone (202) 267-3561.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes that contain identifying information as to those materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the final decisions and orders issued by the Administrator pursuant to the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR part 13, subpart G. The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number of the Administrator's final decisions and orders in civil penalty cases. In a notice issued on October 26, 1990, the FAA published the indexes and digests herein described for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis. (Only the subject-matter index will be published cumulatively. Both the order number index and the digests will be non-cumulative.) In a notice issued on January 25, 1991, the FAA published the first supplement to the indexes and digests herein described, which included the decisions and orders issued by the Administrator from October 1 through December 31, 1990. 56 FR 4866; February 6, 1991.

As noted at the beginning of each of these documents, these indexes and digests do not constitute legal authority, and should not be cited or relied upon as such. The indexes and digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context. The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

The index arranged by order number lists the service date, the name and docket number of the case, and the regulations that were discussed in each of the Administrator's final decisions and orders. That index, which appears below, lists all final decisions and orders issued by the Administrator from January 1, 1991 through March 31, 1991. The FAA will publish noncumulative supplements to this list on a quarterly basis (e.g., in April, July, October, and January of each year).

Civil Penalty Actions—Decisions Issued By Administrator

Index by Order Number

(Current as of March 31, 1991)

This index does not constitute legal authority and should not be cited or relief upon as much. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

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91-3 (2/4/91)	Dawn M. Lewis—CP89SO0108	13.214(b)(1); 13.233(c); 107.21(a); 108.11(f).
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91-5 (3/29/91)	Jay H. Jones—CP90SO0172	

Civil Penalty Actions—Decisions Issued By the Administrator

Subject Matter Index

(Current as of March 31, 1991)

This index does not constitute legal authority, and should not be cited or relief upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

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The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from January 1, 1991 through March 31, 1991. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (e.g. April, July, October, and January of each year).

Civil Penalty Case Decisions

Digests

(Current as of March 31, 1991)

These digests do not constitute legal authority, and should not be cited or relied upon as such. These digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should

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always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Henry Nestor

Order No. 91-1 (1/2/91)

Withdrawal of Appeal

Complainant withdrew its notice of appeal of the oral initial decision. Complainant's appeal is dismissed.

In the Matter of Continental Airlines

Order No. 91-2 (1/4/91)

Respondent filed a document entitled "Notice and Motion for Stay," in which Respondent explained that it and its affiliated companies filed voluntary petitions under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. Respondent sought an indefinite stay of the 51 pending civil penalty cases against it.

Jurisdiction of the Administrator

The Administrator, as the FAA decisionmaker in these cases, does not have jurisdiction over any civil penalty assessment authority case unless and until an appeal of an initial decision is filed, an interlocutory appeal of right is filed, or a motion for interlocutory appeal for cause is granted by a law judge, pursuant to § 13.219 and/or 13.233 of the Rules of Practice. Therefore, the Administrator had jurisdiction over only ten of the cases cited by Respondent, and, as a result, considered Respondent's motion with regard to only those ten cases.

Effect of Bankruptcy on Cases Before the Administrator

Respondent's motion was denied with regard to the ten cases before the Administrator on the basis of a Bankruptcy Code exception that permits federal regulatory agencies to commence and continue proceedings to enforce that agency's policies or regulatory power against entities that file for bankruptcy protection. 11 U.S.C. 362(b)(4). The civil penalty proceedings involved in this case are excepted from the automatic stay because these proceedings are necessary to deter Respondent and others from failing to carry out their security programs. These proceedings enforce public policy and do not adjudicate private rights.

In the Matter of Dawn M. Lewis

Order No. 91-3 (2/4/91)

Respondent submitted here carry-on bag for x-ray screening; the bag contained an unloaded hand gun and four rounds of ammunition. Complainant appealed from the oral initial decision of the law judge in which the law judge found that Respondent violated 49 U.S.C. App. 1471(d) and 14 CFR 107.21(a), but reduced the $2,000 civil penalty sought by Complainant to $500. The law judge based his reduction of the proposed civil penalty on what he considered to be two mitigating factors and Respondent's inability to pay a $2,000 civil penalty.

Complainant argued on appeal that the factors cited by the law judge as a basis for the reduction of the civil penalty were not mitigating factors and that insufficient evidence was presented to support a reduction for inability to pay.

Sanction—Weapons Violations

The Enforcement Sanction Guidance Table contained in FAA Order 2150.3A, Compliance and Enforcement Program, prescribes appropriate sanctions for violations involving concealing of a deadly or dangerous weapon which would be accessible in flight: $1,000 when the weapon is unloaded and ammunition is not accessible; $2,000 when, as in this case, the gun is unloaded and ammunition is accessible; and $2,500 when the gun is loaded. Citing the Broyles decision (FAA Order No. 90-23), the Administrator held that there are no other mitigating or aggravating factors appropriate to consider within these three categories of weapons violations, and that it was improper for the law judge to have reduced the proposed civil penalty on the basis of his findings that Respondent did not observe a warning sign, that Respondent was licensed to carry the gun, and that she had a legitimate business purpose to do so.

Ability to Pay

The Broyles decision was not intended to preclude, and should not be read as precluding, consideration of a respondent's financial circumstances when determining the appropriate sanction. The statement in Broyles that it would be inappropriate to consider any factors as mitigating other than those incorporated in the categories of weapons offenses set forth in the Enforcement Sanction Guidance Table (*i.e.*, loaded, unloaded, ammunition accessible or inaccessible) means that there are no circumstances regarding the particular violation or event that would be considered. This does not include circumstances particular to the individual respondent in such cases (*i.e.*, inability to pay, or prior violation history.) Thus, financial hardship, when proven, can serve as a basis for a reduction in sanction.

In his decision, the law judge said relatively little about Respondent's ability to pay a $2,000 civil penalty. At the hearing, Respondent testified about her various financial problems. Except for one debt, Respondent did not testify as to the specific amounts at issue. Other than her testimony, Respondent did not provide any evidence of her financial hardship.

Once Complainant proves the violations alleged, and what sanction is appropriate for a violation(s) of that nature, the burden necessarily shifts to the respondent to prove inability to pay, if the respondent raises that as a defense, because the respondent has sole control of her financial information. In this case, Respondent's vague and uncorroborated testimony regarding her income and expenses is insufficient to prove by a preponderance of the evidence that she is unable to pay the $2,000 civil penalty. The law judge, therefore, erred in reducing the civil penalty on the basis of financial hardship. Accordingly, the Administrator held that the law judge's reduction of the civil penalty in this case was improper and reinstated the $2,000 civil penalty.

In the Matter of [Airport Operator]

Order No. 91-4 (2-11-91)

Respondent [airport operator] appealed from the law judge's initial decision that Respondent violated 14 CFR 107.13(a)(2). The Administrator denied Respondent's appeal, affirming the law judge's decision, and assessed a $9750 civil penalty.

FAA inspectors observed 13 employees of firms which provide services to the airport not displaying their badges on their outer garments, while these individuals were on the airport's air operations area (AOA), contrary to the requirements of the airport's approved security program (ASP).

Airport Operator Liability

The Administrator affirmed the law judge's determination that Respondent is liable for the failure of individuals to display their badges while on the AOA. Section 107.13 of the FAR, 14 CFR 107.13, requires each airport operator to use the procedures in its ASP. The airport operator must implement the procedures to control access to the AOA in its ASP. Respondent's efforts to implement the badge display procedures were inadequate in light of the number of employees of airport vendors and tenants detected during the FAA inspection. The Administrator rejected Respondent's argument that the air carriers should be held responsible, rather than the airport operator, when employees of companies providing services to the air carriers fail to display their badges because § 107.13 places the responsibility to use ASP procedures on the airport operators. The airport operator had not delegated its responsibility to the air carriers with regard to their exclusive areas.

Sufficiency of the Evidence

Complainant introduced sufficient evidence indicating that the 13 individuals not displaying their badges were not engaged in any activity which would have justified their failure to display their badges. They were not engaged in any activity in which the display of a badge on their outer garments would have been either impracticable or unsafe. Hence, Complainant satisifed its burden of going forward, and Respondent did not rebut that testimony.

In the Matter of Jay H. Jones

Order No. 91-5 (2-29-91)

Withdrawal of Appeal

Complainant withdrew its notice of appeal of the oral initial decision. Complainant's appeal is dismissed.

The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters: FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., room 924A, Washington, DC 20591; (202) 267-3641.

In addition, these materials are available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AAC-7), Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, OK 73125; (405) 680-3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL-7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271-5269.

Office of the Assistant Chief Counsel for the Central Region (ACE-7), Central Region Headquarters, 601 East 12 Street, Federal Building, Kansas City, MO 64106; (816) 426-5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA-7), Eastern Region Headquarters, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430; (718) 917-1035.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL-7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018; (312) 694-7108.

Office of the Assistant Chief Counsel for the New England Region (ANE-7), New England Region Headquarters, 12 New England Executive Park, Burlington, MA 01803; (617) 273-7310.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM-7), Northwest Mountain Region Headquarters, 16000 Pacific Highway South, Seattle, WA 98168; (206) 227-2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO-7), Southern Region Headquarters, 3400 Norman Berry Drive, East Point, GA 30344; (404) 763-7204.

Office of the Assistant Chief Counsel for the Southwest Region (ASW-7), Southwest Region Headquarters, 4400 Blue Mound Road, Fort Worth, TX 76193; (817) 624-5707.

Office of the Assistant Chief Counsel for the Technical Center (ACT-7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 484-6605.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP-7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (213) 297-1270.

The FAA still is considering various means by which the Administrator's decisions and orders, and the indexes and digests of those decisions, could be published and offered for sale, such as by subscription through either a public or private reporting service. If the FAA completes such subscription arrangements, the agency will provide further notice of such publication or sale in the **Federal Register**. The FAA may discontinue publication of the subject-matter index and the digests at some future time if a commercial reporting service publishes similar information and provides it to the public in a timely and accurate manner.

Issued in Washington, DC, on April 22, 1991.

Kenneth P. Quinn,

Chief Counsel.

[FR Doc. 91-10252 Filed 5-1-91; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 91-15; Notice 1]

Receipt of Petition for Determination that Nonconforming 1988 Mercedes-Benz 230E Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1988 Mercedes-Benz 230E passenger cars are eligible for importation.

SUMMARY: This notice announces receipt of a petition by the National Highway Traffic Safety Administration (NHTSA) for a determination that a 1988 Mercedes-Benz 230E not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it is substantially similar to a vehicle originally manufactured for importation and sale in the United States and certified by its manufacturer as complying with the safety standards, and is capable of being readily modified to conform to the standards.

DATES: The closing date for comment on the petition is June 3, 1991.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) (the Act), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined:

"(I) that the motor vehicle * * * is substantially similar to a motor vehicle originally manufactured for importation and sale into the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. After receipt of a petition, NHTSA publishes notice of its receipt in the **Federal Register**, and affords interested persons an opportunity to comment. Following close of the comment period, NHTSA reviews the petition and comments, and publishes its determination in the **Federal Register**.

G&K Automotive Conversion, Inc. of Anaheim, California (Registered Importer No. R-90-007) has petitioned for a determination regarding the eligibility for admission into the United States of 1988 Mercedes-Benz 230E, Model ID 124.023 passenger cars. The vehicle which G&K believes is substantially similar is the 1988

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Mercedes-Benz 280E, Model ID 124.028, and it has submitted information indicating that Mercedes-Benz of North America offered the 1986 Mercedes-Benz 280E for sale in the United States. This model was manufactured by Daimler-Benz A.G. and was certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner notes that the agency, on its own initiative, has already made a determination of substantial similarity covering the 1986 Model 280E that Daimler-Benz A.G. did not certify and offer for sale in the United States (55 FR 47416). It alleges that the 230E and non-conforming 280E cars differ "mainly in engine size and minor options which go with it."

G&K submitted information with its petition intended to demonstrate that the vehicle was originally manufactured to conform to many Federal motor vehicle safety standards in the same manner as its companion U.S. model, or is capable of being readily modified to conform to them.

Specifically, it avers that the noncertified 230E is identical to the certified 280E with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence . . . ., 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluids, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 206 Glazing Materials, 207 Seating Systems, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials. The vehicle would also appear to comply with Standard No. 111 Rearview Mirrors. Petitioner states that the vehicle is equipped with an interior mirror and exterior driver and passenger mirrors, but "the passenger's outside rear view mirror is convex and must be replaced." Standard No. 111 does not require a passenger side mirror unless the inside rearview mirror does not meet field of view requirements. If a passenger side mirror is provided under these circumstances, it may be either unit magnification or convex.

Petitioner also argues that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) install U.S.-model headlamp assembles and front sidemarkers; (b) install U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) install a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Install a tire information placard.

Standard No. 114 Theft Protection: The vehicle's key-locking system lacks a warning buzzer, and it is necessary to install a buzzer microswitch in the steering lock assembly, and a buzzer itself.

Standard No. 115 Vehicle Identification Number: Install a VIN label.

Standard No. 118 Power Window Systems: Rewire so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 Door Locks and Door Retention Components: Replace rear door locks and locking buttons with U.S. parts.

Standard No. 208 Occupant Crash Protection: (a) Install a U.S. model seat belt in the driver's position, or install a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) install an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 Side Door Strength: Install reinforcing beams.

Standard No. 301 Fuel System Integrity: To achieve fuel tank venting, install a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection cannister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: June 3, 1991.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on: April 26, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91-10335 Filed 5-1-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 25, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0169.

Form Number: 4461, 4461-A, 4461-B.

Type of Review: Extension.

Title: (1) Application for Approval of Master or Prototype and Regional Prototype Defined Contribution Plan, Form 4461; (2) Application for Approval of Master or Prototype and Regional Prototype Defined Benefit Plan, Form 4461-A; (3) Application for Approval of Master or Prototype Plan or Regional Prototype Plan, Form 4461-B.

Description: IRS uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application also is used to determine if the related trust qualifies for tax exempt status under Code section 501(a).

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,200.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—40 hours, 40 minutes.

Learning about the law—5 hours, 2 minutes.

Preparing the form—6 hours, 51 minutes.

Copying, assembling, and sending the form to IRS—16 minute

Frequency of Response: The forms are normally filed only once.

Estimated Total Reporting Burden: 120,374 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-10327 Filed 5-1-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: April 26, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: None.

Type of Review: New Collection.

Title: Philadelphia District Survey of Taxpayers Contacted by the IRS Collection Function.

Description: The data collected will be used to determine the level of satisfaction of taxpayers contacted by Collection Function personnel of IRS to identify potential areas of program improvement, and thereby improve the effectiveness of collection activities.

Respondents: Individuals or households.

Estimated Number of Respondents: 800.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: One-time survey.

Estimated Total Reporting Burden: 200 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 91-10328 Filed 5-1-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: April 24, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0042.

Form Number: CF 4457.

Type of Review: Extension.

Title: Certificate of Registration for Personal Effects Taken Abroad.

Description: The document is used to provide travelers with a means of showing proof of a foreign-made personal item.

Respondents: Individuals or households.

Estimated Number of Respondents: 500,000.

Estimated Burden Hours Per Response: 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25,000 hours.

OMB Number: 1515-0097.

Form Number: None.

Type of Review: Extension.

Title: Customs Regulations Relating to Copyrights.

Description: Copyright owners who choose to record a copyright with Customs for import protection must establish validity of the copyright, pay an administration fee, and provide samples and other information to aid Customs officers in identifying pirated copies.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 600.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 600 hours.

Clearance Officer: Ralph Meyer (202) 343-0044, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington DC, 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-10329 Filed 5-1-91; 8:45 am]

BILLING CODE 4830-00-M

Public Information Collection Requirements Submitted to OMB for Review

April 24, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535-0060.

Form Number: PD F 2488-1.

Type of Review: Extension.

Title: Certificates by Legal Representative(s) of Decedent's Estate, During Administration, of Authority to Act and of Distribution Where Estate Holds No More Than $1,000 (face amount) United States Savings and Retirement Securities, Excluding Checks Representing Interest.

Description: This form is used by legal representative of a decedent's estate to establish his/her authority to act and to request disposition of the securities.

Respondents: Individuals or households.

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Estimated Number of Respondents: 1,575.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,575 hours.

OMB Number: 1535–0065.

Form Number: PD F 5261.

Type of Review: Extension.

Title: Notice of Maturing Treasury

Description: This form is used by owner, to have redemption proceeds of a security in the same form registration.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 150,000.

Estimated Burden Hours Per Response: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 15 000 hours.

Clearance Officer: Rita DeNagy (202) 447–1640, Bureau of the Public Debt, room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239–0001.

OMB Reviewers: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–10530 Filed 5–1–91; 8:45 am]

BILLING CODE 4810–40–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 85
Thursday, May 2, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

* * * * *

"FEDERAL REGISTER" NUMBER: 91–9275.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, April 25, 1991, 10:00 a.m.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: 1988 Presidential audits—Status Report

* * * * *

DATE AND TIME: Tuesday, May 7, 1991, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, May 9, 1991, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1991–9:
  Judith L. Corley on behalf of Congressman Peter Hoagland
Presidential Primary and General Election Regulations:
  Final Rules and Explanation and Justification
Revised FY 1991 Management Plan
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 10545 Filed 4–30–91; 2:38 pm]

BILLING CODE 6715–01–M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Monday, May 13, 1991.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC 20419.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Case processing issues.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Dated: April 29, 1991.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 91–10498 Filed 4–30–91; 1:46 pm]

BILLING CODE 7400–01–M

UNITED STATES INSTITUTE OF PEACE

DATE: May 8–9, 1991.

TIME: 9:00 a.m. to 5:30 p.m.

LOCATION: Vista Hotel, 1400 M Street, NW. (Monticello-West Room) Washington, DC.

STATUS: (Open session)—Portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law (98–525).

AGENDA: (Tentative)—Consideration of the minutes of the Forty-Sixth meeting of the Board of Directors; Chairman's Report; President's Report; Annual Program Review; Board Committee Reports.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information, telephone: 202/457–1700.

Dated: April 22, 1991.

Bernice J. Carney,

Director, Office of Administration United States Institute of Peace.

[FR Doc. 91–10523 Filed 4–30–91; 1:46 pm]

BILLING CODE 3155–01–M

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federal register

Thursday
May 2, 1991

Part II

Department of Housing and Urban Development

24 CFR Parts 50, 219, 221, 241, and 248
Mortgage and Loan Insurance Programs: Low Income Housing Mortgages; Prepayment; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 50, 219, 221, 241, and 248

[Docket No. R-91-1512; FR-2979-P-01]

RIN 2501-AB14

Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth HUD's procedures and standards for implementing subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act of 1990, entitled the "Low Income Housing Preservation and Resident Homeownership Act," which repeals and replaces the Emergency Low Income Housing Preservation Act of 1987. This rule is intended to create a permanent and comprehensive program which preserves privately-owned, low income housing projects while not unduly restricting the owners' mortgage prepayment rights. In localities where there is an adequate supply of low income housing, prepayment of the mortgage would not otherwise undermine public policy objectives set forth in the statute, and prepayment would not result in a material increase in the economic hardship of the current tenants, owners of projects subject to low income affordability restrictions may terminate these restrictions and prepay their HUD-insured mortgages or terminate their mortgage insurance contracts. In areas where the supply of low income housing is inadequate, the low income affordability restrictions must be maintained on the projects for their remaining useful life, but owners may receive a fair market return on their investment through the receipt of incentives provided by HUD or through the transfer of the property to other entities which agree to continue the low income affordability restrictions. This rule provides an opportunity for homeownership of eligible low income housing projects by the tenants through resident homeownership programs. It also encourages the transfer of low income housing projects to nonprofit organizations and State and local government entities, by giving these entities the first opportunity to purchase available projects.

DATES: *Comment due date:* All written comments must be received on or before July 1, 1991. The Department urges commenters to submit comments as soon as possible after the publication of this proposed rule in order to receive full consideration.

ADDRESSES: Submit written comments to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Standard Time) at the above address. As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk at voice (202) 708-2084; TDD (202) 708-4594. (These are not toll-free numbers).

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Telephone, voice (202) 708-2300; TDD (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

The information collection requirements contained in the rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

Background

During the late 1960's and early 1970's several thousand multifamily projects were built with mortgages insured or assisted by HUD under sections 221(d)(3) and 236 of the National Housing Act. HUD's regulations at 24 CFR 221.524 and 236.30 provide that in the case of a project owned by a limited distribution mortgagor that is not receiving payments under a rent supplement contract executed pursuant to 24 CFR part 215, the owner is permitted to prepay the mortgage debt at the expiration of 20 years after final endorsement of the mortgage for insurance. (The mortgage term of such mortgages is 40 years.) Prepayment of the mortgage has the effect of terminating the HUD-imposed low income affordability restrictions which ensure that the project is maintained for very low, low and moderate income tenants. Over the next 15 years, the owners of 360,000 units of multifamily projects insured or assisted under parts 236 and 221 of this title will become eligible to prepay their mortgage loans and convert their properties to market rate rental housing or other purposes. Considerable concern has been raised about the risk of losing viable low income projects due to owners exercising their option to prepay and convert their projects to more profitable use.

In response to these concerns, Congress initially enacted an emergency measure, title II of the Housing and Community Development Act of 1987, the Emergency Low Income Housing Preservation Act of 1987 (the "1987 Act"). The final rule implementing the 1987 Act, part 248 of title 24 of the CFR, was published on September 21, 1990 at 55 FR 38943 (the "existing rule"). The 1987 Act placed constraints on an owner's right of prepayment and created incentives to either encourage owners to retain the low income affordability restrictions in exchange for receiving a greater return on their investment or to transfer the property to purchasers who would agree to retain the low income affordability restrictions. The fundamental principles of the 1987 Act were that the housing should be preserved for its intended beneficiaries and that owners should be guaranteed a fair and reasonable return on their investment through new incentives.

The 1987 Act was intended to be temporary in nature and was designed to give Congress time to fashion a permanent program for the preservation of existing low income housing projects. Congress' permanent solution to this problem is embodied in title VI of the Cranston-Gonzalez National Affordable Housing Act, Public Law 101-625, enacted November 28, 1990. Subtitle A of title VI, the Low Income Housing Preservation and Resident Homeownership Act of 1990 (the "1990 Act"), repeals and replaces the 1987 Act.

The 1990 Act provides permanent authority to deal with HUD-assisted projects where owners have the option of prepaying their mortgage loans. Its basic objectives are to assure that most of the "prepayment" inventory of assisted housing remains affordable to low income households and to provide opportunities for tenants to become homeowners, while at the same time fairly compensating owners for the value of their properties. This proposed rule implements subtitle A of title VI of the 1990 Act.

The prepayment process begins under the 1990 Act when the owner of eligible low income housing files a notice of intent. If the project is located in an area where there is an adequate supply of low income housing, the owner may seek to prepay the mortgage and terminate low income affordability restrictions pursuant to the standards set forth in section 218 of the statute and § 248.141 of the proposed rule. In all other cases, HUD and the owner would each hire an appraiser to estimate the value of the project as market rate rental housing (the "extension preservation value") and the value of the project at its highest and best use (the "transfer preservation value"). If HUD and the owner cannot agree on the appraised values based on the first two appraisals, a third appraiser would be hired jointly by HUD and the owner.

If the owner wants to retain the project, it would be entitled to receive incentives that would generate sufficient project income to enable the owner to receive an annual authorized return of 8 percent of its equity in the project, measured on the basis of the extension preservation value less outstanding debt. The total project income would not exceed the Federal cost limit, i.e., the greater of 120 percent of the section 8 fair market rent or 120% of the prevailing rents in the relevant local market area. The annual authorized return could be received in the form of allowable distributions, an equity loan, or both. As a condition to receiving such incentives, the owner would be obligated to maintain the project as low income housing for the project's remaining useful life.

If the owner seeks to sell the project, and the transfer preservation rent (i.e., the aggregate rent stream projected to be necessary to support the costs of sale, rehabilitation, debt service of the federally-assisted mortgage, operating expenses and adequate reserves) does not exceed the "Federal cost limit," the owner would offer the project for sale under § 248.157 for a price (including assumption of the federally-assisted mortgage) that may not exceed the transfer preservation value. The first 12 months of the sale period would be restricted to "priority purchasers," i.e., resident councils organized to purchase the project under a homeownership program, or any nonprofit organization or State or local agency that agrees to maintain low income affordability restrictions for the remaining useful life of the project. If, at the end of the 12-month period, the owner does not accept any bona fide offer from a priority purchaser, the owner must offer the project for sale to any qualified purchaser, including priority purchasers, for 3 months. If an offer to purchase is accepted, HUD would provide incentives, grant assistance, or both, sufficient to enable the purchaser to acquire the project, pay debt service on the federally-assisted mortgage and on any rehabilitation loan, meet operating expenses and establish adequate reserves, receive a return of 8 percent on any cash investment made by the purchaser and, in the case of a priority purchaser, receive reimbursement for transaction expenses. As in the case of an owner that retains the project and receives incentives, the purchaser would be obligated to maintain the project as low income housing for the project's remaining useful life. If the transfer preservation rent exceeds the Federal cost limit, the owner would offer the project for sale under § 248.161. The sale procedure under § 248.161 is similar to that under § 248.157, except that the owner is required to accept any bona fide offer to purchase the project for the transfer preservation value, whereas an owner under § 248.157 may elect not to accept a bona fide offer. Any amount necessary to fund the transfer, over and above incentives that can be supported by project rental income at the Federal cost limit, would be funded by a capital grant under § 248.161(d). Under either § 248.157 or § 248.161, if the owner does not receive a bona fide offer, the owner may prepay the mortgage and terminate the low income affordability restrictions, subject only to certain protections for current tenants.

Under § 248.173, if a project is being offered for sale under either § 248.157 or § 248.161, a "resident council" may seek to purchase the project under a resident homeownership program. HUD would provide grant assistance sufficient to pay the purchase price, transaction expenses, organizational costs, relocation expenses, training costs and establishment of adequate reserves for replacements and, if necessary, operating reserve escrows.

Part 241

The proposed rule also includes numerous revisions to part 241, "Supplementary Financing for Insured Project Mortgages." Section 602(a) of the 1990 Act substantially revised the provisions of section 241 of the National Housing Act, 12 U.S.C. 1715z-6(f). As explained below, the proposed rule revises part 241, subparts E and F to include provisions that are applicable to owners proceeding under either the 1987 Act or the 1990 Act.

Amendments to Section 250 of the National Housing Act

Sections 602 (b) and (c) of the 1990 Act amend section 250 of the National Housing Act, 12 U.S.C. 1715z-15, by deleting the former sections 250 (b) and (c), which required HUD to provide a priority for assistance under the section 8 and Flexible Subsidy programs to owners of subsidized projects in order to induce such owners not to prepay their mortgages. Sections 250 (b) and (c) were precursors of the 1987 Act and the 1990 Act, and were essentially rendered obsolete by the later-enacted statutes.

In addition, section 602(b) adds language to section 250 providing that a mortgagee may foreclose a mortgage on, or acquire by deed in lieu of foreclosure, any eligible low income housing project, as defined in section 229 of the 1990 Act, only if the mortgagee also conveys title to the Secretary in connection with a claim for insurance benefits. This amendment appears to be an attempt to impose the same restriction governing foreclosure that is contained in section 211(b) of the 1990 Act to projects whose mortgages have not yet reached the 18th year following final endorsement and thus are not yet subject to section 211(b). (Such projects are instead subject to section 250(a)). The Department has not promulgated regulations implementing section 250, and thus this proposed rule does not include any provisions implementing the amendments to section 250 in sections 602 (b) and (c).

Other Preservation Provisions of the 1990 Act

Subtitle B of title VI contains other preservation provisions concerning: (a) Advances by owners to finance capital improvements in subsidized projects; (b) increases in rent levels for subsidized projects; and (c) assistance to prevent prepayment under State mortgage programs. These provisions will be implemented through a separate rule.

Amendments Implementing HUD Reform Act Provisions

The proposed rule also includes amendments that implement certain provisions of the Department of Housing and Urban Development Reform Act of

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1989, Public Law 101-235 (the "HUD Reform Act"), that were not implemented in the existing rule. The statutory provisions and the corresponding provisions of the proposed rule are as follows:

1. Section 219.325 has been amended to implement section 203(a)(2) of the HUD Reform Act, which authorizes HUD to adjust the terms of a capital improvement loan (for example, by deferring repayment of the debt as long as the low and moderate income character of the project is maintained) in connection with a plan of action.

2. Sections 248.221 and 248.234 have been amended to implement section 203(d) of the HUD Reform Act, which provides that any plan of action shall specify actions that the Secretary and the owner shall take to ensure that any tenants displaced as a result of (a) a plan of action that involves termination of low income affordability restrictions, or (b) modifications of a plan of action due to the Secretary's inability to extend section 8 assistance for the full term of the plan of action, are relocated to affordable housing.

3. Section 241.166 has been added to implement section 204(b) of the HUD Reform Act, which provides that (a) when underwriting a rehabilitation loan under part 241, subpart A, on a subsidized project, HUD may assume that any rental assistance provided for servicing the additional debt will be extended for the term of the loan; and (b) the holder of an insured mortgage that is senior to the rehabilitation loan may not withhold its consent to such a loan.

Public Comment Period

Section 604(d) of the 1990 Act provides that the Secretary shall, "subject to the provisions of section 553 of title 5" of the United States Code, publish proposed rules to implement the 1990 Act within 90 days of the date of enactment, and also provides that not later than 45 days after the expiration of the 90-day period, the Secretary shall issue an interim or final rule to implement the 1990 Act. The Department construes the reference to 5 U.S.C. 553 as a direction that HUD allow a suitable period for the receipt and consideration of public comments on the proposed rule. Accordingly, the Department has provided for a 60-day period after the publication of this proposed rule for the submission of public comments. On the basis of the public comments, an interim or final rule will be published within 45 days after the expiration of the 60-day comment period, and will replace the existing rule.

Description of the Proposed Rule

The proposed rule, as printed herein, contains three distinct subparts. It incorporates subpart B of the existing rule, which establishes procedures and standards for prepayments and plans of action under the 1987 Act, as subpart C, and implements the 1990 Act in a new subpart B. Each of these subparts is independent of the other. Subpart A of this rule contains general provisions relating to both subparts B and C and explains which subpart owners of eligible low income housing may proceed under in electing to prepay their mortgages, receive incentives or transfer the project.

Section 248.1 (Purpose)

The purpose of this proposed rule is based primarily on section 202(b) of the 1987 Act and § 248.101 of the existing rule. The basic purpose is to strike a balance between the continuing need for low income housing units and private owners' contractual right to prepay their HUD-insured or HUD-assisted mortgages. The proposed rule adds the purpose of facilitating the sale of projects to tenants under tenant homeownership programs, and also clarifies that the rule is intended to preserve housing for very low, low and moderate income tenants.

Section 248.3 (Applicability)

The provisions of the proposed rule are applicable to any project deemed eligible low income housing on or after November 1, 1987, with the exception of any project covered by a homeownership program approved by HUD under title IV, Subtitle B of the Cranston-Gonzalez National Affordable Housing Act, "HOPE for Homeownership of Multifamily Units." This exception is based on section 427 of the Act. (As explained below, the definition of "eligible low income housing" is slightly different for purposes of subpart B than the definition for purposes of subpart C.) A notice of program guidelines for HOPE for Homeownership for Multifamily Units Program (the "HOPE Program Guidelines") implementing title IV was published in the Federal Register on February 4, 1991 at 56 FR 4436.

Section 248.5 (Election to Proceed Under Subpart B or C)

After January 1, 1991, owners of eligible low income housing who submit notices of intent to prepay their HUD-insured or assisted mortgage, terminate the mortgage insurance contract, extend the low income affordability restrictions on the project, or transfer the project to a qualified purchaser shall proceed under the provisions of subpart B of the proposed rule.

However, pursuant to section 604 of the 1990 Act, the proposed rule establishes a transition period during which certain owners may choose to comply with the provisions of either subpart B or subpart C. Section 604(a) of the 1990 Act provides that an owner of eligible low income housing that files a notice of intent under either the 1987 Act or the 1990 Act prior to January 1, 1991, may elect to file a plan of action under either statute. On December 11, 1990, the Department issued notice 90-66, "Transition Rule for Filing Notices of Intent Pursuant to section 604(a) of the Cranston-Gonzalez National Affordable Housing Act of 1990," which informed owners of their right to file a notice of intent prior to January 1, 1991 under either statute and thus preserve their option under section 604(a).

Section 604(b) of the 1990 Act provides that any owner who has filed a plan of action on or before October 11, 1990, shall have the right to convert to the system of incentives and restrictions under the 1990 Act, with such adjustments as the Secretary deems appropriate to compensate for the value of any incentives received under the 1987 Act. It provides further that owners filing plans of action after October 11, 1990, shall not have any such right to convert to a system of incentives under the 1990 Act. To the extent that a conflict may exist between sections 604(a) and 604(b), the Department construes the latter provision as taking precedence. Thus, if an owner has filed a notice of intent prior to January 1, 1991, but then files a plan of action under the 1987 Act after October 11, 1990, it is the Department's view that the owner is barred from subsequently converting to a system of incentives under the 1990 Act.

Accordingly, the proposed regulation provides that owners of projects which have become eligible low income housing prior to January 1, 1991, who have, prior to that date, filed a notice of intent to prepay under the existing rule, but who have not submitted a plan of action after October 11, 1990, may choose to proceed under the provisions of either subpart B or subpart C. Section 248.5 of the proposed rule describes the procedure that an owner of eligible low income housing must follow in order to exercise its option to proceed under either subpart B or subpart C.

It should be noted that if an owner files a plan of action prior to October 11, 1990 under the existing rule, and then prior to its approval, but after the

effective date of this rule, withdraws the plan of action, a subsequent notice of intent and plan of action may be filed under subpart B of this rule and the owner need not comply with the conversion provisions of § 248.5(c).

Section 248.5 states in part that an owner who has filed a plan of action on or before October 11, 1990, and who wishes to convert to the system of incentives and restrictions under subpart B of the proposed rule, must declare its election to do so by filing a notice of intent under subpart B by the latter of February 5, 1992 or 30 days after the date of HUD's final approval of the plan of action. Section 248.5 supersedes § 248.235 of the existing rule, which is deleted in the proposed rule. The February 5, 1992 date is derived from section 230 of the 1987 Act and § 248.235 of the existing regulations; the 30-day period is provided so that an owner whose plan of action is approved shortly before February 5, 1992 would have a sufficient period of tme to elect to convert to a plan of action under subpart B. While section 604(b) does not explicitly provide a date by which owners must elect to convert to the system of incentives and restrictions under the 1990 Act, the Department construes section 604(b) as permitting HUD to establish a reasonable deadline for such elections. An owner that wishes to convert to the system of incentives and restrictions under the 1990 Act must comply with all of the procedural and substantive requirements of the 1990 Act, and must also provide such documentation as is necessary for the Department to evaluate the incentives received by the owner under the 1987 Act.

Section 248.7 (Preemption of State and Local Laws)

Section 248.7 repeats verbatim the language of section 232 of the 1990 Act. Section 232 prohibits any State or locality from establishing, continuing in effect or enforcing any law or regulation that (a) restricts or impairs the right of an owner of eligible low income housing to prepay its mortgage, voluntarily terminate mortgage insurance or receive incentives under the 1990 Act, (b) is limited in its application to eligible low income housing for which the owner has prepaid the mortgage or voluntarily terminated the insurance, or (c) is otherwise inconsistent with the 1990 Act. Section 232, and § 248.7 of the proposed rule, specifically exclude from such preemption any State or local law or regulation, to the extent such law or regulation is applicable both to housing receiving Federal assistance and to nonassisted housing, and also excludes from preemption any contractual restrictions or obligations entered into before the enactment of the 1990 Act that prevent or limit prepayment. Thus, for example, the preemption provision has no effect on any mortgage note provisions requiring the consent of the State housing finance agency for prepayment of the mortgage.

Section 248.9 (Waivers)

Section 248.9 authorizes the Secretary to waive any provision of part 248, subject to statutory limitations, on the basis of a written determination of good cause. The existing rule does not contain a waiver provision.

Subpart B—Prepayments and Plans of Action Under the 1990 Act

Section 248.101 (Definitions)

Aggregate Preservation Rents—Aggregate preservation rents are the gross potential income required by the project to meet certain expenses and preservation costs, depending on whether the owner intends to retain the project with the low income affordability restrictions—the "extension preservation rent"—or transfer the project to a qualified purchaser—the "transfer preservation rent." In both instances, the project's gross potential income must be sufficient to support debt service on any rehabilitation loan and federally-assisted mortgage, project operating expenses and adequate reserves. In this context the term "rehabilitation loan" would include not only a rehabilitation loan insured by the Secretary under part 241 that would be obtained in connection with the plan of action, but also any other rehabilitation loan for the project that is outstanding at the time of the notice of intent. In calculating "adequate reserves" the Department will determine what additional funds must be added to existing reserves in order to maintain the project in accordance with the housing standards specified in § 248.147.

Project operating expenses would be determined by HUD, based on operating expenses for the past three years, adjusted for trend, reasonable reductions in maintenance and utility costs attributable to rehabilitation and energy improvements financed under the plan of action or a trended expense estimate based on the reasonable reductions in maintenance and utility costs attributable to rehabilitation and energy improvements. More weight will be given to the actual expenses, assuming they are reasonable.

If the owner intends to retain the property, the extension preservation rent must also include sufficient income to cover the annual authorized return. Where the owner plans to transfer property, the transfer preservation rent must be sufficient to cover debt service on any acquisition loan.

It should be noted that aggregate preservation rents are to be determined for the project as a whole, and not for each unit in the project, and that the sole purpose of the aggregate preservation rents is to provide a basis for comparison with the Federal cost limit. If the owner intends to transfer the project, the transfer preservation rent would be used to determine whether the project exceeds the Federal cost limit; if the owner intends to retain the project, the extension preservation rent would be used for this purpose.

Annual Authorized Return—The proposed rule defines annual authorized return as the sum of (a) allowable distributions each year plus (b) the debt service attributable to the equity take-out portion of any loan approved under the plan of action, expressed as a percentage of the project's extension preservation equity. This definition recognizes that a plan of action involving incentives could allow the owner to realize its equity in a project through either an increase in allowable distributions, an equity take-out loan, or both.

Bona fide offer—The proposed definition of bona fide offer, along with other requirements concerning sale transactions under the proposed rule, have been designed to ensure that neither owners nor priority purchasers take advantage of the sales process to undermine the purposes of the rule. Section 224(a) of the 1990 Act provides that if the purchaser under a plan of action is unable to consummate a sale for reasons other than HUD's inability to provide incentives, the owner may, subject to the provisions of sections 220 and 221, prepay the mortgage and terminate low income affordability restrictions. This provision is implemented at § 248.169 of the proposed rule. HUD will seek to ensure that owners do not contrive sham offers that are designed to discourage other offers and then fall through, thus leaving the owner free to prepay its mortgage. In part, HUD will do so through enforcement of the requirement that an entity which is a "related party" to the owner does not qualify as a priority purchaser or a qualified purchaser. See definition of "related party." In addition, HUD will seek to ensure that organizations do not make offers in bad faith for the purpose of forestalling an owner from exercising its right to prepay

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the mortgage under the rule. The one percent earnest money deposit requirement is designed in part to prevent such offers. Moreover, the three-month time limits for submitting a plan of action and for closing on a sale, see §§ 248.135(a), 248.157(*f*), will prevent undue delay in this regard. The Department intends to seek administrative sanctions against the seller and/or purchaser if it uncovers evidence of any such sham transaction.

The rule provides that HUD will make a determination as to whether an offer to purchase the project qualifies as a bona fide offer. As set forth in § 248.157, the purchaser must include with the offer a substantial earnest money deposit and a contract of sale in form acceptable to HUD.

Community-based nonprofit organization—The definition of community-based nonprofit organization is derived from the definition of "community housing development organization" used in the HOME program established in title II of the Cranston-Gonzalez National Affordable Housing Act. In light of language in the House Conference Report to the Cranston-Gonzalez National Affordable Housing Act, Conf. Rep. No. 101–943, 101st Cong., 2nd Sess. (the "Conference Report") indicating that Congress intended the definition of nonprofit organization to "conform" to the definition of community housing development corporation under the HOME program, the Department has included this definition in the proposed rule and provided that entities meeting this definition would have a priority in purchasing a project over State and local government agencies and other nonprofit organizations (other than resident councils offering to purchase the project under a homeownership program).

Default—The proposed definition provides that a mortgage would not be considered to be in default unless the 30-day "grace period" provided by the mortgage for the cure of a default has expired. A mortgage for a project that is subject to a workout agreement would not be considered in default under this definition. The proposed definition recognizes the fact that the owner's failure to make a mortgage payment on the first day of the month does not mean that the project is in financial jeopardy or that an insurance claim is imminent. The proposed definition differs from that applicable to multifamily mortgage insurance claims, which provides that a mortgage is considered in default upon the mortgagor's failure to make any payment due or upon the mortgagee's acceleration of the debt due to the mortgagor's failure to perform any other covenant under the mortgage. See 24 CFR 207.255.

Eligible Low Income Housing—The definition of "eligible low income housing" in section 229(1) of the 1990 Act tracks the language of the corresponding definition in section 233(1) of the 1987 Act, except that under the 1990 Act, the project must be within two years of becoming eligible for prepayment without the prior written approval of the Secretary, whereas the 1987 Act's definition provides that the project must be within one year of becoming eligible for prepayment.

If, at any time on or after November 1, 1987, a project meets the criteria of both subsections (a) and (b) of the definition at the same time, then the project is thereafter an eligible low income housing project, regardless of future events. Thus, if a section 221(d)(3) market rate project was receiving section 8 Loan Management Set-Aside assistance on November 1, 1987, and at that time the mortgage was in its 20th year from final endorsement, the project would be considered to be eligible low income housing at all times thereafter, even if the owner subsequently decided not to renew the section 8 contract. If, on the other hand, the section 8 contract for a section 221(d)(3) market rate project expires during the 15th year from final endorsement, the project would not meet the criteria in both subsection (a) and subsection (b) at the same time, and thus the project would not constitute eligible low income housing. (This analysis applies to the definitions of eligible low income housing in both subparts B and C.)

The definition of "eligible low income housing" in the proposed rule adds an exception for projects which are subject to a use restriction imposed by the Secretary that restricts the project to low and moderate income use for a period at least equal to the remaining term of the mortgage. The primary impact of this exception is to exclude from the universe of eligible low income housing projects those projects which have received assistance under the Flexible Subsidy program authorized by section 201 of the Housing and Community Development Amendments of 1978, as amended, 12 U.S.C. 1715z–1a, and are subject to a use agreement imposed pursuant to that statute. Section 201(d)(1) of the 1978 Amendments was amended by section 211(c) of the Housing and Community Development amendments of 1979 to require that an owner receiving Flexible Subsidy assistance must agree, as a condition to receiving such assistance, to "maintain the low- and moderate-income character of (the) project for a period at least equal to the remaining term of the project mortgage." HUD has implemented this requirement by conditioning the provision of Flexible Subsidy assistance on the execution and recordation of a use agreement that requires the owner to maintain the project under the provisions of the applicable insurance program until the maturity date of the mortgage.

The existing rule does not explicitly address the issue of whether a project that is subject to a Flexible Subsidy use agreement may constitute "eligible low income housing" or whether its owner may receive incentives. However, the Department has taken the position that since the owner of such a project would be unable to demonstrate that the project has a "higher and better use," as required by § 248.233(b), the Department would not entertain a request for incentives with respect to such a project. Likewise, the Conference Report states at page 461 that the valuation process, which is at the heart of the procedures for determining incentives under the 1990 Act, "is designed primarily to determine what economic result an owner might have achieved by prepaying the existing HUD-assisted mortgage, ending the affordability restrictions on the housing and converting the housing to alternative use (i.e., market rate rental housing, condominiums or nonresidential uses)." Accordingly, the Department believes that it is consistent with the Congressional intent of the 1990 Act to exclude from the definition of eligible low income housing those projects which are subject to a Flexible Subsidy use agreement.

Under the language of the proposed rule the Department would likewise exclude projects which are subject to a use restriction imposed pursuant to section 203(h)(2) of the Housing and Community Development Amendments of 1978, as amended by section 161(g) of the Housing and Community Development Act of 1987. Section 203(h)(2) provides that the Secretary may not approve the sale of any subsidized project (a) that is subject to a HUD-held mortgage, or (b) if the sale transaction involves the provision of any additional subsidy funds by the Secretary or a recasting of the mortgage, unless such sale is made as part of a transaction that will ensure that the project will continue to operate at least until the maturity date of the mortgage in a manner that will provide rental housing "on terms at least as

advantageous to existing and future tenants as the terms required by the program under which the loan or mortgage was made or insured prior to the proposed sale of the project." An owner may comply with this requirement either by having the mortgage note amended to prohibit prepayment without HUD's consent for the remaining term of the mortgage or by executing and recording a use agreement obligating the owner to operate the project until the maturity date of the mortgage in accordance with the low income affordability restrictions applicable to the program under which the mortgage was insured. Under the definition of eligible low income housing in the proposed rule, owners who choose either option would be precluded from subsequently filing a notice of intent.

Since projects encumbered with use restrictions imposed under the Flexible Subsidy statute or section 203(h)(2) would not be deemed eligible low income housing under the definition in the proposed rule, the owners of such projects would not be precluded by the proposed rule from prepaying their mortgages. However, even if the mortgage on such a project were prepaid, the owner would still be required to comply with the use restriction for the duration thereof.

Projects which receive rent supplement assistance under section 101 of the Housing and Urban Development Act of 1965 and 24 CFR part 215 are prohibited from prepaying the mortgage debt in full without HUD's consent at any time during the 40-year term of the mortgage. See 24 CFR § § 221.524(a); 236.30(a). Therefore, it is the Department's position that such projects do not constitute eligible low income housing. (Although the definitions of eligible low income housing in both the 1987 and 1990 Acts include housing financed by a mortgage insured under the section 221(d)(3) market rate program and assisted under the rent supplement program, there is no indication that these references were intended to overturn HUD's long-standing regulatory prohibitions on prepayment for rent supplement projects.) The Department is aware that in some cases the mortgage note language for projects receiving rent supplement assistance does not prohibit prepayment without the Secretary's consent for the full mortgage term, and thus is inconsistent with the regulatory prohibition; however, in such cases the Department would view the regulatory prepayment prohibition as superseding any conflicting mortgage note language. Thus, HUD would not view such projects as being entitled, under the operative "regulation or contract," as being eligible for prepayment without HUD's consent, and would not consider such projects to be eligible low income housing. Likewise, if the applicable program regulations at § 221.524 or § 236.30 allow prepayment at the expiration of 20 years after final endorsement, but the mortgage note prohibits prepayment without HUD's consent for the full term of the mortgage, HUD would construe the regulation as superseding the prepayment prohibition in the mortgage note.

Fair Market Rent—The fair market rent is the section 8 existing fair market rent published for effect, applicable to the jurisdiction in which the project is located.

Federal Cost Limit—The Federal cost limit for a project is the greater of (a) an amount determined by multiplying 120 percent of the section 8 existing fair market rent published for effect for the market area by the number of units in the project (according to appropriate unit bedroom sizes) and (b) an amount determined by multiplying 120 percent of the prevailing rents in the relevant local market area in which the project is located by the number of units in the project (according to appropriate unit bedroom sizes). The Federal cost limit is used to determine whether an owner may proceed under the "voluntary sale" provisions of § 248.157 or under the "mandatory sale" provisions of § 248.161. If the transfer preservation rent does not exceed the Federal cost limit, the owner, if it seeks to transfer the project, must proceed under § 248.157; if the transfer preservation rent exceeds the Federal cost limit, the owner seeking to transfer the project must proceed under § 248.161.

In addition, the Federal cost limit provides an upper ceiling to the incentives and determines the types of incentives that may be obtained under § 248.153, since the rent stream obtainable through the incentives under § 248.153 may not exceed the Federal cost limit. See sections 215(b)(2)(A) and (B), 219(a) and 220(a) of the statute. While rents for individual units assisted by section 8 may exceed the Federal cost limit, the projected rental income stream for the entire project may not exceed the Federal cost limit for the project.

Federally-assisted Mortgage—The definition in the proposed rule includes the first mortgage that is insured, held or assisted by HUD, plus any operating loss loan or loan insured by HUD under part 241. The definition of "preservation equity" in the 1990 Act refers to "federally assisted-mortgage or mortgages" for the project, and thus appears to imply that loans in addition to the first mortgage could qualify as federally-assisted mortgages. The Department would take into account any operating loss loan or existing section 241 loan when calculating the aggregate preservation rents under § 248.121.

Homeownership Program—A homeownership program for purposes of this subpart is a program, proposed by a resident council, that meets the requirements established under § 248.173. A plan of action in which the tenants intend to operate the project as a nonprofit rental project would not constitute a homeownership program.

Low Vacancy Area—The proposed rule defines "low vacancy area" to mean a market area in which the supply of vacant, available rental housing units is not sufficient to allow for normal growth, and mobility, taking into account the need for vacancies resulting from turnover and for meeting growth in renter households. Such a level of vacancy is the minimum level, below which the range of choice is very limited and mobility is restricted or restrained.

Nonprofit Organization—A nonprofit organization is defined as a chartered or organized entity that is not operating for profit, that complies with HUD's standards of financial accountability, and that has as a principal purpose significant activities related to the provision of housing for low income families. As noted above, the Conference Report expresses the Conference Committee's intent that qualified nonprofit organizations "essentially conform" with the requirements established for community housing development organizations under the HOME program authorized under title II of the 1990 Act. However, the definition of community housing development organization in section 104(6) of the 1990 Act requires, *inter alia*, that the organization have a history of serving the local community or communities in which the housing is to be located. The Department envisions that a nonprofit organization under title VI of the 1990 Act could be an organization that is founded specifically in response to the opportunities made available under the statute, in which case the organization would not have any "history" of service. Therefore, the Department has adopted in the proposed rule the language verbatim from section 229(11) of the statute, and has not included standards from the definition of community housing development

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corporation. However, the proposed rule addresses Congress' interest in supporting community housing development organizations by establishing a priority for community-based nonprofit organizations in the procedures for selecting among priority purchasers that make bona fide offers. See § 248.157.

Notice of Intent—The definition of notice of intent differs slightly under subpart B and subpart C. Under subpart C, it is defined as the owner's notification of its intent to prepay the mortgage, terminate the mortgage insurance contract, or amend the mortgage or regulatory agreement. Under subpart B, a notice of intent is defined as the owner's notification of its intent to prepay, terminate the insurance contract, extend the low income affordability restrictions or transfer the project to a qualified purchaser.

The notice of intent is not binding on the owner. Based on the results of the appraisal, or other reasons, the owner may generally change its intentions regarding the property. However, once an owner accepts an offer to purchase the project (or, under § 248.161, receives an offer to purchase the project), the owner is required to consummate the sale, if possible.

Plan of Action—The proposed rule defines the plan of action as a plan providing for the termination of low income affordability restrictions, extension of low income affordability restrictions, or transfer of the project to a qualified purchaser. A homeownership program submitted to the Secretary pursuant to § 248.173 constitutes a plan of action for purposes of subpart B.

Preservation Equity—In the proposed rule, preservation equity has two different definitions depending on whether the owner of an eligible low income housing project intends to retain the property and extend the low income affordability restrictions or transfer the project to a qualified purchaser who will agree to retain the restrictions. The extension preservation equity is extension preservation value less the outstanding balance of any debt secured by the property, whether in the form of a federally-assisted mortgage or other mortgage. The statute defines preservation equity as preservation value less "any debt secured by the property." The Department interprets this phrase to mean the "outstanding balance" of any debt secured by the property. The transfer preservation equity is the transfer preservation value of the project, less the outstanding balance of the federally-assisted mortgage(s) secured by the project at the time that the transfer preservation equity is calculated.

Preservation Value—Like preservation equity, the proposed rule also establishes two different definitions for preservation value, depending on the owner's intentions for the property. The extension preservation value is the fair market value of the project based on the project's highest and best use as multifamily market-rate rental housing. The transfer preservation value is the fair market value of the project based on the project's highest and best use. In either case the appraisal must take into account the costs that the owner could reasonably expect to incur in order to achieve the use upon which the value is based. For example, if the highest and best use of the property is based on replacement of the project by a shopping center, the appraiser would, in addition to examining the value of comparable raw land parcels suitable for shopping center development, take into consideration demolition and relocation expenses.

Priority Purchaser—Resident councils organized to acquire a project under a HUD-approved homeownership program, and nonprofit organizations and State and local government agencies agreeing to maintain the low income affordability restrictions for the remaining useful life of the project, are deemed priority purchasers and as such are given the first opportunity to purchase projects offered for sale pursuant to this subpart. In addition, such purchasers may receive reimbursement for transaction expenses related to acquisition of the project. Moreover, only priority purchasers are eligible to receive grants under section 220(d)(3)(B) of the statute and § 248.157(o) of the proposed rule. (Both priority and other qualified purchasers are eligible to receive grants under section 221(d)(2) of the statute and § 248.161(d) of the proposed rule.)

Section 236(j)(4) of the National Housing Act, 12 U.S.C. 1715z-1, provides that a mortgage is eligible for insurance under section 236 only if executed by a "private mortgagor" eligible under section 221(d)(3) or section 221(e). However, recent legislation, including title VI, makes clear that Congress intends State and local government agencies to be eligible purchasers of section 236 projects in the context of plans of action under subpart B of part 248. Section 203(a)(1) of the HUD Reform Act amended section 236(b) to provide that interest reduction payments may be made with respect to a mortgage on a project owned by a public entity, and section 203(c)(2) of the HUD Reform Act amended section 241(f)(3), as enacted by the 1987 Act, to make public entities purchasing eligible low income housing projects eligible to receive an equity loan insured under section 241(f). The legislative history of the HUD Reform Act indicates that these amendments were included in the Senate bill to "(make) public entities eligible mortgagors to acquire section 236 projects." Cong. Rec. H9686 (daily ed. November 21, 1989) ("Changes Made in the Senate Amendment to H.R. 1, the HUD Reform Act of 1989"). The inclusion of State or local government agencies in the definition of priority purchaser under section 231(a) of title VI is further evidence of Congress' intent in this regard. Therefore, under the proposed rule, State or local government agencies can be priority purchasers with respect to section 236 projects as well as other eligible low income housing projects.

The Department construes the definition "nonprofit organization" in the statute and in the proposed rule as including a tenant organization that seeks to purchase the project and operate it as a rental project, provided the organization otherwise meets the definition of "nonprofit organization." (see definition of "resident council,' below).

A purchaser that consists of a nonprofit organization or governmental entity that is affiliated with a for-profit entity for purposes of purchasing the project would not constitute a priority purchaser, but could constitute a qualified purchaser. This includes cases where Low Income Housing Tax Credits are allocated to a non-profit entity in connection with the purchase of a project. Additionally, if a nonprofit organization, after receiving assistance and at any time while a plan of action is in effect, becomes affiliated with a for-profit entity or transfers the project to a for-profit entity, the Secretary shall seek reimbursement from the nonprofit purchaser for any assistance provided to it by virtue of its status as a priority purchaser.

Related Party—The definition is derived primarily from sections 231 (c) and (d) of the 1990 Act. The proposed rule elaborates on the statutory definition by making clear that if any member of the board of directors of the purchaser is an emp'oyee, officer or director of the owner, of if the owner has made or intends to make a loan or grant or provide other financial assistance to the purchaser in connection with the transfer of the project, the purchaser and the owner would be deemed "related parties."

Relevant Local Market—The proposed rule defines a relevant local market for a project as being an area geographically smaller than the market area established by the Secretary for purposes of determining the section 8 existing fair market rent, and that is identifiable as a distinct rental market area. In nonmetropolitan areas, where comparable multifamily projects might not exist in the same specific geographic locality, it is customary for appraisers to use comparables in other noncontiguous localities that have similar market characteristics. Appraisers may employ this practice with regard to nonmetropolitan areas as long as the noncontiguous localities are within the same county and have similar market characteristics. If there are no comparables in the relevant local market area in terms of physical conditions, use restrictions and other factors and it is not otherwise possible to determine prevailing rents in that area, the section 8 existing fair market rent shall be the sole measure for determining the Federal cost limit.

Relocation Expenses—The definition of relocation expenses is derived from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, 42 U.S.C. 4601 *et seq.*, and is consistent with the HOPE Program Guidelines. Under this definition, relocation expenses must include, at a minimum, payment for advisory services, referrals, and payment for actual, reasonable moving expenses.

Remaining Useful Life—Subpart B of the proposed rule requires all owners and purchasers of projects who accept incentives pursuant to this subpart to maintain the low income affordability restrictions on the project for the project's remaining useful life. This is a departure from the provisions of the existing rule, which requires maintenance of the low income affordability restrictions only for the remaining term of the original mortgage, a period of approximately eighteen years. The remaining useful life of a project under subpart B is the structure's anticipated physical life, assuming normal maintenance and repairs and replacement of major systems and capital components as necessary. The Department construes section 222(c) of the 1990 Act as requiring that the remaining useful life of a project would be at least 50 years from the date of approval of a plan of action under subpart B, since an owner is precluded, until that date, from petitioning the Department for a determination that a project's remaining useful life has expired. The Department will establish standards and procedures for determining when the useful life of a project has expired.

Resident Council—The proposed rule adopts the definition stated in section 229(11) of the 1990 Act. Only entities qualifying as resident councils may purchase a project pursuant to a homeownership program under § 248.173. However, the Department recognizes that a tenants' organization may seek to purchase a project as rental housing and not under a homeownership program. Such a tenant organization would not be limited to purchasing the project under a homeownership program, even if the organization met the formal elements of the definition of resident council.

Special Needs Tenants—The proposed rule defines special needs tenants as those who are "Elderly Persons," "Elderly Families," "Disabled Persons," or families that include a "Disabled Person," all as defined in 24 CFR 812.2. The Department specifically invites comments as to any other categories of tenants that should be included within the definition of special needs tenants.

Tenant Representative—The proposed rule's definition of tenant representative includes a designated officer of an organization of the project's tenants, a tenant who has been elected to represent the tenants of the project, and individuals and organizations, such as legal aid organizations and other nonprofit organizations, that have been formally designated or retained by an organization of the project's tenants to represent the tenants. In any case, the tenant representative must represent the tenants residing in at least 50 percent of the currently occupied units. The tenant representative must be elected or appointed by the project's tenants themselves and not by an outside entity. The Department recognizes that situations may occur in which more than one person or organization may claim to represent the tenants. In such situations both persons or organizations would be considered tenant representatives for purposes of receiving notifications and information under the proposed rule, until such time as the tenants resolve collectively who is to be their representative.

Voluntary Termination of Mortgage Insurance—The proposed definition of "voluntary termination of mortgage insurance" is derived from § 207.253 of this chapter. That section provides that the mortgagor and mortgagee may jointly request that the Secretary terminate insurance on a mortgage. Such termination of insurance has the effect of discharging the regulatory agreement (since that agreement, by its terms, is in effect only as long as the mortgage is insured or held by HUD) and thereby terminating the low income affordability restrictions that are tied to the federally-assisted mortgage.

Section 248.103 (General Prepayment Limitation)

This section generally states that owners of eligible low income housing may not prepay a mortgage or terminate a mortgage insurance contract without first receiving approval from the Secretary of a plan of action submitted pursuant to this subpart. The provisions of this section are identical to that of § 248.203 of subpart C, except that this section also implements section 211(b) of the 1990 Act by prohibiting mortgagees from foreclosing on, or acquiring by deed in lieu of foreclosure, eligible low income housing projects unless the mortgagee conveys title to the project to the Secretary in connection with a claim for insurance benefits. This provision was apparently enacted in order to prevent collusion between an owner and an insured mortgagee to contrive a foreclosure and enable the owner to redeem the project at foreclosure (or purchase it through a straw party), thereby circumventing the prepayment restrictions of the statute.

State agencies which hold mortgages on non-insured State agency projects do not have the right to receive insurance benefits in exchange for conveying the project to the Secretary. Therefore, § 248.103(c) is limited in its applicability to insured projects. The Department assumes that if a State agency is forced to foreclose on a project that is eligible low income housing, it will take whatever steps are necessary to ensure that the project is preserved after foreclosure as low and moderate income housing.

The penalties set forth in both this section and in § 248.203 for violating the prepayment limitations include a rescission of the prepayment, reinstatement of the mortgage insurance contract, and a declaration that the unlawful prepayment or termnation is null and void.

Section 248.105 (Notice of Intent)

The procedure for owners to notify the Secretary of their intent to prepay, terminate a mortgage insurance contract, extend the low income affordability restrictions, or transfer the project to a qualified purchaser, are set forth in § 248.105 of subpart B of the proposed rule. Any owner of eligible low

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income housing, as defined in subpart B, may submit a notice of intent to the Secretary within 24 months of the date the owner would be contractually eligible to prepay in the absence of this regulation. By contrast, due to the definition of eligible low income housing applicable to subpart C, owners may file notices of intent under that subpart only within one year of being eligible to prepay in the absence of the regulation.

Section 212(c) of the 1990 Act provides that an owner shall not be eligible to file a notice of intent if the mortgage (a) falls into default on or after November 28, 1990, or (b) fell into default before, but is current as of, that date, and the owner does not agree to recompense the appropriate insurance fund, in an amount that HUD determines to be appropriate, for any losses sustained by the insurance fund as a result of any workout or other arrangement agreed to by HUD and the owner with respect to the defaulted mortgage. The statute further directs HUD to carry out this provision in a manner consistent with the provisions of section 203 of the Housing and Community Development Amendments of 1978, 12 U.S.C. 1701z-11.

With respect to loans that fall into default on or after November 28, 1990, the proposed rule provides that the default will disqualify the owner only if the mortgage is held by HUD at the time of the default or if the insured mortgage is assigned to HUD as a result of the default. Thus, if the mortgage falls into default after November 28, 1990, but the owner cures the default prior to the assignment of the mortgage to HUD, the owner would be entitled to file a notice of intent.

The proposed rule also applies this standard to an owner of a project whose mortgage fell into default prior to November 28, 1990 and has continued in default after that date. Although the statute does not specifically address this situation, it would be incongruous to treat such projects differently than projects that fall into default after November 28, 1990. However, if the owner entered into a workout agreement with HUD prior to November 28, 1990 and has continued to comply with the terms of the workout past that date, the owner would be entitled to file a notice of intent, provided the owner brings the mortgage current and recompenses the appropriate insurance fund before filing the notice of intent.

The Department construes the exclusion for projects that fall into default after November 28, 1990 to be applicable even if the default occurred when the project was owned by a former owner; a contrary interpretation would enable owners to evade the prohibition simply by transferring the project. Moreover, this interpretation is more consistent with the plain language of the statute, which refers to the mortgage falling into default, rather than the owner (i.e., the party filing the notice of intent) defaulting under the mortgage.

The Department has also added the requirement that owners who file a notice of intent pursuant to this subpart may not receive incentives unless the mortgage is current at the time of approval of the plan of action. See § 248.145(a)(11).

With respect to mortgages which fell into default prior to November 28, 1990, but were current as of that date, the Department will require, as a condition to eligibility for filing a notice of intent, that the owner repay the Department for any debt forgiven by HUD in connection with a workout arrangement or modification agreement. The Department notes, however, that the Department has rarely forgiven debt in connection with such workouts. The amounts to be repaid would not include reserve for replacements or other escrow deposits that HUD agreed to waive as part of the workout or modification.

The purpose of the allusion to section 203 of the Housing and Community Development Amendments of 1978, which prescribes goals and requirements for the management and disposition of HUD-owned projects and projects with HUD-held mortgages in default, and authorizes HUD to enter into partial payments of claim transactions, is unclear. Therefore, the statutory reference to section 203 is not reflected in the proposed rule.

Both subparts B and C list those parties to whom a copy of the notice of intent must be sent. The 1987 Act does not specify that a copy of the notice of intent be delivered to each tenant; however, the existing rule includes such a requirement. See § 248.211 of subpart C. Similarly, while section 230 of the 1990 Act provides that notification of information to tenants may be accomplished by posting in an accessible location in all affected buildings and delivery to a representative of the tenants, if one exists, the Department has interpreted this as a minimal standard of notice and in the proposed rule requires that a copy of the notice of intent be given to each tenant. In addition, the rule provides that if the project contains a substantial number of tenants that do not speak English, the notice of intent must be written in a language understood by such tenants.

The reason for these requirements is twofold. First, at this early stage in the prepayment process, it is likely that the Secretary and the owner will be unaware of the existence of a tenant representative, and hence could fail to fulfill the statute's notification requirements by merely posting a copy of the notice. By providing a copy of the notice of intent containing instructions for the tenants to notify either the owner or the Secretary of the identity and address of any representative, if one exists, the owner and the Secretary will be able to establish at an early stage in the process who the tenant representative is, and ensure that the tenant representative receives notification as the statute directs. Second, notification to all affected tenants at the time of submission of a notice of intent provides these tenants with the maximum opportunity for taking an active role in the prepayment process, including the opportunity to organize and seek assistance to purchase the project if it is to be sold.

Section 248.105 includes a requirement that the owner provide each tenant with a HUD-prepared summary of the 1990 Act, which will describe in summary form the possible outcomes for the project, including homeownership. The summary will explain in simplified terms what impact the filing of the notice of intent may have on the tenants. Although not required by statute, the Department has added this requirement because of the complexity of the legislation. The summary, like the notice of intent itself, will be posted in each affected building in the project.

Section 248.111 (Appraisal and Preservation Value of Eligible Low Income Housing)

This section implements section 213 of the statute by establishing the procedure for appraising eligible low income housing for which the owner has submitted a notice of intent to transfer the project or to extend its low income affordability restrictions. Two appraisals must be conducted within the four months following submission of a notice of intent to transfer the project or extend its low income affordability restrictions. Both the owner and the Secretary shall retain an independent appraiser to conduct an appraisal of the property. Both appraisers shall possess the same minimum qualifications, to be established by the Department, and shall conduct the appraisals using the same specifications, also to be established by the Department, to determine the project's extension and transfer preservation values. If the appraisals yield different preservation values, the proposed rule establishes a one month period during which the owner and Secretary will attempt to reach agreement as to the project's preservation values based on the results from both appraisals. While the statute does not limit the negotiation period to one month, the Department has determined that in order to comply with the strict time frame which runs throughout the prepayment process and which depends in part on the determination of the project's preservation values, a reasonable time limitation is needed. HUD expects that it will be able to reach agreement with the owner regarding the preservation values if, after review of the two appraisals by the Department, it determines that the discrepancy between the appraisals is no more than 5 percent of the lower appraisal. If agreement cannot be reached within the one month period, the owner and the Secretary must jointly select a third appraiser whose determination of preservation values shall be binding on both parties.

The Department interprets the requirement for "independent appraisers" to mean that the appraisers must not be employees of the Federal Government and may also not be employees or officers of any entity that is affiliated with the owner.

Under title 11 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101-73, 12 U.S.C. 3310 *et seq.*, appraisals performed in connection with federally-related transactions must be conducted by individuals certified or licensed by the State in accordance with the Act's requirements. States are scheduled to have licensing procedures and standards in place by December 31, 1991. The Department will require that all appraisals conducted under subpart B must be done by an appraiser approved by the State under these standards, and that the appraiser must also have six years of appraisal experience, including three years of multifamily property appraisal experience.

The Department is currently developing more detailed procedures for the selection, procurement, instruction and compensation of appraisers under the 1990 Act. These procedures will be included as part of the field instructions implementing these regulations. Such procedures may, consistent with the proposed rule, provide for the establishment of an open-ended "roster" of approved HUD appraisers, from which "HUD's" appraiser and the third appraiser, if needed, would be selected.

The appraisal procedure provides for the estimation of both the extension and transfer preservation values for each project. The former would equal the appraised fair market value of the project as multifamily rental housing less certain adjustments. The latter would equal the appraised "highest and best use" value of the property less certain adjustments. The former figure is the preservation value of the project for purposes of providing incentives in the event that the owner retains the property, while the latter is the preservation value in the case of the transfer of the project to a qualified purchaser. The proposed regulation requires that both of these values be determined for all appraised projects regardless of the owner's intentions as specified in the notice of intent. This is consistent with section 216(b)(1) of the statute, which states that HUD shall provide the owner with the preservation value determined in accordance with the residential rental standard and the highest and best use standard.

For the purpose of determining the preservation values, the statute directs appraisers to use the greater of actual project operating expenses at the time of the appraisal, based on the average of the actual project operating expenses during the preceding three years, or projected operating expenses after conversion. The Conference Report at page 482 states that the purpose of using average expenses is to enable an appraiser to adjust for extraordinary and nonrecurring costs that make the current year operating expenses abnormally high or low. The Conference Report then states that if current year operating expenses are higher than that of the preceding years and the Secretary determines that this is not due to extraordinary or nonrecurring costs, and that the operating expenses are not expected to decrease, then current year operating expenses should be used in making the comparison with post-conversion expenses. Conversely, where project operating expenses are lower in the current year than in preceding years and are expected to continue at the lower level due to energy efficiencies or rehabilitation, these reductions should be accounted for, and current year expenses, rather than the average expenses during the preceding three years, should be used in comparison with post-conversion expenses.

The Conference Report at page 482 states that the appraiser must take into account any use agreements entered into by the owner when determining value. The Department construes the term "use agreements" in this context to include provisions in the mortgage note prohibiting prepayment without the consent of the State housing finance agency or other such entity or agency. Clearly, if such a prohibition exists and the agency's position is that prepayment would not be approved unless the project were maintained as low and moderate income housing for an extended period of time, the impact of the prepayment prohibition on the appraised value of the project would be quite substantial. In addition, the Conference Report directs HUD to examine the Committee Report accompanying the Senate bill with respect to its discussion of the types of costs that owners would incur in the event of prepayment and conversion. The Senate Report (Senate Report No. 101-316, 101st Cong., 2nd Sess., dated June 8, 1990) (the "Senate Report") notes at page 110 that conversion costs vary widely by jurisdiction, especially because of differences in State and local laws governing conversions, rent control and zoning; in addition, the Senate Report states that the appraiser must take into account the availability of financing for potential purchasers of cooperative shares or condominium units. It further provides that conversion costs must assume rehabilitation to a market standard, and must take into account both hard and soft costs, including losses due to vacancies, rent skips, rent withholding, legal costs, advertising, etc. HUD will require that the appraisers include a capital needs assessment as part of the appraisal for this purpose. The Senate Report points out that in estimating such costs, the income distribution of the current tenants and the gap between current rents and market rents must be taken into account. The appraisal instructions to be issued by the Department will discuss all of these considerations.

Although the appraised value will take into account the cost of adding amenities, making upgrades and otherwise elevating the quality of the housing up to its highest and best residential use, and will estimate project value based on such upgraded condition, such amenities and upgrades will not be financed as part of the plan of action. The incentives will finance repairs necessary to restore the project to its original physical standards for occupancy, to account for any required capital improvements, as identified by HUD, and to fund operating reserves needed to maintain the project at that level of quality. The appraisal must also estimate the repairs and replacements needed to meet these housing standards, since HUD will rely on such information in calculating the aggregate preservation rents under § 248.121.

Section 213(a)(3) of the statute provides that the Secretary may provide

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incentives only based upon an appraisal that is not more than 30 months old. The appraised values used in determining the preservation values shall be the appraised values as of the date that the appraisal is "conducted," i.e., the date on which it is signed and delivered to HUD or the owner. No adjustment shall be made to take into account projected trends in real estate values or the length of time required to transfer a project or receive incentives under subpart B.

Section 248.121 (Annual Authorized Return and Aggregate Preservation Rents)

This provision, which implements section 214 of the statute, establishes the procedure for determining the aggregate preservation rents, which are the incomes required to meet certain project costs if the project is to be preserved for low income families. These project costs include debt service on any rehabilitation loan or federally-assisted mortgage, project operating expenses, adequate reserves, an annual authorized return if the project is retained by the owner, and debt service on an acquisition loan if the project is sold to a qualified purchaser.

Given that a project's aggregate preservation rents must be calculated at an early stage in the prepayment process, certain project costs covered by aggregate preservation rents may need to be estimated by the Department. For this reason, the Department has established guidelines for making these determinations. For instance, to determine the debt service on a rehabilitation loan for the project, the loan amount will be based on the estimates made in the appraisals conducted under § 248.111, and market rate interest rates will be assumed. Additionally, rehabilitation funds contributed by State or local government agencies to the project will be deducted from the potential loan amount. To calculate the debt service on an acquisition loan if the project will be sold to a qualified purchaser, the Department will assume that the sale price is equal to the transfer preservation value of the project, and that the Department will provide the maximum acquisition loan allowable under part 241 of this title.

Adequate reserves will be determined by calculating the amount that must be added to existing reserves and sustained on a continuous basis in order to ensure that the project will be able to meet housing quality standards. This estimate will take into account preventive maintenance, necessary replacements and future repairs.

One component of the extension preservation rent is the amount which would enable the owner to realize the annual authorized return. This section states that annual authorized return "shall be equal to 8 percent of the (project's) extension preservation equity." The Department interprets this to mean that while an owner is authorized an 8 percent annual authorized return, the statute does not necessarily guarantee this distribution on an annual basis. This is particularly true during the first three years of implementation of a plan of action when rent increases for tenants residing in the project at the time a plan of action was executed must be phased in and the project has a substantial number of tenants that do not receive section 8 assistance. See § 248.145(a)(6). HUD will approve rents at a level that ensures that owners receive the full annual authorized return beginning in the third year. Moreover, if the owner is unable to realize the full 8 percent annual authorized return in any year, including the first three years, the owner may accrue the amount not realized, and realize that amount in later years through withdrawal of residual receipts. Under the plan of action owners would also be entitled to withdraw residual receipts or take distributions of surplus cash in order to realize distributions that had accrued prior to implementation of the plan of action.

Section 248.123 (Determination of Federal Cost Limit)

This section implements section 215(a) of the statute. Pursuant to this section, aggregate preservation rents determined in § 248.121 for each project are compared to the Federal cost limit for the area in which the project is located.

The extension or transfer preservation rent of a project exceeds the Federal cost limit if it exceeds, for the same number and size of units as the project, both 120 percent of the section 8 existing fair market rent in the market and 120 percent of the prevailing rents in the relevant local market in which the project is located.

Section 248.127 (Limitations on Action Pursuant to Federal Cost Limit)

This section, implementing section 215(b) of the statute, governs the procedure to be followed based on the owner's intentions for the project, as stated in the notice of intent submitted pursuant to § 248.105, and based on whether or not the extension or transfer preservation rent for the project exceeds the Federal cost limit.

With respect to owners that seek to retain the project, the extension preservation rent must be compared to the Federal cost limit. If the extension preservation rent is within the Federal cost limit, the owner may file a plan of action to receive incentives. If the extension preservation rent exceeds the Federal cost limit, the owner may likewise receive incentives, but the amount of the incentives may not exceed an amount that can be supported by a projected income stream equal to the Federal cost limit. In that event, the owner would only be entitled to receive as much of the annual authorized return as could be supported by an income stream capped at the Federal cost limit, after taking into account debt service on the rehabilitation loan and on the federally-assisted mortgage, project operating expenses and payments for adequate reserves.

The transfer preservation rent is compared to the Federal cost limit in order to determine the owner's options with respect to sale of the project. If the transfer preservation rent does not exceed the Federal cost limit, the owner may file a second notice of intent to transfer the project pursuant to § 248.157. If the transfer preservation rent exceeds the Federal cost limit, the owner may either (a) file a second notice of intent indicating an intention to transfer the project under § 248.157 at a price which will result in project rents that, on an aggregate level, do not exceed the Federal cost limit; or (b) file a second notice of intent indicating an intention to transfer the project under § 248.161. Under any of these options, if no bona fide offers are received, the owner may prepay the mortgage or voluntarily terminate the mortgage insurance.

(The statute, at section 215(b)(2)(B), states that the owner shall agree to transfer the project at a price "that shall not exceed the Federal cost limit." Since the Federal cost limit is a rent level and not an amount corresponding to a sales price or project value, the Department construes the statutory language to mean that the purchase price, when combined with the other components of the transaction, requires an income stream which may not exceed the Federal cost limit.)

Section 248.131 (Information From the Commissioner)

This provision implements sections 216 (a), (b) and (c) of the statute. Once a notice of intent is submitted to the Secretary by an owner of eligible low income housing, the Secretary has a specified period of time in which to respond by supplying the owner with the necessary information for filing a plan of action. The specific information which the Secretary must provide the owner, which varies depending on whether the owner has submitted a notice of intent to terminate or to extend the low income affordability restrictions on the project, is listed in this section.

In the case of a notice of intent to terminate the low income affordability restrictions, section 223(a) of the 1987 Act directed the Secretary to furnish the owner with "any relevant market area demographic information that the Secretary has custody of and that the owner may use in preparing the plan." The 1990 Act does not include this requirement; however, the Conference Report at page 460 directs the Secretary to furnish such information, and the proposed rule includes this requirement.

Section 216(c) specifies that the Secretary shall make available to the tenants the information supplied to the owner under section 216 and any other information relating to the rights and opportunities of the tenants. If the owner has expressed an intent to transfer the project, the Secretary shall provide the tenants with information concerning their opportunity to become a priority purchaser or to organize as a resident council for purposes of purchasing the project under a homeownership program.

Section 248.133 (Second Notice of Intent)

This section, implementing section 216(d) of the statute, requires submission of a second notice of intent to the Secretary by owners who intend to transfer the project to a qualified purchaser either under § 248.157, or in connection with a mandatory sale, prepayment or termination under § 248.161. The second notice of intent must be submitted not later than 30 days after receiving the financial information on the project from the Secretary under § 248.131. The second notice of intent would generally conform to the requirements for the initial notice of intent, except that copies would not have to be delivered to every tenant. Instead, the owner would be required only to post the notices in each occupied building and send a copy to the tenant representative(s), if any.

The Department recognizes that during the lengthy prepayment process created by the 1990 Act and this proposed rule, some owners may alter their original intentions for the project which were communicated to the Secretary in the notices of intent submitted under § 248.105. Owners may be especially likely to alter their decisions after receiving the projects' financial information which was derived from the appraisals and which may limit the owners' options for proceeding under this subpart. If the owner originally indicated an intent to retain the project and then decides to transfer the project, the second notice of intent will provide HUD, the State or local government and tenants with advance notice of that intent. If the owner originally indicated an intent to transfer the project and then decides to retain it, the owner would file a plan of action based on its revised intentions, without the necessity of a second notice of intent.

The submission of a second notice of intent commences the 12-month period during which owners may negotiate a sale and sell the project only to priority purchasers.

Section 248.135 (Plans of Action)

This section prescribes deadlines and procedures for submission of the plan of action, the contents of the plan of action, the procedures for revisions to the plan of action, and the consequences for failure to file the plan of action. Paragraph (b) provides that a plan of action involving transfer of the project must be submitted jointly by the owner and the purchaser within 90 days after the owner's acceptance of a bona fide offer under § 248.157 or the purchaser's making of a bona fide offer under § 248.161. The Department believes that this procedure will minimize confusion and the possibility for misunderstanding between the parties. Paragraph (c) provides in part for notification of the tenants through posting in each occupied building a summary of the plan of action and delivery of a copy of the plan of action to the tenant representative, if any. In addition, the summary must indicate that a copy of the plan of action shall be available in a convenient location for inspection and copying.

Paragraph (e) describes the contents of a plan of action involving incentives or a transfer of the project. Paragraph (e)(2) requires the owner to submit cash flow projections, and analyses of how the owner will address any physical or financial deficiencies and maintain the low income affordability restrictions on the project. The Department's implementing instructions will require the owner to submit a five-year pro forma analysis of cash flows. The analysis of physical deficiencies must describe how the owner will make any repairs and deferred maintenance needed to sustain the project at a level that meets section 8 housing quality standards and local housing codes. The analysis of financial deficiencies must describe how the owner will address any accounts payable, deficiencies in reserves or other escrows, and other delinquencies.

Paragraph (f) provides in part that any revisions to the plan of action must be delivered and made available to HUD, the State or local government, the tenants and the tenant representative, if any, in the same manner as the original plan of action. Thus, for example, a summary of the revision would be posted in each occupied building in the project and a copy made available in a convenient location for inspection and copying by the tenants.

Section 248.141 (Criteria for Approval of a Plan of Action Involving Prepayment or Voluntary Termination)

Section 218(a) of the 1990 Act is identical to section 225 of the 1987 Act, and thus the Department's implementation of the two provisions will be consistent. The Department views section 218(a), and thus § 248.141 of the proposed rule, as constituting a basis for prepayment or voluntary termination that is independent of other restrictions in the statute. That is, an owner whose project meets the standards for prepayment under § 248.141 is not required to comply with any other standards in subpart B regarding protection of tenants or availability of affordable housing, and the standards in § 248.141 are inapplicable to any prepayment or voluntary termination that is permitted under § 248.169.

Section 248.145 (Criteria for Approval of a Plan of Action Involving Incentives)

This provision implements sections 222 (a) through (c) of the statute. An initial determination will be based on the appraisals which establish the preservation value of a project. The appraisals will determine whether or not the project has any "preservation equity" and, if so, the amount the incentives which could be made available to owners under this subpart. A "windfall profits" test pursuant to section 222(e) of the statute will also be conducted to determine whether a project is located "in those rental markets where there is an inadequate supply of decent, affordable housing." If not, and if the provision of incentives would not serve "other public policy objectives," then no incentives will be made available to owners. A report on section 222(e) explaining how the "windfall profits" test will be applied is being transmitted to Congress.

In establishing the level of incentives to be provided by the Department, HUD will take into account any Low Income

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Housing Tax Credits and assistance provided to a project by State and local governments and that will be used in connection with a plan of action pursuant to section 102(d) of the Housing and Urban Development Act of 1969. The Department will exercise due diligence in reviewing and evaluating plans of action to assure that a package of incentives is the least costly alternative to HUD and that it is consistent with the full achievement of purposes of the statute.

Paragraph (a)(8) provides that rents for new tenants shall be set at levels that will ensure, to the extent practicable, that the units will be affordable to existing proportions of very low, low and moderate income tenants. Although the statute and the proposed rule explicitly state that this limitation shall not prohibit a higher proportion of very low income families and persons from occupying the project, the Department does not construe this as meaning that HUD must provide additional section 8 assistance if the owner selects additional very low income (and correspondingly fewer moderate income) tenants during the term of the plan of action. The maximum level of section 8 assistance for the project authorized under the plan of action is established at the time of plan of action approval. If the owner admits additional very low income tenants at a later date, such tenants must be subsidized by the project itself or by other sources of assistance, such as a separate allocation of section 8 Loan Management Set-Aside assistance.

The Department intends to use the same standards of affordability for new tenants as are applicable to current tenants under paragraph (a)(5), namely, the lower of the section 8 existing fair market rent published for effect or 30 percent of adjusted income.

Section 222(a)(2)(G)(i) of the 1990 Act provides that future rent adjustments shall be made "by applying an annual factor (to be determined by the Secretary) to the portion of rent attributable to operating expenses for the housing and by making changes in the annual authorized return under section 214." The reference in the statute to changes in the annual authorized return appears to be a vestige from a previous version of the bill, in which the authorized return was not fixed at 8 percent preservation equity, but instead was adjusted annually; therefore, this reference is not reflected in the proposed rule.

With respect to the use of an annual factor based on increases in operating expenses, the Department would not be able to develop such a factor if the intent were similar to the intent underlying the requirement that was included in section 8(c)(2)(D) of the United States Housing Act of 1937, as added by section 371(b) of the Housing and Community Development Amendments of 1981. That provision stated that the Secretary shall limit increases in contract rents for section 8 construction and substantial rehabilitation projects to "the amount of operating cost increases incurred with respect to comparable rental dwelling units of various sizes and types in the same market area * * *." On December 22, 1986, the Department informed the Congress that the provision was "inherently flawed because of the absence of 'normal' year-to-year changes in operating expenses * * *." At the Department's initiative Congress repealed section 8(c)(2)(D). See section 142(e) of the Housing and Community Development Amendments of 1987. Some localized data are available to describe wages, prices and costs. The Department is investigating whether these can form a meaningful basis for a rent adjustment procedure. If it is determined that it is not feasible to adjust rents on the basis of currently available data, the Department may seek a technical amendment eliminating the requirement in section 222(a)(2)(G)(i) that HUD use an annual adjustment factor for operating costs. In the meantime, the proposed rule tracks the statutory language.

Paragraph (a)(10) provides that any savings from reductions in operating expenses due to management efficiencies shall be deposited in the reserve for replacement escrow, and the owner shall have periodic access to such reserves, to the extent that the reserve for replacements is adequate and the housing is maintained in accordance with the standards established in § 248.147.

Paragraph (b) provides that no incentives (other than to qualified purchasers) shall be provided, until the Secretary determines that the project meets the housing standards set forth in § 248.147, except that incentives designed to correct deficiencies in the project may be provided. Thus, if a project does not currently meet the housing standards set forth in § 248.147, the proceeds of a capital improvements loan or rehabilitation loan could be disbursed as needed to correct the deficiencies; other incentives would not be available to an owner retaining a project, but would be available to a qualified purchaser. In addition, no distributions would be permitted to either the owner or a purchaser until the housing standards have been met.

As noted above, the Department is not at this time establishing standards and procedures for making determinations of remaining useful life. Accordingly, sections 222(c)(2)–(4) of the statute have been restated in the proposed rule, but more specific standards and procedures will not be developed until a later date.

Section 248.147 (Housing Standards)

This provision implements section 222(d) of the statute. The rule states that eligible low income housing projects receiving incentives must be maintained in compliance with local codes in the jurisdiction where a project is situated and with the section 8 housing quality standards. Where a conflict exists between the two sets of standards, the stricter standard shall be applicable.

Paragraph (b) states that HUD will inspect each project at least annually for compliance with the housing standards. HUD will notify the owner of any deficiencies within 30 days after the inspection, and the owner will have 90 days in which to bring the project into compliance. HUD will reinspect the project once the repairs have been completed or at the expiration of the 90-day period, whichever is earlier.

The sanctions listed in paragraph (c) of § 248.147 could be imposed either if the owner initially fails to bring the project up to housing standards, or if an owner, after having met the housing standards, has allowed the project to fall below such standards during the term of the plan of action. Section 241(f)(5)(B) of the National Housing Act provides that advances of equity loan proceeds shall be phased in to reflect the phasing in of rent levels. In addition, under section 241(f)(2)(B)(ii) of the National Housing Act, as added by section 602 of the 1990 Act, the lender shall deposit on behalf of the owner 10 percent of the loan amount in an escrow account, controlled by the Secretary or a State housing finance agency approved by the Secretary, and such funds shall be made available to the owner upon the expiration of 5 years from the date that the loan is made, subject to compliance with the 1990 Act's housing standards requirements. Both of these requirements are reflected in § 241.1069 of the proposed rule. Section 248.147(c)(1) of the proposed rule provides that HUD may direct the mortgagee to withhold the disbursement of any such unadvanced equity loan proceeds. HUD would condition the release of the proceeds on the completion of repairs by the owner.

Section 222(d)(2)(A)(ii) of the statute authorizes HUD to reduce the annual authorized return until such standards have been complied with and requires that the amounts withheld be used for repairs. In this context the reference to "annual authorized return" appears to mean the allowable annual distributions, and the proposed rule reads accordingly. The proposed rule states that HUD would prohibit the owner from taking the allowable distributions and direct that such funds be used instead to make required repairs. The owner would not be allowed to accrue the unpaid distributions. This sanction would remain in effect for as long as HUD determines that the project is not in compliance with the housing standards. Once the project is brought into compliance, the allowable distributions would be reduced to 50 percent of the otherwise allowable distributions for the following two years. The owner may accrue the balance during these two years for later distribution from surplus cash.

Paragraph (e) sets forth sanctions that are available to HUD in the event that a project fails to comply with the housing standards for two consecutive years. These provisions generally track the statutory language. With respect to paragraph (e)(2), HUD would direct the mortgagee to declare a covenant default and to accelerate the debt. This procedure is consistent with the enforcement mechanism available to HUD under 24 CFR 207.257.

Paragraph (f) is intended to clarify that the sanctions described in paragraphs (c) through (e) are in addition to, and not in substitution of, any sanctions or remedies that the Department may have under the mortgage, regulatory agreement, section 8 HAP contract or other agreement to enforce compliance with the owner's obligation to maintain the project in good repair and condition.

Section 248.149 (Timetable for Approval of a Plan of Action)

This section implements section 225 of the statute. Section 225(b)(2) states that if a plan of action is rejected on the basis of deficiencies, the Secretary shall give the owner a reasonable opportunity to revise the plan of action and seek approval. Paragraph (c) of the proposed rule limits this time period to 60 days, and provides further that if the owner fails to comply with this deadline and HUD fails to approve the plan of action within the time periods specified in paragraph (b), the owner will not be entitled to relief under paragraph (d). Paragraph (d) of the proposed rule provides that if the Secretary fails to approve a plan of action within the time periods specified in paragraph (b), HUD shall provide incentives and assistance in an amount that the owner would have received if the Secretary had complied with the time limitations, except that owners shall have no such right if the plan of action is not approved because of deficiencies.

Section 248.153 (Incentives to Extend Low Income Use)

Section 248.153 implements section 219 of the statute. The proposed rule lists the incentives specified in the statute, plus the incentive of increases in allowable distributions. Incentives would be capped so that the aggregate rents resulting from the incentives would not exceed the Federal cost limit. To the extent that section 8 rents and rents from unassisted tenants are insufficient in any given year to realize the full 8 percent return, the rule provides that the owner or purchaser may have access to existing and future residual receipts to make up the shortfall. Section 8 contract rents would be capped at the Federal cost limit.

The incentive limit stated in paragraph (a) is based on the extension preservation rent, which in turn assumes market-rate financing for any rehabilitation. If the Department provides below market-rate financing for the rehabilitation under the capital improvement loan program authorized by paragraph (b)(5), the Department would require corresponding adjustments of the rent levels for section 8 tenants.

Paragraph (b)(7) authorizes HUD to redirect the Section 236 Interest Reduction Payment subsidies to a second mortgage. The Senate Report at page 112 indicates that this provision is designed to "alleviate 'phantom income' problems caused by rapid amortization of the underlying section 236 mortgage;" it further points out that the redirected payments could be applied to subsidize interest on a rehabilitation loan provided the Secretary determines that withdrawing the subsidy from the section 236 mortgage will not present a risk of a mortgage insurance claim. The Department is uncertain whether this provision will achieve the objective stated in the Senate Report; in addition, it is unclear how the financial benefits, if any, of the redirection are intended to relate to the overall incentive scheme of the statute, since redirection is the only incentive which constitutes a potential "net after taxes" benefit. Nonetheless, the Department has included the provision in the proposed rule and specifically invites comments as to the effect such redirection may have on eligible low income housing projects and their owners.

Paragraph (b)(9) lists as an incentive an increase in allowable distributions, if necessary to enable the owner, in extension plans of action, to achieve the annual authorized return of 8 percent of the extension preservation equity. In addition, in cases where the project is being transferred to a for-profit qualified purchaser, incentives will be structured to enable the purchaser to realize an 8 percent return on investment.

Section 219(b) of the statute also includes language addressing the problem of reconciling section 236's excess income requirements with the incentive provisions of the statute. Under section 236(f)(1) of the National Housing Act, 12 U.S.C. 1715z–1(f)(1), the Secretary establishes a basic rental charge determined on the basis of operating the project with a mortgage bearing interest at one percent, and a "fair market rent" determined on the basis of operating the project with a mortgage bearing interest at the face amount. Under section 236(g) the owner is obligated to return to the Secretary all rental charges collected in excess of basic rent.

Section 219(b) provides that with respect to a plan of action providing incentives for a section 236 project, the section 236 fair market rent for each unit may be increased in accordance with the incentives provided, but the owner shall pay to HUD the excess rent "in an amount not greater than the fair market rental charges as such charges would have been established under section 236(f) * * * absent the requirements of this paragraph." The Department construes this to mean that the amount of excess rent payable to HUD would be capped at the fair market rent as it would have been calculated if no incentives had been provided. However, even this interpretation does not resolve the problems arising from the interplay of the section 236 requirements and the characteristics of a plan of action. One aspect of this problem is that the full benefit of incentives can be realized only if both the basic rent and the fair market rent are increased on the basis of the incentives. Accordingly, the Department proposes to implement this provision by providing that the owner under a plan of action shall calculate the basic rent by taking into account the operating expenses, debt service on the section 236 mortgage at an interest rate of one percent, debt service on any equity take-out or acquisition loan, debt service on any rehabilitation loan, and the owner's allowable distributions under the plan of action. The section 236 market rent would be derived by applying the appropriate factor to the

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basic rent. Thus, both the basic rent and market rent would reflect the incentives provided to the owner. The owner would be required to remit to the Secretary all rents collected in excess of the basic rent.

Section 248.157 (Voluntary Sale for Projects Not Exceeding the Federal Cost Limit)

Section 248.157 implements section 220 of the statute, which sets forth the rules governing transfers of eligible low income housing where the transfer preservation rent does not exceed the Federal cost limit. Under this provision the owner offers the project for sale, first to priority purchasers and then to any other qualified purchaser. Paragraph (a) provides in part that the owner is not required to accept any offer that is made for the project. However, if the owner receives and rejects a bona fide offer to purchase the project, the owner may not prepay the mortgage and terminate low income affordability restrictions pursuant to § 248.169. The owners option in such a case would be to file a new plan of action for incentives under § 248.153. If the owner does not receive any bona fide offer to purchase the project, then the owner may prepay the mortgage and terminate low income affordability restrictions, subject only to the protections for tenants provided in § 248.165.

Paragraph (b) details the methods that HUD will use in order to notify potential qualified purchasers of the availability of the project for sale. HUD will compile a list of nonprofit organizations, utilize mailing lists for Resolution Trust Corporation property sales and other clearinghouse networks, contact appropriate State and local government agencies, and advertise in major local newspapers.

Paragraph (c) provides that, for the 12-month period beginning on the date that HUD receives the second notice of intent, the owner may offer to sell the project only to priority purchasers. At the end of the 12-month period, if the owner has not accepted an offer, the owner must offer the project for sale to any qualified purchaser for a 3-month period. Paragraph (d) provides that the sale price shall not exceed the transfer preservation value, even if the purchaser is willing to pay an additional amount with its own funds or with funds from sources other than HUD.

Paragraph (e) establishes a procedure for the prospective purchaser to notify HUD of its interest in acquiring the project. If the purchaser is a priority purchaser that intends to make an offer during the 12-month period, it must so notify the Department, and must submit sufficient evidence for HUD to determine that the purchaser is a priority purchaser. In addition, if the purchaser is a resident council seeking to purchase the project under a homeownership program, the purchaser must submit evidence demonstrating that it qualifies as a resident council. If the purchaser is a community-based nonprofit organization or a State or local government entity, it must likewise submit documentation demonstrating that it qualifies as such under the appropriate definition. In making determinations under this paragraph the Department will, to the extent feasible, use any information previously submitted by the purchaser to HUD in connection with its application for a planning grant under the HOPE 2 program, "HOPE for Homeownership of Multifamily Units." Qualified purchasers that are not priority purchasers may, at their option, notify the Department of their interest in submitting an offer.

Paragraph (f) describes the information that the Secretary will provide to the purchaser. This information will include the Secretary's determination as to the priority status of the purchaser and whether the purchaser qualifies as a resident council, community-based nonprofit organization or State or local government entity.

Paragraph (g) discusses the requirements for submission of an offer to purchase the project. The purchaser must submit a signed contract of sale to the owner. The contract of sale must specify that acceptance is contingent upon approval of the plan of action by HUD. The contract of sale must be accompanied by an earnest money deposit. HUD has determined that the earnest money deposit requirement is appropriate and necessary in order to discourage frivolous and disruptive offers. The deposit must be in an amount equal to one percent of the preservation value. The earnest money deposit would be retained by the seller if the offer is accepted and the purchaser, for reasons not attributable to HUD or the owner, fails to close.

Paragraph (h) establishes a procedure for setting priorities among the priority purchasers. It is the Department's position that this procedure is consistent with the statutory intent of encouraging resident homeownership programs and community-based nonprofit organizations. Under the proposed rule, if more than one offer is made during the 12 month period, then at the expiration of this period, the owner may accept the highest offer among those received, not to exceed the transfer preservation value. If more than one purchaser offers the highest amount, the owner must select the purchaser in the following order of priority: A resident council offering to purchase under a homeownership program, a community-based nonprofit organization, a State or local government, and any other nonprofit organization. These priorities apply only with respect to bona fide offers made during the 12-month period or if the sale is reopened pursuant to paragraph (*l*) because of a transaction which fails to close.

If at any time during the 12-month period a bona fide offer is made by a resident council seeking to purchase the project under a tenant homeownership program, then the owner may accept the offer without waiting until the expiration of the 12-month period. However, the owner may, if it chooses, elect to wait until the expiration of the 12-month period, either in anticipation of a higher offer or because of indecision as to whether to sell the project. If the owner receives no bona fide offers during either the 12-month or the 3-month period, the owner may prepay the mortgage or terminate the mortgage insurance in accordance with §248.169.

Paragraph (i) establishes a procedure for submitting an offer to HUD for a determination that the offer is bona fide. Once the Department notifies the owner that the offer is bona fide, the owner may make a binding acceptance of the offer. The owner and the purchaser would then submit a plan of action to the Secretary in accordance with paragraph (j).

Paragraph (*l*) establishes a procedure to address the possibility of transactions which fail to close. If an offer by a resident council is accepted but the sale transaction falls through within the 12-month priority purchase period or does not close within 90 days after the Secretary's approval of the plan of action, the owner would resume holding the project open for sale under paragraph (c). If, at any time beyond the 12-month priority purchase period (i.e., during the 3-month qualified purchase period or thereafter), the sale falls through or does not close within 90 days after the Secretary's approval of the plan of action, the owner would be required to (a) immediately notify the Secretary; (b) contact any purchaser who had previously submitted offers; and (c) give such parties and any other qualified purchasers 60 days from the date of notification to HUD in which to submit or resubmit offers to purchase the project. At the end of the 60-day period the owner would accept offers in accordance with the priorities set forth in paragraph (h). If an offer submitted during the 60-day period is accepted, but

the sale is not consummated within 90 days of HUD's approval of the plan of action for reasons not attributable in whole or in part to the owner, the owner may terminate the low income affordability restrictions through prepayment or voluntary termination, subject to compliance with the requirements of § 248.165.

Paragraph (m) sets forth the amount of assistance that HUD will provide in connection with plans of action involving transfers. One component of this amount is the amount necessary to acquire the project from the current owner at a price not greater than the transfer preservation value. (Although the statute at section 220(d)(2)(A) uses the term "preservation equity" and not "preservation value" in this context, the Conference Report discussion at page 465 and the statute at sections 220(b)(1) and 220(c) refer to the preservation value as the cap on the sales price. The discrepancy appears to be a matter of terminology. Since the purchaser will be assuming the federally-assisted mortgage, the amount payable to the owner by the purchaser will not exceed the transfer preservation equity; stated differently, the compensation to the owner, including the assumption of the owner's debt on the federally-assisted mortgage, would not exceed the transfer preservation value.) Other components include debt service on the federally-assisted mortgage(s) on the project, debt service on any rehabilitation loan on the project, amounts necessary to meet project operating expenses and establish adequate reserves, and amounts necessary to receive an adequate return on any actual cash investment. As noted above, the Department has determined that a return of 8 percent on actual cash invested by the purchaser would constitute an adequate return.

Paragraph (m)(6) provides that in the case of a priority purchaser, the amount of assistance shall also include adequate reimbursement for transaction expenses relating to the purchase of the project, subject to HUD's approval. In reviewing such expenses HUD will apply the standards used by the Department in approving transaction expenses in connection with FHA multifamily full insurance loan transactions. The allowable expenses would include the organizational costs, if any, incurred in establishing a nonprofit organization which is organized solely for the purpose of purchasing the project. Broker's fees would not be permissible as a transaction expenses under this paragraph.

Paragraph (m)(7) provides that in the case of an approved homeownership program, the amount of the assistance would also include the costs of training for the resident council, homeownership counseling and training, the fee for the nonprofit entity or public agency working with the resident council and costs related to relocation of tenants who elect to move. See § 248.173(m)(4). Expenses incurred before approval of the plan of action will be allowed, even though no assistance will be disbursed until HUD and the resident council enter into a grant agreement pursuant to a homeownership program. The proposed rule caps the assistance that may be provided under this paragraph at $500 per unit, but not more than $200,000 for the project, exclusive of relocation expenses. Moreover, expenses payable to the nonprofit or public entity assisting the resident council will be included in the assistance payable to the purchaser only if HUD approves the nonprofit or public entity. Since reimbursement for the resident council's organizational, training, and planning costs will not be available unless and until the resident council and HUD enter into a grant agreement, resident councils may wish to explore other sources of funding for these costs, including planning grants under the HOPE 2 program.

Paragraph (n) discusses the incentives available to purchasers under this section. In accordance with the Conference Report at page 465, the Department will work closely with priority purchasers to determine the mix of subsidies that best meet their preferences and organizational capacity. Section 220(d)(3) of the statute provides in part that "any residual receipts for the housing transferred to the selling owner shall be deducted from the sale price of the housing * * *" However, the sale price is capped at the preservation value which, in accordance with standard appraisal practices, does not take into consideration the amount of project escrows such as residual receipts. Thus, since the full value of the owner's asset includes both the preservation value and amount of residual receipts, requiring the owner to deduct the amount of residual receipts retained by the owner upon sale from the purchase price would appear to deprive the owner of a portion of the project's value. Paragraph (n) repeats the statutory language regarding this deduction; however, the Department specifically invites comments as to the proper construction of this statutory provision.

Paragraph (o) provides that where the qualified purchaser is a priority purchaser the Secretary may provide, in addition to incentives, assistance in the form of a grant in an amount that does not exceed the present value of the total of the projected section 8 existing fair market rents for section 8 existing housing for the next ten years or such longer period if additional assistance is necessary to cover the costs referred to in paragraph (m). The Department reserves the right to determine what combination of incentives and grant assistance is the least costly alternative to the Federal government. The 10-year grant amount provided under this paragraph would be calculated as follows: The section 8 existing fair market rent for each bedroom size would be multiplied by the number of units of each bedroom size, and then added together. This total amount would be adjusted by the latest applicable Annual Adjustment Factor used for the local area. The present value would be discounted using the interest rate on 10-year Treasury notes.

Paragraph (p) of the proposed rule provides that the Secretary shall seek reimbursement for assistance provided to a priority purchaser that, during the term of a plan of action, becomes affiliated with or sells the property to a non-priority purchaser. The Secretary would be entitled to reimbursement for the difference between the assistance provided to the priority purchaser and the assistance that would have been provided if the purchaser had been a non-priority purchaser. The Department is imposing this requirement in order to prevent transactions in which "straw" priority purchasers seek to purchase the project under an arrangement in which they will later transfer it to a for-profit entity.

Section 248.161 (Mandatory Sale for Housing Exceeding Federal Cost Limit)

The procedures for sale of a project whose transfer preservation rent exceeds the Federal cost limit generally parallel the procedures for voluntary sales under § 248.157, and § 248.161 therefore includes appropriate cross-references. The major distinction between the sale procedures under the two sections is that an owner proceeding under §248.157 is not required to accept any offer, regardless of the purchase price being offered, whereas an owner proceeding under § 248.161 is required to accept a bona fide offer to purchase the project for a purchase price that equals the transfer preservation value of the project. (If the owner receives more than one such offer, the selection of the purchaser

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would be based upon the priorities as set forth in section § 248.157(h).)

In addition, a bona fide offer under § 248.157 could be at a purchase price that is up to the transfer preservation value, whereas the purchase price under § 248.161 would in all cases equal the transfer preservation value. Although the statute at sections 221(b)(1) and 221(c) refers to a purchase price "not less than" the transfer preservation value, the Conference Report at page 465 indicates that the purchase price would be equal to the transfer preservation value. The Department believes that the Conference Report is more consistent with the overall scheme of the statute, which is to compensate the owner for the value of its asset, and with the mandate in section 222(a)(1) to provide incentives that are the "least costly alternative" that is consistent with the full achievement of the statute's purposes. If the owner receives no bona fide offers that are at a purchase price equal to the transfer preservation value, the owner would be free to prepay the mortgage and terminate low income affordability restrictions under § 248.169.

The incentives and assistance available in connection with a sale under § 248.161 are generally similar to those under § 248.157, except that instead of providing, for priority purchasers only, a grant authorized by section 234(a) of the statute, the Secretary may provide grant assistance from funds made available under section 234(b) of the statute, and such funds would be available to both priority and for-profit purchasers. Section 221(b)(2) of the statute states that such assistance shall be in an amount not exceeding the difference between the preservation value of the housing and the level of assistance under section 221(d)(1), which authorizes the provision of section 8 assistance and other incentives. However, in the Department's view the total amount of assistance that must be provided under § 248.161 must be sufficient to fund all of the components listed in § 248.157(m). Section 248.161(d) has been drafted accordingly.

Section 248.165 (Assistance for Displaced Tenants)

This section implements section 223 of the 1990 Act, and provides detailed procedures for the protection of tenants who will be displaced through prepayment of the mortgage. The requirements of this section would be applicable in any case where the owner is permitted to prepay the mortgage and terminate low income affordability restrictions under § 248.169. As previously discussed, these requirements would not be applicable to prepayments under § 248.141.

Paragraph (d) requires the owner to pay 50 percent of the relocation expenses of each tenant, regardless of the income level of the tenant, except that the owner shall be required to increase the owner's contribution if so mandated by State or local law of general applicability. HUD will inform the tenants in the project of their rights to reimbursement for relocation expenses and other rights under this section.

Paragraph (e) provides that all tenants, regardless of income, shall be entitled to remain in the project for three years, at rent levels, except for increases due to increased operating costs, existing at the time of prepayment. The proposed rule states that the three-year period shall commence on the date of prepayment. Paragraph (f) allows the owner to fulfill this requirement by providing assistance necessary for the tenant to rent a decent, safe and sanitary unit in another project at a rental cost (i.e., cost to the tenant) that is no more than the amount that the tenant would be required to pay under paragraph (e). This option would be available only if the tenant freely waives his or her right to remain in occupancy in the owner's project.

Paragraph (g) provides special protections for tenants (a) in projects located in low-vacancy areas, and (b) for special needs tenants. See discussion *supra* regarding the definitions of "low vacancy area" and "special needs tenants."

Paragraph (i) prohibits the owner from discriminating against any current tenant or future tenant or applicant for tenancy because that person receives assistance under section 8 of the United States Housing Act of 1937. The Conference Report at page 467 indicates that HUD would be authorized to set section 8 existing fair market rent levels at the "exception rent" so that tenants could use section 8 certificates or vouchers at the project even if the project's rents exceed the section 8 existing fair market rent. The Department is considering whether to make a technical amendment to the part 882 and part 887 regulations authorizing such exception rents, on a case-by-case basis, if necessary to protect current tenants. With respect to section 8 certificate holders for whom HUD does not approve exception rents, the discrimination prohibition in this paragraph would be applicable only to units that rent for an amount not in excess of the section 8 existing fair market rent.

Section 248.169 (Permissible Prepayment, Voluntary Termination or Modification of Commitments)

This section implements section 224 of the 1990 Act and sets forth the circumstances under which the owner may prepay the mortgage or otherwise modify or terminate the low income affordability restrictions. As noted above, this provision is inapplicable to prepayments approved under § 248.141. In general, prepayment will be permitted when HUD does not provide assistance approved in the plan of action within the specified time periods (or cannot approve the plan of action because of lack of adequate appropriations), or if the owner has offered the project for sale under either §248.157 or § 248.161 and has failed to receive any bona fide offers within the specified time periods. In either case the owner would not be entitled to prepay if HUD's failure to provide assistance or if the absence of a bona fide offer was attributable to the owner's actions or inaction. For example, the owner's refusal to execute a new regulatory agreement in connection with the provision of incentives would be grounds for HUD to refuse to permit the owner to prepay the mortgage.

The possibility that adequate funds may not exist to support all of the anticipated plans of action filed under the 1990 Act, with the result that many projects may be lost from the affordable housing inventory, is an issue of concern to the Department. The 1990 Act does not explicitly establish any basis for prioritizing among projects for funding assistance. However, if appropriations are insufficient to fund plans of action for all eligible low income housing projects for which plans of action are filed, the Department would by necessity have to fund some projects and not others. The Department specifically invites comments as to how it should allocate funds if that situation arises.

The statute does not define what is meant by "assistance" for purposes of section 224(a). Section 248.169(a)(1) defines such assistance as including section 8 assistance, a capital improvement loan under 24 CFR part 219, assistance for a homeownership program under § 248.173, a grant provided under § 248.157(o), or a grant under § 248.161(d), but not insurance of a rehabilitation, equity or acquisition loan under part 241.

Section 224(b) of the 1990 Act, which discusses the consequences if HUD is unable to continue providing section 8 assistance for the full term of the plan of action, generally tracks the language of section 225(c) of the 1987 Act. The 1987 Act specified three successive actions that HUD would take in the event that section 8 funds are no longer available: (1) Modifying the low income affordability restrictions that are dependent on the assistance; (2) if (1) is infeasible, releasing the owner from such restrictions; and (3) if (1) and (2) would result in a default under the insured loan, allowing the termination of all low income affordability restrictions. The 1990 Act specifies the following actions: (1) Modifying the low income affordability restrictions that are dependent on the assistance; and (2) permitting the owner to prepay the mortgage and terminate low income affordability restrictions, if the owner agrees to comply with the provisions of section 223 regarding assistance for displaced tenants. Unlike the 1987 Act, the 1990 Act does not state the order in which these alternatives are to be considered. Nonetheless, the proposed rule states that prepayment and termination of low income affordability restrictions will be permitted only if modification of the low income affordability restrictions is infeasible.

Section 248.173 (Resident Homeownership Program).

This section implements section 226 of the statute and sets forth in considerable detail the requirements for a resident homeownership program. The homeownership program would be implemented in the context of a transfer of the project to the resident council under § 248.157 or § 248.161, and the resident council would be eligible to receive grant funds necessary to pay the purchase price, transaction expenses, and reimbursement for costs of training for the resident council, homeownership counseling and training, fees for the nonprofit entity or public agency working with the resident council, and relocation expenses.

Outside of the assistance provided to the resident council under the plan of action, the Department does not intent to provide any subsequent or ongoing assistance to the resident council, with the following exceptions: First, HUD intends to continue section 8 assistance for prospective homeowners who reside in the project on the date that it is transferred; such assistance would continue until the Department has determined that the project has achieved normalized operating expense levels, but in no event later than the completion of the transfer of ownership of units in the project (other than units occupied by nonpurchasing tenants) to the tenants. Project-based assistance to nonpurchasing tenants would be terminated at the time of the transfer of the project to the resident council; however, such tenants would be entitled to receive section 8 certificates or vouchers under § 248.173(m)(2) of the proposed rule. Second, amounts needed for certain ongoing operating expenses, including reserve for replacements escrows and reserves for contingencies against unexpected increases in expenses or shortfalls in homeowners' payments, may be capitalized and included within the assistance provided as part of the homeownership program.

Paragraph (a) contains the statutory requirement that the resident council work with a nonprofit entity or public body approved by the Secretary. The resident council should submit the name and qualifications of such entity or agency as early in the process as possible, so that the resident council will not incur expenses that HUD later determines are not eligible for reimbursement. The entity must have a demonstrated capacity for assisting the tenants to consider their options and develop a workable homeownership program.

Paragraph (c) establishes requirements for demonstrating the sufficient level of tenant interest in the homeownership program at the time that the resident council makes an offer to purchase the project. The resident council must submit a list of at least 75 percent of all of the families, representing at least 50 percent of all of the units in the project, who have expressed an interest in participating in the homeownership program. Although the statute does not impose any such requirement, the Department views such documentation of tenant interest to be an integral part of demonstrating that the offer is a bona fide offer.

Paragraph (d) describes the contents of the homeownership program which must be submitted in connection with the plan of action. These provisions are derived from section 226(b)(1) of the statute and are also drawn from the HOPE Program Guidelines.

Paragraph (f) describes the forms of homeownership which the Secretary could approve under a homeownership program. Although condominium and cooperative arrangements are the most likely forms of ownership, fee simple ownership could also be used in the case of townhouse or side-by-side garden apartment projects, provided a homeowner association or other similar entity is created to exercise the legal control over the project necessary to comply with the requirements of the rule.

Paragraph (g) sets forth requirements concerning occupancy of the project. The Department has determined that it is appropriate to require the same proportionality of very low, low and moderate income initial owners in the project as the proportionality required under § 248.145 for tenants under a non-resident homeownership plan of action. The resident council may, if it elects, sell vacant units and units occupied by tenants who choose not to purchase their units, to very low income and low income purchasers, regardless of the proportions of very low income, low income and moderate income tenants in the project.

The resident council must demonstrate in its homeownership program that the aggregate incomes of initial and subsequent owners and other sources of funds for the project are sufficient to permit occupancy charges to cover the full operating costs of the housing and any debt service. The resident council may provide that occupancy charges will vary on the basis of the homeowner's income, provided that the total charges for housing costs (i.e., principal, interest, taxes, insurance, occupancy charges and utilities) are projected to be no more than 35% of the homeowner's income. The resident council must establish adequate underwriting standards for homeownership.

Section 226(b)(3)(D) of the statute requires that each initial owner occupy the unit that it acquires. The proposed rule provides in addition that each initial owner agree not to lease or otherwise make the property available for occupancy by other residents during the 15-year period from the date of acquisition, unless the resident council determines that the initial owner is required to move outside the market area due to a change in employment or an emergency situation. This requirement is based on a parallel provision in the HOPE Program Guidelines.

Paragraphs (h) through (*l*) establish detailed requirements concerning restrictions on resale of the units and application of sales proceeds. The provisions of section 226(b)(5) of the 1990 Act are largely consistent with the analogous provisions of title IV of the 1990 Act and thus the provisions of the proposed rule largely track the analogous provisions of the HOPE Program Guidelines. As in the case of the HOPE programs, HUD will consult with the Internal Revenue Service on the tax consequences to families

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participating in the homeownership program, and will inform the resident council as to the advice received.

If the initial homeowner sells the unit during the first six years after acquisition of the unit, that homeowner may retain only the amount computed under paragraph (k), i.e., the homeowner's equity contribution, the value of any improvements installed at the homeowner's expense, and the appreciated value, determined by applying the Consumer Price Index (urban consumers) against the equity contribution and the value of improvements.

Paragraph (l)(3) requires the execution of a promissory note payable to the Secretary in the amount of the difference between the market value of the unit and the purchase price paid by the initial owner. If the initial homeowner sells the unit between the seventh year and the expiration of 20 years after acquisition of the unit, the homeowner may retain any net sale proceeds not payable to HUD under the promissory note. For example, if the homeowner sells at the end of the 13th year of homeownership (at the half-way point between the end of the 6th year and the end of the 20th year of homeownership), 84/168 (or one-half) of the note would be forgiven, and only half of the principal amount of the note would be payable from sales proceeds. The homeowner could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the unit. If the initial homeowner retains ownership for 20 or more years, the entire amount of the note would be forgiven.

Paragraph (j) provides that if a subsequent owner purchases the property during the 20-year period for less than the then-current fair market value, the subsequent purchaser shall also execute a promissory note for the balance of the 20-year period. For example, if the subsequent homeowner acquires the unit at the end of the 4th year, 192 months would remain in the 20-year period. If the subsequent homeowner sells the unit at the end of the 10th year, having owned the unit for 72 months, 72/192 (37.5 percent) of the note would be forgiven, and 62.5 percent of the principal amount of the note would be payable from sales proceeds. The subsequent homeowner could retain all remaining sales proceeds. If the subsequent homeowner retains ownership to the end of the initial 20-year period, the entire amount of the note would be forgiven.

Paragraph (m) establishes requirements for protection of nonpurchasing families. As provided in section 226(b)(6)(B) of the statute, HUD would provide section 8 certificates or vouchers for section 8-eligible tenants. The requirements for giving preference to certain categories of eligible families under 24 CFR 882.219 and 887.157 would not apply to the provision of assistance to such families. In addition, the proposed rule provides that tenants whose incomes exceed section 8 eligibility standards would be required to pay no more than the section 8 existing fair market rent published for effect or 30 percent of adjusted income, whichever is less, and rent increases for such tenants would be phased in in accordance with §248.145(a)(6). These rent limitations would continue in effect until the tenant moves out. Thus, nonpurchasing tenants would receive the same level of protection against rent increases that is provided to current tenants under a nonhomeownership plan of action involving incentives.

Paragraph (o) establishes requirements for timely transfer of the project from the owner to the resident council and from the resident council to the initial purchasers. The rule states in part that the resident council shall transfer ownerhship interests in the units within four years from the date of acquisition by the resident council. This requirement is derived from a parallel requirement in the HOPE Program Guidelines. If the resident council fails to tranfer ownership interests within the prescribed period, HUD may invoke contractual remedies as set forth in the grant agreement between HUD and the resident council.

Paragraph (p) requires that, prior to transferring ownership interests to the initial purchasers, the resident council must maintain the project in accordance with the housing standards set forth in §248.147. The Department will conduct annual inspections to ensure that this requirement is complied with. Paragraphs (q) and (r) set forth audit and reporting requirements for the resident council.

Section 226(b)(10) of the statute states that any entity that assumes a mortgage in connection with a resident homeownership program must comply with any low income affordability restrictions for the remaining useful life of the project, provided that this requirement shall only apply to an entity, such as a cooperative association, that, as determined by the Secretary, intends to own the housing on a permanent basis. The HOPE Program Guidelines, implementing a parallel statutory provision, provide that grant recipients may not assume a mortgage where low income use restrictions would continue to apply. Likewise, paragraph (s) of the proposed rule states that a section 221(d)(3) market rate mortgage or purchase money mortgage, but not a section 221(d)(3) BMIR or section 236 mortgage, may be assumed by the resident council in connection with its purchase of the project.

Section 248.177 (Delegated Responsibility to State Agencies)

The proposed rule tracks the language of section 227 of the statute. The Department intends to accept applications from State agencies for delegation of responsibilities under the statute once it has gained some experience with implementation of the statute. More detailed requirements will be issued in the form of administrative instructions.

Section 248.179 (Consultation with Other Interested Parties)

The Department will implement this provision by consulting with State and local government agencies on an ongoing basis.

Section 248.181 (Notice to Tenants)

Section 248.181 provides for notification to the tenants of an affected project of the communications between the Commissioner, the owner, and purchaser, if any, concerning the status of the project as it proceeds under the provisions of this subpart. The language in this section is identical to that of the statute except for the more stringent notification requirements imposed for purposes of identifying tenant representatives when a notice of intent is submitted pursuant to § 248.105. As discussed in the description of § 248.105, the proposed rule provides a more stringent tenant notification procedure for the initial notice of intent than that specified in section 230 of the statute; the Department hopes that through this notification procedure the tenant representative, if any, will be contacted at the earliest possible stage in the process, and tenants will be given the maximum opportunity to participate in the formulation of the plan of action. In addition, the proposed rule clarifies that, where the full text of material (e.g., the proposed plan of action, and the plan of action as finally approved) is to be kept at a convenient location and made available for examination by the tenants, the tenants must have access to such material for inspection and copying during reasonable hours.

Section 248.218 of the existing rule provides that, when the owner and the Secretary have reached preliminary agreement on the terms of a plan of action, the owner shall send to each tenant a HUD-prepared summary of the plan of action, and tenants shall have 60 days in which to submit comments to HUD before final approval of the plan of action. No such requirement is included in subpart B of the proposed rule, because under subpart B tenants will receive notification of the owner's intentions and information about the plan of action on an ongoing basis.

Subpart C

The proposed rule retains the provisions of §§ 248.201 through 248.261 as they exist in the existing rule, with the following exceptions:

Section 248.221(c)

This provision states that HUD will not approve a plan of action involving termination of low income affordability restrictions if there are open findings of noncompliance with civil rights authorities or open audit findings with respect to violations of the regulatory agreement. A corresponding requirement is applicable to plans of action under subpart B of this part. See § 248.141(a)(3).

Section 248.221(d)

Pursuant to section 203(d) of the HUD Reform Act, this provision is being revised to provide that the plan of action shall specify the actions that the Secretary and the owner shall take to ensure that any tenants displaced as a result of the termination of low income affordability restrictions are relocated to affordable housing.

Section 248.233(f)

This provision states that no incentives will be provided if there are open findings of noncompliance with civil rights statutes and authorities or open audit findings with respect to violations of the regulatory agreement. A corresponding requirement is applicable to plans of action under subpart B. See § 248.145(a)(12).

Section 248.234(c)

This provision also implements section 203(d) of the HUD Reform Act, and provides that the plan of action must specify what actions HUD and the owner would take to ensure that tenants displaced as a result of any modification of low income affordability restrictions stemming from the unavailability of section 8 assistance are relocated to affordable housing.

Section 248.235

This provision gives owners who have agreed to extend low income affordability restrictions under the 1987 Act a right to convert to a subsequently-enacted system of incentives and restrictions. As noted above, it is deleted in the proposed rule and is superseded by § 248.5.

Part 241

Subpart A—Eligibility Requirements

Section 241.166

This provision implements section 204(b) of the HUD Reform Act, which provides that, when underwriting a rehabilitation loan under part 241 in connection with "eligible multifamily housing," the Secretary may assume that any rental assistance provided for purposes of servicing the additional debt will be extended for the term of the rehabilitation loan, and states further that the Secretary shall exercise prudent underwriting in insuring rehabilitation loans under part 241. This provision is parallel to the first sentence of section 241(f)(7) of the National Housing Act, as amended by section 602(a) of the 1990 Act, which pertains to equity loans and acquisition loans. However, it is important to note that while the definition of "eligible multifamily housing" generally comprises the same categories of projects as those described in the statutory definition of "eligible low income housing," section 204(b)'s applicability is not tied to the eligibility of the project for prepayment or the status of the project under part 248.

Section 204(b) of the HUD Reform Act also provides that a mortgagee approved by the Secretary may not withhold consent to a rehabilitation loan insured in connection with eligible multifamily housing on which the mortgagee holds a mortgage. This provision parallels section 241(f)(9) of the National Housing Act, as amended by section 602(a) of the 1990 Act, which pertains to equity loans and acquisition loans.

Subpart B—Contract Rights and Obligations

Section 241.251.

The proposed rule includes language incorporating by reference the "Contract Rights and Obligations" provisions of subpart D, "Contract Rights and Obligations—Multifamily Projects Without a HUD-Insured or HUD-Held Mortgage," for noninsured projects that receive a rehabilitation loan under subpart A in connection with a HUD-approved plan of action. Section 241(d) of the National Housing Act, as enacted by section 313 of the Housing and Community Development Act of 1974, Public Law 93-383, provides in part that the Secretary may insure a loan for "improvements or additions" to a multifamily project not covered by a HUD-insured mortgage, if such a loan would assist in preserving, expanding or improving housing opportunities or in providing protection against fire or other hazards. Likewise, section 241(e)(1), as enacted by section 247 of the National Energy Conservation Policy Act of 1978, Public Law 95-619, authorizes the Secretary to insure a loan for energy conservation improvements, solar energy systems or individual utility metering for a project, without regard to whether the project is covered by a HUD-insured mortgage. In 1980 HUD amended part 241 to implement the latter provision only. See 45 FR 30352 (May 7, 1980). Under the proposed rule § 241.251 would be amended to authorize HUD to insure a rehabilitation loan under subpart A of part 241 for a project with a noninsured section 236 mortgage, in connection with a HUD-approved plan of action. A parallel amendment to § 241.1200 has also been included in the proposed rule, in order to authorize HUD to insure an equity or acquisition loan under subpart E for a project with a non-insured section 236 mortgage.

Subparts E and F—Insurance for Equity Loans and Acquisition Loans

Section 602 of the 1990 Act substantially revised the provisions of section 241 of the National Housing Act, 12 U.S.C. 1715z-6(f), by (1) expanding the scope of section 241 to include acquisition loans in connection with plans of action under the 1990 Act; (2) restricting the amount of an equity loan insured under section 241 to the lesser of 70 percent of the preservation equity in the project or the amount that the Secretary determines can be supported by the project on the basis of an 8 percent return on the preservation equity (assuming normal debt service coverage); (3) requiring the lender to escrow 10 percent of the equity loan, to be released after 5 years if the owner is in compliance with the housing standards mandated by section 222(d) of the statute; and (4) providing that an acquisition loan shall be limited to 95 percent of the preservation equity of the project, except that if the purchaser is a priority purchaser, the loan may include any expenses associated with the acquisition, loan closing and implementation of the plan of action.

Under the proposed rule owners whose plans of action are processed under the 1987 Act will be subject to section 241(f) as it existed under the 1987 Act, while owners whose plans of action are processed under the 1990 Act will be subject to section 241(f) as amended by the 1990 Act. Although

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section 602(a) amends section 241(f) and, under section 605, is effective upon the enactment of the 1990 Act (i.e., on November 28, 1990), it is the Department's view that the provisions of section 241(f) as they existed prior to their amendment remain in effect for owners who are or will be seeking approval of plans of action under the 1987 Act and subpart C of part 248. The Department takes this position because section 241(f) was originally enacted by section 231 of the 1987 Act, which is part of subtitle B of title II of the 1987 Act and is thus part of the "Emergency Low Income Housing Preservation Act of 1987," and, as explained in the preceding discussion of § 248.5, under sections 604 (a) and (b) of the 1990 Act owners retain their right to proceed under the 1987 Act and subpart C. For this reason, the proposed rule has revised part 241, subparts E and F to include provisions that implement both section 241(f) as it existed under the 1987 Act and as it has been revised by the 1990 Act.

Section 241.1000 (Purpose and Scope)

The language of this provision has been revised to state that the purpose of subpart E is to provide insurance for equity take-out loans under the 1987 Act and equity take-out loans and acquisition loans under the 1990 Act.

Section 241.1005 (Definitions)

The list of definitions has been expanded to include appropriate cross-references to subpart B of part 248 regarding the definitions of acqusition loan, extension and transfer preservation equity, priority purchaser and qualified purchaser.

Section 241.1065 (Maximum Loan Amount—Loans Insured in Connection with Plans of Action Under Part 248, Subpart C)

This provision retains the language of the existing § 241.1065, but limits its applicability to equity take-out loans insured in connection with plans of action under the 1987 Act.

Section 241.1067 (Maximum Loan Amount—Loans Insured in Connection with Plans of Action Under Part 248, Subpart B)

This provision implements section 241(f)(2)(B)(i) and 241(f)(3)(B), as amended by section 602 of the 1990 Act, and establishes the maximum loan amount for equity take-out loans and acquisition loans, respectively.

Section 241.1069 (Escrow Requirements)

This provision implements section 241(f)(2)(B)(ii), as amended by section 602, and requires that, in connection with equity loans made for plans of action under subpart B of part 248, the lender shall deposit on behalf of the owner 10 percent of the loan amount in the escrow account, controlled by the Secretary or a State housing finance agency approved by the Secretary, to be made available to the owner upon the expiration of 5 years from the date of origination of the loan, subject to the owner's compliance with the housing standards in § 248.147. In addition, with respect to both equity loans provided in connection with plans of action under subparts B or C of part 248, this provision requires the phasing in of advances to reflect rent levels.

Section 241.1120 (Mortgagee's Consent)

The proposed rule revises the provision on mortgagee's consent to provide that the holder of an insured mortgage may not charge a fee for consenting to the equity or acquisition loan. In the Department's view such a fee is tantamount to withholding consent, and allowing such a fee would be contrary to the intent of the statutory prohibition.

Section 241.1200 (Cross-references)

See discussion of § 241.251, *supra*.

Findings and Other Matters

This rule constitutes a major rule, as determined by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the authority of Executive Order 12291 on Federal Regulations issued on February 17, 1981. A copy of the Regulatory Impact analysis has been transmitted to the Office of Management and Budget, and is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule was listed as item 1224 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360, 17371), under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Under section 605 of the Regulatory Flexibility Act (5 U.S.C. 601), HUD certifies that this rule does not have a significant economic impact on a substantial number of small entities, because it carries out statutorily-mandated limitations on prepayment of the affected mortgages. Any economic impact is a direct consequence of the statute and is not separately imposed by this rule.

The information collection requirements contained in the rule have been submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, HUD Desk Officer, room 3001, New Executive Office Building, Washington, DC 20503, for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection and applicable program reference	Number of respondents 17.1 ×	Number of responses per respo 17.2 =	Total annual responses 17.3 ×	Hours per response 17.4	Total hours = 17.5
A. First Notice of Intent 1990 Statute: Section 248.105	508.00	1.00	508.00	2.00	1,012.00
B. Notice of Intent under 1987 Statute: 248.5 (*)	275.00	1.00	275.00	2.00	550.00
C. Appraisal: 248.111					
D. Second Notice of Intent: 248.123	282.00	1.00	282.00	3.75	1,057.50
E. Plan of Action:					
1. Termination of Affordability: 248.141	4.00	1.00	4.00	33.00	132.00

TABULATION OF ANNUAL REPORTING BURDEN—Continued

Description of information collection and applicable program reference	Number of respondents 17.1 ×	Number of responses per respo 17.2 =	Total annual responses 17.3 ×	Hours per response 17.4	Total hours = 17.5
2. Extension of Affordability/Transfer of Project: 248.145	502.00	1.00	502.00	15.00	7,530.00
F. Expression of Interest from Potential Purchasers: 248.157(c)	282.00	1.00	282.00	1.00	282.00
Additional Information from Resident Councils: 248.173(b)	39.00	1.00	39.00	0.25	9.75
G. Owner provides potential purchaser information on housing: 248.157(e)(4)	282.00	1.00	282.00	5.00	1,410.00
H. Bona Fide Offers	282.00	1.00	282.00	1.00	282.00
Additional information from resident councils	39.00	1.00	39.00	4.00	156.00
I. Owner provides information on displaced tenants: 248.165(b)	4.00	1.00	4.00	3.00	12.00
J. Notices of vacencies from public housing agencies: 248.169(c)	4.00	1.00	4.00	1.00	4.00
K. Owner notifies HUD of expiring Section 8 contracts: 248.169(g)	463.00	1.00	463.00	0.75	347.25
L. Resident homeownership plan: 248.157(f) and 248.169(d)	39.00	1.00	39.00	25.00	975.00
M. State preservation plan: 248.179(b)	6.00	1.00	6.00	11.00	66.00
Totals	3,009.00				13,825.50
Rounded					13,826

(*) This notice will only be collected during the 60 days following the publication of this rule.

The Department specifically requests comments on how the paperwork burden on the public resulting from the proposed rule may be reduced.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that some of the policies in this rule will have a significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low income families under the regulation can be expected to support family values, by helping families to achieve security and independence, by enabling them to live in decent, safe, and sanitary housing, and by giving them the skills and means to live indpendently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

The General Counsel, as the Designated Official under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights, has determined that this proposed rule does not have "takings implications,' as defined in HUD's "Suplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings." The proposed rules does not deny the owner an economically viable use for the project. Instead, the owner will, at a minimum, maintain ownership of the project with the below market rate mortgage or rental subsidies in place and with greatly enhanced access to the full equity in the project as residential rental housing; alternatively, the owner may transfer the project under a plan of action in which the Secretary will provide incentives that will enable the owner to realize the full value of the project at its highest and best use, or may be entitled to prepay the mortgage.

The Catalog of Federal Domestic Assistance program number for this rule is 14.137 (Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families).

List of Subjects

24 CFR Part 50

Environmental assessments; Environmental impact statements; Environmental policies and review procedures.

24 CFR Part 219

Loan programs—housing and community development, Low and moderate income housing.

24 CFR Part 221

Condominiums; Low and moderate income housing; Mortgage insurance; Displaced families; Single family housing pojects; Cooperatives.

24 CFR Part 241

Energy conservation; Mortgage insurance; Solar energy; Projects.

24 CFR Part 248

Low and moderate income housing; Mortgage insurance.

Accordingly, the Department proposes to amend title 24 of the Code of Federal Regulations as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for part 50 would continue to read as follows:

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 50.20, paragraph (n) would be revised to read as follows:

§ 50.20 Categorical exclusions.

* * * * *

(n) Approval of mortgage prepayments or plans of action (including incentives) under the Emergency Low Income Housing Preservation Act of 1987 or the Low Income Housing Preservation and Resident Homeownership Act of 1990, and approval of mortgage prepayments under other statutes or authorities, when the proposal does not involve demolition of any buildings, or parts of any building, containing the primary use served by the project.

* * * * *

PART 219—FLEXIBILE SUBSIDY PROGRAM FOR TROUBLED PROJECTS

3. The authority for part 219 would continue to read as follows:

Authority: Sec. 201, Housing and Community Development Amendments of 1978, 12 U.S.C. 1715z-1a; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. In § 219.325, the introductory text of paragraph (b) and paragraph (b)(3) are revised and a new paragraph (b)(5) is added to read as follows:

§ 219.325 Effect on rental rates.

* * * * *

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(b) If rent increases that would result from the debt service and other expenses of a capital improvement loan under this subpart for a project would cause the rents of lower income residents of the project to be higher than the amount that would be allowed for eligible families under 24 CFR 813.107, or where appropriate to implement a plan of action under part 248 of this chapter, the Secretary may consider taking any or all of the following actions:

* * * * *

(3) Notwithstanding § 219.320(b), reduce the rate of interest on the capital improvement loan to a rate not lower than one percent.

* * * * *

(5) Permit repayment of the debt service to be deferred as long as the low and moderate income character of the project is maintained in accordance with § 219.110(b).

* * * * *

PART 221—LOW AND MODERATE INCOME MORTGAGE INSURANCE

5. The authority for part 221 would continue to read as follows:

Authority: Sec. 211, 221, National Housing Act (12 U.S.C. 1715b), 1715*l*); section 221.544(a)(3) is also issued under section 201(a) of the National Housing Act, 12 U.S.C. 1707(a).

6. In § 221.534, paragraph (e) would be revised to read as follows:

§ 221.534 Prepayment privileges.

* * * * *

(e) *Prepayment of mortgages subject to part 248.* Where the mortgage described in paragraph (a)(1) of this section is, or prior to assignment to the Commissioner was, insured under section 221(d)(3) of the Act and the mortgagor receives project-based assistance under parts 880, 881 or 886 of this title, or where the mortgage is, or prior to assignment to the Commissioner was, insured under section 221(d)(5) of the Act, the mortgage may be prepaid in full only in accordance with a plan of action approved by the Commissioner under part 248 of this title.

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

7. The authority for part 241 would continue to read as follows:

Authority: Sec. 211, 241, National Housing Act (12 U.S.C. 1715b, 1715z–6); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).

8. 24 CFR part 241, subpart A, would be amended by adding a new § 241.166 to read as follows:

§ 241.166 Special underwriting standards for eligible multifamily housing.

(a) For purposes of this section, the term "eligible multifamily housing" means any housing financed by a loan or mortgage that is—

(1) Insured or held by the Commissioner under section 221(d)(3) of the National Housing Act and assisted under section 101 of the Housing and Urban Development Act of 1965 or section 8 of the United States Housing Act of 1937;

(2) Insured or held by the Secretary and bears interest at a rate determined under the proviso of section 221(d)(5) of the National Housing Act; or

(3) Insured, assisted or held by the Secretary under section 236 of the National Housing Act.

(b) When underwriting a loan under this subpart in connection with eligible multifamily housing, the Commissioner may assume that any rental assistance provided for purposes of servicing the additional debt will be extended for the term of the rehabilitation loan. The Commissioner shall exercise prudent underwriting practices in insuring rehabilitation loans under this subpart.

(c) The holder of an insured mortgage which is recorded prior to the rehabilitation loan covering eligible multifamily housing may not withhold its consent to the rehabilitation loan or the security instrument executed in connection with the rehabilitation loan, and may not charge a fee as a condition to its consent to such loan or security instrument.

9. Section 241.251 would be amended by adding a paragraph heading to paragraph (a) and adding paragraph (c) to read as follows:

§ 241.251 Cross-reference.

(a) *Projects with a HUD-insured or HUD-held mortgage.*

* * * * *

(c) *Projects without a HUD-insured or HUD-held mortgage.* The provisions of subpart D of this part shall be applicable to a project without a HUD-insured or HUD-held mortgage that is receiving a loan insured under subpart A of this part in connection with a plan of action approved by the Commissioner under part 248 of this chapter.

10. 24 CFR, subparts E and F, would be revised to read as follows:

Subpart E—Insurance for Equity Loans and Acquisition Loans—Eligibility Requirements

Sec.
241.1000 Purpose and scope.
241.1005 Definitions.
241.1010 Feasibility letter.
241.1015 Application and commitment fees.
241.1020 Commitments.
241.1025 Refund of fees.
241.1030 Mortgage insurance premiums.
241.1035 Charges by lender.
241.1040 Eligible lenders.
241.1045 Note and security form.
241.1046 Rental assistance.
241.1050 Method of loan payment.
241.1055 Date of first payment to principal.
241.1060 Maturity.
241.1065 Maximum loan amount—loans insured in connection with a plan of action under subpart C of part 248.
241.1067 Maximum loan amount—loans insured in connection with a plan of action under subpart B of part 248.
241.1069 Escrow requirements.
241.1070 Agreed interest rate.
241.1080 Eligibility of title.
241.1085 Title evidence.
241.1090 Accumulation of next premium.
241.1095 Application of payments.
241.1100 Prepayment privilege and charges.
241.1105 Late charges.
241.1120 Mortgagee's consent.

Subpart F—Insurance for Equity Loans—Contract Rights and Obligations

Sec.
241.1200 Cross-references.
241.1205 Payment of insurance benefits.
241.1210 Condition for payment of insurance benefits.
241.1215 Calculation of insurance benefits.
241.1220 Termination of insurance benefits.
241.1230 No vested right in fund.
241.1235 Cross default.
241.1245 Insurance endorsement.
241.1250 Effect of endorsement.

Subpart E—Insurance for Equity Loans and Acquisition Loans—Eligibility Requirements

§ 241.1000 Purpose and scope.

(a) Section 231 of the Housing and Community Development Act of 1987 (the "1987 Act") amended the National Housing Act by adding a new subsection (f) to section 241. This section authorizes the Secretary to provide insurance for an equity loan as a vehicle for the owner of an eligible multifamily project to capture a portion of the project's equity, in connection with a plan of action approved by the Commissioner under the 1987 Act.

(b) Section 602 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (the "1990 Act") amended section 241 by expanding its scope to include both equity loans for owners, and acquisition loans for purchasers, under a plan of action approved under the provisions of the 1990 Act, and by making other changes. The provisions of section 241(f) as amended by the 1990 Act are applicable to owners with plans of action being processed under part 248, subpart B, which implements the 1990 Act.

(c) The provisions of section 241(f) of the Act as they were in effect prior to the 1990 Act remain in effect for owners with plans of action being processed under part 248, subpart C, which implements the 1987 Act.

(d) The insurance of an equity loan or acquisition loan under this subpart may be provided only as a specific element of a plan of action approved by the Commissioner under part 248 of this chapter and is not available under any other department program.

(e) Unless otherwise indicated, the provisions of this subpart and subpart F of this part are applicable to loans insured in connection with plans of action being processed under either subpart B or C of part 248.

(f) An owner or purchaser may obtain both a rehabilitation loan under subpart A of this part and an equity loan or rehabilitation loan under this subpart.

§ 241.1005 Definitions.

(a) All of the definitions of § 241.1 apply to equity and acquisition loans insured under this subpart E except the following definitions:

241.1(i) Borrower
241.1(k) Energy conserving improvements
241.1(l) Solar energy system

(b) As used in this subpart, the following terms have the meaning indicated:

Acquisition loan means a loan or advance of credit made to a purchaser of eligible low income housing which is made for the purpose of implementing a plan of action approved in accordance with part 248 of this chapter.

Borrower means the owner or qualified purchaser of an eligible low income housing project, which owner receives and becomes primarily obligated for the repayment of an equity loan.

With respect to loans insured in connection with a plan of action under part 248, subpart C, the term includes a public entity, a nonprofit organization or a limited equity tenant cooperative corporation, which entity is purchasing an eligible low income housing project by means of an equity loan and is obligated for the payment of the equity loan.

Eligible low income housing has the same meaning as provided at § 248.101 or §248.201 of this chapter, with respect to loans insured in connection with plans of action under subparts B or C of part 248, respectively.

Equity means, for purpose of subparts E and F of this part only, the difference between the fair market value of the project as determined by the Commissioner and the outstanding indebtedness relating to the property.

Equity Loan means a loan or advance of credit to the owner of an eligible low income housing project which is made for the purpose of implementing a plan of action approved in accordance with part 248 of this chapter.

Extension preservation equity has the same meaning as provided at § 248.101 of this chapter.

Limited equity tenant cooperative corporation means a tenant cooperative corporation which, in a manner acceptable to the Commissioner, restricts the initial and resale price of the shares of stock in the cooperative corporation so that the shares remain affordable to lower income families and moderate income families.

Low income families has the same meaning as provided at § 248.101 of this chapter.

Moderate income families has the same meaning as provided at § 248.101 of this chapter.

Plan of action has the same meaning as provided at § 248.101 or § 284.201 of this chapter.

Preservation equity has the same meaning as provided at § 248.101 of this chapter.

Priority purchaser has the same meaning as provided at § 248.101 of this chapter.

Qualified purchaser has the same meaning as provided at § 248.101 of this chapter.

§ 241.1010 Feasibility letter.

(a) *Request for study.* The owner may request the Commissioner to undertake a feasibility analysis of an equity or acquisition loan, and issue a feasibility letter. At the discretion of the Commissioner the feasibility analysis may be undertaken or denied.

(b) *Findings.* The issuance of a feasibility letter indicates completion of the Commissioner's preliminary analysis for the insurance of an equity or acquisition loan. The feasibility letter shall contain the Commissioner's estimate of the supportable loan amount, based upon the project's equity in the case of an equity loan and based on the project's purchase price in the case of an acquisition loan, but such feasibility letter shall neither constitute a commitment to insure nor bind the Commissioner in any other manner.

(c) *Fee.* The Commissioner shall not charge a fee for undertaking a feasibility analysis or for the issuance of a feasibility letter.

§ 241.1015 Application and commitment fees.

(a) *Application.* An application for the issuance of either a conditional or firm commitment for insurance of an equity or acquisition loan on a project shall be submitted by an approved lender and by the owner or purchaser of the project to the Commissioner on a form prescribed by the Commissioner. No application shall be considered unless the exhibits called for by such forms are furnished.

(b) *Application and commitment fees*—(1) *Application for conditional commitment.* An application commitment fee of $2.00 per thousand dollars of the amount of the loan applied for shall accompany the application for a conditional commitment.

(2) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application-commitment fee in an amount which, when added to any prior fee received in connection with a conditional commitment application, will aggregate $3.00 per thousand dollars of the loan applied for.

§ 241.1020 Commitments.

(a) *Conditional commitment.* The issuance of a conditional commitment constitutes an agreement by the Commissioner, subject to specified terms and conditions, to accept an application for a firm commitment.

(b) *Firm Commitment.* The issuance of a firm commitment indicates the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the equity or acquisition loan will be insured. The firm commitment may provide for the insurance of advances of equity or acquisition loan immediately upon endorsement of the note.

(c) *Term of commitment.*

(1) A conditional commitment is effective for whatever term is specified in the text of the commitment.

(2) A firm commitment is effective for whatever term is specified in the text of the commitment.

(3) The term of either a conditional commitment or firm commitment may be extended in such manner as the Commissioner may prescribe.

(d) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner

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within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

§ 241.1025 Refund of fees.

If the amount of the commitment issued is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fees or any portion thereof may be returned to the applicant. Commitment and reopening fees may also be refunded to the applicant, in whole or in part, in such other instances as the Commissioner may determine.

§ 241.1030 Mortgage insurance premiums.

The lender, upon endorsement of the note, shall pay the Commissioner a first mortgage insurance premium equal to 0.5 percent of the original face amount of the equity or acquisition loan.

(a) If the date of the first principal payment is more than one year following the date of endorsement, the lender upon each anniversary of such endorsement date, shall pay a premium equal to 0.5 percent of the original face amount of the loan. On the date of the first principal payment, the lender shall pay another premium equal to 0.5 percent of the average outstanding principal obligation of the loan for the following year which shall be adjusted so as to accord with such date and so that the aggregate of said premiums shall equal the sum of:

(1) 0.5 percent of the average outstanding principal obligation of the loan for the year following the date of endorsement; and

(2) 0.5 percent per annum of the average outstanding principal obligation of the loan for the period from the first anniversary of the date of endorsement to one year following the date of the first principal payment.

(b) If the date of the first principal payment is one year or less than one year following the date of endorsement, the lender, upon such first principal payment date, shall pay a second premium equal to 0.5 percent of the average outstanding principal obligation of the loan for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of:

(1) 0.5 percent per annum of the average outstanding principal obligation of the loan for the period from the date of endorsement to the date of the first principal payment; and

(2) 0.5 percent of the average outstanding principal obligation of the loan for the year following the date of the first payment following the date of the first principal payment.

(c) Until the equity or acquisition loan is paid in full or until receipt by the Commissioner of an application for insurance benefits, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the lender on each anniversary date of the first principal payment, shall pay an annual insurance premium equal to 0.5 percent of the average outstanding principal obligation of the loan for the year following the date on which such premium becomes payable.

(d) The premiums payable on or after the date of the first principal payment shall be calculated in accordance with the amortizing provisions without taking into account delinquent payments or prepayments.

(e) Premiums shall be payable in cash or in debentures at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in this subpart.

§ 241.1035 Charges by lender.

(a) The lender may collect from the borrower the amount of the fees provided for by this subpart.

(b) The lender may also collect from the borrower an initial service charge, as reimbursement for the cost of closing the transaction, in a amount not to exceed 2 percent of the original principal amount of the loan.

(c) Any charges to be collected by the lender in addition to those prescribed in paragraphs (a) and (b) of this section, shall be subject to the prior approval of the Commissioner.

§ 241.1040 Eligible lenders.

Lenders meeting the applicable eligibility qualifications and requirements contained in § 203.4 or §203.6 of this chapter are eligible for insurance of equity loans under this subpart.

§ 241.1045 Note and security form.

The Lender shall present for insurance a note and security instrument on forms approved by the Commissioner for use in the jurisdiction in which the property is located, which shall not be changed without the prior approval of the Commissioner. The security instrument shall provide for accelerated repayment at the request of the Commissioner pursuant to § 241.1046(b).

§ 241.1046 Rental assistance.

(a) When underwriting an equity or acquisition loan under this subpart, the Commissioner may assume that the rental assistance provided in accordance with a plan of action approved under subparts B or C of part 248 of this chapter will be extended for the full term of the contract entered into under the plan of action.

(b) In the event that rental assistance is not extended under part 248 of this chapter, or the Commissioner is unable to develop a revised package of incentives to the owner comparable to those received under the original approved plan of action, the Commissioner may require the mortgagee to accelerate the debt of the equity or acquisition loan.

(c) If the Commissioner is unable to extend the term of rental assistance for the full term of the contract entered into under part 248 of this chapter, the Commissioner is authorized to take such actions as the Commissioner deems appropriate to avoid default, avoid disruption of the sound ownership and management of the property or otherwise minimize the cost to the Federal Government.

§ 241.1050 Method of loan payment.

The loan shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with the amortization plan as agreed upon by the borrower, the lender, and the Commissioner.

§ 241.1055 Date of first payment to principal.

The date for first payment to principal shall be established by the Commissioner.

§ 241.1060 Maturity.

The loan shall have a maturity equal to the remaining term of the first insured mortgage, or 20 years, whichever is longer.

§ 241.1065 Maximum loan amount—loans insured in connection with a plan of action under subpart C of part 248

The amount of the equity loan shall not exceed ninety percent of the owner's equity in the project, as determined by the Commissioner. Notwithstanding the above, the equity loan shall not exceed an amount which, when added to the existing indebtedness on the property, can be supported by 90 percent of the projected net income of the project, as determined by the Commissioner. The Commissioner, in making a determination regarding the amount of an equity loan and sums available to service said loan, shall take into account the fact that the project's income may increase within the limits established by § 248.233(d) of this chapter.

§ 241.1067 Maximum loan amount—loans insured in connection with a plan of action under subpart B of part 248.

(a) The amount of the equity loan shall not exceed the lesser of 70 percent of the extension preservation equity of the project or the amount the Commissioner determines can be supported by the project on the basis of an 8 percent return on extension preservation equity, assuming normal debt service coverage.

(b) The amount of the acquisition loan shall not exceed 95 percent of the transfer preservation equity of the project, except that, if the purchaser is a priority purchaser, the loan may include any expenses associated with the acquisition, loan closing, and implementation of the plan of action, subject to the approval of the Commissioner.

(c) The owner or purchaser may receive an equity or acquisition loan pursuant to this subpart in combination with a rehabilitation loan insured under subpart A of this part.

§ 241.1069 Escrow requirements.

(a) An equity loan provided in connection with a plan of action under subpart B of part 248 shall provide for the lender to deposit, on behalf of the borrower, 16 percent of the loan amount in an escrow account, controlled by the Commissioner or a State housing finance agency approved by the Commissioner, which shall be made available to the borrower upon the expiration of the 5-year period beginning on the date the loan is made, subject to compliance with § 248.147 of this chapter.

(b) An equity loan provided in connection with a plan of action under either subpart B or subpart C of part 248 shall provide for the lender to phase in advances to reflect project rent levels.

§ 241.1070 Agreed interest rate.

The equity or acquisition loan shall bear interest at the rate agreed upon by the borrower and the lender.

§ 241.1080 Eligibility of title.

In order for the project to be eligible for insurance, the Commissioner shall determine that the title to the property is vested in the borrower as of the date the security instrument is filed for record. The title evidence will be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 241.1085 Title evidence.

Upon insurance of the loan, the lender shall furnish to the Commissioner a policy of title insurance as provided in paragraph (a) of this section. If the lender is unable to furnish such policy for reasons satisfactory to the Commissioner, the lender shall furnish such evidence of title as provided in paragraph (b), (c) or (d) of this section as the Commissioner may require. Any policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The acceptable types of title evidence are:

(a) A policy of title insurance issued by a company satisfactory to the Commissioner. Such policy shall comply with the "L.I.C. Standard Mortgage Form," or such other form as may be approved by the Commissioner; shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured; and shall become an owner's policy, running to the lender as owner upon its acquisition of the property in extinguishment of the debt, and to the Secretary as owner upon his acquisition of the property pursuant to the loan insurance contract;

(b) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles;

(c) A Torrens or similar title certification; or

(d) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or territory thereof.

§ 241.1090 Accumulation of next premium.

The security instrument shall provide for payments by the borrower to the lender on each interest payment date of an amount sufficient to accumulate in the hands of the lender one payment period prior to its due date the next annual insurance premium payable by the lender to the Commissioner. These payments shall continue only as long as the contract of insurance remains in effect.

§ 241.1095 Application of payments.

(a) The security instrument shall provide that all monthly payments to be made by the borrower shall be added together and the aggregate amount shall be paid by the borrower upon each monthly payment date in a single payment. The lender shall apply the payment in the following order:

(1) Premium charges under the contact of insurance;

(2) Interest on the loan; and

(3) Amortization of the principal of the loan.

(b) Any deficiency in the amount of any monthly payments required under paragraph (a) of this section shall constitute a default. The security instrument shall provide for a grace period of 30 days within which time the default must be cured.

§ 241.1100 Prepayment privilege and charges.

(a) *Prepayment privilege.* (1) Except as otherwise provided in paragraph (b) of this section, the security instrument shall contain a provision permitting the borrower to prepay the loan, in whole or in part, upon any interest payment date after giving to the lender 30 days advance notice of its intention to prepay.

(2) If the loan exceeds $200,000, the security instrument may contain a provision for an additional charge in the event of prepayment of principal as may be agreed upon between the borrower and lender. These charges shall not be imposed if the loan is accelerated at the request of the Commissioner, pursuant to § 241.1046(b). The borrower shall be permitted to prepay up to 15 percent of the original principal amount of the loan in any one calendar year without any additional charge. A provision for an additional charge in the event of prepayment may not be included in a loan of $200,000 or less.

(b) *Prepayment of bond-financed loan.* Where the lender has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the loan may contain a prepayment restriction and prepayment penalty charges acceptable to the Commissioner as to term, amount, and conditions.

§ 241.1105 Late charges.

The note and security instrument may provide for the lender's collection of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the borrower and shall not be deducted from any aggregate monthly payment.

§ 241.1120 Mortgagee's consent.

The holder of an insured mortgage which is recorded prior to the equity

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loan shall not withhold its consent to the equity loan or the security instrument executed in connection with the equity loan, and may not charge a fee as a condition to its consent to such loan or security instrument.

Subpart F—Insurance for Equity Loans—Contract Rights and Obligations

§ 241.1200 Cross-references.

(a) *Projects with a HUD-insured or HUD-held mortgage.* (1) All the provisions of part 207, subpart B of this chapter, covering mortgages insured under section 207 of the Act, apply to equity loans or acquisition loans on a project insured under section 241(f) of the Act, except the following provisions:

Sec.
207.251 Definitions.
207.252 First, second and third premium.
207.252a Premiums—operating loss loans.
207.252b Premiums—mortgages insured pursuant to section 223(f) of the Act.
207.252c Premiums—mortgages insured pursuant to section 238(c) of the Act.
207.254 Insurance endorsement.

(2) For the purpose of this subpart, all references in part 207 of this chapter to section 207 of the Act and to the term "mortgage" shall be construed to refer to section 241(f) of the Act and "equity or acquisition loan," respectively.

(b) *Projects without a HUD-insured or HUD-held mortgage.* The provisions of subpart D of this part shall be applicable to a project without a HUD-insured or HUD-held mortgage that is receiving an equity loan or acquisition loan under subpart E of this part in connection with a plan of action approved by the Commissioner under part 248 of this chapter.

(c) All of the definitions in §241.1005 apply to this subpart. In addition, as used in this subpart, the term "contract of insurance" means the agreement evidenced by the Commissioner's insurance endorsement and includes the provisions of this subpart and of the Act.

§ 241.1205 Payment of insurance benefits.

All the provisions of §207.259 of this chapter relating to insurance benefits shall apply to an equity or acquisition loan insured under this subpart, except that insurance benefits shall be payable in cash if the insurance benefits under the senior insured mortgage are payable in cash, unless the lender files a written request for payment in debentures. If such a request is made, payment shall be made in debentures with a cash payment to adjust for any difference between the total amount of the insurance payment and the amount of the debentures issued.

§ 241.1210 Condition for payment of insurance benefits.

(a) All of the provisions of §207.258 of this chapter apply to this subpart, except that, if the holder of the senior insured mortgage institutes a foreclosure action, the lender shall notify the Commissioner in a timely manner of such action. The Commissioner, at its option, may then direct the lender to assign the equity or acquisition loan to the Commissioner, or bid an amount necessary to acquire the project and convey the project to the Commissioner.

(b) If the equity loan or acquisition loan is assigned in accordance with this section, the Commissioner at a foreclosure sale may bid, in addition to amounts otherwise authorized, any sum not in excess of the aggregate unpaid indebtedness secured by the senior insured mortgage and equity or acquisition loan, plus taxes, insurance, foreclosure costs, fees and other expenses.

§ 241.1215 Calculation of insurance benefits.

All of the provisions of §207.259 of this chapter apply to this subpart, except that if the lender, at the direction of the Commissioner, acquires title to the project at a foreclosure sale instituted by the holder of the senior insured mortgage, the amount of the claim determined under §207.259(c) of this chapter shall also include an amount bid by the lender to satisfy the senior insured mortgage at the foreclosure sale.

§ 241.1220 Termination of insurance benefits.

All of the provisions of §207.253a of this chapter apply to this subpart, except that the following shall also constitute grounds for terminating the contract of insurance:

(a) The failure of the lender to notify the Commissioner in a timely manner of a foreclsoure action initiated by the holder of the senior insured mortgage; and

(b) The failure of the lender when directed by the Commissioner to assign the equity or acquisition loan or bid an amount necessary to acquire title to the project and convey the project to the Commissioner, in accordance with § 241.1210 of this part.

§ 241.1230 No vested right in fund.

Neither the lender nor the borrower shall have any vested or other right in the insurance fund under which the loan is insured.

§ 241.1235 Cross default.

In the event the borrower commits a default under a prior recorded insured mortgage and the holder thereof initiates a foreclosure proceeding, said default under the prior recorded insured mortgage shall constitute a default under the equity or acquisition loan.

§ 241.1245 Insurance endorsement.

(a) *Endorsement.* The Commissioner shall indicate his insurance of the equity loan or acquisition loan by endorsing the original credit instrument and identifying the section of the Act and the regulations under which the loan is insured and the date of insurance.

(b) *Endorsement of phased loan.* In the event the loan is phased, the Commissioner shall indicate his insurance of each amount by endorsing the original credit instrument and identifying the section of the Act and the regulations under which such amount is insured and the date of the insurance.

(c) *Final advance of phased loan.* When all advances of a phased loan have been made and the terms and conditions of the commitment have been complied with to the satisfaction of the Commissioner, he or she shall indicate on the original credit instrument the total of all advances he has approved for insurance and again endorse such instrument.

§ 241.1250 Effect of endorsement.

From the date that the equity or acquisition loan is endorsed, the Commissioner and the lender shall be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

PART 248—PREPAYMENT OF LOW INCOME HOUSING MORTGAGES

11. The authority for part 248 would be revised to read as follows:

Authority: Sections 201–235, Housing and Community Development Act of 1987, Public Law 100–242 (101 Stat. 1815); Section 604 of the Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625. Sections 201-238, Low Income Housing Preservation and Resident Homeownership Act of 1990, Public Law 101–625 (12 U.S.C. 1715*l* note).

12. In chapter II, part 248, subpart A is revised, subpart B is redesignated as subpart C, a new subpart B is added, §§ 248.221, 248.233, 248.234, and 248.235 of newly designated subpart C would be revised and the table of contents for part 248 is set out to read as follows:

Subpart A—General

Sec.
248.1 Purpose.
248.3 Applicability.
248.5 Election to proceed under subpart B or subpart C.
248.7 Preemption of State and local laws.
248.9 Waivers.

Subpart B—Prepayments and Plans of Action under the Low Income Housing Preservation and Resident Homeownership Act of 1990

Sec.
248.101 Definitions.
248.103 General prepayment limitation.
248.105 Notice of intent.
248.111 Appraisal and preservation value of eligible low income housing.
248.121 Annual authorized return and aggregate preservation rents.
248.123 Determination of Federal cost limit.
248.127 Limitations on action pursuant to Federal cost limit.
248.131 Information from the Commissioner.
248.133 Second notice of intent.
248.135 Plans of action.
248.141 Criteria for approval of a plan of action involving prepayment and voluntary termination.
248.145 Criteria for approval of a plan of action involving incentives.
248.147 Housing standards.
248.149 Timetable for approval of a plan of action.
248.153 Incentives to extend low income use.
248.157 Voluntary sale of housing not in excess of Federal cost limit.
248.161 Mandatory sale of housing in excess of Federal cost limit.
248.165 Assistance for displaced tenants.
248.169 Permissible prepayment or voluntary termination and modification of commitments.
248.173 Resident homeownership program.
248.177 Delegated responsibility to state agencies.
248.179 Consultation with other interested parties.
248.181 Notice to tenants.

Subpart C—Prepayments and Plans of Action under the Emergency Low Income Preservation Act of 1987

248.201 Definitions.
248.203 General prepayment limitation.
248.211 Notice of intent to prepay.
248.213 Plan of action.
248.215 Notification of deficiencies.
248.217 Revisions to plan of action.
248.218 Tenant notice and opportunity to comment.
248.219 Notification of approval.
248.221 Approval of a plan of action that involves termination of low income affordability restrictions.
248.223 Alternative State strategy.
248.231 Incentives to extend low income use.
248.234 Section 8 rental assistance.
248.241 Modification of existing regulatory agreements.
248.251 Consultation with other interested parties.
248.261 Agreements implementing plans of action and State strategies.

Subpart A—General

§ 248.1 Purpose.

The purpose of this part is to—

(a) Preserve and retain to the maximum extent practicable as housing affordable to low income families or persons those privately owned dwelling units that were produced for such purpose with Federal assistance, without unduly restricting the owners' prepayment rights;

(b) Minimize the involuntary displacement of tenants currently residing in such housing;

(c) Work in partnership with State and local government and the private sector in the provision and operation of housing that is affordable to very low, low and moderate income families; and

(d) Facilitate the sale of housing to residents under a resident homeownership program.

§ 248.3 Applicability.

The requirements of subparts B and C of this part apply to any project that is eligible low income housing, as defined in subparts B and C respectively, on or after November 1, 1987, except that such requirements shall not apply to a project which receives assistance under title IV, subtitle B of the Cranston-Gonzalez National Affordable Housing Act in connection with a homeownership program approved by the Secretary thereunder.

§ 248.5 Election to proceed under subpart B or subpart C.

(a) Any owner who submits a notice of intent on or after January 1, 1991, pursuant to either § 248.211 or § 248.105, shall proceed under subpart B of this part.

(b) Any owner who has filed a plan of action with the Commissioner on or before October 11, 1990 pursuant to subpart C of this part, regardless of whether or not the Commissioner has approved such plan of action or whether the owner has received incentives thereunder, may proceed under subpart B of this part by submitting a notice of intent to the Commissioner in accordance with § 248.105 prior to February 5, 1992, or within thirty days after the Commissioner notifies the owner of HUD's final approval of the plan of action, whichever is later. The notice of intent shall state that the owner is exercising its conversion right pursuant to this section. If the owner fails to file a notice of intent prior to that date, the owner forfeits its right of conversion. In awarding incentives to an owner who elects to proceed under subpart B of this part in accordance with this section, the Commissioner shall take into consideration any incentives which the owner has already received under subpart C of this part.

(c) Any owner of housing that becomes eligible low income housing, as defined in subpart B of this part, before January 1, 1991, and who before such date, filed a notice of intent under § 248.211 of subpart C of this part, may, unless a plan of action is submitted after October 11, 1990, elect to proceed under subpart B or under subpart C of this part. An owner wishing to proceed under subpart B or subpart C of this part must indicate its election by submitting a new notice of intent to the Commissioner within 60 days after the effective date of this rule, in accordance with either § 248.105 (for owners electing to proceed under subpart B of this part) or § 248.211 (for owners electing to proceed under subpart C of this part). Any owner who fails to file a notice of intent within the 60-day period may not proceed under subpart C, but may proceed under subpart B by filing a new notice of intent thereafter. For purposes of calculating any time periods or deadlines under this part for actions following the filing of the notice of intent, the date on which the owner submits the new notice of intent under this paragraph shall be deemed the date of the filing of the notice of intent.

(d) An owner who has filed a plan of action after October 11, 1990, pursuant to § 248.213 of this part, may not elect to proceed under subpart B of this part.

§ 248.7 Preemption of State and local laws.

(a) *In general.* No State or political subdivision of a State may establish, continue in effect, or enforce any law or regulation that—

(1) Restricts or inhibits the prepayment of any mortgage described in § 248.101 or the voluntary termination of any insurance contract pursuant to § 207.253 of this chapter on eligible low income housing projects;

(2) Restricts or inhibits an owner of such projects from receiving the authorized annual return provided under § 248.121;

(3) Is inconsistent with any provision of this subpart, including any law, regulation, or other restriction that limits or impairs the ability of any owner of eligible low income housing to receive incentives authorized to increase rental rates, transfer the project, obtain secondary financing, or use the proceeds of any such incentives; or

(4) In its applicability to low income housing is limited only to eligible low

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income housing for which the owner has prepaid the mortgage or terminated the insurance contract.

(b) *Effect.* Any law, regulation or restriction described in paragraph (a) of this section shall be ineffective and any eligible low income housing exempt from the law, regulation, or restriction, only to the extent that it violates the provisions of this section.

(c) *Law of general applicability; contractual restrictions.* This section shall not prevent the establishment, continuing in effect, or enforcement of any law or regulation of any State or political subdivision of a State not inconsistent with the provisions of this subpart and relating to building standards, zoning limitations, health, safety, or habitability standards for housing, rent control, or conversion of rental housing to condominium or cooperative ownership, to the extent such law or regulation is of general applicability to both projects receiving Federal assistance and nonassisted projects. This section shall not preempt, or alter any contractual restrictions or obligations existing before November 28, 1990 that prevent or limit an owner of eligible low income housing from prepaying the mortgage on the project or terminating the mortgage insurance contract.

§ 248.9 Waivers.

Upon making a determination and finding a good cause, the Commissioner may waive any provision of this part, subject to statutory limitations. Each waiver shall be in writing and shall be supported by documentation of the facts and reasons which form the basis for the waiver.

Subpart B—Prepayments and Plans of Action Under the Low Income Housing Preservation and Resident Homeownership Act of 1990

§ 248.101 Definitions.

Acquisition Loan. A loan or advance of credit made to a qualified purchaser of eligible low income housing and insured by the Commissioner under part 241, subpart E of this chapter.

Adjusted Income. Annual income, as specified in §813.106 of this title, less allowances specified in the definition of "Adjusted Income" in §813.102 of this title.

Aggregate Preservation Rent. The extension preservation rent or transfer preservation rent, as defined under this section.

Annual Authorized Return. The amount an owner of an eligible low income housing project may receive in distributions from the project each year, plus debt service payments payable each year attributable to the equity takeout portion of any loan approved under the plan of action, expressed as a percentage of the project's extension preservation equity.

Bona Fide Offer. A certain and unambiguous offer to purchase an eligible low income housing project pursuant to this subpart made in good faith by a qualified purchaser with the intent that such offer result in the execution of an enforceable, valid and binding contract.

Capital Improvement Loan. A direct loan originated by the Secretary under part 219, subpart C of this chapter.

Community-Based Nonprofit Organization. A nonprofit organization that maintains, through significant representation on the organization's governing board and otherwise, accountability to low income community residents and to the extent practicable, low income beneficiaries with regard to decisions as to the management and preservation of affordable housing.

Default. For purposes of § 248.105(a), the failure of the owner to make any payment due under the mortgage (including the full amount of the debt if the mortgagee has accelerated the debt on the basis of a non-monetary default) within 30 days after such payment becomes due.

Eligible Low Income Housing. Any project that is not subject to a use restriction imposed by the Commissioner that restricts the project to low and moderate income use for a period at least equal to the remaining term of the mortgage, and that is financed by a loan or mortgage—

(1) That is—

(i) Insured or held by the Commissioner under §221(d)(3) of the National Housing Act and assisted under part 215 of this chapter or project-based assistance under parts 880, 881 or 886 of this title;

(ii) Insured or held by the Commissioner under part 221 of this chapter and bearing a below market interest rate as provided under §221.518(b) of this chapter;

(iii) Insured, assisted, or held by the Commissioner or a State or State agency under part 236 of this chapter; or

(iv) A purchaser money mortage held by the Commissioner with respect to a project which, immediately prior to HUD's acquisition, would have been classified under paragraph (1), (2) or (3) of this definition; and

(2) That, under regulation or contract in effect before February 5, 1988, is or will within 24 months become eligible for prepayment without prior approval of the Commissioner.

Equity Loan. A loan or advance of credit to the owner of eligible low income housing and insured by the Commissioner under part 241, subpart E of this chapter.

Extension Preservation Equity. The extension preservation equity of a project is:

(1) The extension preservation value of the project determined under §248.111; less

(2) The outstanding balance of any debt secured by the property.

Extension Preservation Rent. The extension preservation rent is the gross potential income for the project that would be required to support:

(1) The annual authorized return;

(2) Debt service on any rehabilitation loan for the project;

(3) Debt service on the federally-assisted mortgage for the project;

(4) Project operating expenses; and

(5) Adequate reserves.

Extension Preservation Value. The fair market value of the project based on the highest and best use of the project as multifamily market-rate rental housing.

Fair market rent. The section 8 existing fair market rent published for effect and as defined under §882.102 of this title, applicable to the jurisdiction in which the project is located, with adjustments, where appropriate, for projects in which tenants pay their own utilities.

Federal Cost Limit. The greater of 120 percent of the section 8 existing fair market rent for the market area in which the project is located or 120 percent of the prevailing rents in the relevant local market area in which the project is located.

Federally-assisted Mortgage. Any mortgage as defined in this section, any operating loss loan secured by the project and any loan insured by the Commissioner under part 241 of this chapter.

Good Cause. With respect to displacement, the temporary or permanent uninhabitability of the project justifying relocation of all or some of the project's tenants (except where such uninhabitability is caused by the actions or inaction of the owner), or actions of the tenant that, under the terms of the tenant's lease and applicable regulations, constitute a basis for eviction.

HOME Investment Trust Fund. A public fund established in the general local or State government in which a project is located pursuant to title II of the Cranston-Gonzalez National Affordable Housing Act.

Homeownership Program. A program developed by a resident council for the sale of an eligible low income housing project to the tenants in accordance with the standards in § 248.173.

Interest Reduction Payments. Payments made by the Secretary pursuant to a contract to reduce the interest costs on a mortgage insured under part 236 of this chapter, as provided under subpart C of part 236 of this chapter.

Limited Equity Cooperative. A cooperative housing corporation in which the income eligibility of purchasers or appreciation upon resale of membership shares, or both, are restricted in order to maintain the project as available to and affordable by low and moderate income families and persons.

Low Income Affordability Restrictions. Limits imposed by regulation or regulatory agreement on tenant rents, rent contributions, or income eligibility with respect to eligible low income housing.

Low Income Families. Families or persons whose incomes do not exceed the levels established for low income families under part 813 of this title.

Low Vacancy Area. A market area in which the current supply of vacant available rental units, as a proportion of the total overall rental inventory in the area is not sufficient to allow for normal growth and mobility, taking into account the need for vacancies resulting from turnover and to meet growth in renter households. The determination of a low vacancy area, as set forth in § 248.165(h), will be made by the Commissioner, utilizing the most recent available data for the market area on the rental inventory, renter households, rental vacancy rates and other factors as appropriate.

Moderate Income Families. Families or persons whose incomes are between 80 and 95 percent of median area income, as determined by the Commission, with adjustments for smaller and larger families.

Mortgage. The mortgage or deed of trust insured or held by the Commissioner or a State or State agency under parts 221 or 236 of this title or the purchase money mortgage taken back by the Commissioner in connection with the sale of a HUD-owned project and held by the Commissioner, where such mortgage, deed or trust or purchase money mortgage is secured by eligible low income housing.

Nonprofit Organization. Any private, nonprofit organization that—

(1) Is organized or chartered under State or local laws;

(2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(3) Complies with standards of financial accountability acceptable to the Commissioner; and

(4) Has among its principal purposes significant activities related to the provision of decent housing that is affordable to very low, low, and moderate income families.

Notice of Intent. An owner's notification to the Commissioner of its intention to terminate the low income affordability restrictions on the project through prepayment of the mortgage or voluntary termination of the insurance contract, to extend the low income affordability restrictions on the project, or to transfer the project to a qualified purchaser.

Owner. The mortgagor or trustor under the mortgage secured by eligible low income housing.

Participating Jurisdiction. For purposes of the resident homeownership program established in § 248.173, any State or unit of general local government that has been so designated in accordance with section 216 of title I of the Cranston-Gonzalez National Affordable Housing Act of 1990.

Plan of Action. A plan providing for the termination of the low income affordability restrictions on the project through prepayment of the mortgage or voluntary termination of the insurance contract, for extension of the low income affordability restrictions on the project, or for the transfer of the project to a qualified purchaser. A homeownership program constitutes a plan of action for purposes of this subpart.

Prepayment. Prepayment in full of a mortgage, or a partial prepayment or series of partial prepayments that reduces the mortgage term by at least six months, except where the prepayment in full or partial prepayment results from the application of condemnation proceeds.

Preservation Equity. The extension preservation equity or transfer preservation equity, as defined under this section.

Preservation Value. The extension preservation value or transfer preservation value, as defined under this section.

Priority Purchaser. Any entity that is not a related party to the owner and that is either—

(1) A resident council organized to acquire the project in accordance with a resident homeownership program that meets the requirements of this subpart; or

(2) Any nonprofit organization or State or local agency that agrees to maintain low income affordability restrictions for the remaining useful life of the project. A nonprofit organization or State or local agency that is affiliated with a for-profit entity for purposes of purchasing a project under this subpart shall not be considered a priority purchaser.

Public Housing Agency. A public housing agency, as defined in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

Qualified Purchaser. Any entity that is not a related party to the owner and that agrees to maintain low income affordability restrictions for the remaining useful life of the project, and includes for-profit entities and priority purchasers.

Regulatory Agreement. The agreement executed by the owner and the Secretary or a State agency providing for the regulation of the operation of the project.

Related Party. An entity that, either directly or indirectly, is wholly or partially owned or controlled by the owner of the project being transferred under this subpart, is under whole or partial common control with such owner, or has any financial interest in such owner or in which such owner has any financial interest. For purposes of this definition, the owner and the purchaser shall be considered "related parties" if the owner has made or intends to make any loan to the purchaser in connection with the transfer of the project, or if any officer, director or employee of the owner is an officer or director of the purchaser. The purchaser and the owner shall not be deemed related parties solely by reason of the purchaser's retention of a property management entity of a company that is owned or controlled by the owner or a principal thereof, if retention of the management company is neither a condition of sale nor part of consideration paid for the project and the property management contract is negotiated by the qualified purchaser on an arm's length basis.

Relevant Local Market. An area geographically smaller than the a market area established by the Commissioner for purposes of determining the section 8 existing fair market rent, that is identifiable as a distinct rental market area in which similar projects and units would effectively compete with the subject project, for potential tenants.

Relocation Expenses. Relocation expenses shall consist of payment for—

(1) Advisory services, including timely information, counseling (including the provision of information on a resident's rights under the Fair Housing Act), and referrals to suitable, affordable, decent,

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safe and sanitary alternative housing; and

(2) Payment for actual, reasonable moving expenses.

Remaining Useful Life. With respect to eligible low income housing, the period during which the physical characteristics of the project remain in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced as becomes necessary.

Reserve for Replacements. The escrow fund established under the regulatory agreement for the purpose of ensuring the availability of funds for needed repair and replacement costs.

Resident Council. Any incorporated nonprofit organization or association that—

(1) Is representative of the residents of the project;

(2) Adopts written procedures providing for the election of officers on a regular basis; and

(3) Has a democratically elected governing board, elected by the residents of the project.

Residual Receipt Fund. The fund established under the regulatory agreement for holding cash remaining after deducting from the surplus cash, as defined by the regulatory agreement, the amount of all allowable distributions.

Return on Investment. The amount of allowable distributions that a purchaser of a project may receive under a plan of action under § 248.157 or § 248.161.

Section 8 Assistance. Assistance provided under parts 880 through 887 of this title.

Special Needs Tenants. Those "elderly persons," "elderly families," or families that include "disabled persons," as such terms are defined in § 812.2 of this title.

Tenant Representative. A designated officer of an organization of the project's tenants, a tenant who has been elected to represent the tenants of the project with respect to this subpart, or a person or organization that has been formally designated or retained by an organization of the project's tenants to represent the tenants with respect to this subpart. To qualify as a tenant representative under this subpart, the person or organization claiming such status must have been elected as a representative by, or its retention endorsed by, tenants representing at least 50 percent of the units occupied at the time of the election or endorsement, either by vote or signature on a petition.

Termination of Low Income Affordability Restrictions. The elimination of low income affordability restrictions under the regulatory agreement through termination of mortgage insurance or prepayment of the mortgage.

Transfer Preservation Equity. The transfer preservation equity of a project is:

(1) The transfer preservation value of the project determined under § 248.111; less

(2) The outstanding balance of the federally-assisted mortgage or mortgages for the project.

Transfer Preservation Rent. For purposes of receiving incentives pursuant to a sale of the project, transfer preservation rent shall be the gross income for the project that would be required to support:

(1) Debt service on the loan for acquisition of the project;

(2) Debt service on any rehabilitation loan for the project;

(3) Debt service on the federally-assisted mortgage for the housing;

(4) Project operating expenses; and

(5) Adequate reserves.

Transfer Preservation Value. The fair market value of the project based on its highest and best use.

Very Low Income Families. Families or persons whose incomes do not exceed the level established for very low income families under § 813.102 of this title.

Voluntary Termination of Mortgage Insurance. The termination of all rights under the mortgage insurance contract and of all obligations to pay future insurance premiums.

§ 248.103 General prepayment limitation.

(a) *Prepayment.* An owner of eligible low income housing may prepay, and a mortgagee may accept prepayment of, a mortgage on such project only in accordance with a plan of action approved by the Commissioner.

(b) *Termination.* A mortgage insurance contract with respect to eligible low income housing may be terminated pursuant to § 207.253 of this chapter only in accordance with a plan of action approved by the Commissioner.

(c) *Foreclosure.* A mortgagee of a mortgage insured by the Commissioner may foreclose the mortgage on, or acquire by deed in lieu of foreclosure, any eligible low income housing only if the mortgagee also conveys title to the project to the Commissioner in connection with a claim for insurance benefits.

(d) *Effect of unauthorized prepayment.* A mortgagee's acceptance of a prepayment in violation of paragraph (a) of this section, or the voluntary termination of a mortgage insurance contract in violation of paragraph (b) of this section, shall be null and void and any low income affordability restrictions on the project shall continue to apply to the project.

(e) *Remedies for unauthorized prepayment.* A mortgagee's acceptance of a prepayment in violation of paragraph (a) of this section, or attempt to obtain voluntary termination of a mortgage insurance contract in violation of paragraph (b) of this section, is grounds for administrative action under parts 24 and 25 of this title, in addition to any other remedies available by law, including rescission of the prepayment or reinstatement of the insurance contract.

§ 248.105 Notice of intent.

(a) *Eligibility for filing.* An owner of eligible low income housing intending to prepay the mortgage or voluntarily terminate the mortgage insurance contract pursuant to § 248.141, extend the low income affordability restrictions of the housing in accordance with § 248.153, or transfer the housing to a qualified purchaser under § 248.157, may file a notice of intent unless the mortgage covering the project—

(1) Continued in default or fell into default on or after the November 28, 1990, and the mortgage has been assigned to the Commissioner as a result of such default;

(2) Continued in default or fell into default on or after November 28, 1990, while the mortgage was held by the Commissioner;

(3) Fell into default prior to November 28, 1990, if the owner entered into a workout agreement prior to that date, and on or after that date, the owner has defaulted under the workout agreement (and, if the agreement was with an insured mortgagee, the mortgage has been assigned to the Commissioner as a result of the default under the workout agreement); or

(4) Fell into default prior to November 28, 1990, but has been current since that date and the owner has not agreed to recompense the appropriate insurance fund for losses sustained by the fund as a result of any work-out or other arrangement agreed to by the Commissioner and the owner with respect to the defaulted mortgage.

(b) *Filing with the Commissioner.* The notice of intent shall be filed with the HUD Field Office in whose jurisdiction the project is located. The notice of intent shall identify the project by name, project number and location, briefly describe the owner's plans for the project, and the reason the owner seeks to prepay the mortgage, terminate the mortgage insurance contract, extend the income restrictions, or transfer the project. The notice of intent shall also request the tenants to notify the owner and the Commissioner of any individual or organization that has been designated or retained by the tenants to represent the tenants with respect to the actions to be taken under this subpart.

(c) *Filing with the State or local government and tenants.* The owner simultaneously shall file the notice of intent with the chief executive officer of the appropriate State or local government in which the project is located, and with the mortgagee. In addition, the owner shall deliver a copy of the notice of intent to each tenant in the project and to any tenant representative, if any, known to the owner, and shall post a copy of the notice of intent in readily accessible locations within each affected building of the project. If the project includes a substantial number of non-English speaking tenants, the notice of intent shall be translated into a language understood by such tenants. The copies of the notice of intent delivered to the tenants and the tenant representative shall include a summary of possible outcomes of the filing which shall be furnished by the Commissioner.

§ 248.111 Appraisal and preservation value of eligible low income housing.

(a) *Appraisal.* Upon receiving a notice of intent indicating an intent to extend the low income affordability restrictions under § 248.153 or transfer the project under § 248.157, the Commissioner shall provide for determination of the preservation values of the project pursuant to this section.

(b) *Notice.* Within 30 days after the filing of a notice of intent to extend the income restrictions or to transfer the project, the Commissioner shall provide the owner with written notice of—

(1) The need for, and the rules and guidelines governing, an appraisal of the project;

(2) The filing deadline for submission of the appraisal;

(3) The need for an appraiser retained by the Commissioner to inspect the project and the project's financial records; and

(4) Any delegation to an appropriate State agency, if any, by the Commissioner of responsibilities regarding the performance of an appraisal pursuant to this section.

(c) *Appraisers.* The Commissioner and the owner shall each select and compensate an appraiser who shall:

(1) Neither be an employee of the Federal Government nor an employee or officer of any entity that is affiliated with the owner;

(2) Be certified by the appropriate State agency under the standards established by the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989; and

(3) Have six years of experience in the appraisal profession and at least three years' experience in the practice of appraising multifamily residential properties.

(d) *Guidelines.* The Commissioner shall provide to each appraiser guidelines for the conduct of the appraisal. The guidelines established by the Commissioner shall be consistent with customary appraisal standards. The guidelines shall assume repayment of the existing federally-assisted mortgage, termination of the existing low income affordability restrictions, and costs of compliance with any State or local laws of general applicability. The guidelines may permit reliance upon assessments of rehabilitation needs and other conversion costs determined by an appropriate State agency, as determined by the Commissioner.

(e) *Operating expenses.* For the purpose of determining preservation values, the guidelines shall instruct the appraiser to use the greater of actual project operating expenses at the time of the appraisal, based on the average of the actual project operating expenses during the preceding three years, or projected operating expenses after conversion, as determined by the Commissioner. However, if the current year operating expenses are higher than those of the preceding three years and the Commissioner has made a determination that these costs are unlikely to decrease in the future, the appraiser shall use current year operating expenses rather than projected operating expenses for purposes of comparison with projected operating expenses after conversion.

(f) *Preservation values.* The preservation values will be determined on the basis of the appraisals conducted by the owner's and the Commissioner's independent appraisers. Each appraiser will determine both the extension preservation value and the transfer preservation value, regardless of the owner's intentions as indicated in the notice of intent.

(g) *Highest and best use as residential property.* In determining the extension preservation value of the project, the appraiser shall assume conversion of the project to market-rate rental housing. The appraiser shall, in accordance with the guidelines established by the Commissioner, determine the amount of rehabilitation expenditures that would be necessary to bring the project up to quality standards required to attract and sustain a market-rate tenancy upon conversion and assess other costs that the owner could reasonably be expected to incur if the owner converted the property to market-rate multifamily rental housing.

(h) *Highest and best use.* In determining the transfer preservation value for the project, the appraiser shall assume conversion of the project to highest and best use for the property, and shall, in accordance with the guidelines established by the Commissioner, determine the amount of any rehabilitation expenditures that would be necessary to convert the project to such use and assess other costs that the owner could reasonably be expected to incur if the owner converted the property to its highest and best use.

(i) *Submission of appraisal.* Within four months after filing the notice of intent:

(1) The owner shall submit to the HUD Field Office in whose jurisdiction the project is located, the appraisal made by the owner's selected appraiser; and

(2) The Commissioner's selected appraiser shall conduct and submit an appraisal to the Commissioner.

(j) *Joint determination of preservation values.* No later than one month after the submission of the appraisal by the owner to the HUD Field Office, the owner and the Commissioner, shall, on the basis of the appraisals delivered to them, agree on the preservation values of the project. If no agreement as to preservation values can be reached, the owner and the Commissioner shall jointly select a third appraiser meeting the qualifications set forth in paragraph (c) of this section by the end of six months from the date that the notice of intent was filed. The cost of this third appraisal shall be borne equally by both parties. The third appraiser must comply with the guidelines set forth in paragraph (d) of this section and must conduct the appraisal and submit an appraisal within two months after accepting the assignment. The determination by the third appraiser of the project's preservation values shall be binding on both the owner and the Commissioner.

(k) *Timeliness of appraisals.* The Commissioner may approve a plan of action to receive incentives under §§ 248.153, 248.157 or 248.161 only based upon an appraisal conducted in accordance with this section that is not more than 30 months old, unless the failure of the Commissioner to approve the plan of action within the 30-month period was due to circumstances beyond the control of the owner.

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§ 248.121 Annual authorized return and aggregate preservation rents.

(a) *Annual authorized return.* For each eligible low income housing project appraised under § 248.111, the Commissioner shall set an annual authorized return on the project equal to 8 percent of the extension preservation equity.

(b) *Aggregate preservation rents.* For each eligible low income housing project appraised under § 248.111, the Commissioner shall also determine the aggregate preservation rents. The aggregate preservation rents shall be used solely for the purposes of comparison with the Federal cost limit under § 248.123. Actual rents received by the owner (or a qualified purchaser) shall be determined pursuant to § 248.153, § 248.157, and § 248.161.

(c) *Extension preservation rent.* The extension preservation rent shall be the gross potential income for the project, as determined by the Commissioner, that would be required to support—

(1) The annual authorized return determined under paragraph (a);

(2) Debt service on any rehabilitation loan for the project, assuming a market rate of interest and customary terms;

(3) Debt service on the federally-assisted mortgage for the project;

(4) Project operating expenses as determined by the Commissioner; and

(5) Adequate reserves.

(d) *Transfer preservation rent.* The transfer preservation rent shall be the gross income for the project, as determined by the Commissioner, that would be required to support—

(1) Debt service on the loan for acquisition of the project;

(2) Debt service on any rehabilitation loan for the project, assuming a market rate of interest and customary terms;

(3) Debt service on the federally-assisted mortgage for the project;

(4) Project operating expenses; and

(5) Adequate reserves.

(e) *Adequate reserves.* For purposes of this section—

(1) Adequate reserves are the amount of funds which, when added to existing reserves, are sufficient to maintain the project, including needed deferred maintenance, at a level that meets the standards set forth in § 248.147; and

(2) Project operating expenses shall be based on operating expenses for the preceding 3 years, adjusted for reasonable reductions in operating costs due to rehabilitation and energy improvements.

(f) *Debt service.* For purposes of this section, the amount of debt service for an acquisition loan will be estimated based on the maximum loan to which the purchaser is entitled under § 241.1067 of this chapter. The debt service on any rehabilitation loan will be estimated using costs derived from the appraisals conducted under § 248.111, taking into account any funds provided for rehabilitation by State or local governments and assuming market rate interest rates.

§ 248.123 Determination of Federal cost limit.

(a) *Initial determination.* For each eligible low income housing project appraised under § 248.111, the Commissioner shall determine whether the aggregate preservation rents for the project exceed the amount determined by multiplying the number of dwelling units in the project, according to appropriate unit sizes, by 120 percent of the section 8 existing fair market rent for the appropriate unit size.

(b) *Relevant local markets.* If either the extension or transfer preservation rent for a project exceeds the amount determined under paragraph (a) of this section, the Commissioner shall determine whether such extension or transfer preservation rent exceeds the amount determined by multiplying the number of units in the project, according to the appropriate unit sizes, by 120 percent of the prevailing rents in the local market area. The relevant local market, and the prevailing rents in such relevant local market, shall be determined on the basis of the appraisal conducted by the appraiser selected by the Commissioner pursuant to § 248.111 and any other information that the Commissioner determines is appropriate. If there are no comparables in the relevant local market and it is not otherwise possible to determine prevailing rents in that area, the section 8 existing fair market rent shall be the sole measure for determining the Federal cost limit.

(c) *Effect.* The extension or transfer preservation rent for an eligible low income housing project appraised under § 248.111 shall be considered to exceed the Federal cost limit only if the extension or transfer preservation rent exceeds the amount determined under paragraphs (a) and (b) of this section.

§ 248.127 Limitations on action pursuant to Federal cost limit.

(a) *Retention of the project.* With respect to owners who seek to retain the project, the owner may file a plan of action to receive incentives under § 248.153, except that if the extension preservation rent exceeds the Federal cost limit, the amount of the incentives may not exceed an amount that can be supported by a projected income stream equal to the Federal cost limit.

(b) *Transfer of the project.* With respect to owners who seek to transfer the project—

(1) If the transfer preservation rent does not exceed the Federal cost limit, or if the transfer preservation rent exceeds the Federal cost limit and the owner is willing to transfer the project at a price which will result in project rents that, on an aggregate level, do not exceed the Federal cost limit, the owner may file a second notice of intent indicating an intention to transfer the project under § 248.157; or

(2) If the transfer preservation rent exceeds the Federal cost limit, the owner may file a second notice of intent to transfer the project under § 248.161 or, if no bona fide offers are received, to prepay the mortgage or terminate the mortgage insurance.

§ 248.131 Information from the Commissioner.

(a) *Information to owners terminating affordability restrictions.* Within six months after receipt of a notice of intent to terminate the low income affordability restrictions under § 248.141, the Commissioner shall provide the owner with a description of the criteria for such termination and with information that the owner needs to prepare a plan of action. This shall include information concerning the standards under § 248.141 regarding the approval of a plan of action and a list of the Federal incentives authorized under § 248.153 and available to those projects for which a plan of action involving termination of low income affordability restrictions, through prepayment of the mortgage or termination of the mortgage insurance contract, would not be approvable. The Commissioner shall also provide the owner with any other relevant information which the Commissioner may possess.

(b) *Information to owners extending affordability restrictions.* Within nine months of receipt of a notice of intent to extend the low income affordability restrictions under § 248.153 or to transfer the project under § 248.157, the Commissioner shall provide the owner who submitted the notice with—

(1) A statement of the preservation values of the project as determined under § 248.111;

(2) A statement of the aggregate preservation rents for the project as calculated under § 248.121;

(3) A statement of the applicable Federal cost limit for the market area (or relevant local market, if applicable) in which the project is located, and an explanation of the limitations under § 248.127 on the amount of assistance the Commissioner may provide based on such cost limits;

(4) A statement of whether either of the aggregate preservation rents exceeds the Federal cost limit; and

(5) A direction to file a plan of action and the information necessary to file a plan of action; or

(6) A direction to submit a second notice of intent under § 248.133.

(c) *Information to tenants.* The Commissioner shall make any information provided to the owner under paragraphs (a) and (b) of this section available to the tenants, together with other information relating to the rights and opportunities of the tenants, including—

(1) The potential opportunity of the tenants to become priority purchasers under § 248.157 and § 248.161; and

(2) The potential opportunity of resident homeownership under § 248.173.

§ 248.133 Second notice of intent.

(a) *Filing.* A second notice of intent must be filed by all owners who, after receiving the information provided by the Commissioner in § 248.131, elect to—

(1) Transfer the project under § 248.157 or § 248.161; or

(2) Prepay the mortgage or voluntarily terminate the insurance contract on the mortgage pursuant to § 248.141.

(b) *Timeliness.* A second notice of intent must be submitted not later than 30 days after receipt of the information provided by the Commissioner under § 248.131. If an owner who is required to submit a second notice of intent fails to do so within this time period, the original notice of intent submitted under § 248.105 shall be void and ineffective for purposes of this subpart.

(c) *Filing with the State or local government and tenants.* The owner simultaneously shall file the second notice of intent with the chief executive officer of the appropriate State or local government in which the project is located, and with the mortgagee. In addition, the owner shall deliver a copy of the second notice of intent to each tenant in the project and to any tenant representative, if any, known to the owner, and shall post a copy of the second notice of intent in readily accessible locations within each affected building of the project.

§ 248.135 Plans of action.

(a) *Submission.* An owner seeking to terminate the low income affordability restrictions through prepayment of the mortgage or voluntary termination under § 248.141, or to extend the low income affordability restrictions on the project under § 248.153, shall submit a plan of action to the Commission in the form and manner prescribed in paragraph (d) or (e) of this section respectively, within 6 months after receipt of the information from the Commissioner under § 248.131.

(b) *Joint Submission.* An owner and purchaser seeking a transfer of the project under § 248.157 or § 248.161 shall jointly submit a plan of action to the Commissioner in the form and manner prescribed in paragraph (e) of this section within 90 days after the owner's acceptance of a bona fide offer under § 248.157 or the purchaser's making of a bona fide offer under § 248.161.

(c) *Filing with the State or local government and tenants.* The owner shall notify the tenants of the plan of action by posting in each occupied building a summary of the plan of action and by delivery of a copy of the plan of action to the tenant representative, if any. In addition, the summary must indicate that a copy of the plan of action shall be available for inspection and copying during reasonable hours in a location convenient to the tenant. Simultaneously with the submission to the Commissioner, the owner shall submit the plan of action to the office of the chief executive officer of the appropriate State or local government for the jurisdiction within which the project is located. An appropriate agency of such State or local government shall review the plan of action and advise the tenants of the project of any programs that are available to assist the tenants in carrying out the purposes of this subpart.

(d) *Termination of affordability restrictions.* If the plan of action proposes to terminate the low income affordability restrictions through prepayment or voluntary termination in accordance with § 248.141, it shall include:

(1) A description of any proposed changes in the status or terms of the mortgage or regulatory agreement;

(2) A description of any proposed changes in the low income affordability restrictions;

(3) A description of any change in ownership that is related to prepayment or voluntary termination;

(4) An assessment of the effect of the proposed changes on existing tenants;

(5) An analysis of the effect of the proposed changes on the supply of housing affordable to low and very low income families or persons in the community within which the project is located and in the area that the housing could reasonably be expected to serve; and

(6) Any other information that the Commissioner determines is necessary to achieve the purposes of this subpart.

(e) *Extension of affordability restrictions.* If the plan of action proposes to extend the low income affordability restrictions of the project in accordance with § 248.153 or transfer the project to a qualified purchaser in accordance with § 248.157 or § 248.161, the plan of action shall include:

(1) A description of any proposed changes in the status or items of the mortgage or regulatory agreement;

(2) A description of the Federal incentives requested, including cash flow projections and analyses of how the owner will address any physical or financial deficiencies and maintain the low income affordability restrictions of the project;

(3) A description of any assistance from State or local government agencies, including low income housing tax credits that have been offered to the owner or purchaser or for which the owner or purchaser has applied or intends to apply;

(4) A description of any transfer of the property, including the identity of the transferee and a copy of any documents of sale;

(5) An income profile of the tenants as of January 1, 1987 (based on the area median income limits established by the Commissioner in February 1987) and as of the date of submission of the plan of action;

(6) A transfer of physical assets package; and

(7) Any other information that the Commissioner determines is necessary to achieve the purposes of this subpart.

(f) *Revisions.* The owner and purchaser may from time to time jointly revise and amend the plan of action as may be necessary to obtain approval here under this subpart and must amend the plan of action no later than 30 days after a change in any of the information required in paragraphs (d) or (e) of this section. The owner or purchaser shall submit any revision to the Commissioner, and provide a copy of the revision to the office of the chief executive officer of the appropriate State or local government for the jurisdiction within which the project is located, and (unless the purchaser is a resident council or other organization comprised of the project's tenants) to the tenants of the project, and to any tenant representative, if any, known to the owner.

(g) *Failure to Submit.* If the owner fails to submit a plan of action to the Commissioner when prepayment or termination is sought within the 6 month

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period set forth in paragraph (a) of this section or, when a transfer is sought, if the owner and purchaser fail to submit a plan of action within the 90-day time period set forth in paragraph (b) of this section, the notice of intent filed by the owner under § 248.105 shall be ineffective for the purposes of this subpart and the owner shall be barred from submitting another notice of intent under § 248.105 until 6 months after expiration of such period.

(h) *Notification to tenants of plan of action approval.* Upon the Commission's approval of the plan of action, the owner shall notify tenants of the terms thereof by posting in each occupied building a summary of the plan of action and by delivery of a copy of the plan of action to the tenant representative, if any. In addition, the summary must indicate that a copy of the plan of action shall be available for inspection and copying during reasonable hours in a location convenient to the tenants.

§ 248.141 Criteria for approval of a plan of action involving prepayment and voluntary termination.

(a) *Approval.* The Commissioner may approve a plan of action that provides for the termination of the low income affordability restrictions through prepayment of the mortgage or voluntary termination of the mortgage insurance contract only upon a written finding that—

(1) implementation of the plan of action will not—

(i) Materially increase economic hardship for current tenants, and will not in any event result in a monthly rental payment by any current tenant that exceeds 30 percent of the monthly adjusted income of the tenant or an increase in the monthly rental payment in any year that exceeds 10 percent (whichever is lower); or in the case of a current tenant who already pays more than such pecentage, an increase in the Consumer Price Index or 10 percent (whichever is lower); or

(ii) Involuntarily displace current tenants (except for good cause) where comparable and affordable housing is not readily available, determined without regard to the availability of Federal housing assistance that would address any such hardship or involuntary displacement; and

(2) The supply of vacant, camparable housing is sufficient to ensure that such prepayment will not materially affect—

(i) The availability of decent, safe, and sanitary housing affordable to low income and very low income families or persons in the area that the housing could reasonably be expected to serve;

(ii) The ability of low income and very low income families or persons to find affordable, decent, safe, and sanitary housing near employment opportunities; or

(iii) The housing opportunities of minorities in the community within which the housing is located.

(3) There are no open findings of noncompliance with title VI of the Civil Rights Act of 1964; the Fair Housing Act; Executive Order 11063; and Age Discrimination Act of 1975; Section 504 of the Rehabilitation Act of 1973; and all regulations promulgated under such statutes and authorities, and no open audit findings with respect to violations of the regulatory agreement.

(b) *Disapproval.* If the Commissioner determines a plan of action to prepay a mortgage or terminate an insurance contract fails to meet the requirements of paragraph (a) of this section, the Commissioner shall disapprove the plan and within a reasonable time, and shall inform the owner of the reasons for disapproval and suggest alternatives. In the case of disapproval of the plan of action, except for the failure to meet the requirement of paragraph (a)(3) of this section, the notice of intent filed under § 248.105 shall be rendered ineffective for the purposes of this subtitle, and the owner, in order to receive incentives, must file a new notice of intent under such section. If the plan of action is disapproved because of an outstanding civil rights or audit finding, the finding must be closed before the Commissioner will approve a plan of action under this section.

§ 248.145 Criteria for approval of a plan of action involving incentives.

(a) *Approval.* The Commissioner may approve a plan of action for extension of the low income affordability restrictions on an eligible low income housing project or transfer the housing to a qualified purchaser, other than a resident council, only upon a finding that—

(1) Due diligence has been given to ensuring that the package of incentives set forth in the plan of action is, for the Federal Government, the least costly alternative that is consistent with the full achievement of the purposes of this subpart. The Commissioner will conduct a "windfall profits" test to determine whether the project is located in a rental market where there is an adequate supply of decent, affordable housing. If the project is located in such a rental market, and if the provision of incentives would not serve other public policy objectives under this subpart, then no incentives will be provided to the owner;

(2) The project will be retained as housing affordable for very low, low and moderate income families and persons for the remaining useful life of the project, as determined under paragraph (a)(8);

(3) Throughout the remaining useful life of the project, adequate expenditures will be made for maintenance and operation of the project and that the project meets the housing standards established in § 248.147 as determined by inspections conducted by the Commissioner;

(4) Current tenants will not be involuntarily displaced, except for good cause;

(5) Any increase in rent contributions for current tenants will be to a level that does not exceed 30 percent of the adjusted income of the tenant or the fair market rent, whichever is lower. However, the rent contributions of any tenants occupying the project at the time of any increase may not be reduced by reason of this paragraph, except with respect to tenants receiving section 8 assistance in accordance with paragraph (a)(7) of this section;

(6) Any resulting increase in rents for current tenants (except for increases made necessary by increased operating costs) shall be phased in as follows:

(i) If such increase is 30 percent or more, the increase shall be phased in equally over a period of not less than three years, with the first increase occurring upon the effective date of the plan of action, and the subsequent two increases occurring annually thereafter;

(ii) If such increase is more than 10 percent but less than 30 percent, it shall be limited to not more than 10 percent per year;

(7) Section 8 assistance shall be provided, to the extent appropriations are available, if necessary to mitigate any adverse effect on current very low and low income tenants;

(8) Rents for unit becoming available to new tenants shall be at levels approved by the Commissioner, taking into account any incentives provided under this subpart, that will ensure, to the extent practicable, that the units will be available and affordable to the same proportions of very low, low and moderate income families and persons, including families and persons whose incomes are 95 percent or more of area median income, as based on the area median income limits established by the Commissioner in February 1987, as resided in the project as of January 1, 1987, or the date the plan of action is approved, whichever date results in the highest proportion of very low income families. This limitation shall not prohibit a higher proportion of very low income families and persons from occupying the project;

(9) Future rent adjustments shall be—

(i) Made by applying an annual factor, to be determined by the Commissioner, to the portion of rent attributable to operating expenses for the project; and

(ii) Subject to a procedure, established by the Commissioner, for owners to apply for rent increases not adequately compensated by annual adjustment under paragraph (a)(9)(i) of this section, under which the Commissioner may increase rents in excess of the amount determined under paragraph (a)(9)(i) of this section only if the Commissioner determines such increases are necessary to reflect extraordinary necessary expenses of owning and maintaining the project;

(10) Any savings from reductions in operating expenses due to management efficiencies shall be deposited in project reserves for replacement and the owner shall have periodic access to such reserves, to the extent the Commissioner determines that the level of the reserves is adequate and that the project is maintained in accordance with the standards established in § 248.147;

(11) The mortgage on the project is current; and

(12) There are no open findings of noncompliance with title VI of the Civil Rights Act of 1964; the Fair Housing Act; Executive Order 11063; the Age Discrimination Act of 1975; section 504 of the Rehabilitation Act of 1973; and all regulations promulgated under such statutes and authorities, and no open audit findings with respect to violations of the regulatory agreement.

(b) *Compliance with housing standards.* No incentives under § 248.153 may be provided, other than to qualified purchasers under §§ 248.157 and 245.161, and no distributions may be taken by the owner or purchaser, until the Commissioner determines that the project meets the housing standards set forth in § 248.147, except that incentives designed to correct deficiencies in the project may be provided.

(c) *Implementation.* Any agreement to maintain the low income affordability restrictions for the remaining useful life of the project may be made through execution of a new regulatory agreement, modifications to the existing regulatory agreement or mortgage, or in the case of prepayment of a mortgage or voluntary termination of mortgage insurance, a recorded instrument.

(d) *Determination of remaining useful life.* The Commissioner shall make determinations, on the record and after opportunity for a hearing, as to when the useful life of an eligible low income housing project has expired. Under procedures and standards to be established by the Commissioner, owners of eligible low income housing may petition the Commissioner for a determination that the useful life of such project has expired. Such petition may not be filed before the expiration of the 50-year period beginning upon the approval of a plan of action under this subpart with respect to such project. In making a determination pursuant to a petition under this paragraph, the Commissioner shall presume that the useful life of the project has not expired, and the owner shall have the burden of proof in establishing such expiration. The Commissioner may not determine that the useful life of any project has expired if such determination results primarily from failure to make regular and reasonable repairs and replacement, as became necessary. In making a determination regarding the useful life of any project pursuant to a petition submitted under this paragraph, the Commissioner shall provide for comment by tenants of the project and interested persons and organizations with respect to the petition. The Commissioner shall also provide the tenants and interested persons and organizations with an opportunity to appeal a determination under this paragraph.

§ 248.147 Housing standards

(a) *Standards.* As a condition to receiving incentives under this subpart, the owner shall agree to maintain the project in accordance with local housing codes and the housing quality standards set forth in § 887.251 of this title. Where a housing quality standard conflicts with local housing codes, the owner shall maintain the project in compliance with the standard that is stricter.

(b) *Annual inspections.* The Commissioner shall inspect each project at least annually in order to determine compliance with the standards in paragraph (a). The Commissioner shall notify the owner of any deficiencies within 30 days following the inspection. The owner shall have 90 days from the date of such notification to correct any deficiencies cited by the Commissioner and shall promptly notify the Commissioner when such deficiencies have been corrected. The Commissioner shall reinspect the project upon such notification or, if the owner does not notify the Commissioner, upon the expiration of the 90-day period.

(c) *Sanctions for noncompliance.* If the Commissioner determines, upon reinspection of the project, that the project is still not in compliance with the standards set forth in paragraph (a), the Commissioner shall take any action appropriate to bring the project into compliance, including—

(1) Directing the mortgagee, with respect to an equity take-out loan provided under part 241 of this chapter, to withhold the disbursement to the owner of any escrowed loan proceeds and requiring that such proceeds be used for repair of the project; and

(2) Reduce the amount of the allowable distributions to 4 percent of extension preservation equity or (in the case of a purchaser) 4 percent of cash invested, as appropriate, for the period ending upon a determination by the Commissioner that the project is in compliance with the standards and requiring that such amounts be used for repair.

(d) *Continued compliance.* To ensure continued compliance with the standards set forth in paragraph (a) of this section for a project subject to any action under paragraph (c) of this section, the Commissioner may limit access of and use by the owner of such amounts set forth in paragraph (c) of this section, for not more than the 2-year period beginning upon the determination that the project is in compliance with the housing standards.

(e) *Sanctions for continuous noncompliance.* If, upon inspection, the Commissioner determines that any eligible low income housing project has failed to comply with the standards established under this section for two consecutive years, the Commissioner may, upon notification to the owner of the noncompliance, take one or more of the following actions:

(1) Subject to the availability of appropriations, provide assistance, other than project-based assistance attached to the project, under parts 882 and 887 of this title for any tenant eligible for such assistance who desires to terminate occupancy in the project. For each unit in the project vacated pursuant to the provision of assistance under this paragraph, the Commissioner may, notwithstanding any other law or contract for assistance, cancel the provision of project-based assistance attached to the project for one dwelling unit, if the project is receiving such assistance, or convert the project-based assistance allocation for that unit to assistance under part 882 or 887 of this title;

(2) In the case of projects for which an equity take-out loan has been made under part 241 of this chapter, direct the mortgagee to declare such a loan to be in default and accelerate the maturity date of the loan;

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(3) Declare, or direct the insured mortgagee to declare, any rehabilitation loan insured or provided by the Commissioner with respect to the project, including loans provided under part 219 of this chapter, to be in default and accelerate the maturity date of the loan; and

(4) Suspend payments under or terminate any contract for project-based rental assistance under section 8 of the United States Housing Act of 1937.

(f) *Sanctions not exclusive.* The Commissioner may take any other action authorized by law or the project regulatory agreement to ensure that the project will be brought into compliance with the standards established under this section or with other requirements pertaining to the condition of the project.

§ 248.149 Timetable for approval of a plan of action.

(a) *Notification of deficiencies.* Not later than 60 days after receipt of a plan of action, the Commissioner shall notify the owner in writing of any deficiencies that prevent the plan of action from being approved. Such notice shall describe alternative ways in which the plan may be revised to meet the criteria for approval set forth in § 248.145.

(b) *Notification of approval.* Not later than 180 days after receipt of a plan of action, or such longer period as the owner requests, but not more than 365 days, the Commissioner shall notify the owner in writing whether the plan of action, including any revisions, is approved. If approval is withheld, the notice shall describe—

(1) The reasons for withholding approval; and

(2) Suggestions to the owner for meeting the criteria for approval.

(c) *Opportunity to revise.* The Commissioner shall give the owner a reasonable opportunity, of not more than 60 days, to revise the plan of action when approval is denied. If the owner fails to comply with this time period, it shall not be eligible for relief under paragraph (d) of this section.

(d) *Delayed approval.* If the Commissioner fails to approve a plan of action within the time set forth in paragraph (b) of this section, the Commissioner shall provide incentives and assistance under this subpart, to an owner who is entitled to receive such incentives and assistance, in the amount that the owner would have received if the Commissioner had complied with such time limitations. This paragraph does not apply to plans of action that are not approved because of deficiencies.

§ 248.153 Incentives to extend low income use.

(a) *Agreements by the Secretary.* After approving a plan of action filed pursuant to § 248.145, from an owner of eligible low income housing that includes the owner's plan to extend the low income affordability restrictions of the project, the Commissioner shall, subject to the availability of appropriations for such purpose, enter into such agreements as are necessary to enable the owner to—

(1) Receive the annual authorized return for the project as determined under § 248.121;

(2) Pay debt service on the federally-assisted mortgage covering the project;

(3) Pay debt service on any loan for rehabilitation of the project;

(4) Meet project operating expenses; and

(5) Establish adequate reserves.

(b) *Permissible incentives.* Such agreements may include one or more of the following incentives, as determined necessary by the Secretary:

(1) Increased access to residual receipts accounts as necessary to enable the owner to realize the annual authorized return;

(2) An increase in the rents permitted under an existing project-based section 8 contract;

(3) Additional project-based section 8 assistance or an extension of any project-based assistance attached to the housing;

(4) An increase in the rents on non-section 8 units occupied by current tenants up to the maximum allowable rents;

(5) Financing of capital improvements under part 219 of this chapter;

(6) Financing of rehabilitation through provision of insurance for a second mortgage under part 241 of this chapter;

(7) Redirection of the Interest Reduction Payment subsidies to a second mortgage for projects which are insured, assisted, or held by the Commissioner or a State or State agency under part 236 of this chapter;

(8) Access by the owner to a portion of the preservation equity in the project through provision of insurance for an acquisition or equity loan insured under part 241, subpart E of this chapter or through a non-insured mortgage loan approved by the Commissioner and the mortgagee;

(9) An increase in the amount of allowable distributions; and

(10) Other incentives authorized in law.

(c) *Limitation on the provision of permissible incentives.* (1) The total amount of incentives provided to a project under paragraphs (b)(2), (3), and (4) of this section shall not result in a projected rental income stream which exceeds the Federal cost limit.

(2) The debt service on the loan obtained by the owner under paragraph (b)(8), when added to the allowable distributions under paragraph (b)(9), shall not exceed the annual authorized return.

(d) *Interest reduction subsidies.* Where Interest Reduction Payment subsidies are sought to be redirected, pursuant to paragraph (b)(7) of this section, the lender may not unreasonably withhold its consent to such redirection.

(e) *Recalculation of section 236 basic rent and market rent.* With respect to any project with a mortgage insured or otherwise assisted pursuant to part 236 of this chapter, the basic rent and market rent, as defined in § 236.2 of this chapter, for each unit in such project may be increased to take into account the allowable distributions permitted under this section and the debt service on any equity loan, rehabilitation loan or acquisition loan approved under a plan of action under this subpart.

§ 248.157 Voluntary sale of housing not in excess of Federal cost limit.

(a) *Offer to sell.* Where an owner has submitted a second notice of intent under § 248.133 for the purpose of transferring the project to a qualified purchaser, and the transfer preservation value does not exceed the Federal cost limit, the owner shall offer the housing for transfer as provided in this section. The owner shall not be obligated to accept any offer made under this section, but may instead elect to retain the project and receive incentives under § 248.145.

(b) *Notification of qualified purchasers.* Upon receipt of a second notice of intent to transfer the project to a qualified purchaser, the Commissioner shall notify potential qualified purchasers of the availability of the project for sale, and of the names and addresses of the owner, or of a person representing the owner in the sale of the project, by—

(1) Mailing notices to non-profit organizations;

(2) Placing notices in the major local newspaper(s) in the jurisdiction in which the project is located;

(3) Mailing notices to clearinghouse networks; and

(4) Using any other means of notification which the Secretary determines would be effective to notify potential qualified purchasers of the sale of the project.

(c) *Right of first offer to priority purchasers.* (1) For the 12-month period beginning on the date of receipt by the Commissioner of a second notice of intent under § 248.133, the owner may offer to sell the project only to priority purchasers.

(2) If no bona fide offer to purchase the project is made and accepted during or at the end of the 12-month period specified in paragraph (c)(1) of this section, the owner may offer to sell the project during the 3 months immediately following the 12-month period only to qualified purchasers.

(d) *Purchase price.* The sale price, including assumption of the debt on the federally-assisted mortgage, may not exceed the transfer preservation value of the project.

(e) *Expression of interest.* Any priority purchaser seeking to make an offer during the 12-month period specified in paragraph (c)(1) shall, and other qualified purchasers may, submit written notice thereof to the Commissioner. Such notice, if made by a priority purchaser seeking to make an offer during the 12-month period, shall contain the following—

(1) A statement identifying the priority purchaser as a State or local government agency, a nonprofit organization, or a resident council;

(2) A copy of its articles of incorporation, charter and list of officers and directors, if the purchaser is a nonprofit organization or a resident council; and

(3) A statement as to whether the purchaser is affiliated with any other entity for purposes of purchasing the project and whether any Low Income Housing Tax Credits may be awarded in connection with the purchase of the project.

(f) *Information from the Commissioner.* Within 30 days of receipt of an expression of interest by a priority purchaser, the Commissioner shall determine the status of the priority purchaser with respect to the categories listed in paragraph (h) of this section, and provide such purchaser with—

(1) A list of all possible assistance available from the Federal Government to facilitate a transfer of the project;

(2) The appraisal reports for the project as submitted under § 248.111;

(3) The Commissioner's determination as to the priority status of the purchaser and as to whether the purchaser qualifies as a resident council, community-based nonprofit organization or State or local government entity; and;

(4) Any other relevant financial information that the Commissioner possesses concerning the project, including the information determined under § 248.121. Within the same 30 day period, the Commissioner shall also notify the owner of the purchaser's expression of interest and instruct the owner to provide to the purchaser any information concerning the project that the Commissioner deems relevant to the transfer of the project.

(g) *Bona fide offer.* A bona fide offer must include the following:

(1) A contract of sale signed by the purchaser, which states that acceptance of the contract is contingent upon approval by the Commissioner; and

(2) An earnest money deposit in the amount of one percent of the transfer preservation value.

(h) *Retention and acceptance of offers.* The owner shall hold all bona fide offers received from priority purchasers until the expiration of the 12-month period stated in paragraph (c) of this section, provided, however, that an owner who receives a bona fide offer from a resident council seeking to purchase the project under a resident homeownership program may accept the offer at any time during the 12-month period. If an owner does not receive such an offer from a resident council or does not wish to accept such an offer prior to the expiration of the 12-month period, then the 12-month purchase period will continue unabated and at the end of that period, the owner may accept the highest offer among those received, not to exceed the transfer preservation value. If more than one purchaser offers the highest amount, the owner must select the purchaser based on the following order of priority:

(1) A resident council offering to purchase under a homeownership program;

(2) A community-based nonprofit organization;

(3) A State or local government; and

(4) Any other nonprofit organization.

(i) *Submission of offer to HUD.* Upon preliminary acceptance of an offer, the owner shall submit the offer to the Commissioner. The Commissioner shall review the offer to determine whether it meets the requirements of a bona fide offer. The Commissioner shall notify the owner or purchaser, within 30 days after receipt, whether the offer meets such requirements. The owner's preliminary acceptance of any offer pursuant to this section shall be conditional upon the Commissioner's certification that the offer is bona fide. If the Commissioner determines that the offer is not a bona fide offer, the offer will be considered invalid for the purposes of this subpart.

(j) *Submission of plan of action.* Upon a determination by the Commissioner that the offer is bona fide and final acceptance of such an offer, the owner and purchaser shall jointly submit a plan of action to the Commissioner pursuant to § 248.135. The plan of action shall include any request for assistance from the Commissioner for purposes of transferring the project. Upon final acceptance of an offer, the owner shall return all earnest money deposits to the other offerors.

(k) *Requirements for plan of action approval.* If the qualified purchaser of the project is a resident council seeking to purchase the project under a resident homeownership program, the Commissioner may approve a plan of action only if the resident council's proposed resident homeownership program meets the requirements under § 248.173. For all other qualified purchasers, the Commissioner may approve a plan of action submitted pursuant to this section only if the plan of action meets the criteria listed in § 248.145.

(l) *Failure to consummate sales transaction.*

(1) If the owner accepts an offer from a resident council during the 12-month period specified in paragraph (c) of this section, and the sales transaction fails through during that period or does not close within 90 days after the Secretary's approval of the plan of action, the owner shall resume holding the project open for sale for remainder of the time periods specified in paragraph (c) of this section.

(2) If the owner accepts an offer from a purchaser at the end of the 12-month period or during the 3-month period, both as specified in paragraph (c) of this section, or thereafter, and the sales transaction fails through or does not close within 90 days after the Secretary's approval of the plan of action, the owner shall take the following steps:

(i) Immediately notify the Commissioner that the sale has fallen through;

(ii) Contact any other purchaser that had submitted an offer to purchase the project and give such purchaser and any other qualified purchaser 60 days from the date of notification to the Commissioner in which to resubmit an offer to purchase the project.

(3) At the end of the 60-day period the owner may accept an offer submitted under paragraph (l)(2) in accordance with the order of priority set forth in paragraph (h).

(4) If an offer submitted during the 60-day period specified in paragraph (l)(2) is made and accepted, but the sale is not consummated within 90 days of the Commissioner's approval of the plan of action for reasons not attributable in

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whole or in part to the owner, the owner may terminate the low income affordability restrictions through prepayment or voluntary termination, subject to compliance with the provisions of § 248.165.

(m) *Assistance.* Subject to the availability of amounts approved in appropriation acts, the Commissioner, shall, for approvable plans of action, provide assistance sufficient to enable qualified purchasers to—

(1) Acquire the eligible low income housing project from the current owner for a purchase price not greater than the transfer preservation value of the project;

(2) Pay the debt service on the federally-assisted mortgage covering the project;

(3) Pay the debt service on any loan for the rehabilitation of the project;

(4) Meet project operating expenses and establish adequate reserves for the housing;

(5) Receive a return on investment in an amount equal to 8 percent on any actual cash investment made to acquire the project;

(6) In the case of a priority purchaser, receive an adequate reimbursement for transaction expenses relating to acquisition of the project, subject to approval by the Commissioner in accordance with standards applicable to insured loan transactions under this chapter; and

(7) In the case of an approved resident homeownership program, cover the costs of training for the resident council, homeownership counseling and training, the fees for the nonprofit entity or public agency working with the resident council, if such entity or agency is approved by the Commissioner, and costs related to relocation of tenants who elect to move. Assistance for such costs, exclusive of relocation expenses, shall not exceed $500 per unit or $200,000 for the project, whichever is less.

(n) *Incentives: residual receipts.* The Commissioner may provide assistance for all qualified purchasers under this subpart in the form of one or more of the incentives authorized under § 248.153, except that any residual receipts for the project transferred to the owner shall be deducted from the sale price of the project. The incentives provided by the Commissioner to any qualified purchaser may include an acquisition loan provided under subpart E of part 241 of this chapter.

(o) *Grants to priority purchasers.* The Commissioner may provide assistance for priority purchasers under this subpart in the form of a grant for each unit in the project in an amount, as determined by the Commissioner, that does not exceed the present value of the total of the projected fair market rent for the next ten years, or such longer period if additional assistance is necessary to cover the costs set forth in paragraph (m) of this section.

(p) *Reimbursement of assistance.* The Commissioner reserves the right to seek reimbursement from a priority purchaser who, at any time while a plan of action is in effect, becomes affiliated with or transfers the project to any non-priority purchaser. The Commissioner shall be entitled to receive reimbursement for the difference between the assistance provided to the priority purchaser and the assistance that would have been provided in the same circumstances to a non-priority purchaser.

§ 248.161 Mandatory sale of housing in excess of the Federal cost limit.

(a) *In general.* With respect to any eligible low income housing for which the transfer preservation rent determined under § 248.121 exceeds the Federal cost limit, the owner shall offer the housing for transfer to qualified purchasers as provided in this section.

(b) *Applicability of voluntary sale provisions.* The provisions of § 248.157, other than paragraphs (a), (d), and (p) thereof, shall be applicable to any sale conducted under this section, except that in the case of a sale pursuant to this section, the sales price of the project may not be less than the transfer preservation value of the project, and if the owner receives an offer to purchase the project for a sale price not less than the preservation value of the project, as determined under § 248.111, the owner shall be obligated to accept the offer and sell the project to the purchaser.

(c) *Section 8 assistance.* Subject to the availability of amounts approved in appropriation acts, the Commissioner shall, for approvable plans of action, provide assistance to qualified purchasers under part 886, subpart A sufficient to produce a gross income potential equal to the amount determined by multiplying 120 percent of the prevailing rents in the relevant local market in which the project is located by the number of units in the project, according to appropriate unit size, and any other incentives authorized under § 248.153 that would have been provided to a qualified purchaser under § 248.157.

(d) *Grants to qualified purchasers.* From amounts made available by Congress, the Commissioner may make grants to assist in the completion of transfers under this section to any qualified purchasers. Any grant made pursuant to this paragraph shall be in an amount not exceeding the difference between the amount of assistance provided under paragraph (c) of this section and the amount of assistance specified in § 248.157(m).

(e) *Securing State and local funding.* The Commissioner shall assist any qualified purchaser of a project pursuant to this section in securing funding and other assistance, including tax and assessment reductions from State and local governments to facilitate a transfer under this section.

§ 248.165 Assistance for displaced tenants.

(a) *Section 8 assistance.* Each low income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low income housing shall, subject to the availability of funds, receive assistance under parts 882 or 887 of this title.

(b) *Notification of Commissioner.* The owner of any eligible low income housing project who prepays the mortgage or voluntarily terminates the mortgage insurance contract pursuant to this subpart, shall notify the Commissioner of the names and addresses of all of the tenants in the project who will be displaced as a result of prepayment or termination of the insurance contract, as well as the size of the unit in which each of the tenants who will be displaced are currently dwelling. The owner shall provide the Commissioner with this information within 30 days of identifying such tenants for displacement, but in no event less than 30 days prior to the date when the tenants must vacate the premises.

(c) *Relocation of displaced tenants.* The Commissioner shall coordinate with public housing agencies to ensure that any very low or low income family displaced from eligible low income housing as the result of prepayment of the mortgage or termination of the mortgage insurance contract on such project is able to acquire a suitable, affordable dwelling unit in the area where the project from which the family is displaced is located. The Commissioner, upon receiving information from the owner under paragraph (b) of this section stating that certain tenants will be displaced, shall request from the public housing agencies located in the same area as the affected project, notices of vacancies in other affordable projects which would be suitable for the displaced tenants. The Commissioner shall convey the notices of vacancies to the tenants who will be displaced along with the addresses of the local public housing agencies.

(d) *Relocation expenses.* The Commissioner shall require the owner of eligible low income housing who prepays or terminates the insurance contract resulting in the displacement of tenants to pay 50 percent of the relocation expenses of each family which is relocated, except that the Commissioner shall increase such percentage to the extent that State or local law of general applicability requires a higher payment by the owner.

(e) *Continued occupancy.* Each owner that prepays the mortgage or terminates the mortgage insurance contract on eligible low income housing shall, as provided in paragraph (g) of this section, allow all tenants occupying units in such project on the date of submission of a notice of intent under § 248.105 to remain in the project for a period of three years, commencing on the date of prepayment or contract termination, at rent levels existing at the time of prepayment or termination, except for rent increases made necessary due to increased operating costs.

(f) *Replacement unit.* In any case in which the Commissioner requires an owner to allow tenants to occupy units under paragraph (e) of this section, an owner may fulfill the requirements of such paragraph by providing such assistance necessary for the tenant to rent a decent, safe, and sanitary unit in another project for the same 3-year period and at a rental cost to the tenant not in excess of the rental amount the tenant would have been required to pay to the owner in the owner's project, except that the tenant must freely agree to waive the right to occupy the unit in the owner's project. The provisions of paragraph (d) of this section requiring an owner who prepays or terminates an insurance contract to pay a portion of the relocation expenses incurred by displaced tenants shall also be applicable to tenants who relocate pursuant to this paragraph.

(g) *Applicability.* The provisions of paragraphs (e) and (f) of this section shall apply only to—

(1) All tenants in eligible low income housing projects located in a low-vacancy area; and

(2) Special needs tenants.

(h) *Low Vacancy Areas.* The Commissioner shall notify the owner, within 30 days of the approval of a plan of action, whether the project is located in a low vacancy area for purposes of paragraph (g) of this section.

(i) *Required acceptance of section 8 assistance.* Any owner who prepays the mortgage or terminates the mortgage insurance contract on eligible low income housing and maintains the project for residential rental occupancy may not refuse to rent, refuse to negotiate for the rental of, or otherwise make unavailable or deny the rental of a dwelling unit in such project to any person, or discriminate against any person in the terms, conditions, or privileges or rental of a unit, or in the provision of services or facilities in connection therewith, because the person receives assistance under parts 882 or 887 of this title.

(j) *Regional pools.* In providing assistance under this section, the Commissioner shall allocate the assistance on a regional basis through the regional offices of the Department of Housing and Urban Development. The Commissioner shall allocate assistance under this section in a manner so that the total number of assisted units in each such region available for occupancy by, and affordable to, low income families and persons does not decrease because of the prepayment of a mortgage on eligible low income housing or the termination of an insurance contract on such project.

§ 248.169 Permissible prepayment or voluntary termination and modification of commitments.

(a) *In general.* Notwithstanding any limitations on prepayment or voluntary termination under this subpart, an owner may terminate the low income affordability restrictions through prepayment or voluntary termination, subject to compliance with the provisions of § 248.165, under one of the following circumstances:

(1) The Commissioner is unable to approve a plan of action because of a lack of appropriated funds, or the Commissioner approves a plan of action under § 248.153(a), but does not provide the assistance approved in such plan and contained in an executed use agreement between the Commissioner and the owner, including section 8 assistance, a loan provided under part 219 of this chapter, assistance for a homeownership program under § 248.173, a grant provided under § 248.157(o), or a grant under § 248.161(d), but not including insurance of a rehabilitation, equity take-out, or acquisition loan under part 241 of this chapter, during the 15-month period beginning on the date of final approval of the plan of action;

(2) After the date that the project would have been eligible for prepayment pursuant to the terms of the mortgage, notwithstanding this part, the Commissioner approves a plan of action under § 248.157 or § 248.161, but does not provide the assistance approved in such plan before the earlier of—

(i) The expiration of the 2-month period beginning on the commencement of the first fiscal year beginning after such final approval; or

(ii) The expiration of the 6-month period beginning on the date of final approval.

(3) The Commissioner approves a plan of action under § 248.157 for any eligible low income housing not covered by paragraph (a)(2) of this section, but does not provide the assistance approved in such plan before the earlier of—

(i) The expiration of the 2-month period beginning on the commencement of the first fiscal year beginning after such final approval; or

(ii) The expiration of the 6-month period beginning on the date of final approval.

(4) An owner who intended to transfer the project to a qualified purchaser under § 248.157 or § 248.161, and fully complied with the provisions of such section,

(i) Did not receive any bona fide offers from any qualified purchasers within the applicable time periods; or

(ii) Received and accepted a bona fide offer from a qualified purchaser, but the sales transaction fell through for reasons not attributable in whole or in part to the owner, and the owner then complied with the requirements of § 248.157(*l*) and did not receive another bona fide offer from any qualified purchasers.

(b) *Section 8 assistance.* When providing section 8 assistance, the Commissioner may enter into a contract with an owner, contingent upon the future availability of appropriations, for the purpose of renewing expiring contracts for rental assistance as provided in appropriations acts, to extend the term of such rental assistance for such additional period or periods necessary to carry out an approved plan of action. The contract and the approved plan of action shall provide that, if the Commissioner is unable to extend the term of such rental assistance or is unable to develop a revised package of incentives providing benefits to the owner comparable to those received under the original approved plan of action, the Commissioner, upon the request of the owner, shall take the following actions, subject to the limitations under the following paragraphs—

(1) Modify the binding commitments made pursuant to § 248.145(a) (2)–(10) that are dependent upon such rental assistance; or

(2) If the Commissioner determines that such modification is infeasible,

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permit the owner to prepay the mortgage and terminate the plan of action and any implementing use agreements or restrictions, but only if the owner agrees in writing to comply with the provisions of § 248.165.

(c) *Failure to provide section 8 assistance.* With regard to paragraph (b) of this section, the Commissioner shall notify the owner of an inability to either extend the term of section 8 rental assistance or to develop a revised package of incentives providing benefits comparable to those received under the original plan of action as soon as practicable upon discovering that fact. The owner shall inform the Commissioner in writing, within 30 days of receipt of the notice that, since the Commissioner is unable to fulfill the terms of the original plan of action, the owner intends to request that the Commissioner take action under paragraph (b) (1) or (2) of this section. The Commissioner shall, no later than 90 days from receiving the owner's notice, take action to extend the rental assistance contract and to continue the binding commitments under § 248.145(a) (2)–(10).

§ 248.173 Resident homeownership program.

(a) *Formation of resident council.* Tenants seeking to purchase eligible low income housing in accordance with § 248.157 and § 248.161 shall organize a resident council for the purpose of developing a resident homeownership program in accordance with standards established by the Commissioner. In order to fulfill the purposes of this section, the resident council shall work with a public or private nonprofit organization or a public body, including an agency or instrumentality thereof. Such organization shall have sufficient experience to enable it to help the tenants to consider their options and to develop the capacity necessary to own and manage the project, where appropriate, and shall be approved by the Commissioner.

(b) *Submission of expression of interest.* A resident council shall identify itself as such in an expression of interest submitted pursuant to § 248.157 or § 248.161 and shall state that it is interested in purchasing the project pursuant to a homeownership program.

(c) *Bona fide offer.* When submitting an offer to purchase the project pursuant to this section, the resident council must simultaneously submit a certified list of project tenants representing at least 75 percent of the occupied units in the project, and representing at least 50 percent of all of the units in the project, who have expressed an interest in participating in the homeownership program developed by the resident council. An offer made without this certified list will not be considered a bona fide offer for the purposes of this subpart.

(d) *Submission of a homeownership program.* (1) The resident council shall prepare a homeownership program acceptable to the Commissioner for giving all residents of the project an opportunity to become homeowners. The plan shall describe the major elements of, and schedules for, the homeownership program and demonstrate how the program complies with all applicable requirements of this section. The plan shall also describe the resident council's current abilities and proposed capacity-building activities to successfully carry out the homeownership program in compliance with this section. The homeownership program shall include, at a minimum, the following information:

(i) The amount of grant funds requested from the Commissioner, and the expected amounts and sources of other funding;

(ii) The proposed use of the grant funds to be received from HUD and of all other funds, including proceeds from the sale of units to initial purchasers, consistent with paragraph (h) of this section;

(iii) A summary of major rehabilitation activities to be carried out, including repairs, replacements and improvements;

(iv) The price at which the resident council intends to transfer ownership interests in, or shares representing, units in the project, broken down by unit size and/or type; the factors that will influence the establishment of such price, including, but not limited to, the resident council's acquisition cost, estimated rehabilitation costs, capitalization of reserves and organizational costs; how the price arrived at by the resident council compares to the estimated appraised value of the ownership interests or shares; and the underwriting standard that the resident council plans to use, or reasonably expects a public or private lender to use, for potential tenant purchasers, consistent with paragraph (g)(2) of this section;

(v) The expected number of very low, low and moderate income tenants that will be initial owners under the program, consistent with paragraph (g)(1) of this section;

(vi) A pro forma analysis which demonstrates the financial feasibility and viability of the homeownership program, based on the required conditions specified in paragraph (g) of this section;

(vii) The financing arrangements that the tenants are expected to pursue or to be provided, including financing available through the resident council or a State or local governmental entity, and criteria for acceptability of conventional financing;

(viii) A description of the estimated costs expected to be paid by the homeowner at closing;

(ix) The type of homeownership contemplated, consistent with paragraph (f) of this section;

(x) How the marketing of currently vacant units and units occupied by nonpurchasing tenants that become vacant will affect the sales price and occupancy charges to purchasers;

(xi) A workable schedule of sale, subject to the limitations of paragraph (o) of this section, based on estimated tenant incomes;

(xii) Any restrictions on resale by homeowners over and above those specified in paragraph (i) of this section, and any restrictions on homeowners' equity, over and above those specified in paragraph (k) of this section;

(xiii) The qualifications of the resident council or the proposed management entity to manage the project, in compliance with paragraph (n) of this section;

(xiv) The expected number of non-purchasing tenants and their eligibility for section 8 rental assistance under paragraph (m)(2) of this section;

(xv) Expected scope and expenses of relocation activities, both for any temporary relocation due to rehabilitation as well as relocation assistance for non-purchasing tenants, consistent with paragraph (m)(4) of this section;

(xvi) Expected scope and costs of technical assistance, training and counseling for the resident council, purchasers and non-purchasing tenants; and

(xvii) A certification that the resident council shall comply with the provisions of the Fair Housing Act, title VI of the Civil Rights Act of 1964, Executive Order 11063, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and all regulations issued pursuant to these statutes and authorities.

(2) The Commissioner shall give the resident council a reasonable opportunity to revise the homownership program if approval is denied.

(e) *Approval of a homeownership program; assistance provided.* (1) When the Commissioner determines that the homeownership program submitted by the resident council meets the requirements of this section, is financially feasible, and is the least costly alternative that is consistent with establishing a viable homeownership program, the Commissioner shall approve the program.

(2) In connection with an approved homeownership program the Commissioner shall provide grant assistance sufficient to pay the following costs:

(i) The purchase price, which shall not exceed the transfer preservation value;

(ii) Transaction costs, as provided in § 248.157(m)(6);

(iii) Other costs, as provided in § 248.157(m)(7);

(iv) The costs of rehabilitation;

(v) The establishment of an adequate reserve for replacements; and

(vi) If necessary, the establishment of operating reserve escrows including contingencies against unexpected increases in expenses or shortfalls in homeowners' payments.

(3) Upon approval of the homeownership program, the Commissioner and the resident council shall enter into a grant agreement, which shall include, among other matters, procedures governing the drawdown of funds and remedies for noncompliance with the requirements of this section.

(f) *Method of conversion.* The Commissioner shall approve the method for converting the project to homeownership, which may involve acquisition of ownership interests in, or shares representing, the units in a project under any arrangement determined by the Commissioner to be appropriate, such as cooperative ownership, including limited equity cooperative ownership, and fee simple ownership, including condominium ownership.

(g) *Required conditions.* The Commissioner shall require that the form of homeownership impose appropriate conditions, including conditions to assure that—

(1) The number of initial owners that are very low, low, and moderate income persons at initial occupancy are of the same proportion of very low, low, and moderate income tenants (including families and persons whose incomes are 95 percent or more of area median income) as resided in the project on January 1, 1987 or as of the date of approval of the plan of action, whichever date results in the higher proportion of very low income families, except that the resident council may, at its option, increase the proportions of very low income and low initial owners;

(2) Projected debt service payments, occupancy charges and utilities payable by the owners shall not exceed 35 percent of the monthly adjusted gross income of the owners;

(3) The aggregate incomes of initial owners and other sources of funds for the project are sufficient to permit occupancy charges to cover the full operating costs of the project and any debt service; and.

(4) Each initial owner occupies the unit it acquires for at least the initial 15 years of ownership, unless the resident council determines that the initial owner is required to move outside the market area due to a change in employment or an emergency situation.

(h) *Use of proceeds from sales to eligible families.* The entity that transfers ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, may use 50 percent of the proceeds, if any, from the initial sale for costs of the homeownership program, including improvements to the project, operating and replacement reserves for the project, additional homeownership opportunities in the project, and other project-related activities approved by the Commissioner. The remaining 50 percent of such proceeds shall be returned to the Commissioner for use under § 248.157 and § 248.161, subject to the availability of appropriations. Such entity shall keep, and make available to the Commissioner, all records necessary to calculate accurately payments due the Commissioner under this paragraph.

(i) *Restrictions on resale by homeowners.* Resale of a homeowner's interest in a project with an approved homeownership program may occur subject to any reasonable restrictions placed on such a transfer by the resident council and approved by the Commissioner.

(1) *Transfer permitted.* A homeowner may transfer the homeowner's ownership interest in the unit, subject to the right to purchase under paragraph (i)(2) of this section, the requirement for the purchaser to execute a promissory note, if required under paragraph (i)(3) of this section and the restrictions on retention of sales proceeds in paragraph (k) of this section. An applicant may propose in its application, and HUD may approve, reasonable restrictions on the resale of units under the program.

(2) *Right to purchase.* Where a resident management corporation, resident council, or cooperative has jurisdiction over the unit, it shall have the right to purchase the ownership interest in the unit from the initial homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer. Where a resident management corporation, resident council, or a cooperative exercises a right to purchase, it shall resell the unit to an eligible family within a reasonable period of time.

(3) *Promissory note required.* At closing, the initial homeowner shall execute a nonrecourse promissory note, in a form acceptable to HUD, equal to the difference between the fair market value of the unit and the purchase price, payable to the Commissioner, together with a mortgage securing the obligation of the note.

(i) With respect to sale by an initial homeowner, the note shall require payment upon sale by the initial homeowner, to the extent proceeds of the sale remain after paying off other outstanding debt incurred in connection with the purchase of the property, paying any other amounts due in connection with the sale, including closing costs and transfer taxes, and paying the family the amount of its equity in the property, computed in accordance with paragraph (k) of this section.

(ii) With respect to a sale by an initial homeowner during the first six years after acquisition, the family may retain only the amount computed under paragraph (k) of this section. Any excess is distributed as provided in paragraph (*l*) of this section.

(iii) With respect to sale by an initial homeowner six to twenty years, after acquisition, the amount payable under the note shall be reduced by 1/168th of the original principal amount of the note for each full month of ownership by the family after the end of the sixth year. The homeowner may retain all other proceeds of the sale.

(j) *Execution of promissory note by subsequent purchaser.* Where a subsequent purchaser during the 20-year period, measured by the term of the initial promissory note, purchases the property for less than the then current fair market value, the purchaser shall also execute at closing such a promissory note and mortgage, for the amount of the discount. The term of the promissory note shall be the period remaining of the original 20-year period. The note shall require payment upon sale by the subsequent homeowner, to the extent proceeds of the sale remain after paying off other outstanding debt incurred in connection with the purchase of the property, and paying any other amounts due in connection with the sale (such as closing costs and transfer taxes). The amount payable on the note shall be reduced by a

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percentage of the original principal amount of the note for each full month of ownership by the subsequent homeowner. The percentage shall be computed by determining the percentage of the term of the promissory note that the homeowner has owned the property. The remainder may be retained by the subsequent homeowner selling the property.

(k) *Homeowners' equity.* The amount of equity an initial homeowner has in the property is determined by computing the sum of the following—

(1) The contribution to equity paid by the family, if any, including any down payment and any amount paid towards principal on a mortgage loan during the period of ownership;

(2) The value of any improvements installed at the expense of the family during the family's tenure as owner, as determined by the resident council based on evidence of amounts spent on the improvements, including the cost of material and labor; and

(3) The appreciated value, determined by applying the Consumer Price Index (urban consumers) against the contribution to equity under paragraphs (k)(1) and (2) of this section, excluding the value of any sweat equity or volunteer labor used to make improvements to the unit. The resident council may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(l) *Use of recaptured funds.* Any net sales proceeds that may not be retained by the homeowner under the homeownership program approved under this section shall be paid to the HOME Investment Trust Fund for the unit of general local government in which the project is located. If the project is located in a unit of general local government that is not a participating jurisdiction, as such term is defined in § 248.101, any such net sales proceeds shall be paid to the HOME Investment Trust Fund for the State in which the project is located. With respect to any proceeds transferred to a HOME Investment Trust Fund under this paragraph, the Commissioner shall take such actions as are necessary to ensure that the proceeds shall be immediately available for eligible activities to expand the supply of affordable housing under section 212 of the Cranston-Gonzalez National Affordable Housing Act of 1990. The Commissioner shall monitor the HOME Investment Trust Fund for each State and unit of local government and shall require maintenance of any records necessary to calculate accurately payments due under this paragraph.

(m) *Protection of nonpurchasing families.* Nonpurchasing families who continue to reside in a project subject to a homeownership program approved under this section shall be protected as follows—

(1) *Eviction.* No tenant residing in an eligible property on the date the Commissioner approves a plan of action may be evicted by reason of a homeownership program approved under this section. This does not preclude evictions for material violation of the terms of occupancy of the unit.

(2) *Section 8 assistance.* If a tenant decides not to purchase a unit, or is not qualified to do so, the Commissioner shall ensure that assistance under parts 882 or 887 of this title is available for use in that or another property by each tenant that meets the eligibility requirements thereunder.

(3) *Rent increases for ineligible tenants.* Rents for tenants who do not purchase a unit but are ineligible for assistance under paragraph (m)(2) of this section may be increased to a level that does not exceed 30 percent of the tenant's adjusted income or the section 8 existing fair market rent, whichever is lower. Rent increases shall be phased in in accordance with § 248.145(a)6).

(4) *Relocation assistance.* The resident council shall also inform each tenant that if the tenant chooses to move, the resident council, as owner of the project, will pay relocation expenses in accordance with the approved homownership program. The provisions of § 248.165 shall not apply to resident councils who are project owners pursuant to an approved homeownership program under this section.

(n) *Qualified management.* As a condition of approval of a homeownership program under this subpart, the resident council shall have demonstrated its abilities to manage eligible properties by having done so effectively and efficiently for a period of not less than three years or by entering into a contract with a qualified management entity that meets such standards as the Commissioner may prescribe to ensure that the project will be maintained in a decent, safe and sanitary condition.

(o) *Timely homeownership.* The resident council shall acquire ownership of the project no later than 6 months after final approval of a plan of action pursuant to this section. The resident council shall transfer ownership of units in the project (other than units occupied by nonpurchasing tenants) to the tenants within a reasonable time thereafter, but in no event more than 4 years from the date of transfer of the project to the resident council. The Commissioner may seek contractual remedies against any resident council which fails to transfer ownership of all units within the 4-year period. During the interim period when the project continues to be operated and managed as rental housing, the resident council shall utilize written tenant selection policies and criteria that are approved by the Commissioner as consistent with the purpose of providing housing for very low income families. The resident council shall promptly notify in writing any rejected applicant of the grounds for any rejection.

(p) *Housing standards; inspections.* (1) Until the resident council has transferred all units in the project (other than those occupied by nonpurchasing tenants) to the initial purchasers, the project shall be maintained in accordance with the housing standards set forth in § 248.147 of this subpart.

(2) The Commissioner shall inspect the project at least annually in order to determine compliance with paragraph (p)(1).

(q) *Audits.* Each resident council shall be subject to the audit requirements in part 45 of this title and shall submit an annual audit to the Commissioner in such form as the Commissioner may prescribe. The resident council shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such resident council of the proceeds of assistance received under this subpart, including any proceeds from sales under paragraphs (h) and (l) of this section, the total cost of the homeownership program in connection with which such assistance is given or used, and the amount and nature of that portion of the program supplied by other sources, and such other sources as will facilitate an effective audit. The Commissioner or his or her duly authorized representative shall have access for the purpose of audit and examination to any books, documents, papers, and records of the resident council that are pertinent to assistance received under this subpart. The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access, for the purpose of audit and examination, to any books, documents, papers, and records of the resident council that are pertinent to assistance received under this subpart.

(r) *Reports.* The resident council shall submit reports, as required by the Commissioner, in order to demonstrate continued compliance with the requirements of this section.

(s) *Assumption of the federally assisted mortgage.* The resident council may not assume a mortgage insured, held or assisted by the Commissioner under part 236 of this chapter or under part 221 of this chapter and bearing a below market interest rate as provided under § 221.518(b) of this chapter.

§ 248.177 Delegated responsibility to State agencies.

(a) *In general.* The Commissioner shall delegate some or all responsibility for implementing this subpart to a State housing agency if such agency submits a preservation plan acceptable to the Commissioner.

(b) *Approval.* State preservation plans shall be submitted in such a form and in accordance with such procedures as the Commissioner shall establish. The Commissioner may approve plans that contain—

(1) an inventory of low income housing located within the State that is or will be eligible low income housing under this subpart within five years;

(2) a description of the agency's experience in the area of multifamily financing and restructuring;

(3) a description of the administrative resources that the agency will commit to the processing of plans of action in accordance with this subpart;

(4) a description of the administrative resources that the agency will commit to the monitoring of approved plans of action in accordance with this subpart;

(5) an independent analysis of the performance of the multifamily housing inventory financed or otherwise monitored by the agency;

(6) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 105 of the Cranston-Gonzalez National Affordable Housing Act that the proposed activities are consistent with the approved housing strategy of the State within which the eligible low income housing is located; and

(7) such other certifications or information that the Commissioner determines to be necessary to implement an approved State preservation plan, which may include incentives that are authorized under other provisions of this subpart.

(c) *Implementation agreements.* The Commissioner may enter into any agreements necessary to implement an approved State preservation plan, which may include incentives that are authorized under other provisions of this subpart.

§ 248.179 Consultation with other interested parties.

The Commissioner shall confer with any appropriate State or local government agency to confirm any State or local assistance that is available to achieve the purposes of this subpart and shall give consideration to the views of any such agency when making determinations under this subpart. The Commissioner shall also confer with appropriate interested parties that the Commissioner believes could assist in the development of a plan of action that best achieves the purposes of this subpart.

§ 248.181 Notice to tenants.

Except as provided in § 248.105, with respect to the notice of intent, with regard to all provisions of this subpart which mandate that information or material be given to the tenants, by the Commissioner, the owner, or a qualified purchaser, or other party, this requirement shall be satisfied where the notifying entity—

(a) posts a copy of the information or material in readily accessible locations within each affected building, or posts notices in each location describing the information or material and specifying a location, as convenient to the tenants as is reasonably practical, where a copy may be examined and copied during reasonable hours; and

(b) supplies a copy of the information or material to a tenant representative, if any.

Subpart C—Prepayment and Plans of Action under the Emergency Low Income Preservation Act of 1987

13. Section 248.221 would be revised by adding new paragraphs (c) and (d) to read as follows:

§ 248.221 Approval of a plan of action that involves termination of low income affordability restrictions.

* * * * *

(c) There are no open findings of noncompliance with title VI of the Civil Rights Act of 1964; the Fair Housing Act; Executive Order 11063; the Age Discrimination Act of 1975; section 504 of the Rehabilitation Act of 1973; and all regulations promulgated under such statutes and authorities, and no open audit findings with respect to violations of the regulatory agreement.

(d) Any plan of action approved under this section shall specify actions that the Secretary and the owner shall take to ensure that tenants displaced as a result of the termination of low income affordability restrictions are relocated to affordable housing.

14. Section 248.233 would be revised by adding a new paragraph (f) to read as follows:

§ 248.233 Approval of a plan of action that includes incentives.

* * * * *

(f) The Commissioner shall not approve a plan of action under this section if there are open findings of noncompliance with title VI of the Civil Rights Act of 1964; the Fair Housing Act; Executive Order 11063; the Age Discrimination Act of 1975; section 504 of the Rehabilitation Act of 1973; and all regulations promulgated under such statutes and authorities, or if there are open audit findings with respect to violations of the regulatory agreement.

15. Section 248.234(c) would be redesignated as § 248.234(d), and a new § 248.234(c) would be added to read as follows:

§ 248.234 Section 8 rental assistance.

* * * * *

(c) The approved plan of action shall specify actions that the Secretary and the owner shall take to ensure that any tenants displaced as a result of actions taken under paragraph (b) of this section are relocated to affordable housing.

* * * * *

§ 248.235 [Removed]

16. Section 248.235 would be removed in its entirety.

Dated: April 2, 1991.

Jack Kemp,
Secretary.

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Part III

Department of Education

34 CFR Part 445
Technology Education Demonstration Program; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Part 445

RIN 1830-AA07

Technology Education Demonstration Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations governing the Technology Education Demonstration Program. This program is authorized by title VI, subtitle B, chapter 2, of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418). These regulations explain the types of activities the Secretary may support, how to apply for an award, and the basis on which the Secretary would make awards.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Program Improvement Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education (Mary E. Switzer Building, room 4512), 400 Maryland Avenue SW., Washington DC 20202-7242. Telephone: (202) 732-2428.

SUPPLEMENTARY INFORMATION: The Omnibus Trade and Competitiveness Act of 1988 (Act) (Pub. L. 100-418) was enacted on August 23, 1988. Title VI, subtitle B, chapter 2 establishes the Technology Education Demonstration Program covered by these regulations. The purpose of the Technology Education Demonstration Program is to assist educational agencies and institutions in developing a technologically literate population through instructional programs in technology education. The Secretary carries out this purpose by providing a discretionary grant program that establishes no more than 10 demonstration projects in technology education for secondary schools, vocational education centers, and community colleges.

Analysis of Comments and Changes

On July 9, 1990, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (55 FR 28138). In response to the Secretary's invitation in the NPRM, 22 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Definition of Technology Education (Section 445.5)

See discussion under the heading for Priorities (§ 445.20).

Priorities (Section 445.20)

Comments: Several commenters suggested that the definition of "technology education" in § 445.5 be changed to require that programs "be conducted by certified technology education teachers in a laboratory setting using the tools, materials, and equipment related to the areas of communication, construction, manufacturing, and transportation." These commenters also wanted the definition to clarify that "technology education is distinctly different from areas such as educational technology or those programs primarily in the field of science education."

Discussion: The definition of technology education" is the same as the definition in the authorizing statute. The Secretary believes that Congress did not intend to limit the definition either to (1) activities conducted by certified technology teachers in laboratory settings or (2) activities that exclude instruction in education technology or science education. These proposed changes would restrict or preclude some of the authorized activities listed in section 6112(b)(2) of the Act (§ 445.3), such as educating students in the use of tools and machines (§ 445.3(d)) or the integration of mathematics, science, and technology education (§ 445.3(k)). The Secretary agrees, however, that technology education under this program is not intended to focus on using technologically advanced equipment as a means of instruction or to provide assistance for projects advanced equipment as a means of instruction or to provide assistance for projects offering associate degree or college level instruction focusing primarily on the sciences.

The Secretary believes also that limiting the definition of technology education to the areas of communication, construction, manufacturing, and transportation would be overly restrictive. However, the commenters' recommendations and the types of applications received during the 1990 competition for grants under this program suggest that additional guidance on the kinds of activities authorized under this program may be helpful. In addition, the Secretary is aware that the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Pub. L. 101-392) contains a slightly different definition of technology education

Change: The Secretary has not changed the definition of technology education. However, the Secretary has added a new paragraph (d) to § 445.20 to provide guidance on the instructional areas covered under the program. The new paragraph takes into account both the commenter's suggestions and portions of the Perkins Act definition, by allowing the Secretary to give priority in awarding grants to applications for projects that address one or more of the areas of communication, construction, manufacturing, transportation, power, and energy.

Selection Criterion—Educational Significance (Section 445.22(a))

Comment: Several commenters suggested that the title for the criterion "educational significance" be changed to "Meeting the purpose of the Act." Commenters wanted 30 points rather than 15 points assigned to the criterion. Commenters also suggested that a new criterion—"Extent of need for the proposed project"—be added and 20 points be assigned to that criterion.

Discussion: The purpose of this criterion is to evaluate whether an applicant is proposing to demonstrate an effective model. The Secretary is searching for projects that will demonstrate some significant aspect of technology education, or that have been recognized as effective and, if demonstrated at the national level, would be replicable and helpful to others in technology education. The Secretary believes that the title of "educational significance" for the criterion more accurately reflects this purpose. The Secretary believes further that a separate criterion limited to need is unnecessary because the extent of need for the project is implicit in the very nature of the types of projects sought under this program.

Change: None.

Selection Criterion—Project Objectives (Section 445.22(b))

Comments: Several commenters suggested that the Secretary review applications to determine the extent to which project objectives "are appropriate for the achievement of the purpose of the Technology Education Demonstration Program" rather than to determine the extent to which project objectives "relate to the purpose of the program."

Discussion: The Secretary agrees that the suggested language conveys better the intent of the criterion.

Change: Section 445.22(b)(1) has been changed to reflect the comment.

Use of Funds for Equipment (Section 445.24)

Comment: One commenter suggested that any restrictions placed on the amount of funds that can be used for equipment be given careful thought because most technology education programs involve equipment. The commenter recommended that applicants be allowed to determine the amount of funds to be used for the purchase of equipment according to project goals and objectives.

Discussion: Equipment costs for technology education programs could consume a sizeable portion of the limited Federal funds available under this program, and it appears that Congress intended for the Federal funds to be used for educational activities. For this reason, the Secretary may choose to limit the percentage of Federal funds that may be used for equipment. The 35 percent non-Federal share of the costs of a project may be used without limitation for equipment purchases, if applicants so desire.

Change: Section 445.24 has been changed to clarify that the restriction on equipment purchases applies only to Federal funds.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. To the extent that these regulations have an impact on small entities, they respect statutory requirements.

The selection criteria for applications reviewed under this program require the minimum amount of information necessary for a fair appraisal of the activities proposed by applicants in order to ensure the funding of high quality projects.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 445

Colleges and universities, Community colleges, Education, Equal employment opportunity, Grant programs, Reporting and recordkeeping requirements, Schools, Secondary education, Technology, and Vocational education.

(Catalog of Federal Domestic Assistance Number 84.230, Technology Education Demonstration Program)

Dated: April 4, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends title 34, chapter IV, of the Code of Federal Regulations by adding a new part 445 to read as follows:

PART 445—TECHNOLOGY EDUCATION DEMONSTRATION PROGRAM

Subpart A—General

Sec.
445.1 What is the Technology Education Demonstration Program?
445.2 Who is eligible for an award?
445.3 What activities may the Secretary fund?
445.4 What regulations apply?
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Authority: 20 U.S.C. 5101 through 5108, unless otherwise noted.

Subpart A—General

§ 445.1 What is the Technology Education Demonstration Program?

The purpose of the Technology Education Demonstration Program is to provide assistance in the development of a technologically literate population through instructional programs in technology education. The Secretary implements this purpose by providing assistance for no more than ten demonstration projects to develop model programs for technology education for secondary schools, vocational educational centers, and community colleges.

(Authority: 20 U.S.C. 5101 and 5102)

§ 445.2 Who is eligible for an award?

Local educational agencies; State educational agencies; consortia of public and private agencies, organizations, and institutions; and institutions of higher education are eligible for a direct grant under this program.

Cross-Reference: See 34 CFR 75.127 through 75.129, Group Applications.

(Authority: 20 U.S.C. 5102)

§ 445.3 What activities may the Secretary fund?

The Secretary provides grants for projects to develop model programs for technology education that, to the extent practicable, address the following components:

(a) Educational course content based on—

(1) An organized set of concepts, processes, and systems that is uniquely technological and relevant to the changing needs of the workplace; and

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(2) Fundamental knowledge about the development of technology and its effect on people, the environment, and culture.

(b) Instructional content drawn from the introduction to technology education courses in one or more of the following areas:

(1) Communication—efficiently using resources to transfer information to extend human potential.

(2) Construction—efficiently using resources to build structures on a site.

(3) Manufacturing—efficiently using resources to extract and convert raw or recycled materials into industrial and consumer goods.

(4) Transportation—efficiently using resources to obtain time and place utility and to attain and maintain direct physical contact and exchange among individuals and societal units through movement of materials, goods, and people.

(c) Assisting students in developing insight, understanding, and application of technological concepts, processes, and systems.

(d) Educating students in the safe and efficient use of tools, materials, machines, processes, and technical concepts.

(e) Developing student skills, creative abilities, confidence, and individual potential in using technology.

(f) Developing student problem-solving and decision-making abilities involving technological systems.

(g) Preparing students for lifelong learning in a technological society.

(h) Activity oriented laboratory instruction that reinforces abstract concepts with concrete experiences.

(i) An institute for the purpose of developing teacher capability in the area of technology education.

(j) Research and development of curriculum materials for use in technology education programs.

(k) Multidisciplinary teacher workshops for the integration of mathematics, science, and technology education.

(l) Employment of a curriculum specialist to provide technical assistance for the program.

(m) Stressing basic remedial skills in conjunction with training and automation literacy, robotics, computer-aided design, and other areas of computer-integrated manufacturing technology.

(n) A combined emphasis on "know-how" and the "ability-to-do" in carrying out technological work.

(Authority: 20 U.S.C. 5102(b))

§ 445.4 What regulations apply?

The following regulations apply to the Technology Education Demonstration Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this Part 445.

(Authority: 20 U.S.C. 5101 through 5106)

§ 445.5 What definitions apply?

(a) *Definition in the Act.* The following term used in this part is defined in section 6116 of the Act:

Technology education means a comprehensive educational process designed to develop a population that is knowledgeable about technology, its evolution, systems, techniques, utilization in industry and other fields, and social and cultural significance.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
EDGAR
Grant
Grantee
Private
Project
Public
Secondary school
Secretary
Subgrant
State
State educational agency

(c) *Other definitions.* The following definitions also apply to this part:

Act means Title VI, subtitle B, chapter 2 of Public Law 100-418, the Omnibus Trade and Competitiveness Act of 1988 (20 U.S.C. 5101 through 5106).

Institution of Higher Education has the same meaning given to that term in section 1201(a) of the Higher Education Act of 1965.

Local educational agency has the same meaning given to that term in 34 CFR 77.1(c) and includes any other public educational institution or agency having administrative control and direction of a vocational education program.

(Authority: 20 U.S.C. 5101 through 5106)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 445.20 What priorities may the Secretary establish?

(a) The Secretary may announce through one or more notices published in the **Federal Register** the priorities for this program, if any, selected from the list of priorities described in paragraphs (b), (c) and (d) of this section.

(b) To the extent feasible, priority is given to demonstration projects that develop model programs that address the largest number of components listed in paragraphs (a) through (k) of § 445.3.

(c) Priority may be given to projects that address one or more of the components listed in § 445.3.

(d) Priority may also be given to projects that address one or more of the areas of communication, construction, manufacturing, transportation, power, and energy.

(Authority: 20 U.S.C. 5102)

§ 445.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant on the basis of the criteria in § 445.22.

(b) The Secretary may award up to 100 points, including a reserved 10 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 445.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 10 points among the criteria in § 445.22.

(Authority: 20 U.S.C. 5103)

§ 445.22 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria to evaluate an application:

(a) *Educational significance of the proposed demonstration project.* (15 points) The Secretary reviews each application to determine how well it meets the purposes of the Technology Education Demonstration Program, including—

(1) A clear description of what the proposed project intends to demonstrate;

(2) A clear description of how the proposed project will improve programs in technology education and will promote the development of a technologically literate population; and

(3)(i) If the proposed project will demonstrate an existing model, empirical data that shows the effectiveness of the proposed model; or

(ii) If the proposed project will demonstrate a new model, a clear description of how the proposed model could be adapted in other educational settings.

(b) *Project objectives.* (10 points) The Secretary reviews each application to determine the extent to which the project objectives—

(1) Are appropriate for the achievement of the purpose of the Technology Education Demonstration Program; and

(2) Are attainable and measurable.

(c) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the proposed project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective, ensures proper and efficient administration of the project, and includes timelines that show starting and ending dates for all tasks, activities, and significant events;

(3) Specific procedures that clearly describe how the project's objectives will be accomplished;

(4) The way the applicant plans to use its resources and personnel to achieve each objective;

(5) A clear description of the manner in which project activities will be coordinated, to the extent practicable, with programs under the Job Training Partnership Act, the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990; and other Acts related to the purposes of the Technology Education Demonstration Program; and

(6) If the proposed project will provide instruction to students, a description of how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications and experience of the project director;

(ii) The documentation of the project director's availability at the start of the project and a time commitment to the project of at least fifty percent;

(iii) The qualifications and experience of each of the other key personnel to be used on the project;

(iv) The time that each person referred to in paragraphs (d)(1) (i) and (iii) of this section will commit to the project; and

(v) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (iii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed expenditures for each budget category are justified in a budget narrative; and

(2) Costs are necessary and reasonable, and budget category totals are itemized.

(f) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the plan—

(1) Includes specific procedures for—

(i) A formative evaluation to help guide and improve the project; and

(ii) A summative evaluation;

(2) Includes a description of the quantifiable data to be collected based on the project objectives, including, as appropriate, information on—

(i) The demographic characteristics of individual participants and the schools they attend;

(ii) The services provided to participants, including information on duration, intensity, and costs;

(iii) The characteristics, background, and training of staff used in the project; and

(iv) The implementation of the project, including any obstacles to implementation and how those obstacles were overcome;

(3) Specifies the procedures to be used in data collection, including the frequency with which data will be collected;

(4) Describes how the data will be analyzed, including the statistical techniques to be used; and

(5) Describes how achievement of project objectives will be measured, including the empirical measures that will be used to measure progress toward each of the stated project objectives.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) A description of the materials, product(s), packages, or handbooks the applicant plans to make available;

(2) A clear description of the dissemination procedures; and

(3) Provisions for publicizing the findings of the project at the local, State, and national levels, as appropriate.

(Approved under OMB Control No. 1830-0511)

(Authority: 20 U.S.C. 5103)

§ 445.23 What additional factors does the Secretary consider?

In addition to the criteria in § 445.22—

(a) The Secretary considers whether funding a particular applicant would contribute to the equitable geographical distribution of projects funded under this program; and

(b) The Secretary may consider whether funding a particular applicant would contribute to the funding of a variety of approaches to technology education.

(Authority: 20 U.S.C. 5103(c))

§ 445.24 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce, through a notice published in the **Federal Register**, the percentage of

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Federal project funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 5101 through 5100)

Subpart D—What Conditions Must Be Met after an Award?

§ 445.30 What are the cost sharing requirements?

(a) The Federal share of the total cost for a technology education demonstration project may not exceed 65 percent of the total cost of the project.

(b) At least ten percent of the total cost of the project must be provided from contributions from the private sector.

(c) Non-Federal contributions may be in cash or fairly valued in-kind contributions, including facilities, overhead, personnel, and equipment.

Cross-Reference: See 34 CFR Part 74, Subpart G—Cost Sharing or Matching and 34 CFR 80.24.

(Authority: 20 U.S.C. 5102(c))

§ 445.31 What other requirements must be met under this program?

(a) Grantees shall ensure that Federal funds made available under this program are used to supplement and, to the extent practicable, increase the amount of State and local funds that would in the absence of those Federal funds be made available for the uses specified in this program, and in no case supplant those State or local funds.

(b) Grantees shall make reports in the form and containing the information the Secretary may require, including—

(1) A final report; and

(2) A handbook that describes the procedures others may follow to replicate the project.

(c) Grantees shall ensure that any products or evaluation reports produced by their projects are in a form that can be disseminated to benefit the training of teachers, other instructional personnel, counselors, and administrators.

(Approved under OMB Control No. 1830-0511)

(Authority: 20 U.S.C. 5103(b) and 5104)

[FR Doc. 91-10210 Filed 5-1-91; 8:45 am]

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Thursday
May 2, 1991

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary

Funding Availability for Technical Assistance Awards for the Development of Community Energy Systems Based on District Heating and Cooling; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-2340; FR-2941-N-01]

Funding Availability for Technical Assistance Awards for the Development of Community Energy Systems Based on District Heating and Cooling

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for FY 1991.

SUMMARY: This NOFA announces HUD's funding for technical assistance awards for the development of community energy systems based on district heating and cooling. In the body of this document is information concerning the purpose of the NOFA, and information regarding eligibility, available amounts, selection criteria and application processing, including how to apply and how selections will be made.

DATES: The actual Application Due Date will be specified in the application kit. Applicants will have at least 30 days to prepare and submit their proposals. The 30-day (or more) response period shall begin to run from the first date upon which applications are made available.

FOR FURTHER INFORMATION CONTACT: Samuel A. Jones, Program Support Division, Office of Procurement and Contracts, room 5256, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708-1162. (This is not a toll free number.) Application Kits will be sent only upon written request to the Office of Procurement and Contracts at the above address. Telephone requests for Application Kits will not be accepted.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The control number for information collection described in this document is 2535-0084.

I. Purpose and Substantive Description

A. Authority

The authority for this assistance is the Technical Assistance program under section 107 of title I of the Housing and Community Development Act of 1974, implemented by the Department's regulations at 24 CFR 570.400 and 570.402.

B. Allocation Amounts and Forms of Award

A total of $578,000 is available for the awards resulting from this competition. Technically, these grant awards will be made in the form of cooperative agreements. The applicants will compete in three categories:

(1) Initial feasibility studies for new systems;

(2) Design, marketing, and financial/ownership packaging for systems previously determined to be technically and financially feasible; and

(3) Major expansions of existing systems that require either or both of the previous two categories of work.

Half of the funds available will be allocated to category 2 and the remainder will be equally divided between categories 1 and 3. To the extent funds in any category are not used, they will be allocated to other categories. Total project costs in category 1 are expected to range between $35,000 and $75,000, with up to two-thirds to come from this award and at least one-third of the total to come from a non-federal cash contribution. Total project costs in category 2 are expected to range between $100,000 and $300,000 with up to one-half to come from this award and at least one-half of the total to come from a non-federal cash contribution. Total project costs in category 3 are estimated to range between $100,000 and $300,000 with up to one-third to come from this award and at least two-thirds of the total to come from a non-federal cash contribution.

Applications will be ranked and selected in turn from categories 2, 3, and 1 using the selection criteria explained below in section IV. Each award will be made in the form of a cooperative agreement. Specific work activities and project budgets will be negotiated at the time of the award. Each award will be subject to the requirements of 24 CFR 570.400 and 24 CFR 570.402, subparts A, C, J, K, and O.

C. Description of Technical Assistance Competition

1. Purpose and Background

The purpose of the competition announced by this NOFA is to aid communities in developing community energy systems based on district heating and cooling, thereby reducing energy costs to commerce and industry, making housing more affordable, and reducing dependence on imported fuels.

Community energy systems based on district heating and cooling use a network of underground piping to deliver chilled water, hot water or steam from a central plant to whole districts of residential, commercial and industrial buildings, or to a small number of large users, at lower cost. Important cost savings result from using heat that is thrown off as waste or as a by-product of local power companies or factories. Small systems, delivering excess energy from one factory or plant to nearby office buildings, industries or residences also can be cost effective in meeting heating and cooling needs. When based on cogeneration (a process that uses the same energy sequentially—first to make electricity and then to heat buildings) these systems achieve maximum fuel-use efficiency and have a positive effect on economic development projects supported with CDBG funds by reducing the costs of energy to business and residential users.

Grantees will be expected to supplement the funds received with other funds for use in determining the technical and financial feasibility of developing a system, or in conducting the engineering, design, marketing, and financial packaging that make up the later stages of a development process for a feasible system eligible for construction with assistance under the CDBG program. "Development process" or "development phase" as used in this Notice means all of those activities leading up to, but not including, the construction of a system that will involve CDBG funds.

The development process can be divided into three broad categories of activities. The first category deals with technical and financial assessment of new, plausible, candidate CES/DHC projects in a community. A number of communities completed such feasibility assessments with HUD assistance in the past with positive results, but put viable projects on hold when fuel prices dropped dramatically in 1986.

Another category deals with the design, marketing, financial and ownership packaging of the best of the plausible configurations for new systems developed in the assessment phase.

A third category deals with the design, marketing, and financial packaging of a major expansion as part of a rejuvenation effort for an existing system.

HUD believes it is helpful to the development of more fuel-saving, energy-efficient CES/DHC systems in the country to stimulate high-quality examples in each of these three categories of development activity. HUD is putting more emphasis on the category leading directly to construction in order to have more new operating examples for other communities to use as models for independent efforts.

HUD will have teams of nationally-recognized experts available to work with recipients of the awards resulting from this competition. These teams will provide short-duration, highly specialized technical assistance to communities on the more complex analytical and institutional problems common to all of the projects but particularly those engaged in the initial technical and financial feasibility determination category. This assistance will be individually tailored to complement the capabilities of consulting firms hired by the communities. It is intended that the teams will have at their disposal such tools as HEATPLAN, HEATMAP and environmental impact computer models that can be used in screening the community to identify candidate system configurations.

2. Eligibility

Eligible applicants are cities, counties, States, and non-profit and for-profit organizations with the technical capability of conducting energy feasibility studies and developmental work on community energy systems based on district heating and cooling that are eligible for assistance under the Community Development Block Grant (CDBG) program.

The grants will assist two types of efforts: (1) Feasibility studies for communities at the beginning stages of considering community-wide or district-wide energy systems; (2) development activities for communities for which feasibility of district heating and cooling systems has been demonstrated. Construction costs are not eligible for assistance under this Notice.

Depending on the stage of development of a particular project, eligible activities may include: conducting a market analysis, analyzing potential thermal energy sources, conducting a cost-benefit assessment of competing systems, completing financial and ownership analyses, conducting anchor-customer retrofit cost analysis, appraising local environmental problems arising from heating and cooling, and completing an energy-environment-development strategy for the community that is based on district heating and cooling. Other appropriate projects may be included.

3. Selection Criteria/Ranking Factors

The following criteria will be used by the Department to evaluate applications. Each application must contain sufficient technical information to be reviewed for its technical merit.

The score on each criterion will be based on the qualitative and quantitative aspects demonstrated in each area of the response. The criteria and corresponding maximum number of points for each (out of a total of 100 points) are as follows:

1. Probable effectiveness of the proposal in meeting needs of localities and accomplishing overall project objectives;

(a) The extent to which the membership of a Steering Committee represents potential suppliers, customers, and other groups and institutions that could be affected by (or influence the community's acceptance of) the system is specified and appropriate individuals are invited to serve (15);

(b) The percentage of total project costs, above the minimum non-Federal cash contribution required for each category, to be funded from sources other than this grant (10).

2. Soundness of approach based on the extent to which applications identify techniques or systems that can significantly impact on the key problem(s) identified;

(a) Knowledge of one or more specific, existing local opportunities for a DHC system as evidenced, for example, by a preliminary report from an energy specialist (15);

(b) Completeness and quality of the scope of work, and schedule for performance (10).

3. Methodology for transfer of successful technical assistance techniques to other potential assistance providers;

(a) Expressed commitment to be available to provide technical assistance to other communities and the time period for that commitment (10).

(4) Organizational and management plan reflecting a rational project management system;

(a) Completeness and quality of the schedule for performance, and work management plan (10);

(b) Reporting level of the project within the city organization (5).

(5) Application qualifications based on present and past relevant experience and the competence of key personnel assigned in the project;

(a) The extent to which the quality and experience of designated staff and consultant team demonstrate an *assembled* capability for assessing and developing DHC (15).

(6) Potential for assistance activities being sustained beyond the period of the grant;

(a) Local commitment evidenced by the people and financial resources committed to the project (5);

(b) The extent to which the applicant demonstrates a capacity for continuing with CES/DHC activities once the assessment is completed (5).

II. Application Process

A. Obtaining and Submitting Applications

An Application Kit may be obtained from Samuel A. Jones, Program Support Division, Office of Procurement and Contracts, room 5256, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708-1162. (This is not a toll free number.) Application Kits will be sent only upon written request to the Office of Procurement and Contracts at the above address. Telephone requests for Application Kits will not be accepted.

B. Submission Deadline

Applications will be due no earlier than 30 days from the date of publication of this NOFA. The actual date and place for receipt of applications will be specified in the Application Kit.

III. Checklist of Application Submission Requirements

A. Application Contents: Certifications and Disclosures

1. Commitment of Cash Match

Each applicant must submit a letter of commitment, signed by an official authorized to make such a commitment, for each source of local cash contribution.

2. Certification of CDBG Funds

Where an applicant elects to use CDBG funds as all or part of the local cash contribution, the application must include a certification by the chief executive officer or legally designated official of the local or state government responsible for the allocation of CDBG funds that such funds, in the amount to be contributed, will be made available. Those applicants intending to contribute CDBG funds should recognize that costs related to a specific activity under 24 CFR 570.201-570-204 are subject to all requirements of the CDBG programs, and such applicants need to start the process of obtaining the allocation of CDBG funds as quickly as possible.

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Additionally, all applicants must include a letter of commitment or expression of intent from the chief executive officer or legally designated official of the State or local government responsible for the allocation of CDBG funds for the construction of a feasible district heating and cooling system with CDBG assistance.

Applicants that are non-profit or for-profit organizations must also submit a letter from the chief executive officer of the local or State government designating the applicant as a technical assistance provider for the purpose of assisting the government in the planning, development or administration of its CDBG activities for which the technical assistance under this Notice is to be provided.

Failure to submit the required certifications and letters of commitment and designation with the application or within 30 days following the application submission deadline will eliminate the applicant from further consideration for a grant. The inclusion of other public and private funds is encouraged. Considering the lead times involved in obtaining firm commitments of funds from whatever sources, the applicant is urged to start the process at the earliest possible date.

3. Certification Regarding Lobbying

On February 26, 1990, at 55 FR 6736, the Department joined in the issuance of a government-wide interim rule advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition regarding the use of appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. In general, this rule prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds. Potential grantees should refer to the government-wide rule for the language for the certification and disclosure. As indicated in this certification and disclosure, the law provides substantial monetary penalties for failure to file the required certification or disclosure.

4. Certification of Drug-Free Workplace

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each potential grantee must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

5. Certification Prohibiting Excessive Force

Section 906 of the National Affordable Housing Act prohibits CDBG funds from being obligated or expended to any unit of general local government that (1) fails to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations, or (2) fails to adopt and enforce a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstration within its jurisdiction. Accordingly, affected applicants are required to provide a certification of compliance with this provision.

IV. Corrections to Deficient Applications

After the deadline for submission of applications, applications will be screened to determine whether all items were submitted. If the applicant fails to submit certain technical items, or the application contains a technical mistake, such as an incorrect signatory, HUD will notify the applicant in writing that the applicant has 14 calendar days from the date of the written notification to submit the missing item, or correct the technical mistake. If the applicant does not submit the missing item within the required time period, the application will be ineligible for further processing.

The 14 day cure period pertains only to nonsubstantive technical deficiencies or errors. Any deficiency capable of being cured will involve only an item that is not necessary for the Department's ability to assess the merits of an application under the ranking factors set forth in this NOFA.

V. Other Matters

A. Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures in this document relate only to the provision of technical assistance and therefore are categorically excluded from NEPA requirements.

B. Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of new and alternative energy systems is a program of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

C. Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the economic and other benefits expected to flow eventually from the types of energy systems promoted by this program of assistance.

This program is listed in the catalog of Federal Domestic Assistance under program number 14.227, Community Development Block Grants/Special Purpose Grants/Technical Assistance Program.

Authority: Sec. 107, Housing and Community Development Act, as amended, and 24 CFR 570.400 and 570.402.

Dated: April 23, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91-10399 Filed 5-1-91; 8:45 am]

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federal register

Thursday
May 2, 1991

Part V

Department of Defense

Mentor-Protege Pilot Program; Notice

48 CFR Parts 219 and 252

Small Business and Small Disadvantaged Business Concerns; Proposed Rule

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DEPARTMENT OF DEFENSE

Mentor-Protege Pilot Program;

AGENCY: Department of Defense (DoD).

ACTION: Notice of Pilot Program.

SUMMARY: The Department of Defense (DoD) is inviting public comments on its proposed implementation of the Mentor-Protege Pilot Program. The Pilot program will permit selected contractors to provide developmental assistance to small disadvantaged businesses (SDBs) for which DoD may provide cost reimbursement, credit against SDB subcontracting goals or both. The DoD policy sets forth the comprehensive implementation plan for the program and the proposed DFARs coverage provides guidance on contracting officer's responsibilities under the program. The public is invited to comment on both the policy and the proposed DFARS coverage. Comments must be submitted separately for the policy and the DFARS language.

DATES: Comments concerning the policy and the DFARs coverage must be received on or before June 3, 1991, to be considered in finalizing the program. Please cite DAR Case 90-314 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments on the policy to OUSD(A), OSDBU, room 2A340, The Pentagon, Washington, DC 20301-3061, attn: Ms. Tracey Pinson.

FOR FURTHER INFORMATION CONTACT: Tracey Pinson, telephone (703) 697-1688.

SUPPLEMENTARY INFORMATION:

Background

Section 831 of Public Law 101-510 as amended establishes the Mentor-Protege Pilot Program. The purpose of the Program is to provide incentives for major DoD contractors to furnish SDBs with assistance designed to enhance their capabilities to perform as subcontractors and suppliers under DoD contracts and other contracts, in order to increase the participation of the concerns as subcontractors and suppliers under DoD contracts, other Federal Government contracts, and commercial contracts. Incentives for major DoD contractors to provide developmental assistance to SDBs consist of cost reimbursement, credit against SDB subcontracting goals established under DoD contracts or both.

The Mentor-Protege Pilot Program is a test program that will be limited in number of participants so that the concept can be properly tested. Implementation of the program will involve detailed administrative requirements for both DoD and prospective mentor firms. Once funds are available for the Program, DoD will solicit participation in the Program. Companies that are interested in becoming mentors will have 60 days to submit their mentor-protege documents to the Office of Small and Disadvantaged Business, Office of the Under Secretary of Defense (Acquisition). The mentor-protege documents must include: A request to become a mentor, a signed mentor-protege agreement, the proposed costs of the developmental assistance to be provided the protege firm, and an advance agreement proposal on the treatment of developmental assistance costs. The package must be complete and in accordance with the DoD policy. Documents will not be received or considered after the designated closing period. Once all requests for program participation have been received, OSDBU will review all submitted documents except the advance agreement. Subsequent to approval of these documents, OSDBU will send them to the cognizant contracting officer to negotiate the advance agreement with the mentor firm. The mentor firm will be notified by OSDBU that the documents have been approved with the exception of the advance agreement and to proceed to negotiate the advance agreement with the contracting officer. The decision of participation under the program is not final until the advance agreement has been negotiated and approved by the contracting officer. Once the contracting officer has approved the advance agreement, the mentor firm may implement the developmental assistance program in accordance with the approved mentor-protege agreement and advance agreement.

The DoD policy sets forth the information that must be submitted in order for companies to participate in the Program as mentor firms. Companies that are interested in becoming mentor firms will be responsible for the selection of SDBs proteges. DoD will not be involved in the selection of proteges, however, SDBs chosen as proteges by the prospective mentor firm must meet the eligibility criteria set forth in the DoD policy.

The proposed DoD policy on the Mentor-Protege Pilot Program is as follows:

DOD Policy for Implementation of the Mentor Protege Pilot Program

I. Purpose

This policy implements the Mentor-Protege Pilot Program (hereinafter referred to as the "Program") established under section 831 of Public Law 101-510 as amended, The National Defense Authorization Act for Fiscal Year 1991. The purpose of the Program is to:

(1) Provide incentives to major DoD contractors performing under subcontracting plans negotiated under DoD contracts to voluntarily assist small disadvantaged businesses (SDBs) in enhancing their capabilities to satisfy DoD contract and subcontract requirements;

(2) Foster the establishment of long term business relationships between SDBs and major defense contractors and;

(3) Increase the overall participation of SDBs as subcontractors and suppliers under DoD contracts, other Federal government contracts and commercial contracts.

Under the Program, eligible defense contractors will enter into mentor-protege agreements with eligible SDBs as protege firms to provide appropriate developmental assistance to enhance the capabilities of SDBs to perform as subcontractors and suppliers. The Department of Defense will, subsequent to an application and approval process, provide the mentor firm with either cost reimbursement, credit against SDB subcontracting goals established under DoD contracts or both.

II. Procedures

The application process generally consists of the submission of mentor-protege documents that include: A request to become a mentor firm, a signed mentor-protege agreement(s), the proposed costs of the developmental assistance to be provided to the protege firm(s) under the Program and an advance agreement proposal on the treatment of developmental assistance costs. The Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition OUSD(A) (hereinafter referred to as OSADBU) will have the responsibility for approving: Requests to become a mentor firm, the mentor-protege agreement(s) and the funding level if appropriate. Upon receipt of the approved documents from OSADBU, the appropriate contracting officer will have the responsibility for negotiating and approving the advance agreement and modifying contracts accordingly.

Mentor-protege documents submitted to OSADBU will generally be evaluated on the extent to which the mentor's Program addresses the following:

(1) Intent to increase the number and dollar value of subcontracts awarded by the mentor firm to protege firms under DoD contracts, contracts awarded by other Federal Agencies and commercial contracts;

(2) Intent to concentrate on the development of the protege firm(s) on a single major system(s), a service or supply program, research and development programs, initial production or mature systems or in the total contract base;

(3) The extent to which emerging SDBs are identified as protege firms;

(4) Extent to which the mentor's developmental assistance program for the protege firm will result in an increase in subcontracting to the protege firm in industry categories where SDBs have not traditionally participated;

(5) Ideas that will be explored to ensure that the protege firm(s) remain or become competitive and not unduly reliant on the mentor firm in the long term.

III. Program Duration

Activities under the Program will occur during the following periods:

(1) Approval of companies to participate in the Program until September 30, 1994;

(2) Performance under a mentor-protege agreement, only if such agreement was approved and executed by the mentor firm and its protege firm prior to October 1, 1994;

(3) Reimbursement of mentor firms for costs of providing developmental assistance to its protege firms, only if such costs are incurred after the approval of the advance agreement and prior to October 1, 1996;

(4) Accord credit to a mentor firm toward the attainment of such firm's goals for subcontract awards to SDBs for costs of providing developmental assistance to its protege firms, only if such costs are incurred after approval of the advance agreement and prior to October 1, 1999.

IV. Eligibility Requirements for a Protege Firm

A. A company may qualify as a protege firm if it is:

(1) A business concern as defined by section 8(d)(3)(C) of the Small Business Act.

(2) Not suspended, debarred or otherwise ineligible for the award of a government contract.

(3) A small business according to the SBA size standard in the Standard Industrial Code (SIC) which represents the contemplated supplies or services to be provided by the protege firm to the mentor firm.

B. A protege firm may self-certify to a mentor firm that meets the eligibility requirements in A (1), (2) and (3) above. Mentor firms may rely in good faith on this representation.

C. Protege firms may only have one active mentor-protege agreement.

V. Selection of Protege Firms

A. Mentor firms will be responsible for selecting protege firms. If the mentor firm intends to submit to OSADBU more than one mentor-protege agreement, mentor firms shall select a number of protege firms that are defined as emerging equal to those that are in more advanced phases of business development.

B. The selection of protege firms by mentor firms may not be protested by interested SDBs. SDBs may only protest the size and disadvantaged status of selected protege firms in accordance with (C) below.

C. In the event of a protest by an interested SDB regarding the size or disadvantaged eligibility of another SDB to be a protege firm, the mentor firm shall refer the protest to the SBA to resolve in accordance with 13 CFR 124.601.

VI. Approval Process for Mentor Firms, Mentor-Protege Agreements, Funding and Advance Agreements

A. Prospective mentor firms are required to submit to OSADBU the following mentor-protege documents:

(1) A request for approval as a mentor firm;

(2) A signed mentor-protege agreement(s);

(3) The proposed costs of the developmental assistance to be provided to the protege firm(s) under the Program (costs must be broken out per year by mentor-protege agreement.) Prior to submitting a proposed cost proposal the prospective mentor firm shall coordinate with the cognizant PCO to ascertain whether funding is available to support their mentor-protege agreement. Indicate the maximum amount that will be funded by the PCO.

(4) An advance agreement proposal on the treatment of developmental costs.

B. Companies shall submit four copies of the mentor-protege documents specified in A (1), (2), (3), and (4) above to: OUSD(A) OSADBU, room 2A340, The Pentagon, Washington, DC 20301-3061, Attn: Mentor-Protege Program. OSADBU will review items (1), (2), and (3) and if approved, will notify the company to proceed with the negotiation of the advance agreement with the appropriate contracting officer. Authorization for firms to negotiate an advance agreement is a preliminary process and in no way obligates the government to provide reimbursement or credit to the approved mentor firm under the Program.

C. The decision on companies participating in the Program is final and is not reviewable by any other executive agency or other branch of government.

VII. Requests for Approval as a Mentor Firm

A. A request for approval as a mentor firm must contain the following:

(1) A statement that the company is an other than small business concern performing under DoD contracts with subcontracting plans negotiated by DoD.

(2) The total dollar amount of DoD contracts and subcontracts received during the two preceding fiscal years (broken out spearately.)

(3) The total dollar value of all subcontracts awarded and the number and percentage of awards made to SDBs under DoD contracts during two previous fiscal years.

(4) Number of dollar value of subcontract awards made to protege firms during the two preceding fiscal years (if any).

(5) Information on the ability to provide developmental assistance to enhance the capabilities of the identified protege firm(s), and an indication as to how such assistance will result in increased subcontract awards to such protege.

(6) The company's concept for participating in the Program.

(7) A statement that the company is eligible for the award of government contracts and subcontracts.

B. A company may not be approved for participation in the program as a mentor firm if it has been debarred or suspended from contracting with the Federal Government pursuant to FAR part 9.4. Should debarment or suspension occur while the mentor firm is performing under an approved mentor-protege agreement the mentor firm:

(1) may continue to provide assistance to its protege firms pursuant to approved mentor-protege agreements entered into prior to the imposition of such suspension or debarment;

(2) May not be reimbursed for any costs of providing developmental assistance to its protege firm, incurred more than 30 days after the imposition of such suspension or debarment; and

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(3) Shall give notice of its suspension or debarment to its protege firm, its ACO or PCO, and OSADBU.

VIII. Mentor-Protege Agreements

A. Signed mentor-protege agreements submitted for approval under the Program shall include:

(1) The name, address and telephone number of the mentor firm and protege firm and a point of contact within the mentor firm who will administer the developmental assistance program;

(2) The SIC code which represents the contemplated supplies or services to be provided by the protege firm to the mentor firm and a statement that the size of the protege firm does not exceed the appropriate SIC code.

(3) A developmental program for the protege firm specifying the type of assistance that will be provided, identified in (C) below. The developmental program shall include the following:

(a) Factors to assess the protege firm's developmental progress under the Program and;

(b) The anticipated number and type of subcontracts to be awarded the protege firm; and

(4) A program participation term for the protege firm which shall not exceed five years and may be renewed for four years. Mentor firms seeking cost reimbursement shall not submit for approval mentor-protege agreements exceeding the term of the contracts under which developmental costs will be allocated.

(5) Procedures for the mentor firm to notify the protege firm of its intent to withdraw from the Program voluntarily which provide for 60 days advance written notice to the protege firm.

(6) Procedures for a protege firm to terminate the mentor-protege agreement voluntarily which provide for 30 days advance written notice to its mentor firm.

(7) Procedures for the termination of the mentor-protege agreement for cause by the mentor firm, which provide:

(a) The protege firm shall be furnished a written notice of the proposed termination, stating the specific reasons for such action, not later than 90 days in advance of the effective date of such proposed termination.

(b) The protege firm shall have 30 days to respond to such notice of proposed termination, and may rebut any findings believed to be erroneous and offer a remedial program.

(c) Upon prompt consideration of the protege firm's response, the mentor firm shall either withdraw the notice of proposed termination and continue the protege firm's participation, or issue the notice of termination.

(d) The decision of the mentor firm regarding termination for cause, conforming with the requirements of this section, shall be final.

(8) Procedures for the termination of individual elements of developmental assistance.

(9) Additional terms and conditions as maybe agreed upon by both parties.

B. A copy of the voluntary withdrawal from the Program and any termination notices shall be sent to OSD OSDBU, and the ACO or PCO.

C. Termination of a mentor-protege agreement shall not impair the contractual obligations of the mentor firm and the protege firm, to be performed in accordance with the terms and conditions of the applicable contractual agreements.

D. The mentor-protege agreement may provide for the mentor firm to furnish any or all of the types of developmental assistance as follows:

(1) Assistance by mentor firm personnel in:

(a) General business management including organizational management, financial management and personnel management, marketing, business development and overall business planning;

(b) Engineering and technical matters such as production inventory control, quality assurance and

(c) Any other assistance designed to develop the capabilities of the protege firm under the developmental program.

(2) Award of subcontracts under DoD contracts or other contracts on a non-competitive basis.

(3) Payment of progress payments for the performance of subcontracts by a protege firm in amounts as provided for in the subcontract; but in no event may any such progress payment exceed 100% of the costs incurred by the protege firm for the performance of the subcontract.

(4) Advance Payments under such subcontracts.

(5) Loans.

(6) Cash in exchange for an ownership interest in the protege firm, not to exceed 10% of the total ownership interest.

(7) Assistance obtained by the mentor firm for the protege firm from one or more of the following:

(a) Small Business Development Centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648).

(b) Entities providing procurement technical assistance pursuant to chapter 142 of title 10 U.S.C. (PTAP)

(c) Historically Black Colleges and Universities as defined by 34 CFR 608.2

(d) Minority Institutions of Higher Education.

E. Mentor firms are encouraged to authorize advance payments under mentor-protege agreements as a method to finance the performance of subcontracts by protege firms. Such advance payments under subcontracts between the mentor firm and its protege firm may be made upon such terms and conditions as may be specified in the subcontract agreement.

F. A mentor firm may not require a SDB concern to enter into a mentor-protege agreement as a condition for being awarded a contract by the mentor firm including a subcontract under a DoD contract awarded to the mentor firm.

IX. Advance Agreements on the Treatment of Developmental Assistance Costs

A. Companies that have been approved by DoD OSADBU in accordance with III above must negotiate proposed Advance Agreements. Proposed advance agreements are negotiated between the contracting officer and the mentor firm in accordance with FAR 31.109(e). Proposed advance agreements must state the name and telephone number of the appropriate PCO or ACO, and state whether the company is seeking reimbursement of costs for developmental assistance, credit against SDB subcontracting goals established under DoD contracts or a combination of reimbursement and credit. The advance agreement must meet the requirements in 219.7105.

B. upon receipt of the mentor protege documents from OSADBU, the contracting officer will have the responsibility to negotiate the advance agreement or delegate this authority to the ACO, modify applicable contracts in accordance with 219.7104-2 (b) and provide a copy of the negotiated advance agreement to DoD OSADBU.

X. Reimbursement Procedures

A. A mentor firm shall be reimbursed for the total amount of any progress payment or advance payment made to protege firms in connection with a DoD contract under an approved advance agreement and mentor-protege agreement, through the cost reimbursement procedures otherwise applicable to the contract.

B. A mentor firm shall be reimbursed for developmental assistance costs in accordance with an approved advance agreement through a separately priced contract line item.

C. Costs Eligible for Reimbursement are:

(1) Costs incurred by a mentor firm for developmental assistance to a protege firm under VII (B) (1) and (7), pursuant to an approved mentor-protege agreement to the maximum extent provided under the terms of an approved advance agreement.

(2) The full amount of any progress payment or advanced payment made to a protege firm in connection with a DoD contract under an approved mentor-protege agreement.

D. No profit may be associated with the reimbursement of developmental assistance costs under the Program.

E. Absent the existence of an advance agreement between the mentor firm and DoD as specified in IX above, DoD will in no way be liable for reimbursement of costs under the Program.

XI. Credit for Unreimbursed Developmental Assistance Costs

A. Except as provided in E below, developmental costs incurred by a mentor firm in providing assistance to a protege firm pursuant to an approved mentor protege agreement, for which cost reimbursement has not been provided, may be recognized as credit in lieu of subcontract awards for determining the performance of such mentor firm in attaining a SDB subcontracting goal(s) established under:

(1) A DOD contract; or

(2) Any division wide or company wide subcontracting plan which the mentor firm has negotiated with DOD.

B. The amount of credit a mentor firm may receive for any such unreimbursed developmental assistance costs shall be equal to:

(1) Four times the total amount of such costs attributable to assistance provided by SDBs, HBCUs, MIs, and PTAPs.

(2) Three times the total amount of such costs attributable to assistance furnished by the mentor's employees.

(3) Two times the total amount of other such costs.

C. A mentor firm shall receive credit toward the attainment of a SDB subcontracting goal(s) for each subcontract awarded for a product or a service by the mentor firm to a business concern that, except for its size would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if:

(1) The size of such business concern is not more than two times the appropriate size standard; and

(2) The business concern formerly had a mentor-protege agreement with such mentor firm that was not terminated for cause.

D. Amounts credited toward the SDB goal(s) for unreimbursed costs under the program shall be separately identified from the amounts credited toward the goal for the award of actual subcontracts to protege firms and reported in accordance with § 252.219.7007. The combination of the two shall equal the mentor firm's overall accomplishment toward the SDB goal(s).

E. Adjustments may be made to the amount of credit recognized:

(1) If a mentor firm's performance in the attainment of its SDB subcontracting goals through actual subcontract awards declined from the prior fiscal year without justifiable cause. OSADBU may limit the total amount of credit which such firm may claim under A and B above.

(2) If OSADBU determines that imposition of such a limitation on credit appears to be warranted to prevent abuse of this incentive for mentor firm's participation in the Program, the mentor firm shall be afforded the opportunity to explain the decline in SDB participation before imposition of any such limitation on credit. In making the final decision to impose limitation on future credit, the following shall be considered:

(a) The mentor firm's overall SDB participation rates (in terms of percentages of subcontract awards and dollars awarded) as compared to the participation rates existing during the two fiscal years prior to the firm's admission to the Program;

(b) The mentor firm's aggregate prime contract awards during the prior two fiscal years and the total amount of subcontract awards under such contracts; and

(c) Such other information the mentor firm may wish to submit.

(3) The decision regarding the imposition of a limitation on credit shall be final.

(4) Any prospective limitation on credit imposed by the Director shall be expressed as a percentage of otherwise eligible credit and shall apply beginning on a specific date in the future and continue until a date certain during the current fiscal year.

(5) Any retroactive limitation on credit imposed by the Director shall reflect the actual costs incurred for developmental assistance (not exceeding the maximum amount reimbursed.)

F. For purposes of calculating any incentives to be paid for exceeding a SDB subcontracting goal pursuant to a DOD contract, incentives shall only be paid if a SDB subcontracting goal has been exceeded as a result of actual subcontract awards to SDBs.

XII. Definitions

(1) *Emerging SDB Concern* means a small disadvantaged business whose size is no greater than 50% of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

(2) *Minority Institution of Higher Education* means an institution of higher education with a student body that reflects the composition specified in section 312(b) (3), (4) and (5) of the Higher Education Act of 1965 (20 U.S.C. 1058 (b) (3), (4) and (5).

Horace J. Crouch,

Director, Small and Disadvantaged Business Utilization.

[FR Doc. 91-10322 Filed 5-1-91; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

Department of Defense, Federal Acquisition Regulation Supplement, Small Business and Small Disadvantaged Business Concerns

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulations (DAR) Council is proposing changes to implement section 831 of Public Law 101-510 as amended, The National Defense Authorization Act for Fiscal Year 1991. Section 831 establishes a pilot Mentor-Protege Program. Under this program DoD will establish incentives for selected contractors to provide developmental assistance to small disadvantaged businesses.

DATES: Comments on this proposed rule should be submitted in writing to the address shown below on or before June 3, 1991, for consideration in formulation of the final rule. Please cite DAR Case 90-314 in all correspondence related to this proposed rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations System, ATTN: Mrs. Alyce Sullivan, OUSD(A), c/o room 3D139, the Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, 703/697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 831, Public Law 101-510, enacted November 5, 1990 provides for the establishment of a pilot "Mentor-Protege Program". The purpose of this program is to provide incentives for major DoD contractors to furnish disadvantaged small business concerns with assistance to enhance capabilities. Participation in the Pilot program is voluntary. Under the pilot program, selected contractors may receive cost reimbursement, credit against Small Disadvantaged Business goals, or a combination of both for developmental assistance to small disadvantaged businesses. Section 831 directs the Secretary of Defense to publish proposed regulation not later than 180 days of enactment (May 5) and final regulations not later than 270 days after enactment (August 5).

DoD implementation of section 831 is addressed in a DoD policy statement, titled: "DoD Policy for Implementation of the Mentor Protege Pilot Program", The policy statement addresses the program's purpose, procedures, duration, eligibility requirements, the approval process, Mentor-Protege Agreements, and reimbursement procedures.

The Defense Federal Acquisition Regulation Supplement (DFARS) proposed rule is based on the DoD policy statement. It is directed to contracting officers and contractors selected for participation. The DFARS provides limited general information on the program, making reference to the DoD policy statement for more details. It addresses contracting officer responsibilities and advance agreements on the treatment of developmental assistance costs. The DFARS also provides a clause pertaining to reporting of progress under the program.

B. Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis has been prepared and forwarded to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited from small entities concerning the proposed DFARS revisions, such comments should be submitted separately. Please cite DAR Case 90-810 in correspondence.

C. Paperwork Reduction Act

The information collection requirements in this rule do not require the approval of OMB under 44 U.S.C. 3501 because they are based on a voluntary pilot program, which will affect a limited number of contractors. The pilot program is based on section 831 of Public Law 101-510. In accordance with section 831 of Public Law 101-510, the results of the pilot program will be evaluated by the General Accounting Office and furnished to the Committees on Armed Services and Small Business of the Senate and House of Representatives.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Nancy L. Ladd,

Colonel, USAF, Director, Defense Acquisition Regulation System.

Therefore, it is proposed that 48 CFR parts 219 and 252 be amended as follows:

1. The authority citation for 48 CFR parts 219 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35 and FAR subpart 1.3.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. A new subpart 219.71 is added to read as follows:

Subpart 219.71—Mentor-Protege Pilot Program

Sec.
219.7100 Scope.
219.7101 Policy.
219.7102 Definitions.
219.7103 General.
219.7104 Procedures.
219.7104-1 General.
219.7104-2 Contracting officer responsibilities.
219.7105 Advance agreements on the treatment of developmental assistance costs.
219.7105-1 General policy.
219.7105-2 Advance agreements addressing reimbursement.
219.7105-3 Advance agreements addressing credit.
219.7105-4 Advance agreements addressing both reimbursement and credit.
219.7106 Contract clause.

Subpart 219.71—Mentor-Protege Pilot Program

219.71—Mentor-Protege Pilot Program.

219.7100 Scope.

This subpart implements the Mentor-Protege Pilot Program (the program), established under section 831 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, as amended.

219.7101 Policy.

DoD policy for implementation of the program is contained in a policy statement entitled, "DoD Mentor-Protege Pilot Program". This statement addresses the program purpose, duration, eligibility requirements, the approval process, the mentor-protege agreement and advance agreements on the treatment of developmental assistance costs. A copy of the statement may be obtained from the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition, OUSD(A) SADBU, (202) 697-1688.

219.7102 Definitions.

Emerging SDB concern means a small disadvantage business whose size is not greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

Minority institution of higher education means, for the purpose of this subpart, an institution of higher education with a student body that

reflects the composition specified 20 U.S.C. 1058(b) (3), (4) and (5).

219.7103 General.

The Program in general consists of:

(a) Mentor firms, which are large businesses, performing under DoD contracts with subcontracting plans, that voluntarily apply and are approved by the DoD.

(b) Protege firms, which are small disadvantaged business (SDB) firms, eligible for receipt of Federal contracts and selected by the mentor firm.

(c) Mentor-protege agreements which establish a developmental assistance program for a protege (See DoD Policy).

(d) Incentives, which are provided to mentors by the DoD including:

(1) Reimbursement for developmental assistance costs;

(2) Credit against SDB subcontracting goals established under DoD contracts; or

(3) A combination of reimbursement and credit.

(e) Advance agreements, which outline the treatment of costs and/or credit associated with performance under the mentor-protege agreement.

219.7104 Procedures.

219.7104-1 General.

(a) In accordance with the DoD policy statement, a prospective mentor shall submit to the OUSD(A) SADBU:

(1) A request for approval as a mentor and a signed mentor-protege agreement;

(2) The proposed costs of the developmental assistance to be provided to the protege(s) under the program; and

(3) An advance agreement proposal.

(b) OUSD(A) SADBU shall have responsibility for:

(1) Approving contractors as mentor firms, in consultation with contracting officers;

(2) Approving mentor-protege agreements and funding levels;

(3) Forwarding to contracting officer(s) the approved mentor-protege agreement, the approved funding level, and the advance agreement proposal.

219.7104-2 Contracting officer responsibilities.

Upon receipt of approved mentor-protege documents from the OUSD (A) SADBU, the contracting officer shall:

(a) Negotiate the advance agreement or delegate this authority to the Administrative Contracting Officer (ACO).

(b) Modify applicable contract(s) to incorporate the advance agreement and establish a contract line item to incorporate the mentor-protege agreement and provide for reimbursement of cost and/or credit towards SDB subcontracting goals under DoD contracts. The line item must be separately priced or indicate zero costs. It may not indicate "Not Separately Priced". This authority may be delegated to the ACO.

(c) Provide a copy of the negotiated advance agreement on treatment of developmental assistance costs to the OUSD(A) SADBU.

219.7105 Advance agreements on the treatment of developmental assistance costs.

219.7105-1 General policy.

(a) Advance agreements are negotiated between the contracting officer and the mentor firm, but see FAR 31.109(e). These agreements must address: Reimbursement of costs for developmental assistance, credit against SDB subcontracting goals established under DoD contracts, or a combination of reimbursement and credit.

(b) Credit only (toward small disadvantaged business subcontracting goals) for developmental assistance may be provided under any type of DoD contract. Reimbursement for developmental assistance costs is limited to cost type DoD contracts, excluding time and material contracts.

(c) All advance agreements under the program must be in accordance with FAR 31.109 and include:

(1) A statement that all developmental assistance costs under the program must be separate contract line item charges. Charges that are not reimbursed may be eligible for credit.

(2) A statement that assistance costs relative to loans and equity ownership shall not be reimbursed or credited and that only the following costs incurred by mentor firms are eligible for reimbursement or credit:

(i) Assistance to the protege by mentor firm personnel in—

(A) General business management including organizational management;

(B) Financial management;

(C) Personnel management;

(D) Marketing;

(E) Business development and overall business planning;

(F) Engineering and technical matters such as production, inventory control, and quality assurance;

(G) Any other assistance designed to develop the capabilities of the protege firm.

(ii) Assistance to the protege firm provided by—

(a) Small business development centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);

(B) Entities providing technical assistance pursuant to chapter 142 of title 10 U.S.C.;

(C) Historically Black colleges and universities (HBCUs) as defined by 34 CFR 608.2; and

(D) Minority institutions of higher education.

(3) A statement indicating that subcontracts with the protege firm(s) may contain provisions for progress payments up to 100 percent or advance payments, and an identification of subcontracts including such provisions (if available).

(4) A base line to measure whether the mentor firm's overall dollar and number of awards to SDBs have increased or decreased.

219.7105-2 Advance agreements addressing reimbursement.

Advance agreements addressing reimbursement, in addition to the information in 219.7105-1, require:

(a) An identification of prime contract(s) that will include funding for developmental assistance costs. These costs must be related directly to the specific forms of assistance identified in the mentor-protege agreement and must not be a duplication of normal costs associated with the administration of subcontracts.

(b) A statement that no profit will be paid on developmental assistance costs under the program.

219.7105-3 Advance agreements addressing credit.

Advance agreements addressing only credit against SDB subcontracting goals established under DoD contracts, in addition to the information in 219.7105-1, require:

(a) An identification of prime contract(s) that will be credited for developmental assistance costs, in lieu of reimbursement. These costs must be related directly to the specific forms of assistance identified in the mentor-protege agreement.

(b) An explanation of how costs not reimbursed would be credited against SDB goals, and how such credit will be apportioned among contracts. Contractors participating in the Comprehensive Small Business Subcontracting Plan Test Program should state how costs not reimbursed will be credited toward the negotiated corporate wide goal.

(c) Identification of the amount of credit a mentor firm may receive for such developmental assistance costs not reimbursed which is—

(1) Four times the total amount of such costs attributable to assistance provided

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by small business development centers, HBCUs, MIs and entities providing technical assistance.

(2) Three times the total amount of such costs attributable to assistance furnished by the mentor's employees.

(3) Two times the total amount of other such costs.

(d) A statement that the mentor firm may receive credit toward SDB subcontract goals for awards to former protege firms (except those with mentor-protege agreements terminated for cause), even if the former protege exceeds small business size standards, provided the size of such a concern is not more than two times the appropriate size standard.

(e) A statement that costs for which reimbursement has not been provided may be recognized as credit only under DoD subcontracting plans or any division-wide or company-wide DoD subcontracting plan, with no expectation of future reimbursement by the Government.

(f) A statement that the OUSD(A) SADBU may adjust the amount of allowable credit in accordance with the DoD policy statement.

(g) A statement that incentives for exceeding an SDB subcontracting goal shall be paid only if an SDB subcontracting goal was exceeded as a result of actual subcontract awards to SDBs, and not as a result of developmental assistance credit.

219.7105-4 Advance agreements addressing both reimbursement and credit.

Advance agreements seeking both reimbursement and credit against SDB subcontracting goals shall address the requirements of 219.7105-1 through 219.7105-3.

219.7106 Contract clause.

Use the clause at 252.219-XXXX, DoD Mentor Protege Pilot Program, in contracts with mentor firms when an advance agreement has been incorporated under 219.7104-2(b).

PART 252—[AMENDED]

3. Section at 252.219-XXXX is added to read as follows:

252.219-XXXX DoD Mentor Protege Pilot Program.

As prescribed in 219.7106, use the following clause:

DoD Mentor Protege Pilot Program

Mentor firms shall report on the progress made under active mentor-protege agreements, by semi-annually including with their SF 295, Summary Subcontract Report—

(a) An attachment which—

(1) Identifies the number of advance agreements and mentor-protege agreements in effect; and

(2) Summarizes the progress in achieving the developmental objectives under each mentor-protege agreement, including whether the objective of the program set forth in the DoD policy statement were met, any problem areas encountered, and any other information, as appropriate.

(b) A copy of the SF 294, Subcontracting Report for Individual Contracts, for each contract under the Mentor Protege Pilot Program, with a statement in block 18 identifying—

(1) The amount of dollars credited to the SDB subcontract goal, established under DoD contracts, as a result of developmental assistance provided to protege firms; and

(2) The number/dollar value of subcontracts awarded to protege firms.

(End of clause)

[FR Doc. 91-10321 Filed 5-1-91; 8:45 am]
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federal register

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Part VI

The President

Proclamation 6284—Older Americans Month, 1991

Proclamation 6285—National Physical Fitness and Sports Month, 1991

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Title 3—

The President

Proclamation 6284 of April 30, 1991

Older Americans Month, 1991

By the President of the United States of America

A Proclamation

People are our Nation's most precious asset, and America's senior citizens are no exception. These men and women constitute a wellspring of acquired wisdom and skill, and it is fitting that our celebration of Older Americans Month, 1991, should have as its theme, "Older Americans: A Great Natural Resource."

Older Americans have charted the course of our Nation throughout most of this century. While many youngsters view the Great Depression and World War II as the stuff of schoolbooks, it was today's senior citizens who experienced these and other defining moments in American history and, through them, helped to shape the world in which we live. With faith, courage, and countless sacrifices on both the home front and the field of battle, these Americans joined our Nation's allies in defeating the tyrannical forces that threatened to destroy an entire continent during World War II. The industry and creativity of today's older Americans later gave America the technological edge needed to put the first man on the moon. Indeed, their ingenuity and hard work have enabled the United States to make many great and historic strides in business, agriculture, and health care.

Today older Americans continue to merit our respect and gratitude. Whether they quietly enrich the lives of their families and friends or engage in paid employment and voluntary community service, senior citizens are an invaluable source of knowledge and experience. Today many older Americans are remaining in the work force well past the traditional retirement age, and more and more seniors are pursuing second careers. In fact, older Americans are as much a part of our future as they are a part of our past: the contributions that they continue to make in this century will benefit our families and our Nation well into the next.

Over the years older Americans have taught us many powerful lessons about duty, faithfulness, and honor. With those lessons in mind, let us renew our determination to help our senior citizens live with the independence, comfort, and security that they need and deserve. We can begin by reaffirming our support for those public agencies, private organizations, and individuals who work, each and every day of the year, to dispel myths about aging; to protect older Americans from discrimination and exploitation; and to provide long-term health care and other services for seniors with special needs. Their efforts should be a compelling reminder of the respect and gratitude that each of us owes to our society's eldest members.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of May 1991 as Older Americans Month. I call upon the people of the United States to observe this month with appropriate ceremonies and activities in honor of our Nation's senior citizens.

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IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-10808
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Presidential Documents

Proclamation 6285 of April 30, 1991

National Physical Fitness and Sports Month, 1991

By the President of the United States of America

A Proclamation

Anyone who has ever taken part in sports or other athletic activities knows that doing so is not only fun but also a wonderful way to achieve greater physical fitness. Today there are exciting sports and athletic opportunities to match virtually every personal interest and ability, from running, racquetball, fencing, and skiing to swimming, soccer, aerobic dance, and golf—just to name a few.

Whether they engage in periodic workouts or in favorite individual and team sports—or perhaps all three—Americans who exercise regularly enjoy a host of benefits. In addition to enhancing one's physical strength and agility, athletic activity helps to alleviate many of the effects of stress and aging. People who participate in sports and other forms of exercise also enjoy the profound sense of satisfaction and self-confidence that come from meeting a challenge. In a special way team sports enable participants to develop valuable communication skills, as well as a rewarding sense of cooperation and fellowship.

As more and more Americans discover these and other advantages of regular athletic activity, our communities and Nation benefit as well. Because physically fit persons generally have more energy and stamina, greater athletic activity among our population contributes to greater productivity and performance in the workplace. Because an active, healthy life-style can help to prevent coronary disease and other health problems, increased public participation in sports can also help to keep medical costs down.

Recognizing the many benefits of physical fitness to individuals and to the Nation, I have joined with Arnold Schwarzenegger, Chairman of the President's Council on Physical Fitness and Sports, in declaring the 1990s the "Fitness Decade." Just as it is never too early to nurture good habits in one's children, it is never too late for adults to reap the rewards of regular exercise; hence, we are calling on Americans of all ages to commit to get fit. Everyone can benefit from regular exercise, and everyone can find a sport or other physical activity that meets his or her abilities and interests. This month is a splendid opportunity for all those who have not yet done so to take the first step toward healthier, fuller lives through participation in sports and other forms of exercise.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of May 1991 as National Physical Fitness and Sports Month. I urge all Federal, State, and local government agencies and the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

VOL 56 ISS 85 MY 2 1991 UMI

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-10804
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Editorial note: For the President's remarks on physical fitness, see the *Weekly Compilation of Presidential Documents* (vol. 27, no. 18).

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federal register

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Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and New York City see announcement on the inside cover of this issue.

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WHO: The Office of the Federal Register.

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Rules and Regulations

Federal Register
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Friday, May 3, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430, 451, and 540

RIN 3206-AE19 and 3206-AE20

Performance Awards; Time Off From Duty as an Incentive Award

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the new provisions for performance awards and time off from duty as an incentive award contained in the Federal Employees Pay Comparability Act of 1990 (FEPCA). These regulations will enable agencies to use these new authorities as soon as their internal programs are amended.

DATES: The amendments made by sections 201 and 207 of FEPCA and the interim regulations set forth below are effective on May 4, 1991; comments must be received by July 2, 1991.

ADDRESSES: Send or deliver written comments to Allan Heuerman, Assistant Director for Employee and Labor Relations, Personnel Systems and Oversight Group, Office of Personnel Management, Room 7412, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: For parts 430 and 540: Barbara W. Colchao, (202) 606-2628 or (FTS) 296-2628; for part 451: Richard Brengel, (202) 606-2828 or (FTS) 296-2828.

SUPPLEMENTARY INFORMATION: The Federal Employees Pay Comparability Act of 1990 (FEPCA), Public Law 101-509, provides Federal agencies new authority to pay cash awards based on performance and to grant employees time off from duty as an incentive award. Following are the key changes made by the interim regulations:

Performance Appraisal

The heading and general information section of 5 CFR part 430, subpart B, are revised to show that there are miscellaneous employees other than those in the General Schedule and prevailing rate systems who are covered by subchapter I of chapter 43 of title 5, United States Code.

A new provision is added to the performance appraisal regulations to require that temporary employees excluded from the statutory performance appraisal provisions under 5 U.S.C. 4301(2), as amended by Public Law 101-510 (November 5, 1990), must sign a written agreement and receive notification of the consequences of not receiving a performance appraisal. (See §§ 430.202 and 430.403.)

The paragraph excluding Schedule C employees from the provisions of 5 CFR part 432 is revised to conform with the list of excluded employees found in part 432. A similar change has been made regarding employees covered by the Performance Management and Recognition System (PMRS). (See §§ 430.204(j) and 430.405(j).)

Performance Awards

While performance-based cash awards have been authorized by regulation and reflect the authorities contained in chapters 43 and 45 of title 5, United States Code, FEPCA now provides a more specific statutory authority for a cash award based on a rating of record. The interim regulations implement the new provision at 5 U.S.C. 4505a that authorizes the payment of cash awards based on an employee's rating of record. These regulations are contained in the section that was formerly reserved for funding and payment of performance awards (§ 430.504). Also, language is added to 5 CFR part 451 that cross-references the regulations governing performance awards.

Time Off as an Incentive Award

The interim regulations also implement the new provision at 5 U.S.C. 4502(e) that authorizes the granting of time off from duty as an incentive award. Such time off, hereafter referred to as a "time off award," may be granted, without loss of pay or charge to leave, in recognition of superior accomplishment or other personal effort that contributes to the quality, efficiency, or economy of Government operations.

Under the interim regulations, each agency is authorized to determine the types of employee contributions that may be recognized by means of a time off award. The regulations require that agencies establish specific criteria that define the nature of the high quality achievement required to merit a time off award. Examples of employee achievement that might be considered for such an award include—

- Making a high quality contribution involving a difficult or important project or assignment;
- Displaying special initiative and skill in completing an assignment or project before the deadline;
- Using initiative and creativity in making improvements in a product, activity, program, or service; and
- Ensuring the mission of the unit is accomplished during a difficult period by successfully completing additional work or a project assignment while maintaining the employee's own workload.

A time off award may be granted to any employee who meets the definition at 5 U.S.C. 2105, including PMRS employees (who are otherwise excluded from 5 U.S.C. 4501). An employee may be granted a maximum of 40 hours of time off from duty as an incentive award for any single contribution. Time off granted under this authority must be scheduled and used within 120 days after the award is made, and the total amount of time off an employee may be granted under the authority during any one leave year is 80 hours. A time off award does not convert to cash under any circumstances.

The regulations on time off awards are found in 5 CFR part 451, subpart C, which formerly was reserved for regulations on productivity gainsharing programs. OPM has determined that gainsharing regulations are not needed and has issued Federal Personnel Manual guidance instead. (See FPM Letter 451-6, April 16, 1988.) Also, the reference in 5 CFR 430.103(b)(5) to the gainsharing regulations is deleted. A provision is added to 5 CFR part 451 stating that the existing prohibition on mandatory superior accomplishment awards does not prohibit

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implementation of agency productivity gainsharing plans. (See § 451.104(j).)

Performance Management and Recognition System

The definition of "rating of record" at 5 CFR 540.102 is revised to conform with the definition at § 430.404.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists to make these regulations effective in less than 30 days. The notice is being waived and the regulations are being made effective in less than 30 days in order to make these provisions effective within 180 days after the enactment of Public Law 101-509, as required by section 305 of FEPCA.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities, because the changes will affect only Federal employees and agencies.

List of Subjects

5 CFR 430

Administrative practice and procedure, reporting requirements, Government employees.

5 CFR 451

Decorations, medals, and awards; Government employees.

5 CFR 450

Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amended title 5, Code of Federal Regulations, as follows:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for part 430 continues to read as follows:

Authority: 5 U.S.C. chapters 43, 45, 53, and 54.

2. In § 430.103, paragraph (b) is amended by removing paragraph (b)(5) and redesignating paragraphs (b)(6) and (b)(7) as paragraphs (b)(5) and (b)(6), respectively.

3. The heading of subpart B is revised to read as follows:

Subpart B—Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees

4. Section 430.201(a) is revised to read as follows:

§ 430.201 General.

(a) *Statutory authority.* Chapter 43 of title 5, United States Code (5 U.S.C. 4301–4305), provides for the establishment of agency performance appraisal systems and for the appraisal of employees. This subpart contains regulations that the Office of Personnel Management (OPM) has prescribed to implement and supplement the provisions for performance appraisal systems for General Schedule, prevailing rate, and certain other employees covered by 5 U.S.C. 4301–4305.

* * * * *

5. In § 430.202, paragraphs (a), (b), and (c) are revised to read as follows:

§ 430.202 Coverage.

(a) *Employees and agencies covered by statute.* (1) Section 4301(1) of title 5, United States Code, defines agencies covered by this subpart.

(2) Section 4301(2) of title 5, United States Code, defines employees covered by statute by this subpart. Besides General Schedule and prevailing rate employees, coverage includes, but is not limited to, senior-level and scientific and professional employees paid under 5 U.S.C. 5376. However, employees covered by the PMRS are not covered by this subpart.

(b) *Statutory exclusions.* (1) This subpart does not apply to agencies or employees excluded by 5 U.S.C. 4301 (1) and (2), the United States Postal Service, the Postal Rate Commission, or employees covered by the PMRS consistent with 5 U.S.C. 4302a and 5 U.S.C. 5402.

(2) For temporary employees excluded under the authority of 5 U.S.C. 4301(2)(H)—

(i) The agreement to serve without a performance evaluation must be in writing; and

(ii) The employee must be advised of the consequences of such an agreement (i.e., that the employee will not be considered for reappointment or for an increase in pay when either determination is based in whole or in part on a rating or record under part 430 of this title or an equivalent system).

(c) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). The following is excluded: Positions for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

* * * * *

6. In § 430.204, the introductory language of paragraph (j) is revised to read as follows:

§ 430.204 Agency performance appraisal systems.

* * * * *

(j) Except with respect to employees listed at § 432.102(f) of this chapter—

* * * * *

7. In § 430.403, paragraphs (b) and (c) are redesignated as (c) and (d), respectively, a new paragraph (b) is added, and redesignated paragraph (c) is revised to read as follows:

§ 430.403 Coverage.

* * * * *

(b) *Statutory exclusions.* (1) This subpart does not apply to agencies or employees excluded by 5 U.S.C. 4301 (1) and (2), the United States Postal Service, or the Postal Rate Commission.

(2) For temporary employees excluded under the authority of 5 U.S.C. 4301(2)(H)—

(i) The agreement to serve without a performance evaluation must be in writing; and

(ii) The employees must be advised of the consequences of such an agreement (i.e., that the employees will not be considered for reappointment or for an increase in pay when either determination is based in whole or in part on a rating of record under part 430 of this title or an equivalent system).

(c) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). The following is excluded: Positions for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

* * * * *

§ 430.405 [Amended]

8. In § 430.405, the introductory language of paragraph (j) is revised to read as follows:

* * * * *

(j) Except with respect to employees listed at § 432.102(f) of this chapter—

* * * * *

9. In § 430.503, paragraph (c) is removed and paragraphs (d) through (f) are redesignated (c) through (e) respectively.

10. The heading of § 430.504 is revised and the text of the section is added to read as follows:

§ 430.504 Performance award payment.

(a) An award paid under this subpart may not exceed 10 percent of the employee's annual rate of basic pay, except that the agency head may determine that exceptional performance by the employee justifies an award exceeding 10 percent and may authorize an award of up to 20 percent of the employee's annual rate of basic pay, subject to the limitations at § 430.506(b)(3) of this part.

(b) Performance awards are paid as a lump sum and are not considered part of an employee's rate of basic pay.

(c) For the purpose of computing the percentage of basic pay under paragraph (a) of this section, the rate of basic pay used shall be determined without taking into account any locality-based comparability payment under 5 U.S.C. 5304 or interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

(d) The decision to grant a performance award, including the amount of such award, shall be reviewed and approved by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(e) The failure to pay an award under this subpart, or the amount of such an award, may not be appealed.

11. In § 430.506, paragraph (b) is amended by removing paragraph (b)(4) and by redesignating paragraph (b)(5) as paragraph (b)(4).

PART 451—INCENTIVE AWARDS

12. The authority citation for part 451 is revised to read as follows:

Authority: 5 U.S.C. 4501–4507 and 5407.

13. Section 451.101 is amended by adding a new paragraph (d) to read as follows:

§ 451.101 Authority and coverage.

* * * * *

(d) For the regulatory requirements for granting performance awards based on an employee's rating of record, refer to—

(1) Part 430, subpart E, of this chapter for General Schedule, prevailing rate, and certain other employees covered by 5 U.S.C. 4301–4305;

(2) Section 540.109 of this chapter for PMRS employees; and

(3) Section 534.403 of this chapter for Senior Executive Service (SES) employees.

14. Section 451.104 is amended by revising paragraph (j) to read as follows:

§ 451.104 Policy.

* * * * *

(j) The decision to grant a superior accomplishment award, including the amount of such award, shall be reviewed and approved by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency. This restriction does not prohibit implementation of agency productivity gainsharing plans, which are based on predetermined productivity standards, measurement systems, awards formulas, and payout schedules.

15. A new subpart C is added to read as follows:

Subpart C—Time Off as an Incentive Award

Sec.
451.301 Authority and coverage.
451.302 Purpose.
451.303 Definition.
451.304 Policy.
451.305 Granting time off awards.
451.306 Scheduling and use of time off awards.
451.307 Documenting time off awards.

Subpart C—Time Off as an Incentive Award

§ 451.301 Authority and coverage.

(a) Under 5 U.S.C. 4502, agencies may grant employees time off from duty as an incentive award.

(b) This subpart applies to—

(1) Employees as defined in 5 U.S.C. 2105; and

(2) Agencies as defined in 5 U.S.C. 4501.

§ 451.302 Purpose.

Time off awards are intended to increase Federal employees' productivity and creativity by rewarding their contributions to the quality, efficiency, or economy of Government operations.

§ 451.303 Definition.

In this subpart, *time off award* means an excused absence granted to an employee without charge to leave or loss of pay.

§ 451.304 Policy.

(a) An agency shall develop written criteria similar to those used to grant other incentive awards before granting a time off award.

(b) In determining the amount of time off to be granted under this subpart, an agency shall take into consideration the benefits realized by the Government from the employee's contribution.

§ 451.305 Granting time off awards.

(a) An employee may be granted up to 80 hours of time off under this subpart during a leave year (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's biweekly scheduled tour of duty). Time off may be granted in amounts of up to 40 hours for a single contribution (or, in the case of a part-time employee or an employee with an uncommon tour of duty, one-half the maximum amount of time that could be granted during the leave year).

(b) Except as provided in paragraph (c) of this section, each determination to grant a time off award, including the amount of such award, shall be reviewed and approved by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(c) To encourage the use of a time off award for timely recognition of an employee's contribution, an agency may authorize supervisors to grant such awards without further review or approval for periods not to exceed 1 workday.

(d) A time off award granted under this subpart shall be supported by appropriate written justification, which shall be provided to OPM upon request.

§ 451.306 Scheduling and use of time off awards.

(a) A time off award shall be scheduled and used within 120 days after the date the award is made.

(b) The use of time off granted under this subpart shall be subject to approval by the employee's immediate supervisor.

(c) When physical incapacitation for duty occurs during a period of time off granted under this subpart, an agency may grant sick leave for the period of incapacitation.

(d) A time off award shall not convert to a cash payment under any circumstances.

§ 451.307 Documenting time off awards.

(a) The amount of time off granted under this subpart shall be documented on a Standard Form 50 to be retained in the employee's Official Personnel Folder.

(b) Due weight shall be given to time off awards granted under this subpart when rating and ranking an employee for promotion, as provided in 5 U.S.C. 3362.

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PART 540—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

16. The authority citation for part 540 continues to read as follows:

Authority: 5 U.S.C. chapters 43 and 54.

§ 540.102 [Amended]

17. In § 540.102, the definition of "rating of record" is amended by replacing the comma after "circumstances" with a period and removing the remainder of the sentence.

[FR Doc. 91-10549 Filed 5-3-91; 8:45 am]
BILLING CODE 6325-01-M

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5 CFR Part 530

Pay Rates and Systems (General); Special Salary Rate Schedules for Recruitment and Retention

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement provisions of the Federal Employees Pay Comparability Act of 1990 (FEPCA) related to the Government's special pay authority. Section 5305 of title 5, United States Code, as amended by FEPCA, substantially increases the Government's flexibility to authorize special salary rates, as compared with the statutory authority formerly contained in 5 U.S.C. 5303. These flexibilities became effective on February 3, 1911, under Executive Order 12748 of February 1, 1991. The interim regulations (1) Allow OPM to approve special salary rates when the Government is experiencing, or is likely to experience, recruitment or retention problems caused by higher private sector pay (the only reason permitted under the prior provision of law), as well as by a number of other circumstances; and (2) allow those rates to be established at higher levels than previously permitted.

DATES: The interim regulations set forth below are effective on May 4, 1991. Comments must be received on or before July 2, 1991.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Pay and Performance Management, room 7H28, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: William M. Gualtieri, (202) 606-1413 or (FTS) 266-1413.

SUPPLEMENTARY INFORMATION: The Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509, November 5, 1990) gives the Government permanent authority to establish special salary rates under a wider variety of circumstances than was previously allowed. The following are the significantly expanded flexibilities permitted under FEPCA:

- Special salary rates may be established based on actual or anticipated staffing problems for any civilian position under any pay system established by or under Federal statute within the executive branch.
- Special salary rates may be established when the staffing problem is caused by higher non-Federal pay rates, remote location or area, undesirable working conditions, or any other circumstances. The interim regulations also allow for consideration of higher Federal pay rates established under independent statutory authority.
- The highest rate at which the minimum rate of a special rate schedule may be set has been increased to 30 percent above the maximum rate of a grade. Previously, the limit was the maximum rate of a grade.
- The GS-10, step 1, limitation on the computation of overtime pay now includes all special rates of pay established for that grade. The interim regulations set forth the criteria OPM will use for establishing a GS-10 special salary rate for overtime pay computation and other related purposes when one would otherwise not have been established to alleviate staffing problems.

The criteria OPM considers when establishing or adjusting special salary rates have been expanded to take into account (1) The new pay flexibilities created by FEPCA, including recruitment and relocation bonuses and retention allowances; and (2) long-standing pay flexibilities, such as hazard pay and remote worksite allowances.

In addition, the requirement to change the existing special salary rate regulations to conform with FEPCA has given OPM an opportunity to update other provisions of the existing regulations. The updated provisions are as follows:

- Agency certification levels for approving special salary rate requests have been changed. Individuals designated to act on behalf of the agency head may now approve special salary rate requests covering fewer than 1,000 positions or costing less than $4 million. This change means that involvement of an agency head will be required only in the highest impact special rate requests and should thereby reduce the time needed to process such requests.
- The rules concerning the effect of a statutory pay increase on special salary rate schedules have been changed. The interim regulations require that special salary rate schedules be automatically aligned with the rates on new statutory pay schedules (or with "constructed" rates above the maximum rate of the grade). The previous regulation, which provided that changes in statutory pay schedules would have no automatic effect on special salary rate schedules, was found to be inappropriate by the United States Court of Appeals for the Federal Circuit (*National Treasury Employees Union* v. *Horner*, 869 F.2d 571 (Fed. Cir. 1989)).

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The special salary rate provisions of FEPCA must be made effective no sooner than 90 days and not later than 180 days after enactment. The notice is being waived and the regulation is being made effective immediately to enable OPM to implement the expanded special rate authority established by FEPCA at the earliest practicable date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 530

Government employees, Wages, Administrative practice and procedure.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for 5 CFR part 530 is revised to read as follows:

Authority: 5 U.S.C. 5305; E.O. 12748, 56 FR 4521.

2. Section 530.301 is revised to read as follows:

§ 530.301 Applicability.

This subpart applies to agencies having positions paid under—

(a) A statutory pay system; or

(b) Any other pay system established by or under Federal statute for civilian positions within the executive branch.

3. Section 530.302 is revised to read as follows:

§ 530.302 Authority.

In lieu of the pay schedules identified in § 530.301 of this part, the Office of Personnel Management (OPM) may establish, and agencies shall pay, special salary rates under section 5305 of title 5, United States Code, Executive Order 12748, and this subpart.

4. Section 530.303 is revised to read as follows:

§ 530.303 Establishing and adjusting special salary rate schedules.

(a) OPM may increase the minimum rates otherwise payable under the pay schedules identified in § 530.301 of this part in one or more areas or locations to the extent it considers necessary to overcome existing or likely significant handicaps in the recruitment and retention of well-qualified personnel when these handicaps are due to any of the circumstances described in paragraph (b) of this section. When a minimum rate is increased under this authority, increases may also be made in one or more of the remaining rates of the affected grade or level. In no event may an increased minimum rate exceed the maximum rate prescribed by law for the grade or level by more than 30 percent, and no rate may be established under this section in excess of the rate of basic pay payable for level V of the Executive Schedule.

(b) The circumstances referred to in paragraph (a) of this section are the following:

(1) Rates of pay offered by non-Federal employers are significantly higher than those payable by the Government within the area, location, occupational group, or other class of positions under the pay system involved;

(2) The remoteness of the area or location involved;

(3) The undesirability of the working conditions or the nature of the work involved (including exposure to toxic substances or other occupational hazards); or

(4) Any other circumstances OPM considers appropriate.

(c) An agency may propose to OPM tnat special salary rates be established or adjusted. The agency initiating such a request and all other agencies wishing to be included are responsible for submitting complete supporting data, as specified by OPM, including, after consulting with OPM, a survey of prevailing non-Federal pay rates in the relevant labor market.

(d) All requests to establish or adjust special salary rate schedules must be transmitted directly to OPM's central office by the agency's headquarters. Each request must include a certification by the head of the agency that special salary rates are necessary to ensure staffing adequate to the accomplishment of the agency's mission and that funds are available to cover the increased expenditures for salaries and benefits that would result from the approval of the request. If the special salary rate request covers fewer than 1,000 employees or would increase annual salary costs by less than $4 million, this certification may be provided by a headquarters official designated to act on behalf of the head of the agency.

(e) In establishing or adjusting special salary rate schedules, OPM shall consider—

(1) The number of existing or likely vacant positions and the length of time they have been vacant, including evidence to support the likelihood that a recruiting problem will develop if one does not already exist;

(2) The number of employees who have or are likely to quit for comparable positions, including the number quitting for higher paying non-Federal positions and evidence to support the likelihood that employees will quit;

(3) The number of vacancies the agency tried to fill, compared with the number of hires and offers made;

(4) The nature of the existing labor market;

(5) The degree to which the agency has considered and used other pay flexibilities available to the agency to alleviate its staffing problems, including above-minimum entry rates, recruitment and relocation bonuses, and retention allowances;

(6) The degree to which the agency has considered relevant non-pay solutions to the staffing problems, such as conducting an aggressive recruiting program, using appropriate appointment authorities, redesigning jobs, establishing training programs, and improving working conditions;

(7) The impact of the staffing problem on the agency's mission; and

(8) The level of non-Federal rates paid for comparable positions. (Data on non-Federal salary rates may be supplemented, if appropriate, by data on Federal salary rates for comparable positions established under independent statutory authority.)

(f) In determining at which level to set special salary rates, OPM shall consider—

(1) The level of rates it believes necessary to recruit or retain an adequate number of well-qualified employees;

(2) The dollar costs that will be incurred if special salary rate schedules are not authorized; and

(3) The level of pay for comparable positions.

(g) No one factor or combination of factors specified in paragraph (e) or (f) of this section requires special salary rate schedules to be established at or adjusted to any given level. Each agency request to establish or adjust special salary rate schedules shall be judged on its own merits based on the extent to which it meets these criteria.

(h) For newly established or existing special salary rate authorizations, OPM may establish GS-10 special salary rates for the purpose of computing overtime pay and annual premium pay for standby duty and for the purpose of applying the provisions of 5 U.S.C. 5543 governing compensatory time off. In determining the minimum special rate for grade GS-10 to be established for these purposes, OPM shall consider the following factors, as appropriate in each situation:

(1) The need to provide for a reasonable progression in basic pay rates from lower grade levels to higher grade levels; and

(2) The need to avoid pay alignment problems that would result from applying the two-step promotion rule in 5 U.S.C. 5334(b).

5. Section 530.304 is revised to read as follows:

§ 530.304 Annual review.

(a) OPM shall review special salary rate schedules annually to determine whether there is a continuing need for them.

(b) In conducting the annual review, OPM shall designate lead agencies for assistance in coordinating the collection of relevant data. All agencies are responsible for submitting complete supporting data upon request to OPM or the lead agency, as appropriate.

(c) When special rates are adjusted as a result of the annual review, an employee's pay shall be fixed in the same manner as provided in § 530.307(b) of this part.

6. In § 530.306, paragraph (c)(2) is amended by removing "§ 531.203(d)(3)" and replacing it with "§ 531.203(d)(2)(vi)," and paragraph (e)

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is amended by removing the first occurrence of the word "at" and replacing it with the word "within."

7. A new § 530.307 is added to read as follows:

§ 530.307 Effect of an adjustment in scheduled rates of pay.

(a) At the time of an adjustment in the scheduled rates of pay for one or more grades or levels for which special rates have been authorized under 5 U.S.C. 5305, special rates shall be terminated or adjusted as follows:

(1) If the minimum rate of the special rate range is less than the new minimum scheduled rate of the grade or level concerned, special rates shall be terminated.

(2) If the minimum rate of the special rate range is greater than the new minimum scheduled rate of the grade or level concerned, but less than the new maximum scheduled rate of that grade or level, the minimum rate of the special rate range shall be increased to the lowest scheduled rate of that grade or level that exceeds the former minimum rate of the special rate range, and corresponding increases shall be made in the remaining special rates of that grade or level.

(3) If the minimum rate of the special rate range is greater than the new maximum scheduled rate of the grade or level concerned, the new special rates shall be determined by—

(i) Constructing new step rates above the maximum scheduled rate of the grade or level concerned in relationship to the increment(s) between the scheduled rates of that grade or level;

(ii) Increasing the minimum rate of the special rate range to the lowest constructed rate that exceeds the former minimum rate of the special rate range; and

(iii) Making corresponding increases in the remaining special rates of that grade or level.

(b) Except as provided in paragraphs (c) and (d) of this section, when an employee was receiving a special rate immediately before the effective date of an adjustment in scheduled rates of pay, the employee shall receive on that effective date the rate of basic pay for the numerical rank in the new special rate range established under paragraph (a) of this section for the employee's grade or level that corresponds to the numerical rank of the special rate the employee was receiving immediately before that effective date.

(c) If a special rate range is terminated under paragraph (a) of this section, an employee who was receiving a special rate immediately before the effective date of an adjustment in scheduled rates of pay shall receive on that effective date the numerical rank in the new statutory pay schedule for the employee's grade or level that corresponds to the numerical rank of the special rate the employee was receiving immediately before that effective date.

(d) In the case of an employee in a position under the Performance Management and Recognition System who was receiving a special pay rate immediately before the effective date of an adjustment in scheduled rates of pay, the employee shall receive on that effective date a rate of basic pay determined under § 540.106 of this chapter.

[FR Doc. 91-10650 Filed 5-2-91; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Parts 531 and 575

RIN 3206-AE35

Pay Under the General Schedule; Supervisory Differentials

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement supervisory differentials under section 211 of the Federal Employees Pay Comparability Act of 1990 (FEPCA). Section 211 of FEPCA also provides for the repeal of 5 U.S.C. 5333(b) upon the effective date of these regulations. These regulations authorize the payment of a supervisory differential to an employee under the General Schedule who has supervisory responsibility for one or more civilian employees not under the General Schedule who, in the absence of such a differential, would be paid more than the supervisory employee.

DATES: The amendments made by section 211 of FEPCA and the interim regulations set forth below are effective on May 4, 1991. Comments must be received on or before July 2, 1991.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Pay and Performance, U.S. Office of Personnel Management, room 7H28, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Donald J. Winstead, (202) 606-2818 or (FTS) 266-2818.

SUPPLEMENTARY INFORMATION: Section 211 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509) replaced the previous authority, 5 U.S.C. 5333(b), to adjust the pay of a General Schedule employee who supervises one or more prevailing rate employees with a new authority, 5 U.S.C. 5755, to establish supervisory differentials for certain supervisors paid under the General Schedule. The repeal of 5 U.S.C. 5333(b) is effective on the date the supervisory differential becomes effective. No further adjustments may be made under that authority on or after that date.

The two authorities differ in several respects. First, the former authority permitted the adjustment of a supervisor's rate of basic pay, while the new authority permits the payment of a differential that is not considered part of basic pay. Second, the former authority applied to a General Schedule employee who supervises one or more prevailing rate employees. The new authority applies to a General Schedule employee who supervises one or more civilian employees not covered by the General Schedule. Third, the former authority limited the supervisor's adjusted pay to one of the rates of the supervisor's grade. The new authority does not contain a statutory limit other than that the differential may not cause the supervisor's pay to exceed the pay of the highest paid subordinate by more than 3 percent.

Delegation of authority. The interim regulations delegate authority to agencies to pay a supervisory differential to an employee who meets each of the following criteria: (1) The employee is in a General Schedule position, including a position under the Performance Management and Recognition System; (2) the employee is a supervisor, as defined in 5 U.S.C. 7103(a)(10); and (3) the employee is responsible for providing direct, technical supervision over the work of one or more civilian employees whose positions are not under the General Schedule if one or more of the subordinates would, in the absence of the differential, be paid more than the supervisory employee. However, the interim regulations do not permit the payment of a supervisory differential based on supervising a civilian employee whose rate of basic pay exceeds the maximum rate of basic pay established for grade GS-15 of the General Schedule.

Payment of differential. The interim regulations require that a supervisory differential be paid in the same manner and at the same time as the supervisor's basic pay. That is, the differential is paid at an hourly rate for each hour during which the supervisor receives basic pay. The authority to pay a supervisory differential is discretionary, and the interim regulations permit an agency to reduce or terminate the differential at any time the agency determines it is appropriate to do so.

Amount of differential. The interim regulations provide that the amount of a supervisory differential may not cause the continuing pay of the supervisor to exceed the continuing pay of the highest paid subordinate by more than 3 percent. Continuing pay is defined in the interim regulations as the aggregate of all continuing payments and annual premium pay received by an employee at any one time. "Continuing payments" consist of basic pay and other forms of pay that are paid in the same manner and at the same time as basic pay—i.e., for periods during which an employee receives basic pay. Examples of "continuing payments" include, but are not limited to, cost-of-living allowances, post differentials, remote worksite allowances, physicians comparability allowances, and retention allowances.

The methods for determining the amount of continuing pay for both the supervisor and subordinate are described in the interim regulations. Because it is not considered part of basic pay, the amount of a supervisory differential, when combined with the supervisor's rate of basic pay, may cause the total to exceed the maximum rate of basic pay of the supervisor's grade.

The interim regulations require that a supervisory differential be terminated whenever the continuing pay of a supervisor (not including the supervisory differential) exceeds that of the highest paid subordinate. In addition, the interim regulations require that a supervisory differential be reduced or terminated, as appropriate, whenever the continuing pay of a supervisor (including the supervisory differential) exceeds that of the highest paid subordinate by more than 3 percent. This may occur, for example, when the supervisor receives an increase in his or her rate of basic pay, such as an annual pay adjustment, a merit increase, a within-grade increase, or a quality step increase. Reduction or termination of a supervisory differential also may be required when a subordinate employee leaves his or her position or is reduced in pay. The interim regulations provide that the effective date of such a reduction or termination in a supervisory differential shall be not later than 30 days after the date on which the continuing pay of the supervisor exceeds the continuing pay of the highest paid subordinate by more than 3 percent. Effecting such changes at the beginning of a pay period would simplify administration by personnel and payroll staffs.

Because of the potential for frequent changes in a supervisor's eligibility for a supervisory differential (based on annual pay adjustments and other predictable changes in basic pay rates for both supervisors and subordinates at different times of the year), agencies are encouraged to authorize supervisory differentials only when there is a significant pay disparity. In addition, the amount of a supervisory differential (computed as a percentage of the supervisor's rate of basic pay or as a dollar amount) should be set so as to minimize the necessity for frequent adjustments because pf predictable changes in basic pay rates.

Basis for comparing continuing pay of supervisors and subordinates. The interim regulations list the components of continuing pay for both supervisors and subordinates that must be included in making a comparison. For supervisors, continuing pay includes basic pay (including retained rates of pay), locality-based comparability payments or interim geographic adjustments, staffing differentials (when authorized by OPM), retention allowances, other "continuing payments" (except night, Sunday, or holiday premium pay and hazardous duty differentials), and premium pay paid on an annual basis. For subordinates, continuing pay includes basic pay (except retained rates of pay and night or environmental differentials), locality-based payments, other "continuing payments" (except Sunday or holiday pay and retention allowances), and premium pay paid on an annual basis. A retained rate of pay is excluded because it is not related to the subordinate's current position. A retention allowance is excluded to remove any incentive for the supervisor to benefit by virtue of obtaining approval of such an allowance for a subordinate.

Documentation requirements. The interim regulations require that each determination to establish or adjust a supervisory differential be made in writing, include the basis for determining the amount of the differential, and contain sufficient information to allow reconstruction of the action.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The supervisory differential authority must be made effective no sooner than 90 days and no later than 180 days after enactment.

The notice is being waived and the regulation is being made effective in less than 30 days to make this new authority effective on the earliest practicable date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Parts 531 and 575

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations, as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5338, and chapter 54; E.O. 12748; subpart A issued under sec. 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), 104 Stat. 1462, and E.O. 12736; subpart B also issued under 5 U.S.C. 5333, 5402, and 7701(b)(2); subpart D also issued under 5 U.S.C. 7701(b)(2); subpart E also issued under 5 U.S.C. 5336.

§§ 531.301 through 531.305 [Removed and Reserved]

2. Subpart C (§§ 531.301-531.305) is removed and reserved.

3. In Subpart D, § 531.407 is amended by revising paragraph (c)(3) to read as follows:

Subpart D—Within-Grade Increases

* * * * *

§ 531.407 Equivalent increase determinations

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(c) * * *

(3) The establishment of higher minimum rates under section 5305 of title 5, United States Code, or an increase in such rates;

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PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

4. The authority citation for part 575 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, 5755; E.O. 12748.

5. A new subpart D is added to read as follows:

Subpart D—Supervisory Differentials

Sec.

575.401 Purpose.
575.402 Delegation of authority.
575.403 Definitions.
575.404 Use of authority.
575.405 Calculation and payment of supervisory differential.
575.406 Adjustment or termination of supervisory differential.
575.407 Records.

Subpart D—Supervisory Differentials

§ 575.401 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5755, which authorizes payment of a supervisory differential to an employee under the General Schedule who has supervisory responsibility for one or more civilian employees not under the General Schedule if one or more of the subordinate civilian employees would, in the absence of such a differential, be paid more than the supervisory employee.

§ 575.402 Delegation of authority.

(a) The head of an agency may pay a supervisory differential to a supervisor who is—

(1) In a General Schedule position paid under 5 U.S.C. 5332, including a position under the Performance Management and Recognition System established under chapter 54 of title 5, United States Code; and

(2) Responsible for providing direct, technical supervision over the work of one or more civilian employees whose positions are not under the General Schedule if one or more of the subordinates would, in the absence of such a differential, be paid more than the supervisor.

(b) A supervisory differential may not be paid on the basis of supervising a civilian employee whose rate of basic pay exceeds the maximum rate of basic pay established for grade GS–15 of the General Schedule (including any applicable locality-based comparability payment under 5 U.S.C. 5304 or interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) and any applicable special rate of pay under 5 U.S.C. 5305 or simila- authority).

§ 575.403 Definitions

In this subpart:

Agency has the meaning given that term in 5 U.S.C. 5102.

Continuing pay means the aggregate of all continuing payments and annual premium pay received by an employee at any one time.

Continuing payment means basic pay and any other form of pay that is paid in the same manner and at the same time as basic pay—i.e., for periods during which an employee receives basic pay.

Employee has the meaning given that term in 5 U.S.C. 5102.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509).

Supervisor has the meaning given that term in 5 U.S.C. 7103(a)(10).

§ 575.404 Use of authority.

(a) Each determination to pay a supervisory differential shall be made in writing under procedures established by each agency.

(b) The procedures established by each agency under paragraph (a) of this section shall provide that—

(1) Each determination to pay a supervisory differential, including the amount of such differential, shall be reviewed and approved by an official of the agency who is at higher level than the official who made the initial decision, unless there is no official at a higher level in the agency; and

(2) In determining whether to use the authority under 5 U.S.C. 5755 and this subpart and in determining the amount of such differential, the relationship in pay among supervisors under the General Schedule in the same organizational component of the agency shall be considered, as well as the relationship in pay between the supervisor and his or her subordinate(s).

(3) Each determination to pay a supervisory differential shall be documented.

§ 575.405 Calculation and payment of supervisory differential.

(a) A supervisory differential shall be calculated as a percentage of the supervisor's rate of basic pay or as a dollar amount and shall be paid in the same manner and at the same time as the supervisor's basic pay—i.e., the differential shall be paid at an hourly rate for each hour during which the supervisor receives basic pay.

(b) The amount of a supervisory differential shall not cause the supervisor's continuing pay, as determined under paragraph (c) of this section, to exceed the continuing pay of the highest paid subordinate not under the General Schedule, as determined under paragraph (d) of this section, by more than 3 percent.

(c) For purposes of comparing the continuing pay of a supervisor whose position is under the General Schedule with the continuing pay of a subordinate whose position is not under the General Schedule, the following payments shall be included in determining the amount of continuing pay received by the supervisor:

(1) Basic pay, including a retained rate of pay under 5 U.S.C. 5363 and part 536 of this chapter or other similar authority:

(2) A locality-based comparability payment under 5 U.S.C. 5304 or interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509);

(3) A staffing differential under section 209 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509);

(4) A retention allowance under 5 U.S.C. 5754;

(5) Any other continuing payment, except night, Sunday, or holiday premium pay or a hazardous duty differential under chapter 55 of title 5, United States Code; and

(6) Premium pay paid on an annual basis under 5 U.S.C. 5545(c).

(d) For purposes of comparing the continuing pay of a supervisor whose position is under the General Schedule with the continuing pay of a subordinate whose position is not under the General Schedule, the following payments shall be included in determining the amount of continuing pay received by the subordinate:

(1) Basic pay, excluding a night or environmental differential under 5 U.S.C. 5343(f) or part 532 of this chapter, respectively, or other similar authority and a retained rate of pay under 5 U.S.C. 5363 and part 536 of this chapter or other similar authority;

(2) A locality-based comparability payment under 5 U.S.C. 5304, an interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), or another locality-based payment under similar authority;

(3) Any other continuing payment, except Sunday or holiday pay or another similar payment under title 5, United States Code, or other similar authority and a retention allowance under 5 U.S.C. 5754 or other similar authority; and

(4) Premium pay paid on an annual basis under an authority similar to 5 U.S.C. 5545(c).

(e) Payment of a supervisory differential is subject to the aggregate limitation on pay under 5 U.S.C. 5307 and subpart B of part 530 of this chapter.

(f) A supervisory differential shall not be considered part of the supervisor's rate of basic pay for any purpose.

§ 575.406 Adjustment or termination of supervisory differential.

(a) An agency may establish procedures that allow for adjusting or terminating a supervisory differential at any time the agency determines it is appropriate to do so.

(b) A supervisory differential shall be terminated when the continuing pay of the supervisor (not including the supervisory differential) exceeds the continuing pay of the highest paid subordinate whose position is not under the General Schedule.

(c) A supervisory differential shall be reduced or terminated, as appropriate, when the continuing pay of the supervisor (including the supervisory differential) exceeds the continuing pay of the highest paid subordinate whose position is not under the General Schedule by more than 3 percent.

(d) The effective date of a reduction or termination of a supervisory differential under paragraph (b) or (c) of this section shall be not later than 30 calendar days after the date on which the event that necessitates the reduction or termination occurs.

(e) Each determination to adjust a supervisory differential shall be made in writing under procedures established by each agency similar to those established under § 575.404 of this part.

(f) The reduction of termination of a supervisory differential may not be appealed. However, the preceding sentence shall not be construed to extinguish or lessen any right or remedy under subchapter II of chapter 12 of title 5, United States Code, or under any of the laws referred to in 5 U.S.C. 2302(d).

§ 575.407 Records.

(a) Each agency shall keep a record of each determination required by §§ 575.404(a) and 575.406(e) of this part. Each record shall contain sufficient information to allow reconstruction of the action, including the basis for determining the amount of the differential and the comparison of continuing pay required by § 575.405(b) of this part.

(b) Each agency shall promptly submit a report of each determination made to establish, adjust, or terminate a supervisory differential as a part of its regular submission to OPM's Central Personnel Data File.

[FR Doc. 91–10551 Filed 5–2–91; 8:45 am]
BILLING CODE 6325–01–M

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5 CFR Parts 532, 550, and 551

RIN 3206–AE29

Pay Administration Under the Fair Labor Standards Act; Overtime Pay Provisions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement section 210 of the Federal Employees Pay Comparability Act of 1990 (FEPCA). The amendments made by section 210 eliminate the requirement to perform overtime computations for employees who are covered by the Fair Labor Standards Act of 1938 (FLSA) under both title 5, United States Code, and the FLSA and provide that, for the purpose of calculating overtime pay under the FLSA, hours in a paid nonwork status shall be deemed to be hours of work. Henceforth, overtime pay for nonexempt employees will be computed and paid only under the FLSA.

DATES: The amendments made by section 210 of FEPCA and the interim regulations set forth below are effective on May 4, 1991. Comments must be received on or before July 2, 1991.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Pay and Performance, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 7H28, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: James R. Weddel, (202) 606–2858 or (FTS) 208–2858.

SUPPLEMENTARY INFORMATION: Section 210 of the Federal Employees Pay Comparability Act of 1990 eliminates the need to calculate and compare an FLSA nonexempt employee's overtime pay entitlement under two laws in order to pay the greater overtime benefit. Instead, employees who are nonexempt under the Fair Labor Standards Act of 1938, as amended, will always receive overtime pay under the FLSA, as provided in part 551 of title 5, Code of Federal Regulations.

Federal employees who are exempt from the FLSA, but covered by the overtime pay provisions of title 5, United States Code, will continue to have their overtime pay benefit calculated and paid under the title 5 provisions, as provided in part 532 (for prevailing rate employees) or part 550 of title 5, Code of Federal Regulations.

The rules for determining hours of work for the purpose of calculating overtime pay will depend upon whether the legal authority for the hours of work determination is found in title 5, United States Code, or in the Fair Labor Standards Act. Specifically, hours of work for FLSA exempt employees will continue to be determined under part 532 or part 550, with no consideration given to the rules for determining hours of work under part 551. The same will be true for determining hours of work in excess of 8 hours in a day for nonexempt employees, even though overtime pay for work in excess of 8 hours in a day will be calculated and paid under part 551. This is true because FEPCA amended sections 5542 and 5544 of title 5, United States Code, not the FLSA. On the other hand, agencies will apply the rules on hours of work under part 532 or 550, as applicable, and part 551 for the purpose of determining the overtime entitlement for work in excess of 40 hours in a week for nonexempt employees. In summary, to determine hours of work for overtime pay entitlement purposes, agencies must apply 5 CFR 410.602, 5 CFR part 532 and 5 U.S.C. 5544, and/or 5 CFR part 550, as appropriate, for each employee; for nonexempt employees only, agencies must also identify any additional hours of work under 5 CFR part 551, but only for the purpose of determining the overtime pay entitlement for hours of work in excess of 40 hours in a week.

The regulations governing pay under prevailing rate systems have been revised to provide that overtime pay for prevailing rate (wage) employees will be paid under either 5 U.S.C. 5544 and part 532 (for FLSA exempt employees) or part 551 (for nonexempt employees). The requirement to provide the greater overtime benefit under title 5, United

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States Code, or the FLSA has been deleted. (See § 532.503(a)(1).)

The regulations on coverage under part 550 have been revised to indicate that, except for determining hours of work, part 550 regulations on overtime pay do not apply to an employee who is subject to the overtime pay provisions of the FLSA, as described by subpart E of part 551 of title 5, Code of Federal Regulations. (See § 550.101.)

A paragraph in part 550 explaining when time in a travel status is considered to be hours of work has been amended to reflect language in 5 U.S.C. 5542, which includes both travel to and from an event that cannot be scheduled or controlled administratively. This change in law occurred prior to FEPCA. (See § 550.112(g)(2).)

A paragraph has been added to both parts 550 and 551 to clarify that, for prevailing rate employees who are confined to their post of duty, hours in a standby or on-call status or while sleeping or eating are not creditable for the purpose of determining hours of work in excess of 8 hours in a day. (See §§ 550.112(i) and 551.501(a)(3).) Note that for the purpose of determining overtime pay under the FLSA for hours of work in excess of 40 hours in a week, the existing rules under part 551 concerning standby duty, on-call status, and sleep time have not been altered.

Regulations on compensatory time off under part 550 have been revised to reflect the authority at 5 U.S.C. 6123 to grant compensatory time off to employees under flexible work schedules under 5 U.S.C. 6122 in lieu of payment for overtime hours, whether or not irregular or occasional in nature. This is a clarifying change and not directly related to the changes made by FEPCA. (See § 550.114.)

Certain provisions of part 550 that should also apply for the purpose of determining overtime pay under the FLSA have been added to part 551 after conforming revisions were made. The sections involved are (1) § 550.111(a)(2) on computing hours of work for overtime pay, which has been added at § 551.401(g); (2) § 550.112(d) on leave without pay, which has been added at § 551.401(c); and (3) § 550.112(h) on call-back overtime work, which has been added at § 551.401(e).

The overtime pay provisions of parts 550 and 551 will each be independent and complete (except for determining hours of work, as discussed above). However, employees covered by the FLSA will continue to be covered by other applicable provisions of 5 U.S.C. 5544 and part 532 or 550 on night pay, pay for holiday work, pay for Sunday work, annual premium pay for standby duty or administratively uncontrollable overtime work, and other provisions.

Language has also been added to both parts 550 and 551 to clarify that if an employee is compensated by payment of annual premium pay for regularly scheduled standby duty or administratively uncontrollable overtime work under 5 U.S.C. 5545, the same hours of work will not also be compensated by overtime pay under part 551 for hours of work in excess of 8 hours in a day. This language has been added so that nonexempt employees will neither lose nor gain overtime pay entitlement to the extent feasible consistent with the goal of simplifying overtime pay administration. (See §§ 550.112(j) and 551.501(a)(1).)

In addition, subpart D of part 551 has been amended to provide that hours in a paid nonwork status (e.g., paid leave, holidays, compensatory time off, or excused absences) are "hours of work" under part 551 for purposes of determining overtime pay. This parallels parts 532 and 550 overtime provisions, under which hours in a paid nonwork status are included as hours of work for the purpose of determining whether an employee has worked in excess of 8 hours in a day or 40 hours in an administrative workweek. In the past, this has also been true under part 551 for determining whether an employee worked in excess of 40 hours in a workweek, except for determining hours of work for an employee who may be entitled to overtime pay based solely on occasional or irregular overtime work. FEPCA eliminates this difference between the overtime pay provisions. (See § 551.401(b).)

The regulations in subpart E of part 551 also have been amended to provide that, for employees covered by the overtime pay provisions of the FLSA, hours of work in excess of 8 hours in a day shall be deemed to be overtime hours. Thus, title 5 and FLSA overtime pay will be earned on the same basis—i.e., for hours of work in excess of 8 in a day or 40 in a week. A list of exceptions to this rule has also been added. For example, an exception to this requirement is made for employees whose work in excess of 8 hours in a day or 40 hours in a week is not "overtime hours," as defined in 5 U.S.C. 6121 (flexible and compressed work schedules). Another exception is made for the special weekly overtime standards established under section 7(k) of the FLSA for employees engaged in fire protection or law enforcement activities. (See § 551.501(a).)

Also, a paragraph has been deleted from subpart E (§ 551.511(b)(2)) so that the "total remuneration" used in determining a nonexempt employee's "hourly regular rate" will always include pay while in a paid nonwork status, consistent with the change made in subpart D to reflect the fact that hours in a paid nonwork status are deemed to be "hours of work" under part 551.

Another paragraph in subpart E has been amended by deleting language that necessitates dual computations of overtime pay under title 5 and the FLSA It should be noted that elimination of the requirement to perform an overtime pay comparison for nonexempt employees does not affect their entitlement to premium pay under title 5, United States Code, including premium pay for Sunday, holiday, and night work and premium pay paid on an annual basis. Premium pay paid on an annual basis continues to be computed under 5 CFR 550.141 through 550.164. (See § 551.513.)

Part 551 has also been revised to reflect the new FEPCA provision that amends section 5543(a)(1) of title 5, United States Code, to provide that on request of an employee, the head of an agency may grant an employee compensatory time off from the employee's scheduled tour of duty instead of payment under title 5 or the FLSA for an equal amount of time spent in irregular or occasional overtime work. This provision does not apply to prevailing rate employees, who are not covered by the definition of "employee" at 5 U.S.C. 5541. The legal authority for compensatory time off previously did not extend to nonexempt employees. Consequently, compensatory time off for nonexempt employees has been permitted only under very limited circumstances. The interim regulations delete language that required that compensatory time off be taken during the same workweek when it is earned and, for a subsequent workweek, when the overtime pay entitlement under title 5 is equal to or greater than under the FLSA. (See § 551.531.)

The rules governing compensatory time off requested by an employee are not the same under both parts 550 and 551. Part 551 now reflects the new authority to grant compensatory time off under FEPCA. Both parts 550 and 551 now reflect the existing authority to grant compensatory time off to employees under flexible work schedules established under 5 U.S.C. 6122. However, there is no legal authority for an agency to require that a nonexempt employee take compensatory time off in lieu of overtime pay under the FLSA. (Such an authority is provided under title 5 when applied to employees whose rate of basic pay is in excess of the maximum rate for GS–10.) The interim regulations provide that an agency may not require that a nonexempt employee be paid for overtime work earned under the FLSA and part 551 with an equivalent amount of compensatory time off.

Language also has been added to the overtime pay, compensatory time off, and standby premium pay provisions of §§ 550.111, 550.113, 550.114, 550.141, and 550.144 to reflect an amendment made by section 101(b)(3)(E) of FEPCA. Under this provision of law, which became effective on the first day of the first pay period beginning on or after February 14, 1991, references to "GS–10" in 5 U.S.C. 5542(a), 5543, and 5545(c)(1) now include "any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law." The practical effect of this amendment was explained in a notice of effective dates published in the Federal Register on February 14, 1991 (56 FR 6212).

In addition, language has been added to the overtime pay computation provisions of § 550.113(b) to reflect an amendment made by section 410(a) of FEPCA. Under this provision of law, which became effective on November 5, 1990, the rate of overtime pay for law enforcement officers whose rate of basic pay exceeds the rate for GS–10, step 1, is limited to one and one-half times the rate of basic pay for GS–10, step 1 (including any interim geographic adjustment or locality-based comparability payment that may be payable after January 1, 1991, and any special salary rate), or the employee's rate of basic pay (including any interim geographic adjustment or locality-based comparability payment and any special salary rate), whichever is greater.

Finally, language has been added to the definitions of "rate of basic pay" in §§ 550.103(j) and 550.703 for premium pay and severance pay purposes, respectively, to include any applicable interim geographic adjustment under section 302 of FEPCA or locality-based comparability payment under 5 U.S.C. 5304. As indicated in the Federal Register notice of January 9, 1991 (56 FR 771), the effective date of the interim regulations on interim geographic adjustments was the first day of the first pay period beginning on or after January 1, 1991.

OPM will issue additional guidance to agencies on FLSA pay administration through the Federal Personnel Manual in the near future.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The premium pay amendments of section 210 of FEPCA must be made effective no sooner than 90 days and no later than 180 days after enactment. The notice is being waived and the regulation is being made effective in less than 30 days to enable all agencies to implement the premium pay amendments by May 4, 1991.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects

5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 550

Administrative practice and procedure, Civil defense, Government employees, Wages.

5 CFR Part 551

Administrative practice and procedure, Fair Labor Standards Act, Government employees, Manpower training programs, Travel, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending parts 532, 550, and 551 of title 5 of the Code of Federal Regulations as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 89–502.

2. In § 532.503, paragraph (a)(1) is revised to read as follows:

§ 532.503 Overtime pay.

(a)(1) Employees who are exempt from the overtime pay provisions of the Fair Labor Standards Act of 1938, as amended, shall be paid overtime pay in accordance with 5 U.S.C. 5544 and this section. Employees who are nonexempt shall be paid overtime pay in accordance with part 551 of this chapter.

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

3. The authority citation for subpart A of part 550 continues to read as follows:

Authority: 5 U.S.C. 5548 and 6101(c).

4. In § 550.101, paragraph (a)(1) is revised, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 550.101 Coverage and exemptions.

(a) *Employees to whom this subpart applies.* (1) This subpart applies to each employee in or under an Executive agency, as defined in 5 U.S.C. 105, except those named in paragraphs (b) and (c) of this section.

* * * * *

(c) *Employees to whom §§ 550.111, 550.113, and 550.114 of this subpart do not apply.* Except for the purpose of determining hours of work in excess of 8 hours in a day, §§ 550.111, 550.113, and 550.114 of this subpart do not apply to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938 and part 551 of this chapter.

* * * * *

5. In § 550.103, paragraph (j) is revised to read as follows:

§ 550.103 Definitions.

* * * * *

(j) *Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee, including any applicable interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) or locality-based comparability payment under 5 U.S.C. 5304, before any deductions and exclusive of additional pay of any other kind.

* * * * *

6. In § 550.111, paragraph (d)(2) is revised to read as follows:

§ 550.111 Authorization of overtime pay.

* * * * *

(d) * * *

(2) Performed by an employee, when the employee's basic pay exceeds the minimum rate for GS–10 (including any applicable interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) or locality-

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based comparability payment under 5 U.S.C. 5304 and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law) or when the employee is engaged in professional or technical engineering or scientific activities. For purposes of this section and section 5542(a) of title 5, United States Code, an employee is engaged in professional or technical engineering or scientific activities when he or she is assigned to perform the duties of a professional or support technician position in the physical, mathematical, natural, medical, or social sciences or engineering or architecture.

* * * * *

7. In § 550.112, paragraph (g)(2) is revised, and paragraphs (i) and (j) are added to read as follows:

§ 550.112 Computation of overtime work.

* * * * *

(g) * * *

(2) The travel—

(i) Involves the performance of actual work while traveling;

(ii) Is incident to travel that involves the performance of work while traveling;

(iii) Is carried out under such arduous and unusual conditions that the travel is inseparable from work; or

(iv) Results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of the employee to his or her official-duty station.

* * * * *

(i) For an employee covered by 5 U.S.C. 5544, hours in a standby or on-call status or while sleeping or eating shall not be credited for the purpose of determining hours of work in excess of 8 hours in a day.

(j) Periods of duty that are compensated by annual premium pay under 5 U.S.C. 5545(c) (1) or (2) shall not be credited for the purpose of determining hours of work in excess of 8 hours in a day.

8. In § 550.113, paragraphs (a) and (b) are revised to read as follows:

§ 550.113 Computation of overtime pay.

(a) For each employee whose rate of basic pay does not exceed the minimum rate for GS–10 (including any applicable interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) or locality-based comparability payment under 5 U.S.C. 5304 and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law), the overtime hourly rate is 1½ times his or her hourly rate of basic pay.

(b) For each employee whose rate of basic pay exceeds the minimum rate for GS–10 (as determined under paragraph (a) of this section), the overtime hourly rate is 1½ times the hourly rate of basic pay at the minimum rate for GS–10 (as determined under paragraph (a) of this section), except as provided in 5 U.S.C. 5542(a) (3) and (4).

* * * * *

9. In § 550.114, the heading and paragraph (a) are revised; paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively; a new paragraph (b) is added; and the newly redesignated paragraph (c) is revised to read as follows:

§ 550.114 Compensatory time off.

(a) At the request of an employee, as defined in 5 U.S.C. 5541(2), the head of an agency may grant compensatory time off from an employee's tour of duty instead of payment under § 550.113 of this part for an equal amount of irregular or occasional overtime work.

(b) At the request of an employee, as defined in 5 U.S.C. 2105, the head of an agency may grant compensatory time off from an employee's basic work requirement under a flexible work schedule under 5 U.S.C. 6122 instead of payment under § 550.113 of this part for an equal amount of overtime work, whether or not irregular or occasional in nature.

(c) The head of an agency may provide that an employee whose rate of basic pay exceeds the maximum rate for GS–10 (including any applicable interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) or locality-based comparability payment under 5 U.S.C. 5304 and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law) shall be compensated for irregular or occasional overtime work with an equivalent amount of compensatory time off from the employee's tour of duty instead of payment under § 550.113 of this part.

* * * * *

10. § 550.141 is revised to read as follows:

§ 550.141 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of the premium pay prescribed in this subpart for regularly scheduled overtime, night, holiday, and Sunday work, to an employee in a position requiring him or her regularly to remain at, or within the confines of, his or her station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work. Premium pay under this section is determined as an appropriate percentage, not in excess of 25 percent, of that part of the employee's rate of basic pay which does not exceed the minimum rate of basic pay for GS–10 (including any applicable interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) or locality-based comparability payment under 5 U.S.C. 5304 and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law).

11. In § 550.144, the introductory text to paragraph (a) is revised to read as follows:

§ 550.144 Rates of premium pay payable under § 550.141.

(a) An agency may pay the premium pay on an annual basis referred to in § 550.141 to an employee who meets the requirements of that section, at one of the following percentages of that part of the employee's rate of basic pay which does not exceed the minimum rate of basic pay for GS–10 (including any applicable interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) or locality-based comparability payment under 5 U.S.C. 5304 and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law):

12. The authority of subpart G of part 550 continues to read:

Authority: 5 U.S.C. 5596; E.O. 11257.

* * * * *

12a. In § 550.703, the definition of "rate of basic pay" is revised to read as follows:

§ 550.703 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, including, as applicable, annual premium pay for standby duty under 5 U.S.C. 5545(c)(1), night differential for prevailing rate employees under 5 U.S.C. 5343(f), and any interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) or locality-based comparability payment under 5 U.S.C. 5304, but not including additional pay of any kind.

* * * * *

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

13. The authority citation for part 551 is revised to read as follows:

Authority: Sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Pub. L. 93–259, 88 Stat. 55 (29 U.S.C. 204f); Sec. 210 of the Federal Employees Pay Comparability Act of 1990, Pub. L. 101–509, 104 Stat. 1460.

14. In § 551.401, paragraphs (b) and (c) are revised, and paragraphs (e) through (h) are added to read as follows:

§ 551.401 Basic principles.

* * * * *

(b) Hours in a paid nonwork status (e.g., paid leave, holidays, compensatory time off, or excused absences) are "hours of work" under this part.

(c) Hours in an unpaid nonwork status (e.g., leave without pay, furlough, absence without leave) are not "hours of work" under this part.

* * * * *

(e) Irregular or occasional overtime work performed by an employee on a day on which work was not scheduled for that employee or for which the employee is required to return to his or her place of employment is deemed at least 2 hours in duration for the purpose of determining whether the employee may be entitled to overtime pay under this part, either in money or compensatory time off.

(f) For the purpose of determining hours of work in excess of 8 hours in a day under this part, agencies shall credit hours of work under § 410.602 of this chapter, part 532 of this chapter and 5 U.S.C. 5544, and part 550 of this chapter, as applicable.

(g) For the purpose of determining hours of work in excess of 40 hours in a week or in excess of another applicable overtime work standard under section 7(k) of the Fair Labor Standards Act, agencies shall credit hours of work under § 410.602 of this chapter, part 532 of this chapter and 5 U.S.C. 5544, and part 550 of this chapter, as applicable, that will not be compensated as hours of work in excess of 8 hours in a day, as well as any additional hours of work under this part.

(h) For the purpose of determining overtime pay for work in excess of 40 hours in a workweek under this part, time spent in a travel status is hours of work as provided in § 551.422 of this part and § 550.112(g) of this chapter or 5 U.S.C. 5544, as applicable.

15. In § 551.501, paragraph (a) is revised, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 551.501 Overtime pay.

(a) An agency shall compensate an employee who is not exempt under subpart B of this part for all hours of work in excess of 8 in a day or 40 in a workweek at a rate equal to one and one-half times the employee's hourly regular rate of pay, except that an employee shall not receive overtime compensation under this part—

(1) On the basis of periods of duty in excess of 8 hours in a day when the employee receives compensation for that duty under 5 U.S.C. 5545(c) (1) or (2);

(2) On the basis of hours of work in excess of 8 hours in a day that are not overtime hours of work under § 410.602 of this chapter, part 532 of this chapter and 5 U.S.C. 5544, or part 550 of this chapter;

(3) On the basis of hours of work in excess of 8 hours in a day for an employee covered by 5 U.S.C. 5544 for any hours in a standby or on-call status or while sleeping or eating;

(4) On the basis of hours of work in excess of 40 hours in a workweek for an employee engaged in fire protection or law enforcement activities;

(5) For hours of work that are not "overtime hours," as defined in 5 U.S.C. 6121, for employees under flexible or compressed work schedules;

(6) For hours of work compensated by compensatory time off under § 551.531 of this part; and

(7) For fractional hours of work, except as provided in § 551.521 of this part.

* * * * *

(c) In this subpart, "irregular or occasional overtime work" is overtime work that is not scheduled in advance of the employee's workweek.

* * * * *

§ 551.511 [Amended]

16. In section 551.511, paragraph (b)(2) is removed, and paragraphs (b)(3) through (b)(8) are redesignated as paragraphs (b)(2) through (b)(7), respectively.

17. Section 551.513 is revised to read as follows:

§ 551.513 Entitlement to other forms of pay.

Overtime pay under this part shall be paid in addition to all pay to which the employee is entitled under title 5, United States Code, or any other authority.

18. Section 551.531 is revised to read as follows:

§ 551.531 Compensatory time off.

(a) At the request of an employee, as defined in 5 U.S.C. 5541(2), the head of an agency may grant compensatory time off from an employee's tour of duty instead of payment under § 551.501 of this part for an equal amount of irregular or occasional overtime work.

(b) At the request of an employee, as defined in 5 U.S.C. 2105, the head of an agency may grant compensatory time off from an employee's basic work requirement under a flexible work schedule under 5 U.S.C. 6122 instead of payment under § 551.501 of this part for an equal amount of overtime work, whether or not irregular or occasional in nature.

(c) An agency may not require that an employee be compensated for overtime work under this subpart with an equivalent amount of compensatory time off from the employee's tour of duty.

(d) The head of an agency may fix time limits for an employee to request and take compensatory time off under this section. If compensatory time off is not requested or taken within the established time limits, the employee must be paid for overtime work at the overtime rate in effect for the work period in which it was earned under this subpart.

[FR Doc. 91–10552 Filed 5–2–91; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 550

RIN 3206–AE31

Pay Administration (General); Hazard Pay Differentials

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations on the hazard pay differential program that is modified by section 203 of the Federal Employees Pay Comparability Act of 1990 (FEPCA). The interim regulations delete the restriction that hazardous duty must be "irregular or intermittent" for entitlement to a hazard pay differential. In addition, provisions are established for requesting a waiver of the rule that prohibits payment of a hazard pay differential to employees whose hazardous duty has been taken into account in the classification of their position.

DATES: The amendments made by section 203 of FEPCA and the interim regulations set forth below are effective on May 4, 1991. Comments must be received by July 2, 1991.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Pay and Performance, Personnel Systems and Oversight Group, U.S. Office of Personnel

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Management, room 7H28, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Phyllis Foley (202) 606-2848 or (FTS) 266-2848.

SUPPLEMENTARY INFORMATION: Section 203 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101-509, November 5, 1990) modified section 5545(d) of title 5, United States Code, which contains the legal basis for the payment of a differential for duty involving unusual physical hardship or hazard. FEPCA changed the law in two ways:

(1) The restriction that hazardous duty must be "irregular or intermittent" for entitlement to a hazard pay differential is deleted.

(2) The Office of Personnel Management is given authority to establish regulations that would allow a waiver of the rule prohibiting payment of a hazard pay differential to employees whose hazardous duty has been taken into account in the classification of their position.

The interim regulations delete all references to "irregular or intermittent" duty as a requirement for entitlement to a hazard pay differential. In addition, rules are established governing requests for a waiver of the provision that prohibits payment of a hazard pay differential to employees whose hazardous duty has been taken into account in the classification of their position. Since cost estimate information must be provided for waiver requests, a similar provision is added to the existing documentation requirements for amendments to appendix A. This change will provide OPM with additional information that will be useful in evaluating such requests.

Deletion of the "irregular or intermittent" duty requirement brings OPM regulations into conformance with the law. However, it is important to note that the law still prohibits payment of the hazard pay differential when the hazardous duty has been taken into consideration in the classification of the position, unless a waiver is granted. The interim regulations further clarify this prohibition by providing that hazard pay differential is not payable in such a situation whether or not the hazardous duty is grade controlling. The waiver authority is designed to address unusual circumstances and atypical situations in which major inequities are identified and cannot be addressed using other authorities.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days to make these changes effective within 180 days after the enactment of Public Law 101-509, as required by section 305 of FEPCA.

Waiver of Notice of Proposed Rulemaking

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they would affect only Federal employees and Federal agencies.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR part 550 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart I—Pay for Duty Involving Physical Hardship or Hazard

1. The authority citation for subpart I of part 550 continues to read as follows:

Authority: 5 U.S.C. 5545(d) and 5548(b).

2. In subpart I, §§ 550.901 through 550.907 are revised to read as follows:

§ 550.901 Purpose.

This subpart prescribes the regulations required by sections 5545(d) and 5548(b) of title 5, United States Code, for the payment of differentials for duty involving unusual physical hardship or hazard to employees.

§ 550.902 Definitions.

In this subpart: *Agency* has the meaning given that term in 5 U.S.C. 5102(a)(1).

Duty involving physical hardship means duty that may not in itself be hazardous, but causes extreme physical discomfort or distress and is not adequately alleviated by protective or mechanical devices, such as duty involving exposure to extreme temperatures for a long period of time, arduous physical exertion, or exposure to fumes, dust, or noise that causes nausea, skin, eye, ear, or nose irritation.

Employee has the meaning given that term in 5 U.S.C. 5102(a)(2).

Hazardous duty means duty performed under circumstances in which an accident could result in serious injury or death, such as duty performed on a high structure where protective facilities are not used or on an open structure where adverse conditions such as darkness, lightning, steady rain, or high wind velocity exist.

Hazard pay differential means additional pay for the performance of hazardous duty or duty involving physical hardship.

§ 550.903 Establishment of hazard pay differentials.

(a) A schedule of hazard pay differentials, the hazardous duties or duties involving physical hardship for which they are payable, and the period during which they are payable is set out as appendix A to this subpart and incorporated in and made a part of this section.

(b) Amendments to appendix A of this subpart may be made by OPM on its own motion or at the request of an agency. An agency may recommend the rate of hazard pay differential to be established and shall submit with its request for an amendment of the appendix information about the hazardous duty or duty involving physical hardship showing—

(1) The nature of the duty;

(2) The degree to which the employee is exposed to hazard or physical hardship;

(3) The length of time during which the duty will continue to exist;

(4) The degree to which control may be exercised over the physical hardship or hazard; and

(5) The estimated annual cost to the agency if the request is approved.

§ 550.904 Authorization of hazard pay differential.

(a) An agency shall pay the hazard pay differential listed in appendix A of this subpart to an employee who is assigned to and performs any duty specified in the appendix. However, a hazard pay differential may not be paid to an employee when the hazardous duty or physical hardship has been taken into account in the classification of his or her position, without regard to whether the hazardous duty or physical hardship is grade controlling, unless a waiver has been approved by OPM.

(b) A waiver may be approved by OPM at the request of an agency. An agency shall submit with its request information showing—

(1) The specific hazardous duty or duty involving physical hardship involved;

(2) The organizational component, position (title, series, and grade), and number of employees to be covered;

(3) The impact of the hazardous duty or physical hardship on the classification of the position;

(4) The justification for the waiver; and

(5) The estimated annual cost to the agency if the waiver is approved.

(c) For the purpose of this section, the phrase "has been taken into account in the classification of his or her position" means that the duty constitutes an element used in establishing the grade of the position.

§ 550.905 Payment of hazard pay differential.

When an employee performs duty for which hazard pay differential is authorized, the agency shall pay the hazard pay differential for the hours in a pay status on the day (a calendar day or a 24-hour period, when designated by the agency) on which the duty is performed. Hours in a pay status for work performed during a continuous period extending over 2 days shall be considered to have been performed on the day on which the work began, and the allowable differential shall be charged to that day.

§ 550.906 Termination of hazard pay differential.

An agency shall discontinue payment of hazard pay differential to an employee when—

(a) One or more of the conditions requisite for such payment ceases to exist;

(b) Adequate safety precautions have reduced the element of hazard to a negligible level; or

(c) Protective or mechanical devices have adequately alleviated physical discomfort or distress.

§ 550.907 Relationship to additional pay payable under other statutes.

Hazard pay differential is in addition to any additional pay or allowances payable under other statutes. It shall not be considered part of the employee's rate of basic pay in computing additional pay or allowances payable under other statutes.

3. The heading for appendix A to subpart I is revised to read as follows:

Appendix A—Schedule of Pay Differentials Authorized for Hazardous Duty Under Subpart I

4. In the table titled "Hazard Pay Differential, of Part 550 Pay Administration (General)" under Appendix A to subpart I, the heading to column 1 that reads "Irregular or intermittent duty" is revised to read "Duty".

[FR Doc. 91-10553 Filed 5-2-91; 8:45 am]

BILLING CODE 6325-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 150

Recognition of Agreement State Licenses; Well-Logging, Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; Correction.

SUMMARY: This document makes a minor correction to the NRC's regulations concerning the recognition of Agreement State licensees. This action is necessary to reinstate a cross reference that was inadvertently omitted, and to remove a cross reference that was inadvertently retained in a subsequent amendment to this regulation.

EFFECTIVE DATE: July 14, 1987.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301-492-7758.

SUPPLEMENTARY INFORMATION: On March 17, 1987, the Nuclear Regulatory Commission published in the **Federal Register** (52 FR 8241) a final rule which established 10 CFR part 39—Licenses and Radiation Safety Requirements for Well-Logging. This final rule contained a listing of conforming amendments to 10 CFR chapter I including an amendment to § 150.20(b). The amendment to § 150.20(b) in the March 17, 1987 final rule removed an obsolete cross reference to §§ 70.60 and included cross references to part 39. This final rule also made conforming amendments to § 150.20(b). In the December 31, 1987 amendments to § 150.20(b), the conforming amendments made on March 17, 1987, were inadvertently omitted. This document is necessary to restore the appropriate cross references to part 39.

List of Subjects for Part 150

Criminal penalties, Hazardous materials, Transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

Therefore, 10 CFR 150.20 is amended as follows:

1. The authority citation for part 150 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 150.20 [Amended]

2. In § 150.20, paragraph (b) introductory text is amended by removing, "§§ 70.60 to 70.62, inclusive" and adding "70.61, 70.62," after 70.51 to 70.56, inclusive; and by adding "§§ 39.15 and 39.31 through 39.77 inclusive of part 39" after "and subpart B of part 34" and before "of this chapter."

Dated at Bethesda, Maryland, this 30th day of April, 1991.

For the Nuclear Regulatory Commission.

Dennis H. Grimsley,

Director, Division of Freedom of Information and Publication Services, Office of Administration.

[FR Doc. 91-10935 Filed 5-2-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM90-53]

Maximum Lawful Price and Inflation Adjustments Under the Natural Gas Policy Act

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule; order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(c)(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under title I of the Natural Gas Policy Act (NGPA) for the months of May, June, July, 1991. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: May 1, 1991.

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FOR FURTHER INFORMATION CONTACT: Garry L. Penix, (202) 208-0022.

Publication of Prescribed Maximum Lawful Prices Under the Natural Gas Policy Act of 1978

Issued April 29, 1991.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(c)(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of May, June, July, 1991, are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to May, 1991, are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Kevin P. Madden,

Director, Office of Pipeline and Producer Regulation.

1. The authority citation for part 271 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w; Department of Energy Organization Act, 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432.

§ 271.10 [Amended]

2. Section 271.101(a) is amended by adding the maximum lawful prices for May, June, July 1991, in Tables I and II.

TABLE I.—NATURAL GAS CEILING PRICES

[Other than NGPA Sections 104 and 106(a)]

Subpart of part 271	NGPA section	Category of gas	Maximum lawful price per MMBtu for deliveries in		
			May 1991	June 1991	July 1991
B	102	New Natural Gas, Certain OCS Gas [1]	$2.171	$2.219	$2.267
C	103(b)(1)	New Onshore Production Wells [2]	3.717	3.734	3.751
E	105(b)(3)	Intrastate Existing Contracts	5.819	5.860	5.901
F	106(b)1(B)	Alternative Maximum Lawful Price for Certain Intrastate Rollover Gas [3]	2.126	2.136	2.146
G	107(c)(5)	Gas Produced from Tight Formations [4]	7.434	7.468	7.502
H	108	Stripper Gas	6.610	6.661	6.713
I	109	Not Otherwise Covered	3.076	3.090	3.104

[1] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) was deregulated. (See part 272 of the Commission's regulations.)

[2] Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new onshore production well under section 103 was deregulated. (see part 272 of the Commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 108(b)(2) is discontinued.

[3] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See part 272 of the Commission's regulations.)

[4] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in subpart C of part 271. The incentive ceiling price does not apply to certain gas after May 12, 1990, as a result of Commission order No. 519-A. (See § 271.703 of the Commission's regulations.)

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(a) (SUBPART D, PART 271)

Category of natural gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries in		
	May 1991	June 1991	July 1991
Post-1974 gas: [5] All producers	$3.076	$3.090	$3.104
1973-1974 Biennium gas:			
Small producer	2.593	2.605	2.617
Large producer	1.990	1.999	2.008
Interstate rollover gas: All producers	1.140	1.145	1.150
Replacement contract gas or recompletion gas:			
Small producer	1.482	1.489	1.476
Large producer	1.116	1.121	1.126
Flowing gas:			
Small producer	.737	.740	.743
Large producer	.622	.625	.628
Certain Permian Basin gas:			
Small producer	.570	.574	.578
Large producer	.770	.774	.778
Certain Rocky Mountain gas:			
Small producer	.570	.574	.578
Large producer	.737	.740	.743
Certain Appalachian Basin gas:			
North subarea contracts dated after 10-7-69	.703	.706	.709
Other contracts	.651	.654	.657
Minimum rate gas: [5] All producers	.361	.363	.366

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

[2] This price may also be applicable to other categories of gas (see §§ 271.402 and 271.602).

§ 271.102 [Amended]

3. Section 271.102(c) is amended by adding the inflation adjustment for the months of May, June, July, 1991 in Table III.

TABLE III.—INFLATION ADJUSTMENT

Month of delivery	Factor by which price in preceding month is multiplied.
1991:	
May	1.00463
June	1.00463
July	1.00463

[FR Doc. 91-10461 Filed 5-2-91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 1367]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended; Numerical Controls and Priority Dates

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: This final rule implements section 155 of (Pub. L. 101-649) which provides that certain Lebanese preference applicants for whom visa numbers would be available within fiscal years 1991 and 1992 shall have such numbers made available as early as possible in the respective fiscal year. A notice of proposed rulemaking was published on this subject on January 30, 1991. One comment was received and the proposed rule will be adopted without change.

EFFECTIVE DATE: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Department of State, Washington, DC 20522-0113, (202) 663-1184.

SUPPLEMENTARY INFORMATION: During the comment period, which ended on March 1, 1991, the Department received only one comment. The commenter supported the proposed rule and also urged the Department to take other administrative steps, not requiring the promulgation of regulations, to expedite the processing of the visa applications of qualifying aliens. The Department wishes to assure the commenter, and the public generally, that consular officers are making every effort, within the limits of existing staffing constraints and general workload demands, to expedite such applications. The Department does not believe that it is possible to give the kind of pre-emptive attention to those applications which the commenter apparently had in mind.

The commenter, and the public generally, may find it of interest that, as a part of the effort to expedite the processing of applications by qualifying aliens, applications by such aliens physically present in the United States are being accepted for processing by the United States Consulate General at Ciudad Juarez, Mexico. Applications by qualifying aliens outside the United States are being accepted for processing by visa issuing offices upon the request of the alien concerned.

Accordingly, except for the authority citation, the Notice of Proposed Rule No. 1328, at 56 FR 3427, is adopted as proposed.

This rule is not considered to be a major rule for purposes of Executive Order 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 22 CFR Part 42

Immigrants, Lebanese applicants, Visas.

PART 42—[AMENDED]

1. The authority citation for part 42 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; Sec. 155, 104 Stat. 5007, 8 U.S.C. 1153 note.

2. Section 42.54 is revised to read as follows:

§ 42.54 Order of consideration.

(a) *General.* Consular officers shall request applicants to take the steps necessary to meet the requirements of INA 222(b) in order to apply formally for a visa as follows:

(1) In the chronological order of the priority dates of all applicants within each of the immigrant classifications specified in INA 203(a);

(2) In the order specified in INA 203(b) with regard to all applicants chargeable to the same foreign state or dependent area as specified in INA 202(a) and 202(c); and

(3) In the chronological order of the priority dates of all applicants within the special immigrant classifications specified in INA 101(a)(27)(E), (F), or (G).

(b) *Beneficiaries of section 155 of Public Law 101-649.* Notwithstanding (a) above, for fiscal years 1991 and 1992:

(1) The Department shall notify consular officers of the latest priority date, based on a reasonable estimate, for which visa numbers will probably be available worldwide under INA 203(a)(2) and (5) (in FY-91) and INA 203(a)(2) and (4) (in FY-92);

(2) Immediately after receipt of the Department's projected fiscal year ultimate priority date, if they have not previously done so, consular officers shall ensure that all natives of Lebanon who are beneficiaries of petitions conferring such status, approved no later than November 29, 1990, are notified promptly of the requirements the applicants must meet under INA 222(b) to apply formally for a visa. Such notifications sent to applicants not physically present in Lebanon may require, if necessary, additional information to enable the consular officer to determine whether or not the applicant is firmly resettled (as defined in 8 CFR 207.1(b)) in a country other than Lebanon;

(3) Upon a determination that the applicant is not firmly resettled in a country outside Lebanon, and that the applicant is documentarily qualified as provided in § 42.55(b), the consular officer shall so report any such preference Lebanese applicant and the Department shall promptly allocate a visa number for the use of such applicant.

Dated: April 17, 1991

James Ward,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 91-10477 Filed 5-2-91; 8:45 am]

BILLING CODE 4710-06-M

22 CFR Part 43

[Public Notice 1368]

Visas: Documentation of Immigrants

ACTION: Final rule.

SUMMARY: This rule promulgates in final regulations which were published in the Federal Register as a Notice of Proposed Rulemaking on January 30, 1991. The rule implements the provisions of section 133 of Public Law 101-649, which authorizes the issuance during fiscal year 1991 of immigrant visas, without numerical limitation, to certain aliens who had been notified of their selection in the NP-5 program established under section 314 of Public Law 99-603. After analysis of the comments received, the Department is publishing the final

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regulations with certain changes described in detail below.

EFFECTIVE DATE: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations and Advisory Assistance, Visa Office, Department of State, Washington, DC 20522-0113; (202) 663-1184.

SUPPLEMENTARY INFORMATION: On January 30, 1991 a notice of proposed rulemaking was published in the Federal Register at 56 FR 3429. During the comment period the Department received six comments. All six commenters challenged the proposed regulations as narrowing in an unwarranted manner the intended scope of section 133.

Discussion of Comments

Section 43.6(a)(1)

Particular emphasis was given to proposed § 43.6(a)(1). That section was derived from, and an attempt to interpret, section 133(2)(A) which reads "are qualified for the issuance of such visa but for (A) the numerical and fiscal year limitations on the issuance of such visas,". In formulating the challenged interpretation, the Department considered a number of factors.

First, roughly 135,000 aliens were notified of their selection under the NP-5 program prior to May 1, 1990 of whom 40,000 were issued visas by the end of the program on September 30, 1990, leaving 95,000 potential beneficiaries of section 133. Second, on October 2, 1990, during debate on the floor of the House of Representatives on the amendment which became section 133, its proponent engaged in considerable debate with two colleagues over the question of how many aliens would benefit from this provision. The proponent asserted repeatedly that the number would be around 1,000, but in any event not more than roughly 1,200 to 1,300. Finally, the quoted language necessarily must have some meaning and must have been intended to limit the beneficiary class in some way.

The Department considered whether there was an interpretation of the quoted language which would limit the beneficiary class to roughly the size asserted by its proponent. There did not appear to be any interpretation justified either by the rules of statutory construction or by the rules of English grammar and usage which would produce that result.

The Department then considered whether there was an interpretation which would limit the beneficiary class to fewer than the 95,000 potential total. The interpretation proposed in the challenged section would limit the total to about 15,000 aliens, a number substantially in excess of that cited by the section's proponent, but at least closer to 1,000 than 95,000. The Department proposed it for that reason and because it gave some meaning to the portion of section 132 quoted above, rather than none whatsoever.

Several commenters asserted that the intent was to include in the beneficiary class aliens who received notifications in the later stages of the program and were deterred from completing the necessary administrative processing by information from the Visa Office concerning visa availability during the last five to six months of the program. That may indeed be the case. Some of the statements made by the section's proponent during floor debate on October 2 suggest that it is. The difficulty is that there is no way of defining that class in a manner which is susceptible of rational or equitable implementation.

An alien to whom such a notification was sent in 1987, 1988, or 1989 can also claim that by the summer of 1990 he or she had decided to complete the process but was deterred by the information about visa availability. That claim is just as plausible or implausible as a similar claim made by an alien to whom the notification was sent in early 1990.

Notwithstanding the above considerations, the Department has concluded that the commenters are correct in asserting that the language of section 133 will not, on its face, support the interpretation which was proposed.

Applicability of section 212(a)(19)

Two commenters also commented upon the provisions relating to a waiver of ineligibility under section 212(a)(19). One commenter stated merely that the Department's provisions and explanatory discussion presumed that INS would apply normally-applicable standards to the adjudication of such waiver applications, but that the statute contemplated a very liberal standard for this purpose here. The commenter recognized, however, that this is an issue for the Immigration and Naturalization Service, not the Department of State. The Department agrees with this commenter that the issue is one for the Immigration and Naturalization Service. The Department wishes, however, to make clear that it was presuming nothing with respect to how the Immigration and Naturalization Service may adjudicate such applications.

The other commenter who commented upon the waiver provision expressed concern about the time limit in section 133, as it might affect beneficiaries who require individual waivers of section 212(a)(19). His concern results from the time required to process waiver applications and the possibility that the fiscal year might end before some such applications had been adjudicated by the Immigration and Naturalization Service. He urged that the Department publicize widely the fact that section 212(a)(19) may be waived for beneficiary aliens, that visa appointments be scheduled as early as possible to permit processing of waivers when necessary, and that the proposed regulations be amended to provide for visa issuance after September 30, 1991, to beneficiary aliens who waiver applications were pending on that date but were thereafter approved.

The Department has already brought to the attention of the Immigration and Naturalization Service the need for expeditious processing of waiver applications for beneficiary aliens because of the time limit. Consular officers are also aware of the time considerations involved. The Department believes it has done what it can do, within the limits of its existing resources, to inform interested parties of the availability of waivers of ineligibility. The Department does not, however, believe that it has authority to extend by regulation the operation of the program beyond the September 30, 1991 deadline provided for in section 133 itself. While the Department can understand the concern that motivated the commenter's request, it considers such a step to be ultra vires. Accordingly, the Department will not include such a provision in the final regulation.

Change to Notice of Proposed Rule

After careful review and consideration of the comments received the Department is adopting the rule as proposed except for one change. In response to comments received the Department has revised the proposed rule to eliminate the requirement that an alien have become documentarily qualified prior to October 1, 1990, in order to benefit from section 133. Because the Department finds it impossible to make any other implementable distinction among members of the larger class the final regulation will extend the benefit to all aliens notified of selection before May 1, 1990. The Department cannot predict or forecast how many of the 95,000 class members will seek to avail themselves of the benefit, but believes that the total will be closer to the 15,000 who would have benefitted under the challenged interpretation than to the 95,000.

This rule is not considered to be a major rule for the purposes of Executive Order 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 22 CFR Part 43

Aliens, Nonpreference immigrants, Visas.

PART 43—[AMENDED]

1. The authority citation for part 43 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; Sec. 314, 100 Stat. 3359, 8 U.S.C. 1153 note; Sec. 2, 102 Stat. 3359; Sec. 133, 104 Stat. 5000, 8 U.S.C. 1153 note.

2. Part 43 is amended by adding § 43.6 to read as follows:

§ 43.6 Processing and adjudication during Fiscal Year 1991.

(a) *General.* During fiscal year 1991 immigrant visa numbers shall be made available, without numerical limitation, to aliens who were registered pursuant to § 43.3 of this part and who were notified of their selection prior to May 1, 1990. Aliens to whom immigrant visa numbers shall be made available pursuant to this section shall include, but shall not be limited to—

(1) Aliens who were refused an immigrant visa under section 212(e) or 212(a)(19) of the INA prior to October 1, 1990;

(2) Aliens who were informed by a consular officer prior to October 1, 1990, that section 212(e) of the INA would preclude issuance of a visa to them, unless waived, and who thereafter abandoned pursuit of their applications; and

(3) Aliens who were, prior to October 1, 1990, determined to be nationals, but not natives, of an adversely affected country.

(b) *Eligibility to receive a visa.* The provisions of § 43.5 of this part shall apply to determinations of eligibility to receive a visa during fiscal year 1991. In addition, the provisions of section 212(e) of the Immigration and Nationality Act, as amended, shall not apply in making such determinations. An alien determined to be ineligible to receive a visa under section 212(a)(19) of such Act may not be issued a visa during fiscal year 1991 unless the Attorney General shall have waived such ineligibility.

Dated: April 17, 1991.

James Ward,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 91-10478 Filed 5-2-91; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule, amendments.

SUMMARY: This rule amends the Foreign Assets Control Regulations, 31 CFR part 500 (the "Regulations"), to authorize persons subject to U.S. jurisdiction to make certain remittances of funds to close relatives in Cambodia, and provides for case-by-case licensing of U.S. financial institutions to transfer such remittances directly to Cambodia through correspondent banking arrangements with Cambodian banks.

EFFECTIVE DATE: May 3, 1991.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel (tel.: 202/535-6020), or Steven I. Pinter, Chief of Licensing (tel.: 202/535-9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Present § 500.565 of the Foreign Assets Control Regulations, 31 CFR part 500 (the "Regulations"), permits, in pertinent part, the remittance of funds to close relatives of the remitter who are Vietnamese or Cambodian nationals and who reside in Vietnam or any of a number of non-embargoed countries ("family remittances"). Family remittances may be made in an amount not exceeding $300 to any one recipient or household in any consecutive three-month period, or on a one-time basis in an amount not exceeding $750 to enable the recipient to emigrate. This final rule amends § 500.565 to permit remittance of authorized funds to Vietnamese or Cambodian nationals residing in Vietnam, Cambodia or other authorized countries. The rule also amends the Regulations to provide for specific licensing of correspondent banking relationships between U.S. financial institutions and Cambodian banks for the sole purpose of facilitating direct family remittances from the United States to Cambodia. The Regulations were amended recently to permit specific licensing of correspondent banking relationships with Vietnamese banks for this limited purpose.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 500

Banking, Cambodia, Currency, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938-1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 FR 1943-1948 Comp., p. 478.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Section 500.565 is revised as follows:

§ 500.565 Family remittances to nationals of Vietnam and Cambodia.

(a) The remittances specified in this section are authorized to be made to any close relative of the remitter or of the remitter's spouse, provided that the relative is a national of Vietnam or Cambodia, is a resident of Vietnam, Cambodia, or a country to which private remittances to nationals are not generally prohibited pursuant to this chapter, and is not a specially designated national.

(b) Remittances made pursuant to this section may be made only as follows:

(1) For the support of the payee, or for the support of the payee and members of his household, in amounts not exceeding $300 in any consecutive 3-month period to any one payee or to any household; and

(2) For the purpose of enabling the payee to emigrate from Vietnam or Cambodia, in an amount not exceeding $750, to be made only once to any one payee, provided that the payee is a resident of and within Vietnam or Cambodia.

(c) The term "close relative" used with respect to any person means spouse, child, grandchild, parent,

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grandparent, uncle, aunt, brother, sister, nephew, niece or spouse, widow, or widower of any of the foregoing.

(d) The term "member of a household" used with respect to any person means a close relative sharing a common dwelling with such person.

(e) This section does not authorize remittances from blocked accounts.

(f) Specific licenses may be issued authorizing a U.S. financial institution to establish direct correspondent banking relations with a Vietnamese or Cambodian bank or banks for the sole purpose of facilitating the remittance of funds authorized by this section.

Dated: April 17, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: April 22, 1991.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91-10440 Filed 4-29-91; 3:53 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-91-014]

Drawbridge Operation Regulations; Kent Island Narrows, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary deviation from the regulations with request for comments.

SUMMARY: The Coast Guard has been petitioned by the Maryland Department of Transportation to permanently amend the regulations governing operation of the old Kent Island Narrows drawbridge, now carrying local traffic on Rt. 18 across Kent Narrows, mile 1.0, near Grasonville, Maryland. The proposed change would greatly relax current opening restrictions while still providing for regularly scheduled openings to accommodate the needs of local and emergency vehicle traffic. In response to this request, the Coast Guard is issuing a 60-day temporary deviation from the regulations to evaluate the impact on both marine and highway traffic during the period.

DATES: This temporary deviation is effective from May 1, 1991, through June 30, 1991. Comments must be received on or before June 15, 1991.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments received will be available for inspection and copying at room 507 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 804-398-6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the temporary deviation. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered if final action is taken to change the rules. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Ann B. Deaton, Project Officer, and LT Monica L. Lombardi, Project Attorney.

Discussion of Temporary Deviation

This temporary deviation is being issued to evaluate a proposal by the Maryland Department of Transportation to change the existing published regulations for the Kent Narrows drawbridge contained in 33 CFR 117.561, by increasing the number of openings available for boats wishing to transit the bridge. The current regulations have a very restrictive opening schedule from May 1 through October 31. With the opening to traffic of the new adjacent high-level fixed bridge on Route 50/301, the State feels that local highway traffic and emergency vehicle needs as well as those of boaters will best be served by a greatly relaxed but scheduled opening policy for the Route 18 bridge. Their proposal is to have the drawbridge open on the hour from 7 a.m. to 7 p.m. from May 1 through October 31, 7 days a week. The Coast Guard feels that since this is the height of the boating season, and daylight hours are available during most of this period up to 9 p.m., that the hourly openings should be extended up to 9 p.m., that the hourly openings should be extended up to 9 p.m. daily. We feel this should have no significant adverse impact on highway traffic. All public vessels of the United States, State or local vessels on public safety missions, and vessels in distress shall be passed at any time.

The State also proposed scheduled hourly openings from November 1 through April 30, but the Coast Guard feels these restrictions are unnecessary since they do not exist under the current published regulations, nor do the numbers of vessels transiting Kent Narrows during these months warrant such restrictions.

It is emphasized that these temporary deviations from the regulations are for evaluation purpose only. The impact of this proposal on highway and marine traffic during this period will be evaluated to determine if it will result in substantial improvements in vehicular traffic flow without unreasonably restricting marine traffic. The Maryland Department of Transportation will compile data on vehicle counts, boat counts, times of actual drawbridge openings, duration of openings, length of vehicle backups, and the reasons for the backups on Rt. 18. This data will be used to determine if permanent adoption of this proposal is warranted, or if a different opening schedule should be considered. Since this temporary deviation serves the immediate interests of both highway and marine traffic, and the information compiled will provide meaningful input, I find that good cause exists for publishing this temporary deviation without publication of a notice of proposed rulemaking and for making it effective in less than 30 days.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary deviation does not raise sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Evaluation

This temporary deviation is considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are not expected to have any substantial affect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. The Coast Guard will accept comments on this impact, and will consider them when issuing new drawbridge regulations after the Maryland Department of Transportation study is completed.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632) This temporary deviation is being implemented specifically to discover the impact of a more relaxed opening schedule, and it is anticipated that this impact will be beneficial to the fishing and charter boats in the area. The Coast Guard will accept comments on the economic impact on small entities, and will consider them when developing new drawbridge regulations, should that prove necessary.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is temporarily amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); 33 CFR 117.43.

2. Section 117.561 is temporarily revised to read as follows:

§ 117.561 Kent Island Narrows.

(a) From November 1 through April 30 the drawbridge shall open on signal.

(b) From May 1 through October 31 the drawbridge shall open on the hour for the passage of any waiting vessels from 7 a.m. to 9 p.m., and shall remain open for a period sufficient to allow passage of all waiting vessels. From 9 p.m. to 7 a.m., the drawbridge shall open on signal.

(c) Shall open at any time for the passage of public vessels of the United States, State or local vessels on public safety missions, or vessels in distress.

(d) In the event that the new bridge is closed due to an incident, the draw-span shall be closed until the roadway has been cleared and traffic flow resumes on the bridge. In the event that the duration of the incident exceeds (2) hours, the bridge shall open every two hours to permit the passage of waiting vessels.

(e) This temporary deviation is effective from May 1, 1991, through June 30, 1991.

Dated: April 29, 1991.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 91-10513 Filed 5-2-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AD16

Grants to States for Construction or Acquisition of State Home Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its medical care regulations, Grants to States for Construction or Acquisition of State Home Facilities (38 CFR part 17), to implement section 206 of the Veterans' Benefits and Services Act of 1988 enacted on May 20, 1988. This section changes from July 1 to August 15, the date on which VA will determine the priority of applications for construction or acquisition grants for State Extended Care Facilities for purposes of the priority list. Section 206 also provides the Secretary authority to conditionally approve an application and obligate funds for a grant is the Secretary determines that the State can meet all remaining Federal requirements within 90 days. At the same time, VA is updating the States home grant standards and veteran population of the various States set forth in these regulations. These revisions will assist the States in meeting deadlines for the priority list and subsequent grant awards.

DATES: These regulations are effective June 3, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. F. Brent Baker, Chief, State Home Construction Grant Program (182C), Office of Geriatrics and Extended Care, Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3679.

SUPPLEMENTARY INFORMATION: On pages 19753 through 19762 in the **Federal Register** dated May 11, 1990 (55 FR 19753-19762), VA published proposed regulations to amend its medical care regulations, Grants to States for Construction or Acquisition of State Home Facilities (38 CFR part 17), to implement section 206 of the Veterans' Benefits and Services Act of 1988 enacted on May 20, 1988, and update standards for construction as well as the veteran population for various States.

A total of three commenters provided written comments in response to the proposed regulations. Comments were received from one National association, one State, and one office within the Department of Veterans Affairs which had previously concurred with the proposed regulatory changes. All of the commenters are involved with the VA State Home Construction Grant Program.

One commenter indicated that he was pleased to see formal regulations proposed to change the date of the priority list from July 1 to August 15. This date was changed by Public Law 100-322. The regulation merely implements the change. The same commenter stated that in § 17.173, paragraph (e) is redesignated as paragraph (f) but with no apparent revision to its content. Paragraph (e) was inserted to provide the Secretary authority to conditionally approve a grant, and paragraphs (e), (f), (g) and (h) are redesignated as paragraphs (f), (g), (h) and (i), respectively, with no changes. The commenter stated that the current wording of § 17.173(e)(1) sets July 1 as the deadline for states to demonstrate adequate financial support of proposed projects. The commenter suggested that to be consistent with the major purpose of the proposed amendments, this date should be changed to August 15. Section 17.173, paragraph (e)(1) implements section 5035(b)(5)(A) of title 38, United States Code, which requires the Secretary to defer approval of an application that

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otherwise meets the requirements for a grant if the State submitting the application does not, by the July 1 deadline (as defined in paragraph 5035(b)(5)(D) of title 38, United States Code), demonstrate to the satisfaction of the Secretary that the State has provided adequate financial support for construction of the project. To change the July 1 deadline for the deferral of an application in VA regulations would thus require a legislative change. Moreover, this is a provision which has never been used or needed. It has no affect on the States's assurance of matching State fund by August 15 which is required for an application to be considered for group 1 of the priority list.

One commenter had several concerns. Regarding the regulation in § 17.172(b) for handling grant requests that exceed 50 percent of the annual appropriation, the commenter hoped there would be a built-in mechanism on an annual basis, to give the States in this situation enough advance notice in the subsequent years of the status of VA funds available, so that they can apply for partial funding. The regulation indicates that an application in excess of 50 percent of the next fiscal year's estimated appropriation for State home grants, will be placed at the bottom of the priority group in which it is ranked. We shall attempt to apprise States in this situation of our estimates of the funding which Congress will designate for State home grants in subsequent years as soon as possible. When VA's budget has been approved by Congress and the President, VA will of course notify interested States of that fiscal year's appropriation.

The same commenter asked what VA would do if two State applications which exceed 50 percent of the annual appropriation fall in the same priority group. We believe that the same criteria would apply to these applications as to any application for determining its priority. If applications are equal in all aspects, the date of the receipt of the completed preapplication becomes the determining factor in establishing the priority of these applications. This is explained in § 17.173(c)(3).

The commenter questioned whether § 17.173(a)(5) should be revised to state that an environmental assessment is not required if outside construction involving more than 75,000 net square feet is for an addition to an existing building. We believe that such a revision would not be possible because an environmental assessment is required for both new construction and additions to existing facilities. We also noticed a technical error in § 17.173(a)(5). To agree with 38 CFR 26.6, the 75,000 net square feet cited in § 17.173(a)(5) should be changed to 75,000 gross square feet. Therefore, this final regulation is amended to read 75,000 gross square feet.

The commenter was concerned by § 17.178(d)'s requirement that at least 80 percent of the total beds should be in single and/or double rooms. The commenter stated that this would create an added cost and make it more difficult for States to obtain matching State funds. This requirement was not changed in the revised regulations. The existing regulation is found in 38 CFR 17.177(x)(2)(2)(ii) and states that: "Not less than 80 percent of the total beds should be provided in either single or double-bedded rooms or a combination of both." The revised regulation would thus have no additional impact on State homes such as increasing the costs or making it more difficult to obtain State matching funds than the existing regulation.

The commenter further indicated that the reference in § 17.178(e) to 85 percent of patients requiring accessibility was confusing and misleading when compared to the 50 percent UFAS requirements. We agree that this could be confusing and have removed the historical reference to the 85 percent accessibility. We prefer not to specify the 50 percent UFAS requirement. If the State complies with UFAS, it will meet the 50 percent requirement. There are other requirements in UFAS besides the 50 percent accessibility requirement and to specify that States have to meet the 50 percent accessibility requirement might be erroneously interpreted as the only UFAS requirement States must meet.

The last commenter suggested numerous technical and editorial changes. In § 17.183(c)(4), it was suggested that the word "Exits" in the heading be replaced with "Fire Protection", and that, in the first sentence of this section, the word "Exit" should be deleted. We agree, and the changes have been made.

In § 17.183(c)(4), the commenter suggested adding a statement requiring the installation of single station smoke detectors for all patient sleeping rooms for domiciliaries which shall be powered by 120 VAC. The commenter further stated that although these detectors are not required by the Life Safety Code for health care occupancies, they are required for all other occupancies. State home domiciliaries have always been considered health care occupancies for purposes of reviews. We have thus revised the regulations to so state and have added a smoke detector requirement to § 17.183(a) of the regulations.

Again in § 17.183(c)(4), it was suggested that a requirement be added that all space be protected with a sprinkler system and that quick response sprinklers be provided for all smoke compartments containing patient sleeping rooms. We agree and have added this requirement to § 17.183(a).

It was suggested that the 1991 edition of the Life Safety Code be referenced instead of the 1988 edition. The same would apply to the NFPA 101M except that this document will now be published in 1992 and is not on the same cycle as NFPA 101, Life Safety Code. The 1991 edition would be preferred but it has not yet been published. We cannot wait until 1992 to include NFPA 101M. We have let the cross reference to the 1988 edition of the Life Safety Code remain in the regulations.

In § 17.181(b)(4), it is recommended that an additional set of prints be required to permit a copy to be reviewed by the respective VA Regional Safety and Fire Protection Engineer. The requirement for one set of sepias and 8 sets of prints includes one set for the VA Regional Safety and Fire Protection Engineer, and this has not been changed.

It is recommended that an additional reference be made in § 17.183(c)(4) to require compliance with one of the nationally recognized model building codes. This is necessary since the Life Safety Code is not a building code and does not include all necessary fire protection requirements. The reference recommended is already found in § 17.183(a) which states that State homes shall comply with applicable National, State, and local codes, and that such codes include building codes, fire and life safety codes, plumbing codes, and others. This appropriately addresses the requirement for State homes to comply with building codes. We have thus not changed the regulations as recommended.

We have also revised the space chart in § 17.183 by adding "each" to the conference room and the in-service training room allowing two separate spaces, by clarifying the square footage for medical support areas (staff offices, treatment room), and by adding employee toilets under section I.

Although not included in the proposed regulations, upon further review, we decided to recommend a deadline for submitting preapplications. We have thus added April 15 as the deadline for receipt of preapplications for which

States plan to submit formal applications by August 15. This will permit the Department to more accurately project the budgetary needs for the State Home Construction Grant Program and to provide sufficient time to review the preapplication to determine the feasibility of the project for VA participation before the State incurs significant expense.

These regulatory amendments to VA regulations are considered nonmajor under the criteria of Executive Order 12291, Federal Regulation, on the basis that they will not have an annual effect on the economy of $100 million or more, they will not result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor will they have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612. Pursuant to 5 U.S.C. 605(b), these regulatory amendments are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 through 604. The reason for this certification is that these amendments will affect only construction or acquisition grants for State Veterans Homes. They will, therefore, have no significant impacts on small entities (i.e., small business, small private and nonprofit organizations, and small governmental jurisdictions).

The information collection requirement contained in §§ 17.173, 17.178, 17.180, 17.181, and 17.182 of this regulation have been approved by the Office of Management and Budget (OMB) under OMB control number 2900-0520.

(The catalog of Federal Domestic Assistance number is 64.005.)

These regulations are issued under authority granted the Secretary by sections 210(c) and 5034 of title 38, United States Code.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs-health, Health care, Health facilities, Health professions, Incorporation by reference, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: February 28, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 17, Medical, is amended as follows:

PART 17—[AMENDED]

0. The authority citation for part 17 continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 210, unless otherwise noted.

1. In § 17.170, paragraph (b) is revised to read as follows:

§ 17.170 Definitions.

* * * * *

(b) The term *State* means each of the several States, the District of Columbia, the Virgin Islands, and the Commonwealth of Puerto Rico.

(Authority: U.S.C. 5031(b))

* * * * *

2. Appendix A of § 17.171, appearing after § 17.177, is amended by revising the heading of the appendix and the table and by transferring the appendix to the end of § 17.171 to read as follows:

Appendix A to § 17.171—State Home Facilities for Furnishing Nursing Home Care

* * * * *

State	Veteran population in thousands	No. of beds: NHC 2.5/1000	No. of beds: NHC 4/1000	No. of beds: Dom 2/1000
Alabama	405	1,013	1,620	810
Alaska	63	158	252	126
Arizona	420	1,050	1,680	840
Arkansas	252	630	1,008	504
California	2,829	7,073	11,316	5,658
Colorado	395	988	1,580	790
Connecticut	386	965	1,544	772
Delaware	80	200	320	100
District of Columbia	57	143	228	114
Florida	1,524	3,810	6,096	3,048
Georgia	666	1,665	2,664	1,332
Hawaii	100	250	400	200
Idaho	109	273	436	218
Illinois	1,227	3,068	4,908	2,454
Indiana	640	1,600	2,560	1,280
Iowa	325	813	1,300	650
Kansas	282	705	1,128	564
Kentucky	359	898	1,436	718
Louisiana	417	1,043	1,668	834
Maine	154	385	616	308
Maryland	543	1,358	2,172	1,086
Massachusetts	666	1,665	2,664	1,332
Michigan	1,026	2,565	4,104	2,052
Minnesota	496	1,240	1,984	992
Mississippi	230	575	920	460
Missouri	629	1,573	2,516	1,258
Montana	100	250	400	200
Nebraska	178	445	712	356
Nevada	146	365	584	292
New Hampshire	146	365	584	292
New Jersey	875	2,188	3,500	1,750
New Mexico	170	425	680	340
New York	1,801	4,503	7,204	3,602
North Carolina	681	1,703	2,724	1,362
North Dakota	63	158	252	126

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State	Veteran population in thousands	No. of beds: NHC 2.5/1000	No. of beds: NHC 4/1000	No. of beds: Dom 2/1000
Ohio	1,296	3,240	5,184	2,592
Oklahoma	378	945	1,512	756
Oregon	356	890	1,424	712
Pennsylvania	1,508	3,770	6,032	3,016
Rhode Island	119	298	476	238
South Carolina	354	885	1,416	708
South Dakota	77	193	308	154
Tennessee	530	1,325	2,120	1,060
Texas	1,747	4,368	6,988	3,494
Utah	140	350	560	280
Vermont	64	160	256	128
Virginia	664	1,660	2,656	1,328
Washington	598	1,495	2,392	1,196
West Virginia	217	543	868	434
Wisconsin	561	1,403	2,244	1,122
Wyoming	54	135	216	108
Puerto Rico	124	310	496	248

Estimate as of March 31, 1989.
Source: Office of Reports and Statistics, VA. (Based on last available Bureau of the Census data.)

3. In § 17.172, the current text is redesignated as paragraph (a), and paragraphs (b) and (c) and the authority for the section are added to read as follows:

§ 17.172 Scope of grants program.

(a) * * *

(b) The Department of Veterans Affairs may offer a State a grant which is less than the amount of the grant requested subject to the State's provision of assurance that adequate financial support will be available for the project and for its maintenance, repair, and operation when complete. If VA offers a grant to a State for less than the amount requested and the State refuses to accept it, these Federal funds will be applied to other applications which have met all Federal requirements in the order of their priority on the list which was established by the Secretary under § 17.173(d) of this part for that fiscal year.

(c) If a State accepts the grant for less than the amount requested, the State may request that its application for additional funds be ranked on the next priority list for additional Federal funds.

(Authority: 38 U.S.C. 5035(b)(2)(D))

§ 17.173 [Amended]

4. In § 17.173(c)(3), the undesignated first and second paragraphs are designated as (c)(3)(i) and (c)(3)(ii), respectively. In newly designated § 173(c)(3)(ii)(C) remove the words "June 15" where they appear and add, in their place, the words "August 15".

5. In § 17.173, paragraphs (e), (f), (g), and (h) are redesignated as paragraphs (f), (g), (h), and (i), respectively, paragraphs (a)(5) and (b)(7) are revised and an authority citation is added at the end of paragraph (a)(5), newly designated paragraph (c)(3)(i) is revised, the last sentence of newly designated paragraph (c)(3)(ii)(A) is revised, paragraphs (c)(3)(ii)(A) (*1*) and (*2*) are added, the first sentence of paragraph (d) is revised, new paragraph (e) is added, and a parenthetical is added at the end of the section, so the new and revised material reads as follows:

§ 17.173 Applications with respect to projects.

(a) * * *

(5) The State application for Federal assistance shall include environmental documentation for the project by submitting a Categorical Exclusion (CE), Environmental Assessment (EA), or an Environmental Impact Statement (EIS). The environmental documentation will require approval by the Department of Veterans Affairs before final award of a construction or acquisition grant for a State veterans home. (See § 26.6 of this chapter for compliance requirements.) If the proposed actions involving construction or acquisition do not individually or cumulatively have a significant effect on the human environment, the applicant shall submit a letter noting a Categorical Exclusion. If construction outside the walls of an existing structure will involve more than 75,000 gross square feet (GSF), the application shall include an environmental assessment to determine if an Environmental Impact Statement is necessary for compliance with section 102(2)(c) of the National Environmental Policy Act of 1969. When the application submission requires an environmental assessment, the State shall briefly describe the possible beneficial and/or harmful effect which the project may have on the following impact categories:

(i) Transportation;
(ii) Air quality;
(iii) Noise;
(iv) Solid waste;
(v) Utilities;
(vi) Geology (soils/hydrology/flood plains);
(vii) Water quality;
(viii) Land use;
(ix) Vegetation, wildlife, aquatic, and ecology/wetlands;
(x) Economic activities;
(xi) Cultural resources;
(xii) Aesthetics;
(xiii) Residential population;
(xiv) Community services and facilities;
(xv) Community plans and projects; and
(xvi) Other.

If an adverse environmental impact is anticipated, the action to be taken to minimize the impact should be explained in the environmental assessment.

(Authority: 38 U.S.C. 5035(a))

(b) * * *

(7) Grantees will comply with the Federal requirements contained in title 38, Code of Federal Regulations, parts 43 and 44 and assurances contained in SF-424D, Assurances-Construction Programs.

(Authority: 38 U.S.C. 5035(a))

* * * * *

(c) * * *

(3)(i) If such application provides sufficient information for the Secretary to establish its priority, determine the priority of the project described in the application in relation to all other projects in accordance with the criteria set forth in this paragraph. In establishing a project's priority, the Secretary shall rank projects from the highest to the lowest priority in the order of priority groups set forth in this paragraph, giving the projects in Group 1 the highest priority and the projects in Group 8 the lowest. Where more than one project is ranked in a single priority group, the Secretary shall rank those projects by applying the criteria applicable to the next lower priority group. If a State's application for Federal assistance for a project that exceeds 50 percent of the next fiscal year's estimated appropriation for State home grants will be placed at the bottom of the priority group in which it is ranked. Where such ranking results in more than one project being given the same priority, the Secretary shall rank those projects, except as otherwise provided, in accordance with the criteria applicable to the next lowest priority group until all projects are ranked with a different priority.

(ii) * * *

(A) * * * For the purpose of the priority list, the Secretary will accept the following as demonstrating that a State has made sufficient funds available:

(*1*) A copy of the Act, as approved by the Governor, making available at least one-half of the State's matching funds for the project; and

(*2*) A letter from an authorized State budget official certifying that at least one-half of the State funds are, or will be, available for the project, so that if VA approves the grant during the next fiscal year, the project may proceed without further State action to make such funds available.

* * * * *

(Authority: 38 U.S.C. 5035(b))

(d) The Secretary shall establish after August 15 of each year a list of projects, including projects that have been conditionally approved under paragraph (e) of this section, in the order of their priority on August 15 of that year as determined pursuant to paragraph (c) of this section. * * *

* * * * *

(e) The Secretary may conditionally approve a project, conditionally award a grant for the project, and obligate funds for the grant if:

(1) The grant application is sufficiently complete to warrant the conditional award; and

(2) The State requests conditional approval for its application and provides the Department of Veterans Affairs written assurance that it will complete the application and meet all requirements not later than 90 days after the date of conditional approval by the Secretary of the Department of Veterans Affairs.

The final grant award shall not exceed 10 percent of the amount conditionally approved, and in no case shall the total amount of the grant exceed 65 percent of the total estimated cost of the project. If the State fails to complete the remaining requirements within the 90 days from the date of conditional approval, the Secretary shall rescind the conditional approval and grant award, and deobligate the funds previously obligated for the project.

(Authority: 38 U.S.C. 5035(b) (4), (6)(A)–(7)(B))

* * * * *

(Information collection requirements contained in § 17.173 were approved by the Office of Management and Budget under control number 2900-0602.)

6. Section 17.177 is revised to read as follows:

§ 17.177 General program requirements for construction and acquisition of and equipment for State home facilities.

(a) *Introduction.* (1) The general program requirements set forth in this section have been established to guide the State agencies and their architects in preparing drawings, specifications, cost estimates, and the equipment list for the grant application.

(2) States shall apply the Uniform Federal Accessibility Standards (UFAS) (24 CFR part 40, appendix A), during the design and construction of State home projects. UFAS standards establish requirements for facility accessibility by physically handicapped persons for Federal and Federally-funded facilities and were jointly developed by the General Services Administration, the Department of Housing and Urban Development, the Department of Defense, and the United States Postal Service, under the authority of sections 2, 3, 4, and 4a of the Architectural Barriers Act of 1968, as amended, Public Law 90-480, 42 U.S.C. 4151–4157.

(3) States must comply with these requirements where they exceed any National, State, or local codes. If the State or local codes exceed these general requirements, compliance with the more stringent standard is required.

(4) The space allotted to the various services (i.e., medical, nursing, dietary, and the like) will depend upon the requirements of the facility. Some services that are required by these regulations to be in separate spaces or rooms, may be combined if the result will not compromise safety and medical and nursing practices. The Department of Veterans Affairs shall accept a design and waive minimum requirements where a service or services will have minimal renovations and remain in their present locations.

(Authority: 38 U.S.C. 5035(2))

(b) *General conditions of the contract for construction.* The applicant may use the general conditions of the contract for construction of the American Institute of Architects (AIA) or other general conditions as required by the State in awarding contracts for State home grant projects. (See 37 CFR part 43 for contract requirements.)

(c) *Program criteria.* The State will use the program criteria in §§ 17.178 through 17.179, as required by the scope of the project, subject to the approval of the Department of Veterans Affairs.

(Authority: 38 U.S.C. 5034(2))

7. Sections 17.178 through 17.183 are added to read as follows:

§ 17.178 Domiciliary and nursing home care program.

(a) *Objective.* Domiciliary and nursing home care facilities should provide a therapeutic, rehabilitative, safe and home-like environment to assist in maintaining or restoring veterans to the highest level of functioning. Long-term care facilities shall be designed to encourage and facilitate participation in therapeutic programs.

(Authority: 38 U.S.C. 5034(2))

(b) *General.* All newly constructed domiciliary beds shall meet nursing home care construction standards and be suitable to provide for future conversion to nursing home care if needed. The Department of Veterans Affairs may waive this requirement if the State shows that it will need domiciliary beds more than nursing home beds for eligible veterans. See § 17.183 of this part.

(Authority: 38 U.S.C. 5034(2))

(c) *Nursing units.* A nursing unit with related facilities will normally be constructed so that nurses may supervise 30 to 60 patients. If there are design limitations, fewer beds are permissible. A 30-bed unit with a centrally located nursing station is preferred on skilled care units to provide efficient use of staff. A design that minimizes the distance between rooms and nursing stations is recommended. Patient storage may be planned in each nursing unit for bulky clothing that will not fit into patients' closets. A nurses' call system shall be required for nursing units. Each patient shall be furnished with an audiovisual or visual nurses' call system which will register a call from the patient with the signal light above the corridor door and at the

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nursing station in hospitals and nursing homes. An empty conduit system shall be installed for domiciliaries for use in a potential future conversion to a nursing home. A nursing call system shall also be provided in each patient's toilet room and bathroom. Wiring for a nurses' call system shall be installed in conduit.

(Authority: 38 U.S.C. 5034(2))

(d) *Bed configurations.* At least 80 percent of the total beds should be in single and/or double bed rooms. Rooms shall have no more than four beds. Two large two-bed rooms are allowed for a 50-60 bed unit. Adequate space should be provided to allow access to three sides of each bed for the staff to work and utilize medical and emergency equipment.

(Authority: 38 U.S.C. 5034(2))

(e) *Patient bedrooms.* Each bedroom shall have direct access to an enclosed toilet and lavatory. The percentage of the patient bedrooms that shall be accessible to the physically handicapped must comply with UFAS requirements. These rooms must include UFAS clearances around beds and 5-foot wheelchair turning radius. Individual privacy should be provided by screens, privacy curtains, or similar approaches in bedrooms for more than one patient. No patient room shall be located on a floor which is more than 50 percent below grade level. It is desirable that patient rooms include:

(1) Wardrobes with closets and drawers large enough to accommodate the personal clothing of patients who require care for an extended period of time.

(2) Room for a desk, lounge chair, television, and other personal belongings.

(3) Total electric beds.

(4) A sink and mirror.

(5) Piped oxygen and vacuum suction for patients as required.

(6) Operable windows to allow access to air. The sill shall be low enough to permit patients to view the ground while sitting.

(Authority: 38 U.S.C. 5034(2))

(f) *Patient room toilets.* Patient toilets must be designed for maximum accessibility and safety for the patients and to facilitate staff assistance. One toilet/bathroom for each bedroom is preferred with a maximum of four beds for each bathroom. Shower/tub rooms should provide an area for setting clean clothes and supplies. Adequate ventilation should be provided to prevent condensation and mildew. The percentage of the patient toilets/bathrooms that are accessible to the physically handicapped must comply with UFAS requirements. These rooms must include UFAS clearances, grab bar configurations, and mounting heights. Alternative grab bar configurations may be used for the remaining percentage of patient toilets/bathrooms as approved by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 5034(2))

(g) *Reception and control.* Information, telephone, switchboard, mailboxes, and control center facilities should be located adjacent to the main lobby entrance. The information desk serves as a first point of contract, information, and control area for those entering for admission, a visit, or business.

(Authority: 38 U.S.C. 5034(2))

(h) *Administrator/Director's suite.* The project may include an administrator/director's suite to include all administrative activities required by the Director, Assistant Director, and their immediate staffs, including secretaries, analysts, administrative assistants, and/or trainees.

(Authority: 38 U.S.C. 5034(2))

(i) *Dietetic Service.* Dietetic Service facilities such as an office for the dietitian, a kitchen, a dishwashing room, adequate refrigeration, dry storage, receiving area, and garbage facilities should be provided as required. It is desirable to have eating areas on each unit that have a sink, toilet facilities, and storage, that can accommodate wheelchairs and gerichairs, while still being attractive and appealing for dining. Tables should be able to accommodate three to four wheelchairs. Buffet lines may be provided on the unit to allow some choice for patients who cannot get to the main dining room.

(1) Dining room, food preparation, and dishwashing facilities may be planned as separate facilities from Dietetic Service area, if appropriate.

(2) Space for vending machines may be provided.

(Authority: 38 U.S.C. 5034(2))

(j) *Therapy and treatment programs.* Facilities for rehabilitation medicine, physical, occupational, and recreational therapies and other programs shall be planned by the State to meet program requirements and standards of care prescribed by the Department of Veterans Affairs. In addition to the patient therapy spaces, offices may be provided. Medical support areas should be planned to meet program requirements and standards and may include areas for rehabilitation, recreation, dental care and other medical support services.

(Authority: 38 U.S.C. 5034(2))

(k) *Janitors closet.* One janitors closet should be planned for each nursing unit, in the dietetic area, and in the general administrative and clinical space with at least one on each floor. The kitchen and other areas which generate waste or require special care should have their own janitors closet. Convenient storage for floor cleaning machines may also be provided.

(Authority: 38 U.S.C. 5034(2))

(l) *Staff facilities.* Staff toilets should be provided on each floor. Each facility should have an employee locker and lounge.

(Authority: 38 U.S.C. 5034(2))

(m) *Conference room/In-service training.* A conference room which may also be used for staff training and development may be provided. Family and group counseling rooms may also be provided.

(Authority: 38 U.S.C. 5034(2))

(n) *Lounges/recreation.* Two patient lounges which will accommodate large numbers of wheelchair/gerichairs should be considered. Lounges may be separated, one for smokers and one for non-smokers. Lounges should be directly visible from the nursing station or adjacent to the nursing station. Atriums may be planned on the nursing unit, or provisions may be made for access to an outdoor sundeck or patio. An outdoor recreation/patio space should be developed adjacent to a common use area. Every effort should be made to reduce the noise levels on the nursing unit by using noise reducing materials in construction and decorating.

(Authority: 38 U.S.C. 5034(2))

(o) *Miscellaneous space.* The State home may include space for a library, barber and/or beauty shop, retail sales, canteen, mailroom, chapel, and computer communications area. Space for a child day care center may be planned if it will primarily serve the needs of persons employed by the State home. Whirlpools and wheelchair scales may be provided for each State home built to nursing home standards. Other spaces in the State home must be fully justified by the applicant and approved by the Department of Veterans Affairs before the Department of Veterans Affairs can participate in funding the cost of the area.

(Authority: 38 U.S.C. 5034(a))

§ 17.179 State home hospital program.

(a) *General.* The Department of Veterans Affairs cannot participate in the construction of new State home hospitals. However, the Department of Veterans Affairs may participate in the remodeling, alteration, or expansion of existing State home hospitals.

(Authority: 38 U.S.C. 5034(2))

(b) *Hospital's nursing units.* Patient bedrooms may be grouped into distinct nursing units for general medical and surgical patients, and psychiatric patients. A 40-bed unit is most desirable; however, a range of 30–50 beds may be considered.

(Authority: 38 U.S.C. 5034(2))

(c) *Distribution of beds.* Single-bed rooms should be provided for patients who are infectious, terminal, or who for other reasons require separation.

(Authority: 38 U.S.C. 5034(2))

(d) *Construction requirements.* A State may use its own construction standards for a State hospital alteration or expansion if the plans are approved by the State's Department of Health and the State agency responsible for the State home hospital. The grantee should follow applicable National, State, and/or local codes for hospital construction, remodeling, and/or renovation.

(Authority: 38 U.S.C. 5034(2))

(Information collection requirements contained in § 17.179 were approved by the Office of Management and Budget under control number 2900-0520.)

§ 17.180 Preapplication phase.

A State shall submit to the Department of Veterans Affairs a preapplication (SF-424, 424C, and 424D) for Federal assistance for each State home project if Federal participation exceeds $100,000. An original and two copies are required. Costs incurred for the project by the State after the date the Department of Veterans Affairs notifies the State that the project is feasible for Department of Veterans Affairs participation are allowable costs if the application is approved and the grant is awarded. These pre-award expenditures include architectural and engineering fees.

(Authority: 38 U.S.C. 5034(2))

(a) *Purpose.* A preapplication is required to determine the applicant's general eligibility, to establish communication between the Federal agency and the applicant, and to identify those proposals which are not feasible for Department of Veterans Affairs participation before the applicant incurs significant expenditures in preparing a formal application. Filing a preapplication by April 15 of each year will give the Department sufficient time to accomplish these purposes. The State shall submit to the Department of Veterans Affairs a letter designating the State Official authorized to apply for a State home construction or acquisition grant and a point of contact for all matters relating to a State home grant. If the authorized State official is changed, notice shall be provided in writing to the Department of Veterans Affairs.

(Authority: 38 U.S.C. 5034(2))

(b) *Preapplication requirements.* The preapplication shall include schematic drawings, a space program, and a needs assessment. States applying for Federal assistance for new State home beds shall provide justification for the beds by addressing the following areas:

(1) Demographic characteristics of the veteran population of the area;

(2) Availability and suitability of alternative health care providers and facilities in the area;

(3) Waiting lists for existing State home beds;

(4) Documentation that existing State home facilities in the State meet current codes and standards;

(5) Availability of acute medical care services and qualified medical care personnel to staff the proposed facility;

(6) Other information that may be required by the Assistant Chief Medical Director for Geriatrics and Extended Care in the Department of Veterans Affairs.

(Authority: 38 U.S.C. 5034(2))

(c) *Revisions to preapplications.* Grantees shall request approval from the Department of Veterans Affairs for significant revisions after preapplications have been submitted to the Department of Veterans Affairs. If the scope changes and/or cost estimates increase by more than 10 percent, a new preapplication may be required which will be subject to the same review and approval procedure as for the original preapplication.

(Authority: 38 U.S.C. 5034(2))

(Information collection requirements contained in § 17.180 were approved by the Office of Management and Budget under control number 2900-0520.)

§ 17.181 Application phase.

(a) *General.* The applicant shall submit an original and two copies of the formal application (SF 424, 424C, and 424D) after the preapplication has been reviewed by the Department of Veterans Affairs and determined feasible for Department of Veterans Affairs participation. The application must meet the requirements of parts 43 and 44 of this chapter and include an updated space program, design development plans (35 percent), and specifications as outlined in paragraph (b) of this section.

(Authority: 38 U.S.C. 5034(2))

(b) *VA review.* (1) *Program.* The applicant shall provide a narrative description of existing or planned program(s) at the facility and how this project will affect the operation of the existing State home (if applicable).

(2) *Cultural resources.* The applicant shall provide a letter and two copies from the State Historic Preservation Officer (SHPO) stating whether the project area includes any properties on, eligible for, or likely to meet the criteria for the National Register of Historic Places. If the property does, or may include, National Register quality properties, the letter from the SHPO should discuss the determination of effect of the proposed project on such property.

(3) *Design development site plan.* The applicant shall submit a site survey which has been performed by a licensed land surveyor. A description of the site shall be submitted noting the general characteristics of the site. This should include soil reports and specifications, easements, main roadway approaches, surrounding land uses, availability of electricity, water and sewer lines, and orientation. The description should also include a map locating the existing and/or new buildings, major roads, and public services in the geographic area. Additional site plans should show all site work including property lines, existing and new topography, building locations, utility data, and proposed grades, roads, parking areas, walks, landscaping, and site amenities.

(4) *Design development (35 percent) drawings.* The applicant shall provide to the Department of Veterans Affairs one set of sepias and eight sets of prints, rolled individually per set, to expedite the review process. The drawings shall indicate the designation of all spaces, size of areas and rooms and indicate in outline the fixed and movable equipment and furniture. The drawings shall be drawn at 1/8" or 1/4" scale. Bedroom and toilet layouts, showing clearances and UFAS requirements, should be shown 1/4" scale. The total floor and room areas shall be shown in the drawings. The drawings shall include:

(i) Plan of any proposed demolition work;

(ii) A plan of each floor. For renovations, the existing conditions and extent of new work should be clearly delineated;

(iii) Elevations;

(iv) Sections and typical details;

(v) Roof plan;

(vi) Fire protection plans; and

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(vii) Technical engineering plans, including structural, mechanical, plumbing, and electrical drawings.

If the project involves acquisition, remodeling, or renovation, the applicant should include the current as-built site plan, floor plans and building sections which show the present status of the building and a description of the building's current use and type of construction.

(5) *Space program.* The State shall submit a space program which includes a list of each room or area and the square feet proposed. The plan should note special or unusual services or equipment. The format should be similar to the Chart of Net Square Feet Allowed and room titles contained in § 17.183 (c)(5)(i) through (c)(5)(iii) of this part.

(6) *Design development outline specifications.* The applicant shall provide eight copies of outline specifications which shall include a general description of the project, site, architectural, structural, electrical, and mechanical systems such as elevators, nurses' call system, air conditioning, heating, plumbing, lighting, power, and interior finishes (floor coverings, acoustical material, and wall and ceiling finishes).

(7) *Design development cost estimates.* Three copies of cost estimates shall be included in the application to the Department of Veterans Affairs. Estimates shall show the estimated cost of the buildings or structures to be acquired or constructed in the project. Cost estimates should list the cost of construction, contract contingency, fixed equipment not included in the contract, movable equipment, architect's fees, and construction supervision and inspection. Unless justified by the State, the Department of Veterans Affairs allowance for equipment not included in the construction contract shall not exceed 10 percent of the construction or acquisition contract cost. The Department of Veterans Affairs allowance for contingencies shall not exceed 5 percent of the total project cost for new construction or 8 percent of the total project cost for remodeling or renovation projects. If the project involves non-Federal participating areas, such costs should be itemized separately.

(8) *Design development conference.* After Department of Veterans Affairs review of the design development documents, a design development conference is recommended for all major projects. This will provide an opportunity for the applicants and their architects to learn Department of Veterans Affairs procedures and requirements for the project and to discuss Department of Veterans Affairs review comments. The material in paragraphs (b)(1) through (b)(7) of this section should be submitted for Department of Veterans Affairs review at least three weeks before the design development conference in the Department of Veterans Affairs Central Office in Washington, DC.

(Authority: 38 U.S.C. 5034(2))

(c) *Final review and approval (100% construction documents, bid tabulations and cost estimates).* (1) The applicant shall submit to the Department of Veterans Affairs for review and approval one labeled set of microfiche aperture cards, microfilm, or Compact Disc/Read Only Memory (CD ROM) compact laser disc with 100% construction documents (plans and specifications). The applicant shall also submit three copies of: itemized bid tabulations; assurances of compliance with Federal requirements, and revised budget page (SF 424C) based on the selected bids. This should include final cost estimates for all item in the project. Three signed copies of the Memorandum of Agreement shall be submitted which reflect the total estimated cost of the project and the Department of Veterans Affairs participation in the total cost.

(2) Following approval of final construction documents, bid tabulations, and costs estimates, the Secretary will sign the Memorandum of Agreement awarding the grant and committing available Federal funds.

(Authority: 38 U.S.C. 5034(2))

(d) *Construction or acquisition.* The State shall enter into a construction or acquisition contract and begin construction or acquisition of the State home within 90 days after the final grant has been awarded by the Secretary of Veterans Affairs. Any delays beyond 90 days must be fully justified by the State and approved by the Department of Veterans Affairs or the grant may be rescinded.

(Authority: 38 U.S.C. 5034(2))

(e) *Grant revisions.* When significant deviations occur in the approved program or budget, the procedures set forth in paragraphs (e) (1) and (2) of this section shall apply.

(1) If a State has received the award of a construction or acquisition grant, the State shall request prior approval from the Department of Veterans Affairs for programmatic or budgetary revisions when the scope or objective of the project changes in a significant manner or when an approved line item budgeted amount increases or decreases by more than 10 percent. All grant modifications of this type shall be within the total contingency allowance of 5 percent for new construction or 8 percent for remodeling or renovation.

(2) In unusual and unanticipated circumstances, the Department of Veterans Affairs may participate in modifications to a grant that exceeds the contingency allowance by awarding a grant increase for the project. A grant increase will require an amended application from the State and complete justification, subject to the approval of the Department of Veterans Affairs. The amended application for a grant increase will be treated as an original application for the purpose of the priority list and the award of any additional Federal funds for the project.

(Authority: 38 U.S.C. 5035(e))

(f) *Final architectural and engineering inspection.* The grantee shall notify the Department of Veterans Affairs immediately upon completion of the project and request a final architectural and engineering inspection. This inspection is required prior to final payment under the construction or acquisition grant.

(Authority: 38 U.S.C. 5034(2))

(Information collection requirements contained in § 17.181 were approved by the Office of Management and Budget under control number 2900-0520.)

§ 17.182 Equipment.

(a) *General.* Equipment necessary for the State home's planned effective operation shall be included in the cost of the project.

(Authority: 38 U.S.C. 5034(2))

(b) *Definition of equipment.* The term "equipment" as used in this section means all items necessary for the functioning of all services of the State home, including equipment as needed to provide for accounting and other records, and maintenance of buildings and grounds. The term "equipment" does not include consumable supplies such as food, drugs, dressings paper, printed forms, soap, and the like which are routinely required to operate the State home.

(Authority: 38 U.S.C. 5034(2))

(c) *Classification of equipment.* All equipment shall be classified in two groups as indicated in paragraphs (c) (1) and (2) of this section:

(1) *Fixed equipment (included in construction/acquisition contract).* Fixed equipment is permanently affixed to the building or is connected to service distribution systems designed and installed during construction (e.g., kitchen and intercommunication equipment, built-in casework, and cubicle curtain rods). The Federal share in the cost of such equipment, included in the construction contract, will be determined by the Department of Veterans Affairs percentage of participation in the aggregate cost of the project.

(2) *Movable and fixed equipment (not included in project contact).* Movable and fixed equipment may be purchased separately from the construction or acquisition contract and includes furniture, furnishings, wheeled equipment, kitchen utensils linens, draperies, venetian blinds, electric clocks, pictures and trash cans. The Federal share in the cost of such equipment not included in the project contract will be limited to 10 percent of the project contract cost unless justified by the State and approved by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 5034(2))

(d) *Purchase of equipment.* (1) The State shall select and purchase all equipment for the complete and effective functioning of services needed to operate the State home. The State may postpone purchasing of equipment until the facility is almost ready for occupancy to assure that the most current models of equipment are purchased. The equipment shall meet State standards. Title to all equipment purchased by the State with grant monies shall be vested to the State.

(2) The quality and amount of equipment shall be properly apportioned to the various services of the facility so that unduly expensive or elaborate equipment is not provided for some services at the expense of other services.

(Authority: 39 U.S.C. 5034(2))

(e) *Equipment list.* (1) Prior to the completion of the project, the State shall submit to the Department of Veterans Affairs for approval a separate, complete itemized list of fixed and movable equipment, not included in the construction contract. Fixed equipment shall be itemized by category of equipment with the estimated cost of each category or item and the total cost. Movable equipment shall be itemized according to the rooms or functional areas identified on the final drawings. The list shall show the quantity and estimated cost of each item. The quantity will be based on the actual number of units and number of beds in each unit.

(2) The Department of Veterans Affairs will review the equipment list to ascertain medical applicability, quantity, and cost of items. The quantity will be determined by the number of nursing or domiciliary units, the number of bed areas provided, and the items required to make constructed or acquired areas functional. Medical applicability will be determined by whether such items are normally found or used in the type of medical activity/area planned. The Department of Veterans Affairs may disapprove items on the equipment list, but the applicant will be given the opportunity to justify such item(s).

(Authority: 38 U.S.C. 5034(2))

(Information collection requirements contained in § 17.182 were approved by the Office of Management and Budget under control number 2900-0520.)

§ 17.183 General design guidelines and standards.

(a) *General.* Nursing homes and domiciliaries should be planned to approximate the home atmosphere as closely as possible. These guidelines and standards include minimum requirements for site selection and development; architectural design including handicapped accessibility and allowable space criteria; structural, mechanical, and electrical design; plumbing systems and elevator requirements; fire safety criteria; and asbestos abatement rules. State homes to be constructed or acquired with Federal financial assistance shall comply with applicable National, State, and local codes. Such codes include building codes, electrical codes, seismic codes, fire and life safety codes, plumbing codes, and others. Both nursing homes and domiciliaries are health care occupancies, and all space shall be protected with a sprinkler system as well as quick response sprinklers for all smoke compartments containing patient sleeping rooms.

(1) Except as provided in paragraphs (a)(1)(i) and (a)(1)(ii) of this section, in no case shall the total cost of remodeling exceed the cost of constructing a comparable new building or facility.

(i) If a building or facility is on or eligible for the National Register of Historic Places, the total cost of remodeling, renovating, or adapting it may exceed the cost of comparable new construction by five percent.

(ii) If the demolition of a building on or eligible for the National Register of Historic Places is necessary, the cost to professionally record the building for the Historic American Buildings Survey (HABS) plus the total cost for demolition and site restoration shall be included by the State in calculating the total cost of new construction.

(2) The cost of routine maintenance and replacement of mechanical, electrical, structural and architectural work, or maintenance and repair of any building system or equipment will not be considered as a cost for construction or acquisition for a State home grant application. The Department of Veterans Affairs may waive this requirement if it is determined that the work is necessary to comply with standards of life safety or quality patient care or is involved inextricably with the construction or acquisition project.

(b) *Site selection and development.*—(1) *Site accessibility.* The site should be located in a safe, secure, residential-type area which is accessible to acute medical care facilities, community activities and amenities, and transportation facilities typical of the area.

(2) *Mineral rights.* The State shall establish whether the site is subject to mineral rights which have not been developed and include a report on the mineral rights as part of the formal application.

(3) *Limitations.* The State should avoid sites that are near insect-breeding areas, noise or other industrial developments: airports, railways or highways producing noise or air pollution; or potential flood hazards. In the event that these site related disadvantages cannot be avoided, adequate provision will be made to eliminate or minimize the condition.

(4) *Alternatives.* The State shall look at alternative sites for the State home unit and submit a report on these sites to the Department of Veterans Affairs for review early in the application phase.

(5) *Demolition plan.* The cost of demolition of a building cannot be included in the cost of construction unless the proposed construction is in the same location as the building to be demolished or unless the demolition is inextricably linked to the design of the construction project. If the State believes that this cost may be included in the cost of the construction project, a demolition plan should be submitted which includes the extent and cost of existing site features to be removed, stored, or relocated.

(6) *Asbestos abatement.* For existing buildings, a certified industrial hygienist shall be hired for assessment, design, cost estimate, and construction monitoring for asbestos abatement. The abatement process shall follow EPA,

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OSHA, State, and local regulations and guidelines.

(c) *Architectural requirements.* (1) *Finishes.* Walls shall be washable or easily cleaned and smooth. Walls in kitchens and related spaces shall have glazed materials or similar finish and bases shall be waterproof and free from voids. Walls subjected to wetting should also be glazed to a point above the splash or spray line. Wainscots of durable material should be used in patient corridors and other corridors where there is considerable wheeled traffic. Emphasis should be placed on the use of materials for walls and floors that are safe, sanitary, and noise-reducing. The color scheme should provide an attractive and therapeutic environment for elderly patients.

(2) *Handicapped accessibility.* All State home facilities shall provide necessary ingress, egress, and movement throughout the facility for the physically handicapped and elderly in compliance with the Uniform Federal Accessibility Standards (UFAS). Disabled persons shall be provided with access and use that is independent, convenient, and substantially equivalent to that provided other persons.

(3) *Doors.* All doors should be easy to open and in accordance with UFAS requirements.

(4) *Fire Protection.* Facilities shall meet the applicable provisions of the 1988 edition of the National Fire Protection Association's Life Safety Code, NFPA 101, dated February 2, 1988, including NFPA 101M, Alternative Approaches to Life Safety, dated December 2, 1987, (which are incorporated by reference). Incorporation by reference of the 1988 edition of the Life Safety Code including NFPA 101M was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The Code is available for inspection at the Office of the Federal Register, room 8301, 1100 L Street, NW., Washington, DC. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. If any changes in this Code are also to be incorporated by reference, a document to that affect will be published in the Federal Register.

(5) *Space program criteria.* (i) *General.* The chart at paragraph (c)(5)(iii) of this section shows the net square footage allowed for Department of Veterans Affairs participation in the cost of the State nursing homes and domiciliaries.

(ii) *Deviations.* Any deviation from these space criteria of more or less than 10 percent, except to meet a more stringent State or local requirement, must be justified by the State and approved by the Department of Veterans Affairs if the space is to be included in the cost of construction. The Assistant Chief Medical Director for the Office of Geriatrics and Extended Care may approve a deviation if it will improve the safety, quality of care, or quality of life provided to veterans in a State home. If a deviation is not approved by the Department of Veterans Affairs, the cost of questionable space will not be included and the percentage of Federal participation may be reduced.

(iii) *Chart of net square feet (NSF) allowed.*

	Non-Convertible Domiciliary (DOM)	Convertible DOM/Nursing Home
I. Support facilities (maximum allowable square feet per facility for VA participation):		
Administrator's office	200	200.
Assistant administrator	150	150.
Medical officer, director of nursing or equivalent	150	150.
Nurse's office and dictation area	120	120.
General administration (each office/person)	120	120.
Clerical staff (each)	80	80.
Computer area	40	40.
Conference room (consultation area, in-service training)	300 (each)	300 (each).
Lobby/waiting area	3 (per bed) (150 min./600 max. per facility)	3 (per bed).
Public/patient toilets (male/female)	25 (per fixture)	25 (per fixture).
Pharmacy	0	(As required).
Dietetic service	(As required)	(As required).
Dining area	20 (per bed)	20 (per bed).
Canteen/retail sales	2 (per bed)	2 (per bed).
Vending machines	1 (per bed) (450 maximum per facility)	1 (per bed).
Resident toilets (male/female)	25 (per fixture)	25 (per fixture).
Child daycare	(As required)	(As required).
Medical support (staff offices/exam/treatment room/family counseling, etc.).	140 (each)	140 (each).
Barber and/or beauty shops	140	140.
Mail room	120	120.
Janitor's closet	40	40.
Multipurpose room	15 (per bed)	15 (per bed).
Employee lockers	6 (per employee)	6 (per employee).
Employee lounge	120 (maximum 500 per facility)	120.
Employee toilets	25 (per fixture)	25 (per fixture).
Chapel	450	450.
Physical therapy	2.5 (per bed)	5 (per bed).
Office if required	120	120.
Occupational therapy	5 (per bed)	5 (per bed).
Office if required	120	120.
Library	1.5 (per bed)	1.5 (per bed).
Building maintenance storage	2.5 (per bed)	2.5 (per bed).
Resident storage	6 (per bed)	6 (per bed).
General warehouse storage	6 (per bed)	6 (per bed).
Medical/dietary	7 (per bed)	7 (per bed).
General laundry	(As required)	(As required).
II. Bed units (50 Beds):		
One	150	150.
Two	230	245.
Large two-bed (2 per unit)	0	305.

	Non-Convertible Domiciliary (DOM)	Convertible DOM/Nursing Home
Three	340	370
Four	450	480
Lounge areas (resident lounge with storage)	8 (per bed)	8 (per bed).
Resident quiet room	3 (per bed)	3 (per bed).
Clean utility	120	120.
Soiled utility	105	105.
Linen storage	90	150.
General storage	100	100.
Nurses station, ward secretary	0	260.
Medication room	0	75.
Waiting area	50	50.
Unit supply and equipment	50	50.
Staff toilet	25 (per fixture)	25 (per fixture).
Stretcher/wheelchair storage	75	100.
Kitchenette	150	120.
Janitor's closet	40	40.
Resident laundry	125	125.
Trash collection	60	60.
III. Bathing and Toilet Facilities:[1]		
(A) Private or shared facilities:		
Wheelchair facilities	25 (per fixture)	25 (per fixture).
Standard facilities	15 (per fixture)	15 (per fixture).
(B) Full bathroom	75	75.
(C) Congregate bathing facilities:		
First tub/shower	80	80.
Each additional fixture	25	25.

[1] Bathing and toilet facilities must comply with the Uniform Federal Accessibility Standards.

[FR Doc. 91-0218 Filed 5-2-91; 8:45 am]
BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 233

Forfeiture Authority and Procedures

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Consistent with procedures provided by the former customs laws of the United States (19 U.S.C. 1600, *et seq.*), postal regulations establishing procedures for administrative forfeitures currently limit the ceiling on commencement of civil administrative forfeitures to seized property which has an appraised value of $100,000 or less. The Customs and Trade Act, Public Law 101-382, effective August 20, 1990, amended section 607 of the Tariff Act of 1930 (19 U.S.C. 1607) to raise the ceiling on administrative forfeitures from $100,000 to $500,000, and entirely remove the ceiling on administrative forfeitures of monetary instruments (including cash) within the meaning of 31 U.S.C. 5312(a)(3). Accordingly, the Postal Service is publishing this final rule to make postal regulations consistent with this amendment.

EFFECTIVE DATE: May 3, 1991.

FOR FURTHER INFORMATION CONTACT: Fred I. Rosenberg (202) 268-5477.

SUPPLEMENTARY INFORMATION: Until enactment of the Customs and Trade Act, Public Law 101-382, effective August 20, 1990, section 607(a) of the Tariff Act of 1930 (19 U.S.C. 1607) required that property seized for forfeiture, including cash or other monetary instruments, having an appraised value of over $100,000 in value, must be forfeited under the judicial process rather than through an administrative process within the applicable law enforcement agency. There was no value limit on conveyances which contain illegal drugs, and the section did not apply to real property seizures. The Customs and Trade Act increased the value of seized property which could be administratively forfeited from $100,000 to $500,000, and it entirely removed the dollar limitation in regard to administrative forfeiture of monetary instruments, including cash. The Customs and Trade Act did not change the "no value" limit on conveyances which contain illegal drugs or the fact that the section does not apply to real property seizures.

List of Subjects in 39 CFR Part 233

Law enforcement, Crime, Postal Service.

Accordingly, part 233 of 39 CFR is amended as follows:

PART 233—INSPECTION SERVICE AUTHORITY

1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401-3422; 18 U.S.C. 981, 1956, 1957, 2254; 21 U.S.C. 881.

§ 233.7 [Amended]

2. In 233.7, paragraph (g), remove "$100,000" where first stated and insert "$500,000, with the exception of: (1) Monetary instruments within the meaning of 31 U.S.C. 5312(a)(3), or (2) any conveyance which was used to import, export, transport, or store any controlled substance" in its place; remove "$100,000 or less" where stated for the second time and insert in its place "$500,000 or less, or for any monetary instruments within the meaning of 31 U.S.C. 5312(a)(3) or any conveyance which was used to import, export, transport, or store any controlled substance"; in paragraph (h), the italicized heading is revised to read as follows:

* * * * *

(h) *Notice of seizure for property having a value of $500,000 or less, or for monetary instruments or for conveyances which were used to transport or store any controlled substance; advertisement; declaration of forfeiture.* * * *

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-1460 Filed 5-2-91; 8:45 am]
BILLING CODE 7710-12-M

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-474; RM-7355]

Radio Broadcasting Services; Geneva, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ray-Mar Broadcasting Company, substitutes Channel 284A for Channel 285A at Geneva, Ohio, and modifies the license of Station WDON(FM) to specify the alternate Class A channel. See 55 FR 46079, November 1, 1990. The allotment of Channel 284A could enable Station WDON(FM) to increase power to 6 kW and thus increase its coverage area. Channel 284A can be allotted to Geneva in compliance with the Commission's minimum distance separation requirements with a site restriction of 15 kilometers (9.3 miles) west to accommodate petitioner's desired transmitter site. The coordinates for Channel 284A at Geneva are North Latitude 41-49-30 and West Longitude 81-07-33. Canadian concurrence in the allotment has been received because Geneva is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-474, adopted April 17, 1991, and released April 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by removing Channel 285A and adding Channel 284A at Geneva.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-10640 Filed 5-2-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 89-01; Notice 10]

Passenger Automobile Average Fuel Economy Standards; Final Decision

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final decision.

SUMMARY: This decision is issued in response to a petition filed by Dutcher Motors, Inc. (Dutcher) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model year (MY) 1992 passenger automobiles, and that a lower alternative standard be established for it. This decision exempts Dutcher and establishes an alternative standard of 17.0 mpg for MY 1992. The decision was preceded by publication of a notice requesting public comments.

DATES: Effective Date: June 3, 1991. This exemption and the alternative standard apply to Dutcher for model year 1992. Petitions for reconsideration must be submitted by June 3, 1991.

ADDRESSES: Petitions for reconsideration must be submitted to: Adminstrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that 10 copies be provided.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Kee's telephone number is (202) 366-0846.

SUPPLEMENTARY INFORMATION: NHTSA is exempting Dutcher from the generally applicable average fuel economy standard for 1992 model year passenger automobiles and establishing an alternative standard applicable to Dutcher for that model year. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended ("the Act") (15 U.S.C. 2002(c)). Section 502(c) provides that a passenger automobile manufacturer which manufactures fewer than 10,000 passenger automobiles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Section 502(e) of the Act (15 U.S.C. 2002(e)) requires NHTSA, in determining maximum feasible average fuel economy, to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final decision was preceded by a proposed decision announcing the agency's tentative conclusion that Dutcher should be exempted from the generally applicable MY 1992 passenger automobile average fuel economy standard of 27.5 mpg, and that an alternative standard of 17.0 mpg should be established for Dutcher that model year (56 FR 3441, January 30, 1991). No comments were received on the proposed decision.

The agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on the conclusions that the maximum feasible average fuel economy level for Dutcher in MY 1992 is 17.0 mpg, that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision, and that the national effort to conserve energy will not be affected by granting this requested exemption, NHTSA hereby exempts Dutcher from the generally applicable passenger automobile average fuel economy standard for the 1992 model year and establishes an alternative standard of 17.0 miles per gallon for Dutcher for that year.

NHTSA has analyzed this decision, and determined that neither Executive Order 12291 nor the Department of Transportation's regulatory policies and procedures apply, because this decision is not a "rule," which term is defined as "an agency statement of general applicability and future effect." This exemption is not generally applicable, since it applies only to Dutcher. If the Executive order and the Departmental policies and procedures were applicable, the agency would have determined that this action is neither "major" nor "significant." The principal impact of this exemption is that Dutcher will not be required to pay civil penalties if it achieves a CAFE level equivalent to the alternative standard established in this notice. Since this decision sets an alternative standard at the level determined to be Dutcher's maximum feasible average fuel economy, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

The agency has also considered the environmental implications of this decision in accordance with the National Environmental Policy Act and determined that this decision will not significantly affect the human environment. Regardless of the fuel economy of a vehicle, it must pass the emissions standards which limit the amount of emissions per mile traveled. Thus, the quality of the air is not affected by this exemption and alternative standard. Further, since Dutcher's MY 1992 automobiles cannot achieve better fuel economy than 17.0 mpg, granting this exemption will not affect the amount of gasoline available.

Since the Regulatory Flexibility Act may apply to a decision exempting a manufacturer from a generally applicable standard, I certify that this decision will not have a significant economic impact on a substantial number of small entities. This decision does not impose any burdens on Dutcher. It does relieve the company from having to pay civil penalties for noncompliance with the generally applicable standard for MY 1992. Since the price of 1992 Dutcher automobiles will not be affected by this decision, the purchasers will not be affected.

List of Subjects in 49 CFR 531

Energy conservation, fuel economy, gasoline, imports, motor vehicles. In consideration of the foregoing, 49 CFR part 531 is amended to read as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 continues to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

2. Section 531.5 is amended by revising paragraph (b)(11); the introductory text of paragraph (b) is republished to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(11) Dutcher Motors, Inc.

Model year	Average fuel economy standard (miles per gallon)
1986	16.0
1987	16.0
1988	16.0
1992	17.0

Issued on April 30, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-10506 Filed 5-3-91; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 90-01; Notice 2]

RIN 2127-AD16

Federal Motor Vehicle Safety Standards; School Bus Pedestrian Safety Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a new safety standard requiring new school buses to be equipped with a stop signal arm. The standard requires that the stop signal arm be octagonal, meet minimum specified dimensions, and have the word "STOP" in white letters on a background which is red with a white border. To increase the arm's conspicuity, the new standard also requires that the arm be either reflectorized or have at least two red flashing lamps. The standard requires that the device be located on the left side of the bus. The standard further requires that it be automatically deployed, at a minimum, during the entire time that the red signal lamps required by Standard No. 108 are activated. In addition, the standard allows a means by which the driver could manually override the automatic mechanism, provided that the override is equipped with an audible signal to prevent permanent engagement of the override. The intended effect of this rule is to reduce the risk to pedestrians near stopped school buses.

DATES: *Effective Date:* This standard becomes effective September 1, 1992.

Incorporation by reference: The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 1, 1992.

Petitions for reconsideration: Any petition for reconsideration of this rule must be received by the agency not later than June 3, 1991.

ADDRESSES: Petitions for reconsideration should refer to Docket No. 90-01; Notice 2 and be submitted to the following: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (docket hours 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gauthier, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-4799.

SUPPLEMENTARY INFORMATION:

Background

Although statistics about school bus operation demonstrate that school buses provide an extremely safe form of transportation, the agency is committed to improving school bus safety. At the request of Congress, the National Academy of Sciences (NAS) studied school bus safety to determine which safety measures would be "most effective" in protecting school children while boarding, leaving, and riding in school buses. (See "Surface Transportation and Uniform Relocation Assistance Act of 1987," Pub. L. 100-17, 204(a) 101 Stat. 219, April 2, 1987.) In May 1989, the National Research Council (NRC), an agency of the NAS, issued a report entitled "Improving School Bus Safety," Special Report No. 222. Among other things, the study reviewed relevant crash data and potential safety measures to prevent injuries suffered by pedestrians, especially students, struck by a school bus or a vehicle passing the bus.

Based on data from the Fatal Accident Reporting System (FARS) for the years 1982 through 1986 about student-aged children killed in school bus related crashes, the NAS report concluded that in an average year, 12 of those killed were student-aged passengers in school buses or vehicles operated as school buses, eight were passengers of other vehicles, and 36 were pedestrians killed after being struck by the school bus or other vehicle. Of the 36 pedestrian fatalities, approximately 28 were killed by school buses or vehicles operating as school buses. The other 12 pedestrian fatalities resulted from pedestrians being struck by other vehicles passing a school bus that stopped to load or unload passengers. An independent

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study by the Kansas Department of Education concluded that for the years 1982 through 1986, there were an average of 11 children killed each year by vehicles passing school buses in loading zones. NHTSA's subsequent analysis of FARS data for the years 1982 through 1986 indicated that about half of the bus-caused pedestrian fatalities (12 annually) occurred as the children were boarding or leaving the bus.

The NAS study also estimated that each year 960 pedestrians are injured in school bus loading zones, of which it assumed, based on extrapolating from State data, 800 involve student-aged pedestrians. Approximately 525 of these pedestrians are injured by being struck by vehicles other than the school bus; the remainder are struck by the school bus. Twenty percent of these injuries are categorized as being "incapacitating injuries." These injuries are defined by the American National Standards Institute (ANSI) as including any injury that prevents the injured person from walking, driving or normally continuing activities he or she was capable of performing before the injury occurred. These include severe lacerations, broken or distorted limbs, skull and chest injuries. The majority of non-fatal injuries are caused by vehicles other than the school bus striking the student pedestrian.

These data about pedestrians indicate that despite an apparent downward trend, deaths and injuries caused by vehicles passing school buses remain a significant safety problem. The data also indicate that children are at a much greater risk of being killed while boarding or leaving a school bus than they are while on board a bus.

The 1987 Act directed the agency to review the NAS report to determine safety measures that were potentially "most effective" in improving school bus safety. The agency issued a notice endorsing some of the recommendations in the NAS report, finding that they had the potential for reducing fatalities and injuries to school bus users. (54 FR 29629, July 13, 1989). As for equipment intended to increase pedestrian safety in school bus loading zones, the agency concluded that programs to require the installation of stop signal arms and crossview mirrors on school buses were potentially among the "most effective" in improving school bus safety.

A stop signal arm is a device patterned after conventional "STOP" signs and attached to the left side of a school bus. When the school bus stops, the stop signal arm extends outward from the bus. Its purpose is to alert motorists that a school bus has stopped or is stopping. In considering the effectiveness of stop signal arms, the NAS report emphasized the difficulty in conclusively determining the effectiveness of school bus safety measures. Nevertheless, the NAS report cited studies demonstrating that stop signal arms are effective in reducing illegal passing of stopped school buses, thus reducing the risk to pedestrians struck by other vehicles in school bus loading zones. For instance, a 1983 study by Hale et al. indicated that school buses equipped with eight-light systems and stop signal arms recorded almost 40 percent fewer passing violations than buses equipped with light systems but not the stop signal arm. (Hale, A.R. *et al.*, "Development and Test Rural Pedestrian Countermeasures," NHTSA Report DTNH22-80-C07568.). Similarly, a study by Brackett et al., comparing passing violations before and after school buses were equipped with a stop signal arm, estimated that passing violations could be reduced about 30 percent through the use of stop signal arms. (Brackett, R.Q. *et al.*, "School Bus Safety Equipment Evaluation," Texas Transportation Institute, The Texas A&M University System, College Station, TX, 1984).

Based on these considerations, NHTSA initiated a series of efforts to assess methods to improve school bus safety, including pedestrian safety in school bus loading zones. In taking these steps, NHTSA emphasized that the safety record of school buses has been excellent. Although school buses transport many more passengers per trip than other vehicles, the occupant fatality rate per vehicle mile driven is only one-fourth that of passenger cars. Similarly, the number of fatalities and injuries related to pedestrians in school bus loading zones is comparatively small.

Nevertheless, because of the special concern for the well-being of school children and because each fatality and injury involving them is particularly tragic, NHTSA issued two notices about measures intended to reduce the risk to pedestrians near stopped school buses. One notice was an advance notice of proposed rulemaking (ANPRM) to obtain information about outside crossview mirror systems and other equipment (e.g., crossing control arm barriers, audible back-up warnings, video monitors, and proximity detectors) intended to help school bus drivers detect pedestrians, thus preventing pedestrians from being struck by school buses. (54 FR 53127, December 27, 1989) The agency is reviewing comments to that notice and expects to issue a subsequent notice soon. A second notice proposed a new safety standard to require school buses to be equipped with a stop signal arm (55 FR 3619, February 2, 1990). That notice provides the starting point for this final rule.

Notice of Proposed Rulemaking on Stop Signal Arms

In its February 1990 notice, the agency proposed that the stop signal arm meet minimum size requirements, be octagonal, have a specified color scheme (i.e., a red background with a white border and the word "STOP" in white letters), be reflectorized, and be installed on the left side of the bus. The notice also proposed that the stop signal arm be automatically deployed whenever the red signal lamps required by Standard No. 108 were activated. Finally, the notice proposed to allow a means by which the driver could manually override the automatic deployment mechanism.

The NPRM addressed several issues and invited comments about stop signal arms and pedestrians struck by vehicles passing stopped school buses. The notice referred to the previously mentioned studies evaluating the effectiveness of stop signal arms and the endorsement of their use by the NAS report and by the Tenth National Conference on School Transportation. The latter was a meeting of official representatives of State Departments of Education, local school district personnel, contract school bus operators, manufacturers, and others interested in school bus safety.

The notice also explained that although no Federal provision requires the installation of a stop signal arm on school buses, some Federal provisions are designed to protect student pedestrians in the vicinity of stopped school buses. First, section S5.1.4 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108 Lamps, Reflective Devices, and Associated Equipment (49 CFR 571.108), which sets forth the minimum standard of performance, requires school buses to be equipped with either four red lamps (two in front of the bus and two in back of the bus) or an eight lamp system with four amber lamps and four red lamps. The red lamps are automatically activated when the bus entrance door is opened. Second, Highway Safety Program Guideline No. 17, Pupil Transportation Safety (23 CFR 1204.4, Guideline 17), states that "(w)hen vehicles are equipped with stop signal arms, such devices should be operated only in conjunction with red signal lamps." (Section IV.B.3.(6)c.)). The Highway Safety Program Guidelines are designed to provide a uniform national pupil transportation safety program and to assist the States in achieving the highest level of safety in the transportation of children on school buses.

The NPRM also described the Society of Automotive Engineer's recommended practice, SAE J1133 Apr84, School Bus Stop Arms, which is not binding on any manufacturer or school bus user. That practice sets forth test procedures, "requirements," and guidelines for school bus stop signal arms. The recommended practice also specifies the sign's color scheme, the minimum size, and the inclusion of at least two flashing lamps. It incorporates vibration, moisture, dust, corrosion, warpage, durability, and flash rate tests for the lamps and sets forth requirements for luminous intensity, color, and materials. SAE J1133 also sets forth "guidelines," for photometric design, certain design aspects, installation, and activation.

The NPRM also explained the potential Federalism implications of the rulemaking. As of December 1989, 36 States required stop signal arms. The agency estimated that at least 71 percent of new school buses were being equipped with stop signal arms. The notice explained that because FMVSSs set forth minimum standards of performance, any purchaser of school buses may order from a school bus manufacturer a school bus that not only meets but exceeds the requirements in the FMVSSs. In addition, under section 103(d) of the Vehicle Safety Act, which provides for the preemption of nonidentical State requirements covering the same aspect of performance of a FMVSS, a State may require school buses "procured for its own use" to meet a performance standard higher than the Federal one. After noting that many States have based their stop signal arm requirements on SAE J1133, the notice described the stop signal arm requirements of certain States.

Comments to the NPRM and the Agency's Response

NHTSA received 25 comments in response to the NPRM. These were from State organizations, school bus and school bus equipment manufacturers, associations, school bus contractors, and individuals. All but two commenters agreed with the general proposal to require a stop signal arm on school buses. Nevertheless, commenters had many different opinions on specific requirements about the design and operation of stop signal arms. The agency has considered the points raised in the comments in developing the final rule. The agency's discussion of the significant comments and other relevant information is set forth below. For the convenience of the reader, this notice follows the NPRM's order.

General Considerations

Safety Need

The proposal first asked whether there was a safety need for requiring the installation of the stop signal arm. Although commenters noted the difficulty in obtaining comparative data to establish a safety need for the requirement, the consensus was that such a safety need exists. For instance, the Washington Superintendent of Public Instruction (Washington) commented that there was "no question" about the safety need for stop signal arms. The Ohio Department of Education (Ohio) stated that stop signal arms are directly related to better student safety. Only the California Department of Education (California DOE) and the California Highway Patrol (CHP) believed that there was no safety need.

Given the data and recommendations in the NAS report, the Hale and Brackett studies on illegal school bus passes, and general support in the docket comments for stop signal arms, the agency has concluded that a safety need exists for better controlling the movement of vehicles passing stopped school buses during the loading and unloading of passengers. The agency notes that the opposition from the California entities may stem from that State's mandatory student escort program that requires school bus drivers to escort elementary school children across the street. Despite California's opposition, the agency notes that the purpose of traffic control devices is to "help insure highway safety by providing for the orderly and predictable movement of traffic, both motorized and non-motorized, throughout the national highway transportation system, and to provide such guidance and warnings as are needed to insure the safe and informed operation of individual elements of the traffic stream." (Manual on Uniform Traffic Control Devices for Streets and Highways, Federal Highway Administration, 1988, 1A-1) (emphasis added). The Manual's section on "Traffic Controls for School Areas" further explained that "(n)on-uniform procedures and devices cause confusion among pedestrians and vehicle operators, prompt wrong decisions, and can contribute to accidents. In order to achieve uniformity of traffic control in school areas, comparable traffic situations must be treated in the same manner." This goal for nationwide uniformity among the States to reduce confusion necessitates requiring all school buses to be equipped with a stop signal arm. Even CHP agreed about the need for nationwide uniformity, stating that a "nationally consistent equipment requirement (is needed so) that every school bus in the nation should send the same signals to other motorists to stop traffic."

Effectiveness of Stop Signal Arms

Based on the previously mentioned studies on the effectiveness of school buses equipped with a stop signal arm in reducing illegal passing of stopped school buses, the agency tentatively concluded in its proposal that such a requirement would reduce the number of student pedestrians struck by vehicles passing stopped school buses. The NPRM requested comments about the reasonableness of its tentative conclusion.

In response to that request, several commenters provided information about the effectiveness of stop signal arms. The Connecticut Department of Motor Vehicles (Connecticut), the Insurance Institute for Highway Safety (IIHS), Mayflower Contract Services, the Colorado Department of Education (Colorado), the Florida Department of Education (Florida), Kickert School Bus Lines (Kickert), and the Hawaii Department of Transportation (Hawaii) indicated either that they believed stop signals arms are effective in protecting pedestrains near stopped buses or provided information that alluded to the effectiveness of these devices. Several commenters agreed with statements in the NAS report and the NPRM about the difficulty in empirically determining the effectiveness of stop signal arms. Only CHP and the California DOE questioned whether school bus stop signal arms would be effect.

Since issuing the NPRM, the agency has analyzed further information indicating that stop signal arms are effective in reducing illegal passing of stopped school buses. A 1986-1987 study conducted in Henrico County, Virginia, a jurisdiction requiring school buses to be equipped with a stop signal arm, concluded that each school bus was illegally passed an average of 1.25 times per day. In contrast, the 1984 study conducted by Brackett in Texas, a jurisdiction in which school buses were not equipped with stop signal arms, concluded that each school bus was illegally passed an average of 2.8 times per day. Aggregating the number of illegal passes over the course of a school year for those school buses not now required to be equipped with a stop signal arm indicates that adoption of

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such a requirement will result in millions of fewer instances of illegal passing. This reduced risk of illegal passing of stopped school buses, in turn, should reduce the potential for injuries and fatalities sustained by student pedestrians in such illegal passing situations. Because the docket comments and the agency's subsequent analysis appear to confirm the agency's initial determination that stop signal arms are effective in reducing the risk to pedestrians around stopped school buses, the agency has decided to require school buses to be equipped with the stop signal arm.

While the number of illegal passes of a stopped school bus can be reduced by the installation of stop signal arms, the agency encourages the States to educate motorists more fully about their laws on the stopping for school buses that are loading and unloading students. The agency also encourages State and local authorities to increase their enforcement efforts in this area.

The Effect of a Federal Standard on the States

After discussing current levels of stop signal arm usage and the proposal's anticipated effect on the States and State laws, the notice invited comments about the potential impact of a Federal safety standard on existing State laws. In particular, the notice asked whether States would have to amend their laws to comply with the proposed Federal standard in light of section 103(d) of the Vehicle Safety Act.

Of the twelve State organizations that commented on the proposal, all but the two California entities favored the proposal. In addition, Blue Bird stated that a Federal standard was necessary to promote uniformity. As for specific amendments to existing laws, CHP stated that the California Code of Regulations would have to be amended if a stop signal arm is to be installed on California school buses. CHP also stated that the California Vehicle Code would have to be amended to permit flashing lights if such lights on the stop signal arm were required. Two States favoring the proposal stated that a Federal requirement would affect their laws. Florida commented that the proposal's performance and locational requirements might affect their current requirements. The Illinois Department of Transportation (Illinois) explained that it would have to amend its regulation, which currently requires a hexagonal semaphore.

After reviewing the comments, the agency concludes that a Federal standard requiring a stop signal arm on school buses will not impose significant burdens on the States. The agency has determined that this final rule is necessary to ensure uniform school bus stopping and signalling procedures to give passing motorists a consistent message, even though this action will require several States to equip their school buses with a stop signal arm and a few others to modify their laws. It appears that those States having to modify their laws will have little difficulty in enacting the necessary legislation to comply with the new safety standard and section 103(d) of the Vehicle Safety Act.

Stop Signal Arm Characteristics

The NPRM proposed that the stop signal arm be a regular octagon in shape, be on a red background with the word "STOP" in white lettering on both sides and a white border, be at least a specified size, and be reflectorized. The proposal also requested comments on the desirability of adopting other requirements, including those in the SAE recommended practice about flashing lights.

As for the stop signal arm's shape, the NPRM proposed that it be patterned after conventional octagonal highway stop signs with a red background with white lettering. The agency reasoned that drivers recognize the meaning of octagonal signs and have been conditioned to stop when they see them. The notice further explained that standardization of shape, color scheme, and the word "STOP" would ensure that a driver traveling out-of-state would encounter the same familiar stop sign design throughout the country. In addition, the proposal noted that FHWA's Manual on Uniform Traffic Control Devices (1988) requires stop signs to have these characteristics and that the Tenth National Conference expressly recommended that the stop signal arm have these characteristics.

In response to the proposal's request for comments, Blue Bird, Colorado, CHP, the National Student Transportation Association (NSTA), 3M, Superior Coach, and a school teacher supported the proposal to standardize the stop signal arm's shape and color scheme. Even Illinois, a State now requiring a hexagonal shaped sign, did not object to standardizing the stop signal arm's shape. Based on the foregoing, the agency is adopting the requirements that the stop signal arm be octagonal in shape with white letters and a white border on a red background, as set forth in Figure 1 of the final rule.

Minimum Size Requirements

The NPRM also proposed to specify the minimum size of the sign and its lettering. Based on the FHWA's "Standard Alphabets for Highway Signs," a reference guide specifying the size and appearance of letters and numerals used on highway signs, and SAE J1133's recommended practice, the agency proposed to require that the octagonal stop signal arm be a regular octagon at least 450 mm X 450 mm in diameter (approximately 17.7 inches X 17.7 inches), that the white border be at least 12 mm wide (approximately 0.47 inch), and that the white lettering be at least 150 mm (approximately 5.9 inches) in height and have a stroke width of at least 20 mm (approximately 0.79 inch). The proposal asked whether the proposed size specifications adopted from the FHWA practice and SAE J1133 should be incorporated in the standard and whether stop arms and lettering meeting these proposed size requirements would be large enough to be seen and understood by drivers of other vehicles approaching a stopped bus.

In response to these proposals, Blue Bird, Florida, and NSTA expressly supported specifying the sign's size. In addition, the agency assumes that other commenters who generally endorsed the proposal implicitly agreed to the proposed size. 3M believed that the proposed size might be inadequate to make the stop signal arm conspicuous, especially when other vhicles were traveling at 55 miles per hour.

After reviewing the proposal on minimum size requirements in light of the comments, the agency has decided to adopt the size requirements, as proposed. Despite reservations by 3M, the agency concludes that the FHWA guidelines on highway signs, specifications in SAE 1133, and real-world experiences of States using stop signal arms indicate that the proposed minimum size requirements will ensure that the stop signal arm will be conspicuous to drivers of vehicles approaching a stopped school bus. Given that States may specify requirements more stringent than the minimum requirements adopted in this notice, those States who agree with 3M's concerns may equip school buses with a larger stop signal arm.

Conspicuity of Stop Signal Arms

This final rule discusses reflectorization and flashing lights together because both measures are designed to improve the conspicuity of stop signal arms in poor lighting conditions. NHTSA proposed requiring stop signal arms be reflectorized, believing that reflectorization would increase the stop signal arm's

conspicuity, especially when ambient lighting conditions are poor. The proposal requested comments about the need for, costs of, and requirements related to reflectorization. The agency also requested comments on requiring flashing lights on stop signal arms based on provisions in SAE J1133.

Several commenters addressed reflectorization and illumination of stop signal arms. Colorado, Florida, Superior Coach, and a teacher stated that reflectorization together with illumination were effective in increasing the conspicuity of stop signal arms in poor lighting conditions. As for requiring reflectorization alone, the NSTA opposed such a requirement, stating that the benefits of such a requirement had not been established. Carpenter Body Works also opposed requiring reflectorization in any situation. Hawaii and Washington stated they do not require their stop signal arms to be reflectorized. The Virginia Department of Education (Virginia) preferred that reflectorization be at the State's option due to its additional costs. Illinois and the Minnesota Department of Transportation (Minnesota) also stated that a stop signal arm with lights should be allowed as an option to reflectorization. IIHS believed that flashing lights were more effective than reflectorization because reflectorization helps conspicuity primarily in low light conditions such as when headlights on other vehicles render it visible. This led IIHS to conclude that reflectorization is not an adequate substitution for flashing lights in daylight hours. In contrast, 3M advocated requiring the use of reflectorization as a "fail safe" system that would provide high visibility during darkness. 3M criticized the use of flashing lights which might fail, which could "compete and veil the sign shape and message," and which mean different things under different conditions. Similarly, CHP opposed flashing lights, stating that motorists might become jaded to the importance of their message in their uses on other types of vehicles such as emergency vehicles.

Based on the data and the comments, the agency has determined that it is necessary to increase the conspicuity of stop signal arms during poor lighting conditions. While the K-DOT school bus data indicate that most children are killed during "daylight" conditions, at least 10 percent are killed during limited light conditions (e.g., dawn, dusk, dark). In addition, 10 to 20 percent of the fatalities occur during cloudy, rainy, snowy, and foggy conditions, which affect light conditions. Finally, the majority of fatalities occur from November to March, the months when daylight hours are shorter and weather conditions poorer. For the above reasons, the agency has decided to require measures to increase the conspicuity of stop signal arms.

Despite the agency's conclusion that increased conspicuity of stop signal arms is necessary, neither the comments nor independent studies conclusively indicate that one approach is superior to the other. After reviewing the merits of reflectorization and flashing lights to increase the conspicuity of stop signal arms, particularly during poor ambient lighting conditions, the agency has determined that school bus manufacturers and purchasers should have the option of using either a reflectorized stop signal arm or one that is equipped with at least two red flashing lamps. This would enable the State or local school districts to follow their own particular preference to improve stop signal arm conspicuity during limited or non-existing light conditions. They could decide to order buses with stop signal arms that are both reflectorized and equipped with flashing lamps. This decision is consistent with the statement in the FHWA's Manual on Uniform Traffic Control Devices that "signs used for school traffic control shall be reflectorized *or* illuminated when regularly scheduled classes begin or end during hours of darkness, and should be reflectorized or illuminated when there is considerable use of school buildings by children during hours of darkness." (7B-5) (emphasis added).

If reflectorized, both sides of the stop signal arm must use Type III retroreflectorized material that meets Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-85, FHWA section 718 "Reflective Sheeting" (1985), as set forth in S6.1 and Table 1 of the final rule.

If flashing lamps are used, they must meet the requirements for color, flash rate, and vibration, moisture, dust, corrosion, photometry, and warpage, as set forth in S6.2 of the final rule. These tests are patterned after the tests in certain SAE Recommended Practices: For color in SAE J578, Color Specification for electrical signal lighting devices; for flash rate in SAE J1054, Warning Lamp Alternating Flashers: And for vibration, moisture, dust, corrosion, photometry, and warpage in SAE J575 Tests for Motor Vehicle Lighting Devices and Components and SAE J1133, School Bus Stop Arm.

The NPRM also requested comments about strobe lights on stop signal arms. The proposal noted that while strobe lights might prove beneficial in school districts operating in areas prone to poor visibility, requiring all school buses to be equipped with them would be expensive without providing significant additional safety benefits to most school districts.

Florida, Illinois, NSTA, the Ohio Department of Education (Ohio), and CHP opposed requiring strobe lights on stop signal arm, stating that they were expensive and without any demonstrated safety benefit. CHP and IIHS stated that strobe lights had the potential to make the stop signal arm less readable in certain situations. Because the comments confirm the agency's initial concerns about strobe lights, the agency continues to believe that strobe lights should not be required on stop signal arms.

Location of Stop Signal Arm

The NPRM proposed that the stop signal arm be installed on the left side of the bus. The agency decided to propose this general requirement about stop signal arm location, while seeking comments on more specific, objective locational requirements. The proposal explained the agency's preference for more precise locational requirements, which could be important in increasing the conspicuity of stop signal arms.

The commenters consistently favored locating the stop signal arm near the driver. Colorado stated that it requires a stop signal arm to be mounted outside the bus on the left side opposite the driver and immediately below the window. Minnesota commented that the arm should be approximately even with the driver's position. IIHS stated that stop signal arms typically are located near the driver at or just below the window line. While IIHS was not aware of evidence that this is the only effective position for stop signal arms, it believed that standardizing the location would reduce motorist confusion. Florida, NSTA, and CHP similarly believed that stop signal arms should be located near where they are most typically located today, i.e., outside the driver's window. CHP also stated that stop signal arms should be located in a "transverse vertical plane that passes through the driver's seat," but out of the reach of the passengers who might play with it. Florida suggested that the top of the sign be immediately below the window line.

At a July 1990 school bus transportation conference, State school bus transportation personnel expressed divergent opinions about the stop signal

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arm's location relative to the length of the school bus. While several States said they install the device near the driver's window, other States explained that they have been installing the device further rearward than the driver's window because the device may be more visible at these locations if the school bus is stopped at an angle to the road. California stated that given their escort program in which the bus driver holds a stop sign at the front of the school bus, placing the stop signal arm near the bus's rear would be more effective.

Based on the goal for standardization, views of State school transportation personnel about effective locations for stop signal arms, typical location of these devices now in use, and the Vehicle Safety Act's directive that safety standards specify objective requirements, S5.4.1 of the final rule requires that school buses be equipped with one stop signal arm installed on the left side of the bus so that when extended it shall (1) be perpendicular to the side of the bus, plus or minus five degrees; (2) have the top edge of the octagon parallel to and within 6 inches of a horizontal plane passing through the lower edge of the driver's window frame; and (3) have the vertical centerline of the stop sign be at least 8 inches away from the school bus body when the sign is extended. The agency believes that these requirements provide uniform locational specifications while providing users flexibility to install stop signal arms consistent with their experiences with these devices.

Florida and CHP raised the issue of "dual" stop signal arms on longer school buses. Florida stated that it will require dual stop arms on its new school buses over 23 feet in length. CHP stated that the agency should require only one stop signal arm, but if a bus is equipped with a second stop signal arm, then "the forward stop arm should be blank on the rearward side, and the rearward stop arm should be blank on the forward side."

In response to these comments, the agency has decided to permit school buses to be equipped with a second stop signal arm. Motorists following the school bus will see two stop signs, thus reinforcing the message that they are to stop behind a stopped bus and not pass it. The optional second (rear) stop signal arm must comply with all the requirements for the mandatory stop signal arm, except that its front must be blank. The purpose of this latter requirement is to avoid confusion for drivers approaching a stopped bus from the front.

Activation and Override of Stop Signal Arms

As for the operation of a bus' stop signal arm, the NPRM proposed that it be automatically deployed whenever the bus' red signal lamps required by S5.1.4 of Standard No. 108 are activated, i.e., when the bus is in service and the entrance door is open. The notice also proposed to allow, but not to require, a manual override, reasoning that while it would be worthwhile to permit a manual override, it should not be required given cost and engineering considerations associated with an override. The proposal explained that, at times, a manual override might be necessary to allow the stop signal arm to act independently from its automatic activation. For instance, when the weather is cold, the bus driver may wish to keep the school bus door closed but have the stop signal arm activated while a child crossed the street to board the bus. Similarly, when a bus has stopped at a railroad crossing and the driver opens a door to check for approaching trains, the stop signal arm need not or should not be activated while the door needs to be opened.

The NPRM sought comments on the activation and override of stop signal arms. The agency was concerned about the possibility that an override device could permit a driver to override "permanently" the mechanism for automatically deploying the stop signal arm as long as the override device was activated. This would negate the safety benefits obtained from the stop signal arm.

In commenting about permitting a manual override, several States commented on the proposal about tying the deployment of the stop signal arm to the activation of the red stop signal lamps required by Standard 108, i.e., the stop signal arm would be automatically deployed when the bus entrance door is opened and those lamps are activated. Washington, Illinois, and Florida each opposed tying the stop signal arm deployment to the red signal lamp activation and suggested methods of stop signal arm activation other than opening the door. These States believed that their systems increased safety by preventing school children from leaving the bus before the driver had adequately controlled traffic.

Washington recommended a procedure in which the bus driver would activate the flashing red lamps by extending the stop signal arm while the service door remained closed to keep the students within the bus. The driver would only open the door after checking for stopped traffic. To accomplish its suggestion, Washington recommended eliminating the door switch in FMVSS No. 108, requiring a separate control for the stop signal arm independent of the switch that opens the door, and requiring that whenever the stop signal arm is extended, the flashing red lamps must operate. Illinois recommended that stop signal arm operation be patterned after its four-step procedure: (1) Activate the amber lights by hand or foot control, (2) upon a complete stop, desecure but do not open the service door, which turns off the flashing amber lights and turns on the flashing red lamps and extends the stop signal arm; (3) when traffic is clear, open the service door with the red signal still activated and the stop signal arm still extended; and (4) close and secure the service door with the red lamps going off and the stop arm retracting. Florida recommended having drivers activate the stop signal arm before opening the service door and opposed activation by the door switch alone. Florida advocated its current procedure, requiring a three-position switch that controls the warning lights and the stop signal arm and stops traffic before the door is open.

After reviewing the proposal in light of these comments, the agency has decided to adopt the requirement, as proposed. Accordingly, a stop signal arm must automatically extend, at a minimum, whenever the red signal lamps required by S5.1.4 of Standard 108 are activated. The agency emphasizes any system of activation is permissible provided the stop signal arm is extended during, at least, the entire time that the red warning lamps are activated. Accordingly, the systems described by Washington, Illinois, and Florida are permissible under the final rule and appear to serve the interests of safety. The agency nevertheless has decided not to set forth specific requirements regarding these systems, because such specific requirements would be beyond the scope of the proposal and may overburden or otherwise adversely affect States using other means of stop signal arm deployment. For instance, adopting Illinois's system would mandate the now optional 8-lamp system. Nevertheless, given the potential advantages of these systems in better controlling traffic, the agency encourages States to consider such a means of activating stop signal arms.

As for manual override devices, Connecticut stated that it allows an override that can extend or withdraw the stop signal arm regardless of its normal operation, claiming that this eliminates damage to vehicles. Ohio requires an emergency system for extending stop signal arms and operating the red light. Minnesota commented that a manual override of the stop signal arm should also override the 8-lamp warning system. Illinois opposed allowing a manual override because it might be inadvertently left activated, preventing the stop arm from being extended when the bus was stopped to load or discharge passengers. NSTA opposed such an override, claiming that there was no need for it and that the driver could easily forget that the override was deployed, thus creating a permanent override. IIHS commented that an override should be permitted only if there was a provision reminding the bus operator of the override's activation. IIHS recommended that a manual override system include audible and visible reminders that would activate whenever the override is on and the bus is in use.

Based on the agency's tentative conclusions in the NPRM and comments about the benefits from permitting a manual override device, the agency has concluded that there is adequate reason to permit an override device. This is especially true when school buses are used in non-school charter service where the use of the stop signal arm is prohibited by State law. However, to prevent permanent override, the mechanism for operating the override must be located within the driver's reach. Further, the bus must be equipped with a continuous or intermittent signal, which is audible to the driver and which operates whenever the engine is running and the override is activated.

When school buses are used for non-school purposes, the agency is concerned that an audible signal, without any time limit, could become annoying to the driver and passengers during long boarding and unloading operations and could be the cause of permanent disablement of the audible signal. As stated earlier, the purpose of the audible signal is to ensure that the stop signal arm is not permanently overriden. As a result, the agency has determined that it would be beneficial to allow audible override signals on buses to be equipped with a timer that requires the signal for at least 60 seconds. The 60-second time limit was chosen since it represents an adequate time for the bus driver to recognize the audible signal over any roadside noises and to realize that the stop signal arm's manual override is engaged. If a time limit device is used with the audible signal, it must automatically recycle every time the service entry door is opened while the engine is running and the manual override is engaged.

Miscellaneous Issues

The NPRM also sought comments on issues related to but outside the scope of this rulemaking. These issues include the merits of equipping a school bus with an external loud speaker and increasing the conspicuity of school bus bumpers with a fluorescent paint. Those interested in these issues should review this rulemaking's docket, especially for comments by Washington, NSTA, Virginia, 3M, Superior Coach, Florida, and Ram Guard. As mentioned in the NPRM, the agency plans to use this information when considering future school bus safety measures.

Effective Date

The effective date of this final rule is September 1, 1992. Even though stop signal arms are now available, some leadtime is necessary because a few States need to amend their legislative or administrative codes. In addition, bus manufacturers need time to order the devices from equipment manufacturers. Accordingly, the agency has decided to make this rule effective on September 1, 1992.

Economic and Other Impacts

NHTSA has considered the costs and other impacts of this rulemaking, and has prepared and placed a Final Regulatory Evaluation (FRE) in the Docket. Based on this evaluation, the agency has determined that the rulemaking is not "major" within the meaning of Executive Order 12291. Given general public and Congressional interest, the agency has determined that it is "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

The NPRM calculated the annual additional consumer cost of buying school buses equipped with a stop signal arm by multiplying the unit price of equipping new school buses with this device by the number of school buses affected by the requirement. Based on several studies, the proposal estimated the unit cost for a reflectorized stop signal arm to be approximately $300. The agency calculated that approximately 10,900 school buses would be affected by the requirement, i.e., of approximately 38,000 new school buses manufactured each year, 28.7 percent of currently operating school buses were not equipped with a stop signal arm. Therefore, the proposal concluded that the approximate aggregate annual cost of this requirement would be $300 per reflectorized stop signal arm without flashing lights × 10,900 school buses presently sold without stop signal arms for a total of $3,270,000.

Two school bus manufacturers and several States responded to the proposal's request for information about the costs of requiring school buses to be equipped with a stop signal arm. Blue Bird and Thomas Built provided unit cost estimates ranging from $200 to $300 for stop signal arms with different characteristics, e.g., reflectorized, with flashing lights, etc. and different means of activation. Blue Bird further explained that, based on its sales records for the 1989 model year, 67 percent of all its new school buses were equipped with a stop signal arm. Florida commented that it requires two stop signal arms for buses exceeding 23 feet and that the second arm costs between $125 and $200. Illinois, Hawaii, and Washington commented that the cost of installing the proposed stop signal arm compared to the sign they now require would not be significant. California stated the total cost of retrofitting its 21,400 buses would exceed $8 million.

The agency has revised its initial cost estimate based on the comments and additional information. It now estimates that the unit cost for requiring school buses to be equipped with a stop signal arm will be between $200 and $300. The agency also has modified its estimates about the number of school buses affected by this final rule. Based on the data supplied by Blue Bird, the agency believes that 33 percent of the 38,700 new school buses manufactured each year are not equipped with stop signal arms. Therefore, the agency now estimates that 12,800 new school buses will be affected by this final rule. Stop signal arms can be vacuum, air, or electrically operated. Blue Bird provided installation rates for the three types of systems for the 1989 model year as follows: Vacuum—18 percent; air—46 percent; and electric—36 percent. Estimating installed prices of $200, $250, and $300 for vacuum, air, and electrically-operated systems, respectively, and applying Blue Bird's installation rates for the three types of systems, produces an estimated annual cost of $3,315,000 for this rulemaking.

In response to California's concern about the costs for retrofitting school buses currently in use, NHTSA emphasizes that its safety standards apply to the manufacture and sale of new school buses. Therefore, this rulemaking does not require any State or local jurisdiction to install this device on school buses now in use.

As explained in the earlier discussion about the effectiveness of stop signal

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arms, the agency estimates that the effectiveness of these devices ranges between 30 to 55 percent. Although no conclusive relationship can be demonstrated between illegal passes and injuries and fatalities, each illegal pass of a stopped school bus has the potential of striking a student in a loading zone. As elaborated in the FRE, requiring the installation of stop signal arms should reduce the number of illegal passes by millions of incidents each year.

NHTSA has considered the effects of this action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. School bus manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new school buses. However, any impact on small entities from this action will be minimal since the price increase resulting from this rule is approximately $200 to $300, a small fraction of the purchase price of a bus, which can range from $20,000 to more than $80,000. Accordingly, the agency has determined that preparation of a regulatory flexibility analysis is unnecessary.

NHTSA has also analyzed this rulemaking action for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that it does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

In its analysis, the agency considered the rulemaking's likely effect on the States and possible alternatives to the rulemaking. The agency has determined that States increasingly are requiring school buses to be equipped with a stop signal arm, with 36 States now requiring them. Though the rule will result in school buses being equipped with this device in 14 States not now requiring them, the agency has determined that the rule is necessary to promote nationwide uniformity in sending the same signal to motorists traveling near stopped school buses. Of the twelve State organizations commenting on the proposal, all but the California DOE favored the rulemaking. In addition, the Tenth and Eleventh National Conferences on School Transportation, meetings attended by State representatives interested in pupil transportation, recommended that school buses be equipped with a stop signal arm. As this preamble explained earlier, the new Federal standard provides a minimum requirement that the States may exceed. In addition, few State commenters indicated the rule would pose a significant burden on them. Even the California Highway Patrol, which doubted the effectiveness of stop signal arms, acknowledged the importance of uniformity of highway controls, especially around school buses. Illinois, one of the few States that will have to modify its stop signal arm design, "strongly supported" the Federal Standard and stated the costs of modifying its devices would be minimal. NHTSA accordingly does not expect any significant adverse impact on the States from this rulemaking.

Alternatively, NHTSA could have discontinued this rulemaking and not required school buses to be equipped with a stop signal arm. Based on the agency's review of the rulemaking, including the commenters' general support for the rule and the national conference's endorsement of this device, the agency has decided that the Federalism implications are not significant enough to require the preparation of a Federalism Assessment or prevent the final rule's adoption.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.131, Federal Motor Vehicle Safety Standard No. 131, is added to read as follows:

§ 571.131 Federal Motor Vehicle Safety Standard No. 131; School bus pedestrian safety devices.

S1. *Scope.* This standard establishes requirements for devices that can be installed on school buses to improve the safety of pedestrians in the vicinity of stopped school buses.

S2. *Purpose.* The purpose of this standard is to reduce deaths and injuries by minimizing the likelihood of vehicles passing a stopped school bus and striking pedestrians in the vicinity of the bus.

S3. *Application.* This standard applies to school buses.

S4. *Definitions.*

Stop signal arm means a device that can be extended outward from the side of a school bus to provide a signal to other motorists not to pass the bus because it has stopped to load or discharge passengers.

S5. *Requirements.* Each school bus shall be equipped with a stop signal arm meeting the requirements of S5.1 through S5.5 as depicted in Figure 1.

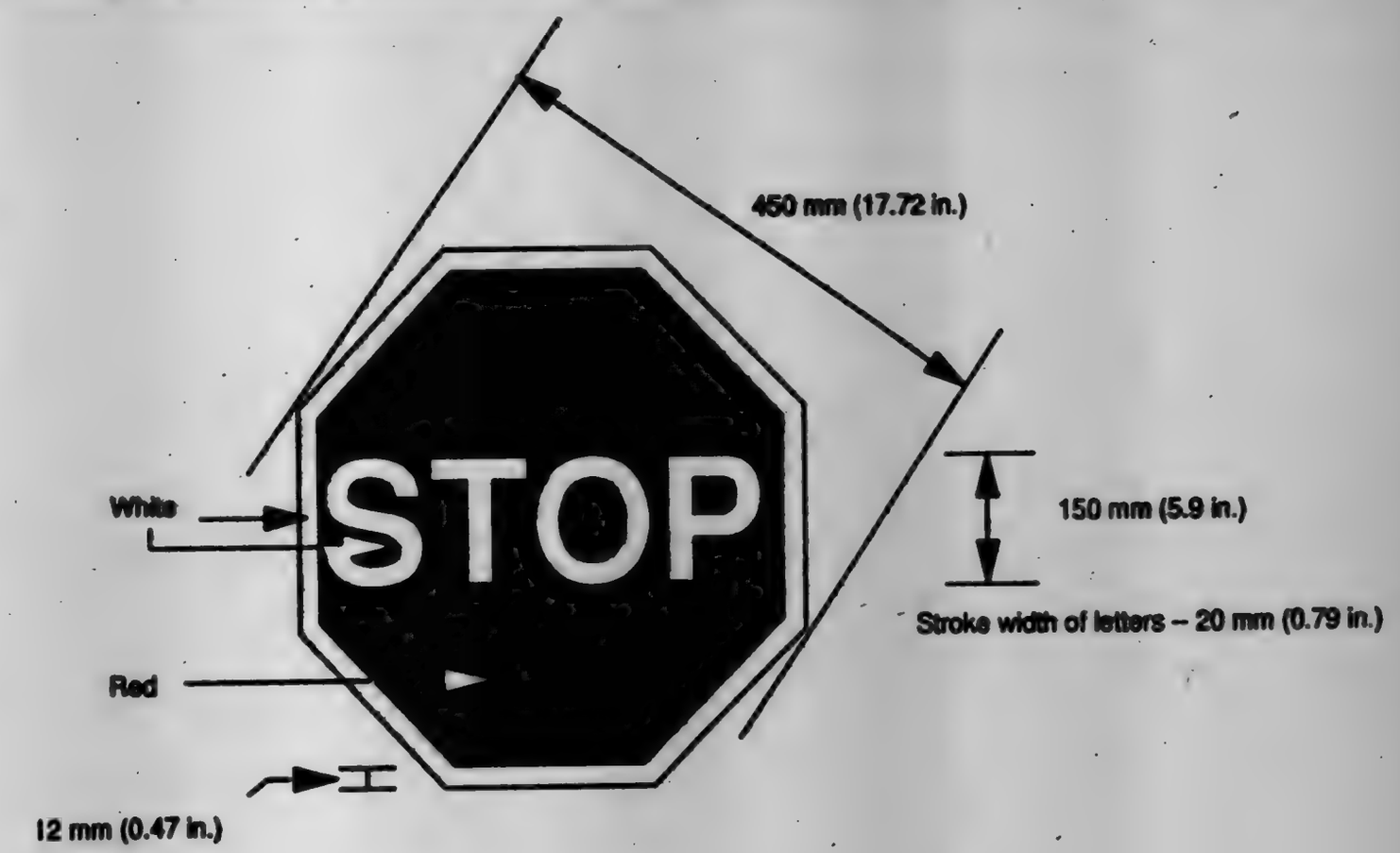

Figure 1. Characteristics of Stop Signal Device

S5.1 The stop signal arm shall be a regular octagon which is at least 450 mm×450 mm (17.72 inches×17.72 inches) in diameter.

S5.2 The stop signal arm shall be red on both sides, except as provided in S5.2.1 and S5.2.2, and S5.2.3.

S5.2.1 The stop signal arm shall have a white border at least 12 mm (0.47 inches) wide on both sides, except as provided in S5.2.3.

S5.2.2 The stop signal arm shall have the word "STOP" displayed in white upper-case letters on both sides, except as provided in S5.2.3. The letters shall be at least 150 mm (5.9 inches) in height and have a stroke width of at least 20 mm (0.79 inches).

S5.2.3 When two stop signal arms are installed on a school bus, the rearmost stop signal arm shall not contain any lettering, symbols, or markings on the forward side.

S5.3 *Conspicuity.* The stop signal arm shall comply with either S5.3.1 or S5.3.2, or both.

S5.3.1 The entire surface of both sides of the stop signal arm shall be reflectorized with type III retroreflectorized material that meets the minimum specific intensity requirements of S6.1 and Table 1. When two stop signal arms are installed on a school bus, the forward side of the rearmost stop signal arm shall not be reflectorized.

S5.3.2 Each side of the stop signal arm shall have at least two red lamps that meet the requirements of S6.2. The lamps shall be centered on the vertical centerline of the stop arm. One of the lamps shall be located at the extreme top of the stop arm and the other at its extreme bottom.

S5.4 The stop signal arm shall be installed on the left side of the bus.

S5.4.1 The stop signal arm shall be located such that, when in the extended position:

(a) The stop arm is perpendicular to the side of the bus, plus or minus five degrees;

(b) The top edge of the sign is parallel to and within 6 inches of a horizontal plane tangent to the lower edge of the driver's window frame; and

(c) The vertical centerline of the stop sign is at least 9 inches away from the side of the school bus.

S5.4.2 A second stop signal arm may be installed on a school bus. That stop signal arm shall comply with S5.4 and S5.4.1.

S5.5 The stop signal arm shall be automatically extended in such a manner that it complies with S5.4.1, at a minimum whenever the red signal lamps required by S5.1.4 of Standard No. 108 are activated; except that a device may be installed that prevents the automatic extension of a stop signal arm. The mechanism for activating the device shall be within the reach of the driver. While the device is activated, a continuous or intermittent signal audible to the driver shall sound. The audible signal may be equipped with a timing device requiring the signal to sound for at least 60 seconds. If a timing device is

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used, it shall automatically recycle every time the service entry door is opened while the engine is running and the manual override is engaged.

S6 *Test Procedures.*

S6.1 *Reflectivity Test.* When tested under the conditions specified in S6.2 (b), (c), and (d) of Federal motor vehicle safety standard 125, Warning Devices, (49 CFR 571.125), the retroreflective materials shall meet the criteria specified in table 1.

TABLE 1.—MINIMUM SPECIFIC INTENSITY PER UNIT AREA (SIA)

(Candelas per Footcandle Per Square Foot)

Observation Angle (°)	Entrance Angle (°)	White	Red
Type III Retroreflective Element Material			
A—Glass Bead Retroreflective Element Material			
0.2	−4	250	45
0.2	+30	150	25
0.5	−4	95	15
0.5	+30	65	10
B—Prismatic Retroreflective Element Material			
0.2	−4	250	45
0.2	+30	95	13.3
0.5	−4	200	28
0.5	+30	65	10

S6.2 *Lighting Tests.*

S6.2.1 *Color.* The procedure shall be done in accordance with the Society of Automotive Engineers (SAE) J578, Color Specification (May 1988), 1990 SAE Handbook, Society of Automotive Engineers, Inc. Along with the incorporation by reference in S6.2.3, this incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096-0001. Copies may be inspected at Docket Room, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC. When visually compared to the light emitted from a filter/source with a combination of chromaticity coordinates as explained in SAE J578, Color Specification (May 1988), within specific boundaries [y=0.33 (yellow boundary) and y=0.96—×(purple boundary)] the color of light emitted from the test object shall not be less saturated (paler), yellower, or purpler. The test object shall be placed perpendicular to the light source to simulate lamps on stop signal arms. In making visual comparisons, the light from the test object shall light one portion of a comparison field and the light from the filter/source standard shall light an adjacent area. To make a valid visual comparison, the two fields to be viewed shall be of near equal luminance.

S6.2.2 *Flash Rate.* The lamps on each side of the stop signal arm, when operated at the manufacturer's design load, shall flash at a rate of 60–120 flashes per minute with a current "on" time of 50 percent.

S6.2.3 *Vibration, Moisture, Dust, Corrosion, Photometry, and Warpage Tests.* The procedure shall be done in accordance with the Society of Automotive Engineers (SAE) J575, Tests for Motor Vehicle Lighting Devices and Components, (July 1983) and Society of Automotive Engineers (SAE) J1133, School Bus Stop Arm, (April 1984), 1990 SAE Handbook, Society of Automotive Engineers, Inc. Lamps and lighting components shall meet the criteria for vibration, moisture, dust, corrosion, photometry, and warpage in SAE J575, Tests for Motor Vehicle Lighting Devices and Components, (July 1983) and SAE J1133, School Bus Stop Arm, (April 1984) under the test conditions specified herein.

Issued on: April 25, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-10481 Filed 5-2-91; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 56, No. 86
Friday, May 3, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 51

[Docket Number FV-91-301]

Pistachio Nuts in the Shell; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed action would revise the United States Standards for Grades of Pistachio Nuts in the Shell. The proposed would add a fourth grade, U.S. No. 3 to the present standard. The Western Pistachio Association, a trade association representing major pistachio nut growers and packers in the United States, has requested the USDA to make these changes to bring the standards in line with current marketing trends. These changes would improve marketing information and communication between shippers and receivers of pistachio nuts in the shell. The Agricultural Marketing Service (AMS) has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

DATES: Comments must be postmarked or courier dated on or before July 2, 1991.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2056 South Building, Washington, DC 20090-6456. Comments should make reference to the date and page number of this issue of the Federal Register and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Thomas G. Gambill, at the above address or call (202) 447-5024.

SUPPLEMENTARY INFORMATION: This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "nonmajor" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 602 et seq.), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entites. This proposed rule for the revision of U.S. Standards for Grades of Pistachio Nuts in the Shell will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the application of these standards is voluntary.

The United States Standards for Grades of Pistachio Nuts in the Shell were established in August 1984. The standards are covered under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.). Industry representatives have requested that the standards be revised to add a new grade, U.S. No. 3, to the existing standards.

The growers and shippers represented by the Western Pistachio Association requested a revision because the present standards do not, in their judgement, reflect current marketing practices. They believe that this proposed revision would give the industry grade standards that would reflect today's modern marketing and packaging methods.

According to the Western Pistachio Association, the addition of a fourth grade would allow the industry to maintain the integrity and quality of the edible kernels and still allow the industry to supply a product to the market having more shell staining persent. Freshly harvested pistachio nuts normally have freshy hull material attached to the shell. If this hull material is not removed within a reasonable amount of time following harvest, the shells may become discolored or stained by tannins and oils leaching from the hulls.

Although this staining may affect the appearance of the shell, it is not believed to indicate any adverse affect on the kernel. Therefore, the proposed U.S. No. 3 grade utilizes the same internal (kernel) specifications found in the current U.S. No. 2 grade, maintaining the integrity and quality of the kernel, but provides for a greater percentage of stained shells in a lot. Also, two external defect tolerances other than for staining would be increased to allow for more defects than would be allowed for the U.S. No. 2 grade. This allows lots which may not be marketed through normal channels only due to external appearances to be marketed with the edible kernel being the focal point of the grade.

Specifically, four different factors listed in Table 1 would have increased tolerances under the new grade. Letter (a), Non-split and not split or suture, would be increased to allow 10 percent. Letter (c), light stained, would be increased to allow for 35 percent including numeral (1), Dark stained, which would be increased to allow for 6 percent. In addition, letter (d), Damage by other means, would be increased to allow for a total of 2 percent. All other tolerances in Table I, as well as those listed in Tables II and III will remain the same as those presently designated for the U.S. No. 2 grade.

In addition, the grade designation of U.S. No. 3 also meets the requirements of the Uniform Grade Nomenclature Policy for United States Standards for Grades of Fresh Fruits, Vegetables, Nuts and other Special Products (41 FR 21335) established July 1, 1976.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that 7 CFR part 51 be amended to read as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as

amended, 1080 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. In Subpart—United States Standards for Grades of Pistachio Nuts in the Shell, § 51.2541 is amended by revising the introductory text to read as follows:

§ 51.2541 Grades.

"U.S. Fancy," "U.S. No. 1," "U.S. No. 2," and "U.S. No. 3" consist of pistachio nuts in the shell which meet the following requirements.

* * * * *

3. Section 51.2542 Tolerances is amended by revising Table I, II, and III in paragraph (a) to read as follows:

§ 51.2542 Tolerances.

(a) * * *

TABLE I

Factor: External (shell) defects (tolerances by weight)	U.S. fancy (percent)	U.S. No. 1 (percent)	U.S. No. 2 (percent)	U.S. No. 3 (percent)
(a) Non-split and not split on suture	2	3	6	10
(1) Non-split included in (a)	1	2	4	4
(b) Adhering hull material	1	1	2	2
(c) Light stained	7	12	20	35
(1) Dark stained included in (c)	2	3	4	6
(d) Damage by other means	1	1	1	2
(e) Less than 29/64 inch in diameter:				
(1) Small size	5	5	5	5
(2) Medium, Large, Extra Large sizes	1	1	1	1

TABLE II

Factor: Internal (kernel) defects (tolerances by weight)	U.S. fancy (percent)	U.S. No. 1 (percent)	U.S. No. 2 (percent)	U.S. No. 3 (percent)
(a) Damage	3	6	8	50
(b) Serious Damage	3	4	5	5
(1) Insect damage, included in (b)	1	2	3	3
Total internal defects shall not exceed	6	9	10	10

TABLE III

Factor: Other defects (tolerances by weight)	U.S. fancy (percent)	U.S. No. 1 (percent)	U.S. No. 2 (percent)	U.S. No. 3 (percent)
(a) Shell pieces and blanks	1	1	2	2
(b) Foreign material (No glass, metal, or live insects shall be permitted)	.25	.25	.50	.50
(c) Particles and dust	.25	.25	.25	.25

(b) * * *

Dated: April 30, 1991.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 91-10533 Filed 5-2-91; 8:45 am]

BILLING CODE 3410-02-M

Federal Grain Inspection Service

7 CFR Parts 800 and 810

RIN 0580-AA12

U.S. Standards for Canola

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) proposes to establish United States Standards for Canola under the authority of the U.S. Grain Standards Act, as amended (USGSA). Under the USGSA canola seed shipped outside the United States must be officially inspected and weighed, except under certain provisions of the USGSA and in § 800.18 of the regulations. Official inspection and weighing would be available, upon request, for domestic shipments.

DATES: Comments must be submitted on or before July 2, 1991.

ADDRESSES: Written comments must be submitted to Allen Atwood, FGIS, USDA, Room 0628-S, Box 96454, Washington, DC 20090-6454; telemail users may respond to (IRSTAFF/FGIS/USDA) telemail; telex users may respond to Allen Atwood, TLX: 7607351, ANS:FGIS UC; and telecopy users may send responses to the automatic telecopier machine at (202) 447-4628.

All comments received will be made available for public inspection at room 0628 South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Allen Atwood, address as above, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform those services do not meet the requirements for small entities.

Background

For centuries, rapeseed oil has been used in foods and as a cooking oil. Currently, world production of rapeseed oil ranks third behind only soybean and

palm oil (Ref. 1). The existence of both winter and spring varieties of rapeseed has led to a wide area of adaptation. Rapeseed varieties are grown in the European Economic Community, China, Canada, India, Eastern Europe, and the United States. In the United States, the production area spreads from as far south and east as Alabama, Kentucky, and Tennessee, across the upper Midwest to the Pacific Northwest.

Rapeseed is a complex crop including not one but three botanical species, *Brassica napus* L., *B. campestris* L., and *B. juncea* L. Moreover, the botanical classification has become even more complicated due to the genetic altering of these species to create new varieties with varying levels of erucic acid and glucosinolates.

The long-chain fatty acid, erucic acid ($C_{22}H_{42}O_2$), is a component of rapeseed and its oil. A high level of erucic acid is desired for the production of certain chemicals, industrial lubricants, fully hydrogenated rapeseed oil, and superglycerinated fully hydrogenated rapeseed oil. A low level is desired for the production of salad and vegetable oils, margarine, and shortening. Glucosinolates, sulfur-containing anions, are components of both the seed and meal of rapeseed. Low levels of glucosinolates are desired in meal products.

Currently, there are rapeseed varieties with levels of high erucic acid and low glucosinolates (HEAR/LG), high erucic acid and high glucosinolates (HEAR/HG), low erucic acid and high glucosinolates (LEAR/HG), and low erucic acid and low glucosinolates (LEAR/LG). Some specific types of LEAR/LG varieties are known as canola. As presently defined in the Canadian Seed Regulations, canola oil must contain less than 2 percent erucic acid in its fatty acid profile, and the solid component must contain less than 30 micromoles per gram of glucosinolates in the meal (Ref. 2). In 1987, the Canadian Government amended its regulations to make "canola" the name in Canada for the plant source from which low erucic acid food-grade oil and low glucosinolate meal are derived. In addition, in 1988, the Food and Drug Administration revised its regulations (21 CFR 184.1555(c)) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 30 *et seq.*) "to recognize canola oil as the alternate common or usual name of low erucic acid rapeseed oil" (53 FR 52681; December 29, 1988). Section 184.1555(c)(1) provides that, "* * * chemically, low erucic acid rapeseed oil is a mixture of triglycerides, composed of both saturated and unsaturated fatty acids, with a erucic acid content of no more than 2 percent of the component fatty acids."

Although most supplies of canola are imported from Canada, production in the U.S. is increasing. In 1989, U.S. producers planted an estimated 75,000 acres of canola. Estimates of the 1990 harvest range from 100,000 to 200,000 acres. If producers are successful in growing and marketing the 1989 and 1990 crops, industry economists forecast that U.S. production may increase to 5 million acres by 1995 (Ref. 3).

In the past 2 years, U.S. consumption of canola oil has more than doubled. In 1989, the U.S. consumed an estimated 550 million pounds of canola oil, 80 percent of which was imported from Canada (Ref. 4). Consumer interest in canola oil has grown due to its nutritional characteristics. It is low in saturated fat (6 percent) compared to corn oil (13 percent), olive oil (14 percent), soybean oil (15 percent), and palm oil (51 percent) (Ref. 5). Canola oil is also characterized by a relatively high level of a monounsaturated fatty acid, oleic acid, and an intermediate level of the polyunsaturated fatty acids, linoleic and linolenic acids.

The use of canola meal has also increased in the U.S. In 1989, canola meal usage in the U.S. exceeded 270 thousand metric tons versus 140 thousand metric tons in 1985 (Ref. 6). Canola meal is used as a component of swine and poultry rations. Based on nutrient content and a unit weight basis, canola meal is worth 70 to 75 percent of the value of 44 percent soybean meal for feeding poultry and approximately 75 to 80 percent of the same for feeding swine and ruminants (Ref. 7).

Comment Review

As a result of growing interest in canola varieties of rapeseed in the U.S., FGIS requested public comments on the need for rapeseed standards in the May 30, 1989, **Federal Register** (54 FR 22924). Although FGIS specifically requested comments on the need for rapeseed standards, it stated that "FGIS is considering using the term "Canola" in standards for rapeseed varieties from which canola oil is derived." FGIS received a total of 11 comments during the 90-day comment period. The comments were submitted from all segments of the canola/rapeseed industry including producer and trade associations, foreign buyers, an inspection agency, a food manufacturing company, and a research association.

On the basis of these comments and other available information, FGIS proposes to establish U.S. Standards for Canola under the authority of the USGSA, as amended, to provide uniform Federal inspection procedures and to facilitate marketing of the crop. Under the USGSA, canola seed shipped outside the United States must be officially inspected and weighed, except under certain provisions of the USGSA and in § 800.18 of the regulations. Official inspection and weighing would be available, upon request, for domestic shipments.

Canola and/or Rapeseed Standards

Ten commentors were in favor of the establishment of canola and/or rapeseed standards. Only one commentor representing a foreign oilseed processing interest was not in favor of establishing standards. This commentor suggested that there is no need to establish numerical grading standards, and that, by offering tests for oil, moisture, erucic acid, free fatty acids, and glucosinolates, FGIS would satisfactorily facilitate marketing. The remaining 10 commentors, however, provided strong support for a numerical grading system. In brief, they suggested that the U.S. canola/rapeseed market will benefit by having established quality standards and that the development of official standards is both timely and appropriate. Also, from experience with other grains and oilseeds, FGIS has determined that numerical grades provide a relatively simple and reliable mechanism which facilitates the marketing of grains and oilseeds.

While 10 commentors supported the establishment of standards, several of those commentors were specifically in favor of canola standards, and several commentors were in favor of rapeseed standards. It should be noted that current U.S. markets for rapeseed can be served with production from 40,000 acres and marketing potential appears limited (Ref. 8). Furthermore, most of U.S. rapeseed is produced under contract to processing facilities. Based on limited production and market potential and current trading practices, FGIS believes there is no need to establish rapeseed standards other than for the canola varieties. If the need should arise, FGIS would consider proposing rapeseed standards at a later date. Consequently, FGIS proposes to establish United States Standards for the canola varieties of rapeseed.

FGIS proposes to require that each canola inspection for grade include screening for glucosinolates. Those lots which test high for glucosinolates will be graded as not standardized grain. Due to the current absence of a rapid

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screening method, FGIS will not routinely test canola lots for erucic acid content as part of the inspection for grade. Except, in those instances where an applicant requests a test for erucic acid content, inspectors will issue a statement in the "Remarks" section of official certificates indicating that each lot was not tested for erucic acid content. However, FGIS will monitor a percentage of all canola inspections for glucosinolate and erucic acid levels. FGIS will use that monitoring program to identify any specific incidence where non-canola varieties of rapeseed are represented as canola.

Standards and Regulations Review: Proposed Action

Accordingly, it is proposed that official United States Standards for Canola be established under the USGSA as authorized pursuant to section 4(a) of the Act (7 U.S.C. 76). The format and structure of the proposed standards are uniform with other standards under the Act.

Specifically, the proposal divides the standards into 5 parts, and into sections, which are generally the same or similar to sections in other U.S. Standards for Grain. Part I, *Terms Defined*, would consist of § 810.301, *Definition of canola*, and § 810.302, *Definition of other terms*, which includes the terms conspicuous admixture, damaged kernels, distinctly green kernels, dockage, ergot, heat-damaged kernels, inconspicuous admixture, sclerotia, and sclerotinia. Part II, *Principles Governing the Application of Standards*, would consist of § 810.303, *Basis of determination*, which references certain quality determinations together with all other determinations. Part III, *Grades and Grade Requirements*, would consist of § 810.304, *Grades and grade requirements for canola*, which gives the actual grading chart. Part IV, *Special Grades and Special Grade Requirements*, would consist of § 810.305, *Special grades and special grade requirements*, which includes the special grade of garlicky canola. Part V, *Nongrade Requirements*, would consist of § 810.306, *Nongrade requirements*, which includes the nongrade requirement of glucosinolates.

In § 810.303, *Basis of determination*, determinations of total damaged kernels, heat-damaged kernels, distinctly green kernels, total conspicuous admixture, ergot, sclerotinia, stones, and inconspicuous admixture are made on the basis of the canola sample when free from dockage. Other determinations are made on the basis of the oilseed as a whole. However, the determination of odor is made on either the basis of the oilseed as a whole or the oilseed when free from dockage. Additionally, determinations of erucic acid, when requested, and glucosinolates are made on the basis of the canola sample according to procedures prescribed in FGIS instructions.

Except for ergot, sclerotinia, and stones, all percentages would be stated to the nearest tenth of a percent. Ergot, sclerotinia, and stones would be stated to the nearest hundredth of a percent. Percentages on the basis of count would be calculated by dividing the number of unsound kernels by the total number of seeds in the representative portion and multiplying by 100. Percentages on the basis of weight would be calculated by dividing the weight of the material removed by the weight of the representative portion and multiplying by 100.

Section 810.304 includes three numerical grades and a Sample grade. The grading factors in the proposed standards are heat damaged kernels, distinctly green kernels, total damaged kernels, ergot, sclerotinia, stones, total conspicuous admixture, and inconspicuous admixture. For export, it is proposed that dockage be included as a grading factor. This would be consistent with the Canadian inspection procedure and marketing practices.

Section 810.305 includes one special grade, garlicky canola. Section 810.306 includes the nongrade requirement of glucosinolates which would be ascertained during the inspection process and shown on the official inspection certificate for grade.

Furthermore, FGIS proposes to revise § 800.162(a)(2) of the Regulations under the USGSA, as amended, and § 810.102(d) of the Official United States Standards for Grain to indicate that test weight would not be an official factor in the canola standards. Test weight is extremely variable in canola and has not been shown to be correlated to the end-use value of the seed.

Additionally, FGIS proposes to revise § 800.0(b)(42) of the Regulations under the USGSA, as amended, to include canola and sunflower seed in the definition of grain. The United States Standards for Sunflower Seed were established in 1984 (49 FR 22761). In addition, the authority citation for Part 810 would be amended for clarity.

Comments including data, views, and arguments are solicited from interested persons. Pursuant to section 4(b)(1) of the USGSA (7 U.S.C. 76(b)), upon request, such information may be presented orally in an informal manner. It should be noted that pursuant to section 4(b) of the USGSA, no standards established or amendments or revocations of standards under the USGSA are to become effective less than 1 calender year after promulgation unless, in the judgement of the Administrator, the public health, interest, or safety requires that they become effective sooner. FGIS is considering that in the public interest an effective date of less than 1 calendar year after promulgation would be warranted. An early effective date would facilitate domestic and export marketing and allow implementation during this crop year of any standards that may be adopted. FGIS, therefore, anticipates that any standards, if adopted, would be effective 30 days after promulgation.

References

(1) _____, "Canola Emerges as Significant Source of Edible Oil in U.S.," Milling and Baking News, July 25, 1989.

(2) Canadian Grain Commission, "Canadian Canola Cargoes," Quality of Canadian Canola and Flaxseed Cargoes, 3–4.

(3) Kohn, F., "Is Canola Coming," Soybean Digest, March, 1989, 8–10.

(4) Novak, J., "The Canola Caper," Forbes, October 16, 1989, 132.

(5) United States Department of Agriculture, Agricultural Handbook No. 8–4 and Human Nutrition Information Service, 1979.

(6) Dixon, P., "U.S. Production-What's the Potential," presentation to the Canola Council of Canada's Annual Convention on March 20–22, 1989.

(7) Canola Council of Canada, "Canola: The Specifics," Canada's Canola, 19–21.

(8) Prato, T., "Production, Processing and Marketing Potential for Repeseed in the Pacific Northwest," CIS 818, 1988.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Grain.

7 CFR Part 810

Exports, Grain.

For reasons set out in the premable, 7 CFR parts 800 and 810 are proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 800.0(b)(42) is revised to read as follows:

§ 800.0 Meaning of terms

* * * * *

(b) * * *

(42) *Grain.* Corn, wheat, rye, oats, barley, flaxseed, sorghum, soybeans, triticale, mixed grain, sunflower seed, canola, and any other food grains, feed grains, and oilseeds for which standards are established under section 4 of the Act.[1]

* * * * *

3. Section 800.162(a)(2) is revised to read as follows:

§ 800.162 Certification of grade; special requirements.

(a) * * * (2) The test weight of the grain, if applicable; * * *

* * * * *

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

4. The authority citation for part 810 is revised to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

5. Section 810.101 is revised to read as follows:

§ 810.101 Grains for which standards are established.

Grain refers to barley, canola, corn, flaxseed, mixed grain, oats, rye, sorghum, soybeans, sunflower seed, triticale, and wheat. Standards for these food grains, feed grains, and oilseeds are established under the United States Grain Standards Act.

6. Section 810.102(d) is amended by revising the last sentence and adding a new sentence following the last sentence to read as follows:

§ 810.102 Definition of other terms.

* * * * *

(d) * * * Test weight per bushel for all other grains, if applicable, is recorded in whole and half pounds, with a fraction of a half pound disregarded. Test weight per bushel is not an official factor for canola.

7. Section 810.104(b) is amended by revising the seventh sentence to read as follows:

§ 810.104 Percentages.

* * * * *

(b) * * * The percentage of smut in barley, sclerotinia, and stones in canola, and ergot are reported to the nearest hundredth percent. * * *

8. Section 810.107(b) heading and introductory text are revised to read as follows:

§ 810.107 Special grades and special grade requirements.

* * * * *

[1] See original footnote to paragraph (b)(3).

(b) *Infested barley, canola, corn, oats, sorghum, soybeans, sunflower seed, and mixed grain.* Tolerances for live insects responsible for infested barley, canola, corn, oats, sorghum, soybeans, sunflower seed, and mixed grain are defined according to sampling designations as follows:

* * * * *

9. Subparts C through L are redesignated as subparts D through M.

10. New subpart C is added to read as follows:

Subpart C—United States Standards for Canola

Terms Defined

810.301 Definition of canola.
810.302 Definition of other terms.

Principles Governing the Application of Standards

810.303 Basis of determination.

Grades and Grade Requirements

810.304 Grades and grade requirements for canola.

Special Grades and Special Grade Requirements

810.305 Special grades and special grade requirements.

Nongrade Requirements

810.306 Nongrade requirements.

Subpart C—United States Standards for Canola

Terms Defined

§ 810.301 Definition of canola.

Seeds of the *Brassica* species from which the oil shall contain less than two percent erucic acid in its fatty acid profile, and the air-dried, oil free meal shall contain less than 30.0 micromoles per gram of glucosinolates. Before the removal of dockage, the seed shall contain not more than 10.0% of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.302 Definition of other terms.

(a) *Conspicuous Admixture.* All matter other than canola which is conspicuous and readily distinguishable from canola and which remains in the sample after the removal of dockage.

(b) *Damaged Kernels.* Canola and pieces of canola that are heat-damaged, distinctly green damaged, frost damaged, or completely rime damaged.

(c) *Distinctly green kernels.* Canola and pieces of canola which, after being crushed, exhibit a distinctly green color.

(d) *Dockage.* All matter other than canola that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of canola kernels removed in properly separating the material other than canola and that cannot be recovered by properly rescreening or recleaning.

(e) *Ergot.* Sclerotia (sclerotium, sing.) of the fungus, *Claviceps* species. Ergot sclerotia are associated with seed other than canola where, unlike in *Sclerotinia*, the fungal organism has replaced the seed.

(f) *Heat-damaged kernels.* Canola and pieces of canola which, after being crushed, exhibit that they are discolored and damaged by heat.

(g) *Inconspicuous admixture.* Any seed which is difficult to distinguish from canola. This includes, but is not limited to, common wild mustard (*Brassica kaber* and *B. juncea*), domestic brown mustard (*Brassica juncea*), yellow mustard (*B. hirta*), and seed other than the mustard group.

(h) *Sclerotia (Sclerotium, sing.).* Dark colored or black resting bodies of the fungi *Sclerotinia* and *Claviceps*.

(i) *Sclerotinia.* Genus name which includes the fungus *Sclerotinia sclerotiorum* which produces sclerotia. Canola seed is only infrequently infected, and the sclerotia, unlike sclerotia of ergot, are usually associated within the stem of the plants.

Principles Governing the Application of Standards

§ 810.303 Basis of determination.

Each determination of conspicuous admixture, ergot, sclerotinia, stones, damaged kernels, heat-damaged kernels, distinctly green kernels, and inconspicuous admixture is made on the basis of the canola sample when free from dockage. Other determinations not specifically provided for under the general provisions are made on the basis of the oilseed as a whole, except the determination of odor is made on either the basis of the oilseed as a whole or the oilseed when free from dockage. The content of glucosinolates and erucic acid is determined on the basis of the canola sample according to procedures prescribed in FGIS instructions.

§ 810.304 Grades and grade requirements for canola.

GRADES AND GRADE REQUIREMENTS

Grading Factors	Grades U.S. Nos.		
	1	2	3
	Maximum percent limits of:		
Damaged Kernels:			
Heat damaged	0.1	0.5	2.0
Distinctly green	2.0	6.0	20.0

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GRADES AND GRADE REQUIREMENTS—Continued

Grading Factors	Grades U.S. Nos.		
	1	2	3
Total	3.0	10.0	20.0
Conspicuous Admixture:			
Ergot	0.05	0.05	0.05
Sclerotia	0.05	0.10	0.15
Stones	0.10	0.10	0.10
Total	1.0	1.5	2.0
Inconspicuous Admixture	5.0	5.0	5.0
Dockage (Export Only)	2.0	2.0	2.0
	Maximum count limits of:		
Other Material:			
Animal filth	3	3	3
Glass	0	0	0
Unknown foreign substance	1	1	1

U.S. Sample grade

Canola that:

(a) Does not meet the requirements for U.S. Nos 1, 2, 3; or

(b) Has a musty, sour, or commercially objectionable foreign odor; or

(c) is heating or otherwise of distinctly low quality.

Special Grades and Special Grade Requirements

§ 810.306 Special grades and special grade requirements.

Garlicky canola. Canola that contains more than two green garlic bulblets or an equivalent quantity of dry or partly dry bulblets in a 1,000 gram portion.

Nonograde Requirements

§ 810.308 Nonograde requirements.

Glucosinolates. Content of glucosinolates in canola is determined according to procedures prescribed in FGIS instructions.

Dated: April 1, 1991.

John C. Foltz,

Administrator.

[FR Doc. 91-10454 Filed 5-2-91; 8:45 am]

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Agricultural Marketing Service

7 CFR Part 1205

[CN-91-004]

Amendment to the Procedure for the Conduct of Referenda in Connection With Cotton Research and Promotion Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the Procedure for the Conduct of Referenda in Connection with Cotton Research and Promotion Orders to provide for the participation of importers of cotton and cotton products in referenda. The proposed revision would add regulations for importers to vote in the referenda to the current regulations that apply to cotton producers. The provisions of the Cotton Research and Promotion Act Amendments of 1990 which called for importers to participate in referenda are to be implemented by this amendment to the Procedure for the Conduct of Referenda in Connection with Cotton Research and Promotion Orders. Referenda for cotton producers and cotton importers would be necessary as specified by the Act to implement, continue, suspend, or terminate the order or provisions thereof.

DATES: Written comments concerning the proposed rule must be sent in triplicate and received no later than May 20, 1991.

ADDRESSES: Written comments should be sent to: Ronald H. Read, USDA, AMS, Cotton Division; P.O. Box 96456; room 2641-S; Washington, DC 20090-6456. All comments will be made available for public inspection at the office of the docket clerk during regular business hours. All comments should reference the date and page of the **Federal Register** publication. In addition, comments concerning the information collection requirements should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for Agricultural Marketing Service, USDA.

FOR FURTHER INFORMATION CONTACT: Ronald H. Read, 202-447-2145.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action contained in the order.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this proposed action on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

There are an estimated 35,000 producers who are presently subject to the Cotton Research and Promotion Order. There are also an estimated 10,000 importers who may become subject to the order. The majority of these producers and importers would be classified as small businesses under the criteria established by the Small Business Administration.

This proposal would amend the Procedure for the Conduct of Referenda in Connection With Cotton Research and Promotion Orders to provide for the participation of importers of cotton and cotton containing products in referenda. The proposed revisions would add procedures for importers to vote in the referenda to the current procedures which apply to cotton producers. The inclusion of importers in referenda is in accordance with the Cotton Research and Promotion Act Amendments of 1990. Under this proposal, producers and importers would have an opportunity to submit referendum ballots. The economic impact of this procedure is not expected to be significant.

Accordingly, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

In compliance with the office of Management and Budget (OMB) regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) and section 3504(h) of that Act, the information and paperwork requirements contained in this subpart have been submitted to OMB for review. It is estimated that approximately 35,000 producers and 10,000 importers would be eligible to vote in a referendum. It is estimated that an average of .10 hours will be required to complete each ballot. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Agricultural Marketing Service, USDA.

This proposal would amend the Procedure for the Conduct of Referenda in Connection Wtih Cotton Research and Promotion Orders (7 CFR 1205.200-1205.210) to: (1) Include terminology pertaining to importers of cotton in defintions; (2) set forth the responsibilities of agencies involved in conducting referenda; (3) establish voting eligibility of importers; (4) establish voting procedures for importers; (5) revise procedures for canvassing of ballots; (6) revise procedures for reporting the results of referenda; (7) provide for the disposition of ballots and records; and (8) provide for additional instructions and forms.

The Cotton Research and Promotion Act Amendments of 1990 (subtitle G of title XIX of the Food, Agriculture, Conservation and Trade Act of 1990, Pub. L. 101-624, November 28, 1990)

require the Secretary of Agriculture to conduct a referendum among persons who have been cotton producers during a representative period, as determined by the Secretary, and persons who are importers of cotton and who, during a 12 month period ending not later than 90 days prior to the conduct of the referendum imported a quantity of cotton with a value in excess of the de minimis value, if any, established by the Secretary. The referendum is for the purpose of determining if a majority of those voting approve a proposed amendment to the order issued by the Secretary after a notice and opportunity for public comment. The proposal would implement the provisions of the Cotton Research and Promotion Act Amendments of 1990. The Secretary is to announce the results of the referendum within 30 days after the date of such referendum. Such a referendum would be conducted on a date to be announced by the Secretary. Referenda of cotton producers and cotton importers would also be necessary as specified by the Act to implement, continue, suspend, or terminate the order or provisions thereof.

Written comments are requested from interested persons on the proposed and is necessary so that the U.S. Department of Agriculture and the cotton industry may begin planning for a referendum to be held as soon as possible. Referendum planning and procedures take considerable time to complete. Early establishment of any procedures that may be adopted as a result of this rulemaking, should prevent unnecessary delay in conducting the referendum. Also early establishment should prevent from the referendum, thereby assisting in timely implementation of the Act amendments of 1990.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is proposed to be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authoritity for part 1205 is revised to read as follows:

Authority: Cotton Research and Promotion Act, as amended; 7 U.S.C. 2101-2118.

2. Section 1205.200 is revised to read as follows:

§ 1205.200 General

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a cotton research and promotion order, or the termination of suspension of such an order, is approved or favored by producers, and importers if subject to an order, and referenda for the purpose of ascertaining whether producers and importers approve or favor the continuance of provisions of the proposed amendment to the order implementing the Cotton Research and Promotion Act Amendments of 1990 shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

3. Section 1205.201 is amended by revising paragraphs (a) and (n) and adding paragraphs (q), (r) and (s) to read as follows:

§ 1205.201 Definitions.

(a) *Act* means the Cotton Research and Promotion Act, as amended (7 U.S.C. 2101-2118; Pub. L. 89-502, 80 Stat. 279, as amended).

* * * * *

(n) *Upland Cotton* means all cultivated varieties of *Gossypium hirsutum L.*

* * * * *

(q) (1) *Importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States.

(2) *Import* means any such entry.

(r) *Cotton* means all Upland cotton harvested in the United States and imports of Upland cotton, including the Upland cotton content of the products derived thereof. The term "cotton" shall not, however, include any entry of imported cotton by an importer which has a value less than the minimis value established by the Secretary and industrial products that are not made readily available to the consumer through normal marketing channels.

(s) *Customs Service* means the United States Customs Service of the United States Department of Treasury.

4. Section 1205.202 is amended by revising paragraphs (a)(2) and (a)(3), and adding paragraphs (a)(5) and (c) to read as follows:

§ 1205.202 Agencies through which a referendum shall be conducted.

(a) * * *

(2) Give producers and importers reasonable notice of the referendum—

(i) By utilizing without advertising expense, available media of public information (including, but not being limited to, press and radio facilities) announcing the dates, places, or methods of voting, and other pertinent information; and

(ii) By such other means as the Administrator may deem advisable.

(3) Provide ballots and related material to be used in the referendum to ASCS. The ballot—

(i) Shall provide for recording essential information for ascertaining whether the person voting is an eligible voter; and

(ii) May provide for recording the total amount of Upland cotton produced by the producer or the total amount of cotton imported by the importer during the appropriate representative period.

* * * * *

(5) Make available to importers through ASCS instructions on voting, an appropriate ballot and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order. The instructions on voting shall explain the appropriate method to be used in determining the amount of cotton imported during the representative period and shall specify whether such amount is to be entered on the ballot by the voter, subject to the following terms and conditions:

(i) The amount of cotton imported by an importer shall be determined from records of imports made available to the Administrator of AMS from the Customs Service or from another source determined by the Administrator.

(ii) For importer entities in which more than one importer is eligible to vote, the vote cast by each importer shall represent only the amount in weight or value of cotton imported by each eligible voter.

(iii) If an eligible importer is engaged in importation of cotton as more than one importer entity, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount, in weight or value, of cotton that is the voters share of cotton imported from each such importer entity: Provided, that only the importer entities for which records are maintained by the Customs Service or other source determined by the Administrator shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of the Administrator the voters share, in weight or value, of the imported cotton.

* * * * *

(c) *Customs Service.* The Customs Service provides data to ASCS which identifies importers who import a value of cotton above the de minimis value of cotton established by the Secretary.

5. Section 1205.206 is amended by revising paragraph (a), by redesignating paragraph (b)(1) as paragraph (b)(1)(i),

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by designating the undesignated paragraph immediately preceding paragraph (b)(2) as paragraph (b)(1)(ii), and by revising newly designated paragraph (b)(1)(i) to read as follows:

§ 1205.203 Voting eligibility.

(a) *Special eligibility requirements.* Each person who was engaged in the production of Upland cotton during the representative period and each person who was an importer of cotton and who, during a 12-month period ending not later than 90 days prior to the conduct of the referendum, imported a value of cotton in excess of the de minimis value of $220.99 per line item entry shall be eligible to vote in a referendum.

(b) *General eligibility requirements.* (1)(i) A person may qualify as an eligible voter by meeting the eligibility requirements, but no such person shall be entitled to more than one vote regardless of the number of importing entities or Upland cotton farms in which the person is interested or the number of communities, counties, or States in which are located farms in which such person is interested: *Provided, however,* That the individual members of a qualified partnership shall each have one vote, but the partnership as such shall not have a vote and an individual who qualifies as an eligible voter by reason of that individual's separate farming or importing operations will be entitled to one vote even though that person is interested in an organization such as (but not limited to) a corporation which is also eligible as a voter and entitled to one vote. A person who, as a guardian, administrator, executor, or trustee engages in the production of Upland cotton or the importation of cotton will be eligible to vote in such fiduciary capacity if, in such capacity, that person qualifies as an eligible voter.

(ii) * * *

* * * * *

6. Section 1205.204 is revised to read as follows:

§ 1205.204 Voting.

(a) *Place of voting.* The ASCS county office serving the county in which the producer's farm is located shall be the producer's polling place. The U.S. Department of Agriculture, ASCS, Washington, DC 20013 shall be the polling place for all cotton importers.

(b) *Register of eligible voters.* The county committee shall establish a register of known eligible producer voters prior to the referendum. The ASCS Kansas City Management Office shall establish a register of known eligible importer voters prior to the referendum.

(c) *Mailing of ballot to eligible voters.* Ballots shall be mailed by ASCS to all known eligible voters. Ballots may be obtained by producer voters from the appropriate ASCS county office and ballots may be obtained by importers from the U.S. Department of Agriculture, ASCS, attn: CGRD, P.O. Box 2415, Washington, DC 20013.

(d) *returning ballot to polling place.* Each person to whom a ballot is issued by mail or in person shall only be allowed to vote in the referendum by completing and signing the ballot, placing it in an envelope, and delivering or mailing it to the appropriate polling place. In order to be eligible for tabulation, voted ballots must be received at the polling place during the period established for holding the referendum. A ballot shall be considered to have been received during the referendum period if:

(1) In the case of the ballot delivered to the polling place, it was received in the office prior to the close of the work day on the final day of the referendum period; or

(2) In the case of a mailed ballot, it was postmarked not later than midnight of the final day of the referendum period and was received in the polling place prior to the start of canvassing the ballots.

(e) *Placing of ballots in ballot box.* Notwithstanding the fact that a ballot(s) may be later challenged by the county committee or a representative of ASCS, envelopes containing ballots received at the polling place during the referendum period shall remain unopened and shall be placed immediately in a ballot box provided by the county executive director for producers and ASCS office for importers. Such ballot box shall be arranged so that ballots cannot be read or moved without breaking the seal on the container.

7. Section 1205.205 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1205.205 Canvass of ballots.

(a) *Canvassing procedure.* Canvassing of returned ballots shall take place as soon as possible after the opening of the ASCS offices on the fifth day following the close of the referendum period. Such canvassing shall be in the presence of at least one member of the county committee for producer ballots or a representative of ASCS for importer ballots and shall be open to the public. The canvassing and ballots shall be handled in such a manner that no member of the public may see how any person voted in the referendum. The county committee member or representative of the ASCS shall supervise the opening of the sealed ballot box, the opening of the envelopes containing the ballots and a determination as to: The number of eligible voters favoring the order and where necessary, the amount of cotton represented by them; the number of eligible voters disapproving the order and, where necessary, the amount of cotton represented by them; the number of ballots cast by voters found to be ineligible to vote in the referendum; and the number of spoiled ballots. The ballots determined to be spoiled or cast by ineligible voters shall not be considered as approving or disapproving the order, and the persons who cast such ballots shall not be regarded as participating in the referendum.

* * * * *

(c) *Challenge of ballots.* A producer ballot may be challenged by the member of the county committee and the importer ballot may be challenged by the representative of the ASCS. Before a challenged ballot is either counted or declared invalid, a determination shall be made by the county committee member of representative of the ASCS as to the eligibility of the voter to vote in the referendum.

8. Section 1205.206 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 1205.206 Reporting results of referendum.

* * * * *

(c) The Deputy Administrator, state and county operations, ASCS or a designee shall transmit a written summary of ballots showing the results of the referendum of importers to the Director, Cotton Division, Agricultural Marketing Service, Washington, DC 20250 and maintain one copy of the summary where it will be available for public inspection for a period of 5 years following the end of the referendum period.

(d) The Director of the Cotton Division, AMS, shall prepare and submit to the Secretary a report as to the results of the referendum. The Secretary shall announce the results of the referendum within 30 days after the date of such referendum.

9. Section 1205.208 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 1205.208 Disposition of ballots and records.

(a) * * *

(b) The representative of the ASCS shall seal the voted ballots, challenged ballots found to be ineligible, spoiled ballots, register sheets, and summary sheets for importers in one or more envelopes or packages, plainly marked with the identification of the referendum, and place them under lock and key in a safe place for a period of 45 calender days after the referendum period. If no notice to the contrary is received by the end of such time, the voted ballots and challenged ballots shall be destroyed, but the registers and summary sheets shall be filed for a period of 5 years.

10. Section 1205.210 is revised to read as follows:

§ 1205.210 Additional instructions and forms.

The Deputy Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart for the use of State and county committees or ASCS in conducting a referendum. Such additional instructions may include procedures for county and State committees or ASCS to report and announce the results of the preliminary count of the votes.

Dated: April 25, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-10213 Filed 5-2-91; 8:45 am]

BILLING CODE 3410-05-M

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 108 and 120

Development Companies and Business Loans

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: Ordinarily, concerns primarily engaged in financing investments that are neither related nor essential to their operations are ineligible for SBA financial assistance. Thus, as a general rule, a small business concern applicant for assistance which is engaged in owning and leasing or proposing to own or lease real or personal property (holding company) to an otherwise eligible small business concern (operating company) is ineligible. See 13 CFR 120.101-2(e) and 13 CFR 108.8(d)(4). As an exception that rule SBA instituted an "alter ego rule". The " alter ego rule" presently permits holding companies to be eligible for SBA assistance if several qualifications are met. Among those qualifications is ownership by the same owners in the same proportion of the ownership interest in the holding company and the operating company.

In 1988, a statutory amendment revised this requirement for complete identify of ownership of the holding company and operating company in cases involving family-owned businesses. See section 114 of Public Law 100-590, November 3, 1988. That amendment relaxed the requirement for identity both as to owners and their proportion of ownership when certain named family members have ownership interests in the operating concern and the holding company. SBA is hereby revising the regulations which implement that statutory amendment.

DATES: Comments will be reviewed for sixty days following the date of publication of this notice.

ADDRESSES: Charles R. Hertzberg, Assistant Administrator for Financial Assistance, Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, (202) 205-6497.

SUPPLEMENTARY INFORMATION: Ordinarily, concerns primarily engaged in financing investments that are neither related nor essential to their operations are ineligible for SBA financial assistance. Thus, as a general rule, a small business concern applicant for assistance which is engaged in owning and leasing or proposing to own or lease real or personal property (holding company) to an otherwise eligible small business concern (operating company) is ineligible. See 13 CFR 120.101-2(e) and 13 CFR 108.8(d)(4). As an exception to that rule SBA instituted an "alter ego rule". The "alter ego rule" presently permit a holding company to be eligible for SBA assistance if there is identity of ownership by the same owners in the same proportion of the ownership interest in the holding company and the operating company.

In 1988, a statutory amendment revised this requirement for identify of ownership of the holding company and operating company in cases involving family-owned businesses. See section 114 of Public Law 100-590, November 3, 1988. That amendment relaxed the requirement for identity of interest both as to owners and their proportion of ownership when certain named family members have ownership interests in the operating concern and the holding company. SBA is hereby revising the regulations which implement that statutory amendment.

SBA's present regulation implementing the statutory amendment states that:

SBA shall not decline a loan or a guaranty to an applicant when the ownership interests in the operating small concern and in such applicant holding company are not identical and not in the same proportion solely because one or more of the following members of the same family have such interest or interests in one and/or the other: Father, mother, son, daughter, wife, husband, brother or sister. In each such case, SBA shall make a determination that such ownership, such guaranty and the proceeds of such loan will substantially benefit the operating small concern.

Heretofore SBA has interpreted the regulatory language to require that the exception be applied to only one person's (a focal point) family members. Thus, we have found identity of ownership to exist if one or more of the stated family members of an individual owner of the operating concern or holding company have all of the remaining ownership interests in the operating concern or holding company. We have been presented with a number of arguments that such a view is too narrow, and therefore does not implement the intent of the statutory exception which is to permit non-identical ownership in the context of a family owned business. Those arguments have been based on the position that reference to the family of a single focal point is insufficient to satisfy the statutory intent.

SBA is therefore proposing to broaden the scope of its interpretation of the statutory exception. Under this proposal SBA would require individual enumerated family members (father, mother, son, daughter, wife, husband, brother or sister) to own no less than 20% of the aggregate ownership interest in the operating concern, and that these enumerated family members own at least 80% of the aggregate ownership of the operating concern. If these requirements are met, any other enumerated family member of those owners could have an ownership interest in the applicant holding company without violating the requirement for identity of ownership. Under this proposal, one or more non-family members could own the remaining 20% interest in the applicant concern only if their ownership in the operating concern was identical and in the same proportion. This latter element of the proposal recognizes the possibility of ownership by key people in an otherwise family-owned business.

Thus, under this proposed rule, as many as five individual people who are related in the manner described in the statute could own as little as 20%

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interest each in the operating concern. In that case any of their enumerated relatives could own interests in the holding company applicant without harming the applicant's eligibility status. In addition, as many as four individuals who are related in the manner described in the statute could own interests of 20% in the operating concern, up to 80%, and a key person or key people could own the remaining 20% interest. So long as statutorily named family members of the 80% family owners owned 80% of the holding company, and the key person or people owned the remaining 20% in the exact same proportions as their ownership in the operating concern, the eligibility of the applicant holding company would not be harmed.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act, 5 U.S.C. 601, et. seq., and the Paperwork Reduction Act, 44 U.S.C. Ch 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule, if promulgated in final form, will not have a significant economic impact on a substantial number of small entities. SBA certifies that this proposed rule, if promulgated as final, will not constitute a major rule for the purposes of Executive Order 12291, since the proposed change is not likely to result in an annual effect on the economy of $100 million or more. While the proposed rule is intended to make eligible for financial assistance more businesses, it is reasonable to assume that SBA will not be requested to process a disproportionate number of additional applications for assistance. In addition, the proposal if adopted would partially relieve only one restriction on eligibility. An applicant would still have to comply with all other requirements in order to qualify for assistance.

The proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35

This proposed rule would not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Lists of Subjects

13 CFR Part 108

Loans to State and Local Development Companies

13 CFR Part 120

Loan programs/businesses; Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6), SBA proposes to amend parts 108 and 120, chapter I, title 13, Code of Federal Regulations, as follows:

1. The Authority Citation for part 108 would continue to read as follows:

Authority: Sections 308(c), 502, 503, 504, 505, of the Small Business Investment Act, 15 USC 687(c), 695, 696, 697, 697(a), 697(b).

2. The Authority Citation for part 120 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).

3. Section 108.8(d)(4) is revised to read as follows:

§ 108.8 Borrowers requirements and prohibition.

* * * * *

(d) * * *

(4) The ownership interest(s) in the applicant shall be completely identical with an in the same proportion as the ownership interest(s) in such operating small concern, and this identity of interests shall remain unchanged until the section 502 loan or 503/504 loan is repaid in full or if SBA sooner gives approval to a change: Provided, however, That SBA shall not decline to issue a guarantee to an applicant when the equitable ownership interests in the operating small concern (whether or not incorporated) and in such applicant are not identical and in the same proportion solely because one or more of the following enumerated members of the same family have such interest or interests in one and [or] the other: father, mother, son, daughter, wife, husband, brother or sister. In this regard, if no less than 20% of the equitable ownership interest in such operating small concern is held by any one enumerated family member, and enumerated family members hold no less than 80% in the aggregate, of such ownership interest of the operating concern, any other enumerated relative of these individuals may be considered an eligible owner of the applicant under the provisions of this section: Provided further, however, that an unrelated individual (or individuals) who own(s) up to 20% of an ownership interest in both the operating small concern and the applicant in the same proportion may also be considered an eligible owner of the applicant. In each case of the application of this exception to the general rule, SBA shall make a determination that such ownership interest, such guarantee, and the proceeds of such loan, will substantially benefit the operating small concern.

4. Section 120.101 2(e)(5) is revised to read as follows:

§ 120.101 Applicant business concern.

* * * * *

(e) * * *

(5) The ownership interest(s) in the applicant shall be completely identical with and in the same proportion as the ownership interest(s) in such operating small concern, and this identify of interests shall remain unchanged until the section 502 loan or 503/504 loan is repaid in full or if SBA sooner gives approval to a change: Provided, however, That SBA shall not decline to issue a guarantee to an applicant when the equitable ownership interests in the operating small concern (whether or not incorporated) and in such applicant are not identical and in the same proportion solely because one or more of the following enumerated members of the same family have such interest or interests in one and [or] the other: Father, mother, son, daughter, wife, husband, brother or sister. In this regard, if no less than 20% or more of the equitable ownership interest in such operating small concern is held by any one enumerated family member, and enumerated family members hold no less than 80% in the aggregate, of such ownership interest of the operating concern, any other enumerated relative of these individuals may be considered an eligible owner of the applicant under the provisions of this section: Provided further, however, that an unrelated individual or individuals) who own(s) up to 20% of an ownership interest in both the operating small concern and the applicant in the same proportion may also be considered an eligible owner of the applicant. In each case of the application of this exception to the general rule, SBA shall make a determination that such ownership interest, such guarantee, and the proceeds of such loan, will substantially benefit the operating small concern.

Dated: April 2, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-10424 Filed 5-2-91; 8:45 am]

BILLING CODE 8025-01-M

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13 CFR Part 121

Small Business Size Standards; Petroleum Refining Industry

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to eliminate the 50,000 barrel per day (BPD) capacity limit as a component of the size standard for petroleum refining. Under this proposal the current requirement that a small petroleum refiner, including all affiliates, have no more than 1,500 employees would remain. The reduction to a single size criteria is compatible to the single size criteria used for all other industries. The single size criteria of 1,500 employees is a realistic size standard considering the structure of this industry, while the 50,000 BPD limitation unrealistically limits small firms in this industry to a level which is equivalent to 400 employees. In addition the elimination of the 50,000 BPD capacity will allow those refining firms now slightly below the capacity limit to expand their facilities without losing small business status, thus offsetting, in part, the economic based trend in recent years of a reduced small business share.

DATES: Comments must be submitted on or before June 3, 1991.

ADDRESSES: Written comments should be sent to: Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 409 3rd Street, NW., 5th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Norman S. Salenger, Economist, Size Standards Staff, (202) 653-6373.

SUPPLEMENTARY INFORMATION: The size standard for the Petroleum Refining Industry, Standard Industrial Classification (SIC) code 2911, was first established by SBA in 1955 at 1,000 employees and refining capacity not in excess of 30,000 barrels per day (BPD). At that time, small refining firms accounted for 7.8 percent of the refining capacity as measured by output of the industry. By 1975, the capacity of the industry's small refining firms fell to 5.1 percent of the industry capacity. In 1975, SBA raised both components of the size standard to, respectively, 1,500 employees and 50,000 BPD capacity, thus restoring the small business share to 7.8 percent of the industry, the same that existed in 1955. By 1989 that share had declined to 6.7 percent. On a comparative basis, the small business share of all manufacturing industries is 20 percent.

In evaluating the appropriateness of a size standard, SBA compares industries to each other using various factors. The primary factors used in evaluating the appropriateness of this size standard were: industry competition, average size of firms, the distributon of firms by size, startup costs for ease of entry into the industry, and the small business market share of Federal procurement.

For manufacturing industries, SBA has adopted a 500-employee size standard as the starting point for analyzing the size standard appropriate for an industry given its industry structure. Five hundred employees is considered the "anchor standard" for manufacturing industries. About 75 percent of industries in the manufacturing industry division have a size standard of 500 employees. SBA adjusts the size standard applied to an industry from this anchor standard based on an analysis of the primary factors discussed above. The highest size standard SBA has is 1,500 employees. Of all industries with SBA size standards, only petroleum has two elements.

For the Petroleum Refining Industry, the highest size standard of 1,500 employees appears to be appropriate based on the following factors: The average size petroleum firm, which includes all affiliates, was approximately 3,000 employees according to the 1987 Census of Manufacturers. This figure is many times larger than the 60-employee average size firm for all of the manufacturing industries and high average firm size argues for a high size standard. The ten largest refining firms, each with over 400,000 BPD capacity, account for 55 percent of the industry's capacity and each has over 5,000 employees. Nine of these top firms are among the largest in the Fortune 500 and each has broad marketing operations supplementing its refinery operations. On the other hand, those refining firms with less than 1,500 employees account for only 6.7 percent of the industry's refining capacity as measured by output, a much smaller share than either the 20 percent figure for all of manufacturing or the 38 percent figure for all industries aggregated together. When the small business percent of sales is very low as in petroleum refining, SBA often considers raising the size standard to achieve a more comparable small business share of industry sales when contrasted with other industries.

The Petroleum Refining Industry is one of predominantly very large firms that have the potential to control output and prices within the industry and in such cases, SBA tends to set relatively high size standards to encourage firms in a broad range of sizes to compete with the very large firms dominating the industry. Additionally, start-up costs for a firm entering the industry run into the millions of dollars, and the higher an industry's start-up costs, the more likely that SBA will set a higher size standard. From a procuring standpoint, the small business share of Federal procurements to petroleum refiners based on direct purchases for FY 1989 was 16.2 percent of all direct awards and an estimated 12 to 13 percent of all awards (including purchases from dealers who, in turn, usually provide products from large petroleum producers). These figures are significantly less than the small business share of 19.5 percent of Federal awards to all industries, suggesting that the present double component size standard could be too restrictive. Reinforcing this observation are a number of factors which have adversely affected small firm participation in the industry over time.

Trends in the Industry Over Time

Between 1979 and 1989 the numbers of refineries in all size classes below 100,000 BPD capacity decreased from 268 refineries to 144, while those of over 100,000 BPD capacity increased from 51 to 55 refineries. This suggests that, in this industry, economies of scale, a desirable size for an establishment to be competitive, is in excess of 100,000 BPD. The three largest refining firms operate, in total, 22 refineries averaging approximately 175,000 BPD capacity per refinery, giving further indication that the economies of scale for a single refinery are close to that level. It takes about 1,400 employees to refine 175,000 BPD, further supporting a 1,500-employee size standard, as well as suggesting a need to remove the current 50,000 BPD limit as part of the size standard. Using an average of 125 BPD per employee in the refining industry, a 50,000 BPD limitation is equivalent to a 400-employee size standard.

Between 1975 and the end of 1989, the smaller refiner share of the industry capacity declined from 7.8 percent to 6.7 percent, reflecting a period where many small refineries simply shut down for economic reasons. In particular, the majority of refineries with under 50,000 BPD ceased operations and the largest percentage lost was refineries of under 10,000 BPD capacity indicating the inefficiency of very small refineries. Table 1 focuses on the change in the industry structure over the 5-year period from the end of 1984 through the end of 1989 by size of firm. This table shows an increase in numbers of the largest firms and a slight increase in the numbers of small firms within the capacity range of 30,001 to 50,000 BPD. However, the number of firms in the zero to 30,000 BPD range declined significantly indicating the inefficiency of very small refineries. In short, the smaller the firm the worse its economic prospects over this period.

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TABLE 1.—SIC CODE 2911—PETROLEUM REFINING SUMMARY OF INDUSTRY STRUCTURE 1984 AND 1989

	Dec. 31, 1984	Dec. 31, 1989
Total number of refining firms	116	108
Small refining firms: [1]		
Up to 30,000 BPD capacity	61	47
30,001–50,000 BPD capacity	9	11
Total small firms	70	58
Large refining firms: [2]		
Up to 50,000 BPD capacity [3]	10	8
50,001–250,000 BPD capacity	21	22
over 250,000 BPD capacity	15	20
Total larger firms	46	50
Industry refining capacity:		
Barrels per day (million)—All firms	16.9	15.6
Percent of total capacity—Small firms	7.1	6.7
Percent of total capacity—Larger firms	92.9	93.3
Concentration ratios (capacity share):		
4 largest refining firms in sales	29.1	31.0
8 largest refining firms in sales	49.1	49.1

[1] Defined as firms with 1,500 employees or less and 50,000 BPD or less capacity.
[2] Defined as firms with either more than 1,500 employees or more than 50,000 BDP capacity.
[3] These firms exceed the 1,500 employee limit due to operations other than refining, such as retailing or service activities.

Sources: Petroleum Supply Annual 1989 and Petroleum Supply Monthly, Nov. 1984 (published Jan. 1985), U.S. Dept. of Energy.

Table 2 below contrasts the experience of operable refineries by size of refinery over the 10-year period of 1979–1989. Operable refineries with capacity in excess of 100,000 BPD increased in number from 1979 to 1989, while the numbers of those in small size classes decreased. Over this period, refineries of 10,000 BPD capacity or less decreased in numbers from 102 to 38 due to widespread shutdowns. Of 17 shutdowns in 1988 and 1989, 15 were owned and operated by small firms. Of these 15 firms, one small firm closed one of its two refineries but remained in the industry while the other 14 firms left the industry entirely. This attrition among small firms supports the position that an optimum refining size is above the current size standard of 50,000 BPD. Locational factors, proximity to its market and/or its source of supply, have been factors assisting some small firms to remain in the industry, but their overall prospects clearly are unfavorable.

TABLE 2.—NUMBER OF OPERABLE REFINERIES BY SIZE 1979–1989

Capacity in BPD	Dec. 31, 1979	Dec. 31, 1983	Dec. 31, 1989	Percent change 1979–89
Over 100,000 BPD	51	47	55	+8
50,001 to 100,000 BPD	44	41	37	−16
10,001 to 50,000 BPD	122	96	69	−43
Less than 10,001 BPD	102	63	38	−63
Totals	319	247	199	−38

Source: Petroleum Supply Monthly, April 1984, Petroleum Supply Annual 1989, U.S. Dept. of Energy.

Industry Structure

For SBA purposes the employee count, when used as a size standard, must include the personnel of all affiliated firms, including those in other industries. Based on an analysis of industry data, it takes a firm of about 400 employees to refine 50,000 BPD provided that the firm's operations are basically refining and not activities related to other industries such as wholesale and retail marketing. Widespread marketing activities, which directly supply consumers such as households, business firms, governments and institutions, are not a function of most small petroleum refining firms. Additionally, large refining firms are often affiliated with firms in other industries, while the small refiner usually is independent. At the 1,500-employee limit a refiner could reach the estimated capacity limit for a small refinery of approximately 200,000 BPD, provided it does not have operations other than refining.

Larger refining firms usually operate with a multitude of refineries in widely dispersed geographical locations. Several large firms have no refinery of under 100,000 BPD capacity. Firms with under 50,000 BPD capacity rarely operate more than one refinery. Table 3 reflects the average refinery size and the percentage of national refining capacity by the owning firm's total capacity. Note the strong tendency for firms with over 100,000 BPD capacity to operate multiple refineries whereas firms of under 50,000 BPD capacity operate one refinery. This is a further indication of a minimal acceptable plant size for refineries in excess of 50,000 BPD. On the high side of relevant plant size, very large firms' individual refinery sizes tend to level off in the 175,000 BPD level. Beyond this point, firms tend to increase their number of refineries rather than the size of individual refinery. This suggests that diseconomies of scale occur at plant sizes in excess of 175,000 BPD, and larger firms will usually expand output in that range by increasing numbers of refineries rather than the capacity of individual refineries.

TABLE 3.—REFINING CAPACITY IN BARRELS PER DAY BY SIZE OF OWNING FIRM DECEMBER 31, 1989

Owning firms total capacity in BPD	No. of firms	Small business firms	No. of refineries	Average refineries per firm	Average capacity per refinery BPD	Percent of national capacity
1 million and over	3	0	22	7.3	174,845	24.7
500,001 to 999,999	6	0	29	4.8	148,504	27.7
200,001 to 500,000	12	0	36	3.0	103,569	23.9
100,001 to 200,000	12	0	25	2.1	70,392	11.3
50,001 to 100,000	9	0	13	1.4	60,185	4.2
30,001 to 50,000	15	11	17	1.1	36,619	4.0
30,000 or less	51	47	57	1.1	11,501	4.2
Totals	108	58	199	1.8	78,250	100.0

Source: U.S. Dept. of Energy, Petroleum Supply Annual, 1989.

At the end of 1989 there were eight small refining firms with a production level between 40,001 and 50,000 BPD and only three small refining firms between 30,001 and 40,000 BPD capacity. These firms each had considerably less than 1,500 employees. The clustering of firms close to, but slightly below, the size standard capacity limit of 50,000 BPD suggests a reluctance of these firms to lose their small business status by expansion of output. Similarly, the absence of any refiner with no more than 1,500 employees and a capacity of between 50,000 and 131,000 BPD further

suggests that firms are restricting output to retain their small status. The 50,000 BPD limitation has all the appearance of shaping the industry structure rather than reflecting that structure for smaller firms in the industry, a development which SBA views with some concern since it is not SBA's wish that firms predicate their decisions in order not to exceed a size standard.

Projecting into the future, the Environmental Protection Agency's (EPA) anticipated regulations are likely to impact heavily on small refining firms by requiring the reduction of sulfur in fuel oil and the reduction of volatility in motor fuel products to meet the Clean Air Act guidelines. The exact levels to meet these requirements have not, as yet, been firmly established. However, in order to meet any of the requirements under consideration, virtually all refineries will have to rebuild or modify their facilities. In a report by the General Accounting Office (GAO) released on June 14, 1990, the GAO acknowledges that at all levels under consideration a substantial change in the refining plants will be necessary and that these changes will entail substantial costs. This report also states that trade association officials agree that small refining firms operate on small profit margins and would have difficulty attracting investors necessary to finance the expensive new equipment necessary to meet the EPA regulations. Other reports indicate that independent refiners would have the greatest difficulty meeting regulatory controls, leading to further consolidation in the industry and continued attrition of small refineries and independent refiners. This would reduce the small business share of the industry's refining capacity even further. This expected reduction can be partially offset through removal of the current capacity limit since one existing firm would gain small business status and the cluster of firms presently just below 50,000 BPD in output could expand capacity to a significant extent without losing their small business status.

In summary, the trend of a reduction in both number of small refining firms as well as their share of the industry's refining capacity is expected to continue over the next several years. As environmental requirements are put in place the very smallest of refiners can be expected to have an even higher attrition rate than in the past. These adverse trends in the industry add additional weight to the static analysis suggesting that a 50,000 BPD limitation is unnecessary.

Federal Procurement Patterns

In FY 1989 the Federal government purchased almost $2.5 billion in petroleum refined products. Small refining firms obtained 15 percent of direct Federal procurements and an estimated 12 percent of all Federal petroleum procurements. This represents a higher small business share of Federal procurements than its share of industry sales of 6 percent, but still less than the 20 percent small business share of all Federal procurement. Both the small firm procurement share and its industry sales share are likely to decline further as small firms exit from the industry in the future. Table 4 presents data on Federal procurements.

TABLE 4.—FEDERAL PROCUREMENTS FROM PETROLEUM REFINERS, SIC CODE 2911—FY 1989

Source	Firms with contracts	Contract dollar values (millions)	Percent of all contracts
Small refining firms:			
10,000 or less BPD capacity	9	$78.3	3.2
10,001–30,000 BPD capacity	5	103.4	4.2
30,001–50,000 BPD capacity	5	220.3	8.9
All small refiners	19	402.0	16.2
Large refining firms	23	2,075.0	83.8
Total all refining firms	43	$2,477.0	100.0

Source: Computed from data compiled by the Federal Procurement Data Center (FPDC) Only contracts awarded directly to refiners are included. The source of petroleum products supplied by dealers cannot be ascertained.

Size Standard Options

The relatively low share of industry sales attributable to small refining firms under the present size limitations as well as the lower small business share of Federal procurement than for other industries suggests the need for either of either (1) a higher size standard for the BPD component of the standard, (2) an elimination of the PBD component entirely, or (3) raising the employment component of the size standard. These options are discussed below.

If SBA were to raise the 50,000 BPD capacity limit to 150,000 BPD, it would have the immediate impact of adding only one refining firm as small business. All other firms with over the present 50,000 BPD capacity have over 1,500 employees. Similarly, a removal of the capacity size limitation entirely would directly add only this one firm as a small business refiner. The elimination of the capacity limit, however, would be expected to encourage present small refiners to expand their capacity without loss of small business status, and thus small business share in the industry and Federal procurement likely would increase.

Other alternatives that could lead to an increase of the small business share of petroleum refining were examined. Raising the capacity limit to 75,000 BPD or 100,000 BPD, however, would have no immediate effect since there are no firms with less than 1,500 employees that also have plant capacity in the 50,000 to 100,000 BPD range. Its effect would be limited to the extent that firms now small would be encouraged to expand beyond the present capacity size standard and still retain small business status. Additionally, such a raise would still retain a two component size standard which complicates size determinations and does not exist for any other industry. For these reasons SBA has rejected changes in the BPD limit, choosing to focus on eliminating the 50,000 BPD limitation entirely.

SBA also considered a raise in the employee limit size standard, while retaining the BPD limitation. A raise in the employee limit to 2,000 employees would add one firm and a raise to 2,500 employees add two firms as being small, each having less than a 50,000 BPD capacity. However, such an action would be contrary to SBA's long-

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standing policy to limit the highest employee size standard to no more than 1,500 employees. It would also assist firms that were not primarily refiners, and it is the refining share of sales and procurement that SBA wishes to expand; not firms that are more active in other industries.

For these reasons, the SBA rejected other approaches to increasing the small firm share and is proposing the elimination of the capacity limit of 50,000 BPD as part of the size standard for petroleum refining. The impact of eliminating the BPD size limitation was previously explained in detail and is summarized here. If SBA does eliminate the capacity restriction, the small business share of the industry would increase over time from the current low level of 6.7 percent to a somewhat higher level and the rule change is expected to stem, to a somewhat higher level and the rule change is expected to stem, at least in part, the trend of a further decline in small business activity. The rule change is expected to encourage firms concentrated at a capacity slightly below the current 50,000 BPD size standard to expand without losing small business status. Also, this rule change simplifies the size standard to a single criteria, the same that exists for other industries. It also simplifies size determinations by SBA's regional offices.

This rule change is intended to encourage the availability of products refined by small businesses, thus assisting small petroleum product dealers in obtaining set aside procurements and 8(a) program contracts, both requiring delivery from a small business refiner. The current 50,000 BPD capacity limit is considerably below the level where a refiney obtains desirable operating efficiency while at 1,500 employees a refining firm could operate at a level approximating desirable efficiency.

SBA specifically invites comment on the appropriateness of this standard and on alternative standards (either higher or lower). Comments suggesting other standards should address the questions of: (1) The interaction of this size standard with SBA's programs; (2) the relative levels of participation at different size standards; (3) the effect of this proposed size standard or other alternative size standard on the businesses within this industry; and (4) the prospect of significant new entries into these businesses in response to this program.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and the Paperwork Reduction Act (44 U.S.C. 501, Chapter 35.)

SBA has determined that this proposed rule would not constitute a major rule for the purposes of Executive Order 12291 because the annual economic effect would not exceed $100 million. This rule would not change the amount of refined petroleum purchased by the Federal government. Since there is an established market price for these products, total Federal procurement dollars are expected to remain the same as if this rule were not promulgated. This rule may result in a few firms receiving Federal contract awards as a small business that they would not receive otherwise. It is unlikely that the net effect of contract dollars shifted by this rule to redefined small businesses would exceed $100 million dollars, as only one firm will become eligible as small with the elimination of the capacity limitation. There is no expected impact on SBA loan programs from this rule since SBA loan limits of $750,000 are far below the financial needs of firms at the sizes affected by this rule. In both FY 1988 and FY 1989, SBA made less than $1 million in loans to firms in the Petroleum Refining Industry.

SBA certifies that this proposed rule does not warrant the preparation of a Federalism assessment in accordance with Executive Order 12612, nor would it contain recordkeeping or reporting requirements subject to the Paperwork Reduction Act, 44 U.S.C., chapter 35.

For purposes of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* this proposed rule, if promulgated in final form, would not have a significant economic effect on a substantial number of small entities for the same reasons that it was rejected as a major rule. It will only make one firm small.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

Accordingly, part 121 of 13 CFR is proposed to be amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, as amended, 15 U.S.C. 632(a) and 634(b)(6) and Pub. L. 100-656, (102 Stat. 3853 (1988)).

§ 121.601 [Amended]

2. In § 121.601 the footnotes following the Standard Industrial Classification Table, footnote 5 is revised to read as follows:[5]

[5] SIC code 2911—For purposes of Government procurement, the total product to be delivered in the performance of a contract classified under this SIC must be at least 60 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

Patricia Saiki,

Administrator, U.S. Small Business Administration.

[FR Doc. 91-10425 Filed 5-2-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-91-10]

Petition for Rulemaking Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 2, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10) Petition Docket No. 26386, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Ida Klepper, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9688.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on April 26, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26386.

Petitioner: Ernest J. DeSimone.

Regulations Affected: 14 CFR 61.155.

Description of Petition: To amend § 61.155 by replacing the term "flight engineer" with "military or civilian flight engineer or flight navigator."

Petitioner's Reason for the Request: The petitioner believes that safety would be enhanced by supplying the industry with more pilots of a high qualification. Also a higher rate of public economic productivity would be gained from money already spent, at no additional (excluding FAA administrative) cost.

[FR Doc. 91-10485 Filed 5-2-91; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1205

[NHTSA Docket No. 91-12; Notice 8]

RIN 2127-AE06

Highway Safety Programs; Determination of Effectiveness

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: On April 2, 1987, Congress enacted the Surface Transportation and Uniform Relocation Assistance Act of 1987. Section 206(d) of the Act, amending 23 U.S.C. 402(j), authorizes the Secretary, from time to time, to conduct a rulemaking process to determine those programs most effective in reducing accidents, injuries, and deaths, and to amend 23 CFR part 1205 accordingly. Pursuant to the Act, those programs judged to be most effective in the Department's final rule will be eligible for Federal funding using an expedited process under the State and Community Highway Safety Grant Program (23 U.S.C. 402).

This notice is being issued to solicit public comments on a proposal of the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) to expand the list of "most effective" or National Priority program areas to include Pedestrian and Bicycle Safety.

DATES: All written comments must be received by June 17, 1991.

ADDRESSES: Written comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to: Docket Section, room 5109, U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: In NHTSA: Mr. Ronald E. Engle, Chief, Safety Countermeasures Division, Traffic Safety Programs, NTS-23, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366-2717.

In FHWA: Ms. Susan Gorcowski, Office of Highway Safety, HHS-22, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366-2156.

SUPPLEMENTARY INFORMATION: On April 2, 1987, the Surface Transportation and Uniform Relocation Assistance Act of 1987, Public Law 100-17, was enacted by Congress. Section 206(d) of the Act, amending 23 U.S.C. 402(j), authorizes the Secretary, from time to time, to conduct a rulemaking process to determine those programs most effective in reducing accidents, injuries, and deaths, and to amend 23 CFR part 1205 accordingly. Pursuant to the Act, those programs judged to be most effective in the Department's final rule will be eligible for Federal funding using an expedited process under the State and Community Highway Safety Grant Program (23 U.S.C. 402).

This process was last completed in 1988. On September 3, 1987, a joint NHTSA and FHWA Notice of Proposed Rulemaking (NPRM) was published in the Federal Register (52 FR 33422), requesting written comments and announcing that public hearings would be held on which highway safety programs are most effective, and should be included on the list of National Priority program areas. On April 1, 1988, the agencies issued a final rule (published in the Federal Register on April 8; 53 FR 11255), announcing that they had determined that the National Priority program areas included one FHWA program area, Roadway Safety, and the following NHTSA program areas: (1) Alcohol and Other Drug Countermeasures; (2) Police Traffic Services; (3) Occupant Protection; (4) Traffic Records; (5) Emergency Medical Services; and (6) Motorcycle Safety.

This notice is being issued to solicit public comments on a proposal of NHTSA and FHWA to add Pedestrian and Bicycle Safety to this list. Pedestrian and Bicycle Safety, if added, would be administered jointly by both agencies.

Background

The State and Community Highway Safety Grant Program (the 402 program) was established under the Highway Safety Act of 1966, 23 U.S.C. 402. The Act required the establishment of Uniform Standards for State Highway Safety Programs to assist the States and local communities to organize their highway safety programs.

Until 1976, the 402 program was principally directed towards achieving State and local compliance with the 18 Highway Safety Program Standards, which were considered mandatory requirements with financial sanctions available for noncompliance. Under the Highway Safety Act of 1976, Congress provided for a more flexible implementation of the program so that the Secretary would not have to require State compliance with every uniform standard or with each element of every uniform standard. As a result, the standards became more like guidelines for use by the States. Management of the program then shifted from enforcing standards to one of problem identification, countermeasure development and evaluation, using the standards as a framework for the State programs. This approach was formalized in section 206(a) of the 1987 Act.

The 402 program has been administered at the Federal level by FHWA and NHTSA. NHTSA is responsible for developing and implementing highway safety programs relating to the vehicle and driver. FHWA has similar responsibilities in program areas involving the highway.

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In 1981, Congress passed the Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, revising the section 402 program. The Act directed the agencies to conduct a rulemaking process to determine those State and local highway safety programs most effective in reducing accidents, injuries, and fatalities.

On April 1, 1982, in accordance with section 1107(d) of the Omnibus Budget Reconciliation Act of 1981, NHTSA and FHWA issued a joint final rule (47 FR 15116) identifying the six program areas which the agencies then considered to be the most effective NHTSA and FHWA highway safety programs. Those program areas were determined to be National Priority program areas, and included one FHWA program area, Safety Construction and Operational Improvements, and the following NHTSA Program Areas: Occupant Protection; Alcohol Countermeasures; Police Traffic Services; Emergency Medical Services; and Traffic Records.

The April 1982 final rule provided that these National Priority program areas continue to be eligible for Federal funding under the 402 program, and established a mechanism by which additional programs identified by a State may be eligible for Federal funding.

The rule provided for an expedited procedure for the funding of National Priority program areas. See, 23 CFR 1205.4. For the funding of other program areas, the rule permits States to select one or both of two procedures: formal decision-making or problem identification. See 23 CFR 1205.5 (a) and (b).

The formal decision-making approach is a method by which States can implement a formal decision-making process for highway safety plan development. The result of this decision-making process is the identification by the State and those program areas that represent priorities within the State. Once a State implements an approved process, the State thereafter can merely list and describe in its Highway Safety Plan those projects identified as the most effective in reducing accidents, injuries and fatalities in that State (through the State's approved process), certify that those projects were identified in accordance with the process, and supply the final decision-making results.

The problem identification approach consists of using the existing procedures for problem identification and countermeasure development, except that the agencies substantively review proposed projects outside of the National Priority program areas with a greater degree of scrutiny. All of the States currently utilize this procedure and are familiar with the review process.

These non-priority program funding mechanisms permit States to support, under section 402, new and innovative programs in any highway safety area and to address problems which are unique to a particular State, provided sufficient justification has been submitted. They also provide an orderly method for assuring that major highway safety problems at the State and local level are being addressed with effective countermeasures. Since 1982, over $9 million in 402 funds have been obligated for projects under these non-priority program funding mechanisms. The agencies are not proposing, in the NPRM, any changes to these funding procedures.

On January 5, 1987, the Department submitted to Congress a legislative proposal to revise 23 U.S.C. 402. The Department's proposal provided for a periodic review of the effectiveness of the various programs eligible for funding under section 402 in reducing accidents, injuries and fatalities. The Department believed the periodic review procedure to be the best method for ensuring the continued relevance of the section 402 program to changing circumstances and traffic safety needs, and for ensuring that Federal funds continue to be used in as cost effective a manner as possible.

The legislative proposal also provided that the terms "standard" and "standards" wherever they appear be replaced with the words "guideline" and "guidelines." The purpose of this amendment was to conform the language of section 402 to the current implementation of the programs. As a result of the 1982 determinations of program effectiveness under section 402(j), the highway safety program standards have been maintained as non-binding guidelines for use by the States in their section 402 programs.

The Department's proposal was enacted by Congress as subsections 206(a) and (d) of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

1988 Determination

Pursuant to this authority, NHTSA and FHWA conducted a rulemaking action to determine those programs most effective in reducing accidents, injuries and deaths. In the April 1, 1988 final rule, the agencies determined that the National Priority program areas included one FHWA program area, Roadway Safety (formerly, Safety Construction and Operational Improvements), and the following NHTSA program areas: (1) Alcohol and Other Drug Countermeasures; (2) Police Traffic Services; (3) Occupant Protection; (4) Traffic Records; (5) Emergency Medical Services; and (6) Motorcycle Safety. NHTSA and FHWA considered, but decided not to include, pedestrian and bicycle safety on the list of National Priority program areas. That decision was based on a finding that many of the countermeasures that had been proven to be effective in reducing pedestrian and bicycle safety problems could be funded under the existing priority programs. It was based also on a determination that, at the time, sufficient other proven countermeasures to address pedestrian and bicycle safety outside the priority programs had not been demonstrated to exist.

The agencies explained that the Department is not at liberty to determine that the pedestrian and bicycle area should be added to the list of National Priority programs simply on the basis that the area involves a serious problem. The Federal statute directs the agencies to determine under section 402 which programs *are "most effective* in reducing accidents, injuries and deaths [emphasis added]." On this basis, the agencies made the determination that pedestrian and bicycle safety could not properly be included on the list of National Priorities until the countermeasures in these areas have demonstrated to be effective.

To encourage the development and demonstration of effective countermeasures to address this serious problem, in the April 1988 final rule, the agencies revealed a number of activities that they planned to conduct and explained the manner in which States could participate in this effort.

The agencies indicated that to assist in the research and development of effective countermeasures, the agencies would compile and distribute a compendium of projects that appear to be effective in addressing pedestrian and bicycle safety problems. The final rule stated also that NHTSA intended to devote Highway Safety Research and Development funds, under section 403 of the Highway Safety Act of 1966, to identify effective countermeasures in the area of pedestrian safety. In addition, the final rule indicated that if a State is interested in conducting a demonstration project to determine the effectiveness of a particular countermeasure, NHTSA would consider providing section 403 funds for evaluation purposes.

With regard to State activities, the final rule advised that if a State has a pedestrian safety program which it believes will be effective in reducing crashes and injuries, the State can still make use of section 402 funding, under one of the other priority categories (e.g., enforcement programs can be funded under police traffic services), or under the non-priority funding process to address special local needs. The agencies strongly encouraged the States to use the funding processes for non-emphasis areas to obtain approval for using 402 monies to introduce effective, innovative pedestrian safety countermeasures.

Since 1988

Much activity has taken place in the area of pedestrian and bicycle safety since 1988 when the agencies decided not to include it on the list of National Priority program areas. The agencies now believe the time has come to reevaluate this decision.

In 1989, President Bush declared traffic fatalities to be an issue of national concern, by charging that the national fatality rate be decreased to 2.2 fatalities per 100 million vehicle miles travelled by 1992. One year later, President Bush and Secretary of Transportation Samuel Skinner released the National Transportation Policy (NTP), which also included this goal. Since pedestrians and bicyclists contribute one out of every six traffic fatalities, pedestrian and bicyclist traffic safety improvements can make an important contribution to the President's and the NTP's goal. The NTP also calls on the department to promote alternative modes of transportation, including bicycles and walking; to better accommodate pedestrian and bicycle needs in designing facilities in urban and suburban areas; and to increase pedestrian safety.

In 1990, FHWA sponsored a national symposium on "Effective Highway Accident Countermeasures" in Washington, DC in order to identify the most effective countermeasures that could be implemented in the next two years to reach the President's goal. More than 250 experts and practitioners, representing different highway safety fields (such as engineering, law enforcement, education and research) participated. Pedestrian safety was one of five highway safety areas considered at the symposium. By the symposium's conclusion, countermeasures cutting across the three E's—education, enforcement and engineering—that could be implemented immediately had been identified as effective means to impact the problem. The symposium participants recommended that pedestrian safety be established as a National Priority program area, and indicated that they consider this to be a top priority. These and other recommendations are described in an action plan that has since been developed. A copy of the plan can be obtained from the Federal Highway Administration, Office of Highway Safety, HHS–1, 400 Seventh Street, SW., Washington, DC 20590.

In its 1989 Special Report 222, "Improving School Bus Safety," the National Academy of Sciences (NAS) recommended a number of effective countermeasures to improve school bus safety. Four of these countermeasures addressed pedestrian safety issues. On July 13, 1989, NHTSA issued a notice in the **Federal Register** endorsing NAS's recommendations, and deemed a number of them to be "effective" or "most effective." A number of pedestrian safety measures were determined to be "most effective." In both 1989 and 1990, NHTSA issued **Federal Register** notices announcing the availability of special grant funds, set aside to address school bus safety issues. The sum of $4.5 million was set aside in each year to address those measures deemed to be "effective" and "most effective" in the July 13, 1989 notice. Thirty-five States chose to use either all or part of their set-aside funds in 1989 to addressed pedestrian and bicycle safety issues.

In addition to these Federal activities, there has also been an increase in State and local activity and spending in support of pedestrian and bicycle safety, including an increase in section 402 dollars dedicated to this program area. Several States (including, for example, Florida, Massachusetts, New York, Pennsylvania and Virginia) have devoted considerable resources to include pedestrian and bicycle safety programs within existing National Priority safety programs, while others have supported these activities through the non-priority program funding process.

Nationally, Federal spending for Research and Development in support of pedestrian safety programs has increased dramatically. This spending is being used to support research and development of new materials, programs and countermeasures, as well as development and implementation of comprehensive community-based pedestrian safety programs. It is being used also to update and improve existing materials, programs and countermeasures, and to reevaluate them to confirm their effectiveness. FHWA and NHTSA have also provided sections 402 and 403 grant funds in both FY 1990 and 1991 to help implement community-based pedestrian safety programs, and Federal money has been appropriated in FY 1991 for a National Bicycle and Walking Study.

In addition, in 1990, FHWA initiated a pooled-fund study on "The Effect of Bicycle Accommodations on Bicycle/Motor Vehicle Safety and Traffic Operations," in which twelve States chose to participate. Together, the States provided $139,000 in State highway planning and research (HPR) funds in support of this effort. Further, the Department's appropriation for FY 1991 specifically directs the Secretary to appoint a bicycle coordinator for DOT. In response to this directive, the Department has decided to create a pedestrian and bicycle coordinator position in the Secretary's office, and FHWA has hired a full time bicycle manager to coordinate the FHWA bicycle safety program.

For these reasons, the agencies believe it is time to reconsider their 1988 decision not to include pedestrian and bicycle safety on the list of National Priority program areas.

Evaluation of Most Effective Program Areas

The agencies are proposing a determination that Pedestrian and Bicycle Safety should be added to the list of "most effective," or National Priority program areas.

Several factors complicate any effort to identify effective programs. A relationship between a crash prevention program and a reduction in crashes or injury levels is often difficult to document. The actual impact and effect of individual elements of a coordinated program may be hard to identify and distinguish from those of other programs.

Another complicating factor in establishing priority areas is that not all States and localities experience similar crash patterns. Crash reduction efforts in highly urbanized areas may not produce similar results when applied to low population rural areas. Because of the differences in problem areas and the difficulty in evaluating program effectiveness, there is a need for flexibility in determining priority programs.

Despite these difficulties, NHTSA and FHWA have reviewed the available data within the Department regarding Pedestrian and Bicycle Safety to determine whether this program area should be considered to be one of the most effective in reducing accidents, injuries and fatalities. Based on this review, the agencies have tentatively

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determined that the area of Pedestrian and Bicycle Safety is of national concern, that effective countermeasures have been developed in this area which address this concern, and that State programs in this area appear to be among the most effective in reducing accidents, injuries and fatalities. The agencies seek public comments from interested parties on this tentative determination.

Problem of National Concern

The agencies believe that pedestrian and bicycle safety has been and continues to be an area of national concern. Over 7000 non-occupants (including 6558 pedestrians and 832 pedalcyclists) were killed in motor vehicle crashes in 1989, which represents approximately 16% of all motor vehicle fatalities. Except for other vehicles, non-occupants are the most frequently struck object in fatal crashes.

In some urban areas, non-occupant fatalities represent 40% to 50% of all motor vehicle deaths. While bicycle and pedestrian safety is considered to be largely an urban problem, it is also of concern in many rural areas. The ratio of deaths to injuries, for example, is higher in rural environments. In response to our NPRM published in September 1987, the agencies received data from the public showing that, at least in some States, fatality rates for bicycles and pedestrians in rural regions equal or exceed these rates in urban areas.

Motor vehicle crashes also result in a significant number of non-occupant injuries. The agencies estimate that approximately 119,000 pedestrians and 76,000 pedalcyclists were injured or killed in 1989 in police-reported motor vehicle crashes. (In the final rule issued in April 1988, based on comments we had received, the agencies estimated that bicycle crashes (including those not involving a motor vehicle) result in 500,000 injuries each year which require emergency room treatment). The U.S. Consumer Product Safety Commission ranks bicycle accidents as one of the most common causes of emergency room admissions, and a study conducted in 1985 by the University of Ottawa School of Medicine reported that bicycle accidents are the most significant cause of head injuries in children.

Alcohol is a major factor in non-occupant crashes. Fatal Accident Reporting System (FARS) data indicate that approximately 39 percent of all pedestrians and 19 percent of all bicyclists killed in these crashes were impaired by alcohol.

Children under 15 years of age represent 46% of all pedalcyclists injured or killed in pedalcycle fatalities. There has recently been an increase in injuries and deaths among adult pedalcyclists. At greatest risk in pedestrian accidents are young children and older adults. Children between the ages of 5 and 14 represent 30% of all injured or killed pedestrians and adults over the age of 65 represent 23% of all pedestrian fatalities. Since the elderly is the fastest growing segment of America's population, this problem is likely to get worse, unless appropriate steps are taken to intervene.

Effective Countermeasures

NHTSA and FHWA will not attempt here to identify each and every countermeasure we believe to be effective. Such an exercise is not necessary, nor would it be useful. NHTSA and FHWA do wish, however, to highlight several countermeasures which the agencies believe have been particularly successful.

A comprehensive Corridor Program was effective in reducing fatalities and injuries in an accident-prone corridor in New York City (the Queens Boulevard corridor), which has a high elderly pedestrian concentration. Based on a detailed analysis of fatality and injury data, the community identified site specific countermeasures to implement, which included modifying signal timing to provide increased pedestrian crossing time, refurbishing pavement markings, installing median strips and erecting oversized speed limit signs.The program also included an enforcement component and extensive public information. This project reduced fatal traffic crashes involving elderly pedestrians by 39 percent. In the past two years, additional programs have been implemented in New York City, including a review of pedestrian barriers, implementation of an education program targeting the elderly and a "cross training" program through which older citizens train young children in appropriate pedestrian behaviors.

The City of Seattle first instituted a comprehensive pedestrian and bicycle safety program in the mid-1970's, and has recently improved and expanded its efforts. Since 1986, for example, the city has developed and implemented an aggressive bicycle helmet project that has increased usage from 1% in 1986 to 23% in 1989. According to a study conducted between 1986 and 87 by the Harborview Injury Prevention and Research Center based in Seattle, bicycle safety helmets are effective in reducing the risk of head injury by 85 percent and the risk of brain injury by 88 percent. To address the pedestrian safety problem, the State passed a law in July 1990 requiring drivers to stop for pedestrians in crosswalks, and the Seattle Police Department has aggressively enforced this law, writing up to 1000 citations per month. The Police Department has also joined forces with Harborview Injury Prevention and Research Center to develop and implement a high profile public information campaign designed specifically to target pedestrians. In addition, the city has instituted a "spot" program, which encourages citizens to inform the city about perceived engineering problems. This has resulted in a number of engineering improvements for both pedestrians and bicyclists. Recent indicators show that these and other measures have contributed to a downward trend in pedestrian fatalities.

Since 1989, the Walk Alert Program, which was developed by the National Safety Council, has been implemented in thirteen States. The program offers information on planning and implementing comprehensive community-based pedestrian safety programs. It is designed to reduce pedestrian traffic accidents by teaching individuals to be safer walkers and more attentive drivers and by creating a safer environment for pedestrians. The program is designed to provide appropriate safety messages to all age groups, from pre-schoolers to older adults, by means of education, enforcement and engineering support. It emphasizes the importance of proper search behavior for drivers and pedestrians; improved visibility and conspicuity on the part of pedestrians; the meaning of traffic signs and signals; the enforcement of traffic laws and ordinances; and the role of planners, designers and engineers in creating a safe environment. In addition, the Walk Alert Program is currently being revised to expand its coverage of alcohol and enforcement issues and to include coverage of work zone safety and pedestrians on high speed roadways. Evaluation of this program is still ongoing. However, a preliminary indications seem to show that this program can have a significant payoff. For example, a comprehensive pedestrian safety program conducted in Lexington, KY, based on the Walk Alert Program model, reduced pedestrian fatalities by over 50 percent during the first year of implementation.

The programs that have been discussed above are comprehensive in nature. However, comprehensive programs are made up of education, enforcement and engineering components designed to address

particular local problems. The agencies believe there are countermeasures in each of these three areas that have proved to be effective.

1. *Enforcement*

NHTSA has developed two model ordinances to help States and communities reduce the number of certain types of common pedestrian traffic crashes. The Model Ice Cream Truck Ordinance was designed to address crashes that occur when an individual (usually a child) approaches or leaves an ice cream vending truck and is struck by a passing vehicle. The ordinance requires that passing motor vehicles stop, then proceed if safe to do so, when ice cream vending trucks are displaying a stop arm and flashing red signals. Implementation of this ordinance has reduced crashes among children approaching or leaving these vending trucks by 77 percent. The Bus Stop Ordinance was designed to address crashes that occur when a pedestrian crosses in front of a stopped bus, is screened by the bus from view of oncoming vehicles, and is struck as he or she stops out. The ordinance involves the relocation of bus stop locations from the near side to the far side of intersections. Implementation of this ordinance has reduced pedestrian crashes in several cities across the country by as much as 65 percent.

Having an ordinance in place, of course, may have little effect if it is not fully enforced. To have the greatest impact, enforcement activities should be actively conducted. The District of Columbia Police Department frequently engages in aggressive enforcement of pedestrian regulations which targets both motorists and pedestrians who violate the city's regulations. The department has noted significant decreases in the District's pedestrian fatalities during those periods of intensive enforcement, and increased fatalities during periods of low enforcement activity.

With regard to bicycle safety, States and communities have enacted legislation requiring that bicycle safety helmets be worn. Examples include: New York State; Massachusetts; Howard County, MD and Beachwood, OH. The use of bicycle safety helmets is the single most effective countermeasure in reducing head injuries and preventing serious head trauma. As mentioned earlier, a study conducted in 1986–87 by the Harborview Injury Prevention and Research Center found that bicycle safety helmets are effective in reducing the risk of head injury by 85 percent and the risk of brain injury by 88 percent. Only about 5% of all bicyclists currently wear helmets nationwide.

2. *Education.*

The Walk Alert Program contains a number of examples of educational activities that can be conducted to reduce pedestrian accidents and promote pedestrian safety. Other programs have also been used and found to be effective. The Willy Whistle pedestrian safety program, for example, teaches basic pedestrian safety skills to children ages 5–9. The program includes two video tapes, a teacher's guide and television PSA's. Through field-testing, the program has been found to reduce "dart-out" type crashes among elementary school-age children by approximately 20 percent. For children ages 9–12, a pedestrian safety education film entitled "And Keep on Looking" teaches more advanced pedestrian safety skills. Use of the film was found to decrease pedestrian crashes among 9–12 year olds by more than 20 percent.

Bicycle Safety Rodeos have become a popular method for teaching bicycle safety and riding skills to children. These programs typically include training, practice session and skill testing. Educational programs in both the pedestrian and bicycle safety areas should emphasize the importance of conspicuity in the prevention of traffic accidents. When individuals wear light-colored clothing during the day and use retro-reflective materials, lights and reflectors at night, it greatly improves the ability of drivers to see and avoid a collision with pedestrians and bicyclists by increasing the detection distance.

3. *Engineering*

Chains, fences or similar devices can be used to separate pedestrian and vehicular traffic, to channel and direct pedestrians to safe crossings, or to prevent pedestrians from crossing at hazardous locations. Barriers are also effective in directing and controlling bicycle traffic. Depending on the type of barrier installed, instances of mid-block crossings, running into the roadway, or pedestrians darting into the roadway from between parked cars can be reduced. It has been estimated that 14 percent of all freeway pedestrian accidents could be prevented with more appropriate barriers.

Exclusively timed pedestrian signals were associated with a 50% reduction in pedestrian accidents in a study conducted in 1982. Exclusive timing provides a separate signal interval during which traffic is stopped in all directions and pedestrians can cross in any direction.

Lighting involves the improved illumination of roads, sidewalks, and crosswalks. Improved lighting may reduce nighttime pedestrians accidents by nearly 50 percent. Other engineering countermeasures include the use of safety islands and facilities for the handicapped and older adults and the improvement of pavement markings and traffic signs.

Most Effective in Reducing Accidents, Injuries and Fatalities

As stated earlier in this document, pedestrian and bicycle fatalities, which account for approximately 16 percent of all fatalities, represent a serious national problem. The magnitude of the problem and the identification of effective countermeasures indicate this problem should be designated as a National Priority.

Based on experience, NHTSA and FHWA believe that there is a metodology for planning and designing a comprehensive program, and that there are particular programs that address individual components of the problem. Experience indicates that, to have the greatest potential for long-term change, communities should identify the nature and extent of the problem and then design a comprehensive program to solve that problem using specially selected education, enforcement and engineering components. We believe programs implemented in isolation are far less likely to succeed. An individual countermeasure, for example, while proven effective on its own, will be enhanced when combined with other efforts. Additionally, these programs can become institutionalized by incoporating them into local master transportation plans.

The agencies have highlighted, in this NPRM, both comprehensive efforts and individual countermeasures that are already being implemented in States and communities. We believe these efforts and countermeasures have proved their effectiveness.

Based on the data and information currently available to NHTSA and FHWA, the agencies have made a preliminary finding that the Pedestrian and Bicycle Safety program area is most effective in reducing accidents, injuries and fatalities. On this basis, we are proposing in this notice to add Pedestrian and Bicycle Safety to the list of National Priority program areas. The agencies believe that adding Pedestrian and Bicycle Safety to the list of National Priority programs would provide States increased flexibility to allocate section 402 funds more easily to these areas if they are needed. It also would encourage the development of additional countermeasures needed to address particular aspects of the problem. We are requesting written comment regarding this proposal.

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Written Comments

NHTSA and FHWA seek public comment on their proposal to add Pedestrian and Bicycle Safety to the list of National Priority Program areas. Section 206(d) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 requires, "any rule under this subsection shall be promulgated taking into account consideration of the States having a major role in establishing programs [most effective in reducing accidents, injuries and deaths]." Accordingly, the agencies encourage States to provide comments to this notice. Specifically, we encourage States or communities in which pedestrian and bicycle safety programs are being or have been conducted to provide their comments. We also encourage others involved in establishing or conducting pedestrian or bicycle safety programs or who are affected by these programs to respond. The agencies are especially interested in receiving data that States, communities and others may have regarding the effectiveness of these programs.

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted.

Written comments to the public docket must be received by June 17, 1991. In order to expedite the submission of comments, simultaneous with the issuance of this notice, copies will be mailed to all Governors, Governors' Representatives for Highway Safety and State highway agencies.

Comments should not exceed 15 pages in length. Necessary attachments may be added to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise manner.

All comments received before the close of business on the comment closing dates indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all written comments and statements will be placed in Docket 81-12; Notice 8 of the Docket Section in room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Impact Analyses

A. Economic Impacts

The agencies have analyzed the effect of this action and determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. The rulemaking would not affect the level of funding available in the highway safety program, or otherwise have a significant economic impact, so that neither a Preliminary Regulatory Impact Analysis nor a Preliminary Regulatory Evaluation is required. Although not required to do so, the agencies prepared an Evaluation in 1982 to assist them in the rulemaking process. In the course of the agencies' 1987-88 rulemaking action, the Evaluation was reviewed and an Addendum was prepared. These documents are available for inspection through NHTSA's Docket Section, room 5109. Also in association with the 1982 rulemaking process, the agencies prepared and submitted in the public docket. Effectiveness and Efficiency Papers regarding the programs then being considered to be national priority program areas. These documents are also available in the public docket, room 5109, Docket Number 81-12, General Reference Section.

B. Impacts on Small Entities

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action would not have a significant economic impact on a substantial number of small entities. States would be recipients of any funds awarded under the regulation and, accordingly, the preparation of an Initial Regulatory Flexibility Analysis is unnecessary.

C. Environmental Impacts

The agencies have also analyzed this action for the purpose of the National Environmental Policy Act. The agencies have determined that this action would not have any effect on the human environment.

D. Federalism Assessment

The agency has analyzed this action under the principles and criteria of Executive Order 12612 and has determined that the rule would not have any federalism implications. The agencies' proposal to add Pedestrian and Bicycle Safety to the list of National Priority program areas would not require that States spend their section 402 funds on that program. Rather, the proposal would provide increased flexibility by enabling States to support the area of Pedestrian and Bicycle Safety more easily if they wish to do so.

E. Paperwork Reduction Act

The requirement relating to this proposal, that each State must submit a highway safety plan to receive section 402 grant funds, is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. This requirement has already been approved by OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq). It has been approved through April 30, 1992; OMB 2127-0003. This NPRM would establish no new information collection requirement, as that term is defined by the OMB in 5 CFR part 1320.

List of Subjects in 23 CFR Part 1205

Grant programs, Highway safety.

In accordance with the foregoing, NHTSA and FHWA propose to amend part 1205 of title 23 of the Code of Federal Regulations, as set forth below.

PART 1205—[AMENDED]

1. The authority citation for part 1205 would continue to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

2. In § 1205.3, paragraph (c) would be added to read as follows:

§ 1205.3 Identification of National Priority Program Areas.

* * * * *

(c) Under statutory provisions jointly administered by NHTSA and FHWA, the following highway safety program area, jointly administered by NHTSA and FHWA, has been identified as encompassing a major highway safety problem which is of national concern, and for which effective countermeasures have been identified. The program developed in this area is eligible for Federal funding, pursuant to provisions of 23 U.S.C. 402(g), guidelines issued by NHTSA and FHWA and the review procedures set forth in § 1205.4: Pedestrian and Bicycle Safety.

Issued on April 29, 1991.

Jerry Ralph Curry,

Administrator, National Highway Traffic Safety Administration.

Thomas D. Larson,

Administrator, Federal Highway Administration.

[FR Doc. 91-10448 Filed 4-29-91; 4:00 pm]

BILLING CODE 4910-59-M

Coast Guard

33 CFR Part 100

[CGD1 91-018]

Special Local Regulation; Biennial Marblehead to Halifax Ocean Race, Marblehead, MA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation for the biennial (every two years) Marblehead to Halifax Ocean Race. The event, sponsored by the Boston Yacht Club, is a 27' to 80' monohull and multihull sailboat race. During the first day of the five day event, the regulations would place operating restrictions on watercraft operating in that portion of water in a 1000 yard radius surrounding Tinker's Ledge Gong Buoy, off of Marblehead, MA. The potential hazards to participants, spectators and transiting vessels are such that, each year, in the interest of safety of life on the navigable waters of the United States, the Coast Guard District Commander has issued special local regulations governing the conduct of the regatta. By adopting permanent regulations, the Coast Guard will continue to provide the same level of public safety at reduced administrative cost. Public notice of the exact dates will be published each year in a **Federal Register** Notice and in the Coast Guard Local Notice to Mariners.

DATES: Comments must be received June 17, 1991.

ADDRESSES: Comments should be mailed to Commander (bb), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110. The comments and other materials referenced in this notice will be available for inspection and copying at 408 Atlantic Avenue, Room 48, Boston, Massachusetts. Normal Office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) E.G. Westerberg, Chief, Boating Safety Affairs Branch (617) 223-8310.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1 91-018) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held in written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of these regulations are Lt(jg) E.G. Westerberg, project officer, First Coast Guard District Boating Safety Affairs Branch, and Lt. R.E. Korroch, project attorney, First Coast Guard District Legal Division.

Discussion of Proposed Regulations

The Marblehead to Halifax Ocean Race is a 27' to 80' monohull and multihull race, sponsored by the Boston Yacht Club, of Marblehead MA, that will involve up to 100 sailboats. The starting line will be located 250 yds off of Tinker's Rock Gong Buoy, MA in a direction southsoutheast, with all racers moving in a easterly direction. Spectating vessels will not be allowed in the regulated area surrounding the starting line. This regulation also prohibits the sponsor from locating any portion of the race course within Marblehead Channel, Salem Sound or any of the Boston main entrance channels.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Because this regulation excludes vessels associated with the Marblehead/Halifax race from obstructing Marblehead Channel, Salem Sound or any of the Boston main entrance channels in any way, no interference with commercial traffic is anticipated.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.110 is added to read as follows:

§ 100.110 Marblehead to Halifax Ocean Race.

(a) *Regulated area.* The regulated area is a rectangular area roughly bounded as follows: Center point 300 years SSE of Tinker's Ledge Gong Buoy, North/South legs 1900 yds long 500 yds above and below the center point, and East/West legs 1000 yds long 950 yds to the right & left of the center point. The specific coordinates of the regulated area are:

(1) *Northeast Corner,* by Tinker's Ledge at 42-29-08 North; 070-48-18 West

(2) *Southeast Corner,* approximately 1400 yds southeast of Tinker's Ledge Gong Buoy at 42-28-43 North; 070-47-58 West

(3) *Southwest Corner,* approximately 1100 yds southwest of Tinker's Ledge Gong Buoy at 42-28-27 North; 070-49-12 West

(4) *Northwest Corner,* by Tinker's Island at 42-28-53 North 070-49-32 West

(b) *Special local regulations.*—(1) The race course and starting line shall be designed such that no part of the race course is in the Marblehead Channel area north of Tinker's Ledge, and shall not be located in any of the Boston main entrance channels.

(2) No person or vessel may transit through the regulated area during the effective period of regulation unless participating in the event or as authorized by the sponsor or Coast Guard patrol commander. The patrol commander will be monitoring channel 16 VHF.

(3) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S.

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Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective period.* These regulations are effective from 11 a.m. through 3 p.m. on July 7th, 1991 and biennially thereafter from 11 a.m. through 3 p.m. on the first Sunday following the Fourth of July.

Dated: April 22, 1991.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 91-10512 Filed 5-3-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE90

Headstone Allowance; Temporary Program of Vocational Training

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning reimbursement for the cost of a headstone or marker and eligibility for the temporary program of vocational training available to certain pension beneficiaries. These proposed changes are based on recently enacted legislation. The intended effect of these change is to expand and extend benefit eligibility.

DATES: Comments must be received on or before June 3, 1991. Comments will be available for public inspection until June 12, 1991. The proposed changes due to be effective December 18, 1989, the date the legislation was signed into law.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until June 12, 1991.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Section 114 of the Veterans' Benefits Amendments of 1989, Public Law 101-237, 103 STAT. 2062 (1989), amended 38 U.S.C. 524 to lower from 50 years to 45 years the maximum age at which veterans awarded a nonservice-connected disability pension must undergo an evaluation to determine whether achievement of a vocational goal is reasonably feasible through a program of vocational training. 38 U.S.C. 524 was also amended to protect the permanent and total evaluation of a veteran, who secures employment within the scope of the vocational goal identified by his or her vocational rehabilitation plan, from termination by reason of employability, until the veteran has maintained this employment for not less than 12 consecutive months. The employment may be in a related field which requires reasonably developed skills and the use of some or all of the training or services furnished the veteran under that plan. VA proposes to amend 38 CFR 3.342(c) to implement these changes.

Section 501 of Public Law 101-237 amended 38 U.S.C. 906(d) to authorize payment of the monetary allowance in lieu of furnishing a headstone or marker at Government expense when the headstone or marker is purchased prior to the veteran's death. Since this benefit is available when the headstone was purchased prior to the veteran's death, VA proposes to discontinue making reimbursement for the cost of adding the veteran's identifying information to an existing headstone or marker if death occurred or or after December 18, 1989. We propose to amend 38 CFR 3.1612 (b)(3), (c), (e)(1) and (e)(2)(i) to implement these changes. It should be noted that section 8041 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, eliminated the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990.

The Secretary hereby certifies that these proposed regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these proposed regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.101 and 64.104.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 20, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 3—[AMENDED]

38 CFR part 3, Adjudication, is proposed to be amended as follows:

1. In § 3.342, in paragraphs (c)(1) and (c)(2) remove the words "age 50" where they appear and add, in their place, the words "age 45"; the authority citation at the end of paragraph (c)(2) is removed; and a new paragraph (c)(3) and a new authority citation are added to read as follows:

§ § 3.342 Permanent and total disability ratings for pension purposes.

* * * * *

(c) * * *

(3) If a veteran secures employment within the scope of a vocational goal identified in his or her individualized written vocational rehabilitation plan, or in a related field which requires reasonably developed skills and the use of some or all of the training or services furnished the veteran under such plan, not later than one year after eligibility to counseling under § 21.6040(b)(1) of this chapter expires, the veteran's permanent and total evaluation for pension purposes shall not be terminated by reason of the veteran's capacity to engage in such employment until the veteran has maintained that employment for a period of not less than 12 consecutive months.

(Authority: 38 U.S.C. 524(c))

2. In § 3.1612, paragraph (e)(3) is redesignated as paragraph (e)(4), and paragraph (e)(2)(iii) is redesignated as paragraph (e)(3); paragraphs (b)(3), (c), (e)(1) and (e)(2)(i) are revised and new authority citations are added at the end of those paragraphs to read as follows:

§ 3.1612 Monetary Allowance in Lieu of a Government-furnished Headstone or Marker.

* * * * *

(b) * * *

(3) The headstone or marker was purchased to mark the otherwise unmarked grave of the deceased veteran or to memorialize the deceased veteran or, if death occurred prior to December 18, 1989, the veteran's identifying information was added to an existing headstone or marker.

(Authority: 38 U.S.C. 906(d))

* * * * *

(c) *Person entitled to request a Government-furnished headstone or marker.* For purposes of this monetary allowance, the term "person entitled to request a headstone or marker" includes, but is not limited to, the person who purchased the headstone or marker (or if death occurred prior to December 18, 1989, the person who paid for adding the veteran's identifying information to an existing headstone or marker), or the executor, administrator or person representing the deceased's estate.

(Authority: 38 U.S.C. 906(d))

* * * * *

(e) *Payment and amount of the allowance.* (1) The monetary allowance is payable as reimbursement to the person entitled to request a Government-furnished headstone or marker. If funds of the deceased's estate were used to purchase the headstone or marker or, if death occurred prior to December 18, 1989, to have the deceased's identifying information added to an existing headstone or marker, and no executor or administrator has been appointed, payment may be made to a person who will make a distribution of this monetary allowance to the person or persons entitled under the laws governing the distribution of intestate estates in the State of the decedents' personal domicile.

(Authority: 38 U.S.C. 906(d))

(2) * * *

(i) Actual cost of acquiring a non-Government headstone or marker or, if death occurred prior to December 18, 1989, the actual cost of adding the veteran's identifying information to an existing headstone or marker; or

(Authority: 38 U.S.C. 906(d))

* * * * *

[FR Doc. 91-10037 Filed 5-3-91; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 4

RIN 2900-AF06

Total Disability Ratings For Pension Based On Unemployability and Age of the Individual

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs is proposing to amend its rating schedule regarding disability requirements for pension applicants. The change regarding deletion of presumption of pension entitlement at age 65 is necessary to implement provisions of the recently enacted Omnibus Budget Reconciliation Act of 1990. The intended effect of this change is to remove presumption of pension entitlement at age 65, and to revise the age and disability requirements.

DATES: Comments must be received on or before June 3, 1991. Comments will be available for public inspection until June 12, 1991. This change is proposed to be effective 30 days after the date of publication of the final rules.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 132, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration (202) 233-3005.

SUPPLEMENTARY INFORMATION: Under current VA regulations, the minimum level of disability required to warrant a permanent and total rating for pension purposes changes with the age of the veteran claimant. Under the age of 55, either a single disability rated at 60 percent of a combined evaluation of 70 percent, with one disability ratable at 40 percent or higher, is required. At age 55, the percentage requirement is reduced to 60 percent for one or more disabilities, and at age 60 to a 50 percent evaluation for one or more disabilities. Permanent and total disability is presumed by law (38 U.S.C. 502(a)) at age 65.

The Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, sec. 8002, eliminated the statutory presumption of permanent and total disability at age 65, and VA proposes to amend 38 CFR 4.17 to reflect that change. We further propose to amend § 4.17 to require for all veterans, regardless of age, a single disability rated as 60 percent or a combined evaluation of 70 percent, with one disability ratable at 40 percent or higher. This change will emphasize the element of unemployability in the pension program by making the disability requirements for that program conform more closely to the requirements for total disability ratings for compensation based on unemployability which are contained in 38 CFR 4.16(a).

Public Law 101-508 eliminated the presumption of pension eligibility at age 65 for all claims filed after October 31, 1990. The changes regarding percentage requirements will be effective 30 days after the date of publication of the final rule. If pension entitlement is terminated for any reason, eligibility must be determined under the new criteria upon receipt of a reopened claim.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual impact on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance number is 64.104.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

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Approved: March 19, 1991.

Edward J. Derwinski,
Secretary of Veterans Affairs.

PART 4—[AMENDED]

38 CFR part 4, Adjudication, is proposed to be amended as follows:

In § 4.17, the third, fourth, and fifth sentences of the introductory text are removed; in the sixth sentence, the word "reduced" is removed; and an authority citation is added at the end of the section to reads as follows:

§ 4.17 Total disability ratings for pension based on unemployability and age of the individual.

* * * * *

(Authority: Sec. 8002, Pub. L. 101-508; 38 U.S.C. 355)

[FR Doc. 91-10038 Filed 5-2-91; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[General Docket No. 91-119; FCC 91-122]

Notice of Inquiry

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: Congress recently amended the Administrative Procedure Act through enactment of the Administrative Dispute Resolution Act (ADR) and the Negotiated Rulemaking Act (NRA). The purpose of this Notice of Inquiry is to gather information from the public to assist in implementing these statutory provisions. The Commission is seeking comments at this time so that the affected public, including members of the communications bar and industry, may be involved at the outset in the development of policies and procedures to implement both the ADR and the NRA. The Commission asks that all comments contain a full explanation as to why a particular area or type of Commission proceeding appears to be appropriate (or inappropriate) for handling under either alternative dispute resolution or negotiated rulemaking.

DATES: Comments are due on or before June 17, 1991 and Reply Comments are due on or before July 2, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon B. Kelley, Office of General Counsel (202) 632-6990.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Inquiry, General Docket 91-119 adopted April 12, 1991, and released April 29, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Notice of Inquiry

1. Congress recently amended the Administrative Procedure Act through enactment of the Administrative Dispute Resolution Act (ADR) and the Negotiated Rulemaking Act (NRA). The ADR and NRA authorize administrative agencies to use arbitration, mediation, settlement negotiation, negotiated rulemaking, and other consensual methods of dispute resolution. This Notice of Inquiry commences an initial inquiry into the use of alternative dispute resolution procedures in Commission proceedings and proceedings in which the Commission is a party (*e.g.*, litigation brought by or against the Commission).

2. The ADR specifically requires the FCC to adopt a policy statement that addresses the use of alternative means of dispute resolution in the following areas: (a) Formal and informal adjudications; (b) rulemaking; (c) enforcement actions; (d) issuing and revoking licenses or permits; (e) contract administration; (f) litigation brought by or against the agency; and (g) other agency actions. The NRA sets forth procedures for the establishment of negotiated rulemaking committees, whose purpose is to develop consensus positions among parties affected by controversial regulations and policies.

3. The primary objective of this notice is to determine the types of FCC activities in which consensual dispute resolution and negotiated rulemaking are appropriate. This notice also solicits recommendations on amendments to the Commission's rules of practice that might be required to implement these procedures.

4. *It is ordered,* Pursuant to § § 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, that all interested parties may file comments on the matters discussed in this notice and on the proposed rules contained below. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting documents. If participants wish each Commissioner to have a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 91-10443 Filed 5-2-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91-21; Notice 1]

RIN 2127-AD34

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems and Air Brake Systems; Automatic Brake Adjusters

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 121, Air Brake Systems, to require automatic brake adjusters and adjustment indicators on vehicles with air brake systems. In addition, NHTSA proposes to amend Standard No. 105, Hydraulic Brake Systems, to require automatic brake adjusters on vehicles with hydraulic brake systems. NHTSA is not proposing to require adjustment indicators on hydraulically-braked vehicles because there do not appear to be significant problems with checking the adjustment of automatic brake adjusters for such vehicles.

DATES: Comment closing date: Comments on this notice must be received on or before June 17, 1991.

Proposed effective date: If adopted, these amendments would be effective two years after the publication of the final rule.

ADDRESS: All comments on this notice should refer to Docket No. 91-21; Notice-1 and be submitted to the following: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested that 10 copies be submitted. The Docket is open from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard C. Carter, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5274).

SUPPLEMENTARY INFORMATION:

I. Background

Proper brake adjustment is critical for maintaining safe stopping performance. Automatic brake adjusters have been developed as one approach to improve brake adjustment. The purpose of these devices is to maintain proper brake adjustment automatically, reducing or eliminating the need for frequent inspection and manual adjustment of the brakes. Automatic brake adjusters have been used on passenger cars and light trucks since the early 1960's and have been standard equipment on all such vehicles sold in recent years in the United States. In addition, all or almost all medium and heavy duty vehicles with hydraulic brake systems have automatic brake adjusters. Automatic brake adjusters were introduced for use on heavy duty air-braked vehicles in the early 1960's and are widely used today. The installation rates of automatic brake adjusters by manufacturers of heavy duty air-braked vehicles range from 40 to 100 percent of their fleets.

II. Safety Need and Practicability

While proper brake adjustment is critical for maintaining safe stopping performance, numerous studies have shown that proper brake adjustment is not being maintained on medium and heavy duty vehicles equipped with air brakes. This may result in failure to stop on time and in "runaways" on steep mountain grades. With air brakes, drivers often do not receive a warning of poor brake adjustment. Unlike hydraulic brakes, air brakes give the driver little feedback on the condition of brake adjustment. Often, by the time the driver of an air-braked vehicle receives a subjective warning of improper brake adjustment, there is little braking ability remaining.

The Office of Technology Assessment (OTA), in their September 1986 report Gearing Up for Safety, started that defective brakes were the most common equipment violation cited in Motor Carrier Safety Accident Reports. The OTA further stated that brake system failures were the single largest group of causes cited for large truck accidents associated with mechanical defects, constituting 31 percent of the total. Similarly, NHTSA estimated in the March 1987 Heavy Truck Safety Study Report to Congress that as many as one-third of all heavy truck accidents could involve brake problems or deficiencies.

Out-of-adjustment brakes on heavy vehicles are a major causal factor in many motor vehicle accidents and a recurring safety deficiency found at State roadside inspections. For example, out-of-adjustment brakes were cited as a causal factor in 27 out of 97 serious heavy truck accidents investigated from 1969 to 1981 by the National Transportation Safety Board (NTSB). Further, a study by the Federal Highway Administration found that 30 percent of heavy truck brakes were out of adjustment when vehicles were checked at various roadside inspections. (All combination unit trucks and nearly all other heavy trucks are equipped with air brakes.) A study by the Oregon Public Utility Commission found that defective equipment was listed as the cause of 6.8 percent of all medium and heavy truck accidents. Of the accidents caused by defective equipment, 31 percent involved defective brakes. Sixty percent of these defective brakes were simply out of adjustment.

The National Transportation Safety Board has recommended that NHTSA develop a Federal Motor Vehicle Safety Standard requiring all newly manufactured commercial vehicles to have equipment that would ensure that brakes are in proper adjustment at all times. One was to improve brake adjustment is through use of automatic brake adjusters, which maintain proper brake adjustment. Automatic brake adjusters are now used on about 60 percent of new medium and heavy duty vehicles with air brakes. However, one major, and a number of smaller vehicle manufacturers, do not provide automatic brake adjusters as standard equipment and many purchasers do not order them as optional equipment. The use of automatic brake adjusters has begun to stabilize and NHTSA believes that the equipment would be used on no more than about 70 percent of new medium and heavy duty vehicles unless their use is mandated.

Many early automatic adjusters for air-brake systems were not well received by vehicle operators because the adjusters did not reliably maintain proper brake adjustment. When under-adjustment occurs, stopping ability is reduced and the probability of an accident is increased. When over-adjustment occurs on a heated and expanded brake drum, excessive lining wear, wheel lock, or brake drum cracking occurs when the system cools down. This increases maintenance costs and the possibility of an accident.

Manufacturers of automatic brake adjusters have redesigned and improved their units. While some vehicle operators still report the same problems that occurred with earlier designs, a larger number of operators have been satisfied with the current automatic brake adjusters.

Because of the continuing reports of problems, NHTSA conducted a large-scale fleet evaluation to assess the performance and reliability of automatic brake adjusters, as compared to manual adjusters on heavy commercial vehicle S-cam air brakes. NHTSA collected brake adjustment data from several hundred fleet vehicles equipped with automatic and manual brake adjusters. The data was collected over approximately five years (i.e., two years for the orignal fleet test and three years of follow-up data from selected fleets). The performance and reliability of approximately 1,800 brake adjusters were monitored, based on over 50 million miles of travel. Nearly 20,000 measurements of brake stroke length were taken. The principal conclusions of the fleet evaluation are listed below:

- In most field test applications, automatic brake adjusters effectively maintained brake adjustments within the appropriate limit. The median percentage of out-of-adjustment brakes for the fleet applications was about four percent. This represents a far lower out-of-adjustment rate than is commonly found in roadside check studies of brake adjustment for manually-adjusted air brakes.
- In the most successful applications, automatic brake adjusters consistently exhibited out-of-adjustment percentages of less than one percent. Thus, automatic brake adjusters demonstrated the potential for very effective performance levels.
- Automatic brake adjusters were significantly more effective than manual brake adjusters in similar applications. For example, in one fleet where four different automatic brake adjuster models were tested against manually-adjused brakes, three of the four automatic brake adjuster models test performed better than the manually-adjusted brakes. The one automatic brake adjuster model which did not perform better than the manually-adjusted brakes has been replaced by a new design. The aggregate out-of-adjustment percentage for the automatically-adjusted brakes was 2.6 percent versus 4.7 percent for the annually-adjusted brakes. The percentage of grossly out-of-adjustment brakes (i.e., 0.25 inch or more above the normal pushrod stoke limit) was 0.6

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percent for the automatically-adjusted brakes versus 1.9 percent for the manually-adjusted brakes.

• The test fleet noted above had a rigorous, well-organized maintenance program. The out-of-adjustment percentage for manually-adjusted brakes for this fleet (i.e., 4.7 percent) was much lower than the industry average found in roadside checks. The data from this fleet likely understated the advantage of automatic brake adjusters, since the adjustment levels of automatically-adjusted brakes are much less sensitive to the quality of fleet maintenance provided than are those of manually-adjusted brakes.

• Carefully-maintained manually-adjusted brakes can hold brake adjustments levels within tolerances at rates comparable to, or even superior to, those of automaitc brake adjusters. Indeed, the adjustment status of manually-adjusted brakes is limited only by the diligence of vehicle operators and maintainers in monitoring and adjusting brakes. However, this is often a critical shortfall because of competing fleet operational and maintenance exigencies. Much greater maintenance effort and management control is necessary for commerical vehicle fleets to maintain manually-adjusted brakes than automatically-adjusted brakes.

• The incidence of brake over-adjustment with automatically-adjusted brakes was low. In the fleet test, there was no case of an automatic brake adjuster over adjusting a brake enough to cause brake over-heating, wheel lockup, or excessive brake lining wear.

• All brands of automatic brake adjusters tested exhibited high structural and mechanical reliability. Failure rates were sufficiently small to have a negligible influence on performance. Less than one percent of the automatic brake adjusters in the program failed. Most of these failures occurred when the automatic brake adjusters had been in service for more than 250,000 miles. Moreover, several of the models that did fail have either been replaced by new models with improved components or modified with new components that are expected to extend service lives.

• In spite of the demonstrated effectiveness of automatic brake adjusters, the study showed that brake adjustment levels still need to be monitored. Thus, there is a need for brake adjustment indicators, whether brake adjustments are maintained manually or automatically.

Automatic brake adjusters are available for all types of air brake systems. About 95 percent of American air brake systems use S-cam actuators to engage the brake shoes. Two major types of automatic brake adjusters are available for S-cam systems, one that adjusts on the basis of actual shoe-to-drum clearance and one that adjusts on the basis of the air chamber push rod stroke. The key to maintaining drum clearance is the adjuster's ability to complete brake adjustment early during any brake application and to cease adjustment as resistance to brake cam rotation (push rod travel) begins to increase. This prevents over-adjustment. Some of the adjusters even have the capability of backing off any over-adjustment.

About three percent of American air brake systems use wedge type actuators. All wedge type air brake systems offered for sale in the United States have an internal automaitc adjustment mechanism.

Disc brakes represent about two percent of American air brake systems. Some air disc brake systems have internal self-adjusting mechanisms, while others have external adjustment features. NHTSA is not aware of any complaints of brake adjustment problems with the internally-self-adjusting type of air disc brake system. The external adjustment mechansim of an air disc brake system operates similarly to those on S-cam brakes.

Brake adjustment indicators are another method to improve brake adjustment. Such devices make it far more convenient to check whether brakes are out of adjustment and whether the automatic brake adjusters are properly functioning. Without a brake adjustment indicator, persons must use a laborious and time-consuming process to measure brake adjustment at each wheel on the vehicle. The manual adjustment procedure for most air brake systems requires the push rod length to be measured before and during brake application. Many of the brake chambers are located at positions under the vehicle that are difficult to reach and measure the change of stroke length. Also, some manufacturers have slightly different stroke lengths for the same size chamber. Therefore, a person checking brake adjustment must know the specific adjustment data for each chamber. It is often difficult to identify the make and model of the chamber when it is covered with road dirt and corrosion.

NHTSA believes that this laborious and time-consuming process has contributed to brakes being out of adjustment. NHTSA further believes that use of an adjustment indicator is necessary to ensure that any significant problems with brake adjustment can be easily detected.

Some brake adjustment indicators are currently commercially available. Two major companies have begun selling air brake chambers with paint markings on the push rod that extends from the brake chamber. Thus, when the stroke becomes too long and the brake system is under adjusted, the paint marking shows. As the brake becomes increasingly under-adjusted, more paint becomes visible. Agency discussions with these two air brake chamber manufacturers indicated it would also be possible to mark the fully adjusted position on the push rod. Such a full adjustment mark would be just visible at the edge of the air chamber when fully adjusted brakes were applied. Thus, if the brakes were over-adjusted, the mark would be inside the air chamber and not visible. NHTSA believes that such a push rod marking system would work well for many air brake systems. However, NHTSA realizes that such markings may not be useful in certain applications (e.g., with wedge brakes when the push rod is enclosed in a sleeve and with S-cam brakes having push rods with protective rubber boots). Therefore, NHTSA has considered the feasibility of other types of adjustment indicators.

Another type of brake adjustment indicator has been developed and marketed, which has the potential to indicate adjustment problems even when protective boots or mounting tubes would prevent viewing marks on the push rod. The device is installed by inserting a guide arm and sliding stem assembly into a small hole in the air booster can. A marker washer if used to indicate brake adjustment relative to the guide arm. Under-adjustment is indicated when the marker washer approaches the end of the guide arm. NHTSA believes that this advice, with minor modifications, could also be used to indicate over-adjustment. This could be accomplished by attaching the sliding stem to the booster plate and placing appropriate adjustment marks on the stem.

Another method of indicating brake adjustment is practiced by some fleet mechanics. They attach a stainless steel hose clamp to the air chamber push rod to mark the fully adjusted brake position relative to the air chamber housing. To check the brake adjustment, the space between the air chamber housing and hose clamp is compared with a bar gauge. Thus, if the hose clamp goes beyond the outboard mark on the bar gauge when the brakes are applied, this indicates that the brakes are under-adjusted. If the hose clamp does not reach the inboard mark on the bar gauge when the brakes are applied, this indicates that the brakes are over-adjusted. NHTSA believes that this methodology can be further refined and developed into a low cost brake adjustment indicator that is capable of indicating both under and over-adjustment on exposed and partially enclosed push rods. This could be accomplished by designing the bar gauge as a permanent part of the air chamber and designing recessed grooves in the exposed part of the push rod, so that a reference collar could be placed in an appropriate groove to indicate the fully adjusted brake position. This technique would still allow air chamber manufacturers to install a rubber boot as part of the push rod. Similar techniques could also be used to mark the push rod position relative to the mounting tube in wedge air brake systems.

III. Details Concerning the Proposal

NHTSA proposes to amend section S5.1.8 of Standard No. 121, which covers trucks and buses with air brakes; section S5.2.2. of Standard No. 121, which covers trailers with air brakes; and section S5.1 of Standard No. 105, which covers vehicles with hydraulic brakes. Under the proposal, all vehicles with air brakes would be required to have automatic brake adjusters and adjustment indicators. All vehicles with hydraulic brakes would be required to have automatic brake adjusters, but adjustment indicators would not be required. NHTSA believes that there are no significant problems with automatic brake adjusters for hydraulically-braked vehicles or with checking the adjustment of such systems. However, NHTSA requests comment on whether adjustment indicators should be required on certain types of vehicles with hydraulic brakes.

As stated above, all new passenger cars sold in the United States have been produced with automatic brake adjusters for a number of years. NHTSA has proposed to require automatic brake adjusters in passenger cars as part of the proposed Standard No. 135, Passenger Car Brake Systems. The supplemental notice of proposed rulemaking for Standard No. 135 was published in the **Federal Register** on January 14, 1987 [52 FR 1474]. When Standard No. 135 becomes effective, that Standard, instead of Standard No. 105, would apply to passenger cars with hydraulic brakes. NHTSA considered not proposing to require automatic brake adjusters in passenger cars as part of the amendment to Standard No. 105 since all new passenger cars already are produced with such a device. However, since NHTSA has already proposed to require automatic brake adjusters in Standard No. 135, NHTSA tentatively decided to require them in the amendment to Standard No. 105. NHTSA specifically requests comment on whether passenger cars should be coved by this amendment to Standard No. 105. Further, since most, if not all, vehicles with hydraulic brakes are produced with automatic brake adjusters, NHTSA also requests comment on whether Standard No. 105 should be amended as part of this rulemaking.

The proposed regulatory text for the amendments is somewhat general. For example, the proposed amendment to Standard No. 105 reads:

Each vehicle shall be equipped with a service brake acting on all wheels. Wear of the service brake shall be compensated for by means of a system of automatic adjustment, which maintains brake adjustment within the manufacturer's recommended adjustment limits.

The proposed language is almost identical to section S5.1 of the proposed Standard No. 135 on which NHTSA has already received comment. The only change is the addition here of the words "which maintains brake adjustment within the manufacturer's recommended adjustment limits." However, NHTSA specifically requests comment on possible changes to the proposed regulatory text to establish more specific performance requirements.

As discussed in the Preliminary Regulatory Evaluation, NHTSA tentatively concludes that automatic brake adjusters should have the capability of correcting for both under and over-adjustment to within the manufacturer's recommended adjustment limits. NHTSA also tentatively concludes that brake adjustment indicators must be capable of indicating when the brakes are under and over-adjusted. Further, NHTSA believes that the indicator markings should be readable from at least eight feet away, using an ordinary flashlight equipped with two D-cell batteries. This would allow a person to check adjustment without crawling under the vehicle. NHTSA requests comment on whether the above performance features are feasible and whether they should be specified in the final regulatory text.

NHTSA proposes to make these amendments effective two years after promulgation of the final rule. Most truck and bus manufacturers already offer automatic brake adjusters as standard equipment. The only major truck and bus manufacturer that does not offer automatic brake adjusters as standard equipment nevertheless adds them to approximately 40 percent of its vehicles in response to customer orders. While most truck trailer manufacturers do not offer automatic brake adjusters as standard equipment, about 50 percent of all new trailers are ordered with automatic brake adjusters. NHTSA estimates that about 63 percent of all new medium and heavy trucks, buses, and trailers already have automatic brake adjusters. NHTSA believes that a switch from manual to automatic brake adjusters would not require major redesigns in more than a few, if any, vehicles. Automatic brake adjusters are already available for most vehicles with manual adjusters and the overall brake system is about the same size, with or without automatic adjusters. Further, NHTSA believes that manufacturers of automatic brake adjusters could easily increase production and supply enough adjusters to equip all new air-braked trucks, buses, and trailers within two years.

NHTSA also believes that two years is sufficient leadtime for requiring brake adjustment indicators. Two major air brake manufacturers, with over 75 percent of the market, already mark there push rods with a visual indicator for under adjustment. NHTSA believes that other manufacturers should be able to "tool up" within two years. NHTSA believes that brake system manufacturers would spend some engineering and development time to accommodate marking the fully adjusted position on exposed push rods of providing adjustment indicators for non-exposed push rods and other enclosed systems. NHTSA believes that this could be accomplished within two years. However, NHTSA requests comment on the adequacy of the leadtime generally and specifically for any particular types of vehicles or brake systems which would require extensive redesign. If commenters identify types of vehicles or brake systems which require additional leadtime and supply convincing supporting information, NHTSA may provide more leadtime for such vehicles or brake systems in the final rule. In addition, NHTSA requests comment on whether less than two years leadtime should be provided for vehicles with hydraulic brakes since most, if not all, such vehicles are currently produced with automatic brake adjusters.

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IV. Regulatory Impacts

A. Executive Order 12291

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. NHTSA estimates that the proposed amendment, if adopted, would cost about $29.2 million yearly. NHTSA derived this estimate as follows. For air-braked vehicles, a typical list price for automatic brake adjusters is $135 per axle, compared to a typical list price for manual brake adjusters of $55 per axle. Based on this price differential, NHTSA estimates that the yearly cost would be about $28 million if automatic brake adjusters were required on all new air-braked vehicles. The distribution of this yearly cost would be about $11 million for air-braked trucks and buses, and $15 million for air-braked trailers. If brake adjustment indicators were required for all air-braked vehicles, NHTSA estimates that the yearly cost of installing them would be about $3.2 million.

NHTSA estimates that this proposed rule, if promulgated, has the potential to avoid at least 12 fatalities per year and to eliminate or reduce the severity of at least 870 accidents per year that are caused by out-of-adjustment air brakes. This estimate is based on data generally reporting the causes of all heavy vehicle accidents. However, using data that report the causes and contributing factors of more serious heavy vehicle accidents, NHTSA would estimate that this proposed rule, if promulgated, could avoid several times the 12 fatalities estimated based on the other data. A Preliminary Regulatory Evaluation discussing these costs and benefits in more detail is available in the docket.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Therefore, NHTSA has not prepared a regulatory flexibility analysis.

While all medium and heavy duty vehicle manufacturers and their suppliers of brake parts will be affected by NHTSA's proposal, any economic impact is not expected to be significant. The added cost of automatic brake adjusters is small in comparison to the cost of the entire brake system, and very small in comparison to the overall cost of the vehicle. Therefore, NHTSA does not believe that this additional equipment would affect purchasing decisions by small entities acquiring such vehicles.

C. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this proposed rule. The agency has determined that this proposed rule, if promulgated, would not have a significant impact on the quality of the human environment. While there will be an increase of up to one pound vehicle weight per automatic brake adjuster, NHTSA does not believe that such a small weight increase would have any significant impact on fuel consumption. It addition, NHTSA does not believe that production and disposal processes connected with the production of automatic brake adjusters would have any significant harmful impact on the environment.

D. Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. No state laws would be affected.

V. Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.105 [Amended]

2. S5.1 of § 571.105 would be amended by adding the following after the current heading:

Each vehicle shall be equipped with a service brake acting on all wheels. Wear of the service brake shall be compensated for by means of a system of automatic adjustment, which maintains brake adjustment within the manufacturer's recommended adjustment limits.

* * * * *

§ 571.121 [Amended]

3. S5.1.8 of § 571.121 would be revised to read as follows:

S5.1.8 *Brake distribution.* Each vehicle shall be equipped with a service brake system acting on all wheels. Wear of the service brakes shall be compensated for by means of a system of automatic adjustment, which maintains brake adjustment within the manufacturer's recommended adjustment limits. The condition of service brake adjustment shall be provided by a brake adjustment indicator, that is discernable when viewed with 20/40 vision, using an ordinary flashlight with two D-cell batteries from a position 8 feet away on the adjacent pavement surface. The brake adjustment indicator shall be capable of displaying the service brake adjustment conditions of: under-adjustment, over-adjustment, and fully adjusted within the manufacturer's specified limits.

4. S5.2.2 of § 571.121 would be revised to read as follows:

S5.2.2 *Brake distribution.* Each vehicle shall be equipped with a service brake system acting on all wheels. Wear of the service brakes shall be compensated for by means of a system of automatic adjustment, which maintains brake adjustment within the manufacturer's recommended adjustment limits. The condition of service brake adjustment shall be provided by a brake adjustment indicator, that is discernible when viewed with 20/40 vision, using an ordinary flashlight with two D-cell batteries from a position 8 feet away on the adjacent pavement surface. The brake adjustment indicator shall be capable of displaying the service brake adjustment conditions of: under-adjustment, over-adjustment, and fully adjusted within the manufacturer's specified limits.

Issued on April 29, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-10446 Filed 5-2-91; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 88-18; Notice 2]

RIN 2127-AC80

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes two alternative amendments to the requirements of Standard No. 121, Air Brake Systems, concerning electrical power sources for trailer antilock brake systems. The standard currently requires trailer antilock systems to be powered from the stop lamp circuit. NHTSA is concerned that this requirement inhibits use of some state-of-the art trailer antilock systems that have more performance features, but also have higher power requirements. Although the two alternatives differ widely in their approach, each would facilitate introduction of this technology. Under the first alternative being considered, trailer antilock systems would be required to be powered by a separate electrical circuit, with the stop lamp circuit being used as a source of backup power. New requirements would also be established for an antilock warning signal circuit. Under the second alternative, the agency would rescind the existing requirement that trailer antilock systems be powered from the stop lamp circuit.

DATES: Comments must be received on or before July 2, 1991.

For the first alternative, which would require trailer antilock systems to be powered by a separate electrical circuit, NHTSA is proposing an effective date of one after publication of a final rule in the Federal Register. Optional compliance would be permitted effective 30 days after publication. For the second alternative, under which the agency would rescind the existing requirement that trailer antilock systems be powered from the stop lamp circuit, NHTSA is proposing an effective date of 30 days after publication of a final rule.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. George Soodoo, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5892.

SUPPLEMENTARY INFORMATION: Since the 1970's, Standard No. 121, Air Brake Systems, has required trailer antilock brake systems (ABS) to be powered from the trailer stop lamp circuit. The stop lamp circuit is powered through one of the pins on a seven-pin electrical connector which is used between tractors and trailers, and has been standardized within the U.S. trucking industry since the early 1950's. One of the seven pins is for the stop lamp circuit; the others are for a ground return to the towing vehicle and other circuits such as those for turn signals.

The purpose of requiring trailer ABS to be powered from the stop lamp circuit was to ensure that the trailer ABS could be powered by all tractors, old and new. The stop lamp circuit was chosen as the source of power since it is the only circuit that is always energized when the brakes are applied.

Standard No. 121 permits additional circuits to be used to obtain "redundant" sources of electrical power. NHTSA stated in 1972 that it believed that the stop lamp circuit has adequate power for single trailer applications (for the antilock systems being used at that time), but that employing complementary systems for multiple trailers may be necessary. See 37 FR 12498, June 24, 1972.

Since the late 1970's, there has been very little use in the United States of ABS on heavy vehicles. However, during that time, a new generation of ABS has been developed. These systems have been used in Europe for the past several years and are the subject of increased interest in the United States. One difference between the earlier ABS used in the United States and the newer systems used in Europe is that the newer systems, when used on trailers, are powered through a separate electrical circuit, incorporating a separate connector, instead of through the stop lamp circuit. A number of other systems are also under development for use in the United States.

On October 12, 1988, NHTSA published in the Federal Register (53 FR 39751) a request for comments about possible amendments to Standard No. 121's requirement that trailer ABS be powered from the stop lamp circuit. The request for comments followed the agency's granting of a petition for rulemaking submitted by WABCO Automotive Products Group, a manufacturer of antilock brake systems.

WABCO requested in its petition that Standard No. 121 be amended to permit the use of a separate electrical circuit for powering trailer ABS. The petitioner noted that the current Standard No. 121 requirement that trailer ABS be powered through the stop lamp circuit means that there is no power to the ABS until the brake pedal is depressed and the stop lamp circuit is energized. Also, the driver has no warning, other than during a brake application, as to whether or not the ABS is operational. WABCO stated that a separate electrical circuit would provide for continuous power to the ABS, which it believes is more desirable for safe and reliable ABS performance. Also, with the installation of ABS status lights in the vehicle cab, the driver could be provided continuous warning in the event of ABS failure. An additional reason cited by the petitioner for using a separate electrical circuit is the need for having adequate power available should all solenoid control valves be activated simultaneously on more complex antilock systems, particularly on double and triple trailer combinations.

WABCO recommended the use of a separate electrical circuit, which

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incorporates a separate connector between a tractor and trailer. That connector has been standardized by the International Organization for Standardization (ISO) and is described in ISO Standard 7638, Road Vehicles—Brake Anti-Lock Device Connector. The petitioner stated that it has used this separate electrical circuit in Europe since 1981. WABCO recommended amendatory language that would permit trailer antilock systems to be powered from either the stop lamp circuit or "a separate electrical circuit specifically provided to power the trailer antilock system."

WABCO noted that it is aware that it is common in the United States for individual trucks and tractors to pull a variety of trailers, and that there is consequently a possibility that tractors or trucks without a separate electrical circuit could be scheduled to operate with WABCO antilock equipped trailers. WABCO stated that it would provide a relay in the circuitry that would enable use of the separate electrical circuit if the towing vehicle is equipped with a separate connector, but that would accept power through the stop lamp circuit if the towing vehicle is not equipped with the separate electrical connector. According to the petitioner, this feature would allow compatibility among all non-antilock equipped towing units and trailers equipped with antilock.

NHTSA granted WABCO's petition in a letter dated March 17, 1988, stating that the granting of the petition signified that the agency believed that a further review of the issues raised in the petition appeared to be warranted. The October 1988 notice requested comments on a number of issues related to possible amendments concerning trailer antilock power requirements.

NHTSA received comments from a number of truck manufacturers, trailer manufacturers, brake manufacturers, and motor carriers. Truck manufacturer commenters included Ford, PACCAR, Freightliner, Volvo GM, and Navistar, as well as the Motor Vehicle Manufacturers Association (MVMA). Trailer manufacturer commenters included Corpac and the Truck Trailer Manufacturers Association (TTMA). Brake manufacturer commenters included Midland, Rockwell International, and Bendix, as well as the Heavy Duty Manufacturers Association. The American Trucking Associations (ATA) submitted a comment representing trucking companies. NHTSA also received comments from the Anti-Lock Brake/Stability System Task Force of the Maintenance Council, ATA, and from Mr. James M. Lewis, a private individual. The agency also held meetings with a number of brake manufacturers, including Rockwell International, Bosch, WABCO, Bendix, and Midland. Summaries of the meetings were placed in the docket.

Subjects addressed by commenters include possible advantages offered by separate electrical circuits; the types of circuits and connectors that could be used to obtain those advantages; the need for compatibility among different tractors and trailers; the impacts on users that could occur from using different circuits and connectors; and the appropriate role for NHTSA in this area, including whether rulemaking is needed at this time.

A number of commenters supported optional use of separate electrical circuits to power trailer antilock systems. Freightliner, which currently offers WABCO tractor antilock braking systems as an option, stated that it supports WABCO's proposal to amend Standard No. 121 so that alternatives to the stop lamp circuit can be used to power trailer ABS systems. Freightliner stated that the standard should not be design restrictive but should allow market forces and voluntary standards to provide for proper trailer ABS operation. That company argued that a separate circuit is the best means to ensure proper operation of trailer antilock systems, citing greater power capacity, improved reliability, and provision for other system circuits. Freightliner also supported the use of in-cab displays to provide antilock information to the driver.

Rockwell argued that a separate circuit and connector should be allowed but not required. That company stated that it believes WABCO's arguments that a separate electrical circuit will allow for better antilock performance, reliability and failure indication are valid, although it believes that adequate performance could be obtained from the stop lamp circuit for at least single trailers. Rockwell emphasized the importance of compatibility and urged that in the event that power through the separate circuit is unavailable, the ABS system should be capable of basic function through the use of the stop lamp circuit. Rockwell also commented that compatibility on all trailers will require that any new, separate electrical circuit connectors be standardized and university applied. It suggested that a study be initiated of possible separate electrical circuits, and a careful choice made of a standardized system to be required on triples, possibly on doubles, and long-term on all trailers.

Volvo GM recommended that NHTSA allow the optional use of a dedicated power supply and not attempt at this time to control the form, fit or function of the components. That company argued that commercial events will bring reliable and compatible products to the market place, and that it would be premature and possibly disruptive for the agency to issue detailed requirements in this area.

Ford suggested that Standard No. 121 already permits additional (redundant) circuits as contemplated by WABCO and questioned the purpose of that company's petition. Ford argued that if the WABCO system can be powered through the stop lamp circuit and without requiring a separate electrical circuit, the WABCO system is apparently compatible with the present Standard No. 121 requirements.

Ford also disagreed with a number of the advantages cited for separate electrical circuits. That company stated that while it is possible that a separate electrical circuit could supply more power than present stop lamp circuits, there is no reason why stop lamp circuits could not be designed to provide additional power. That company also stated that while continuous power to the trailer antilook brake system could be used to provide warning of a fault, it believes that suppliers of antilock brake systems will be able to provide such continuous monitoring without the use of a separate connector through multiplexing of the truck tractor electrical distribution system. (Multiplexing is an electronic technique for passing a number of different signals through a single wire lead, using different frequencies for the signals.)

Some commenters opposed permitting optional use of separate electrical circuits to power trailer antilock systems. ATA argued that permitting separate electrical circuits would condemn large numbers of existing tractors, which are not equipped with the separate circuits, to being unable to fully use antilock on certain future trailers. That commenter stated that the provision of a relay to enable use of the separate electrical circuit would be just another component to fail, and suggested that safety would not be enhanced by adding additional componentry when the power can go through the stop lamp circuit anyway. ATA also stated that trucking companies involved in day-to-day maintenance of present over-the-road heavy duty truck equipment are not in favor of adding more electrical circuits with an additional cable and connector, citing increased maintenance costs.

ATA also expressed concern that adding warning lights for multiple trailers could result in a plethora of lights in the cab, at a time when concern is growing about overloading drivers with too much information.

Corpac also opposed allowing a separate electrical circuit to power the trailer's antilock braking system, stating that another circuit is unlikely to enhance safety and reliability and would cause compatibility problems and introduce another potential failure point at the connection between tractor and trailer. That commenter stated that if WABCO feels it needs a redundant power source to insure that its particular antilock circuitry functions properly, it can do this under the existing regulation, as long as it utilizes the stop lamp circuit as the primary power source.

TTMA stated that it recommends that power for trailer antilock systems continue to be furnished through the brake lamp circuit. That commenter stated that a separate electrical connection would not eliminate the need for antilock power through the stop lamp circuit, and would add complexity in connecting antilock equipped trailers, particularly in doubles and triples combinations.

A number of commenters argued that any regulation should continue to permit use of the stop lamp circuit for trailer antilock power, often citing the need for compatibility.

MVMA stated that it believes any new regulation should not interfere with the option of manufacturers of trailer antilock brake systems to design and produce ABS systems that will operate with existing seven-way connector plugs and with existing tractor/truck wiring circuitry or other technology.

Summary of Proposal

After considering the comments, NHTSA has tentatively concluded that Standard No. 121's electrical power source requirements for trailer ABS systems should be amended to reflect the changes in circumstances since the requirements were issued. These changes include the development and increasing use in Europe of a new generation of trailer ABS systems, using separate electrical circuits, and increasing use in the United States of doubles and triples combinations.

NHTSA is concerned that the existing requirement inhibits use of some state-of-the-art trailer antilock systems that have more performance features, but also have higher power requirements. The agency does not agree with Ford's suggestion that systems such as that produced by WABCO are already contemplated by the current requirements. As indicated above, Ford argued that if the WABCO system can be powered through the stop lamp circuit and without requiring a separate electrical circuit, the WABCO system is apparently compatible with the present Standard No. 121 requirements.

Section S5.5.2, *Antilock System Power—Trailers*, reads as follows: On a trailer equipped with an antilock system that requires electrical power for operation, the power shall be obtained from the stop lamp circuit. Additional circuits may also be used to obtain redundant sources of electrical power.

While section S5.5.2 requires trailer ABS power to be obtained from the stop lamp circuit, the WABCO system ordinarily obtains power from a separate circuit. The agency notes that while section S5.5.2 permits additional circuits to be used to obtain "redundant" sources of power, the WABCO system uses the separate circuit as the primary source of power. Furthermore, while WABCO would provide a relay that would allow use of the stop lamp circuit for compatibility purposes, under some circumstances (e.g., all solenoids firing simultaneously), its more complex systems could require more power than is available from existing stop lamp circuits.

While NHTSA has tentatively concluded that Standard No. 121's existing electrical power source requirements for trailer ABS systems should be revised, the agency believes that the selection of new requirements is a difficult decision. On the one hand, NHTSA is concerned that the existing requirements inhibit use of the best safety technology that is currently available for trailer ABS systems. As discussed below, however, the agency recognizes that any amendment that permits use of that technology can result in compatibility problems. The selection of new requirements therefore necessitates balancing of a number of factors. After careful consideration, NHTSA has decided to propose two alternative amendments.

Under the first alternative, trailer antilock systems would be required to be powered by a separate electrical circuit, with the stop lamp circuit being used as a source of backup power. New requirements would also be established for an antilock warning signal circuit.

Among other things, the first alternative reflects the fact that additional circuits appear to be necessary, with current technology, to obtain the best antilock performance, i.e., multiple channel systems, in-cab warning capability, etc. Moreover, additional circuits are necessary, again with current technology, to provide even the most basic antilock performance for double and triple combinations.

Under the second alternative, NHTSA would rescind the existing requirement that trailer antilock systems be powered from the stop lamp circuit. Under this alternative, the agency would, at least for the time being, leave the selection of trailer ABS power sources to market forces.

While the two alternatives are quite different, one significant factor they have in common is that neither would prohibit trailer antilock systems that are powered by separate electrical circuits. The agency believes that both alternatives would be responsive to WABCO's petition. Since NHTSA believes that trailer ABS systems powered by separate electrical circuits can offer safety benefits over those powered by the stop lamp circuit, it has tentatively concluded that, at the least, Standard No. 121 should not prohibit such systems. The agency does not want its safety standards to stand in the way of innovation in safety technology.

A more complete description of each alternative and their rationales are provided below.

Alternative One—Mandatory Separate Circuits

A. Description of Proposed Requirements

Under the first alternative, all trailers (including trailer converter dollies) equipped with an antilock system would be required to have a dedicated electrical circuit capable of providing full-time power to the antilock system. A dedicated ground would also be required for this circuit. The peak current capacity of the circuit would be required to be sufficient to provide at least 30 amperes to the modulator valve, and at least 2 amperes to the electronic control unit. The antilock system would be required to automatically receive backup power from the stop lamp circuit in the event that the dedicated electrical circuit did not receive electrical power.

For all ABS-equipped trailers, the dedicated electrical power circuit and dedicated ground would be required to have a means for electrical connection at the front of the trailer.

For ABS-equipped trailers equipped to tow other trailers, the dedicated electrical circuit would also be required to be capable of providing full-time power to the antilock systems of additional trailers in the combination, and, for this purpose, have a means for electrical connection at the rear of the trailer. Similarly, the dedicated ground for this circuit would be required to

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have the means for connection at the rear of the trailer.

All ABS-equipped trailers (including trailer converter dollies) would also be required to have a dedicated electrical circuit that is capable of signaling an electrical malfunction in the trailer antilock system to a towing vehicle. The ground for this circuit would not be required to be dedicated.

For all ABS-equipped trailers, the dedicated electrical circuit for antilock warning and ground for this circuit would be required to have the means for electrical connection at the front of the trailer.

For ABS-equipped trailers equipped to tow other trailers, the dedicated electrical circuit for antilock warning would also be required to be capable of transmitting a failure warning signal from the antilock systems of additional trailers in the combination, and, for this purpose, have a means for electrical connection at the rear of the trailer. The ground for this circuit would also be required to have the means for connection at the rear of the trailer.

B. Rationale for Alternative One

This proposed alternative represents a balancing of several considerations. First, the agency believes that the use of additional electrical circuits is a better method of powering trailer antilock systems than use of the stop lamp circuit.

Additional electrical circuits can provide more power than the existing stop lamp circuit. Greater power than is available from the stop lamp circuit appears to be necessary, given current technology, for the higher capability antilock systems, i.e., multiple channel systems. With multiple channels, axle-by-axle, side-to-side, or individual wheel control can be provided. Moreover, additional power appears to be needed, again given current technology, to provide even the most basic antilock performance for double and triple combinations.

Additional electrical circuits can also provide continuous power. This offers the potential for faster reaction time for the antilock brake system, because there is no need for the system to go through its self-diagnostic check every time the brakes are applied, as is the case with systems powered through the stop lamp circuit.

Continuous power can also enable manufacturers to provide a continuous and automatic in-cab warning of trailer antilock brake failure. NHTSA believes it is desirable for drivers to know about a failure in the antilock system as soon as possible, to enable them to adjust their driving, as appropriate, and to obtain more rapid servicing of the vehicle's brakes.

An in-cab warning system would also facilitate identification and repair of non-operative systems by carrier maintenance personnel and roadside inspection officials. This capability may be especially important, since the agency's experience during the 1970's with earlier antilock systems, which did not incorporate an in-cab trailer antilock failure warning feature, indicate that inoperative systems often went unrepaired because of lack of awareness of the failure.

In 1977, a joint NHTSA/Bureau of Motor Carrier Safety roadside survey of 500 antilock equipped was conducted at five locations across the country. This survey was part of NHTSA's overall evaluation of Standard No. 121. See Technical Assessment of FMVSS 121—Air Brake Systems, February 24, 1978, Docket 75-16-GR-030. All systems were checked for failure warning indicator operation and for any physical evidence of disconnection or failure. Of 249 antilock equipped trailers inspected, three percent had been intentionally disconnected. However, 45 percent were definitely not operational, and only 35 percent were fully operational. For the remaining 20 percent, it could not be determined whether or not they were operational. This latter category included vehicles which had no failure warning light bulb and vehicles which had trailer antilock systems that were incompatible with the trailer function tester being used for the inspections. Only five percent of the interviewed drivers knew how to check for a trailer antilock failure.

Some commenters suggested that the burden should be on antilock manufacturers to design systems that are compatible with existing hardware and wiring. While NHTSA appreciates that view, and particularly the desirability of maintaining compatibility with existing vehicles, the agency is also concerned that a 1950's vintage connector not stand in the way of vehicle manufacturers being able to use the best current technology in their brake systems.

While it was suggested in some comments that some of the cited benefits could be obtained through improving the existing seven-pin connector without adding circuits, e.g., by increasing the power capacity of the stop lamp circuit and through multiplexing, not enough information was provided to support the practicability of such an option. Therefore, the agency requests specific information about the wiring and hardware changes that would be needed under such an approach, the costs of such changes, and how compatibility with existing tractors and trailers could be maintained. Also, the agency requests specific information on how trailer lighting systems and other trailer components could be redesigned to use substantially less power, with the result that more power would be available for antilock systems. That information should include the changes that would be needed, the costs, and the relative compatibility when these new units would be towed in combination with old units.

It was also suggested that in-cab warnings for multiple trailers could result in a plethora of lamps in the cab. NHTSA is unaware of and reason why multiple warning lamps would cause confusion, assuming they are properly labeled. In any event, the agency only contemplates that a single warning lamp would be provided in the cab to warn of any trailer or dolly antilock failure.

NHTSA agrees with the commenters that compatibility of all tractors any trailers should be considered. Partial compatibility would be ensured under the agency's proposal because all trailer antilock brake systems would be required to operate from the stop lamp circuit in the event that the dedicated electrical circuit did not receive electrical power, e.g., in situations where the ABS-equipped trailer is pulled by a towing vehicle that is not equipped with separate electrical circuits.

The agency believes that the stop lamp circuit would provide sufficient power for basic antilock performance in most single trailer applications, and the comments support that belief. The agency also believes that benefits could result from requiring trailers primarily used in multiple combinations to be capable of obtaining antilock power from the stop lamp circuit. Such trailers would have sufficient power for basic antilock performance if used singly, but probably would not have sufficient power for basic antilock performance when used in double and triple combinations.

NHTSA recognizes any alternative that permits use of separate circuits will not fully resolve compatibility concerns. Under this first alternative, in some situations, a single trailer might have an ABS system that required greater power than is available from the stop lamp circuit. Similarly, trailers used in doubles and triples combinations might require greater power than is available from the stop lamp circuit.

NHTSA has considered the safety consequences that could result in such situations. The agency believes that

there are two possible areas of concern: braking performance and performance of other vehicle systems, especially lighting, that are dependent on electrical power.

Commenters indicated that manufacturers of antilock systems design the electronic control unit to shut the system down if there is inadequate power, with the result that a trailer reverts to non-antilock braking. Thus, if a trailer obtains inadequate power from the stop lamp circuit, the braking performance would be essentially the same as if it were receiving no power, i.e., the same situation as if the antilock system was not capable of operating from the stop lamp circuit. With the antilock system shut down, other vehicle systems that are dependent on electrical power would continue to function normally.

Under this first alternative, it is thus possible that an ABS-equipped trailer might be driven with the antilock system shut down. It is possible that an ABS system might operate intermittently, i.e., work some of the time and shut down some of the time.

It is obviously not an ideal situation for an ABS-equipped trailer to be driven with the antilock system shut down. NHTSA notes, however, that ABS-equipped trailers are designed to be driven safely with an inoperative antilock system. Moreover, the possibility that an ABS-equipped trailer might be driven with the antilock system shut down must be balanced against the overall safety benefits from antilock, both when used with a separate circuit (which would provide adequate power all of the time) and when used with the stop lamp circuit (which would provide adequate power much of the time). NHTSA specifically requests comments on whether any negative safety consequences could occur from requiring either multiple combination trailers or single trailers to obtain antilock power from the stop lamp circuit, e.g., poorer braking or lighting performance, and if so, whether and how such consequences could be averted.

NHTSA believes that this alternative could result in other benefits related to compatability, especially in the long run. For compatibility purposes, it would be desirable for all ABS-equipped trailers to be powered in the same manner. Since it appears to be necessary to power some such trailers with separate circuits, there could be compatability benefits to powering all ABS-equipped trailers with separate circuits. It it also desirable that all trailers provide a warning of antilock failure in the same manner, to avoid driver confusion.

However, in the absence of multiplexing, an in-cab warning can only be provided if separate circuits are used.

While NHTSA believes that the connectors for additional electric circuits should ultimately be standardized for maximum compatibility, it is not proposing to require a standardized connector at this time. Commenters indicated that several connectors are being considered by the U.S. industry, including the ISO connector and a "seven-plus" connector, i.e., a connector which is interchangeable with the current seven-pin connector but which includes additional circuits in an outer ring of additional contracts.

There are various advantages and disadvantages to the connectors under consideration by the industry. For example, while the separate ISO connector is already developed and in use in Europe, users must take the time to attach two connectors between a tractor and a trailer instead of one connector. If an appropriate "seven-plus" connector could be developed, users would only have to attach one connector. The agency notes that one challenge in developing a "seven-plus" connector is how to keep the additional contacts clean/protected when they are not in use.

With more than one connector under consideration by the industry at this time, each having possible advantages and disadvantages and some still under development, NHTSA believes that it is premature to propose requiring a standardized connector at this time. Moreover, the agency believes that some compatibility can be ensured even if different connectors are used for an interim period. As discussed above, some compatibility would be ensured because all trailer antilock brake systems would be required to operate from the stop lamp circuit in the event that the dedicated electrical circuit did not receive electrical power. This would cover situations where connectors for the dedicated electrical circuit were incompatible as well as situations where the tractor did not have any connector. In addition, adapter plugs could be used to mate otherwise incompatible connectors.

As manufacturers continue with their plans to develop a new generation of antilock equipped trailers for the United States, NHTSA believes that the industry will settle on a standardized connector. If the industry fails to do so and there is a proliferation of incompatible connectors, the agency could then consider rulemaking to standardize the connector.

NHTSA is also proposing to require that the peak current capacity of the circuit providing trailer antilock power to be sufficient to provide at least 30 amperes to the modulator valve, and at least 2 amperes to the electronic control unit. This is consistent with the specifications developed by the ISO for its connector, and would ensure that the circuits have sufficient power for available antilock systems.

The agency is also proposing to require that a dedicated ground be provided for the circuit providing trailer antilock power. Since trailer antilock systems may require a relatively large amount of power, the agency believes a separate ground would ensure the best antilock performance. This is also consistent with the specifications developed by the ISO for its connector. NHTSA notes that the ground on the current seven-pin connector limits the power available for the stop lamp circuit. The agency is not proposing to require a separate ground for the antilock warning signal, since it requires little power.

NHTSA believes that the main advantages of this first alternative can be summarized as follows:

1. Would facilitate use of the higher capability trailer antilock systems;
2. Would provide sufficient power for multiple trailer combinations that are equipped with a separate circuit;
3. Would ensure at least partial compatibility, both in the short run and long run;
4. Would help accelerate industry efforts to either develop a new multi-pin connector, or to standardize on a separate connector;
5. Would ensure that an antilock warning signal is sent to the tractor (or other towing unit) on those combinations that are equipped with a separate circuit.

The proposed amendments under the first alternative would become effective one year after publication of a final rule in the **Federal Register**. The agency believes that a one-year period of time would enable manufacturers to make any necessary changes in planned trailer antilock systems to meet the proposed requirements. Optional compliance would be permitted effective 30 days after publication.

Alternative Two—Recision of Current Requirement

While the first alternative reflects current ABS designs and existing technology, NHTSA appreciates the views of some commenters that it may be possible to develop new designs that can provide adequate ABS performance,

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even for double and triple combinations, with much lower power requirements. As indicated above, commenters also argued that it may be possible to redesign the stop lamp circuit to provide greater power, and to provide in-cab warnings by means of multiplexing.

Given the extremely small number of ABS-equipped trailers that are currently being produced and substantial uncertainty concerning the nature of new ABS systems that may be designed for the U.S. market and the power requirements of such systems, NHTSA believes that it may be appropriate to simply rescind Standard No. 121's existing requirement that trailer antilock systems be powered from the stop lamp circuit.

Another relevant consideration is the fact that trailer antilock systems are not required by Standard No. 121 but are instead a safety device that can be voluntarily provided by manufacturers. One concern about any requirement in this area is that it may provide a disincentive for manufacturers to provide devices that can result in safety benefits. For example, to the extent that the first alternative has the effect of increasing the cost of trailer antilock systems, it may discourage manufacturers from providing any such systems. Moreover, the first alternative could have the effect of removing any incentive manufacturers have for developing new low-power ABS systems that can operate effectively from the stop lamp circuit.

Under this second alternative, NHTSA would, at least for the time being, leave the selection of trailer ABS power sources to market forces. Manufacturers could thus sell trailer antilock systems that are powered by a separate electrical circuit or by the stop lamp circuit.

NHTSA recognizes that an alternative that permits powering only by a separate circuit, without the capability of receiving power from the stop lamp circuit, raises the possibility of compatibility problems. The purpose of the existing requirement was to ensure that all trailer ABS systems could be powered by all tractors, old and new. Unfortunately, as discussed above, the requirement that was meant to ensure this degree of compatibility (stop lamp circuit powering) does not appear to allow optimum performance with the best antilock systems that are currently available for single trailers, or with any current antilock systems for double and triple combination, since the stop lamp circuit does not provide sufficient power for such applications. NHTSA does not believe that the best solution to the compatibility problem is for the government to prohibit the use of the best available safety technology. Instead, manufacturers and users can work together to minimize the problem and its consequences.

Should compatibility problems arise, however, the agency could then consider whether rulemaking is necessary. At that time, NHTSA would have considerably more information on which to base a regulatory decision. Under this alternative, the agency would also leave to the future the issue of whether requirements should be established for an antilock warning signal circuit. NHTSA also notes that, should it later conduct rulemaking to require antilock braking capability on trailers, it could consider these issues as part of that rulemaking.

For this second alternative, NHTSA is proposing an effective date of 30 days after publication of a final rule in the **Federal Register**. Should the agency decide to adopt this alternative, it believes there would be good cause for an effective date of 30 days after publication. The alternative would impose no new requirements, but would instead relieve a restriction on manufacturers.

Additional Considerations/Questions

NHTSA recognizes that there are advantages and disadvantages to both alternatives. The agency believes that the first alternative could provide a foundation for effective and reliable antilock brake systems. On the other hand, the agency does not want its safety standards to stand in the way of innovation in safety technology and is, therefore, proposing the second alternative. Another reason for proposing two alternatives is that there are many unanswered questions concerning the overall direction of the industry in this area, and how it would respond to alternative requirements.

The agency believes that permitting market forces to shape the outcome of this issue, while facilitating innovation, could result in different approaches to powering trailer antilock systems for different vehicle configurations. There is a likelihood that stop lamp powering would evolve for single trailer combinations, while separate circuit powering would prove necessary for multiple trailer combinations.

The truck user industry has indicated a strong preference for the stop lamp powering approach, for the obvious reason of preserving compatibility between existing and future vehicles. In the absence of a requirement for antilock, the market for ABS that does exist for trailer systems would likely focus on single trailers, which constitute 95–98 percent of the current truck trailer fleet. If simple (one modulator valve) antilock systems are used on single trailer combinations, sufficient power will likely be available to operate the system from the stop lamp circuit. The agency believes that this is the most likely approach the industry would adopt.

NHTSA notes, however, that the results of a recent agency study raise doubt that stop lamp circuit powering would be adequate for the more complex (multiple modulator valve) single trailer systems, or, as was the case in the 1970's, for multiple trailer combinations. The agency recently completed a survey of 561 trailers at four locations throughout the country (DOT Report HS 807 545, "Photometric and Electrical Performance Characteristics of Rear Lighting Systems on In-Service Truck Trailers," February 1990). Stop lamp circuit voltages were measured at the rear of the trailer, or the rear of the rearmost trailer in the case of double and triple trailer combinations. The average voltages found, on this nominal 12 V circuit, were: single trailers, 11.53 V; double trailers, 9.84 V; triple trailers, 8.45 V. More significantly, the minimum voltages noted were: single trailers, 7.93 V; double trailers, 6.03 V; triple trailers, 5.50 V. No antilock was present on any of these trailers. Therefore, these values would be reduced even further if such a system was present and functioning. Antilock systems require a minimum of 6–9 V to operate, or they automatically shut down.

The above values reflect the range of voltages that could be expected with typical in-service trailers, assuming that nothing additional is done to upgrade the design of trailer and/or tractor electrical systems. The low voltage readings could be due to losses occurring in the trailers' wiring systems, drops occurring at electrical connection points, or low source voltage at the tractor. At a minimum, these findings seem to indicate that a general upgrading of trailer and/or tractor electrical systems appears warranted to ensure that voltages closer to the nominal 12 V can be maintained. These values also indicate that stop lamp circuit powering would likely be adequate for simple single trailer antilock systems, but would probably not be adequate for doubles, and would definitely be inadequate for triple combinations.

Due to their multiple articulation points, NHTSA believes these latter configurations of combination unit trucks would likely benefit most from the stability-enhancing performance that antilock systems afford. While the agency is not proposing to require antilock systems on trailers at this time, it has indicated that it will consider doing so if the results of its ongoing field study of the reliability of antilock systems are positive. If regulations are promulgated at some point, double and triple trailer combinations may be required to be equipped with antilock.

Based on available data, stop lamp powering may not be an acceptable means of powering the antilock systems on multiple trailer combinations. Also, its use does not appear to enable a very effective way of determining the functional status of trailer antilock systems, regardless of the number of trailers in the combination. It also appears that, if separate circuit powering is used for multiple trailer combinations, incompatibility would result since stop lamp powering will likely become the standardized powering approach for single trailers.

Given this scenario, it can be argued that an advantage of Alternative One is that it would encourage industry to begin the process of developing a standardized separate circuit powering approach for all trailers. However, no best standardized approach is evident at this time. Also added costs are associated with this alternative, and the agency does not wish to discourage trailer antilock use.

In order to help clarify these issues, NHTSA specifical requests comments on the following questions:

1.(a) If Alternative Two is adopted, would two approaches to powering trailer antilock systems likely evolve, stop lamp powering for single trailers and separate circuit powering for multiple trailer combinations?

(b) If this happened, how do commenters believe industry would handle the compatibility issue?

(c) If the trucker user industry moved toward stop lamp circuit powering, what approach would be appropriate for equipping multiple trailer combinations with antilock systems?

(d) What configurations of antilock systems are recommended for multiple unit combinations? Do such configurations now exist?

(e) Would industry equip all trailer and converter dolly axles of multiple trailer combinations with antilock?

2.(a) Is there any need to upgrade trailer electrical systems to accommodate the potential availability of trailer antilock systems?

(b) What plans do trailer manufacturers have in this area?

(c) Is there a need to increase the amount of tractor electrical power output available at the tractor/trailer connector?

(d) What plans do tractor manufacturers have in this area?

3.(a) Is there any work going on within industry to develop a new multiple tractor/trailer electrical connector?

(b) Are current industry efforts within the Society of Automotive Engineers to upgrade the present seven-pin connector likely to yield a revised seven-pin connector that will be suitable for powering the antilock systems of multiple trailer combinations through the stop lamp circuit?

(c) If a separate connector is thought to be necessary or desirable, which connector is most likely to be used?

4.(a) Is it important to develop a standardized trailer antilock failure warning signal?

(b) Are there any plans within industry for achieving uniformity in this regard?

(c) How would uniformity be accomplished for trailer antilock failure warning signal if the use of the stop lamp circuit evolves as the industry standard method for powering trailer antilock systems?

Other Alternatives

While NHTSA is proposing two specific alternatives, it also invites comments on other alternatives. The agency notes that other alternatives might include portions of, or variations on, the first alternative. For purposes of developing a possible final rule based on this notice, the agency may adopt portions of the first alternative or variations on that alternative.

Regulatory Impacts

The agency has considered the cost and other impacts of this proposal and determined that the proposal is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation's regulatory procedures. A preliminary regulatory evaluation describing those effects is available in the docket.

The proposed requirements would only have a cost impact on trailers equipped with antilock brake systems. A negligible number of such trailers are currently being produced, although a larger number is likely to be produced in the future.

For the first alternative the agency estimates that the consumer costs for the more basic antilock systems are: single, non-towing trailer—$180 to $216; towing trailer—$54; converter dolly—$36. The consumer costs for the higher capability antilock systems are: single, non-towing trailer—$180 to $215; towing trailer—$114; converter dolly—$54. These costs include those associated with modifying the electronic control unit to be capable of operating on either a separate circuit or the backup stop lamp circuit, providing the ability to transmit a failure warning signal; additional circuit wiring; and a means for electrical connection.

The second alternative would not impose any new requirements, but would instead relieve a restriction. Thus, no direct costs would be attributable to this alternative.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. The proposed requirements would only affect trailers equipped with antilock brake systems, few of which are currently produced, and would require, at most, only relatively simple design changes. Also, the potential cost impacts would not significantly affect the purchase price of an antilock equipped trailer. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, would be significantly affected by the amendments.

The agency has also considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

Finally, this proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. No state laws would be affected.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the

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complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received to late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 would be amended in accordance with one of the following alternatives.

Alternative 1

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. In §571.121, S5.2.3 would be added to read as follows:

S5.2.3 *Antilock warning signal circuit.* Each trailer (including a trailer converter dolly) equippped with an antilock system shall have an electrical circuit that is capable of signalling an electrical malfunction in the trailer antilock system to a towing vehicle. The circuit shall not be used for any purpose other than signalling a malfunction in the trailer's antilock system or the antilock system of any other trailer in the combination; however, a ground common with other circuits may be used. A trailer that is not designed to tow another vehicle equipped with air brakes shall have means for connection of the antilock warning signal circuit and ground at the front of the trailer. A trailer designed to tow another vehicle equipped with air brakes shall be capable to transmitting a failure warning signal from the antilock systems of additional trailers in a combination and shall have means for connection of the antilock warning signal circuit and ground at both the front and rear of the trailer.

3. In § 571.121, S5.5.2 would be revised to read as follows:

* * * * *

S5.5.2 *Antilock system power—trailers.* Each trailer (including a trailer converter dolly) equipped with an antilock system shall have an electrical circuit capable of providing full-time power to the antilock systems. In the event that the antilock power circuit does not receive electrical power, the antilock system shall automatically receive backup power from the stop lamp circuit. The peaked current capacity of any antilock power circuit shall be sufficient to provide at least 30 amperes to the modulator valve, and at least 2 amperes to the electronic control unit. An antilock power circuit shall not be used for any purpose other than providing power to the antilock system of that or other trailers in a combination, and the ground for the antilock power circuit shall not be common to any circuit not providing antilock power. A trailer that is not designed to tow another vehicle equipped with air brakes shall have means for connection of any antilock power circuit and ground at the front of the trailer. A trailer designed to tow another vehicle equipped with air brakes shall be capable, when connected to a power source, of providing full-time time power to the antilock system of additional trailers in a combination and shall have means for connection of any antilock power circuit and ground at both the front and rear of the trailer.

Alternative 2

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. In § 571.121, S5.5.2 would be removed.

Issued on April 29, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-10447 Filed 5-2-91; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 89-04; Notice 02]

RIN 2127-AC88

Bus Fuel System Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Termination of rulemaking.

SUMMARY: On March 30, 1989, NHTSA published an advance notice of proposed rulemaking (ANPRM) which discussed a number of possible changes to Federal Motor Vehicle Safety Standard No. 301, Fuel System Integrity, 54 FR 13082. Among the options under consideration was the possibility of proposing to extend the standard to non-school buses with a gross vehicle weight rating (GVWR) greater than 10,000 pounds. After considering comments on the ANPRM and other available information, NHTSA has decided to terminate that portion of the rulemaking concerning extension of the standard to non-school buses over 10,000 pounds GVWR. NHTSA has concluded that there does not appear to be a sufficient safety need for an extension of the standard to these non-school buses.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cohen, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone (202) 366-2264.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 301, Fuel System Integrity, limits the amount of fuel spillage that can occur from a vehicle's fuel system during and for 30 minutes after front, rear, and lateral barrier impact tests. Briefly, these limits are (1) from impact, until the vehicle has ceased motion, spillage must not exceed one ounce by weight; (2) for the five-minute period following cessation of motion, fuel spillage must not exceed a total of five ounces by weight; and (3) for the following 25-minute period, fuel spillage during any one-minute interval must not exceed one ounce by weight. The standard is intended to reduce deaths and injuries occurring from fires

that result from fuel spillage during and after motor vehicle crashes. The standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses (including school buses) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, and to school buses with a GVWR greater than 10,000 pounds.

On March 30, 1989, NHTSA published an advance notice of proposed rulemaking (ANPRM) which discussed a number of possible changes to Standard No. 301. 54 FR 13082. Among the options under consideration was the possibility of proposing to extend the standard to non-school buses with a GVWR over 10,000 pounds. In the notice, NHTSA requested responses to the following questions relating to the above option:

1. Should the agency extend Standard No. 301 to large buses that are currently excluded from the standard. If yes, what would be the benefits of such an extension? If no, why not?

2. What are the costs of fuel system guards currently used on school buses over 10,000 pounds GVWR? Would those same types of guards be effective on non-school buses for Standard No. 301 compliance? Would costs be the same?

3. Do any large transit or inter-city buses currently meet any of Standard No. 301's requirements (i.e., those for either large school buses or for small buses)? Where are the fuel tanks on large transit or inter-city buses located? What steps have been taken by manufacturers to protect fuel systems on these vehicles? What makes and models of buses have their fuel tanks located inside the chassis frame rails?

Below, NHTSA briefly summarizes comments received on the ANPRM concerning these topics? Sixteen commenters supported the extension of the standard to non-school buses with a GVWR of over 10,000 pounds, while 12 commenters opposed it. Commenters favoring extension of the standard stated that non-school buses and school buses are exposed to similar traffick hazards and should be subject to the same fuel system integrity requirements. Commenters opposing the extension, including Gillig Corporation, a manufacturer of both school buses and city-transit buses, asserted that there are major differences between school buses and large non-school buses. They further asserted that, because of these differences, there is less need to apply Standard No. 301 to large non-school buses. These commenters asserted that large non-school buses are much stronger structurally than school buses, have floors that generally are lower than school bus floors, and, unlike school buses, generally have a floor structure that is integrated structurally within the chassis and vehicle side frame.

NHTSA also received comments concerning the costs and effectiveness of installing on non-school buses with a GVWR over 10,000 pounds the same type of fuel system guards currently used on school buses over 10,000 pounds GVWR. Three commenters submitted cost estimates, with the estimated costs ranging from $200 to $315. A number of commenters asserted that sufficient safeguards and protections are currently built into the fuel systems of non-school buses. Some commenters stated that guards used on school buses would not be effective on many non-school buses because of significant design differences. For example, they asserted that exterior tank shields would not be effective if a bus has a fuel tank mounted between the frame rails.

NHTSA also received comments on the steps taken by manufacturers to protect fuel systems in non-school buses. Some manufacturers stated that their large transit or inter-city buses meet the requirements of Standard No. 301 applicable to large school buses. Commenters also stated that fuel tanks are generally positioned between the front and rear axles. This makes the tanks less susceptible to rupture from a collision.

After considering comments on the ANPRM and other available information, NHTSA has decided to terminate that portion of the rulemaking concerning extension of the standard to non-school buses over 10,000 pounds GVWR. NHTSA has concluded that there is not a sufficient safety need for an extension of the standard to such non-school buses. The basis for the agency's decision is discussed below.

After the ANPRM, NHTSA analyzed data from the Fatal Accident Reporting System (FARS) as part of its analysis of the possible safety need for extending Standard No. 301 to non-school buses over 10,000 GVWR. NHTSA compared the fire-related fatalities in school buses, which are subject to the requirements of Standard No. 301, to those in non-school buses. From 1977 to 1989, there were 37 occupant fatalities in crashes involving school bus body type vehicles where fires occurred, as compared to 7 occupant fatalities in such crashes involving non-school buses. (There are approximately 390,000 school buses and approximately 235,000 non-school buses in use.) However, fire was determined to be the "most harmful event" in 27 of the fatalities in school bus body type vehicles (all in one crash of a church bus in Carrollton, Kentucky) as compared to only one of the non-school bus fatalities. (The other 10 fatalities in a school bus body type vehicle occurred in a crash in Essex, Montana. While a fire occurred after that crash, the 10 fatalities resulted from trauma-induced injuries. In addition, the source of the fire was from the tractor-trailer that struck the school but, not the school bus itself.)

While there have been more fatalities in school bus body type vehicles than in non-school buses, the number of actual crashes where fire was the "most harmful event" is limited for both categories of vehicles (i.e., one for school bus body type vehicles and one for non-school buses). This seems to indicate that fire risk in all buses is quite low. These "real world" crash data alone do not provide justification to increase the fuel system integrity of either of the categories of buses. However, because of the special importance placed by Congress and the public on the safety of school children, NHTSA continues to believe that it is appropriate to require school buses to meet higher levels of safety performance than other vehicles.

NHTSA also compared the structural characteristics of non-school buses to those of school buses. NHTSA agrees with commenters that there are differences between school buses over 10,000 pounds GVWR, which currently are covered by Standard No. 301, and many non-school buses over 10,000 pounds GVWR. As pointed out by commenters, non-school buses generally have a floor structure that is integrated structurally within the chassis and vehicle side frame and which is generally lower than school buses. As also pointed out by commenters, fuel tanks on non-school buses are generally positioned between the front and rear axles and between the frame rails, and thus less susceptible to rupture from a collision. The fuel tanks on large transit vehicles are generally protected by the structure of the vehicle. The structure of the transit buses performs a similar function as the tank guards (cages), which are used on some school buses. NHTSA concludes that, because of the structural differences discussed above, there is less need to apply the requirements of Standard No. 301 to non-school buses.

In the ANPRM, NHTSA estimated that the modifications necessary to meet the requirements of Standard No. 301 would cost in the range of $90 to $210 per non-school bus that would need modification, with the cost dependent on fuel tank size. These estimates were based on responses by school bus manufacturers to previous inquiries by NHTSA. In response to the ANPRM,

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three commenters provided cost estimates on fuel system guards for school buses. Two commenters indicated that the cost would be approximately $200 per vehicle and one commenter estimated a cost of $315 per vehicle. NHTSA does not know how many non-school buses over 10,000 pounds GVWR manufactured yearly would need modification to comply with an extension of Standard No. 301. NHTSA estimates that the cost of modifying any buses that do not meet the requirements of the standard would range from $150 to $250. The costs of compliance testing are not included in the above estimate of costs.

The Federal Highway Administration (FHWA) has regulations concerning fuel systems for most buses and trucks over 10,000 pounds GVWR (49 CFR 393.65 and 393.67). The FHWA regulations cover fuel tank location, fuel lines, joints, fittings, valves, safety venting systems and tests, and require drop tests for the fuel tank component. The current low risk of fire for large buses can be attributed, in part, to the FHWA regulations.

NHTSA has concluded that the relatively minor safety benefit of extending Standard No. 301 to non-school buses over 10,000 pounds GVWR is not justified in view of the low risk of fire in such buses and the FHWA regulations covering the fuel systems of most such vehicles. Therefore, NHTSA has decided to terminate the rulemaking that would extend Standard No. 301 to those larger non-school buses. However, NHTSA is still considering the other options for rulemaking discussed in the March 30, 1989 ANPRM.

Issued on: April 30, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-10604 Filed 5-2-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 910378—1107]

RIN 0648-AD60

Endangered and Threatened Species; Proposed Endangered Status for Snake River Sockeye Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; Public hearings and change of previously announced times.

SUMMARY: NMFS published a proposed determination to list the Snake River sockeye salmon (*Oncorhynchus nerka*) as endangered (56 FR 14055, April 5, 1991). In that document, NMFS announced three public hearings. These hearings will occur on the dates and places announced, but the times of the hearings have changed. Each hearing will be held from 7 p.m. to 9:30 p.m., rather than as previously announced. The reason for having evening hearings is to assure that the public has ample opportunity to comment. In addition, a fourth public hearing is scheduled. NMFS reminds commenters that the decision on whether to list the Snake River sockeye salmon under the Endangered Species Act will be based solely on the best scientific and commercial data available, without reference to possible economic or other impacts of a listing.

DATES: The public hearings are scheduled as follows:

1. May 8, 1991, from 7 p.m. to 9:30 p.m., Seattle, Washington.

2. May 9, 1991, from 7 p.m. to 9:30 p.m., Portland, Oregon.

3. May 10, 1991, from 7 p.m. to 9:30 p.m., Boise, Idaho.

4. May 15, 1991, from 7 p.m. to 9:30 p.m., Richland, Washington.

ADDRESSES: The hearings will be held at the following locations:

1. Western Administrative Support Center, Building 9, 7600 Sand Point Way, NE, Seattle, Washington.

2. 1st Floor West Side, Federal Complex, 911 NE 11th Ave., Portland, Oregon.

3. Boise Interagency Fire Center, 3905 Vista Ave., Boise, Idaho.

4. Federal Building, 825 Jadwin Ave., Richland, Washington.

FOR FURTHER INFORMATION CONTACT: Tracey Vriens, Environmental and Technical Services Division, NMFS, Portland, Oregon, (503) 230-5420 or FTS 429-5420.

Dated: April 29, 1991.

Samuel W. McKeen,

Program Management Officer.

[FR Doc. 91-10455 Filed 5-2-91; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Chapter VI

Shark Fishery of the Atlantic Ocean (Including the Gulf of Mexico and the Caribbean Sea)

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a revised draft fishery management plan, notice of scheduled public hearings on the plan, and request for comments.

SUMMARY: NOAA issues this notice that NMFS, acting on behalf of the Secretary of Commerce (Secretary), has prepared a revised draft Fishery Management Plan for the Shark Fishery of the Atlantic Ocean (FMP) and will hold public hearings and invite public comment on the revised draft FMP

DATES: Written comments will be accepted until June 7, 1991. See "Supplementary Information" for dates, times, and locations of the hearings.

ADDRESSES: Oral and written statements will be taken at the hearings. Additional comments should be sent to Paul J. Leach, Southeast Region, NMFS, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Mark envelope "Shark Plan". Copies of the revised draft FMP may be obtained from NMFS at this address.

FOR FURTHER INFORMATION CONTACT: Paul J. Leach (813) 893-3141.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) provides under section 304(c) for the preparation of a fishery management plan by the Secretary when a fishery requires conservation and management and the appropriate Regional Fishery Management Council(s) cannot prepare a plan in a reasonable period of time. In 1989, the five Councils covering the east coast, Gulf of Mexico, and the Caribbean areas requested the Secretary to prepare the FMP because of the identified need for immediate management measures to protect shark resources and their acknowledgement of the significant amount of time required for preparing a Council plan. On November 28, 1990, the President signed into law amendments to the Magnuson Act (the 1990 Amendments, Pub. L. 101-627) which transferred to the Secretary the regulatory authority for highly migratory species in the Atlantic, Gulf of Mexico, and Caribbean; these highly migratory species include oceanic sharks. The 1990 Amendments direct the Secretary to prepare, amend (as necessary), and implement a fishery management plan for oceanic sharks (Magnuson Act, 16 U.S.C. 1854 (f)).

The National Marine Fisheries Service prepared the first draft FMP in 1989 and conducted 22 public hearings coastwide on it during November and December of 1989. Subsequently, NMFS reviewed the public hearing comments and the views of the five Councils and identified the need to make certain changes in the FMP. These changes included (1) the need for a better definition of overfishing, (2) the inclusion of a stock rebuilding program for those shark resources overfished, (3) the need for further review of existing scientific information concerning the status of stocks and the estimate of maximum sustainable yield (MSY), and (4) additional assessment of the effects of the shark fishery and the proposed management measures on marine mammals and endangered species. NMFS has completed this work and prepared a revised draft FMP.

NMFS is now conducting public hearings on the revised draft FMP, which includes a draft regulatory impact review and a draft environmental impact statement. Public comments are requested at the hearings in written or oral form. Additional public comments may be submitted in writing to the address indicated above. NMFS will consider the public views on the revised draft FMP, make necessary changes, and prepare a final FMP along with revised proposed implementing regulations. It is NMFS's intention (1) to make the final FMP and proposed regulations available for public and Council comment for a 60-day period, (2) to provide a 45-day public comment period on the draft EIS, and (3) to consider all such comments received before implementation of the FMP and in preparing the final EIS.

Shark resources are valuable to many user groups—including consumers of shark meat in the United States, consumers of sharkfin soup in Asia, recreational fishermen who enjoy catching sharks on rod and reel, commercial fishermen whose income is dependent to varying degrees on a shark fishery, and medical researchers using shark-derived substances to study cancer. Shark resources need conservation and management primarily because of a combination of the unique biology of sharks and intense fishing pressure. Sharks, unlike most fish, are generally slow-growing, take many years to reach maturity, and produce few young (2-25 pups) after long gestation periods (1-2 years). Many species of sharks are highly magratory, ranging extensively across wide ocean areas and crossing State and national jurisdictional boundaries. Stocks of shark are fished by many nations.

The maximum sustainable yield (MSY) is U.S. waters (the Exclusive Economic Zone and state waters) covering the U.S. East Coast, Gulf of Mexico, and Caribbean, is estimated to be 9,800 metric tons (mt) annually for the three resource groups combined, which are identified in the FMP (i.e., large coastal species, small coastal species, and pelagic species groups). The large coastal species, targeted principally by the directed shark fishery, are being overexploited. Sharks of this species group have been overfished since 1987, with yearly catches exceeding the MSY (MSY = 3,400 mt per year for the large coastal species group). As a result, stock abundance of the large coastal species group has been severely reduced; the east coast and Gulf of Mexico shark fisheries could collapse, as has occurred in other overexploited shark fisheries, if the intense fishing pressure on the large coastal group is not controlled. If a fishery collapse occurs, it can take decades before the shark resources involved can recover to healthy levels capable of sustaining recreational and commercial fisheries. Insufficient information exists to adequately assess the condition of pelagic species stocks. However, it is known that they are heavily exploited. Small coastal species are currently believed to be under-exploited, but may be nearly fully exploited.

FMP management measures are proposed to achieve four major objectives: (1) Prevent overfishing; (2) encourage management of shark stocks throughout their ranges; (3) establish a data collection, research, and monitoring program; and (4) optimize the benefits to the United States from shark resources while minimizing resource waste. The FMP is intented to stop overfishing, rebuild depressed shark populations, and increase understanding of the condition of shark resources and the shark fishery.

The revised draft FMP proposes management measures to: (1) Establish a fishing year from July 1-June 30; (2) bring 39 shark species under management; (3) divide managed species into three distinct groups consisting of "large coastal", "Small coastal", and "pelagic" shark species; (4) establish a commercial shark fishery landings quota of 3,050 mt for the 1992-93 fishing year—1,450 mt for large coastals and 1,600 mt for pelagics, with no quota restrictions on the small coastals; (5) establish recreational bag limits of two large coastals or pelagics combined per vessel per trip, and five small coastals per person per day; (6) establish a regulatory procedure for annual adjustments of commercial quotas, bag limits, MSY estimates, the management unit (managed species), composition of species groups, and permitting and reporting requirements; (7) prohibit "finning" by requiring that fins be landed attached to carcasses, except for caudal fin, which may be severed; (8) prohibit the storing of fins aboard fishing vessels after the first point of landing; (9) prohibit the sale of shark or shark products by recreational fishermen; (10) require annual permits for commercial fishermen and dealers; (11) prohibit permitted fishermen from selling (and permitted dealers from buying from fishermen) shark fins 30 days or more after (5 days or more after for meat) the applicable commercial quota has been reached and the commercial fishery closed; (12) require reporting of specified information by persons conducting shark fishing tournaments and by permitted fishermen and dealers; and (13) require selected fishermen to accommodate observers on board.

NMFS will hold eight public hearings on the revised draft FMP to obtain public comments. The dates, times, and locations are scheduled as follows:

May 16, 1991, 7:30 p.m., City Hall, Maderia Beach, Florida.

May 20, 1991, 7 p.m., New Orleans Airport Holiday Inn, Kenner, Louisiana.

May 21, 1991, 7 p.m., New Administration Building Commission Chambers, Fort Pierce, Florida.

May 21, 1991, 7:30 p.m., Airport Holiday Inn, Ronkonkoma, New York.

May 22, 1991, 7 p.m., South Wall Township Firehouse, Wall, New Jersey.

May 23, 1991, 7 p.m., The Dunes Manor, Ocean City, Maryland.

May 29, 1991, 7 p.m., Sheraton Hotel and Marina, New Bern, North Carolina.

May 28, 1991, 2 p.m., Hotel Villa Parguera, La Parguera, Puerto Rico.

Dated: April 29, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservatio. and Management, National Marine Fisheries Service.

[FR Doc. 91-10464 Filed 5-2-91; 8:45 am]

BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 56, No. 86
Friday, May 3, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Meeting of the President's Council on Rural America

AGENCY: Department of Agriculture.

ACTION: Notice of meeting.

SUMMARY: The Under Secretary for Small Community and Rural Development, Department of Agriculture, is announcing a meeting of the President's Council on Rural America. The meeting is open to the public.

DATES: Meeting on Tuesday, May 28, 9 a.m. to 5 p.m., and Wednesday, May 29, 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at Winrock International & Winrock Farms, R.R. #3, Morrilton, Arkansas 72110.

Directions: From Morrilton, South on Highway #9 to Oppelo. Turn West on Highway #154 and proceed to Winrock Farms, which is about 9 miles west of Morrilton.

FOR FURTHER INFORMATION CONTACT: Jeanne Kling, coordinator for Council activities, Farmers Home Administration, room 5028 South Agriculture Building, Washington, DC 20250, (202) 447-4439.

SUPPLEMENTARY INFORMATION: The President's Council on Rural America was established by Executive Order on July 18, 1990. Members are appointed by the President and include representatives from the private sector and from State and local governments. The Council is reviewing and assessing the Federal Government's rural economic development policy and will advise the President and the EPC on how the Federal Government can improve its rural development policy. The upcoming meeting will be a planning session.

Dated: April 26, 1991.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 91-10441 Filed 5-2-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Industrial Reports—Wave II (Voluntary).

Form Number(s): MQ33F.

Agency Approval Number: 0607-0206.

Type of Request: Revision of a currently approved collection.

Burden: 9,042 hours.

Number of Respondents: 2,012.

Avg Hours Per Response: 30 minutes.

Needs and Uses: In December 1990, the Census Bureau discontinued a survey on nonferrous castings from the Current Industrial Reports (CIR) program due to budgetary constraints. Because of renewed funding from the Aluminum Association, we are reestablishing that part of the survey dealing with aluminum castings. We will collect only one data item on aluminum castings quarterly broken out by two categories, for sale and for own use. The data gathered in the CIR's are used by such government agencies as the International Trade Administration for their U.S. Industrial Outlook Report and their export promotion activities and the Federal Reserve Board for their Index of Industrial Production.

Affected Public: Businesses or other for-profit organizations.

Frequency: Monthly and Quarterly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 23, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-10029 Filed 5-2-91; 8:45 am]

BILLING CODE 3510-07-F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: June 3, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 8, March 1 and 8, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 5197, 5197, 8750 and 9941) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Harness, Carrying
  1660-00-571-2239
Kit, Repair
  2590-01-114-7396
Folder, File
  7530-00-926-2122
  7530-00-926-2123
Label, Pressure-Sensitive
  7530-00-01R-1357
  7530-00-02R-1357
Box, Wood
  8115-00-L00-1525 123½"x39½"
  8115-00-L00-1526 147½"x39½"
  8115-00-L00-1527 123½"x51½"
  8115-00-L00-1528 147½"x51½"
  8115-00-L00-1780 147½"x63½"
  8115-00-L00-1532 99½"x39½"
  8115-00-L00-1649 99½"x51½"
(Requirements of the Defense Industrial Plant Equipment Center, Memphis, TN only)

Services

Janitorial/Custodial, Federal Archives and Record Center, Buildings 12 and 22, Military Ocean Terminal, Bayonne, New Jersey.
Janitorial/Custodial, Federal Building and U.S. Post Office, 256 Warner Milne Road, Oregon City, Oregon.
Janitorial/Custodial, U.S. Army Reserve Center, Orangeburg, South Carolina.
Janitorial/Custodial, Federal Building, 695 South Main Street, Colville, Washington.
Operation of the Base Information Transfer Center, Keesler Air Force Base, Mississippi.
Operation of the Postal Service Center, Keesler Air Force Base, Mississippi.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-10539 Filed 5-2-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATES: June 3, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 22, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 7346) of proposed additions to the Procurement List. Comments were received from a trade association representing the domestic pencil industry. The association strongly objected to expansion of the portion of the Government's requirements for stationery products being provided by nonprofit agencies employing persons who are blind or have other severe disabilities under the Javits-Wagner-O'Day (JWOD) Program. The association cited two recent additions to the Procurement List of office supply items and a 1983 addition of fine-line pencils. It noted that two of four companies affected by the 1983 addition have been merged into other companies.

When it approves an addition to the Procurement List, the Committee is required to determine that the addition will not have a serious adverse impact on the current contractor for the item. The current contractor for the eraser is the nonprofit agency which will provide it under the JWOD Program.

The association has provided no evidence that the merger of the two companies was caused by the 1983 addition to the Procurement List. Given the size of the overall market for stationery products, it is unlikely that addition to the Procurement list of the small Government requirement for this eraser could constitute serious adverse impact on one or more stationery products manufacturers, even if the impact of previous additions were to be considered. The association has not identified any business enterprise that would be affected by this addition. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to the Procurement List:

Refill, Eraser
  7510-01-317-4222

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-10540 Filed 5-2-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: June 3, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 1, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 8750) of proposed additions to the Procurement List.

Comments were received from the current contractor for this garrison cap and from another manufacturer of military headware. The current contractor, a large business producing a variety of military clothing items, noted that its sales had diminished due to a combination of decreased Government orders and diversion of some Government business to small business

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setasides and other socio-economic programs. It claimed that loss of its garrison cap business would cost the jobs of 22 workers from an economically disadvantaged group operating in a labor surplus area. The other commenter claimed that because of a reduction in military clothing purchases from 1989 levels, it would be hurt badly by any further reduction in the number of items purchased from industry.

The current contract for the garrison cap that is proposed to be added to the Procurement List represents and extremely small portion of the current contractor's total sales and very small portion of its sales of garrison caps. The Committee does not consider a sales loss of this size to constitute serious adverse impact. The Committee considers that any job loss that may result from the loss of this small portion of the contractor's garrison cap business is outweighed by the creation of jobs for persons with servere disabilities, a group which has traditionally had an extremely high unemployment rate.

Because the other commenter is not a current or most recent contractor, its objection to a reduction in the number of items available for purchase from industry must be considered an objection to losing the opportunity to bid on future procurements of this garrison cap. Under the competitive bidding system, no bidder is guaranteed that it will receive a contract. Accordingly, the Committee does not consider loss of the opportunity to bid on future procurements to constitute serious adverse impact.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities at a fair market price and impact of the addition on the current or most recent contractors, and Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the folloiwng actions will not have a significant impact on a substantial number of small entities. The major factors considered for this cretification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to the Procurement List:

Cap, Garrison
8405–01–232–5330 thru 8405–01–232–5342

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 91–10541 Filed 5–2–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has receive proposals to add to the Procurement List commodities to be produced by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 3, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonmprofit agencies employing the blind or other severely handicapped. It is proposed to add the following commidities to the Procurement List:

Net, Laundry
3510–00–841–6376
3510–00–841–6384

Bandage, Elastic
6510–00–935–5823
(45 percent of the Government's requirement)

Tunic, Woman's
8410–01–277–3610
8410–01–277–3650
(65% of Government's requirement)

Paper, Toilet Tissue
8540–00–530–3770
(Requirements for GSA Zone 4 only)

Beverly L. Milkman,
Executive Director.

[FR Doc. 91–10542 Filed 5–2–91; 8:45 am]

BILLING CODE 6820–33–M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 91–1–89SCD]

1989 Satellite Carrier Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of declaratory ruling.

SUMMARY: The Program Suppliers requested the Tribunal to declare whether copyright owners of network programs are entitled to share in the satellite carrier copyright royalty fund. The Tribunal has determined that network program owners are entitled to share in the satellite carrier royalty fund, based on the unambiguous reading of section 119 of the Copyright Act.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue NW., suite 918, Washigton, DC 20009 (202–673–5400).

SUPPLEMENTARY INFORMATION: On December 28, 1990, the Program Suppliers, a group of approximately 100 producers and/or syndicators of televisions series, specials and movies, filed a motion with the Tribunal seeking a ruling that copyright owners of network programs are not entitled to share in the satellite carrier royalty fees.

The Tribunal published notice of Program Suppliers' motion in the **Federal Register** and requested comments by February 25 and reply comments by March 11. 56 FR 2757 (January 24, 1991).

The Tribunal received direct comments from ABC, CBS and NBC (the Networks), the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), Major League Baseball (MLB), the National Basketball Association (NBA), the National Hockey League (NHL), the National Collegiate Athletic Association (NCAA), the Public Broadcasting Service (PBS), SESAC, Inc. (SESAC) and the U.S. Commercial Television Broadcast Claimant Group (Broadcast Claimants).

The Tribunal received reply comments from ASCAP, BMI, the Broadcast Claimants, the Networks, and the Program Suppliers.

Background

In 1988, Congress created a new compulsory copyright license, the satellite carrier license, which permitted satellite carriers to retransmit broadcast signals to home satellite dish owners, so long as the carriers paid a royalty to the Copyright Office for eventual distribution to the proper copyright owners by the Copyright Royalty Tribunal. The royalty rate set by Congress in section 119 of the Copyright Act was 12 cents per signal per subscriber per month for superstations (independent stations) and 3 cents per signal per subscriber per month for network stations.

Section 119 went into effect in 1989, and copyright owners filed their first claims in July 1990. Program Suppliers asked the Tribunal to declare whether copyright owners of network programs are entitled to share in the satellite carrier royalty fund as a threshold question before distributing the first fund collected under section 119.

Much of section 119 is modeled directly on section 111, the section establishing the cable compulsory license. However, section 111(d)(3) states that cable royalties shall be distributed to those copyright owners who own works "included in a secondary transmission made by a cable system of a *nonnetwork television program*", while section 119(b)(3) states that satellite carrier royalties shall be distributed "to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier." No exclusion of net work programs is mentioned in section 119(b)(3).

Program Suppliers' Argument

The Program Suppliers believe that the network program owners are not entitled to share in the satellite royalty fund. The Program Suppliers are supported in their contention by ASCAP, BMI, the Broadcast Claimants, and SESAC.

The Program Suppliers argue that section 119 is ambiguous, because there exists, according to the Program Suppliers, a conflict between the language of section 119(b)(3) which does not exclude network programs owners from receiving royalties, and section 119(b)(1) which establishes the royalty rate.

As mentioned above, the royalty rate is 12 cents for superstations (independent stations) and 3 cents for network stations. The Program Suppliers argue that this four-to-one ratio is modeled directly after section 111 which states that independent stations are paid for on the basis of one distant signal, while network stations are paid for on the basis of one-quarter distant signal.

The reason for this four-to-one ratio, according to the Program Suppliers, is that Congress did not intend to compensate network programs in cable nor in satellite carrier, because copyright owners of network programs are already compensated for nationwide coverage by the networks.

The Program Suppliers find support for this in two statements in the House Energy and Commerce Committee's Report on the Satellite Home Viewer Act of 1988. First, the Committee stated that the setting of the rate for network stations at one-fourth the rate for superstations was because, " 'the viewing of non-network programs on network stations is considered to approximate 25 percent.' " H.R. Rep. No. 887 (II), 100th Cong. 2d Sess. 22–23. Second, the Committee went on to say,

> The copyright owners of * * * non-network programs would be entitled to receive compensation * * *. Owners of copyright in network programs would not be entitled to compensation for such retransmissions, since those coyright owners are compensated for national distribution by the networks when the programming is acquired. *Id.*

The Broadcast Claimants in their comments states that the networks had disavowed any interest in additional compensation for reaching unserved areas of the nation in testimony before the House Judiciary Committee.

ASCAP states that a finding that network program owners are entitled to participate would lead to an illogical conclusion-that a one-hour program on a network station would be compensated at one-fourth the rate as the same one-hour program on a superstation.

Network Copyright Owners' Argument

The Networks, (ABC, CBS and NBC) and Major League Baseball (supported by the NBA, NCAA, and NHL) identified themselves as copyright owners of network programs, and argued that the Tribunal should declare that they are entitled to share in satellite carrier royalties.

The Networks and Major League Baseball argue first that section 119(b)(3) is unambiguous, and therefore, no resort to legislative history is justified.

The Networks further argue that the very reason the Satellite Home Viewer Act was passed was in response to a court decision that a satellite carrier was not eligible under section 111 for a compulsory license to retransmit a network broadcast signal, a suit in which NBC was a plaintiff. BMI's reply to this argument is that Congress responded to this case in ways other than giving remuneration to the networks, namely, restricting retransmissions to areas unserved by the networks and instructing the FCC to investigate the possibility of syndicated exclusivity protection.

The Networks next argue that copyright owners of network programs are not already fully compensated, because satellite carrier transmissions are intended only for "white areas," those area that cannot receive a network signal by ordinary antenna. The homes receiving such transmissions have been, up to now, outside of the nationwide coverage for which the copyright owner was compensated.

The Networks and Major League Baseball disagree with the Program Suppliers that the disparity in the rates between superstations and network stations was intended to exclude network copyright owners from sharing in the fund. It was intended, they argue, to maintain comparability between the level of payments satellite carriers pay with the level of payments cable systems pay. Whether this would lead to illogical distributions is possible, but not relevant, because that's a decision Congress made. In the cable license, there exists other disparities, because the pay-in does not correlate by statute to the pay-out.

The Networks point to specific language in the House Judiciary Committee report that in their view recognizes their entitlement, "the [Satellite Home Viewer Act] takes affirmative steps to treat similarly the measure of copyright protection accorded to television programming distributed by national television networks and nonnetwork programming distributed by independent television stations." H.R. Rep. No. 887 (I), 14–15.

Finally, the Networks deny that they disavowed their interest in compensation before Congress, having limited their remarks to free marketplace arrangements only, and not to a statutory license that Congress might pass.

Major League Baseball argues that resort to the legislative history is improper, but if the Tribunal does look at the legislative history, the Tribunal should follow the language of the House Judiciary Committee's Report which has jurisdiction over copyright, and not the House Energy and Commerce Committee's Report. The Judiciary Committee's Report, MLB points out, states that those entitled to share in the satellite carrier fund are those copyright owners identified in section 119(b)(3).

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Discussion

Section 119 instructs the Tribunal to distribute satellite carrier royalties to those copyright owners whose works were retransmitted by satellite carriers to home dish owners. It is Tribunal's belief that section 119 is clear and unambiguous. Supporting this view is that section 111, by contrast, very clearly instructs the Tribunal to distribute cable royalties to copyright owners of nonnetwork programs only. As Major League Baseball has noted, the Supreme Court has held that " 'where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.' " *Russello* v. *United States*, 464 U.S. 16, 23 (1983) (quoting *United States* v. *Wong Kim Bo*, 472 F. 2d 720, 722 (5th Cir. 1972).

The Program Suppliers have argued that an ambiguity is created by the language in section 119(b)(1) establishing the different rates for superstations and network stations. But the language of 119(b)(1) is not in and of itself conflicting with 119(b)(3), and the Tribunal believes that sections of a statute should be read as harmonious whenever such a reading is justified. As the Networks and Major League Baseball have pointed out, the disparity in rates can be attributed to the desire of Congress to establish the same payment level for satellite carrier as for cable, thereby avoiding unfair interindustry competition. Similarly, the policy underlying the disparity in rates for cable, that network programs have already been compensated for nationwide coverage, does not apply for satellite carriers, because they are retransmitting network signals to "white areas" only.

Having concluded that no ambiguity appears in the statute, should the Tribunal nonetheless take notice of the plain and clear language of the House Energy and Commerce Committee Report which states that network program owners shall not be eligible for satellite carrier royalty fees?

The Supreme Court recently held, "The best evidence of [the] purpose is the statutory text adopted by both Houses of Congress and submitted to the President. Where that contains a phrase that is unambiguous—that has a clearly accepted meaning in both legislative and judicial practice—we do not permit it to be expanded or contracted by the statements of individual legislators or committees during the course of the enactment process." *West Virginia University Hospitals, Inc.* v. *Casey*, No. 89-994, Slip op. at 15 (decided March 19, 1991).

Similarly, as cited by Major League Baseball, the D.C. Circuit Court of Appeals has ruled, "[E]ven if the pertinent passage from the House Report is seen as speaking with complete clarity, the fact remains that committee reports are now law." *American Civil Liberties Union* v. *FCC*, 823 F. 2d 1554 (DC Cir. 1987). Accordingly, the Tribunal interprets Section 119 as clear on its face, and declares that copyright owners of network programs are entitled to participate and prove their entitlement in the distribution of the satellite carrier royalty fund.

Dated: April 30, 1991.

Marie F. Aguero,

Chairman.

[FR Doc. 91-10534 Filed 5-2-91; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare an Environmental Impact Statement on Air Force Actions in Idaho

The United States Air Force in cooperation with the State of Idaho and several other federal agencies, intends to begin preparing an Environmental Impact Statement (EIS) on implementing recommendations to the Defense Base Closure and Realignment Commission concerning Mountain Home AFB, Idaho. The Air Force is beginning the EIS in anticipation that the Defense Base Closure and Realignment Commission will decide to act favorably on the Department of Defense and Air Force proposal submitted on April 12, 1991. The EIS will evaluate the potential impacts of establishing a Composite Air Wing at Mountain Home AFB. Additionally, the EIS will assess at a programmatic level the potential impacts of implementing the proposal offered by the Governor of Idaho to aggregate state lands for the establishment of an air-to-ground range. Finally, the EIS will assess the impacts of several airspace modifications to accommodate the State range proposal and to the boundaries of existing special use airspace. As part of the analysis in the EIS, and Air Force will take into account the cumulatve impacts of the expected movement of F-4G aircraft to Boise International Airport (Gowen Field), Idaho, and of the expected removal of the EF-111s currently stationed at Mountain Home AFB.

The Air Force will be the lead agency for the EIS and the State of Idaho will be a cooperating agency. The Federal Aviation Administration (FAA) and the Department of the Interior (Bureau of Land Management—BLM) are being invited to be cooperating agencies.

The Air Force and the State of Idaho are planning to conduct scoping meetings to determine the issues and concerns that should be addressed in the EIS. Notice of time and place of the planned scoping meetings will be made to public officials and announced in the news media in areas where the scoping meetings will be held.

To assure there will be sufficient time to consider public inputs on issues to be included in developing the EIS when attendance at the scoping meetings is not possible, comments should be forwarded to the addressee below by July 1, 1991. Comments will be accepted any time during the environmental impact analysis process.

For further information contact: Lt. Colonel Tom Bartol, Director of Environmental Programs, AFRCE-BMS/DEV, Building 520, room 131, Norton AFB, California 92409-6664, telephone: (714) 382-3604.

[FR Doc. 91-10524 Filed 5-2-91; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Ad Hoc Committee Study of Off-Board Sensors—Summer Study 1991 will meet on 17 May 91 from 8 a.m. to 5 p.m. at Human Systems Division, Brooks AFB, Texas 18235-5000.

The purpose of this meeting is to receive presentations of Air Force projects and programs relevant to the concept using off-board sensors data to support air combat operations. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) Thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Grace T. Rowe,

Alternate Air Force Federal Register, Liaison Officer.

[FR Doc. 91-10462 Filed 5-2-91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Opening Meeting

In accordance with section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 16-17 May 1991.

Time: 0800-1600.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) 1991 Summer Study on Army Simulation Strategy will meet for discussions focused on technical and programmatic subjects as regards simulation and modeling. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-10570 Filed 5-2-91; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings for the Proposed Expansion of the Strategic Petroleum Reserve

AGENCY: U.S. Department of energy (DOE).

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: DOE announces its intent to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, to evaluate the environmental impacts of the proposed expansion of the Strategic Petroleum Reserve (SPR) from 750 million barrels to one billion barrels. The SPR is designed to provide the United States with sufficient petroleum reserves to reduce the impacts of any future oil supply interruption and to carry out the obligations of the United States under the International Energy Program. The proposed action is to develop a total of 250 million barrels of crude oil storage capacity at two separate salt domes on the Texas and Louisiana coast. A 150-million-barrel storage facility is proposed for one of four candidate salt domes in southeast Louisiana and a 100-million-barrel storage facility is proposed for one of four candidate salt domes in Texas.

The proposed Louisiana storage facility would be pipeline-connected to DOE's St. James marine terminal on the Mississippi River in St. James Parish and to the Clovelly salt dome pipeline terminal of the Louisiana Offshore Oil Port (LOOP) in Lafourche Parish.

The proposed Texas storage facility would be pipeline-connected to either the proposed Seaway pipeline terminal in Brazoria County or to common carrier pipeline and/or marine terminals of East Houston, the Houston Ship Channel or Texas City in Harris and Galveston Counties.

For each of the two salt dome groupings, the EIS will assess each candidate as an alternative to the other three candidate sites of the group. The assessment of each alternative site will include consideration of ancillary offsite facilities and alternative pipeline routes to crude oil transportation and distribution centers.

Preparation of the EIS will be in accordance with NEPA, the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500-1508), and the DOE NEPA guidelines (52 FR 47662, December 15, 1987).

INVITATION TO COMMENT AND DATES: To ensure that the significant issues related to this proposal are adequately addressed, DOE invites public comment on the proposed scope and content of the EIS from all interested parties. Written comments or suggestions to assist DOE in indentifying significant environmental issues and the appropriate scope of the EIS will be considered in preparing the implementation plan and draft EIS, and should be postmarked by June 17, 1991. Written comments postmarked after that date will be considered to the degree practicable.

Oral comments and suggestions are invited by DOE at public scoping meetings to which agencies, organizations, and the general public are invited. The location, date, and time for the scoping meetings are provided in the section of this Notice entitled SCOPING MEETINGS. Written and oral comments will be given equal weight and will be considered in determining the scope of the Draft EIS. The Draft EIS availability will be announced in the **Federal Register** along with dates for public hearings soliciting comments on it. Comments on the Draft EIS will be considered in preparing the Final EIS.

ADDRESSES: Written comments or suggestions on the scope of the EIS, requests to speak at the scoping meetings, questions concerning the project, or requests to be put on the mailing list for the Draft EIS should be directed to: Mr. Hal Delaplane, Strategic Petroleum Reserve (FE-421), U.S. Department of Energy 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586-4730.

Envelopes should be labeled "Scoping for SPR EIS."

FURTHER INFORMATION: For further information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586-4600.

SUPPLEMENTARY INFORMATION:

Background and Need for the Proposed Action

The SPR is designed to provide the United States with sufficient petroleum reserves to reduce the impacts of any future oil supply interruption and to carry out the obligations of the United States under the International Energy Program. The SPR currently consists of six underground oil storage facilities: four in Louisiana and two in Texas; a marine terminal on the Mississippi River at St. James, Louisiana; and an administrative facility in New Orleans. One facility, Weeks Island, was a conventional room-and-pillar salt mine in a salt dome before DOE converted it to use for oil storage. At the other five storage facilities (Bayou Choctaw, Big Hill, Bryan Mound, Sulphur Mines, and West Hackberry), crude oil is stored in caverns constructed by solution mining of salt domes. The six SPR facilities had a total crude inventory of approximately 580 million barrels as of March 1991. All major surface construction at the six SPR facilities is completed, and cavern development is in progress to achieve a storage capacity of 750 million barrels. Current plans provide for the decommissioning of Sulphur Mines, with replacement capacity to be developed by the on-going enlargement of the caverns at Bayou Choctaw and Big Hill.

Creation of the SPR was mandated by Congress in title I, part B, of the Energy Policy and Conservation Act of 1975. In this Act, Congress authorized the United States Government to provide for the storage of up to one billion barrels of crude oil and petroleum products. The policies for implementing the SPR program were expressed in the SPR Plan that was approved by Congress and became effective on April 8, 1977. In accordance with this plan, 500 million barrels of oil were to have been in storage by December 1982.

Site-specific EISs were prepared between 1976 and 1981 which supported the selection of the present crude oil

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storage facilities and pipelines. The development of the initial 248 million barrels of storage capacity resulted in the selection of five salt dome sites: West Hackberry, Bayou Choctaw, Weeks Island, and Sulphur Mines in Louisiana, and Bryan Mound in Texas.

Three site-specific EISs were published in 1978 to assess the impacts of increasing the crude oil storage capacity to 538 million barrels. Each EIS addressed a complex of sites which were grouped according to the major interstate common carrier pipeline to which they would connect as follows: (1) The Capline Group, located in eastern Louisiana; (2) the Texoma Group, located in western Louisiana and eastern Texas; and (3) the Seaway Group, located in Texas. The selected alternative was the expansion of three existing sites: West Hackberry, Bryan Mound, and Bayou Choctaw.

For the expansion of the SPR from 538 million barrels to 750 million barrels, an EIS was published in 1981 which focused on maximizing early oil fill, as directed by Congress. First consideration, therefore, was given to expanding the existing SPR sites; additional candidates were to be among those considered in the 1978 site-specific EISs. This resulted in the expansion of the West Hackberry and Bryan Mound sites in Louisiana and the development of the Big Hill site in Texas.

In addition, an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) published in January 1990 evaluated the impacts of decommissioning the Sulphur Mines storage facility and increasing the storage capacity of the Big Hill facility.

During 1990, Congress enacted two bills requiring DOE to undertake planning activities associated with the expansion of the SPR to one billion barrels: The Energy Policy and Conservation Act Amendments and the Department of Interior and Related Agencies' Appropriations Act for Fiscal Year 1991. The Appropriations Act requested that DOE report to the Committees on Appropriations regarding recommended storage sites, the proposed methods of storage, a conceptual plan for storage and distribution facilities, and preliminary construction cost estimates. In March 1991, DOE published *Report to the Congress on Candidate Sites for Expansion of the Strategic Petroleum Reserve to One Billion Barrels*, which fulfilled this request. DOE's 1989 Report to the Congress entitled *Report to Congress on Expansion of the Strategic Petroleum Reserve to One Billion Barrels* provides background and a point of departure for the more recent report.

The SPR expansion and distribution plans are based on forecasts of U.S. petroleum demand and supply in the year 2000. Projections for the next ten years include: (1) U.S. oil consumption will increase slowly; (2) domestic oil production will decline significantly; (3) petroleum imports, particularly crude oil, will increase greatly to meet the Nation's net petroleum supply requirements. The crude oil pipeline infrastructure from the Gulf Coast to the Midwest and Midcontinent is projected to increase capacity as inland demands for Gulf Coast imports increase. DOE expects that all increases in pipeline capacity to meet inland crude oil demands will originate in the Houston and Freeport areas of Texas which are currently served by the SPR's Seaway System. Within the Gulf Coast, the Capline and Seaway areas stand out as the largest centers of projected demand and distribution potential.

In the 1989 Report to Congress, DOE discussed the possibility of a 100-million-barrel site on the East Coast utilizing an inground concrete storage technology as an alternative to a second Gulf Coast location. Since then, several studies have been performed to further assess the East Coast storage concept. Although the development of such a facility was found to be technically feasible, the East Coast site development would be roughly double the cost of a Gulf Coast site, and, environmentally, the project would likely encounter significant problems. Therefore, DOE concluded that inground concrete tank storage is not a reasonable alternative at this time and East Coast siting was deleted from the SPR's candidate site list in the 1991 Report.

Based on an analysis of refinery demand and the related SPR distribution infrastructure, the 1991 report concludes that a 250-million-barrel expansion of the SPR would logically be concentrated in the Seaway and Capline complexes. Developing a larger proportion of storage at the Capline site would be more desirable for two reasons. First, the Capline Complex is projected to have a larger distribution potential than the Seaway Complex and is also expected to be the dominant import carrier to the Midwest due to its more direct route and lower tariffs. Secondly, because the Capline Complex was never developed to the level of storage capacity envisioned in the original SPR Plan, the SPR's storage in the Capline area is only 20 percent of the current Reserve and is insufficient to sustain a 150 to 180-day drawdown at design rates. Therefore, the most desirable expansion configuration for the one billion barrel program would be (1) a 150-million-barrel storage site in the Capline Complex connected to the LOOP Clovelly terminal for distribution; and (2) a 100-million-barrel storage site in the Seaway Complex connected to the Seaway Pipeline Terminal or Houston Pipeline terminals serving the Midcontinent and Midwest.

A prototype 150-million-barrel SPR facility in the Capline Complex in Louisiana would include fifteen 10-million-barrel caverns on a 300-acre site. The caverns would be created in rock salt from 2,000 to 5,000 feet below ground by solution-mining, or leaching, with fresh or salt water using from one to three wells per cavern. Leaching 150 million barrels of storage space would create between 1.0 and 1.2 billion barrels of concentrated brine that would require disposal either by pipeline and diffuser into the Gulf of Mexico or by an array of offsite underground injection wells.

To provide the water, a raw water intake structure would be constructed offsite in a source surface water body. The principal operating systems would be the raw water leaching/drawdown system, a brine setting and disposal system, a crude oil injection/distribution system, a fixed fire protection system, and a central control system. Major surface buildings and structures would include an electrical substation, a control center, an administration building, security operations buildings, communications, covered laydown, fire house, and a storage and maintenance warehouse. The water and brine systems would be sized for leaching caverns at a rate of one million barrels per day and the crude oil system would be designed for drawdown at 900,000 barrels per day.

The facility would be connected by crude oil pipelines to the distribution terminals at LOOP's Clovelly salt dome in Lafourche Parish and DOE's St. James Terminal in St. James Parish.

A prototype 100-million-barrel SPR facility in the Seaway Complex in Texas would consist of ten 10-million-barrel caverns on a 200-acre site with the similar systems and structures as described above for the Capline site. Water and brine systems would be sized for leaching caverns at a rate of approximately one million barrels per day; the crude oil system would be designed for drawdown at 600,000 barrels per day. The facility will be pipeline-connected to either the Houston/Texas City distribution centers on the Seaway Pipeline terminus at the Jones Creek Tank Farm in Brazoria County.

In accordance with NEPA, DOE has completed a Supplement Analysis (SA) of the 1978 SPR Programmatic EIS and its 1979 Supplement. The Programmatic EIS considered the impacts of the overall program as well as several alternative storage facilities (e.g., existing solution—mined cavities in salt dome formations, existing conventional mines, development of new solution-mined cavities in salt dome formations, existing and new surface tankage, and surplus tanker ships) and recommended the development of new solution-mined cavities in salt formations along the Gulf Coast. After the SPR Plan was revised by Amendment 2 in June 1978 to increase the SPR to one billion barrels, DOE published a Supplement to the Programmatic EIS in 1979 that addressed this expansion at the programmatic level. Based on the detailed review of the Programmatic EIS and its Supplement in the SA, DOE determined that no supplement to the Programmatic EIS is required to support the proposed expansion. A Strategic Petroleum Reserve Plan Amendment will be submitted at the completion of the NEPA process which will provide final recommendations regarding the storage sites to be developed.

Proposed Action

The proposed action is to develop 250 million barrels of crude oil storage capacity at two salt domes on the Texas and Louisiana coast. A 150-million-barrel storage facility is proposed for one of four candidate salt domes in southeast Louisiana and a 100-million-barrel storage facility is proposed for one of four candidate salt domes in Texas.

Eight Gulf Coast salt domes have been identified as candidate sites in the March 1991 *Report to Congress on Candidate Sites for Expansion of the Strategic Petroleum Reserve to One Billion Barrels*: Chacahoula, Cote Blanche, Napoleonville, and Weeks Island in Louisiana are candidates for a 150-million-barrel storage facility in the Capline Complex; and Boling, Big Hill, Hawkinsville, and Stratton Ridge in Texas are candidates for a 100-million-barrel storage facility in the Seaway Complex. Together, these eight candidate sites represent the alternatives to be assessed under NEPA; however, the scoping process may identify additional alternatives for assessment in the EIS.

The proposed Louisiana storage facility would be pipeline-connected to DOE's St. James marine terminal on the Mississippi River in St. James Parish and to the Clovelly salt dome pipeline terminal of the Louisiana Offshore Oil Port (LOOP) in Lafourche Parish.

The proposed Texas storage facility would be pipeline-connected to either the proposed Seaway pipeline terminal in Brazoria County or to common carrier pipeline and/or marine terminals of East Houston, the Houston Ship Channel or Texas City in Harris and Galveston Counties.

Alternatives

The Department's preferred alternative is to develop a 150-million-barrel storage facility in the Capline Complex and a 100-million-barrel storage facility in the Seaway Complex. Alternatives to be evaluated include (1) no action; (2) the selection of a different distribution system and/or location of storage facilities for each of the Capline and Seaway Complexes. For each of the two salt dome groupings, the EIS will assess each candidate salt dome as an alternative to the other three candidates in the group. The assessment of each alternative site will include consideration of ancillary offsite facilities and alternative pipeline routes to crude oil transportation and distribution centers.

Identification of Environmental Issues

The following issues associated with the proposed expansion of the SPR will be considered by DOE during its evaluation of candidate storage locations. This list is neither intended to be all inclusive, nor is it a predetermination of potential impacts. Additions to or deletions from this list may occur as a result of the scoping process.

(1) Air Quality Impacts: The effects of construction and operation of SPR facilities at the candidate sites on air quality within the surrounding region.

(2) Water Resources and Water Quality Impacts: The qualitative and quantitative effects on water quality of potential oil, brine, or other types of spills, waste disposal (including brine disposal), and water usage during site development and operations.

(3) Involvement of Sensitive Environments and Ecological Impacts: The potential environmental impacts of construction and operation of SPR facilities on local ecology and wetlands, as well as the potential disturbance or destruction of threatened or endangered flora and fauna.

(4) Land Use Impacts: Potential effects of allocating land resources in the area to storage capacity development rather than other uses (e.g., agricultural, commercial, recreational) and potential aesthetic or visual impacts.

(5) Geological Impacts: Potential impacts on the geology in the vicinity of the sites, including halokinesis or cavern "creep", subsidence, increased potential for flooding, and soil impacts.

(6) Socioeconomic Impacts: Potential impacts of (1) economic dislocations on co-located industries and their employees and the local tax base, and (2) increased development on communities located near the candidate sites, including increased traffic, effects on labor patterns, and increased demand for services such as police, fire, and medical services.

(7) Impacts on Cultural Resources: Potential effects on historical, archaeological, scientific, or culturally important sites.

Issues will be discussed in sufficient detail to clarify and distinguish among alternatives.

Mitigation Measures

The projected environmental impacts from the expansion of the SPR at the candidate sites will depend on the level of SPR operations and the mitigation measures that are recommended for each potential impact. Mitigation measures will be discussed in the EIS and will relate specifically to the potential impacts identified.

NEPA and the Scoping Process

DOE will comply with the NEPA process as outlined in the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508) and DOE's Guidelines for Compliance with the National Environmental Policy Act (52 FR 47662, December 15, 1987).

Scoping, an integral part of the NEPA process, solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) the Draft EIS is thorough and balanced; and (3) delays occasioned by an inadequate Draft EIS are avoided. The scoping process will involve all interested agencies (Federal, State, and local), organizations, and members of the public.

Issues to be addressed in the Draft EIS, in addition to those already listed, will be determined from comments submitted by mail, or presented orally or in writing at the public scoping meetings. All comments will be given equal weight by DOE. The preliminary identification of reasonable alternatives and environmental issues is not meant to be exhaustive or final. Alternatives other than those outlined above may warrant examination, and new issues may be identified for evaluation. The results of scoping will be incorporated into a document called an Implementation Plan (IP) which provides guidance for the preparation of an EIS. The IP will be available for public distribution at the conclusion of scoping.

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Scoping Meetings

Public scoping meetings, held at the locations on the date and at the time indicated below, will be informal. A presiding officer designated by DOE will establish procedures governing the conduct of the meetings. The meetings will not be conducted as evidentiary hearings, and those who choose to make statements may not be cross-examined by other speakers. To request time to speak at the public scoping meetings, persons should submit a written request to Hal Delaplane using the address listed in the **ADDRESSES AND FURTHER INFORMATION** section of this notice. The meetings are scheduled as follows:

Date: Tuesday, June 4, 1991
Time: 7:00 p.m.
Place: Center for Arts and Sciences, 400 College Drive, Lake Jackson, Texas

Date: Thursday, June 6, 1991
Time: 7:00 p.m.
Place: Goaux Hall, Madewood Drive, Nicholls State University, Thibodaux, Louisiana

To ensure that everyone who wishes to speak has a chance to do so, five minutes will be allotted to each speaker who signs up before the meeting begins. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations. Persons wishing to speak on behalf of an organization should identify that organization when they sign up to speak. Persons who have not submitted a written request to speak in advance may register to speak at the scoping meetings. They will be called upon to present their comments as time permits.

A complete transcript of the public scoping meetings will be retained by DOE and made available for inspection during business hours, Monday through Friday, at the Department of Energy Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, and at the Department of Energy SPR Project Management Office (c/o Mike Farley), 900 Commerce Road East, New Orleans, LA 70123, telephone (504) 734-4374. Additional copies of the public scoping meetings transcripts also will be made available during normal business hours at the following locations:

Brazoria County Library, 401 East Cedar, Angleton, Texas 77515, Contact: Steve Brown, (409) 849-5711 ext. 1505
Beaumont Public Library, 801 Pearl Street, Beaumont, Texas 77701, Contact: Naomi Paul, (409) 838-6606
Allen J. Ellender Memorial Library, Leighton Drive, Nicholls State University, Thibodaux, Louisiana 70310 Contact: Peter Kaatrud, (504) 448-4652
Dupre Library, 302 East St. Mary Blvd., U. of Southwestern Louisiana, Lafayette, Louisiana 70504, Contact: Sandy Himel or Barbara Flynn, (318) 231-6030.

In addition, copies of the public scoping meeting transcripts will be made available for purchase. Those interested parties who do not wish to submit comments or suggestions at this time, but who would like to receive a copy of the Implementation Plan and/or the Draft EIS, should notify Hal Delaplane at the address given in the **ADDRESSES AND FURTHER INFORMATION** section of this Notice.

Related Documentation

The following documents related to the proposed action are available from Mr. Hal Delaplane, Office of Strategic Petroleum Reserve (FE-421), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586-4730:

"Strategic Petroleum Reserve Phase III Expansion; Record of Decision". **Federal Register**, 47 FR 9730, March 5, 1982.
Report to the Congress on Candidate Sites for Expansion of the Strategic Petroleum Reserve to One Billion Barrels. U.S. Department of Energy, March 1991. DOE/FE-0221P.
Supplement Analysis for the Programmatic Environmental Impact Statement of the Strategic Petroleum Reserve. U.S. Department of Energy, Office of Strategic Petroleum Reserve, March 1991.

The following documents are available in microfiche form from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. To obtain copies, contact the NTIS Sales Desk at (703) 487-4650. The Sales Desk representative will also provide information on document prices and the availability of the document as a printed, bound copy.

Report to the Congress on Expansion of the Strategic Petroleum Reserve to One Billion Barrels. U.S. Department of Energy, April 1989. DOE/FE-0126.
Strategic Petroleum Reserve Phase III Expansion: Texoma and Seaway Group Salt Domes (West Hackberry and Bryan Mound Expansion, Big Hill Development, Final Environmental Impact Statement. U.S. Department of Energy, October 1981. DOE/EIS-0075 (NTIS No. DE 84017132).
Strategic Petroleum Reserve, Expansion of the Reserve, Final Environmental Impact Statement. U.S. Department of Energy, January 1979. DOE/EIS-0034.
Strategic Petroleum Reserve Final Environmental Impact Statement. Federal Energy Administration, December 1976. 2 vols. FEA/S-76/487 and FEA/S-76/488 (NTIS Nos. PB261799 and PB 261800).

Signed in Washington, DC, this 28th day of April 1991, for the United States Department of Energy.

Paul L. Ziemer,
Assistant Secretary, Environment, Safety and Health.

[FR Doc. 91-10510 Filed 5-2-91; 8:45 am]
BILLING CODE 6450-01-M

Energy Information Administration

Forms EIA-23, 23P and 64A, "Oil and Gas Reserves Surveys"

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of Proposed Extension of the forms EIA-23, "Annual Survey of Domestic Oil and Gas Reserves," EIA-23P, "Oil and Gas Well Operator List Update Report," and EIA-64A, "Annual Report of the Origin of Natural Gas Liquids Production," and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA) as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reducation Act of 1980, Public Law No. 96-511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with the opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are cleary understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed extension of the forms EIA-23, "Annual Survey of Domestic Oil and Gas Reserves," EIA-23P, "Oil and Gas Well Operator List Update Report," and EIA-64A, "Annual Report of the Origin of Natural Gas Liquids Production." Under the EIA budget proposal for FY 1992, the Oil and Gas Reserves program will remain a major part of EIA's effort with annual estimates of oil and gas reserves published every other year.

DATES: Written comments must be submitted, on or before June 3, 1991. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Mr. Paul Chapman, Energy Information Administration, Dallas Field Office, 1114 Commerce Street, room 804, Dallas, Texas 75242-2899, Telephone (214) 767-2200.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORMS AND INSTRUCTIONS: Requests for additional information or copies of the forms and instructions should be directed to Mr. Paul Chapman at the address above.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Current Actions.
III. Request for Comments.

I. Background

In order to fulfill its responsibilities under the Federal Energy Adminsitration Act of 1974 (Pub. L. No. 93-275) and the Department of Energy Organization Act (Pub. L. No. 95-91), the Energy Information Adminsitration is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, and disseminate data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near- and longer-term for the Nation's economic and social needs.

Operators of crude oil and natural gas well(s) are the target respondents of the Form EIA-23, and operators of natural gas plant(s) are the target respondents of the Form EIA-64A. The amount of crude oil, associated-dissolved and nonassociated natural gas, and lease condensate production and reserves by field are requested of major oil and gas well operators. In addition, a selected sample of small operators provides production and reserves of crude oil, natural gas and lease condensate at a State level on the Form EIA-23. The amount of natural gas processed, natural gas liquids produced, the resultant shrinkage of the natural gas, and the amount of natural gas used in processing are requested of natural gas plant operators. These data are essential to the development, implementation, and evaluation of energy policy and legislation. Data will be used directly in the publication, *U.S. Crude Oil, Natural Gas and Natural Gas Liquids Reserves,* and incorporated into a number of other publications and analyses. Secondary publications which use the data are the *Annual Energy Review, Annual Energy Outlook, Petroleum Supply Annual,* and *Natural Gas Annual.*

II. Current Actions

This notice is for a proposed three year extension of the forms EIA-23, "Annual Survey of Domestic Oil and Gas Reserves," EIA-23P, "Oil and Gas Well Operator List Update Report," and EIA-64A, "Annual Report of the Origin of Natural Gas Liquids Production," until December 31, 1994, from the current OMB expiration date of December 31, 1991. Under the EIA budget proposal for FY 1992, which was submitted to Congress in January 1991, the Oil and Gas Reserves program will remain a major part of EIA's effort with annual estimates of oil and gas reserves published every other year.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed extension. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the time specified in the instructions?

D. Public reporting burden for this data collection is estimated to range from 62 to 333 hours per response for the field version of Form EIA-23, "Annual Survey of Domestic Oil and Gas Reserves" and reporting burden is estimated to average 8 hours per response for the state level version of Form EIA-23, "Annual Survey of Domestic Oil and Gas Reserves." Public reporting burden is estimated to average 5.9 hours per response for the Form EIA-64A, "Annual Report of the Origin of Natural Gas Liquids Production." Public reporting burden is estimated to average 0.25 hours per response for the Form EIA-23P, "Oil and Gas Well Operator List Update Report." How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form(s)?

E. What is the estimated cost of completing the form(s), including the direct and indirect costs associated with the collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form(s) be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of the collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form(s)?

B. For what purpose would you use the data? Be specific.

C. How could the form(s) be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

E. Would your use of the data be adversely affected if publication of annual estimates were on a biennial basis? If so, how?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form(s); they also will become a matter of public record.

Statutory Authorities: Sections 5(a), 5(b), 13(b), and 52 of Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. §§ 564(a), 764(b), 772(b), and 790a.

Issued in Washington, DC April 29, 1991.

Yvonne M. Bishop,
Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91-10508 Filed 5-2-91; 8:45 am]
BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

[Case No. F-030]

Energy Conservation Program for Consumer Products; Application for Interim Waiver and Petition for Waiver of Furnace Test Procedures From Goodman Manufacturing Corporation

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Goodman Manufacturing Corporation (Goodman) from the existing Department of Energy (DOE) test procedures for furnaces relating to blower time delay for the company's PG and PGX series rooftop gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Goodman

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which requests DOE to grant relief from the DOE test procedures relating to the blower time delay specification. Goodman seeks to test using a blower delay time of 30 seconds for its PG and PGX series rooftop furnaces instead of the specified 1.5 minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than June 3, 1991.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-030, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-3012.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station CE-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3206, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On January 16, 1991, Goodman filed an Application for an Interim Waiver regarding blower time delay. Goodman's Application seeks an interim waiver from the DOE test provisions that require a 1.5 minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Goodman requests the allowance to test using a 30 second blower time delay when testing its PG and PGX series rooftop gas furnaces. Goodman states that the 30 second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 1.0 percent. Since current DOE test procedures do not address this variable blower time delay, Goodman asks that the interim waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to the Coleman Company, 50 FR 2710, January 18, 1985, Magic Chef Company, 50 FR 41553, October 11, 1985, Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990, Trane Company, 54 FR 19228, May 4, 1989, and 55 FR 41589, October 12, 1990, DMO Industries, 55 FR 4004, February 6, 1990, Heil-Quaker Corporation, 55 FR 13184, April 9, 1990, Carrier Corporation, 55 FR 13162, April 9, 1990, Amana Refrigeration, Inc., 56 FR 853, January 9, 1991, and Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Goodman an Interim Waiver for its PG and PGX series rooftop gas furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver to Goodman Manufacturing Corporation was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, April 26, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

April 26, 1991.

Mr. Peter H. Alexander,
Vice President, Engineering, Goodman Manufacturing Corporation, 1501 Seamist, Houston, Texas 77008

Dear Mr. Alexander: This is in reponse to your January 16, 1991, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the Goodman Manufacturing Corporation PG and PGX series rooftop gas furnaces.

Previous waivers for timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985, Magic Chef Company, 50 FR 41553, October 11, 1985, Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990, Trane Company, 54 FR 19228, May 4, 1989, and 55 FR 41589, October 12, 1990, DMO Industries, 55 FR 4004, February 6, 1990, Heil-Quaker Corporation, 55 FR 13184, April 9, 1990, Carrier Corporation, 55 FR 13162, April 9, 1990, Amana Refrigeration, Inc., 56 FR 853, January 9, 1991, and Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991.

Goodman's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Goodman will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Goodman's Application for an Interim Waiver from the DOE test procedures for its PG and PGX series rooftop gas furnaces regarding blower time delay is granted.

Goodman shall be permitted to test its line of PG and PGX series rooftop gas furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, Appendix N, with the modification set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas-and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs as single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start, the blower at the highest temperature. If the fan control is permitted start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe with ±0.01 inch of water gauge of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

January 16, 1991.

Assistant Secretary, Conservation and Renewable Energy,
United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Gentlemen: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to Title 10 CFR 430.27. Waiver is requested from the test procedures for measuring the Energy Consumption of Furnaces found in Appendix N of Subpart B to Part 430.

Goodman Manufacturing Corporation requests a waiver from the specified 1.5 minute delay between burner ignition and initiation of the circulating air blower. Goodman Manufacturing seeks authorization in its furnance efficiency test procedures and calculations to utilize a fixed timing device which energizes the circulating blower 30 seconds after burner ignition. A control of this type which employes a 30 second delay will be incorporated in our PG and PGX series of gas/electric package units.

The current test procedures does not credit Goodman Manufacturing for additional energy savings that are realized when a shorter blower on-time is utilized. Test data which we have generated indicates an average increase of 1 percent in AFUE when a 30 second timed on delay is used. Copies of this confidential test data will be furnished to you upon request.

Goodman Manufacturing is confident that this petition for Waiver will be granted as similar petitions have been previously granted to Evcon, Rheem Manufacturing, Carrier, Inter-City Products, Lennox Industries and the Trane Company.

Manufacturers that domestically market similar products are being sent a copy of this Petition for Waiver and Application for Interim Waiver. Please direct any correspondence on this request to the undersigned.

Sincerely,

GOODMAN MANUFACTURING CORPORATION,

Peter H. Alexander,

Vice President, Engineering.

[FR Doc. 91-10507 Filed 5-2-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 91-10-LNG]

Phillips 66 Natural Gas Company and Marathon Oil Company, Application To Amend Authorization To Export Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application to amend authorization to export liquefied natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on January 30, 1991, of an application filed by Phillips 66 Natural Gas Company (Phillips 66) and Marathon Oil Company (Marathon) requesting an amendment to the pricing provisions contained in their existing authorization to export liquefied natural gas (LNG) from the Kenai peninsula of Alaska to Japan.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., June 3, 1991.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION CONTACT:

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7249.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Under DOE/ERA Opinion and Order No. 261, issued July 28, 1988 (1 ERA Para. 70,130), applicants currently are authorized to export annually 52.0 trillion Btus of LNG per year, subject to certain adjustments, through March 31, 2004. The LNG is exported from their Kenai LNG liquefaction plant in the Cook Inlet area of Alaska to two Japanese customers, the Tokyo Electric Power Company, Inc., and the Tokyo Gas Company, Ltd.

Order No. 261 approved application of the following price formula to these LNG sales:

Delivered price: A base price of five hundred ninety-two and eight tenths (592.8) U.S cents per million Btu (MMBtu) as indexed and adjusted in accordance with the below formula so as to reflect changes in the monthly weighted average of the Government Selling Prices of a basket of twenty (20) crude oils imported into Japan plus an adjustment factor,

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Delivered price for calendar month (U.S. cents per million BTUs) = 582.8

$$\times \frac{\text{Avg GSP (Month Prior to Calendar Month)}}{34.48}$$

+ Adjustment

Where:

Avg GSP is the average of the Government Selling Prices (in U.S. dollars per barrel) applicable on the last day of the preceding calendar month weighted by the volumes for the top twenty (20) crude oils (ranked by descending volumes) imported into Japan during the preceding calendar year.

Adjustment is a factor negotiated from time to time between Buyers and Sellers to better allow the price of LNG sold under the contract to respond to market conditions. The adjustment is limited to a range of plus or minus 30.0 U.S. cents per MMBtus purchased and sold.

In response to the continued volatility of the international crude oil and LNG markets, the parties executed two agreements, the 1989 Memorandum and the 1990 Agreement, both of which, subject to regulatory approval, revised the pricing formula approved in Order No. 261 for sales made from April 1, 1989, through March 31, 2004. Phillips 66 and Marathon maintain that the actual LNG prices established under the 1989 Memorandum are within the price ranges previously permitted under Order No. 261.

The applicants are requesting approval to revise the LNG pricing formula authorized in Order No. 261 in accordance with the 1989 Memorandum and the 1990 Memorandum in the following respects:

1. Using an arithmetic average price over a three month period (rolling average) of the weighted average price of all crude oils (including raw oils) imported into Japan in each of those three months (the JCC) less 66 cents per barrel rather than using a single month weighted average Government selling price of the top twenty crude oils imported into Japan during the preceding calendar year (average GSP);

2. Determining the current month's crude oil prices by averaging the current and preceding two months' prices;

3. Applying the revised pricing formula to the price of LNG sold and delivered from October 1, 1989, through March 31, 2004.

4. Deducting the 66 cents from the JCC in order to reflect the historic difference between the JCC and the formerly used GSP: and

5. Applying a Special Adjustment Factor (SN) for LNG sold and delivered from October 1, 1990, through March 31, 1993.

The applicants assert that the revised pricing formula makes this LNG competitive with other energy sources, including other LNG, imported into Japan. According to the application, since the approval of Order No. 261, the Government Selling Price has ceased to be a reliable indicator of the actual selling price of crude oil. Furthermore, LNG market prices in Japan have changed, affecting the applicants' ability to market LNG in Japan. Therefore, the applicants have sought to adopt a more flexible and market responsive pricing formula.

This export application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204-111. In reviewing natural gas exports, DOE considers domestic need for the gas and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these matters.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decison and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Phillips 66 and Marathon's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 29, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-10509 Filed 5-2-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRI-3953-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burdens; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for New Residential Wood Heaters (Subpart AAA). (ICR #1176.03; OMB #2060-0161). This is a reinstatement of a previously approved collection.

Abstract: Under these regulations, wood heater manufacturers, testing laboratories, and retailers are required to submit reports to EPA and/or to maintain records for demonstrating compliance with the NSPS. Manufacturers must give 30 days advance notice of scheduled certification testing, report the results of the certification tests, and submit a statement biennially certifying that no changes have been made to the model line that affect emission performance. Manufacturers must affix labels to wood heaters in accordance with the regulations and assure that the owner's manual contents comply with the regulations. Testing laboratories must apply to EPA for accreditation and report the results of the initial and annual proficiency tests. Both manufacturers and laboratories are required to keep records pertaining to certification tests. Commercial owners are required to maintain names and addresses of previous owners of used wood heaters. This information is necessary to prevent the sale of new, uncertified wood stoves under a claim that they are exempt used stoves.

EPA uses the information supplied by the manufacturers to ensure that best demonstrated technology is being applied to reduce emissions from wood heaters and to ensure compliance with the certification procedures and emission standards. EPA uses the information from the testing laboratories to grant or deny accreditation and to assist in enforcement and compliance activities.

Burden Statement: The public reporting burden for this collection of information is estimated to average 5 hours per response for reporting with 19 responses required for each of 50 respondents annually, and 5.6 hours each for 932 recordkeepers annually.

Respondents: Manufacturers, distributors and retailers of residential wood heaters, and laboratories that conduct certification tests.

Estimated No. of respondents: 50 for reporting and 932 for recordkeeping.

Estimated No. of responses per respondent: 19.

Estimated total annual burden on respondents: 9,987 hours.

Frequency of collection: On occasion for test results, annually for laboratory proficiency tests, and biennially for manufacturer's certification that no changes have been made to the model line that affect emission performance.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: April 26, 1991.

Paul Lapsley,

Director Regulatory Management Division.

[FR Doc. 91-10526 Filed 5-2-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3953-6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed April 22, 1991 Through April 26, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910123, Final EIS, AFS, NM, Ward Timber Sale, Implementation, Gila National Forest, Luna Ranger District, Catron County, NM, *Due:* June 03, 1991, *Contact:* Jerry Hibbetts (505) 547-2611.

EIS No. 910124, Draft EIS, AFS, CO, Corral Mountain Timber Sale, Implementation, San Juan National Forest, Pagosa Ranger District Archuleta County, CO, *Due:* June 24, 1991, *Contact:* Richard M. Jewell (303) 264-2268.

EIS No. 910125, Second Draft EIS (SCS, CO, UT, Uintah Basin Unit Expansion Plan, Irrigation Improvement, Colorado River Salinity Control Program, Funding, Uintah and Duschesne, UT, *Due:* June 17, 1991, *Contact:* Francis T. Holt (801) 524-5050.

EIS No. 910126, Draft EIS, FHW, MN, MN-TH 14 Improvements, North Mankato-Mankato Bypass and County Road 193 to Smiths Mill, Funding and Section 404 Permit, City of Mankato, Blue Earth County, MN, *Due:* June 17, 1991, *Contact:* Charles E. Foslien (612) 290-3230.

EIS No. 910127, Draft EIS, AFS, UT, WY, Westside Analysis Area, Multiple Use Management Plan, Implementation, Wasatch-Cache National Forest, Summit County, Utah and Uinta County, WY, *Due:* June 17, 1991, *Contact:* Kent O'dell (307) 782-6555.

EIS No. 910128, Draft EIS, COE, HI, Kawainui Marsh Flood Control Project, Coconut Grove Residential Area, Implementation, Island of Oahu, City and County of Honolulu, HI, *Due:* June 17, 1991, *Contact:* Margo Stahl (808) 438-7006.

EIS No. 910129, Final EIS, FAA, WA, Bellingham International Airport Runway Extension, Construction and Operation, Airport Layout Plan, Approval and Funding, Whatcom County, WA, *Due:* June 03, 1991, *Contact:* Dennis G. Ossenkop (205) 227-2611.

EIS No. 910130, Final EIS, FHW, SC, Conway Bypass (formerly Northern Outer Bypass) Construction, US 501 to US 17, Funding, COE section 10 and 404 Permits, U.S. Coast Guard Section 9 Permit, City of Conway, Horry County, SC, *Due:* June 03, 1991, *Contact:* Kenneth Myers (803) 253-3881.

EIS No. 910131, Final EIS, BLM, CA, Ward Valley Low-Level Radioactive Waste Disposal Facility, Site Selection, Construction and Operation, Funding and Right-of-Way Grants, San Bernardino County, CA, *Due:* June 03, 1991, *Contact:* Douglas Romoli (714) 653-4197.

EIS No. 910132, Draft EIS, AFS, WA, Loose Bark/Grouse Butte West Timber Sale, Road Construction, Implementation, Mt. Baker-Snoqualmie National Forest, Mt. Baker Ranger District, Whatcom and Skagit Counties, WA *Due:* June 17, 1991, *Contact:* Larry L. Hudson (206) 856-5700.

EIS No. 910133, Final EIS, FHW, CA, I-5/Santa Ana Freeway Widening and Interchanges I-5/CA-22 and I-5/CA-91 Reconstruction, Funding and Section 404 Permit, Cities of Santa Ana, Orange County, CA, *Due:* June 03, 1991, *Contact:* James J. Bednar (916) 551-1310.

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Dated: April 30, 1991.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 91-10543 Filed 5-2-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3963-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 15, 1991 Through April 19, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1991 (56 FR 14096).

Draft EISs

ERP No. D-AFS-j65170-MT Rating EC2, Moose Creek Timber Sales and Road Construction/Reconstruction, Implementation, Lewis and Clark National Forest, Kings Hill Ranger District, Meagher County, MT.

Summary: EPA is concerned about the preferred alternatives' potential to impact water quality and fisheries. EPA recommends selection of Alternative 5 which appears to meet the Forest Service's timber harvest and management goals while providing a greater degree of environmental protection.

ERP No. D-AFS-j65171-MT Rating EC2, East Fortine Timber Sales and Road Construction Implementation, Kootenai National Forest, Fortine Ranger District, Lincoln County, MT.

Summary: EPA believes that the Forest Service's preferred alternative is environmentally preferable to the other alternatives discussed in the draft EIS. Analysis of sediment impacts on Fortine Creek fisheries should be provided in the final EIS.

ERP No. D-FHW-j40122-WY Rating EO2, Snake River Canyon Highway, Improvement, US 26/89 between Alpine Junction to Hoback Junction, Funding and 404 Permit, Teton and Lincoln Counties, WY.

Summary: EPA believes that more information is needed on the impacts related to wetlands and special aquatic sites.

ERP No. D-UAF-F11018-IL Rating EC2, Chanute Air Force Base (AFS) Disposal and Reuse, Implementation, Champaign County, IL.

Summary: EPA requests additional information concerning radon and asbestos surveys. EPA recommends that the Air Force implement mitigation measures to minimize impacts on water, air quality, noise, and wildlife habitat during base closure and reuse.

Final EISs

ERP No. F-MMS-L01007-AK 1991 Norton Sound Outer Continental Shelf (OCS) Lease Sale, Placer Mining Program, Implementation and Lease Offerings, AK.

Summary: EPA has environmental concerns based on several factors: (1) Uncertainty about what mining technology will prove to be economically feasible in the future, (2) the effect of future gold prices on the development scenarios presented, (3) the significance of the trench habitat to the king crab population, and (4) lack of new data from the Bima monitoring program.

Other

ERP No. LD-NPS-L61191-AK Rating EC2, Gate of the Arctic National Park and Preserve, Use of All-Terrain Vehicles (ATV) for Subsistence on Park Land, City of Anaktuvuk Pass, AK.

Summary: EPA has environmental concerns based on the potential for water quality impacts and the lack of any proposed mitigation. Additional information is needed to clarify the nature of effects on water quality, the basis for the water quality conclusions presented in the draft EIS, and the Chandler Lake Exchange Agreement.

Dated: April 30, 1991.

Richard E. Sanderson,

Director, Officer of Federal Activities.

[FR Doc. 91-10544 Filed 5-2-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3954-3]

Meeting of the Northeast Ozone Transport Commission

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the first meeting of the Northeast Ozone Transport Commission to be held on May 7, 1991. The Clean Air Act Amendments of 1990 require the Administrator of the Environmental Protection Agency to convene, by May 15, 1991, a transport commission to deal with appropriate matters within the transport region. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92-463, as amended.

DATES: The meeting will be held on May 7, 1991.

ADDRESSES: The meeting will be held at: The Hotel St. Moritz, 50 Central Park South, Quarille Room, New York, New York.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, Room 1118, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at section 184 new provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia and requires the Administrator of the Environmental Protection Agency to convene by May 15, 1991 a transport commission to deal with appropriate matters within the transport region.

The purpose of this notice is to announce that this commission will be convened on May 7, 1991 at a meeting to be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of transport commissions are not subject to the provisions of the Federal Advisory Committee Act.

This meeting will be open to the public as space permits.

TYPE OF MEETING: This meeting is open to the general public.

AGENDA: Doors open at 9 a.m. The meeting begins at 10 a.m. and is expected to last until 4:00 p.m. The purpose of the meeting is to establish and organize the commission.

Dated: May 1, 1991.

John S. Seitz,

Director, Office of Air Quality Planning and Standards, Office of Air and Radiation, U.S. Environmental Protection Agency.

[FR Doc. 91-10607 Filed 5-2-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3954-4]

Science Advisory Board, Radiation Advisory Committee; Open Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Radiation Advisory Committee of the Science Advisory Board will meet May 20, 21, 22, 1991 at the, U.S. Environmental Protection Agency, National Air Radiation Environmental Laboratory, 1504 A, Montgomery, Alabama 36115-2601. The meeting will be held in the Auditorium. The meeting will begin at 8:30 a.m. Monday and adjourn no later than 5 p.m. Wednesday.

PURPOSE: The Committee will complete its review of the Idaho Radionuclide Exposure Study, undertake a review of radon risks, and consider a commentary on the radionuclide transport models. The Commtitee will be briefed on the activities and plans of the Nonionizing Electric and Magnetic Fields Subcommittee and also on the activities of the Office of Radiation Protection.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however seating is limited and is on a first come basis. Members of the public wishing to provide oral public comment or have written comment sent to the Committee in advance of the meeting should contact Mrs. Kathleen Conway, Designated Federal Official, or Mrs. Dorothy Clar, Staff Secretary at (202) 382-2552 by 3 p.m. May 17.

Date: April 26, 1991.

Donald G. Barnes,

Director Science Advisory Board.

[FR Doc. 91-10615 Filed 5-2-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-68296A; FRL-3962-7]

Certain Chemical; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-91-12. The test marketing conditions are described below.

EFFECTIVE DATE: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: William B. Lee, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613A, 401 M St., SW., Washington, DC 20460, (202) 382-3769.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-91-12. EPA had determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-91-12:

1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

2. The Company must not release the substance into waters of the United States.

3. The Company may distribute the substance only to persons who agree in writing to not release the substance into waters of the United States.

4. The Company must affix a label to each container of the substance or formulations containing the substance. The label shall include, at a minimum, the following statement:

WARNING: Do not release this substance into waters of the United States. This substance may cause toxicity to aquatic organisms.

5. The applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

a. Records of the quantity of the TME substance produced and the date of manufacture.

b. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

c. Copies of the labels affixed to containers of the substance or formulations containing the substance.

d. Copies of the bill of lading that accompanies each shipment of the substance.

e. Copies of written agreements with customers pertaining to the release to water restrictions.

TME-91-12

Date of Receipt: March 14, 1991.

Notice of Receipt: April 18, 1991 (56 FR 15347).

Applicant: Stepan Company.

Chemical: (G) Alkoxylated diesters.

Use: (G) Lubricants, oil additives, and emulsifiers.

Production Volume: 10,000 lbs.

Number of Customers: 8.

Test Marketing Period: 1.5 years, commencing on first day of commercial manufacture.

Risk Assessment: EPA identified concerns for acute and/or chronic aquatic toxicity based on analogous substances. However, during manufacturing, processing, and use, the submitter is prohibited from releasing the substance into waters of the United States. In addition, the submitter will distribute the substance only to persons who agree in writing to comply with the same release to water restrictions. Therefore, the Agency has determined that the test market activities will not present an unreasonable risk to the environment.

EPA has not identified any significant human health effects associated with the substance. Therefore, the Agency has determined that the test marketing activity will not present an unreasonable risk to human health.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: April 29, 1991.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 91-10532 Filed 5-2-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 25, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under

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the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503 (202) 395-4814.

OMB Number: None.

Title: Section 90.713, Entry Criteria (Report and Order, PR Docket No. 89-552).

Action: New collection.

Respondents: Individuals or households, state or local governments, Businesses or other non-profit (including small businesses).

Frequency of Response: Other: One-time requirement.

Estimated Annual Burden: 50 respondents; 2.5 hours average burden per response; 125 hours total annual burden.

Needs and Uses: Section 90.713 requires applicants for new nationwide systems in the 220-222 MHz band to append additional informationto FCC Form 574 to demonstrate that they meet the entry criteria specified in 47 CFR 90.713. Licensing Division personnel will use the data to determine the eligibility of the applicant to hold a radio station authorization. Land Mobile and Microwave Division personnel will use the data for rulemaking proceedings. Compliance personnel in conjunction with field engineers will use the data for enforcement purposes.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-10444 Filed 5-2-91; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 26, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503 (202) 395-4814.

OMB Number: 3060-0016.

Title: Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station.

Form Number: FCC Form 346.

Action: Revision.

Respondents: Individuals or households, state or local governments, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 1,600 respondents; 28.166 hours average burden per response; 45,066 hours total annual burden.

Needs and Uses: FCC Form 346 is used by licensees/permittees/applicants when applying for authority to construct or make changes in a Low Power Television, TV Translator or TV Booster broadcast station. The form has been revised to include fee processing data and character qualification questions regarding adjudicated actions or pending adjudications of relevant misconduct by broadcast applicants. The data is used by FCC staff to determine if the applicant is qualified, meets basic statutory and treaty requirements and will not cause interference to other authorized broadcast services.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-10445 Filed 5-2-91; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

April 29, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503 (202) 395-4814.

Please note: The Commission has requested emergency review of this item by May 1, 1991, under the provisions of 5 CFR 1320.18.

OMB Number: 3060-0420.

Title: Amendment of part 22 of the Commission's Rules to Revise Certian Filing Procedures for Mobile Services Division Applications.

Action: Reinstatement of a previously appoved collection for which OMB approval has expired.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 16,110 responses; 2 hours average burden per response; 32,220 hours total annual burden.

Needs and Uses: Emergency OMB clearance is sought for the requirement that all non-cellular applications, amendments, correspondence, pleadings, and forms, including attachments, and exhibits of five pages or more to be submitted in paper and microfiche formats. The application forms subject to the microfiche rule are: FCC 489 (3060-0318), FCC 490 (3060-0319), FCC 401 (3060-0046), and FCC 405 (3060-0093). All non-cellular and non-initial cellular applications and all amendments must have certain information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche. The information is used by FCC staff in carrying out its duties as set forth in sections 308 and 309 of the Communications Act. The microfiche requirement will facilitate access to information filed with the Commission, enhance service to the public and allow the FCC to make more efficient use of its resources.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-10585 Filed 5-1-91; 10:57 am]

BILLING CODE 6712-01-M

[DA 91-495]

Advisory Committee on Advanced Television Service Implementation Subcommittee Meeting

Released April 25, 1991.

May 24, 1991, 10 a.m., Commission Meeting Room (room 856), 1919 M Street, NW., Washington, DC

The agenda for the meeting will consist of:

1. Introduction.
2. Minutes of last meeting.
3. Report of working party 1, policy and regulation.
4. Report of working party 2, transition scenarios.
5. General discussion.
6. Other business.
7. Date and location of next meeting.
8. Adjournment.

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairman.

Any questions regarding this meeting should be directed to Dr. James J. Tietjen at (609) 734-2237 or David R. Siddall at (202) 632-7792.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-10538 Filed 5-2-91; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

Intent to Prepare a Supplemental Draft Environmental Impact Statement for the Proposed Acquisition of Land for Construction of Office Space in Northern Virginia for Use by the Department of the Navy

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500-1508), the General Services Administration (GSA) announces its intent to prepare a Supplemental Draft Environmental Impact Statement (SDEIS) for the acquisition of interests in land to construct thereon buildings to house the Naval Systems Command in at least 1,000,000 (one million) occupiable square feet of office and related space. All sites must have the capacity to house at least an additional 1,000,000 (one million) square feet of office and related space available for purchase at the option of the Government. The Navy will act as a cooperating agency during preparation of the EIS pursuant to 40 CFR 1501.6. Acquisition of land will allow the Government to construct office space for the Navy to consolidate its offices, which are scattered in 20 leased buildings in northern Virginia, into one location.

In response to a recent GSA advertisement, the Government received 20 expressions of interest from potential private and public offerors. These responses are listed in this notice in the interests of public information, and must satisfy the Government's site selection criteria in order to be considered as a potential Navy site. The possible alternatives are:

1. No Action—No change in the current pattern of office space usage by the Navy.

2. Franconia—This 72 acre Government-owned site is bounded by the Srpingfield Bypass (currently under construction) to the north, the Gray Concrete and Pipe company to the east, Loisdale Estates to the south, and Loisdale Road to the west.

3. Cameron Station—This 165 acre Government-owned site is bounded by Duke Street to the North, Holmes Run to the east and Backlick Run to the south. Cameron Station is currently under the control of the Department of the Army. Under provisions of the Defense Authorization Amendments and Base Closure and Realignment Act of 1988, Cameron Station is scheduled to be closed by 1995 and the land may be transfered or sold to other Federal, state or local agencies, or to the general public.

4. Cameron Run—This 21 acre privately-owned site is bounded by RF&P right-of-way to the north. Bluestone Road to the East, Eisenhower Avenue to the south, and Lake Cook to the West.

5. Van Dorn Street—This 32.6 acre privately-owned site is bounded by the creek abutting the Southern Railroad yard to the north, by the proposed intersection of Clearmont Drive and Eisenhowever Avenue to the east and south.

6. Seminary Road—This 55 acre privately-owned site is bounded by Seminary Road to the north, I-395 to the east, and North Beauregard Street to the West.

7. Potomac Greens—This 36 acre privately-owned site is approximately 2,200 feet south of Four Mile Run and 1,500 feet north of Slaters Lane, and is bounded by the George Washington Memorial Parkway to the east and the Metrorail right-of-way to the west.

8. Port Potomac—This 27.6 acre privately-owned site is bounded by Crystal City to the north, the RF&P railroad mainline right-of-way to the east, South Glebe Road extension to the south, and Jefferson David Highway and Crystal Drive to the west.

9. Crystal City—This privately-owned site includes the 16.8 acre Hayes Street site, which is bounded by Hayes Street to the west, 15th Street to the south, South Fern Street to the east and 12th Street to the north, and several existing buildings (Crystal Gateway 1, 2, and 3, Jefferson Plaza 2) bounded on the north by 12th Street, on the east by Crystal Drive, on the South by 15th Street, and on the west by South Clarke Street.

10. Gallows Road—This 23 acre privately-owned site is bounded by Gatehouse Road to the north, I-495 to the east, Route 50 to the south, and Gallows Road to the west.

11. Kingstown—This 150 acre privately-owned site is bounded by King Center Parkway to the north and west, Van Dorn Street to the east, and South King Center Drive to the south.

12. Cherokee Avenue—This 50 acre privately-owned site is bounded by Indian Run Park to the north and east, Cherokee Avenue to the south, and Shawnee Road to the west.

13. Bush Hill—This 59.4 acre privately-owned site is composed of three parcels; the first parcel is bounded by I-95 to the north, Overly Drive and Larpin Lane to the east, and Janes Way Court and Nevill Court to the south; the second parcel is bounded by RF&P railroad right-of-way to the north, I-95 to the south, and the end of Vine Street to the West; the third parcel is bounded by Eisenhower Avenue to the north, the City of Alexandria Boundary Line to the south, and is about 1,000 feet west of Cleremont Avenue.

14. Turkeycock Run—This 115 acre privately-owned site is bounded by I-395 to the north and west, Turkeycock Run to the east, and Edsal Road to the south.

15. Industrial Road—This 100 acre privately-owned site is bounded by Spring Mall Road to the north, Elder Road to the east, the intersection of Elder Road and Melia Avenue to the south, and Loisdale Road to the west.

16. (Omitted).

17. Tysons Corner—This 19.9 acre privately-owned site consists of four existing buildings and associated parcels located near the intersection of Tysons Blvd. and Tysons Parkway.

18. Clarendon—This site consists of a 1.72 acre privately-owned parcel generally bounded to the northeast by 13th Street, to the southeast by Wilson Blvd., to the southwest by Herdan Steet, and to the northwest by Hartford Steet; and other parcels totaling 6.21 acres generally bounded to the north by Clarendon Blvd., to the east by Fillmore Street, to the south by Washington Blvd., and to the west by Highbard Street.

19. South Fern Street—This privately-owned 27.67 acre site is bounded to the north by Army-Navy Drive, to the east by South Eads Street, to the south by

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15th Street, and to the west by South Fern Street.

20. Eisenhower Avenue—This 18.8 acre privately-owned site is bounded by Mill Road to the north and east, Eisenhower Avenue to the south and Stoval Street to the west.

Potential environmental impact resulting from the proposed action include short term impacts during construction, and long term changes in traffic, socio-economic and fiscal conditions. GSA will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this proposed action. A public scoping meeting will be held on May 14, 1991, starting at 7 p.m. in the auditorium of the Lee Center located at 1106 Jefferson Street, Alexandria, Virginia; on May 15, 1991, starting at 7 p.m. at the Aurora Hills Recreation Center located at 735 South 18th Street, Arlington, Virginia; and on May 16, 1991, starting at 7 p.m. at the Hayfield High School Lecture Room located at 7630 Telegraph Road, Alexandria, Virginia. A short formal presentation will precede the request for public comments. GSA represenatatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that Federal, state and county agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the SDEIS. In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes.

Agencies and the general public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address.

Written statements and/or questions regarding the scoping process should be mailed no later than May 31, 1991, to Mr. George Chandler—WPL, National Capitol Region, General Services Administration, 7th & D Streets SW., room 7062, Washington, DC 20407 (telephone (202) 708–5334).

Dated: April 30, 1991.

Daniel Neal,

Deputy Director, NCR Planning Staff.

[FR Doc. 91–10594 Filed 5–3–91; 8:45am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Workshop on Health Assessments; Meeting

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the following meeting.

Name: Workshop on Health Assessments.

Time and Date: 8 a.m.–5 p.m., May 20, 1991, 8 a.m.–2:30 p.m., May 21, 1991.

Place: Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia 22202.

Status: Open to the public for observation and participation, limited only by the space available. The meeting room accommodates approximately 100 people.

Matters to be Considered: The meeting will convene a group of interested parties to discuss the ATSDR Health Assessment process. The ATSDR Health Assessment is the evaluation of data and information on the release of hazardous substances into the environment in order to assess any current or future impact on public health, develop health advisories or other recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects. The group will consider such areas as the Health Assessment definition and purpose, scope and limitations, initiation, roles of ATSDR staff, ATSDR-public interaction, steps and activities in a health assessment, and possible follow-up health activities.

Oral comments will be scheduled at the discretion of the meeting facilitator and as time permits.

Contact Person for More Information: Lydia Ogden Askew, Community Involvement Liaison, Division of Health Assessment and Consultation, ATSDR (MS E32), 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639–0610 or FTS 236–0610 (24 hour telephone 404/330–9543).

Dated: April 26, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 91–10476 Filed 5–3–91; 8:45am]

BILLING CODE 4160–70–M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in May–June

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the months of May–June 1991.

The initial review committees and the Advisory Committee on Substance Abuse Prevention will be performing review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 522b(c)(6) and 5 U.S.C. app. 2 10(d).

The Advisory Committee of the Task Force on Homelessness and Severe Mental Illness will be open and will include discussion of clinical/service system issues and housing issues relevant to the homeless mentally ill population. Due to security requirements, it will be necessary to register your intent to attend with the contact person listed below.

Notice of these meetings is required under the Federal Advisory Committee Act, Public Law 92–463.

Committee Name: Advisory Committee of the Task Force on Homelessness and Severe Mental Illness, NIMH.

Date and Time: May 22: 9 a.m.

Place: Hubert H. Humphrey Building, Stonehenge Conference Room 615F, 200 Independence Avenue, SW., Washington, DC.

Status of Meeting: Open—May 22: 9 a.m.–5 p.m.

Contact: Irene Levine, room 7C–08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3706.

Purpose: The Committee provides advice and assistance to the Task Force concerning reaching, treating, and improving access to needed services for severely mentally ill homeless persons, and approaches to preventing homelessnes among severely mentally ill people.

Committee Name: Advisory Committee on Substance Abuse Prevention, OSAP.

Date and Time: May 30–31: 9 a.m.

Place: Executive Plaza North, 6130 Executive Boulervard, Rockville, MD 20852.

Status of Meeting: Open—May 30: 9 a.m.–12 p.m. May 31: 2–5 p.m. Closed—Otherwise.

Contact: DeLoris Hunter, room 9D–08, Rockwall II Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0365.

Purpose: The committee advises the Secretary, the Assistant Secretary for Health, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, Office for Substance Abuse Prevention, on program and policy matters in the field of substance abuse prevention. The committee also may provide final review of any grant or contrqact proposed to be made or entered into by the Office for Subtance Abuse Prevention.

Committee Name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Reserach Review Committee, NIAAA.

Date and Time: June 3–4: 8 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Status of Meeting: Open—June 3: 6–8:30 a.m. Closed—Otherwise

Contact: Ronald Suddendorf, room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of researching and training activities and makes recommendations to the National Advisory council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Cellular Neurobiology and Psychopharmacology Subcommittee of the Neuroscience Research Review Committee, NIMH.

Date and Time: June 3–5: 8 a.m.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037

Status of Meeting: Open—June 3: 8–9 a.m. Closed—Otherwise.

Contact: Camille Sookram, room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.

Purpose: The subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to cellular neurobiology and psychopharmacology with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Epidemiology Subcommittee of the Epidemiologic and Services Research Committee, NIMH.

Date and Time: June 3–5: 9 a.m.

Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

Status of Meeting: Open—June 3: 9–10 a.m. Closed—Otherwise.

Contact: Gloria Yockelson, room 9C–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0946.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Epidemiology and Prevention Subcommmittee of the Alcohol Psychosocial Research Review Committee, NIAAA.

Date and Time: June 3–5: 9 a.m.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Status of Meeting: Open—June 3: 9–10 a.m. Closed—Otherwise.

Contact: Lenore Sawyer Radloff, room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Clinical and Behavioral Sciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH.

Date and Time: June 5–7: 8:30 a.m.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Status of Meeting: Open—June 5: 8:30–9:30 a.m. Closed—Otherwise.

Contact: Sheri Schwartzback, room 9C–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4843.

Purpose: The Subcommittee is charged with the initial review of applications for research in all disciplines pertaining to mental health for support of research in the areas of psychology, psychiartry, the behavioral and biological sciences, and epidemiology.

Committee Name: Aging Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.

Date and Time: June 6–7: 9 a.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Status of Meeting: Open—June 6: 9–10 a.m. Closed—Otherwise.

Contact: Phyllis Zusman, room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to mental health, in the fields of child, family, and aging, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Behavioral Neurobiology Subcommittee of the Neurosciences Research Review Committee, NIMH.

Date and Time: June 6–8: 8:30 a.m.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, Washington, DC.

Status of Meeting: Open—June 6: 8:30–9:30 a.m. Closed—Otherwise.

Contact: William Radcliffe, III, room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants relating to behavioral neurobiology, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Board of Scientific Counselors, NIMH.

Date and Time: June 6–8: 8:30 a.m.

Place: National Institutes of Health, Director's Library, Room 4N–228, Building 10, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open—June 6: 8:30–9 a.m. Closed—Otherwise.

Contact: Steven M. Paul, National Institute of Mental Health, Building 10, room 4N–224, 9000 Rockville Pike, Bethesda, MD 20892, (301) 496–3501.

Purpose: The Board provides expert advice to the Director of Intramural Research and the Acting Director, National Institute of Mental Health, on the mental health intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of producitivity and performance of staff scientists.

Committee Name: Cognition, Emotion, and Personality Research Review Committee, NIMH.

Date and Time: June 6–8: 9 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 2814.

Status of Meeting: Open—June 6: 9–10 a.m. Closed—Otherwise.

Contact: Linda Kepperling, room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3944.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the fields of personality, cognition, emotion, and higher mental processes with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Mental Health Behavioral Sciences Research Review Committee, NIMH

Date and Time: June 6–8: 9 a.m.

Place: Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting: Open—June 6: 9–9:30 a.m. Closed—Otherwise.

Contact: Bernice Cherry, room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to science areas relevant to mental health and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Services Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.

Date and Time: June 10–12: 9–10 a.m.

Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

Status of Meeting: Open—June 10: 9–10 a.m. Closed—Otherwise.

Contact: Gloria Yockelson, room 9C–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0946.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and

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research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Drug Abuse Clinical and Behavioral Research Review Committee, NIDA.

Date and Time: June 11–14: 9 a.m.

Place: Brazilian Court, Hibiscus A Room, 301 Australian Avenue, Palm Beach, FL 33480.

Status of Meeting: Open—June 11: 9–9:30 a.m. Closed—Otherwise.

Contact: Daniel Mintz, room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9042.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Drug Abuse Epidemiology and Prevention Research Review Committee, NIDA.

Date and Time: June 11–14: 9 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Status of Meeting: Open—June 11: 9–10 a.m. Closed—Otherwise.

Contact: Raquel Crider, room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9042.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.

Date and Time: June 12: 8:30 a.m.

Place: Brazilian Court Hotel, Peruvian Room, 301 Australian Avenue, Palm Beach, FL 33480.

Status of Meeting: Open—June 12: 8:30–9 a.m. Closed—Otherwise.

Contact: Rita Liu, room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Criminal and Violent Behavior Research Review Committee, NIMH.

Date and Time: June 13–14: 9 a.m.

Place: Quality Hotel Downtown, 1315 16th Street, NW., Washington, DC 20036.

Status of Meeting: Open—June 13: 9–10 a.m. Closed—Otherwise.

Contact: Bernice Cherry, room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the mental health aspects of antisocial, criminal, and individual violent behavior, including sexual assault and victimization, and law-mental health interactions related to these areas, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Pharmacology I Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.

Date and Time: June 12–14: 8:30 a.m.

Place: Brazilian Court Hotel, Chilian B. Room, 301 Australian Avenue, Palm Beach, FL 33480.

Status of Meeting: Open—June 12: 8:30–9 a.m. Closed—Otherwise.

Contact: Syed Husain, room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Pharmacology II Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.

Date and Time: June 12–14: 8:30 a.m.

Place: Brazilian Court Hotel, 301 Australian Avenue, Palm Beach, FL 33480.

Status of Meeting: Open—June 12: 8:30–9 a.m. Closed—Otherwise.

Contact: Gamil Debbas, room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD, 20857, (301) 443–2620.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.

Date and Time: June 13–15: 9 a.m.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Status of Meeting: Open—June 13: 9–10 a.m. Closed—Otherwise.

Contact: Christine Norton, room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3657.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to mental health in the fields of child, family and aging, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.

Date and Time: June 13: 2 p.m., June 14–16: 8 a.m.

Place: Radisson Suite Beach Resort, 869 South Collier Boulevard, Marco Island, FL 33937.

Status of Meeting: Open—June 13: 2–3 p.m., Closed—Otherwise.

Contact: Antonio Noronha, room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4375

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Psychopathology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH.

Date and Time: June 19–21: 9 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814

Status of Meeting: Open—June 19: 9–10 a.m. Closed—Otherwise.

Contact: Tammy Cross, room 9C–08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1340.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: June 21: 9 a.m.

Place: The Washington Vista Hotel, 1400 M. Street, NW., Washington, DC 20036.

Status of Meeting: Open—June 21: 9–10 a.m. Closed—Otherwise.

Contact: Frances Smith, room 9C–02, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4566.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities in the area of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: June 24–25: 9 a.m..

Place: Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA.

Status of Meeting: Open—June 24: 9–10 a.m. Closed—Otherwise.

Contact: Helen Craig, room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Subcommittee is charged with the initial review of applications for

assistance from the National Institute of Mental Health for support of research and/or research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Small Business Research Review Committee, NIMH.

Date and Time: June 24–25: 9 a.m..

Place: River Inn, 924 25th Street, NW., Washington, DC 20037.

Status of Meeting: Open—June 24: 9–10 a.m. Closed—Otherwise.

Contact: Gloria Levin, room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications requesting support from the National Institute of Mental Health for small businesses involved in mental health research. Final review and recommendations are made from the National Advisory Mental Health Council.

Committee Name: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA.

Date and Time: June 24–26: 9 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Status of Meeting: Open—June 24: 9–10 a.m. Closed—Otherwise.

Contact: Thomas D. Sevy, room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Substantive in formation, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, room 16C–20, (301) 443–4375; Ms. Camilla Holland, NIDA Committee Management Officer, room 10–42, (301) 443–2755; Ms. Joannna Kieffer, NIMH Committee Management Officer, room 9–105, (301) 443–4333; Ms. Sally York, OSAP Committee Management Officer, room 630, Rockwall II Building, (301) 443–7389. The mailing address for the above parties is: Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: April 30, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–10482 Filed 5–2–91; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 90N–0482]

Nutritional Therapy and Nutrition Education in Care and Management of AIDS Patients; Report; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report on current theories and beneficial clinical practices concerning the role of nutritional support in the care of patients with acquired immunodeficiency syndrome (AIDS). The report was prepared by the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB).

DATES: The report became available publicly on March 15, 1991.

ADDRESSES: Requests for a copy of the report should be sent to FASEB's Special Publication Office, Federation of American Societies for Experimental Biology, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, along with $15 to cover the cost. In the near future, the report will be available from the National Technical Information Service, 5275 Port Royal Rd., Springfield, VA 22161. Copies are on display at the Life Sciences Research Office, FASEB (address above) and at the Docket Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. The report is available for public examination at LSRO and at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Yetley, Center for Food Safety and Applied Nutrition (HFF–265), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0067.

SUPPLEMENTARY INFORMATION: FDA has a contract (223–88–2124) with FASEB concerning the analysis of scientific issues in food and cosmetic safety. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with food and cosmetic safety. In the **Federal Register** of December 11, 1989 (54 FR 50822), FDA announced that it has asked LSRO of FASEB, as a task under the contract, to secure information on current theories and beneficial clinical practices concerning the role of nutritional support in the care of patients with AIDS. In the **Federal Register** of April 12, 1990 (55 FR 13847), FDA announced the availability of LSRO's tentative report and provided for public comment.

FDA is now announcing that the report on nutritional therapy and nutrition education in the care and management of patients with AIDS became available to the public on March 15, 1991.

Dated: April 26, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–10483 Filed 5–2–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91N–0072]

Superpharm Corp.; Withdrawal of Approval of Abbreviated New Drug Application for Ibuprofen Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of abbreviated new drug application (ANDA) 70–706 for Ibuprofen Tablets 400 milligrams held by Superpharm Corp. (Superpharm), 1769 Fifth Ave., Bayshore, NY 11706. FDA is withdrawing approval of this application because it contains untrue statements of material fact, and the drug covered by this application is not shown to be safe and lacks substantial evidence of effectiveness. Superpharm has waived its opportunity for a hearing on this product.

EFFECTIVE DATE: May 3, 1991.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 8, 1991 (56 FR 9957), FDA offered an opportunity for a hearing on a proposal to withdraw approval of ANDA 70–706 held by Superpharm. The grounds for the proposal were that the application contains untrue statements of material fact and that the drug covered by the application is not shown to be safe and lacks substantial evidence of effectiveness for its labeled

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indications. In response to the notice, by letter dated March 14, 1991, Superpharm waived its opportunity for a hearing on the product and consented to the entry of an order withdrawing approval of the application.

Accordingly, the Director of the Center for Drug Evaluation and Research, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)), and under authority delegated to him (21 CFR 5.82), finds that (1) ANDA 70-708 contains untrue statements of material fact (21 U.S.C. 355(e)(5)); (2) new evidence of clinical experience, not contained in the application or not available until after the application was approved, evaluated together with the evidence available to him when the application was approved, shows that the drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved (21 U.S.C. 355(e)(2)); and (3) on the basis of new information before him with respect to the drug, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling (21 U.S.C. 355(e)(3)).

Therefore, pursuant to the foregoing finding, approval of ANDA 70-708, and all its amendments and supplements, is hereby withdrawn, effective May 3, 1991. Shipment in interstate commerce of the product listed above will then be unlawful.

Section 505(j)(6)(C) of the act requires that FDA remove from its approved product list (FDA's publication "Approved Drug Products with Therapeutic Equivalence Evaluations") (the list) any drug whose approval was withdrawn for grounds described in the first sentence of section 505(e) of the act. Such grounds apply to the withdrawal of approval of the product listed above. Notice is hereby given that the drug covered by ANDA 70-708 will be removed from the list.

Dated: April 22, 1991.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 91-10684 Filed 5-2-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Indiana State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on June 4, 1991, in the 15th Floor Conference Room, 105 W. Adams Street, Chicago, Illinois to reconsider our decision to disapprove Indiana State Plan Amendment 90-09.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, Telephone: (301) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Indiana State Plan amendment (SPA) number 90-09.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Indiana submitted SPA 90-09 on May 1, 1990 requesting protection under the moratorium for its policy that exempts income-producing property from counting toward the resources limit in certain circumstances. It is requesting such protection beginning on October 1, 1991. The State indicated that the policy would apply to the aged, blind, and disabled in mandatory eligibility groups.

The issues in this matter are: (1) Whether Indiana's proposal qualifies for protection under section 2373(c) of the Deficit Reduction Act of 1984 (DEFRA); and (2) whether including the State's proposal as part of the State plan under the authority of 1902(r)(2) of the Act would violate Federal regulations at 42 CFR 430.20 and the appropriations statutes which govern the Department of Health and Human Services' spending authority.

Under section 2373(c) of DEFRA, as amended, a State is protected during the moratorium period against any compliance, disallowance, penalty, or other regulatory action by the Secretary because of certain State policies that are more liberal than those in section 1902(a)(10) of the Act. The moratorium period began October 1, 1981, and ended February 17, 1989. Policies can be protected during the moratorium only if they are more liberal than required under section 1902(a)(10)(A)(ii) (IV), (V), or (VI) or section 1902(a)(10)(C) of the Act. The effect of this restriction is to protect more liberal policies that are applicable to certain eligibility groups whose coverage is at the option of the State (as compared to groups whose coverage is mandatory).

The moratorium provision does not authorize the Secretary to approve amendments as part of the official State plan. The provision merely permits States to use more liberal eligibility policies during the moratorium without fiscal penalties. Therefore, if a plan amendment meets the moratorium requirements, it is disapproved for inclusion in the official State plan but is given moratorium protection. HCFA believes the State policy in SPA 90-09 is more liberal than the policy of the Supplemental Security Income program that would otherwise have applied during the moratorium under section 1902(a)(10) of the Act. Therefore, HCFA believes the policy cannot be approved as a plan amendment. Further, because the State would apply the policy to mandatory, as opposed to the optional eligibility groups identified in the moratorium, the State cannot be protected by the moratorium from fiscal penalties.

Moreover, HCFA believes the request for protection could not be approved as a State plan amendment because it violates 42 CFR 430.20 and the appropriation statutes which govern the Department of Health and Human Services' spending authority. This is because the "amendment" would liberalize Indiana's eligibility rules with retroactive effect for a period prior to the beginning of the calendar quarter in which it was submitted.

The notice to Indiana announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Ms. Marilyn Scales
Acting Commissioner
Department of Public Welfare
Room 701
100 North Senate Avenue
Indianapolis, Indiana 46204

Dear Ms. Scales:

I am responding to your request for reconsideration of the decision to disapprove Indiana State Plan Amendment (SPA) 90-09.

Indiana submitted SPA 90-09 on May 1, 1990 requesting protection under the moratorium for its policy that exempts income-producing property from counting toward the resources limit in certain circumstances. The State is requesting such protection beginning on October 1, 1991.

The issues in this matter are: (1) Whether Indiana's proposal qualifies for protection under section 2373(c) of the Deficit Reduction Act of 1984 (DEFRA); and (2) whether including the State's proposal as part of the State plan under the authority of 1902(r)(2) of the Social Security Act would violate Federal regulations at 42 CFR 430.20 and the appropriations statutes which govern the Department of Health and Human Services' spending authority.

I am scheduling a hearing on your request for reconsideration to be held on June 4, 1991, at 10 a.m. in the 15th Floor Conference Room, 105 W. Adams Street, Chicago, Illinois. If this date is not acceptable, we will be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed in 42 CFR part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk may be reached at (301) 597-3013.

Sincerely,

Gail R. Wilensky,

Administrator.

cc: Regional Administrator, Chicago

Authority: Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: April 17, 1991

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-10601 Filed 5-2-91; 8:45 am]

BILLING CODE 4120-03-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on April 19, 1991.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. SSI Application Survey—0960-0000—The information collected on the form SSA-2244 will be used by the Social Security Administration (SSA) to determine what additional methods could be utilized to contact individuals who might be eligible for Supplemental Security Income (SSI) benefits. Without this information SSA would not be able to advise certain individuals of their rights to apply for benefits under the Social Security Act. The affected public consists of elderly SSI applicants.

Number of Respondents: 400
Frequency of Response: 1
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 33.3 hours

2. Certification By A Religious Group—0960-0093—The information collected on the form SSA-1458 is used to determine whether or not a specific religious group and it's members qualify for the self-employment tax exemption. The affected public is comprised of certain religious groups.

Number of Respondents: 180
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 45 hours

3. Statement of Self-Employment Income—0960-0046—The information collected on the form SSA-766 is used to determine if an individual will have at least the minimum amount of self-employment income needed for one or more quarters of coverage in the current year. The affected public is comprised of applicants who lack 1-4 quarters of coverage to be eligible for Social Security benefits.

Number of Respondents: 5,000
Frequency of Response: 1
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 416 hours

4. Statement Regarding Date of Birth and Citizenship—0960-0016—The information collected on the form SSA-702 is used to establish a claimant's age or citizenship. The affected public consists of individuals with a knowledge of the date of birth or the citizenship of an applicant.

Number of Respondents: 18,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 3,000 hours

5. Application For Lump-Sum Death Payment—0960-0013—The information collected on the form SSA-8 is used to determine the eligibility of an applicant for the lump-sum death payment. The affected public is comprised of one of the following: Legal representative, widow(er) or child of the deceased.

Number of Respondents: 735,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 122,500 hours

OMB Desk Officer: Allison Herron.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: April 25, 1991.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 91-10179 Filed 5-2-91; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-91-3265]

Privacy Act of 1974 New System of Records

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notice of new system of records.

SUMMARY: The Department is giving notice of a system of records it intends to maintain which is subject to the Privacy Act of 1974. This new system is entitled, "ADP Security Clearance Information System," HUD/DEPT-62. It will permit the tracking of scheduled and completed access and security clearance investigations of current,

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former, and prospective HUD employees, as well as contractor personnel, assigned to sensitive positions related to ADP systems.

EFFECTIVE DATE: This proposal shall become effective without further notice in 30 calendar days (June 3, 1991) unless comments are received during or before that date which would result in a contrary determination.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708-2084). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: For Privacy Act: Donna L. Eden, Departmental Privacy Officer, Telephone Number (202) 708-0050. For Program: Les Graham, Director, ADP Security Staff, Telephone Number (202) 708-0302. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The system, HUD/DEPT-82, ADP Security Clearance Information System, will consist of disks and file folders of current, former, and prospective HUD employees, as well as contractor personnel, assigned to sensitive positions related to ADP systems. The records are filed alphabetically and contain social security number, position sensitivity classification, location of invdividual, dates and types of investigations, and dates and levels of clearances.

A report of the Department's intention to establish the system has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Authority: 5 U.S.C. 552a, 88 Stat. 1896; sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Issued at Washington, DC April 18, 1991.

Jim E. Tarro,

Assistant Secretary for Administration.

HUD/DEPT-82

System name:

ADP Security Clearance Information System.

Security classification:

Sensitivity–S3. Serious risk. Disclosure or alteration of data rated S3 could seriously threaten the organization or its mission.

Criticality–C1. Useful. The system warrants neither a specific contingency plan nor any concern during recovery.

System location:

Headquarters.

Categories of individuals covered by the system:

All current, former, and prospective HUD employees, as well as contractor personnel, assigned to sensitive positions related to ADP systems.

Categories of records in the system:

The system contains the name, social security number, position sensitivity classification, location of individual, dates and types of investigations, and dates and levels of clearances.

Authority for maintenance of the system:

Authority for maintenance of the system includes the following with any revisions or amendments: Executive Order 10450 and Executive Order 12065; and, the Housing and Community Development Act of 1987 (42 U.S.C. 3543).

Purpose:

The records are used for administrative reference to schedule and control background investigations of HUD personnel, as well as contractor personnel, who have access to sensitive systems of HUD.

Routine uses of records maintained in the system, including categories of users and purposes of such uses:

See Routine Uses paragraphs in prefatory statement. Other Routine Uses: to officials of labor organizations recognized under 5 U.S.C. Chapter 71—(1) notice of the sensitivity level of all sensitive systems, which will be updated annually; (2) lists of bargaining unit positions designated as sensitive (provided periodically); (3) schedule of bargaining unit positions which require background investigations; (4) notice at the time an employee's access is removed from sensitive systems as a result of any adverse action; and (5) when possible, intent to perform planned reviews of ADP security in a specific work environment.

Policies and practices for storing retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored on disks, in computers with limited access, and in file folders.

Retrievability:

Records are retrieved by the name, location, or social security number of an individual.

Safeguards:

The disks, and file folders are kept in a secured area; access restricted to authorized individuals. The disks and file folders do not leave the Office of Information Policies and Systems.

Retention and disposal:

Most records are retained for one year after the individual leaves HUD and then are disposed of by erasing the disks or shredding the files.

System manager and address:

ADP Security Officer, ADP Security Staff, Office of Information Policies and Systems, 451 7th Street, SW., Washington, DC 20410.

Notification procedure:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR part 16. A list of all locations is given in Appendix A.

Record access procedures:

The Department's rules for providing access to records to the individual concerned appears in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

Contesting records procedures,

The Department's rules contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the Headquarters location, which is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Record source categories:

Subject individuals.

[FR Doc. 91-0494 Filed 5-2-91; 8:45 am]

BILLING CODE 4210-01-M

Office of Administration

[Docket No. N-91-3261]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 11, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Section 8 Housing Assistance Program for the Disposition of HUD-Owned Project.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Section 886.311a of the Housing Assistance Program (HAP) Contract stipulates that at least 90 days before the expiration of the contract term, the owner will notify each family that they will no longer be assisted and of the increased rental they will be required to pay.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: Other.

Reporting Burden:

	No. of respondents	Frequency of response	Hours per response	Burden hours
Information Collection	[illegible]	11	1	486

Total Estimated Burden Hours: 486.

Status: Reinstatement.

Contact: Donald Myers, HUD, (202) 708-4280, Wendy Sherwin, OMB, (202) 395-6880.

Dated: March 11, 1991.

[FR Doc. 91-10533 Filed 5-2-91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-91-3262]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; 8) whether the

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proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 27, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Monitoring and Technical Assistance Handbook for the Congregate Housing Services Program (CHSP), Handbook 4640.1.

Office: Housing.

Description of the Need for the Information and its Proposed Use:

This information is needed for regular reporting for biennial renewals, no-cost extension, updates and narratives needed to meet grant terms. This report must be filled out by tenants in order for grantees to determine their eligiblity for benefits. The information is used by HUD to monitor reports and guidelines.

Form Number: None.

Respondents: Non-Profit Institutions and Small Businesses or Organizations.

Frequency of Submission: On Occasion, Monthly, Quarterly, Annually, and Biennially.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Budget Formats	59		1		3		177
Quarterly Program Report	59		3		2		354
Annual Program Report	59		1		4		236
Application to CHSP	59		2		5		590

Total Estimated Burden Hours: 1,355.

Status: Extension.

Contact: Jerold Nachison, HUD, (202) 708-3291, Wendy Sherwin, OMB, (202) 395-6880.

Dated: March 27, 1991.

[FR Doc. 91-10491 Filed 5-2-91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-91-3263

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20401, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice listed the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 22, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: 24 CFR parts 215, 236, and 886—Definition of Income, Rents, and Recertification of Family Income for the Rent Supplement, section 236 and Section 8 Special Allocation Programs.

Office: Housing.

Description of the Need for the Information and its Proposed Use:

This information will be used by the project owner to advise HUD and request approval of new utility allowances when the utility rate change results in a cumulative increase of 10 percent or more. If periodic adjustments to the utility allowance are not made, tenants would be required to pay a larger total tenant payment than is permissible.

Form Number: None.

Respondents: State or Local Governments and Businesses or Other For-Profit and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	No. of Respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
Periodic Requests	1,200		1		0.5		600

Total Estimated Burden Hours: 600.

Status: Extension.

Contact: James J. Tahash, HUD, (202) 708-3944, Wendy Sherwin, OMB, (202) 395-6880.

Dated: April 22, 1991.

[FR Doc. 91-10492 Filed 5-2-91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-91-3264]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephne (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 24, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Requirements Governing the Lobbying of HUD Personnel FR-2732.

Office: Administration.

Description of the Need for the Information and its Proposed Use: The proposed rule will require each person who makes expenditures totalling $10,000 or more in a calendar year to influence a Departmental decision to report on their expenditures to HUD. It also requires lobbyists retained to influence a Departmental decision to register and report annually on receipts totalling $10,000 or more.

Form Number: HUD-2881-A, HUD-2881-B, HUD-2882-B, and HUD-2883.

Respondents: Individuals or Households, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations.

Frequency of Submission: Annually.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	3,722		1		3.824		14,233

Total Estimated Burden Hours: 14,233.

Status: New.

Contact: Melvin Bell, HUD, (202) 708-3615, Wendy Swire, OMB, (202) 395-6880.

Dated: April 24, 1991.

[FR Doc. 91-10493 Filed 5-2-91; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1817; FR-2934-N-24]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: May 3, 1991.

ADDRESS: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a notice in the **Federal Register** identifying the properties determined as suitable.

With one exception, the properties in today's notice were published during the

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first quarter of 1991. These properties have been reviewed for suitability for use as facilities to assist the homeless and are being republished as part of HUD's complete resurvey of Federal landholding agencies. The properties identified as suitable in this notice have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable and available in this notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857 (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 60 days from the date of this notice. For complete details concerning the processing of applications, the reader is encouraged to refer to HUD's **Federal Register** notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

This notice also contains a list of properties (including one not previously published) determined by HUD to be unsuitable for use as facilities to assist the homeless. These properties will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405 (202) 501-0067; Dept. of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10317, Washington, DC 20590 (202) 366-5601. (These are not toll-free numbers.)

Dated: April 26, 1991.

Russell K. Paul,

Deputy Assistant Secretary for Grant Programs.

Suitable/Available

California

Suitable Land (by Agency)

GSA

Receiver Site
Dixon Relay Station
7514 Radio Station Road
Dixon, CA 95620-9653
Location: Approximately 16 miles southeast of Dixon, CA. **Federal Register** notice date: 05/03/91
Property Number: 549010042
Status: Excess
Base Closure: No
Comment: 80 acres: 1500 sq. ft.; radio receiver bldg. on site; subject to grazing lease; limited utilities.
GSA No. 9-3-CA-1162-A.

Suitable Buildings (by Agency)

Table Bluff Light Station
Near Loleta, CA
Humboldt, CA, Co: Humboldt 95414
Location: US 101, Take Hookton Road exit, follow Hookton Road for approximately 5 miles (road becomes Table Bluff Road) property on left; west of Light House Ranch. **Federal Register** notice date: 05/03/91
Property Number: 549010039
Status: Excess
Base Closure: No
Comment: 210 sq. ft.; 1 story concrete, needs rehab, subject to access easement, most recent use—storage.
GSA NO. 9-GR-1-CA-683-A.

Building on 0.5 acres
Madera Employment Training Center
Adjacent to Former Madera Employ. Trng. Ctr.
Madera, CA, Co: Madera 93638
Location: Located near 19500 Road 28 1/2
Federal Register notice date: 05/03/91
Property Number: 549010063
Status: Excess
Base Closure: No
Comment: 800 sq. ft., concrete/wood building, possible asbestos, access is from the Former Training Center, most recent use—storage building on 0.5 acres.
GSA NO. 9-G-CA-884A.

Suitable Land (by Agency)

Receiver Site
Delano Relay Station
Route 1, Box 1350,
Delano, CA Co: Tulare 93215
Location: 5 miles west of Pixley, 17 miles north of Delano. **Federal Register** Notice date: 05/03/91
Property Number: 549010044
Status: Excess.
Base Closure: No
Comment: 81 acres, 1580 sq. ft.—radio receiver bldg on site, subject to grazing lease, potential utilities.
GSA NO. 9-2-CA-1308.

Idaho

Suitable Buildings (by Agency)

GSA

Tract BC-3
Ditchrider House #704
SE. 4th Avenue
Payette, ID, Co: Payette 83661
Location: 1.25 miles east of Highway 30, 5.5 miles southeast of New Plymouth, ID. **Federal Register** notice date: 05/03/91.
Property Number: 549010016
Status: Excess
Base Closure: No
Comment: 866 sq. ft., 1 story wood frame with ½ basement, most recent use—residence
GSA NO. 9-I-ID-553.

Tract BC-4
Ditchrider House #716
SE. 2nd Avenue
Payette, ID, Co: Payette 83661
Location: 1.25 miles west of Highway 30, 2.5 miles SW. of New Plymouth, ID. **Federal Register** notice date: 05/03/91
Property Number: 549010017
Status: Excess
Base Closure: No
Comment: 900 sq. ft., 1 story wood frame with unfinished basement, most recent use—residence.
GSA NO. 9-I-ID-543.

Louisiana

Suitable Buildings (by Agency)

GSA

Federal Building
Mississippi and Vienna Streets
Ruston, LA, Co: Lincoln Parish 71273
Federal Register Notice date: 05/03/91
Property Number: 549040005
Status: Excess
Base Closure: No
Comment: 3492 sq. ft., two story, most recent use—office, listed on National Register of Historic Places.
GSA NO. 7-G-LA-0541.

Massachusetts

Suitable Land (by Agency)

GSA

Por of Former Navy Am.no. Plt.
Fort Hill Street
Hingham, MA, Co: Plymouth 02043
Location: Across from bus company parking garage.
Federal Register Notice date: 05/03/91
Property Number: 549030017
Status: Excess
Base Closure: No
Comment: 1.129 acres, gravel pavement, most recent use—parking lot.
GSA NO. 2-GR-MA-591B.

Maryland

Suitable Buildings (by Agency)

GSA

Chesapeake Bay Hydraulic Model
Matapeake, MD, Co: Queen Annes 21666
Federal Register Notice date: 05/03/91
Property Number: 549040007
Status: Excess
Base Closure: No
Comment: 617280 sq. ft., one story metal building, ceiling height over 40 ft., lease restriction, Corps will maintain an antenna on property.

Maine

Suitable Land (by Agency)

GSA

Bucks Harbor GATR Site
GATR Road
Machias Port, ME, Co: Washington 04655
Location: 6 miles southeast of Machias off Highway 91
Federal Register Notice date: 05/03/91
Property Number: 549030015
Status: Excess
Base Closure: No
Comment: 5.5 acres with 2,900 sq. ft. concrete block building, potential utilities, secured area with alternate access.
GSA NO. 2-U-ME-611B.

Ohio

Suitable Land (by Agency)

GSA

Receiver Site
Bethany Relay Station
Tolbert Road, Wayne Township
Jacksonburg, OH, Co: Butler 45040
Federal Register notice date: 05/03/91
Property Number: 549010046
Status: Excess
Base Closure: No
Comment: 29 acres, 7560 sq. ft.—concrete bldg. on site, radio antenna towers, potential utilities.
GSA NO. 2-Z-OH-726-A.

Oregon

Suitable Land (by Agency)

GSA

Tonque Point Job Corps Center (Portion of)
Astoria, OR, Co: Clotsop 97103
Location: On the east by highway 30; on the west by city of Astoria's sewage treatment plant
Federal Register notice date: 05/03/91
Property Number: 549010027
Status: Excess
Base Closure: No
Comment: 22.77 acres, land slopes, some soil erosion, potential utilities.
GSA NO. 9-L-OR-508M.

Alaska

Suitable Buildings (by Agency)

GSA

Anchorage Duplex
924-928 Brown Street
Anchorage, AK 99501
Federal Register notice date: 05/03/91
Property Number: 549030005
Status: Excess
Base Closure: No
Comment: 930 sq. ft., 2 story residence, wooden frame, presence of asbestos.
GSA NO. 9-U-AK-496.

Anchorage Duplex
944-946 Brown Street
Anchorage, AK 99501
Federal Register notice date: 05/03/91
Property Number: 549030006
Status: Excess
Base Closure: No
Comment: 930 sq. ft., 2 story residence, wooden frame, presence of asbestos.
GSA NO. 9-U-AK-496.

Maine

Suitable Buildings (by Agency)

GSA

Ellsworth Federal Building
Corner of Main and Water Streets
Ellsworth, ME, Co: Hancock 04605
Federal Register notice date: 05/03/91
Property Number: 549040006
Status: Excess
Base Closure: No
Comment: 4904 sq. ft., 1 story steel frame/brick concrete exterior, most recent use—office.
GSA NO. 2-G-ME-622.

New York

Suitable Land (by Agency)

GSA

Tibbetts Point Light Station
Cape Vincent, NY, Co: Jefferson 13618
Federal Register notice date: 05/03/91
Property Number: 549040009
Status: Excess
Base Closure: No
Comment: 3.27 acres, black top, easement restrictions.
GSA NO. 2-U-NY-799.

Suitable Buildings (by Agency)

Dwelling #1
Tibbetts Point Light Station
Cape Vincent, NY, Co: Jefferson 13618
Federal Register notice date: 05/03/91
Property Number: 549040010
Status: Excess
Base Closure: No
Comment: 460 sq. ft., 2 story wood frame, good condition, lease restrictions.
GSA NO. 2-U-NY-799.

Dwelling #2
Tibbetts Point Light Station
Cape Vincent, NY, Co: Jefferson 13618
Federal Register notice date: 05/03/91
Property Number: 549040011
Status: Excess
Base Closure: No
Comment: 360 sq. ft., 2 story wood frame, good condition, lease restrictions.
GSA NO. 2-U-NY-799.

Barn
Tibbetts Point Light Station
Cape Vincent, NY, Co: Jefferson 13618
Federal Register notice date: 05/03/91
Property Number: 549040012
Status: Excess
Base Closure: No
Comment: 204 sq. ft., 1 story wood frame, good condition, lease restrictions.
GSA NO. 2-U-NY-799.

3-Car Garage
Tibbetts Point Light Station
Cape Vincent, NY, Co: Jefferson 13618
Federal Register notice date: 05/03/91
Property Number: 549040013
Status: Excess
Base Closure: No
Comment: 660 sq. ft., 1 story wood frame, good condition, lease restrictions.
GSA NO. 2-U-NY-799.

Paint Locker
Tibbetts Point Light Station
Cape Vincent, NY, Co: Jefferson 13618
Federal Register notice date: 05/03/91
Property Number: 549040014
Status: Excess
Base Closure: No
Comment: 55 sq. ft., 1 story metal on concrete slab, most recent use—tool shed, lease restrictions.
GSA NO. 2-U-NY-799.

Fog Signal Building
Tibbetts Point Light Station
Cape Vincent, NY, Co: Jefferson 13618
Federal Register notice date: 05/03/91
Property Number: 549040015
Status: Excess
Base Closure: No
Comment: 792 sq. ft., 1 story brick, most use—power house, lease restrictions.
GSA NO. 2-U-NY-799.

Colorado

Unsuitable Land (by Agency)

GSA

Sunset Canyon Field Station
Boulder, CO, Co: Boulder 80302
Location: 5 miles west of Wall Street on County Road 118
Federal Register notice date: 05/03/91
Property Number: 549030019
Status: Excess
Base Closure: No
Reason: Floodway
GSA NO. 7-C-CO-602.

New York

Unsuitable Buildings (by Agency)

DOT

Bldg. S-253
Governors Island
Governors Island, NY, Co: New York 10004
Location: The first building directly south of the base library
Federal Register notice date: 05/03/91
Property Number: 879120095
Status: Unutilized

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Base Closure: No
Reason: Secured Area, Other
Comment: Not accessible by road.

GSA

Portion Former Radar
Radar Surveillance Facility
Saratoga Springs
Stillwater, NY, Co: Saratoga 12866
Federal Register notice date: 05/03/91
Property Number: 548060006
Status: Excess
Base Closure: No
Reason: Other
Comment: Radar Tower
GSA NO. NY-738B.

Plum Island Light Station
Plum Island
Southfield Township, NY, Co: Suffolk
Federal Register notice date: 05/03/91
Property Number: 548060004
Status: Excess
Base Closure: No
Reason: Secured Area
GSA NO. 2-A-NY-798.

Utah

Unsuitable Land (by Agency)

GSA

Hill Air Force Base
Layton, UT, Co: Davis 84041
Location: Approximately 850 west 3000 North Street.
Federal Register notice date: 05/03/91
Property Number: 548010010
Status: Surplus
Base Closure: No
Reason: Other
Comment: 16.36 acres, irregular elevations, several easements of record.
GSA NO. 7-D-UT-421AC.

[FR Doc. 91-10400 Filed 5-2-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-01-4120-14; WYW117924]

Proposed Coal Lease by Application; Public Hearing, Rescheduled

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of rescheduling of public hearing, change of location.

SUMMARY: This Notice announces the rescheduled date and location of the location of the public hearing previously announced in the April 10, 1991, Federal Register, Vol. 56, No. 69, pg 14530-531 to receive comments on a proposed sale, the environmental assessment (EA), the fair market value (FMV), and the maximum economic recovery (MER) pertaining to the proposed coal lease application filed by Kerr-McGee Coal Corporation.

DATES: The public hearing has been rescheduled to be held on Monday, June, 24, 1991, 7 p.m., in the Gillettee Holiday Plaza, Gillette, WY 82716. The public comment period will end on Wednesday, July 10, 1991. The Environmental Assessment is expected to be available for public review and comment on or before June 7, 1991.

ADDRESSES: The EA document will be mailed directly to interested individuals and groups. Copies can also be obtained upon request from the Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601 between the hours of 7:45 a.m. an 4:30 p.m. Written comments should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: All comments and any further information should be addressed to: James W. Monroe, District Manager, Casper District Office, Bureau of Land Management (BLM), 1701 East "E" Street, Casper, Wyoming 82601 (307) 261-7600.

SUPPLEMENTARY INFORMATION: Kerr-McGee Coal Corporation has filed a coal lease application for the following subject lands:

Sixth Principal Meridian
T. 44 N., R. 70 W.,
Sec. 33, lots 1-3 incl., 6-11 incl., 14-16 incl.;
Sec. 34, lots 1-16 incl.;
Sec. 35, lots 2-15 incl.

The above lands comprise 1708.62 acres, and contain an estimated 132 million tons of recoverable coal. These lands are adjacent to the existing Jacob's Ranch coal mine in Campbell County, Wyoming operated by the Kerr-McGee Coal Corporation. Comments may be submitted in writing or expressed verbally at the hearing.

Ray Brubaker,
State Director, Wyoming.

[FR Doc. 91-10475 Filed 5-2-91; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-41-4111-15; WYW108469]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

April 29, 1991.

Correction

In notice document 91-6547 appearing on page 14714 in the issue of Thursday, April 11, 1991, in the second column, third paragraph, second line, "administrative fee and $25 to reimburse" should read "administrative fee and $125 to reimburse."

Pamela J. Lewis,
Supervisory Land Law Examiner.

[FR Doc. 91-10479 Filed 5-2-91; 8:45 am]

BILLING CODE 4310-22-M

[OR 43344; OR-080-01-4212-13; GP1-202]

Realty Action: Cancellation of Notice of Realty Action for Oregon

This notice cancels the notice of realty action published in the Federal Register on November 9, 1989, 54 FR 47138 (FR Doc. 89-26472). The parties involved have decided to terminate further processing of this exchange proposal.

Dated: April 26, 1991.

Richard C. Prather,
Yamhill Area Manager.

[FR Doc. 91-10456 Filed 5-2-91; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Meetings

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held at 10:30 a.m. (p.d.t.) on Saturday, May 18, 1991 at West Marin School in Point Reyes Station, California to hear presentations on issues related to management of the Point Reyes National Seashore and adjoining Golden Gate National Recreation lands.

The Advisory Commission was established by Public law 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties. Members of the Commission are as follows:

Mr. Richard Bartke, Chairman; Ms. Amy Meyer, Vice Chair; Mr. Ernest Ayala, Dr. Howard Cogswell, Brig. Gen. John Crowley, USA (ret); Mr. Margot Patterson Doss, Mr. Neil D. Eisenberg, Mr. Jerry Friedman, Mr. Steve Jeong, Ms. Daphne Greene, Ms. Gimmy Park Li, Mr. Gary Pinkston, Mr. Merritt Robinson, Mr. R. H. Scaroni, Mr. John J. Spring, Dr. Edgar Wayburn, Mr. Joseph Williams.

Included on the agenda for this public meeting will be reports on resource management at Point Reyes, including grazing, on the work by the Soil Conservation Service, and on a Olema Creek study. This will be followed by a report on the proposed rehabilitation of the parking areas at Chimney Rock, Abbotts Lagoon, and Drakes Estero. This will be followed by a report on the exhibit expansion at the Drakes Beach Visitor Center. The final agenda item will be a report on the status of other proposed exhibits at Point Reyes National Seashore, including a Pierce Point exhibit and roadside exhibits.

Also included at this meeting under Old Business will be a report on comments received on the GGNRA Statement for Management.

Interested individuals, representatives of organizations, and public officials are invited to express their views in person at the May 18 public meeting. Those not wishing to appear in person may submit written statements to the Superintendent of the Point Reyes National Seashore on any of the above-mentioned items.

These meetings will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. A transcript for this meeting is available after June 14, 1991.

For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: April 24, 1991.

Stanley T. Albright,
Regional Director, Western Region.

[FR Doc. 91-10537 Filed 5-2-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-517 (Preliminary)]

Refined Antimony Trioxide from the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-517 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of refined antimony trioxide,[1] provided for in subheading 2825.80.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 10, 1991.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and B (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: April 25, 1991.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202-252-1188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on April 25, 1991, by The Coalition for Fair Trade in Antimony Trioxide.[2]

Participation in the investigation and public service list—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on May 16, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Woodley Timberlake (202-252-1188) not later than May 14, 1991, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 21, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: April 29, 1991.

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[1] For purposes of this investigation, refined antimony trioxide (also known as antimony oxide) is a crystalline powder of the chemical formula (Sb_2O_3). The refined antimony trioxide which is the subject of this investigation includes blends with organic or inorganic additives comprising up to and including 20 percent of the blend by volume or weight.

[2] The Coalition for Fair Trade in Antimony Trioxide is composed of the following individual member firms: (1) Anzon, Inc., Philadelphia, PA; (2) Atochem North America, Inc., Philadelphia, PA; (3) Laurel Industries, Inc., Cleveland, OH; (4) United States Antimony Corporation, Thompson Falls, MT; and (5) United States Antimony Sales Corporation, Natick, MA.

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By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10453 Filed 5-2-91; 8:45 am]

BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

April 30, 1991.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Harvest State Cooperatives.
(2) P.O. Box 64594, St. Paul, MN 55164
(3) 1667 N. Snelling Avenue, St. Paul, MN 55108.
(4) Russell J. Eichman, P.O. Box 64594, St. Paul, MN 55164

(1) Northwest Agricultural Cooperative Association, Inc. (N.A.C.A., INC.),
(2) P.O. Box 1, Ontario, OR 97914
(3) 920 SE 9th Avenue, Ontario, OR 97914.
(4) Jerry Ready, P.O. Box 1, Ontario, OR 97914

Kathleen M. King,

Acting Secretary.

[FR Doc. 91-10517 Filed 5-2-91; 8:45 am]

BILLING CODE 7035-01-M

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Jones Group, Inc., 6060 St. Albans Street, One South Executive Park, Charlottee, NC 28287, (704) 553-3000. State of incorporation; Delaware.

2. Wholly-owned subsidiaries which will participate in the operations and state(s) of incorporation:

A. J. A. Jones Construction Company, Inc., State of Incorporation: North Carolina.

B. Metric Constructors, Inc., State of Incorporation: North Carolina.

C. Chas. H. Tompkins Company, State of Incorporation: District of Columbia.

D. William L. Crow Construction Company, State of Incorporation: New York.

E. Rea Construction Company, State of Incorporation: North Carolina.

F. J. A. Jones Applies Research Company, State of Incorporation: North Carolina.

G. Queens Properties, Inc., State of Inc., North Carolina.

H. Tiber Construction Company, State of Incorporation: Virginia.

I. J.A. Jones Construction Services Company, State of Incorporation: North Carolina.

J. Ecker Empire Electirc, Inc., State of Incorporation: Washington.

K. Electical and Special Systems, Inc., State of Incorporation: North Carolina.

L. Enviro-Tech Abatement Services, Inc., State of Incorporation: North Carolina.

M. Jones Operations & Maintenance Co., State of Incorporation; North Carolina.

N. Jones Capital Corporation, State of Incorporation: North Carolina.

O. Mansfield Mining Company, State of Incorporation: North Carolina.

P. Jones Black River Services, Inc., State of Incorporation: New York.

Q. Jones Charles River, Inc., State of Incorporation: Delaware.

R. Jones Power Co., Ltd., Province of Incorporation: Nova Scotia.

Kathleen M. King,

Acting Secretary.

[FR Doc. 91-10518 Filed 5-2-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-32; Sub-No. 43]

Boston and Maine Corporation and Springfield Terminal Railway Corporation—Abandonment and Discontinuance of Service in Hartford Country, CT; Findings

The Commission has found that the public convenience and necessity permit Boston and Maine Corporation (B&M) and Springfield Terminal Railway Corporation (ST) to abandon and discontinue service over 8.24 miles of rail line in Hartford County, CT, between milespost 28.61 in Plainville and milepost 37.05 in Avon and, as amended, .4 mile of sidetrack. The certificate will be issued 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to continue; and (2) it is likely that the assistance would fully compensate the railroad.

Requests for public use conditions must be filed with the Commission and the applicant within 10 days after publication.

Any financial assistance offer must be filed with the Commission and applicants no later than 10 days from the publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27. Requests for public use conditions must conform with 49 CFR 1152.28(a)(2).

Decided: April 26, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Kathleen M. King,

Acting Secretary.

[FR Doc. 91-10514 Filed 5-2-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-351X]

County of Wayne, New York—Abandonment Exemption—Within Village of Newark, NY

Applicant has filed a notice of exemption under 49 CFR Part 1152 subpart F—*Exempt Abandonments* to abandon its 0.630-mile line of railroad between mileposts 16.2 and 17.06, within the Village of Newark, Wayne County, NY.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 29, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27 (c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by May 9, 1991[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by May 20, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Donald Crowley, County Court House, 26 Church Street, Lyons, NY 14489.

If the notice of exemption contains false or misleading infomation, use of the exemption is void *ad initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 3, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 29, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 91-10515 Filed 5-2-91; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Information Collections Under Review

April 29, 1991.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published.

Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 514-4312.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

This Notice also contains certain entries for which an expedited review has been requested from the Office of Management and Budget. In an effort to fully inform the reporting public, those entries for which an expedited review has been requested are printed in full, including instructions if any, at the end of this notice.

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Agreement Between a Transportation Line (Operating Between Foreign Territory and the United States) and the United States of America.

(2) I-775, Immigration and Naturalization Service.

(3) On occasion.

(4) Businesses or other for-profit. The agreement between a transportation company and the United States is mandatory to assure the U.S. that the transportation company will remain responsible for the aliens that transports to the United States under the Visa Waiver Pilot Program (8 U.S.C. 1187).

(5) 50 annual respondents at 1 hour per response.

(6) 50 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Assurance by a United States Sponsor in Behalf of an Applicant for Refugee Status.

(2) I-591, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. Used by U.S. sponsor in behalf of a refugee as acceptable sponsorship agreement and guarantee of transportation in order to be approved for refugee status under section 107 of the Immigration and Nationality Act.

(5) 10,000 annual respondents at .332 hours per response.

(6) 3,320 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Application for Nonresident Alien's Canadian Border Crossing Card.

(2) I-175, Immigration and Naturalization Service.

(3) On occasion.

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(4) Individuals or households. Used to obtain data from an applicant for a Canadian Border Crossing Card; data is used to determine eligibility of applicant.

(5) 5,000 annual respondents at .03 hours per response.

(6) 150 estimated annual burden hours.

(7) Not applicable under 3504(h).

An Expedited Review Has Been Requested For This Entry

(1) Employment Eligibility Verification.

(2) I–9, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households, State or local governments, farms, businesses or other for profit, Federal agencies or employees, non-profit institutions, small businesses or organization. The I–9 facilitates compliance with section 101 of the Immigration Reform and Control Act of 1986, making employment of unauthorized aliens unlawful which will and is diminishing the flow of illegal workers into the United States.

(5) 90,000,000 annual respondents at .166 hours per response. 20,000,000 annual recordkeepers at .083 hours each.

(6) 16,600,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Nonimmigrant Checkout Letter.

(2) G–146, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. Used in making inquiry of persons in the United States or abroad concerning the whereabouts of aliens and/or departure information wanted by the INS when initial investigation to locate an alien or verify his/her departure has been unsuccessful.

(5) 20,000 annual respondents at .166 hours per response.

(6) 50 estimated annual burden hours.

(7) Not applicable under 3504(h).

New Collections

(1) Study of Conditions of Confinement in Juvenile Detention and Correctional Facilities.

(2) No form number. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs.

(3) One time collection.

(4) State of local governments, non-profit institutions. This is a survey of conditions of confinement in all State and local juvenile detention and correctional facilities in the United States. The information from this survey fulfills a Congressional mandate and will be used to form policy recommnedations.

(5) 1,038 annual respondents at 2 hours per response.

(6) 2,076 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) 1991 Restta Restitution Survey.

(2) No form number. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs.

(3) On occasion.

(4) State or local governments. The survey will determine state-of-the-art of juvenile restitution, provide descriptive data regarding model restitution strategies, and indicate training/technical assistance needs of practitioners. The information will also be used to update a juvenile restitution program dirctory, and will be published as a reference guide for program development/improvement.

(5) 2,100 annual respondents at 1 hour per response.

(6) 2,100 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Hate Crime Statistics.

(2) No form number. Federal Bureau of Investigation.

(3) Quarterly.

(4) State or local governments. The Hate Crime Statistics Act mandated a five year data collection of crimes motivated by religious, ethnic, racial, or sexual orientation prejudice. The FBI's Uniform Crime Reports (UCR) section has been assigned the task of developing and managing the collection of this information through the use of a separate report.

(5) 16,000 respondents, quarterly, at .17 hours per response.

(6) 10,880 estimated annual burden hours.

(7) Not applicable under 3504(h).

An Expedited Review Has Been Requested For This Entry

(1) Application for Participation in a Dedicated Commuter Lane Program.

(2) I–823, I 823A, I–823B. Inspections Division, Immigration and Naturalization Service.

(3) Annually.

(4) Individuals or households. At land border ports of entry participating in this dedicated commuter lane program, this form will be used by frequent crossers to voluntarily apply for permission to use the dedicated commuter lane.

(5) 200,000 annual respondents at .664 hours per response.

(6) 132,800 estimated annual burden hours.

(7) Not applicable under 3504(h).

An Expedited Review has been Requested for this Entry

(1) Application to Waive Exclusion Grounds.

(2) I–724. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This form is used by aliens to apply to waive excludability from the United States pursuant to provisions as amended by section 601 of the Immigration Act of 1990. Public Law 101–649. This new form replaces the current I–191, I–192, I–193, I–212, I–601, I–602 and I–612, now used to apply for various waivers.

(5) 76,000 respndents, quarterly, at .82 hours per response.

(6) 62,320 estimated annual burden hours.

(7) Not applicable under 3504(h).

An Expedited Review has been Requested for this Entry

(1) Visa Waiver Nonimmigrant Arrival Departure Document.

(2) I–94W, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This form is used by nonimmigrant aliens applying for admission into the United States under the Visa Waiver Program. It merges the current I–791 and the I–94 Nonimmigrant Arrival Departure Document so persons applying for admission to the United States under this program can complete one rather than two forms.

(5) 4,000,000 annual respondents at .105 hours per response.

(6) 420,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

An Expedited Review has been Requested for this Entry

(1) Application to Replace a Naturalization/Citizenship Certificate.

(2) N–565, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This form is used to apply for a duplicative Naturalization certificate, Citizenship certificate, or related documents. It replaces the N–565, the N–458, N–459, and the N–577, previously used to apply for these documents.

(5) 10,000 annual respondents at .9 hours per response.

(6) 9,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

An Expedited Review has been Requested for this Entry

(1) Petition for Immigrant Entrepreneur.

(2) I–526, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This form is used to petition for classification as an alien entrepreneur as provided by sections 121(b)(5) and 162(b) of the Immigration Act of 1990. The data collected is used to determine eligibility for this benefit.

(5) 2,000 annual respondents at 1.25 hours per response.

(6) 2,500 estimated annual burden hours.

(7) Not applicable under 3504(h).

An Expedited Review Has Been Requested for This Entry

(1) Application for Naturalization.

(2) N–400, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This application is prescribed by the Immigration and Naturalization Act as the means for permanent residents to apply for Naturalization. This form replaces the current N–400 as well as the N–400B, supplement to N–400, the N–402, Naturalization Petition for a Child, the N–405, and the N–407 Petition for Naturalization.

(5) 377,000 annual respondents at 4.335 hours per response.

(6) 1,634,295 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Survey of Inmates of State Correctional Facilities.

(2) NPS 23, 24, 25, 26, 27, 28, Bureau of Justice Statistics, Office of Justice Programs.

(3) Every five years.

(4) Individuals or households, State or local governments. This survey will be used to profile inmates nationwide; to determine trends in inmate composition, criminal histories and drug abuse; and gun use and crime; and to report on the victims of crime. The data will be used by the Bureau of Justice Statistics, the Congress, researchers, practitioners and others in the criminal justice community.

(5) 15,200 annual respondents at .75 hours per response.

(6) 11,400 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Application for Temporary Protected Status.

(2) I–821, Immigration and Naturalization Service.

(3) Annually.

(4) Individuals or households. The I–821 was developed to comply with Sections 302 and 303 of the Immigration Act of 1990 to provide eligible aliens with withholding of deportation as well as employment authorization.

(5) 50,000 annual respondents at .5 hours per response.

(6) 25,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Certificate by Designating School Official.

(2) I–538, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households, Non-profit institutions. This form is provided for use in section 101(a)(15) of the I&N Act. The form is submitted by a nonimmigrant student as a supporting document to applications for employment authorization, extension of stay or school transfers.

(5) 150,000 annual respondents at .063 hours per response.

(6) 9,450 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Request for Asylum in the United States.

(2) I–589, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This information will be used to determine if an alien applying for asylum in the United States is classifiable as a refugee and is eligible to remain in the United States. These data will minimize the need to re-interview applicants for asylum.

(5) 175,000 annual respondents at 3.5 hours per response.

(6) 612,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

Special Note Regarding Impact on the Fee

I–724: The forms being merges have the same fee except for the current I–192. In the interest of consistency, the fee for the majority of these applications will apply to each waiver for which application is made. This means that where a person wishes to apply for more than one ground of ineligibility, the application fee will be the base fee multiplied by the number f actual waivers sought.

N–400: The forms being merged into the new N–400 have fees that are within a narrow range. In the interest of consistency and simplicity, the new N–400 will have a single fee, which would be the fee for the prior N–400, since it, by far, has the largest volume of filings among the merged forms.

I–526: The existing process, which due to visa number restrictions, has not been available for some years, calls for the I–526 to be filed with an I–485 application for adjustment. The new IMMACT process is such that the I–526 must be able to be filed independently. Based on an analysis of the projected processing costs associated with this complex adjudication, and comparison with the fee for other adjudicative processes, the INS proposes to institute a fee of $140.00 for filing an I–526. As the INS gains experience in processing this new application, the fee will be adjusted annually based on actual costs.

Public comment on these items is encouraged.

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

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U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-XXXX
Application for Naturalization

INSTRUCTIONS

Purpose of This Form.
This form is for use to apply to become a naturalized citizen of the United States.

Who May File.
You may apply for naturalization if:

- you have been a lawful permanent resident for five years;
- you have been a lawful permanent resident for three years, have been married to a United States citizen for those three years, and continue to be married to that U.S. citizen;
- you are the lawful permanent resident child of United States citizen parents; or
- you have qualifying military service.

Children under 18 may automatically become citizens when their parents naturalize. You may inquire at your local Service office for further information. If you do not meet the qualifications listed above but believe that you are eligible for naturalization, you may inquire at your local Service office for additional information.

General Instructions.
Please answer all questions by typing or clearly printing in black ink. Indicate that an item is not applicable with "N/A". If an answer is "none," write "none". If you need extra space to answer any item, attach a sheet of paper with your name and your alien registration number (A#), if any, and indicate the number of the item the answer refers to.

Every application must be properly signed and filed with the correct fee. If you are under 18 years of age, your parent or guardian must sign the application.

If you wish to be called for your examination at the same time as another person who is also applying for naturalization, make your request on a separate cover sheet. Be sure to give the name and alien registration number of that person.

Initial Evidence Requirements.
You must file your application with the following evidence:

A copy of your alien registration card.

Photographs. You must submit 3 identical natural color photographs of yourself taken within 30 days of this application. The photos should be no larger than 2 X 2 inches. They must have a white background, be unmounted, printed on thin paper, and be unglossy and unretouched. They should show a three-quarter frontal profile showing the right side of your face with your right ear visible and with your head bare (unless you are wearing a headdress as required by a religious order of which you are a member), and with the distance from the top of the head to the point of your chin about 1 1/4 inches. Lightly print you A# on the back of each photo with a pencil.

Fingerprints. If you are between the ages of 14 and 75, you must sumit your fingerprints on Form FD-258. Fill out the form and write your Alien Registration Number in the space marked "Your No. OCA" or "Miscellaneous No. MNU". Take the chart and these instructions to a police station, sheriff's office or an office of this Service, or other reputable person or organization for fingerprinting. (You should contact the police or sheriff's office before going there since some of these offices do not take fingerprints for other government agencies.) You must sign the chart in the presence of the person taking your fingerprints and have that person sign his/her name, title, and the date in the space provided. Do not bend, fold, or crease the fingerprint chart.

U.S. Military Service. If you have ever served in the Armed Forces of the United States at any time, you must submit a completed Form G-325B. If your application is based on your military service you must also submit Form N-426, "Request for Certification of Military or Naval Service."

Application for Child. If this application is for a permanent resident child of U.S. citizen parents, you must also submit copies of the child's birth certificate, the parents' marriage certificate, and evidence of the parents' U.S. citizenship. If the parents are divorced, you must also submit the divorce decree and evidence that the citizen parent has legal custody of the child.

Where to File.
File this application at the local Service office having jurisdiction over your place of residence.

Fee.
The fee for this application is $90.00. The fee must be submitted in the exact amount. It cannot be refunded. DO NOT MAIL CASH.

All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:

- If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."
- If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

Processing Information.
Rejection. Any application that is not signed or is not accompanied by the proper fee will be rejected with a notice that the application is deficient. You may correct the deficiency and resubmit the application. However, an application is not considered properly filed until it is accepted by the Service.

Requests for more information. We may request more information or evidence. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Interview. After you file your application, you will be notified to appear at a Service office to be examined under oath or affirmation. This interview may not be waived. If you are an adult, you must show that you have a knowledge and understanding of the history, principles, and form of government of the United States. There is no exemption from this requirement.

You will also be examined on your ability to read, write, and speak English. If on the date of your examination you are more than 50 years of age and have been a lawful permanent resident for 20 years or more, or you are 55 years of age and have been a lawful permanent resident for at least 15 years, you will be exempt from the English language requirements of the law. If you are exempt, you may take the examination in any language you wish.

Oath of Allegiance. If your application is approved, you will be required to take the following oath of allegiance to the United States in order to become a citizen:

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the armed forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God."

If you cannot promise to bear arms or perform noncombatant service because of religious training and belief, you may omit those statements when taking the oath. "Religious training and belief" means a person's belief in relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or merely a personal moral code.

Oath ceremony. You may choose to have the oath of allegiance administered in a ceremony conducted by the Service or request to be scheduled for an oath ceremony in a court that has jurisdiction over the applicant's place of residence. At the time of your examination you will be asked to elect either form of ceremony. You will become a citizen on the date of the oath ceremony and the Attorney General will issue a Certificate of Naturalization as evidence of United States citizenship.

If you wish to change your name as part of the naturalization process, you will have to take the oath in court.

Penalties.
If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Privacy Act Notice.
We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 USC 1439, 1440, 1443, 1445, 1446, and 1452. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

Paperwork Reduction Act Notice.
We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: (1) learning about the law and form, 20 minutes; (2) completing the form, 25 minutes; and (3) assembling and filing the application (includes statutory required interview and travel time, after filing of application), 3 hours and 35 minutes, for an estimated average of 4 hours and 20 minutes per response. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W., Room 5304, Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-XXXX, Washington, D.C. 20503.

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U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-XXXX
Application for Naturalization

START HERE - Please Type or Print

Part 1. Information about you.

Family Name	Given Name	Middle Initial

U.S. Mailing Address - Care of

Street Number and Name	Apt. #

City	County

State	ZIP Code

Date of Birth (month/day/year)	Country of Birth
Social Security #	A #

Part 2. Basis for Eligibility *(check one)*.

a. ☐ I have been a permanent resident for at least five (5) years.
b. ☐ I have been a permanent resident for at least three (3) years and have been married to a United States Citizen for those three years.
c. ☐ I am a permanent resident child of United States citizen parent(s).
d. ☐ I am applying on the base of qualifying military service in the Armed Forces of the U.S. and have attached completed Forms N-426 and G-325B
e. ☐ Other. (Please specify section of law) _____

Part 3. Additional information about you.

Date you became a permanent resident (month/day/year)	Port admitted with an immigrant visa or INS Office where granted adjustment of status.

Citizenship

Name on alien registration card (if different than in Part 1)

Other names used since you became a permanent resident (including maiden name)

Sex ☐ Male ☐ Female	Height	Marital Status: ☐ Single ☐ Married ☐ Divorced ☐ Widowed

Can you speak, read and write English ? ☐No ☐Yes.

Absences from the U.S.:

a. Since becoming a permanent resident have you been absent from the U.S. for any periods of six months or longer? ☐No ☐Yes. Total number of trips_____.

b. Since becoming a permanent resident, have you been absent from the U.S. for any periods of six months or less? ☐No ☐Yes. Total number of trips _____.

If you answered "Yes" to either of the above, complete the following. Begin with your most recent absence. If you need more room to explain the reason for an absence or to list more trips, continue on separate paper.

Date left U.S.	Date returned	Destination	Reason for trip

Form N-400 (Rev. 4/17/91) DRAFT 7

Continued on back.

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
☐ Applicant Interviewed	

At Interview
☐ request naturalization ceremony at court

Remarks

Action

To Be Completed by *Attorney or Representative*, if any
☐ Fill in box if G-28 is attached to represent the applicant
VOLAG#
ATTY State License #

Part 4. Information about your residences and employment.

A. List your addresses during the last five (5) years or since you became a permanent resident, whichever is less. Begin with your current address. If you need more space, continue on separate paper:

Street Number and Name, City, State, Country, and Zip Code	Dates (month/day/year) From	To

B. List your employers during the last five (5) years. List your present or most recent employer first. If none, write "None". If you need more space, continue on separate paper.

Employer's Name	Employer's Address: Street Name and Number - City, State and ZIP Code	Dates Employed (month/day/year): From	To	Occupation/position

Part 5. Information about your marital history.

A. Total number of times you have been married _____. If you are now married, complete the following regarding your husband or wife.

Family name	Given name	Middle initial
Address		

Date of birth (month/day/year)	Country of birth	Citizenship
Social Security#	A#	Immigration status (if not a U.S. citizen)

Naturalization (if applicable)
(month/day/year) Place (City, State)

If you have ever previously been married or if your current spouse has been previously married, please provide the following on separate paper: Name of prior spouse, date of marriage, date marriage ended, how marriage ended and immigration status of prior spouse.

Part 6. Information about your children.

B. Total Number of Children _____. Complete the following information for each of your children. If the child lives with you, state "with me" in the address column; otherwise give city/state/country of child's current residence. If deceased, write "deceased" in the address column. If you need more space, continue on separate paper.

Full name of child	Date of birth	Country of birth	Citizenship	A - Number	Address

Form N-400 (Rev. 4/17/91) Draft 7

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Part 7. Additional eligibility factors.

Please answer each of the following questions. If your answer is **"Yes"**, explain on a separate paper.

1. Are you now, or have you ever been a member of, or in any way connected or associated with the Communist Party? ☐ Yes ☐ No
2. Have you ever knowingly aided or supported the Communist Party directly, or indirectly through another organization, group or person? ☐ Yes ☐ No
3. Do you now, or have you ever advocated, taught, believed in, or knowingly supported or furthered the interests of communism? ☐ Yes ☐ No
4. During the period March 23, 1933 to May 8, 1945, did you serve in, or were you in any way affiliated with, either directly or indirectly, any military unit, paramilitary unit, police unit, self-defense unit, vigilante unit, citizen unit of the Nazi party or SS, government agency or office, extermination camp, concentration camp, prisoner of war camp, prison, labor camp, detention camp or transit camp, under the control or affiliated with:
   a. The Nazi Government of Germany? ☐ Yes ☐ No
   b. Any government in any area occupied by, allied with, or established with the assistance or cooperation of, the Nazi Government of Germany? ☐ Yes ☐ No
5. Have you at any time, anywhere, ever ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion? ☐ Yes ☐ No
6. Have you ever left the United States to avoid being drafted into the U.S. Armed Forces? ☐ Yes ☐ No
7. Have you ever failed to comply with Selective Service laws? ☐ Yes ☐ No
   If you have registered under the Selective Service laws, complete the following information:
   Selective Service Number:_____ Date Registered:_____
   If you registered before 1978, also provide the following:
   Local Board Number:_____ Classification:_____
8. Did you ever apply for exemption from military service because of alienage, conscientious objections or other reasons? ☐ Yes ☐ No
9. Have you ever deserted from the military, air or naval forces of the United States? ☐ Yes ☐ No
10. Since becoming a permanent resident, have you ever failed to file a federal income tax return? ☐ Yes ☐ No
11. Since becoming a permanent resident, have you filed a federal income tax return as a nonresident or failed to file a federal return because you considered yourself to be a nonresident? ☐ Yes ☐ No
12. Are deportation proceedings pending against you, or have you ever been deported, or ordered deported, or have you ever applied for suspension of deportation? ☐ Yes ☐ No
13. Have you ever claimed in writing, or in any way, to be a United States citizen? ☐ Yes ☐ No
14. Have you ever:
    a. been a habitual drunkard? ☐ Yes ☐ No
    b. advocated or practiced polygamy? ☐ Yes ☐ No
    c. been a prostitute or procured anyone for prostitution? ☐ Yes ☐ No
    d. knowingly and for gain helped any alien to enter the U.S. illegally? ☐ Yes ☐ No
    e. been an illicit trafficker in narcotic drugs or marijuana? ☐ Yes ☐ No
    f. received income from illegal gambling? ☐ Yes ☐ No
    g. given false testimony for the purpose of obtaining any immigration benefit? ☐ Yes ☐ No
15. Have you ever:
    a. knowingly committed any crime for which you have not been arrested? ☐ Yes ☐ No
    b. been arrested, cited, charged, indicted, convicted, fined or imprisoned for breaking or violating any law or ordinance excluding traffic regulations? ☐ Yes ☐ No

    (If you answer yes to 15, in your explanation give the following information for each incident or occurrence the **city, state,** and **country,** where the offense took place, the **date** and **nature** of the offense, and the **outcome** or **disposition** of the case).
16. Have you ever been declared legally incompetent or have you ever been confined as a patient in a mental institution? ☐ Yes ☐ No
17. Were you born with, or have you acquired in same way, any title or order of nobility in any foreign State? ☐ Yes ☐ No

Part 8. Allegiance to the U.S.

If your answer to any of the following questions is "NO", attach a full explanation:

1. Do you believe in the Constitution and form of government of the U.S.? ☐ Yes ☐ No
2. Are you willing to take the full Oath of Allegiance to the U.S.? (see instructions) ☐ Yes ☐ No
3. If the law requires it, are you willing to bear arms on behalf of the U.S.? ☐ Yes ☐ No
4. If the law requires it, are you willing to perform noncombatant services in the Armed Forces of the U.S.? ☐ Yes ☐ No
5. If the law requires it, are you willing to perform work of national importance under civilian direction? ☐ Yes ☐ No

Continued on back

Part 9. Memberships and organizations.

A. List your present and past membership in or affiliation with every organization, association, fund, foundation, party, club, society, or similar group in the United States or in any other place. Include any military service in this part. If none, write "none". Include the name of organization, location, dates of membership and the nature of the organization. If additional space is needed, use separate paper.

_____

_____

_____

_____

Part 10. Complete only if you checked block " C " in Part 2.

How many of your parents are U.S. citizens? ☐ One ☐ Both (Give the following about one U.S. citizen parent:)

Family Name	Given Name	Middle Name
Address		

Basis for citizenship:
☐ Birth
☐ Naturalization Cert. No.

Relationship to you (check one): ☐ natural parent ☐ adoptive parent
☐ parent of child legitimated after birth

If adopted or legitimated after birth, give date of adoption or, legitimation: *(month/day/year)*_____.

Does this parent have legal custody of you? ☐ Yes ☐ No

(Attach a copy of relating evidence to establish that you are the child of this U.S. citizen and evidence of this parent's citizenship.)

Part 11. Signature. *(Read the information on penalties in the instructions before completing this section).*

I certify or, if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature Date

Please Note: *If you do not completely fill out this form, or fail to submit required documents listed in the instructions, you may not be found eligible for naturalization and this application may be denied.*

Part 12. Signature of person preparing form if other than above. *(Sign below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature Print Your Name Date

Firm Name
and Address

DO NOT COMPLETE THE FOLLOWING UNTIL INSTRUCTED TO DO SO AT THE INTERVIEW

I swear that I know the contents of this application, and supplemental pages 1 through_____, that the corrections, numbered 1 through_____, were made at my request, and that this amended application, is true to the best of my knowledge and belief.

(Complete and true signature of applicant)

Subscribed and sworn to before me by the applicant.

(Examiner's Signature) Date

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U.S. Department of Justice
Immigration and Naturalization Service

OMB# 1115-XXXX
Application to Waive Exclusion Grounds

INSTRUCTIONS

Purpose of This Form.
This form is used to apply for a waiver of the exclusion provisions of the immigration law.

Who May File; Initial Evidence Requirements.
General. If you have been found excludable under a ground listed below, you may be able to apply for a waiver. You must file your application with a written statement indicating why you believe you should be granted a waiver and with the other initial evidence required in the appropriate subsection. In your statement explain the beginning and end dates of your proposed trip(s) as well as the reason(s) and purpose of the trip(s). Include any information and evidence you wish considered as to why you should be given the requested waiver. For a nonimmigrant waiver, you should include information about each proposed trip for which you seek a waiver.

In this application the term "immigrant" refers to a person applying for admission with an immigrant visa or applying for adjustment to permanent resident status. The term "permanent resident" refers to a person who has a lawful permanent resident of the United States, but does not qualify as a returning resident. The term "returning resident" refers to a person who has been a permanent resident for the past 7 consecutive years, is returning from a temporary trip abroad, was not deported, and has not been convicted of an aggravated felony and served a term of imprisonment of at least 5 years.

Lack of valid passport or visa. If, when you apply to enter the U.S., you are excludable because you do not have a valid passport or valid nonimmigrant visa, you can apply for a waiver, but you must establish when filing your application that your trip was due to an unforeseen emergency. If, when you apply to enter the U.S. with an immigrant visa, it is found that the visa has expired or was issued in error, you can apply for a waiver, but you must establish when filing your application that you could not reasonably have known that the visa had expired or was issued in error.

Controlled substance trafficking. You may apply for a waiver if you are a nonimmigrant or returning resident. File the application with:
- evidence of the violations (see **General Evidence**), and
- evidence of rehabilitation (see **General Evidence**).

Prostitution or procurement. File your application with evidence of the violations (see **General Evidence**). If you are an immigrant or permanent resident, you must also file evidence that you are the spouse, parent, son, or daughter of a U.S. citizen or permanent resident, and evidence of rehabilitation (see **General Evidence**).

Commercialized vice. File your application with evidence of the violations (see **General Evidence**). If you are an immigrant or permanent resident also file evidence that you are the spouse, parent, son, or daughter of a U.S. citizen or permanent resident, evidence that it has been at least 15 years since you committed any excludable offense, and evidence of rehabilitation (see **General Evidence**).

Exercise of diplomatic immunity from prosecution. File your application with:
- evidence of the violations (see **General Evidence**),
- a statement from the prosecuting authority as to whether or not prosecution is planned or contemplated, and
- a detailed explanation of your decision to exercise diplomatic immunity to avoid full submission to the jurisdiction of a U.S. court. Include the date of your departure from the U.S. Also indicate if you have made any attempts at restitution (if applicable).
- If you are an immigrant or permanent resident, also file evidence you are the spouse, parent, son or daughter of a U.S. citizen or permanent resident; evidence that it has been at least 15 years since you committed any excludable offense; and evidence of rehabilitation (see **General Evidence**).

One or more other criminal violations. File your application with:
- evidence of the violations (see **General Evidence**), and
- If you are an immigrant or permanent resident, also file evidence that you are the spouse, parent, son or daughter of a U.S. citizen or permanent resident, evidence that it has been at least 15 years since you committed any excludable offense, and evidence of rehabilitation (see **General Evidence**).

You are not eligible for a waiver if you have been convicted of murder or a crime involving torture. An immigrant or permanent resident is also not eligible for a waiver of a violation of any law relating to controlled substances, other than one conviction of simple possession of 30 grams or less of marijuana.

Previous terrorist activities. You may apply for a waiver if you are a nonimmigrant or returning resident. File this application with:
- evidence that you are no longer engaged in terrorist activities,
- evidence that you have no intention of engaging in terrorist activities in the future,
- evidence of rehabilitation (see **General Evidence**), and
- a detailed explanation of your reasons for coming to the United States.

Membership in Communist or other totalitarian party. File your application with:
- evidence that you are the parent, spouse, son, daughter, brother, or sister of a U.S. citizen or the spouse, son, or daughter of a permanent resident (see **General Evidence**),
- a statement giving the name of each Communist or other totalitarian party to which you belonged, explaining why and when you joined; dates of membership; any offices you held; why you remained a member and the degree to which you accepted the structure, goals, methods, and philosophy of the party; and, if you left, the reasons why you left.

Previous exclusion, deportation, or removal. File your application with:
- copies of any documents you have relating to previous immigration proceedings, or a statement about the proceeding, including the date of exclusion, deportation or removal,
- evidence of any family relationship to a U.S. citizen or permanent resident (see **General Evidence**),
- evidence of any petitions filed in your behalf.

Assisting illegal entry of others. File your application with:
- complete information about the violations (see **General Evidence**),
- If you are an immigrant or have been a permanent resident for less than 7 years, you must submit evidence that the alien(s) you assisted were your spouse, parent, son, or daughter, and no other person.

Subject of a civil penalty for violation of section 274C. You may apply for a waiver if you are a nonimmigrant, returning resident, or refugee/asylee. File the application with a letter from the administrative law judge who imposed the civil penalty stating that he or she has no objection to the granting of the waiver.

Other misrepresentation or fraud in immigration proceedings. File your application with:
- copies of any documents you have relating to your attempt to procure the benefit through fraud or misrepresentation, and
- a statement describing the manner in which you attempted to gain such benefit.
- If you are an immigrant or permanent resident, also file evidence that you are the spouse, parent, son or daughter of a U.S. citizen or permanent resident (see **General Evidence**), or that the fraud occurred more than 10 years ago.

Ineligible for citizenship. You may apply for a waiver if you are a nonimmigrant or returning resident. File a statement detailing the events which caused you to be ineligible for citizenship and explaining why you believe you should be granted the waiver.

Draft evasion. You may apply for a waiver if you are a nonimmigrant, returning resident, or refugee/asylee. You must file the application with a statement giving the date of your departure and explaining your reasons for departing the U.S. to avoid military service.

Withholding child custody. File your application with a copy of the court order giving custody to another person, and evidence that you are coming to the United States to comply with the court order.

Two-year foreign residence requirement. File your application with:
- copies of the Form(s) I-94, Nonimmigrant Arrival/Departure Record, of yourself, your spouse, and your children, if applicable.
- copies of your IAP-66 forms issued by your program sponsors; and
- evidence that you are the spouse or parent of a U.S. citizen or permanent resident (see **General Evidence**) and that compliance with the requirement would impose exceptional hardship upon them or that compliance would result in your persecution on account of race, religion, or political opinion in the country to which you would have to return to comply with the requirement, or
- a recommendation from the USIA that the waiver be granted based on either
  - a letter from the country of your citizenship or last residence that it has no objection to the waiver, or
  - a letter from an interested U.S. government agency.

General Evidence.
Any foreign language document must be accompanied by an English translation certified by the translator that he or she is competent to translate from the foreign language into English.

Family relationship. If you must file evidence that you are related to a U.S. citizen or permanent resident, you must file:
- a copy of that person's birth certificate, naturalization certificate, alien registration card, or other evidence of he or her status in the U.S., and
- a copy of a birth certificate, marriage certificate, adoption decree, or other document showing your relationship to that person.

Evidence of criminal violations. If you must file evidence of criminal violations, you must include full and complete copies of the official police reports and court records for all crimes (other than minor traffic violations), indicating the crime committed, the sentence imposed, the sentence actually served, whether any probation or parole has been successfully completed, and copies of any pardon, clemency, expungement or similar action. If you admit committing a crime but there are no official records, you must submit a statement detailing the crime committed.

Evidence of rehabilitation. If you file evidence of rehabilitation, you must include a letter of clearance from local police departments where you have resided for the last 5 years. You may also include any other evidence you wish to submit, such as letters attesting to your good moral character from individuals of high standing in the community, documentation of volunteer work in the community, etc.

General Filing Instructions.
Please answer all questions by typing or clearly printing in black ink. Indicate that an item is not applicable with "N/A". If an answer is "none", write "none". If you need extra space to answer any item, attach a sheet of paper with your name and your alien registration number (A#), if any, and indicate the number of the item the answer refers to.

Every application must be properly signed and filed with the correct fee. If you are under 14 years of age, your parent or guardian may sign the application.

Where to File.
Except as noted below, you must file the application at the American Consulate or INS office where you are applying for a visa or other benefit. If you are applying for a waiver of previous exclusion, deportation, or removal, you must file the application at the INS office where the previous proceedings were held.

If you are outside the U.S. and you are applying for a waiver of the 2-year foreign residence requirement, you must file the application with the INS office having jurisdiction over your last address in the U.S. If you qualify as a returning resident and believe that you may be excludable, you may apply for this waiver while in the U.S. If you are not sure whether you are excludable, contact your local INS office for assistance.

Fee.
The fee for this application is $90.00 per waiver requested (per block checked in Part 2, Question 2 of the application form). The fee must be submitted in the exact amount. It cannot be refunded. DO NOT MAIL CASH. All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:
- If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."
- If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

Processing Information.
Rejection. Any application that is not signed, or is not accompanied by the correct fee, will be rejected with a notice that the application is deficient. You may correct the deficiency and resubmit the application. However, an application is not considered properly filed until accepted by the Service.

Initial processing. Once an application has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form, or file if without required initial evidence, you will not establish a base for eligibility, and we may deny your application.

Requests for more information or interview. We may request more information or evidence, or we may request that you appear at an INS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Decision. An application for a waiver may be approved in the discretion of the Service. If your application is denied, you will be notified in writing of the reasons for the denial. A nonimmigrant waiver may be limited as time or purpose. If you later apply for status as an immigrant, you may be required to obtain another waiver based upon the requirements for an immigrant waiver.

Penalties.
If you knowingly and willfully falsify or conceal a material fact or submit a false document with the request, we will deny the benefit you are filing for and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Privacy Act Notice.
We ask for the information on the form, and associated evidence, to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for the information is in 8 USC 1184, 1255 and 1258. We may provide the information to other government agencies. Failure to provide the information, and any requested evidence may delay a final decision or result in denial of your request.

Paperwork Reduction Act Notice
We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: (1) learning about the law and form 15 minutes; (2) completing the form, 10 minutes; and (3) assembling and filing the application, 25 minutes, for an estimated average of 50 minutes per response. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W., Room 5304, Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-XXXX Washington, D.C. 20503.

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U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-XXXX

Application to Waive Exclusion Grounds

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Resubmitted
Relocated Sent
Relocated Rec'd
☐ Applicant Interviewed

Part 1. Information about you.

Family Name | Given Name | Middle Initial

Address - C/O

Street Number and Name | Apt. #

City | State or Province

Country | ZIP/Postal Code

Date of Birth (month/day/year) | Country of Birth

Social Security # | A#

Part 2. Application Type.

1. I am applying for status as: *(check one)*
   - ☐ a nonimmigrant
   - ☐ an immigrant
   - ☐ a permanent resident
   - ☐ a returning resident (certain permanent residents see instruction)
   - ☐ an asylee/refugee
   - ☐ Other_____

2. I believe that I am excludable due to *(check all that apply).*

(check the instructions to make sure you are eligible to apply for a waiver.)

a. ☐ lack of a valid passport or visa
b. ☐ controlled substance trafficking
c. ☐ prostitution or procurement
d. ☐ commercialized vice
e. ☐ exercise of diplomatic immunity from prosecution
f. ☐ one or more other criminal violations
g ☐ previous terrorist activities
h. ☐ membership in communist or other totalitarian party
i. ☐ previous exclusion, deportation, or removal
j. ☐ assisting illegal entry of others
k. ☐ subject of civil penalty for violation of INA Section 274(C)
l. ☐ misrepresentation or fraud in immigration proceedings
m. ☐ ineligible for citizenship
n. ☐ draft evasion
o. ☐ withholding child custody
p. ☐ the two-year foreign residence requirement based on hardship
q. ☐ the two-year foreign residence requirement based on persecution
r. ☐ the two-year foreign residence requirement based on the recommendation of the USIA

Waiver approved under Section:
(Check as many as apply)
- ☐ 212(c)
- ☐ 212(d)(3)(A)
- ☐ 212(d)(3)(B)
- ☐ 212(d)(4)
- ☐ 212(d)(11)
- ☐ 212(e)
- ☐ 212(h)
- ☐ 212(i)
- ☐ 212(k)
- ☐ 212(l) of the INA

Action Block

To Be Completed by Attorney or Representative, if any
☐ Fill in box if G-28 is attached to represent the applicant
VOLAG#
ATTY State License #

Form I-724 (Rev. 04/17/91) DRAFT 6

Continued on back.

Part 3. Processing Information.

Other Names Used (include maiden name) | Consulate where you will apply for a visa

Home Telephone # | Work Telephone # | Country of Citizenship

IF IN THE U.S.: Date of Arrival *(month/day/year)* | I-94# | Current nonimmigrant status: | Expires on *(month/day/year)*

(Attach a copy of your INS documentation, e.g. Alien Registration Card, I-94, etc). If a returning resident, on separate paper list each date of departure and return to the U.S. within the past 7 years.)

Passport Information: Passport # | Date of Issuance *(month/day/year)* | Country | Expiration Date (month/day/year)

Nonimmigrant Visa Information: Nonimmigrant Visa # | Date of Issuance *(month/day/year)* | Place of Issuance | Classification | Expiration Date *(month/day/year)*

Part 4. Family Members. List any relative who lives in the U.S.: (attach separate paper if additional space is needed)

1 Family name | Given name | Middle initial
Address
Relationship | Immigration status | A# (if any)

2 Family name | Given name | Middle initial
Address
Relationship | Immigration status | A# (if any)

Part 5. Signature. (Read the information on penalties in the instructions before completing this section. If you are going to file this petition at an INS office in the United States, sign below. If you are going to file it at a U.S. Consulate or INS Office overseas, sign in front of a U.S. INS or Consular official.)

I certify, or, if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature | *Date*

Signature of INS or Consular Officer | *Print Name* | *Date*

Please Note: If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested waiver and this application may be denied.

Part 6. Signature of person preparing form if other than above. *(Sign below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature | Print Your Name | Date

Firm Name and Address

Form I-724 (Rev. 4/17/91) DRAFT 6

VOL 56 ISS 86 MY 3 1991 UMI

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0136
Employment Eligibility Verification

1. EMPLOYEE INFORMATION AND VERIFICATION *To be completed and signed by employee at the time of hire.*

Print or Type: Name Last First Middle Birth Name

Address (Street Name and Number, City, State, Zip Code)

I attest, under penalty of perjury, that I am (check one of the following):
Date of Birth: Month/Day/Year | Social Security Number

❑ A citizen or national of the United States.
❑ A Lawful Permanent Resident (Alien # A_____).
❑ An alien authorized to work until ____/____/____ (Alien # or Admission #_____).

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

Employee's Signature | Date: Month/Day/Year

2. EMPLOYER REVIEW AND VERIFICATION *To be completed and signed by employer in accordance with instructions on reverse of this form. You must accept any document or combination of documents listed that appear to be genuine and to relate to the individual. You can not specify which document(s) you will accept from an employee.*

Date of Hire: Month/Day/Year

Examine one document from List A OR Examine one document from List B and one from List C

List A - Documents that establish both identity and employment eligibility - List document number and expiration date (if any) and place a check mark (✓) next to the document examined.
Document #_____
Expiration Date (if any) ____/____/____

❑ 1. U.S. Passport (unexpired or expired)
❑ 2. Certificate of U.S. Citizenship (INS Form N-560 or N-561)
❑ 3. Certificate of Naturalization (INS Form N-550 or N-570)
❑ 4. Unexpired foreign passport with attached unexpired employment authorization document (list passport document number and expiration date above and list employment authorization document number and expiration date below)
Document #_____
Expiration Date (if any) ____/____/____
❑ 5. Alien Registration Receipt Card with photograph (INS Form I-151) or Resident Alien Card with photograph (INS Form I-551)
❑ 6. Unexpired Temporary Resident Card (INS Form I-688)
❑ 7. Unexpired Employment Authorization Card (INS Form I-688A)
❑ 8. Unexpired reentry permit (INS Form I-327)
❑ 9. Unexpired Refugee Travel Document (INS Form I-571)
❑ 10. Unexpired employment authorization document issued by the INS which contains a photograph (INS Form I-688B)

List B - Documents that establish identity - List document number and expiration date (if any) and place a check mark (✓) next to the document examined.
Document #_____
Expiration Date (if any) ____/____/____

❑ 1. Driver's license or ID card issued by a state or outlying possession of the U.S. provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
Specify issuing authority _____
❑ 2. School ID card with a photograph
❑ 3. Voter's registration card
❑ 4. U.S. Military card or draft record
❑ 5. ID card issued by federal, state, or local government agencies or entities provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
Specify issuing authority _____
❑ 6. Military dependent's ID card
❑ 7. Native American tribal document
❑ 8. U.S. Coast Guard Merchant Mariner Card
❑ 9. Driver's license issued by a Canadian government authority

For persons under age 18 who are unable to present a document listed above:
❑ 10. School record or report card
❑ 11. Clinic, doctor, or hospital record
❑ 12. Daycare or nursery school record

List C - Documents that establish employment eligibility - List document number and expiration date (if any) and place a check mark (✓) next to the document examined.
Document #_____
Expiration Date (if any) ____/____/____

❑ 1. U.S. social security card issued by the Social Security Administration (other than a card stating it is not valid for employment)
❑ 2. Certification of Birth Abroad issued by the Department of State (Form FS-545)
❑ 3. Certification of Birth Abroad issued by the Department of State (Form DS-1350)
❑ 4. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the U.S. bearing an official seal.
Specify issuing authority _____
❑ 5. Native American tribal document
❑ 6. U.S. Citizen ID Card (INS Form I-197)
❑ 7. ID Card for use of Resident Citizen in the U.S. (INS Form I-179)
❑ 8. Unexpired employment authorization document issued by the INS (other than those listed under List A)
Specify form type _____

Certification - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee commenced employment on the above-listed date, and that to the best of my knowledge the employee is eligible to work in the United States.

Signature of Employer or Authorized Representative | Print or Type: Name | Title

Business or Organization Name | Address (Street Name and Number, City, State, Zip Code) | Date: Month/Day/Year

Form I-9 Rev. 04-19-91 DRAFT

See Reverse Side for Instructions

3. UPDATING AND REVERIFICATION *To be completed and signed by employer in accordance with instructions below.*

A. New name and/or address (if applicable): _____	A. New name and/or address (if applicable): _____
B. Date of rehire (if applicable): ____/____/____	B. Date of rehire (if applicable): ____/____/____
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility:	C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility:
Document type / Document # / Expiration Date (if any)	Document type / Document # / Expiration Date (if any)
I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.	I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.
Employee's Signature / Date: Month/Day/Year	Employee's Signature / Date: Month/Day/Year

4. PREPARER AND/OR TRANSLATOR CERTIFICATION *To be completed and signed if Section 1 is prepared by a person other than the employee.*

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature | Print or Type: Name

Address (Street Name and Number, City, State, Zip Code) | Date: Month/Day/Year

INSTRUCTIONS

Anti-Discrimination Notice -
You may not discriminate against any individual (other than an alien not authorized to work in the U.S.) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status.

SECTION 1 EMPLOYEE - All employees hired after November 6, 1986 must complete Section 1 of this form at the time of hire. The employer is responsible for ensuring that Section 1 is timely and properly completed.

SECTION 2 EMPLOYER - For the purpose of completing this form, the term "employer" includes those recruiters and referrers for a fee who are agricultural associations, agricultural employers, or farm labor contractors. Employees must complete Section 2 by examining evidence of identity and employment eligibility within three (3) business days of the date of hire. However, if employers hire individuals for a duration of less than three (3) business days, Section 2 must be completed at the time of hire. If employees are unable to present the required document(s) within three (3) business days, they must present a receipt for the application of the document(s) within ninety (90) days. Employers must record the date of hire, check either an appropriate box in List A OR an appropriate box in both List B and List C, record the document number(s) and expiration date(s), if any, and sign and date the certification. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. These photocopies may only be used for the verification process and must be retained with the I-9. However, the employer is still responsible for completing the I-9.

SECTION 3 UPDATING AND REVERIFICATION - Employers must complete Section 3 when updating and/or reverifying the I-9. Employers must reverify employment eligibility of their employees on or before the expiration date recorded in Section 1.
- If an employee's name or address changes, complete line A.
- If an employee is rehired within three (3) years of the date this form was originally completed and the employee is still eligible to be employed on the same basis as previously indicated on this form (updating), complete line B and the signature block.
- If an employee is rehired within three (3) years of the date this form was originally completed and the employee's work authorization has expired (reverification),
  - examine any document that reflects that the employee is authorized to work in the U.S. (see Lists A and C),
  - record the type of document, document number and expiration date (if any) on line C, and
  - complete the signature block.

SECTION 4 PREPARER/TRANSLATOR CERTIFICATION - The Preparer/Translator Certification must be completed if Section 1 is prepared by a person other than the employee. A preparer/translator may be used only when the employee is unable to complete Section 1 on his/her own. However, the employee must still sign Section 1 personally.

PHOTOCOPYING AND RETAINING FORM I-9 - A blank Form I-9 may be reproduced provided both sides are copied. Employers must retain completed I-9's for three (3) years after the date of hire OR one (1) year after the date employment ends, whichever is later.

DO NOT MAIL COMPLETED I-9 TO INS.

PAPERWORK REDUCTION ACT NOTICE: We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: 1) learning about this form, 5 minutes; 2) completing the form, 5 minutes; and 3) assembling and filing (record keeping) the application, 5 minutes, for an average of 15 minutes per response. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W., Room 5304, Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-0136, Washington, D.C. 20503.

NOTICE: Authority for collecting the information on this form is in Title 8, United States Code, Section 1324a, which requires employers to verify the identity and employment eligibility of individuals on a form approved by the Attorney General. This form will be used to verify the individual's identity and employment eligibility in the United States. Failure to present this form for inspection to officers of the Immigration and Naturalization Service, the Department of Labor, or the Office of Special Counsel for Unfair Immigration Related Employment Practices within the time period specified by regulation, or improper completion or retention of this form, may be a violation of the above law and may result in a civil money penalty. Information on this form will comply with the requirements of Sections (c)(1) and (4) of the Privacy Act (5 U.S.C. 552a).

Form I-9
OMB No. 1115-0136

U.S. Department of Justice
Immigration and Naturalization Service

VOL 56 ISS 86 MY 3 1991 UMI

U.S. Department of Justice
Immigration and Naturalization Service

OMB NO. 1115-XXXX
Application - Dedicated Commuter Lane Program

INSTRUCTIONS

Read carefully -- fee will not be refunded. Failure to follow instructions may require return of your application and delay final action.

1. Preparation of Application. Fill in application in single copy only, by typewriter, or print in block letters using only dark ink. **Do not use pencil or red ink.**

2. Who Can Apply. Citizens of the United States or citizens of the country contiguous to the specific port of entry sponsoring the commuter lane program are eligible to apply for participation in the dedicated commuter lane. Other passengers accompanying the principal applicant in the registered vehicle are limited to members of the applicant's car pool, or immediate family residing with the applicant, who must be listed on this form at the time of the principal's application. It is the responsibility of the principal applicant to promptly notify the local Immigration Office of the addition of approved new family or car pool members prior to their use of the dedicated commuter lane. All participants in the program are required to submit an application which must accompany the application of the principal applicant.

3. Where to Submit This Application. The port of entry sponsoring the dedicated commuter lane for which you are applying will furnish you with the correct local address to which this application may be mailed. If mail-in applications are not being accepted, the local port of entry will furnish you with detailed instructions on how to schedule an interview appointment and/or otherwise complete the necessary processing.An application for participation in a dedicated commuter lane program may be denied at the discretion of the District Director with no appeal. All applicants denied shall be so notified.

4. Fee. The U.S. Immigration and Naturalization Service requires a $25.00 (U.S.) nonrefundable fee upon approval of this application. Payment by check or money order must be drawn on a bank or other institution located in the United States and be payable in United States currency. When a check is drawn on an account of a person other than the applicant, the name of the applicant must be entered on the face of the check. Personal checks are accepted subject to collectibility. An uncollectible check will render the approval of the application invalid. A charge of $15.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

5. Privacy Act Statement. The Authority to collect this information is contained in Title 8, United States Code. Furnishing the information on this form is voluntary, however, failure to provide all of the requested information may result in the delay of a final decision or denial of your request. The information collected will be used to make a determination on your application. It may, however, be provided to other government agencies (Federal, state, local and/or foreign).

6. Penalties for False Statements in Applications. Severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact or using any false document in the submission of this application. Also, a false representation may result in the denial of this application and any other application you may make for any benefit under the immigration laws of the United States.

In addition, periodic checks will be made to ensure proper use of the dedicated commuter lane. Any person violating the conditions and terms of this application or agreement may be subject to severe penalties including revocation of the permit; seizure of the vehicle and/or any goods found unlawfully therein; as well as possible fines and/or prosecution. The law will be strictly enforced.

7. Reporting Burden. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: 1)learning about the form, and reading and understanding U.S. Customs Publications 28 minutes; 2) completing the form, 8 minutes ; and 3) assembling and mailing the application , 4 minutes, for an estimated average of 40 minutes per response. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W.; Room 5304, Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-XXXX, Washington, D.C. 20503.

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-XXXX
Application- Dedicated Commuter Lane Program

START HERE - PLEASE TYPE OR PRINT

1. Name: *(Last)* *(First)* *(Middle Initial)*

2. Date of Birth: *(MM/DD/YY)* 3. Sex: ( ) Male ( ) Female

4. Mailing Address *(Street Number and Name)*:

City | State or Province | Zip/Postal Code

5. Telephone: Business: ( ) - Residence: ( ) -

6. Residence Address *(Street Number and Name)*:

City | State or Province | Zip/Postal Code

7. Country of Citizenship: 8. Alien Registration No.: *(If applicable)* 9. Place of Birth:

10. Driver's License No.: State/Province:

11. Frequency of cross border travel: Per week: 12. Most frequent reason for crossing:

13. Have you or any person listed below ever been convicted of:
1. A criminal offense Yes____ No____
2. A violation of Customs law Yes____ No____
3. A violation of Immigration law Yes____ No____
If yes, please specify:_____

14. Family, or Car Pool, Members:

	Name	Citizenship/Alien No.	Sex	Date of Birth *(MM/DD/YY)*
1.				
2.				
3.				
4.				
5.				

15. Vehicle Information *(If applicable)*:
1. Vehicle License: _____ State/Province: _____
2. Vehicle Make: _____ Vehicle Model: _____
3. Vehicle Year: _____ Vehicle Color: _____

Name and address of registered owner, if different than applicant:_____

CERTIFICATION: I certify that I have read and understood all statements contained in this application. I also certify that the information given is true and complete. I understand that all information provided on this application may be shared with other agencies participating in this pilot project.

(Signature of Applicant) *(Date)*

PRIVACY ACT STATEMENT -- The Authority to collect this information is contained in Title 8, United States Code. Furnishing the information on this form is voluntary, however, failure to provide all of the requested information may result in the delay of a final decision or denial of your request. The information collected will be used to make a determination on your application. It may, however, be provided to other government agencies (Federal, state, local and/or foreign).

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U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-XXXX
Application - Dedicated Commuter Lane Program

COMMUTER LANE PARTICIPANTS

1. Participant acknowledges that he/she is a citizen of the United States or a citizen of the country contiguous to the specific port of entry sponsoring the commuter lane program.

2. Participant agrees to a full inspection of the registered vehicle and/or all passengers listed on the application prior to initial use of the dedicated commuter lane, if requested by either Federal agency.

3. Participant further agrees to submit to a full and complete vehicular and passenger inspection, for compliance purposes, at any time while utilizing the dedicated commuter lane.

4. Participant agrees to pay a periodic fee for the use of the dedicated commuter lane.

5. Participant agrees to abide by all conditions imposed. These conditions include, but are not limited to, the following:

   a. Number and type of passengers permitted in a designated vehicle;
   b. State and federal laws regarding the importation of alcohol;
   c. All federal, state and local laws pursuant to Sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act regarding possession and importation of controlled substances; and,
   d. All other pertinent regulations under the jurisdiction of any other federal inspectional agency.

6. Participant agrees that the dedicated commuter lane will not be utilized when he/she intends to travel to interior points within the United States which require a permit from the U.S. Immigration Service.

7. Participant agrees to retain the dedicated commuter lane approval notice in the vehicle when crossing the border and to produce such notice and personal identification upon request.

8. Participant acknowledges that a violation of the conditions listed above for use of the dedicated commuter lanes may result in his/her removal from the program and, in addition, may result in the imposition of any other applicable fines, penalties, or sanctions as provided by law.

9. Participant acknowledges that he/she has read and understood U.S. Customs publication 512, "Know Before You Go", for U.S. resident applicants, or U.S. Customs publication 511-A, "Customs Hints", for non-resident applicants. If there is anything to be declared in the vehicle by anyone, beyond entitled exemptions, vehicle can not use the dedicated commuter lane.

CERTIFICATION: I certify that I have read, understood, and agree to abide by all conditions listed above for use of the dedicated commuter lanes.

Signature	Printed Name	Date
1.		
2.		
3.		
4.		
5.		

FOR AGENCY USE ONLY
DECAL#:
ISSUE DATE:
RENEWAL DATE:
VEHICLE LIC. #:
APP.____DEN.___OPP.___INT.___

Form I-823A (04-17-91) DRAFT 4

U.S. Department of Justice
Immigration and Naturalization Service

Dear Applicant:

Congratulations on your acceptance into the dedicated commuter lane program. Please affix the decal included with this notice to the inside of the windshield of the vehicle listed. The decal is to be placed at the top of the windshield in the center. (On most vehicles this will be behind the rear view mirror.) The decal is constructed to disintegrate in the event that you attempt to remove it so you must be very careful in its application.

Vehicle Information (from system):

You and the following family or car pool members are authorized to be in the vehicle when you are utilizing the dedicated commuter lanes. If you are transporting anyone not included on this list, you must use one of the regular lanes.

Applicant, family and/or car pool members, including DOB (from system):

You must keep this letter in the vehicle when crossing the border. It is your responsibility to inform this Service if the vehicle is sold, stolen, or disposed of otherwise. The decal is not transferable under any circumstances. If you sell the vehicle, it is your responsibility to remove, or obliterate the window decal. If the windshield needs to be replace because of damage, a new decal may be obtained if you provide satisfactory evidence to this Service.

Very Truly Yours,

DISTRICT DIRECTOR

Form I-823B (04-17-91) DRAFT 4

OMB No. 1115-XXXX

VOL 56 ISS 86 MY 3 1991 UMI

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-XXX

Admission Number

Welcome to the United States

I-94W Nonimmigrant Visa Waiver Arrival/Departure Form

Instructions

This form must be completed by every nonimmigrant visitor not in possession of a visitor's visa, who is a national of one of the countries enumerated in 8 CFR 217. The airline can provide you with the current list of eligible countries.

Type or print legibly with pen in ALL CAPITAL LETTERS. USE ENGLISH

This form is in two parts. Please complete both the Arrival Record, items 1 through 11 and the Departure Record, items 12 through 15. The reverse side of this form must be signed and dated. Children under the age of fourteen must have their form signed by a parent/guardian.

Item 7 - If you are entering the United States by land, enter LAND in this space. If you are entering the United States by ship, enter SEA in this space.

Admission Number

Immigration and Naturalization Service
Form I-94W (03-25-91) - Arrival Record
VISA WAIVER

1. Family Name
2. First (Given) Name
3. Birth Date (day-mo-yr)
4. Country of Citizenship
5. Sex (male or female)
6. Passport Number
7. Airline and Flight Number
8. Country where you live
9. City Where you boarded
10. Address While in the United States (Number and Street)
11. City and State

Departure Number

Immigration and Naturalization Service
Form I-94W (03-25-91) - Departure Record
VISA WAIVER

12. Family Name
13. First (Given) Name
14. Birth Date (day-mo-yr)
15. Country of Citizenship

See Other Side **Staple Here**

Do any of the following apply to you? *(Answer Yes or No)*

A. Do you have a communicable disease; physical or mental disorder; or are you a drug abuser or addict? ☐Yes ☐No

B. Have you ever been arrested or convicted for an offense or crime involving moral turpitude or a violation related to a controlled substance; or been arrested or convicted for two or more offenses for which the aggregate sentence to confinement was five years or more; or been a controlled substance trafficker; or are you seeking entry to engage in criminal or immoral activities? ☐Yes ☐No

C. Have you ever been or are you now involved in espionage or sabotage; or in terrorist activities; or have you ever participated in Nazi persecutions or genocide? ☐Yes ☐No

D. Are you seeking to work in the U.S.; or have you ever been excluded and deported; or been previously removed from the United States; or procured or attempted to procure a visa or entry into the U.S. by fraud or misrepresentation? ☐Yes ☐No

E. Have you ever detained, retained or withheld custody of a child from a U.S. citizen granted custody of the child? ☐Yes ☐No

F. Have you ever been denied a U.S. visa or entry into the U.S. or had a U.S. visa canceled? If yes, when?_____where?_____ ☐Yes ☐No

G. Have you ever asserted immunity from prosecution? ☐Yes ☐No

IMPORTANT: If you answered "Yes" to any of the above, please contact the American Embassy BEFORE you travel to the U.S. since you may be refused admission into the United States.

Family Name *(Please Print)* First Name

Country of Citizenship Date of Birth

WAIVER OF RIGHTS: I hereby waive any rights to review or appeal of an immigration officer's determination as to my admissibility, or to contest, other than on the basis of an application for asylum, any action in deportation proceedings.

CERTIFICATION: I certify that I have read and understand all the questions and statements on this form. The answers I have furnished are true and correct to the best of my knowledge and belief.

Signature Date

Public Reporting Burden - The burden for this collection is computed as follows: (1) Learning about the form 2 minutes; (2) completing the form 4 minutes for an estimated average of 6 minutes per response. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to INS, 425 I Street, N.W., Rm. 5304, Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-1115-0077, Washington, D.C. 20503.

Departure Record

Important - Retain this permit in your possession; you must surrender it when you leave the U.S. Failure to do so may delay your entry into the U.S. in the future.
You are authorized to stay in the U.S. only until the date written on this form. To remain past this date, without permission from Immigration authorities, is a violation of the law.
Surrender this permit when you leave the U.S.:
- By sea or air, to the transportation line;
- Across the Canadian border, to a Canadian Official;
- Across the Mexican border, to a U.S. Official.

WARNING: You may not accept unauthorized employment; or attend school; or represent the foreign information media during your visit under this program. You are authorized to stay in the U.S. for 90 days or less. You may not apply for: 1) a change of nonimmigrant status; 2) adjustment of status to temporary or permanent resident, unless eligible under section 201(b) of the INA; or 3) an extension of stay. Violation of these terms will subject you to deportation.

Port:
Date:
Carrier:
Flight #/Ship Name:

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U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-XXXX

Application for Replacement Naturalization/Citizenship Document

INSTRUCTIONS

Purpose of This Form.
This form is used to apply for a replacement Declaration of Intention, Naturalization Certificate, Certificate of Citizenship, or Repatriation Certificate, or to apply for a special certificate of naturalization as a U.S. citizen to be recognized by a foreign country.

Who May File.
If you have been issued a Declaration of Intention, Naturalization Certificate, Certificate of Citizenship, or Repatriation Certificate which has been lost, mutilated, or destroyed, or if your name has been changed by marriage or by court order after the document was issued and you wish a document in the new name, you may apply for a replacement.

If you are a naturalized citizen who desires to obtain recognition as a citizen of the United States by a foreign country, you may apply for a special certificate for that purpose.

General Filing Instructions.
Please answer all questions by typing or clearly printing in black ink. Indicate that an item is not applicable with "N/A". If an answer is "none," please so state. If you need extra space to answer any item, attach a sheet of paper with your name and your A#, if any, and indicate the number of the item.

Every application must be properly signed and filed with the correct fee. If you are under 14 years of age, your parent or guardian may sign the application in your behalf.

Initial Evidence Requirements.
You must file your application with the following evidence:

- 3 identical natural color photographs of yourself taken within 30 days of this application. The photos should be no larger than 2 X 2 inches. They must have a white background, be unmounted, printed on thin paper, and be unglossy and unretouched. They should show a three-quarter frontal profile showing the right side of your face with your right ear visible and with your head bare (unless you are wearing a headdress as required by a religious order of which you are a member), with the distance from the top of the head to the point of your chin about 1 1/4 inches. Lightly print your A# on the back of each photo with a pencil.
- If you are applying for replacement of a mutilated document, you must attach the mutilated document.
- If you are applying for a new document because your name has been changed, you must submit the original Service document and a copy of the marriage certificate or court order showing the name change.
- If you are applying for a special certificate of naturalization, you must attach a copy of your naturalization certificate.

Copies.
If these instructions state that a copy of a document may be filed with this application, and you choose to send us the original, we may keep that original for our records.

Where to File.
File this application at the local Service office having jurisdiction over your place of residence.

Fee.
The fee for this application is $50.00, except there is no fee if you check block 2(d) of Part 2. The fee must be submitted in the exact amount. It cannot be refunded. DO NOT MAIL CASH.

All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:

- If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."
- If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

Processing Information.
Rejection. Any application that is not signed or is not accompanied by the correct fee will be rejected with a notice that the application is deficient. You may correct the deficiency and resubmit the application. However, an application is not considered properly filed until accepted by the Service.

Initial processing. Once the application has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility and we may deny your application.

Requests for more information or interview. We may request more information or evidence or we may request that you appear at an INS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Decision. If you establish eligibility for the document, your application will be approved and the document issued. A special certificate of naturalization will be forwarded to the Department of State for delivery to a foreign government official. If your application is denied, you will be notified in writing of the reasons for the denial.

Penalties.
If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Privacy Act Notice.
We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 USC 1439, 1440, 1443, 1445, 1446, and 1452. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

Paperwork Reduction Act Notice.
We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: (1) learning about the law and form, 10 minutes; (2) completing the form, 10 minutes; and (3) assembling and filing the application, 35 minutes, for an estimated average of 55 minutes per response. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W., Room 5304, Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-XXXX, Washington, D.C. 20503.

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U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-XXXX
Application for Replacement
Naturalization/Citizenship Document

START HERE - Please Type or Print

Part 1. Information about you.

Family Name | Given Name | Middle Initial

Address - In care of:

Street # and Name | Apt #

City or town | State or Province

Country | Zip or Postal Code

Date of Birth (month/day/year) | Country of Birth

Certificate # | A #

Part 2. Type of application.

1. I hereby apply for: (check one)
   a. ☐ a new Certificate of Citizenship
   b. ☐ a new Certificate of Naturalization
   c. ☐ a new Certificate of Repatriation
   d. ☐ a new Declaration of Intention
   e. ☐ a special Certificate of Naturalization to obtain recognition of my U.S. citizenship by a foreign country
2. Basis for application: (If you checked other than "e" in Part 1, check one)
   a. ☐ my certificate was lost, stolen or destroyed (attach a copy of the certificate if you have one)
   b. ☐ my certificate is mutilated (attach the certificate)
   c. ☐ my name has been changed (attach the certificate)
   d. ☐ my certificate or declaration is incorrect (attach the document)

Part 3. Processing information.

SEX ☐ Male ☐ Female | Height | Marital Status ☐ Single ☐ Married ☐ Widowed ☐ Divorced

My last certificate or declaration of intention was issued to me by:

INS Office or Name of court | Date (month/day/year)

Since becoming a citizen, have you lost your citizenship in any manner?

☐ No ☐ Yes (attach an explanation)

Part 4. Complete if applying for a new document because of name change.

Name changed to present name by: (check one)

☐ Marriage or Divorce on (month/day/year)_____ (attach a copy of marriage or divorce certificate)

☐ Court Decree (month/day/year)_____ (attach a copy of the court decree)

Form N-565 (Rev. 04/09/91) DRAFT 10

Continued on back.

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
☐ Applicant Interviewed	

☐ Declaration of Intention verified by _____

☐ Citizenship verified by _____

Remarks

Action Block

To Be Completed by *Attorney or Representative*, if any

☐ Fill in box if G-28 is attached to represent the applicant

VOLAG#

ATTY State License #

Part 5. Complete if applying to correct your document.

If you are applying for a new certificate or declaration of intention because your current one is incorrect, explain why it is incorrect and attach copies of the documents supporting your request.

Part 6. Complete if applying for a special certificate of recognition as a citizen of the U.S. by the Government of the foreign country.

Name of Foreign Country_____

Information about official of the country who has requested this certificate (if known)

Name | Official title

Government Agency

Address: Street # and Name | Room #

City | State or Province

Country | Zip or Postal Code

Part 7. Signature. *Read the information on penalties in the instructions before completing this part. If you are going to file this application at an INS office in the U.S., sign below. If you are going to file it at a U.S. INS office overseas, sign in front of a U.S. INS or consular official.*

I certify, or, if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature | Date

Signature of INS or Consular Official | Print Name | Date

Please Note: If you do not completely fill out this form, or fail to submit required documents listed in the instructions, you may not be found eligible for a certificate and this application may be denied.

Part 8. Signature of person preparing form if other than above. *(sign below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature | Print Your Name | Date

Firm Name and Address

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U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-XXXX
Immigrant Petition by Alien Entrepreneur

INSTRUCTIONS

Purpose of This Form.
This form is for use by an entrepreneur to petition for status as an immigrant to the U.S.

Who May File.
You may file this petition for yourself if you have established a new commercial enterprise

- in which you will engage in a managerial or policy-making capacity, and
- in which you have invested or are actively in the process of investing the amount required for the area in which the enterprise is located, and
- which will benefit the U.S. economy, and
- which will create full-time employment in the U.S. for at least 10 U.S. citizens, permanent residents, or other immigrants authorized to be employed, other than yourself, your spouse, your sons or daughters, or any nonimmigrant aliens.

The establishment of a new commercial enterprise may include:

- creation of a new business,
- the purchase of the assets of an existing business which results in reorganization of the business, such as reincorporation or the restructuring of a partnership, or
- the expansion of an existing business through investment of the amount required, so that a substantial increase (at least 140%) in either the net worth, number of employees, or both, results.

The amount of investment required in a particular area is set by regulation. Unless adjusted downward for targeted areas or upward for areas of high employment, the figure shall be $1,000,000. You may obtain this information from an INS office or American consulate.

General Filing Instructions.
Please answer all questions by typing or clearly printing in black ink. Indicate that an item is not applicable with "N/A". If an answer to a question is "none," please so state. If you need extra space to answer any item, attach a sheet of paper with your name and your A#, if any, and indicate the number of the item. Your petition must be properly signed and filed with the correct fee.

Initial Evidence Requirements.
The following evidence must be filed with your petition:

- Evidence that you have established a lawful business entity under the laws of the jurisdiction in the U.S. in which it is located, or, if you have made an investment in an existing business, evidence that your investment has caused a substantial (at least 140%) increase in the net worth of the business, the number of employees, or both. Such evidence may consist of copies of the articles of incorporation, partnership or joint venture agreement, license or other official authorization to engage in business, payroll records, certified financial reports, or any available evidence of conveyance of the funds from you to the business.
- Evidence, if applicable, that your enterprise has been established in a targeted employment area. A targeted employment area is defined as a rural area or an area which has experienced high unemployment of at least 150% of the national average rate. A rural area is an area not within a metropolitan statistical area or not within the outer boundary of any city or town having a population of 20,000 or more.
- Evidence that you have invested or are actively in the process of investing the amount required for the area in which the business is located. Such evidence may include copies of bank statements, purchase contracts, evidence of borrowing which is secured by your assets, excluding the new enterprise, evidence of monies transferred to the new enterprise in exchange for shares of stock or convertible debentures, evidence of property transferred from abroad for use in the U.S. enterprise (including U.S. Customs entry documents), etc.
- Evidence that the enterprise will create at least 10 full-time positions for U.S. citizens, permanent residents, or aliens lawfully authorized to be employed (except yourself, your spouse, sons, or daughters, and any nonimmigrant aliens). Such evidence may consist of copies of Form I-9, if the employees have already been hired, or a business plan showing when such employees will be hired within the next two years.
- Evidence that you are or will be engaged in the management of the enterprise, either through the exercise of day-to-day managerial control or through policy formulation. Such evidence may include a statement of your position title and a complete description of your duties, evidence that you are a corporate officer or hold a seat on the board of directors, or if the new enterprise is a partnership, evidence that you are engaged in either direct management or policy-making activities.

Copies.
If these instructions state that a copy of a document may be filed with this application, and you choose to send us the original, we may keep that original for our records.

Where to File.
The petition must be filed with the INS Service Center having jurisdiction over the area in which the new commercial enterprise is established or will be principally doing business.

If the enterprise is in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, or West Virginia, mail this petition to USINS, Eastern Service Center, P.O. Box 590, Williston, VT 05479.

If the enterprise is in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, mail this petition to USINS, Southern Service Center, P.O. Box 152122, Dept. A, Irving, Texas 75015-2122.

If the enterprise is in Arizona, California, Guam, Hawaii, or Nevada, mail this petition to USINS, Western Service Center, P.O. Box 30040, Laguna Nigel, CA 92607-0040.

If the enterprise is elsewhere in the U.S., mail this petition to USINS, Northern Service Center, 100 Centennial Mall North, Room, B-26, Lincoln NE 68508.

Fee.
The fee for this petition is $140.00. The fee must be submitted in the exact amount. It cannot be refunded. DO NOT MAIL CASH. All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:

- If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."
- If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

Processing Information.
Rejection. Any petition that is not signed or is not accompanied by the correct fee will be rejected with a notice that it is deficient. You may correct the deficiency and resubmit the petition. However, a petition is not considered properly filed until accepted by the Service. A priority date will not be assigned until the petition is properly filed.

Initial processing. Once the petition has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility, and we may deny your petition.

Requests for more information or interview. We may request more information or evidence or we may request that you appear at an INS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Approval. If you have established that you qualify for investor status, the petition will be approved. If you have requested that the petition be forwarded to an American consulate abroad, the petition will be sent there unless that consulate does not issue immigrant visas. If you are in the U.S. and state that you will apply for adjustment of status, and the evidence indicates that you are not eligible for adjustment, the petition will be sent to an American consulate abroad. You will be notified in writing of the approval of the petition and where it has been sent, and the reason for sending it to a place other than the one requested, if applicable.

Meaning of petition approval. Approval of a petition shows only that you have established that you have made a qualifying investment. It does not guarantee that the American Consulate will issue the immigrant visa. There are other requirements which must be met before a visa can be issued. The American Consulate will notify you of those requirements.

Denial. If you have not established that you qualify, the petition will be denied. You will be notified in writing of the reasons for the denial.

Penalties.
If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Privacy Act Notice.
We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 USC 1184, 1255 and 1258. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

Paperwork Reduction Act Notice.
We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: (1) learning about the law and form, 15 minutes; (2) completing the form, 25 minutes; and (3) assembling and filing the application, 35 minutes, for an estimated average of 1 hour and 15 minutes per response. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W., Room 5304, Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-XXXX, Washington, D.C. 20503.

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U.S. Department of Justice
Immigration and Naturalization Service

Immigrant Petition by
Alien Entrepreneur
OMB #1115-XXXX

START HERE - Please Type or Print

FOR INS USE ONLY

Returned | Receipt
Resubmitted
Reloc Sent
Reloc Rec'd
☐ Applicant Interviewed
Remarks
Action Block

Part 1. Information about you.

Family Name | Given Name | Middle Initial
Address - In Care of:
Street # and Name | Apt. #
City or town | State or Province
Country | Zip or Postal Code
Date of Birth (month/day/year) | Country of Birth
Social Security # | Alien #
If in the U.S. — Date of Arrival (month/day/year) | I-94 #
Current Nonimmigrant Status | Expires on (month/day/year)

Part 2. Application Type (check one).

a. ☐ This petition is based on an investment in a commercial enterprise in a targeted employment area.
b. ☐ This petition is based on an investment in a enterprise in an area for which the required amount of capital invested has been adjusted upward.
c. ☐ This petition is based on an investment in a commercial enterprise which is not in either a targeted area or in an upward adjustment area.

Part 3. Information about your investment.

Name of Commercial Enterprise Invested in
Street Address
Phone # | Business Organized as (Corporation, partnership, etc...)
Kind of Business (Example: Furniture Manufacturer)
Date established (month/day/year) | IRS Tax #
Date of your initial investment (month/day/year) | Amount of your initial investment $
Your total Capital Investment in Enterprise to date $ | % of Enterprise you own

If you are not the sole investor in the new commercial enterprise, list on separate paper the names of all other parties (natural and non-natural) who hold a percentage share of ownership of the new enterprise and indicate whether any of these parties is seeking classifications as an alien entrepreneur. Include the name, percentage of ownership and whether or not the person is seeking classification under section 203(b)(5).

If you indicated in Part 2 that the enterprise was in a targeted employment area or in an upward adjustment area, give the location at right. County ____ State ____

To Be Completed by Attorney or Representative, if any
☐ Fill in box if G-28 is attached to represent the applicant
VOLAG#
ATTY State License #

Form I-526 (Rev. 04-09-91) DRAFT 7

Continued on back.

Part 4. Additional information about the enterprise.

Type of enterprise *(check one)*:
☐ new commercial enterprise resulting from the creation of a new business
☐ new commercial enterprise resulting from the reorganization of an existing business.
☐ new commercial enterprise resulting from a capital investment in an existing business.

Assets:
Total amount in U.S. bank account $____
Total value of all assets purchased for use in the enterprise $____
Total value of all property transferred from abroad to the new enterprise $____
Total of all debt financing $____
Total stock and debenture purchases $____
Other (explain on separate paper) $____
Total $____

Income: When you made investment Gross $____ Net $____
Now Gross $____ Net $____
Net worth When you made investment $____ Now $____

Part 5. Employment creation information.

# of full-time employees in Enterprise in U.S. (excluding you, spouse, sons & daughters)
When you made your initial investment ____ Now ____ Difference ____
How many of these new jobs were created by your investment? ____ How many additional new jobs will be created by your additional investment? ____

What is your position, office or title with the new commercial enterprise?

Briefly describe your duties, activities and responsibilities.

Salary Cost of Benefits

Part 6. Processing information.

Below give the U.S. Consulate you want notified if this petition is approved and if any requested adjustment of status cannot be granted.
American Consulate: **City** **Country**

If you gave a U.S. address in Part 1, print your foreign address below. If your native alphabet does not use Roman letters, print your name and foreign address in the native alphabet.
Name **Foreign Address**

Is an application for adjustment of status attached to this petition? ☐ yes ☐ no
Are you in exclusion or deportation proceedings? ☐ yes (explain on separate paper) ☐ no
Have you ever worked in the U.S. without permission ☐ yes (explain on separate paper) ☐ no

Part 7. Signature. *Read the information on penalties in the instructions before completing this section.*

I certify under penalty of perjury under the laws of the United States of America that this petition, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.
Signature Date

Please Note: *If you do not completely fill out this form, or fail to submit required documents listed in the instructions, you may not be found eligible for the requested document and this application may be denied.*

Part 8. Signature of person preparing form if other than above. *(Sign below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.
Signature Print Your Name Date

Firm Name and Address

[FR Doc. 91-10451 Filed 5-2-91; 8:45 am]
BILLING CODE 4410-10-C

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Federal Prison Industries, Inc.

UNICOR Independent Market Study; Interim Report Availability

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: The independent market study of UNICOR is in process. An interim report describing the study approach and data sources is now available for review and comment. Copies of the interim report are available at the address given below.

DATES: All written comments and suggestions should be submitted prior to June 1, 1991.

ADDRESSES: Requests for the interim report and any comments and suggestions on the market study may be sent to John C. Foreman, Deloitte & Touche, 1969 M Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: John Foreman, (202) 955-4194.

Dated: April 29, 1991.

James Hagerty,

Manager, Market Research, Federal Prison Industries, Inc.

[FR Doc. 91-10500 Filed 5-2-91;8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Mine Safety and Health Administration.

Form 7000-1, Mine Accident, Injury and Illness Report

1219-0007.

On occasion.

Businesses and other for profit; small businesses or organizations.

59,477 responses, 0.5 hour per response, 29,738 burden hours Mine operators are required to submit Form 7000-1 to MSHA to report on accidents, injuries, and illnesses at their mines shortly after an accident or injury has occurred or a work-related illness has been identified. The use of the form provides for uniform information gathering.

Reinstatement

Bureau of Labor Statistics.

Current Population Survey—September 1991—Veterans, Supplement.

1220-0102—CPS-1, CPS 260.

Other—one time.

Individuals or households.

57,000 responses; 969 hours—1 minute per responses; 1 form.

The supplement data will provide estimates of disabled and Vietnam-theater veterans in the labor force, the number of Veterans who feel their disability affects labor force participation and information about veterans who use the programs that are available to them. Data are necessary to evaluate Veterans' programs.

Signed at Washington, DC this 30th day of April, 1991.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 91-10520 Filed 5-2-91; 8:45 am]

BILLING CODE 4510-24-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects

to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Alabama:
AL91-23 (Feb. 22, 1991) ..... p.45, p.46.
AL91-24 (Feb. 22, 1991) ..... p.47, p.48.
AL91-25 (Feb. 22, 1991) ..... p.49, p.50.
AL91-26 (Feb. 22, 1991) ..... p.51, p.52.
AL91-28 (Feb. 22, 1991) ..... p.55, p.56.
AL91-29 (Feb. 22, 1991) ..... p.57, p.58.

North Carolina:
NC91-23 (Feb. 22, 1991) ..... p.655, p.656.
NC91-24 (Feb. 22, 1991) ..... p.657, p.658.
NC91-25 (Feb. 22, 1991) ..... p.659, p.660.
NC91-26 (Feb. 22, 1991) ..... p.661, p.662.
NC91-27 (Feb. 22, 1991) ..... p.663, p.664.
NC91-28 (Feb. 22, 1991) ..... p.665, p.666.
NC91-29 (Feb. 22, 1991) ..... p.667, p.668.
NC91-30 (Feb. 22, 1991) ..... p.669, p.670.
NC91-31 (Feb. 22, 1991) ..... p.671, p.672.

New Jersey:
NJ91-2 (Feb. 22, 1991) ..... p.701, p.705.
NJ91-3 (Feb. 22, 1991) ..... p.721, p.725.

New York:
NY91-6 (Feb. 22, 1991) ..... p.827, pp.828-829,833.

Pennsylvania:
PA91-1 (Feb. 22, 1991) ..... p.953, p.957.
PA91-2 (Feb. 22, 1991) ..... p.985, pp.986-987, 971.
PA91-3 (Feb. 22, 1991) ..... p.979, p.980.
PA91-4 (Feb. 22, 1991) ..... p.985, pp.986, 988.
PA91-8 (Feb. 22, 1991) ..... p.1029, p.1030, pp.1032-1036.
PA91-11 (Feb. 22, 1991) ..... p.1053, p.1054.
PA91-16 (Feb. 22, 1991) ..... p.1077, p.1078.
PA91-17 (Feb. 22, 1991) ..... p.1079, p.1080.
PA91-20 (Feb. 22, 1991) ..... p.1099, p.1100.
PA91-22 (Feb. 22, 1991) ..... p.1111, p.1112.
PA91-25 (Feb. 22, 1991) ..... p.1135, p.1136.

Rhode Island:
RI91-1 (Feb. 22, 1991) ..... p.1149, pp.1150-1152.

South Carolina:
SC91-1 (Feb. 22, 1991) ..... p.1157, p.1158.
SC91-3 (Feb. 22, 1991) ..... p.1161, p.1162.
SC91-7 (Feb. 22, 1991) ..... p.1169, p.1170.
SC91-8 (Feb. 22, 1991) ..... p.1171, p.1172.
SC91-9 (Feb. 22, 1991) ..... p.1172a, p.1172b.
SC91-12 (Feb. 22, 1991) ..... p.1172g, p.1172h.
SC91-13 (Feb. 22, 1991) ..... p.1172i, p.1172j.
SC91-15 (Feb. 22, 1991) ..... p.1173, p.1174.
SC91-18 (Feb. 22, 1991) ..... p.1179, p.1180.
SC91-19 (Feb. 22, 1991) ..... p.1181, p.1182.
SC91-21 (Feb. 22, 1991) ..... p.1185.

Tennessee:
TN91-6 (Feb. 22, 1991) ..... p.1205, p.1206.
TN91-7 (Feb. 22, 1991) ..... p.1207, p.1208.
TN91-8 (Feb. 22, 1991) ..... p.1209, p.1210.
TN91-9 (Feb. 22, 1991) ..... p.1211, p.1212.
TN91-10 (Feb. 22, 1991) ..... p.1213, p.1214.
TN91-11 (Feb. 22, 1991) ..... p.1215, p.1216.
TN91-12 (Feb. 22, 1991) ..... p.1217, p.1218.
TN91-13 (Feb. 22, 1991) ..... p.1219, p.1220.
TN91-14 (Feb. 22, 1991) ..... p.1221, p.1222.
TN91-15 (Feb. 22, 1991) ..... p.1223, p.1224.

Virginia:
VA91-1 (Feb. 22, 1991) ..... p.1233, p.1234.
VA91-2 (Feb. 22, 1991) ..... p.1235, p.1236.
VA91-4 (Feb. 22, 1991) ..... p.1241, p.1242.
VA91-7 (Feb. 22, 1991) ..... p.1249, p.1250.
VA91-13 (Feb. 22, 1991) ..... p.1285, p.1286.
VA91-16 (Feb. 22, 1991) ..... p.1277, pp.1278-1279.
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VA91-22 (Feb. 22, 1991) ..... p.1295, p.1296.

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Illinois:
IL91-3 (Feb. 22, 1991) ..... p.115, p.117.
IL91-13 (Feb. 22, 1991) ..... p.183, p.188.
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IL91-18 (Feb. 22, 1991) ..... p.237, p.238.

Kansas:
KS91-6 (Feb. 22, 1991) ..... p.363, pp.364-365.
KS91-8 (Feb. 22, 1991) ..... p.373, p.375.

Minnesota:
MN91-12 (Feb. 22, 1991) ..... p.629, p.630.

Nebraska:
NE91-1 (Feb. 22, 1991) ..... p.745, p.746.
NE91-11 (Feb. 22, 1991) ..... p.771, p.772.

Oklahoma:
OK91-13 (Feb. 22, 1991) ..... p.977, pp.978,981,98 p.985.
OK91-16 (Feb. 22, 1991) ..... p.999, p.1000.

Volume III

Idaho:
ID91-1 (Feb. 22, 1991) ..... p.207, p.208.
ID91-3 (Feb. 22, 1991) ..... p.221, p.222.
ID91-4 (Feb. 22, 1991) ..... p.225, p.226.
ID91-5 (Feb. 22, 1991) ..... p.228, p.230.

Nevada:
NV91-1 (Feb. 22, 1991) ..... p.229, pp.300-319.
NV91-5 (Feb. 22, 1991) ..... p.345, pp.346-347.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

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Signed at Washington, DC this 26th day of April 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-10315 Filed 5-3-91; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that Attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

The Employment and Training Administration has established a voice-mail service for the H-1A nurse attestation process. Call telephone number: 202-535-0643 (this is not a toll-free number.) At that number, a caller can:

(1) Listen to general information on the attestation process for H-1A nurses;

(2) Request a copy of the Department of Labor's regulations (20 CFR part 655, subparts D and E, and 29 CFR part 504, subparts D and E) for the attestation process for H-1A nurses, including a copy of the attestation form (form ETA 9029) and the instructions to the form;

(3) Listen to information on H-1A attestations filed within the preceding 30 days;

(4) Listen to information pertaining to public examination of H-1A attestation filed with the Department of Labor;

(5) Listen to information on filing a complaint with respect to health care facility's H-1A attestation (however, see the telephone number regarding complaints, set forth below); and

(6) Request to speak to a Department of Labor employee regarding questions not answered by Nos. (1) through (4) above.

Regarding the Complaint Process

Questions regarding the complaint process for the H-1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202-523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facilities' attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 26th day of April 1991.

Robert A. Scheerfl,

Director, United States Employment Service.

Division of Foreign Labor Certifications Approved Attestations 04/15/91 to 04/19/91

CEO-name/facility name/address	State	Approval date
Mr. Larry O. Barton, Jefferson Regional Med. Ctr., 1515 West 42nd, Pine Bluff, AR 71603, 501-541-7771.	AR	04/16/91
Mr. Charles S. Ricks, Hanford Community Med. Ctr., 450 Greenfield Avenue, Hanford, CA 93230, 209-582-900.	CA	04/16/91
Mr. David M. Litchman, Naval Hospital, Oakland, 9750 Mountain Blvd., Oakland, CA 94627, 415-633-5001.	CA	04/16/91
Mr. William S. Kerr, The Medical Ctr. at the U. of 505 Parnassus Ave., San Francisco, CA 94143, 415-476-4855.	CA	04/16/91
Ms. Marcia S. Weldon, Beverly Manor Convalescent Ho, 9541 Van Nuys Blvd., Panorama City, CA 91402, 818-893-6365.	CA	04/16/91
Mr. Floyd E. Farley, Kern Medical Center, 1830 Flower Street, Bakersfield, CA 93305, 805-326-2101.	CA	04/16/91
Mr. David Levinsohn, Sherman Oaks Community Hospit, 4929 Van Nuys Boulevard, Sherman Oaks, CA 91403, 818-981-7111.	CA	04/16/91
Mr. Bernard Salick, Salick Health Care, Inc., 407 North Maple Drive, Beverly Hills, CA 90210, 213-276-0732.	CA	04/16/91
Mr. William Crittenden, Health Center at Abbey Delray, 21105 S.W. 11th Court, Delray Beach FL 33445, 407-278-3249.	FL	04/16/91
Mr. Robert B. Hill, Bethesda Memorial Hosp. 2815 S. Seacrest Blvd., Boynton Beach, FL 33435, 407-737-7733.	FL	04/16/91
Mr. Larry E. Hannan, AMI Town & Country Hosp., 6001 Webb Road, Tampa, FL 33615, 813-885-6666.	FL	04/16/91

Division of Foreign Labor Certifications Approved Attestations 04/15/91 to 04/19/91—Continued

CEO-name/facility name/address	State	Approval date
Mr. Donald A. Anderson, Everglades Memorial Hosp., In, 200 South Belfield Highway, Pahokee, FL 33476, 407-924-5201.	FL	04/16/91
Ms. Joan Robinson Carl, Alden Management Services, In, 4200 West Peterson Ave., Chicago, IL 60646, 312-286-3883.	IL	04/16/91
Mr. Bryan Beckenridge, Shady Grove Adventist Hospital, 9901 Medical Center Dr., Rockville, MD 20850, 301-279-6136.	MD	04/16/91
Ms. Debbie Sheffield, Brian Center Nursing Care/Sal, 635 Statesville Blvd., Salisbury, NC 28145, 704-633-7390.	NC	04/16/91
Ms. Eleanor A. Rivera, Eastern Nursing Services, Inc., 471 Bloomfield Avenue, Verona, NJ 07044, 201-857-5662.	NJ	04/16/91
Mr. Hugh A. Quigley, St. Mary's Hospital, 211 Pennington Avenue, Passaic, NJ 07055, 201-470-3000.	NJ	04/16/91
Mr. Ronald J. Del Mauro, Saint Barnabas Med. Ctr., Old Short Hills Road, Livingston, NJ 07039, 201-533-5000.	NJ	04/16/91
Mr. Sid Schiff, Hospitality Care Center, 300 Broadway, Newark, NJ 07104, 201-484-4222.	NJ	04/16/91
Mr. Benjamin F. Miller, Berkeley Heights Convalescent, 35 Cottage Street, Berkeley Heights, NJ 07922, 908-464-0048.	NJ	04/16/91
Mr. Edward A. Steinsberg, Westchester County Med. Ctr., Personnel Office-Eastview Hall, Valhalla, NY 10595, 914-285-7842.	NY	04/16/91
Mr. Peter T. Gandron, Briar Crest Nursing Home, 31 Overton Road, Ossining, NY 10562, 914-941-4047.	NY	04/16/91
Mr. Albert Dicker, Franklin Hosp. Med. Ctr., 900 Franklin Avenue, Valley Stream, NY 11580, 516-825-8800.	NY	04/16/91
Mr. Orlando R. Pozzuoli, Sacred Heart Hospital, 421 Chew Street, Allentown, PA 18102, 215-776-4594.	PA	04/16/91
Ms. Louise Linder, Brian Center Nursing Care/Col, 2451 Forest Drive, Columbia, SC 29204, 803-254-5960.	SC	04/16/91
Mr. Raymond Khoury, St. Joseph Hospital, 1919 La Branch, Houston, TX 77002, 713-757-1000.	TX	04/16/91
Mr. Donald R. Ginzig, Lutheran General Hospital, P.O. Box 7896, San Antonio, TX, 78407, 512-434-5252.	TX	04/16/91
Ms. Chris Kelly, AMI Brownsville Medical Center, 1040 W. Jefferson, Brownsville, TX 78520, 512-544-1455.	TX	04/16/91
Mr. William C. Poore, East Texas Medical Center—R, 500 North Bonner, Rusk, TX 75785, 903-683-2273.	TX	04/16/91
Mr. Houston Bell, Roanoke Memorial Hospital, Belleview at Jefferson Street, Roanoke, VA 24014, 703-981-7825.	VA	04/16/91
Total Attestations		30

[FR Doc. 91-10519 Filed 5-2-91; 8:45 am]

BILLING CODE 4510-30-M

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; Processing of Applications Submitted by Employers Which Have Traditionally Utilized Nonimmigrant Caribbean Workers

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is announcing operational policies that will be followed starting in 1991 by its Regional Offices in reviewing applications for temporary agricultural (H-2A) labor certifications expected to be submitted by employers which have traditionally utilized temporary nonimmigrant workers from the Caribbean.

EFFECTIVE DATE: The policies announced in this notice apply to applications filed under 20 CFR part 655, subpart C, on or after May 3, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Scheerfl, Director, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N-4456, 200 Constitution NW., Washington, DC. Telephone: 202-535-0157 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is announcing operational policies to be followed starting in 1991 by its Regional Offices in reviewing applications for temporary agricultural (H-2A) labor certifications expected to be submitted by employers which have traditionally utilized temporary nonimmigrant workers from the Caribbean. Approximately 6,000 such alien workers are normally permitted entry into the United States to harvest apples in New England, New York, Virginia and West Virginia. Another 10,000 normally work in the Florida sugar cane harvest.

In the past, employers of those workers have required the execution of a tripartite agreement between the worker, the employer and the West Indies Central Labour Organization (WICLO) acting for and on behalf of the governments of Barbados, Dominica, Jamaica, St. Lucia, St. Vincent and Grenada. This agreement served as a contract between the employer and the worker for the period during which agricultural work was to be performed under the provisions of a labor certification granted by ETA.

Prior to 1991, ETA did not require employers to submit the standard Caribbean worker contract with their applications for temporary alien labor certification. This policy was revised in August 1990, and employers of Caribbean workers were advised that submittal of the contract would be a requirement in 1991. The employers were also reminded of the long-standing ETA policy that adherence to ETA regulatory requirements at 20 CFR part 655 takes priority over any contract terms that may conflict with the regulations, and that DOL's Wage and Hour Divisions would continue to enforce H-2A employer contractual obligations in this manner. See 29 CFR part 501.

A review of the contents of the standard Caribbean worker contract has been completed by ETA. The ETA Regional Offices are being provided instructions to follow in reviewing such contracts when they are submitted by employers this year. The ETA Regional Office in Atlanta also is being given supplemental instructions to follow in reviewing applications expected to be submitted by Florida sugar cane growers in August 1991. These policy instructions are summarized and published below for public information.

Operational Policies

1. The alien worker contract must show the actual place where the worker was recruited for purposes of determining transportation and subsistence costs. Contract language which in the past "deemed" the place of recruitment to be Kingston, Jamaica, is not permissible.

2. The charge quoted for three meals a day to be provided by the employer to the worker must include any tax involved in providing meals. With tax included, the total daily charge cannot

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exceed the maximum permissible under ETA regulations.

3. Employers must delete alien worker contract provisions which provide for earlier termination of a contract period than specified in the job offer which has been approved earlier as a condition of the H-2A labor certification.

4. Any provision in the standard contract which requires the worker to appoint WICLO as the exclusive representative to pursue claims against an employer must be deleted.

5. Any mandatory deduction for "savings" stipulated in the standard worker contract is not permissible. Because the deduction is mandatory, it cannot be considered "reasonable" under the provisions of 20 CFR 655.102(b)(13).

6. Any deduction specified in the contract for insurance coverage (other than workers compensation) may be permissible, provided certain conditions are met. The employers must demonstrate that the deduction is reasonable and complies with Pension and Welfare Benefits Administration requirements for employee welfare benefit plans under the Employee Retirement Income Security Act of 1974 if such a deduction is stipulated. A benefit of this nature, if offered to foreign workers, also must be offered to United States workers and be included in the employer's job order.

7. Any definitions for "hours worked", or "starting" or "quitting time" in the standard contract must conform to principles established under the Fair Labor Standards Act (FLSA).

8. Any provision describing lodging arrangements in the standard contract must conform to ETA's housing policy set forth in 20 CFR parts 653 and 655.

9. The ETA Atlanta Regional Office also will carefully examine information provided by the Farmworker Justice Fund in its letter of June 21, 1990, to the Secretary of Labor relative to the following components of sugar cane employers' H-2A applications: (a) Variations in wage rates among employers; (b) bonus arrangements; and (c) premium row prices. The Regional Office will determine if it is necessary to require additional employ-specific information pertaining to these items.

Signed at Washington, DC this 25th day of April 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-10521 Filed 5-3-91; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standard under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Trojan Mining

[Docket No. M-91-30-C]

Trojan Mining, P.O. Box 280, Ashcamp, Kentucky 41512 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 1 mine (I.D. No. 15-11726)) located in Pike County, Kentucky. Due to roof conditions, the petitioner proposes to monitor methane and oxygen from the surface.

2. S & J Coal Company

[Docket No. M-91-31-C]

S & J Coal Company, 117 School Row, Branchdale, PA 17923 has filed a petition to modify the application of 30 CFR 75.301 (air quality; quantity, and velocity) to its Diamond View Slope (I.D. No. 36-06152) located in Schuykill County, Pennsylvania. The petitioner requests a modification to require the minimum quantity of air reaching the working face be 1,500 cubic feet a minute, reaching the last open crosscut 5,000 cubic feet a minute, and reaching the intake end of a pillar line 5,000 cubic feet a minute.

3. Zeigler Coal Company

[Docket No. M-91-32-C]

Zeigler Coal Company, 50 Jerome Lane, Fairview Heights, Illinois 62208 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Spartan Mine (I.D. No. 11-00612) located in Randolph County, Illinois. The petitioner proposes to place electrical equipment in a neutral air course in lieu of ventilating the equipment to the return.

4. U.S. Steel Mining Company

[Docket No. M-91-33-C]

U.S. Steel Mining Company, Inc., P.O. Box 338, Pineville, West Virginia 24874 has filed a petition to modify the application of 30 CFR 75.326 (air courses and belt haulage entries) to its Shawnee Mine (I.D. No. 46-06907) located in Wyoming County, West Virginia. The petitioner proposes to use belt air to ventilate the face area and install a low-level carbon monoxide detection system in the belt entry.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 3, 1991. Copies of the petitions are available for inspection at that address.

Dated: April 25, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-10522 Filed 5-3-91; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 91-24; Exemption Application No. D-8407, et al.]

Grant of Individual Exemptions; Los Angeles Police Credit Union Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested person. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Los Angeles Police Credit Union Pension Plan (the Plan) Located in Van Nuys, California

[Prohibited Transaction Exemption 91-24; Exemption Application No. D-8407]

Exemption

The restrictions of section 406(a), 406 (b)(1), and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the cash purchase from the Plan of interests (the Interests) in certain real estate limited partnerships by the Los Angeles Police Credit Union (the Employer), the sponsor of the Plan; and (2) the assumption by the Employer of the Plan's obligations with respect to four promissory notes related to the Interests; provided that the purchase price paid to the Plan is no less than the greater of $992,940, plus interest at the rate of 9 percent per annum effective January 1, 1989, or the fair market value of the Interests as of the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 22, 1991 at 56 FR 7402.

Written Comments: The Department received one written comment and no requests for a hearing. The comment was submitted by the applicant as a supplementation of the summary of facts and representations. The points addressed in the applicant's comment are summarized as follows:

(1) The applicant wishes to clarify that the amount of cash required by the litigation settlement, referred to in the summary of facts and representations, to be paid by the Employer to the Plan represents the amount determined by Touche Ross to reflect the aggregate harm to the Plan's entire portfolio resulting from the Committee's investments of Plan assets over a nine year period. The applicant notes that this amount, $992,940 plus interest at the rate of 9 percent per annum effective January 1, 1989, includes but is not restricted to losses resulting from the investments of Plan assets in those limited partnership interests (the Interests) which are proposed by the applicant for transfer from the Plan to the Employer. With respect to the other Committee investments resulting in Plan losses which are remedied by the litigation settlement, the applicant represents that there were secondary markets in which the Trustees were able to sell such investments and recover some value. The Interests constitute those Committee investments for which secondary markets could not be located and with respect to which there are remaining Plan obligations under unpaid promissory notes, which are proposed for assumption by the Employer.

(2) The applicant represents that the payment of cash by the Employer to the Plan pursuant to the litigation settlement was made subsequent to the filing of the exemption application with the Department and following the approval of the litigation settlement by the United States District Court for the Central District of California (the Court), although the Interests will not be transferred to the Employer until the requested exemption is granted.

(3) The applicant represents that the Plan received a written notice on March 18, 1991 from representatives of the Noteholders/Investor's Committee for the Rodeo Plaza partnership, the Plan's investment in which constitutes one of the Interests to be transferred to the Employer. Such notice advised that this committee expects to be able to make a distribution in the approximate amount of $93,000 in return for the relinquishment of the Rodeo Plaza investment, due to a sale of the underlying real estate at an unexpectedly favorable price. The applicant represents that in the event any such distribution with respect to the Rodeo Plaza investment is made prior to the transfer of the Interests to the Employer, such distribution will be held in a separate account until the requested exemption is granted, at which time the separate account and any earnings thereon, together with the Interest representing the Plan's Rodeo Plaza investment, would be transferred to the Employer. The applicant represents that this treatment of any distribution with respect to the Rodeo Plaza investment is in accordance with the terms of the litigation settlement. Counsel for the plaintiffs in the class action which resulted in the litigation settlement represents that this treatment of any distribution with respect to the Rodeo Plaza investment is consistent with the terms of the litigation settlement and that it was the intention of the parties thereto that any monies eventually received in return for any of the Interests would be the property of the Employer.

After consideration of the entire record, including the applicant's comment, the Department has determined to grant the exemption.

For Further Information Contact: Mr. Ronald Willet of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Fox Lumber Sales, Inc. Profit Sharing Plan (the Plan) Located in Hamilton, Montana

[Prohibited Transaction Exemption 91-25; Exemption Application No. D-8429]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of certain real property (the Property) by the Plan to Thomas L. Fox (Fox), a party in interest with respect to the Plan, and the assumption by Fox of the existing amount due by the Plan on a contract for deed on the Property, provided the Plan receives no less than the greater of $614,800 of the fair makret value of the Property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 22, 1991, at 56 FR 7404.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

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Equitable Life Assurance Society of the United States (Equitable) Located in New York, NY

[Prohibited Transaction Exemption 91-22; Exemption Application No. D-7937]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective January 1, 1988, to the transfer of certain interests (the Interests) in four parcels of real property (the Properties) from Equitable's General Account to its Separate Account No. 143 (the Separate Account), a single customer separate account established pursuant to a group annuity contract with the International Business Machines (IBM) Retirement and Part-Time Employees Retirement Plans (the Plans), provided that transactions were on terms and conditions at least as favorable to the Plans as those between unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 21, 1990, at 55 FR 38874.

Written Comments: The Department received two written comments on the proposed exemption.

The two commentators, both Plan participants, questioned the proposed exemption on the grounds that the rate of return on the Properties was inadequate and that Equitable violated its fiduciary duty to the Plans by transferring the Interests of the Separate Account.

IBM, in response to the Plan participants' comments, explained that the decision to invest in commerical real estate generally, and to acquire the Interests in particular, and the terms of the acquisitions, were made by the named fiduciary for the Plans, the IBM Retirement Plans Committee, (the Committee). The Committee retained Goldman Sachs Co., (Goldman) to act as independent acquisition advisor for the Plans in this regard. The Committee and Goldman, after extensive investigation of the Properties, determined that the investment in the Interests satisfied the Plans' investment guidelines and that the terms of the transactions were satisfactory to the Plans.

After consideration of the entire record the Department has determined to grant the exemption as proposed.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-7901. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of this Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transactions which is the subject of the exemption.

Signed at Washington, DC, this 30th day of April 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-10511 Filed 5-2-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement to Assist State Arts Agencies in Program Evaluation

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to provide technical assist to State Arts Agencies in the area of program evaluation of their Arts Education Programs. The work will consist of: Researching, developing, and distributing a program evaluation resource/information package; creating and maintaining appropriate consultant availability and expertise information; and developing and distributing a self-assessment instrument to help State Arts Agencies assess and improve their program evaluation efforts. Those interested in receiving the Solicitation package should reference Program Solicitation PS 91-08 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 91-08 is scheduled for release approximately May 1, 1991 with proposals due June 3, 1991.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 91-10480 Filed 5-2-91; 8:45 am]

BILLING CODE 7537-01-M

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Arts in Schools Basic Education Grants; Challenge III Section) to the National Council on the Arts will be held on May 21, 1991 from 9 a.m.-5:30 p.m. and on May 22 from 9 a.m.-3 p.m. in room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 22 from 11:30 a.m.-3 p.m. The topics will be AISREC category evaluation and policy discussion.

The remaining portions of this meeting on May 21 from 9 a.m.-5:30 p.m. and May 22 from 9 a.m.-11:30 a.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5482, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-10458 Filed 5-2-91; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Artists Projects: New Forms II Section) to the National Council on the Arts will be held on May 20-23, 1991 from 9 a.m.-7 p.m. and May 24 from 9 a.m.-5 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 24 from 3 p.m.-5 p.m. The topic will be policy discussion.

The remaining portions of this meeting on May 20-23 from 9 a.m.-7 p.m. and May 24 from 9 a.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-10459 Filed 5-2-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-390 and 50-391]

Tennessee Valley Authority Availability of Safety Evaluation Report Related to the Operation of Watts Bar Nuclear Plant, Units 1 and 2

The U.S. Nuclear Regulatory Commission has published Safety Evaluation Report, Supplement No. 6 (NUREG-0847, Supp. 6) related to the operation of Watts Bar Nuclear Plant, Units 1 and 2, Docket Nos. 50-390 and 50-391.

Copies of the report have been placed in the NRC's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and in the Local Public Document Room, Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402, for review by interested persons. Copies of the report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. GPO deposit account holders may charge orders by calling 202-275-2060. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfied, Virginia 22161.

Dated at Rockville, Maryland, 23rd day of April 1991.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-10536 Filed 5-2-91; 8:45 am]

BILLING CODE 7590-01-M

Meeting of the Fifth MELCOR Peer Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The MELCOR Peer Review Committee will meet to review the technical adequacy of the MELCOR code.

DATES: May 20-22, 1991.

TIME: 8 am May 20, 1991, 8:30 am May 21, 1991, 8 am May 22, 1991.

ADDRESSES: Holiday Inn, Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: R. B. Foulds, Office of Nuclear Regulatory, Research, U.S. Nuclear Regulatory, Commission, Washington, DC 20555, (301) 492-3535.

SUPPLEMENTARY INFORMATION: MELCOR is a fully integrated severe accident analysis code that has been developed for the U.S. Nuclear Regulatory Commission by Sandia National Laboratories. Among the targeted applications of the code are its use in probabilistic risk assessment studies to address the perceived risk from a nuclear plant and evaluation of accident management strategies. MELCOR development activities have focused on improving physical models beyond those in precursor codes, flexibility for future modification, and ease of use. MELCOR is capable of treating the complete accident sequence from the initiating event to the fission product release.

The newest version of MELCOR, MELCOR 1.8, was released in March

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1988. This version has the capabilities for modeling both boiling and pressurized water reactor plants. The code has now reached sufficient maturity that a number of organizations inside and outside the US Nuclear Regulatory Commission are planning to use the current version. Although the quality control and validation efforts are seen to be proceeding, there is a need to have a broad technical review by recognized experts to determine or confirm the technical adequacy of the code for the serious and complex analyses it is expected to perform.

A peer review committee has been organized using recognized experts from the national laboratories, universities, MELCOR user community, and independent contractors. During the meetings to be held on Monday, May 20, the MELCOR Peer Review Committee will review the proposed top-down findings regarding MELCOR. This review will focus on the draft body of the final report and presentation materials for Tuesday. On Tuesday, May 21, an overview of the complete findings of the MELCOR Peer Review Committee will be presented. The morning session will focus on the MELCOR Peer Review process and findings regarding the integral code (top-down review). The afternoon session will be devoted to findings about the MELCOR phenomenological packages and the models in those packages (bottom-up review). On Wednesday, May 22, the Committee will consider how to incorporate comments received the previous days and complete plans for drafting the final Committee Report.

Dated at Rockville, Maryland, this 24 day of April, 1991.

For the U.S. Nuclear Regulatory Commission.

Farouk Eltawila,

Chief, Accident Evaluation Branch, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 91-10442 Filed 5-2-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy (OFPP)

AGENCY: Office of Federal Procurement Policy (OFPP), OMB.

ACTION: FINAL POLICY LETTER CORRECTION.

SUMMARY: In the Federal Register of March 20, 1991, (56 FR 11796) OFPP published policy letter No. 91-1 entitled "Government-wide Small Business and Small Disadvantaged Business Goals for Procurement Contracts; Policy Letter". This policy letter implements sections 502 and 503 of Public Law 100-656, the Business Opportunity Development Reform Act of 1988. Errors were detected in the document. This notice corrects these errors.

FOR FURTHER INFORMATION CONTACT: Robert L. Neal, Jr., Deputy Associate Administrator, (202) 395-3300.

2. On page 11797, in the third column, in the second full paragraph, delete "do not".

3. On page 11797, in the third column, in the second full paragraph, delete "prime contract" and insert "estimated subcontracts".

1. On page 11797, in the third column, in the third full paragraph, delete "prime contracts" and insert "subcontracts".

Dated: April 25, 1991.

Allan V. Burman,

Administrator.

[FR Doc. 91-1463 Filed 5-2-91; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under schedules A and B, and placed under schedule C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: John Daley (202) 606-0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on April 2, 1991 (55 FR 12973). Individual authorities established or revoked under schedules A and B and established under schedule C between March 1 and March 31, 1991, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30, 1991.

Schedule A

The following exception was established:

National Endowment for the Arts

One position of Assistant Director of the International Program. Effective March 15, 1991.

Schedule B

No Schedule B authorities were established or revoked during March.

Schedule C

Administrative Conference of the United States

One Confidential Assistant to the Chairman. Effective March 31, 1991.

Air Force

One Special Counsel to the General Counsel. Effective March 5, 1991.

Department of Agriculture

One Confidential Assistant to the Director, Office of Public Affairs. Effectivee March 9, 1991.

One Staff Assistant to the Director, Press and Media Relations. Effective March 29, 1991.

One Confidential Assistant to the Manager, Federal Crop Insurance Corporation. Effective March 29, 1991.

Agency for International Development

One Special Assistant to the Director, Office of Trade and Investment, Bureau for Latin America and the Caribbean. Effective March 13, 1991.

Commission on Civil Rights

One Special Assistant to the Staff Director. Effective March 28, 1991.

Department of Commerce

One Special Assistant to the Deputy Assistant Secretary for Program Support. Effective March 4, 1991.

One Special Assistant to the Deputy Assistant Secretary for Services. Effective March 8, 1991.

One Deputy to the Counselor to the Secretary. Effective March 12, 1991.

One Public Affairs Specialist to the Director, Office of Public Affairs, Bureau of Export Administration. Effective March 20, 1991.

One Confidential Assistant to the Deputy Assistant Secretary for Investigations. Effective March 24, 1991.

One Confidential Assistant to the Chief of Staff, Office of the Secretary. Effective March 26, 1991.

One Congressional Affairs Specialist to the Congressional Affairs Officer, Bureau of the Census. Effective March 24, 1991.

One Special Assistant to the Deputy Assistant Secretary for Economic Development, Economic Development Administration. Effective March 26, 1991.

One Confidential Assistant to the Under Secretary for Travel and Tourism. Effective March 28, 1991.

Department of Defense

One Speechwriter to the Director, Strategic Defense Initiative Organization. Effective March 12, 1991.

One Drug Testing, Health and Rehabilitation Programs Officer, to the Deputy Assistant Secretary of Defense for Drug Enforcement Policy. Effective March 20, 1991.

Department of Energy

One Special Assistant to the Director, Office of Scheduling and Logistics. Effective March 3, 1991.

One Deputy to the Director, Office of Minority Economic Impact. Effective March 28, 1991.

Department of Transportation

One Chief, Consumer Affairs Division, to the Director, Office of Public and Consumer Affairs. Effective March 4, 1991.

One Staff Assistant to the Administrator, Federal Aviation Administration. Effective March 6, 1991.

One Special Assistant to the Administrator, Research and Special Programs Administration. Effective March 12, 1991.

One Staff Assistant to the Secretary. Effective March 14, 1991.

One Chief, Communications Division, to the Director, Office of Public and Consumer Affairs. Effective March 16, 1991.

One Special Assistant to the Director, Office of Small and Disadvantaged Business Utilization. Effective March 20, 1991.

One Special Assistant to the Deputy Administrator, Federal Highway Administration. Effective March 28, 1991.

One Director, Office of Media Relations and Special Projects, to the Assistant Secretary for Public Affairs. Effective March 29, 1991.

Environmental Protection Agency

One Program Advisor to the Assistant Administrator for Solid Waste and Emergency Response. Effective March 24, 1991.

One Chief Scheduler to the Chief of Staff. Effective March 24, 1991.

One Program Advisor to the Assistant Administrator, Office of Research and Development. Effective March 29, 1991.

Federal Mine Safety and Health Review Commission

One Confidential Secretary to a Member. Effective March 24, 1991.

Government Printing Office

One Special Assistant to the Chief of Staff. Effective March 25, 1991.

General Services Administration

One Staff Assistant to the Associate Administrator for Congressional Affairs. Effective March 13, 1991.

One Special Assistant to the Commissioner, Federal Property Resources Service. Effective March 15, 1991.

One Special Assistant to the Acting Comptroller. Effective March 28, 1991.

One Senior Advisor to the Regional Administrator, Region 2 (New York). Effective March 31, 1991.

Department of Health and Human Services

One Confidential Assistant to the Director, U.S. Office of Consumer Affairs. Effective March 3, 1991.

One Confidential Assistant to the Executive Secretary, Office of the Secretary. Effective March 3, 1991.

One Special Assistant to the Associate Commissioner for Public Affairs. Effective March 9, 1991.

One Speechwriter to the Assistant Secretary for Public Affairs. Effective March 15, 1991.

Department of Housing and Urban Development

One Staff Assistant (Typing) to the Chief of Staff, Office of the Secretary. Effective March 3, 1991.

One Special Assistant to the Deputy Assistant Secretary for Executive Services. Effective March 3, 1991.

One Assistant to the Director, Executive Secretariat. Effective March 19, 1991.

Department of the Interior

One Special Assistant to the Director, Office of Surface Mining Reclamation and Enforcement. Effective March 6, 1991.

One Special Assistant to the Principal Deputy Assistant Secretary, Fish and Widlife and Parks. Effective March 13,1991.

Department of Justice

One Special Assistant to the Director, Office of Policy Development. Effective March 15,1991.

One Senior Liaison Officer to the Director, Office of Liaison Services. Effective March 24,1991.

Department of Labor

One Special Assistant to the Director, Women's Bureau. Effective March 19, 1991.

National Endowment for the Arts

One Director of Policy, Planning and Research to the Chairman. Effective March 7, 1991.

One Special Assistant to the Chairman. Effective March 7, 1991.

One Acting Director of Public Affairs to the Chairman. Effective March 25, 1991.

National Transportation Safety Board

One Confidential Assistant to a Member. Effective March 16, 1991.

Office of National Drug Control Policy

One Staff Assistant for Scheduling to the Executive Assistant to the Director. Effective March 1, 1991.

Office of Personnel Management

One Special Assistant to the Chief of Staff. Effective March 9, 1991.

Office of Science and Technology Policy

One Administrative Assistant (Typing) to the Chief of Staff. Effective March 12, 1991.

Small Business Administration

One Special Assistant to the Administrator. Effective March 4, 1991.

One Confidential Assistant to the Administrator. Effective March 4, 1991.

Department of State

One Corrersponding Officer to the Principal Deputy Assistant Secretary. Effective March 4, 1991.

United States Tax Courts

One Secretary (Confidential Assistant) to a Judge. Effective March 28, 1991.

Department of the Treasury

One Confidential Assistant to the Deputy Treasurer of the United States. Effective March 3, 1991.

One Speechwriter to the Associate Director for Public Affairs. Effective March 13,1991.

One Public Affairs Specialist to the Commissioner of Customs. Effective March 24,1991.

One Staff Assistant to the Director, Office of Public Affairs. Effective March 28, 1991.

United States Trade Representative

One Executive Secretary to the United States Trade Representative. Effective March 28, 1991.

One Confidential Secretary to the United States Trade Representative. Effective March 28, 1991.

One Confidential Secretary to the Chief Textile Negotiator. Effective March 28, 1991.

One Associate Director, Office of Private Sector Liaison, to the Assistant United States Trade Representative for Public Affairs and Private Sector Liaison. Effective March 28, 1991.

Department of Veterans Affairs

One Special Assistant to the Assistant Secretary for Acquisition and Facilities. Effective March 9, 1991.

Authority: 5 U.S.C. 3301; E.O. 10555, 3 CFR 1954–1958 Comp, P. 218.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–10497 Filed 5–2–91; 8:45 a.m.]

BILLING CODE 6325–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; 1990 and 1991 Annual Review

SUMMARY: The purpose of this notice is: (1) To announce the dispositions of the petitions accepted for review in the 1990 Annual Review of the GSP program; and (2) to announce the deadline for the submission of petitions in the 1991 GSP Annual Review.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971. Public versions of all documents are also available for review by appointment with the USTR Public Reading Room. Documents will be available in the reading room shortly after the filing deadlines. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395–6186.

SUPPLEMENTARY INFORMATION:

I. Decisions Made on 1990 GSP Annual Review Petitions

This publication contains the dispositions of the petitions accepted for review in the 1990 Annual Review of the GSP program (55 FR 14029 and 55 FR 34878). These petitions requested changes in the list of articles and countries eligible for duty-free treatment under the U.S. Generalized System of Preference (GSP). The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465). The review was conducted pursuant to regulations codified as 15 CFR part 2007. These changes will take effect on July 1, 1991. The President's decisions concerning the 1990 Annual Review have also been reflected in a proclamation and in a recent USTR press release (the press release is available by contacting the USTR Public Affairs Office at (202) 395–3230). All communications with respect to this notice should be addressed to the Executive Director, Generalized System of Preferences, room 517, 600 17th Street, NW., Washington, DC 20506.

Reviews were also conducted concerning the beneficiary status of eight GSP beneficiary countries based on their practices in the area of internationally recognized worker rights. This includes reviews of Benin, the Dominican Republic, Haiti, Nepal, and Syria, which were continued from the 1989 Annual Review and reviews of Bangladesh, El Salvador, and Sudan, which were accepted for review in the 1990 Annual Review. After reviewing these requests, the President determined that Benin, Nepal, Haiti, and the Dominican Republic are taking steps to afford internationally recognized worker rights. The President also determined that Sudan is not taking such steps and therefore will be suspended from the GSP program. Bangladesh, El Salvador, and Syria will continue to be reviewed as part of the upcoming 1991 Annual Review. With respect to a request from American International Group (AIG) to examine Peru's actions of alleged expropriation without compensation, the President has extended the review for up to one year.

BILLING CODE 3190–01–M

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1. Petitions to add products to the GSP Program
   - Tariff numbers with a (#) have been established by Presidential Proclamation in order to grant GSP on the specified article.
   - Items with a (*) are added to the list of GSP eligible articles effective May 1, 1991.

Case #	HTS	Article	Petitioner	Action Taken
1	0202.30.20	beef cuts, frozen*	Hungary Meat Proc. Co.	grant
2	0203.22.10	ham cuts, processed*	Hungary Meat Proc. Co.	grant
3	0203.29.20	ham cuts, processed*	Hungary Meat Proc. Co.	grant
4	0406.10.10#	chongos	Govt. Mexico Dulces Reg. Tres Reyes	grant
5	0406.90.30	goya cheese	Duna Cheese Company	deny
6	0701.90.10#	potatoes, yellow	Govt. Colombia	grant
7	0710.30.00	frozen spinach	Govt. Mexico Congelados Don Jose Covemex, S.A. Empacad. Gen. Agr. Bajia Expohort, S.A. Mar Brand Vegetales Congelados S.	deny
8	0710.80.95	frozen broccoli	Govt. Colombia Govt. Mexico Congelados Don Jose Covemex, S.A. Empacad. Gen. Agr. Bajia Expohort, S.A. Mar Brand Vegetables Congelados S.	deny

9	0710.80.95	frozen cauliflower	Govt. Colombia Govt. Mexico Congelados Don Jose Covemex, S.A. Empacad. Gen. Agr. Bajia Expohort, S.A. Mar Brand Vegetables Congelados S.	deny
10	0710.80.97#	frozen okra	Govt. Colombia Govt. Mexico Congelados Don Jose Covemex Emp. Gen. Agr. Bajio Expohort Mar Brand Veg. Congelados Mex.	grant
11	0807.10.00	ogden/galia melons	Govt. Mexico Asn. Agricl. de Sonora	grant
12	1602.41.20	pork hams*	Animex Ltd., Poland	grant
13	1602.42.20	pork shoulders*	Animex Ltd., Poland	grant
14	1602.49.20	other canned pork*	Animex Ltd., Poland	grant
15	1702.30.40	glucose	Govt. Mexico Arancia, S.A.	grant
16	2003.10.00	preserved mushrooms	Pillsbury Company Rubrecan Canning Factory	deny
17	2007.99.05	jam, ling. and rasp.*	Fructal Aldovneina	grant

18	2007.99.10	jam, strawberry*	Fructal Ajdovscina	grant
19	2007.99.20	jam, apricot*	Fructal Ajdovscina	grant
20	2007.99.25	jam, cherry*	Fructal Ajdovscina	grant
21	2204.21.40.30	red wine	Assoc. Hungarian Wine Tr. Ergervin Winery	deny
22	2204.21.40.45	white wine	Ergervin Winery Assoc. Hungarian Wine Tr	deny
23	2204.21.80	dessert wine	Assoc. Hungarian Wine Tr.	deny
24	2208.90.50	bottled tequila	Govt. Mexico Cunstruexport, S.A. Satisfactores, S.A.	grant
25	2901.10.30§	n-pentane and isopentane	Govt. Mexico Inter. Com. Exp. Corp. Prod. Quimicos Coin	grant
26	2903.61.10	chlorobenzene	Nitroclor Productos	grant
27	2903.61.30	p-dichlorobenzene	Nitroclor Productos	grant
28	2903.69.05§	certain trifluoro-toluenes*	Chemolimpex Budapest Chem. Works	grant
29	2904.90.04§	monochloromononitrob.	Nitroclor	grant
30	2904.90.15§	derivatives of hydroc.*	Chemolimpex Budapest Chem. Works	grant
31	2907.29.20§	certain phenols	Amaribrom, Inc.	grant
32	2907.29.20§	4,4 - biphenol	Novaquim, S.A.	grant
33	2908.10.15§	certain trifluoro-toluenes*	Chemolimpex	grant
34	2908.90.04§	nitrophenols	Nitroclor	grant
35	2916.39.08§	4-chloro-3 nitrobenzoic*	Chemolimpex	grant

			Budapest Chem. Works	
36	2916.39.12§	4-chloro-3,5-dinitro-benzoic acid*	Chemolimpex Budapest Chem. Works	grant
37	2916.39.16§	4-chlorobenzoic acid*	Chemolimpex Budapest Chem. Works	grant
38	2917.37.00	dimethyl terephthalate	Govt. Mexico Petrocel, S.A.	grant
39	2921.42.23§	aniline derivatives	Nitroclor, S.A.	grant
40	2921.42.24§	metanilic/sulfanilic*	Nitrokemia	grant
41	2921.43.18§	toluide derivatives*	Chemolimpex Budapest Chem. Works	grant
43	2924.29.04§	aromatic cyclic amides	Govt. Mexico Ciba-Geigy Mexico	grant
44	2924.29.02§	acetanilide*	Nitrokemia	grant
45	2929.10.15	Mix. of toluenediisocy.	Govt. Mexico Ind. Cydsa Bayer, S.A. Petr. Rio Tercero	grant
46	2929.10.30§	isocyanates	Nitroclor	grant
47	2934.20.05§	n.tar.butyl-2/ben-sul.	Govt. Mexico Quimica Organica de Mex.	grant
48	3205.00.20	carmine	Govt. Peru Asoc. de cochinilla Universal Foods Corp. Biocon	grant
49	3606.90.60	combustible materials	Govt. Colombia	grant
50	3823.90.25§	chemical mixtures	Aceto Corporation	grant
51	3906.90.50	acrylic polymers	Govt. Colombia	grant

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52	5608.90.23#	hammocks	Govt. Mexico Hamacas El Aguacate	grant
53	6204.39.60#	silk women's jackets	Govt. Thailand	grant
54	6204.49.10#	silk women's dresses	Govt. Thailand	grant
55	6911.10.41	steins, candy box*	Minex, Ltd. Poland Con. Brasileiro de Ceram.	grant
56	6911.10.45	mugs and steins*	Minex, Ltd. Poland Con. Brasileiro de Ceram.	grant
57	6912.00.41	steins, decanters, etc.	Con. Brasileiro de Ceram.	grant
58	7013.21.50	crystal glasses, over $5*	Govt. Mexico Vitrocrisa Kristal Crisa Corporation Con. Brasileiro de Ceram. Minex, Ltd. Poland Turkiye Sise ve Cam Fab.	grant
59	7013.31.50	crystal tableur, over $5*	Govt. Mexico Vitrocrisa Kristal Crisa Corporation Con. Brasileiro de Ceram. Minex, Ltd. Poland Turkiye Sise ve Cam Fab.	grant
60	7013.91.50	crystal items, over $5	Govt. Mexico Vitrocrisa Kristal Crisa Corporation Con. Brasileiro de Ceram.	grant
61	7202.11.50	ferromanganese	Govt. Peru	deny
62	7202.92.00	ferrovanadium	Govt. Argentina	deny

63	7318.15.80	screws	Universal Company	deny
64	7801.10.00	unwrought lead	Govt. Mexico Met-Mex Penoles, S.A	grant
65	7801.99.90	unwrought lead	Govt. Mexico Met-Mex Penoles, S.A.	grant
66	7901.11.00	unwrought zinc	Govt. Mexico Cia. Autland	grant
67	7901.12.50	unwrought zinc	Govt. Mexico Met-Mex Penoles, S.A.	grant
68	8111.00.45	unwrought manganese	Soc. Brasileira de Elet.	deny
69	8533.10.00	carbon resistors	Govt. Mexico Cia. Gen. de Electronica	grant
70	8703.10.50#	golf carts*	Melex U.S.A.	grant
71	8714.92.50	wheel spokes	Govt. Peru	grant
72	9608.10.00	ball point pens	Govt. Peru Wearever de Mexico	grant

2. Requests for the Removal of Items from the List of GSP items, and Country Specified (if any)

CASE #	HTS	Description	Petitioner	Action Taken
73	2005.90.55	Sweet capsicum peppers	Cherokee Products Co. Del Mar Food Products Co. Draper-King Cole, Inc. Dunbar Foods Corp. Moody Dunbar, Inc.	deny

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			Furman Foods, Inc.	
			Mancini Packing Co.	
			G. L. Mezzetta, Inc.	
			Monticello Canning Co.	
			Saticoy Foods Corp.	
74	2843.21.00	silver nitrate	Ames Goldsmith Corp.	deny
			Metz Metallurgical	
75	2916.39.15	ibuprofen (India)	Ethyl Corporation	grant
76	3817.10.00	linear alkylbenzenes	Vista Chemical Company	grant
77	8481.80.10	tire and tube valves	Bridgeport-Piedmont Co.	deny
78	8481.80.90	tire and tube valves	Bridgeport-Piedmont Co.	deny
79	8481.90.10	valve parts	Bridgeport-Piedmont Co.	deny
80	8481.90.90	valve parts	Bridgeport-Piedmont Co.	deny
81	8516.90.60	glass pots	Kimble Glass, Inc.	deny

1. Requests to Waive the Competitive Need Limits on a Country and Product Specific Basis

CASE #	HTS	Description(Country)	Petitioner	Action Taken
12	1602.41.20	canned ham(Poland)	Animex Ltd.	grant
87	2935.00.21	anti-infect. sulf.*(Yugoslavia)	Pliva, I.L.	grant
89	4015.11.00	surgical gloves(Malaysia)	Baxter, Inc.	deny
107	8517.10.00	telephone sets(Malaysia)	Thomson Elec.	grant
108	8520.20.00	answering mach.(Malaysia)	Thomson Elec.	grant
109	8527.11.11	radio-tape sets(Malaysia)	Thomson Elec.	grant

4. WAIVER REQUESTS FOR WHICH NO RECOMMENDATION IS BEING PROVIDED AT THIS TIME

CASE #	HTS	Description(Country)	Petitioner
38	2917.37.00	dipethyl terephthalate	Govt. Mexico
			Petrocel, S.A.
66	7901.11.00	unwrought zinc(Mexico)	Govt. Mexico
			Cia. Autland22
82	0802.90.15	pecans(Mexico)	Govt. Mexico
			Ind. de Nuez
83	0804.50.40	guavas, mangoes(Mexico)	Govt. Mexico
			Con. prod. Hor.
84	2005.20.00.20	potato chips(Mexico)	Govt. Mexico
			Pepsico, Inc.
85	2529.22.00	fluorspar(Mexico)	Govt. Mexico
			Almcor, S.A.
86	2836.92.00	strontium carb.(Mexico)	Govt. Mexico
			Sales Y Oxidos
			Com. Min. Val.
88	3907.60.00	polyethylene ter.(Mexico)	Govt. Mexico
			Petrocel, S.A.
90	4409.10.40	wood moldings(Mexico)	Govt. Mexico
			Cal-State Lumb.
91	4818.40.40	sanitary napkins(Mexico)	Govt. Mexico
			Conver. y Maq.
92	7202.11.10	ferromanganese(Mexico)	Govt. Mexico
			Cia. Autland

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93	7202.19.50	ferromanganese(Mexico)	Govt. Mexico
			Cia. Autland
94	8414.59.80	fans(Mexico)	Govt. Mexico
			Comair Rotron
95	8418.10.00	refrigerators(Mexico)	Govt. Mexico
			Whirlpool Corp.
			Vitromatic
96	8418.21.00	refrigerators(Mexico)	Govt. Mexico
			Whirlpool Corp.
			Vitromatic
97	8418.22.00	refrigerators(Mexico)	Govt. Mexico
			Whirlpool Corp.
			Vitromatic
98	8418.29.00	refrigerators(Mexico)	Govt. Mexico
			Whirlpool Corp.
			Vitromatic
99	8418.30.00	freezers(Mexico)	Govt. Mexico
			Whirlpool Corp.
			Vitromatic
100	8418.40.00	freezers(Mexico)	Govt. Mexico
			Whirlpool Corp.
			Vitromatic
101	8475.20.00	mach. to mfr. glass(Mexico)	Govt. Mexico
			Anchor Corp.
			Fab. Maq.
102	8504.10.00	lamp ballasts(Mexico)	Govt. Mexico

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			Elec. Bal. Co.
103	8504.32.00	transformers(Mexico)	Govt. Mexico
			Westinghouse
			Op. Maq. Juarez
104	8505.19.00	magnets(Mexico)	Govt. Mexico
			General Motors
105	8507.90.40	batteries(Mexico)	Govt. Mexico
			Aislantes Leon
106	8511.10.00	spark plugs(Mexico)	Govt. Mexico
			Bujias Mex.
110	8536.69.00	plugs and sockets(Mexico)	Govt. Mexico
			Labinal Elect.
111	8536.90.00	electrical appar.(Mexico)	Govt. Mexico
			Labinal Elect.
112	8544.30.00	ignition wire(Mexico)	Govt. Mexico
			Ser. Condumex
			Cond. Monterrey
112	8544.30.00	ignition wire(Philippines)	Govt. Philipp.
113	8544.51.40	conductors(Mexico)	Govt. Mexico
			ACS Industries
114	8708.70.80	road wheels(Mexico)	Govt. Mexico
			Kelsey Hayes
115	8708.99.50	veh. accessories(Mexico)	Govt. Mexico
			Gabriel de Mex.
116	9401.90.10	veh. seat parts(Mexico)	Govt. Mexico
			General Motors
117	9503.70.80	toys(Mexico)	Govt. Mexico

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			Mattel, Inc.
			Tonka Corp.
118	9503.90.60	toys(Mexico)	Govt. Mexico
			Mattel Inc.
			Tonka Corp.

5. The products below were not produced in the United States on January 1, 1985 and are granted a waiver of the competitive need percentage limit (Section 504(d) of the Trade Act of 1974) on the following items

CASE #	HTS	Description(Country)	Petitioner
4	0406.10.00	chongos(Mexico)	Govt. Mexico
			Dulces Reg. Tres Reyes
43	2924.29.45	arom. amides(Mexico)	Govt. Mexico
			Ciba-Geigy
48	3203.00.10	carmine(Peru)	Govt. Peru
			Warner-Jenkinson Co.
			Association de cochinilla
109	8527.11.11	radio-tape comb.(Malaysia)	Thomson Co.

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II. Announcement of 1991 GSP Annual Review

Notice is hereby given that, in order to be considered in the 1991 GSP Annual Review, all petitions to modify the list of articles eligible for duty-free treatment under the GSP and requests to review the GSP status of any beneficiary developing country must be received by the GSP Information Center no later than 5:00 p.m., Tuesday, June 4, 1991. Due to the recent addition of Czechoslovakia to the list of eligible countries under the GSP, the Government of Czechoslovakia and Czechoslovakian exporters will be granted an extension of this deadline to Tuesday, July 2, 1991. Petitions submitted after the appropriate deadline will not be considered for review and will be returned to the petitioner. The GSP provides for the duty-free importation of qualifying articles when imported from designated beneficiary developing countries. The GSP is authorized by Title V of the Trade Act of 1974, as amended, and has been implemented by Executive Order 11888 of November 24, 1975, and modified by subsequent Executive Orders and Presidential Proclamations.

1. 1991 GSP Annual Review

Interested parties or foreign governments may submit petitions (1) to design additional articles as eligible for GSP; (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; (3) to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in subsections 502(b) or 502(c) of the Act (19 U.S. 2462 (b) and (c)); and (4) to otherwise modify GSP coverage.

2. Identification of Product Requests With Respect to the Harmonized System Tariff Nomenclature

The Harmonized Tariff System nomenclature (HTS) was implemented by the United States on January 1, 1989, and replaces the previous Tariff Schedules of the United States (TSUS) nomenclature. Certain changes in the information required in petitions are necessary as a result of the change to the HTS nomenclature. All product-related petitions must identify the product(s) of interest in terms of the HTS and include a detailed description of the product or products of interest. The petition should also identify the former TSUS headings for the HTS products contained in the petition and provide the petition history for those TSUS products. Trade data for the last three years should be provided in the HTS categories. Where the conversion to the new nomenclature makes this difficult, HTS estimates can be provided along with the relevant TSUS data. The method used to arrive at HTS estimates should also be described. Finally, those petitions which are being submitted, in the view of the petitioner, as a result of a change in a product's GSP status solely due to the conversion from the TSUS to the HTS should indicate this on the first page of the petition. A change in status could include the addition or removal of GSP eligibility for a product, changes in a country's eligibility due to competitive need exclusions or its eligibility for redesignation, as well as other changed circumstances.

3. Submission of Petitions and Requests

Petitions and requests to modify GSP treatment should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. All such submissions must conform with regulations codified in 15 CFR part 2007. These regulations are also printed in "A Guide to the U.S. Generalized System of Preferences (GSP)" (October 1988), along with a model petition. Information submitted will be subject to public inspection by appointment only with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. Petitions and requests must be submitted in fourteen copies in English. If the petition or request contains business confidential information, fourteen copies of a nonconfidential version of the submission along with fourteen copies of the confidential version must be submitted. In addition, the submission containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the submission. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each page (either "public version" or "nonconfidential").

Prospective petitioners and requestors are strongly advised to review the GSP regulations published in the Federal Register on Tuesday, February 11, 1986 (51 FR 5035). Prospective petitioners and requestors are reminded that submissions that do not provide all information required by section 2007.1 of the GSP regulations will not be accepted for review except upon a detailed showing in the submission that the petitioner or requestor made a good faith effort to obtain the information required. This requirement will be strictly enforced. In cases where the request has been reviewed previously, petitioners should cite new information concerning the issues examined that would support a reexamination, as cited in 15 CFR 2007.1(a)(4). Petitions with respect to competitive need waivers must meet the informational requirements for product addition requests in section 2007.1(c). A model petition format is available from the GSP Information Center and is included in the publication "A Guide to the U.S. Generalized System of Preferences" (October 1988). Prospective petitioners are requested to use this model petition format so as to ensure that all informational requirements are met. Furthermore, interested parties submitting petitions that request modifications with respect to specific articles should list on the first page of the petition the following information: (1) The requested action; (2) the classification of the article(s) of interest in the HTS; and (3), if applicable, the beneficiary country(ies) of interest. Questions about the preparation of petitions and requests should be directed to the staff of the GSP Information Center. The phone number of the center is (202) 395-6971.

Notice of petitions and requests accepted for review will be published in the Federal Register on or about Monday, July 15, 1991. The notice will also provide information concerning the opportunity for interested parties to comment on requests accepted for review through public hearings and written submissions. Any modifications to the GSP resulting from the 1991 GSP Annual Review will be announced on or about April 1, 1992 and will take effect on July 1, 1992.

David A. Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 91-10000 Filed 5-1-91; 8:45 am]

BILLING CODE 3190-01-M

Advisory Committee for Trade Policy and Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting and determination of closing of meeting.

SUMMARY: The meeting of the Advisory Committee for Trade Policy and Negotiations (ACTPN) to be held Thursday, May 16, 1991 in Washington, DC, from 1:30 p.m. to 4:30 p.m., will include the development, review and

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discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

ADDRESSES: 600 17th Street NW. Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Mollie Van Heuven, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 91-10506 Filed 5-2-91; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended April 26, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47516.

Date filed: April 26, 1991.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 483 (Cargo Rates from Angola).

Proposed Effective Date: May 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 91-10502 Filed 5-2-91; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 26, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47514.

Date filed: April 25, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 23, 1991.

Description: Application of F.S. Air Service, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, requests authority to engage in interstate scheduled air transportation of persons, property and freight: Between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 91-10503 Filed 5-2-91; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Fitness Determination of Interflight, Inc. d/b/a Dulles Express

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 91-4-52, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Interflight, Inc. d/b/a/ Dulles Express is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than May 14, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2337.

Dated: April 29, 1991.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-10465 Filed 5-2-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that the newly formed Federal Aviation Administration Aviation Rulemaking Advisory Committee will conduct its first meeting. The meeting will be held to organize the committee into subcommittees and to assign tasks to those subcommittees.

DATES: The committee meeting will be held on May 23, 1991, at 8:30 a.m.; the subcommittee meetings will be held at specific times to be scheduled on May 24, 1991, beginning at 9 a.m.

ADDRESSES: The meetings will be held at the Holiday Inn-Inner Harbor, 301 W. Lombard Street, Baltimore, MD.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Meeting Coordinator, Office of Rulemaking (ARM-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9683.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Aviation Rulemkaing Advisory Committee to be held on May 23, 1991, followed by subcommittee meetings on May 24, 1991. The agenda for the committee meeting will include opening remarks and an overview of the committee's activities, presentation of the committee chair and vice chair, identification of subcommittees, presentation of subcommittee chairs, assignment of the initial tasks that the subcommittees will be asked to undertake, and review of committee procedures. The agenda for the subcommittee meetings will include subcommittee organization, discussion and clarification of assigned tasks, and establishment of working groups to perform the tasks they have been assigned.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before May 17, 1991, to present oral statements at the meeting. Written statements (75 copies) may be presented to the committee at any time through the meeting coordinator. Arrangements may be made by contacting the meeting coordinator listed under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on April 29, 1991.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-10486 Filed 5-2-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

April 26, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: None.

Type of Review: New Collection.

Title: Opinion Survey of Taxpayers Contacted by the EP/EO Examination Program.

Description: The data collected will be used to evaluate the level of satisfaction of taxpayers contacted by the IRS EP/EO Examination Program, to identify possible areas of program improvement, and thereby improve the effectiveness of EP/EO activities.

Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 4,000.

Estimated Burden Hours Per Response: 20 minutes.

Frequency of Response: One-time only survey.

Estimated Total Reporting Burden: 1,333 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Officer Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 91-10487 Filed 5-2-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

April 29, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0082.

Form Number: 1041 and related Schedules D, J, and K-1.

Type of Review: Revision.

Title: U.S. Fiduciary Income Tax Return; Capital Gains and Losses; Trust Allocation of an Accumulation Distribution; Beneficiary's Share of Income, Deductions, Credits, etc.

Description: Internal Revenue Code section 6012 requires that an annual income tax return be filed for estates and trusts. Data is used to determine that the estates, trusts, and beneficiaries filed the proper returns and paid the correct tax.

Respondents: Individuals or households, businesses or other for-profit.

Estimated Number of Respondents: 2,500,000.

Estimated Burden Hours Per Response/Recordkeeping:

	Form 1041	Schedule D
Recordkeeping	2 hrs., 11 mins.	46 mins.
Learning about the law or the form.	2 hrs., 37 mins.	36 mins.
Preparing the form.	2 hrs., 22 mins.	1 hr., 8 mins.
Copying, assembling, and sending the form to IRS.	35 mins.	35 mins.
	Schedule J	Schedule K-1
Recordkeeping	1 hr., 58 mins.	2 hrs., 11 mins.
Learning about the law or the form.	23 mins.	35 mins.
Preparing the form.	1 hr., 2 mins.	34 mins.
Copying, assembling, and sending the form to IRS.	35 mins.	20 mins.

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 26,934,663 hours.

OMB Number: 1545-0746.

Form Number: None.

Type of Review: Extension.

Title: Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks.

Description: LR-27-83 requires sellers of trucks, trailers and semi-trailers, and tractors to maintain records of the gross vehicle weights of articles sold to verify taxability.

Respondents: Businesses or other for-profit.

Estimated Number of Recordkeepers: 4,100.

Estimated Burden Hours Per Recordkeeper: 2 hours, 4 minutes.

Frequency of Response: Other (recordkeeping).

Estimated Total Reporting Burden: 4,140 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-10488 Filed 5-2-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

April 29, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed

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and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0168.

Form Number: IRS Form 4361.

Type of Review: Extension.

Title: Application for Exemption from Self-Employment Tax for Use of Ministers, Members of Religious Orders and Christian Science Practitioners.

Description: Form 4361 is used by ministers, members of religious orders, or Christian Science Practitioners to file for an exemption from self-employment on certain earnings and to acceptance of certain public insurance benefits.

Respondents: Individuals or households.

Estimated Nubmer of Respondents/Recordkeepers: 10,270.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—7 minutes.

Learning about the law or the form—19 minutes.

Preparing the form—16 minutes.

Copying, assembling, and sending the form to the IRS—17 minutes.

Frequency of Response: One-time.

Estimated Total Reporting/Recordkeeping Burden: 10,065 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-10469 Filed 5-2-91; 8:45 am]

BILLING CODE 4830-01-M

Office of Thrift Supervision

Chisholm Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Chisholm Federal Savings Association, Kingfisher, Oklahoma, on April 19, 1991.

Dated: April 29, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10466 Filed 5-2-91; 8:45 am]

BILLING CODE 6720-01-M

Cimarron Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Cimarron Federal Savings Association, Muskogee, Oklahoma, on April 19, 1991.

Dated: April 29, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10467 Filed 5-2-91; 8:45 am]

BILLING CODE 6720-01-M

Metropolitan Federal Savings and Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Metropolitan Federal Savings and Loan Association, F.A., on Apriil 19, 1991.

Dated: April 29, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10468 Filed 5-2-91; 8:45 am]

BILLING CODE 6720-01-M

Prospect Park Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Prospect Park Federal Savings Bank, West Paterson, New Jersey, on April 18, 1991.

Dated: April 29, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10469 Filed 5-2-91; 8:45 am]

BILLING CODE 6720-01-M

Chisholm Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Chisholm Federal Savings and Loan Association, Kingfisher, Oklahoma, OTS No. 8518, on April 19, 1991.

Dated: April 29, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10470 Filed 5-2-91; 8:45 am]

BILLING CODE 6720-01-M

Cimarron Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Cimarron Federal Savings and Loan Association, Muskogee, Oklahoma, OTS No. 08511, on April 19, 1991.

Dated: April 29, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10471 Filed 5-2-91; 8:45 am]

BILLING CODE 6720-01-M

Imperial Federal Savings Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Imperial Federal Savings Association, San Diego, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on April 19, 1991.

Dated: April 29, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10472 Filed 5-2-91; 8:45 am]

BILLING CODE 6720-01-M

Metropolitan Federal Bank, a Federal Savings Bank Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Metropolitan Federal Bank, a Federal Savings Bank, Nashville, Tennessee, OTS No. 5271, on April 19, 1991.

Dated: April 29, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10473 Filed 5-2-91; 8:45 am]

BILLING CODE 6720-01-M

Prospect Park Savings Bank, SLA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Prospect Park Savings Bank, SLA, West Paterson, New Jersey (OTS No. 4188), on April 18, 1991.

Dated: April 29, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10474 Filed 5-2-91; 8:45 am]

BILLING CODE 6720-01-M

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 86
Friday, May 3, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, May 8, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed modifications to the criteria for the tiered pricing structure for check collection services. (Proposed earlier for public comment; Docket No. R-0712)
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: May 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10601 Filed 5-1-91; 11:24 am]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM:

TIME AND DATE: Approximately 10:30 a.m., Wednesday, May 8, 1991, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 1, 1991

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10602 Filed 5-1-91; 11:24 am]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 19146, April 25, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, May 1, 1991.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposed purchase of computers and relocation of a data center within the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: May 1, 1991

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10601 Filed 5-1-91; 3:54 pm]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 6, 1991.

A closed meeting will be held on Tuesday, May 7, 1991, at 2:30 p.m. An open meeting will be held on Thursday, May 9, 1991, at 10:30 a.m., in Room 1C30.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10), and 17 CFR 200.402(a) (4), (8), (9)(i), and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 7, 1991, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

The subject matter of the open meeting scheduled for Thursday, May 9, 1991, at 10:30 a.m., will be:

1. Consideration of whether to issue a release soliciting information and comments with respect to American Depositary Receipts ("ADRs"). The proposed solicitation of information and comments would be part of a review by the Commission of the marketplace for the regulations relating to ADRs. For further information, please contact Anita T. Klein or Paul M. Dudek at (202) 272-3246.
2. Consideration of whether to issue a second Automation Review Policy statement that sets forth the Commission's views concerning: (1) The nature of the independent reviews that the self-regulatory organizations ("SROs") are encouraged to obtain with respect to their automated trading and information dissemination systems; (2) the contents of SROs' annual reports on major systems changes and a process for provision of notifications of material systems changes; and (3) notifications of significant systems problems. In addition, the Policy Statement requests comment on establishing a process to explore the development of generally accepted standards for authomated systems of regulated entities with respect to computer audits, security and capacity. For further information, please contact Eugene A. Lopez at (202) 272-2828.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kaye Williams at (202) 272-2400.

Dated: May 1, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10629 Filed 5-1-91; 1:47 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 56, No. 86
Friday, May 3, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3779-1]

Amendments to Standards of Performance for New Stationary Sources; Reporting Requirements

Correction

In rule document 90-29111 beginning on page 51378 in the issue of Thursday, December 13, 1990, make the following corrections:

§ 60.465 [Corrected]

1. On page 51384, in the first column, in § 60.465(c), in the fifth line, "atmospheric" should read "atmosphere".

§ 60.495 [Corrected]

2. On the same page, in the second column, in § 60.495(c)(2), in the third line, "incinerator" should read "incineration".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Targeted Training Grants; Correction

Correction

In notice document 91-9342 appearing on page 16347 in the issue of Monday, April 22, 1991, in the second column, under *Region X*, in the third line, "111" should read "1111".

BILLING CODE 1505-0

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federal register

Friday
May 3, 1991

Part II

Department of Housing and Urban Development

Office of Assistant Secretary for Fair Housing and Equal Opportunity

Notice of Funding Availability for Fair Housing Assistance Program in Fiscal Year 1991

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-91-3213; FR-2953-N-01]

Funding Availability for Fair Housing Assistance Program, Non-Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Funding Availability (NOFA) for FY 1991.

DATE: The actual Application Due Date will be specified in the application kit. Applicants will have at least 30 days after the application kit becomes available to prepare and submit their proposals. No application received after the closing date will be considered.

SUMMARY: This NOFA announces HUD's funding for FY 1991 of the Fair Housing Assistance Program (FHAP). Applications are solicited for Capacity Building and Incentive Funding only. Contributions agencies that are eligible for complaint processing and training support are not required to submit an application. In the body of this document is information concerning the purpose of the NOFA and information regarding eligibility, available amounts, selection criteria and information processing, including how to apply and how selections will be made.

FOR FURTHER INFORMATION CONTACT: Lauretta A. Dixon, Branch Chief, Fair Housing Assistance Program (FHAP), Programs Division, Office of Fair Housing Enforcement and section 3 Compliance, room 5218, 451 Seventh Street, SW., Washington, DC 20410-2000. Telephone: (202) 708-0455 (V and TDD). (This is not a toll-free number.) Application kits will automatically be sent to eligible State and local fair housing agencies by the Regional Office with geographic responsibility for such agency. Requests for application kits may also be made by telephone from the number listed above.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

Information collection requirements contained in this notice were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been approved and assigned OMB control number 2529-0005.

Purpose and Substantive Description

I. Authority

The Fair Housing Act (42 U.S.C. 3601-19), ("the Act") prohibits discrimination in the sale or rental of housing, in residential real-estate related transactions, in the provision of brokerage services, and in other housing-related practices. Discrimination is prohibited on the basis of race, color, religion, sex, familial status, handicap, or national origin. Section 810(f) of the Act provides that, "Whenever a complaint alleges a discriminatory housing practice (A) within the jurisdiction of a State or local public agency; and (B) as to which such agency has been certified by the Secretary (for the referral of complaints of discriminatory housing practices), the Secretary shall refer such complaint to that certified agency before taking any action with respect to such complaint." Section 817 of the Act provides, among other things, that the Secretary may utilize the services of State and local agencies charged with the administration of the State and local Fair Housing laws, and "may reimburse such agencies and their employees for services rendered to assist him in carrying out" the Fair Housing Act. The FHAP was authorized by Congress to provide HUD with the resources to enhance the fair housing enforcement capabilities of State and local civil rights agencies. This announcement of solicitation for capacity building and incentive funding under the Fair Housing Assistance Program (FHAP) is issued in accordance with these authorities and 24 CFR part 111.

The FHAP was redesigned in 1989 to replace the administrative funding system of competitive and noncompetitive funding with a single non-competitive funding approach. On May 9, 1989, HUD published a final rule (54 FR 20094) implementing the redesigned FHAP. This comprehensive approach gives recipients an increased ability to plan a long-term program that is more suitable to their fair housing enforcement needs and gives HUD the ability to improve administration of the FHAP. The purpose of the funding is to provide support for capacity building, complaint processing, training, technical assistance, data and information systems, and other fair housing projects. The intent of the program is to build a coordinated intergovernmental effort to further fair housing and to encourage States and localities to assume a greater share of the responsibility for administering their fair housing laws.

II. Allocation Amounts

(a) Scope: A total of $6.3 million is available under this NOFA. Applications are solicited for capacity building and incentive funding as described at 24 CFR Section 111.105.

(b) Funding of Capacity Building Agencies: Under 24 CFR 111.105(a), HUD will give $50,000 to each capacity building agency (an agency in the first two years of participation in FHAP) which submits an acceptable application.

(c) Funding of Contributions Agencies: Under 24 CFR 111.105(a), agencies which have received two years of awards for capacity building (Contributions Agencies) are eligible to receive training funds, complaint processing funds and, for those agencies meeting the additional incentive criteria in 24 CFR 111.113 and section III.(a)(6) specified below, incentive funds.

(1) Training: Each Contribution Agency will receive $4,000 to support participation of no fewer than 4 persons in HUD-sponsored or HUD-approved fair housing training. These funds are intended to support attendance at HUD-sponsored training at national and regional training sites. These monies may also be used to support additional in-house training by agencies for agency-specific problems, and for training of staff unable to attend national or regional training, subject to the approval of the HUD Government Technical Representative.

(2) Complaint processing funds: Contributions agencies will receive support for complaint processing based solely on the number of dual-filed housing discrimination complaints actually processed by them during the twelve month period beginning October 1, 1989 and ending September 30, 1990. (See 24 CFR 111.105(b).) (A dual-filed complaint is a complaint which has been docketed at both HUD and the agency.) The unit reimbursement level will be $800 per complaint.

(3) Incentive funds: A contributions agency that meets all of the criteria for incentive funds set forth in 24 CFR 111.113 and in section III.(a)(6) below may apply for incentive funds, describing those projects that would benefit its jurisdiction. The amount of funds awarded to an agency will be based on the population of the jurisdiction served by the agency, and on the projects proposed and the cost of implementing those projects. HUD will use 1990 U.S. census estimates to determine a jurisdiction's population. Population figures for counties will exclude population figures for

substantially equivalent cities within those counties. The maximum amount of funds based on population ranges is as follows:

Population range	Maximum amount
Fewer than 100,000	$30,000
100,000 to 499,999	40,000
500,000 to 999,999	50,000
1,000,000 to 3,999,999	65,000
4,000,000 to 9,999,999	80,000
10,000,000 to 14,999,999	95,000
15,000,000 and above	110,000

III. Eligibility

(a) Agencies

(1) Interested agencies are urged to review 24 CFR parts 111 and 115 and the information in this announcement to determine eligibility to apply.

(2) An agency is not eligible for capacity building and incentive funding at the same time.

(3) Contributions agencies that are eligible for complaint processing and training support are not required to submit an application.

(4) To be eligible to apply for funds under the FHAP, an agency first must meet the criteria prescribed in 24 CFR 111.107. Specifically:

(A) The State or local agency must be certified as a substantially equivalent agency under 24 CFR 115.6 (including an agency grandfathered for the referral of complaints under 24 CFR 115.6(d)); or must have entered into an agreement for interim referrals under 24 CFR 115.11 after the date of enactment of the Fair Housing Amendments Act of 1988 (see CFR 115.11).

(B) The agency must have executed a written Memorandum of Understanding with HUD which, at a minimum, describes the working relationship to be in force between the agency and HUD. An agreement for interim referral of complaints in accordance with 24 CFR 115.11 may constitute such a Memorandum of Understanding.

(C) The agency must demonstrate to HUD that the agency has acceptable procedures for cooperation with other FHAP-funded agencies having concurrent jurisdiction.

(D) The agency must not unilaterally reduce the level of financial resources currently committed to fair housing complaint processing. Budget and staff reductions occasioned by legislative action outside the control of the agency will not, alone, result in a determination of ineligibility. However, HUD will take such actions into consideration in assessing the ongoing viability of an agency's fair housing program; and

(E) The agency must participate in training sponsored by HUD and designed in consultation with HUD staff and agency representatives to provide uniform skills and technical knowledge.

(6) In addition to the criteria in section (5), above, an applicant for incentive funds must meet the following additional criteria:

(A) The agency must have processed a minimum number of dual-filed complaints during the period from October 1, 1989 through September 30, 1990. The following separate minimum numbers have been established for States and localities:

Population Range	Minimum Number of Dual Filed Complaints
Localities:	
Less than 1,000,000	10
1,000,000 to 4,999,999	15
5,000,000 and above	25
States:	
Less than 5,000,000	20
5,000,000 to 14,999,999	35
15,000,000 and above	50

(i) To be considered dual-filed, a complaint must be cognizable under the Federal Fair Housing Act and accepted by the Regional office as meeting the processing requirements under the cooperative agreement in effect during that time period.

(ii) For the purpose of determining eligibility for incentive funding, the number of dual filed complaints may include cases closed under contract for investigation undertaken by an agency grandfathered for the referral of complaints if: (1) The complaint involves allegations of discrimination based on familial status or handicap; and (2) the complaint also involves allegations of discrimination based on race, color, religion, sex or national origin. Cases involving discrimination solely on the basis of familial status or handicap are not counted for the purpose of determining eligibility for incentive funding.

(iii) For the purposes of paragraph (ii), above, a case will be considered to be closed under contract if it is assigned to a contracting agency for investigation and accepted by the Regional Office for payment under the familial status and handicap contract.

(B) The agency must have engaged in comprehensive and thorough investigative activities relative to complaints dual-filed with HUD, as determined by HUD based on its most recent annual performance evaluation under 24 CFR Part 115 and through monitoring thereafter, for the period from October 1, 1989 through September 30, 1990;

(C) The agency must demonstrate (as certified by the head of the agency) that during the agency's most recently concluded fiscal year, a minimum of 20 percent of funds spent by the agency for fair housing activities was from non-Federal sources.

(D) The agency must have performed satisfactorily in the timely submission of vouchers. A voucher is not submitted timely if it is received in the Regional office, as evidenced by the date stamped thereon, after the close of business of the fifteenth day after the date stipulated in the funding instrument for a recipient's submission of the voucher.

(E) The agency must have completed administrative processing of complaints in a timely manner. A complaint will be considered timely processed if an agency processed it within 100 days.

(b) Eligible Activities

(1) The primary purpose of capacity building and incentive funds is to support activities that produce increased awareness of fair housing rights and remedies. All activities proposed for funding must address, or have ultimate relevance to, matters affecting fair housing that are cognizable under the Fair Housing Act (42 U.S.C. 3601-3619). These activities include, but are not limited to, the following:

(A) Activities designed to develop and implement outreach efforts to heighten public awareness of all forms of housing discrimination prohibited under the Fair Housing Act and to increase public awareness of fair housing rights and responsibilities.

(B) Activities designed to create, modify, or improve local, regional, or national information systems concerned with fair housing matters.

(C) Activities designed to improve an agency's capability to ensure fair housing through new or redirected approaches to the agency's internal structure or compliance techniques.

(D) Activities to develop and conduct a testing or auditing program for specific protected classes or special market areas for fair housing administrative enforcement or litigation.

(E) Activities designed to identify new or subtle practices of housing discrimination and to implement programs to eliminate such practices.

(F) Activities designed to address violence and intimidation affecting equal housing opportunity. These activities may include education, technical assistance, or the development of programs for prevention and response.

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(G) Activities designed to coordinate fair housing enforcement efforts of governmental enforcement agencies with various community resources which have an impact on the prevention or elimination of discriminatory housing practices.

(H) Technical assistance activities to enable agencies to work with private fair housing groups, educational institutions, the real estate industry, and other private and governmental entities to eliminate or prevent housing discrimination.

(I) Activities to provide services to aggrieved individuals, consistent with rights and remedies under applicable Federal, State, and local laws prohibiting discrimination in housing.

(J) Affirmative marketing activities to inform persons of housing opportunities with respect to government-assisted housing and the private housing market.

(K) Activities designed to improve investigations of systemic discrimination for further processing by State and local agencies, HUD, or the Department of Justice.

(L) Fair housing training for enforcement agency staff.

(M) Activities designed to create, modify, or improve an agency's complaint information and monitoring capacity, to assure that its system is compatible with HUD's for internal monitoring of fair housing complaint activity.

(N) Activities designed to achieve substantial equivalency certification (e.g., amending relevant laws).

IV. Selection Criteria

(a) General Instructions Governing Applications for Assistance

(1) Each application for capacity building or incentive funds must include:

(A) A description of the applicant agency's proposed activities and objectives. Applicants who receive funding under the Education and Outreach Initiative of the Fair Housing Initiatives Program (FHIP) in FY 1991 will not be able to use FHAP funding to support the same activities funded under FHIP. (To promote applicant awareness of FHIP funded activities being conducted by other agencies within the same jurisdiction or geographical area, HUD will provide a listing in the application kit of all agencies and organizations selected for funding under the FHIP. This will help ensure that any of the activities to be funded under FHIP in the same jurisdiction or geographic area will not be duplicated by activities funded under this NOFA.)

(B) A schedule for completion and estimated cost of each proposed activity.

(C) For all capacity building applicants, information to justify the amount of funds requested, including the need for the activities proposed and the number of fair housing complaints processed during the previous fiscal year.

(b) Certification

(1) The applicant must certify that:

(A) The submission of the application is authorized under State or local law (as applicable), and the applicant possesses the legal authority to carry out the activities proposed in the application.

(B) The agency will adhere to a written agreement (Memorandum of Understanding or Interim Agreement) governing all fair housing referral activity and complaint processing between the agency and the appropriate HUD Regional Office.

(C) An applicant for incentive funds must also certify, on the basis of the supporting documentation submitted, that 20 percent of the funds spent by the agency for fair housing activities in the agency's most recently concluded fiscal year were from non-Federal sources.

(c) To receive capacity building or incentive funding, applicants must submit all information required in the FHAP application kit. The amount and method of determining an eligible agency's capacity building or incentive funding will be included in the application kit. Contributions agencies that are eligible for funding to support training and complaint processing activities will automatically be sent a Cooperative Agreement and are not required to submit an application. The agreement will include the allotment for training and case processing support. With respect to agencies eligible for incentive funds, the amount approved also will be included in the agreement. (Approved by OMB under control number 2529-0005.)

Application Process

(a) Application kits will automatically be sent to eligible State and local fair housing agencies by the Regional Office with geographic responsibility for such agency. Requests for application kits may also be made by telephone, (202) 708-0455.

(b) Completed applications are to be submitted to the Regional Office in which the applying agency is located. Addresses will be included in the application kit.

(c) An application for funding under this notice must be submitted by the date specified in the application kit. Applicants will have at least 30 days after the application kit becomes available to prepare and submit their proposals. No application received after the closing date will be considered.

(d) Negotiations: After submission of the application, but before the award, HUD may require that applicants participate in negotiations and submit application revisions resulting from those negotiations. HUD expects to make awards within four weeks after negotiations are successfully completed.

(e) Notification: An application for funding will be considered approved as of the date of HUD's written offer to the applicant to enter into a cooperative agreement.

(f) Type of Funding Instrument: Applicants will be funded under fixed-price Cooperative Agreements.

Checklist of Application Submission Requirements

A checklist for applicants to follow will be included in the application kit.

Corrections to Deficient Applications

(a) Applicants will be given an opportunity to cure nonsubstantive, technical deficiencies in their applications. Applications for capacity building and incentive funding will be reviewed upon receipt for completeness and conformity with 24 CFR part 111. With respect to any applications for funding in which the responsible HUD Regional Office has found deficiencies, the Regional Office will notify the applicant in writing of the deficiencies found. The applicant must, within 14 days of receipt of notification from the Regional Office, correct the deficiency or supply the additional information that the Regional Office requests. HUD will consider an applicant's failure to respond appropriately within the 14-day period as an abandonment of the application.

The kinds of technical deficiencies which can be cured after the submission date for applications has passed relate to items that (1) are not necessary for HUD review under the selection criteria/ranking factors; and (2) cannot be submitted, after the application due date has expired, to improve the substantive quality of the proposal.

(b) Appeal: If the applicant is notified by the Regional Office that, notwithstanding its attempt to correct the deficiency or supply the requested information, the applicant has failed to do so in the determination of the Regional Office, the applicant may appeal this determination to the Assistant Secretary for Fair Housing and Equal Opportunity.

Other Matters

Lobbying Activities—Prohibition and Disclosure

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (Pub. L. 100-121) and the implementing regulations at 55 FR 6736 (February 26, 1990). These authorities generally prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Additionally, a recipient must file a disclosure if it has made or agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this NOFA will not have potential significant impact on family formation maintenance, and general well being and, therefore, is not subject to review under the order. The NOFA, insofar as it funds the fair housing enforcement activities of State and local agencies, will assist families who are the victims of discriminatory housing practices.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA will provide financial assistance to State and local fair housing agencies, none of its provisions will have an effect on the relationship of the States or their jurisdictions with the Federal government.

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

The Catalog of Federal Domestic Assistance program number is 14.401.

Authority: Fair Housing Act (42 U.S.C. 3601-19); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: April 19, 1991.

Leonora L. Guerrero,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 91-10457 Filed 5-2-91; 8:45 am]

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Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 15 et al.

Federal Acquisition Regulation; Preproduction Startup Costs, Multiyear Contracting, and Contractor Acquisition of ADPE; Proposed Rules

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

[FAR Case 90-67]

Federal Acquisition Regulation (FAR); Preproduction Startup Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: FAR sections 15.804-6, 15.804-8, and 52.215 are revised to address preproduction, startup, and other nonrecurring costs. These revisions eliminate the need for numerous versions of component level provisions by providing standard language for use governmentwide.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 2, 1991 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAR Case 90-67 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR Case 90-67. For information pertaining to this case, contact Jeremy Olson at (202) 501-3221.

SUPPLEMENTARY INFORMATION:

A. Background

The Secretary of Defense directed that the Defense Federal Acquisition Regulation Supplement (DFARS) be streamlined and rewritten as part of the Defense Management Review (DMR) Regulatory Reform initiative. This initiative entails deletion of some DFARS language, consolidation of DFARS language, movement of DFARS language to the FAR, redefinition of policies and procedures, and editing and rewrite of the total DFARS .

These particular revisions eliminate the need for numerous versions of component level provisions by providing standard language for use governmentwide.

B. Regulatory Flexibility Act

The proposed changes are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive fixed-price basis and certified cost or pricing data are not submitted. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 610 (FAR Case 90-67) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of informaton from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 15 and 52

Government procurement.

Dated: April 25, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 15 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 15 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

2. Section 15.804-6 is amended to revise paragraph (f) to read as follows:

15.804-6 Procedural requirements.

* * * * *

(f) Preproduction and startup costs include costs such as preproduction engineering, special tooling, special plant rearrangement, training programs, and such nonrecurring costs as initial rework, initial spoilage, and pilot runs. Since an offeror may propose a price which does not include all preproduction and startup or other nonrecurring costs for the purpose of obtaining the first production contract and for gaining an advantage over competitors in negotiations for future acquisitions, it is important to know whether the offeror intends to absorb any portion of these costs or whether the offeror plans to recover them in connection with subsequent pricing actions under the proposed or future contracts. When these costs may be a significant factor in an acquisition, the contracting officer shall require that the offeror provide

(1) An estimate of total preproduction and startup costs,

(2) The extent to which these costs are included in the proposed price, and

(3) The intent to absorb, or plan for recovery of, any remaining costs.

This information could be useful in determining the lowest overall cost to the Government. If a successful offeror has indicated an intent to absorb any portion of these costs, the contracting officer may request a breakdown of these costs. The contract shall expressly provide that such portion will not be charged to the Government in any other action.

* * * * *

3. Section 15.804-8 is amended to revise the title and to add paragraph (X) to read as follows:

15.804-8 Solicitation provision and contract clauses.

* * * * *

(X) The contracting officer shall insert a provision substantially the same as the provision at 52.215-XX, Preproduction, Startup and Other Nonrecurring Costs, in solicitations when such costs are expected to be a significant factor in an acquisition.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.215-XX is added to read as follows:

52.215-XX Preproduction, startup, and other nonrecurring costs.

As prescribed in 15.804-8, insert in solicitations a provision substantially as follows:

Preproduction, Startup, and Other Nonrecurring Costs (Date)

In accordance with FAR 15.804-6(f), the offeror must submit the information requested below. The Government will consider the information provided below in the evaluation of proposals:

Estimated total of nonrecurring costs: $_____

Nonrecurring costs included in proposed price: $_____

Nonrecurring costs, not included in the proposed price, that the offeror intends to absorb: $_____

Nonrecurring costs, not included in the proposed price, that the offeror intends to recover from the Government: $_____

The offeror agrees to accept a clause in any resulting contract that the nonrecurring costs not included in the proposed price that the offeror intends to absorb will not be charged to the Government in any other action.

(End of provision)

[FR Doc. 91-10386 Filed 5-2-91; 8:45 am]

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48 CFR Part 31

[FAR Case 91-17]

Federal Acquisition Regulation (FAR); Contractor Acquisition of ADPE

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are amending FAR 31.205-2 to raise two dollar thresholds from $500,000 to $1,000,000. Raising the dollar thresholds from $500,000 to $1,000,000 will reduce Government in-plant reviews of ADPE and contractor data requirements to justify leasing ADPE, resulting in reduced resource requirements for both the Government and the contractor.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 2, 1991 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAR Case 91-17 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR Case 91-17. For information pertaining to this case, call Mr. Jeremy Olson at (202) 501-3221.

SUPPLEMENTARY INFORMATION:

A. Background

As part of the Councils' initiative to streamline regulations and reduce contractor oversight, we have reviewed all regulatory dollar thresholds. The language at FAR 31.205-2 requires contractors to annually support decisions to retain or change ADPE capability. Raising the dollar thresholds from $500,000 to $1,000,000 will reduce Government in-plant reviews of ADPE and contractor data requirements to justify leasing ADPE, resulting in reduced resource requirements for both the Government and the contractor.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive fixed-price basis and certified cost or pricing data are not obtained, nor do the cost principles at part 31 apply. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601 (FAR Case 91-17) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: April 25, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

31.205-2 [Amended]

2. Section 31.205-2 is amended in paragraphs (b)(2)(iii)(B) and (d)(3) by removing the figure "$500,000" and inserting in its place "$1,000,000".

[FR Doc. 91-10384 Filed 5-2-91; 8:45 am]

BILLING CODE 6820-34-M

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48 CFR Parts 17 and 52

[FAR Case 91-18]

Federal Acquisition Regulation (FAR); Multiyear Contracting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering proposed revisions to FAR part 17 and corresponding coverage in part 52 to provide special provisions for use in multiyear contracts whereas the FAR now requires contracting officers to develop provisions for use in multiyear solicitations and contracts on an as needed basis. The intent of these changes is to reduce the administrative burden on contracting officers by supplying needed provisions and clauses that were required but not provided.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 2, 1991 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAR Case 91-18 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR Case 91-18. For information pertaining to this case, call Ms. Jeritta Parnell at (202) 501-4082.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 17.102-2 is amended and FAR 17.105(a) is amended and subparagraphs (3) through (8) are added along with corresponding provisions and clauses to subpart 52.217. References in FAR 17.103-3(e)(4) and 17.103-4(d)(2) are changed. Amendments to FAR 17.103-1(d)(3) and to the clauses at 52.217-1 and 52.217-2 include substituting the term "cancellation ceiling clause of this contract" for the term "schedule." The

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proposed additions to the prescriptions in FAR 17.105(a) (3) through (8) are intended to provide special provisions for use in multiyear contracts whereas the FAR now requires contracting officers to develop provisions for use in multiyear solicitations and contracts on an as needed basis. FAR 17.103-2 (b) through (e) and (h) through (j), and 17.104-4(b)(8) are deleted because the coverage duplicates the proposed new coverage provided in the new provisions and clauses.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely implements in the FAR the procedures currently included in military service supplements. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 610 (FAR Case 91-18) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 17 and 52

Government procurement.

Dated: April 25, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 17 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 17 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 17—SPECIAL CONTRACTING METHODS

17.103-1 [Amended]

2. Section 17.103-1 is amended in paragraph (d)(3) by removing the word "schedule" in the last sentence of the paragraph and inserting in its place the words " 'Cancellation Ceiling' clause of this contract".

17.103-2 [Amended]

3. Section 17.103-2 is amended by removing paragraphs (b) through (e) and (h) through (j), and redesignating paragraphs (f), (g), and (k) through (o) as (b), (c), and (d) through (h), respectively.

17.103-3 [Amended]

4. Section 17.103-3 is amended in the last line of paragraph (e)(4) by removing the citation "17.103-2(n))" and inserting in its place "17.103-2(f))".

17.103-4 [Amended]

5. Section 17.103-4 is amended in paragraph (d)(2) by removing the citation "17.103-2(c)(1)" and inserting in its place "17.105(a)(4)".

17.104-4 [Amended]

6. Section 17.104-4 is amended by removing paragraph (b)(8) and redesignating paragraph (b)(9) as (b)(8).

7. Section 17.105 is amended by revising paragraph (a) introductory text and paragraph (a)(2), and by adding paragraphs (a) (3) through (8) to read as follows:

17.105 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the following provisions and clauses in solicitations and contracts when a multiyear contract or a multiyear modified-requirements contract is contemplated:

* * * * *

(2) The clause at 52.217-2, Cancellation of Items. If a multiyear modified requirements contract is to be awarded for more than one program year, insert the clause with its Alternate I.

(3) The clause at 52.217-10, Cancellation Ceiling, with the cancellation ceiling expressed on a percentage or dollar basis. If a multiyear modified requirements contract is awarded for more than one program year, insert the clause with its Alternate I.

(4) The provision at 52.217-11, Submission of Multiyear Prices, when previous acquisitions of the item have been made with competition and prices are to be submitted for the total requirements of the first program year, or for the total multiyear requirements or both. Insert Alternate I when the price is to be submitted only for the total multiyear requirements and prices on a single-year basis will not be considered because competition after the first program year would be impracticable and it is necessary to prevent a first program year "buy-in".

(5) The provision at 52.217-12, Submission of Prices—First Program Year, when previous acquisitions for the item have been made without competition, a first program year "buy-in" is not anticipated, and prices are to be submitted for the first program year requirements and may also be submitted for the total multiyear requirements.

(6) The provision at 52.217-13, Multiyear Unit Pricing, when the unit price of each item in the multiyear requirement shall be the same for all program years (level unit price). (See 16.203 for the use of an economic price adjustment clause which might affect the level unit price.)

(7) The provision at 52.217-14, Reduction of Multiyear Requirements, when the Government determines before award that only the first program year requirements are needed and offers may be evaluated and award made solely on the basis of the price offered on that year's requirements.

(8) The provision at 52.217-15, Minimum Award Under Multiyear Procedure, when award will not be made on less than the first program year requirements.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.217-1 [Amended]

8. Section 52.217-1 is amended in the third sentence of paragraph (a) of the clause by removing the word "Schedule" and inserting in its place " 'Cancellation Ceiling' clause of this contract".

§ 52.217-2 [Amended]

9. Section 52.217-2 is amended in the second sentence of paragraphs (a) and (e) of the clause, and the second sentence of Alternate I(a) by removing the word "Schedule" and inserting in its place " 'Cancellation Ceiling' clause of this contract"; paragraph (c) of the clause, is amended by removing the words "specified in the Schedule".

10. Sections 52.217-10 through 52.217-15 are proposed to be added to read as follows:

52.217-10 Cancellation Ceiling.

As prescribed in 17.105(a)(3), insert the following clause:

Cancellation Ceiling (Date)

The following cancellation ceiling(s) and date(s)/time period(s) for notification of availability or nonavailability of funds apply to this contract:

Program Year(s) Cancellation Ceiling Notification Date/Time Period

(End of clause)

Alternate I (Date). As prescribed in 17.105(a)(3), add the following to the basic clause:

Any anticipated significant changes in the Best Estimated Quantity for the succeeding program year will be provided by *(insert applicable date(s)/time period(s).*

52.217-11 Submission of Multiyear Prices.

As prescribed at 17.105(a)(4), insert the following provision:

Submission of Multiyear Prices (Date)

Offerors shall submit a price(s) for *(insert the total multiyear requirement, the total requirements of the first program year, or both).*

(End of provision)

Alternate I (Date). As prescribed in 17.105(a)(4), add the following to the basic provision:

Prices on a single-year basis will not be considered. If only one offer on the multiyear requirements is received that is both responsive and from a responsible offeror, the Government reserves the right to cancel the solicitation and resolicit on a single-year basis by whatever procedures are then appropriate.

52.217-12 Submission of Prices—First Program Year.

As prescribed at 17.105(a)(5), insert the following provision:

Submission of Prices—First Program Year (Date)

Offerors shall submit a price(s) for the first program year requirements and prices may be submitted for the total multiyear requirements. An offer on only the multiyear requirements will be considered ineligible for award.

If only one offer on the multiyear requirements is received that is both responsive and from a responsible offeror, the Government reserves the right to disregard the offer on the multiyear requirements and make an award only for the first program year requirements.

(End of provision)

52.217-13 Multiyear Unit Prices.

As prescribed at 17.105(a)(6), insert the following provision:

Multiyear Unit Prices (Date)

Unit prices submitted for each item in the total multiyear requirement shall be the same for all program years (level unit price).

(End of provision)

52.217-14 Reduction of Multiyear Requirements.

As prescribed in 17.105(a)(7), insert the following provision:

Reduction of Multiyear Requirements (Date)

In the event the Government determines prior to award that only the first program year requirements are needed, the Government may evaluate offers and make award solely on that year's requirements. Offers to cover the total multiyear requirements will not be considered.

(End of provision)

52.217-15 Minimum Award Under Multiyear Procedure.

As prescribed at 17.105(a)(8), insert the following provision:

Minimum Award Under Multiyear Procedure (Date)

Award under this solicitation will not be made for less than the first program year requirements.

(End of provision)

[FR Doc. 91-10385 Filed 5-2-91; 8:45 am]

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Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 522

Control, Custody, Care, Treatment and Instruction of Inmates; Admission and Orientation Program; Final Rule

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 522

Control, Custody, Care, Treatment and Instruction of Inmates; Admission and Orientation Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is updating its rule on the Admission and Orientation Program in order to make minor editorial changes. The intent of these changes is to improve the organization and clarity of the regulations, to maintain consistency in terminology, and to incorporate appropriate references to current Bureau policy.

EFFECTIVE DATE: May 3, 1991.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is updating its rule on the Admission and Orientation Program in order to make minor editorial amendments. A final rule on this subject was published in the Federal Register December 4, 1981 (46 FR 59507). There is no change in the intent of the regulation. A summary of the specific changes follows.

Orientation materials prepared by the Bureau for an inmate are more accurately described as handouts, and references to a pamphlet or a handbook are either removed or revised accordingly. The provision that staff shall develop such written orientation materials to supplement lectures and discussions is removed from § 552.40 and placed instead in the more appropriate § 552.41. The provisions in former § 552.41(c) are redesignated as paragraph (d) to make room for the above change and are reworded for the sake of clarity. Provisions in former § 552.42 (c) and (d) for inmate participation in program activities are consolidated in a new paragraph (c) in order to remove redundant regulatory text. Provisions in redesignated § 522.42(d) for telephone calls by newly committed inmates are amended by including a reference to existing Bureau regulations on the use of telephones by inmates. Finally, the phrase "A&O Program" is used consistently throughout the regulation, the word "Pre-trial" is revised as "Pretrial", and the phrase "inmate central file" in redesignated § 522.42(f) is revised to read "inmate's central file".

Because these changes pose no additional restrictions and are editorial in nature, the Bureau finds good cause for exemption from the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 522

Prisoners.

Dated: April 26, 1991.

J. Michael Quinlan,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), subchapter B of 28 CFR chapter V is amended as set forth below:

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 522—ADMISSION TO INSTITUTION

1. The authority citation for 28 CFR part 522 is revised to read as follows, and all other authority citations within the part are removed:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 4161–4166 (Repealed as to offenses occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 18 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 522.40 [Amended]

2. In § 522.40, paragraph (a) introductory text is amended by revising, in the last sentence, the phrase "admission and orientation program" to read "A&O Program", paragraph (b) is removed, and paragraph (c) is redesignated as new paragraph (b) and amended by revising the word "Pre-trial" to read "Pretrial".

3. In § 522.41, paragraph (c) is redesignated as paragraph (d) and revised, and a new paragraph (c) is added to read as follows:

§ 522.41 Responsibility.

* * * * *

(c) Staff shall develop written orientation materials to supplement lectures and discussions.

(d) A staff member involved in the A&O Program who believes that an inmate is experiencing significant emotional stress shall notify the A&O staff coordinator so that the inmate may be offered appropriate assistance.

§ 522.42 [Amended]

4. In § 522.42:

a. Paragraph (c) is removed and paragraphs (d) through (g) are redesignated as paragraphs (c) through (f);

b. Newly redesignated paragraph (c) is amended by revising the first sentence to read as follows: "The A&O staff coordinator is to ensure that the A&O Program provides a full schedule of activities in which each newly committed inmate may participate.";

c. Newly redesignated paragraph (d) is amended by revising the phrase "or collect long distance phone calls during the admission process" to read "or long distance phone calls during the admission process, in accordance with the provisions in part 540, subpart I of this chapter";

d. Newly redesignated paragraph (e) is amended by revising, in the heading, the phrase "*admission and orientation program*" to read "*A&O Program*" and by revising, in the text, the phrase "A&O program" to read "A&O Program"; and

e. Newly redesignated paragraph (f) is amended by revising, in the first sentence, the word "handbook" to read "handouts" and the phrase "admission and orientation program" to read "A&O Program", and by revising, in the last sentence, the phrase "inmate central file" to read "inmate's central file".

[FR Doc. 91-10469 Filed 5-3-91; 8:45 am]

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Part V

The President

Proclamation 6286—National Day To Commemorate the 200th Anniversary of the Polish Constitution of May 3, 1791

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Friday, May 3, 1991

Presidential Documents

Title 3—

The President

Proclamation 6286 of May 1, 1991

National Day To Commemorate the 200th Anniversary of the Polish Constitution of May 3, 1791

By the President of the United States of America

A Proclamation

On May 3, 1791, declaring their love of "national independence and freedom over life itself," brave Polish patriots adopted a national constitution for their homeland. This document was a resounding declaration of Poles' desire for liberty and self-government—and it was a bold challenge to the foreign powers that had invaded and partitioned their country less than 20 years before.

One of the first written national constitutions in the world, the Polish Constitution of May 3, 1791, was modeled after our own. Even through the most difficult periods in Poland's history, it has remained a great and cherished symbol of the Polish people's devotion to democratic ideals.

We Americans gladly join in celebrating the 200th anniversary of this historic document because we are united with the Polish people by strong ties of kinship and culture and by a mutual love of liberty. These special bonds were affirmed in the "Declaration on Relations between the United States of America and the Republic of Poland," which President Lech Walesa and I signed on March 20, 1991.

Poles were among the first immigrants to come to these shores in search of freedom and opportunity, and they and their descendants have served and enriched our Nation in countless ways. Since the great Polish heroes Tadeusz Kosciuszko and Kazimierz Pulaski helped to secure the Independence of our fledgling Republic, millions of other men and women of Polish extraction have likewise labored and sacrificed to help ensure the success of America's bold experiment in self-government, always inspiring others by their unshakable faith in God and in the promise of liberty under law.

In Poland, that faith has been tested by decades of often brutal repression. During the late 18th century Poland again fell prey to the expansionist aims of neighboring empires. Early in this century Poland enjoyed only a brief period of independence before being invaded by Nazi Germany and the Soviet Union in 1939. Nevertheless, despite decades of foreign domination and the declaration of martial law as recently as 1981, the people of Poland have held fast to their dream of freedom and self-determination.

Today the faith, courage, and tenacity of the Polish people are finally being rewarded. During the past 2 years the Poles have thrown off the heavy yoke of communism and under a new, democratically elected government have begun working to break the cycle of impoverishment and decline imposed by nearly half a century of totalitarian rule.

The United States wholeheartedly supports the Poles' courageous efforts to establish a free market economy and stable democratic rule in their country. Those efforts have required difficult decisions by the Polish leadership and great sacrifices by all Poles, and the United States has acted to assist Poland's historic transition in many ways.

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The United States is proud to stand by our Polish friends as they work to transform their triumph over tyranny into lasting freedom and prosperity. Today we know that the promise of the Polish Constitution of May 3, 1791, is being fulfilled. On the occasion of its 200th anniversary, we salute and congratulate the courageous people of Poland, who have proved, once again, that "Poland is not lost while Poles still live."

The Congress, by House Joint Resolution 669 (Public Law 101-532), has designated May 3, 1991, as a day of commemoration of the 200th anniversary of the Polish Constitution of May 3, 1791, and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim May 3, 1991, as a day of commemoration of the 200th anniversary of the adoption of the Polish Constitution of May 3, 1791. I call upon all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-10723
Filed 5-3-91; 10:36 am]
Billing code 3195-01-M

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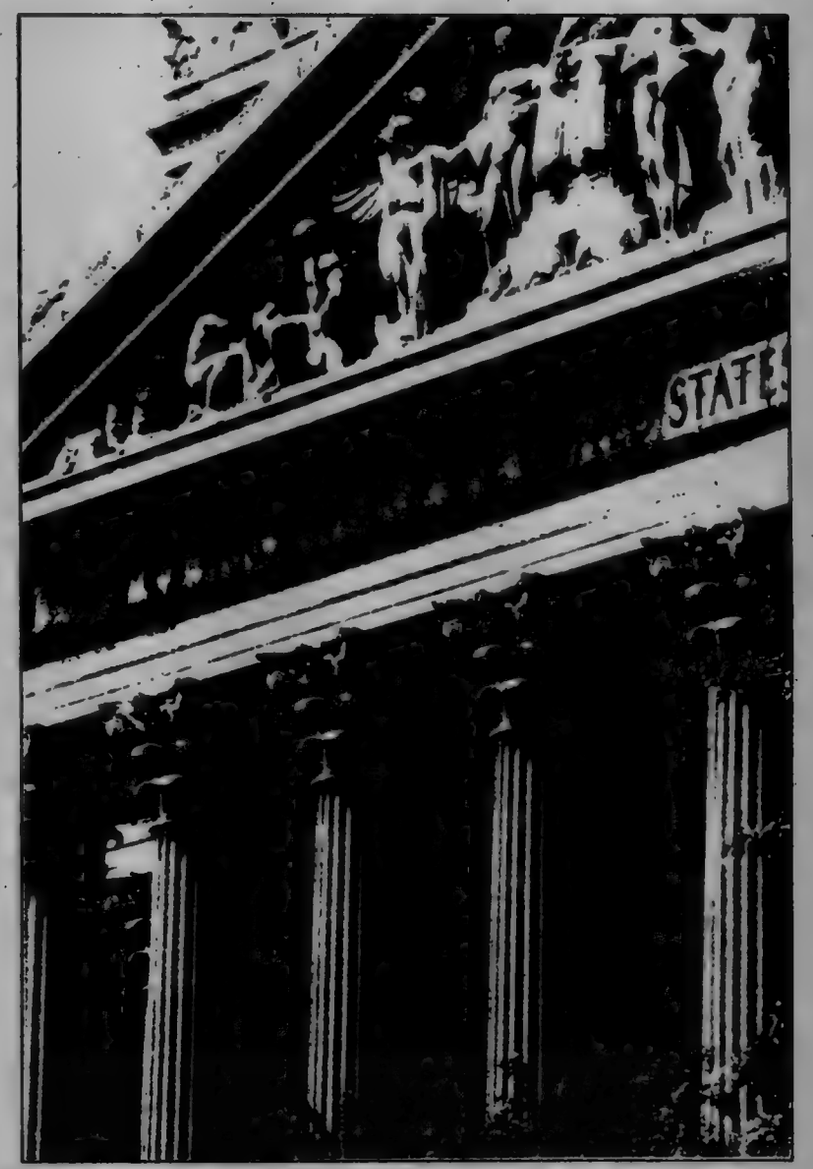

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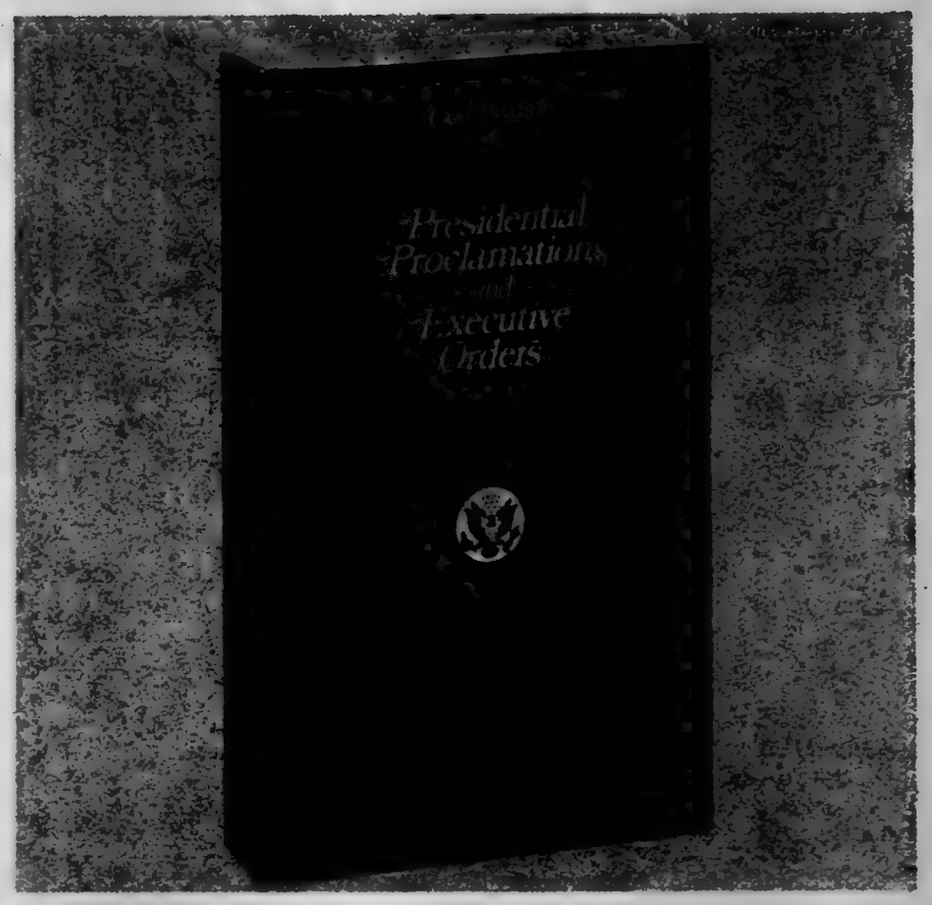

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Monday
May 6, 1991

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Rules and Regulations

Federal Register
Vol. 56, No. 87
Monday, May 6, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

Absence and Leave; Reservist Leave Bank Program

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations and requesting comments on rules establishing a leave bank authorized by Public Law 102-25 for returning Federal employees who were called to active duty in the U.S. Armed Forces during the Persian Gulf War. These rules define the procedures and conditions that agencies must follow to (1) identify eligible returnees, (2) identify qualified leave contributors, (3) accept contributed annual leave, (4) report to OPM, and (5) credit the annual leave accounts of recipients.

DATES: Interim rules effective May 6, 1991. Comments must be received on or before June 5, 1991.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Pay and Performance, U.S. Office of Personnel Management, room 7H30, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Bernadette Christie, (202) 606-2858 or (FTS) 266-2858.

SUPPLEMENTARY INFORMATION: The Desert Shield/Desert Storm Reservist Leave Bank Act of 1991 was enacted as part D of the Department of Defense Desert Strom Supplemental Authorization and Military Personnel Benefits Act for Fiscal Year 1991, Public Law 102-25, April 6, 1991. The Act directs OPM to establish a leave bank to which employees may contribute unused accrued annual leave for the use of other Federal employees who perfomed active duty military service during the Persian Gulf War and who are returning to civilian employment with their agencies. The contributed annual leave will be divided equally among all eligible returnees. Under this program, employees may not contribute leave for the use of a specific individual.

The Act further requires OPM to establish a contribution period (open season) during which employees may contribute annual leave. OPM will specify the dates by which agencies must report (1) the number of returning employees within each agency who are eligible to receive leave contributed under this program, and (2) the aggregate amount of annual leave contributed by leave contributors within each agency to the reservist leave bank. Finally, OPM will determine when the contributed annual leave will be made available for use by recipients. OPM will use this and additional information provided by the agencies for a report to Congress.

Agencies are required to identify and list eligible returnees. This legislation requires that each service member meet the definition of employee in 5 U.S.C. 6361(1) and have been activated under sections 672(a), 672(g), 673, 673b, 674, 675, or 688 of title 10, United States Code.

Agencies must determine the eligibility of returnees under the above-cited title 10 provisions. Each returnee's military orders will indicate the statutory conditions under which the individual was activated. Service members activated under the provisions of 10 U.S.C. 672(d) or for training purposes only are not eligible to receive contributed leave under this program. In addition, only reservists and guardsmen called to active duty during the Persian Gulf War are eligible to receive contributed leave. The Act defines "Persian Gulf War" as the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law. OPM will advise agencies of the ending date for eligibility to receive leave under this program.

Section 6361(1) of title 5 defines "employee" for purposes of the voluntary leave bank program. This definition refers to 5 U.S.C. 6301(2), but excludes employees of the Government of the District of Columbia. The definition further excludes part-time employees who do not have regularly scheduled tours of duty and employees of the U.S. Postal Service may not receive contributed leave. Finally, although health-care professionals covered under section 4108(e) of title 38, United States Code, do not meet the requirements to be recipients of leave contributed to the reservist leave bank established for employees covered by title 5, this Act also requires the Secretary of Veterans Affairs to establish a similar program for title 38 health-care professionals.

All employees who do meet the criteria in the legislation must be considered eligible to receive contributed leave and must be included in an agency's report to OPM. (The legislation provides no discretion in this area.) Agencies must report the number of eligible returnees to OPM by a date to be determined.

Only employees of Executive agencies may be leave contributors and contribute unused accrued annual leave to the reservist leave bank. To simplify recordkeeping and accounting, the minimum amount of annual leave a contributor may contribute is 1 hour. A contributor may contribute only annual leave that already has been accrued, but not more than the lesser of—

- One-half the amount of annual leave he or she would be entitled to accrue during the leave year in which the contribution is made (i.e., 52 hours, 80 hours, or 104 hours, depending on the employee's annual leave accrual category); or
- One-half his or her annual leave balance at the time of contribution.

Annual leave contributed under this program will not be applied against the limitations on annual leave that may be donated under the voluntary leave transfer or leave bank programs established under 5 U.S.C. 6332 and 6362, respectively.

Agencies may require leave contributors to use a Standard Form (SF) 71, Application for Leave, indicating that they are charging annual leave and completing section 6, "Remarks," to show that the leave is being contributed for the use of Persian Gulf War returnees. However, OPM does not require that the SF-71 be used. OPM does not plan to develop a new form for this purpose.

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While agencies are encouraged to be creative in publicizing this leave bank program, OPM reminds agencies that there must not be an appearance of coercion on the part of management requiring employees to contribute their annual leave.

After the contribution period (open season) closes, agencies will have approximately 4 weeks to report to OPM the amount of annual leave contributed to the bank. OPM will compute the amount of leave each eligible returnee will receive.

The total amount of contributed annual leave will be divided equally among eligible returnees. If this computation results in a fraction of an hour, the fraction will be rounded up to the next quarter-hour. Agencies may grant leave recipients excused absence for the remainder of the hour, but may not reduce the amount of leave credited to an employee by any fraction of an hour. Alternatively, agencies may charge leave by the quarter-hour for the purpose of this program; however, this solution may require agencies to compute the affected leave balances manually.

OPM will communicate to agencies the amount of leave each eligible returnee should receive. Agencies will credit the contributed leave to the annual leave accounts of eligible returnees who already have returned to Federal employment by not later than the end of the second pay period after the date on which OPM notifies agencies of the amount of annual leave to credit to each eligible returnee's leave account.

Eligible returnees who have returned to civilian service may use the contributed leave immediately, subject to supervisory approval. Once credited, however, the annual leave is subject to and must be used in accordance with, all pertinent rules and regulations. The contributed leave creditable to those eligible returnees who have not yet returned to their agencies will be held in abeyance until the recipients return. Annual leave held in abeyance for employees identified as eligible returnees, but who do not return to Federal employment with their agencies, will be forfeited.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

The Act provides that OPM must issue implementing regulations within 30 days following enactment. In order to give practical effect to this legislation at the earliest authorized date, I find that good cause exists to waive the general notice of proposed rulemaking pursuant to section 553(b)(3)(B) of title 5, United States Code. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The 30-day delay in the effective date is being waived to give affected employees the benefit of these new provisions at the earliest practicable date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending part 630 of title 5, Code of Federal Regulations, as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 is revised to read as set forth below:

Authority: 5 U.S.C. 6311; § 630.303 also issued under 5 U.S.C. 6133(a); § 630.501 and subpart F also issued under E.O. 11228; subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332 and Pub. L. 100-566; subpart J also issued under 5 U.S.C. 6362 and Pub. L. 100-566; subpart K also issued under Pub. L. 102-25.

2. In part 630, subpart K is added to read as follows:

Subpart K—Reservist Leave Bank Program

Sec.
630.1101 Purpose and applicability.
630.1102 Definitions.
630.1103 Identifying eligible returnees.
630.1104 Receipt, processing, and transfer of leave.
630.1105 Limitations on contribution of annual leave.
630.1106 Prohibiton of coercion.
630.1107 Crediting annual leave accounts of eligible returnees.
630.1108 Use of annual leave contributed under this program.
630.1109 Records and reports.

Subpart K—Reservist Leave Bank Program

§ 630.1101 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to establish procedures and requirements for a reservist leave bank program in Executive agencies under which an employee may contribute unused accrued annual leave to a leave bank established by the Office of Personnel Management (OPM) for use by eligible returnees who have been members of the Armed Forces of the United States serving on active duty during the Persian Gulf War and who return to civilian employment with their agencies.

(b) *Applicability.* This subject applies to officers and employees—

(1) To whom subchapter IV of chapter 63 of title 5, United States Code, applies; and

(2) Who are employed in Executive agencies.

§ 630.1102 Definitions.

In this subpart:

Agency means an "Executive agency," as defined in 5 U.S.C. 105.

Contribution period means a period of at least 6 weeks beginning on a date to be established by OPM. The Director of OPM may extend the contribution period, if necessary, to meet the requirements of the legislation.

Eligible returnee means an employee who has been a member of the U.S. Armed Forces serving on orders issued under 10 U.S.C. 672(a), 672(g), 673, 673b, 674, 675, or 688 during the Persian Gulf War, and who has returned to, or will return to Federal employment with his or her agency. An employee who, after completing his or her active duty military service, does not return to Federal employment for any reason is not eligible to receive leave contributed to the reservist leave bank.

Employee has the meaning given that term in 5 U.S.C. 6361(1).

Leave contributor means an employee who contributes annual leave to the reservist leave bank established under section 361 of Public Law 102-25; 105 Stat. 92 (5 U.S.C. 6361 note).

Persian Gulf War means the period beginning on August 2, 1990, and ending on a date thereafter prescribed by Presidential proclamation or by law. OPM will advise agencies of the ending date for eligibility to receive leave under this program.

Reservist leave bank means the leave bank established by OPM for the purpose of this subpart.

§ 630.1103 Identifying eligible returnees.

(a) Each agency shall identify and list all eligible returnees within the agency.

(b) Each agency shall report the number of eligible returnees identified to OPM. Negative reports are required.

§ 630.1104 Receipt, processing, and transfer of leave.

(a) Each agency shall accept annual leave contributed to the reservist leave bank by leave contributors during the contribution period (open season).

(b) Each agency shall determine the procedures under which to collect, process, and transfer leave contributed under this subpart. Leave contributed to the reservist leave bank must be debited from the contributor's annual leave account during the pay period in which it is contributed.

(c) Each agency shall report the aggregate amount of annual leave contributed to the reservist leave bank to OPM. (See § 630.1109(b)(1) of this subpart.)

§ 630.1105 Limitations on contribution of annual leave.

(a) A leave contributor may not contribute leave for the use of a specific eligible returnee.

(b) A leave contributor may contribute only accrued unused annual leave to the reservist leave bank.

(c) A leave contributor may not contribute less than 1 hour of annual leave, nor more than the lesser of—

(1) One-half the amount of annual leave he or she would be entitled to accrue during the leave year in which the contribution is made; or

(2) One-half his or her annual leave balance at the time the contribution is made.

(d) Annual leave contributed to the reservist leave bank shall not be applied against the limitations on annual leave that may be donated under the voluntary leave transfer and leave bank programs established under 5 U.S.C. 6332 and 6362, respectively.

§ 630.1106 Prohibition of coercion.

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any rights such employee may have with respect to contributing, or not contributing, annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section, the term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 630.1107 Crediting annual leave accounts of eligible returnees.

(a) OPM shall divide the contributed annual leave equally among eligible returnees without regard to any factor (e.g., full- or part-time status, duty station during the Persian Gulf War, or time spent on active duty) other than each employee's status as an eligible returnee.

(b) The amount of annual leave each eligible returnee receives shall be rounded to the next higher quarter-hour. An employing agency may not reduce the amount of leave credited to an eligible returnee by any fraction of an hour, but may grant leave recipients excused absence for the remainder of the hour or charge leave by the quarter-hour for the purpose of this program.

(c) OPM shall notify each agency of the amount of annual leave that shall be credited to each eligible returnee.

(d) Each agency shall credit the annual leave accounts of eligible returnees who have returned to Federal employment as soon as possible, but not later than the end of the second pay period beginning on or after the date the agency is notified of the amount of leave each eligible returnee is to receive.

§ 630.1108 Use of annual leave contributed under this program.

(a) The annual leave credited to the account of an eligible returnee may be used in the same manner and for the purposes as if the leave had accrued under 5 U.S.C. 6303.

(b) An eligible returnee who has returned to Federal employment may use the leave credited under § 630.1107 of this subpart immediately, subject to supervisory approval.

(c) Annual leave creditable to an eligible returnee who has not yet returned to Federal employment shall be held in abeyance by the employing agency that identified such employee until his or her return.

(d) Annual leave held in abeyance for an eligible returnee who does not return to Federal employment shall be forfeited.

§ 630.1109 Records and reports.

(a) Each agency shall maintain records and report pertinent information concerning the administration of the reservist leave bank program.

(b) Each agency shall maintain the following information:

(1) The grade or pay level of each leave contributor and the amount of leave contributed by leave contributors at each grade or pay level (Each agency is required to report to OPM the aggregate amount of annual leave contributed to the reservist leave bank under § 630.1104(c) of this subpart.);

(2) The grade or pay level of each eligible returnee;

(3) The number of eligible returnees to whom the contributed annual leave was credited immediately;

(4) The number of eligible returnees for whom the contributed annual leave was held in abeyance;

(5) The estimated direct and indirect costs of administering the reservist leave bank program; and

(6) Any additional information OPM may require.

(c) Each agency shall report the information specified in paragraph (b) of this section to OPM.

(d) OPM shall identify the dates by which each agency shall report the information gathered pursuant to §§ 630.1103(b) and 630.1104(c) of this subpart and paragraph (b) of this section.

[FR Doc. 91-10636 Filed 5-3-91; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1477

Disaster Payment Program for 1989 Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Disaster Assistance Act of 1989 (the 1989 Act), provided assistance to eligible producers for losses of 1989 crop production due to damaging weather or related conditions in 1988 or 1989. The Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act) amended the 1989 Act to provide: The total quantity of 1989 sugarcane that producers on a farm actually harvested or could have harvested shall be based on the quantity of recoverable sugar when determining disaster losses; losses of producers of any crop of valencia oranges affected by a freeze in either 1988 or 1989 shall be considered when determining eligibility for program payments and; disaster assistance for producers on the Wind River Indian Reservation, Wyoming, who suffered losses due to lack of water as the result of Indian Tribal water adjudication.

Accordingly, this rule adopts as final the interim rule published Jan. 4, 1991 that implemented these revised provisions.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Charles M. Cox, Jr., Program Specialist, Cotton, Grain, and Rice Price Support

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Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC, Telephone: (202) 382-8757.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major" since the program will have an annual effect on the economy of less than $100 million. Accordingly, a final regulatory impact analysis is not necessary.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

An Environmental Evaluation with respect to the Disaster Payment Program was completed for the 1989 program. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The titles and numbers of federal assistance program to which this rule applies are: Title—Cotton—10.502; Feed Grains—10.055; Wheat—10.058; Rice—10.065; as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The information collection requirements contained in this regulation have been submitted to the Office of Management and Budget for emergency review under the provisions of 44 U.S.C. chapter 35 and OMB Numbers will be assigned. The emergency clearance was determined to be necessary in order to commence application for benefits. The emergency clearance will expire in 90 days. Public reporting burden for these collections is estimated to require 15 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background

The 1990 Act amended the 1989 Act to provide that disaster payments for the 1989 sugarcane crop will be based on the quantity of recoverable sugar rather than on the number of tons of sugarcane produced on the farm. The Interim rule provided that producers who previously applied for disaster payments would have their payments recomputed and the amount due would be determined not later than February 28, 1991, based on pounds of recoverable sugar. Those producers who previously did not apply for benefits under the 1989 disaster program for sugarcane would have until January 15, 1991, to seek disaster benefits under the 1989 program for sugarcane as amended by the 1990 Act.

Producers of 1989 or 1990 crop of valencia oranges affected by a 1989 freeze may be eligible for a disaster program payment if the producer on the farm incurred a loss of 50 percent. Those producers who applied previously for a disaster payment would have their payments recomputed not later than February 28, 1991. Producers who did not previously apply for benefits may do so until January 15, 1991.

Producers on the Wind River Indian Reservation who were affected by a lack of water as a result of Indian Tribal water rights adjudication affecting producers on that portion of the Big Horn River drainage system on the Wind River Reservation, Wyoming, are eligible for disaster payments. This is effective for 1990 crop of wheat, barley, oats, grass hay, and alfalfa hay.

These producers may make application for program payment no later than May 27, 1991. However, the total amount of assistance is limited to $250,000.

In response to the interim rule issued on January 4, 1991, at 56 FR 364, 1 (one) timely filed comment was received from the Wyoming Congressional delegation. The comment applied to § 1477.20 of the regulation. The Wyoming Congressional delegation took issue with the Department's interpretation of the statutory provision which provides that assistance is limited to only those producers who were actually farming on the Wind River Indian Reservation.

Section 2275 of the 1990 Act provides, in part: " * * * (a) In general.—Effective only for providers on a farm who suffered losses due to drought induced by a lack of water as a result of Indian Tribal water rights adjudication affecting producers on that portion of the Big Horn River Drainage system located on the Wind River Indian Reservation, Wyoming, for the 1990 crop of wheat, barley, oats, grass hay, and alfalfa hay, * * *." Since this provision specifically refers to "producers on that portion of the Big Horn River drainage system located on the Wind River Indian Reservation", there is no statutory basis to extend the scope of the regulation to producers who are located off of the reservation. Accordingly, the suggested revision is not adopted.

List of Subjects in 7 CFR Part 1477

Agricultural commodities, Disaster assistance, Fraud, Grant programs—agriculture, Reporting and recordkeeping requirements.

PART 1477—[AMENDED]

Accordingly, the interim rule amending 7 CFR part 1477 which was published at 56 FR 364 on January 4, 1991, is adopted as a final rule without change.

Signed at Washington, DC on April 30, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-10568 Filed 5-3-91; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 333

RIN 3064-AA55

Extension of Corporate Powers

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations to provide that insured state chartered banks that are members in the Savings Association Insurance Fund ("SAIF"), *i.e.*, savings associations that converted to state banks, are subject to the same activity and investment restrictions, transactions with affiliates restrictions, and loan to one borrower limits that are applicable to savings

associations. In addition, SAIF member insured state banks are required to: (1) Provide the FDIC with prior notice before acquiring or establishing a subsidiary, or initiating the conduct of any new activity in an existing subsidiary, (2) deduct from the bank's capital investments in, and extensions of credit to, subsidiaries to the same extent as is the case for a savings association, (3) file with the FDIC a copy of any application requesting approval of the conversion that is filed with any other federal or state agency, and (4) file a capital plan with the FDIC within 30 days of conversion if as of the conversion the bank does not meet the capital requirements set out in the FDIC's regulations.

EFFECTIVE DATE: June 5, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Counsel, (202) 898-3730, Legal Division, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

The application and notice requirements set forth in § 303.13 of the FDIC's regulations (12 CFR 303.13) shall apply to any SAIF member state bank that was formerly a savings association to the same extent as though the bank had not converted. The application and notice requirements of § 303.13 of 12 CFR part 303 have been reviewed and approved by the Office of Management and Budget ("OMB") in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 3064-0104. The estimated average annual burden associated with these application and notice requirements is approximately 5 hours per response. Submission to the FDIC of capital plans has been reviewed and approved by OMB in connection with the Paperwork Reduction Act under control number 3064-0075. The estimated average annual burden associated with the capital plan is 42 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Assistant Executive Secretary (Administration), room F-400, Federal Deposit Insurance Corporation, Washington, DC 20429, and to the Office of Management and Budget, Paperwork Reduction Project (3064-0104, 3064-0075), Washington, DC 20503.

Discussion of Final Regulation

In December 1990, the FDIC proposed for comment an amendment to part 333 of the FDIC's regulations (55 FR 51117). The proposal was designed to address certain risks that were posed to the SAIF insurance fund by savings associations converting to state chartered savings banks. The background and purpose of that proposal as explained in the preamble accompanying the publication of the proposal in the **Federal Register** is set out once again below.

Background

On August 9, 1989 President Bush signed the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA", Public Law No. 101-73, 103 Stat. 183 (1989)) into law. Among other things, FIRREA established the Savings Association Insurance Fund ("SAIF") to replace the Federal Savings and Loan Insurance Corporation ("FSLIC") (the entity that had previously insured savings and loan associations) and placed SAIF under the administration of the FDIC. All previously FSLIC insured savings associations were made members of SAIF. The statute also provides that all future state or federal savings associations are to be members of SAIF.

One of the announced Congressional purposes of FIRREA is to "curtail investments and other activities of savings associations that pose unacceptable risks to the Federal deposit insurance funds." Section 101 of FIRREA, 103 Stat. 187. It is clear that Congress concluded that the best way to remove unacceptable risks presented to SAID as a result of activities and investments undertaken by SAIF members is to limit the activities and investments a state savings association can make to those activities and investments that are permissible for a federal savings association. This was accomplished by an amendment to the Federal Deposit Insurance Act ("FDI Act") (new section 28 (12 U.S.C. 1831(e)), see discussion below). Congress also saw fit to impose a limit on loans to one borrower for all savings associations (see section 5(u) of the Home Owners' Loan Act ("HOLA", 12 U.S.C. 1464(u)). The decision by Congress to do so evidences a conclusion that making loans to any one borrower in excess of the limits set by section 5(u) of HOLA presents an unacceptable risk to SAIF. It is also apparent that the activities of certain subsidiaries of savings associations were found to be a potential source of risk to SAIF from which the parent association (and thus SAIF) should be insulated. Section 5(t)(5) of HOLA (12 U.S.C. 1464(t)(5)) provides that a savings association's investment in, and loans to, a subsidiary engaged in activities not permissible for a national bank shall be deducted from the savings association's capital. In addition, Congress not only chose to make SAIF institutions subject to the loan to affiliate restrictions contained in section 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c-1) it imposed additional restrictions on transactions with affiliates. (See section 11(a)(1) of HOLA, 12 U.S.C. 1468.) Finally, Congress specifically required SAIF member savings associations to provide the FDIC with prior notice before establishing or acquiring a subsidiary or conducting any new activity through a subsidiary. (Section 18(m)(1) of the FDI Act, 12 U.S.C. 1828(m)(1).) Thus, the agency given the responsibility of administering SAIF was given the opportunity to review in advance the proposed establishment or acquisition of a subsidiary by a SAIF member institution and the conduct of new activities by an existing subsidiary of a SAIF member institution.

The FDIC is aware that a growing number of states have enacted, or are considering enacting, legislation to allow a SAIF member savings association to become a savings bank. To date eleven states (California, Texas, Florida, Illinois, Ohio, Alabama, Indiana, Louisiana, North Carolina, Wisconsin, and Tennessee) fall into this category. These states are not among those which have traditionally allowed for savings banks. Additionally, in some instances states that have had savings banks for many years are interpreting their existing statutes to allow a savings association to become a savings bank. All of these institutions would retain their membership in SAIF.

Depending upon the specifics of the legislation, a savings association that does become a SAIF member savings bank may be authorized to engage in activities, and make investments (including investments in noninvestment grade corporate debt securities, *i.e.*, "junk bonds") that Congress specifically found to pose an unacceptable risk to SAIF. These new SAIF member savings banks may be able to make loans to any one borrower in excess of that which would have been permitted the institution as a SAIF member had it not become a state savings bank and may be able to enter into transactions with affiliates that Congress judged to create an unacceptable risk to SAIF. There may be no requirement to deduct investments in and loans to subsidiaries from the institution's capital (assuming that the state law establishes specific capital requirements) and there may be no requirement to provide the FDIC with advance notice before establishing or acquiring a subsidiary or conducting any

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new activity in an existing subsidiary. In short, the very safeguards Congress determined to be necessary to protect SAIF from risk would no longer apply to institutions that continue to be SAIF members and which may be able to exercise powers and make investments previously exercised by state savings associations that Congress found to contribute so heavily to the savings and loan crisis. Cong. Rec. H2714, June 15, 1989 (remarks of Rep. Glickman); Cong. Rec. S4090-4092, April 18, 1989; Cong. Rec. S8996, April 17, 1989.

The FDIC is of the belief that potential harm is posed to SAIF if SAIF member institutions side step the FIRREA restrictions by changing their status to savings banks. There is ample evidence that investing in junk bonds and real estate and making excessive loans by any one borrower, etc. raise safety and soundness concerns and that such concerns pose a serious threat to SAIF.

The financial soundness of a savings association is in large part determined by the amount of equity capital the institution holds and the quality of its investment portfolio. Capital serves two purposes: (1) It provides a buffer against potential losses, and (2) it reduces risk taking (investors with more of their own funds at risk tend to manage an institution more conservatively). As asset portfolios are funded by insured deposits, it is important to carefully supervise investment policies of thrift institutions. A thrift's investment portfolio should be appropriately diversified and the quality of the assets therein must be maintained. Today, as a result of the passage of FIRREA, the ability of savings associations to hold noninvestment grade corporate debt securities and equities is limited, loans to any one borrower are limited, and a savings association's investments in certain subsidiaries are deducted from the association's capital. These restrictions are vital in helping to ensure diversification, maintaining good asset quality, and ensuring an adequate level of capital.

Thrift acquisition of noninvestment grade corporate debt securities and equities present significant risks. The potential impact of price volatility associated with such speculative investments is illustrated by recent experiences in the junk bond market. Numerous junk bonds are now in default; such bonds typically trade, if at all, at only a fraction of their original price. Examples of such bonds held by thrifts include Gillett Holding Corp. bonds which have been trading at approximately 18 cents on the dollar and Federated Department Stores Inc. bonds also in default and currently quoted at three cents on the dollar. At the peak of junk bond issues in the 1980's, savings and loan associations had invested an estimated $15.1 billion in junk bonds. By July 1990 the Resolution Trust Company held $3.7 billion in high-yield bonds acquired from 26 institutions.

Equity prices are more volatile than either corporate earnings or dividends. Equities involve speculation in asset price movements unrelated to the earnings potential of the firm. The drop of 22.6% (508 points) in the Dow Jones Industrial Average (DJIA) on October 19, 1987, the largest one-day decline in history, provides a recent example of the potential variability of equity portfolios. In foreign markets, recent Japanese stock market declines have created capital problems for Japanese banks holding large investments in equities. Price fluctuations of less diversified portfolios may exhibit even greater volatility than broad market indexes.

The market volatility of noninvestment grade debt securities and equities has two negative effects on the portfolios of thrift institutions. First, as asset values vary, the net worth (and equity capital) of savings associations experience wide swings. An institution holding these assets may become insolvent in a short period of time as assets decline in value. Second, these financial instruments may become difficult or even impossible to market, particularly when the firms default on their debt. This is likely to exacerbate liquidity problems for an institution at the time when liquidity is needed most.

Similar problems are likely to be associated with deviations from the loan to one borrower rule. The safety of an institution is compromised if a thrift asset portfolio is not properly diversified. When loans to a single borrower exceed a relatively small proportion of the overall investment portfolio, the risks born by the financial institution increase. In a properly diversified loan portfolio, losses from any one source will have a small impact on the institution. Increased concentration, however, makes an institution more susceptible to failure should a single borrower default.

Subsidiaries represent a different level of risk to thrift institutions. Subsidiaries tend to concentrate in relatively high-risk, competitive industries such as real estate development. These activities are generally relegated to subsidiaries precisely because they are too hazardous to permit in the thrift. Losses from subsidiary activities may easily exceed capital levels, a situation which would cause the thrift institution to fail and subsequently impose costs on the FDIC. The requirement that savings associations deduct investments in and extensions of credit to a subsidiary is appropriate to protect thrift capital against potential subsidiary failures. The capital deduction rule ensures that thrifts invest (either directly or indirectly) no more in a subsidiary than they can afford to lose. This maintains the capital base for protection against potential asset losses within the thrift institution itself.

Description of Proposed Regulation

In keeping with the above findings and opinions, the Board of Directors proposed amending the FDIC's regulations by adding a new § 333.3 to part 333 providing that SAIF member savings banks would continue to be subject to the safeguards enacted by FIRREA. As proposed, § 333.3 would have applied to any savings association that converted to a state savings bank and retained its membership in SAIF. For the purposes of the proposal the term "conversion" refers to a change in status from a savings association to a SAIF member state savings bank regardless of the manner in which the change in status occurred. The description of the proposal as it was published for comment is reprinted below.

Paragraph (a) of § 333.3 of the proposed regulation provides that § 303.13 of the FDIC's regulations shall apply to a SAIF member state savings bank to the same extent as though the savings bank were a state savings association. Section 303.13 implements section 18(m)(1) and sections 28(a), 28(b), 28(c), and 28(d) of the FDI Act. Section 28 of the FDI Act as added by FIRREA (12 U.S.C. 1831(e)): (1) Prohibits a state savings association from engaging as principal on or after January 1, 1990 in any activity of a type that is not permissible for federal savings associations unless the FDIC determines that the activity poses no significant risk to SAIF and the savings association is, and continues to be, in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act ("HOLA", 12 U.S.C. 1464(t)) (section 28(a)); (2) provides that a state savings association may engage in activities that are permissible for a federal association but in an amount that would not be permissible for a federal savings association if the state savings association meets the fully phased-in capital requirements set out in section 5(t) of HOLA and the FDIC has not determined that conducting the activity to such an extent poses a significant risk to SAIF (section 28(b)); (3) prohibits a state savings association from making any equity investments that are not permissible for a federal savings association with the exception of an investment in service corporations if the FDIC grants approval. (The FDIC may approve an investment in an impermissible service corporation if the savings association meets the fully phased-in capital requirements of section 5(t) of HOLA and the FDIC determines that the investment does not pose a significant risk to SAIF.) (section 28(c)); and (4) prohibits state and federal savings associations from acquiring noninvestment grade corporate debt securities (section 28(d)). A savings association that acquired an equity investment or a noninvestment grade corporate debt security prior to the passage of FIRREA that is now an impermissible investment must divest that investment by July 1, 1994. (Sections 28 (c) and (d)). Section 18(m)(1) (12 U.S.C. 1828(m)(1)) provides that state as well as federal savings associations (with certain exceptions) must provide the FDIC with 30 days prior notice before acquiring or establishing a subsidiary or conducting any new activity through an existing subsidiary.

Section 303.13 establishes application and notice requirements designed to implement the above described provisions of law. The effect of the cross reference to § 303.13 is that any SAIF member state savings bank that converts from a savings association, be it a state or federal savings association, will be subject to the prohibitions recited in § 303.13 and must file the applications and/or notices required by that section. For example, if a state savings association has filed a plan of divestiture pursuant to § 303.13(d) with respect to an impermissible equity investment, a change of status to a SAIF member state savings bank will not remove the institution's obligation to divest the equity investment. Likewise, a SAIF member state savings bank must continue to apply for the FDIC's permission under § 303.13(b)(1) if it intends to engage in an activity not permissible for a federal savings association. If a federal savings association becomes a state SAIF member savings bank, the savings bank will be treated for the purposes of § 303.13 as though it is a state savings association. In several instances applications may or may not be necessary under § 303.13 based upon whether an institution meets the fully phased-in capital requirements prescribed by section 5(t) of HOLA. For the purposes of § 333.3 the references to fully phased-in capital as per HOLA should be understood to refer to meeting the capital requirements of part 325 of the FDIC's regulations.

Paragraph (b) of § 333.3 of the proposed regulation prohibits a SAIF member state savings bank that converts from a savings association from making loans to any one borrower to an extent greater than the bank could have done under federal law had the bank not converted. Thus, a converted savings bank will continue to be subject to the loans to one borrower limits set forth in section 5(u) of HOLA. However, if the limit under state law is more restrictive, the state limit shall apply. If the savings bank made any loans since its conversion that would have been in violation of the federal limit had it not converted, those loans need not be divested. (See paragraph (e)(3) of the proposal.)

Paragraph (c)(1) of § 333.3 of the proposal provides that the investment in, and extensions of credit to, a subsidiary by a SAIF member state savings bank that has converted from a savings association shall be deducted from the bank's capital to the same extent that such deduction would be required under federal law had the bank not converted from a savings association. Thus, a converted state savings bank will continue to be subject to the capital deduction requirements set out in section 5(t)(5) of HOLA. This provision results in a deduction from capital if a savings bank invests in a subsidiary that engages in activities that a national bank cannot conduct.

Paragraph (c)(2) provides that any savings bank that converts from a savings association and is under capitalized as of the conversion must file a plan with the appropriate FDIC regional director within 30 days of the conversion describing the means and timing by which the bank will achieve its minimum capital requirements under the FDIC's regulations. Any under capitalized savings bank that converts from savings association that fails to submit a plan, or whose plan is not approved, will be deemed to be engaged in an unsafe or unsound practice in accordance with part 325 of the FDIC's regulations. The requirement to file a capital plan has been included in the proposal as the FDIC is concerned that some states may allow severely under capitalized savings associations to convert to savings banks. If this occurs, the FDIC needs to be in a position to see that prompt, appropriate supervisory measures are taken to correct the capital deficiency.

Paragraph (d) of § 333.3 of the proposed regulation concerns transactions with affiliates. Section 11(a)(1) of HOLA (12 U.S.C. 1468(a)(1)) makes savings associations subject to the restrictions on transactions with affiliates established by sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c-1). That provision of HOLA, however, imposes two additional restrictions on transactions with affiliates: (1) No loan or other extension of credit may be made to any affiliate by a savings association unless that affiliate is engaged only in activities which the Board of Governors of the Federal Reserve System has determined are permissible for bank holding companies, and (2) no savings association can purchase or invest in securities issued by an affiliate other than shares of a subsidiary. Paragraph (d) reimposes these restrictions on SAIF member state savings banks. The term affiliate shall for the purposes of this paragraph have the same meaning as applicable for the purposes of section 23A of the Federal Reserve Act.

Paragraph (e) of § 333.3 of the proposed regulation covers savings banks that converted prior to the adoption of the regulation. Under paragraph (e)(1)(i) such institutions that are engaged in an activity, or that have an investment, of the type covered by § 303.13 of the FDIC's regulations are prohibited from continuing the activity or retaining the investment without the FDIC's consent. The application procedures set forth in § 303.13 are to be followed when requesting consent to continue the activity or retain the investment. Requests for consent must be filed within 30 days after the regulation becomes effective. If a request for consent is filed, the institution will not be considered to be in violation of the regulation pending approval of the regional director.

Consent will not be granted unless to do so is consistent with § 303.13. Thus, for example, consent to continue an impermissible activity will not be granted if the FDIC determines that the activity poses a significant risk to SAIF or if the savings bank does not meet the capital requirements of part 325.

If a savings bank purchased junk bonds, their retention is not consistent with § 303.13. The bonds must be divested as quickly as prudently possible but in no event later than July 1, 1994. If the institution acquired an impermissible equity investment, it must be divested by July 1, 1994 unless

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retention is approved. If consent to conduct an activity is denied, the institution must phase out the activity as quickly as prudently possible.

Under paragraph (e)(3), an institution that converted prior to the adoption of the regulation that established or acquired a subsidiary after its conversion (but prior to the effective date of the regulation) and any institution that initiated any new activity in an existing subsidiary after its conversion (but prior to the effective date of the regulation) must file the notice required by § 303.13(f) pertaining to subsidiaries.

The proposed regulation does not provide any special treatment for institutions that converted prior to the regulation's adoption insofar as the deduction of investments in, and loans to, subsidiaries is concerned. Thus, for example, a savings association that converted to a savings bank prior to the adoption of the regulation and which also prior to the adoption of the regulation established a subsidiary that is engaged in an activity prohibited to a national bank will still be required to deduct its investment in the subsidiary from its capital.

Institutions that do not meet the FDIC's capital requirements as of the effective date of the regulation must file a capital plan within 30 days.

SAIF member savings banks that converted prior to the adoption of the regulation are not required under the proposal to divest loans made in that interim period to affiliates which engage in activities that are not permissible for bank holding companies. (See paragraph (e)(3)). If, however, a converted SAIF member savings bank purchased or invested in securities issued by any of its affiliates in the interim period, the institution must request the FDIC's consent to retain the securities. The procedures for seeking consent are the same as described above. (See paragraph (e)(5)).

Paragraph (f) of § 333.3 of the proposal provides that it shall be unlawful for a SAIF member savings bank to have converted from a savings association unless the FDIC was given advance notice of the intended conversion and a follow-up notice that the conversion did in fact occur is filed with the FDIC within 10 days after the conversion. The follow-up notice only needs to confirm that the conversion took place and the date thereof. The proposal requires that a copy of any application, notice etc. that is required by statute or regulation to be filed seeking approval of the conversion must also be filed with the FDIC simultaneously with the submission of the application to the appropriate state or federal agency. If the conversion application was filed with the appropriate agency before the regulation became effective, the institution must file a copy of the application with the FDIC as soon as possible after the effective date of the regulation. The copy (as well as the follow-up notice) is to be submitted to the FDIC regional director for supervision for the region in which the bank's principal office is located. The regional director may, for good cause, accept a notice in lieu of a copy of the conversion application, etc. Such notice only needs to indicate that it is the institution's present intent to convert.

Paragraph (f) further provides that any SAIF member state savings bank that converted from a savings association prior to the adoption of the regulation must notify the FDIC of its conversion within 30 days after the effective date of the regulation. Receiving this information will enhance the FDIC's ability to assess the risks posed to SAIF by the conversion of the particular institution given the state enabling legislation and will allow for advance planning on the scheduling of examinations, etc. (The FDIC is the appropriate federal supervisory agency with respect to state savings banks.)

Comment Summary

The FDIC received 33 comments in response to the proposed amendment. The majority of the comments were supportive of the proposal, commended the FDIC for its action, and urged the FDIC to adopt the regulation in final form as quickly as possible. Several of those commenting indicated that the proposed rule would have little impact on savings banks in their state as state law was as restrictive, if not more so, than the proposed rule. One commenter indicated that the proposal was not ojectionable as it simply imposed customary and prudent banking practices. A major banking association said "the proposal has been so narrowly drawn and rests so firmly on explicit Congressional mandate that the FDIC's authority to impose restrictions is unquestionable." The same comment went on to say that "the reasonableness of the relationship between the activities of these particular savings associations, whether converted into savings banks or not, and safety and soundness can not be an issue."

One state banking department commented that the proposal was unnecessary, that it overlooked the importance and competence of supervision at the state level, and that the FDIC, rather than imposing restrictions by way of a regulation, should rely on its broad enforcement tools to address concerns on a case-by-case basis. Another commenter voiced the opinion that the FDIC had not shown there to be a need for the proposal. In direct contrast, however, another state banking department from a state with a long savings bank tradition not only expressed strong support for the proposal but indicated that the proposal bolsters the dual banking system.

Among the opinions expressed by those critical of the proposed amendment was the sentiment that the proposal, if adopted, will reduce the value of a savings bank charter as it would reduce the flexibility otherwise accorded savings banks and increase their regulatory compliance burdens. This would be especially so, indicated the comment, if the proposal is extended to cover all savings banks and not just SAIF member savings banks. (The preamble accompanying the proposal indicated that the FDIC was considering extending the same or similar restrictions to a larger group of insured institutions as the restrictions were designed to address safety and soundness and risk concerns that may be present regardless of the type of institution involved.)

While few of those commenting thought that the proposal would increase regulatory compliance burdens, several did question the validity of "creating two classes of savings banks" and urged the FDIC to either allow converted savings banks to phase-in the powers permitted BIF savings banks or to develop a uniform rule for all savings banks. In this vien certain commenters (including the Office of Thrift Supervision, "OTS") argued that the risks addressed by the activity, investment, and other restrictions of the proposal are not confined to any particular type of charter, *i.e.*, if the activities, etc. are risky for SAIF member savings banks, they should be viewed equally as risky for SAIF member commercial banks and other SAIF member institutions. The OTS and serveral others commenting urged the FDIC to extend the restrictions to all insured institutions for much the same reasons.

As to the specifics of the proposal, several commenters approved of the FDIC requiring a converted institution to file a capital plan with the FDIC if the institution does not upon conversion comply with the capital requirements applicable to nonmember banks. One comment suggested that the FDIC should require that institutions wishing to convert must meet the capital requirements before conversion.

The FDIC also requested comment on whether the regulation should apply to SAIF member federally chartered savings banks that are able to exercise certain grandfathered powers pursuant to section 5(i)(4) of HOLA. As was indicated in the preamble accompanying the proposal, these institutions are not presently subject to the FIRREA restrictions on activities, etc. As written, the proposal would apply if and when the federal institution converts to a state savings bank. Four commenters specifically addressed this aspect of the proposal. Three objected to these institutions being covered on the basis that Congress chose not to do so (the implication being that the FDIC does not therefore have the authority to impose the conditions). One commenter (the Independent Bankers Association of America) voiced the opinion that the regulation should cover section 5(i) institutions.

Discussion of Comments and Description of Final Rule

Based upon the comments received in response to the proposal, the Board of Directors has voted to expand the scope of the proposal to cover all SAIF member state chartered banks. The remainder of the proposal is being adopted substantially as published for comment with certain clarifying changes described below.

Scope of Final Rule

All SAIF Member State Banks

The Board of Directors is persuaded upon reflection that the risks presented to the SAIF fund by the conduct by SAIF member state chartered banks of activities otherwise prohibited by statute to SAIF member savings associations is a concern regardless of whether the SAIF member is a savings bank, a commercial bank or some other form of bank. Therefore, the final rule has been revised so as to bring within its scope any savings association that becomes a state bank and retains its membership in SAIF. The rule focuses on state chartered institutions as it is in the state arena that powers developments are rapidly unfolding. Savings associations converting to national banks (SAIF member national banks) will not be covered by the final rule as national banks operate under a federally legislated scheme that subjects them (with only minor exceptions) to the same, if not more stringent, restrictions than would be imposed by the regulation.

Section 5(i) SAIF Member Federal Savings Banks

The final regulation as adopted will include within its scope any SAIF member federally chartered savings bank that becomes a state bank and retains its membership in SAIF regardless of whether the federal savings bank was eligible under its federal charter to exercise grandfathered activities pursuant to section 5(i)(4) of HOLA. While several comments objected to including the section 5(i) federal savings banks within the scope of the regulation, the FDIC is of the opinion that it is well within its authority to do so and that doing so is warranted. Such institutions do not have an unfettered right to conduct activities pursuant to section 5(i). Section 5(i) of HOLA specifically provides that the exercise of grandfathered powers is dependent not only upon the Director of OTS authorizing the conduct of the activities but also upon the FDIC's authority pursuant to section 18(m)(3) of the FDI Act to prohibit the activities if they pose a serious threat to SAIF. The imposition of the regulation on such institutions will not in and of itself necessarily preclude the continued conduct of the grandfathered activities except in the case of investments in junk bonds and direct equity investments (other than in service corporations) of the type generally not permitted to federal savings associations. Section 303.13 of the FDIC's regulations which is made applicable to these institutions by the final regulation allows the continued exercise of activities and retention of equity investments in service corporations if it is determined that the activities and investments do not pose a significant threat to SAIF and if the institution is adequately capitalized. Thus section 5(i) SAIF member federal savings banks that convert may apply for permission to continue the conduct of the activities.

BIF Member Banks

The Board of Directors has not at this time voted to extend the restrictions contained in the proposal to BIF member insured institutions. Nor does the proposal cover those section 5(i) federal savings banks that are SAIF members so long as they retain their status as federal savings banks. The Board wishes to stress that the decision to limit this regulation to SAIF member state banks that convert from savings associations has been done so that this regulation can go forward as quickly as possible. The FDIC continues to review the issue of expanded powers and hopes to in the very near future propose a regulation dealing with the types of concerns discussed in connection with this regulation but in the context of all insured financial institutions. It is not the FDIC's desire to permanently establish two classes of insured banks. Until such time as any regulation that results from that effort is in place, however, it is viewed as extremely important by the Board of Directors to act to reimpose the FIRREA restrictions designed to protect SAIF from harm.

Other Amendments

Two additional changes are being made in the final rule.

Section 333.3(b) as proposed provided that no SAIF member state savings bank could make loans to any one borrower to a greater extent than a savings association is permitted under section 5(u) of HOLA. Section 5(u) limits a savings association in making loans to any one borrower to the limit applicable to a national bank but provides several exceptions. One of those exceptions is applicable only if, among other things, the association meets its fully phased-in capital requirements and the Director of OTS by order allows the association to take advantage of the exception. Language has been added to § 333.3(b) as adopted in final to clarify that in administering § 333.3(b) the reference to fully phased-in capital refers to the capital requirements in part 325 of the FDIC's regulations and that the reference to the Director of OTS shall be understood to refer to the Board of Directors.

Lastly, the opening reference in § 333.3(f) of the proposal stating that it shall be "unlawful" for an institution to have converted without providing the FDIC with a copy of its conversion application, etc. before hand has been changed. The opening now reads that "It shall be considered a violation of this regulation" for an institution to convert without having filed a copy of its conversion application with the FDIC before the conversion. The language change is being made to avoid the appearance that failure to file the requisite copy is a violation of some other federal statute.

Definition of Savings Bank

The preamble accompanying the proposed regulation indicated that whether any particular savings association becomes a savings bank for the purposes of section 3(g) of the FDI Act depends upon the particular state legislation and comment was requested on what criteria the FDIC should use in determining whether the requirements of section 3(g) have been met. Section 3(g)

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defines a savings bank to be a bank that transacts its ordinary banking business strictly as a savings bank under a state law imposing special requirements on the manner in which the savings bank can invest its funds and conduct its business. The FDIC received several comments which suggested various criteria that the FDIC might use. Among the criteria suggested by the commenters were the following: (1) Is there a savings bank tradition in the state; (2) is there a different supervisor for savings banks and savings associations; (3) does the law require savings banks to have higher capital than savings associations; (4) are savings banks and savings associations chartered by a different regulatory body; (5) does the FDIC have a good working relationship with the savings bank charterer and is the FDIC comfortable with the savings bank supervisor's examination methodology; (6) are the savings banks involved in home mortgage financing to a lesser extent than savings associations; (7) does the law allow savings banks greater commercial lending than it allows savings associations; (8) are the savings banks more liquid than savings associations; (9) is the savings bank law its own separate act or is it an amendment to the savings association act; and (10) are there any significant differences between savings associations and savings banks in the following areas: Organization and incorporation, charter, capital requirements, investment authority, corporate transaction authorization, and supervisory scheme.

In view of the fact that the Board of Directors has voted to expand the coverage of the regulation in its final form to any SAIF member insured state chartered bank, it is not necessary to define the term "savings bank" for the purposes of the final regulation. The FDIC still intends, however, to review the comments received on this issue and hopes to publish a policy statement in the near future that will provide further clarification on how to differentiate a savings association from a savings bank for the purposes of the FDI Act.

Statutory Authority

As discussed above, the FDIC's Board of Directors has determined that certain acts and practices by SAIF member state banks present a threat to SAIF and that the deduction of such an institution's investment in, the loans to, certain subsidiaries is necessary to further prevent risk to SAIF. Likewise the Board of Directors has determined that in order to prevent risks to the fund the FDIC should receive prior notice from such institutions before a subsidiary is acquired or established or an existing subsidiary initiates any new activity. The Board of Directors has also determined that advance notice of a conversion is necessary if the FDIC is to properly discharge its responsibilities under the FDI Act. Finally, consistent with existing regulations, the Board of Directors has determined that as it is unsafe and unsound for an under capitalized institution to operate without a capital plan. SAIF member state banks that do not meet the FDIC's capital requirements must file a capital plan after their conversion.

Based upon these determinations, the FDIC is adopting the final regulation more fully described above. The FDIC's action in doing so is fully consistent with the FDIC's purpose and is authorized by sections 6, 8, 9, and 18(m)(3)(A) of the FDI Act (12 U.S.C. 1816, 1818, 1819 (Tenth), 1828(m)(3)(A)).

The FDIC has the broad general authority to adopt this regulation under section 9 of the FDI Act which authorizes the FDIC to issue whatever regulations "it may deem necessary to carry out the provisions of the (Federal Deposit Insurance Act) or of any other law which it has the responsibility of administering or enforcing * * *". 12 U.S.C. 1819 (Tenth). Pursuant to this authority the FDIC may adopt substantive regulations designed to further the purposes for which the federal deposit insurance system was established. It is settled that binding legislative rules based on general rulemaking authority may be issued so long as the rules are reasonably related to the purpose of the enabling legislation containing the general rulemaking authority. *Mourning* v. *Family Publications Services*, 411 U.S. 356, 369 (1973) (quoting *Thorpe* v. *Housing Authority of the City of Durham*, 393 U.S. 268, 280–281 (1969)). It is clear from the legislative history of the FDI Act that in the shadow of the banking collapse Congress sought to restore public confidence in the banking system, promote safe and sound banking practices, eliminate runs on banks by depositors, and safeguard deposits. It did so through the mechanism of providing for a system of federal deposit insurance and creating the FDIC to administer the deposit insurance program. *FDIC* v. *Allen*, 584 F. Supp. 366 (E.D. Tenn. 1984). More recently, with the enactment of FIRREA, the FDIC was given the responsibility of administering the federal deposit insurance system for savings associations as well as banks. FIRREA placed the savings and loan insurance fund under the FDIC's administration, established an elaborate funding mechanism designed to rehabilitate the fund, and established safeguards designed to protect savings associations and SAIF. The legislative history of FIRREA is replete with statements that Congress sought to correct the problems which lead to the failure of so many savings and loan associations and the savings and loan insurance system. In some measure those failures were attributed to activities, investments and practices authorized for state savings associationr that federally chartered entities could not do.

Administering the SAIF fund means, among other things, taking action to protect the solvency of SAIF. As the safety and soundness of SAIF is inextricably linked with the safety and soundness of SAIF member institution, and the risks those institutions undertake, *Federal Deposit Insurance Corporation* v. *Citizens State Bank*, 130 F.2d 102, 104 n. 6 (8th Cir. 1942), and the FDIC is directed under section 11(f) of the FDI Act to pay insured deposits whenever an insured depository institution is closed "on account of inability to meet the demands of its depositors" (12 U.S.C. 1821(f), the FDIC must preserve the solvency of SAIF in order to fulfill its mandate when called upon. Any practice by an insured institution that may jeopardize its safety and soundness, or in some other manne. present a risk to SAIF, is therefore a proper target of the FDIC's regulatory oversight.[1]

Section 6 of the FDI Act (12 U.S.C. 1816) represents an additional source of authority for the regulation apart from that derived from the FDIC's general rulemaking authority. Section 6 provide: the FDIC with express authority to determine what activities are appropriate for financial institutions in light of the federal deposit insurance safety net and what activities, if conducted by an insured institution, will pose an unacceptable risk to the funds. Before an institution receives deposit insurance the FDIC must be satisfied that the institution will exercise its corporate powers properly, that those powers are not inconsistent with the purposes for which the deposit insurance system was established, and that the institution if permitted to join the deposit insurance system will not pose an unacceptable risk to the fund. The FDIC's ability to determine what corporate powers are consistent with the purposes of the FDI Act and what powers pose a risk to the fund in essence creates a fundamental, and continuing, condition of deposit insurance. This provision of the FDI Act confers an important power and responsibility on the FDI to assess its insurance risk and the corollary responsibility and authority to take steps to limit that risk. In doing so the FDIC is not limited to announcing its determinations on a case-by-case basis but may adopt a regulation of general applicability setting forth what powers, practices, etc. are considered to pose a risk to the fund of such magnitude as to warrant prohibiting those activities to institutions currently in the fund and conditioning entry into the fund on not engaging in such practices. *Independent Bankers Association* v. *Heimann*, 613 F.2d 1164 (D.C. Cir. 1979, *cert. denied*, 449 U.S. 823 (1980).

The FDIC also derives authority for the regulation from section 8 of the FDI Act (12 U.S.C. 1818). The FDIC was given the authority, and the responsibility, under section 8 of the FDI Act to ensure that banks observe safe and sound banking practices. This was done so that the FDIC might act to ensure that the banking system will function property; that the public confidence in the banking system does not falter; and that the solvency of the deposit insurance fund is not endangered due to bank failures. Over the years the FDIC's enforcement powers have been strengthened by Congress in an ever increasing recognition that the FDIC needs strong tools to accomplish its purposes. A wide latitude of discretion was given to the FDIC "in filling in and administering the details embodied by the general standard" in the FDI Act to promote safe and sound banking practices. *Heimann*, 1169. What is and is not an unsafe or unsound banking practice and what constitutes an unsafe or unsound condition is left to the FDIC to determine in its expertise as "* * * one of the purposes of the banking acts is clearly to commit the progressive definition and eradication of (unsafe and unsound banking) practices to the expertise of the appropriate regulatory agencies." *Gross National Bank* v. *Comptroller of the Currency*, 573 F.2d 889, 897 (5th Cir. 1978). The FDIC may do so either by order or regulation. It was established by the court in *Heimann* that the Office of the Comptroller of the Currency, which has the authority to initiate a cease-and-desist action against a national bank, is not confined to initiating individual enforcement actions under section 8 but may, at its discretion, adopt substantive regulations defining what constitutes an unsafe or unsound practice and what practices involve the violation of particular statutes or regulations.

> [A] regulation giving advance notice of conduct which the Comptroller disapproves as threatening to the safety and soundness of the banks he regulates is wholly consistent with the statutory scheme. * * * His ability to forewarn by specifying and clarifying the nature and scope of his concerns will at the same time minimize the necessity for recurrent and costly investigation into the conduct of the many individual banks under his supervision.
>
> *Heimann*, 1168–1169.

The the principle in *Heimann* applies equally in the case of other federal financial regulators which were given cease-and-desist authority over the institutions they supervise was made clear in *Lincoln Savings and Loan Association* v. *Federal Home Loan Bank Board*, 856 F.2d 1558, 1563 (D.C. Cir. 1988). The *Lincoln* court citing *Heimann* as precedent equally applicable to the FHLBB found that the FHLBB's power to issue an order to cease and desist engaging in an unsafe and unsound banking practice carries with it the authority to announce by regulation what constitutes an unsafe or unsound banking practice. Like the Comptroller of the Currency and the FHLBB, the FDIC can rely upon the provisions of the FDI Act granting it authority to issue cease-and-desist orders (section 8(b)) and to promulgate rules with respect to such proceedings (section 8(n)) as authority for this regulation.

The final regulation is also authorized by 8(a) of the FDI Act. As indicated above, 8(a) permits the FDIC to terminate deposit insurance when it is determined that an institution is in an unsafe or unsound condition. That provision provides the authority for the adoption of substantive rules designed to protect bank safety and soundness and protect the deposit insurance fund in much the same way that 8(b) authorizes the adoption of substantive regulations. The FDIC is permitted to announce by regulation the banking practices which it has determined to be unsafe and unsound and thereby forewarn of the circumstances in which termination of deposit insurance may be sought. *National Council of Savings Institutions* v. *Federal Deposit Insurance Corporation*, 664 F.Supp. 572 (D.D.C. 1987).

Finally, in addition to the authority conferred on the FDIC to adopt this regulation based upon sections 6, 8 and 9 of the FDI Act, the FDI is granted the express authority to do so under section 18(m)(3)(A) of the FDI Act (12 U.S.C. 1828(m)(3)(A)). Section 18(m)(3)(A) expressly provides that the FDIC may adopt regulations prohibiting any specific activity that poses a serious threat to SAIF. The Board of Directors has herein determined that if the restrictions imposed by this regulation are not observed a serious threat will be posed to SAIF. Furthermore, the Board of Directors has determined that receiving timely notice of a conversion by a savings association to a SAIF member state bank will enhance the FDIC's ability to protect SAIF from serious threats and will allow for the more timely and orderly discharge of the FDIC's responsibilities to examine and supervise state banks.

Regulatory Flexibility Analysis

The Board of Directors has determined that the final amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. Therefore, the FDIC is not required to conduct a regulatory flexibility act analysis pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Compliance with the final regulation will not necessitate the development of sophisticated recordkeeping and reporting systems by small institutions nor the expertise of specialized staff accountants, lawyers, or managers. It is therefore not expected that compliance with the regulation will have a disparate economic impact on institutions depending upon their size. In addition, pursuant to the FDIC's statement of policy on the drafting of regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement is not required.

List of Subjects in 12 CFR Part 333

Banks, banking.

In consideration of the foregoing, the FDIC hereby amends part 333 of title 12 of the Code of Federal Regulations as follows:

[1] Any SAIF member institution that was FSLIC insured prior to the enactment of FIRREA and which fails prior to August 9, 1992 is the responsibility of the Resolution Trust Corporation ("RTC"). Funds expended in the resolution of such failures do not come from SAIF. That fact does not mean, however, that there is no need for the FDIC to act now to prevent SAIF member state banks from engaging in the practices covered by the regulation. The ill effects associated with these investments, etc. may not necessarily result in failures in the short term but will certainly accumulate over the long term. In the meantime, imposing the restrictions should help reduce the number of failures RTC needs to resolve. This perhaps unintended "by product" of the regulation is consistent with the FDIC's statutory responsibilities as the manager of RTC. As such, it is yet another reason why the regulation is within the scope of the FDIC's authority.

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PART 333—EXTENSION OF CORPORATE POWERS

1. The authority citation for part 333 is revised to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819, 1828(m).

2. Part 333 is amended by adding new § 333.3 to read as follows:

§ 333.3 Savings Association Insurance Fund ("SAIF") member state banks formerly savings associations.

(a) *Activities, investments, prior notice on subsidiaries.* The prohibitions and application and notice requirements set forth in § 303.13(a) through § 303.13(f) of this chapter shall apply to all SAIF member state banks to the same extent as though the bank is a state savings association. Any FDIC employee who has been delegated the authority to act on notices and applications filed pursuant to § 303.13 of this chapter shall have the same delegated authority to act on an application or notice filed pursuant to the requirements of this section. For the purposes of administering this section, all references in § 303.13 of this chapter to the fully phased-in capital requirements prescribed under section 5(t) of the Home Owners' Loan Act ("HOLA", 12 U.S.C. 1464(5)(t)) shall be understood to refer to the capital requirements prescribed by part 325 of this chapter.

(b) *Loans to one borrower.* No SAIF member state bank may make loans to any one borrower to a greater extent than a savings association is permitted under section 5(u) of HOLA (12 U.S.C. 1464(u)). For the purposes of administering this section, the reference in section 5(u) of HOLA to "fully phased-in capital" shall be understood to refer to capital requirements prescribed by part 325 of this chapter and the reference to "Director" shall be understood to refer to the Board of Directors of the FDIC.

(c) *Capital.* (1) The investment in, and extensions of credit to, a subsidiary by a SAIF member state bank shall be deducted from the bank's capital to the same extent that would be required under section 5(t)(5) of HOLA (12 U.S.C. 1464(t)(5)) in the case of a savings association.

(2) Any SAIF member state bank that converts from a savings association that does not meet the minimum capital requirements set out in part 325 of this chapter as of the date of its conversion must file a plan describing the means and timing by which the bank will achieve its minimum capital requirements. The plan must be filed with the FDIC regional director for supervision for the region in which the bank's principal office is located no later than 30 days after its conversion. For the purposes of this section, any savings association that changes its status to a SAIF member state bank regardless of the manner in which the status change occurs will be considered to have converted from a savings association to a bank.

(d) *Affiliate transactions.* No SAIF member state bank may engage in any transaction with any of its affiliates if such transaction would be prohibited under section 11(a)(1) of HOLA (12 U.S.C. 1466) in the case of a savings association.

(e) *SAIF member state banks that converted prior to June 5, 1991.* (1) Section 333.3(a) of this part notwithstanding:

(i) Any SAIF member state bank that converted from a savings association prior to June 5, 1991 which as of that date is engaged in an activity, or has an investment, of the type covered by § 303.13 of this chapter, may not continue the activity, or retain the investment, without the FDIC's consent. Requests for consent should be filed in accordance with the procedures set forth in § 303.13 of this chapter within 30 days after June 5, 1991; and

(ii) No SAIF member state bank that files a request for consent pursuant to paragraph (e)(1)(i) of this section shall be found in violation of this section pending approval from the regional director. Consent will only be granted if the FDIC determines that the activity or the retention of the investment is consistent with § 303.13 of this chapter. If consent is denied, the bank must divest the investment in accordance with § 303.13 of this chapter. In the case of a denial of a request to continue an activity, the bank shall cease the activity as quickly as prudently possible.

(2) Any SAIF member state bank that converted from a savings association prior to June 5, 1991, that established or acquired a subsidiary since its conversion but prior to June 5, 1991, or which initiated the conduct of new activities in an existing subsidiary since such conversion but prior to June 5, 1991, must file the notice required by § 303.13(f) of this chapter.

(3) Sections 333.3(b) and 333.3(d) notwithstanding, a SAIF member state bank that converted from a savings association prior to June 5, 1991 shall not be required by this section to divest any loans made prior to that date that would have at that time been in violation of the federal loans to one borrower limit or the federal restriction on transactions with affiliates had the bank not converted.

(4) Any SAIF member state bank that converted from a savings association prior to June 5, 1991, that does not meet the minimum capital requirements set out in part 325 of this chapter as of June 5, 1991, must file a plan describing the means and timing by which the bank will achieve its minimum capital requirements. The plan must be filed with the FDIC regional director for supervision for the region in which the bank's principal office is located no later than 30 days after June 5, 1991.

(5) Any SAIF member state bank that converted from a savings association prior to June 5, 1991 that after its conversion but prior to such date purchased or invested in securities issued by an affiliate (other than shares issued by a subsidiary) cannot retain those securities without the FDIC's consent. Requests for consent should be filed in accordance with the procedures set forth in § 303.13 of this chapter within 30 days after June 5, 1991. No SAIF member state bank that files a request for consent pursuant to this section shall be found in violation of this section pending approval from the regional director. If consent is denied, the bank must divest the securities in accordance with § 303.13 of this chapter.

(f) *Notice of conversion.* (1) It shall be considered a violation of this regulation for any SAIF member state bank to have converted from a savings association unless prior to the conversion the bank filed with the FDIC a copy of any application, notice, etc. required by statute or regulation to be filed with any other federal or state agency seeking approval for the conversion. The copy should be sent to the FDIC regional director for supervision for the region in which the bank's principal office is located at the same time it is submitted to the appropriate agency for approval. If a conversion application was submitted prior to June 5, 1991, a copy of the application should be filed with the FDIC regional director as soon as possible after June 5, 1991. If the conversion takes place, the bank must file a follow-up notice with the regional director not later than 10 days after the conversion confirming that the conversion did occur and the date thereof.

(2) Section 333.3(f)(1) notwithstanding, when the regional director determines that there is good cause to do so, the regional director may accept a letter notice in satisfaction of the requirement to file with the FDIC a copy of the conversion application or notice.

(3) A SAIF member state bank that converted from a savings association prior to June 5, 1991 must notify the FDIC regional director for supervision for the region in which the bank's principal office is located not later than July 5, 1991 that the conversion took place and the date thereof.

By Order of the Board of Directors. Dated at Washington, DC, this 30th day of April 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-10652 Filed 5-3-91; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-34-AD; Amdt. 39-6966]

Airworthiness Directives; Boeing Models 707, 727, 737, 747, and 757 Series Airplanes; and McDonnell Douglas Models DC-8, DC-9 (Includes MD-80), and DC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing and McDonnell Douglas airplanes, which currently requires certain operational and equipment changes and design modifications to be accomplished to maximize cargo fire detection and protection. The existing rule (AD 89-18-12 R1) was based on the FAA's determination that the existing Class B cargo compartment firefighting procedures and fire protection features did not provide adequate protection from a fire that could occur in main deck cargo areas, and could result in the loss of an airplane if an uncontrolled cargo fire occurred. This amendment revises certain portions of the existing rule and allows additional time to comply with certain other requirements. This amendment is prompted by additional information concerning firefighting concepts which has been received since issuance of the original AD, and by reports from operators concerning the severe economic impact caused by implementing the existing AD within the required compliance period.

EFFECTIVE DATE: May 1, 1991.

ADDRESSES: Send comments in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-34-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Letcher, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2670; or Mr. Kevin Kuniyoshi, Los Angeles Aircraft Certification Office, Systems and Equipment Branch, ANM-130L, Northwest Mountain Region, 3229 E. Spring Street, Long Beach, California 90806-2425; telephone (213) 963-5337.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89-18-12 R1, Amendment 39-6557 (55 FR 11163, March 27, 1990), applicable to certain Boeing and McDonnell Douglas airplanes, to revise certain portions of the existing rule and allow additional time to comply with certain other requirements, was published in the Federal Register on March 4, 1991 (56 FR 8935).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Comments were received through March 25, 1991, concerning the proposed current changes to the existing AD. The comment period relating to other aspects of the AD extends through May 25, 1991. Due consideration has been given to the comments received.

Discussion of Comments

Seven commenters agreed with the proposed two year delay for implementation of the requirement for a trained firefighter because (1) it allows sufficient time to evaluate test data from the FAA Technical Center regarding firefighting equipment and procedures, and (2) it provides for time to prepare and implement firefighter training programs and facilities, and the subsequent training of airline personnel.

Three commenters disagreed with the proposed two year delay for implementation of the requirement for trained firefighters. They stated that an adequate level of safety would not be provided in the interim and that the FAA and industry had not diligently pursued preparation of firefighter training guidelines. Two of the commenters recommended a six month to one year delay rather than the two year delay proposed by the NPRM. The FAA does not agree. Recent tests at the FAA Technical Center indicate that methods for fighting aircraft fires should be re-evaluated. This testing is ongoing and definitive data and conclusions have not been available to date, and would not be available to support the shortened delay recommended by the commenters. An interim level of safety is being provided by requiring pre-flight inspections for firefighting access and the addition of improved firefighting equipment. Under existing operating rules, basic training in the use of this equipment will be required. The two year extension was selected because it would allow time for completion of testing at the FAA Technical Center, allow time for the FAA to prepare comprehensive training guidelines, and allow time for the training of operator personnel in specific techniques for handling cargo fires.

One commenter recommended that FAA training guidelines be published in the final rule. The FAA concurs with the commenter that the guidelines should be readily accessible, but is not prepared at this point to publish them in the final rule. The FAA is currently developing guidelines that may address:

a. Theory and use of protective breathing equipment;

b. Use of protective garments;

c. Hazardous materials, fire chemistry, and behavior;

d. Theory of fire extinguishment and use of portable fire extinguishing equipment;

e. Aircraft fire protection features, systems, and their use;

f. Search and rescue in cargo compartments and aircraft layouts;

g. Cargo loading envelope familiarization;

h. Aircraft-specific emergency procedures;

i. Other appropriate aircraft systems;

j. Aircraft communication systems and use;

k. Emergency medical care; and

l. Fighting various types of fires in a well simulated aircraft environment.

Further rulemaking, which may incorporate appropriate training guidelines, is anticipated following the second phase of the comment period pertaining to the proposal, for which comments are due by May 25, 1991.

Seven commenters agreed with the proposed delay for implementation of the 30-minute periodic inspection. One of these commenters requested an additional two to nine months delay to accommodate development and installation of the thermal monitoring system for Model 747 airplanes. The FAA does not concur with this extension. Development and implementation times were taken into consideration in the formulation of the

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proposed rule, and the FAA determined that the two year delay is reasonable. In addition, operators will retain the option to perform 30-minute walk-through inspections in the interim if the thermal monitoring system cannot be installed within the two year timeframe.

Three commenters disagreed with the two year postponement for implementation of the 30-minute walk-through inspection. They indicated that an interim level of safety would not be provided during the two year delay. One commenter recommended instead a six to nine month delay in implementation. The FAA does not concur. Paragraph A. continues to require upgraded equipment and pre-flight inspections which, in conjunction with the current smoke detectors, ensure that an interim level of safety is maintained. The two year extension was specifically selected to allow for implementation of trained firefighters and to allow additional time for development and installation of the optional thermal monitoring system.

Three commenters recommended modified walk-through inspections. Two of the commenters recommended that the inspections could be performed by flight attendants. The other commenter recommended modified walk-through inspections at 60-minute intervals and after turbulence. Although persons other than the firefighter could be trained to perform the walk-through inspections, many operators would continue to suffer severe economic penalties because they would still require additional flight attendants to accommodate the 30-minute inspections. No evidence was submitted to the FAA concerning the effectiveness of 60-minute inspections. The FAA agrees that post-turbulence walk-through inspections are of potential value and will consider further rulemaking on this subject. An interim level of safety is being provided by requiring the upgraded firefighting equipment and pre-flight inspections.

One commenter supported the option to allow 30-minute walk-through inspections in lieu of installing a thermal monitoring system.

Six commenters recommended that the pre-flight inspections could be performed by a person other than a flight deck crewmember. These commenters recommended that flight attendants or ground personnel could be appropriately trained to perform this function. The FAA disagrees. The flight deck crew is responsible for the overall safety of the airplane and is responsible for preflight inspections prior to departure. The pre-flight inspection of the cargo compartment should not be delegated because of its safety implications.

Two commenters recommended that the FAA modify the AD to either require a video monitoring system or accept it in lieu of 30-minute inspections. The FAA disagrees. Although such a system could potentially be an acceptable alternative method of compliance, no such system has been certificated to date, and the FAA has not received sufficient data on the system to make an assessment at this time. Such a system, when certificated, could be evaluated as an alternative method of compliance to the walkthrough requirement.

One commenter disagreed with certain proposed requirements of paragraph A. as they would apply to narrow-body Combi airplanes. This commenter stated that there was insufficient space for installation of some of the portable extinguishers and that loading placards were unnecessary because cargo can only be loaded in one configuration. The FAA disagrees. The commenter has merely stated that space cannot be found to place the extinguishers, but has not provided justification for either a reduction in the number of extinguishers or a deviation in their placement. Loading placards not only tell where cargo can be loaded, but also the minimum clearances allowable for firefighting access.

One commenter recommended that the phrase "general fire security" be eliminated from the pre-flight inspection requirement of paragraphs A.1. and B.3.a.(2) of the AD. The FAA disagrees. The pre-flight inspection is intended not only to verify access to the cargo for firefighting, but also to verify that cargo has been appropriately secured and that no anomalies, such as leaking of fluids, have occurred.

One commenter recommended that fire safety requirements for narrow body aircraft should be proportionate to the risk which their flight experience dictates as appropriate. This commenter pointed out that certain requirements of the NPRM cannot easily be met by existing narrow-body Combi airplanes. Operators that cannot feasibly comply with the AD requirements can submit requests for alternative methods of compliance for FAA review. Alternative methods of compliance that have been previously accepted for AD 89-18-12 R1 continue to be acceptable for this amendment.

One commenter requested clarification of the term "cargo compartment entrance," which is used in proposed paragraphs A.2.a., A.2.b., and A.2.d. The FAA notes that the "cargo compartment entrance" is the entrance through which the flight crew member fighting the fire, or the trained firefighter required by paragraph B.3. of the AD, is most likely to enter the cargo compartment. This is usually the door which separates the cargo compartment from the passenger cabin. The AD has not been modified to add this clarification because the placement of equipment is dependent upon the airplane configuration and must be FAA-approved.

One commenter recommended that the Model MD-80 be removed from the applicability of the rule because it does not have a type certificated main deck Class B cargo compartment. The FAA does not agree. This airplane could be modified in the future by means of a Supplemental Type Certificate to incorporate a main deck Class B cargo compartment and, therefore, will not be removed from the AD applicability.

One commenter pointed out a typographical error in the lettering of paragraphs B.3.k. and on. This error has been corrected in the final rule.

Several commenters submitted comments to paragraph B. of the proposed rule. These comments will be filed and addressed during the second phase of the comment period. The deadline for comments to paragraph B. is May 25, 1991.

Paragraph D. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes discussed previously. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

Since this amendment relieves a restriction, it is made effective upon display at the Federal Register.

This is considered interim action. The FAA is considering further rulemaking on this subject to address additional comments that may be received from the public concerning certain portions of this rule.

Cost Impact

There are approximately 278 Boeing Model 707, 727, 737, 747, and 757 series airplanes and 124 McDonnell Douglas Model DC-8, DC-9, and DC-10 series airplanes of the affected design in the worldwide fleet. It is estimated that approximately 80 Boeing Model 707, 727, 737, 747, and 757 series airplanes, and 124 McDonnell Douglas Model DC-8, DC-9 (includes MD-80 series), and DC-10 series airplanes, of U.S. regis ry have been certified to operate with a Class B main deck cargo compartment. Many of these airplanes have been permanently operated in the all-passenger configuration and are, therefore, not affected by this rule. Approximately 40 of these airplanes, presently operated by U.S. operators in the mixed cargo/passenger configuration, are affected by this amendment.

The design alternative selected by the operator will have a significant impact on the cost of complying with this AD. The highest cost option is expected to be the conversion to a Class C compartment, as defined in paragraph B.1. of this rule. A conservative cost estimate for such a modification, based upon costs of required materials, labor, and testing, is $1,000,000 per airplane. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $40,000,000.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6557 (55 FR 11163, March 27, 1990), AD 89-18-12 R1, with the following new airworthiness directive:

Boeing and McDonnell Douglas: Applies to Boeing Models 707, 727, 737, 747, and 757 series airplanes, and McDonnell Douglas Models DC-8, DC-9 (includes MD-80 series), and DC-10 series airplanes; equipped with a main deck Class B cargo compartment, as defined by FAR 25.857(b) or its predecessors, with a volume exceeding 200 cubic feet; certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the hazard associated with a main deck Class B cargo compartment fire, accomplish the following:

A. Within one year after May 3, 1990 (the effective date of Amendment 39-6557, AD 89-18-12 R1), or prior to carrying cargo in a Class B cargo compartment, whichever occurs later, accomplish the following in accordance with the appropriate technical data approved by the Manager, Seattle Aircraft Certification Office (for Boeing series airplanes), FAA, Transport Airplane Directorate; or the Manager, Los Angeles Aircraft Certification Office (for McDonnell Douglas series airplanes), FAA, Transport Airplane Directorate:

1. Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following: "For Each Flight in Which Cargo is Transported in the Class B Cargo Compartment:

Prior to flight, a flight deck crewmember must make a visual inspection throughout the Class B cargo compartment to verify access to cargo and the general fire security of the compartment after the cargo door is closed and secured."

2. Incorporate the following systems and equipment:

a. Provide appropriate protective garments stored adjacent to the cargo compartment entrance.

b. Provide a minimum of 30 minutes of protective breathing. This equipment must meet the requirements of Technical Standard Order (TSO) C-116, Action Notice 8150.2A, or equivalent, and be stored adjacent to the cargo compartment entrance.

c. Provide a minimum of 48 lbs. Halon 1211 fire extinguishant, or its equivalent, in portable fire extinguisher bottles readily available for use in the cargo compartment. At least two bottles must be a minimum of 16 lb. capacity.

d. Provide at least two Underwriters Laboratories (UL)2A (2½ gallon) rated water portable fire extinguishers, or its equivalent, adjacent to the cargo compartment entrance for use in the compartment.

e. Provide a means for two-way communication between the flight deck and the interior of the cargo compartment.

f. Install placards in conspicuous place(s) within the cargo compartment clearly defining the cargo loading envelope and limitations that provide sufficient access of sufficient width for firefighting along the entire length of at least two sides of a loaded pallet or container. Amend the appropriate Weight and Balance and loading instructions by description and diagrams to include this information.

Note: In accordance with paragraph C. of this AD, if the requirements of paragraph B.1. or B.2. of this AD are accomplished within one year after the effective date of AD 89-18-12 R1, compliance with paragraph A. of this AD is unnecessary.

B. Within three years after May 3, 1990 (the effective date of Amendment 39-6557, AD 89-18-12 R1), or prior to carrying cargo in a Class B cargo compartment, whichever occurs later, accomplish the requirements of paragraph B.1., B.2., or B.3., below:

1. Modify the Class B cargo compartment to comply with the requirements for a Class C cargo compartment, as defined in FAR 25.855 (Amdt. 25-60), 25.857(c), and 25.858 (Amdt. 25-54).

2. Modify all main deck Class B cargo compartments to require the following placard installed in conspicuous locations approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate (for Boeing airplanes), or the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate (for McDonnell Douglas airplanes), throughout the compartment:

"Cargo carried in this compartment must be loaded in an approved flame penetration-resistant container meeting the requirements of FAR 25.857(c) with ceiling and sidewall liners and floor panels that meet the requirements of FAR 25, Appendix F, Part III, (Amdt. 25-60)."

3. In addition to the requirements of paragraph A.2. of this AD, accomplish the following in accordance with technical data approved by the Manager, Seattle Aircraft Certification Office (for affected Boeing series airplanes), or the Manager, Los Angeles Aircraft Certification Office (for affected McDonnell Douglas series airplanes), to include the following:

a. Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following: "For Each Flight in Which Cargo is Transported in the Class B Cargo Compartment:

(1) For airplanes having compartments of 200 square feet or less of cargo/baggage floor area, a minimum of one individual trained to fight cargo fires must be provided. (This individual is in addition to the crewmembers required by the operational rules.)

(2) Prior to flight, a flight deck crewmember or the individual required by the previous paragraph B.3.a.(1) must make a visual inspection throughout the Class B cargo compartment to verify access to cargo and the general fire security of the compartment after the cargo door is closed and secured.

(3) For airplanes having compartments with more than 200 square feet of cargo/baggage floor area, provide an additional person trained to fight cargo fires to work with the individual required by the previous paragraph B.3.a.(1). (This individual may be a required flight attendant.)"

b. Provide a cargo compartment fire "knock down" extinguishing system that provides an

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initial fire extinguishant concentration of at least 5 percent of the empty compartment volume of Halon 1301 or equivalent, and a fire suppression extinguishant concentration of at least 3 percent of the empty compartment volume of Halon 1301 or equivalent, for a period of time not less than 15 minutes.

c. Provide a smoke or fire detection systems that meets the requirements of FAR 25.858 (Amdt. 25-54) and also provides an aural and visual warning to the station assigned to the individual trained to fight cargo fires. The designated station must be located adjacent to the in-flight access door to the cargo compartment.

d. Provide a means from the flight deck to shut off ventilation system inflow to the cargo compartment.

e. Accomplish the requirements of paragraph B.3.e.(1) or B.3.e.(2):

(1) Provide a thermal monitoring system to the flight deck and station designated for the individual trained to fight cargo fire to advise of potentially hazardous conditions within the cargo compartment.

(2) At intervals not to exceed 30 minutes in flight and continuously after a fire has been detected and extinguished, the individual trained to fight cargo fires must conduct a visual inspection throughout the Class B cargo compartment to monitor for evidence of fire.

f. Provide a cargo compartment liner that meets the requirements of FAR 25.855 (Amdt. 25-60). The smoke/fire barrier between the occupants and cargo compartment must extend from the cargo compartment floor to the ceiling liner, or top skin of the airplane, and from the right side liner to the left side liner of the cargo compartment. The liner and barrier seals must also be constructed of materials that meet the flame penetration resistance requirements of FAR 25, appendix F, part III (Amdt. 25-60), except that currently-installed glass fiber reinforced resin material is acceptable. In addition, provide protective covers for cockpit voice and flight data recorders, windows, wiring, and primary flight control systems (unless it can be shown that a fire could not cause jamming or loss of control), and other equipment within the compartment that is required for safe flight and landing; these covers must be constructed of materials that meet the Flame Penetration Resistance requirements of FAR 25, appendix F, part III (Amdt. 25-60).

g. Provide illumination of the cargo compartment as follows:

(1) General area illumination of the cargo with an average illumination of 0.1 foot-candle measured at 40-inch intervals both at one-half the pallet or container height, and at the full pallet or container height.

(2) Illumination of the access pathways required by paragraph A.2.f. of this AD under visibility conditions likely to be encountered after a fire and discharge of the fire extinguishant, and prior to the decay of extinguishant concentration below 3 percent, must provide an average of 0.1 foot-candle measured at each 40-inch interval, with not less than 0.05 foot-candle minimum along a line that is within 2 inches of and parallel to the floor centered on the pathway.

h. Provide a safe means to effectively discharge portable fire extinguishers into each container or into each pallet that is covered.

i. Establish FAA-approved firefighting procedures for controlling cargo compartment fires.

j. Establish an FAA-approved training program for firefighters required by paragraphs B.3.a.(1) and B.3.a.(3) of this AD.

k. Demonstrate the following features and functions during flight tests:

(1) Fire extinguishant concentration, required by paragraph B.3.b. of this AD.

(2) Smoke or fire detection system, required by paragraph B.3.c. of this Ad.

(3) Prevention of smoke penetration into occupied compartments [Refer to FAR 25.857(b)2 and 25.855(e)2].

(4) Compartment temperature indication system, if required by paragraph B.3.e. of this AD.

(5) Cargo accessibility, required by paragraph A.2.f. of this AD.

(6) Firefighting procedures, required by paragraph B.3.i. of this AD.

l. Items specified in paragraphs B.3.k.(5) and B.3.k.(6) of this AD must be evaluated under reduced visibility conditions representative of those likely to occur with cargo fires.

m. Provide a means of two-way communication between the flight deck and the station assigned to the individual trained to fight cargo fires.

C. Compliance with paragraphs B.1. or B.2. of this AD constitutes terminating action for the requirements of paragraph A. of this AD.

D. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate (for Boeing series airplanes); or the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate (for McDonnell Douglas series airplanes).

Note. The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO, or the Manager, Los Angeles ACO, as appropriate.

Note. Alternative methods of compliance previously granted for Amendment 39-6557, AD 89-18-12 R1, continue to be acceptable alternative methods of compliance for this amendment.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment supersedes Amendment 39-6557, AD 89-18-12 R1.

This amendment becomes effective May 1, 1991.

Issued in Renton, Washington, on April 19, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10651 Filed 5-1-91; 2:40 pm]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[Docket No. 910229-1028]

Public Information; Freedom of Information Public Facilities and Addresses for Requests for Records; Initial Denial Officials

AGENCY: U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is revising appendices B and C of its Freedom of Information Act rules. Appendix B gives the names and addresses of the Department's Freedom of Information public facilities. Appendix C lists the officials authorized to make initial denials for Freedom of Information requests. The revised appendices B and C are being publicized now to reflect current locations and/or redelegation of authority through reorganization.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Geraldine P. LeBoo, Departmental Freedom of Information Officer, Office of Federal Assistance and Management Support, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230, telephone: 202-377-4115.

SUPPLEMENTARY INFORMATION: The Department of Commerce last published its revised Freedom of Information Act rules on March 4, 1988, 53 FR 6972, which also included appendices B and C: The Department's public inspection facilities, addresses, and initial denial officials. The revised appendices B and C are being publicized now to reflect current locations and/or redelegation of authority through reorganization. The revised appendices are the "organization and management" portion of 15 CFR part 4, and as such are exempt from all requirements of section 553 of the Administrative Procedure Act, including notice and comment and delayed effective date. Accordingly, this revision is effective upon publication.

Because a notice of proposed rulemaking is not required by section 553 of the Administrative Procedures Act or any other law, a Regulatory Flexibility Analysis is not necessary for purposes of the Regulatory Flexibility Act. This rule, relating to agency organization and management, is not subject to the requirements of Executive Order 12291. This rule does not contain information collection activity as

defined by the Paperwork Reduction Act.

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 4

Public information, Freedom of information.

For the reasons set forth in the preamble, 15 CFR part 4 is amended as follows:

PART 4—PUBLIC INFORMATION

1. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552, 5 U.S.C. 553, Reorganization Plan No. 5 of 1950; 31 U.S.C. 3717.

2. Appendices B and C are revised to read as follows:

Appendix B—Freedom of Information Public Facilities and Addresses for Requests for Records

The following public reference facilities have been established within the Department of Commerce for: (a) Public inspection and copying of materials from various units within the Department under 5 U.S.C. 552(a)(2), or determined to be available for response to requests made under 5 U.S.C.(a)(3); (b) furnishing information and otherwise assisting the public concerning Departmental operations under the Freedom of Information Act; and (c) receipt and processing requests for records under 5 U.S.C. 552(a)(3).

Commerce units that have separate mailing addresses are noted below. Requests should be addressed to the unit which the requester knows or has reason to believe has possession, control, or has primary concern with the records sought. Otherwise, requests should be addressed to the Central Reference and Records Inspection Facility.

Department of Commerce Freedom of Information Central Reference and Records Inspection Facility, U.S. Department of Commerce, room 6020, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania, NW., Washington, DC 20230. Phone (202) 377-4115. This facility serves the Office of the Secretary and all other units of the Department not identified below as explained at 15 CFR 4.4(c) and (d).

Bureau of the Census, Chief, Program and Policy Development Office, U.S. Department of Commerce, room 2430, Federal Building 3, Washington, DC 20233. Phone (301) 763-2758.

The Bureau of the Census maintains a separate facility for inspection of (a)(2) records. The location is room 2455, Federal Building 3, Suitland, Maryland 20233.

Bureau of Economic Analysis, Public Reference Facility, U.S. Department of Commerce, room 1115, Tower Building, 1401 K Street, NW., Washington, DC.

Mailing address: Freedom of Information Control Desk, Office of Administration, Office of Economic and Statistical Affairs, U.S. Department of Commerce, room 4838, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Phone 377-3308.

Economic Development Administration, Freedom of Information Records Inspection Facility, U.S. Department of Commerce, room 7001, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Phone (202) 377-4687. Mailing address of Regional EDA offices:

—Philadelphia Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Liberty Square Building; First floor, 105 South 7th Street, Philadelphia, Pennsylvania 19106.

—Atlanta Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, suite 1820, 401 West Peachtree Street, NW., Atlanta, Georgia 30308-3510.

—Denver Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, room 670, 1244 Speer Boulevard, Denver, Colorado 80204.

—Chicago Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, 175 West Jackson Boulevard, suite A-1630, Chicago, Illinois 60604.

—Seattle Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Jackson Federal Building, room 1856, 915 Second Avenue, Seattle, Washington 98174.

—Austin Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Grant Building, suite 201, 611 East 6th Street, Austin, Texas 78701.

Bureau of Export Administration, Freedom of Information Records Inspection Facility, U.S. Department of Commerce, room 4525, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Phone (202) 377-5653.

International Trade Administration, Freedom of Information Records Inspection Facility, U.S. Department of Commerce, room 4102, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Phone (202) 377-3031.

Minority Business Development Agency, Freedom of Information Office, U.S. Department of Commerce, room 5073, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Phone (202) 377-2861.

The Minority Business Development Agency maintains a separate facility for public inspection of (a)(2) records. The location is room 5078B, Herbert C. Hoover Building, Washington, DC 20230.

National Institute of Standards and Technology, Freedom of Information Records Inspection Facility, room E106, Administration Building, Gaithersburg, Maryland 20234. Phone (301) 975-2369.

Mailing address: National Institute of Standards and Technology, Freedom of Information Request Control Desk, U.S. Department of Commerce, room A-1105, Gaithersburg, Maryland 20234.

National Oceanic and Atmospheric Administration, Public Reference Facility, room 714 WSC-5, 6010 Executive Boulevard, Rockville, Maryland 20852. Phone (301) 443-8997.

National Technical Information Service, Freedom of Information Records Inspection Facility, room 208, Forbes Building, 5285 Port Royal Road, Springfield, Virginia 22161. Phone (703) 487-4670.

National Telecommunications and Information Administration, Freedom of Information Request Control Desk, U.S. Department of Commerce, room 4717, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20504. Phone (202) 377-1816.

Patent and Trademark Office, Freedom of Information Records Inspection Facility, Public Search Room, room 1A01, Crystal Plaza 3, Arlington, Virginia 20231. Mailing address: Patent and Trademark Office, Freedom of Information Request Control Desk, Box 8, Washington, DC 20231. Phone (703) 557-4035.

United States Travel and Tourism Administration, Freedom of Information Request Control Desk, U.S. Department of Commerce, room 1524, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Phone (202) 377-3812.

Appendix C—Officials Authorized to Make Initial Denials of Requests for Records

The following officials of the Department have been delegated authority to initially deny requests for records of their respective units for which they are responsible. (The listings are subject to change because of organizational changes or new delegations.

Accordingly, the Director for Federal Assistance and Management Support is specifically authorized to amend or revise this appendix from time to time in order to reflect changes.

Office of the Secretary

Office of the Deputy Secretary: Associate Deputy Secretary.

Office of Business Liaison: Director.

Office of Consumer Affairs: Director.

Office of Space Commerce: Director.

Office of the Assistant Secretary for Legislative and Intergovernmental Affairs: Deputy Assistant Secretary for Legislative and Intergovernmental Affairs.

Office of the Inspector General: Counsel to the Inspector General. Deputy Counsel to the Inspector General.

Office of the General Counsel: Deputy General Counsel. Assistant General Counsel for Administration. Director of Intelligence Liaison.

Assistant Secretary for Administration

Office of the Administrative Law Judge: Office Manager.

Office of Civil Rights: Director.

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Office of Financial Management: Director.
Office of Federal Assistance and Management Support: Director.
Office of Federal Assistance: Director.
Office of Budget Operations: Director.
Office of Management Support: Director.

Departmental Freedom of Information Officer

Office of Budget, Planning and Organization: Director.
Office of Management and Organization: Director.
Office of Budget: Director.
Office of Program Planning and Evaluation: Director.
Office of Personnel: Director.
Office of Personnel Operations: Director.
Office of Information Resources Management: Director.
Office of Procurement and Administrative Services: Director.
Office of Administrative Services Management: Director.
Office of Federal Property Programs: Director.
Office of Publications: Director.
Office of Security: Director.
Office of Procurement: Director.
Office of Major Systems Procurement: Director.
Office of Procurement Operations: Director.
Office of Procurement Management: Director.
Office of Small and Disadvantaged Business Utilization: Director.

Economic and Statistical Affairs

Office of Administration: Director.
Bureau of Economic Analysis: Director.
Bureau of the Census: Chief, Program and Policy Development Office.

Technology Administration

Under Secretary for Technology: Deputy Under Secretary for Technology. Assistant Secretary for Technology Policy. Chief Counsel. Deputy Chief Counsel.
National Institute of Standards and Technology: Director of Administration. Deputy Director of Administration.
National Technical Information Service: Director. Associate Director for Administration.

Economic Development Administration

Chief Counsel.
Deputy Chief Counsel.

Export Administration

Under Secretary.
Deputy Under Secretary.
Assistant Secretary for Export Administration.
Director, Office of Technology and Policy Analysis.
Director, Office of Foreign Availability.
Director, Office of Export Licensing.
Deputy Assistant Secretary for Industrial Resource Administration.
Assistant Secretary for Export Enforcement.
Director, Office of Export Enforcement.
Director, Office of Antiboycott Compliance.
Director, Office of Enforcement Support.

International Trade Administration

International Economic Policy:
Director, Office of Policy Coordination.
Director, Office of Multilateral Affairs.
Director, Office of Africa.
Director, Office of the Near East.
Director, Office of South Asia.
Director, Office of Western Europe.
Director, Office of European Community Affairs.
Director, Office of Eastern Europe and Soviet Affairs.
Director, Office of South America.
Director, Office of Mexico and the Caribbean Basin.
Director, Office of Canada.
Director, Office of the PRC and Hong Kong.
Director, Office of the Pacific Basin.
Deputy Assistant Secretary for Japan.
Trade Development:
Director, Office of Program and Resource Management.
Director, Office of Planning and Coordination.
Director, Office of Computers and Business Equipment.
Director, Office of Microelectronics and Instrumentation.
Director, Office of Telecommunications.
Director, Office of General Industrial Machinery.
Director, Office of Special Industrial Machinery.
Director, Office of International Major Projects.
Director, Office of Trade and Investment Analysis.
Director, Office of Industrial Trade.
Director, Office of Finance and Trade Information.
Director, Office of Services Industries.
Director, Office of Export Trading Company Affairs.
Director, Office of Forest Products and Domestic Construction.
Director, Office of Metals, Minerals and Commodities.
Director, Office of Energy.
Director, Office of Chemicals and Allied Products.
Director, Office of Automotive Industry Affairs.
Director, Office of Consumer Goods.
Director, Office of Textiles and Apparel.
Deputy Assistant Secretary for Trade Adjustment Assistance.
Director, Office of Aerospace Market Development.
Director, Office of Aerospace Policy and Analysis.
Import Administration:
Director, Foreign Trade Zones Staff.
Director, Statutory Import Programs Staff.
Director, Office of Antidumping Compliance.
Director, Office of Countervailing Compliance.
Director, Office of Agreements Compliance.
Director, Office of Antidumping Investigations.
Director, Office of Countervailing Investigations.
Director, Office of Policy.
Director, Office of Accounting.
U.S. and Foreign Commercial Service:
Director, Caribbean Basin Information Center.
Director, Office of Foreign Service Personnel.
Deputy Assistant Secretary for International Operations.
Director, Office of Planning and Management.
Manager of Export Promotion Services.
Director, Office of Commercial Information Management.
Director, Office of Trade Promotion.
Deputy Assistant Secretary for Domestic Operations.
Administration:
Director, Office of Organization and Management Support.
Director, Office of Personnel.
Director, Office of Financial Management.
Director, Office of Information Resources Management.
Deputy Under Secretary for International Trade:
Deputy Assistant Secretary for Planning.
Director, Office of Public Affairs.
Director, Congressional Affairs Staff.

Minority Business Development Agency

Freedom of Information Officer.

National Oceanic and Atmospheric Administration

Under Secretary.
Assistant Secretary.
Director, Office of Public Affairs.
Director, NOAA Corps.
General Counsel.
Assistant Administrator for Ocean Services and Coastal Zone Management.
Assistant Administrator for Fisheries.
Assistant Administrator for Weather Service.
Assistant Administrator for Environmental Satellite, Data, and Information Service.
Assistant Administrator for Oceanic and Atmospheric Research.
Director, Environmental Research Laboratories.
Director, Office of Administration.
Director, Eastern Administrative Support Center.
Director, Central Administrative Support Center.
Director, Western Administrative Support Center.
Director, Mountain Administrative Support Center.

National Telecommunications and Information Administration

Deputy Assistant Secretary.
Chief Counsel.
Legal Advisor.

Patent and Trademark Office

Solicitor, Deputy Solicitor.

United States Travel and Tourism Administration

Under Secretary.
Director, Office of Management and Administration.

Dated: April 28, 1991.

Sonya G. Stewart,

Director for Federal Assistance, and Management Support.

[FR Doc. 91-10598 Filed 5-3-91; 8:45 am]

BILLING CODE 3510-FA-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program; Permits, Performance Standards, and Civil Penalties

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is announcing the approval, with certain exceptions, of proposed amendments to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments modify fourteen sections in title 62 of the Illinois Administrative Code (IAC). The amendments address the concerns of other State and Federal agencies, enhance the clarity of the Illinois rules, and meet State codification rules and guidelines.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fulton, Director, Springfield Field Office, Office of Surface Mining and Enforcement, 511 West Capitol Avenue, suite 202, Springfield, Illinois 62704, telephone: (217) 492-4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program
II. Submission of Amendments
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.10, 913.15, 913.16, and 913.17.

II. Submission of Amendments

By letter dated July 17, 1989, Illinois submitted a proposed amendment to its program (Administrative Record No. IL-1075). On April 10, 1990, Illinois submitted additional changes to this proposed amendment (Admininstrative Record No. IL-1100). This Illinois amendment was approved, with certain exceptions, by the Director on August 29, 1990 (55 FR 35301). On July 26, 1990, Illinois submitted to OSM the adopted version of the amendment which contained certain changes from the version approved by OSM (Administrative Record No. IL-1104). A majority of these changes were made by the Illinois Department of Mines and Minerals pursuant to comments and direction received from the Illinois Joint Committee on Administrative Rules.

The program amendments modify the following rules of title 62 of the IAC: 1700, 1761, 1772, 1773, 1778, 1779, 1780, 1783, 1784, 1800, 1816, 1817, 1843, and 1846.

OSM announced receipt of the proposed amendments in the November 16, 1990, **Federal Register** (55 FR 47890) and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The comment period closed on December 17, 1990.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendments to the Illinois program submitted on July 26, 1990.

A. Revisions to Illinois' Regulations that are Substantively Identical to the Corresponding Federal Regulations

State Regulation	Subject	Federal Counterpart
62 IAC 1700.11(d), (e)	Applicability	30 CFR 701.11 (e), (f).
62 IAC 1761.12	Areas Designated by Act of Congress	30 CFR 761.12.
62 IAC 1773.20(b)(2)(B)	Permits and Permit Processing	30 CFR 773.20(b)(2)(ii).
62 IAC 1773.21(b)	Permits and Permit Processing	30 CFR 773.21(b).
62 IAC 1778.13(b)	Permit Applications	30 CFR 778.13(b).
62 IAC 1778.13(c)(5)	Permit Applications	30 CFR 778.13(c)(5).
62 IAC 1778.13(i)	Permit Applications	30 CFR 778.13(i).
62 IAC 1778.13(j)	Permit Applications	30 CFR 778.13(j).
62 IAC 1778.14(e)	Permit Applications	30 CFR 778.14(d).
62 IAC 1779.12	Environmental Resources Information	30 CFR 779.12.
62 IAC 1780.16(a)(1)(B)(i)	Reclamation and Operation Plan	30 CFR 780.16(a)(1).
62 IAC 1780.21(f)(3)(C)	Reclamation and Operation Plan	30 CFR 780.21(f)(3)(iii).
62 IAC 1780.21(f)(3)(D)(v)	Reclamation and Operation Plan	30 CFR 780.21(f)(3)(v).
62 IAC 1780.31(a)(1)	Reclamation and Operation Plan	30 CFR 780.31(a)(1).
62 IAC 1784.14(e)(3)(C)(v)	Reclamation and Operation Plan	30 CFR 784.14(e)(3)(iii).
62 IAC 1784.17(a)(1)	Reclamation and Operation Plan	30 CFR 784.17(a)(1).
62 IAC 1784.17(b)	Reclamation and Operation Plan	30 CFR 784.17(b).
62 IAC 1784.21(a)(1)(B)(i)	Reclamation and Operation Plan	30 CFR 784.21(a)(1).
62 IAC 1800.21(d)	Bonding and Insurance	30 CFR 800.21(e)(1).
62 IAC 1800.40(b)(1)	Bonding and Insurance	30 CFR 800.40(b)(1).
62 IAC 1800.40(b)(2)	Bonding and Insurance	30 CFR 800.40(b)(2).
62 IAC 1816.49(a)(10)	Performance Standards	30 CFR 816.49.
62 IAC 1816.67	Performance Standards	30 CFR 816.67(b).
62 IAC 1817.49(a)(10)	Performance Standards	30 CFR 817.49.
62 IAC 1817.67	Performance Standards	30 CFR 817.67(b).
62 IAC 1817.66(d)	Performance Standards	30 CFR 817.66.
62 IAC 1843.11	State Enforcement	30 CFR 843.11.
62 IAC 1846.5	Civil Penalties	30 CFR 846.5

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Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Illinois' proposed rules are no less effective than the Federal rules.

B. Revisions to Illinois' Regulations That are not Substantively Identical to the Corresponding Federal Regulations

1. 62 IAC 1761.11(a)—Areas Designated by Act of Congress

Illinois is proposing to revise this regulation to prohibit mining within wild and scenic study river corridors as established in any "future" guidelines pursuant to the Wild and Scenic Rivers Act. The corresponding Federal regulation at 30 CFR 761.11(a) does not limit the mining prohibition to those corridors established in future guidelines but applies it to any guidelines pursuant to the Act. The Director finds the proposed State regulation less effective than the Federal regulation at 30 CFR 761.11(a) and the word "future" is not approved to the extent that it limits the mining prohibition to those corridors established in future guidelines pursuant to the Wild and Scenic Rivers Act and does not take into consideration guidelines that already exist. The required amendment at 30 CFR 913.16(c) will remain in effect until Illinois further amends this regulation to include provisions concerning protection of wild or scenic study river corridors that are no less effective than the Federal rules at 30 CFR 761.11(a).

2. 62 IAC 1772.12(b)(8)(D)—Requirements for Coal Exploration

Illinois is proposing to add a provision to give the State authority, in consultation with the Illinois State Historic Preservation Agency, to require that an application for an exploration permit contain additional information regarding known or unknown historic or archeological resources. The corresponding Federal regulation at 30 CFR 772.12(b)(8)(iv) does not require that the regulatory authority consult with other state agencies prior to requiring additional information. The Director finds that the additional language in the proposed State regulation does not render the State regulation inconsistent with the Federal regulation.

3. 62 IAC 1773.15(b)(1), (b)(1)(B)—Review of Permit Applications

At 62 IAC 1773.15(b)(1), Illinois is proposing to add a reference to 62 IAC 1843 which suggests that the State may intend to limit the review of violations provision to cessation orders issued by the State. The corresponding Federal regulation at 30 CFR 773.15(b)(1) requires that the review of violations be based on available information concerning all unabated enforcement actions and delinquent civil penalties under any State or Federal program under SMCRA. The Director finds the proposed State regulation less effective than the Federal regulation at 30 CFR 773.15(b)(1) and he is not approving the proposed phrases "as defined in 62 Ill. Adm. Code 1843.11(b)" and "as defined in 62 Ill. Adm. Code 1843.11(a)" to the extent that these references could limit this provision to cessation orders issued by Illinois. The Director is also requiring that Illinois amend 62 IAC 1773.15(b)(1) to clarify that this rule applies to all unabated enforcement actions and delinquent civil penalties incurred under any State or Federal program under SMCRA.

4. 62 IAC 1773.20(c)(2)—Permits and Permit Processing

Illinois is proposing to allow the State, as a remedial measure for an improvidently issued permit, to require that in the specified period of time, the permittee or other responsible person abate the violation or pay the penalty or fee. The corresponding Federal regulation at 30 CFR 773.20(c)(2) requires that the violation be abated or the fee paid in a "reasonable" period of time. The determination of what is reasonable is within the State's discretion. Therefore, as Illinois has indicated that it will specify a reasonable period of time in the permit condition, the Director finds the proposed State regulation is no less effective than the Federal regulation.

5. 62 IAC 1778.14(c)—Violation Information

Illinois is proposing to add the language, "Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*" to modify "Federal Act." The corresponding Federal regulation at 30 CFR 778.14(c) refers to "the Act." As clarified by one of its preambles (44 FR 15022, March 13, 1979), the compliance information requirements of this Federal rule apply to any violation of SMCRA, including all State or Federal programs approved under its provisions. Since it is not clear that Illinois' reference to SMCRA includes all State and Federal programs approved thereunder, the Director finds the proposed State regulation less effective than the Federal regulation. He is requiring that Illinois amend section 1778.14(c) to clarify how it intends to interpret this regulation.

6. 62 IAC 1779.12(b)—Environmental Resources Information

Illinois is proposing to add the sentence, "Indications of cultural, archeological, and historical resources shall be based upon such factors including, but not limited to, topographic and physiographic characteristics and other cultural, archeological, and historical resource data for the proposed permit or adjacent areas." Illinois is also proposing to require that a permit applicant conduct field investigations "if such field investigation will provide the information required by subsection (a). A field investigation is a pedestrian archeological survey supplemented by shovel testing, where appropriate." The corresponding Federal regulation at 30 CFR 779.12(b)(2) does not include this language. However, the proposed language merely clarifies, without limiting, the criteria used in determining the existence of otherwise unknown cultural, archeological and historical resources. Therefore, the Director finds that the additional specificity provided in the proposed Illinois regulation does not render it inconsistent with the Federal regulation.

7. 62 IAC 1780.31(b)—Reclamation and Operation Plan

Illinois is proposing to require that a permit applicant take into account mining plans and the amount of materials present when the applicant is required to take appropriate mitigation and treatment measures to protect certain properties. The State has the discretion to determine whether or not mitigation and treatment resources are needed. Since the Federal rule at 30 CFR 780.31(b) is silent as to what factors the State may use in making that determination, Illinois is free to consider factors such as mining plans and the amount of materials present. Illinois is also proposing to delete the word "reasonable" modifying "period of time." the word "taking" is changed to "that takes" preceding "into account." The corresponding Federal rule at 30 CFR 780.31(b) does not include the language noted above. The Director finds that the additional specificity provided in the proposed Illinois regulation does not render it inconsistent with the Federal regulation.

8. 62 IAC 1783.12—Environmental Resources Information

Illinois is proposing the following revisions: (a) Changing the word "features" to "sites" in subsection (a); (b) changing the word "provided" to "available" modifying "information" in subsection (b); (c) adding the word

"shadow" to describe those areas likely to contain unknown resources in subsection (b); (d) adding the sentence, "Indications of cultural, archeological, and historical resources shall be based upon such factors including, but not limited to, topographic and physiographic characteristics, and other cultural, archeological, and historical resource data for the proposed permit, shadow, and adjacent areas" in subsection (b); (e) adding the requirement that Illinois, when determining the necessity for field investigations, consult with "the Illinois State Historic Preservation Agency, if such field investigations will provide the information required by subsection (a)," in subsection (b); and, (f) adding the sentence, "A field investigation is a pedestrian archeological survey supplemented by shovel testing, where appropriate" in subsection (b). Certain paragraph notations and cross-references were also changed to maintain organizational consistency. The corresponding Federal rule at 30 CFR 783.12 does not include the language noted above. However, the proposed language merely clarifies, without limiting, the criteria used in determining the existence of otherwise unknown cultural, archeological and historical resources. Therefore, the Director finds that the additional specificity and wording selections provided in the proposed Illinois regulation, including the addition of the "shadow area" as an area to be considered for the likely existence of cultural, archeological or historic resources, do not render it inconsistent with the Federal regulation.

9. 62 IAC 1784.21(a)(2)(C)—Fish and Wildlife Plan

Illinois is proposing to require site-specific resource information when the permit or adjacent area is likely to include species or habitats identified as requiring special protection under the "Endangered Species Act of 1973, as amended (16 U.S.C. 1532 *et seq.*) or the Illinois Endangered Species Protection Act (Ill. Rev. State. 1987, ch. 8, par 331 *et seq.*)." The corresponding Federal regulation at 30 CFR 784.21(a)(2)(iii) does not restrict the special protection to species or habitats included in just the Endangered Species Act of 1973, but instead requires the same site-specific resource information for a larger universe of protected species and habitats, namely those requiring special protection, by specifying "under State or Federal law." Therefore, the Director finds the proposed State regulation less effective than the Federal regulation at 30 CFR 784.21(a)(2)(iii) and he is not approving the proposed references to the above Acts to the extent that they restrict this provision to just the two Acts. The Director is also requiring Illinois to submit an amendment to 62 IAC 1784.21(a)(2)(C) which requires site specific resource information when the permit or adjacent area is likely to include species requiring special protection under any State or Federal law.

10. 62 IAC 1800.40(a)(2)—Bonding and Insurance

Illinois is proposing to require that an operator submit a copy of the advertisement for bond release to the State within 30 days after the application has been filed. The operator is also required to submit a certification of publication for such advertisement prior to the State's final administrative decision releasing bond. While the corresponding Federal regulation at 30 CFR 800.40(a)(2) requires that an operator submit a copy of the advertisement for bond release to the regulatory authority within 30 days, it does not require that the operator submit a certification of publication. The Director finds that the inclusion of this additional requirement by the State does not render the Illinois proposed regulation inconsistent with the Federal regulation.

11. 62 IAC 1800.40(e)—Bonding and Insurance

Illinois is proposing to delete the requirement at 62 IAC 1800.40(e) that Illinois notify the municipality in which a surface coal mining operation is located by certified mail at least 30 days prior to the release of all or part of a performance bond. The corresponding Federal regulation at 30 CFR 800.40(e) requires the notification described above. However, section 6.06(g) of the Illinois Surface Coal Mining Land Conservation and Reclamation Act retains language substantively identical to the Federal regulation at 30 CFR 800.40(e). Illinois stated in its submission of April 9, 1990 (Administrative Record No. IL-1100) that it proposed to delete the notification requirement at 62 IAC 1800.40(e) to eliminate redundant language and that it is relying on the statute. Therefore, the Director finds that the proposed deletion does not render the Illinois program less effective than the Federal regulations. This finding corrects and replaces the previous finding contained in the August 29, 1990, Federal Register notice (55 FR 35307), which addressed the deleted language at 61 IAC 1800.40(e).

12. 62 IAC 1816.49(a)(1)/1817.49(a)(1)—Impoundments

At 62 IAC 1816.49(a)(1) and 1817.49(a)(1), Illinois is proposing to add a specific edition date of "1989" to its reference of 30 CFR 77.216 in the sentence, "Impoundments meeting the size and other qualifying criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 (1989) and this Section" and added a new sentence, "30 CFR 77.216 does not include any later editions or amendments." OSM does not restrict the reference to 30 CFR 77.216(a) to a specific edition in the corresponding Federal regulations at 30 CFR 816.49(a)(1) and 30 CFR 817.49(a)(1). Therefore, the Director finds the proposed State regulation less effective than the Federal regulations at 30 CFR 816.49(a)(1) and 30 CFR 817.49(a)(1) respectively and is not approving 62 IAC 1816.49(a)(1) and 1817.49(a)(1) to the extent that Illinois' regulation language does not ensure that the latest edition of 30 CFR 77.216 as of the date of the promulgation of the revised rules at 62 IAC 1816.49(a)(1) and 1817.49(a)(1) would be referenced. The Director is also requiring that Illinois amend 62 IAC 1816.49(a)(1) and 62 IAC 1817.49(a)(1) to ensure that the State regulations include reference to the latest edition to 30 CFR 77.216 as of the date of the promulgation of its regulations.

13. 62 IAC 1816.97(b)/1817.97(b)—Performance Standards

At 62 IAC 1816.97(b) and 1817.97(b), Illinois is proposing to add the provision that no surface mining will be allowed which is likely to result in the destruction or adverse modification of designated critical habitats of species in violation of the "Illinois Endangered Species Protection Act (Ill. Rev. Stat. 1987, ch. 8, par. 331 *et seq.*)." The corresponding Federal regulation does not include this citation. The Director finds, however, that the additional language in the proposed State regulation does not render the State regulation inconsistent with the Federal regulations at 30 CFR 816.97(b) and 817.97(b).

14. 62 IAC 1846.14(a)(3)—Civil Penalties

Illinois is proposing to change the word "demonstrated" to "determined" modifying "good faith of the individual," which good faith is used as a factor in determining the amount of an individual civil penalty. The corresponding Federal regulation at 30 CFR 846.14(a)(3) refers to the "demonstrated" good faith of the individual. Since the State must render a determination of good faith based upon

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a showing, or demonstration by the operator, the Director finds that the revision does not lessen the strength of the regulation. Therefore, he finds the proposed State regulation no less effective than the Federal regulation.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the November 16, 1990, Federal Register ended on December 17, 1990. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

The Illinois Historic Preservation Agency supported the amendment.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Illinois program. The U.S. Fish and Wildlife Service (FWS) concurred with the majority of the proposed changes affecting fish and wildlife resources and habitats. The FWS did, however, express concern about the wording in several subsections that pertain to threatened and endangered species. The Director finds that the specific State regulations identified by the FWS are not being amended and are, therefore, outside the scope of this rulemaking. However, the FWS comments have been forwarded to the State of Illinois for consideration in future rulemakings.

Director's Decision

Based on the above findings, the Director is approving the amendments to the Illinois regulatory program submitted on July 26, 1990, with the exception of the provisions found not to be in accordance with the SMCRA or not consistent with the Federal regulations. Those provisions not approved and requiring further amendment are addressed in Findings B-1, B-3, B-5, B-9, and B-12.

The Federal rules at 30 CFR part 913 concerning the Illinois program are being amended to implement the Director's decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

The Director is also taking this opportunity to make corrections to 30 CFR 913.10 and to 30 CFR 913.15 published on August 29, 1990. At 30 CFR 913.10, the addresses for the Illinois Department of Mines and Minerals and the Office of Surface Mining are being changed to reflect recent location changes. At 30 CFR 913.15(k), as originally published, the paragraph neglected to state that the amendments submitted to OSM on July 17, 1989 were revised on April 9, 1990. At 30 CFR 913.15(k)(1), the reference to the disapproval of the deletion of "wind velocity and direction" from the list of factors required in the blast records at 1816.68(a) and 1817.68(a) was not made. Also, 30 CFR 913.15(k)(1) is changed to place rule 1816.61 on a separate line.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary.

Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In his oversight of the Illinois program, the Director will recognize only the statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Illinois of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA (30 U.S.C. 1292(d)), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 18, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 913.10 is amended by revising the list of addresses to read as follows:

§ 913.10 State regulatory program approval.

* * * * *

Illinois Department of Mines and Minerals, Division of Land Reclamation, 300 West Jefferson, Suite 300, Springfield, Illinois 62791-0197.

Illinois Department of Mines and Minerals, Division of Land Reclamation, Southern District Field Office, #2 Coal Development Park, Carterville, Illinois 62918.

Office of Surface Mining Reclamation and Enforcement, 511 West Capitol, Suite 202, Springfield, Illinois 62704.

* * * * *

3. In § 913.15, paragraph (k) is amended by revising amendments 1816.68 and 1817.68 and a new paragraph (1) is added to read as follows:

§ 913.15 Approval of regulatory program amendments.

* * * * *

(k) The following amendments, as submitted to OSM on July 17, 1989, and revised on April 9, 1990, are approved effective August 29, 1990, with the exceptions identified herein. The amendments consist of the following modifications to the Illinois program:

* * * * *

1816.49 Permanent Program Performance Standards for Surface Mining Activities; Impoundments (except for the deferral of the exemption for impoundments of five feet or less in height and twenty acre-feet or less in volume contained in 1816.49(a)(10)(B))

1816.61 Use of Explosives; General Requirements

* * * * *

1816.68 Use of Explosives; Records of Blasting Operations (except the deletion of wind velocity and direction at 62 IAC 1816.68(a)(18) which was disapproved).

* * * * *

1817.68 Use of Explosives; Records of Blasting Operations (except the deletion of wind velocity and direction at 62 IAC 1817.68(a)(18) which was disapproved).

* * * * *

(1) The following amendments submitted to OSM on July 26, 1990, are approved effective May 6, 1991, with the exceptions identified herein. The amendments consist of the following modifications to the Illinois program: Revision of the following regulations of chapter I of title 62 of the Illinois Administrative Code:

1700.11(d), (e) General; Applicability

1761.11(a) Areas Designated by Act of Congress; Areas Where Mining is Prohibited or Limited (except the word "future" is not approved to the extent that it limits the mining prohibition to those corridors established in future guidelines pursuant to the Wild and Scenic Rivers Act)

1761.12 Areas Designated by Act of Congress; Procedures

1772.12(b)(8)(D) Requirements for Coal Exploration; Permit Requirements for Exploration Removing More Than 250 Tons of Coal

1773.15(b)(1) Requirements for Permits and Permit Processing; Review of Permit Applications (except the phrases "as defined in 62 Ill. Adm. Code 1843.11(b)" and "as defined in 62 Ill. Adm. Code 1843.11(a)" are not approved to the extent that these references could limit this provision to cessation orders issued by Illinois)

1773.20(b)(2)(B) Requirements for Permits and Permit Processing; Improvidently Issued Permits: General Procedures

1773.20(c)(2) Requirements for Permits and Permit Processing; Improvidently Issued Permits: General Procedures

1773.21(b) Requirements for Permits and Permit Processing; Improvidently Issued Permits: Rescission Procedures

1778.13(b) Permit Applications; Identification of Interests

1778.13(c)(5) Permit Applications; Identification of Interests

1778.13(i) Permit Applications; Identification of Interests

1778.13(j) Permit Applications; Identification of Interests

1778.14(c) Permit Applications; Violation Information (except to the extent that "the Federal Act" does not include all Federal and State programs under SMCRA)

1778.14(e) Permit Applications; Violation Information

1779.12 Surface Mining Permit Application; General Environmental Resources Information

1779.12(b) Surface Mining Permit Application; General Environmental Resources Information

1780.16(a)(1)(B)(i) Surface Mining Permit Application; Fish and Wildlife Plan

1780.21(f)(3)(C) Surface Mining Permit Application; Hydrologic Information

1780.21(f)(3)(D)(v) Surface Mining Permit Application; Hydrologic Information

1780.31(a)(1) Surface Mining Permit Application; Protection of Public Parks and Historic Places

1780.31(b) Surface Mining Permit Application; Protection of Public Parks and Historic Places

1783.12(b) Underground Mining Permit Applications; General Environmental Resources Information

1784.14(e)(3)(C)(v) Underground Mining Permit Applications; Hydrologic Information

1784.17(a)(1) Underground Mining Permit Applications; Protection of Public Parks and Historic Places

1784.17(b) Underground Mining Permit Applications; Protection of Public Parks and Historic Places

1784.21(a)(1)(B)(i) Underground Mining Permit Applications; Fish and Wildlife Plan

1784.21(a)(2)(C) Underground Mining Permit Applications; Fish and Wildlife Plan (except the references to the Endangered Species Act of 1973 and the Illinois Endangered Species Protection Act are not approved to the extent that they restrict this provision to the two Acts rather than any State or Federal Law)

1800.21(d) Bonding and Insurance Requirements; Collateral Bonds

1800.40(a)(2) Bonding and Insurance Requirements; Requirement to Release Performance Bonds

1800.40(b)(1) Bonding and Insurance Requirements; Requirement to Release Performance Bonds

1800.40(b)(2) Bonding and Insurance Requirements; Requirement to Release Performance Bonds

1800.40(e) Bonding and Insurance Requirements; Requirement to Release Performance Bonds (notification requirement deleted, paragraphs relettered)

1816.49(a)(1) Permanent Program Performance Standards—Surface Mining Activities; Impoundments (except the sentence "30 CFR 77.216 does not include any later editions or amendments" is not approved to the extent that as phrased it limits the provision to an edition of 30 CFR 77.216 that could be outdated at the time of Illinois' promulgation of the regulation).

1816.49(a)(10) Permanent Program Performance Standards—Surface Mining Activities; Impoundments

1816.67 Permanent Program Performance Standards—Surface Mining Activities; Use of Explosives: Control of Adverse Effects

1816.97(b) Permanent Program Performance Standards—Surface Mining Activities; Protection of Fish, Wildlife, and Related Environmental Values

1817.49(a)(1) Permanent Program Performance Standards—Underground Mining Operations; Impoundments (except the sentence "30 CFR 77.216 does not include any later editions or amendments" is not approved to the extent that as phrased it limits the provision to an edition of 30 CFR 77.216 that could be outdated at the time of Illinois' promulgation of the regulation).

1817.49(a)(10) Permanent Program Performance Standards—Underground Mining Operations; Impoundments

1817.66(d) Permanent Program Performance Standards—Underground Mining Operations; Use of Explosives: Blasting Signs, Warnings, and Access Control

1817.67 Permanent Program Performance Standards—Underground Mining Operations; Use of Explosives: Control of Adverse Effects

1817.97(b) Permanent Program Performance Standards—Underground Mining Operations; Protection of Fish, Wildlife, and Related Environmental Values

1843.11 State Enforcement; Cessation Orders

1846.5 Individual Civil Penalties; Definitions

1846.14(a)(3) Individual Civil Penalties; Amount of Individual Civil Penalty

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3. In § 913.16, paragraphs (g), (h), (i), (j) and (k) are added to read as follows:

§ 913.16 Required program amendments.

* * * * *

(g) By August 5, 1991, Illinois shall submit a revision to 62 IAC 1773.15(b)(1) to clarify that this rule applies to all unabated enforcement actions and delinquent civil penalties incurred under any State or Federal program under SMCRA.

(h) By August 5, 1991, Illinois shall submit a revision to 62 IAC 1778.14(c) to clarify that Illinois' reference to SMCRA includes all State and Federal programs approved thereunder.

(i) By August 5, 1991, Illinois shall submit a revision to 62 IAC 1784.21(a)(2)(C) which requires site-specific resource information when the permit or adjacent area is likely to include species requiring special protection under any State or Federal law.

(j) By August 5, 1991, Illinois shall submit a revision to 62 IAC 1816.49(a)(1) to ensure that the State regulation includes reference to the latest edition of 30 CFR 77.216 as of the date of the promulgation of its regulation.

(k) By August 5, 1991, Illinois shall submit a revision to 62 IAC 1817.49(a)(1) to ensure that the State regulation includes reference to the latest edition of 30 CFR 77.216 as of the date of the promulgation of its regulation.

[FR Doc. 91-10254 Filed 5-3-91; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule; list of specially designated nationals of Libya.

SUMMARY: The Libyan Sanctions Regulations are being amended to add a new appendix A, Organizations Determined To Be Within the Term "Government of Libya" (Specially Designated Nationals of Libya), to the end thereof. Part I of appendix A contains the names of companies, banks, and other entities located outside of Libya which the Director of the Office of Foreign Assets Control has determined to be owned or controlled by, or acting or purporting to act directly or indirectly for, the Government of Libya. Part II of appendix A (to be published at a later date) will contain the names of organizations located within Libya which the Director of the Office of Foreign Assets Control has determined to be Specially Designated Nationals of Libya. This list may be expanded or amended at any time.

EFFECTIVE DATE: May 6, 1991.

ADDRESSES: Copies of this list are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Section, Office of Foreign Assets Control, Tel.: (202) 566-5021.

SUPPLEMENTARY INFORMATION: The Libyan Sanctions Regulations, 31 CFR part 550 (the "Regulations"), were issued by the Treasury Department to implement Executive Orders No. 12543 (51 FR 875, Jan. 9, 1986) and 12544 (51 FR 1235, Jan. 10, 1986), in which the President declared a national emergency with respect to Libya, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and ordering specific measures against the Government of Libya. The Regulations were amended by a final rule published in the **Federal Register** (53 FR 5571, Feb. 25, 1988), which clarified the term "Government of Libya."

Section 550.304 of the Regulations, as amended, defines the term "Government of Libya" as follows:

(a) The "Government of Libya" includes:

(1) The state and the Government of Libya, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Libya;

(2) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing;

(3) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing;

(4) Any other person or organization determined by the Secretary of the Treasury to be included within paragraph (a) of this section.

(b) A person specified in paragraph (a)(2) of this section shall not be deemed to fall within the definition of Government of Libya solely by reason of being located in, organized under the laws of, or having its principal place of business in Libya.

Section 550.805 of the Regulation states that: Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12543 may be taken by the Director of the Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority to so act.

Determinations that persons fall within the definition of the "Government of Libya" are effective upon the date of determination by the Director, Office of Foreign Assets Control ("FAC"). Public notice is effective upon the date of publication or upon actual notice, whichever is sooner.

This rule adds appendix A to part 550 to provide public notice of a list of persons, known as "specially designated nationals" of the Government of Libya. Part I of appendix A consists of organizations located outside of Libya which the Director of the Office of Foreign Assets Control has determined are owned or controlled by or are acting or purporting to act directly or indirectly on behalf of the Government of Libya, and which thus fall within the definition of the "Government of Libya" contained in § 550.304(a) of the Regulations. The persons included in appendix A are subject to all prohibitions applicable to other components of the Government of Libya. All unlicensed transactions with such persons, or in property in which they have an interest, are prohibited.

The list of specially designated nationals is a partial one, since FAC may not be aware of all the agencies and officers of the Government of Libya or of all the persons located outside of Libya that might be owned or controlled by the Government of Libya or acting as agents or front organizations for Libya, and which thus qualify as specially designated nationals of the Government of Libya. Therefore, persons engaging in transactions may not rely on the fact that any particular person is not on the specially designated nationals list as evidence that it is not owned or controlled by, or acting or purporting to act directly or indirectly for, the Government of Libya. The Treasury Department regards it as incumbent upon all U.S. persons to take reasonable steps to ascertain for themselves whether persons they enter into transactions with are owned or controlled by the Government of Libya or are acting or purporting to act on its behalf, or on behalf of other countries subject to blocking or transportation-related restrictions (at present, Cambodia, Cuba, Iraq, North Korea, and Vietnam).

Section 206 of the International Emergency Economic Powers Act, 50 U.S.C. 1705, as amended by the Uniform Sentencing Act, 18 U.S.C. 3571 and 3581, provides for civil penalties not to exceed $10,000 per count for violations of the Regulations, fines of up to $250,000 and imprisonment for up to 12 years for willful violations of the Regulations by individuals, and fines of up to $500,000 for organizations.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of subjects in 31 CFR Part 550

Banks, Banking, Foreign trade, Libya, Securities.

For the reasons set forth in the preamble, 31 CFR part 550 is amended as set forth below:

PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for part 550 is revised to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2349aa-8 & -9; 49 U.S.C. 1514; E.O. 12543, 51 FR 875 (Jan. 9, 1986); E.O. 12544, 51 FR 1235 (Jan. 10, 1986).

2. Appendix A to part 550 is added to read as follows:

Appendix A—Organizations Determined to be Within the Term "Government of Libya" (Specially Designated Nationals of Libya)

Part I: Located Outside Libya

1. Al Hambra Holding Company, Madrid, Spain.
2. Arab Libyan Syrian Industrial & Agricultural Investment Co., Damascus, Syria.
3. Arab Real Estate Co. ("Aresco"), Beirut, Lebanon.
4. Arabian Gulf Oil Co. ("Agoco"), Windsor House, 42-50 Victoria Street, London SW1H 0NW, United Kingdom.
5. Asteris S.A. Industrial & Commercial Corporation, Athens, Greece.
6. Banque Arabe Libyenne Burkinabe Pour le Commerce Exterieur et le Developpement 1336 Avenue Nelson Mandela, Ouagadougou, Burkina Faso.
7. Banque Arabe Libyenne Malienne Pour le Commerce Exterieur et le Developpement ("Balima"), P.O. Box 2372, Bamako, Mali.
8. Banque Arabe Libyenne Mauritanienne Pour le Commerce Exterieur et le Developpement ("Balm"), Jamal Abdulnasser Street, P.O. Box 262, Nouakchott, Mauritania.
9. Banque Arabe Libyenne Nigerienne Pour le Commerce Exterieur et le Developpement, P.O. Box 11363, Niamey, Niger.
10. Banque Arabe Libyenne Togolaise du Commerce Exterieur ("Baltex"), P.O. Box 4874, Lome, Togo.
11. Banque Arabe Tuniso-Libyenne de Developpement et de Commerce Exterieur ("B.T.L."), 25 Avenue Kheireddine Pacha, P.O. Box 102, 1002 Le Belvedere, Tunis, Tunisia.
12. Banque Intercontinentale Arabe, 67, Avenue Franklin Roosevelt, 75008 Paris, France.
13. Banque Tchado Arabe Libyenne, P.O. Box 104, N'Djamena, Chad.
14. Compagnie Algero-Libyenne de Transport Maritime ("Caltram"), 21 Rue des Freres Bouadou, Birmandreis, Algiers, Algeria.
15. General Est. for Publication Distribution & Advertising, P.O. Box 113, Beirut, Lebanon.
16. International Holding Co., Luxembourg.
17. The Joint Turkish Libyan Agricultural Livestock Co., Ankara, Turkey.
18. Kaeble & Gmeinder Co., Panknang, Germany.
19. Liberian Libyan Holding Co., Monrovia, Liberia.
20. Libyan Arab Airlines, (numerous branch offices and facilities abroad).
21. Libyan Arab Foreign Investment Co. ("Lafico"), Athens, Greece, Rome, Italy, Malta.
22. The Libyan Arab Maltese Holding Co. Ltd. ("Lamhco"), St. Mark House, Cappuchan Street, Floriana, Malta.
23. The Libyan Arab Uganda Bank for Foreign Trade and Development, P.O. Box 9485, Kampala, Uganda.
24. The Libyan Arab Uganda Holding Co. Ltd. (also known as Uganda Libyan Holding Co. Ltd.), Kampala, Uganda.
25. The Libyan-Greek Investment Co., Athens, Greece.
26. Medisan Limited, R1 6A, Qasam Industrial, Limiti tal Ricasch, Kalkara, Malta.
27. Mediterranean Aviation Co., Ltd., Malta.
28. Mediterranean Sea Oil Services GmbH ("Medoil"), Dusseldorf, Germany.
29. Menil Enstalt Co., Vaduz, Liechtenstein.
30. Metrovia, Switzerland.
31. National Petrochemicals Co. (Libyan), Germany.
32. North Africa Commercial Bank S.A.L. (formerly known as Arab Libyan Tunisian Bank S.A.L.), P.O. Box 9575/11, 1st Floor, Piccadily Centre, Hamra Street, Beirut, Lebanon.
33. Pak-Libyan Holding Co. Ltd., Karachi, Pakistan.
34. Societe Agricole Togolaise Arabe Libyenne, Lome, Togo.
35. Societe Arabe Libyenne-Centrafricaine D'Import-Export, Bangui, Central African Republic.
36. Societe Arabe Libyenne Malienne Pour L'Agriculture et L'Elevage ("Solima"), Bamako, Mali.
37. Societe Arabe Libyenne Mauritanienne des Ressources Maritimes ("Salmaurem"), Nouadhibou, Mauritania.
38. Societe Arabe Libyo-Guineenne Pour le Developpement Agricole et Agro-Industriel ("Salguidia"), Conakry, Guinea.
39. Societe Arabe Libyo-Nigere Pour le Developpement et la Commercialisation des Produits Agricoles, Niamey, Niger.
40. Societe Arabe Libyo-Tunisienne de Transport Maritime, Tunis, Tunisia.
41. Societe D'Economie Mixte Centre Africaine Libyenne des Produits Agricoles, Bangui, Central African Republic.
42. Societe Libyenne Centre Africaine des Mines, Bangui, Central African Republic.
43. Societe Mixte Rwando-Arabe Libyenne de Promotion Hoteliere et Touristique au Rwanda, Kigali, Rwanda.
44. Societe Mixte Rwando Arabe Libyenne Pour le Developpement et la Commercialisation des Produits Agricoles et D'Elevage, Kigali, Rwanda.
45. Societe Togolaise Arabe Libyenne de Peche, Lome, Togo.
46. Tamoil Italiana SpA, Piazzetta Bossi 3, I-20121 Milan, Italy. Cremona Refinery, Italy.
47. Turkish-Libyan Joint Maritime Transport Stock Co., ("Turlib"), Kemeralti Caddesi 99, 80020 Karakoy, Istanbul, Turkey.
48. Umm Al-Jawaby Oil Service Co., Ltd., 33 Cavendish Square, London W1M 9HF, United Kingdom.

Dated: April 25, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: April 26, 1991.

Peter K. Nunez,

Assistant Secretary, (Enforcement).

[FR Doc. 91-10547 Filed 4-30-91; 3:44 pm]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 6

[FRL-3849-1]

RIN 2020-AA16

The Environmental Protection Agency's National Environmental Policy Act Review Procedures for Public and Other Federal Agency Involvement and for Its Office of Research and Development

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending its National Environmental Policy Act (NEPA) regulation in 40 CFR part 6 subpart G which addresses the environmental review procedures for projects conducted by its Office of Research and Development (ORD). The changes to subpart G include: Development of procedures to categor.cally exclude from a full NEPA review those ORD projects normally having no significant impact

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on the environment; listing of ORD projects which normally result in the preparation of environmental assessments (EAs); revision of criteria requiring preparation of environmental impact statements (EISs) on ORD projects; provision to coordinate, where feasible, ORD's NEPA reviews with other EPA program reviews; and general clarification of the NEPA review process for ORD actions.

EPA is also amending subpart D of EPA's NEPA regulations entitled Public and Other Federal Agency Involvement, specifically § 6.400(f), Categorical exclusions. This final rulemaking eliminates the current requirement for public notice of EPA's categorical exclusion determinations for all of EPA's programs except the Wastewater Treatment Construction Grants Program, where it has been beneficial for some activities. Interested persons can still obtain information regarding categorical exclusion determinations by contacting EPA's Office of Research Program Management for ORD actions or Office of Federal Activities for other program actions.

EFFECTIVE DATE: June 5, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph Montgomery, Office of Federal Activities, A-104, U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, DC 20460, phone (202) 475-8793.

SUPPLEMENTARY INFORMATION: On May 4, 1990, EPA published in the **Federal Register** (55 FR 18836) a notice of proposed rulemaking for revisions to its NEPA regulations in 40 CFR part 6 subparts D and G. The current rulemaking finalizes the changes proposed in the earlier notice. These changes include the development of procedures for categorically excluding ORD projects having no significant impact on the environment from preparation of an EA or EIS. As part of the revisions EPA also developed a list of ORD actions which would normally be eligible for categorical exclusion. These are:

(1) Library or literature searches and studies;

(2) Computer studies and activities;

(3) Monitoring and sample collection wherein no significant alteration of existing ambient conditions occurs;

(4) Projects conducted completely within a contained facility, such as a laboratory or other enclosed building where methods are employed for appropriate disposal of laboratory wastes and safeguards exist against hazardous, toxic, and radioactive materials entering the environment. Laboratory directors or other appropriate officials must certify and provide documentation that the laboratory follows good laboratory practices and adheres to applicable federal statutes, regulations and guidelines.

Since an estimated 98 percent of ORD's NEPA reviews are on the types of actions listed above, the changes in the regulation will enable the Agency to now focus its resources on assessing projects that have the potential to significantly affect the environment.

Other changes to the regulations include revision of the criteria requiring preparation of EISs on ORD actions. This was done in order to clarify criteria which, in the past, was vague or confusing to ORD project officers, and to make the criteria more applicable to ORD projects having the potential to significantly affect the environment. As a result of this change, EPA, in deciding whether to prepare an EIS, will focus on the significance of environmental impact as the key determinant, rather than the nature of the activity itself. EPA also developed a list of ORD actions, in § 6.705, which normally result in the preparation of an EA, and included a new provision [in § 6.703(c)] for coordinating ORD NEPA reviews with reviews conducted in other EPA programs. Additionally, the text of subpart G was reformatted to describe more clearly the environmental review process for ORD projects.

This rulemaking also amended § 6.400(f) Categorical exclusions in 40 CFR part 6 subpart D—Public and other Federal Agency Involvement. As previously written, the regulation required applicants to publish notice of EPA's categorical exclusion determinations. It also required the Agency to make documentation of these decisions available to the public and distribute notices of the determinations to all known interested parties. EPA believes that this requirement is unwarranted for most of its actions and places an undue burden on the applicant and the Agency. By this rulemaking, EPA has eliminated the public notice requirement for categorical exclusion determinations in all of EPA's programs except the Wastewater Treatment Construction Grants Program. For this program, the requirement is still in effect because the Agency has found it to be of benefit in obtaining new information on certain projects, such as minor plant expansions.

EPA believes that the changes that have been made in the regulations are consistent with the Council on Environmental Quality's (CEQ) NEPA regulations in 40 CFR parts 1500-1508 and will improve the conduct of EPA's NEPA reviews for ORD actions.

Response to Comments

EPA received comments from two parties in response to the notice of the proposed rulemaking. One party supported the changes that the Agency was proposing in the regulations. The other party disagreed with EPA's proposal to categorically exclude all research conducted in a laboratory or contained building from an EA or EIS review. The individual was concerned that research involving potentially hazardous organisms and requiring "P3 or P4" type of containment procedures would not receive adequate assessment under a categorical exclusion determination nor allow the public to be informed of the research. P3 and P4 procedures are those carried out for the most stringent levels of containment and involve the use of specific laboratory practices, containment equipment and special laboratory design to prevent human and environmental contamination.

EPA has carefully considered this comment. We appreciate the commentor's concern regarding research involving potentially hazardous organisms.

While research conducted in contained facilities is a category of activity which normally does not have a significant effect on the environment, this does not mean that contained research in all cases would necessarily be excluded from the requirement to prepare an EA or EIS. To make a categorical exclusion determination, the ORD project officer must also ensure that the activity does not satisfy the criteria for not granting a categorical exclusion which is listed in EPA's general procedures for implementing NEPA in subpart A, § 6.107(e). Otherwise, an EA or EIS must be prepared. A review of the criteria in § 6.107(e) of the general procedures will be conducted on each project, regardless of whether the project fits the categories listed in § 6.704(b) of the regulations. Moreover, a categorical exclusion determination may later be revoked if the program official, in accordance with § 6.107(c), determines that:

(1) The project no longer meets the requirements for a categorical exclusion because of changes in the project;

(2) There is new evidence that serious local or environmental issues exist; or

(3) Federal, State, local or tribal laws may be violated. If this situation occurred, a full environmental review would have to be conducted on the project.

As a further precaution, EPA shall require laboratory directors to certify and provide documentation that the laboratory uses good laboratory practices and adheres to all applicable federal statutes, regulations and guidelines, such as the National Institutes of Health Guidelines for Research Involving Recombinant DNA Molecules and Resource Conservation and Recovery Act (RCRA) requirements for treatment, storage, and disposal of hazardous wastes. Good laboratory practices include procedures and facility design to address emergencies, and safeguards against hazardous materials accidently entering the environment. To ensure that extramural research is conducted in a safe manner, ORD will continue its practice of having project officers make periodic visits to the research facility. Given these considerations, we believe that research eligible to be categorically excluded from a full NEPA review poses little or no risk to the environment.

EPA also believes that, because the ORD actions normally eligible for categorical exclusion pose little or no risk to the environment, there is no need to provide public notice of its categorical exclusion determinations. While this requirement has been eliminated in this rulemaking for most of the EPA actions that are categorically excluded, the public can still obtain information about these determinations upon request to the Agency.

In the final rule EPA has made minor modifications to language in the notice of proposed rulemaking at § 6.706(a) which sets out criteria for preparation on an EIS. 6.706(a)(2) was re-written to make it more clear. Section 6.706(a)(3) and (5) were modified to use language consistent to that set out in the CEQ NEPA regulations at 40 CFR part 1508.27.

EPA has determined that the rulemaking is not a "major rule" under Executive Order 12291. Consequently, no regulatory impact analysis was prepared. Also, under the criteria of the Regulatory Flexibility Act, this rulemaking would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 6 Subparts D and G

Environmental impact statements.

Dated: April 29, 1991.

Acting Administrator, Environmental Protection Agency.

For the reasons set out in the preamble title 40 part 6 subparts D and G of the Code of Federal Regulations are amended as follows:

Subpart D—[Amended]

1. The authority citation for part 6 continues to read as follows:

Authority: Secs. 101, 102, and 103 of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); also, the Council on Environmental Quality Regulations dated Nov. 29, 1978 (40 CFR part 1500).

2. Section 6.400 is amended by revising paragraph (f) to read as follows:

§ 6.400 Public involvement.

* * * * *

(f) *Categorical exclusions.* (1) For categorical exclusion determinations under subpart E (Wastewater Treatment Construction Grants Program), an applicant who files for and receives a determination of categorical exclusion under § 6.107(a), or has one rescinded under § 6.107(c), shall publish a notice indicating the determination of eligibility or rescission in a local newspaper of community-wide circulation and indicate the availability of the supporting documentation for public inspection. The responsible official shall, concurrent with the publication of the notice, make the documentation as outlined in § 6.107(b) available to the public and distribute the notice of the determination to all known interested parties.

(2) For categorical exclusion determinations under other subparts of this regulation, no public notice need be issued; however, information regarding these determinations may be obtained by contacting the U.S. Environmental Protection Agency's Office of Research Program Management for ORD actions, or the Office of Federal Activities for other program actions.

3. Subpart G is revised in its entirety to read as follows:

Subpart G—Environmental Review Procedures for Office of Research and Development Projects

Sec.
6.700 Purpose
6.701 Definition
6.702 Applicability
6.703 General
6.704 Categorical exclusions
6.705 Environmental assessment and finding of no significant impact
6.706 Environmental impact statement

Subpart G—Environmental Review Procedures for Office of Research and Development Projects

§ 6.700 Purpose.

(a) This subpart amplifies the requirements described in subparts A through D by providing specific environmental review procedures for activities undertaken or funded by the Office of Research and Development (ORD).

(b) The ORD Program provides scientific support for setting environmental standards as well as the technology needed to prevent, monitor and control pollution. Intramural research is conducted at EPA laboratories and field stations throughout the United States. Extramural research is implemented through grants, cooperative agreements, and contracts. The majority of ORD's research is conducted within the confines of laboratories. Outdoor research includes monitoring, sampling, and environmental stress and ecological effects studies.

§ 6.701 Definition.

The term *appropriate program* official means the official at each decision level within ORD to whom the Assistant Administrator has delegated responsibility for carrying out the environmental review process.

§ 6.702 Applicability.

The requirements of this subpart apply to administrative actions undertaken to approve intramural and extramural projects under the purview of ORD.

§ 6.703 General.

(a) *Environmental information.* (1) For intramural research projects, information necessary to perform the environmental review shall be obtained by the appropriate program official.

(2) For extramural research projects, environmental information documents shall be submitted to EPA by applicants to facilitate the Agency's environmental review process. Guidance on environmental information documents shall be included in all assistance application kits and in contract proposal instructions. If there is a question concerning the preparation of an environmental information document, the applicant should consult with the project officer or contract officer for guidance.

(b) *Environmental review.* The diagram in figure 1 represents the various stages of the environmental review process to be undertaken for ORD projects.

(1) For intramural research projects, an environmental review will be performed for each laboratory's projects at the start of the planning year. The review will be conducted before projects are incorporated into the ORD program planning system. Projects added at a

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later date and, therefore, not identified at the start of the planning year, or any redirection of a project that could have significant environmental effects, also will be subjected to an environmental review. This review will be performed in accordance with the process set forth in this subpart and depicted in figure 1.

(2) For extramural research projects, the environmental review shall be conducted before an initial or continuing award is made. The appropriate program official will perform the environmental review in accordance with the process set forth in this subpart and depicted in figure 1. EPA form 5300-23 will be used to document categorical exclusion determinations or, with appropriate supporting analysis, as the environmental assessment (EA). The completed form 5300-23 and any finding of no significant impact (FNSI) or environmental impact statement (EIS) will be submitted with the proposal package to the appropriate EPA assistance or contract office.

(c) *Agency coordination.* In order to avoid duplication of effort and ensure consistency throughout the Agency, environmental reviews of ORD projects will be coordinated, as appropriate and feasible, with reviews performed by other program offices. Technical support documents prepared for reviews in other EPA programs may be adopted for use in ORD's environmental reviews and supplemented, as appropriate.

§ 6.704 Categorical exclusions.

(a) At the beginning of the environmental review process (see Figure 1), the appropriate program official shall determine whether an ORD project can be categorically excluded from the substantive requirements of a NEPA review. This determination shall be based on general criteria in § 6.107(d) and specialized categories of ORD actions eligible for exclusion in § 6.704(b). If the appropriate program official determines that an ORD project is consistent with the general criteria and any of the specialized categories of eligible activities, and does not satisfy the criteria in § 6.107(e) for not granting a categorical exclusion, then this finding shall be documented and no further action shall be required. A categorical exclusion shall be revoked by the appropriate program official if it is determined that the project meets the criteria for revocation in § 6.107(c). Projects that fail to qualify for categorical exclusion or for which categorical exclusion has been revoked must undergo full environmental review in accordance with § 6.705 and § 6.706.

(b) The following specialized categories of ORD actions are eligible for categorical exclusion from a detailed NEPA review:

(1) Library or literature searches and studies;

(2) Computer studies and activities;

(3) Monitoring and sample collection wherein no significant alteration of existing ambient conditions occurs;

(4) Projects conducted completely within a contained facility, such as a laboratory or other enclosed building, where methods are employed for appropriate disposal of laboratory wastes and safeguards exist against hazardous, toxic, and radioactive materials entering the environment. Laboratory directors or other appropriate officials must certify and provide documentation that the laboratory follows good laboratory practices and adheres to applicable federal statutes, regulations and guidelines.

§ 6.705 Environmental assessment and finding of no significant impact.

(a) When a project does not meet any of the criteria for categorical exclusion, the appropriate program official shall undertake an environmental assessment in accordance with 40 CFR 1508.9 in order to determine whether an EIS is required or if a FNSI can be made. ORD projects which normally result in the preparation of an EA include the following:

(1) Initial field demonstration of a new technology;

(2) Field trials of a new product or new uses of an existing technology;

(3) Alteration of a local habitat by physical or chemical means.

(b) If the environmental assessment reveals that the research is not anticipated to have a significant impact on the environment, the appropriate program official shall prepare a FNSI in accordance with § 6.105(f). Pursuant to § 6.400(d), no administrative action will be taken on a project until the prescribed 30-day comment period for a FNSI has elapsed and the Agency has fully considered all comments.

(c) On actions involving potentially significant impacts on the environment, a FNSI may be prepared if changes have been made in the proposed action to eliminate any significant impacts. These changes must be documented in the proposal and in the FNSI.

(d) If the environmental assessment reveals that the research may have a significant impact on the environment, an EIS must be prepared. The appropriate program official may make a determination that an EIS is necessary without preparing a formal environmental assessment. This determination may be made by applying the criteria for preparation of an EIS in § 6.706.

§ 6.706 Environmental impact statement.

(a) *Criteria for preparation.* In performing the environmental review, the appropriate program official shall assure that an EIS is prepared when any of the conditions under § 6.106 (a) through (g) exist or when:

(1) The proposed action may significantly affect the environment through the release of radioactive, hazardous or toxic substances;

(2) The proposed action, through the release of an organism or organisms, may involve environmental effects which are significant;

(3) The proposed action involves effects upon the environment which are likely to be highly controversial;

(4) The proposed action involves environmental effects which may accumulate over time or combine with effects of other actions to create impacts which are significant;

(5) The proposed action involves uncertain environmental effects or highly unique environmental risks which may be significant.

(b) *ORD actions which may require preparation of an EIS.* There are no ORD actions which normally require the preparation of an EIS. However, each ORD project will be evaluated using the EIS criteria as stated in § 6.706(a) to determine whether an EIS must be prepared.

(c) *Notice of intent.* (1) If the environmental review reveals that a proposed action may have a significant effect on the environment and this effec cannot be eliminated by redirection of the research or other means, the appropriate program official shall issue a notice of intent to prepare an EIS pursuant to § 6.400(b).

(2) As soon as possible after release of the notice of intent, the appropriate program official shall ensure that a draft EIS is prepared in accordance with subpart B and that the public is involved in accordance with subpart D.

(3) Draft and final EISs shall be sent to the Assistant Administrator for ORD for approval.

(4) Pursuant to § 6.401(b), a decision on whether to undertake or fund a project must be made in conformance with the time frames indicated.

(d) *Record of decision.* Before the project is undertaken or funded, the appropriate program official shall prepare, in accordance with § 6.105 (g) and (h), a record of decision in any case where a final EIS has been issued.

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Figure 1. Environmental review process for ORD projects.

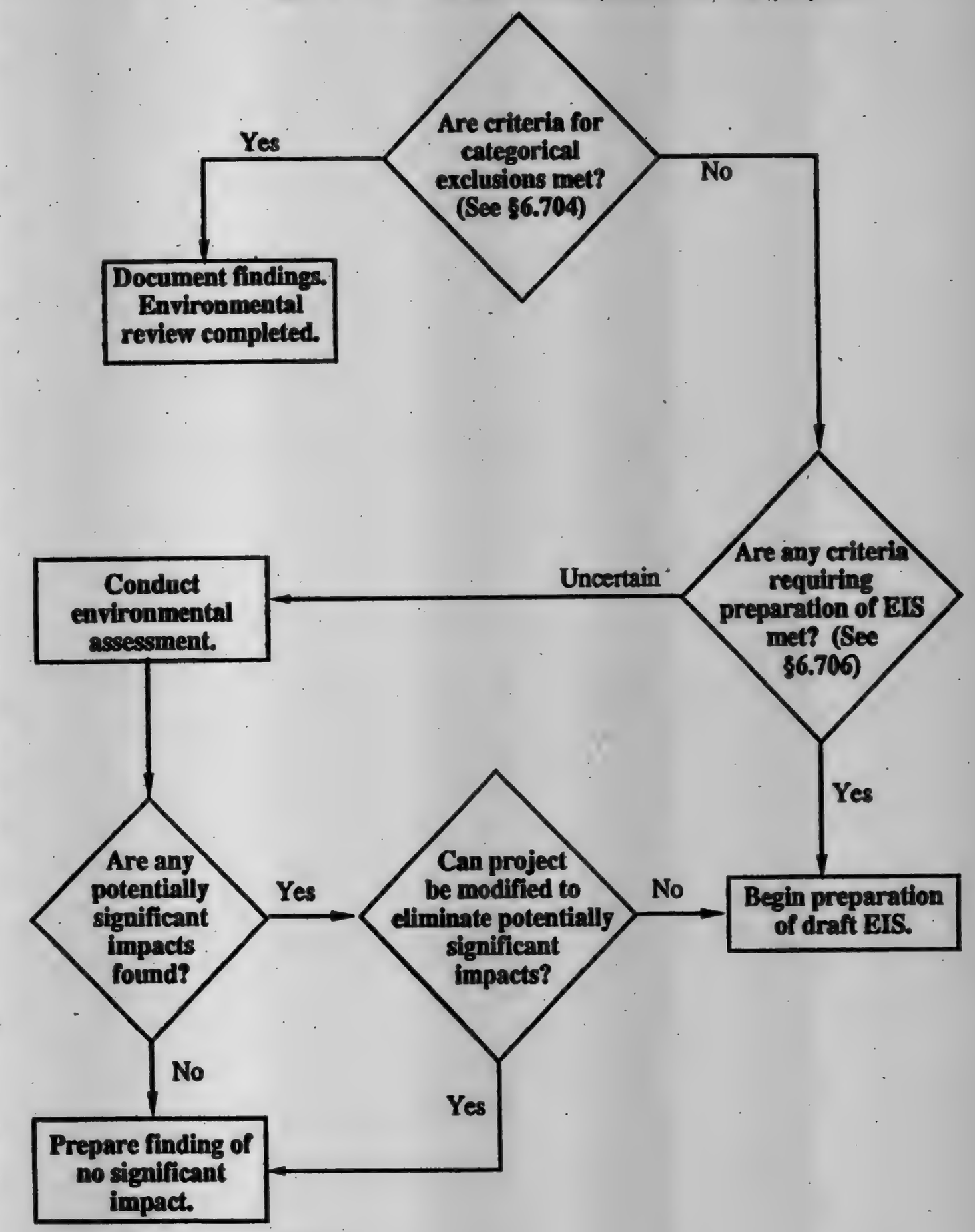

[FR Doc. 91-10609 Filed 5-3-91; 8:45 am]

BILLING CODE 6560-50-C

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40 CFR Part 80

[FRL-3914-6]

RIN 2060-AC93

Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Year 1991

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: Today's action promulgates a revision of the Phase I federal gasoline and alcohol blend volatility regulations which were promulgated on March 22, 1989 (54 FR 11886). This revision applies only to the State of Texas during the summer of 1991. The current rule requires eastern Texas to comply with a Reid Vapor Pressure (RVP) standard in most summer months that is different from that required for western Texas. This action promulgates a revision to provide a uniform set of RVP standards for the entire state for June through August, 1991. The RVP standard for eastern Texas during the month of May will change from 10.5 pounds per square inch (psi) to 9.5 psi. During the months of June, July, and August the RVP standard will change from 9.5 psi to 9.0 psi. This revision is in response to a petition submitted to EPA by the Texas Oil Marketers Association (TOMA) requesting that EPA reconsider the federal Phase I RVP standards for Texas.

EFFECTIVE DATE: This regulation becomes effective on June 5, 1991.

ADDRESSES: Materials relevant to this rulemaking have been placed in Docket A-90-17 by EPA. The docket is located at Air Docket (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, in room M-1500 Waterside Mall and may be inspected from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Alfonse Mannato, (202) 382-2640.

SUPPLEMENTARY INFORMATION:

Introduction

This notice describes EPA's decision to revise the RVP standard for the Eastern part of Texas from May 1 to September 15, 1991. The remainder of this preamble will be divided into three sections. The first provides the background for this action, with respect to chronology and broad issues involved. The second section presents todey's action and EPA's rationale. The third section summarizes the comments received on the proposed action and EPA's responses to them.

Background

On August 19, 1987, the Agency proposed a two-phase reduction in summertime gasoline volatility (52 FR 31274). On March 22, 1989 (54 FR 11886), EPA published a notice of final rulemaking promulgating Phase I of these volatility control regulations. These Phase I regulations included a list of applicable standards for geographical areas throughout the 48 contiguous states for the period of May 1 through September 15, effective June 1, 1989 [1].

In the final rule for the Phase I program, the State of Texas was divided along the 99th degree meridian of longitude in accordance with the geographical classification scheme historically used by the American Society of Testing and Materials (ASTM) to designate volatility classes. Prior to promulgation, no comments were received concerning the proposed division of Texas into two RVP regions.

In the summer of 1989 there was an exchange of correspondence between the State of Texas, TOMA and EPA regarding the perceived problems created in Texas by the division of the state into two volatility classes. In fact TOMA requested, in a letter dated July 10, 1989, that the border within Texas be moved westward to approximately the 105° meridian of longitude. EPA was unable to resolve this issue during the 1989 volatility season. Although there were no reports of severe supply shortages, a number of supply and pricing distortions were reported. (See public docket.)

On December 8, 1989 the Texas Air Control Board adopted reduced volatility standards for the nine-county region in the Dallas/Fort Worth area of 9.0 psi for the period May 1 through September 16. (This 9.0 psi standard is equivalent to the June, July and August federal Phase I standards for West Texas.) On April 30, 1990, (55 FR 18005), EPA proposed to approve, and on August 3, 1990 (55 FR 31584) EPA approved the State RVP regulation for the Dallas area as a State Implementation Plan (SIP) revision. Under section 211(c)(4)(A) of the Clean Air Act (the Act), EPA's national RVP regulations preempt state RVP regulation which are not identical to EPA's regulation. However, section 211(c)(4)(C) of the Act provides for approval of state control of fuel or fuel additives if the control is part of the SIP and is necessary to achieve the primary or secondary National Ambient Air Quality Standard which the plan implements. In a letter dated January 26, 1990, TOMA asserted that this adoption of the 9.0 psi standard for the Dallas/Fort Worth area would further complicate the distribution and pricing situation for gasoline in Texas.

On March 8, 1990, EPA wrote a letter to William P. Clements, Jr., Governor of Texas, conveying the concerns that had been raised regarding the division of the State of Texas by the current violatility standards for the summer months. In the letter, EPA referred to correspondence submitted to the Agency from TOMA which stressed concern that the division within the State in the RVP standard would lead to gasoline shortages and/or distribution problems and higher prices. On March 28, 1990, Governor Clements responded to EPA stating his belief that a single set of RVP standards for the State would be in the best interest of Texas consumers.

In a letter dated April 26, 1990, TOMA reiterated its concerns regarding the problems with the division of the State of Texas in the volatility program. In that letter, TOMA petitioned EPA to take action immediately to establish a uniform volatility standard for Texas, requesting that the more stringent Phase I standard applicable to West Texas be applied to the entire state.

On June 11, 1990, EPA published a notice of final rulemaking promulgating Phase II of a two-phase nationwide reduction in summertime commercial gasoline volatility (55 FR 23658). These standards will take effect in the summer of 1992.[2] The Phase II standards are not based on the traditional ASTM boundaries, which split various states into separate areas. This change was intended to simplify the program in order to make enforcement and compliance easier and to reduce the likelihood of intrastate "border issues" such as the one this rulemaking is addressing. Also, the Phase II regulations provide a mechanism for changes to state standards based on unique localized impacts created by the federal standards. Beginning in 1992, the current Phase II standards for the entire State of Texas will be 9.0 psi in May and 7.8 psi for June through September 15. The revisions to Phase I volatility standards for eastern Texas adopted today were proposed on September 25, 1990 (55 FR 39169).

[1] In 1989, the standards did not go into effect until June 1.

[2] In a separate rulemaking, EPA will revise the Phase II regulations to implement the provisions of section 216 of the Clean Air Act Amendments of 1990, Public Law 101-549 (November 15, 1990). Today's revisions are limited to the 1991 RVP season and do not change the Phase II regulations.

A Description of Today's Action

EPA believes that there will be environmental benefits associated with the reduction of volatility levels proposed in this rulemaking. The level of benefits are discussed in the approved Texas SIP referenced above (see 55 FR 18005). While there will be some incremental costs associated with the production of the lower volatility gasoline, these costs will be small and may be offset by the elimination of inequities in the local market which were created by the dual standards. As noted earlier, both the State of Texas and local gasoline marketers support today's action. In fact, there was no opposition to today's action at either the public hearing on November 14, 1990 or in written comments.

EPA has reviewed TOMA's petition and has found that the request to apply a uniform set of RVP standards throughout Texas is appropriate because of the concerns raised by many refiners, jobbers and citizens regarding gasoline production, transportation and availability along the 99th meridian of longitude, stemming from the difference in Phase I RVP standards east and west of this meridian. In addition, there will be environmental benefits from this reduction in volatility as previously discussed. Today's action will revise the Phase I volatility standards to make the same set of standards applicable to the whole state, effective for 1991. Specifically, for the part of Texas east of the 99th degree meridian of longitude, today's action changes the Federal phase I RVP standard for the month of May from 10.5 psi to 9.5 psi, and for the months of June, July and August from 9.5 psi to 9.0 psi. Because 1991 is the only remaining year of the Phase I program, these standards are applicable only for calendar year 1991. Beginning in the summer of 1992, the federal standards promulgated for the phase II program will apply; this rulemaking action in no way affects the phase II program.

Because of the existence of the approved state standard of 9.0 psi in the nine-county Dallas/Fort Worth area, whenever the State standard is more stringent than the applicable Federal standard, the State standard will be fully enforceable by the State. Therefore, although this action is finalized and will be effective for the 1991 volatility season, the more stringent state standard for May 1991 and for the period from September 1 through September 16, 1991, will be in effect, unless revised by the State.

Summary of Public Comments and EPA's Responses

(1) *Comment:* One commenter supported the new rule citing the differences in the production of a lower RVP gasoline and cost differentials across the State of Texas. Also, price differentials have caused many marketers requiring a lower RVP to purchase the gasoline farther away, thereby incurring a greater cost for time and transportation. This created a financial disadvantage.

Response: EPA agrees with the commenter by proposing this final rule.

(2) *Comment:* A commenter supported a single volatility level for the state of Texas, however, the higher standard of 9.5 psi. was preferred. No economic or environmental reasons were provided for this preference.

Response: EPA acknowledges that although a single volatility level is desirable, the standard should be the lower RVP level for the 1991 volatility season to achieve the environmental benefit previously discussed.

(3) *Comment:* A commenter was concerned that gasoline marketers in neighboring states with higher RVP standards would be prevented from exporting their product into Texas. No economic or other reasons were provided to support this concern.

Response: EPA feels that this concern is speculative in nature, and does not change EPA's view that a single volatility level across Texas is a proper response to the problems previously discussed. Border issues such as these are not unique to the Texas volatility standard, they occur anywhere there is a dividing line between two volatility classes.

Administrative Requirements

Under Executive Order (E.O.) 12291, EPA must judge whether an action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed action is not major because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The effects of this action are to establish a uniform set of volatility standards throughout Texas for 1991. While there will be some incremental costs associated with the production of the lower volatility gasoline, these costs will be small and may be offset by the elimination of inequities in the local market which were created by the dual standards. Under these circumstances, this proposed rule is not likely to result in the conditions described in E.O. 12291.

This regulation was submitted to the Office of Management and Budget (OMB) for review under E.O. 12291. Any written comments from OMB have been placed in the rulemaking docket.

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, I certify that the regulatory revision promulgated in this notice will not have a significant adverse impact on a substantial number of small entities. The regulatory revision should have little economic impact. Therefore, a regulatory flexibility analysis has not been prepared.

This rulemaking does not include any new information collection requirements. Information collection requirements in the regulations promulgated on March 22, 1989, were approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and have been assigned OMB control number 2060-0178.

Authority for the action promulgated in this notice is granted to EPA by sections 114, 211, and 301 of the Clean Air Act (42 U.S.C. 7414, 7545, and 7601).

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Motor vehicles pollution, Penalties, Reporting and recordkeeping requirements.

Dated: April 30, 1991.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545, and 7601(a).

2. In § 80.27(a) the table is amended by revising under the Texas heading the first entry, "East of 99° Longitude," to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

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APPLICABLE STANDARDS [1]

[(1) 1990–1991]

State	May	June	July	Aug.	Sept.
*	*	*	*	*	*
Texas: East of 99° Longitude	9.5	9.0	9.0	9.0	9.5
*	*	*	*	*	*

[1] Standards are expressed in pounds per square inch (psi).

[FR Doc. 91–10612 Filed 5–3–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 228

[FRL–3953–9]

Ocean Dumping; Cancellation of Site Designation; Key West, FL

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today cancels the interim designation of an ocean dumping site for the disposal of dredged material offshore Key West, Florida. This action is being taken because there is no clear future need for this site. The site will be removed from the list of "Approved Interim Dumping Sites" in 40 CFR 228.12(a)(3), which includes dredged material and non-dredged material ocean dumping sites.

DATES: This cancellation shall become effective on June 5, 1991.

ADDRESSES: Mr. Robert B. Howard, U.S. Environmental Protection Agency/Region IV, Water Management Division, Water Quality Management Branch, Wetlands and Coastal Programs Section, Coastal Programs Unit, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Howard (404) 347–2126 or FTS 257–2126.

SUPPLEMENTARY INFORMATION: EPA published revised "Ocean Dumping Regulations and Criteria" in the Federal Register on January 11, 1977 (42 FR 2462 et seq.). Section 228.12 contains a list of "Approved Interim Dumping Sites" and "Approved Dumping Sites."

This list was amended on December 9, 1980 (45 FR 81042 et seq.) to extend the interim designation of some ocean dumping sites and cancel the designation of six industrial sites and one dredged material site. At that time, EPA stated its intention to identify additional ocean dumping sites for which there is no projected future need. One such site offshore Key West, Florida, has now been identified, and EPA is cancelling the interim designation of this site based upon EPA's evaluation of information from the U.S. Army Corps of Engineers (COE), Jacksonville District. According to the Jacksonville District, the site has never been used and there is no work, new or maintenance, envisaged for the Key West, Florida area. Any future dredging that may be required would be in the event of an emergency (e.g., hurricane). Such disposal of dredged material is best handled by the COE's Section 103 Designation authority provided in the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended. The use of significant resources for studying, designating, monitoring and managing an EPA section 102 (MPRSA) ocean dumping site for the disposal of dredged material offshore Key West, Florida is presently unwarranted based upon the absence of any past or reasonably foreseeable need for ocean disposal of significant volumes of dredged material.

EPA proposed cancellation of the designation of this site on July 10, 1990 (55 FR 28235). The public comment period expired on August 9, 1990. Only one letter was received commenting on the proposed cancellation of the Key West site. The letter, from the Key West Bar Pilots, stated that the site was needed because maintenance dredging of the local channels would eventually be necessary and that upland alternatives were not available. While EPA does not disagree that ocean disposal of dredged materials may be necessary in the future, the infrequency and uncertainty of dredging for this area does not justify an EPA section 102 ocean dumping site (as discussed above). Such events should be handled under the section 103 authority granted to the COE for one-time use.

The site with its identifying coordinates is:

Key West, FL

24°27'24" N., 81°45'36" W.
24°27'24" N., 81°44'32" W.
24°26'20" N., 81°44'32" W.
24°26'20" N., 81°45'36" W.

The cancellation of this site as an EPA interim-approved ocean dumping site is being published (per 40 CFR 228.11(a)) as final rulemaking.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis.

EPA has determined that this action will not have a significant impact on small entities. No small entities are using or, as far as EPA is aware, are planning to use this site in the near future. Furthermore, the cancellation of this site designation will have no effect on the economy or cause any of the other effects which would result in its being classified as a "major" action. Consequently, this action does not necessitate the preparation of a Regulatory Flexibility Analysis or Regulatory Impact Analysis.

This final rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Patrick M. Tobin,
Acting Regional Administrator.

In consideration of the foregoing, part 228 of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

§ 228.12 [Amended]

2. Section 228.12 is amended by removing the "Key West" entry from the list of "Dredged Material Sites," in paragraph (a)(3).

[FR Doc. 91–10613 Filed 5–3–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 250

[SWH–FRL–3954–2]

Guideline for Federal Procurement of Paper and Paper Products Containing Recovered Materials

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has issued a series of guidelines designed to encourage Federal government's use of products containing materials recovered from solid waste. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), as amended, 42 U.S.C. 6962, states that if a procuring agency purchases items designated in EPA's guidelines, such items must be composed of the highest percentage of recovered materials practicable. EPA is required to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002.

On June 22, 1988, EPA published a guideline for purchasing recycled paper and paper products (40 CFR part 250; 53 FR 23546). The guideline included a general discussion of the factors affecting the availability and relative price of recycled paper and paper products but did not provide detailed information. Today EPA is announcing how and where interested persons can obtain detailed information about the availability and price of recycled paper and paper products covered by the guideline.

ADDRESSES: The public docket for this notice is located in room M–2427 (Mail code OS–305) of the U.S. EPA, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9 am to 4 pm, Monday through Friday, excluding holidays. To review docket materials, the public must make an appointment by calling (202) 475–9327. Refer to docket F–91–PPGA–FFFFF.

Materials may be copied from any regulatory docket at a cost of 15 cents per page. Copying totaling less than $15 (100 pages) is free.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Procurement Guidelines Hotline, (703) 941–4452. For technical information, contact Terry Grist, Office of Solid Waste (OS–301), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone: (202) 475–8518.

SUPPLEMENTARY INFORMATION:

I. Background

Section 6002 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6962, requires each procuring agency subject to the statute to procure certain items composed of the highest percentage of recovered materials practicable. The U.S. Environmental Protection Agency (EPA) is responsible for preparing guidelines to assist procuring agencies in meeting the statutory requirements and to provide information on recovered materials. These guidelines must designate items which are or can be produced with recovered materials and whose procurement will carry out the objectives of section 6002.

Section 6002(d)(2) provides that within one year after the publication of an EPA guideline, Federal procuring agencies must assure that their specifications for the items designated by the guideline require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the designated items. In addition, section 6002(i) requires each procuring agency to develop an affirmative procurement program for procuring the designated items. The program must: (1) Assure that items composed of recovered materials will be purchased to the maximum extent practicable, (2) be consistent with applicable provisions of Federal procurement law, and (3) contain at least the following four elements:

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) Procedures for requiring estimates, certification, and verification of recovered material content; and

(4) Annual review and monitoring of the effectiveness of the procurement program.

EPA's guidelines provide recommendations for specification revisions and for establishing an affirmative procurement program. In addition, section 6002(e) requires EPA to provide information as to availability and relative price of products containing recovered materials.

To date, EPA has published guidelines for five items: cement and concrete containing fly ash (40 CFR part 249, 48 FR 4249, January 28, 1983), paper and paper products (40 CFR part 250, 53 FR 23546, June 22, 1988), re-refined lubricating oil (40 CFR part 252, 53 FR 24699, June 30, 1988), retread tires (40 CFR part 253, 53 FR 46588, November 17, 1988), and building insulation products (40 CFR part 248, 54 FR 7328, February 17, 1989).

The guideline for purchasing recycled paper and paper products included a general discussion of the factors affecting the availability and relative price of recycled paper and paper products but did not provide detailed information. EPA noted that price and availability vary significantly over short periods of time and that, therefore, such information "would not remain accurate long enough * * * to be useful in a guideline." (53 FR 23559).

EPA's guideline was challenged by the National Recycling Coalition and the Environmental Defense Fund. In *National Recycling Coalition, Inc. and Environmental Defense Fund, Inc.* v. *Reilly*, D.C. Dir. No. 88–1511, EPA was directed to amend the guideline by including a reference to where and how interested parties can obtain price and availability information. Today EPA is providing this additional information.

II. Variability of Pricing Information

Price and availability of paper and paper products, whether virgin or recycled, are affected by many variables, including grade, brightness, size, basis weight, color, finish, quantity, distributor mark-up, and freight charges. In addition, price and availability vary depending on whether the paper is a stock item or requires a special order. Price and availability of recycled paper and paper products also are affected by the geographic location of the purchaser because these products are not uniformly readily available throughout the United States. Therefore, the best sources of current price and availability information for specific quantities of specific grades to be delivered to specific locations are the paper mills and paper product vendors.

Relative prices of recycled paper and paper products compared to prices of comparable virgin paper and paper products also vary. Some paper grades are almost always cheaper when containing recovered materials, while others are more expensive. For example, in the late summer of 1990, prices of truckload quantities of recycled text and cover grades, on average, were 10 percent lower than virgin text and cover grades. During the same time period, prices of truckload quantities of recycled commodity offset paper were 8–15 percent higher than virgin commodity offset paper. While these figures represent national averages, the prices actually paid in any part of the United States could be different depending upon such additional factors as freight charges and distributor mark-ups.

III. Sources of Information

EPA has developed lists of mills claiming that they produce paper and paper products that meet the minimum content standards recommended in the paper guideline. EPA also has developed national and regional lists of vendors claiming that they can supply recycled printing and writing papers meeting the recommended minimum content standards. These lists are updated periodically as new sources are identified and mills/vendors offer additional products. Procuring agencies should contact the mills and vendors to discuss their specific needs and to obtain detailed information on the price and availability of paper and paper products meeting those needs. To assist procuring agencies, the lists of mills and vendors are available at no charge by calling the Procurement Guidelines Hotline at (703) 941–4452. They also can

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be reviewed in the RCRA public docket, which is located at EPA headquarters in Washington, DC. The address for the docket and procedures for reviewing and copying information are described above under "ADDRESSES". The docket number is F-91-PPGA-FFFFF.

In addition to EPA's mills and vendors lists, there are other publicly available sources of information about recycled paper mills and vendors. For example, the Official Recycled Products Guide (RPG) was established in March 1989 to provide a broad range of information on recycled products. Listings include product, company name, address, contact, telephone, fax, type of company (manufacturer or distributor), and minimum recycled content. As with EPA's lists, price information is not included. The RPG is available on a subscription basis from American Recycling Market Inc., 1-800-267-0707.

State and local recycling programs are a potential source of information on local distributors, product price, and availability. In addition, state and local government purchasing offices that are contracting for recycled paper and paper products should have price and availability information. A list of state purchasing/procurement officials has been placed in the docket for this notice and will be updated periodically. Table 1 lists those states with recycled product procurement laws, executive orders and resolutions as of October 1, 1990.

In December of 1990, the American Paper Institute (API) published the first edition of its PaperMatcher directory. This document is intended to be a directory of paper recycling resources that serve as markets for recovered waste paper. The document provides lists of U.S. mills that use waste paper in their papermaking processes; waste paper dealers located throughout the United States; and U.S. recycling centers. Copies of the PaperMatcher directory are available from the API's Solid Waste Resource Center at 1-800-878-8878.

Dated: April 19, 1990.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

TABLE 1—STATES WITH RECYCLED PRODUCTS PROCUREMENT PROGRAMS

State	Law	Basis of Program	
		Executive Order	Resolution
Alaska	X		
Arizona	X		
California	X		
Colorado	X	X	
Connecticut	X		
Dist. of Columbia	X		
Florida	X		
Georgia	X		
Hawaii	X		
Illinois	X	X	
Indiana	X		
Iowa	X	X	
Kansas		X	
Kentucky		X	
Louisiana	X		
Maine	X		
Maryland	X		
Massachusetts	X	X	
Michigan	X	X	
Minnesota	X		
Mississippi	X		
Missouri	X		
Nebraska		X	
New Hampshire	X		
New Jersey	X		
New Mexico	X		
New York	X		
North Carolina	X		
North Dakota	X		
Ohio	X	X	
Oklahoma	X		
Oregon	X		
Pennsylvania	X		
Rhode Island	X		
Tennessee	X		
Texas	X		
Utah			X
Vermont	X		
Virginia	X		
Washington	X		
West Virginia	X		
Wisconsin	X		

Source: American Paper Institute; Richard Keller, Northeast Maryland Waste Disposal Authority; and E.H. Pechan & Associates.

[FR Doc. 91-10610 Filed 5-3-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6856

[OR-943-4214-10; GP1-059; OR-10686]

Withdrawal of National Forest System Lands for the Abbott Creek Research Natural Area, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 2,760.94 acres of National Forest System land in the Rogue River National Forest from mining for a period of 20 years for use by the Forest Service for the Abbott Creek Research Natural Area. The land has been and will remain open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2), but not from leasing under the mineral leasing laws, to protect the U.S. Forest Service's research natural area:

Willamette Meridian

Rogue River National Forest

T. 30 S., R. 2 E.,
- Sec. 23, that portion of the E½ located southerly of the divide between the Rogue River and Umpqua National Forests;
- Sec. 24, that portion of said section located southerly of the divide between the Rogue River and Umpqua National Forests;
- Sec. 25, N½, N½SW¼, N½SW¼SW¼, SE¼SW¼SW¼, SE¼SW¼, and SE¼;
- Sec. 26, N½NE¼, N½SE¼NE¼, and SE¼SE¼NE¼;
- Sec. 36, lot 4, E½ of lot 3, E½NE¼, N½NW¼NE¼, SE¼NW¼NE¼, E½SW¼NE¼, NE¼SE¼, and E½NW¼SE¼.

T. 30 S., R. 3 E.,
- Sec. 19, lots 3, 5, 6, 7, and 8, NW¼SE¼SW¼, S½SE¼SW¼, that portion of lot 2 located southerly of the divide between the Rogue River and Umpqua National Forests, and the W½ of lot 4;
- Sec. 30, lots 1 to 8, inclusive, SW¼NW¼NE¼, W½SW¼NE¼, E½W½, and W½W½SE¼;
- Sec. 31, lots 1 to 10, inclusive, W½W½NE¼, E½NW¼, NE¼SW¼, and NW¼SE¼.

The area described contains approximately 2,760.94 acres in Douglas and Jackson Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review

conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: April 26, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-10620 Filed 5-3-91; 8:45 am]

BILLING CODE 4310-33-M

43 CFR Public Land Order 6857

[OR-943-4214-10; GP1-027; OR-10687]

Withdrawal of National Forest System Lands for the Squaw Lakes Recreation Area, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 540 acres of National Forest System lands in the Rogue River National Forest from mining for a period of 20 years for use by the Forest Service for the Squaw Lakes Recreation Area. The lands have been and remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2), but not from leasing under the mineral leasing laws, to protect the Forest Service's recreation area:

Willamette Meridian

Rogue River National Forest

T. 40 S., R. 3 W.,
- Sec. 35, SE¼SW¼ and SE¼.

T. 41 S., R. 3 W.,
- Sec. 1, W½SW¼NW¼;
- Sec. 2, NE¼, E½NW¼, and N½SE¼.

The areas described aggregate 540 acres in Jackson County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: April 26, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-10619 Filed 5-3-91; 8:45 am]

BILLING CODE 4310-33-M

VOL 56 ISS 87 MY 6 1991 UMI

Proposed Rules

Federal Register
Vol. 56, No. 87
Monday, May 6, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AE48

Federal Employees Health Benefits Negotiations for Changes in Benefits and Rates; Nonrenewal of Contracts

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is clarifying the Federal Employees Health Benefits (FEHB) regulations on benefit and rate negotiations and the nonrenewal of contracts at the end of a contract term. This clarification is necessary to address situations where negotiations break down and either party decides not to renew an existing health benefits contract by issuing a notice of termination at the end of a contract term.

DATES: Comments must be received on or before July 5, 1991.

ADDRESSES: Written comments may be sent to Andrea Minniear Farran, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Abby Block, (202) 606-0775, ext. 207.

SUPPLEMENTARY INFORMATION: Section 890.203 of title of 5 of the Code of Federal Regulations addresses the application for approval of, and proposals for amendments to, health benefit plans. Section 890.203(b) sets forth the process for negotiating changes in existing rates and benefits for approved plans, prior to the expiration of the current contract period. These proposed regulations clarify the process where OPM and a health benefits plan carrier cannot reach agreement during these negotiations, and either party notifies the other party that it does not intend to renew the contract at the end of the existing contract period. A new section, § 890.205, further clarifies these procedures.

Existing regulations do not address specifically the situation where OPM and a health benefits plan carrier are unable to agree on changes in benefits and/or rates. That situation may result in either OPM or the carrier exercising its discretion not to renew the contract by the issuance of a notice of termination of the contract, as provided for in 5 U.S.C. 8902(a) and 8902(i). Existing regulations do not address fully the procedure for such issuance of a notice of intent not to renew at the end of a contract period. Neither the FEHB statute nor the existing regulations require or contemplate a hearing-type procedure to review a decision not to renew a contract. The proposed regulations clarify the process for notification of intent not to renew a contract by issuance of a notice of intent and the process of administrative review of that decision.

To reflect a more realistic time frame, OPM is changing the date by which OPM seeks to complete negotiations from "no later than 3 months prior to the start of the new contract period" to "no later than 4 months prior to the start of the new contract period."

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect the administrative procedures used by OPM and FEHB plans.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Life insurance, Health insurance.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec. 599C of Pub. L. 101-513, 104 Stat. 2064.

2. Section 890.203 is amended by revising the current last sentence of paragraph (b) and adding a new last sentence to read as follows:

§ 890.203 Application for approval of, and proposal of amendments to, health benefits plans.

* * * * *

(b) * * * The negotiation period shall begin approximately 7 months before the expiration of the current contract period, and OPM shall seek to complete all benefit and rate negotiations no later than 4 months preceding the contract period to which they will apply. If OPM and the carrier do not reach agreement by this date, either party may give written notice of nonrenewal in accordance with § 890.205 of this part.

3. Section 890.205 is added to read as follows:

§ 890.205 Nonrenewal of contracts of health benefits plans.

(a) Either OPM or the carrier may terminate a contract by giving written notice of nonrenewal.

(b) Where termination by notice of intent not to renew is made by OPM, the carrier contesting that notice may request that OPM review the proposed decision. Such review shall be conducted by the Director or his or her designee. A request for such review, which may include a request that a representative of the carrier appear personally before OPM, shall be in writing. That request must be received within 10 calendar days of the carrier's receipt of the notice of intent not to renew. Such request shall include a detailed statement as to why the carrier disagrees with OPM's notice of nonrenewal and shall be accompanied by appropriate supporting documentation. Where a carrier has requested review under this section, the final decision by OPM not to renew under this section, the final decision by OPM not to renew a health benefits contract shall be communicated to the carrier in writing not more than 30 days

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after OPM's receipt of the carrier's request for review, unless a later date is mutually agreed upon.

(c) In the absence of a timely request for review as set forth in paragraph (b) of this section, OPM's notice of intent not to renew will become final without further notification.

[FR Doc. 91-10836 Filed 5-3-91; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

Cotton

AGENCY: Commodity Credit Corporation.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) is proposing to amend the regulations at 7 CFR part 1427 with respect to the price support program for cotton which is conducted by the CCC in accordance with The Agricultural Act of 1949, as amended (the 1949 Act). This rule is necessary in order to implement the changes made by section 103B by the Food Agriculture, Conservation and Trade Act of 1990 (the 1990 Act). Generally, the amendment proposed by this rule specify the manner in which producers may participate in CCC price support program for cotton and the term and conditions of CCC price support program for cotton.

DATES: Comments must be received on or before June 5, 1991 in order to be assured of consideration.

ADDRESSES: Submit comments to Director, Grain and Rice Price Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Philip Sharp, Program Specialist, Cotton, Grain, and Rice Support Division (CGRD), Agricultural Stabilization and Conservation service (ASCS), United States Department of Agriculture (USDA) P.O. Box 2415, Washington, DC 20013, telephone (202) 447-7988.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under United States Department of Agriculture (USDA) procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and it has been determined to be "non-major" because this program will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance program, as found in the catalogue or Federal Domestic Assistance, to which this notice applies is Commodity Loans and Purchases, 10.051.

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of these determinations.

It has been determined by environmental evaluations for cotton price support program that this program will have no significant impact on the quality of the human environment.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

Public reporting burden for the information collections contained in this regulation with respect to price support program for cotton is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collection has previously been cleared by OMB, assigned number 0560-0067.

Background

The 1949 Act sets forth the statutory authority for CCC price support programs. CCC price support programs are intended to stabilize market prices, provide interim financing and assistance to producer in the orderly marketing of eligible commodities. This proposed rule would amend 7 CFR part 1427 to provide rules for administrating the 1991 through 1995 CCC cotton price support program. The major proposed revisions from the regulations which were applicable to the 1990 cotton program are as follows:

This proposed rule would amend § 1427.4(g) to allow persons with an interest in storing, processing, or merchandising any commodity to act as an agent for a producer if that person is delegated authority which is restricted specifically to repaying outstanding loan amounts plus interest and charges, and the delegation is on file at the county office.

This proposed rule would amend § 1427.5(b) to provide that upland cotton must be grated by Agricultural Marketing Service (AMS) using a High Volume Instrument (HVI) to be pledged as collateral for CCC price support and have a strength reading of more than 18 grams per tex, in whole grams, to be eligible for CCC price support.

Under the 1990 cotton price support program, CCC allowed producers who had cotton pledged as collateral for CCC price support loans to sell an equity interest in this cotton to third parties by filing CCC Form 813 with CCC. This form gave the third party the right (and obligation if filed with CCC) to repay the producer's cotton price support loan prior to the maturity date. A bankruptcy court recently held that a holder of a filed CCC Form 813 had an equitable interest in cotton which had been placed under loan to CCC even after the maturity date of the loan. Such a determination is not consistent with the intent of the cotton loan program. Therefore, in order to ensure that the statutory provisions which authorize the cotton price support program are accomplished; protect CCC's interest in cotton pledged as collateral for price support loans; remove any ambiguity regarding the rights of any such party to redeem a producer's CCC price support loan collateral; and to be consistent with other price support program provisions, this proposed rule would amend § 1427.5(c)(2) to provide that a producer shall not be considered to have divested beneficial interest in a commodity if the producer executes an option to purchase contract with a buyer, with or without an advance payment by the buyer, with respect to cotton under loan, if the option to purchase contract provides that the title, risk of loss, and beneficial interest in the cotton remains with the producer until the buyer exercises the option to purchase, and if such option to purchase expires in the event CCC claims title to the cotton.

This proposed rule would amend § 1427.19(c) to provide a producer may repay a loan amount for upland at a level that is the lesser of the loan level and charges, plus accrued interests or the higher of the loan multiplied by 70 percent of the adjusted world price.

This proposed rule would amend § 1427.19(f) to provide if a upland cotton loan has been extended and is repaid in accordance with § 1427.19(c), the repayment amount shall include interest that has accrued on the cotton loan in accordance with § 1427.7(b)(2).

This proposed rule would amend § 1427.23 to provide that loan deficiency payments will be available for the quantity of upland cotton that is legible to be pledged as collateral for a price support loan.

The proposed rule would add § 1427.25(d)(2) to specify the formula to be used in repayment cotton loans. Currently the same formula is set forth in 7 CFR part 26. Placing the formula in part 1427 will result in placing all CCC cotton price support programs on one location.

List of Subjects in 7 CFR Part 1427

Cotton, Incorporation by reference, Loan programs/agriculture, Price support programs, Warehouses.

Accordingly, 7 CFR part 1427 is proposed to be amended by revising Subpart—Cotton Loan Program Regulations (§§ 1427.1—1427.26) and Subpart—Seed Cotton Loan Program Regulations (§§ 1427.160—1427.176) as follows:

PART 1427—COTTON

The authority citation continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1444, and 1444-2; 15 U.S.C. 714b and 714c.

Subpart—Cotton Loan Program Regulations

Sec.
1427.1 Applicability.
1427.2 Administration.
1427.3 Definitions.
1427.4 Eligible producer.
1427.5 General eligibility requirements.
1427.6 Disbursement of price support loans.
1427.7 Maturity of loans.
1427.8 Amount of loan.
1427.9 Classification of cotton.
1427.10 Approved storage.
1427.11 Warehouse receipt and insurance.
1427.12 Liens.
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1427.14 Offsets.
1427.15 Special procedure where note amount advanced.
1427.16 Reconcentration of cotton.
1427.17 Custodial offices.
1427.18 Liability of the producer.
1427.19 Repayment of price support loans.
1427.20 Handling payments and collections not exceeding $9.99.
1427.21 Settlement.
1427.22 Death, incompetency, or disappearance.
1427.23 Cotton loan deficiency payments.
1427.24 Recourse loans.
1427.25 Determination of the prevailing world market price and the adjusted would price for upland cotton.
1427.26 Paperwork Reduction Act assigned numbers.

Subpart—Seed Cotton Loan Program Regulations

Sec.
1427.160 General statement.
1427.161 Administration.
1427.162 Definitions.
1427.163 Disbursement of loans.
1427.164 Eligible producer.
1427.165 Eligible seed cotton.
1427.166 Insurance.
1427.167 Liens.
1427.168 Offsets.
1427.169 Fees, charges and interest.
1427.170 Quantity for loan.
1427.171 Approved storage.
1427.172 Settlement.
1427.173 Foreclosure.
1427.174 Maturity of loans.
1427.175 Restrictions in use of agents.
1427.176 Fraud and unlawful disposition.

* * * * *

Subpart—Cotton Loan Program Regulations

§ 1427.1 Applicability.

(a) The regulations of this subpart are applicable to the 1991 and subsequent crops of upland cotton and extra long staple (ELS) cotton. These regulations set forth the terms and conditions under which price support loans and, for upland cotton, loan deficiency payments shall be made available by the Commodity Credit Corporation ("CCC"). Additional terms and conditions are set forth in the note and security agreement and loan deficiency payment application which must be executed by a producer in order to receive such price support loans and loan deficiency payments.

(b) The following are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices," respectively):

(1) Price support rates,

(2) For upland cotton, the schedules of premiums and discounts for:

(i) Grade and staple,

(ii) Micronaire, and

(iii) Strength.

(2) For ELS cotton, the schedules of:

(i) Loan rates, and

(ii) Discounts for micronaire.

(3) Loan service and related fees, and

(4) Forms which are used in administering the price support and loan deficiency payment programs for a crop of cotton. The forms for use in connection with the programs in this part shall be prescribed by CCC.

(c) Price support loans and loan deficiency payments shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1427.2 Administration.

(a) The price support and loan deficiency payment programs which are applicable to a crop of cotton shall be administered under the general supervision of the Executive Vice President, CCC, or a designee, or Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees," respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision of delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, or the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans and loan deficiency payment applications and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1427.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 719 of this title and part 1413 of this chapter shall also be applicable.

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Authorized loan servicing agent (LSA) means a legal entity that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing Form A cotton loans. The authorized LSA may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including but not limited to the following:

(1) Preparing and executing loan documents;

(2) Disbursing loan proceeds;

(3) Handling the extension of loans as authorized by CCC;

(4) Accepting cotton loan repayments;

(5) Handling documents involved with forfeiture of cotton loan collateral to CCC; and

(6) Providing loan and accounting data to CCC for statistical purposes.

Charges means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the cotton tendered to CCC for price support. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such cotton.

Cotton means, as defined in part 1413 of this chapter, upland cotton and ELS cotton as applicable, produced in the United States.

Financial institution means:

(1) A bank in the United States which accepts demand deposits; and

(2) An association organized pursuant to Federal or State law and supervised by Federal or State banking authorities.

Forms A loans means a loan executed on Form CCC—Cotton A, Cotton Producer's Note and Security Agreement.

Form G loans mean a cotton loan to an approved marketing cooperative on eligible cotton delivered to a cooperative by eligible members of the cooperative executed on Form CCC—Cotton G, Cotton Cooperative Loan Agreement.

Lint cotton means cotton which has passed through the ginning process.

Loan clerk means a person approved by CCC to assist producers in preparing Form A loan documents.

Seed cotton means cotton which has not passed through the ginning process.

Servicing agent bank means the bank designated as the financial institution for a cooperative marketing association approved in accordance with part 1425 of this chapter, which has been approved by CCC.

§ 1427.4 Eligible producer.

(a) An eligible producer of a crop of cotton shall be a person (i.e., an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity) which:

(1) Produces such a crop of cotton as a landowner, landlord, tenant, or sharecropper;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12, 718 of this title, and part 1413 of this chapter.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the executor or administrator. Loan and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive price support and loan deficiency payments only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable price support documents are signed by the guardian;

(3) Any note and security agreement signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) Two or more producers may obtain a single joint loan with respect to cotton which is stored in an approved warehouse if the warehouse receipt which is pledged as collateral for the loan is issued jointly to such producers. The cotton in a bale may have been produced by two or more eligible producers on one or more farms if the bale is not a repacked bale.

(e) Loans may be made to a warehouseman who, in the capacity of a producer, tenders to CCC warehouse receipts issued by such warehouseman on cotton produced by such warehouseman only in those States where the issuance and pledge of such warehouse receipts are valid under State law.

(f) A cooperative marketing association which has been approved in accordance with part 1425 of this chapter may obtain price support on the eligible production of such cotton or loan deficiency payments with respect to such cotton on behalf of the members of the cooperative who are eligible to receive price support loans or loan deficiency payments with respect to a crop of cotton. For purposes of this subpart, the term "producer" includes an approved cooperative marketing association.

(g) A producer shall not delegate to any person, or the person's representative, who has any interest in storing, processing, or merchandising any commodity which is otherwise eligible for price support or a loan deficiency payment under a program to which this section is applicable, authority to exercise on the behalf of the producer any of the producer's rights or privileges under such program, including the authority to execute any note and security agreement or other price support document, unless the person (or the person's representative) to whom authority is delegated, is serving in the capacity of a farm manager for the producer or unless the authority delegated is restricted specifically for the purpose of repaying the loan amount and charges plus interest or, for the purpose of extending the loan or, for the purpose of obtaining loan deficiency payments, and such delegation is filed through the execution of Form ASCS-211, Power of Attorney, or other form as approved by CCC, with the county office and accepted by CCC.

§ 1427.5 General eligibility requirements.

(a) In order to receive price support for a crop of cotton, a producer must execute a note and security agreement or loan deficiency payment application on or before May 31 of the year following the year in which such crop is normally harvested. A Form A loan must be signed by the producer or the producer's agent and mailed or delivered to the county office or an authorized LSA within 15 days after the producer signs the Form A loan and within the period of loan availability.

(1) A producer, except for a cooperative, must request price support and loan deficiency payments:

(i) At the county office which, in accordance with part 719 of this title, is responsible for administering programs for the farm on which the cotton was produced, or

(ii) From an authorized LSA.

(2) An authorized agent which has an agreement with CCC and which is designated by the producer to obtain a loan or loan deficiency payment on behalf of such producers may obtain such loans through a central county office designated by CCC.

(3) An approved cooperative marketing association must request loans and loan deficiency payments:

(i) At a servicing agent bank approved by CCC, or

(ii) At the county office for the county in which the principal office of the cooperative is located unless the State committee designates some other county office as the office where such association must request price support.

(b)(1) Cotton must be tendered to CCC by an eligible producer and must:

(i) Be in existence and in good condition at the time of disbursement of loan or loan deficiency payment proceeds;

(ii) For ELS cotton, be a grade and staple length specified in the schedule of loan rates for ELS cotton.

(iii) For upland cotton, be a grade, staple length, micronaire, and strength specified in:

(A) The schedule of premiums and discounts for grade and staple,

(B) The schedule of strength premiums and discounts, and

(C) The schedule of micronaire premiums and discounts.

(iv) Be represented by a warehouse receipt meeting the requirements of § 1427.11;

(v) Not be false-packed, water-packed, mixed-packed, reginned, or repacked and:

(A) Upland cotton must not:

(*1*) Have been reduced more than two grades because of preparation; and

(*2*) Have a strength reading of 18 grams per tex, rounded to whole grams, or below.

(B) ELS cotton must:

(*1*) Have been ginned on a roller gin,

(*2*) Must have been produced in a county designated as suitable for the production of such cotton,

(*3*) Must not have a micronaire reading of 2.6 or less, and

(*4*) Must not have been reduced in grade for any reason;

(vi) Not be compressed to universal density where side pressure has been applied or to high density at a warehouse;

(vii) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a price support loan or to obtain a loan deficiency payment; and

(viii) Not have been previously sold and repurchased; or pledged as collateral for a CCC price support loan and redeemed except as provided in § 1427.172(b) (3) or (4).

(ix) For upland cotton, have been graded by Agricultural Marketing Service (AMS) using a High Volume Instrument (HVI).

(2) Each bale of cotton must:

(i) Weigh not less than 325 pounds net weight;

(ii) If compressed to standard or higher density either at warehouse or at a gin, have not less than eight bands;

(iii) Be packaged in materials which meet specifications adopted and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC), sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging materials. Heads of bales must be completely covered.

(A) Copies of the June 1990 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available upon request at the county office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112.

(B) Information with respect to experimental packaging material may be obtained from JCIBPC.

(C) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a);

(iv) Be ginned by a ginner:

(A) Who has entered the tare weight of the bale (bagging and ties used to wrap the bale) on the gin bale tag, and

(B) Who has entered into CCC-609, Cooperating Ginners' Bagging and Bale Ties Certification and Agreement, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (b)(2)(iii) of this section.

(c)(1) To be eligible to receive price support, a producer must have the beneficial interest in the cotton which is tendered to CCC for a loan or loan deficiency payment. The producer must always have had the beneficial interest in the cotton unless, before the cotton was harvested, the producer and a former producer whom the producer tendering the cotton to CCC has succeeded had such an interest in the cotton. Cotton obtained by gift or purchase shall not be eligible to be tendered to CCC for price support. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan shall be eligible to receive price support whether succession to the cotton occurs before or after harvest as long as the heir otherwise complies with the provisions of this part.

(2) A producer shall not be considered to have divested the beneficial interest in the commodity if the producer retains control of the commodity, including the right to make all decisions regarding the tender of the cotton to CCC for price support, and:

(i) Executes an option to purchase whether or not an advance payment is made by the potential buyer with respect to such cotton if the option to purchase contains the following provision:

Notwithstanding any other provision of this option to purchase, title; risk of loss; and beneficial interest in the commodity, as specified in 7 CFR part 1427, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: (1) The maturity of any Commodity Credit Corporation price support loan which is secured by such commodity; (2) the date the Commodity Credit Corporation claims title to such commodity; or (3) such other date as provided in this option.; or

(ii) Enters into a contract to sell the cotton if the producer retains title, risk of loss, and beneficial interest in the commodity and the purchaser does not pay to the producer any advance payment amount or any incentive payment amount to enter into such contract except as provided in part 1425 of this chapter.

(3) If price support is made available to producers through an approved marketing cooperative in accordance with part 1425 of this chapter, the beneficial interest in the cotton must always have been in the producer-member who delivered the cotton to the cooperative or its member cooperative, except as otherwise provided in this subsection. Cotton delivered to such a cooperative shall not be eligible to receive price support if the producer-member who delivered the cotton does not retain the right to share in the proceeds from the marketing of the cotton as provided in part 1425 of this chapter.

(d) If the person tendering cotton for a loan is a landowner, landlord, tenant, or sharecropper, such cotton must represent such persons' separate share of the crop and must not have been acquired by such person directly or indirectly from a landowner, landlord, tenant, or sharecropper or have been

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received in payment of fixed or standing rent.

(e) Each bale of upland cotton sampled by the warehouseman upon initial receipt which has not been sampled by the ginner must now show more than one sample hole on each side of the bale. If more than one sample is desired when the bale is received by the warehouseman, the sample shall be cut across the width of the bale, broken in half or split lengthwise, and otherwise drawn in accordance with AMS dimension and weight requirements. This requirement will not prohibit sampling of the cotton at a later date if authorized by the producer.

(f) The quantity of cotton for which a loan deficiency payment has been made is not eligible to be pledged for a price support loan.

§ 1427.6 Disbursement of price support loans.

(a)(1) Disbursement of loans to individual producers may be made by:

(i) County offices,

(ii) Authorized LSA's, or by

(iii) Central county offices designated by CCC to provide centralized service to a person or firm which has been designated as a producer's agent and which has entered into a written agreement with CCC.

(2) Loan proceeds may be disbursed by approved servicing agent banks to approved cooperative marketing associations.

(3) The loan and loan deficiency payment documents shall not be presented for disbursement unless the commodity covered by the mortgage or pledge of security is eligible, in existence, in approved storage, and in good condition. If the commodity was not either an eligible commodity, in existence and in good condition at the time of disbursement, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

§ 1427.7 Maturity of loans.

(a) Form A cotton loans and Form G loans to cotton cooperative marketing associations, mature on demand by CCC and no later than the last day of the 10th calendar month from the first day of the month in which the loan or loan advance is disbursed, except that

(1) Upland cotton loans may, at the producer's request, be extended for an additional eight months during the 10th month of the initial loan provided the average spot market price for the base quality of cotton as determined by CCC during the ninth month of the loan did not exceed 130 percent of the average spot market price for such base quality of cotton for the preceding 36 months.

(2) If authorized by CCC, ELS cotton loans may, at the producer's request, be extended for an additional eight months during the tenth month of the initial loan.

(3) CCC may, by public announcement, extend the time for repayment of the loan indebtedness or carry the loan in a past due status.

(4) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 15 days in advance of the accelerated maturity date.

(b) If a producer's upland cotton price support loan is extended for 8 months in accordance with paragraph (a)(2) of this section and the loan collateral is:

(1) Thereafter forfeited to CCC, the producer shall pay to CCC:

(i) All storage costs associated with the storage of the forfeited cotton, beginning with the first month of such extension; and

(ii) A handling fee of $1.00 per bale.

(2) Thereafter redeemed by repayment to CCC, the producer shall pay to CCC an amount which shall include interest that has accrued with respect to such collateral, beginning with the first month of such extension.

(c) If the loan is not repaid by the maturity date of the loan, title to the cotton shall vest in CCC the day after such maturity date and CCC shall have no obligation to pay for any market value which such cotton may have in excess of the amount of the loan, plus interest and charges.

§ 1427.8 Amount of loan.

(a) The quantity of cotton which may be pledged as collateral for a loan shall be the net weight of the eligible cotton as shown on the warehouse receipt issued by an approved warehouse, except that in the case of a bale which has a net weight of more than 600 pounds, the weight to be used in determining the amount of the loan on the bale shall be 600 pounds. Cotton pledged as collateral for loans on the basis of reweights will not be accepted by CCC.

(b) The amount of the loan for each bale will be determined by multiplying the net weight of the bale, as determined under paragraph (a) of this section, by the applicable loan rate and subtracting:

(1) Any unpaid warehouse receiving charges,

(2) Any warehouse storage charges in excess of 60 days as of the date of tender to CCC, as provided in § 1427.11(g), and

(3) Any unpaid charge for furnishing new bale ties as prescribed in § 1427.11(g).

(c) CCC will not increase the amount of the loan made with respect to any bale of cotton as a result of a redetermination of the quantity or quality of the bale after it is tendered to CCC, except that if it is established to the satisfaction of CCC that a bona fide error was made with respect to the weight of the bale or the classification for the bale as specified on the AMS Form A–1, such error may be corrected.

§ 1427.9 Classification of cotton.

References made to "classification" in this subpart shall include micronaire, and for upland cotton, strength, readings. All cotton tendered for loan must be classed by an AMS Cotton Classing Office ("Cotton Classing Office") and tendered on the basis of such classification.

(a) An AMS Cotton Classification Memorandum Form 1 ("AMS Form 1") showing the classification of a bale must be based upon a representative sample drawn from the bale in accordance with instructions to samplers drawing samples under the Smith-Doxey program.

(b) If the producer's cotton has not been sampled for an AMS Form 1 classification, the warehouse shall sample such cotton and forward the samples to the Cotton Classing Office serving the district in which the cotton is located. Such warehouse must be licensed by AMS to draw samples for submission to the Cotton Classing Office.

(c) If a sample has been submitted for classification, another sample shall not be drawn and forwarded to a Cotton Classing Office except for a review classification. Review classifications are recorded on AMS Form 1, Review Memorandum ("AMS Form 1 Review").

(d) Where review classification is not involved, if through error or otherwise, two or more samples from the same bale are submitted for classification, the loan rate shall be based on the classification having the lower loan value.

(e) The classification on AMS Form 1 or AMS Form 1 Review must be dated not more than 15 days prior to the date the warehouse receipt was issued; however, State committees may, in arid regions, extend this period to not to exceed 30 days prior to the date the warehouse receipt was issued upon determining that such extension will not result in reduction in the grade of the cotton during the extension period, otherwise a new sample must be drawn and a review classification based on the new sample will be required.

(f) If an AMS Form 1 Review classification is obtained, the loan value of the cotton represented thereby will be based on such review classification.

§ 1427.10 Approved storage.

(a) Except as provided in accordance with § 1427.16, eligible cotton may be pledged as collateral for loans only if stored at warehouses approved by CCC.

(1) Persons desiring approval of their facilities should communicate with the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205.

(2) The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State or county offices.

(b) When the operator of a warehouse receives notice from CCC that a loan has been made by CCC on a bale of cotton, the operator shall, if such cotton is not stored within the warehouse, promptly place such cotton within such warehouse.

(c) Storage charges paid by a producer to CCC as security for a loan will not be refunded by CCC. If cotton is redeemed from the loan, the person removing the cotton from storage shall pay all unpaid warehouse charges at the established tariff rate.

(d) The approved storage requirements provided in this section may be waived by CCC if the producer requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1427.29.

§ 1427.11 Warehouse receipt and insurance.

(a) Producers may obtain loans on eligible cotton represented by warehouse receipts only if the warehouse receipts:

(1) Are negotiable machine cardtype warehouse receipts,

(2) Are issued by CCC approved warehouses,

(3) Provide for delivery of the cotton to bearer or are properly assigned by endorsement in blank, so as to vest title in the holder of the receipt, and

(4) Otherwise are acceptable to CCC.

(b) The warehouse receipt must:

(1) Contain the tag number (warehouse receipt number),

(2) Show that the cotton is covered by fire insurance, and

(3) Be dated on or prior to the date the producer signs the note and security agreement.

(c) If a bale is stored at the origin warehouse (the warehouse to which the bale was first delivered for storage after ginning), the warehouse receipt must contain the gin bale number. If a bale has been moved from the origin warehouse, the warehouse receipt shall, in lieu of the gin bale number, contain the tag number and identification of the origin warehouse.

(d) Open yard endorsement, if any, on the warehouse receipt must have been rescinded with the legend "open yard disclaimer deleted" with appropriate signature of the authorized representative of the warehouse.

(e) Block warehouse receipts will be accepted with authorized by CCC only under the following conditions:

(1) The owner of the warehouse issuing the block warehouse receipt shall also own the cotton represented by the block warehouse receipt, and

(2) The warehouse shall not be licensed under the U.S. Warehouse Act.

(f) Each receipt must set out in its written or printed terms the tare and the net weight of the bale represented thereby.

(1) The net weight shown on the warehouse receipt shall be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight, except that the warehouse receipt may show the net weight established at a gin:

(i) In case the gin is in the immediate vicinity of the warehouse and is operated under common ownership with such warehouse or in any other case in which the showing of gin weights on the warehouse receipts is approved by CCC, and

(ii) If the showing of gin weights on the warehouse receipts is permitted by the licensing authority for the warehouse.

(2) The tare shown on the receipt shall be the tare furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A warehouse receipt reflecting an alteration in tare or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (tare or net) weight
(Name of warehouse)
by (Signature)
Date

(3) Alterations in other inserted data on the receipt must be initialed by an authorized representative of the warehouse.

(g) If warehouse storage charges have been paid, the receipt must be stamped or otherwise noted to show that date through which the storage charges have been paid.

(1) For receipts showing accrued storage charges in excess of 60 days as of the date of tender to CCC, the loan amount will be reduced for each month of unpaid storage or fraction thereof in excess of 60 days by the monthly storage charge specified in the storage agreement between the warehouse and CCC.

(2) If warehouse receiving charges have been paid or waived, the receipt must be stamped or otherwise noted to show such fact.

(3) If the receipt does not show that receiving charges have been paid or waived, CCC shall reduce the loan amount the amount of the receiving charges specified in the storage agreement between the warehouse and CCC. However, except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, if receiving charges due on the bale include a charge, if any, for a new set of ties for compressing flat bales tied with ties which cannot be reused, the warehouse receipt must show such receiving charges and state: "Receiving charges due include charge for new set of ties, or similar notation, and CCC shall reduce the loan amount by the amount of the receiving charges shown on the warehouse receipt (this will be the amount payable by CCC if it pays for receiving, notwithstanding the provisions of the storage agreement)".

(4) In any case where the loan amount is reduced by unpaid storage or receiving charges, such charges will be paid to the warehouse by CCC after loan maturity if the cotton is not redeemed from the loan, or as soon as practicable after the cotton is ordered shipped by CCC or destroyed by fire while in loan status. Except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, or Virginia, if the bale is stored at a warehouse which does not have compress facilities or arrangements, and if the bale ties are not suitable for reuse when the bale is compressed, the warehouse receipt must show this fact, and the loan amount will be reduced by the charge which will be assessed by the nearest compress in line of transit for furnishing new bale ties.

(h) If the bale was received by rail, the receipt must be stamped or otherwise noted to show such fact.

(i) The warehouse receipt must show the compression status of the bale, i.e., flat, modified flat, standard, gin standard, gin universal, or warehouse universal density. If the compression charge has been paid, or if the warehouse claims no lien for such compression, the receipt must be stamped or otherwise noted to show such fact.

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§ 1427.12 Liens.

If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

§ 1427.13 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC or, if applicable, to an authorized LSA, at a rate determined by CCC. Any such fee shall be in addition to any loan clerk fee paid to a loan clerk in accordance with paragraph (b) of this section. The amount of such fees is available in State and county offices and are shown on the note and security agreement.

(b) Loan clerks may only charge fees for the preparation of loan documents at the rate determined by CCC.

(1) Such fees may be deducted from the loan proceeds instead of the fees being paid in cash.

(2) The amount of such fees is available in State and county offices and are shown on the note and security agreement.

(c) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter. All or a portion of such interest may be waived with respect to a quantity of cotton which has been redeemed in accordance with § 1427.19 at a level which is less than the principal amount of the loan plus charges and interest.

(d) For each crop of upland cotton, the producer, as defined in the Cotton Research and Promotion Act (7 U.S.C. 2101), shall remit to CCC an assessment which shall be transmitted by CCC to the Cotton Board and shall be deducted from the:

(1) Loan proceeds for a crop of cotton and shall be at a rate equal to one dollar per bale plus up to one percent of the loan amount, and

(2) Loan deficiency payment proceeds for a crop of cotton and shall be at a rate equal to up to one percent of the loan deficiency payment amount.

§ 1427.14 Offsets.

(a) If any installment on any loan made by CCC on farm-storage facilities or drying equipment is due and payable such amount due to CCC shall be offset from loan proceeds made available to the producer in accordance with this part, after deduction of clerk fees, service charges, research and promotion fees.

(b) If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under regulations in this subpart, after deduction of amounts payable under paragraph (a) of this section shall be applied to such indebtedness as provided in part 3 of this title and part 1403 of this chapter.

§ 1427.15 Special procedure where note amount advanced.

(a) This special procedure is provided to assist persons or firms which, in the course of their regular business of handling cotton for producers, have made advances to eligible producers on eligible cotton to be placed under loan and desire to obtain credit at a financial institution for the amounts advanced. A financial institution which has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) This special procedure shall apply only:

(1) To loan documents covering cotton on which a person or firm has advanced to the producers, including payments to prior lienholders and other creditors, the note amounts shown on the Form A loan, except for:

(i) Authorized loan clerk fees,

(ii) The research and promotion fee collected for transmission to the Cotton Board, and

(iii) CCC loan service charges, and

(2) If such person or firm is entitled to reimbursement from the proceeds of the loans for the amounts advanced and has been authorized by the producer to deliver the loan documents to a county office for disbursement of the loans.

(c)(1) Each Form A loan and related documents shall be mailed or delivered to the appropriate county office and shall show the entire proceeds of the loans, except for CCC loan service charges, for disbursement to:

(i) The financial institution which is to allow credit to the person or firm which made the loan advances or to such financial institution and such person or firm as joint payees, or

(ii) The financial institution which made the loan advances to the producers.

(2) When received in a county office (or postmarked, if mailed) warehouse receipts and loan documents must reflect not more than 60 days accrued storage, or the loan amount must be reduced by the excess storage as specified in § 1427.11.

(3) The documents shall be accompanied by Form CCC-825, Transmittal Schedule of Form A Cotton Loans, in original and two copies, numbered serially for each county office by the financial institution. The Form CCC-825 shall snow the amounts invested by the financial institution in the loans, which shall be the amounts of the notes minus the amounts of CCC loan service charges shown on the notes.

(4) Upon receipt of the loan documents and Form CCC-825, the county office will stamp one copy of the Form CCC-825 to indicate receipt of the documents and return this copy to the financial institution.

(d) County offices will review the loan documents prior to disbursement and will return to the financial institution any documents determined not to be acceptable because of errors or illegibility. County offices will disburse the loans for which loan documents are acceptable by issuance of one check to the payee indicated on the Form A and will mail the check to the address shown for such payee on the Form A loan with a copy of Form CCC-825. The Form CCC-825 will show the date of disbursement by a county office and amount of interest earned by the financial institution.

(e) The financial institution shall be deemed to have invested funds in the loans as of the date loan documents acceptable to CCC were delivered to a county office or, if received by mail, the date of mailing as indicated by postmark or the date of receipt in a county office if no postmark date is shown. Patron postage meter date stamp will not be recognized as a postmark date.

(f) Interest will be computed on the total amount invested by the financial institution in the loan represented by accepted loan documents from and including the date of investment of funds by the financial institution to, but not including, the date of disbursement by a county office.

(1) Interest will be paid at the rate in effect for CCC loans as provided in part 1405 of this chapter.

(2) Interest earned by the financial institution in the investment in loans disbursed during a month will be paid by county offices after the end of the month.

§ 1427.16 Reconcentration of cotton.

(a) Loans on cotton to be reconcentrated shall be available only on cotton received at CCC approved warehouses in areas where there is a shortage of storage space and the local warehouse certifies such fact to CCC. A producer who desires to obtain a loan on cotton to be reconcentrated under the provisions of this paragraph shall request such reconcentration and present the same documents as required for a regular loan.

(1) The Forms CCC-Cotton A-1, Schedule of Pledged Cotton (Form CCC-Cotton A-1), and warehouse receipts covering such cotton to be reconcentrated must show the reconcentration order number furnished by the county office or authorized LSA under which the cotton will be shipped.

(2) The county office or authorized LSA shall arrange for reconcentration of the cotton under the direction of the Kansas City Commodity Office.

(3) Any fees, cost, or expenses incident to such actions shall be charges against the cotton.

(4) After the cotton is reconcentrated, the Kansas City Commodity Office shall obtain new warehouse receipts, allocate to individual bales shipping and other charges incurred against the cotton, and return new warehouse receipts and reconcentration charges applicable to each bale to the county office or authorized LSA. Such reconcentration charges shall be added to bale loan amounts and must be repaid for bales redeemed from loan.

(b) CCC may under certain conditions, before loan maturity, compress, store, insure, or reinsure the cotton against any risk, or otherwise handle or deal with the cotton as it may deem necessary or appropriate for the purpose of protecting the interest therein of the producer or CCC.

(1) CCC may also move the cotton from one storage point to another with the written consent of the producer or borrower and upon the request of the local warehouse and certification that there is congestion and lack of storage facilities in the area: Provided, however, That if CCC determines such loan cotton is improperly warehoused and subject to damage, or if any of the terms of the loan agreement are violated, of if carrying charges are substantially in excess of the average of carrying charges available elsewhere and the local warehouse, after notice, declines to reduce such charges, such written consent need not be obtained.

(2) The county office or authorized LSA shall arrange for reconcentration of the cotton under the direction of the Kansas City Commodity Office.

(3) Any fees, costs, or expenses incident to such actions shall be charges against the cotton.

(4) After the cotton is reconcentrated, the Kansas City Commodity Office shall obtain new warehouse receipts, allocate to individual bales, shipping and other charges incurred against the cotton, and return new warehouse receipts and reconcentration charges applicable to each bale to the county office or authorized LSA. Such reconcentration charges shall be added to bale loan amounts and must be repaid for bales redeemed from loan.

§ 1427.17 Custodial offices.

Forms A and CCC-Cotton A-1, collateral warehouse receipts, cotton classification memoranda, and related documents will be maintained in custody of the local county office, authorized LSA, central county office, or any financial institution defined in § 1427.2 and approved by CCC, whichever disbursed the loan evidenced by such documents.

§ 1427.18 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining, or settling a loan or disposes of or moves the loan collateral without the approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(i) The amount of the loan or loan deficiency payment;

(ii) Any additional amounts paid by CCC with respect to the loan or loan deficiency payment;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;

(iv) Applicable interest on such amounts, and

(v) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of cotton with a settlement value that is less than the total of such amounts or by repayment of such loan at the lower loan repayment rate as prescribed in § 1427.19.

(2)(i) Notwithstanding any provision of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral delivered to or acquired by CCC shall be determined by CCC, and shall be the lower of:

(A) The market value of the commodity at the close of the market on the final date for repayment; or

(B) The loan settlement value of the commodity.

(ii) Notwithstanding the provisions of paragraphs (a)(2) of this section, if CCC sells the loan collateral in order to determine the market value of the cotton, the value of the cotton shall be the lower of:

(A) The sales price of the cotton less any costs incurred by CCC in completing the sale; or

(B) The loan settlement value of the cotton.

(b) If the amount disbursed under a loan, or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess, plus interest. In addition, the commodity pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan or loan deficiency payment is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement or loan deficiency payment application with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the cotton pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such cotton, or loan proceeds, after execution of the note and security agreement by CCC.

§ 1427.19 Repayment of support price loans.

(a) Warehouse receipts will not be released except as provided in this section.

(b) A producer may redeem one or more bales of cotton pledged as collateral for a loan by payment to CCC of an amount applicable to the bales of cotton being redeemed determined in accordance with this section. CCC, upon proper payment for the amount due, shall release the warehouse receipts and, if requested, the classification memoranda applicable to such cotton. The producer may also request that the warehouse receipts and classification memoranda be forwarded to a bank for payment, in which case:

(1) The amount of the loan, interest, and charges must be paid to the bank within 5 business days after the documents are received by the bank, and

(2) All charges assessed by the bank to which the receipts are sent must be paid by the producer.

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(c) A producer may repay the loan amount for one or more bales of cotton pledged as collateral for a loan:

(1) For upland cotton, at a level that is the lesser of:

(i) The loan level and charges, plus interest determined for such bales; or

(ii) The higher of:

(A) The loan level determined for such bales multiplied by 70 percent for the 1991 and subsequent years crops; or

(B) The adjusted world price, as determined by CCC in accordance with § 1427.25, in effect on the day the repayment is received by the county office or authorized LSA that disbursed the loan.

(2) For ELS cotton, by repaying the loan amount and charges, plus interest determined for such bales.

(d) CCC shall determine and publicly announce the adjusted world price for each crop of upland cotton on a weekly basis.

(e) The difference between the loan level, excluding charges and interest, and the loan repayment level is the market gain. The total amount of any market gain realized by a person is subject to part 1497 of this chapter.

(f) Notwithstanding any other provision in this part, if an upland cotton loan has been extended in accordance with § 1427.7(a)(2), and is repaid in accordance with paragraph (c)(1) of this section, the repayment amount shall include interest that has accrued on the cotton under loan in accordance with § 1427.7(b)(2).

(h) Repayment of loans will not be accepted after CCC acquires title to the cotton in accordance with § 1427.7.

§ 1427.20 Handling payments and collections not exceeding $9.99.

To avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less will be paid to the producer only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1427.21 Settlement.

(a) The settlement of loans shall be made by CCC on the basis of the quality and quantity of the cotton delivered to CCC by the producer or acquired by CCC.

(b) Settlements made by CCC with respect to eligible cotton which are acquired by CCC which are stored in an approved warehouse shall be made on the basis of the entries set forth on the applicable warehouse receipt and other accompanying documents.

(c) If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall take title to the cotton in accordance with § 1427.7(c).

§ 1427.22 Death, incompetency, or disappearance.

In the case of death, incompetency, or disappearance of any producer who is entitled to the payment of any proceeds in settlement of a loan or loan deficiency payment, payment shall, upon proper application to the county office which disbursed the loan or loan deficiency payment, be made to the person or persons who would be entitled to such producer's payment as provided in the regulations entitled Payment Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent, part 707 of this title.

§ 1427.23 Cotton loan deficiency payments.

(a) Producers may obtain loan deficiency payments for 1991 and subsequent crops of upland cotton in accordance with this section.

(b) In order to be eligible to receive such loan deficiency payments, the producer of such commodity must:

(1) Comply with all of the program requirements to be eligible to obtain loans in accordance with this part;

(2) Agree to forego obtaining such loans; and

(3) Otherwise comply with all program requirements.

(c) The loan deficiency payment applicable to a crop of cotton shall be computed by multiplying the loan payment rate, as determined in accordance with this paragraph (c) by the quantity of the crop the producer is eligible to pledge as collateral for a price support loan.

(d) The loan deficiency payment rate for a crop of upland cotton shall be the amount by which the level of price support loan determined for a bale of such crop exceeds the amount at which CCC has announced that producers may repay the price support loan for such bale.

(e) The total amount of any loan deficiency payments that a person may receive is subject to part 1497 of this chapter.

§ 1427.24 Recourse loan.

CCC may make recourse loans available to eligible producers. Repayment or settlement of such recourse loans shall be in accordance with the terms and conditions set forth by CCC when the availability of such recourse loans is announced.

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

(a) The prevailing world market price for upland cotton shall be determined by CCC as follows:

(1) During the period when only one daily price quotation is available for each growth quoted for Middling one and three-thirty-second inch (M 1 5/32 inch) cotton C.I.F. (cost, insurance, and freight) northern Europe, the prevailing world market price for upland cotton shall be based upon the average of the quotations for the preceding Friday through Thursday for the five lowest-price growths of the growths quoted for M 1 5/32 inch cotton C.I.F. northern Europe.

(2) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year ("current shipment price") and a price quotation for cotton for shipment no earlier than October/November of the current calendar year ("forward shipment price") are available for the growths quoted for M 1 5/32 inch cotton C.I.F. northern Europe, the prevailing world market price for upland cotton shall be based upon the following: Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 5/32 inch cotton C.I.F. northern Europe ("Northern Europe current price") and the average of the forward shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 5/32 inch cotton C.I.F. northern Europe ("Northern Europe forward price") are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe current price and the Northern Europe forward price are available, the prevailing world market price for upland cotton shall be based upon the result calculated by the following procedure:

(i) *Weeks 1 and 2:* 2 × Northern Europe current price) + Northern Europe forward price/3.

(ii) *Weeks 3 and 4:* Northern Europe current price + Northern Europe forward price/2.

(iii) *Weeks 5 and 6:* Northern Europe current price + (2 × Northern Europe forward price)/3.

(iv) *Week 7 through July 31:* Northern Europe forward price.

(3) The prevailing world market price for upland cotton as determined in accordance with paragraph (a)(1) or (a)(2) of this section shall hereinafter be referred to at the "Northern Europe price."

(4) If quotes are not available for one or more days in the five-day period, the available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market price shall be based upon the best available world price information, as determined by CCC.

(b) The prevailing world market price for upland cotton, adjusted in accordance with paragraph (c) of this section ("adjusted world price"), shall be applicable to the 1991 through 1995 crops of upland cotton.

(c) The adjusted world price for upland cotton shall equal the Northern Europe price as determined in accordance with paragraph (a) of this section, adjusted as follows:

(1) The Northern Europe price shall be adjusted to average designated U.S. spot market location be deducting the average difference in the immediately preceding 52-week period between:

(i)(A) The average of price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 5/32 inch cotton C.I.F. northern Europe during the period when only one daily price quotation for such growths is available, or

(B) The average of the current shipment prices for U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 5/32 inch cotton C.I.F. northern Europe during the period when both current shipment prices and forward shipment prices for such growths are available; and

(ii) The average price of M 1 5/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted each Thursday in the designated U.S. spot markets.

(2) The price determined in accordance with paragraph (c)(1) of this section shall be adjusted to reflect the price of Strict Low Middling (SLM) 1 1/16 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton ("U.S. base quality") by deducting the difference, as announced by CCC, between the applicable loan rate for a crop of upland cotton for M 1 5/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton and the loan rate for a crop of upland cotton of the U.S. base quality.

(3) The price determined in accordance with paragraph (c)(2) of this section shall be adjusted to average U.S. location by deducting the difference between the average loan rate for a crop of upland cotton of the U.S. base quality in the designated U.S. spot markets and the corresponding crop year national average loan rate for a crop of upland cotton of the U.S. base quality, as announced by CCC.

(4)(i) If it is determined that the prevailing world market price, as adjusted in accordance with paragraphs (c)(1) through (c)(3) of this section, is less than 115 percent of the current crop year loan level for SLM 1 1/16 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton, and that the Friday through Thursday average price quotation for the lowest-price U.S. growth as quoted for M 1 5/32 inch cotton C.I.F. northern Europe is greater than the Northern Europe price, such price may be adjusted on the basis of some or all of the following data, as available:

(A) The U.S. share of world exports;

(B) The current level of cotton export sales and/or cotton export shipments; and

(C) Other data determined by CCC to be relevant in establishing an accurate prevailing world market price determination adjusted to United States quality and location.

(ii) The adjustment may not exceed the difference between the Friday through Thursday average price for the lowest-priced U.S. growth as quoted for M 1 5/32 inch cotton C.I.F. northern Europe and the Northern Europe price.

(d) In determining the average difference in the 52-week period as provided in paragraph (c)(1) of this section:

(1) If the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1 5/32 inch cotton C.I.F. northern Europe and the average price of M 1 5/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted each Thursday in the designated U.S. spot markets for any week is:

(i) More than 115 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 115 percent of such actual cost shall be substituted in lieu thereof such week.

(ii) Less than 85 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 85 percent of such actual cost shall be substituted in lieu thereof for such week.

(2) If a Thursday price quotation for either the U.S. Memphis territory or the California/Arizona territory as quoted for M 1 5/32 inch cotton C.I.F. northern Europe is not available for any week, CCC:

(i) May use the available northern Europe quotation to determine the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1 5/32 inch cotton C.I.F. northern Europe and the average price of M 1 5/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted each Thursday in the designated U.S. spot markets for that week, or

(ii) May not take that week into consideration.

(3) If Thursday price quotations for any week are not available for either, (i) both the Memphis territory and the California/Arizona territory as quoted for M 1 5/32 inch cotton C.I.F. northern Europe, or (ii) the average price of M 1 5/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted in the designated U.S. spot markets, that week will not be taken into consideration.

(e) The adjusted world price for upland cotton, as determined in accordance with paragraph (c) of this section and the amount of the additional adjustment, as determined in accordance with paragraph (f) of this section, shall be determined weekly by CCC and shall be announced as soon as possible after 4 p.m. Eastern time each Thursday, beginning July 25, 1991, and continuing through the last Thursday of July 1996. In the event that Thursday is a nonworkday, the determination will be announced the next workday.

(f)(1) The adjusted world price, as determined in accordance with paragraph (c) of this section, shall be subject to further adjustments as provided in this subjection with respect to any grade of upland cotton with a staple length of 1 1/32 inch or shorter and the following grades of upland cotton with a staple length of 1 1/16 inch or longer:

(i) *White Grades*—Strict Good Ordinary Plus, Strict Good Ordinary, Good Ordinary Plus and Good Ordinary;

(ii) *Light Spotted Grades*—Low Middling and Strict Good Ordinary;

(iii) *Spotted Grades*—Middling, Strict Low Middling, Low Middling, and Strict Good Ordinary;

(iv) *Tinged Grades*—Strict Middling, Middling, Strict Low Middling and Low Middling;

(v) *Yellow Stained Grades*—Strict Middling and Middling;

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(vi) *Light Gray Grades*—Strict Low Middling;

(vii) *Gray Grades*—Middling and Strict Low Middling. Grade and staple length must be determined in accordance with § 1427.9. If no such official classification is presented, the adjustment shall not be made.

(2) The adjustment for upland cotton provided for by paragraph (f)(1) of this section shall be determined by deducting from the adjusted world price:

(i) The difference between the Northern Europe price, and

(A) During the period when only one daily price quotation for each growth quoted for "coarse count" cotton C.I.F. northern Europe is available the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe.

(B) During the period when both current shipment prices and forward shipment prices are available for the growths quoted for "coarse count" cotton C.I.F. northern Europe, the result calculated by the following procedure: Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe ("Northern Europe coarse count current price") and the average of the forward shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe ("Northern Europe coarse count forward price") are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe coarse count current price and the Northern Europe coarse count forward price are available:

(*1*) *Weeks 1 and 2:* (2 × Northern Eurpe coarse count current price) + Northern Europe coarse count forward price/3.

(*2*) *Weeks 3 and 4:* Northern Europe coarse count current price + Northern Europe coarse count forward price/2.

(*3*) *Weeks 5 and 6:* Northern Europe coarse count current price + (2 × Northern Europe coarse count forward price)/3.

(*4*) *Weeks 7 through July 31:* The Northern Europe coarse count forward price, minus:

(ii) The difference between the applicable loan rate for crop of upland cotton for M 1⅛s inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton and the loan rate for a crop of upland cotton for SLM 1⅛s inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton.

(iii) The result of the calculation as determined in accordance with this paragraph (f)(2) shall hereinafter be referred to as the "Northern Europe coarse count current price".

(3) With respect to the determination of the Northern Europe coarse count current price in accordance with paragraph (f)(2)(i) of this section:

(i) If no quotes are available for one or more days of the five-day period, the available quotes will be used.

(ii) If quotes for three growths are not available for any day in the five-day period, that day will not be taken into consideration; and

(iii) If quotes for three growths are not available for at least three days in the five-day period, that week will not be taken into consideration, in which case the adjustment determined in accordance with paragraph (f)(2) of this section for the latest available week will continue to be applicable.

(g) If the 6-week transition periods from using current shipment prices to using forward shipment prices in the determination of the Northern Europe price in accordance with paragraph (a)(2) of this section, and the Northern Europe coarse count current price in accordance with paragraph (f)(2)(i)(B) of this section do not begin at the same time, CCC shall use either current shipment prices, forward shipment prices, or any combination thereof, to determine the Northern Europe price and/or the Northern Europe coarse count price used in the determination of the adjustment for upland cotton provided for by paragraph (f)(1) of this section and determined in accordance with paragraph (f)(2) of this section, in order to prevent distortions in such adjustment.

(h) The adjusted world price, determined in accordance with paragraph (c) of this section, shall be subject to further adjustments, as determined by CCC based upon the Schedule of Premiums and Discounts and the location differentials applicable to each warehouse location as announced in accordance with the upland cotton price support loan program for a crop upland cotton.

§ 1427.28 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations will be submitted to the Office of Management and Budget in accordance with 44 U.S.C. chapter 35 and an OMB number will be assigned.

Subpart—Seed Cotton Loan Program Regulations

§ 1427.160 General statement.

(a) The regulations in this subpart are applicable to the 1991 and subsequent crops of upland and extra long staple (ELS) seed cotton. Such loans will be available through March 31 of the year following the calendar year in which such crop is normally harvested. This is the loan availability period. CCC may change the loan availability period to conform to State or locally imposed quarantines. Additional terms and conditions are set forth in the note and security agreement which must be executed by a producer in order to receive such loans.

(b) Price support rates and the forms which are used in administering the program for a crop of upland and ELS cotton are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively). Price support rates shall be based upon the location at which the loan collateral is stored.

(c) A producer must, unless otherwise authorized by CCC, request price support at the county office which, in accordance with part 719 of this title, is responsible for administering programs for the farm on which the cotton was produced. An approved cooperative marketing association must, unless otherwise authorized by CCC, request price support at a servicing agent bank approved by CCC. All note and security agreements and related documents necessary for the administration of the price support programs shall be determined by CCC and are available at State and county offices.

(d) Price support loans shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1427.161 Administration.

Section 1427.2 of this part shall be applicable to this subpart.

§ 1427.162 Definitions.

Section 1427.3 of this part shall be applicable to this subpart.

§ 1427.163 Disbursement of loans.

(a) A producer or the producer's agent shall request a loan at the county office for the county which, in accordance with part 719 of this title, is responsible for administering programs for the farm on which the cotton was produced, which will assist the producer in completing the loan documents, except that approved cooperatives and approved financially responsible commercial ginning companies designated by producers to obtain loans in their behalf may obtain loans through a central county office designated by the State committee. Financially responsible ginning companies wishing to participate on behalf of producers must file an application with the county committee for the county office designated by the State committee. Only such ginning companies approved by CCC are eligible to participate on behalf of their members.

(b) Disbursement of each loan will be made by the county office of the county which is responsible for administering programs for the farm on which the cotton was produced except that approved cooperatives designated by producers to obtain loans in their behalf may obtain disbursement of loans at a servicing agent bank. Service charges shall be deducted from the loan proceeds. The producer or the producer's agent shall not present the loan documents for disbursement unless the cotton is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer or the agent shall immediately return the check issued in payment of the loan or, if the check has been negotiated, shall promptly return the proceeds.

§ 1427.164 Eligible producer.

Section 1427.4 of this part shall be applicable to this subpart.

§ 1427.165 Eligible seed cotton.

(a) Cotton pledged as collateral for a loan must be tendered to CCC by an eligible producer and must be:

(1) In existence and in good condition at the time of disbursement of loan proceeds;

(2) Stored in identity preserved lots in approved storage meeting requirements of § 1427.171; and

(3) Insured at the full loan value against loss or damage by fire.

(4) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a price support loan; and

(5) Not have been previously sold and repurchased; or pledged as collateral for a CCC price support loan and redeemed except as provided in § 1427.171(b) (3) or (4).

(b) The quality of cotton which may be pledged as collateral for a loan shall be the estimated quality of lint cotton in each lot of seed cotton as determined by the county office, except that if a control sample of the lot of cotton is classed by an Agricultural Marketing Service (AMS), Cotton Classing Office, the quality for the lot shall be the quality shown on the AMS Form 1 or Form 3 classification card issued for the control sample.

(c) To be eligible for price support, the beneficial interest in the commodity must be in the producer who is pledging the commodity as collateral for a loan as provided in § 1427.59(c)

§ 1427.166 Insurance.

The cotton must be insured at the full loan value against loss or damage by fire.

§ 1427.167 Liens.

If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

§ 1427.168 Offsets.

(a) If any installment on any loan made by CCC on farm-storage facilities or drying equipment is due and payable such amount due to CCC shall be offset from loan proceeds made available to the producer in accordance with this part, after deduction of clerk fees, service charges, research and promotion fees.

(b) If the producer is indebted to CCC or any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under regulations in this subpart, after deduction of amounts payable under paragraph (a) of this section shall be applied to such indebtedness as provided in part 3 of this chapter and part 1403 of this chapter.

§ 1427.169 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC.

(b) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter.

§ 1427.170 Quantity for loan.

(a) The quantity of lint cotton in each lot of seed cotton tendered for loan shall be determined by the county office by multiplying the weight or estimated weight of seed cotton by the lint turnout factor determined in accordance with paragraph (b) of this section.

(b) The lint turnout factor for any lot of seed cotton shall be the percentage determined by the county committee representative during the initial inspection of the lot. If a control portion of the lot is weighed and ginned, the turnout factor determined for the portion of cotton ginned will be used for the lot. If a control portion is not weighed and ginned, the lint turnout factor shall not exceed 32 percent for machine picked cotton and 22 percent for machine stripped cotton unless acceptable proof is furnished showing that the lint turnout factor is greater.

(c) Loans shall not be made on more than a percentage established by the county committee of the quantity of lint cotton determined as provided in this section. If the seed cotton is weighed, the percentage to be used shall not be more than 95 percent. If the quantity is determined by measurement, the percentage to be used shall not be more than 90 percent. The percentage to be used in determining the maximum quantity for any loan may be reduced below such percentages by the county committee when determined necessary to protect the interests of CCC on the basis of one or more of the following risk factors:

(1) Condition or suitability of the storage site or structure,

(2) Condition of the cotton,

(3) Location of the storage site or structure, and

(4) Other factors peculiar to individual farms or producers which relate to the preservation or safety of the loan collateral. Loans may be made on a lower percentage basis at the producer's request.

§ 1427.171 Approved storage.

Approved storage shall consist of storage located on or off the producer's farm (excluding public or commercial warehouses) which is determined by a county committee representative to afford adequate protection against loss or damage and which is located within a reasonable distance, as determined by CCC, of an approved gin. If the cotton is stored off the producer's farm, the producer must furnish satisfactory evidence that the producer has the authority to store the cotton on such property and that the owner of such property has no lien for such storage against the cotton. The producer must provide satisfactory evidence that the producer and any person having an interest in the cotton including CCC, have the right to enter the premises to inspect and examine the cotton and

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shall permit a reasonable time to such persons to remove the cotton from the premises.

§ 1427.172 Settlement.

(a) A producer may, at any time prior to maturity of the loan, obtain release of all or any part of the loan cotton by paying to CCC the amount of the loan, plus interest and charges.

(b)(1) A producer or the producer's agent shall not remove from storage any cotton which is pledged as collateral for a loan until prior written approval has been received from the county committee for removal of such cotton. If a producer or the producer's agent obtains such approval, they may remove such cotton from storage, sell the seed cotton, have it ginned, and sell the lint cotton and cottonseed obtained therefrom. The ginner shall inform the county office in writing immediately after the cotton removed from storage has been ginned and furnish the county office the loan number, producer's name, and applicable gin bale numbers. If the seed cotton is removed from storage, the loan interest and charges thereon must be satisfied not later than the earlier of:

(i) The date established by the county committee;

(ii) 5 days of the date of the producer received the AMS classification in accordance with § 1427.9 (and the warehouse receipt, if the cotton is delivered to a warehouse), representing such cotton; or

(iii) The loan maturity date.

(2) If the seed cotton or lint cotton is sold, the loan, interest, and charges must be satisfied immediately.

(3) A producer, except a cooperative, may obtain a warehouse stored loan in accordance with this part, on the lint cotton, but the loan, interest, and charges on the seed cotton must be satisfied out to the proceeds of the warehouse stored loan.

(4) An approved cooperative must repay the seed cotton loan, interest, and charges before pledging the cotton for a warehouse stored loan. If approved cooperatives and commercial ginning companies authorized by producers to obtain loans in their behalf remove seed cotton from storage prior to obtaining approval to move such cotton, such removal shall constitute conversion of such cotton unless:

(i) The cooperative or commercial ginning company notifies the county office in writing the following morning by mail or otherwise that such cotton has been moved and is on the gin yard.

(ii) Furnished CCC an irrevocable letter of credit if requested; and

(iii) Repays the loan, plus interest and charges within the time specified by the county committee.

(5) Any removal from storage shall not be deemed to constitute a release of CCC's security interest in the cotton or to release the producer or approved cooperative from liability for the loan, interest, and charges if full payment of such amount is not received by the county office.

(c) If, either before or after maturity, the producer discovers that the cotton is going out of condition or is in danger of going out of condition, the producer shall immediately so notify the county office and confirm such notice in writing. If the county committee determines that the cotton is going out of condition or is in danger of going out of condition, the county committee will call for repayment of the loan, plus interest and charges on or before a specified date. If the producer does not repay the loan or have the cotton ginned and obtain a warehouse-stored loan on the lint cotton produced therefrom within the period as specified by the county committee, the cotton shall be considered abandoned.

(d) If the producer has control of the storage site and if the producer subsequently loses control of the storage site or there is danger of flood or damage to the cotton or storage structure making continued storage of the cotton unsafe, the producer shall immediately either repay the loan or move the cotton to the nearest approved gin for ginning and shall, at the same time, inform the county office. If the producer does not do so, the cotton shall be considered abandoned.

§ 1427.173 Foreclosure.

Any seed cotton pledged as collateral for a loan which is abandoned or which has not been ginned and pledged as collateral for a warehouse-stored loan in accordance with this part by the loan maturity date may be removed from storage by CCC and ginned and the resulting lint cotton warehoused for the account of CCC. The lint cotton and cottonseed may be sold, at such time, in such manner, and upon such terms as CCC may determine at public or private sale. CCC may become the purchaser of the whole or any part of such cotton and cottonseed. If the proceeds are less than the amount due on the loan (including interest, ginning charges, and any other charges incurred by CCC), the producer shall be liable for such difference and there shall be no obligation on the part of CCC to pay for any proceeds which may be in excess of the loan amount including interest and other charges.

§ 1427.174 Maturity of loans.

Seed cotton loans mature on demand by CCC but no later than May 31 following the calendar year in which such crop is normally harvested.

§ 1427.175 Restrictions in use of agents.

A producer shall not delegate to any person, or the person's representative, who has any interest in storing, processing, or merchandising any commodity which is otherwise eligible for price support or a loan deficiency payment under a program to which this section is applicable, authority to exercise on the behalf of the producer any of the producer's rights or privileges under such program, including the authority to execute any note and security agreement or other price support document, unless the person (or the person's representative) to whom authority is delegated, is serving in the capacity of a farm manager for the producer or unless the authority delegated is restricted specifically for the purpose of repaying the loan amount and charges plus interest or, for the purpose of extending the loan or, for the purpose of obtaining loan deficiency payments, and such delegation is filed through the execution of Form ASCS-211, Power of Attorney, or other form as approved by CCC, with the county office and accepted by CCC.

Signed this April 30, 1991 in Washington, DC.

Dated: April 29, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-10579 Filed 5-3-91; 8:45 am]

BILLING CODE 3410-05-M

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Issuance of Quarterly Report on the Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of regulatory agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the first quarter, January through March, of 1991. The agenda is issued to provide the public with information about NRC's rulemaking activities. The Regulatory Agenda is a quarterly compilation of all rules on which the NRC has recently completed action or has proposed, or is considering action and of all petitions for rulemaking that the NRC has received that are pending disposition.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG-0936) Vol. 10, No. 1, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 275-2060 or (202) 275-2171 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-7758, tool-free number (800) 368-5642.

Dated at Bethesda, Maryland, this 30th day of April 1991.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services; Office of Administration.

[FR Doc. 91-10650 Filed 5-3-91; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 704 and 741

Corporate Credit Unions and Requirements for Insurance

AGENCY: National Credit Union Administration.

ACTION: Proposed revisions to regulation; extension of comment period.

SUMMARY: On March 13, 1991, the NCUA issued proposed revisions to its regulations governing corporate credit unions and requirements for insurance (part 704 and § 741.9). The proposed revisions were published in the Federal Register on March 21, 1991 (see 56 FR 11952). The NCUA Board requested that comments on the proposed revisions be submitted on or before May 20, 1991. Due to requests made, the Board has decided to extend the comment period from May 20, 1991, to July 1, 1991.

DATES: The comment period is being extended from May 20, 1991, to July 1, 1991.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, or Linda Groth, Corporate Credit Union Specialist, Office of Examination and Insurance, NCUA, at the above address, or telephone: (202) 682-9640.

PART 704—[AMENDED]

The authority citation for part 704 is:

Authority: 12 U.S.C. 1762, 1766(a), 1781 and 1789.

PART 741—[AMENDED]

The authority citation for part 741 is:

Authority: 12 U.S.C. 1757, 1766, 1781 through 1790. Section 741.11 is also authorized by 31 U.S.C. 3717.

By the National Credit Union Administration Board on April 29, 1991.

Becky Baker,

Secretary of the Board.

[FR Doc. 91-10621 Filed 5-3-91; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-139-86]

RIN 1545-AJ51

Discounted Unpaid Losses; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the discounting of unpaid losses of insurance companies for federal income tax purposes. The regulations affect insurance companies and provide them with guidance needed to comply with the changes to the law.

DATES: The public hearing will be held on Tuesday, September 24, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, September 10, 1991.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [FI-139-86], room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject to the public hearing is a notice of proposed rulemaking that contains amendments to the Income Tax Regulations (26 CFR part 1) to provide rules relating to the discounting of unpaid losses under section 846 of the Internal Revenue Code of 1986. The proposed regulations reflect the addition of section 846 to the Code by section 1023(c) of the Tax Reform Act of 1986 (100 Stat. 2399). These proposed regulations appear in the proposed rules section of the issue of the Federal Register dated May 2, 1991.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire the present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, September 10, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-10664 Filed 5-1-91; 2:17 pm]

BILLING CODE 4830-01-M

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[AMS-FRL-3953-9]

Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program; Supplemental Proposed Alternative Test Procedure

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period.

SUMMARY: Because of a request, this notice announces an extension of the public comment period on EPA's supplemental notice of proposed rulemaking (SNPRM) for an alternative test procedure for the voluntary aftermarket part certification program. This proposal was published in the Federal Register on January 30, 1991 (56 FR 3746).

DATES: The public comment period is extended 60 days and will remain open through June 1, 1991.

ADDRESSES: Interested parties may submit written comments in response to this notice to the U.S. Environmental Protection Agency, Air Docket, room M-1500 (LE-131), Waterside Mall, 401 M Street SW., Washington, DC 20460, attn: Docket No. A-88-31.

FOR FURTHER INFORMATION CONTACT: Linc Wehrly, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, MI 48105 (313) 668-4286.

SUPPLEMENTARY INFORMATION: In the SNPRM, EPA offered an additional alternative certification compliance demonstration method for certifying aftermarket parts. The method involved back-to-back testing a representative test vehicle over the first 505 seconds of the Federal Test Procedure (the cold 505) with and without the aftermarket part installed. Compliance would be based on the emission difference between the two tests being less than or equal to an allowable emission margin. Two methods for determining the allowable emission margin were proposed. One method uses Federal Test Procedure (FTP) certification test results to determine emission margins. The other method uses the cold 505 certification test results to determine emission margins.

The Specialty Equipment Market Association (SEMA) has requested an extension of the public comment period to allow them sufficient time to evaluate cold 505 certification test data. EPA has concluded that SEMA's request is warranted and is hereby extending the comment period an additional sixty days, to close June 1, 1991.

Copies of the correspondences between EPA and SEMA have been submitted to the public docket.

Dated: April 29, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91-10611 Filed 5-3-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO-630-4111-02-24 1A]

RIN 1004-AB37

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 8; Well Completions/Workovers/Abandonments

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule provides for the issuance of Onshore Oil and Gas Order No. 8 (Order) under 43 CFR subpart 3164.1. This Order would implement and supplement the requirements found in 43 CFR part 3160 relating to onshore oil and gas operations. Specifically, the Order would require oil and gas operators to comply with minimum standards of performance when conducting well completions, workovers and abandonments on Federal and Indian lands (except Osage). The Bureau of Land Management's (BLM) existing guidelines on well completions, workovers and abandonments have never been formalized and published. Thus, this Order has no direct predecessor.

DATES: Comments should be submitted by July 5, 1991. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240.

Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joe Lara (505) 622-9042 or Rudy Baier (202) 653-2153.

SUPPLEMENTARY INFORMATION: The existing regulations in 43 CFR part 3160—Oil and Gas Operations—provide in § 3164.1 for the issuance of Oil and Gas Orders when necessary to implement and supplement specific provisions of the regulations. All Orders are promulgated through the rulemaking process and, when issued in final form, apply on a nationwide basis. A table is included in § 3164.1 that shows all existing Orders. This proposed rule would result in another such Order. It is intended to supplement the provisions of § 3162.3-1—Drilling Applications and Plans, § 3162.3-4—Well Abandonment, § 3162.4-1—Well Records and Reports, § 3162.4-2—Samples, Tests, and Surveys, § 3162.5-1—Environmental Obligations, § 3162.5-2—Control of Wells, § 3162.5-2(a)—Drilling Wells, § 3162.5-3—Safety Precautions, Subpart 3163—Noncompliance, Assessment, and Penalties, § 3165.3—Notice, State Director Review and Hearing on the Record, and § 3165.4—Appeals.

Onshore Oil and Gas Order No. 8 would require oil and gas operators to comply with minimum standards of performance when conducting well completions, workovers and abandonments on Federal and Indian (except Osage) lands in different parts of the country. General variances to specific requirements may be granted on a case-by-case or field basis.

In developing this Order, the BLM utilized, as guidance, standards prepared by the Oklahoma Corporation Commission, Texas Railroad Commission, the New Mexico Environmental Improvement Division and representative standards used by industry. Additionally, the BLM held public meetings in Roswell, New Mexico, Casper, Wyoming, and Bakersfield, California during July 1990. The purpose of these meetings was to solicit public comments on BLM's policy concerning stripper well production which included a requirement for operators to test the integrity of well casings in order to ensure that shut-in wells are not left in a condition that would impose an environmental risk. Based on the comments received, an alternative testing requirement of 500 pounds per square inch gauge maximum pressure for temporarily abandoned wells was included under section III.C.3.c. of this Order.

As part of this proposed Order, the BLM would require oil and gas operators seeking authorization of temporary abandonment of a well to conduct a casing integrity test within 30 days of obtaining BLM approval for abandonment, and to conduct subsequent casing integrity tests at least once every 3 years. The BLM currently requires a casing integrity test to be conducted on temporarily abandoned wells when a BLM official believes it to be necessary to ensure that the wellbore fluids are isolated and not able to migrate to other zones. This proposed Order, however, would require a casing integrity test for all temporarily abandoned wells, except those wells that are recently drilled and are assumed to have good casing. The proposed Order would allow either of two tests that show, within reason, that the casing is in good condition. By allowing a choice, the rule would enable operators to pick the one that is more practicable in light of existing field conditions. The BLM would welcome comments, and any ideas for additional testing methods that would accomplish the objective of ensuring that these wells do not act as conduits for wellbore fluids that could endanger valuable resources such as fresh or usable water, coal, oil shale, potash, etc.

The proposed Order would have no adverse economic effects because its requirements reflect the operating practices currently followed by prudent operators when conducting well completions, workovers, and abandonments on leases under the jurisdiction of the BLM. The proposed Order may have a beneficial economic effect. Industry would be less likely to be subjected to assessments or penalties resulting from violations and/or the requirement to undertake costly remedial actions if it has a better understanding of the requirements of the BLM which relate to well completion, workover, and abandonment operations. The requirements and standards established by this Order essentially are those which have been required but not officially promulgated by the Department of the Interior, and would impose the same burden on all operators, regardless of the size of the entity.

The principal authors of this proposed rule are Joe Lara, Roswell District Office, New Mexico; Rudy Baier, Washington Office; Aden Seidlitz, Alaska State Office; Darrell Self, Lander Resource Area Office, Wyoming; Max McCoy, White River Resource Area Office, Colorado; John Stout, Ely District Office, Nevada; assisted by the Onshore Orders Task Group, Mike Pool of the Division of Legislation and Regulatory Management, BLM; and the Office of the Solicitor, Department of the Interior.

It has been determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Additionally, this proposed rule will not cause a taking of private property under Executive Order 12630.

The provisions for collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004-0134 and 1004-0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, part 3160, group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3160—[AMENDED]

1. The authority citation for part 3160 continues to read as follows:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359); the Act of May 31, 1930 (30 U.S.C. 301-306); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a-396g); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 *et seq.*); the Act of December 12, 1980 (42 U.S.C. 6508); the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 *et seq.*).

2. Section 3164.1(b) is amended by adding the following entry to the table:

§ 3164.1 Onshore oil and gas orders.

* * * * *

(b) * * *

Order No.	Subject	Effective date	Federal Register reference	Supersedes
*	* * * * *	*	*	
8.	Well Completions/Workovers/Abandonments			None.

Note: Numbers to be assigned sequentially by the BLM as proposed Orders are prepared for publication.

Dated: Nov. 7, 1990.

Deputy Assistant Secretary of the Interior

James M. Hughes

Appendix—Text of Oil and Gas Order No. 8

Note: This appendix will not appear in the Code of Federal Regulations.

Onshore Oil and Gas Order No. 8—Well Completions/Workers/Abandonments

I. Introducion

A. Authority
B. Purpose
C. Scope

II. Definitions

III. Requirements

A. Completions
1. Approval and Reporting Requirements
2. Informational Requirements
3. Operational Requirements
B. Workovers
1. Approval and Reporting Requirements
2. Informational Requirements
3. Operational Requirements
C. Temporary Abandonment
1. Approval and Reporting Requirements
2. Informational Requirements
3. Operational Requirements
D. Permanent Abandonment of Exhausted Producers or Serivce Wells
1. Approval and Reporting Requirements
2. Informational Requirements

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3. Operational Requirements
IV. Variance from Minimum Standards

I. Introduction

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior under various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the BLM and is implemented by the onshore oil and gas operating regulations contained in 43 CFR part 3160. Section 3164.1 thereof specifically authorizes the Director, BLM, to issue Onshore Oil and Gas Orders when necessary to implement or supplement the operating regulations, and provides that all such Orders shall be binding on the lessees and operators of Federal and Indian (except Osage) oil and gas leases which have been, or may thereafter, be issued.

Specific authorities for the provisions contained in this Order are found at:

§ 3162.3-1 Drilling Applications and Plans
§ 3162.3-4 Well Abandonment
§ 3162.4-1 Well Records and Reports
§ 3162.4-2 Samples, Tests, and Surveys
§ 3162.5-1 Environmental Obligations
§ 3162.5-2 Control of Wells
§ 3162.5-2(a) Drilling Wells
§ 3162.5-3 Safety Precautions

Subpart 3163—Noncompliance, Assessment, and Penalties

§ 3165.3 Notice, State Director Review and Hearing on the Record; and
§ 3165.4 Appeals

B. Purpose

This Onshore Order details the BLM's national standards for the minimum levels of performance expected from operators when conducting well completions, workovers, and abandonments on Federal and Indian lands (except Osage). It also identifies the enforcement actions that will result when violations of the minimum standards are found, and when those violations are not abated in a timely manner.

C. Scope

This Order is applicable to all onshore Federal and Indian (except Osage) oil and gas leases. Abandonment of newly-drilled dry or nonproductive wells is covered in Onshore Oil and Gas Order No. 2.

II. Definitions

A. *Abandonment operations* means work conducted to permanently secure a well after the producible hydrocarbons are depleted, and a determination has been made that the well cannot serve any other useful purpose in the foreseakeable future.

B. *Authorized officer* means any employee of the BLM authorized to perform the duties described in 43 CFR Groups 3000 and 3100.

C. *Authorized representative* means any entity or individual authorized by the Secretary to perform duties described in this Order by cooperative agreement, delegation or contract.

D. *Blowout preventer* (BOP) means a device attached to the wellhead that allows the well to be sealed or controlled with or without a string of pipe or wireline in the wellbore.

E. *Completion operations* means work conducted to establish the producibility or serviceability of a well after the production-casing string has been set and cemented.

F. *Functional operating test* means activating equipment without subjecting it to wellbore pressure.

G. *Major violation* means noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income.

H. *Minor violation* means noncompliance that does not rise to the level of a major violation.

I. *Plugging fluid* means a slurry, comprised of bentonite or other flocculent or viscosifier and water, and possibly other additives, needed to achieve the required weight and consistency to stablize the hole.

J. *Prompt correction* means immediate correction of violations, with operations suspended if required by the authorized officer or representative.

K. *Recompletion* means conducted to reestablish producibility or serviceability of a well in any geologic horizon.

L. *Routine well maintenance* means work conducted on a well without altering its configuration including replacement or repair of malfunctioning equipment, clean out, or evaluation. This work includes but is not limited to:

1. Cutting paraffin and hot oil treatment;
2. Pulling rods and tubing;
3. Bailing sand;
4. Pressure surveys;
5. Swabbing;
6. Scale or corrosion treatment such as acid washes where any acid returned to the surface is retained;
7. Caliper and gauge surveys;
8. Removing or replacing subsurface pumps;
9. Logging; and
10. Fishing.

M. *Tagging the plug* means running in the hole with a string of tubing or drill pipe and placing weight on the plug. Other methods of tagging the plug may be approved by the authorized officer or representative.

N. *Temporarily abandoned well* means a well which is physically or mechanically incapable of producing oil and/or gas of sufficient value to exceed direct operating costs but may have value as a service completion for enhanced recovery or water disposal.

O. *Usable water* means water containing up to 10,000 parts per million (ppm) of total dissolved solids.

P. *Well worker operations* means work conducted to maintain, restore, or increase production or serviceability of a well in the geologic horizon(s) that the well is currently completed in.

III. Requirements

All well completions, workovers, and abandonment operations on Federal and Indian leases shall be conducted in a manner that assures the operations do not result in undue damage to surface or subsurface resources.

Violation: Major.

Corrective Action: Conduct corrective measures.

Normal Abatement Period: Prompt correction required.

A. Completions

1. Approval and Reporting Requirements.

a. A routine single zone completion does not require approval.

b. A well completion procedure that is included as part of the approved Application for Permit to Drill, Deepen, or Plug Back, Form 3160-3 (hereafter referred to as the ADP) does not require further approval. Informational requirements for the APD are contained in Onshore Oil and Gas Order No. 1.

c. If the well completion procedure has not been described in the APD, it shall be submitted for approval on a Sundry Notice and Report on Well, Form 3160-5 (hereafter referred to as the Sundry Notice) before initiating the operation.

For all procedures listed above, the operator shall submit a Well Completion or Recompletion Report and Log, Form 3160-4 (hereafter referred to as the Completion Report) within 30 days of moving the rig off location.

2. Informational Requirements.

a. The following information shall be included in the Sundry Notice: a brief description of the methods and equipment to be used for perforating, testing, formation treatment, and handling of any production; the geologic horizon; and proposed depth of the perforations.

3. Operational Requirements.

a. As specified in section III. A.1., the operator shall obtain approval before initiating a well completion.

Violation: Major.

Corrective Action: Stabilize well, cease operations, and apply for approval.

Normal Abatement Period: Prompt correction required.

b. Any oil produced shall be stored in a tank. No oil shall be placed in an earthen pit unless approved by the authorized officer or representative, or during an emergency that results from an uncontrolled flow of oil.

Violation: Major.

Corrective Action: Remove oil from earthen pit.

Normal Abatement Period: 24 hours.

c. The operator shall obtain prior approval from the authorized officer or representative to use surface pits for handling or storing fluids used during as well completion.

Violation: Minor.

Corrective Action: Apply for approval.

Normal Abatement Period: Prompt correction required.

Requirements and enforcement actions for use of surface pits to dispose of produced water are contained in Onshore Oil and Gas Order No. 7.

d. No later than 10 days following completion of down-hole operations, all surface pits used for handling or storing fluids shall be properly emptied and backfilled. Extensions may be granted by the authorized officer or representative to retain pits on a case-by-case basis.

Violation: Minor.

Corrective Action: Empty and backfill pit.

Normal Abatement Period: 48 hours.

e. A Completion Report and two copies of all logs shall be submitted within 30 days of moving the rig off location.

Violation: Minor.

Corrective Action: Submit required report and logs.

Normal Abatement Period: 20 days.

B. Workovers

1. Approval and Reporting Requirements.

a. Unless additional surface disturbance is involved, neither prior approval nor a subsequent report is required for routine well maintenance or for repair, replacement, or modification of surface production equipment.

b. Unless additional surface disturbance is involved, no prior approval is required for hydrolic fracturing, acidizing jobs where the acid does not return to the surface, or other workover operations. However, a subsequent report shall be submitted on a Sundry Notice (Form 3160-5) within 30 days of the completion of these operations.

c. Prior approval on the APD (Form 3160-3) shall be required for deepening or plugging back operations. A Completion Report (Form 3160-4) shall be submitted within 30 days of moving the rig off location.

d. Prior approval on a Sundry Notice shall be required for all other well operations such as repairing or altering casing, performing explosive fracturing or acidizing jobs where the acid returns to the surface, and converting to an injection or disposal well. A subsequent report shall be submitted on a Sundry Notice within 30 days of the completion of these operations. Any plans to use surface pits shall be applied for on the same form prior to commencing operations.

2. Informational Requirements.

a. For workover operations that require prior approval on the APD or Sundry Notice, the following information, where applicable, shall be attached to and made part of the forms:

(1) Objectives of the workover;
(2) Equpment that will be used to achieve the objectives (e.g., workover rig, wireline unit, coiled tubing unit);
(3) Anticipated pressure, control procedures, and equipment;
(4) Additives, density, and type of fluid to be used in the operation;
(5) Plan for disposition of the acid that returns to the surface;
(6) Detailed program of any explosive fracturing operation;
(7) Any anticipated hazards (e.g., high pressure, presence of H_2S gas) and plans to mitigate such hazards;
(8) Any plans to disturb additional surface acreage or to use existing pits;
(9) Estimated volume of gas to be flared or vented during the operation and plans to measure such gas;
(10) Testing and anticipated recompletion procedures when deepening a well; and
(11) The location and type of plug when plugging back a well. If a cement plug is used, the amount and type of cement shall be specified.

3. Operational Requirements.

a. As specified in section III B.1., the operator shall obtain approval from the authorized officer or representative before initiating a well workover.

Violation: Major.

Corrective Action: Stabilize well, cease operations, and apply for approval.

Normal Abatement Period: Promot correction required.

b. A blowout preventer and related equipment (BOPE) shall be installed and tested prior to working in (1) high pressure zones, (2) zones where the bottom pressures are not know, or (3) zones where H_2S is know to exist. The minimum BOPE shall consist of an appropriate pressure-rated double ram preventer and/or annular preventer, and sufficient valving to permit fluid circulation at the surface.

Violation: Major.

Corrective Action: Stabilize well, cease operations, and install the equipment as specified.

Normal Abatement Period: Prompt correction required.

c. All pipe fittings and valves placed on or connected with a BOPE, well casing, casinghead, drill pipe, or tubing shall have a working pressure rating for the maximum pressure anticipated at the well surface.

Violation: Major.

Corrective Action: Install the proper rated equipment.

Normal Abatement Period: Prompt correction required.

d. Blowout preventers shall be capable of closing on the pipe or tools being used. High-pressure lines such as choke or kill lines shall be secured by tying or anchoring to prevent whipping resulting from pressure surges.

Violation: Major.

Corrective Action: Stabilize well, cease operations, and install the equipment as specified.

Normal Abatement Period: Prompt correction required.

e. If the blind rams are closed for any purpose, the valves on the choke line(s) or relief line(s) below the blind rams shall be opened prior to opening the rams to bleed off any pressure.

Violation: Major.

Corrective Action: Bleed off pressure.

Normal Abatement Period: Prompt correction required.

f. While in service, the BOPE shall be inspected and a functional operating test shall be performed daily.

Violation: Minor.

Corrective Action: Conduct the inspection and test.

Normal Abatement Period: 24 hours.

g. Performance of the functional operating test shall be noted either on the daily operator or daily contractor report, as appropriate.

Violation: Minor.

Corrective Action: Make notation of test of the report.

Normal Abatement Period: 24 hours.

h. Operators shall comply with Onshore Oil and Gas Order No. 6 (Hydrogen Sulfide Operations) in appropriate circumstances.

i. Minimum standards and enforcement actions for the use of

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surface pits during workover operations are prescribed in section III.A.3.b., c., and d.

k. A Completion Report or Sundry Notice, as appropriate, shall be submitted within 30 days of moving the rig off location.

Violation: Minor.

Corrective Action: Submit the required reports.

Normal Abatement Period: 20 days.

C Temporary Abandonment

1. Appoval and Reporting Requirements.

a. No well shall be temporarily abandoned for more than 30 days without prior approval from the authorized officer or representative. The authorized officer or representative may authorize a delay in the permanent abandonment of a well for a period of 12 months. When justified by the operator, the authorized officer or representative may authorize additional delays, no one of which may exceed an additional 12 months (43 CFR 3162.3-4 (c)).

b. Prior approval on a Sundry Notice (Forum 3160-5) shall be required for temporary abandonment operations. A subsequent report shall be submitted on a Sundry Notice within 30 days of completion.

2. Informational Requirements.

a. The following information shall be attached to and made part of a Sundry Notice:

(1) Rationale for temporarily abandoning rather than permanently abandoning or producing the well;

(2) The time period, up to 12 months, that the well will be temporarily abandoned;

(3) Plans for testing the down-hole integrity of the well;

(4) Plans for isolating the perforations from the surface; and

(5) Plans for securing the wellhead at the surface.

3. Operational Requirements.

a. No well shall be temporarily abandoned for more than 30 days without prior approval from the authorized officer or representative.

Violation: Minor.

Corrective Action: Apply for approval.

Normal Abatement Period: 20 days.

b. No operations shall be commenced to temporarily abandon a well without prior approval from the authorized officer or representative.

Violation: Major.

Corrective Action: Stabilize well, cease operations, and apply for approval.

Normal Abatement Period: Prompt correction required.

c. A casing integrity test shall be conducted to ensure that the casing, including any packers or plugs, will hold a minimum of 70 percent of the internal yield of the casing being tested minus the hydrostatic pressure of the test fluid at the deepest point for a minmum of 30 minutes, with less than 10 percent decline. An alternative test method shall consist of filling the casing with an inert fluid and conducting a pressure test to 500 pounds per square inch gauge with no pressure drop within 30 minutes. One or the other of these tests shall be required at least once every three years. The requirement for the initial test shall be a condition of approval for temporarily abandoned status and shall be performed within 30 days of such status approval unless the subject well is a recently drilled well in which case it is at the discretion of the authorized officer or representative to determine when the initial test shall be required. The testing results shall be submitted on or attached to a Sundry Notice within 30 days of completion. Any temporarily abandoned well approved as a Class II injection well shall be subject to those testing requirements of the primacy State and not subject to either of these integrity tests.

Violation: Minor.

Corrective Action: Perform the necessary test and submit the required report.

Normal Abatement Period: 30 days.

d. A retrievable or a permanent-type bridge plug or a cement plug at least 50 feet in length shall be set in the casing within 100 feet above the producing interval.

Violation: Minor.

Corrective Action: Place the plug as specified.

Normal Abatement Period: 30 days.

e. The wellhead shall be secured.

Violation: Minor.

Corrective Action: Secure the wellhead.

Normal Abatement Period: 30 days.

f. A subsequent report shall be submitted on a Sundry Notice within 30 days of the completion of operations to temporarily abandon a well.

Violation: Minor.

Corrective Action: Submit the required report.

Normal Abatement Period: 20 days.

D. Permanent Abandonment of Exhausted Producers or Service Wells

1. Approval and Reporting Requirements.

The operator shall submit a notice of intent to abandon on a Sundry Notice (Form 3160-5) to the authorized officer or representative for approval prior to commencing abandonment operations. A subsequent report shall be submitted on a Sundry Notice within 30 days after the completion of the down-hole plugging operation, and a final abandonment notice shall be submitted on a Sundry Notice with 30 days after completing surface restoration.

2. Informational Requirements.

Plugging design for an abandonment hole shall include the following minimum standards:

a. *Open Hole.* A cement plug shall be placed to extend at least 50 feet below the bottom (except as limited by total depth (TD) or plugged back total depth (PBTD), to at least 50 feet above the top of:

(1) Any zones which contain fluid(s) with a potential to migrate;

(2) Any valuable resources including but not limited to usable water, hydrocarbons, coal, oil shale, potash; and

(3) The production casing shoe.

Extremely thick sections of a single formation may be secured by placing 100-foot plugs across the top and bottom of the formation.

In the absence of productive zones or prospectively valuable deposits of minerals which otherwise require placement of cement plugs, long sections of open hole shall be plugged at least every 3,000 feet. Such plugs shall be placed across in-gauge sections of the hole, unless otherwise approved by the authorized officer or representative.

All cement plugs, except the surface plug, shall have sufficient slurry volume to fill at least 100 feet of the hole, plus an additional 10 percent of slurry for each 1,000 feet of depth.

b. *Cased Hole.* A cement plug shall be placed opposite all open perforations and extend to a minimum of 50 feet below (except as limited by TD or PBTD) to at least 50 feet above the perforated interval. All cement plugs, except the surface plug, shall have sufficient slurry volume to fill at least 100 feet of hole, plus an additional 10 percent of slurry for each 1,000 feet of depth. In lieu of the cement plug, a bridge plug or retainer is acceptable, provided:

(1) The bridge plug or retainer is set within 100 feet above the open perforations;

(2) The perforations are isolated from any open hole below; and

(3) The bridge plug or retainer is capped with at least 50 feet of cement. If a bailer is used to cap this plug, 35 feet of cement shall be sufficient.

c. *Casing Removed from Hole.* If any casing is cut and recovered, a cement plug shall be plaed to extend at least 50 feet above and below the stub, and an additional cement plug placed to extend a minimum of 50 feet above and below the shoe of the surface casing or intermediate string, as appropriate. The exposed hole resulting from casing removal shall be secured as required in item 2a.

d. *Annular Space.* Whenever a cement plug is placed in casing where the annular space is not cemented, the uncemented annular section shall be cemented by perforating and circulating, using the one-inch tubing method, or any other method approved by the authorized officer or representative.

e. *Testing.* Any cement plug which is the only isolating medium for a zone containing usable water or a valuable mineral deposit shall be tested by either tagging the plug or pressuring to a minimum pump (surface) pressure of 1,000 psi, with no more than a 10 percent drop during a 15-minute period (cased hole only). If the placement and/or integrity of any other plug is questionable, it shall be tested in the same manner.

f. *Silica Sand or Silica Flour.* Silica sand, silica flour or other equivalent materials shall be added to cement exposed to bottom hole static temperatures above 230 degrees Fahrenheit to prevent heat degradation of the cement.

g. *Surface plug.* A cement plug of at least 50 feet shall be placed in the smallest casing and all annuli which extends to the surface. The top of the plug shall be placed as near to the eventual casing cutoff point as possible.

h. *Plugging Fluid.* Each of the intervals between the plugs shall be filled with fluid of sufficient density to exert hydrostatic pressure exceeding the greatest formation pressure encountered when drilling through such interval. In the absence of other information at the time plugging is approved, a minimum fluid weight of 9.0 pounds per gallon shall be specified.

i. *Surface Cap.* All casing shall be cut off at the base of the cellar or 3 feet below the final restored ground level, whichever is deeper. The celler shall be filled from the cutoff point to the restored ground surface with suitable material.

j. *Abandonment Marker.* A permanent monument shall be required for each abandoned well, unless otherwise requested by the private surface owner or surface management agency, and then only if a waiver is granted in writing by the authorized officer or representative. The marker shall be at least 4 feet above the reclaimed ground level and securely anchored. The pipe shall be capped and inscribed with the name of the operator, the lease serial number, the well number, and the surveyed description of the well (43 CFR 3162.6(d)).

k. *Surface Reclamation.* When a well site is to be permanently abandoned, the surface of the lands disturbed in connection with the conduct of operations shall be reclaimed in a timely manner and in accordance with a reclamation plan. If the well and other facilities are not covered by a previously-approved reclamation plan, a plan shall be submitted with a Sundry Notice.

3. Opertional Requirments.

a. Prior to commencing abandonment operations, the operator shall submit a notice of intent to abandon on a Sundry Notice and receive approval. The notice shall include plans that meet the above minimum requirements, as appropriate, and will describe the type, additives, and yield of the cement to be used.

Violation: Major.

Corrective Action: Stabilize well, cease operations, and apply for approval.

Normal Abatement Period: Prompt correction required.

Failure to meet this requirement will result in an immediate assessment of $500 (43 CFR 3163.1(b)(3)).

b. All plugging operations shall be conducted in accordance with the design criteria as specified on a Sundry Notice. Any variance of the criteria shall receive prior approval from the authorized officer or representative.

Violation: Major.

Corrective Action: Conduct remedial operations to meet the approved design criteria.

Normal Abatement Period: Prompt correction required.

c. A subsequent report of the down-hole plugging operation shall be submitted on a Sundry Notice within 30 days of completion.

Violation: Minor.

Corrective Action: Submit required report.

Normal Abatement Period: 20 days.

d. A final abandonment notice shall be submitted on a Sundry Notice within 30 days of completion of the required surface reclamation.

Violation: Minor.

Corrective Action: Submit required report.

Normal Abatement Period: 20 days.

IV. Variance from Minimum Standards

An operator may request the authorized officer or representative to approve a variance from any of the minimum standards prescribed in section III hereof. All such requests shall be submitted in writing to the authorized officer or representative and provide information as to the circumstances which warrant approval of the variance(s) requested and the proposed alternative methods by which the related minimum standard(s) are to be satisfied. The authorized officer or representative, after considering all relevant factors, may approve the requested variance(s) if it is determined that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s).

In the case of emergency or other situations of an immediate nature, approval may be given orally by the authorized officer or representative to proceed with a well completion, workover, or abandonment operation. However, such requests shall be followed by a written notice filed not later than the fifth business day following oral approval.

[FR Doc. 91-10630 Filed 5-3-91; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 47 and 52

[FAR Case 91-11]

Federal Acquisition Regulation (FAR); Shipment to Ports and Air Terminals

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing revisions to coverage at 47.305-6, 52.247-51 and alternate I of 52.247-51 of the Federal Acquisition Regulation (FAR) to require contracting officers to publish, with the solicitation, any available information on port handling and ocean charges. Based on a Defense Management Review (DMR), this particular change would delete coverage previously contained in lower-level supplements.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 5, 1991 to

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be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, room 4041, Washington, DC 20405.

Please cite FAR Case 91-11 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR Case 91-11. For information pertaining to this case, contact Ms. Linda Klein at (202) 501-3775.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revision will not have a significant cost or administrative impact on contractors. Comments are nonetheless solicited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subsection will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 91-11) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collectoin requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 47 and 52.

Government procurement.

Dated: April 25, 1991.

Albert A. Vicchiollis,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 47 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 47 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 47—TRANSPORTATION

2. Section 47.305-6 is amended by redesignating paragraph (e) introductory text through (e)(3) as (e)(1) through (e)(1)(iii) respectively; and by adding paragraph (e)(2) to read as follows:

47.305-6 Shipments to ports and air terminals.

* * * * *

(e) * * *

(2) Port handling and ocean charges available at the time of issuance of a solicitation shall be published in solicitations for the acquisition of supplies for overseas shipment.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.247-51 is amended by revising the introductory text, the date in the clause heading, and paragraphs (a), (d), and Alternate I of the clause, to read as follows:

52.247-51 Evaluation of Export Offers.

As prescribed in 47.305-6(e), insert the following provision:

Evaluation of Export Offers (Apr. 1991)

(a) *Port handling and ocean charges—other than DOD water terminals.* Tenative port handling and ocean freight charges are set forth in paragraph (d) of this provision for the information of Offerors. In evaluationg offers received, the Government will use the port handling and ocean charges in tariffs on file with the Bureau of Domestic Regulation, Federal Maritime Commission; Directorate of International Traffic, Military Traffic Management Command; of other appropriate regulatory authorities as of the date of bid opening (or the closing date specified for receipt of offers) and effective for the date of the expected initial shipment. A list of port handling and ocean freight charges actually used in the evaluation, if substituted for any listed in this solicitation, will be furnished to interested Offerors upon request.

* * * * *

(d) *Ports of loading for evaluation of offers and tentative ocean and port handling charges.* Ports to be used by the Government in evaluating offers and tentative ocean and port handling charges are as follows:

Port(s) of loading	Combined ocean and port handling charges to (country)	Unit of measure: i.e., metric ton, measurement ton, cubic foot, etc.

* * * * *

Alternate I (APR 1991). When the CONUS ports of export are DOD water terminals, delete paragraph (a) from the basic provision and substitute the following paragraph (a):

(a) *Port handling and ocean charges—DOD water terminals.* Tentative port handling and ocean freight charges are set forth in paragraph (d) of this provision for the information of offerors. In evaluating offers received, the Government will use the port handling and ocean charges made available by the Directorate of International Traffic, Military Traffic Management Command rate information letters on file as of the date of bid opening (or closing date specified for reciept of the offers) and effective for the date of the expected initial shipment. A list of port handling and ocean freight charges actually used in the evaluation, if substituted for any listed in the solicitation, will be furnished to interested Offerors upon request.

* * * * *

[FR Doc. 91-10616 Filed 5-3-91; 8:45 am]

BILLING CODE 6820-94-M

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1631, 1649, and 1652

RIN 3206-AE47

Federal Employees Health Benefits Acquisition Regulations; Termination of Contracts

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is identifying the sections of 5 U.S.C., chapter 89, and 5 CFR part 890, which govern the termination of FEHB contracts. This clarification is necessay because different sections of the law and regulations govern different types of contract terminations. This rule also implements the State premium tax provisions of section 7002(c) of Public Law 101-508.

DATES: Comments must be received on or before July 5, 1991.

ADDRESSES: Written comments may be sent to Andrea Minniear Farran, Assistant Director for Retirement and Insurance Policy, Retirement and Insurnace Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Abby Block (202) 606-0775, ext. 207.

SUPPLEMENTARY INFORMATION: Sectio 1649.002-70 of title 48 of the Code of Federal Regulations (FEHBAR) identifies which sections of the Federal Employees Health Benefits (FEHB) law and regulations control the termination of a contract under the FEHB Program. Currently, this FEHBAR section deals only with the withdrawal of approval of

a health benefits plan or carrier. These proposed regulations control the nonrenewal of an FEHB contract at the end of the contract term.

The proposed regulation also amends part 1631 of title 48 of the Code of Federal Regulations to implement section 7002(c) of Public Law 101-508, which exempts FEHB Program carriers, underwriters, and plan administrators, from State taxes on FEHB premiums. Under the provisions of the Federal Acquisition Regulation [FAR 31.205-41], such taxes have previously been chargeable to the FEHB contract. The new law necessitates a clarification to this provision in OPM's implementing regulations at 1631.205-41 stating that the charge of a premium tax by a carrier to the FEHB contract will not be an allowable cost.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily clarify existing regulations.

List of Subjects in 48 CFR Parts 1631, 1649 and 1652

Administrative practice and procedure, Government contracts, Health insurance.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend 48 CFR parts 1631, 1649 and 1652 as follows:

PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for part 1631 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

2. In subpart 1631.2 a new 1631.205-41 is added to read as follows:

1631.205-41 Taxes.

5 U.S.C. 8909(f)(1) prohibits the imposition of taxes, fees, or other monetary payment, directly or indirectly, on FEHB premiums by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority of those entities. Therefore, FAR 31.205-41 is modified to include those taxes as unallowable costs.

PART 1649—TERMINATION OF CONTRACTS

1. The authority citation for part 1649 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

2. Section 1649.002-70 is revised to read as follows:

1649.002-70 Applicability of the FAR to FEHB acquisitions.

(a) Termination of FEHB contracts because of withdrawal of approval is controlled by 5 U.S.C. 8902(e) and 5 CFR 890.204.

(b) Termination of FEHB contracts because of nonrenewal of the contract at the end of the contract term is controlled by 5 U.S.C. 8902(a) and 5 CFR 890.205.

(c) The procedures for settlement of contracts after they are terminated shall be those contained in FAR part 49.

PART 1652—CONTRACT CLAUSES

1. The authority citation for part 1652 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

2. Section 1652.216-71 is amended by revising the second sentence of paragraph (b)(2)(ii) as set forth below; by removing the designation "(A)" from paragraph (b)(2)(iv); and by removing paragraph (b)(2)(iv)(B).

1652.216-71 Accounting and allowable cost.

* * * * *

(b) * * *

(2) * * *

(ii) * * * Unless otherwise stated in the contract, administrative expenses include, in part: All taxes (excluding premium taxes, as provided in section 1631.205-41), insurance and reinsurance premiums, medical and dental consultants used in the adjudication process, concurrent or managed care review when not billed by a health care provider and other forms of utilization review, the cost of maintaining eligibility files, legal expenses incurred in the litigation of benefit payments and bank charges for letters of credit. * * *

* * * * *

3. Section 1652.249-70 is amended by revising paragraph (a) to read as follows:

1652.249-70 Renewal and withdrawal of approval.

* * * * *

(a) Pursuant to 5 U.S.C. 8902(a), the contract renews automatically for a term of 1 year each January 1st, unless written notice of intent not to renew is given either by OPM or the Carrier not less than 60 calendar days before the renewal date, or unless modified by mutual agreement

* * * * *

[FR Doc. 91-10637 Filed 5-3-91; 8:45 am]

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Notices

Federal Register
Vol. 56, No. 87
Monday, May 6, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured (Types 35–36), Virginia Sun-Cured (Type 37), and Cigar-Filler and Binder (Types 42, 43, 44, 53, 54 & 55) Tobaccos; 1991–92 Marketing Quotas and Acreage Allotments

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), U.S. Deaprtment of Agriculture (USDA).

ACTION: Notice of determination of 1991–92 marketing quotas and acreage allotments.

SUMMARY: The purpose of this notice is to affirm determinations which were made by the Secretary of Agriculture on March 1, 1991, with respect to the 1991 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), and cigar-filler and binder (types 42–44 & 53–55) tobaccos. In addition to other determinations, the Secretary declared national acreage allotments for the following kinds of tobaccos: fire-cured (type 21), 3,900 acres; fire-cured (types 22–23), 15,037 acres; dark air-cured (types 35–36), 5,142 acres; Virginia sun-cured (type 37), 213 acres; and cigar-filler and binder (types 42–44 & 53–55), 11,505 acres.

This notice also affirms the proclamation made by the Secretary that marketing quotas will be in effect for fire-cured (types 21–23) and dark air-cured (types 35–36) tobaccos for the three marketing years beginning October 1, 1991, and sets forth the results of the referenda held during the period March 25–28, 1991, in which producers of both kinds of tobacco approved marketing quotas for the 1991–92, 1992–93, and 1993–94 marketing years.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, room 3736 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–8839. The final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since ASCS or Commodity Credit Corporation (CCC) are not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The purpose of this notice is to affirm the determinations of the national marketing quotas for the 1991 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), and cigar-filler and binder (types 42–44 & 53–55) tobacco which were announced by the Secretary on March 1, 1991, and to set forth certain other determinations with respect to these kinds of tobacco. On March 1, 1991, the Secretary also announced that referenda would be conducted by mail with respect to fire-cured and dark air-cured tobaccos.

During the period March 25–28, 1991, eligible fire-cured and dark air-cured producers voted in separate referenda, to determine whether such producers disapprove marketing quotas for the 1991–92, 1992–93, and 1993–94 marketing years for these tobaccos. Of the producers voting, 89.3 percent favored marketing quotas for fire-cured tobacco while 88.9 percent favored marketing quotas for dark air-cured tobacco. Accordingly, quotas for these kinds are in effect for the 1991–92 marketing year.

In accordance with section 312(a) of the Agricultural Adjustment Act of 1938, as amended (the "Act"), the Secretary of Agriculture is required to proclaim not later than March 1 of any marketing year with respect to any kind of tobacco, other than burley and flue-cured tobacco, a national marketing quota for any such kind of tobacco for each of the next three marketing years if such marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect. With respect to fire-cured and dark air-cured tobaccos, the 1990–91 marketing year is the last year of three such consecutive years. Accordingly, a marketing quota for fire-cured and dark air-cured tobaccos are proclaimed for each of the three marketing years beginning October 1, 1991, October 1, 1992, and October 1, 1993. Sections 312 and 313 of the Act also provide that the Secretary shall announce the reserve supply level and the total supply of fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), and cigar-filler and binder (types 42–44 & 53–55) tobaccos for the marketing year beginning October 1, 1990, and the amounts of the national marketing quotas, national acreage allotments, and national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (a) new farms and (b) making corrections and adjusting inequities in old farm allotments for fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type

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37), cigar-filler and binder (types 42–44 & 53–55) tobaccos for the 1991–92 marketing year.

Section 312(b) of the Act provides, in part, that the amount of the national marketing quota for a kind of tobacco is the total quantity of that kind of tobacco which may be marketed which will make available during such marketing year a supply of such tobacco equal to the reserve supply level. Since producers of these kinds of tobacco generally produce less than their respective national acreage allotments, it has been determined that a larger quota would be necessary to make available production equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restriction of marketings in adjusting the total supply to the reserve supply level.

Section 301(b)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. The "normal supply" is defined in section 301(b)(10)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use and 65 percent of a normal year's exports as an allowance for a normal year's carryover. A "normal year's domestic consumption" is defined in section 301(b)(11)(B) of the Act as the average quantity produced and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the average quantity produced in and exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

On January 24, 1991, a Notice of Proposed Determination was published (56 FR 2737) in which interested persons were requested to comment with respect to these issues.

Discussion of Comments

Twelve written responses were received in response to the Notice of Proposed Determination. Some respondents discussed more than one kind of tobacco. A summary of these comments by kind of tobacco is as follows:

Fire-cured (type 21) tobacco: Two comments were received. They recommended that the marketing quotas established for this kind of tobacco be the same as those for 1990 marketing year.

Fire-cured (types 22–23) tobacco: Seven comments were received. Recommendations ranged from a 25 percent reduction in quota to no change from the 1990 marketing quota.

Virginia sun-cured (type 37) tobacco: Two comments were received. They recommended that marketing quotas established for this kind of tobacco be established at the same level that was applicable for the 1990 marketing year.

Cigar-filler and binder (types 42–44 & 53–55) tobacco: Five comments were received. These comments ranged from a 15 percent decrease in quota to no change in quota from the 1990 marketing year.

Dark air-cured (types 35–36) tobacco: Eight comments were received. Recommendations ranged from no change to a 20 percent increase in the quota.

Based upon a review of these comments and the latest available statistics of the Federal Government, the following determinations have been made.

Fire-Cured (Type 21) Tobacco

The yearly average quantity of fire-cured (type 21) tobacco produced in the United States, which is estimated to have been consumed in the United States, during the 10 marketing years preceding the 1990–91 marketing year was approximately 1.9 million pounds. The average annual quantity of fire-cured (type 21) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1990–91 marketing year was 2.3 million pounds (farm sales weight basis). Domestic use has trended sharply downward. Accordingly, a normal year's domestic consumption has been determined to be 0.9 million pounds and a normal year's exports have been determined to be 2.5 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 6.9 million pounds.

Manufacturers and dealers reported stocks of fire-cured (type 21) tobacco held on October 1, 1990, of 5.4 million pounds. The 1990 fire-cured (type 21) tobacco crop is estimated to be 2.9 million pounds. Therefore, the total supply of fire-cured (type 21) tobacco for the 1990–91 marketing year is 8.3 million pounds. During the 1990–91 marketing year, it is estimated that disappearance will total approximately 3.0 million pounds. By deducting this disappearance from the total supply, a carryover of 5.3 million pounds at the beginning of the 1991–92 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1991, is 1.6 million pounds. This represents the quantity of fire-cured (type 21) tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level.

During the past 5 years, slightly more than 40 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 3.9 million pounds is necessary to make available production of 1.6 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1991–92 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota of 4.66 million pounds for the 1991–92 marketing year.

In accordance with section 313(g) of the Act, the 1991–92 national marketing quota divided by the 1986–90, 5-year national average yield of 1,200 pounds per acre results in a 1991 national acreage allotment of 3,900.00 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 27.0 acres, by the total of 1991 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Fire-Cured (Types 22–23) Tobacco

The yearly average quantity of fire-cured (types 22–23) tobacco produced in the United States estimated to have been consumed in the United States during the 10 years preceding the 1991–92 marketing year was approximately 17.7 million pounds. The average annual quantity of fire-cured (types 22–23) tobacco produced in the United States and exported during the 10 marketing years preceding the 1990–91 marketing year was 18.0 million pounds (farm-sales weight basis). Both domestic use and exports are erratic. A normal year's domestic consumption has been determined to be 20.0 million pounds and a normal year's exports have been determined to be 21.2 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 94.5 million pounds.

Manufacturers and dealers reported stocks of fire-cured (types 22–23) tobacco on October 1, 1990, of 70.2 million pounds. The 1990 fire-cured (types 22–23) crop is estimated to be 30.8 million pounds. Therefore, the total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1990, is 101.0 million pounds. During the 1990–91 marketing year, it is estimated that disappearance will total approximately 32.0 million pounds. By deducting this disappearance from the total supply, a carryover of 69.0 million pounds at the beginning of the 1991–92 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1991, is 25.5 million pounds. This represents the quantity of fire-cured (types 22–23) tobacco which may be marketed which will make available during the 1991–92 marketing year a supply equal to the reserve supply level. During the past 5 years, about 93 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota for the 1991–92 marketing year of 27.4 million pounds is necessary to make available production of 25.5 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1991–92 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1991–92 marketing year of 32.9 million pounds.

In accordance with section 313(g) of the Act, the national marketing quota for the 1991–92 marketing year has been divided by the 1986–90, 5-year national average yield of 2,188 pounds per acre, to obtain a national acreage allotment of 15,036.56 acres, for the 1991–92 marketing year.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment for the 1991–92 marketing year less a national reserve of 34 acres by the total of the 1991 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Dark Air-Cured (Types 35–36) Tobacco

The yearly average quantity of dark air-cured (types 35–36) tobacco produced in the United States, which is estimated to have been consumed in the United States, during 10 marketing years preceding the 1990–91 marketing year was approximately 11.7 million pounds. The average annual quantity of dark air-cured (types 35–36) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1990–91 marketing year was 2.0 million pounds (farm sales weight basis). Both domestic use and exports have trended downward.

Accordingly, a normal year's domestic consumption has been determined to be 10.2 million pounds and a normal year's exports have been determined to be 1.6 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 32.2 million pounds.

Manufacturers and dealers reported stocks of dark air-cured (types 35–36) tobacco held on October 1, 1990, of 29.9 million pounds. The 1990 dark air-cured (types 35–36) tobacco crop is estimated to be 7.5 million pounds. Therefore, the total supply of dark air-cured (types 35–36) tobacco for the 1990–91 marketing year is 37.4 million pounds. During the 1990–91 marketing year, it is estimated that disappearance will total approximately 12.5 million pounds. By deducting this disappearance from the total supply, a carryover of 24.9 million pounds at the beginning of the 1991–92 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1991, is 7.3 million pounds. This represents the quantity of dark air-cured (types 35–36) tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level.

During the past 5 years, less than 65 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 8.8 million pounds is necessary to make available production of 7.3 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1991–92 national marketing quota must be increased by 19 percent in order to avoid undue restriction of marketings. This results in a national marketing quota of 10.5 million pounds for the 1991–92 marketing year.

In accordance with section 313(g) of the Act, the 1991–92 national marketing quota divided by the 1986–90, 5-year average yield of 2,042 pounds per acre results in a 1991 national acreage allotment of 5,142.02 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.2 is determined by dividing the national acreage allotment, less a national reserve of 15.0 acres by the total of 1991 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Virginia Sun-Cured (Type 37) Tobacco

The yearly average quantity of Virginia sun-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1990–91 marketing year was approximately 370,000 pounds. The average annual quantity produced in the United States and exported during the same period was approximately 120,000 pounds (farm-sales weight basis). Domestic use has shown a sharp downward trend, and exports have shown a moderate downward trend. Accordingly, a quantity of 141,000 pounds has been determined to be a normal year's domestic consumption and a quantity of 100,000 pounds has been determined to be a normal year's exports. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 561,000 pounds.

Manufacturers and dealers reported stocks of Virginia sun-cured (type 37) tobacco held on October 1, 1990, of 600,000 pounds. The 1990 Virginia sun-cured (type 37) tobacco crop is estimated to be 100,000 pounds. Therefore, the total supply of Virginia sun-cured (type 37) tobacco for the 1990-91 marketing year is 700,000 pounds.

During the 1990–91 marketing year, it is estimated that disappearance will total approximately 200,000 pounds. By deducting the disappearance from the total supply, a carryover of 500,000 pounds at the beginning of the 1991–92 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1991, is 61,000 pounds. This represents the quantity of Virginia sun-cured tobacco which may be marketed which will make available during such marketing year a supply

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equal to the reserve supply level. During the last 5 years, about one-third of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 241,000 pounds is necessary to make available production of 81,000 pounds. Accordingly, the National marketing quota for the 1991–92 marketing year is 241,000 pounds.

In accordance with section 313(g) of the Act, the 1991–92 national marketing quota divided by the 1986–90, 5-year national average yield of 1,131 pounds per acre result in a 1991 national acreage allotment of 213.09 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 1 acre, by the total of the 1991 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Cigar-Filler and Binder (Types 42–44 and 53–55) Tobacco

The yearly average quantity of cigar-filler and binder (types 42–44 and 53–55) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1990–91 marketing year was approximately 20.4 million pounds. The average annual quantity of cigar-filler and binder (types 42–44 and 53–55) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1990–91 marketing year was very small. Domestic use has trended downward and exports are almost non-existent. Accordingly, a normal year's domestic consumption has been established at 14.4 million pounds while a normal year's exports has been established at zero pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 40.7 million pounds.

Manufacturers and dealers report stocks of cigar-filler and binder (types 42–44 and 53–55) tobacco held on October 1, 1990, of 27.8 million pounds.

The 1990 cigar-filler and binder crop is estimated to be 13.6 million pounds. Therefore, the total supply of cigar-filler and binder (types 42–44 and 53–55) tobacco for the 1990–91 marketing year is 41.4 million pounds. During the 1990–91 marketing year, it is estimated that disappearance will total about 15.0 million pounds. By deducting this disappearance from the total supply, a carryover of 26.4 million pounds at the beginning of the 1991–92 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1991, is 14.3 million pounds. This represents the quantity of cigar-filler and binder tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. Less than two-thirds of the announced national marketing quota has been produced recently. Accordingly, it has been determined that a 1991–92 national marketing quota of 22.7 million pounds is necessary to make available production of 14.3 million pounds. Accordingly, the national marketing quota for the 1991–92 marketing year is 22.7 million pounds.

In accordance with section 313(g) of the Act, the 1991–92 national marketing quota of 22.7 million pounds divided by the 1986–90, 5-year national average yield of 1,973 pounds per acre results in a 1991–92 national acreage allotment of 11,505.32 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 82 acres, by the total of 1991 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

Accordingly, the following determinations announced by the Secretary of Agriculture on March 1, 1991, are affirmed:

Proclamations of National Marketing Quotas Fire-Cured Tobacco

Since the 1990–91 marketing year is the last of three consecutive years for which marketing quotas previously proclaimed will be in effect for fire-cured tobacco, a national marketing quota for such kind of tobacco for each of the three marketing years beginning October 1, 1991, October 1, 1992, and October 1, 1993 is proclaimed.

Dark Air-Cured Tobacco

Since the 1990–91 marketing year is the last of three consecutive years for which marketing quotas previously proclaimed will be in effect for dark air-cured tobacco, a national marketing quota for such kind of tobacco for each of the three marketing years beginning October 1, 1991, October 1, 1992, and October 1, 1993, is proclaimed.

Determinations for the 1991–92 Marketing Years of Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air Cured (Types 35–36), Virginia Sun-Cured (Type 37), and Cigar-filler and Binder (Types 42–44 and 53–55) Tobaccos

Referendum Results

Marketing quotas shall be in effect for the 1991–92 marketing year for both fire-cured and dark air-cured tobaccos. In separate referenda held during the period March 25–28, 1991, 89.3 percent of producers of fire-cured and 88.9 percent of producers of dark air-cured tobacco voted in favor of marketing quotas.

The following is a summary, by State, of the results of each referendum:

FIRE-CURED TOBACCO

	Total votes	Yes votes	No votes	% Yes votes
Virginia	736	668	68	91
Kentucky	2,314	2,082	232	90
Tennessee	2,223	1,961	262	88

DARK AIR-CURED TOBACCO

	Total votes	Yes votes	No votes	% Yes votes
Indiana	7	4	3	57
Kentucky	4,528	4,017	511	89
Tennessee	1,166	1,048	118	90

With respect to fire-cured (type 21) tobacco for the marketing year beginning October 1, 1991:

(a) *Reserve supply level.* The reserve supply level for fire-cured (type 21) tobacco is 6.9 million pounds.

(b) *Total supply.* The total supply of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1990, is 8.3 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1991, is 5.3 million pounds.

(d) *National marketing quota.* The 1991–92 national marketing quota for fire-cured (type 21) tobacco for the marketing year beginning October 1, 1991, is 4.66 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 3,900.00 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments is 1.0.

(g) *National reserve.* The national acreage reserve is 27 acres of which 10 acres are made available for the 1991 new farms and 17 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1991:

(a) *Reserve supply level.* The reserve supply level for fire-cured (types 22–23) tobacco is 94.5 million pounds.

(b) *Total supply.* The total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1990, is 101.0 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1991, is 69.0 million pounds.

(d) *National marketing quota.* The 1991–92 national marketing quota for fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1991, is 32.9 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 15,036.56 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1991–92 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 34 acres of which 10 acres are made available for 1991 new farms, and 24 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to dark air-cured (types 35–36) tobacco for the marketing year beginning October 1, 1991:

(a) *Reserve supply level.* The reserve supply level for dark air-cured (types 35–36) tobacco is 32.2 million pounds.

(b) *Total supply.* The total supply of dark air-cured (types 35–36) tobacco for the marketing year beginning October 1, 1990, is 37.4 million pounds.

(c) *Carryover.* The estimated carryover of dark air-cured (types 35–36) tobacco for the marketing year beginning October 1, 1991, is 24.9 million pounds.

(d) *National marketing quota.* The 1991–92 national marketing quota for dark air-cured (types 35–36) tobacco for the marketing year beginning October 1, 1991, is 10.5 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 5,142.02 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1991–92 marketing year is 1.2.

(g) *National reserve.* The national acreage reserve is 15 acres, of which 5 acres are made available for 1991 new farms, and 10 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to Virginia sun-cured (type 37) tobacco for the marketing year beginning October 1, 1991:

(a) *Reserve supply level.* The reserve supply level for Virginia sun-cured (type 37) tobacco is 561,000 pounds.

(b) *Total supply.* The total supply of Virginia sun-cured (type 37) tobacco for the marketing year beginning October 1, 1990, is 700,000 pounds.

(c) *Carryover.* The estimated carryover of Virginia sun-cured (type 37) tobacco for the marketing year beginning October 1, 1991, is 500,000 pounds.

(d) *National marketing quota.* The national marketing quota for Virginia sun-cured (type 37) tobacco for the marketing year beginning October 1, 1991, is 241,000 pounds.

(e) *National acreage allotment.* The national acreage allotment is 213.09 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1991–92 marketing year is 1.0

(g) *National reserve.* The national acreage reserve is 1.0 acre, of which 0.5 acres are made available for 1991 new farms, and 0.5 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to cigar-filler and binder (types 42–44 and 53–55) tobacco for the marketing year beginning October 1, 1991:

(a) *Reserve supply level.* The reserve supply level for cigar-filler and binder (types 42–44 and 53–55) tobacco is 40.7 million pounds.

(b) *Total supply.* The total supply of cigar-filler and binder (types 41–44 and 53–55) tobacco for the marketing year beginning October 1, 1990, is 41.4 million pounds.

(c) *Carryover.* The estimated carryover of cigar-filler and binder (types 42–44 and 53–55) tobacco for the marketing year beginning October 1, 1991, is 26.4 million pounds.

(d) *National marketing quota.* The amount of the national marketing quota for cigar-filler and binder (types 42–44, 53–55) tobacco for the marketing year beginning October 1, 1991, is 22.7 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 11,505.32 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1991–92 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 82.0 acres, of which 70.0 acres are made available for 1991 new farms, and 12.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

Authority: 7 U.S.C. 1301, 1312, 1313, 1375.

Signed at Washington, DC on April 30, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91-10646 Filed 5-3-91; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

Mohair Advertising and Promotion

AGENCIES: Agricultural Stablization And Conservation Service And Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: The purpose of this notice is to announce that a referendum will be conducted during the period of June 17–28 1991, among mohair producers to determine if such producers are in favor of a proposed agreement between the Mohair Council of America (MCA) and the United States Department of Agriculture (USDA). Under the proposed agreement, USDA would make deductions for the 1991 through 1995 marketing years from price support payments which are made to angora goat producers for mohair under the National Wool Act of 1954, as amended the ("Act"). The amounts so deducted would be used by the MCA for advertising and sales promotion programs and for programs pertaining to the dissemination of information concerning mohair or the products thereof.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Harry D. Milner, Program Specialist, EOLPD, ASCS, USDA, P.O. Box 2415, Washington, DC 20013. Telephone (202) 475-3805.

SUPPLEMENTARY INFORMATION: This notice of referendum has been reviewed under United States Department of Agriculture (USDA) procedures established in accordance with provisions of Departmental Regulations 1512-1 and Executive Order 12291 and has been classified as "not Major." It has been determined that the provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local

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government agencies, or geographic regions; and (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this notice applies as found in the Catalog of Federal Domestic Assistance are: National Wool Act Payments; 10.059.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Marketing Service (AMS) and the Agricultural Stabilization and Conservation Service (ASCS) are not required by 5 U.S.C. 553, or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 relating to intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Section 708 of the Act authorizes the Secretary of Agriculture to enter into agreements with, or to approve agreements entered between, marketing cooperatives, trade associations, or others engaged in the handling of wool, mohair, sheep, or goats or the products thereof for the purpose of developing and conducting advertising and sales promotion programs and programs for the development and dissemination of information on product quality, production management, and marketing improvement of wool, mohair, sheep, or goats or their products.

In order to defray the expenses for carrying out these activities, the agreements may provide for deductions to be made from price support payments which are paid to producers under the Act. However, as required by section 708 of the Act, no agreement providing for any deductions shall become effective unless the agreement is approved in a referendum by at least a majority of the producers voting or by producers with at least a majority of the volume of production represented in the referendum. The approval requirement was changed by the Food, Agriculture, Conservation, and Trade Act of 1990 from a two-thirds requirements to a requirement for majority approval.

Mohair producers approved agreements for advertising and sales promotion activities between the Secretary and the Mohair Council of America (MCA) in referendum conducted in 1967, 1971, 1982, and 1986. The last agreement dated October 15, 1986, was effective for the 1986–1990 marketing years.

It is proposed that a new agreement be entered into between the Secretary and the MCA for the 1991–1995 marketing years. The proposed agreement will be similar to the agreement dated October 15, 1986.

The purpose of this notice is only to announce the period when the referendum will be conducted and certain eligibility requirements for producers to participate in such referendum in accordance with 7 CFR part 1270.

Notice of Referendum

1. *Period of Mohair Referendum for the 1991, 1992, 1993, 1994, and 1995 marketing years.* In accordance with section 708 of the National Wool Act of 1954, as amended, the Secretary of Agriculture will conduct a referendum among mohair producers to determine whether they approve of the proposed agreement between the Mohair Council of America, and the Agricultural Marketing Service regarding advertising and sales promotion programs for goats, mohair or the products thereof. The referendum will be conducted in accordance with the provisions of 7 CFR part 1270 during June 17–28 1991, inclusive. Voting will be conducted through county offices of the Agricultural Stabilization and Conservation Service (ASCS) of the U.S. Department of Agriculture. Copies of the proposed agreement are available at ASCS county offices and will be mailed to individual producers.

2. *Eligibility requirements to participate in the Referendum.* Eligibility requirements for producers to participate in the referendum shall be those contained at 7 CFR 1270.7.

Authority: 7 U.S.C. 1787.

Signed at Washington, DC on April 30, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 91–10646 Filed 5–3–91; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR 217.5(d), the public shall be advised, through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notices of decisions is in addition to direct notice of decisions to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR part 217 shall begin on or after May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Jean Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning and Budget, 1720 Peachtree Road, NW., Atlanta, Georgia 30367–0102, phone: 404–347–4867.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper.

Southern Regional Forester Decisions affecting National Forest System lands in any of the 13 states of the Southern

Region and the Commonwealth of Puerto Rico.

Atlanta Journal, published daily in Atlanta, GA.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Montgomery Advertiser, published daily in Montgomery, AL.

District Rangers Decisions

Bankhead Ranger District: Northwest Alabamian, published weekly (Monday & Thursday) in Haleyville, AL.
Conecuh Ranger District: The Andalusia Star, published daily (Tuesday through Saturday) in Andalusia, AL.
Oakmulgee Ranger District, The Tuscaloosa News, published daily in Tuscaloosa, AL.
Shoal Creek Ranger District: The Anniston Star, published daily in Anniston, AL.
Talladega Ranger District: The Daily Home, published daily in Talladega, AL.
Tuskegee Ranger District: Tuskegee News, published weekly (Thursday) in Tuskegee, AL

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR.
San Juan Star, published daily in San Juan, PR.

District Ranger Decisions

El Yunque Ranger District: El Nuevo Dia, published daily in Spanish in San Juan, PR.
San Juan Star, published daily in San Juan, PR.

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times, published daily in Gainesville, GA.

District Ranger Decisions

Armuchee Ranger District: Walker County Messenger, published bi-weekly (Wednesday & Friday) in LaFayette, GA.
Toccoa Ranger District: The News Observer published weekly (Thursday) in Blue Ridge, GA.
Chestatee Ranger District: Dahlonega Nugget, published weekly (Thursday) in Dahlonega, GA.
The Times, published daily in Gainesville, GA.
Brasstown Ranger District: North Georgia News, published weekly (Tuesday) in Blairsville, GA.
Towns County Herald, published weekly (Tuesday) in Hiawassee, GA.
Tallulah Ranger District: Clayton Tribune, published weekly (Wednesday) in Clayton, GA.
Chattooga Ranger District: Northeast Georgian, published weekly (Friday) in Clarksville, GA.
Toccoa Record, published weekly (Thursday) in Toccoa, GA.
The Telegraph, published weekly (Wednesday) in Cleveland, GA.
Cohutta Ranger District: Chatsworth Times, published weekly (Tuesday) in Chatsworth, GA.
Oconee Ranger District: Monticello News, published weekly (Wednesday) in Monticello, GA.

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN.

District Rangers Decisions

Ocoee Ranger District: Polk County News, published weekly (Wednesday) in Benton, TN.
Hiwassee Ranger District: Daily Post-Athenian, published daily (Monday–Friday) in Athens, TN.
Tellico Ranger District: Monroe County Advocate, published weekly (Thursday) in Sweetwater, TN.
Nolichucky Ranger District: Greeneville Sun, published daily (Monday–Saturday) in Greeneville, TN.
Unaka Ranger District: Johnson City Press, published daily in Johnson City, TN.
Watauga Ranger District: Elizabethton Star, published daily (Sunday–Friday) in Elizabethton, TN.

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions:

Lexington Herald-Leader, published daily in Lexington, KY.

District Rangers Decisions

Morehead Ranger District: Morehead News, published bi-weekly (Tuesday and Friday) in Morehead, KY.
Stanton Ranger District: The Clay City Times, published weekly (Thursday) in Clay City, KY.
Berea Ranger District: Jackson County Sun, published weekly (Thursday) in McKee, KY.
London Ranger District: The Sentinel-Echo, published tri-weekly (Monday, Wednesday and Friday) in London, KY.
Somerset Ranger District: Commonwealth-Journal, published daily (Sunday through Friday) in Somerset, KY.
Stearns Ranger District: McCreary County Record, published weekly (Tuesday) in Whitley City, KY.
Redbird Ranger District: Manchester Enterprise, published weekly (Thursday) in Manchester, KY.

National Forests in Florida, Florida

Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL.

District Rangers Decisions

Apalachicola Ranger District: The Weekly Journal, published weekly (Wednesday) in Bristol, FL.
Lake George Ranger District: The Ocala Star Banner, published daily in Ocala, FL.
Osceola Ranger District: The Lake City Reporter, published daily (Monday–Saturday) in Lake City, FL.
Seminole Ranger District: The Daily Commercial, published daily in Leesburg, FL.
Wakulla Ranger District: The Tallahassee Democrat, published daily in Tallahassee, FL.

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions

The State, published daily in Columbia, SC.

District Rangers Decisions

Enoree Ranger District: Newberry Observer, published tri-weekly (Monday, Wednesday and Friday) Newberry, SC.
Andrew Pickens Ranger District: Seneca Journal and Tribune, published bi-weekly (Wednesday and Friday) in Seneca, SC.
Long Cane Ranger District: Index-Journal, published daily (Sunday through Friday) in Greenwood, SC.
Wambaw Ranger District: News and Courier published daily in Charleston, SC.
Witherbee Ranger District: Berkeley Independent, published weekly (Wednesday) in Moncks Corner, SC.
Tyger Ranger District: The State, published daily in Columbia, SC.
Edgefield Ranger District: Augusta Chronicle, published daily in Augusta, GA.

George Washington National Forest, Virginia

Forest Supervisor Decisions

Daily News Record, published daily in Harrisonburg, VA.

District Rangers Decisions

Lee Ranger District: Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA.
Warm Springs Ranger District: The Recorder, published weekly (Thursday) in Monterey, VA.
Pedlar Ranger District: News-Gazette, published weekly (Wednesday) in Lexington, VA.
James River Ranger District: Virginian Review, published daily in Covington, VA.
Dearfield Ranger District: Daily News Leader, published daily in Staunton, VA.
Dry River Ranger District: Daily News Record, published daily in Harrisonburg, VA.

Jefferson National Forest, Virginia

Forest Supervisor Decisions

Roanoke Times & World-News, published daily in Roanoke, VA.

District Rangers Decisions

Blackburg Ranger District: Roanoke Times & World-News, published daily in Roanoke, VA.
Monroe Watchman, published weekly (Thursday) in Union, WV.
Glenwood Ranger District: Roanoke Times & World-News, published daily in Roanoke, VA.
New Castle Ranger District: Roanoke Times & World-News, published daily in Roanoke, VA.
Monroe Watchman, published weekly (Thursday) in Union, WV.
Mount Rogers National Recreation Area: Bristol Herald Courier, published daily i.. Bristol, VA.

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Clinch Ranger District: Bristol Herald Courier, published daily in Bristol, VA.
Wythe Ranger District: Southwest Virginia Enterprise, published bi-weekly (Wednesday and Saturday) in Wytheville, VA.

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

Alexandria Daily Town Talk, published daily in Alexandria, LA.
Colfax Chronicle, published weekly (Wednesday) in Colfax, LA.
Leesville Leader, published daily in Leesville, LA.
Winn Parish Enterprise, published weekly (Wednesday) in Winfield, LA.
Natchitoches Times, published bi-weekly (Sunday and Wednesday) in Natchitoches, LA.
Minden Press Herald, published daily in Minden, LA.
Homer Guardian Journal, published weekly (Wednesday) in Homer, LA.

District Ranger Decisions

Caney Ranger District: Minden Press Herald, published daily in Minden, LA.
Homer Guardian Journal, published weekly (Wednesday) in Homer, LA.
Catahoula Ranger District: Alexandria Daily Town Talk, published daily in Alexandria, LA.
Colfax Chronicle, published weekly (Wednesday) in Colfax, LA.
Evangeline Ranger District: Alexandria Daily Town Talk, published daily in Alexandria, LA.
Kisatchie Ranger District: Natchitoches Times, published bi-weekly (Sunday and Wednesday) in Natchitoches, LA.
Vernon Ranger District: Leesville Leader, published daily in Leesville, LA.
Winn Ranger District: Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA.

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions

Clarion-Ledger, published daily in Jackson, MS.

District Ranger Decisions

Bienville Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Biloxi Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Black Creek Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Bude Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Chickasawhay Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Delta Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Holly Springs Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Homochitto Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Strong River Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Tombigbee Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Ashe-Brambert Project: Clarion-Ledger, published daily in Jackson, MS.

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC.

District Ranger Decisions

Cheoah Ranger District: Graham Star, published weekly (Thursday) in Robbinsville, NC.
Croatan Ranger District: The Sun Journal, published weekly (Sunday through Friday) in New Bern, NC.
Carteret County New-Times, published tri-weekly (Sunday, Wednesday and Friday) in Morehead City, NC.
French Broad District: The News Record, published weekly (Thursday) in Marshall, NC.
The Mountaineer, Inc., published tri-weekly (Monday, Wednesday and Friday) in Waynesville, NC.
Grandfather District: McDowell News, published daily in Marion, NC.
News Herald, published daily in Morganton, NC.
Lenoir News Topic, published daily in Lenoir, NC.
Avery Journal, published weekly (Thursday) in Newland, NC.
Watauga Democrat, published tri-weekly (Monday, Wednesday and Friday) in Boone, NC.
Highlands Ranger District: The Highlander, published weekly (May-Oct. Tues. and Fri.; Oct.-April, Tues. only) in Highlands, NC.
Cashiers Crossroads Chronicle, published weekly (Wednesday) in Cashiers, NC.
The Franklin Press, published tri-weekly (Monday, Wednesday and Friday) in Franklin, NC.
The Sylva Herald, published weekly (Thursday) in Sylva, NC.
The Transylvania Times, published bi-weekly (Monday and Thursday) in Brevard, NC.
Pisgah Ranger District: The Transylvania Times, published bi-weekly (Monday and Thursday) in Brevard, NC.
Times-News, published daily in Hendersonville, NC.
The Mountaineer, published tri-weekly (Monday, Wednesday, Friday) in Waynesville, NC.
The Asheville Citizen-Times, published daily in Asheville, NC.
Toecane Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC.
The Yancey Journal, published weekly (Thursday) in Burnsville, NC.
Tusquitee Ranger District: Cherokee Scout, published bi-weekly (Tuesday and Friday) in Murphy, NC.
Clay County Progress, published weekly (Thursday) in Hayesville, NC.
Andrews Journal, published weekly (Wednesday) in Andrews, NC.
Uwharrie Ranger District: Montgomery Herald, published weekly (Wednesday) in Troy, NC.
Wayah Ranger District: The Franklin Press, published tri-weekly (Monday, Wednesday and Friday) in Franklin, NC.

Ouachita National Forest, Arkansas, Oklahoma

Forest Supervisor Decisions

Arkansas Democrat, published daily in Little Rock, AR.

District Ranger Decisions

Caddo Ranger District: Arkansas Democrat, published daily in Little Rock, AR.
Cold Springs Ranger District: Arkansas Democrat, published daily in Little Rock, AR.
Fourche Ranger District: Arkansas Democrat, published daily in Little Rock, AR.
Jessieville Ranger District: Arkansas Democrat, published daily in Little Rock, AR.
Mena Ranger District: Arkansas Democrat, published daily in Little Rock AR.
Oden Ranger District: Arkansas Democrat, published daily in Little Rock, AR.
Poteau Ranger District: Arkansas Democrat, published daily in Little Rock, AR.
Winona Ranger District: Arkansas Democrat published daily in Little Rock, AR.
Womble Ranger District: Arkansas Democrat, published daily in Little Rock, AR.
Choctaw Ranger District: Tulsa World, published daily in Tulsa, OK.
Kiamichi Ranger District: Tulsa World, published daily in Tulsa, OK
Tiak Ranger District: Tulsa World, published daily in Tulsa, OK.

Ozark-St. Francis National Forest: Arkansas

Forest Supervisor Decisions

Courier-Democrat, published daily (Sunday through Friday) in Russellville, AR.

District Ranger Decisions

Sylamore Ranger District: Stone County Leader, published weekly (Tuesday) in Mountain View, AR.
Buffalo Ranger District: Newton County Times, published weekly (Wednesday) in Jasper, AR.
Bayou Ranger District: Courier-Democrat, published daily (Sunday through Friday) in Russellville, AR.
Pleasant Hill Ranger District: Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR.
Boston Mountain Ranger District: Southwest Times Record, published daily in Fort Smith, AR
Magazine Ranger District: Southwest Times Record, published daily in Fort Smith, AR.
St. Francis Ranger District: The Daily World, published daily (Sunday through Friday) in Helena, AR.

National Forests in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX.

District Rangers Decisions

San Jacinto Ranger District: The Houston Post, published daily in Houston, TX.
Neches Ranger District: The Lufkin Daily News, published daily in Lufkin, TX.
Raven Ranger District: The Courier, published daily in Conroe, TX.

Tenaha Ranger District: The Lufkin Daily News, published daily in Lufkin, TX.
Trinity Ranger District: The Lufkin Daily News, published daily in Lufkin, TX.
Yellowpine Ranger District: The Beaumont Enterprise. Published daily in Beaumont, TX.
Caddo-LBJ Ranger District—Caddo-LBJ National Grassland: Denton Record-Chronicle, published daily (Sunday thru Friday) in Denton, TX.

Dated: April 30, 1991.

Robert B. Erickson,

Deputy Regional Forester.

[FR Doc. 91-10580 Filed 5-3-91; 8:45 am]

BILLING CODE 3410-11-M

The Ouachita National Forest, Le Flore County, Oklahoma, Multiple Use Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Ouachita National Forest, Le Flore County, Oklahoma, Multiple Use Advisory Council. The meeting will be open to the public. This notice also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act.

DATES: May 20, 1991, 7 p.m.

ADDRESSES: The meeting location is at the Bob Lee Kidd Civic Center, Poteau, Oklahoma. Send written statements to Forest Supervisor, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902.

FOR FURTHER INFORMATION CONTACT: Gary Pierson, (501) 321-5281.

SUPPLEMENTARY INFORMATION: The Ouachita National Forest, Le Flore County, Oklahoma, Multiple Use Advisory Council was created by the Winding Stair Mountain National Recreation and Wilderness Area Act (16 U.S C. 460vv-13). The Council, comprised of 20 members, appointed by the Secretary of Agriculture September 25, 1989, will meet periodically. The purpose of this Council is advisory in nature. The Council shall provide information and recommendations to the Secretary regarding the operation of the Ouachita National Forest in Le Flore County. The Council is composed of representatives from the local area in which the Ouachita National Forest is located, equally divided among conservation, timber, fish and wildlife, tourism and recreation, and economic development interests.

Mike Curran, Supervisor of the Ouachita National Forest will chair the meeting. Representatives of the Forest Service will attend from the Department of Agriculture including the designated officer of the Federal Government. The agenda for this meeting will include: the response on the ATV resolution and a review of the Weyerhaeuser land acquisition proposal comments.

Dated: April 24, 1991.

R. Gary Pierson,

Acting Forest Supervisor.

[FR Doc. 91-10577 Filed 5-3-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). A prompt OMB review of this data collection has been requested.

AGENCY: National Oceanic and Atmospheric Administration.

Title: Fisheries Certificate of Origin.

Form Number: Agency—370; OMB—0648-0040.

Type of Request: Request for a revision of a currently approved collection—Prompt OMB Review Requested.

Burden: 100 respondents; 3,200 reporting hours; average hours per response—66 hours.

Needs and Uses: Section 101(a)(2), Marine Mammal Protection Act, and Section 901, Fisheries Conservation Amendments of 1990, require the Secretary to ban importation of fish from nations whose fishing results in accidental death/injury to marine mammals. This collection from exporters/importers/ processors of fish products potentially caught in association with marine mammals allows NMFS to identify area/method of harvest.

Affected Public: Individuals, business or other for-profit, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ron Minsk, (202) 395-3084.

The form to collect this information is published below. For any other information, please call or write DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3019, New Executive Office Building, Washington, DC 20503.

Dated: April 30, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Managment and Organization.

BILLING CODE 3510-CO-M

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NOAA FORM NO. 370
U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE

FISHERIES CERTIFICATE OF ORIGIN
(This statement complies with 16 U.S.C. 1385 and 16 U.S.C. 1371)

FORM APPROVED:
APPROVAL EXPIRES:

1. COUNTRY OF ORIGIN

2. EXPORTER (Name and Address)

3. CONSIGNEE (Name and Address)

4. DESCRIPTION OF FISH U.S. TARIFF SCHEDULE NUMBER AND SPECIES DESCRIPTION	QUANTITY (UNITS)	OCEAN AREA OF CATCH	FISHING METHOD	IF FISHING METHOD IS PURSE SEINE (PS) VESSEL NAME AND FLAG	TRIP DATES BEGIN-END

Please indicate the appropriate statement below and attach a copy of the original commercial invoice.

	(A)	is entered under an affirmative finding by the Assistant Administrator for Fisheries that the yellowfin tuna were caught in conformance with the requirements of the Marine Mammal Protection Act.
	(B)	is entered, as tuna harvested by a purse seine vessel of 400 tons carrying capacity or greater, with valid documentation by an authorized observer and the captain of the vessel, certifying that the tuna was not harvested in a purse seine net intentionally deployed on or to encircle dolphin. Observer and Captain certificates are attached.
	(C)	is entered as tuna harvested by a purse seine vessel of less than 400 tons carrying capacity.
	(D)	in the case of tuna and tuna products, was not harvested with a large-scale driftnet(s) anywhere on the high seas after July 1, 1991.
	(E)	in the case of fish and fish products, was not harvested with a large-scale driftnet in the South Pacific Ocean after July 1, 1991 or in any other water of the high seas after July 1, 1992.

I certify that the above information is complete, true, and correct to the best of my knowledge and belief. (Must be signed by the original exporter of record)

Name & Title: Signature: Date:

5. CERTIFICATION I certify that the information listed above is complete, true, and correct to the best of my knowledge and belief. (Must be signed by a responsible government official of the harvesting or exporting nation)

Name & Title: Signature: Date:

6. EXPORTER/IMPORTER/PROCESSOR ENDORSEMENT

I certify that the information and documentation transmitted herewith is that directly associated with the quantity of fish and fish products listed above and on the attached invoice.

Name and Title (Type or Print)	Address, Telex, or Fax	Signature	Date
Name and Title (Type or Print)	Address, Telex, or Fax	Signature	Date
Name and Title (Type or Print)	Address, Telex, or Fax	Signature	Date
Name and Title (Type or Print)	Address, Telex, or Fax	Signature	Date

Completed forms and attachments should be sent to: Regional Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Room 2005, Terminal Island, CA 90731, (213) 514-6197; FAX: (213) 514-6194

General Information

The information requested on this form is necessary to substantiate the origin and the method of harvest of the fish as required by 50 CFR 216.24 (e)(3) and (e)(4), and will be used to determine whether or not the listed shipment(s) of fish or fish product will be allowed entry into the United States. This form must be submitted to the U.S. Customs Service with other required entry documents at the time of product entry into the United States. This form must accompany each shipment of fish or fish product listed under 50 CFR 216.24 (e)(2), and the information provided must relate to the shipment(s) of fish described. Confidentiality of the information provided will be treated in accordance with NOAA directive 88-30. Blank forms may be reproduced. This form supersedes the SF 370-1 "Yellowfin Tuna Certificate of Origin." U.S. Customs will collect and forward all completed forms to NMFS.

Public reporting burden for this collection of information is estimated to average 40 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: NMFS, Southwest Regional Office, 300 S. Ferry St., Terminal Is., CA 90731; and to, Office of Management and Budget, Paperwork Reduction Project (0648-0040), Washington, D.C. 20503

Instructions

1. COUNTRY OF ORIGIN - Enter country under whose laws the harvesting vessel operates.

2. EXPORTER - Enter name and address of exporter.

3. CONSIGNEE - Enter name and address of U.S. importer.

4. DESCRIPTION OF FISH -

U.S. TARIFF SCHEDULE NUMBER AND SPECIES DESCRIPTION - Enter U.S. Harmonized Tariff Code Number of fish or fish product, and the species description. Only those tariff codes described in 50 CFR 216.24 (e)(2) require this certificate. All shipments of tuna and tuna products, except fresh products, from all countries require this certificate. Only countries that use large-scale driftnets are required to submit this form for other species of fish and fish products. This form is not required for fresh tuna or other fresh fish.

QUANTITY (UNITS) - Enter the quantity of the shipment, and the units as it is measured (lbs., Kg, tons, etc.)

OCEAN AREA OF CATCH - Enter the ocean in which the shipment was harvested ;
- ETP - Eastern Tropical Pacific Ocean (east of 160 W. Long, between 40 N. and 40 S. Lat)
- WP - Western Pacific Ocean (West of 160 W. Long)
- SP - South Pacific Ocean (South of equator) - applicable to driftnet caught fish
- ATL - Atlantic Ocean
- CAR - Caribbean Sea
- IND - Indian Ocean
- OT - Other - Describe area _____

FISHING METHOD - Enter method used to harvest fish
- PS - Purse Seine
- LL - Long Line
- BB - Bait Boat
- DN - Large-Scale Driftnet
- GN - Gillnet
- TR - Trawl
- PL - Pole and Line, Hook and Line
- OT - Other - Describe method _____

VESSEL NAME AND FLAG - If the method of harvest is PS (purse seine), enter the name of the harvesting vessel and the country under whose laws it operated during the harvest, i.e., flag of the vessel.

TRIP DATES - Enter the begin and end dates of the fishing trip during which the described shipment of fish was harvested.

INDICATE THE APPROPRIATE STATEMENT - To be completed and certified by the by the original exporter. Indicate correct statement;

(A) If the shipment is yellowfin tuna or yellowfin tuna product harvested by purse seine set on marine mammals in the ETP, and the country of origin has an affirmative finding to import such a product to the United States.

(B) If the shipment is yellowfin tuna or yellowfin tuna product harvested by purse seine in the ETP not in association with marine mammals, and the shipment is accompanied by an observer's certificate and a captain's certificate.

(C) If the shipment is yellowfin tuna or yellowfin tuna product harvested in the ETP by a purse seine vessel of less than 400 tons carrying capacity.

(D) If the shipment is any tuna or tuna product not harvested by large-scale driftnet on the high seas after July 1, 1991, and not described by A, B or C above.

(E) If the shipment is fish or fish products not harvested by large-scale driftnet after July 1, 1991 in the South Pacific Ocean, or after July 1, 1992 anywhere on the high seas.

5. CERTIFICATION - Must be signed by a responsible government official of the harvesting or exporting nation.

6. EXPORTER/IMPORTER/PROCESSOR ENDORSEMENT - Must be signed by each exporter, importer, or processor of the shipment, certifying that the documentation describes the shipment of fish that it accompanies.

[FR Doc. 91-10599 Filed 5-3-91; 8:45 am]
BILLING CODE 3510-22-C

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International Trade Administration

[A-570-804]

Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) has determined that sparklers from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Francis J. Sailer, Deputy Assistant Secretary for Investigations, or Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5497 and (202) 377-2613, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

The Department determines that imports of sparklers from the PRC are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since publication of the preliminary determination (55 FR 51743, December 17, 1990) the following events have occurred. On December 18, 1991, respondents requested that we postpone making our final determination by 60 days pursuant to 19 CFR 353.20(b)(1). On January 4, 1991, we published a notice postponing the final determination until April 26, 1991 (56 FR 417).

We verified the questionnaire response of Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Corporation in Changsha, Hunan Province, PRC, from February 26 through March 1, 1991. Petitioner and respondents submitted comments for the record in case briefs on April 1, 1991. Both parties submitted rebuttal briefs on April 5, 1991. On April 8, 1991, we held a public hearing in which petitioners and respondents participated.

Scope of the Investigation

The products covered by this investigation are sparklers from the PRC. Sparklers are fireworks, each comprising a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. Sparklers are currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3604.10.00. The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of this proceeding.

Period of Investigation

The period of investigation (POI) is February 1, 1990, through July 31, 1990.

Fair Value Comparisons

To determine whether sales of sparklers from the PRC to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

In calculating USP, the Department used purchase price, as defined in section 772 of the Act, because the sparklers were sold to unrelated purchasers for exportation to the United States prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. Purchase price was based on the CIF, packed price to unrelated purchasers in Hong Kong for sparklers destined for the United States because the producers knew that the sparklers were destined for the United States. We made deductions for discounts, and charges incurred for inland freight, ocean freight, and marine insurance.

In accordance with the policy set forth in our final determination in the investigation of carbon steel wire rod from Poland (49 FR 29434, July 20, 1984), we based ocean and inland freight charges on freight rates in market economy countries (Hong Kong for ocean freight and India for inland freight).

Foreign Market Value

In past cases (*e.g., Tapered Roller Bearings from the People's Republic of China: Final Determination of Sales at Less than Fair Value,* 52 FR 19748 (May 27, 1987)), the Department has treated the PRC as a nonmarket economy country (NME). As noted in our preliminary determination, we determined that nonmarket economy treatment is appropriate in this investigation.

As a result, section 773(c) of the Act, as amended by the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act"), requires the Department to determine foreign market value on the basis of the market valuation of the factors of production utilized in producing the subject merchandise (unless the Department determines the available information on factor prices in market economies to be inadequate).

The 1988 Act further permits the Department to value the factors of production in one or more market economy countries that are at a level of economic development comparable to that of the NME and that are significant producers of comparable merchandise.

Of countries known to produce sparklers, we have determined that India, Pakistan and the Philippines are comparable to the PRC in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor. We calculated FMV based on factors of production reported by the Chinese exporters, Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Corporation; Guangxi Native Produce Import & Export Corporation, Behai Fireworks and Firecrackers Branch; and, Jiangxi Native Produce Import & Export Corporation, Guangzhou Fireworks Company. We used information from India and the Philippines regarding the values of various factors of production.

We chose India as the most comparable surrogate on the basis of per capita GNP, the growth rate in per capita GNP, and the national distribution of labor. Where possible, we obtained information for valuing factors of production from publicly available sources in India.

For the two items for which neither an actual market economy import price (paid by the PRC producer) nor an Indian price was available, we assigned a value based on data from the Philippines. We also based the value for one factor on the actual price paid by a PRC manufacturer for an input that was imported from a country with a market economy. Where appropriate, the factor values were inflated to POI levels using wholesale price indices published by the International Monetary Fund.

The three respondents reported the amounts of raw materials needed to manufacture one carton of sparklers. For each sparkler type, we multiplied the per carton factor quantity by the value for each component material, and summed the resulting individual raw material values. We then added an amount for direct labor cost. We then added the statutory minimum of 10 percent for general expenses. We added the statutory minimum because it is higher than the percentage amount reported by the Indian manufacturer. We next added 10 percent for profit. We added 10 percent, the figure reported by the Indian manufacturer, because this figure is higher than the 8 percent statutory minimum for profit. Finally, we added an amount for packing costs to arrive at a constructed foreign market value for a single carton of sparklers. We then compared this value to the exporters' U.S. price for a single carton of sparklers.

We made currency conversions in accordance with 19 CFR 353.60(a).

Final Negative Determination of Critical Circumstances

Petitioner alleged that imports of sparklers from the PRC present "critical circumstances." Under section 735(a)(3) of the Act, "critical circumstances" exist if we determine (1) There is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

To determine whether imports have been massive over a relatively short period, we based our analysis on respondents' shipment data for equal periods immediately preceding and following the filing of the petition. Based on this analysis, we find that imports of the subject merchandise from the PRC during the period subsequent to receipt of the petition have not been massive when compared to recent import levels.

Since we do not find there have been massive imports, we do not need to consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value.

Therefore, we determine that critical circumstances do not exist with respect to imports of sparklers from the PRC.

Verification

As provided in section 776(b) of the Act, we verified all information used in making our final determination. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

Interested Party Comments

Comment 1: Respondents argue that the three PRC companies should be assigned separate dumping margins because they are legally and factually independent entities and because no direct, sparkler-industry-specific evidence of central control exists. Respondents cite as evidence of their independence: (a) Each company's possession of an "enterprise legal person" business license (which requires the bearer company to maintain its own accounts and be responsible for its own profits and losses); (b) various official and unofficial explanations that the companies have been separated from the national head office which is now unable to exert control over its former local offices; (c) that there is no evidence in the record indicating that the sparkler sellers are subject to centralized government control; and (d) that there is no evidence of coordination among the companies on such matters as price setting, market division, and production practices.

Petitioner contends that the PRC's status as a nonmarket economy, coupled with government ownership of the companies in question, creates a strong presumption of central government control. This requires the assignment of a single dumping margin covering all sparklers from the PRC in the absence of verifiable evidence of freedom from central control. If the Department were to assign separate margins in a case where such freedom has not been demonstrated, petitioner contends, the central authorities would be able to funnel output from different factories through the company assigned the lowest margin. Petitioner notes that documents submitted by respondents to establish separateness also contain general references to continuing centralized policy-making and control of prices with respect to the national trading companies' former local branch offices. Petitioner also states that it believes that central control of the sparkler industry exists.

DOC Position: We have determined that exporters in nonmarket economy countries are entitled to separate, company-specific margins when they can demonstrate an absence of central government control, both in law and in fact, with respect to exports. Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of central government control with respect to exports is based on two prerequisites: (1) Whether each exporter sets its own export prices independently of the government and other exporters; and (2) whether each exporter can keep the proceeds from its sales.

Each exporter of sparklers sets its own prices for export. At verification, we noted that the proceeds from all sales that we examined were deposited into the selling entity's bank account. Each company submitted its business license for the record before verification, along with explanations, published before this investigation began, of the substantive implications of receiving a business license. The explanations mentioned no stipulations that could be construed as specific central control of pricing or production.

We have therefore assigned separate, company-specific margins for purposes of our final determination.

Comment 2: Respondents urge the Department to obtain "more legally and factually defensible surrogate country information" because the information used for purposes of calculating foreign market value for the preliminary determination produced distorted results.

DOC Position: The Department used the most reasonable available information in making its preliminary determination. Since the preliminary determination, we have gathered additional information from an Indian sparkler manufacturer on input prices and industry experience (*i.e.,* with respect to raw materials, overhead, profit, and general expenses) and have made revisions in all instances where newer information was superior to that used for the preliminary determination.

Comment 3: Respondents argue that the Department should find the surrogate country factor prices used in the preliminary determination to be inadequate for purposes of calculating the foreign market value. In its final determination, the Department should, following the guidance of section 773(c)(2) of the Act in situations where surrogate country factor prices are inadequate, base FMV on the price of

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sparklers in third countries that have economies comparable to the PRC and that produce merchandise comparable to the subject merchandise. Respondents recommend the use of sales prices in Pakistan. Respondents argue that the Act does not provide for using petitioner's information when the Department determines factor price information on the record to be inadequate and when sales prices in appropriate surrogate countries exist.

Petitioner contends that respondents have not justified the use of Pakistan sparkler prices over other information on the record. Petitioner contends that the Department should use the United States as a surrogate country because the three countries selected as appropriate surrogate countries are not significant sparkler producers. Petitioner proposes its own information as appropriate for valuing factors of production in the United States.

DOC Position: The information provided by an Indian manufacturer of sparklers, which we have used to value most of the factors of production, is adequate for purposes of calculating FMV pursuant to section 773(c) of the Act. Therefore, the issue of the most appropriate third country sparkler prices to be used as FMV need not be addressed.

Comment 4: Respondents contend that the Department should use Hunan's corrected factor amounts, reported at verification, for assorted sparkler production.

DOC Position: We agree. We verified the correct chemical amounts used in the manufacture of assorted sparklers and have incorporated those figures for purposes of our final determination.

Comment 5: Respondents contend that the values that the Department assigned to certain raw materials (iron wire, aluminum powder, aluminum-magnesium alloy powder, resinox powder, paste, silver powder, and ignition chemical) are unreasonably high. Respondents specifically call into question the following Departmental decisions in determining factors' prices:

a. The use of the price reportedly paid for iron wire by the sparkler industry in the Philippines when the characteristics of that wire are uncertain;

b. In the case of aluminum-magnesium alloy powder, which had three components for which prices are available, the assumption that the factor was one hundred percent aluminum (the most expensive component) because respondent had failed to provide full and timely information on the percentage of each component in the factor;

c. The use of values based on Indian import statistics for determining the values of aluminum powder and ignition chemical rather than prices reported by the sparkler industries in the Philippines or Pakistan for those items;

d. Not adjusting for differences when basing the value of resinox on epoxy resins, a commodity only similar to resinox;

e. In assigning a value to paste, the use of an Indian import statistics-based value for glue—a product less similar to that used in making sparklers—instead of using the value for paste cited in the Philippines import statistics; and

f. The use of an Indian import statistics-based value for silver powder when the category may have included varieties of silver powder not specifically used in sparkler manufacture.

Petitioner contends that Filipino and Pakstani prices are not appropriate because the sparkler industries in those countries are small and not comparable to the PRC sparkler industry. Petitioner further contends that factor prices would be higher for the PRC sparkler industry, were it located in one of the surrogate countries, than the prices reported by the producers in the surrogate countries. Thus, the Department "should value all inputs at the industrial level in the surrogate country to the extent data are available and appropriate."

DOC Position: We generally seek to value factors using (in order of preference): (1) Prices paid by the NME manufacturer for items imported from a market economy; (2) prices in the primary surrogate country of domestically produced or imported materials; (3) prices in one or more secondary surrogate countries reported by the industry producing subject merchandise in the secondary country or countries; and (4) prices in one or more secondary surrogate countries from sources other than the industry producing the subject merchandise. This ranking of data sources reflects the Department's desire to use to the greatest extent possible factor prices in a single surrogate country. We determined that India was the most appropriate surrogate for the PRC in this case. (One of the respondents, Hunan, reported that it imported two raw material inputs for sparkler production. However, verification revealed that the raw materials were further processed in the PRC before their incorporation into sparklers. We were unable to determine the cost of such processing in a market economy country. Thus, we could not use the import prices paid by Hunan for the raw materials that were processed further after importation.)

To value wire, we used the price reported by the sparkler industry industry in the Philippines. Although we do not know the characteristics of the wire used by the Philippines sparkler industry, the wire is nevertheless used to produce sparklers and is the best information we were able to develop.

For purposes of our final determination, we have used prices from the sparkler industry in India to value aluminum-magnesium alloy powder, aluminum powder, and ignition chemical. Respondents' concerns about the values used for these factors in the preliminary determination are therefore moot. We have also used prices from the sparkler industry in India to value barium nitrate, iron filings sulfur in both lump and powder form, potassium perchlorate, wheat flour, mucilage, plastic bags, caddies, cellophane film, master cartons, moistureproof paper and identifying dye.

With respect to resinox, we agree with respondents that the use of the value for epoxy resins was inappropriate. Because resinox is considered a phenolic resin, we have valued this factor using the average price of phenolic resins imported into India.

With respect to paste, we agree with respondents that the Philippines import statistics value for paste is more appropriate than the Indian import statistics value for glue. We therefore have valued paste using the average price of paste imported into the Philippines, which we calculated form Philippines import statistics.

With respect to silver powder, we have valued this factor using the average price of silver powder imported into India which we calculated from Indian import statistics. We adjusted the average import price for known differences based on information reported by respondents.

Comment 6: Respondents content that the Department inappropriately valued labor based on the average wage rate for unskilled labor in major industrial groups in India, as reported in the petition. Respondents argue that the industries included in the average are "highly developed and sophisticated industries (while) the sparkler industry * * * is a handicrafts or cottage industry * * *" Respondents suggest that unskilled labor rates reported for the Indian cotton textile industry or the minimum wage in New Delhi, India, would be more reasonable than petitioner's information. Respondents further argue that, because sparklers are produced in a rural area of India (Tamil Nadu) where the minimum wage would likely be lower than in New Delhi, the Tamil Nadu minimum wage reported by respondents would be most appropriate.

DOC Position: For purposes of our final determination, we valued PRC labor using actual wage rates paid by an Indian sparkler manufacturer to its workers.

Comment 7: Respondents content that the Department's calculation of factory overhead using a combination of information supplied in the petition and information reported by the sparkler industry in Pakistan was unjustified. Respondents' contention hinges on three arguments: (a) That the Department's conclusion that the overhead level in the PRC sparkler industry is somewhere between the overhead levels in the United States and Pakistan is inappropriate because it is based on a videotape of a PRC sparkler factory that is no longer in operation; (b) that the Department could have used the respondents' reported factory overhead attributable to sparkler production; and (c) that the Department alternatively could have used overhead information reported by the Pakistan sparkler industry.

Respondents further contend that the Department inappropriately applied the factory overhead percentage used to the packing-inclusive cost of manufacture rather than the packing-exclusive cost of manufacture.

Petitioner argues that costs associated with placing sparklers into caddies should be treated as normal labor and material costs, and that only costs associated with preparing cartons of sparklers should be considered packing costs. Petitioner also argues that, in addition to overhead attributable to the manufacturer, the Department should include in its overhead calculation overhead attributable to the exporter. Petitioner points out that Hunan did not report as overhead tools and equipment utilized in sparkler production. Petitioner argues that factory workers' "down-time," as well as the time of supervisory and indirect labor, should be accounted for in factory overhead.

DOC Position: At the time of the preliminary determination, we had not developed any meaningful information concerning factory overhead expense in market economy countries. Since that time, an Indian manufacturer of sparklers has reported information on its factory overhead to us.

The Indian manufacturer reported that overhead is 17 percent of "total cost" and, further, that overhead is composed almost entirely of packing materials and labor. The manufacturer could not calculate a packing-exclusive overhead figure. We are nevertheless able to infer from the manufacturer's account that packing-exclusive overhead is very small as a percentage of direct materials and labor.

For purposes of our final determination, we assumed factory overhead to be zero as the closest approximation of the actual overhead figure. The Indian manufacturer also supplied us with separate packing material and labor costs which we used in our normal calculation of FMV.

Petitioner's suggestion that overhead attributable to the reseller be included in factory overhead is inappropriate since exporter-related overhead expenses are captured by imputing selling, general, and administrative expenses in the FMV.

Comment 8: Respondents argue that the Department erred in including a dangerous cargo surcharge in its calculation of surrogate freight charges because the PRC companies did not incur such a surcharge when shipping using nonmarket freight carriers.

DOC Position: We disagree. Since the PRC companies incurred the freight charges using NME carriers, we used surrogate freight information (see the "Foreign Market Value" section of this notice). The information we obtained indicated that, in a market economy, a dangerous cargo surcharge would be applied to sparkler shipments. Respondents' home market experience is not applicable since market forces are not at work.

Comment 9: Respondents claim that the Department's decision to exclude one Guangxi sale was improper because Guangxi had reported all POI sales to the United States.

DOC Position: We disagree. We excluded this sale because the sale was reported as a telephone order. In its November 19, 1990, questionnaire response, Guangxi reported that, in cases where orders come over the telephone, it does not know the destination of the merchandise in question. Because Guangxi does not know at the time of sale whether telephone order sales are U.S.-bound, we did not consider this to be a U.S. sale and therefore excluded this sale from our margin calculations.

Comment 10: Respondents contend that Hunan's failure to report in its questionnaire response the use of flour and dye in its manufacturing process does not warrant the use of best information available because the factors are insignificant. Respondents further contend that the Department should ignore the factor amounts reported at verification because they are *de minimis*.

Petitioner argues that, because Hunan failed to submit informaiton on flour and dye before verification, the Department must make adverse inferences in determining the best information available as to these factors.

DOC Position: We determined that the omission of these factors from the questionnaire response represented a clerical error that was easily corrected. We have therefore used the quantities verified, and valued them based on prices reported by the Indian sparkler manufacturer.

Comment 11: Respondents contend that the Department should determine that critical circumstances do not exist based on information reported in questionnaire responses and gathered at verification.

DOC Position: We have determined that critical circumstances do not exist with respect to the subject merchandise. See the "Critical Circumstances" section of this notice for further details.

Comment 12: Petitioner contends that the Department should modify the scope of the investigation for the final determination so as to include sparklers made of bamboo, wood, plastic or other materials besides wire in order to forestall potential circumvention.

Respondents argue that no scope modification is warranted because petitioner defined the scope in its petition and has presented no evidence as to why a modification is not appropriate.

DOC Position: Petitioner has not provided adequate information as to why the scope of the investigation should be modified for the final determination. Under 19 CFR 353.29, interested parties may formally request that the Department determine whether particular merchandise is within the scope of an antidumping duty order. Should the Department issue an order in this case, petitioner may choose to renew its request for such a ruling and provide the necessary support.

Comment 13: Petitioner contends that the Department should use all of the Hunan information that changed at verification and that was verified. Petitioner also contends that the Department should use the best information available for Hunan information that could not be verified. In the latter category, petitioner specifically includes the imported factor prices and Hunan's overhead figures.

DOC Position: We have used all of Hunam's verified information, including information that changed as a result of verification. We did not use any

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imported factor prices because, among other reasons, we could not verify payment for these factors. We applied overhead information reported by an Indian sparkler manufacturer.

Comment 14: Petitioner argues that a figure reported as a commission should be considered a discount because no commissionaire agreement exists.

DOC Position: We agree, and, as in our preliminary determination, have treated this amount as a discount for purposes of our final determination.

Comment 15: Petitioner contends that Hunan's reported packing labor figures are not credible and should be disregarded in favor of best information available.

Respondents contend that Hunan's reported packing labor figures were verified and thus cannot be rejected.

DOC Position: We verified Hunan's reported packing labor figures and have therefore used them for purposes of our final determination.

Continuation of Suspension of Liquidation

In accordance with 19 CFR 353.15(a)(3)(i), we are directing the United States Customs Service to continue to suspend liquidation of all entries of sparklers from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after December 17, 1990, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the FMV of subject merchandise from the PRC exceed the U.S. price, as shown below.

Manufacturer/producer/exporter	Margin percentage
Gaungxi Native Produce Import & Export Corporation, Behai Fireworks and Firecrackers Branch	1.64
Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Corporation	93.54
Jiangxi Native Produce Import & Export Corporation, Guangzhou Fireworks Company	85.78
All Others	75.86

This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(f) of the Act, we have notified the International Trade Commission (ITC) of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

The ITC will determine within 45 days from the date of this final determination whether there is material injury, or the threat thereof, to the domestic industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on sparklers from the PRC entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, equal to the amount by which the FMV exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: April 26, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10597 Filed 5-3-91; 8:45 am]

BILLING CODE 3510-DS-M

A-588-702

Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 28, 1991, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on stainless steel butt-weld pipe and tube fittings ("SSPF's") from Japan. The review covers one manufacturer, Nippon Benkan Kogyo, K.K. ("Benkan"), an exporter of this merchandise to the United States for the period from March 1, 1989, through February 28, 1990. We preliminarily found a dumping margin of 6.97 percent. The administrative review for the period of September 16, 1987, through February 28, 1989 had a weighted average margin of 0.70 percent.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed the margin from that presented in our preliminary results. We have determined the final margin to be 6.96 percent.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Bruce Harsh or Linda L. Pasden, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1991, the Department published in the **Federal Register** (56 FR 3070) the preliminary results of its administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Japan (53 FR 9787, March 25, 1988). The Department has completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Imports covered by this review are shipments of stainless steel butt-weld pipe and tube fittings from Japan. These fittings are used in piping systems for chemical plants, pharmaceutical plants, food processing facilities, waste treatment facilities, semiconductor equipment applications, nuclear power plants, and other applications. Such merchandise is classifiable under Harmonized Tariff Schedules ("HTS") item number 7307.230000. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers Benkan, a manufacturer/exporter to the United States of stainless steel pipe and tube fittings from Japan, and the period from March 1, 1989, through February 28, 1990.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments and rebuttal comments from Flowline, the petitioner, and Benkan, the respondent.

Comment 1: Flowline argues that the pipe fittings, as revealed in Benkan's February 14, 1991, submission, are not identical in physical characteristics.

Flowline notes that when the "identical" pipe fittings (*i.e.*, those having the same product code) in each market are compared with each other, they have different finished weights and require different amounts of raw materials. By claiming that these fittings are "identical," Benkan has materially understated the adjustment in FMV for such fittings. Flowline urges, at a minimum, that the FMV's reported by Benkan in this administrative review should be adjusted to account for the substantial physical differences in butt-weld fittings described by Benkan as identical. Flowline asserts that there is little doubt that Benkan's claim that physically identical merchandise was sold in both markets misled ITA and thus has significantly impeded this review. Therefore, Flowline urges ITA to base the final results of this administrative review on the "Best Information Available" rather than on Benkan's submissions. "Best Information" in this instance is the 37.24 percent dumping margin found in the LTFV investigation.

Benkan argues that the use of the finished product weight for calculation of the difference in merchandise adjustment ("difmer") is a valid method. Benkan utilized the finished product weight since it was in their computer data base and was readily accessible. Benkan notes that any benefit they derived by utilizing the finished weight was an incidental and unintended consequence due to simplifying the processing of information. However, Benkan believes that if the Department adopts the petitioner's suggestion to modify the difmer, the effect on the margins will be insignificant.

Department's Position: The Department does not agree with the petitioner that the administrative review should be based on "Best Information Available" rather than on Benkan's submissions. The Department has accepted Benkan's characterization of identical fittings in that this merchandise matches all product criteria used for this review. Flowline's argument is based on the U.S. product weights reported in Benkan's February submission. After reviewing Benkan's submission, the Department noted discrepancies between the February submission and the questionnaire response in regard to the U.S. product weights of the fittings. The Department has resolved this discrepancy by accepting the weights reported in Benkan's questionnaire response given that they reflect the same weights reported in Benkan's verified questionnaire response from the prior review. The U.S. weights reported in the questionnaire response are very similar to the home market weights reported in the submission. While some identical fittings (i.e., having the same 6-digit product code) have slight differences in finished weights, the finished weight differences between the identical fittings could be attributed to the tolerances allowed in production.

The Department does, however, agree with the petitioner that the difmer for sales involving similar product matches should be recalculated to reflect physical differences attributed to the production of the different fittings. In response to comments received after the preliminary results of review, the Department requested that Benkan provide for the record the yield rates and data concerning scrap recovery (by quantity and value) for use in difmer adjustments. Benkan provided the yield rates, the finished product weights, and the base material weights. Benkan did not provide the scrap information. Benkan stated that the revenue from the scrap sales is not allocated to the production costs of the subject fittings because it considers this as miscellaneous revenue. The Department continues to use the finished weights from the questionnaire response, which were verified during the previous review, for the difmer adjustment. The petitioner did not object to the use of the actual yield rates provided in Benkan's submission, and the Department used the applicable yield rates to adjust for the physical raw material differences. The Department made no offset in the difmer adjustment for scrap revenue since Benkan did not provide this information.

Comment 2: Flowline stated that movement charges should be calculated on an entry-by-entry basis rather than on an aggregated monthly basis. Flowline noted that Benkan should already know exactly what its movement costs for each sale are.

Benkan argues that the use of movement charges aggregated on a monthly basis is appropriate. These movement charges were calculated and reported based on the actual costs incurred.

Department's Position: We agree with the petitioner that the Department should use the entry-by-entry data that was provided. This is consistent with the Department's preference to use shipment-specific data in calculating movement charges. For the final results, the Department used the provided shipment-specific data in calculating movement charges.

Final Results of the Review

As a result of our review, we determine that a margin of 6.96 percent exists for Benkan for the period March 1, 1989, through February 28, 1990.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Individual differences between United States price and foreign market value may vary from the percentage stated.

Further, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based upon the above margin shall be required for Benkan. For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after February 28, 1990, and who is unrelated to the reviewed firm, a cash deposit of 6.96 percent will be required. The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the last published rate.

These deposit requirements are effective for all shipments of stainless steel butt-weld pipe and tube fittings from Japan, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and (19 CFR 353.22(c)(8)).

Dated: April 30, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR. Doc. 91-10653 Filed 5-3-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-604]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two respondents and petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on tapered

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roller bearings and parts thereof, finished and unfinished, from Japan. The review covers four manufacturers/exporters of the subject merchandise to the United States during the period October 1, 1988, through September 30, 1989. The review indicates the existence of dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the difference between the United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Chip Hayes, Laurel LaCivita, or Laurie Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 1989, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (54 FR 41317). Two respondents and petitioner requested an administrative review. We initiated the review on November 20, 1989 (54 FR 48010), covering the period October 1, 1988, through September 30, 1989. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). We published the preliminary results of review for the period March 27, 1987, through September 30, 1988, on April 1991 (56 FR 13618).

Scope of the Review

Imports covered by the review are sales or entries of tapered roller bearings (TRBs) and parts thereof, which are flange, take-up cartridge, and hanger units incorporating TRBs, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the outstanding dumping finding covering certain TRBs from Japan four inches or less in outside diameter, and certain components thereof (A-588-054), are not included within the scope of this order. This order includes all TRBs and parts thereof, as described above, that are manufactured by NTN Toyo Bearing Co., Ltd. (NTN). During the review period such merchandise was classifiable under item numbers 680.30, 680.39, 681.10, and 682.32 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8482.99.30, 8483.20.40, 8482.20.00, 8483.20.80, 8482.91.00, 8483.30.80, 8483.90.20, 8483.90.30, and 8483.90.80. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers TRB sales by Koyo Seiko Company, Ltd. (Koyo), Nippon Seiko K.K. (NSK), Nachi Fujikoshi Corporation (Nachi), and entries of merchandise manufactured by NTN Toyo Bearing Company, Ltd. (NTN) and entered by Caterpillar during the period October 1, 1988, through September 30, 1989. Nachi reported no shipments. Because the Department did not establish a separate rate for Nachi in the antidumping duty order and Nachi has never before been subject to administrative review, we have assigned Nachi a rate of 36.52 percent, based on the all other rate from the antidumping duty order, as amended.

United States Price

The Department used exporter's sales price (ESP) for Koyo and NSK and purchase price (PP) for NTN's sales to Caterpillar, as defined in section 772 of the Tariff Act, to calculate United States price. ESP was based on the packed, delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign inland freight, ocean freight, marine insurance, export inspection fees, brokerage and handling, U.S. inland freight, U.S. duty, commissions to unrelated parties, U.S. credit, discounts, warranties, technical expenses, packing expenses incurred in the United States, and indirect selling expenses (which include inventory carrying costs, warehouse transfer expenses, advertising, and selling expenses). We also adjusted ESP for value added by further manufacturing, including an allocation of profit earned on U.S. sales. No other adjustments were claimed or allowed.

Purchase price for NTN was based on the c.i.f. price to an unrelated purchaser in the United States. We made adjustments for brokerage and handling and foreign inland freight. No other adjustments were claimed or allowed.

Foreign Market Value

The Department used the home market price, as defined in section 773 of the Tariff Act, to calculate foreign market value (FMV). If sufficient quantities of such or similar merchandise were not sold in the home market to allow a comparison between the United States price and FMV, we used constructed value as the basis for FMV.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV. In consideration of the significant volume of home market sales involved in this review, we examined whether it was appropriate to average respondents' home market sales in accordance with section 777A of the Tariff Act. To determine whether an annual average is representative of the transactions under consideration, we compared the monthly weighted-average home market price for each product with the weighted-average price for the entire review period. Because the weighted-average price for each model sold by Koyo and NSK over the entire period did not vary meaningfully from the monthly weighted-average prices of sales, we consider overall weighted-average prices to be representative of the transactions under consideration. Therefore, we calculated a single FMV for each model sold by Koyo and NSK on an annual weighted-average basis, in accordance with section 777A of the Tariff Act.

Some of NTN's U.S. entries during the period were made pursuant to sales contracts pre-dating the period, so we tested the stability of NTN's home market sales which were contemporaneous to those U.S. sales. While we found that NTN's six-month weighted-average prices in 1987 did not vary meaningfully from its monthly weighted-average home market prices, the overall weighted-average price of each model did. MTN's annual weighted-average prices in 1988 and 1989 did not vary meaningfully from monthly weighted-average prices. Therefore, we calculated the FMV for each model sold by NTN on a semi-annual weighted-average basis for sales in 1987 and on an annual basis for sales in 1988 and 1989. These weighted-average FMVs are representative, within the meaning of section 777A of the Tariff Act.

When we used home market sales as the basis of comparison, we based FMV on the packed, F.O.B., ex-factory or delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, credit, discounts, commissions, warranty, and differences in physical characteristics. We adjusted FMV for indirect selling expenses (which include post-sale price adjustments and rebates) in the home market to offset indirect selling expenses on ESP sales in the United States. We limited the indirect selling expenses deduction on home market sales by the amount of the indirect selling expenses incurred in the United States. We added packing expenses incurred in Japan for U.S. sales to FMV.

Based on petitioner's allegations, we investigated whether NTN, NSK, and Koyo sold merchandise covered by the order in the home market at prices below the cost of production. In accordance with section 773(b) of the Tariff Act, we used construed value as the basis for FMV when home market sales were made at prices below the cost of production.

We calculated constructed value in accordance with section 773(e) of the Tariff Act. We included the cost of materials, labor, and factory overhead in our calculations. The actual selling, general and administrative expenses (SG&A) and profits of Koyo and NTN were less than the statutory minimums of ten and eight percent, respectively, of the cost of manufacture. Therefore, we used the statutory minimums in our calculation of constructed value. The SG&A and profit for NSK were equal to or greater than the statutory minimums; consequently, we calculated constructed value using NSK's actual figures for SG&A and profit.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period October 1, 1988, through September 30, 1989:

Manufacturer	Margin (percent)
Koyo Seiko, K.K.	49.99
NTN (Caterpillar)	8.93
Nippon Seiko, K.K.	30.46
Nachi Fujikoshi Corporation	[1] 36.52

[1] No shipments during the period.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries.

Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required on shipments of TRBs from Japan. For any shipments of this merchandise manufactured by NTN and imported by Caterpillar, the cash deposit will be 8.93 percent.

In general, we do not establish importer-specific cash deposit rate. However, due to many reasons, we have not completed our analysis of NTN's exports to the United States to importers other than Caterpillar, although we have completed our analysis of Caterpillar's imports from NTN. Because we did not wish to delay issuance of our preliminary results of review, we have included sales by NTN to Caterpillar for the review period, and, therefore, we are issuing a cash deposit rate preliminarily resulting from the review. Shipments of TRBs manufactured by NTN and not imported by Caterpillar will continue to have a cash deposit requirement of 36.53 percent, which was established in the antidumping duty order, as amended.

For any future entries of this merchandise from an exporter not covered in this or any previous review, and who is unrelated to any review firm, a cash deposit of 49.99 percent shall be required. These deposit requirements are effective for all shipments of the covered merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 30, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-10654 Filed 5-3-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-507]

Certain Fresh and Chilled Whole Atlantic Ground Fish From Canada; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain fresh and chilled whole Atlantic ground fish from Canada. Interested parties who object to this revocation must submit their comments in writing not later than May 31, 1991.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1986, the Department of Commerce (the Department) published a countervailing duty order on certain fresh and chilled whole Atlantic ground fish from Canada (51 FR 17785). The Department has not received a request to conduct an administrative review of the countervailing duty order on certain fresh and chilled whole Atlantic ground fish from Canada for four consecutive annual anniversary months. This is the fifth anniversary.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by section 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than May 31, 1991, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC. 20230.

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If interested parties do not request an administrative review or object to the Department's intent to revoke by May 31, 1991, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: April 29, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-10555 Filed 5-3-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-504]

Certain Heavy Iron Construction Castings From Brazil; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain heavy iron construction castings from Brazil. Interested parties who object to this revocation must submit their comments in writing not later than May 31, 1991.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Elizabeth Levy or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1986, the Department of Commerce ("the Department") published a countervailing duty order on certain heavy iron construction castings from Brazil (51 FR 17786). The Department has not received a request to conduct an administrative review of the countervailing duty order on certain heavy iron construction castings from Brazil for four consecutive annual anniversary months. This is the fifth anniversary.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity To Object

Not later than May 31, 1991, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by May 31, 1991, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: April 29, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 91-10556 Filed 5-3-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-005]

Litharge and Red Lead From Mexico; Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review and Intent to Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances countervailing duty administrative review and intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce has information sufficient to warrant initiation of a changed circumstances administrative review of the countervailing duty order on litharge and red lead from Mexico. Because the U.S. industry is not interested in having the United States Trade Representative refer this case to the International Trade Commission to conduct a section 332 investigation and, consequently, is not interested in maintaining the countervailing duty order on duty-free imports of litharge and red lead from Mexico, we intend to revoke the order. We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On December 6, 1982, the Department of Commerce (the Department) published in the **Federal Register** (47 FR 54847) a notice of final affirmative countervailing duty determination and countervailing duty order on litharge, red lead and lead stabilizers from Mexico. At the time the countervailing duty order was issued, Mexico was not entitled to an injury test under U.S. and international law. Countervailing duties were imposed upon this merchandise without a determination that these entries were injuring the relevant domestic industry.

On August 24, 1986, Mexico acceded to the General Agreement on Tariffs and Trade (GATT). Consistent with our earlier positions in Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order (47 FR 44129; October 6, 1982) and Carbon Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Administrative Review and Tentative Determination to Revoke Countervailing Duty Order (50 FR 19561; May 9, 1985), the Department has concluded that it lacks the authority under article VI of the GATT and section 303(a)(2) of the Tariff Act of 1930, as amended (the Tariff Act), to levy countervailing duties on duty-free imports from Mexico entered on or after August 24, 1986 absent a determination regarding injury to the domestic industry.

In order to fulfill our international obligations, we have developed procedures whereby the U.S. International Trade Commission (ITC) will, at the request of the United States Trade Representative (USTR), conduct an investigation pursuant to section 332 of the Tariff Act to assess whether (1) an industry in the United States would be materially injured, or would be threatened with material injury, or (2) the establishment of an industry in the United States would be materially retarded, if the Department were to revoke an outstanding countervailing duty order with respect to duty-free merchandise from Mexico.

On February 20, 1990, the Department published in the **Federal Register** (55 FR 5869) a notice of Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order (In Part); Litharge, Red Lead and Lead Stabilizers from Mexico. At that time, lead stabilizers were the only products covered by that order that were duty-free and, therefore, entitled to an investigation pursuant to section 332. We determined that there was no interest on the part of the domestic industry in USTR requesting such an investigation, and we partially revoked the outstanding countervailing duty order with respect to lead stabilizers from Mexico. Litharge and red lead, the remaining products covered by this countervailing duty order, were provided duty-free status effective July 1, 1990, by Proclamation 6123 of April 26, 1990 (55 FR 18075; May 1, 1990), which provided preferential tariff treatment under the Generalized System of Preferences (GSP) to certain countries that have been excluded from the benefits of the GSP for certain eligible articles imported from such countries.

On March 18, 1991, we sent letters to all domestic interested parties on the Department's service list informing them of the procedures to initiate an investigation pursuant to section 332 on litharge and red lead from Mexico. In order to determine whether there was any interest in USTR requesting such an investigation, we requested that interested parties submit a statement of interest within 30 days of the date of receipt of our letter. We stated that if we received a statement of interest, we would urge USTR to request that the ITC conduct an investigation pursuant to section 332. We further stated that, in the absence of a statement of interest, we would initiate procedures to revoke the countervailing duty order on litharge and red lead from Mexico. We received no response.

Scope of Review

Imports covered by this review are litharge and red lead from Mexico. Through 1988, such merchandise was classifiable under item numbers 473.5200 (litherage) and 473.5600 (red lead) of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under the following Harmonized Tariff Schedule (HTS) numbers: 2824.10.00 and 2822.20.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Initiation, Preliminary Results of Review and Intent To Revoke

We have determined that changed circumstances exist sufficient to warrant initiation of a changed circumstances review. These changed circumstances include: (1) The Government of Mexico's accession to the GATT; (2) our international obligations requiring us not to levy countervailing duties on duty-free imports from GATT-member countries in the absence of an affirmative injury determination; (3) the duty-free status accorded Mexican litharge and red lead; and (4) the domestic industry's lack of interest in having USTR refer this case to the ITC to conduct a section 332 investigation and, consequently, its lack of interest in maintaining the countervailing duty order on litharge and red lead from Mexico. Under these circumstances, we conclude that expedited action is warranted and are combining the notices of initiation and preliminary results of our changed circumstances administrative review.

Thus, we preliminarily determine that there is a reasonable basis to believe that the requirements for revocation based on changed circumstances are met. Accordingly, we intend to revoke the countervailing duty order with respect to litharge and red lead from Mexico effective July 1, 1990. The current requirements for the cash deposit of estimated countervailing duties will remain in effect until publication of the final results of this review.

Interested parties may request a hearing not later than 10 days after the date of publication of this notice, and may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This initiation of review, administrative review, intent to revoke and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR 355.22 (h)(1) and (h)(4) and 355.25 (d)(1), (d)(2) and (d)(3).

Dated: April 29, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10557 Filed 5-3-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals: Issuance of Permit; NMFS, National Marine Mammal Laboratory (P77#49)

On March 14, 1991, notice was published in the **Federal Register** (56 FR 10861) that an application had been filed by the National Marine Mammal Laboratory, Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Seattle, WA 98115, for a Permit to take up to 60 California sea lions (*Zalophus californianus*) over a 2-year period for scientific purposes. The original application was modified to eliminate the lethal take of healthy full-term pups. The Permit authorizes up to 30 adult female and 10 full-term to be captured, sampled and released and up to 10 premature pups sampled.

Notice is hereby given that on April 30, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that this research satisfies the issuance criteria for scientific research permits. The taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research.

The Permit is available for review in the following offices:

By appointment: Office of Protected Resources, Permit Division, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, Maryland 20910 (301/427-2289);

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, BIN C15700, Seattle, Washington, 98115 (206-526-6150); and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415 (213/514-6196).

Dated: April 30, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-10555 Filed 5-3-91; 8:45 am]

BILLING CODE 3510-22-M

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COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Cotton Textile Products Produced or Manufactured in Bangladesh

May 1, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending export visa requirements.

EFFECTIVE DATE: May 3, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa arrangement between the Governments of the United States and the People's Republic of Bangladesh is being amended to require a visa for shipments of cotton textile products in part-Categories 369-S and 369-O, produced or manufactured in Bangladesh and exported from Bangladesh on and after May 1, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 55 FR 50756, published on December 10, 1990). Also see 53 FR 46484, published on November 17, 1988.

Dated: May 1, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 1, 1991

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 1988, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Bangladesh which are not properly visaed by the Government of the People's Republic of Bangladesh.

Effective on May 3, 1991, you are directed to amend further the directive dated November 14, 1988, to include coverage of part-Categories 369-S [1] and 369-O [2]. Merchandise in Category 369 which is exported from Bangladesh prior to May 1, 1991 shall not be subject to these part-category visa requirements. Goods exported from Bangladesh on and after May 1, 1991 shall be denied entry if not accompanied by the correct part-category designation.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-10718 Filed 5-2-91; 10:57 am]

BILLING CODE 3510-DR-M

[1] Category 369-S: only HTS number 6307.10.2005.

[2] Category 369-O: all HTS numbers except 6307.10.2005 (Category 369-S).

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Communications Panel of the Ad Hoc Committee Study of Off-Board Sensors—Summer Study 1991 will meet on 22-24 May 91 from 8 a.m. to 5 p.m. at ESC, San Antonio, TX, and Hurlburt, Field, FL.

The purpose of this meeting is to receive presentations of Air Force projects and programs relevant to the concept using off-board sensors data to support air combat operations. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-10627 Filed 5-3-91; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

April 30, 1991.

The USAF Scientific Advisory Board Sensor Panel of the Ad Hoc Committee Study of Off-Board Sensors—Summer Study 1991 will meet on 21-22 May 91 from 8 to 5 p.m. at Anser, 1215 S. Jefferson Davis Hwy., Arlington, VA.

The purpose of this meeting is to review Air Force projects and programs relevant to the concept using off-board sensors data to support air combat operations. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1)(and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-10628 Filed 5-3-91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 18-20 June 1991.

Time: 0800-1700 18-19 June 1991, 0800-1200 20 June 1991.

Place: Fort Detrick, Maryland.

Agenda: A subgroup of the Army Science Board (ASB) 1991 Summer Study on the Soldier As a System will hold discussions with personnel from the U.S. Army Medical Research and Development Command on the medical research, development and acquisition process. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-10573 Filed 5-3-91; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 29 May 1991.

Time: 0900-1700.

Place: Aeroflightdynamics Directorate, AVSCOM, NASA, Ames Research Center, Mountain View, California.

Agenda: The Army Science Board (ASB) 1991 Summer Study on Army Simulation Strategy will hold a one-day meeting. The meeting will include technical programmatic briefings and a site visit of the Crew Station Research and Development Facility (CSRDF) in the area of modeling and simulation. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-10571 Filed 5-3-91; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Board of Advisors to the President, Naval War College, Newport, RI; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is given that the Board of Advisors to the President, Naval War College, will meet on 14 and 15 May 1991, in room 210, Conolly Hall, Naval War College, Newport, Rhode Island. The meeting will commence at 8:30 a.m. on 14 May and terminate at approximately 12 noon on 15 May. The purpose of the meeting is to elicit the advice of the Board on educational, doctrinal, and research policies and programs. The agenda will consist of presentations and discussions on the curriculum, programs and plans of the College, and is open to the public. For further information contact: Mrs. Mary E. Guimond, Executive Assistant to the Dean of Academics, Naval War College, Newport, Rhode Island 02841-5010. Telephone number (401) 841-3589.

Dated: May 1, 1991.

Wayne T. Baucino,

Alternate Federal Register Liaison Officer.

[FR Doc. 91-10550 Filed 5-3-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Assessment Governing Board and its committees. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

DATES: May 9, 10, and 11, 1991.

TIME: May 9, 1991—Design and Analysis Committee—9 a.m. to 4:30 p.m. (open); Executive/Archievement Levels Joint Committee—3 p.m. to 4:30 p.m. (closed); Executive Committee—7 p.m. to 10 p.m. (open). May 10, 1991—Nominations Committee—7:30 a.m. to 9 p.m. (closed); National Assessment Governing Board—9 a.m. to 10 a.m. (open); 10 a.m. to 10:30 a.m. (closed); 10:30 a.m. to 1:30 p.m. (open); 1:30 p.m. to 2:30 p.m., (closed); 2:30 p.m. to 4:30 p.m. (open). May 11, 1991—Full Board—9 a.m., until approximately 11:30 a.m. (open); 11:30 a.m. to 12 Noon (closed); 12 Noon, until adjournment, approximately, 1:30 p.m. (open).

LOCATION: Hotel Washington, 15th and Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, U.S. Department of Education, 1100 L Street, NW., suite 7322, Washington, DC., 20005-4013. TELEPHONE: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board (NAGB) is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Act (NAEP Improvement Act), Title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297); (20 USC 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. On May 9, three committees will be in session. The Design and Analysis Committee will meet from 9 a.m. until 4:30 p.m. to receive briefings and to engage in dicussions of highly technical issues which have significant implications for Board policy. Such issues include but shall not be limited to within-grade scaling, NAEP design issues, alternative assessments, and international assessments. The Joint Executive/Achievement Levels Committee will meet in closed session from 3 p.m. until 4:30 p.m. During the closing meeting, the Committee will review and discuss recommendations on levels for the 1990 Mathematics Assessment. The discussion will include references to specific items from the 1990 Assessment, the disclosure of which would significantly frustrate the implementation of the NAEP. Further, the Board will discuss preliminary data from the NAEP, premature disclosure of which may be misleading and could have serious consequences for parties, whose performance could be misinterpreted, leading to decisions being taken by the Department and/or others, that would be based on incomplete, confusing, or erroneous inferences being drawn. Such matters are protected by exemption 9(B) of 552b(c) of title 5 U.S.C. Also, on May 9, the Executive Committee will meet in open session from 7 p.m. to 10 p.m. to review the outcome of the achievement levels replication/validation study and to approve the plans for setting achievement levels for upcoming assessments. On May 10, the Nominations Committee will meet in closed session from 7:30 a.m. until 9 a.m. The Nominations Committee will review and discuss the personal qualifications and experience of nominees for upcoming Board vacancies. Discussion of such information will touch upon matters that would constitute a clearly unwarranted invasion of personal privacy if conducted in open session, and will relate solely to the internal personnel rules and practices of an agency. Such matters are protected by exemptions (2) and (6) of section 552b(c) of title 5 U.S.C. The Board will meet in open session from 9 a.m. until 10 a.m., and 10:30 a.m. until 1:30 p.m. From 9 a.m., until 10 a.m., there will be an overview of the agenda, a report by the Executive Director, and a report on the substantial replication/validation study for 1990 NAEP mathematics achievement levels. During the period from 10:30 a.m., until 1:30 p.m., there will be meetings of the Humanities, Mathematics and Science, and Reporting and Dissemination Committees and a discussion with Secretary of Education, Lamar Alexander.

Beginning at 10 a.m., until approximately 10:30 a.m., the Board will meet in closed session to take action on recommendations on achievement levels

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for the 1990 Mathematics Assessment. The discussion will include references to specific items from the 1990 Mathematics Assessment, the disclosure of which would significantly frustrate implementation of the NAEP. Further, premature disclosure of these data may be misleading and could have serious consequences for third parties, whose performance could be misinterpreted, leading to decisions being taken by the Department and/or others, that would be based on incomplete, confusing, or erroneous inferences being drawn. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C. The meeting will also be closed between 1:30 p.m. and 2:30 p.m. for members to hear a briefing on the 1990 NAEP results. The dicussion will include preliminary data from the NAEP, premature diclosure of which may be misleading and could have serious consequences for third parties, whose performance could be misinterpreted, leading to decisions being taken by the Department and/or others, that would be based on incomplete, confusing, or erroneous inferences being drawn. Such matters are protected by exemption 9(B) of section 552(c) of title 5 U.S.C. At 2:30 p.m., the Board will reconvene in open sessions when an update on NAEP activities and the following reports will be heard: progress on national education goals; results of the replication/validation study of the achievement levels setting process.

On May 11, the full Board will meet from 9 a.m., until adjournment at approximately 1:30 p.m. The meeting will be open from 9 a.m. until approximately 11:30 a.m. The proposed agenda for this portion of the meeting includes a report on the National Academy of Education interim evaluation of the NAEP trial state assessment and presentation of NAGB committee reports. From 11:30 a.m. to 12 Noon, the meeting will be closed. During this closed portion of the meeting, the Board will vote on nominees to be recommended to the Secretary for appointment to the Board. The Board will review and discuss the personal qualifications and experience of the nominees for upcoming Board vacancies. Discussion of such information will touch upon matters that would constitute a clearly unwarranted invasion of personal privacy if conducted in open session, and will relate solely to the internal personnel rules and practices of an agency. Such matters are protected by exemptions (2) and (6) of section 552b(c) of title 5 U.S.C. From 12 Noon until adjournment, at approximately 1:30 p.m., the meeting will be open. During this period, there will be a working lunch and adjournment.

A summary of the activities at the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, 1100 L Street NW., suite 7322, Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: April 30, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91-10702 Filed 5-3-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ91-8-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 29, 1991.

Take notice that on April 25, 1991, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Sixth Revised Twelfth Revised Sheet No. 8
Sixth Revised Twelfth Revised Sheet No. 9

Carnegie states that pursuant to § 154.308 of the Commission's regulations and the Commission's Order Nos. 483 and 483-A, it is filing an Out-of-Cycle PGA to reflect a substantial decrease in its projected overall system sales for the month of May 1991. Carnegie states that, as a result of this projected sales decrease and the availability of low-priced spot gas supplies, Carnegie has increased its projection of storage gas injections for May 1991, thereby effecting a commodity rate decrease to its jurisdictional sales customers. Carnegie also states that its filing incorporates a decrease in the projected cost of spot gas supplies and a recent rate change filed on March 29, 1991, by Carnegie's pipeline supplier, Texas Eastern Transmission Corporation, in Docket No. TQ91-3-17-000.

The revised rates are proposed to become effective May 1, 1991, and reflect the following changes from Carnegie's last fully-supported PGA filing in Docket No. TQ91-7-63-000: a $0.0750 per Dth increase in the demand component of its LVWS and CDS rate schedules; $0.3062 per Dth decrease in the commodity component of its LVWS and CDS rate schedules; a $0.3038 per Dth decrease in its LVIS commodity rate; a $0.0025 per Dth increase in its DCA charge under its LVWS and CDS rate schedules; and a $0.1358 per Dth increase in its Standby Charge Adjustment, from $0.2203 to $0.3186 per Dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to intervene or protest said filing should file an intervention and/or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such pleadings should be filed on or before May 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10559 Filed 5-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-6-4-000]

Granite State Gas Transmission, Inc. Proposed Changes in Rates

April 29, 1991.

Take notice that on April 24, 1991, Granite State Gas Transmission, Inc. (Granite State) 300 Friberg Parkway, Westborough, Massachusetts 01581 tendered for filing Third Revised Sheet No. 25 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on May 1, 1991.

According to Granite State, it provides a storage service for Bay State Gas Company under its Rate Schedule GSS with storage capacity provided in a facility operated by CNG Transmission Corporation (CNG). It is further stated that Granite State's Rate Schedule GSS tracks changes made by CNG under its Rate Schedule GSS pursuant to which Granite State obtains storage capacity from CNG.

Granite State further states that on March 29, 1991, in Docket No. RP91-125-000, CNG filed minor changes in its take-or-pay recovery mechanism which, in part, adjusted the Injection Charge component in its Rate Schedule GSS. According to Granite State, its filing adjusts the Injection Charge component in its Rate Schedule GSS to track the change made by CNG in Rate Schedule GSS.

Granite State states that copies of its filing were served on Bay State Gas Company and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10562 Filed 5-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-227-021]

Paiute Pipeline Co.; Proposed Changes in FERC Gas Tariff

April 29, 1991.

Take notice that Paiute Pipeline Company (Paiute) on April 25, 1991 tendered for filing First Revised Volume No. 1-A to its FERC Gas Tariff, including Original Sheet Nos. 1-130, to be effective June 1, 1991. These tariff sheets are to be effective upon Paiute's conversion to a transportation only pipeline.

In addition, Paiute filed the following tariff sheets, which set forth rates which are effective until conversion takes place.

Original Volume No. 1

Substitute Seventh Revised Sheet No. 10
Substitute Eighth Revised Sheet No. 10
Substitute Ninth Revised Sheet No. 10
Substitute Tenth Revised Sheet No. 10
Third Substitute Eleventh Revised Sheet No. 10
Second Substitute Twelfth Revised Sheet No. 10
Second Substitute Thirteenth Revised Sheet No. 10
Second Substitute Fourteenth Revised Sheet No. 10
Second Substitute Fifteenth Revised Sheet No. 10
Second Substitute Sixteenth Revised Sheet No. 10
Second Substitute Seventeenth Revised Sheet No. 10
Substitute Eighteenth Revised Sheet No. 10

Original Volume No. 1-A

Substitute Original Sheet No. 10
Substitute First Revised Sheet No. 10
Substitute Fourth Revised Sheet No. 10
Substitute Fifth Revised Sheet No. 10
Substitute Sixth Revised Sheet No. 10
Substitute Seventh Revised Sheet No. 10

Paiute states that this filing is in compliance with Commission Orders issued on September 20, 1990, (52 FERC ¶61,311) and on March 28, 1991, (54 FERC ¶61,338) in Docket Nos. RP88-227-000, *et al.* Paiute states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before May 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10560 Filed 5-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-1627-000]

Tennessee Gas Pipeline Co. Technical Conference

April 29, 1991.

Take notice that on May 22, 1991, the Commission Staff will hold a technical conference to discuss the issues raised by the parties and Staff as a result of Tennessee Natural Gas Company's (Tennessee) proposal in the above referenced docket. All parties should be prepared to discuss those technical issues which pertain directly to the proposal and Tennessee should be prepared to answer the questions of the parties and Staff. Please bring an adequate number of copies of any further written materials that are to be provided to the parties and Staff in support of any points raised in previous pleadings.

Docket No. CP91-1627-000 was filed on March 21, 1991, and a Notice of Application in that docket was issued by the Commission on April 2, 1991, and was published in the **Federal Register** on April 9, 1991, (56 FR 14368). The Notice of Application contains a description of Tennessee's proposal and other procedural information.

The primary technical issues which will be discussed at the technical conference are:

(1) Shifts in reserves and deliverability of gas supply in various basins attached to the Tennessee system;

(2) Proposed rate structure, rate design, and rate impact;

(3) Cost allocation between new and existing facilities;

(4) Cost allocation among directions of natural gas flows;

(5) Capacity allocation, scheduling, and curtailments, including the possibility of an open season to allocate new capacity;

(6) Capacity availability, as shown on flow diagrams;

(7) Comparability of service between sales and transportation;

(8) Relationship of this proposal to Tennessee's proposals in Docket No. CP89-470-000, *et al.*

Environmental issues will not be discussed at this conference.

The technical conference will be held at the Commission's offices in Washington, DC on May 22, 1991, and held over to May 23, 1991, if necessary. The conference will begin at 10 am in one of the Commission's hearing rooms at 810 First Street NE., Washington, DC. A specific room designation will be posted on the day of the conference.

The Commission Staff will provide an agenda for the technical conference. The agenda will include an initial presentation of about 30 minutes by Tennessee to summarize their proposal. The Commission Staff will announce any further procedures, as necessary, at the conference.

For further procedural information please contact Richard Eibel of the Commission Staff at (202) 208-0005. Please telephone Mr. Eibel by May 17, 1991, to confirm your attendance, the number of persons in your group that

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will attend, and any special audiovisual needs you may have.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10563 Filed 5-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-6-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

April 29, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on April 25, 1991, certain revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff included in appendix A attached to the filing.

Transco states that the purpose of the filing is to track rate changes attributable to (1) transportation services purchased from National Fuel Gas Supply Corporation (National Fuel) under its Rate Schedule X-42 and storage services purchased from Consolidated Natural Gas (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedule LSS, (2) storage services purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X-28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S-2, and (3) storage services purchased from North Penn Gas Company (North Penn) under its Rate Schedule SS the costs of which are included in the rates and charges payable under Transco's Rate Schedule SS-1. The tracking filing is being made pursuant to section 4 of Transco's Rate Schedule LSS, section 26 of the General Terms and Conditions of Volume No. 1 of Transco's FERC Gas Tariff and section 5 of Transco's Rate Schedule SS-1.

Transco states that included in the appendices B through E attached to the filing are explanations of each of the tracking rate changes, the proposed effective date of such changes and details regarding the computation of the revised LSS, SS-1 and S-2 rates.

Transco notes that also included therein for filing are revised tariff sheets which incorporate the Rate Schedule LSS, SS-1 and S-2 rate changes proposed therein into subsequent intervening rate filings which have been accepted by the Commission to be effective on the dates reflected thereon.

Transco states that copies of the filing are being mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10561 Filed 5-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-49-013]

Transwestern Pipeline Co.; Compliance Filing

April 29, 1991.

Take notice that on April 19, 1991, Southern California Gas Company (SoCalGas), pursuant to Commission's Order Modifying and Approving Contested Settlement, Rejecting Alternate Settlement; Granting Abandonment and Amending Blanket Certificate in Docket No. RP89-49-000 issued March 20, 1991, submits for filing its written procedures detailing SoCalGas plan to implement the open access, nondiscriminatory transportation assignment program on Transwestern Pipeline Company (Transwestern) approved by the Order.

SoCalGas' filing includes a settlement it has filed with the Public Utilities Commission of the State of California (CPUC). SoCalGas requests the Commission to find that the settlement is consistent with the nondiscriminatory, open-access requirements for capacity brokering on Transwestern, required by the March 20, 1991 order.

SoCalGas states that copies of the filing have been served upon each person designated on the service list compiled by the secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 6, 1991. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10564 Filed 5-3-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Environmental Restoration and Waste Management

Merit Review System

AGENCY: Department of Energy, Office of Environmental Restoration and Waste Management (EM).

ACTION: Program Notice.

SUMMARY: The Office of Environmental Restoration and Waste Management (EM) is publishing its Merit Review System in accordance with requirements set forth in the Department of Energy (DOE) Financial Assistance Rules, 10 CFR part 600. This notice establishes the procedures to be followed by EM program offices in conducting the merit review of discretionary financial assistance applications submitted pursuant to 10 CFR part 600.

EFFECTIVE DATE: June 5, 1991.

FOR FURTHER INFORMATION CONTACT: Michael J. Barainca (EM-50), Office of Technology Development, U.S. Department of Energy, Washington, DC, 20585, (301) 353-7940.

SUPPLEMENTARY INFORMATION: The DOE Financial Assistance Rules (10 CFR 600.16), require program offices to establish and publish an objective merit review system for discretionary financial assistance and to ensure its satisfactory functioning. This notice sets forth EM's Merit Review System as follows:

I. Purpose and Scope
II. Responsible Official
III. Deviations
IV. Evaluation Process

I. Purpose and Scope

A. This announcement sets forth the Department of Energy, Office of Environmental Restoration and Waste Management (EM) policies and procedures applicable to the merit review and evaluation of discretionary financial assistance applications for the following program areas:

Technology development for waste management and environmental restoration; environmental educational development; technology integration and transfer; applied research and development; demonstration, testing and evaluation; waste minimization, treatment, and disposal; monitoring equipment, facilities and technologies; characterization; laboratory testing and measurement; remediation technology, including in-situ treatment; transportation and packaging of radioactive, mixed, and other hazardous materials/wastes; and related systems or activities to enhance the infrastructure supporting these areas.

This announcement defines the merit review process for EM review of financial assistance applications. The merit review augments the Federal review normally conducted by the DOE project managers. The merit review process requires additional reviews by merit review groups or field readers as described in the body of this announcement. This announcement fulfills the requirements set forth in DOE Financial Assistance Rules 10 CFR part 600.

B. Merit review procedures should be applied to unsolicited, as well as solicited, financial assistance applications.

C. Merit review is the process of evaluating applications for discretionary financial assistance using predetermined criteria. The review is thorough, consistent and independent and is completed by individuals with expert knowledge in the field in question. The purpose of the review is to provide analysis on the merits of applications to the Program Official having decisionmaking authority (the Selection Official) over the award of discretionary financial assistance.

II. Responsible Official

The EM Associate Director of the Office of Technology Development or his/her designee is responsible for this system of objective merit review of discretionary financial assistance applications funded by EM.

III. Deviations

Single-case deviations from the following procedures may be authorized in writing by EM's Responsible Official upon the written request by a member of the EM staff. Whenever a proposed deviation from this system of review would be a deviation from 10 CFR part 600, the deviation must also be authorized in accordance with the procedures prescribed in that part.

IV. Evaluation Process

A. Initial Screening Procedures

1. Applications will normally be submitted to the Department of Energy Office of Management Support (PR-33) Washington, DC 20585. Applications will be assigned a control number by PR-33 and those pertaining to the Office of Environmental Restoration and Waste Management (EM) will be provided to EM. EM will assign and EM Project Officer, through the applicable Associate Director and Division Director, for initial screening to assure the following standards are met before conducting a detailed merit review and evaluation:

a. Appropriations to the EM Mission. Applications must be relevant to EM mission requirements.

b. Technical/Scientific Content and Merit. Those applications judged to be without sufficient detail for evaluation will be returned to the sender.

c. No Unnecessary Duplications or Overlap. Applications proposing to perform research already being supported by DOE or other Federal agencies generally will not be subjected to formal merit review unless there is a convincing programmatic reason to do so.

d. Completeness. Applications not meeting the requirements of 10 CFR part 600, subpart A may be returned to the sender for correction or modification.

Until the application meets the above standards, it will not be given detailed merit review.

2. The determination to return an application based on the above standards will be made in writing by the EM Project Officer and will be approved at least one level higher than hat of the Project Officer.

3. Applications meeting the above standards will be subjected to formal merit review.

B. Selection Official

1. The Responsible Official, who has ultimate responsibility for selection, may delegate decision-making authority to a Deputy Associate Director, or another EM Associate Director, as appropriate.

2. A selection will be assigned (may be the Project Officer if he/she has decision authority and no conflict of interest). In the event that the Project Officer is also the selection official, this situation shall be approved by the Responsible Official or designee.

C. Qualifications of Reviewers and Selection Official

1. The review members may be a mixture of Federal or non-Federal experts. The review group, when possible, should consist of at least three qualified persons from outside the program office in addition to the designated Contracting Officer's Representative (COR), if the designated COR serves on the group. When possible, the merit review group should exclude anyone who, on behalf of the Federal Government, performs any of the following functions:

a. Providing substantial technical assistance to the applicant.

b. Approving/disapproving or having any decision-making role regarding the application.

c. Serving as the project manager or otherwise monitoring, auditing, or evaluating the recipient's programmatic performance.

d. Exercising line authority over anyone ineligible to serve as reviewers because of the above limitations.

2. Reviewers will be chosen by Division Directors based on their expertise and professional qualifications as related to the proposed work.

3. Reviewers may be Federal employees, including those from EM that are neither the selection official nor those in a direct line of supervision above the Project Officer. Non-Federal employees may also be reviewers.

4. Reviewers will not include former employees of the Project Officer's immediate office or any former employee having line authority over that immediate office within the past 1 year.

5. The designated COR will not serve on the review group or be an external reader unless specifically approved by the Responsible Official.

6. Selection officials and reviewers must comply with the requirements of 10 CFR 1010.101(a) and 1010.302(a)(1) concerning conflict of interest. Individuals who cannot meet these requirements with regard to a particular application may not review, discuss, or make an evaluation of an application in which they have a conflict of interest; and may not participate in any meeting involving the review of an application in which there is a conflict of interest.

D. Project Officer/Contracting Officer Representative

1. The Project Officer will be a Federal employee, from Headquarters or the field, assigned to review the application. The Project Officer may also be designated as the Contracting Officer Representative (COR). This assignment will be made in writing by, or with the concurrence of, the employee's supervisor.

2. The Project Officer will be responsible for coordinating the Merit Review and providing guidance to external reviewers as described in this notice.

3. The Project Officer is responsible for conducting the initial screening. If the application does not satisfy the initial screening, the Project Officer will

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provide the applicant a rejection letter (informing appropriate officials) or request additional information if required.

4. The Project Officer will be responsible for compiling the information from the Merit Review and preparing the Selection Report/Justification for Acceptance for the Selection Official. This report should address the evaluation criteria including the information from the initial screening, any programmatic comments reflecting a Federal policy perspective, and the rationale for selection or rejection.

5. For solicited applications, once the Selection Official approves the Selection Report, the Contracting Officer will inform the applicant. For other applications, once the Selection Official approves the justification for Selection, the Project Officer is then responsible for preparing the rejection letter or Procurement Request documents. The Project Officer will also recommend assignment to a field office for award and implementation if the award is not made at Headquarters.

E. Formal Review Mechanism

There are two types of mechanisms available to accomplish a merit review. The type of review mechanism to be used is dependent on the circumstances concerning the application as discussed below. Regardless of the review mechanism chosen, at least three qualified individuals will perform the review. In those instances where three or more qualified reviewers cannot be obtained to conduct a formal merit review, the selection official must issue a waiver, which is based upon a written explanation of the situation by the assigned Project Officer. In the event that the Project Officer is a reviewer and is also the selection official, this waiver shall be considered and issued by an EM official one level higher than that of the Project Officer or selection official. The types of review mechanisms available and the situations they are used in are as follows:

1. Review group. a. An organization of standing committees called Technical Peer Review Groups (TPRGs) will be the principal method of application review. These review groups are appropriate when required by legislation, or when:

(1) Sufficient number of applications on a specific topic is received on a regular basis in accordance with a predetermined review schedule.

(2) Sufficient number of people is available to accept appointments, serve over reasonably protracted periods of time, and convene regularly or at the call of the chairperson.

(3) Legislative authority for particular programs extends for more than 1 year.

b. Persons outside the cognizant program office shall constitute at least one half the reviewers unless a deviation has been approved under 10 CFR 600.16(g).

c. Members of TPRGs will independently review applications and will individually present results of their reviews to the Project Officer. Reviewers will not meet to review and present a general recommendation. Reviewers may be called together by the Project Officer to receive material, review issues, or share information, but no attempt will be made to acheive a group consensus.

2. Field readers. a. Field readers may be used for applications that cannot be effectively reviewed by the TPRG. This may include applications which are outside the scope of TPRGs, when the workload of TPRGs requires augmentation, or when specific expertise is required.

b. Field readers will follow the guidance provided by the Project Officer for conducting their review. Field readers will independently review applications and will individually present results of their reviews to the Project Officer.

c. Field readers may be called together by the Project Officer to reassess material, review issues, or share information, but no attempt will be made to achieve a group consensus.

F. Review Process

1. The EM Project Officer will provide reviewers with a copy of the application, programmatic guidance, conflict of intererst disclosures, certificates of confidentiality, and other information needed to conduct the review (such as site specific needs and schedules for technologies). The Project Officer may provide instructions to comparatively evaluate proposals if there are multiple proposals.

2. Reviewers should sign the certificate of confidentiality and conflict of interest disclosures and return them before initiating their review.

3. Based upon his/her review of the application and related documents, the reviewer is expected to provide the EM Project Officer with a written analysis based on the guidance and/or other program information for each application.

4. All reviews serve as input for the decision by the selection official and are not binding. Significant adverse evaluations will be addressed in writing in a selection statement document.

5. Upon request by applicants, a written summary will be provided to them on the evaluation of their application.

G. Evaluation Criteria

Review criteria include, but are not limited to, the following list. These criteria, which are listed in descending order of importance, will be used by reviewers after the application has been through the initial screening. For unsolicited applications, this review may also address guidance the Project Officer provides from the initial screening.

1. Technical/Scientific objectives and content.

2. Benefits and merit of application, such as public purpose, time savings, extent of application, cost and risk reduction, etc.

3. Likelihood of technical success (reasonableness of proposed approach and probability of achieving stated objectives).

4. Quality, availability, and experience of organization (personnel, facilities, equipment).

5. The appropriateness and adequacy of the proposed budget.

H. Selection of an application for award will be based on the findings of the technical evaluations and how well the application serves the EM program objectives. Furthermore, selection of an application for award is subject to the availability of funds.

Paul D. Grimm,
Deputy Director.

[FR Doc. 91-10639 Filed 5-3-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90-11-NG]

Encogen Four Partners L.P.; Conditional Order Granting Long-Term Authorization to Import Canadian Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of a conditional order granting long term authorization to import canadian natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued in order conditionally authorizing Encogen Four Partners L.P. (Encogen) to import up to 14,800 Mcf of Canadian natural gas per day for a period of 15 years commencing on or about November 1991. Encogen would buy the gas from Sceptre Resources Limited to fuel a 62 megawatt cogeneration facility which Encogen plans to build in Buffalo, New York.

Transportation from the international border would be provided by the proposed Empire State Pipeline (Empire).

The conditional order makes preliminary findings and indicates DOE's determination on all but the environmental matter to this proceeding. The approval is subject to DOE's review of an environmental assessment being prepared by the Federal Energy Regulatory Commission on the Empire facilities and completion of DOE's responsibilities under the National Environmental Policy Act. A final order will address all environmental aspects of the application.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 30, 1991.

Clifford P. Tomaszewski,
Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-10640 Filed 5-3-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-19-NG]

Inland Gas & Oil Corp.; Application To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas from and to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on March 5, 1991, of an application filed by Inland Gas & Oil Corp. (IGOC), requesting blanket authorization to import up to 14 Bcf of natural gas from Canada and to export from the United States to Canada up to 36 Bcf of domestic natural gas over a two-year term beginning on the date the first import or export delivery occurs. IGOC intends to use existing facilities in the United States and states that it will notify DOE of the date of first delivery and submit quarterly reports detailing each import or export transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., June 5, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: IGOC is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Wilmington, Delaware. IGOC is a wholly owned subsidiary of B.C. Gas Inc. ("B.C. Gas"), a Canadian corporation located in Vancouver, British Columbia. IGOC functions as a natural gas marketer and intends to import and export gas on a short-term or spot basis for its own account or as agent for Canadian or U.S. purchasers and suppliers including B.C. Gas and its U.S. agent, Grand Valley Gas Company of Salt Lake City, Utah. IGOC states the terms of all transactions will be the product of arms length negotiations between the parties and therefore will be competitive.

The decision on the import por .on of this blanket application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In deciding whether the proposed export of natural gas is in the public interest, domestic need for the has will be considered, and any other issue determined to be appropriate. Parties that may oppose this application should comment in their responses on these issues. The applicant asserts the import would be competitive and there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing the arrangement bear the burden of overcoming these assertions.

IGOC requests that DOE grant expedited treatment but did not identify emergency or other considerations which would warrant a reduction in DOE's normal 30-day comment period. Therefore, no decision on IGOC's application will be made until all responses to this notice have been received and evaluated.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in

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the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of IGOC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 29, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-10841 Filed 5-3-91; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 91-12; Certification Notice—60]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of proposed new electric base load powerplant has a filed self-certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has a filed self-certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Oxbow Power Corporation, West Palm Beach, FL	04-23-91	Combine Cycle	55	North Tonawanda, NY.

Amendments to the FUA on May 21, 1987 (Pub. L. 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on April 30, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91-10842 Filed 5-3-91; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of March 22 Through March 29, 1991

Office of Hearings and Appeals

During the Week of March 22 through March 29, 1991, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: April 30, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date	Name and location of applicant	Case No.	Type of submission
Mar. 28, 1991	Church of Jesus Christ of Latter-day Saints, Salt Lake City, Utah.	RR272-71	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If Granted: The September 11, 1990 Decision and Order (Case No. RF272-55108) issued to Church of Jesus Christ of Latter-day Saints would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
Mar. 28, 1991	Gulf/Relt Fuel Oil Co., Point Bay Fuel, Inc. & F.C. Haab Co., Washington, DC.	RR300-16 RR300-17 RR300-18	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The July 27, 1989 Decisions and Orders (Case Nos. RF300-8431, RF 300-8432, & RF300-10822) issued to Relt Fuel Oil Co., Point Bay Fuel Inc., & F.C. Haab Co. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

Date	Name and location of applicant	Case No.	Type of submission
Mar. 28, 1991	Diamond Shamrock R&M, Inc., Washington, DC	LEF-0026	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, Subpart V, in connection with Consent Order entered into with Diamond Shamrock R&M, Inc.
Mar. 27, 1991	Appalachian Flying Service, Inc., Washington, DC	LEF-0029	Implementation of Special Refund Procedures. If Granted: The Office of Hearings & Appeals would implement Special Refund Procedures pursuant to 10 CFR, part 205, subpart V, in connection with July 8, 1983 Consent Order entered into with Appalachian Flying Service, Inc.

Date received	Name of refund proceeding/name of refund application	Case No.
3/25/91	Gleason Company	RF307-10170.
3/25/91	Federal Service Station.	RF307-10160.
3/22/91	Portland General Electric.	RF304-12196.
3/22/91	J & L Oil Company	RF304-12197.
3/22/91	J & L Oil Company	RF304-12198.
3/25/91	Texas Electric Service Company.	RF225-246.
3/25/91	Koppra Company	RF315-10135.
3/26/91	Pearl River Oil Company.	RF325-847.
3/28/91	Smith's Grocery Service.	RF304-12199.
3/22/91 thru 3/29/91.	Crude Oil Refund Applications Received.	RF272-67832 thru RF272-69873.
3/22/91 thru 3/29/91.	Gulf Oil Refund Applications Received.	RF300-19133 thru RF300-19196.
3/22/91 thru 3/29/91.	Texaco Refund Applications Received.	RF321-14947 thru RF321-14996.

[FR Doc. 91-10843 Filed 5-3-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of March 4 through March 8, 1991

During the week of March 4 through March 8, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Keith D. Britt, 3/04/91, LFA-0096

Keith D. Britt filed an Appeal from a determination issued by the Albuquerque Operations Office (AOO), withholding his five-year Personnel Security Reinvestigative Report that he sought in a Privacy Act request. In considering the Appeal, the DOE found that the document at issue was the property of the Office of Personnel Management (OPM) rather than DOE. Therefore, the Appeal was granted, and the matter was remanded to the AOO for consultation with OPM and a new determination.

Shea & Gardner, 3/05/91, LFA-0102

Shea & Gardner filed an appeal from determination issued by the DOE's Oak Ridge Operations Office (ORO) of a request for information under the Freedom of Information Act. Shea & Gardner had sought copies of agency records relating to the treatment of radioactive waste material by a process that involves mixing the material with concrete or other substances that cause the material to solidify. After a search for responsive documents, the Authorizing Official determined that six reports concerning waste material treatment were responsive to the request and released them to the firm. The Appeal alleged that the search conducted by the ORO was inadequate because the released reports referenced other DOE documents responsive to the firm's request, and because the ORO failed to include other types of documents in its determination. During its investigation of the adequacy of the ORO's initial search, the DOE discovered that a new search had already been instituted by the ORO at the request of the Appellant. Therefore, the DOE granted Shea & Gardner's Appeal, and remanded the matter to the ORO to complete its new search.

William Wisner, 3/07/91, LFA-0097

William Wisner filed an Appeal from a determination issued by the Freedom of Information and Privacy Acts Branch (FOI Branch) which found that Mr. Wisner's Freedom of Information Act (FOIA) request did not reasonably describe the records that Mr. Wisner was seeking. In considering the Appeal, the DOE found that in response to the first two of Mr. Wisner's substantially identical FOIA requests, the FOI Branch sent Mr. Wisner three documents it believed were responsive to his requests. In addition, the DOE found that the FOI Branch had contacted the office it believed would be most likely to have documents responsive to Mr. Wisner's requests and that several documents searches were conducted in response to the Wisner requests. In response to the third FOIA request and after direct consultations with Mr. Wisner, no additional documents could be found to satisfy the request. Therefore, the Appeal was denied.

Refund Applications

APCON Corporation, et al., 03/08/91, RF272-14010 et al., RD272-14010 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed on behalf of eight Applicants in the subpart V crude oil overcharge refund proceeding. All of the claimants purchased refined petroleum products in connection with road construction and asphalt pavement manufacturing. The DOE determined that the refund claims were meritorious and granted refunds of $379,173. The DOE also denied objections filed by a consortium of States and 2 territories of the United States (the States), finding that the industry-wide data submitted by the States did not rebut the presumption that the Applicants were injured by the crude oil overcharges. The Motions for Discovery filed by the States were also denied.

Atlantic Richfield Company/Pfarr Super Service, 03/08/91, RR304-7

Fuel Refunds, Inc. (FRI), a refund application filing service, submitted a Motion for Modification of a Decision and Order issued to Pfarr Super Service (Pfarr) in the Atlantic Richfield Company refund proceeding. The Pfarr decision, in pertinent part, specified that the refund paid be sent directly to Pfarr, rather than through the applicant's representative, FRI. That determination was based upon a policy that barred another refund application service, P.A.D., Inc. (P.A.D.), from acting as an agent for refund claimants in any DOE refund proceeding. The Pfarr application was first submitted by P.A.D. and then resubmitted by FRI. In its Motion, FRI asked that it be allowed to receive future refund payments directly. The DOE dismissed the Motion with prejudice, stating that FRI failed to demonstrate the existence of significantly changed circumstances, that FRI had no standing to bring the

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Motion, and that FRI had stated in its own promotional material that it was the same organization as P.A.D.

Broderick and Gibbons, Inc. Wells Cargo, Inc., 03/06/91, RF272-61526, RF272-61526, RF272-63966, RD272-63966

The Department of Energy (DOE) issued a Decision and Order granting crude oil overcharge refunds to two paving companies. The DOE rejected identical objections filed by a consortium of 30 State and two territories (the States), finding them insufficient to rebut the presumption of injury. Motions for Discovery filed by the States in regard to these Applications were also denied. Broderick and Gibbons, Inc. was granted a refund of $23,999. Wells Cargo, Inc. was granted a refund of $23,867.

City of Fort Worth, 03/08/91, RF272-49051

The Department of Energy (DOE) issued a Decision and Order granting a subpart V crude oil overcharge refund to the City of Fort Worth. The applicant is a city government that applied for a refund based solely on its purchases of refined petroleum products for end-use in its motor vehicle fleet. Phillip P. Kalodner, counsel for utilities, transporters and manufacturers filed conditional objections to this application. Mr. Kalodner argued that governmental entities are ineligible to receive subpart V crude oil refunds and that non-governmental claimants should have priority in receiving refunds. Moreover, Mr. Kalodner attempted to rebut Fort Worth's reliance on the end-user presumption. The DOE found Mr. Kalodner's objections to the applicant's eligibility unconvincing and granted Fort Worth a refund of $22,455.

Ecolab, Inc., 03/07/91, RF272-47913, RD272-47913

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Ecolab, Inc., an end-user of refined petroleum products. A group of States and Territories filed Objections to the application, contending that the firm was not injured, because it was able to pass through to customers any overcharges it incurred. The DOE found the States' Objections to be without merit. The States' Motion for Discovery was denied. The DOE granted Ecolab a refund of $36,731.

General Mills, Inc., 03/08/91, RF272-40849, RD272-40849

General Mills, Inc. (General Mills), a company involved in the manufacturing of foods, clothing and related products, toys, and specialty chemicals, filed an Application for Refund in the subpart V crude oil overcharge refund proceeding being conducted by the Office of Hearings and Appeals of the DOE. A consortium of state governments and two U.S. territories (the States) objected to the Application on the basis of evidence concerning the food industry as a whole, and filed a Motion for Discovery. The DOE concluded that the industry-wide data submitted by the States was insufficient to rebut the end-user presumption of injury and that no convincing evidence had been produced to show that General Mills had been able to pass on any crude oil overcharges. In view of that determination, the States' Objections to the refund application were rejected and the related Motion for Discovery denied. The DOE granted General Mills a refund of $82,652.

George A. Hormel & Company, 03/08/91, RF272-19873, RD272-19873

George A. Hormel & Company (Hormel), a food processor and end-user of refined petroleum products, filed an application for a crude oil overcharge refund. A consortium of States and two U.S. territories (the States) objected to the Application. The DOE concluded that the industry-wide data submitted by the States was insufficient to rebut the end-user presumption of injury. In view of that determination, the States' objections to the refund application were rejected and the related Motion for Discovery denied. The DOE concluded that Hormel should receive a refund of $43,334.

Green Construction of Indiana Green Bay Packaging Inc, 03/04/91, RF272-63297, RD272-63297, RF272-63419, RD272-63419

The DOE issued a Decision and Order granting crude oil overcharge refunds to two companies, one in the coal mining and construction industry and the other in the packaging industry. The DOE rejected industry wide objections filed by a group of States regarding these Applications, finding them insufficient to rebut the end-user presumption of injury. Therefore, the Applications for Refund of these two firms were granted and Motions for Discovery filed by the States were denied. Green Construction of Indiana was granted a refund of $19,368. Green Bay Packaging Inc. was granted a refund of $21,028.

Hanover Coop Oil Company, 03/0791, RF272-72435

The DOE considered an Application for Refund submitted on behalf of Hanover Coop Oil Company in the subpart V crude oil overcharge refund proceeding. The application stated that because Hanover had been dissolved, any refund received could not be passed through to the cooperative's members. The application proposed to donate any refund granted to the Hanover (Kansas) American Legion Post 306 for use in community projects. The OHA stated that while the cooperative's suggestion was commendable, this refund mechanism was not appropriate to assure that the refund granted to Hanover would provide restitution to its members. Accordingly, the refund claim was denied.

Interplastic Corp., 03/04/91, RF272-64290, RD272-64290

The DOE issued a Decision and Order denying an application for a crude oil overcharge refund filed by the Interplastic Corp. Interplastic did not demonstrate that the five refined petroleum products for which it requested the refund were covered by the EPAA. In light of this finding, the DOE dismissed a Motion for Discovery filed by a consortium of States in regard to Interplastic's Application.

Keyes Fibre Company, 03/07/91, RF272-47518, RD272-47518

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Keyes Fibre Company in the subpart V crude oil overcharge refund proceeding. The DOE found that the industry-wide data submitted by a consortium of 28 States and 2 territories did not rebut the presumption that the applicant was injured by crude oil overcharges. The DOE denied a Motion for Discovery filed by the States. The DOE granted a refund of $31,654 to Keyes.

Lowe's Companies Inc., 03/08/91, RF272-53368, RD272-53368

Lowe's Companies Inc., a retailer of building materials, appliances, and household hardware, filed an Application for Refund in the subpart V crude oil overcharge refund proceeding being conducted by the Office of Hearings and Appeals of the Department of Energy. A consortium of state governments and two U.S. territories (the States) objected to the Application on the basis of material found in Lowe's Annual Report and Moody's Industrial Manual, and filed a Motion for Discovery. The DOE concluded that the material submitted by the States was insufficient to rebut the end-user presumption of injury and that no convincing evidence had been produced to show that Lowe's had been able to pass on any crude oil overcharges. In view of that determination, the States' Objections to the refund application were rejected and the related Motion for Discovery denied. The DOE concluded that Lowe's Companies Inc., should receive a refund of $22,469.

Ogden Allied New York Services, Inc., et al., 03/07/91, RF272-77202

The Department of Energy issued a Decision and Order granting a refund from the crude oil overcharge funds to ten applicants. The DOE did not accept the gallonage estimation used by the applicants and required them to either exclude estimated gallons from their gallonage claim or substantiate those estimated gallons with verificable estimates. Three of the 10 applicants chose to exclude estimated gallons from their gallonage claims, while the remaining 7 applicants supplied additional information that adequately substantiated the estimated gallons. The total refund granted to the applicants in this Decision is $11,277.

Pilot Knob Pellet Company, National Steel Pellet Company, 03/04/91, RC272-116, RC272-117

The DOE issued a Supplemental Order which rescinded the crude oil overcharge refunds previously granted to Pilot Knob Pellet Company and to National Steel Pellet Company. Affiliates of these two companies had waived their right to a crude oil refund, by participating in the Surface Transporter Escrow and receiving a refund in the Stripper Well proceeding. The Supplemental Order a refund in the Stripper Well proceeding. The Supplemental Order therefore rescinded the $11,115 refund granted to Pilot Knob Pellet Company and the $12,801 refund granted to the National Steel Pellet Company.

Refined Sugars Incorporated, 03/06/91, RF272-10519

Refined Sugars Incorporated, a cane sugar producer, filed an application for a crude oil overcharge refund. A group of state governments and two territories of the United States (the States) objected to the application and provided evidence that the sugar industry as a whole passed through increased costs to customers. The DOE determined that the States had failed to produce any convincing evidence to show that Refined Sugars had been able to pass on the crude oil overcharges to it customers. The Decision granted the firm a $15,764 refund.

Scrivner, Inc., 03/08/91, RF272-14537, RD272-14537

Scrivner, Inc. (Scrivner), a grocery wholesaler, filed an application for a crude oil overcharge refund. A consortium of state governments and two U.S. territories (the States) objected to the Application on the basis of material that the food industry as a whole passes through increased costs to its customers. The DOE concluded that the industry-wide data submitted by the States was insufficient to rebut the end-user presumption of injury and that no convincing evidence had been produced to show that Scrivner had been able to pass on any crude oil overcharges. In view of that determination, the States' Objections to the refund application were rejected and a related Motion for Discovery denied. The DOE granted the firm a refund of $27,040.

Washington State Ferries, 03/08/91, RF272-28260

The DOE issued a Decision and Order considering an application for a subpart V crude oil overcharge refund filed by Washington State Ferries (WSF). Philip P. Kalodner, counsel for a group of utilities, transporters, and manufacturers, filed objections to the Application of Refund, contending that governmental authorities are ineligible for such a refund. The DOE found the objections inapplicable because WSF, although a political subdivision of the State of Washington, was operated as an autonomous business. In addition, numerous previous decisions have stated that the Stripper Well Settlement Agreement, while designating the States as conduits for indirect restitution, in no way curtailed the States' right to direct restitution with respect to their own purchases of refined petroleum products. Therefore, the DOE determined that the Applicant was an end-user of the refined petroleum products which it purchased, and granted WSF a refund of $70,212.

Woods Management Company, 03/07/91, RF272-10164, RD272-10164

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Woods Management Company, an end-user of refined petroleum products. A group of States and Territories filed an Objection to the application, contending that the firm was not injured, because it was able to pass through to customers any overcharges it suffered due to regulations by the New York City Rent Guidelines Board, which allowed landlords to place surcharges on rent. The DOE rejected the objections, finding that the surcharges were a flat rate and did not permit an automatic passthrough of all crude oil overcharges. Accordingly, the DOE granted Woods a refund of $6,789. The DOE denied a related Motion for Discovery filed by the States.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Alabama-Coushatta Indian Reservation *et al.*	RF272-5718	03/08/91
Baxter Cooperative Exchange *et al.*	RF272-77965	03/07/91
Crane Co.	RF272-64036	03/06/91
Exxon Corporation/St. Regis/Champion Inter-National Corp.	RF307-10172	03/05/91
Gulf Oil Corp./ Crockett's Gulf *et al.*	RF300-10929	03/05/91
Gulf Oil Corp./Joe's Gulf.	RF300-15826	03/08/91
Gulf Oil Corp./Matt Dillon Gulf Station.	RF300-15752	03/04/91
Gulf Oil Corp./Owen's Gulf *et al.*	RF300-11900	03/08/91
Gulf Oil Corp./Phil's Gulf *et al.*	RF300-12000	03/07/91
Gulf Oil Corp./Richard F. Wilcoxon *et al.*	RF300-8983	03/08/91
Placid Oil Co./Stone Oil Company.	RF314-36	03/07/91
Shell Oil Company/ Edwards-Etherton Oil Co., *et al.*	RF315-6066	03/08/91
Shell Oil Company/ Herb's Shell *et al.*	RF315-826	03/08/91
Sims Wholesale, Inc. *et al.*	RF272-72447	03/08/91
Skamania County Road Dept., Aleutian Constructors.	RF272-24175 RF272-27619	03/08/91
Texaco Inc./Davis Texaco Service *et al.*	RF321-2222	03/08/91
Texaco Inc./Dean's Texaco in Seattle *et al.*	RF321-3734	03/05/91
Texaco Inc./George Rowe Texaco, George Rowe Texaco.	RF321-4963 RF321-13075	03/08/91
Texaco Inc./Hatcher Texaco *et al.*	RF321-4472	03/05/91
Texaco Inc./McCourts Texaco *et al.*	RF321-6131	03/04/91
Texaco Inc./Pi-Jon, Inc. *et al.*	RF321-4710	03/04/91

Dismissals

The following submissions were dismissed:

Name	*Case No.*
Bd. of Education (City of BPT. CT)	RF272-85204
Bennoc, Inc.	RF272-84110
Blaine County, MT	RF272-85044
Burke County, ND	RF272-85524
Central Shell Service	RF315-1435
Cherokee Public Schools—USD #413.	RF272-81898
Clear Creek ISD	RF272-84758
Dickens County, TX	RF272-85288
Dock Rabon Gulf	RF300-11003
Dom's Fenwood Gulf	RF300-11391

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Name	Case No.
Donald E. Foster	RF321-12205
Donald Ralston	RF315-10067
Effingham County, GA	RF272-65186
Elida Local School	RF272-62035
Elmer Holtz Trucking	RF272-70260
Etowah County, AL	RF272-65289
Franklin County, ID	RF272-65212
Franklin Shell I	RF315-1434
Gloucester School District	RF272-66320
Green Local School District	RF272-64368
Harold's Texaco	RF321-13000
Hopewell, VA	RF272-66294
Hudson's Gulf	RF300-11008
Jim Thomas Enterprises, Inc.	RR139-72
JT #01 Minocqua School District	RF272-66723
Kearsburg Board of Education	RF272-61617
Lee Gibson Texaco	RF321-3988
Lucas County Asphalt, Inc.	RF272-64462
Melton Drilling Co.	RF272-64672
Mills Shell	RF315-1428
Milton Hospital	RF272-66395
MSD North Posey County School	RF272-61205
Musgrove Texaco	RF321-396
Natchitoches Parish, LA	RF272-65108
Newton Square, PA	RF272-63769
Ophir Comm. Cons. School District 235.	RF272-61147
Park City HS #5	RF272-60101
Pondera County, MT	RF272-66339
Richton School District	RF272-64593
School District of St. Joseph	RF272-60123
Simplex Wire & Cable Co.	RF272-63104
South Brunswick, NJ	RF272-65490
Starmount Coding Co.	RF272-64643
Stillwater Public Schools	RF272-62230
Temple Public Schools	RF272-62562
Terek Service	RF321-13278
Tippah County Schools	RF272-61914
Town of Stratford	RF272-64685
Utility Bill Analysis	RF272-62379
Valley Five Texaco	RF321-10088
Walker County, GA	RF272-66306
West St. Texaco	RR321-39
Western Reserve Local School District.	RF272-64508
Whelsee Drilling Co.	RD272-32264
Whelsee Drilling Co.	RF272-32264
Winona Trading Post	RF321-11349
Zeeland, MI	RF272-65399

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: April 30, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-10844 Filed 5-3-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of March 11 through March 15, 1991

During the week of March 11 thorugh March 15, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Canyon Consultants, 3/14/91, LFA-0101

Canyon Consultants filed an Appeal from a denial by the Office of Hearings and Appeals (OHA) of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In its Request, Canyon Consultants sought a list of customer names and addresses which Tesoro Petroleum Corporation (Tesoro) had submitted to OHA in connection with special refund proceedings. The DOE denied the Appeal, finding that the Tesoro list was exempt from mandatory disclosure pursuant to Exemptions 2 and 4 of the FOIA.

Valerie A. Benson, 3/14/91, LFA-0099

Valerie A. Benson filed a Freedom of Information Act (FOIA) Appeal of a partial denial of her information request by the Batavia Area Office (Batavia) of the Department of Energy (DOE). The DOE determined that: (1) The FOIA does not require agencies to answer questions; (2) the FOIA does not require agencies to release the originals of documents requested nor re-release materials previously provided to the requester; and (3) Benson is not entitled to government-provided counsel under the FOIA. Accordingly, Ms. Benson's Appeal was denied.

Motion for Modification and/or Rescission

New York, 3/14/91, LER-0008

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by the State of New York which sought to reverse earlier determinations by the DOE Assistant Secretary for Conservation and Renewable Energy and the Office of Hearings and Appeals (OHA). The program for which New York had requested Stripped Well monies, the Oil Energy Conservation Program, was ineligible for funding because it promoted environmental concerns rather than energy efficiency. This program would provide matching grants to firms which would locate and plug abandoned oil wells in the State's old oil field area. In its Motion, the State argued that the program should be approved because its object was primarily energy conservation, not environmental restoration, and maintained that there was real potential for significant oil recoveries. The DOE disagreed, stating that the program's major benefit would be environmental, and that any increase in New York's oil production resulting from the program was likely to be marginal. The DOE compared the program to a program approved in *Texas*, 18 DOE ¶ 82,501 (1988) (*Texas*), which involved research on oil producing reservoirs. Both the *Texas* program and the New York program would result in increased oil production, but only the Texas program involved energy research, a category of program permissible under the Stripper Well Litigation Settlement Agreement. Accordingly, as the New York program neither fell into a permissible category, nor would provide restitution to injured consumers of petroleum products, the State's Motion was denied.

Refund Applications

American National Can Company, 3/14/91, RF272-8743

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to American National Can Company based on its purchases of refined petroleum products between August 19, 1973 and January 27, 1981. The applicant was an end-user of the refined petroleum products and based its claim on a presumption of injury for end-users. A group of 31 States and two Territories (the States) filed a Statement of Objections with respect to American's application. The DOE found that the States' filing was insufficient to rebut the presumption of injury. Therefore American's Application for Refund was granted. The refund granted to American was $145,155.

Bambergers Inc., 3/12/91, RF272-19480

Bambergers Inc. (Bambergers), a retailer of automotive parts and gasoline, filed an Application for Refund in the subpart V crude oil special refund proceeding being conducted by the Office of Hearings and Appeals of the Department of Energy. A consortium of state governments and two U.S. territories (the States) objected to the application on the basis that Bambergers was a reseller. The DOE agreed with the States that 95 percent of the total gallonage submitted by Bambergers was ineligible for a refund. The DOE concluded, however, that the other portion of the gallonage claim was eligible for a refund because Bambergers used the petroleum products in its vehicles for delivery of auto parts to its branch stores, a business operation separate from its refined products resale enterprise. As an end-user, Bambergers Inc. received a refund of $1,004.

Dana Corporation, 3/13/91, RF272-375, RD272-375

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Dana Corporation, a manufacturer of engine and chassis components, that used petroleum products in its business operations. A consortium of State and two Territories filed a "Statement of Objections" and "Motion for Discovery" with respect to the applicant's refund claim. The DOE found that the States' filings did not refer to whether the applicant was able to pass through crude oil overcharges, but only made generalized statements regarding whether increased fuel costs could be passed through. The DOE concluded that these arguments were insufficient to rebut the presumption of injury for end-users in this case. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted to Dana Corporation is $17,476.

Exxon Corporation, Mel's Car Care Center, 3/13/91, RR307-12

The DOE issued a Decision and Order granting a Motion for Reconsideration concerning an application in the Exxon Corporation special refund proceeding. On December 3, 1990, the DOE denied an application submitted by Mel's Car Care Center (MCCC), a retailer, because it had failed to supply any evidence to support the estimated purchase figures in its claim. MCCC subsequently submitted invoices to substantiate its claim. Because MCCC presented substantial evidence to support its initial refund application, the DOE exercised its discretion to consider MCCC's Motion for Reconsideration. The DOE determined that MCCC was eligible for a refund and calculated MCCC's approved gallonage using an estimate of 34,000 gallons per month based on invoices submitted by the firm. MCCC was granted a refund of $390 representing $281 in principal and $109 in interest.

Hebrew Rehabilitation Center for the Aged, 3/11/91, RF272-68311

The DOE issued a Decision and Order concerning an Application for Refund submitted by the Hebrew Rehabilitation Center for the Aged, based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981 pursuant to the provisions of 10 CFR Part 205, subpart V (subpart V). It was determined that as an end-user of these products, the applicant was entitled to its full allocable share of available crude oil refund monies. However, the DOE pointed out that the applicant filed its refund claim after June 30, 1988, the first of several deadlines for submitting crude oil refund claims. While the applicant was granted a refund at the rate of $.0008 per gallon, it will be decided in the future whether claimants, such as this applicant, that filed later applications will receive additional refunds. The refund granted to the aplicant is $3,260.

Metropolitan Edison Company, 3/13/91, RF272-23243, RD272-23243

The DOE issued a Decision and Order granting the subpart V crude oil refund application of Metropolitan Edison Company, based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant, a privately-owned utility, demonstrated the volume of its claim by using contemporaneous records and reasonable estimates. The applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. A group of state governments and territories of the United States (the States) objected to the application, contending that the utility was not itself injured because it was able to pass through to customers any overcharges it suffered. They also argued that it was inappropriate to grant refunds to utilities on the condition that the refunds be passed through to customers because state and federal governments, not utilities, were the appropriate conduits for restitution to consumers. The DOE found the States' arguments to be without merit. Accordingly, the DOE granted Metropolitan Edison Company a refund of $113,492.

Peabody Coal Company, 3/14/91, RF272-23241, RD272-23241

The DOE issued a Decision and Order granting the subpart V crude oil refund application of Peabody Coal Company, based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant, a coal mining company, demonstrated the volume of its claim by using contemporaneous records and reasonable estimates. The applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. A group of state governments and territories of the United States (the States) objected to the application, contending that the firm was not injured because it was able to pass through to customers any overcharges it suffered due to the elasticities of supply and demand that exist in any industry. The DOE found that the States failed to submit any direct evidence to indicate that the applicant passed on increased fuel costs to its customers. Accordingly, the DOE granted Peabody a refund of $280,853. The DOE also denied the Motion for Discovery filed by the States in this case, for reasons discussed in earlier subpart V crude oil Decisions.

Plaza Materials Company, 3/12/91, RF272-44723, RD272-44723

Plaza Materials Company (Plaza), a company in the road construction industry, filed an Application for Refund in the subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application, provided evidence concerning the construction industry as a whole and filed a Motion for Discovery. The DOE determined that the States had failed to produce any convincing evidence to show that Plaza had been able to pass on the crude oil overcharges to its customers, and found that the States' evidence failed to properly address the individual situation of the applicant. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Plaza were injured by crude oil overcharges. Plaza indicated that 15 percent of its contracts were affected by price escalator clauses and that 15 percent of its liquid asphalt purchases were covered by a price escalator clause. Plaza's liquid asphalt purchase volume claim was therefore reduced accordingly. The DOE granted Plaza Materials Company a refund of $18,371 based on its approved purchases of 22,983,739 gallons of petroleum products. The DOE accordingly denied the Motion for Discovery filed by the States.

Shell Oil Company/Plattville Consumers CO-OP OIL CO., 3/14/91, RF315-1150

The DOE issued a Decision and Order concerning the refund application filed in the Shell Oil Company special refund proceeding on behalf of Plattville Consumers Co-op Oil Co. Plattville was found to be eligible for a refund based on its purchases of Shell petroleum products. The cooperative was granted a refund of $4,679 after certifying that it would pass through the refund to its members.

Shell Oil Company/Poole's Michigan Avenue Shell Service, South and Primrose Service, 3/14/91, RF315-

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8620, RF315-10083, RF315-8621, RF315-10082

The DOE issued a Decision and Order concerning the refund applications filed in the Shell Oil Company special refund proceeding by James Poole and H. Robert Poole, who were partners in Poole's Michigan Avenue Shell Service until James bought out H. Robert in May 1979 and in South and Primrose Shell until it closed in 1976. James Poole was granted a $793 refund ($588 principal and $205 interest) based on 50 percent of Poole's Michigan Avenue purchases during the period of partnership, on all of the station's purchases after May 1979, when he was sole proprietor, and on 50 percent of the South and Primrose purchases. H. Robert Poole was granted a $472 refund ($350 principal and $122 interest) based on 50 percent of Poole's Michigan Avenue purchases during the period of partnership and on 50 percent of the South and Primrose purchases. The total of the refunds granted in this Decision is $1,265.

State Escrow Distribution, 3/11/91, RF303-10

The Office of Hearings and Appeals (OHA) ordered the DOE's Office of Controller to disburse to the State Governments $91,000,000 in crude oil overcharge funds received in a March 1991 installment payment made pursuant to a consent order with Texaco Inc. These Texaco crude oil funds had been earmarked for distribution to the State in *Texaco Inc.*, 19 DOE ¶ 85,200 (1989). In addition, the OHA ordered the Controller to transfer $89,364,000 of the Texaco funds to the escrow account maintained for distribution to the Federal Treasury and $44,682,000 to the escrow account maintained for distribution to injured parties who file crude oil refund claims with the OHA. The use of the crude oil funds by the States is governed by the Stripper Well Settlement Agreement.

Texaco Inc./Claud Hodges Texaco, 3/15/91, RF321-14446

The DOE issued a Decision and Order in the Texaco Inc. special refund proceeding concerning an Application for Refund filed by Claud Hodges Texaco (Hodges), a retailer of Texaco products. In *Texaco Inc./LaCumbre Texaco*, Case Nos. RF321-589 *et al.* (September 18, 1990), Hodges was granted a refund based on its claim that it operated the retail outlet from September 1973 to July 1978. Subsequently, the DOE received two other refund applications requesting a refund based on purchases at the same location during part of the same time period that Hodges claimed to have operated the station. Accordingly, the DOE determined that the refund granted to Hodges should be modified unless it submits documentation to substantiate its claim within 30 days.

Texaco Inc./Pecan Shoppe of Cecil, Inc. et al., 3/15/91, RF321-4120 et al.

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning six Applications for Refund filed by retail outlets that were direct purchasers of Texaco refined products. Each of the six applicants was owned by a separate corporation, and they all had the same treasurer. Three of the applicants were owned by Taylor Jordan or members of his family. The Jordan family also owned 25 percent of a fourth applicant. The remaining two applicants were owned by unrelated individuals. The DOE noted that firms having common ownership are generally considered together in determining the appropriate presumption level. The total allocable share of the four outlets in which the Jordan family had an interest exceeded the $10,000 small claims threshold. However, the DOE found that it would be inequitable to limit the refund due the three unrelated owners of the fourth applicant merely because one owner also owned an interest in other outlets. Moreover, the total allocable share attributable to the Jordan family was below the $10,000 threshold. Accordingly, the DOE granted each applicant a refund equal to its full allocable share.

The Asphalt Service Co., Inc., Lionmark, Inc., Rein, Shultz & Dahl of Illinois, Inc., 3/13/91, RF272-64890, RD272-64890, R272-70853, RD272-70853, RF272-71311, RD272-71311

The Asphalt Service Co., Inc. (Asphalt), Lionmark, Inc. (Lionmark), and Rein, Shultz & Dahl of Illinois, Inc. (Rein) are involved in the road construction business. They filed Applications for Refund as end-users of refined petroleum products in the subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the applications and provided evidence concerning the construction industry as a whole. The DOE determined that the States had failed to produce any convincing evidence to show that Asphalt, Lionmark, and Rein had been able to pass on the crude oil overcharges to their customers, and found that the States' evidence failed to properly address the individual situations of the applicants. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users were injured by crude oil overcharges. The total of the refunds granted in this Decision is $80,561. The DOE also denied the three Motions for Discovery filed by the States for reasons discussed in previous Decisions.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Atlantic Richfield Co./Gloria's Arco.	RF304-12194	03/11/91
Atlantic Richfield Co./Kelson Enterprises, Inc. *ET AL.*	RF304-3909	03/13/91
Cessna Aircraft Company, Butler Construction Co.	RF272-28603 RF272-27704	03/14/91
Empire District Electric Co.	RR272-68	03/14/91
Exxon Corporation/Putnam's Exxon, INC., Laurens Exxon, Beard Oil Company.	RF307-2513 RF307-4448 RF307-10153	03/13/91
Gulf Oil Corp./National Heat & Power.	RF300-11387	03/13/91
Magma Cooper Company, San Manuel Division.	RF272-70868	03/13/91
Martin Carlin	RF272-49662	03/15/91
Shell Oil Company/Hunter Shell Service *ET AL.*	RF315-1255	03/13/91
Texaco Inc./Bill Hughes Texaco *ET AL.*	RF321-827	03/15/91
Texaco Inc./Black Oil Company, Inc. *ET AL.*	RF321-4289	03/15/91
Texaco Inc./Eugene L. Harwood *ET AL.*	RF321-2334	03/13/91
Texaco Inc./Maynard O. Christenson *ET AL.*	RF321-2672	03/13/91
Texaco Inc./Penny's Texaco.	RF321-14446	03/13/91
Texaco Inc./White Fuel Company *ET AL.*	RF321-3007	03/15/91
The Empire District Electric Company.	RF272-35	03/11/91

Dismissals

Name	Case No.
The following submissions were dismissed:	
Al Jones Texaco	RF321-4970
Al Jones Texaco	RF321-4971
Al Jones Texaco	RF321-13125
Al Jones Texaco	RF321-13124
Al Jones Texaco	RF321-4969
Al Jones Texaco	RF321-13123
Amoco Corp.	RF324-0001
Arizona Bus Lines	RF272-70307
Belmont Texaco	RF321-6736
Chesapeake Union Ex Village SD	RF272-81060
Deerfield Public Schools	RF272-81763
Dwight Barton Texaco Wholesaler, Inc.	RF321-7273
El Paso Natural Gas Company	RF272-39414
J&E Texaco	RF321-10620
John E. Jones Oil Co.	RF321-1645
Leighow Oil Company	RF307-10173
Mike's Gulf Service	RF300-11369
Nola's Texaco	RF321-2131
Perry's Texaco	RF321-1184
South Crowley Gulf	RF300-11017
The Colony, TX	RF272-68202
Thomas Gulf	RF300-11015
Town of Greenwich—Board of Education.	RF272-82533
Union City, GA	RF272-83064
Village Gulf	RF300-11041
Wellsville-Middleton R 1 Schools	RF272-79694
Willam Almond	RF321-12283
Woodlawn Texaco	RF321-3159

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commerically published loose leaf reporter system.

Dated: April 30, 1991.

George B. Breznay,

Office of Hearings and Appeals.

[FR Doc. 91-10645 Filed 5-3-91; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-3954-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before June 5, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Laboratory Performance Evaluation Studies for Water Analyses (EPA No. 0234.04; OMB No. 2080-0021). This ICR requests an extension to an existing information collection.

Abstract. Pursuant to the Safe Drinking Water Act (Public Law 93-523) 40 CFR parts 141-142, and the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500), the EPA's Environmental Monitoring Systems Laboratory (EMSL-CIN) must conduct performance evaluation (PE) studies on laboratories that routinely analyze several types of water samples. There are three types of PE studies that are conducted:

(1) Water Pollution (WP) Studies are done semiannually to provide information to EPA on laboratory producing critical data for regulatory purposes, and to support the wastewater certification programs administered by many States.

(2) Discharge Monitoring Report-Quality Assurance (DMR-QA) Studies are done annually to provide EPA with an objective estimate of the analytical capability of laboratory performing self-monitoring analyses, as required in major National Pollutant Discharge Elimination System (NPDES) permits.

(3) Water Supply (WS) Studies are done semiannually to support the drinking water laboratory certification program administered by the States.

In these studies, each laboratory receives from EMSL-CIN, samples with concentrations unknown to them, but known to EMSL-CIN. The laboratory analyzes the samples and reports their results to EMSL-CIN for evaluation. EMSL-CIN sends each laboratory a copy of their performance evaluation that includes the data they submitted to EMSL-CIN, the related study true values and PE limits, and an evaluation judgment for each reported value. The results of the PE Studies are maintained on an EPA computer data base.

The results will be used by EPA, State, and private laboratory personnel to identify and correct analytical deficiencies of laboratories, thereby improving the data quality of their monitoring operations. WP and WS study results can be decisive in the laboratory certification process administered by EPA and State programs. DMR-QA study results are used to target NPDES loabratories with apparent analytical problems for on-site inspection by EPA or State regulatory personnel.

Burden Statement: Public reporting burden for this collection of information is estimated to average 10.5 hours per laboratory response in the Water Pollution (WP) Studies, 4.3 hours per permittee response in the chemistry portion of Discharge Monitoring Report—Quality Assurance (DMR-QA) Studies, 116.1 hours per laboratory response in the whole-effluent toxicity testing portion of DMR-QA Studies, and 4.5 hours per laboratory response in the Water Supply (WS) Studies. These estimates assume study instructions are followed and an average number of the most frequently analyses are conducted. These estimates include time for reviewing instructions, searching existing information sources, and completing and reviewing the collection of information.

Respondents: Businesses or other for-profit organizations, non-profit institutions, small businesses or organizations, State and local organizations.

Estimated Number of Respondents: 14,900.

Frequency of Collection: Semiannually for WP and WS Studies, annually for DMR-QA Studies.

Estimated Number of Reponses per Repondent: 1.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC. 20530.

Dated: April 26, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-10614 Filed 5-3-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 30, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commisson's copy contractor, Downtown Copy Center,

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1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0410.

Title: Forecast of Investment Usage Report and Actual Usage of Investment Report.

Form Number: FCC Form 495-A and 495-B.

Action: Reinstatement of a previously approved collection for which OMB approval has expired.

Respondents: Business or other for-profit.

Frequency of Response: Annually.

Estimated Annual Burden: 300 respondents; 40 hours average burden per response; 12,000 hours total annual burden.

Needs and Uses: FCC Forms 495-A and 495-B are needed to detect and correct forecast errors that could lead to significant misallocation of network plant between regulated and nonregulated activities. The forms implement the FCC's Joint Cost Order, CC Docket No. 86-111, which requires that certain telephone plant investments used for both regulated and nonregulated purposes be allocated on the basis of forecasted regulated and nonregulated use. The Forecast of Investment Usage Report (FCC Form 495-A) is used by carriers to submit the forecasts of investments used. The Actual Usage of Investment Report (FCC Form 495-B) is used to submit the actual investments used. These reports are part of the Automated Reporting and Management Information System (ARMIS). The required information provides the necessary detail to enable the Commission to fulfill its regulatory responsibility to ensure that the regulated operations of the carriers do not subsidize the nonregulated operations of those same carriers.

Federal Communications Commission.

Donna R. Search,

Secretary.

[FR Doc. 91-10658 Filed 5-3-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Port of Houston/International Cargo Network, LP Terminal Agreements et al; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200508 and 224-500509.

Title: Port of Houston/International Cargo Network, L.P. Terminal Agreements.

Parties: Port of Houston Authority (Port), International Cargo Network, L.P.

Synopsis: The Agreements, filed April 25, 1991, provide for the lease of certain Port land to be used for the operation of a refrigerated warehouse. The Agreements will terminate February 28, 1996.

Agreement No.: 224-010896-006.

Title: Maryland Port Administration/Moller Steamship Line, Inc. Marine Terminal Agreements.

Parties: Maryland Port Administration, Moller Steamship Line, Inc.

Synopsis: The Agreement provides for a sixty-day extension of the terms of the basic Agreement and Lease, beginning May 1, 1991.

Agreement No.: 224-200420-002.

Title: City of Los Angeles/Nippon Yusen Kaisha (NYK) Terminal Agreement.

Synopsis: The Agreement, filed April 25, 1991, amends: Section 7(a)(6) of the agreement to allow NYK to purchase certain chassis stacker equipment, which will result in a cost savings to City, and the City to reduce NYK's cost of improvements in certain facilities; and, section 10 to allow NYK to assign the agreement to its subsidiary, Yusen Terminals, Inc. (Yusen), provided NYK remains bound by all present obligations under the agreement and obligations that Yusen may assume in the future.

Agreement No.: 224-003613-013.

Title: Department of Transportation of the State of Hawaii/Matson Terminals, Inc. Terminal Lease Agreement.

Parties: Department of Transportation of the State of Hawaii/Matson Terminals, Inc. (Matson).

Synopsis: The Agreement, filed April 26, 1991, restates the parties' basic lease and provides for Matson's substitution of new cranes having value and utility equal to the old cranes being replaced.

Agreement No.: 224-200307-003.

Title: Port of Portland/James River II Inc. dba Western Transportation Terminal Agreement.

Parties: Port of Portland (Port), James River II, Inc. dba Western Transportation.

Filing Party: Ms. Elaine Lycan, Manager, Pricing and Regulatory Affairs, Port of Portland, P.O. Box 3529, Portland, OR 97208.

Synopsis: The Agreement, filed April 29, 1991, amends the parties' basic agreement to provide for: (1) the Port to repossess House 103; new rental rates, effective July 1, 1991; and, restatement of and fixing of the Maintenance/Operating charge and decrease in such charge if House 103 is repossessed by the Port.

By Order of the Federal Maritime Commission.

Dated: May 1, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-10597 Filed 5-3-91; 8:45 am]

BILLING CODE 6730-01-M

New York Shipping Association, Inc., et al; Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice, that on April 29, 1991, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 224-200083-009.

Title: NYSA-ILA Tonnage Assessment Agreement.

Parties:

New York Shipping Association, Inc.,
International Longshoremen's Association, AFL-CIO.

Synopsis: The agreement, filed April 29, 1991, amends the parties' basic agreement to provide for a reduction in the tonnage assessment paid by ocean carriers in the Port of New York and New Jersey, effective May 1, 1991.

By Order of the Federal Maritime Commission.

Dated: May 1, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-10598 Filed 5-3-91; 8:45 am]

BILLING CODE 6730-01-M

Puerto Rico Maritime Shipping Authority Sea-Land Service, Inc. Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007540-053.

Title: United States Atlantic and Gulf/Southeastern Caribbean Conference.

Parties:

Puerto Rico Maritime Shipping Authority Sea-Land Service, Inc.

Synopsis: The proposed amendment would modify Article 8(i)(3) (Voting Procedures) to provide that a member who charters space from another member in a particular Section of the trade will have met the sailing requirements necessary to maintain its voting rights in that section.

Agreement No.: 217-010051-019.

Title: Mediterranean Space Charter Agreement.

Parties:

Compania Trasatlantica Espanola,
Compagnie Generale Maritime,
Contship Container Lines, Ltd.,
Farrell Lines, Inc.,
Italia di Navigazione, S.P.A.,
Jugolinija,
Lykes Bros. Steamship Co., Inc.,
A.P. Moller-Maersk Line,
Nedlloyd Lijnen B.V.,
Sea-Land Service, Inc.,
P&O Containers Ltd.,
Zim Israel Navigation Co., Inc.

Synopsis: The proposed amendment would delete Contship Container Lines, Ltd. as a party to the Agreement.

Agreement No.: 217-011328.

Title: Toko Line/Shinwa Space Charter and Cooperative Working Agreement.

Parties:

Toko Kaiun Kaisha Ltd.,
Shinwa Kaiun Kaisha Ltd.

Synopsis: The proposed Agreement would permit the parties to charter space on each other's vessels in the trade from ports in Japan to ports in the United States, including shipments from, to, or between inland or coastal points. The parties may also discuss rates and conditions in the trade and reach non-binding agreement with respect to matters of mutual interest and concern.

By order of the Federal Maritime Commission.

Dated: April 30, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-10556 Filed 5-3-91; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder Licenses; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

I.E.S.C. Forwarding, Inc., a Florida Corp., 2280 NW. 98th Ave., Bay #2, Miami, FL 33172. Officers: Hugo R. Castro, Vice President/Director/Stockholder, Jose L. Paret, Vice President/Director/Stockholder.

Automated Freight Systems, Inc., 5630 S. Memorial Drive, Tulsa, Oklahoma 74145. Officers: Brian J. Barker, President, B.J. Cloud, Vice President, Lisa Barker, Treasurer.

Consolidated Transportation Services, Inc., Wespac Bldg., Puerto Rico, Saipan, CNMI, MP 96950. Officers: Samuel H.T. Chou, Director/Stockholder, Rosalina Tan, Director/Stockholder, Wellington Ang, Director/Stockholder, Benigno R. Ong, Vice President/Director, Richard D. Ong, Vice President/Director.

T.M.L.-TAR-MAC International & Co., P.O. Box 2100, #10 Northfork Farms Rd., New Caney, TX 77357. Officer: John J. Tarnowski, Sole Proprietor.

Advantage Forwarding Inc., 9360 SW. 16th Street, Miami, FL 33165. Officers: Antonio M. Menendez, President/Treasurer/Director, Lillian Hernandez, Secretary/Director.

Kellie International Shipping Inc., 6969 Westheimer, suite 101, Houston, TX 77063. Officer: Naman Abuawad, President.

BMA International Traders and Forwarders, Inc., 250 S. Maple Ave., #B, So. San Francisco, CA 94080. Officers: Benjamin Arcayena, Sr., President, Dimas Mariano Serrano, Jr., Vice President/Director, Carmelita S. Arcayena, Chief Financial Officer, Ann Arcayena, Secretary/Director, Benjamin Arcayena, Jr., Director.

Leo Shipping Inc., 15649 Dupage, Taylor, MI 48180. Officers: M. Abdul Qayyum Khan, President.

Sextant Overseas Shipping Corporation, 36 Birch Drive, Middletown, NY 10940. Officers: Robert Urbano, President.

Dependable International Services & Transport, Inc., 2420 Athania Pkwy., suite 200-201, Metairie, LA 70001. Officers: Jo Fredotovich-Baudoin, President, Bruce Baudoin, Secretary/Treasurer, Cheryl Sciambra, Director, Mary Johnson, Director.

Total Air & Ocean Services, Inc., 5086 NW. 74th Avenue, Miami, FL 33166. Officers: Lillian Hayden, President, Henry K. Verges, Vice President, Lisa Russo, Secretary/Treasurer.

Pexcon Inc., 2214 Torrance Blvd., #102, Torrance, CA 90501. Officers: Dong H. Lee, President, Moon C. Chon, Director.

Alliance Shipping Ltd., 2430 Herodian Way, suite 100, Smyrna, GA 30080. Officers: Gary S. Waller, President, David A. Tighe, Vice President, Terry J. Purton, Vice President.

Transpo Service, Ltd., 4411 E. 119th St., P.O. Box 152, Grandview, Missouri 64030. Officers: Vivian A. Ward, President/Secretary/Director, Jessie Cartwright, Chairman, Jack Spencer, Secretary/Treasurer/Vice President.

Fischer International Forwarders, Inc., 999 E. Touhy Ave., #280, Des Plaines, IL 60018. Officers: Frank W. Fischer, President/Director, Hope A. Barrios, Vice President of Export-Ocean.

Eximaco, Inc., 6283 Hunters Pointe, Westland, Michigan 48185. Officers: Carlos B. Gonzalez, President, Bonnie Halvey, Export Clerk, Chris Andrews, CPA Accountant, Joel H. Schavrien, Corporate Attorney.

Transoceanic Shipping Co., Inc., 2151 NW. 79th Ave., Miami, FL 33122. Officers: Basil J. Rusovich, Jr., Chairman/Director, Arval D. Headrick, President/Director, Gregory R. Rusovich, Vice President/Director, Richard W. Castaing, Secretary/Treasurer/Director, Jose R. Cosio, Asst. Vice President, Marilyn Louise Schuster, Director.

Wisconsin Export Service, Inc., 316 N. Milwaukee Street, Milwaukee, Wisconsin 53202. Officers: Kenneth D. Miller, President, Mark Alan, Vice President, R. Lee Vest, Vice President, Harish Patel, Stockholder.

By the Federal Maritime Commission.

Dated: April 30, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-10557 Filed 5-3-91; 8:45 am]

BILLING CODE 6730-01-M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards to Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, ADAMHA, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301)443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Alpha Medical Laboratory, Inc., 5405 Alderson Street, Schofield, WI 54476, 800-627-8200

American BioTest Laboratories, Inc., Building 15, 3350 Scott Boulevard, Santa Clara, CA 95054, 408-727-5525

American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 168, Fairfax, VA 22030, 703-691-9100

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119-5412, 702-733-7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414-355-4444/800-877-7016

Bellin Hospital-Toxicology Laboratory, 2789 Allied Street, Green Bay, WI 54304, 414-496-2487

Bio-Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614, 312-880-6900

The certification of this laboratory (Bio-Analytical Technologies, Chicago, IL) is suspended from conducting confirmatory testing of amphetamines. The laboratory continues to meet all requirements for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine. For more information, see 55 FR 2183 (Jan. 22, 1991).

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810

Center for Human Toxicology, 417 Wakara Way-room 290, University Research Park, Salt Lake City, UT 84108, 801-581-5117

Columbia Biomedical Laboratory, Inc., 4700 Forest Drive, suite 200, Columbia, SC 29206, 800-848-4245/803-782-2700

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412-488-7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-6917

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919-549-8263

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800-365-3840 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)

Damon Clinical Laboratories, 6300 Esters Blvd., suite 900, Irving, TX 75063, 214-929-0535

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904-787-9006

Drug Labs of Texas, 15201 I 10 East, suite 125, Channelview, TX 77530, 713-457-3784

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215-674-9310

Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516-625-9800

ElSohly Laboratories, Inc., 1215-½ Jackson Ave., Oxford, MS 38655, 601-236-2609

Environmental Health Research & Testing, Inc., 1075 South 13th St., Birmingham, AL 35205-9998, 205-934-0985

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608-267-6267

Harris Medical Laboratory, P.O. Box 2961, 1401 Pennsylvania Avenue, Fort Worth, TX 76104, 817-878-5600

HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800-225-9414 (outside MI)/800-328-4142 (MI only)

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2672

Laboratory Specialists, Inc., P.O. Box 4350, Woodland Hills, CA 91365, 818-718-0115/800-331-8670 (outside CA)/800-464-7061 (CA only) (name changed: formerly Abused Drug Laboratories)

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504-392-7961

Massey Analytical Laboratories, Inc., 2214 Main Street, Bridgeport, CT 06606, 203-334-6187

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 800-533-1710/507-284-3631

Med Arts Lab, 5419 South Western, Oklahoma City, OK 73109, 800-251-0089

Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412-931-7200

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901-795-1515

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 612-636-7466

Mental Health Complex Laboratories, 9455 Watertown Plank Road, Milwaukee, WI 53226, 414-257-7439

Methodist Medical Center, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 309-672-4928

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708-595-3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201-393-5000

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800-492-0800/818-343-8191

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 301-247-9100 (name changed: formerly Maryland Medical Laboratory, Inc.)

National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703-742-3100/800-572-3734 (inside VA)/800-336-0391 (outside VA)

National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103-6710, 919-760-4620/800-334-8627 (outside NC)/800-642-0894 (NC only)

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800-251-9492

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805-322-4250

Nichols Institute Substance Abuse Testing (NISAT), 8965 Balboa Avenue, San Diego, CA 92123, 800-446-4728/619-694-5050 (name changed: formerly Nichols Institute)

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3361

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440-0972, 503-687-2134

Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708-480-4660

Pathlab, Inc., 16 Concord, El Paso, TX 79906, 800-999-7284

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509-926-2400

PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07080, 201-769-8500

PharmChem Laboratories, Inc., 1505-A O'Brien Drive, Menlo Park, CA 94025, 415-328-6200/800-446-5177

Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619-279-2600

Precision Analytical Laboratories, Inc., 13300 Blanco Road, suite #150, San Antonio, TX 78216, 512-493-3211

Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206-882-3400

Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205-581-3537

Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614-889-1061

The certification of this laboratory (Roche Biomedical Laboratories, Dublin, OH) is suspended from conducting confirmatory testing of amphetamines. The laboratory continues to meet all requirements for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine. For more information, see 55 FR 50589 (Dec. 7, 1990).

Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919-361-7770

Roche Biomedical Laboratories, Inc., 101 Inverness Drive East, Englewood, CO 80112, 303-792-2822

Roche Biomedical Laboratories, Inc., 1 Roche Drive, Raritan, NJ 08869, 800-631-5250

Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601-342-1286

S.E.D. Medical Laboratories, 500 Walter NE suite 500, Albuquerque, NM 87102, 505-848-8800

SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708-885-2010 (name changed: formerly International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800-523-5447 (name changed: formerly SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404-934-9205 (name changed: formerly SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-638-1301 (name changed: formerly SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818-376-2520

South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219-234-4176

Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800-338-0166

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405-272-7052

St. Louis University Forensic Toxicology Laboratory, 3610 Rutgers Avenue, St. Louis, MO 63104, 314-577-8628

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, suite 208, Columbia, MO 65203, 314-882-1273

Toxicology Testing Service, Inc., 5426 NW. 79th Avenue, Miami, FL 33166, 305-593-2260

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 91-10707 Filed 5-3-91; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

National Committee on Vital and Health Statistics; Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: 1 p.m.-5 p.m., June 5, 1991, 9 a.m.-5 p.m., June 6, 1991, 9 a.m.-1 p.m., June 7, 1991.

Place: Room 503A-529A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the committee to consider reports from each NCVHS subcommittee; to receive reports from NCHS, the Health Care Financing Administration, and the Agency for Health Care Policy and Research; and to address new business as appropriate.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050 or FTS 436-7050.

Dated: April 30, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 91-10561 Filed 5-3-91; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Health Statistics for Minority and Other Special Populations; Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following committee meeting.

Name: NCVHS Subcommittee on Health Statistics for Minority and Other Special Populations.

Time and Date: 9:30 a.m.-4 p.m., June 4, 1991.

Place: Room 339A, Hubert H. Humphrey Building, 20 Independence Avenue, SW., Washington, DC 20201.

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Status: Open.

Purpose: To pursue with the Health Care Financing Administration and the Social Security Administration feasible methods to include racial and ethnic identifiers in the Medicare data files.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050 or FTS 436-7050.

Dated: April 30, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 91-10582 Filed 5-3-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Formalin for Use in the Treatment of Penaeid Shrimp Diseases; Data; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of safety, effectiveness, and environmental data to be used in support of a new animal drug application (NADA) for use of formalin to treat penaeid shrimp diseases. The data, contained in Public Master File (PMF) 3543, were compiled under the U.S. Department of the Interior and the U.S. Department of Agriculture Interregional Research Project No. 4 (IR-4), a national agricultural programs for obtaining clearances for use of agricultural products for minor or special uses.

ADDRESSES: Submit NADA's for use of formalin to treat penaeid shrimp diseases to the Document Control Section (HFV-199), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Larry D. Rollins, Center for Veterinary Medicine (HFV-138), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: The use of formalin to treat diseases of penaeid shrimp in confinement is a new animal drug use under section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). As a new animal drug, it is subject to section 512 of the act (21 U.S.C. 360b) requiring that its uses be the subject of an approved NADA.

The University of Arizona, Tucson, AZ 85721, has provided data and information to demonstrate effectiveness, safety to the target animal, and tissue residue depletion for use of 50 to 100 parts per million (ppm) formalin for up to 4 hours or 25 ppm continuously for control of external protozoan parasites (*Bodo* spp., *Epistylis* spp., and *Zoothamnium* spp.) on penaeid shrimp. The University of California IR-4 Project, Western Region, Davis, CA 95616, provided an environmental assessment of possible impacts at the site of use of the animal drug product. The data and information are contained in PMF 3543.

Sponsors of NADA's or supplemental NADA's may reference the PMF without further authorization to support an application's approval. An NADA or supplemental NADA should include, in addition to references to the PMF, drug labeling, and other information needed for approval, such as human food safety data, information and data concerning manufacturing methods, facilities, and controls, and information addressing the potential environmental impacts of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA may contact Larry D. Rollins (address above).

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information in PMF 3543, submitted to support approval of an NADA, may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Dated: April 29, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91-10587 Filed 5-3-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91E-0124]

Determination of Regulatory Review Period for Purposes of Patent Extension; Ganite™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Ganite™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1962.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two period of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Ganite. Ganite (gallium nitrate injection) is indicated for the treatment of clearly symptomatic cancer-related hypercalcemia that has not responded to adequate hydration. Subsequent to this approval, the Patent and Trademark Office received a patent

term restoration application for Ganite (U.S. Patent No. 4,529,593) from the Sloan-Kettering Institute for Cancer Research, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated April 2, 1991, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Ganite represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Ganite is 6,279 days. Of this time, 5,610 days occurred during the testing phase of the regulatory review period, while 669 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* November 10, 1973. FDA has verified the applicant's claim that the date the investigational new drug (IND) application became effective was November 10, 1973.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* March 20, 1989. The applicant claims March 17, 1989, as the date the new drug application (NDA 19-961) was filed. However, FDA records indicate that the NDA was received March 20, 1989.

3. *The date the application was approved:* January 17, 1991. FDA has verified the applicant's claim that NDA 19-961 was approved January 17, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 916 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 5, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 4, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 26, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91-10588 Filed 5-3-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91E-0117]

Determination of Regulatory Review Period for Purposes of Patent Extension; Geref®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Geref® and is publishing this notice of that determinaton as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Geref®. Geref® (sermorelin acetate) is indicated for the evaluation of the functional capacity and responsiveness of the somatotrophs of the anterior pituitary gland. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Geref® (U.S. Patent No. 4,703,035) from The Salk Institute for Biological Studies, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated March 28, 1991, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Geref® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Geref® is 1,166 days. Of this time, 198 days occurred during the testing phase of the regulatory review period, while 968 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* October 21, 1987. The applicant claims August 31, 1987, as the date the investigational new drug (IND) application became effective. However, FDA records indicate that the IND effective date was October 21, 1987, after a clinical hold was lifted.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* May 5, 1988. The applicant claims April 29, 1988, as the

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date the new drug application (NDA), NDA 19-863, was filed. However, FDA records indicate that the NDA was received on May 5, 1988.

3. *The date the application was approved:* December 28, 1990. FDA has verified the applicant's claim that NDA 19-863 was approved on December 28, 1990.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,904 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 5, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 4, 1991 for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 26, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91-10590 Filed 5-3-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91E-0116]

Determination of Regulatory Review Period for Purposes of Patent Extension; Lodine®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Lodine® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Lodine®. Lodine® (etodolac) is indicated for acute and long-term use in the management of signs and symptoms of osteoarthritis. Lodine® is also indicated in the management of pain. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Lodine® (U.S. Patent No. 4,076,831) from American Home Products Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated April 2, 1991, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Lodine® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Lodine® is 4,032 days. Of this time, 1,077 days occurred during the testing phase of the regulatory review period, while 2,955 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* January 19, 1980. FDA has verified the applicant's claim that the date the investigational new drug (IND) application became effective was January 19, 1980.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 30, 1982. FDA has verified the applicant's claim that the new drug application (NDA 18-922) was filed on December 30, 1982.

3. *The date the application was approved:* January 31, 1991. FDA has verified the applicant's claim that NDA 18-922 was approved January 31, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 5, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 4, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H.

Comments and petitions should be submitted to the Dockets Management

Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 26, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91-10589 Filed 5-3-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91E-0105]

Determination of Regulatory Review Period for Purposes of Patent Extension; Rev-Eyes™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Rev-Eyes™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard Klein, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approved phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Rev-Eyes™. Rev-Eyes™ (dapiprazole hydrochoride) is indicated in iatrogenically induced mydriasis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Rev-Eyes™ (U.S. Patent No. 4,252,721) from Angelini Pharmaceuticals, Inc., and the Patent and Trademark Office requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated April 2, 1991, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the approval of Rev-Eyes™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Rev-Eyes™ is 1,873 days. Of this time, 924 days occurred during the testing phase of the regulatory review period, while 949 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* November 16, 1985. FDA has verified the applicant's claim that the investigational new drug (IND) application for the drug became effective November 16, 1985.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of Federal Food, Drug, and Cosmetic Act:* May 27, 1988. The applicant claims that the new drug application (NDA) for Rev-Eyes™ (NDA 19-849) was initially submitted on May 23, 1988. However, FDA records indicate that the NDA was received on May 27, 1988.

3. *The date the application was approved:* December 31, 1990. FDA has verified the applicant's claim that NDA 19-849 was approved on December 31, 1990.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,871 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 5, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 4, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41-42, 1984). Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 26, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91-10592 Filed 5-3-91; 8:45 am]

BILLING CODE 4160-01-M

Food and Drug Administration

[Docket No. 90N-0055]

Zenith Laboratories; Conjugated Estrogens Tablets; Withdrawal of Approval of Four Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of four abbreviated new drug applications (ANDA's) for conjugated

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estrogens tablets. The basis for the withdrawal is that the products are no longer shown to be safe and lack substantial evidence of effectiveness for their indicated uses. These products, which are generic versions of Premarin Tablets, are no longer marketed. The products have been used for osteoporosis and other conditions amenable to estrogen replacement therapy.

EFFECTIVE DATE: June 5, 1991.

FOR FURTHER INFORMATION CONTACT: Suzanne O'Shea, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of February 13, 1990 (55 FR 5074), the Director of the Center for Drug Evaluation and Research (the Director) offered an opportunity for a hearing on a proposal to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) to withdraw approval of previously approved ANDA's for conjugated estrogens tablets. The proposal was based on new information demonstrating that the products approved under ANDA's were potentially bioinequivalent to Premarin Tablets, the innovator product manufactured by Wyeth-Ayerst Laboratories. Based on this new information and a reevaluation of other information, the Director found that the products approved under ANDA's were no longer shown to be safe and lacked substantial evidence of effectiveness.

Zenith Laboratories, Inc., 50 Williams Dr., Ramsey, NJ 07446, requested a hearing but subsequently withdrew its hearing request for the following ANDA's:

ANDA 83-373; 0.625 milligram (mg) of conjugated estrogens.

ANDA 83-601; 1.25 mg of conjugated estrogens.

ANDA 83-602; 2.5 mg of conjugated estrogens.

ANDA 83-569; 0.3 mg of conjugated estrogens.

Accordingly, the Director, under section 505(e) of the act (21 U.S.C. 355(e)), and under authority delegated to him (21 CFR 5.82), finds that:

(1) New evidence of clinical experience not contained in the applications listed above or not available until after the applications were approved, and tests by new methods, and tests by methods not deemed reasonably applicable when the applications were approved, evaluated together with the evidence available when the applications were approved, show that the conjugated estrogens tablet products approved under the applications listed above are not shown to be safe for use under the conditions of use upon the basis of which the applications were approved (21 U.S.C. 355(e)(2)); and

(2) On the basis of new information with respect to the conjugated estrogens tablet products approved under the applications listed above, evaluated together with the evidence available when the applications were approved, there is a lack of substantial evidence that the products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling (21 U.S.C. 355(e)(3)).

Therefore, pursuant to the foregoing finding, approval of the ANDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective June 5, 1991. Shipment in interstate commerce of the products listed above will then be unlawful.

Section 505(j)(6)(C) of the act requires that FDA immediately remove from its approved product list ("Approved Drug Products with Therapeutic Equivalence Evaluations") (the list) any drug whose approval was withdrawn for grounds described in the first sentence of section 505(e) of the act. Such grounds apply to the withdrawals of approval of the ANDA's listed above. Notice is hereby given that the drug products covered by these ANDA's are removed from the list.

Dated: April 25, 1991.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 91-10504 Filed 5-3-91; 8:45 am]

BILLING CODE 4160-01-M

Food and Drug Administration

[Docket No. 91E-0109]

Determination of Regulatory Review Period for Purposes of Patent Extension; Zofran®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Zofran® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Zofran®. Zofran® (ondansetron hydrochloride) Injection is indicated for the prevention of nausea and vomiting associated with initial and repeat courses of emetogenic cancer chemotherapy, including high dose cisplatin. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Zofran® (U.S. Patent No. 4,695,578) from Glaxo Group Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated April 2, 1991, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Zofran® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Zofran® is 1,570 days. Of this time, 1,120 days occurred during the testing phase of the regulatory review period, while 450 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* September 19, 1986. FDA has verified the applicant's claim that the date the investigational new drug (IND) application became effective was September 19, 1986.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* October 12, 1989. FDA has verified the applicant's claim that the new drug application (NDA20-007) was filed on October 12, 1989.

3. *The date the application was approved:* January 4, 1991. FDA has verified the applicant's claim that NDA 20-007 was approved on January 4, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 560 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 5, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 4, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 26, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91-10591 Filed 5-3-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87A-0255]

Response to a Request for an Advisory Opinion on the Preemption of a Proposed New York Statute Governing the Labeling of Sunglasses; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a response to a request for an advisory opinion concerning the applicability of the preemption provisions of the Federal Food, Drug, and Cosmetic Act (the act) to certain New York State Senate and Assembly Bills governing the labeling of sunglasses. The request was supplemented by additional information in a letter sent to FDA, dated February 6, 1990.

DATES: Comments on the advisory opinion may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the response on the preemption of a proposed New York statute governing the labeling of sunglasses to the Office of Standards and Regulations, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the response to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the response and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4674.

SUPPLEMENTARY INFORMATION: On July 22, 1987, David O. Elliott, on behalf of the Sunglass Association of America, submitted a request for an advisory opinion, supplemented by additional information in a letter dated February 6, 1990 to FDA on whether New York State Senate Bill 3347 and Assembly Bill 7742-A governing the labeling of sunglasses are preempted under section 521(a) (21 U.S.C. 360k(a)) of the act. These bills would require that sunglasses bear labeling concerning the level of protection from ultraviolet light afforded by the lenses.

Section 521(a) of the act provides that no State or local government may establish or continue in effect any requirement with respect to the safety and effectiveness of a device or to any other requirement applicable to the device under the act if such requirement is different from, or in addition to, a requirement which is applicable to the device under the act.

FDA has reviewed the proposed bills and determined that, if enacted, they would not be preempted by section 521(a) of the act, because there are no specific FDA counterpart requirements. FDA has worked with the Sunglass Association of America to develop voluntary labeling on protection from ultraviolet light provided by sunglasses. FDA believes that this voluntary labeling may, if implemented, ameliorate the concerns addressed by the New York legislation.

The agency is now in the process of considering whether to revise § 10.85 *Advisory opinions* (21 CFR 10.85). Although the decision-making process is not yet complete, the agency has decided to publish this opinion. However, this notice and the opinion are not being issued under the authority of 21 CFR 10.85, and the opinion, although called an advisory opinion, does not operate to bind the FDA or any other person in any way.

The agency advises that this advisory opinion represents its current position on this preemption issue. A person may follow the opinion or may choose to follow an alternate course of action. If a person chooses an alternate course of action, that person may wish to discuss the matter further with the agency to prevent an expenditure of effort on activities that may later be determined to be unacceptable by FDA. This opinion does not bind the agency, and it

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does not create or confer any rights, privileges, or benefits for or on any person.

Dated: April 28, 1991.

Ronald G. Cheesmore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-10668 Filed 5-3-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Meeting of the Take Pride in America Advisory Board

AGENCY: Take Pride in America, Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting of the Take Pride in America Advisory Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that a meeting of the Take Pride in America Advisory Board will be held on May 23, 1991 in the Secretary's Conference Room 5160, 5th floor of the U.S. Department of the Interior Building, 1849 C Street, NW., Washington.

The general business session will start at 1 p.m. on Thursday, May 23 and is planned to conclude at 3 p.m. of that same day.

The purpose of this meeting is to launch the newly created Take Pride in America Advisory Board. This first meeting of the Advisory Board will consist of an overview and briefing of the Take Pride in America program. The Board will explore avenues to advise the Secretary of the Interior on the aspects of the program as they apply to the mission of the Department of the Interior. Officials of the Department of Interior and the Take Pride in America staff will also address the Board.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Board a written statement concerning matters to be discussed.

The Chairman will allow for public commentary, but may restrict the length of presentations as necessary to allow the Board to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Ms. Mary Ann Gomez, Take Pride in America, U.S. Department of the Interior, room 5123, 1849 C Street, NW., Washington, DC 20240 (telephone 202-208-3726). Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in room 5123, Main Interior Building, 1849 C Street, NW., Washington, DC 20240.

Mary Ann Gomez,

Advisory Board Management Officer.

[FR Doc. 91-10626 Filed 5-3-91; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[NV-010-91-4130-09]

Amended Notice of Intent for the Environmental Impact Statement; Ivanhoe Gold Co., Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment of the Notice of Intent to prepare an Environmental Impact Statement on the mining plan of operations for the Ivanhoe Gold Company in Elko County, Nevada.

SUMMARY: On April 5, 1991, a Notice of Intent (NOI) to prepare the Ivanhoe Mine Expansion EIS was published in the **Federal Register** on pages 14118-14119. Since the publication of the NOI, it was decided to amend the project and, consequently the proposed action of the EIS, to assess the impacts of mining a third pit and the related waste rock disposal areas and heap leach facilities. This amendment has enlarged the project size from 228 acres to 526 acres. Due to these changes, the scoping period for the Environmental Impact Statement has been extended three weeks to June 24, 1991. All other terms and conditions of the previous notice continue to apply.

Dated: April 23, 1991.

Nancy Phelps,

Acting District Manager.

[FR Doc. 91-10572 Filed 5-3-91; 8:45 am]

BILLING CODE 4310-HC-M

[NV-030-91-4320-13]

Las Vegas District Grazing Advisory Board Meeting; NV

Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Las Vegas District Grazing Advisory Board will be held Thursday, May 30, 1991. The meeting will begin at 10 a.m., in the conference room of the Peppermill Hotel and Casino, Mesquite, Nevada, and continue until 3 p.m.

The agenda is as follows:

1. Welcome and introductions.
2. Range Improvements proposals.
3. Update on section 7 Consultation for livestock grazing on Desert Tortoise habitat.
4. Public comments.
5. Arrangements for next meeting.

The meeting is open to the public. Interested persons may make oral comments to the Board during the public comment period on the day of the meeting or they may file written statements for the Board's consideration during the meeting. Notify the District Manager, BLM, 4765 West Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, if you wish to make an oral statement to the Board. Summary minutes of the Board meeting will be maintained at the Las Vegas District Office. The minutes will be available for public inspection during regular hours (7:30 a.m. to 4:15 p.m.) within 30 days after the meeting.

Ben F. Collins,

District Manager, Las Vegas.

[FR Doc. 91-10574 Filed 5-3-91; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-020-4333-02]

Phoenix District Advisory Council; Meeting

AGENDA: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Phoenix District Advisory Council.

DATE: June 11, 1991.

SUMMARY: The Phoenix District Advisory Council of the Bureau of Land Management meets June 11, 1991 at the Phoenix District Office, 2015 West Deer Valley Road, Phoenix at 9 a.m. to discuss and make recommendations on various public land issues.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978.

The agenda for the meeting includes:

—Kingman Resource Area Resource Management Plan.
—BLM Management Updates.
—Business from the Floor.
—Public Comments and Statements.
—Future Meetings and Agenda Topics.

SUPPLEMENTARY INFORMATION: This is a public meeting and the Bureau of Land Management welcomes the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters.

Dated: April 25, 1991.

Henri R. Bisson,

District Manager.

[FR Doc. 91-10575 Filed 5-3-91; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service (MMS)

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010-0079); Washington, DC 20503, telephone (202) 395-7430, with copies to John V. Mirabella; Acting Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817.

Title: 30 CFR part 250, subpart G, Abandonment of Wells.

OMB approval number: 1010-0079.

Abstract: Respondents submit this information to MMS so they can verify that permitting requirements are met, estimate completion dates, and determine that a necessity exists to leave the wellbore in an uncomplicated state.

Bureau form number: None.

Frequency: Annual.

Description of respondents: Federal Outer Continental Shelf oil and gas lessees.

Estimated completion time: 16 hours.

Annual responses: 10

Annual burden hours: 160

Bureau clearance officer: Dorothy Christopher (703) 787-1239.

Dated: April 5, 1991.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 91-10622 Filed 5-3-91; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290; Sub-No. 115X]

Norfolk Southern Railway Company—Abandonment Exemption—In Madison County, TN

Applicant has filed a notice of exemption under 49 CFR part 1152, Subpart F—*Exempt Abandonments* to abandon its 2.22-mile line of railroad between milepost C-473.78, at Bemis, and milepost C-476.00, at Malesus, in Madison County, TN.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. district court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 5, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by May 16, 1991.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by May 28, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Richard W. Kienle, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 10, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 29, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-10516 Filed 5-3-91; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Indexing the Annual Operating Revenues of Railroads, Motor Carriers of Property and Motor Carriers of Passengers

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads, motor carriers of property and motor carriers of passengers for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business

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expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. For both motor carriers of property and motor carriers of passengers, the inflation factors are based on the annual average Producer Price Index for all commodities. The indexes are developed by the Bureau of Labor Statistics (BLS).

The base years for railroads, motor carriers of property, and passenger motor carriers are 1978, 1980, and 1988 respectively. The inflation index factors for 1988, 1989, and 1990 are presented as follows:

RAILROADS-RAILROAD FREIGHT INDEX

	Index	Deflator percent
1978	213.1	
1988	382.1	54.35
1989	396.5	53.48
1990	402.3	52.96

MOTOR CARRIERS OF PROPERTY PRODUCER PRICE INDEX [1]

	Index	Deflator percent
1980	89.8	
1988	106.9	84.00
1989	112.2	80.04
1990	116.3	77.21

[1] The indices and deflator percentages for motor carriers of property were adjusted to reflect changes by the BLS.

MOTOR CARRIERS OF PASSENGERS PRODUCER PRICE INDEX

	Index	Deflator percent
1988	106.9	
1989	112.2	95.28
1990	116.3	91.92

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: William F. Moss III, (202) 275-7310.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-10869 Filed 5-3-91; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF JUSTICE

National Institute of Justice

National Institute of Justice Research Plan; 1991

AGENCY: Office of Justice Programs, National Institute of Justice.

ACTION: Public announcement of the availability of the National Institute of Justice Research Plan: 1991.

SUMMARY: The National Institute of Justice (NIJ) is publishing this Notice of the availability of its NIJ Research Plan: 1991.

DATES: The deadlines for receipt of proposals are June 20, 1991, and June 27, 1991.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Charles B. DeWitt, Director, National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. To obtain copies of the NIJ Research Plan: 1991, call the National Criminal Justice Reference Service, 1-800-851-3420 (in Metropolitan Washington (301-251-5500), Box 6000, Rockville, MD 20850.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority This action is authorized under 42 U.S.C. 3721-23 (1988).

Background

The Office of Justice Programs (OJP), U.S. Department of Justice, previously published a notice announcing the FY 1991 Discretionary Program Plans for its component bureaus/offices (see 56 FR 1672, January 16, 1991). The National Institute of Justice Research Plan: 1991, announced herein, provides further details of NIJ programs outlined in the OJP Plan. Also included in the NIJ Research Plan are application requirements, application forms, and deadlines for receipt of proposals. For a copy of the NIJ Research Plan: 1991, call the National Criminal Justice Reference Service, 1-800-851-3420 (in Metropolitan Washington, 301-251-5500)

Charles B. DeWitt,

Director, National Institute of Justice.

[FR Doc. 91-10558 Filed 5-3-91; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Wyoming State Standard: Approval

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Approval of changes to the Wyoming State Standard: Oil and gas well drilling.

SUMMARY: This Notice approves changes to Wyoming's Standard for Oil and Gas Well Drilling, submitted for approval on May 1, 1990. The oil and gas well drilling standard is an independent State standard for which there is no Federal equivalent. Where a State standard adopted pursuant to an OSHA-approved State plan differs significantly from a comparable Federal standard or is a State-initiated standard, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (the Act) requires that the State standard must be "at least as effective" in providing safe and healthful employment and places of employment. In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce.

On November 30, 1990, OSHA published a **Federal Register** notice (55 FR 49722) requesting public comment on both the "at least as effective" criterion as well as the product clause test of section 18(c)(2) of the Act. This notice invited interested persons to submit by December 31, 1990, written comments and views regarding the Wyoming standards and whether they should be approved by the Assistant Secretary. In response to this notice, OSHA did not receive any comments from the public.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: James Foster, Director Office of Information and Consumer Affairs, Occupational Safety and Health Administration, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

A. Background

The requirements for adoption and enforcement of safety and health standards by a State with a State plan approved under section 18(b) of the Act are set forth in section 18(c)(2) of the Act and in 29 CFR part 1902, 29 CFR 1952.7, and 29 CFR 2953.21, 1953.22 and 1953.23. OSHA regulations require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register** (29 CFR 1953.23(a); a 30-day response time is required for State adoption of a standard comparable to a Federal emergency temporary standard (29 CFR 1953.22(a)). Independent State standards also must be submitted for OSHA's review and approval. Newly adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR part 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming State plan and the adoption of subpart BB to part 1952 containing the decision. A determination of final approval was made under section 18(e) of the Act on June 27, 1985 (50 FR 28770). The Wyoming State plan provides for the adoption of State standards in the following manner.

The Wyoming Division of Occupational Health and Safety (WOHS) either proposes to adopt Federal standards or drafts such standards as it considers necessary after agency review and research and consultation with other persons knowledgeable in the specific field for which the standards are being formulated. The standards are submitted to the Wyoming Occupational Health and Safety Commission for its approval. The Wyoming plan provides for adoption of a standard as a State standard after public notice and hearing are published in accord with the Wyoming Administrative Procedures Act and the Secretary's rules on rulemaking. By letter of May 1, 1990, changes to the oil and gas well drilling standard were submitted by Stephan R. Foster, OSHA Program Manager, Division of Employment Affairs—OSHA, to Byron R. Chadwick, OSHA Regional Administrator. The subject standard establishes rules and regulations applicable to the oil and gas well drilling industries in the State of Wyoming. After the normal open period for public review and comment, the Commission adopted these changes and they became effective May 15, 1989.

The Wyoming Oil and Gas Well Drilling Standard was initially approved by OSHA on December 14, 1987, after providing an opportunity for public comment. OSHA received comments from three associates representing the oil and gas well industry. All three associates were in favor of the standard and recommended its approval. The State's standard section on Safety Procedures for Drill Stem Tests was subsequently revised on May 15, 1989. The changes provide additional requirements for drill stem tests in areas containing hydrogen sulfide (H_2S).

OSHA does not have specific standards for oil and gas well drilling. It currently applies 29 CFR part 1910 General Industry Standards and OSHA Instruction STD 1-12.28 to conditions addressed by the Wyoming standard. The Wyoming standard was therefore compared to OSHA's general standards requirements and enforcement policy set out in OSHA Instruction STD 1-12.28, which prescribes alternative abatement methods.

B. Public Participation

A **Federal Register** notice requesting public comment on both the "at least as effective" criterion as well as the product clause test of section 18(c)(2) of the Act was published on November 30, 1990 (55 FR 49723). This notice invited interested persons to submit by December 31, 1990, written comments and views regarding the changes to Wyoming oil and gas well drilling standard and whether they should be approved by the Assistant Secretary. In addition, comments were specifically sought on whether the standards are applicable to products which are distributed or used in interstate commerce; required by compelling local conditions; and unduly burden interstate commerce. In response to the August November 30, 1990 **Federal Register** notice, OSHA did not receive any public comment on the changes.

C. Decision

Having reviewed the State submission and having received no objections to the approval of changes to the standard, OSHA has determined that:

[1] Changes to the Wyoming standard for oil and gas well drilling is at least as effective as Federal OSHA's general standards requirements (29 CFR part 1910 General Industry Standards) applicable to conditions addressed by the Wyoming standard. Thus, OSHA determines that the changes to the State standard meet the "at least as effective" criterion of section 18(c)(2) of the Act: and,

[2] The record on these changes includes no evidence, developed by or submitted to OSHA, that the changes to the standard are not in compliance with the product clause test of section 18(c)(2) of the Act; therefore the changes to the standard are presumed to be in compliance with section 18(c)(2) of the Act.

OSHA therefore approves changes to the Wyoming standard for oil and gas well drilling.

D. Location of Supplement for Inspection and Copying

A copy of the changes to the Wyoming standard applicable to the oil and gas well industries, along with approved State provisions for adoption of the standard, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor, Federal Office Building, room 1576, 1961 Stout Street, Denver, Colorado 80294; Division of Employment Affairs—WOHS, Wyoming Department of Employment, Herschler Building, 2nd Floor East, 122 West 25th Street, Cheyenne, Wyoming 82002; Office of the Director, Federal-State Operations, OSHA, U.S. Department of Labor, room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210.

This decision is effective May 6, 1991.

Authority: Sec. 18, 84 Stat. 1608 [29 U.S.C. 667]; 29 CFR part 1902, Secretary of Labor's Order No. 1-90, (55 FR 9033).

Signed the 29th day of April 1991, in Washington, DC.

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 91-10608 Filed 5-3-91; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunications Standards

AGENCY: National Communications System, Office of Technology Standards.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Federal Telecommunications Standard 1090, "Telecommunications: Federal Building Telecommunications Wiring Standards."

DATES: Comments are due within 90 days of the date of this notice

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ADDRESSES: Send comments to the National Communications System, Office of Technology and standards, Washington, DC 20305–2010.

FOR FURTHER INFORMATION CONTACT: National Communications System, Office of Technology and Standards, Washington, DC 20305–2010, Mr. Nick Andre, telephone (703) 692–2124.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardized Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards for NCS interoperability and the computer communication interface. GAS's authority to publish Federal Telecommunications Standards is dependent on the definition of automatic data processing equipment as specified in 40 U.S.C. 759.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Requests for copies of the draft proposed FED-STD 1090 should be directed to the National Communications System, Office of Technology and Standards, Washington, DC 20305–2010.

Dennis Bodson,

Assistant Manager, NCS Office of Technology & Standards.

[FR Doc. 91–10623 Filed 5–3–91; 8:45 am]

BILLING CODE 3610-05-M

Federal Telecommunications Standards

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Federal Telecommunications Standard 1092, "Telecommunications: Residential & Light Commercial Telecommunications Wiring Standard."

DATES: Comments are due within 90 days of the date of this notice.

ADDRESSES: Send comments to the National Communications System, Office of Technology and Standards, Washington, DC 20305–2010.

FOR FURTHER INFORMATION CONTACT: National Communications System, Office of Technology and Standards, Washington, DC 20305–2010, Mr. Nick Andre, telephone (703) 692–2124.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards for NCS interoperability and the computer communication interface. GSA's authority to publish Federal Telecommunication Standards is dependent on the definition of automatic data processing equipment as specified in 40 USC 759.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Requests for copies of the draft proposed FED-STD 1092 should be directed to the National Communications System, Office of Technology and Standards, Washington, DC 20305–2010.

Dennis Bodson,

Assistant Manager, NCS Office of Technology & Standards.

[FR Doc. 91–10624 Filed 5–3–91; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Catherine Wolhowe, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United States Code.

Date: May 20, 1991.

Time: 9 a.m. to 5:30 p.m.

Room: 316–2.

Program: This meeting will review fellowship applications submitted to the HBCU Faculty Graduate Study Program in the Division of Fellowships and Seminars, for projects beginning after September 1992.

Thomas Kingston,

Advisory Committee; Management Officer, Alternate.

[FR Doc. 91–10605 Filed 5–3–91; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric & Gas Co.; et al.; Issuance of Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–70 and DPR–75 issued to Public Service Electric & Gas Company, Philadelphia Electric Company, Delmarva Power & Light Company, and Atlantic City Electric Company (the licensees) for operation of the Salem Nuclear Generating Station, Units 1 and 2, (the facility) located in Salem County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would change the expiration date for the Salem Unit 1 Operating License from September 25, 2008 to August 13, 2016 and for the Salem Unit 2 Operating License from September 25, 2006 to April 18, 2020. The original date is 40 years from the date of issuance of the Construction Permit. The revised date is 40 years from the date of issuance of the Operating License. The Commission's staff has prepared an Environmental Assessment of the proposed action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the change in the Expiration Dates of Facility Operating License Nos. DPR–70 and DPR–75, Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Salem Nuclear Generating Station, Units 1 and 2, Docket Nos. 50–272 and 50–311," dated April 30, 1991.

Summary of Environmental Assessment

The Commission's staff has reviewed the potential environmental impact of the proposed change in the expiration dates of the Operating Licenses for the Salem Nuclear Generating Station, Units 1 and 2. This evaluation considered the previous environmental studies, including the "Final Environmental Statement related to operation of Salem Nuclear Generating Station, Units 1 and 2", dated April 1973, and more recent NRC policy related to evaluations of license extensions for similar nuclear power plants.

Radiological Impacts

The staff concludes that the current Exclusion Area Boundary, Low Population Zone, and nearest population center distances will likely remain unchanged from those described in the April 1973 Final Environmental Statement (FES). The regional demography for Salem within a 25-mile radius is found to be about 48 percent woodlands, and 42 percent agriculture. The FES projected a 20 percent increase in population within 5 miles of the facility from 1970 to 1980, and a 23 percent increase within the 30-mile radial distance. Based on 1980 census data, the level of population projected in the FES for 1980 is close to the 1980 census data. The staff also projected an upward trend in the population of the region for the years 1990 and 2020. Based upon these population estimates, the staff therefore concludes that projected population distributions as related to the requested extension of the Salem operating licenses are adequately bounded by the FES.

The additional period of plant operation would not significantly affect the probability or consequences of any reactor accident. Salem Nuclear Generating Station, Units 1 and 2, radiological effluents to unrestricted areas during normal operation have been far below 10 CFR part 50, appendix I limits, and are indicative of future releases. The proposed additional years of reactor operation do not increase the annual public risk from reactor operation.

With regard to normal plant operation, the occupational exposures for the Salem Nuclear Generating Station, Units 1 and 2, is indicated to be in the upper 40 percent of all PWRs in achieving ALARA goals. In fact, Salem has reduced its total collective dose from 300 person-rems in 1987 to 252 person-rems in 1988, and then to 169 person-rems in 1989, as compared to the annual PWR averages of 371, 336, and 296 person-rems, respectively, for each corresponding year. The staff has determined that no changes to the amendment application with respect to occupational radiation protection is necessary for a 40-year operating life for Salem 1 and 2.

Accordingly, annual radiological impacts on man, both offsite and onsite, are not more severe than previously estimated in the FES, and the staff's previous cost-benefit conclusions remain valid.

The environmental impact attributable to transportation of fuel and waste to and from Salem Nuclear Generating Station, Units 1 and 2, with respect to normal conditions of transport and possible accidents in transport, are adequately bounded by those identified in Table S–4 of 10 CFR 51.52. The values in Table S–4 would continue to represent the contribution of transportation to the environmental cost associated with plant operations.

Non-Radiological Impact

The Commission has concluded that the herein proposed extensions will not cause a significant increase in the impacts to the environment and will not change any conclusions reached by the Commission in the FES.

Findings of no Significant Impact

The Commission has reviewed the proposed change to the respective expiration dates of the Salem Nuclear Generating Station, Units 1 and 2, Operating Licenses relative to the requirements set forth in 10 CFR part 51. Based upon the environmental assessment, the staff has concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendments will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment. For further details with respect to this action, see (1) The application for amendment dated August 3, 1987, as supplemented on August 10 and 21, 1990, (2) the Final Environmental Statement related to operation at Salem Nuclear Generating Station, Units 1 and 2, issued April 1973, and (3) the Environmental Assessment dated April 30, 1991. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room located at Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 30th day of April 1991.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate 1–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–10660 Filed 5–3–91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–361 AND 50–362]

Southern California Edison Co. et al.; San Onofre Nuclear Generating Station, Unit Nos. 2 and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Facility Operating License No. 10 and No. 15 issued to Southern California Edison Company, et al., for operation of San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would allow the licensee relief from the provision of section III.D.1(a) of appendix J to 10 CFR part 50 that requires that the third test of each set of three Type A (Containment integrated leak rate) tests for a 10-year service period shall be conducted when the unit is shutdown for the 10-year unit inservice inspection (ISI). In a letter dated April 8, 1991, the licensee

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requested to be allowed to conduct the third Type A test of each 10-year inservice interval during a separate plant outage from the 10-year plant ISI.

The Need for the Proposed Action

The proposed exemption is required in order to permit the licensee to uncouple the third Type A test for a 10-year service period from the 10-year ISI for San Onofre Units 2 and 3.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed exemption and concludes that the exemption would only permit the licensee to conduct the third Type A test in a 10-year service period and the 10-year ISI in different outages. The 10-year ISI would be conducted at an outage later than the Type A test. The exemption does not change the licensed power level, or reduce the containment integrity requirements or 10-year ISI requirements. Therefore, the proposed exemption does not increase the probability or consequences of accidents; no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that granting the proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed exemption involves systems located within the restricted areas as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other enviromental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with a grant of the proposed exemption.

Alternative to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from a grant of the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the San Onofre Nuclear Generating Station, Units 2 and 3 dated April 1981 and its Errata dated June 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application for exemption dated April 8, 1991, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room at the Main Library, University of California, P.O. Box 19557, Irvine, California 92173.

Dated at Rockville, Maryland, this 26th day of April, 1991.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Acting Director, Project Directorate V, Division of Reactor Project III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-10661 Filed 5-3-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Planning and Procedures; Meeting

The Subcommittee on Planning and Procedures will hold a meeting on May 8, 1991, room P-110, 7920 Norfolk Avenue, Bethesda, MD. Prior notice of this meeting was published on April 24, 1991 (56 FRN 18840).

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Wednesday, May 8, 1991—6:15 p.m. until 7:15 p.m.

The Subcommittee will consider the policies and practices of the ACRS with respect to the scheduling and conduct of its meetings and related activities, a proposed revision of ACRS Bylaws to update committee practices consistent with current policies, and to eliminate lengthy detailed procedures, appendices, and attachments.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Raymond F. Fraley (telephone 301/492-4516) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: April 30, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91-10662 Filed 5-3-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

April 30, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Autozone, Inc.
Common Stock, $0.01 Par Value (File No. 7-6745)
Comerica, Inc.
Common Stock, $5.00 Par Value (File No. 7-6746)

Continuum Co., Inc.
Common Stock, $0.10 Par Value (File No. 7-6747)
Furr's/Bishop's Inc.
Class A Common Stock, $0.01 Par Value (File No. 7-6748)
Illinois Central Corp.
Common Stock, $0.001 Par Value (File No. 7-6749)
Mid-American Waste Systems, Inc.
Common Stock, $1.00 Par Value (File No. 7-6750)
Nuveen Select Quality Municipal Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-6751)
Pet, Inc.
Common Stock, $0.01 Par Value (File No. 7-6752)
Pioneer Electronic Corp.
American Depository Shares (1 Share Common Stock, 50 Yen Par Value) (File No. 7-6753)
Terex Corp.
Common Stock, $0.01 Par Value (File No. 7-6754)
TriMas Corp.
Common Stock, $0.01 Par Value (File No. 7-6755)
Western Waste Industries
Common Stock, No Par Value (File No. 7-6756)
Yankee Energy System Inc.
Common Stock, $5.00 Par Value (File No. 7-6757)
Attwoods, Plc
American Depository Shares (File No. 7-6558)
National City Corp.
Depository Receipts (File No. 7-6759)
Uno Restaurant Corp.
Common Stock, $0.01 Par Value (File No. 7-6760)
USX—Marathon Group
Common Stock, $1.00 Par Value (File No. 7-6761)
USX—U.S. Steel Group
Common Stock, $1.00 Par Value (File No. 7-6762)
Americus Trust for Xerox Corp.
Prime Component (File No. 7-6763)
Hasbro, Inc.
Warrants (File No. 7-6764)
AMSCO International Inc.
Common Stock, $0.01 Par Value (File No. 7-6765)
Collins Foods, Inc.
Common Stock, $0.01 Par Value (File No. 7-6766)
Destec Energy, Inc.
Common Stock, $0.01 Par Value (File No. 7-6767)
Grand Metropolitan Plc
American Depository Receipts (File No. 7-6768)
LSI Logic Corp.
Common Stock, $0.01 Par Value (File No. 7-6769)
NIKE, Inc.
Class B Common Stock, No Par Value (File No. 7-6770)
Rollins Environmental Services, Inc.
Common Stock, $1.00 Par Value (File No. 7-6771)
Safeway, Inc.
Common Stock, $0.01 Par Value (File No. 7-6772)
RJR Holdings Corp.
Common Stock, $0.01 Par Value (File No. 7-6773)
Sotheby's Holdings, Inc.
Class A Common Stock, $0.10 Par Value (File No. 7-6774)
American Municipal Term Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7-6775)
Blackstone Strategic Term Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7-6776)
ECC International Corp.
Common Stock, $0.10 Par Value (File No. 7-6777)
Nuevo Energy Co.
Common Stock, $0.01 Par Value (File No. 7-6778)
Nuveen Insured Quality Municipal Fund
Common Stock, $0.01 Par Value (File No. 7-6779)
University Health Realty Income Trust
Common Stock, $0.01 Par Value (File No. 7-6780)
URCARCO, Inc.
Common Stock, $0.01 Par Value (File No. 7-6781)
Wheeling Pittsburgh Corp.
Warrants (File No. 7-6782)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 21, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-10665 Filed 5-3-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29133; File No. SR-DTC-91-06]

Self-Regulatory Organizations; The Depository Trust Company; Filing of Proposed Rule Change Relating to a New Legal Notice System

April 29, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 10, 1991, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-DTC-91-06) as described in Items I, II, and III below, which items have bee prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes procedures whereby DTC Participants may choose from a menu on their Participant Terminal System ("PTS") screen through the Legal Notice System ("LENS") certain notices received by DTC which they wish to order.

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's current notice distribution system has become an enormous and expensive enterprise requiring duplication and distribution of up to 85,000 copies per day. The expense for all of this is borne by DTC's Participants and is paid for out of their general fee. A recent survey revealed that most Participants find that only a fraction of currently distributed notices are of interest to them.

Participants have asked DTC to create a system which would reduce the

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amount of notices that they receive. LENS has been developed to allow Participants to prescreen certain notices (*e.g.*, notices relating to bankruptcies, class actions, default and performance histories of asset-backed securities) which are received by DTC and which DTC chooses to make available to Participants via LENS. LENS will enable Participants to avoid receiving and, ultimately, to avoid paying for the duplication and distribution of notices that are irrelevant to them. At the same time, LENS will allow, where practical, certain enhancements to the current distribution system. Enhancements may include: (1) The identification of CUSIP numbers associated with the issues which are the subject of the notices; (2) Participants' ability to search for notices by CUSIP numbers; (3) Participants' ability to conduct position checks; (4) Participant access, with automatic order capability, to a computer record of notices requested during the prior year; (5) DTC's distribution of certain notices (*e.g.*, notices relating to default and performance histories of asset-backed securities) which, given their length or relative importance, would otherwise not be distributed by DTC; and (6) equitable billing (*e.g.*, a Participant would not be charged any fee for the duplication and distribution of any notices it was not interested in and did not order).

The proposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Act in that it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

DTC has discussed the proposed rule change with and has invited comments from various Participants. Comments related generally to the amount of information to be displayed on the LENS screens, enhancements to the "user-friendly" nature of LENS screens, enhancements to the "user-friendly" nature of LENS computer procedures, the timeliness and integrity of receipt and distribution of notices, and the types of notices that might be include in LENS. Many of the enhancements set forth in paragraph II(A) above have been built into LENS in response to such comments and requests.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-91-06 and should be submitted by May 28, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10635 Filed 5-3-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

April 30, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Caldor Corporation
Common Stock, $.01 Par Value (File No. 7-7693)
Critical Care America, Inc.
Common Stock, $.10 Par Value (File No. 7-7694)
Sport Supply Group, Inc.
Common Stock, $.01 Par Value (File No. 7-7695)
National Health Laboratories Incorporated
Common Stock, $.01 Par Value (File No. 7-7696)
Bankcorp Hawaii, Inc.
Common Stock, $2.00 Par Value (File No. 7-7697)
Unicare Financial Corp.
Common Stock, No Par Value (File No. 7-7698)
Ambase Corporation
Common Stock, $.01 Par Value (File No. 7-7699)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 21, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Follwing this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-10568 Filed 5-32-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29132; File No. SR-NASD-91-9]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Improvements in the NASD Code of Arbitration Procedure

I. Introduction

The National Association of Securities Dealers, Inc. ("NASD") submitted on February 13, 1991, a proposed rule change pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and rule 19b-4 [2] to amend part III, sections 13(a), 30(a) and 41(e) of the NASD Code of Arbitration Procedure ("the Code") to improve the efficiency of its arbitration process. Notice of the proposed rule change together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 28993 (March 20, 1991)) and by publication in the **Federal Register** 56 FR 12573, (March 26, 1991). The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Proposed Amendments

1. Simplified Arbitration

The NASD has proposed to amend section 13(a) of the Code to eliminate the required customer demand or written consent of the parties to simplified arbitration procedures. It has been the practice of the self-regulatory organizations ("SROs") to apply simplified procedures to cases involving public customers where the amount does not exceed $10,000, without the need for a customer to request ("customer demand") or for parties to consent in writing. Accordingly, the NASD is amending the Code to reflect that reality.

The practice of applying simplified arbitration procedures to such cases is designed to decrease the cost of arbitration and delays in the administration of cases, while providing the opportunity for parties to have their cases heard by a public arbitrator knowledgeable in the securities industry. Moreover, the practice of applying simplified arbitration procedures has proven to be an efficient means of conserving the arbitral resources of SROs.

2. Party Service of Amended Pleadings

The proposed amendment to section 39(a) of the Code would require parties to serve copies of amended pleadings on all other parties and to provide the Director of Arbitration with additional copies for each arbitrator. This change conforms to the provisions of section 25(b) of the Code, which require party service of all pleadings subsequent to service of the statement of claim. Similarly, this proposed amendment, as does the above stated proposal, conforms to current practice.

This amendment to section 39(a) of the Code addresses the NASD's concern that the increasing number of cases using the arbitration department as an intermediary for the service of amended pleadings would result in unnecessary delays in processing cases and add to the cost of operating the arbitration system. Consequently, the proposed rule change would amend the code so as to require parties to serve amended pleadings, rather than the Director of Arbitration, and thereby save administrative time and cost, while continuing to ensure that the respondents receive adequate notice of all arbitration pleadings.

3. Contents of Award

Finally, the proposed rule change would amend section 41(e) of the Code to require that the name of counsel, if any, and the type of security or product in controversy be included in all arbitration awards. The NASD believes the inclusion of such information will give the public a better general understanding of the award. Moreover, the NASD believes that the addition of these items would facilitate the exchange of information about arbitration proceedings and about the outcome of proceedings involving particular securities or products.

III. Conclusion

The Commission believes the proposed amendments to the Code are consistent with and further the goals of recent modifications recommended by the Securities Industry Conference on Arbitration ("SICA") [3] in response to Commission reviews of securities industry sponsored arbitration. These previous modifications were recommended to improve the fairness and efficiency of industry administered arbitration systems and subsequently adopted by SROs through conforming rule changes. The rule changes proposed herein promote the Commission's endeavors to ensure that industry sponsored arbitration system are both equitable and efficient in their administration. Furthermore, the Commission is of the opinion that the proposed rule change is indicative of an ongoing effort by the NASD to review issues that arise in the administration of its system and to periodically implement appropriate amendments for improving the system.

Because these amendments will aid in providing timely and just resolutions of disputes between investors and broker-dealers and facilitate the arbitration process in the public interest, the Commission finds that the proposed rule change is consistent with the requirements of the Act, specifically section 15A(b)(6), which requires that the rules of a registered securities association be designed to prevent fraudulent and manipulative practices, promote just and equitable principles of trade, provide for an equitable allocation of fees, and, in general, protect investors and the public.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: April 26, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10634 Filed 5-3-01; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1989).

[3] See Securities Exchange Act Release No. 26805, (May 10, 1989) 54 FR 21144 (May 16, 1989) approving proposed rule changes by the New York Stock Exchange, Inc., National Association of Securities Dealers, Inc., and the American Stock Exchange, Inc. relating to the arbitration process and the use of predispute arbitration clauses.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

April 30, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Amsco International, Inc.
Common Stock, $.01 Par Value (File No. 7-6783)
Beazer Plc
American Depositary Receipts (File No. 7-6784)
Convex Computer Corporation
Common Stock, $.01 Par Value (File No. 7-6785)
Destec Energy, Inc.
Common Stock, $.01 Par Value (File No. 7-6786)
Flightsafety International, Inc.

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Common Stock, $.10 Par Value (File No. 7-6787)
Foundation Health Corp.
Common Stock, $.01 Par Value (File No. 7-6788)
Iowa Illinois Gas & Electric Co.
Common Stock, $1.99 Par Value (File No. 7-6789)
Critical Care America, Inc.
Common Stock, $.10 Par Value (File No. 7-6790)
Hasbro, Inc.
Warrants (File No. 7-6791)
Co-Video, Inc.
Common Stock, $.001 Par Value (File No. 7-6792)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 21, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-10667 Filed 5-3-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29142; File No. SR-OCC-91-7]

Self-Regulatory Organization; The Options Clearing Corporation; Notice of Proposed Rule Change Relating to Establishing a Cross-Margin Program with The Board of Trade Clearing Corporation

April 30, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on April 11, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would establish a cross-margining program with the Board of Trade Clearing Corporation ("BOTCC").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. General

The purpose of this rule change is to establish a cross-margining program between OCC and BOTCC which parallels the proposed expanded program between OCC and the Chicago Mercantile Exchange ("CME").

In File No. SR-OCC-90-1, OCC proposed to expand its existing proprietary cross-margining program with the CME to include nonproprietary accounts carried by Clearing Members of OCC and CME on behalf of market professionals.[2] That filing detailed not only the operation of the expanded OCC-CME cross-margining program, but also discussed certain technical legal considerations relating to non-proprietary cross-margining that are absent from proprietary cross-margining. Those considerations relate to regulations adopted by the Commodity Futures Trading Commission ("CFTC") under the Commodity Exchange Act concerning the segregation of customer funds and to provisions of the federal bankruptcy code and other laws governing the distribution of customer property in the event of the liquidation of securities broker or futures commission merchant.

Because the OCC-BOTCC program is virtually identical to that proposed by OCC and CME, this filing only will discuss the few minor differences between the two programs. OCC accordingly incorporates by reference the description of the operation of the OCC-CME cross-margining program and the description of the legal considerations set forth in File No. SR-OCC-90-1. Finally, OCC requests that the Commission accelerate the effectiveness of this rule change to the extent necessary so that it is approved no later than the date of the Commission's approval of File No. SR-OCC-90-1.

2. OCC-BOTCC Cross-Margining Program

The Cross-Margining Agreement (the "Agreement") between OCC and BOTCC is attached to the filing as an Addendum and includes the following exhibits:

Exhibit A: List of Eligible Contracts;
Exhibit B: Proprietary Cross-Margin Account Agreement and Security Agreement (Joint Clearing Member);
Exhibit C: Proprietary Cross-Margin Account Agreement and Security Agreement (Affiliated Clearing Members);
Exhibit D: Non-Proprietary Cross-Margin Account Agreement and Security Agreement (Joint Clearing Member); and its corresponding Appendix II;
Exhibit E: Non-Proprietary Cross-Margin Account Agreement and Security Agreement (Affiliated Clearing Members) and its corresponding Appendix II; and
Exhibit F: Cross-Margin System Super-Margins.

BOTCC acts as the clearing organization for futures contracts and options on futures contracts for which the Board of Trade for the City of Chicago ("CBOT") or any of its affiliated exchanges has been designated by the CFTC as a contract market. The Agreement provides for the cross-margining of proprietary accounts and non-proprietary accounts of market professionals. The Agreement will permit the cross-margining of certain index future and index option products cleared by BOTCC and OCC, respectively. Specifically, the eligible contracts include BOTCC-cleared futures on the Major Market Index and OCC-cleared put and call options on the Major Market Index and Institutional Index, the S&P 100 Index and S&P 500 Index, the NYSE Composite Index, the Financial News Composite Index and the Institutional Index.

Except for several minor differences in terms and in language, the terms of the Agreement, including the Exhibits, between OCC and BOTCC are the same as the terms of the Amended and Restated Cross-Margining Agreement ("OCC-CME Amended Agreement"), including the Exhibits thereto. These minor differences are described below.

Consistent with the present requirements of the CFTC, the OCC-BOTCC Agreement will not permit clearing members to designate either the paired proprietary cross-margin accounts or the paired non-proprietary cross-margin accounts, or both, as cross-margin pledge accounts as contemplated in section 3 of the OCC-CME Amended Agreement. Section 3, therefore is intentionally left blank and other references to cross-margin pledge accounts are omitted from the OCC-BOTCC Agreement. This is in accordance with the September 5, 1989 correspondence of Don L. Horwitz, General Counsel, OCC, to Jonathan Kallman, Assistant Director, Commission in respect of the proprietary cross-margining program between OCC an CME.[3] Section 9 of the Agreement generally requires OCC and BOTCC to maintain, except as otherwise provided for therein, the confidentiality of all information obtained in connection with the Agreement. The Agreement provides that OCC and BOTCC have the obligation to notify each other of a request for confidential information. Each clearing organization is obligated to cooperate to a reasonable extent with the other in the event the other determined to seek a protective order against disclosing confidential information. These additional obligations are not included in the OCC-CME Amendment Agreement.

Section 14 of the Agreement reflects the information sharing arrangements between OCC and BOTCC. It specifically provides that each clearing organization must notify the other in the event that such clearing organization receives information which causes it significant concerns over the financial or operation capabilities of a clearing member. In contrast, the OCC-CME Amended Agreement provides that CME will advise OCC is one of its Clearing Members is on its "High Risk List." BOTCC has informed OCC that it does not maintain any equivalent listing.

Finally, appendix II to exhibits D and E, respectively, has been slightly revised to clarify the subordinaton arrangement.[4] These same amendments will be included later in the appendix II to exhibits D and E for the OCC-CME expanded cross-margining program.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934, as amended because it expands the implementation of cross-margining to another significant group of market participants, further enhancing the safety of the clearing system while providing lower clearing margin costs to participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to such period that the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-OCC-91-07 and should be submitted by May 28, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10633 Filed 5-3-91; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1).

[2] See Securities Exchange Act Release No. 27717 (February 2, 1990) 55 FR 7388.

[3] See Securities Exchange Act Release No. 27288 (September 28, 1989) 54 FR 41195.

[4] The revisions were made as result of discussions between the CME and CFTC.

[Investment Company Act Rel. No. 18188; International Series Rel. No. 263; 812-7715]

Baillie Gifford International Fund, Inc.; Application

Dated: April 26, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Baillie Gifford International Fund, Inc.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and rule 12d3-1.

SUMMARY OF APPLICATION: Applicant seeks a conditional order permitting it to purchase the securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser, in accordance with the conditions of the proposed amendments to rule 12d3-1.

FILING DATE: The application was filed on April 22, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 23, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may

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request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o The Guardian Insurance & Annuity Company, Inc., 201 Park Avenue South, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company registered under the Act and is organized as a series investment company. Applicant seeks relief with respect to its one current series and any additional series that applicant may create in the future.

2. Guardian Baillie Gifford Limited, a corporation organized under the laws of Scotland and a registed investment adviser under the Investment Advisers Act of 1940, serves as the investment manager of applicant.

3. Applicant seeks to invest in foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser ("Foreign 15% Issuers").

4. Applicant seeks relief from section 12(d)(3) of the Act and rule 12d3-1 thereunder to invest in securities of Foreign 15% issuers to the extent permitted in the proposed amendments to rule 12d3-1. See Investment Company Act Release No. 17099 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Applicant's proposed acquisitions of securities issued by Foreign 15% Issuers will satisfy each of the requirements of proposed amended rule 12d3-1.

Applicant's Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Subparagraph (b)(4) of rule 12d3-1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." This requirement prevents applicant from investing in equity securities of a Foreign 15% Issuer that are comparable in quality to "margin securities," but which do not fall within the definition of "margin securities" under Regulation T because they are not registered in the United States, are not traded in U.S. over-the-counter markets, and are not included in the list of Foreign Margin Stocks published by the Federal Reserve Board.[1] Accordingly, applicant seeks an exemption from the "margin security" requirements of current rule 12d3-1.

2. Proposed amended rule 12d3-1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of Foreign 15% Issuers that meet qualitative criteria comparable to criteria applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17099 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicant's Condition

The requested relief shall be subject to the following condition:

Applicant will comply with the proposed amendments to rule 12d3-1 (Investment Company Act Release No. 17099 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989), as they are currently proposed, or as they may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10939 Filed 5-3-91; 8:45 am]

BILLING CODE 8010-01-M

[1] The staff of the Division of Investment Management notes that the Board of Governors of the Federal Reserve System recently amended Regulation T to include "foreign margin stock[s]." However, because the requirements for inclusion on the Board's "List of Foreign Margin Stocks" are generally more restrictive than the requirements for a "margin security" traded in United States markets, securities issued by many foreign securities firms are not included in the definition of "foreign margin stocks" under Regulation T. See 12 CFR § 220.2(i) and (q)(8).

[Rel. No. IC-18117; File No. 812-7716]

Monarch Life Insurance Co. et al.; Application

April 30, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Monarch Life Insurance Company ("Monarch Life"), First Variable Life Insurance Company ("First Variable"), Variable Account A of Monarch Life Insurance Company ("Variable Account A"), Variable Account B of Monarch Life Insurance Company ("Variable Account B"), Variable Account A1 of Monarch Life Insurance Company ("Variable Account A1"), Variable Account B1 of Monarch Life Insurance Company ("Variable Account B1"), The Fidelity Variable Account of Monarch Life Insurance Company ("Fidelity Account"), Separate Account VA-1 of Monarch Life Insurance Company ("Separate Account VA-1"), Separate Account VA of Monarch Life Insurance Company ("Separate Account VA"), First Variable Life Insurance Company Fund E ("Fund E") (together, the "Separate Accounts"), and Monarch Financial Services, Inc. ("MFSI") (collectively, the "Original Applicants"), and Monarch Services, Inc. ("MSI") (together with the Original Applicants, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 6(c) of the 1940 Act amending existing orders of exemption under sections 2(a)(32), 2(a)(35), 12(d)(1), 22(c), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d), 27(f), and 27(h)(3) of the 1940 Act and rules 6e-2 and 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order amending certain prior orders (the "Existing Orders") obtained by the Original Applicants to add MSI as a party to the exemptive relief previously granted in each Existing Order and to specify that MSI acts as a principal underwriter with respect to the variable life insurance policies and variable annuity contracts (collectively, "Variable Policies") described in the Existing Orders.

FILING DATE: The application was filed on April 23, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 pm on May 21, 1991.

Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Monarch Life Insurance Company and First Variable Life Insurance Company, One Monarch Place, Springfield, Massachusetts 01133.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Attorney, (202) 272-2026, or Nancy M. Rappa, Senior Attorney, (202) 272-2060, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Monarch Life is a stock life insurance company organized under the laws of the Commonwealth of Massachusetts. Variable Account A, Variable Account B, Variable Account A1, Variable Account B1, the Fidelity Account, Separate Account VA-1, and Separate Account VA are each separate accounts of Monarch Life. First Variable is a stock life insurance company organized under the laws of the State of Arkansas. Fund E is a separate account of First Variable.

2. MFSI, formerly known as Monarch Resources, Inc., is a broker-dealer registered under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the National Association of Securities Dealers, Inc. (the "NASD"). MFSI has acted as principal underwriter of the Variable Policies. MSI is a broker-dealer registered under the 1934 Act, and is also a member of the NASD. Currently, MFSI and MSI are parties to a sales agreement through which applications for the Variable Policies may be solicited by registered representatives of MSI.

3. In connection with the issuance and distribution of the Variable Policies, Original Applicants obtained various exemptive orders (i.e., the Existing Orders) with respect to, among other things: (i) The deduction of specified charges under certain of the Variable Policies; (ii) the treatment of certain of the Variable Policies as "variable life insurance contracts" under rule 6e-2 under the 1940 Act; (iii) the issuance through the same separate account of scheduled premium variable life insurance contracts and flexible premium life insurance contracts; (iv) the acquisition of units of certain unit investment trusts ("Zero Trust Units"); and (v) the recovery from certain Separate Accounts of certain costs of acquiring Zero Trust Units. The Existing Orders consist of the following:

a. *File No. 812-7553:* Fund E, First Variable, and MFSI obtained exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act with respect to certain flexible purchase payment deferred annuity contracts, single purchase payment immediate annuity contracts, and single purchase payment deferred annuity contracts. The relief permitted the deduction of mortality and expense risk charges from the assets of Fund E. (Release Nos. IC-17830 (July 31, 1990) (notice) and IC-17711 (Aug. 29, 1990) (order)).

b. *File No. 812-7453:* Separate Account VA, Monarch Life and MFSI obtained exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act with respect to certain flexible purchase payment deferred annuity contracts and single purchase payment immediate annuity contracts. The relief permitted the deduction of mortality and expense risk charges from the assets of Separate Account VA. (Release Nos. IC-17349 (Feb. 21, 1990) (notice) and IC-17393 (Mar. 21, 1990) (order)).

c. *File No. 812-7471:* Separate Account VA-1, Monarch Life, and MFSI obtained exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act with respect to certain flexible purchase payment deferred annuity contracts and single purchase payment immediate annuity contracts. The relief permitted the deduction of mortality and expense risk charges from the assets of Separate Account VA-1. (Release Nos. IC-17343 (Feb. 16, 1990) (notice) and IC-17381 (Mar. 15, 1990) (order)).

d. *File No. 812-6915:* Separate Account VA, Monarch Life, First Variable Annuity Fund BE, First Variable, and Variable Annuity Sales Corporation ("VASCO") (to which MFSI succeeded pursuant to a statutory merger) obtained exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act with respect to certain flexible purchase payment deferred annuity contracts and single purchase payment immediate annuity contracts. The relief permitted the deduction of mortality and administrative expense risk charges from the assets of Separate Account VA and First Variable Annuity Fund BE. (Release Nos. IC-16521 (Aug. 11, 1988) (notice) and IC-16556 (Sept. 8, 1988) (order)).

e. *File No. 812-6894:* Variable Account A, Monarch Life, and Monarch Resources, Inc. obtained exemptions from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d), 27(f) and 27(h)(3) of the 1940 Act and Rules 6e-2 and 22c-1 thereunder with respect to certain scheduled premium variable life insurance contracts. The relief permitted the contracts to include features such as (i) The right of the insured to pay unscheduled premiums under the contracts; (ii) the deduction of a sales load chargeable to first year scheduled premiums and unscheduled premiums in the nature of a "deferred sales load" and the deduction of a premium tax charge for unscheduled premiums in the nature of a deferred charge; and (iii) the deduction from the investment base of the contracts for cost of insurance and the deduction from the assets of Separate Accounts for the guaranteed benefits risk charge. (Release Nos. IC-16179 (Dec. 17, 1987) (notice) and IC-16219 (Jan. 12, 1988) (order)).

f. *File No. 812-6606:* Fund E and First Variable obtained exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act with respect to certain flexible purchase payment deferred annuity contracts and single purchase payment immediate annuity contracts.[1] The relief permitted the deduction of mortality and expense risk charges from the assets of Fund E. (Release Nos. IC-15644 (Mar. 28, 1987) (notice) and IC-15701 (Apr. 24, 1987) (order)).

g. *File No. 812-6403:* Variable Account A1, Variable Account B1, the Fidelity Account, Monarch Life, and Monarch Resources, Inc. obtained exemptions from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2) 27(d), and 27(f) of the 1940 Act, and rules 6e-2 and 22c-1 thereunder, with respect to certain single premium variable life insurance contracts. The relief permitted (i) The deduction of a surrender charge under a contingent deferred sales load structure; (ii) deductions from each contract's investment base for cost of insurance, first year administrative, and state premium tax charges; (iii) deductions from the assets of Separate Accounts identified in the application as amended for minimum death benefit risk charges; and (iv) partial withdrawal

[1] The application incorrectly stated that these contracts are "deferred" annuity contracts. Applicants represent that, during the Notice Period, the application will be amended to correctly define the contracts as "immediate" rather than "deferred" annuity contracts.

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rights (and certain other features) that affect the duration of the contracts', minimum death benefit guarantee. (Release Nos. IC-15443 (Nov. 28, 1986) (notice) and IC-15503 (Dec. 29, 1986) (order)).

h. *File No. 812-6244:* Variable Account A, Variable Account B, and Monarch Life obtained an order amending Existing Orders (i) and (k) below, and granting exemptions from subsections (a)(2) and (b)(15) of rule 6e-2 under the 1940 Act, with respect to certain flexible premium variable life insurance policies. (Release Nos. IC-14937 (Feb. 13, 1986) (notice) and IC-14978 (Mar. 11, 1986) (order)).

i. *File No. 812-6028:* Variable Account B and Monarch Life obtained exemptions from sections 12(d)(1), 26(a)(2), and 27(c)(2) of the 1940 Act to the extent necessary to permit Variable Account B to acquire Zero Trust Units, and to recover through an asset charge amounts paid by Monarch Life to Oppenheimer Investor Services, Inc. in connection with the acquisition by Variable Account B of Zero Trust Units. (Release Nos. IC-14407 (Mar. 7, 1985) (notice) and IC-14460 (Apr. 9, 1985) (order)).

j. *File No. 812-5928:* Fund E and First Variable obtained exemptions from sections 26(a) and 27(c)(2) of the 1940 Act with respect to certain individual and group variable annuity contracts. The relief permitted the deduction of mortality risk, expense risk, and distribution expense risk charges from the assets of Fund E. (Release Nos. IC-14225 (Nov. 5, 1984) (notice) and IC-14265 (Dec. 3, 1984) (order)).

k. *File No. 812-5724:* Variable Account A and Monarch Life obtained exemptions from sections 12(d)(1), 26(a)(2), and 27(c)(2) of the 1940 Act to the extent necessary to permit Variable Account A to acquire Zero Trust Units, and to recover through an asset charge amounts paid by Monarch Life to Merrill Lynch, Pierce, Fenner & Smith in connection with the acquisition by Variable Account A of Zero Trust Units. (Release Nos. IC-13874 (Apr. 10, 1984) (notice) and IC-13914 (May 1, 1984) (order)).

4. Monarch Capital Corporation ("MCC") is the parent corporation of Monarch Life, MFSI, and MSI. MCC has experienced financial difficulties as a result of which MCC likely will be unable to retain ownership and control of Monarch Life and certain other MCC subsidiaries. In connection with a restructuring plan (the "Plan") being developed by certain creditors of MCC, pursuant to discussions in which Monarch Life and the Massachusetts Insurance Commissioner have also participated, and subject to approval by the Massachusetts Insurance Commissioner and other insurance regulatory authorities, ownership of Monarch Life would be transferred to such creditors, and ownership of certain MCC subsidiaries with insurance-related operations or the operations themselves would be transferred to Monarch Life. Accordingly, pursuant to the Plan, the insurance activities conducted by certain MCC subsidiaries would be restructured or transferred in order to consolidate insurance operations related to Monarch Life, and to bring such operations under Monarch Life's control. In particular, insurance-related operations of MFSI as well as its principal underwriter functions and obligations for the Variable Policies would be transferred to MSI. As a step toward implementing the Plan, MSI became a direct wholly-owned subsidiary of Monarch Life, effective April 18, 1991. The Applicants intend to transfer MFSI's principal underwriter functions and obligations for the Variable Policies to MSI as soon as the requested relief is obtained. Upon consummation of the Plan, MSI, like Monarch Life, would no longer be owned or controlled by MCC. MFSI would remain a subsidiary of MCC, and after the transfer of ownership of Monarch Life would no longer be affiliated with Monarch Life. In view of the Plan and pending separation of ownership of Monarch Life and MFSI, Monarch Life has determined that it is essential that MSI undertake the role of principal underwriter of the Variable Policies as soon as practicable.

5. Given the pending separation of ownership of Monarch and MFSI and MSI's prospective role as principal underwriter of the Variable Policies, the Applicants seek to extend the exemptive relief under the Existing Orders which is currently applicable to MFSI, as principal underwriter of the Variable Policies, to MSI, which will assume this role as soon as practicable. Applicants therefore request an order of the Commission pursuant to section 6(c) of the 1940 Act: (i) Amending Existing Orders to add MSI as a party to the exemptive relief previously granted in each Existing Order, and (ii) specifying that MSI acts as principal underwriter with respect to the Variable Policies described in the Existing Orders.[8]

[8] Applicants represent that, during the Notice Period, the application will be amended to reflect the representations in this paragraph.

Applicants assert that the order requested in the application is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10632 Filed 5-3-91; 8:45 am]

BILLING CODE 8010-01-m

[Release No. 35-25303]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 26, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 20, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Southwestern Electric Power Company (70-8077)

Southwestern Electric Power Company ("SWEPCO"), 28 Travis Street, Shreveport, Louisiana 71156, an electric public utility subsidiary of Central and South West Corporation ("CSW"), a registered holding company, has filed a post-effective amendment to its declaration filed under sections 6(a) and 7 of the Act.

By order dated June 8, 1984 (HCAR No. 23325), the Commission authorized SWEPCO to issue, prior to December 31, 1984, up to $75 million of unsecured noted ("Notes") in one or more transactions evidencing borrowings from commercial banks. Pursuant to the granted authority, SWEPCO borrowed $50 million from three banks under a term loan agreement dated June 15, 1984 ("Loan Agreement").

SWEPCO now requests authorization through June 30, 1991 to enter into an agreement to amend the Loan Agreement ("Amended Loan Agreement") to: (1) Extend the maturity of the Notes through June 15, 1997; (2) amend the interest rate on the Notes; (3) add provisions to compensate the lenders for their costs of complying with capital adequacy regulations; and (4) add assignment and participation provisions. SWEPCO will not receive any new proceeds as a result of entering into the Amended Loan Agreement and the aggregate principal amount of Notes outstanding will remain at $50 Million.

The existing Loan Agreement provides for varying interest rates not exceeding 115% of the Prime Rate. SWEPCO expects that the interest rate under the Amended Loan Agreement will be 0.5% above the Fed Funds Rate, as defined, through June 15, 1994, and thereafter will be the Alternate Base Rate, as defined, currently 9%, through June 15, 1997. SWEPCO will pay the Bank of New York an arrangement fee of $25,000 upon Commission approval of the Amended Loan Agreement.

The aggregate principal amount of Notes to be issued under the Amended Loan Agreement together with all other unsecured indebtedness of SWEPCO will not exceed 20% of the sum of the secured indebtedness of SWEPCO and SWEPCO's capital stock and surplus. The Notes and the Amended Loan Agreement will permit prepayment of principal in whole or in part at any time prior to maturity without penalty. SWEPCO anticipates that the Notes issued under the Amended Loan Agreement will be repaid no later than June 15, 1994.

Allegheny Generating Company et al. (70-7790)

Allegheny Generating Company ("AGC"), 320 Park Avenue, New York, New York 10022, an electric public-utility subsidiary company of Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac Edison"), Downsville Pike, Hagerstown, Maryland 21740, and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, each electric public-utility subsidiary companies of Allegheny Power System, Inc., a registered holding company, have filed a declaration under sections 6(a), 7 and 12(b) of the Act and rule 45 thereunder.

AGC proposes to issue promissory notes up to a maximum aggregate principal amount of $150 million, through June 30, 1993, pursuant to a revolving credit agreement ("Agreement") with a group of nine banks ("Notes"). The Notes will have a maturity date of December 31, 1994. The Agreement provides that the lending banks may extend the maturity date of the Notes for one-year periods. In order to extend the maturity date of the Notes beyond December 31, 1994, AGC must seek further Commission authorization. Each Note shall be payable as to principal and shall bear interest from the effective date of such loan to the termination date.

At the option of AGC, the Notes would bear interest at: (1) The alternate base rate which is the higher of Chemical Bank's floating prime or ½ of 1% per annum over the average weekly three-month certificate of deposit rate adjusted for reserves and insurance; (2) the London Interbank Offer Rate ("LIBOR") plus ⅛ of 1% per annum from the effective date through December 31, 1994; or (3) the certificate of deposit rate plus ⅛ of 1% per annum, adjusted for reserves and insurance, until December 31, 1994. In addition, each bank may offer fixed rate loans. The effective interest rate applicable to a fixed rate loan would not exceed prime plus two percentage points per annum. Monongahela, Potomac Edison and West Penn request authorization to guarantee to the banks, severally and not jointly, 27%, 28% and 45%, respectively, the amount AGC borrows pursuant to the Agreement.

The Notes may be prepayable at any time without premium or penalty except that any loss to the banks' reinvestment of the funds which results from prepayment prior to the end of an interest period will be reimbursed by AGC. There will be a commitment fee in the amount of ⅜ of 1% per annum charged on the average daily unused portion of the credit facility.

The proceeds from the Notes will be used to operate AGC's business as an electric public-utility company and to provide a portion of the financing for its ownership interest in the 2,100 MW Bath County Pumped Storage Project.

General Public Utilities Corporation (70-7845)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, has filed a declaration under sections 6(a), 7 and 12(c) of the Act and rules 46 and 50(a)(5) thereunder.

GPU proposes to effect a two-for-one stock split, by way of a stock dividend, of its shares of common stock by issuing an additional share for each of 62,891,669 shares outstanding or held in GPU's treasury.

In addition, GPU proposes to transfer the sum of $2.50 for each additional share to be issued, or to be held in GPU's treasury, from its capital surplus account to its capital stock account, so that the par value of each share outstanding or held in GPU's treasury after the split will continue to be $2.50. At December 31, 1990, GPU had 150,000,000 authorized shares of common stock, par value $2.50 per share, of which 62,891,669 shares had been issued and 7,503,961 shares previously reacquired were held in its treasury, with the result that 55,387,666 shares were outstanding.

Included in the number of shares outstanding are 13,522 shares of a total 1,000,000 shares initially authorized for the 1990 Stock Plan for Employees of GPU and 3,500 of the initial 20,000 shares initially authorized for the Restricted Stock Option Plan for Outside Directors. The authorized shares for each plan will increase to 1,972,956 and 33,000 shares respectively.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10666 Filed 5-3-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1385]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group B Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Tuesday, May 21, 1991, in room 1105 from 8:30 a.m. to 5 p.m., Department of State, 2201 C Street, NW., Washington, DC 20520.

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The agenda of the meeting will be as follows:

1. Approve March 19, 1991, meeting minutes.
2. Review results and activities of CCITT Study Group XI Meeting (April 8–26, 1991).
3. Consider contributions.
—CCITT Study Group XVIII (June 10–28, 1991).
—Others appropriate for Study Group B.
4. Review new draft Recommendations I.233 and I.370 and revised draft Recommendations I.324 and I.464 to be approved at Study Group XVIII according to Resolution No. 2 procedures.
5. Consider nominations for U.S. delegation to Study Group XVIII Meeting.
6. Other business.

Members of the general public may attend the meeting and join in the discussions, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of Sate building is controlled and entry will be facilitated if arrangements are made in advance of the meeting.

Please Note: Persons intending to attend the above meeting must announce this not later than five days before the meeting to the Department of State, 202–647–2592 (fax 202–647–7407). The announcement must include name, social security number, and date of birth. The above includes government and non-government attendees. All attendees must use the C-Street entrance.

Please bring 60 copies of documents to be considered at this meeting. If document has been mailed, bring only 10 copies.

Dated: February 4, 1991.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

[FR Doc. 91–10578 Filed 5–3–91; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1364]

U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that the U.S. Organization for the International Radio Consultative Committee (CCIR National Committee) will meet May 24, 1991 at the Department of State, 2201 C Street NW., Washington, DC in room 1408 commencing at 9:30 a.m.

The International Radio Consultative Committee (CCIR) is a permanent organ of the International Telecommunication Union (ITU), a specialized agency of the United Nations, established by the International Telecommunication Convention. The CCIR studies questions and issues recommendations relating to: (a) The use of the radio-frequency spectrum in terrestrial and space radiocommunications, (b) characteristics and performance of radio systems, (c) operation of radio stations and (d) radiocommunication aspects of distress and safety matters. The purpose of the United States Organization for the International Radio Consultative Committee is to assist and advise the Department of State on matters concerning United States participation in the activities of the CCIR.

The agenda of the meeting will include; (a) discussion of the U.S. CCIR documentation data base, (b) review of the Recommendations in the Report of the ITU High Level Committee and (c) review of preparations for the consolidated meeting of the Ad Hoc Advisory Group on CCIR Strategic Review and Planning and the working Party of the Plenary Assembly on Restructuring of CCIR Study Groups.

Members of the general public may attend the meeting (subject to available seating) and join in the discussions subject to instructions of the Chairman.

Entrance to the Department of State is controlled but can be facilitated by making attendance arrangements in advance. Persons planning to attend the meeting should so advise Ms. Marlou Klemmer, (202) 647–2592, (fax 202 647–7407) no later than five days before the meeting. Notification should include name, date of birth and Social Security number. All attendees must use the C Street entrance.

Dated: April 25, 1991.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 10576 Filed 5–3–91; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Wake-Johnston Counties

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway improvement of US 70 in Wake and Johnston Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Nicholas L. Graf, P.E., Division Administrator, Federal Highway Administration, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone Number (919) 856–4346.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an Environmental Impact Statement (EIS) on a proposal to relocate US 70 from I–40 in Wake County to the intersection of existing US 70 and US 70A in Johnston County, a distance of approximately 10 miles. The existing facility is a 4-line divided express way with little access control and at-grade intersections, some with traffic signals. The proposed project will consist of a 4-lane divided freeway on new locations.

The proposed project is needed to serve the rapidly growing traffic demand in the U.S. 70 corridor. It will provide an alternate route to existing U.S. 70 and will relieve some of the congestion currently being experienced on the existing facility.

Alternatives under consideration include:

(1) "No-Build".
(2) Improve existing U.S. 70.
(3) Construct a freeway on new location.

Other means of transportation (mass transit) will also be considered during this study.

The interfacing of the proposed project and the future Southern wake Expressway (Raleigh Other Loop) will also be evaluated in the proposed study.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. Public meetings, and meetings with local officials, will be held in the project area. A corridor Public Hearing and a Design Public Hearing will also be held. Information on the time and location of the public meetings and public hearings will be provided in the local news media. The Draft EIS will be available for public and agency review and comments at the time of the Corridor Public Hearing. No formal Scoping Meting is planned at this time.

To ensure that the full range of issues relating to the proposed action are addressed and all significant issues identified, comments and suggestions are invited form all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Robert L. Lee,

District Engineer, FHWA Raleigh, North Carolina.

[FR Doc. 91–10625 Filed 5–3–91; 8:45 am]

BILLING CODE 4910–22–M

National Motor Carrier Advisory Committee Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee (NMCAC) will hold its next meeting on May 13–14, 1991, 400 7th Street, SW., room 4200, Washington, DC. The meeting will be from 8 a.m. to 5 p.m. on May 13 and from 8:30 a.m. to 12 p.m. on May 14. The focus of the meeting is on the Reauthorization Legislation, Strategic Highway Research Program, Intelligent Vehicle Highway Systems, Motor Carrier Management Information Systems, driver training, and congestion. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas J. McKelvey, Federal Highway Administration, HIA–20, room 3104, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–1861. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for legal holidays.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: April 29, 1991.

T.D. Larson,

Administrator.

[FR Doc. 91–10569 Filed 5–3–91; 8:45 am]

BILLING CODE 4910–22–M

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 87
Monday, May 6, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 15, 1991.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-10770 Filed 5-3-91; 2:12 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday May 17, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Objectives

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-10771 Filed 5-2-91; 2:12 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, May 21, 1991.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-10772 Filed 5-2-91; 2:12 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, May 21, 1991.

PLACE: 2033 K St., NW., Washington, DC, Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application of the Minneapolis Grain Exchange for contract designation in Options on White Wheat futures
—Program Objectives, 4th Quarter, FY 1991

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-10773 Filed 5-2-91; 2:12 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, May 24, 1991.

PLACE: 2033 K St., NW., Washington, DC, 6th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Review

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-10774 Filed 5-2-91; 2:13 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Thursday, May 30, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-10775 Filed 5-2-91; 2:13 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Thursday, May 30, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule Enforcement Review

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-10776 Filed 5-2-91; 2:13 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 30, 1991.

PLACE: 2033 K St., NW., Washington, DC, Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Registration of Broker Associations/final rules

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-10777 Filed 5-2-91; 2:13 pm]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 4:22 p.m. on Tuesday, April 30, 1991, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), Seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Jonathan Fiechter, acting in the place and stead of Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Compass Bank, Plano, Texas, an insured state nonmember bank, for the Corporation's consent to merge, under its charter and title, with Gleneagles National Bank, Plano, Texas, and Bank of Las Colinas, National Association, Irving, Texas, and for consent to establish the one office of Gleneagles National Bank and the two offices of Bank of Las Colinas, National Association, as branches of the resultant bank.

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Matters relating to the Corporation's corporate activities.

The Board further determined, by the same majority vote, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,890 Gibralter Savings Association Houston, Texas.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B).

Dated: May 1, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-10706 Filed 5-1-91; 5:09 p.m.]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 1, 1991

TIME AND DATE: 10:00 a.m., Wednesday, May 8, 1991.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Southern Ohio Coal Company*, Docket No. WEVA 89-278. (Issues include whether the judge erred in finding Southern Ohio violated 30 CFR § 77.404(a), and whether the violation was significant and substantial and the result of unwarrantable failure.

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay, 800-877-8339 for Toll Free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 91-10758 Filed 5-3-91; 2:00 pm]

BILLING CODE 6735-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on April 29, 1991, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for June 3, 1991, in Louisville, Kentucky. The members will consider a proposed filing with the Postal Rate Commission for barcode discounts on flats and parcels.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Griesemer, Hall, Mackie, Nevin, Pace and Setrakian; Postmaster General Frank, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Hughes.

The Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with proceedings under Chapter 36 of title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code.

The Board determined further that pursuant to section 552b(c)(10) of title 5 United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, this discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after an opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of title 5, United States Code; section 410(c)(4) of title 39, United States Code; and section 7.3 (c) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

Neva R. Watson,

Alternate Certifying Officer.

[FR Doc. 91-10837 Filed 5-3-91; 3:33 pm]

BILLING CODE 7710-12-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:50 p.m. on Tuesday, April 30, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) corporate activities, and (2) the resolution of failed thrift institutions.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr. and Jonathan L. Fiechter, acting in the place and stead of Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, NW., Washington, DC

Dated: May 1, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-10829 Filed 5-3-91; 3:18 pm]

BILLING CODE 6714-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting; Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that

at 2:35 p.m. on Tuesday, April 30, 1991, the Board of Directors of the Resolution Trust Corporation met in open session.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan, Jr., that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, the following matter:

Memorandum re: Proposed policy on self-insurance for real estate owned property.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC

Dated: May 1, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-10830 Filed 5-3-91; 3:15 pm]

BILLING CODE 6714-01-M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1439)

TIME AND DATE: 10 a.m. (c.d.t.), May 8, 1991.

PLACE: Land Between The Lakes, Golden Pond Visitor Center, Golden Pond, Kentucky.

STATUS: Open.

AGENDA

Approval of minutes of meeting held on March 27, 1991.

Action Items

New Business

C—Power

C1. Modifications to Economy Surplus Power and Limited Interruptible Power Programs.

E—Real Property Transactions

E1. Sale of Permanent Easement Affecting Approximately 0.7 Acre of TVA's South Morristown Substation in Hamblen County, Tennessee.

E2. Thirty-year Recreation Easement Affecting 6 Acres of Chickamauga Reservoir Land in Hamilton County, Tennessee.

E3. Sale of Permanemt Easement Affecting 0.15 Acre of Tellico Reservoir Shoreland in Monroe County, Tennessee.

E4. Sale of Permanent Easement Affecting 16 Acres of Wheeler Reservoir Land in Limestone County, Alabama.

E5. Public Auction Sale Affecting 20 Acres of Eads Mine Property in Jefferson County, Illionois.

F—Unclassified

F1. Filing of Condemnation Cases.

F2. Supplement to Personal Services Contract No. TV-63319V with United Engineers & Constructors Inc.

F3. Supplement to Personal Services Contract No. TV-72370A with Gilbert/Commonwealth, Inc.

F4. Personal Services Contract with Performance Controls Company.

F5. Modification to Contract 70P99-91 with American Commercial Barge Line Company.

Information Items

1. Increase Contract Amount with Systems Engineering Solutions, Inc., for ADPE Support Services for U.S. Army Information Systems Command-Missile Command.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager, Media Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: May 1, 1991.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 91-10734 Filed 5-2-91; 2:10 pm]

BILLING CODE 8120-08-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Northern Spotted Owl; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB32

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to designate critical habitat for the northern spotted owl (*Strix occidentalis caurina*), a subspecies federally listed as threatened under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). The northern spotted owl, referred to herein as spotted owl or owl, is a medium-sized owl with dark eyes, dark-to-chestnut brown coloring, whitish spots on the head and neck, and white mottling on the abdomen and breast. The current range of the northern spotted owl extends from southwestern British Columbia through western Washington, western Oregon, and the Coast Ranges area of northwestern California south to San Francisco Bay. Located primarily on Federal land, and to a lesser extent on State and private lands, this proposed critical habitat designation would result in additional protection requirements under section 7 of the Act with regard to activities that require Federal agency action. Section 4 of the Endangered Species Act requires the Service to consider economic costs and benefits prior to making a final decision on the size and scope of critical habitat. The Service solicits data and comments from the public on all aspects of this proposal, including additional data on the economic impacts of the designation and a valuation technique for determining benefits.

DATES: Comments will be accepted until June 5, 1991. The Service intends to publish a revised critical habitat proposal 60 days thereafter and will request public comments for 60 days on the revised proposal. During the initial 30 day comment period, a public hearing will be conducted at each of the following locations: Arcata, California; Olympia, Washington; Springfield, Oregon; and Portland, Oregon. Times, dates, and exact locations of the public meetings will be published in a subsequent **Federal Register** notice.

ADDRESSES: The complete file for this rule is available for inspection by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 911 Northeast 11th Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hall, Assistant Regional Director for Fish and Wildlife Enhancement, at the above address (503/231-6159 or FTS 429-6159).

SUPPLEMENTARY INFORMATION:

Background

The northern spotted owl (*Strix occidentalis caurina*) is one of three subspecies of spotted owls recognized by the American Ornithologist's Union (1957). Two other subspecies are recognized: the California spotted owl (*S. o. occidentalis*), and the Mexican spotted owl (*S. o. lucida*). Its darker brown color and smaller white spots and markings separate the northern spotted owl from other subspecies. Juvenile plumage is similar to adult plumage except for the tail feathers of the juvenile, which are retained until the bird is about 27 months old, and the downy tips of which become ragged with wear.

The spotted owl is known from most of the major types of coniferous forests in the Pacific Northwest (June 26, 1990, Final Rule (55 FR 26114)). The current range of the northern spotted owl is from southwestern British Columbia, through western Washington, western Oregon, and northern California south to San Francisco Bay where forested habitat still exists. The southeastern boundary of its range, separating this subspecies from the California spotted owl, is the Pit River area of Shasta County, California.

Management practices have resulted in fragmented patches of older forests, separated by a preponderance of very young forests that have yet to develop characteristics used by owls. This management results in an unnaturally skewed distribution of forest structure across the landscape. To provide for conservation of the owl, an adequate distribution of appropriate forest structure is necessary so that as older forest stands are lost (due to logging or natural causes) they are replaced by mature stands within a relatively short period of time. This distribution would allow for the perpetuation of high quality owl habitat for nesting, roosting, and foraging.

Northern spotted owls have been observed over a wide range of elevations, although they seem to avoid higher elevation, subalpine forests (USDA 1986). The range of elevation in which spotted owls occur extends from 70 feet above sea level in the Olympic Peninsula of Washington to 6,000 feet above sea level in California (55 FR 26114).

Populations are not evenly distributed throughout the owl's present range. The majority of spotted owls are found in the Cascades of Oregon and northwestern California (55 FR 26114). The owl has been extirpated or is uncommon in certain areas (in intermingled ownership lands in southwestern Washington and in northwestern Oregon) due to habitat modification; thus, its distribution is now discontinuous over its range (Dawson *et al.* 1986; Forsman 1986, as cited in 55 FR 26114).

Spotted owls most commonly use Douglas-fir (*Pseudotsuga menziesii*) and mixed-conifer forest types in California, but have also been reported in northwestern California in coastal redwood (*Sequoia sempervirens*), and Bishop pine (*Pinus muricata*) forests, and in stands dominated by ponderosa pine (*Pinus ponderosa*) (55 FR 26114). Preferred habitat for the northern spotted owl, particularly in California, is not continuous, but occurs naturally in a mosaic pattern, especially in the southern portions of the bird's range (55 FR 26114).

The spotted owl is found in forests dominated by Douglas-fir and western hemlock (*Tsuga heterophylla*) in Washington's coastal forest. At higher elevations in western Washington, Pacific silver fir (*Abies amabilis*) is commonly used by owls, whereas on the east side of the Cascades, Douglas-fir and grand fir (*Abies grandis*) are used (Postovit 1977, as cited in 55 FR 26114).

A change in habitat conditions within the owl's range, as one moves southward, is evident as habitat in southern Oregon begins to change to a drier Douglas-fir/mixed conifer habitat with a corresponding change in the predominant prey base; from northern flying squirrels (*Glauocomys sabrinus*) to woodrats (*Neotoma* spp.) (55 FR 26114). Availability of forest types within a region may be responsible for the observed differences in use among types (Gutierrez 1985; Meslow *et al.* 1986, as cited in 55 FR 26114).

Historical logging practices in the mixed conifer zone of southern Oregon and along the east side of the Cascades in Oregon and Washington consisted of more selective timber harvesting than in other areas, leaving remnant patches of old-growth or stands of varying ages with old-growth characteristics. However, the age of a forest is not as important a factor in determining habitat suitability as are vegetational and structural elements. Components of northern spotted owl nesting habitat are:

Moderate to high canopy closure (60 to 80 percent); a multi-layered, multi-species canopy dominated by large (>30 inches diameter-at-breast-height (dbh)) overstory trees; a high incidence of large trees with various deformities (e.g., large cavities, broken tops, mistletoe infections, and other evidence of decadence); numerous large snags; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for owls to fly (Thomas *et al.* 1990). Old-growth or mixed stands of old-growth and mature trees typically require 150 to 200 years to attain these aforementioned attributes (Thomas *et al.* 1990). Breeding sites used by spotted owls have been observed throughout the range of the owl where the components of suitable spotted owl habitat are present in relatively young forests (60 or more years of age) (Thomas *et al.* 1990). Attributes of breeding and roosting habitat are sometimes found in younger forests, especially those with significant remnants of earlier stands that were influenced by fire, wind storms, inefficient logging operations, or highgrading (removal of the most economically valuable trees). However, nearly all nest and major roost sites are located in the portions of these stands containing the oldest components (Thomas *et al.* 1990).

At several sites in California, Pious (1989, as cited in 55 FR 26114) observed spotted owls nesting in coastal redwood stands that had acquired suitable habitat conditions in as little as 40-60 years. Redwood-dominated forest stands in coastal northern California, which comprise about 7 percent of the owl's overall range, are believed to develop suitable habitat characteristics more rapidly than other types because of unique conditions: A fast growing, stump-sprouting species, good soil conditions, high precipitation levels, coastal fog, a long growing season, an understory of other conifers and hardwoods, and an abundant prey base (Thomas *et al.* 1990).

Age classes of coniferous forest within the range of the owl are defined as follows: young-growth forest is generally defined as less than 100 years of age, mature forest as stands from 100 to 200 years old, and old-growth as forest more than 200 years old. Owl survey data indicate that northern spotted owls are dramatically and disproportionately found in association with older forests (55 FR 26114).

In the Oregon Coast Ranges, Oregon Cascades, Washington Cascades and Olympic Peninsula, and Klamath Province, owls use old forests more than expected for foraging (i.e., it is a "preferred" habitat) (55 FR 26114). Owls having an array of habitat types within their home ranges select for older forest, use mature forest in relation to its availability, and tend to avoid younger forest or use it in relation to its availability (USDI 1990). Roost sites are also strongly associated with older forests (55 FR 26114).

Paired northern spotted owls have relatively large home ranges and require large tracts of land containing significant acreage of older forest to meet their biological needs (e.g., foraging and breeding) (USDI 1990). Thomas *et al.* (1990) indicated median annual pair home range sizes varied from a high of 9,930 acres for the Olympic Peninsula to a low of 2,955 acres for the Oregon Cascades. Actual annual pair home range size varied from 1,035 acres in the Klamath Province to 30,961 acres in the Washington Cascades (USDI 1990).

Spotted owls on the Olympic Peninsula and Oregon Coast Ranges consistently occupy larger home ranges than owls in the other provinces. Forests within the Olympic Peninsula, Oregon Coast Ranges, and the Washington Cascades (west side) provinces are highly fragmented and have the least amount of older forest remaining within the range of the owl. As the quality and quantity of preferred habitat declines, owl home range sizes increase (USDI 1989).

On April 4, 1990, The Interagency Scientific Committee (ISC), established under an agreement among the Service, the U.S. Forest Service (FS), the U.S. Bureau of Land Management (BLM), and the National Park Service, released *A Conservation Strategy for the Northern Spotted Owl* (Plan). This Plan was based on the best biological information on the species available at the time, and was intended to ensure long-term viability for the owl in well-distributed numbers throughout its range while limiting, to the extent possible, adverse effects on human activities. The ISC developed a management strategy that focused on FS and BLM lands. By applying the principles of conservation biology, population modeling, and current spotted owl research data, the ISC developed a scientifically credible conservation strategy which combines a system of Habitat Conservation Areas (HCAs) capable of supporting multiple pairs of spotted owls with a management standard for the remaining forest matrix to provide dispersal between the HCAs (50-11-40 rule). This rule intended to provide for dispersal by requiring that 50 percent of the forest matrix outside of the large reserve areas (HCAs) be maintained in stands with trees averaging 11 inches or more in dbh and with at least 40 percent canopy closure. Neither part of the plan was designed to stand alone, and the Plan also recommends an adaptive management strategy and further research on the owl's biology and management (Thomas *et al.* 1990).

The ISC plan predicted, in a worst-case scenario, a 50 to 60 percent decline in the spotted owl population. This projected decline was based on the loss of all owl pairs outside of HCAs. The surrounding forest matrix would still offer marginal foraging opportunities for dispersing owls, so that genetic exchange among the HCAs would take place. The ISC plan was prepared before the owl was listed and did not explicitly address "recovery," "critical habitat," or any other aspect of the Endangered Species Act.

On August 6, 1990, the BLM released its management plan entitled *Northern Spotted Owl: The Jamison Plan Detailed Management Strategy* (Jamison Plan). This plan incorporates parts of the ISC Plan, but emphasizes BLM's requirements under the Federal Land Policy Management Act and the National Environmental Policy Act. The Jamison Plan provides interim guidance prior to the development of Resource Management Plans that are expected to be completed by fiscal year 1993. The Jamison Plan was designed to minimize economic impacts, protect northern spotted owls, and still provide for a maximum number of options during the interim planning period. The Jamison Plan incorporates the HCAs and considers the 50-11-40 rule where possible.

Critical habitat delineates areas that contain resources known to be essential to the conservation of a species. Conservation is defined in the Act to include actions necessary to ensure the recovery of a listed species. A recovery plan has not yet been developed for this species. Nevertheless, as required by the Act, the Service has based its proposal on the presence of constituent elements of habitat believed to be capable of supporting the survival and recovery of the northern spotted owl. The Service believes that this critical habitat proposal will contribute towards the species' recovery.

The proposal includes HCAs as well as other areas that contain habitat elements upon which owls depend and that are similarly in need of special management considerations or protection. The designation of critical habitat, however, does not prescribe any

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particular management regime in the areas so designated. Rather, it identifies areas within which interagency consultation under section 7 of the Act will address any potential loss of resources that could appreciably diminish the capability of that habitat to contribute to the survival and recovery of the species. Identification of HCAs is one element of the ISC strategy, which proposes not only a management prescription for the HCAs, but an overall management standard (the 50–11–40 rule) for forests outside the HCAs. Because the HCAs and the areas proposed as critical habitat are defined according to different criteria and serve different purposes, they should not be expected to coincide exactly. Nevertheless, the HCAs include large contiguous blocks of current and potential owl habitat and contain constituent elements essential to the conservation of the owl. Consequently, the Service used the HCA network as a basis for identifying critical habitat.

Previous Federal Actions

On January 28, 1987 and August 4, 1987, the Service received petitions requesting that the northern spotted owl be listed pursuant to the Act. On December 17, 1987, the Service made a finding that listing the northern spotted owl was not warranted at that time. Notice of this finding was published in the **Federal Register** on December 23, 1987 (52 FR 48552).

On May 5, 1988, several environmental organizations filed suit challenging the Service's finding that listing was not warranted. In an order issued on November 17, 1988, the Court concluded that the Service's petition finding was arbitrary and capricious, and ordered the Service to reanalyze the evidence and issue a revised petition finding.

On April 25, 1989, the Service issued a revised finding indicating that listing the northern spotted owl as a threatened species throughout its entire range was warranted.

On June 23, 1989 (54 FR 26666), the Service published a proposal to list the northern spotted owl as a threatened species. After a review of all comments received in response to the proposed rule, the Service published a final rule to list the northern spotted owl as a threatened species on June 26, 1990 (55 FR 26114), and thereby activated the protections applicable to listed species. The Service did not propose to designate critical habitat for the northern spotted owl within the proposed or the final listing rule because the Service found that critical habitat was not determinable at those times. The Service subsequently proceeded to commence work on a critical habitat proposal.

Plaintiffs filed an additional motion in *Northern Spotted Owl* v. *Hodel*, seeking to compel the Service to immediately propose critical habitat. On February 28, 1991, the Court ruled that the Service had violated the Act in failing to designate critical habitat concurrently with listing the owl. The Court ordered the Service to propose a rule on critical habitat by April 29, 1991, and to publish a final rule at the earliest possible time permitted under the appropriate regulations.

Biological Considerations of Critical Habitat

Critical habitat, as defined by section 3 of the Act, means: "(I) the specific areas within the geographic area occupied by a species * * * on which are found those physical and biological features (i) essential to the conservation of the species, and (ii) that may require special management considerations or protection; and (II) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species." The term "conservation," as defined in section 3(3) of the Act, means "to use and the use of all methods and procedures necessary to bring a listed species to the point at which protection under the Act is no longer necessary." Thus, the Service generally considers the needs of a species in terms of recovery from endangered or threatened status in its designation of critical habitat. Critical habitat may be proposed for species that are already listed as endangered or threatened.

The Service is required to base critical habitat proposals upon the best scientific data available (50 CFR 424.12). In determining what areas are to be proposed as critical habitat based on biology, the Service considers those physical and biological attributes that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements, as stated in 50 CFR 424.12, include, but are not limited to, the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring; and generally;

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

In considering the biological basis for proposing critical habitat, the Service focuses on the primary physical and biological constituent elements that are essential to the conservation of the species, without consideration of land ownership. Primary constituent elements may include, but are not limited to, roost sites, nesting areas, feeding areas, and vegetation types (50 CFR 424.12(b)). The Service is required to list the known primary constituent elements together with a description of any critical habitat that is proposed.

In the case of the northern spotted owl, coniferous and mixed coniferous/hardwood forests within the range of the subspecies that provide for nesting, roosting, and foraging constitute the primary constituent elements of its critical habitat. Such habitat also permits successful movement by owls. Northern spotted owls generally find suitable nesting, roosting, and foraging habitat in forests which exhibit: moderate to high canopy closure; a multi-species, multi-layered canopy dominated by large overstory trees; a high incidence of large trees with deformities; numerous large snags; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for owls to fly (Thomas *et al.* 1990). Large tracts of land containing significant acreage of forest with these structural components are generally required to satisfy the biological needs of spotted owls (e.g., nesting, roosting, and foraging) (55 FR 26114). Marginal foraging and dispersal habitat may be comprised of younger aged (<100 years) forests that provide protection from avian predators and support an adequate prey base.

The extensive range of the spotted owl within Washington, Oregon, and California encompasses over 7 million acres of forested habitat suitable for nesting and an undetermined amount of other forest types that are also of significance to the survival and recovery of the subspecies. Logging and other activities have reduced much of this habitat to small, fragmented, and isolated stands that are not expected to support the few remaining pairs over time.

Numerous attempts have been made in recent years by the BLM and FS to map suitable spotted owl nesting habitat on their lands. However, the FS and BLM used different definitions to identify nesting habitat, and the definitions varied among National Forests and have changed from year to year as more data have been collected on spotted owl occurrences. For example, the BLM has only mapped habitat greater than 80 years of age while the FS included a wide range of forest types and conditions, from young forests with inclusions of old growth to very old, multi-layered stands. Other attempts have also been made to map habitat. The Audubon Society, using FS and BLM data, produced maps that depict older forest groves greater than 200 acres in size. Although the Wilderness Society has not attempted to map owl habitat, it has published maps that identify remaining old growth habitat in the western forests of Oregon, Washington, and northern California.

The detail and scale of these maps, and the amount of first-hand information available from experts, were highly variable throughout the range of the species. The fragmented distribution of owl habitat also affected the delineation of critical habitat areas. Because of these factors, it was not possible for the Service to identify as critical habitat all areas containing the primary constituent elements listed above. The spotted owl requires relatively large contiguous areas of habitat to meet its life requisites; small, isolated, and highly fragmented stands are less valuable and may not necessarily be essential to the conservation of the species. Small, isolated, or fragmented stands were proposed as critical habitat, however, when they were needed to maintain the integrity of and promote future development of large contiguous habitat areas.

The Service relied substantially upon the ISC strategy for the spotted owl in formulating this proposed designation of critical habitat. This management plan includes management guidelines for the entire forest matrix on Federal lands within the range of the owl and a series of reserves labeled as HCAs. The ISC suggested that the same provisions that apply to BLM and FS lands apply to all other lands as well. Thus, the ISC plan essentially encompasses the entire range of the northern spotted owl; the western portions of California, Oregon, and Washington from north of San Francisco Bay to southern British Columbia, Canada.

In designating critical habitat, the Service does not necessarily delineate the entire range of a species. Often, portions of the range are selected, and these portions may contain areas that are not always occupied by the species. In the case of the northern spotted owl, the Service selected a network of areas within the range of the owl to propose as critical habitat, and used the HCAs identified in the ISC plan as the basis of its proposed designation of critical habitat. However, due to differences between the HCA network and the regulatory requirements for critical habitat, these two designations do not overlap exactly.

The differences between the identification of HCAs and a designation of critical habitat under the Endangered Species Act should be recognized. Although critical habitat boundaries must be legally described and accurately mapped, the HCA boundaries did not correspond with legally definable boundaries. The Service, in many cases, redrew HCA boundaries in conformance to section lines to allow the boundary to be legally described as critical habitat.

Because HCAs were used as a base for critical habitat, the unsuitable habitat within the HCAs was also included in the proposed critical habitat to facilitate the development of large blocks of habitat. While the HCAs contain significant contiguous blocks of currently suitable owl habitat, they also contain many areas that presently are unsuitable as habitat. The ISC presumed that this habitat would reach its full potential in the future and with protection would become suitable for nesting and foraging within a 100-year management period. The proposed designation of critical habitat outside of the HCAs is based on the presence of habitat that is currently suitable and sometimes contain larger more contiguous blocks of habitat than the original HCAs. Some smaller patches of land that cannot support any of the primary constituent elements were incidentally incorporated into the proposed critical habitat boundaries, primarily because of the difficulty of providing legal descriptions in sufficient detail to exclude them. Where possible (within the requirements imposed by legal descriptions, etc.), sites that cannot support suitable habitat characteristics (e.g., alpine areas, and lava flows) were excluded from the critical habitat designation.

A further difference between the HCA network and the proposed critical habitat is that the HCAs were deliberately structured around 1.9 million acres of existing reserved lands, particularly wilderness areas and National Parks, and in some cases excluded larger, less fragmented blocks of owl habitat. This incorporation of reserved areas was a significant element of the overall ISC strategy. In contrast, the Act requires the Service to focus on areas within the owl's range that contain the biological elements essential to the conservation of the species and that require special management attention. In fact, the Service has not proposed any wilderness areas or National Parks as critical habitat because the statutory protection afforded wilderness areas obviates the need for special management considerations or protection. The Service does recognize, however the contribution of those wilderness areas to the conservation of the owl even though they are not part of the proposed critical habitat.

In the 1989 Status Review Supplement (USDI 1989), the Service identified areas of concern within checkerboard Federal and non-Federal ownership where habitat linkage within and between physiographic provinces is at risk. The Service proposes to designate critical habitat within those areas of concern because preserving these habitat linkages is essential to the conservation of the owl. The four areas of concern, identified due to potential demographic isolation, occur both between and within physiographic provinces and are caused by habitat fragmentation associated with areas of intermingled (checkerboard) land ownership. The Interstate 90 area of concern, within the Washington Cascades province, and the Santiam Pass area of concern, within the Oregon Cascades, are two areas the Service focuses on because of isolation within provinces. The Interstate 5 area of concern in southern Oregon consists of three inter-provincial linkage areas: The Southern Willamette-North Umpqua and Southern Umpqua-North Rogue, which link the Coast Ranges and Cascades provinces, and South Ashland, which links the Klamath province with the Cascades. The Columbia Gorge is an inter-provincial area of concern due to the extensive non-forested zone between the Oregon and Washington Cascades provinces. Habitat conditions that allow owls to move successfully across these areas of concern cannot be assured given existing land management practices and habitat conditions in areas of intermingled ownership. The need to provide linkages across these areas of concern on both public and private lands will become increasingly more important if habitat conditions continue to decline elsewhere. Critical habitat designation within areas of concern is intended to help maintain these essential linkages by promoting habitat conditions suitable for owl passage.

Owls must be able to move through these areas of concern to provide for genetic exchange between subpopulations, to recolonize formerly-occupied portions of the subspecies range, and for juvenile owls to disperse

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from their natal areas, especially between physiographic provinces. The quality of travel habitat is based on stand density and size, tree size, and percent overstory closure to allow for protection from avian predators during juvenile and adult movement periods. Such habitat also provides marginal foraging opportunities. Because spotted owls tend to disperse in random directions, Thomas *et al.* (1990) concluded it is unlikely that special dispersal corridors would successfully lead traveling owls from one suitable habitat block to another. Instead, they suggested that the general forest landscape should be maintained in a condition that will allow successful owl movement. Based on their examination of both owl dispersal characteristics and general harvest practices, the ISC developed the "50–11–40" rule. According to the ISC, this configuration provides marginal foraging habitat for dispersing owls. Owls can move through such younger coniferous forest stands that provide protection from avian predators and offer marginal foraging opportunities.

Proposed Critical Habitat Designation

The Service has identified 190 critical habitat areas totaling 11,638,195 acres in California, Oregon, and Washington. The approximate acreage of proposed critical habitat areas by land ownership and State is shown in Table 1.

TABLE 1. APPROXIMATE ACREAGE OF PROPOSED CRITICAL HABITAT AREAS (CHAs) FOR THE NORTHERN SPOTTED OWL

	Oregon	California	Washington	Total
USFS	2,654,791	1,491,175	2,319,070	6,465,036
BLM	1,099,695	296,275	320	1,396,290
Tribal [1]	6,970	5,100	62,260	74,330
State	164,850	101,155	344,620	610,625
COE [2]	3,020	0	0	3,020
Military	0	240	78,135	78,375
Private	1,169,864	1,374,000	476,865	3,020,629
Total	5,099,180	3,257,945	3,281,070	11,638,195
No. of CHAs	66	78	46	190

[1] The Service notes that the proposed rule includes lands subject to Indian sovereignty claims.
[2] Army Corps of Engineers.

Effects of Critical Habitat Designation

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Regulations found at 50 CFR 402.02 define destruction or adverse modification of critical habitat as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

When evaluating proposed activities within critical habitat through section 7 analyses, the Service would use biological assessments provided by the action agency and focus on the likely effects of a project on the constituent elements (i.e. nesting, roosting and foraging habitat, and habitat that facilitates movement of owls between and within physiographic provinces) contained in a particular area of critical habitat before determining whether a project is likely to destroy or adversely modify critical habitat. These activities may include actions that would reduce the canopy closure of a timber stand; reduce the average dbh of the trees in the stand; reduce the multi-layered stand structure; reduce the availability of nesting structures and roost sites; reduce the suitability of the landscape to provide for safe movement; or reduce the abundance or availability of prey species.

Proposed Federal actions are evaluated on a case-by-case basis to determine if they would be likely to destroy or adversely modify critical habitat. In order to make that determination, the Service considers the effect of the proposed project on the primary constituent elements in the proposed project location and the reasons why the specific area was designated. An activity cannot cause adverse modification in an area within designated critical habitat that does not contain such elements. Some such areas were incidentally included in the proposed designation to facilitate the process of completing legal descriptions. Furthermore, some activities would not be restricted due to critical habitat designation because they would have no effect on the primary constituent elements. Many of the recreation and "personal use" commodity production activities listed below would very likely fall in that category. Note, however, Federal projects that may not adversely modify critical habitat may still affect spotted owls (e.g., through disturbance) and, therefore, be subject to review under the jeopardy standard of section 7 of the Act.

Some activities could be considered to be of benefit to spotted owl habitat and, therefore, would not be expected to adversely modify critical habitat. Examples of activities that could benefit critical habitat include some protective measures such as fire suppression or forest-pest eradication, as well as silvicultural treatments that the Service determines would improve spotted owl habitat.

Areas proposed for designation as critical habitat support a number of commercial and noncommercial activities. Commercial activities that may be proposed within critical habitat include timber harvests, other wood fiber utilization (paper, firewood, etc.), Christmas tree farming, livestock grazing, mining, activities associated with oil and gas leases, construction and operation of hydroelectric facilities, geothermal development, construction of alpine ski areas, and various site-specific activities such as scenic tours and cavern exploration. Non-commercial activities are largely associated with recreation and include hiking, camping, fishing, hunting, cross-country skiing, off-highway vehicle use, organized moto-crosses, and various activities associated with nature appreciation. Additional activities include "personal use" commodity production such as firewood gathering, mushroom and plant gathering, Christmas tree cutting, rock collecting, etc. Activities associated with land management by involved agencies include fire suppression, controlled burning, erosion control, campground construction and maintenance, trail construction and maintenance, road construction and maintenance, military maneuvers, and silvicultural activities such as tree planting, brush control, pre-commercial thinning, and forest pest management (insects, rodents, mistletoe, etc.).

As stated previously, each proposed project would be examined in relation to its site-specific impacts. Thus, projects such as commercial thinning of timber stands and other selective harvest prescriptions may or may not destroy or adversely modify critical habitat, depending on the type of harvest and the pre-project condition of the area in relation to spotted owl habitat needs.

In evaluating projects within critical habitat the Service will focus on the primary constituent elements contained at the specific site and the reasons why that particular area was proposed to be critical habitat. The involved Federal agencies can assist the Service in its evaluation of proposed actions by providing detailed information on the habitat configuration of a project area, habitat conditions of surrounding areas, and information on known locations of spotted owls. The Service would focus on the specific primary constituent element in its evaluation of any proposed action. Thus in an area of concern, where linkage habitat is important, the Service may not consider a proposed harvest to constitute adverse modification if the surrounding forest matrix would still permit movement opportunities for owls. However, a proposed action that would result in further fragmentation or loss of nesting habitat might be considered adverse modification if it appreciably reduced the value of the habitat. To the maximum extent possible, the Service is required under section 7 of the Act to include reasonable and prudent alternatives to any proposed action that would result in adverse modification of critical habitat. By definition, reasonable and prudent alternatives refer to alternative actions identified during section 7 consultation that can be implemented in a manner consistent with the intended purposes of the action consistent with the scope of the Federal agency's legal authority and jurisdiction, and thus would allow the intended purpose of the action to go forward.

The northern spotted owl was listed as threatened primarily because of widespread habitat loss and fragmentation from logging operations. The main timber harvest prescription that has resulted in this fragmentation has been the clear cut. For the most part, the Service has proposed areas that contain large contiguous blocks of older forest habitat as critical habitat. One purpose of this effort has been to reduce fragmentation. Throughout the range of the owl, nesting pairs are occasionally found in younger forests, although the center of activity is the older remnant patches of forest.

In addition to the larger contiguous blocks of older forest habitat selected by the Service for its proposal of critical habitat, the Service has proposed several areas of linkage habitat within the range of the owl. These linkage sites are in the areas of concern addressed above. These areas can provide marginal foraging opportunities for dispersing owls if they conform to the 50–11–40 rule described by the ISC plan.

Although designating critical habitat for the northern spotted owl will affect primarily activities on Federal lands, there may be significant impacts on private and other non-Federal lands. Over 30 percent of the acreage proposed for critical habitat designation is non-Federally owned. In addition, although critical habitat designation affects Federal agencies directly because of their conservation and consultation responsibilities under section 7 of the Act, private activities requiring Federal permits or funding can also be affected. An example is a right-of-way permit required from the BLM in order to allow timber harvest on an area of private land. Use of existing roads alone does not constitute access. Moreover, there may be State or local requirements that are triggered by the presence of Federally designated critical habitat. An example might be a State requirement for more exacting environmental reviews of proposed activities within critical habitat.

Summary of Economic Analysis

Section 4(b)(2) of the Act requires the Service to designate critical habitat on the basis of the best scientific data available and after consideration of the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

The Act thus requires the Service to evaluate those economic and other impacts likely to take place due to the designation of critical habitat. Effects attributable to listing of the owl as a threatened species, increasing automation in the timber industry, and reduction in available timber to harvest are not analyzed as effects of the designation of critical habitat. Due to the complex interplay of economic forces involved, this task of examining impacts associated solely with the designation of critical habitat is often difficult.

Following the receipt of additional economic cost and benefit information, the Service will evaluate proposed critical habitat boundaries on a case by case basis. If specific areas are identified where the economic costs are high, the Service will evaluate the biological needs of the northern spotted owl within that particular area. Following this two-staged evaluation, the Service may revise proposed critical habitat boundaries.

For the purposes of its initial economic analysis the Service has used the current economic situation within the timber industry as the baseline for predicting the economic effects that would result from designating critical habitat for the owl. This baseline incorporates the intention of the Forest Service to be not inconsistent with the ISC Plan and the Bureau of Land Management implementation of the Jamison Plan. In assessing the economic impacts from designating critical habitat, the Service attempts to predict the most likely changes in planned land uses, over and above existing land use restrictions. This requires an assessment of current land management strategies with respect to the northern spotted owl. The two major Federal managers involved, the FS and BLM, have indicated their intent to implement most of the ISC strategy. By **Federal Register** notice (55 FR 40412), the FS stated it would conduct timber harvest activities in a manner to not be inconsistent with the ISC Plan. Although the FS action is the subject of current litigation, as of the date of this notice the FS indicated that it does not plan to cut within the HCAs or to depart from the 50–11–40 rule. The BLM indicated it would protect the HCAs from harvest, and that it intended to implement the 50–11–40 rule as much as possible given current conditions. The BLM likewise has not indicated any intention to depart from these practices. Although these decisions represent policy decisions, and could be changed,

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the ISC plan is the most likely planning framework of which the Service is aware for FS and BLM lands. Therefore, for the purposes of its initial economic analysis, the Service has used implementation of the ISC plan as part of the baseline for determining the economic effects of critical habitat over and above existing conditions.

Federal lands are the main areas affected by the proposed designation of critical habitat. State and private lands are directly affected only where Federal involvement occurs (i.e., activities funded, authorized, or carried out by a Federal agency). The Service does recognize, however, the potential indirect effects on non-Federal lands that employ Federal actions as a basis for State or local requirements. The FS and BLM are the primary agencies affected by the proposed critical habitat designation. The Bureau of Indian Affairs, Corps of Engineers, and certain Army installations also oversee lands within the proposed critical habitat. The BLM, FS, Corps of Engineers, Fish and Wildlife Service, and Federal Energy Regulatory Commission have permitting responsibilities that may affect State or private activities.

For purposes of the initial economic analysis, the Service has included several assumptions in its identification of a baseline existing without designation of critical habitat: (1) The FS and BLM would not harvest timber within the HCAs, (2) the 50–11–40 rule would be followed on all FS lands (ISC plan), and (3) the 50–11–40 rule would be followed on 80 percent of BLM lands (Jamison strategy).

Assumptions relating to probable allowable activities within the proposed critical habitat areas include the following: (1) That up to 50 percent of the timber could be removed from areas that are additions to HCAs for the purpose of simplifying the definition of legal boundaries (line additions), (2) that as little as no timber harvesting would be allowed on proposed critical habitat areas that are essential additions to the HCAs, and (3) that proposed critical habitat in areas of concern could be subject to timber harvesting and would conform only to the 50–11–40 rule. We seek public comment on what the expected impacts on the economic baseline will be as a result of critical habitat designation.

The initial economic analysis was conducted using FS and BLM data to estimate some of the economic impacts associated with timber harvest activities administered by those agencies. Those impacts may not reflect all possible impacts on timber harvest on these lands. Many other activities that may take place within critical habitat may be affected resulting in economic impacts. Impacts on non-timber related Federal agency actions (e.g. energy and mineral exploration and development, tourism and recreational developments, etc.) and impacts of the effects of critical habitat designation on private, tribal, and State lands, related to both timber and nontimber uses, must be evaluated and considered.

The Act requires the Service to consider the benefits of designating critical habitat. The aforementioned estimated annualized costs do not include the substantial benefits which are expected, though unquantified, from the designation of critical habitat for the northern spotted owl. Such benefits include, but are not limited to, watershed protection, Native American heritage values, archaeologic resource protection, non-consumptive uses or recreation, protection of biological diversity, protection of sport and commercial fisheries, and protection of the older forest ecosystem. The techniques used to calculate values for these essentially non-market commodities are in the infancy of development, and rather cumbersome to employ. Studies that have been completed for these non-market commodities have consistently shown that they can be of extremely high value. The research methods used to quantify recreation and other use values require specific data that are not currently available for the areas designated as critical habitat. However, the benefits of designating critical habitat may be substantial.

As a result of the time constraints under which the proposed critical habitat designation was prepared and the magnitude of the issues and area under consideration, the Service's initial economic analysis does not adequately analyze the full range of the economic impacts, both positive and negative, of the proposed designation. To allow for completion of the analysis and the fullest possible public comment on the economic effects of the proposed designation, the Service is requesting public comment concerning several specific economic issues. See discussion under "Public Comments Solicited," below. Based upon public comments submitted by May 31, 1991, and other relevant information, the Service will prepare and publish for further public comment a revised proposed critical habitat designation. The Service will also prepare a complete draft economic analysis and will identify on a proposed basis any areas of proposed critical habitat that may be excluded pursuant to section 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of specifying the areas as critical habitat. The Service intends to publish the revised proposed critical habitat designation within 60 days after the initial 30 day comment period closes. The Service will request public comments for 60 days on the revised proposal and will issue a final decision at the earliest possible time thereafter.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices.

Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies with respect to a federally listed species' designated critical habitat and the prohibitions against taking are discussed below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened, and with respect to its proposed critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act and 50 CFR 402.10 of the regulations, require Federal agencies to confer informally with the Service on any action that is likely to result in destruction or adverse modification of proposed critical habitat. If critical habitat is subsequently designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. In the case of the northern spotted owl, the Service will confer on projects within proposed critical habitat when so requested by the action agency. The Service expects to confer on some projects for which biological opinions on the effects of Federal agency actions on the spotted owl have already been issued. As necessary, the Service will prepare conference reports addressing effects of these actions on proposed critical habitat. The Service will issue combined consultation/conference documents for any requests received

subsequent to publication of the proposed rule.

A number of Federal agencies or departments fund, authorize, or carry out actions on lands that the Service proposes to designate as critical habitat. These agencies are the BLM, the FS, the Bureau of Indian Affairs, Department of Defense, Corps of Engineers, Bureau of Reclamation, Federal Energy Regulatory Commission, and Federal Highway Administration.

When the Service issues an opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, the Service also provides reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

The Service is aware of a number of ongoing section 7 consultations which may be affected by the designation of critical habitat as it is proposed. Table 2 lists, by State, those informal and formal section 7 consultations in progress within the range of the spotted owl.

TABLE 2. FORMAL AND INFORMAL SECTION 7 CONSULTATIONS IN PROGRESS ADDRESSING PROJECTS PROPOSED WITHIN THE RANGE OF THE NORTHERN SPOTTED OWL.

Proposed Project	Location	Agency[1]
OREGON:		
Land Exchange	Siskiyou NF[1]	FS
FY91 Timber Program.	Oregon & Washington.	FS
FY91 Timber Program.	State of Oregon.	BLM
Snowmobile Trail	Deschutes NF	FS
Gopher Belling	Umpqua NF	FS
Mining Claim	Siskiyou NF	FS
Campground Renovation.	Siskiyou NF	FS
Mill Town Hill Dam	Elkhead	BR
Grande Ronde Reservation Timber Program.	Grande Ronde Indian Reservation.	BIA
Hydroelectric Project.	Mt. Hood NF	FS
County Road Widening.	Dorena Reservoir.	COE
Land Exchange	Eugene District.	BLM
Mt. Ashland Ski Area.	Rogue River NF.	FS
Mt. Hood Meadows Expansion.	Mt. Hood NF	FS
Land Exchange	Coos Bay District.	BLM
WASHINGTON:		
Early Winters Resort.	Okanagan NF	FS
White Pass Ski Expansion.	Wenatchee NF.	FS
Big Bend Road Project.	Wenatchee NF.	FS
Fort Lewis Timber Program.	Ft. Lewis Military Installation.	DOD
Curly Creek Road Const.	Gifford Pinchot NF.	FS
Deadhorse Creek Hydroelectric Project.	Mt. Baker-Snoqualmie National Forest.	FHWA
Cushman Hydro. Project.	Olympic NF	FERC
Wynoochee Hydro. Project.	Olympic NF	FERC
Pressentin Creek Hydroelectric Project.	Mt. Baker-Snoqualmie National Forest.	FERC
Cumberland Creek Hydroelectric Project.	Mt. Baker-Snoqualmie National Forest.	FERC
O'Toole Creek Hydroelectric Project.	Mt. Baker-Snoqualmie National Forest.	FERC
Windfall Salvage Supplement.	Olympic NF	FS
Southshore Hazard Tree and Personal Use Firewood.	Olympic NF	FS
Pre-commercial Thinning and Aerial Fertilization.	Olympic NF	FS
CALIFORNIA:		
FY91 Timber Program.	N. California	FS

[1] FS=Forest Service, NF=National Forest, BLM=Bureau of Land Management, BR=Bureau of Reclamation, BIA=Bureau of Indian Affairs (Tribal Lands), COE=Corps of Engineers, FERC=Federal Energy Regulatory Commission, FHWA=Federal Highway Administration, DOD=Department of Defense

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, Indian Nations, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons why any habitat (either proposed critical habitat or additional areas) should or should not be determined to be critical habitat as provided by section 4 of the Act;

(2) Information regarding actions that should be considered necessary to achieve recovery of the northern spotted owl and the conditions that might allow it to be removed from the list of threatened wildlife;

(3) Current or planned activities in the subject area and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat;

(5) Economic values associated with benefits of designating critical habitat for the northern spotted owl. Such benefits include those derived from non-consumptive uses (hiking, camping, bird watching, etc.), and "existence values";

(6) The methodology the Service might use, under section 4(b)(2) of the Act, in determining whether the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat;

(7) Timber harvest activities anticipated on Federal lands, or affected by Federal agencies, other than FS and BLM lands;

(8) The percentage of lands within the proposed critical habitat boundaries that are available for timber harvest;

(9) Non-timber related Federal activities (including federally permitted, authorized, or carried out on State and private lands) and economic costs associated with any alternatives being considered; and

(10) Alternative methods to ensure linkage habitat in the areas of concern, including implementation of the 50–11–40 rule, or other means.

(11) The treatment that should be afforded tribal lands, especially with respect to Indian sovereignty issues.

As stated previously under "Summary of Economic Analysis," comments received during the initial 30 day comment period will be used to prepare a revised critical habitat designation which will be published for further public comment. The eventual final decision on this proposed designation of critical habitat will take into consideration the comments and any additional information received by the Service.

The Service intends to hold public hearings in Olympia, Washington;

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Portland, Oregon; Springfield, Oregon; and Arcata, California. Specific dates, locations, and times will be announced in a future Federal Register notice.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major rule under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within critical habitat areas, it is not clear whether that significant economic impacts will result from the critical habitat designation. In addition, there are a limited number of actions on private land that have Federal involvement through funds or permits that would affect or be affected by the critical habitat designation; the potential economic impact of the critical habitat designation on these actions will be evaluated. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1990.

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Authors

The primary authors of this rule are Karla Kramer, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement (see ADDRESSES section); Steve Spangle, U.S. Fish and Wildlife Service, Sacramento Field Station; Mike Tehan, U.S. Fish and Wildlife Service, Olympia Field Station; and Randy Tweten, U.S. Fish and Wildlife Service, Portland Field Station.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by revising the "critical habitat" entry for "Owl, northern spotted", under BIRDS, to read 17.95(b).

3. It is proposed to amend § 17.95(b) by adding critical habitat of the northern spotted owl (*Strix occidentalis caurina*), in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) * * *

* * * * *

Northern Spotted Owl (*Strix occidentalis caurina*)

California. Areas of land and water as follows:

Description of BB-1 taken Solely From Bureau of Land Management Maps; Bodega Bay 1982 and Napa 1983, California.

Sonoma County

Beginning at the intersection of Bodega Highway with Highway 116 at Sebastopol, California; thence southwesterly along the Bodega Highway to its intersection with Highway No. 1; thence northwesterly along said Highway No. 1 to the Russian River; thence northwesterly along said Russian River to Highway 116; thence southeasterly along said Highway 116 to the point of beginning.

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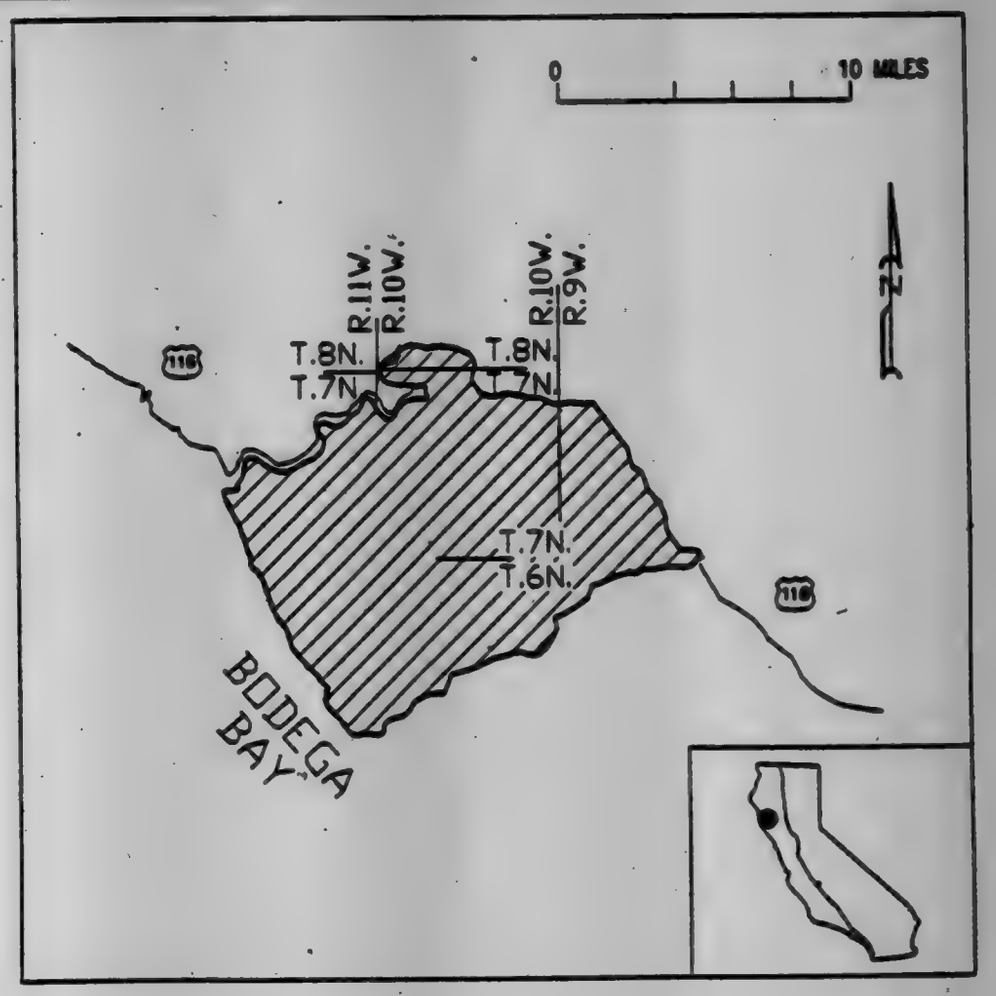

BB-1

BILLING CODE 4310-55-C

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Description of C-1 taken Solely From National Forest Service Map; Six Rivers, California 1984.

Siskiyou and Del Norte Counties.

T. 16 N., R. 2 E.: Humboldt Meridian
Secs. 11; 12; 13; 14; 15; 21; 22; 23; 24; 25; 26; 27; 28; 36; and 36.

T. 16 N., R. 3 E.: Humboldt Meridian
Secs. 1; 7; 12; 13; 14; 15; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 17 N., R. 4 E.: Humboldt Meridian
Secs. 1; 2; 3; 9; 10; 11; 12; 14; 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 33; 34; and 35.

T. 16 N., R. 4 E.: Humboldt Meridian
Secs. 1; 2; 3; 4; 5; 8; 9; 10; 11; 12; 15; 16; 17; 20; 21; 22; 27; 28; 29; 32; and 33.

T. 15 N., R. 2 E.: Humboldt Meridian
Secs. 1; 2; 11; 12; 13; 14; 23; and 24.

T. 15 N., R. 3 E.: Humboldt Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 15 N., R. 4 E.: Humboldt Meridian
Secs. 5; 6; 7; 8; 18; and 19.

T. 14 N., R. 3 E.: Humboldt Meridian
Secs. 4; 5; 9; 10; 15; 25; 26; 27; 34; 35; and 36.

T. 14 N., R. 4 E.: Humboldt Meridian
Secs. 1; 31; 32; 33; 34; and 35.

T. 13 N., R. 3 E.: Humboldt Meridian
Secs. 3; 25; 26; 34; 35; and 36.

T. 13 N., R. 4 E.: Humboldt Meridian
Secs. 1; 2; 3; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 13 N., R. 5 E.: Humboldt Meridian
Secs. 6; 7; 8; 17; 18; 19; 20; 29; 30; 31; and 32.

Excepting any of the above area lying within the Siskiyou Wilderness area.

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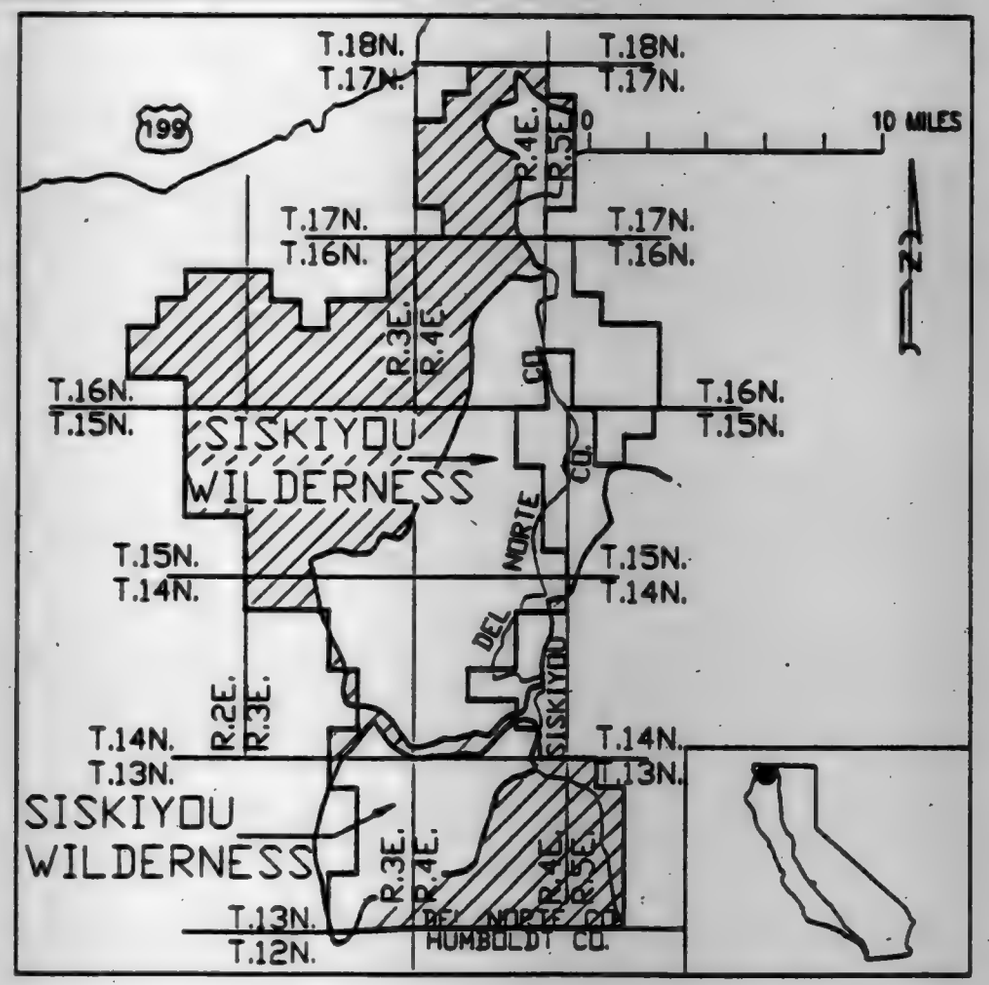

C-1

BILLING CODE 4310-55-C

Description of C-2 taken Solely From National Forest Service Map; Six Rivers, California.

Del Norte, Humboldt, and Siskiyou Counties

T. 12 N., R. 5 E.: Humboldt Meridian
Secs. 25; 26; 27; 31; 32; 33; 34; 35; and 36.

T. 12 N., R. 6 E.: Humboldt Meridian
Sec. 33.

T. 11 N., R. 4 E.: Humboldt Meridian
Secs. 1; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 32; 33; 34; 35; and 36.

T. 11 N., R. 5 E.: Humboldt Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 11 N., R. 6 E.: Humboldt Meridian
Secs. 4; 5; 6; 7; 8; 17; 18; and 19.

T. 10 N., R. 4 E.: Humboldt Meridian
Secs. 1; 2; 3; 10; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; and 27.

T. 10 N., R. 5 E.: Humboldt Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 16; 17; and 18.

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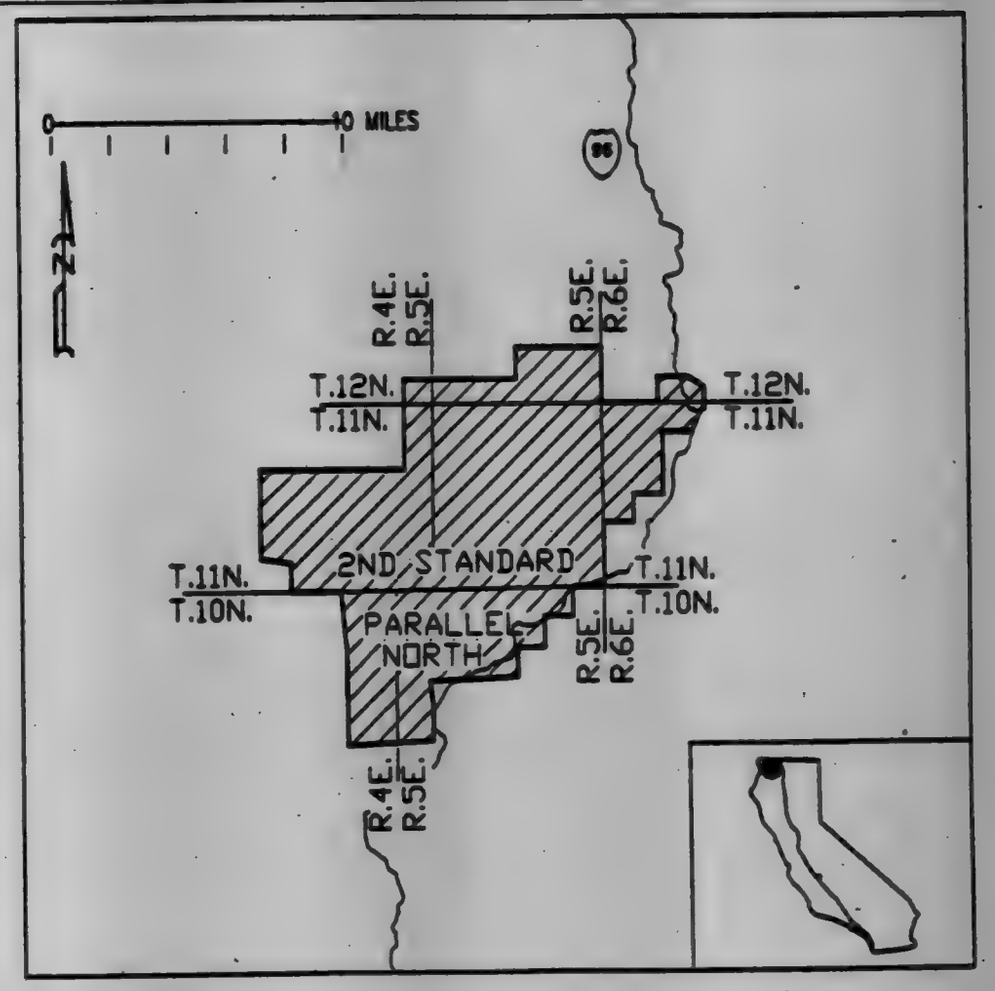

C-2

BILLING CODE 4310-55-C

Description of C-3 taken Solely From National Forest Service Map; Six Rivers, California.

Trinity and Humboldt Counties

T. 6 N., R. 4 E.: Humboldt Meridian
Secs. 13; 14; 15; 21; 22; 23; 24; 25; 26; 27; 28; 32; 34; 35; and 36.

T. 6 N., R. 5 E.: Humboldt Meridian
Secs. 18; 19; 30; 31; 32; and 33.

T. 5 N., R. 4 E.: Humboldt Meridian
Secs. 1; 2; 3; 4; 10; 11; 12; 13; 14; 23; 24; and 25.

T. 5 N., R. 5 E.: Humboldt Meridian
Secs. 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 22; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 4 N., R. 5 E.: Humboldt Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 22; 23; 24; and 26.

T. 4 N., R. 6 E.: Humboldt Meridian
Secs. 6; and 7.

BILLING CODE 4310-55-M

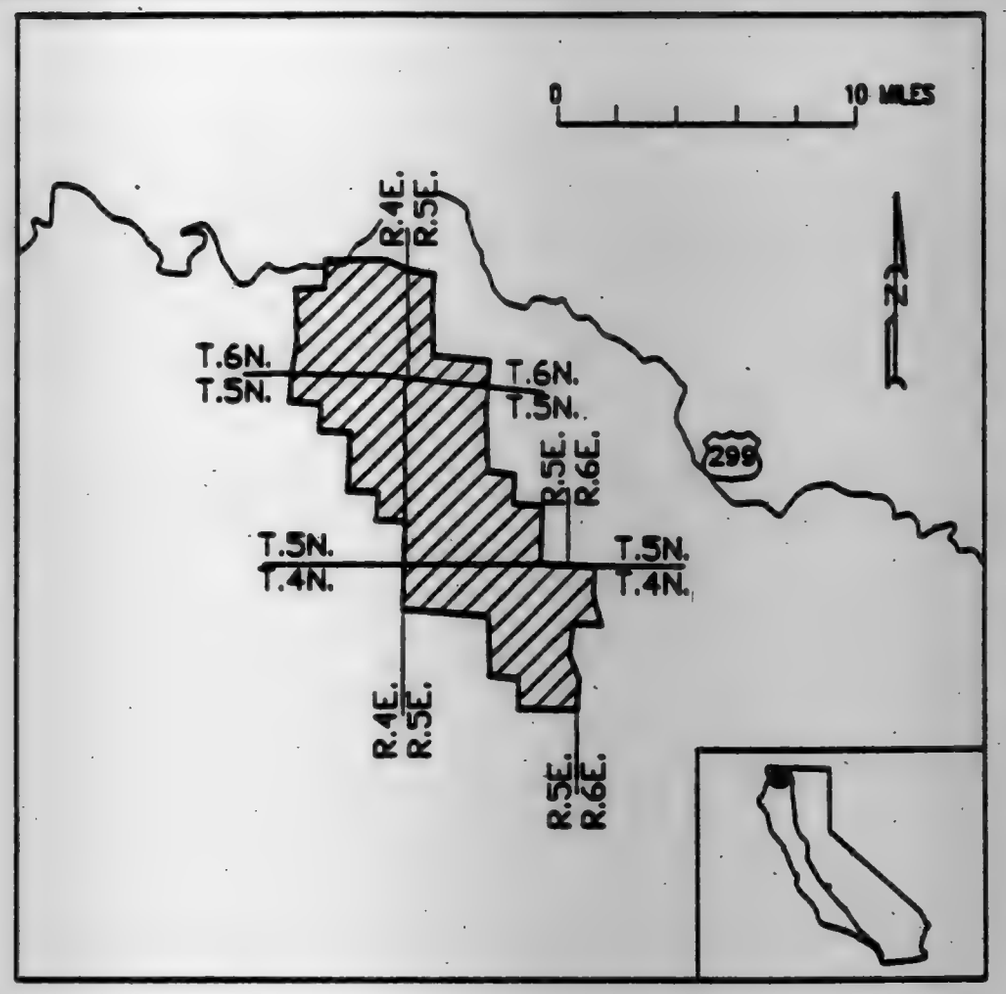

C-3

BILLING CODE 4310-55-C

Description of C-4 taken Solely From National Forest Service Map; Six Rivers, California.

Trinity and Humboldt Counties

T. 1 N., R. 5 E.: Humboldt Meridian
Secs. 1; 2; 10; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; and 27.

T. 1 N., R. 6 E.: Humboldt Meridian
Secs. 5; 6; 7; 8; 16; 19; 29; 30; 31; and 32.

T. 1 S., R. 5 E.: Humboldt Meridian
Secs. 13; 14; 22; 23; 24; 25; 26; 27; 34; 35; and 36.

T. 1 S., R. 6 E.: Humboldt Meridian
Secs. 5; 6; 8; 17; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 2 S., R. 6 E.: Humboldt Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 2 S., R. 5 E.: Humboldt Meridian
Secs. 1; 2; 11; 12; 13; 14; 23; and 24.

T. 2 S., R. 7 E.: Humboldt Meridian
Secs. 19; 30; and 31.

T. 3 S., R. 6 E.: Humboldt Meridian
Secs. 1; 2; 3; 4; 5; 9; 10; 11; 12; 13; 24; and 25.

T. 3 S., R. 7 E.: Humboldt Meridian
Secs. 4; 5; 6; 7; 8; 9; 15; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; and 33.

T. 4 S., R. 7 E.: Humboldt Meridian
Secs. 5; 6; 7; and 8.

BILLING CODE 4310-55-M

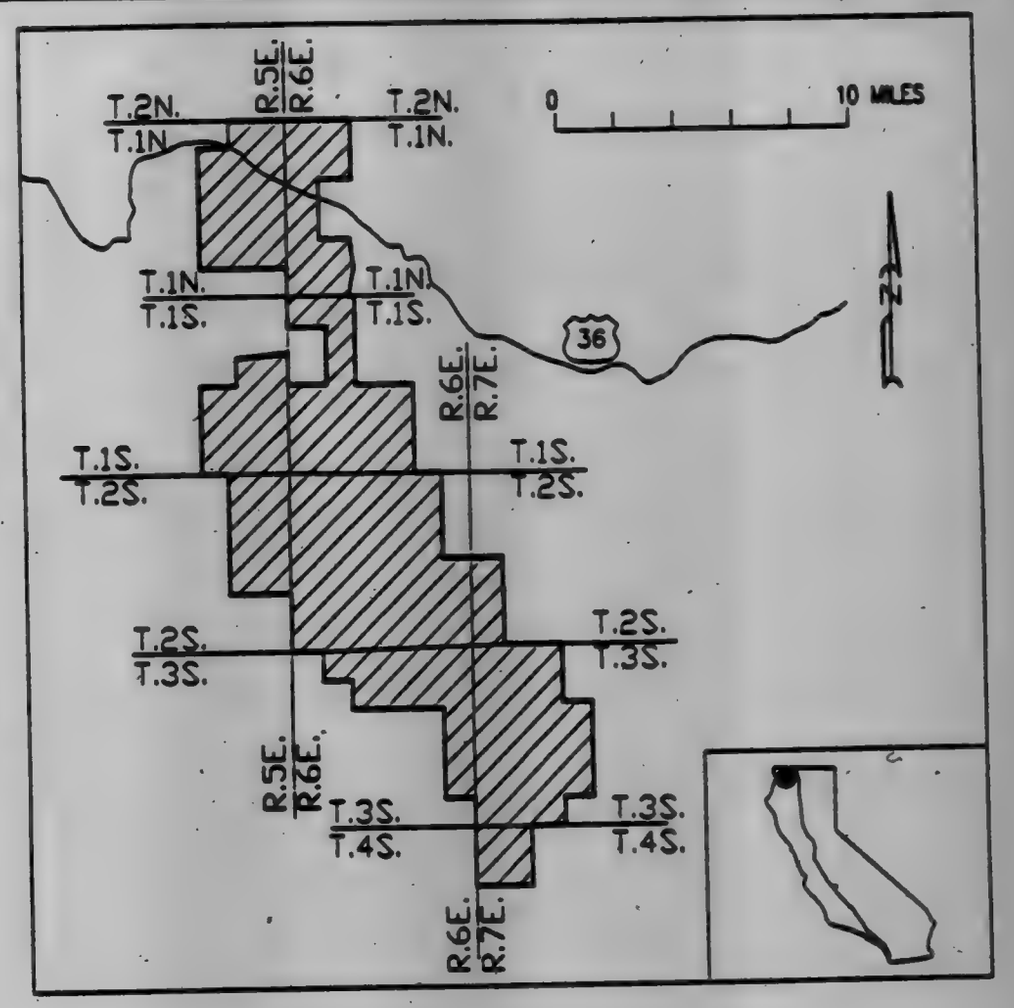

C-4

BILLING CODE 4310-55-C

Description of C-5-C taken Solely From National Forest Service Map; Klamath, California 1988.

Siskiyou County

T. 18 1/2 N., R. 7 E.: Humboldt Meridian
Secs. 33; 34; 35; and 36.

T. 18 N., R. 7 E.: Humboldt Meridian
Secs. 1; 2; 3; 4; 5; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 17 N., R. 7 E.: Humboldt Meridian
Secs. 1; 2; and 3.

T. 18 1/2 N., R. 8 E.: Humboldt Meridian
Secs. 31; 32; and 33.

T. 18 N., R. 8 E.: Humboldt Meridian
Secs. 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; and 33.

T. 17 N., R. 8 E.: Humboldt Meridian
Secs. 4; and 6.

T. 48 N., R. 12 W.: Mt. Diablo Meridian
Secs. 19; 20; 21; 27; 34; 35; and 36.

T. 47 N., R. 12 W.: Mt. Diablo Meridian
Secs. 1; 5; 6; 7; 8; 9; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 48 N., R. 11 E.: Humboldt Meridian
Secs. 31; 32; 33; 34; 35; and 36.

T. 47 N., R. 11 E.: Humboldt Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 48 N., R. 10 W.: Mt. Diablo Meridian
Secs. 31; and 32.

T. 47 N., R. 10 W.: Mt. Diablo Meridian
Secs. 4; 5; 6; 7; 8; 9; 18; 19; 20; and 30.

T. 48 N., R. 12 W.: Mt. Diablo Meridian
Secs. 2; and 3.

Excepting any of the above area lying within the Red Butte Wilderness Area.

BILLING CODE 4310-55-M

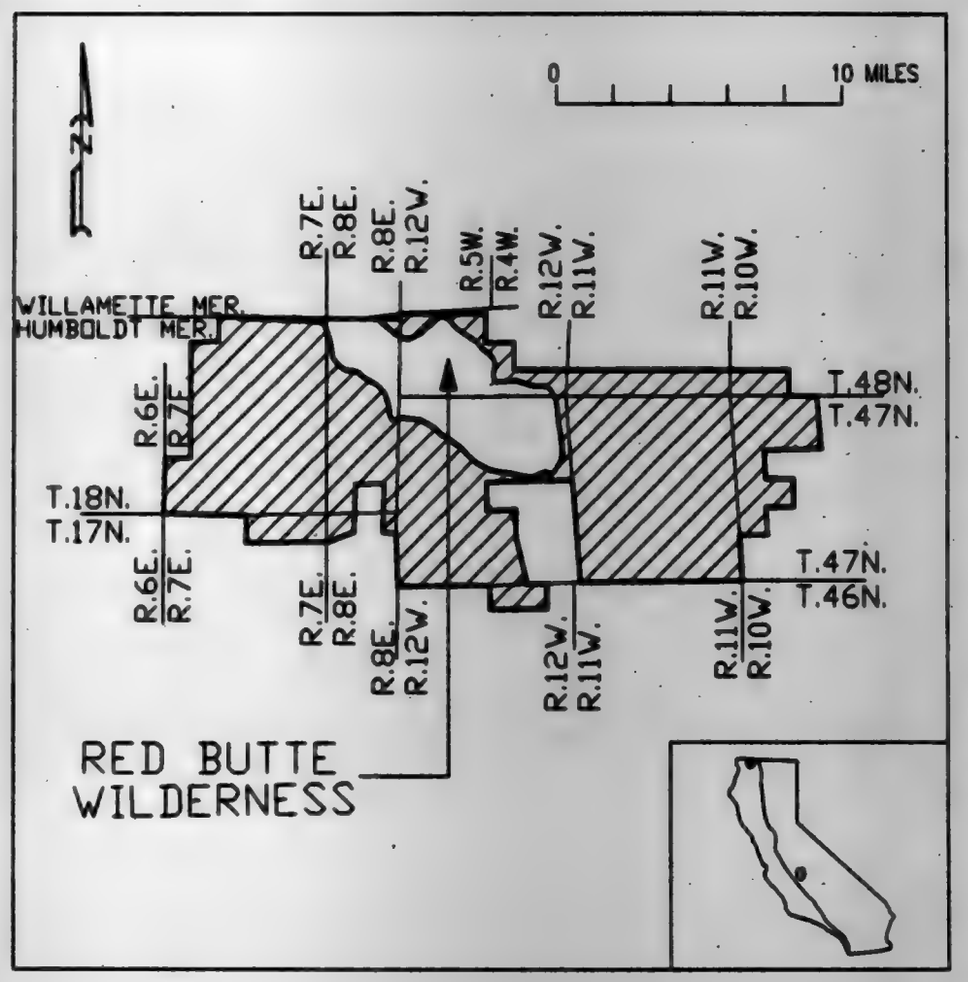

C-5-C

BILLING CODE 4310-55-M

Description of C-6 taken Solely From National Forest Service Map; Klamath, California 1988.

Siskiyou County.

T. 16 N., R. 8 E.: Humboldt Meridian
Secs. 9; 15; 16; 21; 22; 27; 28; 33; and 34.

T. 45 N., R. 12 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 46 N., R. 12 W.: Mt. Diablo Meridian
Secs. 25; 26; 31; 32; 33; 35; and 36.

T. 46 N., R. 11 W.: Mt. Diablo Meridian
Secs. 27; 28; 29; 30; 31; 32; 33; and 34.

T. 45 N., R. 11 W.: Mt. Diablo Meridian
Secs. 4; 5; 6; 7; 8; 9; 10; 11; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 44 N., R. 11 W.: Mt. Diablo Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; and 9.

T. 44 N., R. 12 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; and 5.

T. 15 N., R. 8 E.: Humboldt Meridian
Sec. 3.

Excepting any of the above area lying within the Marble Mountain Wilderness Area.

BILLING CODE 4310-55-M

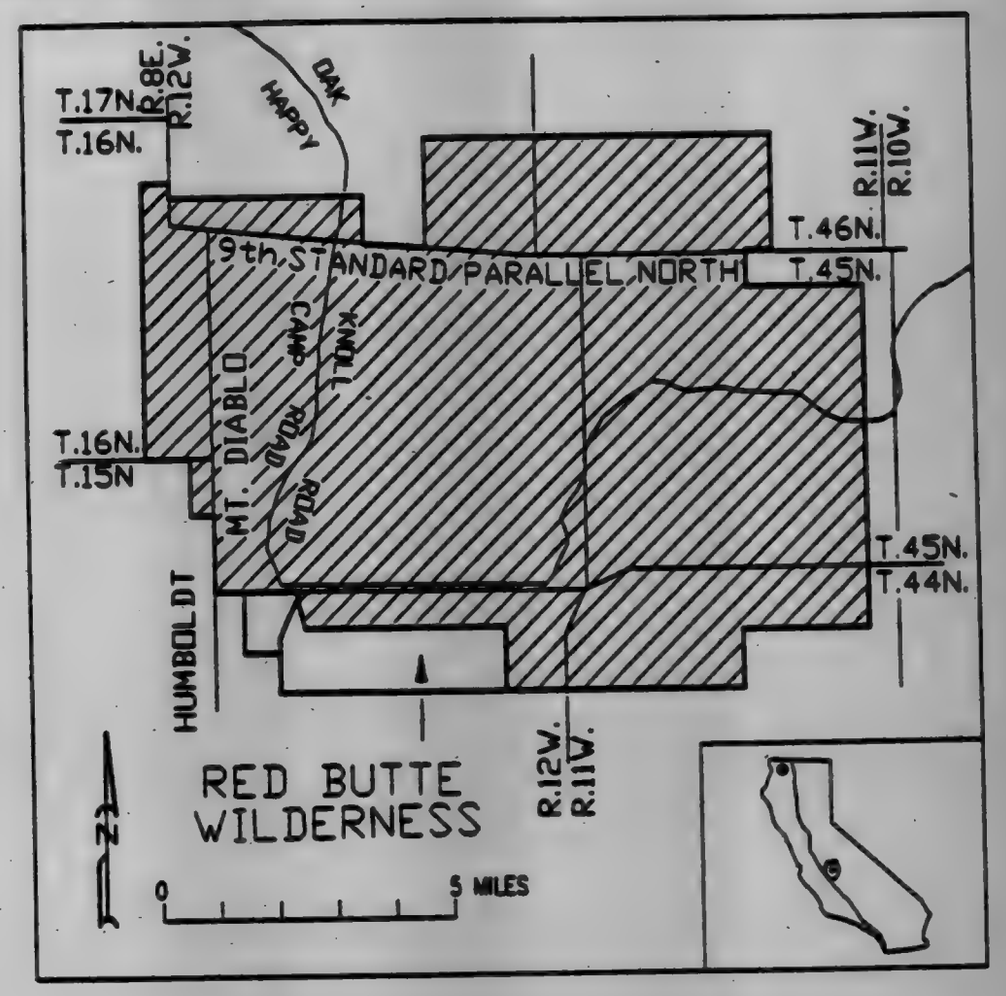

C-6

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-7 taken Solely From National Forest Service Map; Klamath, California 1988.

Siskiyou County.

T. 46 N., R. 10 W.: Mt. Diablo Meridian Secs. 25; 26; 27; 28; 33; 34; 35; and 36.

T. 45 N., R. 10 W.: Mt. Diablo Meridian Secs. 1; 2; 11; 12; 13; 14; 22; 23; 24; and 25.

T. 46 N., R. 9 W.: Mt. Diablo Meridian Secs. 30; 29; 30; 31; and 32.

T. 45 N., R. 9 W.: Mt. Diablo Meridian Secs. 5; 6; 7; 8; 9; 10; 16; 17; 18; 19; 20; 21; 28; 29; 30; 32; and 33.

T. 44 N., R. 9 W.: Mt. Diablo Meridian Secs. 4; 9; and 10.

BILLING CODE 4310-55-M

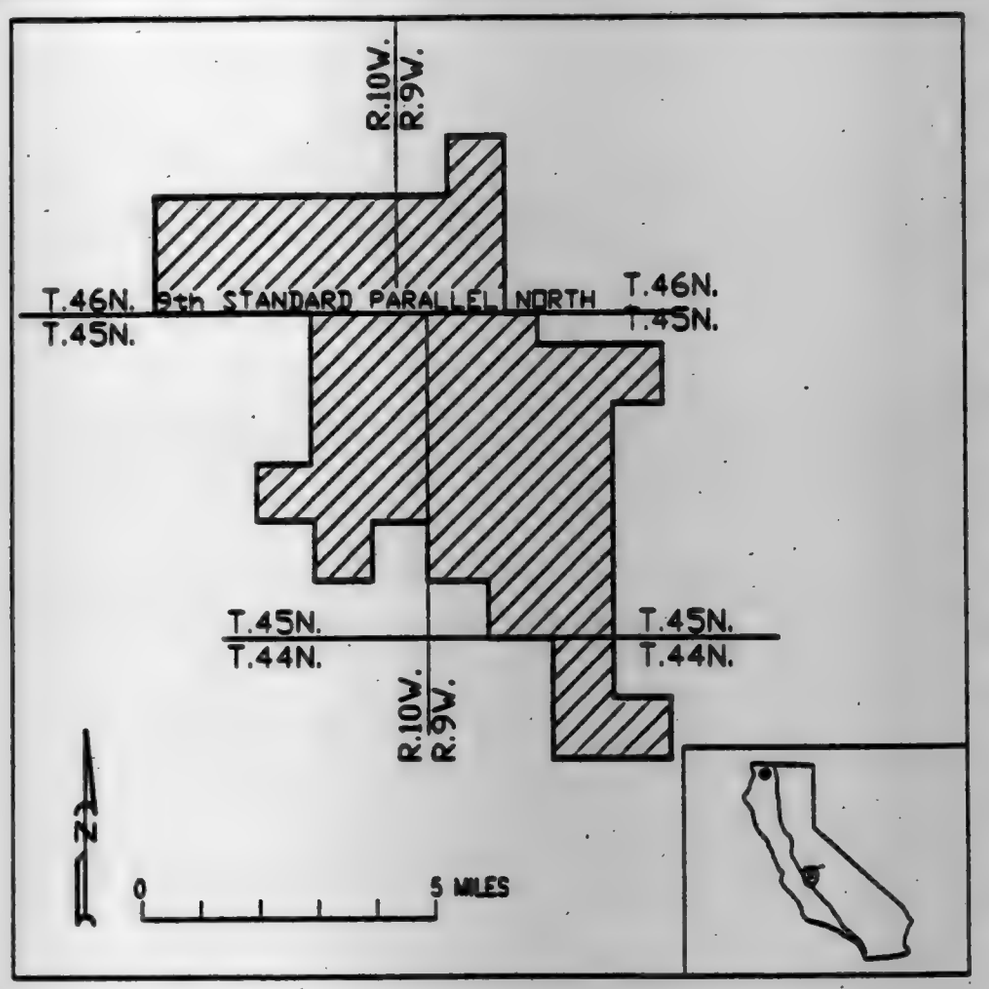

C-7

BILLING CODE 4310-55-C

Description of C-8 taken Solely From National Forest Service Map; Klamath, California 1988.

Siskiyou County.

T. 40 N., R. 11 W.: Mt. Diablo Meridian Secs. 7; and 8.

T. 40 N., R. 12 W.: Mt. Diablo Meridian Secs. 10; 11; 12; 13; 14; 15; 16; 17; 18; 23; and 24.

T. 41 N., R. 12 W.: Mt. Diablo Meridian Secs. 25; 26; 27; 34; 35; and 36.

T. 41 N., R. 11 W.: Mt. Diablo Meridian Secs. 20; 30; and 31.

T. 11 N., R. 7 E.: Humboldt Meridian Secs. 1; 2; 3; 4; 5; 10; 11; 12; 13; 14; 22; 23; 24; 26; and 27.

T. 11 N., R. 8 E.: Humboldt Meridian Secs. 19; 20; 21; 29; and 30.

T. 14 N., R. 8 E.: Humboldt Meridian Secs. 7; and 8.

T. 15 N., R. 7 E.: Humboldt Meridian Secs. 14; 15; 16; 21; 22; 23; 26; 27; 28; 33; 34; 35; and 36.

T. 14 N., R. 7 E.: Humboldt Meridian Secs. 2; 3; 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 12 N., R. 7 E.: Humboldt Meridian Secs. 3; 4; 5; 6; 7; 8; 17; 18; 19; 32; and 33.

T. 12 N., R. 6 E.: Humboldt Meridian Secs. 1; 2; 11; 12; 13; 14; 23; and 24.

T. 13 N., R. 6 E.: Humboldt Meridian Secs. 1; 2; 3; 4; 5; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 27; 35; and 36.

T. 14 N., R. 6 E.: Humboldt Meridian Secs. 13; 14; 15; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

Excepting any of the above area lying within the Marble Mountain Wilderness area.

BILLING CODE 4310-55-M

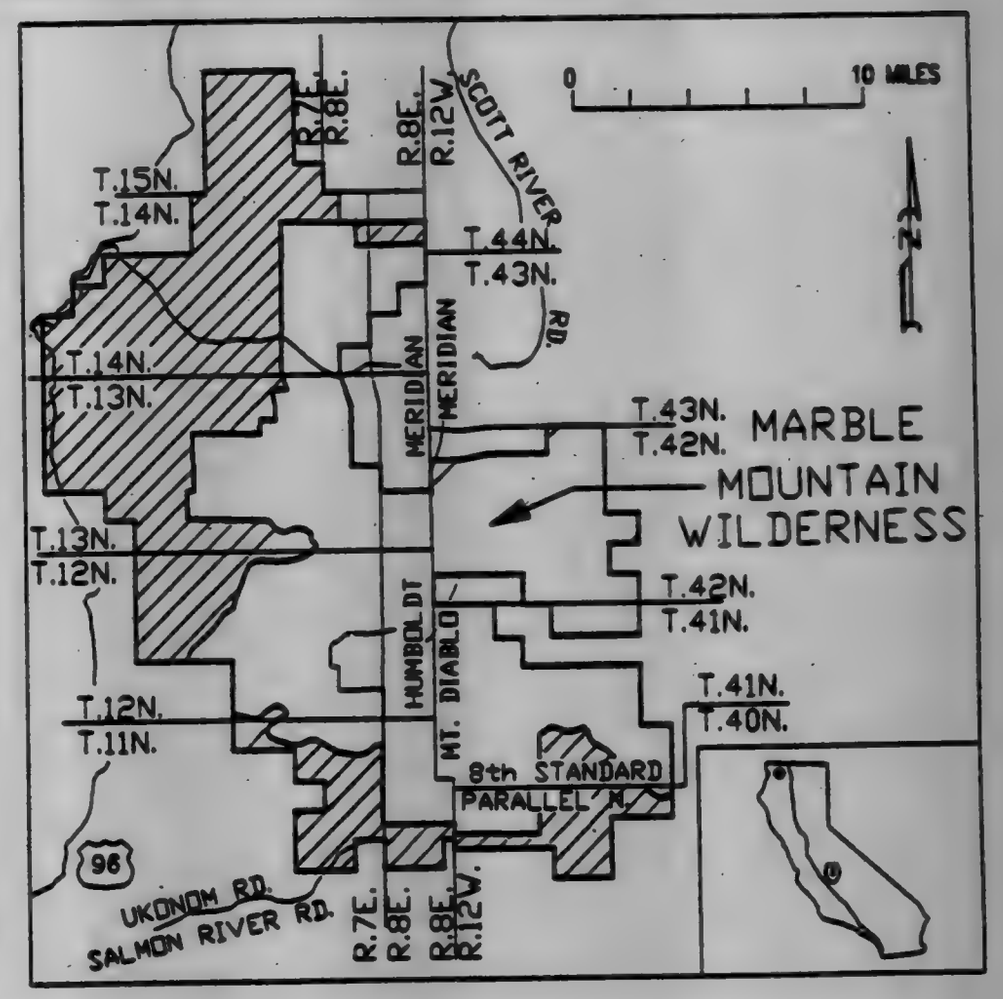

C-8

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-9 taken Solely From National Forest Service Map; Klamath, California 1988.

Siskiyou County.

T. 43 N., R. 11 W.: Mt. Diablo Meridian Secs. 34; 35; 36; and 36.

T. 42 N., R. 11 W.: Mt. Diablo Meridian Secs. 1; and 12.

T. 42 N., R. 10 W.: Mt. Diablo Meridian Sec. 6.

Excepting any of the above area lying within the Marble Mountain Wilderness area.

BILLING CODE 4310-55-M

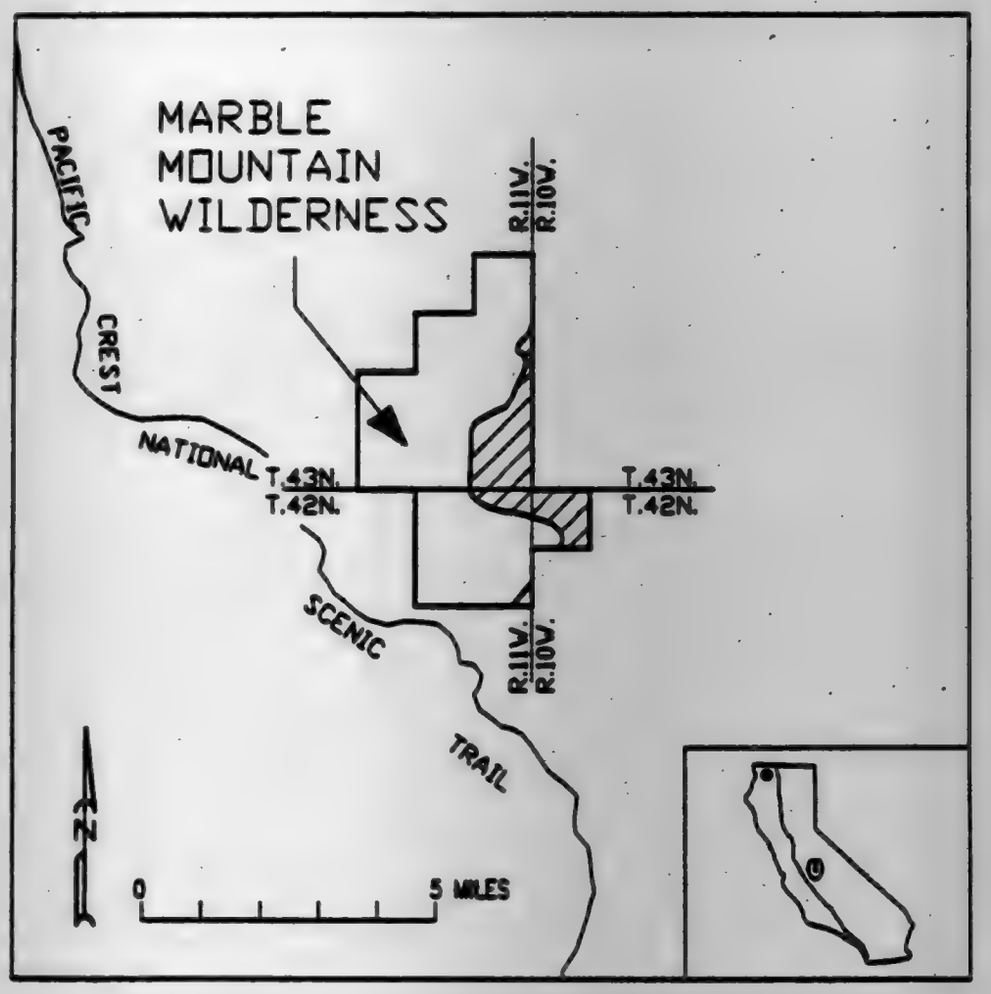

C-9

BILLING CODE 4310-55-C

Description of C-10 taken Solely From National Forest Service Map; Klamath, California 1988.

Siskiyou County.

T. 42 N., R. 10 W.: Mt. Diablo Meridian Secs. 33; 34; and 35.

T. 41 N., R. 10 W.: Mt. Diablo Meridian Secs. 2; 3; 4; 5; 8; 9; 10; 11; 12; 13; 14; 15; 16; 20; 21; 22; 23; 24; 28; 29; 31; 32; and 33.

T. 40 N., R. 10 W.: Mt. Diablo Meridian Secs. 7; 8; 9; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 39 N., R. 10 W.: Mt. Diablo Meridian Secs. 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 30; 31; and 32.

T. 40 N., R. 11 W.: Mt. Diablo Meridian Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 38 N., R. 11 W.: Mt. Diablo Meridian Secs. 3; 4; 5; 8; 9; 17; and 18.

T. 39 N., R. 12 W.: Mt. Diablo Meridian Secs. 11; 12; 13; 14; 23; 24; 25; and 36.

T. 38 N., R. 12 E.: Humboldt Meridian Secs. 1; 10; 11; 12; 13; 14; 15; 22; 23; and 24.

Excepting any of the above area lying within the Marble Mountain Wilderness and Russian Wilderness areas.

BILLING CODE 4310-55-M

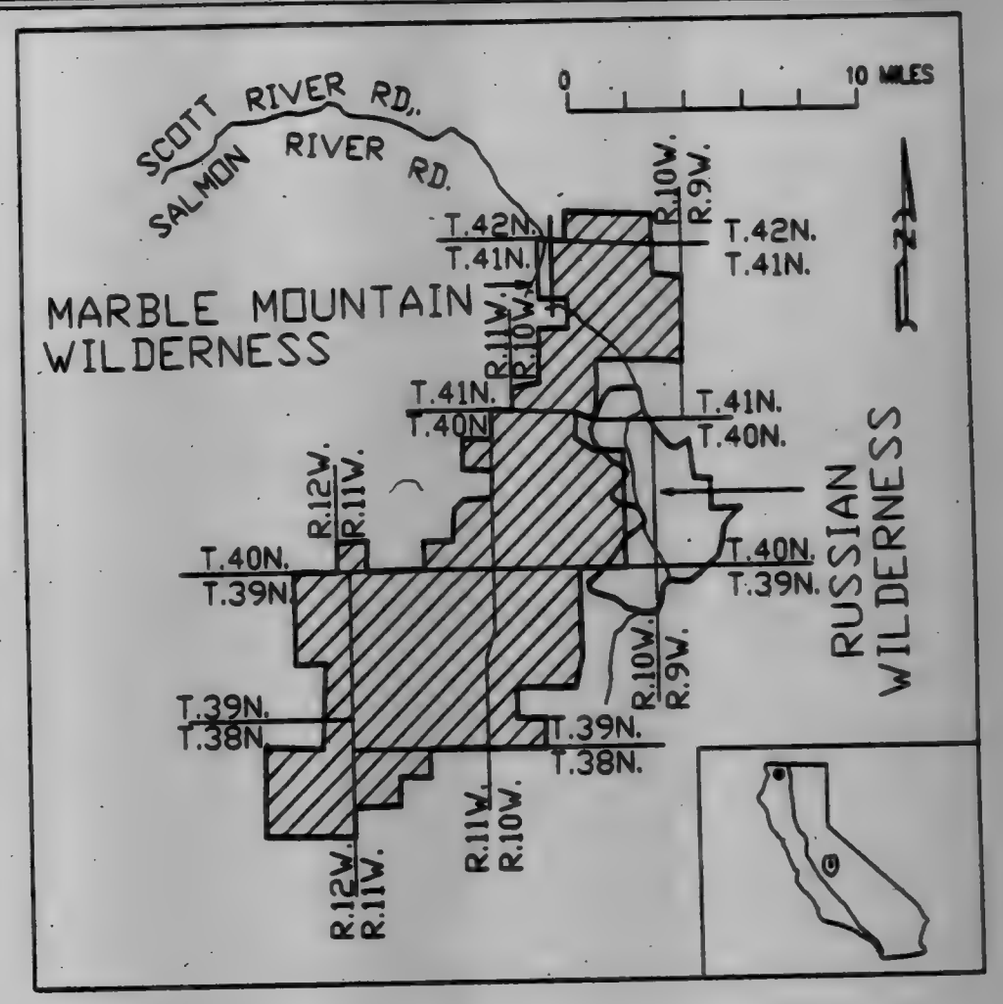

C-10

BILLING CODE 4310-55-C

Description of C-11 taken Solely From National Forest Service Map: Trinity, California 1987

Humboldt and Trinity Counties.

T. 9 N., R. 6 E.: Humboldt Meridian
Secs. 7; 8; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 9 N., R. 5 E.: Humboldt Meridian
Secs. 12; 13; 14; 23; 24; 25; 26; 35; and 36.

T. 8 N., R. 5 E.: Humboldt Meridian
Secs. 1; 12; and 13.

T. 8 N., R. 6 E.: Humboldt Meridian
Secs. 4; 5; 6; 7; 8; 9; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 8 N., R. 5 E.: Humboldt Meridian
Secs. 25; 26; 34; 35; and 36.

T. 7 N., R. 5 E.: Humboldt Meridian
Secs. 1; 2; 3; 11; 12; 13; and 14.

T. 7 N., R. 6 E.: Humboldt Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 32; 33; 34; 35; and 36.

T. 7 N., R. 7 E.: Humboldt Meridian
Secs. 6; 7; 10; 11; 14; 15; 16; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 7 N., R. 8 E.: Humboldt Meridian
Secs. 19; and 30.

T. 6 N., R. 7 E.: Humboldt Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 19; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 6 N., R. 6 E.: Humboldt Meridian
Secs. 1; 2; 3; 4; 11; 12; 13; 14; 23; and 24.

T. 5 N., R. 7 E.: Humboldt Meridian
Secs. 1; 2; 3; 11; 12; 18; 19; 30; 31; and 32.

T. 5 N., R. 6 E.: Humboldt Meridian
Secs. 5; 6; 8; and 21.

T. 34 N., R. 12 W.: Mt. Diablo Meridian
Secs. 13; 14; 18; 23; 24; 25; 26; and 27.

T. 34 N., R. 11 W.: Mt. Diablo Meridian
Secs. 4; 5; 8; 17; 19; 20; 28; and 30.

T. 35 N., R. 11 W.: Mt. Diablo Meridian
Secs. 6; 7; 17; 18; 19; 20; 28; 30; 31; 32; and 33.

T. 36 N., R. 11 W.: Mt. Diablo Meridian
Sec. 32.

Excepting any of the above area lying within the Trinity Alps Wilderness area.

BILLING CODE 4310-55-M

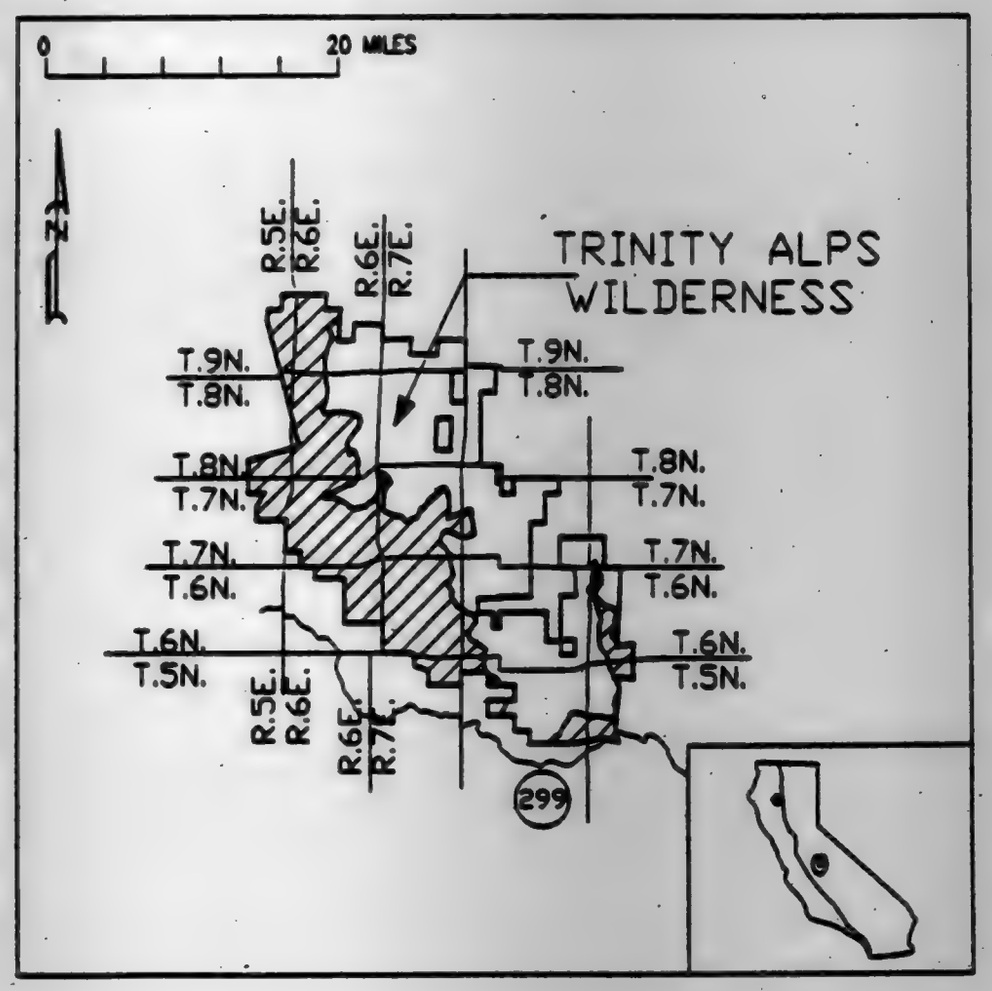

C-11

BILLING CODE 4310-55-C

Description of C-12 taken Solely From National Forest Service Map: Trinity, California 1987.

Trinity County.

T. 5 N., R. 7 E.: Humboldt Meridian
Secs. 27; 28; 29; 31; 32; 33; and 34.

T. 4 N., R. 7 E.: Humboldt Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 22; 23; 24; 25; 26; 27; 33; 34; 35; and 36.

T. 4 N., R. 6 E.: Humboldt Meridian
Secs. 12; and 13.

T. 3 N., R. 7 E.: Humboldt Meridian
Secs 2; and 3.

T. 4 N., R. 8 E.: Humboldt Meridian
Secs. 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 3 N., R. 8 E.: Humboldt Meridian
Secs. 8; 9; 16; and 17.

T. 33 N., R. 12 W.: Mt. Diablo Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 32 N., R. 12 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 11; 12; 13; 14; 23; and 24.

T. 33 N., R. 11 W.: Mt. Diablo Meridian
Secs. 18; 19; 20; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 32 N., R. 11 W.: Mt. Diablo Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 17; 18; and 19.

BILLING CODE 4310-55-M

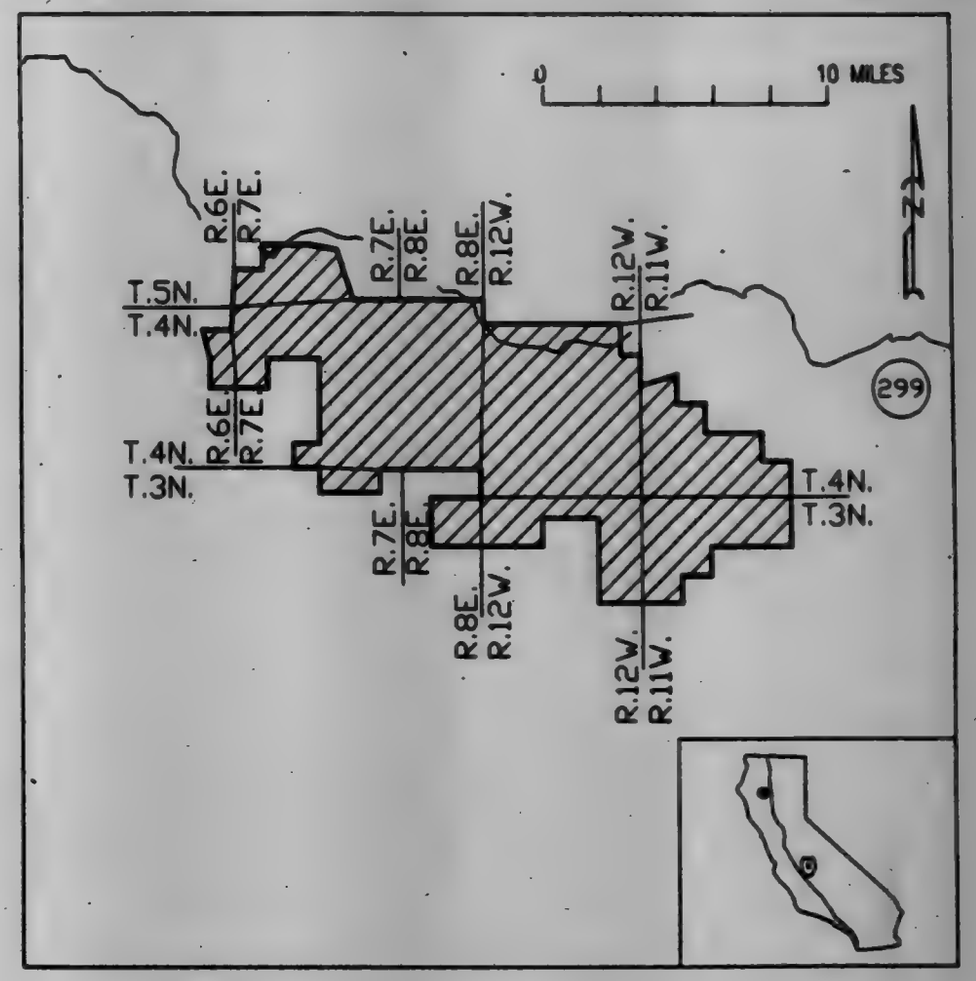

C-12

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-13 taken Solely From National Forest Service Map; Trinity, California 1987.

Trinity County

T. 1 N., R. 6 E.: Humboldt Meridian
Secs. 12; 13; 14; 23; 24; 25; and 36.

T. 1 S., R. 6 E.: Humboldt Meridian
Sec. 1.

T. 1 N., R. 7 E.: Humboldt Meridian
Secs. 7; 8; 15; 17; 18; 19; 20; 21; 22; 23; 25; 26; 27; 28; 29; 30; 31; and 32.

T. 1 S., R. 7 E.: Humboldt Meridian
Secs. 4; 5; 6; 7; 8; 9; 10; 13; 14; 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 27; 35; and 36.

T. 2 S., R. 7 E.: Humboldt Meridian
Sec. 1.

T. 1 S., R. 8 E.: Humboldt Meridian
Secs. 19; 20; 28; 29; 30; 31; 32; and 33.

T. 2 S., R. 8 E.: Humboldt Meridian
Secs. 4; 5; 6; 7; 8; 9; 16; 17; and 21.

T. 29 N., R. 12 W.: Mt. Diablo Meridian
Secs. 30; 31; 34; and 35.

T. 28 N., R. 12 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 33; 34; and 35.

T. 27 N., R. 12 W.: Mt. Diablo Meridian
Sec. 2.

T. 28 N., R. 11 W.: Mt. Diablo Meridian
Secs. 7; 18; 19; and 30.

BILLING CODE 4310-55-M

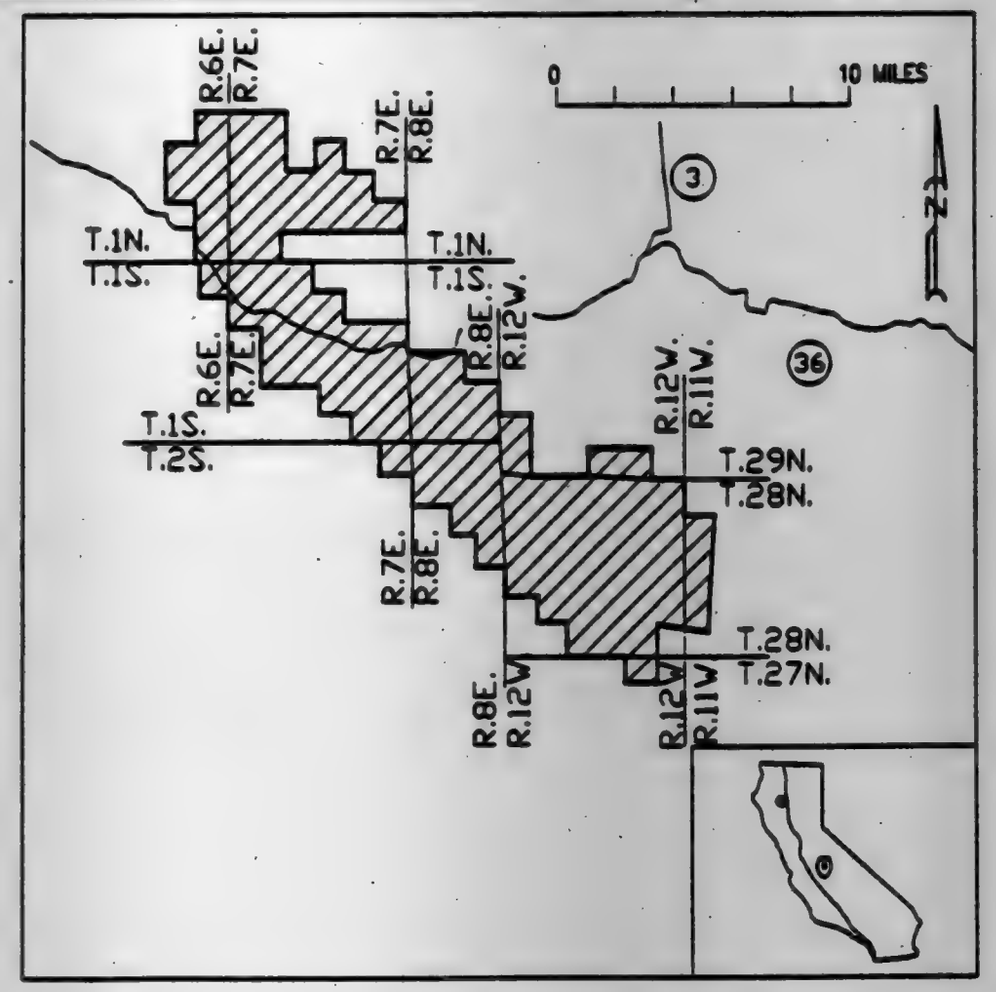

BILLING CODE 4310-55-C

C-13

Description of C-14 taken Solely From National Forest Service Map; Trinity, California 1987.

Trinity and Shasta Counties

T. 31 N., R. 11 W.: Mt. Diablo Meridian
Secs. 34; 35; and 36.

T. 31 N., R. 10 W.: Mt. Diablo Meridian
Sec. 31.

T. 30 N., R. 11 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 10; 11; 12; 13; 14; 15; 21; 22; 23; 24; 25; 26; 27; 28; 33; 34; 35; and 36.

T. 31 N., R. 10 W.: Mt. Diablo Meridian
Secs. 25; 26; 27; 34; 35; and 36.

T. 29 N., R. 11 W.: Mt. Diablo Meridian
Secs. 1; 2; 11; 12; 13; 14; 24; and 25.

T. 31 N., R. 9 W.: Mt. Diablo Meridian
Sec. 31.

T. 30 N., R. 9 W.: Mt. Diablo Meridian
Secs. 6; 7; 17; and 18.

T. 30 N., R. 10 W.: Mt. Diablo Meridian
Secs. 1; 2; 4; 5; 6; 7; 11; 12; 13; 14; 15; 16; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 29 N., R. 10 W.: Mt. Diablo Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 17; 18; 19; 20; and 30.

Excepting any of the above area lying within the Chanchelulla Wilderness area.

BILLING CODE 4310-55-M

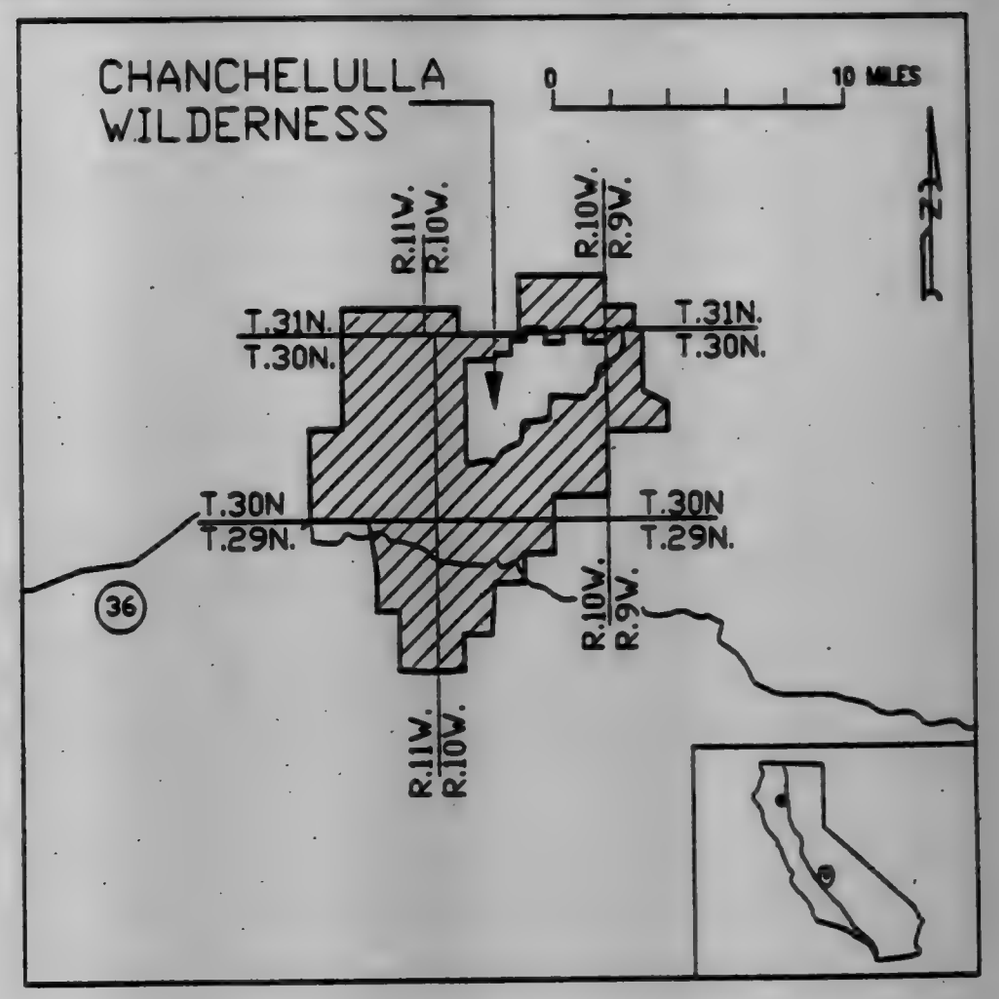

BILLING CODE 4310-55-C

C-14

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-15 taken Solely From National Forest Service Map; Mendocino, California 1983.

Trinity and Mendocino Counties

T. 26 N., R. 12 W.: Mt. Diablo Meridian Secs. 18; 21; 22; 23; 24; 25; 26; 27; 28; and 35.

T. 26 N., R. 11 W.: Mt. Diablo Meridian Secs. 5; 7; 18; 19; 29; 30; 31; and 32.

T. 26 N., R. 10 W.: Mt. Diablo Meridian Sec. 6.

T. 27 N., R. 10 W.: Mt. Diablo Meridian Secs. 13; 14; 31; and 32.

T. 27 N., R. 9 W.: Mt. Diablo Meridian Secs. 20; and 21.

T. 25 N., R. 12 W.: Mt. Diablo Meridian Secs. 1; and 12.

T. 25 N., R. 11 W.: Mt. Diablo Meridian Secs. 6; 7; 8; 9; 10; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; and 36.

T. 25 N., R. 10 W.: Mt. Diablo Meridian Secs. 7; 8; 17; 18; 19; 20; 29; 30; 31; and 32.

Excepting any of the above area lying within the Yolla Bolly Wilderness and Middle Eel Wilderness areas.

BILLING CODE 4310-55-M

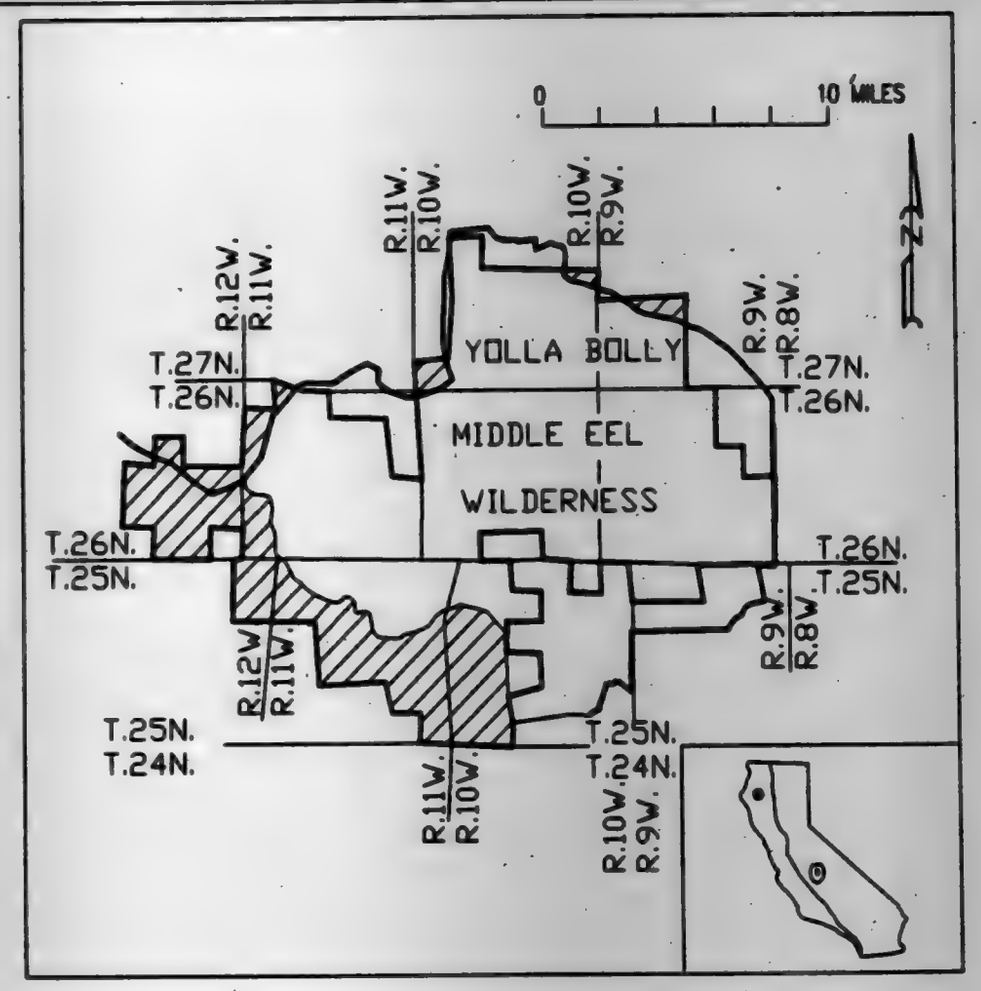

BILLING CODE 4310-55-C

C-15

Description of C-18 taken Solely From National Forest Service Map; Mendocino, California 1983.

Mendocino, Glenn, and Lake Counties

T. 20 N., R. 10 W.: Mt. Diablo Meridian Secs. 25; 35; and 36.

T. 19 N., R. 10 W.: Mt. Diablo Meridian Secs. 1; 2; 3; 11; 12; 13; 14; 23; 24; and 25.

T. 20 N., R. 9 W.: Mt. Diablo Meridian Secs. 28; 29; 32; 33; and 34.

T. 19 N., R. 9 W.: Mt. Diablo Meridian Secs. 1; 2; 3; 4; 5; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 27; 28; and 29.

T. 20 N., R. 8 W.: Mt. Diablo Meridian Secs. 28; 31; 32; 33; 34; and 35.

T. 19 N., R. 8 W.: Mt. Diablo Meridian Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 27; 28; 29; 30; 33; and 34.

T. 20 N., R. 7 W.: Mt. Diablo Meridian Secs. 31; and 32.

T. 19 N., R. 7 W.: Mt. Diablo Meridian Secs. 4; 5; 6; 7; 8; 9; 17; 18; and 19.

BILLING CODE 4310-55-M

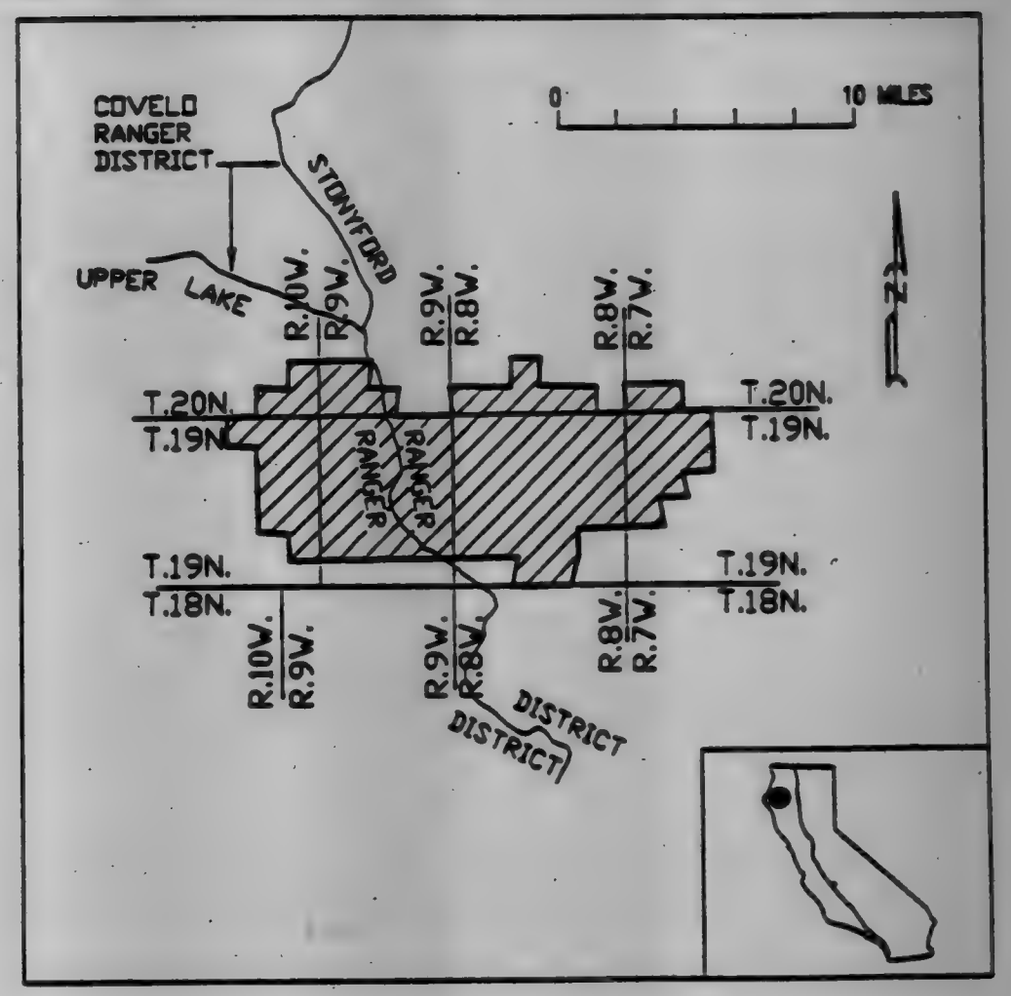

BILLING CODE 4310-55-C

C-18

Description of C-19 taken Solely From National Forest Service Map; Mendocino, California 1983.

Mendocino and Lake Counties

T. 20 N., R. 12 W.: Mt. Diablo Meridian Secs. 24, 25; 35; and 36.

T. 19 N., R. 12 W.: Mt. Diablo Meridian Secs. 1; 2; 12; 13; and 25.

T. 20 N., R. 11 W.: Mt. Diablo Meridian Secs. 19; 20; 21; 27; 28; 29; 30; 31; and 33.

T. 19 N., R. 11 W.: Mt. Diablo Meridian Secs. 6; 7; 8; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 19 N., R. 9 W.: Mt. Diablo Meridian Secs. 19; 30; and 31.

T. 18 N., R. 11 W.: Mt. Diablo Meridian Secs. 1; 2; 3; 4; 5; 6; 7; 8; 11; and 12.

T. 18 N., R. 10 W.: Mt. Diablo Meridian Secs. 4; 5; 8; and 9.

BILLING CODE 4310-55-M

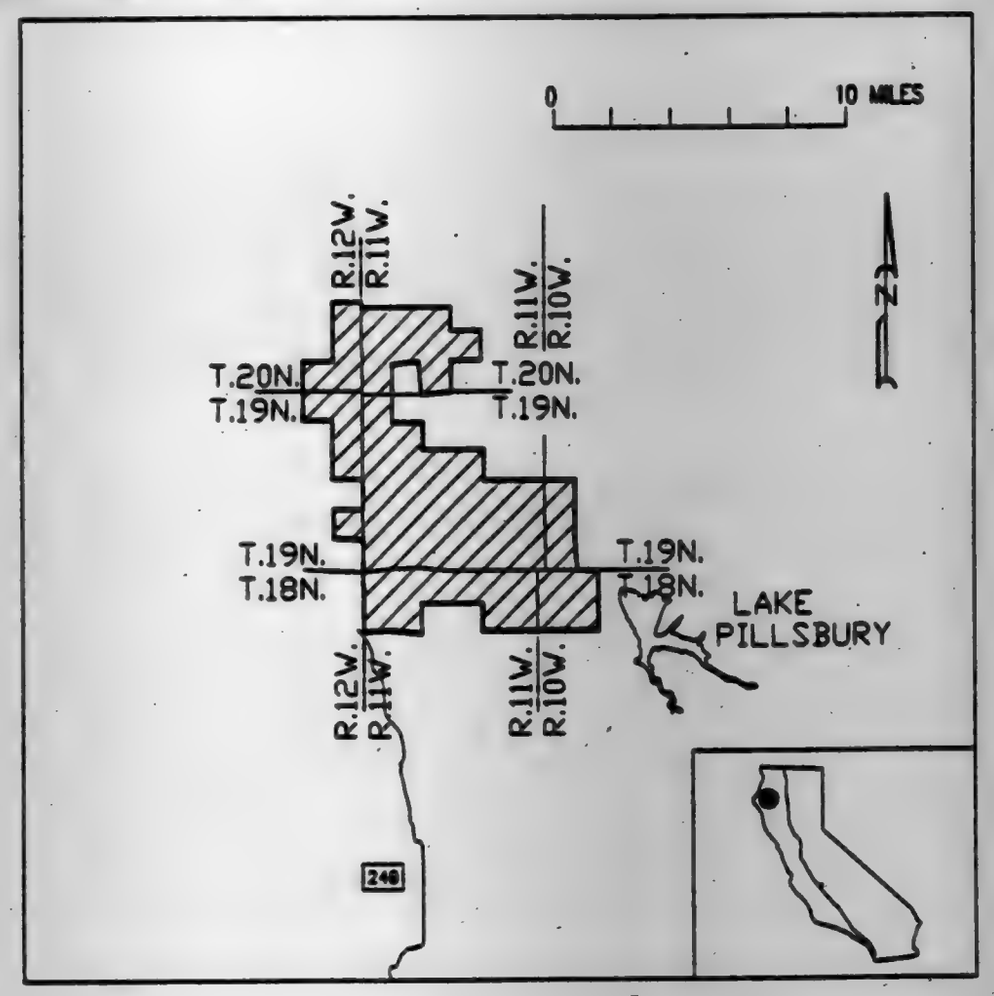

C-19

BILLING CODE 4310-55-C

Description of C-20 taken Solely From National Forest Service Map; Mendocino, California 1983.

Mendocino and Lake Counties

T. 18 N., R. 11 W.: Mt. Diablo Meridian Secs. 24, 25; and 36.

T. 17 N., R. 11 W.: Mt. Diablo Meridian Secs. 1; 11; 12; 13; and 14.

T. 18 N., R. 10 W.: Mt. Diablo Meridian Secs. 20; 21; 26; 27; 28; 29; 32; 33; 34; and 35.

T. 17 N., R. 10 W.: Mt. Diablo Meridian Secs. 2; 3; 4; 5; 8; 9; 16; 17; 20; 21; 22; 27; and 28.

BILLING CODE 4310-55-M

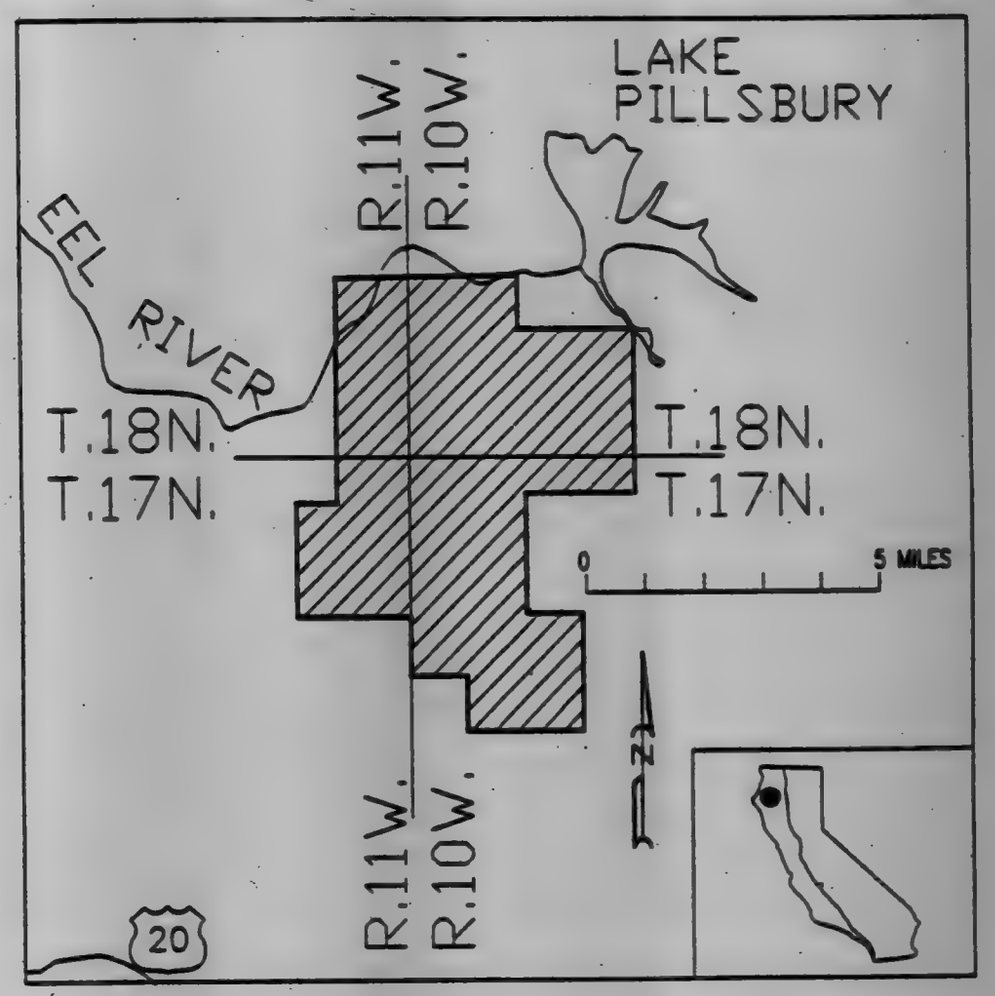

C-20

BILLING CODE 4310-55-C

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Description of C-23 taken Solely From National Forest Service Map; Klamath, California 1986.

Siskiyou County

T. 38 N., R. 11 W.: Mt. Diablo Meridian Sec. 25; and 35.

T. 38 N., R. 10 W.: Mt. Diablo Meridian Secs. 8; 9; 15; 16; 17; 18; 19; 20; 21; 29; and 30.

Excepting any of the above area lying within the Trinity Alps Wilderness area.

BILLING CODE 4310-55-M

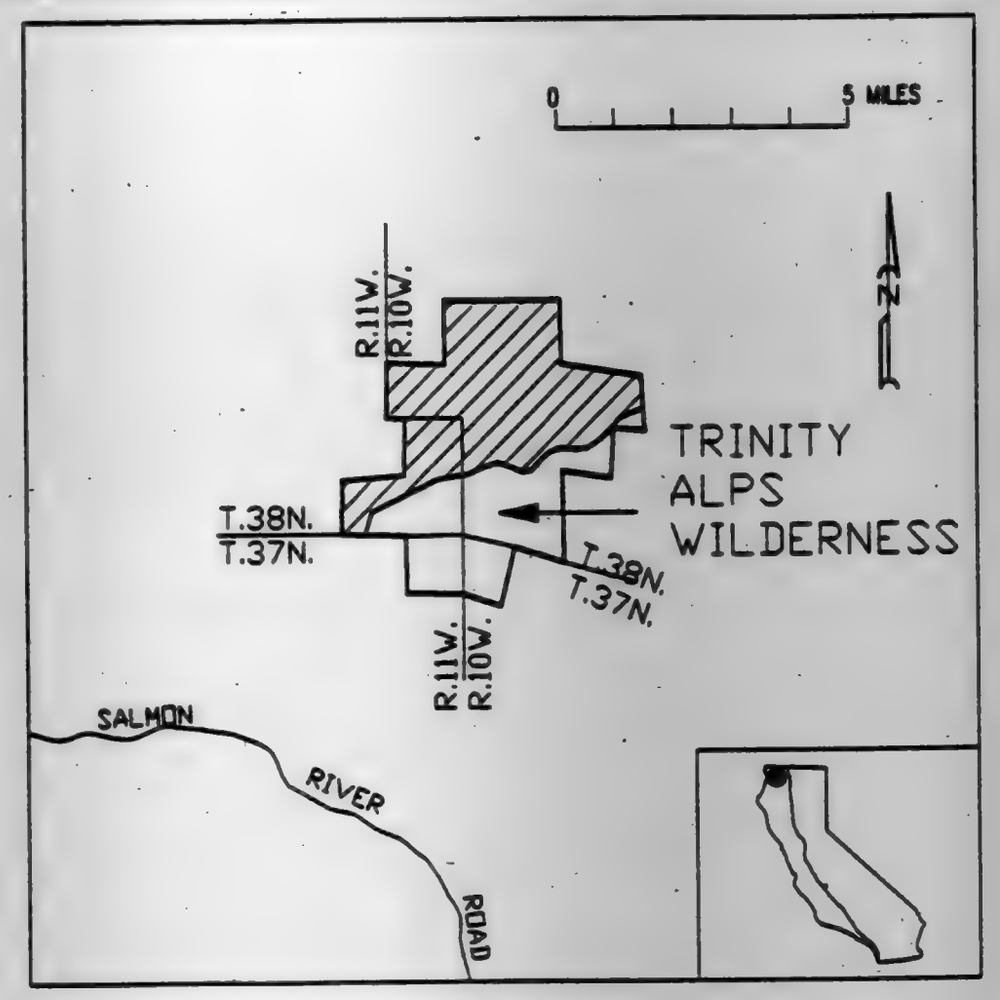

C-23

BILLING CODE 4310-55-C

Description of C-24 taken Solely From National Forest Service Map; Klamath, California 1986.

Siskiyou County

T. 39 N., R. 10 W.: Mt. Diablo Meridian Secs. 24; and 25.

T. 39 N., R. 11 W.: Mt. Diablo Meridian Secs. 19; 29; 29; and 30.

Excepting any of the above area lying within the Trinity Alps Wilderness area.

BILLING CODE 4310-55-M

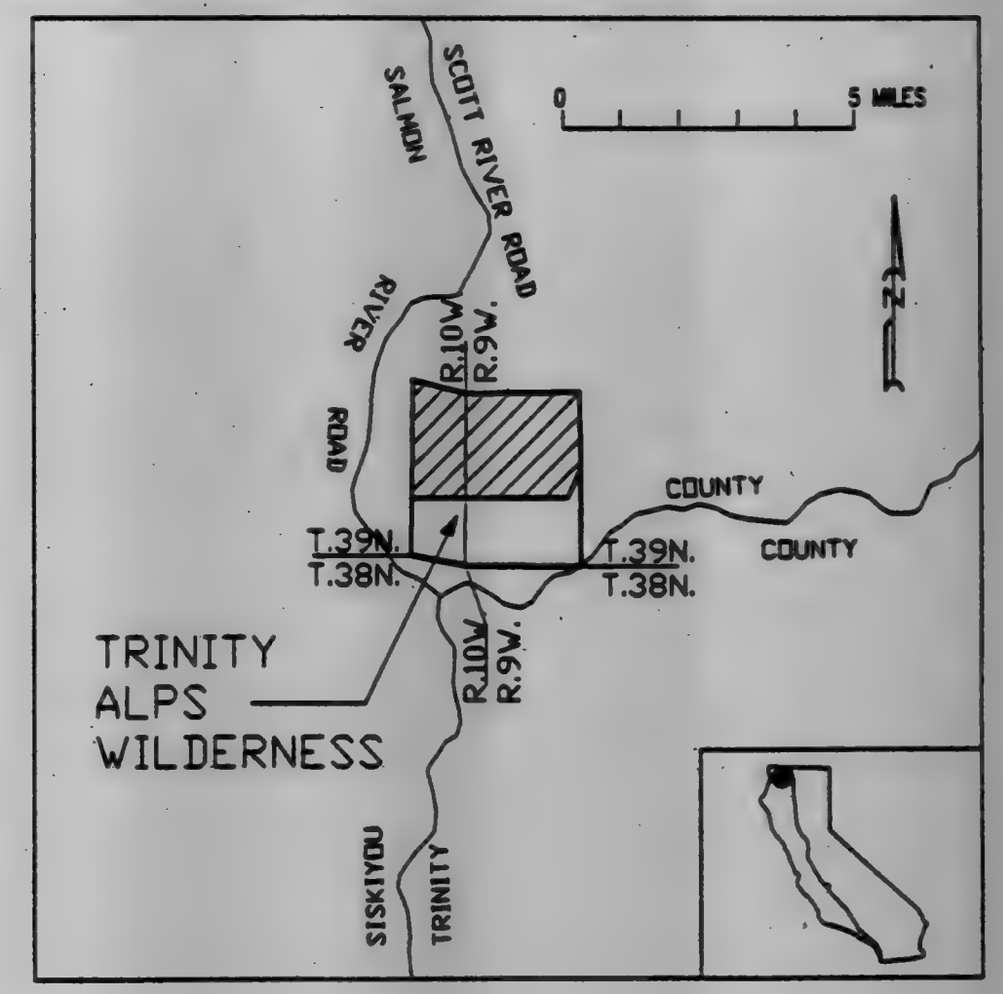

C-24

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-25 taken Solely From National Forest Service Map; Klamath, California 1988.

Siskiyou and Trinity Counties

T. 39 N., R. 9 W.: Mt. Diablo Meridian Secs. 12; 13; and 23.

T. 39 N., R. 8 W.: Mt. Diablo Meridian Secs. 17; and 18.

Excepting any of the above area lying within the Trinity Alps Wilderness area.

BILLING CODE 4310-55-M

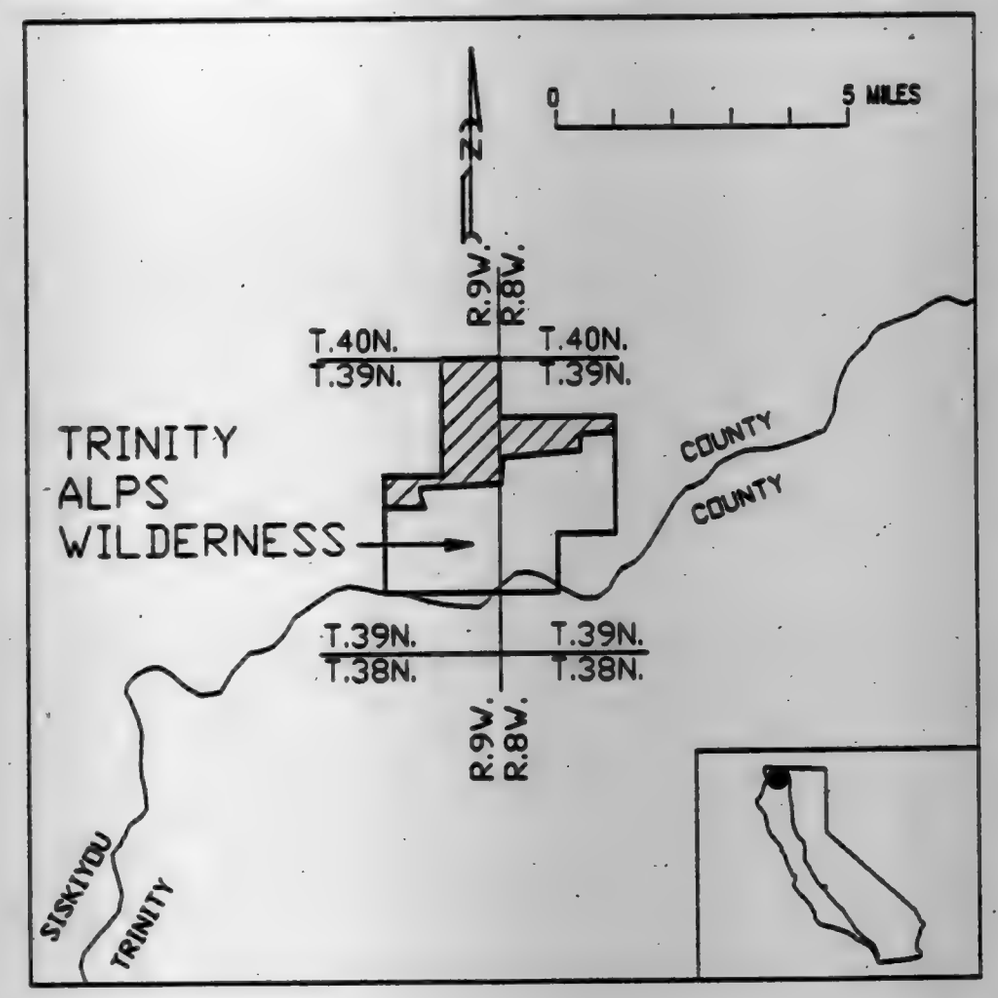

C-25

BILLING CODE 4310-55-C

Description of C-26 taken Solely From National Forest Service Map; Klamath, California 1988.

Siskiyou and Trinity Counties

T. 40 N., R. 8 W.: Mt. Diablo Meridian Sec. 34.

T. 39 N., R. 8 W.: Mt. Diablo Meridian Sec. 9.

Excepting any of the above area lying within the Trinity Alps Wilderness area.

BILLING CODE 4310-55-M

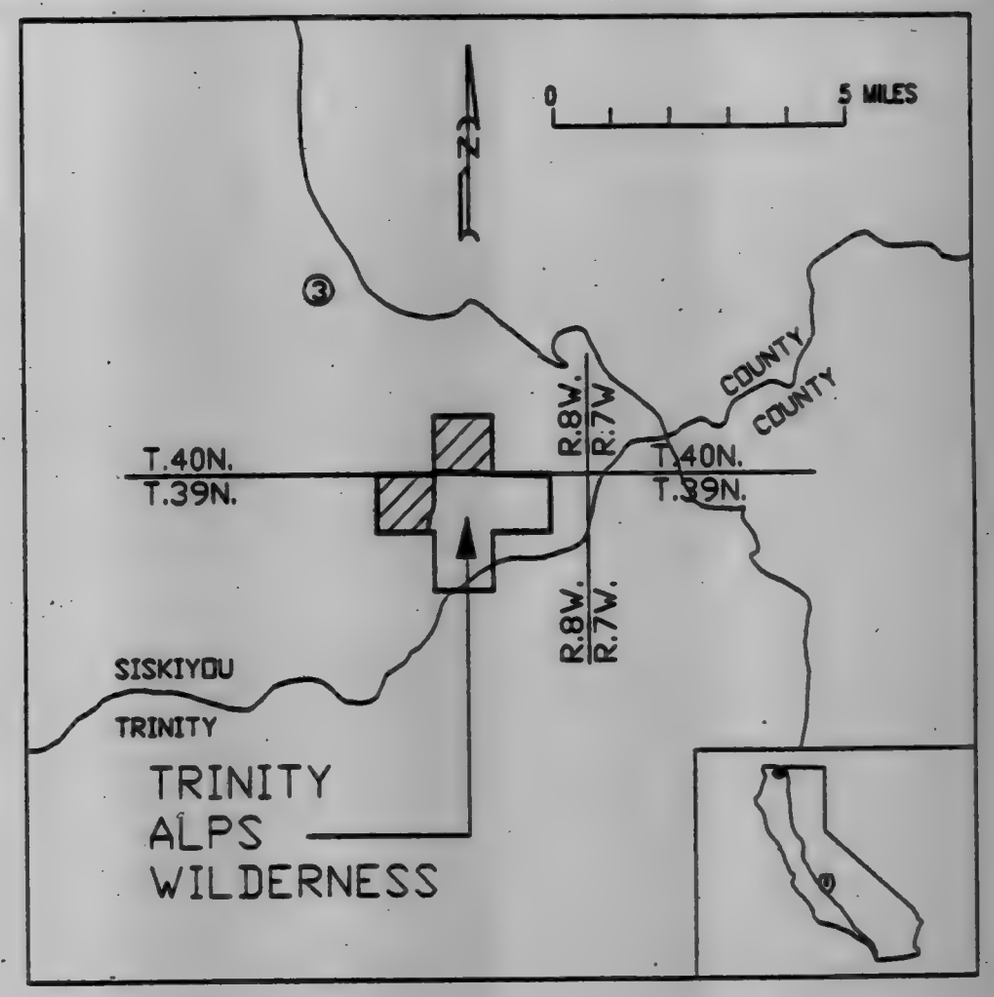

C-26

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-27 taken Solely From National Forest Service Map; Klamath California 1988.

Siskiyou and Trinity Counties

T. 41 N., R. 7 W.: Mt. Diablo Meridian Secs. 32; 33; and 34.

T. 40 N., R. 7 W.: Mt. Diablo Meridian Secs. 2; 3; 4; 9; 10; 11; 14; 15; and 16.

BILLING CODE 4310-55-M

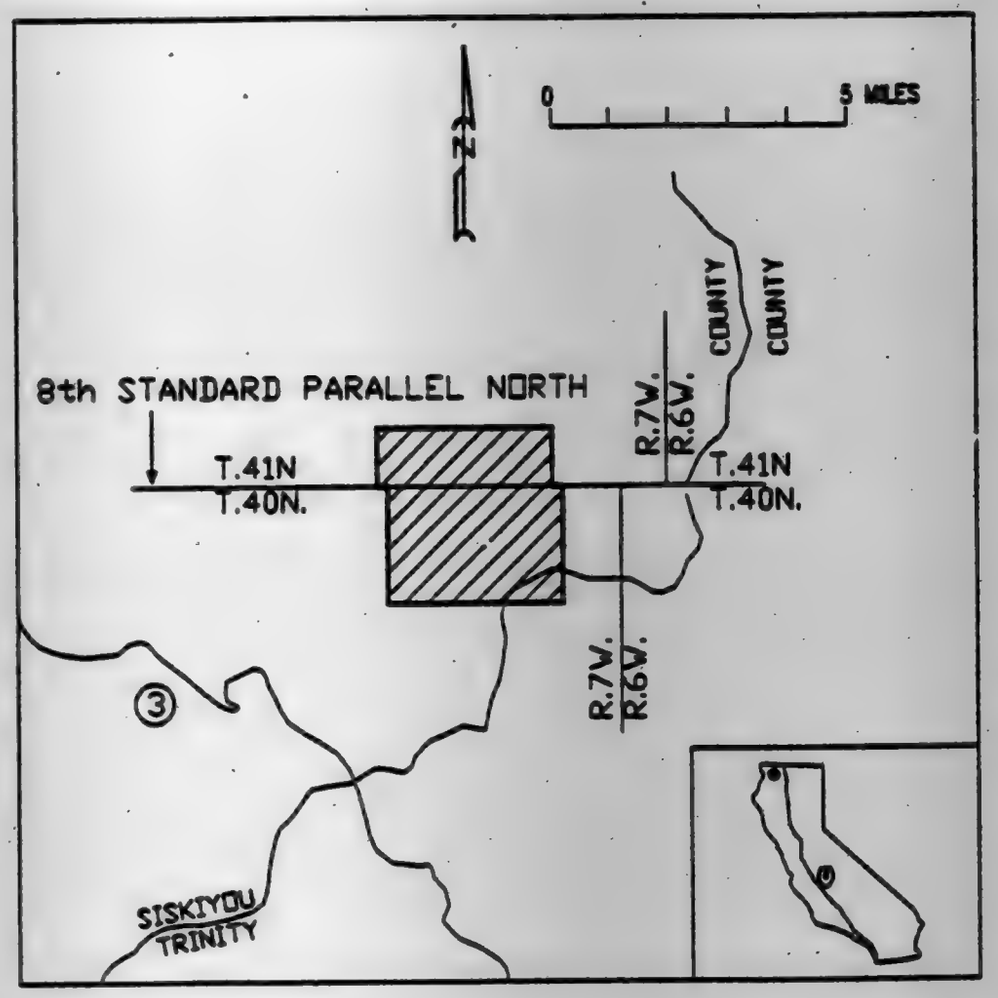

C-27

BILLING CODE 4310-55-C

Description of C-28 taken Solely From National Forest Service Map; Klamath, California 1988.

Siskiyou County

T. 48 N., R. 3 W.: Mt. Diablo Meridian Sec. 32.

T. 47 N., R. 3 W.: Mt. Diablo Meridian Secs. 4; 5; 8; 17; 32; and 34.

T. 47 N., R. 4 W.: Mt. Diablo Meridian Secs. 13; 23; 24; 25; 26; 33; 35; and 36.

T. 46 N., R. 4 W.: Mt. Diablo Meridian Secs. 1; 2; 3; 9; 10; 11; 12; 13; 14; 15; 23; 24; 25; 26; 35; and 36.

T. 46 N., R. 3 W.: Mt. Diablo Meridian Secs. 2; 3; 4; 5; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 46 N., R. 2 W.: Mt. Diablo Meridian Secs. 7; 8; 17; 18; 19; 20; 29; 30; 31; and 32.

T. 45 N., R. 3 W.: Mt. Diablo Meridian Secs. 2; 3; 4; and 10.

T. 45 N., R. 4 W.: Mt. Diablo Meridian Secs. 1; 2; and 12.

BILLING CODE 4310-55-M

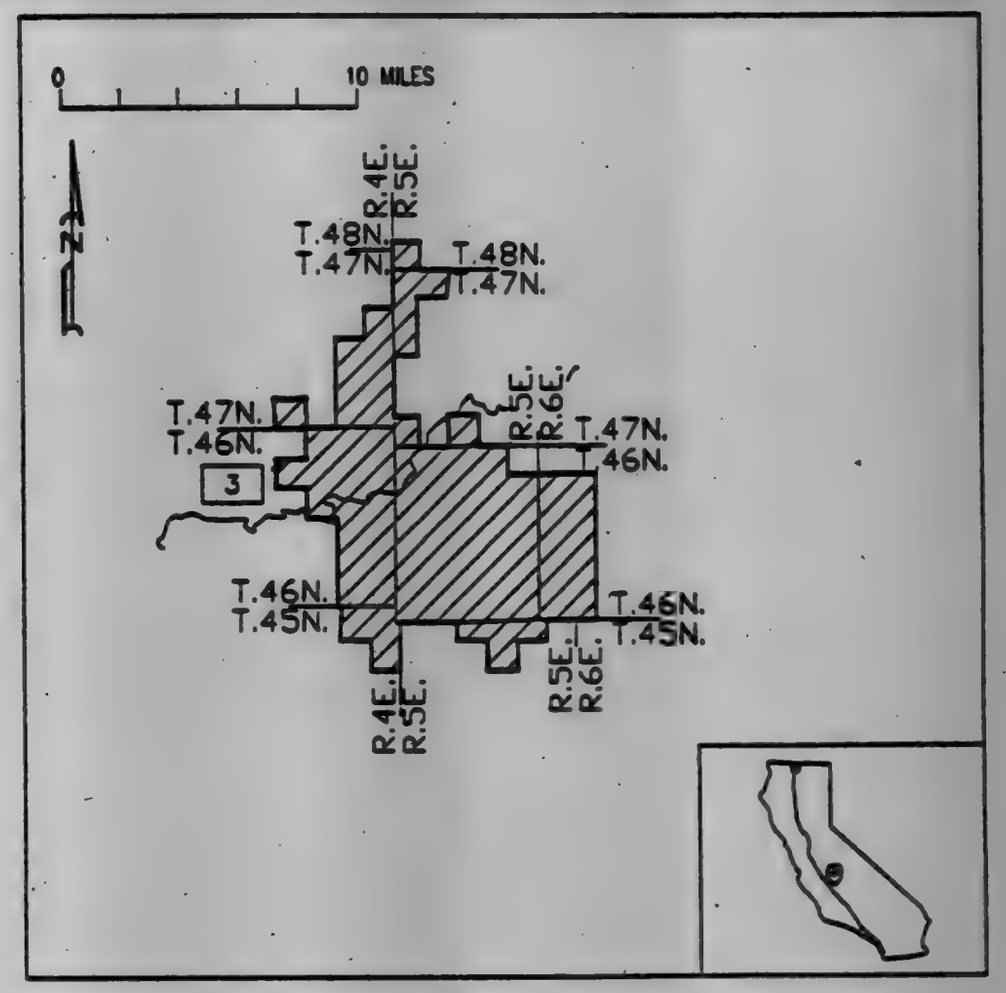

C-28

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-29 taken Solely From National Forest Service Map; Shasta, California 1987.

Trinity and Shasta Counties

T. 35 N., R. 9 W.: Mt. Diablo Meridian Secs. 19; 20; 28; 29; and 33.

T. 34 N., R. 9 W.: Mt. Diablo Meridian Secs. 3; 4; 7; 8; 9; 10; 12; 13; 18; and 24.

T. 34 N., R. 8 W.: Mt. Diablo Meridian Secs. 19; 20; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 33 N., R. 8 W.: Mt. Diablo Meridian Secs. 2; 3; 10; 11; 12; 13; 14; 15; 23; 24; 25; 26; 35; and 36.

T. 32 N., R. 8 W.: Mt. Diablo Meridian Secs. 1; 2; 11; and 12.

T. 33 N., R. 7 W.: Mt. Diablo Meridian Secs. 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 35; and 36.

T. 33 N., R. 6 W.: Mt. Diablo Meridian Secs. 7; 8; 17; 18; 19; 20; 29; 30; 31; and 32.

T. 32 N., R. 7 W.: Mt. Diablo Meridian Secs. 1; 5; 6; 7; 8; 18; 30; 31; 32; and 33.

T. 31 N., R. 7 W.: Mt. Diablo Meridian Secs. 1; 2; 3; 4; 5; and 6.

T. 32 N., R. 6 W.: Mt. Diablo Meridian Secs. 2; 3; 5; 6; 11; 14; 23; and 26.

T. 31 N., R. 6 W.: Mt. Diablo Meridian Secs. 6; 7; 8; 9; 10; and 11.

Excepting any of the above area lying within the Trinity Alps Wilderness.

BILLING CODE 4310-55-M

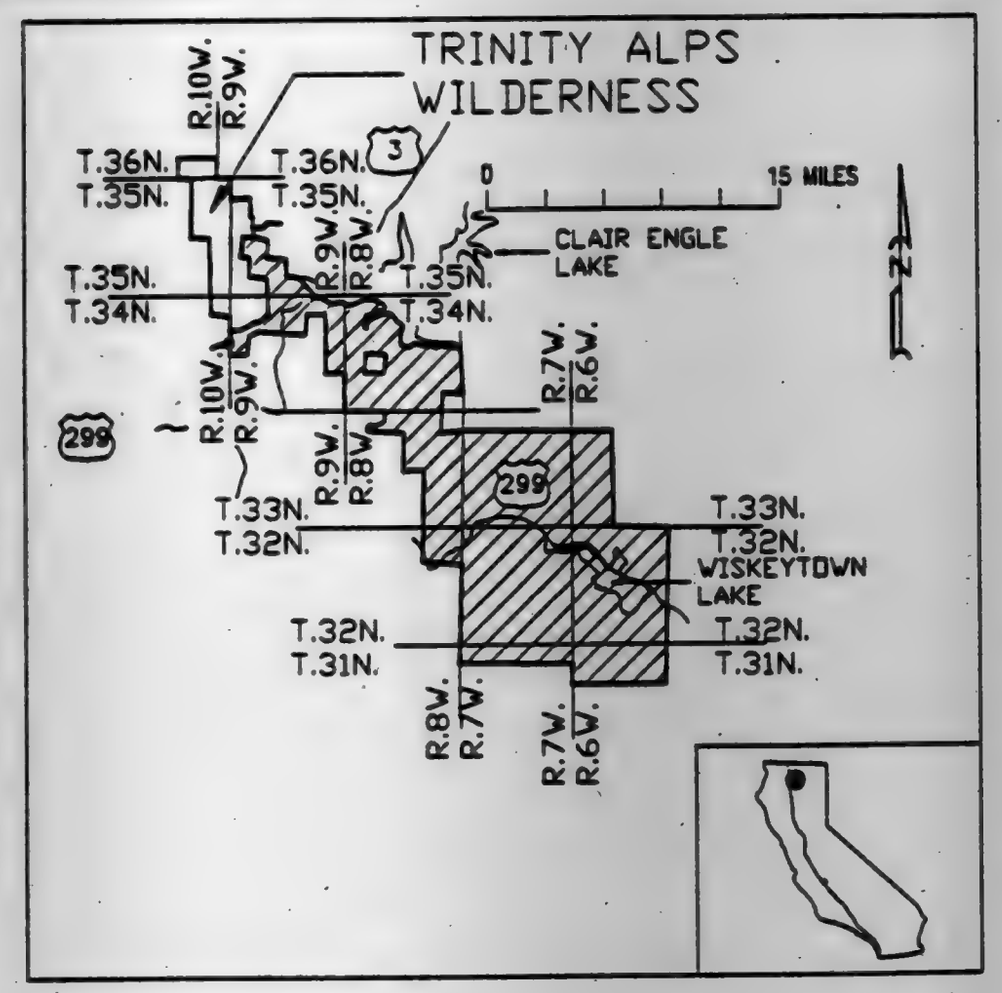

C-29

BILLING CODE 4310-55-C

Description of C-30 taken Solely From National Forest Service Map; Shasta, California 1987.

Trinity County

T. 36 N., R. 8 W.: Mt. Diablo Meridian Secs. 29; and 32.

T. 35 N., R. 9 W.: Mt. Diablo Meridian Secs. 1; 11; 12; 14; and 15.

T. 35 N., R. 8 W.: Mt. Diablo Meridian Secs. 5; 6; 7; 8; 9; 17; 18; 19; and 20.

Excepting any of the above area lying within the Trinity Alps Wilderness area.

BILLING CODE 4310-55-M

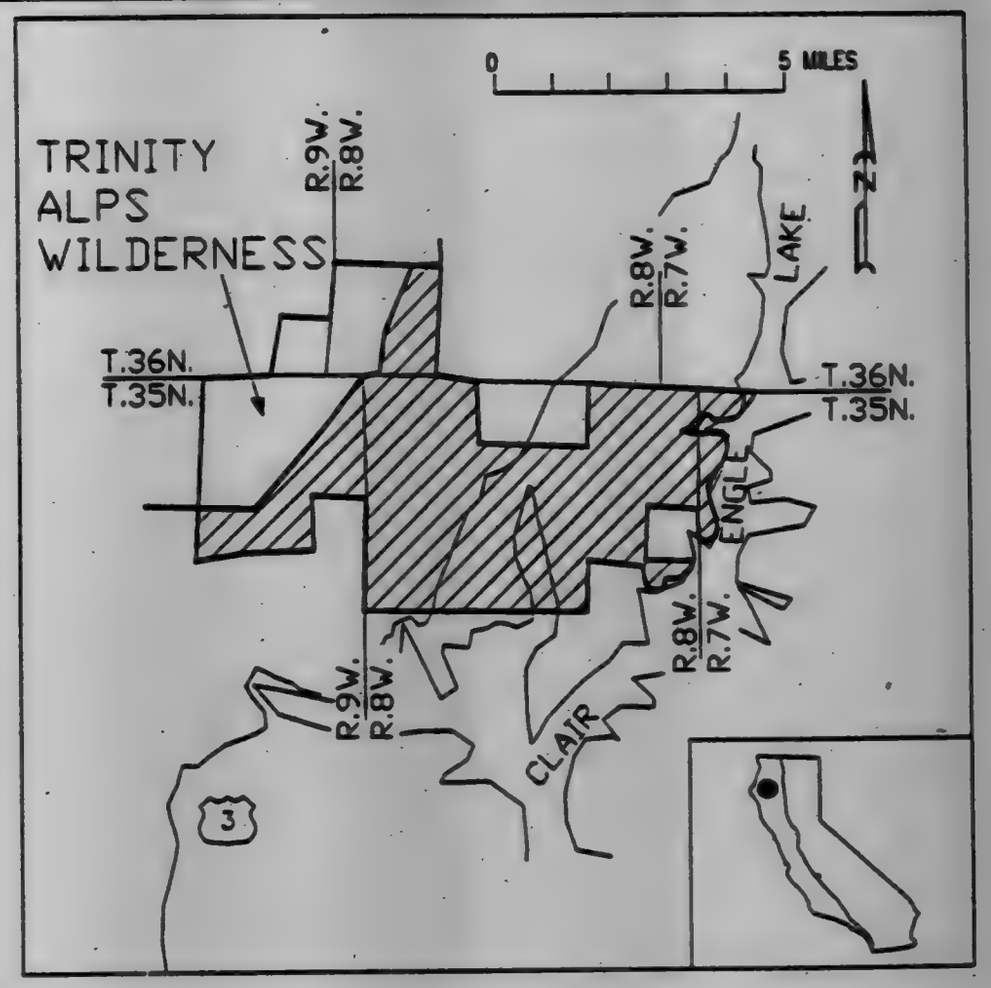

C-30

BILLING CODE 4310-55-C

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Description of C-31 taken Solely From National Forest Service Map; Shasta, California 1987.

Trinity and Shasta Counties

T. 36 N., R. 7 W.: Mt. Diablo Meridian
Sec. 36.

T. 35 N., R. 7 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 10; 11; 12; 14; 15; 21; 22; 26; 27; 28; 32; and 34.

T. 34 N., R. 7 W.: Mt. Diablo Meridian
Sec. 6.

T. 36 N., R. 6 W.: Mt. Diablo Meridian
Secs. 3; 4; 6; 7; 8; 9; 10; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 35 N., R. 6 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 14; 15; 16; 17; 18; 20; 21; 22; and 28.

T. 35 N., R. 5 W.: Mt. Diablo Meridian
Secs. 6; 7; and 18.

Excepting any of the above area lying within Claire Engle Lake.

BILLING CODE 4310-55-M

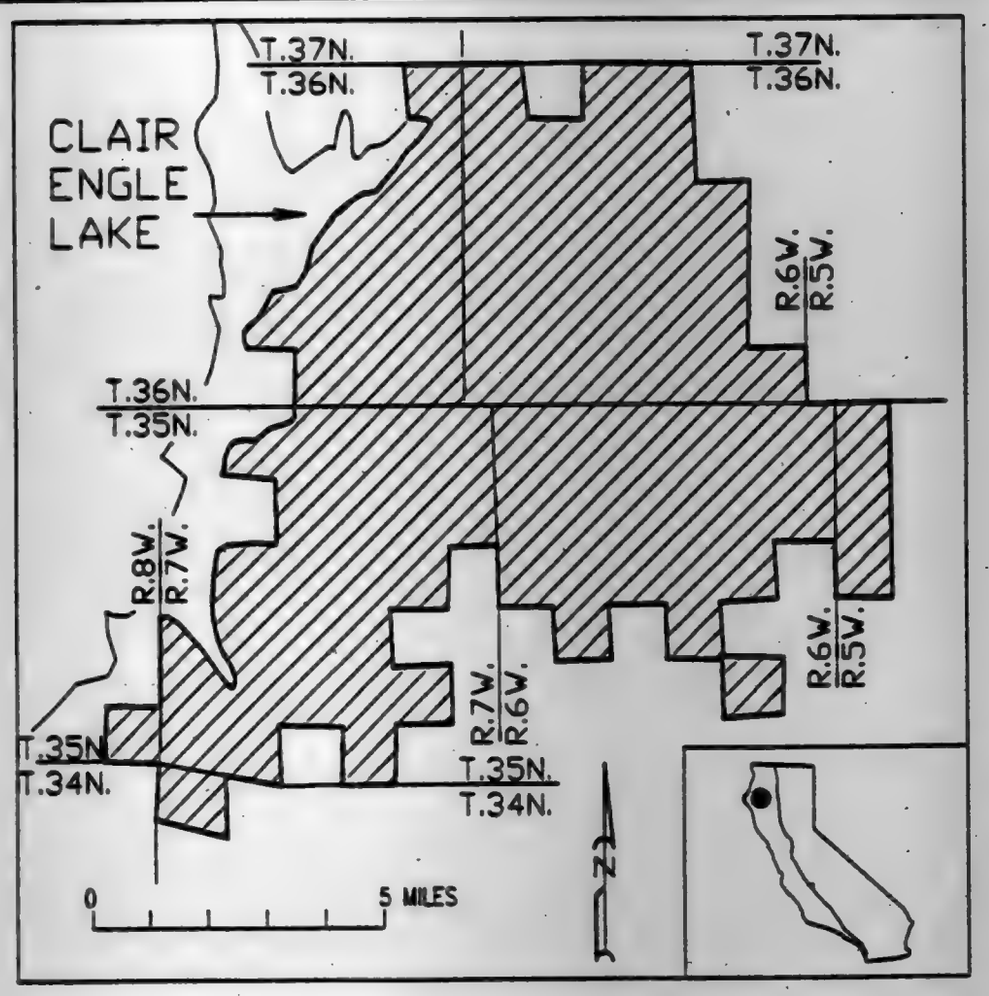

C-31

BILLING CODE 4310-55-C

Description of C-32 taken Solely From National Forest Service Map; Shasta, California 1987.

Trinity County

T. 37 N., R. 8 W.: Mt. Diablo Meridian
Secs. 10; 12; 13; 14; 15; 16; 22; 23; 24; and 26.

T. 37 N., R. 7 W.: Mt. Diablo Meridian
Secs. 7; 18; 19; and 30.

Excepting any of the above area lying within the Trinity Alps Wilderness area.

BILLING CODE 4310-55-M

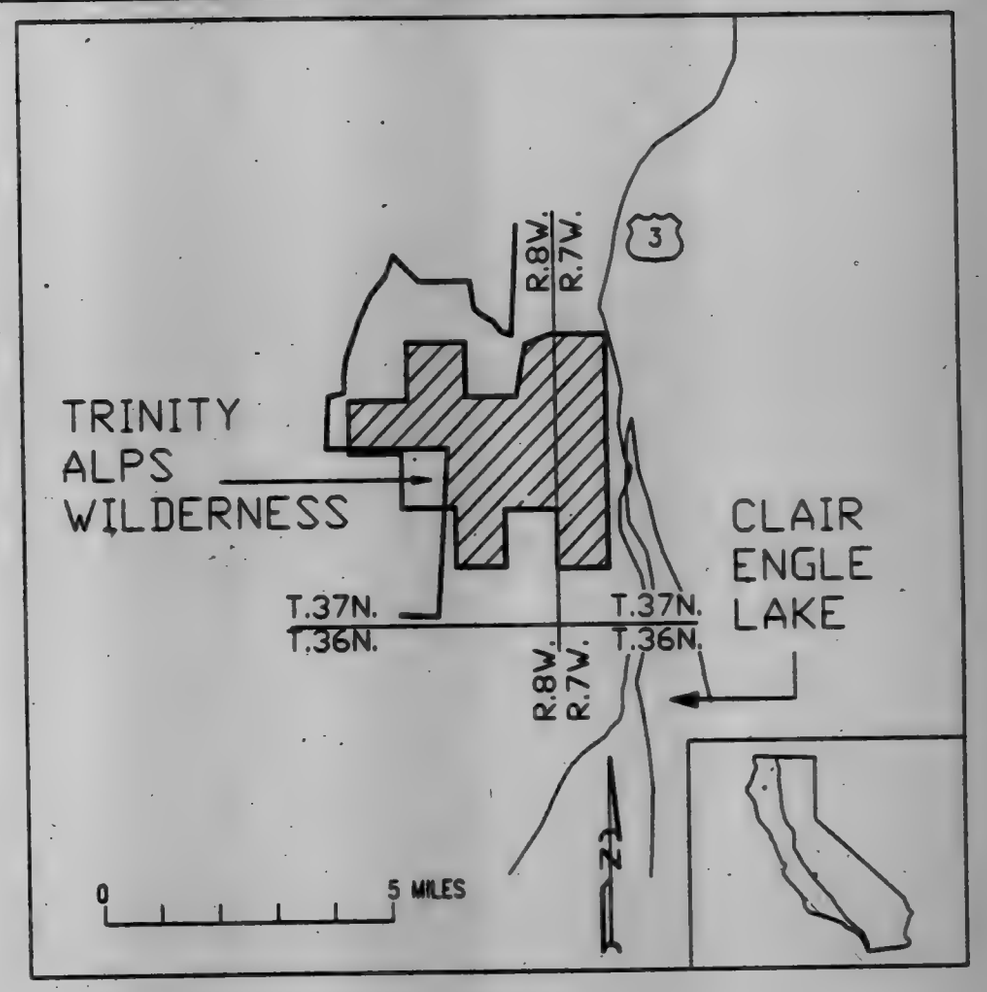

C-32

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-33 taken Solely From National Forest Service Map; Shasta, California 1987.

Trinity County

T. 38 N., R. 8 W.: Mt. Diablo Meridian Secs. 34; and 36.

T. 38 N., R. 7 W.: Mt. Diablo Meridian Secs. 6; 16; 17; 18; 19; 20; 30; and 31.

Excepting any of the above area lying within the Trinity Alps Wilderness area.

BILLING CODE 4310-55-M

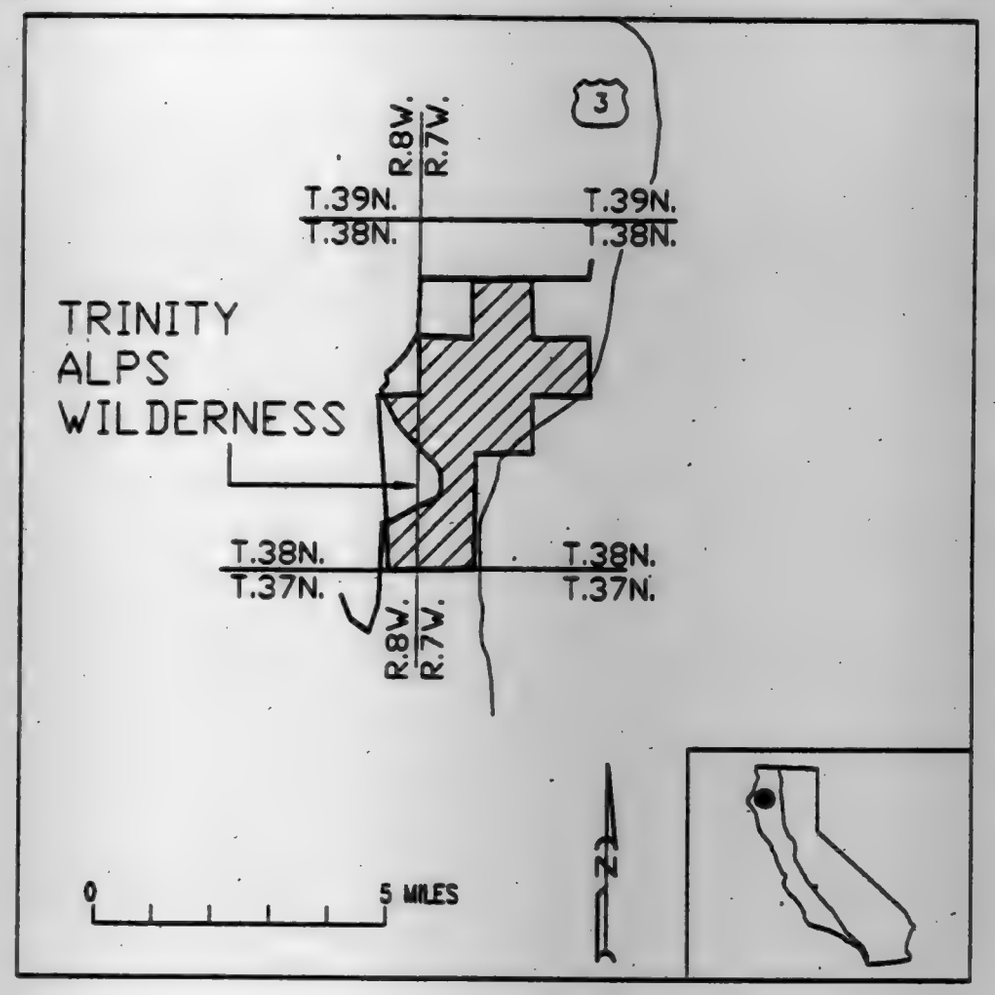

C-33

BILLING CODE 4310-55-C

Description of C-34 taken Solely From National Forest Service Map; Shasta, California 1987.

Trinity County

T. 39 N., R. 7 W.: Mt. Diablo Meridian Secs. 26; 35; and 36.

T. 39 N., R. 6 W.: Mt. Diablo Meridian Sec. 30.

T. 38 N., R. 7 W.: Mt. Diablo Meridian Secs. 2; and 12.

BILLING CODE 4310-55-M

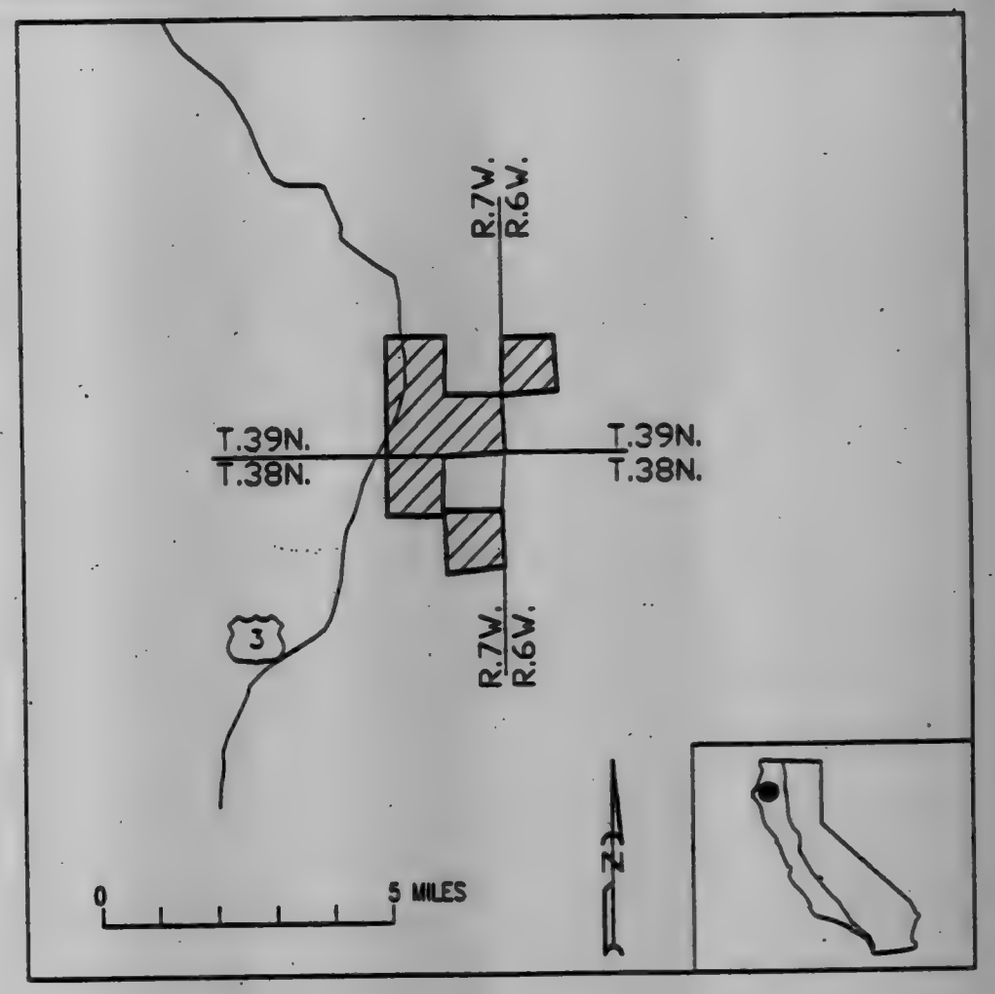

C-34

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-37 taken Solely From National Forest Service Map; Shasta, California 1987.

Siskiyou County

T. 40 N., R. 5 W.: Mt. Diablo Meridian Secs. 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; and 28.

BILLING CODE 4310-55-M

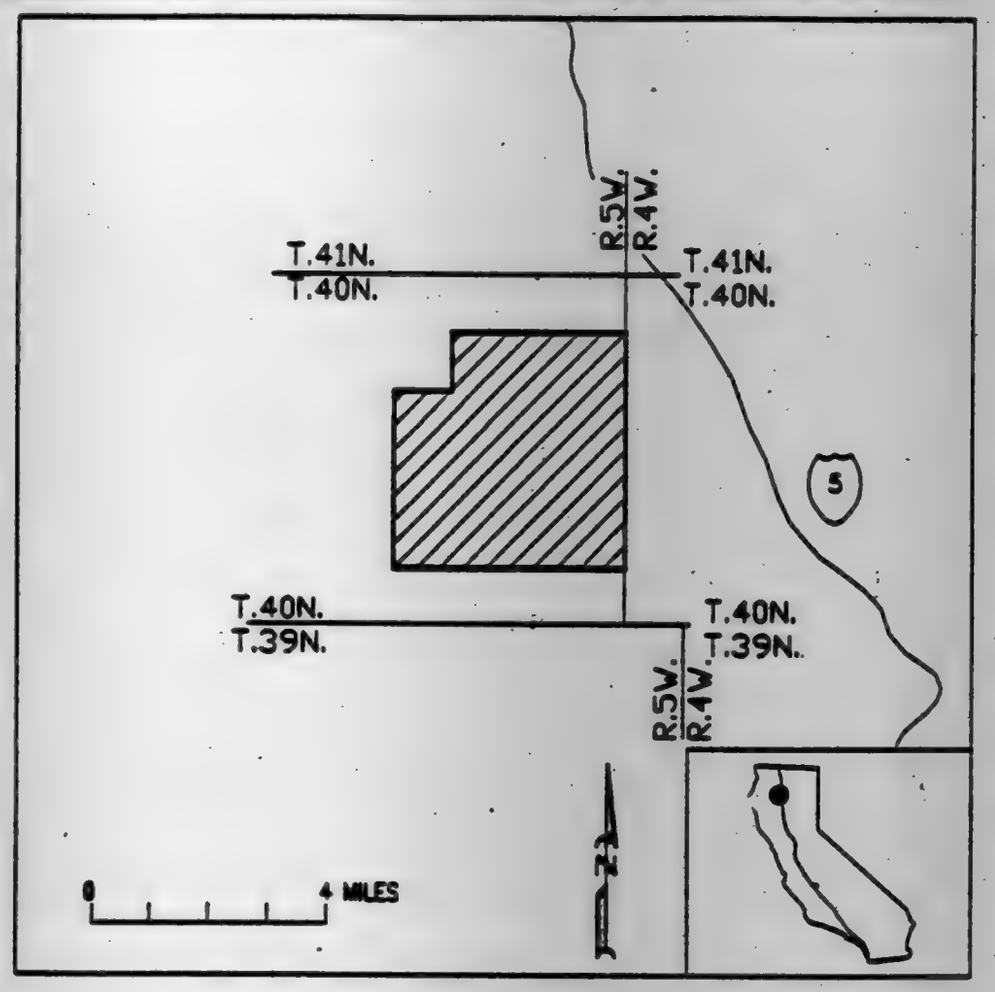

C-37

BILLING CODE 4310-55-C

Description of C-38 taken Solely From National Forest Service Map; Shasta, California 1987.

Shasta County

T. 38 N., R. 4 W.: Mt. Diablo Meridian Secs. 18; 20; and 30.

T. 38 N., R. 5 W.: Mt. Diablo Meridian Sec. 36.

T. 37 N., R. 5 W.: Mt. Diablo Meridian Secs. 1; 2; 11; 12; and 13.

T. 37 N., R. 4 W.: Mt. Diablo Meridian Secs. 6; 7; 8; 17; and 18.

BILLING CODE 4310-55-M

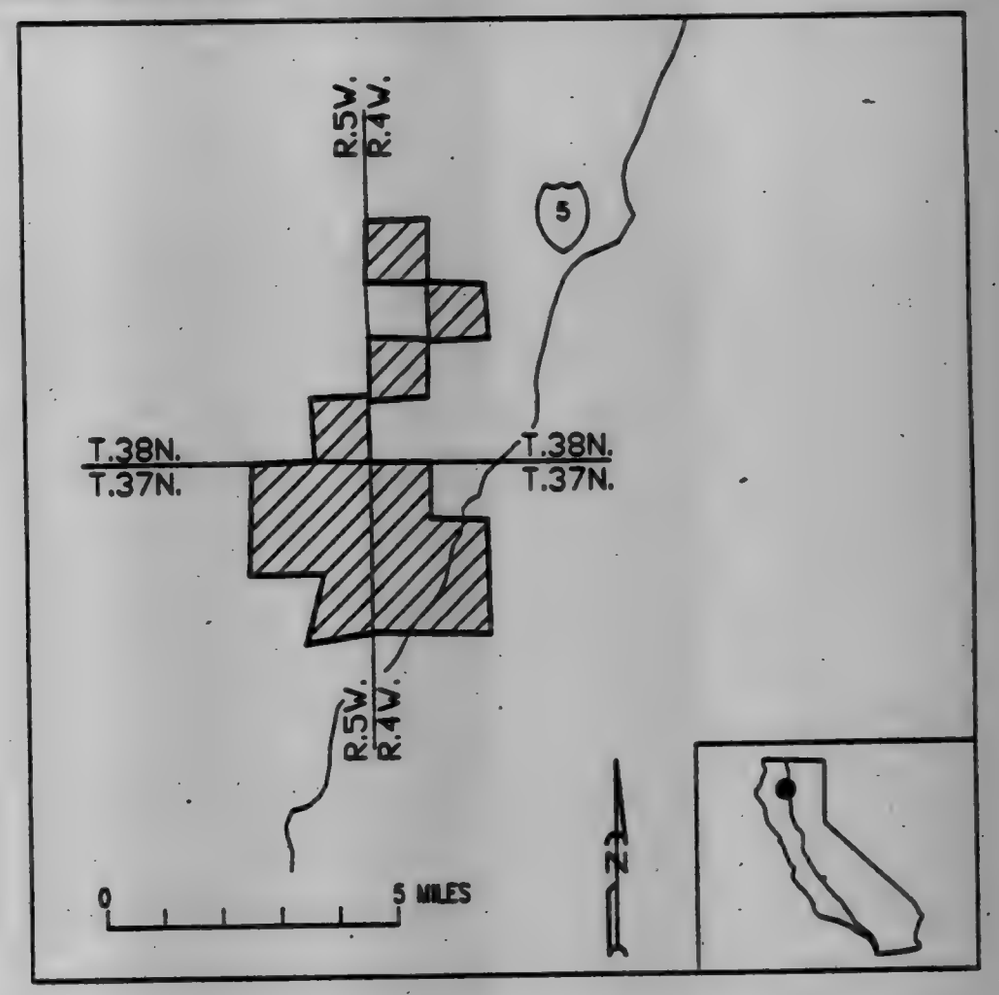

C-38

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-39 taken Solely From National Forest Service Map; Shasta, California 1987.

Siskiyou County

T. 41 N., R. 3 W.: Mt. Diablo Meridian Secs. 30; and 31.

T. 40 N., R. 3 W.: Mt. Diablo Meridian Sec. 6.

T. 41 N., R. 4 W.: Mt. Diablo Meridian Secs. 35; and 36.

T. 40 N., R. 4 W.: Mt. Diablo Meridian Secs. 1; 2; 11; 12; and 13.

Excepting any of the above area lying within the Mt. Shasta Wilderness area.

BILLING CODE 4310-55-M

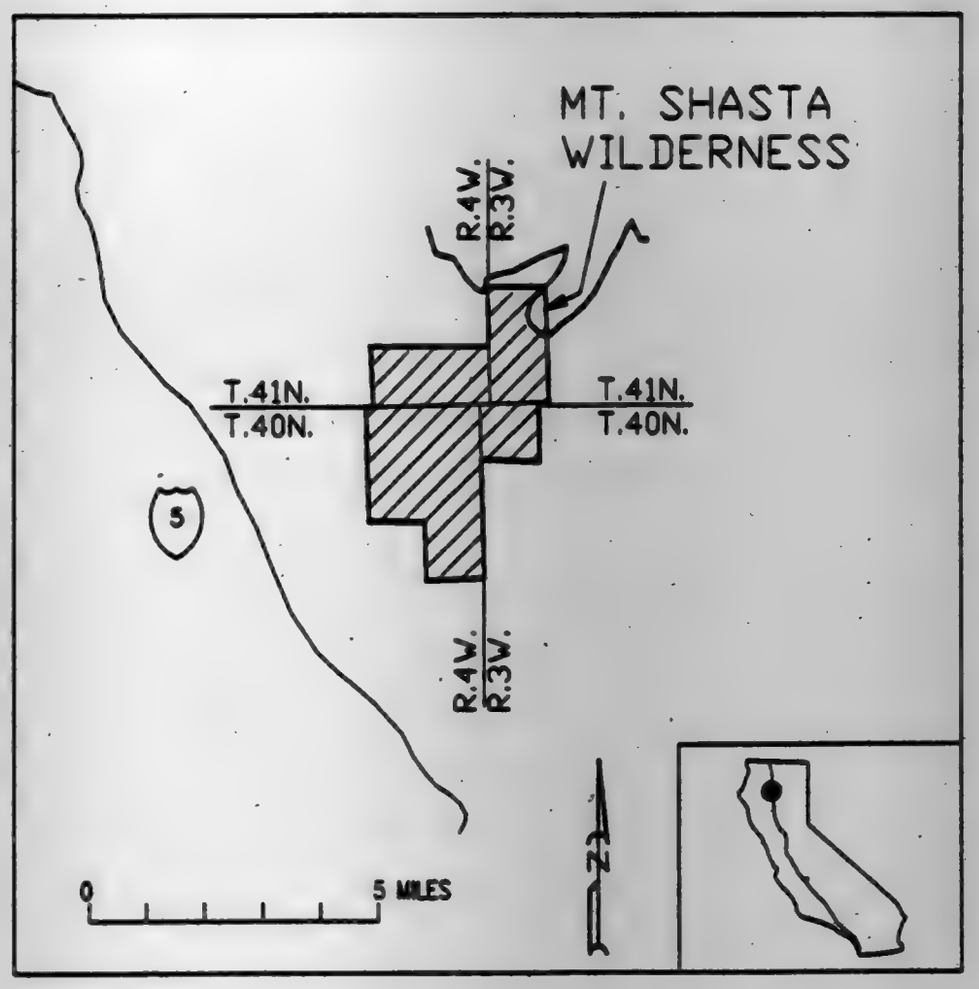

C-39

BILLING CODE 4310-55-C

Description of C-40 taken Solely From National Forest Service Map; Shasta, California 1987.

Siskiyou County

T. 40 N., R. 3 W.: Mt. Diablo Meridian Secs. 12; 13; 14; and 24.

T. 40 N., R. 2 W.: Mt. Diablo Meridian Secs. 7; 8; 17; 18; 19; and 20.

BILLING CODE 4310-55-M

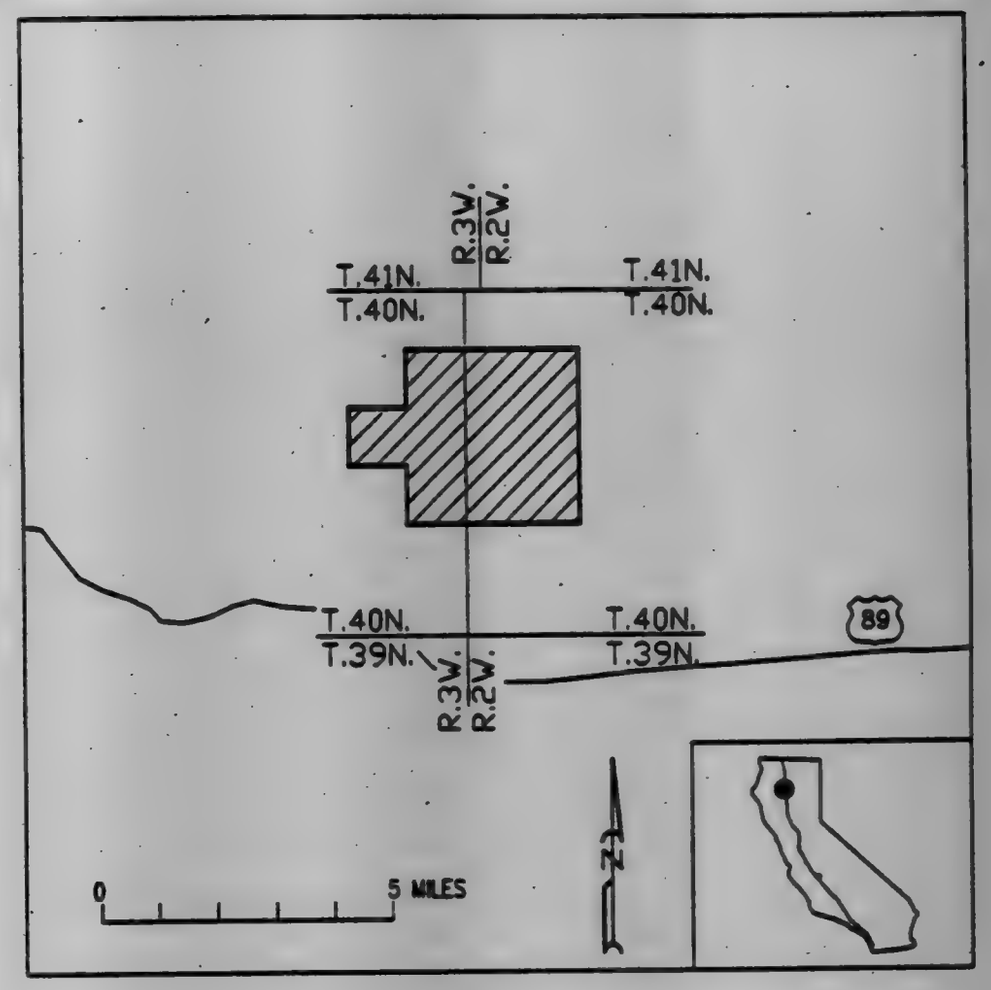

C-40

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-41 taken Solely From National Forest Service Map; Shasta, California 1987.

Siskiyou County

T. 40 N., R. 2 W.: Mt. Diablo Meridian
Secs. 11; 12; 13; 14; 22; 23; and 24.

BILLING CODE 4310-05-M

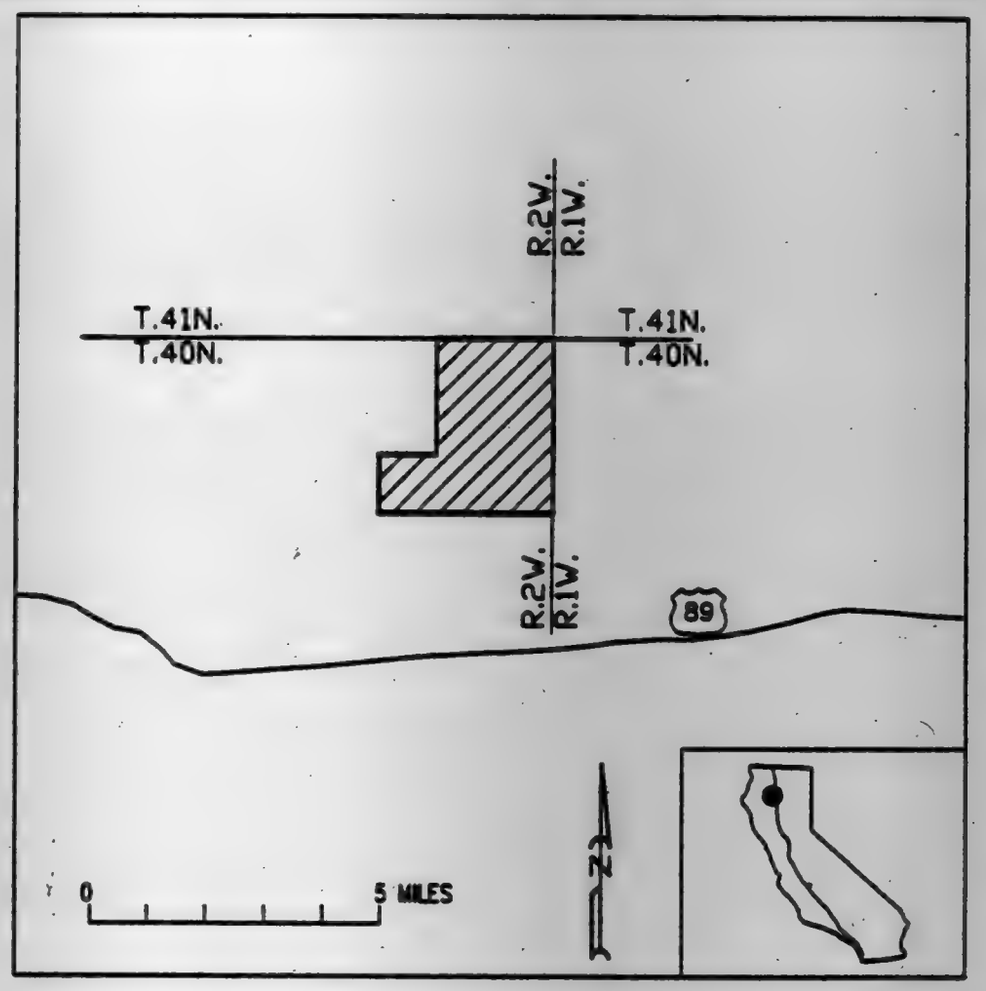

C-41

BILLING CODE 4310-05-C

Description of C-42 taken Solely From National Forest Service Map; Shasta, California 1987.

Shasta County

T. 38 N., R. 3 W.: Mt. Diablo Meridian
Secs. 4; 8; 9; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 32; 33; 34; 35; and 36.

T. 37 N., R. 3 W.: Mt. Diablo Meridian
Secs. 8; 9; 10; 11; 12; 13; 24; 25; and 36.

T. 38 N., R. 2 W.: Mt. Diablo Meridian
Secs. 16; 19; 24; 25; 26; 28; 30; 31; 32; 33; and 36.

T. 37 N., R. 2 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 36 N., R. 2 W.: Mt. Diablo Meridian
Secs. 5; 6; 7; and 8.

T. 36 N., R. 1 W.: Mt. Diablo Meridian
Secs. 14; 15; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 38 N., R. 1 E.: Mt. Diablo Meridian
Secs. 30; and 31.

T. 37 N., R. 1 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 26; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 36 N., R. 1 W.: Mt. Diablo Meridian
Secs. 4; 5; 6; 7; 8; and 9.

T. 37 N., R. 1 E.: Mt. Diablo Meridian
Secs. 6; 7; and 18.

BILLING CODE 4310-05-M

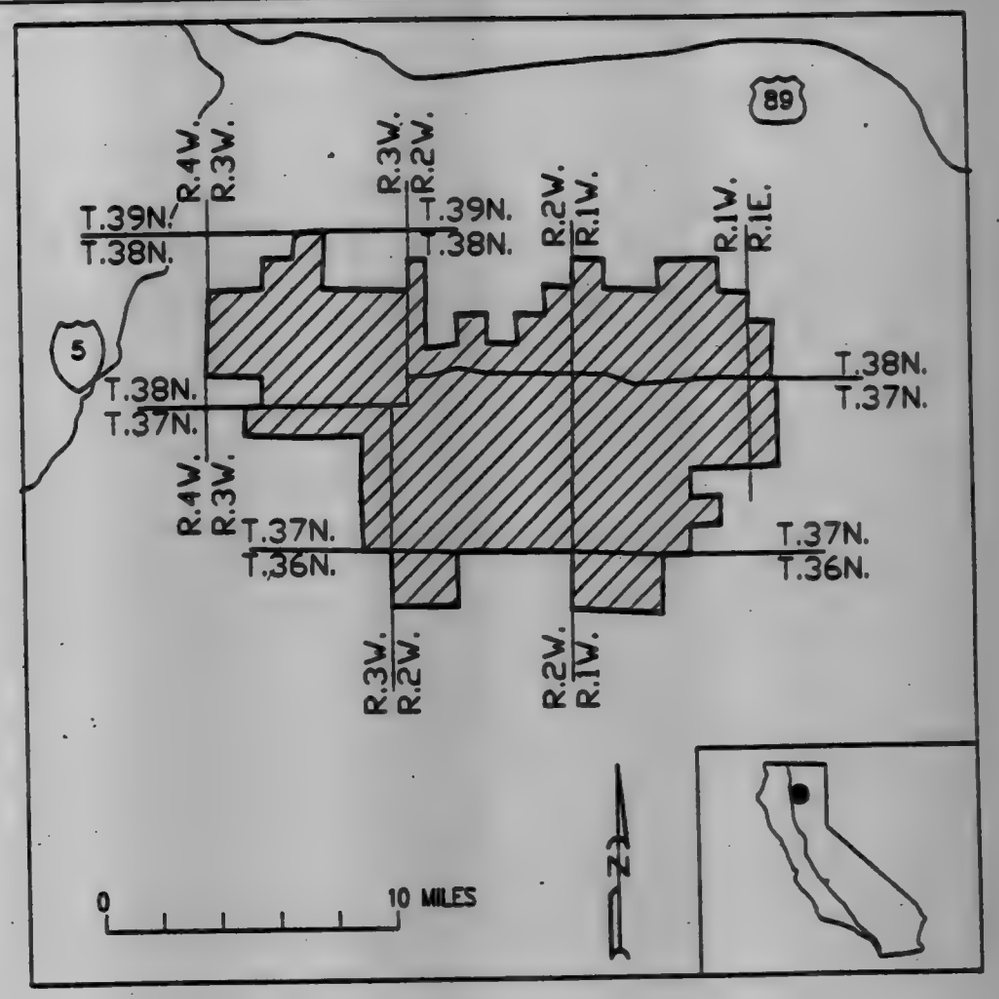

C-42

BILLING CODE 4310-05-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-43 taken Solely From National Forest Service Map; Shasta, California 1987.

Siskiyou County

T. 40 N., R. 1 W.: Mt. Diablo Meridian Secs. 13; 24; 25; and 36.

T. 40 N., R. 1 E.: Mt. Diablo Meridian Secs. 4; 7; 8; 9; 10; 15; 16; 17; 18; 19; 20; 29; 30; 31; and 32.

T. 39 N., R. 1 W.: Mt. Diablo Meridian Secs. 1; 2; 11; 12; and 14.

T. 39 N., R. 1 E.: Mt. Diablo Meridian Secs. 5; 6; 8; 9; and 16.

BILLING CODE 4310-55-M

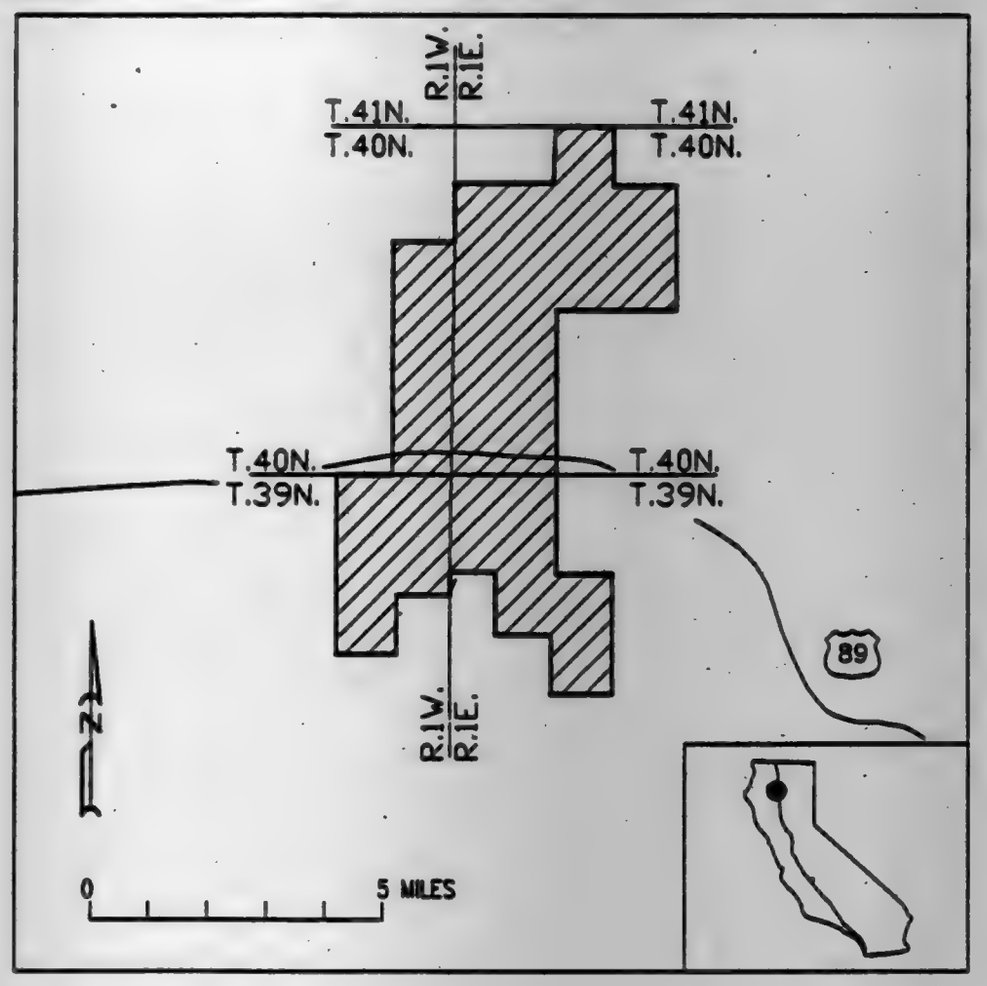

C-43

BILLING CODE 4310-55-C

Description of C-44 taken Solely From National Forest Service Map; Shasta, California 1987.

Siskiyou and Shasta Counties

T. 39 N., R. 1 E.: Mt. Diablo Meridian Secs. 12; 13; 14; 23; 24; 25; 26; 28; 30; 31; 32; 33; 34; and 35.

T. 39 N., R. 2 E.: Mt. Diablo Meridian Secs. 7; 17; 18; 19; and 30.

BILLING CODE 4310-55-M

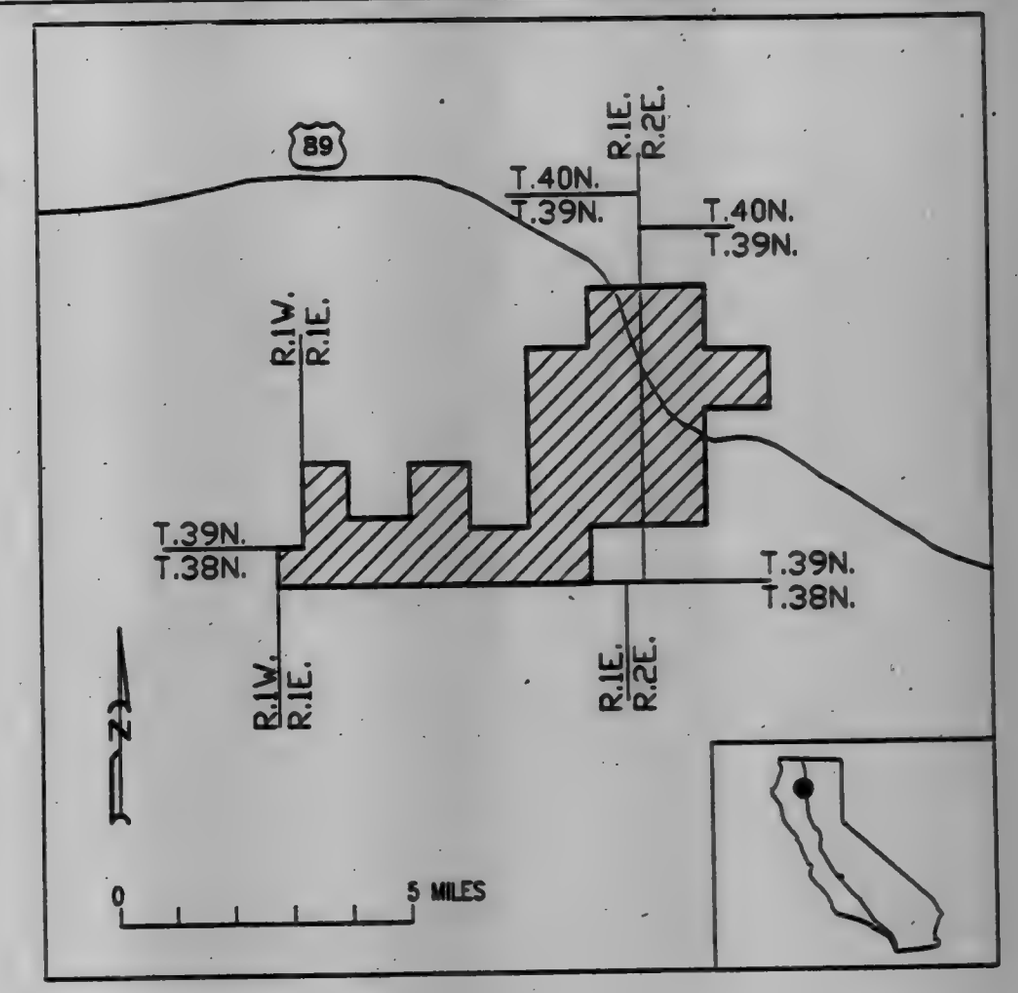

C-44

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-45 taken Solely From National Forest Service Map; Shasta, California 1987.

Shasta County

T. 37 N., R. 1 E.: Mt. Diablo Meridian
Secs. 12; 13; 14; 22; 23; 24; 25; 26; 27; 28; 34; 35; and 36.

T. 36 N., R. 1 E.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 10; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 27; 34; and 35.

T. 37 N., R. 2 E.: Mt. Diablo Meridian
Secs. 18; 19; 20; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 36 N., R. 2 E.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 18; 17; 18; 19; 20; and 30.

BILLING CODE 4310-55-M

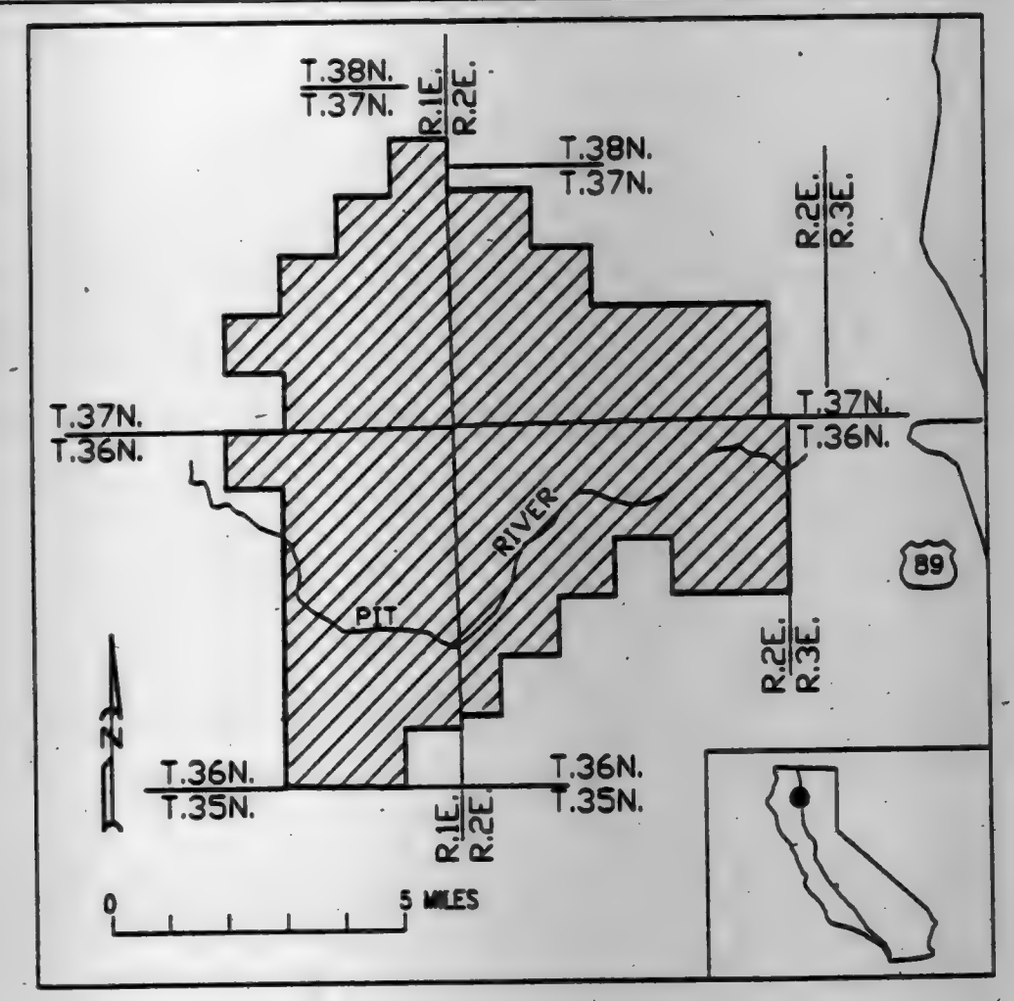

C-45

BILLING CODE 4310-55-C

Description of C-47 taken Solely From National Forest Service Map; Six Rivers, California 1984.

Del Norte County

T. 17 N., R. 1 W.: Humboldt Meridian
Secs. 25; and 36.

T. 17 N., R. 1 E.: Humboldt Meridian
Secs. 30; 31; and 32.

T. 16 N., R. 1 W.: Humboldt Meridian
Secs. 1; 2; 11; 14; 23; and 36.

T. 16 N., R. 1 E.: Humboldt Meridian
Secs. 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 23; 26; 27; 29; 31; and 32.

T. 15 N., R. 1 W.: Humboldt Meridian
Secs. 1; 12; 13; 23; 24; 25; and 36.

T. 15 N., R. 1 E.: Humboldt Meridian
Secs. 7; 8; 17; 18; 19; 30; and 31.

T. 14 N., R. 1 E.: Humboldt Meridian
Secs. 6; 7; 9; 10; 15; 16; 17; 20; 22; 27; 28; 29; 32; and 33.

Excepting any of the above area lying within the Redwood National Park, and the Pacific Ocean.

BILLING CODE 4310-55-M

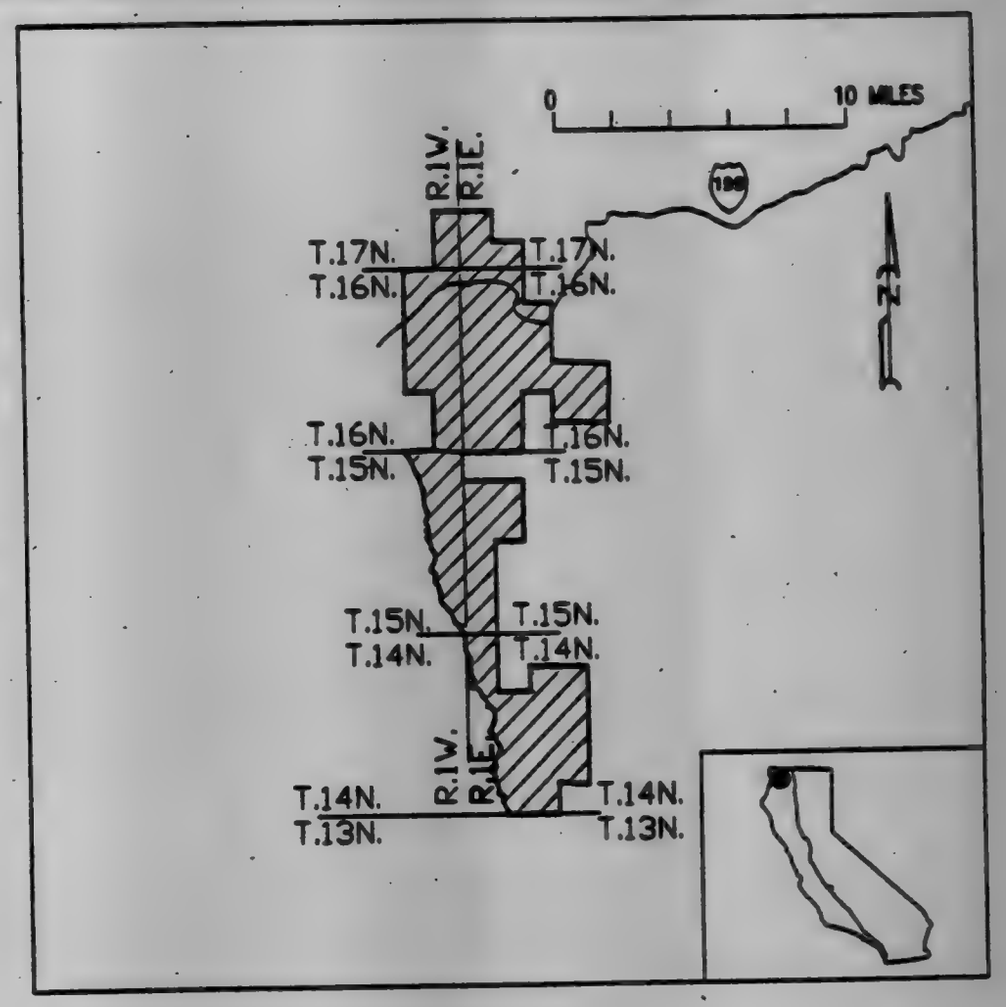

C-47

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-48 taken Solely From Six River NationalForest Map; California 1964.

Humboldt County

T. 12 N., R. 1 E.: Humboldt Meridian Secs. 3; 4; 9; 10; 11; 14; 21; 22; 23; 24; 33; 34; 35; and 36.

T. 12 N., R. 2 E.: Humboldt Meridian Secs. 30; and 31.

T. 11 N., R. 1 E.: Humboldt Meridian Secs. 1; 2; 3; 4; 9; 11; 12; 14; 22; 23; 27; 28; 29; 33; and 34.

T. 11 N., R. 2 E.: Humboldt Meridian Secs. 5; 6; 17; 21; 28; and 32.

T. 10 N., R. 1 E.: Humboldt Meridian Secs. 3; 4; 5; 8; 21; 28; and 33.

T. 10 N., R. 2 E.: Humboldt Meridian Secs. 5; 7; 8; 18; 20; 21; 29; and 33.

T. 9 N., R. 1 E.: Humboldt Meridian Secs. 4; 9; 14; 15; 23; 24; 25; and 36.

T. 9 N., R. 2 E.: Humboldt Meridian Secs. 3; 4; 10; 11; 14; 23; 31; and 35.

T. 9 N., R. 3 E.: Humboldt Meridian Sec. 19.

T. 8 N., R. 2 E.: Humboldt Meridian Secs. 2; 3; 5; 9; 10; 15; and 16.

Excepting any of the above area lying within the Redwood National Park area and the Pacific Ocean.

BILLING CODE 4310-55-M

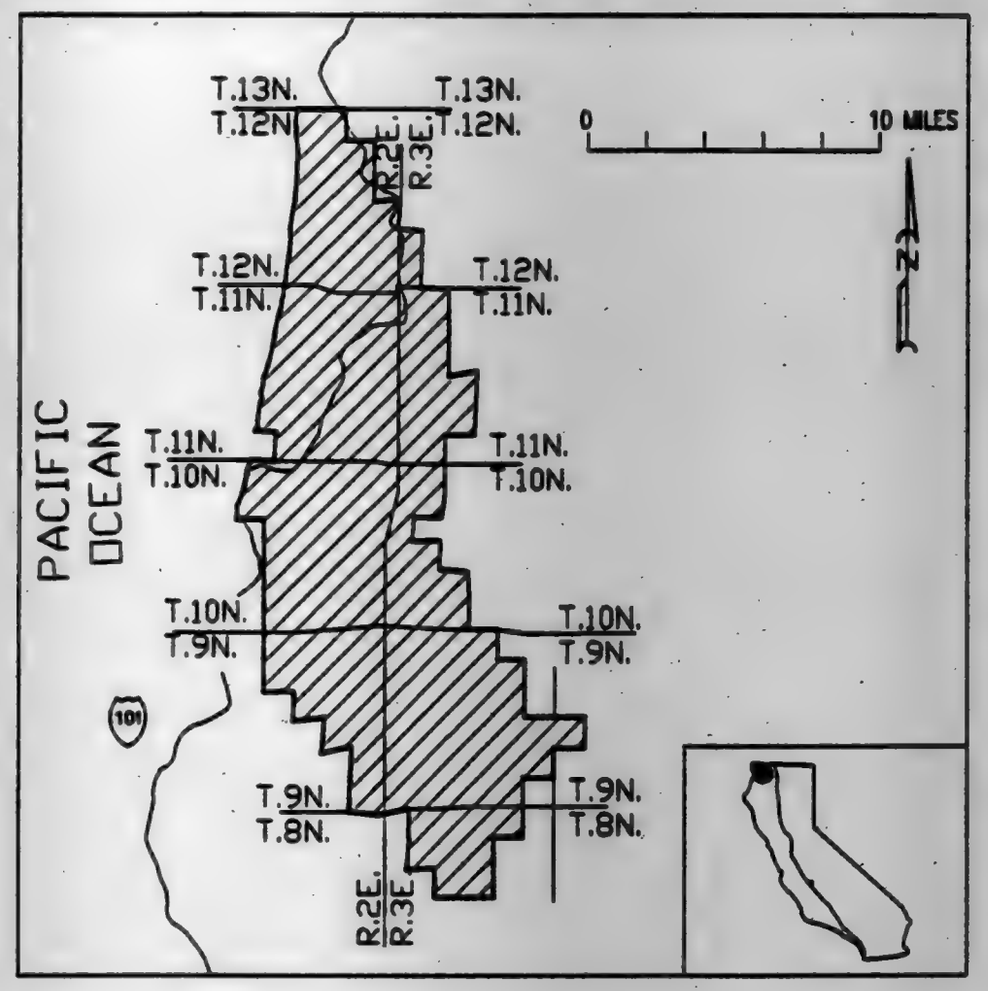

BILLING CODE 4310-55-C

C-48

Description of C-53 taken Solely From Bureau of LandManagement Maps; Hoopa 1983 and Hayfork 1982, California.

Humboldt County

T. 8 N., R. 3 E.: Humboldt Meridian Secs. 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 7 N., R. 3 E.: Humboldt Meridian Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; and 24.

T. 8 N., R. 4 E.: Humboldt Meridian Secs. 29; 30; 31; and 32.

T. 7 N., R. 4 E.: Humboldt Meridian Secs. 5; 6; 7; 8; 17; 18; 29; and 30.

BILLING CODE 4310-55-M

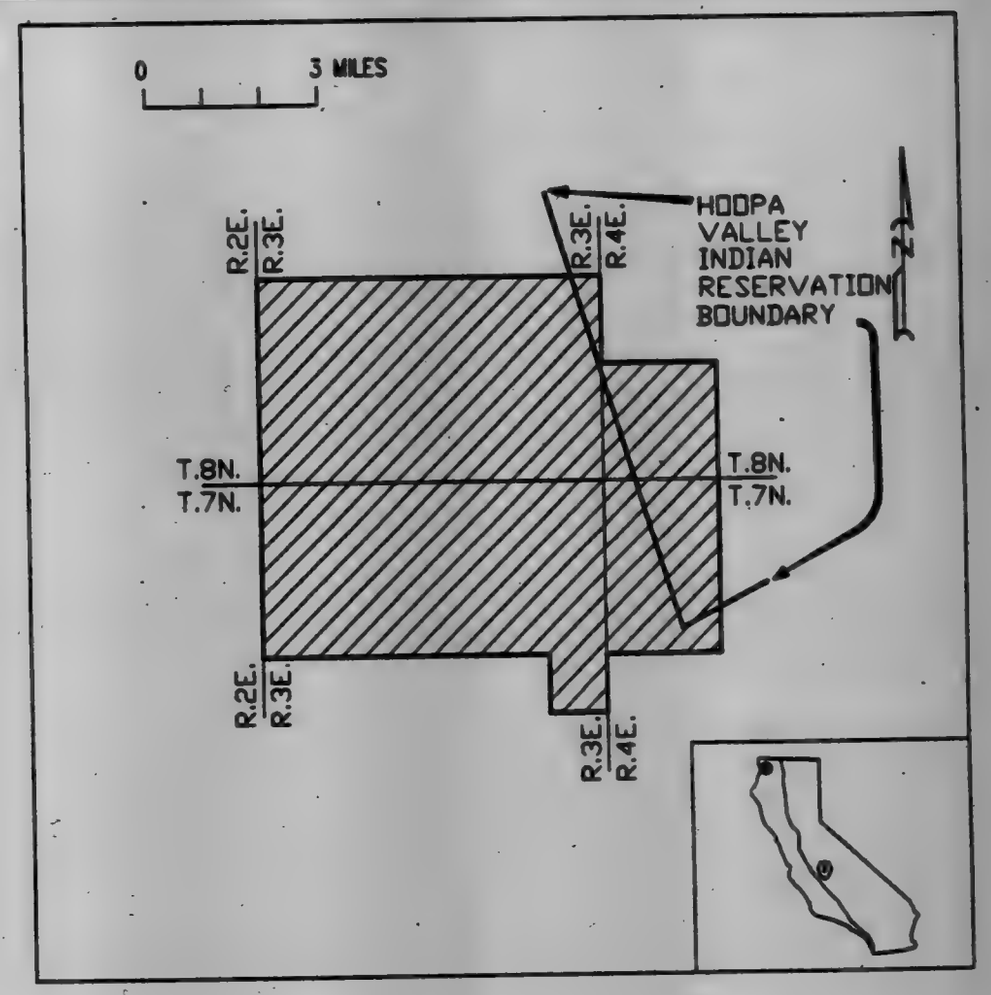

BILLING CODE 4310-55-C

C-53

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-54 taken Solely From Bureau of Land Management Map; Hayfork, California 1982.

Humboldt County

T. 4 N., R. 2 E.: Humboldt Meridian Sec. 23.

T. 3 N., R. 2 E.: Humboldt Meridian Secs. 1; and 2.

T. 4 N., R. 3 E.: Humboldt Meridian Sec. 31.

T. 3 N., R. 3 E.: Humboldt Meridian Sec. 6.

BILLING CODE 4310-05-M

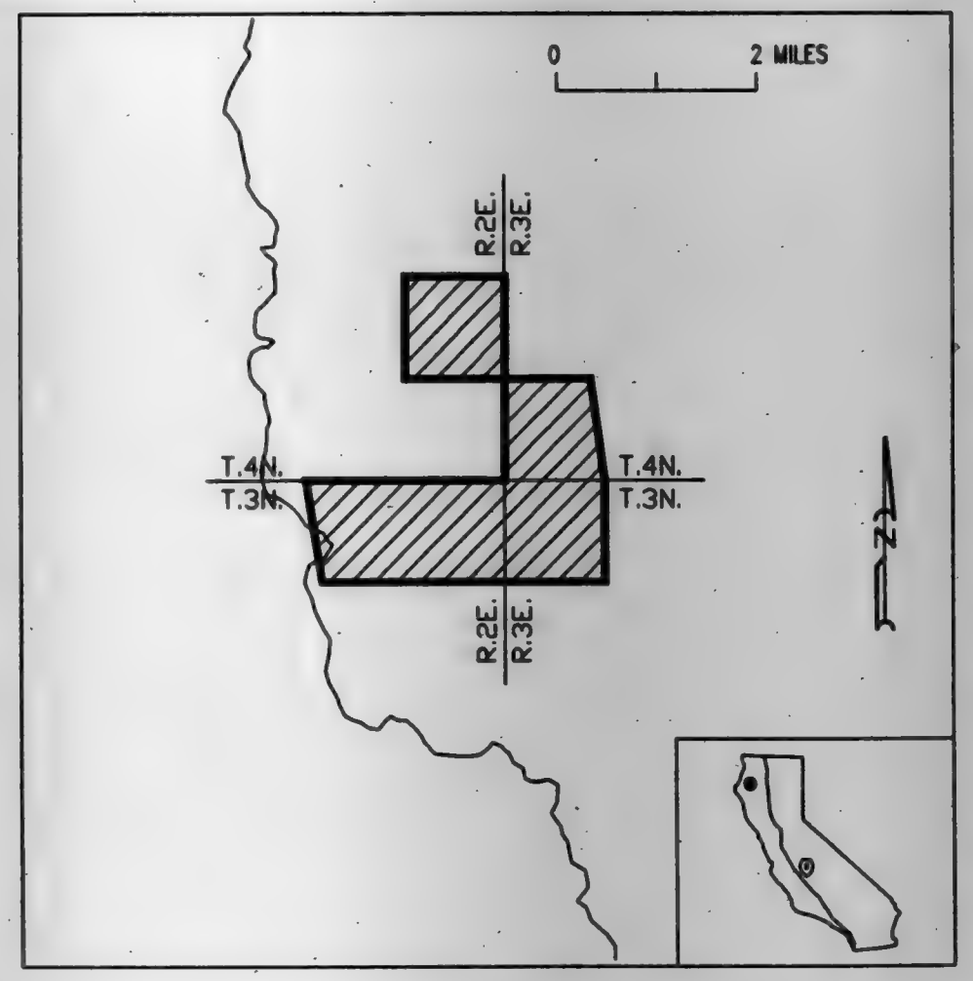

C-54

BILLING CODE 4310-05-C

Description of C-55 taken Solely From Bureau of Land Management Map; Hayfork, California 1982.

Humboldt County

T. 3 N., R. 3 E.: Humboldt Meridian Secs. 10; 14; and 15.

BILLING CODE 4310-05-M

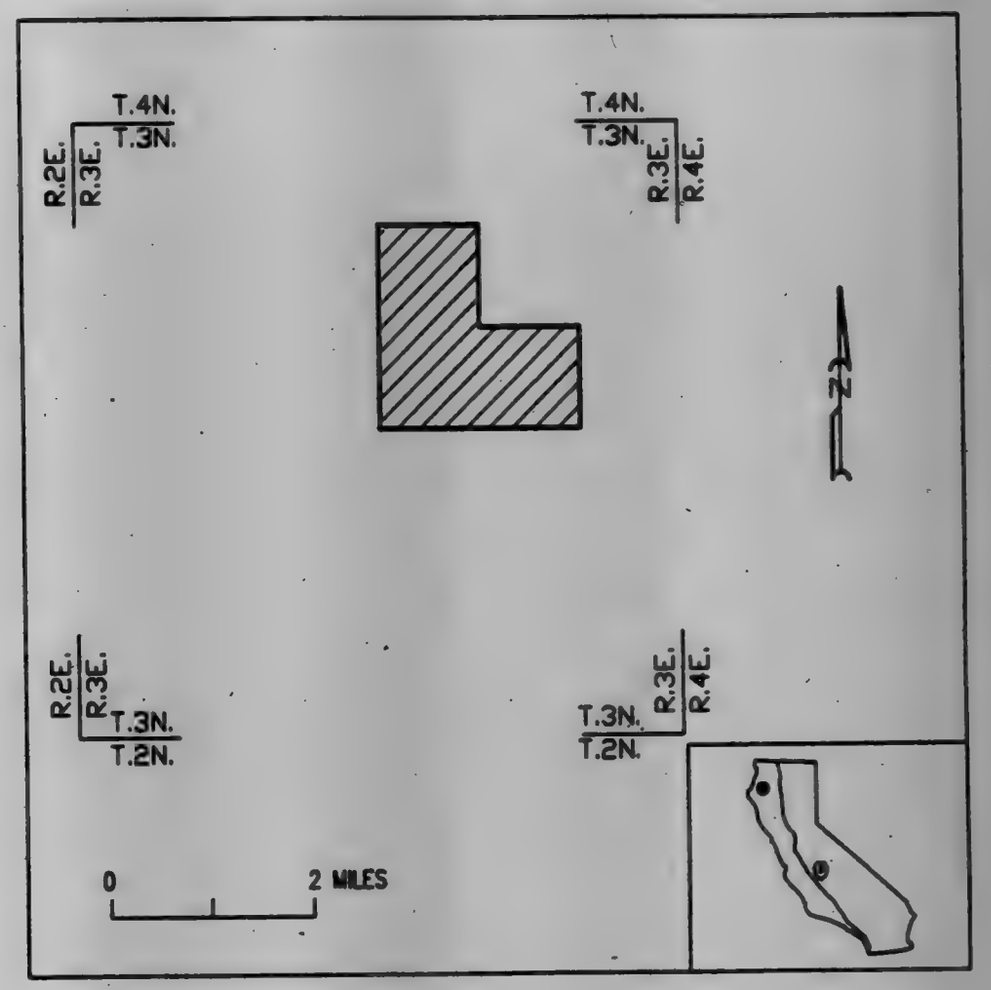

C-55

BILLING CODE 4310-05-C.

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-56 taken Solely From Bureau of Land Management Map; Garberville, California 1979.

Humboldt County

T. 1 N., R. 4 E.: Humboldt Meridian
Secs. 6; 7; 8; 9; 10; 15; 16; 17; 18; 19; 20; 21; 22; 23; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 1 S., R. 4 E.: Humboldt Meridian
Secs. 1; 2; 3; and 4.

Excepting any of the above area lying North of Highway 36.

BILLING CODE 4310-55-M

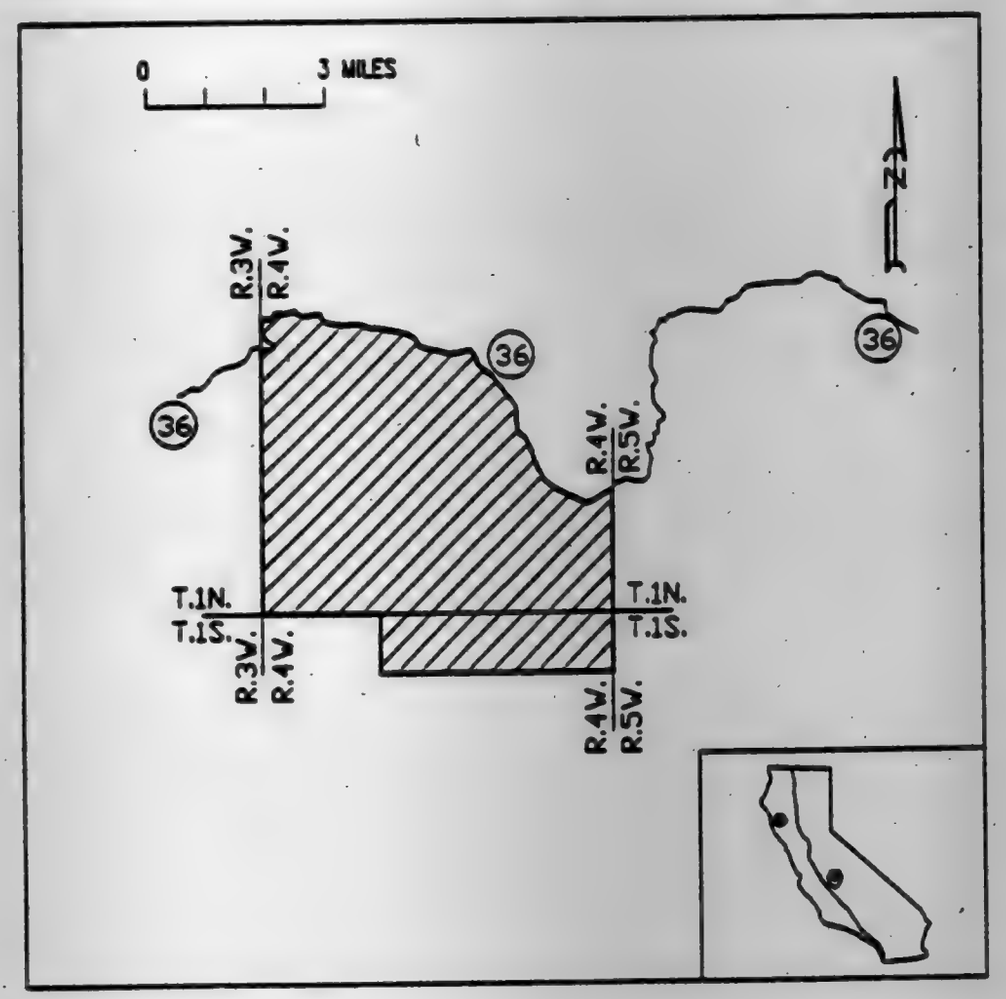

C-56

BILLING CODE 4310-55-C

Description of C-62 taken Solely From Bureau of Land Management Maps; Garberville 1979 and Covelo 1981, California.

Mendocino and Trinity Counties

T. 5 S., R. 7 E.: Humboldt Meridian
Secs. 23; 24; 25; 26; 34; 35; and 36.

T. 5 S., R. 8 E.: Humboldt Meridian
Secs. 19; and 30.

BILLING CODE 4310-55-M

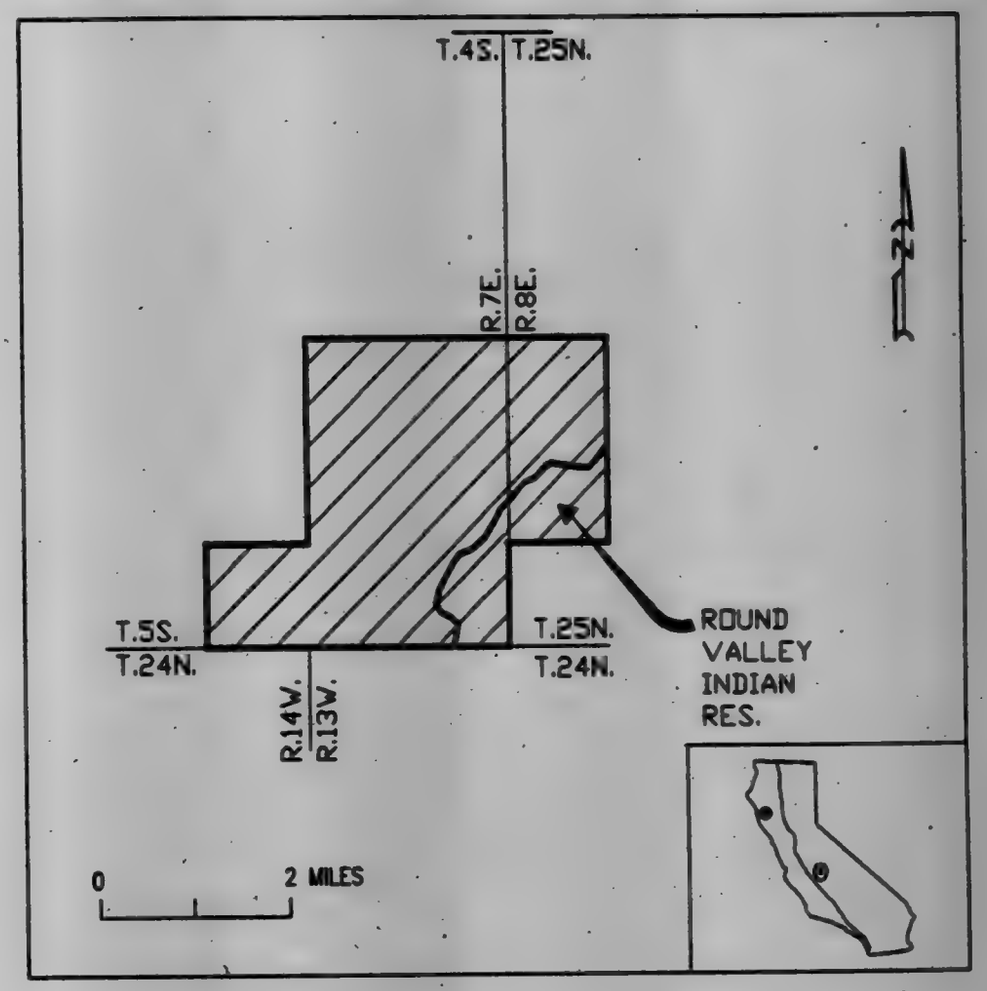

C-62

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-71 taken Solely From Bureau of Land Management Map; Covelo, California 1981.

Mendocino County

T. 22 N., R. 13 W.: Mt. Diablo Meridian Sec. 33.

T. 21 S., R. 13 W.: Humboldt Meridian Secs. 3; and 4.

BILLING CODE 4310-55-M

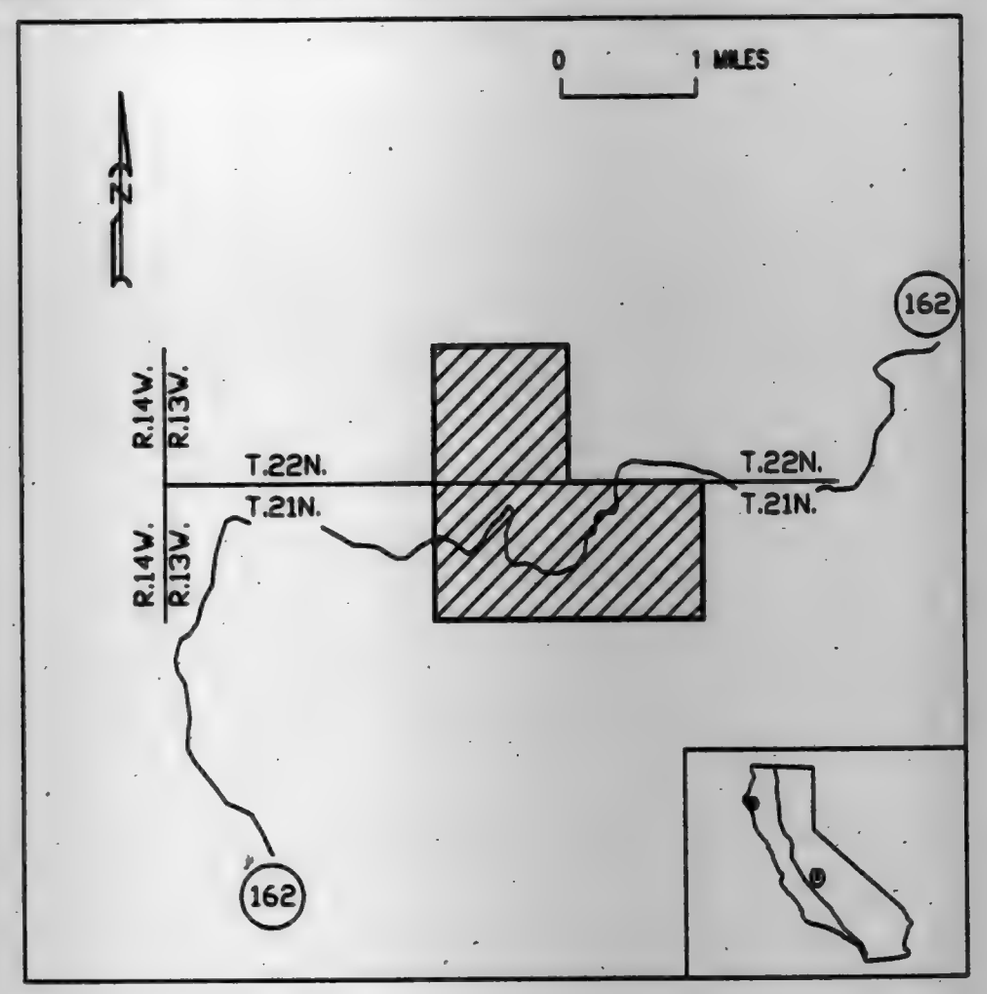

C-71

BILLING CODE 4310-55-C

Description of C-76 taken Solely From Bureau of Land Management Map; Ukiah, California 1981.

Mendocino County

T. 18 N., R. 13 W.: Mt. Diablo Meridian Secs. 1; 2; 3; and 11.

BILLING CODE 4310-55-M

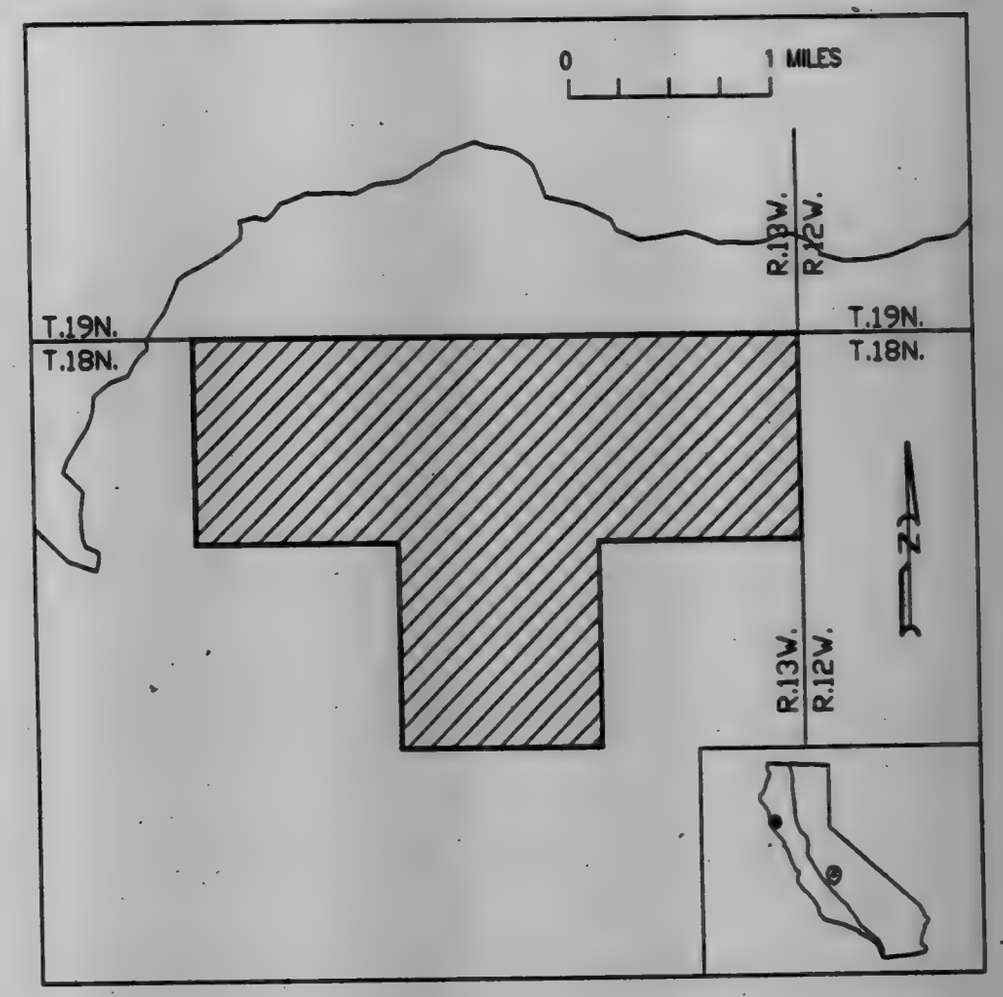

C-76

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-77 taken Solely From Bureau of Land Management Map; Ukiah, California 1981.

Mendocino County

T. 17 N., R. 14 W.: Mt. Diablo Meridian Secs. 14; 23; and 24.

T. 17 N., R. 13 W.: Mt. Diablo Meridian Secs. 31; and 32.

T. 16 N., R. 13 W.: Mt. Diablo Meridian Secs. 5; and 6.

BILLING CODE 4310-55-M

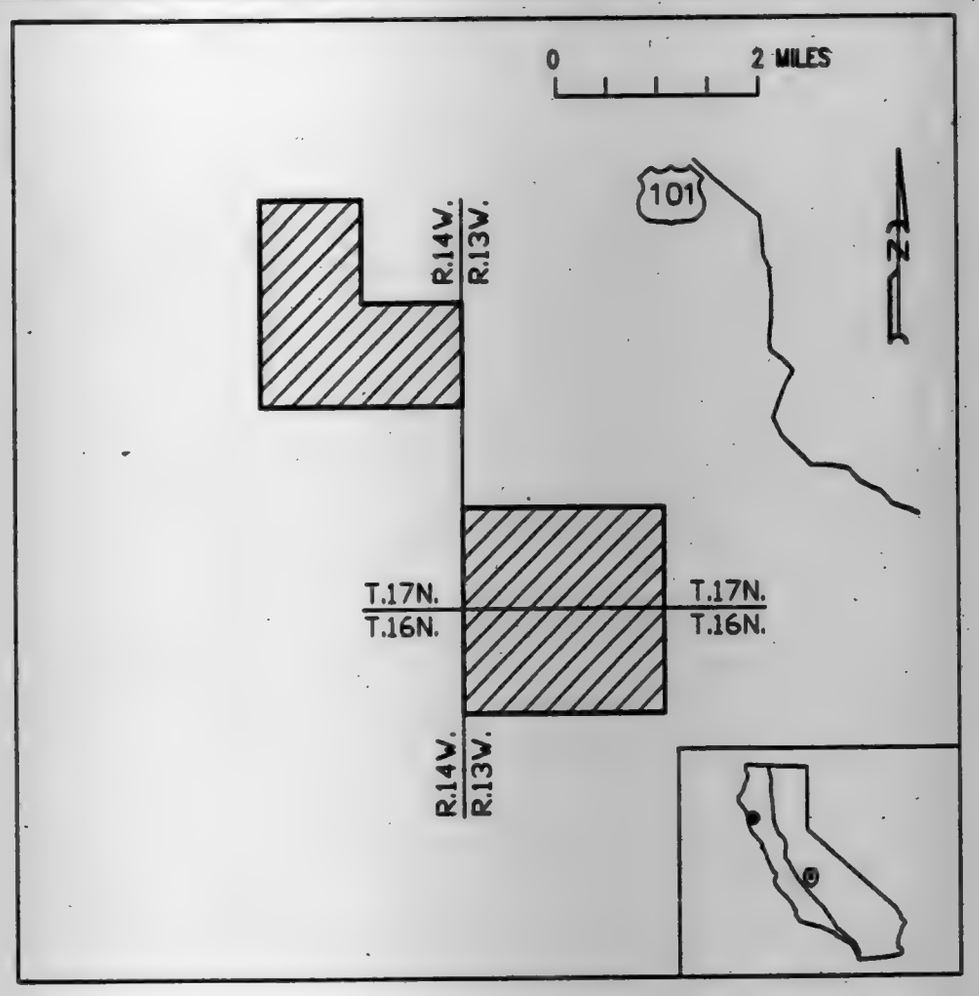

C-77

BILLING CODE 4310-55-C

Description of C-79 taken Solely From Bureau of Land Management Map; Ukiah, California 1981.

Mendocino and Lake Counties

T. 16 N., R. 10 W.: Mt. Diablo Meridian Secs. 7; 18; and 19.

T. 16 N., R. 11 W.: Mt. Diablo Meridian Secs. 13; 14; 15; 22; 23; 24; 25; 26; and 27.

T. 16 N., R. 12 W.: Mt. Diablo Meridian Secs. 32 and 33.

T. 15 N., R. 11 W.: Mt. Diablo Meridian Secs. 4; 5; 6; 7; 8; 9; 10; 15; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; and 30.

T. 15 N., R. 12 W.: Mt. Diablo Meridian Secs. 1; 12; 13; 24; and 25.

BILLING CODE 4310-55-M

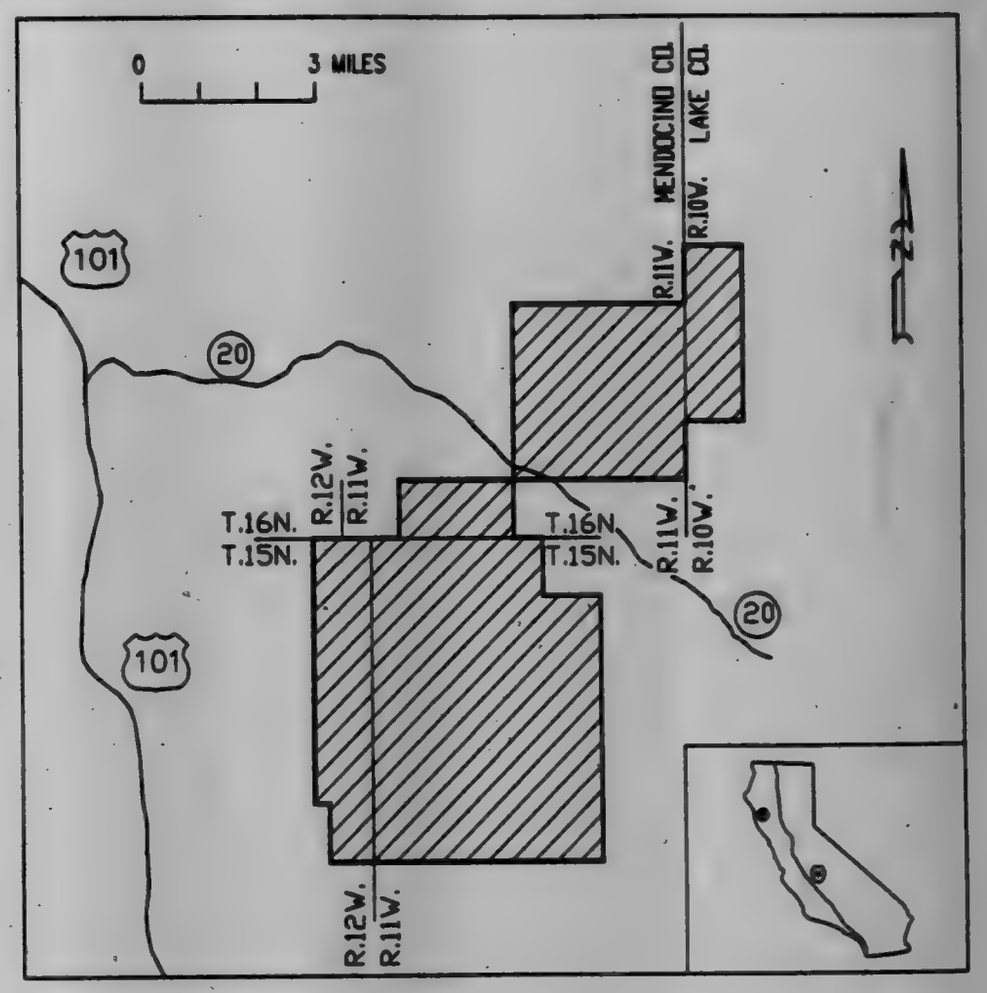

C-79

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-82 taken Solely From Bureau of Land Management Map; Garberville, California 1979.

Humboldt County

T. 2 N., R. 2 E.: Humboldt Meridian Secs. 33; 34; 35; and 36.

T. 2 N., R. 3 E.: Humboldt Meridian Secs. 31; and 32.

T. 1 N., R. 2 E.: Humboldt Meridian Secs. 1; 2; 3; 4; 9; 10; 11; and 12.

T. 1 N., R. 3 E.: Humboldt Meridian Secs. 5; 6; 7; and 8.

BILLING CODE 4310-66-M

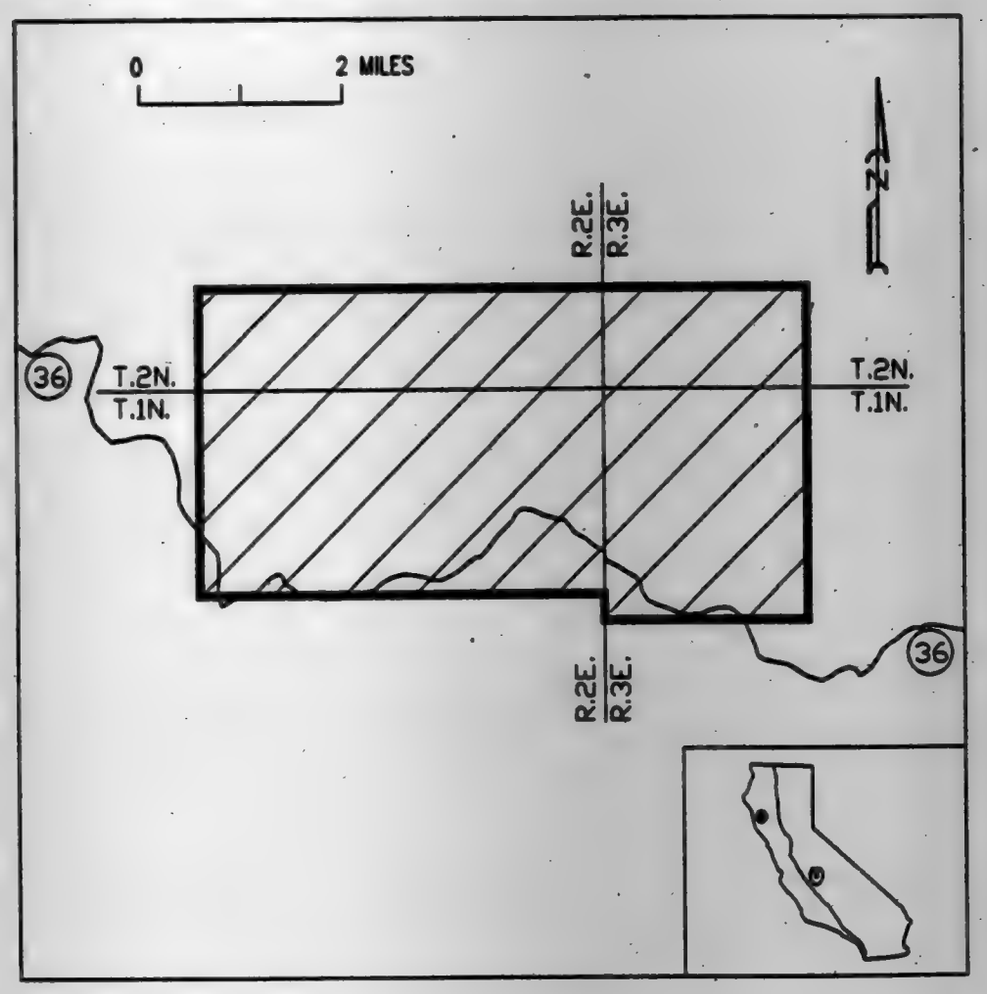

C-82

BILLING CODE 4310-66-C

Description of C-83 taken Solely From Bureau of Land Management Map; Garberville, California 1979.

Humboldt County

T. 4 S., R. 3 E.: Humboldt Meridian Secs. 2; 9; 10; and 11.

BILLING CODE 4310-66-M

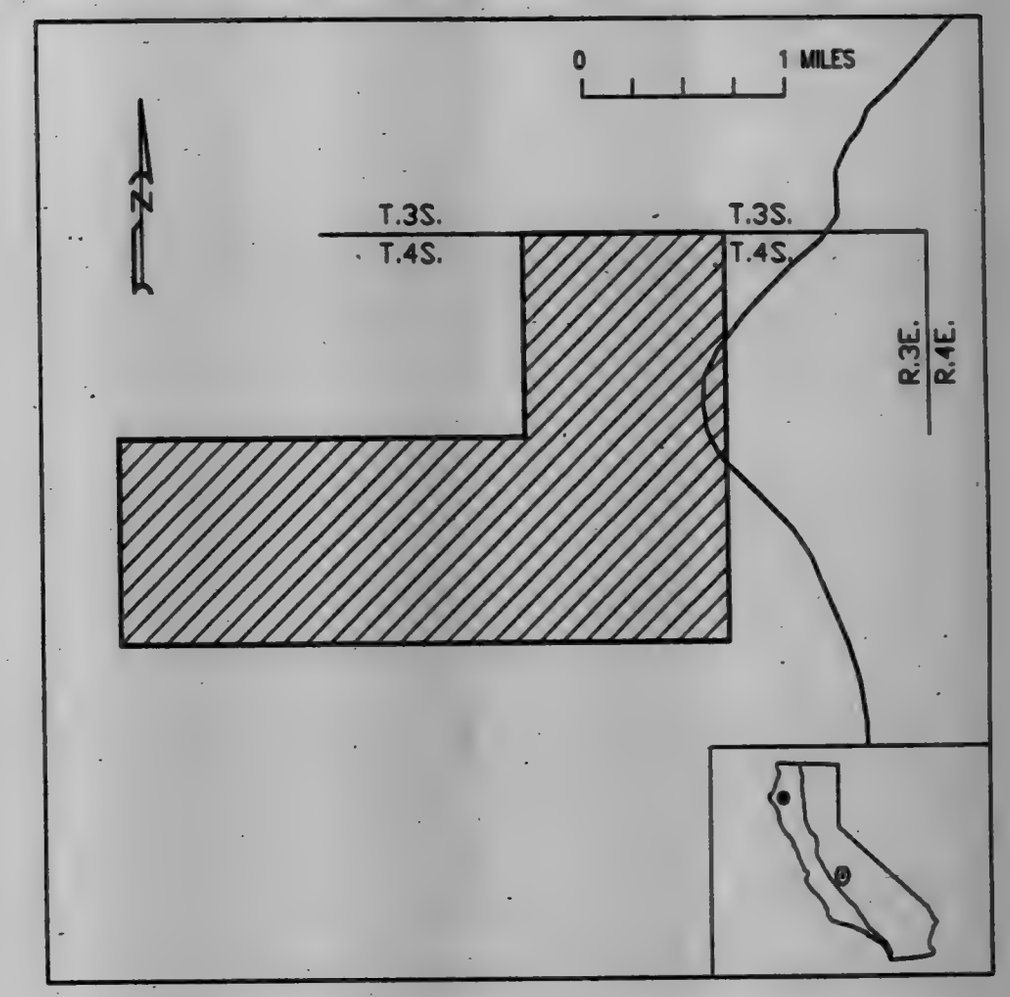

C-83

BILLING CODE 4310-66-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-84 taken Solely From Bureau of Land Management Map; Garberville, California 1979.

Humboldt County

T. 4 S., R. 3 E.: Humboldt Meridian Secs. 36; and 36.

T. 5 S., R. 3 E.: Humboldt Meridian Secs. 1; 2; 12; 13; and 14.

BILLING CODE 4310-55-M

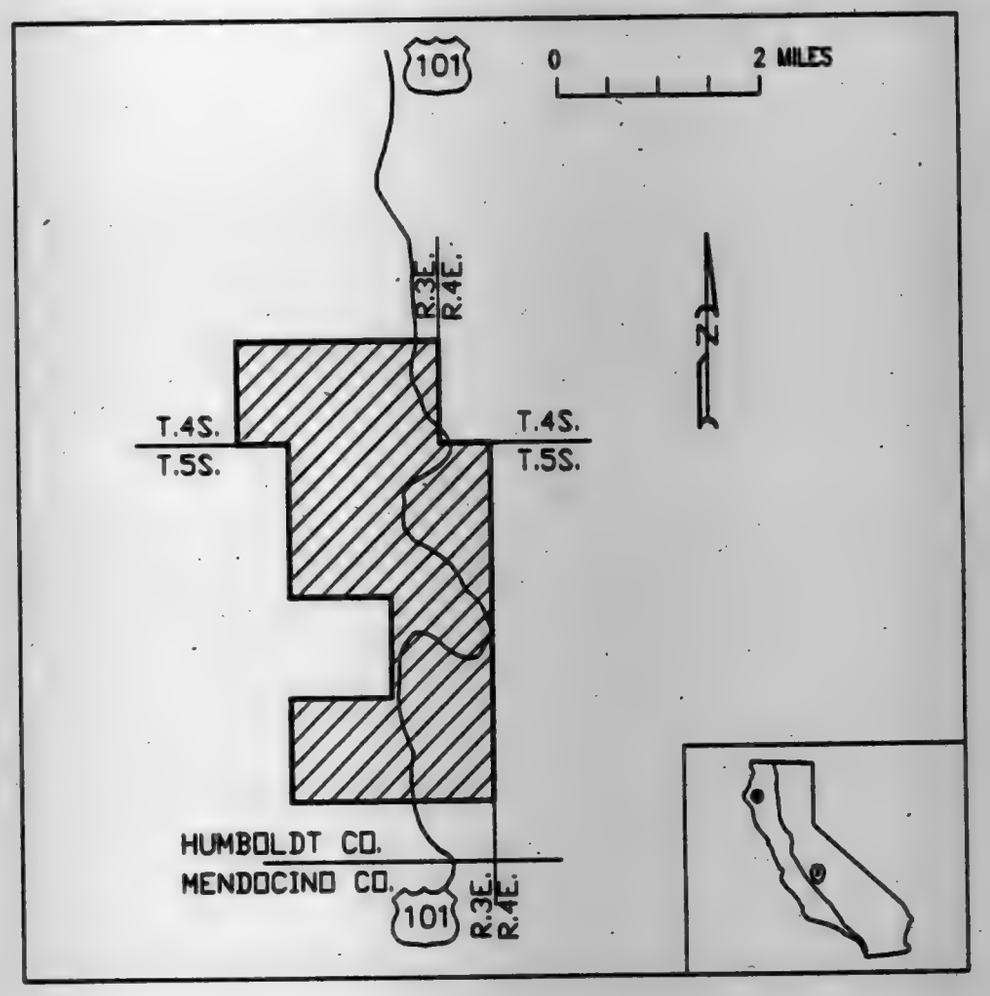

C-84

BILLING CODE 4310-55-C

Description of C-86 taken Solely From Bureau of Land Management Map; Covelo, California 1981.

Mendocino County

T. 20 N., R. 17 W.: Mt. Diablo Meridian Secs. 1; and 12.

T. 20 N., R. 16 W.: Mt. Diablo Meridian Secs. 6; and 7.

BILLING CODE 4310-55-M

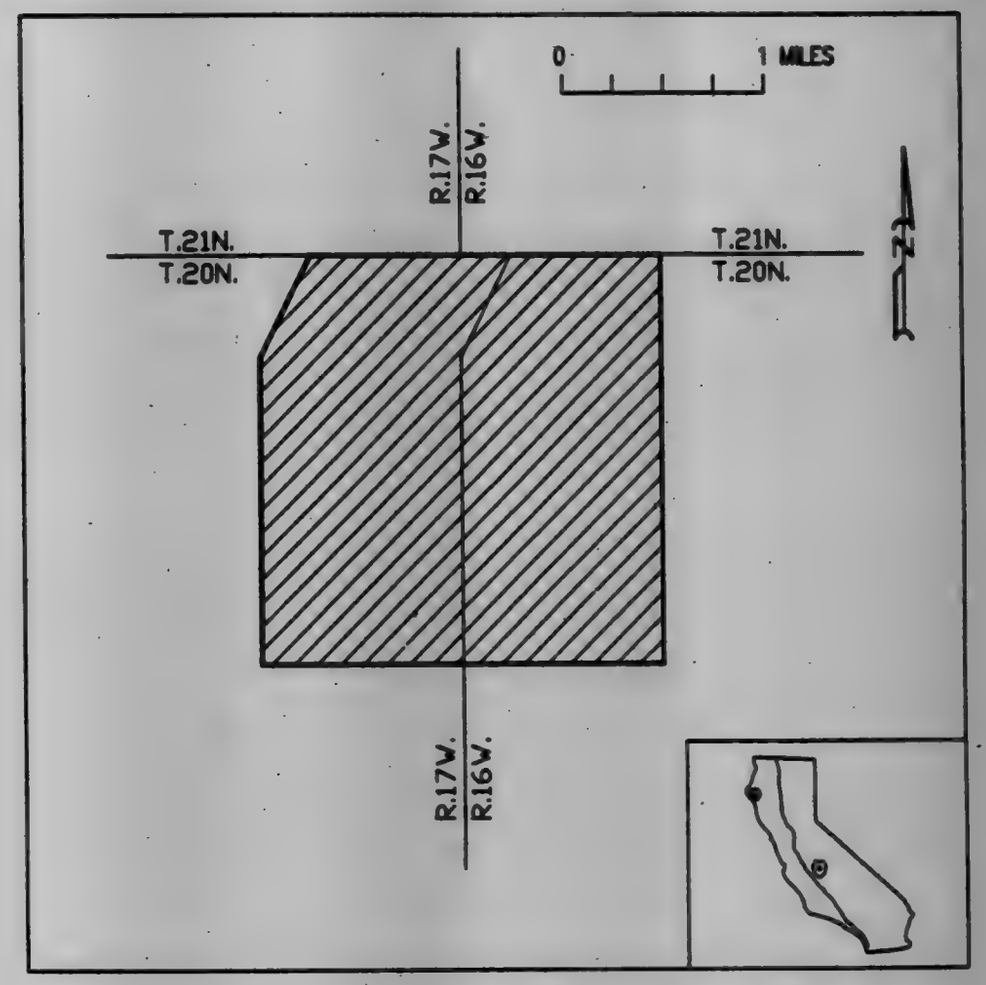

C-86

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of C-93 taken Solely From Bureau of Land Management Map; Point Arena, California 1981.

Mendocino County

T. 12 N., R. 13 W.: Mt. Diablo Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 10; 15; 16; 17; 18; 19; 20; 21; and 22.

BILLING CODE 4310-DS-M

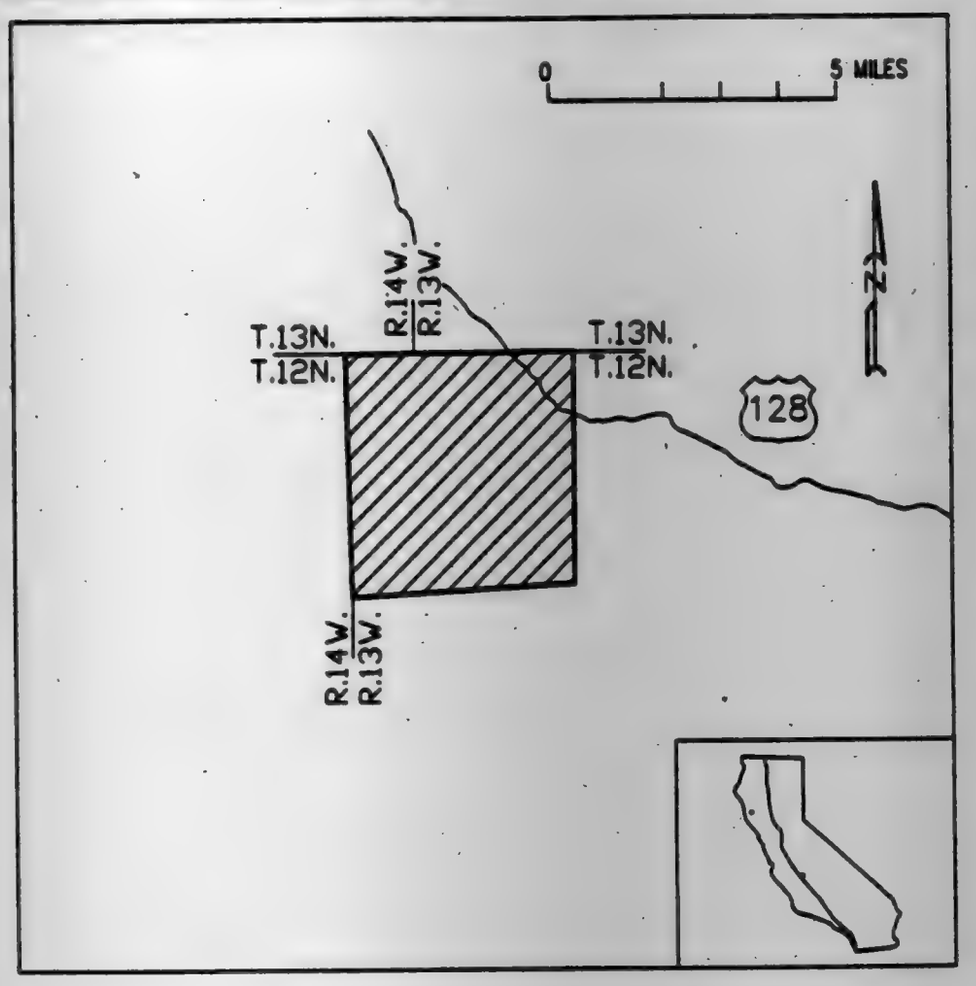

C-93

BILLING CODE 4310-DS-C

Description of C-96 taken Solely From Bureau of Land Management Map; Healdsburg, California 1972.

Lake, Napa, Sonoma Counties

T. 9 N., R. 6 W.: Mt. Diablo
Secs. 6; 7; 8; 9; 10; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 9 N., R. 5 W.: Mt. Diablo
Secs. 19; 20; 29; 30; and 31.

T. 10 N., R. 7 W.: Mt. Diablo
Secs. 27; 28; 29; 32; 33; 34; and 35.

T. 9 N., R. 7 W.: Mt. Diablo
Secs. 1; 2; 3; 4; 9; 10; 11; 13; 14; and 23.

Together with that part of Mallacomes or Moristul Y plan De Agua Caliente lying East of Mallacomes or Moristul; West of Carne Humana, and North of Highway 128.

BILLING CODE 4310-DS-M

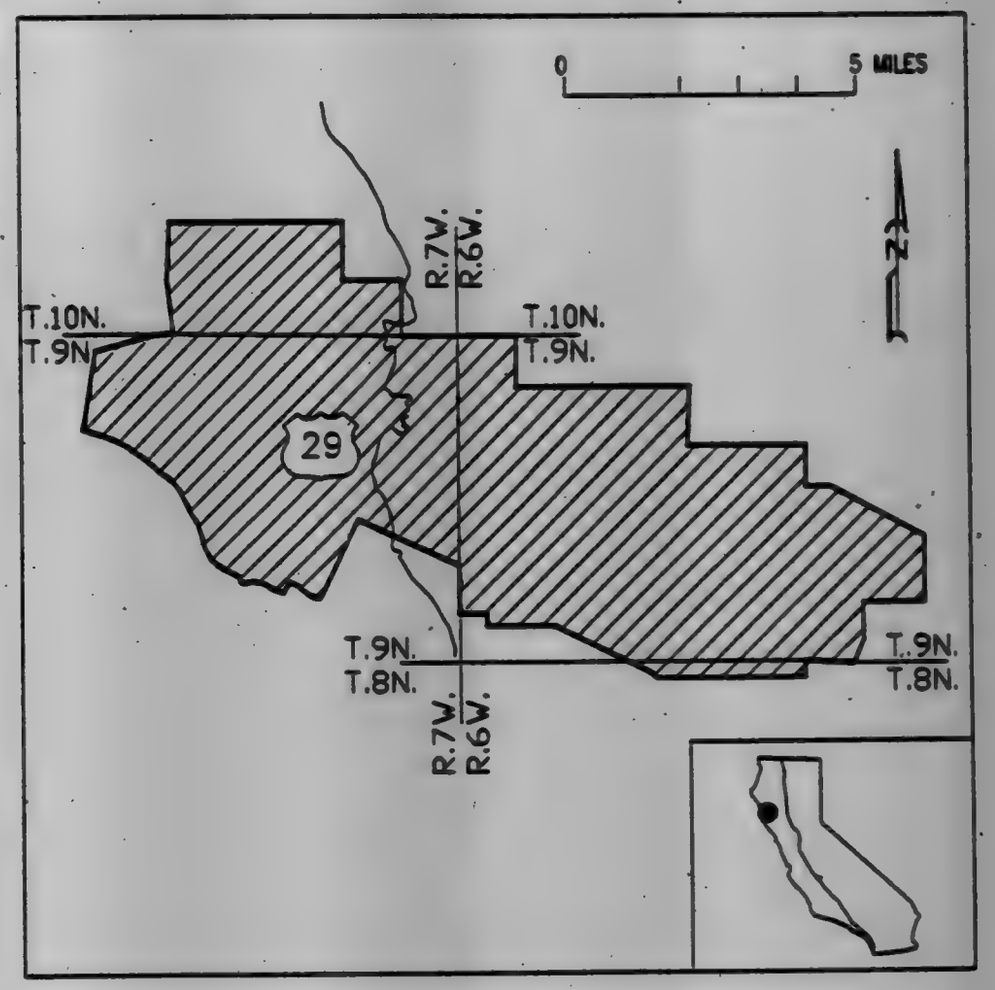

C-96

BILLING CODE 4310-DS-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of CM-1 taken Solely From Bureau of Land Management Maps: Cape Mendocino 1979 and Eureka, California 1979.

Humboldt County

T. 2 N., R. 1 W.: Humboldt Meridian
Secs. 20; 21; 22; 27; 28; 29; 32; 33; and 34.

T. 1 N., R. 1 W.: Humboldt Meridian
Secs. 3; 4; 5; 8; 9; 10; 15; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; and 33.

T. 1 N., R. 2 W.: Humboldt Meridian
Secs. 13; 14; 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 1 S., R. 2 W.: Humboldt Meridian
Secs. 1; 2; 3; 4; 5; 8; 9; 10; 11; and 12.

T. 1 S., R. 1 W.: Humboldt Meridian
Secs. 4; 5; and 6.

BILLING CODE 4310-55-M

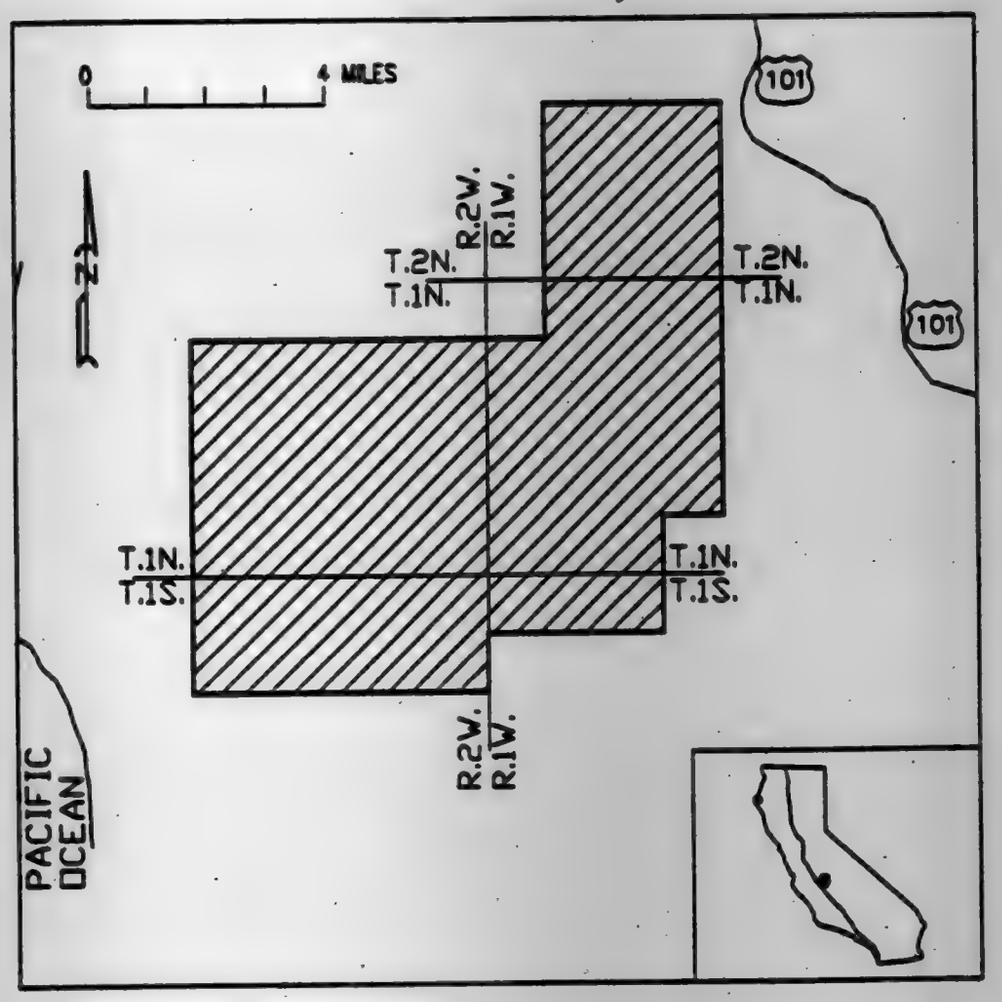

CM-1

BILLING CODE 4310-55-C

Description of CM-2 taken Solely From Bureau of Land Management Maps: Garberville 1979, Cape Mendocino 1979, Covelo 1981, California.

Humboldt and Mendocino Counties

T. 1 N., R. 1 E.: Humboldt Meridian
Secs. 23; 24; 25; and 26.

T. 1 N., R. 2 E.: Humboldt Meridian
Secs. 19; 20; 29; 30; and 32.

T. 1 S., R. 2 E.: Humboldt Meridian
Secs. 3; 4; 5; 10; 11; 14; 15; 16; 17; 18; 23; 26; and 35.

T. 1 S., R. 1 E.: Humboldt Meridian
Secs. 13; 14; 15; 22; 28; 33; and 34.

T. 2 S., R. 1 E.: Humboldt Meridian
Secs. 2; 3; 4; 9; 15; 22; 26; 35; and 36.

T. 2 S., R. 2 E.: Humboldt Meridian
Secs. 1; 2; 25; 26; 27; 28; 29; 30; 31; 32; and 36.

T. 3 S., R. 2 E.: Humboldt Meridian
Secs. 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; and 30.

T. 2 S., R. 3 E.: Humboldt Meridian
Secs. 7; 17; 18; 21; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 3 S., R. 3 E.: Humboldt Meridian
Secs. 3; 11; and 12.

T. 1 S., R. 3 W.: Humboldt Meridian
Secs. 13; 24; 25; and 36.

T. 2 S., R. 2 W.: Humboldt Meridian
Secs. 4; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 3 S., R. 2 W.: Humboldt Meridian
Secs. 1; 2; 3; 4; 5; 6; 8; 9; 10; 11; 12; 13; 14; 15; 16; 22; 23; 24; 25; and 26.

T. 2 S., R. 1 W.: Humboldt Meridian
Secs. 18; 19; 20; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 3 S., R. 1 W.: Humboldt Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 3 S., R. 1 E.: Humboldt Meridian
Secs. 1; 2; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 4 S., R. 1 W.: Humboldt Meridian
Secs. 1; 2; 3; 4; 5; 9; 10; 11; 12; 13; 14; and 15.

T. 4 S., R. 1 E.: Humboldt Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 4 S., R. 2 E.: Humboldt Meridian
Secs. 6; 7; 18; 19; 20; and 31.

T. 5 S., R. 2 E.: Humboldt Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 24 N., R. 19 W.: Mt. Diablo Meridian
Secs. 2; 3; 4; 9; 10; 11; 14; 15; 22; 23; 24; 25; 26; and 36.

T. 24 N., R. 18 W.: Mt. Diablo Meridian
Secs. 19; 20; and 31.

T. 23 N., R. 19 W.: Mt. Diablo Meridian
Sec. 1.

T. 23 N., R. 18 W.: Mt. Diablo Meridian
Secs. 5; 6; 7; 8; 9; 16; 17; 18; 21; and 22.

Excepting any of the area lying to the right of the Mattole River looking downstream in the following sections:

T. 2 S., R. 2 W.: Humboldt Meridian
Secs. 9; 10; 11; 12; 13; 16; 17; 24; and 25.

T. 2 S., R. 1 W.: Humboldt Meridian
Secs. 19; 30; 28; 29; 30; 33; 34; and 35.

T. 3 S., R. 1 W.: Humboldt Meridian
Secs. 1; 2; and 3.

T. 3 S., R 1 E.: Humboldt Meridian
Secs. 4; 5; 6; 9; and 10.

and the Pacific Ocean.

BILLING CODE 4310-55-M

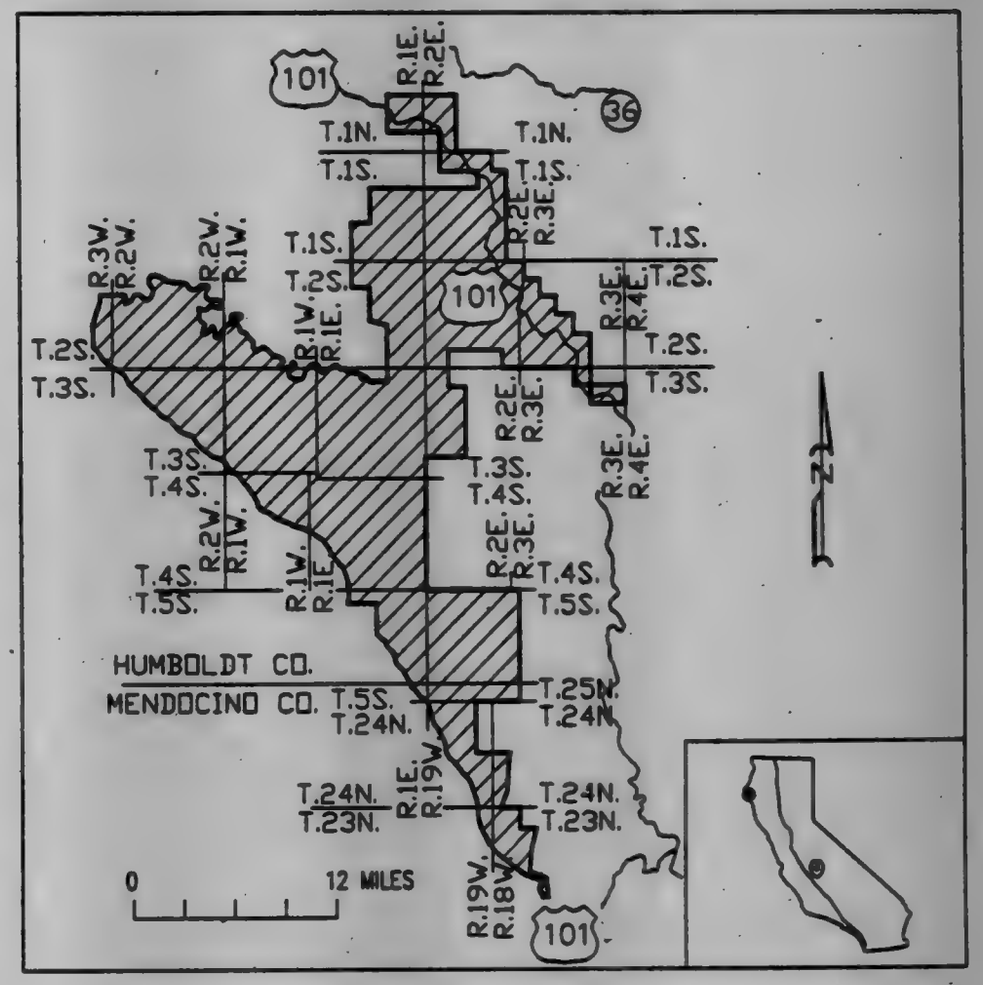

CM-2

BILLING CODE 4310-55-C

Description of COV-1 taken Solely From Bureau of Land Management Maps: Garberville 1979 and Covelo 1981, California.

Humboldt, Mendocino, and Trinity Counties

T. 4 S., R. 5 E.: Humboldt Meridian Secs. 18; 22; 27; 33; and 34.

T. 5 S., R. 5 E.: Humboldt Meridian Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 5 S., R. 4 E.: Humboldt Meridian Secs. 25; 26; 27; 32; 33; 34; 35; and 36.

T. 5 S., R. 6 E.: Humboldt Meridian Secs. 30; and 31.

T. 24 N., R. 17 W.: Mt. Diablo Meridian Secs. 1; 2; 3; 4; 10; 11; 12; 13; 14; 23; 24; 25; 26; 27; 28; 33; 34; 35; and 36.

T. 24 N., R. 16 W.: Mt. Diablo Meridian Secs. 3; 4; 5; 6; 7; 8; 9; 10; 11; 15; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 24 N., R. 15 W.: Mt. Diablo Meridian Secs. 3; 4; 5; 6; 7; 8; 9; 10; 11; and 12.

T. 23 N., R. 17 W.: Mt. Diablo Meridian Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 33; 34; 35; and 36.

T. 23 N., R. 16 W.: Mt. Diablo Meridian Secs. 3; 4; 5; 6; 7; 8; 9; 10; 15; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 22 N., R. 17 W.: Mt. Diablo Meridian Secs. 1; 12; 13; and 24.

T. 22 N., R. 16 W.: Mt. Diablo Meridian Secs. 3; 4; 5; 6; 7; 8; 9; 10; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 26; 27; 28; 34; and 35.

T. 22 N., R. 15 W.: Mt. Diablo Meridian Secs. 19; 20; and 31.

T. 21 N., R. 16 W.: Mt. Diablo Meridian Secs. 1; 2; 11; 12; and 13.

T. 21 N., R. 15 W.: Mt. Diablo Meridian Secs. 5; 6; 7; 8; 17; and 18.

BILLING CODE 4310-55-M

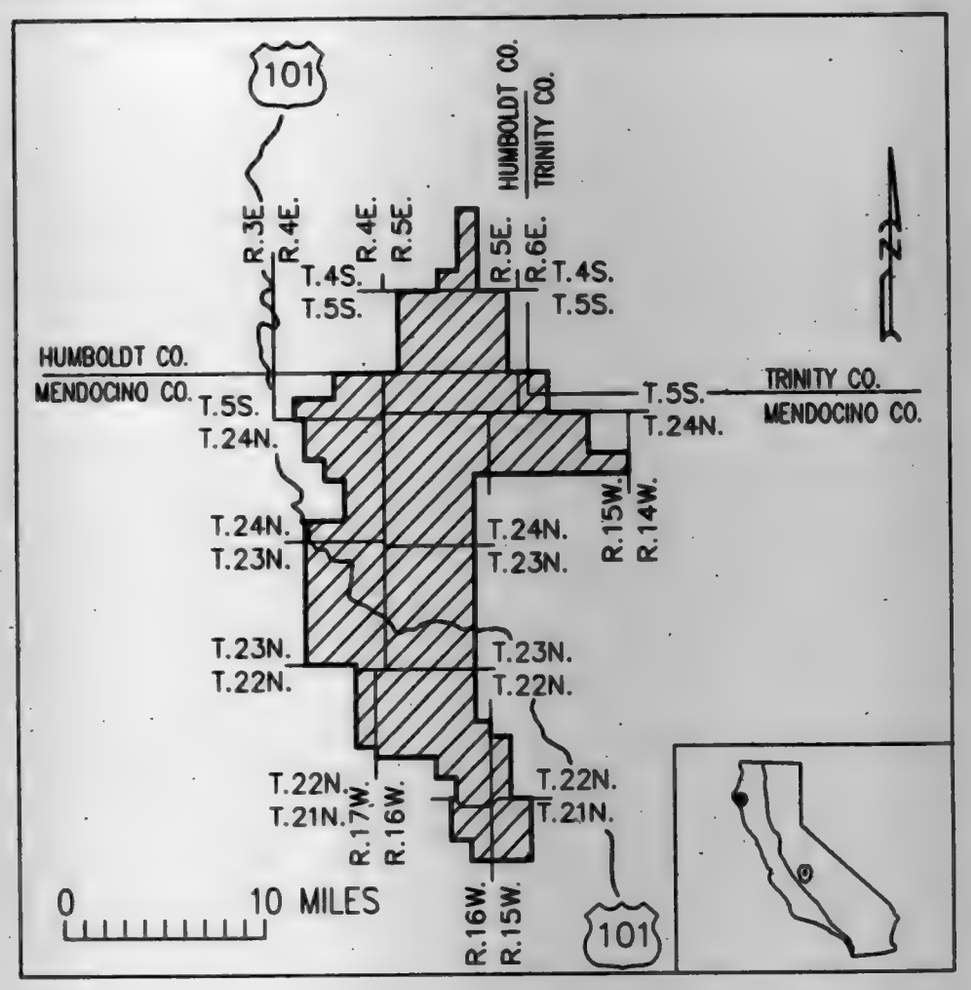

COV-1

BILLING CODE 4310-55-C

Description of COV-2 taken Solely From Bureau of Land Management Map; Covelo, California 1981.

Mendocino County

T. 23 N., R. 15 W.: Mt. Diablo Meridian Secs. 13; 24; 25; and 36.

T. 22 N., R. 15 W.: Mt. Diablo Meridian Secs. 1; 12; 13; and 24.

T. 23 N., R. 14 W.: Mt. Diablo Meridian Sec. 30.

T. 22 N., R. 14 W.: Mt. Diablo Meridian Secs. 4; 5; 6; 7; 8; 9; 17; 18; 19; 20; 21; 22; 27; 28; 29; 32; 33; and 34.

T. 21 N., R. 15 W.: Mt. Diablo Meridian Sec. 12.

T. 21 N., R. 14 W.: Mt. Diablo Meridian Secs. 4; 5; and 6.

BILLING CODE 4310-55-M

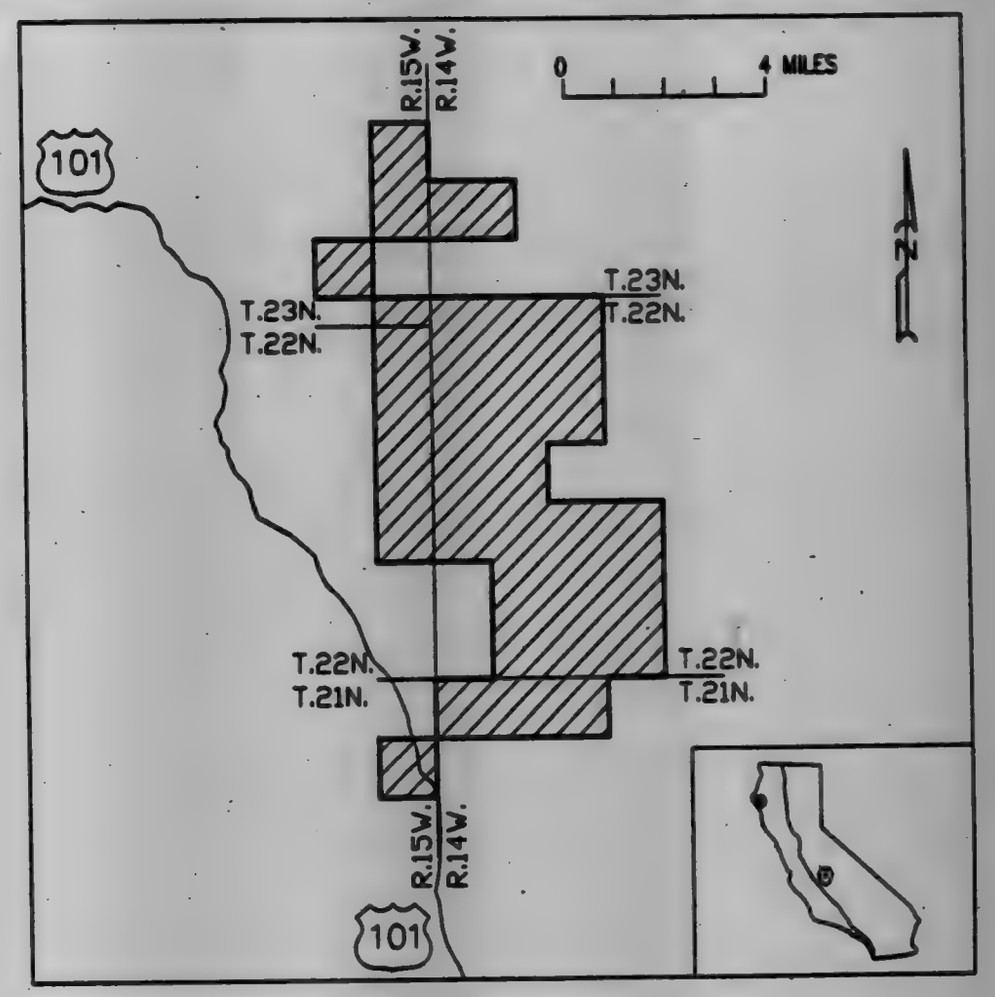

COV-2

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of COV-3 taken Solely From Bureau of Land Management Maps; Covelo 1961 and Ukiah 1961, California.

Mendocino County

T. 20 N., R. 13 W.: Mt. Diablo Meridian Secs. 1; 2; 4; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 35; and 36.

T. 20 N., R. 14 W.: Mt. Diablo Meridian Secs. 24; and 25.

T. 20 N., R. 13 W.: Mt. Diablo Meridian Secs. 18; 19; 30; and 31.

T. 19 N., R. 12 W.: Mt. Diablo Meridian Sec. 6.

T. 19 N., R. 13 W.: Mt. Diablo Meridian Secs. 1; 4; 5; 6; 9; 10; 15; 16; and 22.

BILLING CODE 4310-55-M

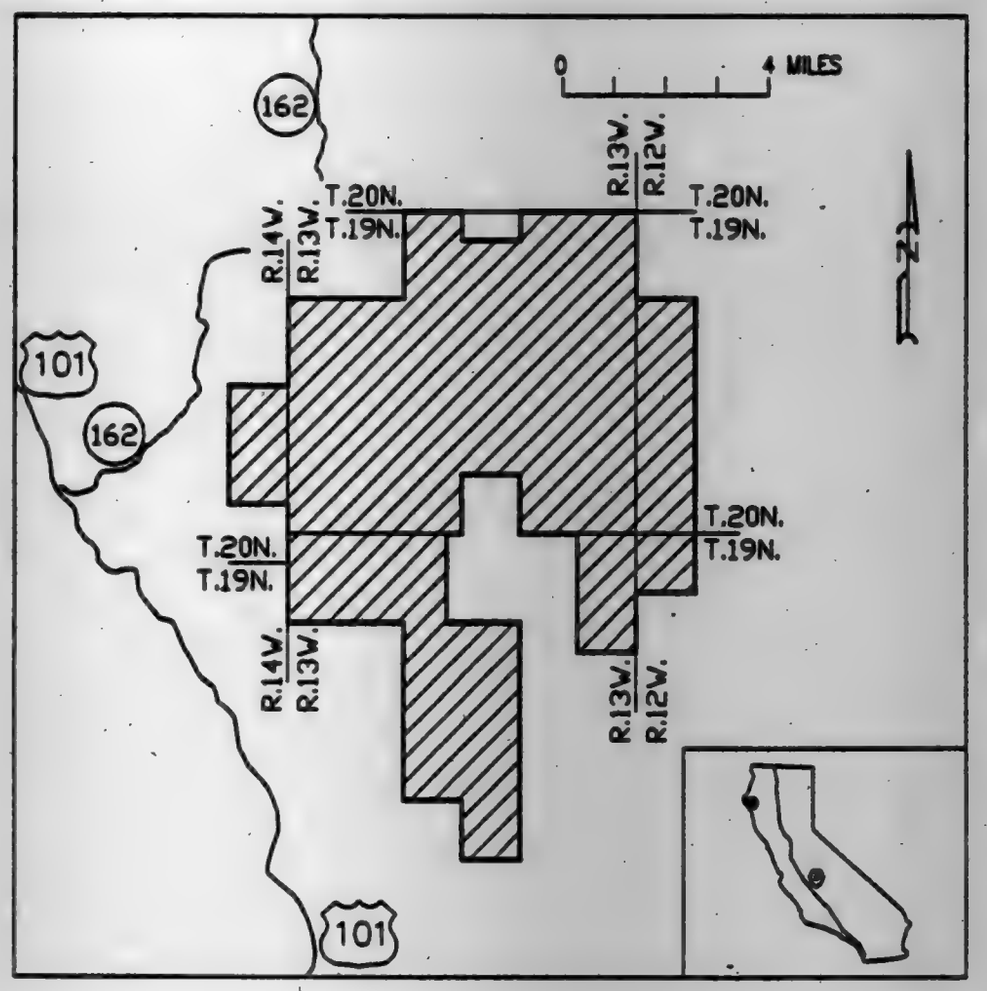

COV-3

BILLING CODE 4310-55-C

Description of COV-4 taken Solely From Bureau of Land Management Map; Covelo, California 1961.

Mendocino County

T. 22 N., R. 12 W.: Mt. Diablo Meridian Secs. 12; 13; 14; 23; 24; and 25.

T. 22 N., R. 11 W.: Mt. Diablo Meridian Secs. 18; 19; 20; 28; 29; 30; 31; 32; 33; and 34.

T. 21 N., R. 12 W.: Mt. Diablo Meridian Secs. 1; 3; 10; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 27; 34; 35; and 36.

T. 21 N., R. 11 W.: Mt. Diablo Meridian Secs. 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 20 N., R. 12 W.: Mt. Diablo Meridian Secs. 1; 2; 3; 10; 11; 12; 13; and 14.

T. 20 N., R. 11 W.: Mt. Diablo Meridian Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 15; 17; and 18.

BILLING CODE 4310-55-M

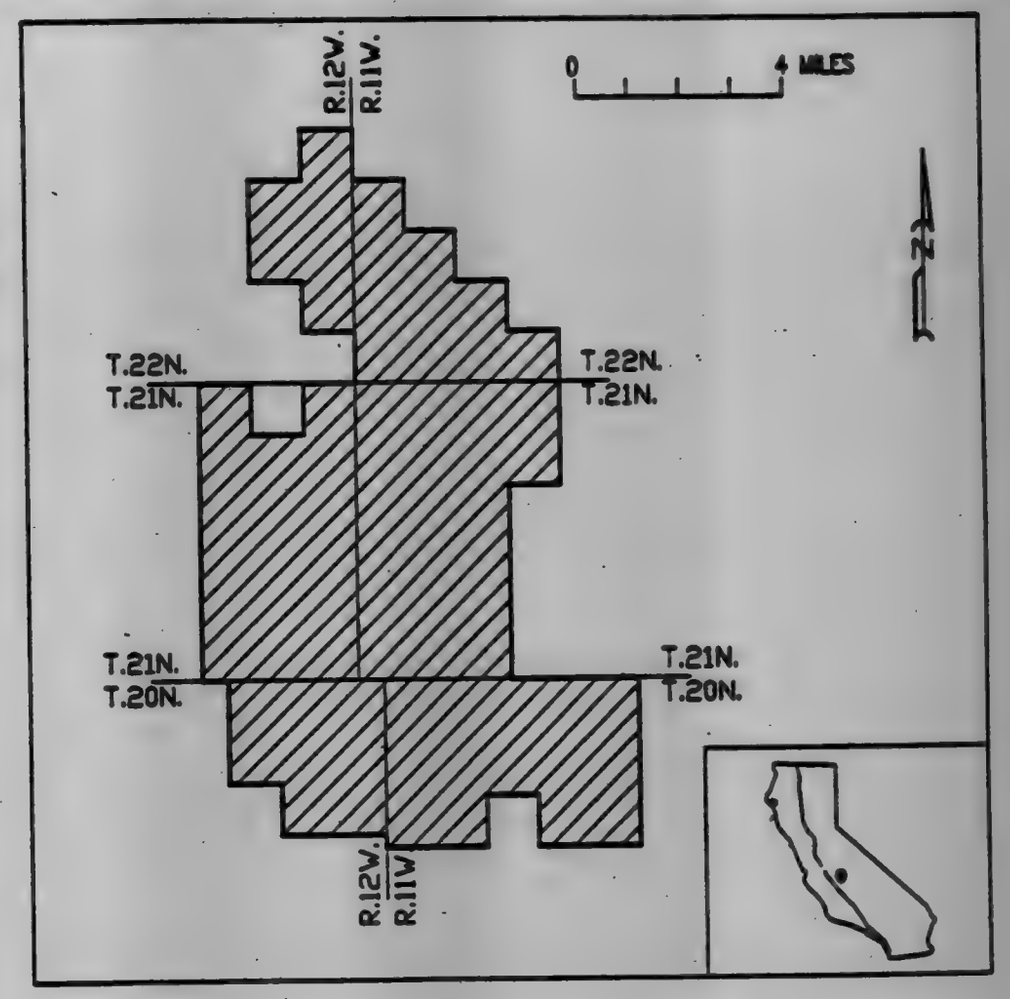

COV-4

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of EUR-1 taken Solely From Bureau of Land Management Map; Eureka 1979 and Hayfork 1982, California.

Humboldt County

T. 5 N., R. 1 W.: Humboldt Meridian
Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; and 24.

T. 5 N., R. 1 E.: Humboldt Meridian
Secs. 7; 8; 9; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 4 N., R. 1 E.: Humboldt Meridian
Secs. 1; 2; 3; and 36.

T. 3 N., R. 2 E.: Humboldt Meridian
Secs. 17; 18; 19; 20; 29; 30; 31; and 32.

T. 2 N., R. 2 E.: Humboldt Meridian
Secs. 5; and 6.

BILLING CODE 4310-DQ-M

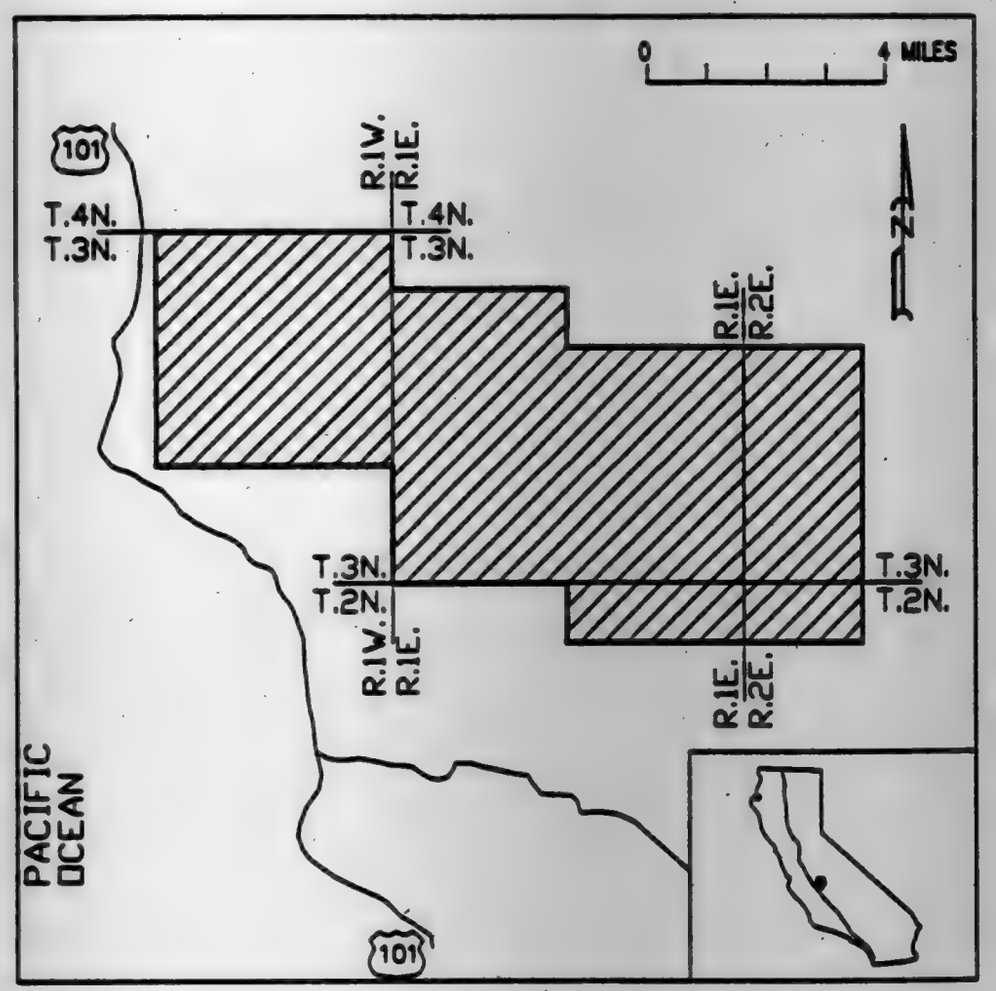

EUR-1

BILLING CODE 4310-DQ-C

Description of GAR-1 taken Solely From Bureau of Land Management Map; Garberville 1979 and Covelo 1981, California.

Mendocino and Trinity Counties

T. 5 S., R. 8 E.: Humboldt Meridian
Secs. 9; 10; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 27; and 35.

T. 25 N., R. 12 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 24 N., R. 13 E.: Mt. Diablo Meridian
Secs. 1; 2; 11; and 12.

T. 24 N., R. 12 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 10; 11; 12; and 14.

BILLING CODE 4310-DQ-M

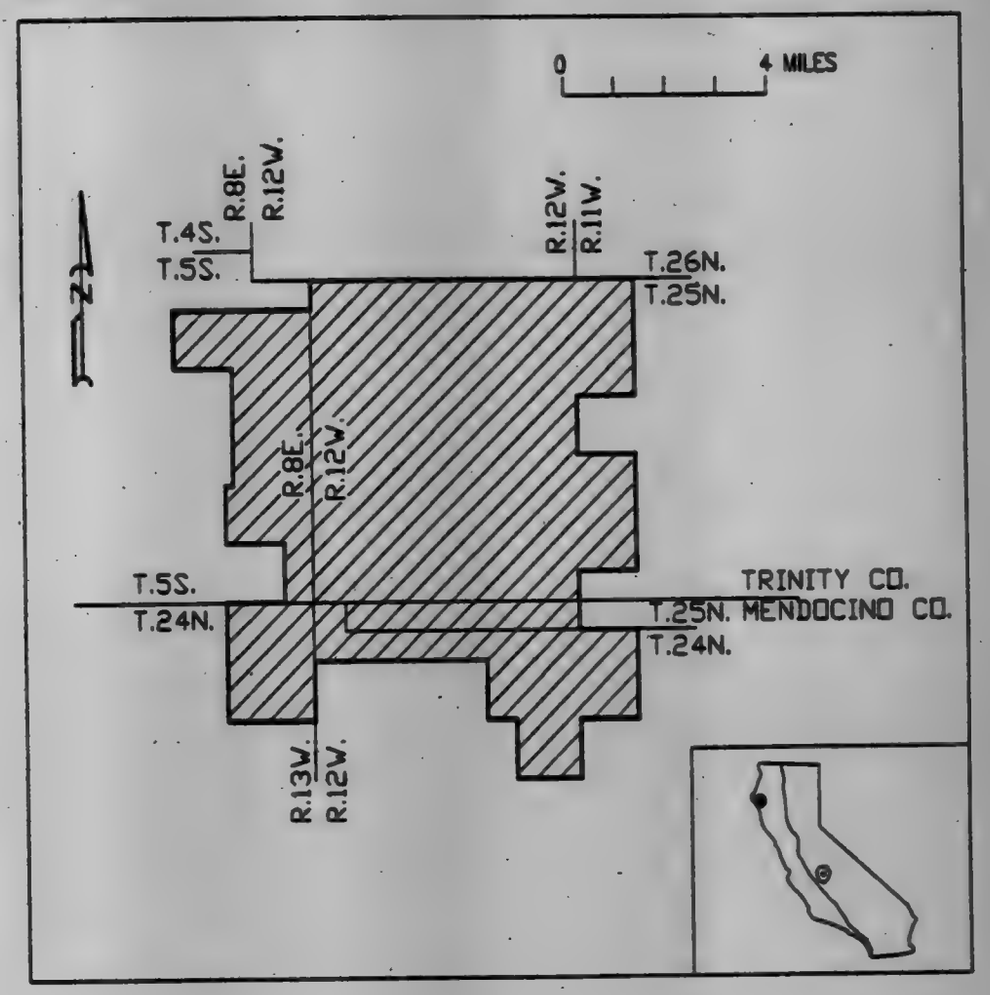

GAR-1

BILLING CODE 4310-DQ-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of HAY-1 taken Solely From Bureau of Land Management Maps; Hayfork 1962 and Eureka 1979, California.

Humboldt County

T. 5 N., R. 1 E.: Humboldt Meridian
Sec. 1.

T. 6 N., R. 2 E.: Humboldt Meridian
Secs. 1; 11; 12; 13; 14; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 7 N., R. 2 E.: Humboldt Meridian
Sec. 36.

T. 7 N., R. 3 E.: Humboldt Meridian
Sec. 31.

T. 6 N., R. 3 E.: Humboldt Meridian
Secs. 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 5 N., R. 2 E.: Humboldt Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; and 36.

T. 5 N., R. 3 E.: Humboldt Meridian
Secs. 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

Excepting any of the above area lying North of Highway 299.

BILLING CODE 4310-55-M

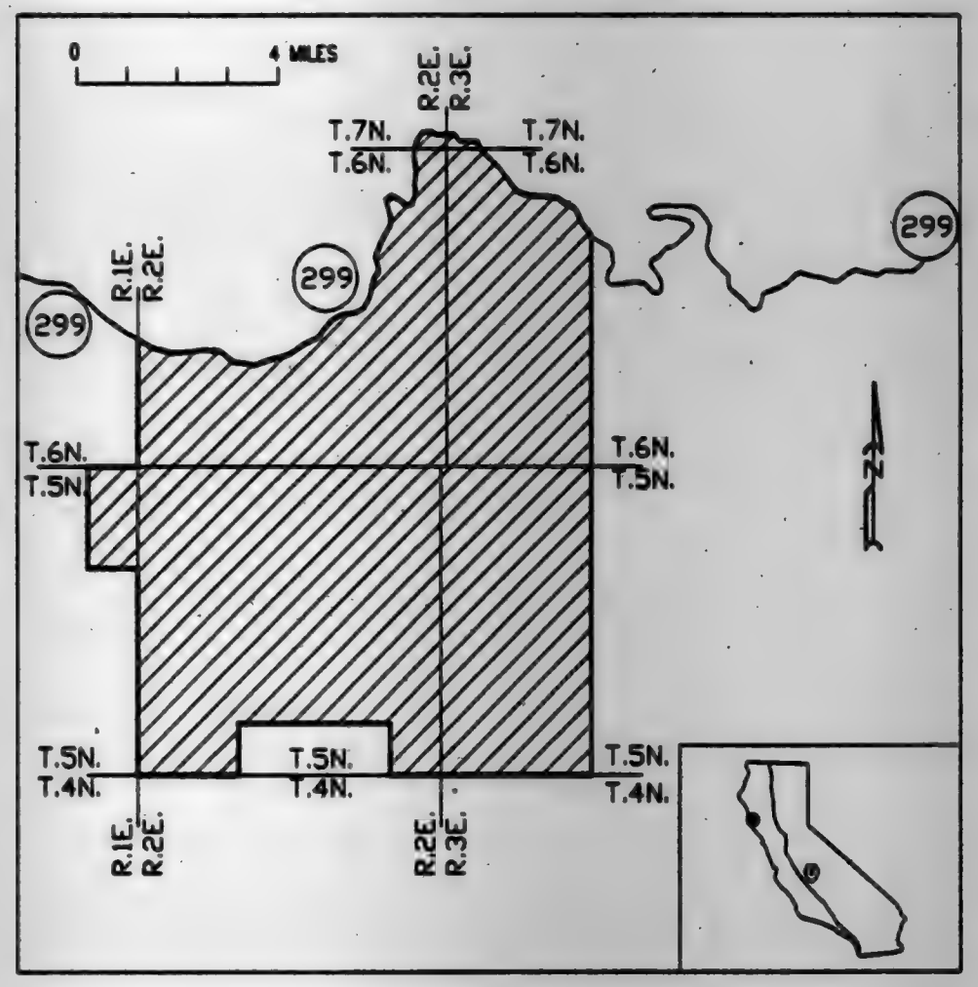

HAY-1

BILLING CODE 4310-55-C

Description of HEA-1 taken Solely From Bureau of Land Management Map; Healdsburg, California 1972.

Lake and Sonoma Counties

T. 12 N., R. 8 W.: Mt. Diablo Meridian
Secs. 22; 23; 24; 25; 26; 27; 34; 35; and 36.

T. 13 N., R. 8 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; and 16.

T. 12 N., R. 7 W.: Mt. Diablo Meridian
Secs. 5; 6; 7; 8; 17; 18; 19; 20; 29; 30; 31; and 32.

T. 7 N., R. 3 E.: Mt. Diablo Meridian
Sec. 31.

T. 6 N., R. 3 E.: Mt. Diablo Meridian
Secs. 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 5 N., R. 2 E.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; and 36.

T. 5 N., R. 3 E.: Mt. Diablo Meridian
Secs. 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

BILLING CODE 4310-55-M

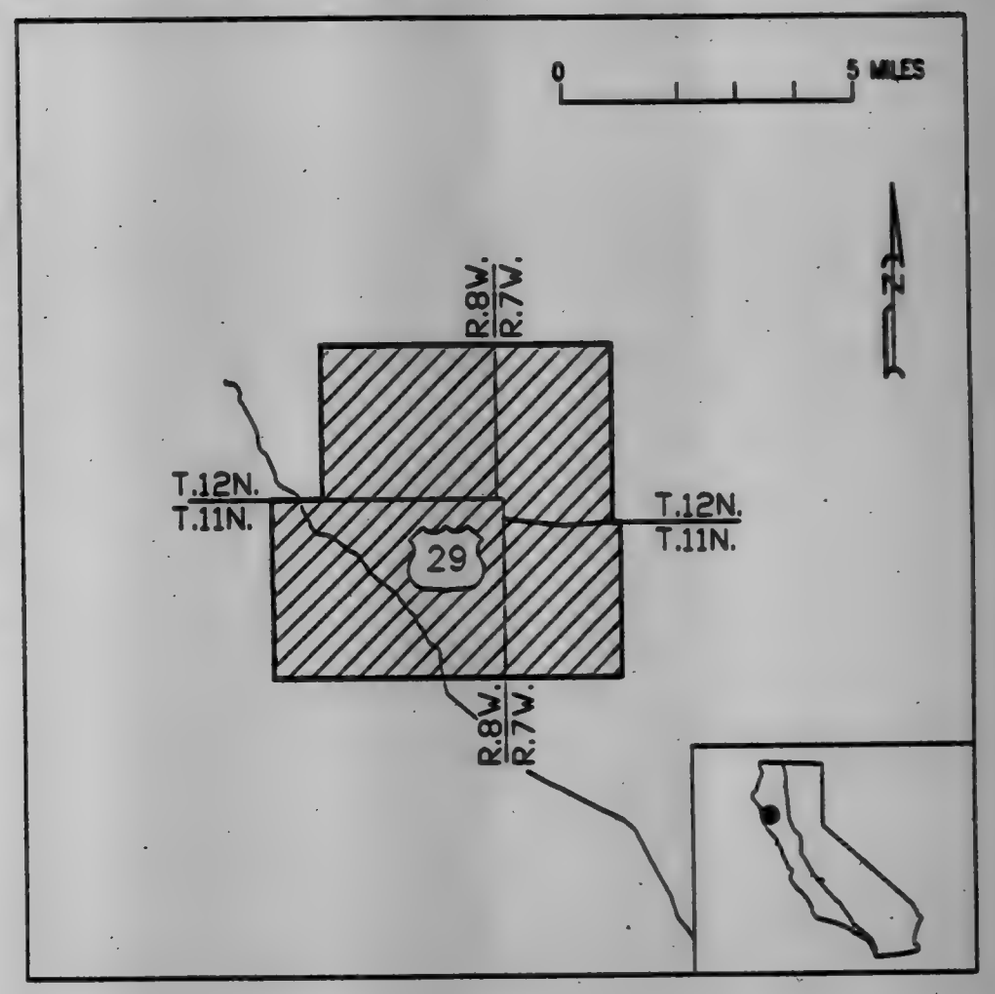

HEA-1

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of ME-1 taken Solely From Mendocino National Forest Map; Mendocino, California 1963.

Humboldt County

T. 24 N., R. 10 W.: Mt. Diablo Meridian
Secs. 1; 2; 11; 12; 13; 14; 23; 24; 25; 26; 27; 34; 35; and 36.

T. 24 N., R. 9 W.: Mt. Diablo Meridian
Secs. 5; 6; 7; 17; 18; 19; 30; 31; 34; and 35.

T. 24 N., R. 8 W.: Mt. Diablo Meridian
Secs. 14; 15; 21; 22; 23; 25; 26; 27; 28; 31; 32; 33; 34; and 35.

T. 23 N., R. 10 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 10; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 35; and 36.

T. 23 N., R. 9 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 23 N., R. 8 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; and 29.

T. 22 N., R. 11 W.: Mt. Diablo Meridian
Secs. 13; 23; 24; 25; 35; and 36.

T. 22 N., R. 10 W.: Mt. Diablo Meridian
Secs. 1; 2; 12; 13; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 22 N., R. 9 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 9; 10; 11; 12; 13; 14; 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; and 33.

T. 22 N., R. 8 W.: Mt. Diablo Meridian
Secs. 6; 7; 18; 19; 20; 29; 30; 31; and 32.

T. 21 N., R. 11 W.: Mt. Diablo Meridian
Secs. 1; 2; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 27; 34; 35; and 36.

T. 21 N., R. 10 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 21 N., R. 9 W.: Mt. Diablo Meridian
Secs. 29; 32; and 33.

T. 20 N., R. 10 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 10; and 11.

T. 20 N., R. 9 W.: Mt. Diablo Meridian
Secs. 4; and 5.

BILLING CODE 4310-55-M

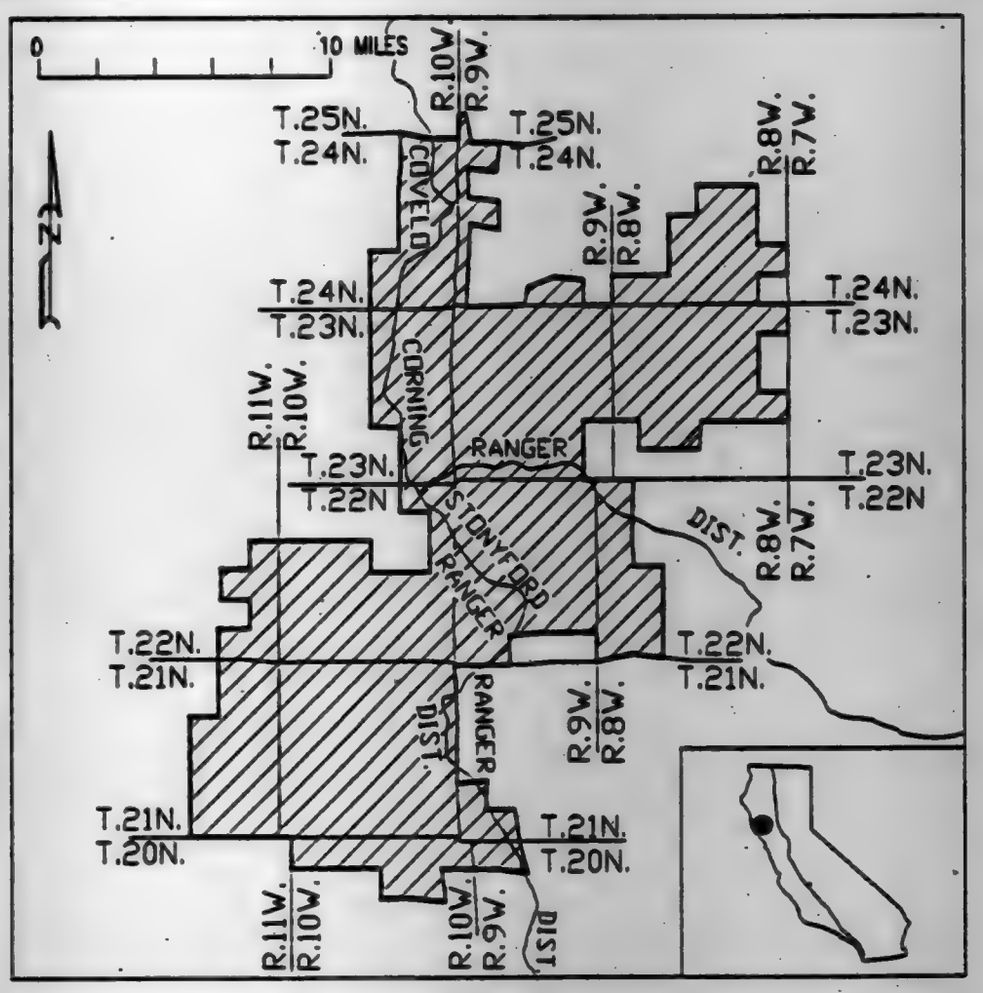

ME-1

BILLING CODE 4310-55-C

Description of ME-2 taken Solely From Mendocino National Forest Map; Mendocino, California 1963.

Mendocino County

T. 24 N., R. 10 W.: Mt. Diablo Meridian
Secs. 1; 2; 11; 12; 13; 14; 23; 24; 25; 26; 27; 34; 35; and 36.

T. 24 N., R. 9 W.: Mt. Diablo Meridian
Secs. 5; 6; 7; 17; 18; 19; 30; 31; 34; and 35.

T. 17 N., R. 9 W.: Mt. Diablo Meridian
Secs. 12; 13; 24; 27; 32; 33; and 34.

T. 16 N., R. 9 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; and 11.

T. 17 N., R. 8 W.: Mt. Diablo Meridian
Secs. 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 17 N., R. 7 W.: Mt. Diablo Meridian
Secs. 7; 19; 20; 29; 30; 31; and 32.

T. 16 N., R. 8 W.: Mt. Diablo Meridian
Secs. 1; 2; 4; 5; and 6.

T. 16 N., R. 7 W.: Mt. Diablo Meridian
Sec. 6.

BILLING CODE 4310-55-M

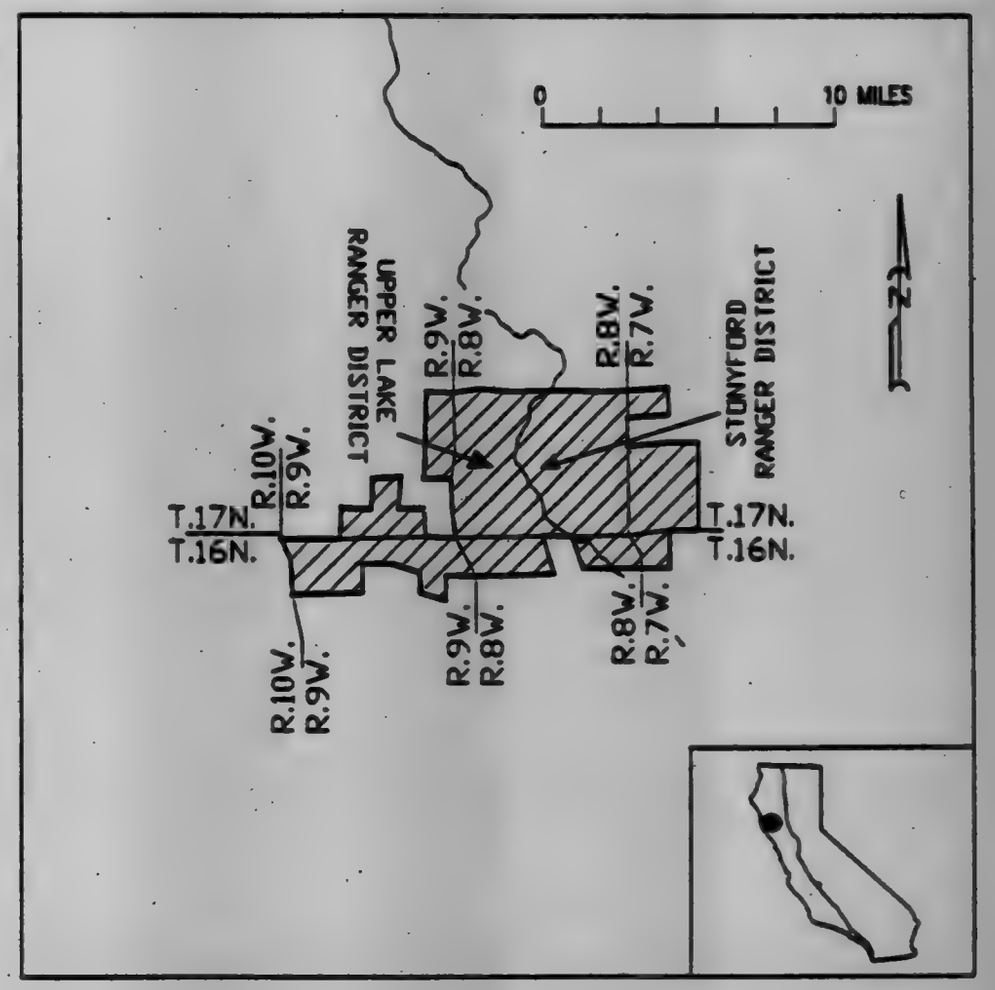

ME-2

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of NAP-1 taken Solely From Bureau of Land Management Maps: Napa 1983 and Healdsburg 1972, California.

Napa and Sonoma Counties

T. 7 N., R. 6 W.: Mt. Diablo Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; and 29.

T. 6 N., R. 5 W.: Mt. Diablo Meridian
Secs. 6; 7; 8; 9; 10; 15; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; and 33.

T. 7 N., R. 6 W.: Mt. Diablo Meridian
Secs. 36; and 36.

T. 7 N., R. 7 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 34; and 35.

T. 6 N., R. 7 W.: Mt. Diablo Meridian
Secs. 1; and 2.

T. 6 N., R. 6 W.: Mt. Diablo Meridian
Secs. 1; 2; 6; 11; 12; 13; 14; 24; and 25.

T. 6 N., R. 5 W.: Mt. Diablo Meridian
Secs. 3; 4; and 5.

T. 9 N., R. 8 W.: Mt. Diablo Meridian
Sec. 36.

T. 8 N., R. 8 W.: Mt. Diablo Meridian
Secs. 1; 12; 13; and 24.

T. 9 N., R. 7 W.: Mt. Diablo Meridian
Secs. 31; 32; 33; and 34.

T. 8 N., R. 7 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 8 N., R. 6 W.: Mt. Diablo Meridian
Secs. 7; 8; 9; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

Together with: That part of Section 15, T. 8 N., R. 6 W. lying South and West of Highway 128.

Also together with: That part of Los Guilicos described as follows: Beginning at the intersection of Nunns Canyon Road and Highway 12: Thence Southerly along said Highway 12 to Arnold Drive; Thence Southwesterly along said Arnold Drive to Bennett Valley Road; Thence Northwesterly along said Bennett Valley Road to the South East corner of Section 6, T. 6 N., R. 6 W.; Thence along the Northerly lines of said Section 6 and Section 1 of T. 6 N., R. 7 W. to the South East corner of Annadel State Park; Thence along the East, North, and West lines of said park to the East line of Cabeza De Santa Rosa; Thence Northerly along said East line to the Northern most corner of said Cabeza De Santa Rosa; Thence Southeasterly along the North and East lines of said Los Guilicos to Nunns Canyon Road; Thence Southwesterly along said Nunns Canyon Road to the Point of Beginning.

BILLING CODE 4310-55-M

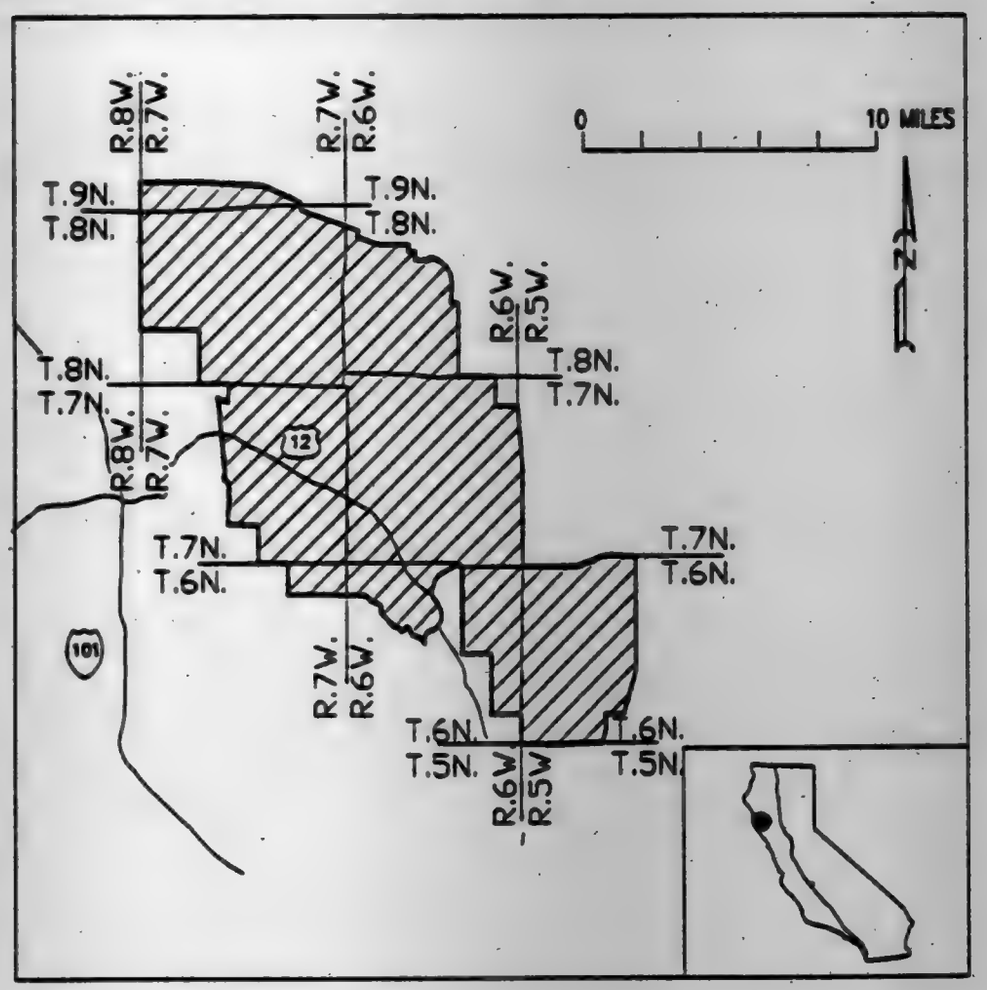

NAP-1

BILLING CODE 4310-55-C

Description of 0-20-C taken Solely From National Forest Service Map; Klamath, California 1988.

Siskiyou County

T. 48 N., R. 9 W.: Mt. Diablo Meridian
Secs. 13; 14; 15; and 16.

T. 48 N., R. 8 W.: Mt. Diablo Meridian
Secs. 13; 14; 15; 16; 17; 18; 20; 21; 22; 23; 26; 27; 28; and 29.

BILLING CODE 4310-55-M

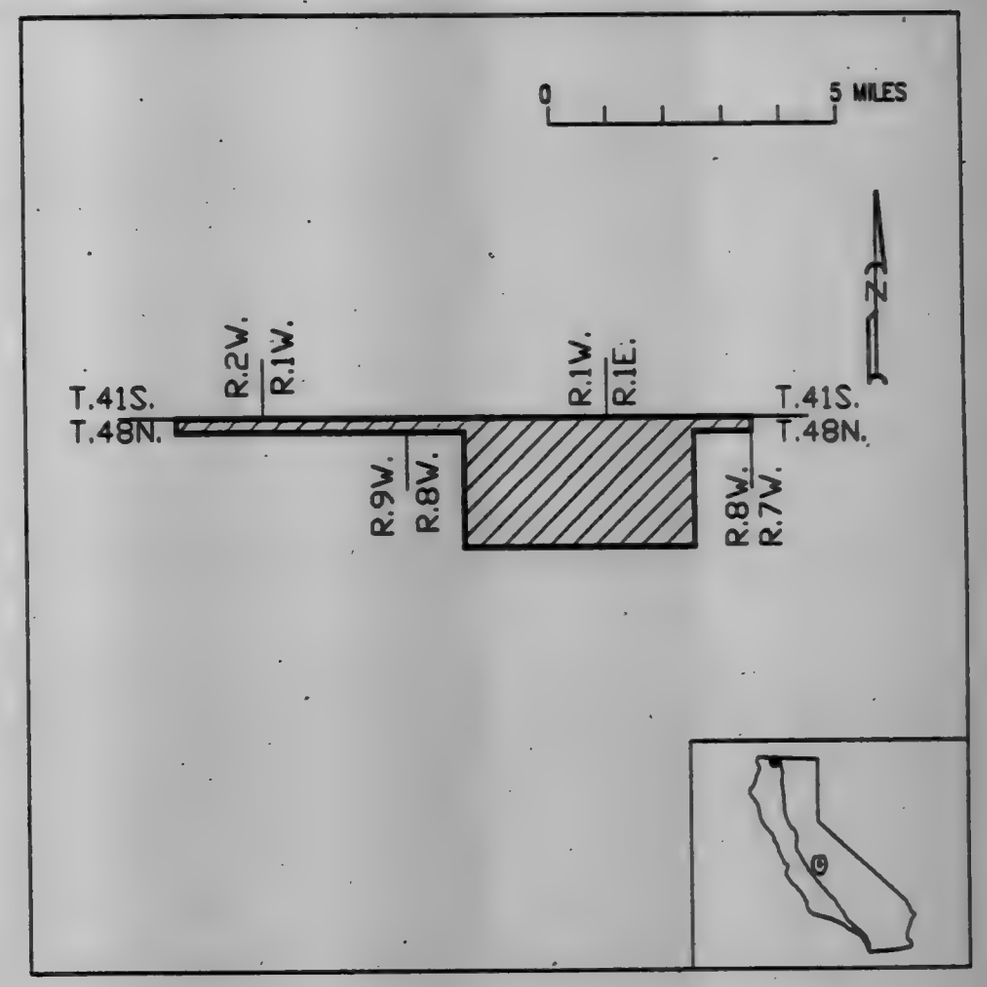

0-20-C

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of O-22-C taken Solely From National Forest Service Map; Six Rivers, California 1994.

Del Norte County

T. 19 N., R. 1 E.: Humboldt Meridian
Secs. 32; 34; 35; and 36.

T. 19 N., R. 2 E.: Humboldt Meridian
Sec. 31.

T. 18 N., R. 1 E.: Humboldt Meridian
Secs. 1; 2; 3; 4; 10; 11; 12; 14; 15; 22; 23; 26; and 27.

T. 18 N., R. 2 E.: Humboldt Meridian
Sec. 6.

BILLING CODE 4310-55-M

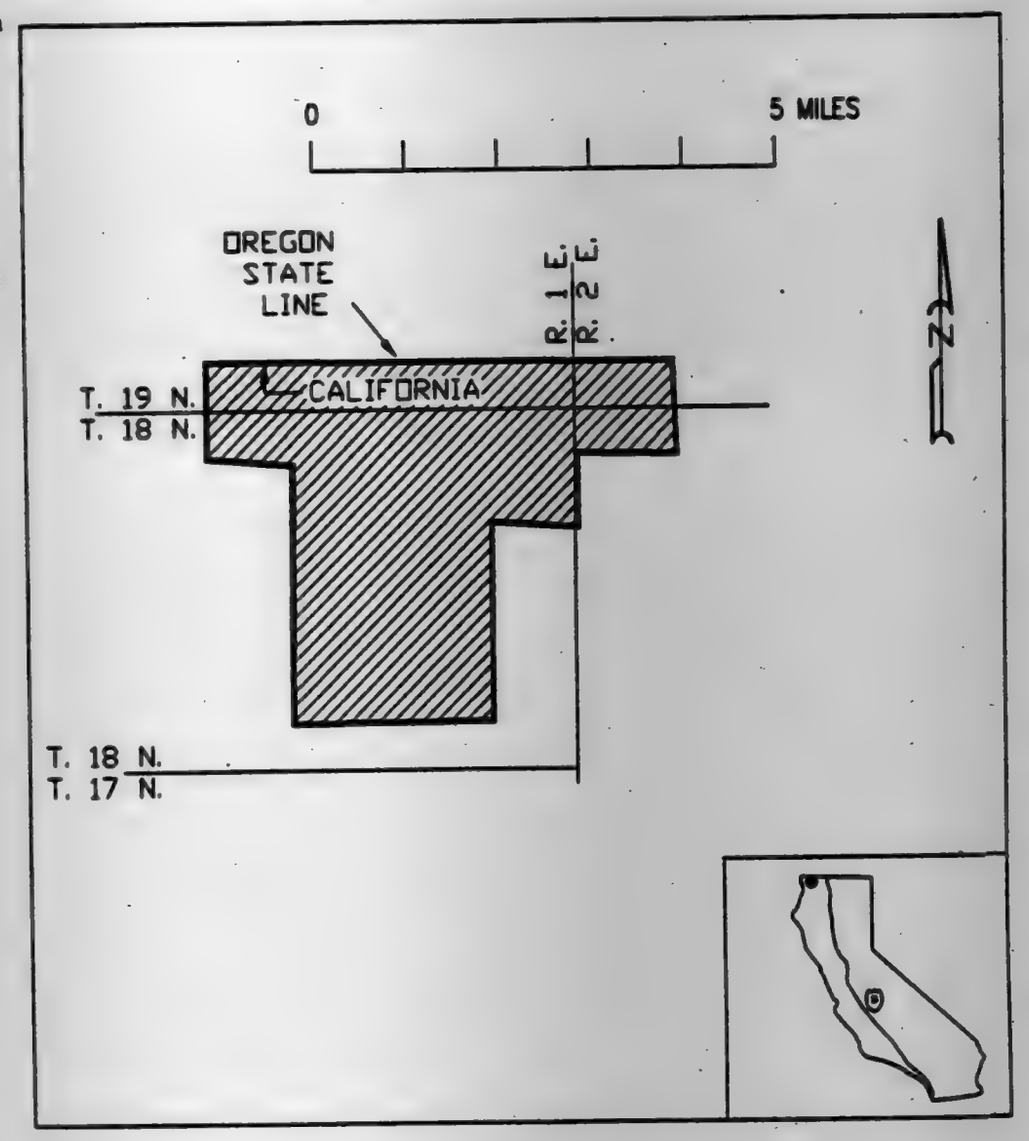

O-22-C

BILLING CODE 4310-55-C

Description of PA-1 taken Solely From Bureau of Land Management Map; Point Arena, California 1981.

Sonoma and Mendocino Counties

T. 12 N., R. 17 W.: Mt. Diablo
Secs. 11; 12; and 13.

T. 12 N., R. 16 W.: Mt. Diablo
Secs. 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 32; 33; 34; 35; and 36.

T. 12 N., R. 15 W.: Mt. Diablo
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 12 N., R. 14 W.: Mt. Diablo
Secs. 5; 6; 7; 8; 17; 18; 19; 20; 29; 30; 31; and 32.

T. 11 N., R. 16 W.: Mt. Diablo
Secs. 1; 2; 3; 4; 12; and 13.

T. 11 N., R. 15 W.: Mt. Diablo
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 20; 21; 22; 23; 24; 25; 26; 27; 28; 34; 35; and 36.

T. 11 N., R. 14 W.: Mt. Diablo
Secs. 5; 6; 7; 8; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 10 N., R. 14 W.: Mt. Diablo
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 20; 21; 22; 23; and 24.

T. 10 N., R. 15 W.: Mt. Diablo
Secs. 1; 2; and 12.

T. 12 N., R. 15 W.: Mt. Diablo
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 20; 21; 22; 23; and 24.

Excepting any of the above area lying West of Highway 1.

BILLING CODE 4310-55-M

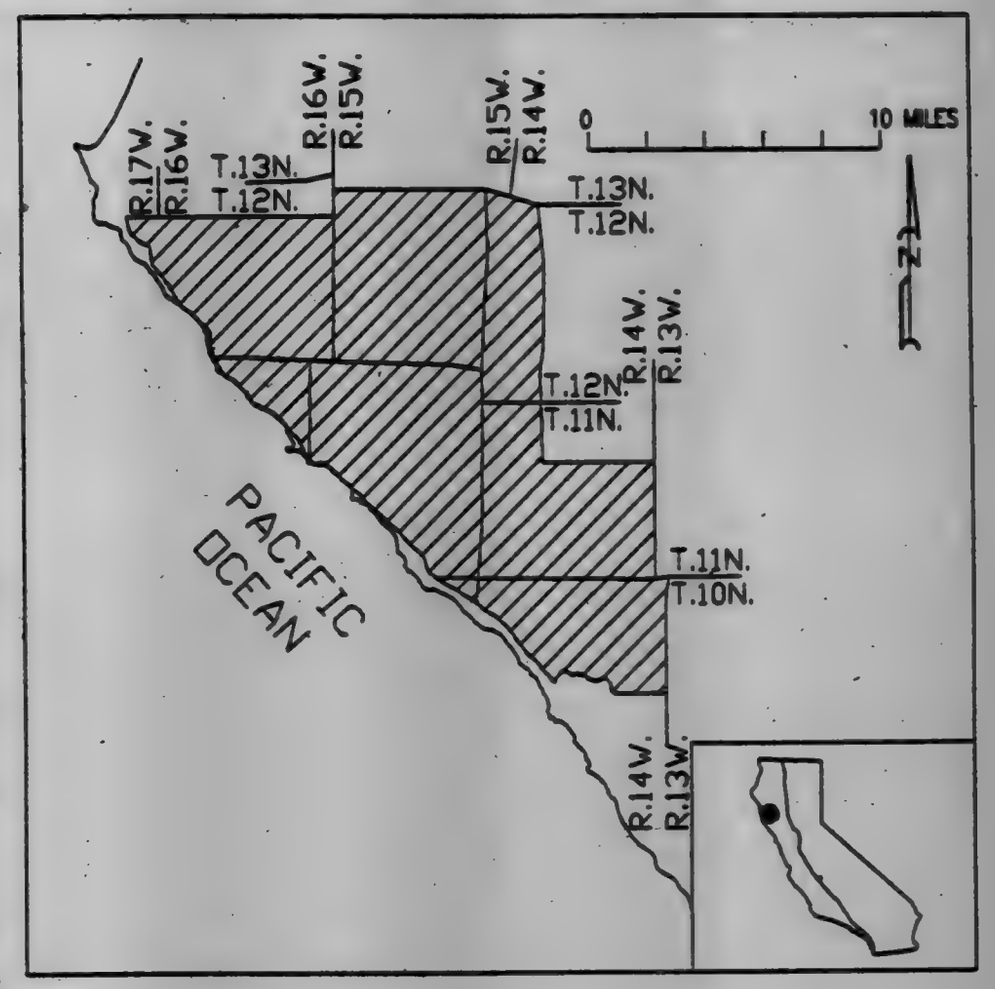

PA-1

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of PA–2 taken Solely From Bureau of Land Management Map; Point Arena, California 1981.

Sonoma County

T. 10 N., R. 13 W.: Mt. Diablo
Secs. 25; 26; 27; 28; 31; 32; 33; 34; 35; and 36.

T. 9 N., R. 13 W.: Mt. Diablo
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 34; 35; and 36.

T. 10 N., R. 12 W.: Mt. Diablo
Secs. 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 10 N., R. 11 W.: Mt. Diablo
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 8 N., R. 12 W.: Mt. Diablo
Secs. 1; 2; 3; 4; 5; and 6.

T. 8 N., R. 13 W.: Mt. Diablo
Secs. 1; and 2.

T. 9 N., R. 11 W.: Mt. Diablo
Secs. 6; 7; 15; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 35.

T. 8 N., R. 11 W.: Mt. Diablo
Secs. 1; 2; 3; 4; 5; 6; 9; 10; 15; and 16.

T. 8 N., R. 10 W.: Mt. Diablo
Secs. 6; 7; and 18.

BILLING CODE 4310-55-M

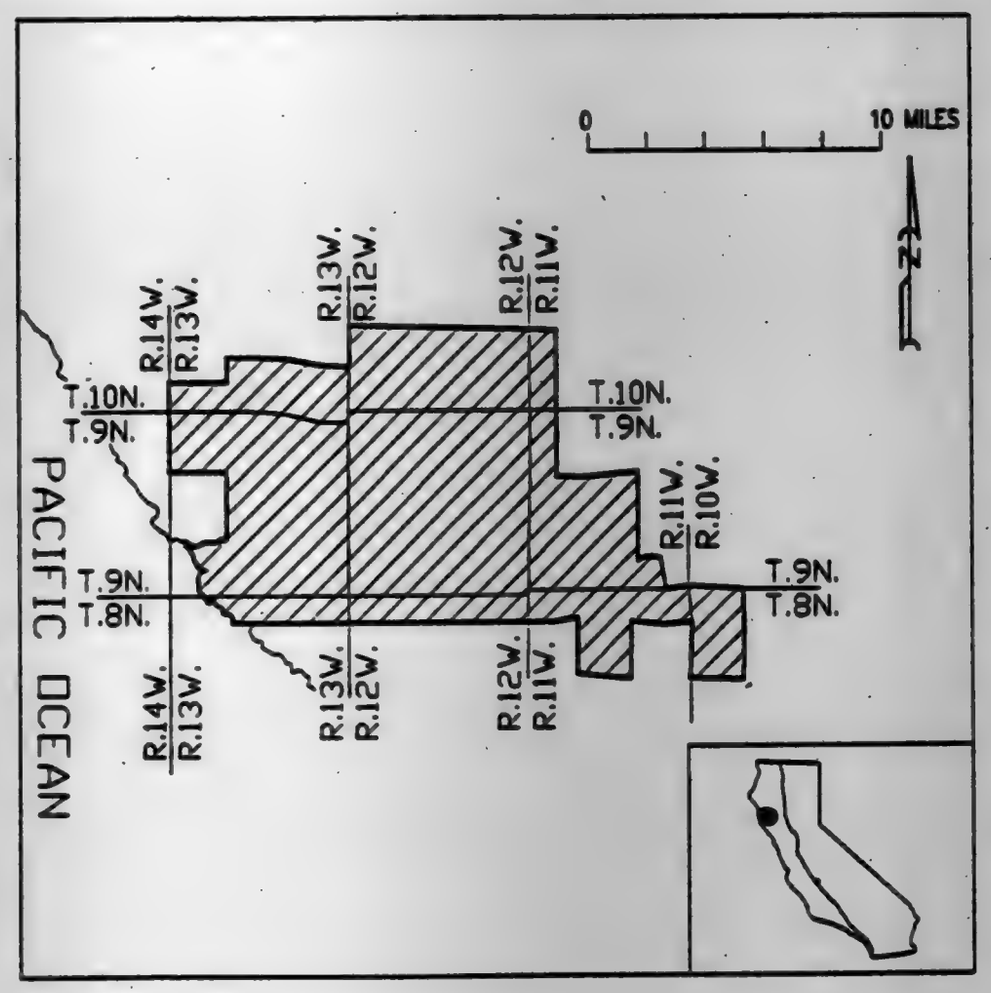

PA–2

BILLING CODE 4310-55-C

Description of ST–1 taken Solely From National Forest Service Map; Shasta, California 1987.

Siskiyou and Trinity Counties

T. 42 N., R. 6 W.: Mt. Diablo Meridian
Secs. 29; 30; 31; 32; and 33.

T. 41 N., R. 7 W.: Mt. Diablo Meridian
Secs. 1; 2; and 12.

T. 41 N., R. 6 W.: Mt. Diablo Meridian
Secs. 4; 5; 6; 7; 8; 9; 10; 11; 13; 14; 15; 16; 17; 18; 20; 21; 22; 23; 24; and 25.

T. 41 N., R. 5 W.: Mt. Diablo Meridian
Secs. 18; 19; 20; and 30.

BILLING CODE 4310-55-M

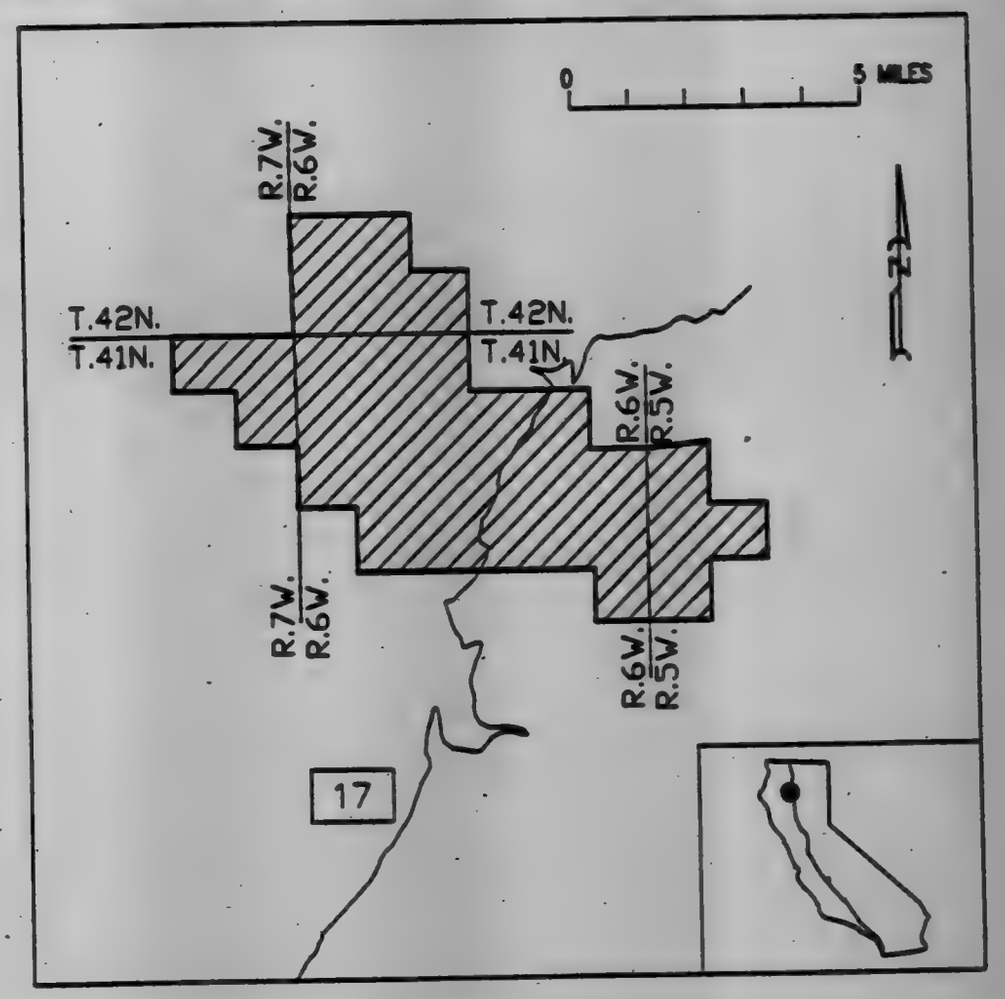

ST–1

BILLING CODE 4310-55-C

VOL 56 ISS 87 MAY 6 1991 UMI

Description of TR-1 taken Solely From National Forest Service Map; Trinity, California 1987.

Trinity County

T. 33 N., R. 10 W.: Mt. Diablo Meridian
Secs. 13; 14; 23; 24; 25; 26; 35; and 36.

T. 32 N., R. 10 W.: Mt. Diablo Meridian
Secs. 1; 2; 11; 12; 13; 14; 23; 24; 25; 26; 35; and 36.

T. 33 N., R. 9 W.: Mt. Diablo Meridian
Secs. 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; and 31.

T. 33 N., R. 8 W.: Mt. Diablo Meridian
Secs. 18; 19; 30; and 31.

T. 32 N., R. 9 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 32 N., R. 8 W.: Mt. Diablo Meridian
Secs. 6; 7; 18; 19; 30; and 31.

BILLING CODE 4310-DS-M

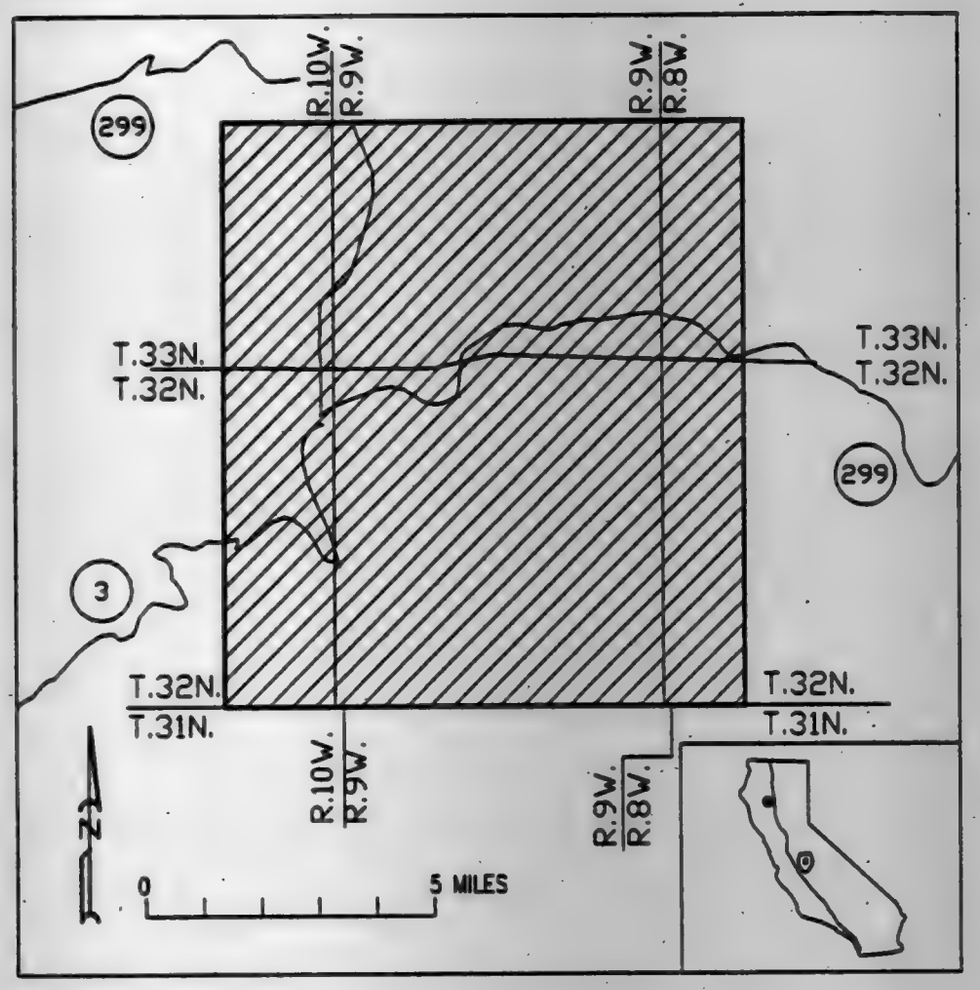

TRI-1

BILLING CODE 4310-DS-C

Description of UK-1 taken Solely From Bureau of Land Management Map; Ukiah, California 1981.

Mendocino County

T. 18 N., R. 17 W.: Mt. Diablo Meridian
Secs. 1; 2; 10; 11; 12; 13; 14; 15; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 18 N., R. 18 W.: Mt. Diablo Meridian
Secs. 25; and 36.

T. 17 N., R. 17 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 20; 21; 22; 23; 24; 25; 26; 27; 28; 31; 32; 33; 34; 35; and 36.

T. 16 N., R. 17 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 10; and 11.

T. 19 N., R. 16 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 18 N., R. 16 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 17 N., R. 16 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 16 N., R. 16 W.: Mt. Diablo Meridian
Secs. 5; and 6.

T. 19 N., R. 15 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 18 N., R. 15 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 17 N., R. 15 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 17 N., R. 15 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 16 N., R. 15 W.: Mt. Diablo Meridian
Secs. 2; 3; and 4.

T. 19 N., R. 14 W.: Mt. Diablo Meridian
Secs. 6; 7; 18; 19; 30; and 31.

T. 18 N., R. 14 W.: Mt. Diablo Meridian
Secs. 6; 7; 18; 19; 30; and 31.

T. 17 N., R. 14 W.: Mt. Diablo Meridian
Secs. 6; 7; 18; 19; 30; and 31.

Excepting any of the Pacific Ocean, and any land lying North of the Middle Fork of 10 Mile River.

BILLING CODE 4310-DS-M

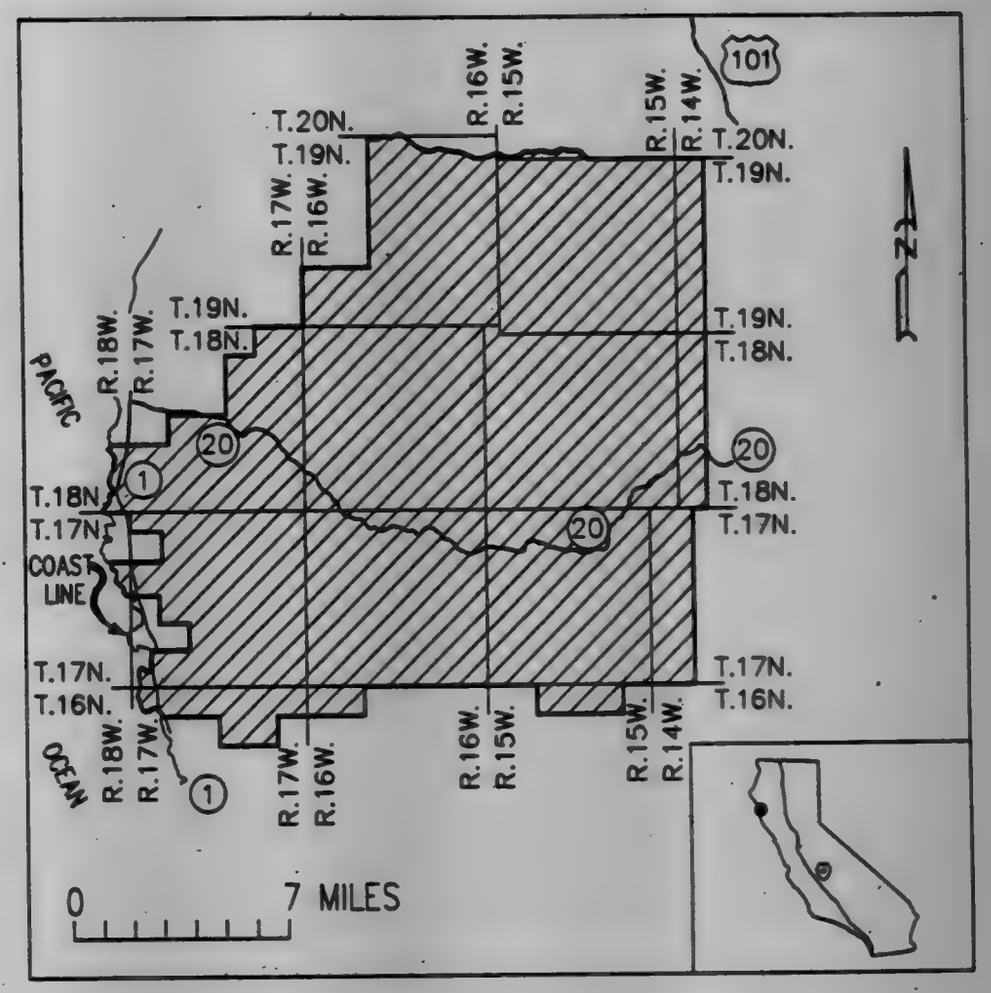

UK-1

BILLING CODE 4310-DS-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of UK-2 taken solely From Bureau of Land Management Map; Ukiah, California 1961.

Mendocino County

T. 15 N., R. 17 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 27; 35; and 36.

T. 14 N., R. 17 W.: Mt. Diablo Meridian
Secs. 1; 2; 12; 13; and 24.

T. 16 N., R. 16 W.: Mt. Diablo Meridian
Secs. 32; 33; and 34.

T. 15 N., R. 16 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 14 N., R. 16 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 13 N., R. 16 W.: Mt. Diablo Meridian
Secs. 4; 5; and 6.

T. 13 N., R. 15 W.: Mt. Diablo Meridian
Secs. 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 16 N., R. 14 W.: Mt. Diablo Meridian
Secs. 4; 9; 10; 11; 14; 15; 16; 17; 19; 20; 21; 22; 23; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 15 N., R. 15 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 14 N., R. 15 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; and 24.

T. 15 N., R. 14 W.: Mt. Diablo Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 10; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; and 32.

T. 14 N., R. 13 W.: Mt. Diablo Meridian
Secs. 4; 5; 6; 8; and 9.

Excepting any of the above area lying West of Highway 1, and any of the above area lying North of Navarro Ridge Road in the following sections:

T. 15 N., R. 17 W.: Mt. Diablo Meridian
Secs. 1; 2; and 3.

T. 16 N., R. 16 W.: Mt. Diablo Meridian
Secs. 32; 33; and 34.

T. 14 N., R. 16 W.: Mt. Diablo Meridian
Secs. 3; and 4.

Excepting any of the above area lying North of Comptche-Ukiah Rd. and Orrspring Rd. in the following sections:

T. 16 N., R. 14 W.: Mt. Diablo Meridian
Secs. 32; 33; and 34.

T. 15 N., R. 15 W.: Mt. Diablo Meridian
Secs. 1; 2; 3; 15; 16; 22; 23; and 24.

T. 15 N., R. 14 W.: Mt. Diablo Meridian
Secs. 16; 17; 18; 19; and 20.

Oregon: Areas of land and water as follows:

BILLING CODE 4310-55-M

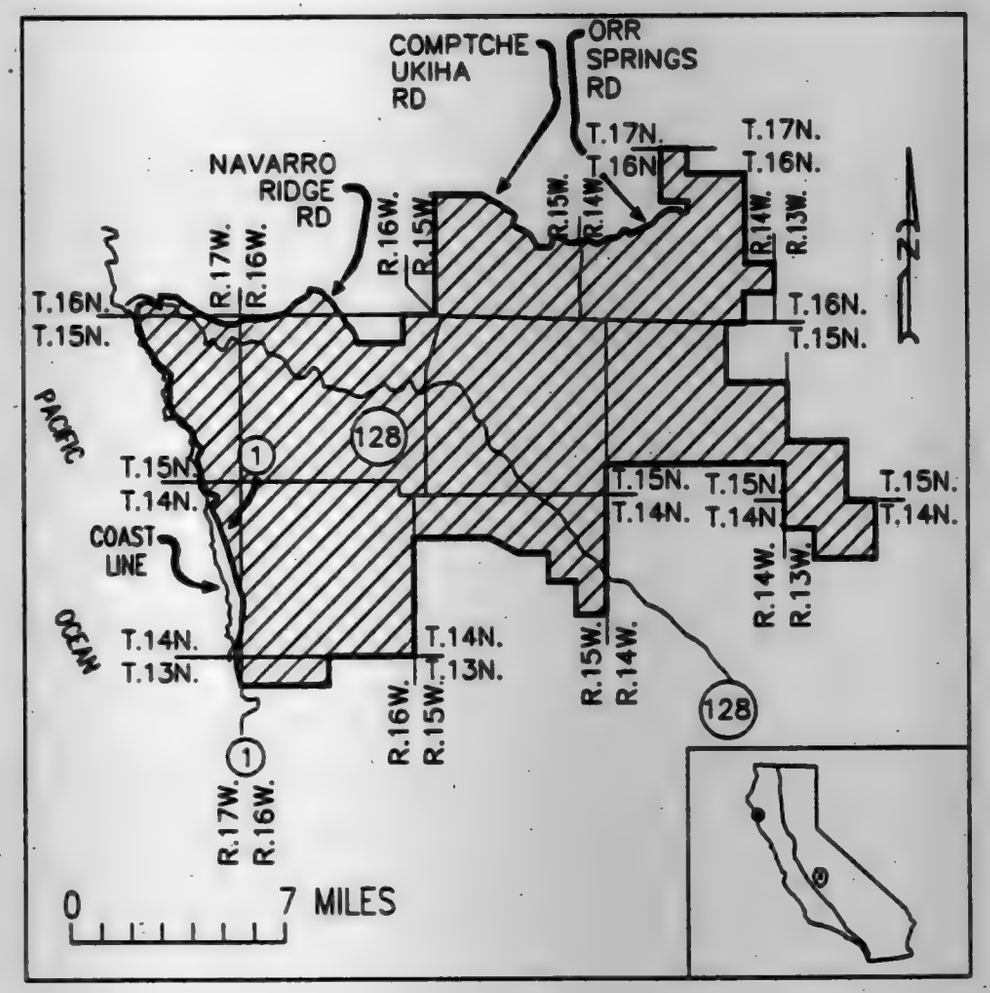

UK-2

BILLING CODE 4310-55-C

Description of C-5-0 taken Solely From Forest Visitor's Maps of Siskiyou National Forest; Oregon and California.

Josephine County

T. 40 S., R. 6 W.: Willamette Meridian
Secs. 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 41 S., R. 6 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 9; 10; 11; 12; 13; 14; 16; and 17.

T. 41 S., R. 5 W.: Willamette Meridian
Sec. 7 and 18.

Excepting any of the above area lying within the Red Butte Wilderness areas.

BILLING CODE 4310-55-M

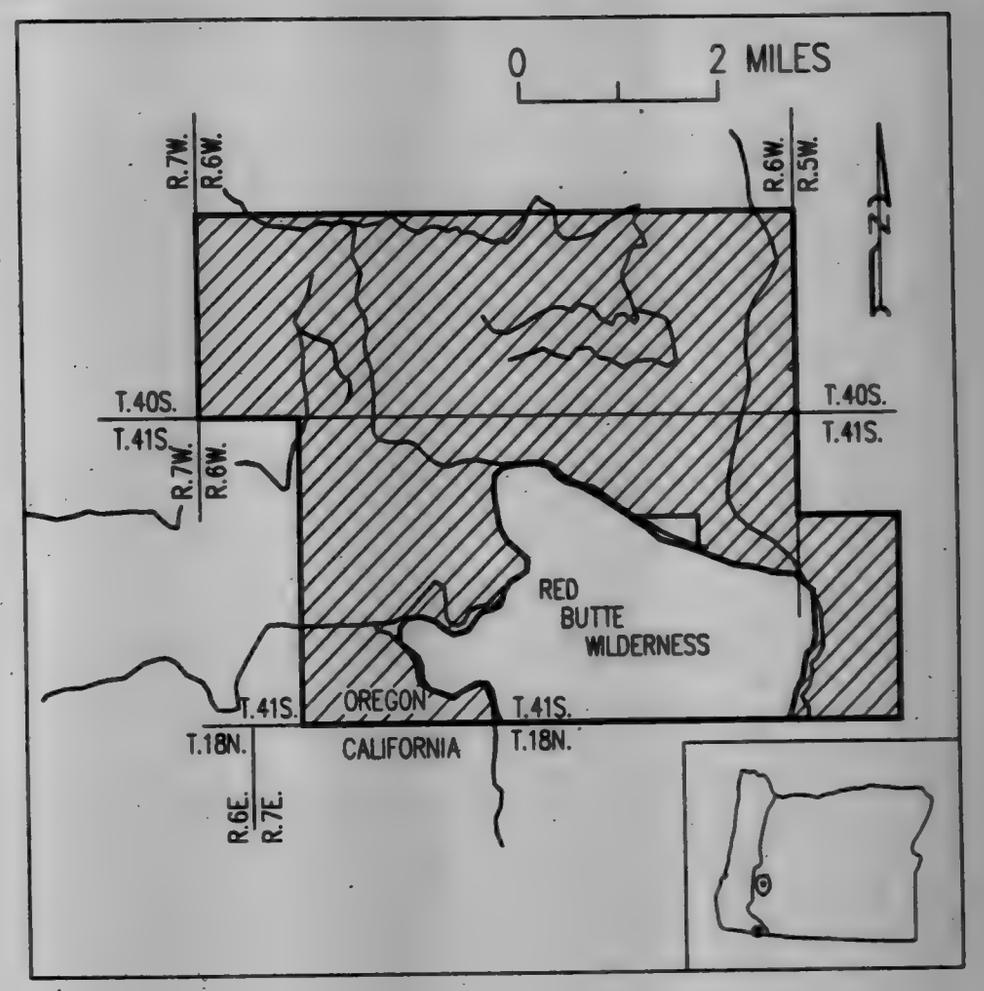

C-5-0

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of CG–1 taken Solely From Bureau of Land Management Maps; Eugene 1980 and Cottage Grove 1979, Oregon.

Douglas and Lane Counties

T. 20 S., R. 7 W.: Willamette Meridian
Secs. 1; 12; and 13.

T. 19 S., R. 7 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 19 S., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 18 S., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 18 S., R. 7 W.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 23; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 17 S., R. 7 W.: Willamette Meridian
Secs. 31; 32; and 33.

T. 17 S., R. 8 W.: Willamette Meridian
Secs. 23; 35; and 36.

T. 18 S., R. 6 W.: Willamette Meridian
Sec. 31.

BILLING CODE 4310-55-M

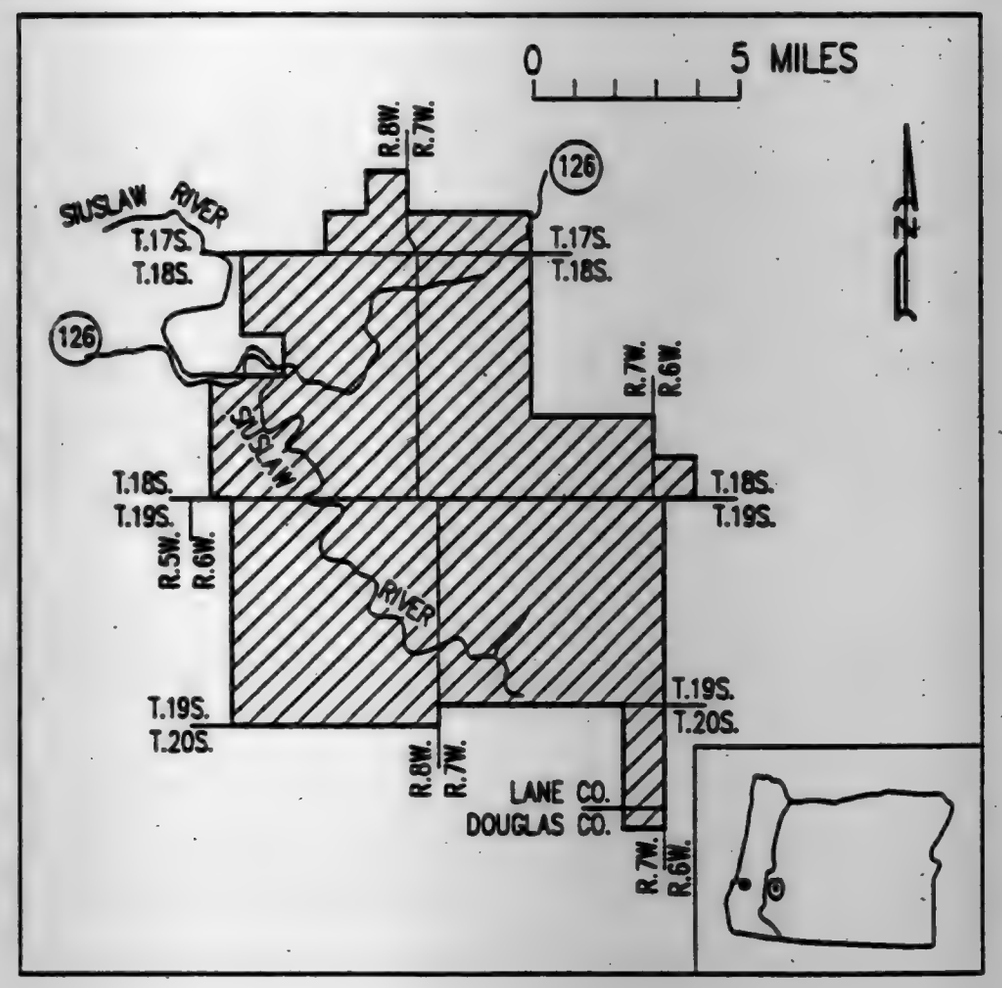

CG–1

BILLING CODE 4310-55-C

Description of DES–1 taken Solely From Forest Visitor's Map; Deschutes, Oregon 1988.

Deschutes County

T. 20 S., R. 7 E.: Willamette Meridian
Secs. 13; 14; 15; 22; 23; 24; 25; 26; 27; 33; 34; 35; and 36.

T. 21 S., R. 7 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 10; 11; 12; 13; 14; 15; 22; 23; and 24.

T. 21 S., R. 8 E.: Willamette Meridian
Secs. 7; 17; 18; 19; 20; 29; and 30.

T. 20 S., R. 8 E.: Willamette Meridian
Secs. 7; 8; 9; 16; 17; 18; 19; 20; 21; 30; and 31.

Excepting all area within Cultus Lake and Crane Prairie Reservoir.

BILLING CODE 4310-55-M

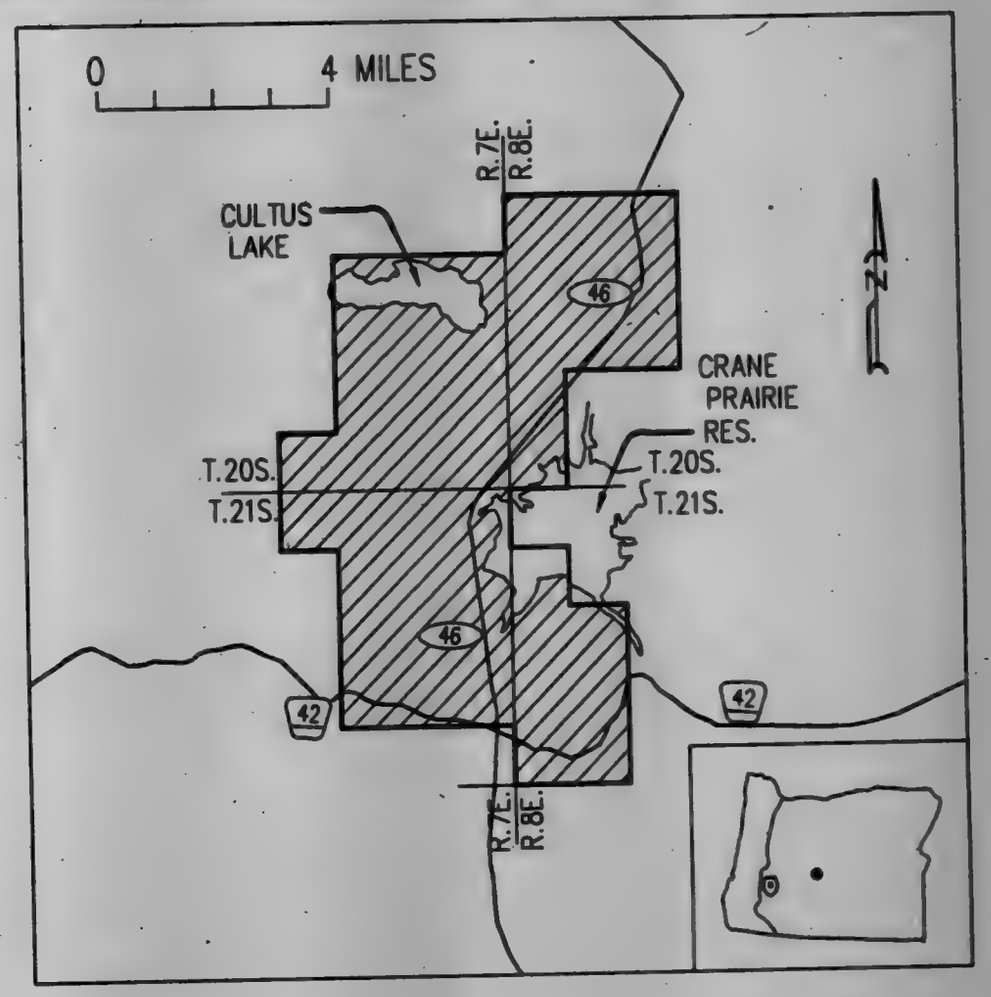

DES–1

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of DES–2 taken Solely From Forest Visitor's Map; Deschutes, Oregon 1988.

Deschutes and Klamath Counties

T. 23 S., R. 6 E.: Willamette Meridian
Secs. 1; 9; 10; 12; 13; 14; 15; 16; 23; 24; and 25.

T. 22 S., R. 7 E.: Willamette Meridian
Secs. 30; 31; 28; 29; 31; 32; 33; and 36.

T. 23 S., R. 7 E.: Willamette Meridian
Secs. 1; 4; 5; 6; 7; 8; 9; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 32; 33; 34; 35; and 36.

T. 23 S., R. 8 E.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 16; 17; 18; 19; 20; 21; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 22 S., R. 8 E.: Willamette Meridian
Secs. 21; 22; 23; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 24 S., R. 8 E.: Willamette Meridian
Secs. 3; 4; 5; and 6.

Excepting all areas within Odell and Davis Lakes.

BILLING CODE 4310-JB-M

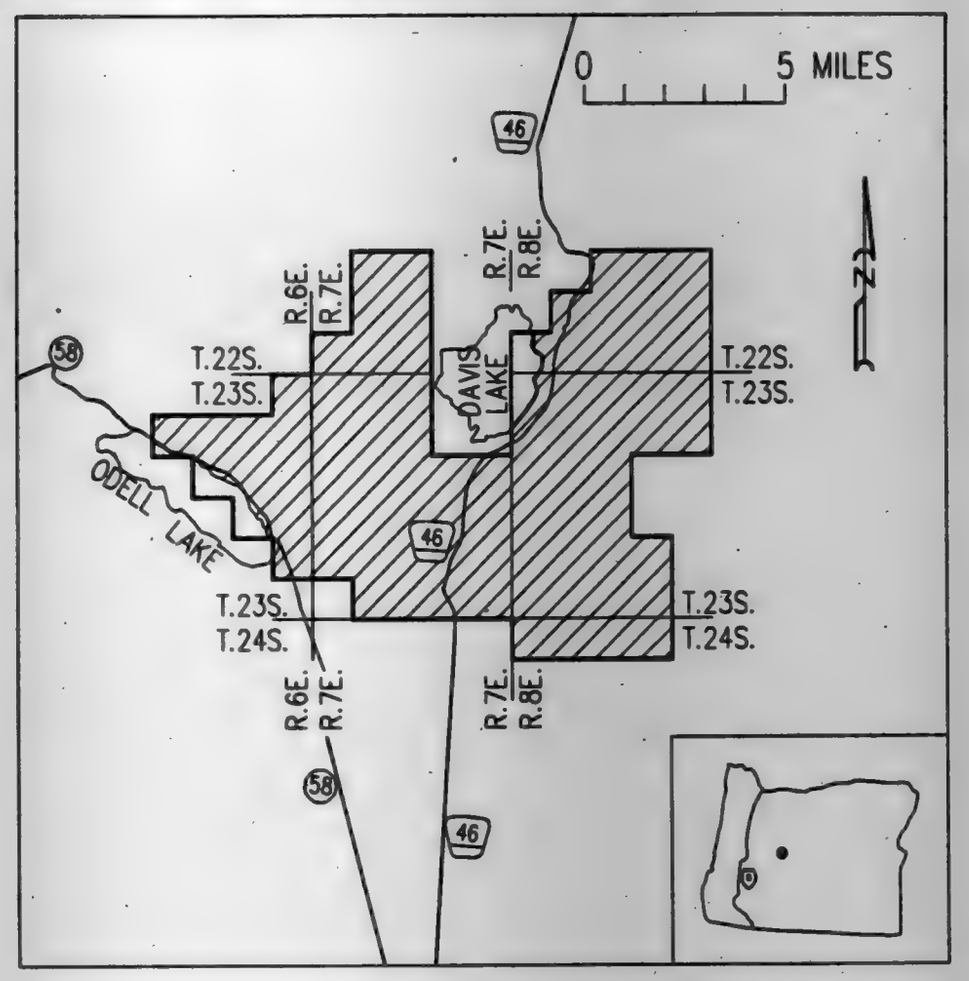

DES–2

BILLING CODE 4310-JB-C

Description of GPQ–1 taken Solely From Bureau of Land Management Map; Grants Pass, Oregon 1978.

Josephine and Jackson Counties

T. 39 S., R. 5 W.: Willamette Meridian
Secs. 13; 21; 23; 24; 25; 26; 27; 28; 29; 33; 34; and 35.

T. 40 S., R. 5 W.: Willamette Meridian
Secs. 2; and 4.

T. 38 S., R. 4 W.: Willamette Meridian
Secs. 33; 34; and 35.

T. 38 S., R. 3 W.: Willamette Meridian
Secs. 31; and 32.

T. 39 S., R. 4 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 16; 17; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 39 S., R. 3 W.: Willamette Meridian
Secs. 5; 6; 7; 8; 17; 18; 19; 20; 29; and 30.

BILLING CODE 4310-JB-M

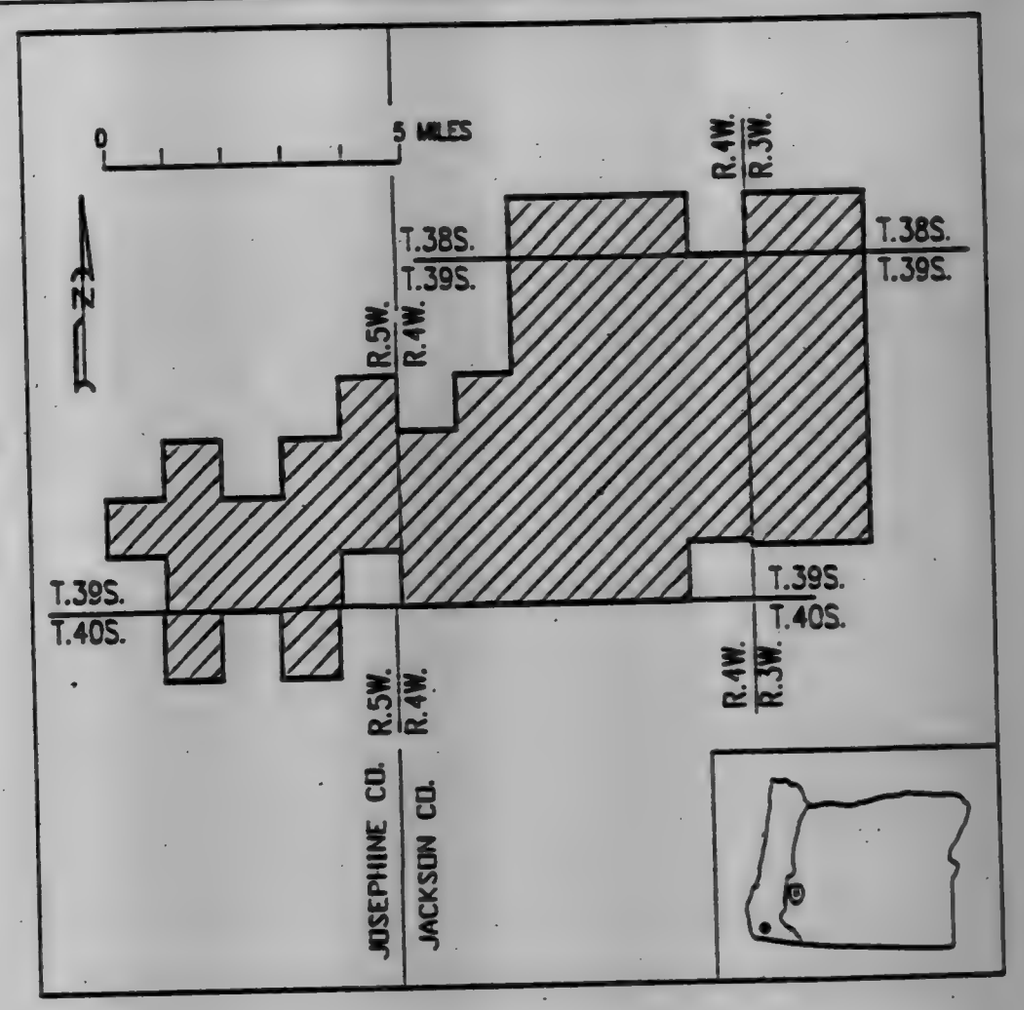

GPQ–1

BILLING CODE 4310-JB-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of MCK-1 taken Solely From Bureau of Land Management Map; McKenzie River, Oregon 1973.

Linn and Lane Counties

T. 15 S., R. 2 W.: Willamette Meridian
Secs. 21; 22; 23; 24; 25; 26; 27; 28; 29; 31; 33; 34; 35; and 36.

T. 15 S., R. 1 W.: Willamette Meridian
Secs. 19; 30; and 31.

T. 16 S., R. 2 W.: Willamette Meridian
Secs. 5; and 7.

BILLING CODE 4310-55-M

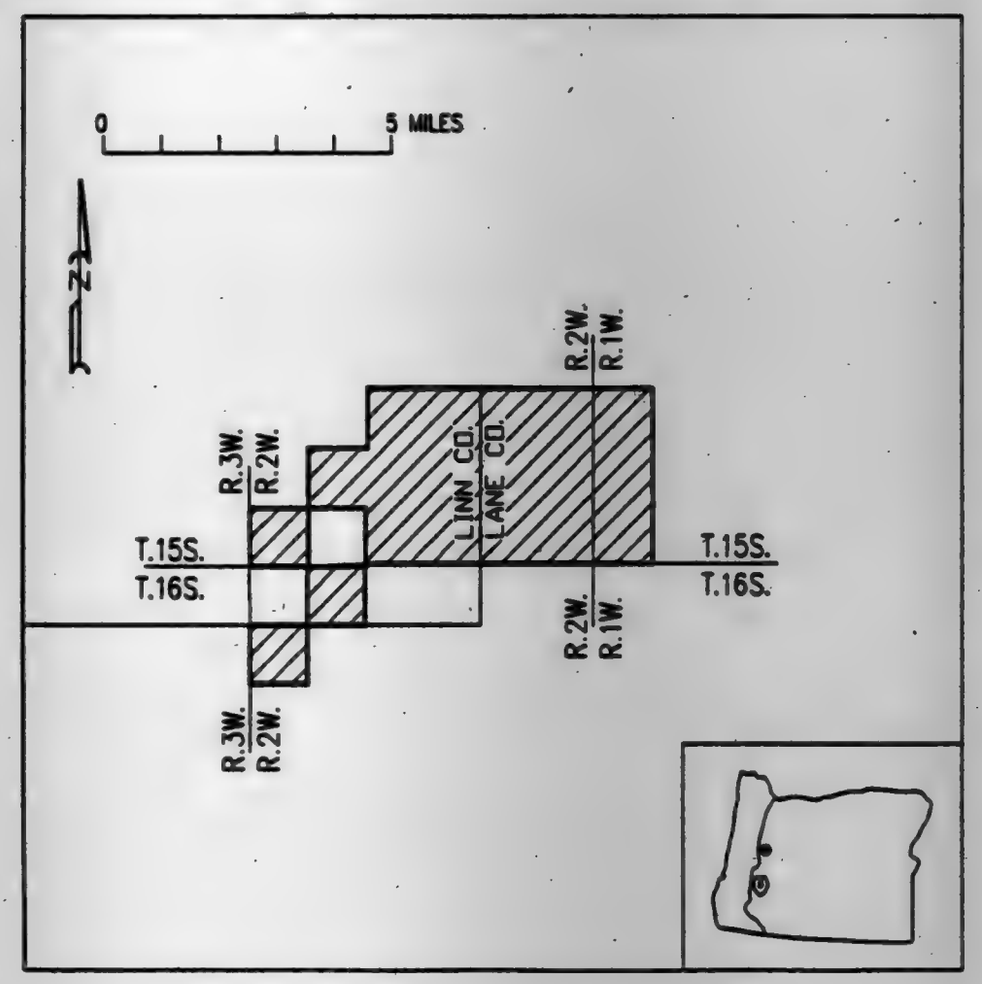

MCK-1

BILLING CODE 4310-55-C

Description of MDF-1 taken Solely From Bureau of Land Management Map; Medford, Oregon 1978.

Jackson County

T. 38 S., R. 2 W.: Willamette Meridian
Secs. 34; and 35.

T. 39 S., R. 2 W.: Willamette Meridian
Secs. 1; 2; 3; 10; 11; 12; 14; 15; 21; 22; 23; 25; 26; 27; 28; 30; 31; 32; 33; 34; 35; and 36.

T. 40 S., R. 2 W.: Willamette Meridian
Secs. 2; 3; 4; 5; 9; and 10.

BILLING CODE 4310-55-M

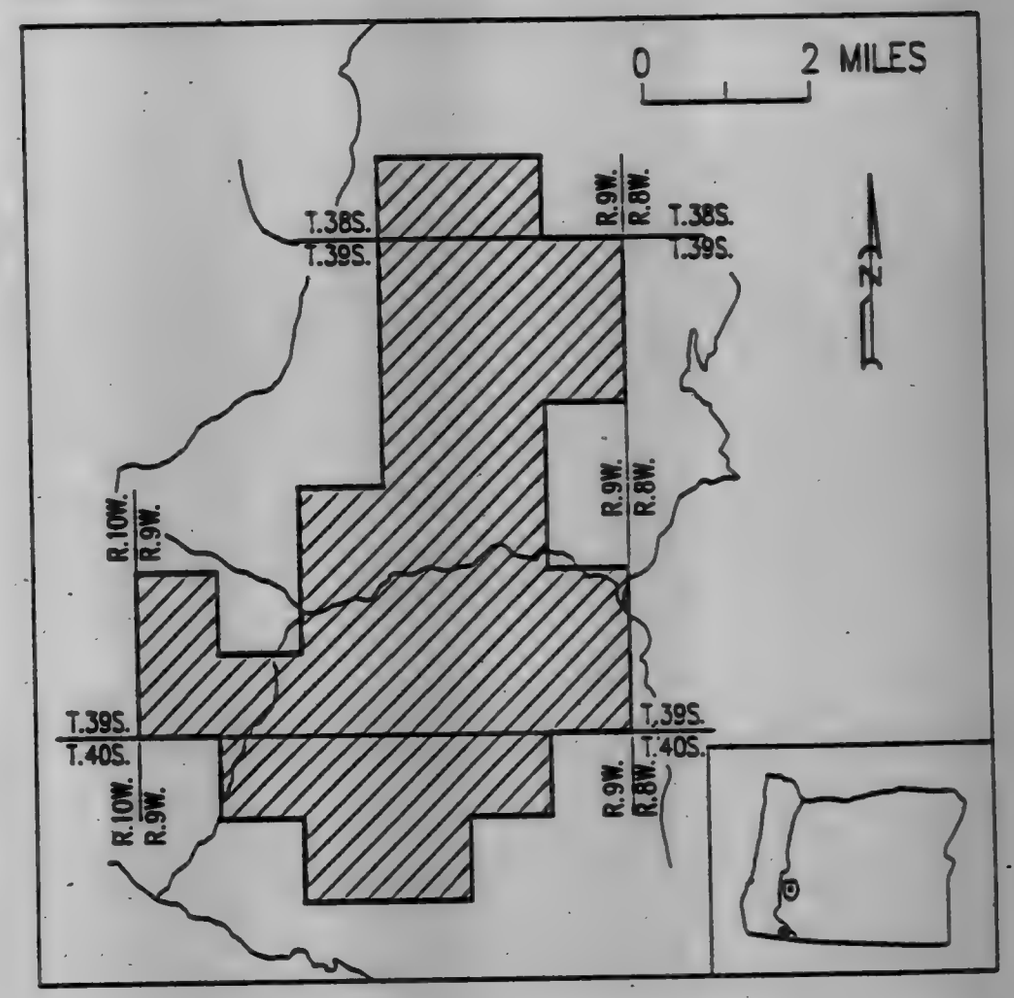

MDF-1

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of MH-1 taken Solely From Forest Visitor's Map; Mt. Hood, Oregon 1987.

Wasco County

T. 4 S., R. 10 E.: Willamette Meridian
Secs. 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 4 S., R. 11 E.: Willamette Meridian
Secs. 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 5 S., R. 10 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; and 26.

T. 5 S., R. 11 E.: Willamette Meridian
Secs. 5; 6; 7; 8; 17; 18; 19; 20; and 30.

Excepting any of the above area lying within the Warm Springs Indian Reservation.

BILLING CODE 4310-66-M

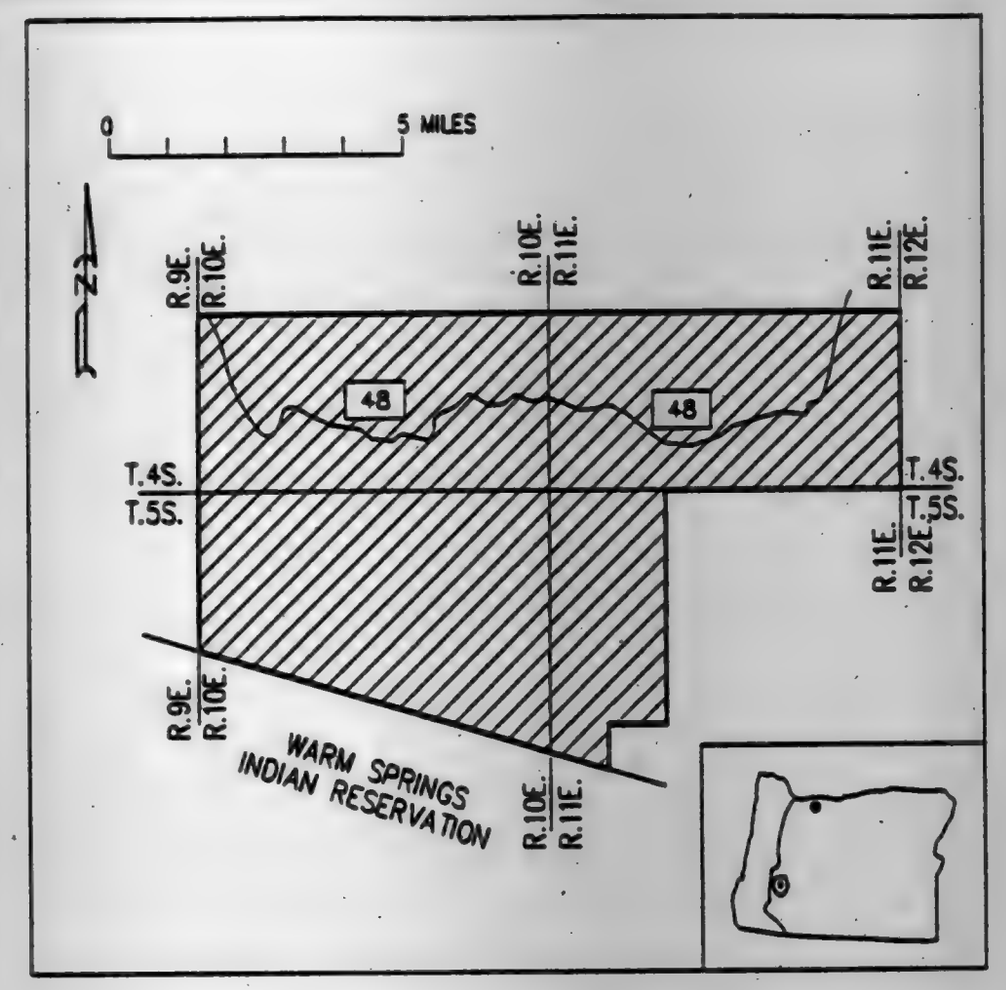

MH-1

BILLING CODE 4310-66-C

Description of MH-2 taken Solely From Forest Visitor's Map; Mt. Hood, Oregon 1987.

Wasco and Clackamas Counties

T. 6 S., R. 7 E.: Willamette Meridian
Secs. 1; and 2.

T. 7 S., R. 7 E.: Willamette Meridian
Secs. 1; 2; 11; 12; 13; 14; 23; 24; 25; 26; 35; and 36.

T. 6 S., R. 7 E.: Willamette Meridian
Secs. 23; 24; 25; 26; 35; and 36.

T. 6 S., R. 8 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; and 6.

T. 7 S., R. 8 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 6 S., R. 8 E.: Willamette Meridian
Secs. 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 6 S., R. 8 1/2 E.: Willamette Meridian
Secs. 23; 24; 25; 26; 35; and 36.

T. 7 S., R. 8 1/2 E.: Willamette Meridian
Secs. 2; 11; 14; 23; 26; and 35.

T. 8 S., R. 8 1/2 E.: Willamette Meridian
Sec. 2.

Excepting any of the above area lying within the Warm Springs Indian Reservation.

BILLING CODE 4310-66-M

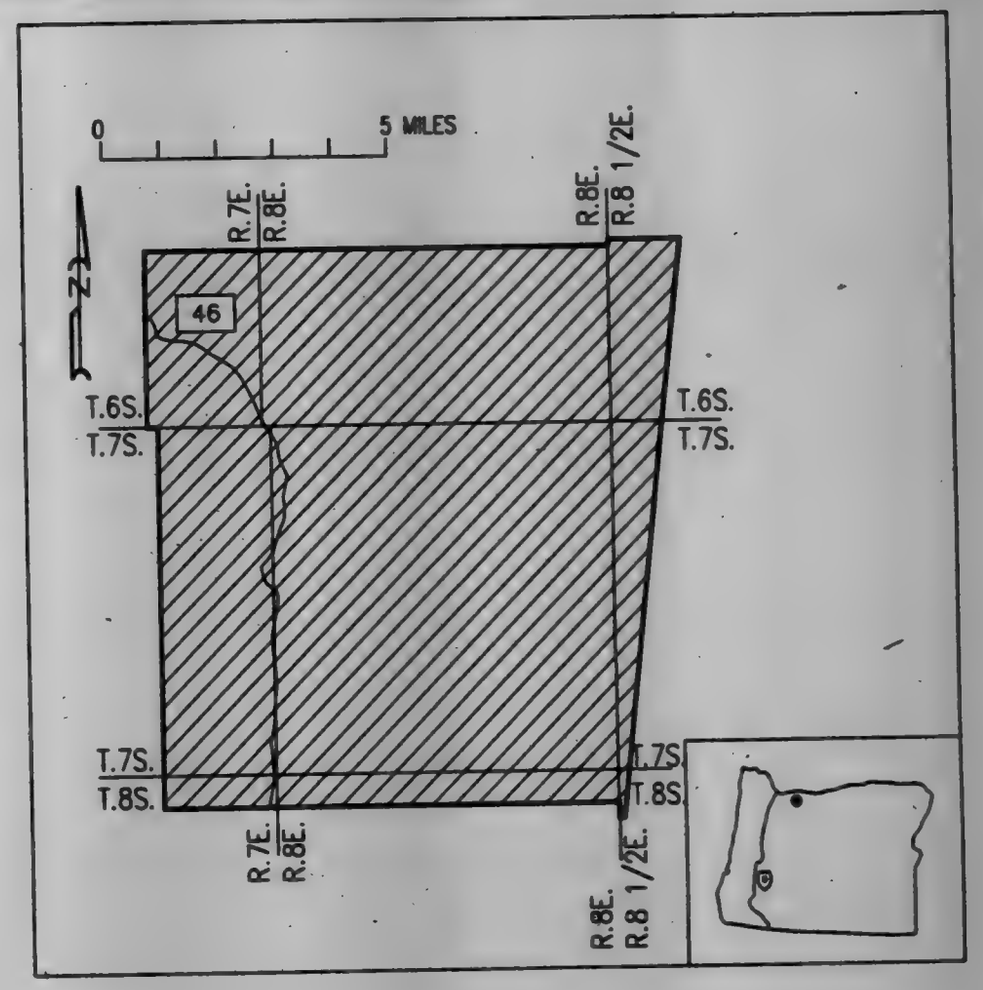

MH-2

BILLING CODE 4310-66-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–1 taken Solely From Forest Visitor's Map; Mt. Hood, Oregon 1987.

Hood River, Clackamas, and Multnomah Counties

T. 1 S., R. 5 E.: Willamette Meridian
Secs. 25; 26; 35; and 36.

T. 2 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; and 3.

T. 2 S., R. 6 E.: Willamette Meridian
Secs. 1; 2; 3; 5; 6; and 7.

T. 2 S., R. 7 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 11; and 12.

T. 2 S., R. 8 E.: Willamette Meridian
Secs. 3; 4; 5; 6; and 7.

T. 1 S., R. 6 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 1 S., R. 7 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 1 S., R. 8 E.: Willamette Meridian
Secs. 5; 6; 7; 8; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 1 N., R. 6 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 1 N., R. 7 E.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 17; 18; 19; 20; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 1 N., R. 8 E.: Willamette Meridian
Secs. 1; 2; 10; 11; 14; 15; 21; 22; 29; 31; and 32.

T. 2 N., R. 8 E.: Willamette Meridian
Secs. 1; 2; 3; 7; 8; 9; 10; 11; 12; 13; 14; 16; 17; 18; 19; 20; 25; 30; and 36.

T. 2 N., R. 9 E.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 16; 17; 18; 19; and 20.

T. 2 N., R. 7 E.: Willamette Meridian
Secs. 12; 13; 14; 22; 23; 24; 25; 26; 27; 28; 29; 31; 32; 33; 34; and 36.

T. 2 N., R. 6 E.: Willamette Meridian
Secs. 36; and 36.

Excepting any of the above area lying within the Columbia Wilderness area, and the Columbia River.

BILLING CODE 4310-33-M

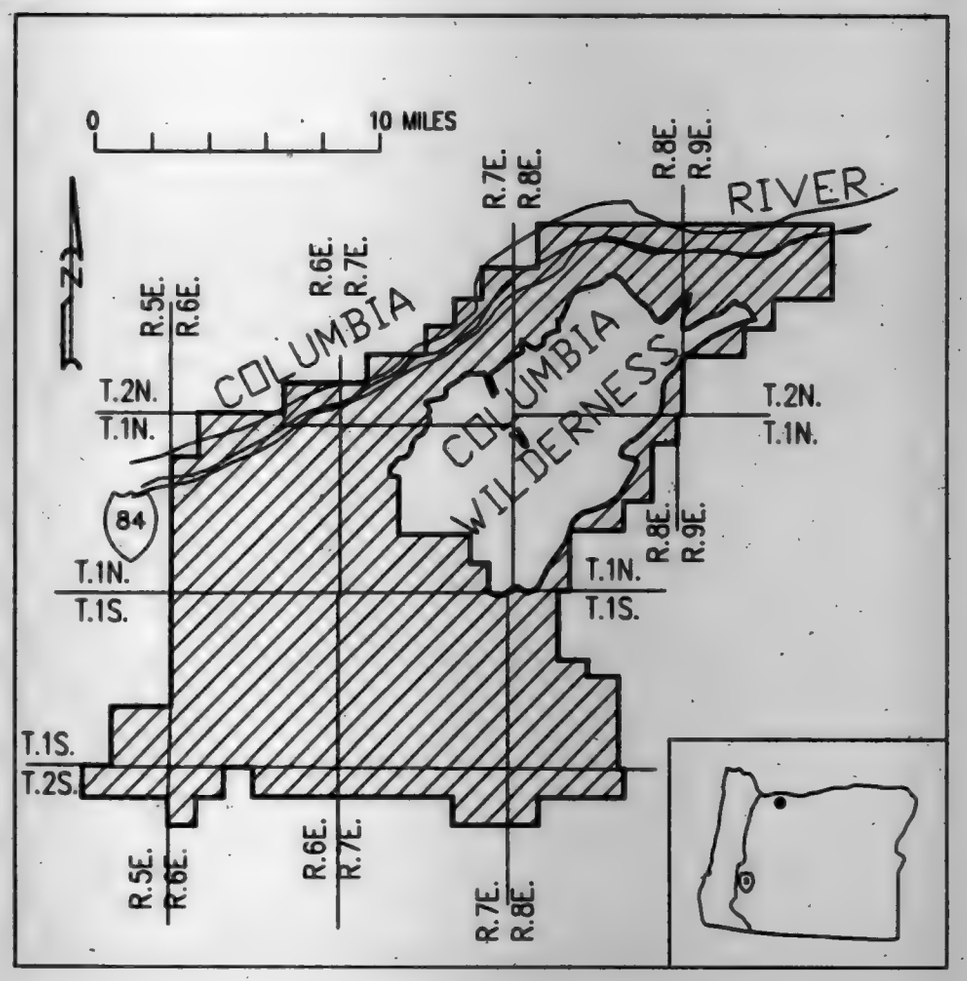

O–1

BILLING CODE 4310-33-C

Description of O–2 taken Solely From Forest Visitor's Map; Mt. Hood, Oregon 1987.

Hood River and Wasco Counties

T. 2 S., R. 9 E.: Willamette Meridian
Sec. 12.

T. 2 S., R. 10 E.: Willamette Meridian
Secs. 7; 8; 9; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 2 S., R. 11 E.: Willamette Meridian
Secs. 13; 14; 15; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 3 S., R. 9 E.: Willamette Meridian
Secs. 1; 2; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 28; 29; 30; 31; and 32.

T. 3 S., R. 10 E.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 17; 18; 19; 20; 21; 25; 26; 27; 28; 29; and 30.

T. 3 S., R. 11 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 10; 11; 12; 13; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 3 S., R. 12 E.: Willamette Meridian
Sec. 6.

Excepting any of the above area lying within the Mt. Hood Wilderness and Badger Creek Wilderness areas.

BILLING CODE 4310-33-M

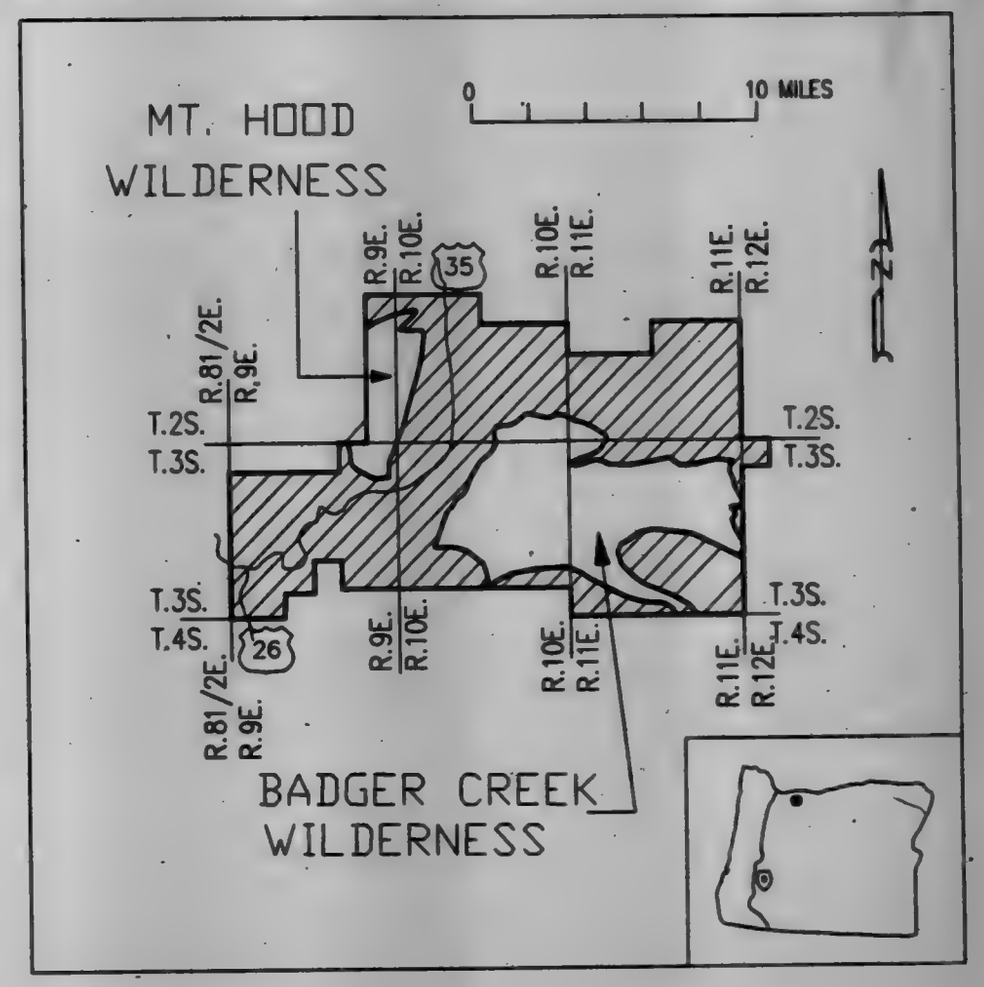

O–2

BILLING CODE 4310-33-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–3 taken Solely From Forest Visitor's Map: Mt. Hood National Forest, Oregon 1987.

Clackamas County

T. 3 S., R. 6 E.: Willamette Meridian
Secs. 2; 3; 4; 5; 8; 9; 10; 11; 14; 15; 16; 17; 20; 21; 22; 29; and 33.

T. 4 S., R. 6 E.: Willamette Meridian
Secs. 3; 4; 10; 11; 13; 14; 15; 22; 23; 24; 25; 26; 27; 32; 33; 34; 35; and 36.

T. 5 S., R. 6 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 6 S., R. 6 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 10; 11; 12; 13; 14; and 15.

T. 7 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 6 S., R. 7 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 17; and 18.

T. 4 S., R. 7 E.: Willamette Meridian
Secs. 2; 3; 18; 19; 20; 21; 22; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 3 S., R. 7 E.: Willamette Meridian
Secs. 3; 6; 8; 10; 11; 14; 15; 16; 22; 23; 24; 25; 26; 27; 33; 34; and 36.

T. 3 S., R. 8 E.: Willamette Meridian
Secs. 19; 30; and 31.

T. 4 S., R. 8 E.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 9; 10; 11; 14; 15; 16; 19; 20; 29; 30; 31; and 32.

Excepting any of the above area lying within the Salmon-Huckleberry Wilderness area.

BILLING CODE 4310-55-M

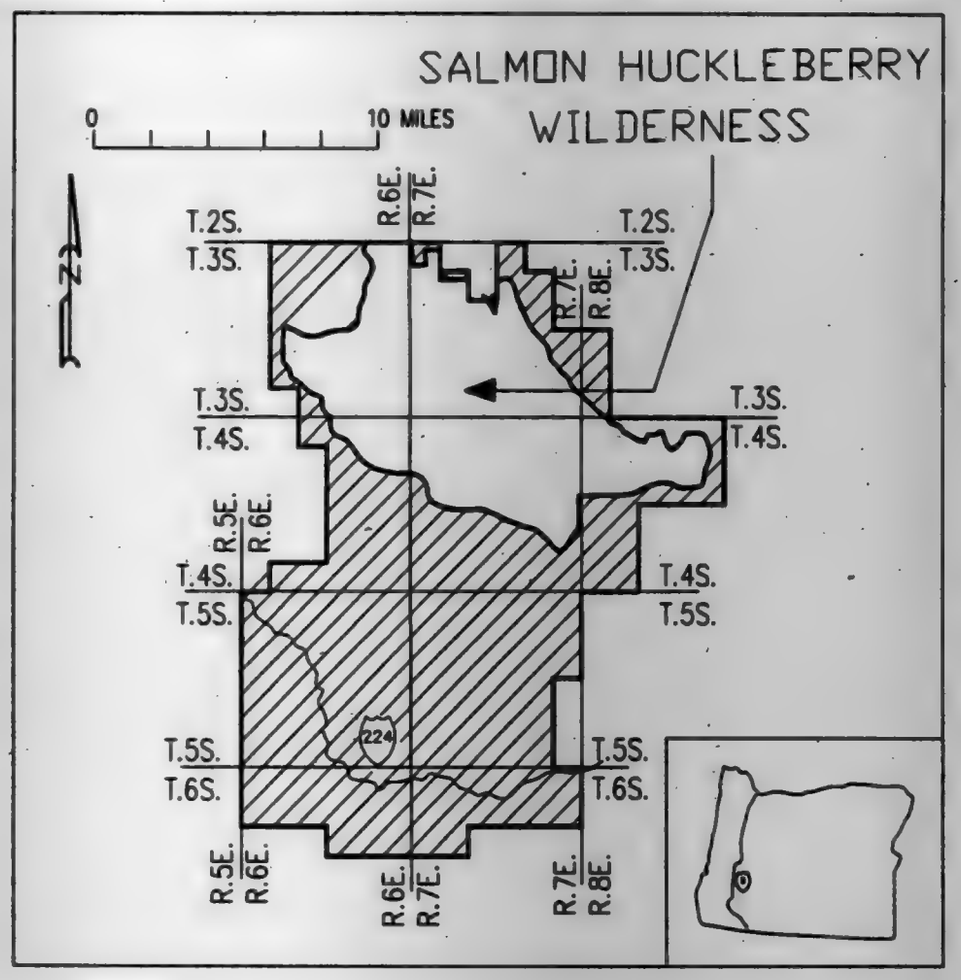

O–3

BILLING CODE 4310-55-C

Description of O–4 taken Solely From Forest Visitor's Map: Mt. Hood, Oregon 1987.

Clackamas and Marion Counties

T. 7 S., R. 3 E.: Willamette Meridian
Secs. 12; 13; 14; 15; 21; 22; 23; 24; 25; 26; 27; and 28.

T. 6 S., R. 4 E.: Willamette Meridian
Secs. 33; and 34.

T. 7 S., R. 4 E.: Willamette Meridian
Secs. 4; 5; 7; 8; 9; 10; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 35; and 36.

T. 8 S., R. 4 E.: Willamette Meridian
Secs. 1; 2; 11; and 12.

T. 6 S., R. 5 E.: Willamette Meridian
Secs. 31; and 32.

T. 7 S., R. 5 E.: Willamette Meridian
Secs. 5; 6; 7; 8; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 7 S., R. 6 E.: Willamette Meridian
Secs. 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 8 S., R. 5 E.: Willamette Meridian
Secs. 1; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 9 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 9; 10; 11; 12; 13; 14; 15; 16; 17; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 35; and 36.

T. 7 S., R. 7 E.: Willamette Meridian
Secs. 30; and 31.

T. 8 S., R. 6 E.: Willamette Meridian
Secs. 1; 2; 5; 6; 7; 11; 12; 13; 24; 25; 26; 34; 35; and 36.

T. 9 S., R. 6 E.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 16; 17; and 18.

T. 8 S., R. 7 E.: Willamette Meridian
Secs. 5; 6; 7; 8; 17; 18; 19; 20; 29; 30; and 31.

Excepting any of the above area lying within the Bull of the Woods Wilderness area.

BILLING CODE 4310-55-M

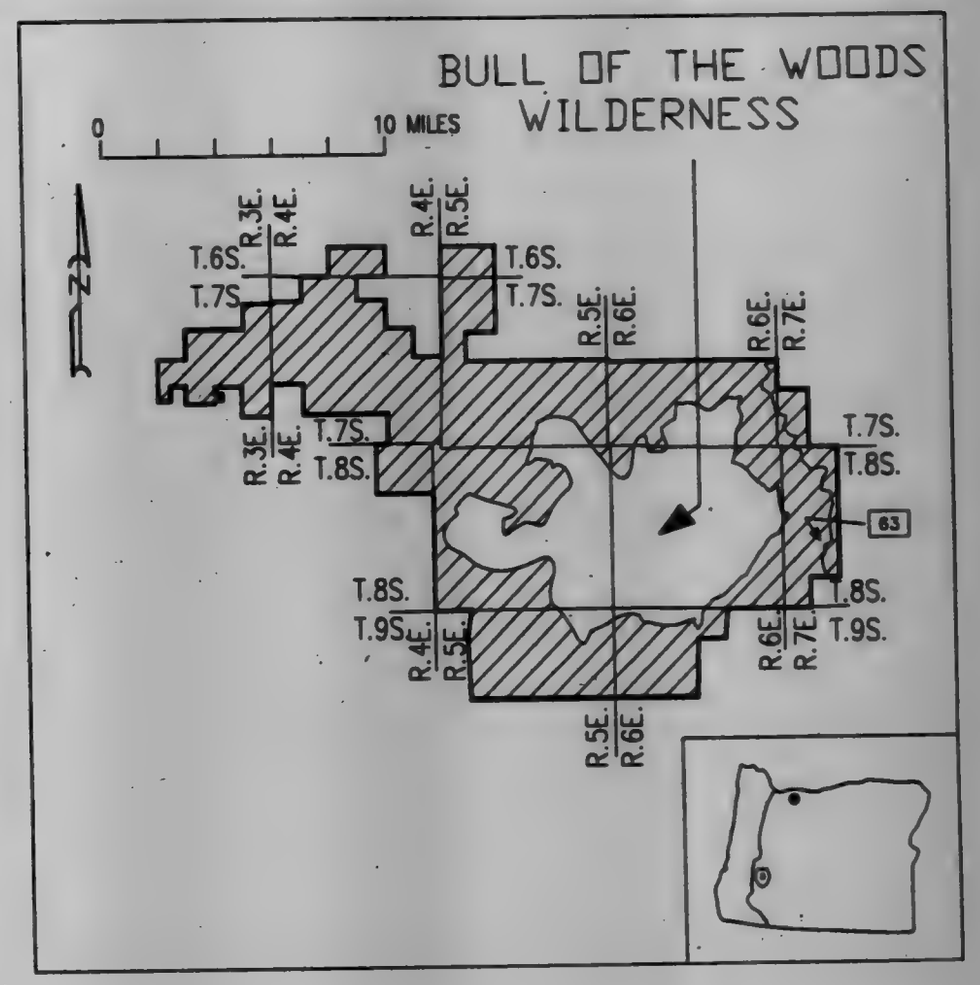

O–4

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–5 taken Solely From Forest Visitor's Map; Willamette, Oregon 1990.

Marion and Linn Counties

T. 10 S., R. 5 E.: Willamette Meridian
Secs. 12; 13; 14; 15; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 11 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 9; 10; 11; 14; 15; 22; 23; 24; 25; 26; 27; 28; 31; 32; 33; 34; 35; and 36.

T. 9 S., R. 6 E.: Willamette Meridian
Secs. 24; 25; 26; 27; 28; 31; 32; 33; 34; 35; and 36.

T. 10 S., R. 6 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 11 S., R. 6 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; and 6.

T. 8 S., R. 7 E.: Willamette Meridian
Secs. 26; 27; 34; 35; and 36.

T. 9 S., R. 7 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 10 S., R. 7 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 11 S., R. 7 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 8 S., R. 8 E.: Willamette Meridian
Secs. 29; 30; 32; 33; 34; 35; and 36.

T. 9 S., R. 8 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 21; 22; 23; 26; 27; and 31.

T. 10 S., R. 8 E.: Willamette Meridian
Secs. 17; 18; 19; 20; 29; 30; 31; and 32.

T. 11 S., R. 7 1/2 E.: Willamette Meridian
Secs. 22; 23; 26; 27; 34; and 35.

Excepting any of the above area lying within the Mt. Jefferson Wilderness area.

BILLING CODE 4310-33-M

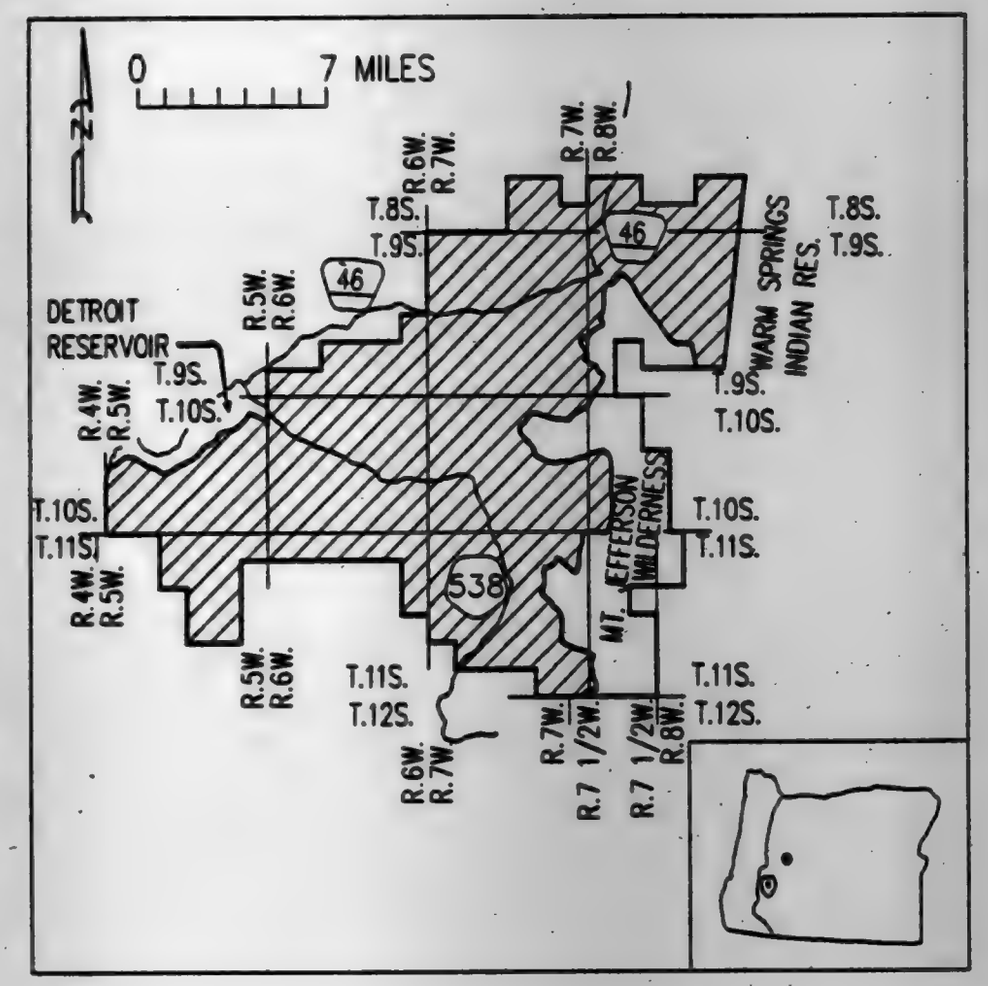

BILLING CODE 4310-33-C

O–5

Description of O–6 taken Solely From Forest Visitor's Map; Willamette, Oregon 1990.

Linn County

T. 11 S., R. 2 E.: Willamette Meridian
Secs. 12; 13; and 24.

T. 12 S., R. 2 E.: Willamette Meridian
Secs. 11; 12; 13; 14; 15; 23; 24; and 27.

T. 11 S., R. 3 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 32; 33; 34; 35; and 36.

T. 12 S., R. 3 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 15; 16; 17; 19; 20; 21; 28; 29; 30; 31; and 32.

T. 11 S., R. 4 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 12 S., R. 4 E.: Willamette Meridian
Secs. 1; and 2.

T. 11 S., R. 5 E.: Willamette Meridian
Secs. 5; 6; 7; 8; 16; 17; 19; 20; 21; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 12 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 11; 12; 13; 14; 19; 20; 23; 24; 25; 26; 27; 28; 29; 30; 32; 34; and 36.

T. 13 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; 4; 6; 8; 10; 12; 14; 16; 18; 20; 22; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36. Excepting All Private Land in Sec. 1

T. 12 S., R. 6 E.: Willamette Meridian
Secs. 7; 18; 19; 23; 24; 25; 26; 27; 29; 30; 32; 33; 34; 35; and 36.

T. 13 S., R. 6 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 6; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 27; 28; 29; 30; 31; 32; 33; and 34.

Excepting All Private Land in Secs. 17 and 19.

T. 12 S., R. 7 E.: Willamette Meridian
Secs. 19; 20; 21; 22; 23; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 13 S., R. 7 E.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 10; 13; 14; 15; 16; 17; 18; 23; and 24.

T. 13 S., R. 7½ E.: Willamette Meridian
Secs. 18; 19; 21; and 22.

Excepting any of the above area lying within the Middle Santiam and Mt. Jefferson Wilderness areas, and the Green Peter Reservoir.

BILLING CODE 4310-33-M

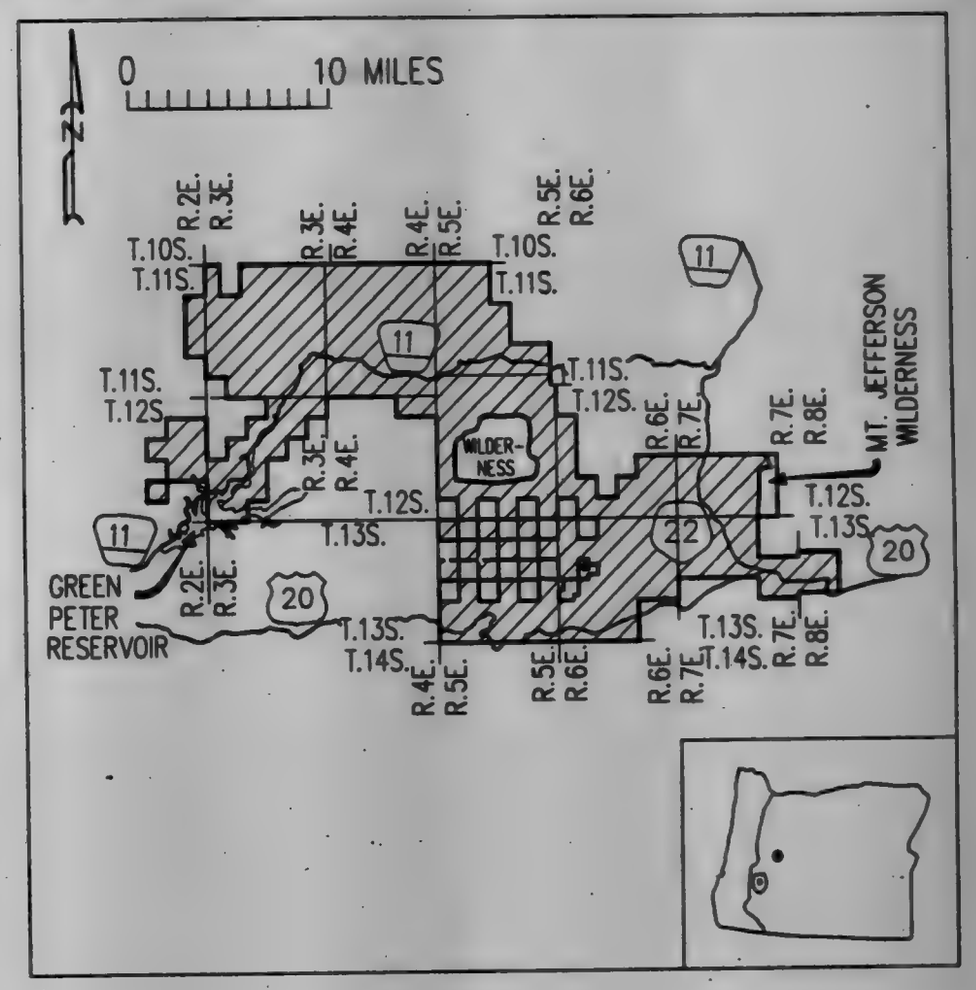

BILLING CODE 4310-33-C

O–6

Description of O–7 taken Solely From Forest Visitor's Map, Willamette National Forest, Oregon 1990.

Linn and Lane Counties

T. 16 S., R. 2 E.: Willamette Meridian
Sec. 25.

T. 17 S., R. 2 E.: Willamette Meridian
Secs. 1; 11; and 12.

T. 16 S., R. 3 E.: Willamette Meridian
Secs. 10; 11; 12; 13; 14; 15; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 17 S., R. 3 E.: Willamette Meridian
Secs. 5; 6; 7; 8; 9; 17; and 18.

T. 14 S., R. 4 E.: Willamette Meridian
Secs. 11; 12; 13; 14; 31; 32; and 36.

T. 15 S., R. 4 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 16 S., R. 4 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 15; 16; 17; 18; 19; 20; and 30.

T. 14 S., R. 5 E.: Willamette Meridian
Secs. 17; 18; 19; 20; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 15 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 14; 15; 16; 17; 18; 19; 20; 21; 22; 26; 29; 30; and 31.

T. 16 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; and 6.

T. 14 S., R. 6 E.: Willamette Meridian
Secs. 30; and 31.

T. 15 S., R. 6 E.: Willamette Meridian
Secs. 7; 18; 20; 28; 29; and 33.

T. 16 S., R. 6 E.: Willamette Meridian
Secs. 4; 5; and 6.

BILLING CODE 4310–55–M

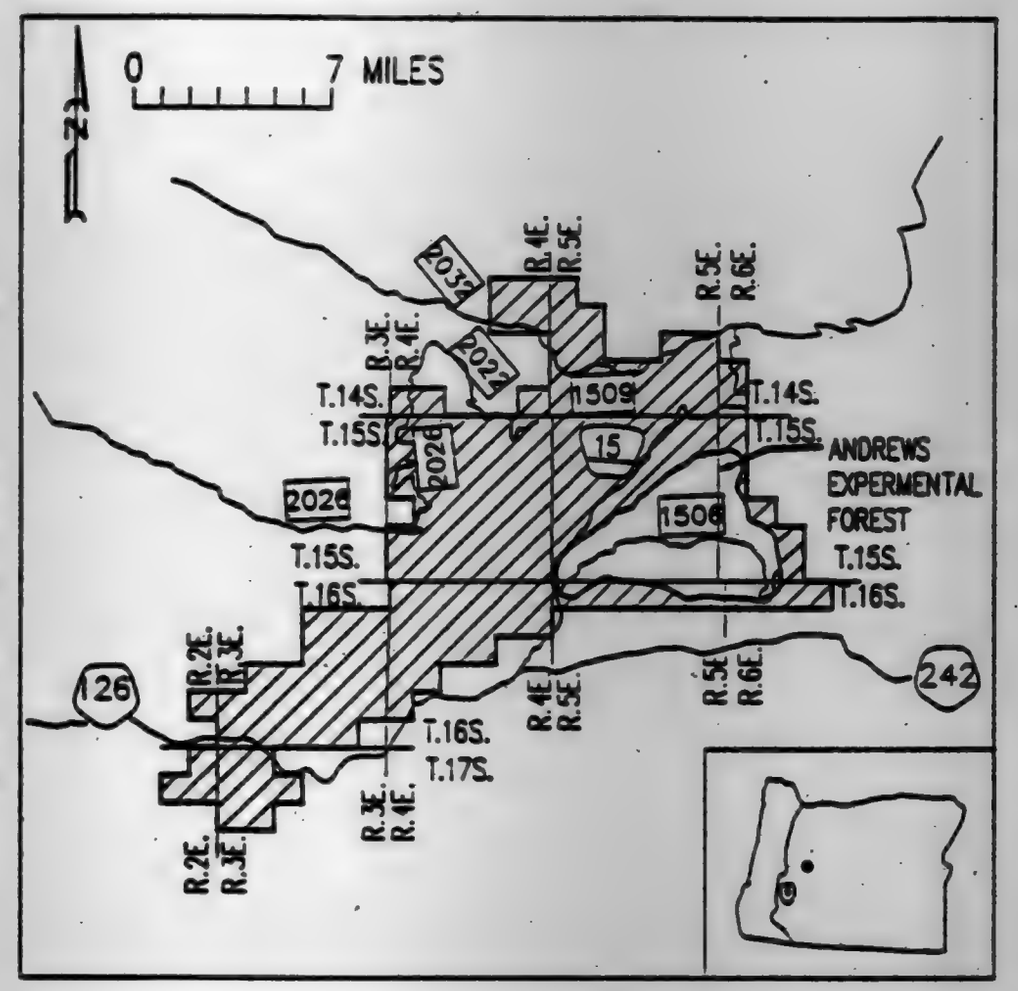

0–7

BILLING CODE 4310–55–C

Description of O–8 taken Solely From Forest Visitor's Map; Willamette, Oregon 1990.

Lane County

T. 16 S., R. 5 E.: Willamette Meridian
Secs. 25; 26; 27; 28; 33; 34; 35; and 36.

T. 17 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 8; 9; 10; 11; 12; 15; 16; 17; 20; 21; 22; 28; and 33.

T. 18 S., R. 5 E.: Willamette Meridian
Secs. 3; 4; 11; 12; 14; 23; and 25.

T. 16 S., R. 6 E.: Willamette Meridian
Secs. 14; 15; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 17 S., R. 6 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; and 33.

T. 17 S., R. 6 1/2 E.: Willamette Meridian
Secs. 16; 21; and 28.

T. 18 S., R. 6 E.: Willamette Meridian
Secs. 28; 29; 30; 34; and 35.

T. 16 S., R. 7 E.: Willamette Meridian
Secs. 13; 14; 15; 16; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; and 33.

Excepting any of the above area lying within the Olallie Research Natural area, Lamb Butte Scenic area, Three Sisters Wilderness area and Cougar Reservoir.

BILLING CODE 4310–55–M

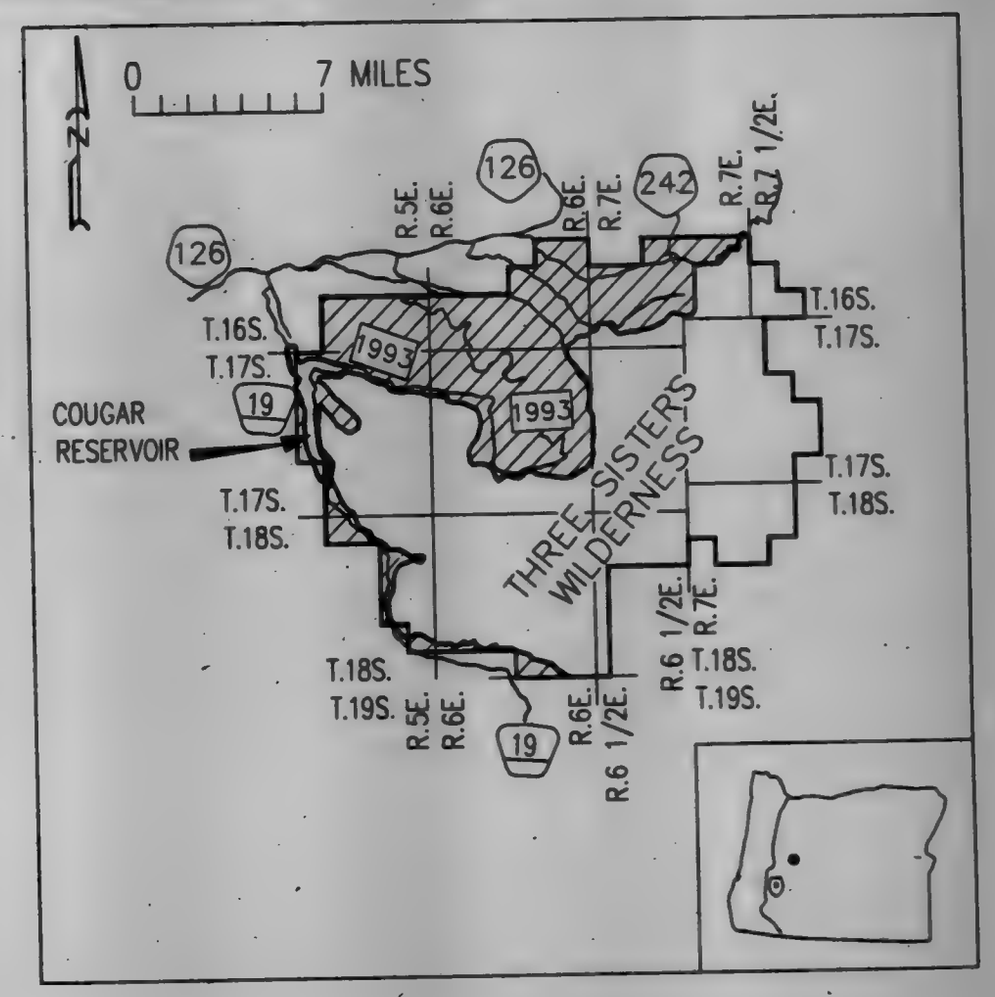

0–8

BILLING CODE 4310–55–C

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VOL 56 ISS 87 MY 6 1991 UMI

Description of O–9 taken Solely From Forest Visitor's Map; Willamette, Oregon 1990.

Lane County

T. 18 S., R. 2 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 19 S., R. 2 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 8; 9; 10; 11; 12; 13; 14; 15; 24; and 25.

T. 17 S., R. 3 E.: Willamette Meridian
Secs. 13; 23; 24; 25; 26; 34; 35; and 36.

T. 17 S., R. 4 E.: Willamette Meridian
Sec. 31.

T. 18 S., R. 3 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 19 S., R. 3 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 20 S., R. 3 E.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 15; 16; 17; 18; 20; 21; 22; 23; 24; 27; 28; 29; 32; and 33.

T. 18 S., R. 4 E.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 10; 15; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 19 S., R. 4 E.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 17; 18; 19; 30; and 31.

BILLING CODE 4310–55–M

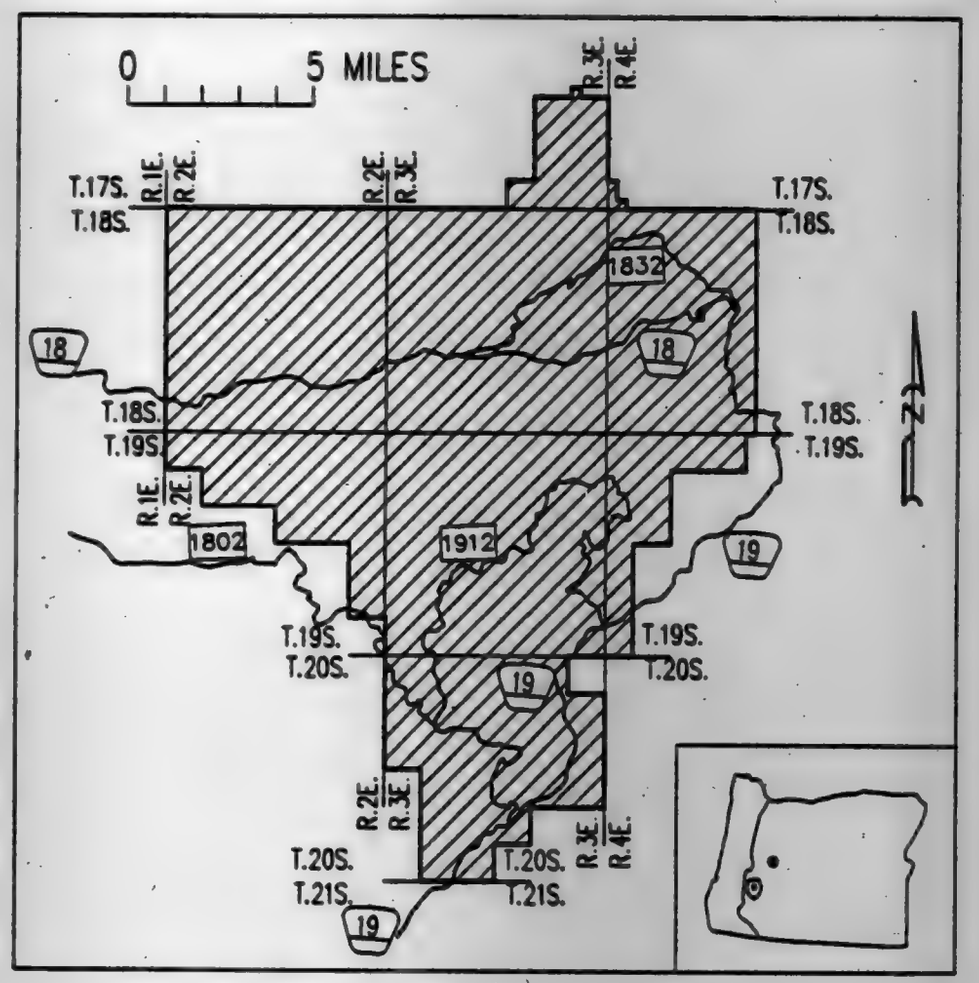

O–9

BILLING CODE 4310–55–C

Description of O–10 taken Solely From Forest Visitor's Map; Willamette, Oregon 1990.

Lane County

T. 19 S., R. 4 E.: Willamette Meridian
Secs. 25; and 36.

T. 20 S., R. 4 E.: Willamette Meridian
Secs. 1; 12; 13; 24; 25; and 36.

T. 21 S., R. 4 E.: Willamette Meridian
Secs. 1; 2; 11; 12; 13; 14; 22; 23; 24; 25; 26; 27; and 36.

T. 23 S., R. 4 E.: Willamette Meridian
Secs. 1; 12; and 13.

T. 19 S., R. 5 E.: Willamette Meridian
Secs. 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 20 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 21 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 22 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 23 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 14; 17; and 18.

T. 19 S., R. 5½ E.: Willamette Meridian
Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 16; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; and 36.

T. 20 S., R. 5½ E.: Willamette Meridian
Secs. 4; 5; 8; 9; 10; 20; 21; 22; 26; 27; 28; 29; 32; 33; and 34.

T. 21 S., R. 5½ E.: Willamette Meridian
Secs. 3; 4; 5; 8; 9; 16; 17; 20; 21; 22; 23; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 22 S., R. 5 1/2 E.: Willamette Meridian
Secs. 3; 4; 5; 8; 9; 10; 15; 16; 17; 20; 28; 29; 32; and 33.

T. 19 S., R. 6 E.: Willamette Meridian
Secs. 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 20 S., R. 6 E.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; and 9.

T. 23 S. R. 5½ E.: Willamette Meridian
Secs. 4; 5; 8; and 9.

Excepting any of the above area lying within the Diamond Peak Wilderness, Waldo Lake Wilderness and the Three Sisters Wilderness areas.

BILLING CODE 4310–55–M

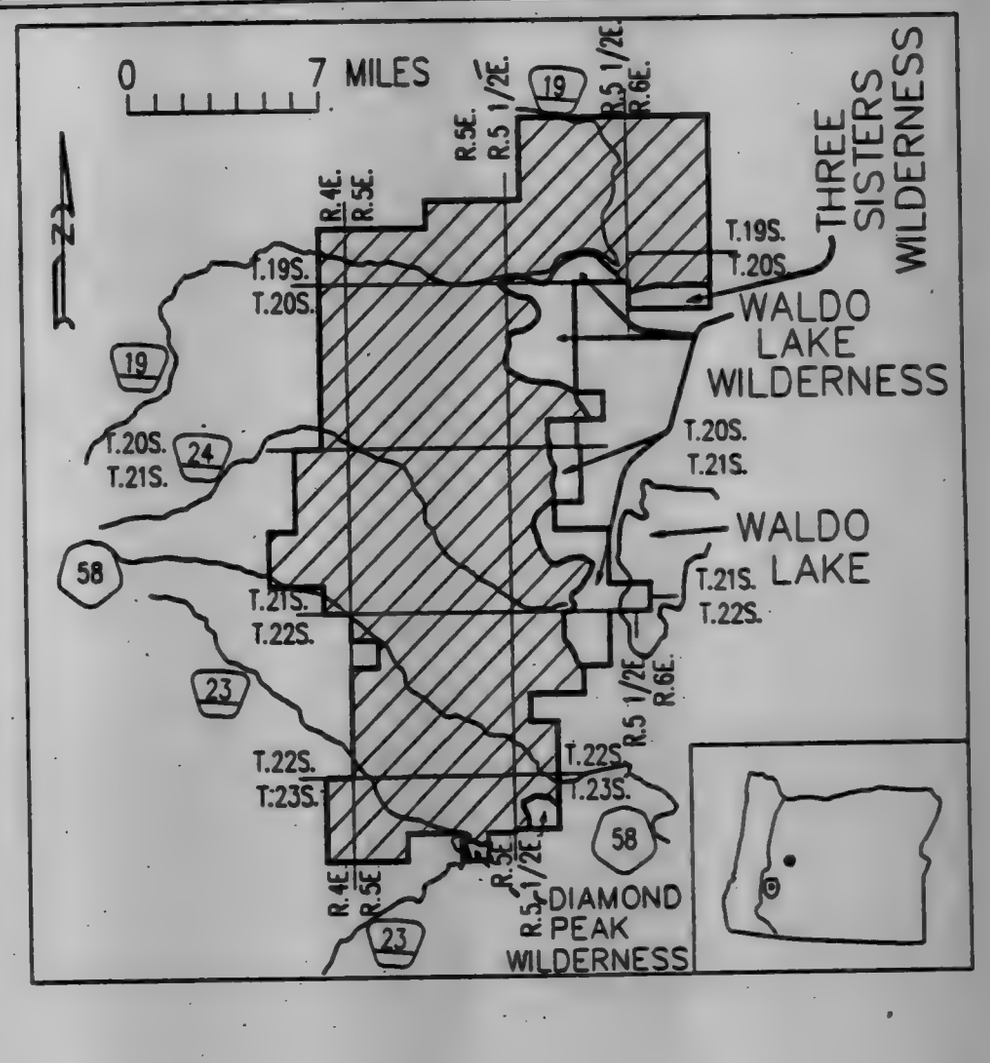

O–10

BILLING CODE 4310–55–C

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–11 taken Solely From Forest Visitor's Map; Willamette, Oregon 1990.

Lane County

T. 19 S., R. 1 W.: Willamette Meridian
Sec. 35.

T. 20 S., R. 1 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 21; 22; 23; 24; 25; 26; and 27.

T. 20 S., R. 1 E.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 21 S., R. 1 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 8; 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; and 24.

T. 20 S., R. 2 E.: Willamette Meridian
Secs. 18; 19; 20; 21; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 21 S., R. 2 E.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 33; 34; 35; and 36.

T. 22 S., R. 2 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 10; 11; 12; 13; 14; 15; 22; 23; and 24.

T. 21 S., R. 3 E.: Willamette Meridian
Secs. 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 22 S., R. 3 E.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; and 8.

Excepting any of the above area living within the Lookout Point, and Hills Creek Reservoirs

BILLING CODE 4310-55-M

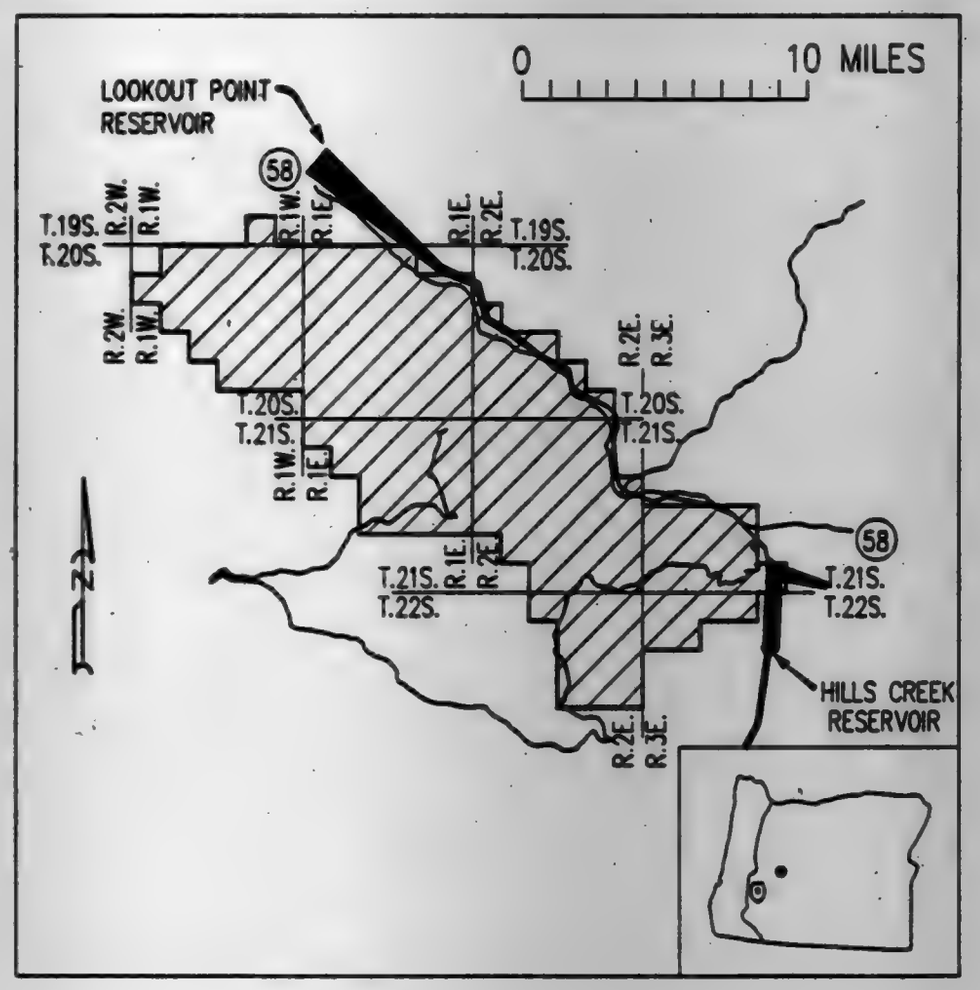

BILLING CODE 4310-55-C

O–11

Description of O–12 taken Solely From Bureau of Land Management Map; Oakridge, Oregon 1974.

Douglas and Lane Counties

T. 22 S., R. 2 W.: Willamette Meridian
Secs. 31; 32; 33; 34; 35; and 36.

T. 23 S., R. 2 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 32; 33; 34; 35; and 36.

T. 24 S., R. 2 W.: Willamette Meridian
Secs. 1; 2; and 3.

T. 22 S., R. 1 W.: Willamette Meridian
Secs. 13; 14; 15; 22; 23; 24; 25; 26; 27; 31; 32; 33; 34; and 35.

T. 23 S., R. 1 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 24 S., R. 1 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 25 S., R. 1 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; and 12.

T. 25 S., R. 2 W.: Willamette Meridian
Sec. 1.

BILLING CODE 4310-55-M

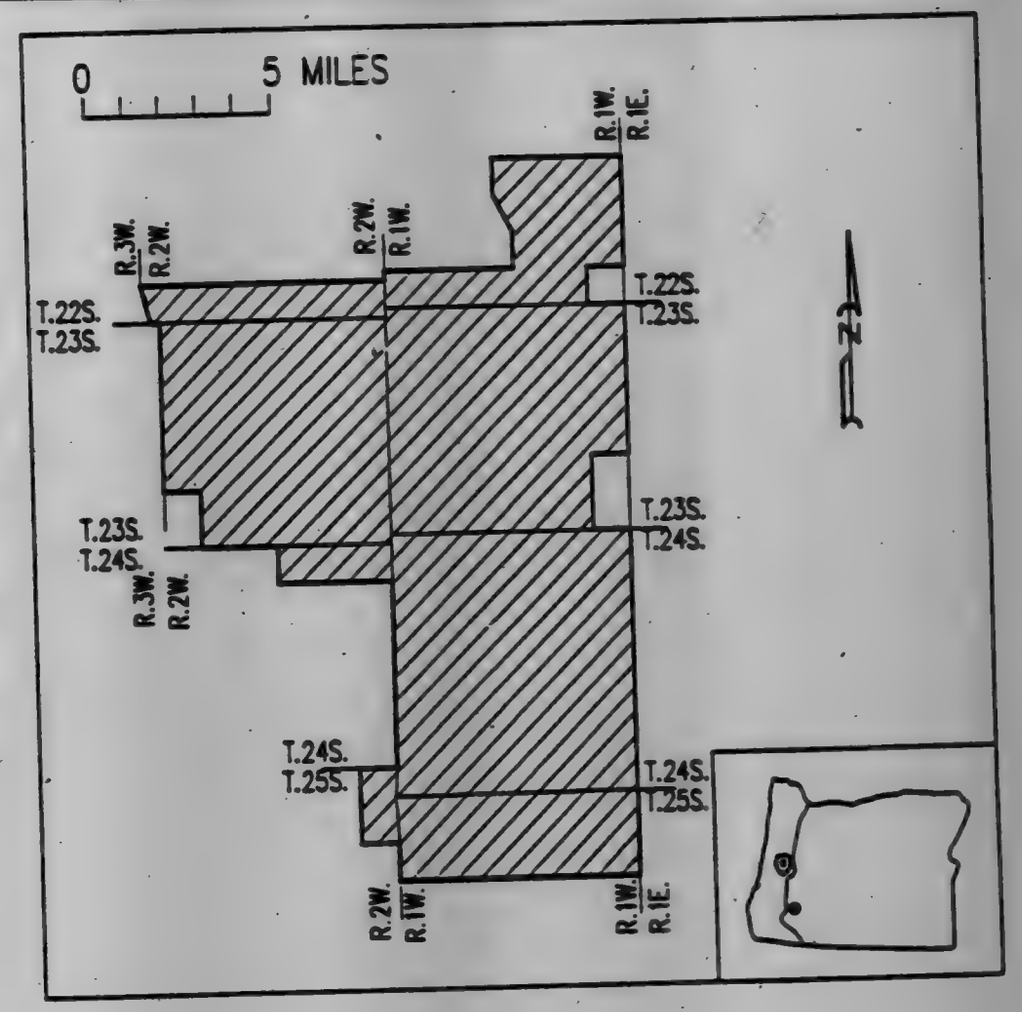

BILLING CODE 4310-55-C

O–12

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–13 taken Solely From Forest Visitor's Map; Umpqua, Oregon 1985.

Lane and Douglas Counties

T. 25 S., R. 2 E.: Willamette Meridian
Secs. 12; 24; 25; 26; and 35.

T. 25½ S., R. 2 E.: Willamette Meridian
Secs. 34; and 35.

T. 26 S., R. 2 E.: Willamette Meridian
Secs. 3; 10; 13; 15; 31; 32; 33; 34; 35; and 36.

T. 26 S., R. 1 E.: Willamette Meridian
Sec. 36.

T. 27 S., R. 1 E.: Willamette Meridian
Secs. 1; and 12.

T. 27 S., R. 2 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 20; 21; 22; 23; 24; 25; 26; 27; 28; and 29.

T. 24 S., R. 3 E.: Willamette Meridian
Secs. 22; 23; 25; 26; 27; 34; 35; and 36.

T. 25 S., R. 3 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 13; 14; 15; 16; 17; 18; 19; 22; 23; 24; 25; 26; 27; 34; 35; and 36.

T. 25½ S., R. 3 E.: Willamette Meridian
Secs. 35; and 36.

T. 26 S., R. 3 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 8; 9; 10; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 27; 31; 32; 33; 34; 35; and 36.

T. 27 S., R. 3 E.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 17; 18; 19; and 20.

T. 24 S., R. 4 E.: Willamette Meridian
Secs. 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 25 S., R. 4 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 25½ S., R. 4 E.: Willamette Meridian
Secs. 31; 32; 33; 34; 35; and 36.

T. 26 S., R. 4 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; and 32.

T. 24 S., R. 5 E.: Willamette Meridian
Secs. 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 25 S., R. 5 E.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 15; 16; 17; 18; 19; 20; 21; 22; 23; 26; 27; 28; 29; 30; 31; 32; 33; and 34.

Excepting any of the above area lying within the Boulder Creek Wilderness area.

BILLING CODE 4310-55-M

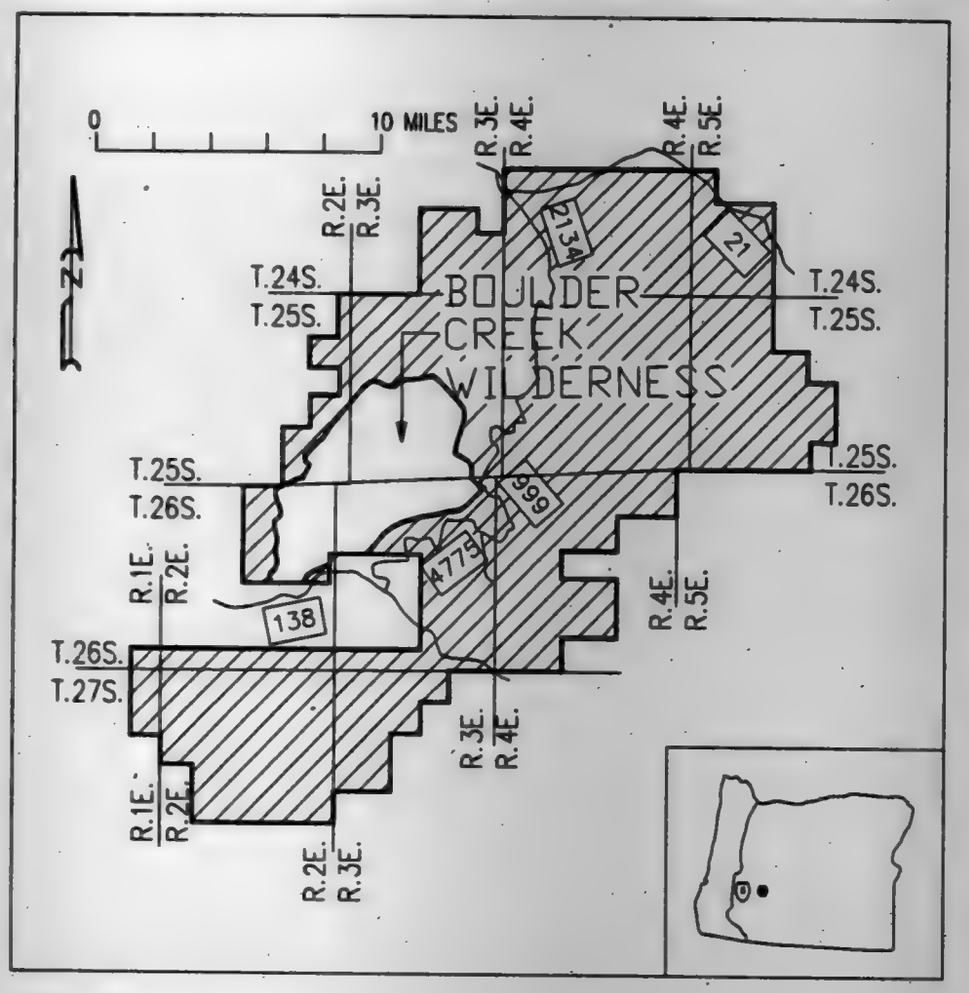

O–13

BILLING CODE 4310-55-C

Description of O–14 taken Solely From Forest Visitor's Map; Umpqua, Oregon 1985.

Douglas County

T. 26 S., R. 1 W.: Willamette Meridian
Secs. 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 27 S., R. 1 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 27 S., R. 2 W.: Willamette Meridian
Secs. 31; 32; 33; 34; 35; and 36.

T. 28 S., R. 1 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 28 S., R. 2 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 28 S., R. 3 W.: Willamette Meridian
Sec. 24.

T. 29 S., R. 1 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; and 12.

T. 29 S., R. 2 W.: Willamette Meridian
Secs. 1; 2; 11; and 12.

T. 28 S., R. 1 E.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 10; 15; 16; 17; 18; 19; 20; 21; 29; 30; 31; and 32.

T. 29 S., R. 1 E.: Willamette Meridian
Sec. 6.

BILLING CODE 4310-55-M

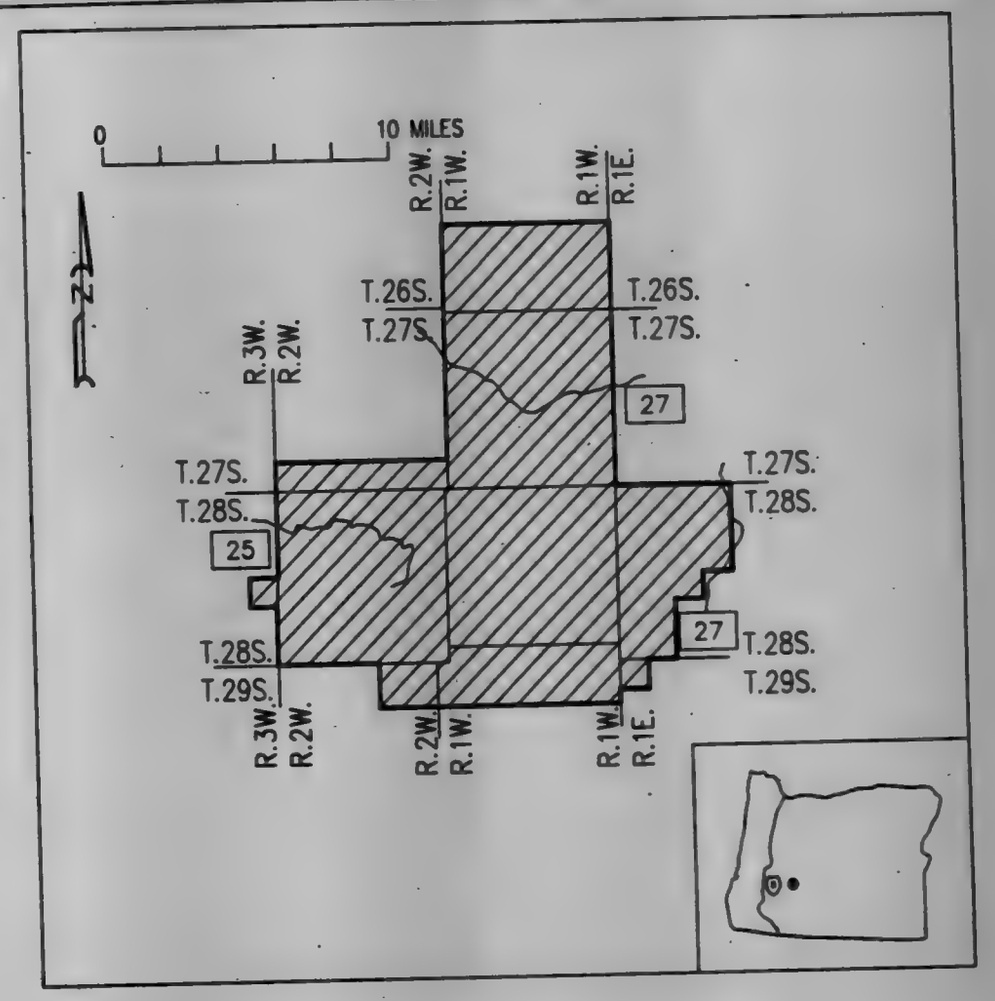

O–14

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–15 taken Solely From Forest Visitor's Map; Umpqua, Oregon 1985.

Douglas and Jackson Counties

T. 28 S., R. 3 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 16; 17; 18; 19; 20; 24; 25; 26; 29; 30; 31; 32; 33; 35; and 36.

T. 28 S., R. 4 E.: Willamette Meridian
Secs. 5; 6; 7; 8; 17; 18; 19; 20; 29; 30; 31; and 32.

T. 29 S., R. 4 E.: Willamette Meridian
Secs. 4; 8; 9; and 18.

T. 29 S., R. 3 E.: Willamette Meridian
Secs. 10; 11; 12; 15; 16; 17; 18; 19; 20; 21; 22; 26; 27; 28; 29; 30; 33; 34; 35; and 36.

T. 30 S., R. 3 E.: Willamette Meridian
Secs. 3; 4; 6; 7; 8; 9; 16; 17; 19; 20; 21; 29; 30; 31; and 32.

T. 28 S., R. 2 E.: Willamette Meridian
Secs. 13; 24; 25; 26; 27; 28; 33; 34; 35; and 36.

T. 29 S., R. 2 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 29 S., R. 1 E.: Willamette Meridian
Secs. 24; 25; and 36.

T. 30 S., R. 1 E.: Willamette Meridian
Secs. 1; 12; 13; 22; 23; 24; 25; 26; 27; 34; 35; and 36.

T. 30 S., R. 2 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 31 S., R. 1 E.: Willamette Meridian
Secs. 1; 2; 3; 9; 10; 11; 12; 13; 14; 15; 16; 17; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 32 S., R. 1 E.: Willamette Meridian
Sec. 2.

T. 31 S., R. 1 W.: Willamette Meridian
Secs. 25; and 36.

T. 31 S., R. 2 E.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 17; 18; 19; 30; and 31.

T. 31 S., R. 3 E.: Willamette Meridian
Secs. 5; and 6.

Excepting any of the above area lying within the Rogue-Umpqua Divide Wilderness area.

BILLING CODE 4310-55-M

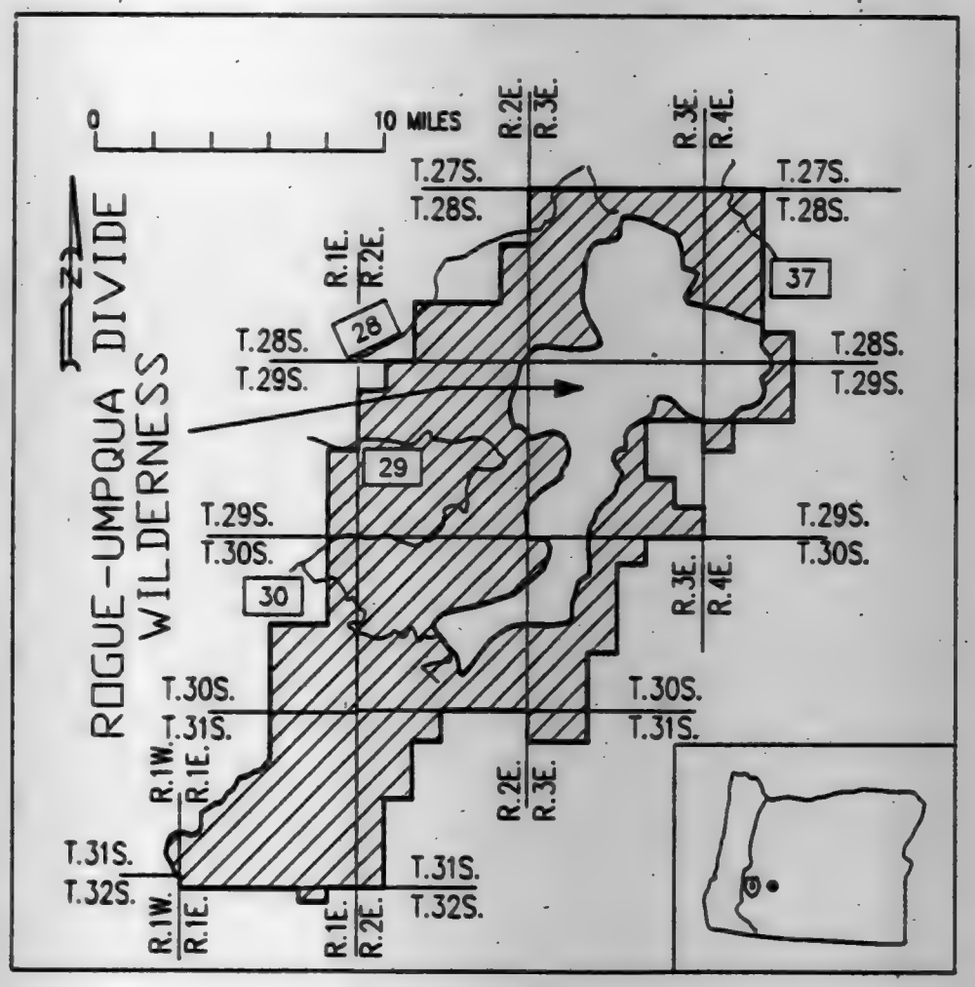

O–15

BILLING CODE 4310-55-C

Description of O–16 taken Solely From Bureau of Land Management Maps; Canyonville 1979, Crater Lake 1978, and Roseburg 1979, Oregon.

Douglas and Jackson Counties

T. 32 S., R. 5 W.: Willamette Meridian
Secs. 1; 2; 13; 23; 24; 25; 26; 35; and 36.

T. 31 S., R. 5 W.: Willamette Meridian
Secs. 1; 2; 12; 13; 23; 24; 25; 26; 35; and 36.

T. 30 S., R. 5 W.: Willamette Meridian
Secs. 34; 35; and 36.

T. 32 S., R. 4 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 31 S., R. 4 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 30 S., R. 4 W.: Willamette Meridian
Secs. 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 30 S., R. 3 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 30 S., R. 2 W.: Willamette Meridian
Sec. 31.

T. 29 S., R. 3 W.: Willamette Meridian
Secs. 13; 23; 24; 25; 26; 27; 33; 34; 35; and 36.

T. 31 S., R. 2 W.: Willamette Meridian
Sec. 6.

T. 31 S., R. 3 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; and 30.

BILLING CODE 4310-55-M

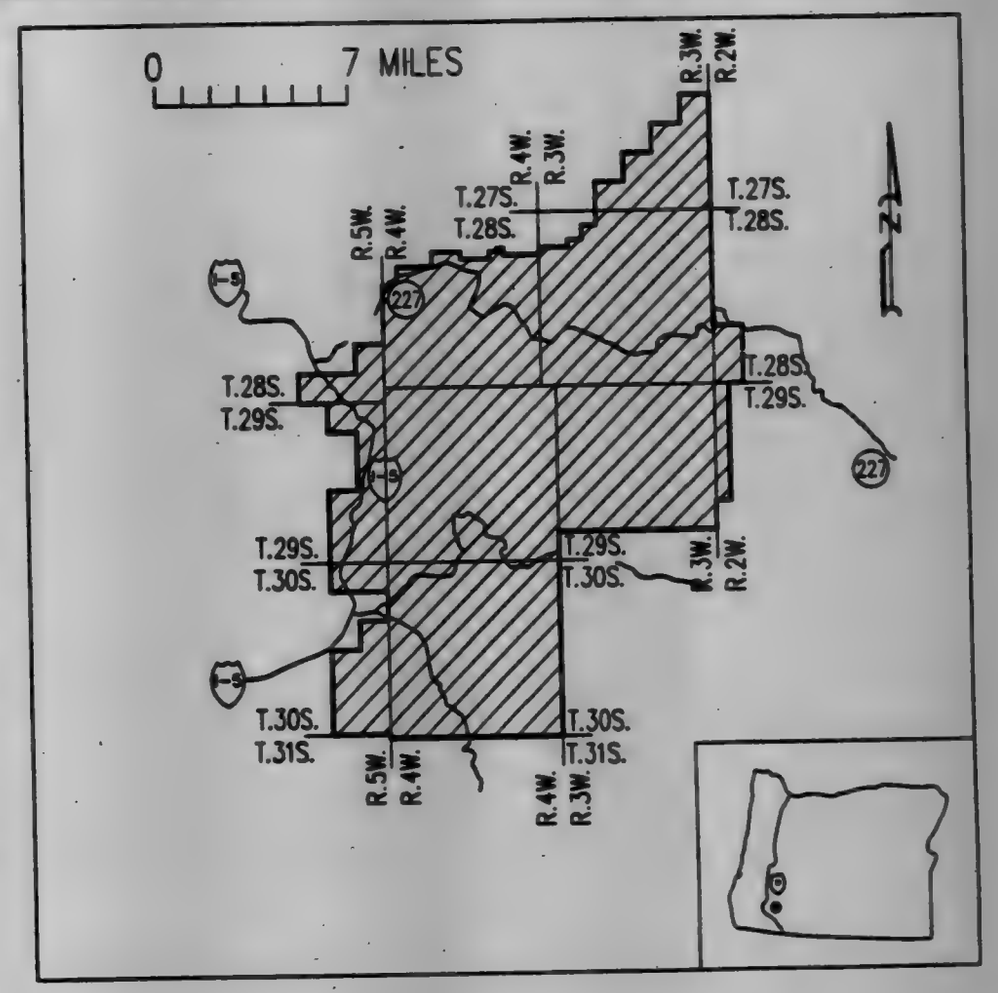

O–16

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–17 taken Solely From Bureau of Land Management Map; Crater Lake, Oregon 1978.

Jackson and Douglas Counties

T. 32 S., R. 1 W.: Willamette Meridian
Secs. 1; 11; 12; 13; 14; 21; 22; 23; 24; 25; 26; 27; 28; 29; 31; 32; 33; 34; 35; and 36.

T. 32 S., R. 1 E.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 10; 11; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 33 S., R. 1 W.: Willamette Meridian
Secs. 1; 2; 10; 11; 12; 13; 14; 15; 22; 23; and 24.

T. 33 S., R. 1 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; and 19.

T. 32 S., R. 2 E.: Willamette Meridian
Secs. 31; 32; and 33.

T. 33 S., R. 2 E.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 13; 14; 15; 16; 17; 18; 22; 23; 24; 25; 26; 27; and 35.

T. 33 S., R. 3 E.: Willamette Meridian
Secs. 18; 19; 29; and 30.

Excepting any of the area lying within the Lost Creek Reservoir.

BILLING CODE 4310-55-M

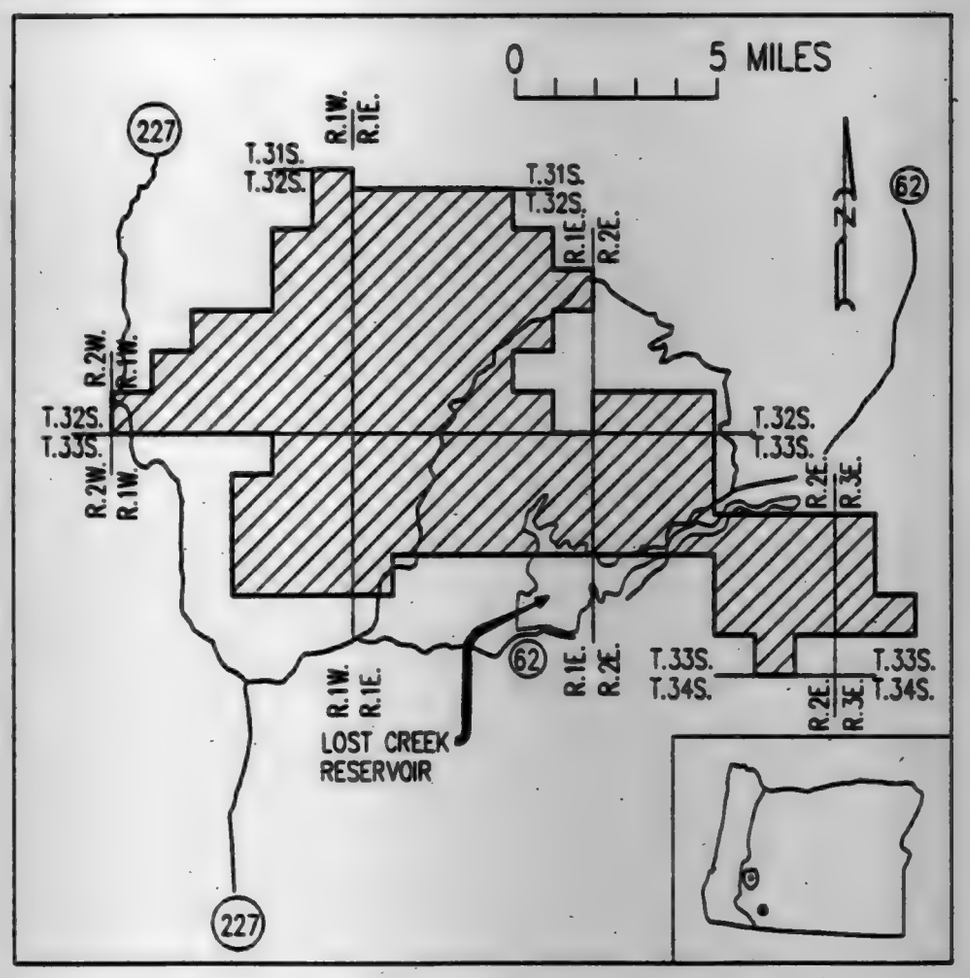

0–17

BILLING CODE 4310-55-C

Description of O–18 taken Solely From Forest Visitor's Map; Rogue River National Forest, Oregon 1987.

Jackson and Klamath Counties

T. 31 S., R. 3 E.: Willamette Meridian
Secs. 23; 24; 25; 26; 35; and 36.

T. 31 S., R. 4 E.: Willamette Meridian
Secs. 1; 2; 10; 11; 12; 13; 14; 15; 16; 17; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 31 S., R. 5 E.: Willamette Meridian
Secs. 30; and 31.

T. 32 S., R. 4 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 32 S., R. 5 E.: Willamette Meridian
Secs. 6; 7; and 18.

T. 33 S., R. 4 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 33 S., R. 5 E.: Willamette Meridian
Secs. 30; and 31.

T. 34 S., R. 4 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 34; 35; and 36.

T. 34 S., R. 5 E.: Willamette Meridian
Sec. 30.

T. 35 S., R. 4 E.: Willamette Meridian
Sec. 2.

Excepting any of the above area lying within the Sky Lakes Wilderness and Crater Lake National Park areas.

BILLING CODE 4310-55-M

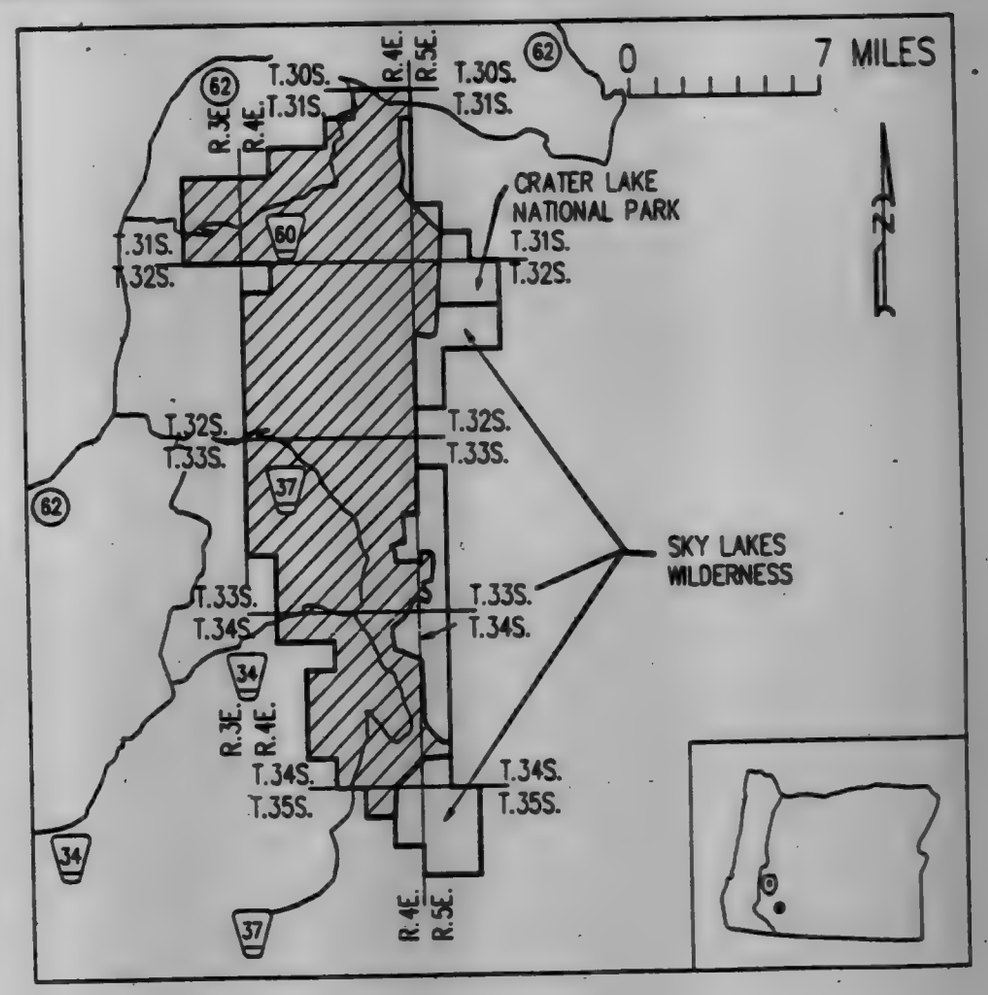

0–18

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of 0–19 Taken Solely From Forest Visitor's Map; Rogue River National Forest, Oregon 1987.

Jackson and Klamath Counties

T. 37 N., R. 3 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 36 N., R. 3 W.: Willamette Meridian
Secs. 4; 5; and 6.

T. 36 N., R. 4 E.: Willamette Meridian
Secs. 21; 27; 28; 33; 34; 35; and 36.

T. 37 N., R. 4 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 36 N., R. 5 E.: Willamette Meridian
Secs. 20; 21; 28; 29; 30; 31; 32; 33; and 34.

T. 37 N., R. 5 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

Excepting any of the above area lying within the Sky Lakes Wilderness area.

BILLING CODE 4310-55-M

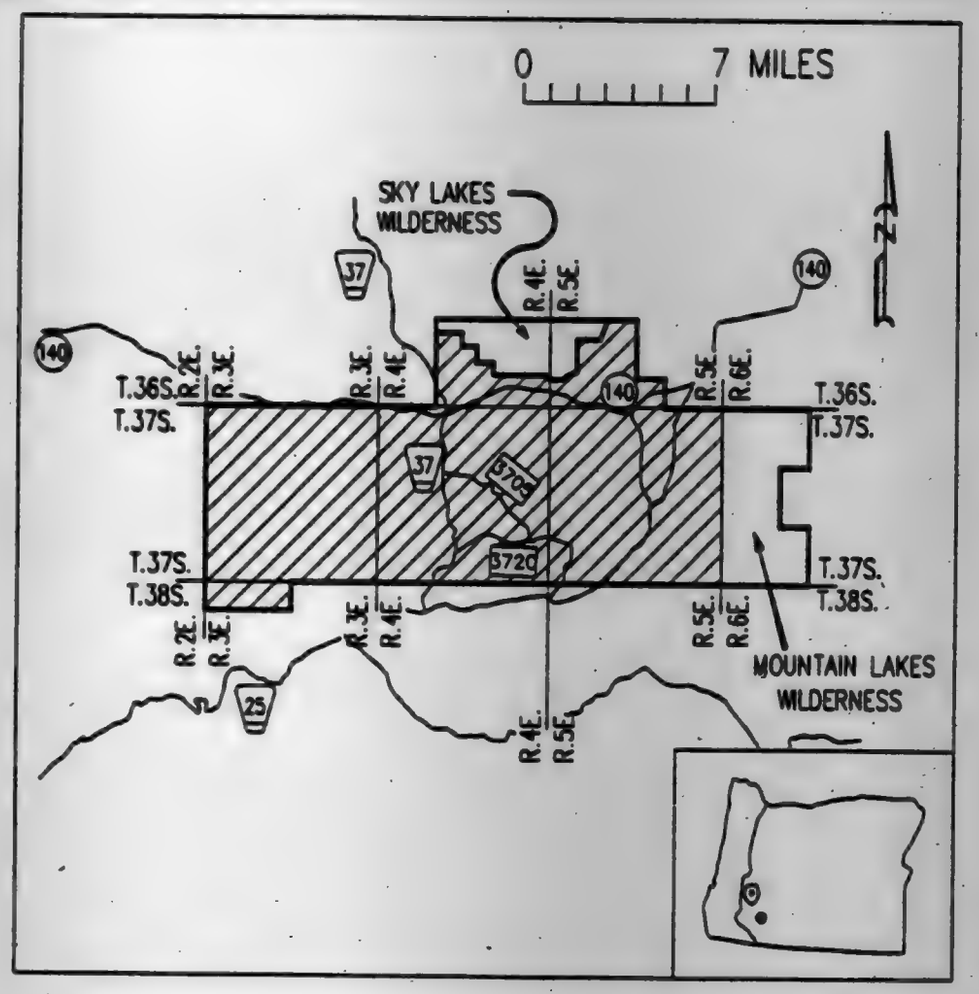

BILLING CODE 4310-55-C

0–19

Description of 0–20–0 taken Solely From Bureau of Land Management Map; Medford, Oregon 1978.

Jackson County

T. 41 S., R. 2 W.: Willamette Meridian
Secs. 12; 13; and 14.

T. 41 S., R. 1 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; and 18.

T. 41 S., R. 1 E.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 15; 16; 17; and 18.

T. 40 S., R. 1 W.: Willamette Meridian
Secs. 1; 2; 3; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 32; 33; 34; 35; and 36.

T. 39 S., R. 1 W.: Willamette Meridian
Secs. 25; 26; 34; 35; and 36.

T. 40 S., R. 1 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 39 S., R. 1 E.: Willamette Meridian
Secs. 17; 19; 20; 21; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 38 S., R. 7 W.: Willamette Meridian
Secs. 1; 12; 13; 24; and 25.

BILLING CODE 4310-55-M

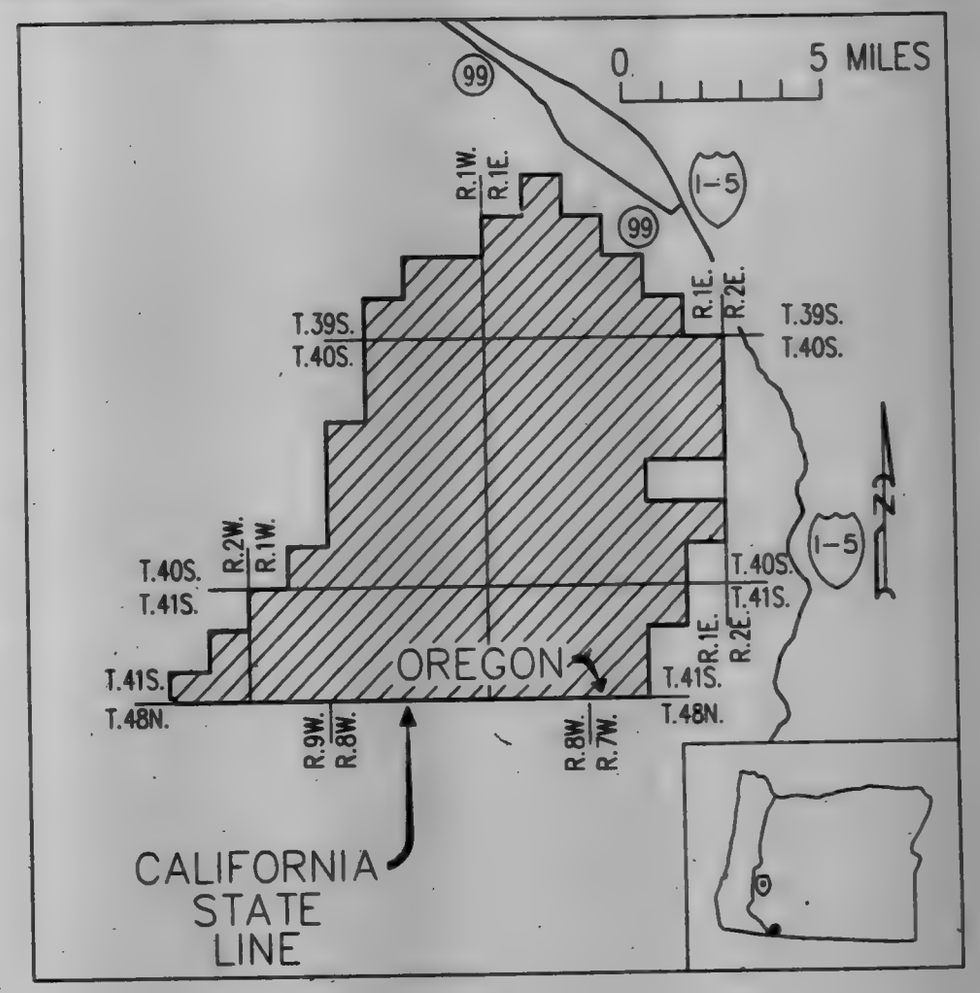

BILLING CODE 4310-55-C

0–20–0

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Description of O–21 taken Solely From Bureau of Land Management Map; Grants Pass, Oregon 1978.

Josephine County

T. 37 S., R. 7 W.: Willamette Meridian
Secs. 21; 25; 26; 27; 28; 29; 31; 32; 33; 34; 35; and 36.

T. 37 S., R. 6 W.: Willamette Meridian
Secs. 21; 23; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 37 S., R. 5 W.: Willamette Meridian
Sec. 31.

T. 38 S., R. 7 W.: Willamette Meridian
Secs. 1; 2; 3; 11; 12; 13; 14; 22; 23; 24; 25; 26; 27; 35; and 36.

T. 38 S., R. 6 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 38 S., R. 5 W.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 17; 18; 19; 20; 21; 29; 30; and 31.

T. 39 S., R. 6 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; and 30.

T. 39 S., R. 7 W.: Willamette Meridian
Secs. 1; 12; 13; 24; and 25.

BILLING CODE 4310-55-M

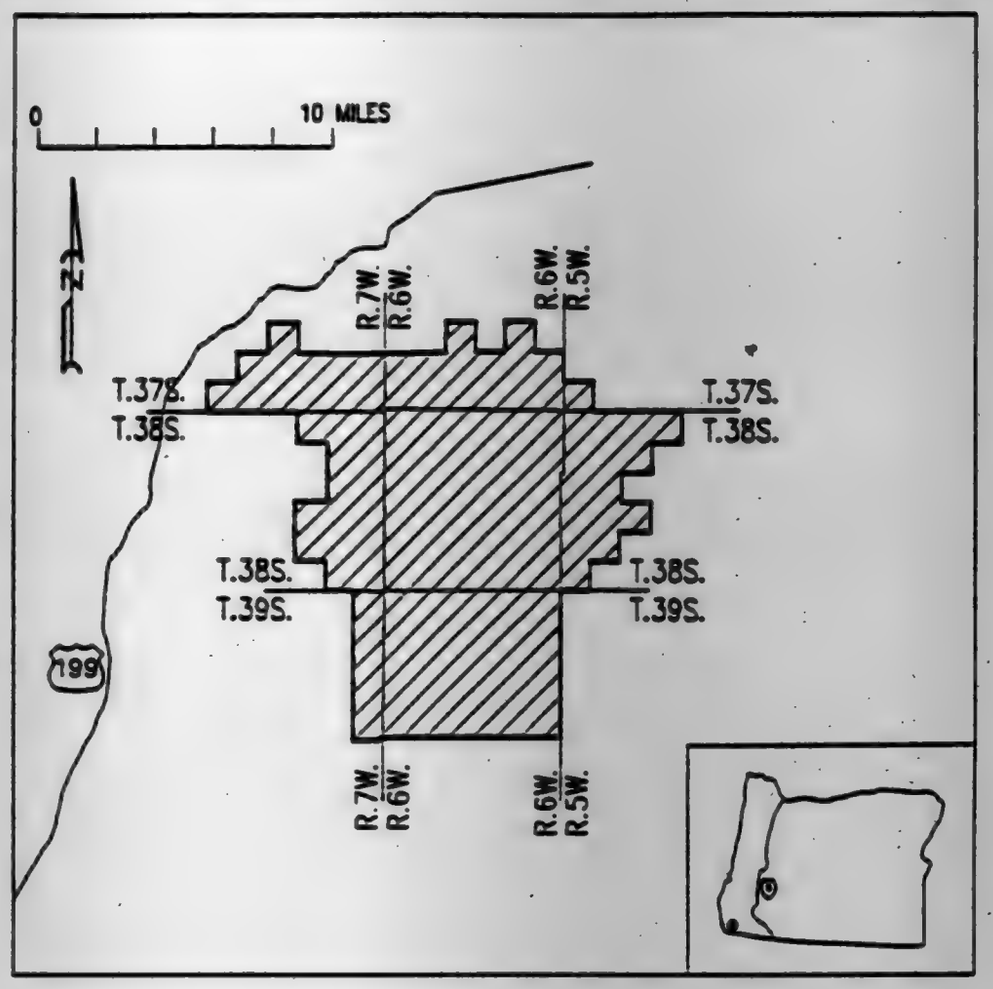

O-21

BILLING CODE 4310-55-C

Description of O–22–0 taken Solely From Forest Visitor's Map; Siskiyou, Oregon 1984.

Curry County

T. 39 S., R. 11 W.: Willamette Meridian
Secs. 19; 20; 21; 22; 29; 30; 31; 32; and 33.

T. 39 S., R. 12 W.: Willamette Meridian
Secs. 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 40 S., R. 11 W.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 41 S., R. 12 W.: Willamette Meridian
Secs. 1; 2; 3; 4; and 5.

T. 40 S., R. 12 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 27; 28; 32; 33; and 34.

T. 41 S., R. 11 W.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 16; 17; and 18.

Excepting any of the above area lying within the Kalmiopsis Wilderness and Wheeler Creek Research Natural areas.

BILLING CODE 4310-55-M

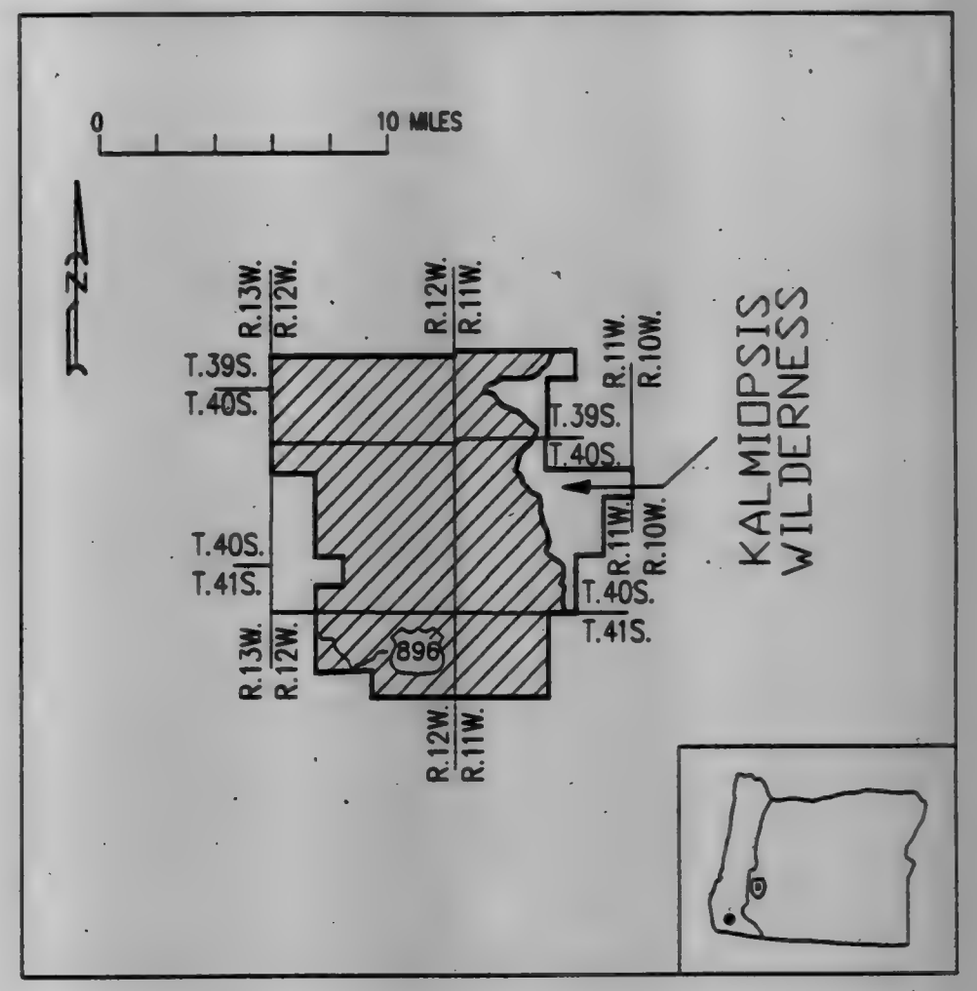

O-22-O

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–23 taken Solely From Forest Visitor's Map; Siskiyou, Oregon 1984.

Josephine and Curry Counties

T. 35 S., R. 12 W.: Willamette Meridian
Sec. 36.

T. 35 S., R. 11 W.: Willamette Meridian
Secs. 31; 32; 33; 34; 35; and 36.

T. 36 S., R. 12 W.: Willamette Meridian
Secs. 1; 2; 3; 10; 11; 12; 13; 14; 15; 23; 24; 25; 26; 35; and 36.

T. 36 S., R. 11 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 21; 22; 23; 24; 25; 26; and 27.

T. 36 S., R. 10 W.: Willamette Meridian
Secs. 5; 6; 7; 17; 18; 20; 21; 22; 23; 25; and 36.

T. 36 S., R. 9 W.: Willamette Meridian
Secs. 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 37 S., R. 12 W.: Willamette Meridian
Secs. 1; 2; 3; 9; 10; 17; 20; 21; 28; 34; and 35.

T. 37 S., R. 10 W.: Willamette Meridian
Secs. 1; 12; 13; 24; 25; 35; and 36.

T. 37 S., R. 9 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 38 S., R. 8 W.: Willamette Meridian
Secs. 19; 20; 29; 30; 31; and 32.

T. 37 S., R. 8 W.: Willamette Meridian
Secs. 6; 27; 28; 29; 30; 31; 32; and 33.

T. 38 S., R. 9 W.: Willamette Meridian
Secs. 2; 3; and 4.

Excepting any of the above area lying within the Wild and Scenic Illinois River area, Kalmiopsis Wilderness area and Big Craggies Botanical area.

BILLING CODE 4310-33-M

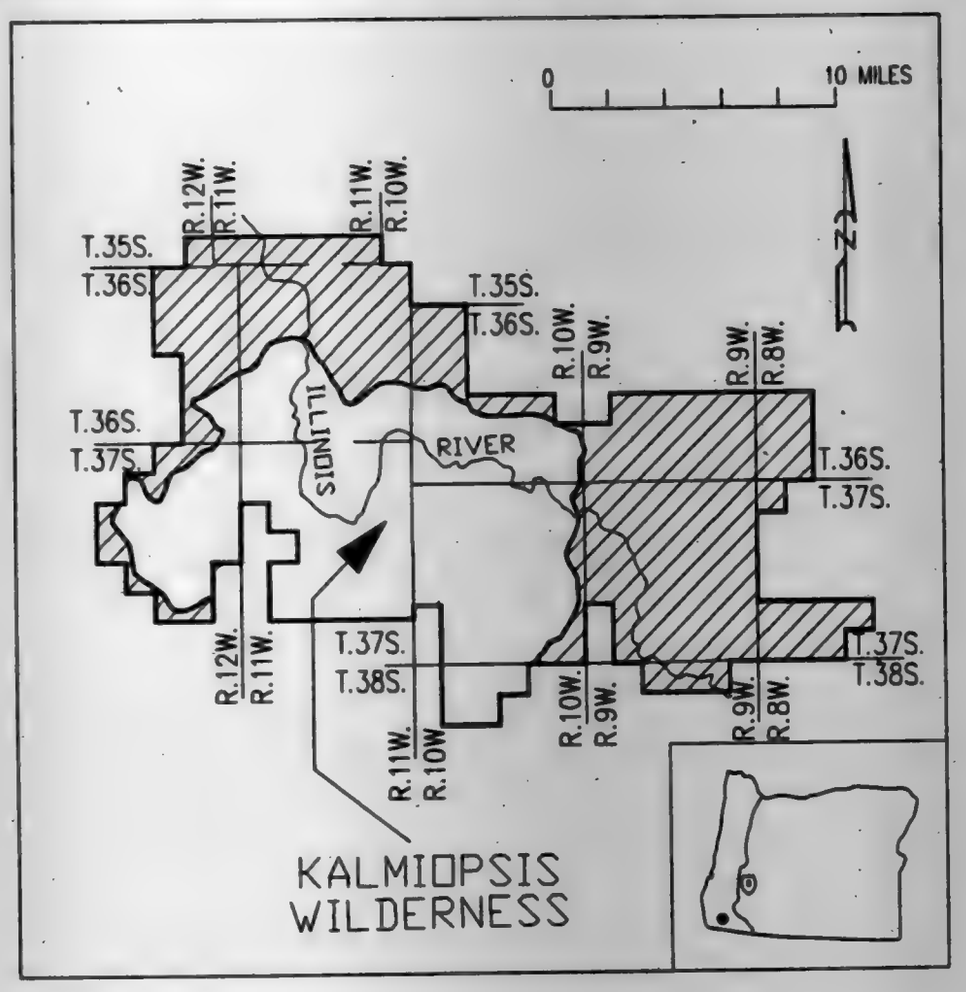

O–23

BILLING CODE 4310-33-C

Description of O–24 taken Solely From Bureau of Land Management Map; Canyonville, Oregon 1979.

Josephine and Curry Counties

T. 34 S., R. 7 W.: Willamette Meridian
Secs. 5; 6; 7; 8; 17; 18; 19; 20; 29; 30; 31; and 32.

T. 33 S., R. 8 W.: Willamette Meridian
Secs. 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 34; 35; and 36.

T. 34 S., R. 8 W.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 35 S., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; and 7.

T. 33 S., R. 9 W.: Willamette Meridian
Secs. 16; 17; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 34 S., R. 9 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 35 S., R. 9 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 9; 10; 11; 12; 13; 14; 15; 16; 17; 20; 21; 22; 23; and 24.

T. 35 S., R. 7 W.: Willamette Meridian
Secs. 5; and 6.

T. 33 S., R. 10 W.: Willamette Meridian
Secs. 13; 14; 23; 24; 25; and 36.

T. 34 S., R. 10 W.: Willamette Meridian
Secs. 1; and 12.

Excepting any of the above area lying within the Rogue National Wild & Scenic River.

BILLING CODE 4310-33-M

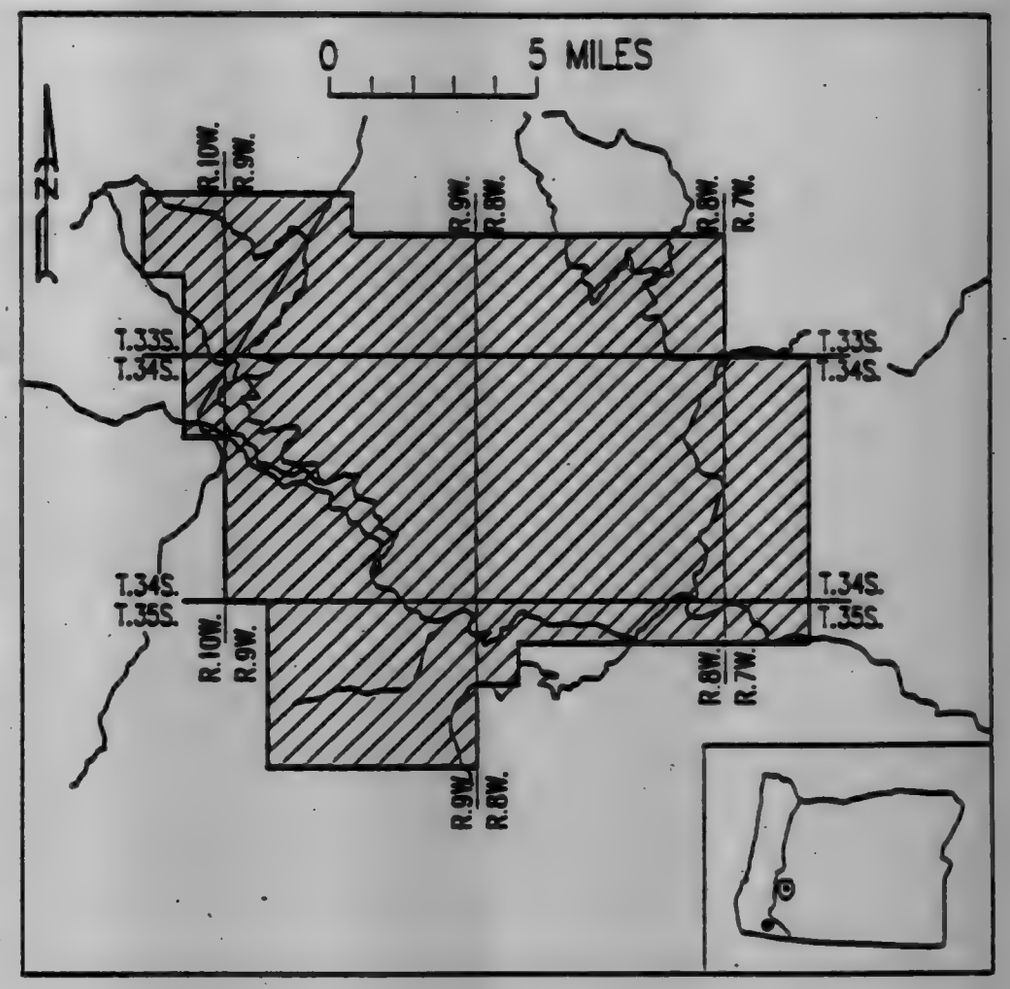

O–24

BILLING CODE 4310-33-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–25 taken Solely From Forest Visitor's Map; Siskiyou, Oregon 1984.

Coos and Curry Counties

T. 33 S., R. 11 W.: Willamette Meridian
Secs. 1; 11; 12; 13; 14; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 32 S., R. 12 W.: Willamette Meridian
Secs. 25; 26; 32; 33; 34; and 36.

T. 32 S., R. 10 W.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 26; 28; 29; 30; 31; and 36.

T. 33 S., R. 13 W.: Willamette Meridian
Secs. 25; 36; and 36.

T. 33 S., R. 12 W.: Willamette Meridian
Secs. 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 33 S., R. 11 W.: Willamette Meridian
Secs. 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 27; 28; 29; 30; 31; 32; and 33.

T. 33 S., R. 10 W.: Willamette Meridian
Secs. 2; 3; 9; 10; 15; 21; 22; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 34 S., R. 10½ W.: Willamette Meridian
Secs. 7; and 18.

T. 34 S., R. 13 W.: Willamette Meridian
Secs. 1; 2; 11; 12; 13; and 14.

T. 34 S., R. 12 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; and 18.

T. 34 S., R. 11 W.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 11; 12; 13; 14; 15; 16; 19; 21; 22; 23; 24; 27; 28; 30; 31; and 32.

T. 34 S., R. 10 W.: Willamette Meridian
Secs. 3; 4; 5; and 6.

Excepting any of the above area lying within the Wild Rogue Wilderness; Wild and Scenic Rogue River, Port Orford Cedar Research Natural Area, and Coquille River Falls Research Natural Area.

BILLING CODE 4310-55-M

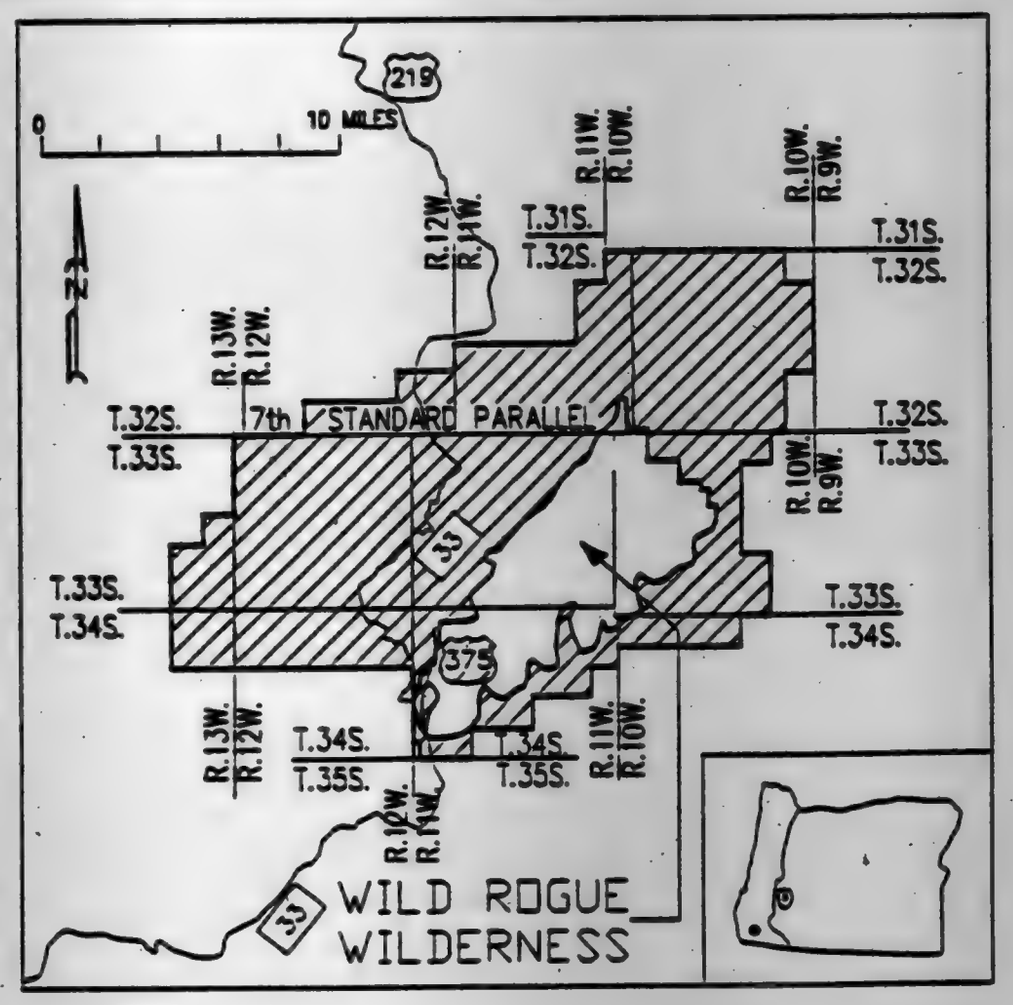

O–25

BILLING CODE 4310-55-C

Description of O–26 taken Solely From Bureau of Land Management Maps; Canyonville 1979, and Roseburg 1979, Oregon.

Douglas, Jackson, and Josephine Counties

T. 33 S., R. 7 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; and 14.

T. 33 S., R. 6 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; and 18.

T. 33 S., R. 5 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 12; and 13.

T. 33 S., R. 4 W.: Willamette Meridian
Secs. 5; 6; 7; and 8.

T. 32 S., R. 6 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 32 S., R. 5 W.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 14; 15; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 31 S., R. 6 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 31 S., R. 5 W.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 10; 11; 14; 15; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 30 S., R. 6 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 31 S., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 22; 23; 24; 25; 26; 27; 34; 35; and 36.

T. 30 S., R. 7 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 31 S., R. 7 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 32 S., R. 7 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 29 S., R. 9 W.: Willamette Meridian
Sec. 36.

T. 29 S., R. 8 W.: Willamette Meridian
Secs. 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 29; 31; 32; 33; 34; 35; and 36.

T. 29 S., R. 7 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 29½ S., R. 7 W.: Willamette Meridian
Secs. 31; 32; 33; and 34.

T. 32 S., R. 10 W.: Willamette Meridian
Sec. 1.

BILLING CODE 4310-55-M

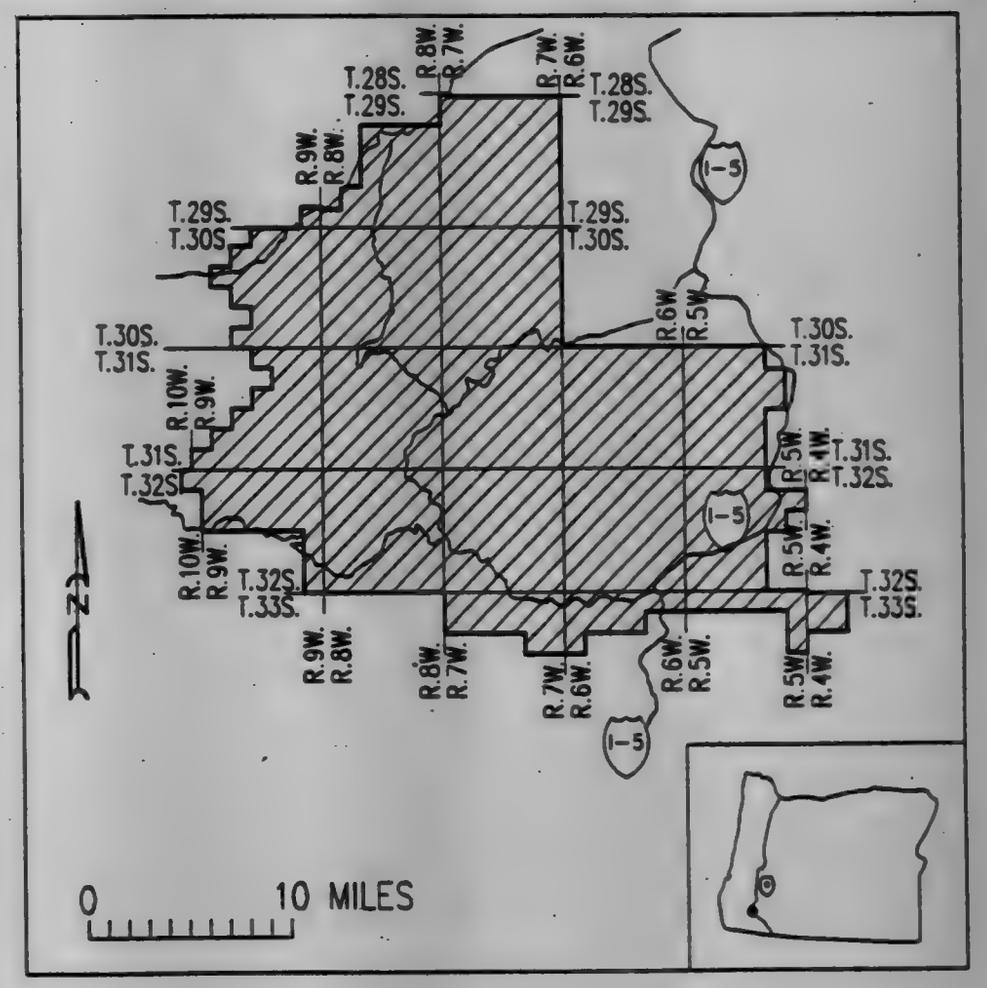

O–26

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–27 taken Solely From Bureau of Land Management Map; Roseburg, Oregon 1979.

Coos County

T. 25 S., R. 10 W.: Willamette Meridian
Secs. 31; 32; 33; and 34.

T. 26 S., R. 10 W.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 10; 11; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 27 S., R. 10 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 28 S., R. 10 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 17; 18; 19; 20; 29; and 30.

T. 28 S., R. 11 W.: Willamette Meridian
Secs. 25; and 36.

T. 26 S., R. 9 W.: Willamette Meridian
Secs. 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 27 S., R. 9 W.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 28 S., R. 9 W.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; and 9.

BILLING CODE 4310-33-M

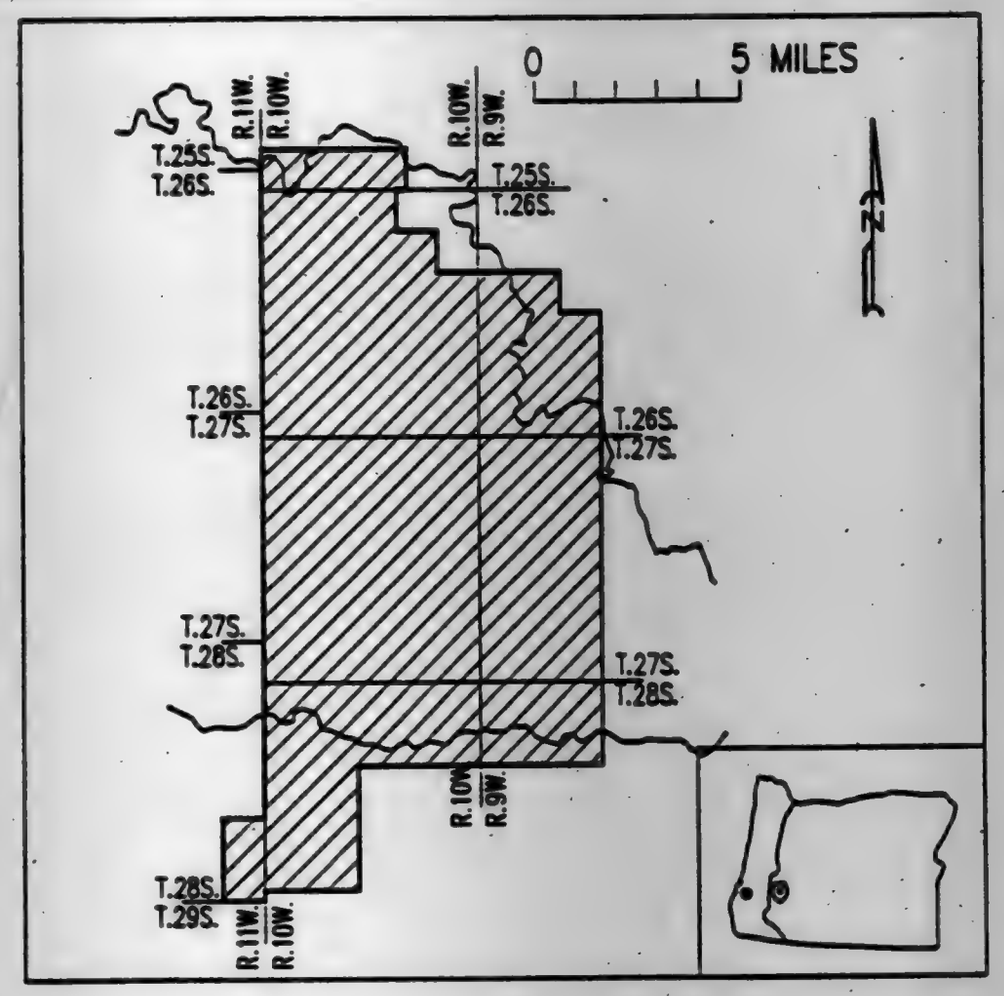

0–27

BILLING CODE 4310-33-C

Description of O–28 taken Solely From Bureau of Land Management Maps: Cottage Grove 1979 and Roseburg 1979, Oregon.

Douglas County

T. 23 S., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 23 S., R. 9 W.: Willamette Meridian
Secs. 7; 8; 13; 14; 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 27; 28; and 29.

T. 24 S., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; 9; 10; 11; 12; 13; 14; 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 33; 34; 35; and 36.

T. 24 S., R. 7 W.: Willamette Meridian
Secs. 6; 7; 18; and 19.

T. 25 S., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 8; 9; 10; 11; 12; 13; 14; 15; 16; 22; 23; 24; 25; and 36.

T. 25 S., R. 7 W.: Willamette Meridian
Secs. 7; 8; 17; 18; 19; 20; 21; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 26 S., R. 8 W.: Willamette Meridian
Secs. 1; and 12.

T. 26 S., R. 7 W.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; and 9.

BILLING CODE 4310-33-M

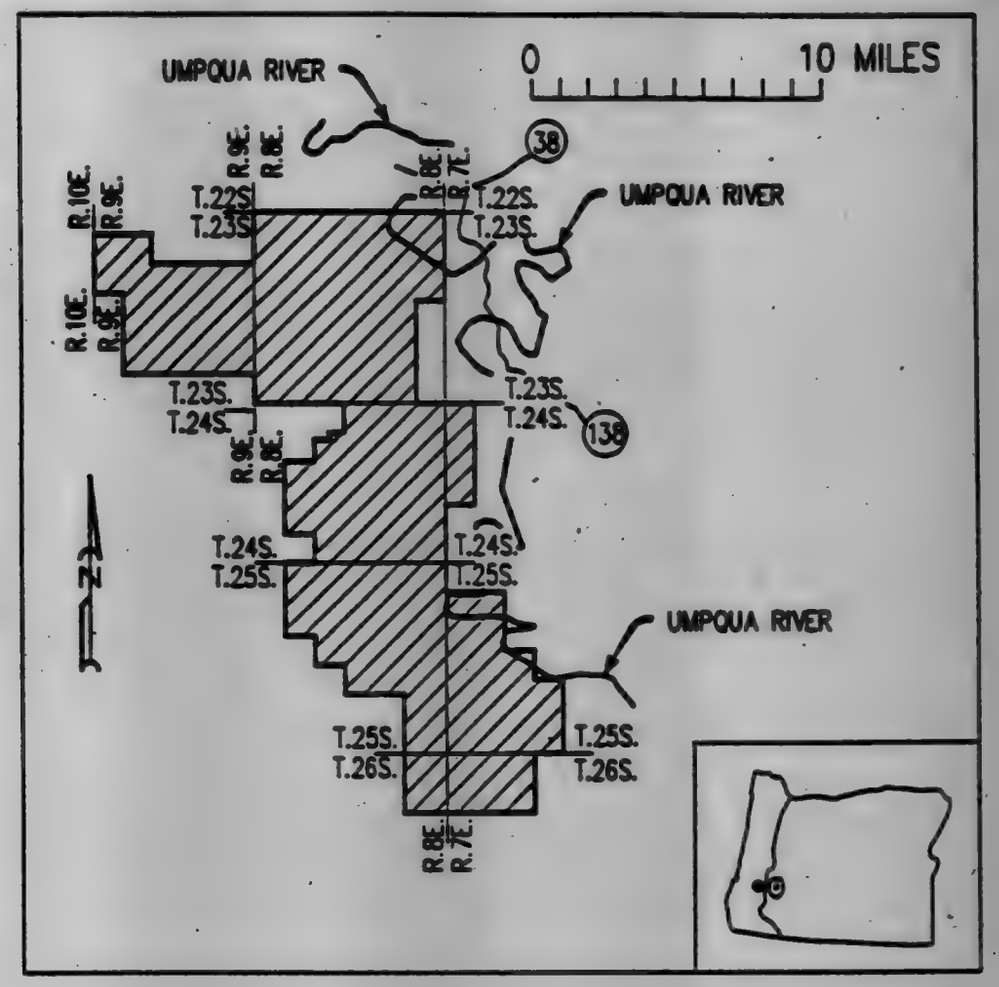

0–28

BILLING CODE 4310-33-C

Description of O–29 and Map taken Solely From Forest Visitor's Map; Siuslaw National Forest, Oregon 1978.

Douglas County

T. 20 S., R. 10 W.: Willamette Meridian
Secs. 33; 34; 35; and 36.

T. 20 S., R. 9 W.: Willamette Meridian
Secs. 31; 32; and 33.

T. 21 S., R. 11 W.: Willamette Meridian
Secs. 1; 12; 13; 23; 24; 25; 26; 27; 28; 33; 34; 35; and 36.

T. 21 S., R. 10 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 21 S., R. 9 W.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 22; 29; 30; 31; 32; and 33.

T. 22 S., R. 10 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; and 12.

T. 22 S., R. 9 W.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; and 9.

BILLING CODE 4310-55-M

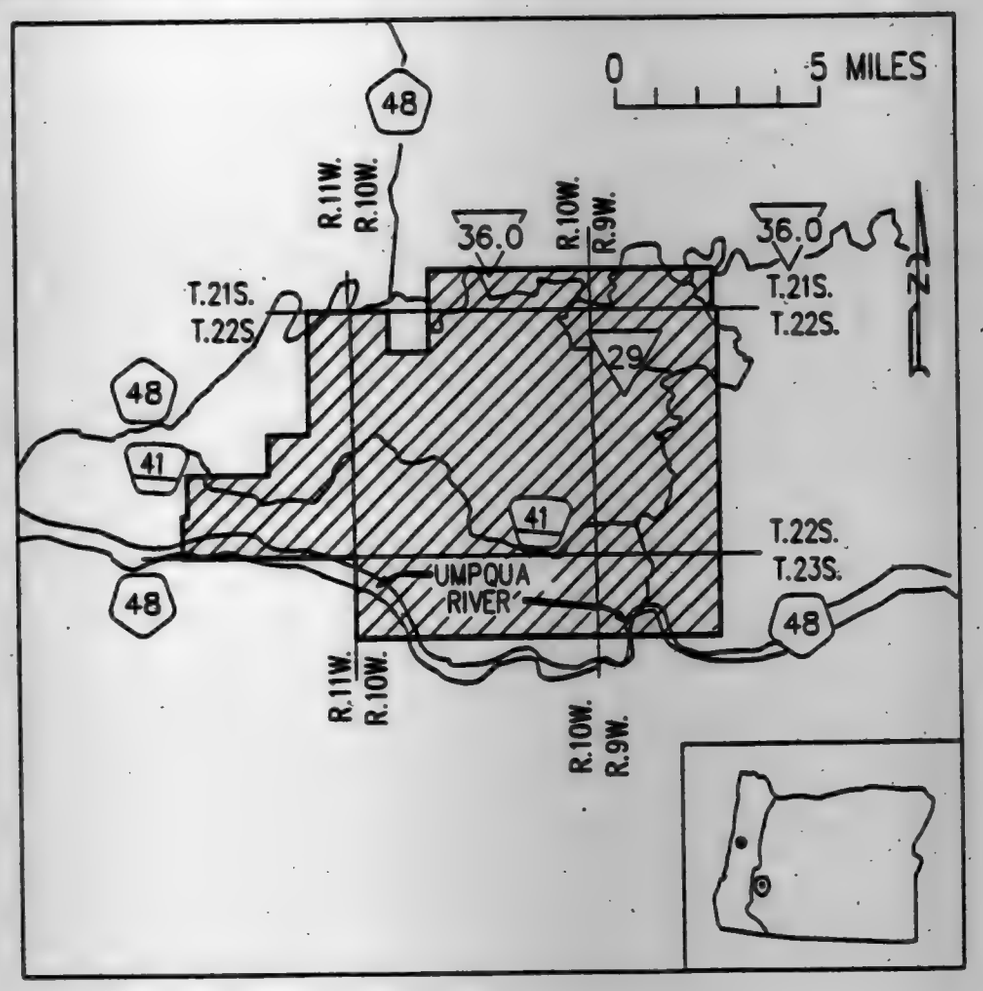

O–29

BILLING CODE 4310-55-C

Description of O–30 taken Solely From Bureau of Land Management Map; Cottage Grove, Oregon 1979.

Douglas and Lane Counties

T. 22 S., R. 7 W.: Willamette Meridian
Secs. 1; 11; and 12.

T. 22 S., R. 6 W.: Willamette Meridian
Secs. 5; and 6.

T. 21 S., R. 7 W.: Willamette Meridian
Secs. 1; 13; 25; 35; and 36.

T. 21 S., R. 6 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 27; 28; 29; 30; 31; 32; and 33.

T. 21 S., R. 5 W.: Willamette Meridian
Secs. 7; and 19.

T. 20 S., R. 6½ W.: Willamette Meridian
Includes all of Township and Range.

T. 20 S., R. 6 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 20 S., R. 5 W.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 10; 11; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 19 S., R. 6 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 19 S., R. 5 W.: Willamette Meridian
Secs. 5; 6; 7; 8; 9; 15; 16; 17; 18; 19; 20; 21; 27; 28; 29; 30; 31; 32; 33; and 34.

BILLING CODE 4310-55-M

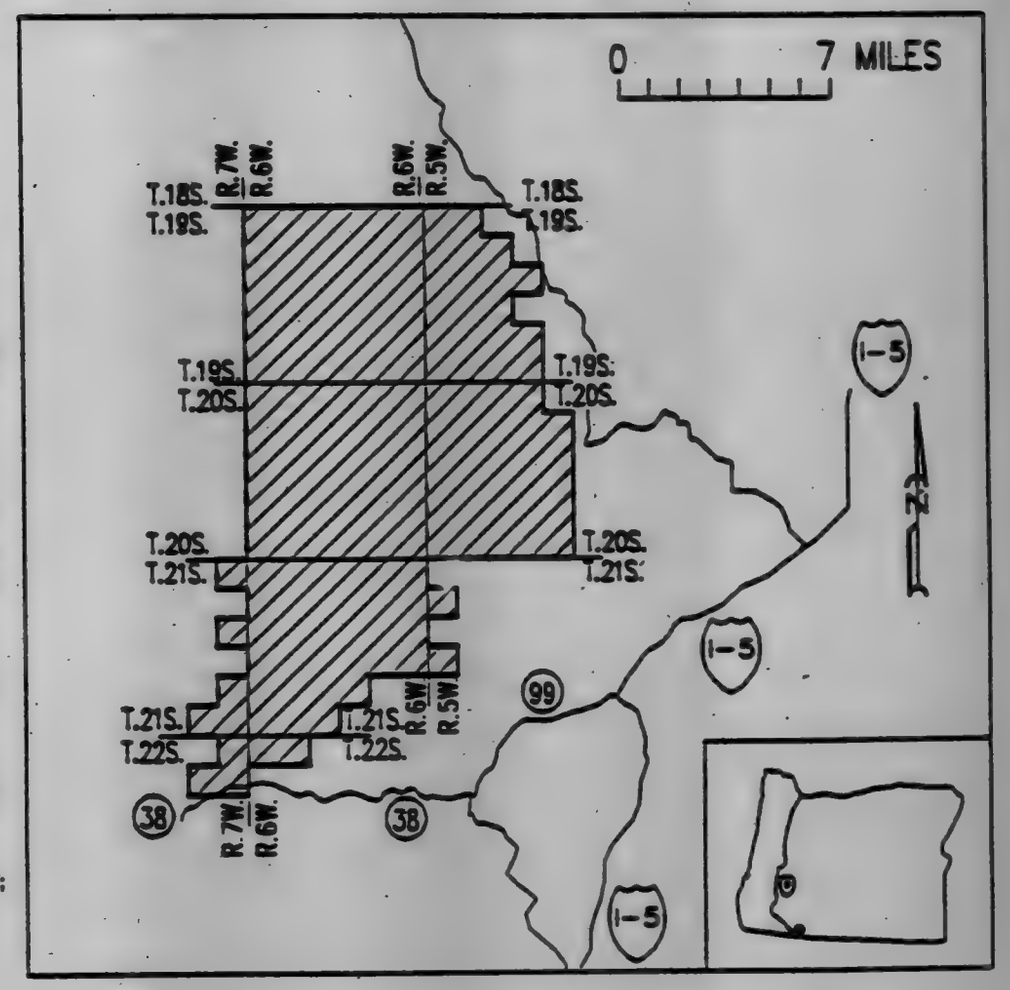

O–30

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–31 and Map taken Solely From Forest Visitor's Map; Siuslaw National Forest, Oregon 1975.

Lane and Douglas Counties

T. 18 S., R. 11 W.: Willamette Meridian
Secs. 25; 26; 35; and 36.

T. 18 S., R. 10 W.: Willamette Meridian
Secs. 15; 16; 17; 18; 19; 20; 21; 22; 23; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 18 S., R. 9 W.: Willamette Meridian
Secs. 13; 14; 23; 24; 25; 26; 27; 28; 32; 33; 34; 35; and 36.

T. 18 S., R. 8 W.: Willamette Meridian
Secs. 17; 18; 19; 20; 29; 30; 31; and 32.

T. 19 S., R. 11 W.: Willamette Meridian
Secs. 1; 2; 11; 12; 13; 24; and 25.

T. 19 S., R. 10 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 34; 35; and 36.

T. 19 S., R. 9 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 19 S., R. 8 W.: Willamette Meridian
Secs. 6; 7; 18; 19; 30; and 31.

T. 20 S., R. 10 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; and 27.

Excepting the North ½ of section 4.

T. 20 S., R. 9 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; and 9.

Excepting all private and B.L.M. Land in section 7.

BILLING CODE 4310-33-M

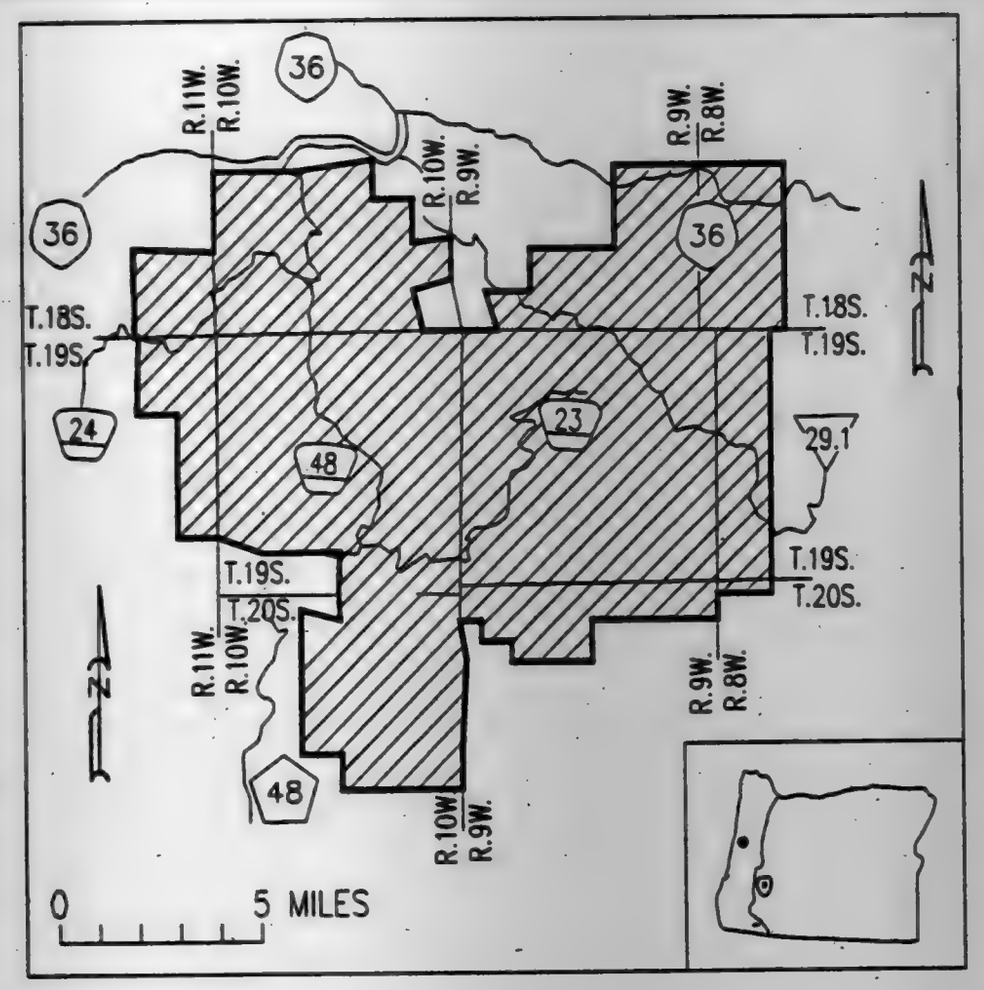

BILLING CODE 4310-33-C

O–31

Description of O–32 taken Solely From Bureau of Land Management Map; Eugene, Oregon 1980.

Lincoln, Benton, and Lane Counties

T. 14 S., R. 9 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 33; 34; 35; and 36.

T. 16 S., R. 9 W.: Willamette Meridian
Secs. 5; 6; 7; 8; 17; 18; 19; and 20.

T. 10 S., R. 17 W.: Willamette Meridian
Secs. 1; 2; 11; 12; 13; 14; and 23.

T. 16 S., R. 9 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 33; 34; 35; and 36.

T. 15 S., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 16 S., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

BILLING CODE 4310-33-M

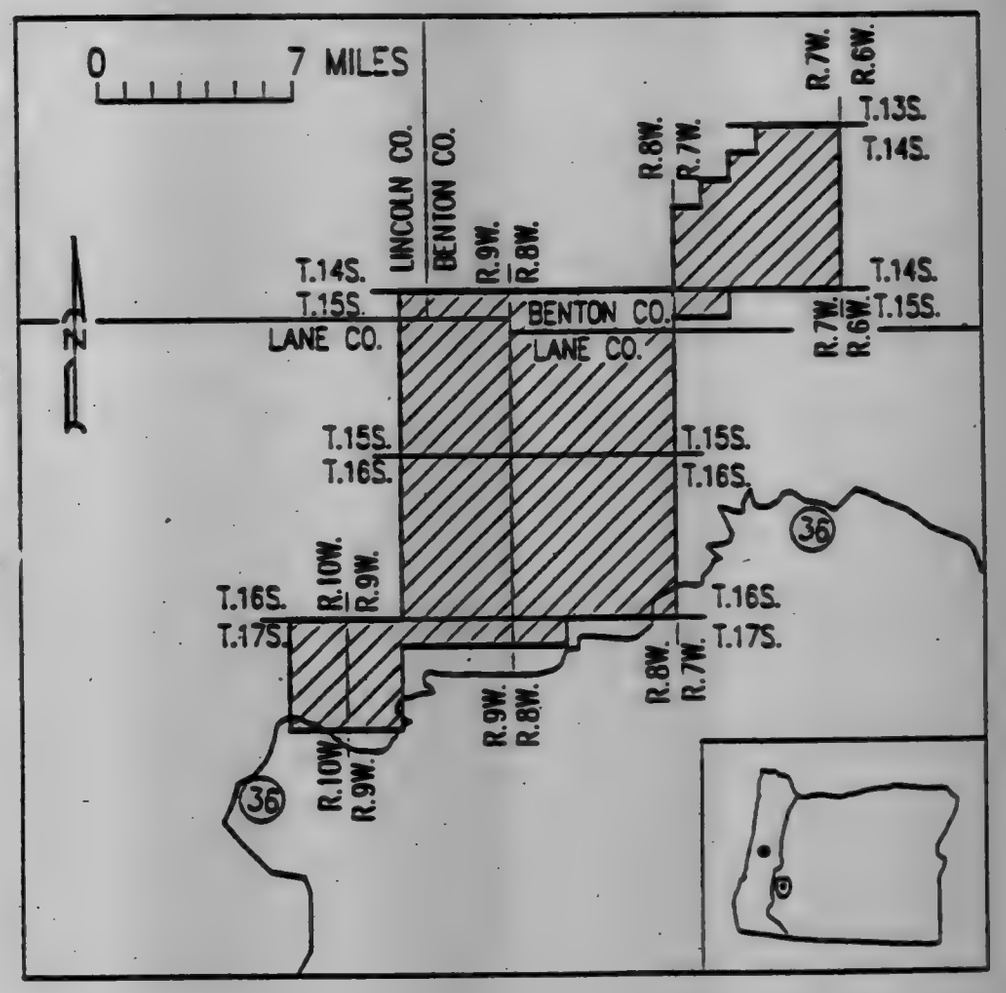

BILLING CODE 4310-33-C

O–32

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–33 and Map taken Solely From Forest Visitor's Map; Siuslaw National Forest, Oregon 1982.

Lincoln and Benton Counties

T. 12 S., R. 8 W.: Willamette Meridian
Secs. 3; 4; 5; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 12 S., R. 7 W.: Willamette Meridian
Secs. 7; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 13 S., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; and 24.

T. 13 S., R. 7 W.: Willamette Meridian
Secs 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 15; 16; 17; 18; 19; 20; and 21.

BILLING CODE 4310-33-M

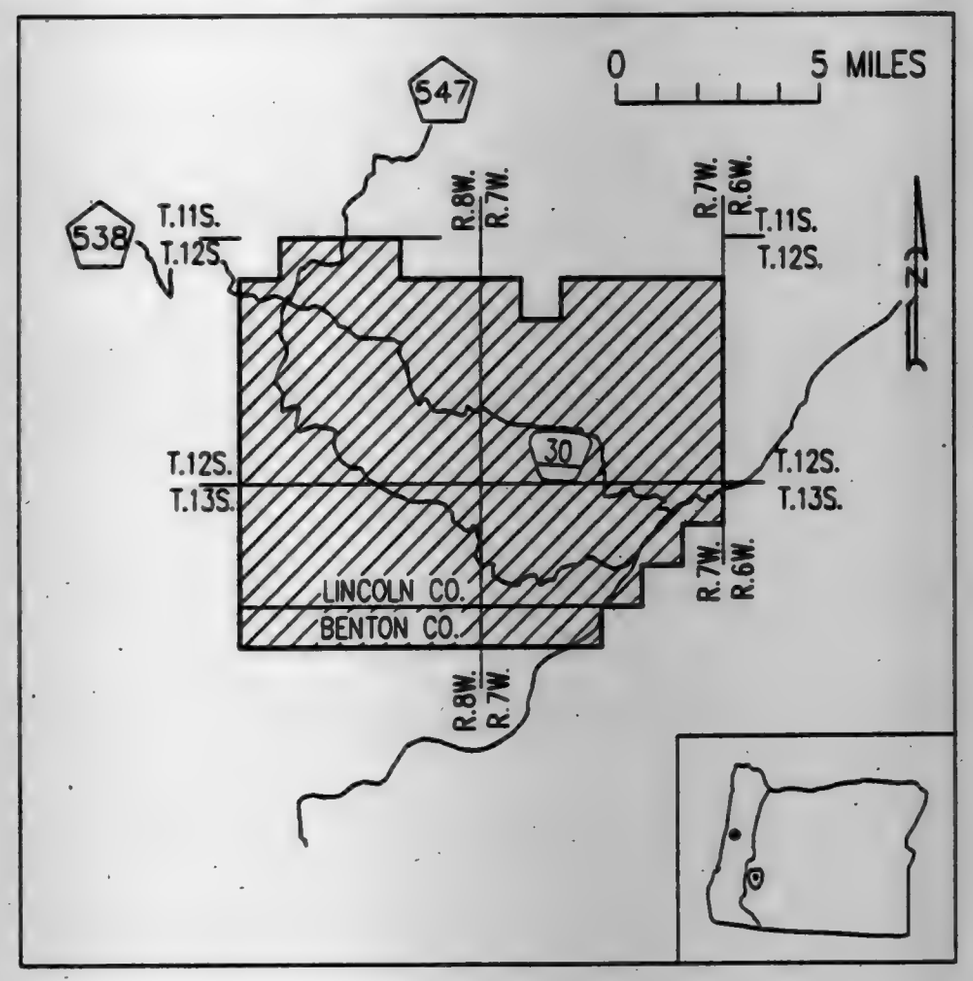

O–33

BILLING CODE 4310-33-C

Description of O–34 and Map taken Solely From Forest Visitor's Map; Siuslaw National Forest, Oregon 1982.

Lincoln and Benton Counties

T. 12 S., R. 11 W.: Willamette Meridian
Secs. 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 27; 35; and 36.

T. 12 S., R. 10 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 13 S., R. 11 W.: Willamette Meridian
Secs. 1; 2; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 34; 35; and 36.

T. 13 S., R. 10 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 35; and 36.

T. 13 S., R. 10½ W.: Willamette Meridian
Secs. 6; and 7.

T. 13 S., R. 9 W.: Willamette Meridian
Secs. 6; 7; 8; 18; 19; 20; 29; 30; and 31.

T. 14 S., R. 11 W.: Willamette Meridian
Secs. 1; 2; 11; and 12.

T. 14 S., R. 10 W.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 17; and 18.

Excepting any of the above area lying within the Drift Creek Wilderness area.

BILLING CODE 4310-33-M

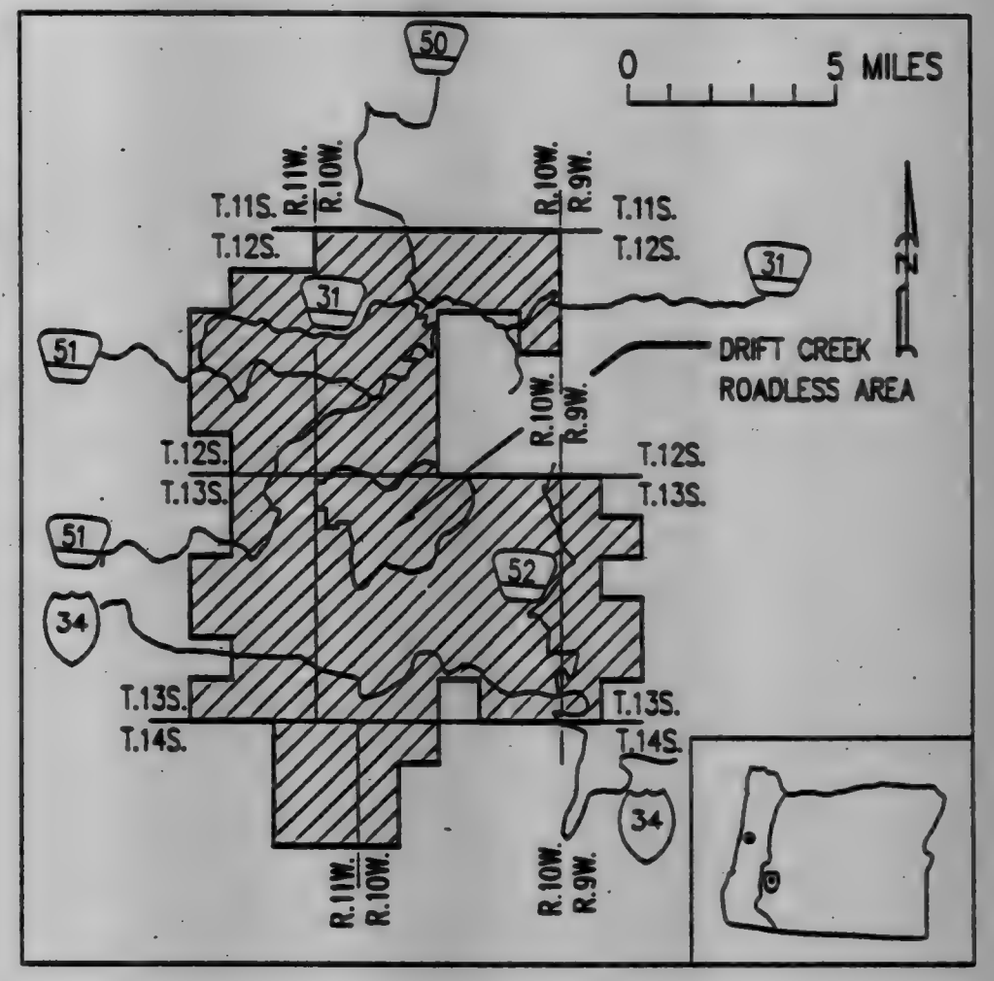

O–34

BILLING CODE 4310-33-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–35 and Map taken Solely From Forest Visitor's Map; Siuslaw National Forest, Washington 1962.

Lincoln and Tillamook Counties

T. 6 S., R. 11 W.: Willamette Meridian
Secs. 1; 2; 11; 12; 13; 14; 23; and 24.

T. 6 S., R. 10 W.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 26; 27; 28; 32; and 33.

T. 7 S., R. 10 W.: Willamette Meridian
Secs. 19; and 30.

T. 8 S., R. 10 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 18; 21; 22; 23; 24; 25; 26; and 36.

T. 7 S., R. 9 W.: Willamette Meridian
Secs. 18; 19; and 30.

BILLING CODE 4310-33-M

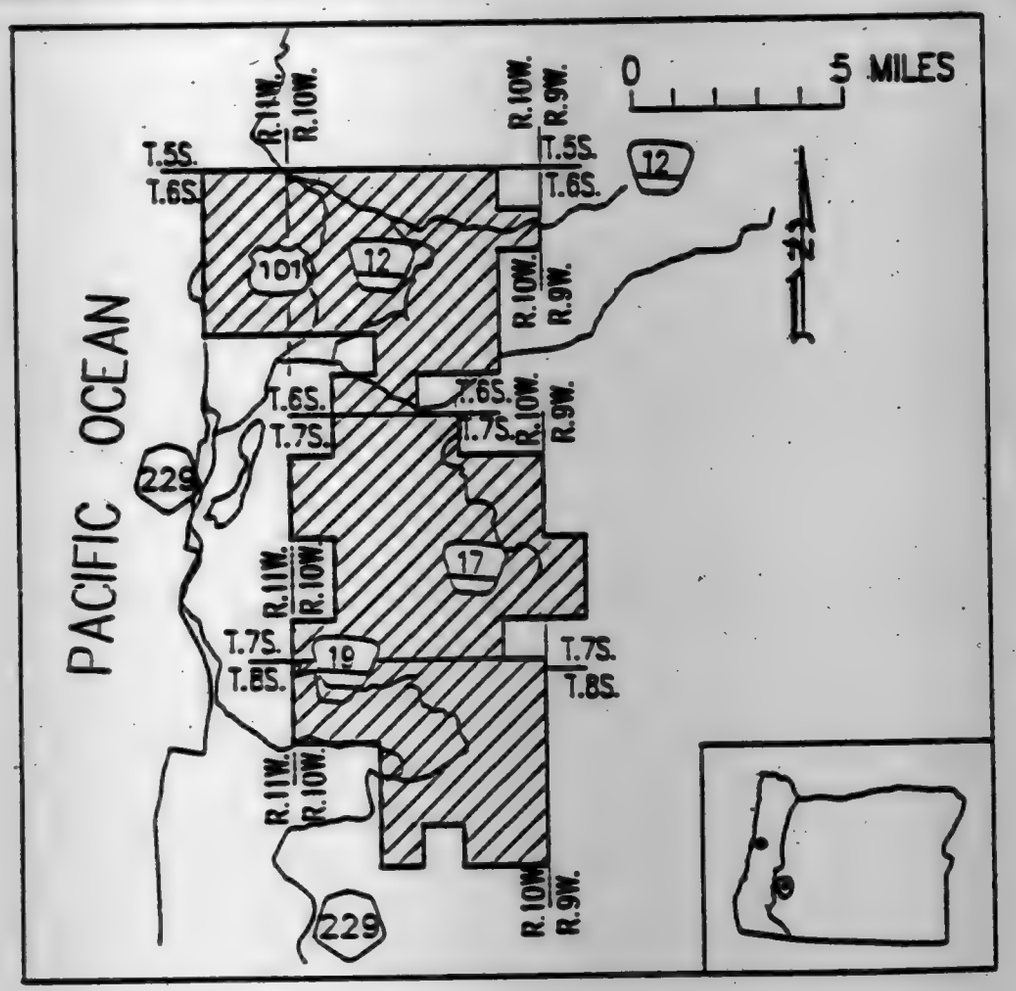

0–35

BILLING CODE 4310-33-C

Description of O–36 taken Solely From Bureau of Land Management Map; Yamhill River, Oregon 1980.

Tillamook and Yamhill Counties

T. 4 S., R. 9 W.: Willamette Meridian
Secs. 8; 9; 13; 14; 15; 16; 17; 22; 23; 24; 25; 26; 27; 34; 35; and 36.

T. 5 S., R. 9 W.: Willamette Meridian
Secs. 1; 2; 3; 10; 11; 12; 13; 14; and 15.

T. 3 S., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 31; 32; 33; 34; 35; and 36.

T. 4 S., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 3 S., R. 7 W.: Willamette Meridian
Secs. 5; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 4 S., R. 7 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; and 18.

T. 4 S., R. 6 W.: Willamette Meridian
Secs. 5; 6; 7; and 18.

T. 3 S., R. 6 W.: Willamette Meridian
Secs. 7; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 2 S., R. 8 W.: Willamette Meridian
Secs. 30; 31; 32; 33; and 34.

BILLING CODE 4310-33-M

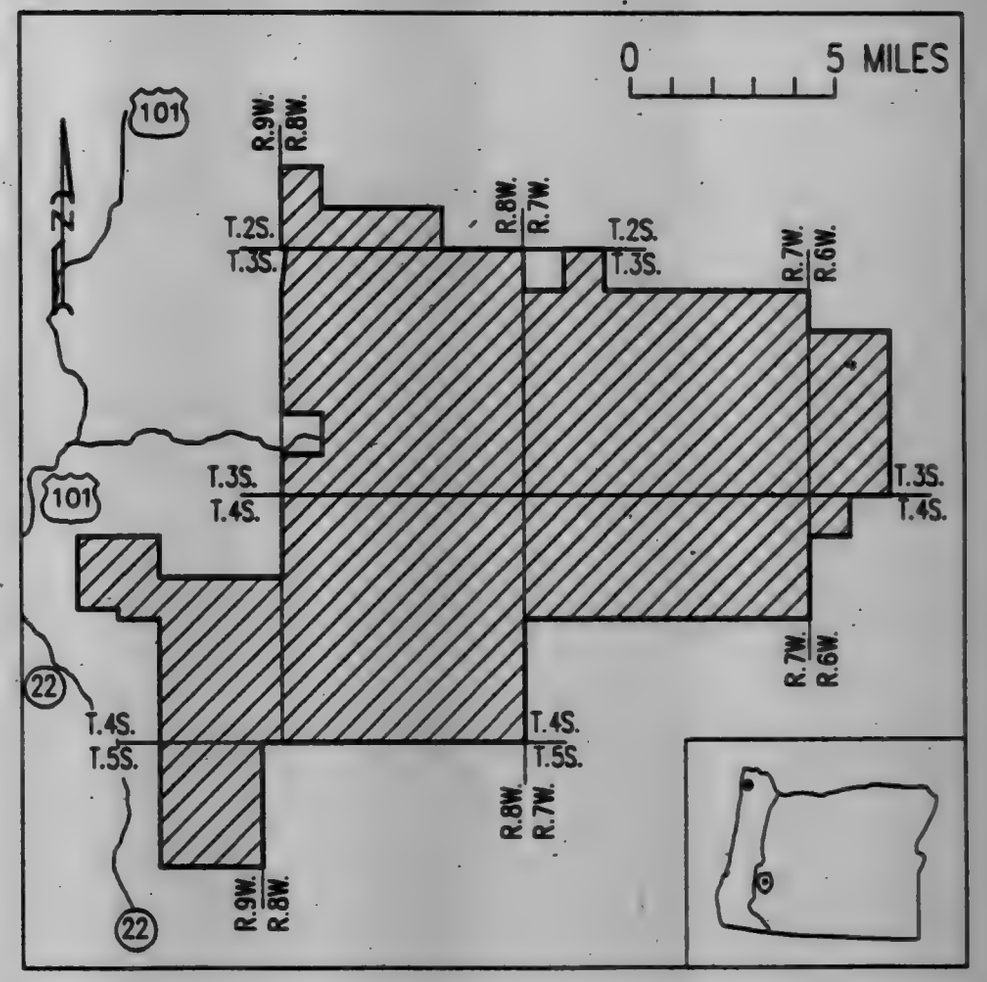

0–36

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–37 taken Solely From Bureau of Land Management Map; Corvallis, Oregon 1980.

Polk County

T. 7 S., R. 8 W.: Willamette Meridian
Secs. 1; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 8 S., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; and 11.

T. 7 S., R. 7 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 8 S., R. 7 W.: Willamette Meridian
Secs. 3; 4; 5; and 6.

T. 7 S., R. 6 W.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 17; and 18.

BILLING CODE 4310-33-M

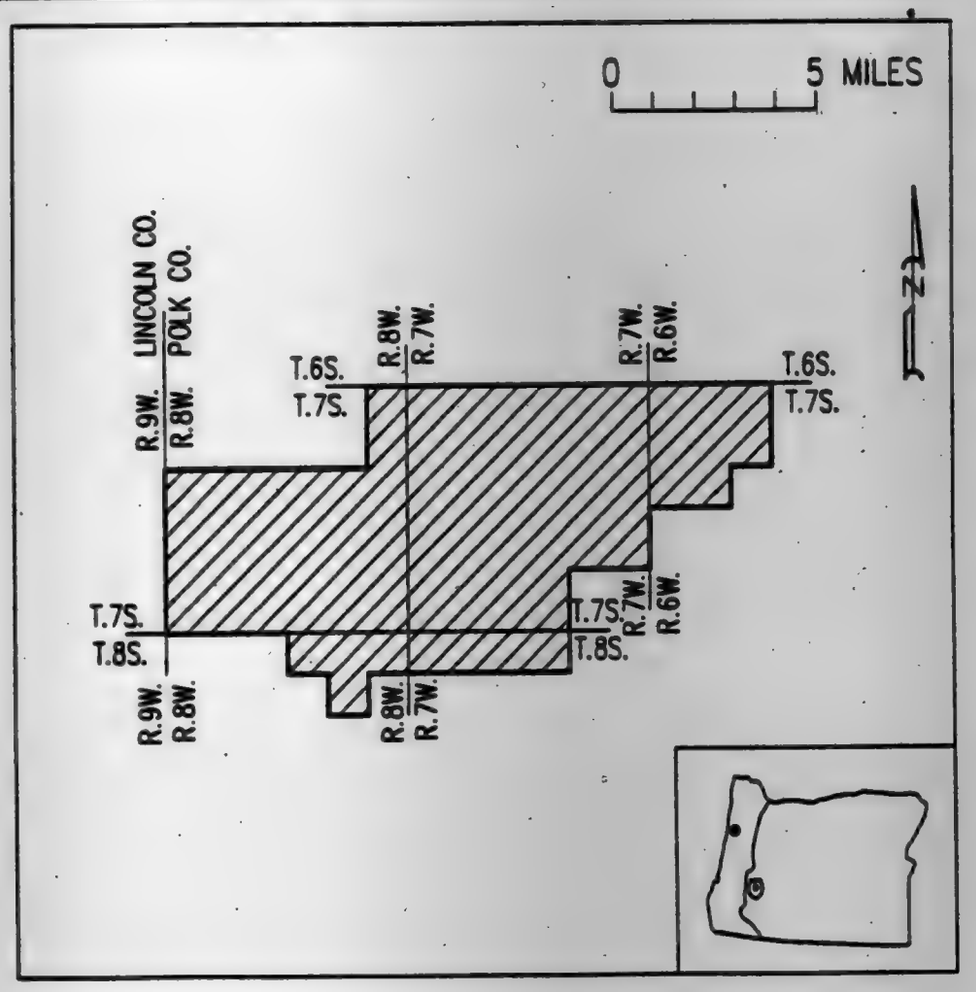

O–37

BILLING CODE 4310-33-C

Description of O–38 taken Solely From Bureau of Land Management Map; Corvallis, Oregon 1980.

Polk County

T. 8 S., R. 6 W.: Willamette Meridian
Sec. 31.

T. 9 S., R. 6 W.: Willamette Meridian
Secs. 5; 6; and 7.

T. 9 S., R. 7 W.: Willamette Meridian
Secs. 1; 2; 3; 9; 10; 11; 12; 13; 14; 15; 16; 17; 21; 22; 23; 26; and 35.

BILLING CODE 4310-33-M

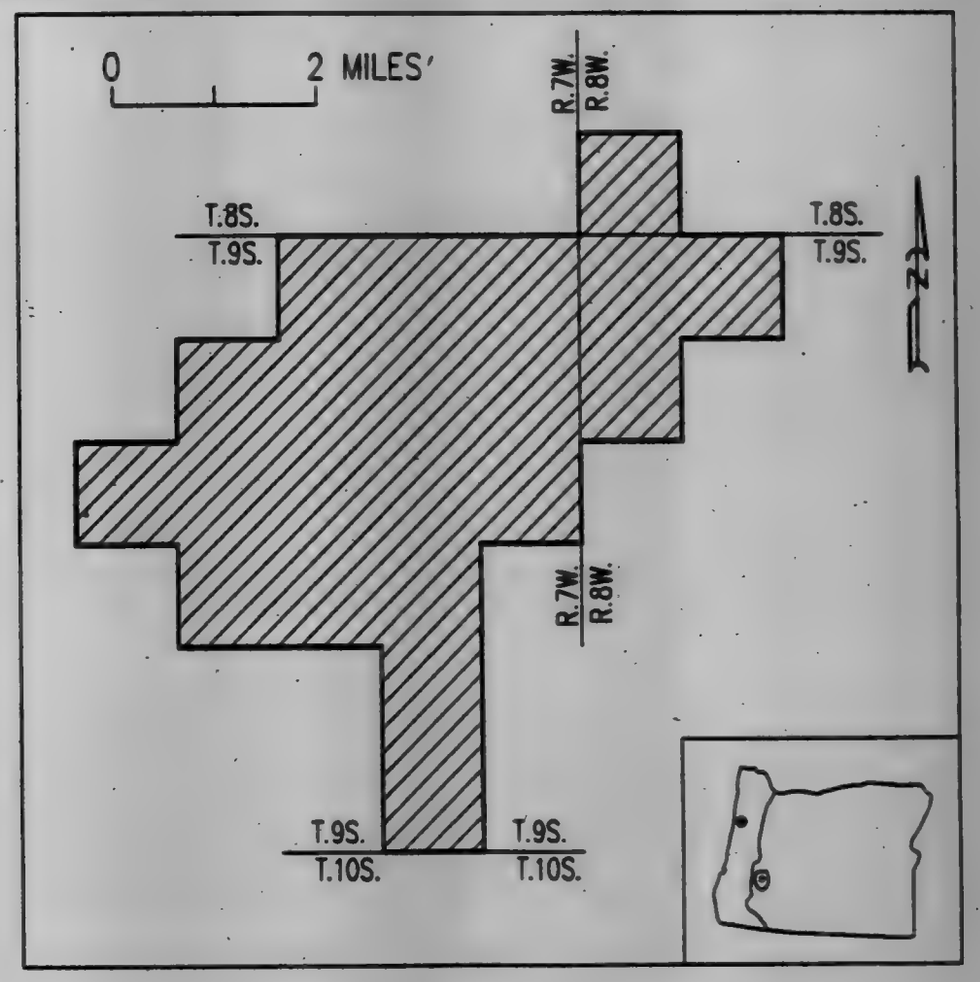

O–38

BILLING CODE 4310-33-C

VOL 56 ISS 87 MAY 6 1991 UMI

Description of O-39 taken Solely From Bureau of Land Management Maps; Cottage Grove 1980, Diamond Lake 1978, Roseburg 1978, and Oakridge 1974, Oregon.

Douglas and Lane Counties

T. 20 S., R. 4 E.: Willamette Meridian
Secs. 7; 8; 9; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 21 S., R. 4 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 22 S., R. 4 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 23 S., R. 4 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 23 S., R. 5 W.: Willamette Meridian
Secs. 1; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 27; 28; 33; 34; 35; and 36.

T. 24 S., R. 5 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 10; 11; and 12.

T. 24 S., R. 4 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 21; 22; 23; 24; 25; and 26.

T. 24 S., R. 3 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 25 S., R. 3 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 11; and 12.

T. 21 S., R. 3 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 22 S., R. 3 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 23 S., R. 3 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 20 S., R. 2 W.: Willamette Meridian
Secs. 31; and 32.

T. 21 S., R. 2 W.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 22 S., R. 2 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; and 30.

T. 21 S., R. 1 W.: Willamette Meridian
Secs. 19; 30; 31; 32; 33; 34; and 35.

T. 22 S., R. 1 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 16; 17; 18; 19; 20; 21; 26; 28; and 30.

BILLING CODE 4310-33-M

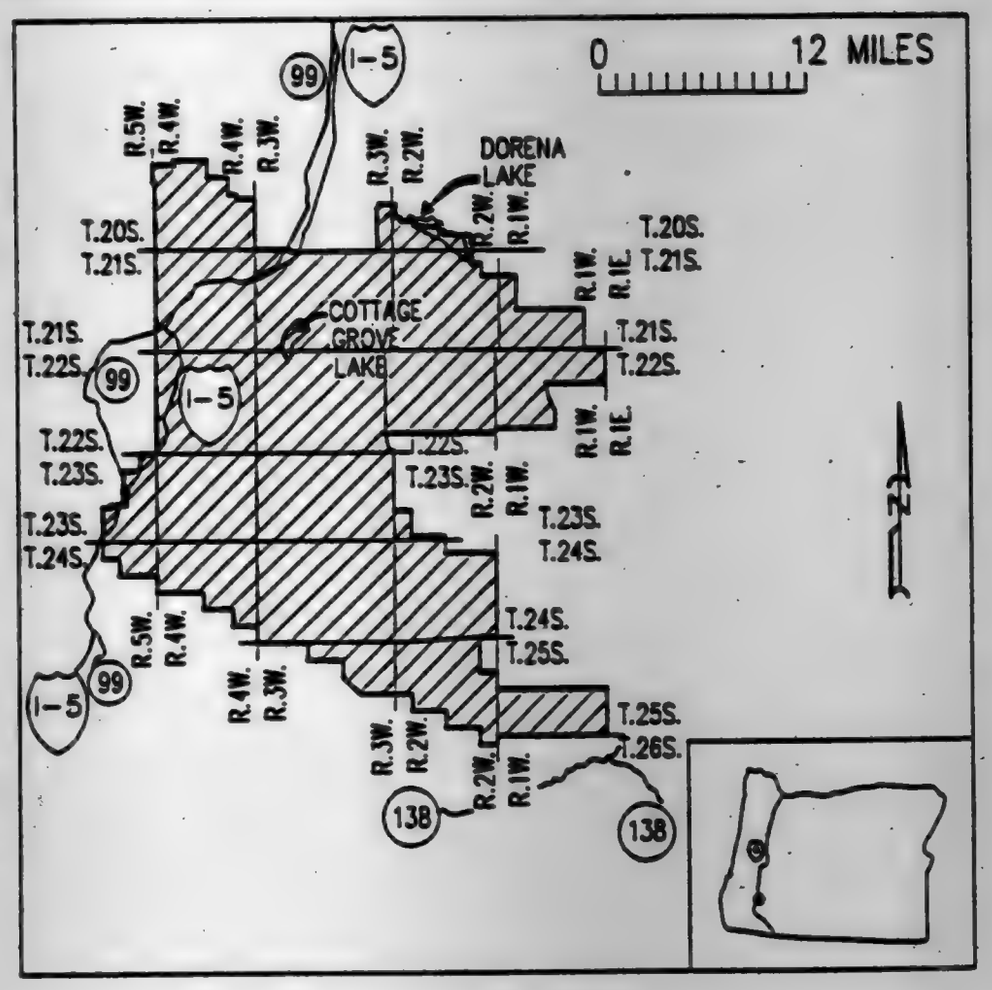

0-39

BILLING CODE 4310-33-C

Description of O-40 taken Solely From Bureau of Land Management Map; Medford, Oregon 1978.

Klamath and Jackson Counties

T. 39 S., R. 1 E.: Willamette Meridian
Secs. 9; 10; 11; 12; 13; 14; 15; 16; 22; 23; 24; 25; 26; and 36.

T. 38 S., R. 2 E.: Willamette Meridian
Secs. 25; 26; 27; 32; 33; 34; 35; and 36.

T. 39 S., R. 2 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 40 S., R. 2 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 41 S., R. 2 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; and 18.

T. 40 S., R. 1 E.: Willamette Meridian
Secs. 23; 24; and 36.

T. 41 S., R. 1 E.: Willamette Meridian
Secs. 1; 11; 12; 13; and 14.

T. 38 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; 3; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 38 S., R. 4 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 38 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 39 S., R. 3 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 39 S., R. 4 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 39 S., R. 5 E.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 18; and 19.

T. 40 S., R. 3 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 41 S., R. 3 E.: Willamette Meridian
Secs. 1; 2; 3; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; and 18.

T. 40 S., R. 4 E.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 41 S., R. 4 E.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 16; 17; and 18.

Excepting any of the above area lying within Hyatt Reservoir, Emigrant Lake, and Howard Prairie Lake.

BILLING CODE 4310-33-M

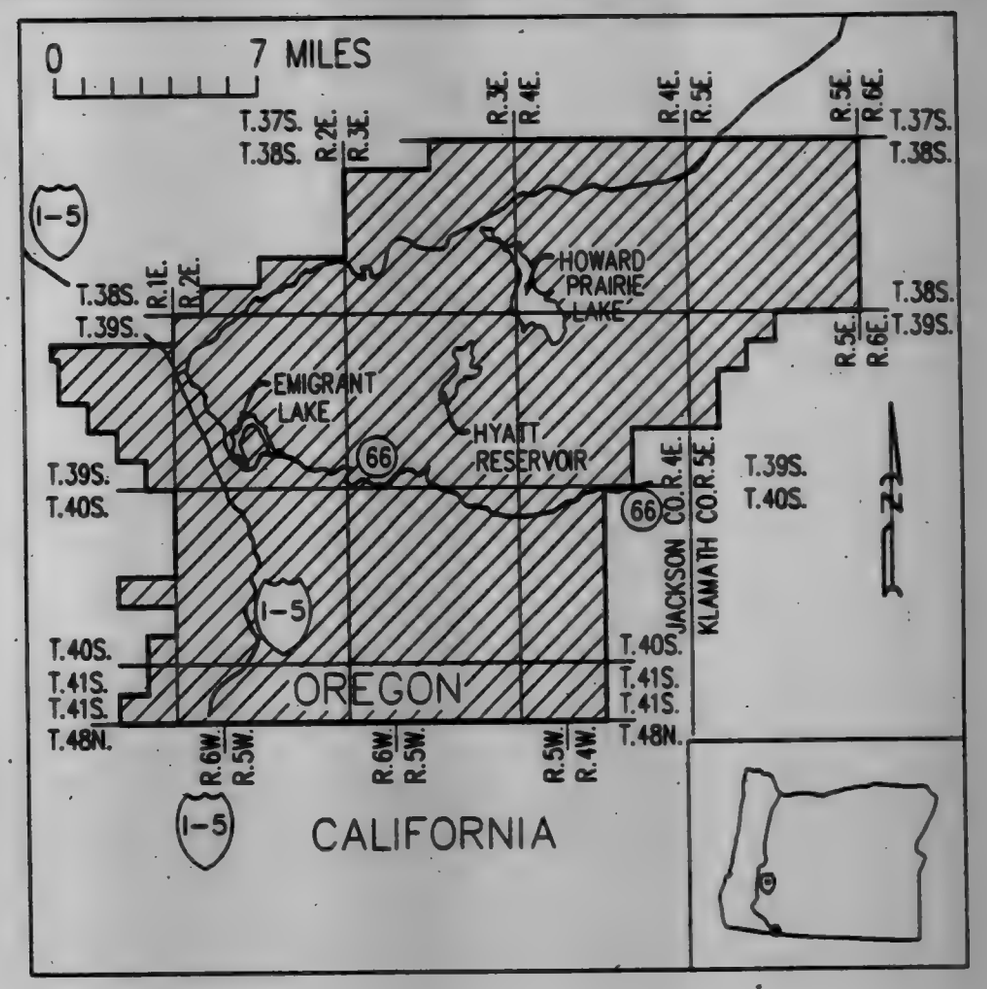

0-40

BILLING CODE 4310-33-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–41 taken Solely From Forest Visitor's Map; Deschutes, Oregon 1988.

Jefferson County

T. 10 S., R. 9 E.: Willamette Meridian
Sec. 36.

T. 11 S., R. 9 E.: Willamette Meridian
Secs. 1; 12; 13; 24; and 25.

T. 10 S., R. 10 E.: Willamette Meridian
Secs. 27; 28; 29; 31; 32; 33; and 34.

T. 11 S., R. 10 E.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 29; and 30.

BILLING CODE 4310-05-M

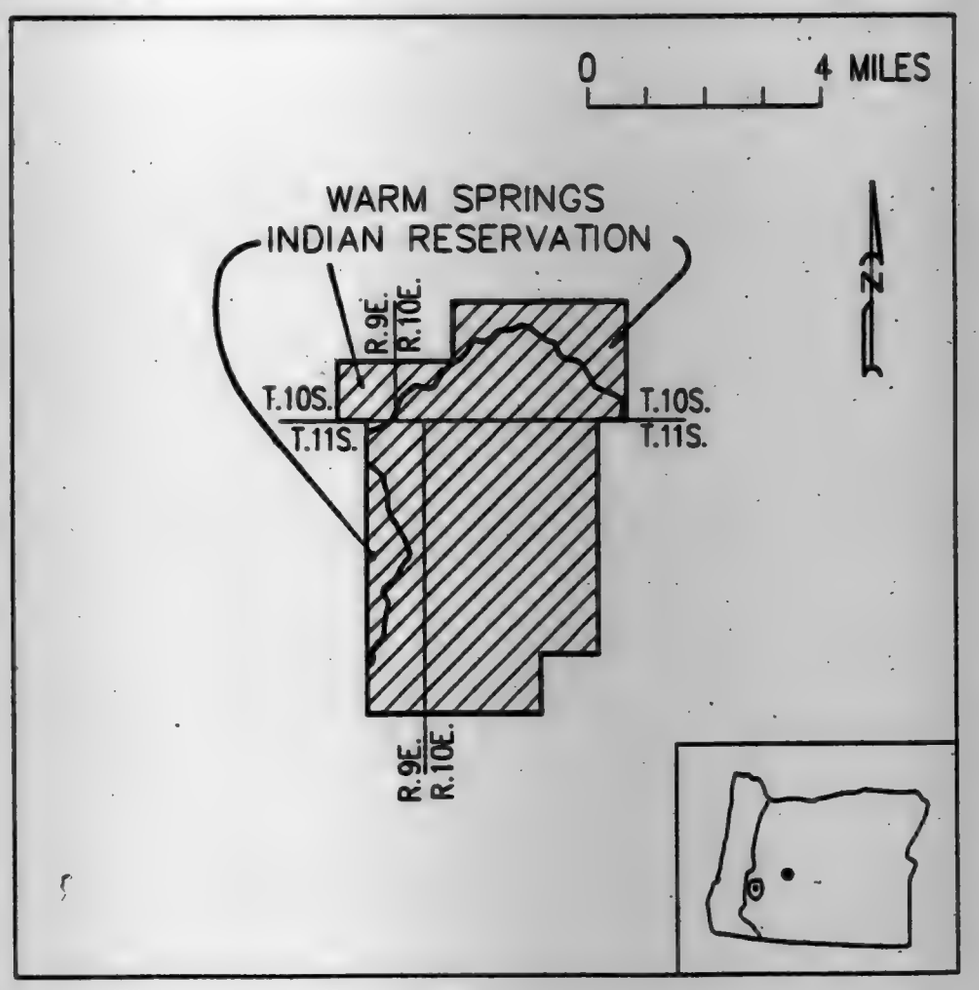

0–41

BILLING CODE 4310-05-C

Description of O–42 taken Solely From Forest Visitor's Map; Deschutes, Oregon 1988.

Jefferson County

T. 11 S., R. 8 E.: Willamette Meridian
Secs. 1; 2; 9; 10; 35; and 36.

T. 12 S., R. 8 E.: Willamette Meridian
Secs. 1; 2; 11; and 12.

T. 11 S., R. 9 E.: Willamette Meridian
Secs. 6; 7; 17; 20; 28; 29; 31; 32; and 33.

T. 12 S., R. 9 E.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; and 9.

Excepting any of the above area lying within the Mt. Jefferson Wilderness area.

BILLING CODE 4310-05-M

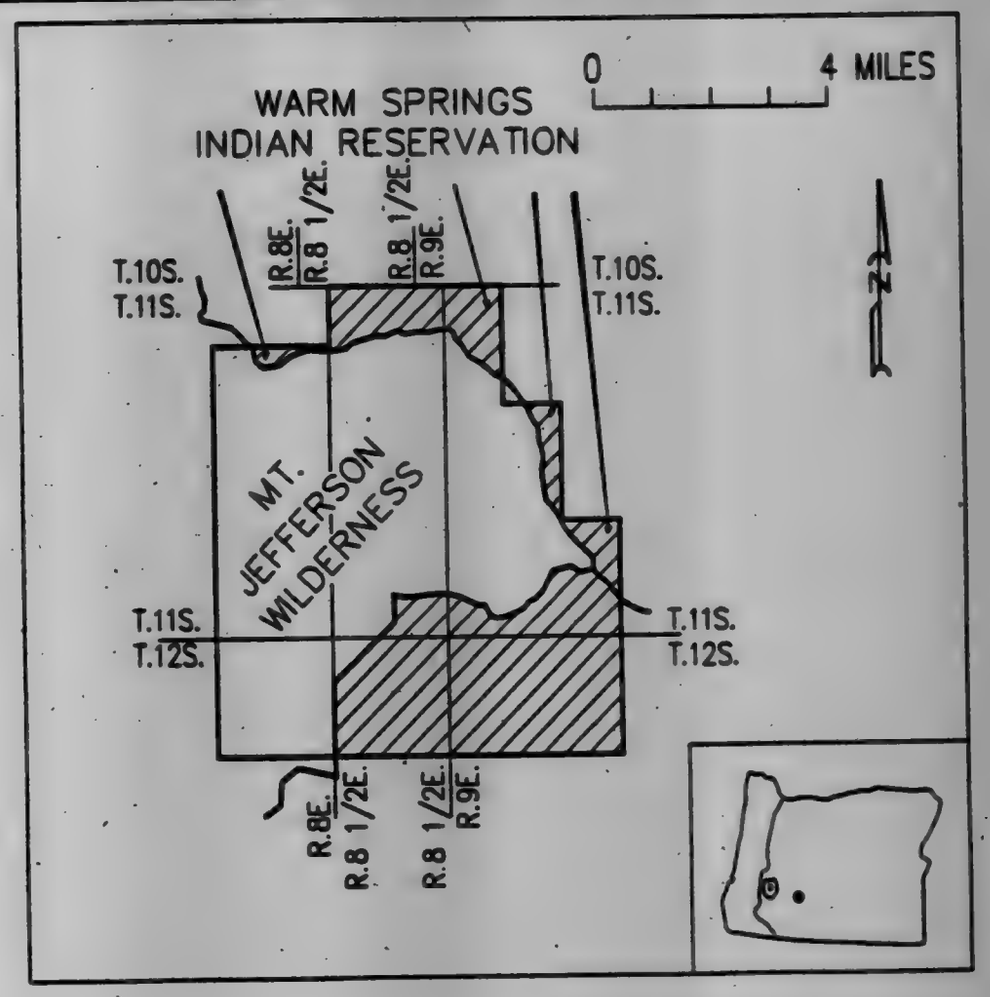

0–42

BILLING CODE 4310-05-C

Description of O-43 taken Solely From Forest Visitor's Map; Klamath, Oregon 1988.

Josephine County

T. 40 S., R. 6 W.: Willamette Meridian Secs. 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 41 S., R. 6 W.: Willamette Meridian Secs. 1; 2; 3; 4; 5; 8; 9; 12; 16; and 17.

T. 41 S., R. 5 W.: Willamette Meridian Sec. 7.

Excepting any of the above area lying within the Red Butte Wilderness areas.

BILLING CODE 4310-55-M

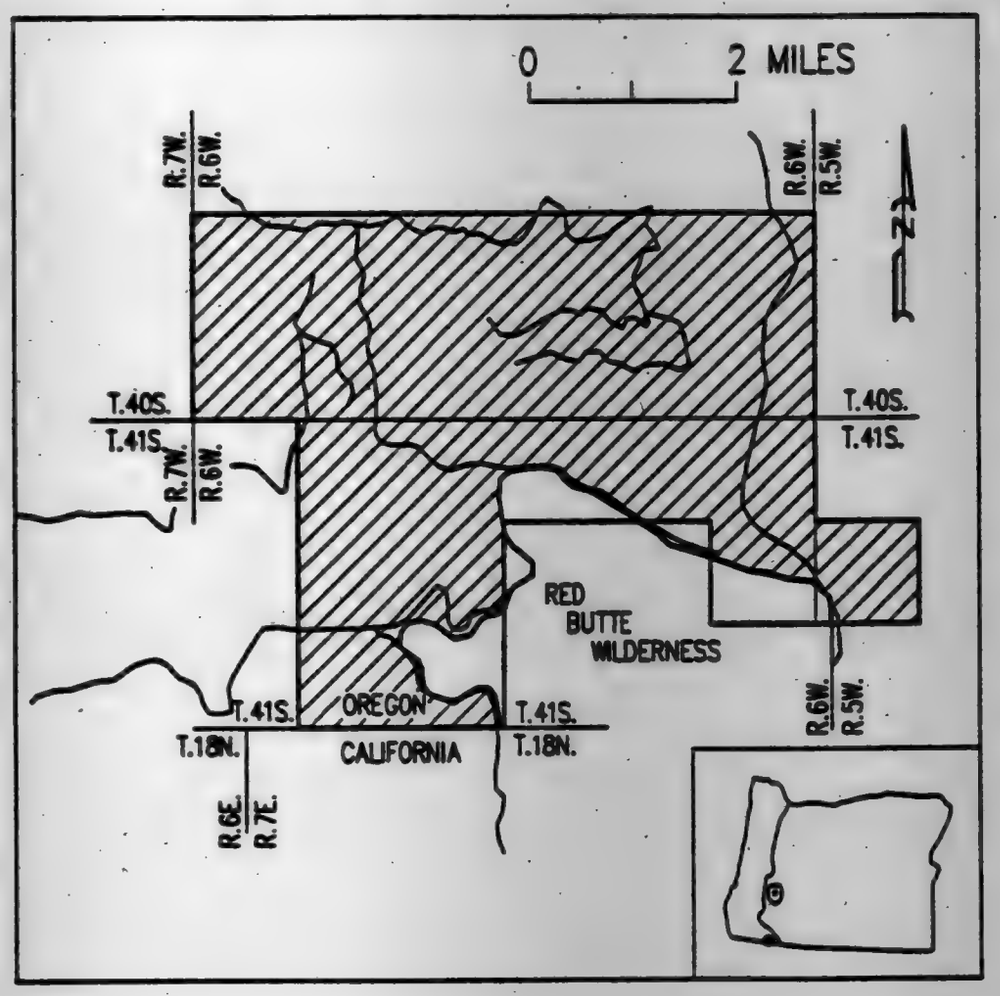

0-43

BILLING CODE 4310-55-C

Description of O-44 taken Solely From Forest Visitor's Map; Deschutes, Oregon 1988.

Deschutes, Jefferson, and Linn Counties

T. 12 S., R. 8 E.: Willamette Meridian Sec. 33.

T. 13 S., R. 8 E.: Willamette Meridian Secs. 2; 3; 4; 9; 10; 11; 14; 15; 16; 19; 20; 21; 22; 28; 29; 30; 31; and 32.

T. 14 S., R. 8 E.: Willamette Meridian Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 14; 15; 16; 21; 22; and 23.

T. 13 S., R. 7½ E.: Willamette Meridian Secs. 24; 25; and 36.

T. 14 S., R. 7½ E.: Willamette Meridian Sec. 1.

Excepting any of the above area lying within the Mt. Jefferson Wilderness and Washington Wilderness areas.

BILLING CODE 4310-55-M

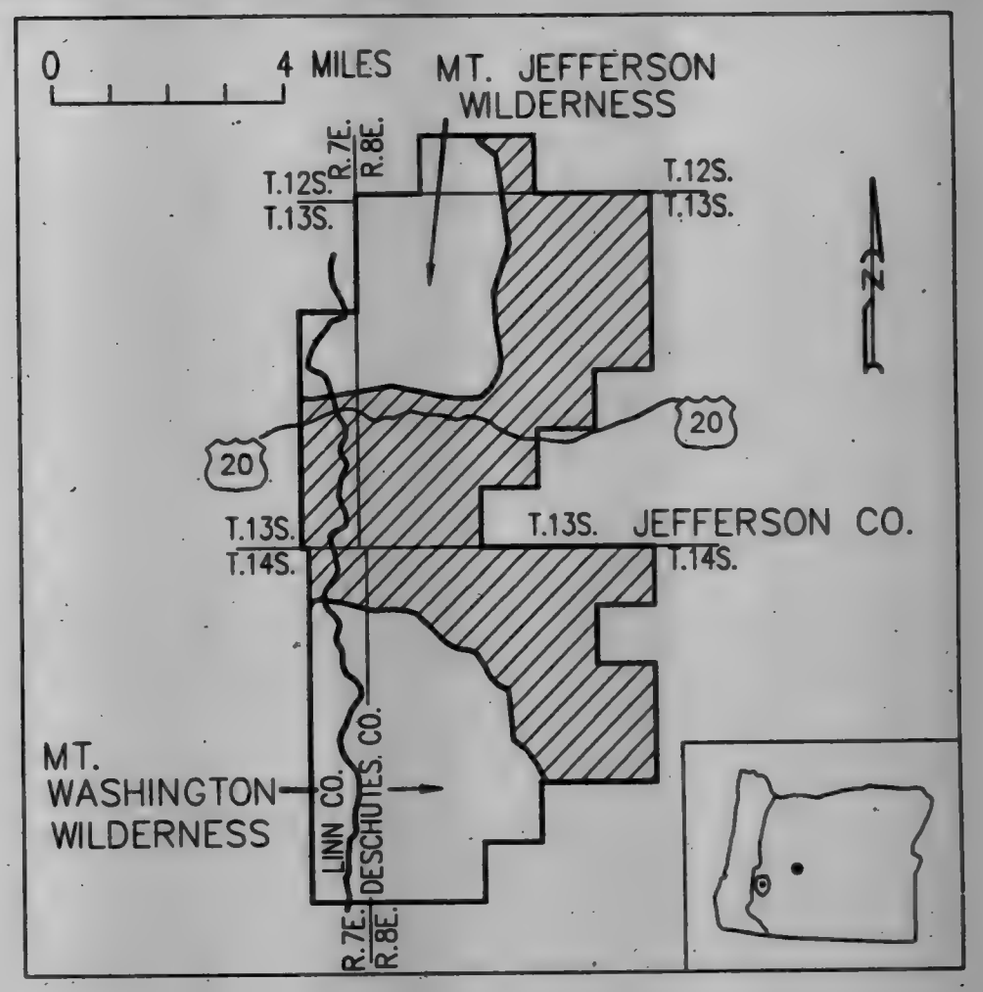

0-44

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–45 taken Solely From Forest Visitor's Map; Deschutes, Oregon 1988.

Deschutes and Lane Counties

T. 15 S., R. 8 E.: Willamette Meridian
Sec. 1; 2; 10; 12; 13; 15; 16; 21; 24; 25; and 36.

T. 15 S., R. 9 E.: Willamette Meridian
Secs. 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.
31; and 32.

Excepting any of the above area lying within the Three Sisters Wilderness and Washington Wilderness areas.

BILLING CODE 4310-66-M

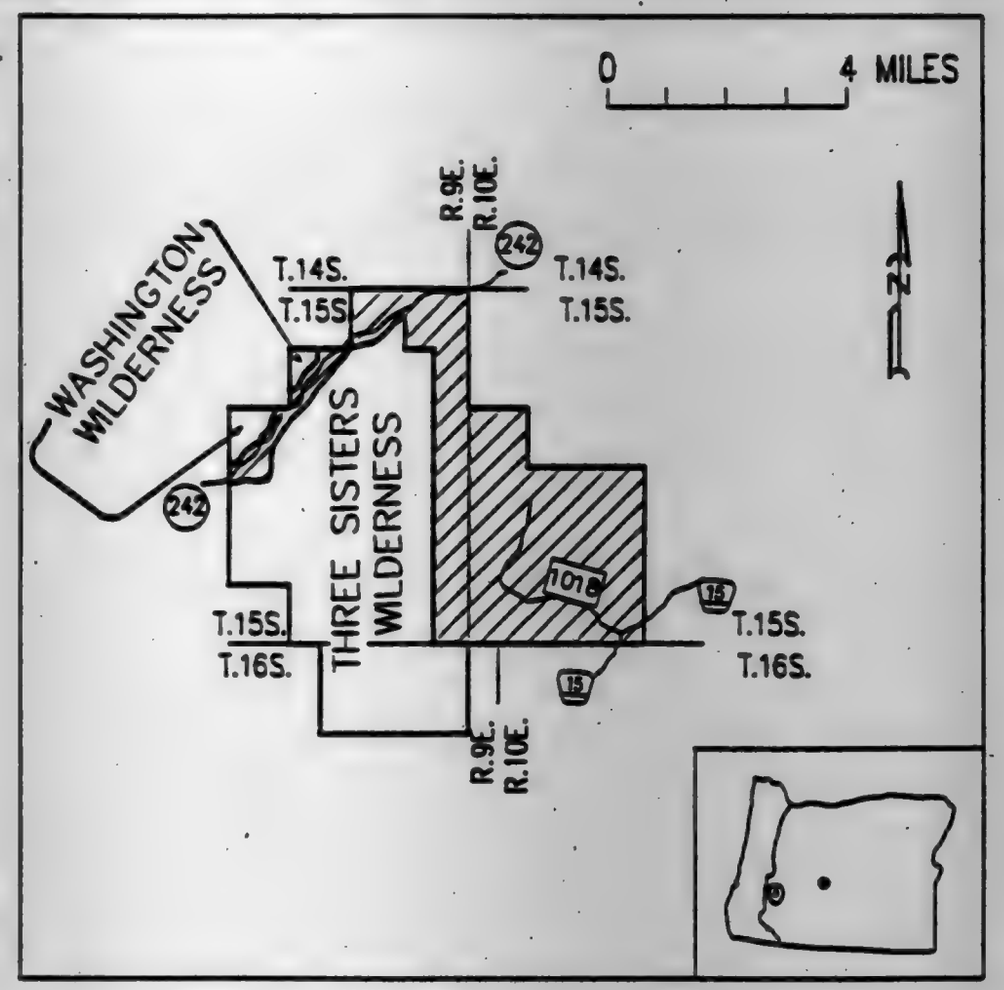

0–45

BILLING CODE 4310-66-C

Description of O–46 taken Solely From Bureau of Land Management Map; Nehalem River, Oregon 1979.

Tillamook County

T. 2 N., R. 10 W.: Willamette Meridian
Secs. 13; 24; 25; and 36.

T. 2 N., R. 9 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 1 N., R. 9 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 9; 10; 11; 12; 13; 14; 15; and 16.

T. 3 N., R. 8 W.: Willamette Meridian
Secs. 31; and 32.

T. 3 N., R. 9 W.: Willamette Meridian
Secs. 34; 35; and 36.

T. 2 N., R. 8 W.: Willamette Meridian
Secs. 5; 6; 7; 8; 17; 18; 19; 20; 29; 30; 31; and 32.

T. 1 N., R. 8 W.: Willamette Meridian
Secs. 5; 6; 7; 8; 17; and 18.

BILLING CODE 4310-66-M

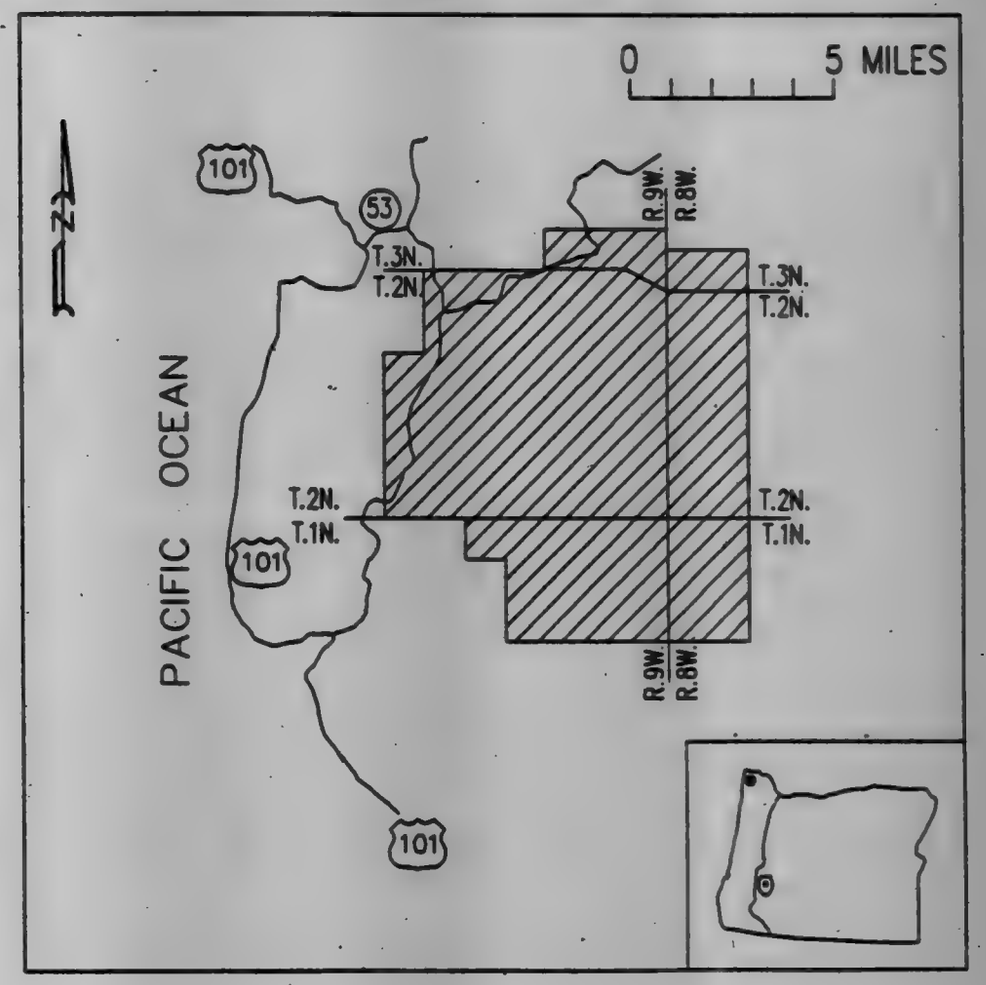

0–46

BILLING CODE 4310-66-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–47 taken Solely From Bureau of Land Management Map; Nehalem River, Oregon 1979.

Columbia, Washington, Clatsop, and Tillamook Counties

T. 4 N., R. 6 W.: Willamette Meridian
Secs. 12; 13; 14; 21; 22; 23; 24; 25; 26; 27; 28; 33; 34; 35; and 36.

T. 4 N., R. 5 W.: Willamette Meridian
Secs. 17; and 18.

T. 3 N., R. 6 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 2 N., R. 6 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; and 6.

T. 3 N., R. 5 W.: Willamette Meridian
Secs. 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 2 N., R. 5 W.: Willamette Meridian
Secs. 4; 5; and 6.

BILLING CODE 4310-33-M

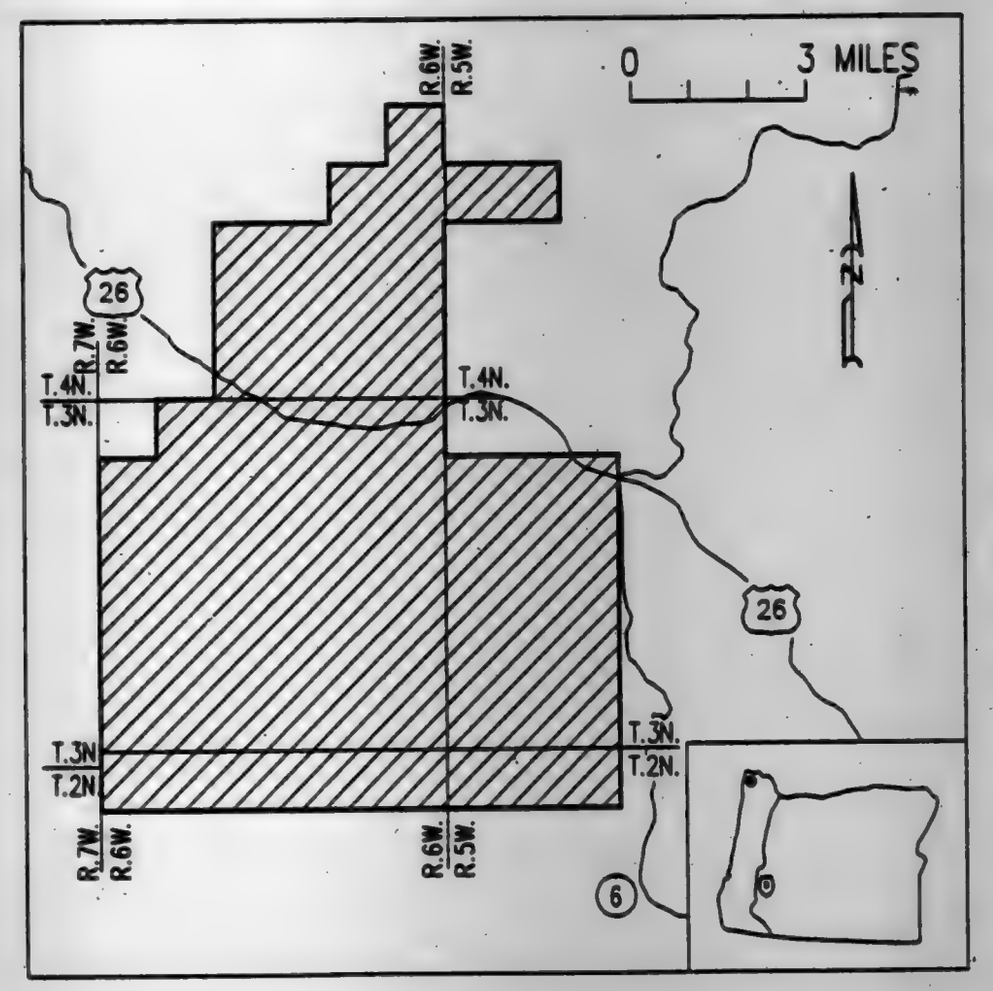

0–47

BILLING CODE 4310-33-C

Description of O–48 taken Solely From Bureau of Land Management Map; Astoria, Oregon 1981.

Clatsop County

T. 9 N., R. 7 W.: Willamette Meridian
Secs. 25; and 36.

T. 9 N., R. 6 W.: Willamette Meridian
Sec. 31.

T. 8 N., R. 7 W.: Willamette Meridian
Secs. 1; 2; 11; 12; 13; 14; 23; 24; 25; 26; 35; and 36.

T. 8 N., R. 6 W.: Willamette Meridian
Secs. 5; 6; 7; 8; 17; 18; 19; 20; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 7 N., R. 6 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 7 N., R. 7 W.: Willamette Meridian
Secs. 1; 2; and 13.

Excepting any of the above area lying within the Colombian White Tailed Deer National Wildlife Refuge area and the Columbia River.

BILLING CODE 4310-33-M

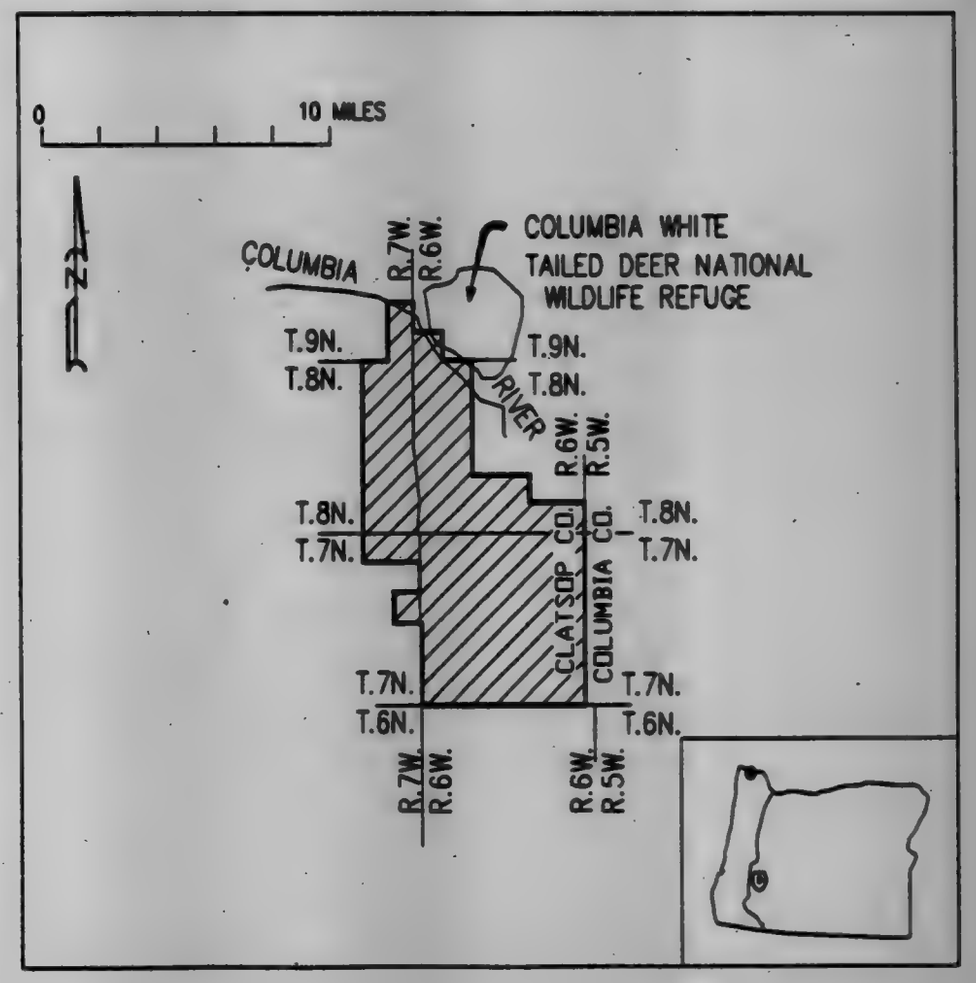

0–48

BILLING CODE 4310-33-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of O–49 taken Solely From Bureau of Land Management Map; Corvallis, Oregon 1980.

Polk, Lincoln, and Benton Counties

T. 9 S., R. 8 W.: Willamette Meridian
Secs. 27; 28; 29; 30; 32; 33; 34; 35; and 36.

T. 10 S., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 9; 10; 11; 12; 13; and 24.

T. 9 S., R. 7 W.: Willamette Meridian
Secs. 29; 30; 31; 32; and 33.

T. 10 S., R. 7 W.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 10; 15; 16; 17; 18; 19; 21; 22; 27; and 28.

BILLING CODE 4310-66-M

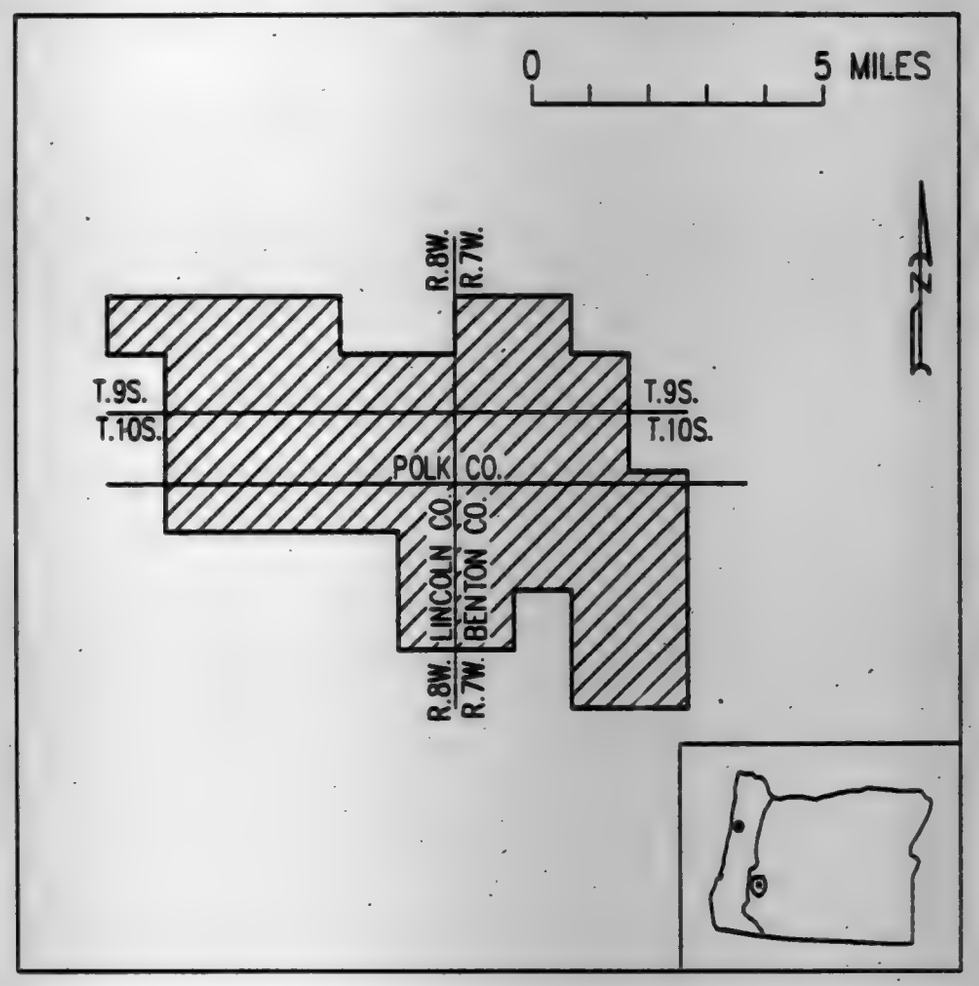

O–49

BILLING CODE 4310-66-C

Description of O–50 taken Solely From Forest Visitor's Map; Mt. Hood, Oregon 1987.

Clackamas and Marion Counties

T. 7 S., R. 2 E.: Willamette Meridian
Secs. 25; and 36.

T. 7 S., R. 3 E.: Willamette Meridian
Secs. 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 8 S., R. 3 E.: Willamette Meridian
Secs. 1; 2; 3; 4; and 12.

BILLING CODE 4310-66-M

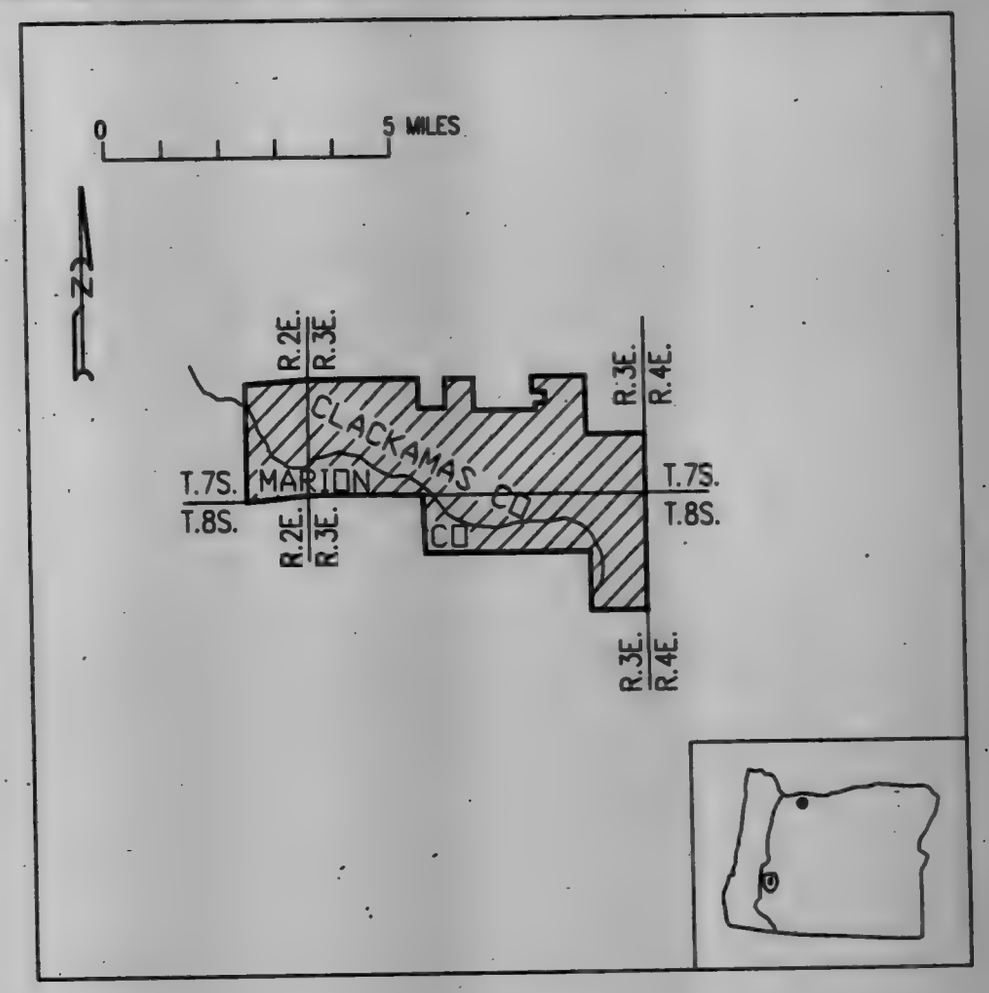

O–50

BILLING CODE 4310-66-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of SIS–1 taken Solely From Forest Visitor's Map; Siskiyou, Oregon 1984.

Curry County

T. 32 S., R. 14 W.: Willamette Meridian Secs. 22; 23; 24; and 25.

T. 32 S., R. 13 W.: Willamette Meridian Secs. 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

Excepting any of the above area lying within the Grassy Knob Wilderness area.

BILLING CODE 4310-55-M

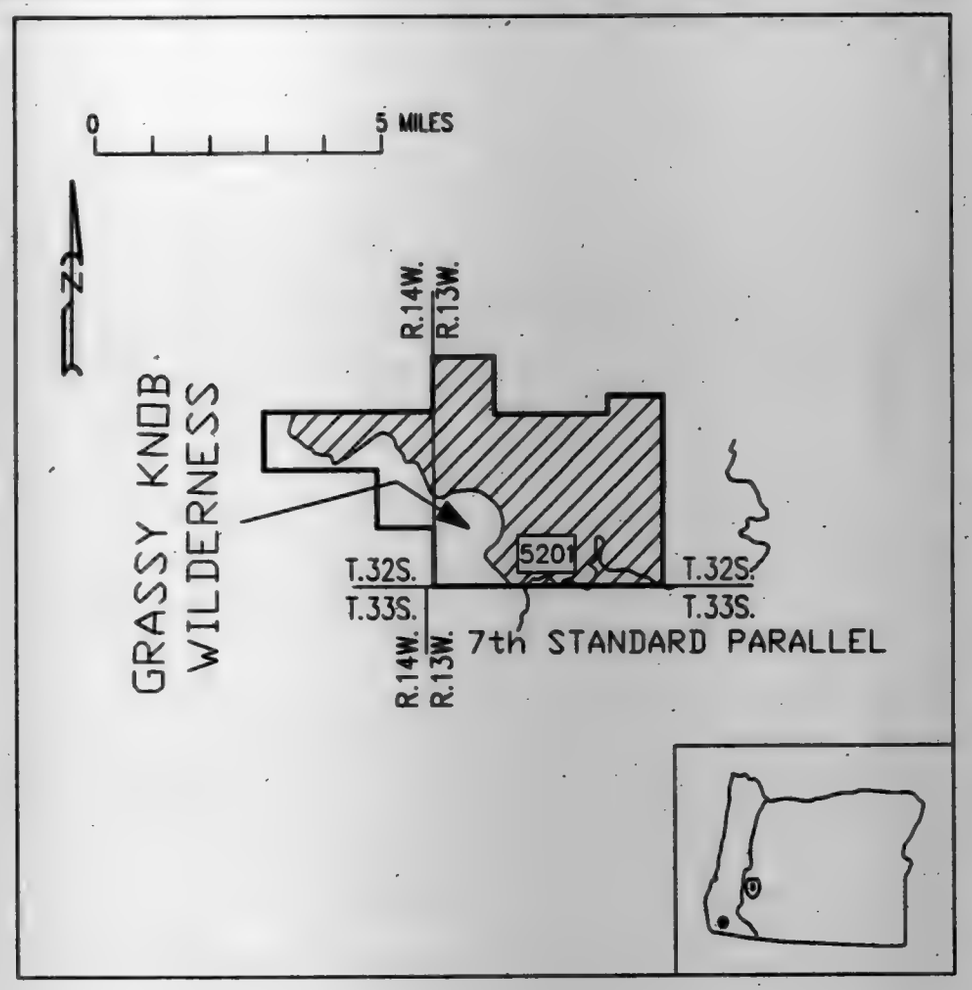

SIS-1

BILLING CODE 4310-55-C

Description of SIS–2 taken Solely From Forest Visitor's Map; Siskiyou, Oregon 1984.

Curry County

T. 34 S., R. 11 W.: Willamette Meridian Secs. 25; 26; 35; and 36.

T. 34 S., R. 10½ W.: Willamette Meridian Secs. 19; 30; and 31.

T. 34 S., R. 10 W.: Willamette Meridian Secs. 7; 18; 19; 30; and 31.

T. 35 S., R. 11 W.: Willamette Meridian Secs. 1; 2; 11; 12; 13; 14; 23; 24; 25; and 26.

T. 35 S., R. 10½ W.: Willamette Meridian Secs. 6; 7; 18; 19; and 30.

T. 35 S., R. 10 W.: Willamette Meridian Secs. 6; 7; and 18.

BILLING CODE 4310-55-M

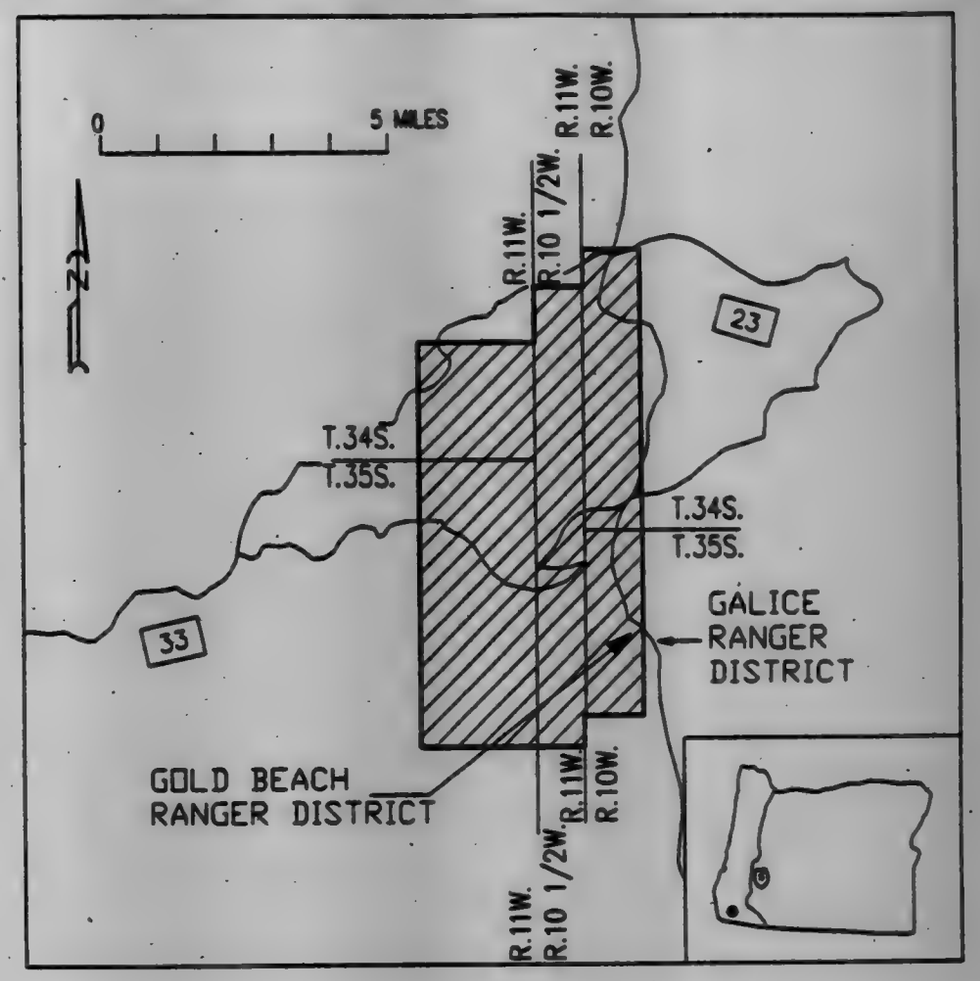

SIS-2

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of SNF–1 and Map taken Solely From Forest Visitor's Map; Siuslaw National Forest, Oregon 1975.

Lincoln and Lane Counties

T. 14 S., R. 12 W.: Willamette Meridian
Sec. 36.

T. 14 S., R. 11 W.: Willamette Meridian
Sec. 31.

T. 15 S., R. 12 W.: Willamette Meridian
Secs. 1; 2; 11; 12; 13; 14; 24; 25; and 36.

T. 15 S., R. 11 W.: Willamette Meridian
Secs. 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 15 S., R. 10 W.: Willamette Meridian
Secs. 17; 18; 19; 20; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 16 S., R. 12 W.: Willamette Meridian
Secs. 1; 10; 11; 12; 13; 14; 15; 23; and 24.

T. 16 S., R. 11 W.: Willamette Meridian
Secs. 22; 24; 25; 26; 35; and 36.

T. 16 S., R. 10 W.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 10; 17; 18; 19; 20; 29; 30; 31; and 32.

BILLING CODE 4310-33-M

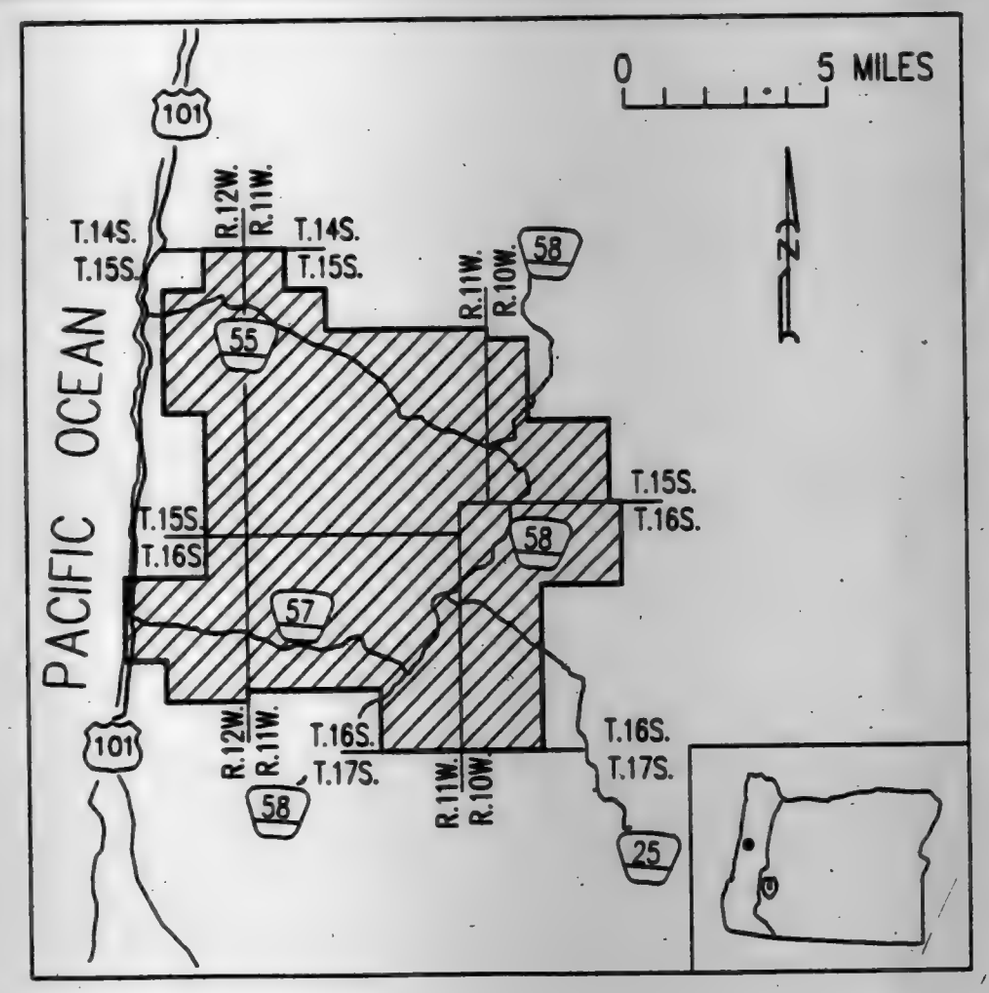

SNF–1

BILLING CODE 4310-33-C

Description of UNF–1 and Map taken Solely From Forest Visitor's Map; Umpqua, Oregon 1985.

Douglas and Lane Counties

T. 25 S., R. 1 E.: Willamette Meridian
Secs. 4; 5; 6; and 7.

T. 24 S., R. 1 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 8; 9; 10; 11; 14; 15; 16; 17; 19; 20; 21; 22; 28; 29; 30; 31; 32; and 33.

T. 23 S., R. 1 E.: Willamette Meridian
Secs. 1; 2; 3; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 21; 22; 23; 24; 25; 26; 27; 33; 34; 35; and 36.

T. 22 S., R. 1 E.: Willamette Meridian
Secs. 23; 24; 25; 26; 31; 34; 35; and 36.

T. 22 S., R. 2 E.: Willamette Meridian
Secs. 19; 30; and 31.

T. 23 S., R. 2 E.: Willamette Meridian
Secs. 6; 7; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

BILLING CODE 4310-33-M

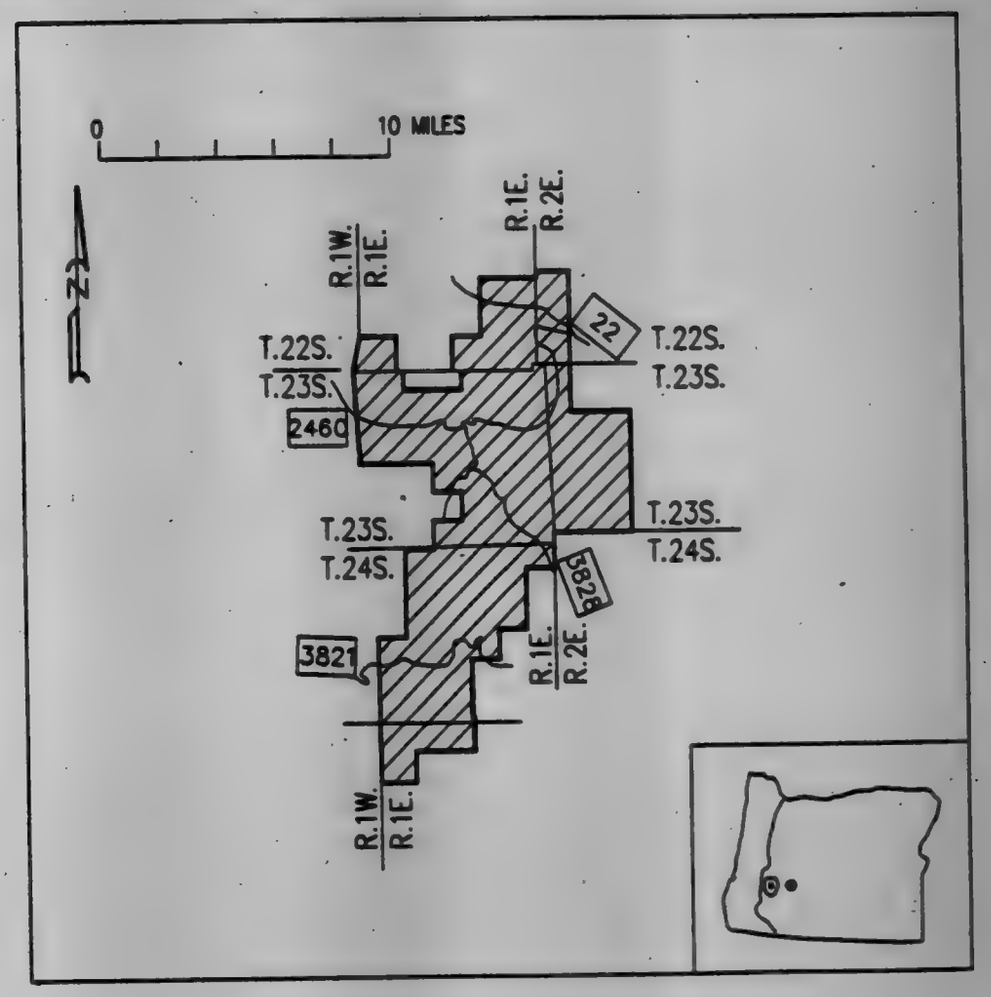

UNF–1

BILLING CODE 4310-33-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of UNF–2 and Map taken Solely From Forest Visitor's Map; Umpqua, Oregon 1986.

Jackson and Douglas Counties

T. 32 S., R. 3 W.: Willamette Meridian
Secs. 13; 24; and 25.

T. 32 S., R. 2 W.: Willamette Meridian
Secs. 5; 6; 7; 8; 18; 19; 30; 31; and 32.

T. 31 S., R. 2 W.: Willamette Meridian
Secs. 5; 7; 8; 17; 18; 19; 20; 29; 30; 31; 32; and 33.

BILLING CODE 4310-33-M

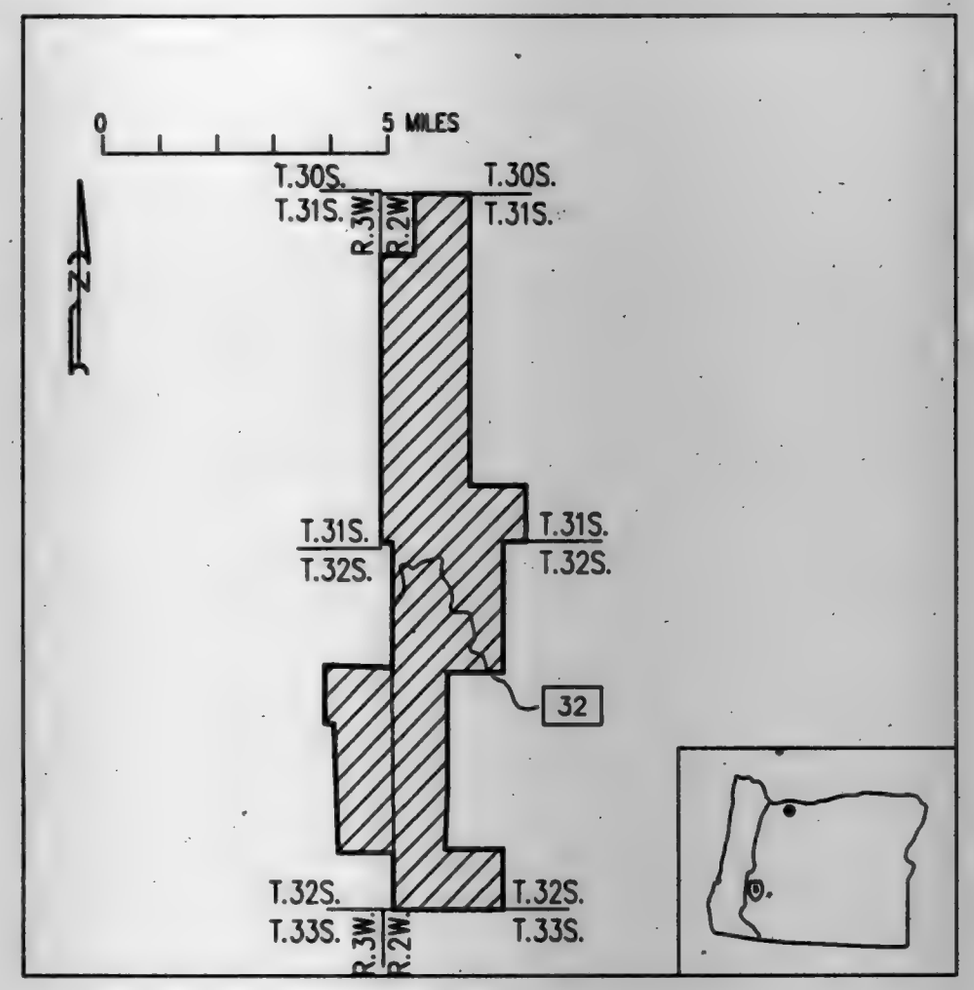

UNF–2

BILLING CODE 4310-33-C

Description of WIN–1 taken Solely From Forest Visitor's Map; Winema, Oregon 1986.

Klamath County

T. 34 S., R. 6 E.: Willamette Meridian
Secs. 16; 17; 19; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 35 S., R. 6 E.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 10; 15; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 36 S., R. 6 E.: Willamette Meridian
Secs. 4; 5; 6; 7; and 18.

T. 35 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; 3; 10; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 35; and 36.

T. 36 S., R. 5 E.: Willamette Meridian
Secs. 1; 2; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 20; 21; 22; 23; and 24.

Excepting any of the above area lying within the Sky Lakes Wilderness area.

BILLING CODE 4310-33-M

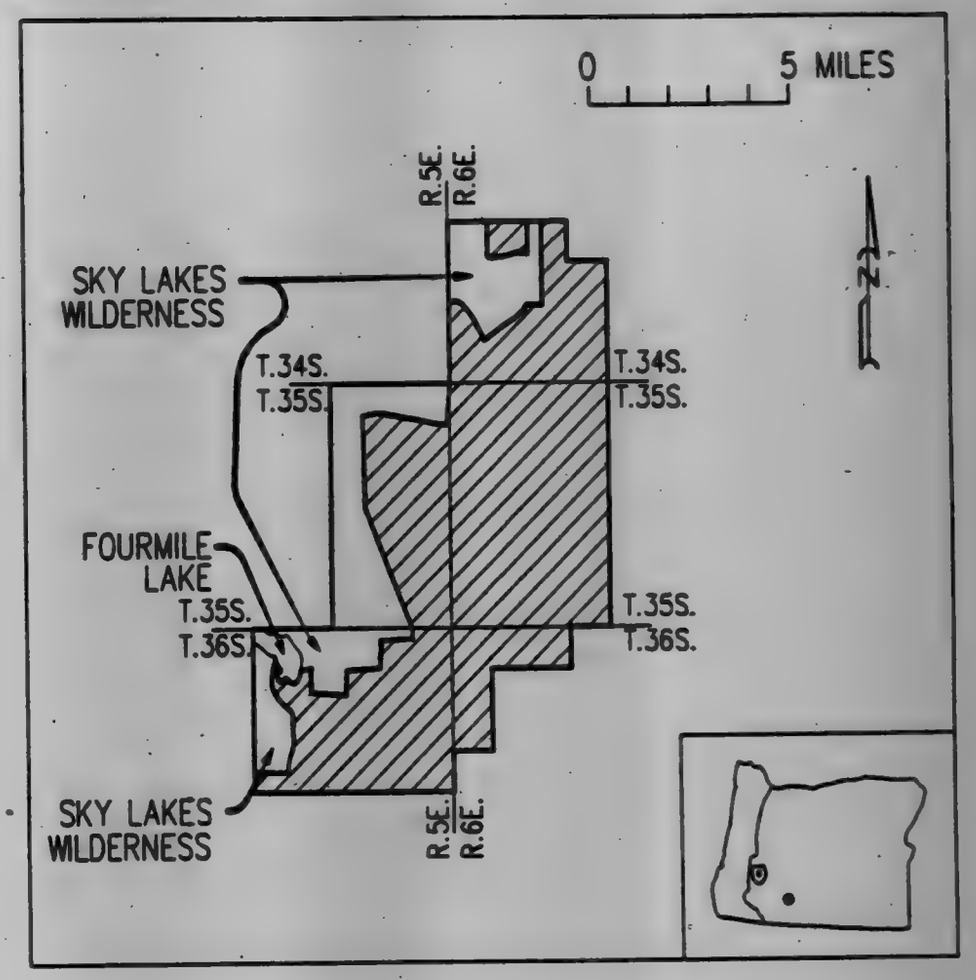

WIN–1

BILLING CODE 4310-33-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of WIN-2 taken Solely From Forest Visitor's Map; Winema, Oregon 1986.

Klamath County

T. 35 S., R. 8 E.: Willamette Meridian
Secs. 16; 17; 20; 21; 28; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 36 S., R. 8 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 29; 30; 31; 35; and 36.

T. 36 S., R. 9 E.: Willamette Meridian
Secs. 30; and 31.

BILLING CODE 4310-55-M

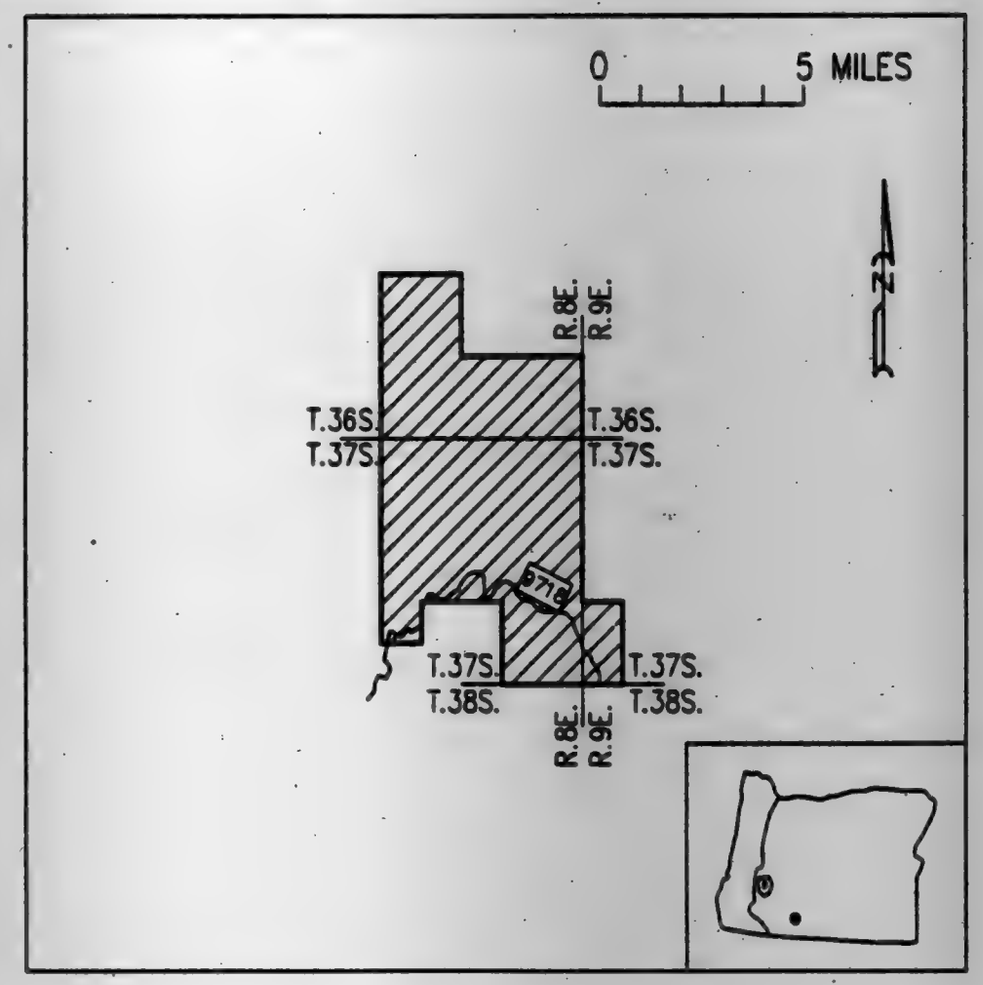

WIN-2

BILLING CODE 4310-55-C

Description of YR-1 taken Solely From Forest Visitor's Map; Yamhill River, Oregon.

Tillamook County

T. 3 S., R. 10 W.: Willamette Meridian
Secs. 26; 27; 28; 32; 33; 34; and 35.

T. 4 S., R. 10 W.: Willamette Meridian
Secs. 3; 4; and 5.

Washington: Areas of land and water as follows:

BILLING CODE 4310-55-M

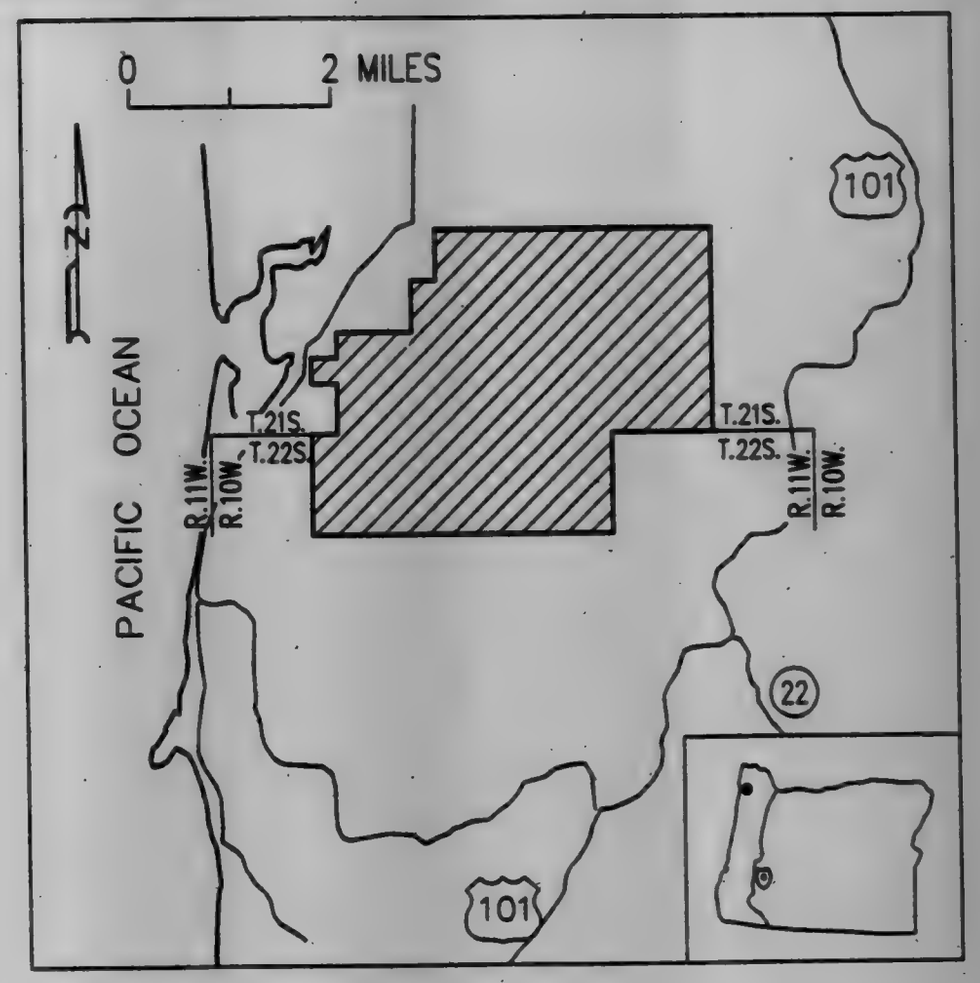

YR-1

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of FL-WA taken Solely From U.S. Geological Survey; Centralia 1960 and Tacoma 1975, Washington.

Thurston and Pierce Counties

T. 19 N., R. 1 E.: Willamette Meridian
Secs. 34; 35; and 36.

T. 18 N., R. 1 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 8; 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 33; 34; 35; and 36.

T. 19 N., R. 2 E.: Willamette Meridian
Secs. 31; 32; 33; 34; 35; and 36.

T. 19 N., R. 3 E.: Willamette Meridian
Secs. 31; 32; and 33.

T. 18 N., R. 2 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 36.

T. 18 N., R. 3 E.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 10; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 26; 27; 28; 29; 30; 31; 32; and 33.

T. 17 N., R. 2 E.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; and 9.

T. 17 N., R. 1 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 28; 29; 30; 31; 32; and 33.

T. 17 N., R. 1 W.: Willamette Meridian
Secs. 21; 22; 23; 24; 25; 26; 34; 35; and 36.

T. 16 N., R. 1 E.: Willamette Meridian
Sec. 6.

T. 16 N., R. 1 W.: Willamette Meridian
Sec. 1.

BILLING CODE 4310-93-M

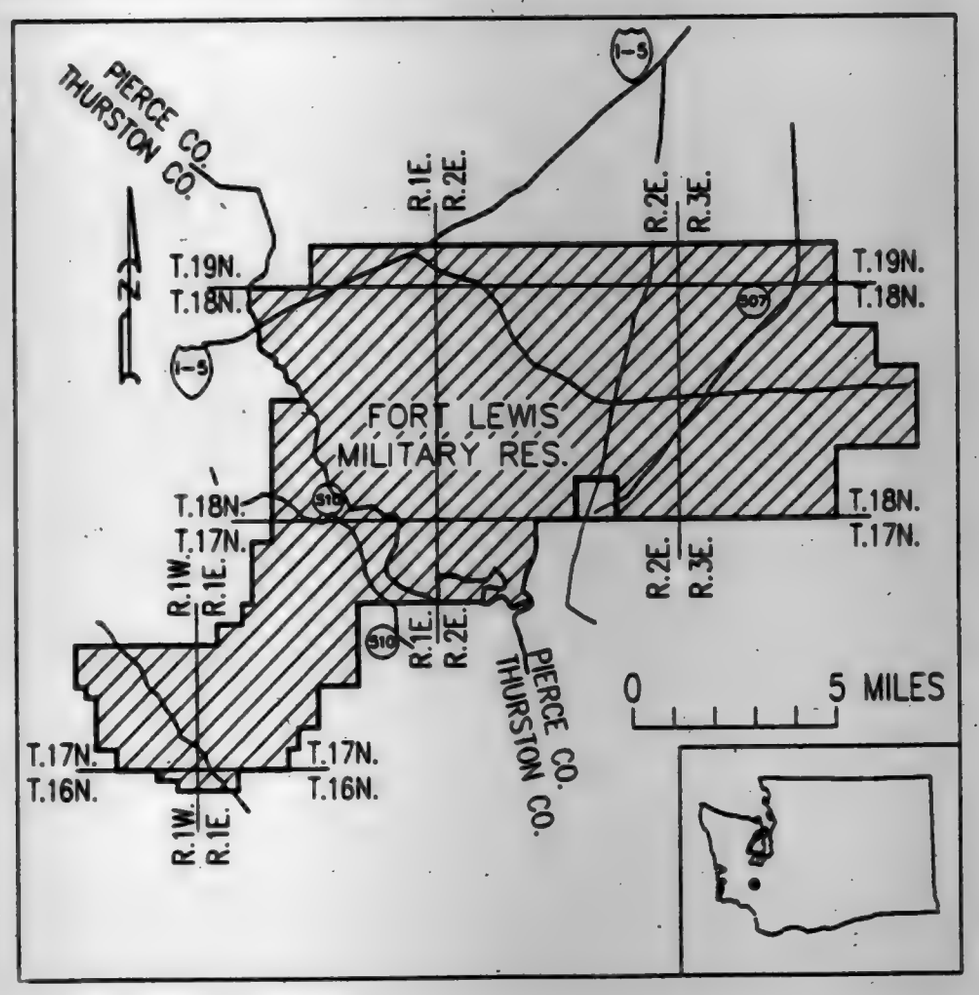

FL—WA

BILLING CODE 4310-93-C

Description of GP-1 Taken Solely From Forest Visitor's Map; Gifford Pinchot National Forest, Washington 1984.

Lewis, Pierce, and Yakima Counties

T. 16 N., R. 7 E.: Willamette Meridian
Sec. 32.

T. 15 N., R. 7 E.: Willamette Meridian
Secs. 5; 8; 16; 17; 18; 19; 20; 21; 28; 29; 30; 32; 33; and 34.

T. 14 N., R. 7 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 21; 22; 23; 24; 25; 35; and 36.

T. 13 N., R. 8 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; and 27.

T. 14 N., R. 8 E.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 14 N., R. 9 E.: Willamette Meridian
Secs. 7; 8; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 15 N., R. 10 E.: Willamette Meridian
Secs. 35; and 36.

T. 14 N., R. 10 E.: Willamette Meridian
Secs. 1; 2; 3; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 14 N., R. 11 E.: Willamette Meridian
Secs. 5; 6; 7; 8; 18; 19; 20; 28; 29; 30; 31; 32; and 33.

T. 13 N., R. 11 E.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; and 9.

T. 13 N., R. 10 E.: Willamette Meridian
Secs. 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 29; 30; 31; and 32.

T. 13 N., R. 9 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 17; 18; 19; 20; 22; 23; 24; 25; 26; 27; 29; 30; 33; 34; 35; and 36.

T. 12 N., R. 9 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 32; 33; 34; 35; and 36.

T. 11 N., R. 9 E.: Willamette Meridian
Secs. 1; 2; and 11.

T. 12 N., R. 10 E.: Willamette Meridian
Secs. 5; 6; 7; 8; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 12 N., R. 8 E.: Willamette Meridian
Secs. 13; 14; 21; 22; 23; 24; 25; 26; 27; and 28.

Excepting any of the above area lying within Glacier View, William O. Douglas, Goat Rocks, and Tatoosh Wilderness areas.

BILLING CODE 4310-93-M

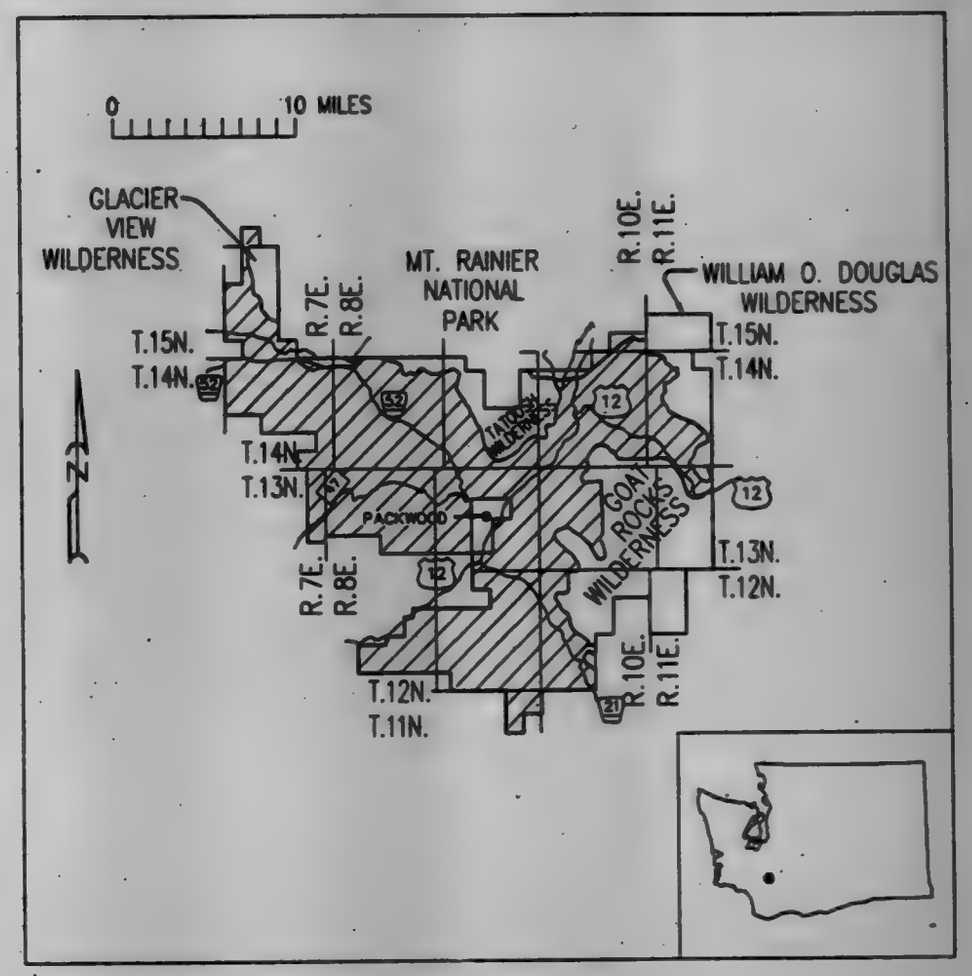

GP—1

BILLING CODE 4310-93-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of GP-2 taken Solely From Forest Visitor's Map; Gifford Pinchot National Forest, Washington 1984.

Lewis and Skamania Counties

T. 12 N., R. 7 E.: Willamette Meridian
Secs. 28; 29; 30; 31; 32; and 33.

T. 11 N., R. 5 E.: Willamette Meridian
Secs. 11; 12; 13; 14; and 36.

T. 11 N., R. 6 E.: Willamette Meridian
Secs. 15; 16; 17; 18; 19; 20; 21; 22; 23; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 11 N., R. 7 E.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 10; 11; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 11 N., R. 8 E.: Willamette Meridian
Secs. 18; 19; and 30.

T. 10 N., R. 5 E.: Willamette Meridian
Secs. 1; and 12.

T. 10 N., R. 6 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 27; 34; 35; and 36.

T. 10 N., R. 7 E.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 15; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 9 N., R. 6 E.: Willamette Meridian
Secs. 1; 2; 3; 12; 13; 24; 25; 26; 35; and 36.

T. 9 N., R. 7 E.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 9 N., R. 8 E.: Willamette Meridian
Secs. 3; 6; 7; 10; 11; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 9 N., R. 9 E.: Willamette Meridian
Secs. 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 8 N., R. 6 E.: Willamette Meridian
Secs. 1; 2; 3; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 34; 35; and 36.

T. 8 N., R. 7 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 8 N., R. 7½ E.: Willamette Meridian
Secs. 1; 12; 13; 24; 25; and 36.

T. 8 N., R. 8 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 27; 28; 29; 30; and 31.

T. 8 N., R. 9 E.: Willamette Meridian
Secs. 5; and 6.

T. 7 N., R. 6 E.: Willamette Meridian
Secs. 1; 2; 11; 12; 13; and 14.

T. 7 N., R. 7½ E.: Willamette Meridian
Secs. 1; 12; 13; 24; and 25.

T. 7 N., R. 8 E.: Willamette Meridian
Sec. 6.

T. 7 N., R. 7 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

Excepting any of the above area lying within the Mount St. Helens National Volcanic Monument.

BILLING CODE 4310-55-M

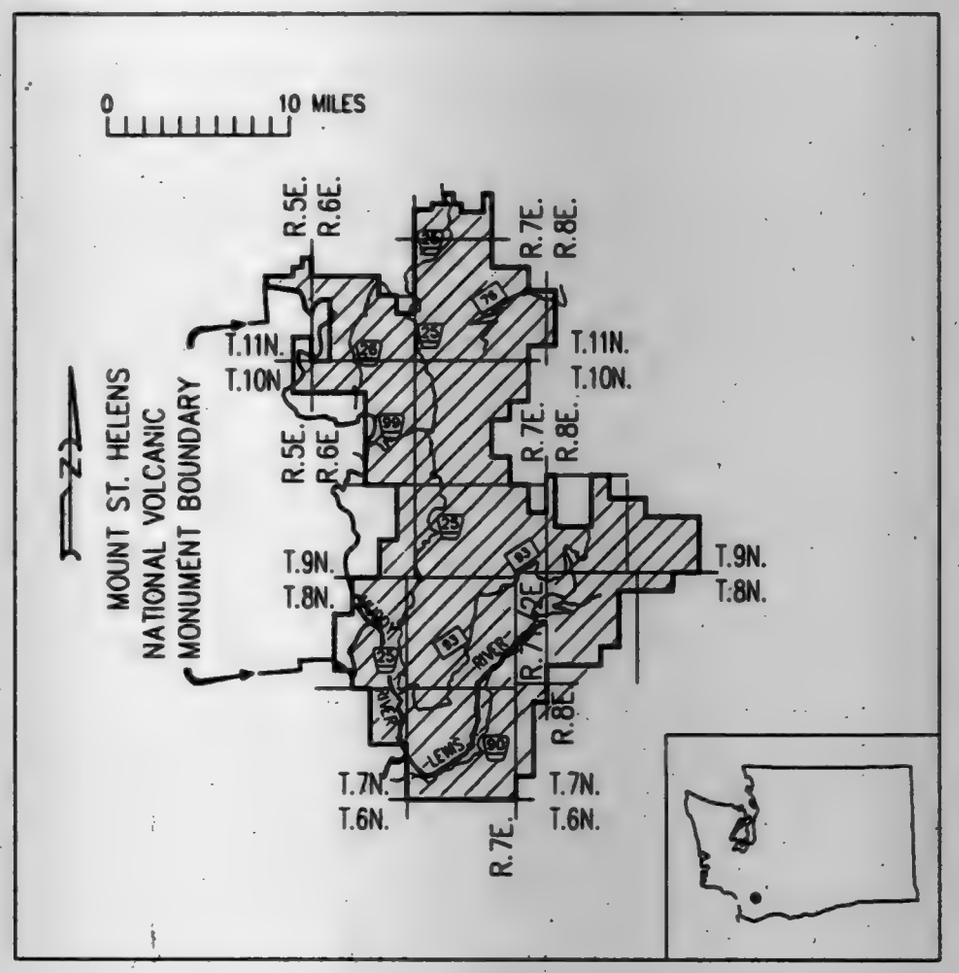

GP-2

BILLING CODE 4310-55-C

Description of GP-3 taken Solely From Forest Visitor's Map; Gifford Pinchot National Forest, Washington 1984.

Yakima, Klickitat, and Skamania Counties

T. 8 N., R. 10 E.: Willamette Meridian
Sec. 35; and 36.

T. 7 N., R. 10 E.: Willamette Meridian
Secs. 1; 2; 3; 10; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 27; 34; 35; and 36.

T. 7 N., R. 11 E.: Willamette Meridian
Secs. 3; 4; 5; 8; 9; 10; 11; 13; 14; 15; 16; 17; 19; 20; 21; 22; 23; 24; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 7 N., R. 12 E.: Willamette Meridian
Secs. 5; 6; 7; and 8.

T. 6 N., R. 11 E.: Willamette Meridian
Secs. 3; 4; and 5.

Excepting any of the above area lying within the Mt. Adams Wilderness area.

BILLING CODE 4310-55-M

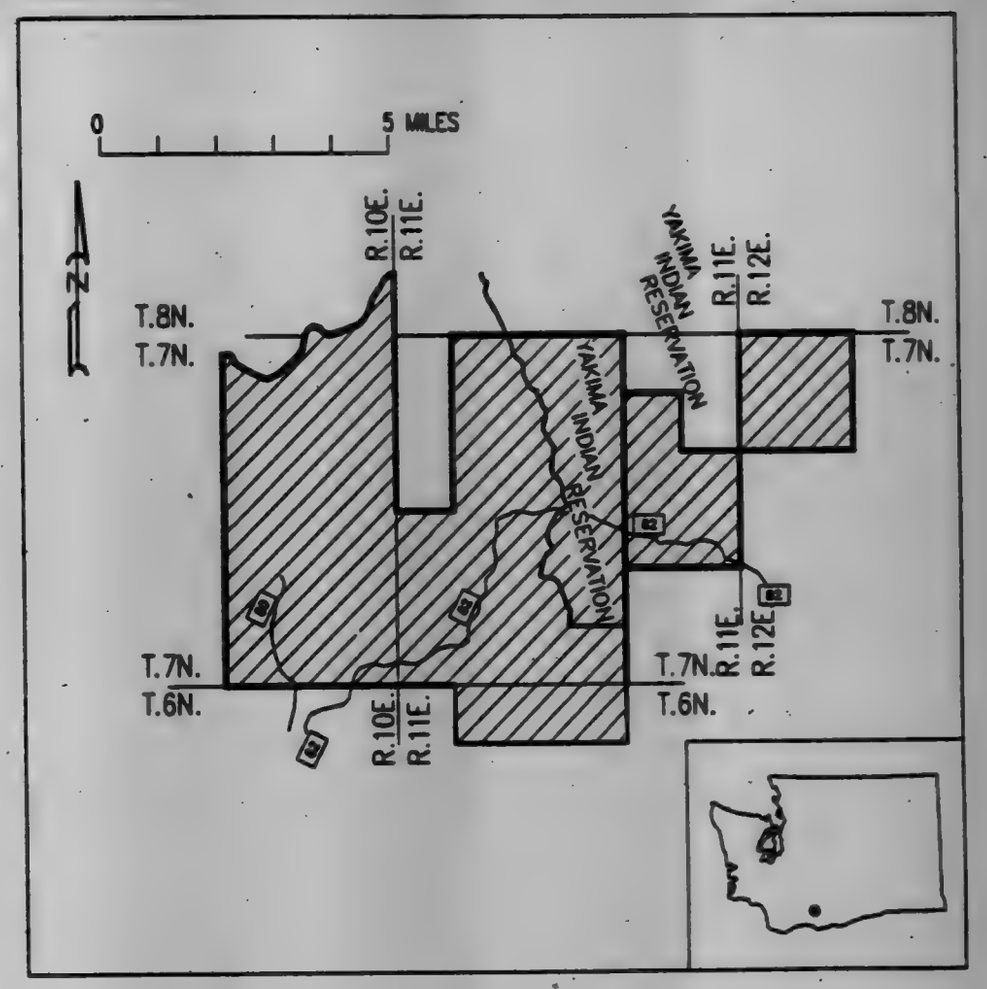

GP-3

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of GP-4 taken Solely From Forest Visitor's Map; Gifford Pinchot National Forest, Washington 1984.

Skamania and Klickitat Counties

T. 6 N., R. 9 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 6 N., R. 8 E.: Willamette Meridian
Secs. 23; 24; 25; 26; 34; 35; and 36.

T. 5 N., R. 6 E.: Willamette Meridian
Secs. 1; 2; 10; 11; 12; 13; 14; 15; 21; 22; 27; 28; 32; 33; 34; 35; and 36.

T. 5 N., R. 7½ E.: Willamette Meridian
Secs. 12; 13; 24; 25; and 36.

T. 5 N., R. 7 E.: Willamette Meridian
Secs. 7; 13; 15; 17; 18; 19; 20; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 5 N., R. 8 E.: Willamette Meridian
Secs. 1; 2; 3; 7; 8; 9; 10; 11; 12; 15; 16; 17; 18; 19; 20; 21; 22; 28; 29; 30; 31; 32; 33; and 35.

T. 5 N., R. 9 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 4 N., R. 7½ E.: Willamette Meridian
Secs. 1; 12; 13; 24; 25; and 36.

T. 5 N., R. 10 E.: Willamette Meridian
Secs. 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; and 32.

T. 4 N., R. 6 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 4 N., R. 7 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 4 N., R. 8 E.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 4 N., R. 9 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 15; 16; 17; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 3 N., R. 5 E.: Willamette Meridian
Secs. 1; 2; 11; 12; 13; 14; 23; 24; 25; 26; 35; and 36.

T. 3 N., R. 6 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; and 35.

T. 3 N., R. 7 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 35; and 36.

T. 3 N., R. 8 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 3 N., R. 9 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 2 N., R. 5 E.: Willamette Meridian
Secs. 1; 2; 11; 12; 13; 14; 23; 24; 25; 26; 35; and 36.

T. 2 N., R. 6 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 2 N., R. 7 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 15; 16; 17; 18; and 19.

T. 1 N., R. 5 E.: Willamette Meridian
Secs. 1; 2; 11; and 12.

T. 1 N., R. 6 E.: Willamette Meridian
Secs. 5; and 6.

Excepting any of the above area lying within the Indian Heaven Wilderness, Trapper Creek Wilderness areas, and the Columbia River.

BILLING CODE 4310-86-M

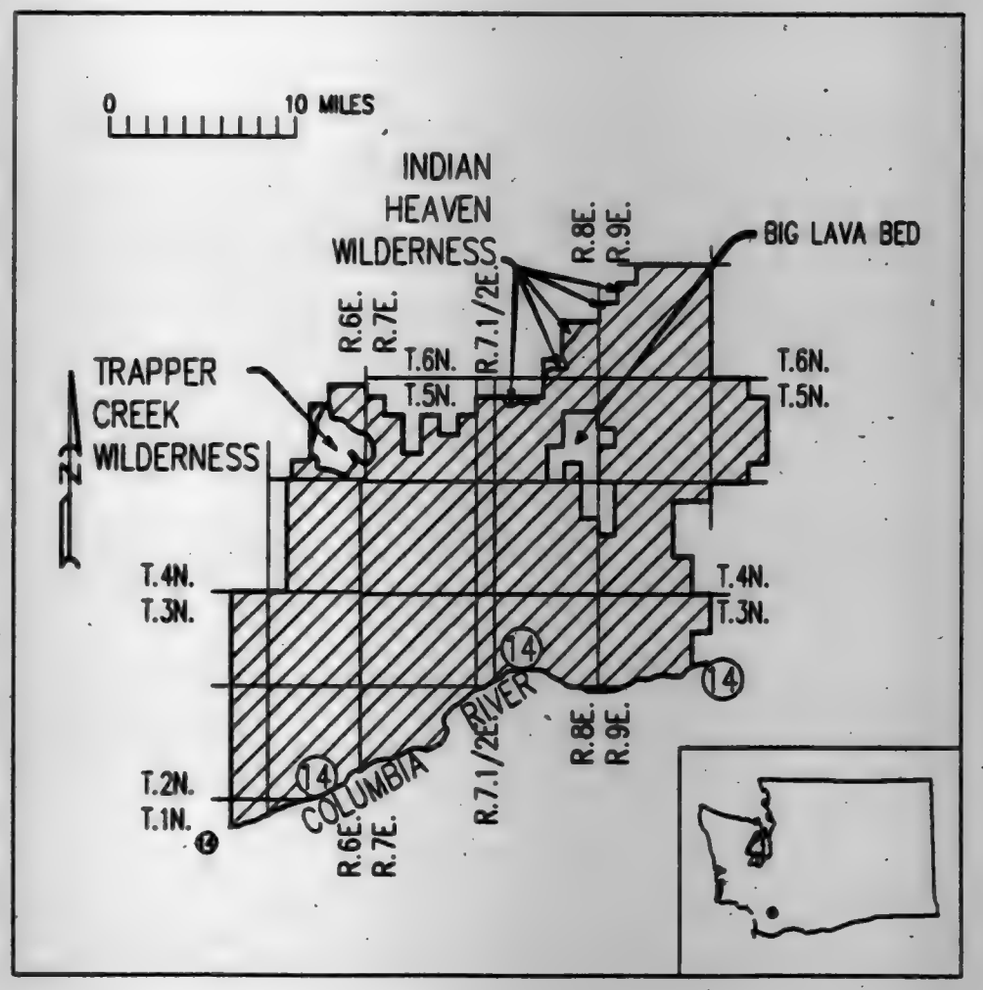

GP-4

BILLING CODE 4310-86-C

Description of GP-5 taken Solely From Forest Visitor's Map; Gifford Pinchot National Forest, Washington 1984.

Lewis, Skamania, and Yakima Counties

T. 11 N., R. 10 E.: Willamette Meridian
Secs. 25; 26; 27; 34; 35; and 36.

T. 11 N., R. 11 E.: Willamette Meridian
Secs. 30; and 31.

T. 10 N., R. 10 E.: Willamette Meridian
Secs. 1; 2; 3; 10; and 11.

T. 10 N., R. 11 E.: Willamette Meridian
Sec. 6.

T. 10 N., R. 11 E.: Willamette Meridian
Sec. 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 20; 21; 22; 23; 24; 25; 26; 27; 28; 33; 34; 35; and 36.

T. 9 N., R. 11 E.: Willamette Meridian
Sec. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 16; 24; 25; and 36.

T. 8 N., R. 11 E.: Willamette Meridian
Sec. 1; 2; 11; 12; 13; 14; 22; 23; 24; 25; 26; 27; 28; and 29.

T. 10 N., R. 12 E.: Willamette Meridian
Sec. 18; 19; 30; and 31.

T. 9 N., R. 12 E.: Willamette Meridian
Sec. 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 8 N., R. 12 E.: Willamette Meridian
Sec. 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; and 30.

Excepting any of the above area lying within the William O. Douglas Goat Rocks, and Mount Adams Wilderness areas.

BILLING CODE 4310-86-M

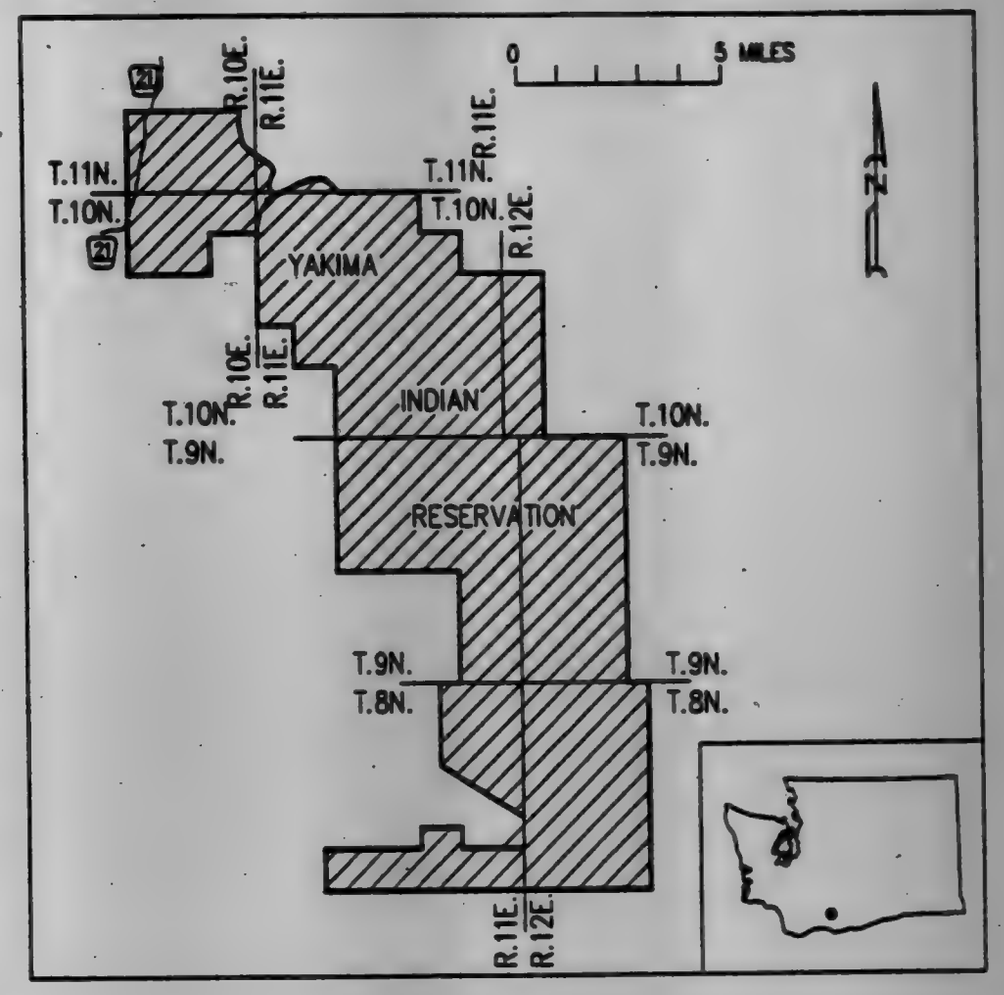

GP-5

BILLING CODE 4310-86-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of GP-6 Taken Solely From Forest Visitor's Map; Gifford Pinchot National Forest, Washington 1984.

Cowlitz and Skamania Counties

T. 8 N., R. 4 E.: Willamette Meridian
Secs. 11; 14; 15; 16; 17; 18; 19; 20; 21; 28; 33; 34; 34; and 36.

T. 7 N., R. 4 E.: Willamette Meridian
Secs. 1; 2; 11; 12; and 14.

T. 7 N., R. 5 E.: Willamette Meridian
Secs. 6; and 7.

T. 8 N., R. 5 E.: Willamette Meridian
Sec. 31.

Excepting any of the above area lying within the Mt. St. Helens National Volcanic Monument.

BILLING CODE 4310-55-M

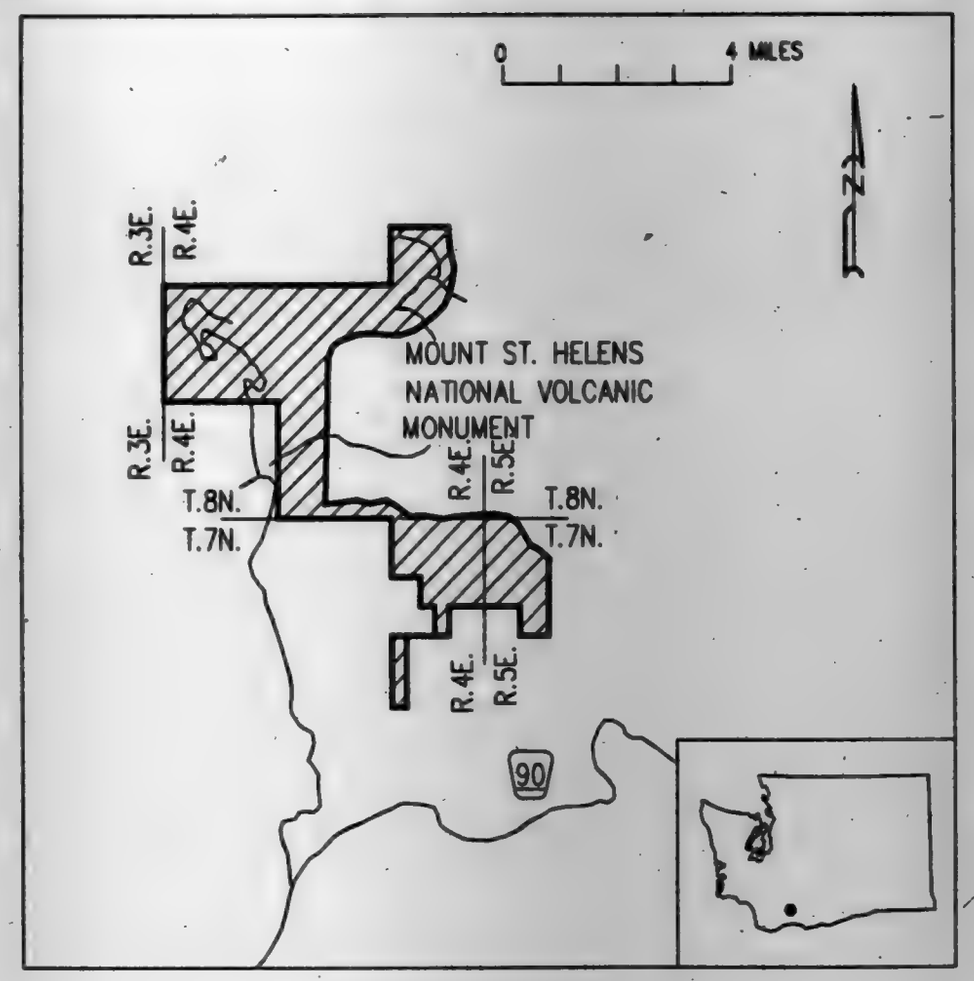

GP-6

BILLING CODE 4310-55-C

Description of OK-1 taken Solely From Forest Visitor's Map; Okanogan National Forest, Washington 1987.

Skagit and Whatcom Counties

T. 38 N., R. 15 E.: Willamette Meridan
Sec. 36.

T. 38 N., R. 16 E.: Willamette Meridan
Secs. 35; and 36.

T. 38 N., R. 17 E.: Willamette Meridan
Secs. 17; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 37 N., R. 15 E.: Willamette Meridan
Secs. 1; 12; and 13.

T. 37 N., R. 17 E.: Willamette Meridan
Secs. 5; 6; and 7.

T. 36 N., R. 16 E.: Willamette Meridan
Secs. 1; 2; 3; 4; 5; 8; 9; 10; 11; and 12.

T. 37 N., R. 16 E.: Willamette Meridan
Secs. 1; 2; 3; 5; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 20; 21; 22; 25; 26; 27; 28; 32; 33; 34; 35; and 36.

Excepting any of the above area lying within the Pasayten Wilderness Area.

BILLING CODE 4310-55-M

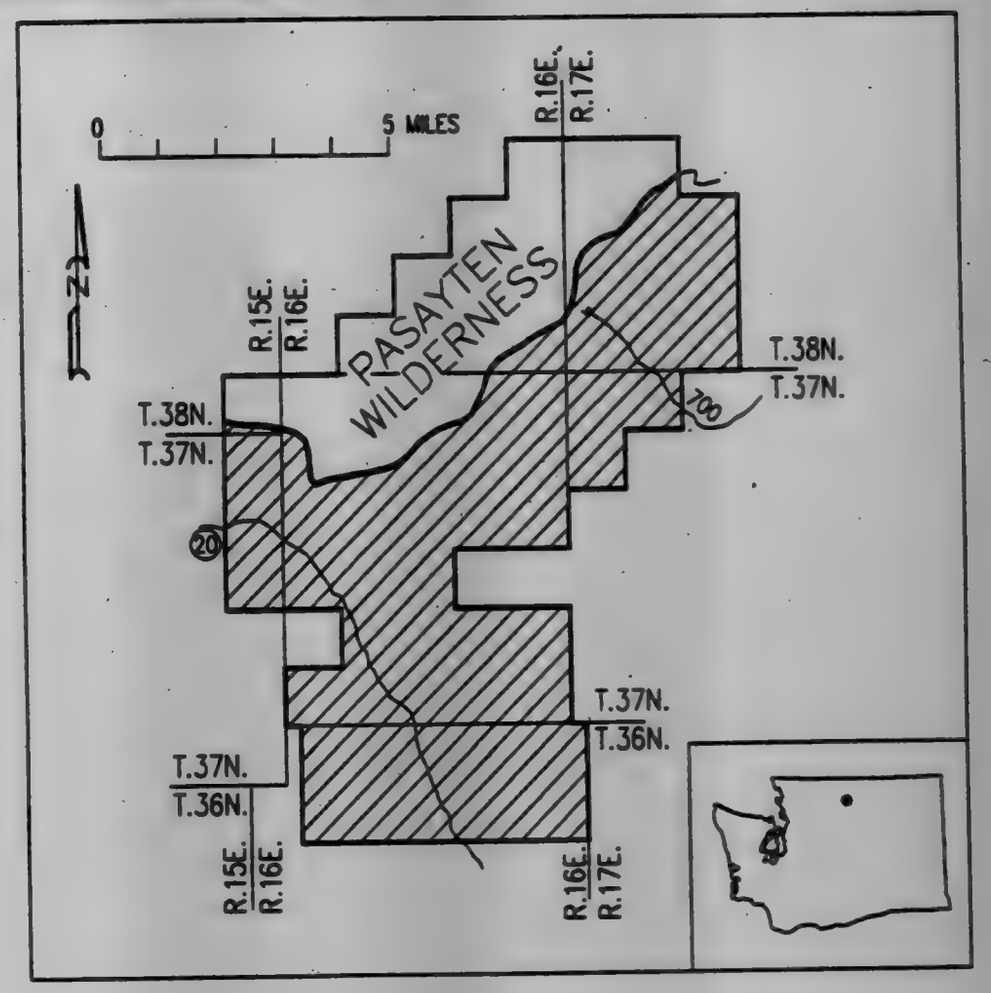

OK-1

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of OK-2 taken Solely From Forest Visitor's Map; Okanogan National Forest, Washington 1987.

Skagit, Okanogan, and Chelan Counties

T. 36 N., R. 18 E.: Willamette Meridian Secs. 25; 26; 35; and 36.

T. 35 N., R. 18 E.: Willamette Meridian Secs. 1; 2; 11; and 12.

T. 36 N., R. 17 E.: Willamette Meridian Secs. 29; 30; 31; 32; and 33.

T. 35 N., R. 17 E.: Willamette Meridian Secs. 4; 5; 6; 7; 8; and 9.

Excepting any of the above area lying within the North Cascades National Park.

BILLING CODE 4310-55-M

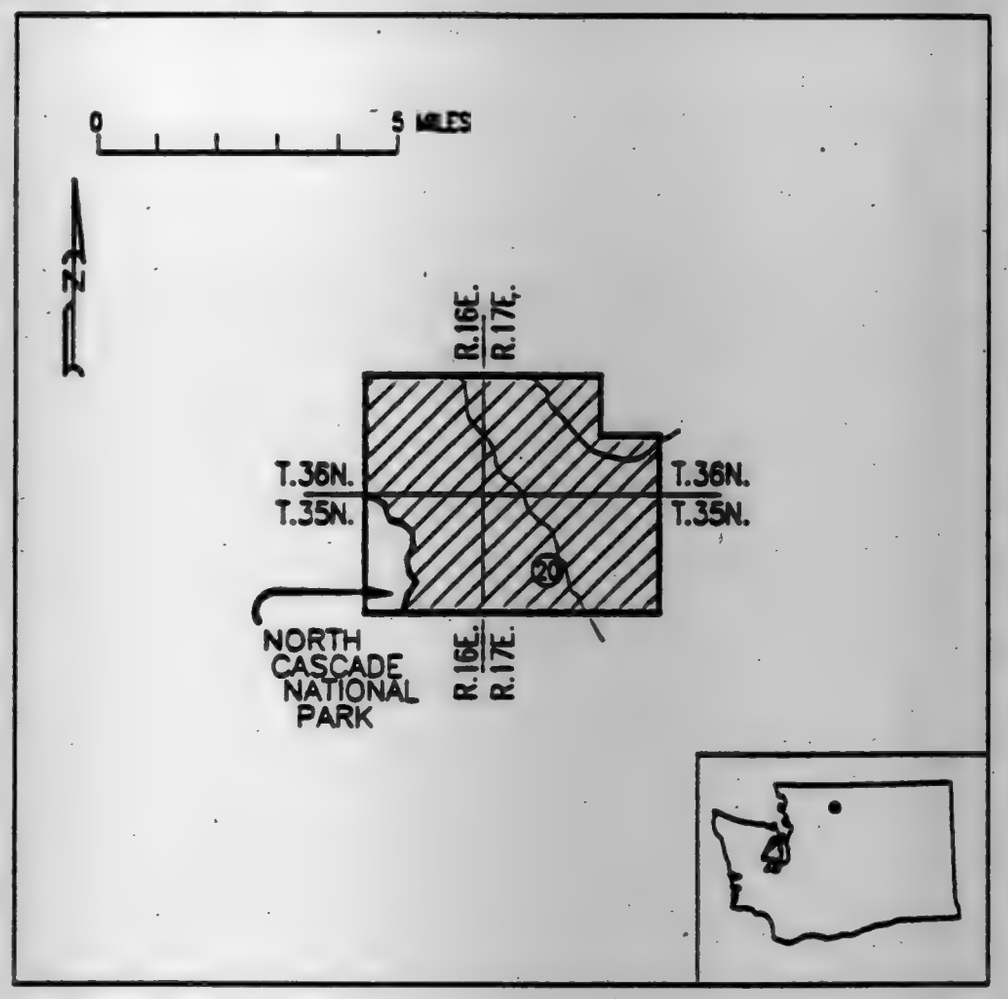

OK-2

BILLING CODE 4310-55-C

Description of OK-3 Taken Solely From Forest Visitor's Map; Okanogan National Forest, Washington 1987.

Okanogan County

T. 37 N., R. 19 E.: Willamette Meridian Sec. 19; 20; 21; 22; 23; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 37 N., R. 18 E.: Willamette Meridian Secs. 25; 26; 27; 33; 34; 35; and 36.

T. 36 N., R. 19 E.: Willamette Meridian Secs. 3; 4; 5; 6; 7; 8, excepting private ownership; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 36 N., R. 18 E.: Willamette Meridian Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 35 N., R. 19 E.: Willamette Meridian Secs. 3; 4; 5; 6; 8; 9; and 10.

T. 35 N., R. 18 E.: Willamette Meridian Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; and 10.

Excepting any of the above area lying within the Pasayten Wilderness Area.

BILLING CODE 4310-55-M

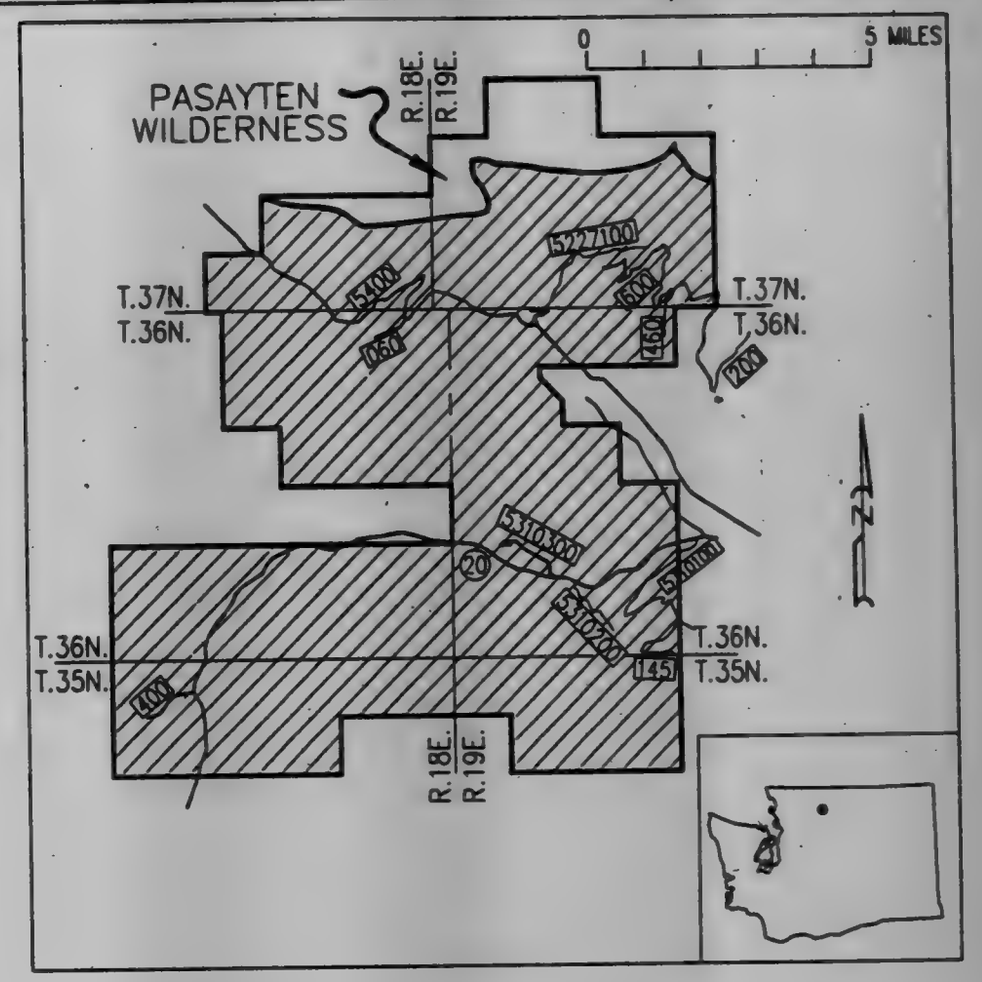

OK-3

BILLING CODE 4310-55-C

Description of OK–4 taken Solely From Forest Visitor's Map; Okanogan National Forest, Washington 1987.

Okanogan County

T. 33 N., R. 19 E.: Willamette Meridian Secs. 1; 2; 10; 11; 12; 13; 14; 15; 23; 24; and 25.

T. 33 N., R. 20 E.: Willamette Meridian Secs. 6; 7; 8; 17; 18; 19; 20; and 30.

Excepting any of the above area lying within the Lake Chelan-Sawtooth Wilderness.

BILLING CODE 4310-55-M

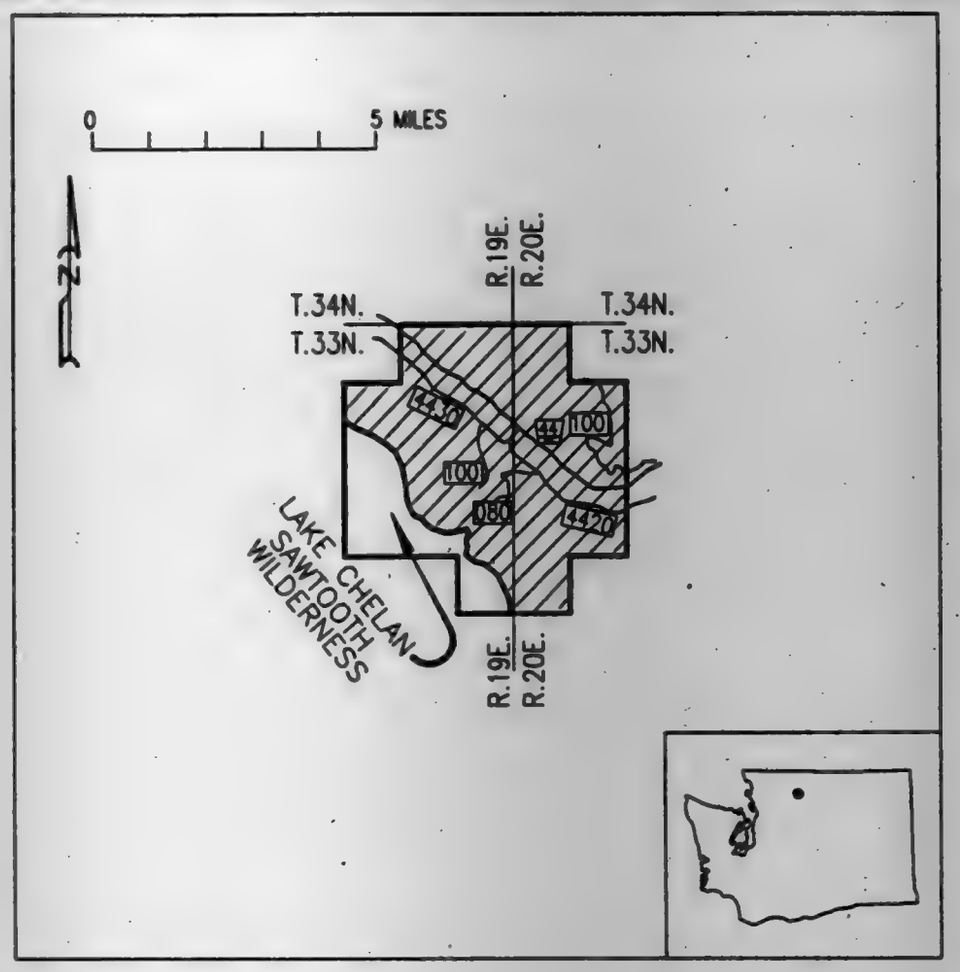

OK–4

BILLING CODE 4310-55-C

Description of OK–5 taken Solely From Forest Visitor's Map; Okanogan National Forest, Washington 1987.

Okanogan County

T. 33 N., R. 21 E.: Willamette Meridian Secs. 22; 23; Sec. 24 S ½ and NW ¼; 25; 26; 27; 34; 35; and 36.

T. 33 N., R. 22 E.: Willamette Meridian Secs. 29; 30; 31; and 32.

BILLING CODE 4310-55-M

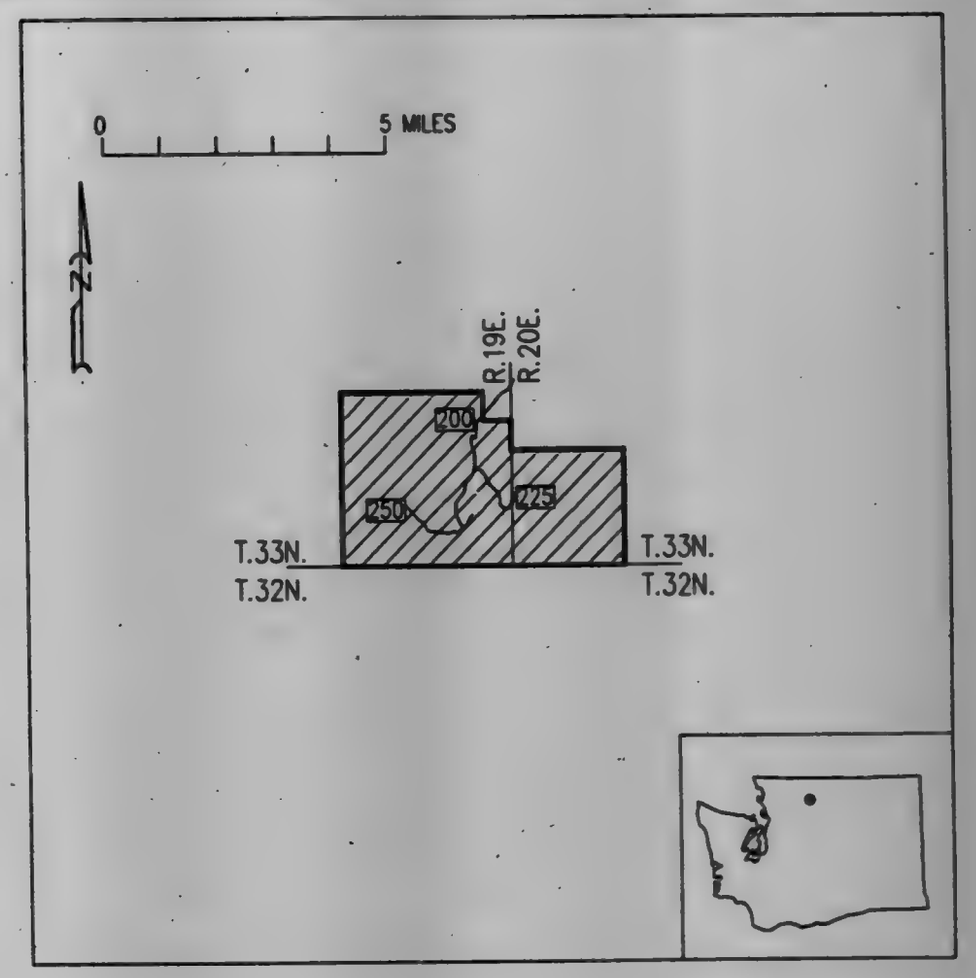

OK–5

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

VOL 56 ISS 87 MY 6 1991 UMI

Description of OK-6 taken Solely From Forest Visitor's Map; Okanogan National Forest, Washington 1987.

Okanogan County

T. 36 N., R. 20 E.: Willamette Meridian
Secs. 16; 20; 21; 22; 27; 28; 29; 32; 33; and 34.

T. 35 N., R. 20 E.: Willamette Meridian
Sec. 4 N ½ of NW ¼ and NW ¼ of NE ¼.

Excepting all private and state lands.

BILLING CODE 4310-33-M

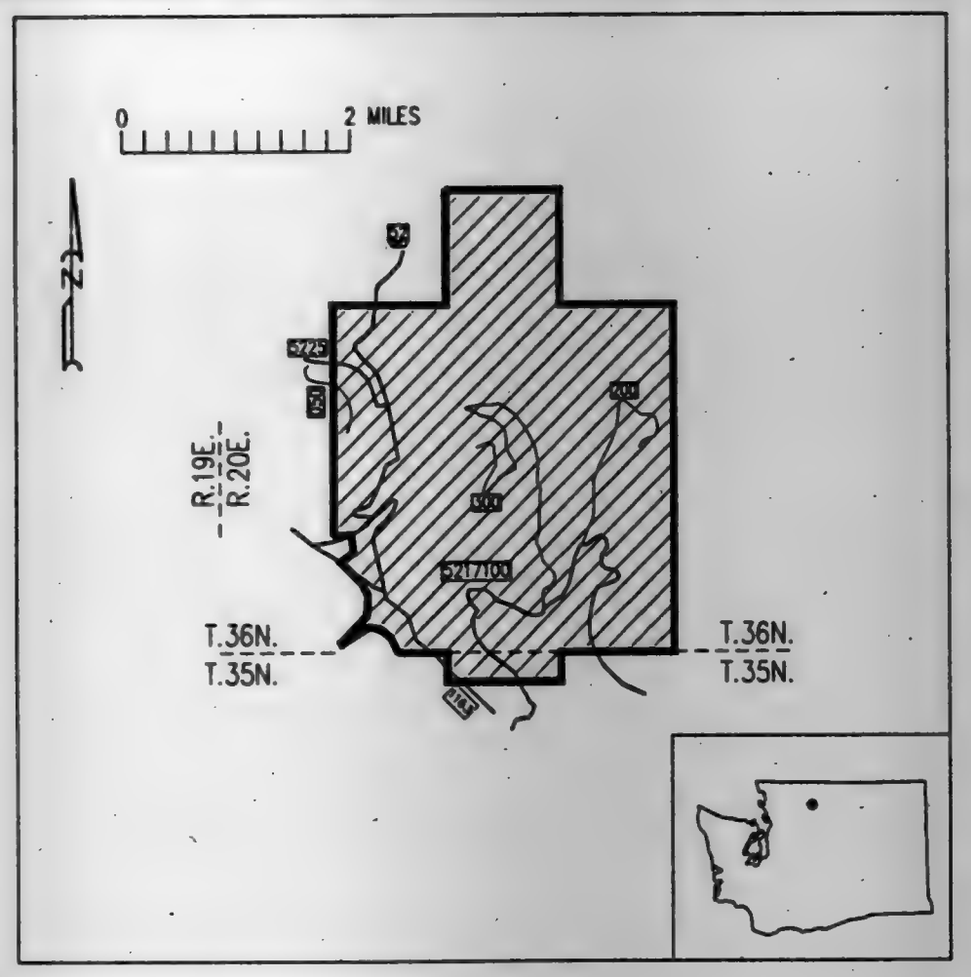

OK-6

BILLING CODE 4310-33-C

Description of OLY-1 taken Solely From Forest Visitor's Map; Olympic National Forest, Washington 1987.

Clallam, Jefferson, Grays Harbor, and Mason Counties

T. 30 N., R. 11 W.: Willamette Meridian
Secs. 7; 8; 9; 10; 11; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 32; 33; 34; and 35.

T. 30 N., R. 10 W.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 10; 15; 16; 17; 18; 19; 20; 21; 22; 23; 26; 33; 34; and 35.

T. 29 N., R. 10 W.: Willamette Meridian
Secs. 1; 2; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 28 N., R. 13 W.: Willamette Meridian
Secs. 1; 2; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; and 36.

T. 28 N., R. 12 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 15; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 28 N., R. 11 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; and 18.

T. 27 N., R. 12 W.: Willamette Meridian
Secs. 4; 5; 6; 8; 9; 10; 11; 13; 14; 15; 16; 22; 23; 24; 25; and 26.

T. 27 N., R. 11 W.: Willamette Meridian
Secs. 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 27 N., R. 10 W.: Willamette Meridian
Secs. 19; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 26 N., R. 11 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 33; 34; 35; and 36.

T. 26 N., R. 10 W.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 26 N., R. 9 W.: Willamette Meridian
Secs. 19; 29; 30; 31; and 32.

T. 25 N., R. 11 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 33; 34; 35; and 36.

T. 25 N., R. 10 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 14; 15; 16; 17; 18; 19; 20; 21; 29; 30; 31; 32; and 36.

T. 25 N., R. 9 W.: Willamette Meridian
Secs. 6; 31; and 32.

T. 24½ N., R. 10 W.: Willamette Meridian
Secs. 33; 34; 35; and 36.

T. 24 N., R. 10½ W.: Willamette Meridian
Secs. 12; 13; 14; 23; 24; 25; 26; 35; and 36.

T. 24½ N., R. 9 W.: Willamette Meridian
Secs. 31; 32; 33; and 34.

T. 24 N., R. 10 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 24 N., R. 9 W.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 15; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; 33; and 36.

T. 23 N., R. 10 W.: Willamette Meridian
Secs. 1; 2; 3; 10; 11; 23; and 24.

T. 23 N., R. 9 W.: Willamette Meridian
Secs. 1; 2; 6; 9; 10; 11; 15; 16; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 23 N., R. 8 W.: Willamette Meridian
Secs. 10; 11; 12; 13; 14; 15; 16; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 23 N., R. 7 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 30; 31; 35; and 36.

T. 23 N., R. 6 W.: Willamette Meridian
Secs. 1; 2; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 29; 30; 31; and 32.

T. 22 N., R. 10 W.: Willamette Meridian
Secs. 12; 13; 14; 23; 24; 25; 26; and 36.

T. 22 N., R. 9 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 34; 35; and 36.

T. 22 N., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 22 N., R. 7 W.: Willamette Meridian
Secs. 1; 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; 30; and 32.

T. 22 N., R. 6 W.: Willamette Meridian
Secs. 5; 6; 9; 10; 11; 14; 15; 16; 20; 21; 22; 26; 27; 28; 29; 32; 33; and 34.

T. 21 N., R. 9 W.: Willamette Meridian
Secs. 1; 2; 11; 12; and 13.

T. 25 N., R. 4 W.: Willamette Meridian
Secs. 25; 26; 27; 28; 33; 34; 35; and 36.

T. 21 N., R. 8 W.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 16; 17; and 18.

T. 23 N., R. 5 W.: Willamette Meridian
Secs. 1; 3; 5; 6; 7; 8; 9; 10; 11; 12; 16; 17; 18; 19; 20; 21; 22; and 23.

T. 23 N., R. 4 W.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; and 8.

T. 24 N., R. 8 W.: Willamette Meridian
Sec. 28; 29; 30; 31; 32; and 33.

T. 24 N., R. 4 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 24 N., R. 3 W.: Willamette Meridian
Secs. 5; 6; and 7.

T. 25 N., R. 3 W.: Willamette Meridian
Secs. 1; 2; 3; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 26; 29; 30; 31; 32; and 33.

T. 26 N., R. 3 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 10; 11; 12; 13; 14; 15; 16; 17; 19; 20; 21; 22; 23; 24; 26; 33; 34; and 35.

T. 26 N., R. 2 W.: Willamette Meridian
Secs. 3; 4; 5; 6; 7; 8; 9; 10; 17; 18; 19; and 20.

T. 27 N., R. 2 W.: Willamette Meridian
Secs. 19; 20; 21; 28; 29; 30; 31; 32; 33; and 34.

T. 27 N., R. 3 W.: Willamette Meridian
Secs. 2; 3; 4; 10; 11; 14; 15; 22; 23; 24; 25; 26; 27; 28; 29; 33; 34; 35; and 36.

T. 28 N., R. 3 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 15; 16; 17; 18; 19; 20; 21; 27; 28; 29; 30; 32; 33; 34; and 35.

T. 28 N., R. 4 W.: Willamette Meridian
Secs. 1; 4; 5; 9; 12; 13; 23; 24; 25; 26; 35; and 36.

T. 28 N., R. 2 W.: Willamette Meridian
Secs. 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; and 21.

T. 29 N., R. 2 W.: Willamette Meridian
Secs. 19; 20; 29; 30; 31; 32; and 33.

T. 29 N., R. 3 W.: Willamette Meridian
Secs. 19; 20; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 29 N., R. 4 W.: Willamette Meridian
Secs. 19; 20; 21; 24; 25; 26; 27; 28; 29; 30; 32; 33; 34; 35; and 36.

T. 30 N., R. 7 W.: Willamette Meridian
Secs. 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 30 N., R. 8 W.: Willamette Meridian
Secs. 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

Excepting any of the above area lying within the Colonel Bob Wilderness, Buckhorn Wilderness, The Brothers Wilderness, Mt. Skokomish Wilderness, Wonder Mountain Wilderness and Olympic National Park areas.

BILLING CODE 4310-33-M

VOL 56 ISS 87 MY 6 1991 UMI

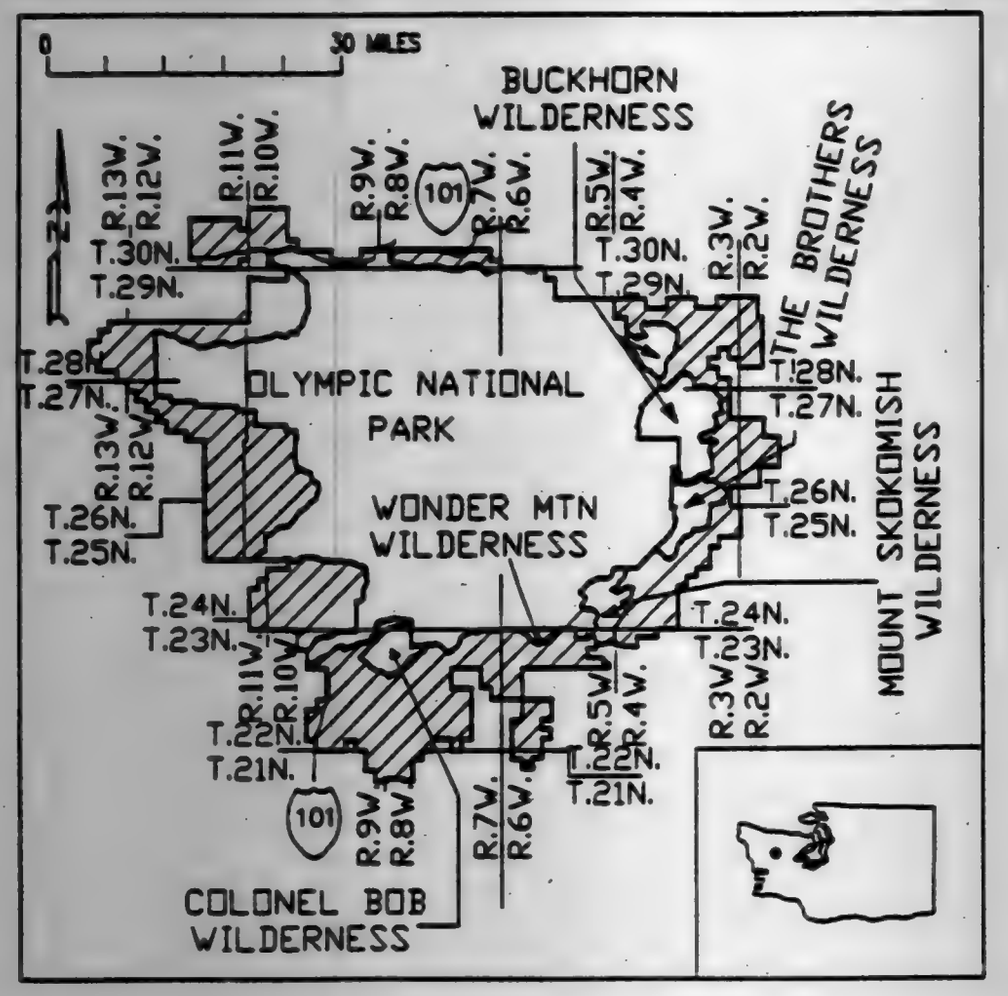

BILLING CODE 4310-05-C

OLY-1

Description of OLY-2 taken Solely From Forest Visitor's Map; Olympic National Forest, Washington 1987.

Clallam County

T. 31 N., R. 13 W.: Willamette Meridian Sec. 36.

T. 31 N., R. 12 W.: Willamette Meridian Secs. 31; 32; and 33.

T. 30 N., R. 13 W.: Willamette Meridian Secs. 1; 12; and 13.

T. 30 N., R. 12 W.: Willamette Meridian Secs. 4; 5; 6; 7; 8; 9; 16; and 17.

BILLING CODE 4310-05-M

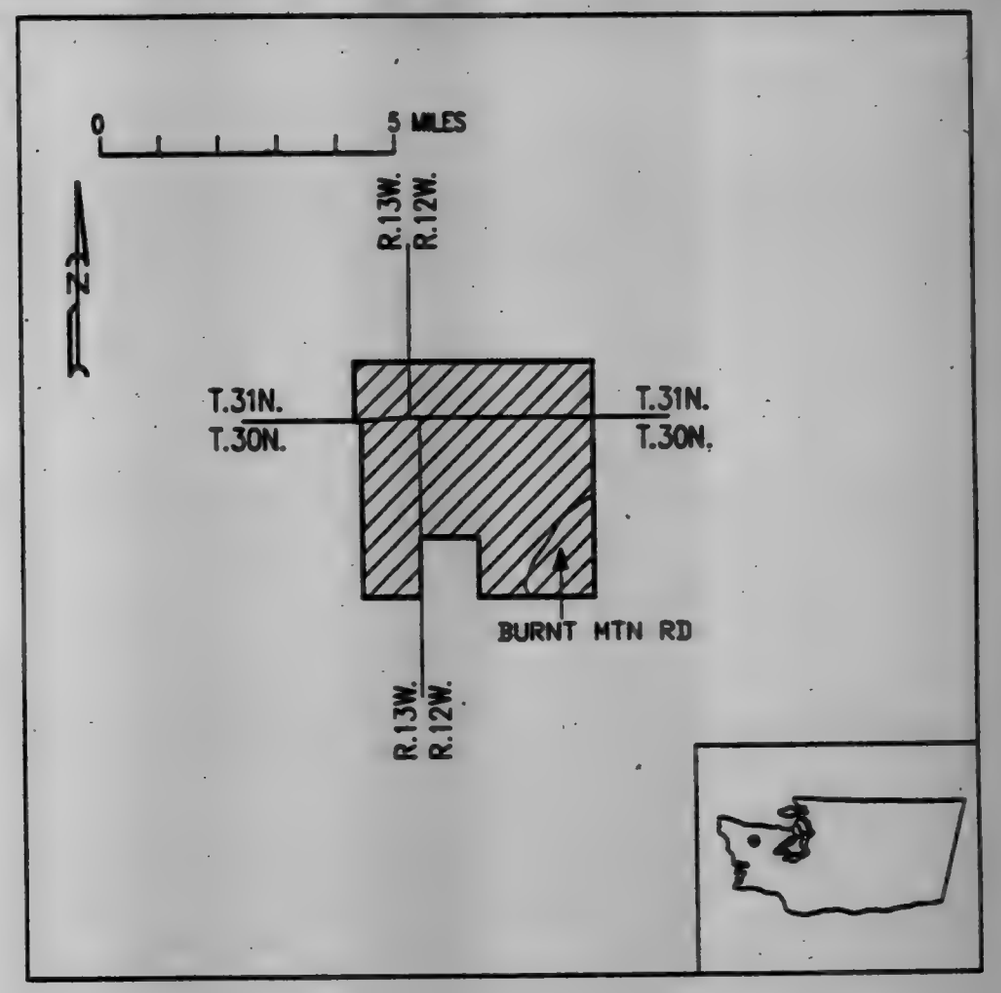

BILLING CODE 4310-05-C

OLY-2

VOL 56 ISS 87 MY 6 1991 UMI

Description of OLY-3 taken Solely From Forest Visitor's Map; Olympic National Forest, Washington 1987.

Clallam County

T. 30 N., R. 13 W.: Willamette Meridian Secs. 1; 2; 3; 10; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; and 27.

T. 30 N., R. 12 W.: Willamette Meridian Secs. 7; 8; 17; 18; 19; 20; 29; and 30.

BILLING CODE 4310-55-M

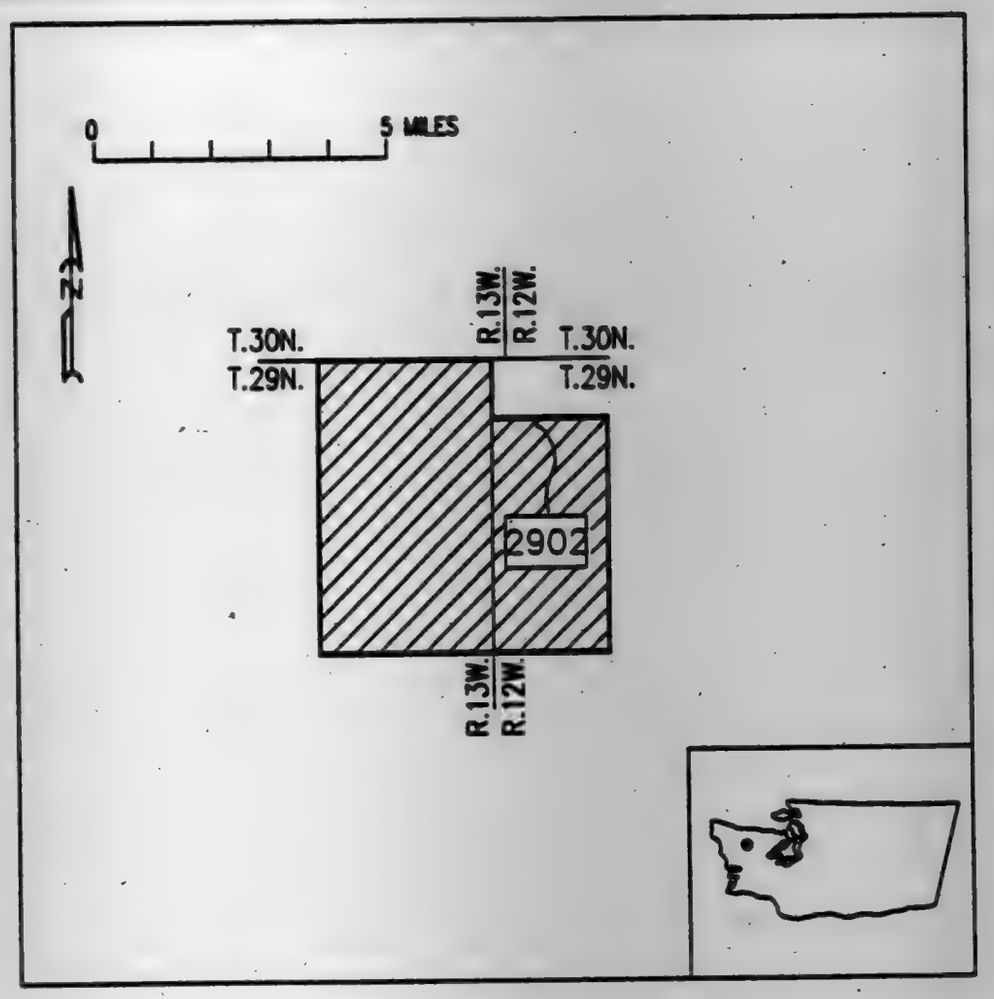

OLY-3

BILLING CODE 4310-55-C

Description of SQN-1 taken Solely From Forest Visitor's Map; Mt. Baker-Snoqualmie National Forest, Washington 1988.

Whatcom County

T. 41 N., R. 7 E.: Willamette Meridian, Secs. 32; 33; 34; 35; and 36.

T. 40 N., R. 7 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 41 N., R. 8 E.: Willamette Meridian, Secs. 31; 32; 33; and 34.

T. 40 N., R. 9 E.: Willamette Meridian, Secs. 16; 19; 20; 21; 29; 30; 31; 32; 33; and 34.

T. 40 N., R. 8 E.: Willamette Meridian, Secs. 3; 4; 5; 6; 7; 8; 9; 10; 15; 16; 17; 18; 19; 20; 21; 24; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 39 N., R. 7 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 5; 6; 9; 10; 11; 12; 14; 15; and 16.

T. 39 N., R. 8 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 15; 16; 17; 18; 20; 21; and 22.

T. 39 N., R. 9 E.: Willamette Meridian, Secs. 3; 4; 5; 6; 7; 8; 9; 10; 11; 14; 15; 16; and 17.

Excepting any of the above area lying within the Mt. Baker Wilderness area and the North Cascades National Park.

BILLING CODE 4310-55-M

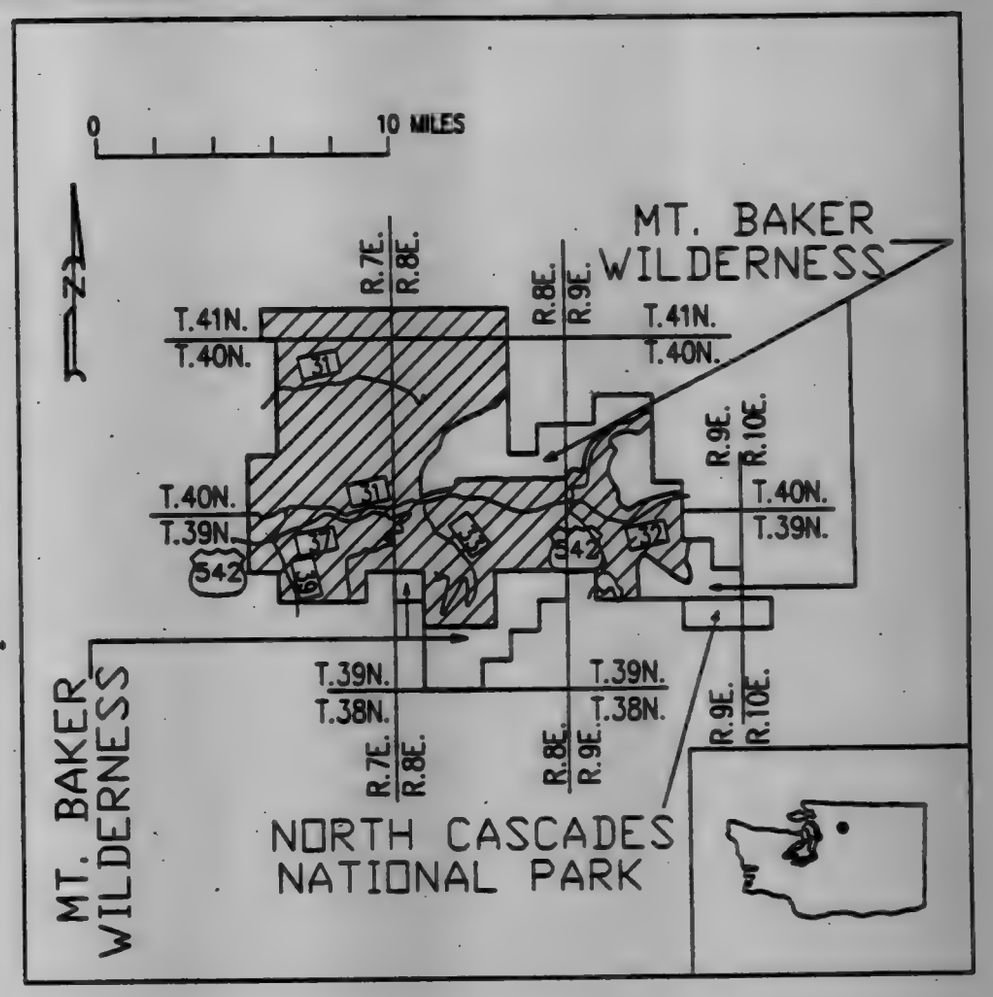

SQN-1

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of SQN–2 Taken Solely From Forest Visitor's Map; Mt. Baker-Snoqualmie National Forest, Washington 1988.

Whatcom and Skagit Counties

T. 38 N., R. 6 E.: Willamette Meridian, Secs. 13; and 36.

T. 38 N., R. 7 E.: Willamette Meridian, Secs. 16; 17; 18; 19; 20; 28; 29; 30; 31; 32; 33; and 34.

T. 38 N., R. 9 E.: Willamette Meridian, Secs. 8; 9; 13; 14; 15; 16; 17; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 38 N., R. 10 E.: Willamette Meridian, Secs. 18; 19; 30; and 31.

T. 37 N., R. 6 E.: Willamette Meridian, Sec. 1.

T. 37 N., R. 7 E.: Willamette Meridian, Secs. 2; 3; 4; 5; 6; 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 33; 34; 35; and 36.

T. 38 N., R. 8 E.: Willamette Meridian, Secs. 23; 24; 25; 26; 33; 34; 35; and 36.

T. 37 N., R. 8 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 37 N., R. 9 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 36 N., R. 6 E.: Willamette Meridian, Sec. 5.

T. 36 N., R. 7 E.: Willamette Meridian, Secs. 1; 2; and 3.

T. 36 N., R. 9 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 5; 8; 9; 10; 11; 12; 13; 14; 15; 22; 23; and 24.

T. 36 N., R. 10 E.: Willamette Meridian, Secs. 5; 6; 7; 8; 17; 18; 19; 20; 21; 27; 28; 29; and 30.

Excepting any of the above area lying within the Mt. Baker Wilderness, Noisy-Diobsud Wilderness, and North Cascade National Park.

BILLING CODE 4310-55-M

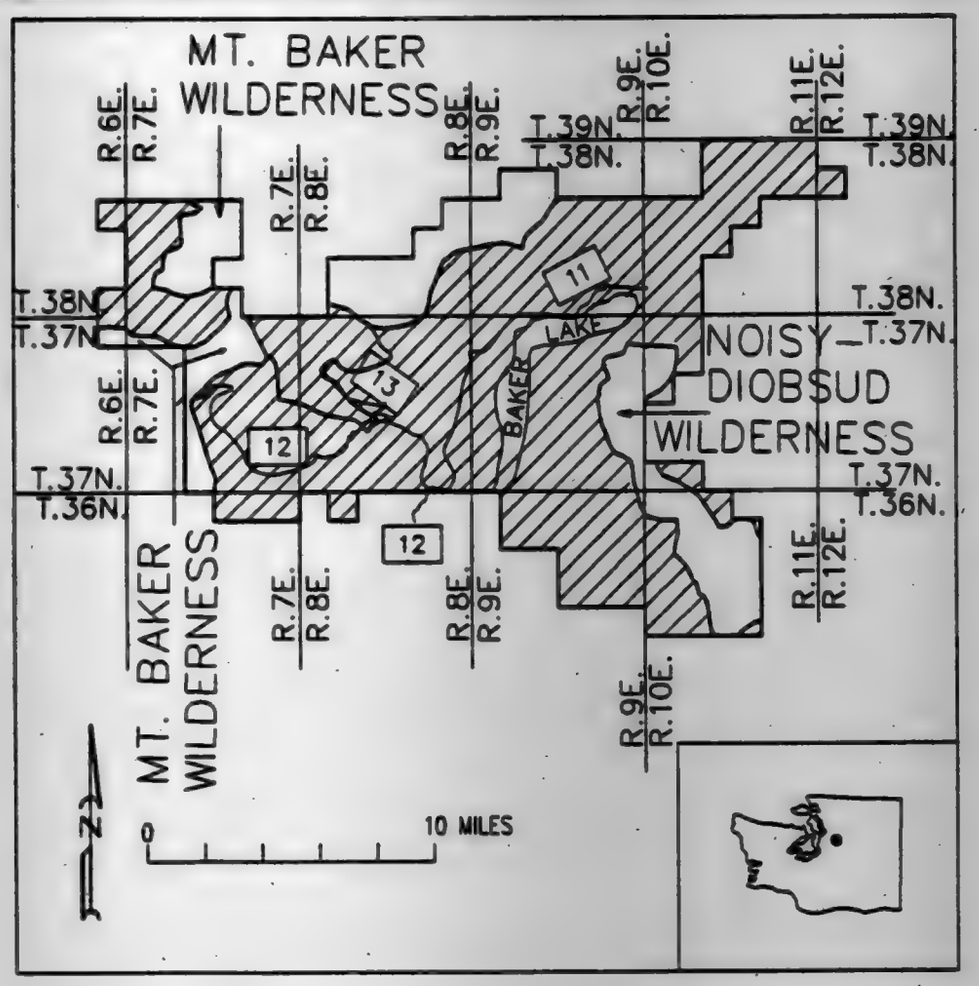

SQN–2

BILLING CODE 4310-55-C

Description of SQN–3 Taken Solely From Forest Visitor's Map; Mt. Baker-Snoqualmie National Forest, Washington 1988.

Skagit County

T. 36 N., R. 11 E.: Willamette Meridian, Secs. 23; 26; 27; 33; 34; 35; and 36.

T. 35 N., R. 12 E.: Willamette Meridian, Secs. 5; 6; 7; 8; 9; 10; 11; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 34 N., R. 10 E.: Willamette Meridian, Secs. 12; 13; 24; 25; 26; 27; 34; 35; and 36.

T. 34 N., R. 11 E.: Willamette Meridian, Secs. 5; 6; 7; 8; 15; 16; 17; 18; 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 34; and 35.

T. 34 N., R. 12 E.: Willamette Meridian, Secs. 1; 2; 3; 10; 11; and 12.

T. 34 N., R. 13 E.: Willamette Meridian, Secs. 4; 5; 6; 7; 8; and 9.

Excepting any of the above area lying within the North Cascade National Park and the Glacier Peak Wilderness area.

BILLING CODE 4310-55-M

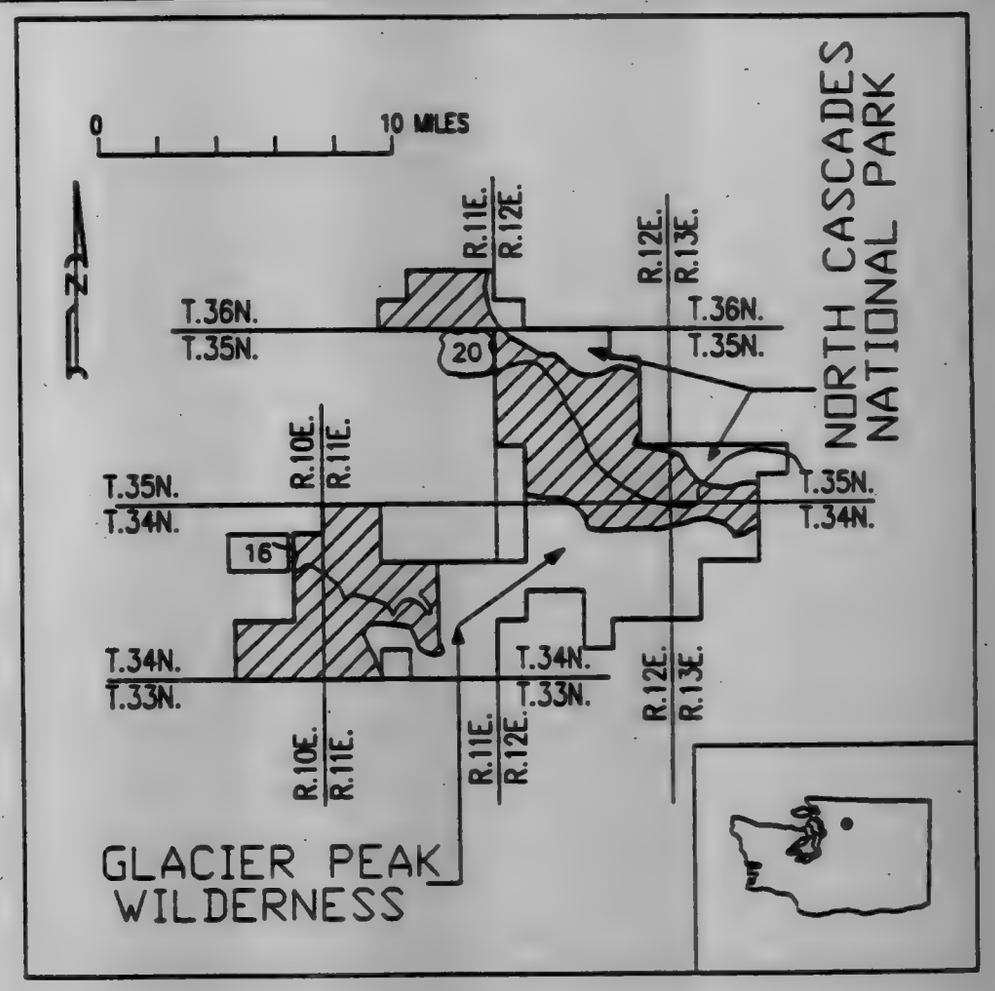

SQN–3

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of SQN-4 Taken Solely From Forest Visitor's Map; Mt. Baker-Snoqualmie National Forest, Washington 1988.

Skagit and Snohomish Counties

T. 35 N., R. 7 E.: Willamette Meridian, Secs. 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 34 N., R. 7 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; and 34.

T. 34 N., R. 8 E.: Willamette Meridian, Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 34 N., R. 9 E.: Willamette Meridian, Secs. 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 33 N., R. 8 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 32 N., R. 8 E.: Willamette Meridian, Secs. 1; 3; 4; 5; and 6.

T. 33 N., R. 9 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 26; 28; 29; 30; 31; 32; 33; and 35.

T. 32 N., R. 9 E.: Willamette Meridian, Sec. 4.

BILLING CODE 4310-55-M

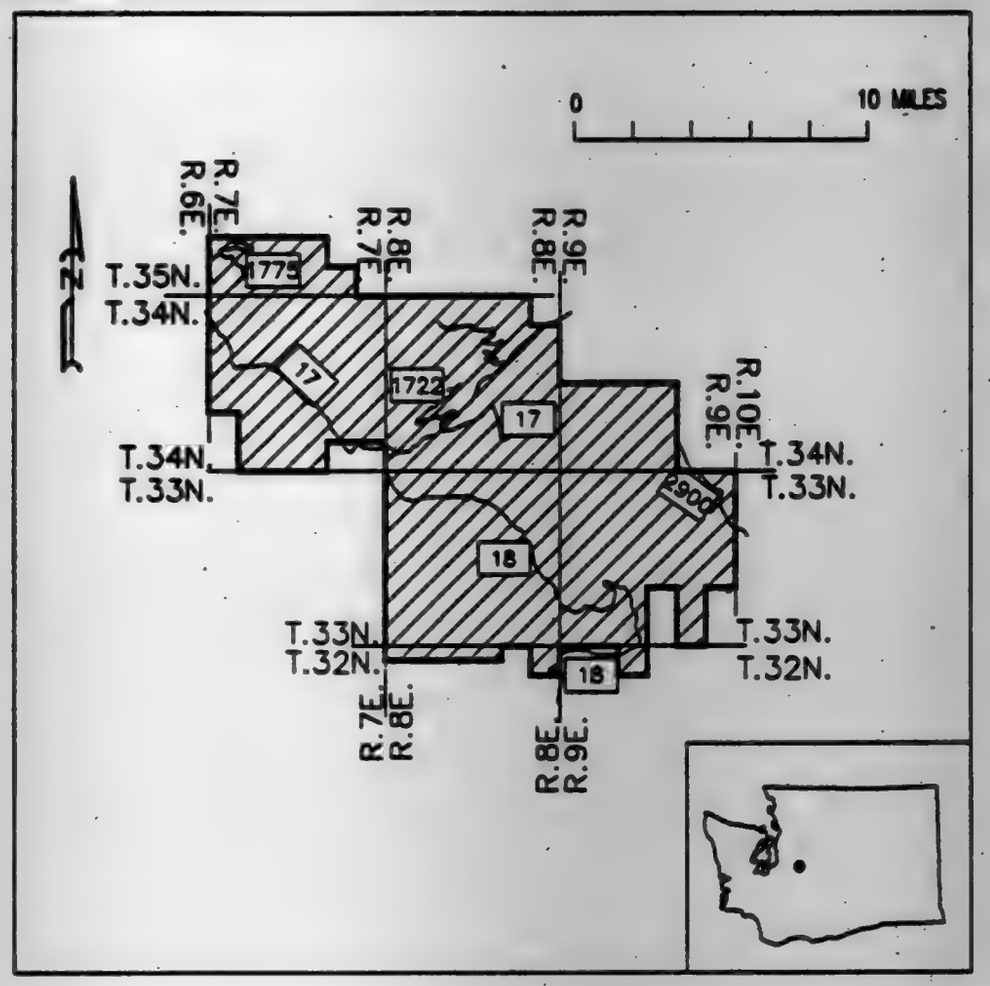

SQN-4

BILLING CODE 4310-55-C

Description of SQN-5 Taken Solely From Forest Visitor's Map; Mt. Baker-Snoqualmie National Forest, Washington 1988.

Skagit, Snohomish, and Chelan Counties

T. 32 N., R. 10 E.: Willamette Meridian, Secs. 1; 2; 3; 10; 11; 12; 13; 14; 23; 24; 25; and 26.

T. 32 N., R. 11 E.: Willamette Meridian, Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 33; 34; 35; and 36.

T. 31 N., R. 11 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 10; 11; and 12.

T. 32 N., R. 12 E.: Willamette Meridian, Secs. 7; 8; 9; 10; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 31 N., R. 12 E.: Willamette Meridian, Secs. 4; and 5.

Excepting any of the above area lying with the Glacier Peak Wilderness area.

BILLING CODE 4310-55-M

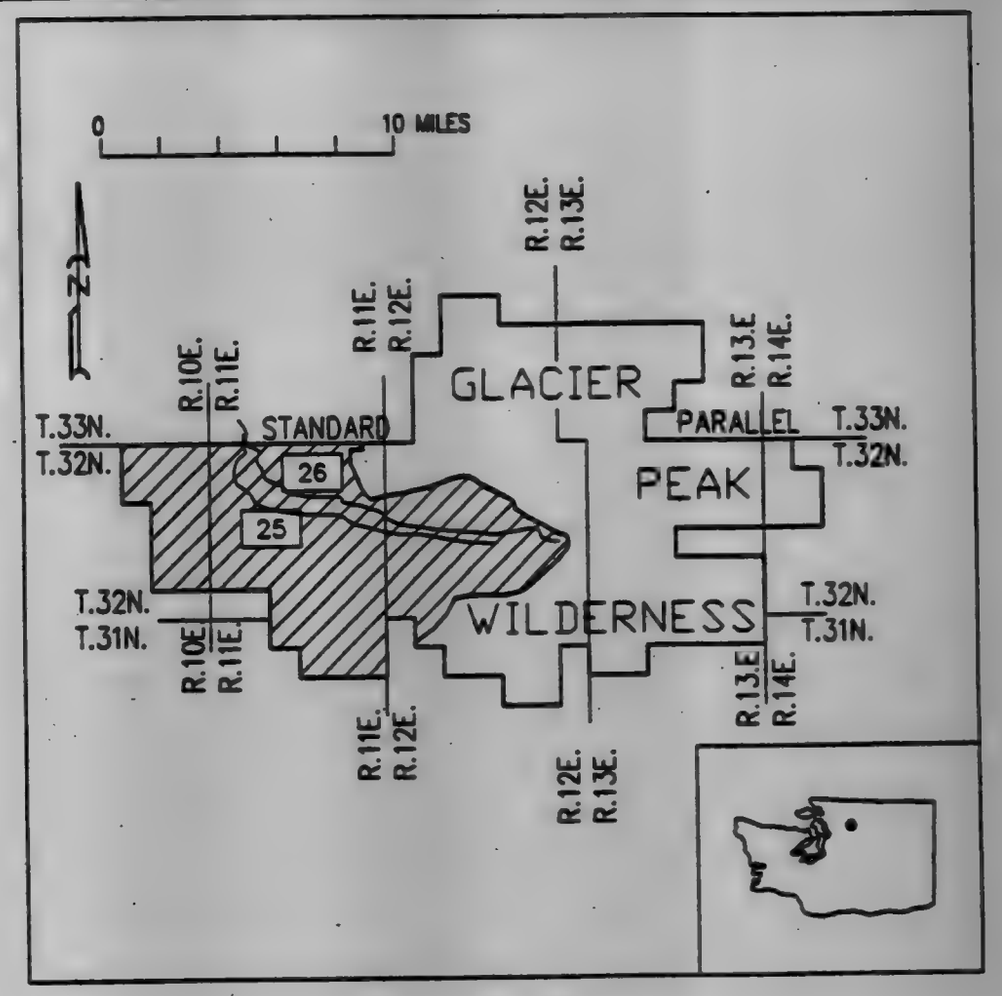

SQN-5

BILLING CODE 4310-55-C

Description of SQN–6 Taken Solely From Forest Visitor's Map; Mt. Baker-Snoqualmie National Forest, Washington 1988.

Snohomish County

T. 32 N., R. 8 E.: Willamette Meridian, Secs. 19; 20; 21; 27; 28; 34; 35; and 36.

T. 31 N., R. 7 E.: Willamette Meridian, Secs. 1; 12; and 13.

T. 31 N., R. 8 E.: Willamette Meridian, Secs. 3; 4; 5; 7; 8; 9; 10; 17; 18; 19; 20; 21; 22; 23; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 30 N., R. 8 E.: Willamette Meridian, Secs. 2; 3; 4; and 5.

Excepting any of the above area lying within the Boulder River Wilderness area.

BILLING CODE 4310-55-M

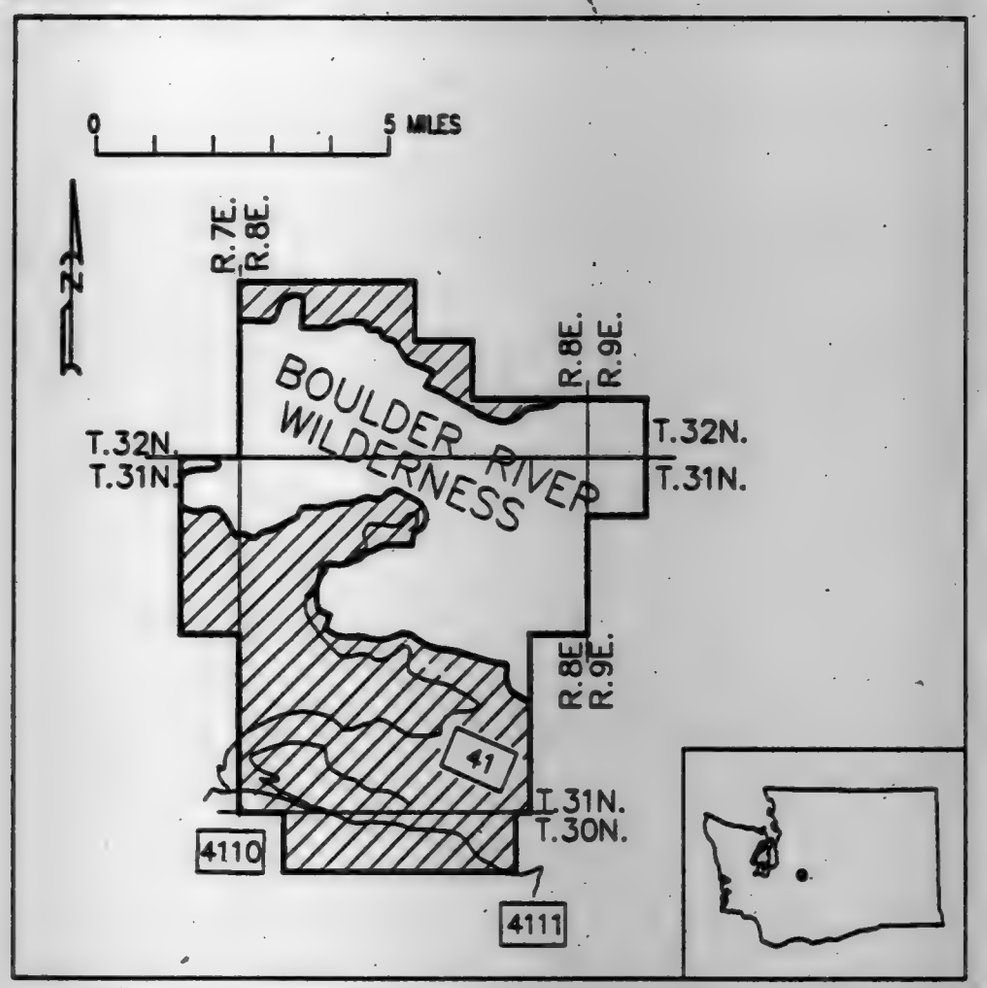

SQN–6

BILLING CODE 4310-55-C

Description of SQN–7 Taken Solely From Forest Visitor's Map; Mt. Baker-Snoqualmie National Forest, Washington 1988.

Snohomish County

T. 31 N., R. 10 E.: Willamette Meridian, Secs. 7; 8; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 31 N., R. 9 E.: Willamette Meridian, Secs. 13; 23; 24; 25; 26; 27; 28; 35; and 36.

T. 30 N., R. 10 E.: Willamette Meridian, Secs. 6; and 7.

T. 30 N., R. 9 E.: Willamette Meridian, Secs. 1; 2; and 12.

Excepting any of the above area lying within the Boulder River Wilderness area.

BILLING CODE 4310-55-M

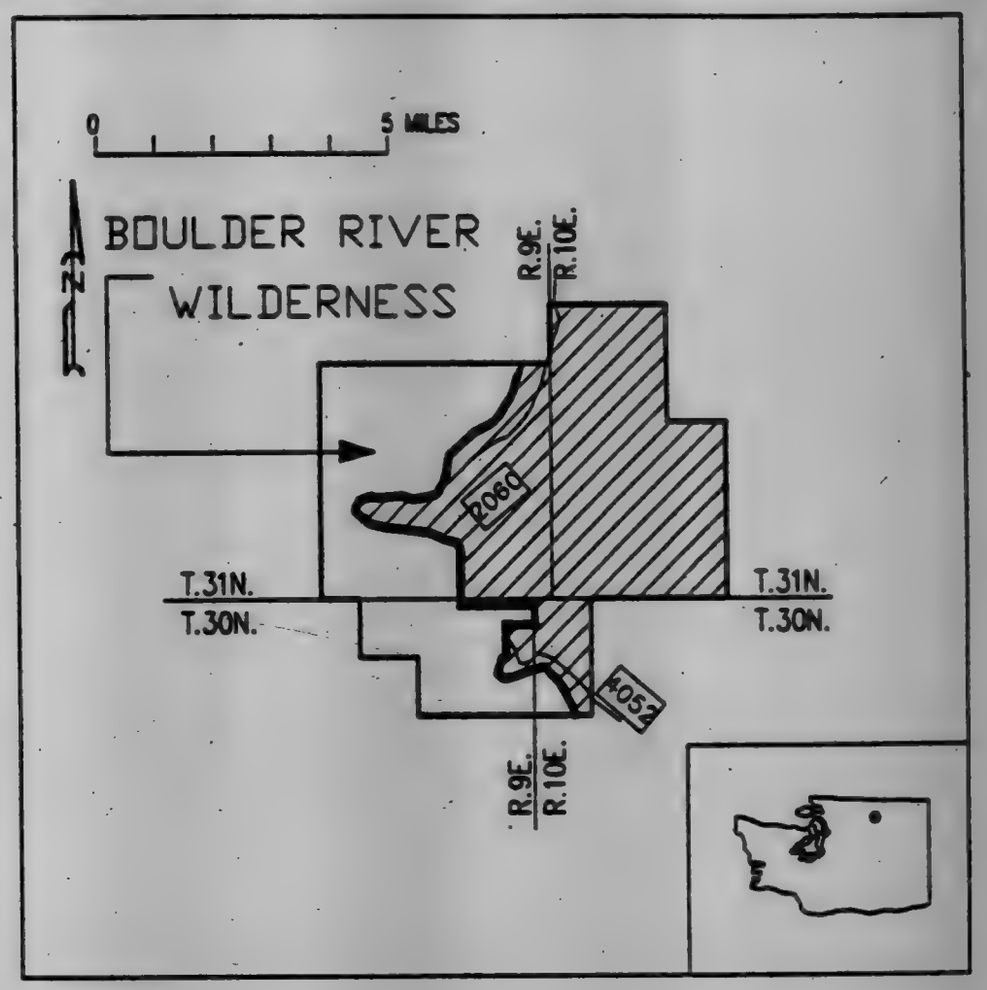

SQN–7

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of SQN-8 Taken Solely From Forest Visitor's Map; Mt. Baker-Snoqualmie National Forest, Washington 1988.

Snohomish County

T. 30 N., R. 11 E.: Willamette Meridian, Secs. 1; 2; 10; 11; 12; 13; 14; 15; 16; 20; 21; 22; 27; 28; 29; 34; and 35.

T. 30 N., R. 12 E.: Willamette Meridian, Secs. 6; 7; 8; 16; 17; 18; 19; 20; 21; 29; 32; and 33.

T. 29 N., R. 12 E.: Willamette Meridian, Secs. 3; 4; 5; 8; 9; 10; 11; 13; 14; 15; 16; 17; 18; 20; 21; 22; and 23.

Excepting any of the above area lying within the Glacier Peak and Henry M. Jackson Wilderness Areas.

BILLING CODE 4310-33-M

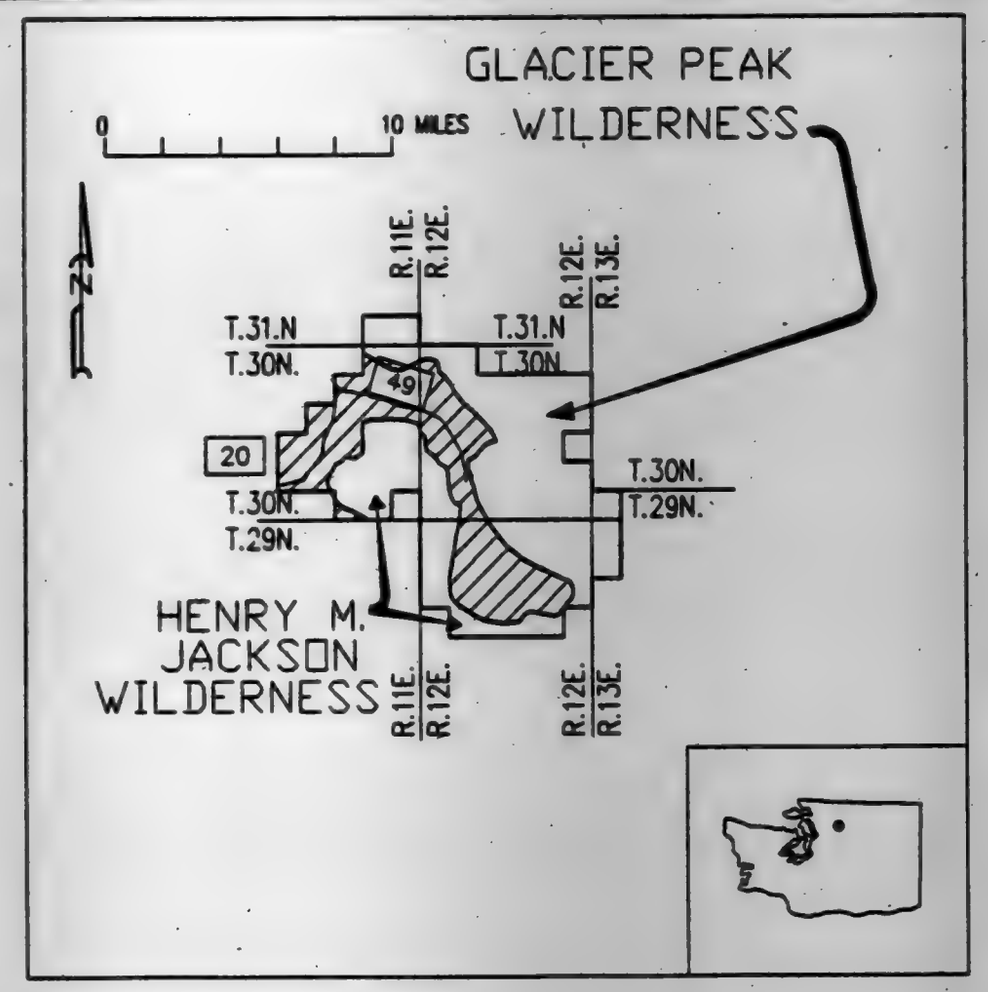

SQN-8

BILLING CODE 4310-33-C

Description of SQS-1 Taken Solely From Forest Visitor's Map; Mt. Baker-Snoqualmie National Forest, Washington 1988.

Snohomish and King Counties

T. 28 N., R. 10 E.: Willamette Meridian, Secs. 25; 26; 27; 34; 35; and 36.

T. 28 N., R. 11 E.: Willamette Meridian, Secs. 14; 15; 16; 17; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 35; and 36.

T. 28 N., R. 12 E.: Willamette Meridian, Secs. 3; 4; 9; 10; 15; 16; 17; 18; 19; 20; 21; 22; 23; 26; 27; 28; 29; 30; 31; 32; and 33.

T. 27 N., R. 12 E.: Willamette Meridian, Secs. 3; 4; 5; 6; 7; 8; 9; 10; 15; 16; 17; 18; 23; 25; 26; 34; 35; and 36.

T. 27 N., R. 11 E.: Willamette Meridian, Secs. 1; 12; 13; 30; 31; 32; and 33.

T. 26 N., R. 11 E.: Willamette Meridian, Secs. 4; 5; 6; 7; 8; 9; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; 35; and 36.

T. 25 N., R. 11 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 16; 17; 19; 20; 22; 23; 26; 27; 30; 33; and 34.

T. 25 N., R. 10 E.: Willamette Meridian, Secs. 7; 8; 13; 16; 17; 18; 20; 21; 22; 24; 25; 26; and 27.

T. 25 N., R. 12 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 16; 17; 18; 19; 20; 21; 28; 29; and 30.

T. 26 N., R. 13 E.: Willamette Meridian, Secs. 18; 19; 30; 31; and 32.

T. 25 N., R. 13 E.: Willamette Meridian, Secs. 6; 7; 18; and 19.

T. 24 N., R. 11 E.: Willamette Meridian, Secs. 2; and 3.

T. 24 1/2 N., R. 11 E.: Willamette Meridian Secs. 34; and 35.

T. 27 N., R. 10 E.: Willamette Meridian Sec 36.

T. 27 N., R. 12 E.: Willamette Meridian Secs. 1; 2; 3; 4; 5; 6; 7; 8; 10; 11; 12; 13; 14; 15; 16; 17; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

Excepting any of the above area lying within the Henry M. Jackson and Alpine Lake Wilderness Areas.

BILLING CODE 4310-33-M

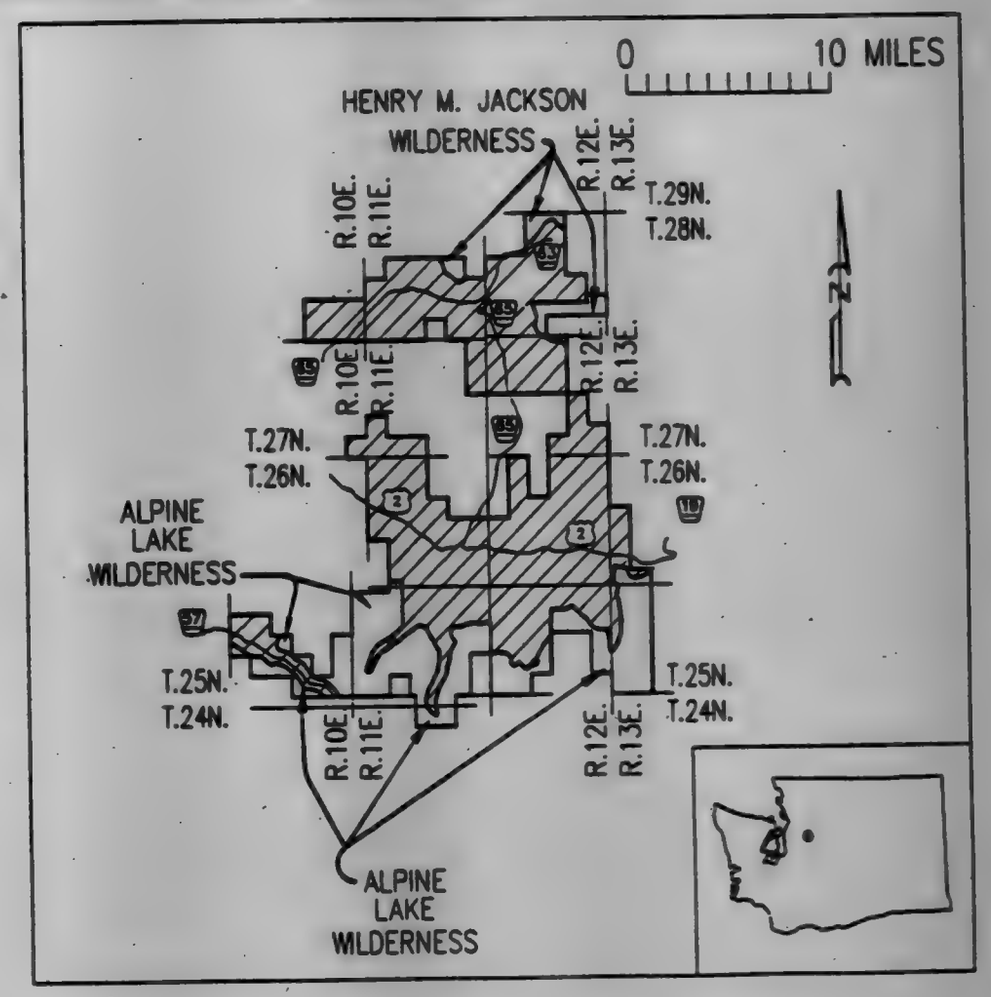

SQS-1

BILLING CODE 4310-33-C

VOL 56 ISS 87 MY 6 1991 UMI

VOL 56 ISS 87 MY 6 1991 UMI

Description of SQS–2 Taken Solely From Forest Visitor's Map; Mt. Baker-Snoqualmie National Forest, Washington 1988.

King County

T. 24 N., R. 10 E.: Willamette Meridian, Secs. 16; 19; 20; 21; 22; 23; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 23 N., R. 10 E.: Willamette Meridian, Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 15; 16; 17; 18; 19; 20; 21; 22; 27; 28; and 29.

T. 24 N., R. 11 E.: Willamette Meridian Sec. 31

T. 23 N., R. 11 E.: Willamette Meridian Secs. 6 and 7.

Excepting any of the above area lying within the Alpine Lakes Wilderness.

BILLING CODE 4310-55-M

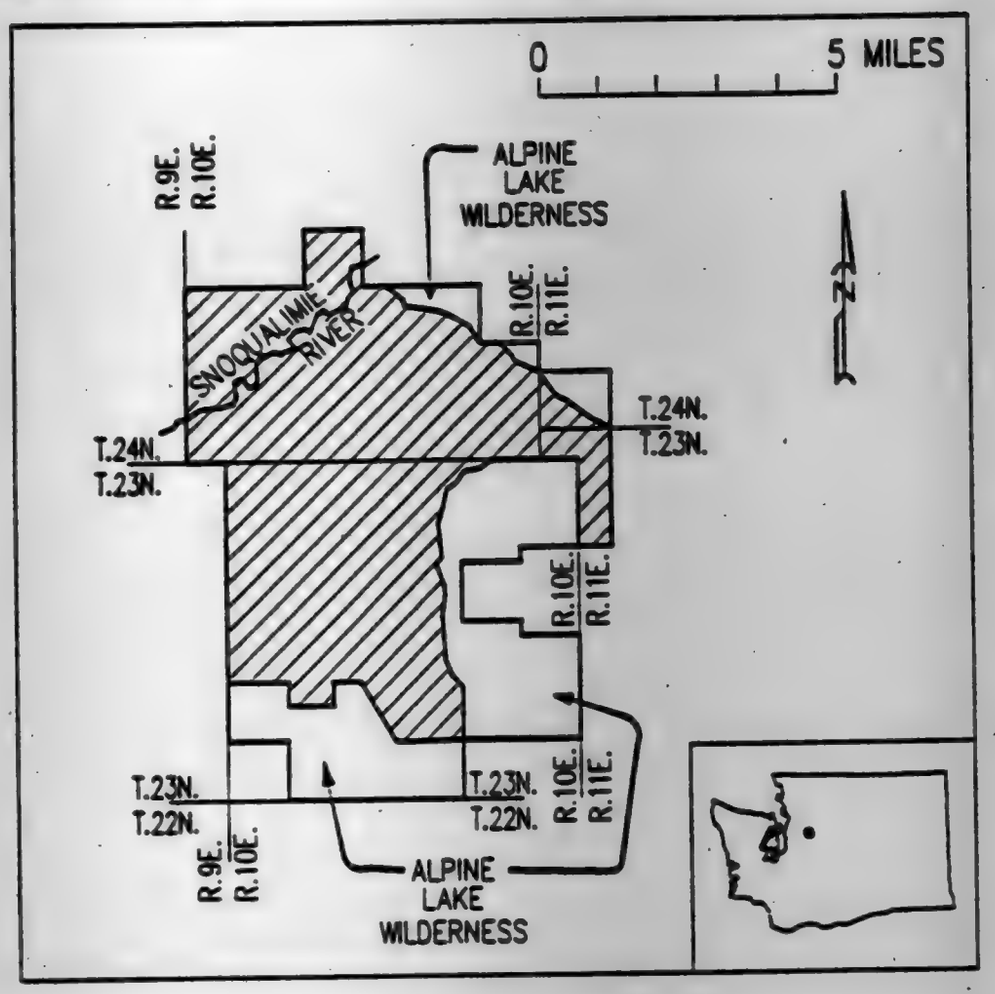

SQS–2

BILLING CODE 4310-55-C

Description of SQS–3 Taken Solely From Forest Visitor's Map; Mt. Baker-Snoqualmie National Forest, Washington 1988.

King and Kittitas Counties

T. 22 N., R. 10 E.: Willamette Meridian, Secs. 13; 14; 22; 23; 24; 25; 26; 27; 28; 31; 32; 33; 34; 35; and 36.

T. 22 N., R. 11 E.: Willamette Meridian, Secs. 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 21 N., R. 9 E.: Willamette Meridian, Sec. 1; 12; 13; 14; 22; 23; and 24.

T. 21 N., R. 10 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; and 36.

T. 21 N., R. 11 E.: Willamette Meridian, Secs. 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 20 N., R. 10 E.: Willamette Meridian, Secs. 1; 12; and 13.

T. 20 N., R. 11 E.: Willamette Meridian, Sec. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 27; and 36.

T. 20 N., R. 14 E.: Willamette Meridian, Sec. 7; 9; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 20 N., R. 13 E.: Willamette Meridian, Sec. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 19 N., R. 13 E.: Willamette Meridian, Sec. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; and 25.

T. 19 N., R. 12 E.: Willamette Meridian, Sec. 1; 11; 12; 13; 14; 23; and 24.

T. 19 N., R. 14 E.: Willamette Meridian, Sec. 4; 5; 6; 7; 8; 9; 17; 18; and 19.

T. 20 N., R. 12 E.: Willamette Meridian, Sec. 1; 2; 3; 10; 11; 12; 13; 14; 15; 23; 24; 25; and 36.

T. 21 N., R. 13 E.: Willamette Meridian, Sec. 5; 6; 7; 8; 17; 18; 19; 20; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 22 N., R. 13 E.: Willamette Meridian, Sec. 31.

T. 22 N., R. 12 E.: Willamette Meridian, Sec. 25; 26; 27; 34; 35; and 36.

T. 21 N., R. 12 E.: Willamette Meridian, Sec. 1; 2; 3; 10; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 27; 35; and 36.

T. 21 N., R. 11 E.: Willamette Meridian, Sec. 21; 22; 23; 24; and 25.

T. 22 N., R. 9 E.: Willamette Meridian, Sec. 36.

T. 22 N., R. 11 E.: Willamette Meridian, Sec. 13; 14; 15; 16; 17; 21; 22; 23; 24; 25; 26; 35; and 36.

Excepting any of the areas lying within the Keechelus and the Kachess Lakes.

BILLING CODE 4310-55-M

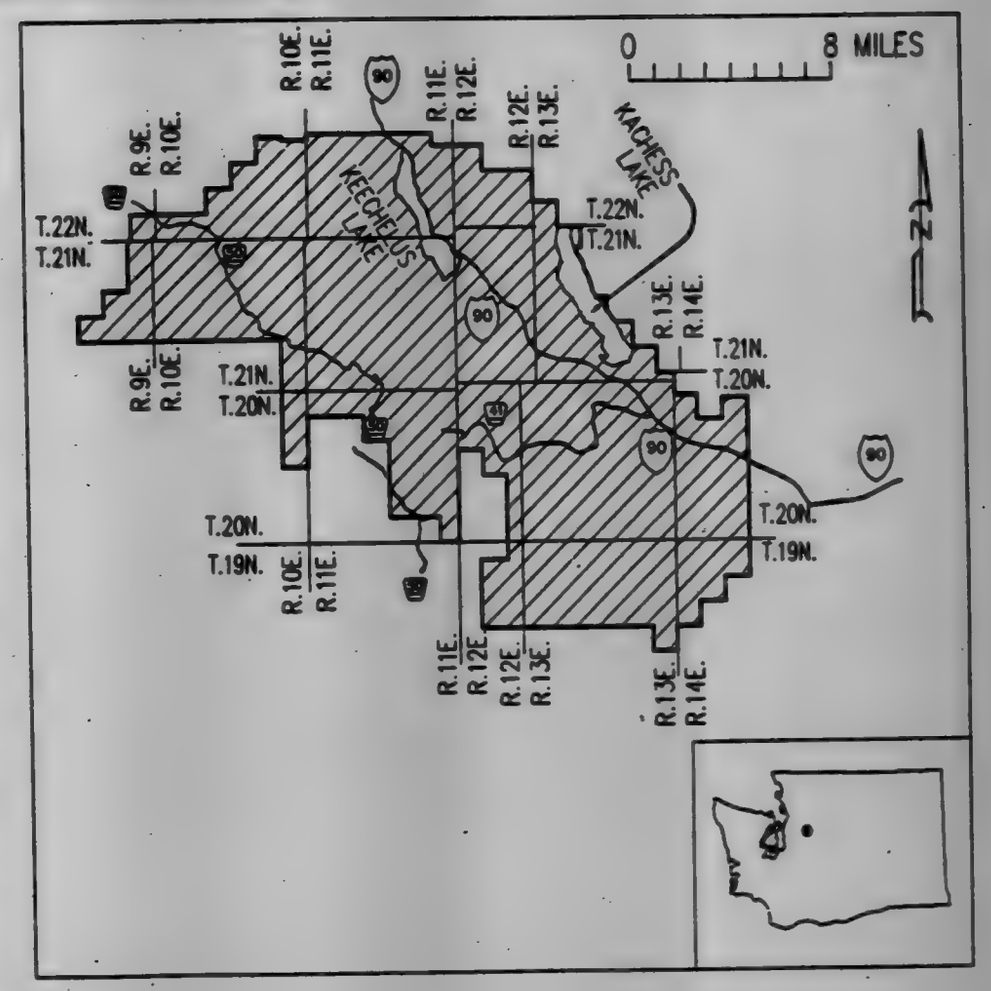

SQS–3

BILLING CODE 4310-55-C

Description of SQS–4 Taken Solely From Forest Visitor's Map; Mt. Baker-Snoqualmie National Forest, Washington 1988.

King, Kittitas, Pierce, and Yakima Counties.

T. 20 N., R. 11 E.: Willamette Meridian, Secs. 7; 8; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 20 N., R. 10 E.: Willamette Meridian, Secs. 24; 25; 26; 28; 30; 31; 32; 33; 34; 35; and 36.

T. 20 N., R. 9 E.: Willamette Meridian, Sec. 36.

T. 19 N., R. 10 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 32; 33; 34; 35; and 36.

T. 20 N., R. 12 E.: Willamette Meridian, Secs. 22; 26; 27; 34; and 35.

T. 19 N., R. 11 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 18 N., R. 8 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 10; 11; 12; 13; 14; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 18 N., R. 9 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 18 N., R. 10 E.: Willamette Meridian, Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 17 N., R. 10 E.: Willamette Meridian, Secs. 2; 3; 10; 11; 14; and 23.

Excepting any of the above area lying within the Norse Peak and Clearwater Wilderness areas and Mount Rainier National Park.

BILLING CODE 4310-55-M

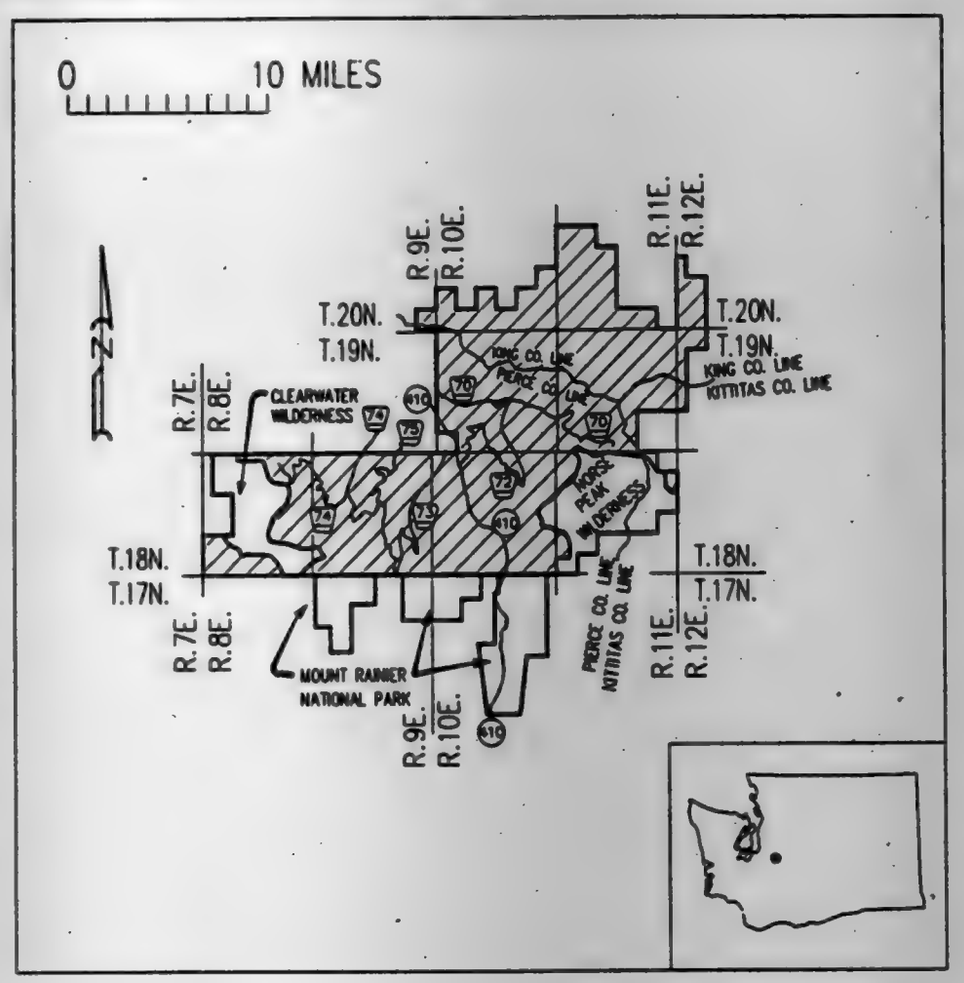

SQS–4

BILLING CODE 4310-55-C

Description of SQS–5 Taken Solely From Forest Visitor's Map; Mt. Baker-Snoqualmie National Forest, Washington 1988.

Pierce County

T. 18 N., R. 7 E.: Willamette Meridian, Secs. 12; 13; 14; 22; and 23.

Excepting any of the above area lying within the Clearwater Wilderness Area.

BILLING CODE 4310-55-M

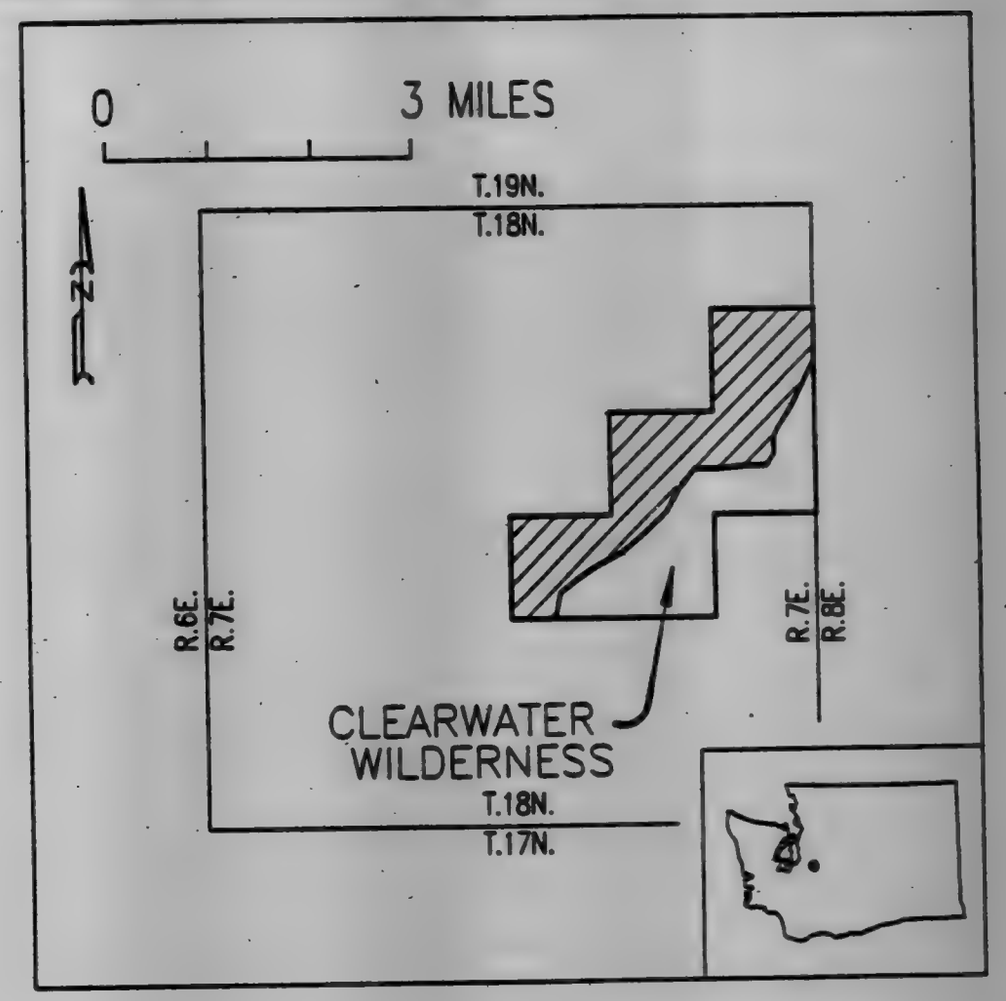

SQS–5

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of SQS-6 Taken Solely From Forest Visitor's Map; Mt. Baker-Snoqualmie National Forest, Washington 1988.

Pierce County

T. 17 N., R. 7 E.: Willamette Meridian, Secs. 4; 5; 8; 9; 16; 17; 18; 19; 20; 21; 28; and 29.

BILLING CODE 4310-55-M

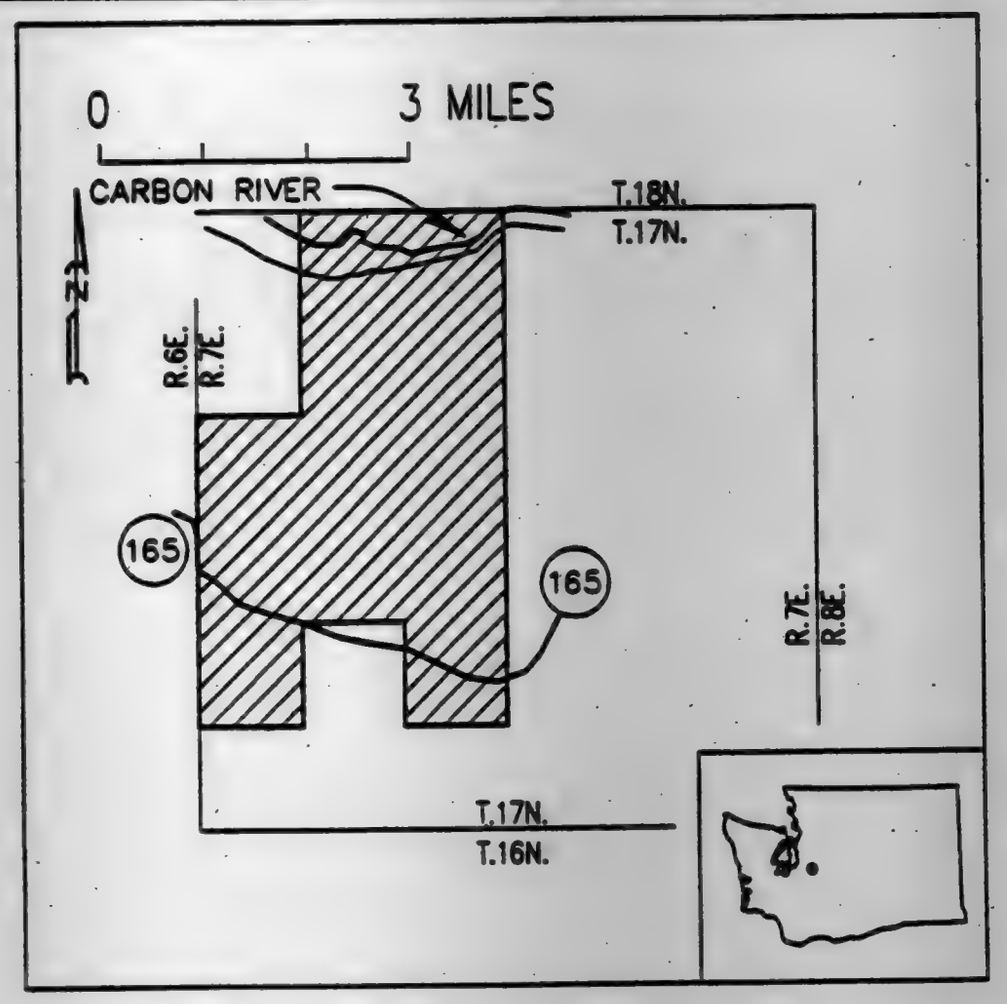

SQS-6

BILLING CODE 4310-55-C

Description of W-39 Taken Solely From Bureau of Land Management Map, Chehalis River Washington 1979, and U.S. Geological Survey Map, Shelton, Washington 1988.

Gray's Harbor and Thurston Counties

T. 17 N., R. 5 W.: Willamette Meridian Secs. 1; 2; 10; 11; 12; 13; 14; 15; 23; 24; 25; 26; 35; and 36.

T. 16 N., R. 5 W.: Willamette Meridian Secs. 1; 2; 11; 12; and 13.

T. 17 N., R. 4 W.: Willamette Meridian Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 16 N., R. 4 W.: Willamette Meridian Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 26; 27; and 28.

T. 17 N., R. 3 W.: Willamette Meridian Secs. 3; 4; 5; 6; 7; 8; 9; 16; 17; 18; 19; 20; 21; 28; 29; 30; 31; 32; and 33.

T. 16 N., R. 3 W.: Willamette Meridian Secs. 4; 5; 6; and 7.

T. 18 N., R. 5 W.: Willamette Meridian Sec. 36.

T. 18 N., R. 4 W.: Willamette Meridian Secs. 14; 15; 16; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 18 N., R. 3 W.: Willamette Meridian Secs. 19; 20; 21; 22; 27; 28; 29; 30; 31; 32; 33; and 34.

BILLING CODE 4310-55-M

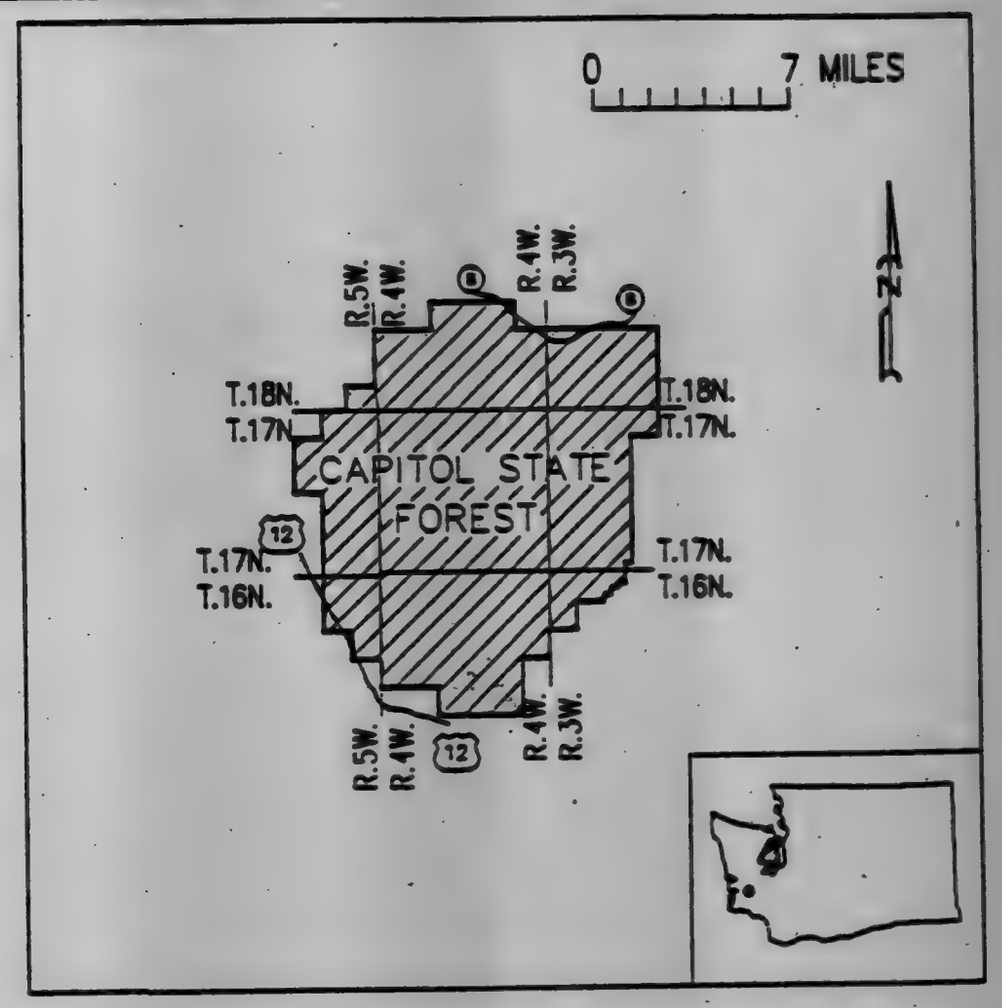

W-39

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of W-40 Taken Solely From Bureau of Land Management Map; Chehalis River, Washington 1979.

Pacific and Lewis Counties

T. 14 N., R. 5 W.: Willamette Meridian
Secs. 14; 15; 16; 21; 22; 23; 26; 27; 28; 31; 32; 33; 34; and 35.

T. 14 N., R. 9 W.: Willamette Meridian
Sec. 36.

T. 14 N., R. 8 W.: Willamette Meridian
Secs. 31; 32; 33; 34; 35; and 36.

T. 14 N., R. 7 W.: Willamette Meridian
Secs. 31; 32; 33; 34; 35; and 36.

T. 14 N., R. 6 W.: Willamette Meridian
Secs. 31; 32; 33; 34; 35; and 36.

T. 13 N., R. 9 W.: Willamette Meridian
Secs. 1; 12; 13; 24; 25; and 36.

T. 13 N., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 13 N., R. 7 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 13 N., R. 6 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 13 N., R. 5 W.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 12 N., R. 8 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 9; 10; 11; 12; 13; 14; 15; 16; and 17.

BILLING CODE 4310-55-M

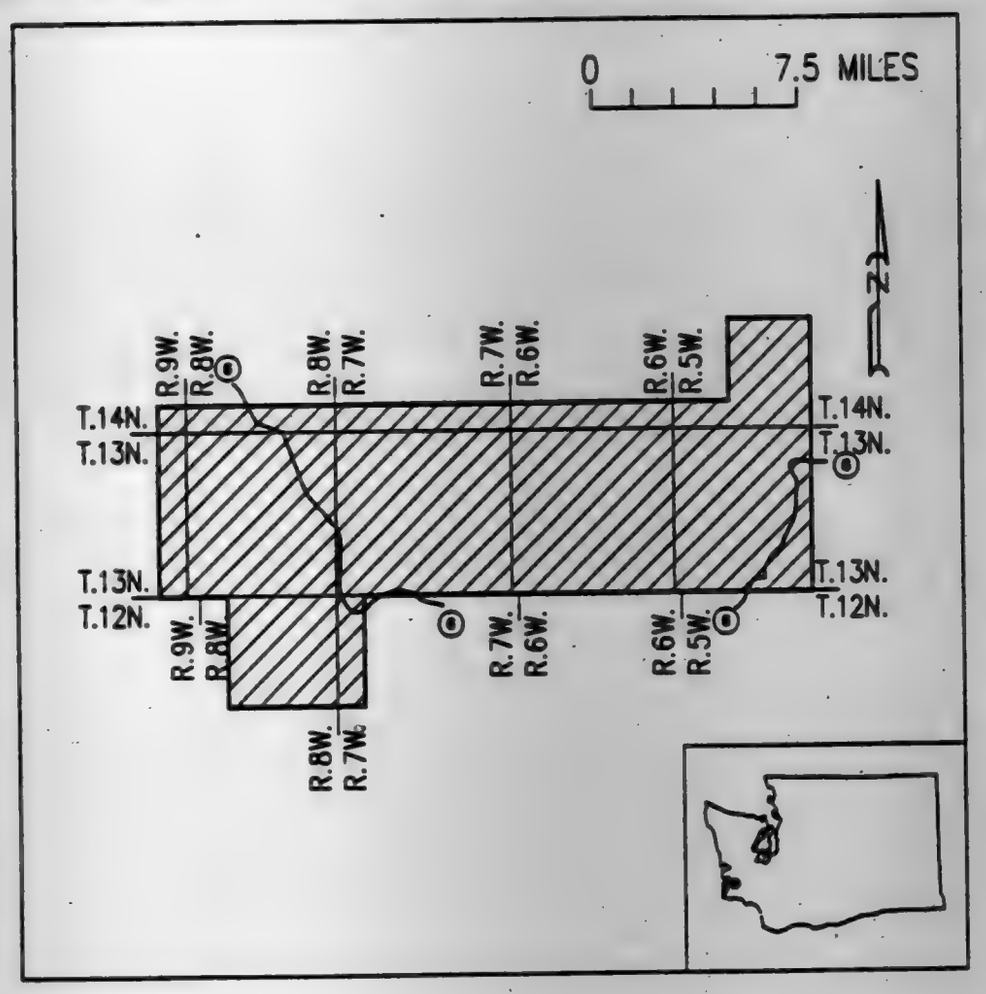

W-40

BILLING CODE 4310-55-C

Description of W-41 Taken Solely From Bureau of Land Management Map; Astoria, Washington 1961.

Wahkiakum County

T. 10 N., R. 6 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 33; 34; 35; and 36.

T. 9 N., R. 6 W.: Willamette Meridian
Secs. 1; 2; and 3.

T. 10 N., R. 5 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 9 N., R. 5 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 33; 34; 35; and 36.

T. 8 N., R. 5 W.: Willamette Meridian
Secs. 1; 2; 3; 4; 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 26; 27; and 28.

T. 10 N., R. 4 W.: Willamette Meridian
Secs. 6; 7; 18; 19; 20; 30; and 31.

T. 9 N., R. 4 W.: Willamette Meridian
Secs. 6; 7; 18; 19; 30; and 31.

T. 8 N., R. 4 W.: Willamette Meridian
Secs. 6; 7; and 18.

Excepting any of the above area lying within the Columbia River.

BILLING CODE 4310-55-M

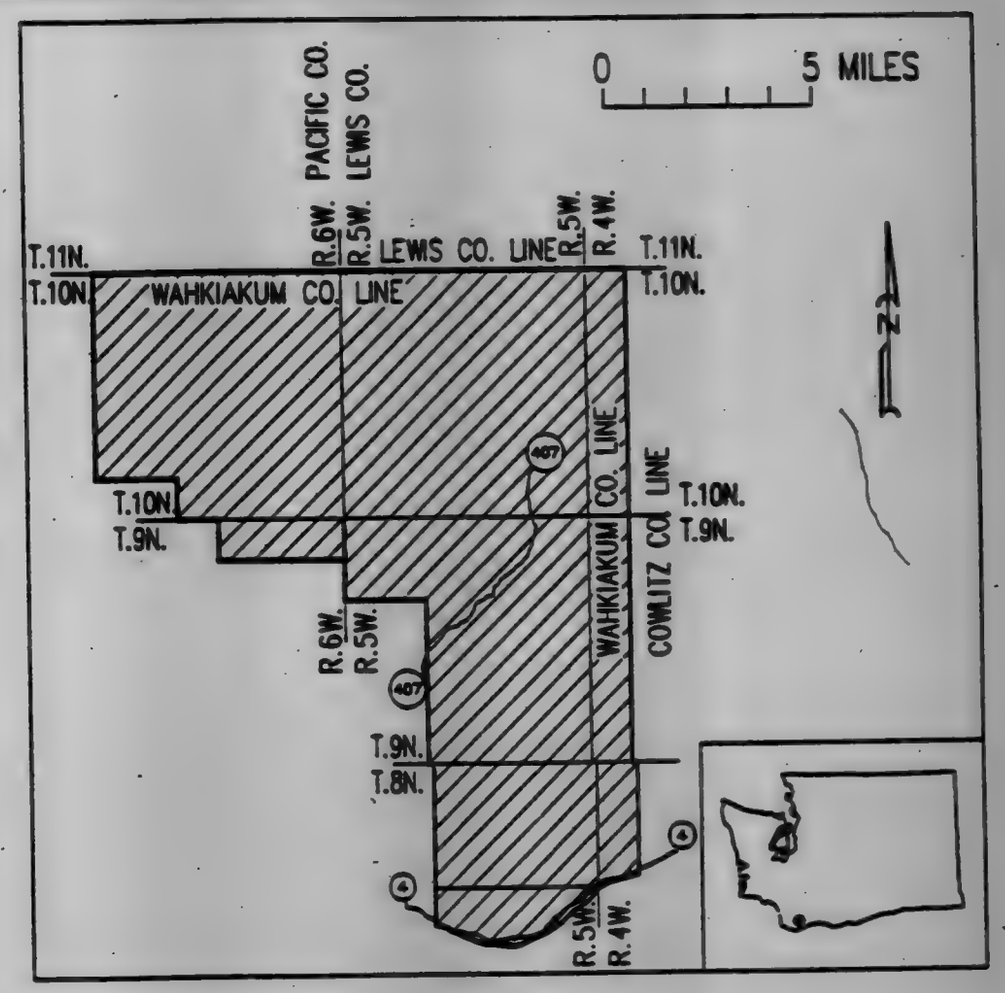

W-41

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of WN-1 Taken Solely From Forest Visitor's Map; Wenatchee National Forest, Washington 1990.

Chelan County

T. 30 N., R. 16 E.: Willamette Meridian Secs. 11; 14; 15; 21; 22; 23; 26; 27; 28; 34; and 35.

T. 29 N., R. 16 E.: Willamette Meridian Secs. 1; 2; 3; 10; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 27; 34; and 36.

T. 28 N., R. 16 E.: Willamette Meridian Secs. 1; 2; 12; 13; 24; 25; 34; 35; and 36.

T. 29 N., R. 17 E.: Willamette Meridian Secs. 7; 8; 9; 16; 17; 18; 19; 20; 21; 22; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 27 N., R. 17 E.: Willamette Meridian Secs. 1; 2; 3; 4; 5; 6; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 27; 35; and 36.

T. 28 N., R. 17 E.: Willamette Meridian Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 28 N., R. 18 E.: Willamette Meridian Secs. 30; and 31.

T. 27 N., R. 18 E.: Willamette Meridian Secs. 4; 5; 6; 7; 8; 9; 10; 11; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 33; 34; 35; and 36.

T. 27 N., R. 19 E.: Willamette Meridian Secs. 19; 29; 30; 31; 32; and 33.

T. 26 N., R. 18 E.: Willamette Meridian Secs. 1; 2; 3; 4; 8; 9; 10; 11; 12; 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 28; 34; 35; and 36.

T. 26 N., R. 19 E.: Willamette Meridian Secs. 4; 5; 6; 7; 8; 9; 30; and 31.

T. 25 N., R. 18 E.: Willamette Meridian Secs. 1; 2; and 3.

T. 25 N., R. 19 E.: Willamette Meridian Sec. 6.

Except any of the above area lying within the Glacier Peak Wilderness area.

BILLING CODE 4310-55-M

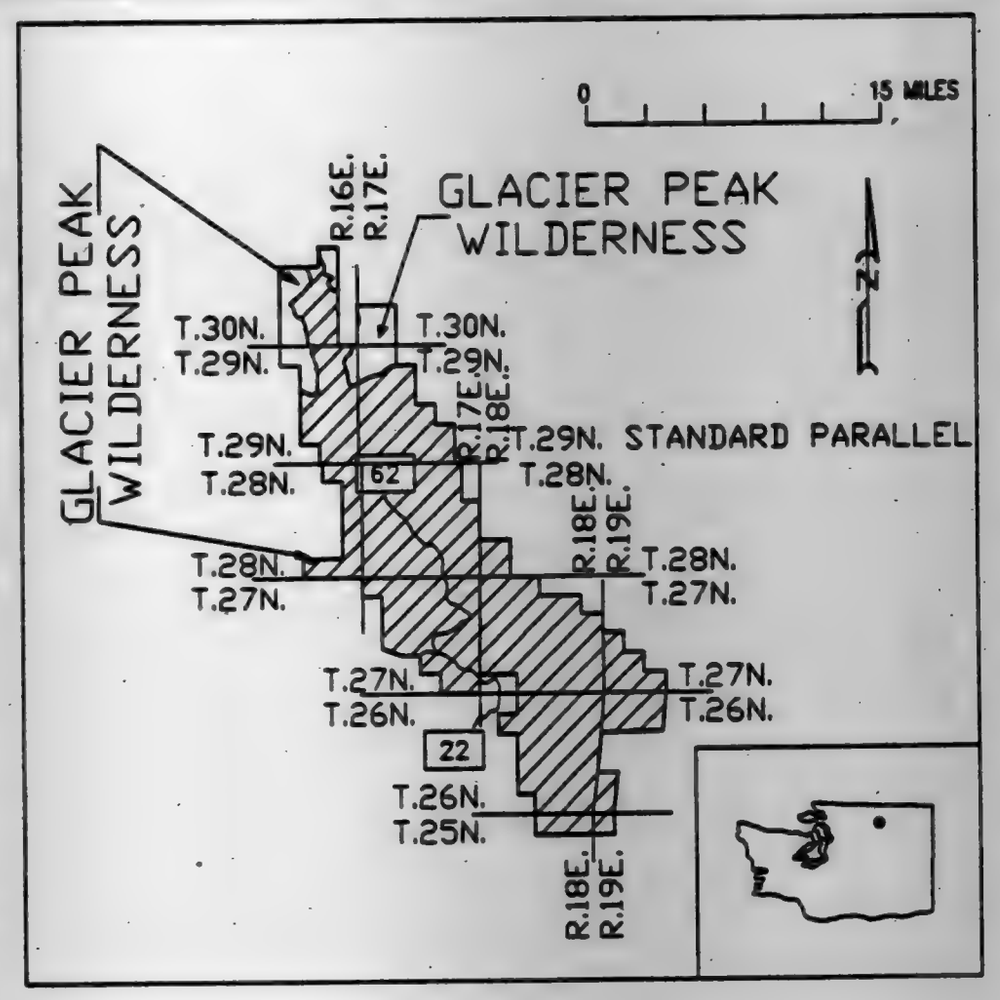

WN-1

BILLING CODE 4310-55-C

Description of WN-2 Taken Solely From Forest Visitor's Map; Wenatchee National Forest, Washington 1990.

Chelan County

T. 30 N., R. 17 E.: Willamette Meridian Sec. 36.

T. 30 N., R. 18 E.: Willamette Meridian Secs. 27; 28; 29; 30; 31; 32; 33; and 34.

T. 29 N., R. 17 E.: Willamette Meridian Secs. 1; and 12.

T. 29 N., R. 18 E.: Willamette Meridian Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 34; 35; and 36.

T. 29 N., R. 19 E.: Willamette Meridian Secs. 19; 20; 29; 30; 31; and 32.

T. 28 N., R. 18 E.: Willamette Meridian Secs. 1; 2; 3; 4; 10; 11; and 12.

T. 28 N., R. 19 E.: Willamette Meridian Secs. 6; and 7.

BILLING CODE 4310-55-M

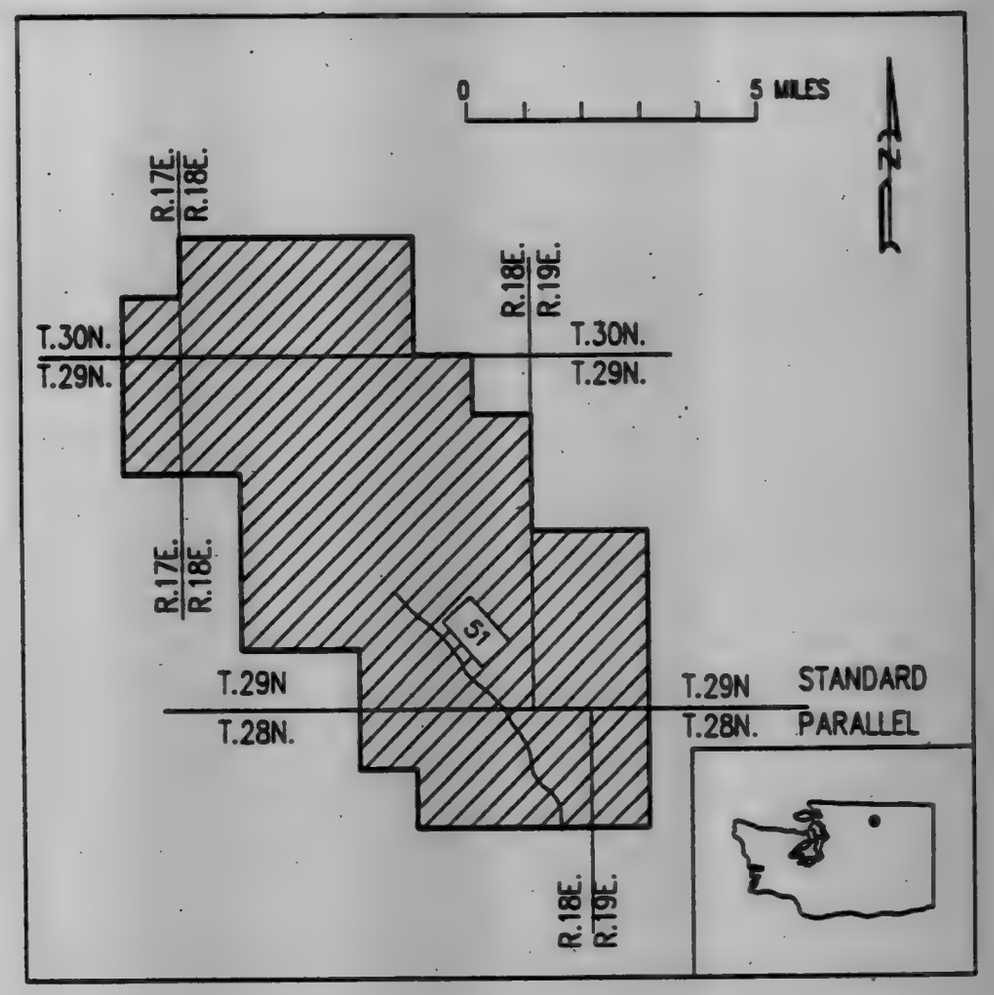

WN-2

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of WN-3 Taken Solely From Forest Visitor's Map; Wenatchee National Forest, Washington 1990.

Chelan County

T. 29 N., R. 20 E.: Willamette Meridian Secs. 20; 21; 22; 26; 27; 28; 29; 30; 31; 32; 33; 34; and 35.

T. 28 N., R. 19 E.: Willamette Meridian Secs. 1; and 12.

T. 28 N., R. 20 E.: Willamette Meridian Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 16; 17; and 18.

BILLING CODE 4310-55-M

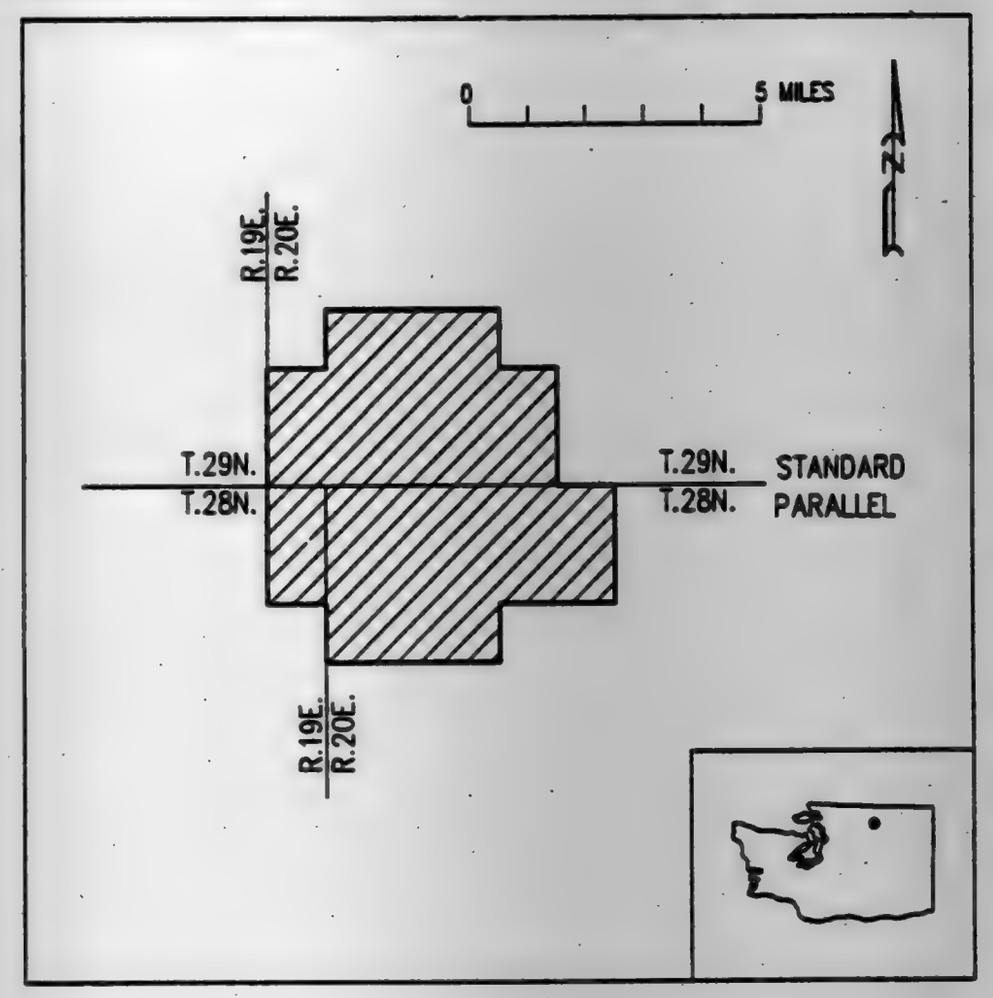

WN-3

BILLING CODE 4310-55-C

Description of WN-4 Taken Solely From Forest Visitor's Map; Wenatchee National Forest, Washington 1990.

Chelan and Snohomish Counties

T. 28 N., R. 13 E.: Willamette Meridian Secs. 13; 14; 15; 16; 21; 22; 23; 24; 25; 26; 27; 34; 35 and 36.

T. 28 N., R. 14 E.: Willamette Meridian Secs. 23; 24; 25; 26; 35; and 36.

T. 27 N., R. 13 E.: Willamette Meridian Secs. 1; and 2.

T. 27 N., R. 14 E.: Willamette Meridian Secs. 1; 2; and 11.

T. 29 N., R. 15 E.: Willamette Meridian Secs. 26; and 35.

T. 28 N., R. 15 E.: Willamette Meridian Secs. 2; 11; 12; 13; 14; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 28 N., R. 16 E.: Willamette Meridian Secs. 30; and 31.

T. 27 N., R. 16 E.: Willamette Meridian Secs. 6; 7; 18; and 19.

T. 27 N., R. 15 E.: Willamette Meridian Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 21; 22; 23; and 24.

Excepting any of the above area lying within the Glacier Peak and Henry M. Jackson Wilderness areas.

BILLING CODE 4310-55-M

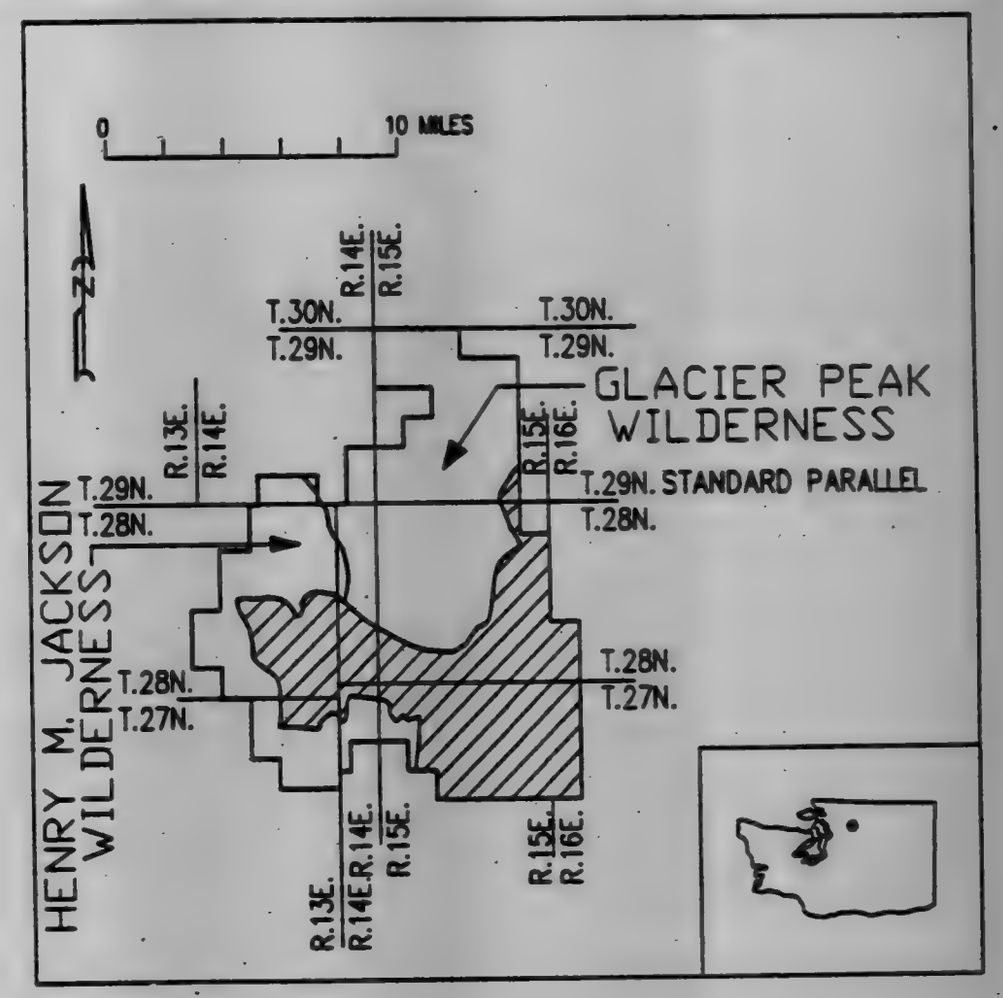

WN-4

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of WN-5 Taken Solely From Forest Visitor's Map; Wenatchee National Forest, Washington 1990.

Chelan and King Counties

T. 26 N., R. 14 E.: Willamette Meridian Secs. 34; and 35.

T. 26 N., R. 15 E.: Willamette Meridian Secs. 1; 2; 8; 9; 10; 11; 12; 15; 16; 17; 18; 19; 20; 21; and 30.

T. 25 N., R. 15 E.: Willamette Meridian Secs. 35; and 36.

T. 25 N., R. 16 E.: Willamette Meridian Sec. 32.

T. 24 N., R. 15 E.: Willamette Meridian Secs. 1; 2; and 3.

T. 24 N., R. 16 E.: Willamette Meridian Secs. 4; 5; 6; 7; and 8.

T. 23 N., R. 16 E.: Willamette Meridian Sec 17.

Excepting any of the above area lying within the Alpine Lakes Wilderness areas.

BILLING CODE 4310-55-M

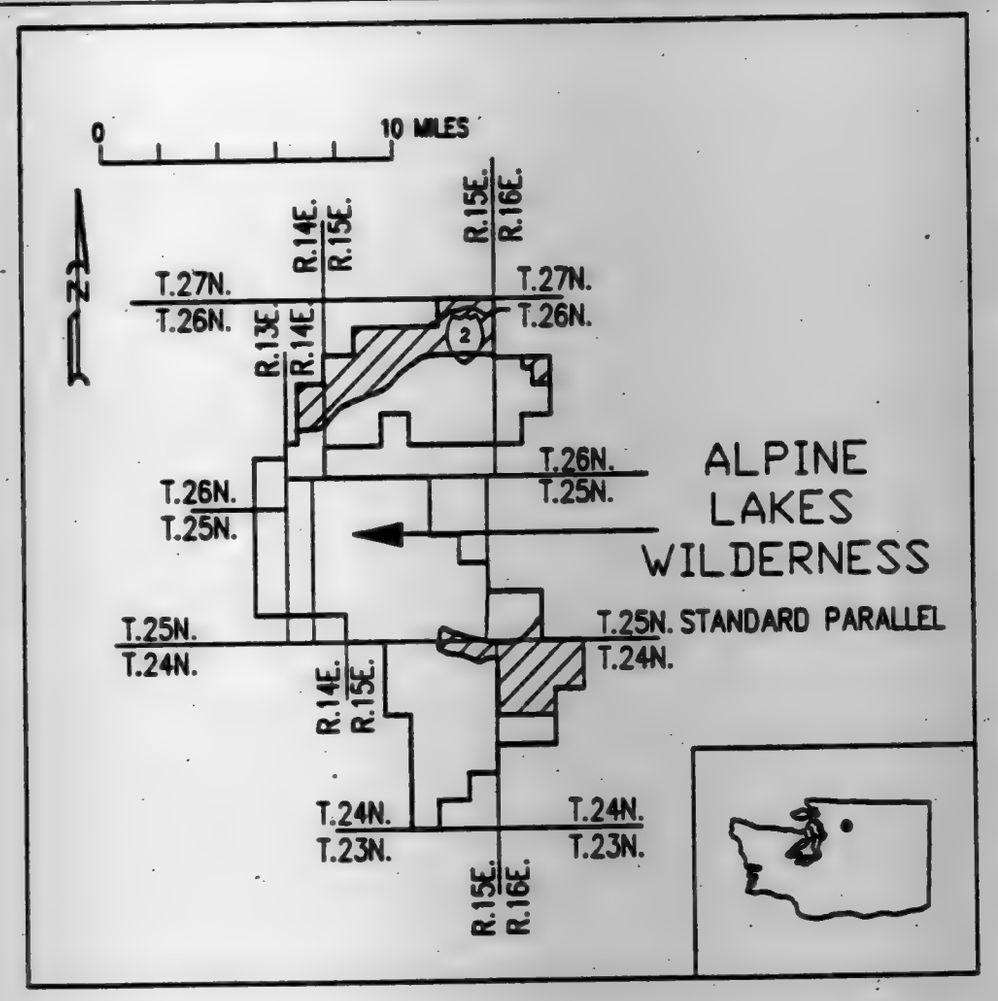

WN-5

BILLING CODE 4310-55-C

Description of WN-6 taken Solely From Forest Visitor's Map; Wenatchee National Forest, Washington 1990.

Chelan County

T. 25 N., R. 16 E.: Willamette Meridian Secs. 25; and 36.

T. 26 N., R. 17 E.: Willamette Meridian Secs. 20; 27; 28; 29; 30; 31; 32; 33; and 34.

T. 25 N., R. 17 E.: Willamette Meridian Secs. 1; 2; 3; 4; 5; 6; 8; 9; 10; 11; 12; 14; 15; 16; 17; 18; 19; 20; 21; 22; 25; 26; 27; 28; 34; 35; and 36.

T. 24 N., R. 17 E.: Willamette Meridian Secs. 2; 3; and 4.

Excepting any of the above areas lying within the Alpine Lakes Wilderness.

BILLING CODE 4310-55-M

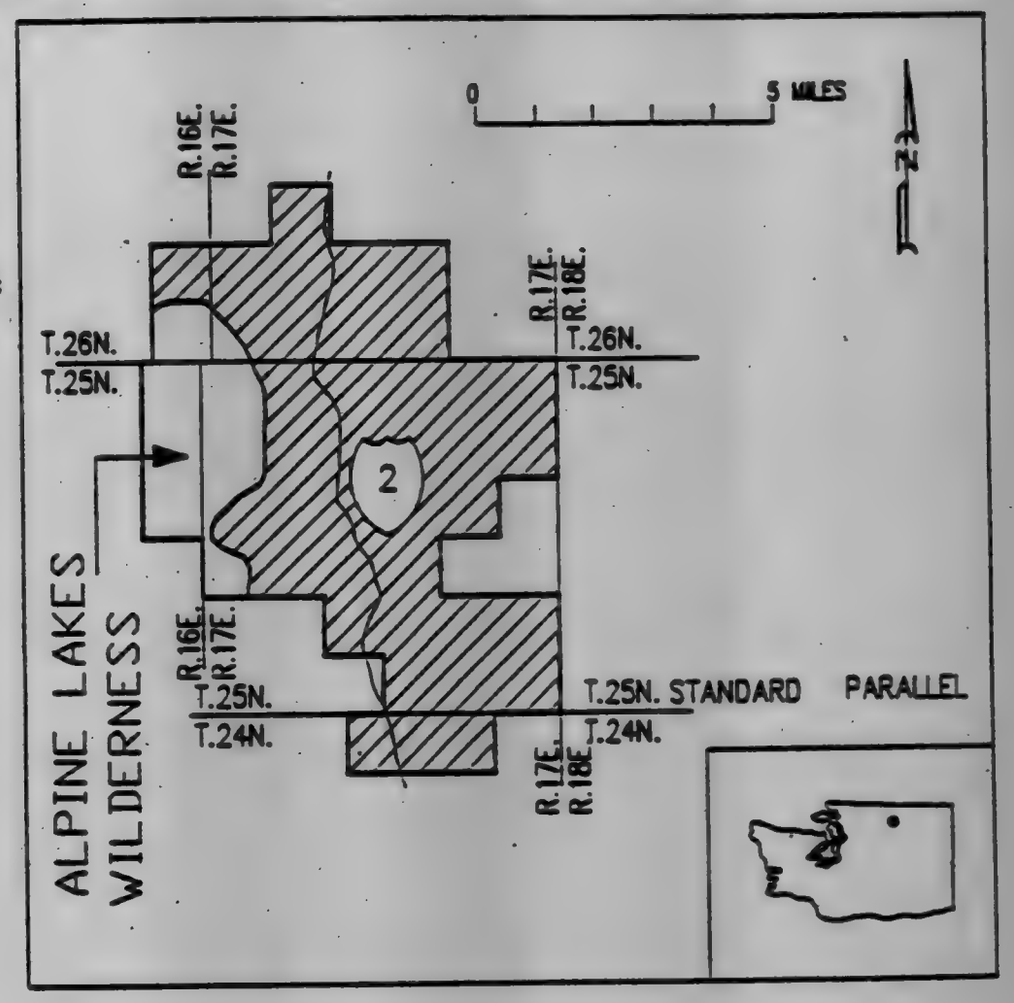

WN-6

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of WN-7 Taken Solely From Forest Visitor's Map; Wenatchee National Forest, Washington 1990.

Chelan County

T. 24 N., R. 17 E.: Willamette Meridian
Secs. 22; 23; 26; 27; 28; 32; 33; 34; 35; and 36.

T. 24 N., R. 18 E.: Willamette Meridian
Secs. 30 and 31.

T. 23 N., R. 17 E.: Willamette Meridian
Secs. 1; 2; 3; 9; 10; 11; 12; 13; 14; 15; 22; 23; 26; and 27.

T. 23 N., R. 18 E.: Willamette Meridian
Sec. 6.

Excepting any of the above areas lying within the Alpine Lakes Wilderness area.

BILLING CODE 4310-55-M

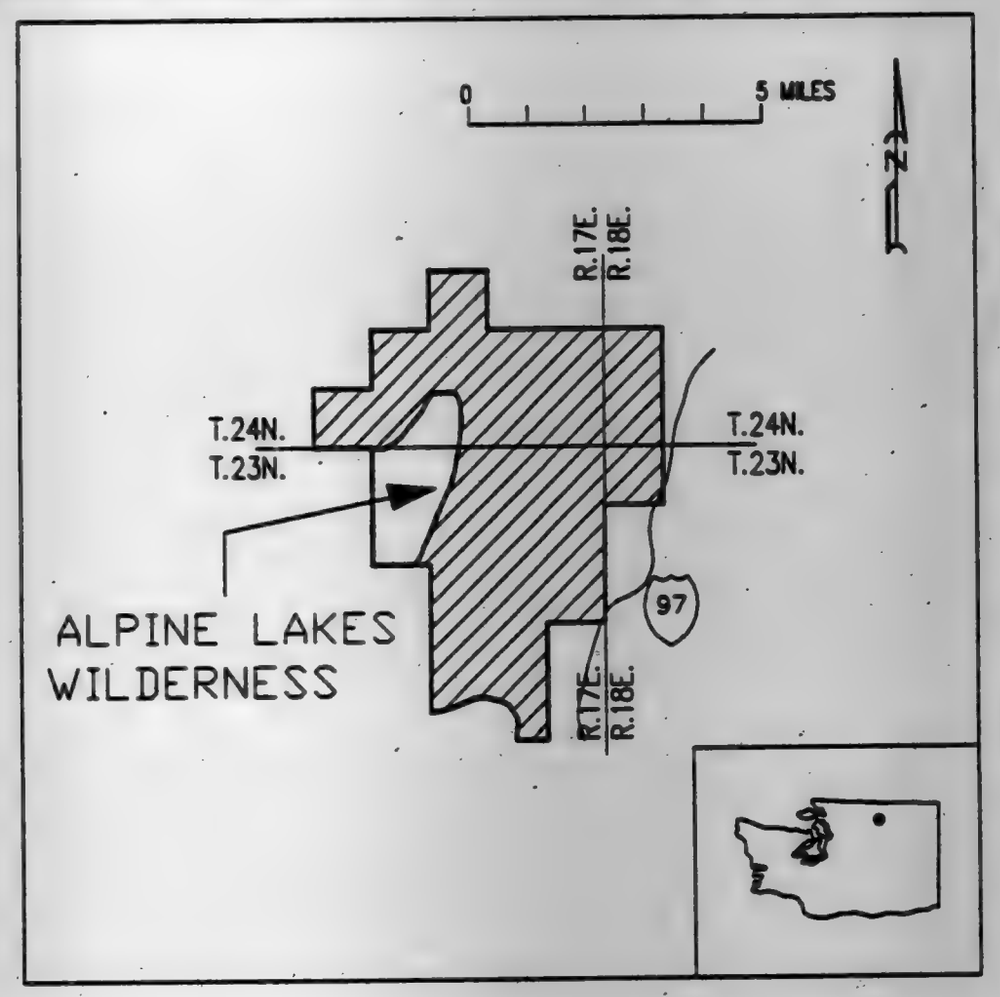

WN-7

BILLING CODE 4310-55-C

Description of WS-1 Taken Solely From Forest Visitor's Map; Wenatchee National Forest, Washington 1990.

Chelan and Kittitas Counties

T. 23 N., R. 13 E.: Willamette Meridian
Secs. 21; 22; 23; 26; 27; 28; 29; 31; 32; 33; 34; and 35.

T. 23 N., R. 18 E.: Willamette Meridian
Secs. 25; 26; 31; 35; and 36.

T. 23 N., R. 17 E.: Willamette Meridian
Secs. 26; 35; and 36.

T. 22 N., R. 13 E.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 32; 33; 34; 35; and 36.

T. 22 N., R. 19 E.: Willamette Meridian
Secs. 6; 7; 18; 19; 20; 28; 29; 30; 31; 32; 33; and 34.

T. 21 N., R. 14 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 21 N., R. 19 E.: Willamette Meridian
Secs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 14; 15; 16; 17; 18; 19; 20; 21; and 22.

T. 22 N., R. 18 E.: Willamette Meridian
Secs. 1; 2; 4; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 21 N., R. 18 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 26; 27; 28; 29; 30; 31; and 32.

T. 20 N., R. 14 E.: Willamette Meridian
Secs. 4; 5; 6; and 8.

T. 20 N., R. 18 E.: Willamette Meridian
Secs. 5; 6; 7; 8; 9; 16; 17; 18; 19; 21; 28; 29; 30; 32; and 33.

T. 22 N., R. 17 E.: Willamette Meridian
Secs. 1; 2; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 21 N., R. 16 E.: Willamette Meridian
Secs. 1; 12; 13; 24; 25; and 36.

T. 21 N., R. 17 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 20 N., R. 17 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 8; 9; 10; 11; 12; 13; 14; and 15.

T. 22 N., R. 16 E.: Willamette Meridian
Secs. 11; 12; 13; 14; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; and 36.

T. 22 N., R. 15 E.: Willamette Meridian
Secs. 19; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 21 N., R. 15 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 17; 18; and 20.

T. 22 N., R. 14 E.: Willamette Meridian
Secs. 2; 3; 4; 5; 8; 9; 10; 11; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 21 N., R. 13 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 22; 23; 24; 25; 26; and 36.

T. 22 N., R. 12 E.: Willamette Meridian
Secs. 12; 13; 14; 23; and 24.

Excepting any of the above area lying within the Alpine Lakes Wilderness area.

BILLING CODE 4310-55-M

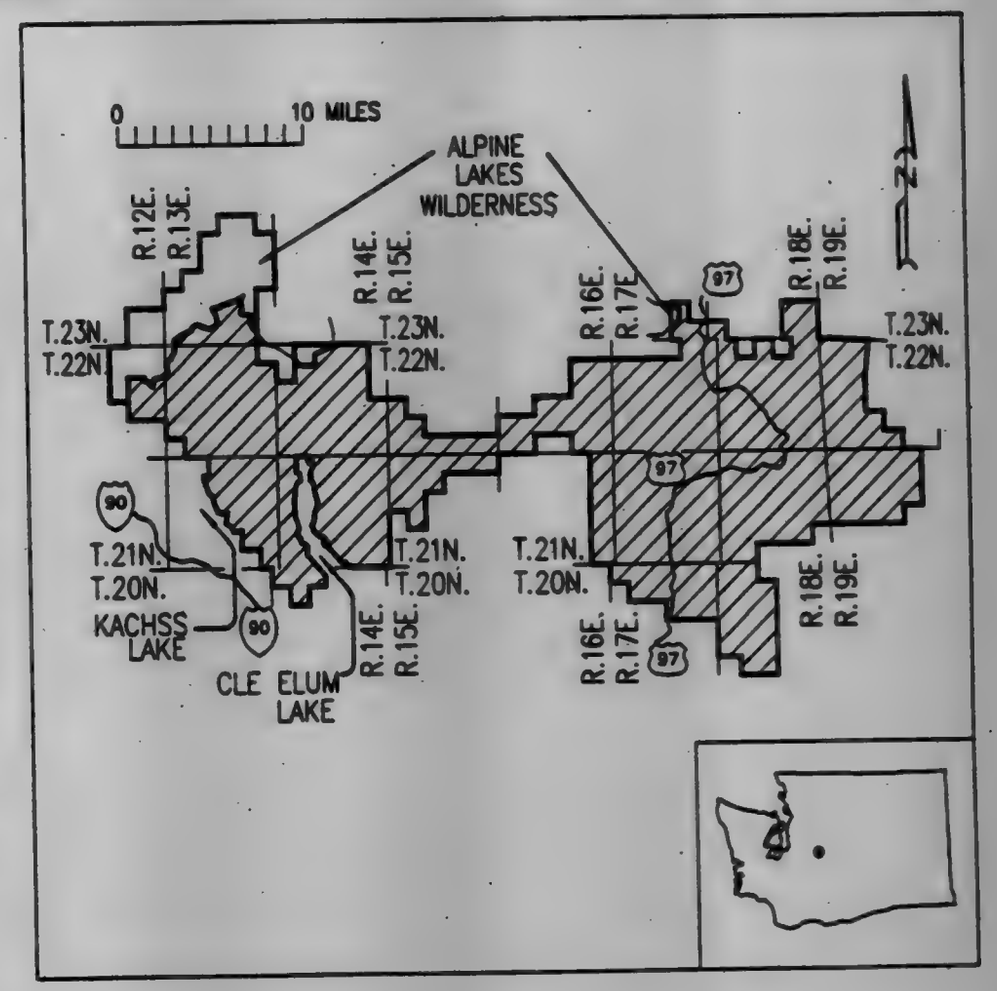

WS-1

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of WS–2 Taken Solely From Forest Visitor's Map; Wenatchee National Forest, Washington 1990.

Kittitas and Yakima Counties

T. 19 N., R. 15 E.: Willamette Meridian
Secs. 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 18 N., R. 15 E.: Willamette Meridian
Secs. 4; 5; and 6.

T. 18 N., R. 14 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; and 30.

T. 18 N., R. 13 E.: Willamette Meridian
Secs. 1; 12; 13; and 24.

T. 19 N., R. 14 E.: Willamette Meridian
Secs. 10; 11; 12; 13; 14; 15; 16; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

T. 19 N., R. 13 E.: Willamette Meridian
Sec. 36.

T. 20 N., R. 13 E.: Willamette Meridian
Sec. 34.

T. 20 N., R. 12 E.: Willamette Meridian
Sec. 36.

T. 19 N., R. 12 E.: Willamette Meridian
Secs. 1; and 12.

BILLING CODE 4310-55-M

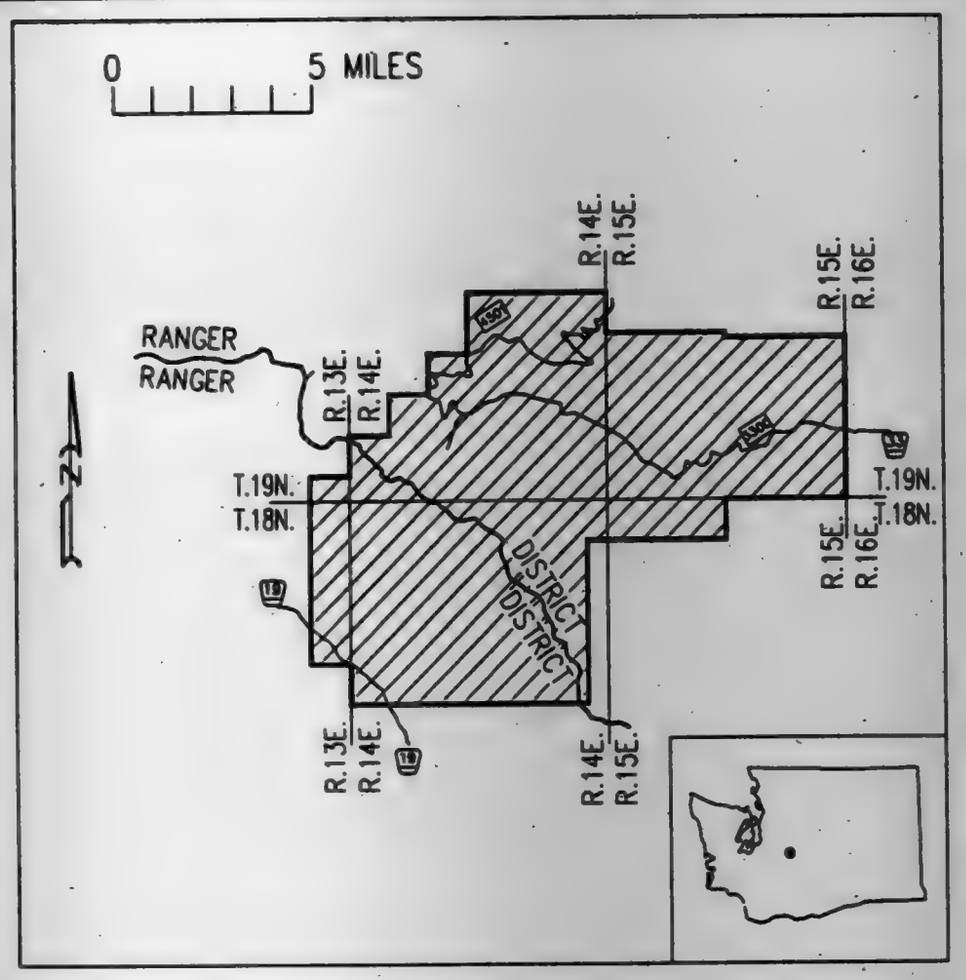

WS–2

BILLING CODE 4310-55-C

Description of WS–3 Taken Solely From Forest Visitor's Map; Wenatchee National Forest, Washington 1990.

Yakima County

T. 15 N., R. 11 E.: Willamette Meridian
Secs. 12; 13; 24; 25; and 36.

T. 15 N., R. 12 E.: Willamette Meridian
Secs. 2; 3; 4; 5; 8; 9; 10; 11; 15; 16; 17; 20; 21; 29; and 32.

T. 16 N., R. 11 E.: Willamette Meridian
Secs. 25; and 36.

T. 16 N., R. 12 E.: Willamette Meridian
Secs. 1; 11; 12; 13; 14; 15; 22; 23; 24; 25; 26; 27; 28; 29; 32; 33; 34; and 35.

T. 16 N., R. 13 E.: Willamette Meridian
Secs. 5; 6; and 7.

T. 17 N., R. 13 E.: Willamette Meridian
Secs. 10; 11; 12; 13; 14; 21; 22; 23; 24; 27; 28; 32; 33; and 34.

Excepting any of the above area lying within the William O. Douglas Wilderness area.

BILLING CODE 4310-55-M

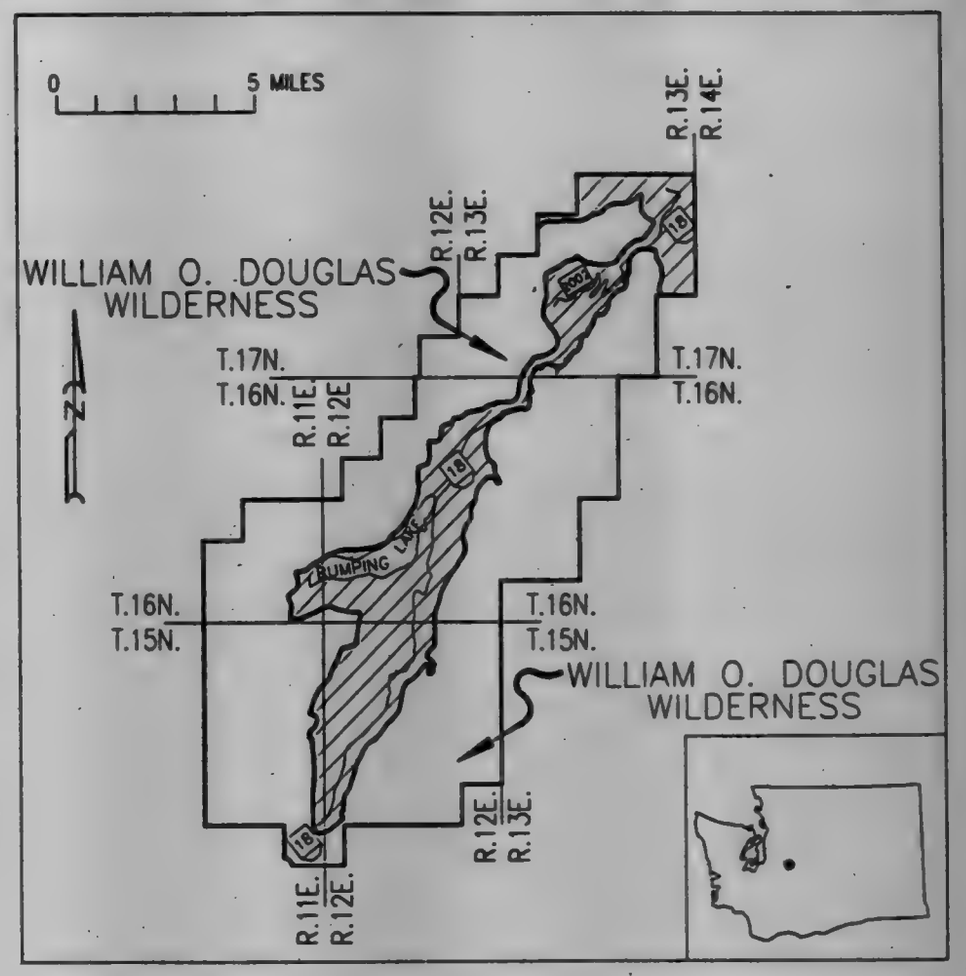

WS–3

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of WS–4 Taken Solely From Forest Visitor's Map; Wenatchee National Forest, Washington 1990.

Yakima County

T. 15 N., R. 13 E.: Willamette Meridian
Sec. 25; and 36.

T. 14 N., R. 13 E.: Willamette Meridian
Sec. 1.

T. 14 N., R. 14 E.: Willamette Meridian
Secs. 4; 5; and 6.

T. 15 N., R. 14 E.: Willamette Meridian
Secs. 20; 21; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; and 36.

Excepting any of the above area lying within the William O. Douglas Wilderness area.

BILLING CODE 4310-55-M

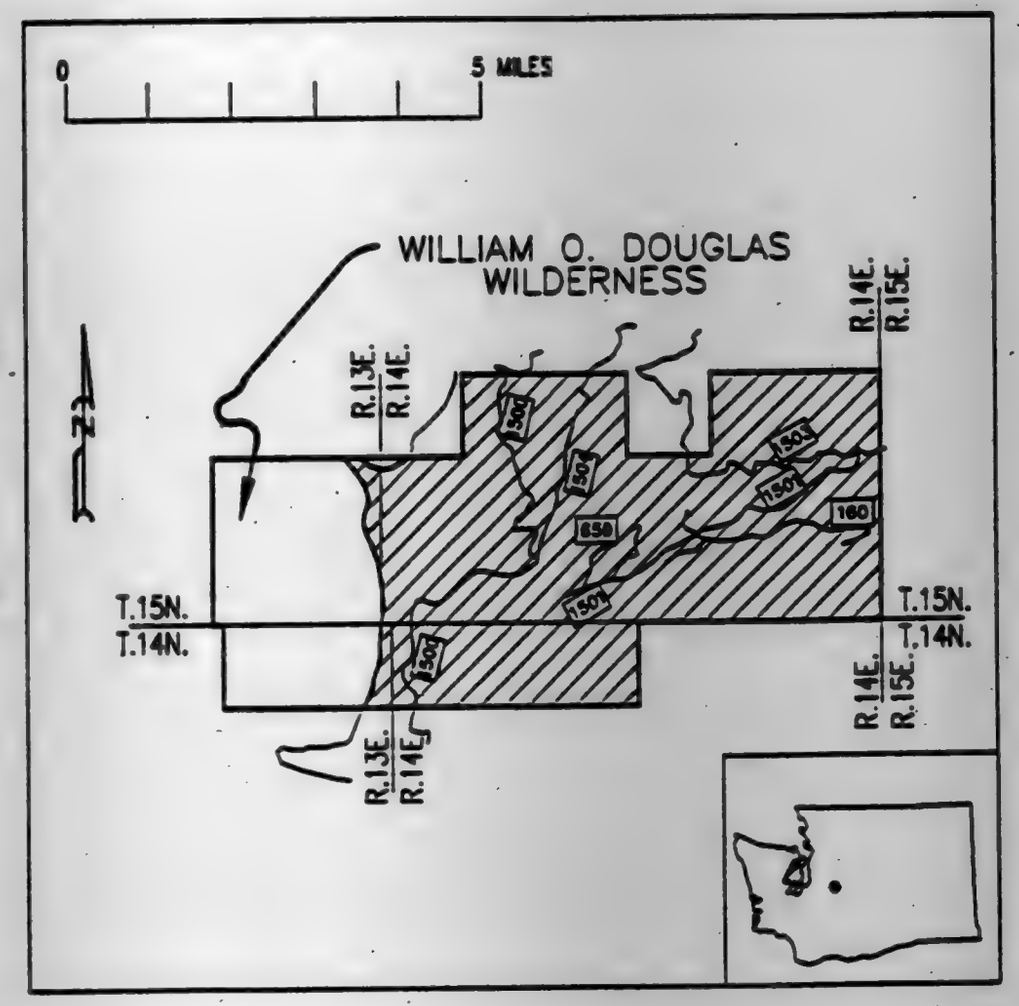

WS–4

BILLING CODE 4310-55-C

Description of WS–5 Taken Solely From Forest Visitor's Map; Wenatchee National Forest, Washington 1990.

Yakima and Lewis Counties

T. 13 N., R. 11 E.: Willamette Meridian
Secs. 1; 2; and 12.

T. 13 N., R. 12 E.: Willamette Meridian
Secs. 1; 2; 3; 4; 5; 9; 10; 11; 12; 13; 14; 15; 16; 20; 21; 22; 23; 27; 28; 29; 32; and 34.

T. 14 N., R. 13 E.: Willamette Meridian
Secs. 30; and 31.

T. 14 N., R. 12 E.: Willamette Meridian
Secs. 32; 34; 35; and 36.

T. 14 N., R. 11 E.: Willamette Meridian
Sec. 36.

T. 13 N., R. 13 E.: Willamette Meridian
Sec. 6.

T. 12 N., R. 12 E.: Willamette Meridian
Sec. 4.

Excepting any of the above area lying within the Goat Rocks and William O. Douglas Wilderness areas.

BILLING CODE 4310-55-M

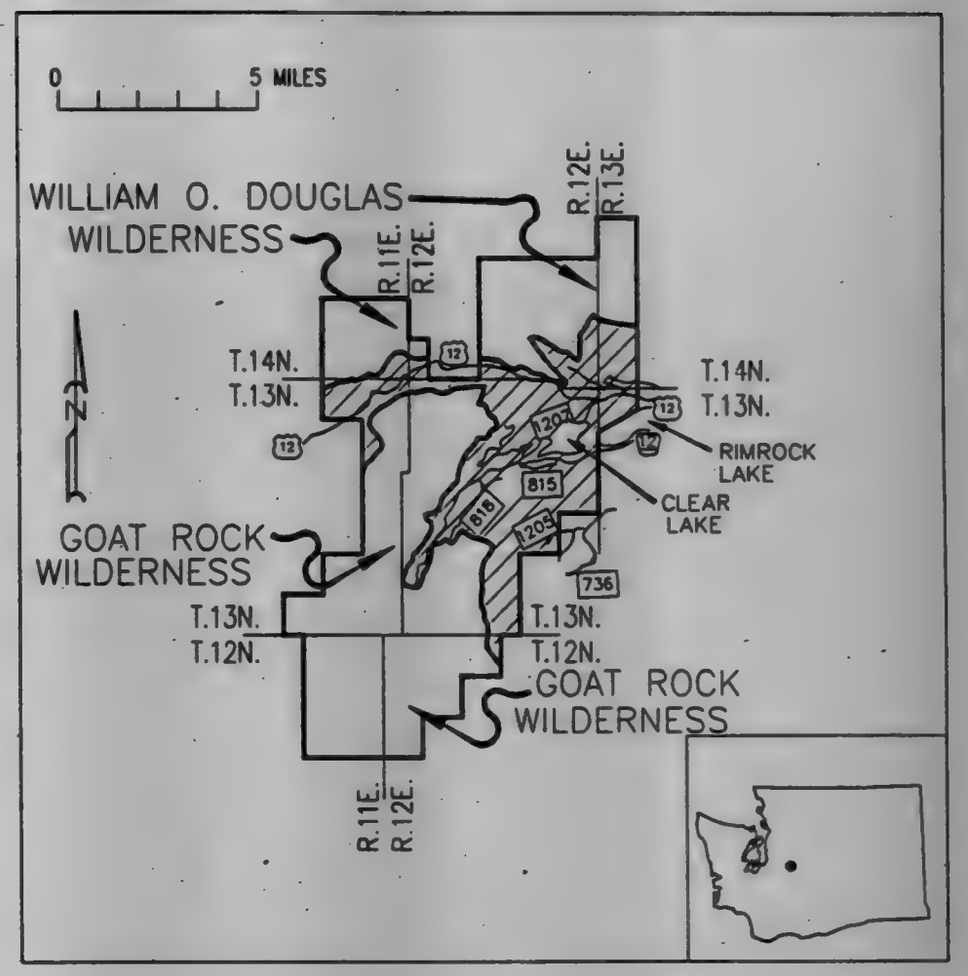

WS–5

BILLING CODE 4310-55-C

VOL 56 ISS 87 MY 6 1991 UMI

Description of WS-6 Taken Solely From Forest Visitor's Map; Wenatchee National Forest, Washington 1990.

Yakima County

T. 13 N., R. 13 E.: Willamette Meridian Secs. 11; 12; 13; 14; 15; 21; 22; 23; 24; 25; 26; 27; 28; 29; 31; 32; 33; and 34.

T. 13 N., R. 14 E.: Willamette Meridian Secs. 2; 3; 4; 5; 7; 8; 9; 10; 11; 15; 16; 17; 18; 19; 20; 21; 29; and 30.

T. 14 N., R. 14 E.: Willamette Meridian Secs. 25; 26; 33; 34; 35; and 36.

Primary constituent elements: forested lands that are used or potentially used by the northern spotted owl for nesting, roosting, foraging, or dispersing.

Dated: April 25, 1991.

John F. Turner,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-10283 Filed 5-3-91; 8:45 am]

BILLING CODE 4310-55-M

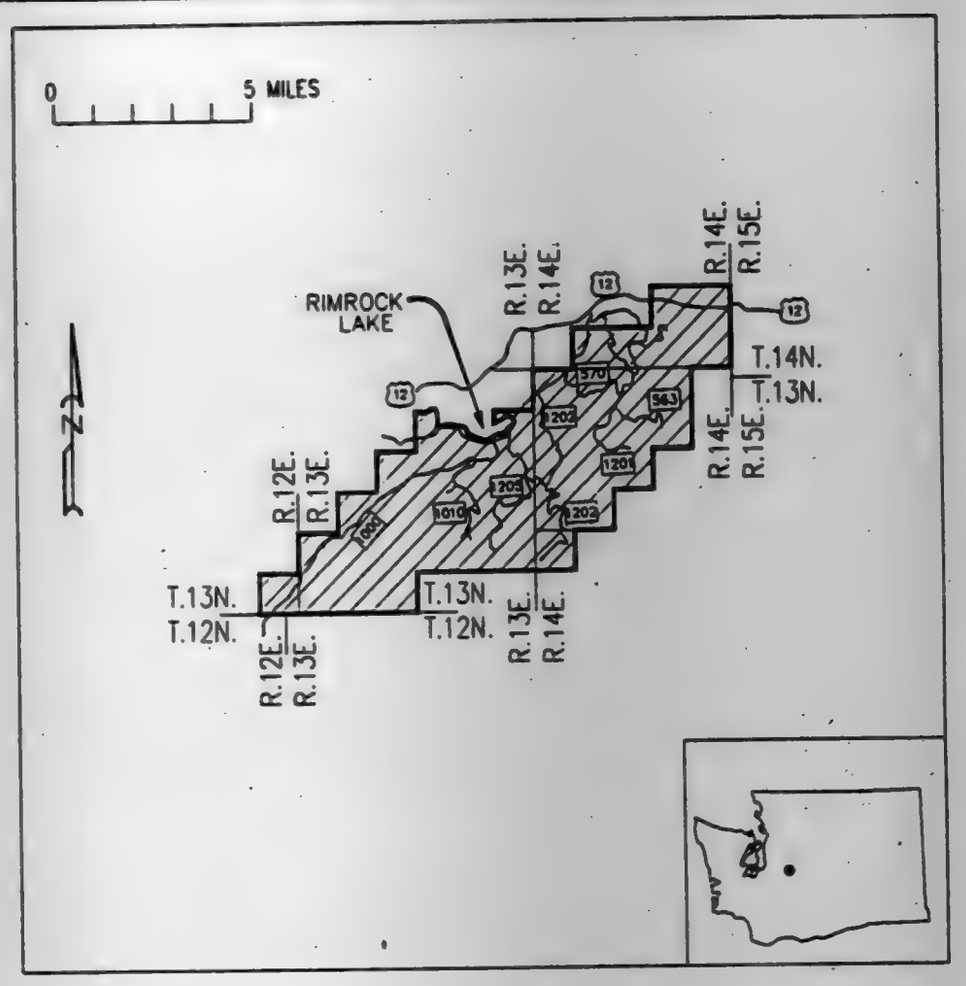

WS-6

BILLING CODE 4310-55-C

federal register

Monday
May 6, 1991

Part III

Department of Education

Drug-Free Schools and Communities Counselor Training Grants Program; Notice

VOL 56 ISS 87 MY 6 1991 UMI

DEPARTMENT OF EDUCATION

[CFDA No.: 84.241]

Drug-Free Schools and Communities Counselor Training Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991

Note to applicants: This notice is a complete application package. together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of program: To award grants to establish, expand, or enhance programs and activities for the training of counselors, social workers, psychologists, or nurses who are providing or will provide the drug abuse prevention, counseling, or referral services in elementary and secondary schools. Funds under this program may not be used for treatment services.

Eligible applicants: The following are eligible for new awards under this competition: State educational agencies, local educational agencies, institutions of higher education, or consortia of those agencies or institutions. Grants may also be awarded to private nonprofit agencies that have an agreement with a local educational agency to provide training in drug abuse counseling for individuals who will provide counseling in the schools of that local educational agency.

Deadline for transmittal of applications: June 21, 1991.

Deadline for intergovernmental review: August 20, 1991.

Available funds: $3,395,000.

Estimated range of awards: $50,000 to $100,000.

Estimated average size of awards: $75,000.

Estimated number of awards: 45.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 12 months.

Applicable regulations: (a) The Education Department General Administative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), Part 82 (New Restrictions on Lobbying), Part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)), and Part 86 (Drug-Free Schools and Campuses); (b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98; and (c) The regulations for Family Educational Rights and Privacy in 34 CFR part 99.

Selection criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of section 5129 of the Drug-Free Schools and Communities Act (DFSCA), including consideration of—

(i) the objectives of the project; and

(ii) How the objectives of the project further the purposes of section 5129 of the DFSCA.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in section 5129 of the DFSCA, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(4) *Quality of key personnel.* (12 points) (i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the projects, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(**Cross-reference:** See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any Single Point of Contact, see the list published in the **Federal Register** on September 17, 1990, pages 38210 and 38211.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.241, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that this address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for transmittal of applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA 84.241), Washington, DC 20202-4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.241), Room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and Instructions.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying: Debarment, Suspension, and Other Responsibility Matters; and Drug Free Workplace Requirements (ED 80-0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80-0014, 9/90) and instructions.

Note: ED 80-0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Allen King, Director, Division of Drug-Free Schools and Communities, 400 Maryland Avenue SW., Washington, DC 20202-6439; (202) 401-1599. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3202, 3203.

Dated: April 29, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

BILLING CODE 4000-01-M

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OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 4 1
TITLE: Drug-Free Schools and Communities Counselor Training Grants Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

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BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

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Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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Instructions for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package;

3. Provide assurances that the Federal funds made available shall be used to supplement, and, to the extent practical, to increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant, and in no case to supplant such funds;

4. Provide assurances of compliance with the statute;

5. Include a discussion of how the training to be assisted under the grant will assist the applicant to:

a. Increase the number of school personnel who are trained to provide drug abuse counseling services; and

b. Improve the quality of drug abuse counseling services offered by the applicant or the local educational agency concerned;

6. In the case of an applicant that is a private, nonprofit agency, include documentation of an agreement with a local educational agency to provide training in drug abuse counseling for individuals who will provide counseling in the schools of the local educational agency; and

7. Include any other pertinent information that might assist the Secretary in reviewing the application.

Please limit the Application Narrative to no more than 25 double-spaced, typed pages (on one side only).

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing the Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction 1810–0552, Washington, DC 20503.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter ____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier ____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Reporting Entity: _____ Page ____ of ____

[FR Doc. 91-10548 Filed 5-3-91; 8:45 am]
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federal register

Monday
May 6, 1991

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 552

Control, Custody, Care, Treatment and Instruction of Inmates; Searches of Housing Units, Inmates and Inmate Work Areas; Interim Rule

VOL 56 ISS 87 MY 6 1991 UMI

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 552

Control, Custody, Care, Treatment and Instruction of Inmates; Searches of Housing Units, Inmates and Inmate Work Areas

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document the Bureau of Prisons is amending its rule on Searches of Housing Units, Inmates and Inmate Work Areas in order to codify existing procedures. This amendment allows the Warden to place an inmate in a room or cell for close observation when there is reasonable belief that the inmate has ingested contraband or concealed contraband in a body cavity, and other methods of body searches are inappropriate or likely to result in physical injury to the inmate. This amendment also adds other examples which indicate when a visual search is warranted, and makes editorial corrections. The intended effect of this amendment is to help ensure the continued security and good order of the institution by providing an alternate method for the detection of contraband.

DATES: *Effective* May 6, 1991. Comments must be submitted by June 20, 1991.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its rule on Searches of Housing Units, Inmates, and Inmate Work Areas. A final rule on this subject was published in the **Federal Register** November 13, 1980 (45 FR 75134) and was amended in the **Federal Register** October 21, 1983 (48 FR 48970). A summary of the specific changes to that rule follows.

In § 552.11(b)(1), the second sentence is revised to read "For example, placement in a special housing units (see 28 CFR part 541, subpart B), leaving the institution, or re-entry into an institution after contact with the public (after a community trip, court transfer, or after a "contact" visit in a visiting room) is sufficient to justify a visual search." This amendment merely adds other examples indicating when a visual search is warranted, and represents no change in the intent of the existing rule. In § 552.11(c), the introductory text is amended by revising the word "forcep" in the first sentence to read "forceps".

Sections 552.12 and 552.13 are redesignated as §§ 552.13 and 552.14, and a new § 552.12 is added which specifies that when there is reasonable belief that an inmate has ingested contraband or concealed contraband in a body cavity and the methods of search specified in § 552.11 are inappropriate or likely to result in physical injury to the inmate, the Warden or designee may authorize the placement of an inmate in a room or cell for the purpose of staff's closely observing that inmate until the inmate has voided the contraband or until sufficient time has elapsed to preclude the possibility that the inmate is concealing contraband. Paragraph (a) of § 552.12 provides for the termination and review of close observation status, paragraph (b) specifies that the supervising staff member shall be the same sex as the inmate and shall maintain complete and constant visual supervision of the inmate, and paragraph (c) specifies the conditions of close observation.

Because this amendment is intended to specify agency procedures for dealing with institution security (specifically, alternate procedures for the detection of contraband), the Bureau finds good cause for exemption from the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and delay in effective date. While the Bureau believes it is necessary to implement these procedures immediately, the Bureau is publishing the procedures as an interim rule in order to invite public comment. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered before the rule is finalized.

Through an inadvertent error in the production of a previous edition of title 28, the text of former § 552.12(b)(2) was partially replaced by a repetition of the text of paragraph (c). This amendment correctly revises redesignated § 552.13(b)(2) to read "Staff shall solicit the inmate's consent prior to the X-ray examination. However, the inmate's consent is not required."

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 552

Prisoners.

Dated: April 26, 1991.

J. Michael Quinlan,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), subchapter C of 28 CFR chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 552—CUSTODY

1. The authority citation for 28 CFR part 552 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to offenses occurring on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. In § 552.11, (c) introductory text is amended by revising the word "forcep" in the first sentence to read "forceps", and paragraph (b)(1) is amended by revising the second sentence as follows:

§ 552.11 Body searches of inmates.

* * * * *

(b) * * *

(1) * * * For example, placement in a special housing unit (see 28 CFR part 541, subpart B), leaving the institution, or re-entry into an institution after contact with the public (after a community trip, court transfer, or after a "contact" visit in a visiting room) is sufficient to justify a visual search.

* * *

* * * * *

§§ 552.12 and 552.13 [Redesignated as §§ 552.13 and 552.14].

3. Sections 552.12 and 552.13 are redesignated as §§ 552.13 and 552.14.

4. A new § 552.12 is added to read as follows:

§ 552.12 Close observation.

When there is reasonable belief that an inmate has ingested contraband or concealed contraband in a body cavity and the methods of search specified in § 552.11 are inappropriate or likely to result in physical injury to the inmate, the Warden or designee may authorize the placement of an inmate in a room or cell for the purpose of staff's closely observing that inmate until the inmate has voided the contraband or until sufficient time has elapsed to preclude the possibility that the inmate is concealing contraband.

(a) The length of close observation status will be determined on an individual basis. Ordinarily, the Captain, in consultation with qualified health personnel, shall determine when termination is appropriate. The status of an inmate under close observation for as long as three days must be reviewed by the Segregation Review Official according to the provisions in § 541.22(c) of this chapter, and the initial SRO review conducted within three work days shall be a formal hearing. Maintaining an inmate under close observation beyond seven days requires approval of the Warden, who makes this decision in consultation with the Captain and qualified health personnel.

(b) The supervising staff member shall be the same sex as the inmate and shall maintain complete and constant visual supervision of the inmate.

(c) The supervisor responsible for initiating the close observation watch shall advise the inmate of the conditions and of what is expected.

(1) The inmate shall be required to provide a urine sample within two hours of placement under close observation in accordance with the provisions of § 550.30 of this chapter on urine surveillance. A second urine sample is required prior to releasing the inmate from close observation.

(2) The light will be kept on at all times.

(3) No inmate under close observation status may be allowed to come into contact with another inmate.

(4) The inmate ordinarily may not be allowed personal property while under close observation status, except legal and personal mail and a reasonable amount of legal materials when requested. Personal hygiene items will be controlled by staff.

(5) When the inmate is lying on a bed, the inmate shall be required to lie on top of the mattress in full view, weather and room temperature permitting. When necessary for the inmate to use cover, hands must remain visible at all times so that staff can observe any attempt to move contraband.

(6) Due to security concerns, the inmate ordinarily may not be permitted recreation outside of the cell.

(7) The inmate is to be served the same meals as those served to the general population, unless medically contraindicated.

(8) No medications may be given to the inmate except for those prescribed and given by hospital personnel. No laxatives may be given except natural laxatives, i.e., coffee, prune juice, etc.

(9) When the inmate needs to urinate and/or defecate, the inmate will be furnished an empty hospital bed pan.

(10) When the inmate requests to shave, to brush teeth, or other such request, a wash pan and container of water is to be provided for use in the cell.

(11) Institution staff shall be available to the inmate upon request, within reason and within the bounds of security concerns.

5. In redesignated § 552.13, paragraph (b)(2) is revised to read as follows:

§ 552.13 X-ray, major instrument, fluoroscope, or surgical intrusion.

* * * * *

(b) * * *

(2) Staff shall solicit the inmate's consent prior to the X-ray examination. However, the inmate's consent is not required.

* * * * *

[FR Doc. 91-10606 Filed 5-3-91; 8:45 am]

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Monday
May 6, 1991

PART V

Department of Education

Tribally Controlled Postsecondary Vocational Institutions Program; Notice

VOL 56 ISS 87 MY 6 1991 UMI

DEPARTMENT OF EDUCATION

[CFDA No.: 84.245]

Tribally Controlled Postsecondary Vocational Institutions Program (Institutional Support Grants), Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all the information, application forms, and instructions needed to apply for a grant under this competition.

The Supplemental Appropriations Act enacted April 10, 1991 (Pub L. 102–27), directs the Department to make awards for this program no later than June 1, 1991. That legislation also waives, for this program, the requirements in the General Education Provisions Act for rulemaking with public comment. Therefore the Department is publishing, in final without public comment, this special application notice with selection criteria tailored to the requirements of the Tribally Controlled Vocational Institutions Support Act of 1990.

Purpose of Program: It is the purpose of this program to provide gants for the operation and improvement of tribally controlled postsecondary vocational institutions to ensure continued and expanded educational opportunities for Indian students, and to allow for the improvement and expansion of the physical resources of those institutions.

Deadline for Transmittal of Applications: May 15, 1991.

Available Funds: $2,440,000.

Estimated Range of Awards: $500,000–$1,900,000.

Estimated Average Size of Awards: $1,220,000.

Estimated Number of Awards: A minimum of 2 grants.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations) part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and Indian Tribal Governments), part 81 (General Education Provisions Act—Enforcement), part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirement for Drug-Free Workplace (Grants), and part 86 (Drug-Free Schools and Campuses).

Description of Program: The Tribally Controlled Postsecondary Vocational Institutions Program (title III, part H of the Carl D. Perkins Vocational and Applied Technology Education Act) provides institutional support grants for the operation and improvement of the tribally controlled postsecondary vocational institutions to ensure continued and expanded educational opportunities for Indian students, and to allow for the improvement and expansion of the physical resources of those institutions.

The Secretary intends to distribute all funds available under this program through this competitive grant process and, therefore, it is anticipated that no funds would be reserved to fund additional training equipment costs at a later date. (See section 389(d)(1)(A) of the Act).

Eligibility: A tribally controlled postsecondary vocational institution is eligible for assistance under this program if it meets the following conditions:

(a) Is governed by a board of directors or trustees, a majority of whom are Indians.

(b) Demonstrates adherence to stated goals, a philosophy or a plan of operation that fosters individual Indian economic and self-sufficiency opportunity, including programs that are appropriate to stated tribal goals of developing individual entrepreneurship and self-sustaining economic infrastructures on reservations.

(c) Has been in operation for at least three years.

(d) Holds accreditation with or is a candidate for accreditation by a nationally recognized accrediting authority for postsecondary vocational education; and

(e) Enrolls the full-time equivalency of not fewer than 100 students, of whom a majority are Indians.

Funding Activities: The Secretary provides institutional support grants for basic support for the education and training of Indian students, including—

(1) Training costs;

(2) Educational costs;

(3) Equipment costs;

(4) Administrative costs; and

(5) Costs of operation and maintenance of the institution.

Definitions: The following definitions also apply to this program:

(a) *Act* means the Tribally Controlled Vocational Institutions Support Act of 1990.

(b) *Indian* means a person who is a member of an Indian tribe.

(c) *Indian student count* means a number equal to the total number of Indian students enrolled in each tribally controlled postsecondary vocational institution, determined as follows:

(1) The registrations of Indian students as in effect on October 1 of each year.

(2) Credits or clock hours toward a certificate earned in classes offered during a summer term must be counted toward the computation of the Indian student count in the succeeding fall term.

(3) Credits or clock hours toward a certificate earned in classes during a summer term must be counted toward the computation of the Indian student count if the institution at which the student is in attendance has established criteria for the admission of the student on the basis of the student's ability to benefit from the education or training offered. The institution is presumed to have established those criteria if the admission procedures for those studies include counseling or testing that measures the student's aptitude to successfully complete the course in which the student has enrolled. Credit earned by the student for purposes of obtaining a high school degree or its equivalent may not be counted toward the computation of the Indian student count.

(4) Indian students earning credits in any continuing education program of a tribally controlled vocational institution must be included in determining the sum of all credit or clock hours.

(5) Credits or clock hours earned in a continuing education program must be converted to the basis that is in accordance with the institution's system for providing credit for participation in these continuing education programs.

(d) *Indian tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act (85 stat. 688), that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(e) *Tribally controlled postsecondary vocational institution* means an institution of higher education that is formally controlled, or has been formally sanctioned or chartered by the governing body of Indian tribe or tribes, and that offers technical degrees or certificate granting programs. This term does not include an institution that is a tribally controlled community college as defined in this section of the notice. (See Cong. Rec. S4116 (daily ed. April 5, 1990) (Statement of Senator Bingaman); Cong. Rec. H1708 (daily ed. May 9, 1989) (Statement of Rep. Richardson)).

(f) *Tribally controlled community college* means an institution that receives assistance under Tribally Controlled Community Colleges Assistance Act of 1978 or the Navajo Community College Act.

(g) *Institutional support grant* means a grant under section 386 of the Act.

Application Content: To receive a grant under the Tribally Controlled Postsecondary Vocational Institutions Program an applicant for an institutional support grant must include the following information in the application:

(a) Documentation showing that the institution is eligible according to the requirements under the eligibility section of this notice.

(b) A description of the fiscal control and fund accounting procedures to be used for all funds received under this program that will allow the Secretary to monitor expenditures and the Education Department Inspector General, the U.S. Comptroller General, or an independent non-federal auditor to audit the institution's programs.

(c) A comprehensive development plan that must address—

(1) The institutional mission statement, i.e., a broad statement of purpose, that identifies its distinguishing characteristics, including the characteristics of the students the institution serves and plans to serve and the programs of study it offers and proposes to offer;

(2) Data for the past three academic years reflecting the number and required qualifications of the teaching and administrative staff, the number of students enrolled, attendance rates, dropout rates, graduation rates, rate of job placement or college enrollment after graduation, and the most significant scholastic problems affecting the student population;

(3) A description of how the institution is responsive to the current and projected labor market needs in its geographic area, including the institution's plans for placement of students;

(4) Assumptions concerning the institutional environment, the potential number of students to be served, enrollment trends, and economic factors which could affect the institution;

(5) Major problems or deficiencies that inhibit the institution from realizing its mission;

(6) Long-range and short-range goals that will chart the growth and development of the institution and address the problems identified under paragraph (c)(5);

(7) Measurable objectives related to reaching each goal;

(8) Time-frames for achieving the goals and objectives described in paragraphs (c) (6) and (7);

(9) Strategies and resources for objectively evaluating the institution's progress towards, and success in, achieving its goals and objectives;

(10) Priorities for implementing improvements concerning instructional and student support, capital expenditures, equipment, and other priority areas; and

(11) Major resource requirements necessary for achieving its goals and objectives, including personnel, finances, equipment, and facilities, and a detailed budget identifying the costs to be paid with a grant under this program and resources available from other Federal, State, and local sources that will be used to achieve the institution's goals and objectives. Budget and cost information must be sufficiently detailed to enable the Secretary to determine the amount of payments pursuant to section 386(b)(2) of the Act. (The statement must include information on allowable expenses listed under the heading "allowable expenses.")

(d) The institution's operating expenses for the preceding fiscal year, including allowable expenses listed below under the heading "allowable expenses".

(e) The institution's Indian student count.

Allowable Expenses: An institutional support grant may be used only to pay expenses associated with the following:

(a) The maintenance and operation of the program, including—

(1) Development costs;

(2) Costs of basic and special instruction, including special programs for individuals with handicaps and academic instruction;

(3) Materials;

(4) Student costs;

(5) Administrative expenses;

(6) Boarding costs;

(7) Transportation;

(8) Student services;

(9) Day care and family support programs for students and their families, including contributions to the costs of education for dependents; and

(10) Training equipment costs necessary to implement training programs.

(b) Capital expenditures, including operations and maintenance and minor improvements and repair, and physical plant maintenance costs.

(c) Costs associated with repair, upkeep, replacement, and upgrading of instructional equipment.

Selection Criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The Criteria*—(1) *Institutional goals and objectives.* (15 points) The Secretary reviews each application to determine the extent to which the applicant's current and future institutional goals and objectives are:

(i) Realistic and defined in terms of measurable results; and

(ii) Directly related to the problems to be solved.

(2) *Comprehensive development plan.* (30 points) The Secretary reviews each application to determine the extent to which the plan is effectively designed to meet the applicant's current and future institutional goals and objectives, including instructional and student support needs, equipment and capital requirements.

(3) *Implementation strategy.* (25 points) The Secretary reviews each application to determine the extent to which an applicant's implementation strategy—

(i) For each major activity funded under this program, is comprehensive and likely to be effective, taking into account the applicant's past performance and the data for the past three academic years reflecting the number and required qualifications of the teaching and administrative staff, the number of students enrolled, attendance rates, dropout rates, graduation rates, rate of job placement or college enrollment after graduation, and the most significant scholastic problems affecting the student population;

(ii) Includes a realistic timetable for each activity; and

(iii) Includes a staff management plan likely to ensure effective administration of the project activities.

(4) *Budget and cost effectiveness.* (20 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the proposed activities to be funded under this program, including capital expenditures and acquisition of equipment, if applicable;

(ii) Costs are necessary and reasonable in relation to similar activities the institution carried out in previous years; and

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(iii) The budget narrative justifies the expenditures.

(5) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan the institution plans to use to determine its progress towards, and success in, achieving its goals and objectives, including the extent to which—

(i) The plan identifies, at a minimum, types of data to be collected, expected outcomes, and how those outcomes will be measured;

(ii) The methods of evaluation are appropriate and, to the extent possible, are objective and produce data that are quantifiable; and

(iii) The methods of evaluation provide periodic data that can be used for ongoing program improvement.

(*Instructions for Transmittal of Applications:* (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, attention: (CFDA #84.245), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202–4725.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–8493.

(3) The applicant must indicate on the package and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this application is divided into four parts including various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—and Instructions.

Part III: Itemized Budget and Budget Narrative.

Part IV: Program Narrative.

Additional Materials: Assurances—Non-Construction Programs (Standard Form 424B).

Certifications Regarding Debarment, Lobbying, Suspension, and Other Responsibility Matters; and Drug Free Workplace Requirements (ED Form 80–0013) and instructions.

Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

Note: ED Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

All applicants must submit one original signed application, including ink signature on all forms and assurance and two copies of the application.

FOR FURTHER INFORMATION CONTACT: Harvey Thiel, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4512, Mary E. Switzer Building), Washington, DC 20202–7327. Telephone (202) 732–2360.

Program Authority: 20 U.S.C. 2397 through 2397h.

Dated: April 17, 1991.

Lamar Alexander,

Secretary of Education.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 4 5
TITLE: Tribally Controlled Postsecondary Vocational Institution Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date; Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant; b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories (First Budget Period)

	A*	B**
1. Personnel		
2. Fringe Benefits (Rate %)		
3. Travel		
4. Equipment		
5. Supplies		
6. Contractual		
7. Other		
8. Total, Direct Cost (lines 1 through 7)		
9. Indirect Cost (Rate %)		
10. Training Costs/Stipends		
11. TOTAL, Federal Funds Requested (lines 8 through 10)		

SECTION B - Other Available Resources

	A*	B**
1. Federal		
2. State and Local		
3. TOTAL,		

*NOTE: Fill in only column A for one year budget periods. Continuation amounts for future years go in Section C.

**NOTE: Fill in columns A a. . B when full-funded projects are longer than 12 months.

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SECTION C - Budget Estimates (Federal Funds Only) For Balance of Project

Budget Periods

Second	Third	Fourth	Fifth

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid to project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for at least one trip for two people to attend a project director's meeting in Washington, D.C.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. Supplies: Include the cost of consumable supplies and materials to be used during the project.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment; and (2) sub-contracts.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Cost: Show the total for lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. Training/Stipend Cost: (if allowable)

11. TOTAL, Federal Funds Requested: Show total for lines 8 through 10.

SECTION B - Other Available Resources

List the total resources available from other Federal, State and Local sources that will be used to achieve the institution's goals and objectives.

SECTION C - Budget Estimates (Federal Funds Only) for Balance of Project

If the project period exceeds 12 months, include cost estimates for the continuation budget periods, as appropriate.

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INSTRUCTIONS FOR PART III--BUDGET NARRATIVE

The itemized budget and budget narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Please limit this section to no more than five pages. Be sure that each page of your application is numbered consecutively.

INSTRUCTIONS FOR PART IV--PROGRAM NARRATIVE

The Program Narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, where, why, and how of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is the selection criteria. Because your application will be reviewed and rated by a review panel on the basis of the selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and regulations of the program, eligibility requirements, information on any priority set by the Secretary, and the selection criteria for this competition.

Your program narrative should be clear, concise, and to the point. Begin the narrative with a one page abstract or summary of your proposed project. Then describe the project in detail addressing each selection criterion in order.

The Secrtary strongly requests the applicant to limit the Program Narrative to no more than 25 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. Be sure to number ALL pages in your application.

You may include supporting documentation as appendices. Be sure that this material is concise and pertinent to this program competition.

Applicants are advised that:

(a) The Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (EDGAR § 75.217)

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(b) The technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments which pertain to the established technical review criteria, such as commitment of resources.

INSTRUCTIONS FOR ESTIMATED PUBLIC REPORTING BURDEN

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651.

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse. (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

[FR Doc. 91-10877 Filed 5-3-91; 8:45 am]

BILLING CODE 4000-01-C

federal register

Monday
May 6, 1991

Part VI

Department of Education

Fund for Innovation in Education: Innovation in Education Program; Proposed Priorities for Fiscal Year 1991; Notice

VOL 56 ISS 87 MY 6 1991 UMI

DEPARTMENT OF EDUCATION

Fund for Innovation in Education: Innovation in Education Program; Proposed Priorities for Fiscal Year 1991

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for Fiscal Year 1991.

SUMMARY: The Secretary proposes priorities for fiscal year 1991 under the Innovation in Education Program. The Secretary takes this action to implement his strategy for moving America toward the National Education Goals that the President and the Governors have defined. These priorities are intended to help the Secretary identify approaches in school leadership training and teacher training that could be replicated in new programs.

DATES: Comments must be received on or before June 5, 1991.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Margo Anderson, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208-55524.

FOR FURTHER INFORMATION CONTACT: Shirley Steele, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208-5524. Telephone: (202) 219-1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Under the Innovation in Education Program, the Secretary supports projects that show promise of identifying and disseminating innovative approaches in preschool, elementary, and secondary education. One aspect of the Secretary's plan for moving the Nation toward the National Education Goals for the year 2000 is to foster better and more accountable schools. The Secretary seeks to identify innovative approaches to the training of school leaders and teachers that will help make schools better and more accountable.

Academies for School Leaders

One of the lessons of the reform effort of the 1980s is that change must occur school by school. Schools need strong leadership, and school leaders need the freedom to run their schools if they are to make well-conceived efforts at improvement and be held accountable for results. The Secretary proposes to set funds aside for Academies for School Leaders that would train principals and other school leaders in school improvement strategies and accountability systems that will create in schools the conditions needed to reach the National Education Goals.

Academies for Teachers

Teachers are the heart of schools. Restructuring schools and attaining the National Education Goals depend heavily on the quality of teaching, particularly in the core academic disciplines. The Secretary proposes to set funds aside for Academies for Teachers to give teachers the knowledge and the skills that they need to help students meet world-class standards of performance. The Secretary proposes to support separate academies to conduct training in each of the five core disciplines—English, mathematics, science, history, and geography—as well as academies that would conduct training in all five disciplines.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note.—This notice of proposed priorities does not solicit applications. A notice inviting applications under these competitions will be published in the **Federal Register** following the close of the public comment period for this notice of proposed priorities.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary intends to set funds aside separately for each of the priorities, and he proposes to fund under each competition only applications that meet the absolute priority.

Proposed Priority 1

Academies for School Leaders

Projects to operate training academies for public and private school leaders. Each academy would choose to serve a State or a multi-State region, and the Governors of the States to be served would be consulted in the design and operation of the academy's program. Only one academy in a State or region would be funded. The activities carried out by an academy would include:

- Construction of a model curriculum for the development of school leaders that focuses on instructional leadership, school-based management, and the design and execution of school improvement strategies and accountability mechanisms;
- Identification of candidates to be trained as new school leaders, including minorities and persons with disabilities, using a carefully designed search process;
- Identification of schools with principal and other school leader vacancies and negotiation with schools and school districts to: match the trainee-candidates with districts or schools that will sponsor and support the candidates; and identify and support exceptional, experienced principals and other school leaders to serve as mentors to the trainee-candidates;
- Operation of school leadership programs during the school year or during the summer that provide intensive training and development for the trainee-candidates, using the model curriculum developed by the academy;
- Monitoring and facilitating an internship, as appropriate, for each of the graduates of the intensive development programs under the guidance and supervision of an experienced school leader; and
- Providing periodic follow-on development activities for the trainee-candidates during the internship.

Within this absolute priority for Academies for School Leaders, the Secretary intends to establish invitational priorities to encourage projects that would match funds provided under this priority with funds from non-Federal sources, and projects that would combine the resources of different schools within an institution of higher education, such as the schools of arts and sciences, business or management, and education, or that would provide a similar multidisciplinary approach. However, projects that address these invitational priorities would not receive a competitive advantage over other projects that meet the absolute priority.

Proposed Priorities 2-7

English Academies for Teachers

Mathematics Academies for Teachers

Science Academies for Teachers

History Academies for Teachers

Geography Academies for Teachers

Academies for Teachers in the Five Core Disciplines

Projects to operate training academies for teachers in each of the five core academic disciplines—English, mathematics, science, history, and geography—and projects to operate single academies that deliver training to teachers in all five disciplines. Each academy would choose to serve a State or a multi-State region, and the Governors of the States to be served would be consulted in the design and operation of the academy's program. Only one academy would be funded in a State or region to deliver training in a given discipline. The activities carried out by an academy would include:

- Development of a model curriculum for the training of teachers that focuses on renewal and enhancement of teachers' knowledge of the core academic discipline or disciplines addressed by the academy; teaching skills and strategies needed to impart academic subject matter to students, including students from diverse backgrounds and students with disabilities; the use of educational technologies in teaching the core discipline; and the training that teachers need to become master teachers and to participate in curriculum development;
- Recruitment of teachers within the State or region to participate in the program of the academy, with an effort made to recruit minority teachers, teachers with disabilities, and other teachers who have potential for leadership; and
- Operation of programs during the school year or during the summer that provide intensive training using the model curriculum developed by the academy.

Within the absolute priorities for Academies for Teachers, the Secretary intends to establish an invitational priority to encourage projects that would match funds provided under this priority with funds from non-Federal sources. However, projects that address the invitational priority would not receive a competitive advantage over other projects that meet the absolute priorities.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 522, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

There are no regulations for this program. The Education Department General Administrative Regulations in 34 CFR part 75 contain the selection criteria and procedures for review and selection of applications.

Program Authority: 20 U.S.C. 3151.

(Catalog of Federal Domestic Assistance Number 84.215, Fund for Innovation in Education: Innovation in Education Program)

Dated: April 29, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-10780 Filed 5-3-91; 1:26 pm]

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VOL
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federal register

Monday
May 6, 1991

Part VII

The President

Executive Order 12760—President's Commission On Executive Exchange

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Federal Register
Vol. 56, No. 87
Monday, May 6, 1991

Presidential Documents

Title 3—

The President

Executive Order 12760 of May 2, 1991

President's Commission on Executive Exchange

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. The President's Commission on Executive Exchange is hereby abolished. The Director of the Office of Personnel Management shall be responsible for terminating the functions of the Commission, which shall be completed no later than September 30, 1991.

Sec. 2. Executive Order No. 12403 of December 5, 1984 is revoked.

THE WHITE HOUSE,
May 2, 1991.

[FR Doc. 91-10994
Filed 5-3-91; 9:22 am]
Billing code 3195-01-M

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783–3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

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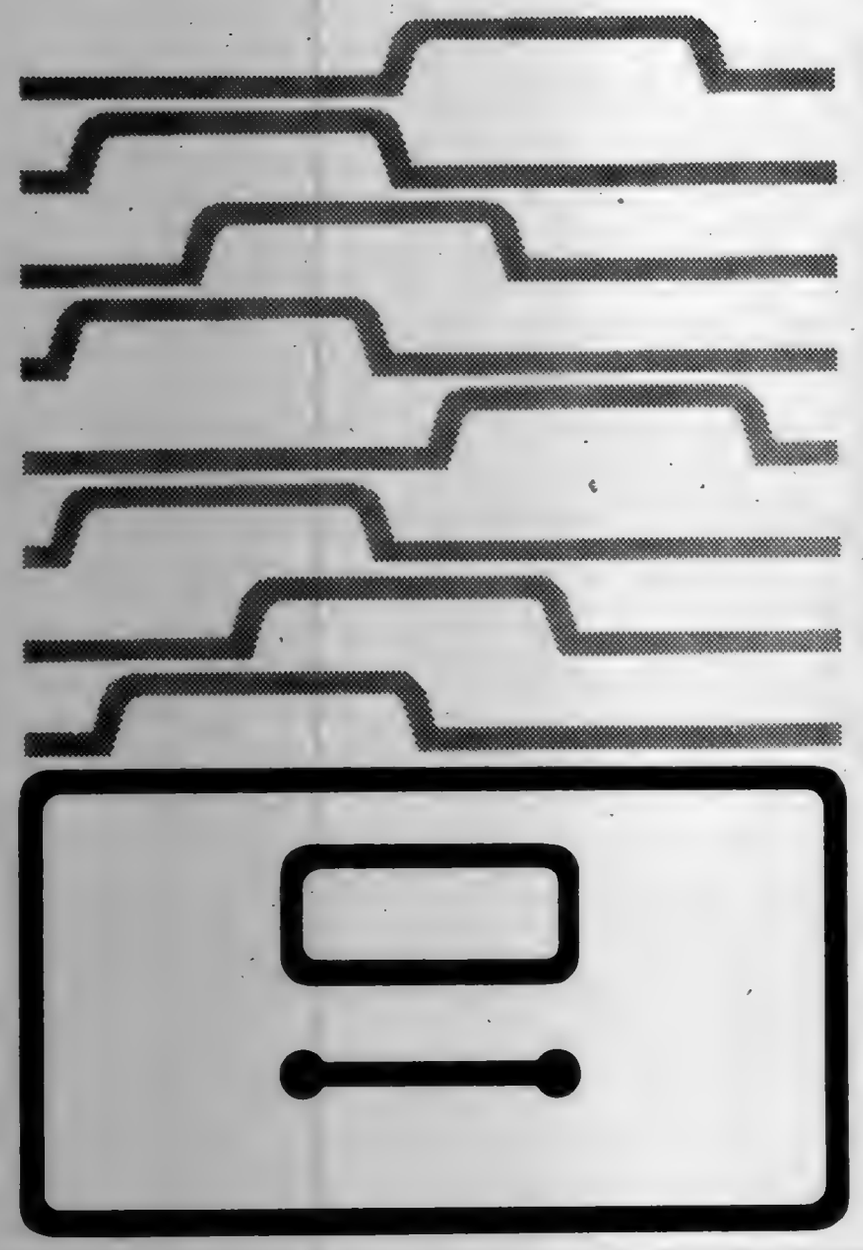

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 91-024]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by removing and adding commuted traveltime allowances for travel between various locations in Delaware and Missouri. Commuted traveltime allowances are the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime for these locations.

EFFECTIVE DATE: May 7, 1991.

FOR FURTHER INFORMATION CONTACT: Paul R. Eggert, Director, Resource Management Support, PPQ, APHIS, USDA, Room 456, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7764.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals and animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by removing and adding commuted traveltime allowances for locations in Delaware and Missouri. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Accordingly, 7 CFR part 354 is amended as follows:

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(c).

2. Section 354.2 is amended by removing or adding in the table, in

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alphabetical order, the information as shown below:

§ 364.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

(In hours)

Location covered	Served from	Metropolitan area	
		Within	Outside
Remove:			
* * * * *			
Delaware:			
* * * * *			
Claymont	Dover		3
Claymont	Wilmington		1
* * * * *			
Dover		1	
Greater Wilmington Airport.	Dover		3
Wilmington (including marine terminal and airport).		1	
* * * * *			
Wilmington	Dover		3
Missouri:			
* * * * *			
Kansas City International Airport.		2	
* * * * *			
Add:			
* * * * *			
Delaware:			
* * * * *			
Claymont	Dover		4
Claymont	Wilmington		2
* * * * *			
Dover		2	
Slaughter Beach.	Dover		2
Wilmington (including marine terminal and airport).		2	
* * * * *			
Wilmington (including marine terminal and airport).	Dover		4
Missouri:			
* * * * *			
Kansas City International Airport.		1	
* * * * *			

Done in Washington, DC, this 1st day of May 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-10607 Filed 5-6-91; 8:45 am]

BILLING CODE 3410-10-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064-AA86

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") is amending part 327 of its regulations, 12 CFR part 327, ("Assessments") to increase the assessment to be paid by Bank Insurance Fund ("BIF") members during the second half of calendar year 1991 and thereafter.

EFFECTIVE DATE: The Final Rule is effective June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Alvin E. Kitchen, Associate Director, Division of Accounting and Corporate Services, Federal Deposit Insurance Corporation, 550 Seventeenth St., NW., Washington, DC, 20429, (202) 625-6344.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) does not apply to the publication of "a rule of particular applicability relating to rates." *Id.* 601(2). Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis (*id.* 603 & 604) are not applicable.

In any case, the primary purpose of the Regulatory Flexibility Act is fulfilled as a matter of course. The Act's purpose is to make sure that agencies' rules do not impose disproportionate burdens on small businesses. The Act is "designed to encourage agencies to tailor their rules to the size and nature of those to be regulated whenever this is consistent with the underlying statute authorizing the rule." See 126 Cong. Rec. 21453 (1980) ("Description of Major Issues and Section-by-Section Analysis of Substitute for S. 299"). The Federal Deposit Insurance Act ("FDI Act") specifies how assessments are computed, and gears each institution's assessment to the institution's size (as measured by domestic deposits). See 12 U.S.C. 1813 & 1817. The FDIC has no authority to "tailor [assessments] to the size and nature of [banks]" in any manner other than that set forth in the Act.[1]

The Final Rule

I. Increase in the BIF assessment rate

A. The substance of the rule

The FDIC must assess all insured depository institutions. *Id.* 1817. The FDIC's assessment rules are set forth in part 327 of title 12 of the Code of Federal Regulations ("Assessments").

The minimum assessment rate for BIF members is 0.15 percent per annum (subject to a minimum annual assessment of $1,000). The Board of Directors may set a higher rate if the Board determines that the higher rate is "appropriate * * * to increase the reserve ratio to the designated reserve ratio within a reasonable period of time." *Id.* 1817(b)(1)(C). When determining an appropriate rate, the Board must consider the BIF's financial condition—its expected operating expenses, case resolution expenditures, and income—and the effect of the assessment rate on the earnings and capital of BIF members. The Board may consider other appropriate factors as well.

The Board of Directors has already raised the annual assessment rate for BIF members from .15 percent to .195 percent. The higher rate has been in effect for the first semiannual period of 1991. See 55 FR 40817 (1990).

Now the Board is increasing the rate to .23 percent per annum. The new rate applies to assessments that become due in the second semiannual period of 1991 and thereafter.[2]

B. The need for the assessment increase

The BIF's designated reserve ratio is currently set by statute at 1.25%. *Id.* 1817(b)(1)(B). The BIF's actual reserve ratio is below that level. It has fallen from 1.10 percent at year-end 1987

[1] The Board believes that the adverse effects of the higher assessment rate do not fall disproportionately on smaller banks. See footnote 16.

[2] The Board published its proposal to raise the BIF assessment rate on March 6, 1991, in the form of a proposed regulation. 56 FR 9308 (1991).

(when the BIF's balance stood at $18.3 billion) to .80 percent at year-end 1988 (BIF balance $14.1 billion), and then to .70 percent at year-end 1989 (BIF balance $13.2 billion). Preliminary figures indicate that the ratio was .42 percent at the end of 1990 (BIF balance $8.4 billion).[3]

Current data suggest that the BIF reserve ratio will continue to decline through the end of 1992 if the assessment rate remains at .195 percent. Under the FDIC's baseline assumptions,[4] the ratio is expected to decline to .19 percent (BIF balance: $3.8 billion) by the end of 1991 and to .11 percent at the end of 1992 (BIF balance: $2.3 billion).[5] Under pessimistic assumptions,[6] the BIF ratio is expected to be zero at the end of 1991 and to be negative (−.28 percent; BIF balance −$5.9 billion) at the end of 1992:[7]

TABLE 1.—BANK INSURANCE FUND TRENDS AND PROJECTIONS, 1984–1992

[Dollars in Billions]

Year	No. failed banks	Failed banks assets	Failed banks assets (adj.) [1]	Baseline Estimate				Pessimistic Estimate			
				Total income [2]	Total expense	Fund balance	BIF reserve ratio (percent)	Total income [2]	Total expense	Fund balance	BIF reserve ratio (percent)
1984	80	$38.9	$38.9	$3.1	$2.0	$16.5	1.19	$3.1	$2.0	$16.5	1.19
1985	120	8.8	8.8	3.4	2.0	18.0	1.19	3.4	2.0	18.0	1.19
1986	145	7.7	8.9	3.3	3.0	18.3	1.12	3.3	3.0	18.3	1.12
1987	203	9.5	20.8	3.3	3.3	18.3	1.10	3.3	3.3	18.3	1.10
1988	221	53.9	61.6	3.4	7.6	14.1	0.80	3.4	7.6	14.1	0.80
1989	207	29.2	15.5	3.5	4.3	13.2	0.70	3.5	4.3	13.2	0.70
1990 [3]	169	16.3	39.8	3.9	8.7	8.4	0.42	3.9	8.7	8.4	0.42
Estimates for 1991 and 1992 [4]											
1991	180–230	$65–90B		$5.4	$10.00	$3.8	0.19	$5.04	$13.9	$−0.1	0.00
1992	160–210	30–70B		5.0	6.5	2.3	0.11	5.0	10.8	−5.9	−0.28

Notes to Table 1:

[1] Reserves are established for open banks when their failure appears likely. The adjusted figures on failed bank assets reflect either the year reserves were established or the year the bank was actually closed, whichever was earlier.

[2] Assumes that the assessment rate remains at .195 percent per annum through year-end 1992.

[3] 1990 BIF revenue and expense figures are preliminary.

[4] The most recent projections dated April 10, 1991, using the .23 percent rate included in the final rule shows the BIF balance in 1991 and 1992 to be $4.1 billion and $3.6 billion, respectively, for the baseline estimates and $.2 billion and $−4.6 billion, respectively, for the pessimistic estimate.

In view of this trend, the Board has determined that the annual BIF assessment rate must be increased to .23 percent for the second semiannual period of 1991 and thereafter. The increase is needed as part of the FDIC's overall program to restore the BIF's reserve ratio to 1.25 percent within a reasonable time. The FDIC presently anticipates that it will borrow working capital[8] of approximately $10 billion. The higher assessment rate is expected to generate additional annual revenues of approximately $870 million, and will provide the funds needed to pay the interest and amortization on that level of borrowing.

The FDIC's anticipated borrowing, and the assessment increase needed to fund it, are only interim measures. They are necessary under the current framework of insurance and supervision for depository institutions. But they must also be seen in the context of longer-term BIF recapitalization efforts currently under development. In any event, it will be appropriate for the FDIC to reconsider its assumptions and projections, and to reevaluate the need for setting the assessment rate at the level here prescribed.

C. Impact on Bank Capital

1. The industry as a whole. Increasing the assessment rate from .195 percent to .23 percent will have a minimal impact on industry capital levels in the short term. The FDIC recognizes, however that banks' assessment costs have been rising sharply in recent years. Assessments will have risen nearly 92 percent between year-end 1990 and mid-year 1991, and will have nearly tripled from the level that prevailed prior to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, 103 Stat. 183 ("FIRREA"). To the extent that banks are unable to share these costs with customers, or that banks are unable to find ways to reduce other costs, bank earnings and profitability will be diminished.

As of December 31, 1990, the tangible equity capitalization[9] of BIF members[10] was approximately $222.9 billion. The assessment rate increase will raise 1991 industry assessments by an estimated $435 million, or less than .2 percent of fourth-quarter 1990 industry capital. On an annual basis, the higher rate will generate additional assessments of $870 million, or about .39 percent of fourth-quarter 1990 industry capital.[11]

The FDIC staff estimates that year-end 1992 tangible equity capital for BIF

[3] During the past 4 years, 800 banks with about $140 billion in total assets have been closed or reserved for, costing the BIF $23 billion. The BIF's administrative and operating expenses over that period have exceeded $850 million. As a result, although the BIF has generated about $14 billion in revenue during this time, the BIF has declined from $18.3 billion at year-end 1986 to $8.4 billion as of year-end 1990. About $8.8 billion is comprised of cash or other liquid assets.

[4] The "baseline" forecast assumes a moderate recession ending by mid-year 1991. It does not represent a best-case scenario.

[5] Under currently expected conditions, FDIC staff projects that 180 banks will be closed in 1991, with another 160 failures in 1992. FDIC staff estimates that reserves of $10 billion will be set aside to cover total expenses and losses on $65 billion in failed-bank assets in 1991. Another $6.5 billion in reserves will be needed in 1992 to cover expenses and losses on $30 billion in failed-bank assets. If the assessment rate were to remain at .195 percent, the BIF's income would be approximately $5.4 billion in 1991 and $5.0 billion in 1992.

[6] The assumptions are "pessimistic" in that they assume the recession lasts for more than a year. They do not represent a worst-case scenario.

[7] Under these assumptions, FDIC staff projects that 230 banks would fail in 1991 and 210 banks would fail in 1992. Reserves of $13.9 billion would be needed to cover expenses and losses on $80 billion in failed-bank assets in 1991. Reserves of $10.8 billion would be needed to cover expenses and losses on $70 billion in failed-bank assets in 1992.

[8] See discussion of the term "working capital" in connection with the comments of the Independent Bankers' Association of America, at paragraph II(B).

[9] Tangible capital is narrowly defined as bank equity minus all intangible assets.

[10] This analysis excludes 18 federal savings banks with tangible capital of $0.934 billion or .4% of industry tangible capital. The federal savings banks were excluded because of significant differences between the financial reports filed by federal savings banks and the other BIF-insured banks.

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members would have been just under $240.6 billion if the .195 percent rate had remained in place. With the assessment rate set at .23 percent, FDIC staff estimates that BIF members' year-end 1992 tangible equity capital will be just over $240.1 billion (roughly $.5 billion lower).

The after-tax cost of the assessment increase is projected to be $574 million per year.[13] If banks maintain dividend levels despite the increase in operating costs, growth in their book capital will be reduced by the full amount of the after-tax cost of the assessment increase (assuming no new capital issues). That is to say, if dividends are not reduced, then the increased operating costs will be reflected in lower retained earnings.[14]

For the projections presented here, the FDIC staff has assumed that banks' dividend rates remained the same as those reported in 1990, and that the only source of new book capital is additions to retained earnings. Under those assumptions, the total $861 million in increased after-tax assessment costs projected over the next one-and-a-half years result in a $474 million total decline in capital and a $387 million total reduction in dividends. This represents a reduction in average annual dividends for the industry of approximately $258 million or 1.8 percent of total 1990 industry dividends of $14.2 billion.

2. Individual banks. Forty-three BIF-insured banks (assets: $22.6 billion) reported negative equity capital at the end of 1990. If the assessment rate had been .195 percent in 1990, three more banks (assets: $0.174 billion) would have reported negative equity capital that year. For another 21 banks (assets: $4.2 billion), the extra cost of the higher insurance premiums would have represented more than 10 percent of their equity capital.

If the 1990 assessment rate had been .23 percent, one additional bank (assets: $2.1 billion) would have seen its equity capital eclipsed by the higher insurance fee. Fourteen more banks (assets: $1.9 billion) would have had increased premiums equal to more than 10 percent of their equity capital.[15]

During 1992, the assessment increase is projected to raise the number of poorly capitalized banks—those with less than 3 percent tangible capital—by only 3 banks (average assets: $35 million). The number of banks with between 3 and 6 percent tangible capital is projected to increase by 11 (average assets: just over $122 million). In sum, while the assessment increase lowers the book capital of most banks, the overall impact on book capital is expected to be small in the short run.

D. Earnings

1. Impact on the industry. The additional assessment premiums, when measured over a full year, would boost BIF members' noninterest overhead expenses by approximately .71 percent. The additional expense of the 3.5 basis point assessment rate increase, measured on an annual basis, amounts to 4.1 percent of 1990 pre-tax net operating income and 6.2 percent of net income after taxes and nonrecurring extraordinary gains. The after-tax impact will be reduced to 3.9 percent of 1990 net income, however, when 1990 state and federal income tax provisions—which amounted to $8.0 billion—are considered.

2. Individual banks.[16] The assessment rate stood at .12 percent during 1990. That year 1,758 BIF members (assets: $730 billion) reported full-year earnings losses totalling $10.7 billion.

If the 1990 rate had been the rate effective for the first semiannual period of 1991 (.195 percent), these banks would have lost an additional $398 million. Another 166 banks (assets: $197 billion) would have lost $57 million. In addition, 2,483 banks (assets: $617 billion) would have had their earnings reduced by more than 10 percent.

If the 1990 assessment rate had been 0.23 percent, 63 more banks (assets: $21.5 billion) would have seen their net income reduced below zero by the additional insurance assessment:[16]

TABLE 2.—BIF MEMBERS WITH EARNINGS LOSSES UNDER DIFFERENT ASSESSMENT SCENARIOS

[Based on 1990 earnings; amounts in $ millions]

	Actual 1990 rate (0.12%)	First-half 1991 rate (0.195%)	Second-half 1991 rate (0.23%)
Number of banks with negative net income	1,758	1,924	1,987
Combined losses	$10,672	$11,108	$11,298
Total assets	$730,741	$928,118	$949,856

An additional 2,767 banks (assets: $485 billion) would have incurred earnings reductions exceeding 10 percent. The average full-year reduction in earnings for these banks attributable to the increase from .195 percent to .23 percent in the assessment rate would have been approximately 15 percent.

The 1,758 banks reporting net losses in 1990 included 193 banks (assets: $100 billion) that had equity capital of less than 3 percent of assets at year-end 1990. If the 1990 assessment rate had been .195 percent, two additional thinly-capitalized banks would have reported a net loss for the year, and 9 others would have had more than 10 percent of their net income absorbed by the additional assessment payments. Lifting the assessment rate to .23 percent would not have resulted in any additional under-capitalized unprofitable banks, nor would it have caused any additional banks to have earnings reduced by more than 10 percent.

II. Comments

The FDIC published the proposed assessment increase for comment on March 6, 1991. 56 FR 9308 (1991). The FDIC received 185 comments on the proposal. Bankers supplied 182 comments; trade groups provided the other 3 comments.

[13] The FDIC staff has projected the BIF assessment base to increase at an annual rate of 4.5 percent during 1991.

[14] FDIC staff has assumed an average tax rate of 34 percent. FDIC staff has also assumed that banks will bear the full after-tax cost of the assessments themselves, and will not pass any portion of the cost along to bank customers in the form of higher borrowing rates, increased service fees, and lower deposit rates.

[15] A change in the value of a bank's book capital is not the same as a change in the bank's overall market value. Some observers have suggested that, if banks cut dividends in order to maintain internal capital generation rates, the market value of common stock will be reduced, and that banks raising capital through new stock issues will see a reduction in the proceeds from new capital issues. This argument runs counter to standard financial theory. While the market value of bank equity undoubtedly rises and falls with profits, it should be independent of dividend policy. Accordingly, the bank's ability to attract new capital should not be materially affected by assumptions about dividend policy.

[16] It is assumed that all increased deposit insurance costs are taken directly out of retained earnings, and are not offset by tax reductions, cost pass-throughs, or lower dividends.

[16] This analysis of the impact of higher assessment rates on bank earnings makes several simplifying assumptions, which have the effect of overstating the likely consequences of a rate increase. Estimated assessment payments are based on end-of-year total domestic deposits, which enlarges the assessment base; in practice, actual assessments would be somewhat lower than the amounts used here. In addition, the effect of higher insurance premiums represents a "worst-case" scenario, in which no tax effect or cost pass-through is assumed, where all higher payments are carried directly through to lower net income.

[16] The affected banks are not disproportionately small ones. Fifty-four have assets under $100 million (86%); four have assets from $100 million to $1 billion (6.4%); three have assets between $1 billion and $5 billion (4.8%); and two have assets exceeding $5 billion (3.2%). By comparison, banks with assets under $100 million comprise 73.3% of all BIF members; $100 million-to-$1 billion banks comprise 23.3%; $1-to-$5 billion comprise 2.5%; and banks with assets over $5 billion comprise the remaining 1%.

A. Bankers' Comments

Just over two-thirds of the bankers (119) opposed the increase; just under one-third of them (63 bankers) did not oppose it or favored it in some degree.

Ninety-eight bankers said that the assessment increase weighs more heavily on small banks than on large ones. These bankers generally noted that large banks often hold foreign deposits, which are not subject to assessment, whereas small banks usually hold domestic deposits only. Accordingly, said these bankers, smaller banks are assessed on a larger proportion of their liabilities.

In the same vein, 95 bankers objected that the FDIC protects all the liabilities of bigger banks under the so-called "Too Big To Fail" doctrine. These bankers made two points: on one hand, the doctrine places them at a disadvantage in competing for deposits; and on the other, smaller banks are in effect paying the cost of the extra protection afforded to the bigger banks.

Bankers suggested three main alternatives to the uniform rate increase. Forty-three bankers called for risk-based assessments; 69 bankers specifically recommended assessing foreign deposits; and 52 bankers proposed changing and/or broadening the assessment base in other ways (*e.g.*, by assessing assets less capital).

None of these options are available under current law, however. The FDI Act prescribes a single rate for all BIF members. 12 U.S.C. 1817(b)(1)(C). The FDI Act also defines the assessment base in terms of "deposits," *id.* 1817(c)(4),[17] and specifically excludes foreign deposits from that term, *id.* 1813(1)(5)(2)(A).

Sixty-one bankers said the increase would have an adverse impact on their own banks. Many bankers described the magnitude of the impact in terms of dollars, but only a few described (or provided sufficient information to compute) the effect of the increase in terms of their banks' earnings or capital. In general, the information provided in the comments was in line with the FDIC's projections. A somewhat smaller number of bankers (13) asserted that the increase would hurt banks generally.

Thirty-two bankers indicated that banks would have to raise interest rates paid by borrowers and/or cut rates paid to depositors. Half as many (16 bankers) said they would not be able to pass costs on to customers.

B. Trade groups' comments

One comment was filed jointly by four trade groups. The other two comments were filed by individual groups. None of the comments directly opposed the assessment increase. All, however, suggested changes in the current statutory assessment plan.

The joint comment was filed by the American Bankers Association, the Association of Bank Holding Companies, the Association of Reserve City Bankers, and the Consumers Banking Association. These four groups noted that industry representatives had developed a recapitalization program, and had presented it to the FDIC in a letter dated February 12, 1991 ("February 12 proposal"). This program called for the FDIC to issue bonds to be purchased by banks. The FDIC would impose a special assessment on the banking industry to cover the interest and principal on the bonds. The assessment would be levied on a different assessment base: Namely, assets minus capital.

The four trade groups contend that the February 12 proposal is a better plan than the FDIC's proposal to raise the assessment rate. They acknowledge, however, that changes in federal law would be needed before the February 12 proposal could be implemented. Accordingly, none of the four groups disputes the need for an increase in BIF resources. But the groups also believe that the increase should be adopted only as an interim measure, pending final Congressional action on various legislative proposals.

The four trade groups make the point that the assessment increase will reduce bank earnings and capital, and will accordingly have an adverse effect on bank lending. The trade groups suggest that the assessment increases from .12 percent per annum (which was the rate in effect at year-end 1990) to .23 percent (which will apply to assessments collected in July 1991, and thereafter) result in a net withdrawal of approximately $3 billion per year from banks' earnings and capital. Based on this computation, the trade groups assert that bank lending would be reduced by almost $25 billion per year. They observe that the assessment increase of .035 percent could take as much as ten years to amortize $10 billion in borrowings. They conclude that, over this interval, raising the rate from .12 percent to .23 percent could reduce bank lending by $250 billion.

There can be no doubt that the increase in bank assessments has been steep ever since the passage of the FIRREA. But at the same time, it is not clear that the impact of the present assessment increase will be as severe as the four trade groups suggest. For one thing, the increase at issue here is a bit less than one-third of the overall increase discussed by the trade groups (.035 percent as compared with .11 percent). For another, the trade groups evidently do not allow for any tax deduction for these operating expenses, nor contemplate the possibility that bank dividends may be reduced: Rather, the trade groups assume that the entire amount of the charge will be reflected in reduced bank capital and retained earnings. For a third, it is not at all clear that a change in banks' retained earnings automatically causes a proportionate change in their lending activity. Banks' lending practices are sensitive to a variety of influences. External conditions can make banks reluctant to lend even when they have unused lending capacity. Conversely, when little excess lending capacity exists, external conditions may nevertheless be more conductive to increased lending activity. The lending environment can change over comparatively short intervals; accordingly, ten-year projections of lending activity are necessarily speculative.

Nevertheless, the four trade groups' central point is well taken. The FDIC agrees that the present assessment schedule should be considered in the context of the larger problems of industry structure and of the deposit-insurance program. If these issues are addressed comprehensively, it may well become appropriate to re-evaluate assessment levels.

The Independent Bankers Association of America ("IBAA") filed one of the individual comments. The IBAA indicated its support for the February 12 proposal. In addition, the IBAA specifically called for the inclusion of foreign deposits in the assessment base, or in the alternative for the assessment base to be changed to assets less capital. The IBAA acknowledged, as did the four trade groups signing the joint statement, that changes of this kind would require new legislation.

With respect to the assessment increase, however, the IBAA called upon the FDIC to clarify the use to which the FDIC will put the assessment proceeds. As provided above, the FDIC expects to borrow $10 billion, and to use the proceeds for the purpose of resolving failed and failing institutions. The FDIC

[17] The FDIC does have limited power under current law to vary the limits of the category "deposit." *Id.* 1813(1)(5). But the FDIC may only include liabilities that are "deposit liabilities by usage." In addition, the FDIC must consult with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision before changing the scope of the term "deposit." The comments did not call for minor changes of this kind, however.

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describes the funds so borrowed and used as "working capital." The IBAA properly observes that, in this connection, "working capital" generally refers to temporary borrowings used to finance the acquisition of assets from failed banks, and that the proceeds from the sale of the assets are expected to be the primary source of repayment for the borrowings. The IBAA indicates concern that the assessment increase will be used to amortize the principal amount so borrowed. Conversely, the IBAA calls for "working capital borrowings" to be "fully collateralized."

The FDI Act does not afford a basis for distinguishing the funds received pursuant to the incremental .035 percent increase from other assessment receipts. The basic purpose for instituting the assessment rate increase is to help restore the BIF's reserve ratio to the designated ratio. See 12 U.S.C. 1817(b)(1)(C). All amounts assessed on BIF members are to be deposited in the BIF without differentiation, and are to be available for the BIF's general uses and purposes. *Id.* 1821(a)(5) (C) & (D). Accordingly, while the FDIC characterizes the funds to be borrowed as "working capital," and speaks of devoting the proceeds from the incremental 0.035 percent increase to the amortization of the principal and interest of those funds, the FDIC's remarks are in the nature of a description of the practical uses to which the funds will be put, and of the reason for setting the amount of the assessment increase at .035 percent. The fact of the matter is that the full resources of the BIF—not just the incremental assessment, and not just any particular collateral—are available for the repayment of any borrowings by the FDIC.

The IBAA calls upon the FDIC to estimate the amount of losses the FDIC expects to sustain over the next five years. As the IBAA itself recognizes, however, such estimates can vary greatly depending on the assumptions used and the economic conditions expected. The FDIC considers that the shorter-term projections set forth above, taken together with the current status of the BIF reserve ratio, are sufficient to demonstrate the need for the assessment increase at issue here.

Finally, the IBAA makes the point, as so many bankers have done, that the assessable deposits of small banks represent a much larger proportion of total liabilities (and in particular, of total deposits) than is the case for larger banks (particularly those that hold foreign deposits). Accordingly, says the IBAA, the assessment increase weighs more heavily on small banks than on larger ones.

The IBAA's observation has to do, at bottom, with the question whether small banks are paying their fair share of the insurance costs. The IBAA implicitly assumes that they are doing so and more. Whatever the validity of this assumption,[10] the FDI Act does not currently provide a mechanism for granting special relief to banks based on size alone. A program of risk-based assessments might address this issue indirectly, however, insofar as the composition of small banks' assets and liabilities might lower their risk profiles.

The New Jersey Council of Savings Institutions filed the other individual comment. The Council recommended that the assessment base be expanded to include foreign deposits. The Council also called for the aggressive pursuit of a system of risk-based insurance premiums. As noted above, these changes would require modifications to federal law.

III. Effective date

The final rule is made effective June 6, 1991.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Financing Corporation, Savings associations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation is amending part 327 of title 12 of the Code of Federal Regulations as follows:

1. The authority citation for part 327 continues to read as follows:

Authority: 12 USC 1441, 1441b, 1817–19.

2. Section 327.13(c) is revised to read as follows:

§ 327.13 Payment of assessment.

* * * * *

(c) *Assessment rate.* The annual assessment rate for each BIF member shall be:

(1) For the first semiannual period of calendar year 1991, 0.195 percent; and

(2) For the second semiannual period of calendar year 1991, and for subsequent semiannual periods, 0.23 percent.

By order of the Board of Directors.

Dated at Washington, DC, this 30th day of April, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–10706 Filed 5–6–91; 8:45 am]

BILLING CODE 6714–01–M

[10] The Treasury Study indicates that, from 1986 through 1988, banks with assets exceeding $1 billion paid 70.7% of all assessments yet imposed only 51.5% of all resolution costs. Dept. of the Treasury, Modernizing the Financial System: Recommendations for Safer, More Competitive Banks 30–31 (1991). But the average size of failed banks is increasing: The pattern reported in the Treasury Study may not hold true in future years.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–CE–46–AD; Amdt. 39–6987]

Airworthiness Directives; British Aerospace Beagle B121 Pup Series 1, 2, and 3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to British Aerospace Beagle B121 Pup series 1, 2, and 3 airplanes. This action requires initial replacement of the flight control column handgrips on the affected airplanes and replacement thereafter at five-year intervals. Several cases of fractures to the flight control column handgrips have been reported on relatively low-time airplanes, and a life limit of five years has been established. The actions of this AD are intended to prevent the possibility of flight control column handgrip failure that could result in loss of control of the airplane.

DATES: Effective May 22, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 22, 1991. Comments for inclusion in the Rules Docket must be received on or before July 1, 1991.

ADDRESSES: British Aerospace Mandatory Pup Service Bulletin B121/95, Revision 2, dated January 28, 1991, that is discussed in this AD may be obtained from British Aerospace Limited, Manager Product Support, Commercial Aircraft Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44–292) 79888; Facsimile (44–292) 79703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435–9100; Facsimile (703) 435–2628. This information may also be examined at the Rules Docket at the address below. Send comments on this AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 90–CE–46–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; Telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.68.99; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA of an unsafe condition that may exist on British Aerospace (BAe) Beagle B121 Pup series 1, 2, and 3 airplanes. The CAA reports that several of the affected airplanes have developed fractures on the flight control column handgrips. These fractures, if not detected and corrected, could result in flight control column handgrip failure and possible loss of control of the airplane. The CAA and the manufacturer (BAe) have determined that a five-year service life should be established for the flight control column handgrips on the affected airplanes.

BAe has issued Mandatory Pup Service Bulletin (SB) B121/95, Revision No. 2, dated January 28, 1991, which specifies inspection and replacement procedures for the flight control column handgrips (part number (P/N) BE–45–10283) on the affected airplanes. The CAA classified the actions specified in this service bulletin as mandatory and issued CAA AD 10–05–90 to assure the continued airworthiness of these airplanes. These airplanes are manufactured in the United Kingdom and are type certificated in the United States. Pursuant to a bilateral airworthiness agreement, the CAA has kept the FAA fully informed of the conditions described above.

The FAA has examined the findings of the CAA, reviewed all other available information, and determined that AD action is necessary for BAe Beagle B121 Pup series 1, 2, and 3 airplanes that are certificated for operation in the United States. The FAA determined that rather than rely on repetitive inspections to reveal damaged flight control column handgrips, the flight control column handgrips should be replaced initially instead of after damage is found. Therefore, the proposed AD would require initial and five-year interval replacements of the flight control column handgrips on the affected airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

The FAA has determined that calendar time is the most desirable method of compliance for this AD because the flight control column handgrips are made of plastic. Over time, water and heat adversely affect plastic, causing cracks and distortions on the flight control column handgrips. The analysis that was performed to establish the five-year service life of the flight control column handgrips took into account factors such as water and heat.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

British Aerospace (BAe): Amendment 39–6987; Docket No. 90–CE–46–AD.

Applicability: Beagle B121 Pup series 1, 2, and 3 (all serial numbers) airplanes, certificated in any category.

Compliance: Required within the next 30 calendar days after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 60 calendar months.

To avoid loss of control of the airplane, accomplish the following:

(a) Replace the flight control column handgrips, part number BE–45–10283, in accordance with the instructions in BAe Mandatory Pup Service Bulletin (SB) B121/95, Revision 2, dated January 28, 1991.

(b) Special permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000

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Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(d) The replacements required by this AD shall be done in accordance with British Aerospace Mandatory Pep SB B121/86, Revision 2, dated January 28, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace PLC, Manager Product Support, Commercial Aircraft Airtuse Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment becomes effective on May 22, 1991.

Issued in Kansas City, Missouri on April 19, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10708 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ANE-21; Amdt. 39-6915]

Airworthiness Directives; Textron Lycoming Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Textron Lycoming four cylinder piston engines equipped with a rear-mounted propeller governor and external oil line. The existing AD requires a one-time inspection, and replacement if necessary, of the propeller governor oil line installation. This amendment is prompted by the determination that additional oil line configurations exist and the need to allow an optional use of flexible hose in place of a steel oil line. This amendment is needed to prevent oil line fracture and loss of engine oil which could lead to engine failure.

EFFECTIVE DATE: May 28, 1991.

ADDRESSES: The applicable service information may be obtained from Textron Lycoming/Subsidiary of Textron Inc., 652 Oliver Street, Williamsburg, Pennsylvania 17701. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mr. Pat Perrotta or Mr. Nick Minniti, Propulsion Branch, ANE-174, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581, telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: On January 2, 1990, the FAA issued AD 90-04-06, Amendment 39-6427 (55 FR 3577, February 2, 1990), to require a one-time inspection on all Textron Lycoming four cylinder engines equipped with a rear-mounted governor and external oil line. That AD was prompted by several incidents and accidents resulting from propeller oil line failures. The FAA determined that engines with oil lines having aluminum B-nuts were operating with missing support clamps or clips and with interference conditions.

Since the issuance of that AD, the FAA has determined that other propeller governor oil line configurations exist, which are not addressed in the existing AD.

Textron Lycoming has revised Service Instruction (SI) No. 1435 to include an optional flexible line as an acceptable replacement for the propeller governor steel oil line. The FAA is adding this option as an alternate means of compliance. Also paragraphs (a)(1), (a)(2), and b and Notes (1), (2) and (3) were revised for clarification.

The FAA has reviewed and approved Textron Lycoming Service Bulletin (SB) No. 488, Revision A, dated April 2, 1990, and Textron Lycoming SI No. 1435, including Supplement No. 1, dated April 24, 1990, which contain related information on correct oil line installation.

Since this condition is likely to exist or develop on other engines of this same type design, this AD revises AD 90-04-06 to correct Figure 1 to Appendix 1 of that AD to show other existing oil line configurations and add an optional flexible line installation as an optional method of compliance (Appendix 2).

Since this AD provides for an optional method of compliance and provides a clarification only, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the AD may be made effective in less than 30 days.

There are approximately 10,000 engines of the affected design in the U.S. registry and it will cost approximately $152 per engine for the inspection and replacement of parts. Based on the cost per engine, it is estimated that the total cost impact will be approximately $1,520,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising Amendment 39-6427, AD 90-04-06, (55 FR 3577, February 2, 1990), as follows:

Textron Lycoming: Applies to all Textron Lycoming four cylinder piston engines equipped with a rear mounted propeller governor and external oil line, manufactured prior to January 1, 1990.

Compliance is required as indicated, unless already accomplished.

To prevent oil line fracture and loss of engine oil, accomplish the following:

(a) Within the next 25 time hours in service or whenever the propeller governor oil line is removed, whichever occurs first, accomplish the following:

(1) Inspect the propeller governor external oil line for abrasions, cracks, and oil leaks along the length of the line and at the end attachment fittings. Inspect to determine that the two cushion type support clamps or clips are properly installed as shown in figure 1 of appendix 1 to this AD, and assure that sufficient clearances exist between the oil line and adjacent components.

(2) If any leaks, chafing, or interference condition exists or if the two support clamps or clips are not properly installed, replace the governor oil line and its attachment end fittings with new parts even though the parts show no visible damage. Refer to figure 1 in appendix 1 to this AD, for parts identification, line routing, and location of support clamps or clips. The fittings in the engine case and governor must be replaced if they are damaged or are made of aluminum.

(b) At the next engine overhaul or anytime the governor oil line is removed for any reason, whichever occurs first, but no later than May 1, 1992, remove any governor oil line assembly having integral aluminum connecting nuts and reinstall an oil line assembly with corresponding steel connecting nuts. Replace any engine case/governor aluminum fittings with corresponding steel fittings as shown in figure 1 of appendix 1 to this AD.

Note: The attachment nuts are components of the governor oil line tube assembly and have been changed by Textron Lycoming from aluminum to steel without changing the oil line part number. Aluminum nuts may be identified by their blue colored anodized surface. The attachment nuts as well as the elbow/nipple end fittings may also be identified by using a magnet to differentiate aluminum from steel.

(c) An optional method of compliance with paragraph (a)(2) and (b) is the installation of steel fittings and a fire resistant flexible hose assembly which meets the standards in FAA Technical Standard Order TSO-C53a Type D, and is installed in accordance with appendix 2 of this AD.

Note: Further guidance pertaining to installation can be obtained from FAA Advisory Circular 43.13-1A, chapter 10, Maintenance Standards.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD, may be approved by the Manager, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

BILLING CODE 4910-13-M

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Appendix 1

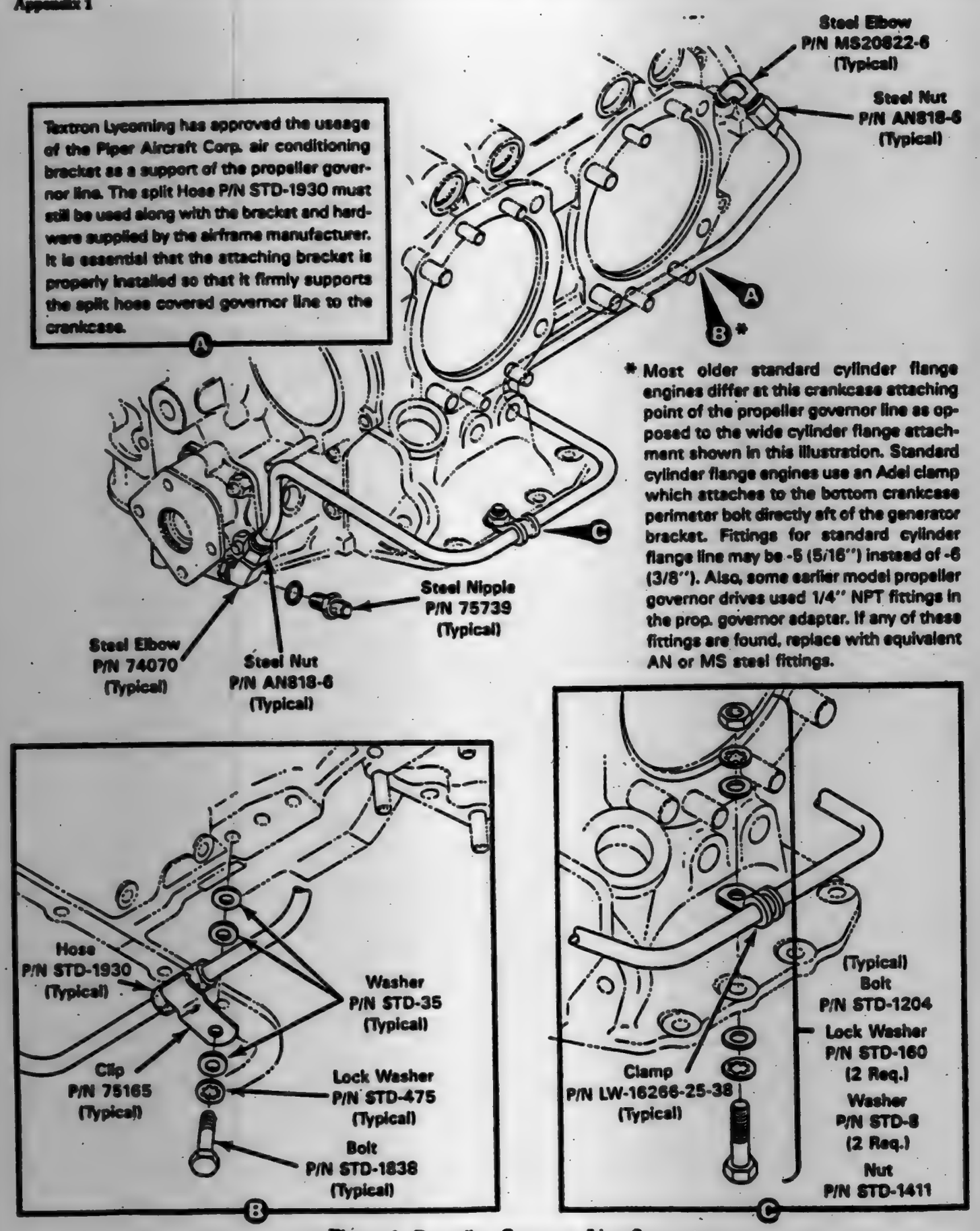

* Most older standard cylinder flange engines differ at this crankcase attaching point of the propeller governor line as opposed to the wide cylinder flange attachment shown in this illustration. Standard cylinder flange engines use an Adel clamp which attaches to the bottom crankcase perimeter bolt directly aft of the generator bracket. Fittings for standard cylinder flange line may be -5 (5/16") instead of -6 (3/8"). Also, some earlier model propeller governor drives used 1/4" NPT fittings in the prop. governor adapter. If any of these fittings are found, replace with equivalent AN or MS steel fittings.

Figure 1. Propeller Governor Line Support

Appendix 2

If -5 (5/16") fittings have been installed on some standard cylinder flange crankcase model engines, the propeller governor drive fitting and front crankcase fitting must be changed to the appropriate steel fitting to accommodate the new -6 (3/8") line. When re-installing new stainless steel tube assembly, appropriate -5 steel fittings must be re-installed.

CAUTION

IT IS MANDATORY THAT THIS FLEXIBLE HOSE BE REPLACED AT EACH OVERHAUL.

When this engine modification is accomplished, Textron Lycoming recommends that a copy of the approved FAA Form 337 — plus the proper logbook entry become a permanent part of the aircraft records.

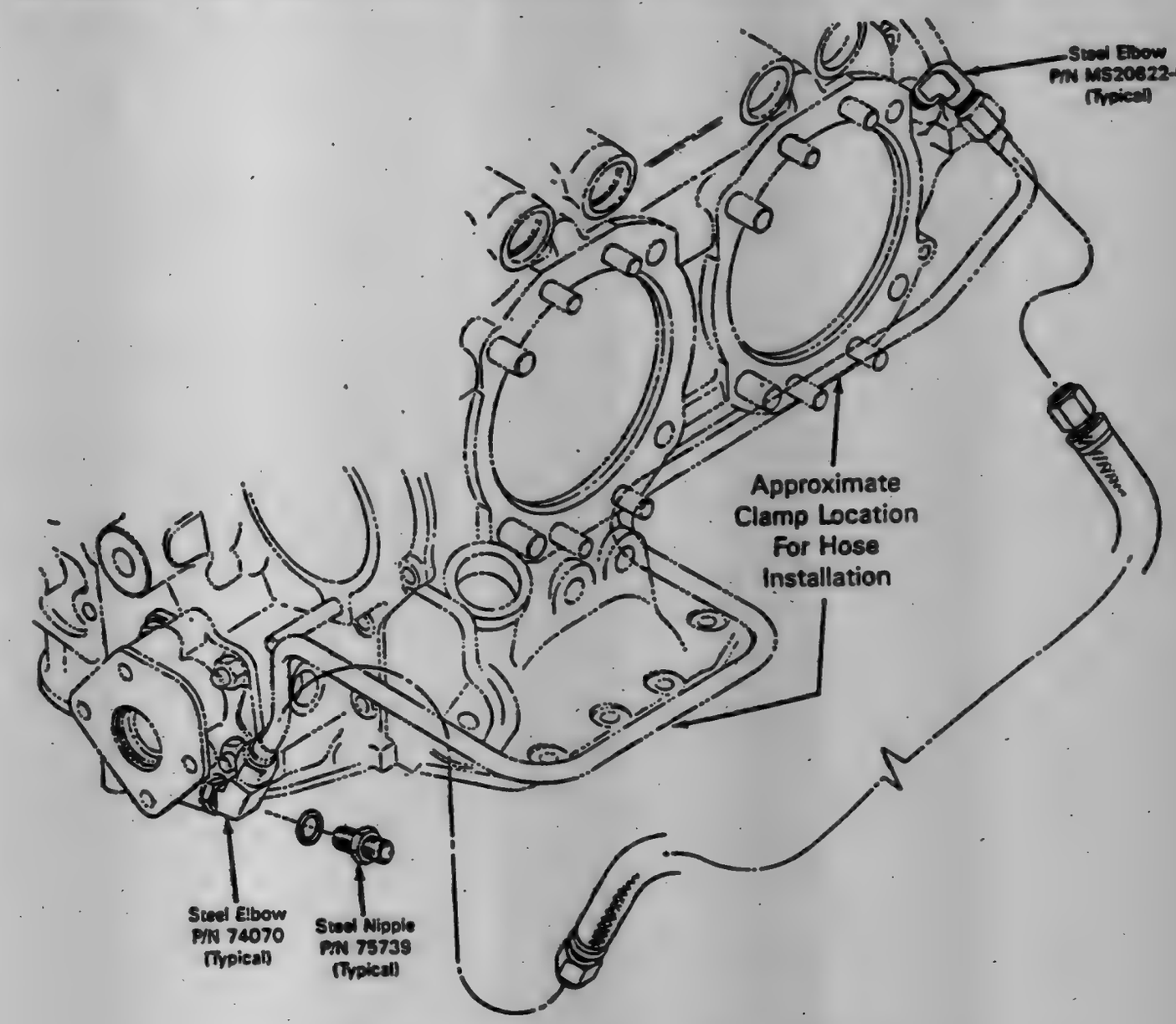

Figure 1. Routing, Fittings and Clamping Detail

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Installation is as follows:

a. Determine proper hose length as required for your particular installation.

b. No sharp bends are permissible. Ascertain that no "kinks" exist while routing and clamping hose.

c. Hose must not be routed near a heat source, such as any portion of the exhaust system.

d. Hose is to be clamp supported to the engine (not to an airframe component) at a minimum of two locations.

e. No clamping to cylinder head drain back tubes is allowed.

f. After installation is complete, ensure that hose is not pinched. Make certain that engine motion during startup and shutdown does not pull or pinch the hose.

This amendment revises Amendment 39-6427 (55 FR 3577, February 2, 1990) AD 90-04-06.

This amendment becomes effective on May 28, 1991.

Issued in Burlington, Massachusetts, on April 23, 1991.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-10759 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ASO-4]

Revision of Transition Area, Philadelphia, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Philadelphia, MS Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve Runway 36 based on the Philadelphia nondirectional radio beacon (NDB). This action adds an arrival area extension south of the airport to provide controlled airspace protection for instrument flight rules (IFR) aircraft executing the NDB SIAP.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On March 7, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Philadelphia, MS Transition Area (56 FR 9660). A standard instrument approach procedure has been developed to serve Runway 36 at the Philadelphia Municipal Airport. This action adds an arrival area extension south of the airport to provide the necessary controlled airspace for protection of IFR aircraft executing the instrument approach procedure. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Philadelphia, MS Transition Area. An arrival area extension is added south of the Philadelphia Municipal Airport in order to provide controlled airspace protection for IFR aircraft executing a new NDB SIAP to serve Runway 36.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Philadelphia, MS [Amended]

By deleting the remainder of the present description beginning with the phrase, "within 3.5 miles each side of the 001° bearing" * *" and inserting the following, "within 3.5 miles each side of the 001° and 196° bearings from the Philadelphia NDB (lat. 32°47'54"N, long. 89°07'28"W.), extending from the 6.5-mile radius area to 11.5 miles north and south of the NDB."

Issued in East Point, Georgia, on April 25, 1991.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91-10760 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 910401-1101]

Revisions to the Commodity Control List; Export Controls on Certain Vacuum or Controlled Environment Furnaces

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commodity Control List (CCL), Supplement No. 1 to § 799.1 of the Export Administration Regulations (EAR), which identifies those items subject to Department of Commerce export controls. This interim rule amends the CCL by adding a new Export Control Commodity Number (ECCN) 4203B that requires a validated license for exports and reexports to destinations in Country Groups QSTVWYZ of vacuum or controlled environment furnaces, including arc, induction, plasma, or electron beam capable of operation above 1,100 °C without regard to size or temperature control method, and specially designed parts and components therefor.

This action is taken in consultation with the Arms Control and Disarmament Agency (ACDA) and the Departments of Defense, Energy, and State. These export controls are being imposed for nuclear nonproliferation reasons and are the result of a comprehensive review of the Nuclear Referral List. Other changes in the Nuclear Referral List will follow as the review continues.

The net effect of this rule will be to increase the number of individual validated license applications that will have to be submitted for these types of furnaces.

DATES: This rule is effective May 2, 1991. Comments must be received by June 6, 1991.

ADDRESSES: Written comments (six copies) should be sent to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Surendra Dhir, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone (202) 377-5696.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005 and 0694-0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close June 6, 1991. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-3653.

Lists of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730-799) is amended as follows:

1. The authority citation for 15 CFR part 799 is revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; E.O. 12532 of September 8, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242 of March 10, 1978, 92 Stat. 141 (42 U.S.C. 2139a); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

PART 799—[AMENDED]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power-Generating Equipment), a new ECCN 4203B is added immediately preceding ECCN 1205A, as follows:

§ 799.1 Supplement No. 1 [Amended]

4203B Vacuum or controlled environment furnaces, including arc, induction, plasma, or electron beam capable of operation above 1,100 °C without regard to size or temperature control method, and specially designed parts and components therefor.

Controls for ECCN 4203B

Unit: Report in "$ value".

GLV $ Value Limit: $5,000 for Country Groups T and V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: None.

Dated: May 2, 1991.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 91-10667 Filed 5-3-91; 10:43 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960-None Assigned

Supplemental Security Income; Determining Disability for a Child Under Age 18—Extension of Comment Period

AGENCY: Social Security Administration, HHS.

ACTION: Final rule with request for comments—extension of comment period.

SUMMARY: This document announces an extension of the comment period to July 8, 1991, on the final rule "Supplemental Security Income; Determining Disability

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for a Child Under Age 16," which was published in the **Federal Register** on February 11, 1991 (56 FR 5534). Corrections to the final rule were published in the **Federal Register** on April 1, 1991, at 56 FR 13286 and 13385.

DATES: Your comments on the final rule published on February 11, 1991, as corrected, will be considered if we receive them no later than July 8, 1991.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Martin Sussman, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 965-1758.

SUPPLEMENTARY INFORMATION: On February 11, 1991 (56 FR 5534), we published "Supplemental Security Income; Determining Disability for a Child Under Age 16" as a final rule with request for comments. This final rule is designed to comply with the February 20, 1990, U.S. Supreme Court ruling in the case of *Sullivan* v. *Zebley*, ___ U.S. ___, 110 S.CCt. 885 (1990). We provided a comment period ending April 12, 1991. We have received a number of requests to extend the comment period. This factor, and the unusual significance of the final rule, make it appropriate to extend the comment period an additional 60 days to July 8, 1991.

Dated: April 19, 1991.

Gwendolyn S. King

Commissioner of Social Security.

Approved: May 1, 1991.

Louis W. Sullivan

Secretary of Health and Human Services

[FR Doc. 91-10738 Filed 5-6-91; 8:45 am]

BILLING CODE 4190-29-M

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by A. L. Laboratories, Inc. The supplement provides for the use of bacitracin Type A medicated articles to manufacture Type C medicated swine feeds containing 250 grams of bacitracin per ton for the control of clostridial enteritis in suckling piglets by feeding the medicated feed to sows before and after farrowing on premises with a history of clostridial scours.

EFFECTIVE DATE: May 7, 1991.

FOR FURTHER INFORMATION CONTACT: Larry D. Rollins, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: A. L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed a supplement to NADA 46-592 providing for the use of Type A medicated articles containing 25, 30, 40, 50, 60, or 75 grams of bacitracin (as bacitracin methylene disalicylate) per pound to manufacture Type C medicated swine feeds containing 250 grams of bacitracin per ton. The Type C feed is used for the control of clostridial enteritis caused by *C. perfringens* in suckling piglets by feeding the medicated feed to sows before and after farrowing. The NADA is approved as of April 29, 1991 and 21 CFR 558.76(d)(1)(xi) is amended to reflect the approval of the new use. The basis of approval is discussed in the freedom of information summary. Section 558.76(d)(1)(xi) is also amended to change the designation of the production class from "swine" to "growing/finishing swine."

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning April 29, 1991 because new clinical or field investigations conducted or sponsored by A. L. Laboratories, Inc., were essential to the approval.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.76 is amended in the table in paragraph (d)(1) at entry (xi), under the heading "Indications for use" by removing "Swine:" and inserting in its place "1. Growing/Finishing Swine:" and by adding a new item "2." and a new item under the "Limitations" column to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(1) * * *

Bacitracin methylene disalicylate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
* * *				
(xi) 250		1. Growing/Finishing Swine: * * *	* * *	* * *
		2. Pregnant sows: For control of clostridial enteritis caused by *C. perfringens* in suckling piglets.	As the sole ration. Feed to sows from 14 days before through 21 days after farrowing on premises with a history of clostridial scours. Diagnosis should be confirmed by a veterinarian when results are not satisfactory.	

* * * * *

Dated: April 29, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91-10754 Filed 5-6-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR part 58a

RIN 0790-AC49

[DoD Directive 6485.AA]

Human Immunodeficiency Virus (HIV-1)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense published a proposed rule on December 5, 1989 (54 FR 50243) concerning Human Immunodeficiency Virus (HIV-1). This document is published to remove 32 CFR part 58a. On April 16, 1991 (56 FR 15281), the Department of Defense published a final rule, same subject as part 58a, which replaced part 58a, therefore, part 58a is no longer required.

EFFECTIVE DATE: March 19, 1991.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Directives Division, Washington Headquarters Services, Pentagon, Washington, DC 20301, telephone (703) 697-4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 58a

Armed Forces reserves, DoD civilian employees, Government employees, Human Immunodeficiency Virus (HIV-1), Military personnel.

PART 58a—[REMOVED]

Accordingly, proposed rule 32 CFR part 58a is removed:

Authority: 10 U.S.C. 131.

Dated: May 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaision Officer, Department of Defense.

[FR Doc. 91-10679 Filed 5-6-91; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 367

[DoD Directive 5138.1]

Assistant Secretary of Defense (Health Affairs)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part is revised to comply with statutory changes required by title 10, United States Code and section 8091 of Public law 101-511. This revision also reflects a change in the Assistant Secretary of Defense (Health Affairs) and the Uniformed Services University of the Health Sciences (USUHS).

EFFECTIVE DATE: April 15, 1991.

ADDRESSES: Office of the Organizational and Management Planning Directorate, The Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, telephone 707-697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 367

Organization and functions (Government agencies). Accordingly, 32 CFR part 367 is revised to read as follows:

PART 367—ASSISTANT SECRETARY OF DEFENSE (HEALTH AFFAIRS)

Sec.
367.1 Purpose.
367.2 Definition.
367.3 Responsibilities.
367.4 Functions.
367.5 Relationships.
367.6 Authorities.

Authority: 10 U.S.C. 136.

§ 367.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. 136, this part:

(a) Designates one of the positions of Assistant Secretary of Defense as the ASD(HA).

(b) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(HA).

§ 367.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

§ 367.3 Responsibilities.

The Assistant Secretary of Defense (Health Affairs) is the principal staff assistant and advisor to the Secretary of Defense for all DoD health policies, programs, and activities. Subject to the direction of the Secretary of Defense, the ASD(HA) is responsible for overall supervision of the health affairs of the Department of Defense and exercises oversight of all DoD health resources. The ASD(HA) shall:

(a) Develop policies, conduct analyses, issue guidance on DoD plans and programs, and advise the Secretary of Defense, as appropriate.

(b) Develop systems, standards, and procedures for the administration and management of approved DoD plans and programs.

(c) Develop plans, programs, actions, and taskings to ensure adherence to DoD health policies and national security objectives and to ensure that programs and systems are designed to accommodate operational requirements.

(d) Establish requirements and standards for medical facility and material acquisition programs.

(e) Establish requirements for DoD research and development programs in medical fields. Keep abreast of technical developments to provide for their orderly transition to operational status. Make recommendations on funding levels for DoD research and development programs in medical fields and the Human Immunodeficiency Virus (HIV) Program.

(f) Serve as program manager for all DoD health and medical resources. I coordination with the Comptroller of the Department of Defense (C, DoD) and the

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Assistant Secretary of Defense (Program Analysis and Evaluation) (ASD(PA&E)), review all Program Objective Memoranda and budget submissions, and make determinations regarding priorities and resources for health and medical programs. Provide input to Program Decision Memoranda and Program Budget Decisions to the C, DoD, and the ASD(PA&E) for incorporation into the Planning, Programming, and Budgeting System (PPBS) process. Monitor the execution of approved health and medical programs by the DoD Components and, subject to the direction of the Secretary of Defense, make such determinations regarding priorities and resources as may be required to achieve DoD-wide program objectives.

(g) Review, evaluate, and make recommendations to the Secretary of Defense on health requirements and priorities.

(h) Review and evaluate plans and programs to ensure adherence to approved policies, standards, and resource guidance and decisions.

(i) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense and other Federal Agencies and the civilian community.

(j) Serve on boards, committees, and other groups pertaining to ASD(HA) functional areas.

(k) Exercise direction, authority, and control over:

(1) The Office of Civilian Health and Medical Program of the Uniformed Services.

(2) The Defense Medical Support Activity, which includes the Defense Medical Systems Support Center and the Defense Medical Facilities Office.

(l) Exercise the direction, authority, and control over the Uniformed Services University of the Health Sciences (USUHS) vested in the Secretary of Defense by chapter 104 of 10 U.S.C. and the Department of Defense Appropriations Act, 1991, except that the authority to appoint the President of the USUHS is reserved to the Secretary of Defense.

§ 367.4 Functions.

The ASD(HA) shall:

(a) Carry out the responsibilities described in § 367.3 for the following functional areas:

(1) Medical readiness.
(2) Disease prevention.
(3) Health promotion.
(4) Health benefits programs.
(5) Alcohol and drug abuse treatment.
(6) Cost containment.
(7) Quality assurance.
(8) Medical information systems.
(9) DoD HIV Program and research on acquired immunodeficiency syndrome.
(10) Procurement, professional development, and retention of medical and dental personnel, and related healthcare specialists and technicians.
(11) Military medical construction.

(b) Perform such other functions as may be assigned.

§ 367.5 Relationships.

(a) In the performance of assigned duties, the ASD(HA) shall:

(1) Coordinate and exchange information with other OSD officials and heads of DoD Components having collateral or related functions.

(2) Consult, as appropriate, with the C, DoD, and the ASD(PA&E) to ensure that medical planning, programming, and budget activities are integrated with the DoD PPBS.

(3) Use existing facilities and services of the Department of Defense or other Federal Agencies, whenever practicable, to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(HA) on all matters concerning the functions in § 367.4.

§ 367.6 Authorities.

The ASD(HA) is hereby delegated authority to:

(a) Carry out the responsibilities and functions described in § 367.3 and § 367.4.

(b) Issue orders, DoD Instructions, publications, and one-time directive-type memoranda, consistent with DoD 5025.1-M [1], regarding the accomplishment of functions and responsibilities delegated by the Secretary of Defense in this part. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Commands shall be issued through the Chairman of the Joint Chiefs of Staff.

(c) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5 [2], as necessary.

(d) Communicate directly with the heads of the DoD Components. Communications to the Commanders of the Unified and Specified Commands shall be coordinated through the Chairman of the Joint Chiefs of Staff.

(e) Make determinations on the uniform implementation of laws relating to separation from the Military Departments due to physical disability as prescribed in DoD Directive 1332.18 [3].

(f) Develop, issue, and maintain regulations, with the coordination of the Military Departments, as necessary and appropriate to fulfill the Secretary of Defense's responsibility to administer chapter 55 of 10 U.S.C.

(g) Establish arrangements for DoD participation in nondefense governmental programs for which the ASD(HA) has been assigned primary cognizance.

(h) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(i) Execute the authorities required to administer and operate the USUHS as specified in enclosure 1 of DoD Directive 5105.45 [4].

Dated: May 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-10682 Filed 5-6-91; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 367a

[DoD Directive 5105.45]

Uniformed Services University of the Health Sciences (USUHS)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part reflects the provisions of title 10, United States Code and section 8091 of Public Law 101-511. It also reflects the change that provides the USUHS Board of Regents as an advisory board to the Secretary of Defense.

EFFECTIVE DATE: April 19, 1991.

ADDRESSES: Office of the Organizational and Management Planning Directorate, The Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, telephone 707-697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 367a

Organization and functions (Government agencies).

Accordingly, title 32, subchapter R is amended to add part 367a to read as follows:

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[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 367.6(b).

[3] See footnote 1 to § 367.6(b).

[4] See footnote 1 to § 367.6(b).

PART 367a—UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES (USUHS)

Sec.
367a.1 Purpose.
367a.2 Definitions.
367a.3 Mission and scope.
367a.4 Policy.
367a.5 Organization.
367a.6 Responsibilities and functions.
367a.7 Relationships.
367a.8 Authorities.

Appendix A to Part 367a—Delegations of Authority

Authority: 10 U.S.C. 136.

§ 367a.1 Purpose.

This part updates the mission, responsibilities, functions, and authorities of the USUHS and provides for its governance pursuant to chapter 104, section 2112, et seq. of title 10, United States Code and section 8091 of Public Law 101-511, "Department of Defense Appropriations Act, 1991," November 5, 1990.

§ 367a.2 Definitions.

(a) *Academic Affairs.* Faculty appointments, promotions and organization, awarding of degrees, curriculum design and implementation, academic requirements for admission and graduation, and related matters vital to the academic well-being of the USUHS.

(b) *DoD Components.* The Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

(c) *Uniformed Services.* The Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the U.S. Public Health Service, and the Commissioned Corps of the National Oceanic and Atmospheric Administration.

§ 367a.3 Mission and scope.

The mission of the USUHS is to educate and train competent medical personnel qualified to serve the needs of the Uniformed Services of the United States through providing the highest quality education programs in the health sciences. Within that mission, the University shall place high priority on educating and training personnel to meet the combat and peacetime medical needs of the armed forces. The University is authorized to grant appropriate advanced academic degrees; establish postdoctoral and postgraduate programs, and technological institutes; conduct medical readiness training and continuing education for uniformed members of the health professions; and prepare individuals for careers in the health professions in the Uniformed Services.

§ 367a.4 Policy.

Consistent with the performance of the Department's mission and with established practices covering academic independence and integrity in the fields of medical and health sciences education, the Department of Defense recognizes the University's Board of Regents' unique role in advising the Secretary of Defense. In particular, consistent with applicable law and accomplishment of the Department's mission, the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) will be guided by the advice of the USUHS Board of Regents on academic affairs.

§ 367a.5 Organization.

The USUHS shall consist of:

(a) A Board of Regents, which shall be established and operated in accordance with the Federal Advisory Committee Act and shall consist of members appointed as provided by section 2113(a) of chapter 104, section 2112, et seq. of title 10, United States Code.

(b) A President of the USUHS, who shall be the chief executive officer of the University, and who also is the Dean of the University described in section 2113(a) of chapter 104, section 2112, et seq. of title 10, United States Code, and who shall report to the ASD(HA).

(c) A Dean of the F. Edward Hebert School of Medicine, who shall function as the chief academic officer of the F. Edward Hebert School of Medicine and report to the President of the USUHS.

(d) Other deans, academic officers, faculty members and administrative officials, staffs, and other subordinate organizations as may be required for the accomplishment of the University's mission.

(e) Students selected under procedures prescribed in accordance with section 2113(a) of chapter 104, section 2112, et seq. of title 10, United States Code and graduate students.

§ 367a.6 Responsibilities and functions.

(a) The Assistant Secretary of Defense (Health Affairs) shall exercise the authorities over the USUHS vested in the Secretary of Defense by chapter 104, section 2112, et seq. of 10 U.S.C. and section 8091 of Public Law 101-511, except that the authority to appoint the President of the USUHS is reserved to the Secretary of Defense. In this capacity, the ASD(HA) shall:

(1) Ensure effective operation of the University.

(2) In matters of academic affairs, ensure that the advice of the Board of Regents is given due regard in accordance with the policy set forth in § 367a.4.

(3) Make arrangements with the Secretaries of the Military Departments and the heads of other DoD Components to provide for support of the USUHS as may be necessary to implement this part.

(b) The *Board of Regents* shall participate in the governance of the USUHS by advising the Secretary of Defense, through the ASD(HA), on academic affairs and administration and management of the USUHS.

(c) *The President of the Uniformed Services University of the Health Sciences* shall:

(1) Ensure that educational programs leading to a Doctor of Medicine or other advanced degrees in the health professions meet the standards of appropriate and recognized, accrediting, licensing, and certifying agencies.

(2) Carry out those responsibilities and functions about the supervision and management of University programs, activities, personnel, and resources as the ASD(HA) prescribes.

(d) The *Dean of the F. Edward Hebert School of Medicine* shall develop and administer policies and procedures on the academic affairs of the F. Edward Hebert School of Medicine.

§ 367a.7 Relationships.

(a) In carrying out the responsibilities and functions of chief executive officer of the USUHS, the President of the USUHS shall:

(1) Obtain advice from the Board of Regents as necessary to assist the President in performing the President's duties.

(2) Coordinate and exchange information and advice with elements of the OSD and other DoD Components having collateral or related responsibilities.

(3) Make use of established facilities and services in the Department of Defense and other Government Agencies, whenever practical, to avoid duplication and achieve maximum efficiency and economy.

(4) Consult and coordinate with other governmental and nongovernmental agencies on matters related to the mission and programs of the USUHS.

(b) The Heads of the DoD Components shall coordinate with the ASD(HA) on all matters relating to the mission and programs of the USUHS.

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§ 367a.8 Authorities.

The ASD(HA) shall exercise the delegations of administrative authority contained in appendix A to this part.

Appendix A to part 367a—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense and in accordance with DoD policies, Directives, and Instructions, the ASD(HA), or in the absence of the ASD(HA), the person acting for the ASD(HA), is hereby delegated authority as required in the administration and operation of the USUHS to:

1. Obtain such information, consistent with the policies and criteria of DoD Directive 7750.5,[1] advice, and assistance from the DoD Components, as necessary, to carry out assigned responsibilities and functions.

2. Communicate directly with appropriate DoD Component personnel on matters related to the mission and programs of the USUHS.

3. Appoint civilian members of the faculty and staff under salary schedules and grant retirement and other related benefits prescribed by the Secretary of Defense so as to place the employees of the USUHS on a comparable basis with the employees of fully accredited schools of the health professions within the vicinity of the District of Columbia as provided by law.

4. Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302(b), and 3101 regarding the employment, direction, and general administration of USUHS civilian personnel.

5. Fix rates of pay for wage-rate employees exempted from the Classification Act of 1949 by 5 U.S.C. 5102 on the basis of rates established under the Coordinated Federal Wage System. In fixing such rates, the ASD(HA) shall follow the wage schedule established by the DoD Wage Fixing Authority.

6. Establish advisory committees and employ part-time advisors, as approved by the Secretary of Defense, for the performance of USUHS functions consistent with the 10 U.S.C. 173; 5 U.S.C. 3109(b); DoD Directive 5105.4,[2] "DoD Federal Advisory Committee Management Program," September 5, 1989; and the agreement between the Department of Defense and the Office of Personnel Management (OPM) regarding employment of experts and consultants, June 21, 1977.

7. Administer oaths of office to those entering the Executive branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of the USUHS to perform this function.

8. Establish a USUHS Incentive Awards Board and pay cash awards to, and incur necessary expenses for the honorary recognition of, civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect the USUHS or its subordinate activities, in accordance with 5 U.S.C. 4503 and applicable OPM regulations.

9. In accordance with 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; and DoD Directive 5200.2,[3] "DoD Personnel Security Program," December 20, 1979; as appropriate:

(a) Designate any position in the USUHS as a "sensitive" position.

(b) Authorize, in case of an emergency, the appointment of a person to a sensitive position in the USUHS for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

(c) Authorize the suspension, but not terminate the services, of an employee in the interest of national security in positions within the USUHS.

(d) Initiate investigations, issue personnel security clearances and, if necessary, in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned or detailed to, or employed by, the USUHS.

Any action to deny or revoke a security clearance shall be taken in accordance with procedures prescribed in DoD 5200.2-R,[4] "DoD Personnel Security Program," January 1987.

10. Act as agent for the collection and payment of employment taxes imposed by chapter 21 of the Internal Revenue Code of 1954, as amended; and, as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954, as amended, and section 205(p) (1) and (2) of the Social Security Act, as amended (42 U.S.C. 405(p) (1) and (2)) about USUHS employees.

11. Authorize and approve overtime work for USUHS civilian officers and employees in accordance with 5 U.S.C. chapter 55, subchapter V, and applicable OPM regulations.

12. Authorize and approve:

(a) Temporary duty travel for military personnel assigned or detailed to the USUHS in accordance with Joint Travel Regulations, Volume 1, "Uniformed Service Members."

(b) Travel for USUHS civilian officers and employees in accordance with Joint Travel Regulations, Volume 2, "DoD Civilian Personnel."

(c) Invitational travel to non-DoD employees whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, USUHS activities, in accordance with Volume 2, Joint Travel Regulations.

13. Approve the expenditure of funds available for travel by military personnel assigned or detailed to the USUHS for expenses about attendance at meetings of technical, scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense, or designee, is required by law (37 U.S.C. 412 and 5 U.S.C. 4110 and 4111).

14. Develop, establish, and maintain an active and continuing Records Management Program pursuant to section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102).

15. Establish and use imprest funds for making small purchases of material and services, other than personal services, for the USUHS, when it is determined more advantageous and consistent with the best interests of the Government, in accordance with DoD Directive 7360.10,[5] "Disbursing Policies," January 17, 1989.

16. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of the USUHS consistent with 44 U.S.C. 3702.

17. Establish and maintain appropriate property accounts for the USUHS, and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for USUHS property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

18. Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the President of USUHS, pursuant to DoD Directive 5200.8,[6] "Security of Military Installations and Resources," July 29, 1980.

19. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1-M,[7] "DoD Directives System Procedures," December 1990.

20. Enter into support and service agreements with the Military Departments, other DoD Components, or other Government Agencies, as required for the effective performance of USUHS functions and responsibilities.

21. Exercise the authority delegated to the Secretary of Defense by the Administrator of the General Services Administration for the disposal of surplus personal property.

22. Enter into and administer contracts, directly or through a Military Department, a DoD contract administration services component, or other Government Department or Agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of the USUHS. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

The ASD(HA) may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

Dated: May 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-10988 Filed 5-6-91; 8:45 am]

BILLING CODE 3810-01-M

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to section 1 of this appendix.

[3] See footnote 1 to section 1 of this appendix.

[4] See footnote 1 to section 1 of this appendix.

[5] See footnote 1 to section 1 of this appendix.

[6] See footnote 1 to section 1 of this appendix.

[7] See footnote 1 to section 1 of this appendix.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 149

[CGD-90-016]

RIN 2115-AD53

Deepwater Port Radar Beacons

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the radar beacon regulations for deepwater ports to require transmission in both the X-band and S-Band, eliminate the sweep requirements, and have a programmed off time for frequency agile radar beacons. This change is needed to improve the effectiveness of radar beacons as a navigational aid.

EFFECTIVE DATE: July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Gary W. Chappell, Office of Marine Safety, Security and Environmental Protection (G-MPS-3) at (202) 267-0491, between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Gary W. Chappell, Project Manager, and Christena G. Green, Project Counsel, Office of Chief Counsel.

Regulatory History

On September 19, 1990, the Coast Guard published a notice of proposed rulemaking entitled Deepwater Port Radar Beacons in the Federal Register (55 FR 38562). The Coast Guard received two letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The Coast Guard is making changes to the regulations for radar beacons on deepwater ports to improve their effectiveness as a navigational aid and eliminate requirements that could be interpreted as prohibiting the use of frequency agile radar beacons. The current regulations only require transmission capability in the 9320-9500 MHz frequency range but the use of S-Band radars operating in the 2900-3100 MHz frequency range is increasing. To allow S-Band radars to more easily identify the deepwater port, the Coast Guard is changing the regulations to require transmission capability in both the S-Band and X-Band frequency ranges for all radar beacons installed after the effective date of this rule.

A change is also being made that will permit the use of frequency agile radar beacons on deepwater ports and limit their response rate to between 40% and 90% of the time. The response rate is limited to prevent the radar beacon from creating clutter on the vessel's radar screen without reducing the ability of vessels to identify the beacon. Wording referring to sweep type and sweep rate has been eliminated. This change will allow flexibility in the selection of an effective radar beacon.

Discussion of Comments and Changes

1. Two letters containing several comments were received in response to the notice of proposed rulemaking and several minor wording changes were made, however, the basic requirements remain the same.

2. One comment recommended that paragraph (c) be revised to begin "Transmits a morse code character beginning with a dash, the length of which, * * *" This wording would eliminate the limitations on the size of the morse code character and add a requirement that the morse code symbol begin with a dash.

The Coast Guard believes that single element morse code symbols should not be used because they are harder to distinguish from radar contacts. Morse code symbols with more than 3 elements are easily identified but would have to be displayed as smaller characters in order to meet the size limitation of 25% of the expected vessel radar range. Limiting morse code symbols to those beginning with a dash aids identification since a dot can easily be lost in the radar return from the deepwater port structure. This factor is already taken into account when ID codes are assigned by the Coast Guard and need not be included in this rule. When the morse code symbol to be used is selected during the deepwater port permit approval process, preference will be given to 2 or 3 element symbols beginning with a dash. The wording in the final rule has been changed to allow selection of morse code symbols with more than 3 elements.

3. Three comments recommended changing the wording of paragraph (d). One comment suggested that paragraph (d) read: "Will respond to radar interrogations on X (3 cm) and S (10 cm) bands with response times at least 15 seconds in length." Another comment suggested that paragraph (d) read: "The racon must be programmed so that there is a regular off time on each band during which the racon does not respond to interrogations." The third comment recommended that the racon transmission be limited to between 30% and 40% of the time.

While the first two suggested changes have merit, neither provides the necessary limitations on the programming of off times for frequency agile radar beacons. The intent of this pargagraph is to require off times to prevent the morse code character transmission from obscuring radar contacts, while retaining the visibility of the morse code character. The first suggestion addresses the length of response time but does not require off times. The second suggestion requires off times but does not specify a duration to ensure that the amount of off time will provide an adequate break and that the on time will provide the necessary morse code character visibility. The visibility concern must be considered since efforts to save energy and reduce wear on the radar beacon could produce an insufficient on time.

The third comment requests a shorter on time for the racon due to problems being experienced at the existing deepwater port. The racon transmission is being received by the deepwater port's radar, creating excessive clutter. The technology exists to eliminate this problem by careful location of the racon in relation to the radar and use of absorbent material to isolate the racon. Alternatively, a hard wire connection between the radar and the racon would be used to eliminate the problem. Coast Guard policy recommends a 75% rate for structures, right in the middle of the originally proposed limits. Further research indicates that racons in other countries are sometimes set with response rates as low as 40% with no adverse effects. The existing deepwater port has been operating the racon at a 40% response rate for some time and no complaints have been received indicating that the low response rate has adversely affected navigation in the area. Although a response rate closer to 75% is preferred, paragraph (d) has been changed to allow a response rate as low as 40%. A narrower range of acceptable response rates may be set during the deepwater port permitting process for future deepwater ports.

With response rates as low as 40%, a concern arises as to the duration of the

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racon on time. If the on time is not at least 15 seconds in duration, some radars may not recognize the racon. To avoid this problem, paragraph (d) has been further modified to require an on time of at least 15 seconds in duration.

The Coast Guard agrees that the word "respond" is more accurate than the word "transmit" as used in paragraph (d) and has changed the final rule text accordingly.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). A Regulatory Evaluation is available in the docket.

The cost resulting from this rule will be low. The deepwater port radar beacon currently in use need not be replaced until the end of its useful life, in approximately 10 years. Purchasing a dual band radar beacon costs approximately $1,800.00 more than buying a comparable single band beacon. Radar beacons cost $20,000 to $35,000 each. The $1,800.00 increase in cost required by this proposal is a relatively small cost differential. Over time the cost differential between single and dual band radar beacons is expected to become an even smaller percentage of the total unit price. Single band radar beacons may even become unavailable as dual band radar beacons become standard for most applications. No comments were received on the regulatory evaluation.

Small Entities

Only one deepwater port currently exists and neither the owners or operators qualify as small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion determination is available in the docket.

List of Subjects in 33 CFR Part 149

Fire prevention, Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 149 as follows:

PART 149—[AMENDED]

1. The authority citation for part 149 is revised to read as follows:

Authority: 33 U.S.C. 1504; 49 CFR 1.46.

2. Section 149.795 is revised to read as follows:

§ 149.795 Radar beacon.

The tallest platform must have an FCC type accepted radar beacon (RACON) that:

(a) Transmits in—

(1) Both the 2900–3100 MHz and 9300–9500 MHz frequency bands, or

(2) The 9320–9500 MHz frequency band if installed prior to July 8, 1991.

(b) Transmits a signal of a least 250 milliwatts radiated power that is omnidirectional and polarized in the horizontal plane;

(c) Transmits a 2 or more element Morse code character, the length of which does not exceed 25% of the radar range expected to be used by vessels operating in the area;

(d) If of the frequency agile type, is programmed so that it will respond at least 40% of the time but not more than 90% of the time, with a response time duration of at least 15 seconds; and

(e) Is installed at a minimum height of 15 feet above the highest deck of the platform and where the structure of the platform, or equipment mounted thereon, does not obstruct the signal propagation in any direction.

Dated: April 15, 1991.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91-10751 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3954-5]

Nebraska Schedule of Compliance for Modification of Waste Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Nebraska Compliance Schedule to adopt program modifications.

SUMMARY: On September 22, 1986, EPA promulgated amendments to the deadline for State hazardous waste program modifications and published requirements for States to be placed on compliance schedules to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Nebraska to modify its program in accordance with 40 CFR 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler, RCRA Branch, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; 913-551-7055.

SUPPLEMENTARY INFORMATION: State authorization to implement the Federal hazardous waste management program within a state is available under section 3006(b) of the Resource Conservation and Recovery Act (RCRA). Final authorization is granted by EPA upon findings that the State program (1) is equivalent to the Federal program, (2) is consistent with the Federal and other state programs, and (3) provides for adequate enforcement. EPA regulations for final authorization appear at 40 CFR 271.1 through 271.24. In order to retain authorization, a state must revise its program to adopt new Federal requirements by the "cluster" deadlines specified on 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of the regulatory clusters and associated deadlines.

Nebraska received final authorization of its hazardous waste management program on February 7, 1985 (50 FR 3345, January 24, 1985) and was authorized for two "clusters" of program revisions on December 3, 1988 (53 FR 38950, October 4, 1988). The State has also submitted an authorization request for the first cluster of Hazardous and Solid Waste Amendments of 1984 (HSWA) authorities and two more clusters of non-HSWA authorities. This request is currently under review by EPA.

Today EPA is publishing a compliance schedule for Nebraska to obtain program modifications for the following Federal program requirements, all of which are in the fifth non-HSWA cluster.

- Treatability Studies Sample Exemption, 53 FR 27290;
- Standards for Hazardous Waste Storage and Treatment Tank Systems, 53 FR 34079;
- Identification and Listing of Hazardous Waste, 53 FR 35412;
- Permit Modifications for Hazardous Waste Management Facilities (optional), 53 FR 37912 and 53 FR 41649;
- Statistical Methods for Evaluating Ground-Water Monitoring Data from Hazardous Waste Facilities, 53 FR 39720;
- Removal of Iron Dextran from the List of Hazardous Wastes (optional), 53 FR 43878;
- Removal of Strontium Sulfide from the List of Hazardous Wastes (optional), 53 FR 43881;
- Manifest Renewal (optional), 53 FR 45089;
- Hazardous Waste Miscellaneous Units, 54 FR 615;
- Amendment to Requirements for Hazardous Waste Incinerator Permits, 54 FR 4286; and
- Changes to Interim Status Facilities for Hazardous Waste Management Permits (optional), 54 FR 9596.

The State has agreed to seek the needed program modifications according to the following schedule:

(1) Public notice of proposed rulemaking, May 1, 1991 (approximately);

(2) Public hearing and adoption by Environmental Control Council, June 7, 1991; and

(3) New rules become effective, August 7, 1991;

Nebraska expects to submit a final application to EPA for authorization of the above mentioned program revisions by March 1, 1992. This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42, U.S.C. 6912(a), 6926 and 6974(b).

Dated: April 17, 1991.

Morris Kay,

Regional Administrator.

[FR Doc. 91-10786 Filed 5-6-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[GEN Docket No. 89-296; FCC 91-102, RM-6820, RM-6849]

Aviation Services; Use of Frequencies in the 136–137 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Memorandum Opinion and Order amends and clarifies the rules governing the use of the Aviation Services frequencies in the 136–137 MHz band. This was in response to a Petition for Partial Reconsideration filed by Aeronautical Radio, Inc. This will clarify the rules and enhance their usefulness to the public.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, PR Docket No. 89-295, adopted April 1, 1991, and released May 2, 1991. The full text of this Commission decision including the adopted rule changes are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this decision including the adopted rule changes may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

Summary of Memorandum Opinion and Order

In response to two petitions for rulemaking, one filed by Aeronautical Radio, Inc. (ARINC), RM-6820, and the other by the American Petroleum Institute (API), RM-6849, on June 28, 1989, the Commission released a Notice of Proposed Rule Making (Notice), GEN. Docket No. 89-295, FCC 89-207 54 FR 28823, July 10, 1989, which proposed to amend the rules to authorize the aviation services to use the frequencies in the 136–137 MHz band. Authorization to use these frequencies will help to alleviate the frequency congestion currently being experienced in the aviation services. On July 5, 1990, the Commission released a Report and Order (R&O), GEN. Docket No. 89-295, FCC 90-236 55 FR 28627, July 12, 1990, which amended the rules and distributed the frequencies in the 136–137 MHz to the aeronautical enroute services, general aviation services and special purpose services. On August 13, 1990, ARINC filed a Petition for Partial Reconsideration (Petition) requesting that the number of special purpose frequencies be reduced and to rearrange the frequency allocation plan adopted in the (R&O). This Memorandum Opinion & Order discusses the comments filed regarding the issues in the Petition and adopts certain changes and clarifies the rules adopted in the R&O.

Ordering Clauses

Accordingly, *It is ordered* That pursuant to the authority contained in sections 4(i) and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and § 1.429(i) of the Commission's Rules, 47 CFR 1.429(i), the Petition for Partial Reconsideration filed by ARINC is Granted to the extent indicated herein and in all other respects denied.

It is further ordered That part 87 of the Commission's Rules is amended as shown below effective June 17, 1991.

It is further ordered That this proceeding is terminated.

List of Subjects in 47 CFR Part 87

Aviation services, Aeronautical stations, Communications equipment.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Parts 87 of chapter I title 47 of the Code of Federal Regulations is amended as follows:

PART 87—AVIATION SERVICES

1. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609.

2. In § 87.173, the frequency table in paragraph (b) is amended by revising the entries for 136.900 MHz, 136.925 MHz, 136.950 MHz and 136.975 MHz to read as follows:

§ 87.173 Frequencies

* * * * *

(b) * * *

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Frequency or frequency band	Subpart	Class of station	Remarks
* * * * *		*	*
136.900 MHz	I	MA, FAE	International and domestic VHF.
136.925 MHz	I	MA, FAE	International and domestic VHF.
136.950 MHz	I	MA, FAE	International and domestic VHF.
136.975 MHz	I	MA, FAE	International and domestic VHF.
* * * * *		*	*

3. In § 87.263, paragraphs (a) (1) and (5) are revised to read as follows:

§ 87.263 Frequencies.

(a) * * *

(1) The frequencies in the 128.825–132.000 MHz band and the frequencies 136.500 MHz, 136.525 MHz, 136.550 MHz, 136.575 MHz, 136.625 MHz, 136.600 MHz, 136.625 MHz, 136.650 MHz, 136.675 MHz, 136.700 MHz and 136.725 MHz are available to serve domestic routes. The frequencies 136.900 MHz, 136.925 MHz, 136.950 MHz and 136.975 MHz are available to serve domestic and international routes. The frequencies 136.750 MHz, 136.775 MHz, 136.800 MHz, 136.825 MHz, 136.850 MHz and 136.875 MHz are also available to enroute stations located at least 288 kilometers (180 miles) from the Gulf of Mexico shoreline (outside the Gulf of Mexico Region). Frequency assignments are based on 25 kHz spacing. Use of these frequencies must be compatible with existing operations and must be in accordance with pertinent international treaties and agreements.

* * * * *

(5) The frequencies 136.750 MHz, 136.775 MHz, 136.800 MHz, 136.825 MHz, 136.850 MHz and 136.875 MHz are available in the Gulf of Mexico Region to serve domestic routes over the Gulf of Mexico and adjacent coastal areas. Assignment of these six frequencies is reserved until January 1, 1994, for helicopter flight following systems. Applicants must provide a showing of need for all frequencies requested. Assignment of these six frequencies in the Gulf of Mexico Region is not subject to the conditions contained in § 87.261(c) and paragraph (a)(2) of this section. Frequency assignments are based on 25 kHz spacing. Use of these frequencies must be compatible with existing operations and must be in accordance with pertinent international treaties and agreements. For the purpose of this paragraph, the Gulf of Mexico Region is defined as an area bounded on the east, north and west by a line 288 km (180 miles) inland from the Gulf of Mexico shoreline. Inland stations using these frequencies must be located within forty-eight kilometers (30 miles) of the Gulf of Mexico shoreline.

* * * * *

APPENDIX.—U.S.A./CANADA CHANNELING ARRANGEMENT FOR 136–137 MHz BAND

Freq. MHz	Within appropriate coordination zone		Beyond appropriate coordination zone
	U.S.A.	Canada	U.S.A.
136.000	X (F)	X	X (F)
136.025	X (F)	X	X (F)
136.050	X (F)	X	X (F)
136.075	X (F)	X	X (F)
136.100	X (R)	X	X (R)
136.125	X (F)	X	X (F)
136.150	X (F)	X	X (F)
136.175	X (F)	X	X (F)
136.200	X (R)	X	X (R)
136.225	X (F)	X	X (F)
136.250	X (F)	X	X (F)
136.275	X (R)	X	X (R)
136.300	X (F)	X	X (F)
136.325	X (F)	X	X (F)
136.350	X (F)	X	X (F)
136.375	X (R)	X	X (R)
136.400	X (F)	X	X (F)
136.425	X (F)	X	X (F)
136.450	X (F)	X	X (F)
136.475	X (R)	X	X (R)
136.500	X (A)	X	X (A)
136.525	X (A)		X (A)
136.550	X (A)	X	X (A)
136.575		X	X (A)
136.600	X (A)	X	X (A)
136.625	X (A)		X (A)
136.650	X (A)	X	X (A)
136.675		X	X (A)
136.700	X (A)	X	X (A)
136.725	X (A)		X (A)
136.750	X (A)	X	X (B)
136.775		X	X (B)
136.800	X (A)	X	X (B)
136.825	X (A)		X (B)
136.850	X (A)	X	X (B)
136.875		X	X (B)
136.900	X (A)	X	X (A)
136.925	X (A)		X (A)
136.950	X (A)	X	X (A)
136.975		X	X (A)

Notes 1. Letter in parenthesis indicates usage as follows:

(A) Enroute communications in accordance with § 87.261 of the Rules.

(B) Enroute communications in accordance with § 87.261 except as noted in § 87.263(a)(5) of the Rules.

(F) Available to the Government (FAA)/non-Government entities for air traffic control purposes (ATC), automatic weather observation services (AWOS), automatic terminal information services (ATIS) and airport control tower (ATC) communications.

(R) Reserved.

2. The frequencies 136.000 MHz through 136.475 MHz allocated for air traffic control (ATC) purposes will be shared by the United States and Canada on an equal basis without prejudging the needs of either Government.

3. When applicable, the frequencies 136.000 MHz through 136.475 MHz will be coordinated on the basis of required technical data and coordination zones as established in the October 24, 1982, agreement entitled "TELECOMMUNICATIONS-Coordination and Use of Radio Frequencies Above 30 Megacycles per Second" between the United States of America and Canada and any subsequent revisions thereto (U.S.A./Canada agreement).

4. When applicable, the frequencies 136.500 MHz through 136.975 MHz will be coordinated on the basis of the U.S.A./Canada agreement. The frequency coordination zones for co-channel assignments are:

Type of station	Altitude level (feet)	Coordination zone (n.m.)
Ramp	Ground level	50
Helicopter	0 to 2,000	150
Low level	0 to 10,000	250
Mid level	0 to 20,000	400
High level	Over 20,000	600

[FR Doc. 91-10828 Filed 5-6-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE42

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Cumberland Pigtoe Mussel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the Cumberland pigtoe mussel (*Pleurobema gibberum*) under the Endangered Species Act (Act) of 1973, as amended. This species is endemic to the Caney Fork River system (a Cumberland River tributary) in Grundy, Van Buren, Warren, and White Counties, Tennessee. Although presumably once widely distributed in the Caney Fork system, the species now occurs in short reaches in only four Caney Fork River tributaries. The species has been and continues to be impacted by water quality deterioration resulting from siltation contributed by coal mining and poor land use practices, by other water pollutants, and by impoundments.

EFFECTIVE DATE: June 6, 1991.

ADDRESSES: The complete file of this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

The Cumberland pigtoe mussel (*Pleurobema gibberum*), which was described by Lea (1838), is apparently endemic to the Caney Fork River system above the Great Falls (the Great Falls Lake Dam is now located at the Great Falls), Cumberland River basin, Tennessee (Anderson 1990, Gordon and Layzer 1989). This small freshwater mussel (rarely exceeds 60 mm in length) has a triangular, compressed, somewhat heavy shell. The shell's outer surface on young individuals is a yellowish-brown color; adults have a dark mahogany shell. The inside of the shell is a distinctive peach to orange color (Anderson 1990). Like other freshwater mussels, this animal feeds by filtering food particles from the water. It has a complex reproductive cycle in which the mussel's larvae likely parasitize fish. The mussel's life span, parasitic host, and most aspects of its life history are unknown.

Historic mussel collection records reviewed by Anderson (1990) revealed that the Cumberland pigtoe has been reported from five Caney Fork River tributaries, all above the Great Falls Reservoir. Anderson (1990) conducted a mussel survey of the Caney Fork River system above and below the Great Falls Reservoir and reported that the species is now restricted to isolated populations in short reaches of four Caney Fork tributaries—Barren Fork, Warren County; Calfkiller River, White County; Cane Creek, Van Buren County; and Collins River, Warren and Grundy Counties. Although the species likely occurred in the main stem of the Caney Fork and has been historically collected from Hickory Creek, no specimens were taken at the four sampling stations in the Hickory Creek system, nor was the mussel collected in any unimpounded reaches of the Caney Fork River. It is believed that the species has now been extirpated from both of these areas. The mussel was also not taken in collections made in other Caney Fork tributaries—Big Creek, Big Hickory Creek, Charles Creek, Dry Branch Barren River, Falling Water River, Firescald Creek, Fultz Creek, Little Hickory Creek, Mountain Creek, Pine Creek, Rocky River, Sink Creek, Smith Fork, Smith Fork Creek, and West Fork Hickory Creek.

The Cumberland pigtoe's distribution has been reduced by such factors as impoundments and the general deterioration of water quality resulting from siltation and other pollutants contributed by coal mining, poor land use practices, and waste discharges. These factors continue to impact the species and its habitat. Because the populations inhabit only short river reaches, they are also very vulnerable to extirpation from accidental toxic chemical spills.

On December 8, 1989, the Service notified by mail (30 letters) appropriate interested individuals, Federal and State agencies, and local governments within the species' present range that a status review was being conducted specifically to determine if the Cumberland pigtoe should be proposed for protection under the Act. Five written responses were received in response to this notification. No objections to the potential listing of the Cumberland pigtoe were received. No additional information on the species' status and its former and present distribution was provided.

On October 15, 1990, the Service published in the **Federal Register** (55 FR 41718) a proposal to list the Cumberland pigtoe mussel as an endangered species. That proposal provided information on the species' biology, status, and threats to its continued existence.

Summary of Comments and Recommendations

In the October 15, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports and information that might contribute to development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and interested parties were contacted by letter dated October 28, 1990, and requested to comment. A newspaper legal notice was published in the Southern Standard, McMinnville, Tennessee, on October 28, 1990.

Four written comments were received. The U.S. Army Corps of Engineers, Nashville District, stated, "There are no Corps of Engineers' projects or water planning studies in the upper Caney Fork River and therefore no district-related potential effects exist for the species." The U.S. Soil Conservation Service (SCS) responded that they have an ongoing Rural Abandoned Mine Program in the watershed that might cause some short-term negative impacts to the mussel, but long-term impacts would be positive. The SCS also stated that they were reviewing two applications for Caney Fork River watershed projects, but they did not expect these projects to cause any negative impacts to the mussel. The Tennessee Valley Authority stated they had no additional data on the species. The Tennessee Wildlife Resources Agency stated that they would cooperate in the protection of the species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Cumberland pigtoe mussel should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Cumberland pigtoe mussel (*Pleurobema gibberum*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Based on historic mussel collection records from the Cumberland River system (Anderson 1990, Gordon and Layzer 1989), the Cumberland pigtoe is restricted to the Caney Fork River basin above the Great Falls. Within this isolated river basin the species has been reported from only five Caney Fork River tributaries. However, historic mussel collection records from the upper Caney Fork system are very limited. Thus,

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considering the extent of the mussel's preferred habitat (riffle areas with sand and gravel with occasional mud and cobble substrates (Anderson 1990, Gordon and Layzer 1989)), which was inundated by the construction of the Great Falls Reservoir at the site of the Great Falls in the 1910s, the species was likely much more widely distributed within the upper Caney Fork system than available records indicate.

Presently, the species is restricted to isolated populations in short reaches of four Caney Fork tributaries—Barren Fork, Warren County; Calfkiller River, White County; Cane Creek, Van Buren County; and Collins River, Warren and Grundy Counties (Anderson 1990). These populations are adversely affected by impoundments and the general deterioration of water quality resulting from siltation and other pollutants contributed by coal mining, poor land use practices, and waste discharges. Mussel populations in adjacent watersheds with similar geology (upper Duck and Elk Rivers) have already lost much of their mussel fauna because of poor land management practices and impoundments (Anderson 1990).

B. Overutilization for commercial, recreational, scientific, or educational purposes. There is no indication that overutilization has been a problem for this species. However, because of the mussel's restricted range, its slow growth rate, and low reproductive capacity, collection of the species could be a problem if specific locations of populations were known. Therefore, the present range of the species has been described only in general terms.

C. Disease or predation. Although the Cumberland pigtoe is consumed by predatory animals, there is no evidence that predation is a serious threat to the species. However, freshwater mussel die-offs have recently (early to mid-1980s) been reported throughout the Mississippi River basin (Richard Neves, Virginia Polytechnic Institute and State University, personal communication, 1986). The cause of the die-offs has not been determined, but significant losses have occurred in some populations.

D. The inadequacy of existing regulatory mechanisms. The State of Tennessee prohibits taking fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, the species is generally not protected from other threats. Federal listing will provide additional protection for the species from mussel collectors by requiring a Federal endangered species permit to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. Other natural or manmade factors affecting its continued existence. As the Cumberland pigtoe is presently restricted to short river reaches, it is also very vulnerable to extirpation from accidental toxic chemical spills; and as the populated reaches are physically isolated from each other by impoundments, recolonization of any extirpated population would not be possible without human intervention. Additionally, because natural gene flow among populations is no longer possible, the long-term genetic viability of these remaining isolated populations is questionable.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Cumberland pigtoe mussel (*Pleurobema gibberum*) as endangered. Presently only four isolated populations are known to exist. Because of the restricted nature of these populations and their vulnerability, endangered status appears to be the most appropriate classification for the species. (See "Critical Habitat" section for a discussion of why critical habitat is not being designated for the Cumberland pigtoe mussel.)

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. Such a determination would result in no known benefit to the species.

As part of the development of the proposed and final rule, Federal agencies were notified of the Cumberland pigtoe mussel's distribution, and they were requested to provide data on Federal actions that might adversely affect the species. No projects were identified that would have a significant impact on the species. Should any future projects occur in the Caney Fork system, the involved Federal agency will already have the distributional data needed to determine if the species may be impacted by their action. Thus, no additional benefits would accrue from critical habitat designation that would not also accrue from the listing of the species.

In addition, this species is rare, and taking for scientific purposes and private collection could be a threat. The publication of critical habitat maps and other publicity accompanying critical habitat designation could increase that threat. The locations of populations of this species were consequently described only in general terms in the proposed and final rule. Precise locality data would be available to appropriate Federal, State, and local governmental agencies from the Service office described in the "ADDRESSES" section.

For the reasons discussed above, it would not be prudent to determine critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that may have programs affecting the species. The U.S. Soil Conservation Service (SCS) informed the Service that they have some active Rural Abandoned Mine Programs in the watershed. However, SCS believed that, although minor short-term negative impacts might occur during the project, long-term impacts would be positive. The SCS also was reviewing two applications for watershed projects in the Caney Fork

River basin, but they felt these projects would not adversely affect the mussel. Other Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, reservoir construction, stream alterations, wastewater facility development, pesticide registration, and road and bridge construction. However, it has been the experience of the Service that nearly all section 7 consultations can be resolved so that the species is protected and the project objectives are met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

In some instances permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. This species is not in trade, and such permit request are not expected.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Anderson, R.M. 1990. Status survey of the Cumberland pigtoe pearly mussel (*Pleurobema gibberum*). Tennessee Cooperative Fishery Research Unit, Tennessee Technological University, Cookeville, Tennessee. Unpublished report. Submitted to the U.S. Fish and Wildlife Service, Asheville Field Office, Asheville, NC. 10 pp.

Gordon, M.E., and J.B. Layzer. 1989. Mussels (BIVALVIA: UNIONOIDAE) of the Cumberland River: Review of life histories and ecological relationships. U.S. Fish and Wild. Serv. Biol. Rep. 89(15). 99 pp.

Author

The primary author of this final rule is Richard G. Biggins (see "ADDRESSES" section) (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under CLAMS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Clams:							
Mussel, Cumberland pigtoe	*Pleurobema gibberum*	U.S.A. (TN)	Entire	E	423	NA	NA

Dated: April 10, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-10739 Filed 5-6-91; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Helianthus schweinitzii (Schweinitz's Sunflower) Determined to be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the plant *Helianthus schweinitzii* (Schweinitz's sunflower), a perennial herb limited to 13 populations in North Carolina and South Carolina, to be an endangered species under the authority of the Endangered Species Act (Act) of 1973, as amended. *Helianthus schweinitzii* is endangered by the loss of historic levels of natural disturbance from fire and grazing by native herbivores, residential and industrial development, mining, encroachment by exotic species, highway construction

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and improvement, and roadside and utility right-of-way maintenance. This action implements Federal protection provided by the Act for *Helianthus schweinitzii*.

EFFECTIVE DATE: June 6, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Helianthus schweinitzii, described by John Torrey and Asa Gray (1841) from material collected in North Carolina, is a rhizomatous perennial herb. This sunflower grows from 1 to 2 meters tall from a cluster of carrot-like tuberous roots; stems are usually solitary, branching only at or above mid-stem, with the branches held in candelabrum-style arches. The narrowly lanceolate opposite leaves are scabrous above, resin-dotted and loosely soft-white-hairy beneath, entire (or occasionally with a few small teeth), 18 centimeters long, and 2.5 centimeters wide. The yellow flowers are approximately 5.5 centimeters in diameter and are borne from September to frost in a rather open system of upwardly arching heads. The fruit of this species is a smooth, dark gray-brown achene approximately 5 millimeters long (Kral 1983, Radford *et al.* 1964, Cronquist 1980). Stems are often a deep red color. The leaves are opposite on the lower parts of the stems, usually becoming alternate on the upper parts. *Helianthus schweinitzii* can be easily confused with several other similar species, including the sympatric *H. laevigatus* and narrow-leaved extremes of *H. microcephalus*. However, the tuberous root system and relatively small heads of *H. schweinitzii*, as well as the rather narrowly lanceolate leaf, which is revolute (at least when dry) and rather densely pubescent and resin-dotted beneath, combine to distinguish *H. schweinitzii* from its similar relatives.

Helianthus schweinitzii is endemic to the piedmont of the Carolinas, where it is currently known from 10 locations in North Carolina and 5 in South Carolina. The species occurs in clearings and edges of upland woods on moist to dryish clays, clay-loams, or sandy clay-loams that often have a high gravel content and are moderately podzolized. Soils supporting this species are mainly of the Iredell series. Like most sunflowers, this species is a plant of full sun or the light shade of open stands of oak-pine-hickory (Kral 1983). Natural fires as well as large herbivores, including elk and bison, are part of the history of the vegetation in this species' range. Many of the associated herbs are also cormophytic, sun-loving species which depend on periodic disturbances to reduce the shade and competition of woody plants (Kral 1983). The piedmont areas now occupied by remnant populations of *Helianthus schweinitzii* were characterized in early accounts (Brown 1953) as:

> Where the woodlands came to an end, [and] the open prairies began. We are informed by early writers that the Blackjack lands of Chester and York [Counties, South Carolina] were once prairies with no growth of trees, and covered in many places with maiden cane * * * Through this country, with its magnificent woods and wide prairies, roam the buffalo and the deer in large numbers, the luxuriant grass lands also feed the elk * * * The * * * region [is] now thickly covered with Blackjack, but at that time [(during the American Revolution)], [it was] an open prairie, on which persons could be seen at a great distance. The patriots coming to visit their families always endeavored to pass over this plain by night, to avoid detection by the Torries.

Logan (1859) similarly described this same region as a prairie where "vast brakes of cane [stretched] in unbroken lines of evergreen for hundreds of miles * * *." Schweinitz's sunflower, like other prairie species, is dependant upon some form of disturbance to maintain the open quality of its habitat. Currently, artificial disturbance, such as power line and road right-of-way maintenance (where they are accomplished without herbicides and at a season that does not interfere with the reproductive cycle of this sunflower) are maintaining some of the openings historically provided by naturally occurring periodic fires and native grazing animals.

Twenty-one populations of *Helianthus schweinitzii* have been reported historically from 10 counties in North Carolina and South Carolina. Earlier reports of the species from Georgia and Alabama are now believed to have been in error (Robert Kral, Vanderbilt University, personal communication, 1988). Of the 13 remaining populations (located in York County, South Carolina, and Stanly, Cabarrus, Mecklenburg, Rowan, and Union Counties, North Carolina), 5 are within rights-of-way maintained by the North Carolina Department of Transportation, 2 are in rights-of-way maintained by the South Carolina Department of Highways and Public Transportation, 1 is on land managed by the Rock Hill, South Carolina, Department of Parks, Recreation, and Tourism, and the remaining 5 are on privately owned lands usually in or near transmission line corridors of various utility companies. Extirpated populations are believed to have succumbed as a result of suppression of natural disturbance (fire and/or grazing), residential and industrial development, and highway construction and improvement. The continued existence of *Helianthus schweinitzii* is threatened by these activities, as well as by mining (part of one population exists near an active gravel quarry), herbicide use, and possibly by encroachment of exotic species.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document number 94-51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27832) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) [now section 4(b)(3)] of the Act and of its intention thereby to review the status of the plant taxa named within.

On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *Helianthus schweinitzii* was included in that notice as a category 1 species. Category 1 species are those species for which the Service currently has on file substantial information on biological vulnerability and threats to support proposing to list them as endangered or threatened. Subsequent revisions of the 1980 notice have maintained *Helianthus schweinitzii* in category 1 until the February 21, 1990, publication of the revised notice of review for native plants in the **Federal Register** (55 FR 6184), in which this species' status changed to category 2 in recognition of the need for additional status surveys. Recent surveys have been conducted by Service and State personnel, and the Service now believes sufficient information exists to list *Helianthus schweinitzii* as endangered.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case of *Helianthus schweinitzii* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, and in October of each year thereafter, through 1989, the Service found that the petitioned listing of *Helianthus schweinitzii* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats were still being gathered. The July 2, 1990, proposal for *Helianthus schweinitzii* to be listed as endangered (55 FR 27270) constituted the final 12-month finding for this species.

Summary of Comments and Recommendations

In the July 2, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the Charlotte Observer (North Carolina), the Rock Hill Herald (South Carolina), and the McMinnville Southern Standard (Tennessee) on July 14, 1990, July 21, 1990, and July 15, 1990, respectively.

Twenty-three comments were received, all of which express support for the proposal.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Helianthus schweinitzii* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Helianthus schweinitzii* Torrey and Gray (Schweinitz' sunflower) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Helianthus schweinitzii has been and continues to be endangered by destruction or adverse alteration of its habitat. Since discovery of this species, approximately one-third of the known populations have been extirpated, largely due to fire/grazing suppression, and conversion of the habitat for residential and industrial purposes. Fire suppression and absence of grazing by large native herbivores are a serious problem for this species and will be discussed in detail under Factor E below. At least 12 of the remaining 13 populations are currently threatened by habitat alterations (North Carolina Natural Heritage Program and South Carolina Heritage Trust Program, 1990).

Eight of these populations survive along roadsides, with an additional population being in a utility line right-of-way. Some of the roadside populations are also within utility line rights-of-way. Three others have been partially bulldozed in recent years. All of these populations are small, which increases their vulnerability to extirpation as a result of highway and right-of-way maintenance and improvement, particularly if herbicides are used. Significant declines have been noted within the last 3 years in six of the remaining populations, with decreases ranging from 9 to 89 percent. Since the publication of the proposed rule, two extant populations have been extirpated. During the past 3 years, increases in numbers of stems were noted at only three of the currently extant sites, ranging from 14 percent to 150 percent (the latter figure is from one unusually vigorous population located on a highly vulnerable site only a few feet from the edge of a paved highway). Four of the remaining populations are small, containing less than 40 plants each.

The limited geographic range and scarcity of seed sources, as well as appropriate habitat, increases the severity of the threats to *Helianthus schweinitzii*. As stated in the "Background" section above, this species requires some form of disturbance to maintain its open habitat and can withstand mowing an timber-harvesting operations, if done properly. It cannot withstand bulldozing or direct application of broadleaf herbicides. In addition, the small populations that survive on road edges could be easily destroyed by highway improvement projects or by right-of-way maintenance activities if these are not done in a manner consistent with protecting the species.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Helianthus schweinitzii, although it is offered for sale by a few native plant nurseries, is not currently a significant component of the commercial trade in native plants. However, with its relatively showy flowers, the species has potential for horticultural use, and publicity could generate an increased demand which might exceed the currently available sources of cultivated material. Because of the species' easily accessible populations, it is vulnerable to taking and vandalism that could result from increased specific publicity.

C. Disease or predation. Not applicable to this species at this time.

D. The inadequacy of existing regulatory mechanisms. Helianthus schweinitzii is afforded legal protection in North Carolina by North Carolina general statutes, § 106-202.122, 106-202.19 (CUN.SUP.1985), which provides for protection from interstate trade (without a permit) and for monitoring and management of State-listed species and prohibits taking of plants without written permission of landowners. *Helianthus schweinitzii* is listed in North Carolina as endangered. The species is recognized in South Carolina as "threatened and of national concern" by the South Carolina Advisory Committee on Rare, Threatened, and Endangered Plants in South Carolina; however, this State offers no official protection. The Endangered Species Act would provide additional protection and encouragement of active management for *Helianthus schweinitzii*.

E. Other natural or manmade factors affecting its continued existence. As mentioned in Factor A, many of the remaining populations are small in numbers of individual stems and in terms of area covered by the plants. Therefore, there may be low genetic variability within populations, making it more important to maintain as much habitat and as many of the remaining colonies as possible. Much remains unknown about the demographics and reproductive requirements of this species in the wild, although germination tests and cultivation experiments have been conducted at the North Carolina Botanical Garden in cooperation with the Center for Plant Conservation, The Garden Club of America, and the Fauquier-Loudoun Garden Club of Virginia. A few commercial nurseries specializing in native plants are currently propagating this species and are offering cultivated specimens for sale.

In the absence of uncontrolled natural fires and grazing of the large, free-roaming herbivores now extirpated from the area, controlled burning or some other suitable form of disturbance, such as well-timed mowing or careful clearing, is essential to maintaining the prairie remnants occupied by *Helianthus schweinitzii*. Without such periodic disturbance, this type of habitat is gradually overtaken and eliminated by shrubs and trees of the adjacent woodlands. As the woody species

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increase in height and density, they overtop *Helianthus schweinitzii*, which, like most other sunflowers, is shade intolerant. The current distribution of the species is ample evidence of its dependence on disturbance. Of the 15 remaining populations, 11 are in roadside or power line rights-of-way.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Helianthus schweinitzii* as endangered. With one-third of the species' populations already having been eliminated and only 13 remaining in existence, and based upon its dependence on some form of active management, it clearly warrants protection under the Act. Endangered status seems appropriate because of the imminent serious threats facing those populations. As stated by Kral (1983),

> The problem is that, this being a very localized species, * * * seed sources are usually * * * destroyed [thereby preventing recolonization of bulldozed or otherwise severely disturbed sites]; therefore large tracts of the former range of *H. schweinitzii* now lack it [the species].

Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *Helianthus schweinitzii*. As discussed in Factor B in the "Summary of Factors Affecting the Species," *Helianthus schweinitzii* is threatened by taking, an activity difficult to enforce and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of endangered plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Because such provisions are difficult to enforce, publication of critical habitat descriptions and maps would make *Helianthus schweinitzii* more vulnerable and would increase enforcement problems. All involved parties and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 consultation process. Therefore, it would not now be prudent to determine critical habitat for *Helianthus schweinitzii*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact *Helianthus schweinitzii* and its habitat in the future include, but are not limited to, the following: Utility right-of-way construction, maintenance, and improvements; highway construction, maintenance, and improvement; and permits for mineral exploration and mining. The Service will work with the involved agencies to secure protection and proper management of *Helianthus schweinitzii* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Helianthus schweinitzii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits will be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Asheville Field Office (see "ADDRESSES" section).

Author

The primary author of this final rule is Ms. Nora Murdock (see "ADDRESSES" section) (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

(1) The authority citation for 50 CFR part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

(2) Amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species: Scientific name	Species: Common name	Historic range	Status	When listed	Critical habitat	Special rules
Asteraceae—Aster family:						
*	*	*	*	*	*	
Helianthus schweinitzii	Schweinitz's sunflower	U.S.A. (NC, SC)	E	424	NA	NA
*	*	*	*	*	*	

Dated: April 10, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–10740 Filed 5–6–91; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB52

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Scirpus ancistrochaetus (Northeastern Bulrush)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines *Scirpus ancistrochaetus* Schuyl. (Northeastern bulrush), a perennial herb of the sedge family (Cyperaceae) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Thirteen extant populations of *Scirpus ancitrochaetus* are found in open shallow ponds, wet depressions, and marshes in Virginia, West Virginia, Maryland, Pennsylvania, Massachusetts, and Vermont; the species is also known historically from New York. Eight of the thirteen extant populations are extremely small, each having less than 70 flowering culms. The species is threatened by habitat loss and modification through residential, agricultural and recreational development. This listing implements protection and recovery provisions afforded by the Act to *Scirpus ancistrochaetus*. Critical habitat has not been determined.

EFFECTIVE DATE: June 6, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the New England Field Office, U.S. Fish and Wildlife Service, 22 Bridge St., Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Susanna L. von Oettingen at the above address (telephone: 603/225–1411 or FTS 834–4411).

SUPPLEMENTARY INFORMATION:

Background

Scirpus ancistrochaetus (Northeastern bulrush), a perennial member of the sedge family (Cyperaceae), was described as a new species by A.E. Schuyler in 1982. Though *Scirpus ancistrochaetus* is closely related to *Scirpus antrovirens* Willd. and *Scirpus hattorianus* Mak., Kartesz and Kartesz (1980) also acknowledged *S. ancistrochaetus* as a distinct species. The Northeastern bulrush is a tall, leafy plant, generally 80 to 120 cm (30 to 47 inches) in height. Flowering culms (stems) are produced from short, woody, underground rhizomes. The lower leaves are 40 to 60 times as long as wide; the uppermost leaves are 30 to 50 times as long as wide (Schuyler 1982). A distinctive field characteristics that aids in separating this species from other bulrushes is the arching rays of the inflorescence. The flowers have six, small, rigid perianth bristles each covered to the base with thick-walled, sharply pointed barbs projecting downward. The yellow-brown achenes (fruits) are mostly ovate, and thickened and tough at the top. *S. ancistrochaetus* flowers from mid-June to July, and sets fruit between July and September (Crow 1982).

The reproductive mechanism of *S. ancistrochaetus* is not clearly understood. It appears to most often reproduce vegetatively, with new plants developing from the nodes and culms of recumbent stems. The absence of isolated individuals suggests that sexual recruitment may not be occurring (Bartgis, Maryland Natural Heritage Program, pers. comm., 1990). Seeds of S. ancistrochaetus can be easily germinated *in vitro*, an experimental evidence indicates that seeds will remain viable for many years (W. Brumback, New England Wildflower Society, Inc., *in litt.*, 1991; A Schuyler, Academy of Natural Sciences of Philadelphia, *in litt.*, 1991).

Schuyler (1963, 1967) investigated the relationship between *Scirpus ancistrochaetus* and two closely related species, *S. atrovirens* and *S. hattorianus* and observed that *S. ancistrochaetus* will hybridize with both species, generally producing a sterile hybrid. When in its vegetative form, *S. atrovirens* is very similar in appearance to *S. ancistrochaetus*, while hybrids between these two species are morphologically intermediate, both in vegetative and reproductive forms. The ancestral relationship of *Scirpus ancistrochaetus* to *S. atrovirens*, as well as its scarcity and scattered occurrence in isolated wetlands in areas where the flora has been well researched, suggests that *S. ancistrochaetus* is a relict species (Schuyler, pers. comm., 1990).

The Northeastern bulrush is found at the unshaded water's edge of acidic to circumneutral natural ponds, wet depressions or shallow sinkholes. The ponds are often clustered and separated by a few hundred feet or yards. *S. ancistrochaetus* may be found in one or more ponds within a wetland complex, though rarely, if ever, occurring in all of the ponds. These wetlands, generally less than one acre in size, appear to occur primarily in low-lying areas in hilly country (Schuyler 1982) and have seasonally variable water levels, ranging from inundation to desiccation (Rawinski 1990). The ponds and depressions where *S. ancis'rochaetus* may be found are considered unusual habitats, especially in the southern

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portion of its range. Though the habitat does not appear to have distinctive characteristics, many statewide rare plants such as *Potamogeton pulcher* Tuckerm., *Scirpus torreyi* Olney, and *Glyceria acutiflora* Torr. are often found in association with *S. ancistrochaetus*, indicating that there may be subtle, and as yet unknown properties of the habitat (T. Rawinski, The Nature Conservancy, pers. comm., 1990). Schuyler (*in litt.*, 1991) states that *Scirpus ancistrochaetus* is rarely found in human-disturbed habitats and it may be adapted to naturally fluctuating water regimes and subject to elimination and replacement by competing species if the habitat becomes consistently drier or wetter. Other members of the genus *Scirpus* found with *S. ancistrochaetus* are *S. atrovirens*, *S. cyperinus* (L.) Kunth, *S. pedicellatus* Fern., *S. hattorianus* and *S. atrocinctus* Fern.

Schuyler (1982) first discovered *S. ancistrochaetus* in Rockingham, Windham County, Vermont, which is considered the type locality. Emergence of the plant at a location may be unpredictable from year to year. Nonetheless, historical records of leafy *Scirpus* species are useful in indicating whether *S. ancistrochaetus* is more common than believed. In Schuyler's (1983, 1987) extensive review of *Scirpus* herbaria specimens, few misidentified *S. ancistrochaetus* were documented and only five historical localities were identified. In 1986 and 1989 the Fish and Wildlife Service (Service) contracted with The Nature Conservancy's Eastern Regional Office to conduct status surveys for *Scirpus ancistrochaetus* (Rawinski 1988, 1990). All extant and historic sites, and a majority of the sites identified as potential habitat were surveyed in Virginia, West Virginia, Maryland, Pennsylvania, New York, Massachusetts, and Vermont. At present, there are 13 extant populations and nine historical localities. Four of the historical populations were confirmed to have been destroyed or have failed.

Approximately half of the suitable habitat in Virginia has been surveyed; of the twenty-one ponds identified as potential habitat and surveyed for *S. ancistrochaetus* in 1989, only one was found to be a new occurrence. There are now four extant populations known in Rockingham, Bath, Alleghany and Augusta Counties. One of the sites has fewer than 25 plants. The plants are found in shallow, oligotrophic sinkholes overlying sandstone in the Blue Ridge Mountains. A number of rare and unusual species occur in association with *S. ancistrochaetus* on the Virginia sites, including *Helenium virginicum* Blake, a Category 1 Federal candidate species (a candidate for which the Service has sufficient information to support a proposal to list), and *Glyceria acutiflora* and *G. septentrionalis* Hitchc., two species diagnostic of this habitat type (Rawinski 1990). Three of the occurrences are on privately owned land, the fourth is located in the George Washington National Forest.

Prior to 1988, *Scirpus ancistrochaetus* had not been found in Maryland or West Virginia. Using aerial photographs to identify potentially suitable habitat, all potential habitat in Maryland and approximately ninety percent of the potential habitat in West Virginia was surveyed. Three populations were discovered, two in West Virginia and one in Maryland. These populations are found relatively close together in the Appalachian Mountains. West Virginia's two extant populations are located in Berkeley County, both on privately owned land. They are found in shallow, centripetally-drained sinkholes perched atop flat ridges and are part of wetland complexes containing three or more ponds. One site consists of two ponds in a cluster of seven, with stands totaling over 1400 stems. The second site has over 400 stems in three discrete patches within one pond (Bartgis 1989). Maryland's occurrence, in Washington County, consists of a very small stand of approximately 100 stems. The small, shallow, successional pond is located on private property lying within the acquisition boundary of a State Wildlife Management Area (Bartgis 1989).

All but one of the historical *S. ancistrochaetus* sites and much of the potential habitat in Pennsylvania have been surveyed for *S. ancistrochaetus*. The two occurrences in Lackawanna and Clinton Counties are still recorded as "extant", although three years of surveys have been unable to reconfirm the plants' presence. The Lackawanna County site, a bog lying between sandstone ridges on private land, had one plant in 1985 and was severely burned in 1988. The Clinton County site, lying within the Bald Eagle State Forest, was reported to have had two plants in 1985. A newly discovered third population is located in a privately owned, shallow, kettle lake in the Ridge and Valley province in Monroe County. The Monroe County site has between 25 and 50 clumps of *S. ancistrochaetus* growing at the edge of the lake.

Most of the potential habitat for *Scirpus ancistrochaetus* has been surveyed in Massachusetts; no new sites have been discovered, though one historical population was confirmed extant in 1989. The extant population of four plants in Franklin County, Massachusetts is found in a shallow, bowl-shaped depression, which is part of a privately owned wetland complex. The depression is inundated with water during periods of ample rainfall and dries out during droughts (Rawinski 1990).

The two Vermont occurrences are both in Windham County. One is an emergent marsh in an alluvial meadow of the Connecticut River. Sixty-nine plants were observed in 1985; 10 plants were observed in 1989. Currently, The Nature Conservancy holds a management agreement with the landowner. The second site, also located on privately owned land, is part of a wetland complex consisting of natural depressions and abandoned beaver ponds. In 1985, 12 plants were observed, while no plants were observed in 1989 (Thompson 1990). All suitable habitat within the Connecticut River drainage in Vermont was surveyed; no new occurrences of *Scirpus ancistrochaetus* were found.

Five historical collections of *Scirpus ancistrochaetus* are known from New York (Washington County) and Pennsylvania (Blair, Lehigh, Monroe and Northampton Counties). The Nature Conservancy and Natural Heritage Program botanists undertook extensive surveys of these states in 1989, including all historical sites and a significant portion of the suitable habitat. Surveys have not relocated *S. ancistrochaetus* at any of the historical localities in New York and Pennsylvania.

Scirpus ancistrochaetus and its habitat are highly vulnerable to destruction and disturbance. The majority of the occurrences are in wetlands that currently have little State or Federal protection. Of the 13 existing populations, two are located on Federal lands and one population is located on State land. The remaining populations situated on private lands are subject to obliteration or degradation through filling and dredging activities for development, agriculture and recreation purposes. Other adverse impacts to the species can occur through direct physical damage to the plants by recreational vehicles or through water quality degradation from non-point source pollution.

There is little available information on the life history of this species. It is not known how the water regime affects *Scirpus ancistrochaetus* and what specific ecological factors are required for the establishment of new populations. Extremely high water levels may be responsible for the lack of reproduction in a given year, while drier

conditions may be conducive to good reproductive output (Rawinski, pers. comm., 1990). There is no data on the impact of fire on *Scirpus ancistrochaetus*. The site of one extant population was completely burned in 1988 and plants have not been observed subsequently.

Federal consideration of this plant for listing began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on the plants considered to be endangered, threatened or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975 and subsequently published (Ayensu and DeFilipps 1978). It recommended *Scirpus ancistrochaetus* for "endangered" status. Service acceptance of the Smithsonian report as a petition within the context of section 4 of the Act and its intention to review the status of plant taxa named within was published July 1, 1975 (40 FR 27823). The Service's subsequent actions in relation to the Smithsonian petition are explained in detail in the "Relationship to Petition Requirements" section of the February 21, 1990 (55 FR 6184) comprehensive plant notice of review.

On April 7, 1988, the Service received a second petition, submitted by The Vermont Natural Heritage Program, requesting that *Scirpus ancistrochaetus* be federally listed. In accordance with its established policy, the Service treated this second petition as a public comment to be considered in evaluating the original listing petition. The additional information about the status and threats to *S. ancistrochaetus* provided by this petition increased the species' priority for listing.

Additional petition findings involving *Scirpus ancistrochaetus* were published on January 20, 1984 (49 FR 2485), May 10, 1985 (50 FR 19761), January 9, 1986 (51 FR 996), June 30, 1987 (52 FR 24312), July 7, 1988 (53 FR 25511), December 29, 1988 (53 FR 52746), and April 25, 1990 (55 FR 17475). The November 8, 1990, (55 FR 46963) proposal to classify *Scirpus ancistrochaetus* as endangered constituted the final required petition finding for this species.

Summary of Comments and Recommendations

In the November 8, 1990 proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. During the period from November 19 through November 26, 1990, newspaper notices inviting general public comment were published in the Staunton, Virginia, Daily News Leader; the Waynesboro, Virginia, Waynesboro News-Virginian; the Martinsburg, West Virginia, Martinsburg Journal; the Frederick, Maryland, The News-Post; the Lock Haven, Pennsylvania, Lock Haven Express; the Scranton, Pennsylvania, Scranton Times; the Northampton, Massachusetts, Daily Hampshire Gazette; the Brattleboro, Vermont, Brattleboro Reformer; and the Springfield, Vermont, Springfield Reporter.

Sixteen written comments were received, including letters from five Federal agencies, six State agencies, three private organizations and two individuals. Twelve letters supported the proposal; the remaining four letters were from the U.S. Army Corps of Engineers acknowledging receipt of the proposal and the need to coordinate section 7 consultations on activities under Nationwide Permit 26. Minor comments regarding new species status information, life history observations and additional State protection were included in four letters. All additional data have been incorporated into the final rule as deemed appropriate.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Scirpus ancistrochaetus* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531–1544) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Scirpus ancistrochaetus* Schuyler (Northeastern bulrush) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Ten of the thirteen extant populations occur in private lands. Residential development activities, particularly at the southern portion of its range, are responsible for extensive destruction and modification of *Scirpus ancistrochaetus* habitat. During the 1989 status survey in Virginia, nine of twenty-one ponds believed to be suitable habitat for *S. ancistrochaetus* were found to be degraded from fill, partial excavation, and eutrophication due to non-point source discharges, or were destroyed by total excavation and diking activities (Rawinski 1990). The two extant populations in West Virginia are also located in areas of increasing residential development and may suffer degradation or destruction if not protected. Both occurrences are surrounded by subdivided lands currently being marketed for housing developments.

Construction or agricultural activities occurring near populations may indirectly impact the habitat unless specific measures to prevent or minimize siltation or contamination are implemented. Four of eight historical sites in eastern Pennsylvania have been destroyed or degraded, primarily by agricultural activities. Sedimentation of the wetlands, discharges of herbicides or fertilizers, and alteration of the hydrological regime of *Scirpus* wetlands are actions which can alter the physical and biological makeup of the habitat, creating an unsuitable environment for the continued existence of the species.

During droughts, the wetlands in which the populations are found dry out, allowing vehicular access to the habitat. Use of off-road and all-terrain vehicles may result in the degradation of the habitat through soil compaction, destruction of vegetation, and the direct loss of plants. Heavy off-road vehicle use was observed at one *Scirpus ancistrochaetus* site in West Virginia during a dry period in 1989, but actual destruction of this species was not observed.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Taking of the species for these purposes has not been documented as being a factor in its decline. In the past, scientific collections have been inadvertent. Relatively few specimens have been collected in recent years. However, future collections could seriously threaten populations, especially at those sites consisting of only a few plants or occupying a very small area.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of this species.

D. The Inadequacy of Existing Regulatory Mechanisms

In Virginia, *Scirpus ancistrochaetus* is listed as endangered and is protected under the Endangered Plant and Insect

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Species Act of Virginia (1979, c. 372). This law prohibits taking without permits, except by private landowners. Virginia law also gives the Department of Agriculture and Consumer Services the authority to regulate the sale an movement of listed plants and to establish programs for the management of listed plants.

Scirpus ancistrochaetus receives protection in Pennsylvania as an endangered species under the regulations of the Wild Resources Conservation Act (25 Pa. Code, chapter 82). Permits are required to collect, remove, or transplant wild plants classified as threatened or endangered, though landowners are exempt from these requirements. Pennsylvania regulations also provide for the establishment of native wild plant sanctuaries on private lands where there is a management agreement between the landowner and the State Department of Environmental Resources.

Under the Vermont Endangered Species Law (10 V.S.A. chapter 123), *Scirpus ancistrochaetus* is listed as threatened and is afforded protection from taking, possession or transport by any person, unless exempted, or authorized by certificate or permit. Permits may be granted for scientific purposes, enhancement of survival of the species, economic hardship, educational purposes or special purposes consistent with the purposes of the Federal Endangered Species Act. Vermont is currently proposing to list *S. ancistrochaetus* as endangered; this change will provide a higher degree of protection.

Maryland is in the process of designating *Scirpus ancistrochaetus* as endangered. The endangered species designation of *S. ancistrochaetus* in Maryland will provide additional protection at the State level. Upon final listing the State will be able to regulate activities involving State funding and permitting, will regulate trade and commerce of the species and will prohibit taking without the written permission of the landowner.

Recently, the State of Massachusetts passed an Endangered Species Act (chapter 131A), though regulations have not been promulgated at this time. Under the Massachusetts Endangered Species Act, *Scirpus ancistrochaetus* is listed as endangered and will be protected from take, unless a permit has been issued by the Director of the Division of Fisheries and Wildlife. Additional protection may be afforded *S. ancistrochaetus* if the State designates significant habitat for this species. Under the new State law, there may be no alteration of significant habitat.

There is no State endangered species legislation in West Virginia. New York has a law protecting State listed plants, but has not listed *Scirpus ancistrochaetus* since there are no extant populations. Upon the Federal listing of *S. ancistrochaetus*, the species will be automatically listed as a Protected Native Plant under State regulation and will be protected from take or destruction without the permission of the landowner.

Though the majority of the states with extant *Scirpus ancistrochaetus* populations have legislation protecting endangered plants from taking or transport, no protection is afforded the habitat. The primary threat to *S. ancistrochaetus* is from habitat degradation.

Under current Federal regulations, a Department of the Army permit is required for the discharge of dredged or fill material into waters of the United States including adjacent and isolated wetlands where the majority of *S. ancistrochaetus* populations occur. However, Nationwide Permit 26 exempts wetland fills smaller than 10 acres from the individual permit process provided they are (a) located above headwaters (5 cfs or less) and (b) not part of a surface tributary system to interstate waters or navigable waters. Deposit of up to one acre of dredge or fill material in such wetlands does not require the prior notification of the Army Corps of Engineers. Without Federal listing of the species, the 404 regulatory process provides very limited protection for the habitat of *S. ancistrochaetus*.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Six of the 13 known occurrences of *S. ancistrochaetus* consist of fewer than 25 plants. These isolated and critically small populations are highly vulnerable to extinction. Extreme isolation, whether by geographic distance, ecological factors or reproductive strategy, prevents the influx of new genetic material and can result in a highly inbred population with low viability and/or fecundity (Chesser 1983). In addition, current knowledge of the species biology and population dynamics is insufficient to assess whether *S. ancistrochaetus* is likely to persist following natural events such as drought, flooding and fire.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Scirpus ancistrochaetus* as an endangered species. Only thirteen occurrences are known, and plants were not found at three of these sites during the most recent status survey (Rawinski 1990). Due to the small number of populations and the continuing threats to its habitat, the plant is in need of protection if it is to survive. These factors support listing as an endangered species. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Scirpus ancistrochaetus* at this time. Most populations of this species are small to moderate in size, are widely scattered throughout its range and are located on private property, for which there is no regulation to prevent taking by the landowner or others, while collecting for scientific and educational purposes has not contributed to the decline of the species, taking due to vandalism or private collections could eliminate some populations if their locations are publicized. Publication of critical habitat descriptions and maps in the Federal Register could increase these threats to the survival of the species, overriding any protection that such designation might provide.

Designation of critical habitat primarily affects Federal agencies. Since the majority of the occurrences are on privately owned land, critical habitat designation would have little impact on the management or protection of this species. The designation of critical habitat would not provide additional benefits to populations that do not already accrue from listing through section 7 consultation and the recovery process. The Service will coordinate with the U.S. Army Corps of Engineers by providing locational information on *S. ancistrochaetus* in an effort to prevent destruction of existing sites under Nationwide Permit 26 activities. The U.S. Forest Service has been notified of the presence of *Scirpus ancistrochaetus* on its properties and of the section 7 requirements. The population located on State property is managed and protected by the State landowning agency.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. Through *Scirpus ancistrochaetus* is not currently listed as endangered in New York State, Federal listing will result in the species being listed as a Protected Native Plant in New York. Listing will provide additional protection from collection or destruction throughout its range. The Nature Conservancy is currently working to protect all known populations and listing will enhance these efforts. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Scirpus ancistrochaetus is a wetland plant, therefore, activities which involve filling of these wetlands (including filling authorized under Nationwide 26) would be regulated by the U.S. Army Corps of Engineers and would require section 7 consultation. The Service is not presently aware of any specific proposed projects that might affect known populations of *Scirpus ancistrochaetus*.

Listing *Scirpus ancistrochaetus* will encourage research on critical aspects of its life history, ecology and population biology. Information is needed regarding the relationship of fertile culm production to the hydrologic regime of its habitat, reproduction strategies and population recruitment. These factors will be important for the development of recovery strategies and long-term management considerations for individual populations.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62 and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and state conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits will ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquires regarding them may be addressed to the office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 N Fairfax Dr., Arlington, VA 22203-3507 (703/358-2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Susanna L. von Oettingen (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal

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Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Cyperaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cyperaceae—Sedge family:						
Scirpus ancistrochaetus	Northeastern bulrush (=Barbed bristle bulrush).	U.S.A. (VA, MD, WV, PA, NY, MA, VT).	E	425	NA	NA

Dated: April 10, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–10741 Filed 5–6–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 901231–1099]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of embargo and revocation of findings.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) announces that on March 26, 1991, the United States District Court for the Northern District of California ordered a prohibition on the importation of all yellowfin tuna and yellowfin tuna products harvested with purse seines in the eastern tropical Pacific Ocean (ETP) by any foreign nation whose vessels intentionally set purse seine nets on marine mammals, and the revocation of any certification for any foreign nation currently importing commercial yellowfin tuna or yellowfin tuna products harvested with purse seines in the ETP. Such certifications are therefore revoked and an embargo on such products has been implemented and will remain in effect unless and until the Secretary of Commerce (Secretary) makes a positive finding based upon documentary evidence provided by the government of the exporting nation that the average rate of the incidential taking by vessels of such foreign nation is no more than 1.25 times that of U.S. vessels during the same period, or until the Secretary makes a positive finding that the government of the exporting nation has taken sufficient steps to prohibit the fishing vessels of such country from intentionally setting purse seine nets on marine mammals in the course of harvesting yellowfin tuna in the ETP.

DATES: This importation prohibition became effective on April 3, 1991, when it was directed by the U.S. customs service. The revocation of findings is effective as of the date of publication.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731, Phone: (213) 514–6196.

SUPPLEMENTARY INFORMATION: On March 26, 1991, the District Court for the Northern District of California ordered an embargo of yellowfin tuna and yellowfin tuna products harvested with purse seines in the ETP. The embargo is to remain in effect unless and until the Secretary makes an affirmative finding based upon documentary evidence provided by the government of the exporting nation that the average rate of the incidential taking by vessels of such foreign nation is no more than 1.25 times that of U.S. vessels during the same period, or until the Secretary makes a positive finding that the government of the exporting nation has taken sufficient steps to prohibit the fishing vessels of such country from intentionally setting purse seine nets on marine mammals in the course of harvesting yellowfin tuna in the ETP.

The countries of Panama, Ecuador, Mexico, Vanuatu, and Venezuela harvest, or in the recent past have harvested, yellowfin tuna in the ETP by means of purse seines, and export yellowfin tuna or yellowfin tuna products to the United States. On November 15, 1990, and on March 15, 1991, the Secretary made affirmative findings for Panama and Ecuador, respectively. The Secretary found that these countries have taken sufficient steps to prohibit their respective fishing vessels from intentionally setting purse seine nets on marine mammals in the course of harvesting yellowfin tuna in the ETP. At the time of the order the Court recognized that the Secretary made an affirmative finding on November 15, 1990, that Panama had taken sufficient steps to prohibit Panamanian fishing vessels from intentionally setting purse seine nets on marine mammals in the course of harvesting yellowfin tuna in the ETP. Therefore, Panama was not included in the Court's embargo order.

On March 15, 1991 (56 FR 12367), the Secretary announced that Ecuador submitted documentation that it is in compliance with the yellowfin tuna importation regulations for nations that have acted to ban purse seine sets on marine mammals in the ETP. Therefore, the Secretary has determined that yellowfin tuna and yellowfin tuna products from Ecuador are not embargoed pursuant to the court order of March 26, 1991.

The Assistant Administrator announces, therefore, that the comparability findings for Mexico, Venezuela, and Vanuatu, which were extended on December 27, 1990 (55 FR 53160) (effective on December 20, 1990), to May 31, 1991, are hereby revoked. As a result of the court order the interim fnal rule of December 27, 1990, has been invalidated, and the importation of yellowfin tuna and yellowfina tuna products harvested by purse seine in the eastern tropical Pacific Ocean is prohibited from any foreign nation, unless and until the Secretary makes a positive finding that the incidental taking of marine mammals by vessels of such foreign nation is no more than 1.25 times that of the United States vessels during the same period, or that the government of the exporting nation has taken sufficient steps to prohibit the fishing vessels of such country from intentionally setting purse seine nets on marine mammals in the course of harvesting yellowfin tuna in the ETP. The court order of March 26, 1991, necessitates amendment of NMFS regulations published on December 27, 1990, amending the schedule for completing findings affecting the importation of yellowfin tuna into the United States. The Assistant Administrator will shortly issue new regulations to conform to the order.

Dated: May 1, 1991.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 91–10806 Filed 5–6–91; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 380

[Docket Number 910376–1076]

Antarctic Marine Living Resources Convention Act of 1984

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) amends the regulations governing the harvesting and reporting of Antarctic finfish catches and reserves a section in the regulations for the protection of land-based ecosystem monitoring sites. The regulations implement conservation and management measures promulgated by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR or Commission) and accepted in whole by the Government of the United States to regulate catches in Convention for the Conservation of Antarctic Marine Living Resources (Convention) statistical reporting subareas (subareas) 48.1, 48.2, 48.3 and 58.4. These measures restrict the use of gear, restrict the directed taking any bycatch of certain species of fish, prohibit the taking of other species, require real-time and other reporting of the harvest of certain species and establish a prodecure for according protection to CCAMLR Esosystem Monitoring Program (CEMP) sites.

EFFECTIVE DATE: May 7, 1991.

ADDRESSES: A copy of the framework environmental assessment may be obtained from the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service 1335 East-West Highway, Silver Spring, MD 20910.

Comments regarding burden estimates or collection of information aspects of this rule should be sent to Robin Tuttle, National Marine Fisheries Service , 1335 East-West Highway, Room 7256, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Paperwork Reduction Act Project 0648–0194.

FOR FURTHER INFORMATION CONTACT: Robin Tuttle (NMFS International Organizations and Agreements Division), 301–427–2282.

SUPPLEMENTARY INFORMATION:

Background

At its annual meeting in Hobart, Tasmania, in 1986, CCAMLR, of which the United States is a member, adopted a conservation measure requiring the Commission at subsequent meetings to adopt limitations on catch, or equivalent measures, binding for species upon which fisheries are permitted in Convention subarea 48.3 (South Georgia), depicted at Figure 1 of 50 CFR part 380. The system for imposing these limitations and measures is described at 50 CFR 380.26.

The resolution and measures concerning the 1990/91 fishing season adopted by CCAMLR at its annual meeting in 1990 are based upon the advise of its Scientific Committee and take into account research conducted by Commission members and the report and recommendations of the Scientific Committee's Working Groups of Fish Stock Assessment and CEMP. The resolution and measures were announced and public comments invited (until January 16, 1991) by Federal Register notice on December 17, 1990 (55 FR 51783). No comments were received.

(1) Marine Debris Information Brochure and Placard

The Commission in 1986 at its Fifth Meeting agreed to the texts of an information brochure advising fishermen, researchers and others working in the Convention Area of the sources, fates and effects of potentially hazardous marine debris and of a placard that could be displayed in appropriate places aboard ships operating in the Convention Area, describing "do's and don'ts" with respect to handling, storing and discarding refuse. Members have been urged by the Commissin to distribute the brochure widely among their nationals working in Antarctica and to ensure that all vessel operators were provided with the placard. Distribution of the placard among crew members and display of the placard aboard vessels under U.S. jurisdiction operating within the Convention Area are thus required by these regulations.

(ii) Subarea 48.3

The Commission took most of its actions with respect to subarea 48.3.

For the 1990/91 fishing season, the total catch of *Champsocephalus gunnari* (mackerel icefish) in subarea 48.3 has been limited by the Commission to an amount not to exceed 26,000 metric tons, an increase of 18,000 metric tons over the total allowable catch for the 1989/90 fishing season. The use of bottom trawls in the directed fishery for *C. gunnari* is prohibited in subarea 48.3. Directed fishing on *C. gunnari* in subarea 48.3 is prohibited between April 1 and November 4, 1991.

Directed fishing on *Notothenia rossii* (marbled rockcod), *Nothothenia gibberifrons* (humped rockcod), *Chaenocephalus aceratus* (blackfin icefish), *Pseudochaenichthys georgianus* (South Georgia icefish), *Notothenia squamifrons* (grey rockcod) and *Patagonotothen brevicauda guntheri* (Patagonian rockcod) is prohibited at any time in subarea 48.3 during the 1990/91 season.

The total catch of *Dissostichus eleginoides* (Patagonian toothfish) in subarea 48.3 caught in the 1990/91 season is limited to 2,500 metric tons. The seasons for this species is the period from November 2, 1990 through November 1, 1991.

The bycatch of *N. gibberifrons* in subarea 48.3 is limited to an amount not to exceed 500 metric tons and the bycatch of any of the species of *N. rossii, N. squamifrons, C. aceratus* and *P. georgianus* in subarea 48.3 is limited to an amount not to exceed 300 metric tons.

The fishery in subarea 48.3 will be closed if the limit on any of the bycatch species is reached or if the total catch of *C. gunnari* reaches 26,000 metric tons, whichever comes first. If the fishery is closed before the end of the fishing season, NMFS will notify the designated representative of the holder of a permit to fish in subarea 48.3 of the date of closure of the fishery.

If, in the course of the directed fishery for *C. gunnari*, the bycatch of any one haul of any of the named bycatch species exceeds 5 percent, the fishing vessel is required to move to another fishing ground within the subarea.

The reporting system for all catch and effort in subarea 48.3 adopted by the Commission for the 1989/90 fishing season is extended, with changes to the species to which it applies, to the 1990/

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91 season. This is an every-8-day reporting requirement. It applies to catch and effort on *C. gunnari, N. gibberifrons, N. rossii, N. squamifrons, C. aceratus, P. georgianus*, and *D. eleginoides*. It does not apply to the catches of *N. squamifrons* taken in subarea 58.4.

Section 380.26 of the regulations describes the process by which the Commission will specify and the Executive Secretary of CCAMLR and NMFS will give effect to limitations on catch or equivalent measures for species on which fisheries are permitted around South Georgia. It was prospective in nature and is no longer necessary. The measures which the Commission has adopted using this procedure are described in sections of the regulations on catch restrictions, closures and gear restrictions. Thus, existing § 320.26 is removed from the regulations.

(iii) Subareas 48.1 and 48.2

The Commission prohibited the taking of all species of finfish, other than for scientific research purposes, in subareas 48.1 and 48.2 in the 1990/91 season.

(iv) Subarea 58.4

The Commission limited the total catch of *N. squamifrons* in statistical division 58.4.4 not to exceed 305 metric tons on the Lena Bank and not to exceed 287 metric tons on the Ob Bank.

(v) Protection of CEMP Sites

The Commission adopted detailed procedures for the proposal, registration and management of land-based CEMP sites. The registration and resulting management plans are designed to protect these sites from certain forms of human interference. Once approved, plans will be reviewed every 5 years to determine whether they require revision and whether continued protection is necessary. A section is reserved in 50 CFR part 380 for identifying protected CEMP sites and the activities prohibited within them by CCAMLR-approved management plans.The section will also establish a system for issuing permits authorizing U.S. nationals to carry out activities consistent with provisions of the management plans and ensuring compliance with the plans.

(vi) Driftnet Fishing

The Commission adopted a resolution noting Contracting Party agreement not to expand large-scale pelagic driftnet fishing into the Convention Area. Because Public Law 101-627, the "Fishery Conservation Amendments of 1990," effective November 28, 1990, prohibits large-scale driftnet fishing by fishing vessels of the United States in fisheries subject to U.S. jurisdiction, regulations prohibiting their use in the Convention Area are not included in these regulations.

Classification

The Secretary has determined that this rule is necessary to implement the Antarctic Marine Living Resources Convention Act of 1984 (the Act) and to give effect to the conservation and management measures adopted by CCAMLR and agreed to by the United States.

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) prepared a framework environmental assessment (EA) for the Act in 1987. NMFS reviewed this rule and determined that the actions it requires were generally summarized in the framework EA and are thus excluded from further National Environmental Policy Act analysis.

This action is exempt from Executive Order 12291 and section 553 of the Administrative Procedure Act because it involves a foreign affairs function of the United States.

Because notice and comment rulemaking is not required for this rule, the Regulatory Flexibility Act does not apply; therefore, a regulatory flexibility analysis has not been prepared. At present, except for research purposes, there is only one U.S. vessel subject to the jurisdiction of the United States harvesting Antarctic marine living resources within the area to which these regulations apply. The one commercial vessel holding a harvesting permit will be engaged in a 30-day catch-and-release exploratory crab fishery. The only other Antarctic marine living resources affected are scientific specimens taken under National Science Foundation permits and by the U.S. Antarctic Marine Living Resources directed research program.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of information has been approved by the Office of Management and Budget under OMB Control Number 0648-0194, which expires September 30, 1991.

The annual reporting burden for this collection of information is estimated to average one-half hour per harvester, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Robin Tuttle, National Marine Fisheries Service, and to the Office of Information and Regulatory Affairs (see ADDRESSES).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

List of Subjects in 50 CFR Part 380

Antarctic, Fish and wildlife, Reporting and recordkeeping requirements.

Dated: May 1, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 380 is amended as follows:

PART 380—ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984

1. The authority citation for part 380 continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.*

2. Section 380.9 is amended by adding new paragraph (c) to read as follows:

§ 380.9 Gear disposal.

* * * * *

(c) The operator of a harvesting vessel must provide a copy of the CCAMLR information brochure "Marine Debris—A Potential Threat to Antarctic Marine Mammals" to each member of the crew of the harvesting vessel and must display copies of the CCAMLR placard "Avoidance of Incidental Mortality of Antarctic Marine Mammals" in the wheelhouse and crew quarters of the harvesting vessels. Copies of the brochure and placard will be provided to each holder of a harvesting permit by NMFS when issuing the permit.

3. In § 380.22, paragraph (a) is revised to read as follows:

§ 380.22 Mesh size.

(a) The use of pelagic and bottom trawls having the mesh size in any part of a trawl less than indicated is prohibited for any directed fishing for the following Antarctic finfishes:

(1) *Notothenia rossii* and *Dissostichus eleginoides*–120 mm;

(2) *Champsocephalus gunnari* –90 mm; and

(3) *Notothenia gibberifrons, Notothenia kempi* and *Notothenia squamifrons*–80 mm.

* * * * *

4. Section 380.23 is revised to read as follows:

§ 380.23 Catch restrictions.

(a) The following catch restrictions apply to subarea 48.3 during the 1990/91 fishing season:

(1) The total catch of *C. gunnari* in subarea 48.3 for the 1990/91 season shall not exceed 28,000 metric tons (see Figure 1).

(2) The total catch of *D. eleginoides* in subarea 48.3 for the 1990/91 season shall not exceed 2,500 metric tons. For purposes of this fishery the 1990/91 fishing season is defined as the period from November 2, 1990 through November 1, 1991.

(3) Directed fishing for *N. rossii, N. gibberifrons, C. aceratus, P. georgianus, N. squamifrons* and *P. b. guntheri* is prohibited in subarea 48.3 during the 1990/91 fishing season.

(4) The bycatch of *N. gibberifrons* in subarea 48.3 shall not exceed 500 metric tons during the 1990/91 fishing season.

(5) The bycatch in subarea 48.3 of any of the following species: *N. rossii, N. squamifrons, C. aceratus* and *P. georgianus* shall not exceed 300 metric tons during the 1990/91 fishing season.

(6) If, in the course of the directed fishery for *C. gunnari*, the bycatch of any one haul of any of the species *N. gibberifrons, N. rossii, N. squamifrons, C. aceratus* or *P. georgianus* exceeds 5 percent, the fishing vessel must move to another fishing ground within the subarea.

(7) The bycatch limit of *P. b. guntheri* in subarea 48.3 during the 1990/91 fishing season is 1 percent of all Antarctic finfishes onboard a vessel in the subarea.

(b) The taking of finfish, other than for scientific research purposes, in subareas 48.1 and 48.2 is prohibited during the 1990/91 season.

(c) The following catch restrictions apply to subarea 58.4 during the 1990/91 fishing season:

(1) The total catch of *N. squamifrons* on the Lena Bank of division 58.4.4 shall not exceed 305 metric tons during the 1990/91 season.

(2) The total catch of *N. squamifrons* on the Ob Bank of division 58.4.4 shall not exceed 287 metric tons during the 1990/91 season.

(d) Directed fishing for *N. rossii* is prohibited in subarea 58.5. The catch limit for *N. rossii* in subarea 58.5 is 1 percent of all Antarctic finfishes onboard a vessel fishing in subarea 58.5.

5. Section 380.24 is revised to read as follows:

§ 380.24 Reporting requirements for Convention statistical reporting subarea 48.3.

(a) The calendar month is divided into six reporting periods: Day 1 to day 5 is period A, day 6 to day 10 is period B, day 11 to day 15 is period C, day 16 to day 20 is period D, day 21 to day 25 is period E, and day 26 to the last day of the month is period F.

(b) The operator of any vessel fishing in subarea 48.3 must, within 2 days of the end of a reporting period, report his or her catch and bycatch of *C. gunnari, N. gibberifrons, N. rossii, N. squamifrons, C. aceratus, P. georgianus* and *D. eleginoides* to NMFS. The report must be made in writing, by cable, telex, rapidfax or other appropriate method to the address or number specified in the vessel's permit, and must include the vessel name, permit number, month and reporting period, and its catch in metric tons (to the nearest tenth of a metric ton) of *C. gunnari, N. gibberifrons, N. rossii, N. squamifrons, C. aceratus, P. georgianus* and *D. eleginoides* taken in subarea 48.3 If none of these species is taken during a reporting period, the operator must submit a report showing no catch.

(c) This catch reporting system applies to the reporting of *D. eleginoides* during the 1990/91 fishing season commencing November 2, 1990

§ 380.25 [Removed]

6. Section 380.26 is removed.

§ 380.27 [Redesignated as § 380.26]

7. Section 380.27 is redesignated as § 380.26 and is revised to read as follows:

§ 380.26 Closures.

(a) The fishery in subarea 48.3 will close if the bycatch of *N. gibberifrons* reaches 500 metric tons, the bycatch of any of the species *N. rossii, N. squamifrons, C. aceratus* or *P. georgianus* reaches 300 metric tons or the total catch of *C. gunnari* reaches 28,000 metric tons, whichever comes first. NMFS will notify harvesting permit holder representatives of such closure.

(b) Directed fishing on *C. gunnari* in subarea 48.3 between April 1 and November 4, 1991 is prohibited.

§ 380.28 [Redesignated as § 380.27]

7. Section 380.28 is redesignated as § 380.27 and is revised to read as follows:

§ 380.27 Gear restrictions.

(a) Longline fishing is prohibited in Convention waters.

(b) The use of bottom trawls in the directed fishery for *C. gunnari* in subarea 48.3 is prohibited during the 1990/91 fishing season.

8. A new section 380.28 is added and reserved to read as follows:

§ 380.28 Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites. [Reserved]

[FR Doc. 91-10809 Filed 5-6-91; 8:45 am]

BILLING CODE 3510-22-M

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Proposed Rules

Federal Register
Vol. 56, No. 88
Tuesday, May 7, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1344-91; AG ORDER NO. 1483-91]

Mariel Cuban Parole Determinations

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises and expands the discretionary authority of the Immigration and Naturalization Service (the Service) under the Cuban Review Plan to withdraw parole approval for excludable Mariel Cubans where circumstances make it impossible to execute the parole decision, and release of the detainee is contrary to the public interest. It further provides for flexibility in the scheduling of parole reviews in the case of a new or returning Mariel Cuban detainee whose previous immigration parole has been revoked. These changes are necessary to reduce administrative costs and to clarify the status of the detainee whose parole decision cannot be implemented.

DATES: Written comments must be received no later than June 6, 1991.

ADDRESSES: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference INS number 1344-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Joan Lieberman, Assistant General Counsel, Office of the General Counsel, room 7048, Immigration and Naturalization Service, 425 I Street NW., room 7048, Washington, DC 20536, telephone (202) 514-2895.

SUPPLEMENTARY INFORMATION: This proposed rule would amend 8 CFR 212.12 to permit the Service a wider range of discretionary authority to revoke parole approval previously authorized for excludable Mariel Cubans where circumstances warrant a reversal of the parole approval decision. Currently, 212.12(e) contains an admonition that a detainee approved for parole must maintain proper behavior while awaiting suitable sponsorship or placement, or risk parole revocation. Section 212.12(f) prohibits release absent suitable sponsorship or placement. The present regulation makes no provision for cases where sponsorship is declined or appropriate sponsorship is unavailable, despite repeated attempts by the Service to locate placement. Administration of the Cuban Review Program has been severely handicapped by cases with placement problems. In such cases, numerous attempts to place certain detainees with appropriate sponsors have met with failure, since no program will accept these individuals due to their criminal histories. In many cases, the Service has requested aliens' rights groups to secure appropriate sponsorship or placement for these individuals, but without success. The current amendment to the regulation is designed to remedy the uncertainty surrounding the detainee's status where a release decision has been made by the Associate Commissioner for Enforcement, but that decision cannot be implemented. This regulatory change is also designed to allow for flexibility in meeting unusual or changing circumstances, in foreign affairs or domestic conditions, which indicate that the parole determination is no longer in the public interest. The proposed change conforms the language of § 212.12(e) to the language that currently exists in § 212.13(i), governing the authority of Departmental Panels to withdraw parole approval.

This rule also amends 8 CFR 212.12(g) by inserting flexibility into the parole review process for Mariel Cubans who are subject to repatriation. The class of Mariel Cubans immediately affected by this proposed rule change are those individuals whose return has been agreed to by the government of Cuba, pursuant to the Migration Agreement of 1984, whose previous immigration parole has been revoked, and who have been placed in the custody of the Service. The amendment to the regulation clarifies that the Cuban Review Plan Director, in the exercise of discretion, may suspend the parole review process in order to commence the repatriation process. Rather than scheduling a file review within three months after parole is revoked, the Service may begin the repatriation process immediately. In this manner, the return of the individual to Cuba may be accomplished within the time that it would ordinarily take to complete the parole review process. This approach is consistent with the preamble to the regulation, at 52 FR 48800, December 28, 1987, that an excludable Mariel Cuban may be deported from the United States and repatriated to Cuba without first receiving a parole review pursuant to 8 CFR part 212.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of Equal Opportunity 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with Equal Opportunity 12612.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Detention, Exclusion, Immigration, Parole, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1228, 1252.

2. Section 212.12 is amended by revising paragraph (e), and by adding a new sentence at the end of paragraph (g)(1) to read as follows:

§ 212.12 Parole determinations and revocations respecting Mariel Cubans.

* * * * *

(e) Withdrawal of parole approval. The Associate Commissioner for Enforcement may, in his discretion, withdraw his approval for parole of any detainee prior to release when, in his opinion, the conduct of the detainee, or any other circumstance, indicates that parole would no longer be appropriate.

* * * * *

(g) * * *

(1) * * * In the case of a Mariel Cuban whose previous immigration parole has been revoked, and who has been placed in the custody of the Service, the Cuban Review Plan Director may, in his or her discretion, suspend or postpone the parole review process if such detainee's return to Cuba has been negotiated.

* * * * *

Dated: April 30, 1991.

Dick Thornburgh,
Attorney General.

[FR Doc. 91-10783 Filed 5-6-91; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Part 217

[INS No. 1406-91]

RIN 1115-AB93

Visa Waiver Pilot Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule amends 8 CFR part 217 to enhance the Visa Waiver Pilot Program by permitting nationals of countries designated for the program to apply for admission at land border ports as well as at airports and seaports. This rule will simplify the forms required of an applicant by combining two forms into one and will reduce the paperwork for the inspections process under the Pilot Program.

DATES: Written comments must be received no later than May 22, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. Please include INS number 1406-91 on the mailing envelope to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Y. Peggy Wong, Acting Deputy Assistant Commissioner, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., room 7123, Washington, DC 20536, telephone number (202) 514-4033.

SUPPLEMENTARY INFORMATION: Under the Visa Waiver Pilot Program, authorized by Congress in section 217 of the Immigration and Nationality Act, nonimmigrant visitors from countries designated jointly by the Attorney General and the Secretary of State are eligible to apply for admission into the United States as nonimmigrant visitors for business or pleasure for ninety (90) days or less without obtaining nonimmigrant visitor visas at United States embassies or consulates. The primary goal of the pilot program is to promote international travel and tourism.

The Visa Waiver Pilot Program, as implemented on July 1, 1988, allowed applicants to apply for admission at air and sea ports via signatory carriers. However, many nationals from the designated countries commence their journeys by traveling to Canada or to Mexico then make their initial application for admission to the United States at land border ports of entry. Because they did not arrive aboard a signatory carrier, they were not eligible for entry under the Visa Waiver Pilot Program. This rule expands the avenues by which these nonimmigrants may enter the country and now allows them to make an initial entry at land border ports.

The proposed amendment of this section also eliminates the Visa Waiver Pilot Program Information Form and replaces it with a Visa Waiver Pilot Program Arrival/Departure Record. This will reduce the amount of paperwork that must be completed by applicants and immigration officers under this program, thereby streamlining the inspection process.

This rule defines the return passage requirement in accordance with established policy. The requirement may be met by possession of a round trip transportation ticket, airline passes indicating return passage, individual vouchers, group vouchers for charter flights, or United States military travel orders which include military dependents showing return to duty stations outside the United States on United States military flights.

Title 8 CFR 217.4 is amended to establish a uniform format by which the Service will notify carriers that an alien is not found to be admissible under the program. Currently, there is no consistent manner in which the carriers are notified. The regulations now propose a single form for that purpose, the Notice to Detain, Deport, Remove or Present Alien, Form I-259, already in use.

Title 8 CFR 217.6 is amended by requiring the carrier to ensure that the Visa Waiver Pilot Program Arrival/Departure Record is completed and signed prior to boarding the aircraft or vessel as the alien's prima facie evidence of eligibility under the program.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirement contained in this regulation has been submitted to the Office Of Management and Budget (OMB) for review under the provisions of the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 217

Administrative practice and procedures, Aliens, Passports and visas, Reporting and record keeping requirements.

Accordingly, part 217 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 217—VISA WAIVER PILOT PROGRAM

1. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

2. Section 217.2 is amended by revising paragraph (a) introductory text; revising paragraph (a)(4); removing paragraphs (a)(5) and (a)(6); redesignating paragraphs (a)(7) and (a)(8) as (a)(5) and (a)(6) respectively and revising them; revising paragraphs (b) through (d) to read as follows:

§ 217.2 Eligibility.

(a) *General.* Notwithstanding the provisions of section 212(a)(7)(B)(i)(II) of the Act, a nonimmigrant visa may be waived for an alien who is a national of a country enumerated in § 217.5 of this part regardless of place of residence or point of embarkation who:

* * * * *

(4) Is in possession of a completed and signed Visa Waiver Pilot Program Arrival/Departure Record;

(5) Waives any right otherwise provided in the Act to administrative or judicial review or appeal of an immigration officer's determination as to admissibility other than on the basis of an application for asylum in the United States as provided in section 208 of the Act; and

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(6) Waives any right to contest any action for deportation.

(b) *Applicants arriving by air or sea.* (1) Applicants must be in possession of a return trip ticket which will transport the traveler out of the United States to any foreign port or place. A return trip ticket includes any of the following:

(i) A round trip transportation ticket which is valid for a period of not less than one year;

(ii) Airline passes indicating return passage;

(iii) Individual vouchers;

(iv) Group vouchers for charter flights only;

(v) Military travel orders which include military dependents for return to duty stations outside the United States on United States military flights.

(2) Applicants must arrive in the United States on a carrier which has enterd into an agreement as provided in § 217.6 of this part.

(c) *Applicants arriving at land border ports of entry.* Any applicant arriving at a land border port of entry must provide evidence to the immigration officer of financial solvency and a domicile abroad to which the applicant intends to return.

(d) *Aliens in transit.* An alien who is in transit through the United States is eligible to apply for admission under the Visa Waiver Pilot Program, provided the applicant meets the eligibility criteria set forth in this section.

3. Section 217.4 is amended by revising paragraphs (b) and (d) and by adding a new paragraph (e) to read as follows:

§ 217.4 Excludability and deportability.

* * * * *

(b) *Determination of excludability and inadmissibility.* (1) An alien who applies for admission under the provisions of section 217 of the Act, who is determined by an immigration officer not to be eligible for admission under that section or to be excludable from the United States under one or more of the grounds of excludability listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents will be refused admission into the United States and removed. Such refusal and removal shall be made by the district director and shall be effected without referring the alien to an immigration judge for further inquiry, examination, or hearing.

(2) The removal of an alien under this section may be deferred if the alien is paroled into the custody of a federal, state, or local law enforcement agency for criminal prosecution or punishment. This section in no way diminishes the discretionary authority of the Attorney General enumerated in section 212(d) of the Act.

* * * * *

(d)(1) *Removal of excludable and deportable aliens who arrived by air or sea.* The carrier which transported to the United States an alien who is to be removed pursuant to this section will be notified immediately of the determination to remove such alien by means of a Notice to Detain, Deport, Remove, or Present Alien, Form I-259. Removal from the United States under this section may be effected using the return portion of the round trip passage presented by the alien at the time of entry to the United States as required in § 217.2(b)(1) of this part. Such removal will be on the first available means of transportation to the alien's point of embarkation to the United States. Nothing in this part absolves the carrier of the responsibility to remove any excludable or deportable alien at carrier expense, as provided in § 217.6(b) of this part.

(2) *Removal of excludable and deportable aliens who arrived at land border ports of entry.* Removal will be by the first available means of transportation deemed appropriate by the district director.

(e) *Applicants for asylum.* An applicant for admission under section 217 of the Act who applies for asylum in the United States must be referred to an asylum officer for further inquiry on the claim for asylum. Such applicant may appeal a decision denying asylum directly to the Board of Immigration Appeals. Such appeal must be filed within ten (10) days of the asylum officer's decision by filing a notice of appeal on Form I-290A with the district director, who shall immediately forward the notice to the asylum officer. The asylum officer shall transit the notice of appeal, his or her decision, and the record on which that decision was based, to the Board of Immigration Appeals. The filing of a notice of appeal shall stay the exclusion or deportation of the applicant pending a decision on the appeal by the Board.

4. Section 217.6 is amended by revising paragraphs (a), (b)(1)(ii), (iv) and (v); by revising paragraph (b)(2)(i) and (iv); and by adding a new paragraph (b)(2)(vi) to read as follows:

§ 217.6 Carrier agreements.

(a) *General.* The carrier agreements referred to in section 217(e) of the Act shall be made by the Commissioner in behalf of the Attorney General and shall be on Form I-775, Visa Waiver Pilot Program Agreement. The term "carrier" as used in this part refers to the owner, charterer, lessee or authorized agent of any commercial vessel or commercial aircraft engaged in transporting passengers to the United States from a foreign place.

(b) * * *

(1) * * *

(ii) Is in possession of a completed and signed Visa Waiver Pilot Program Arrival/Departure Record;

* * * * *

(iv) Is in possession of round trip passage that is valid for one year, issued by a carrier signatory on Form I-775, or by authorized agents who are subcontractors to such a carrier, and guaranteeing transportation from the United States;

(v) Agrees that the return portion of such passage may be used to effect removal from the United States based on a finding of excludability or deportability under § 217.4 of this part;

* * * * *

(2) The carrier further agrees to:

(i) Submit to the Immigration and Naturalization Service the Visa Waiver Pilot Program Arrival/Departure Record as required by sections 231 and 217(e)(1)(B) of the Act;

* * * * *

(iv) Retain the responsibilities and obligations enumerated in this part should the alien under the Visa Waiver Pilot Program depart temporarily for a visit to foreign contiguous territory during the period of authorized stay in the United States;

* * * * *

(vi) Ensure that the Visa Waiver Pilot Program Arrival/Departure Record is complete and signed by the alien prior to boarding the aircraft or vessel.

* * * * *

Dated: March 18, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-10912 Filed 5-6-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-60-AD]

Airworthiness Directives: Boeing Model 737-300, -400, and -500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede two existing airworthiness directives (AD), one of which is applicable to Boeing Model 737-300 series airplanes and the other to Boeing Model 737-400 series airplanes, which currently require repetitive inspections for chafing between the number two engine throttle cable and the adjacent right wing front spar bracket. These conditions, if not corrected, could result in throttle cable separations and subsequent loss of engine throttle control. This action would require modifications to the engine's throttle control cables. In addition, this notice proposes to include the Boeing Model 737-500 series airplanes in the applicability. This proposal is prompted by the manufacturer's development of a modification which eliminates the cable accelerated wear condition, subject of the existing AD's, and a condition referred to as "engine throttle cable ratcheting."

DATES: Comments must be received no later than June 24, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-60-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2681. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-60-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On June 8, 1989, the FAA issued AD 89-13-05, Amendment 39-6240 (54 FR 26021, June 21, 1989) applicable to Boeing Model 737-300 series airplanes; and on October 11, 1989, the FAA issued AD 89-23-05, Amendment 39-6367 (54 FR 43046, October 20, 1989), applicable to Boeing Model 737-400 series airplanes. These AD's require repetitive inspections for chafing between the number two engine throttle cable and adjacent right wing front spar bracket, and replacement of the cable, if necessary. Those actions were prompted by one report of throttle cable failure and several reports of significantly worn or frayed cables on Model 737-300 series airplanes. In this area, the Model 737-300 is similar to the Model 737-400 and the Model 737-500.

During the research and development phase of the modification to correct the chafing problems, the manufacturer's flight test uncovered an operational deficiency in the engine throttle control cable systems in which the cables transmit "ratcheting feedback" to the flight compartment isle stand thrust levers during flight at certain flap positions. The ratcheting phenomenon, on the Model 737-300, -400, and -500, as well as the premature cable failure is the result of an aerodynamically-induced cable vibration transmitted through the engine throttle control cable system when the wing leading edge kreuger flaps are extended. Throttle controls are designed to operate smoothly. These conditions, if not corrected, could result in separation of the throttle cable and subsequent loss of engine throttle control, or could distract the flightcrew from their primary responsibility during the high workload phase of flight, such as approach or landing, which unduly jeopardizes safe operation of the airplane.

Since issuance of those AD's, the manufacturer has developed a modification which eliminates the accelerated wear condition and corrects the ratcheting condition.

The FAA has reviewed and approved Boeing Service Bulletin 737-76-1023, dated February 14, 1991, which describes a modification to the engine throttle control cables in the left and right wing leading edge, to prevent chafing of the throttle cable and to eliminate cable ratcheting by relocating the cable tensioning turnbuckles from the wing leading edges to within the body of the airplane.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD's 89-13-05 and 89-23-05 with a new AD that would require modification of the affected engine throttle control cables, in accordance with the service bulletin previously described and thus would terminate the need for the existing repetitive inspections.

There are approximately 1,099 Model 737-300, -400, and -500 series airplanes of the affected design in the worldwide fleet. It is estimated that 416 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Modification parts are estimated to cost $400 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $535,040.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendments 39-6240 (54 FR 26021, June 21, 1989), AD 89-13-05; and 39-6367 (54 FR 43046, October 20, 1989), AD 89-23-05; with the following new airworthiness directive:

Boeing: Applies to Model 737-300, -400, and -500 series airplanes, as listed in Boeing Service Bulletin 737-76-1023, dated February 14, 1991, certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the potential for cable separation due to the number two engine throttle cable chafing against the right wing front spar bracket, and prevent engine throttle control cable ratcheting feedback, accomplish the following:

A. For Model 737-300 series airplanes: Prior to the accumulation of 300 flight hours after July 24, 1989 (the effective date of Amendment 39-6240), unless previously accomplished within the previous 700 flight hours, and thereafter at intervals not to exceed 1,000 flight hours, gain access to the fuel shutoff cable pulley bracket near the right wing front spar station 124 and inspect the number two engine throttle cable for wear. Replace the cable, before further flight, if cable wear exceeds acceptable wear limits specified in Section 20-20-31 of the Model 737 Maintenance Manual.

B. For Model 737-400 series airplanes: Prior to the accumulation of 300 flight hours after November 27, 1989 (the effective date of Amendment 39-6367), unless previously accomplished within the previous 700 flight hours, and thereafter at intervals not to exceed 1,000 hours, gain access to the fuel shutoff cable pulley bracket near the right wing front spar station 124 and inspect the number two engine throttle cable for wear. Replace the cable, before further flight, if cable wear exceeds acceptable wear limits specified in Section 20-20-31 of the Model 737 Maintenance Manual.

C. For all airplanes: Within 18 months after the effective date of this AD, modify the engine throttle control cable system in accordance with Boeing Service Bulletin 737-76-1023, dated February 14, 1991. This modification constitutes terminating action for the repetitive inspections required by paragraphs A. and B. of this AD.

D. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington.

Issued in Renton, Washington, on April 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 91-10764 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-61-AD]

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, which would require rerouting and adding shielded wiring associated with the differential protection current transformers in the P6 panel. This proposal is prompted by the results of a Model 747-400 electrical system safety assessment, which demonstrated that the potential exists for a single event causing the loss of all normal sources of airplane electrical power. This condition, if not corrected, could result in the loss of all normal sources of electrical power to the airplane essential busses, limiting power availability to that provided by the standby system.

DATES: Comments must be received no later than June 24, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-61-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Slotte, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S: telephone (206) 227-2797. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-61-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A Boeing Model 747-400 electrical system safety assessment was recently conducted by the manufacturer. One result of this assessment demonstrated that the potential exists for the loss of all normal AC and DC power under certain failure conditions.

The AC bus differential protection current transformers (DPCT) in the P6 electrical panel for channels 1, 2, and 3 are routed in a common bundle. The circuits for the individual channels are neither sleeved nor separated by space. An open circuit fault on any one of these channels will cause the associated generator control relay, generator circuit breaker, and bus tie breaker to trip, causing loss of the associated bus for the duration of the flight. All three channels could experience such a fault as the result of a hot short or other failure of the common wire bundle in which they are routed. Loss of electrical channels 1, 2, and 3 would cause all airplane power to be derived from the standby system, powered by the battery, which is limited to 30 minutes of operation. A hot short on these wires will cause at least a momentary loss of the associated bus. The bus may be restored by cycling the generator control switch if the fault is momentary and has not caused an open circuit fault. These conditions assume that integrated drive generator (IDG) 4 was disconnected prior to dispatch, a condition allowed by the Master Minimum Equipment List.

This condition, if not corrected, could result in the loss of all normal sources of electrical power to the airplane essential busses, limiting power availability to that provided by the standby system.

The FAA has reviewed and approved Boeing Service Bulletin 747-24-2154, dated February 7, 1991, which describes the necessary instructions for rerouting wires and adding protective sleeves to wiring associated with AC channels 1, 2, and 3 DPCT circuitry in order to provide adequate wire separation.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require operators to correct the inadequate wire separation of the AC DPCT circuits associated with AC channels 1, 2, and 3 within the P6 panel in accordance with the service bulletin previously described.

There are approximately 107 Model 747-400 series airplanes of the affected design in the worldwide fleet. It is estimated that 18 airplanes of U.S. registry would be affected by this AD, that it would take approximately eight manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost of required parts per airplane is estimated to be $20. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,280.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747-400 series airplanes, as identified in Boeing Service Bulletin 747-24-2154, dated February 7, 1991, certified in any category. Compliance required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent the loss of essential airplane electrical busses, accomplish the following:

A. Reroute and add protective sleeving to provide adequate separation between wiring associated with the differential protection current transformers for AC channels 1, 2, and 3, located in the P6 panel, in accordance with Boeing Service Bulletin 747-24-2154, dated February 7, 1991.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector who may concur or comment and then send it to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10763 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-63-AD]

Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F-28 Mark 0100 series airplanes, which would require replacement of the audio control panels with modified units. This proposal is prompted by reports of audio failure following the selection of certain control settings. This condition, if not corrected, could result in loss of communications and reduced capability to comply with air traffic control separation procedures.

DATES: Comments must be received no later than June 24, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-63-AD 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest

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Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-83-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Rijksluchvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F-28 Mark 0100 series airplanes.

There have been recent reports of audio control panel failure following the selection of certain control settings. The circuit breaker must be reset to correct the failure. This condition, if not corrected, could result in loss of communications and reduced capability to comply with air traffic control separation procedures.

Fokker has issued Service Bulletin F100-23-014, dated November 7, 1990, which describes procedures for removal of the audio control panels and replacement with modified units. The Fokker service bulletin references Gables Service Bulletins G6937-XX SB #2, G6939-12 SB#3, and G6968-02 SB#2 for additional instructions. The RLD has classified the Fokker service bulletin as mandatory, and has issued Netherlands Airworthiness Directive BLA No. 90-131 addressing this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, and AD is proposed which would require removal of the audio control panels and replacement with modified units in accordance with the Fokker service bulletin previously described.

It is estimated that 12 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost for required parts is negligible. Based on these figures, the total cost impact of the AD of U.S. operators is estimated to be $1,320.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Applies to Model F-28 Mark 0100 series airplanes; Serial Numbers 11244 through 11264, 11266 through 11283, 11286, 11289, 11291, 11293, 11295, and 11297; certificated in any category. Compliance is required within one year after the effective date of this AD, unless previously accomplished.

To prevent loss of communications and reduced capability to comply with air traffic control separation procedures, accomplish the following:

A. Remove all audio control panels and replace with modified audio control panels, in accordance with Fokker Service Bulletin F100-23-014, dated November 7, 1990.

Note: The Fokker service bulletin references Gables Service Bulletins G6937XX SB#2, Revision 1, dated March 1, 1991; G6939-12 SB#3, dated February 6, 1990; and G6968-02 SB#2, dated February 6, 1990; for additional instructions.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manger, Standardization Branch, ANM-113.

C. special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10765 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-77-AD]

Airworthiness Directives; Lockheed Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Lockheed Model L-1011 series airplanes, which would require that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this proposal are not met, and that the new landing gear brake wear limits be incorporated into the FAA-approved maintenance inspection program. This proposal is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. This condition, if not corrected, could result in loss of brake effectiveness during a high energy RTO and could cause the airplane to leave the runway surface, possible resulting in injuries to passengers and crew.

DATES: Comments must be received no later than June 24, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-77-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Razzeto, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L; FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-77-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

In 1988, a McDonnell Douglas Model DC-10 series airplane was involved in an aborted takeoff accident in which eight of the ten brakes failed, and the airplane ran off the end of the runway. Investigation revealed that there were failed pistons on each of the eight brakes, with O-rings damaged by over-extension due to extensive wear. Fluid leaking from the damaged pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of the methodology used in the determination of the allowable wear limits for all transport category airplane brakes. Worn brake rejected takeoff (RTO) dynamometer testing and analyses were conducted for the Model DC-10 series brakes and a new set of reduced allowable wear limits was established; the use of these limits for the Model DC-10 is required by AD 90-01-01, Amendment 39-6431 (54 FR 53048, December 27, 1989).

The FAA and the Aerospace Industries Association (AIA) jointly developed a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. It should be noted that this worn-brake accountability determination validates brake wear limits with respect to brake energy capacity only, and is not meant to account for any reduction in brake force due solely to the wear state of the brake. Any reduction in brake force (or torque) that may develop over time as a result of brake wear is to be evaluated and accounted for as part of a separate rulemaking project. The guidelines for validating brake wear limits allow credit for use of reverse thrust to determine energy level absorbed by the brake during the dynamometer test.

The FAA has requested that U.S. airframe manufacturers (1) determine required adjustments in allowable wear limits for all of its brakes in use, (2) schedule dynamometer testing to validate wear limits as necessary, and (3) submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated.

Lockheed Aeronautical System Company has submitted, and the FAA has evaluated, the dynamometer test data and analyses concerning brakes installed on Model L-1011-385-1, L-1011-385-1-14, L-1011-385-1-15, and L-1011-385-3 series airplanes. The dynamometer test was completed in November 1990. Based on this data, the FAA has determined that the brake wear limits currently recommended in the Component Maintenance Manuals for Model L-1011 series airplanes are not acceptable as they relate to the effectiveness of the brakes during a high energy RTO. Further, these limits are only recommended values. The FAA has determined that the following criteria for the Model L-1011 brakes, specifically the new maximum brake wear limits indicated in the last column, are necessary:

Model airplane	Brake part No.	Type of brake	Total No. of airplanes	Planes of U.S. registry	Maximum wear limit (inches)
L-1011, -385-1	2-1195-1	Steel	128	79	2.10
	2-1195-5	Steel			2.10
	2-1195-6	Steel			2.10
	2-1195-7	Steel			2.10
	2-11.95-8	Steel			2.10
	2-1357	Steel			[illegible].00

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Model airplane	Brake part No.	Type of brake	Total No. of airplanes	Planes of U.S. registry	Maximum wear limit (inches)
	2-1367-1	Steel			3.00
	2-1367-2	Steel			3.00
	2-1367-3	Steel			2.60
	2-1367-4	Steel			2.60
	2-1367-5	Steel			2.60
L-1011, 385-1, -14 & -15	2-1367	Steel	67	19	3.00
	2-1367-1	Steel			3.00
	2-1367-2	Steel			3.00
	2-1367-3	Steel			2.60
	2-1367-4	Steel			2.60
	2-1367-5	Steel			2.60
L-1011, -385-3	2-1367	Steel	50	11	3.00
	2-1367-1	Steel			3.00
	2-1367-2	Steel			3.00

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require (1) inspection of certain Model L-1011 landing gear brake part numbers for wear, and replacement if the new wear limits are not met; and (2) incorporation of specified maximum wear limits into the FAA-approved maintenance inspection program.

There are approximately 243 Model L-1011 series airplanes of the affected design in the worldwide fleet. It is estimated that 109 airplanes of U.S. registry would be affected by this AD, that it would take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost of parts to accomplish the change (cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) is estimated to be $4,096 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $628,314.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed: Applies to Model L-1011 series airplanes equipped with brake part numbers identified in paragraph A. of this AD, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

A. Within 100 days after the effective date of this AD, inspect the brake part numbers shown below for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within this limit.

Brake part No.	Maximum wear limit
2-1195-1	2.10 inches.
2-1195-5	2.10 inches.
2-1195-6	2.10 inches.
2-1195-7	2.10 inches.
2-1195-8	2.10 inches.
2-1367	3.00 inches.
2-1367-1	3.00 inches.
2-1367-2	3.00 inches.
2-1367-3	2.60 inches.
2-1367-4	2.60 inches.
2-1367-5	2.60 inches.

B. Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits specified in paragraph A. of this AD into the FAA-approved maintenance inspection program.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on April 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10766 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-78-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes, Model DC-9-80 Series Airplanes, Model MD-88 Airplanes, and C-9 (Military) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directives (AD), applicable to certain McDonnell Douglas Model DC-9 series airplanes, which would require that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this proposal are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program. This proposal is promptly by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. This condition, if not corrected, could result in loss of brake effectiveness during a high energy RTO and cause further incidents/accidents.

DATES: Comments must be received no later than June 24, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-78-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Mr. Any Gfrefer, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2324; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-78-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

In 1988, a McDonnell Douglas Model DC-10 series airplane was involved in an aborted takeoff accident in which eight of the ten brakes failed, and the airplane ran off the end of the runway. Investigation revealed that there were failed pistons on each of the eight brakes, with O-rings damaged by over-extension due to extensive wear. Fluid leaking from the damaged pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of the methodology used in the determination of the allowable wear limits for all transport category airplane brakes. Worn brake rejected takeoff (RTO) dynamometer testing and analyses were conducted for the Model DC-10 series brakes and a new set of reduced allowable wear limits was established; the use of these limits for the Model DC-10 is required by AD 90-01-01, Amendment 39-6431 (54 FR 53048, December 27, 1989).

The FAA and the Aerospace Industries Association (AIA) jointly developed a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. It should be noted that this worn brake accountability determination validates brake wear limits with respect to brake energy capacity only, and is not meant to account for any reduction in brake force due solely to the wear state of the brake. Any reduction in brake force (or torque) that may develop over time as a result of brake wear is to be evaluated and accounted for as part of a separate rulemaking project. The guidelines for validating brake wear limits allow credit for use of reverse thrust to determine energy level absorbed by the brake during the dynamometer test.

The FAA has requested that U.S. airframe manufacturers (1) determine required adjustments in allowable wear limits for all of its brakes in use, (2) schedule dynamometer testing to validate wear limits as necessary, and (3) submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated.

McDonnell Douglas Corporation has submitted, and the FAA has evaluated, a series of dynamometer test data and analyses concerning brakes installed on Model DC-9 series airplanes. The FAA also witnessed some of the dynamometer tests, which were conducted in October 1990. Based on this data, the FAA has determined that the maximum brake wear limits currently recommended in the Component Maintenance Manuals for Model DC-9 series airplanes are not acceptable as they relate to the effectiveness of the brakes during a high energy RTO. Further, these limits are only recommended values. The FAA has determined that the following criteria for Model DC-9 brakes, specifically the new maximum brake wear limits indicated in the last column, are necessary:

Series airplane	Douglas brake part No.	Maximum wear limit (inches)
DC-9-10	9560746A	0.3
	B9560746A	0.3
	9560743	0.3
	A9560743	0.3
	B9560743	0.3
DC-9-20/30	9560786	0.3
	A9560786	0.3
	B9560786	0.3
DC-9-30	9560955	0.3
	9560788	0.3
	A9560788	0.3
	B9560788	0.3
	9560788-2/-3/-5/-6	0.7
	9560788-6	0.3
DC-9-30/40/50	B9560861	0.2
	9560861-1	

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Series airplane	Douglas brake part No.	Maximum wear limit (inches)
	9560861-2	0.3
DC-9-81/82/87 and MD-88	2808892-1	1.0
	5004321-3/-4/-5, all trapezoid	0.8
	5004321-8, bullnose	1.0
	5004321-6, trapezoid	0.8
	500431-10, bullnose	0.9
	500432-11, trapezoid (standard)	1.0
	5004321-11, trapezoid (rebalanced)	1.2
	500432-12, trapezoid	0.9
	5007898, trapezoid	1.1
	5007898-1, trapezoid	1.1
DC-9-83	2808892-1	1.0
	5007898, bullnose	1.1
	5007898-1, trapezoid	1.1

Since this condition is likely to exist on other airplanes of same type design, an AD is proposed which would require (1) inspection of certain Model DC-9 landing gear brake part numbers for wear, and replacement if the new wear limits are not met, and (2) incorporation of specified maximum wear limits for certain Model DC-9 brake part numbers into the FAA-approved maintenance inspection program.

There are approximately 1,800 Model DC-9 series airplane [including Model DC-9-80 series, Model MD-88 airplanes, and C-9 (military), airplanes] of the affected design in the worldwide fleet. It is estimated that 859 Model DC-9 series airplanes of U.S. registry would be affected by this AD, that it would take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per hour. The cost of parts to accomplish the change (cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) is estimated to be $12,000 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $12,197,800.

The regulations proposed herein would not have substantial direct effects on the State, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9 series, including C-9 (military), DC-9-80 series, including MD-88 airplanes, equipped with brake part numbers identified in paragraph A of the AD, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

A. Within 180 days after the effective date of this AD, inspect the brake part numbers below for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within this limit.

Series airplanes	Douglas brake part No.	Maximum wear limit (inches)
DC-9-10	9560746A	0.3
	B9560746A	0.3
	9560743	0.3
	A9560743	0.3
	B9560743	0.3
DC-9-20/30	9560786	0.3
	A9560786	0.3
	B9560786	0.3
DC-9-30	9560955	0.3
	9560788	0.3
	A9560788	0.3
	B9560788	0.3
	9560788-2/-3/-5/-6	0.3
	9560788-7	0.7
DC-9-30/40/50	B9560861	0.3
	9560861-1	0.2
	9560861-2	0.3
DC-9-81/82/87, and MD-88	2808892-1	1.0

Series airplanes	Douglas brake part No.	Maximum wear limit (inches)
	5004321-3/-4/-5, all trapezoid	0.8
	5004321-8, bullnose	1.0
	5004321-6, trapezoid	0.8
	5004321-10, bullnose	0.9
	5004321-11, trapezoid (standard)	1.0
	5004321-11, trapezoid (rebalanced)	1.2
	5004321-12, trapezoid	0.9
	5007898, trapezoid	1.1
	5007898-1, trapezoid	1.1
DC-9-83	2808892-1	1.0
	5007898, bullnose	1.1
	5007898-1, trapezoid	1.1

B. Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits specified in paragraph A. of this AD into the FAA-approved maintenance inspection program.

C. An alternative method of compliance or adjustment of the compliance time which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: the request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on April 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10707 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Proposed Extension of Eagle Pass, Texas Port Limits

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to extend the boundaries of the Eagle Pass, Texas, port of entry. This proposed extension of boundaries is part of the ongoing efforts of Customs to improve the efficiency of its field operations. The extension of port limits will be operationally advantageous to the Customs Service and will benefit the importing public.

DATES: Comments must be received on or before July 8, 1991.

ADDRESSES: Written comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, Office of Workforce Effectiveness and Development, Office of Inspection and Control (202) 566-9425.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide a better service, Customs is proposing to amend § 101.3, Customs Regulations (19 CFR 101.3), to extend the geographical limits of the port of entry of Eagle Pass, Texas. The port of Eagle Pass, Texas is currently described as "the territory within the corporate limits of the city which includes any incorporated areas therein." This description has resulted in uncertainty as to the Customs services available in areas surrounding Eagle Pass. The proposed boundary would include areas beyond the city limits which would facilitate further commercial activity, such as bonded warehouses, cattle pens, and a foreign trade zone.

The proposed revised boundary is as follows: Beginning at the point of intersection of the Rio Grande River and the county line between Maverick County and Kinney County proceed in an easterly direction to the intersection of the county lines of Maverick County, Kinney County, Uvalde County and Zavala County; then in a southern direction along the county line between Maverick County and Zavala County to its intersection with F.M. 2644; then in a westerly direction along F.M. 2644 to its intersection with F.M. 1021; then due west to the water's edge of the Rio Grande River; then in a northwesterly direction along the meanders of the Rio Grande River to its intersection with the county line between Maverick County and Kinney County and Point-of-Beginning.

Comments

Prior to final determination, consideration will be given to any written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552, section 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Authority

Customs ports of entry are established under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order 10289, September 17, 1951 (3 CFR 1949-1953 Comp., ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5, February 17, 1987 (52 FR 6282).

Executive Order 12291 and Regulatory Flexibility Act

Because the document relates to agency organization and management, it is not subject to Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Drafting Information

The principal author of this document was Earl Martin, Regulationss and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

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List of Subjects in 19 CFR Part 101

Customs duties and inspection, Organization and functions (Government agencies).

It is proposed to amend part 101, Customs Regulations (19 CFR part 101), as set forth as follows:

PART 101—GENERAL PROVISIONS

1. The authority citation for part 101, Customs Regulations (19 CFR part 101), continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3, Harmonized Tariff Schedule of the United States), 1623, 1624, unless otherwise noted.

§ 101.3 [Proposed Amendment]

2. It is proposed to amend § 101.3(b) Customs Regulations (19 CFR 101.3(b)), by adding immediately after "Eagle Pass" in the column headed "Ports of entry", in the Laredo, Texas, Customs District of the Southwest Region, the phrase, "including the territory described in T.D. 91-_____."

Approved: May 1, 1991.

Carol Hallett,

Commissioner of Customs.

[FR Doc. 91-10791 Filed 5-6-91; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[FI-189-84]

RIN 1545-AH48

Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property; Potentially Abusive Situation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains amendments to the proposed regulations relating to certain determinations under the original issue discount rules. In the case of any "potentially abusive situation," the imputed principal amount of a debt instrument issued in consideration for the sale or exchange of property is limited to the fair market value of the property. Under proposed regulations issued under section 1274, a situation involving nonrecourse financing is a potentially abusive situation. The amendments to the proposed regulations clarify that an exchange of a nonrecourse debt instrument for an outstanding debt instrument (or a modification of a nonrecourse debt instrument that causes a deemed exchange) is not a potentially abusive situation by reason of "nonrecourse financing." The amendments to the proposed regulations also clarify that the term "debt instrument" as used for purposes of the original issue discount rules includes only instruments constituting valid indebtedness under general principles of Federal income tax law. These amendments to the proposed regulations provide guidance to those who need to make determinations under the original issue discount rules.

DATES: Written comments and requests for a public hearing must be received by June 6, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Benjamin Franklin Station, Attn: CC:CORP:T:R (FI-189-84), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Robert N. Deitz, 202-566-3803 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1986, the **Federal Register** published a notice of proposed rulemaking (51 FR 12022) under sections 1271 through 1275 and certain related provisions of the Internal Revenue Code, relating to original issue discount. Proposed § 1.1274-4(g) provides rules concerning potentially abusive situations. Proposed § 1.1275-1(b) defines a debt instrument in general. This document proposes amendments to those provisions of the proposed regulations.

Explanation of Provisions

If a debt instrument is issued in exchange for property, the issue price of the debt instrument, as determined under the original issue discount ("OID") rules, determines the cost of the property to the purchaser. See S. Prt. No. 169 (Vol. I), 98th Cong. 2d Sess. 256 (1984) (the "Senate Report"). In determining the issue price of a debt instrument given in exchange for nonpublicly traded property, section 1274 generally respects the stated principal amount of the debt instrument if it bears interest at a rate at least equal to the applicable Federal rate ("AFR"). Thus, in general, the issue price of a debt instrument is the lesser of the stated principal amount or the present value of all payments due under the debt instrument, discounted at the AFR.

Congress recognized that using the AFR as a test rate would provide a liberal estimate of principal amount (and thus of the value of the property), see *id.* at 254 n.13, and that this result may not be appropriate in certain "potentially abusive situations." Accordingly, Congress provided in section 1274(b)(3) that in the case of any potentially abusive situation, the stated principal amount of the debt instrument generally is not respected in determining issue price even if the stated interest rate is at least equal to the AFR. In such a case, the issue price of the debt instrument may not exceed the fair market value of the property for which it is issued, adjusted to take into account other consideration involved in the exchange.

Section 1274(b)(3) defines a potentially abusive situation as including any situation which, by reason of nonrecourse financing, is of a type which the Secretary specifies by regulations as having potential for tax avoidance. Under this authority, proposed § 1.1274-4(g) specifies that a situation involving nonrecourse financing has the potential for tax avoidance.

If a debt instrument (the "new debt") is issued in exchange for an outstanding debt instrument (the "old debt"), the amount of discharge of indebtedness income realized by the debtor is measured by reference to the new debt's issue price, which is determined under section 1274 if neither the old debt nor the new debt is publicly traded. See section 108(e)(11). In addition, proposed § 1.1274-1(c) provides that if the issuer and holder modify a debt instrument, the modified instrument is treated as a new debt instrument given in consideration for the unmodified debt instrument.

The amendment to proposed § 1.1274-4(g)(2) clarifies that an exchange of a nonrecourse debt instrument for an outstanding debt instrument (or a modification of an outstanding debt instrument) is not a situation involving nonrecourse financing within the meaning of proposed § 1.1274-4(g). Thus, the fact that the new debt instrument (or the modified debt instrument) is nonrecourse will not cause the transaction to be classified as a potentially abusive situation.

The amendment to proposed § 1.1275-1(b)(1) clarifies that the OID rules apply only to the extent that an obligation represents valid indebtedness of the debtor under general principles of tax law.

Effective Dates

The amendment to proposed § 1.1274-4(g)(2) is proposed to be effective in accordance with the rules set forth in proposed § 1.1274-1(e) (generally, for sales or exchanges of property occurring after December 31, 1984), and the amendment to proposed § 1.1275-1(b)(1) is proposed to be effective for debt instruments issued after July 1, 1982.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these amendments to the proposed regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these amendments will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these amendments to the proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits timely written comments. If a public hearing is held, prior notice of the time, place and date will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Robert N. Deitz, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1231-1 through 1.1297-3

Income taxes.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR, part 1, are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 1.1274-4(g)(2)(iv) also issued under 26 U.S.C. 1274(b)(3).

Par. 2 A new paragraph (g)(2)(iv) is added to § 1274-4 as proposed at 51 FR 12073, April 8, 1986, to read as follows:

§ 1.1274-4 Debt instruments without adequate stated interest.

* * * * *

(g) * * *

(2) * * *

(iv) *Exchange or modification of nonrecourse financing.* For purposes of paragraph (g)(2)(ii)(B) of this section, the term "nonrecourse financing" does not include an exchange of nonrecourse debt instrument for an outstanding debt instrument or a modification of a nonrecourse debt instrument treated as an exchange under § 1274-1(c).

* * * * *

Par. 3. A new sentence is added to the end of § 1.1275-1(b)(1) as proposed at 51 FR 12083, April 8, 1986, to read as follows:

§ 1.1275-1 Definitions relating to treatment of debt instruments.

* * * * *

(b) *Debt instrument*—(1) * * * An instrument is not a debt instrument unless it constitutes valid indebtedness under general principles of Federal income tax law.

* * * * *

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-10663 Filed 5-6-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Evaluation of Revegetation Success

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; withdrawal of proposed rule revisions and Administrative Record information.

SUMMARY: OSM is announcing the withdrawal of proposed rule changes and Administrative Record information submitted by the State of Ohio in connection with Revised Program Amendment No. 25 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 18, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, an 935.16.

II. Discussion of the Proposed Amendments

On December 15, 1989 (54 FR 51397), the Director of OSM announced his decision on Ohio's initial submission of Revised Program Amendment No. 25. In that decision, the Director found that Ohio had not demonstrated that its method of evaluating the success of revegetation is no less effective than the Federal rules at 30 CFR 816.116(a). The Director therefore continued the requirement at 30 CFR 935.16(f) that Ohio amend its program to include a statistically valid technique to evaluate revegetation success and provided additional time for Ohio to amend its program.

By letter dated December 12, 1989 (Administrative Record No. OH-1245), Ohio proposed a continuation of Revised Program Amendment Number 25. In this continuation, Ohio proposed to revise section 1501:13-9-15 of the Ohio Administrative Code (OAC) to include a statistically valid method of evaluating revegetation success in order to satisfy the OSM requirement at 30 CFR 935.16(f).

By letter dated March 23, 1990 (Administrative Record No. OH-1292), OSM notified Ohio that the proposed revisions to OAC section 1501:13-9-15 were less effective then the Federal

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regulations at 30 CFR 816.116(a) because Ohio proposed to use statistically valid sampling methods only on "questionable" areas.

By letter dated July 24, 1990 (Administrative Record No. OH-1343), Ohio submitted further proposed revisions to OAC section 1501:13-9-15 which were intended to respond to OSM's comments of March 23, 1990. Ohio proposed to revise paragraph (I)(1) to specify that success of revegetation shall be measured using a statistically valid sampling technique with a ninety per cent statistical confidence interval (i.e., one-sided test with 0.10 alpha error). Ohio also proposed to revise paragraph (I)(3)(c)(iv) to delete the requirement that, for Phase III bond release, species planted must meet the standard that no single area with less than thirty percent cover shall exceed the lesser of three thousand square feet or 0.3 percent of the land affected.

On August 10, 1990, OSM published a notice in the Federal Register (55 FR 32643) announcing receipt of Ohio's further revisions to the continuation of Revised Program Amendment No. 25 and inviting public comment on its adequacy. The public comment period ended on September 10, 1990. The public hearing scheduled for September 4, 1990, was not held because no one requested an opportunity to testify.

By letter dated October 24, 1990 (Administrative Record No. OH-1398), OSM provided Ohio with its questions and comments about the additional revisions submitted on July 24, 1990. OSM requested that Ohio provide the details of Ohio's statistically valid sampling method for OSM's review and approval. OSM also requested that Ohio provide a justification for the proposed deletion of the vegetation standard limiting the size of areas with less than thirty percent vegetative cover.

By letter dated March 1, 1991 (Administrative Record No. OH-1471), Ohio submitted administrative record information in support of the revisions proposed on July 24, 1990 and intended to respond to OSM's comments of October 24, 1990. This administrative record information provided the details of Ohio's proposed statistically valid sampling method which was modeled on the Rennie-Farmer Stick Method. The additional information also proposed justification to support Ohio's proposed deletion of its vegetation standard limiting the size of areas with less than thirty percent vegetative cover.

On March 27, 1991, OSM published a notice in the Federal Register (56 FR 12991) announcing receipt of Ohio's March 1, 1991, Administrative Record information in support of Revised Program Amendment No. 25.

By letter dated March 21, 1991 (Administrative Record No. OH-1489), Ohio withdrew its March 1, 1991, submission of Administrative Record information providing the details of the statistically valid method of sampling revegetation success and justifying the deletion of the standard for areas with less than thirty percent vegetative cover. Ohio also withdrew the revisions to Ohio Administrative Code section 1501:13-9-15 paragraphs (I)(1) and (I)(3)(c)(iv) which the State proposed on July 24, 1990.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 25, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-10872 Filed 5-6-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09-91-03]

Drawbridge Operation Regulations Cheboygan River, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Michigan Department of Transportation, the Coast Guard is considering a change to the operating regulations governing the US-23 highway bridge at mile 0.9 across the Cheboygan River in Cheboygan, Michigan, by extending the period of time when the bridge opens for the passage of recreational vessels on a regulated schedule. This proposal is being made because of a steady increase of both land and water traffic. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before June 21, 1991.

ADDRESSES: Comments should be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199-2060. Any comments received as a result of this proposed rule and other materials referenced in this notice will be available for inspection and copying at 1240 East Ninth Street, room 2083D, Cleveland, Ohio. Normal office hours are between 6:30 a.m. and 3 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., Chief, Bridge Branch, telephone (216) 522-3993.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names, addresses, identify the bridge, and give reasons for concurrence with or any recommended changes in the proposal.

The Commander, Ninth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Fred H. Mieser, project officer, and Lieutenant Commander M. Eric Reeves, U.S. Coast Guard, project attorney.

Discussion of Proposed Regulations

Presently, the US-23 highway bridge opens on signal from March 16 through December 14; however, from May 15 through September 15, the draw need open only from three minutes before to three minutes after the quarter hour and three-quarters hour, from 7:16 a.m. to 6:12 p.m., Monday through Friday, and from 11:16 a.m. to 5:12 p.m. on Saturdays. From December 15 through March 15, the draw is not required to open for the passage of vessels unless notice is given at least 24 hours in advance of a vessel's time of intended passage through the draw. At all times, the draw is required to open on signal as soon as possible for the passage of public vessels of the United States, state or local government vessels used for public safety, commercial vessels, and vessels in distress.

The proposed operating regulations would expand the times for regulated openings during the period from May 16 through September 15. The draw would be required to open on signal from three minutes before to three minutes after the quarter hour and three-quarters hour between the hours of 6 a.m. and 6 p.m., seven days a week. From 6 p.m. to 6 a.m., seven days a week, the draw would be required to open on signal for the passage of a vessel. The proposal does not change the requirement of the owner to open the draw as soon as possible at all times for the passage of public vessels of the United States, state or local government vessels used for public safety, commercial vessels, and vessels in distress, nor does it change the two periods of time from March 16 through May 15 and from September 16 through December 14, when the bridge is required to open on signal for the passage of vessels.

Statistics provided by the bridge owner show that there are between 300 and 500 cars per hour crossing over the bridge between the hours of 6 a.m. and 6 p.m. on Saturdays and Sundays. Delays that cause traffic tie-ups are caused when the bridge opens for the passage of masted recreational vessels on a random basis. There are times during the navigation season when the bridge opened for the passage of masted recreational vessels as many as six times within a forty-five minute period with as few as five minutes between some openings. Operating regulations identical to the ones in this proposal were issued on a temporary basis for the 1989 navigation season for evaluation purposes. The temporary regulations were published in the Ninth Coast Guard District *Local Notice to Mariners*, LNM-11/89, dated May 11, 1989, with a request for comments from the marine community. No comments were received.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulators and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation in unnecessary. The additional regulated periods will help to alleviate vehicle traffic tie-ups while still allowing vessel traffic to navigate the river. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulations does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.827 is revised to read as follows:

§ 117.827. Cheboygan River.

The draw of the US 23 bridge, mile 0.9 at Cheboygan, shall operate as follows:

(a) From March 16 through May 15 and from September 16 through December 14, the draw shall open on signal.

(b) From May 16 through September 15—

(1) Between the hours of 6 p.m. and 6 a.m., seven days a week, the draw shall open on signal.

(2) Between the hours of 6 a.m. and 6 p.m., seven days a week, the draw need open only from three minutes before to three minutes after the quarter and three-quarters hour.

(c) From December 15 through March 15, no bridgetender is required to be at the bridge and the draw need not open unless a request to open the draw is given to the Cheboygan Police Department at least 24 hours in advance of a vessel's time of intended passage through the draw.

(d) At all times, the draw shall open as soon as possible for the passage of public vessels of the United States, State or local vessels used for public safety, commercial vessels, and vessels in distress.

Dated: April 26, 1991.

G. A. Penington,

Rear Admiral, U.S. Coast Guard Commander, 9th Coast Guard District.

[FR Doc. 91-10753 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42123A/42134A; FRL 3963-8]

RIN 2070-AC27

Multi-Substance Rules for the Testing of Developmental/Reproductive Toxicity and Neurotoxicity; Proposed Test Rules; Extension of Comment Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules; extension of comment periods.

SUMMARY: EPA is extending the comment periods for the proposed multi-substance test rules for developmental/reproductive toxicity and neurotoxicity testing published in the Federal Register of March 4, 1991. The extension responds to a request by the Chemical Manufacturers Association (CMA) and others for additional time to comment on the rules and prepare oral testimony for a public meeting.

DATES: Written comments on either proposed rule must be submitted on or before June 3, 1991. Public meetings have been requested for both proposed rules and will be held no earlier than June 3, 1991.

ADDRESSES: Submit written comments, identified by the applicable document control number [OPTS-42123A or OPTS-42134A], in triplicate to: TSCA Public Docket Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, rm. NE-G004, 401 M St., SW., Washington, DC 20460. A public version of the administrative record supporting this action is available for inspection in rm. NE-G004 at the above address from 8 a.m. to noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, rm. E-543B, 401 M St., SW., Washington, DC 20460, Phone: (202) 554-1404 TDD: (202) 554-0551

SUPPLEMENTARY INFORMATION: EPA issued proposed rules on the testing of substances for developmental/reproductive toxicity and neurotoxicity, simultaneously published in the Federal Register of March 4, 1991 (56 FR 9092 and 56 FR 9105). CMA and others have requested a 60-day extension of both comment periods and dates for public meetings. EPA has agreed to a 30-day extension that will extend the end of the comment period for both of the rules

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from May 3, 1991, to June 3, 1991. Public meetings have been requested for both rules and will be held no earlier than the close of the comment period.

Authority: 15 U.S.C. 2603.
Dated: April 30, 1991.

Mark A. Greenwood,
Director, Office of Toxic Substances.

[FR Doc. 91-10801 Filed 5-6-91; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 32

[CGD 90-071]

RIN 2115-AD09

Tank Level or Pressure Monitoring Devices

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is soliciting comments relating to tank level or pressure monitoring devices on tank vessels carrying oil. Regulations to require installation of these devices on tank vessels are mandated by the Oil Pollution Act of 1990. The purpose of requiring these devices is to reduce the impact of oil spillage.

DATES: Comments must be received on or before October 4, 1991.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 90-71), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Thomas J. Felleisen, Marine Technical and Hazardous Materials Division (202) 267-1217.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 90-71) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the period.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a date and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this rulemaking are Thomas J. Felleisen, Project Manager, and Nicholas E. Grasselli, Project Counsel, Office of Chief Counsel.

Background and Purpose

Regulations for tank level or pressure monitoring devices are required by section 4110 of Public Law 101-380, the Oil Pollution Act of 1990 (Act). The Act is based on H.R. 1465. During consideration of H.R. 1465, the Committee of the Whole House agreed to an amendment from the Committee on Public Works and Transportation which added, *inter alia*, the Act's requirements for tank level or pressure monitoring devices. The intent of requiring those devices was:

> "so that tanks and tankers and barges carrying oil would have a monitoring device similar to the monitoring device that we have in our automobiles to warn a crew when, in fact, there is oil that is leaking." (Congressional Record, November 9, 1989, p. H 8254.)

The amendment mandating tank level or pressure monitoring devices also included requirements for gauging of tank plating and overfill devices which are not contained within this rulemaking. The Coast Guard's implementation of those requirements will be undertaken separately.

As amended, H.R. 1465 passed the House of Representatives. Subsequently, the House and Senate agreed to a conference on H.R. 1465. The conferees made no major change to the tank level or pressure monitoring device requirement, and the President signed the Act on August 18, 1990.

This statutory requirement for tank level or pressure monitoring device regulations was mentioned next to a discussion of the slick from Tank Barge 565. During a thunderstorm in August 1988, the hull of that 37-year-old barge failed while being towed up the Chesapeake Bay. The barge was being towed on a 600-foot hawser when it nearly broke in two causing both of its ends to rise up out of the water and oil to spill. Because the storm reduced visibility to near zero, the towing vessel's crew was unaware of the spill until notified by a passing vessel as the storm was abating.

The usefulness of tank level or pressure monitoring devices is that they might inform the master of a leak so that appropriate action can be taken. The master's actions would include performing the notification required by 33 CFR 153.203 and navigating clear of areas with especially sensitive environments. Under some circumstances, the master might even be able to transfer enough cargo from the leaking tank into a tight tank, and thereby stop the outflow of oil on the basis of hydrostatic balance (cf. Congressional Record, November 9, 1989, pp. H 8265-6.). However, use of the devices will not normally prevent pollution: The vessel's crew cannot immediately stop a leak by repairing the vessel's hull because of the nature of those repair operations.

The Coast Guard interprets the term, "pressure devices," to mean devices which monitor the hydrostatic head above a tank bottm and which are conceptually modelled after devices used to remotely monitor ocean dumping from barges.

This advance notice of proposed rulemaking is intended to provide environmental groups, industry, and other interested parties the opportunity to comment on how to best implement the Act's requirements for tank level or pressure monitoring devices. The Coast Guard invites comments on all aspects of these requirements, and particularly on the following five topics.

1. Preliminary research suggested that existing level detectors are not sufficiently sensitive to indicate leakage before a large spill occurs. That conclusion was verified by consulting internationally recognized experts in the field of marine environmental protection and marine vessel design. The Coast Guard is contracting for a study to determine if there are existing devices which can indicate small rates of leakage from a vessel's tanks, or devices which could be modified to indicate small leakage rates. Has the Coast Guard overlooked any existing devices which have both a high sensitivity and a proven shipboard performance record while carrying liquids with the viscosity of gasoline or crude oil? (Manufacturers' claims of high sensitivity should be thoroughly documented. Documentation should contain endorsements of vessel operators which specifically mention the sensitivity of the devices.)

2. As indicated above, minimizing the time between the start of a leak and the notification of the master is a requirement for limiting a pollution incident. It follows that tank level or pressure monitoring devices ought to be sensitive to small changes in tank levels. Therefore, the Coast Guard is asking the following questions: How sensitive should these devices be? What criteria should be used to quantify a permissible tank level change before a tank level or pressure monitoring device indicates leakage? How can the change in tank level be transmitted to a towboat from an unmanned barge, whether on a hawser or when shoved either singly or in a tow of two or more barges?

3. Certain technical obstacles hinder the devices' ability to sense small changes in level. These obstacles must be surmounted in order to meet the statutory requirement to specify design and operation standards for these devices. For example, one technical hurdle arises because a vessel's tanks and their contents move constantly and irregularly. Because of this sloshing within the tank, measurement of a fine change in tank level is difficult, so a leak can go undetected for a long time, and become a large spill, before a monitoring device can accurately detect a change in tank level or pressure. The Coast Guard is developing and evaluating a list of other factors which affect the performance of tank level or pressure monitoring device. For the purpose of compiling a complete list, the Coast Guard is asking: What other factors should be addressed in developing standards for these devices? How do these factors affect the performance of tank level or pressure monitoring devices?

4. While drafting the standards for tank level or pressure monitoring devices, the Coast Guard wants to encourage involvement of all interested parties. The participation of those parties will be used to the extent the Coast Guard deems practical. For other rulemakings, standing advisory committees and national standards organizations have assisted in drafting standards. Consequently, the Coast Guard asks: What forum should be used to develop standards for design or operation of tank level or pressure monitoring devices? What characteristics of these devices must be specified by regulations and what aspects can be left to the manufacturer or customer?

5. The Act's legislative history shows that tank level or pressure monitoring devices were intended to prevent tanks from leaking oil into the water. Carriage of oil within a double containment system seems sufficient to obviate any need for those devices in order to prevent pollution. The existence of redundant anti-pollution requirements may be explained in light of the legislative history. The amendment calling for tank level or pressure monitoring devices preceded one calling for double hulls. Ultimately, the Act will require that all new tank vessels have double containment systems. Hence the Coast Guard is asking: How is pollution prevention improved by the installation of tank level or pressure monitoring devices on tanks on double containment system vessels? Should regulations insist that tanks which cannot leak into the water be equipped with tank level or pressure monitoring devices?

Preliminary Regulatory Evaluation

At this early stage in the rulemaking process, the Coast Guard anticipates that its final rules will not be considered major under Executive Order 12291, or significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979).

The primary impact of any rules resulting from this advance notice of proposed rulemaking would be on operators of tank vessels carrying oil. These vessel operators would be required to install additional equipment on their vessels in order to comply with the Act.

The benefit derived from installing tank level or pressure monitoring devices depends upon the standards for those devices which result from this rulemaking. At this time, the economic impact of any regulations which result from this rulemaking cannot be accurately determined. As a result of the comments received on this advance notice of proposed rulemaking and a concurrent study for the Coast Guard, a regulatory assessment will be made and placed in the public docket. If the Coast Guard learns that the financial impact of these regulations would be more than minimal, a detailed regulatory evaluation will be performed.

Environment

The Coast Guard will consider the environmental impact of the proposed rule which results from this advance notice of proposed rulemaking. Before a proposed rule for tank level or pressure monitoring devices is published, a document will be prepared in accordance with the Coast Guard publication, COMDTINST M16475.1B. That document, which will describe the anticipated environmental effects resulting from the proposed rulemaking, will be placed in the docket for inspection or copying at a location indicated in the proposed rule. The type of environmental document that will be prepared depends upon the type of devices which are ultimately proposed and their efficacy.

Small Entities

This advance notice of proposed rulemaking addresses standards for tank level or pressure monitoring devices on tanks of tank vessels carrying oil in accordance with 46 U.S.C. 3703. These standards will impact vessels currently in operation, some of which may be owned by small entities. Agencies may delay the completion of the initial regulatory analysis under section 608(a) of the Regulatory Flexibility Act (5 U.S.C. 601*et seq.*). To assist in its determination, the Coast Guard invites comments on the impact of these standards on small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and otherwise qualify as small business concerns under section 3 of the Small Business Act (15 U.S.C. 632).

Collection of Information

The Coast Guard anticipates that the rules being considered will result in no new collection of information requirements under the Paper Work Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this advance notice of proposed rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Dated: April 26, 1991.

D.H. Whitten,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91-10752 Filed 5-6-91; 8:45 am]
BILLING CODE 4910-14-M

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Maritime Administration

46 CFR Part 308

[Docket No. R-137]

RIN 2133-AA89

Values for War Risk Insurance; Review of War Risk Insurance Valuation Methodology

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) is soliciting input from interested persons concerning the need for and content of a revised ship valuation methodology for the purpose of issuing war risk insurance. The existing methodology is established by a procedure that has been in effect since 1959.

DATES: All information and comments concerning the need for and content of a rulemaking must be received on or before July 8, 1991.

ADDRESSES: Send an original and two copies of comments to the Secretary, Maritime Administration, room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional ten (10) copies. All comments will be made available for inspection during normal business hours at the above address. Commenters wishing MARAD to acknowledge receipt of comments should enclose a stamped, self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Trade Analysis and Insurance, Maritime Administration, Washington, DC 20590, tel. (202) 366-2400.

SUPPLEMENTARY INFORMATION: In administering its War Risk Insurance Program (46 App. U.S.C. 1281 et seq.) MARAD's valuation system is implemented by a Ship Valuation Committee (Committee) authorized by a procedure dated October 12, 1959 (Procedure). Although the Procedure sets out a number of factors and criteria that could be utilized in determining values, the methodology that has been followed by the Committee over a long period of time is based on the guidance provided in section VI A 4 of the Procedure. The Procedure is published in its entirety as Exhibit A.

Subpart 3 of section VI B of the Procedure provides: "Independent valuations shall be obtained from three qualified commercial ship appraisers or brokers."

In subpart C.2 of section VI 4, it also provides:

"The four valuations submitted by the three commercial appraisers and the Office of Ship Construction and any other data and/or information pertinent to the valuation of the ship shall be analyzed by the Committee. In the absence of special circumstances, the Committee shall adopt the commercial valuation nearest to the average of the four valuations. However, an exception shall be made where in the opinion of the Committee special circumstances exist so that using the valuation nearest to the average does not produce a proper value."

MARAD is considering whether to conduct a rulemaking with respect to its present methodology of determining vessel valuations for war risk insurance purposes. Specifically, MARAD is considering giving specific instructions to the commercial ship appraisers to consider factors other than sales of similar or comparable ships. Other factors that MARAD might require that the commercial ship appraisers consider would include:

(1) The term and rate of long term characters or other employment contracts;

(2) The depreciated replacement cost of the vessel; and

(3) Any unique characteristics of the vessel-specialty ship. (e.g., liquefied natural gas carrier).

Guidance might also be given to the commercial ship appraisers on how to handle vessels with different characteristics:

(1) Jones Act vessels with full domestic trading rights;

(2) Vessels built with construction-differential subsidy (CDS) with limited domestic trading rights;

(3) Vessels built with capital construction funds (CCF) with limited domestic trading rights; and

(4) Foreign-built vessels with no domestic trading rights.

In addition, should vessels built under section 615 of the Merchant Marine Act, 1936, as amended (Act), be valued differently than foreign-built vessels not constructed under that authority?

War Risk Insurance

War risk insurance that is available from the U.S. Government under title XII of the Act, has two basic categories:

(1) Insurance which is written on the basis of an indemnity from another Government agency that employs the vessels, usually the Department of Defense under section 1205 of the Act, and

(2) Insurance which is provided on the basis of the market risk, with the Department of Transportation collecting a premium from the assured and being fully liable for any losses. This second category is authorized under section 1202 of the Act. It is further subdivided into (a) a Standby Insurance Program, and (b) Direct Insurance, which had not been active since the early 1960s during the Cuban Missile Crisis, but was activated in response to the invasion of Kuwait by Iraq.

Indemnity Underwriting (Section 1205)

This type of underwriting is fairly straightforward. Under section 1205 of the Act the Secretary of Transportation (Secretary) is authorized to provide war risk insurance provided an agency, such as the Department of Defense, has sought and received approval from the President to procure such insurance from the Secretary. In addition, the Secretary is authorized to write the war risk insurance requested by the Secretary of Defense or such other agency, without the payment of a premium, provided the Secretary of Defense or other agency indemnifies the Secretary "against all losses covered by such insurance" and provides an indemnity agreement.

This type of insurance would be written under two major scenarios:

(1) Limited war or potential hostilities, such as Vietnam and the Desert Shield/Desert Storm situation; and

(2) Rapid reinforcement of Europe by sealift ships, with all vessels chartered to the U.S. Government being covered by Government war risk insurance under section 1205.

Shortly after the invasion of Kuwait, the Secretary of Defense requested that the Secretary of Transportation provide war risk insurance under section 1205. That request was approved by President Bush on August 20, 1990. A similar approval was granted by President Bush for section 1202 insurance on August 29, 1990 (Approval).

The authority granted by the August 20, 1990 Approval, authorized the Secretary to provide war risk insurance on behalf of the Secretary of Defense for vessels entering the Middle East region for so long as the Secretary of Defense determines such insurance to be necessary. In response, MARAD has issued war risk insurance policies at the request of the Department of Defense on a total of 325 vessels and is in the process of providing insurance on another 25 vessel requested by the Department of Defense. Under the authority granted by the August 29, 1990, Approval, four war risk insurance policies for premium were written.

Market Underwriting (Section 1202)

As indicated previously, this category of war risk insurance is subdivided into the Standby and Direct Programs.

Standby Program

Under 46 CFR part 308, the MARAD has set forth such an insurance program as authorized by title XII, including an interim war risk insurance binder program for all U.S.-flag vessels and certain U.S. citizen-owned or controlled vessels that have been deemed best suited to augment the U.S. merchant fleet in times of national emergency.

The interim binder program assures that entered vessels will be covered for war risks for a period of 30 days following the termination of commercial war risk insurance through operation of the automatic termination clauses of those policies. All commercial war risk insurance provides that the insurance will automatically terminate "upon and simultaneously with the occurrence of any hostile detonation of any nuclear weapon of war as defined above (any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter), wheresoever or whensoever such detonation may occur and whether or not the Vessel may be involved" or "upon and simultaneously with the outbreak or war, whether there be a declaration of war or not, among any of the following countries: United States of America; United Kingdom; France; the Union of Soviet Socialist Republics or the People's Republic of China."

The 30-day binder period has two purposes. First, it permits those vessels for which interim binders have been issued to proceed, wherever possible, to their destination with the knowledge that the vessel and its crew (if hull, protection and indemnity and second seamen's binders have been secured) will be insured against loss for a period of at least 30 days. Second, the 30-day period permits the military authorities to screen and requisition for title or for use those vessels deemed best fitted for augmenting the naval forces and enable those vessels to proceed to designated ports for takeover while still insured for war risks.

Premiums will be assessed on a mutual basis during the 30-day binder period. At the end of the binder period, a full war risk insurance program will be in place to provide such coverage for those vessels which are not requisitioned for title or for use and which the owners wish to continue to use in the waterborne commerce of the United States. Premiums during the full insurance program will be charged on an actuarial basis, with rates being changed from time to time as loss experience dictates. There are presently under war risk "Binders," 268 U.S.-flag vessels, 1,070 U.S.-flag barges, and 14 U.S.-owned foreign-flag vessels.

The values of vessels for which binders are issued under the section 1202 Standby program are determined by the methodology outlined in subpart 3 section VI 4 of the Procedure. These values are then published as of January 1 and July 1 of each year.

Direct Program

This methodology for establishing war risk values under section 1202 for the Standby program is different from that employed during Operation Desert Shield/Desert Storm for the Section 1205 program. During Operation Desert Shield/Desert Storm, the Department of Defense, through the Military Sealift Command (MSC) instructed MARAD to utilize the commercial insurance war risk hull value in effect on August 1, 1990, in setting the war risk values under section 1205. MARAD has insured over 350 vessels under section 1205 using that methodology. One of the questions that needs to be addressed in this ANPRM is whether the criteria for sections 1202 and 1205 of the Act should be identical, or at least similar.

The final area that MARAD is considering with respect to rulemaking deals with the proper insurance levels for war risk P&I and Second Seamen's insurance. Under the section 1205 program, MSC initially authorized Second Seamen's insurance at only $5,000 per crew member, which was modified to $50,000 and later to $150,000 per crew member. The war risk P&I level was initially as low as $3 million for some vessels, later modified to a minimum of $10 million and later modified to $45 million per vessel for the section 1205 program. The question to be addressed here is what are adequate levels of war risk P&I and Second Seamen's insurance for the risks involved.

In order to administer the war risk insurance program on a consistent and effective basis, it may be necessary to change the present methodology of determining vessel valuations for war risk insurance purposes. Therefore, any comments on the proposed change in methodology should specifically address any existing problems with the present methodology and a rationale for acceptance of any proposed criteria. Such comments will aid in the development of any criteria for valuations or any action deemed appropriate. MARAD is, therefore, requesting that any person, corporation or other entity having any interest or desiring to offer views and comments on MARAD's war risk valuation methodology submit them in writing. After reviewing the comments, MARAD will decide whether to propose a change in valuation methodology with respect to war risk insurance valuations.

The public is advised that MARAD is not, through the issuance of this ANPRM, committed to the initiation of a rulemaking on the subject. The purpose of this ANPRM is merely to solicit information and views from commenters that MARAD can use in evaluating its policy with respect to the placement of hull insurance, and in deciding whether to proceed with a rulemaking.

Administrative Notices

A. Executive Order 12291

The effect of this advance notice of proposed rulemaking does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. It is not a significant rule under the regulatory procedures of the Department of Transportation (44 FR 11034). This advance notice of proposed rulemaking does not require a Regulatory Impact Analysis, or an environmental assessment or impact statement under the National Environmental Policy Act (42 FR 4321 et seq.). A preliminary regulatory evaluation will be prepared based on comments to this advance notice of rulemaking.

B. Executive Order 12612

This advance notice of proposed rulemaking has been analyzed in accordance with the principles and criteria in Executive Order 12612 and MARAD does not believe that this advance notice of proposed rulemaking would have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

C. Impact on Small Entities

This advance notice of proposed rulemaking will not, if a rule based on it is promulgated, have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

Exhibit A

Maritime Administration

Procedure for Determining Values of Large Vessels for War Risk Insurance (Pursuant to General Order 82)

October 12, 1959.

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I. *Purpose*

This statement prescribes the procedure to be followed within the Maritime Administration under General Order 82 to determine the values for war risk insurance purpose of ships of 1500 gross tons or more.

II. *Statutory Requirements*

A. Section 1209(a), Merchant Marine Act, 1936, as amended, requires determination of a value (exclusive of national defense features paid for by the Government) which shall not exceed the amount payable if the vessel had been requisitioned for title under section 902(a) of the Act, with appropriate adjustment in the case of a construction-subsidized vessel.

B. Comptroller General interpretations and opinions are contained in decisins B-107600 dated February 11, 1952, and March 31, 1955.

C. A pertinent Supreme Court decision is contained in *United States* v. *Cors*, 337 U.S. 325.

III. *General Principles*

A. Values shall be determined within the framework of pertinent Rules of the Advisory Board on Just Compensation, appointed on October 15, 1943, by the President by Executive Order 9367.

1. Rules pertinent to valuations for war risk hull insurance purposes:

a. Value U.S. flag vessels on the American market, not foreign.

b. If there are insufficient sales or hirings, consider construction cost, acquisition cost, improvements, replacement cost depreciated, earnings, physical condition, appraisals, etc, as judgment indicates.

c. Deduct enhancement due to the Government's need for taking, to previous takings or to prospective takings, but not enhancement due to a general rise in prices or earnings.

2. The Advisory Board was re-established on September 10, 1945, and issued Supplementary Rules for determining values of foreign-flag vessels requisitioned. The most pertinent is that, as applied to foreign vessels, value means value in the port where taking occurs with regard for any available foreign market value.

B. The values determined, therefore, shall be domestic market values, except when foreign-flag vessels are concerned.

IV. *Collection of Data*

A. An index of United States shipbuilding cost shall be maintained.

B. A record of bulk cargo and time charter rates shall be maintained.

C. A record of all available sales prices and sales particulars on ships of 1500 gross tons or more shall be maintained.

V. *Categories of Ships to Which General Order 82 and this Procedure Apply*

A. Under § 309.3(b) of General Order 82—standard types of war-built (World War II) vessels.

B. Under § 309.3(c) of General Order 82—other vessels built during or after 1938.

C. Under § 309.4 of General Order 82—vessels built prior to 1938.

D. § 309.2(b) of General Order 82 describes types of vessels excluded from the above provisions.

VI. *Procedure for Standard War-Built Ships*

A. The Office of Ship Construction shall estimate current values using the following data as applicable to each ship:

1. Recent sales prices and sales conditions of similar ships. The terms and rate of charter, credit and other terms of sale, and delivery date shall be evaluated under current market conditions and appropriate adjustments made to reflect the cash value of the ship with prompt charter free delivery.

2. If there have been no recent reported sales of similar ships, sales prices of comparable ships shall be used. These shall be adjusted for age, speed, tonnage, and other factors relevant to the specific ships involved, using one or more of the following:

a. Dry Cargo Ships
(1) Deadweight ton/mile/year factor
(2) Bale/mile/year factor
b. Tank Ships
(1) Deadweight ton/mile/year factor
(2) Barrel/mile/year factor
c. Passenger Ships
(1) Gross ton/mile/year factor
(2) Passenger/mile/year factor
d. Other factors to be considered include reefer space, cargo gear, number of cargo holds, number of decks, type of passenger vessel, special survey position, and special features for a specific service.

3. If non-current sales must be used, the sales prices shall be further adjusted to reflect the difference in market conditions at the time of valuation, based on the general trend of the market as ascertained from bulk cargo rates, time charter rates, shipbuilding cost, sales of other types of ships, and any other factors (e.g., general economic or international) that would influence the used ship market.

4. In cases where actual sales prices are inadequate to establish market values, reproduction cost of the ship shall be determined by utilizing the shipbuilding index and/or the current estimated building cost and depreciated by an appropriate depreciation rate to date of original construction adjusted for betterments. This shall be taken as evidence of what a willing buyer would pay to a willing seller for the ship and thus is evidence of market value. Consideration shall also be given to other factors available that would reflect on the price, e.g., age, physical characteristics, and availability or shortage of the particular type. One of the following depreciation methods shall be used as appropriate:

a. Straight-line—an equal amount per year for the estimated economic life of the ship. This method shall generally be used for comparatively new ships.

b. Martin scale—5% per year of the undepreciated balance. This method shall generally be used in depreciating older ships and in comparing similar ships of different ages.

B. Independent valuations shall be obtained from three qualified commercial ship appraisers or brokers.

C. Ship Valuation Committee.

1. This committee was established by Administrator's Order No. 113, amended, and is charged with the function of developing and recommending to the Administrator the market values of ships for various purposes. The committee is made up of the following members: Chief Office of Ship Construction—Chairman, Chief, Office of Government Aid, Chief, Office of Ship Operations, General Counsel, Comptroller.

2. The four valuations submitted by the three commercial appraisers and the Office of Ship Construction and any other data and/or information pertinent to the valuation of the ship shall be analyzed by the Committee. In the absence of special circumstances, the Committee shall adopt the commercial valuation nearest to the average of the four valuations. However, an exception shall be made where in the opinion of the Committee special circumstances exist so that using the valuation nearest to the average does not produce a proper value.

4. After thorough consideration of all of the above factors, the value considered by the majority of the Committee to represent the oroper market value of the ships shall be determined.

VII. *Procedure for Other Vessels Built During or After 1938*

A. The Office of Ship Construction shall proceed as prescribed in VI.A.;

B. Independent valuations shall be obtained approximately every six months from one to three qualified commercial ship appraisers or brokers when one ship is typical of or comparable with a group of ships to be valued.

C. In the case of a specialized ship such independent appraisals shall be obtained for initial valuation and only once every two years thereafter.

D. The Ship Valuation Committee shall proceed as prescribed in VI.C. with appropriate modification for the handling of commercial appraisals consistent with VII. B. and C, above.

VIII. *Procedure for Vessels Built Prior to 1938.*

A. The procedure described in VI shall be followed except that valuations and independent appraisals shall be made on a deadweight ton basis in terms of a typical or average ship in each category (dry cargo, tank, or collier) built in 1937.

B. The Office of Ship Construction shall then

1. Determine the average age at which ships of each category have most recently been scrapped.

2. Determine the current value of ship scrap based on recent scrap sales or, if none, on the published heavy melting scrap index at Pittsburgh.

3. Pro-rate the values obtained under VIII.A downward for each additional year of age until scrap value is reached using the following formula:

$$\text{VIII.A. Value minus Scrap Value} \over \text{Age of Specific Ship minus Age of Typical Ship}$$

C. Adjustments under § 309.5 of General Order 82.

1. Refrigeration—Adjustment for refrigeration shall be based on the reproduction cost of such equipment depreciated in the same percentage as the reproduction cost of the entire ship is depreciated.

2. Speed—Over 11 knots and under 9 knots—Adjustment for excess or deficient speed shall be determined as follows:

a. The difference between the basic values per deadweight ton of a typical ship built in 1937 with a speed of 11 knots and a similar ship with a speed of 15 knots divided by 4 shall be added to the basic value for each knot over 11 knots or deducted from the basic value for each knot under 9 knots (fractions of knots to be prorated to the nearest ¼).

b. The basic value per deadweight ton for ships of 11 knots built in 1937 will be the value used in section 309-4(a). To determine the value of the 15-knot ship, that value will be increased by the ratio of the ton-mile-year factor of the 11-knot ship to the ton/mile/year factor of the 15-knot ship.

IX. *Prohibited Enhancement*

A. Comptroller General's letter B-107600 dated March 31, 1955, established a critical date of January 1, 1955, for the determination of prohibited enhancement. Each time war risk insurance values are prescribed in General Order 82 and amendments thereto this critical date is brought forward. Therefore, the Ship Valuation Committee shall determine whether there is prohibited enhancement, and the amount if any, from the date of the previous finding.

B. A finding of "no prohibited enhancement" shall be made if there have been no takings or requisitioning of vessels in the period under review and if there is no reasonable prospect of the condemnation of vessels. If there has been any requisitioning or if there is prospect thereof, a determination as to enhancement shall be made in terms of the types of vessels involved, location, and other circumstances.

X. *Final Determination.*

A. If any evidence of the value of the vessel in addition to that described in this statement comes to the attention of the Ship Valuation Committee or the Maritime Administrator, such weight shall be given to the evidence as is deemed appropriate by the Committee and the Administrator.

B. The proper valuation, exclusive of prohibited enhancement shall be submitted by the Ship Valuation Committee to the Maritime Administrator with an appropriate recommendation and sufficient data for his final determination.

C. The Maritime Administrator may authorize deviations from this procedure in special situations.

Dated: May 2, 1991.

By order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 91-10733 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF DEFENSE

48 CFR Parts 215, 237 and 252

Department of Defense Federal Acquisition Regulation Supplement; Evaluation and Identification of Uncompensated Overtime

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulations (DAR) Council is proposing changes to the Defense FAR Supplement to amend parts 215, 237, and 252 to implement section 834 of the FY 1991 DoD Authorization Act (Pub. L. 101-510) which requires, to the maximum extent practicable, DoD to acquire services on the basis of the task to be performed rather than on the basis of the number of hours of services provided.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 6, 1991, to be considered in the formulation of the final rule. Please cite DAR Case 90-316 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Ms. Barbara Young, Procurement Analyst, DAR Council, OUSD(A)DP(DARS), room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Young, Procurement Analyst, DAR Council, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 834 of the FY 1991 DoD Authorization Act (Pub. L. 101-510) requires the Secretary of Defense to prescribe regulations to ensure, to the maximum extent practicable, that services are acquired on the basis of the task to be performed rather than on the basis of the number of hours of services provided. DFARS 215.605 is amended to require contracting officers to ensure that proposals, which include unrealistically low rates, whether based on uncompensated overtime or other techniques, are considered in a risk assessment and evaluated accordingly. DFARS 237.102 is amended by adding DoD policy that services should be acquired, to the maximum extent practicable, on the basis of the task to be performed rather than on a labor-hour basis. DFARS 237.170 is added to provide guidance and prescribe a new solicitation provision and contract clause on uncompensated overtime.

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This proposed rule is based on and when finalized will amend the 1991 Edition of DFARS. The 1991 edition is scheduled for publication this summer.

B. Regulatory Flexibility Act

The proposed changes are expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 60 *et seq.* An initial Regulatory Flexibility Analysis has been performed. Comments from small entities concerning the affected DFARS section will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 90-316 in all correspondence.

C. Paperwork Reduction Act

The proposed rule does impose reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.* A request for an information collection requirement will be submitted to OMB for review and approval.

List of Subjects in 48 CFR Parts 215, 237 and 252

Government procurement.

Nancy L. Ladd,

Colonel, USAF Director, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR parts 215, 237, and 252 which were proposed at 56 FR 6058 on February 14, 1991 would be further amended as follows:

1. The authority citation for 48 CFR parts 215, 237, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.605 is added to read as follows:

§ 215.605 Evaluation Factors.

(c) In competitive acquisitions of services—

(1) Evaluation and award should be based, to the maximum extent practicable, on best overall value to the Government in terms of quality and other factors.

(2) The weighting of costs must be commensurate with the nature of the services being procured.

(3) It may be appropriate to award to the technically acceptable offeror with the lowest price when—

(i) Services being procured are of a routine or simple nature,

(ii) Highly skilled personnel are not required, and

(iii) The product to be delivered is clearly defined at the outset of the procurement.

(4) It may be appropriate to award to an offeror, based on technical and quality considerations, at other than the lowest price when—

(i) The effort being contracted for departs from clearly defined efforts, and

(ii) Highly skilled personnel are required.

(e) When acquiring services, contracting officers shall ensure that proposals which include unrealistically low rates, whether based on uncompensated overtime or other technique, which do not otherwise demonstrate cost realism, are considered in a risk assessment and evaluated accordingly. See 237.170 for requirements regarding uncompensated overtime.

PART 237—SERVICE CONTRACTING

3. Section 237.102 is added to read as follows:

237.102 Policy.

To the maximum extent practicable, acquire services on the basis of the task to be performed rather than on a labor-hour basis.

4. Sections 237.170 thru 237.170-2 are added to read as follows:

237.170 Uncompensated Overtime.

237.170-1 General.

(a) Uncompensated overtime means the hours worked in excess of the normal 8 hours per day or 40 hours per week by employees who are exempt from the Fair Labor Standards Act (FLSA), without additional compensation. The uncompensated overtime rate is the rate which results from multiplying the hourly rate calculated based on a 40-hour work week by 40 hours divided by the proposed hours per week.

(b) Solicitations shall require offerors to identify uncompensated overtime hours and the uncompensated overtime rate for FLSA-exempt personnel included in their proposals or subcontractor's proposals. If compensated overtime hours are accounted for in indirect rates, the contractor must also disclose that information separately.

(c) The contracting officer shall ensure that the use of uncompensated overtime will not degrade the level of technical expertise required to fulfill the government's needs.

237.170-2 Solicitation provision and contract clause.

(a) Use the provision at 252.237-XXXX, Identification of Uncompensated Overtime, in all solicitations for services estimated at $1,000,000 or more.

(b) Use a clause substantially the same as the clause at 252.237-XXXX, Uncompensated Overtime, in cost-type contracts for services estimated at $1,000,000 or more.

5. Sections 252.237-XXXX and 252.237-XXXX are added to read as follows:

252.237-XXXX Identification of Uncompensated Overtime.

As prescribed at 237.170-2(a), use the following provision:

Identification of Uncompensated Overtime (XXX 1991)

(a) Definitions.

As used in this provision—

Uncompensated overtime means the hours worked in excess of the normal 8 hours per day or 40 hours per week by employees who are exempt from the Fair Labor Standards Act, without additional compensation.

Uncompensated overtime rate is the rate which results from multiplying (1) the hourly rate calculated based on a 40 hour work week by (2) 40 hours divided by the proposed hours per week. For example, 45 hours proposed on a 40 hour work week basis at $20.00 would be converted to an uncompensated overtime hourly rate of $17.78 per hour. (40 divided by 45)×$20=$17.78.

(b) For any hours proposed against which an uncompensated overtime rate is applied, offerors shall identify in their proposals the hours for FLSA-exempt employees in excess of 8 hours per day or 40 hours per week, by labor category, and the uncompensated overtime rate per hour, whether at the prime or subcontract level, regardless of the method for accounting for those hours.

(c) Proposals which include unrealistically low rates, whether based on uncompensated overtime or other technique, which do not otherwise demonstrate cost realism, will be considered in a risk assessment and evaluated accordingly.

(d) If uncompensated overtime hours are accounted for in indirect rates, the contractor must also disclose that information separately.

(e) Offerors shall include a copy of their corporate policy addressing uncompensated overtime with their proposals.

(End of clause)

252.237-XXXX Uncompensated Overtime.

As prescribed at 237.170-2(b), use a clause substantially the same as the following:

Uncompensated Overtime (XXX 1991)

(a) The following proposed compensated hours and uncompensated overtime hours will be delivered under this contract:

Labor category	Compensated hours	Uncompensated overtime hours

(b) The contractor shall indicate on each invoice the total number of hours provided during the period covered by the invoice and shall separately identify compensated hours and uncompensated overtime hours by labor category. Contractors proposing uncompensated overtime agree that, while individual invoices may vary, final reconciliation of the uncompensated overtime hours will be predicted upon the ratio of compensated and uncompensated hours proposed and the hours delivered and accepted.

(c) The accounting system of the contractor proposing uncompensated overtime must be acceptable to the Defense Contract Audit Agency and the administrative contracting officer. All hours shall be burdened and in the baseline for the allocation of general and administrative and overhead expenses.

(End of clause)

[FR Doc. 91-10678 Filed 5-6-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB

Endangered and Threatened Wildlife and Plants; Public Hearings and Correction of Locations for Public Hearings on Proposed Determination of Critical Habitat for the Northern Spotted Owl (Strix occidentalis caurina)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearings and correction of locations for public hearings.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act (Act), gives notice that public hearings will be held on the proposed designation of critical habitat for the northern spotted owl (*Strix occidentalis caurina*), a threatened species. The hearings will allow all interested parties to submit oral or written comments on the proposal. In addition, the Service corrects the hearing locations as follows: from Arcata, California to Eureka, California and from Springfield, Oregon to Creswell, Oregon.

DATES: Hearing dates and locations are as follows: Monday, May 20, 1991, in Eureka, California; Wednesday, May 22, 1991, in Creswell, Oregon; Thursday, May 23, 1991, in Olympia, Washington; and Friday, May 24, 1991, in Portland, Oregon. Each public hearing will be held from 1:00 p.m. to 4:00 p.m. and from 6:00 p.m. to 9:00 p.m.

ADDRESSES: The public hearings will be held in the following locations: in Eureka, California at the Red Lion Inn, 1929 Fourth Street, Eureka, California; in Creswell, Oregon at the Emerald Valley Resort, 83293 Dale Kuni Road, Cresell, Oregon; in Olympia, Washington at the Washington Center for the Performing Arts, 512 South Washington Street, Olympia, Washington; and in Portland, Oregon at the Ramada Inn at the airport, 6221 Northeast 82 Avenue, Portland, Oregon. Written comments and materials may be submitted to the Assistant Regional Director for Fish and Wildlife Enhancement, 911 Northeast 11th Avenue, Portland, Oregon 97232-4181. Written submissions will be given the same weight and consideration as oral comments presented at the hearings.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hall, Assistant Regional Director for Fish and Wildlife Enhancement, Portland, Oregon (see ADDRESSES section), telephone (503) 231-6159 or FTS 429-6159.

SUPPLEMENTARY INFORMATION:

Background

The Service proposes to designate critical habitat for the northern spotted owl (*Strix occidentalis caurina*), a subspecies federally listed as threatened under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). The northern spotted owl is a medium-sized owl with dark eyes, dark-to-chestnut brown coloring, whitish spots on the head and neck, and white mottling on the abdomen and breast. The current range of the northern spotted owl extends from southwestern British Columbia through western Washington, western Oregon, and the Coast Ranges area of northwestern California south to San Francisco Bay. Located primarily on Federal land, and to a lesser extent on State and private lands, this proposed critical habitat designation would result in additional protection requirements under section 7 of the Act with regard to activities that involve Federal agency action. Section 4 of the Endangered Species Act requires the Service to consider economic impacts prior to making a final decision on the size and scope of critical habitat. The Service solicits data and comments from the public on all aspects of this proposal, including additional data on the economic impacts of the designation and a valuation technique for determining benefits.

Section 4(b)(5)(E) of the Act requires that a public hearing be held, if requested, within 45 days of the publication of a proposed rule. Due to a large number of anticipated requests for public hearings, the Service has scheduled hearings for May 20, 1991, in Eureka, California; May 22, 1991, in Creswell, Oregon; May 23, 1991, in Olympia, Washington; and May 24, 1991, in Portland, Oregon.

Parties wishing to make statements for the record should bring a copy of their statements to the hearing. In anticipation of a large number of parties at each hearing, oral statements will be limited in length to 3 minutes. If time does not allow everyone who has registered to present an oral statement, written comments may be submitted to the Service at the above address. Written submissions will be given the same weight and consideration as oral comments presented at the hearings. The comment period closes on June 5, 1991.

Author

The primary author of this notice is Karla Kramer, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, Portland, Oregon (see ADDRESSES section).

Authority

The authority for this section is the Endangered Species Act (16 U.S.C. 1361-1407; (16 U.S.C. 1531-1544; (16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: May 2, 1991.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 91-10671 Filed 5-6-91; 8:45 am]

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Notices

Federal Register
Vol. 56, No. 88
Tuesday, May 7, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Hamlin Elementary Critical Area Treatment RC&D Measure Plan, West Virginia

AGENCY: U.S. Department of Agriculture, Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines, (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Hamlin Elementary Critical Area Treatment RC&D Measure Plan, Town of Hamlin, Lincoln County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, Telephone (304) 291-4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the measure is critical area treatment. The measure is designed to stabilize by regarding, shaping, and revegetating approximately .5 acres of land that has an average erosion rate of 20 tons per acre per year. Conservation practices include heavy use area protection and critical area treatment.

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: April 24, 1991.

Rollin N. Swank,
State Conservationist.

[FR Doc. 91-10685 Filed 5-6-91; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 5 p.m. on Tuesday, May 21, 1991, at the Alumni Lounge, Marshall University, 400 Hall Greer Blvd., Huntington, West Virginia 25755. The Committee will hold a community forum on law enforcement policies and practices in the State, as they are directed toward racial, religious, and ethnic groups.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Marcia Pops (304/291-7254) or John I. Binkley, Director of the Eastern Regional Division (202/523-5564; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Eastern Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated: at Washington, DC, May 2, 1991.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.

[FR Doc. 91-10719 Filed 5-6-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 7103-01]

Motion To Modify Privileges: Werner Ernst Gregg

Summary

The March 28, 1991 recommended Decision of the Administrative Law Judge (ALJ), which is attached hereto, is hereby affirmed. Pursuant to the Decision, the request to modify the duration or quality of the sanctions is denied.

Order

On March 28, 1991, the ALJ entered his recommended Decision in the above-referenced matter. The Decision, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision of the ALJ.

This constitutes final agency action in this matter.

Dated: April 29, 1991.

Dennis E. Kloske,
Under Secretary for Export Administration.

Decision on Motion to Modify Sanctions

In the matter of: Werner Ernst Gregg, Respondent, Docket No. 7103-01.

Appearance for Respondent: Kathleen C. Little, Esq., Howery & Simon, 1730 Pennsylvania Avenue, NW., Washington, DC 20006-4793.

Appearance for Agency: Louis K. Rothberg, Esq., Office of the Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3839, 14th & Constitution Ave., NW., Washington, DC 20230.

Preliminary Statement

This is part of a follow up administrative proceeding to a criminal conviction of the Arms Export Control Act, 22 U.S.C.A. 2778; the Export Administration Act of 1979, 50 U.S.C.A. app. 2410 and 18 U.S.C. 1001, 1002. Based upon that Criminal Conviction a summary denial of export privileges was issued in April 1987. As outlined in the Background which follows, the Order was subsequently modified. The principal party thereto now seeks a modification of the period of the sanctions with respect to him. The violations involved occurred between 1980 and 1984. They are set forth in the indictment which is part of this record.

Background

On April 9, 1987 an *Ex Parte* Order was issued by the office of Export Licensing denying Respondent and Gregg International export licenses until February 16, 1996. 52 Fed. Reg. 13279 (1987). The administrative denial was based on the conviction of three counts of violating Section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (1982), and as provided in Section 11(h) of the Export Administration Act of 1979 and the implementing regulations. *U.S.* v. *Gregg*, 829 F.2d 1430 (8th Cir. 1987).[1]

On May 22, 1987, while an appeal from his criminal conviction was pending, an administrative petition was filed in this office contesting the scope and duration of the above denial order. The petition was supplemented by letter of June 22, 1987. An order issued from this Tribunal on June 29, 1987 scheduling a conference. That order expressly excepted consideration of Respondent Werner Gregg's status and reserved consideration of same until after his release from incarceration. Thereafter an informal conference was held in this office on July 1, 1987. A modification of the denial orders, removing Gregg International from its provision, dated July 18, 1987, (52 FR 26368 (1987)) was issued from the Office of Export Licensing, as a result of a letter of interpretation issued by the Office of Export Enforcement dated July 1, 1987 and further negotiation among the parties. The proceedings before this Tribunal were then stayed, reserving the right to reopen.

Notice of the intention to reopen and to modify the denial order wass submitted on January 19, 1990 which was supplemented with a Motion to Reopen and to Remove or Modify the Denial Order on May 24, 1990. Filings in opposition to the request and in support of the same have also been made. Since no facts are at issue, an evidentiary hearing was not held. The written submissions are considered to be sufficient for a disposition of the matter.

Jurisdiction

As the above Background and the decisions cited reflect, this case has a rather long history. At the time it was first appealed in May 1987 the regulations (Section 389.2(b) Appeal Procedures) provided for their submission to Room 6717 which was and had for some years been the Office of the Administrative Law Judge. Officials in that office had, in the past, acted in the capacity of presiding official, Hearing Commissioner, appeals adviser and/or Chairman, Appeals Board in Export License and Compliance Matters. License denial appeals had recently been returned to the Office of the Under Secretary because it had been determined that they did not constitute adjudications. The effect of the regulations reference cited above was reviewed with then Assistant Under Secretary in the Bureau of Export Administration. The instruction from that officer was that license appeals would continue to be processed directly under this office and that appeals dealing with "compliance" type cases would be referred to the Office of the Administrative Law Judge. This direction was provided in June of 1987 and was the basis for the initial consideration, reservation of jurisdiction and continued participation in this matter.

As a further basis, it is also noted, that the provisions of section 13 of the Export Administration Act providing for Administrative Law Judge participation, particularly in compliance proceedings, was not excluded from application in the adoption of Section 11(h) of the Export Administration Act.

It is not apparent that the statutory revisions were meant to remove the independent assessment provided under Section 13 as reflected in proceedings such as *Spawr*, 54 FR 43975 (1989).

Nor is a pattern of agency consistency discernable when different administrative units and appeal processes separately decide identical issues where there is no apparent basis for a distinction. The difference between the present summary adjudication of principals and the notice and opportunity for submission on behalf of related persons is a further puzzlement.[2]

The initial appeal to the Administrative Law Judge was not questioned by the Agency or Counsel as not within the existing regulatory scheme. The reservation of jurisdiction, based upon Respondent's incarceration, was an appropriate discretionary ruling and this current action is proper within that context. It affords this Respondent the procedural safeguards which he and others are entitled to, when the various provisions of the Act are considered in context.

The Motion To Modify Sanctions

The thrust of the present petition is to modify the Denial Order, as it affects Respondent, so as to allow Mr. Gregg to obtain employment with firms that engage in international sales. Representations on his behalf state that companies engaged in international trade are unwilling to hire him because of the uncertainty which his status as an employee would have and because of the stigma associated with the denial order. That is the normal and anticipated effect of the denial order.

In the initial request made in January 1990 it appeared that some interpretation or modifications would accomplish the desired result, allowing Respondent to function within a company engaged in domestic and international trade. However as the subsequent communications in the docket file reflect, companies engaged in such activities would understandably not be expected to make an employment offer with the restrictions and particularly the uncertainties involved.

Discussion

The basis for Respondent's current request to reopen and modify the period of denial is that its broad sweeping provision not only prevents Respondent from applying for or using export licenses for his own account, but it also appears to prohibit Mr. Gregg from accepting employment with any firm that engages in international sales. In addition, the stigma associated with the Denial Order severely limits his employment opportunities. All of the above is certainly true and is the intended result of a denial order.

The representation that Respondent would be subject to statutory deberment for only 3 years at the present time does

[1] Details of the transactions, charges, parties and other particulars are set forth in substantial detail in the above cited decision by the Court of Appeals. The District Court decision is reported at 629 F. Supp. 956 (W.D. Mo 1986) Copies of both Court decisions are in the Docket file.

[2] The continued outstanding pre-1985 Amendment Temporary Denial Orders initially issued for 20 days and yet outstanding after more than 5 years further illustrates the irregularity and lack of consistency of the administrative process.

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not appear to be accurate. The applicable portion of the statute reads:

A license to export an item on the United States Munitions List may not be issued to a person—

(A) If that person, or any party to the export, has been convicted of violating a statute cited in paragraph (1), or

(B) If that person, or any party to the export, is at the time of the license review ineligible to receive export licenses (or other forms of authorization to export) from any agency of the United States Government,

except as may be determined on a case-by-case basis by the President, after consultation with the Secretary of the Treasury, after a thorough review of the circumstances surrounding the conviction or ineligibility to export and a finding by the President that appropriate steps have been taken to mitigate any law enforcement concerns.

22 U.S.C. 2778(3)(4))

The implementing regulations provides:

Debarment

* * * * *

(c) * * * It is the policy of the Department of State not to consider applications for licenses or requests for approvals involving any person who has been convicted of violating the Arms Export Control Act or conspiracy to violate that Act for a three year period following conviction * * *

22 CFR 127.8(c).

Such regulatory statements of policy do not appear to remove the lifetime case by case presidential exception requirement.

The sanctions imposed against Mr. Gregg are severe, but the criminal violations reported in the above judicial decisions reflect that the offenses were serious.[9] That the criminal convictions resulted in a sentence of 3 years custody, 5 years probation and a $200,000 fine reflects that the District and Appellate Court, whose findings are not subject to review here, saw these acts as serious criminal misconduct. The forfeiture of some $300,000 worth of equipment is also a matter reflection that seriousness.

I perceive that this Respondent, through the extraordinarily effective representation of counsel, has been the beneficiary of mitigation which I have never seen before, extending back over the 40 or so years of these Department of Commerce proceedings. Contrary to their Counsel's assertion, the administrative record and the above cited judicial decisions reflects that this individual, his wife, and the corporation, Gregg International, through which they operated, were a trinity of activity. Mr. and Mrs. Gregg were more than partners in marriage, they were partners in business, and partners in the activity which resulted in the violation considered here. Her admissions, reflected in the cited federal court decisions, and their relationship to Gregg International Inc., are clear on the record. That she was permitted to "cop a plea" to income tax violations does not alter the conclusion expressed in the judicial and administrative records.

In the *Bakely* proceeding *#264* from 1959 it was observed that liquidation of a company was not a reason for not including it in the proceeding. That case also discussed related party status where husband and wife owned shares in a corporation.

Those observations are not made to try these other two principals but rather to consider all of the facts and circumstances relating to the sanctions imposed as they relate to the Respondent's request here.

Review of the record and the judicial observations compel the conclusion that Mrs. Gregg and Gregg International were principals.

By the terms of the private agreement incorporated into the 1987 Modification which allowed the sale of the business, Mrs. Gregg was to receive $50,000 a year for 10 years; a $200,000 note at 9% amortized over 20 years. In addition, a $1,500 per month triple net lease was executed for the business premium. The fact that she also received 499 of the 1000 shares in the successor Polyserve Corporation is also significant. I cannot be blind to the fact that this was, and continues to be, income to the partnership in all of its aspects.

After lengthy and thoughtful consideration I see no good reason for modifying the outstanding sanctions here. This representative, who engaged in terrible misconduct, which has probably advanced apartheid, as well as death and the civil strife in South Africa, does not deserve any further amelioration of sanctions.

The request to modify the period or quality of the sanctions is *denied.*

So ordered.

Hugh J. Dolan,

Administrative Law Judge.

Dated: March 28, 1991.

To be considered in the 30-day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave. NW., Room 3898B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 91-10724 Filed 5-6-91; 8:45 am]

BILLING CODE 3510-DT-M

[9] The prohibited shipments to South Africa included:

spec (1) Night Vision Goggles

(2) Radios

(3) Parts of a Tube Launcher, Optical Tracker (Tow) Missile System

(4) Air to Air Tacan

(7) Laser inertial Navigation System

(8) False Statements re Value of HF Transievers

(9) False Statements re Value of HF Transievers

Automated Manufacturing Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held May 29, 1991, 9:30 a.m. in the Herbert C. Hoover Building, room 1617F, 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377-2583.

Dated: May 2, 1991.

Betty A. Ferrell,

Director, Technical Advisory Committee Staff.

[FR Doc. 91-10722 Filed 5-6-91; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Trade Performance and Competitiveness Subcommittee of the President's Export Council is holding its first meeting to discuss organizational issues and ways the Council could encourage excellence in manufacturing and improved trade performance; recommend removal of regulatory and other constraints to productivity; identify domestic barriers to trade; suggest ways to encourage capital investment; discuss technology development issues; and explore ways the Council can encourage standards policies to compete in world markets. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. export trade.

DATES: May 10, 1991, from 1:30 p.m.–4:30 p.m.

ADDRESS: Main Commerce Building, room 4830, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Seating is limited and will be on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: Ms. Annette Richard, President's Export Council, room 3215, Washington, DC 20230.

Dated: April 29, 1991.

Wendy H. Smith,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 91-10721 Filed 5-6-91; 8:45 am]

BILLING CODE 3510-DR-M

Foreign-Trade Zones Board

[Docket 23-91]

Proposed Foreign-Trade Zone—Austin, TX, Area Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone of Central Texas, Inc. (a Texas not-for-profit corporation associated with the Cities and Chambers of Commerce of Austin, Georgetown, Round Rock and San Marcos, Texas), requesting authority to establish a general-purpose foreign-trade zone at sites in the Austin, Texas, area, in and adjacent to the Austin Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 26, 1991. The applicant is authorized to make the proposal under Senate Bill No. 691, Texas Revised Civil Statutes Article 1446.01.

The proposed foreign-trade zone would consist of 7 sites (1,391 acres) in Austin and four nearby communities. Site 1 (Austin Enterprise site, 317.43 acres) consists of seven parcels within the Austin Enterprise Zone Area, with 164.45 acres located along Highway 290 and 152.98 acres located in east Austin in the Ben White Boulevard-Montopolis Drive area. Site 2 (Balcones Research site, 50 acres) is located in north central Austin at the intersection of Burnett Road and Longhorn Boulevard. Site 3 (High Tech Corridor site, 393.52 acres) consists of five parcels located along I-35, approximately 14 miles north of downtown Austin (site straddles Austin-Round Rock city line). Site 4 (Cedar Park site, 122.30 acres) involves two parcels located in Cedar Park, eight miles northwest of Austin city limits, in Williamson County. Site 5 (Round Rock "SSC" site, 329.28 acres) consists of three parcels located along I-35 between Chandler Road and Westinghouse Road on the northern edge of the City of Round Rock. Site 6 (Georgetown site, 138.37 acres) is located along I-35 and U.S. 81, south of downtown Georgetown. Site 7 (San Marcos site, 40 acres) is located on the grounds of the San Marcos Municipal Airport in eastern San Marcos, adjacent to State Highway 21, on the Hays County/Caldwell County line.

The Foreign Trade Zone of Central Texas, Inc., has agreements with the owners of each parcel involved in the zone plan. The zone will be operated by Foreign Trade Zone of Central Texas Operators, a joint venture between Centre International, Inc., and Sekin Transport International, which is presently involved in the operation of Foreign-Trade Zones 39 and 168 in the Dallas/Fort Worth area.

The application contains evidence of the need for zone services in the Central Texas region. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as telecommunications equipment, oil field equipment, computer products and maquila related goods. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of John J. Da Ponte, Jr. (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Regional Director, Office of Inspection and Control, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, Texas 77057-3012; and Colonel William D. Bown, District Engineer, U.S. Army Engineer District, Fort Worth, P.O. Box 17300, Ft. Worth, Texas 76102-0300.

As part of its investigation the examiners committee will hold a public hearing on May 30, 1991, at 9 a.m., 15th Floor Conference Room, First City Texas Bank Building, 823 Congress Avenue, Austin, Texas 78701.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by May 23, 1991. Instead of an oral presentation written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary at any time from the date of this notice through July 1, 1991.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations.

Port Director's Office, U.S. Customs Service, 4005 Airport Boulevard, suite 2-150, Austin, Texas 78722.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716; 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 1, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-10812 Filed 5-6-91; 8:45 am]

BILLING CODE 3510-DS-M

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International Trade Administration

[A-401-601]

Brass Sheet and Strip From Sweden; Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On November 27, 1990, the Department of Commerce published the final results of its administrative review of the antidumping duty order on brass sheet and strip from Sweden. The review covered one manufacturer/exporter of this merchandise, Outokumpu Rolled Products (Outokumpu), and the period August 22, 1986, through February 29, 1988. Based on the correction of certain clerical errors, we have changed the margin for Outokumpu from 5.84 percent to 3.39 percent.

EFFECTIVE DATE: May 7, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 1990, the Department of Commerce published in the **Federal Register** (55 FR 49317) the final results of its administrative review of the antidumping duty order on brass sheet and strip from Sweden (52 FR 6998, March 6, 1987). After publication of our final results, petitioners and respondent alleged that clerical errors has been made regarding adjustment for fabrication costs, credit expenses for exporter's sales price (ESP) sales, and calculation of the ESP offset. We agree and have corrected these errors.

Amended Final Results of Review

As a result of our correction of clerical errors, we have determined that a weighted-average margin of 3.39 percent exists for Outokumpu.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required for all shipments of Swedish brass sheet and strip. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipment occurred after February 29, 1988, and who is unrelated to Outokumpu, a cash deposit of 3.39 percent shall be required. These deposit requirements are effective for all shipments of Swedish brass sheet and strip entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next administrative review.

This notice is published pursuant to 19 CFR 353.28.

Dated: May 1, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10614 Filed 5-6-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain, Other Than Bicycle From Japan; Partial Termination of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of partial termination of antidumping duty administrative reviews.

SUMMARY: On October 3, 1986 (51 FR 35385) and May 20, 1987 (52 FR 18937), the Department of Commerce initiated various administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan. The Department has now decided to terminate these reviews with regard to Nissan Motor Corp., Ltd., for the period April 1, 1985 through March 31, 1987.

EFFECTIVE DATE: May 7, 1991.

FOR FURTHER INFORMATION CONTACT: Lisa Boykin or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 1986 (51 FR 35385) and May 20, 1987 (52 FR 18937), the Department of Commerce (the Department) published notices of initiation of various administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan for the periods April 1, 1985 through March 31, 1986 and April 1, 1986 through March 31, 1987, respectively. In these initiations only Nissan Motor Corp., Ltd. requested administrative reviews of their entries. On May 17, 1988, Nissan withdrew their requests for review of both periods.

Although generally a request for review must be withdrawn not later than 90 days after the date of publication of the notice of initiation of the requested review, the time limit may be extended if the Secretary decides that it is reasonable to do so (19 CFR 353.22(a)(5)). The American Chain Association, the petitioner, has indicated by letter dated November 14, 1990, that it is not interested in the administrative reviews of Nissan for the 1985-1987 period. Nissan, which requested the 1985-86 and 1986-87 reviews on June 27, 1986, and April 30, 1987, respectively, to effect a revocation based on no sales at less than fair value, withdrew both requests on May 17, 1988. Nissan said that they have decided to terminate their efforts to obtain revocation. Given the acquiescence of both petitioner and respondent to the termination, the burden of completing these reviews on the respondent and the Department, and the fact that substantial work must be undertaken by all parties to complete the reviews, we deem it reasonable to extend the time limit in this case and allow withdrawal.

Accordingly, the Department has determined to terminate the reviews of Nissan Motor Corp., Ltd., for the period April 1, 1985 through March 31, 1987. This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and § 353.22(a)(5) of the Department's regulations (19 CFR 353.22 (a)(5)).

Dated: May 2, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-10613 Filed 5-6-91; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 90-A0006.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the Forging Industry Association (FIA) on April 30, 1991. The original Certificate was issued on July 9, 1990. Notice of issuance of the Certificate was published in the **Federal Register** on July 13, 1990 (55 FR 28801).

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

FIA's Export Trade Certificate of Review has been amended to:

1. Add the following ten companies as "Members" within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Airfoil Forging Textron Inc., Cleveland, OH (controlling entity: Textron Inc., Providence, RI); Anchor-Harvey Components, Inc.; Freeport IL; Cleveland Hardware & Forging Co., Cleveland, OH (including Fox Valley Forge Div., Aurora, IL and Green Bay Drop Forge Div., Green Bay, WI); Cornell Forge Company, Chicago, IL; Coulter Steel & Forge Co., Emeryville, CA; Eaton Corporation, Cleveland, OH (Eaton Corporation Forge Division, Marion, OH); Endicott Forging & Manufacturing Co., Endicott, NY; Erie Forge & Steel, Inc., Erie, PA; Park Ohio Industries, Inc., Cleveland, OH (controlling entity: Park-Ohio Industries, Inc., Cleveland, OH); and Viking Metallurgical Corporation, Verdi, NV (controlling entity: Quanex Corp., Houston, TX); and

2. Replace Ajax Rolled Ring Company, Wayne, MI, with Ovako Ajax, Inc., because Ovako Ajax, Inc. has acquired Ajax Rolled Ring Company since the original certificate was issued; and

3. Replace two members (The American Welding & Manufacturing Company and Standard Steel) with Freedom Forge Corporation, Burnham, PA, of which the two members are divisions (American Welding & Manufacturing Division and Standard Steel Division, respectively).

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: April 30, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-10717 Filed 5-6-91; 8:45 am]

BILLING CODE 3510-DR-M

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of a closed meeting.

SUMMARY: The Executive Committee Subcommittee of the President's Export Council is holding a meeting to discuss organizational issues, plans for the upcoming full Council meeting to be held in Boston, May 24, issues relating to export promotion, competitiveness, export controls and foreign market development, and other sensitive matters properly classified under Executive Order 12356. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. export trade.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, 202-377-4217.

DATES: May 7, 1991, from 2:30 p.m.-4:30 p.m.

ADDRESSES: Main Commerce Building, room 6029, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Annette Richard, President's Export Council, room 3215, Washington, DC 20230.

Dated: April 30, 1991.

Wendy H. Smith,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 91-10716 Filed 5-6-91; 8:45 am]

BILLING CODE 3510-DR-M

National Institute of Standards and Technology

[Docket No. 910481-1081]

Continuation of Fire Research Grants Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; announcing continuation of fire research grants program.

SUMMARY: The purpose of this notice is to inform potential applicants that the Fire Research Program, National Institute of Standards and Technology, is continuing its Fire Research Grants Program. Previous notices of this research grant program were published in the **Federal Register** on February 20, 1981 (46 FR 13250), November 19, 1984 (49 FR 45636), May 6, 1986 (51 FR 16730), June 5, 1987 (52 FR 21342), June 6, 1988 (53 FR 20675), and May 31, 1989 (54 FR 23243). (Catalog of Federal Domestic Assistance No. 11.609 "Measurement and Engineering Research and Standards.")

CLOSING DATE FOR APPLICATIONS: Proposals must be received no later than close of business May 31, 1991.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the proposal along with the Grant Application, Standard Form 424 (Rev. 4-88) as referenced under the provisions of OMB Circular A-110 to: Building and Fire Research Laboratory, Attn: Sonya Cherry, National Institute of Standards and Technology, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Sonya Cherry, (301) 975-6854.

ELIGIBILITY: Academic institutions, Non-Federal agencies, and independent and industrial laboratories.

SUPPLEMENTARY INFORMATION: As authorized by section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 276f), the NIST Building and Fire Research Laboratory conducts directly and through grants and cooperative agreements, a basic and applied fire research program. This program has been in existence for several years at approximately $1.5 million per fiscal year. No increase in funds has taken place. The Fire Research Program is

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limited to innovative ideas which are generated by the proposal writer on what research to carry out and how to carry it out. Proposals will be considered for research projects from one to three years. When a proposal for a multi-year grant is approved, funding will be provided for only the first year of the program. Funding for the remaining years of the program is contingent on satisfactory performance and subject to the availability of funds, but no liability shall be assumed by the government because of non-renewal or non-extension of a grant. All grant proposals submitted must be in accordance with the programs and objectives listed below.

Program Objectives

(a) *Combustion and Flammability:* Develop the methods to measure and predict the gas and condensed phase combustion processes, and their relationships to determining the flammability properties of materials.

(b) *Fire Dynamics:* Develop the methods to measure and predict the fire processes of materials and products in realistic environments.

(c) *Building Fire Physics:* Develop techniques of smoke transport phenomena due to building fires, and to extend the capabilities of fire protection analysis.

(d) *Smoke Dynamics Research:* Produce scientifically sound principles, metrology, data, and predictive methods for the formation/evolution of smoke components in flames for use in understanding and predicting general fire phenomena.

(e) *Fire Hazard Analysis:* Develop analytical systems for the quantitatives prediction of the threats to people and property from fires and the means to assess the accuracy of those methods.

(f) *Fire Suppression Research:* Develop understanding of fire extinguishment processes and derive techniques to measure and predict the performance of fire protection and fire fighting systems.

Proposal Review Process

All proposals are assigned to the appropriate group leader of the six programs listed above for review, including external peer review, and recommendations on funding. Both technical value of the proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration in the group leader's recommendation to the Deputy Director. Applicants should allow up to 60 days processing time. Proposals are evaluated for technical merit by at least three professionals from NIST, the Building and Fires Research Laboratory, or technical expert from other interested government agencies and in the case of new proposals, experts from the fire research community at large.

Evaluation Criteria

Rationality	0–20
Qualification of Technical Personnel	0–20
Resources Availability	0–20
Technical Merit of Contribution	0–40

The results of these evaluations are transmitted to the Deputy Director of the appropriate research unit in the Building and Fire Research Laboratory who prepares an analysis of comments and makes a recommendation. The Building and Fire Research Laboratory head will also consider compatibility with programmatic goals and financial feasibility.

Paperwork Reduction Act

The SF–424 mentioned in this notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348–0006.

Additional Requirements

All applicants must submit a certification ensuring that employees of the applicant are prohibited from engaging in the unlawful manufacturing, distribution, dispensing, possession or use of a controlled substance at the work site, as required by the regulations implementing the Drug-Free Workplace of 1988, 15 CFR part 26, subpart F.

Applicants are subject to the Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

Section 319 of the Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required to be submitted with any application.

NIST has determined that Executive Order 12372 is not applicable to the Fire Research Grants Program.

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment. Any recipient/applicant who has an outstanding indebtedness to the Department of Commerce will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

Awards under the Fire Research Program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to financial assistance awards.

Dated: May 1, 1991.

John Lyons,

Director.

[FR Doc. 91–10676 Filed 5–6–91; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Marine Mammals: Issuance of Permit; The Department of Veterinary Pathology, Armed Forces Institute of Pathology (P473)

On March 6, 1991, notice was published in the **Federal Register** (56 FR 9347) that an application had been filed by the Department of Veterinary Pathology, Armed Forces Institute of Pathology, Department of Defense, Washington, DC 20306–6000, for a permit to obtain, import, export, and re-import specimen materials from all species of the Orders Pinnipedia (except walrus) and Cetacea for scientific purposes.

Notice is hereby given that on April 30, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review in the following offices:

By appointment: Office of Protected Resources, Permit Division, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, Maryland 200910 (301/427–2289);

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930 (508) 281–9300;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Juneau, Alaska 90731 (907/586–7221);

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C17500, Seattle, Washington 78115 (206/526–6150);

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6169).

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702 (813/893–3141).

Dated: April 30, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–10736 Filed 5–6–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit; NMFS, Southwest Fisheries Science Center (P77#48)

On March 7, 1991, notice was published in the **Federal Register** (56 FR 9688) that an application had been filed by the Southwest Fisheries Science Center, National Marine Fisheries Service, La Jolla, CA 92038, to take 35 Hawaiian monk seals (*Nonachus schauinslandi*) for scientific research.

Notice is hereby given that on April 30, 1991 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit; (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The application, Permit and supporting documentation are available for review by interested persons in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Suite 7324, Silver Spring, Maryland 20910 (301/427–2289); and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196).

Dated: April 30, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR. Doc. 91–10735 Filed 5–6–91; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of a Negotiated Settlement for Certain Cotton Textile Products Produced or Manufactured in Bangladesh

May 1, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

During recent consultations between the Governments of the United States and the People's Republic of Bangladesh, agreement was reached, effected by a Memorandum of Understanding (MOU) dated April 5, 1991, to establish specific limits for cotton shop towels in Category 369–S for three consecutive one-year periods, beginning February 1, 1991 and extending through January 31, 1994. In the letter published below, the Chairman, Committee for the Implementation of Textile Agreements, directs the Commissioner of Customs to establish a limit for Category 369–S for the first agreement period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 47904, published on November 16, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 1, 1991.

Commissioner of Customs,

Department of the Treasury,

Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 18, 1991 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of Bangladesh and exported during the twelve-month period which began on February 1, 1991 and extends through January 31, 1992.

Effective on May 8, 1991, you are directed, pursuant to a Memorandum of Understanding dated April 5, 1991, to establish a limit of 1,010,640 kilograms [1] for cotton textile products in Category 369–S [2] for the period February 1, 1991 through January 31, 1992.

Textile products in Category 369–S, which have been exported to the United States prior to February 1, 1991 shall not be subject to this directive.

Textile products in Category 369–S which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided as data become available.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 91–10746; Filed 5–6–91; 8:45 am]

BILLING CODE 3510–DR–F–

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[1] The limit has not been adjusted to account for any imports exported after January 31, 1991.

[2] Category 369–S: only HTS number 6307.10.2005.

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Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czech and Slovak Federal Republic

May 2, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: June 1, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated June 25 and July 22, 1986, as amended and extended, between the Governments of the United States and the Czech and Slovak Federal Republic establishes limits for the period June 1, 1991 through May 31, 1992.

The limit for Category 443 has been adjusted for carryforward used during the previous agreement period.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 2, 1991.

Commissioner of Customs,

Department of the Treasury,

Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated June 25 and July 22, 1986, as amended and extended, between the Governments of the United States and the Czech and Slovak Federal Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Czechoslovakia and exported during the twelve-month period beginning on June 1, 1991 and extending through May 31, 1992, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
410/624	969,095 square meters.
433	8,161 dozen.
434	12,037 dozen.
435	7,447 dozen.
443	54,707 numbers.

Imports charged to these category limits for the period June 1, 1990 through May 31, 1991 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Czech and Slovak Federal Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 91–10748; Filed 5–6–91; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

May 2, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: May 9, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6494. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 335, 336/636, 342 and 347/348 are being increased for special allowance provided for handmade products under the current agreement.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 51144, published on December 12, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 2, 1991.

Commissioner of Customs,

Department of the Treasury,

Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 7, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile

products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on May 9, 1991, you are directed to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
335	219,813 dozen.
336/636	553,824 dozen.
342	503,728 dozen.
347/348	360,820 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 91–10747; Filed 5–6–91; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the Philippines

April 29, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6735. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 338/339 and 347/348 in Group I are being increased by application of swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 51946, published on December 18, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 29, 1991.

Commissioner of Customs,

Department of the Treasury,

Washington, DC 20229.

Dear Commissioner:

This directive amends, but does not cancel, the directive of December 12, 1990 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on May 6, 1991, you are directed to amend the December 12, 1990 directive to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Philippines:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
338/339	1,485,936 dozen.
347/348	979,369 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 91–10449; Filed 5–6–91; 8:45 am]

BILLING CODE 3510–DR–F

Amendment to Visa and Exempt Certification Requirements for Certain Textiles and Textile Products Produced or Manufactured in Peru

May 1, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa and exempt certification requirements.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: J. Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Peru reached agreement, effected by exchange of letters dated February 19 and 28, 1991, to amend the existing export visa and certification requirements.

Shipments of textiles and textile products for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments, valued at US$250 or less, are no longer subject to visa and quota requirements and shall not be charged to existing agreement levels.

See **Federal Register** notice 51 FR 4409, published on February 4, 1986.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 1, 1991.

Commissioner of Customs,

Department of the Treasury,

Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of January 30, 1986 from the Chairman, Committee for the Implementation of Textile Agreements, which directs you to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption of certain cotton, wool and man-made fiber textile products, produced or manufactured in Peru for which the Government of Peru has not issued an appropriate export visa or exempt certification.

Effective on May 8, 1991, the directive of January 30, 1986 is amended to reflect that shipments of textiles and textile products from Peru which are imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at US$250 or less, do not require a visa or exempt certification for entry and shall not be charged to the existing agreement levels.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

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exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 91-10743; Filed 5-6-91; 8:45 am]

BILLING CODE 3510-DR-F-

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Technology Strategies

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Technology Strategies will meet in closed session on May 28-29, June 27-28, and July 22-23, 1991 at the Crystal Gateway 4, suite 1100, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will build upon results of the 1990 Summer Study. In particular, given the events of the past year, especially the experience gained from operations Desert Shield and Desert Storm, the Board will satisfy itself of the continuing validity of its 1990 framework or make changes as appropriate. The Board will select some of its key 1990 recommendations and propose ways to implement them with emphasis on prototyping and technology insertion.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. app. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: May 1, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-10884 Filed 5-6-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Privacy Act of 1974; Amend Record Systems

AGENCY: Department of the Army, DOD.

ACTION: Amend Privacy Act record systems.

SUMMARY: The Department of the Army proposes to amend eight record systems in its inventory of record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The proposed action will be effective without further notice on June 6, 1991, unless comments are received that would result in a contrary determination.

ADDRESSES: Contact Ms. Alma Lopez, Office of Systems Management Branch (ASOP-MP), Ft. Huachuca, AZ 85613-5000.

SUPPLEMENTARY INFORMATION: The Department of the Army record system notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** as follows:

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow)
51 FR 23876, Jun. 30, 1986
51 FR 30900, Aug. 29, 1986
51 FR 40479, Nov. 7, 1986
51 FR 44361, Dec. 9, 1986
52 FR 11647, Apr. 13, 1987
52 FR 18798, May 19, 1987
52 FR 25905, Jul. 9, 1987
52 FR 32329, Aug. 27, 1987
52 FR 43932, Nov. 17, 1987
53 FR 12971, Apr. 20, 1988
53 FR 16575, May 10, 1988
53 FR 21509, Jun. 8, 1988
53 FR 28247, Jul. 27, 1988
53 FR 28249, Jul. 27, 1988
53 FR 28430, Jul. 28, 1988
53 FR 34576, Sep. 7, 1988
53 FR 49586, Dec. 8, 1988
53 FR 51580, Dec. 22, 1988
54 FR 10034, Mar. 9, 1989
54 FR 11790, Mar. 22, 1989
54 FR 14835, Apr. 13, 1989
54 FR 46965, Nov. 8, 1989
54 FR 50268, Dec. 5, 1989
55 FR 13935, Apr. 13, 1990
55 FR 21697, May 30, 1990 (Army Address Directory)
55 FR 41743, Oct. 15, 1990
55 FR 46707, Nov. 6, 1990
55 FR 46708, Nov. 6, 1990
55 FR 48671, Nov. 21, 1990 (Army System ID Changes)
55 FR 48678, Nov. 21, 1990

The amendments are not within the purview of subsection (r) of the Privacy Act, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report. The specific changes to the record systems are set forth below followed by the record system notices published in their entirety, as amended.

Dated: May 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0305.11DAPE

System name:

Cadet Account System (52 FR 18809, May 19, 1987).

Changes:

Delete System Identification Number and replace with "A0037-104-3USMA".

* * * * *

Purpose(s):

Delete entry and replace with "To compute debits and credits posted against cadet account balances. Debits include charges to the cadet account for uniforms, textbooks, computers and related supplies, academic supplies, various fees, etc.; credits include advance pay, monthly deposits from payroll, scholarships, initial deposits, interest accumulated on cadet account balances, and individual deposits. All funds are held in trust by the Treasurer, USMA."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the U.S. Military Academy, Treasurer, West Point, NY 10996-1783.

Individual should provide full name, cadet account number, Social Security Number, graduating class year, current address and telephone number, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the U.S. Military Academy, Treasurer, West Point, NY 10996-1783.

Individual should provide full name, cadet account number, Social Security Number, graduating class year, current address and telephone number, and signature.

Personal visits may be made to the Academy; individual must provide acceptable identification such as valid driver's license and information that can be verified with his/her payroll."

* * * * *

A0037-104-3USMA

SYSTEM NAME:

USMA Cadet Account System.

SYSTEM LOCATION:

U.S. Military Academy, West Point, NY 10996-1783.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Corps of Cadets, U.S. Military Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Monthly deposit listings of Corps of Cadets members showing entitlements and activity pertaining to funds held in trust by the USMA Treasurer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 205, 4340, and 4350; Title 6, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies; and Executive Order 9397.

PURPOSE(S):

To compute debits and credits posted against cadet account balances. Debits include charges to the cadet account for uniforms, textbooks, computers and related supplies, academic supplies, various fees, etc.; credits include advance pay, monthly deposits from payroll, scholarships, initial deposits, interest accumulated on cadet account balances, and individual deposits. All funds are held in trust by the Treasurer, USMA.

Treasurer, USMA to record and provide taxable interest data to individual cadet and Internal Revenue Service; to control and monitor charges/credits to the cadet account; and to record deposits to the cadet account and to maintain records of financial institutions for direct deposit purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer agencies as defined in the Fair Credits Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and compuer printouts; paper records in file folders.

RETRIEVABILITY:

By Cadet account number.

SAFEGUARDS:

Records are maintained in buildings which are secured and patrolled and are accessible only to personnel who have need therefor in the performance of official duties. Automated master data and back-up files are further protected by assignment of passwords.

RETENTION AND DISPOSAL:

Duplicate account statements are retained locally for 1 year after cadets graduation and then destroyed by shredding. Information in automated media is retained for 1 to 3 months, except that annual interest tapes are retained for 1 year before being erased.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Military Academy, West Point, NY 10996-1783.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the U.S. Military Academy, Treasurer, West Point, NY 10996-1783.

Individual should provide full name, cadet account number, Social Security Number, graduating class year, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the U.S. Military Academy, Treasurer, West Point, NY 10996-1783.

Individual should provide full name, cadet account number, Social Security Number, graduating class year, current address and telephone number, and signature.

Personal visits may be made to the Treasurer, U.S. Military Academy; individual must provide acceptable identification such as valid driver's licsense and information that can be verified with his/her payroll.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Department of Army, Department of the Treasurer, financial institutions and insurance companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351-17aUSMA

System name:

U.S. Military Academy Candidate Files (55 FR 48617, Nov. 21, 1991).

Changes:

* * * * *

Retention and dispoal:

Delete "A0709.03DAPE" in line four and replace with "A0351-17bUSMA".

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquires to the Superintendent, U.S. Military Academy, West Point, NY 10996-1797.

Individual should provide the full name, current address, year of application, source of nomination, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Superintendant, U.S. Military Academy, West Point, NY 10996-1797.

Individual should provide the full name, current address, year of application, source of nomination, and signature."

* * * * *

Exemptions claimed for the system:

Delete entry and replace with "parts of this system may be exempt under 5 U.S.C. 552a(k)(5), (6), or (7) as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager."

A0351-17aUSMA

SYSTEM NAME:

U.S. Military Academy Candidate Files.

SYSTEM LOCATION:

U.S. Military Academy, West Point, NY 10996-1797.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential and actual candidates for entrance to the U.S. Military Academy for the current and previous 2 years.

CATEGORIES OF RECORDS IN THE SYSTEM:

Entrance examination results, Personal Data Record (DD Form 1867), Candidate Activities Report (DD Form 1868), Prospective Candidate Questionnaire (DD Form 1908), Interview Sheets, School Official's Evaluation (DD Form 1869), Employer's Evaluation of Candidate, Scholastic Aptitude Examination scores, American College Testing Program Scores, High School and College/University transcripts, physical aptitude examination, Candidate Summary Sheets, Nominating Letter, naturalization or adoption papers, birth certificate, Oath 5–50, special orders, all correspondence to/form/and about candidate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 4331, 4332, and 4334.

PURPOSE(S):

To evaluate a candidate's academic, leadership, and physical aptitude potential for the U.S. Military Academy, to conduct management studies of admissions criteria and procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to Members of Congress to assist them in nominating candidates.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folder. Selected items of information reside on computer discs.

RETRIEVABILITY:

By candidate's surname; by source of nomination, current status, and special categories.

SAFEGUARDS:

All information is stored in locked rooms with restricted access to authorized personnel. Automated data are further protected by a user identification and password convention.

RETENTION AND DISPOSAL:

For accepted candidates, records become part of the Cadet's Personnel Record, described by System of Records A0351–17bUSMA—a permanent record. Records on candidates not accepted for admission are destroyed either on expiration of age eligibility or after 3 years, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Military Academy, West Point, NY 10996–1797.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–1797.

Individual should provide the full name, current address, year of application, source of nomination, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–1797.

Individual should provide the full name, current address, year of application, source of nomination, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Members of Congress, school transcripts, evaluations from former employer(s), medical reports/physical examination results, U.S. Military Academy faculty evaluations, American College Testing Service, Educational Testing Service, and similar relevant documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(5), (6), or (7) as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0351–17bUSMA

System name:

U.S. Military Academy Personnel Cadet Records (55 FR 48671, Nov 21, 1991).

Changes:

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

Individual should provide the full name, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

Individual should provide the full name, and signature."

* * * * *

Exemptions claimed for the system:

Delete entry and replace with "Parts of this system may be exempt under 5 U.S.C. 552a(k) (5), (6), or (7) as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager."

A0351–17bUSMA

SYSTEM NAME:

U.S. Military Academy Personnel Cadet Records.

SYSTEM LOCATION:

U.S. Military Academy, West Point, NY 10996–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Cadets of the U.S. Military Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application and evaluations of cadet for admission; letters of recommendation/endorsement; academic achievements, awards, honors, grades, and transcripts; performance counseling; health, physical aptitude and abilities and athletic accomplishments, peer appraisals; supervisory assessments; suitability data, including honor code infractions and disposition. Basic biographical and historical summary of cadet's tenure at the U.S. Military Academy is maintained on cards in the Archives Office or on microfiche in the Cadet Records Section.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 4334, and Executive Order 9397.

PURPOSE(S):

To record the cadet's appointment to the Academy, his/her scholastic and athletic achievements, performance, motivation, discipline, final standing, and potential as a military career officer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Academic transcripts may be provided to educational institutions.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records in file folders; microfilm.

RETRIEVABILITY:

By surname or Social Security Number.

SAFEGUARDS:

Access to records is limited to persons having official need therefor; records are maintained in secure file cabinets and/or in locked rooms.

RETENTION AND DISPOSAL:

Records of Cadets who are commissioned become part of his/her Official Military Personnel File. Records of individuals not commissioned are destroyed after 5 years. Microfilmed records maintained by USMA are permanent; hard copy files are destroyed after being microfilmed.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

Individual should provide the full name, Social Security Number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

Individual should provide the full name, Social Security Number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her sponsors, peer evaluations, grades and reports of U.S. Military Academy academic and physical education department heads, transcripts from other educational institutions, medical examination/assessments, supervisory counseling/performance reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k) (5), (6), or (7) as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0614–100/200USMA

System name:

Evaluation/Assignment of Academic Instructors (50 FR 48671, Nov. 21, 1991).

Changes:

* * * * *

Categories of individuals covered by the system:

Delete "Officers" and replace with "Military personnel".

* * * * *

Purpose(s):

Delete "officers" and replace with "military personnel".

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry and replace with "The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, ATTN: Dean of the Academic Board, West Point, NY 10996–5000.

Individual should provide the full name, Social Security Number, sufficient details to locate records, current mailing address, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, ATTN: Dean of the Academic Board, West Point, NY 10996–5000.

Individual should provide the full name, Social Security Number, sufficient details to locate records, current mailing address, and signature."

* * * * *

A0614–100/200USMA

SYSTEM NAME:

Evaluation/Assignment of Academic Instructors.

SYSTEM LOCATION:

U.S. Military Academy, West Point, NY 10996–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel who apply or serve as instructors on the Staff and Faculty, U.S. Military Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application consisting of name, grade, Social Security Number, branch of service, educational and military qualifications, teaching experience, transcript of academic grades, results of Graduate Record Examination (GRE), and Admission Test for Graduate Study in Business (ATGSB); evaluation and assessment notes; correspondence between the U.S. Military Academy and U.S. Army Military Personnel Center; assignment order application/acceptance for advanced civil schooling, and related documents.

AUTHORITY FOR MAINTAIN OF THE SYSTEM:

10 U.S.C. 4334 and Executive Order 9397.

PURPOSE(S):

Used by the U.S. Military Academy Dean of the Academic Board and

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department heads to assess qualifications and suitability of military personnel as academic instructors for assignment to the Staff and Faculty, U.S. Military Academy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets and computer discs in vault.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Information is available only to designated persons having official need therefor.

RETENTION AND DISPOSAL:

Records of individuals not selected for assignment or unavailable are destroyed when no longer required; records for those assigned to U.S. Military Academy are retained for 25 years; then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Military Academy, West Point, NY 10996-5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, ATTN: Dean of the Academic Board, West Point, NY 10996-5000.

Individual should provide the full name, Social Security Number, sufficient details to locate records, current mailing address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, ATTN: Dean of the Academic Board, West Point, NY 10996-5000.

Individual should provide the full name, Social Security Number, sufficient details to locate records, current mailing address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; official Army or other Service records; academic institutions; letters of endorsement from third parties; U.S. Army Military Personnel Center; similar relevant documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0037-1DAPE

System name:

Resource Management and Cost Accounting Files (55 FR 48617, Nov 21, 1991).

Changes:

* * * * *

System location:

Delete last sentence and replace with "Official mailing addresses are published as an appendix to the Army's compilation of record sysems notices."

* * * * *

Authority for maintenance of the system:

Add at the end "and Executive Order 9397."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry and replace with "The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system."

* * * * *

System manager(s) and address:

Delete entry and replace with "The Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Wasington, DC 20310-4000."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themseleves is contained in this record system should address written inquiries to the agency head/installation commander of the Department of the Army organization to which they are (or were) assigned/employed. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, office believed to have the record, time frame, and other information verifiable from the record itself."

* * * * *

A0037-1DAPE

SYSTEM NAME:

Resource Management and Cost Accounting Files.

SYSTEM LOCATION:

Headquarters, Department of the Army, Staff and field operating agencies, major commands, installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel assigned/attached to the organization.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records by individual of man-hours applied to the accomplishment of assigned tasks or projects. Specific data elements include name, Social Security Number/employee identification number, organizational element, military rank/civilian grade, job title, clearance status, rating data, regular/overtime wage rates, regular/overtime hours worked, hours of leave taken, record of official travel, project code, accounting code and cost data, workload units accomplished, file references and related information and records control data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 3013; and Executive Order 9397.

PURPOSE(S):

To project manpower and monetary requirements; to allocate available resources to specific projects; to schedule workload and assess progress; to project future organizational milestones; to evaluate individual performance and equipment efficiency; to set standards and methods; to record and control personnel and equipment utilization; to document inventories; to interpolate training needed by unit or individual; to monitor use of overtime; to control and monitor obligations and expenditures of government funds; to provide audit trail; to generate statistical reports of workload and production levels and other trends within the organization; and to provide other accounting and monitoring reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Punch cards, magnetic tapes, cards, discs, microform, microfiche, computer printouts and paper records.

RETRIEVABILITY:

By individual's name, Social Security Number, or employee identification number. Information may also be accessed by a non-personal data element such as project code, cost accounting code, or organizational element.

SAFEGUARDS:

Automated systems employ computer hardware/software safeguard features. All records are maintained in controlled areas, within buildings/rooms which are secured during non-duty hours. Personal information is accessed only by individuals who have need therefor in their official duties.

RETENTION AND DISPOSAL:

Magnetic media are erased after 1 year; manual records are destroyed after 1 year by pulping, tearing, or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

The Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310-4000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this records system should address written inquiries to the agency head/installation commander of the Department of the Army organization to which they are (or were) assigned/employed. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, office believed to have the record, time frame, and other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the agency head/installation commander of the Department of the Army organization to which they are (or were) assigned/employed. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, office believed to have the record, time frame, and other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulaton 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Employee time cards; organization manpower rosters; individual personnel and training records; production records; travel orders; unit inventory records; and other relevant Army documents and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351DAPE

System name:

Army Training Requirements and Resources System (ATRRS) (55 FR 48671, Nov. 21, 1991).

Changes:

* * * * *

System location:

Delete entry and replace with "Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Washington, DC; U.S. Total Army Personnel Command; major commands; Army Reserve Personnel Center; National Guard Bureau; Schools and Army Training Centers worldwide. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices."

* * * * *

Authority for maintenance of the system:

Delete the comma after "3013" and replace with "and Executive Order 9397."

Purpose(s):

Delete entry and replace with "The Army Training Requirements and Resources System (ATRRS) supports institutional training missions. The system integrates training requirements for individuals by using resources and class schedules developed by the training establishment. Reservations are made by name for training in Army formal schools and other service schools. The system maintains other service schools' input and course completion statistics".

In paragraph three replace "The Personnel Training Management System (PTMS)" with "The Student Trainee Management System—Enlisted (STRAMS-E) * * *"

In paragraph four replace "The U.S. Army Military Personnel Center" with "U.S. Total Army Personnel Command".

* * * * *

Safeguards:

Place quotations before and after "Official Use Only".

* * * * *

System manager and address:

Delete entry and replace with "Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, DAPE-MPT, Washington, DC 20310-0300."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself."

Record access procedure:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this

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records system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

* * * * *

A0351DAPE

SYSTEM NAME:

Army Training Requirements and Resources System (ATRRS).

SYSTEM LOCATION:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310-0300; U.S. Total Army Personnel Command; major commands; Army Reserve Personnel Center; National Guard Bureau; Schools and Army Training Centers worldwide. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Army, Navy, Air Force, Marine Corps, Reserve Officers' Training Corps students, Department of Defense (DoD) civilian employees and approved foreign military personnel attending a course of instruction conducted under the auspices of a DOD School.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records pertaining to course administrative data, course scope and prerequisites, course training requirements, course equipment, personnel and facilities constraints, requirements for instructors, class schedules, class quotas, prioritized order of merit list for input into Noncommissioned Officers Education System (NCOES) training, by name reservations, limited individual personnel data, and course input and completion data by name/Social Security Number. Data related to an individual is as follows:

Training course completion data and reason codes for attrition are maintained for an individual, as well as training seat reservations.

Limited personnel data is maintained on an individual as long as the individual has a valid reservation for training or is currently in the training base.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 3013 and 4301; and Executive Order 9397.

PURPOSE(S):

The Army Training Requirements and Resources System (ATRRS) supports institutional training missions. The system integrates training requirements for individuals by using resources and class schedules developed by the training establishment. Reservations are made by name for training in Army formal schools and other service schools. The system maintains other service schools' input and course completion statistics.

The Mobilization Training Planning System (MTPS) provides resource information to training personnel managers in a mobilization environment.

The Student Trainee Management System—Enlisted (STRAMS-E) monitors the flow of trainees through the accession, training, and distribution process.

The Quota Management System provides the U.S. Total Army Personnel Command, Reserve Component counterparts, and other agencies that have an input to training missions, the vehicle to manage individuals and training course seats/quotas through the training base of officers and skill level 2 and above.

The ATRRS system provides the Army's Schools and Training Centers with the data necessary to manage resources associated with the instructors, equipment, and facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The "Blanket Routine Uses' set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Magnetic tapes, computer discs, and limited paper printouts.

RETRIEVABILITY:

Retrieved by Social Security Number.

SAFEGUARDS:

An employee badge and visitor registration system is in effect. Hard copy records which contain data by Social Security Number are maintained with an "Official Use Only" cover. Access to the ATRRS system is limited to those who have a need to access the data as determined by the System Manager.

RETENTION AND DISPOSAL:

Records are kept on the individual only as long as the individual is actively seeking training.

SYSTEM MANAGER AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, ATTN: DAPE-MPT, Washington, DC 20310-0300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves is contained in this record system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from DoD staff, field installations, and automated systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600-85DAPE

System name:

Alcohol and Drug Abuse Rehabilitation Files (55 FR 48671, Nov 21, 1991.

Changes:

* * * * *

System location:

In the second paragraph delete entry and replace with "U.S. Total Army Personnel Command, Personnel Information Systems Command (ASQNI-ASM), 200 Stovall Street, Alexandria, VA 22332-0310."

* * * * *

Categories of records in the system:

In the first paragraph replace "client" and "client's" with "patient" and "patient's", respectively.

In the second paragraph replace "client" with "patient". After "intake records" add "(DA Form 4465)"; after "progress reports" add "(DA Form 4466)".

Authority for maintenance of the system:

Add to the end of the entry "and Executive Order 9397."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the first paragraph and replace with "The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices do not apply."

Add a new second subparagraph "The Patient Administration Division at the Medical Treatment Facility with jurisdiction is responsible for the release of medical information to malpractice insurers in the event of malpractice litigation or prospect thereof".

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

In the first paragraph replace "Paper records" to "ADAPCP Outpatient Medical Records" and add "or Outpatient Treatment Records" to the last sentence.

In the second paragraph replace the first sentence with "Patient intake and progress reports are stored in locked file cabinets". Delete "US Army Drug and Alcohol Technical Activity, Falls Church, VA 22041" and replace with "U.S. Army Drug and Alcohol Operations Agency (USADAOA), 4501 Ford Avenue, suite 320, Alexandria, VA 22302-1435". Delete "US Army Safety Center, Ft Rucker" and replace with "U.S. Army Personnel Information Systems Command, Alexandria, VA.

Retrievability:

In the second paragraph replace "client's" and with "patient's".

Safeguards:

In the second paragraph delete "Primary records on magnetic disk are stored with the computer in a secure vault separated from the primary computer." Replace "U.S. Army Safety Center" with U.S. Army Personnel Information Systems Command".

System manager(s) and address:

Replace "(DAPE-HRA)" with "(DAPE-PMH-H)".

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the U.S. Army Drug and Alcohol Operations Agency (USADAOA), 4501 Ford Avenue, suite 320, Alexandria, VA 22302-1435. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature".

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the U.S. Army Drug and Alcohol Operations Agency (USADAOA), 4501 Fort Avenue, suite 320, Alexandria, VA 22302-1435. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature".

A0600-85DAPE

SYSTEM NAME:

Alcohol and Drug Abuse Rehabilitation Files

SYSTEM LOCATION:

Primary location: Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) rehabilitation/counseling facilities (e.g., Community Counseling Center/ADAPCP Counseling Facilities) at Army installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Secondary location: U.S. Total Army Personnel Command, Personnel Information Systems Command (ASQNI-ASM), 200 Stovall Street, Alexandria, VA 22332-0310.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual (military, civilian, family member) who is eligible for care, is referred to and enrolled in the ADAPCP for rehabilitation, pursuant to Army Regulation 600-85.

CATEGORIES OF RECORDS IN THE SYSTEM:

Primary location: Copies of patient intake records, progress reports, psychosocial histories, counselor observations and impressions of patient's behavior and rehabilitation progress, copies of medical consultation and laboratory procedures performed, results of biochemical urinalysis for alcohol/drug abuse, and similar or related documents.

Secondary location: Copies of patient intake records (DA Form 4465), progress reports (DA Form 4466), and demographic composites thereof.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012; 42 U.S.C. 290dd-3 and 290ee-3; and Executive Order 9397.

PURPOSE(S):

To identify alcohol and drug abusers and either restore such persons to effective duty or identify rehabilitation failures for separation from government service. At the primary location, information is used to treat, counsel, and rehabilitate individuals who participate in the Alcohol and Drug Abuse Prevention and Control Program. At the secondary location, client intake and progress reports are used to provide essential management and statistical information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices do not apply to this record system.

The Patient Administration Division at the medical treatment facility with jurisdiction is responsible for the release of medical information to malpractice insurers in the event of malpractice litigation or prospect thereof.

Information is disclosed only to the following persons/agencies:

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To health care components of the Veterans Administration furnishing health care to veterans.

To medical personnel to the extent necessary to meet a bona fide medical emergency.

To qualified personnel conducting scientific research, audits, or program evaluations, provided that a patient may not be identified in such reports, or his or her identity further disclosed by such personnel.

In response to a court order based on the showing of good cause in which the need for disclosure and the public's interest is shown to exceed the potential harm that would be incurred by the patient, the physician-patient relationship, and the Army's treatment program. Except as authorized by a court order, no record may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

Note: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statutes take precedence over the Privacy Act of 1974 to the extent that disclosure is more limited. However, access to the record by the individual to whom the record pertains is governed by the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Primary location: ADAPCP Outpatient Medical Records in file folders at Alcohol and Drug Abuse Prevention and Control Program facilities are maintained for 1 year following termination of treatment or referral (if not enrolled). Selected forms are transferred to individual's health record or Outpatient Treatment Record.

Secondary location: Patient intake and progress reports are stored in locked file cabinets. Computer data are entered on line at U.S. Army Drug and Alcohol Operations Agency (USADAOA), 4501 Ford Avenue, suite 320, Alexandria, VA 22302–1435 and transferred to magnetic disk or tape at U.S. Army Personnel Information Systems Command, Alexandria, VA.

RETRIEVABILITY:

Primary location: Alphabetically by individual's surname. Secondary location: By patient's Social Security Number or identification code, date and installation where individual was in the Alcohol and Drug Abuse Prevention and Control Program.

SAFEGUARDS:

Primary location: Records are maintained in central storage areas in locked file cabinets where access is restricted to authorized persons having an official need-to-know.

Secondary location: Manual records are stored in locked file cabinets. Automated records are maintained in random access mode in controlled access areas. Data are processed in batch mode and are subjected to standard executive and system control programs plus the audit/edit and data base management system designed by the U.S. Army Personnel Information Systems Command.

RETENTION AND DISPOSAL:

Primary location: Records are destroyed 1 year after termination of the patient's treatment, unless the Army Medical Department Activity/Facility commander authorizes retention for an additional 6 months.

Secondary location: Manual records are retained up to 18 months or until information taken therefrom and entered into computer records is transferred to the "history" file, whichever is sooner. Disposal of manual records is by burning or shredding. Computer records are retained permanently for historical and/or research purposes.

SYSTEM MANAGER(S) AND ADDRESS:

The Deputy Chief of Staff for Personnel, Headquarters, Department of the Army (DAPE–PMH–H), The Pentagon, Washington, DC 20310–4000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the U.S. Army Drug and Alcohol Operations Agency (USADAOA), 4501 Ford Avenue, suite 320, Alexandria, VA 22302–1435. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the U.S. Army Drug and Alcohol Operations Agency (USADAOA), 4501 Ford Avenue, suite 320, Alexandria, VA 22302–1435. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

Denial to amend records in this system can be made only by the Deputy Chief of Staff for Personnel in coordination with The Surgeon General.

RECORD SOURCE CATEGORIES:

From the individual by interviews and history statement; abstracts or copies of pertinent medical records; abstracts from personnel records; results of tests; physicians' notes, observations of client's behavior; related notes, papers, and forms from counselor, clinical director, and/or commander.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0602DAPE–ARI

System name:

Behavioral and Social Sciences Research Project Files (95 FR 48617, Nov. 21, 1991).

Changes:

* * * * *

System location:

Delete "Fort Lewis, WA;" and "Camp Zama, Japan * * * " and replace with "Fort Benning, GA;" and "Fort Gordon, GA * * * " respectively.

* * * * *

Categories of records in the system:

Delete the first two lines and replace with "Individual's name and Social Security Number. Army personnel records and questionnaire-type data relating to * * * "

* * * * *

System manager(s) and address:

Delete entry and replace with "Commander, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI–AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI–AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

Individual should provide the full name, Social Security Number, current address, subject area, and the year of testing if known".

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI–AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

Individual should provide full name, Social Security Number, current address, subject area, and the year of testing if known".

* * * * *

A0602DAPE–ARI

SYSTEM NAME:

Behavioral and Social Sciences Research Project Files.

SYSTEM LOCATION:

Army Research Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600 and field offices located at Fort Benning, GA; Boise, ID; Fort Gordon, GA; Fort Huachuca, AZ; London, England; Mannheim, Germany; Naval Training Center, Orlando, FL; Falls Church, VA; Fort Hood, TX; Fort Knox, KY; Fort Leavenworth, KS; Presidio of Monterey, CA; Fort Rucker, AL; and St. Louis, MO. Official mailing addresses are published as an appendix to the Army's compilation or record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former officer, warrant officer, and enlisted military personnel, including Army Reservists and National Guard.

Family members of the above service members.

Civilian employees of Department of Defense.

Samples of civilians from the general U.S. population who are surveyed to determine why people do or do not consider military service as a career or a short-term employment option.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name and Social Security Number, Army personnel records and questionnaire-type data relating to service member's pre-service education, work experience and social environment and culture, learning ability, physical performance, combat readiness, discipline, motivation, attitude about Army life, and measures of individual and organizational adjustments; test results from Armed Services Vocational Aptitude Battery and Skill Qualification Tests. Also, individual's name and Social Security Number, and questionnaire type data relating to non-service member's education, work experience, motivation, knowledge of and attitude about the Army. When records show military service or marriage to a service member, the appropriate non-service records will be linked to the service record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2358 and 4503, and Executive Order 9397.

PURPOSE(S):

To research human factors inherent in the recruitment, selection, classification, assignment, evaluation, and training of military personnel; to enhance readiness effectiveness of the Army by developing personnel management methods, training devices, and testing of weapons methods and systems aimed at improved group performance. (No decisions affecting an individual's rights or benefits are made using these research records).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; punch cards; magnetic tape.

RETRIEVABILITY:

By individual's name and/or Social Security Number. For research purposes, the data are usually retrieved and analyzed with respect to relative times of entry into service, training performance, and demographic values. Scheduled data for follow-up data collections however, are retrieved by month of scheduled follow-up and by name.

SAFEGUARDS:

Access to records is restricted to authorized personnel having official need therefor. Automated data are further protected by controlled system procedures and code numbers governing access.

RETENTION AND DISPOSAL:

Information is retained until completion of appropriate study or report, after which it is destroyed by shredding or erasing.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI–AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI–AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

Individual should provide the full name, Social Security Number, current address, subject area, and the year of testing if known.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI–AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

Individual should provide the full name, Social Security Number, current address, subject area, and the year of testing if known.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or

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may be obtained form the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his or her peers, or, in the case of ratings and evaluations, from supervisors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91-10880 Filed 5-6-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Anti-Tactical Ballistic Missile Requirements in the 2010 Timeframe will meet on May 20-21, 1991. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8 a.m. and terminate at 5 p.m. on May 20; and commence at 8 a.m. and terminate at 4:15 p.m. on May 21, 1991. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide technical briefings for the panel members pertaining to their assessment of the vulnerability of U.S. naval forces to ballistic missile attack, employing conventional, chemical, and nuclear munitions, and identifying the key issues related to the Navy ATBM program and the corresponding critical technology requirements. The agenda will include briefings and discussions related to current U.S. Navy anti-tactical ballistic missile capabilities, current intelligence, technology options in connection with the tactical ballistic missile threat, current strategy, and ATBM treaty and policy implications. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Captain Gerald Mittendorff, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

G.B. Roberts,

Federal Register Liaison Officer.

[FR Doc. 91-10886 Filed 5-6-91; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 6, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: May 1, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Teacher Status Information for the Teacher Follow-up Survey.
Frequency: On Occasion.
Affected Public: State or local government; businesses or other for-profit; non-profit institutions; small businesses or organizations.
Reporting Burden:
Responses: 13,179.
Burden Hours: 3,295.
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey will be used to collect more useful and comprehensive data on teachers, school administrators, and school policies and practices.

Type of Review: Revision.
Title: Final Performance Report for the Library Services for Indian Tribes and Hawaiian Native Program.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 250.
Burden Hours: 625.
Recordkeeping Burden:
Recordkeepers: 250.
Burden Hours: 5.
Abstract: This report is used by State Educational agencies to provide caseload data. The Department uses the information collected to assess the accomplishments of program goals and objectives.

Office of Postsecondary Education

Type of Review: Revision.
Title: Guarantee Agency Monthly Claims and Collections Report.
Frequency: Monthly.
Affected Public: State or local governments; non-profit institutions.
Reporting Burden:
Responses: 660.
Burden Hours: 4,620.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form is used by state agencies to request payments of reinsurance claims paid on rehabilitated loans.

Type of Review: Revision.
Title: Application for Federal Student Aid.
Frequency: Annually.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 7,006,383.
Burden Hours: 7,466,403.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will collect information from students who are applying for Federal Student Aid. The Department will determine eligibility for student aid under the Department's student financial assistance programs.

[FR Doc. 91-10778 Filed 5-6-91; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by May 14, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting and/or recordkeeping burden and (6) abstract. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: May 1, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Expedited.
Title: Notice of Final Selection Criteria for Implementing the National Science Scholars Program in Fiscal Year 1991.
Frequency: Annually.
Affected Public: Individuals or households; State or local governments.
Reporting Burden:
Responses: 15,547.
Burden Hours: 265,272.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by state Educational agencies to apply for funding under the National Science Scholars Program. The Department uses the information to make grant awards.

Additional Information: An Expedited review is requested in order for the Department to award funds to institutions of higher education before September 30, 1991. The Department must require each participating State to provide its' nominations to the President by June 28, 1991. The President, in consultation with the Secretary and the Director of the National Science Foundation, selects two National Scholars per congressional district as required by section 603(b)(3) of the program statute.

BILLING CODE 4000-01-M

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UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-5447

SUMMARY: This letter transmits the notice of final selection criteria and procedures for the National Science Scholars Program that participating States use to evaluate student applications and submit nominees to the President.

Dear Chief State School Officer:

This letter is our second communication to you concerning the Department's plans to implement the recently enacted National Science Scholars Program (NSSP). In our first letter, SG-91-5, we announced the Department's initial plans to implement the NSSP and provided you with the procedures by which you could propose the membership of a State nominating committee for the review and approval of the Secretary of Education. In this letter we are providing you with the selection criteria that each State with an approved nominating committee must use to evaluate student applications, select nominees, and submit the names of nominees to the President. The selection criteria were jointly published in the Federal Register on [exact date to be inserted] (__FR_____) by the Director of the National Science Foundation (NSF) and the Secretary in a notice of final selection criteria. We have enclosed a copy of the notice.

By September 30, 1991, the President will announce fiscal year 1991 NSSP scholarship recipients, and the Secretary will disburse funds to institutions of higher education on behalf of the Scholars. The President's selections will be made from the nominations provided by State nominating committees. As we previously informed you, the nominations submitted by your nominating committee will be based upon student eligibility criteria contained in section 604(a) of the program's statute and selection criteria.

Please carefully read the notice for a complete understanding of the Scholar nomination process. In this letter we do not repeat all of the information contained in the notice that you need to know to administer properly the Scholar nomination process.

The notice of final selection criteria requires several information collections by and on behalf of the U.S. Department of Education (Department). Please note the following statement concerning those information collections. Public reporting burden for the information collections associated with this letter and the enclosed Notice of Final Selection Criteria are estimated to vary from 12 to 40 hours per response, with an average of 17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840-0629, Washington, D.C. 20503.

Each State with an approved nominating committee may now begin to solicit scholarship applications and to review and score the applications. States must then submit Scholar nominations to the President. Each State nominating committee must establish its own operating procedures governing the scholarship nomination

Page 2 - Dear Chief State School Officer

process that include: (1) procedures for the dissemination of program information and application materials to the State's public and private secondary schools and General Education Development (GED) Test Centers; and (2) the establishment of internal State administrative procedures for the timely submission, processing, and review of applications submitted by eligible students.

Who is Eligible to Apply?

To be eligible to apply for and receive a fiscal year 1991 National Science Scholarship for attendance at an institution of higher education during the 1991-92 academic year, a student must meet the following eligibility criteria:

- Be scheduled to graduate from a public or private secondary school, or to obtain the equivalent of a certificate of graduation (as recognized by the State in which the student resides), during the 1990-91 secondary school year.

- Be a citizen or national of the United States or of the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, or an alien lawfully admitted to the United States for permanent residence.

- Have demonstrated outstanding academic achievement in secondary school in the physical, life, or computer sciences, mathematics, or engineering. A State nominating committee may adopt a minimum eligibility standard for the purpose of demonstrating a student's outstanding academic achievement in the scholarship disciplines which may include an overall minimum grade point average combined with a minimum grade point average in the sciences, mathematics, and engineering and a minimum score on the ACT Assessment or Scholastic Aptitude Test.

- Demonstrate to the State nominating committee that he or she intends to apply for enrollment at a public or private nonprofit institution of higher education as a full-time undergraduate student (as determined by the institution) for the purpose of receiving a baccalaureate degree in one of the scholarship fields.

- To apply for a NSSP scholarship, a student only needs to provide a written statement to the nominating committee indicating his or her intention to major in one of the scholarship disciplines. To receive a scholarship, a Scholar must declare a major in either the physical, life, or computer sciences, mathematics, or engineering, or provide a written statement to the institution of higher education at which he or she enrolls of his or her intent to major in one of the scholarship fields, if it is the policy of the institution at which the Scholar has been accepted for enrollment that a student not declare a major until a later point in his or her course of study.

Student Application

Each State must use the eligibility criteria, selection criteria, and instructions

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published in the Federal Register in order to solicit student applications. Each participating State must develop its own application or other document to gather student responses to the selection criteria that can best be processed by that particular State's nominating committee. No approval by the Department is necessary for your student response documents or applications.

However, Federal statutes pertaining to the privacy of information are applicable to this program and require that certain information must be included on any application for Federal financial assistance. The Department will be publishing a notice of new system of records in the Federal Register in the near future in order to provide for the maintenance of information under the NSSP in accordance with the Privacy Act.

Privacy Act Information and Use of Student's Social Security Number. The Privacy Act of 1974 requires that each Federal agency or its agent that asks for a student's social security number or other information must tell the student the following:

(1) The agency's legal right to request the information and whether the law says it must be given.

(2) What purpose the agency has in asking for it and how it will be used.

(3) What could happen if the information is not provided.

Therefore, a State's application or other documents used to collect student responses for the National Science Scholars Program must include the following statements:

- Giving us any information to apply for a National Science Scholarship is voluntary, including the provision of your social security number (SSN). However, providing your SSN will ease the administration of this program. If you do not provide your SSN with your application, an alternative identification will be generated for you. If you do not provide the other information requested, we may not be able to process your application. Your SSN or alternative identification will be used, if you are selected by the President to be a National Science Scholar, to record information about your college attendance and progress, to ensure that you have received your scholarship award in the correct amount, and to assist in providing you with summer employment in federally-funded research and development centers and Federal agencies.

- The information which you supply may be disclosed to third parties that the Department has authorized to assist in administering Federal student aid programs such as the financial aid administrator at a Scholar's institution of higher education or to other individuals or organizations to provide additional financial assistance and summer employment to students selected as National Science Scholars.

- The information which you supply may be used by the Department to determine your eligibility for receipt of continuation NSSP awards during

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subsequent years you are in attendance at an institution of higher education and are pursuing a degree in one of the scholarship disciplines.

- We will send certain information you provide such as your name, address, social security number (if provided), gender, and the name of the institution of higher education you plan to attend to the Department which, in turn, may disclose this information to responsible officials of the National Science Foundation and to the President or his representatives during consultation preceding the President's selection of National Science Scholars. Also, we will use this information to notify your congressional representative of your award. If the Department or an employee of the Department is involved in litigation, they may send your information to the Department of Justice or a court or adjudicative body if the disclosure is related to financial aid and if certain other conditions are met. The information may also be made available to Federal agencies which have the authority to subpoena other Federal agencies' records when appropriate.

- When appropriate, officials of the Department may decide to disclose information to individuals or organizations qualified to carry out research solely for research purposes.

- The Department may disclose to a consumer reporting agency information for the purpose of reporting a claim which is determined valid and overdue.

Selection Criteria

For fiscal year 1991, your State nominating committee must use the selection criteria and scoring methodology published in the enclosed Federal Register notice to select and prioritize nominees from among those eligible students who submit applications for National Science scholarships. The eligibility criterion in section 604(a)(3) of the statute requires a demonstration by each applicant of outstanding achievement in the scholarship disciplines at the secondary level. Moreover, under these selection criteria a successful applicant must have clearly demonstrated in his or her application that he or she has the potential and motivation to complete a postsecondary education at a high level of academic achievement in one of the scholarship disciplines. However, through the publication in the Federal Register of the selection criteria, the Secretary and the Director seek to encourage and attract to a career in the sciences, mathematics, or engineering not only those individuals who have excelled specifically in the scholarship disciplines during their secondary education and are already committed to a career in the scholarship disciplines but also those academically superior individuals who have not yet decided on the direction of their postsecondary education and professional career.

Selection criterion five, "Meeting the purposes of the authorizing statute," provides the nominating committee with the ability to rate overall each student's application in order to determine how well the student meets the purposes of the National Science Scholars Program. Each reviewer should first evaluate and rate the student's response to the first four selection criteria. Then, under criterion five, each reviewer should evaluate and rate how all of the information

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contained in each application establishes the student's ability to meet and fulfill the purposes of the NSSP as discussed in section 601(a) of the program statute.

Continuation Awards

Student's selected by the President to be Scholars may receive continuation NSSP awards in subsequent years in order to complete their undergraduate course of study. An eligible Scholar may receive additional scholarships for not more than 3 academic years of undergraduate study, except that an eligible Scholar who is enrolled in an undergraduate course of study that requires attendance for 5 academic years may receive additional scholarships for not more than 4 academic years. To be eligible to receive a continuation award a Scholar must meet certain eligibility criteria that the Department will propose in a notice of proposed rulemaking for the NSSP to be published in the Federal Register in the near future.

Submission of Nominations to the President

In order for the Department to assist the President in selecting the Scholars and provide funds to institutions of higher education on behalf of the Scholars by September 30, 1991, each State nominating committee must provide the following information for each nominee:

Congressional District #___
Congressional representative's or delegate's name _____

Nominee's name _____
Social security number _ _ _-_ _-_ _ _ _ (if provided) Male___ Female___
Priority ranking within congressional district _____
Permanent Address:
Street _____
City _____ State _____ ZIP _____
Telephone # where the nominee may be reached during the summer:
( ) _____ - _____
Institution of Higher Education: ___Accepted ___ Plan to attend
Name _____
Address _____
City _____ State _____ ZIP _____

The Department of Education will accept nominations on behalf of the President at the following address:

National Science Scholars Program
United States Department of Education
Office of Student Financial Assistance
Campus-Based Programs Branch
ROB-3, Room 4651
400 Maryland Avenue, S.W.
Washington, D.C. 20202-5453

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Due to the time required for the President to select the Scholars and for the Department to confirm the Scholar's acceptance of the scholarship and to make the awards to the institutions of higher education at which the Scholars will enroll, nominations must be postmarked no later than June 28, 1991, in order to be accepted by the Department on behalf of the President. This deadline will be published in the Federal Register shortly.

Obviously, the time is short for your submission of nominations to the President and for the awarding of fiscal year 1991 National Science Scholars Program scholarships by the Secretary. However, we continue to be confident that, with your assistance, we will be able to award scholarships before the end of the fiscal year.

Should you have any questions concerning this program, you may call the staff responsible for the implementation and administration of the National Science Scholars Program on (202) 708-4607.

Sincerely,

Michael J. Farrell
Deputy Assistant Secretary for
Student Financial Assistance

Enclosure

cc: State contact person for the NSSP

[FR Doc. 91-10779 Filed 5-6-91; 8:45 am]
BILLING CODE 4000-01-C

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DEPARTMENT OF ENERGY

Statement of Findings on Floodplain and Wetland Assessment for Proposed Removal Action at White Oak Creek Embayment, Department of Energy, Oak Ridge Reservation, Oak Ridge, TN

AGENCY: Department of Energy.

ACTION: Statement of findings on floodplain and wetland assessment.

SUMMARY: The U.S. Department of Energy (DOE) presents this Statement of Findings on Floodplain and Wetland Assessment, prepared pursuant to Executive Orders 11988 and 11990, and 10 CFR part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. By the authority granted under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and Executive order 12580, and based on consideration of the factors listed in 40 CFR 300.415(b)(2), DOE proposes to stabilize and control cesium-137 contaminated sediments within the White Oak Creek Embayment (WOCE) and the DOE Oak Ridge Reservation, and to prevent the off-site migration of contaminants to the Clinch River. The proposed action involves the placement of a coffer-cell sediment control structure within the 100-year floodplain of White Oak Creek.

On the basis of the Floodplain/Wetland Assessment (available from the Oak Ridge address below), the DOE has determined that there is no practicable alternative to the proposed action and that it has been designed to minimize potential harm to or within the floodplain and the wetland of the WOCE and the Clinch River. Several other alternatives, such as "no action," rockfill structure, concrete structure, silt curtain, mat overlays, gabion overlays, and dredging/removal within critical reach, were considered and evaluated in making this determination. The no-action alternative, which entails leaving the site in its present condition, is not consistent with the intent of Congress in CERCLA and would not result in compliance with the Environmental Protection Agency (EPA) standards.

The proposed action is to construct a coffer-cell sediment retention structure across the mouth of the WOCE as an interim corrective action. This action would (1) minimize the cyclic flow of water in and out of the lower embayment, (2) retain existing sediments within the embayment, (3) prevent contaminated sediments from being transported from the WOCE to off-site surface waters, (4) retain water in the embayment during winter months to keep contaminated sediments submerged, and (5) reduce fish movement into and out of the contaminated area. These benefits would outweigh the potential minimal impacts to the historically disturbed WOCE Embayment system. The location of the proposed action and retention structure is shown in Figure 1.

The Floodplain/Wetland Assessment also shows that there would be minimal impacts with respect to hydrologic effects, backwater effects, floodplain inundation of land, property or individuals, and disturbance of wetland. The embayment is a significantly disturbed riverine wetland system and does not constitute a unique area with regard to size, species diversity, economic/social value, or occurrence of endangered/threatened species.

BILLING CODE 6450-01-M

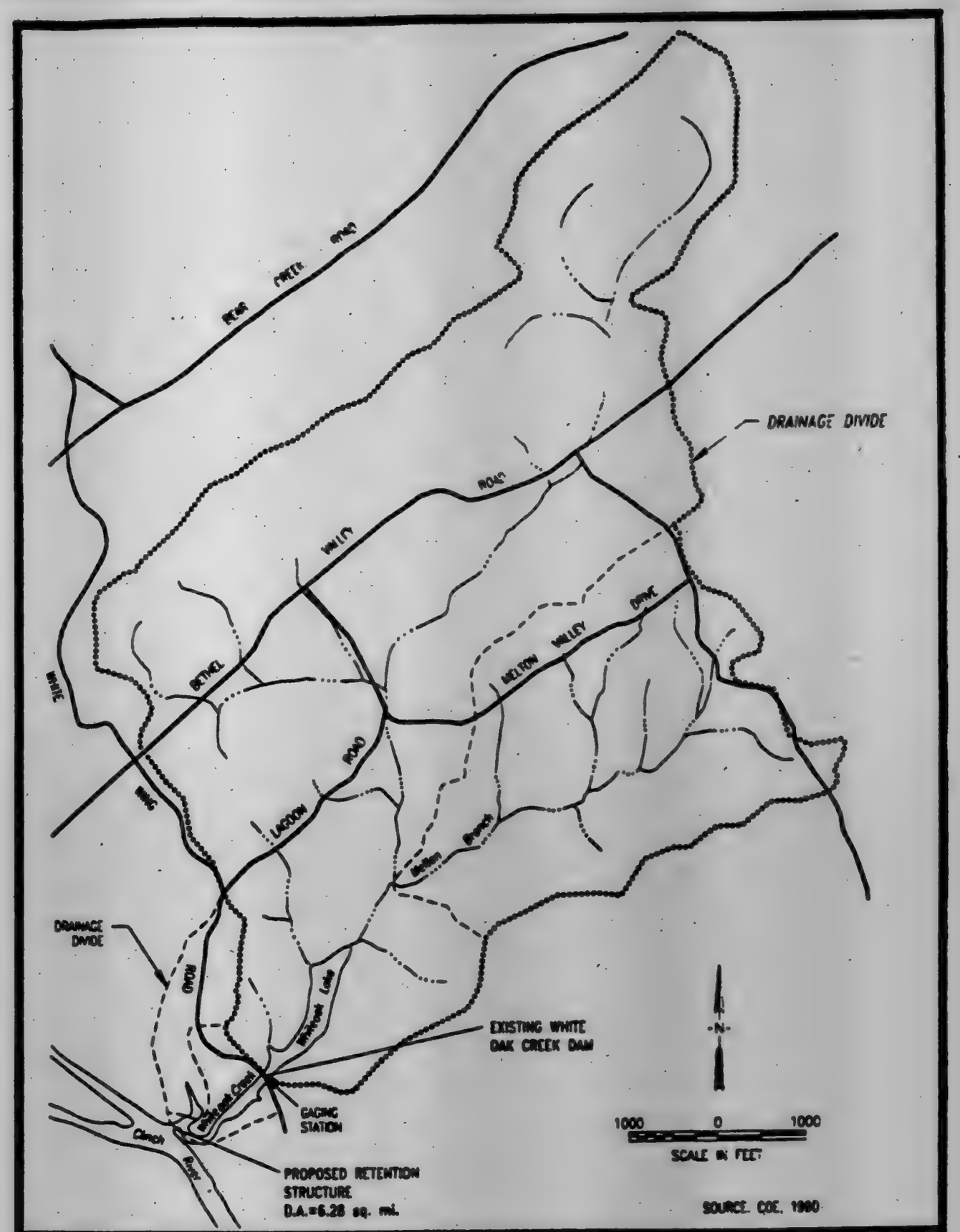

CDM FEDERAL PROGRAMS CORPORATION DRAINAGE BASIN OF WHITE OAK CREEK	FIGURE NO.
WHITE OAK CREEK EMBAYMENT OAK RIDGE, TENNESSEE	1

BILLING CODE 6450-01-C

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The area immediately adjacent to the proposed construction site has been previously disturbed by a number of past program activities that involved road construction, brush removal, and motor vehicle encroachment.

Specific proposed construction activities that are related to the floodplain/wetland area include the following:

1. Site preparation that would stabilize existing roads to transport materials and to enable safe access of cranes to close proximity of the coffer-cell site during construction. These activities would be located outside the floodplain/wetland area.

2. Installation of coffer-cell sheet piles on the floodplain, using long boom cranes and a jet grouting process.

A coffer-cell design for the sediment retention structure is preferred for its ability to be constructed with minimal disturbance of contaminated sediment and for its maximal strength and stability. The upper portion of the coffer-cell structure would be composed of a gabion layer that would be permeable to water and wuld reduce the velocity of the water flowing into and from the WOCE at summer-pool water levels. The structure would not increase the summer-pool water level in the embayment. The structure would not cause enlargement of the embayment, inundation of adjacent terrestrial areas, or expansion of the contaminated area on-site. During normal winter-pool water levels, additional water would be retained in the WOCE, and the contaminated sediments would remain continuously submerged thereby reducing external exposure risk. Therefore, the construction of this structure would have no significant environmental impact and no adverse impact on the White Oak Creek floodplain and wetland.

Potential impacts during removal action would be mitigated by the use of the following measures:

1. A jet grouting process would be employed for installing the coffer-cell structure in order to minimize, immobilize, and fix contaminated sediments which would otherwise be removed as a hazardous waste and retained in an approved storage facility.

2. Any wastes generated during the construction phase would be handled as a potentially hazardous material pending verification and appropriate disposal.

3. All necessary site preparation activities would be conducted outside the floodplain/wetland area.

4. The long-boom cranes utitlized for the installation of the coffer-cell structure would not be allowed to operate on the floodplain/wetland areas. They would only be operated from stabilized roads from outside the floodplain/wetland areas.

5 Sediment booms would be installed during construction to contain any potential contaminant/sediment releases downstream of the coffer-cell structure.

6. A monitoring program would be implemented to collect surface water samples downstream of sediment booms during the construction. The samples would be analyzed for total suspended solids and cesium-137.

This removal action has been designed to conform to applicable Federal and State regulations. Since this removal action will take place entirely on-site, no permits are required in accordance with Section 121(e) of CERCLA, as amended. Due to the EPA's determination that this action is time critical, DOE will waive the 15-day no-action period following publication of this notice, pursuant to 10 CFR 1022.18(c). This is a time critical action, since it must be immediately implemented to reduce or eliminate the continuing significant offsite releases of contaminants, thereby reducing the risk to the public and the environment.

Single copies of the Floodplain/Wetland Assessment are available from: Mr. Robert C. Sleeman, Director, Environmental Restoration Division (EW-91), U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831-8541.

FOR FURTHER INFORMATION, CONTACT: Mr. James J. Fiore, Acting Director, Division of Eastern Area Programs, Office of Environmental Restoration, EM-42, Trevion II, U.S. Department of Energy, Washington, DC 20585-0002, Phone (301) 353-8141.

Issued in Washington, DC, this 3d day of May, 1991.

Paul D. Grimm,

Deputy Director, Office of Environmental Restoration and Waste Management.

[FR Doc. 91-10906 Filed 5-3-91; 12:58 pm]

BILLING CODE 6450-01

Office of the Deputy Secretary

U.S. Alternative Fuels Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: United States Alternative Fuels Council.

Date and Time: Friday, May 17, 1991, 9:30 a.m.-4:00 p.m.

Location: 2168 Rayburn House Office Building, The Gold Room, Independence Avenue and South Capitol Steet, SW., Washington, DC.

Contact: Mark Bower, Office of Policy, Planning and Analysis, U.S. Department of Energy, Mail Stop AC-26, Washington, DC 20585, Phone: (202) 586-3891.

Purpose of the Council: To provide advice to the Interagency Committee on Alternative Motor Fuels to help:

1. "* * * coordinate Federal agency efforts to develop and implement a national alternative motor fuels policy."

2. "* * * ensure the development of a long-term plan for the commercialization of alcohols, natural gas, and other potential alternative motor fuels."

3. "* * * ensure communication among representatives of all Federal agencies that are involved in alternative motor fuels projects or that have an interest in such projects."

4. "* * * provide for the exchange of information among persons working with, or interested in working with, the commercialization of alternative motor fuels."

U.S. Alternative Fuels Council, Agenda Outline, May 17, 1991

9:30 a.m.-11 a.m.

Analytic Activities to be Sponsored by the U.S. Alternative Fuels Council. Chair: Robert W. Hahn.

11 a.m.-12 p.m.

Discussion on the National Energy Strategy. Chair: Charles R. Imbrecht.

—Carmen Difiglio, U.S. Department of Energy.

12 p.m.-1 p.m.

Alternative Fuels Policy Session—Part I. Chair: Robert W. Hahn.

1 p.m.-2 p.m.

Lunch.

2 p.m.-3 p.m.

Alternative Fuels Policy Session—Part II.

3 p.m.-4 p.m.

Discussion of Future Meetings and Agendas and Public Comment Period.

4 p.m.

Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Council either before or after the meeting. Members of the Public who wish to make oral statements pertaining to the agenda items should contact Mark Bower at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairpersons of the Council are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, room 1E190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC between 9 a.m. and 4 p.m. Monday through Friday, except Federal Holidays

Issued at Washington, DC, on May 2, 1991.

Howrd H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 91-10619 Filed 5-6-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[ERA Docket No. 89-01-NG]

Project Orange Associates, L.P.; Order Amending a Long-Term Authorization to Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order amending a Long-Term Authorization to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order amending the authorization of Project Orange Associates, L.P. (Project Orange) to import up to 120 Bcf of natural gas from Canada over a term of 20 years. The gas would be used to fuel a new cogeneration facility to be built in Syracuse, New York. The amended authorization will permit Project Orange to import natural gas from Noranda, Inc., under a gas sale and purchase agreement which supersedes and cancels their previous contract. Other than an increase in the price to be paid for the gas because of delays in finalizing the project, there is no change in the existing import authorization.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 30, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-10620 Filed 5-6-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER90-547-000, et al.]

Wisconsin Electric Power Co., et al.; Electric rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Company

[Docket No. ER90-547-000]

April 26, 1991.

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on April 18, 1991, tendered for filing revised rates and additional cost support information concerning its original submittal in Docket No. ER90-547-000.

Wisconsin Electric respectfully requests waiver of the Commission's notice requirements to permit an effective date of November 1, 1991, which is the commencement date specified in the executed agreements which are the subject of the filing. Wisconsin Electric is authorized to state that the Wisconsin Public Power Incorporated SYSTEM (WPPI) joints the requested effective date.

Copies of the filing have been served on WPPI, and the Public Service Commission of Wisconsin.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER90-567-001]

April 26, 1991.

Take notice that on April 22, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to the January 15, 1991 compliance filing (Interconnection Agreement (IA) between Sacramento Municipal Utility District (SMUD) and PG&E). This amendment revises the price for coordination power services, basing both the energy and demand components on PG&E's system average costs.

The amendment was filed in compliance with a directive in the Commission's March 26, 1991 letter order.

Copies of the filing were served upon the California Public Utilities Commission and all parties in this docket.

Comment date: May 10, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Morgantown Energy Associates

[Docket No. QF89-25-001]

April 28, 1991.

On April 22, 1991, Morgantown Energy Associates of 555 Beechhurst Avenue, Morgantown, West Virginia 26505 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located adjacent to the campus of West Virginia University in Morgantown, West Virginia. The facility will consist of two circulating fluidized bed boilers and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used for space heating and cooling, sterilization, and cooking at the West Virginia University campus. The primary energy source of the facility will be bituminous waste coal. The installation began in October of 1989 and commercial operation is scheduled to commence on March 1, 1992.

The original certification was issued on December 27, 1988, 45 FERC 62,263. The instant recertification is requested due to a change in the size of the boilers and a reduction in the net electric power production capacity of the facility from 58 MW to 52.8 MW.

Applicant is a West Virginia general partnership consisting of three general partners: MidAtlantic Energy Co. (MidAtlantic), Hickory Power Corporation (HPC), a wholly-owned subsidiary of Bechtel Enterprises, Inc. (BEI), and Dominion Cogen WV, Inc. which is a wholly-owned subsidiary of Dominion Energy, Inc. (DEI). MidAtlantic and HPC are not electric utilities, electric utility holding companies or any combination thereof. DEI is a wholly-owned subsidiary of Dominion Resources, Inc. which is an electric utility holding company. Each partner's equity investment, share in partnership profits, losses, cash distribution and tax benefits will be in the following proportion: DEI (50%), MidAtlantic (35%) and BEI (15%).

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

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4. Central Vermont Public Service Corporation

[Docket No. ER91-369-000]

April 29, 1991.

Take notice that on April 22, 1991, Central Vermont Public Service Corporation (CVPS) tendered for filing a Notice of Termination of FERC Rate Schedules 140 and 142.

CVPS states that the effective date of termination is April 30, 1991.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corporation

[Docket No. ER91-368-000]

April 29, 1991.

Take notice that on April 22, 1991, Central Vermont Public Service Corporation (CVPS) tendered for filing a Notice of Termination of FERC Rate Schedules 141, 143 and 144.

CVPS states that the effective date of termination is April 30, 1991.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Missouri Public Service, a Division of UtiliCorp United, Inc.

[Docket No. ER91-208-000]

April 29, 1991.

Take notice that on April 18, 1991, Missouri Public Service, a division of UtiliCorp United Inc. (MPS) tendered for filing an amendment to its January 6, 1991 change in its FERC Electric Service Tariff for wholesale firm power service to the City of Odessa located in the state of Missouri. In response to a request from FERC staff, MPS' amendment supplements its January 6, 1991 filing by providing replacement Service Schedules B, C, and D containing caps for the purchased energy for resale adders in those schedules, together with supporting documentation. Relying on the fact that this amendment merely provides caps to the adders contained therein, MPS is also requesting a waiver of the Commission's Regulations in order to permit the contract to become effective as of the date of the original filing.

Copies of this filing were served upon the City of Odessa whose contract would be affected thereby and upon the Public Service Commission of Missouri.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER91-201-001]

April 29, 1991.

Take notice that on April 18, 1991, Southern California Edison Company tendered for filing its refund report pursuant to the Commission's order issued February 14, 1991 in the above referenced docket.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp Electric Operations

Docket No. ER91-272-000

April 29, 1991.

Take notice that PacifiCorp Electric Operations (PacifiCorp), on April 17, 1991, tendered for filing an amended filing to Docket No. ER-91-272-000 in accordance with 18 CFR part 35 of the Commission's Rules and Regulations. The amended filing includes Amendment No. 1 dated April 16, 1991 to the Non-firm Transmission Service Agreement (Agreement) between PacifiCorp Electric Operations (PacifiCorp) and Idaho Power Company (Idaho Power) dated January 18, 1991, a Non-firm Transmission Service Agreement between PacifiCorp and Idaho Power dated April 16, 1991, under PacifiCorp's FERC Electric Tariff, Original Volume No. 5 (Tariff), Service Schedule TS-5 and Fourth Revised Sheet No. 3.0 superseding Third Revised Sheet No. 3.0, Index of Utilities Executed Service Agreements under the Tariff.

PacifiCorp requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of January 18, 1991 be assigned to the Agreement, this date being consistent with the effective date shown to the Agreement.

Copies of this filing were supplied to Idaho Power Company, the Public Utility Commission of Oregon, the Utah Public Service Commission and the Idaho Public Utilities Commission.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. West Texas Utilities Company

[Docket No. EC91-11-000]

April 29, 1991.

Take notice that on April 18, 1991, West Texas Utilities Company (WTU) tendered for filing an application pursuant to section 203 of the Federal Power Act and Part 33 of the Commission's regulations, seeking an order authorizing the sale by WTU to Western Farmers Electric Cooperative (WFEC) of WTU's North Vernon Switching Station and related facilities. WTU states that, with the intergration of Vernon into WTU's South System, WTU no longer has a need for the North Vernon Switching Station. WFEC has an immediate need for the Switching Station to provide more reliable service to its customers.

Comment date: May 17, 1991 in accordance with Standard Paragraph E at the end of this notice.

10. Washington Water Power Company

[Docket No. ER91-389-000]

April 29, 1991.

Take notice that on April 18, 1991 the Washington Water Power Company (WWP), tendered for filing a Firm Capacity and Energy Agreement between WWP and Sierra Pacific Power Company. WWP requests that the Commission (a) accept the agreement for filing, effective as of December 1, 1990, and (b) grant a waiver of notice pursuant to 18 CFR 35.11, to allow the filing of the Agreement less than 60 days prior to the date on which service under the Agreement is to commence.

A copy of the filing was served upon Sierra Pacific Power Company.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of New Hampshire

[Docket No. FA90-43-000]

April 29, 1991.

Take notice that on April 22, 1991, Public Service Company of New Hampshire tendered for filing its refund report pursuant to the Commission's Letter Order dated March 5, 1991 in the above referenced docket.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. Washington Water Power Company

[Docket No. ER91-386-000]

April 29, 1991.

Take notice that on April 18, 1991, the Washington Water Power Company (WWP) tendered for filing a Firm and Non-Firm Energy Sale Agreement between WWP and Los Angeles Department of Water Power Company. WWP requests that the Commission (a) accept the Agreement for filing, effective as of February 1, 1991, and (b) grant a waiver of notice pursuant to 18 CFR 35.11, to allow the fining of the Agreement less than 60 days prior to the date on which service under the Agreement is to commence.

A copy of the filing was served upon Los Angeles Department of Water & Power.

Comment date: May 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. TECO Power Services Corporation

[Docket No. ER91-372-000]

April 29, 1991.

Take notice that on April 5, 1991, Teco Power Services Corporation (TECO) tendered for filing a report stating that the transfer from TECO to Hardee Power Partners Limited of three power sale agreements had been consummated. TECO states that this report is being submitted pursuant to a Commisson order issued on March 13, 1991 in Docket No. EC91-3-000. This docket has been redesignated as Docket No. ER91-372-000.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of Colorado

[Docket No. ER91-383-000]

April 29, 1991.

Take notice that on April 17, 1991, Public Service Company of Colorado tendered for filing an electric tariff for capacity to serve Tri-State Generation and Transmission Association, Inc.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

15. Central Vermont Public Service Corporation

[Docket No. ER91-112-000]

April 29, 1991.

Take notice that Central Vermont Public Service Corporation (CVPS) on April 23, 1991, tendered for filing supplemental financial information and two amendments to the contract that was filed in the above docket. This first amendment increases the amount of capacity sold in April 1991. The second amendment extends contract through April 30, 1992 and provides for Vermont Marble to purchase between 1000 kw and 8000 kw of Vermont Yankee capacity each month on thirty days notice at prices ranging from 75% to 100% of the fully allocated cost of capacity, plus 100% of all energy costs.

CVPS requests the Commission to waive its notice of filing requirements to permit the original contract to become effective as of May 1, 1990 and the two amendments to become effective as of April 1, 1991 and May 1, 1991, respectively.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10692 Filed 5-6-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PL91-1-000]

Public Conference and Request for Comments on Electricity Issues; Granting in Part and Denying in Part Extension of Time

April 30, 1991.

On April 24, 1991 and April 25, 1991, the Indiana Municipal Power Agency (IMPA) and the Organizations [1] (collectively Participants) filed respective motions for an extension of time for the filing of written comments and to extend the date of the Public Conference to be held in response to the Notice of Inquiry issued April 12, 1991, in the above-docketed proceeding (56 FR 15875, April 18, 1991). In their motions, Participants state that due to the complex nature and scope of the Notice of Inquiry, additional time is requested to analyze and prepare comments. The motions also state that additional time will allow for increased coordination of comments within the various groups of representatives of the electric utility industry, industrial consumers, and cogenerators and independent power producers.

Upon consideration, notice is hereby given that an extension of time for the filing or written comments is granted to and including June 10, 1991. Requests to participate, which must be filed separately from comments, shall be filed on or before June 10, 1991. The request to extend the date of the conference is denied. The conference shall be held on June 18, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10694 Filed 5-6-91; 8:45 am]

BILLING CODE 6717-01-M

[1] Edison Electric Institute, American Public Power Association, National Rural Electric Cooperative Institute, Cogeneration and Independent Power Coalition of America, Electricity Consumers Resource Council, and the IPP Working Group.

[Docket No. CP91-1925-000]

Southwestern Glass Company, Inc. v. Arkla Energy Resources, a division of Arkla, Inc.; Complaint

April 29, 1991.

Take notice that on January 28, 1991, Southwestern Glass Company, Inc. (Southwestern), P.O. Box 10205, Fort Smith, Arkansas 72901, filed a timely Protest and Motion for Leave to Intervene in Arkla Energy Resources, a division of Arkla, Inc.'s (Arkla) application in Docket No. CP91-610-000, to construct and/or operate nine sales taps under its part 157 blanket certificate and pursuant to §§ 157.205, 157.211, and 157.212 of the Commission's Regulations. By order issued on April 29, 1991, in Docket No. CP91-610-000, the Commission authorized Arkla to proceed under its blanket certificate to construct and operate its proposed facilities and established a separate complaint proceeding to consider Southwestern's allegations. This notice establishes that separate complaint proceeding and contains relevant information, all as more fully set forth in Southwestern's January 28, 1991, intervention which is on file with the Commission and open to public inspection.

Southwestern contends that for over four years it has actively, but unsuccessfully, attempted to obtain interstate transportation of natural gas on Arkla's system. Southwestern alleges that Arkla has repeatedly rebuffed Southwestern's requests for a hookup to permit open access transportation of natural gas even though Southwestern has lined up the necessary supplies and has repeatedly offered to bear all the costs of constructing the line and interconnection facilities. Southwestern asserts that Arkla refuses to provide such a hookup, notwithstanding (a) conditions placed on its open access certificate, (b) its general obligations

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under the Natural Gas Act, and (c) Arkla's willingness to provide hookups for its sister division, Arkansas Louisiana Gas Company, a division of Arkla (ALG).

Southwestern contends that it has requested interstate transportation service and a tap from Arkla's interstate pipeline division rather than either direct sales from Arkla or local distribution service from ALG. It is alleged, that for whatever reason, Arkla refuses to serve Southwestern through the requested tap even though (a) Arkla has numerous existing direct industrial customers and (b) Arkla is willing to provide taps to serve new users at the request of its affiliate ALG. Southwestern provides several instances of Arkla's refusal to transport gas to a delivery point for Southwestern.

Southwestern requests that the Commission eliminate discrimination under Arkla's blanket transportation and construction certificates by ordering Arkla to provide the necessary tap and firm transportation services requested by Southwestern. Southwestern contends that unless the Commission orders Arkla to cure discrimination by constructing a tap to serve Southwestern, Arkla would continue to discriminate against Southwestern, while improperly favoring its affiliate, ALG, and users behind ALG in the construction of taps.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before May 17, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Answers to the complaint shall also be due on or before May 17, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10666 Filed 5-6-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3954-9]

Revision of Indiana's National Pollutant Discharge Elimination System (NPDES) Program to Issue General Permits

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of the National Pollutant Discharge Elimination System General Permits Program of the State of Indiana.

SUMMARY: On April 2, 1991, the Regional Administrator for the Environmental Protection Agency (EPA), Region V approved the State of Indiana's National Pollutant Discharge Elimination System (NPDES) General Permits Program. This action authorizes the State of Indiana to issue general permits in lieu of individual NPDES permits in appropriate cases.

FOR FURTHER INFORMATION CONTACT: Joan M. Karnauskas, Chief, Permits Section, U.S. EPA, Region V, 230 South Dearborn Street, Chicago Illinois 60604, (312) 353-2105.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations or operating conditions, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits.

Indiana was authorized to administer the NPDES program in January 1975. Their program, as previously approved, did not include provisions for the issuance of general permits. There are several categories which could appropriately be regulated by general permits. For these reasons, the IDEM requested a revision of their NPDES program to provide for issuance of general permits. The discharges intended to be covered by general permits. The discharges intended to be covered by general permits include: Non-contact cooling water discharges of 1 million gallons per day or less, storm water discharges, coal mine and terminal discharges, stone/sand/gravel quarry discharges, pipeline hydrostatic test water discharges, discharges from potable water treatment plants, petroleum terminal/tank farm discharges, groundwater remediation project discharges, returned supernatant from dredging operations, and semi-public and other similar sanitary treatment plants.

Each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of Indiana submitted in support of its request, copies of the relevant statutes and regulations. The State has also submitted a statement by the Attorney General certifying, with appropriate citations to the statutes and regulations, that the State has adequate legal authority to administer the general permits program as required by 40 CFR 123.23(c). In addition, the State submitted a program description supplementing the original application for NPDES program authority to administer the general permits program, including the authority to perform each of the activities set forth in 40 CFR 122.28.

Based on its review of Indiana's legal authority, U.S. EPA determined that no statutory or regulatory changes were necessary for the State to administer a general permits program. This change was thus determined to be a non-substantial program modification. Further, based upon Indiana's program description and upon its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program. As a result, U.S. EPA has approved Indiana's request for General Permits Program delegation.

III. Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA will provide Federal Register notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's Federal Register notice is to announce the approval of Indiana's authority to issue general permits.

STATE NPDES PROGRAM STATUS

[2/27/91]

	Approved state NPDES permit program	Approved to regulate federal facilities	State approved state pretreatment program	Approved general permit program
Alabama	10/19/79	10/19/79	10/19/79	
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75			03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	
Delaware	04/01/74			
Georgia	06/26/74	12/06/80	03/12/81	01/28/91
Hawaii	11/26/74	06/01/79	06/12/83	
Illinois	10/23/77	09/20/79		01/04/84
Indiana	01/01/75	12/09/78		/—/91
Iowa	06/10/78	06/10/78	06/03/81	
Kansas	06/26/74	06/26/85		
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	
Michigan	10/17/73	12/09/78	06/07/83	
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81		04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	06/31/78		
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	6/13/80		
North Carolina	10/19/75	09/26/84	06/14/82	
North Dakota	06/13/75	01/22/90		01/22/90
Ohio	03/11/74	01/28/83	07/27/83	
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78		
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	
Tennessee	12/28/77	09/30/86	06/10/83	
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74		03/16/82	
Virgin Islands	06/30/76			
Virginia	03/31/75	02/09/82	04/14/89	
Washington	011/4/73		09/3/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81		
Totals	39	34	27	19

Number of Complete NPDES programs (Federal Facilities, Pretreatment, General Permits) = 13

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State General Permits program will not have a significant impact on a substantial number of small entities. Approval of the Indiana NPDES State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Indiana NPDES State General Permits Program merely provides a simplified administrative process.

Dated: April 2, 1991.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 91-10767 Filed 5-6-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 30, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0420.

Title: Amendment of part 22 of the Commission's Rules to Revise Certain Filing Procedures for Mobile Services Division Applications.

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 16,110 responses; 2 hours average burden per response; 32,220 hours total annual burden.

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Needs and Uses: Emergency OMB clearance is sought for the requirement that all non-cellular applications, amendments, correspondence, pleadings, and forms, including attachments, and exhibits of five pages or more to be submitted in paper and microfiche formats. The application forms subject to the microfiche rule are: FCC 489 (3060-0318), FCC 490 (3060-0319), FCC 401 (3060-0046), and FCC 405 (3060-0093). All non-cellular and non-initial cellular applications and all amendments must have certain information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche. The information is used by FCC staff in carrying out its duties as set forth in sections 308 and 309 of the Communications Act. The microfiche requirement will facilitate access to information filed with the Commission, enhance service to the public and allow the FCC to make more efficient use of its resources.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-10627 Filed 5-6-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Nordana/d'Amico Space Charter Agreement; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, N.W., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232-011329.

Title: Nordana/d'Amico Space Charter Agreement.

Parties:

Nordana Line AS

d'Amico Societa di Navigazione, S.p.A.

Synopsis: The proposed Agreement would permit Nordana to charter space to d'Amico in the trade between Livorno and Genoa, Italy, Barcelona and Valencia, Spain and San Juan, Puerto Rico. It would also permit the parties to consult and agree on sailing schedules, service frequencies, ports to be served and port rotations.

Dated: May 1, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-10695 Filed 5-6-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

May 1, 1991.

BACKGROUND: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collections of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before May 22, 1991.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

Proposal to approve under OMB delegated authority the extension, with revision, of the following reports:

1. *Report title:* Notice of Change in Bank Control.

Agency form number: FR 2061.

OMB Docket number: 7100-0134.

Frequency: On occasion.

Reporters: Persons proposing to acquire control of a bank holding company or state member bank.

Annual reporting hours: 7,725.

Estimated average hours per response: 51.5.

Number of respondents: 150.

Small businesses are not affected.

General description of report: This information collection is required by law (12 U.S.C. 1817(j)). Parts may be given confidential treatment at the applicant's request (5 U.S.C. 552(b)(4)).

This notification is mandatory under the Change in Bank Control Act, which seeks to maintain public confidence in the banking system by preventing anti-competitive or otherwise adverse combinations of banks. The form requests information regarding the factors that must be considered by the Board under the statute, including a description of the proposal, and financial and employment data concerning the acquiring party. The proposed revisions eliminate filing requirements for acquisitions of incremental shareholdings between 10 and 25 percent of a bank holding company or state member bank. Other changes are proposed to clarify information requests and to provide for uniform responses.

2. *Report title:* Annual Report of Foreign Banking Organizations; Foreign Banking Organization Confidential Report of Operations.

Agency form number: FR Y-7; FR 2068.

OMB Docket number: 7100-0125.

Frequency: Annual.

Reporters: Foreign banking organizations.

Annual reporting hours: 11,453.

Estimated average hours per response: 19.9.

Number of respondents: 575.

Small businesses are not affected.

General description of report: These information collection is mandatory (12 U.S.C. 1844(c), 3106, and 3108(a)) and is given confidential treatment (5 U.S.C. § 552(b)(8)).

These reports request financial and structural information on foreign banking organizations and their U.S. activities in order to assess their ability to serve as a source of strength to their U.S. operations and to determine compliance with the Bank Holding Company Act and International Banking Act. The reports are being proposed for extension with minor technical changes and instructional clarifications.

3. *Report title:* Criminal Referral Form.

Agency form number: FR 2230.

OMB Docket number: 7100-0212.

Frequency: On occasion.

Reporters: State member banks, bank holding companies and their nonbank subsidiaries, Edge Act and Agreement corporations, and U.S. branches and agencies of foreign banks.

Annual reporting hours: 2040.

Estimated average hours per response: 0.6 hours.

Number of respondents: 3400.

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a)(1), 625, and 1844(c)) and is given confidential treatment [5 U.S.C. 552(b)(7) and 552a(k)(2)].

This report has been jointly designed and used by the federal financial institutions supervisory agencies, the Department of Justice, and the F.B.I. It is also used by the U.S. Secret Service and the U.S. Department of Treasury. The purpose of the reporting form is to detect and track suspected criminal misconduct involving financial institutions and persons associated with them. The proposed revisions would create a uniform reporting form and instructions, this allowing the creation of a common database for use by all agencies.

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. *Report title:* Application to Issue Capital Notes.

Agency form number: FR 4015.

OMB Docket number: 7100-0140.

Frequency: On occasion.

Reporters: State member banks.

Annual reporting hours: 10.

Estimated average hours per response: 1.

Number of respondents: 10.

Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. 461(a) and 12 CFR 204.2(a)(1)(vii)(c) and is not given confidential treatment.

This letter form application must be filed by state member banks seeking approval from the Federal Reserve to issue a capital note and to include it in its capital structure.

2. *Report title:* Statement of Purpose for an Extension of Credit Secured by Margin Stock.

Agency form number: FR U-1.

OMB Docket number: 7100-0115.

Frequency: Recordkeeping requirement, on occasion.

Reporters: Domestic commercial banks.

Annual reporting hours: 88,065.

Estimated average hours per response: .0031 hours.

Number of respondents: 13,400.

Small businesses are affected.

General description of report: This information collection is mandatory [15 U.S.C. 78g, 78w] and is not given confidential treatment.

A purpose statement is required to be completed by a bank and its borrower whenever credit is secured directly or indirectly by any margin stock in an amount exceeding $100,000. The statement is not filed with the Federal Reserve, but is a recordkeeping form retained for a specified period by the lending bank. It is used to determine the purpose of the loan proceeds, to serve as an evidentiary tool to ascertain the intention of the parties involved, and to document the securities serving as collateral.

Board of Governors of the Federal Reserve System, May 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR. Doc. 91-10725 Filed 5-6-91; 8:45 am]

BILLING CODE 6210-01-M

Bluestem Financial Services, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 28, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bluestem Financial Services, Inc.*, Fairbury, Illinois; to engage *de novo* through its subsidiary, Bluestem Financial Corp., Fairbury, Illinois, in insurance agency activities pursuant to § 225.25(b)(8)(iii); tax planning activities pursuant to § 225.25(b)(21); and providing securities brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in Fairbury, Illinois.

Board of Governors of the Federal Reserve System, May 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10726 Filed 5-6-91; 8:45 am]

BILLING CODE 6210-01-F

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Commercial Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 28, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Commercial Bancorporation, Inc., Orlando, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial State Bank of Orlando, Orlando, Florida.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Mansfield Bancorp, Inc., Mansfield, Illinois; to become a bank holding company by acquiring at least 90 percent of the voting shares of Peoples State Bank of Mansfield, Mansfield, Illinois.

2. Readlyn Bancshares, Inc., St. Paul, Minnesota; to become a bank holding company by acquiring an additional 3.8 percent of the voting shares of Britt Bancshares, Inc., St. Paul, Minnesota, for a total of 18.12 percent, and thereby indirectly acquire First State Bank, Britt, Iowa.

3. Wisconsin Financial Bancorporation, Inc., Minneapolis, Minnesota; to become a bank holding company by acquiring 98.3 percent of the voting shares of The First National Bank and Trust Company of Baraboo, Baraboo, Wisconsin, and 90.79 percent of the voting shares of The Bank of Edgar, Edgar, Wisconsin.

Board of Governors of the Federal Reserve System, May 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10727 Filed 5-6-91; 8:45 am]

BILLING CODE 6210-01-F

First Virginia Banks, Inc.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 21, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Virginia Banks, Inc., Falls Church, Virginia; to acquire through its wholly-owned subsidiary, First Virginia Insurance Services, Inc., Farmville, Virginia, 100 percent of the stock of Harwood-Andrews, Inc., Farmville, Virginia, a company engaged in providing general insurance agency services pursuant to § 4(c)(8)(G) of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, May 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10728 Filed 5-6-91; 8:45 am]

BILLING CODE 6210-01-F

Charles A. and Carolyn C. Hurth, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 28, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Charles A. and Carolyn C. Hurth, St. Cloud, Florida; to acquire an additional 9.66 percent of the voting shares of Financial Holdings, Inc., Louisville, Colorado, for a total of 17.33 percent, and thereby indirectly acquire Boulder Valley National Bank, Boulder, Colorado, and Bank of Louisville, Louisville, Colorado.

2. Mary Elizabeth Thompson O'Connor; Kathleen Anne Thompson Brown; Byron Gregory Thompson, Jr.; Mark Collins Thompson; Paul Joseph Thompson; Timothy John Thompson; Patricia Marie Thompson; Brian Christopher Thompson; and Ann Therese Thompson, to each acquire 4 percent; Michael Scott Thompson to acquire 3.5 percent, and Michael Scott Thompson to acquire 0.5 percent; and George R. Haydon, Jr., Kansas City, Missouri, as co-trustee of the above mentioned trusts, to acquire 40 percent of the voting shares of Buchanan County Bancshares, Inc., St. Joseph, Missouri, and thereby indirectly acquire The Heritage Bank of St. Joseph, St. Joseph, Missouri.

Board of Governors of the Federal Reserve System, May 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10729 Filed 5-6-91; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 28, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; Norwest Financial Services, Inc., Des Moines, Iowa; and Norwest Financial Inc., Des Moines, Iowa; to acquire substantially all of the assets of Prime Rate Premium Finance Corporation, Inc., IFCO, Inc., and Agency Technologies, Inc. that are devoted to the insurance premium finance business, and thereby engage in making, acquiring, and servicing loans related to personal and commercial automobile premiums and other personal and commercial insurance lines pursuant to § 225.25(b)(1); and providing data software services to insurance agents and brokers relating to such loans pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10730 Filed 5-6-91; 8:45 am]

BILLING CODE 6210-01-F

Craig Reeves; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 28, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Craig Reeves, Clayton, New Mexico; to acquire an additional 16.99 percent for a total of 26.19 percent, and Viola C. Reeves, Clayton, New Mexico, to acquire an additional 3.22 percent for a total of 35.51 percent of the voting shares of Los Hacendados, Inc., Clayton, New Mexico, and thereby indirectly acquire First National Bank in Clayton, Clayton, New Mexico.

Board of Governors of the Federal Reserve System, May 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10731 Filed 5-6-91; 8:45 am]

BILLING CODE 6210-01-F

Seben S.A.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank

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indicated or the offices of the Board of Governors not later than May 28, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Saban S.A.*, Panama City, Panama; to acquire RNYC Holdings Ltd., George Town, The Cayman Islands.

In connection with this application, RNYC Holdings Limited has applied to become a bank holding company by acquiring Saban S.A.'s existing subsidiaries, Republic National Bank of New York, New York, New York, and The Manhattan Savings Bank, Brooklyn, New York. RNYC has also applied to acquire Republic Clearing Corp., New York, New York, and thereby engage in acting as a futures commission merchant for account of members of the RNYC Group and, with respect to foreign exchange, government securities, certificates of deposits, other money market instruments, and bullion contracts, for account of non-members of the RNYC Group pursuant to § 225.25(b)(18); Republic Factors Corp., New York, New York, and thereby engage in factoring, including old line maturity factoring of accounts receivable (purchase of accounts receivable) and lending against accounts receivable collateral pursuant to § 225.25(b)(1); Republic Information and Communications Services, Inc., New York, New York, and thereby engage in providing data processing, system, programming, communications, technical support and related services to RNYC Group members, and also providing equipment and technical support regarding such equipment to non-RNYC Group members for disaster recovery actions by them pursuant to § 225.25(b)(7); Republic New York Trust Company of Florida, National Association, North Miami, Florida, National Bank, and thereby engage in trust and other fiduciary services pursuant to § 225.25(b)(3); and Republic New York Mortgage Corp., Pompano Beach, Florida, and thereby engage in mortgage banking activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 1, 1991.

William W. Wiles,
Secretary of the Board.

[FR Doc. 91-10732 Filed 5-6-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

[MH-91-16 (Catalog of Federal Domestic Assistance 93.125)]

Child and Adolescent Service System Program (CASSP) Competing Continuation Grants

INSTITUTE: National Institute of Mental Health.

ACTION: Notice of request for applications.

INTRODUCTION: The National Institute of Mental Health (NIMH) reannounces the availability of support for competing continuation grants for those states with currently-funded CASSP grants. These grants will be made under the authority of section 520 of the Public Health Service (PHS) Act which authorizes funds for service system development for children and adolescents with serious mental and emotional disorders.

Purpose

These grants are for the purpose of allowing State- and community-level system development grantees who are currently receiving CASSP funding to renew their activities for up to 2 additional years (subject to exhaustion of statutory eligibility).

Each competing continuation application must include a clear specification of project goals and identification of anticipated outcomes. A methodology for evaluation which measures whether these goals have been met must be developed and described in detail. It could focus on outcomes that reflect changes, such as:

(1) Degree of interagency coordination, collaboration, and integration, (2) formal agreements between agencies to collaborate, as well as measures of the effectiveness of collaboration among agencies that serve individual children and their families, (3) access to services, (4) degree of family and minority group involvement in the system development, and (5) family satisfaction with the availability, accessibility, and/or appropriateness of services. It is anticipated that $1.2 million will be available for 8–9 grants.

Under the National Institute of Mental Health Public-Academic Liaison (PAL) Initiative, grantees are encouraged to use academic institutions to aid in the execution of these evaluation activities.

Eligibility

Eligibility under this RFA is limited to grantees with currently funded projects in order to provide them up to two years of additional support (subject to exhaustion of statutory eligibility) in order to secure service system improvements so that maximum benefits may be realized. The National Institute of Mental Health is allocating funds for Type 2, competing continuation grants under this announcement because previous evaluation studies have shown that five years of support are more likely to result in significant service system improvements than projects limited to three years.

New activities may be supported through a Program Announcement (PA-91-40) which will support research demonstration projects designed to test innovative ways of organizing, financing and delivering services to children and adolescents with or at risk for serious emotional or mental disorders. The announcement is available from the staff contact person: Diane L. Sondheimer, Chief, Research Demonstration Program, CFSB, DASR, NIMH, 5600 Fishers Lane, room 11C-05, Rockville, Maryland 20857.

Project Requirements[1]

All competing continuation projects must document the following:

- A relationship to State planning efforts for children and adolescents with severe emotional disturbance, under the State Planning Act, Public Law 99-660.
- Interaction and resource sharing between mental health and other child service systems, such as education, child welfare, juvenile justice, health, substance abuse, etc.
- Broad-based participation in decision-making at the system level (including such task as examining data, achieving consensus on problems and objectives, and developing a strategy) by such groups as health and human service agencies; paraprofessionals; professionals; and citizen, family, children, and racial/ethnic minority groups concerned with human services.
- Specific goals focusing on increasing the role of parents and the use of the family as a resource in both service planning and delivery.
- Assessment of the special needs of racial/ethnic minority children and youth and specific strategies for meeting these needs.
- Adequate budgeting and provision for obtaining State approval for travel related to the grant, including at least three out-of-State trips for the project director to attend national program meetings.
- Specification of the anticipated outcomes and a strategy to evaluate the outcomes of systems building efforts and to assess the degree to which these approaches have been successful in achieving their goals and as such are worthy of replication in other areas of a State or at the State and national levels. (Under the NIMH Public-Academic Liaison (PAL) Initiative, grantees are encouraged to use academic institutions to aid in the execution of these evaluation activities)
- Progress made since CASSP grant first awarded.

[1] The intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100, are applicable to this program. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application kit. The SPOC should send any State process recommendations to: Judith Katz-Leavy, CFSB, NIMH, 5600 Fishers Lane, rm. 11C-05, Rockville, MD 20857.

The due date for State process recommendations is 60 days after the deadline date for receipt of applications. The National Institute of Mental Health does not guarantee to accomodate or explain for State process recommendations that are received after the 60-day cut-off date.

Application Process

For Competing Continuation Grants, State agencies should use form PHS-5161 which is available from: Judith Katz-Leavy, Chief, Technical Assistance Program, Child and Family Support Branch, National Institute of Mental Health, 5600 Fishers Lane, room 11C-05, Rockville, Maryland 20857, (301) 443-1333.

The type of application should be typed in Item 8 on the face page of the PHS 5161 form on the blank line provided as: Competing Continuation. The name of the Federal Agency (Item 9) is: "National Institute of Mental Health—RFA MH-91-16; and the title of the program, "Child and Adolescent Service System Program (CASSP)" should be typed in Item 10. The specific title of your project should be provided in Item II (limit to 56 characters, including spaces).

The original and two (2) copies of the application must be received (not postmarked) by the close of business June 24, 1991 at the latest; applications received after June 24, 1991 will be returned without review. Applications should be sent to the Division of Research Grants, National Institutes of Health, room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892.[2]

Important—The mailing envelope (including that provided by an express carrier) must be clearly marked, "RFA MH-91-16."

To facilitate the timely review of your application, it is also suggested that one additional copy be sent directly to: Division of Extramural Affairs, National Institute of Mental Health, room 9C-15, 5600 Fishers Lane, Rockville, Maryland 20857.

The mailing envelope for this application should also be clearly marked "RFA MH-91-16."

Application Characteristics

Applications must be complete and contain all information needed for initial and Advisory Council reviews. No addenda will be accepted unless specifically requested by the executive secretary of the review committee. No site visits will be made.

The applicant must include a project abstract which should not exceed ½ single-spaced, typewritten page.

The narrative section must clearly describe the context for the proposed project, prior accomplishments of the State and/or local entity related to the goals of this request for applications, problems in current services delivery to the target population, rationale for the selection of the proposed project, methods by which the project will be implemented and evaluated, and expected results.

The narrative should be written clearly, yet briefly (limited to 20 pages) so that objective, outside reviewers unfamiliar with prior activities of the applicant will have the information necessary to adequately understand the project. Appendices may be attached but should not be used to merely extend the narrative. Applications exceeding page limits will be returned without review. It is important that the relationship between the proposed project and ongoing State and/or local activities be clearly explained. It is also important that the activities that are specific to the proposed project be clearly identified.

To assure that sufficient information is included for technical merit review of the application, the narrative section should include:

- A section describing the organizational background and need for assistance addressing the following areas:
  - —Discussion of the locus of responsibility for the target population within the State government and/or local government.
  - —Organizational structure of the applying entity.
  - —Summary of pertinent mental health or other legislation, regulations, and policies pertinent to the target population and proposed project.
  - —Clarification of organizational relationships between the State/local mental health agency and other State/local level health and human service agencies as these relate to the proposed project.
  - —Preliminary analysis of the target population, including the operational definition to be used for the proposed project, a summary of available data on the population (size, location, socioeconomic characteristics, racial/ethnic minority composition, etc.), a discussion of available services for the population, and a discussion of gaps and problems in current services.
- A section describing the proposed philosophy of systems change on which the activities of the grant are to be based.
- A detailed description of the statewide strategy, achievements of the project to date, and a summary of recent and ongoing CASSP funded activities.
- Approach for implementing project:
  - —A description of and rationale for the proposed focus for the project activities.
  - —Identification of the goals and specific objectives for the proposed project, and discussion of how these relate to the goals stated in this request for applications.
  - —A plan of action for all the years of the entire project bring requested, which discusses how each activity related to the project will be approached, and provides a rationale for the proposed implementation plan, justifying it in relation to the past accomplishments, needs, and problems as outlined in the narrative.
  - —A management plan that includes action steps, timetable, key personnel, and specific major milestones.
  - —A detailed budget narrative that relates budget line items to specific projects within the proposal (All budget items should not include indirect costs, which are negotiated separately).
  - —The budget for all years covered by the application, reflected in Item 15 of the face page of the application.
  - —Projected budgets for each year supplied in Item E of the "Budget Information" section of the application form.

[2] If overnight mail or courier servcie is used, the zip code is 20816.

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—A discussion of project staffing for all key personnel and consultants, whether paid by the project or committed to it, including their titles, major functions, and to whom they report; organization charts for the project; documentation that staff loaned to the project from other units or agencies will be available for the amount of time required; resumes and position descriptions for all key professional staff to be paid by the grant or to have major leadership roles in the project. (Where a specific individual has not yet been identified, selection criteria for the position should be indicated.)

—A discussion of the extent to which proposed staff reflects racial/ethnic, majority/minority representation proportional to the State/community population, and what steps will be taken toward achieving proportional representation.

—A section discussing the methodological approach to evaluation of the system change at State-and/or community-levels proposed in the grant. (The applicant should present quantifiable goals and a methodology to measure achievement of those goals, or the process to date of developing potential methodology and the plan to finalize the evaluation during the grant period.)

—A section discussing the anticipated impact of the project on addressing the problems and gaps in providing appropriate services for the target population. Applicants should identify specific anticipated outcomes for each year. Local services demonstration projects should state the number and characteristics of individuals to be assisted through the project.

Client Safeguards in Competing Renewal Projects

The applicant must satisfactorily address issues regarding (1) protection of confidentiality for clients (and their families); (2) provisions for informing potential clients (and their families) of the nature of the demonstration project and (3) obtaining informed voluntary consent for their participation.

Terms and Conditions of Support

Period of Support

Applicants may request a maximum project period extension of 2 years of support for competing continuations of State-and community-level CASSP grants, with the total support of the project not to exceed 5 years (subject to exhaustion of statutory eligibility).

Allowable Costs

Grant funds may be used for expenses clearly related and necessary to carry out the described project, including direct costs and allowable indirect costs. However, in accordance with the specific provisions of section 520 of the PHS Act, no more than 10 percent of the grant may expend for administrative expenses.

Grant funds may be usd for the costs of planning, developing, and implementing activities to support attainment of the project objectives. Applicants are expected to submit a budget for each proposed project year requested. Grant funds are to be additive, not substitutive; that is, they are not to be used to replace existing resources. Costs of delivery of direct client services are not allowed under the provision of these grants, with the exception of community-level system development grants in which direct service may be supported, if that funding is demonstrated to be crucial to the development of the local system.

Allowable items of expenditure for which grant support may be requested include:

• Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities (Grant support for salaries and wages of staff who are engaged less than full time in the grant-supported activities must be commensurate with the effort under the grant.)

• Travel directly related to carrying out activities under the project.

• Supplies, communications, and rental of space directly related to project activities.

• Contracts to local government, not-for-profit agencies and organizations, public institutions, and consultants necessary for performance of activities under the approved project.

• Other such items necessary to support project activities, as approved by NIMH.

• Applicants must include the following assurance in their application, "not more than 10 percent of the grant will be expended for administrative expenses."

Grants must be administered in accordance with the PHS Grants Policy Statement (Rev. 10/90).

Federal regulations at Title 45 CFR part 92, "Uniform administrative Requirements for Grants and Cooperative Agreements to State and local Governments," are applicable to these awards.

Review Process

Applications will be reviewed by an initial review group (IRG) consisting primarily of non-Federal programmatic and technical experts. Notification of the IRG review recommendations will be sent to the applicant after the initial review. Applications will receive a second-level review by the National Advisory Mental Health Council whose review may be based on policy as well as technical merit considerations. Only applications recommended for approval by Council may be considered for funding.

Review Criteria

Each grant application is evaluated on its own merits against the review criteria listed below:

• Fulfillment of the project requirements for the particular type of application, as stated in the text of this announcement.

• Merit and clarity of the statement of need for project and quality of problem definition in the narrative.

• Clarity of the statement of a system change strategy with accompanying goals to be measured as evidence of outcome, and the feasibility of the plan to evaluate attainment of those goals.

• Evidence of the State's and/or local entity's readiness and commitment to improve community-based services for the target population, as documented by such factors as:

—Documentation of relevant State and/or local program development initiatives.

—Relevance of the stated statewide, system-building philosophy to national CASSP goals and the degree of the commitment of the State to that philosophy.

—Consistency of proposed activities with ongoing State comprehensive mental health planning and human resource development activities.

—Commitment of State mental health and/or other health and human service resources to activities that support the goals of the proposed project, as demonstrated by the level of interagency collaboration in the development of the application and commitment to the goals and objectives of the project.

• Feasibility of the proposed project and likelihood that it will significantly address program gaps and improve services and opportunities for the target population.

• Potential of the State-level plan and strategy for improving services for children and adolescents with, or at risk of, severe emotional distrubance.

• Quality of the projected role of families of children and adolescents with, or at risk of, severe emotional disturbance in the demonstration projects.

• Emphasis on the special needs of racial/ethnic minoriy families represented in the project.

• Capability and experience of project director, consultants, and other key staff proposed for the project and adequacy of staffing plan and evidence of efforts to recruit minority staff.

• Evidence of activities directed at developing continuing funding support for the project after the grant is terminated.

• Appropriateness of budget.

• Progress made since first CASSP award.

Receipt and Review Schedule

Receipt of applications	Initial review	Council review	Earliest start date
June 24, 1991	July	September	September 30, 1991.

Applications received after the receipt date above will be returned to the applicant without review.

Award Criteria

In the decision to fund approved applications, the following will be considered:

• Quality of proposed project as determined by the review process.

• Geographical distribution.

• Availability of funds.

• Rural distribution (15% of appropriated funds set aside for projects conducted in rural areas as specified in section 520A of the PHS Act).

FOR FURTHER INFORMATION: Judith Katz-Leavy, Chief, Technical Assistance Program, Child and Family Support Branch, Division of Applied and Service Research, National Institute of Mental Health, 5600 Fishers Lane, room 11C-05, Rockville, Maryland 20657, (301) 443-1333.

Richard Kopanda,

Deputy Associate Adminstrator for Management Alcohol, Drug Abuse, and Mental Health Adminstration.

[FR Doc. 91-10617 Filed 5-6-91; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

International Biotechnology Conference—"Biologics '91"

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) and the State of Maryland are cohosting and sponsoring an international biotechnology conference entitled "Biologics '91" This conference will address regulatory and scientific issues pertaining to manufacturing, preclinical and clinical assessment, and licensure of biological products, and it also will provide interaction between persons and organizations involved in the biotechnology field.

DATES: The conference will be held Monday, June 24, 1991, 8 a.m. to 5 p.m.; Tuesday, June 25, 1991, 8 a.m. to 5 p.m., and 7 p.m. to 9 p.m.; and Wednesday, June 26, 1991, 8 a.m. to 12 p.m. There will also be luncheon presentations on June 24 and 25, 1991, and a dinner presentation on June 24, 1991.

ADDRESSES: The conference will be held at the Hyatt Regency Hotel located at the Inner Harbor, 300 Light St., Baltimore, MD, 301-528-1234.

FOR FURTHER INFORMATION CONTACT: For registration and general information (including a complete agenda and hotel and travel information): Laura Kurie, International Biotechnology Conference—"Biologics '91," Social and Scientific Systems, 7101 Wisconsin Ave., suite 610, Bethesda, MD 20814-4805, 301-986-4870, 301-913-0351 (facsimile).For program information: Benjamin P. Lewis, Center for Biologics Evaluation and Research (HFB-3), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-443-8884, 301-443-8306 (facsimile).

SUPPLEMENTARY INFORMATION: This conference will address regulatory land scientific issues relevant to aspects of manufacturing, preclinical and clinical assessment, and licensure of biological products. The program is structured to provide an opportunity for interaction at both formal plenary sessions and informal "How-To" sessions among scientists, regulators, executives, administrators, and policymakers from academia, government, and industry involved in the biotechnology field.

Formal plenary sessions, scheduled for June 24, 25, and 26, 1991, will include such topics as: (1) Approaches to protein engineering; (2) the pharmacology of receptors and antagonists in therapeutic development; (3) science-based approach to preclinical assessment of safety; (4) advances in cellular therapy; (5) multiagent clinical trials with biological products; and (6) strategies for a Maryland bioprocessing facility.

Informal evening "How-To" panel sessions scheduled for June 25, 1991, 7 p.m. to 9 p.m., will include experts from FDA, the State of Maryland, the National Institutes of Health, industry, and others. Four concurrent panel sessions will provide an opportunity for informal discussion on topics including: (1) Investigational new drug (IND) issues—clinical hold, IND filing for novel therapies, issues of controlled clinical trial designs, early access issues; (2) licensing issues—creative manufacturing, problems in filing a product license application/establishment license application, orphan product regulations; (3) manufacturing issues—scale-up process changes, multiuse facilities; and (4) technology transfer and commercialization—cooperative research and development agreements (CRADA's), joint licensing, patents, and funding.

Special topics will be presented by luncheon and dinner speakers: "AIDS in the United States—1991" and "European Community Perspectives in Biotechnology."

Dated: May 2, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-10615 Filed 5-6-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicare and Medicaid Programs; Meeting of the Advisory Council on Social Security

AGENCY: Health Care Financing Administatration (HCFA), HHS.

ACTION: Notice of public hearing.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a hearing of the Advisory Council on Social Security.

DATES: The hearing will be open to the public on May 22, 1991 from 10 a.m. to 7 p.m.

ADDRESSES: Palo Duro Senior Center, 5221 Palo Duro NE., Albuquerque, New Mexico 87110.

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FOR FURTHER INFORMATION CONTACT: Arta Mahboubi, Advisory Council on Social Security, room 638 G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, 202-245-0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every four years. The Council examines issues affecting the Social Security retirement, disability, and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

• The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;

• Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds; and

• Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Philip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignagni, James R. Jones, Paul O'Neill, A. L. "Pete" Singleton, John J. Sweeney, and Don C. Wegmiller. The chairperson is Deborah Steelman.

The Council is to report to the Secretary and Congress in 1991.

II. Agenda

The Council will hear testimony on the interim report on Social Security and its relationship to the Federal budget; other aspects of the social security programs; and issues and options related to health care financing reforms; including long term care.

The agenda items are subject to change as priorities dictate.

[Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.733 Medicare-Hospital Insurance; 13.774 Medicare-Supplementary Medical Insurance; 13.802, Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivor's Insurance]

Ann D. LaBelle,

Executive Director, Advisory Council on Social Security.

[FR Doc. 91-10742 Filed 5-6-91; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1991:

Name: National Advisory Council on Health Professions Education.

Date and Time: May 23, 1991, 9 a.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on May 23 9 a.m. to 12:45 p.m.; closed on May 23 1:45 p.m. to adjournment.

Purpose: The Council advises the Secretary with respect to the administration of programs of financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The open portion of the meeting will cover welcome and opening remarks, report of the Director, Bureau of Health Professions; a presentation by the American Association of Colleges of Pharmacy on Pharmacy Education; a discussion of Funding Factors for Grants and Cooperative Agreements; approval of minutes from last meeting, and discussion of future agenda items. The meeting will be closed on May 23 at 1:45 p.m. for the review of applications for Health Education and Training Centers, Faculty Development in Family Medicine, and Graduate Training in Family Medicine. The closing is in accorance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Ms. Wilma J. Johnson, Executive Secretary, National Advisory Council on Health Professions Education, room 8C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-6880.

Agenda items are subject to change as priorities dictate.

Dated: May 2, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-10816 Filed 5-6-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

John E. Fogarty International Center for Advanced Study in the Health Sciences; Notice of Meeting of the Fogarty International Center Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the eighteenth meeting of the Fogarty International Center (FIC) Advisory Board, May 21, 1991, in the Lawton Chiles International House (Building 16, formerly Stone House), at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to 1:45 p.m. The morning agenda will include a report by the Director, FIC; reports on opportunities for research collaboration in Africa; a report on the new immigration law and its implications for NIH; and a presentation on "Perspectives From the White House Office of Science and Technology Policy."

The afternoon agenda will include a report on the Workshop on Drug Development, Biological Diversity, and Economic Growth.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public from 1:45 p.m. to adjournment for the review of International Research Fellowship and Senior International Fellowship applications, Scholars nominations, and proposals for Scholars' conferences and international studies.

Myra Halem, Committee Management Officer, Fogarty International Center, Building 31, room B2C32, National Institutes of Health, Bethesda, Maryland 20892 (301-496-1491), will provide a summary of the meeting and a roster of the committee members upon request.

Ms. Stephanie Bursenos, Acting Assistant Director for Planning and Evaluation, Fogarty International Center (Acting Executive Secretary), Building 31, Room B2C39, telephone 301-496-1415, will provide substantive program information.

Dated: April 24, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-10667 Filed 5-6-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Notice of Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging (NIA), on May 23-24, 1991. On May 23 the Council will meet in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 8:30 a.m. until 2 p.m. for a status report by the Director, National Institute on Aging; a report on the Epidemiology, Demography and Biometry Program; and for discussions of program policies and issues, recent legislation, and other items of interest.

It will again be open to the public on Friday, May 24, Conference Room 6, from 8:30 a.m. to adjournment for a report on the Neuroscience and Neuropsychology of Aging Program; and a report on the Task Force on Minority Aging. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C. and section 10(d) of Public Law 92-463, the meeting of the Council will be closed to the public on May 23 from 2:00 to recess for the review, discussion, and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, room 5C02, Bethesda, Maryland 20891, (301/496-9322), will provide a summary of the meeting and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: April 24, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-10668 Filed 5-6-91; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute; Meeting of the National Advisory Eye Council (NAEC)

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the NAEC on May 30 and 31, 1991, Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

The NAEC meeting will be open to the public from 8:30 a.m. until approximately 3 p.m. on Thursday, May 30, 1991. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open sessions will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting of the NAEC will be closed to the public from approximately 3 p.m. on Thursday, May 30 until adjournment on Friday, May 31 for the review, discussion, and evalaution of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, room 6A08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases; 13.868, Anterior Segment Diseases Research; and 13.871, Strabismus, Amblyopia and Visual Processing; National Institutes of Health.)

Dated: April 24, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-10669 Filed 5-6-91; 8:45 am]

BILLING CODE 4140-01-M

National Center for Research; Meeting of the National Advisory Research Resources Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR), at the National Institutes of Health.

This meeting will be open to the public, as indicated below, during which time there will be discussions on administrative matters such as previous meeting minutes; the report of the Director, NCRR; and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92-463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning indviduals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Date of meeting: June 5-7, 1991.

Place of meeting: National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: June 5, 4:45 p.m. until recess, Planning and Agenda Subcommittee, Building 12A, Room 4007. June 6, 9 a.m. until recess, Conference Room 10,. Building 31C. June 7, 8:30 a.m. until 10:30 a.m.

Closed: June 7, 10:30 a.m. until adjournment, Conference Room 10, Building 31C.

Mr. James J. Doherty, Information Office, NCRR, Westwood Building, Room 10A15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of meeting and a roster of the Council members upon request. Dr. Judith L. Vaitukaitis, Acting Deputy Director for Extramural Research Resources, NCRR, Building 12A, Room 4011, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389 Research Centers in Minority Institutions; 93.198, Biological Models and Material Resources, National Institutes of Health.)

Dated: April 24, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-10670 Filed 5-6-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Chemicals (16) Nominated for Toxicological Studies; Request for Comments

SUMMARY: On March 13, 1991, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review eleven chemicals nominated for in-depth toxicological studies, and five chemicals for chemical disposition studies, and to recommend

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the types of studies to be performed, if any. With this notice, the NTP solicits public comments on the nominated chemicals in order to encourage public participation in the chemical evaluation process and to assist the NTP in making decisions about whether to test these chemicals.

FOR FURTHER INFORMATION CONTACT: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–3511.

SUPPLEMENTARY INFORMATION: The NTP Chemical Evaluation Committee (CEC) is composed of representatives from the agencies participating in the NTP. As part of the chemical selection process of the National Toxicology Program, nominated chemicals which have been reviewed by the CEC are published in the **Federal Register** with request for comment. This is done to encourage active participation in the NTP chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response will be reviewed by NTP technical staff for use in the further evaluation of the nominated chemicals. The NTP chemical nomination and selection process is summarized in the **Federal Register**, April 1981 (46 FR 21828), and also in the NTP FY 1990 Annual Plan, pages 13–15.

On March 13, 1991, the CEC met to evaluate eleven chemicals nominated to the NTP for in-depth toxicological studies. The following table lists the chemicals, their Chemical Abstract Service (CAS) registry numbers, and the types of toxicological studies recommended by the CEC.

Chemical	CAS Registry No.	Committee recommendations
1. ((o-Carboxyphenyl)thio)ethylmercury sodium salt	54–64–8	No testing.
2. Hexamethyldisilazane	999–97–3	Carcinogenicity. Reproductive effects.
3. Isoeugenol	97–54–1	Chemical disposition. Carcinogenicity. Reproductive and developmental effects.
4. Sesamol	533–31–3	No testing.
5. 3,3',4,4'-Tetrachloroazobenzene	14047–09–7	Carcinogenicity.
6. 3,3',4,4'-Terachloroazoxybenzene	21232–47–3	Carcinogenicity.
7. Trimethylolpropane	15625–89–5	Chemical disposition. Carcinogenicity. Reproductive and developmental effects.
8. C.I. Acid Red 52	3520–42–1	Defer.
9. C.I. Basic Blue 3	33203–82–6	Defer.
10. C.I. Disperse Red 60	17418–58–5	Defer.
11. C.I. Vat Yellow 2	129–09–9	Defer.

Two of the eleven chemicals nominated for in-depth toxicological evaluation, ((o-carboxyphenyl)thio)ethylmercury sodium salt and isoeugenol, were previously tested in Salmonella by the NTP and were found to be nonmutagenic in this assay.

The CEC recommended that the four dyes (C.I. Acid Red 52, C.I. Basic Blue 3, C.I. Disperse Red 60, and C.I. Vat Yellow 2) be evaluated in the context of a class study of dyes. Therefore it was recommended that these nominated dyes be deferred in order to retrieve the necessary information to perform this overall evaluation.

In addition to the eleven chemicals listed above, the CEC reviewed five chemicals which were nominated only for chemical disposition studies. The chemicals were: Calcium naphthenate (CAS No. 85763–87–3), cobalt naphthenate (CAS No. 1789–51–3), copper naphthenate (CAS No. 1338–02–9), sodium naphthenate (CAS No. 61790–13–4), and 1,2-propylene glycol dinitrate (CAS No. 6423–43–4). The NTP is currently conducting a chemical disposition study of cobalt naphthenate; however, the focus of this study is on the cobalt moiety. Since the primary interest of the nominating source was in the naphthenate moiety rather than the metallic moiety of the four metal naphthenates, the CEC recommended chemical disposition studies of a naphthenic acid and no testing for any of the metal naphthenates.

The fifth chemical nominated for chemical disposition studies, 1,2-propylene glycol dinitrate (PGDN), has been suggested by the nominating source to be responsible for neurotoxic effects observed among workers at an incinerator site. The EPA is planning to perform neurotoxicity studies of the chemical. The CEC recommended chemical disposition studies of PGDN only if the proposed EPA studies indicate that PGDN is a neurotoxic agent.

Interested parties are requested to submit pertinent information on all of the nominated chemicals. The following types of data are of particular relevance:

(1) Modes of production, present production levels, and occupational exposure potential;

(2) Uses and resulting exposure levels, where known;

(3) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimental protocols and results, in the case of completed studies;

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing (by 30 days after date of publication) to Dr. Fung. Any submissions received after the above date will be accepted and utilized if possible.

Dated: April 30, 1991.

David G. Hoel,

Acting Director, National Toxicology Program.

[FR Doc. 91–10666 Filed 5–6–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–620–00–4111–12–2410]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget and approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of infomation and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Office at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Office and to the Office of Management and Budget, Paperwork Reduction Project (1004–0065), Washington, DC 20503, telephone 202–395–7340.

Title: Oil and Gas Nomination Form.

OMB Approval Number: 1004–0065.

Abstract: Respondents supply information on the form which is submitted to nominate oil and gas parcels to be offered for oral auction at a competitive lease sale.

Bureau Form Numbers: 3120–25, 3120–25a.

Frequency: On occasion.

Description of Respondents: General public, small businesses, and oil companies;

Estimated Completion Time: 15 minutes.

Annual Responses: 0.

Annual Burden Hours: 1.

Bureau Clearance Officer: (Alternate) Gerri Jenkins (202) 653–8853.

Dated: March 28, 1991.

A.A. Sokoloski,

AD, Energy and Mineral Resources.

[FR Doc. 91–10667 Filed 5–6–91; 8:45 am]

BILLING CODE 4310–84–M

[UT–020–01–4212–14; U–66589]

Salt Lake District; Plan Amendment for the Pony Express Resource Management Plan and Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of plan amendment for the Pony Express Resource Management Plan and notice of realty action, bureau motion, noncompetitive public land sale in Tooele County, Utah.

SUMMARY: The above Resource Management Plan was amended on April 24, 1991 by the Utah State Director. This amendment allows the following described land to be disposed of pursuant to the provisions of sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743, 2757; 43 USC 1713 & 1719):

T. 1N., R. 19W., SLM, Section 34: SW¼NE¼ contains 40 acres.

The land will be offered for sale after a 60 day waiting period from the publication of this notice. There is also a concurrently running 30 day time period to protest this amendment.

The land described is hereby segregated from appropriation under all other public land laws, including the mining laws, pending disposition of this action or two years from the date of publication of this notice, whichever occurs first.

When patent is issued, it will contain a reservation for ditches and canals and leasable minerals. The tract is being offered to the city of Wendover, Utah.

This tract was not identified for disposal in the Pony Express Resource Management Plan. Therefore, this plan had to be amended to allow for the sale of the land. On August 14, 1990, a notice was published in the **Federal Register** giving notice of the BLM's intent to amend the above plan. On January 4, 1991, a notice was published in the **Federal Register** giving notice of availability of the proposed planning amendment for the Pony Express Resource Management area. Also both notices were published in the local newspaper. There have been no public comments on any of the above notices.

Detailed information concerning these reservations as well as specific conditions of the sale and supporting documents are available at: Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Salt Lake District Manager at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 91–10737 Filed 5–6–91; 8:45 am]

BILLING CODE 4310–DQ–M

[WY–930–01–4332–09]

Wilderness Study Areas in Wyoming; Availability of Mineral Survey Reports

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of nine mineral survey reports produced by the U.S. Geological Survey and Bureau of Mines on nine Bureau of Land Management Wilderness Study Areas (WSA's) in Wyoming. Announcement of a sixty-day comment period to obtain previously unknown mineral information on the areas.

SUMMARY: The Federal Land Policy and Management Act (Pub. L. 94–579) requires the U.S. Geological Survey and the U.S. Bureau of Mines to conduct mineral surveys on certain BLM WSA's to determine the mineral values, if any, that may be present.

The reports are for the Cedar Mountain WSA in Washakie and Hot Springs Counties, the McCullough Peaks WSA in Park County, the Buffalo Hump and Sand Dunes Addition in Sweetwater County, the Adobetown WSA in Sweetwater County, the Raymond Mountain WSA in Lincoln County, the Oregon Buttes WSA in Sweetwater County and the Devils Playground/Twin Buttes WSA's in Sweetwater County, Wyoming. This notice gives the public an opportunity to obtain the reports and to review and offer previously unknown mineral information on these WSA's.

DATES: The public review of the nine mineral survey reports named in this Notice shall begin on May 6, 1991, and continue for sixty days (July 1991).

ADDRESSES: All data and written comments should be directed to the State Director (WY–910), Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003. Copies of these reports must be purchased from Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, Colorado, 80255.

FOR FURTHER INFORMATION CONTACT: Wayne Erickson, Wilderness Coordinator, (307) 775–6107, Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: The nine mineral reports are available for review or purchase from the Geological Survey. When ordering, the bulletin number and name should be used. The price listed is that charged by the Books and Open-File Reports Section, U.S. Geological Survey (303) 776–7476 and includes third or fourth class mailing. First class or foreign mailings require an addition of ten percent.

Cedar Mountain WSA, Washakie and Hot Springs Counties, (U.S.G.S. 1756–B) $1.50.
McCullough Peaks WSA, Park County, (U.S.G.S. 1756–F) $4.75.
Buffalo Hump and Sand Dunes Addition, Sweetwater County, (U.S.G.S. 1757–G) $1.75.
Adobetown WSA, Sweetwater County, (U.S.G.S. 1757–H), $3.25.
Raymond Mountain WSA, Lincoln County, (U.S.G.S. 1757–I) $3.75.
Oregon Buttes WSA, Sweetwater County, (U.S.G.S. 1757–J) $3.75.
Devils Playground and Twin Buttes WSAs, Sweetwater County

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(Administrative Report) No charge. This report may be obtained from: Richard E. VanLoenen, U.S. Geological Survey, Mail Stop 905, Lakewood, CO 80225.

The reports are also available for review in the offices of the BLM in Cheyenne, Rawlins, Rock Springs, and Worland, Wyoming. County libraries in Laramie County (Cheyenne), Park County (Cody), Washakie County (Worland), Hot Springs County (Thermopolis), Sweetwater County (Green River), and Lincoln County (Kemmerer). Any new public comment information/data will be screened by the BLM. The Wyoming State Director may ask the Geological Survey or the Bureau of Mines to determine if the information contains significant new data or an interpretation that was not available at the time the mineral survey report was prepared. The Geological Survey or the Bureau of Mines would determine if additional field investigations should be undertaken. Recommendations for the designation of an area as wilderness will be made to the Secretary of the Interior by the BLM. The Secretary shall, in turn, make recommendations to the President who will advise Congress. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

Dated: April 26, 1991.

F. William Eikenberry,

Associate State Director, Wyoming.

[FR Doc. 91-10793 Filed 5-6-91; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Proposed Central and Western Gulf of Mexico Sales 139 and 141 Draft Environmental Impact Statement; Public Hearings

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of locations and dates of public hearings regarding the Draft Environmental Impact Statement for Proposed Central and Western Gulf of Mexico Sales 139 and 141.

On April 24, 1991, a **Federal Register** Notice 56 FR 18632 announced the availability of the draft Environment Impact Statement (EIS) for the proposed 1992 Outer Continental Shelf (OCS) oil and gas lease sales in the Central and Western Gulf of Mexico indicating that the dates, times, and locations of public hearings on the draft EIS would be announced at a later date. The purpose of these public hearings is to provide the Department of the Interior and the Minerals Management Service with information from individuals, public and private groups, and Government Agencies to further evaluate the potential effects of the proposed lease sales.

Four public hearings have been scheduled to receive comment on the draft Environmental Impact Statement 139/141. The locations and dates and times of the hearings are listed below. Persons who wish to testify at these hearings can register the day of the hearing at the hearing sites beginning one hour prior to the beginning of the meeting. Oral testimony should be limited to 10 minutes. Testimony may be supplemented by a written statement which, if submitted at a hearing, will be considered as part of the hearing record. Pertinent testimony and comments will be addressed in the final EIS for Sales 139/141. Those unable to attend the hearing may submit written statements until the close of the comment period, June 18, 1991. Written statements will receive the same degree of consideration in the final EIS as oral testimony presented at the hearings. Written statements should be submitted to the Regional Supervisor, Office of Leasing and Environment (MS 5410), Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, room 311, New Orleans, Louisiana 70123.

New Orleans, Louisiana, May 20, 1991, from 2 to 4 p.m., Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, Conference Room 111.

Galveston, Texas, May 21, 1991, from 7 to 10 p.m., Rosenberg Library, 2310 Sealy Avenue.

Corpus Christi, Texas, May 22, 1991, from 7 to 10 p.m., Conrad Blucher Institute for Surveying and Science, Corpus Christi State University, 6300 Ocean Drive.

Mobile, Alabama, May 29, 1991, from 7 to 10 p.m., Ramada Inn Resort, 600 South Beltline Highway.

After all the public hearing testimony and written comments on the draft EIS have been reviewed and analyzed, a final EIS will be prepared.

A scoping workshop is to be held May 30, 1991, at the Ramada Inn Resort, from 7 to 10 p.m. This meeting is designed to gather information from the public regarding the issues and resources to be addressed in the draft EIS for proposed 1993 Central and Western Gulf of Mexico Sales 142 and 143. All interested parties are invited to attend and participate in the planning process for this draft EIS.

Dated: April 29, 1991.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 91-10818 Filed 5-6-91; 8:45 am]

BILLING CODE 4310-MR-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 756719

Applicant: Walter R. Schreiner, Mt. Home, TX.

The applicant requests a permit to import the sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Henmyr Investments, Great Kei Nature Reserve, Bloemfontein, South Africa for the purpose of enhancement of survival of the species.

PRT 756184

Applicant: Larry Johnson, Orange, CA.

The applicant requests a permit to purchase in interstate commerce one captive born female white-handed gibbon (*Hylobates lar*) from Wildlife Safari, Winston, Oregon and export to the Guadalajara Zoo, Mexico for the purpose of captive propagation and education.

PRT 757502

Applicant: Gary C. Smith, Los Gatos, CA.

The applicant requests a permit to import a short-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive heard maintained by W.G. de Klerk, Glen Lynden, Bedford, Republic of South Africa for the purpose of enhancement of survival of the species.

PRT 757789

Applicant: Chicago Zoological Park, Brookfield, IL.

The applicant requests a permit to import one captive-born Amur leopard (*Panthera pardus orientalis*) from Diergaard, Blijdorp, Rotterdam, Netherlands for breeding and display purposes.

PRT 757503

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import one male and two female captive-born black-footed cats, (*Felis nigripes*) from John Visser, Durbanville, South Africa, for breeding and display purposes.

PRT 756054

Applicant: Cleveland Metroparks Zoo, Cleveland, OH.

The applicant requests a permit to import one male and one female captive-born cheetahs (*Acinonyx jubatus*) from John Rens Zoo Animal Broker, Wassenaar, Netherlands, for breeding and display purposes.

PRT 756417

Applicant: The Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to import two pair of captive-born tigers (*Panthera tigris*) from Germany. These tigers are the progeny of applicant's own tigers that are currently performing in Germany. The tigers will be imported for purposes of exhibition and captive breeding. In the future, the applicant will export and re-import these animals for the same purposes.

PRT 757577

Applicant: Gene Branscome, Baytown, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. M.C. Weinand, Longwood, Bedford 5780, Longwood, Republic of South Africa, for the purposes of enhancement of survival of the species.

PRT 756717

Applicant: Louis A. Schreiner, Mt. Home, TX.

The applicant requests a permit to import the sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Henmyr Investments, Great Kei Nature Reserve, Bloemfontein, South Africa for the purpose of enhacement of survival of the species.

PRT 757846

Applicant: William H. Smith, Cody, WY.

The applicant requests a permit to import the sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by J.M. Mullins, Faberskraal, Grahmstown, Republic of South Africa for the purpose of enhancement of survival of the species.

PRT 757700

Applicant: St. Louis Zoological Park, St. Louis, MO.

The applicant requests a permit to import one captive-born male gorilla (*Gorilla gorilla*) from the Jersey Wildlife Preservation Trust, Jersey, Channel Islands for display purpose.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Servie, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 1, 1991.

Karen W. Ross,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91-10675 Filed 5-6-91; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Alaska Outer Continental Shelf: Availability, Proposed Notice of Sale, Navarin Basin Planning Area, Oil and Gas Lease Sale 107

With regard to oil and gas leasing on the Outer Continental Shelf (OCS), the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for Sale 107, Navarin Basin Planning Area, may be obtained by written request to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, room 544, Anchorage, Alaska 99508–4302, telephone (907) 261–4691.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of the bid opening. The bid opening is scheduled for September 1991.

This Notice of Availability is herby published, pursuant to 30 CFR 256.29(c), as matter of information to the public.

Dated: May 1, 1991.

Barry Williamson,

Director, Minerals Management Service.

[FR Doc. 91-10795 Filed 5-6-91; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-518 (Preliminary)]

Hand-held Aspherical Indirect Opthalmoscopy Lenses from Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-518 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of hand-held aspherical indirect ophthalmoscopy lenses, provided for in subheading 9018.50.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 14, 1991.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and B (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: April 30, 1991.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–252–1185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–251–1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on April 30, 1991, by Volk Optical, Inc., Mentor, Ohio.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an

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entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on May 21, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202-252-1185) not later than May 17, 1991, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission or or before May 24, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: May 1, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10853 Filed 5-6-91; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 29, 1991, a proposed Consent Decree in *United States* versus *Armstrong World Industries, Inc., et al.*, No. 89-4346, was lodged with the United States District Court for the District of New Jersey. The complaint in this action was filed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, to recover costs incurred by the Environmental Protection Agency ("EPA") in taking response actions at the Lone Pine Landfill Superfund Site ("Site") located in Freehold Township, Monmouth County, New Jersey.

The proposed Consent Decree embodies an agreement by 21 potentially responsible parties at the Site to pay the United States a total of $4,400,000. This payment covers the liability of these parties for past costs incurred by EPA in connection with the first operable unit at the Site, as well as for the first $500,000 of oversight costs to be incurred by EPA in connection with the first operable unit at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *Armstrong World Industries, Inc., et al.*, DOJ No. 90-11-2-294A.

The proposed Consent Decree may be examined at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $10.25 (25 cents per page reproduction cost) for the Consent Decree.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-10786 Filed 5-6-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States* v. *Asarco, Inc., et al.* was filed in the United States District Court for the Northern District of Oklahoma on April 25, 1991, and, simultaneously, a consent decree was lodged with the Court in settlement of the allegations in the complaint. This consent decree settles the government's claims in the complaint pursuant to section 107 of CERCLA, 42 U.S.C. 9607, for reimbursement of costs incurred by the United States in response to the release or threatened release of hazardous substances at or from a facility located in northeast Oklahoma, known as the "Tar Creek Site." The complaint alleged, among other things, that the defendants are persons who operated the facility at the time of disposal of hazardous substances and/or who by contract, agreement or otherwise arranged for disposal of hazardous substances at the facility.

Under the terms of the proposed consent decree, the defendants agree to pay the sum of $1,273,000 in reimbursement of response costs incurred in connection with the government's investigation, study and remediation of the Tar Creek Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Asarco, Inc., et al.*, D.J. Ref. 90-11-2-330.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Pamela Phillips, Office of Regional Counsel, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-2120.

United States Attorney's Office

Contact: Peter Bernardt, Assistant United States Attorney, 3600 Federal Courthouse, 333 W. 4th, Tulsa, Oklahoma 74103, (918) 581-7463.

The proposed consent decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004, (202-347-2072). A copy of the proposed Consent Decree can be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $4.25 payable to Treasurer of the United States.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-10889 Filed 5-6-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, notice is hereby given that on April 24, 1991, a proposed Consent Decree in *United States* v. *Ionia City, Michigan*, was lodged with the United States District Court for the Western District of Michigan.

This is a civil action for cost recovery and injunctive relief under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9606 and 9607. This action involves a hazardous waste site near Ionia City, Michigan, known as the Ionia City Landfill facility ("Ionia site"). The United States seeks to recover costs incurred by the United States in conducting response actions at the Ionia site. The United States also seeks injunctive relief to remedy conditions at the site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ionia City, Michigan*, D.J. reference #90-11-2-476.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Michigan, 110 Michigan Street, NW., Grand Rapids, Michigan 49503, or at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $47.00 payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 91-10785 Filed 5-6-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i) and Departmental policy at 28 CFR 50.7, notice is hereby given that on April 19, 1991, a proposed consent decree in *United States* v. *Wallace, et al.*, (Northwest Transformer Site) Civil Action No. C88-605C, was lodged with the United States District Court for the Western District of Washington. The complaint, as amended, alleged that a number of generator and owner/operator defendants, including defendants Wallace, Sidell, Northwest Transformer Company, and Whatcom Builders, are liable under sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, for injunctive relief and cost-recovery arising out of the release of PCBs at the Northwest Transformer repair site near Everson, Washington. Third-party claims against the Theotista Potts Trust and the Claude Potts Estate were also asserted in the case. Pursuant to the proposed consent decree, the United States will receive $460,000 ($230,000 from Wallace, Sidell and Northwest Transformer Company; $86,250 from Whatcom Builders; and $143,750 from the Potts Estate and Trust) to reimburse Superfund response costs. Completion of the remedy selected by the United States Environmental Protection Agency and the recovery of additional response costs are not addressed in this settlement but will be in negotiations with other potentially responsible parties. The Department of Justice, for a period of thirty (30) days from the date of this publication, will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Wallace, et al.*, Department of Justice reference number 90-11-3-341.

The proposed consent decree may be examined at the office of the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101 and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington DC 20004, (202) 347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction costs) payable to "Consent Decree Library." When requesting a copy, please refer to *United States* v. *Wallace, et al.*, Department of Justice 90-11-3-341.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-10880 Filed 5-6-91; 8:45 am]

BILLING CODE 4410-10-M

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Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Petrotechnical Open Software Corporation; Joint Research and Development Venture

Notice is hereby given that, on April 19, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et. seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the protections of the Act limiting the recovery of antitrust plaintiffs to actual damage under specified circumstances.

Specifically, the notification stated that the following additional parties have become new, non-voting members of POSC:

ARCO Oil and Gas Co., Division of Atlantic Richfield Co., 2300 West Plano Parkway, Plano, Texas 75075.
Landmark Graphics Corporation, 333 Cypress Run, Houston, Texas 77094.
Societe Francaise de Genie Logiciel, 14 Rue de La Ferme, 92100 Boulogne, France.
Oryx Energy Co., P.O. Box 2880, Dallas, Texas 75221-2880.
Western Atlas Software, 10205 Westheimer, Houston, Texas 77042.
Schlumberger Well Services, Division of Schlumberger Technology Corporation, 5000 Gulf Freeway, Houston, Texas 77023.
Petrosystems Geoscience Software Inc., 2500 Wilcrest, suite 250, Houston, Texas 77042.
Institut Francais Du Petrole, 1 & 4 avenue de Bois-Preau, B.P. 311, 92506 Rueil-Malmaison Cedex, France.
Cray Research Inc., 655 E. Lone Oak Drive, Eagan, Minnesota 55121.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed simultaneously with the Attorney General and the Federal Trade Commission its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 7, 1991 (56 FR 5021).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-10888 Filed 5-6-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-25,519]

ABCO Industries, Inc., Abilene, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 11, 1991 in response to a worker petition which was filed on March 11, 1991 on behalf of workers at ABCO Industries, Incorporated, Abilene, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 29th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-10797 Filed 5-6-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25, 413]

Birnbaum & Englard Knitting Mills, Inc. Brooklyn, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 19, 1991 in response to a worker petition which was filed on behalf of workers at Birnbaum & Englard Knitting Mills, Inc., Brooklyn, New York.

A negative determination applicable to the petitioning group of workers was issued on July 31, 1990 (TA-W-24, 467). No new information is evident which would result in a reversal of the Department's previous determination. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 30th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-10796 Filed 5-6-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,350]

Shot Point Services, Inc., Houston, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Shot Point Services, Incorporated, Houston, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-25,350; Shot Point Services, Incorporated; Houston, Texas (April 26, 1991).

Signed at Washington, DC this 30th day of April, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-10798 Filed 5-6-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,302]

Storage Technology Corp., Customer Services-Printer Operations, Melbourne, FL; Negative Determination Regarding Application for Reconsideration

By an application dated April 9, 1991, the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on March 15, 1991 and published in the **Federal Register** on April 2, 1991 (56 FR 13500).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifyng Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at the subject facility provide customer services—installation and maintenance.

The company claims that the subject workers lost the design, installation and maintenance activities in more than 20 major metropolitan markets for the non-impact printers whose workers were certified for the trade adjustment assistance under petition TA-W-25-303.

Investigation findings show that StorageTek entered into a joint venture with Siemens on March 1, 1991 consolidating domestic end user sales and service of non-impact printers in more than 20 major metropolitan markets. As a result of the consolidation, StorageTek's maintenance force will service non-impact printers outside the primary markets on a contract basis. StorageTek will continue to sell and service impact printers in all cities. The reason for the worker separations at Storage Technology's Customer Service-Printer Operations is a consolidation resulting from the joint venture.

The Department's denial was based on the fact that the contributed importantly test of the Group Eligibility Requirements of the Trade Act was not met. In order for a worker group to be certified eligible to apply for adjustment assistance, increased imports must have contributed importantly to declines in sales or production and employment. This was not the case with the customer service facility.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the facts or of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this April 30, 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-10799 Filed 5-6-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91-37)]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Advanced Life Support Technology.

DATES: May 30, 1991, 8 a.m. to 5 p.m.; and May 31, 1991, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, John F. Kennedy Space Center, room 110, Building 1732, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Evanich, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2843.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics, Exploration and Technology (OAET) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The AD Hoc Review Team on Advanced Life Support Technology, chaired by Mr. Adrain P. O'Neal, is composed of eight members.

The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda

May 30, 1991

8 a.m.—Opening Remarks.
8:30 a.m.—Briefing on Controlled Ecological Life Support Systems Research Program.
11 a.m.—Tour of Life Support Facilities.
1 p.m.—Review Team Discussion.
5 p.m.—Adjourn.

May 31, 1991

8 a.m.—Review Team Discussion/Deliberations
5 p.m.—Adjourn

Dated: May 1, 1991.

John W. Gaff,

Advisory Commitee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-10720 Filed 5-6-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL EDUCATION GOALS PANEL

National Education Goals Panel; Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was established by a Joint Statement between the President and the nation's governors dated July 31, 1990. The panel will determine how to measure and monitor progress toward achieving the national education goals and to report to the nation on progress toward the goals. Members of the National Education Goals Panel are six governors appointed by the Chairman of the National Governors Association, four senior Administration officials, and four Congressional leaders. Governor Roy Romer of Colorado is the initial Chairman.

TENTATIVE AGENDA ITEMS: Panel members will provide an update on the process of regional forums related to the assessment of the national education goals.

DATES: The meeting is scheduled for Monday, May 13, 1991, from 3:30 to 4:30 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency-Washington on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC.

ATTENDANCE: Please contact Pat Forgione, Executive Director of the National Education Goals Panel, to indicate attendance of for further information. The phone number is (202) 632-0952

Dated: May 1, 1991.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 91-10861 Filed 5-6-91; 8:45 am]

BILLING CODE 3127-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panels; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting(s).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The meetings are closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), the Government in the Sunshine Act.

Dated: May 1, 1991.

M. Rebecca Winkler,

Committee Management Officer.

The National Science Foundation announces the following meeting:

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Name: Special Emphasis Panel for the Division of Design and Manufacturing Systems.

Date and Time: May 22 & 23, 1991, 8:30 a.m. to 5 p.m.

Place: State Plaza Hotel, Envoy Room 2117 E St., NW., Washington, DC 20037.

Type of meeting: Closed.

Contact Persons: Dr. Thom J. Hodgson, Program Director, Operations Research and Computer-Intergrated Engineering Programs, Division of Design and Manufacturing Systems, National Science Foundation, 1800 G St., NW., room 1128, Washington, DC 20550. Telephone: (202) 357–5167.

Purpose of Meeting: Unsolicited Proposal Review.

Agenda: Review proposals submitted to the Operations Research and Computer-Integrated Engineering Programs.

The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for the Division of Design and Manufacturing Systems.

Date and Time: May 29, 1991, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G St., NW., room 1242, Washington, DC 20550.

Type of meeting: Closed.

Contact Persons: Dr. Bruce M. Kramer, Program Director, Materials Processing and Manufacturing Program.

or

Dr. Suren B. Rao, Program Director, Manufacturing Machines and Equipment Program, Division of Design and Manufacturing Systems, National Science Foundation, 1800 G St., NW., room 1128 Washington, DC 20550. Telephone: (202) 357–7676.

Purpose of Meeting; Unsolicited Proposal Review.

Agenda: Review proposals submitted to the Materials Processing and Manufacturing Program and Manufacturing Machines and Equipment Program.

The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for the Division of Design and Manufacturing Systems.

Date and Time: May 29 & 30, 1991, 8:30 a.m. to 5 p.m.

Place: State Plaza Hotel, Ambassador room, 2117 E St., NW., Washington, DC 20037.

Type of meeting: Closed.

Contact Persons: Dr. Thom J. Hodgson, Program Director, Operations Research Program.

or

Dr. Louis Martin-Vega, Program Director, Production Systems Program, Division of Design and Manufacturing Systems, National Science Foundation, 1800 G St., NW., room 1128, Washington, DC 20550. Telephone: (202) 357–5167.

Purpose of Meeting: Unsolicited Proposal Review.

Agenda: Review proposals submitted to the Operations Research and Production Systems Programs.

The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for the Division of Design and Manufacturing Systems.

Date and Time: June 5, 1991, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G St., NW., room 523, Washington, DC 20550.

Type of meeting: Closed.

Contact Persons: Dr. Bruce M. Kramer, Program Director, Materials Processing and Manufacturing Program.

or

Dr. Suren B. Rao, Program Director, Manufacturing Machines and Equipment Program, Division of Design and Manufacturing Systems, National Science Foundation, 1800 G St., NW., room 1128, Washington, DC 20550. Telephone: (202) 357–7676.

Purpose of Meeting: Unsolicited Proposal Review.

Agenda: Review proposals submitted to the Materials Processing and Manufacturing Program and Manufacturing Machines and Equipment Program.

[FR Doc. 91–10711 Filed 5–6–91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Materials Research; Meeting

The National Science Foundation Announces the following meeting:

Name: Special Emphasis Panel Meeting in Materials Research.

Date: June 3, 1991.

Location: Princeton University, Princeton, New Jersey.

Time: 8 a.m.–5:30 p.m. June 3, 1991.

Type of Meeting: Closed.

Contact Person: Dr. Adriaan M. de Graaf, Deputy Division Director, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550 Telephone: (202) 357–0794.

Purpose of Meeting: To provide advice and recommendations concerning the support for the proposal "An Ultra-long (Quasistatic) 65 Tesla Pulsed Magnet".

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: May 1, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–10710 Filed 5–6–91; 8:45 am]

BILLING CODE 7555-01-M

Division of Networking and Communications Research and Infrastructure Special Emphasis Panel; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Networking and Communications.

Dates: May 20–21, 1991.

Time: 8:30 a.m.–5 p.m. each day.

Place: Room 417, National Science Foundation, 1800 G St., NW., Washington, DC 20550.

Type of Meeting: Closed.

Agenda: Review and evaluate Networking and Communications Research proposals.

Contact: Dr. Aubrey Bush, Networking and Communications Research Program, National Science Foundation, room 416, Washington, DC 20550 (202 357–9717).

Dated: April 30, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–10712 Filed 5–6–91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Memorandum of Understanding (MOU) Between NRC and the State of Michigan

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Publication of draft memorandum of understanding between U.S. NRC and the State of Michigan for public comment.

SUMMARY: Section 274i. of the Atomic Energy Act of 1954, as amended, allows the U.S. Nuclear Regulatory Commission (Commission or NRC) to enter into an agreement with a State "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." This section 274i. agreement, typically in the form of a Memorandum of Understanding (MOU), differs from an agreement between NRC and a State under the "Agreement State" program; the latter is accomplished only by entering into an agreement under section 274b. of the Atomic Energy Act. A State can enter into a section 274i. MOU whether or not it has a section 274b. agreement.

The Draft Memorandum of Understanding provides the basis for mutually agreeable procedures whereby the Michigan Department of State Police may utilize the NRC Emergency Response Data System to receive plant data during an emergency at a commercial nuclear power plant in the State of Michigan.

DATES: Submit comments by June 6, 1991, to David L. Meyer, Chief, Regulatory Publications Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

For Further Information Contact: John R. Jolicoeur, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4155.

SUPPLEMENTARY INFORMATION: As a result of the accident at Three Mile Island, Unit 2, on March 28, 1979, the Nuclear Regulatory Commission (NRC) and others recognized a need to substantially improve the NRC's ability to acquire accurate and timely data on plant conditions during emergencies. The Emergency Response Data System (ERDS) has been developed to respond to this need. ERDS is a direct computer link between licensee computers at commercial nuclear power plants and computers at the NRC Operations Center at Bethesda, Maryland. The system allows for direct electronic transmission of a limited set of data points from the licensee computers to ERDS. Data transmitted over ERDS provides information concerning (1) core and coolant system conditions, needed to assess the extent or likelihood of core damage, (2) conditions inside the containment building, needed to assess the likelihood and consequences of containment failure, (3) radioactivity release rates, needed to assess the immediacy and degree of public danger, and (4) data from the plant meteorological tower, needed to assess the likely patterns of potential or actual impact on the public. The ERDS design provides for access to ERDS data by State governments which have jurisdiction over any area which falls within the 10 mile plume exposure Emergency Planning Zone around each nuclear power plant.

This MOU may deviate from what could be considered a generic MOU in one area. Paragraph V.C. reflects a preexisting agreement between the State of Michigan and the affected utilities in which the utilities provide a technical liaison at the State Emergency Operations Center in the event of an accident at one of the Michigan nuclear power plants. These technical liaison personnel will both operate the Michigan ERDS terminal and interpret the ERDS data for the State. In most MOUs, it is anticipated that clarification of ERDS data would be requested from the NRC to minimize the impact on plant operators.

This Memorandum of Understanding is intended to formalize and define the manner in which the NRC will cooperate with the State of Michigan to provide data related to plant conditions during emergencies at commercial nuclear power plants in Michigan.

Dated at Rockville, Maryland, this 26th day of April 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of Michigan and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Michigan enter into this Agreement under the authority of section 274i of the Atomic Energy Act of 1954, as amended.

Michigan recognizes the Federal Government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities, monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Michigan fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Emergency Management Division, Department of State Police as described in the Emergency Management Act of 1990.

III. Scope

A. This Agreement defines the way in which NRC and Michigan will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants, with the exception of Big Rock Point, in the State of Michigan.

B. It is understood by the NRC and the State of Michigan that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Michigan, or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Michigan on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Michigan authority to (1) interpret or modify NRC regulations

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and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; or (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Michigan during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the State of Michigan. The NRC will provide any software which is not commercially available and is necessary for configuring an ERDS workstation.

V. Michigan's General Responsibilities

A. Michigan will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Michigan will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Michigan agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the utility provided technical liaison personnel or the NRC.

IV. Implementation

Michigan and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Michigan and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and Michigan agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Michigan will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to Michigan by the NRC. Michigan may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, Michigan will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Governor-appointed State Director of Emergency Management. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and Michigan staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and Michigan will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews, and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

XI. Separability

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

For the U.S. Nuclear Regulatory Commission,

James M. Taylor,

Executive Director for Operations.

For the State of Michigan,

Col. Michael D. Robinson,

Director, Department of State Police.

[FR Doc. 91-10810 Filed 5-6-91; 8:45 am]

BILLING CODE 7590-01-M

Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 and 2; Withdrawal of a Provision of an Amendment Request to Facility Operating License

[Docket Nos. 50-327/328]

The U.S. Nuclear Regulatory Commission (NRC) has approved the withdrawal of a portion of a Technical Specification (TS) amendment request by the Tennessee Valley Authority (TVA or the licensee), to Facility Operating License Numbers DPR-77 and DPR-79, issued to the Sequoyah Nuclear Plant, Units 1 and 2, respectively. The plant is located in Soddy Daisy, Tennessee. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on February 21, 1990 (55 FR 6116).

The item being withdrawn was originally included in an amendment request dated January 22, 1990, and requested that the wide-range containment pressure and reactor vessel level instrumentation be removed from TS Table 3.3-10. However, in the NRC staff's letter dated December 7, 1990, which forwarded Amendment Numbers 149 and 135 (and approved other TS

changes requested in the January 22, 1990 application), the staff disagreed with the licensee's request to delete the instrumentation and requested that the licensee withdraw this item from the amendment request. By letter dated April 12, 1991, the licensee has withdrawn this item from the original amendment request.

For further details with respect to this action, see (1) the application for amendment dated January 22, 1990, (2) the staff's letter forwarding Amendment Numbers 149 and 135 for License Numbers DPR-77 and DPR-79 respectively, dated December 7, 1990, (3) the licensee's letter dated April 12, 1991, and (4) the staff's letter dated April 30, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Chattanooga Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, the 30th day of April, 1991.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Project Manager, Project Directorate II-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-10811 Filed 5-6-91; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Reinstatement of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2675, Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for reinstatement of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested reinstatement of approval by the Office of Management and Budget for a collection of information (OMB no. 1212-0032) for which previous approval has expired. There is no change in the substance of the information to be collected or in the method of collection. The collection of information is contained in the PBGC's regulation on Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal (29 CFR part 2675). The collection of information pertains to notices that are to be given by mass-withdrawal-terminated multiemployer pension plans to the PBGC and to plan participants and beneficiaries, and to applications by such plans to the PBGC for financial assistance or for permission to pay benefits in forms or amounts not otherwise permitted. The effect of this notice is to advise the public of this request for reinstatement of OMB's approval.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212-0032), Washington, DC 20503. The request for reinstatement will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, 2020 K Street, NW., Washington, DC 20006, between 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal, 29 CFR part 2675.

Section 4041A of the Employee Retirement Income Security Act of 1974 ("ERISA") prescribes rules that, among other things, govern the payment of benefits under plans that have terminated by mass withdrawal. Section 4041A(f)(1) provides that such plans may request the approval of the PBGC to pay benefits in amounts or forms not otherwise permitted under section 4041A. Section 4041A(f)(2) authorizes the PBGC to establish reporting requirements for plans terminated by mass withdrawal, and other rules and standards for the administration of such plans, as may be necessary to protect plan participants and the multiemployer insurance program.

Under section 4281(c) of ERISA, when the annual valuation of a mass-withdrawal-terminated plan shows that plan assets are not sufficient to satisfy all nonforfeitable benefits under the plan, the plan sponsor must amend the plan to reduce or eliminate any benefits that are not guaranteeable by the PBGC, to the extent necessary to make the assets of the plan sufficient for all nonforfeitable benefits. If, after a plan has been so amended, the plan becomes insolvent (*i.e.*, unable to pay benefits when due for a plan year), the plan sponsor is required by section 4281(d) to suspend benefits in excess of guaranteed benefits to the extent that their payment cannot be supported by the plan's available resources. If the plan's available resources are inadequate to pay guaranteed benefits, the plan sponsor must request financial assistance from the PBGC. Section 2181(d) requires the PBGC to issue regulations providing for notice to plan participants and beneficiaries of benefit suspensions and otherwise governing the administration of insolvent mass-withdrawal-terminated plans.

The PBGC's regulation on Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal (29 CFR part 2675) prescribes all of the various rules pursuant to ERISA sections 4041A and 4281, concerning the administration of plans (both solvent and insolvent) that have been terminated by mass withdrawal.

This regulation requires: (1) Notices to the PBGC and plan participants and beneficiaries when benefit reductions are required and notice to the PBGC when benefits are restored; (2) notices that the plan is or will be insolvent to the PBGC and participants after the first determination that the plan is or will be insolvent; (3) notices of insolvency benefit level to participants who are in pay status or who may reasonably be expected to enter pay status in the year of insolvency (and a brief notice to the PBGC); (4) annual updates to the PBGC and to participants who do not receive notices of insolvency benefit level; (5) an application to the PBGC for financial assistance whenever a plan is, or will soon be, unable to pay guaranteed benefits; and (6) in plans that are closing out, notices of election to participants who are eligible to receive lump sum benefit payments. In addition, the regulation permits plan sponsors to request PBGC approval to pay benefits not otherwise permitted, upon a showing that the requested payments would not be adverse to the interests of plan participants generally and would not unreasonably increase the PBGC's risk of loss with respect to the plan.

The information received by the PBGC is used to identify and estimate cash needs for financial assistance to troubled plans and enables the PBGC to make certain determinations required by ERISA. Plan participants and beneficiaries use the information to make personal financial decisions. Without this regulation, the notices required by ERISA section 4281 would be inconsistently given and of varying quality, as plan sponsors applied their individual interpretations to the law.

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Further, PBGC financial assistance to troubled plans would likely be delayed.

The PBGC estimates the annual burden attributable to this regulation as follows: (1) For one notice of benefit reductions, 24 hours; (2) for one notice of insolvency, 25 hours; (3) for three notices of insolvency benefit level, 75 hours; (4) for three annual updates, 12 hours; (5) for one request for approval of special payments, 4 hours; (6) for notices of election provided by 9 plans to 15,750 participants, 3,938 hours; (7) for three requests for financial assistance, 108 hours; total annual burden, 4,186 hours.

Issued at Washington, DC, this 29 day of April 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-10769 Filed 5-6-91; 8:45 am]

BILLING CODE 7708-01-M

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2677, Procedures For PBGC Approval of Plan Amendments

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: This notice advises the public that the Pension Benefit Guaranty Corporation has requested extension of approval by the Office of Management and Budget for a currently approved collection of information (1212-0031) contained in its regulation on Procedures for PBGC Approval of Plan Amendments (29 CFR part 2677). Current approval of the collection of information expires on May 31, 1991.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212-0031), Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Procedures for PBGC Approval of Plan Amendments (29 CFR part 2677).

Section 4220 of the Employee Retirement Income Security Act of 1974 ("ERISA") requires the plan sponsor of a multiemployer pension plan covered by title IV of ERISA to submit for PBGC review certain plan amendments authorized by ERISA sections 4201-4219 that are adopted after September 25, 1983. Section 4220(a) provides that any such plan amendment shall be effective only if the PBGC approves it or fails (within 90 days after it is submitted for review) to disapprove it. Under section 4220(c), they PBGC may disapprove an amendment only if it determines that the amendment creates an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC.

The PBGC's regulation on Procedures for PBGC Approval of Plan Amendments (29 CFR part 2677) tells plan sponsors how to submit plan amendments for PBGC review under ERISA section 4220. The regulation's information collection requirements, set forth in § 2677.2, are necessary to give the PBGC the information needed to decide whether to approve or disapprove plan amendments.

The PBGC estimates that it will receive three submissions under the regulation annually. Since the PBGC assumes that each submission takes two hours to prepare, the estimated annual burden imposed on the public by this collection of information is six hours.

Issued at Washington, DC, this 29 day of April 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-10768 Filed 5-6-91; 8:45 am]

BILLING CODE 7708-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Pilot Study—Medical Assessment Reports for Disability Claimants Under the Railroad Retirement Act.

(2) *Form(s) submitted:* T-250, T-250a, T-6.

(3) *OMB Number:* New collection.

(4) *Expiration date of current OMB clearance:* Six months from date of OMB approval.

(5) *Type of request:* New collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households, businesses or other for-profit, small businesses or organizations.

(8) *Estimated annual number of respondents:* 1,000.

(9) *Total annual responses:* 2,000.

(10) *Average time per response:* .5705.

(11) *Total annual reporting hours:* 1,141.

(12) *Collection description:* A pilot study conducted for the purpose of determining the effectiveness of three proposed forms designed to obtain improved and more specific medical information from examining physicians with respect to claimants for disability annuities under the Railroad Retirement Act. The forms obtain information needed by the Railroad Retirement Board for determining the nature and severity of claimed impairments.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 91-10792 Filed 5-6-91; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29144; International Series No. 264; SR-DTC-90-09]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by Depository Trust Co., Granting Participants the Option of Receiving Dividend, Interest or Principal Payments in Foreign Currency

April 30, 1991.

On March 25, 1990, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-90-09) under section

19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposal would enable DTC participants to exercise, through DTC, the option of receiving a dividend, interest or principal payment in a foreign currency. Notice of the proposal appeared in the Federal Register on July 24, 1990.[2] The Commission did not receive any letters of comments. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

DTC is proposing to implement a service enabling participants to exercise the option of receiving periodic dividend, interest or principal payments on certain issues directly from the paying agent in a foreign currency. DTC will offer the service for dividend or interest yielding securities, for which the terms of the instrument allow the beneficial owner of the security the option of receiving all or a portion of the payment in a foreign currency.

Ordinarily, dividend, interest and principal payments on securities eligible for deposit at DTC are issued and credited to a participant's account in U.S. Dollars. With limited exceptions, if the terms of the security provide for payment in another currency, a participant who wants to receive payments in that currency must withdraw physical certificates from DTC and arrange for processing of the foreign currency payment directly with the paying agent.[3] After receiving a foreign currency dividend or interest payment outside DTC, a participant may re-deposit the certificates at DTC.[4]

As part of the proposed service, DTC will notify participants of an impending principal, interest and/or dividend payment and, if applicable, of the option of receiving that particular payment in foreign currency.[5] This notification will also inform participants of the number of days after record date [6] within which DTC must be notified of a participant's decision to exercise the option of receiving such payment in foreign currency.[7] Under the proposal, participants must instruct DTC to decrease the subsidiary record [8] of the participant's position at the close of business of the day prior to record date by the number of securities on which the participant wishes to receive payment in foreign currency. In addition, the participant must also instruct the DTC to advise the issuer's paying agent to make payment due on such securities in foreign funds directly to the participant, outside DTC,[9] on payable date. DTC will notify the issuer's paying agent no less than five business days after the record date.[10]

Participants may deliver securities at DTC, even if those securities are the subject of foreign currency payments. Movements of dividend-yielding securities between record date and payable date will be debited and credited to participants' accounts pursuant to DTC's ordinary settlement process. Routine trade settlement in the United States occurs on the fifth day after the date of execution of a trade ("T+5"), thus transactions involving securities with an impending dividend payment usually stop trading with the dividend ("ex-dividend") on the fourth day prior to record date. This time frame is sufficient to allow a participant who will be the holder of a security on record date to notify DTC that it will exercise the option of receiving the dividend payment in foreign currency, outside DTC.

Interest paying instruments (*e.g.*, debt securities) continue to accrue interest between record date and payable date. Accordingly, DTC records, in an interim account, any activity between the close of business on record date and the close of business on the night prior to payable date.[11] This procedure, called interim accounting, allows DTC to account for the interest accrued between record date and payable date and to determine a subsequent holder's entitlement to the impending interest payment.

Initially, the interim account of a participant expecting payment in foreign currency will reflect the participant's position in that security as of record date, minus the number of securities for which the participant expects interest payment outside DTC (*i.e.*, securities on which payment is due in foreign funds). During the interim accounting period, DTC will debit from a participant's interim account any deliveries of securities and credit those securities to the receiving participant's interim account.[12] If, as a result of this

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 28218 (July 17, 1990), 55 FR 30053 (July 24, 1990).

[3] Presently, however, DTC allows participants to deposit certain Canadian issued securities. Payments related to these securities, made in Canadian funds are converted into U.S. Dollars outside DTC and credited to the participant's account. DTC, Participant Operating Procedures, Dividends/Rights F-150 (February 1988).

[4] Securities issues subject to impending redemptions follow similar procedures. Three weeks prior to redemption date, DTC places a freeze on maturing securities, which prevents any physical movement, including deposit or withdrawal activity. The freeze, however, does not affect book-entry movements in these securities until one week prior to redemption date. At that time, DTC captures positions in the maturing securities and on redemption date the securities are presented to the issuer for redemption. Redemption date for maturing securities usually coincides with the payable date for the last interest payment. Consequently, for purposes of the proposed rule filing, DTC will use the record date of the last interest payment to capture positions on the maturing securities.

[5] DTC notifies participants of an impending payment, prior to record or redemption date, through Important Notices. In addition, DTC makes this information available to participants through informational messages broadcast through its Participant Terminal System ("PTS") Network.

DTC's PTS network is an electronic system that permits direct communication between DTC and its participants, enabling participants to perform account related activity via remote terminal. See Securities Exchange Act Release No. 20579 (December 30, 1983), 49 FR 986 (January 6, 1984).

[6] Record date is the calendar date on which an investor must be registered on the issuer's books as a holder, in order to receive a declared dividend or interest payment.

[7] The contractual terms of the instrument will specify the time period during which a participant must notify DTC that it wishes to exercise its option to receive payment in foreign denomination.

[8] Currently, DTC creates a subsidiary record based on participants' positions at the close of business on record date. This subsidiary record indicates the number of securities held in a participant's position on which dividend or interest payments are due on payable date (the calendar date on which the issuer's paying agent disburses any declared dividend or interest payments). Upon receipt by DTC of a dividend or interest payment, DTC credits a participant's account based on the participant's record date position in that security.

[9] Participants electing this option must provide the bank name, account number and account name where payment is to be made. At first, DTC will only accept these instructions in paper form. DTC, however, expects to phase in the proposed service to the PTS Network before the end of this year or early in 1991. Once the proposed service is available through the PTS Network, participants will be able to submit instructions in an automated fashion, via remote terminal. DTC, Bulletin #7309-90 (June 22, 1990).

[10] Currently, DTC requires at least five business days to process participants' instructions. DTC, however, will continue to review this operational guideline in light of technological developments, and, if possible, will notify paying agents within a shorter time period, so long as such shorter time period furthers the efficient processing of participant's instructions. Telephone conversation between Raymond DeCesare, Vice-President, Dividends Department, DTC, and Julius R. Leiman-Carbia, Staff Attorney, Division of Market Regulation, Commission (October 11, 1990).

[11] DTC will apply interim accounting procedures to equity securities movements when related to stock or large cash distributions. The interim accounting period for equity securities runs from record date until the close of business of the fourth business day after the date when the security ceases to trade with a dividend payment obligation.

[12] For example, assume, participant A, holding 100 bonds on record date, notifies DTC that it will exercise its right to receive interest payment in foreign funds on 25 bonds. Participant A's interim account will reflect a balance of 75 bonds. On the day following record date, participant A sells 50 bonds to participant B. Pursuant to the transaction, DTC will debit 50 bonds from participant A's interim account and credit these bonds to

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transaction, a participant delivers securities in excess of the delivering participant's interim account balance, the interim account will reflect a negative balance. Since the securities continue to be held in custody at DTC, the receiving participant's interim account will be credited with the corresponding amount of securities.[13]

On the last day of the interim accounting period, debit and credit amounts are netted to the participants' net settlement position. Accordingly, on payable date, a delivering participant's securities net settlement position will reflect a debit for the securities delivered and its funds net settlement position will reflect a debit for the dividend due on the delivered securities.[14] If, during the interim accounting period, the participant delivered securities on which it received payment in foreign currency, the delivering participant's net settlement position will reflect a debit for the equivalent amount in U.S. Dollars of the interest payment received outside DTC. At the same time, the receiving participant's securities and funds net settlement position will reflect corresponding credits.

If, prior to payable date, DTC is made aware of a potential failure by a paying agent to fulfill the expected payment obligation, DTC will not debit or credit participants' positions on payable date. If DTC is made aware of a paying agent's default after DTC has credited or debited participant positions for expected payments in U.S. Dollars, DTC will reverse corresponding debits and credits.[15]

participant B's interim account. Accordingly, participant A's interim account will reflect a balance of 25 bonds while participant B's interim account will reflect a balance of 50 bonds.

[13] For example, assume in the previous example, participant A's interim account reflected a balance of 25 bonds and that participant A delivers 50 bonds to participant C (*i.e.*, the 25 bonds left in its interim account, plus 25 bonds on which participant A will receive payment in foreign currency, outside DTC). Pursuant to the transaction, DTC will debit 50 bonds from participant A's interim account and credit them to participant C's interim account. Thus, participant A's account will reflect a negative balance of 25 ("−25") bonds and participant C's account will reflect a positive balance of 50 bonds.

[14] In order to determine the U.S. Dollar amount to be debited from or credited to a participant's account as a result of movements during the interim accounting period, DTC will use the same exchange rate that is used by the issuer's paying agent. As a matter of standard industry practice, two business days prior to payable date, the paying agent informs DTC of the exchange rate to be applied to the interest payment. Telephone conversation between Raymond DeCesare, Vice-President, Dividends Department, DTC, and Julius R. Leiman-Carbia, Staff Attorney, Division of Market Regulation, Commission (October 11, 1990).

[15] Accordingly, in the case of partial or full interest, dividend or principal payments in U.S. Dollars at DTC, DTC will debit the amounts previously credited. Likewise, in the event of a non-payment outside DTC, the equivalent U.S. Dollar amounts debited from a participant's position would be re-credited to the participant who delivered the securities. At the same time, DTC would debit the account of the delivering participant for the equivalent U.S. Dollar amount of the defaulted payment. DTC generally credits dividend and interest payments to participants on payable date. DTC also may credit participants for payments of principal on redemptions of certain types of securities in advance of DTC's receipt of such payment. If DTC subsequently determines that a credit was mistakenly made, whether due to the issuer's default on the payment, an error on DTC's part, or for some other reason, DTC may charge back the account credited. Securities Exchange Act Release No. 26070 (September 9, 1988), 53 FR 36142 (September 16, 1988).

II. DTC's Rationale

DTC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3) of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. According to DTC, under its present procedures, there is no provision for participants to use DTC's facilities to exercise the option, where available under the terms of an issue, to receive dividend, interest or principal payments in the foreign currency in which the security is denominated. Instead, in order to exercise such an option, a participant must withdraw physical certificates from DTC and arrange for processing of the foreign currency payment directly with the paying agent. According to DTC, in order to again achieve the benefits of immobilization, such a participant would be required to re-deposit the certificates after payment has been made. DTC believes that the proposed rule change will eliminate the inefficiencies and costs associated with the physical movement of certificates solely to exercise the foreign currency payment option and will help remove an impediment to the issuance of foreign-currency denominated issues in book-entry-only form.

III. Discussion

The Commission believes that the proposal enhances DTC's ability to facilitate and promote prompt and accurate settlement of movements involving securities on which principal, interest and dividend payments in foreign currency are due. For this reason, the Commission believes that DTC's proposal is consistent with sections 17A(b)(3)(A) and (F) of the Act.[16]

Currently, if a participant wishes to exercise the right to receive principal, interest or dividend payments in foreign currency, the participant must withdraw physical certificates from DTC and arrange for processing of the foreign currency payment directly with the paying agent. In the case of securities paying interest or dividends outside DTC, a participant may re-deposit the certificates at DTC. DTC's proposed rule change enables participants to keep on deposit (*i.e.*, immobilized), during the period between record date and payable date, securities on which foreign funds payments are expected.

Immobilization of securities offers substantial savings to secondary market participants by facilitating the use of book-entry settlement which reduces transfer activity.[17] Book-entry settlement, moreover, promotes efficiency by eliminating the physical packaging and movement normally required to settle transactions, as well as the need to examine each certificate for authenticity every time a delivery takes place.[18] DTC's proposal extends the benefits of immobilization and, therefore, the advantages of book-entry settlement to transactions involving securities that offer participants the alternative of receiving principal, interest and dividend payments in foreign currency.

DTC's proposal eliminates the need to withdraw physical securities in order to receive dividend, interest or redemption payments in foreign currency and allows participants to receive payment credits on a timely basis. Pursuant to the proposal, participants will be able to employ DTC's book-entry facilities, between record date and payable or redemption date, to deliver and receive securities by book-entry movement. The current proposal precludes the need to physically withdraw maturing securities three weeks prior to redemption date in order to present the securities for redemption.

The Commission, therefore, believes that the proposal will enable participants to benefit from DTC's custody service for securities with an impending principal, interest or dividend payment. Participants' ability to immobilize securities while expecting payment in foreign currency, outside DTC, will eliminate settlement delays and the potential for loss, typically associated with the physical handling of securities. For this reason, the Commission believes that DTC's proposal not only will promote prompt and accurate settlement, but also will assure the safeguarding of securities, as required by section 17A(b)(3)(F) of the Act.[19]

[16] 15 U.S.C. 78q-1(b)(3)(A) & (F).

[17] Book-entry settlement requires no physical movement of securities. Instead, delivery and receipt of securities and funds are accomplished via a computerized accounting process that allows the depository to transfer ownership by making notations to participants' depository accounts. For an analysis of the cost saving advantages associated with the immobilization of securities and book-entry settlement, see, Division of Market Regulation, Commission, Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems 6–7 (June 14, 1985).

[18] Consultative Group on International Economic and Monetary Affairs, Inc. ("G–30 Group"), Clearance and Settlement Systems in the World's Securities Markets 54 (1989).

The Commission also believes that the proposal is consistent with the statutory requirement that DTC's rules be designed to assure the safeguarding of funds which are in its custody or control.[20] Currently, DTC's procedures are designed to protect DTC from losing any dividend or interest payment amounts erroneously credited to a participant's account. DTC's proposal does not alter these procedures, allowing DTC to charges back any mistaken credit to a participant's account due to the issuer's default on the dividend or interest payment, an error on DTC's part or for any other reason.

Under most circumstances, interim accounting procedures will not apply to transactions involving dividend-paying instruments. These transactions usually start trading ex-dividend on the fourth business day prior to the record date. Accordingly, settlement occurs after record date, at which point a holder no longer has a right to receive the dividend payment. Stock distributions involving 25% or more of the value of the underlying security, however, usually are required by the location where the trade is executed to commence trading ex-dividend no later than the fourth day prior to record date.[21] Under these circumstances, DTC would apply interim accounting in order to ensure proper credit of the amounts disbursed on payable date.[22]

Recently, DTC expanded participation in some of its settlement services, such as the International Institutional Delivery System, making them available to foreign entities.[23] Until today, however, with the exception of certain Canadian issues, processing of dividend, interest and principal payment at DTC remained limited to securities issues disbursing such payments in U.S. Dollars. DTC's proposal to enable participants to receive periodic dividend, interest or principal payments on certain issues directly from the paying agent in a foreign currency will contribute to processing efficiency by enabling DTC participants, both domestic and foreign, to centralize the processing stream of payments associated with securities on deposit at DTC.

Providing foreign currency accounting for, at least, principal, interest and dividend payments improves DTC's ability to safeguard securities. The Commission believes that DTC should expand foreign currency payment accounting to transactions involving the purchase and sale of securities. This action would enable DTC to provide simultaneous movement of funds and securities among participants' accounts (*i.e.*, delivery versus payment ["DVP"]) for transactions involving securities quoted in foreign currencies.[24] The Commission believes that DVP through DTC's facilities would eliminate the risk of price changes, thus reducing the exposure due to delivery delays by a counterpart [25] and further facilitating the prompt and accurate clearance and settlement of securities transacted in foreign currency. For this reason, the Commission expects DTC to continue expanding its processing capability in order to account for purchase and sale transactions that require the transfer of foreign currency funds.

IV. Conclusion

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[26] that the proposed filing (SR–DTC–90–9) be, and is hereby, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12) (1990).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10822 Filed 5–6–91; 8:45 am]

BILLING CODE 8010–01–M

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] See, e.g., New York Stock Exchange ("NYSE"), Constitution & Rules, § 235 (February 1988), 2 NYSE Guide (CCH) § 2235.

[22] See DTC, Participants Operating Procedures, Dividends/Rights F–110 (February 1988).

[23] Securities Exchange Act Release No. 27395 (December 13, 1989), 54 FR 52017 (December 20, 1989).

[24] DTC recently solicited comment from its participants concerning possible enhancements DTC might effect to facilitate international clearing and settlement. Many responding participants urged DTC to provide foreign currency settlement facilities. See DTC, Memorandum to Participants and Other Users (January 17, 1991). The Commission urges DTC to continue exploring the cost and the changes, if any, that are pre-requisites to the feasibility of such a service.

[25] See G–30 Group, supra note 18 at 11.

[26] 15 U.S.C. 78s(b)(2).

[Release No. 34–29142; File No. SR–MCC–91–02]

Self-Regulatory Organizations; Midwest Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Revision of Its Member-to-Member Securities Loan Pricing Schedule

April 30, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 5, 1991, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise MCC's Member-to-Member Securities Loan pricing schedule in an effort to make this service more competitive to all its users.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory and Statutory Basis for, the Proposed Rule Change

The purpose of the attached rule filing is to revise the fees for Member-to-Member Securities Loans. Currently, MCC charges Participants for Member-to-Member Securites $1.80 per delivery or receipt plus a $.60 data entry charge per delivery or receipt for each set-up or take down of the loan. (Member-to-Member Securities Loans are "set-up" at the beginning of each loan, and "taken down" as the securities are returned to the lending Participant.)

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Under the proposed fee change, MCC will charge Participants $2.00 per delivery or reciept for each set-up of a loan. MCC will no longer impose a separate take-down charge as the securities are returned to the lending Participant.

After analyzing the charges incurred by Participants when returning Member-to-Member Securities Loans, MCC has detemined that the existing fee structure caused Participants unnecessary expenses per loan. MCC has now imposed one set-up fee of $2.00 (which includes delivery and receipts) in an effort to make this service more competitive to all users of the Member-to-Member Securities Loan service.

Since the proposed rule change relates to the equitable allocation of dues, fees and other charges among Participants, it is consistent with the requirement of section 17A(b)(3)(D) of the Securities Exchange Act of 1934.

B. Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 thereunder, because the proposed rule change establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of MCC. All submissions should refer to File No. SR-MCC-91-02 and should be submitted by May 28, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10701 Filed 5-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29134; File No. SR-NASD-91-13]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the Uniform Practice Code

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 14, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend its Uniform Practice Code to eliminate certain obsolete provisions, consolidate certain redundant provisions, clarify certain provisions, amend certain provisions to conform to current industry standards and amend certain provisions to provide for the ultimate delivery of aged fails such as non-transferable, bankrupt, worthless and expired securities.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD recently completed a comprehensive review of the Uniform Practice Code. The goal of the review was to update and amend, where necessary, provisions which were obsolete or which did not conform to current industry standards and procedures. Among the specific accomplishments of the review were the consolidation of redundant provisions, clarification of certain provisions and providing for the ultimate delivery of aged fails such as non-transferable, bankrupt, worthless and expired securities.

Summary of Proposed Amendments

Section 3—Definitions

Section 3 is proposed to be amended by the addition of definitions of the terms ex-date, trade date and *immediate return receipt.* The definition of *immediate return receipt* is proposed to be added to clarify the process for the transmittal of written notices. In addition, clarifying amendments are proposed for the definitions of *written notices, Committee* and *record date.*

The proposed definition of the term *ex-date* is the date on which a security is traded without a specified dividend. The proposed definition of the term *trade date* is the day on which the dealer in a later time zone, provided that dealer is accepting a bid or offer, accepts the trade. The proposed definition of the term *immediate return receipt* means the acknowledgement by the receiving member of a written notice. The return receipt must be made via the same media as the notice.

Under the proposed amendments to existing definitions, a written notice could be delivered by FAX, in addition to the methods currently specified. The definition of *record date* is proposed to be broadened to include equity securities among the types of securities, and dividends or any other distribution among the types of distributions, for which a record date is fixed for a distribution.

Section 4—Delivery Dates

Current subsections (a) through (d), relating to cash, regular way, seller's option and buyer's option delivery dates, respectively, are proposed to be deleted from section 4 and added to section 12. Subsections (e) and (f), relating to "when, as and if issued/delivered" delivery dates, will be retained in Section 4 and renumbered as subsections (c) and (d).

Proposed new subsections 4(a) and 4(b), relocated from section 11, set forth the requirements for the contents of confirmations related to "when, as and if issued/distributed" contracts. Proposed new section 4, when published in the NASD Manual, will also include sample form confirmations. The sample form confirmations are attached to the NASD's rule filing as exhibits 2 and 3.

Section 5—Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants"

The NASD is proposing to amend section 5 to renumber the subsections of section 5, to add language in subsection (b) to codify the currently employed treatment of cash dividends or distributions, to reorganize subsection (b), and to eliminate current subsections (d)(1) and (d)(2) as redundant of language contained in renumbered subsections (b) and (c).

Section 6—Transactions "Ex-Interest" in Bonds Which Are Dealt in "Flat"

The NASD is proposing to amend section 6 to conform with the amendments to section 5, and to renumber certain subsections.

Section 7—"Ex" Liquidating Payments

The NASD is proposing to amend section 7 to add a reference to section 6 to the current reference to section 5 as a reflection that liquidating payments may be applied to both equity and debt.

Section 11—Reserved

Section 11 currently addresses confirmations on "when, as and if issued/distributed" contracts. The language of section 11 is proposed to be moved to section 4 and section 11 is proposed to be reserved for future amendments to the Code.

Section 12—Dates of Delivery

The NASD is proposing to amend section 12 by moving language from section 4 relating to the time, place and date of delivery for all types of transactions. New subsections (e) through (g) relate to contracts due on holidays or Saturdays, delayed-delivery, and prior to delivery date. The existing language of section 12 relating to time and place of delivery is to be retained and renumbered as subsection (h) of section 12.

Under proposed new subsection (e) contracts due on a day other than a business day shall mature on the next business day. Proposed subsection (f) provides that delayed delivery shall be at the office of the purchaser on the date agreed upon at the time of the transaction. Finally, proposed subsection (g) provides that if a seller tenders delivery before the stated time, acceptance shall be at the buyer's election, and rejection of delivery will not prejudice the buyer's rights.

Section 27—Delivery of Securities Called for Redemption or Which are Deemed Worthless

The NASD is proposing to amend section 27 to add a new subsection (b) to provide an alternative method of resolving a fail-to-deliver where the security is deemed worthless. The proposed new subsection (b) provides that where securities have no market value and there has been a public announcement to that effect, delivery may consist of the worthless securities or a Letter of Indemnity securing any rights and privileges which may accrue to the holders of the physical security. Such delivery will close out the contract and must be accompanied by documentation evidencing the worthlessness of the security.

Section 29—Assignments and Powers of Substitution; Delivery of Registered Securities

The NASD is proposing to amend section 29 by consolidating the provisions of section 38 therein as subsection (e). The remaining subsections of section 29 will be renumbered as necessary.

Sections 31, 32, 35, 36, 27 and 38—Elimination of Notorials and Miscellaneous Amendments

The NASD is proposing to amend section 31 to eliminate the requirement that notorials be attached to securities where the transfer books are closed indefinitely. A transfer indemnification may be used in lieu of a notorial. The NASD believes that the proposed amendment will eliminate the need to attach large quanitities of paper to securities, and will allow the removal of such notorials where they are currently used. Under the proposed amendments the member will then assume liability for the correctness of the certificate. The NASD does not believe there will be any significant liability exposure to the member, and any additional exposure will be offset by the availability of timely settlement.

Section 32 is proposed to be amended to eliminate reference to notorials and to reference the transfer indemnification provision set forth in section 31. Section 36 is proposed to be amended to reflect the renumbering of section 29.

The provisions of section 35 relating to certificates in the name of married women are proposed to be deleted as obsolete and the section reserved for use in later amendments. And finally, the provisions of section 37 relating to certificates in joint tenancy are proposed to be eliminated as redundant of the provisions in section 29 and the section reserved for use in later amendments.

Section 56—Irregular Delivery—Transfer Refused—Lost or Stolen or Confiscated Securities

The NASD is proposing to amend section 56 to add the term "confiscated" to the category of irregular deliveries to accommodate situations where securities are seized by government officials.

Section 60—Selling Out

The NASD is proposing to amend section 60 to properly identify the Uniform Reclamation Form ("Form") and to provide for equivalent depository generated advice in the absence of the Form. Subsection (b) relating to the proper notice of sell-out is proposed to be amended to conform to the recent amendments to section 59 relating to buy-ins. Section 59 was amended pursuant to NASD rule filing SR-NASD-90-1 and approved by the SEC December 18, 1990.

Section 81—Rights and Warrants

The NASD is proposing to amend section 61 to provide for alternative methods of settling contracts where the securities have expired by their terms. The method may only be used more than 30 days after expiration. Deliveries under this proposed method shall consist of the expired securities or a Letter of Indemnification, and, in the case of units where some of the components have expired, the unexpired components.

The proposed rule change to the Uniform Practice Code is consistent with the provisions of section 15A(b)(6) of the Act, which requires that the rules

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of the NASD be designed to foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 28, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: April 30, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10700 Filed 5-6-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Application for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

May 1, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Amsco International, Inc.
Common Stock, $.01 Par Value (File No. 7-6801)
Destec Energy, Inc.
Common Stock, $.01 Par Value (File No. 7-6802)
Molecular Biosystems
Common Stock, $.01 Par Value (File No. 7-6803)
Grand Metropolitan, Plc
American Depository Shares (File No. 7-6804)
NWNL Companies, Inc.
Common Stock, $1.25 Par Value (File No. 7-6805)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 22, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10625 Filed 5-6-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 1, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following security:

Caldor Corporation Common Stock, $0.01 Par Value (File No. 7-6800).

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 22, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10626 Filed 5-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18121; 811-5085]

Columbus Income Shares, Inc.; Application

April 29, 1991

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Columbus Income Shares, Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on February 4, 1991, and amended on April 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 24, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o ABD Securities Corporation, One Battery Park Plaza, New York, New York 10004, with a copy to Matthew G. Maloney, Esq., Dicksten, Shapiro & Morin, 2101 L Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney, at (202) 504-2274, or Max Berueffy, Branch Chief, at (202) 272-3016 (Office of Investment Regulation, Division of Investment Managment).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company incorporated under the laws of the State of Maryland. On March 12, 1985, Applicant filed a Notification of Registration on Form N-8A, pursuant to section 8(a) of the Act. On June 10, 1985, Applicant filed a registration statement on Form N-1A pursuant to section 8(b) of the 1940 Act. Applicant has made no filings under the Securities Act of 1933, as its shares have been offered on a private placement basis to certain investors outside the United States and to certain employees of Applicant's adviser, ABD Securities Corporation ("ABD").

2. On November 19, 1990, after ABD advised Applicant's Board of Directors that Muenchener Ruechkversicherungs AG, Applicant's principal shareholder ("Muenchener"), intended to redeem its shares in January 1991, because, as of December 31, 1990, a newly-negotiated income tax treaty between the United States and the Federal Republic of Germany would eliminate the tax advantages inherent in its investment in Applicant, the Board approved a Plan of Liquidation and Dissolution (the "Plan"). On January 8, 1991, this Plan was unanimously approved by the stockholders of Applicant.

3. On January 2, 1991, Muenchener redeemed 50,105,000 of its 50,112,800.605 shares of Applicant's common stock, an amount representing over 99% of the common stock issued and outstanding. To satisfy the redemption, Applicant distributed to Muenchener portfolio securities and cash in kind, valuing its portfolio securities in accordance with Applicant's procedures for computing net asset value as described in its registration statement on Form N-1A. The net asset value per share Applicant paid to Muenchener on the redemption date was $10.946124542 ($548,455,570.18 in the aggregate).

4. Therefore, certain fund expenses continued to accrue. On January 29, 1991, Applicant distributed to Muenchener and its other shareholders, holding a total of 9,387,387.15 shares ($102,042.66 in the aggregate), all its remaining shares, in the amount of $10.871 per share, in cash by check or wire transfer to each stockholder at its address of record.

5. Applicant incurred a total of $43,864 in liquidation expenses, including the costs of legal, accounting and tax advice and of preparing, printing and mailing proxy materials and other filings. These expenses were amortized during the period commencing September 6, 1990 and ending December 31, 1990, so that Muenchener bore its pro-rate share of liquidation expenses.

6. Pursuant to Maryland law, Applicant was dissolved on February 1, 1991. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10698 Filed 5-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18125; 812-7666]

Transamerica Cash Reserve, Inc. and Transamerica Current Interest, Inc.

April 30, 1991.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Transamerica Cash Reserve, Inc., a Maryland corporation ("TCR"), and Transamerica Current Interest, Inc., a Texas corporation ("Current Interest"), on behalf of one of its portfolios known as Transamerica Money Market Fund ("Money Market Fund") (the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 17(b) for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: The Applicants seek an order permitting TCR to acquire substantially all of the assets and certain liabilities of Money Market Fund in exchange for shares of TCR.

FILING DATE: The application was filed on February 19, 1991, amended on April 26, 1991, and supplemented by letter to be received during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 28, 1991, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 1000 Louisiana, Houston, Texas 77002.

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FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney, at (202) 504-2274, or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representation

1. TCR and Current Interest are each registered under the Act as open-end diversified management investment companies. Money Market Fund is one of two diversified portfolios of Current Interest.

2. Subject to, and contingent upon, the affirmative vote of the holders of at least a majority of the outstanding shares of Money Market Fund, TCR proposes to acquire the assets of Money Market Fund in exchange for shares of TCR's existing class of stock (the "Reorganization"). Pursuant to the terms of an agreement and plan of reorganization by and between TCR and Current Interest (the "Agreement"), TCR will acquire all of the assets and liabilities of Money Market Fund in exchange for shares of TCR having an aggregate net asset value equal to the aggregate value of the net assets of Money Market Fund being exchanged. Money Market Fund will then distribute the TCR shares to its shareholders on a *pro rata* basis in liquidation of Money Market Fund. Money Market Fund will endeavor to discharge all of its known liabilities and obligations prior to the date of the proposed exchange (the "Exchange Date"). TCR will assume all liabilities of Money Market Fund reflected on an unaudited statement of assets and liabilities prepared in accordance with generally accepted accounting principles and dated as of the close of business on the Exchange Date. TCR will not assume any other liabilities of Money Market Fund, whether absolute or contingent, known or unknown, accrued or unaccrued.

3. The Agreement was approved by each Applicant's Board of Directors, including a majority of the directors of each who are not "interested persons" of Applicants, at meetings held on February 28, 1991.

4. Under the Agreement, each Applicant will bear all of its own expenses of the proposed transaction, except to the extent that such expenses may be assumed by its investment adviser.

5. The consummation of the Reorganization is subject to certain conditions, including that the Applicants shall have received all necessary consents, permits, and order from federal, state and local regulatory authorities (including the SEC), and that the holders of at least a majority of the outstanding shares of Money Market Fund shall have approved the Agreement and the transactions contemplated.

6. The prospectus/proxy statement to be sent to shareholders of Money Market Fund will include a description of the material aspects of the Reorganization, information about TCR, a comparison of the Applicants and pertinent financial information regarding the Applicants. The Agreement will be appended as an exhibit to the prospectus/proxy statement.

7. Transamerica Fund Management Company, a Delaware Corporation ("TFMC"), serves as the investment adviser to TCR and Money Market Fund. TFMC is a wholly-owned subsidiary of Transamerica Criterion Group, Inc., a Delaware corporation ("Criterion Group"), which in turn is a wholly-owned subsidiary of Transamerica Corporation, a Delaware corporation ("Transamerica"). Transamerica Fund Distributors, Inc., a Maryland corporation ("Distributors"), serves as the distributor of shares of TCR and Money Market Fund. Distributors is a wholly-owned subsidiary of TFMC.

8. Transamerica Investment Services, Inc., a Delaware corporation ("TIS"), serves as the sub-adviser to TCR. TIS is a wholly-owned subsidiary of Transamerica.

Applicants' Legal Analysis

1. As of January 31, 1991, Transamerica, through companies controlled by it, owned approximately 33% of TCR's shares and less than five percent of the shares of Money Market Fund.

2. The exchange of Money Market Fund assets for TCR shares in connection with the Reorganization could be deemed to be an affiliated transaction prohibited under section 17(a) of the Act absent prior approval by the SEC. Among other things, section 17(a) prohibits the sale of securities or property to a registered investment company, and the purchase of securities or property from such company, by an affiliated person of the company or by an affiliated person of the principal underwriter of the company. Rule 17a-8 under the Act provides an exemption from the provisions of section 17(a) for a purchase or sale of substantially all of the assets involving registered investment companies that are affiliated solely because the companies have a common investment adviser, common directors, and/or common officers, provided that the companies' non-interested directors make certain findings specified in the rule and record these findings and their bases on the companies' minute books. However, given the various affiliations, share ownerships, and contractual relationship here, Current Interest and TCR may be deemed to be affiliated persons of one another for reasons other than that they have a common investment adviser, common directors, and/or common officers, and the Reorganization therefore may not be exempt from the prohibitions of section 17(a) pursuant to rule 17a-8.

3. The Reorganization meets the standards for an exemption from the provisions of section 17(a) of the Act. The Applicants argue that the terms of the Reorganization are reasonable and fair and do not involve overreaching on the part of any person concerned, and the Reorganization is consistent with the investment policies of each Applicant, and with the general purposes and policies of the Act. Further, the Applicants claim that the policy considerations that support exempting the type of transaction contemplated by rule 17a-8 from the provisions of section 17(a) are equally applicable to the proposed transaction. Accordingly, as a condition to relief from section 17(a), the directors of each Applicant, including the non-interested directors, will be required to make the findings required by rule 17a-8 (a) and (b).

4. Moreover, in considering the terms of the proposed transaction and determining whether to adopt the Agreement, and, in the case of Board of Directors of Current Interest, whether to recommend its approval to shareholders of Money Market Fund, the directors of each Applicant (including the non-interested directors of each acting with the advice and assistance of legal counsel) have fully considered the following factors, among others, from the perspective of each Applicant: (a) The compatibility of the Applicants' investment objectives, (b) the advantages to the Applicants of eliminating the competition and duplication of effort involved in offering shares of open-end investment companies having similar investment objectives, (c) the comparative performance and expense ratios of the Applicants, and (d) the costs and tax consequences of the proposed transaction.

5. The Applicants also argue that shareholders of Money Market Fund should benefit from the flexibility and greater diversity of investments available from a portfolio of TCR's size. Shareholders of TCR should benefit from the proposed transactions through the increase in TCR's total net assets, as well as from the increase in the investment diversification of TCR that can be obtained from the transactions. In addition, the Applicants state that the Reorganization will not affect the rights of TCR shareholders.

Conditions to the Requested Relief

If the requested order is granted, the Applicants expressly consent to the following conditions:

1. The number of shares of TCR to be issued in exchange for the assets for Money Market Fund will be determined on the basis of the aggregate value of the assets and liabilities of Money Market Fund to be transferred and the net asset value per share of TCR, each fixed as of the close of business on the New York Stock Exchange on the Exchange Date. The aggregate value of the assets and liabilities of Money Market Fund to be acquired by TCR and the net asset value of the TCR shares to be issued therefor will each be detemined in accordance with the procedures set forth in TCR's then-current prospectus and statement of additionial information.

2. The proposed transaction will conform to the conditions set forth in rule 17a-8(a) and (b) under the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10669 Filed 5-6-91; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-10432]

Issuer Delisting; Application To Withdraw from Listing and Registration Roberts Pharmaceutical Corp., Common Stock, $.01 Par Value

May 1, 1991.

Roberts Pharmaceutical Corporation ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the Boston Stock Exchange ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company initially listed its Common Stock on the BSE to facilitate trading. The Company seeks to effect the delisting and withdrawal of its Common Stock from the BSE because there is minimal trading of the Common Stock on the BSE. Moreover, the limited trading volume affects prices quoted on the BSE for the Company's Common Stock, which prices are not comparable to price quotations reported by the National Association of Securities Dealers Automated Quotation System/National Market System ("NASDAQ/NMS"). The inclusion of the Common Stock on NASDAQ/NMS provides widespread access for trading in the Common Stock and the administrative effort and costs associated with continued listing of the Common Stock on the BSE are not warranted in light of the limited trading.

Any interested person may, on or before May 22, 1991 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the infomation submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10624 Filed 5-6-91; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Trading in Securities of Texscan Corp.; Order Lifting Suspension of Trading

May 1, 1991.

On April 22, 1991, the Commission entered an Order, pursuant to section 12(k) of the Securities Exchange Act of 1934, suspending trading in the securities of Texscan Corporation, on the American Stock Exchange or otherwise, for the period from 9:30 a.m. e.s.t., April 22, 1991, through 11:59 p.m. e.s.t., on May 3, 1991, because there had been recent market activity in the securities of Texscan Corporation ("Texscan") that may have been the result of manipulative conduct or other illegal activity.

The Commission has filed an action in the United States District Court for the Southern District of New York captioned *Securities and Exchange Commission* v. *Mark P. Molenfant, Thomas C. Payne, and Payne Financial Group*, 91 Civ. 2998 (MBM), alleging that the defendants have engaged and were about to engage in manipulative conduct with respect to Texscan securities. Furthermore, the Court in the above-referenced matter has entered a temporary restraining order enjoining the defendants from engaging in manipulative conduct and employing manipulative and deceptive devices in connection with the trading of securities. The Commission is of the opinion that the public interest and the protection of investors no longer require a suspension of trading in the securities of Texscan.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that the suspension of trading in the securities of Texscan, on the American Stock Exchange or otherwise, is lifted effective 9:30 a.m. e.d.t., on May 2, 1991.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-10621 Filed 5-6-91; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-9979]

Issuer Delisting; Application to Withdraw from Listing and Registration; USP Real Estate Investment Trust, Shares of Beneficial Interest, $1.00 Par Value

May 1, 1991.

USP Real Estate Investment Trust ("Trust") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Board of Trustees of the Trust unanimously approved resolutions on January 25, 1991, to withdraw the Trust's Shares from listing on the Amex and, instead, list such share on the National Association of Securities Dealers Automated Quotations System ("NASDAQ"). The decision of the Boar followed a study of the matter, and was based upon the belief that listing of the shares on NASDAQ will be more beneficial to its shareholders than present listing on Amex.

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In this regard, it is believed that the NASDAQ system of competing market makers will result in increased visibility and sponsorship for the shares than is presently the case with the single specialist assigned to the stock on the Amex. In addition, on NASDAQ, the Trust will have the opportunity to secure its own group of market makers and, in doing so, expand the capital base available for trading in its shares. Finally, it is believed that firms making a market in the Trust's shares will also be inclined to issue research reports concerning the Trust, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before May 22, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10823 Filed 5-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18122; 811-4239]

Voyageur Granit Government Securities Fund, Inc.; Application

April 30, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Voyageur Granit Government Securities Fund, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on October 15, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 28, 1991 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 100 South Fifth Street, suite 2200, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Senior Staff Attorney, (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company that was organized as a corporation under the laws of the State of Minnesota. On February 4, 1985, applicant filed its initial registration statement pursuant to section 8(b) of the 1940 Act. Applicant's registration statement was declared effective on May 16, 1985. The initial public offering of applicant's shares of common stock commenced on or about August 1, 1985, and applicant's shares of common stock were continuously offered for sale to the public until August 30, 1990.

2. By letter dated August 3, 1990, Voyageur Fund Managers ("Voyageur"), applicant's investment adviser, informed applicant's shareholders of its intention to terminate its voluntary expense reimbursement program with respect to applicant and recommended that applicant's shareholders redeem their shares.

3. As of August 30, 1990, there were 554,788 outstanding shares of applicant's common stock. On August 31, 1990, all of applicant's outstanding shares of common stock were redeemed and all of applicant's assets were distributed *pro rata* to applicant's shareholders of record as of that date. Pursuant to the liquidation of applicant, all of its portfolio securities were sold without the payment of brokerage commissions, but at net prices that may have included a spread or markup.

4. All expenses, including legal, accounting, and other general and administrative expenses, incurred in connection with the liquidation of applicant and the redemption of its shares were paid by Voyageur.

5. On October 12, 1990, applicant filed articles of dissolution with the Secretary of State of the State of Minnesota.

6. Applicant has no assets, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10698 Filed 5-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18123; 811-4249]

Voyageur Granit Insured Tax Exempt Fund, Inc.; Application

April 30, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Voyageur Granit Insured Tax Exempt Fund, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on October 15, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 28, 1991 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549.

Applicant, 100 South Fifth Street, suite 2200, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Senior Staff Attorney, (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company that was organized as a corporation under the laws of the State of Minnesota. On March 11, 1985, applicant filed its initial registration statement pursuant to section 8(b) of the 1940 Act. Applicant's registration statement was declared effective on July 18, 1985. The initial public offering of applicant's shares of common stock commenced on or about August 1, 1985, and applicant's shares of common stock were continuously offered for sale to the public until August 30, 1990.

2. By letter dated August 3, 1990, Voyageur Fund Managers ("Voyageur"), applicant's investment adviser, informed applicant's shareholders of its intention to terminate its voluntary expense reimbursement program with respect to applicant and recommended that applicant's shareholders redeem their shares.

3. As of August 30, 1990, there were 373,481 outstanding shares of applicant's common stock. On August 31, 1990, all of applicant's outstanding shares of common stock were redeemed and all of applicant's assets were distributed *pro rata* to applicant's shareholders of record as of that date. Pursuant to the liquidation of applicant, all of its portfolio securities were sold without the payment of brokerage commissions, but at net prices that may have included a spread or markup.

4. All expenses, including legal, accounting, and other general and administrative expenses, incurred in connection with the liquidation of applicant and the redemption of its shares were paid by Voyageur.

5. On October 12, 1990, applicant filed articles of dissolution with the Secretary of State of the State of Minnesota.

6. Applicant has no assets, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10697 Filed 5-6-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC NO. 120-45A]

Proposed Advisory Circular on Airplane Flight Training Device Qualification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The proposed advisory circular revision is intended to provide information regarding airplane flight training device evaluation criteria and procedures. This revision expands the scope of training devices discussed to include all flight training devices used for flight training, qualification, or certification of airmen and categorizes them into levels. Validation and functional tests have been added for the newly established levels and test parameters have been clarified. The format has been completely revised for ease of reference and consistency with other recent guidance material and current regulatory projects. It cancels and replaces AC 120-45, Advanced Training Devices (Airplane Only) Evaluation and Qualification.

DATES: Comments must be received on or before June 21, 1991.

ADDRESSES: Send all comments and requests for copies of the proposed advisory circular to: Federal Aviation Administration, National Simulator Program (Attention: ASO-205), P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Ed Cook, ASO-205, at the above address, telephone: (404) 763-7773 (8 a.m. to 4:30 p.m. EDT).

COMMENTS INVITED: Comments are invited on all aspects of the proposed advisory circular.

Commentators must identify file number AC 120-45A.

SUPPLEMENTARY INFORMATION: The guidance material contained in this advisory circular reflects information to assist all operators in the qualification of airplane flight training devices to be used in training programs or for airman checking under title 14, Code of Federal Regulations.

Issued in Washington, DC, on April 26, 1991.

David Gilliom,

Acting Director, Flight Standards Service.

[FR Doc. 91-10762 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the meeting of the Executive Committee to be held May 24, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks and introductions; (2) Approval of the March 27, 1991 Executive Committee Meeting minutes; (3) Executive Director's report; (4) Special Committee activities report for March-April 1991; (5) Fiscal and Management Subcommittee report; (6) Facilities Working Group report; (7) Review proposed revised terms of reference of SC-159 and SC-162; (8) Consideration of proposals to establish new special committees; (9) Other business; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 1, 1991.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 91-10701 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 13-91]

Treasury Notes, Series N-1998; Interest Rate

Washington, April 26, 1991.

The Secretary announced on April 25, 1991, that the interest rate on the notes

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designated Series N-1996, described in Department Circular—Public Debt Series—No. 13-91 dated April 18, 1991, will be 7⅝ percent. Interest on the notes will be payable at the rate of 7⅝ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 91-10806 Filed 5-6-91; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 12-91]

Treasury Notes, Series Z-1993; Interest Rate

Washington, April 23, 1991.

The Secretary announced on April 24, 1991, that the interest rate on the notes designated Series Z-1993, described in Department Circular—Public Debt Series—No. 12-91 dated April 18, 1991, will be 7 percent. Interest on the notes will be payable at the rate of 7 percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 91-10808 Filed 5-6-91; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: Since at lest 1978 the policy of the Customs Service has been not to issue a Customs Broker License to an individual whose spouse was employed by the agency. This was based on Legal Determination 3532-08, dated July 17, 1978, which held that a conflict of interest would exist in such situations. In 1987 and 1989 Customs issued internal directives requiring Customs employees to report any relatives and household members employed in industries dealing with the agency, including the Customs Brokerage industry, and to obtain an opinion on conflicts of interest which might be present in each reported situation. The Chief Counsel of Customs, designated as the agency's Ethics Officer, renders those opinions.

In light of the procedure now in place to treat such situations on a case-by-case basis, Customs now considers that the blanket policy of denying issuance of Customs Broker Licenses to spouses of employees serves no purpose. Accordingly, effective immediately, the policy is hereby terminated. Any applicants who were previously denied a license solely due to the aforementioned policy may reapply to the appropriate district director on Customs Form 3124. There should be attached to the application a narrative description listing the applicant's work history and residence addresses from the date of Customs denial of a license to the date of the application. The district director will forward the application, along with his/her recommendation, to the Office of Trade Operations, Customs Headquarters. If it is decided that a new background investigation or reexamination is required, the applicant will be so notified and fees will be charged.

Samuel H. Banks,

Assistant Commissioner, Office of Commercial Operations.

[FR Doc. 91-10871 Filed 5-6-91; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before June 6, 1991.

Dated: April 26, 1991.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Marital Status Questionnaire, VA Form 21-0537.

2. The form is used to request certification of a continued unremarried status by surviving spouses in receipt of dependency and indemnity compensation. The information is used to determine continued eligibility to benefits.

3. Individuals or households.

4. 2,875 hours.

5. 5 minutes.

6. Once every eight years.

7. 34,500 respondents.

[FR Doc. 91-10757 Filed 5-6-91; 8:45 am]

BILLING CODE 8320-01-M

Veterans Advisory Committee on Environmental Hazards

AGENCY: Department of Veterans Affairs.

ACTION: Notice of meeting.

The Department of Veterans Affairs gives notice under Public Law 92-463, section 10(a)(2), that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on May 23-24, 1991. The purpose of the meeting is to consider what recommendations should be made to the Secretary of the Department of Veterans Affairs concerning the issue of the conditions related to dioxin exposure. The meeting will convene at 9 a.m. until 5 p.m. in room 119, at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

These meetings will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Leney Holohan, Department of Veterans Affairs Central Office (phone 202/233-8018), prior to May 16, 1991.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, (026B), Deputy Assistant General Counsel, Department of Veterans Affairs Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: April 23, 1991.

By direction of the Secretary.

Laurence M. Christman,

Executive Assistant, Office of the Deputy Assistant Secretary for Program Coordination and Evaluation.

[FR Doc. 91-10755 Filed 5-6-91; 8:45 am]

BILLING CODE 8320-01-M

Scientific Review and Evaluation Board for Rehabilitation Research and Development; Meeting

In accordance with Public Law 92-463, the Department of Veterans Affairs gives notice of a meeting of the Scientific Review and Evaluation Board for Rehabilitation Research and Development. This meeting will convene at the Vista International Hotel, 1400 M Street NW., Washington, DC, July 23 through July 26, 1991. The session on July 23, 1991, is scheduled to begin at 6:30 p.m. and end at 10:30 p.m. The sessions on July 24, 25, and 26, 1991, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) for the July 23, session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On July 24-26, 1991, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b (c)(6), and (c)(9)(b) and the determination of the Secretary of the Department of Veterans Affairs under sections 10(d) of Public Law 92-463 as amended by section 5(c) of Public Law 94-409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service, Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420 (phone: 202-535-7278) at least five days before the meeting.

Dated: April 26, 1991.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91-10713 Filed 5-6-91; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Matching Program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer-matching program matching Internal Revenue Service (IRS) and Social Security Administration (SSA) income tax records with VA pension, compensation and parents' dependency and indemnity compensation records.

The goal of these matches is to compare income and employment status as reported to VA with income tax records maintained by IRS and SSA. For the information of all concerned, a summary of report of the VA matching program, describing the computer matches follows. In accordance with 5 U.S.C. 552a(o)(2), copies of the matching agreement are being sent to both houses of Congress.

These matches are expected to commence on June 1, 1991, or 30 days after agreements by the parties are submitted to Congress and the Office of Management and Budget whichever is later.

The match with IRS is estimated to start June 1, 1991, and will end June 30, 1991, for tax year 1989 information. This agreement may not be extended. A new matching agreement will be required for each year. The match will not continue past the date the legislative authority to obtain this information expires.

The match with SSA is estimated to start June 1, 1991, and will end September 30, 1992. The match may be extended by the involved Data Integrity Boards for a twelve month period provided VA and SSA certify to the Data Integrity Boards, within three months of the termination date of the original match, that the matching program will be conducted without change and the matching program has been conducted in compliance with the original matching agreement. The match will not continue past the date the legislative authority to obtain this information expires.

ADDRESSES: Interested individuals may comment on the proposed matches by writing to the Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Robert Yurgal (213B), (202) 233-3504.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is required by title 5 U.S.C. 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both houses of Congress and the Office of Management and Budget.

Approved: April 23, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Report of Matching Program: Department of Veterans Affairs Compensation, Pension and Dependency and Indemnity Compensation Records with Income Tax Records maintained by the Internal Revenue Service and the Social Security Administration.

a. *Authority.* Title 38 United States Code, section 3006 and Public Law 101-508.

b. *Program Description.*

(1) *Purpose.* (a) The Department of Veterans Affairs (VA) plans to match records of veterans, dependents of veterans, surviving spouses, dependents of surviving spouses who receive pension and parents and their spouses who receive Dependency and Indemnity Compensation (DIC) with income tax records maintained by the Internal Revenue Service (IRS) and the Social Security Administration (SSA).

(b) VA also plans to match records of veterans who are receiving compensation pursuant to a rating of disability awarded by reason of inability to secure or follow a substantially gainful occupation as a result of a service-connected disability or disabilities, not rated as total, with wage and self employment income tax information maintained by SSA.

(c) Currently information about a VA beneficiary's receipt of wage, self employment and other income as well as employment status is obtained from reporting by the beneficiary. The proposed matching programs will enable

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VA to ensure accurate reporting of income and employment status.

(2) *Procedures.* VA will prepare an extract file of beneficiaries receiving income dependent benefits and those who are receiving total compensation due to unemployability caused by a service-connected disability or disabilities whose VA records contain a valid social security number. The VA extract file will be matched against IRS and SSA income tax records. If a VA record and SSA or IRS record match on Social Security number and name, VA will refer the cases to field stations for development to assure the validity of the matched cases, to verify the reported income amount with the payer of the income, to contact the beneficiary identified by the match, to inform the individual of the income identified by the match and to make any required award adjustment. Before any adverse action is taken, the individual identified by the match will be given the opportunity to contest the findings. Where there are reasonable grounds to believe that there has been a violation of criminal laws, the matter will be investigated and referred for prosecutive consideration in accordance with existing VA policies.

c. *Records to be Matched.* The VA records involved in the match are compensation, pension and parents' dependency and indemnity compensation records maintained in the "VA Compensation, Pension, Education and Rehabilitation Records—VA (58 21/22)" contained in the Privacy Act issuances, 1987 compilation, Volume V, Page 808 as amended at Federal Register 52 FR 4078. The SSA records consist of information from the Earnings Recording and Self-Employment Income System, HHS/SSA/OSR, 09-60-0059. The IRS records are from the Wage and Information Returns (IRP) Master File, Privacy Act System Treas/IRS 22.061.

d. *Period of Match.* The initial data exchanges are expected to begin about June 1, 1991. The match with IRS will end June 30, 1991, for tax year 1989 information. The match may not be extended. A new matching agreement will be required for each year. The match will not continue past the date the legislative authority to obtain this information expires. The matching program with SSA will end September 30, 1992. The match may be extended by the involved DIBS for a twelve month period provided the agencies participating in the match certify to the Data Integrity Boards, within three months of the termination date of the original match, that the matching program will be conducted without change and the matching program has been conducted in compliance with the original matching agreement. The match will not continue past the date the legislative authority to obtain this information expires.

[FR Doc. 91-10756 Filed 5-6-91; 8:45 am]

BILLING CODE 8320-01

Sunshine Act Meetings

Federal Register
Vol. 56, No. 88
Tuesday, May 7, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION:

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 9, 1991, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be closed to the public. The matters to be considered at the meeting are:

Closed Session *

New Business

1. Enforcement Actions; and
2. Government-Sponsored Enterprises—Agency Options.

Dated: May 3, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-10950 Filed 5-3-91; 3:55 pm]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, May 9, 1991

May 2, 1991.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 9, 1991, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No, Bureau, and Subject

1—General Counsel—*Title:* Proposals to Reform the Commission's Comparative Process to Expedite the Resolution of Cases (GEN Docket No. 90-264). *Summary:* The Commission will consider petitions for reconsideration of the *Report and Order* in this proceeding.

2—Mass Media—*Title:* Amendment of Section 73.3525 of the Commission's Rules Regarding Settlement Agreements Among Applicants for Construction Permits (MM Docket No. 90-263). *Summary:* The Commission will consider whether to adopt a *Memorandum Opinion and Order* concerning settlement limitations to deter abuse of the Commission's processes.

3—Mass Media—*Title:* Revision of Radio Rules and Policies. *Summary:* The Commission will consider whether to adopt a *Notice of Proposed Rule Making* to explore changes in the structural and ownership regulations governing radio broadcasting service.

4—Common Carrier—*Title:* Regulation of International Accounting Rates (CC Docket No. 90-337, Phase I). *Summary:* The Commission will consider adoption of a *Report and Order* concerning the U.S. carrier accounting and settlement arrangements with their foreign correspondents.

5—Common Carrier—*Title:* Regulation of International Accounting Rates (CC Docket No. 90-337, Phase II). *Summary:* The Commission will consider adoption of a *Further Notice of Proposed Rule Making* concerning the U.S. carrier accounting and settlement arrangements with their foreign correspondents.

6—Common Carrier—*Title:* Interconnection of Exchange Access Carrier Facilities (RM-7249). *Summary:* The Commission will consider a petition for rule making filed by Metropolitan Fiber Systems (MFS) on November 14, 1989. In its petition, MFS requested the Commission to develop rules providing alternative access providers with access to the local exchange carriers' networks on reasonable and nondiscriminatory terms.

7—Common Carrier—*Title:* Inquiry into the Existence of Discrimination in the Provision of Superstation and Network Station Programming (GEN Docket No. 89-88). *Summary:* The Commission will consider adoption of a *Second Report* on whether and the extent to which satellite carriers unlawfully discriminate against home satellite dish distributors in the provision of superstation and network station programming.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued: May 2, 1991.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-10675 Filed 5-3-91; 8:45 am]

BILLING CODE 6712-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM:

TIME AND DATE: 12:00 noon, Monday, May 13, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m., two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 3, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10941 Filed 5-3-91; 3:18 pm]

BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, May 14, 1991.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5488—Safety Study: Transport of Hazardous Materials by Rail.

5369A—Highway Accident Report: Multiple Vehicle Collision and Fire in a Work Zone on Interstate Highway 79, Sutton, West Virginia, July 26, 1991.

NEWS MEDIA CONTACT: Telephone (202) 382-6600.

* Session closed to the public—exempt pursuant to 5 U.S.C. § 552(c)(8) and (9).

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FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: May 2, 1991.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 91-10931 Filed 5-3-91; 2:13 pm]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 6, 13, 20, and 27, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 6

Monday, May 6

9:00 a.m.
Briefing on Maintenance Rule (Public Meeting)

Tuesday, May 7

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 13—Tentative

Wednesday, May 15

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 20—Tentative

Monday, May 20

10:00 a.m.
Briefing on Final Rule on Performance Based QA—Part 35 (Public Meeting)

Tuesday, May 21

10:00 a.m.
Briefing on BRC Consensus Process (Public Meeting)

2:00 p.m.
Briefing on Final Rule on License Renewal—Part 54 (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 27—Tentative

Friday, May 31

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: May 2, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-10935 Filed 5-3-91; 2:31 pm]

BILLING CODE 7590-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:30 p.m. (closed portion), 3:30 p.m. (open portion), Tuesday, May 21, 1991.

PLACE: Offices of the Corporation, Fourth Floor Board Room, 1615 M Street, N.W., Washington, DC.

STATUS: The first part of the meeting from 1:30 p.m. to 3:30 p.m. will be closed to the public. The open portion of the meeting will commence at 3:30 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:30 p.m. to 3:30 p.m.):

1. President's Report.
2. Insurance Project in Hungary
3. Insurance and Finance Project in Venezuela
4. Finance Project in Bolivia
5. Claims Report
6. Finance and Insurance Reprots
7. Approval of 3/26/91 Minutes (Closed Portion)

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 3:30 p.m.)

1. Approval of 3/26/91 Minutes (Open Portion)
2. Credit Reform Implementation
3. Information Reports
   (a) Notice to Board of Changes to OPIC Country List
   (b) Political Risk Insurance Issued for 2nd Qtr FY 91
   (c) Country Consentration
   (d) Financial Statements as of March 31, 1991
   (e) Report on Smaller Business and Cooperative Activities for 2nd Qtr FY 1991
   (f) U.S. Benefits and Less Developed Country Developmental Effects of Projects Assisted by OPIC for 2nd Qtr FY 1991
4. Reconfirmation of meetings schedule for remainder of 1991

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary on (202) 457-7007.

Dated: May 3, 1991.

Dennis K. Dolan,

OPIC Corporate Secretary.

[FR Doc. 91-10876 Filed 5-3-91; 10:57 am]

BILLING CODE 3210-01-M

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federal register

Tuesday
May 7, 1991

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

NOFA for the Operating Assistance and Capital Improvement Loan Components Under the Flexible Subsidy Program; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3250; FR-3010-N-01]

NOFA for the Operating Assistance and Capital Improvement Loan Components Under the Flexible Subsidy Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for Fiscal Year 1991.

SUMMARY: This notice announces HUD's funding for the Operating Assistance and Capital Improvement Loan components of the Flexible Subsidy Program. This document includes information concerning the following:

(a) The purpose of the NOFA and information regarding eligibility, available amounts, and selection criteria;

(b) Application processing, including how to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

DATES: The deadline date for submission of applications by project owners in response to this Notice of Fund Availability is July 8, 1991. See the Application Process section of this NOFA to determine where to submit applications and what constitutes proper submission.

FOR FURTHER INFORMATION CONTACT: Questions concerning this NOFA should be directed to the Program Support Branch, Office of Multifamily Housing Management, 451 Seventh Street SW., Washington, DC. 20410, telephone (202) 708-2654 (voice) or (202) 708-3936 (TDD for hearing-impaired). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: Paperwork Reduction Statement: The Office of Management and Budget has approved the use of the Flexible Subsidy forms under OMB control number 2502-0395 through September 30, 1992.

I. Purpose and Substantive Description

A. Statutory Background and Authority

Section 201 of the Housing and Community Development Amendments (HCDA) of 1978 created the Flexible Subsidy Program to provide Operating Assistance to eligible projects experiencing financial difficulty. Operating Assistance is provided in the form of a deferred loan and, in conjunction with other resources, is designed to restore or maintain the physical and financial soundness of eligible projects. The 1983 amendments to section 201 of the HCDA expanded the universe of eligible projects and clarified that a project need not have an FHA-insured mortgage to be eligible for Flexible Subsidy assistance (e.g., a non-insured section 236 project is eligible).

The 1987 amendments to section 201 of HCDA created a new category of assistance to be provided under the Flexible Subsidy Program for projects that needed capital improvements to achieve physical soundness that cannot be funded from project reserve funds without jeopardizing other major repairs or replacements that are reasonably expected to be required in the near future.

The 1987 amendments to the Flexible Subsidy statute (sections 185 and 186 of the Housing and Community Development Act of 1987) also recognized the need to coordinate assistance under the Flexible Subsidy Program with the preservation of low- and moderate-income housing initiative enacted in sections 221 through 235 of that Act. (In its comprehensive revision of the 1987 Act, section 601 of the Cranston-Gonzalez National Affordable Housing Act, at the new section 219, repeated the listing of incentives the Secretary could agree to provide an owner as part of a plan of action to prevent prepayment of a mortgage on a project serving low- and moderate-income tenants.) Section 219.330 of the rule governing the Capital Improvement Loan portion of the program contains a set-aside provision to assure maximum support for such preservation activities.

This notice assures support of preservation efforts by providing for a set-aside of $25 million for Flexible Subsidy capital improvement funding to projects that are eligible to receive incentives in exchange for extending the low- to moderate-income use of the projects under plans of action approved in accordance with 24 CFR part 248. The remainder of the Flexible Subsidy Fund is available for award to all eligible projects on a competitive basis, in accordance with the priorities specified in this notice.

B. Allocation Amounts

The Flexible Subsidy Fund is comprised of excess rental receipts paid to HUD from owners of section 236 projects, interest earned on the fund, and repayment of Operating Assistance loans made by the Department in past fiscal years, and amounts appropriated by Congress, if any, to carry out the purposes of the Flexible Subsidy Program.

Funds are allocated separately for two types of projects: State-agency financed non-insured projects and all others, including projects with FHA-insured and HUD-held mortgages. Section 219.115 of the HUD regulations requires that the State Agency allocation be based on the number of units in potentially eligible non-insured projects as a percentage of the total number of units in all potentially eligible projects. In accordance with that section, the Department has determined that 9.3 percent of the available funding for Fiscal year 1991 will be earmarked for eligible State Agency projects.

In addition, the Capital Improvement Loan portion of the program is required by statute to be funded at a minimum level of $30 million or 40 percent of the amount in the Flexible Subsidy fund, whichever is less. Any of that amount not used for loans under that program before the last 60 days of a fiscal year shall become available for Operating Assistance loans. This year, $30 million is less than 40 percent of the fund, and, therefore is the amount designated for Capital Improvement Loan.

Funding availability for Fiscal Year 1991 is estimated as follows:

Flexible Subsidy Available 12/31/90	$76,627,000
Plus: Estimated Transfers for the Balance of the Fiscal Year	51,929,000
Estimated Available Funds—Fiscal Year 1991	$128,556,000
Less: Set-aside for capital improvements for projects with incentives under Part 248 (estimated)	25,000,000
Net Available Funds to be allocated under NOFA	$103,556,000
Net Available Funds—State Agency Projects (9.3%)	$ 9,630,708
Net Available Funds—All Other Eligible (90.7%)	$93,925,292
Amount of Available Funds segregated for the Capital Improvement Loan component	$30,000 000
State Agency share (9.3%)	$ 2,790,000
All other eligible projects (90.7%)	$27,210,000
Amount of Available Funds set aside for the Operating Assistance component	$73,556,000
State Agency share (9.3%)	$ 6,840,708
All other eligible projects (90.7%)	$66,715,297

The $25 million estimated set aside for capital improvement incentives under a plan of action may be increased or decreased during the fiscal year, as appropriate. Any adjustment to the estimate will affect the Net Available Funds shown above.

C. Eligibility

1. Types of Projects

The following types of rental or cooperative housing are eligible for Flexible Subsidy assistance:

a. A project assisted under the section 236 interest reduction program, including State Agency non-insured projects, the section 221(d)(5) program (commonly known as the 221(d)(3) Below Market Interest Rate Program), or the Rent Supplement Program.

b. A project that was constructed more than 15 years before assistance is to be provided under the Flexible Subsidy Program with a direct loan under the section 202 Program for Housing for the Elderly or Handicapped.

c. A project assisted under section 23 of the United States Housing Act of 1937 as in effect immediately before January 1, 1975, that is ineligible for assistance under the modernization program operated under the 1937 Act.

d. A project assisted under the section 8 Housing Assistance Payments Program after conversion from assistance under the section 236 Rental Assistance Payments Program or the Rent Supplement Program.

e. A project that met the criteria in item 1 or 2 above before acquisition by the Secretary of HUD and that has been sold by the Secretary subject to a mortgage insured or held by the Secretary and subject to an agreement which provides that the low- and moderate-income character of the project will be maintained. An application for Operating Assistance for a project in this category must be received by HUD within three years of the date of the sale of the project by the Secretary.

2. Conditions

Flexible subsidy assistance will be made available, in accordance with 24 CFR 219.110, only if the following conditions are determined to exist:

a. The assistance is necessary, when considered with other resources available to the project; it will restore or maintain the financial or physical soundness of the project; and it will preserve the low- and moderate-income character of the project.

b. The owner has agreed to maintain the low- and moderate-income character of the project for a period at least equal to the remaining term of the project mortgage.

c. The assistance will be less costly to the Federal Government over the useful life of the project than other reasonable alternatives of preserving the occupancy character of the project.

d. The project owner, and any mortgagee of a project that does not have an FHA-insured mortgage, has provided or agreed to provide the required owner contribution.

e. The project is or can reasonably be made structurally sound, as determined in accordance with an on-site inspection.

f. The project is operated competently, as determined by HUD in a management review.

g. Project management is in accordance with any management improvement and operating plan approved by HUD for the project.

h. In the case of an application for a Capital Improvement Loan, the owner must have funded the reserve for replacements in accordance with HUD requirements, and yet the reserve (and any other project funds available to fund the reserve) is insufficient to finance both the capital improvements for which assistance is being requested and other capital improvements that are reasonably expected to be required within the next 24 months. (See 24 CFR 219.305.)

3. Owner Contribution

a. *Limited dividend, profit-motivated, or cooperative.* These types of owners who seek Operating Assistance must make a minimum financial contribution of 25 percent of the amount needed to render the project financially sound. If seeking a Capital Improvement Loan, they must contribute 25 percent of the total estimated cost of the capital improvements involved. In addition, a profit-motivated owner or an owner of a limited-dividend project seeking Operating Assistance under the Flexible Subsidy Program must agree to waive its right to accrue and pay distributions while any portion of the Operating Assistance loan is outstanding.

b. *Non-profit.* The owner or sponsor of a non-profit project seeking Operating Assistance must make a contribution toward the total amount needed. However, if HUD determines that neither the owner (mortgagor) nor the sponsor has the financial capacity to make a cash contribution, HUD may permit the non-profit owner to contribute to the project in the form of services. If seeking a capital improvement loan, a non-profit owner is exempt from providing a contribution.

c. *Source of contribution.* This owner contribution may not be taken from project income but may be made from distributions of surplus cash as defined in and permitted under the Regulatory Agreement. Cash that already has been agreed to be contributed as a condition for approval of purchase of the project (TPA) may NOT be considered for this purpose. Cash contributions made by the owner within 24 months before the Flexible Subsidy application, from sources other than project income, may be considered. Other possible sources of funding, such as assistance from State or local governments, should be pursued aggressively, in order to attain or exceed the required owner contribution percentage.

4. Special Eligibility Limits

A project owner may request and receive Operating Assistance more than once during the term of the mortgage. However, § 219.205(a)(1) of the regulation permits a repair or replacement item to be eligible for Operating Assistance only if no previous payment of HUD-related assistance has been made (e.g., previous Operating Assistance, Housing Development Grant or Community Development Block Grant) for that particular repair or replacement item.

A repair or replacement included as an action item in the MIO Plan and made by the owner on an emergency basis before execution of the Flexible Subsidy contract may be funded with Operating Assistance only if the owner received advance approval from the HUD Field Office to proceed with the emergency repair.

D. Selection Criteria and Ranking Factors

Each application for Operating Assistance and/or a Capital Improvement Loan will be reviewed by the HUD Field Office having jurisdiction over the project in question. Field Offices will recommend applications for funding to HUD Headquarters.

To implement the priorities for funding specified in §§ 219.230 and 219.330 and to support efforts to preserve housing for low- and moderate-income use, in accordance with section 224 of the Housing and Community Development Act of 1987 and subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (104 Stat. 4249-4278), funding will be awarded within each project type (State Agency financed non-insured and other) and within each component of the Flexible Subsidy Program (Operating Assistance and Capital Improvement

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Loans) to applications in the following category order:

Category 1

Projects designated as troubled by the HUD Field Office for which half or more of the MIO dollar amount (for Operating Assistance) or Capital Improvement amount is designated for emergency health and safety problems. This category applies to projects with insured, non-insured, or HUD-held mortgages that are current under the terms of the mortgage at the time of the application for assistance, but is limited to those projects with emergency problems that are of such a magnitude that:

(a) They could not be mitigated at a cost that could be in any way absorbed within the operating budget; and

(b) Their continuation could potentially result in tenant displacement.

Accounts payable included in the MIO Plan for Operating assistance may be considered "emergency" only to the extent that they directly relate to vital services provided to the project (e.g., utility payables). (Examples of emergency health and safety problems involving possible capital improvements that may be included in this category are broken heating systems, leaking gas stoves and falling balconies.)

Category 2

Insured, non-insured and HUD-held projects designated by the HUD Field Office as troubled that are current under the terms of the mortgage at the time of the application for assistance, with serious financial and physical problems, whose sponsors do not have the necessary funds available to cure the immediate problems and whose income stream cannot be sufficiently improved to meet the project's expenses without first correcting its physical problems.

Category 3

Projects designated by the HUD Field Office as troubled or potentially troubled that are delinquent under the terms of the HUD-insured or State Agency mortgage at the time of the application for assistance and State Agency-owned projects meeting programmatic eligibility requirements.

The above categories represent the initial ranking of applications received for the Operating Assistance and Captial Improvement Loan components of the Flexible Subsidy Program. A secondary ranking of projects within a funding category will be made by HUD Headquarters, as necessary, to determine projects selected for funding.

* * * * *

Example

Assume total available funds equals $90.
Total of applications for categories equals:
Category 1 Projects: $60
Category 2 Projects: $40
Category 3 Projects: $45
Total All Categories $145

In this example, HUD will fund all projects in Category 1. Projects in Category 2 will be scored, ranked, and selected, to the extent funds are available (or $30 in this case) in descending order of funding score. Category 3 projects will not be funded.

* * * * *

The financial distress of a project will be assessed to determine which projects within each funding category are most in need. The severity of a project's financial condition and its ability to meet short-term operating needs and obligations, including debt service payments will be measured by HUD, using financial data contained in the project's audited balance sheet and statement of profit and loss for 1990, or the most recently submitted audited statements (only for those projects with fiscal year end dates later than December 31, 1990).

In assessing financial distress, HUD will use the following ratios, awarding a maximum of 15 points for each ratio, for a maximum score of 30 points per project. Projects with poor financial ratios (e.g., income/expense ratios with a negative value) will be assigned higher point scores than projects with breakeven or positive income/expense ratios from operations.

1. Income/Expense Ratio defined as follows:

$$\frac{\text{Net Income/Loss before depreciation LESS annual debt service and reserve payments}}{\text{Total annual cost of operating the project}}$$

2. Mortgage Coverage Payment Ratio defined as follows:

$$\frac{\text{Current Assets LESS Current Liabilities}}{\text{Total monthly mortgage payment}}$$

* * * * *

E. Other Capital Improvement Loan Terms and Conditions

Capital improvements include any major repair or replacement of building components, e.g., roof structures, ceilings, wall or floor structures, foundations, plumbing, heating, cooling, electrical systems and major equipment, as well as any major repair or replacement of any short-lived building equipment or component before the expiration of its useful life.

Capital improvements may also include limited supplements or enhancements to mechanical equipment to the extent they are needed for the health and safety of the residents (e.g., air conditioning, heating equipment, and building sprinkler systems) where they do not exist. They may also include improvements necessary to comply with HUD's standards in 24 CFR part 8 for accessibility to individuals with handicaps. Capital improvements do not include maintenance of any building components or equipment.

Capital Improvement assistance is provided in the form of an amortizing loan. The interest rate on the loan may not be less than 3 percent (unless HUD determines that a lower rate is necessary to maintain reasonable rental rates) nor more than 6 percent. HUD will determine the rate when considering the project's ability to absorb the rent increase and the percentage of the tenants receiving rental assistance. Interest on the Capital Improvement Loan starts to accrue and the loan amortization period begins when the loan proceeds have been disbursed.

If the requested loan amount is greater than the remaining unpaid balance of the present first mortgage, the loan may not exceed 80 percent of the appraised value of the property, as repaired, less the balance of the first mortgage. HUD or HUD contracted staff will conduct the appraisal.

II. Application Process

An owner must indicate in the application whether it is seeking Operating Assistance or a Capital Improvement Loan. An owner may apply for both simultaneously, but each application will be treated separately under the selection criteria and ranking factors cited in this Notice. In addition, if a limited-dividend project is selected for Operating Assistance, the owner must agree to waive its right to accrue and pay distributions so long as the Operating Assistance loan is outstanding.

The owner of any project eligible for Flexible Subsidy assistance msut apply for assistance by submitting an application (through the State Agency in the case of an uninsured State Agency project) to the Loan Management Branch in the HUD Field Office that has jurisdiction over the project for which assistance is requested, no later than the deadline date specified in this notice. The Field Office will be available to provide technical assistance on the preparation of applications during the application period.

Items must be physically received by the HUD Field Office Loan Management Branch by the due date; it is not enough for an application to bear a postmark date within the submission time period. The HUD Field Office will date-stamp incoming applications to evidence (timely or late) receipt, and, on request, provide the applicant with an acknowledgement of receipt.

Applications received after the due date will be considered for funding in Fiscal Year 1991 only if the Secretary determines that assistance is needed immediately in response to emergency circumstances and only to the extent that contract authority is available to satisfy the request for assistance.

Notification of a general funding award will be made through the HUD regional or area office after notification to the Congressional delegation. Disapproved applicants will be notified with a statement of the basis for disapproval.

After HUD receives the application, it will perform a physical inspection to assure that the Management Improvement and Operating (MIO) plan addresses in a comprehensive fashion all the financial and physical deficiencies. HUD also will conduct a comprehensive management review to assure that all management issues are addressed as part of the MIO plan.

III. Checklist of Application Submission Requirements

A. Operating Assistance under the Flexible Subsidy Program

1. Form HUD–9385, Management Improvement and Operating (MIO) plan. The MIO must include documentation of eligibility and fully address ALL financial and physical deficiencies of the project. To be included in every MIO are a detailed maintenance schedule; a schedule for correcting past deficiencies in maintenance, repairs, and replacements; a plan to upgrade the project to meet cost-effective energy efficiency standards approved by HUD; a plan to improve financial and management control systems; an updated annual operating budget if the last budget was submitted more than 90 days before; and a description of cost controls, procedures and savings.

Action Items on the MIO must be written in a manner which specifically describes the scope of the work and an estimate of the cost of the work to be performed. For example, if gutters and downspouts are to be replaced, the description of the Action Item must detail the number of linear feet, the type and quality of guttering and the cost per foot, including labor.

The MIO must clearly identify all emergency repair Action Items and provide a justification as to the reasons the repair should be considered "emergency" in nature.

2. All documentation required by Notice H 90–17, Combining Low-Income Housing Tax Credits (LIHTC) with HUD Programs.

3. All documentation required by Notice H 90–27, OMB's Guidance on new Government-wide Restrictions on Lobbying, and 24 CFR part 87.

4. Form HUD–2530, Previous Participation Certificate, for all principals requiring clearance under these procedures.

5. Evidence of compliance with the governmentwide rule implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), codified at 49 CFR part 24. (All persons displaced on or after April 2, 1989 as a direct result of privately undertaken rehabilitation, demolition or acquisition of a HUD-assisted project are entitled to relocation payments and other assistance under the URA.)

6. Disclosures of other government assistance and identity of interested parties, as required by 24 CFR 12.32, published on March 14, 1991 (56 FR 11046). See also, Administrative Guidelines published on April 9, 1991 (56 FR 14436).

B. Capital Improvement Loan Program

1. A work write-up and cost estimates listing the major project components that have failed, or are likely to fail or seriously deteriorate within the next 24 months; capital items that can be upgraded to meet cost-effective energy efficiency standards approved by HUD; supplements or enhancements to mechanical equipment and the extent they are needed for health or safety reasons; and amounts needed to comply with HUD's standards as set forth in 24 CFR part 8, dealing with accessibility to individuals with handicaps.

2. All documentation required by Notice H 90–17, Combining Low-Income Housing Tax Credits (LIHTC) with HUD Programs.

3. All documentation required by Notice 90–27, OMB's Guidance on New Government-wide Restrictions on Lobbying, and 24 CFR part 87.

4. A Comprehensive Technical Energy Audit, including an audit of all capital improvements for which assistance is requested, and related capital items whose improvement or upgrading will result in cost-effective energy efficiency improvements. The results of the audit will be a list of specified improvements, their costs and evidence of their cost effectiveness.

5. A MIO plan, if one is required pursuant to § 219.310(b).

6. A statement outlining the owner's contributions.

7. Form HUD–2530, Previous Participation Certificate, for all principals requiring clearance under these procedures.

8. Evidence of compliance with the governmentwide rule implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), codified at 49 CFR part 24. (All persons displaced on or after April 2, 1989 as a direct result of privately undertaken rehabilitation, demolition or acquisition for a HUD-assisted project are entitled to relocation payments and other assistance under the URA.)

9. Disclosures of other government assistance and identity of interested parties, as required by 24 CFR 12.32, published on March 14, 1991 (56 FR 11046). See also, Administrative Guidelines published on April 9, 1991 (56 FR 14436).

IV. Corrections to Deficient Applications

HUD will notify an applicant, in writing, shortly after the expiration of the NOFA response deadline of any technical deficiencies in the application. The applicant must submit corrections to the Loan Management Branch within 14 calendar days from the postmark date of HUD's letter notifying the applicant of any such deficiencies. Corrections to technical deficiencies will be accepted, but substantive changes or supplements to the application will not be accepted.

V. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 101(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this Notice of Fund Availability will not have substantial, direct effects on States, on there

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political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this Notice of Fund Availability will not have a significant impact on family formation, maintenance or well being, and therefore, is not subject to review under the order. The NOFA, insofar as it funds emergency repairs to multifamily housing projects will assist in preserving decent housing stock for families residing there.

D. Catalog

The Catalog of Federal Domestic Assistance Program number is 14.164.

Authority: Sec. 201, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: April 23, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 91-10703 Filed 5-6-91; 8:45 am]

BILLING CODE 4210-27-M

federal register

Tuesday
May 7, 1991

Part III

Department of State

22 CFR Part 40

Visas; Immigrant and Nonimmigrant Documentation: Ineligibility Grounds; Proposed Rule

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DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 40

[Public Notice 1369]

Visas: Regulations Pertaining to Both Nonimmigrants and Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, (DOS).

ACTION: Notice of proposed rule.

SUMMARY: This proposed rule would amend the Department's visa regulations at part 40, title 22, Code of Federal Regulations, to implement the provisions of section 601 of the Immigration Act of 1990, Public Law 101-649. Section 601 revises the grounds of ineligibility under section 212(a) of the Immigration and Nationality Act (INA) applicable to all aliens applying for visas to enter the United States. This section restructures INA 212(a) by consolidating related grounds, repeals certain outmoded grounds, revises the grounds of ineligibility relating to health and security, and expands certain waiver provisions.

DATES: Written comments are invited and must be received in duplicate on or before May 22, 1991.

ADDRESSES: Comments may be submitted to: Chief, Division of Legislation and Regulations, Visa Office; Department of State, Washington, DC 20522-0113.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Division of Legislation and Regulations, Visa Office, Department of State, 202-663-1204.

SUPPLEMENTARY INFORMATION:

Public Law 101-649 Background

Title VI of the Immigration Act of 1990, Public Law 101-649, revises all sections of the INA relating to exclusion and deportation. The first section in that title, section 601, revises the section 212(a) grounds of ineligibility which apply to aliens seeking visa issuance to the United States.

Section 601 reorganized the INA 212(a) grounds of ineligibility by consolidating certain grounds of exclusion. The provisions under present INA 212(a) (1)-(34) were reduced to nine paragraphs under the new INA 212(a). The chart below demonstrates how Public Law 101-649 consolidated the grounds of ineligibility

INA as amended	Present law
212(a)(1)	212(a) (1-6).
212(a)(2)	212(a) (9), (10), (12), (23), and (34).
212(a)(3)	212(a) (27), (28), (29), and (33).
212(a)(4)	212(a)(15).
212(a)(5)	212(a) (14) and (32).
212(a)(6)	212(a) (16), (17), (18), (19), and (31).
212(a)(7)	212(a) (20) and (26).
212(a)(8)	212(a)(22).
212(a)(9)	212(a) (11) and (30).

The consolidation of all the grounds of ineligibility into nine paragraphs resulted in the creation of many subparagraphs with an extensive layering of additional subunits. The statutory breakdown made it impossible for the Department to retain its current format in the Code of Federal Regulations. Consequently, it has become necessary to reorganize part 40 in order to accommodate the restructured INA 212(a) provisions. A redesignation table is herein provided as a guide to users of this part.

Proposed Changes

As many of the INA 212(a) grounds of ineligibility were only reorganized by Public Law 101-649 most of the Department's regulations remain essentially the same in substance. Even in the case of section 212(a)(1) in which all the medical grounds were not only consolidated, but significantly altered, the Department's regulations at 22 CFR 40.11 required only slight modification to reflect the amendment to the INA 212(a) waiver provisions.

The only changes in the regulations pertaining to criminal related grounds of ineligibility in subpart C (INA 212(a)(2)) involve amending the regulations at § 40.24 relating to prostitution to correspond with the statutory amendment to INA 212(a)(2)(D). The Department continues to reserve the authority to promulgate regulations at § 40.25 relating to certain aliens involved in serious criminal activity who have asserted immunity from prosecution.

The most extensive amendment to section 212(a) involves the security grounds, INA 212(a) (27), (28), (29) and (33), which were consolidated into INA 212(a)(3). While the Department is considering publication of regulations at § 40.31, § 40.32, § 40.33, and § 40.35, the text to these sections is being reserved at this time. If the Department decides to promulgate such regulations, they will be published as separate proposed rules. Additionally, although INA 212(a)(3)(D) only applies to immigrants, the regulations implementing its predecessor INA 212(a)(28)(C) are still applicable and are republished at § 40.34.

The proposed regulations at § 40.51 and § 40.52, INA 212(a)(5), are formulated to address the labor certification requirement as it applies to the present occupational preferences under INA 203(a) (3) and (6), as well as the new employment-based preference categories under INA 203(b) (2) or (3) which will become effective on October 1, 1991. Although the nonpreference immigrant classification—INA 203(a)(7)—remains in existence until October 1, 1991, immigrant visa numbers have been unavailable for nonpreference applicants since 1977. In addition, there is no operational possibility that immigrant visa numbers will become available for nonpreference immigrants during the remainder of this fiscal year. As a result, the Department proposes to take this occasion to eliminate from its regulations, which implement section 212(a)(5)(A), all references and all provisions applicable to nonpreference immigrants. Doing so at this time will have no operational effect, either beneficial or prejudicial, and will make it unnecessary to further amend the regulations within three months.

The regulation for INA 212(a)(6)(F) has been reserved, as this ground is new and sufficiently precise to obviate the immediate necessity of promulgating any regulations.

The regulation proposed for INA 212(a)(9)(C) at § 40.93 seeks to reflect the intent of this ground of ineligibility. It is the Department's understanding that this paragraph excludes an alien who withholds custody of a U.S. citizen child outside the United States from a person granted custody of that U.S. citizen by a U.S. court order. An exception arises when that U.S. citizen child is located in a foreign state which is party to the Hague Convention on the Civil Aspect of the International Child Abduction. In order to benefit from the provisions of the convention the child, regardless of nationality, must be located in a party state to the Hague Convention rather than in a signatory state.

It should, also, be noted that as INA 212(a) (7), (8), (13), and (25) were repealed by Public Law 101-649, the corresponding sections of 2 CFR part 40 are similarly repealed.

Proposed new § 40.111 replaces current § 40.8 relating to waivers of ineligibility for nonimmigrants under INA 212(d)(3)(A). Only one substantive change is proposed. Current § 40.8(b)(1) implements a delegation of authority from the Immigration and Naturalization Service to consular officers to approve waivers of ineligibility under INA 212(a)(28)(C) for nonimmigrants in certain cases. INA 212(a)(3)(D), which replaces INA 212(a)(28)(C), is applicable only to immigrant aliens. For this reason, the department proposes to eliminate § 40.8(b) as obsolete.

The remaining grounds of ineligibility, INA 212(a)(4), (a)(7), and (a)(8), are essentially the same as under present law. Thus, the regulations have been retained in substance but have been correspondingly restructured to accommodate the new INA 212(a) format.

Finally, the Department wishes to point out a technical matter relating to INA 212(d)(3)(A) which these proposed regulations address. Under current law, INA 212(d)(3)(A) authorizes the granting of a waiver of ineligibility to a nonimmigrant unless the alien is ineligible under INA 212(a) (27), (29), or (33). In the restructuring of INA 212 by Public Law 101-649 paragraph (3)(A) replaces former paragraph (29), paragraph (3)(C) replaces former paragraph (27), and paragraph (3)(E) replaces former paragraph (33). Accordingly the conforming amendment in section 601(d)(2)(B)(i) of Public Law 101-649 should logically provide for the replacement of "(27), (29), and (33)" with (3)(A), (3)(C), and (3)(E)." Instead, section 601(d)(2)(B)(i) provides for their replacement with "(3)(A), (3)(C), and (3)(D)." This appears to the Department as a clear drafting or typographical error, especially since INA 212(a)(3)(D)—the successor to INA 212(a)(28)(C)—applies only to immigrants. Accordingly, the Department, finding this wording unclear on its face, proposes to interpret it to have meant, "(3)(E)" instead of "(3)(D)."

DERIVATION TABLE

New No.	Old No.	INA as amended
Sec.	Sec.	Sec.
40.1	40.1	No change.
40.2	40.2	No change.
40.3	40.3	No change.
40.4	40.4	No change.
40.5	None	Unassigned.
40.6	40.6	No change.
40.7	40.7	Unassigned.
40.8	40.8	Unassigned.
40.9	40.7	212(a).
40.11	40.7(a)(1-6)	212(a)(1).
40.21	40.7(a)(9) & (23)(A).	212(a)(2)(A).
40.22	40.7(a)(10)	212(a)(2)(B).
40.23	40.7(a)(23)(B)	212(a)(2)(C).
40.24	40.7(a)(12)	212(a)(2)(D).
40.25	40.7(a)(34)	212(a)(2)(E).
40.31	40.7(a)(27), (29), & (29).	212(a)(3)(A).
40.32	40.7(a)(29)	212(a)(3)(B).

DERIVATION TABLE—Continued

New No.	Old No.	INA as amended
Sec.	Sec.	Sec.
40.33	40.7(a)(27)	212(a)(3)(C).
40.34	40.7(a)(28)	212(a)(3)(D).
40.35	40.7(a)(33)	212(a)(3)(E).
40.41	40.7(a)(15)	212(a)(4).
40.51	40.7(a)(14)	212(a)(5)(A).
40.52	40.7(a)(32)	212(a)(5)(B).
40.61	40.7(a)(16)-(17)	212(a)(6)(A).
40.62	40.7(a)(16)-(17)	212(a)(6)(B).
40.63	40.7(a)(19)	212(a)(6)(C).
40.64	40.7(a)(18)	212(a)(6)(D).
40.65	40.7(a)(31)	212(a)(6)(E).
40.66	None	212(a)(6)(F).
40.71	40.7(a) (20) & (21).	212(a)(7)(A).
40.72	40.7(a)(26)	212(a)(7)(B).
40.81	40.7(a)(22)	212(a)(8)(A).
40.82	40.7(a)(22)	212(a)(8)(B).
40.91	40.7(a)(11)	212(a)(9)(A).
40.92	40.7(a)(30)	212(a)(9)(B).
40.93	None	212(a)(9)(C).
40.101	40.7(b)	No change.
40.102	40.7(c)	No change.
40.103	40.7(d)	No change.
40.111	40.8	212(d)(3)(A).

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 22 CFR Part 40

Aliens, Ineligible Classes, Nonimmigrants, Immigrants, Visas, Waivers of Grounds of Ineligibility.

Proposed Regulations

In view of the foregoing, title 22 of the Code of Federal Regulations, subchapter E—VISAS, part 40 is revised to read as follows:

SUBCHAPTER E—VISAS

PART 40—REGULATIONS PERTAINING TO BOTH NONIMMIGRANTS AND IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED [AMENDED]

Subpart A—General Provisions

Sec.
40.1 Definitions.
40.2 Documentation of nationals.
40.3 Entry into areas under U.S. administration.
40.4 Furnishing records and information from visa files for court proceedings.
40.5 [Reserved]
40.6 Basis for refusal.
40.7 [Reserved]
40.8 [Reserved]
40.9 Classes of excludable aliens.

Subpart B—Medical Grounds of Ineligibility

40.11 Medical Grounds of Ineligibility.

Subpart C—Criminal and Related Grounds—Conviction of Certain Crimes

40.21 Crimes involving moral turpitude and controlled substance violators.
40.22 Multiple criminal convictions.
40.23 Controlled substance traffickers. [Reserved]
40.24 Prostitution and commercialized vice.
40.25 Certain aliens involved in serious criminal activity who have asserted immunity from prosecution. [Reserved]

Subpart D—Security and Related Grounds

40.31 General. [Reserved]
40.32 Terrorist activities. [Reserved]
40.33 Foreign policy. [Reserved]
40.34 Immigrant membership in totalitarian party.
40.35 Participants in Nazi persecutions or genocide.

Subpart E—Public Charge

40.41 Public charge.

Subpart F—Labor Certification and Qualification for Certain Immigrants

40.51 Labor certification.
40.52 Unqualified physicians.

Subpart G—Illegal Entrants and Immigration Violators

40.61 Aliens previously deported under INA 212(a)(6)(A).
40.62 Certain aliens previously removed from the United States under INA 212(a)(6)(B).
40.63 Misrepresentation.
40.64 Stowaways.
40.65 Smugglers.
40.66 Subject of civil penalty. [Reserved]

Subpart H—Documentation Requirements

40.71 Documentation requirements for immigrants.
40.72 Documentary requirements for nonimmigrants.

Subpart I—Ineligible for Citizenship

40.81 Ineligible for Citizenship.
40.82 Alien who departed the United States to avoid service in the Armed Forces.

Subpart J—Miscellaneous

40.91 Practicing polygamists.
40.92 Guardian required to accompany excluded alien.
40.93 International child abduction.

Subpart K—Failure to Comply with INA; Certain Former Exchange Visitors; Alien Entitled to A, E, or G Nonimmigrant Classification

40.101 Failure of Application To Comply With INA.
40.102 Certain former exchange visitors.
40.103 Alien Entitled to A, E, or G Nonimmigrant Classification.

Subpart L—Waiver of Grounds of Ineligibility

40.111 Waiver for ineligible nonimmigrants under INA 212(d)(3)(A).

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; Sec. 182(e) Stat. 5011, 8 U.S.C. 1153 note; Sec. 601, 104 Stat. 5087; 8 U.S.C. 1182.

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Subpart A—General Provisions

§ 40.1 Definitions

The following definitions supplement definitions contained in the Immigration and Nationality Act (INA). As used in these regulations, the term:

(a) *Accompanying* or *accompanied by* means not only an alien in the physical company of a principal alien but also an alien who is issued an immigrant visa within 4 months of either the date of issuance of a visa to, or the date of adjustment of status in the United States of, the principal alien, or the date on which the principal alien personally appears and registers before a consular officer abroad to confer alternate foreign state chargeability or immigrant status upon a spouse or child. An "accompanying" relative may not precede the principal alien to the United States.

(b) *Act* means the Immigration and Nationality Act (or INA), as amended.

(c) *Competent officer*, as used in INA 101(a)(26), means a *consular officer* as defined in INA 101(a)(9).

(d) *Consular officer*, as defined in INA 101(a)(9), includes commissioned consular officers and the Director of the Visa Office of the Department and such other officers as the Director may designate for the purpose of issuing nonimmigrant visas only, but does not include a consular agent, an attaché or an assistant attaché. The assignment by the Department of any Foreign Service Officer to a diplomatic or consular office abroad in a position administratively designated as requiring, solely, partially, or principally, the performance of consular functions, and the initiation of a request for a consular commission, constitutes designation of the officer as a "consular officer" within the meaning of INA 101(a)(9).

(e) *Department* means the Department of State of the United States of America.

(f) *Dependent area* means a colony or other component or dependent area overseas from the governing foreign state, natives of which are subject to the limitation prescribed by INA 202(c).

(g) *Documentarily qualified* means that the alien has reported that all the documents specified by the consular officer as sufficient to meet the requirements of INA 222(b) have been obtained, and that necessary clearance procedures of the consular office have been completed. This term shall be used only with respect to the alien's qualification to apply formally for an immigrant visa; it bears no connotation that the alien is eligible to receive a visa.

(h) *Entitled to immigrant classification* means that the alien:

(1) Is the beneficiary of an approved petition granting immediate relative or preference status;

(2) Has satisfied the consular officer as to entitlement to special immigrant status under INA 101(a)(27); or

(3) Has obtained an individual labor certification, or is within one of the professional or occupational groups listed in Schedule A of the Department of Labor regulations, or is within one of the classes described in § 40.51(c) and is therefore not within the purview of INA 212(a)(5)(A).

(i) With respect to alternate chargeability pursuant to INA 202(b), the term "foreign state" is not restricted to those areas to which the numerical limitation prescribed by INA 202(a) applies but includes dependent areas, as defined in this section.

(j) *INA* means the Immigration and Nationality Act, as amended.

(k) *INS* means the Immigration and Naturalization Service.

(l) *Not subject to numerical limitation* means that the alien is entitled to immigrant status as an immediate relative within the meaning of INA 201(b) or INA 201(b)(2)(A)(i) after September 30, 1991, or as a special immigrant within the meaning of INA 101(a)(27) or INA 101(a)(27) (A) and (B) after September 30, 1991, unless specifically subject to a limitation other than under INA 201 (a), (b), or (c).

(m) *Parent, father*, and *mother*, as defined in INA 101(b)(2), are terms which are not changed in meaning if the child becomes 21 years of age or marries.

(n) *Port of entry* means a port or place designated by the Commissioner of Immigration and Naturalization at which an alien may apply to INS for admission into the United States.

(o) *Principal alien* means an alien from whom another alien derives a privilege or status under the law or regulations.

(p) *Regulation* means a rule which is established under the provisions of INA 104(a) and is duly published in the **Federal Register**.

(q) *Son* or *daughter* includes only a person who would have qualified as a *child* under INA 101(b)(1) if the person were under 21 and unmarried.

(r) *Western Hemisphere* means North America (including Central America), South America and the islands immediately adjacent thereto including the places named in INA 101(b)(5).

§ 40.2 Documentation of nationals.

(a) *Nationals of the United States.* A national of the United States shall not be issued a visa or other documentation as an alien for entry into the United States.

(b) *Former Nationals of the United States.* A former national of the United States who seeks to enter the United States must comply with the documentary requirements applicable to aliens under the INA.

§ 40.3 Entry into areas under U.S. administration

An immigrant or nonimmigrant seeking to enter an area which is under U.S. administration but which is not within the "United States", as defined in INA 101(a)(38), is not required by the INA to be documented with a visa unless the authority contained in INA 215 has been invoked.

§ 40.4 Furnishing records and information from visa files for court proceedings.

Upon receipt of a request for information from a visa file or record for use in court proceedings, as contemplated in INA 222(f), the consular officer must, prior to the release of the information, submit the request together with a full report to the Department.

§ 40.5 [Reserved]

§ 40.6 Basis for refusal.

A visa can be refused only upon a ground specifically set out in the law or implementing regulations. The term "reason to believe," as used in INA 221(g), shall be considered to require a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive a visa as provided in INA and as implemented by the regulations. Consideration shall be given to any evidence submitted indicating that the ground for a prior refusal of a visa may no longer exist. The burden of proof is upon the applicant to establish eligibility to receive a visa under INA 212 or any other provision of law or regulation.

§§ 40.7–40.8 [Reserved]

§ 40.9 Classes of excludable aliens.

Subparts (B) through (K) describe classes of excludable aliens who are ineligible to receive visas and who shall be excluded from admission into the United States, except as otherwise provided in the Immigration and Nationality Act, as amended.

Subpart B—Medical Grounds of Ineligibility

§ 40.11 Medical grounds of ineligibility.

(a) *Decision on eligibility based on findings of medical doctor.* A finding of a panel physician designated by the post in whose jurisdiction the examination is performed pursuant to INA 212(a)(1) shall be binding on the consular officer, except that the officer may refer a panel physician finding in an individual case to USPHS for review.

(b) *Waiver of ineligibility—INA 212(g).* If an immigrant visa applicant is ineligible under INA 212(a)(1)(A)(i) or (ii) but is qualified to seek the benefits of INA 212(g), the consular officer shall inform the alien of the procedure for applying to INS for relief under the provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(g).

Subpart C—Criminal and Related Grounds—Conviction of Certain Crimes

§ 40.21 Crimes involving moral turpitude and controlled substance violators.

(a) *Crimes involving moral turpitude.*

(1) *Acts must constitute a crime under criminal law of jurisdiction where they occurred.* Before a finding of ineligibility under INA 212(a)(2)(A)(i)(I) may be made because of an admission of the commission of acts which constitute the essential elements of a crime involving moral turpitude, it must first be established that the acts constitute a crime under the criminal law of the jurisdiction where they occurred. A determination that a crime involves moral turpitude shall be based on the moral standards generally prevailing in the United States.

(2) *Conviction for crime committed when under age 18.* An alien shall be not ineligible to receive a visa under INA 212(a)(2)(A)(i)(I) by reason of any offense committed prior to the alien's fifteenth birthday. Nor shall an alien be ineligible to receive a visa under INA 212(a)(2)(A)(i)(I) by reason of any offense committed between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code. An alien tried and convicted as an adult for a violent felony offense, as so defined, committed after having attained the age of fifteen years, shall be subject to the provisions of INA 212(a)(2)(A)(i)(I) regardless of whether at that time juvenile courts existed within the jurisdiction of the convictions.

(3) *Two or more crimes committed while under age 18.* An alien convicted of a crime involving moral turpitude or admitting the commission of acts which constitute the essential elements of such a crime and who has committed an additional crime involving moral turpitude shall be ineligible under INA 212(a)(2)(A)(i)(I), even though the crime were committed while the alien was under the age of 18 years.

(4) *Conviction in absentia.* A conviction *in absentia* of a crime involving moral turpitude does not constitute a conviction within the meaning of INA 212(a)(2)(A)(i)(I).

(5) *Effect of pardon by appropriate U.S. authorities/foreign states.* An alien shall not be considered ineligible under INA 212(a)(2)(A)(i)(I) by reason of a conviction of a crime involving moral turpitude for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency by a foreign state shall not serve to remove a ground of ineligibility under INA 212(a)(2)(A)(i)(I).

(6) *Political offenses.* The term "purely political offense", as used in INA 212(a)(2)(A)(i)(I), includes offenses that resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious, or political minorities.

(7) *Waiver of ineligibility—INA 212(h).* If an immigrant visa applicant is ineligible under INA 212(a)(2)(A)(i)(I) but is qualified to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

(b) *Controlled substance violators*—(1) *Date of conviction not pertinent.* An alien shall be ineligible under INA 212(a)(2)(A)(i)(II) irrespective of whether the conviction for a violation of or for conspiracy to violate any law or regulation relating to a controlled substance, as defined in the Controlled Substance Act (21 U.S.C. 802), occurred before, on, or after October 27, 1986.

(2) *Waiver of ineligibility—INA 212(h).* If an immigrant visa applicant is ineligible under INA 212(a)(2)(A)(i)(II) but is qualified to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

§ 40.22 Multiple criminal convictions.

(a) *Conviction(s) for crime(s) committed under age 18.* An alien shall not be ineligible to receive a visa under INA 212(a)(2)(B) by reason of any offense committed prior to the alien's fifteenth birthday. Nor shall an alien be ineligible under INA 212(a)(2)(B) by reason of any offense committed between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of title 18 of the United States Code. An alien, tried and convicted as an adult for a violent felony offense, as so defined, committed after having attained the age of fifteen years, and who has also been convicted of at least one other such offense or any other offense committed as an adult, shall be subject to the provisions of INA 212(a)(2)(B) regardless of whether at that time juvenile courts existed within the jurisdiction of the conviction.

(b) *Suspended sentence.* A sentence to confinement that has been suspended by a court of competent jurisdiction is not one which has been "actually imposed" within the meaning of INA 212(a)(2)(B).

(c) *Conviction in absentia.* A conviction *in absentia* shall not constitute a conviction within the meaning of INA 212(a)(2)(B).

(d) *Effect of pardon by appropriate U.S. authorities/foreign states.* An alien shall not be considered ineligible under INA 212(a)(2)(B) by reason in part of having been convicted of an offense for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under INA 212(a)(2)(B).

(e) *Political offense.* The term "purely political offense", as used in INA 212(a)(2)(B), included offenses that resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious, or political minorities.

(f) *Waiver of ineligibility—INA 212(h).* If an immigrant visa applicant is

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ineligible under INA 212(a)(2)(B) but is qualified to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

§ 40.23 Controlled substance traffickers. [Reserved]

§ 40.24 Prostitution and commercialized vice.

(a) *Activities within 10 years preceding visa application.* An alien shall be ineligible under INA 212(a)(2)(D) only if

(1) The alien is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution, or the alien directly or indirectly procures or attempts to procure, or procured or attempted to procure or to import prostitutes or persons for the purposes of prostitution, or receives or received, in whole or in part, the proceeds of prostitution; and

(2) The alien has performed one of the activities listed in § 40.24(a)(1) within the last ten years.

(b) *Prostitution defined.* The term *prostitution* means engaging in promiscuous sexual intercourse for hire. A finding that an alien has "engaged" in prostitution must be based on elements of continuity and regularity, indicating a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts.

(c) *Where prostitution not illegal.* An alien who is within one or more of the classes described in INA 212(a)(2)(D) is ineligible to receive a visa under that section even if the acts engaged in are not prohibited under the laws of the foreign country where the acts occurred.

(d) *Waiver of ineligibility—INA 212(h).* If an immigrant visa applicant is ineligible under INA 212(a)(2)(D) but is qualified to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

§ 40.25 Certain aliens involved in serious criminal activity who have asserted immunity from prosecution. [Reserved]

Subpart D—Security and Related Grounds

§ 40.31 General. [Reserved]

§ 40.32 Terrorist activities. [Reserved]

§ 40.33 Foreign policy. [Reserved]

§ 40.34 Immigrant membership in totalitarian party.

(a) *Definition of affiliate.* The term *affiliate*, as used in INA 212(a)(3)(D), means an organization which is related to, or identified with, a proscribed association or party, including any section, subsidiary, branch, or subdivision thereof, in such close association as to evidence an adherence to or a furtherance of the purposes and objectives of such association or party, or as to indicate a working alliance to bring to fruition the purposes and objectives of the proscribed association or party. An organization which gives, loans, or promises support, money, or other thing of value for any purpose to any proscribed association or party is presumed to be an "affiliate" of such association or party, but nothing contained in this paragraph shall be construed as an exclusive definition of the term "affiliate".

(b) *Service in Armed Forces.* Service, whether voluntary or not, in the armed forces of any country shall not be regarded, of itself, as constituting or establishing an alien's membership in, or affiliation with, any proscribed party or organization, and shall not, of itself, constitute a ground of ineligibility to receive a visa.

(c) *Voluntary Service in a Political Capacity.* Voluntary service in a political capacity shall constitute affiliation with the political party or organization in power at the time of such service.

(d) *Voluntary Membership After Age 16.* If an alien continues or continued membership in or affiliation with a proscribed organization on or after reaching 16 years of age, only the alien's activities after reaching that age shall be pertinent to a determination of whether the continuation of membership or affiliation is or was voluntary.

(e) *"Operation of Law" Defined.* The term "operation of law", as used in INA 212(a)(3)(D), includes any case wherein the alien automatically, and without personal acquiescence, became a member of or affiliated with a proscribed party or organization by official act, proclamation, order, edict, or decree.

(f) *Membership in Organization Advocating Totalitarian Dictatorship in the United States.* In accordance with the definition of "totalitarian party" contained in INA 101(a)(37), a former or present voluntary member of, or an alien who was, or is, voluntarily affiliated with a noncommunist party, organization, or group, or of any section, subsidiary, branch, affiliate or subdivision thereof, which during the time of its existence did not or does not advocate the establishment in the United States of a totalitarian dictatorship, is not considered ineligible under INA 212(a)(3)(D) to receive a visa.

(g) *Waiver of ineligibility—212(a)(3)(D)(iv).* If an immigrant visa applicant is ineligible under INA 212(a)(3)(D) but is qualified to seek the benefits of INA 212(a)(3)(D)(iv), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(a)(3)(D)(iv).

§ 40.35 Participants in Nazi persecutions or genocide.

(a) *Participation in Nazi persecutions.* (Reserved)

(b) *Participation in genocide.* (Reserved)

Subpart E—Public Charge

§ 40.41 Public charge.

(a) *Basis for determination of ineligibility.* Any determination that an alien is ineligible under INA 212(a)(4) must be predicated upon circumstances indicating that the alien will probably become a public charge after admission.

(b) *Posting of bond.* A consular officer may issue a visa to an alien who is within the purview of INA 212(a)(4) upon receipt of notice from INS of the giving of a bond or undertaking in accordance with INA 213 and INA 221(g), provided the officer is satisfied that the giving of such bond or undertaking removes the likelihood that the alien might become a public charge within the meaning of this section of the law and that the alien is otherwise eligible in all respects.

(c) *Prearranged employment.* An immigrant visa applicant relying on an offer of prearranged employment to establish eligibility under INA 212(a)(4), other than an offer of employment certified by the Department of Labor pursuant to INA 212(a)(5)(A), must establish the offer of employment by a document that confirms the essential

elements of the employment offer. Any document presented to confirm the employment offer must be sworn and subscribed to before a notary public by the employer or an authorized employee or agent of the employer. The signer's printed name and position or other relationship with the employer must accompany the signature.

(d) *Significance of income poverty guidelines.* An immigrant visa applicant relying solely on personal income to establish eligibility under INA 212(a)(4), who does not demonstrate an annual income above the income poverty guidelines published by the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, and who is without other adequate financial resources, shall be presumed ineligible under INA 212(a)(4).

Subpart F—Labor Certification and Qualification for Certain Immigrants

§ 40.51 Labor certification.

(a) *INA 212(a)(5) applicable only to certain immigrant aliens.* INA 212(a)(5)(A) applies

(1) Through September 30, 1991, only to immigrant aliens described in INA 203(a) (3) or (6) who are seeking to enter the United States for the purpose of engaging in gainful employment; or,

(2) On or after October 1, 1991, only to immigrant aliens described in INA 203(b)(2) or

(3) Who are seeking to enter the United States for the purpose of engaging in gainful employment.

(b) *Determination of need for alien's labor skills.* An alien within one of the classes to which INA 212(a)(5) applies as described in § 40.51(a) who seeks to enter the United States for the purpose of engaging in gainful employment, shall be ineligible under INA 212(a)(5)(A) to receive a visa unless the Secretary of Labor has certified to the Attorney General and the Secretary of State, that

(1) There are not sufficient workers in the United States who are able, willing, qualified, (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts) and available at the time of application for a visa and at the place to which the alien is destined to perform such skilled or unskilled labor, and

(2) The employment of such alien will not adversely affect the wages and working conditions of the workers in the United States similarly employed.

(c) *Labor certification not required in certain cases.* A spouse or child accompanying or following to join an alien spouse or parent who prior to October 1, 1991 is or was a beneficiary of a petition approved pursuant to INA 203(a) (3) or (6) or an alien spouse or parent who on or after September 30, 1991 is a beneficiary of a petition approved pursuant to INA 203(b) (2) or (3) is not considered to be within the purview of INA 212(a)(5).

§ 40.52 Unqualified physicians.

INA 212(a)(5)(B) applies only to immigrant aliens described in INA 203(a) (3) or (6) through September 30, 1991 or to immigrant aliens described in INA 203(b) (2) or (3) on or after October 1, 1991.

Subpart G—Illegal Entrants and Immigration Violators

§ 40.61 Aliens previously deported under INA 212(a)(6)(A).

An alien who was excluded and deported from the United States under INA 212(a)(6)(A) shall not be issued a visa within one year from the date of deportation unless the alien has obtained permission from INS to reapply for admission.

§ 40.62 Certain aliens previously removed from the United States under INA 212(a)(6)(B).

An alien who was arrested and deported from the United States under INA 212(a)(6)(B) shall not be issued a visa unless the alien has remained outside the United States for at least five successive years (or twenty years in the case of an alien convicted of an aggravated felony) following the last deportation or removal, or has obtained permission from the Immigration and Naturalization Service to reapply for admission to the United States.

§ 40.63 Misrepresentation.

(a) *Fraud and misrepresentation and INA 212(a)(6)(C) applicability to certain refugees.* An alien who seeks to procure, or has sought to procure, or has procured a visa, other documentation, or entry into the United States or other benefit provided under the INA by fraud or by willfully misrepresenting a material fact at any time shall be ineligible under INA 212(a)(6)(C); *provided*, That the provisions of this paragraph are not applicable if the fraud or misrepresentation was committed by an alien at the time the alien sought entry into a country other than the United States or obtained travel documents as a bona fide refugee and the refugee was in fear of being repatriated to a former homeland if the facts were disclosed in connection with an application for a visa to enter the United States: *provided further*, That the fraud or misrepresentation was not committed by such refugee for the purpose of evading the quota or numerical restrictions of the U.S. immigration laws, or investigation of the alien's record at the place of former residence or elsewhere in connection with an application for a visa.

(b) *Misrepresentation in application under Displaced Persons Act or Refuge Relief Act.* Subject to the conditions stated in paragraph (a)(6)(C)(i) of this section an alien who is found by the consular officer to have made a willful misrepresentation within the meaning of section 10 of the Displaced Persons Act of 1948, as amended, for the purpose of gaining admission into the United States as an eligible displaced person, or to have made a material misrepresentation within the meaning of section 11(e) of the Refugee Relief Act of 1953, as amended, for the purpose of gaining admission into the United States as an alien eligible, hereunder, shall be considered ineligible under the provisions of INA 212(a)(6)(C).

(c) *Waiver of ineligibility—INA 212(i).* If an immigrant applicant is ineligible under INA 212(a)(6)(C) but is qualified to seek the benefits of INA 212(i), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(i).

§ 40.64 Stowaws.

INA 212(a)(6)(D) is not applicable at the time of visa application.

§ 40.65 Smugglers.

(a) *General.* A visa shall not be issued to an alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

(b) *Waiver of ineligibility—INA 212(d)(11).* If an immigrant applicant is ineligible under INA 212(a)(6)(E) but is qualified to seek the benefits of INA 212(d)(11), the consular officer shall inform the alien of the procedure for applying to INS for relief under the provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(d)(11).

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§ 40.68 Subject of civil penalty. [Reserved]

Subpart H—Documentation Requirements

§ 40.71 Documentation requirements for immigrants.

INA 212(a)(7)(A) is not applicable at the time of visa application. (For waiver of documentary requirements for immigrants see 22 CFR 42.1 and 42.2.)

§ 40.72 Documentary requirements for nonimmigrants.

A passport which is valid indefinitely for the return of the bearer to the country whose government issued such passport shall be deemed to have the required minimum period of validity as specified in INA 212(a)(7)(B)

Subpart I—Ineligible for Citizenship

§ 40.81 Ineligible for citizenship.

An alien shall be ineligible to receive an immigrant visa under INA 212(a)(8)(A) if the applicant is ineligible for citizenship.

§ 40.82 Alien who departed the United States to avoid service in the armed forces.

(a) *Applicability to immigrants.* INA 212(a)(8)(A) applies to immigrant visa applicants who have departed from or remained outside the United States between September 8, 1939 and September 24, 1978, to avoid or evade training or service in the United States Armed Forces.

(b) *Applicability to nonimmigrants.* INA 212(a)(8)(B) applies to nonimmigtant visa applicants who have departed from or remained outside the United States between September 8, 1939 and September 24, 1978 to avoid or evade training or service in the U.S. Armed Forces except an alien who held nonimmigrant status at the time of such departure.

Subpart J—Miscellaneous

§ 40.91 Practicing polygamists.

An immigrant alien shall be ineligible under INA 212(a)(9)(A) only if the alien is coming to the United States to practice polygamy.

§ 40.92 Guardian required to accompany excluded alien.

INA 212(a)(9)(B) is not applicable at the time of visa application.

§ 40.93 International child abduction.

(a) *Foreign state signatory to the Hague Convention.* For purposes of INA 212(a)(9)(C) a foreign state shall not be deemed signatory unless it has become a party to such convention. A foreign state becomes a party to the Hague Convention on the Civil Aspects of International Child Abduction if it has both signed and has assumed full legal responsibility for its implementation.

(b) *Exception when child located in certain foreign state.* An alien who would otherwise be ineligible under INA 212(a)(9)(C)(i) shall not be ineligible under such paragraph if the U.S. citizen child in question is physically located in a foreign state which is party to the Hague Convention on the Civil Aspects of International Child Abduction.

Subpart K—Failure to Comply with INA; Certain Former Exchange Visitors; Alien entitled to A, E, or G Nonimmigrant Classification

§ 40.101 Failure of application to comply with INA.

(a) *Refusal under INA 221(g).* The consular officer shall refuse an alien's visa application under INA 221(g)(2) as failing to comply with the provisions of INA or the implementing regulations if:

(1) The applicant fails to furnish information as required by law or regulations;

(2) The application contains a false or incorrect statement other than one which would constitute a ground of ineligibility under INA 212(a)(6)(C);

(3) The application is not supported by the documents required by law or regulations;

(4) The applicant refuses to be fingerprinted as required by regulations;

(5) The necessary fee is not paid for the issuance of the visa or, in the case of an immigrant visa, for the application therefore;

(6) In the case of an immigrant visa application, the alien fails to swear to, or affirm, the application before the consular officer; or

(7) The application otherwise fails to meet specific requirements of law or regulations for reasons for which the alien is responsible.

(b) *Reconsideration of refusals.* A refusal of a visa application under paragraph (b)(1) of this section does not bar reconsideration of the application upon compliance by the applicant with the requirements of INA and the implementing regulations or consideration of a subsequent application submitted by the same applicant.

§ 40.102 Certain former exchange visitors.

An alien who was admitted into the United States as an exchange visitor, or who acquired such status after admission, and who is within the purview of INA 212(e) as amended by the Act of April 7, 1970, (84 Stat. 116) and by the Act of October 12, 1976, (90 Stat. 2301), is not eligible to apply for or receive an immigrant visa or a nonimmigrant visa under INA 101(a)(15)(H), (K), or (L), notwithstanding the approval of a petition on the alien's behalf, unless:

(a) It has been established that the alien has resided and has been physically present in the country of the alien's nationality or last residence for an aggregate of at least 2 years following the termination of the alien's exchange visitor status as required by INA 212(e), or

(b) The foreign residence requirement of INA 212(e) has been waived by the Attorney General in the alien's behalf.

§ 40.103 Alien Entitled to A, E, or G Nonimmigrant Classification.

An alien entitled to nonimmigrant classification under INA 101(a)(15) (A), (E), or (G) who is applying for an immigrant visa and who intends to continue the activities required for such nonimmigrant classification in the United States is not eligible to receive an immigrant visa until the alien executes a written waiver of all rights, privileges, exemptions and immunities which would accrue by reason of such occupational status.

Subpart L—Waiver of Ground of Ineligibility

§ 40.111 Waiver for ineligible nonimmigrants under INA 212(d)(3)(A).

(a) *Report or recommendation to Department.* Except as provided in paragraph (b) of this section, consular officers may, upon their own initiative, and shall, upon the request of the Secretary of State or upon the request of the alien, submit a report to the Department for possible transmission to the Attorney General pursuant to the provisions of INA 212(d)(3)(A) in the case of an alien who is classifiable as a nonimmigrant but who is known or believed by the consular officer to be ineligible to receive a nonimmigrant visa under the provisions of INA 212(a), other than INA 212(a) (3)(A), (3)(C) or (3)(E).

(b) *Recommendation to designated INS officer abroad.* A consular officer may, in certain categories defined by the Secretary of State, recommend directly to designated INS officers that the temporary admission of an alien ineligible to receive a visa be authorized under INA 212(d)(3)(A).

(c) *Attorney General may impose conditions.* When the Attorney General authorizes the temporary admission of an ineligible alien as a nonimmigrant and the consular officer is so informed, the consular officer may proceed with the issuance of a nonimmigrant visa to

the alien, subject to the conditions, if any, imposed by the Attorney General.

Dated: April 18, 1991.

James Ward,

Acting Assistant Secretary for Consular Affairs.

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Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Part 245

Railroad User Fees; Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 245

[FRA Docket No. RSUF-1, Notice No. 1]

RIN 2130-AA62

Railroad User Fees

AGENCY: Federal Railroad Administration (FRA); DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes a rule to establish a schedule of fees to be assessed equitably to railroads subject to the Federal Railroad Safety Act of 1970 to cover the costs incurred by FRA in administering the Act. FRA has selected a definition of railroad which will exclude from the user fee program only those railroads whose operations are confined within an industrial installation. All other railroads are in some manner subject to FRA's regulatory oversight and will be subject to the user fee assessment program. FRA proposes that the user fees be assessed based on two criteria: One criterion, train miles will be a measure of volume; and the second criterion, miles of road, will be a measure of system size. FRA proposes to apply the train mile/miles of road user fee allocaton formula across the board to all railroads, large or small (with a minimum fee included to ensure that each railroad pays a fair share of the costs of the FRA safety and enforcement program).

DATES: (1) Written comments must be received not later than June 12, 1991. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) FRA will hold a public hearing on this proposal on June 12, 1991 at the time and place set forth below. Any person who desires to make an oral statement at the hearing is requested to notify the Docket Clerk at least five working days prior to the date of the hearing, by phone or mail.

ADDRESSES: (1) Written comments should be submitted to the Docket Clerk (RCC-30), Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

(2) The public hearing will be held in Washington, DC on June 12, 1991 at 10 a.m. in the Nassif Building (DOT Headquarters), 400 Seventh Street SW., room 2230.

Persons desiring to make oral statements at the hearing should notify the Docket Clerk by telephone (202) 366-2257 or by writing to the Docket Clerk at the address above.

FOR FURTHER INFORMATION CONTACT: Gail L. Payne, Senior Program Analyst, Industry Operations and Safety Analysis Division, Office of Policy, (RRP-12), FRA, Washington, DC 20590 (Telephone: 202-366-4930); or William R. Fashouer, Attorney-Advisor, Office of the Chief Counsel, (RCC-10) FRA, Washington, DC 20590 (Telephone: 202-366-0616).

SUPPLEMENTARY INFORMATION:

Introduction

Background

Section 10501 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508, 104 Stat. 1388-399) (the "Reconciliation Act") amended the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 *et seq.*) (the "Safety Act") by adding a new section 216 requiring the Secretary of Transportation to establish by regulation, after notice and comment, a schedule of fees to be assessed equitably to railroads, in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors, but not based on the proportion of industry revenues attributable to a railroad or class of railroads. The fees to be collected are to be imposed on railroads subject to the Safety Act and are to be designed to cover the costs of administering the Safety Act, other than activities described in section 202(a)(2) thereof (45 U.S.C. 431(a)(2)). The Secretary's authority under the Safety Act, including the authority to implement new section 216, has been delegated to the Federal Railroad Administrator. (See 49 CFR 1.39(m)).

The Secretary is further directed in section 216 to assess and collect the applicable user fees with respect to each fiscal year before the end of the fiscal year. For the fiscal year ending September 30, 1991, the fees are to be assessed in an amount sufficient to cover the costs of administering the Safety Act beginning on March 1, 1991. Subsequent years will address the costs of administering the Safety Act for the entire year. The aggregate fees received for any fiscal year may not exceed 105 percent of the aggregate of appropriations made by the Congress for the fiscal year for activities covered by the fees.

The Secretary's authority to collect fees is to expire on September 30, 1995.

FRA Conclusion and Proposals (With Section-by-Section Analysis)

FRA faced four principal challenges in developing regulations implementing section 216: First, identifying those activities carried out by FRA under the Safety Act for which the costs are to be covered by user fees; second, defining the entities covered by the user fees; third, developing an allocation formula that fairly distributes the user fee burden across the railroad industry; and fourth, completing the process in an expeditious and timely manner in order to meet the Congressional mandate that user fees covering the fiscal year ending September 30, 1991 be collected prior to that date.

Covered Activities

In defining the scope of the covered activities, FRA naturally has focused on the language employed by Congress in the statute. Section 216 provides: "fees established under this section shall be assessed to railroads subject to this Act and shall cover the costs of administering this Act, other than activities described in section 202(a)(2)." Section 216(a)(3). Since section 216 is an amendment to the Safety Act, the reference to "this Act" means the user fee provision covers only the costs of administering the Safety Act. FRA administers as part of its safety program certain statutes other than the Safety Act and certain regulations not issued under the Safety Act. These include the Hazardous Materials Transportation Act, the Hours of Service Act, the Safety Appliance Act, the Locomotive Inspection Act, the Signal Inspection Act, the Accident Reports Act, the Noise Control Act, and the Sanitary Food Transportation Act of 1990. In addition, FRA has issued implementing regulations jointly under the Safety Act and one of the older safety statutes.

FRA intends to include within the calculation of the cost of administering the Safety Act all activities carried out pursuant to the Safety Act itself, and all regulations issued under the Safety Act, including regulations that have been or may be issued jointly under the Safety Act and one or more of the older safety statutes. FRA will not include within the calculation of the cost of administering the Safety Act costs associated with

administering those regulations not issued under the authority of the Safety Act. These primarily involve regulations implementing the Noise Control Act, the Hazardous Materials Transportation Act, and activities associated with implementing the Hours of Service Act, except for 49 CFR part 228.

One final issue on the scope of coverage of FRA's activities under the Safety Act is worth noting. The statute specifically exempts from the user fee program activities undertaken by FRA under authority of section 202(a)(2) of the Safety Act (45 U.S.C. 431(a)(2)). Section 202(a)(2) authorizes the Secretary to "conduct, as necessary, research, development, testing, evaluation, and training for all areas of railroad safety." Clearly, this means that safety research and development costs and related testing and evaluation are outside the scope of the user fee provision. FRA has also made a careful review of the legislative history of the 1970 Safety Act and concluded that the reference to training in section 202(a)(2) is directed towards the training of railroad industry employees and does not address training carried out by FRA of FRA or state inspection personnel. Accordingly, FRA intends to exclude from the user fee program training costs incurred in training railroad industry personnel but to include within the user fee program training costs incurred by FRA in training its own inspector personnel and inspectors employed by the individual states.

Covered Railroads

As noted in the previous discussion, section 216(a) requires the Secretary to assess user fees on "railroads subject to this Act." Under section 202(e) of the Safety Act (45 U.S.C. 431(e)), "railroad" is defined as follows:

> The term railroad as used in this subchapter means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Under this definition, every railroad in the nation is "subject to" the Safety Act. However, as FRA has noted in its statement of enforcement policy at 49 CFR part 209, appendix A, FRA does not exercise jurisdiction under all of its regulations to the full extent permitted by statute. Since FRA believes that the user fees should be applied to all railroads subject to the FRA's regulatory program, FRA has selected a definition of railroad for these regulations which parallels that employed in the regulations with the broadest reach, part 225—Railroad Accidents/Incidents: Reports, Classification, and Investigations. Accordingly, consistent with part 225 the only railroads that will be excluded from the user fee regulations as a class are railroads whose entire operations are confined within an industrial installation. Since FRA does not exercise jurisdiction over these so-called "plant railroads" under current regulatory policy, it is appropriate that they be excluded from the user fee assessment program. All other railroads are in some manner subject to FRA's regulatory oversig and will be subject to the user fee assessment program.

Allocation Formula

The development of an appropriate basis upon which to allocate the mandated user fees represents the most significant challenge presented by section 216. The statute requires "a schedule of fees to be assessed equitably to railroads, in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors, but shall not be based on the proportion of industry revenues attributable to a railroad or class of railroads." Section 216(a)(1). FRA has made a careful analysis of a number of criteria which might be employed as a basis for allocating user fees among the covered railroads. FRA's goal in conducting this analysis was the selection of a combination of factors that will not only equitably allocate the fees among the various railroads but which will also be relatively simple to calculate and administer.

In addition to the guidance included in the authorizing legislation, FRA considered the following factors in evaluating the most appropriate criteria upon which to base the user fees:

—the reporting burden that the criteria would impose on the industry;

—the degree to which the agency would be able to verify the data;

—the degree to which the data were compatible with the administration of an efficient billing and collection system; and

—the degree to which the criteria could be defined in a clear, unambiguous manner.

The authorizing legislation specifically excluded revenue as a basis for assessing fees on either an individual railroad or a class of railroads.

FRA proposes that the user fees be assessed based on two criteria: one criterion, train miles, will be a measure of volume; and the second criterion, miles of road, will be a measure of system size. A combination of two criteria, train miles and miles of road, was selected rather than reliance on a single criterion. Train and road miles are measures that are well known throughout the industry and are currently used in regulatory oversight. They represent the kind of criteria (volume and size) that were identified in the legislation and that work well together because in combination they compensate for disparities between railroad sizes and densities. The new reporting burden is minimal because all railroads report train miles to FRA monthly on the Illness and Injury Summary Report and road miles (by method of train control) to FRA annually on the Systems Signal Report.

The measures that FRA examined, but did not select, included: Revenue ton miles, gross ton miles, car miles, fuel consumption, locomotive unit miles, passenger miles, and revenue vehicle miles. Included below is a brief discussion addressing the key reasons these other measures were rejected by FRA.

Revenue ton-miles, which are a measure of a railroad's traffic volume, were found wanting in several respects. First, the data are reported by only the 16 Class I railroads. Therefore, selection of revenue ton-miles as a criterion would impose a new reporting burden on the more than 500 non-Class I railroads. Second, revenue ton-miles are not meaningful to terminal railroads because the switching service those railroads provide cannot be measured meaningfully by a composite measure of volume times distance.

Track miles include parallel main line tracks, sidings, passing tracks, yard tracks, and industrial track. There are several concerns FRA had about using track miles as a criterion. First, track miles are all-encompassing. As a result, verification of the miles of sidings and yard tracks could result in a substantial administrative burden. Second, FRA believes that a double section of road should not result in a user fee twice that of a single track section of road. Third, yard tracks and sidings are sufficiently different from first main tracks along the right of way that grouping them together into the single measure, track miles,

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would not be an appropriate method for assessing user fees.

Gross ton miles has many of the same shortcomings as revenue ton miles. Gross ton miles are reported by only Class I railroads, and, because it is a composite figure, a short, high density section of railroad could have the same gross ton miles as a more extensive section of road with low density.

Car miles, fuel consumption, and locomotive unit miles are not reported by the non-Class I railroads. FRA's principal concern with these measures is that the Interstate Commerce Commission has exempted non-class I carriers from reporting such data. Utilizing criteria not now the subject of a reporting requirement would mean the imposition of a new reporting requirement on the non-Class I railroads and would require FRA to develop new data bases. In addition, relying on one of these sources for assessing the user fees would mean that FRA would be unable to perform impact analyses prior to an initial data collection. This would delay calculation of an assessment rate for the first year and the potential exists that FRA would be unable to collect the fees by the end of the fiscal year ending September 30, 1991. The measures selected as criteria for assessment, train miles and miles of road, are generally available for most railroads from existing FRA reporting requirements.

FRA also considered several separate criteria for allocating user fee costs to passenger railroads before deciding that the fairest allocation method was to apply the same criteria to passenger and freight operations. Passenger miles were considered as a criterion for apportioning fees among both commuter and passenger railroads. A shortcoming with passenger miles is that the reliability of the measure may be questionable because it is based on an estimate of the average distance traveled per passenger. This estimate is derived from a survey of passengers. The number of passengers is then multiplied by the estimated average distance traveled per passenger to arrive at an estimate of passenger miles. In essence, passenger miles are statistically derived estimates, as opposed to data that are measured directly. Revenue vehicle miles are also a measure of passenger activity. Although revenue vehicle mile data are of better quality than passenger mile data, FRA has been unable to identify a strong rationale supporting the need for separate passenger and freight criteria. Accordingly, the train miles and miles of road criteria will apply to all railroad operations.

In this notice FRA has applied the train mile/miles of road user fee formula across the board to all railroads, large or small (with a minimum fee included to ensure that each railroad pays a share of the cost of the FRA safety and enforcement program). FRA has carefully considered and rejected the concept of an exemption from the user fee assessment program for certain types of railroads. FRA is of the opinion that all railroads that potentially participate in or benefit from FRA's safety program should participate in funding the costs of that program. Congress did not include an exemption for small railroads in the enabling legislation, and FRA believes that none is appropriate.

FRA is interested in receiving comments on the subject of the impact of the train mile/miles of road criteria on light density railroads. Applying the standard train mile/road miles criteria may result in a disproportionately high user fee compared to the limited scope of operations on these railroads. FRA is considering treating those railroads with less than 900 train-miles per mile of road as light density railroads.

In order to address this potential problem, FRA is considering an alternative under which the assessment rate per mile of road for light density railroads would be adjusted according to a sliding scale. The sliding scale would be as follows:

Train miles per road mile	Scaling factor
up to 100	.10
101 to 200	.20
201 to 300	.30
301 to 400	.40
401 to 500	.50
501 to 600	.60
601 to 700	.70
701 to 800	.80
801 to 900	.90
901 and above	1.00

The scaling factor would be multiplied by the assessment rate per mile of road. The result would be that light density railroads would be subject to an adjusted assessment rate per mile of road. The adjustment would vary with the density, such that railroads with the lowest density would benefit from the greatest adjustment. For example, a railroad that had a density of 150 train-miles per miles of road would be able to apply the scaling factor. .20 to the standard assessment rate per mile of road, resulting in an adjusted assessment rate per mile of road that is 20 percent of the rate in the standard fee schedule. A railroad with a density of 850 train miles per mile of road would apply a scaling factor of .90, and pay 90 percent of the standard assessment rate per mile of road. The effect is to give a proportionately smaller adjustment to those railroads whose density approaches 900 train-miles per mile of road. Naturally, application of the scaling factor to certain railroads will reduce the aggregate fees collected from this group and increase the fees to be collected from other railroads.

Regulatory Schedule

The fourth principal challenge facing FRA in developing regulations implementing section 216 is completing the regulatory process in sufficient time to ensure that the collection requirements established in the statute are satisfied. The statute requires user fees to be assessed in an amount sufficient to cover FRA's safety oversight activities under the Safety Act beginning on March 1, 1991. In addition, the Secretary is required to assess and collect the fees with respect to each fiscal year before the end of the fiscal year. FRA has interpreted this statutory requirement as mandating that assessments be sent to covered railroads with a due date occurring prior to the end of the fiscal year. FRA expects the railroads to meet their responsibilities in a timely fashion. However, FRA will pursue collection into the new fiscal year in the event payment is not made in a timely fashion. In order to assure that assessments are received and collection is completed prior to September 30, 1991, FRA has adopted an expedited schedule for these proceedings.

Section-by-Section Analysis

Section 245.1 describes the purpose and scope of the user fee regulations. The purpose is the adoption of a program of railroad user fees to implement section 216 of the Safety Act as added by section 10501 of the Reconciliation Act. The user fees are to be assessed beginning in the fiscal year ending September 30, 1991 and these regulations are to expire by law on September 30, 1995.

Section 245.3 defines the applicability of these regulations. As noted above, we propose that they apply to all railroads except those railroads whose entire operations are confined within an industrial installation. The term "railroad" is otherwise intended to have the full breadth encompassed in the statutory definition found in section 202(e) of the Safety Act (45 U.S.C. 431(e)).

Section 245.5 includes a series of definitions of important terms employed

in the user fee regulation. Defined terms include main track, miles of road operated, railroad, and train mile. For the most part, FRA has developed these definitions to reflect traditional railroad industry practice. The inclusion of definitions for these terms should help clarify the reporting requirements for individual railroads and assure that the user fee assessments are based on common understandings.

Section 245.7 identifies the penalties FRA may impose upon any individual or entity that violates any requirement of this part. These penalties are authorized by section 209 of the Safety Act and parallel penalty provisions included in numerous other regulations issued by FRA under authority of the Safety Act. Essentially, any person who violates any requirement of this part or causes the violation of any such requirement will be subject to a civil penalty of at least $250 and not more than $10,000 per violation. Civil penalties may be assessed against individuals only for willful violations. In addition, each day a violation continues will constitute a separate offense. Finally, a person may be subject to criminal penalties for knowingly and willfully falsifying records or reports required by these regulations. FRA believes that the inclusion of penalty provisions for failure to comply with the regulations is important in insuring that compliance is achieved not only in terms of the payment of the relevant user fee but also in the development of accurate data on train miles and miles of road so as to insure that each railroad pays its fair share of the cost of the FRA safety program.

Section 245.101 establishes a new reporting requirement. In order to assure that FRA has adequate data upon which to make its calculation of user fees for each individual railroad, FRA is requiring each railroad subject to this part to submit a report to FRA, not later than March 1 of each year (June 15th for the fiscal year ending September 30, 1991), identifying the railroad's total train miles for the previous calendar year and the total number of miles of road owned, leased or controlled (but not including trackage rights) by the railroad as of December 31 of the previous calendar year. Provisions have been included to assist each covered railroad in calculating train miles and miles of road. Each covered railroad shall make its report to FRA on FRA Form 6180.89—Annual Report of Railroad's Subject to User Fees. In addition to identifying its train miles and miles of road, each railroad will be required to include on Form 6180.89 a corporate billing address for the user fee, whether it is a subsidiary of another corporation, an explanation if zero is entered for either train miles or road miles and the name, title, telephone number, date, and notarized signature of the person submitting the form to FRA.

In order to facilitate the process, FRA anticipates mailing blank copies of the FRA Form 6180.89—Annual Report of Railroads Subject to User Fees to each railroad during the month of January of each year. For the fiscal year ending September 30, 1991, FRA will mail the blank copy of the form during the month of May, 1991. FRA wishes to highlight that this action is for the convenince of the railroads only and in no way affects the obligation of railroads subject to this Part to obtain and submit FRA Form 6180.89 to FRA in a timely fashion in the event a blank form is not received from FRA. Blank forms may be obtained from the FRA Office of Safety. It is FRA's intention to follow the reporting requirements mandated by existing FRA regulations; however, in instances of conflict, the provisions contained in the user fee regulations will govern user fee reporting requirements. Since a significant percentage of the information to be reported is already gathered by the railroads, FRA does not anticipate that the new reporting requirement will impose a significant burden on the industry. Correspondingly, FRA believes the new reporting requirement is necessary to allow for the information to be assembled and reported at one time and in one calculation for the year.

Provisions included in § 245.101 are also designed to clarify which entity is responsible for satisfying the reporting requirements (and paying the user fee) when several railroads have an interest in a particular track or facility. As a basic principle, FRA intends for each railroad subject to this part to report its own train miles for the freight and passenger services it operates without regard to track or facility ownership. As a result, Amtrak and the commuter railroads that own track and operate their own equipment with their own employees would report their own train miles even if the services operated over track owned by one of the freight railroads (or commuter operations over track owned by Amtrak). Since Amtrak owns track primarily in the Northeast Corridor, its share of the user fee will be calculated on both a train mile and road mile basis for its Northeast Corridor operations and solely on a train mile basis for the bulk of its off-corridor operations.

Provisions included in section 245.101 also clarify which entity is responsible for reporting miles of road. Miles of road to be reported is to include all track owned, operated, or controlled by the railroad but does not include track used under trackage rights agreements. Miles of road consisting of leased track is to be reported by the lessee railroad. In the case of trackage rights agreements, FRA intends for the railroad that owns the track to report the road miles. Trackage rights agreements allow one railroad (Railroad A) to operate over tracks controlled by a second railroad (Railroad B). Under this arrangement, train miles accrued by Railroad A over tracks controlled by Railroad B would be reported as train miles by Railroad A, and Railroad A would be assessed its user fee based on these train miles. The user fee related to miles of road would be assessed to Railroad B, the railroad with operational control over the track segment. Similarly, in the case of a haulage agreement where Railroad B operates a regularly scheduled train for Railroad A over road under the operational control of Railroad B, then Railroad B would report and be assessed the user fee on both the train miles and the miles of road.

Each railroad also has a continuing obligation to assure that the information it has provided to FRA is true and accurate. If a railroad should learn that the information it has supplied is incorrect, it is required to resubmit the data to FRA along with an explanation of the discrepancy.

Section 245.103 requires each railroad subject to this part to maintain adequate records supporting the information submitted to FRA regarding the railroad's train miles and miles of road calculations. This section also indicates that the FRA Administrator or the Administrator's designee is to have a right of access to such records during normal business hours for the purposes of inspection and copying. FRA invites interested parties to comment on the types of records that each railroad would maintain in order to support the information to be supplied to FRA and how FRA might be afforded access to such records.

Section 245.105 identifies the period of time during which records required under section 245.103 must be maintained. Such records must be maintained for three years.

Section 245.201 describes the method FRA has selected for calculating the user fee to be paid by each railroad subject to these regulations. Following receipt of FRA Form 6180.89 from each railroad identifying its cumulative train miles for the previous calendar year and its miles of road as of December 31 of

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the previous year, FRA will calculate the total train miles and total miles of road for railroads subject to the user fee regulations for the current fiscal year. This information is due from the covered railroads by March 1 of each year (June 15th for the fiscal year ending September 30, 1991). At the same time, FRA will calculate the total cost of administering the Safety Act for the current fiscal year. Employing these totals, FRA will calculate a railroad user fee rate per train mile and railroad user fee rate per mile of road. The user fee rate per train mile (the volume component) will be calculated by multiplying the total amount to be collected by 0.5 and then dividing this amount by the total number of train miles reported to the FRA for the prior calendar year. The assessment rate per mile of road (the system size component) will be calculated by multiplying the total amount to be collected by 0.5 and then dividing this amount by the total miles of road reported to the FRA for the prior calendar year. The user fee to be paid by each covered railroad will be based on the sum of: the railroad's train miles times the rate per train mile plus the railroad's miles of road times the rate per mile of road. FRA has decided to set a minimum railroad user fee of $500 ($250 for the fiscal year ending September 30, 1991). FRA believes a minimum user fee is appropriate because all of the railroads subject to this part are subject to the Safety Act, and, therefore, benefit from the existence of the program.

Section 245.301 outlines the procedures that will be employed by FRA in collecting the user fees. Each year FRA will provide each covered railroad with a Preliminary Assessment Notice and a Final Assessment Notice. The Preliminary Assessment Notice will be mailed to the subject railroad after March 1 of each year (June 15th for the fiscal year ending September 30, 1991) and will contain FRA's estimate of the total user fee to be collected from all the railroads, the assessment rate per train mile, the assessment rate per mile of road, the train miles and road miles for the subject railroad for the prior calendar year, and the user fee to be paid by the subject railroad. The Preliminary Assessment Notice is designed to provide the individual railroads with information that can be used in making necessary plans and budget adjustments. Following issuance of the Preliminary Assessment Notice, FRA will continue to refine its calculations. FRA will then mail to each covered railroad a Final Assessment Notice which will contain FRA's final determination of the relevant calculations and an indication of the user fee that is due from the railroad.

Section 245.303 indicates that each railroad subject to this part has an obligation to pay to FRA an annual railroad user fee. Payment will be due not later than September 15th of each year. FRA expects to receive prompt payment. In the event payment is not received in a timely manner, applicable interest charges, penalties, and administrative charges will be applied and actions designed to assure collection will be employed as necessary.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

These proposed regulations have been evaluated in accordance with existing regulatory policies and are considered to be non-major under Executive Order 12291. The proposed regulations are considered to be significant under section 5(a)(2)(f) of DOT's Regulatory Policies and Procedures ("the Procedures") (44 FR 11034; February 26, 1979) because they implement a substantial regulatory program or change in policy. In accordance with section 10(a) of the Procedures, FRA has determined that a draft Regulatory Analysis is not required because the proposed regulations do not meet any of the criteria mandating the preparation of such an analysis. As a result, in accordance with section 10(e), FRA has prepared a draft Regulatory Evaluation which includes a brief analysis of the economic consequences of the proposed regulation and an analysis of its anticipated benefits and impacts.

Regulatory Evaluation

Prepared in accordance with section 10(e) of the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

The imposition of the railroad user fee program was mandated by section 10501 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101–508, 104 Stat. 1388). The purpose of the regulation is to implement the authorizing legislation in an equitable manner and to assess the fees according to a formula that maintains a reasonable relationship to a combination of system miles and traffic volume.

The economic consequence of the regulation is to shift the cost of the Federal Railroad Administration's railroad safety program, which heretofore had been borne by the general public, to the railroad industry which directly benefits from uniform, nationwide safety standards. The cost to the rail industry in fiscal year 1991 will be $20 million and approximately $40 million each year in fiscal years 1992 through 1995. These costs represent about one-tenth of one percent of Class I railroad revenues, which were $28 billion in 1989. It is estimated that revenues for the entire rail industry in 1989 were $31.7 billion. In addition to the user fees, there will be a minor cost burden on the industry associated with necessary record keeping and the actual payment of the user fees. However, since the user fees are based on criteria that is well known and already reported to the FRA to a large extent for other purposes, any additional burden should be minimal.

The costs to the rail industry will directly offset the public funding through general revenues, which had previously supported the costs of the FRA safety program.

The costs on each individual railroad are proportional to its system size and volume of traffic. The largest railroad pays the greatest amount in user fees and the smaller railroads pay proportionally lesser amounts. For example, the Burlington Northern Railroad's fee would be about 0.0012 percent of their revenues and the Florida East Coast Railroad's fee would be about 0.0011 percent of their revenues.

The impact on consumers will be minimal. In theory, the railroads could pass along the user fees to its customers as increased rates as they could do with any increase in costs. However, since the fees are only 0.0012 percent of Class I revenues, the impact would be minimal even if the full costs were passed on. It is more likely that competitive factors will prevent the railroads from passing on the full cost of the fees. To the extent the fees may result in slightly higher freight charges, these charges represent a shift of the cost burden from the general public to those who use rail transportation and benefit by increased safety on the railroads. Since the regulations will apply only to the railroad industry, there will be no impact on state and local governments. The Agency requests comments on the impact of the rule on railroads, consumers, and State and local governments.

Since the railroad user fee program was statutorily mandated by Congress in the Reconciliation Act, FRA is of the opinion that Congress has determined that the benefits exceed the costs by deciding to adopt the legislation. The statute specifically mandates that the user fees are to be assessed to railroads subject to the Federal Railroad Safety Act of 1970 and are to be collected in an amount sufficient to cover the costs incurred by FRA in administering the Safety Act (excluding certain training and research and development costs). As a result, FRA has little discretion in the regulatory process to make adjustments in the scope of the covered entities or in the amount of money to be collected. The use of assessment criteria that are for the most part based on data kept by the railroads and submitted for other reporting requirements (most notably 49 CFR parts 225 and 233) will minimize the additional costs associated with the administrative costs of implementing the user fee program.

Regulatory Flexibility Act

FRA certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The proposed rule will apply only to railroads, and accordingly will have no direct impact on small units of government, businesses and other organizations. Although a substantial number of small railroads would be subject to these regulations, if adopted, FRA is of the opinion that the economic impact of the proposed rule should not be significant.

FRA specifically requests comment on the impact of this rule on small entities.

The regulations proposed herein would not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Paperwork Reduction Act

The proposed rule contains information collection requirements. FRA will submit these information collection requirements to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). FRA has endeavored to keep the burden associated with this proposal as simple and minimal as possible. The proposed sections that contain information collection requirements and the estimated time to fulfill each requirement are as follows:

Proposed section	Brief description	Estimated average time
245.101	Annual report of railroads subject to user fees.	1 to 8 hours depending on size of railroad.
245.101	Revised annual report.	45 minutes.
245.103	Recordkeeping	5 minutes.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. FRA solicits comments on the accuracy of the estimates, the practical utility of the information, and alternative methods that might be less burdensome to obtain this information. Persons desiring to comment on this topic should submit their views in writing to Gloria D. Swanson, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590; and to Desk Officer, Regulatory Policy Branch (OMB No. 2130-New), Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20530. Copies of any comments should also be submitted to the docket of this rulemaking at the address provided above.

Environmental Impact

FRA has evaluated these proposed regulations in accordance with its procedures for ensuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, executive orders, and DOT Order 5610.1c. These proposed regulations meet the criteria that establish this as a non-major action for environmental purposes.

List of Subjects in 49 CFR Part 245

Railroad user fee, Reporting and recordkeeping requirements.

Request for Public Comment

FRA proposes to add a new part 245 to title 49, Code of Federal Regulations, as set forth below. FRA solicits comments on all aspects of the proposed rule and the analysis advanced in the explanation of the proposed rule, whether through written submissions or participation at the public hearing, or both. FRA may make changes in the final rule based on comments received in response to this notice.

In consideration of the foregoing, chapter II, subtitle B, of title 49, Code of Federal Regulations is amended as follows:

1. A new part 245 is added to read as follows:

PART 245—RAILROAD USER FEES

Subpart A—General

Sec.
245.1 Purpose and scope.
245.3 Application.
245.5 Definitions.
245.7 Penalties.

Subpart B—Reporting and Recordkeeping

245.101 Reporting requirements.
245.103 Recordkeeping.
245.105 Retention of records.

Subpart C—User Fee Calculation

245.201 User fee calculation.

Subpart D—Collection Procedures and Duty to Pay

245.301 Collection procedures.
245.303 Duty to pay.

Authority: 45 U.S.C. 431, 437, 438, 446 as amended; Pub. L. 101–508, 104 Stat. 1388; and 49 CFR 1.49(m)

Subpart A—General

§ 245.1 Purpose and scope.

(a) The purpose of this part is to implement section 216 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 446) (the "Safety Act") (as added by section 10501 of the Omnibus Budget Reconciliation Act of 1990, Public Law No. 101–508, 104 Stat. 1388–399) which requires the Secretary of Transportation to establish a schedule of fees to be assessed equitably to railroads to cover the costs incurred by the Federal Railroad Administration ("FRA") in administering the Safety Act (not including activities described in section 202(a)(2) thereof).

(b) Beginning in the fiscal year ending September 30, 1991, each railroad subject to this part shall pay an annual user fee to the FRA to be calculated by the FRA in accordance with § 245.101. The provisions of this part shall expire on September 30, 1995, as provided for in section 216(f) of the Safety Act.

§ 245.3 Application.

This part applies to all railroads except those railroads whose entire operations are confined within an industrial installation.

§ 245.5 Definitions.

As used in this part—

(a) *FRA* means the Federal Railroad Administration.

(b) *Main Track* means a track, other than an auxiliary track, extending through yards or between stations, upon which trains are operated by timetable or train order or both, or the use of which is governed by a signal system.

(c) *Miles of road operated* means the length in miles of the single or first main track, measured by the distance

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between terminals or stations, or both. Miles of road operated does not include industrial and yard tracks, sidings, and all other tracks not regularly used by road trains operated in such specific service, and lines operated under a trackage rights agreement.

(d) *Passenger service* means both intercity rail passenger service and commuter rail passenger service.

(e) *Railroad* means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

(f) *Safety Act* means the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 *et seq.*)

(g) *Trackage rights agreement* means an agreement through which a railroad obtains access and provides service over tracks owned by another railroad where the owning railroad retains the responsibility for operating and maintaining the tracks.

(h) *Train* means a unit of equipment, or a combination of units of equipment (including light locomotives) in condition for movement over tracks by self-contained motor equipment.

(i) *Train mile* means the movement of a freight or passenger train a distance of one mile measured by the distance between terminals and/or stations.

§ 245.7 Penalties.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation. Civil penalties may be assessed against individuals only for willful violations. Each day a violation continues shall constitute a separate offense. A person may also be subject to the criminal penalties provided for in 45 U.S.C. 438(e) for knowingly and willfully falsifying records or reports required by this part.

Subpart B—Reporting and Recordkeeping

§ 245.101 Reporting requirements.

(a) Each railroad subject to this part shall submit to FRA, not later than March 1 of each year (June 15 for the fiscal year ending September 30, 1991), a report identifying the railroad's total train miles for the prior calendar year and the total miles of road owned, leased, or controlled (but not including trackage rights) by the railroad as of December 31 of the previous calendar year. This report shall be made on FRA Form 6180.89—Annual Report of Railroads subject to User Fees. The report must include an explanation for an entry of zero for either train miles or miles of road. Each railroad must also identify all subsidiary railroads and provide a breakdown of train miles and miles of road for each subsidiary. Finally, each railroad must enter its corporate billing address for the user fees, and the name, title, telephone number, date, and a notarized signature of the person submitting the form to FRA.

(b) FRA anticipates mailing blank copies of FRA Form 6180.89—Annual Report of Railroads Subject to User Fees to each railroad of record during the month of January (the month of May for the fiscal year ending September 30, 1991) for the railroad's use in preparing the report. This action by FRA is for the convenience of the railroads only and in no way affects the obligation of railroads subject to this Part to obtain and submit FRA Form 6180.89 to FRA in a timely fashion in the event a blank form is not received from FRA. Blank copies of FRA Form 6180.89 may be obtained from the Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590.

(c) Train miles shall be calculated by the railroad in accordance with the following considerations:

(1) Each railroad subject to this part is to report the train miles for the freight and passenger service it operates without regard to track or facility ownership.

(2) Freight train miles to be reported shall include miles run between terminals or stations, or both, to transport revenue and company freight, miles run by trains consisting of empty freight cars or without cars, locomotive train miles run, motor train miles run, and yard-switching miles run.

(3) Passenger train miles to be reported shall include miles run between terminals or stations, or both, to transport passengers, baggage, mail, express, or any combination of these, and miles run by trains consisting of deadhead passenger equipment.

(d) Miles of road shall be calculated by the railroad in accordance with the following considerations:

(1) Miles of road to be reported shall include all track owned, operated, or controlled by the railroad but shall not include track used under trackage rights agreements. Miles of road consisting of leased track is to be reported by the lessee railroad.

(2) Miles of road to be reported shall not include industrial and yard tracks, sidings, and other tracks not regularly used by road trains operated in such specific service.

(e) In computing both train miles and miles of road, fractions representing less than one-half mile shall be disregarded and other fractions considered as one mile.

(f) Each railroad subject to this part has a continuing obligation to assure that the information provided to FRA on Form 6180.89 is accurate. Should a railroad learn at a later date that the information provided was not correct, it shall submit a revised Form 6180.89 along with a detailed letter explaining the discrepancy.

(g) The information collection and reporting requirements contained in this part have been referred to the Office of Management and Budget for approval in accordance with the provision of the Paperwork Reduction Act of 1980.

§ 245.103 Recordkeeping.

Each railroad subject to this part is responsible for maintaining adequate records supporting its calculation of the railroad's total train miles for the prior calendar year and the total miles of road owned, leased, or controlled (but not including trackage rights) by the railroad as of December 31 of the previous calendar year. Such records shall be sufficient to enable the FRA to verify the information provided by the railroad on FRA Form 6180.89—Annual Report of Railroads Subject to User Fees. Such records shall also be available for inspection and copying by the Administrator or the Administrator's designee during normal business hours.

§ 245.105 Retention of Records.

Each railroad subject to this part shall retain records required by section 245.103 for at least three years after the end of the calendar year to which they relate.

Subpart C—User Fee Calculation

§ 245.201 User fee calculation.

(a) The fee to be paid by each railroad shall be determined as follows:

(1) After March 1 of each year (June 15th for the fiscal year ending September 30, 1991), FRA will tabulate the total train miles and total miles of road for railroads subject to this part for the preceding calendar year. FRA's calculations will be based on the information supplied by covered railroads under section 245.101 hereof, and other reports and submissions which railroads are required to make to FRA under applicable regulations. At the same time, FRA will calculate the total cost of administering the Safety Act for the current fiscal year (other than activities described in section 202(a)(2) thereof) which will represent the total amount of user fees to be collected.

(2) On the basis of its tabulations of total train miles, total miles of road, and the total cost of administering the Safety Act, FRA will calculate a railroad user fee rate per train mile and a railroad user fee rate per mile of road. These rates will be calculated as follows:

(i) The assessment rate per train mile will be calculated by multiplying the total amount to be collected by 0.5 and then dividing this amount (i.e., fifty percent of the total amount to be collected) by the total number of train miles reported to the FRA for the prior calendar year. The result will be the railroad user fee rate per train mile for that year.

(ii) The assessment rate per mile of road will be calculated by multiplying the total amount to be collected by 0.5 and then dividing this amount (i.e., fifty percent of the total amount to be collected) by the total miles of road reported to the FRA for the prior calendar year. The result will be the railroad user fee rate per mile of road for that year.

(b) FRA will publish a summary of its calculations in the **Federal Register**.

(c) The user fee to be paid by each covered railroad is based on the greater of $500.00 ($250.00 for the fiscal year ending September 30, 1991) or a two-part formula involving the sum of

(1) The railroad's train miles times the rate per train mile and

(2) The railroad's miles of road times the rate per mile of road.

The formula is as follows: (train miles × rate per train mile) + (miles of road × rate per mile of road) = User Fee Due.

Subpart D—Collection Procedures and Duty to Pay

§ 245.301 Collection procedures.

(a) After March 1 of each year (June 15th for the fiscal year ending September 30, 1991), FRA will provide to each covered railroad a notice (the "Preliminary Assessment Notice") containing FRA's preliminary estimates of the total user fee to be collected, the assessment rate per train mile, the assessment rate per mile of road, the train miles and road miles for the railroad for the prior calendar year, and the user fee to be paid by the railroad. The Preliminary Assessment Notice is designed to be purely informational and will enable covered railroads to make necessary plans and budget adjustments in preparation of receipt of the final notice and user fee assessment.

(b) FRA will refine its calculations as necessary and each year will provide to each covered railroad a notice (the "Final Assessment Notice") containing FRA's final calculations of the total user fee to be collected, the assessment rate per train mile, the assessment rate per mile of road, the train miles and road miles for the railroad for the prior calendar year, the user fee to be paid by the railroad, and a payment voucher. FRA will mail the Final Assessment Notice sufficiently in advance of the end of the fiscal year in order to allow all collections to be completed prior to the end of the fiscal year. For the fiscal year ending September 30, 1991, the Final Assessment Notice will be provided on or about August 15, 1991.

§ 245.303 Duty to pay.

(a) Beginning in the fiscal year ending September 30, 1991, each railroad subject to this part shall pay an annual railroad user fee to the FRA. Payment in full must be received by FRA no later than September 15th of each year. Each railroad shall pay by certified check or money order payable to the Federal Railroad Administration. The payment will be identified as the railroad's user fee by marking it with the railroad's User Fee Account Number as assigned by FRA and by returning the payment voucher form received with the Final Assessment Notice. Payment shall be sent to the address stated in the assessment notice.

(b) Payments not received by the due date will be subject to allowable interest charges, penalties, and administrative charges (31 U.S.C. 3717). Follow-up demands for payment and other actions intended to assure timely collection, including referral to local collection agencies or court action, will be conducted in accordance with Federal Claims Collection Standards (4 CFR chapter II) and Departmental procedures.

Issued in Washington, DC, on May 1, 1991.

Gilbert E. Carmichael,

Federal Railroad Administrator.

[FR Doc. 91-10704 Filed 5-6-91; 8:45 am]

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Part V

Department of Education

Grants and Cooperative Agreements; Availability, etc.: Research in Education of Individuals With Disabilities Program; Notices

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DEPARTMENT OF EDUCATION

Research in Education of Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of final priorities for fiscal year 1991.

SUMMARY: The Secretary announces final funding priorities for fiscal year 1991 for the Research in Education of Individuals with Disabilities Program. This program is administered by the Office of Special Education Programs. The Secretary announces these priorities to ensure effective use of program funds and to direct funds to areas of identified need during fiscal year 1991.

EFFECTIVE DATES: These priorities take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, room 3095—M/S 2313–2640), Washington, DC 20202. Telephone (202) 732–1099. (TDD (202) 732–6153.)

SUPPLEMENTARY INFORMATION: The Research in Education of Individuals with Disabilities Program, authorized by part E of the Individuals with Disabilities Education Act (20 U.S.C. 1441–1443), provides support to advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals in regular education environments, to provide children with disabilities effective instruction and enable them to successfully learn; and research and related purposes, surveys or demonstrations relating to physical education or recreation, including therapeutic recreation, for infants, toddlers, children, and youth with disabilities.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment in the Notice of Proposed Priorities, published on September 25, 1990 (55 FR 39244), twelve comments were received. An analysis of the comments and of the changes in the proposed priorities follows.

General

Comment: One commenter recommended that the title of the program be changed to "Research in Education of Children with Disabilities" to be consistent with the change to "children with disabilities."

Discussion: The Education of the Handicapped Act Amendments of 1990 (Pub. L. 101–476) retitled the Act to read "Individuals with Disabilities Education Act" (IDEA), and retitled the research program to read "Research in Education of Individuals with Disabilities Program."

Changes: The new titles for both the act and the program have been used throughout this document.

Comment: One commenter was concerned that the field-initiated research competition was not included in this list of priorities.

Discussion: Both the field-initiated and the student-initiated research projects priority areas are included in the program regulations. The regulations, and the priorities therein, were subject to public comment in their proposed form, and were announced as final on August 28, 1985. Because those two priorities are contained in the program regulations, they do not need to be republished annually in proposed form. For fiscal year 1991, both the field-initiated and the student-initiated research projects competitions were announced on August 1, 1990 at 55 FR 31340.

Changes: None.

Comment: One commenter stated that the topics of the proposed priorities, although important, did not address the breadth of issues (e.g., social integration, recreation, transition. etc.) that need scientific investigation at this time.

Discussion: The Secretary acknowledges that, in addition to the priorities announced here, there are numerous and equally important areas of inquiry deserving of attention. However, due to the limited amount of resources available for new projects in any given fiscal year it is necessary to target funds in a select number of areas. Applicants wishing to submit research proposals for projects that address different topic areas are encouraged to submit to either the field-initiated research projects competition, or the small grants program competition.

Changes: None.

Comment: One commenter recommended that the small grants program, and the initial career awards priorities should be institutionalized and offered every year.

Discussion: The Secretary agrees that both the small grants program and the initial career awards should be offered every year if sufficient funds are available. He is presently considering proposing the addition of the small grants program and the initial career awards to the list of priorities included in the program regulations.

Changes: None.

Small Grants Program (Priority 1)

Comment: One commenter urged the addition of a focus on racial/ethnic minority groups for the Small Grants Program. The commenter noted the increase in minority populations, differences in prevalence and manifestations of disabilities among children from minority groups, and the possibility that optimal practices might differ for children from different cultural backgrounds.

Discussion: The Secretary agrees that the issues and concerns facing children with disabilities from racial/ethnic minority groups are critical, and should be encouraged under this priority.

Changes: A sentence has been added to this priority encouraging studies that focus on infants, toddlers, children and youth with disabilities from racial/ethnic minority groups.

Comment: One commenter recommended that priorities 1 and 3 be expanded to specifically include studies concerning adopted and foster children experiencing problems in school.

Discussion: As written, priorities 1 and 3 do not preclude applications for studies concerning adopted and foster children with disabilities.

Changes: None

Initial Career Awards (Priority 2)

Comment: One commenter suggested that special consideration be given to candidates who are members of "federally-designated" minority groups since these groups are underrepresented among individuals who are engaged in research.

Discussion: The Secretary agrees that encouraging members of minority groups to apply for Initial Career Awards will benefit the field in a number of ways: By providing role models and mentors, by expanding research about minority populations in some cases, and ultimately by improving services to these populations.

Changes: A sentence has been added to the priority encouraging racial/ethnic minority group applicants to apply for these awards.

Improving Learning Through Home/School Collaboration (Priority 3)

Comment: On commenter raised the issue of the scope implied by this priority. Specifically, the commenter questioned whether all disabilities where to be systematically included in the studies; and whether an applicant could address either performance assessment or homework.

Discussion: As written, the sample requirements in the priority detail that a contrast group of children without disabilities must be included. Consequently, this implies that the sample of children with disabilities should be participating in regular education academic classes with the contrast group children. The priority intended that the sample of children with disabilities be selected with specific attention given to demographic/cultural/socio-economic considerations thought to be related to performance assessment and homework. In addition, the broadest inclusion of children with differing disabilities that meet the above criteria must be included. Therefore, the Secretary agrees that the priority should be clarified regarding the composition of the sample required. The Secretary also believes the priority should address both performance assessment and homework. It is the opinion of the Secretary that these two topic areas are related. Homework is, in part, another mechanism by which teachers can assess a student's understanding and skills through performance. In addition, homework provides a tool for addressing many other learning objectives.

Changes: The language of the priority has been clarified regarding the composition of the sample required.

Comment: One commenter raised the issue of whether the priority is focused on home-school collaboration or instruction. The concern was that the potential broadening of the scope of the research would exceed projected resources and timeframe.

Discussion: The priority refers to the "hidden instruction" associated with assigned homework and school projects. This reference to instruction is not meant to broaden the focus beyond the instructional objectives underlying the assignment. Rather, parents may provide the collaborative instructional assistance needed to clarify assignments and support the students in their efforts to complete class requirements. However, for many students this additional "instructional" assistance is provided by siblings or friends. The Secretary believes that it is important to identify differences in access to differing levels and sources of out-of-school "instructional" assistance.

Changes: None.

Comment: One commenter raised the issue that the priority should distinguish the preferred methodology for addressing the research questions in light of project timeframe. Specifically, the clarification requested was whether the intent was for experimental or descriptive inquiry.

Discussion: Given the lack of current knowledge related to the psycho/social and academic impacts of increased performance assessment and homework practices, these studies are intended to be predominately descriptive, not experimental, studies.

Changes: The purpose section of the priority has been changed to clarify the methodological intent.

Comment: One commenter raised the issue of whether it is feasible to establish cause and effect relationships given project scope, resources and timeframe

Discussion: The Secretary believes that the studies should be designed to provide descriptive information about current practices and their relationship to student psycho-social and academic status, however a "pre-post" evaluation of the impact of educational reform was not intended.

Changes: The priority has been changed to clarify the intent for these projects to be descriptive studies. Further, the priority was clarified to eliminate any suggestion that a "pre-post" evaluation of the impact of educational reforms was intended.

Comment: One commenter requested that the priority be rewritten so that projects focusing on children below kindergarten age are not excluded.

Discussion: The Secretary agrees that home/school collaboration at the preschool level is important for establishing and supporting lifelong learning. The Department has supported projects that focused on this issue, and undoubtedly will do so again in the future. However, giving the limited resources at this time, it is not feasible to expand the scope of this priority.

Changes: None.

Improving the Retention of Special Education Teachers (Priority 4)

Comment: A number of commenters felt that the priority should also address the retention of teachers in rural areas.

Discussion: The Secretary recognizes that there are retention problems in areas other than urban sites. However, the Secretary believes that it is most important at this time to focus on projects in urban sites. However, the Department previously has funded a number of activities in rural sites, and will do so again in the future. The severity of the problem as well as the concentration of students in urban districts supports the urban focus of this priority at the present time.

Changes: None.

Comment: Several commenters suggested that the priority should also address recruitment of teachers since this is also a critical problem.

Discussion: The Secretary acknowledges that recruitment has been a problem. This is true, in part, because attrition of special education teachers is so acute. However, the Secretary believes that it is most important at this time to focus on problems of retention. Work related to recruitment issues will be given full consideration in future competitions.

Changes: None.

Comment: One commenter perceived that the proposed priority stressed traditional quantitative methods, and recommended adding qualitative methods.

Discussion: While the Secretary expected that quantitive measures will be used, it is also anticipated that qualitative techniques will be utilized. The Secretary believes the priority, as written, provides applicants with the flexibility to determine the appropriate methodologies.

Changes: None.

Comment: Two commenters indicated that five years of funding, rather than three years of funding should be considered so a longitudinal perspective could be obtained.

Discussion: The Secretary agrees that longitudinal issues are critical to research regarding teacher retention. However, time series issues can be examined in a cost effective manner either retrospectively or cross-sectionally since teachers with different years of service naturally exist in the districts.

Changes: None.

Comment: One commenter identified a need for the priority to require projects to define what makes a teacher qualified.

Discussion: While there could be merit in focusing a priority on that issue, the Secretary believes that it would be beyond the scope of this particular priority.

Changes: None.

Comment: One commenter recommended that the priority stress collaboration between the university and the school districts.

Discussion: The Secretary agrees that such collaboration would be very productive, and notes that as written the priority requires participation of multiple stakeholders including teacher educators and local school district staff.

Changes: None.

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Comment: One commenter recommended either opening the competition to all issues of teacher retention or segmenting the competition further and funding a grant for each segment.

Discussion: Opening the competition to all issues related to retention would reduce the resources available to study any one issue, and it is possible that projects addressing urban issues might not be funded at all. The Secretary believes that it is most important at this time to focus on projects in urban sites.

Changes: None.

Comment: One commenter recommended adding the perceived degree of administrative support to the measurement section of the priority, because it appears to be highly related to job satisfaction and retention.

Discussion: The Secretary agrees that the perceived degree of administrative support is an important variable.

Changes: The perceived degree of administrative support has been added as a variable to the measurement section of the priority.

Comment: One Commenter indicated that the six month planning period was unnecessary.

Discussion: The experience of the Department suggests that complex projects involving large, administratively complex sites benefit from a planning phase. However, projects that do not require a planning phase will not be compelled to have one.

Changes: None.

Comment: One commenter asked if the strategic plans developed in the project were to be pilot-tested or implemented as a part of the project.

Discussion: The 3-year projects will not include an implementation period. During the final phase of the projects, the Department, in consultation with the staff of the projects, will discuss implications for pilot-testing and evaluating the plans.

Changes: None.

Comment: One commenter suggested considering applications that were designed to identify factors related to retention.

Discussion: This is an expected outcome of the priority and is addressed under the "Dissemination" section.

Changes: None.

Examining High School Curricula and the Demands on Personnel Educating Students With Disabilities (Priority 5)

Comment: One commenter proposed that this priority "develop high quality *training curricula* (underlining in original) for teachers, administrators, and support personnel." The commenter went on to propose that the "research should not only identify problems in providing better service, but also solutions to these problems."

Discussion: The Secretary agrees with the comment that the ultimate goal of examining high school curricula and the demands on personnel will be to develop a range of solutions to problems encountered in educating children with disabilities in high schools. This priority should lay the groundwork for development and intervention activities by providing a base of knowledge about current curricula and implications for teacher expertise. In the future, priorities that focus on development activities will be better informed about the nature of proposed interventions with the knowledge base that this priority will provide.

Changes: None.

Comments Relating to Both Priorities 4 and 5

Comment: Two commenters suggested alternative approaches to these priorities should be considered. One commenter specifically suggested that these priorities were too prescriptive, leaving "little room for attacking the research problems in unique ways, for approaching a problem in ways that build on previous work in either of these areas, for writing a creative proposal." However, another commenter noted the need for greater specificity in these two priorities, stating that "it would be most helpful if * * * the focus of the competition is clear and the relationship between these different components is addressed (how much weight should be placed on each component, how they should be integrated into the content, plan of operation and evaluation plan, how evaluators will consider them, etc.)."

Discussion: It is certainly not the intent of the Department to discourage creative approaches to research. The priorities were developed in a manner to encourage investigator initiated approaches to broadly stated study parameters. The study specifications included in the priority are meant to communicate the desired impact and expectations for the contribution of the projects to be funded to advancing professional practice and achieving better outcomes for children with disabilities. By stating the expectations and impact for these projects, the development of specific methodologies and approaches for these studies is left to the creativity of the applicant. However, the Secretary acknowledges that these two priorities could be clarified so that investigators know that they may submit proposals that add additional analysis or other variables to conceptual frameworks, sampling, measurement, or project design than those described in the priorities.

Changes: Language has been added to both priorities 4 and 5 to clarify that some of the activities listed under the various components are not all inclusive (e.g., conceptual frameworks, dissemination, measurement, or project analysis). Applicants are not necessarily limited to only the stated variables, but may add additional ones where appropriate.

Priorities

The Secretary establishes the following funding priorities for the Research in Education of Individuals with Disabilities Program, CFDA No. 84.023. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(C)(3)), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: Small Grants Program CFDA 84.023A)

This priority provides support for a broad range of research and related projects that can be completed within a 12–18 month time period, and that are budgeted at $75,000 or less for the entire project period. The projects supported by this priority must focus on early intervention services for infants and toddlers and special education for children and youth with disabilities, consistent with the purpose of the program as stated in 34 CFR 324.1. The purpose of this priority is not to fund product development but, rather, to advance knowledge and practice. This priority is for pilot studies, projects that employ new methodologies, descriptive studies, advances in assessment, projects that synthesize state-of-the-art research and practice, projects for research dissemination and utilization, and projects that analyze extant data bases. Studies that use these approaches to address the needs of infants, toddlers, children and youth with disabilities from racial/ethnic minority groups are encouraged. Projects must demonstrate the potential contribution and benefits to be derived from the research or related activities.

Pilot studies are initial inquiries designed to develop and determine the feasibility of sampling, measurement, data collection or analysis procedures. These pilot studies must be conducted in a manner that actually results in initial findings as well as provides evidence of feasibility of procedures.

Advances in assessment refer to studies designed to identify new constructs, improved scaling, new approaches, improved criteria for scoring, and improved methods of the administration of assessments.

Given the diversity of research and related activities that could be supported under this priority, projects must be rigorously designed. Projects that increase the access and use of a research knowledge base must demonstrate effective design principles for providing access, formatting information, and, providing knowledge support that utilizes a professional knowledge base for improving programs and practice. Evaluation activities must consider design effectiveness, implementation requirements, and advance understanding of administrative and teacher needs. A follow-up evaluation to their dissemination or utilization activity is required.

Project procedures, findings, and conclusions must be prepared in a manner that is informative for other interested researchers and that can be submitted to ERIC by the U.S. Department of Education. As appropriate, projects must include activities to prepare findings in formats useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families. Project findings must be disseminated to appropriate research institutes, clearinghouses, and technical assistance.

Priority 2: Initial Career Awards (CFDA 84.023N)

This priority supports awards to eligible applicants for the support of individuals who have completed a doctoral program and graduated no earlier than the 1986–87 academic year. Researchers who are members of racial/ethnic minority groups are encouraged to develop proposals for these grants. This priority supports projects to conduct research and related activities focusing on early intervention services for infants and toddlers, and special education for children and youth with disabilities consistent with the purpose of the program as stated in 34 CFR 324.1. This support is intended to allow individuals in the initial phases of their careers to initiate and develop promising lines of research that will improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. A line of research refers to a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish parameters for designing future studies extending beyond the support of this award. However, the projects supported under this priority are not intended to comprise an entire line of inquiry. Rather, they are expected to initiate a new line or advance an existing one.

The project must demonstrate promise that the potential contribution and benefits of the line of inquiry will substantially improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. The project must include sustained involvement with nationally recognized experts having substantive or methodological knowledge and techniques critical to the conduct of the proposed research. These experts do not have to be at the same institution or agency as the applicant. The nature of this interaction must be of sufficient frequency and duration for the researcher to develop the capacity to effectively pursue the research into mid-career activities. However, the experts' involvement must not usurp the project leadership role of the initial career researcher. An applicant may apply for up to three years of funding. At least 50 percent of the researcher's time must be devoted exclusively to the project.

Project procedures, findings, and conclusions must be prepared in a manner which is informative for other interested researchers, and which can be submitted to ERIC by the U.S. Department of Education. As appropriate, projects must include activities to prepare findings in formats useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families. Project findings must be disseminated to appropriate research institutes, clearinghouses, and technical assistance providers.

Priority 3: Improving Learning Through Home/School Collaboration (CFDA 84.023L)

The purpose of this priority is to support studies that focus on home and school collaboration related to children with disabilities psycho-social status (i.e. self-perception, mental health, motivation, social relationships, social perceptions) and learning. Project findings must provide guidance suitable for use by school administrators, teachers, and parents related to the considerations, and alternative approaches for grading performance, and assigning/assessing homework for children with disabilities. The topic focuses on two dimensions of educational reform that may differentially affect children with disabilities—homework and performance assessment.

Issue

Special education has a long history of recognizing the importance of the parent role and involvement in their child's development and learning. The school excellence and teacher effectiveness reforms have increasingly focused attention on the reality that schools alone can not provide the educational experiences, support, and motivation critical to student learning. Parents place value on learning and education and they provide recognition, motivation and support for their child's development. Parents set expectations for their child's engagement in school, level of effort, and performance.

The education summit involving our Nation's Governors and the President of the United States focused attention on the critical need for home and school collaboration. In contrast to other public trusts in government and professional services, education requires unique and complex partnerships. Community, business, family, and school must collaborate to create attitudes, resources, and opportunities that develop and achieve educational excellance for all children. Parents are the earliest, and can be the most consistent, and proximal influence in establishing and supporting lifelong learning.

Learning does not begin when children enter school and stop when children exit our formal education system. Nevertheless, schools provide the predominant setting for formal learning and thus, significantly affect children's disposition towards learning, their motivation, achievement, and success. The importance of parental influence on the psychosocial development of children and their motivation towards school and learning has been an underlying premise of educators. Schools have increasingly relied on parents to assist in improving school attendance, student discipline, and student performance.

An essential component of the educational reform movement is the focus on increased performance expectations and accountability. These initiatives have emphasized greater accountability related grades, report cards, and performance assessment of students and teachers. In addition, excellence initiatives have often been

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accompanied by changes in the amount and nature of homework assignments. Each of these educational actions represent a potentially significant event affecting the nature and climate of the learning environment at home and in school.

Little is known as to how these reforms affect children with disabilities, their families, and the home/school learning climate. It is not known whether performance assessment has resulted in teachers providing students increased successful learning experiences, teaching to the test, or greater negative feedback to the student. Further, it is unknown whether increased performance assessment has resulted in more frequent and focused home/school communication and cooperation or parent anxiety, frustration, and tensions with either their child or teachers. The relationship of that assessment to course grades and failure is unknown. Similarly, little is known about the impact of increased and sometimes graded homework and school projects. Have these reforms provided increased time for practice, and expanded opportunities for applications of learning? Have these reforms resulted in a strategy for increasing the amount and rate of subject matter covered in class by relying on the home for guided and self-directed practice? Has the increased reliance on homework created a bridge between home and school or resulted in increased parent/child friction and need for tutorial services? Finally, the impact of these educational reform initiatives on special education teachers assigned to resource or self-contained classrooms, and their instruction and assignment practices is unknown.

Purpose

The purpose of this priority is to support studies that focus on home and school collaboration related to psycho-social and learning status of children with disabilities; and to develop guidance suitable for use by school administrators, teachers, and parents related to the considerations, and alternatives approaches for grading and homework for children with disabilities. The topic focuses on two dimensions of educational reform that may differentially affect children with disabilities—homework and student performance assessment (e.g., standardized tests, competency tests, quizzes, take-home tests, etc.). Studies must consider current policy and practices related to grading student assignments, performance assessments, report cards, and their relationship to home and school collaboration. In addition, studies supported by this priority must consider practices related to assigning homework, its completion, and feedback about homework. Projects funded by this priority must describe the extent to which current practices related to performance assessment and homework affect home-school and student interactions. In addition, projects must identify unintended side effects of these practices for children with disabilities and their families. In particular, these projects must determine whether these elements of educational reform place greater demands on home and the school relationship and whether schools have devised additional or different methods of home and school collaboration to meet these demands. These projects must develop guidance suitable for use by school administrators, teachers, and parents related to the considerations, and alternative approaches for grading and homework for children with disabilities.

Activities

Sampling: Each project must include school age children experiencing disabling conditions (i.e. cognitive, sensory, physical and emotional). Projects must include a representative sample of children without disabilities for contrast purposes. These samples must be children participating in regular education academic course work (including differing levels of special education services). Projects must select children, families, and schools in a manner reflecting consideration of: Disability; age level and type of school; parent education; family income; ethnic, cultural, and linguistic differences; and geography. School building and teacher participation must be obtained, as well as parent and student consent to participate.

Measurement: Projects must select or develop measurement approaches and instrumentation to describe the premises, context, understanding, meaning, emotions, and interactions among schools, parents, and children with disabilities related to homework and performance assessment. Measurement of homework, school and teacher assigned projects must include, but not be limited by, dimensions such as: Purpose of assignment; nature and extent of formative feedback to be provided by teachers and parents; peer assistance or collaboration; and teacher, parent, and student emotional response to, and understanding of, assignment and product expectation.

Measurement of performance assessment related to grading assignments, class tests, report card grading, and achievement tests (e.g., standardized, curriculum based, or competency) must, at a minimum, consider such dimensions as: purpose; scale meaning; expectations of student, parent, and teacher for assessment of performance levels; student time and reactions to studying for tests; family tensions and involvement in preparations for the tests; and premises, understanding, and meaning attributed to grading policy and practices by teachers, parents, and students.

Measurement approaches and instrumentation must be piloted for content, understanding, and administrative feasibility with teachers, parents, and children with disabilities. In addition, each respondent group should be interviewed to determine if there was information that should be collected that is not in the pilot instrument.

Project Design: The projects must include ongoing input from teachers, parents and, where appropriate, children with disabilities. Their input must be sought in relationship to project's conceptual framework, hypotheses, variable, and instrument selection or development. Further, this participation must be evidenced in their involvement in interpreting results. Projects must consider the "hidden instruction" provided by peers and family outside of school. Hidden instruction refers to the nature and sources of "instructional" assistance children receive in clarifying assignments and obtaining support for their completion. These projects must identify critical features for achieving effective home/school collaboration in order to fulfill these expectations. Projects supported under this priority must develop the knowledge necessary, as well as the issues to be addressed, if homework assignments and performance assessment are to be positive contributors to students with disabilities' learning.

Collaboration: Projects supported under this priority must collaborate with one another in order to achieve a cumulative advancement in knowledge and practice potentially greater than that achieved by any single project. Projects must collaborate to determine a common core of descriptive marker variables (e.g. grade level, age). In addition, the feasibility of determining a common core of constructs and instrumentation must be explored. The intention of this collaboration is not to compare or aggregate data across projects. The purpose of this collaboration is to strengthen the confidence in the strength and generalizability of hypothesized relationships where possible; establish robustness of relationships; identify critical features for achieving effective home/school collaboration related to homework and performance assessment; and determine critical policy and practice issues requiring attention.

Before the end of the project, the Department will determine whether or not to fund an optional six-month period. The purpose of the optional period would be to permit project personnel supported under this competition to collaboratively document their findings, and the implications those findings have for advancing knowledge and improving practice and programs. This period will also be used to disseminate findings through methods that capitalize on the existence of professional, advocacy and parent networks and communication systems for the exchange of project information. As appropriate, this period could be used to modify findings based on input and feedback from researchers and representatives of target audiences.

Dissemination: Project procedures, findings, and conclusions must be prepared in a manner that is informative for other interested researchers, and that can be submitted to ERIC by the U.S. Department of Education. Projects must also prepare findings in a manner useful to school administrators, teachers and parents, and if appropriate, students, related to improving current policies and practices associated with homework and performance assessment. Project findings must be disseminated to appropriate research institutes, clearinghouses, and technical assistance providers.

Priority 4: Improving the Retention of Special Education Teachers (CFDA 84.023Q)

The purpose of this priority is to describe and understand the broad range of forces, including factors related to personnel preparation, that are contributing to the attrition rate of special education teachers in urban schools, and to develop a strategic action plan for implementation by participating urban schools.

Issue

The need for qualified special education personnel is significant and continues to increase. Critical special education teacher shortages are exacerbated by high rates of teacher attrition which are reported to be as great as 30 percent in some areas. Simultaneously, enrollments in personnel preparation programs are declining and the number of graduates from these programs has declined by 35 percent over the past decade. The decline in recruitment, growth in reported personnel shortages, projections for teacher retirements, expansion of services, and increases in numbers of children requiring special education make retention of the current work force critical. Retention problems are most acute in major urban areas where special education teacher shortages are considered to be the most severe.

Although these shortages signal an impending crisis in the provision of educational services to children with disabilities, they underrepresent the true magnitude of the problem. A host of State certification and waiver policies reduce the apparent special education teacher shortage by allowing personnel with various types of emergency or restricted certification to fill special education positions. By definition these personnel are not fully qualified special educators as they do not meet State standards for teaching in special education. The extent of those certification practices is not currently known, but it is estimated to be as high as 30 percent.

Concerns about both the quality and the diminishing supply of special education teachers have led to the rapid development of alternative programs for preparing special education teachers. Unlike emergency certification policies, these alternative programs involve sequences of professional preparation training experiences designed to prepare highly qualified personnel to meet State certification requirements. Program designs reflect different notions of what characterizes highly qualified instructional personnel and vary greatly in terms of the nature and amount of academic and fieldwork experiences required. The range of programs includes those that limit professional studies and stress the essential content knowledge to be derived from academic majors as well as programs that include traditional professional studies content and standards but employ alternative designs or target candidates who differ from those who have traditionally entered the field.

These programs provide broad parameters for characterizing different training/certification patterns or entry paths through which personnel first enter employment as special education teachers in urban schools. These paths include, but are not limited to: (1) Traditional preservice education leading to standard State certification, (2) emergency certification or waivers for individuals who have not completed and may have little exposure to a structured preparation program, (3) alternatively designed preparation programs stressing traditional content and standards, and (4) alternative certification based on standards that deviate from traditional State and professional standards and limit professional studies. The stratification of specific entry paths is further complicated by variations in States policies regarding prerequisite preparation and experience in general education teaching or in specific categorical areas of special education.

Increasing numbers of personnel are entering special education teaching through alternative paths. Urban IHEs with teacher preparation programs indicate that enrollments in traditional preservice special education teacher training programs is plummeting while enrollments of special education teachers holding limited or emergency certification is escalating. Depending upon the nature of State requirements, an undetermined number of personnel may continue to renew emergency certification or earn permanent certification, while never participating in a preparation program with a prescribed curriculum sequence, and possibly never participating in a supervised practicum with a master teacher and faculty supervisor. An implicit assumption underlying personnel preparation programs is that the nature and extent of special education teacher preparation interacts with the other factors that influence teaching effectiveness and teacher retention. Yet the relationship of teacher preparation, teaching effectiveness, and teacher retention has not been determined.

Issues of recruitment and information about supply and demand have been receiving increased attention, but little attention has been focused on the quality of the supply of special education teachers or on reasons for special education teacher attrition. We do not know whether we are losing qualified personnel who meet State certification standards, or unqualified instructional personnel. We do not know the differential rates of attrition associated with such factors as work conditions, nature of undergraduate and preservice teacher education, teaching assignment, case load or class size, and geographic location. While anecdotal and single case studies provide insights into issues related to burnout, second careers, and changing assignments to general education, inadequate information exists for designing efforts to reverse the trend.

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Purpose

The purpose of this priority is to describe and understand the broad range of forces, including factors related to personnel preparation, that are contributing to the attrition rate of special education teachers in urban schools, and to develop a strategic action plan for implementation by the participating urban schools. Under this priority ubran schools are defined as any local political jurisdiction (city) with a population of 300,000 or more people and a school enrollment of 25,000 or more. A major intent of this priority is to identify from the perspective of special education teachers the reasons for their decisions to continue or terminate their careers as teachers of children with disabilities. The projects to be supported must be designed to secure information representative of teachers sampled in a specified urban area or areas and consider, but not be limited to, variables such as: School demographics, types of credentials, nature and extent of preservice and inservice preparation, type of teaching assignment. These studies must focus on who is leaving and why they are leaving as well as who is remaining and why they are remaining in the special education teaching force in urban schools.

Activities

Conceptual Framework: The projects must articulate a conceptual framework for describing and understanding the complex of variables that are associated with teacher retention in urban areas. This conceptual framework must be developed utilizing, where appropriate, the empirical knowledge base relevant to this priority. The framework must be sufficient to encompass the many constructs and variables that help to describe and may influence teacher retention and attrition including, but not necessarily limited to, demographic, organizational, and professional and personal characteristics. Hypotheses as to the reasons for teacher retention, as well as attrition, must be derived from this conceptual framework. Further, the identification and definition of salient marker variables and descriptions of their relationships to other variables must also be derived consistent with this conceptual framework. The conceptual framework must be continually reviewed and refined, if necessary, as other activities are implemented and completed, and various stakeholders have the opportunity to review and respond to the results. Variable selection for the projects must be consistent with this conceptual framework.

Sampling: Projects must sample teachers on the basis of the number of years of experience and certification/training path. The projects must develop a scheme for classifying the various routes that teachers use for training and certification that must then be used as a stratifying variable in the sample selection. The projects must ensure that the sample includes personnel who teach students with the full range of disabilities and levels of severity. Sample selection must consider ethnic and cultural issues. The projects must obtain agreement to participate from the teachers selected. Sample size must be sufficient to yield adequate levels of precision for each of the alternative entry paths representative of the range of preparation and certification patterns that characterize the existing special education teaching force in urban schools.

Measurement: The projects must develop a practical method of measuring teacher retention and attrition. Measurement must consider, but not necessarily be limited to, teachers' demographic characteristics, professional expectations, salary and other incentives received, and training thought to be significant in teacher retention. Measures of working conditions must also be developed that include, but are not necessarily limited to, the nature of assignment, class size, decision making opportunities, planning time, the perceived degree of administrative support, and other important variables. All measurement techniques and instruments must be piloted before their full scale use.

Project Design: The projects must include ongoing input from teachers (including those who are currently practicing as well as those who have left teaching), school administrators, and faculty from IHEs. Their input must be sought in relationship to the conceptual framework, hypotheses, and variable and instrument selection of development. Furthermore, this participation must be evidenced in their involvement in reviewing project findings and interpretations. It is anticipated, that during the first six months projects will finalize the conceptual framework, project design, instrumentation, and sampling plan. During the first six months of this award, projects must be prepared to finalize the sample, obtain teacher consent for participation, and begin data collection. In September of 1992 and 1993, projects must determine teacher attrition over the preceding year.

Strategic Planning: Each project supported under this priority must develop a strategic action plan, based on the project findings and their interpretations, for implementation by the participating urban schools and other stakeholders (e.g., interested parties) to support and retain qualified special education teachers. This activity must provide examples of principles and designs for implementing teacher retention initatives. Projects must involve the multiple stakeholders concerned with this issue in a strategic planning process. Projects must involve the multiple stakeholders concerned with this issue in a strategic planning process. Projects must be characterized by the participation of district administrators and teacher educators as well as representatives of State educational agencies, and the collective bargaining unit. That involvement must provide for minority participation and address multicultural issues related to teacher preparation and retention.

Collaboration: Projects supported under this priority must collaborate with one another in order to achieve a cumulative advancement in knowledge and practice potentially greater than possible for any single project. Projects must jointly determine at the beginning a common core of marker variables and explore the feasibility of determining a common core of constructs and instrumentation. The intention of this collaboration is not to compare or aggregate data across projects. The purpose of this collaboration is to, where possible, substantiate hypothesized relationships; establish robustness of relationships; identify critical features for improving teacher retention; and determine critical policy and practice issues requiring address.

Before the end of the project, the Department will determine whether or not to fund an additional six-month period. The purpose of the additional period would be to permit project personnel supported under this competition to collaboratively document their findings, and the implications those findings have for advancing knowledge and improving practice and programs.

Dissemination: Projects must prepare findings in a manner useful to school administrators, teachers, teacher educators, and State and Federal administrators and policymakers. Projects must consider the National Clearinghouse on Careers and Employment in Special Education, professional, advocacy and parent networks and communication systems for the exchange of project information. The projects must produce and disseminate materials addressing, but not necessarily limited to, the following areas:

1. Initial data collection and analyses; describe the demographics of the current special education teacher workforce; analyze the various entry patterns, or paths, by which personnel become employed as special education teachers in the urban schools; and analyze retention attrition rates according to the reason for staying and leaving.

2. Analyze and describe the relationship of special education teacher retention and attrition, and alternative entry paths, demographic variables, and organizational variables.

3. A strategic and operational plan detailing the goals, objectives, opportunities and actions that the school district and other stakeholders will design and implement to support and retain special education teachers.

4. Describe the relationship of alternative entry paths to special education teachers' retention and career advancement.

5. For each of the designated alternative entry paths described the types of support and opportunities needed for teachers to (a) obtain satisfactory performance evaluations, and (b) earn appropriate State certification as a special education teacher.

Phasing

Year 1: The first six months of the project will focus on developing and piloting project methodology and measurement, and developing cooperation among projects. It is expected that key personnel from the successful projects will meet twice at a central location during the first year to facilitate these cooperative efforts. Projects must schedule activities to permit productive use of the information generated and exchanged at these meetings. Initial study of the teacher workforce will occur in the second half of the first year.

Years 2–3: The primary activities during this period will be further study of the teacher workforce, analysis, and completion of project findings for dissemination. Strategic planning activities are expected during year 3.

Priority 5: Examining High School Curricula and the Demands on Personnel Educating Students With Disabilities (CFDA 84.023U)

The purpose of projects supported under this priority is to study the curricula provided in high schools for students with disabilities as a foundation upon which to consider needed school, and teacher education reforms

Issue

The restructuring of American high schools occurring as a result of educational reform initiatives continues to be premised on a basic concept of faculty subject matter specializations (i.e., English, mathematics, science). While curricular reform, teacher standards, and course requirements have received significant attention they have all been designed consistent with the concept of faculty specializations. This is evidenced in the departmental and program organizational structures of high schools.

Reform initiatives for addressing the diversity of ability, skills, interests, linguistic, and cultural differences of a student body are generally occurring independent of subject matter considerations. While curricula and teacher reforms have focused on content and teacher preparation they have not examined the implications for aligning specialized programs or services (e.g., vocational education, special education) with subject matter requirements.

Restructuring of the American high school consistent with encouraging school based management practices must address the needs of children with disabilities. Curricula, teacher reforms, accountability, and school restructuring initiatives must be designed to effectively provide an appropriate education for all children with disabilities. Achieving this objective is a complex, multi-dimensional challenge. The magnitude and depth of educational reform requires sustained and planned initiatives.

A starting point for designing and developing needed improvements or changes requires a representative mapping of the range of current curricula practices. While a wide array of snapshots have provided a collage depicting course offerings, student access and participation, graduation requirements, and outcomes, insufficient detail exists to substantiate or provide direction for reforms. In determining the need for reforms and designing improvement and change in secondary education for students with disabilities it is essential to examine the nature of student and program outcomes related to subject matter (e.g., history, science, math), instructional (e.g., bilingual, remedial) and program (e.g., vocational, special education) specializations.

Purpose

The purpose of projects supported under this priority is to map the curricula provided in secondary high schools for students with disabilities as a foundation upon which to consider needed school and teacher education reforms. Curriculum outcomes are considered the primary building blocks for designing appropriate educational programs for children with disabilities. The mapping of curricula in relationship to desired student and program outcomes will provide direction for developing programs that effectively integrate the expertise of regular, vocational, and special education personnel. In addition, curricula descriptions and analysis of their requirements for teacher expertise provide a useful template for State agency review of certification requirements for secondary credentials and for institutions of higher education in designing personnel preparation programs.

Projects supported under this priority may focus the study of educational programs on any meaningful classification of student or program characteristics. Those classifications might consider the students' disability, severity of disability, student or program outcomes, intensity of services required, or program type (e.g., college preparation, vocational). The projects must be directed toward improving the effectiveness of high school programs and curricula by achieving better outcomes for students with disabilities. The projects must examine educational programs, curricula and desired outcomes, and determine the requirements and demands they place on special education personnel expertise.

Activities

Conceptual Framework and Approach. Projects supported under this priority must develop and refine a conceptual framework and approach that will focus and provide direction for the required analytic and other activities. The conceptualization must consider the multiple dimensions used in constructing secondary curricula, as well as those used by personnel preparation program accreditation and teacher credentialling bodies. The conceptual framework must be developed with input from administrators, regular, vocational, special education, and related service personnel, and other relevant parties.

Sampling. The unit of analysis to be studied is the educational programs of students with disabilities enrolled in high school programs. The target population to be sampled must be justified and defined relevant to the project's selection of a classification scheme. The selection of a sample should recognize and address potential

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threats to the external validity of the study resulting from such factors as idiosyncratic building characteristics, non-representativeness of the educational programs sampled, and other relevant variables. The project must select a representative array of curricula scope and sequence, course syllabi, and experiences that fulfill a student's entire secondary school program requirements for graduation or program completion. The educational programs sampled should be targeted to allow generalizations to the knowledge, processes, skills, and attitudes teachers and other school personnel are expected to impart to a specified population of students with disabilities.

Project Analysis. The projects supported under this priority must analyze, but are not limited to: The curriculum scope and sequences; course syllabi; basic skills; processes and strategies that comprise the content of regular, vocational, and special education courses; and training opportunities for students with disabilities. Projects must examine the appropriateness of the educational program objectives and designs that can be identified through these curricular analyses. Projects must conduct rigorous and thorough analyses to map the content comprising the educational programs being provided students with disabilities. The projects must also obtain access to existing documentation describing teacher and administrator professional preparation achieved with professional and State accrediting bodies. The projects must draw implications for effectively integrating the specialized expertise of regular, special, and vocational education personnel in the delivery of educational programs for high school students with disabilities. Additionally, projects must analyze findings and derive implications for considering professional preparation programs, and for State and professional accreditation of teacher education programs.

Dissemination. The projects supported under this priority must be conducted in a manner that will facilitate the utility and use of project findings. Projects must work with existing networks, develop networks or collaborate with professional associations in conducting and affecting the use of project activities and results. The projects supported under this priority must develop strategies for communication among themselves that will facilitate in year 3 their collaborative effort to order and map their collective findings. This collaborative initiative must be designed to enhance the collective impact of the individual projects in focusing attention and stimulating reforms to improve secondary educational programs and school related outcomes for children with disabilities.

Phasing

The projects supported under this priority have two phases. The first phase encompasses years 1 and 2, and the second phase year 3 activities. Phase 1 must involve the refinement of the conceptual framework and approach, selection of sample, development and piloting of measurement and documentation procedures, data collection and analysis of educational program curricula, State and professional acceditation standards, and teacher certification requirements.

In the second phase each project must focus on its individual dissemination strategies. In order to fulfill this objective projects will need to collaboratively order and map their collective findings in a format able to be exchanged with relevant professional associations and other national organizations relevant to improving secondary education programs and curricula for students with disabilities.

(Catalog of Federal Domestic Assistance Number 84.023, Research in Education of Individuals with Disabilities Program)

Program Authority: 20 U.S.C. 1441–1443.

Dated: May 1, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–10781 Filed 5–6–91; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.023]

Notice Inviting Applications for New Awards Under the Research in Education of Individuals With Disabilities Program for Fiscal Year 1991

Purpose: To assist research and related activities, and to conduct research, surveys, or demonstrations, relating to the education of, and early intervention services for infants, toddlers, children and youth with disabilities.

Eligible Applicants: Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

Applications Available: 5/17/91.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 324; and (c) the final funding priorities published in this issue of the **Federal Register**.

Priorities: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference under the Research in Education of Individuals with Disabilities Program for Fiscal Year 1991 to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet one of these priorities.

RESEARCH PRIORITIES FOR FISCAL YEAR 1991

Title and CFDA No.	Deadline for transmittal of applications	Available funds	Estimated size of awards	Estimated number of awards	Project period in months
Small Grants Program (CFDA No. 84.023A)	6/19/91	$825,000	$75,000 for 18 months	11	Up to 18.
Initial Career Awards (CFDA No. 84.023N)	6/26/91	300,000 per year	$75,000	4	Up to 36.
Improving Learning Through Home/School Collaboration (CFDA No. 84.023L).	7/3/91	880,000	$220,000 per year	4	Up to 36.
Improving the Retention of Special Education Teachers (CFDA No. 84.023O).	7/3/91	1,200,000	$300,000 per year	4	Up to 36.
Examining High School Curricula and the Demands on Personnel Educating Students with Disabilities (CFDA No. 84.023U).	7/3/91	880,000	$220,000 per year	4	Up to 36.

For Applications or Information Contact: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, room 3524 —M/S 2640), Washington, DC 20202. Telephone (202) 732–1099. (TDD (202) 732–6153.)

Program Authority: 20 U.S.C. 1441–1443.

Dated: May 1, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91–10782 Filed 5–6–91; 8:45 am]

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Part VI

Department of Health and Human Services

Family Support Administration

45 CFR Part 402
State Legalization Impact Assistance Grants (SLIAG); Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 402

RIN 0970-AA79

State Legalization Impact Assistance Grants (SLIAG)

AGENCY: Family Support Administration, HHS.

ACTION: Final rule.

SUMMARY: This rule amends regulations implementing the State Legalization Impact Assistance Grant (SLIAG) program, 45 CFR part 402. This amendment implements changes made to section 204 of the Immigration Reform and Control Act of 1986 (IRCA) by the Immigration Nursing Relief Act of 1989, Public Law 101-238. This law allows, but does not require, limited amounts of SLIAG funds to be used for two new purposes—Phase II outreach and employment discrimination education and outreach. The amendment also simplifies administrative requirements by reducing the amount of information that States must submit in their SLIAG applications. Finally, the amendment makes technical and conforming changes.

DATES: The rule is effective May 7, 1991.

FOR FURTHER INFORMATION CONTACT: David B. Smith, Director, Division of State Legalization Assistance, Office of Refugee Resettlement, U.S. Department of Health and Human Services, at 202-401-9255 (FTS 401-9255).

SUPPLEMENTARY INFORMATION: Section 204 of the Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. 99-603), as amended, establishes State Legalization Impact Assistance Grants (SLIAG) for States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam for fiscal years 1988 through 1992. (The term "State" is used hereinafter to include all eligible SLIAG grantees.) States may use (obligate) SLIAG grant funds through September 30, 1994. The purpose of SLIAG is to lessen the financial impact on State and local governments that may result from the legalization of aliens under the Immigration Reform and Control Act of 1986 (IRCA).

On March 10, 1988, the Department published a final rule, 45 CFR part 402, implementing section 204 of IRCA. This regulation was amended at 54 FR 23983 (June 5, 1989), and 55 FR 26206 (June 27, 1990).

The Department published a Notice of Proposed Rulemaking for the present amendments on December 11, 1990 (55 FR 51062ff.). We received comments from nine organizations. Some of the commenters' suggestions have been adopted in the final rule, while others have not. Comments and our responses are discussed below at the end of each section to which the comments apply.

PHASE II OUTREACH

Background.

IRCA provided for the legalization of three categories of aliens. For these aliens, achieving lawful permanent resident status—the ability to remain indefinitely in this country on a legal basis—is a two-step process. The initial step—obtaining lawful temporary resident status—is commonly called Phase I of the legalization program. The subsequent adjustment to lawful permanent resident status is commonly called Phase II. The process is somewhat different for each of these three groups of aliens.

Aliens who had been in the U.S. illegally prior to January 1, 1982 were given the opportunity to apply for lawful temporary resident status under section 245A of the Immigration and Nationality Act (INA) between May 5, 1987 and May 4, 1988. After being in lawful temporary resident status for 18 months, aliens granted lawful temporary resident status under this section must apply a second time to INS in order to obtain permanent resident status. This process is commonly called Phase II of the legalization process. If aliens granted lawful temporary resident status under section 245A do not apply for permanent resident status within 42 months of the date they were granted temporary resident status, they will lose their lawful resident status. (IRCA provided for 30 months, with a 12 month extension added by the Immigration Act of 1990, Pub. L. 101-649.)

In order to become lawful permanent residents, these aliens must meet certain requirements imposed by IRCA. These requirements include demonstration of minimal understanding of ordinary English and knowledge of the history and Government of the U.S., or satisfactory progress toward that goal in courses recognized by the Attorney General.

Aliens who had performed seasonal agricultural services for certain minimum periods could apply for lawful temporary resident status between June 1, 1987 and November 30, 1988 under section 210 of the INA. These "special agricultural workers" or "SAWs" automatically become lawful permanent residents either one or two years after the effective date of lawful temporary resident status. (The length of time between temporary and permanent status depends upon which of two subsections of the INA an alien qualified under.) SAWs are not required to demonstrate a minimal understanding English or knowledge of the history and Government of the U.S. in order to obtain lawful permanent resident status.

Section 210A of the INA provides for admission of replenishment agricultural workers (RAWs), beginning in FY 1990, if the Secretaries of the U.S. Departments of Agriculture and Labor jointly determine that a shortage of agricultural labor exists. To date, no such certification has occurred, so there are no lawful temporary residents under section 210A of the INA. If a shortage is declared and aliens are granted lawful temporary resident status under section 210A, these "replenishment agricultural workers" or "RAWS" will have to demonstrate that they worked in agriculture a specified number of days for each of three consecutive years to remain in lawful temporary resident status and to qualify for lawful permanent residence. Like SAWs, RAWs do not have to demonstrate proficiency in the English language or knowledge of the history and Government of the U.S. in order to obtain lawful permanent resident status.

In order to ensure that RAWs could be made available soon after the determination of a shortage, INS allowed aliens to register for the RAW program in late 1989. Over 600,000 aliens have registered. These aliens have no legal status as a result of that registration. In particular, they are not lawful temporary residents for purposes of determining the allowability of SLIAG-related costs. If a shortage number is announced, an appropriate number of registrants randomly selected by priority category will be allowed to petition for admission as RAWs. Those aliens whose petitions are granted by INS will be lawful temporary residents.

Outreach Activities Authorized

New section 204(c)(1)(D) of IRCA authorizes States to use SLIAG funds for certain kinds of outreach to lawful temporary residents. Specifically, new section 204(c)(1)(D) of IRCA allows States to use SLIAG funds to make payments for public education and outreach (including the provision of information to individual applicants) to inform temporary resident aliens regarding:

(1) The requirements of sections 210, 210A, and 245A of the Immigration and Nationality Act regarding the adjustment of resident status;

(2) Sources of assistance for such aliens' obtaining the adjustment of status described in clause (1), including educational, informational, referral services, and the rights and responsibilities of such aliens and aliens lawfully admitted for permanent residence;

(3) The identification of health, employment, and social services; and,

(4) The importance of identifying oneself as a temporary resident alien to service providers.

This amendment to the regulation defines "Phase II outreach" in § 402.2 using language that closely parallels the statute.

Certain Activities Not Allowable

The statute explicitly prohibits use of SLIAG funds for "client counseling or any other service which would assume responsibility for the alien's application for the adjustment of status * * *." New paragraph (i) of § 402.11 adds this limitation to the regulation. This paragraph reflects our interpretation that this prohibition also precludes the use of SLIAG funds to assist aliens in appealing INS decisions or to represent aliens before any administrative or judicial body.

Use Limited to Temporary Residents

New IRCA section 204(c)(1)(D) authorizes the use of SLIAG funds for public education and outreach only for lawful temporary residents. The statute also explicitly permits the provision of information to "individual applicants." We interpret this to mean that SLIAG funds may be used to provide information to aliens who have been granted lawful temporary resident status, as well as aliens who have applied for such status and whose applications are pending with INS at the time the information was provided.

The amended regulation stipulates that the cost of public education and outreach activities directed to specific individuals may not be charged to SLIAG if the individuals are lawful permanent residents or aliens with any other status except that of lawful temporary resident granted under sections 245A, 210, or 210A of the INA, or applicants under those sections. SLIAG funds may not be used for outreach directed to lawful permanent residents, even if they still are "eligible legalized aliens (ELAs)."

States would have to document that services were provided to lawful temporary residents (or applicants) in order to charge costs associated with those services to their SLIAG grants. For public education or outreach activities that are not directed to specific individuals, e.g., posters or brochures, this statutory provision means that the material must be targeted to or intended primarily for lawful temporary residents.

Relationship to Other Activities

Public Law 101-238 allows the use of SLIAG funds to "identify" health, employment, and social service programs to lawful temporary residents. This authority does not allow States to use SLIAG funds to provide such services to aliens, merely to inform temporary residents of the availability of such services.

Public Law 101-238 does not affect the allowability under the current regulations of States' charging a portion of the costs of public assistance and public health assistance program general outreach activities (i.e., outreach activities not directed to ELAs) to SLIAG. Under current regulations, the cost of such outreach is allowable if it (1) is part of a program of public assistance or public health assistance that is included in a State's approved application, and (2) is "generally available," i.e., not intended solely or primarily for ELAs. Such costs generally are considered "program administrative costs" and may be apportioned to SLIAG in accordance with § 402.22(b), which this rule revises and redesignates as § 402.21(c)(6)(i). Such costs are not counted in computing the maximum amount of SLIAG funds that may be expended for Phase II outreach.

Outreach designed to inform ELAs (not just temporary residents) of the availability of SLIAG-funded educational services is an allowable activity under the current regulation and is not affected by Public Law 101-238. The costs of such educational services outreach activities, performed by educational service providers under their educational service contracts with State education agencies, do not have to be counted toward the statutory ceiling on Phase II outreach activities. However, such educational services outreach activities continue to be subject to the funding limitations that IRCA and the regulation at 45 CFR 402.11(e) impose on spending for educational services.

Activities beyond those intended to make ELAs aware of the availability of SLIAG-funded classes are not allowable under the current regulation, but may be allowable under the new authority of Public Law 101-238 if those activities are targeted to temporary residents. Such activities are subject to the spending limitation in § 402.11(k).

Use of Other Organizations

Public Law 101-238 is silent on such issues as which State agency will be responsible for conducting Phase II outreach activities and what, if any, other organizations must or may be involved, consulted with, or receive funding. We are not issuing regulations in these areas, as such decisions, in the absence of statutory guidance, are appropriately left to the State, subject to section 204(d)(1)(B)(ii) of IRCA and 45 CFR 402.41(a)(2) which require that the State provide a fair method, as determined by the State, to allocate SLIAG funds among State and local agencies, and Federal grant management regulations at 45 CFR part 92.

Comments. Several commenters requested that the final rule clairfy that SLIAG-funded Phase II outreach messages may include information on such subjects as the Temorary Protected Status provision of the Immigration Act of 1990 and the INS Family Fairness program, as well as any programs benefitting temporary residents in the future, as long as such messages are directed to temporary residents.

Response. The Division of State Legalization Assistance (DSLA) has issued policy guidance to States regarding the Phase II Outreach provisions of Public Law 101-238 in its SLIAG Information Transmittals (ITs). IT 90-011, issued on January 16, 1990, indicates that temporary resident outreach may provide information on a variety of legal and programmatic subjects of interest to temporary resident aliens, as long as the target audience consists of temporary residents, not potential beneficiaries of the programs or policies themselves, unless temporary residents are the beneficiaries. IT 91-005, issued on December 4, 1990, states, "Education and outreach activities designed to inform temporary residents of the requirements for applying for permanent resident status, and of their rights and responsibilities as temporary residents, are allowable under this program. Activities designed to inform temporary residents about the requirements and procedures connected with the INS Family Fairness policy, which applies to legalization-ineligible spouses and children of legalized aliens, are among the allowable activities." DSLA will continue to issue policy guidance to grantees in response to new initiatives and legislation, but does not consider it necessary to address specific initiatives in regulation as long as the general

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guidelines of allowable activities are clearly delineated.

Comments. Several commenters noted that the one-year extension of the Phase II legalization deadline by the Immigration Act of 1990 increased the period during which temporary residents may apply for permanent resident status from 30 months, as stated in the Preamble to the NPRM, to 42 months, and requested that the final rule clarify that SLIAG-funded Phase II information can be used for the extended period.

Response. We have changed the reference to 30 months to 42 months in the last sentence of the second paragraph of the Background portion of this section of the Preamble. The definition of Phase II Outreach in the regulation clarifies that public education and outreach may be provided to temporary resident aliens for as long as those individuals remain in temporary resident status as well as to aliens whose applications for such status are pending with INS.

Employment Discrimination Education and Outreach

Background

IRCA established sanctions against employers who knowingly hire aliens not authorized to work in this country. IRCA requires that employers verify the identity and work authorization of all new employees. During debate on IRCA, Congress foresaw the possibility that employers, fearful of sanctions, would refuse employment to individuals who looked or sounded foreign. Responding to that concern, Congress created section 102 of IRCA. Section 102 made it unlawful, with specified exceptions, for employers to discriminate in hiring, firing, or recruiting and referring labor for a fee because of a person's national origin and, in the case of a citizen or intending citizen, citizenship status.

Congress also created the Office of the Special Counsel for Immigration Related Unfair Employment Practices (hereafter "Office of the Special Counsel") to enforce IRCA's antidiscrimination provision. The Office of the Special Counsel is responsible for investigating discrimination charges and, when appropriate, filing complaints with a specially designated administrative tribunal.

The Office of the Special Counsel, located in the U.S. Department of Justice, has established a record of vigorous enforcement. However, studies by the U.S. General Accounting Office and local authorities have raised serious concerns about the general lack of knowledge and misunderstanding of IRCA's requirements. Enforcement of the anti-discrimination provision will serve little purpose if workers are not aware of their rights. Moreover, discrimination will not be eradicated as long as employers are unaware of their duty not to discriminate.

Anti-Discrimination Effort Authorized

Congress addressed these problems by enacting section 6 of Public Law 101-238. This statute adds new section 204(c)(1)(E)(i) to IRCA which allows, but does not require, States to use SLIAG funds

> * * * to make payments for education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status.

The legislative history states that this provision is intended to fund education and outreach efforts to inform workers of their rights under the anti-discrimination provision of IRCA and to inform employers of how to comply with their anti-discrimination responsibilities under IRCA. (Congressional Record, S 16442, November 20, 1989)

This regulation adopts the statutory language of new section 204(c)(1)(E)(i) of IRCA in defining "employment discrimination education and outreach" in § 402.2. The statute and regulation permit a broad range of activities, including but not limited to: the development, production and distribution of informational literature; production and publication of advertisements in the electronic or print media; conducting meetings, seminars or other public functions; awarding grants, contracts or cooperative agreements, as appropriate, to local government agencies (including local education agencies), employee and employer groups, or other public or private organizations, including community-based organizations or for-profit concerns; and, providing referral services regarding employment discrimination prohibited by IRCA.

Use of Other Organizations

The statute states that SLIAG funds may be used for "education and outreach efforts by State agencies * * *" (new section 204(c)(1)(E)(i) of IRCA, emphasis added). We interpret this to mean that employment discrimination education and outreach activities in which SLIAG-related costs may be incurred must be under the direction of or coordinated by State agencies.

The statute does not specify which State agency or agencies may conduct employment discrimination education and outreach activities. We are not regulating in this area, as this decision is appropriately left to each State. However, we encourage States to confer with appropriate agencies and organizations and to create or enhance ongoing contacts with local public and private entities already conducting such activities. By using existing community networks, States will be able to develop "bottom up" outreach strategies, thereby extending the scope and range of the educational campaign. Also, the use of existing community networks will facilitate audience targeting and may enhance the access and credibility of the message.

The statute is silent regarding State agencies' conducting employment discrimination education and outreach activities through other organizations. (However, section 204(d)(1)(B)(ii) of IRCA and 45 CFR 402.41(a)(2) require that the State assure that it will provide a fair method, as determined by the State, of allocating SLIAG funds among State and local agencies.) We have not promulgated regulations in this area. Within the confines of Federal and State procurement principles and the assurance noted above, States have discretion in deciding what, if any, other organizations to use in implementing SLIAG-funded employment discrimination education and outreach efforts. (Federal grants management regulations at 45 CFR part 92 apply to this use, as well as other uses, of SLIAG funds.) If otherwise permissible, States may implement their SLIAG-funded employment discrimination education and outreach through grants, contracts or cooperative agreements with other units of government, other public agencies, non-profit, or for-profit organizations.

Activities That Are Not Allowable.

Although the statute permits a wide range of allowable uses of SLIAG funds for employment discrimination education and outreach, there are several limitations inherent in the statutory language and legislative history. For example, we believe that Public Law 101-238 does not allow the use of SLIAG funds to investigate or prosecute discrimination complaints beyond initial intake and referral. Nor does it allow for the payment of legal fees or other expenses incurred to provide legal counsel to a party alleging discrimination or to represent parties before any administrative or judicial body. The final regulation makes these exclusions explicit in new §402.11(j).

Not limited to "eligible legalized aliens." New section 204(c)(1)(E) of IRCA does not limit the use of SLIAG funds for employment discrimination education and outreach to aliens legalized by IRCA. (Other uses of SLIAG funds generally are limited to services provided to "eligible legalized aliens," as that term is defined in the Act and 45 CFR 402.2) SLIAG funds may be used for employment discrimination education and outreach efforts targeted to ELAs, permanent residents, asylees, refugees, U.S. citizens, and all others protected under IRCA's antidiscrimination provision. These efforts may also be directed to employers and to persons or other entities that recruit or refer labor for a fee.

Prior Consultation Required

New section 204(c)(1)(E)(ii) of IRCA stipulates that States

> * * * shall not initiate such efforts until after such consultation with the Office of the Special Counsel for Immigration Related [Unfair] Employment Practices as is appropriate to ensure, to the maximum extent feasible, a uniform program.

We believe the most straightforward reading of this language is that States may not use SLIAG funds to reimburse the costs of activities that occurred prior to consultation with the Office of the Special Counsel. Under the final rule, new activities to be funded with a State's SLIAG allotment may not be started until after consultation has occurred. For activities begun prior to consultation (i.e., those funded with State or local funds), SLIAG reimbursement would be available only for costs associated with activities that occur after consultation.

Consultation Process

This regulation combines the statutorily required consultation with the Office of the Special Counsel and the process of States' submitting applications for SLIAG funds (or amendments to approved applications). This combined process involves the following steps:

(1) A State submits to the Department an application, or amendment to an approved application, including as detailed a description as possible of the employment discrimination education and outreach efforts the State plans to undertake, including, if available, copies or drafts of the text of public information materials it intends to use in those efforts. (See "Content of required submission," below.)

(2) The Department transmits a copy of the State's submission to the Office of the Special Counsel for review.

(3) The Office of the Special Counsel reviews the State's submission to ascertain whether it meets certain criteria, discussed below. (The Office of the Special Counsel has indicated that it anticipates its review will take no longer than 15 working days, unless discussions or correspondence with a State extend this time.) Simultaneously, the Department reviews the submission to ascertain the allowability of costs and the reasonableness of cost estimates. (See "Review criteria," below.)

(4) Upon completion of its review, the Office of the Special Counsel certifies to the Department whether the State's submission meets the specified criteria. The Department then notifies the State that the section(s) of the State's application or amendment related to employment discrimination education and outreach have been approved or notifies the State of the reasons for disapproval. This notification will include additional comments, if any, provided by the Office of the Special Counsel.

HHS' notification informs the State that the statutory requirement for prior consultation with the Office of the Special Counsel has been met. Upon receiving notification from the Department that its application is approved, a State may initiate the SLIAG-funded employment discrimination education and outreach activities described in its approved application. We have included in the regulation new § 402.11(n) which prohibits the use of SLIAG funds to reimburse the costs of employment discrimination education and outreach activities that occur prior to this notification. We believe that we could not allow reimbursement of such costs without contravening the clear intent of the statute. (However, see "Prior consultation waived for dissemination of certified materials," below.)

Unlike other programs or activities where prior approval of applications or amendments by the Department is not required, this process requires States to submit and receive approval for planned employment discrimination education and outreach activities before initiating those activities, or before beginning to reimburse the costs of ongoing activities. However, we believe that this consolidated approach will be simpler to administer at both the State and Federal level than separate consultation and application processes.

We have separated the formal consultation process from ongoing information exchange and technical assistance activities with the Office of the Special Counsel, as well as other Federal agencies (e.g., the INS Office of Employer and Labor Relations, the Department of Labor, the Equal Employment Opportunity Commission, and the Small Business Administration). We expect that States will have ongoing contacts with these Federal agencies and other States to enhance and coordinate their employment discrimination education and outreach activities. We strongly encourage this informal exchange of information, ideas, and technical assistance, but have not included it in the formal consultation process in the interest of expediting States' implementation of employment discrimination education and outreach efforts.

Content of Required Submission

New § 402.41(d)(1)(ii) of the regulation specifies the information regarding planned employment discrimination education and outreach efforts that States must include in their applications or amendments to approved applications. States' applications must contain a description of the planned education and outreach activities, including:

—Descriptions of the kinds of State or local government agencies, or other entities, to be involved in each activity;

—Brief descriptions of the targeted audience(s) for each activity; and,

—Pre-production copies or text of any material to be disseminated to the public, if available at the time the application is submitted. (See "Certification of material for public distribution," below.)

These requirements reflect: (1) The level of information the Office of the Special Counsel has informed us it needs to carry out its statutory consultation requirement; and, (2) the information needed by the Department to determine the allowability of the activities and reasonableness of the estimated costs. Because of the statutory requirement for prior consultation and a strong Federal interest in ensuring that Federal funds are used efficiently to provide the public with accurate information, the application requirements concerning employment discrimination education and outreach activities are more detailed than those for other uses of SLIAG funds.

We urge States to be as specific as possible in describing their activities, including the kinds of organizations they intend to use, the audience to be targeted, the media mix to be used, and the nature and content of the information to be disseminated. This will assist the Office of the Special Counsel in serving as a clearinghouse for information, by sharing with other States innovative education and outreach ideas. However, we do not

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envision States submitting highly detailed operational plans. Further, we recognize that States may not have complete plans developed for their SLIAG-funded education and outreach activities. We recommend that States submit their application in whatever level of detail is possible, and thereby satisfy the prior consultation requirement, as soon as they have at least a preliminary idea of the activities they want to undertake, the audience, and the types of organizations they will use. This will allow the State to begin to spend SLIAG funds for employment discrimination education and outreach. As States more fully develop their plans, applications can be amended. (If a State plans to undertake activities beyond those described in its approved application, the final rule requires the application to be amended prior to its initiating those new activities.)

As with other uses of SLIAG funds, the application must also contain an estimate of the SLIAG-related costs the State expects to incur in its employment discrimination education and outreach efforts and describe the methodology used to make that estimate.

Review Criteria

HHS will review States' applications and amendments to determine the allowability of costs and the reasonableness of cost estimates. This review will be conducted in the same manner and employ the same criteria as the Department's review of other activities included in States' applications. While States are required by statute to consult with the Office of the Special Counsel, accountability for SLIAG funds, including determination of the allowability of costs, rests with the Department.

By statute, the purpose of consultation with the Office of the Special Counsel is to "ensure, to the maximum extent feasible, a uniform program." Accordingly, under the final rule, the Office of the Special Counsel will review States' submissions to determine that SLIAG-funded, State-administered efforts do not conflict with or unnecessarily duplicate other education and outreach efforts. (The Office of the Special Counsel will also review public information material submitted with a State's application or amendment. See "Certification of material for public distribution," below.)

When the Office of the Special Counsel determines that the activities described in a State's submission do not conflict with or unnecessarily duplicate other anti-discrimination efforts, it will certify to the Department that consultation has taken place. Any conflicts with other anti-discrimination efforts identified by the Office of the Special Counsel will have to be resolved prior to completion of consultation. Resolution of such conflicts would likely require that a State amend the application or amendment submitted to the Department to remove the conflict.

The Office of the Special Counsel will also provide any additional comments and suggestions it has regarding a State's planned employment discrimination education and outreach activities. The Office of the Special Counsel will transmit those comments to HHS. HHS in turn will forward those comments to the State for consideration.

Certification of Material for Public Distribution

The regulation at new § 402.11(o) provides that SLIAG funds may be used to reimburse costs associated with material intended for public dissemination only if that material is certified by the Office of the Special Counsel. Certification of public information material involves the Office of the Special Counsel's determining that:

—The information to be produced and disseminated to the public with Federal funds is legally accurate; and,

—Such information identifies the Office of the Special Counsel as a source of information and referral for complaints of discrimination based on citizenship status or national origin and includes that Office's address and telephone numbers, including toll-free and TDD numbers for the hearing impaired.

Material which a State wishes to have certified may be transmitted to the Office of the Special Counsel in either of two ways.

1. If such material (e.g., drafts or pre-production copy) is available when a State prepares its application or amendment, that material must be included in its submission. HHS will transmit that material to the Office of the Special Counsel.

2. Material developed after approval of a State's application or amendment should be submitted directly to the Office of the Special Counsel. (The Department does not require that such materials be submitted to it for review. However, if a State submits public information directly to the Office of the Special Counsel for review and use of that material is not described in its approved application, then the final rule requires the State to amend its application prior to producing and disseminating that material.)

We strongly encourage States to submit material for review by the Office of the Special Counsel before incurring significant production and distribution costs in order to avoid potential disallowances.

Prior Consultation Waived for Dissemination of Certified Materials

The Federal government has a strong interest in expediting States' SLIAG-funded employment discrimination education and outreach efforts. States may want to get started by reproducing and distributing already available public information material that has been certified by the Office of the Special Counsel.

States that elected to use SLIAG funds for this limited purpose would not need first to submit an application or amendment to HHS or the Office of the Special Counsel. We would deem consultation to have taken place for this limited use. However, States would be required to reproduce the text of certified material verbatim (but could add the name of the State agency or other appropriate entity, its address and telephone number). Only the costs of such activities undertaken after December 18, 1989, the date of enactment of Public Law 101-238, could be reimbursed with SLIAG funds.

Although States would not be required to submit an application or amendment to HHS before distributing certified public information material, States would have to include descriptions and cost estimates of such activities when they did submit their applications or amendments. Prior consultation, and prior approval of a State's application or amendment, would be required for any other employment discrimination education and outreach activity.

Subsequent Amendments

The current regulation at § 402.45(a) requires that, if a State adds a program or activity for which it intends to claim SLIAG reimbursement or make payment with SLIAG funds, it must amend its application. For employment discrimination education and outreach activities, this means that States will have to amend their applications *before* they initiate or seek SLIAG reimbursement for activities beyond those described in their approved applications. The process for consulting with the Office of the Special Counsel described above would be followed for each amendment.

Amendments to Prior Years' Applications

Public Law 101-238 is effective with allotments made for FY 1989. Because of this effective date and the statutory requirement for prior consultation with the Office of the Special Counsel, there will be no costs incurred in either FY 1988 or FY 1989 for such activities which can be reimbursed with SLIAG grants. Thus, States will have no need to amend their FY 1988 or FY 1989 applications for this purpose.

However, as noted in "Limitations on Use of SLIAG Funds," below, subject to statutory limits, States may use funds from their FY 1989 SLIAG allotments for the costs of activities which occur after consultation (e.g., in FY 1990 or subsequent fiscal years). This is in accordance with the general provision in IRCA and the SLIAG regulation that funds allotted for a fiscal year remaining unobligated at the end of that fiscal year continue to be available for use until September 30, 1994.

States which elect to use SLIAG funds for employment discrimination education and outreach activities that occur in FY 1990 must amend their FY 1990 applications. Except as noted above, under the final rule, our prior approval of such amendments is required before States may initiate SLIAG-funded employment discrimination education and outreach efforts or begin to reimburse the costs of ongoing activities.

Comments. Some commenters opposed a mandatory or formal process of certification of materials by the Office of the Special Counsel, while other commenters opposed the Department's requirement of approval of an application amendment in order to spend funds for this activity.

Response. The process of the Office of the Special Counsel review and certification of States' proposed employment discrimination education and outreach materials is consistent with Congressional intent, as discussed above. The requirement for an application amendment is necessary in order for the Department to be able to determine the allowability of costs expended on this activity. This requirement was promulgated in SLIAG program regulations on March 10, 1988, and is a standard requirement for all SLIAG activities (see 45 CFR 402.41(d)). For employment discrimination education and outreach amendments, current practice has been that Departmental approval of application amendments and Office of the Special Counsel certification of materials has been accomplished within timeframes that have not imposed hardships on States. We do not anticipate a change in this approach.

Comments. Two commenters suggested that the Office of the Special Counsel review of literature may cause unnecessary delays, and proposed time deadlines for responses.

Response. After examining the process of review, we determined that, with few exceptions, evaluation and review of literature by the Office of the Special Counsel has been completed well in advance of suggested guidelines. We therefore concluded that there is no need for regulatorily-imposed deadlines for responses.

Comments. Two commenters suggested that costs for antidiscrimination education and outreach activities be allowable from the date of Office of the Special Counsel certification rather than the date of the Department's notice of approval.

Response. Amendments to SLIAG applications are not approved until the States submitting the amendments receive notice of approval from the Department. The difference in the time from Office of the Special Counsel certification and the Department's notification to the States has been sufficiently short during the year that materials have been certified and the pertinent amendments have been processed by the Department that it does not seem necessary to impose a different timeframe by regulation for these amendments only. If circumstances dictate that this is no longer the case, the timeframes can be changed outside the regulatory process.

Comment. One commenter suggested that we permit the Office of the Special Counsel to waive its requirement that all literature and announcements reference their address and telephone number. This could be important, for example, in a 30 second radio announcement.

Response. We agree that the requirement of the inclusion of this information could certainly be waived by the Office of the Special Counsel without any intercession by the Department outside the regulatory process. We have added this provision to the regulatory language at § 402.11(o)(2). States seeking this consideration can make their wishes known to the Office of the Special Counsel at the time of submission of the material for certification.

Limitations on Use of SLIAG Funds

New sections 204(c)(2)(D) (i) and (ii) of IRCA, established by Public Law 101-238, limit the amount of their SLIAG allotments that States may use for Phase II outreach and employment discrimination education and outreach activities. New paragraphs (k) and (l) of § 402.11 of this regulation include these restrictions. For each of these two new activities, a State may make payments, i.e., for contracts, interagency agreements, etc., totalling no more than an amount equal to the greater of 1 percent of its allotment for each fiscal year beginning with FY 1989, or $100,000. Costs associated with the administration of these payments by the State single point of contact are considered SLIAG administrative costs, as that term is defined in this Part.

For example, assume that a State's FY 1989 SLIAG allotment was $15 million and its FY 1990 allotment is $9 million. That State could use up to $150,000 of its FY 1989 allotment (1 percent of $15 million) and $100,000 of its FY 1990 allotment (because 1 percent of its allotment—$90,000— is less than $100,000) for Phase II outreach and up to the same amount for employment discrimination education and outreach.

Those funds, if unobligated by the State at the end of the fiscal year, would remain available for use through FY 1994, as is the case with SLIAG funds generally. For example, States will not have any FY 1989 costs for employment discrimination education and outreach that can be reimbursed with SLIAG funds. This is because the required prior consultation with the Office of the Special Counsel could not have been accomplished in FY 1989. However, 1 percent of the State's allotment for FY 1989 (or $100,000, if greater), if not otherwise obligated, remains available to reimburse costs incurred in subsequent fiscal years.

States' use of SLIAG funds for either Phase II outreach or employment discrimination education and outreach is optional. There is no minimum amount of SLIAG funds which States are required to use for these activities. This regulation amends § 402.11(d) to clarify application of the statutory requirement that States use at least 10% of their SLIAG allotments for public assistance, public health assistance, and educational services.

The statutory provisions authorizing use of SLIAG funds for these purposes are effective with States' FY 1989 allotments. Costs incurred prior to October 1, 1988 may not be reimbursed with SLIAG funds. (FY 1988 allotments may not be used for Phase II outreach or for employment discrimination education and outreach. FY 1988 allotments are the only funds available to reimburse costs incurred in FY 1988.) States' FY 1988 allotments are not included in computing the maximum

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amount of SLIAG funds that may be used for these purposes.

As noted above, States may use SLIAG funds to pay otherwise allowable costs incurred through FY 1994. New paragraphs (i) through (l), (n), and (o) of § 402.11 of this regulation include additional restrictions that apply to these new uses of SLIAG funds. These were described previously under "Phase II Outreach" and "Employment Discrimination Education and Outreach." Sections 402.11(a), 402.11(c) and 402.21(b) describe which funds are permitted for costs associated with SLIAG-reimbursable activities.

Comments. A few commenters expressed the opinion that funds for Phase II information should be able to be used for as long as there are persons in temporary resident status.

Response. Information Transmittal 91-005, sent to States in December, 1990, addresses the issue of the continuation of outreach costs as the number of temporary residents declines. It clearly states, "Outreach activities can legitimately continue as long as there are temporary residents to be served." A table showing Phase II applications for section 245A ELAs by month of filing for status was sent to each State along with IT 91-005. The guidance indicates that we do not intend to adopt a pro rata approach to the amount of allocable costs for outreach as the number of temporary residents declines. It does indicate, however, that States should exercise reason and prudence in deciding what level of activity should be undertaken, and for how long, in conducting this activity. In light of our issuance of this guidance and the State-specific data which accompanied it, DSLA considers that States have been given the latitude to expend SLIAG funds for Phase II outreach messages to temporary residents for as long as there is a perceived need.

Simplification of Application Requirements

This regulation simplifies States' preparation of SLIAG applications by deleting the requirement that applications contain both cost estimates for the upcoming fiscal year and updated estimates for the prior fiscal year. A key element is our changing the due date for applications in § 402.43 from July 15 preceding the fiscal year for which application is made to October 1 of that fiscal year. (See 55 FR 26206, which changed the due date for FY 1991 applications from July 15, 1990 to October 1, 1990. This regulation also changed the date by which applications must be rendered approvable by the Secretary from October 1 to December 15.) This final rule adopts those dates for all applications.

This change allows us to simplify States' SLIAG applications. Under the current regulation, State applications must contain estimates of SLIAG-related costs for the year for which funds are sought, plus updated estimates for the prior fiscal year. For example, under the current regulations, States' applications for FY 1991 must include cost estimates for FY 1991 and updated estimates for FY 1990.

Under the new time schedule, we will complete our review and approval of States' applications, including the cost estimates they contain, by the end of the calendar year. This is the same time that States must submit end-of-year reports containing actual cost data for the prior fiscal year. (Subpart F of the regulation requires States to submit to the Department a report with actual cost data for FY 1990 no later than 90 days after the end of the fiscal year.) Thus, we will have actual cost data for the prior year available to us when we compute States' allocations. Therefore, there is no need for updated cost estimates for the prior year in States' applications. We therefore are eliminating the requirements at 45 CFR 402.31(b) (1) through (6) that State applications contain updated cost estimates for the prior fiscal year.

The current regulation calls for the Department to hold 25% of the FY 1991 appropriation (the final year for which funds were appropriated at the time the regulation was published) for allocation in late FY 1991, after we receive States' end-of-year reports for FY 1990. (These reports were due by December 29, 1990 and, under the schedule in the current regulation, would not have been available in time to be included in computing States' FY 1991 allocations.)

We included provision for a final adjustment to States' allocations late in FY 1991 so that final allocations would be based as much as possible on actual, rather than estimated, costs. With the October 1 application deadline, this final adjustment will not be necessary. Actual cost data for FY 1990 will be available when we compute States' FY 1991 allocations for the first time. Therefore, there is no need for a second allocation in FY 1991. We will allocate all FY 1991 funds as soon as cost data are received from States and reviewed by the Department.

Comments. With reference to the proposal to use actual cost data rather than updated estimates for the prior year in computing States' FY 1991 allocations, one commenter expressed concern that the Department would have no data to use in the allocation formula for costs that are in dispute. Another commenter stated that the Department should acknowledge to Congress and the Federal administration that costs reported by States to date are expected to constitute only a fraction of all of the costs which will ultimately be documented, claimed, and adjudicated as SLIAG reimbursement.

Response. Costs that are in dispute cannot be used in the allocation formula whether they are estimates or actual costs. Actual SLIAG-related costs used for allocation or any other purpose are subject to revision through the statutory close of the SLIAG program. States are aware that actual cost reports may be amended at any time prior to the end of FY 1994.

Comments. Two commenters suggested that we provide two allocations in FY 1992, as was originally provided for in the SLIAG regulation for FY 1991. The same commenters opposed the proposed change in the application deadline because it would delay the allocation of FY 1992 funds until well after the start of the fiscal year.

Response. There is no certainty at this time that there will be an allocation in FY 1992. The number of allocations to be made in a fiscal year are at the discretion of the Department subject to circumstances at the time. If it is determined that there is a need for more than one allocation in FY 1992, should funds be available, the Department will consider that option at that time.

Comment. Three commenters stated in their remarks that FY 1992 funds should be able to used for costs incurred "on or after October 1, 1990" to be consistent with the provisions of IRCA.

Response. We agree that if there are SLIAG funds available for States in FY 1992, they should be subject to the requirements of IRCA, and have therefore amended the final rule by adding the phrase, "except funds for FY 1992 may be used for costs incurred on or after October 1, 1990" to § 402.46(b).

Technical and Conforming Changes

In referring to activities for which SLIAG funds may be used, § 402.10(a) lists the three categories of programs/activities for which SLIAG funds could be used prior to enactment of Public Law 101-238: Public assistance, public health assistance, and educational services. Two other allowable uses—SLIAG administrative costs and program administrative costs—were provided for in §§ 402.10(c) and 402.22. In addition, categories of activities for which SLIAG funds may be used are listed in numerous other places in the regulation, including § 402.11.

With the addition of two new categories of activities for which SLIAG funds may be used—employment discrimination education and outreach and Phase II outreach—listing all seven of the allowable uses of SLIAG funds at each reference is unwieldy. Therefore, this amendment defines "SLIAG-reimbursable activity" to include all allowable uses of SLIAG funds:

—Public assistance;
—Public health assistance;
—Educational services;
—Employment discrimination education and outreach;
—Phase II outreach;
—SLIAG administrative costs; and,
—Program administrative costs.

The terms "SLIAG administrative costs" and "program administrative costs" are defined in paragraphs (a) and (b) of § 402.22, respectively, and § 402.10(c) of the current regulation. Because these are "SLIAG-reimbursable activities," defined by this amendment, we have moved the definitions of "SLIAG administrative costs" and program administrative costs" to § 402.2, "Definitions." We believe that it is clearer and more consistent to define all allowable uses of SLIAG funds in that section.

The definition of "SLIAG administrative costs" in § 402.2 does not differ substantively from that in the current regulation at § 402.22(a). This amendment substitutes the term "conferring" for "consultation" (i.e., with local officials) to prevent confusion between this reference and the consultation with the Office of the Special Counsel required as a prerequisite for initiating employment discrimination education and outreach activities.

The definition of "program administrative costs" included in § 402.2 does not differ substantively from the current definition in §§ 402.10(c) and 402.22(b). It is modified only to clarify that program administrative costs are those costs associated with administering any of the five categories of programs or activities for which SLIAG funds may be used.

This amendment moves the description of the methodologies States may employ to determine program administrative costs from § 402.22(b) to § 402.21(c)(6)(i). This locates all cost documentation requirements and guidance in the same section of the regulation.

The current regulation limits SLIAG-related costs for educational services to the amount that can be paid with SLIAG funds. The amended definition of "SLIAG-related costs" in § 402.2 of this final rule applies the same restriction to SLIAG-related costs for Phase II outreach and employment discrimination education and outreach. The effect of this would be to prevent the inclusion of costs that could not be reimbursed with SLIAG funds in the computation of States' allocations.

The final rule removes and reserves § 402.10(c) of the current regulation. That paragraph permits SLIAG funds to be used for program and SLIAG administrative costs. Because the regulation now defines these uses in § 402.2 and includes them in the list of SLIAG-reimbursable activities in §§ 402.2 and 402.10(a), § 402.10(c) would be superfluous.

The current SLIAG regulation addresses State allocations and application requirements for each year from FY 1988 through FY 1991. The change in application requirements, due date, and allocation schedule for FY 1991 (discussed above), eliminates the need to list rquirements and procedures separately for each year. Therefore, this regulation eliminates unnecessary references to specific fiscal years.

INS regulations require that physical examinations for applicants for adjustment of status under sections 210, 210A, and 245A of the INA be at no expense to the government. The current SLIAG regulation prohibits use of SLIAG funds to pay the cost of physical examinations only for applicants under section 245A and 210. Section 402.11(h) of this regulation corrects this oversight and prohibits use of SLIAG funds to pay cost of physical examinations required of petitioners for status under section 210A (replenishment agricultural workers), should any aliens become eligible to petition for adjustment of status under that section.

The proposed rule would have added a provision to § 402.45(a) to require a State to submit amendments to its approved application for a fiscal year by the due date for that fiscal year's cost report under § 402.51. This change would have codified current policy.

Comments. Several commenters expressed the idea that States should be able to amend their applications for as long as there is authority to expend funds; that is, until the end of FY 1994, even though current policy requires States to amend applications before the close of the fiscal year for which the amendment would be applicable.

Response. We believe that States have ample opportunity under these final rules to determine those programs and activities they wish to qualify as SLIAG related. For purposes of program allowability and cost claiming, the latest approved application and amendments govern from the date of approval until such time as superseded. For purposes of funds allocation, applications and amendments approved for the subject fiscal year by the designated deadline for submissions for the allocation process are applicable.

Required Consultations with State and Local Officials

Section 204(i) of IRCA requires the Secretary to consult with representatives of State and local governments in establishing regulations and guidelines for SLIAG. On January 16, 1990 we transmitted information regarding Public Law 101-238 to SLIAG contacts and other interested parties. In that transmittal, we requested comments and suggestions for regulations regarding temporary resident education and outreach and employment discrimination education and outreach activities. We received comments from four States and one national organization. Those comments were considered in developing this final rule.

Required Consultation with States and the Comptroller General

Section 204(e) of IRCA requires that the Secretary consult with States and the Comptroller General in developing reporting requirements for SLIAG. As this final rule does not establish new reporting requirements, but merely eliminates now unnecessary reporting, we determined that prior consultation was not necessary. However, copies of the proposed rule were transmitted to State SLIAG single points of contact and the Comptroller General for comment.

Regulatory Procedures

In accordance with 5 U.S.C. 605(b), the Secretary certifies that this rule does not have a significant adverse economic impact on small business entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

Paperwork Reduction Act

This rule imposes no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

List of Subjects in 45 CFR Part 402

Administrative cost, Allocation formula, Aliens, Allotment, Education, Grant programs, Immigration, Immigration Report and Control Act, Public assistance, Public health assistance, Reporting and recordkeeping requirements, State Legalization Impact Assistance Grants.

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(Catalog of Federal Domestic Assistance Program No. 93.565, State Legalization Impact Assistance Grants)

Dated: March 26, 1991.

Jo Anne B. Barnhart,

Assistant Secretary, Family Support Administration.

Approved: April 12, 1991.

Louis W. Sullivan,

Secretary.

For the reasons set forth in the preamble, 45 CFR part 402 is amended as follows:

PART 402—STATE LEGALIZATION IMPACT ASSISTANCE GRANTS

1. The authority citation for part 402 continues to read as follows:

Authority: 8 U.S.C. 1255a note, as amended.

2. Section 402.1 is revised to read as follows:

§ 402.1 General.

(a) These regulations implement section 204 of Pub. L. 99-603, the Immigration Reform and Control Act of 1986 (IRCA), as amended. This act establishes a temporary program of State Legalization Impact Assistance Grants (SLIAG) for States. The purpose of SLIAG is to lessen the financial impact on State and local governments resulting from the adjustment of immigration status under the Act of certain groups of aliens residing in the States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(b) Funds appropriated by section 204 may be applied by States with approved applications to certain State and local government costs incurred:

(1) In providing public assistance and public health assistance to eligible legalized aliens,

(2) For making payments to State educational agencies for the purpose of assisting local educational agencies in providing certain educational services to eligible legalized aliens,

(3) To provide public education and outreach to lawful temporary resident aliens concerning the adjustment to lawful permanent resident status and other matters,

(4) To make payments for education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status, and

(5) To administer the funds provided under this Part.

3. Section 402.2 is amended by revising the first two sentences of and adding a sentence to the definition of *SLIAG-related costs*, and by adding definitions of *Employment discrimination education and outreach, Phase II outreach, Program administrative costs, SLIAG administrative costs*, and *SLIAG-reimbursable activity*, to read as follows:

§ 402.2 Definitions.

* * * * *

Employment discrimination education and outreach means education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status.

* * * * *

Phase II outreach means public education and outreach (including the provision of information to individuals) to inform temporary resident aliens under section 210, 210A, 245A of the INA and aliens whose applications for such status are pending with the Immigration and Naturalization Service regarding:

(1) The requirements of sections 210, 210A, and 245A of the INA regarding the adjustment of resident status;

(2) Sources of assistance for such aliens obtaining the adjustment of status described in paragraph (1) of this definition, including educational, informational, and referral services, and the rights and responsibilities of such aliens and aliens lawfully admitted for permanent residence;

(3) The identification of health, employment, and social services; and,

(4) The importance of identifying oneself as a temporary resident alien to service providers.

Program administrative costs means those costs associated with administering public assistance, public health assistance, educational services, Phase II outreach, and employment discrimination education and outreach activities.

* * * * *

SLIAG administrative costs means the direct and indirect costs related to administration of funds provided under this part, including: planning and conferring with local officials, preparing the application, audits, allocation of funds, tracking and recordkeeping, monitoring use of funds, and reporting.

SLIAG-reimbursable activity means programs of public assistance, programs of public health assistance, educational services, employment discrimination education and outreach, Phase II outreach, program administrative costs, and SLIAG administrative costs, as those terms are defined in this part, that are included in a State's application approved pursuant to subpart E of this part.

SLIAG-related costs means expenditures made: To provide public assistance; public health assistance, or educational services, as defined in this part, to eligible legalized aliens; to provide public health assistance to aliens applying on a timely basis to become lawful temporary residents under sections 210, 210A, or 245A of the INA during such time as that alien's application with INS is pending approval; to provide employment discrimination education and outreach, as defined in this part; to provide Phase II outreach, as defined in this part; and for SLIAG administrative costs, as defined in this part. SLIAG-related costs include all allowable expenditures, including program administrative costs determined in accordance with § 402.21(c), regardless of whether those expenditures actually are reimbursed or paid for with funds allotted to the State under this part. SLIAG-related costs for educational services, Phase II outreach, and employment discrimination education and outreach are limited to the amount of payment that can be made under the Act for those activities, as described in § 402.11 (e), (k) and (l), respectively. * * *

* * * * *

4. Section 402.10 is amended by revising paragraphs (a) and (d) and removing and reserving paragraph (c) to read as follows:

§ 402.10 Allowable Use of Funds.

(a) Funds provided under this part for a fiscal year may be used only with respect to SLIAG-related costs incurred in that fiscal year or succeeding fiscal years, subject to § § 402.11 and 402.26(a), for the following activities, as defined in this part:

(1) Public assistance;

(2) Public health assistance;

(3) Educational services;

(4) Employment discrimination education and outreach;

(5) Phase II outreach;

(6) SLIAG administrative costs; and,

(7) Program administrative costs;

* * * * *

(c) [Removed and Reserved]

(d) Except as provided for in § 402.11(n), funds awarded under this part may be used to reimburse or pay SLIAG-related costs incurred prior to the approval of a State's application or amendment to its application, pursuant to subpart E of this part, provided that such reimbursement or payment is consistent with the Act and this part.

5. Section 402.11 is amended by revising paragraphs (a) and (c), revising the last sentence of paragraph (d), revising paragraph (h), adding paragraphs (i), (j), (k), (l), adding and reserving paragraph (m), and adding

paragraphs (n) and (o), to read as follows:

§ 402.11 Limitations on Use of SLIAG Funds.

(a) Funds provided under this part may be used only for SLIAG-reimbursable activities that—

(1) Meet the definitions of § 402.2 of this part; and

(2) Are otherwise consistent with the rules and procedures governing such activities.

* * * * *

(c) The amount of reimbursement or payment may not exceed 100% of SLIAG-related costs, as defined in this part, associated with SLIAG-reimbursable activites.

(d) * * * In the event that a State does not require use of a full 10% in one of the above categories, it must allocate the unused portion equally among the remaining categories listed in this paragraph.

* * * * *

(h) Funds provided under this part shall not be used to reimburse or pay costs inurred by any public or private entity or any individual, in the conduct of a medical examination as required for application for adjustment to lawful temporary resident status under 8 CFR 245a.2(i), 8 CFR 210.2(d), or 8 CFR 210a.6(f).

(i) Funds provided under this part shall not be used for client counselling or any other service which would assume responsibility for the adjustment of status of aliens to that of lawful temporary or permanent residence. This prohibition includes assisting an alien to appeal INS decisions or representation of an alien before any administrative or judicial body.

(j) Funds under this part shall not be used to investigate or prosecute discrimination complaints beyond initial intake and referral, to pay legal fees or other expenses incurred to provide legal counsel to a party alleging discrimination, or to represent such parties before any administrative or judicial body.

(k) A State may use funds to make payments for Phase II outreach activities, including related program administration, from allotments made to it under this part for FY 1989 and succeeding fiscal years. The maximum amount that a State may use for this purpose from a fiscal year's allotment is the greater of 1% of its allotment for that fiscal year or $100,000.

(l) A State may use funds to make payments for employment discrimination education and outreach activities, including related program administration, from allotments made to it under this part for FY 1989 and succeeding fiscal years. The maximum amount that a State may use from a fiscal year's allotment for this purpose is the greater of 1% of the State's allotment for that fiscal year or $100,000.

(m) [Reserved]

(n)(1) Except as provided for in paragraph (n)(2) of this section, a State may use SLIAG funds alloted to it for a fiscal year to reimburse or pay only those SLIAG-related costs for employment discrimination education and outreach activities which occurred after approval by the Department of an application or amendment describing those activities, as required by § 402.41(d).

(2) Costs incurred in FY 1990 prior to approval by the Department of an application or amendment containing the information required by § 402.41(d), but after December 18, 1989, for reproduction and dissemination of public information material certified by the Office of the Special Counsel for Immigration-Related Unfair Employment Practices, Department of Justice (hereafter, "Office of the Special Counsel"), pursuant to paragraph (o) of this section may be reimbursed with funds allotted under this part.

(o)(1) With respect to employment discrimination education and outreach, a State shall not use SLIAG funds to pay for the cost of producing or distributing materials prepared for public dissemination unless the Office of the Special Counsel has certified that those materials meet the criteria in paragraph (o)(2) of this section.

(2) Certification of materials described in paragraph (o)(1) of this section shall consist of a finding by the Office of the Special Counsel that information contained in such materials relating to the discrimination provision of the Act is legally accurate and that those materials include reference to the Office of the Special Counsel as a source of information and referral for complaints of discrimination based on citizenship status or national origin. Information regarding the Office of the Special Counsel shall include its address and telephone number, including the toll-free number and toll-free TDD number for the hearing impaired. The Office of the Special Counsel, in the exercise of discretion, may agree to the deletion of any portion of the information referenced in the previous sentence, in those instances where space limitations in printed materials, or time limitations in electronically recorded materials, make inclusion of all the required information impractical.

6. Section 402.12 is amended by revising paragraph (c) to read as follows:

§ 402.12 Use of SLIAG Funds for Costs Incurred Prior to October 1, 1987.

* * * * *

(c) A State may use funds provided under this part for costs incurred prior to October 1, 1987, but after November 6, 1986, in providing public health assistance to eligible legalized aliens and to applicants for lawful temporary residence under sections 210, 210A and 245A of the INA, in conformity with the provisions of § 402.10(a).

§ § 402.21 and 402.22 [Amended]

7. Section 402.21 is amended by revising the third sentence of paragraph (b), revising paragraph (c)(2), adding paragraphs (c) (4) and (5) as set forth below. Section 402.22 (b) and (c) are redesignated as paragraphs (c)(6)(i) and (c)(6)(ii) of § 402.21 and revised to read as follows:

§ 402.21 Fiscal Control.

* * * * *

(b) * * * States must demonstrate that SLIAG-related costs, as defined in this part, incurred in SLIAG-reimbursable activities, equal or exceed the amount of SLIAG funds expended with respect to costs incurred in those activities. * * *

(c) * * *

(2) For public health assistance, States may establish allowability by accounting for actual expenditures made to or on behalf of identifiable eligible legalized aliens, or applicants for lawful temporary resident status under sections 210, 210A, or 245A of the INA, who qualify for and receive such assistance and/or services, by use of a statistically valid sampling of clients in the public health system of the State or local government, or by using the ratio of eligible legalized aliens in a service population to all members of the relevant service population.

* * * * *

(4) With respect to Phase II outreach, as defined in this part, a State must demonstrate that the costs of activities that provide information directly to specific individuals are attributable only to lawful temporary residents under sections 210, 210A, or 245A of the INA, and applicants for such status whose applications were pending with the Immigration and Naturalization Service at the time information is provided. For Phase II outreach activities that do not involve the provision of information directly to specific individuals, States must demonstrate that such activities

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are targeted predominantly to or intended primarily for lawful temporary residents under sections 210, 210A, or 245A of the INA or applicants for such status whose applications are pending with the Immigration and Naturalization Service at the time information is provided. The State must demonstrate that the amount of any fiscal year's allotment used for this purpose did not exceed the amount described in § 402.11(k) and was consistent with the limitations of § 402.11(i).

(5) With respect to employment discrimination education and outreach, as defined in this part, the State must demonstrate that funds were expended only for activities described in the State's approved application pursuant to § 402.41(d) and the limitations of § 402.11 (i), (n), and (o) and that the amount of any fiscal year's allotment used for this purpose did not exceed the amount described in § 402.11(1).

(6)(i) For program administrative costs, as defined in this part, a State may establish allowability by use of the proportion of eligible legalized aliens provided assistance and/or services allowable under this part by a recipient, as defined in this part, relative to all persons provided such assistance and/or services; by use of the proportion of program or service costs actually incurred in providing assistance and/or services allowable under this part by a recipient, relative to all costs of providing the same assistance and/or services allowable under this part by the recipient; or by use of such other basis as will document that administrative costs incurred in providing such assistance and/or services and reimbursed under this part are allowable, allocable to SLIAG, and reasonable.

(ii) Consistent with section 604 of the Emergency Immigrant Education Act, of the amount paid to a State educational agency for educational services, only 1.5 percent may be used for administrative costs incurred by the State educational agency in carrying out its function under this part.

§ 402.22 [Reserved]

8. Section 402.22 is removed and reserved.

9. Section 402.31 is amended by revising paragraph (b) to read as follows:

§ 402.31 Determination of Allocations.

* * * * *

(b) *Calculation of Allocations.* Each time the Department calculates State allocations, it will use the best data then available to the Secretary on the distribution of eligible legalized aliens by State. The Department will determine each State's SLIAG-related costs to be included in the computation of its allocation for a fiscal year by adding to the sum of SLIAG-related costs reported for all previous fiscal years by that State, pursuant to § 402.51(e) (1) and (2), the total amount of estimated SLIAG-related costs included in the State's approved application for that fiscal year, pursuant to § 402.41(c) (1) and (2). In the event that a State has not submitted an approved report for a fiscal year, the Department will include no costs for that fiscal year in its calculation.

10. Section 402.32 is revised to read as follows:

§ 402.32 Determination of State Allotments.

Except as noted below, a State's allotment is the difference between the amount determined under § 402.31(b) of this regulation and the cumulative amount previously allotted to the State. In the event that the amount determined under § 402.31(b) is less than the cumulative amount previously allotted to a State, that State's allotment will be zero. The allotments of the remaining States would be calculated by multiplying the difference between the amount determined under § 402.31(b) of this regulation and the cumulative amount previously allotted to the State by the ratio of the amount of funds available for grants to States to the sum of the differences between the amounts determined under § 402.31(b) and the amounts previously awarded to those States.

11. Section 402.41 is amended by redesignating paragraph (c)(1) as paragraph (c) and revising the second sentence of that paragraph, removing paragraph (c)(2), redesignating paragraph (d)(1) as paragraph (d)(1)(i) and revising it, adding new paragraph (d)(1)(ii), adding a sentence at the end of paragraph (d)(2), and adding a sentence at the end of the third sentence of paragraph (f), and adding the undesignated paragraph at the end of the section as the last sentence of paragraph (b), to read as follows:

§ 402.41 Application Content.

* * * * *

(c) * * * Programs and activities must be identified by the purposes listed in § 402.10(a). * * *

(d) * * *

(1) (i) Descriptions of the programs and activities for which SLIAG-related costs will be incurred; and,

(ii) If a State elects to use its allotment for employment discrimination education and outreach, a description of the State's planned education and outreach activities, including: descriptions of the kinds of government or private agencies or other entities, if any, through which these activities will be conducted; brief descriptions of the targeted audience(s) for these activities; and, preproduction copies or the text of any material intended for distribution to the public to be produced or disseminated with SLIAG funds, if available at the time the application is submitted.

(2) * * * For SLIAG administrative costs, Phase II outreach, and employment discrimination education and outreach, the descriptions must instead include the basis for the estimate of SLIAG-related costs, as defined in this Part.

(f) * * * If the State elects to use SLIAG funds for employment discrimination education and outreach, it must also designate in its application a contact person for this activity, if different from the single point of contact. * * *

12. Section 402.43 is amended by revising paragraph (a) and by removing the first sentence and revising the second sentence of paragraph (b) to read as follows:

§ 402.43 Application Deadline.

(a) An Application from a State for SLIAG funds for any Federal fiscal year must be received by the Department by October 1 of that fiscal year. If a State fails to submit an application by this date, funds which it may otherwise have been eligible to receive shall be distributed among States submitting timely approved applications in accordance with § 402.33 of this Part.

(b) In order to receive funds under this part, a State's application for a fiscal year must be approvable by the Secretary by December 15 of that fiscal year. * * *

13. Section 402.44 is amended by adding paragraph (d) to read as follows:

§ 402.44 Basis for Approval.

* * * * *

(d) (1) The Department will forward to the Office of Special Counsel information provided by a State pursuant to §402.41(d).

(2) The Office of the Special Counsel will review information forwarded to it by the Department pursuant to paragraph (d) (1) of this section to determine whether the activities described therein conflict with or unnecessarily duplicate other employment discrimination education and outreach efforts. Certification to the Department by the Office of the Special Counsel that the State's submission meets this criterion is a prerequisite for approval by the Department.

14. Section 402.45 is amended by revising paragraph (a), and revising the first sentence of paragraph (b), to read as follows:

§ 402.45 Amendments to applications.

(a) (1) If, during the course of a fiscal year, a State adds a program or activity for which it intends to claim reimbursement or make payment in that fiscal year, it must submit an amendment (containing appropriate information pursuant to § 402.41(c)) to its approved application for that fiscal year prior to the due date for reports required by § 402.51 of this part.

(2) If a State plans to initiate employment discrimination education and outreach activities not described in its application pursuant to § 402.41(d), it must submit an application amendment, which shall be reviewed in accordance with procedures described in § 402.41(d) of this part. The Department's approval of such an amendment is a prerequisite for the initiation of such new activities, except as provided for in § 402.11(n) (2).

(b) Except as provided for in § 402.11(k) and (n), a State may use SLIAG funds received for a fiscal year to reimburse or pay SLIAG related costs for programs or activities described in paragraph (a) of this section retroactive to the date the activity began, but no earlier than the first day of the fiscal year and only to the extent described in § 402.10(d), except that funds received in FY 1992, if any, may be used for costs incurred on or after October 1, 1989. * * *

15. Section 402.51 is amended by designating the first two sentences of paragraph (e) as paragraph (e) (1) and revising the second sentence of that paragraph, designating the third sentence of paragraph (e) as paragraph (e) (2) and revising it, designating the last sentence of paragraph (e) as paragraph (e) (3), and revising it to read as follows:

§ 402.51 Reporting.

* * * * *

(e) (1) * * * The report must provide, for each program or activity identified in the State's application, the amount of SLIAG-related costs, as defined in this part, incurred in that program or activity, identified as public assistance, public health assistance, educational services, Phase II outreach, employment discrimination education and outreach, and SLIAG administrative costs, as defined in this part, the amount of SLIAG funds obligated for that program or activity, and the time period for which the funds were obligated.

(2) The report must contain a description of the methodology used to determine actual SLIAG-related costs, if different from the description provided in the State's application pursuant to § 402.41 (d) (2) of this part.

(3) Federal and State costs of providing assistance under a State plan approved under title XIX of the Social Security Act to aliens whose status has been adjusted under sections 245A and 210A of the INA by virtue of the exceptions to the bar to Medicaid eligibility (sections 245A (h) (2) and (3) of the INA) must be shown separately in States' reports.

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Part VII

The President

Proclamation 6287—National Tourism Week, 1991

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Presidential Documents

Title 3—

The President

Proclamation 6287 of May 3, 1991

National Tourism Week, 1991

By the President of the United States of America

A Proclamation

From coast to coast the United States is marked by an abundance of beautiful public parks and fascinating historic landmarks, as well as a variety of recreational and cultural attractions. These features, coupled with the hospitality of our people and the high quality of American travel services and accommodations, make the United States the world's number one tourist destination.

Tourism and business travel not only provide rewarding educational opportunities for individuals but also contribute to the Nation's economic prosperity. The travel and tourism industry is America's second largest private employer, directly or indirectly supporting millions of jobs across the country. According to the United States Department of Commerce, the industry is also our largest export earner. With nearly $350 billion spent annually by all travellers and tourists in the United States, travel and tourism account for about 6.5 percent of our gross national product.

While travel and tourism enrich virtually every community in which they thrive, they are especially important to rural America. More and more, Americans and international visitors are travelling to rural America, not only to explore our forests, parks, and recreation areas, but also to enjoy a respite from the hustle and bustle of urban life. Businesses are beginning to discover the many advantages of holding retreats and seminars in the country. All of this activity brings thousands of dollars into rural economies, benefitting small businesses and entire communities alike.

Both in rural areas and in our cities, the revenue generated by travel and tourism helps to spur needed development—including the building of schools, where children can learn about our Nation's past and acquire the knowledge and skills needed to enjoy a bright future.

Students can benefit significantly from travel in the United States, as can everyone who recognizes it as a wonderful learning opportunity. Indeed, the many historic and cultural landmarks preserved across America help to tell our Nation's story. Monuments and museums, battlefields and nature trails—all trace the rich history of America's native peoples and the immigrants who helped to make this land the home of freedom and opportunity as well. Moreover, in today's shops and markets, in our courthouses and legislative halls, visitors can see American free enterprise and democracy at work. This year is a most exciting time to rediscover America, since we celebrate the 200th year of our Bill of Rights.

This week, let us honor all those Americans who work in the travel and tourism industry—particularly those who are striving to promote tourism in rural areas and to increase America's share of the world tourism market. Each of us benefits, in so many ways, from their year-round efforts.

The Congress, by Senate Joint Resolution 102, has designated the week beginning on the first Sunday in May as "National Tourism Week" and has authorized and requested the President to issue a proclamation in observance of this week.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of May 5 through May 11, 1991, as National Tourism Week. I call upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

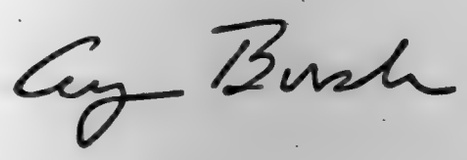

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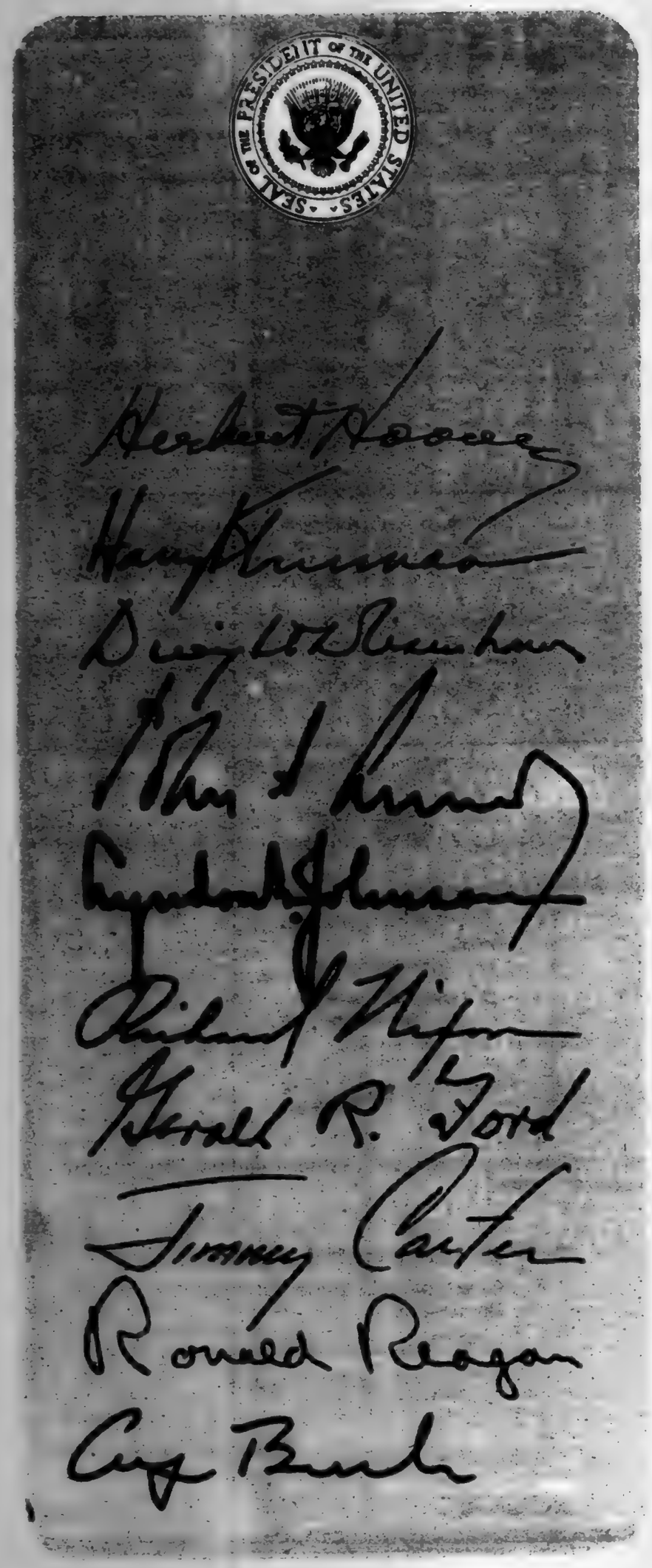

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Presidential Documents

Title 3—

The President

Proclamation 6288 of May 6, 1991

Asian/Pacific American Heritage Month, 1991 and 1992

By the President of the United States of America

A Proclamation

With characteristic clarity and force, Walt Whitman wrote: "The United States themselves are essentially the greatest poem. . . . Here is not merely a nation but a teeming nation of nations." Those immortal words eloquently describe America's ethnic diversity—a diversity we celebrate with pride during Asian/Pacific American Heritage Month.

The Asian/Pacific American heritage is marked by its richness and depth. The world marvels at the wealth of ancient art and philosophy, the fine craftsmanship, and the colorful literature and folklore that have sprung from Asia and the Pacific islands. Whether they trace their roots to places like Cambodia, Vietnam, Korea, the Philippines, and the Marshall Islands or cherish their identities as natives of Hawaii and Guam, all Asian and Pacific Americans can take pride in this celebration of their heritage.

By preserving the time-honored customs and traditions of their ancestral homelands, Americans of Asian and Pacific descent have greatly enriched our Nation's culture. They have also made many outstanding contributions to American history. Indeed, this country's westward expansion and economic development were greatly influenced by thousands of Chinese and other Asians who immigrated during the 19th century. Today recent immigrants from South Asia are giving our Nation new appreciation for that region of the world.

Over the years—and often in the face of great obstacles—Asian and Pacific Americans have worked hard to reap the rewards of freedom and opportunity. Many have arrived in the United States after long and arduous journeys, escaping tyranny and oppression with little more than the clothes on their backs. Yet, believing in America's promise of liberty and justice for all and imbued with a strong sense of self-discipline, sacrifice, courage, and honor, they have steadily advanced, earning the respect and admiration of their fellow citizens. Today we give special and long-overdue recognition to the nisei who fought for our country in Europe during World War II. During one of America's darker hours, they affirmed the patriotism and loyalty of Japanese Americans and, in so doing, taught us an important lesson about tolerance and justice.

Time and again throughout our Nation's history, Asian and Pacific Americans have proved their devotion to the ideals of freedom and democratic government. Those ideals animate and guide our policies toward Asia and the Pacific today. The economic dynamism of the Pacific Rim is a crucial source of growth for the global economy, and the United States will continue working to promote economic cooperation and the expansion of free markets throughout the region. The United States also remains committed to the security of our allies and to the advancement of human rights throughout Asia and the Pacific.

The political and economic ties that exist between the United States and countries in Asia and the Pacific are fortified by strong bonds of kinship and culture. All Americans are enriched by those ties, and thus we proudly unite in observing Asian/Pacific American Heritage Month.

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The Congress, by House Joint Resolution 173, has designated May 1991 and May 1992 as "Asian/Pacific American Heritage Month" and has authorized and requested the President to issue a proclamation in observance of these occasions.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the months of May 1991 and May 1992 as Asian/Pacific American Heritage Month. I call upon the people of the United States to observe these occasions with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

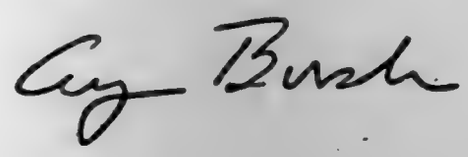

[FR Doc 91-11139
Filed 5-6-91; 4:27 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 56 No. 89
Wednesday, May 8, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service—Schedule A Authority for Employment of Students

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is revising the Schedule A excepted service appointing authority used by agencies to hire student assistants. These regulations permit agencies to make appointments under the authority at grades up to GS-9, or equivalent. Previously, the top grade limit was GS-7, or equivalent.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 606-0960.

SUPPLEMENTARY INFORMATION: The Schedule A authority for positions filled by student assistants allows Federal agencies to use the services of students in work related to their majors and to afford the students practical experience to supplement their education. The authority requires that appointees be full-time students and does not provide for either full-time employment or continued employment after the student leaves school. Exception is based on OPM's finding that examinations geared toward career employment may not produce candidates interested in part-time temporary employment or may do so only at excessive cost. Currently, the authority permits employment at grades GS-7, or equivalent, and below for up to 1,040 hours in a service year. These limits represent a break-even point above which examining would be appropriate and cost-effective.

On December 7, 1990 (55 FR 50560), OPM published proposed regulations to raise the grade limit to GS-9. This change was suggested by an agency. In addition to the agency that made the original suggestion, three agencies and an employee organization supported the proposed regulations. One employee organization opposed expanding the Schedule A authority, stating that the agencies could fill these positions through job-sharing and part-time employment programs in the competitive service. However, those programs are geared toward continuing part-time work, not toward work that is both part-time and temporary.

OPM is, therefore, adopting the proposed regulations as final. Only the grade level limit is changed. The 1,040-hour service limit and the requirement for appointees to meet the experience and training requirements of the applicable qualifications standard are still in place.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only the procedures used to appoint certain employees in Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees.

Office of Personnel Management.

Constance Berry Newman,
Director.

Accordingly, OPM is amending 5 CFR part 213 as follows:

1. The authority citation for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; section 213.101 also issued under 5 U.S.C. 2103; section 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95-454, sec. 3(5); section 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337(h), and 8457.

2. In § 213.3102(q), the first sentence is revised to read as follows:

§ 213.3102 Entire Executive Civil Service

* * * * *

(q) Positions at grade GS-9, or equivalent, and below when appointees are to assist scientific, professional, or technical employees. * * *

* * * * *

[FR Doc. 91-10903 Filed 5-7-91; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

Tobacco

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule adopts as a final rule, with a minor correction, the proposed rule published in the Federal Register on February 21, 1991, (56 FR 6998). This rule amends the tobacco loan program regulations at 7 CFR part 1464 to: (1) Incorporate provisions implementing marketing assessments on the 1991 through 1995 crops of tobacco as set forth in the Omnibus Budget Reconciliation Act of 1990; (2) correct cross references to 7 CFR part 723 regulations published in the Federal Register on October 1, 1990; (3) delete obsolete material; and (4) make minor technical revisions. This final rule also amends 7 CFR part 1464 to incorporate an amendment which provides that a producer who is determined by the Agricultural Stabilization and Conservation Service (ASCS) to have erroneously represented any fact affecting a program determination shall not be entitled to price support with respect to which such representation was made, and shall refund to Commodity Credit Corporation (CCC) all payments received by the producer with respect to such farms and the tobacco program. This proposed amendment was erroneously published in the Federal Register on March 14, 1991, as a proposed revision to 7 CFR part 723.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Gary W. Wheeler, Tobacco Marketing Specialist, Tobacco and Peanuts Division, USDA-ASCS, P.O. Box 2415, Washington, DC, 20013, telephone (202) 447-7562.

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SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512-1 and has been classified as "not major."

It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases: 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This program/activity is not subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The Omnibus Budget Reconciliation Act of 1990, enacted November 15, 1990, (Pub. L. 101–577), amended section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445), "the Act", to require, effective for each of the 1991 through 1995 crops of tobacco for which price support is made available under the Act, that both producers and purchasers of such tobacco shall each remit to the CCC a nonrefundable marketing assessment in an amount equal to .5 percent of the national price support level for each such crop as otherwise provided for in the Act.

Annually, in accordance with the Act, the USDA determines and announces a national price support level for each kind of tobacco for which marketing quotas have not been disapproved by producers. For the 1991 through 1995 crops of such tobacco, both producers and purchasers of such tobacco will be required to remit to CCC an amount equivalent to .5 percent of the national price support level for such kind of tobacco on each pound of such tobacco marketed. Such remittance will be handled by CCC as a nonrefundable marketing assessment.

The CCC will determine and announce the marketing assessment for each of the 1991 through 1995 crops of the respective kinds of tobacco. The amount of the marketing assessment will be determined and rounded to the nearest hundredth of a cent. For example, if the national price support level for a kind of tobacco for the 1991 crop is $1.50 per pound, the marketing assessment due on each pound of tobacco marketed would be $.015 cents or $.0075 cent from both the producer and the purchaser.

The Act also provides for the collection and enforcement of the nonrefundable marketing assessment in a manner similar to the no-net-cost tobacco program assessments and contributions. The no-net-cost tobacco program assessments and contributions ensure, insofar as practicable, that the tobacco program operates at no-net-cost to the government.

The marketing assessment will be collected and remitted to CCC in accordance with 7 CFR 1464.10(i) which provides the procedures for collecting no-net-cost tobacco program assessments and contributions. For auction sales of tobacco, the marketing assessment will be collected through provisions in auction warehouse contracts between tobacco loan associations and auction warehouses. For non-auction sales of tobacco, dealers will be required to submit the marketing assessment collections on a weekly basis along with their weekly report of purchases.

A penalty for the failure to collect and remit any such marketing assessment will be determined in accordance with 7 CFR 1464.10(j) which provides the procedures for determining the penalty for failure to collect and remit no-net-cost tobacco contributions and assessments. Generally, any person who fails to collect and remit the nonrefundable marketing assessment in a timely manner would be liable for a marketing penalty at a rate equal to 75 percent of the average market price for the applicable kind of tobacco for the immediately preceding year on the quantity of tobacco as to which failure occurs. This marketing penalty would be in addition to any penalty imposed for failure to remit the no-net-cost tobacco program assessment or contribution.

In 7 CFR part 1464, all references to 7 CFR parts 724 through 726 are being changed to reference 7 CFR part 723. This action is necessary since USDA published a Final Rule in the **Federal Register** on October 1, 1990 (55 FR 39913), which removed 7 CFR parts 724, 725, and 726 and revised part 723 to include applicable portions of parts 724, 725, and 726.

Throughout 7 CFR part 1464 all references to "warehouseman" are being changed to "warehouse operator". This correction in terminology will be consistent with language contained in 7 CFR part 723.

All references in 7 CFR part 1464 to loans on farm-stored tobacco are being deleted since tobacco is no longer eligible for a farm-stored loan in accordance with 7 CFR part 1421.

No comments were received with respect to implementation of the tobacco marketing assessment published in the **Federal Register** on February 21, 1991 (56 FR 6998).

In a proposed rule to 7 CFR part 723, published in the **Federal Register** on March 14, 1991 (56 FR 10820), a new provision was added which provides that a producer who is determined by ASCS to have erroneously represented any fact affecting a program determination shall not be entitled to price support with respect to which such representation was made, and shall refund to CCC all payments received by the producer with respect to such farms and the tobacco program. This amendment was proposed since current regulations do not provide a scheme and device provision with respect to tobacco producers, warehouse operators, dealers, and other persons who intentionally act to defeat the purpose of the tobacco program regulations. This amendment provides for assessing penalties in such a manner as will correct and nullify any action in which a person or entity adopts any scheme or device to defeat the purpose of the tobacco regulations. No comments were received in response to this scheme and device provision being added to the tobacco program regulations. Both CCC and ASCS have determined that this scheme and device provision with respect to producers is more appropriately codified in 7 CFR part 1464 in lieu of 7 CFR part 723 since the monetary benefits which are affected by this action are issued pursuant to 7 CFR part 1464. This scheme and device provision with respect to warehouse operators, dealers, and other entities will remain at § 723.414(c) of this title.

List of Subjects in 7 CFR 1464

Tobacco; Tobacco loan program.

Final Rule

PART 1464—TOBACCO [AMENDED]

For the reasons set out in the preamble, title 7, chapter XIV, of the Code of Federal Regulations, is amended as follows:

1. The authority citation for part 1464 continues to read as follows:

Authority: 7 U.S.C. 1308, 1441, 1445, 1445–1, 1421, and 1423; 15 U.S.C. 714b, 714c.

2. In part 1464 all references to "warehouseman" throughout part 1464 are revised to read "warehouse operator".

§ 1464.2 [Amended]

3. Section 1464.2 is amended in paragraph (b)(2)(i) by removing the words "Part 725" and adding, in its place, the words "Part 723"; in paragraph (b)(3) by deleting the second and third sentences; and in paragraph (b)(4) by deleting the second sentence.

§ 1464.4 [Amended]

4. Section 1464.4 is amended in paragraph (b) by removing the words "Parts 723 through 726" and adding, in their place, the words "Part 723", and by removing the words "his/her" and adding, in their place, the word "their", and paragraph (c) is removed.

§ 1464.5 [Amended]

5. Section 1464.5 is amended by removing the second sentence.

6. Section 1464.7 is amended by adding paragraphs (b)(3), (b)(4), and (b)(5) to read as follows:

§ 1464.7 Eligible producer.

* * * * *

(b) * * *

(3) Erroneously represented any fact affecting a tobacco program determination.

(4) Adopted any scheme or device which tends to defeat the purpose of the tobacco program.

(5) Made any fraudulent representations with respect to the tobacco program.

* * * * *

§ 1464.8 [Amended]

7. Section 1464.8 is amended in paragraph (d)(2) by removing the words "Parts 724 through 726" and adding, in their place, the words "Part 723".

8. Section 1464.9 is amended by adding paragraph (c) to read as follows:

§ 1464.9 Refund of price support advance.

* * * * *

(c) Misrepresented any fact affecting a tobacco program determination, adopted any scheme or device which tends to defeat the purpose of the tobacco program, or made any fraudulent representation which tends to defeat the purpose of the tobacco program. The refund of CCC price support advance shall apply to all payments on all farms received by such producer.

§ 1464.10 [Amended]

9. Section 1464.10 is amended in paragraph (i)(5)(i) by removing the word "Warehousemen" and adding, in its place, the words "Warehouse operators", in paragraph (i)(5)(ii) by removing the words "Parts 724 through 726" and adding, in their place, the words "Part 723", and paragraph (j)(2) is amended by removing the word "warehouseman's" and adding, in its place, the words "warehouse operator's".

§ 1464.12 [Redesignated from 1464.11]

10. Section 1464.11 is redesignated as § 1464.12.

11. Section 1464.11 is added to read as follows:

§ 1464.11 Nonrefundable marketing assessment.

Effective only for each of the 1991 through 1995 crops of tobacco for which price support is made available according to § 1464.2 of this part, both the producer and purchaser of such tobacco shall each remit to the CCC a nonrefundable marketing assessment in an amount equal to .5 percent of the national price support level for each such kind and crop on each pound of tobacco marketed. The nonrefundable marketing assessment will be:

(a) Determined and announced by CCC at the time of announcing the national price support level for applicable kinds of tobacco or as soon thereafter as possible.

(b) Collected and remitted to CCC in accordance with § 1464.10(i) of this Part from producers and purchasers at the time of marketing.

(c) Collected by loan associations and remitted to CCC on all such tobacco pledged as loan collateral at the time such 1991 through 1995 crops of tobacco are sold from loan inventories.

(d) Subject to the same penalty for failure to be collected and remitted as provided for in § 1464.10(j) of this part.

(e) Enforceable in the courts of the United States by the Secretary.

Signed at Washington, DC on April 30, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–10665 Filed 5–7–91; 8:45 am]

BILLING CODE 3410-05-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

[Docket No. RM-91-1]

Rules Implementing the Freedom of Information Act

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Final rule.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) is promulgating the following set of regulations to implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. These regulations provide procedures for public access to Board records. The Board is undertaking this rulemaking in response to the decision of the United States Court of Appeals for the District of Columbia Circuit that the Board is an "agency" covered by FOIA. *Energy Research Foundation* v. *Defense Nuclear Facilities Safety Board (ERF* v. *DNFSB)*, 917 F. 2d 581 (1990).

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004, (202) 208–6367.

SUPPLEMENTARY INFORMATION:

I. Background

The Board is responsible for making recommendations to the Secretary of Energy and the President regarding health and safety issues at the nation's defense nuclear facilities. Since March of 1990 the Board has been voluntarily complying with the requirements of FOIA in the absence of implementing regulations. In *ERF* v. *DNSFB*, the D.C. Circuit held that the Board is an agency subject to the provisions of FOIA and generally covered by the Government in the Sunshine Act, 5 U.S.C. 552b. On March 8, 1991 (56 FR 9902) the Board published for comment its proposed regulations implementing FOIA. The Board received a single set of comments, which were filed jointly by the Energy Research Foundation and the Natural Resources Defense Council (ERF/NRDC). In addition, one of ERF/NRDC's comments filed with respect to the Board's proposed Sunshine Act regulations (since published as a final rule on March 7, 1991 (56 FR 9605)) related to FOIA and is treated in this notice. The Board has carefully considered the ERF/NRDC comments and has made some modifications to the proposed rule in response.

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II. Board Consideration of Comments

Comment. The personal records exclusion from the proposed definition of "agency record" in § 1703.102 fails to take use of the record into consideration, as required under *Bureau of National Affairs* v. *U.S. Department of Justice*, 742 F. 2d 1484 (D.C. Cir. 1984) (BNA).

Response. The Board agrees that, in addition to the indicia of a personal record set forth in the proposed regulation, consideration must be given to whether, and to what extent, the author of the record used it to conduct agency business. *BNA; Kissinger* v. *Reporter's Committee for Freedom of the Press*, 445 U.S. 136 (1980). Section 1703.102 has been modified to note this additional factor to be considered in determining whether a document is a "personal" or an "agency" record.

Comment. ERF/NRDC assert that if it is the Board's intent that fee waivers not be applicable to the duplication costs of records made available in the Public Reading Room (PRR), such intent is "flatly inconsistent" with FOIA's fee waiver provision.

Response. The Board has made a distinction in § 1703.107 between records available for inspection and copying through the PRR and records not available in this manner. A "FOIA" request is not necessary for records available through the PRR, whereas it is necessary for other Board records. A member of the public seeking access to records that are available through the PRR simply has to reasonably describe the records sought (§ 1703.103(a)). The request does not have to be in writing, nor does the requesters have to state his willingness to pay fees or request a fee waiver or reduction (§ 1703.105(b)). As noted in § 1703.105(a), access to records through the PRR is intended to be a simplified process.

Consistent with this simplified procedure, the Board has provided that only duplication costs, and not search costs, will be passed on to requesters of PRR documents (§ 1703.107(a)). The Board has published for comment its Proposed FOIA Fee Schedule that establishes charges to requesters for various forms of document duplication based upon the Board's specific costs. 56 FR 11114 (March 15, 1991). For example, the cost for copying standard 8.5" by 11" paper would be five cents per page. ERF/NRDC are correct that, under this simplified procedure, the Board would not entertain waiver or reduction requests with respect to the duplication costs for PRR documents.

The distinction in the Board's proposed regulations between fee treatment of PRR records and other Board records is consistent with FOIA. 5 U.S.C. 552(a)(2) establishes a requirement that certain basic agency records shall be made easily available to the public for inspection and copying. 5 U.S.C. 552(a)(3) then states that requests for other agency records must be made in accordance with agency regulations, mentioning fees as one of the matters to be addressed in such a request. The Board reads 5 U.S.C. 552(a)(4), the FOIA section on fees, as implementing 5 U.S.C. 552(a)(3) and not 5 U.S.C. 552(a)(2). Documents in the PRR are in the "public domain" and are readily available to anyone who wants to review them. Section 1703.103(a) has been supplemented with a statement to this effect.

An agency satisfies FOIA when it has already made records available for inspection and copying in its public reading room and does not additionally have to provide those records directly to a requester in response to a FOIA request. *Tax Analysts* v. *Dep't of Justice*, 845 F.2d 1060, 1065, 1066–67 and n.15 (D.C. Cir. 1988), *aff'd* 109 S. Ct. 2841, 2851 n.12 (1989); *Oglesby* v. *Dep't of the Army*, 920 F. 2d 57, 70 (D.C. Cir. 1990); *Blakey* v. *Dep't of Justice*, 549 F. Supp. 362, 364–65 (D.D.C. 1982), *aff'd mem.*, 720 F. 2d 215 (D.C. Cir. 1983), cited in ERF/NRDC's comments.

This same reasoning has been applied in holding that the denial of a fee waiver is appropriate if requested information is already in the public domain, particularly in an agency's public reading room. *Blakey, supra.*[1]

The Board's treatment of fees for records available through the PRR is similar to the practices of other federal agencies. The Nuclear Regulatory Commission (NRC) distinguishes between duplication charges for records made available through its Public Document Rooms (PDRs) and other NRC records (10 CFR 9.35). The NRC has not made its provisions for fee waiver or reduction (10 CFR 9.41) applicable to duplication costs for PDR records.[2]

The Federal Energy Regulatory Commission (FERC) makes the same distinction. 18 CFR 388.108 provides for certain documents to be maintained in the Public Reference Room (PRR) and 18 CFR 388.109 distinguishes between (a) fees for records available through the PRR and (b) fees for other FERC records. 18 CFR 388.109(b)(6) states that fee reduction or waiver only applies to fees for other records.

As a final part of this comment, ERF/NRDC assert that if the Board does not have to apply fee waivers or reductions to documents made available through its PRR, it would be able to "shield" agency records from an applicable provision of FOIA. On the contrary, making documents available through the PRR is intended to speed and facilitate public access to Board records. The Board believes that the simplified process of access to Board records through the PRR will benefit members of the public.

Comment. The Board impermissibly proposes to include associated labor costs in charges for duplication of agency records by commercial contractors.

Response. This comment is based upon a statement by the Board in proposed § 1703.107(a)(1) that the Board will not charge for associated labor costs when *it* duplicates the agency records requested. ERF/NRDC assert that some requesters may be charged considerably more than others depending upon whether the Board finds it necessary to make use of a contractor to perform the duplication. This concern is laid to rest in the Board's proposed fee schedule. The Board currently expects to perform duplication of requested records by its own personnel. However, should it become necessary to use a commercial copying service, the Board does not expect the cost to be higher than the per-page rate to be

[1] ERF/NRDC suggest that in order for a document to be in the public domain, it must have been obtained by a member of the public and widely disseminated. ERF/NRDC imply that this is the position of the Department of Justice (DOJ) in its New FOIA Fee Waiver Policy Guidance (April 2, 1987). That guidance document does not address the question of whether availability through a public reading room places a document in the public domain. However, earlier DOJ guidance on the same subject expressly stated that availability of a document in an agency's public reading room constitutes placing that document in the public domain. Memorandum to Heads of All Federal Departments and Agencies from Jonathan C. Rose, Assistant Attorney General, Office of Legal Policy, Subject: Freedom of Information Act Fee Waivers (January 7, 1983, p. 3). *But compare Blakey, supra, with Fitzgibbon* v. *Agency for International Development, et. al.*, 724 F. Supp. 1048 (D.D.C. 1989), holding that under FOIA implementing regulations of the Departments of Justice and Defense, availability of certain documents in their public reading rooms did not establish that those documents were in the public domain and that a fee waiver request should, therefore, be denied.

[2] 10 CFR 9.41(a) provides that: "The NRC shall collect fees for searching for, reviewing, and duplicating agency records. . . . unless a requester submits a request in writing for a waiver or reduction of fees." In contrast, 10 CFR 9.35(a) prescribes the charges for duplication of PDR records by the contractor performing that service without provision for fee waiver or reduction.

charged when Board personnel perform the duplication. 56 FR 11114, n.2.[3]

Comment. Proposed § 1703.108(b) provides: "In the event of a request for a fee waiver or reduction, the period for action under this paragraph [*i.e.*, on the records request] begins to run from the date that the designated FOIA Officer grants the waiver or reduction request." ERF/NRDC assert that this provision would delay inappropriately the processing of FOIA requests that are accompanied by requests for fee waiver or reduction. They suggest that if persons seeking fee waiver or reduction also indicate a willingness to pay reasonable fees in the event the fee waiver or reduction is denied, the processing of the FOIA request should commence without awaiting a determination on the waiver/reduction request.

Response. The Board substantially adopts ERF/NRDC's suggestion and has modified §§ 1703.105(b)(4) and 1703.108(b) to reflect that a FOIA requester may avail itself of the option of stating a willingness to pay the fee anticipated to be incurred in processing its request, or to pay that fee not to exceed a certain amount, should its request for fee waiver or reduction be denied. In that event, the Board will commence processing of the records request without awaiting a determination by the Designated FOIA Officer on the waiver/reduction request. This modification makes proposed §§ 1703.105(b)(4) and 1703.108(b) consistent with the practices of other agencies. See, e.g., 10 CFR 1004.3(e) (DOE); 28 CFR 16.10(e) (DOJ).[4]

Comment. In their comments on the Board's proposed Government in the Sunshine regulations, ERF/NRDC requested modification of 10 CFR 1704.9 to state that the Board will only charge requesters for the actual cost of duplication of transcripts or recordings of closed meetings that are subsequently determined to be releasable. They further requested that the Board's regulations state that the fee waiver provisions of FOIA shall apply to requests for copies of such documents. The Board stated that it would address these comments in its promulgation of a final rule at FOIA. 56 FR 9605, at 9606 (March 7, 1991).

Response. The documents to which ERF/NRDC refer are recordings (the method that the Board intends to use) or transcripts of Board meetings that have been closed pursuant to 5 U.S.C. 552b(c)–(d) and which the Board subsequently determines may be released. 5 U.S.C. 552b(f)(2) requires the Board to make copies of such documents available to the public, except for such matters contained in the recordings or transcripts that may continue to be withheld under 5 U.S.C. 552b(c), and that copies of the documents be furnished to a requester at the actual cost of duplication or transcription. Consistent with this requirement and FOIA, the Board has proposed to charge $3.00 per cassette for audio cassette recordings of Board meetings. 56 FR 11114. This charge represents the actual cost to the Board for cassettes and is, therefore, responsive to part of ERF/NRDC's comment.

When the Board determines that such recordings may be publicly released, it will make them available through the PRR without the need for a request under § 1703.105. Section 1703.103 has been supplemented to reflect this intended practice. As noted above, the Board does not consider the fee waiver/reduction provisions of the FOIA to be applicable to documents made publicly available in this manner. If, however, a FOIA request is made for a recording that has not yet been placed in the PRR, the requester would be entitled to consideration for fee waiver or reduction even though the recording might subsequently be placed in the PRR.

List of Subjects in 10 CFR Part 1703

Freedom of information.

Accordingly, chapter XVII of title 10 of the Code of Federal Regulations is amended by adding a new part 1703 to read as follows:

PART 1703—PUBLIC INFORMATION AND REQUESTS

Sec.
1703.101 Scope.
1703.102 Definitions; words denoting number, gender and tense.
1703.103 Requests for board records available through the public reading room.
1703.104 Board records exempt from public disclosure.
1703.105 Requests for board records not available through the public reading room (FOIA requests).
1703.106 Requests for waiver or reduction of fees.
1703.107 Fees for record requests.
1703.108 Processing of FOIA requests.
1703.109 Procedure for appeal of denial of requests for board records and denial of requests for fee waiver or reduction.
1703.110 Requests for classified records.
1703.111 Requests for privileged treatment of documents submitted to the board.
1703.112 Computation of time.

Authority: 5 U.S.C. 552; Executive Order 12600, 3 CFR, 1987 Comp., p. 235; 42 U.S.C. 2286, 2286b(c).

§ 1703.101 Scope.

This part contains the Board's regulations implementing the Freedom of Information Act, 5 U.S.C. 552.

§ 1703.102 Definitions; words denoting number, gender and tense.

Agency record is a record in the possession and control of the Board that is associated with Board business. Agency records do not include records such as:

(1) Publicly available books, periodicals, or other publications that are owned or copyrighted by non-federal sources;

(2) Records solely in the possession and control of Board contractors;

(3) Personal records in the possession of Board personnel that have not been circulated, were not required by the Board to be created or retained, and may be retained or discarded at the author's sole discretion. In determining whether such records are agency records the Board shall consider whether, and to what extent, the records were used in agency business;

(4) Records of a personal nature that are not associated with any Board business; or

(5) Non-substantive information in the calendar or schedule books of the Chairman or Members, uncirculated except for typing or recording purposes.

Board means the Defense Nuclear Facilities Safety Board.

Chairman means the Chairman of the Board.

Designated FOIA Officer means the person designated by the Board to administer the Board's activities pursuant to the regulations in this part. The Designated FOIA Officer shall also be the Board officer having custody of or responsibility for agency records in the possession of the Board and shall be the Board officer responsible for authorizing or denying production of records upon requests filed pursuant to § 1703.105.

[3] OMB encourages the use of private sector services to locate, reproduce, and disseminate records in response to FOIA requests where the cost to the requester is no greater than it would be if the agency itself had performed the tasks. 52 FR 10018 (March 27, 1987). The charges of a commercial contractor are clearly going to include its labor costs.

[4] 28 CFR 16.10(e), providing that a FOIA request would not be deemed to have been received until the requester had agreed to pay the anticipated total fee (where the fee was estimated to be more than $25.00, the requester had been so advised, and fee waiver or reduction had not been requested), was upheld in *Irons* v. *FBI*, 571 F. Supp. 1241, at 1245 (D. Mass. 1983).

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General Counsel means the chief legal officer of the Board.

General Manager means the chief administrative officer of the Board.

Member means a Member of the Board.

In determining the meaning of any provision of this Part, unless the context indicates otherwise: the singular includes the plural; the plural includes the singular; the present tense includes the future tense; and words of one gender include the other gender.

§ 1703.103 Requests for board records available through the public reading room.

(a) A Public Reading Room will be maintained at the Board's headquarters and will be open between 8:30 a.m. and 4:30 p.m. Mondays through Fridays, with the exception of legal holidays. Documents may be obtained in person or by written or telephonic request from the Public Reading Room by reasonably describing the records sought. The purpose of the Public Reading Room is to provide easy accessibility to a substantial portion of the Board's records. The Board considers that documents available through the Public Reading Room have been placed in the public domain.

(b) The public records of the Board that are available for inspection and copying upon request in the Public Reading Room include:

(1) The Board's rules and regulations;

(2) Statements of policy adopted by the Board.

(3) Board recommendations; the Secretary of Energy's response, any final decision, and implementation plans regarding Board recommendations; and interested person's comments, data, views, or arguments to the Board concerning its recommendations and the Secretary of Energy's response and final decision;

(4) Transcripts of public hearings and any Board correspondence related thereto;

(5) Recordings or transcripts of Board meetings that were closed under 10 CFR part 1704, where the Board subsequently determines under 10 CFR 1704.9 that the recordings or transcripts may be made publicly available;

(6) Board orders, decisions, notices, and other actions in a public hearing;

(7) Board correspondence, except that which is exempt from mandatory public disclosure under § 1703.104;

(8) Copies of the filings, certifications, pleadings, records, briefs, orders, judgments, decrees, and mandates in court proceedings to which the Board is a party and the correspondence with the courts or clerks of court;

(9) Those of the Board's Administrative Directives that affect members of the public;

(10) Index of the documents identified in this section, but not including drafts thereof; and

(11) Annual reports to Congress in which the Board's operations during a past fiscal year are described.

§ 1703.104 Board records exempt from public disclosure.

The following records are exempt from public disclosure:

(a)(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(2) Which are in fact properly classified pursuant to such Executive Order;

(b) Records related solely to the internal personnel rules and practices of an agency;

(c) Records specifically exempted from disclosure by statute, provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Interagency or intraagency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Board;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records of information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings,

(2) Would deprive a person of a right to a fair trial or an impartial adjudication,

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(4) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(6) Could reasonably be expected to endanger the life or physical safety of any individual;

§ 1703.105 Requests for board records not available through the public reading room (FOIA Requests).

(a) Upon the request of any person, the Board shall make available for public inspection and copying any reasonably described agency record in the possession and control of the Board, but not available through the Public Reading Room, subject to the provisions of this part. If a member of the public files a request with the Board under the FOIA for records that the Board determines are available through the Public Reading Room, the Board will treat the request under the simplified procedures of § 1703.103.

(b)(1) A person may request access to Board records that are not available through the Public Reading Room by using the following procedures:

(i) The request must be in writing and must describe the records requested to enable Board personnel to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester, including the names and titles of any Board personnel who have been contacted regarding the request prior to the submission of the written request.

(ii) A request for all records falling within a reasonably specific and well-defined category shall be regarded as conforming to the statutory requirement that records be reasonably described. The request must enable the Board to identify and locate the records by a process that is not unreasonably burdensome or disruptive of Board operations.

(2) The request should be addressed to the Designated FOIA Officer and clearly marked "Freedom of Information Act Request." The address for such requests is: Designated FOIA Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. For purposes of calculating the time for response to the request under § 1703.106, the request shall not be deemed to have been received until it is in the possession of the Designated FOIA Officer or his designee.

(3) The request must include:

(i) A statement by the requester of a willingness to pay the fee applicable under § 1703.107(b), or to pay that fee not to exceed a specific amount, or

(ii) A request for waiver or reduction of fees.

(4) No request shall be deemed to have been received until the Board has:

(i) Received a statement of willingness to pay, as indicated in § 1703.105(b)(3)(i), or

(ii) Received and approved a request for waiver or reduction of fees. However, the FOIA request shall be deemed to have been received if the request for waiver or reduction of fees includes a statement of willingness to pay the fee anticipated to be incurred in processing the request under this section, or to pay that fee not to exceed a specific amount, should the request for fee waiver or reduction be denied.

(c) with respect to records in the files of the Board that have been obtained from other federal agencies:

(1) Where the record originated in another federal agency, the Designated FOIA Officer shall refer the request to that agency and so inform the requester, unless the originating agency agrees to direct release by the Board.

(2) Requests for Board records containing information received from another agency, or records prepared jointly by the Board and other agencies, shall be treated as requests for Board records. The Designated FOIA Officer shall, however, coordinate with the appropriate official of the other agency. The notice of determination to the requester, in the event part or all of the record is recommended for denial by the other agency, shall cite the other agency Denying Official as well as the Designated FOIA Officer if a denial by the Board is also involved.

(d) If a request does not reasonably describe the records sought, as provided in paragraph (b) of this section, the Board response shall specify the reasons why the request failed to meet those requirements and shall offer the requester the opportunity to confer with knowledgeable Board personnel in an attempt to restate the request. If additional information is needed from the requester to render records reasonably described, any restated request submitted by the requester shall be treated as an initial request for purposes of calculating the time for response under § 1703.106.

§ 1703.106 Requests for waiver or reduction of fees.

(a) The Board shall collect fees for record requests made under § 1703.105, as provided in § 1703.107(b), unless a requester submits a request in writing for a waiver or reduction of fees. The Designated FOIA Officer shall make a determination on a fee waiver or reduction request within five working days of the request coming into his possession. No determination shall be made that a fee waiver or reduction request should be denied, until the Designated FOIA Officer has consulted with the General Counsel's Office. If the determination is made that the written request for a waiver or reduction of fees does not meet the requirements of this section, the Designated FOIA Officer shall inform the requester that the request for waiver or reduction of fees is being denied and set forth his appeal rights under § 1703.109.

(b) A person requesting the board to waive or reduce search, review, or duplication fees shall:

(1) Describe the purpose for which the requester intends to use the requested information;

(2) Explain the extent to which the requester will extract and analyze the substantive content of the agency record;

(3) Describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding;

(4) Describe the likely impact of disclosure of the requested records on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure;

(5) Describe the size and nature of the public to whose understanding a contribution will be made;

(6) Describe the intended means of dissemination to the general public;

(7) Indicate if public access to information will be provided free of charge or provided for an access or publication fee; and

(8) Describe any commercial or private interest the requester or any other party has in the agency records sought.

(c) The Board shall waive or reduce fees, without further specific information from the requester if, from information provided with the request for agency records made under § 1703.105, it can determine that disclosure of the information in the agency records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(d) In making a determination regarding a request for a waiver or reduction of fees, the Board shall consider the following factors:

(1) Whether the subject of the requested agency records concerns the operations or activities of the Government;

(2) Whether disclosure of the information is likely to contribute significantly to public understanding of Government operations or activities;

(3) Whether, and the extent to which, the requester has a commercial interest that would be furthered by the disclosure of the requested agency records; and

(4) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

§ 1703.107 Fees for record requests.

(a) Fees for records available through the Public Reading Room.

(1) With the exception of copies of transcripts of Board public hearings addressed in paragraph (a)(2) of this section, the fees charged shall be limited to costs of duplication of the requested records. The Board shall either duplicate the requested records or have them duplicated by a commercial contractor. If the Board duplicates the records, it shall not charge the requester for the associated labor costs. A schedule of fees for this duplication service shall be prescribed in accordance with paragraph (b)(6) of this section. A person may obtain a copy of the schedule of fees in person or by mail from the Public Reading Room. There shall be no charge for responses consisting of ten or fewer pages.

(2) Transcripts of Board public hearings are made by private contractors. Interested persons may obtain copies of public hearing transcripts from the contractor at prices set in the contract, or through the duplication service noted in paragraph (a) of this section, if the particular contract so permits. Copies of the contracts shall be available for public inspection in the Public Reading Room.

(3) Requests for certification of copies of official Board records must be accompanied by a fee of $5.00 per document. Inquiries and orders may be made to the Public Reading Room in person or by mail.

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(b) Fees for records not available through the Public Reading Room (FOIA requests).

(1) *Definitions.* For the purpose of paragraph (b) of this section:

Commercial use request means a request from or on behalf of one who seeks information for a use or purpose that furthers commercial, trade, or profit interests as these phrases are commonly known or have been interpreted by the courts in the context of the FOIA;

Direct costs means those expenditures which the Board incurs in search, review and duplication, as applicable to different categories of requesters, to respond to requests under § 1703.105. Direct costs include, for example, the average hourly salary and projected benefits costs of Board employees applied to time spent in responding to the request and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as cost of space, and heating or lighting the facility in which the Board records are stored.

Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research;

Noncommercial scientific institution refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry;

Representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminations of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media may be included in this category. A "freelance" journalist may be regarded as working for a news organization if the journalist can demonstrate a solid basis for expecting publication through that organization, even though the journalist is not actually employed by the news organization. A publication contract would be the clearest proof, but the Board may also look to the past publication record of a requester in making this determination.

(2) *Fees.* (i) If documents are requested for commercial use, the Board shall charge the average hourly pay rate for Board employees, plus the average hourly projected benefits cost, for document search time and for document review time, and the costs of duplication as established in the schedule of fees referenced in paragraph (b)(6) of this section.

(ii) If documents are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the Board's charges shall be limited to the direct costs of duplication as established in the schedule of fees referenced in paragraph (b)(6) of this section. There shall be no charge for the first 100 pages of duplication.

(iii) For a request not described in paragraphs (b)(2) (i) or (ii) of this section the Board shall charge the average hourly pay rate for Board employees, plus the average hourly projected benefits cost, for document search time, and the direct costs of duplication as established in the schedule of fees referenced in paragraph (b)(6) of this section. There shall be no charge for document review time and the first 100 pages of reproduction and the first two hours of search time will be furnished without charge.

(iv) If documents are mailed, requesters shall be charged fees based on the current postage or express delivery service rates.

(v) The Board, or its designee, may establish minimum fees below which no charges will be collected, if it determines that the costs of routine collection and processing of the fees are likely to equal or exceed the amount of the fees. If total fees determined by the Board for a FOIA request would be less than the appropriate threshold, the Board shall not charge the requesters.

(vi) Payment of fees must be by check or money order made payable to the U.S. Treasury.

(vii) Requesters may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Board reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading assessment of fees, the Board may aggregate any such requests and charge the requester accordingly. The Board shall not, however, aggregate multiple requests on unrelated subjects from a requester.

(viii) Whenever the Board estimates that duplication or search costs are likely to exceed $25, it shall notify the requester of the estimated costs, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester an opportunity to confer with the Board personnel with the object of reformulating the request to meet the requester's needs at a lower cost.

(3) *Fees for unsuccessful search.* The Board may assess charges for time spent searching, even if it fails to locate the records, or if records located are determined to be exempt from disclosure.

(4) *Advance payments.* (i) If the Board estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250, the Board shall notify such requester of the estimated cost and either require satisfactory assurance of full payment where the requester has a history of prompt payment of fees, or require advance payment of the charges if a requester has no payment history.

(ii) If a requester has previously failed to pay a fee charged in a timely fashion, the Board shall require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Board will begin to process a new request or a pending request from that requester.

(iii) When the Board requires advance payment under this paragraph, the administrative time limits prescribed in § 1703.108(b) will begin only after the Board has received the fee payments.

(5) *Debt collection.* The Board itself may endeavor to collect unpaid FOIA fees, or may refer unpaid FOIA invoices to the General Services Administration, or other federal agency performing financial management services for the Board, for collection.

(6) *Annual adjustment of fees.*—(i) *Update and publication.* The Board, by its designee, the General Manager, shall promulgate a schedule of fees and the average hourly pay rates and average hourly projected benefits cost and will update that schedule once every twelve months. The General Manager shall publish the schedule for public comment in the **Federal Register**.

(ii) *Payment of updated fees.* The fee applicable to a particular FOIA request will be the fee in effect on the date that the request is received.

§ 1703.108 Processing of FOIA requests

(a) Where a request complies with § 1703.105 as to specificity and statement of willingness to pay or request for fee waiver or reduction, the Designated FOIA Officer shall acknowledge receipt of the request and commence processing of the request. The Designated FOIA Officer shall prepare a written response:

(1) Granting the request,

(2) Denying the request,

(3) Granting or denying it in part,

(4) Stating that the request has been referred to another agency under § 1703.105, or

(5) Informing the requester that responsive records cannot be located or do not exist.

(b) Action pursuant to this section to provide access to requested records shall be taken within ten working days of receipt of a request for Board records, as defined in § 1703.105, except that, if unusual circumstances require an extension of time before a decision on a request can be reached and the person requesting records is promptly informed in writing by the Designated FOIA Officer of the reasons for such extension and the date on which a determination is expected to be made, the Designated FOIA Officer may take an extension not to exceed ten working days. In the event of a request for fee waiver or reduction, unless the requester has stated a willingness to pay the fee anticipated to be incurred in processing its request under § 1703.105, or to pay that fee not to exceed a specific amount, should his request for fee waiver or reduction be denied, the period for action under this paragraph shall begin to run from the date that the Designated FOIA Officer grants the waiver or reduction request.

(c) For purposes of this section and § 1703.109, the term "unusual circumstances" may include but is not limited to the following:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Board's Washington, DC offices;

(2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which may be responsive to a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency pursuant to § 1703.105(d).

(d) If no determination has been made at the end of the ten day period, or the last extension thereof, the requester may deem his administrative remedies to have been exhausted, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be made within the applicable time limit, the Board will nevertheless continue to process the request. If the Board is unable to provide a response within the statutory period, the Designated FOIA Officer shall inform the requester of the reason for the delay; the date on which a determination may be expected to be made; and that the requester can seek remedy through the courts, but shall ask the requester to forgo such action until a determination is made.

(e) Nothing in this part shall preclude the Designated FOIA Officer and a requester from agreeing to an extension of time for the initial determination on a request. Any such agreement shall be confirmed in writing and shall clearly specify the total time agreed upon.

(f) The procedure for appeal of denial of a request for Board records is set forth in § 1703.109.

§ 1703.109 Procedure for appeal of denial of requests for board records and denial of requests for fee waiver or reduction.

(a)(1) A person whose request for access to records or request for fee waiver or reduction is denied in whole or in part may appeal that determination to the General Counsel within 30 days of the determination. Appeals filed pursuant to this section must be in writing, directed to the General Counsel at the address indicated in § 1703.105(b)(2) and clearly marked "Freedom of Information Act Appeal." Such an appeal received by the Board not addressed and marked as indicated in this paragraph will be so addressed and marked by Board personnel as soon as it is properly identified and then will be forwarded to the General Counsel. Appeals taken pursuant to this paragraph will be considered to be received upon actual receipt by the General Counsel.

(2) The General Counsel shall make a determination with respect to any appeal within 20 working days after the receipt of such appeal. If, on appeal, the denial of the request for records or fee reduction is in whole or in part upheld, the General Counsel shall notify the person making such request of the provisions for judicial review of that determination.

(b) In unusual circumstances, as defined in § 1703.108(c), the time limits prescribed for deciding an appeal pursuant to this section may be extended by up to ten working days, by the General Counsel, who will send written notice to the requester setting forth the reasons for such extension and the expected determination date.

§ 1703.110 Requests for classified records.

The Board may at any time be in possession of classified records and Unclassified Controlled Nuclear Information (UCNI) received from the Department of Energy or other federal agencies. The Board shall refer requests under § 1703.105 for such records or information to the Department of Energy or other originating agency without making an independent determination as to the releasability of such documents. The Board shall refer requests for classified records in a manner consistent with Executive Order 12356, "National Security Information," 3 CFR, 1982 Comp., p. 166, or any superseding Executive Order. The Board shall refer requests for UCNI in a manner consistent with 42 U.S.C. 2168 and the Department of Energy's implementing regulations in 10 CFR part 1017 or any successor regulations.

§ 1703.111 Requests for privileged treatment of documents submitted to the board.

(a) *Scope.* Any person submitting a document to the Board may request privileged treatment by claiming that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of FOIA and should otherwise be withheld from public disclosure.

(b) *Procedures.* A person claiming that information is privileged under paragraph (a) of this section must file:

(1) An application, accompanied by an affidavit, requesting privileged treatment for some or all of the information in a document, and stating the justification for nondisclosure of the information and addressing the factors set forth in paragraph (e) of this section;

(2) The original document, boldly indicating on the front page "Contains Privileged Information—Do Not Release" and identifying within the document the information for which the privileged treatment is sought;

(3) Three copies of the redacted document (*i.e.*, without the information for which privileged treatment is sought) and with a statement indicating that information has been removed for privileged treatment; and

(4) The name, title, address, telephone number, and telecopy information of the person or persons to be contacted regarding the request for privileged treatment of documents submitted to the Board.

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(c) *Effect of privilege claim.* (1) The Designated FOIA Officer shall place documents for which privileged treatment is sought in accordance with paragraph (b) of this section in a nonpublic file, while the request for confidential treatment is pending. By placing documents in a nonpublic file, the Board is not making a determination on any claim for privilege. The Board retains the right to make determinations with regard to any claim of privilege, and the discretion to release information as necessary to carry out its responsibilities.

(2) The Designated FOIA Officer shall place the request for privileged treatment described in paragraph (b)(1) of this section and a copy of the redacted document described in paragraph (b)(3) of this section in a public file while the request for privileged treatment is pending.

(d) *Notification of request and opportunity to comment.* When a FOIA requester seeks a document for which privilege is claimed, the Designated FOIA Officer shall so notify the person who submitted the document and give that person an opportunity (at least five days) in which to comment in writing on the request. A copy of this notice shall be sent to the FOIA requester.

(e) *Factors to be considered by Board.* In determining whether to grant the document privileged status and to deny the request for the document the Board shall consider:

(1) Whether the information has been held in confidence by its owner;

(2) Whether the information is of a type customarily held in confidence by its owner and whether there is a rational basis therefor;

(3) Whether the information was transmitted to and received by the Board in confidence;

(4) Whether the information is available in public sources; and

(5) Whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner; the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.

(f) *Notification before release.* Notice of a decision by the Designated FOIA Officer to deny a claim of privilege, in whole or in part, shall be given to any person claiming that information is privileged no less than five days before public disclosure. The decision shall be made only after consultation with the General Counsel's Office. The notice shall briefly explain why the person's objections to disclosure were not sustained. A copy of this notice shall be sent to the FOIA requester.

(g) *Notification of suit in Federal courts.* When a FOIA requester brings suit to compel disclosure of confidential commercial information, the Board shall notify the person who submitted documents containing such confidential commercial information of the suit.

§ 1703.112 Computation of time.

In computing any period of time under this Part, the day of the Board's action is not included. The last day of the period is included unless it is a Saturday, Sunday or legal holiday, in which case the period runs until the end of the next working day. Whenever a person has the right or is required to take some action within a prescribed period after notification by the Board and the notification is made by mail, five days shall be added to the prescribed period. Only two days shall be added when a notification is made by express mail.

Dated: May 1, 1991.

John T. Conway,

Chairman.

[FR Doc. 91-10651 Filed 5-7-91; 8:45 am]

BILLING CODE 6830-KD-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-256-AD; Amdt. 39-6990]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-80 and MD-88 series airplanes, which requires inspections and modification of the electrical connectors containing sidewall fluorescent lighting wires to preclude overheating the connectors and damaging the associated wiring located above the forward cabin ceiling panel. This amendment is prompted by two reports of smoke emanating from the passenger forward cabin ceiling area. This condition, if not corrected, could result in damage to the associated systems wires and possible in-flight fire in the passenger forward cabin ceiling area.

EFFECTIVE DATE: June 11, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kirk Baker, Aerospace Engineer, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90808-2425; telephone (213) 988-5345.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 airplanes, which requires inspections and modification of the electrical connectors containing sidewall fluorescent lighting wires to preclude overheating the connectors and damaging the associated wiring located above the forward cabin ceiling panel, was published in the Federal Register on December 14, 1990 (55 FR 51427).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One operator stated that a longer compliance time was justified since it had not experienced fires due to overheated connectors in the wiring above the forward cabin ceiling panel on any of its aircraft. Further, this commenter stated that a lead time of 16 to 18 weeks is required for availability of this specific connector. Another commenter asserted that the requirement to modify the airplane, prior to further flight, would impose an undue burden on its fleet, which comprises 46 percent of the Model DC-9-80 airplanes on the U.S. registry. The FAA does not concur. Data from the manufacturer indicate that the required parts will be available to modify the fleet within the proposed compliance time. Furthermore, due to the severe consequences of an in-flight fire in the passenger forward cabin ceiling area, the FAA has determined that the 90-day compliance time is appropriate.

One commenter requested that the repetitive inspection interval be changed from the proposed 6 months to 1,800 hours time-in-service in order to align the follow-on inspections with aircraft utilization time and not calendar days. The FAA disagrees. Inspection intervals based on hours time-in-service would not provide an equivalent level of safety for those operators with low usage of their aircraft.

Several commenters requested that the proposed compliance time of "prior to further flight," for accomplishing the terminating modification, be delayed after findings of damage. One commenter stated that performing the modification, which requires 5.2 manhours for accomplishment, is unreasonable. One operator requested a 5-day extension to the proposed compliance time to allow scheduling flexibility to perform the modification at a base of operation where manpower and facilities are available with minimal impact on operations. Another commenter suggested that a temporary fix be developed until such time that the terminating modification can be accomplished. The FAA does not concur. The FAA has determined that the compliance time, as proposed, represents the maximum time allowable for affected airplanes to continue to operate prior to modification without compromising safety. Furthermore, based upon the catastrophic consequences of an in-flight fire in the passenger forward cabin ceiling areas, the FAA has determined that, after findings of damage, modification is necessary prior to further flight.

Paragraph C. of the final rule has been revised to reflect the current method of obtaining approvals for alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 845 McDonnell Douglas Model DC-9-81, -82, -83, and -87 series airplanes and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 495 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Parts are estimated to cost $70 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $225,225.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-81, -82, -83, and -87 series airplanes, and MD-88 airplanes, fuselage Numbers 999 through 1825 certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate a potential fire ignition source in the forward cabin ceiling panel area, accomplish the following:

A. Within 90 days after the effective date of this AD, inspect the electrical connectors located above the forward cabin ceiling panel for damage in accordance with Paragraph B. of the "Accomplishment Instructions" of McDonnell Douglas Alert Service Bulletin A33-92, dated October 22, 1990 (hereinafter referred to as "The Service Bulletin").

1. If damage is found, prior to further flight, modify the connectors and wires in accordance with Paragraph B. Condition 1. of the "Accomplishment Instructions" in the Service Bulletin.

2. If no damage is found, reinstall the connectors and reinspect the connectors in accordance with paragraph A. of this AD at intervals not to exceed 6 months.

B. Within 2 years after the effective date of this AD, modify the connectors in accordance with Paragraph B. Condition 1 or Condition 2, Option 2, of the Service Bulletin. Accomplishment of these modifications constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard Long Beach, California 90846; ATTN: Business Unit Manager, Technical Publications C1-HCW (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective June 11, 1991.

Issued in Renton, Washington, on April 26, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10652 Filed 5-7-91; 8:45 am]

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14 CFR Part 39

[Docket No. 91-NM-02-AD; Amdt. 39-6991]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes, Manufacturer's Fuselage Numbers 1 Through 379

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10 series airplanes, which requires inspection and replacement of the cargo door latch spool fitting attach bolts. This amendment is prompted by a report of broken latch spool fitting attach bolts found on a Model DC-0 series freighter airplane. This condition, if not corrected, could result in inadvertent opening of a cargo door in flight, and subsequently lead to loss of pressurization and reduced controllability of the airplane.

EFFECTIVE DATE: June 11, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda D. Baker, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-121L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5231.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC-10 series airplanes, which requires inspection and replacement of the cargo door latch spool fitting attach bolts, was published in the **Federal Register** on January 28, 1991 (56 FR 3059).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The commenters agreed with the rule as proposed.

Paragraph F. of the final rule has been revised to specify the current procedures for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 379 McDonnell Douglas Model DC-10 series airplanes of the affected design in the worldwide fleet. It is estimated that 190 airplanes of U.S. registry will be affected by this AD, that it will take approximately 86 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The cost of parts required for terminating action is estimated to be $10,662 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,928,280.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation of part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to all McDonnell Douglas Model DC-10 series airplanes, manufacturer's fuselage numbers 1 through 379, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent opening of a cargo door in flight, a condition which could result in loss of pressurization and reduced controllability of the aircraft, accomplish the following:

A. Within 16 months after performing the torque test required by AD 90-19-12, Amendment 39-6735, perform magnetic particle inspections on the H-11 cargo door latch spool fitting attach bolts or replace the H-11 cargo door latch spool fitting attach bolts with new bolts and associated hardware, in accordance with the Accomplishment Instructions for Phase 2 of McDonnell Douglas DC-10 Alert Service Bulletin A52-212, Revision 1, dated September 14, 1990 (hereafter referred to as the "Service Bulletin").

1. If a bolt does not pass the magnetic particle inspection, prior to further flight, replace it with a new bolt and seal in accordance with Figure 1 of the Service Bulletin.

2. If a bolt passes the magnetic particle inspection, prior to further flight, reinstall the bolt and seal in accordance with the Service Bulletin.

B. Within 16 months after accomplishment of the inspections required by paragraph A. of this AD, and at intervals not to exceed sixteen months, replace the H-11 cargo door latch spool fitting attach bolts with new bolts and associated hardware or perform either a magnetic particle or ultrasonic inspection on the H-11 cargo door latch spool fitting attach bolts in accordance with the Accomplishment Instructions for Phase 2 of the Service Bulletin.

1. If a bolt does not pass the magnetic particle/ultrasonic inspection, prior to further flight, replace it with a new bolt and seal in accordance with Figure 1 of the Service Bulletin.

2. If a bolt passes the magnetic particle/ultrasonic inspection, prior to further flight, reinstall the bolt and seal in accordance with the Service Bulletin.

C. The inspections required by paragraphs A. and B. of this AD are not required for Inconel bolts, parts numbers RA21026-7, 77711-7, and 3D0031-7.

D. Within five years after the effective date of this AD, replace all H-11 cargo door latch spool fitting attach bolts with Inconel bolts, part numbers RA21026-7, 77711-7, and 3D0031-7 (grip lengths as applicable per location as specified in Figure 1 sheets 3 and 4 of the Service Bulletin) in accordance with the Accomplishment Instructions for Phase 3 of the Service Bulletin. Installation of Inconel bolts constitutes terminating action for the requirements of paragraphs A. and B. of this AD.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base for the accomplishment of the requirements of this AD.

F. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies of upon request to McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Management, Technical Publications, C1-HDR (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective June 11, 1991.

Issued in Renton, Washington, on April 26, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10663 Filed 5-7-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 26539; Amdt. No. 1451]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. *It, therefore*—(1) is not a "major rule under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC on April 26, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective July 25, 1991*

Andalusia/Opp, AL—Andalusia-Opp, NDB-A, Amdt. 2
Bessemer, AL—Bessemer, VOR RWY 5, Amdt. 5
Bessemer, AL—Bessemer, NDB RWY 5, Amdt. 3
Butler, AL—Butler-Choctaw County, NDB RWY 11, Amdt. 2
Decatur, AL—Pryor Field, VOR RWY 18, Amdt. 10
Decatur, AL—Pryor Field, VOR RWY 30, Amdt. 3
Montgomery, AL—Dannelly Field, RADAR-1, Amdt. 6
Truckee, CA—Truckee-Tahoe, RNAV-B, Amdt. 1, CANCELLED
Falmouth, KY—Gene Snyder, VOR-A, Amdt. 2
Danville, KY—Goodall Field, NDB-A, Amdt. 4
Homer, LA—Homer Muni, NDB RWY 12, Amdt. 1
Houma, LA—Houma-Terrebonne, VOR RWY 12, Amdt. 3
Houma, LA—Houma-Terrebonne, VOR/DME RWY 30, Amdt. 10
Houma, LA—Houma-Terrebonne, NDB RWY 18, Amdt. 3
Houma, LA—Houma-Terrebonne, ILS RWY 18, Amdt. 2
Houma, LA—Houma-Terrebonne, VOR/DME RNAV RWY 36, Amdt. 3
Houma, LA—Houma-Terrebonne, Copter VOR/DME 117, Amdt. 2
Mansfield, LA—De Soto Parish, NDB RWY 18, Amdt. 1
Morristown, TN—Moore-Murrell, SDF RWY 5, Amdt. 3
Morristown, TN—Moore-Murrell, NDB RWY 5, Amdt. 3
Alpine, TX—Alpine Muni, NDB RWY 19, Amdt. 3
Big Lake, TX—Reagan County, NDB RWY 16, Amdt. 1
Bowie, TX—Bowie Muni, NDB RWY 17, Amdt. 2
Bowie, TX—Bowie Muni, NDB RWY 35, Amdt. 2
Georgetown, TX—Georgetown Muni, NDB RWY 18, Amdt. 4
Odessa, TX—Odessa-Schlemeyer Field, VOR-A, Amdt. 5
Odessa, TX—Odessa-Schlemeyer Field, NDB RWY 20, Amdt. 3

** * * Effective June 27, 1991*

Chico, CA—Chico Muni, VOR RWY 13L, Amdt. 8
Cordele, GA—Crisp County-Cordele, VOR/DME RWY 22, Amdt. 9
Cordele, GA—Crisp County-Cordele, NDB RWY 9, Amdt. 3
Monroe, GA—Monroe-Walton County, NDB RWY 3, Amdt. 3
Sandersville, GA—Kaolin Field, VOR/DME-A, Amdt. 4
Sandersville, GA—Kaolin Field, NDB RWY 12, Amdt. 3
Louisville, KY—Bowman Field, NDB RWY 32, Amdt. 12
Madison, MS—Bruce Campbell Field, NDB RWY 17, Amdt. 2 CANCELLED
Raleigh/Durham, NC—Raleigh-Durham International, ILS RWY 5L, Amdt. 2
Raleigh/Durham, NC—Raleigh-Durham International, ILS RWY 23R, Amdt. 7
Oxford, OH—Miami University, NDB RWY 4, Amdt. 9
Oxford, OH—Miami University, RNAV RWY 4, Amdt. 4 CANCELLED
Bartlesville, OK—Frank Phillips, VOR RWY 17, Amdt. 10
Bartlesville, OK—Frank Phillips, VOR/DME RWY 35, Amdt. 5
Bartlesville, OK—Frank Phillips, LOC RWY 17, Amdt. 2
Bartlesville, OK—Frank Phillips, NDB RWY 17, Amdt. 1
Georgetown, SC—Georgetown County, NDB RWY 5, Amdt. 5
Nashville, TN—Nashville International, LDA/DME RWY 2C, Amdt. 2, CANCELLED
Sheridan, WY—Sheridan County, NDB RWY 31, Amdt. 1, CANCELLED

** * * Effective May 30, 1991*

St. Louis, MO—Lambert-St. Louis Intl, LOC BC RWY 6, Amdt. 2
St. Louis, MO—Lambert-St. Louis Intl, LDA/DME RWY 30L, Amdt. 1
St. Louis, MO—Lambert-St. Louis Intl, ILS RWY 24, Amdt. 43
St. Louis, MO—Lambert-St. Louis Intl, RNAV RWY 6, Amdt. 1
St. Louis, MO—Lambert-St. Louis Intl, RNAV RWY 24, Amdt. 2
New York, NY—LaGuardia, VOR RWY 4, Amdt. 2
Batavia, OH—Clermont County, VOR-B, Amdt. 4
Huntsville, TX—Huntsville Muni, NDB RWY 18, Amdt. 3, CANCELLED
Huntsville, TX—Huntsville Muni, NDB RWY 18, Orig.

** * * Effective April 24, 1991*

Texarkana, AR—Texarkana Regional-Webb Field, ILS RWY 22, Amdt. 14

** * * Effective April 18, 1991*

Camarillo, CA—Camarillo, NDB/DME-A, Amdt. 1

[FR Doc. 91-10884 Filed 5-7-91; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

Louisiana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; Approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions and additional requirements, of an amendment to the Louisiana permanent regulatory program (Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to Louisiana's rules pertaining to definitions; areas where mining is prohibited or limited; areas designated unsuitable for surface coal mining; requirements for permit applications; coal exploration; permit requirements for legal, financial, and compliance information, permit requirements for environmental resources information; permit requirements for reclamation and operations plans; permits for special categories of mining; public participation, approval of applications, and permit terms and conditions; revision, renewals, and transfer, sale, and assignment of permit rights; small operator assistance; bonding and insurance requirements; permanent program performance standards; inspections; enforcement; and civil penalties. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, improve operational efficiency, and incorporate the additional flexibility afforded by the revised Federal regulations.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background

On October 10, 1980, the Secretary of the Interior approved the Louisiana program. The October 10, 1980, **Federal Register** (45 FR 67340) gives general background information regarding the Louisiana program, including information on the Secretary's findings and the disposition of comments on the program, as well as a detailed explanation of the conditions of its approval. Subsequent actions concerning the Louisiana program are identified at 30 CFR 918.16.

II. Submission of Proposed Amendment

In accordance with the provisions of 30 CFR 732.17(c), OSM notified Louisiana by letters dated July 9, 1986 (administrative record No. LA-285), June 9, 1987 (administrative record No. LA-261), December 12, 1988 (administrative record No. LA-289), and May 11 and November 16, 1989 (administrative record Nos. LA-291 and LA-294), of the changes that were necessary to ensure that the approved regulatory program was no less effective than SMCRA and its implementing regulations as revised between October 10 and August 30, 1989.

To comply with these notifications and to meet other needs and State objectives, Louisiana elected to undertake a complete revision of the rules for its program. The proposed rules, subpart 1, chapter 1, through subpart 5, chapter 73, would replace subchapter A, part 100, through subchapter K, part 246. By letter dated January 19, 1990 (administrative record No. LA-295), Louisiana submitted these proposed rules to OSM for review. More specifically, Louisiana proposed revisions to the Louisiana Surface Mining Regulations (LSMR) at: Chapter 1, general—definitions; Chapter 11, areas where mining is prohibited or limited; Chapters 13 and 15, areas designated unsuitable for surface coal mining; Chapters 17 and 19, requirements for permit applications; Chapter 21, coal exploration; Chapter 23, permit requirements for legal, financial, and compliance information; Chapter 25, permit requirements for environmental resources information; Chapter 27, permit requirements for reclamation and operations plans; Chapter 29, permit requirements for special categories of mining; Chapter 31, public participation, approval of applications, and permit terms and conditions; Chapter 35, permit revisions, renewals, and transfer, sale, and assignment of permit rights; Chapter 37, small operator assistance; Chapters 39, 41, 43, 45, and 47, bonding and insurance requirements; Chapters 51, 53, 55, and 59, permanent program performance standards; Chapter 63, inspections; Chapter 65, enforcement; and Chapter 69, civil penalties. The abandoned mine land reclamation plan as approved by OSM on November 10, 1986 (51 FR 40793) remains in effect and is unchanged by this amendment.

On February 20, 1990, OSM published a notice in the **Federal Register** announcing its receipt of the proposed amendment to the Louisiana program and inviting public comment on the adequacy of the amendment (55 FR 5858; administrative record No. LA-299). The comment period closed on March 22, 1990. After reviewing the proposed amendment and all comments it had received during the comment period, OSM notified Louisiana by letters dated April 27 and July 6, 1990 (administrative record Nos. LA-304 and LA-308) of several provisions in the amendment that appeared to be inconsistent with the Federal regulations. By letters dated August 14 and September 7, 1990 (administrative record Nos. LA-308 and LA-310), Louisiana submitted to OSM revisions to and clarification of the proposed amendment that addressed OSM's concerns.

To allow the public an opportunity to comment on the revised amendment, OSM published a notice in the **Federal Register** on October 18, 1990 (55 FR 42207), reopening and extending the public comment period (administrative record No. LA-315). The reopened comment period closed on November 2, 1990.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment submitted by Louisiana on January 19, 1990, as subsequently revised on August 14 and September 7, 1990. The Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSM's continuing oversight of the Louisiana program.

1. General

In general, with minor changes to improve clarity and specificity and to replace Federal references and terms with State references and terms, Louisiana's proposed rules are substantively identical to the corresponding Federal regulations. The proposed rules deviate from the Federal language to (1) reflect the decisions of the U.S. District Court for the District of Columbia (*In re: Permanent Surface Mining Regulation Litigation (II), Rounds II and III*, No. 79-1144 (D.D.C. Oct. 1, 1984), 21 Env't Rep. Cas. 1724 and 620 F. Supp. 1519 (D.D.C. 1985); hereinafter referred to, respectively, as *PSMRL II, Round II, and PSMRL II, Round III*), and (2) conform to State requirements concerning administrative procedures and reviews. (Louisiana's Administrative Procedures Act and Subpart 5, Chapters 33 and 67, special rules applicable to surface coal mining review hearings and appeals, replace the Federal administrative procedures at 43 CFR Part 4.)

Louisiana's original program was approved with no detailed permit requirements for concurrent surface and underground mining, auger mining, operations in alluvial valley floors, mountaintop removal, and multiple seam mining on steep slopes (45 FR 58576, 58582, finding No. 4(b)(15)(ii)). Section 906E of the Louisiana Surface Mining and Reclamation Act (LSMRA) prohibits underground mining and auger mining and requires persons wishing to underground or auger mine to submit an application 36 months prior to the time operations are planned to begin so that legislation can be considered by the Louisiana legislature and regulations promulgated as necessary to comply with SMCRA.

Louisiana's original program was also approved with no provisions corresponding to 30 CFR 701.11(a) and (b) to provide for continued operations for 8 months after the date of the State program approval (45 FR 58576, 58580, finding No. 4(c)(15)(i)), because there were no surface coal mining operations in existence in Louisiana prior to the original program approval. For the same reason, initial program rules corresponding to 30 CFR part 710 were

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not included in the original program. Because no surface coal mining operations existed prior to program approval, Louisiana proposes to delete its existing rule at LSMR 171.13 which provides for implementation of a Federal program should an application for surface coal mining be made prior to its permanent program approval. Also because no surface coal mining operations existed in Louisiana prior to permanent program approval, there is no need for a definition of "previously mined areas" or for remining rules. Therefore, Louisiana's proposed rules have no counterparts to the Federal regulations at 30 CFR 701.5 (definition of "previously mined areas") and 30 CFR 816.106 (remining).

The Director finds that none of these changes alters the original findings, made at the time of program approval as required by 30 CFR 732.15 (b) through (d), concerning Louisiana's authority and capability to implement, administer and enforce a program to regulate coal exploration and surface coal mining and reclamation operations (45 FR 58576, September 4, 1980, and 45 FR 67340, October 10, 1980). Therefore, the Director finds that the proposed amendment, except as discussed below, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

Discussed below are only those proposed rules that (1) are less effective than the corresponding Federal regulations or (2) require additional explanation prior to approval. Provisions that are not discussed either (1) contain language that is the same as or similar to the corresponding Federal regulations and are not substantively different from them or (2) add specificity or lack a Federal counterpart and do not adversely affect other aspects of the program.

2. LSMR 105.A, Definitions.

(a) Affected Area

Louisiana proposes a definition of "affected area" at LSMR 105.A.7 which differs from the Federal definition of "affected area" at 30 CFR 701.5 to the extent that it does not exclude from regulation all roads with more than incidental public use. In *PSMRL II, Round III*, the U.S. District Court remanded the Federal definition of "affected area" at 30 CFR 701.5 because it excluded all roads with more than incidental public use, an exclusion which the court found to be inconsistent with the definition of "surface coal mining operations" at section 701(28) of SMCRA.

The Director finds that Louisiana's proposed definition of "affected area" at LSMR 105.A.7 conforms to the court's decision because it is consistent with the definition of "surface coal mining operations" at LSMR 147, which corresponds to the definition of "surface coal mining operations" at section 701(28) of SMCRA. Therefore, the Director approves the proposed definition of "affected area" at LSMR 105.A.7.

(b) Valid Existing Rights (VER)

With certain exceptions, Louisiana proposes at LSMR 105.A.160 a definition for VER that is substantively identical to the corresponding Federal definition of VER at 30 CFR 761.5. The exceptions are those provisions corresponding to the provisions of the Federal definition of VER that have been suspended by OSM. These provisions were not included in Louisiana's proposed definition of VER.

OSM suspended the provisions of the Federal definition at 30 CFR 761.5 (a), (c), and (d)(2) in response to the court decision, PSMRL II, Round II, that remanded these regulations (51 FR 41952, 41954, November 20, 1986).

OSM suspended paragraphs (a) and (d)(2) insofar as they would authorize use of the "takings test" (taking of a person's property for which compensation would have to be paid under the Fifth and Fourteenth Amendments to the U.S. Constitution) to determine whether a person has VER. OSM reinstated its previous March 13, 1979, regulation at 30 CFR 761.5(a) (51 FR 41952, 41954, November 20, 1986).

OSM suspended paragraph (c) to the extent that it would expand VER under the "needed for and adjacent to test" to include lands for which the claimant had not acquired the necessary property rights for mining prior to August 3, 1977. The 1979 Federal definition of VER included a needed for and adjacent to test allowing a person to claim VER if, as of August 3, 1977, he or she possessed a legally binding conveyance, lease, deed, contract or other document authorizing the applicant to conduct surface coal mining operations, and he or she could demonstrate that the coal is both needed for and adjacent to an ongoing surface coal mining operation for which all approvals and permits were obtained prior to August 3, 1977.

Because Louisiana has proposed language at LSMR 105.A.160 that is substantively identical to the language of the Federal regulation at 30 CFR 761.5 as revised by the suspensions of 30 CFR 761.5(a), (c), and (d)(2), the Director finds that Louisiana's proposed definition of VER at LSMR 105.A.160 is no less effective than the corresponding Federal definition at 30 CFR 761.5. Therefore, the Director approves Louisiana's proposed definition of VER at LSMR 105.A.160.

3. LSMR 107, Applicability

(a) LSMR 107(b), 2-Acre Exemption

Louisiana proposes to delete existing LSMR 107(b). This rule exempts from the requirements of the State surface mining law those operations that extract coal for commercial purposes and affect 2 acres or less. Existing LSMR 107(b) corresponds to the Federal regulations at 30 CFR 700.11(b).

As originally enacted, section 528(2) of SMCRA (30 U.S.C. 1278) exempted from the requirements of SMCRA coal extraction operations affecting 2 acres or less. However, on May 7, 1987, the President signed Public Law 100-34, which repealed this exemption and preempted any corresponding acreage-based exemptions included in State laws or regulations (52 FR 21228, June 4, 1987).

Louisiana's proposed revision would remove from LSMR 107 the language preempted by Public Law 100-34. Removal of the acreage exemption from the Louisiana rules will preclude confusion on the part of the public, which may not be aware of the Federal preemption.

The Director finds that the proposed deletion of Louisiana's existing LSMR 107(b) regarding the 2-acre exemption is no less stringent than section 528(2) of SMCRA, as amended by Public Law 100-34. Therefore, the Director approves the proposed deletion of LSMR 107(b).

The Director encourages Louisiana to make a similar deletion of the 2-acre exemption from Louisiana's Surface Mining and Reclamation Act at section 927(2).

(b) LSMR 107.G, Termination of Jurisdiction.

Louisiana proposes LSMR 107.G.1 and 2 regarding termination of jurisdiction that is substantively identical to the corresponding Federal regulations at 30 CFR 700.11(d). However, the U.S. District Court for the District of Columbia found that the Federal regulations at 30 CFR 700.11(d) were contrary to sections 521(a)(1) and (a)(2) of SMCRA (*National Wildlife Federation* v. *Lujan*, Civil Action Nos. 88-2416, 88-3345, 88-3586, 88-3635, 89-0039, 89-0136, and 89-0141, D.D.C., August 30, 1990). More specifically, the court interpreted sections 521(a)(1) and (a)(2) as imposing an on-going duty upon the Secretary of the Interior to correct violations of SMCRA. Accordingly, the

court remanded the Federal regulations at 30 CFR 700.11(d) to the Secretary to be withdrawn or revised.

Because the Director is pursuing an appeal of the court's remand of this rule, the Director is deferring his decision on proposed LSMR 107.G.1 and 2. Until such time as the Director takes action on his deferral and decides to approve or not approve the proposed rules, Louisiana may not promulgate and implement proposed LSMR 107.G.1 and 2.

The Director will, pursuant to 30 CFR 732.17(d), notify Louisiana of any regulatory changes needed for the above rules.

4. LSMR 2523. Probable Hydrologic Consequences (PHC) Determinations

The Federal regulations regarding PHC determinations at 30 CFR 780.21(f) and 784.14(e) were challenged in PSMRL II, Round III on the grounds that they were wrongly limited to activities occurring during the "life of the permit" as opposed to the "life of the mine." Rather than ruling on the substance of this argument, the court instead remanded the rules on procedural grounds. As a result of the court decision, OSM suspended the PHC regulations (51 FR 41952 at 41957, November 20, 1986). OSM reexamined the regulations and on September 19, 1988, promulgated regulations at 30 CFR 780.21(f) and 784.14(e) identical to those that had been previously suspended (53 FR 36394, 36400).

However, in the preamble to the new regulations, OSM clarified how its interpretation to limit the PHC determination to the permit and adjacent areas ("life of the permit") was appropriate. OSM interprets the PHC determination to apply to all activities authorized under the permit for the permit and adjacent areas. The PHC determination need not consider those activities that may occur during the life of the mine that would be authorized under future permitting activities. A new PHC determination would be required for any additional surface mining activity that could impact the hydrologic regime authorized during the initial permit term or in future permitting actions. A renewal of the initial permit with no changes would not necessitate a new PHC determination. Therefore, OSM considers the PHC determination to be "spatial" rather than "temporal" in nature (53 FR 36394, 36396-36399, September 19, 1988). A "temporal" PHC determination would apply to all known mining activities associated with the initial permit area and those which may occur during the life of the mine (emphasis added).

Louisiana's proposed LSMR 2523 is substantively identical to the Federal regulations at 30 CFR 780.21(f) and 784.14(e). However, Louisiana has not revised its regulations or submitted a policy statement specifying its interpretation of the PHC rules. The Director finds that Louisiana's proposed LSMR 2523 does not render the Louisiana program less effective than the corresponding Federal regulations at 30 CFR 780.21(f) and 784.14(e) and he approves it. However, to be no less effective than the Federal regulations at 30 CFR 780.21(f) and 784.14(e) as interpreted by OSM at 53 FR 36394, 36396-36399 (September 19, 1988), the Director requires that Louisiana submit as a program amendment a policy statement specifying its interpretation of LSMR 2523 regarding "spatial" or "temporal" PHC determinations.

5. Rule 5327. Siltation Structures

Louisiana proposes to delete existing LSMR 5327.B(2). LSMR 5327.B(2) requires all surface drainage from the disturbed area be passed through a siltation structure before leaving the permit area. LSMR 5327.B(2) is substantively identical to the Federal regulation at 30 CFR 816.46(b)(2), which OSM suspended.

OSM suspended 30 CFR 816.46(b)(2) in response to the court decision, PSMRL II, Round II, that remanded this regulation. OSM suspended paragraph (b)(2) because the use of sediment ponds and other siltation structures does not necessarily constitute use of the best technology currently available (BTCA) to prevent additional contributions of suspended solids to streamflow or runoff outside the permit area (51 FR 41952 at 41957, November 20, 1986). The use of BTCA is required by sections 515(b)(10)(B) and 516(b)(9)(B) of SMCRA. OSM's suspension of 30 CFR 816.46(b)(2) means that regulatory authorities must determine on a case-by-case basis what constitutes BTCA as defined by State programs. In those instances where sedimentation ponds or other siltation structures are determined to be BTCA, the State's performance standards corresponding to the Federal regulations at 30 CFR 816.46(b), (c), and (d) will continue to apply. Where BTCA includes a discharge from a point source, effluent limits will continue to apply and a National Pollution Discharge Elimination System permit is needed. In situations where sediment control measures other than siltation structures are determined as BTCA, the State's performance standards corresponding to 30 CFR 816.45 will be applicable.

Because Louisiana's proposed deletion of existing LSMR 5327.B(2) is consistent with OSM's suspension of 30 CFR 816.46(b)(2), the Director finds that the proposed deletion is consistent with the court decision and is no less stringent than sections 515(b)(10)(B) and 516(b)(9)(B) of SMCRA.

6. LSMR 5375 and 5381, End or Side Dumping for Coal Processing Waste Banks

Louisiana proposes at LSMR 5375, among other things, that all coal processing waste be hauled or conveyed and placed in disposal areas within the permit area approved by Louisiana, and that the disposal area be designed, constructed and maintained in accordance with LSMR 5367. Louisiana's proposed LSMR 5367.C requires that spoil be hauled or conveyed and placed in a controlled manner and concurrently compacted in lifts no greater than 4 feet or less if required by Louisiana.

The Federal regulation at 30 CFR 816.81(a) requires that all coal mine waste be placed in a disposal area within a permit area which is approved by the regulatory authority for this purpose. However, OSM suspended 30 CFR 816.81(a) in response to the court decision, PSMRL II, Round II, that remanded this regulation. OSM suspended paragraph (a) insofar as it allowed end dumping or side dumping of coal mine waste in coal mine waste disposal areas (51 FR 41952 at 41959, November 20, 1986).

Because Louisiana's proposed LSMR 5375 requires that coal processing waste be hauled or conveyed and placed in a disposal area, it implicitly prohibits end or side dumping. Furthermore, Louisiana's proposed LSMR 5367.C requires that spoil shall be hauled or conveyed and placed in a controlled manner. Such language explicitly prohibits end or side dumping. Therefore, Louisiana's proposed LSMR 5375 reflects the suspension of 30 CFR 816.81(a). Based on the above, the Director finds that Louisiana's proposed LSMR 5375 is no less effective than the Federal regulation at 30 CFR 816.81 and he approves it.

7. LSMR 5389, Disposal of Noncoal Wastes

Louisiana proposes at LSMR 5389 that (1) noncoal wastes, including but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustibles generated during surface mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area, (2)

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placement and storage shall insure that leachate and surface runoff do not degrade surface water or ground water, and (3) final disposal of noncoal wastes be in a designated disposal site in the permit area, disposal sites shall, among other things, be designed and constructed with appropriate water barriers on the bottom and sides of the designated site, and that operation of the disposal site be conducted in accordance with all local, State and Federal requirements.

The Federal regulations at 30 CFR 816.89(d) and 817.89(d) require that noncoal mine waste, defined as "hazardous" under section 3001 of the Resource Conservation and Recovery Act (RCRA) and 40 CFR part 261, be handled in accordance with Subtitle C of RCRA and any implementing regulations. However, the Federal regulations at 30 CFR 816.89(d) and 817.89(d) were suspended on November 20, 1986 (51 FR 41952), to implement the decision of the U.S. District Court for the District of Columbia in PSMRL II, Round III. The court remanded these rules because OSM failed to comply with the public notice and public comment requirements of the Administrative Procedures Act in promulgating these Federal regulations. No substantive issues were involved (51 FR 41952 at 41959). Because of the court's remand of 30 CFR 816.89(d) and 817.89(d), OSM may not use these regulations in evaluating the sufficiency of Louisiana's proposed rules. Accordingly, OSM evaluated Louisiana's proposed amendments based upon their consistency with the court's decision and the applicable provisions of SMCRA.

As stated previously, the court's decision to remand the Federal regulations was based solely on procedural rather than substantive grounds. Since the Louisiana rulemaking process has provided for adequate public participation, the promulgation by Louisiana of its proposed rule is not inconsistent with the court's ruling.

Section 515(b)(14) of SMCRA generally states that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are to be treated or buried and compacted or otherwise disposed of in a manner to prevent contamination of ground or surface waters. Because Louisiana's proposed LSMR 5389 provides for the handling and disposal of such material in a manner designed to prevent contamination of ground or surface waters, the Director finds that Louisiana's proposed LSMR 5389 is no less stringent than section 515(b)(14) of SMCRA, and he approves it.

8. LSMR 52103 and 53105, Contemporaneous Reclamation

Louisiana proposes at LSMR 53103 that reclamation efforts occur as contemporaneously as practicable with mining operations. Louisiana also proposes at LSMR 53105 schedules for backfilling and grading that include time and distance factors for contour mining and area strip mining, and an allowance for a time schedule to be approved by Louisiana for open-pit mining with thin overburden.

Louisiana's proposed rule requires (1) for contour mining that rough backfilling and grading follow coal removal by not more than 60 days or 1,500 linear feet, (2) for open-pit mining with thin overburden that Louisiana shall approve a schedule, on the basis of materials submitted under Rule 2715.B.3, by which time rough backfilling and grading shall occur, and (3) for area strip (surface) mining that rough backfilling and grading be completed within 180 days following coal removal and not more than four spoil ridges behind the pit being worked.

OSM's contemporaneous reclamation regulation at 30 CFR 816.100 (48 FR 24638, June 1, 1983) was remanded by the U.S. District Court for the District of Columbia in PSMRL II, Round II to the extent that it did not specify both time and distance factors defining contemporaneous reclamation (PSMRL II, Round II, Mem. Op. at 52). The Federal regulation at 30 CFR 816.101(a) (44 FR 15312 at 15411, March 13, 1979), which had been in effect prior to OSM's promulgation of the remanded regulation at 30 CFR 816.100, did specify such time and distance factors.

Although OSM never actually suspended the remanded regulation, OSM may not, because of the court's remand, use the June 1, 1983, Federal regulation in evaluating the sufficiency of Louisiana's proposed rule. Accordingly, OSM evaluated the proposed amendment based upon its consistency with the court's decision and the applicable provisions of SMCRA.

Louisiana's proposed LSMR 53103 and 53105 are substantively identical to the March 13, 1979, Federal regulation at 30 CFR 816.101(a). Thus, Louisiana's proposed LSMR 53103 and 53105 are consistent with the court's decision in that they do specify objective and reasonable time and distance factors defining contemporaneous reclamation.

Section 515(b)(16) of SMCRA provides that reclamation efforts are to proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations. It does not expressly define contemporaneous reclamation. The Director therefore finds that Louisiana's proposed LSMR 53103 and 53105 are no less stringent than section 515(b)(16) of SMCRA, and he approves them.

9. LSMR 53111 and 53113, Backfilling and Grading of Thin and Thick Overburden Surface Mines

Louisiana proposes requirements at LSMR 53111 and 53113, respectively, that provisions for thin overburden apply when the final thickness of the overburden is less than 0.8 percent of the initial thickness, and that provisions for thick overburden apply when the final thickness of the overburden is greater than 1.2 percent of the initial thickness.

On October 1, 1984, the U.S. District Court for the District of Columbia in PSMRL II, Round II remanded OSM's backfilling and grading regulations for thin and thick overburden surface mines at 30 CFR 816.104(a) and 816.105(a) (48 FR 23356 at 23369, May 24, 1983) because the regulations did not provide objective formulae for defining thick and thin overburden (PSMRL II, Round II, Mem. Op. at 53). The Federal regulations at 30 CFR 816.104(a) and 816.105(a) (44 FR 15312 at 15411, March 13, 1979) that had been in effect prior to OSM's promulgation of the remanded regulations at 30 CFR 816.104(a) and 816.105(a) did specify such objective formulae.

Although OSM never actually suspended the remanded regulations, OSM may not, because of the court's remand, use the May 24, 1983, Federal regulations in evaluating the sufficiency of Louisiana's proposed rules. Accordingly, OSM evaluated the proposed rules based upon their consistency with the court's decision and the applicable provisions of SMCRA.

Louisiana's proposed LSMR 53111 and 53113, respectively, are substantively identical to the March 13, 1979, Federal regulations at 30 CFR 816.104(a) and 816.105(a). Thus, Louisiana's proposed rules are consistent with the court's decision in that they do specify objective and reasonable formulae for defining thick and thin overburden.

Section 515(b)(3) of SMCRA creates a limited exception, with regard to areas of thin and thick overburden, from the general statutory requirement to restore disturbed lands to a proximate original contour. More specifically, section 515(b)(3) states that if the overburden is either insufficient or more than sufficient to restore approximate original contour, then operators must use overburden and other spoil and waste materials to attain the lowest practical grade, but not more than the angle of repose. Section 515(b)(3) of SMCRA does not expressly define thin and thick overburden. The Director therefore finds that Louisiana's proposed LSMR 53111 and 53113 are no less stringent than section 515(b)(3) of SMCRA, and he approves them.

10. LSMR 53123 and 53125, Revegetation Success Standards

(a) LSMR 53123.A.1, 2, and 3

Louisiana proposes at LSMR 53123.A.1, 2, and 3 various techniques for estimating ground cover, productivity, and live stems per acre. However, Louisiana only lists the names of the techniques; it does not provide sufficient information to document that statistically valid sampling techniques will be used to determine revegetation success for phase III bond release, as required by the Federal regulation at 30 CFR 816.116(a)(1). Therefore, the Director finds proposed LSMR 53123.A.1, 2, and 3 less effective than 30 CFR 816.116(a)(1). The Director approves LSMR 53123.A.1, 2, and 3; however, he is requiring that Louisiana further revise LSMR 53123.A.1, 2, and 3 to provide detailed descriptions of each technique it proposes to allow, or reference documents that include detailed descriptions of the allowed techniques. Either source must contain a description of each step within each technique. If Louisiana chooses to reference the documents in its rules, the documents must be submitted to OSM as part of the amendment package.

(b) LSMR 53123.A.4

Louisiana proposes at LSMR 53123.A.4 that "[e]stimates of the mean for particular parameters shall be statistically valid. Sample adequacy shall be determined by the following formula: ($N_{min}=(t^2s^2)/(dx)^2$) Minimum sample size shall be 10. Maximum sample size shall be 30." Louisiana does not explicitly state that sample adequacy must be met for cover, production, and/or woody plant densities, as required by the Federal regulation at 30 CFR 816.116(a)(2). In addition, by placing a maximum size limit on the sample size, Louisiana has not ensured that sampling be based on statistically valid techniques as required by the Federal regulation at 30 CFR 816.116(a)(1). Therefore, the Director finds proposed LSMR 53123.A.4 less effective than the Federal regulations at 30 CFR 816.116(a) (1) and (2). The Director does not approve LSMR 53123.A.4 to the extent that it places a maximum limit on a sample size. Specifically he does not approve the statement "[m]aximum sample size shall be 30." He is requiring Louisiana to (1) remove the statement " [m]aximum sample size shall be 30" and (2) further revise LSMR 53123.A.4 to clarify that the sample adequacy must be met for ground cover, productivity, and/or woody plant densities.

(c) LSMR 53123.B.1

As written, Louisiana's proposed rule at LSMR 53123.B.1 requires for pasture land that ground cover and production be equal to a reference area, historical records, and technical documents, rather than requiring that ground cover and production be equal to one of the three options. Louisiana clarified (administrative record No. LA-314) that it intended that ground cover and production be equal to one of the three options. Based on this clarification, the Director finds proposed LSMR 53123.B.1 no less effective than the Federal regulation at 30 CFR 816.116(b). He approves LSMR 53123.B.1 with the understanding that Louisiana will correct the typographical error by adding the word "selected" before "from the following methods."

(d) LSMR 53123.B.1.b and c, 53123.B.2.b and c, and 53123.B.3.b and c

Louisiana proposes at LSMR 53123.B.1.b and c, 53123.B.2.b and c, and 53123.B.3.b and c to allow a permittee to choose historical records or technical documents to use in determining the success of productivity and ground cover on mined lands reclaimed for pasture land, grazing land, and cropland. Louisiana proposes that a "historic record would consist of af least four growing seasons of data, collected to achieve sample adequacy. The mean value for each parameter from each yearly sampling period would be averaged to obtain an overall mean. This value would then be used as the success standard." Louisiana also proposes that "[s]tandards established by reference to technical documents of the USDA, USDI, or other authorities are allowed when specifically approved by the office. The office should be consulted prior to the use of this approach."

The Federal regulations at 30 CFR 816.116(b) (1) and (2) allow for the regulatory authority to approve success standards for productivity and ground cover from sources other than reference areas. However, 30 CFR 816.116(a)(1) requires that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program (i.e., approved by the Director).

Because Louisiana has not included the historical records or the specific technical documents it would allow, the Director finds proposed LSMR 53123.B.1.b and c, 53123.B.2.b and c, and 53123.B.3.b and c less effective than the Federal regulation at 30 CFR 816.116(a)(1). The Director approves these rules but requires that Louisiana (1) further revise LSMR 53123.B to include or reference, in its rules, those documents or historical records it intends to allow, or (2) specify the technical criteria it would use to select and approve any document or historical record. If Louisiana references specific historical records or technical documents it must submit these to OSM as part of a program amendment.

(e) LSMR 53123.B.2.a

Louisiana proposes at LSMR 53123.B.2.a that "[w]eighted average comparisons are appropriate" when using reference areas to determine the success of revegetation of grazing land. 30 CFR 816.116(a)(1) requires that statistically valid sampling techniques be selected by the regulatory authority and included in an approved regulatory program (i.e., approved by the Director). Because OSM cannot determine, based on the information provided at LSMR 53123.B.2.a, whether "weighted average comparisons" is a statistically valid sampling technique, the Director finds LSMR 53123.B.2.a less effective than 30 CFR 816.116(a)(1). The Director approves LSMR 53123.B.2.a but requires that Louisiana further revise LSMR 53123.B.2.a to explain what is meant by "weighted average comparison" and to explicitly state whether such comparisons are required.

(f) LSMR 53123.B.4 and 53125.A and B

Louisiana proposes (1) at LSMR 53123.B.4 programwide success standards for live stems per acre, and permit-specific consultation with and approval by the Louisiana Department of Agriculture and Forestry for ground cover, on lands with the land use designated as forestry, (2) at LSMR 53125.A programwide procedures used to determine stocking (i.e., live stems per acre), and (3) at LSMR 53125.B programwide minimum performance standards where commercial forest land is the approved postmining land use.

The Federal regulation at 30 CFR 816.116(b)(3) requires that success standards for areas to be developed for forest products shall be determined on

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the basis of tree and shrub stocking and vegetative ground cover, that such parameters shall be specified on the basis of local and regional conditions after consultation with and approval by the State agencies responsible for the administration of forestry, and that the consultation and approval may occur on either a programwide or a permit-specific basis.

Louisiana submitted with its proposed amendment, a letter dated June 13, 1990, from the Louisiana Department of Agriculture and Forestry stating that the programwide regulations concerning forestry and commercial forest land at LSMR 53123 and 53125 "are acceptable for regeneration of surface mined forest lands for the production of various wood products."

However, at LSMR 53125.B.3, Louisiana requires that the sampling methods (used to determine the number of trees or shrubs and the ground cover) be approved by the regulatory authority. The Federal regulation at 30 CFR 816.116(a)(1) requires that statistically valid sampling techniques be selected by the regulatory authority and included in an approved regulatory program (i.e., approved by the Director).

Based on the above, the Director finds proposed LSMR 53123.B.4, LSMR 53125.A and B, with the exception of LSMR 53125.B.3, no less effective than the Federal regulation at 30 CFR 816.116(b)(3). The Director finds proposed LSMR 53125.B.3 less effective than the Federal regulation at 30 CFR 816.116(a)(1) to the extent that Louisiana has not submitted statistically valid sampling techniques for the determination of the success of stocking and ground cover on commercial forest lands.

The Director approves proposed LSMR 53123.B.4, LSMR 53125.A and B; however, the Director is requiring Louisiana to further amend LSMR 53125.B.3 to include in its rules, or to reference, statistically valid sampling techniques for the determination of the success of stocking and ground cover for commercial forest lands.

In addition, Louisiana must correct the typographical errors at LSMR 53125.A.2 and 53125.B.3 and 4. At LSMR 53125.A.2, the reference to 53123.B.3.b should be 53123.B.4.a. At LSMR 53125.B.3 and 4, the references to 53123.B.3 should be 53123.B.4.

(g) LSMR 53123.B.5, 6, and 7

Louisiana proposes (1) at LSMR 53123.B.5 and 6 that the vegetative ground cover shall not be less than 70 percent for areas developed for residential and industrial/commercial use, and (2) at LSMR 53123.B.7 that the standard for vegetative ground cover for areas developed for recreation shall not be less than 70 percent and that consultation with and approval by the Louisiana Department of Wildlife and Fisheries must be obtained for this standard on a permit-specific basis.

The Federal regulations at 30 CFR 816.116(b)(3)(i) and (iii) require, on a programwide or permit-specific basis, consultation with and approval by the State agency responsible for the administration of forestry and wildlife for minimum stocking and planting arrangements and that vegetative ground cover shall not be less than that required to achieve the approved postmining land use. The Federal regulation at 30 CFR 816.116(b)(4) requires for areas to be developed for industrial, commercial, or residential use, the vegetative ground cover shall not be less than that required to control erosion.

Because 70 percent ground cover is sufficient to control erosion for the topographic conditions present in Louisiana, the Director finds LSMR 53123.B.5 and 6 no less effective than the Federal regulation at 30 CFR 816.116(b)(4). Because Louisiana requires, on a permit-specific basis, consultation with and approval by the Louisiana Department of Wildlife and Fisheries for vegetative ground cover for areas developed for recreation, the Director finds LSMR 53123.B.7 no less effective than the Federal regulation at 30 CFR 816.116(b). Therefore, the Director approves proposed LSMR 53123.B.5, 6, and 7.

(h) LSMR 53123.B.9

Louisiana proposes that vegetative ground cover shall not be less than 70 percent for areas with a postmining designation of "undeveloped." OSM does not recognize undeveloped land as a postmining land use because the intention of the reclamation is to return mined land to a managed land use. Undeveloped land is not managed. Therefore, the Director finds proposed LSMR 53123.B.9 less effective than 30 CFR 816.116(b). The Director does not approve LSMR 53123.B.9 and requires that Louisiana remove the performance standard for vegetative ground cover on undeveloped lands.

(i) LSMR 53123.C.3

Louisiana proposes at LSMR 53123.C.3 that it may approve selective husbandry practices, excluding augmented seeding, fertilization or irrigation, provided it obtains prior approval from the Director of OSM. In addition, Louisiana has submitted for the Director's approval the following normal husbandry techniques: disease, pest and vermin control, the use of firelanes in protecting young stands from fire, and any pruning, reseeding or transplanting specifically necessitated by such actions. Louisiana submitted three documents proposed for use by the regulatory authority in determining limitations of selected husbandry practices. They are (1) 1990 Insect Control Guide, (2) Louisiana's Suggested Chemical Weed Control Guide for 1990, and (3) 1990 Louisiana Plant Disease Control Guide, all published by the Louisiana Cooperative Extension Service of the Louisiana State University Agricultural Center. These documents discuss specific rates of applications of herbicides and pesticides, as well as common practices such as crop rotation, for disease control, weed control, and insect/pest control. In specific instances, the documents identify transplanting, pruning, and/or reseeding as appropriate actions. Louisiana stated, "[t]hese three publications shall be used by the Office of Conservation in determining limitations of selected husbandry practices" (administrative record No. LA-308).

In addition, Louisiana submitted with its proposed amendment a letter from the Louisiana Cooperative Extension Service, dated August 22, 1990, that the practices listed in LSMR 53123.C.3 are normal and common for the State (administrative record No. LA-306).

Based on the above, the Director finds that LSMR 53123.C.3 is no less effective than the Federal regulation at 30 CFR 816.116(c)(4). The Director approves proposed LSMR 53123.C.3 and approves as normal husbandry practices, as defined in the documents listed above, disease, pest and vermin control, and any pruning, reseeding or transplanting specifically necessitated by such actions, and the use of firelanes in protecting young stands from fire. However it should be noted, with respect to transplanting or reseeding of trees and shrubs, that the proposed success standard for woody plants at LSMR 53123.B.3.b effectively restricts such replanting to 20 percent of the stems counted to determine whether revegetation success has been achieved.

(j) LSMR 53125.C

Louisiana proposes at LSMR 53125.C programwide minimum performance standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land.

As discussed in finding No. 11(f), Louisiana submitted a letter dated June 13, 1990, from the Louisiana Department of Agriculture and Forestry stating that the performance standards at LSMR 53123 and 53125 "are acceptable for regeneration of surface mined forest lands for the production of various wood products." However, Louisiana has not submitted a letter from the Louisiana Department of Wildlife and Fisheries granting programwide approval of the performance standards at LSMR 53125.C for areas developed for wildlife management (including shelter belts), recreation, and forest uses other than commercial forest land. Because programwide consultation and approval has not been obtained, Louisiana must obtain the Louisiana Department of Wildlife and Fisheries' consultation and approval on a permit-specific basis.

The Federal regulation at 30 CFR 816.116(b)(3)(i) requires that minimum stocking and planting arrangements shall be developed after consultation with and approval by the State agency responsible for the administration of wildlife and forestry programs, on either a programwide or permit-specific basis.

Therefore, the Director finds LSMR 53125.C less effective than the Federal regulation at 30 CFR 816.116(b)(3) to the extent that it does not require permit-specific consultation with and approval by the Louisiana Department of Wildlife and Fisheries for the performance standards at LSMR 53125.C for those areas to be developed for wildlife management, recreation, shelter belts, and forest uses other than commercial forest land.

The Director approves proposed LSMR 53125.C regarding programwide consultation and approval by the Louisiana Department of Agriculture and Forestry for the listed performance standards (with the exception of LSMR 53125.C.3.b as discussed below at finding No. 11(k)); however, he is not approving proposed LSMR 53125.C to the extent that it does not require permit-specific consultation with and approval by the Louisiana Department of Wildlife and Fisheries for the performance standards at 53125.C for those areas to be developed for wildlife management, recreation, shelter belts, and forestry other than commercial forest land.

The Director is requiring Louisiana to further revise LSMR 53125.C to require permit-specific consultation with and approval by the Louisiana Department of Wildlife and Fisheries prior to use of the performance standards at LSMR 53125.C on mined lands reclaimed for wildlife management, recreation, shelter belts, and forest uses other than commercial forest land.

(k) *LSMR 53125.C.3.b.* Louisiana proposes at LSMR 53125.C.3.b (for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land) that upon expiration of the 5-year responsibility period and at the time of request for bond release, (1) each permittee shall provide documentation showing that the ground cover of the revegetated area satisfies LSMR 53123.B.3, and (2) that species diversity, seasonal variety and regenerative capacity of the vegetation of the revegetated area shall be evaluated on the basis of the results which could reasonably be expected using the revegetation methods described in the mining and reclamation plan.

The Federal regulation at 30 CFR 816.116(a)(1) requires Louisiana to submit all standards that will be used to evaluate the success of revegetation.

Because Louisiana has not submitted the standards by which it will evaluate the success of revegetation, the Director finds LSMR 53125.C.3.b less effective than 30 CFR 816.116(a)(1). He is not approving the phrase "on the basis of results which could reasonably be expected" at LSMR 53125.C.3.b. The Director requires that Louisiana further revise LSMR 53125.C.3.b to (1) remove the phrase "on the basis of results which could reasonably be expected" and (2) provide a description of, or to reference, the means by which it will evaluate diversity, seasonality, and regenerative capacity on reclaimed areas of mined lands where woody plants are used for wildlife management, recreation, shelterbelts, or forest uses other than commercial forest land. For example, species diversity, seasonality, and regenerative capacity could be determined by the seed mix, by comparison to a reference area, or by technical standards.

In addition, Louisiana must correct the typographical error at LSMR 53125.C.3.b; the reference regarding ground cover should be to LSMR 53123.B.4.

11. LSMR 6301.E Inspections of Abandoned Sites.

Louisiana proposes LSMR 6301.E regarding inspections of "abandoned sites" that is substantively identical to the Federal regulation at 30 CFR 840.11(g) and (h). However, the U.S. District Court for the District of Columbia found that the Federal regulations at 30 CFR 840.11(g) and (h) were inconsistent with section 517(c) of SMCRA. Section 517(c) of SMCRA requires an average of 12 partial and 4 complete inspections per year. Accordingly, the court remanded the Federal regulations at 30 CFR 840.11(g) and (h) to the Secretary to be withdrawn or revised (*National Wildlife Federation* v. *Lujan*, Civil Action Nos. 88-2416, 88-3345, 88-3586, 88-3635, 89-0039, 89-0136, and 89-0141, D.D.C., August 30, 1990).

Although OSM has not yet actually suspended the above Federal regulations, OSM may not, because of the court's remand, use the regulations at 30 CFR 840.11(g) and (h) in evaluating the sufficiency of Louisiana's proposed rule. Accordingly, OSM evaluated the proposed rule based upon its consistency with the appropriate provisions of SMCRA as interpreted by the court.

Based upon (1) the court's finding that the 30 CFR 840.11(g) and (h) is contrary to the provisions of SMCRA, and (2) the court's specific instruction to withdraw or revise 30 CFR 840.11(g) and (h), the Director finds that, Louisiana's proposed LSMR 6301.E, which is substantively identical to the Federal regulations at 30 CFR 840.11(g) and (h), includes requirements that are less stringent than sections 517(c) of SMCRA. Therefore, the Director is not approving Louisiana's proposed LSMR 6301.E regarding inspections of "abandoned sites."

The Director will, pursuant to 30 CFR 732.17(d), notify Louisiana of the regulatory changes needed for the above rule.

12. Policy Statements

(a) Policy Statement No. PS-1, Blasters Certification Requirements

In response to the required program amendments at 30 CFR 918.16(a) (1) and (2) to satisfy the blaster certification requirements of 30 CFR 918.16(a) and part 850, Louisiana proposes at LSMR 5353.C to reference Policy Statement No. PS-1. Louisiana has submitted as part of the January 19, 1990, amendment, Policy Statement No. PS1, dated June 1, 1990. In Policy Statement No. PS-1, Louisiana commits, should blasting become necessary, to develop a valid blaster certification program in accordance with 30 CFR part 850. Because of the physical nature of the unconsolidated overburden materials associated with coal and lignite in the State, Louisiana anticipates that there will be no blasting operations necessary for surface coal mining and reclamation operations permitted under LSMRA. Furthermore, until such a certification program is in place, Louisiana would recognize and accept as valid a current blaster's certification legitimately obtained from any other State regulatory authority (or the Federal government) having a blaster certification program approved under 30 CFR part 850. Based on the above, the Director finds Louisiana's proposed

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LSMR 5353.C to be no less effective than 30 CFR 918.16(a) and part 850. He approves both the proposed rule at LSMR 5353.C and Policy Statement No. PS-1, dated June 1, 1990, as part of the Louisiana permanent program. Therefore, the Director is removing the required program amendments at 30 CFR 918.16(a) (1) and (2) regarding rules governing the training, examination, and certification of blasters and a program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operations.

(b) Policy Statement No. PS-2, Violations Review Criteria for Improvidently Issued Permits

Louisiana proposes LSMR 3127 that prescribes the violations review criteria to be used in determining when a permit has been improvidently issued. The proposed rule is substantively identical to the Federal regulation at 30 CFR 773.20. However, the proposed Louisiana rule, like the Federal regulation, contains only the general procedures the regulatory authority must employ to determine whether a surface coal mining and reclamation permit was improvidently issued. The preamble to the Federal regulation notes that the regulation is written in general terms, but that the regulatory authority (which in this situation is the State of Louisiana) must set out the violations, and the penalties and fees that apply. It further specifies the minimum types of unabated violations and delinquent penalties and fees (i.e., the violations review criteria) that each regulatory program should cover (54 FR 18438, 18440, April 28, 1989). Therefore, as part of its January 19, 1990, proposed amendment, Louisiana submitted Policy Statement No. PS-2, dated June 1, 1990. Policy Statement No. PS-2 states that Louisiana will apply the violation review criteria specified in the preamble to the Federal regulation for each review of a permit believed to be improvidently issued. Based on the above, the Director finds that Louisiana's proposed LSMR 3127 is no less effective than the Federal regulation at 30 CFR 773.20. Therefore, the Director approves both LSMR 3127 and Policy Statement No. PS-2, dated June 1, 1990, as part of the Louisiana permanent program.

(c) Policy Statement No. PS-3, Clean Water Act and Water Quality Standards

Louisiana proposes LSMR 5321 requiring that "[d]ischarges of water from areas disturbed by surface mining activities shall be made in compliance with all applicable state and federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR part 343." In addition, as part of its January 19, 1990, proposed amendment, Louisiana submitted Policy Statement No. PS-3, dated August 31, 1990. Policy Statement No. PS-3 states that "implementation of the Louisiana Surface Mining and Reclamation Act, and the Louisiana Surface Mining Regulations, shall in no way conflict with the Clean Water Act, and that Louisiana shall enforce its regulations in compliance with the Clean Water Act." Louisiana's proposed LSMR 5321 is substantively identical to, and no less effective than, the Federal regulation at 30 CFR 816.42, and Policy Statement No. PS-3 is consistent with LSMR 5321. Therefore, the Director approves both LSMR 5321 and Policy Statement No. PS-3, dated August 31, 1990, as part of the Louisiana permanent program.

13. 30 CFR 918.10(b). Provisions of the State Regulatory Program Affirmatively Disapproved to Comply With the Order of the District Court

In the **Federal Register** notice announcing the Department of the Interior's approval of Louisiana's original program, the Secretary at 30 CFR 918.10(b) affirmatively disapproved several provisions of Louisiana's program that incorporated suspended or remanded Federal regulations (45 FR 67343, October 10, 1980). The affirmative disapprovals were based upon an order of the U.S. District Court for the District of Columbia that the Secretary "affirmatively disapprove * * * those segments of a State program that incorporate a suspended or remanded regulation" *(In re: Permanent Surface Mining Regulation Litigation,* Civil Action 79-1144, May 16, 1980, Mem. Op. at 49).

On August 15, 1980, however, the court partly stayed its May 16, 1980, order and allowed the Secretary to approve State program provisions similar to remanded or suspended Federal regulations when the State adopted such provisions in a rulemaking or legislative proceeding which occurred before the enactment of SMCRA or after the date of the District Court decision (May 16, 1980), since such State rules clearly were not based solely upon the suspended or remanded Federal regulations. In addition, the court stated that the Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal regulations if a responsible State official requested the Secretary to approve them.

As discussed below, the Director finds, consistent with the court decisions, that the affirmative disapprovals at 30 CFR 918.10(b) (1) through (31) are no longer necessary. The Director is taking this opportunity to remove them.

Louisiana proposes, in its January 19, 1990, amendment, recodifying and revising its permanent program rules. As discussed above, the Director is, with certain exceptions and with required revisions, approving these proposed rules. Those exceptions are discussed at finding Nos. 3(b), 10 (b), (h), (j), and (k), and (12), and do not impact the rules for which the affirmative disapprovals were written.

The Director's decision to remove the affirmative disapprovals at 30 CFR 918.10(b) (1) through (31) is consistent with the court's August 15, 1980, ruling in that (1) Louisiana's proposed permanent program rules are based on revised Federal regulations, not on the remanded 1979 language, and (2) in submitting the amendment, the head of the Louisiana regulatory authority specifically requested approval of the proposed rules.

IV. Summary and Disposition of Comments

1. Public Comments

The Director both solicited public comment and provided opportunity for a public hearing on the proposed amendment. No public comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director also solicited comments from various State and Federal agencies with an actual or a potential interest in the Louisiana program.

By letter dated February 21, 1990, the U.S. Soil Conservation Service (SCS) responded by notifying OSM of the draft document, "State of Louisiana Standards and Specifications for Prime Farmland Reconstruction of Mined Land," that is under consideration by SCS (administrative record No. LA-300).

By letter dated March 6, 1990, the U.S. Forest Service responded with no comments on the proposed amendment (administrative record No. LA-301).

By letter dated March 8, 1990, the U.S. Fish and Wildlife Service (FWS) responded with the following comments (administrative record No. LA-302). FWS commented that the fish and wildlife plan should be sent to the FWS

for review when the Louisiana Department of Natural Resources receives the permit application, rather than requiring that the FWS request the plan as required by Louisiana's proposed rule at LSMR 2713.C. Louisiana's proposed LSMR 2713.C is substantively identical to the Federal regulation at 30 CFR 780.16(c), which requires that the regulatory authority provide the resource information to FWS within 10 days of receipt of the request from the FWS. Therefore, the Director is not requiring Louisiana to revise its program in response to this comment.

FWS also commented that Louisiana should retain the existing rule at LSMR 5327.B(2) which requires that all drainage pass through a siltation structure before leaving the permit area. Louisiana proposes to delete existing LSMR 5327.B(2). Louisiana's existing LSMR 5327.B(2) is substantively identical to the Federal regulation at 30 CFR 816.46(b)(2). OSM suspended 30 CFR 816.46(b)(2) in response to the court decision, PSMRL II. Round II, that remanded this regulation. OSM suspended paragraph (b)(2) because the use of sediment ponds and other siltation structures does not necessarily constitute use of the best technology currently available (BTCA) to prevent additional contributions of suspended solids to streamflow or runoff outside the permit area 51 FR 41952, 41957, November 20, 1986; also see finding No. 6 for a discussion of the Director's approval of Louisiana's proposed deletion of existing LSMR 5327.B(2). Because Louisiana's proposal to delete LSMR 5327.B(2) is consistent with OSM's suspension of 30 CFR 86.46(b)(2), the Director has determined that at this time, no further action is required with regard to this comment.

By letter dated April 13, 1990, the U.S. National Park Service (NPS) responded by saying that the amendment adequately addresses NPS programs (administrative record No. LA-303).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with the respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). By letter dated February 8, 1990, OSM requested EPA's concurrence (administrative record No. LA-298).

By letter dated June 20, 1990, OSM received from the EPA concurrence for those aspects of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act (administrative record No. LA-308). However, EPA qualified its concurrence to the extent that Louisiana's rules should not be interpreted so as to provide full authorization for instream treatment of point source discharges.

EPA noted certain situations related to instream treatment which could result in conditions that would not assure compliance with applicable State water quality standards as required by the Clean Water Act. By instream treatment, EPA referred to two activities. The first activity is one in which mine wastes are discharged into waters of the United States for the primary purpose of waste disposal but with the effect of fill. The second activity involves instream waste treatment impoundments. These impoundments are built in waters of the United States for the purpose of creating a waste treatment system. Such impoundments may be used for the chemical treatment of mine waste water as well as solids settling.

EPA's definition of "waters of the United States" at 40 CFR 122.2 includes not only perennial, but also intermittent and ephemeral streams. EPA noted that the creation of any impoundments or sediment ponds in waters of the United States does not itself remove those waters from the definition of "waters of the United States" under the Clean Water Act. The Clean Water Act requires that all discharges of pollutants from point sources into waters of the United States obtain a permit as appropriate under either section 402 or 404 of the Clean Water Act.

The Director acknowledges that nothing in SMCRA supersedes the requirements of the Clean Water Act. The Director's approval of Louisiana's proposed rules should not be construed to authorize any actions inconsistent with the Clean Water Act. Additionally, Louisiana submitted to OSM Policy Statement No. PS-3, dated August 31, 1990, stating that "implementation of the Louisiana Surface Mining and Reclamation Act, and the Louisiana Surface Mining Regulations, shall in no way conflict with the Clean Water Act, and that Louisiana shall enforce its regulations in compliance with the Clean Water Act" (administrative record No. LA-308). The Director is approving this policy statement as part of the Louisiana permanent program (see finding No. 13(c)).

4. State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation Comments (ACHP)

30 CFR 732.17(h)(4) requires that all amendments that may have an effect on historic properties be provided to the SHPO and ACHP for comment. By letters dated February 8, 1990, comments were solicited from these offices (administrative record No. LA-297). No comments were received from the SHPO or ACHP.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and with additional requirements, the proposed amendment submitted to OSM by Louisiana on January 19, 1990, and revised on August 14 and September 7, 1990.

The exceptions are (1) LSMR 107.G, termination of jurisdiction; (2) LSMR 53123.A.4, sample adequacy for cover, production, and/or woody plant densities; (3) 53123.B.9, ground cover for undeveloped land; (4) LSMR 53125.C, success standards on mined lands reclaimed for wildlife management, recreation, and shelterbelts; (5) LSMR 53125.C.3.b, evaluation of diversity, seasonality, and regenerative capacity on reclaimed areas of mined lands where woody plants are used for wildlife management, recreation, shelterbelts, or forest uses other than commercial forest land; and (6) LSMR 6301.E, abandoned sites.

As discussed in finding No. 3(b), the Director is not approving but is deferring his decision on LSMR 107.G, termination of jurisdiction.

As discussed in finding No. 11, the Director has determined that proposed LSMR 6301.E is less stringent than SMCRA. He is not approving it.

As discussed in finding Nos. 10 (b), (h), (j), and (k), the Director has determined that proposed LSMR 53123.A.4, 53123.B.9, 53125.C, and 53125.C.3.b are less effective than the Federal regulations and/or less stringent than SMCRA. He is not approving them and he is requiring further regulatory program amendments.

In addition, as discussed in findings Nos. 4, and 10 (a), (d), (e), and (f), the Director is requiring that Louisiana amend (1) LSMR 2523, determination of probable hydrologic consequences; (2) LSMR 53123.A.1, 2, and 3, statistically valid sampling techniques for estimating ground cover, productivity, and live stems per acre; (3) LSMR 53123.B.1.b and

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c, 53123.B.2.b and c, and 53123.B.3.b and c, use of productivity and ground cover success standards on pasture land, grazing land, and cropland; (4) LSMR 53123.B.2.a, use of weighted average comparisons for reference areas to determine the revegetation success on grazing land; and (5) LSMR 53125.B.3, statistically valid sampling techniques for the determination of success of stocking and ground cover on commercial forest lands.

The Director is also, as explained in finding Nos. 12 and 13, (1) approving the policy statements, Nos. PS–1, 2, and 3, regarding blasters certification, improvidently issued permits, and the Clean Water Act, as part of the approved permanent program, (2) removing the required amendments at 30 CFR 918.16(a) (1) and (2) regarding blaster certification, and (3) removing the affirmative disapprovals at 30 CFR 918.16(b)(1)–(31).

Except as noted, the Director is approving the proposed rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public. However, the Director reserves the right to require further changes to these rules in the future as a result of Federal regulatory revisions, court decision, and OSM's continuing oversight of the Louisiana program.

The Federal regulations at 30 CFR 918 which codify all decisions concerning the Louisiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency between State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that alteration of an approved program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Louisiana program, the Director will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Louisiana of only such provisions.

VI. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, the action this notice describes is exempt both from regulatory review by OMB and from the requirement to prepare a regulatory impact analysis.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities, nor will it impose any new requirements; rather, the rule will ensure that existing requirements established by SMCRA and its implementing Federal regulations will be met by the State of Louisiana.

3. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 29, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations, is amended as set forth below:

PART 918—LOUISIANA

1. The authority citation for part 918 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 918.10 is revised to read as follows:

§ 918.10 State regulatory program approval.

The Louisiana permanent regulatory program, as submitted on January 3, 1980, and resubmitted on September 4, 1980, is approved effective October 10, 1980. Copies of the approved program are available at:

(a) Department of Natural Resources, Office of Conservation, 625 N. 4th Street, Baton Rouge, Louisiana 70804, Telephone: (504) 342–5515.

(b) Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 500 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581–6430.

3. Section 918.15 is added to read as follows:

§ 918.15 Approval of amendments to State regulatory program.

With the exceptions of Louisiana Surface Mining Regulations (LSMR) 107.G, termination of jurisdiction; 53123.A.4, sample adequacy for cover, production, and/or woody plant densities; 53123.B.9, ground cover for undeveloped land; 53125.C, success standards on mined lands reclaimed for wildlife management, recreation, and shelterbelts; 53125.C.3.b, evaluation of diversity, seasonality, and regenerative capacity on reclaimed areas of mined lands where woody plants are used for wildlife management, recreation, shelterbelts, or forest uses other than commercial forest land; and 6301.E, abandoned sites; revisions to the following chapters of LSMR submitted to OSM on January 19, 1990, as revised by Louisiana on August 14 and September 7, 1990, are approved May 8, 1991:

(a) Chapter 1, general—definitions; Chapter 11, areas where mining is prohibited or limited; Chapters 13 and 15, areas designated unsuitable for surface coal mining; Chapters 17 and 19, requirements for permit applications; Chapter 21, requirements for coal exploration; Chapter 23, requirements for legal, financial, and compliance information; Chapter 25, requirements for information on environmental resources; Chapter 27, requirements for reclamation and operations plans; Chapter 29, requirements for permits for special categories of mining; Chapter 31, public participation, approval of applications, and permit terms and conditions; Chapter 35, permit revisions, renewals, and transfer, sale, and assignment of permit rights; Chapter 37, small operator assistance; Chapters 39, 41, 43, 45, and 47, bonding and insurance requirements; Chapters 51, 53, 55, and 59, permanent program performance standards; Chapter 63, inspections; Chapter 65, enforcement; and Chapter 69, civil penalties.

(b) In addition the policy statements, PS–1, PS–2, and PS–3, submitted by Louisiana on August 14, 1990, as part of its January 19, 1990, amendment regarding, respectively, blasters certification requirements at LSMR 5353.C, violations review criteria for improvidently issued permits at LSMR 3127, and enforcement of water quality standards at LSMR 5321, are approved as part of the Louisiana permanent program.

4. Section 918.16 is amended by revising paragraph (a) and adding new paragraphs (b) through (i) to read as follows:

§ 918.16 Required program amendments.

* * * * *

(a) By September 5, 1991, Louisiana must submit as a program amendment a policy statement interpreting LSMR 2523 regarding "spatial" or "temporal" determinations of probable hydrologic consequences.

(b) By September 5, 1991, Louisiana must submit as a program amendment detailed descriptions of the statistically valid sampling techniques it proposes for estimating ground cover, productivity, and live stems per acre at LSMR 53123.A. 1, 2, and 3.

(c) By September 5, 1991, Louisiana must submit as a program amendment:

(1) Removal of the statement "[m]aximum sample size shall be 30" and

(2) Clarification that sample adequacy must be met for ground cover, productivity, and/or woody plant densities at LSMR 53123.A.4.

(d) By September 5, 1991, Louisiana must submit as a program amendment the technical documents and historical records it would allow for determining the success of ground cover and productivity on mined lands reclaimed for pasture land, grazing land, and cropland at LSMR 53123.B.1. b and c, 53123.B.2. b and c, and 53123.B.3. b and c.

(e) By September 5, 1991, Louisiana must submit as a program amendment a detailed description of what is meant by "weighted average comparisons" when using reference areas to determine the success of revegetation on mined lands reclaimed for grazing land at LSMR 53123.B.2.a.

(f) By September 5, 1991, Louisiana must submit as a program amendment a detailed description of the statistically valid sampling techniques it would allow for the determination of the success of stocking and ground cover on mined lands reclaimed for commercial forest land at LSMR 53125.B.3.

(g) By September 5, 1991, Louisiana must submit as a program amendment removal of the performance standard for vegetative ground cover on undeveloped land at LSMR 53123.B.9.

(h) By September 5, 1991, Louisiana must submit as a program amendment the requirement for permit-specific consultation with and approval by the Louisiana Department of Wildlife and Fisheries prior to use of the performance standards at LSMR 53125.C on mined lands reclaimed for wildlife management, recreation, shelterbelts, and forest uses other than commercial forest land.

(i) By September 5, 1991, Louisiana must submit as a program amendment:

(1) Removal of the phrase "on the basis of results which could reasonably be expected" and

(2) A description of the means by which it will evaluate diversity, seasonality, and regenerative capacity on reclaimed areas of mined lands where woody plants are used for wildlife management, recreation, shelterbelts, or forest uses other than commercial forest land at LSMR 53125.C.3.b.

[FR Doc. 91–10673 Filed 5–7–91; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 925

Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its approval, with certain exceptions and additional requirements, of proposed amendments to the Missouri permanent regulatory program (hereinafter referred to as the Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments, which pertain to Missouri's bonding program, are intended to revise the State program to be consistent with the corresponding Federal regulations and restore the solvency of the State's alternative bonding system.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte Street, room 500, Kansas City, Missouri 64105; Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1980, the Secretary of the Interior conditionally approved the Missouri program. The Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the November 21, 1980, Federal Register (45 FR 77017). Actions taken subsequent to approval are found in 30 CFR 925.10, 925.12, 925.15, and 925.16.

II. Submission of Amendments

OSM has reviewed the proposed amendments submitted by Missouri that address its bonding program. They include submittals of March 18, 1988 (Administrative Record No. MO–371), July 8, 1988 (Administrative Record No. MO–388), and January 12, 1989 (Administrative Record No. MO–410). The submittals are in response to 30 CFR part 732 notifications from the Director to the State dated June 11, 1988, and January 30, 1988 (Administrative Record Nos. MO–295 and MO–351). To provide clarity and continuity to the review and decision process, the Director is combining these proposed statutory and regulatory changes all of which concern bonding, into one rulemaking.

The Missouri statute and regulations addressed in each of the three proposed amendments and OSM actions taken are as follows:

The March 18, 1988, submittal proposed revisions to 10 CSR 40–7.011(2)(D), Amount of Bond per Permitted Areas; 10 CSR 40–7.011(2)(E), Amount of Bond on Coal Preparation Areas; and 10 CSR 40–7.011(2)(F), Minimum Bond for a Single Mine. OSM announced receipt of this proposed amendment in the May 3, 1988, Federal Register (53 FR 15702) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on the amendment's substantive adequacy. The comment period closed June 2, 1988. No public hearing was requested or held. By letter dated August 18, 1989, OSM notified Missouri of concerns it had with regard to its proposed regulation at 10 CSR 40–7.011(2)(F), that placed a $10,000 bond minimum for each individual operation rather than each individual permit. Missouri responded to OSM's concern by letter dated August 30, 1988, and informed OSM that it would address the concern in a future rulemaking (Administrative Record No. MO–470).

The July 8, 1988, submittal proposed revisions to the Revised Statutes of Missouri (RSMo) at section 444.805, Definitions; section 444.830, General

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Bonding Requirements; section 444.950.1, Phase I Reclamation Bond; section 444.960.1, Establishment of the Land Reclamation Fund; and section 444.985.1, Fee Assessment of the Land Reclamation Fund. OSM announced receipt of the proposed amendment in the August 12, 1988, Federal Register (53 FR 30449) and in the same notice opened the public comment period and provided an opportunity for a public hearing on the amendment's substantive adequacy. The comment period closed on September 12, 1988. No public hearing was requested or held. By letter dated November 29, 1988, OSM notified Missouri of concerns it had with regard to RSMo 444.805 and its definition of "Phase I reclamation" (Administrative Record No. MO-427). By letter dated December 30, 1988, Missouri replied to OSM's concern by stating its position that the Phase I reclamation definition was as stringent as SMCRA (Administrative Record No. MO-411).

The January 12, 1989, submittal proposed revisions to the Missouri regulations at 10 CSR 40-7.011, Bond Requirements; 10 CSR 40-7.021, Duration and Release of Reclamation Liability; 10 CSR 40-7.031, Permit Suspension or Revocation, Bond Forfeiture, and Authorization to Expend Reclamation Fund Monies; and, 10 CSR 40-7.041, Form and Administration of the Coal Mine Land Reclamation (CMLR) Fund. OSM announced receipt of the proposed amendment in the February 10, 1989, Federal Register (54 FR 6423), and in the same notice, opened the public comment period and provided an opportunity for a public hearing on the amendment's substantive adequacy. The comment period closed on March 13, 1989. No public hearing was requested or held. On June 5, 1989, OSM notified Missouri of concerns it had with regard to proposed regulations at 10 CSR 40-7.011(5), Self Bonding; 10 CSR 40-7.021(2) (A) and (B), Criteria and Schedule for Release of Reclamation Liability; and, 10 CSR 40-7, the General Bonding Program (Administrative Record No. MO-441).

By letter dated July 19, 1989, Missouri provided an overall explanation of its bonding program and also offered to meet with OSM to explain its program in detail (Administrative Record No. MO-448). This resulted in an October 5, 1989, public meeting held at the OSM office in Denver, Colorado. The meeting discussions are recorded in an October 26, 1989, letter to Missouri (Administrative Record No. MO-460). Missouri responded to questions raised at that meeting by letter dated November 9, 1989 (Administrative Record No. MO-447). OSM announced receipt of the material and reopened the public comment period until April 6, 1990 (55 FR 10632, March 22, 1990). No public hearing was requested or held.

OSM then identified additional concerns relating to the fixed rate Phase I bond amounts, the past bond forfeiture reclamation responsibility, and the CMLR Fund solvency. These concerns were conveyed to Missouri by OSM in a letter dated July 3, 1990 (Administrative Record No. MO-499). At Missouri's request, OSM held a public meeting on August 7, 1990, to allow Missouri to respond to the concerns (Administrative Record No. MO-512). OSM then published a notice in the August 23, 1990, Federal Register (55 FR 34578) inviting public comment on the additional information provided by Missouri at the meeting. The public comment period closed on September 7, 1990. No public comments were received.

III. Director's Findings

In accordance with SMCRA and 30 CFR 732.15 and 732.17, the Director finds that, with the exception of the provisions discussed below, the proposed bonding provisions contained in the amendments submitted by Missouri on March 18, 1988, July 8, 1988, and January 12, 1989, can meet the requirements of SMCRA and 30 CFR chapter VII.

A. General Findings

The Director approved an alternative bonding program for the State of Missouri in the May 8, 1984, Federal Register (49 FR 19468). As a condition of that approval and as part of OSM's oversight of the Missouri program, the Director required that Missouri provide periodic reports, not less than annually, to evaluate the adequacy of the CMLR Fund. This was to insure that sufficient resources were available to complete the reclamation plan for any areas that might be in default on reclamation obligations at any time pursuant to requirements of the Federal regulations at 30 CFR 800.11(e)(1).

In conjunction with the above, the Director encouraged and expected Missouri, pursuant to RSMo 444.830 and the Missouri Code of State Regulations (CSR) at 10 CSR 40-7.010(8), to review the program frequently and make any adjustments as necessary to assure adequacy of the Fund, May 8, 1984, Federal Register (49 FR 19468, 19470).

In its October 30, 1985, CMLR Fund evaluation report, Missouri notified OSM that the reclamation costs for mines that had failed in the State as well as costs for anticipated failures in the near future, would exceed the resources of the Fund, assuming reclamation were to be accomplished in a timely manner (Administrative Record No. MO-352).

On January 30, 1986, on the basis of that report, and pursuant to 30 CFR 732.17(e), OSM notified Missouri that it must: (1) Address the adequacy of the alternative bonding system (ABS), and (2) outline plans to reclaim the backlog of forfeiture sites (Administrative Record No. MO-351). OSM's letter indicated that Missouri no longer met the requirement of 30 CFR 800.11(e)(1) that each ABS "assure that the regulatory authority will have sufficient resources to complete the reclamation plan for any areas which may be in default at any time."

Missouri subsequently initiated a review and evaluation of its bonding program. The proposed State program changes evaluated in this finding document represent Missouri's actions resulting from that review. In addition to the proposed amendments being acted upon herein, Missouri has previously submitted amendments that were in partial response to OSM's January 30, 1986, letter. They are as follows:

Missouri enacted statutory and regulatory changes that increased the required Phase I performance bond amount from $500 per acre to $2,500 per acre and increased the ceiling of the CMLR Fund from $3 million to $7 million. OSM approved this amendment as an adequate partial response to its January 30, 1986, letter in the February 26, 1988, Federal Register (53 FR 5766).

Missouri then enacted additional changes that increased the performance bonding amount from $2,500 per acre to $10,000 per acre for coal preparation areas. OSM approved this amendment as an adequate partial response to its January 30, 1986, letter in the October 31, 1988, Federal Register (53 FR 43866).

The proposed amendments now before OSM provide additional modifications to the Missouri program and represent a major redrafting of Missouri's bonding statutes and regulations. As now proposed, Missouri's statutes and regulations would offer a permittee the option of either posting a full-cost conventional bond or participating in the ABS. The ABS would require a permittee to provide a conventional bond of $2,500 per permitted acre (referred to as a Phase I reclamation bond) to guarantee satisfactory completion of Phase I reclamation. In addition, the permittee would have to pay an assessment based on coal tonnage production, into the CMLR Fund. The Fund would serve as the bonding mechanism for Phase II and III reclamation liabilities.

Missouri is also proposing changes to its bonding program that would involve modification of the CMLR Fund (1) to provide money to cover only part of the cost of reclaiming sites that were in bond forfeiture prior to September 1, 1988; (2) to increase the future CMLR Fund balance; (3) to impose special bonding requirements for operators of small mines; and (4) to provide additional mechanisms and requirements for self-bonding.

As previously noted, the proposals being addressed in this notice combine several amendment submittals that Missouri provided in response to OSM's January 30, 1986, letter sent pursuant to 30 CFR 732.17(e). In this rulemaking notice, the Director has identified numerous concerns that still exist with Missouri's ABS and its ability to continue to operate in an administratively effective and solvent manner consistent with the Federal requirement at 30 CFR 800.11(e).

Under the Federal regulation at 30 CFR 800.11(e), an ABS must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time. The ABS must meet these requirements at all times. A proposed ABS or a proposed amendment to an ABS may initially appear sound, logical and capable of meeting the requirements of 30 CFR 800.11(e) and fulfilling the objectives and purposes of section 509 of SMCRA. However, in practice, the ABS may not perform as initially assumed for a variety of reasons. Yet its obligations remain under 30 CFR 800.11(e). The Missouri ABS has experienced an unexpectedly large default. The issue before the Director is whether the new proposed income provisions, structure and coverage meets and will continue to meet the requirements of 30 CFR 800.11(e).

Under 30 CFR 732.16, the Director may establish terms or conditions for the implementation, administration and operation of a State program. As a result, the Director has decided to approve only parts of Missouri's proposed revisions to its ABS, and then only with certain conditions intended to assure that the revisions meet the regulatory requirements of 30 CFR 800.11(e) in generating sufficient income in a timely manner to reclaim any defaulted acreage. In responding to these conditions and required amendments, Missouri needs to consider the factors identified in OSM's November 1990 study on alternative bonding systems entitled "An Analytical Approach and Identified Factors to Consider for Evaluating Alternative Bonding Systems."

B. Findings on Statutory Amendments

1. RSMo 444.805—Definitions

Missouri proposes to recodify this section, delete the definition of "pit reclamation", and add three new definitions: "full-cost bond," "Phase I reclamation" and "Phase I reclamation bond."

(a) *Full-Cost Bonds.* Missouri would define "full-cost bond" at subsection (9) to mean:

> A bond for performance filed by a permittee pursuant to section 444.830 payable to the [Land Reclamation] commission [LRC] and conditional upon faithful performance of all the requirements of this law and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. The amount of the bond required shall depend upon the reclamation requirements of the approved permit, shall reflect the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology and revegetation potential and shall be determined by the [LRC]. The amount of bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the [LRC] in the event of forfeiture.

The requirements of this definition are substantively identical to those at section 509(a) of SMCRA pertaining to performance bonds. While Missouri elected to use "full-cost bond," instead of "performance bond," the Director finds that Missouri's definition of the term "full-cost bond" is no less stringent than the requirements of SMCRA for performance bonds at section 509(a). The Director is therefore approving Missouri's proposed definition.

(b) *Pit Reclamation/Phase I Reclamation.* Missouri proposes to delete the term "pit reclamation" previously defined at subsection (12), as this term is no longer used in the revised statute. The State would replace this term with the new term "Phase I reclamation" at subsection (15), which is defined as "the filling and grading of all areas disturbed in the conduct of surface coal mining operations, including the replacement of topsoil and initial seeding." SMCRA does not provide a definition for "Phase I reclamation," however, section 519(c) provides a three-step bond release schedule. The first step requires the operator to complete the backfilling, regrading, and drainage control in accordance with the approved reclamation plan. The Federal regulation that implements this SMCRA provision is 30 CFR 800.40(c)(1). In that regulation, the term "Phase I reclamation" is used to describe the completion of backfilling, regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan. Missouri's proposed definition of Phase I reclamation differs from the Federal standard in that it would require the replacement of topsoil (this is optional, in the Federal definition), but would not provide for a drainage control requirement.

In a letter dated November 29, 1988, (Administrative Record No. MO-427), OSM notified Missouri of its concern that Missouri's definition of Phase I reclamation did not include drainage control requirements. Missouri's reply to this letter on December 30, 1988 (Administrative Record No. MO-411), included a discussion in support of its omission of the requirement. The State contended that the following provisions of its regulations would assure that drainage control would be in place prior to Phase I bond release: (1) 10 CSR 40-3.040(2)(A) 1 and 5 requiring that sediment ponds and other treatment facilities be established prior to disturbance and maintained until the disturbed area has been restored and revegetation requirements have been met; (2) 10 CSR 40-7.021(2)(A) 1 and 10 CSR 40-7.021(2)(C) that prohibits Phase I or II bond release for temporary structures such as sedimentation ponds and diversions; and (3) 10 CSR 40-7.021(2)(B) requiring that vegetation be sufficient to control erosion or sediment to obtain a Phase II bond release. While the above State regulations assure sedimentation control aspects of "drainage control," they do not address other drainage control elements such as restoration of the area to approximate original contour with reconstructed drainage on the reclaimed area that is designed for stability and erosion control. The term "drainage control" implies an all inclusive requirement that such control must be in place prior to Phase I bond release. The Director finds that without the requirement for "drainage control" as a Phase I bond release criteria, the Missouri program is less stringent than the Federal program requirements.

In an October 10, 1990, submittal to OSM, Missouri has proposed changes to its regulations that address this issue. The Director is therefore deferring his decision on this issue to that future rulemaking action.

(c) *Phase I Reclamation Bond.* At newly codified subsection (19), Missouri

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defines the new term "Phase I reclamation bond" to mean "a bond for performance filed by a permittee pursuant to RSMo 444.960 that may be released upon the successful completion of phase I reclamation of a permit area in accordance with the approved reclamation plan." There is no Federal counterpart to Missouri's proposed definition. However, since the Federal regulations at 30 CFR 800.13(a)(2) authorize regulatory authorities to accept phased bonding, the Director finds that this definition is not inconsistent with Federal program requirements. Therefore, the Director is approving Missouri's proposed definition.

2. RSMo 444.830—Bonding Requirements

At section 444.830.1, Missouri proposes to allow an applicant the option of (1) filing a full-cost bond and paying a one-time assessment to the CMLR Fund (the one-time assessment would only be required until September 1, 1993; after this date, permittees filing full-cost bonds would be exempt from any payments to the CMLR Fund), or (2) filing a Phase I bond and complying with the Fund assessment requirements under the ABS. Section 509(c) of SMCRA allows a State flexibility, upon the approval of the Secretary, to adopt an ABS, provided the alternative system will achieve the objectives and purposes of the bonding program pursuant to section 509 of SMCRA. SMCRA does allow both full-cost bond and an ABS; however, the Missouri proposal initially requires a mandatory participation in the ABS unless an applicant who chooses the full-cost bond contributes money to the ABS until September 1, 1993. After that date a nonrestrictive option with regard to participation in one of the two systems would be allowed. Such an option can be approved only if the ABS is demonstrated to be sufficiently solvent in accordance with the implementing Federal regulations for approving an ABS at 30 CFR 800.11(e). The State of Missouri has not made this demonstration. Therefore the Director is not approving the proposed nonmandatory participation option at section 444.830.1 concerning full-cost bond versus the ABS and is requiring Missouri to amend its program to remove this provision or to make a demonstration that the ABS will be solvent consistent with the requirements of 30 CFR 800.11(e).

3. RSMo 444.960—Phase I Reclamation Alternative Bond

(a) *General.* At section 444.950.1, Missouri is replacing the concept of pit reclamation with Phase I reclamation (as discussed in Finding B.1.(b) of this notice) and is proposing to revise this section accordingly to set forth the requirements for filing a Phase I bond. Missouri proposes to set a fixed Phase I bond amount of $2,500 per permitted acre, except that the bond amount would be $10,000 per acre for coal preparation areas. In no case would the Phase I reclamation bond be less than $10,000 per permitted surface coal mine operation. In addition those operations with less than 1,000 bonded acres would be required to post a minimum bond amount equivalent to 20 acres of Phase I bond ($50,000) for each acre of open pit. Missouri would define an open pit as the area between the crest of the highwall to the toe of the spoil.

OSM previously approved the $2,500 per acre Phase I bond amount in the February 26, 1988, Federal Register (53 FR 5766), and the $10,000 per acre bond requirement for coal preparation areas in the October 31, 1988, Federal Register (53 FR 43866). Both approvals were considered to be adequate partial responses to OSM's January 30, 1986, 30 CFR part 732 notification to Missouri. At the time of OSM's approvals of the $2,500 and $10,000 bond amounts, the Phase I bonds were supplemented by the CMLR Fund to assure completed reclamation; that is, if the bond amounts were inadequate to complete Phase I reclamation, Missouri could use money from the CMLR Fund to complete required reclamation.

The proposed amendment now before OSM would separate the CMLR Fund from the Phase I reclamation obligations, that is, the Phase I reclamation obligation are distinct and act as a conventional bonding system. Therefore, should the forfeited Phase I bond amounts prove insufficient to cover reclamation costs, no other funds nor the CMLR Fund would be available to complete the remaining Phase I reclamation liability. The new Missouri scheme proposes to set a flat bonding rate of $2,500 per permitted acre ($10,000 per acre for coal preparation areas) to cover Phase I reclamation liability.

With Missouri's introduction of the full-cost bond option and other modifications to its bonding program in the amendments now before OSM, the Director is revisiting the previous approval actions in order to insure that Missouri's program, when considered as a whole, will meet the criteria set forth in the implementing Federal regulations at 30 CFR 800.11(e) for approval of an ABS.

(i) $2,500 Fixed Rate Phase I Reclamation Bond Amount. The Federal regulations at 30 CFR 800.11 implement the authority given the Secretary to approve an ABS per section 509(c) of SMCRA. 30 CFR 800.11(e)(1) requires that the regulatory authority have available sufficient money to complete the reclamation plan for any area which may be in default at any time. Missouri did not provide any documentation to support a $2,500 fixed rate bond as being adequate to complete Phase I reclamation liabilities. Therefore, OSM conducted an analysis to determine whether, in the event of bond forfeiture, the Phase I reclamation plan could be achieved. The analysis demonstrated that the $2,500 per acre Phase I reclamation bond would not be sufficient to reclaim all sites under all forfeiture scenarios, particularly for operations of 100 or more acres with mining at overburden depths of 60 feet or greater (Administrative Record No. MO-499). A fixed rate also would not provide the State the necessary flexibility to adjust for changes in the cost of future reclamation, a component essential to ensure the Fund's solvency and hence its ability to meet the criteria of 30 CFR 800.11(e).

Missouri's statute would prohibit the expenditure of CMLR Fund money for any aspect of the proposed alternative bonding system's Phase I reclamation liability. This means that to achieve the objectives and purposes of the bonding program as required by section 509(c) of SMCRA, an operator's Phase I reclamation bond has to be sufficient to cover all required Phase I reclamation costs since there is no other source of funds to do so. To the extent that Missouri did not demonstrate and OSM did not find (1) that the separation of the liability of the CMLR Fund from the Phase I bonded areas would provide sufficient reclamation money to satisfy the requirements of 30 CFR 800.11(e), (2) that a fixed-rate Phase I reclamation bond of $2,500 per acre is sufficient to reclaim all bond forfeiture scenarios, and (3) that the State does not have the necessary flexibility to adjust the bond amount in the event that the cost of reclamation changes, the Director finds that Missouri's proposed changes are not in accordance with the requirements of section 509 of SMCRA. For these reasons, the Director is not approving the proposed language and is requiring Missouri to amend its program to provide that: (1) The amount of Phase I reclamation bond is sufficient to assure completion of the reclamation plan if the work has to be performed by the regulatory authority in the event of forfeiture; and (2) the amount of the Phase I reclamation bond can be adjusted from time to time as the cost of reclamation changes.

(ii) $10,000 Fixed Rate Coal Preparation Area Bond. Since the October 31, 1988, approval of Missouri's $10,000 per acre bond requirement for coal preparation areas, Missouri has reclaimed various preparation plant sites through its abandoned mine land reclamation program. Reclamation costs for these sites have averaged $13,000 per acre, with a range of $7,300 to $24,000 per acre. These data demonstrate that, since the CMLR funds cannot be used for Phase I reclamation, Missouri's fixed bond rate of $10,000 per acre for coal preparation areas is not sufficient to cover the cost of reclamation in every case of bond forfeiture (Administrative Record No. MO-499). Accordingly, the Director finds that, for the reasons set forth in the previous finding, Missouri's proposed changes are not in accordance with the Federal regulations at 30 CFR 800.11(e)(1) that an ABS ensure that the regulatory authority will have available sufficient money to complete the reclamation plan for any area which may be in default at any time. Therefore, the Director is not approving Missouri's proposed $10,000 per acre coal preparation area bond and is requiring Missouri to amend its program to assure that sufficient bond will be available to complete the required reclamation on coal preparation areas in the event of bond forfeiture.

(iii) Open Pit Bond. Missouri proposes an exception to the $10,000 minimum bonding requirement for those operations with less than 1,000 bonded acres by proposing that the minimum bond on such operations be the equivalent of 20 acres of Phase I bond at $2,500 per acre for each acre of open pit as determined by the approved mining plan (or stated differently, $50,000 per acre for each acre of open pit). An open pit would be the area between the crest of the highwall and the toe of the spoil. Missouri did not provide any documentation to demonstrate that the open pit bond would be adequate. OSM has determined that in some cases this open pit minimum bond would be adequate to assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any area which may be in default at any time under the requirement of 30 CFR 800.11(e)(1). However, OSM has been unsuccessful in determining that Missouri's proposed open pit minimum bond would be sufficient to assure the completion of the reclamation plan in all cases. For example, OSM determined that while the bond is based on the number of open pit acres identified in the approved mining plan, there is no definite relationship between the number of open pit acres and the acres of land actually disturbed or the actual costs of reclamation. Accordingly, a predetermined open pit bond amount may often not be sufficient to assure funding of the required reclamation work. Further, the size of the open pit is a flexible aspect of the mining plan and the actual on-the-ground operation. Because of this flexibility, the total amount of bond posted for an operation could constantly be in flux, making it uncertain how the required amount of bond would be determined and whether the actual amount of available bond money would be sufficient to cover actual reclamation costs. Therefore, Missouri's proposed open pit minimum bond does not assure that sufficient bond money would be available to complete the required reclamation in the event of bond forfeiture. The Director finds that Missouri's proposal is not in accordance with section 509 of SMCRA and is not approving the proposed requirement. Accordingly, the Director is requiring Missouri to: (1) Demonstrate that its open pit minimum bond will be sufficient to assure the completion of the required Phase I reclamation; or (2) amend its program to provide an amount that assures Phase I reclamation requirements can be met.

(b) *Liability Period.* At section 444.950.2, Missouri proposes language that would require the Phase I reclamation bond to be executed by the operator and a corporate surety licensed to do business in the State, and also would allow the operator the option to deposit cash, irrevocable letters of credit, negotiable bonds of the United States Government or of the State of Missouri, or negotiable certificates of deposit of any bank organized or transacting business in the United States, so long as the cash deposit or market value of such securities are equal to or greater than the amount of the required bond. Under Missouri's proposed ABS, the operator's responsibility for bond coverage is limited to Phase I reclamation only. At section 444.950.4, Missouri would require that liability under the proposed Phase I reclamation bond continue until the LRC determines that Phase I reclamation has been completed. The proposed CMLR Fund is established to provide for the reclamation bond coverage of only Phases II and III. While the operator is not directly responsible for total bond coverage, the combination of the Phase I bond and the CMLR Fund's coverage of Phases II and III reclamation does insure that a bond liability will exist for the duration of mining, reclamation and revegetation.

Therefore, the Director finds that Missouri's proposed requirements at RSMo 444.950.2 requiring the operator to post a Phase I bond in combination with the bonding liabilities of the CMLR Fund, is not inconsistent with the objectives and purposes of section 509(b) of SMCRA or the requirement of 30 CFR 800.11(e)(1) that the regulatory authority have available sufficient money to complete the reclamation plan for any areas which may be in default at any time. Therefore, the Director is approving Missouri's proposed combination bond liability between the operators Phase I reclamation bond and the CMLR Fund bond liability pending a showing by Missouri that the proposed Phase I reclamation bonding amounts assure adequate bond coverage for the Phase I reclamation and that the CMLR Fund meets the requirements of 30 CFR 800.11(e) and is maintained to cover the potential liability of the Phase II and III reclamation cost as discussed in other parts of this notice.

(c) *Self-Bonding.* At section 444.950.3, Missouri proposes to allow its LRC to accept the bond of an applicant without separate surety when the applicant demonstrates to the satisfaction of the LRC the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient to self insure or bond the required amount. Missouri's proposed language is substantively identical to the Federal counterpart in section 509(c) of SMCRA. However, before Missouri can implement the self-bonding statutory provisions it must submit and obtain OSM approval of counterpart self-bonding requirements to the Federal regulations at 30 CFR 800.23. Missouri has provided these proposed regulations at 10 CSR 40-7.011(5)(D). They are discussed at finding C.1.(e)(iii) of this notice. With the exception for the need of several further amendment actions, the Director finds that Missouri's proposed self-bonding regulations as proposed are no less effective than the Federal regulation requirements on self-bonding. Therefore, the Director finds that Missouri's proposed statutory requirements proposed here, in combination with its proposed self-bonding regulations, are no less stringent than and no less effective than the applicable Federal requirements. Accordingly, the Director is approving Missouri's proposed self-bonding requirements at RSMo 444.950.3.

(d) *Bond Alternatives.* Within this same statutory section, at 444.950.3,

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Missouri also provides that, in lieu of the establishment of a bonding program as set forth in section 444.960, the LRC may adopt an alternative system that will achieve the objectives and purposes of the bonding program pursuant to section 444.960. Section 509(c) of SMCRA provides (in part) that, in lieu of the establishment of a bonding program as set forth in section 509, the Secretary may approve, as part of a State program, an alternative system that will achieve the objectives and purposes of the bonding program pursuant to section 509 of SMCRA. As proposed, the Missouri statute does not require that the LRC obtain the Secretary's approval before adopting an alternative bonding system.

Since section 509(c) of SMCRA reserves the authority for approval of such systems to the Secretary, the Director is not approving this provision of the Missouri statute to the extent that it could be interpreted as allowing the State to adopt such systems without prior Secretarial approval. The Director is requiring that the State either delete this provision and an identical one at RSMo 444.830.3 or modify both to require Secretarial approval.

(e) *Miscellaneous.* At section 444.950.4, Missouri proposes to replace the terms "bond" and "pit reclamation," with "Phase I reclamation bond" and "Phase I reclamation" respectively. Since these proposed changes provide internal consistency in the Missouri statute, the Director is approving them subject to Missouri demonstrating that its ABS will met the requirements of 30 CFR 800.11(e).

4. RSMo 444.960—Coal Mine Land Reclamation Fund

(a) *Establishment of the Coal Mine Land Reclamation Fund—General.* At section 444.960.1, Missouri proposes to establish the Coal Mine Land Reclamation Fund (CMLR Fund) as a part of its ABS. At section 444.960.5, Missouri proposes that after September 1, 1988, all moneys paid into the CMLR Fund be allocated so that 40 percent of the assessments would be used for reclaiming permits revoked by the LRC prior to September 1, 1988 (Fund A), and 60 percent of the assessments would apply to reclamation of permits revoked by the LRC after September 1, 1988 (Fund B). Moneys that existed in the CMLR Fund as of September 1, 1988, would be allocated to Fund A. All moneys assessed after September 1, 1993, would be allocated to Fund B. Fund A moneys would be used on any aspect of reclamation, while Fund B moneys would only be used for Phase II and III reclamation.

As previously discussed, in its October 30, 1985, CMLR Fund evaluation report, Missouri notified the Director that, assuming reclamation were to be accomplished in a timely manner, reclamation costs for mines that had failed in the State as well as costs for anticipated failures in the near future, would exceed the resources of the CMLR Fund. A total of seven failed mining operations resulted in permit revocation and bond forfeiture for some 3,154 acres. Of this acreage, only 793.4 acres have been reclaimed or rebonded, leaving a balance of 2,360.6 forfeited and unreclaimed acres.

(i) Fund A. Missouri established Fund A in response to the Director's January 30, 1986, letter that required the State to outline plans to reclaim the backlog of forfeited sites. The proposed fee structure of Fund A would have the potential to add an estimated $400,000 toward the reclamation of these sites compared to the amount of funds generated by the current ABS. However, OSM analyses suggest that a shortfall ranging from approximately $550,000 to $2.5 million may still exist in assuring full and timely reclamation of the forfeited sites (Administrative Record Nos. MO–460 and MO–512).

Section 509(c) of SMCRA provides that "in lieu of the establishment of a bonding program, as set forth in this section, the Secretary may approve * * * an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section." As stated in section 509(a) of SMCRA, one of the key objectives and purposes of the bonding program is "to assure the completion of the reclamation plan if the work ha[s] to be performed by the regulatory authority in the event of forfeiture * * *." In furtherance of this objective, 30 CFR 800.11(e)(1) provides, in pertinent part, that OSM may approve an ABS if the alternative assures that "the regulatory authority will have available sufficient money to complete the reclamation plan for *any* areas which may be in default at *any* time" (emphasis added).

Reclamation liability under a bond pool must be continuous. The liability and obligation of an ABS does not disappear if the bond pool finds itself unable to meet its obligations as they mature, or its existing capital structure is impaired or its ability to perform any of its obligations is impaired. Additionally, existing liabilities of an impaired pool cannot be erased simply because proposed modifications to the pool will assure partial satisfaction of existing reclamation liabilities. Stated differently, if a bond pool comes up short of cash, the regulatory authority cannot and should not be able to simply "write off" any existing reclamation liabilities and then resume business as usual by proposed modifications to the previous ABS. This would be directly in conflict with the language of 30 CFR 800.11(e) and the purposes and objectives of section 509 of SMCRA, which provide that an ABS, must have available sufficient money to complete reclamation for any areas which may be in default at any time.

In Missouri's situation, even though Fund A has the potential to generate some $400,000 in additional monies, the Fund will still fall short in its ability to reclaim fully the seven forfeited sites. This is inconsistent with the requirements in 30 CFR 800.11(e). Therefore, the Director is not approving Missouri's proposed CMLR Fund system to the extent that it does not provide sufficient funding to adequately reclaim those sites for which it assumed reclamation responsibility prior to September 1, 1988. The Director is requiring Missouri to amend its program in a manner that will ensure sufficient funds are available to reclaim fully the defaulted acreage.

(ii) Fund B. To meet the requirements of 30 CFR 800.11(e) as discussed in the previous finding, Missouri's proposed CMLR Fund must be sufficient to cover Phase II and III reclamation liability. OSM has analyzed the ability of Fund B, as proposed by Missouri, to meet potential Phase II and III reclamation liabilities for the years 1989 through 2003. This study was based on the assumption that the same general level of operator participation and mining disturbance, as existed in the State through 1988, would continue and that Fund B would experience no further forfeitures. Additionally, based upon the assumption that, under conditions of bond forfeiture, the regulatory authority would not be required to assume the revegetation responsibility period specified in section 515(b) of SMCRA, no costs were assigned to Phase III reclamation. Based on the above assumptions, OSM's projections indicate that, by 1993, CMLR Fund B would be adequate to cover 35 percent of the Phase II reclamation liability, by 1998, 64 percent of the Phase II reclamation liability would be covered; and by 2003, 94 percent of the Phase II liability would be covered (Administrative Record No. MO–499). While the Director does not find the concept of Fund B, as proposed by Missouri, to be inconsistent with SMCRA, Missouri has not made a demonstration that the amount of funds is sufficient to comply with 30 CFR

800.11(e). Therefore the Director is not approving the separation of Fund B from Fund A and is requiring that Missouri demonstrate that the Fund's generation of monies will be adequate to reclaim all defaulted lands as discussed in Finding B.4.(a)(i) of this notice and that this separation of funds will not affect the solvency of the Missouri ABS.

(b) *CMLR Fund B Expenditures.* As previously mentioned, at section 444.960.5, Missouri proposes that moneys in Fund B may be utilized by the LRC for any aspect of reclamation except Phase I reclamation. However, at section 444.960.1, Missouri's approved statute states that moneys within the CMLR Fund (the entire Fund—not necessarily Fund B) will be used by the LRC to complete the reclamation plan for any permitted lands after the proceeds from any applicable performance bond for such reclamation have been exhausted. This would conceivably allow use of moneys in the CMLR Fund to complete Phase I, II, and III reclamation requirements. Missouri's proposed regulation at 10 CSR 40–7.041(4)(A) 2 reinforces the proposed statutory language at section 444.960.5 in that it limits Fund B use for reclamation of lands other than Phase I reclamation. Discussions between OSM and the State have verified that it is Missouri's intent not to allow Fund B moneys to be used for Phase I reclamation in the event of forfeiture. Therefore, the Director is requiring Missouri to amend its statutory language at section 444.960.1 to clarify, consistent with other changes that Missouri needs to make in response to the issues raised in this notice, how the CMLR Fund moneys will be spent, and the sufficiency of the Fund monies to meet 30 CFR 800.11(e).

5. RSMo 444.965—Payments into the CMLR Fund

(a) *Option to File a Full-Cost or Phase I Bond.* Missouri proposes to modify section 444.965.1 by setting September 1, 1988, as the date when permittees may either file a full-cost bond, or a Phase I reclamation bond. While the concept of optional participation in the alternative bonding system is not necessarily in conflict with SMCRA or implementing Federal regulations at 30 CFR 800.11(e), the Director is concerned that the change from mandatory to voluntary participation may have an adverse impact on the alternative bonding system's ability to meet all potential reclamation liability in the manner prescribed by the Federal regulations at 30 CFR 800.11(e)(1). In view of Missouri's traditionally small operator population (now less than a dozen operators), voluntary participation may prove catastrophic to the CMLR Fund's solvency. No analysis has been performed to determine the consequences of voluntary participation on Fund solvency or the adjustments necessary for the Fund to be maintained in a financially sound condition. The Federal regulation at 30 CFR 800.11(e)(1) requires that the regulatory authority have available sufficient money to complete the reclamation plan for any areas that may be in default at any time. Missouri has not demonstrated that this will be assured for its ABS if optional participation in the full-cost or Phase I reclamation bonding system is allowed. Therefore the Director is not approving the proposed non-mandatory participation option at section 444.965 concerning full-cost bond versus the ABS and is requiring Missouri amend its program to remove this provision or to make a demonstration that the ABS would be solvent consistent with the requirements at 30 CFR 800.11(e).

(b) *Initial CMLR Fund Assessment Rate.* Missouri proposes to modify section 444.965.2 to reflect new terminology, delete obsolete legislative reporting requirements and raise the assessment for the CMLR Fund from 30 cents to 45 cents per ton for the first 50,000 tons sold, shipped, or otherwise disposed of in a calendar year, and from 25 cents to 30 cents per ton for the next 50,000 tons sold, shipped or otherwise disposed of in such calendar year. The first two changes do not necessarily concern Federal program requirements and therefore are not inconsistent with Federal program requirements. While the third change would increase fees, thus assisting in restoring and maintaining Fund solvency, Missouri has not demonstrated any relationship to the funds generated by the fee increase with the actual or potential liability of the Fund. However, the proposed change is not inconsistent with section 509(c) of SMCRA or the Federal regulations at 30 CFR 800.11(e). The Director is therefore approving the mechanism for fee assessment proposed by Missouri with the condition that the State demonstrate that its proposed tonnage fee rates are sufficient to assure compliance with 30 CFR 800.11(e).

(c) *Buy-out Option.* At section 444.965.3, Missouri proposes to allow permittees to "buy-out" of the ABS between September 1, 1988, and September 1, 1993, provided that they file a full-cost bond as a replacement. Permittees who choose this option prior to September 1, 1993, would be required to pay a one-time assessment into the CMLR Fund. This assessment would be based on the permittee's projected annual coal production between September 1, 1988, and September 1, 1993 but could not exceed $125,000. After paying the one-time assessment, the permittee would not be liable for any additional assessments to the CMLR Fund unless the permittee thereafter elected to return to the ABS rather than filing a full-cost bond. If a permittee holding a Phase I bond after September 1, 1988, opts to file a full-cost replacement bond, any monthly assessment paid into the CMLR Fund between January 1, 1988, and the date of acceptance of the full-cost bond, would be credited as part of the one-time assessment. Permittees who file full-cost bonds after September 1, 1993, would be exempt from any assessments payable to the CMLR Fund. No comparable requirements are provided in either SMCRA or the Federal regulations with regard to the relationship between permittees filing full-cost bonds, and those participating in an ABS. Missouri is proposing a transition period in order to put in place its two-option bonding approach, as well as address the issue of cost liability to the CMLR Fund that resulted from prior bond forfeitures. At Finding B.4.(a), the Director determined that Missouri's CMLR Fund does have a continuing liability to reclaim sites forfeited in the past and is requiring Missouri to take appropriate action by modifying its program to ensure that those sites are fully reclaimed. As proposed, the two option bonding system and the uncertainties associated with Fund income do not provide assurance that the CMLR Fund will continue to be active and financially sufficient, since participation in it would be on a voluntary basis. Therefore there is no assurance that past bond forfeiture liabilities will be met. The Director is not approving the proposed non-mandatory participation option, at section 444.965.3 concerning the buy-out option from the ABS and is requiring Missouri to amend its program to remove this provision or to make a demonstration that past CMLR Fund liabilities will be resolved as required in Finding B.4.(a) of this notice, and that the Fund's financial solvency is and can be maintained on an actuarially sound basis to meet the requirements of 30 CFR 800.11(e).

(d) *CMLR Fund Ceiling.* At newly codified section 444.965.4, Missouri has modified existing language previously found at 444.965.2 to limit the applicability of the CMLR Fund assessment requirements to only those permittees that participate in the Phase I reclamation bond rather than all

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permittees as was previously required. Missouri proposes to require that,

"Whenever the total balance in the [CMLR] fund exceeds seven million dollars as of the close of the State's fiscal year, no assessments shall be required during the State's next fiscal year, except that each new permittee filing a phase I reclamation bond pursuant to section 444.950 shall pay assessments pursuant to section 444.960 and this section until the permittee's payments equal those made by an existing permittee of comparable size. Whenever the fund balance is less than seven million dollars at the close of the State's fiscal year, all permittees who have elected to file phase I reclamation bonds pursuant to section 444.950, shall pay assessments into the fund as provided for in subsection 2 of this section."

Missouri's proposed language adds clarity to the administration of its proposed ABS and from that standpoint, the Director finds that it is not inconsistent with the requirements of the Federal program. However, Missouri has not demonstrated a relationship between the potential reclamation liability to the $7 million CMLR Fund ceiling amount, and therefore it cannot be determined whether that ceiling figure would be sufficient to maintain the solvency of the CMLR Fund and meet the requirements of 30 CFR 800.11(e)(1). The Director is therefore approving the proposed language conditioned upon the State's demonstration that the CMLR Fund will be operated in an actuarially sound and financially solvent manner.

(e) *CMLR Fund Adjustment.* Proposed language at section 444.965.5 would require that after September 1, 1993, whenever the CMLR Fund balance falls below $7 million, the tonnage assessment provided for in section 444.965.2 would resume at the rate of 25 cents per ton for the first 50,000 tons and 15 cents per ton for the second 50,000 tons of coal sold, shipped, or otherwise disposed of in a calendar year until the Fund balance equals at least $7 million at the close of the State's fiscal year. The Director agrees that the State needs the ability to adjust the fee schedule for the CMLR Fund. However, the Director is concerned that the "trigger mechanism" proposed by Missouri may not be sufficiently prompt or financially sound. Missouri has not demonstrated that the amount of the tonnage fee has any relationship to meeting its liabilities of the Fund and its ability to meet 30 CFR 800.11(e). Missouri proposes to establish the trigger for this provision based upon a minimum balance tied to a specific date, i.e., if the CMLR Fund is below $7 million on September 1, 1993, then the tonnage assessment will resume at the specified rate. In doing so, Missouri would impose a lack of flexibility to adjust the CMLR Fund amount to keep up with actual reclamation liability the CMLR Fund may have. Missouri's CMLR Fund would be especially vulnerable between September 1, 1993, through September 1, 1998, when fees would be reduced to 25 cents per ton for the first 50,000 tons sold and 15 cents per ton for the second 50,000 tons. This is so because, as Missouri now proposes, beginning September 1, 1993, permittees' participation in the ABS would become voluntary without any requirement for a buy-out that would provide sufficient supplementary funding to the CMLR Fund to meet the 30 CFR 800.11(e) requirements. Should forfeitures threaten the Fund's solvency, the State has not provided a method to replenish its reserves in a timely or immediate manner. More importantly, if the Fund suffers a major short fall of funds, the State has not identified how solvency will be reestablished.

The Federal regulations at 30 CFR 800.11(e) require that the regulatory authority have available sufficient money to complete the reclamation plan for any areas that may be in default at any time. Missouri has not demonstrated that its proposed changes meet these requirements. Therefore, the Director is not approving the proposed changes and is requiring Missouri to modify the system to ensure that the Fund will be operated in a financially sound manner as required by the Federal regulation at 30 CFR 800.11(e)(1).

(f) *CMLR Fund Balance Below $2 Million.* At section 444.965.6, Missouri proposes that:

After September 1, 1998, whenever the fund balance falls below two million dollars, the assessment rate established in [RSMo 444.965.2] shall increase to a per ton rate of 30 cents per ton for the first 50,000 tons and 20 cents per ton for the second 50,000 tons of coal sold, shipped or otherwise disposed of in a calendar year by a permittee. The increased tonnage assessment shall remain in effect until the fund balance is at least three million dollars at the close of the State's fiscal year, at which time the assessment rate will revert to the rate established pursuant to [RSMo 444.965.5].

As discussed in the previous finding, the Director agrees that the ability to adjust the fee schedule for the CMLR Fund is needed. However, as also pointed out in the previous finding, the Director notes that greater flexibility is needed to secure additional money on an as needed basis to assure that there is a reasonable relationship of Fund income and reserves to liabilities. For the reasons stated in the previous finding, the Director is therefore not approving Missouri's proposed change, and is requiring Missouri to modify its provisions to ensure the Fund's ability to operate in a financially sufficient manner.

(g) *Apparent Ambiguity/Conflict in the Statutory Language.* At section 444.965.5, Missouri's proposed statutory language provides that:

After September 1, 1993, whenever the [CMLR] fund balance *falls below* seven million dollars, *the tonnage assessment provided for in subsection 2 of the section shall resume* at the same rate of twenty-five cents per ton for the first fifty thousand tons and fifteen cents per ton for the second fifty thousand tons of coal sold, shipped or otherwise disposed of in a calendar year by a permittee. (emphasis added).

The "falls below" language of the statute makes unclear whether after September 1, 1993, the new assessment rate will be effective any time the CMLR Fund balance is merely below $7 million, or whether the new assessment rate will take effect only after the CMLR Fund first reaches the $7 million ceiling, and then "falls below" that amount. However, Missouri's proposed regulations that implement this statutory provision provide, at 10 CSR 40-7.041(E)2, that "[a]fter September 1, 1993, whenever the [CMLR] fund balance is below seven million dollars" the new assessment rate of 25 cents per ton for the first 50,000 tons of coal, and 15 cents per ton for the next 50,000 tons, will take effect (emphasis added). Furthermore, this same regulation provides that the new assessment rate "shall remain in effect until the [CMLR] fund balance reaches seven million dollars * * *." (emphasis added). The proposed regulatory provision makes clear that the new assessment rate will be effective after September 1, 1993, any time the CMLR Fund balance is below $7 million, regardless of whether the Fund has first reached the $7 million ceiling.

The emphasized "tonnage assessments provided for in subsection 2 of this section shall resume" statutory language suggests an apparent conflict with the tonnage assessment rates provided in subsection two (45 and 25 cents per ton before 1993) "resuming" at the rate of 25 and 15 cents per ton. The proposed regulatory provision implementing this statutory provision provides, at 10 CSR 40-7.041(E)2, that "[a]fter September 1, 1993, whenever the [CMLR] fund balance is below seven (7) million dollars, the assessment established in subsection (1)(A)1. of this rule shall be reinstated at a rate of no more than twenty-five cents * * * and no more than fifteen cents * * *."

(emphasis added). In other words, in reading the proposed regulatory language in conjunction with the proposed statutory language, it is evident that the assessment procedure, and not the previously established assessment rate, shall resume if, after September 1, 1993, the CMLR Fund balance is below $7 million.

Because of the clarifying regulations implementing Missouri's statute, the Director finds that the apparent ambiguity in Missouri's proposed statute at section 444.965.5 does not warrant a disapproval of the statutory provision. However, as stated in Findings B.5.(e), the Director is not approving this statutory provision for other substantive reasons. The Director notes that, in responding to the requirements set forth in Finding B.5.(e), Missouri will have an opportunity to change the structure and provisions of RSMo 444.965.5. As part of this process, Missouri should consider taking appropriate actions to eliminate any question about its statutory authority for its regulations in administration and interpretation of its program.

C. Findings on Regulatory Amendments

1. 10 CSR 7.011, Bond Requirements

(a) *10 CSR 40-7.011(1), Definitions.* (i) *Definition of "Self Bonding".* At 10 CSR 40-7.011(1)(C), Missouri proposes to define "self-bonding" to mean "an indemnity agreement in a sum certain executed by the permittee or any corporate guarantor and made payable to the State of Missouri, with or without separate surety." The proposed State definition is substantively identical to the Federal definition of self-bonding at 30 CFR 800.5(c) except that, under the Federal definition, when there is a corporate guarantor, the permittee and the corporate guarantor must both execute the indemnity agreement. Under the proposed Missouri definition, the agreement may be executed by the corporate guarantor alone, thus possibly relieving the permittee of responsibilities it has under the Federal program.

The Director finds that the proposed Missouri definition of self-bonding is less effective than the Federal definition and is requiring Missouri to amend its proposed definition of self-bonding to require that permittees as well as corporate guarantors execute self-bonding indemnity agreements.

(ii) *Definition of "Phase I Bond".* At 10 CSR 40.7011(1)(E), Missouri proposes to define a "Phase I bond" as "a performance bond conditioned on the release of Phase I liability." Under the proposed Missouri bonding program, an operator may elect to file a conventional or full-cost performance bond covering all phases of reclamation, or elect to participate in the ABS by filing a Phase I bond and contributing to the CMLR Fund for bond coverage of the other phases of reclamation. Therefore, the term "Phase I bond" has a unique meaning in the Missouri program that helps distinguish the ABS from conventional performance bonding. The Federal regulations do not define Phase I bonds. However, the Federal regulations condition the release of bonds on the performance of reclamation, whereas Missouri proposes to condition the release of its Phase I bond on the release of "Phase I liability." Missouri does provide Phase I liability requirements at 10 CSR 40-7.021(2)(B) of its regulation. These requirements include specific reclamation performance requirements. As a result, Missouri's Phase I bond conditioned on the release of Phase I liability has the same effect as the Federal regulation bond release condition on performance of reclamation.

The Director finds that the addition of the definition of Phase I bond to the Missouri program is not inconsistent with and no less effective than the Federal program and is approving the change.

(iii) *Definition of "Full-Cost Bond".* At 10 CSR 40-7.011(1)(F), Missouri proposes to define "full-cost bond" as "a performance bond conditioned on the release of Phase I, II and III liability." Missouri also proposes a definition of "full-cost bond" in its revised statute at RSMo 444.805(8). The statutory definition provides a more comprehensive explanation of the term and was found to be no less stringent than section 509(a) of SMCRA, refer to Finding B.1.(a) of this notice. Because Missouri is proposing the option of two different bonding systems in its program, the full-cost bond and the Phase I bond, the term "full-cost bond" has a unique meaning in its program and is needed to distinguish between the two systems.

While the Federal regulations do not define "full-cost bond," the Director finds that Missouri's regulatory definition of "full-cost bond" along with its statutory counterpart definition provides for administrative clarity to its program and is not inconsistent with the Federal program. The Director is therefore approving the change.

(iv) *Definition of "open pit".* At 10 CSR 40-7.011(1)(G), Missouri proposes to define "open pit" as the "area between the crest of the highwall to the toe of the spoil." The Federal program does not define "open pit". However, Missouri's proposed ABS provides for a minimum bond based on the number of acres of open pit. In order to implement the minimum bond provision, there must be a clear definition of open pit. The Director finds that the definition of "open pit" provides needed clarification to the Missouri program and is not inconsistent with the Federal program. The Director is approving the proposed change.

(b) *10 CSR 40-7.011(2), Requirement to File a Bond.* (i) *General bond filing requirements.* Missouri's regulation at 10 CSR 40-7.011(2)(A) sets out general bond filing requirements and minimum conditions that bonds must meet. Missouri proposes to delete the term "pit reclamation" here and throughout its program. Under the currently approved Missouri bonding program there is only one type of performance bond, a pit reclamation bond. Under Missouri's proposed revision to its bonding program there will be two types of performance bonds, a Phase I reclamation bond and a full cost reclamation bond. Therefore, use of the term "pit reclamation" in reference to reclamation performance bonds is no longer appropriate throughout Missouri's program. The Director finds that the deletion of the term "pit reclamation" in the Missouri program is needed and is approving the proposed change.

(ii) *Bond conditioning.* Missouri's approved provision at 10 CSR 40-7.011(2)(A) requires that performance bonds be conditioned upon the faithful performance of reclamation. The corresponding Federal regulation at 30 CFR 800.11(a) requires that performance bonds be conditioned upon the faithful performance of all the requirements of the Act, the regulatory program, the permit, and the reclamation plan. The proposed Missouri regulation would limit liability to "reclamation" only. The Director finds that Missouri's performance bond conditions at 10 CSR 40-7.011(2)(A) are less effective than the Federal performance bond conditions. Missouri is required to further amend its program to provide requirements that are no less effective than the Federal regulation requirements at 30 CFR 800.11(a).

(iii) *Bond filing options.* At 10 CSR 40-7.011(2)(B), Missouri proposes to allow permittees the option to file either a Phase I bond or a full-cost bond. If the permittee files a full-cost bond prior to September 1, 1993, it must make a Phase I bond, it must also make payments into the CMLR fund under 10 CSR 40-7.041(1)(B)1. If the permittee files a lump sum payment into the fund under 10 CSR

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40–7.041(1)(B)3. Permittees filing full cost bonds after September 1, 1993, are not required to make payments to the fund.

The Federal program has no provision corresponding to Missouri's proposals at 10 CSR 40–7.011(2)(B). However, as discussed in Finding B.2. of this notice, the Director is concerned with an optional bonding system's impact on the ability for the ABS to operate in a solvent manner. As at Finding B.2., the Director is not approving the bond filing options proposed by Missouri at 10 CSR 40–7.011(2)(B), and is requiring Missouri to either remove the provision or to demonstrate that the resulting financial aspects of it will be sufficient to allow the ABS to function in a solvent manner as required by the Federal regulations at 30 CFR 800.11(e).

(iv) *Option to change bonds.* At 10 CSR 40–7.011(2)(C), Missouri proposes a regulation that would prevent permittees who file full cost bonds prior to September 1, 1993, from reverting to filing a Phase I bond until after September 1, 1993, unless otherwise authorized by the State director. The proposed regulation gives Missouri the administrative control to prevent operators from indiscriminately changing from one bond option to another thus making administration of the bonding program difficult.

The Federal program has no provision corresponding to 10 CSR 40–7.011(2)(C). The Director finds that the ability for Missouri to control refiling efforts from a full-cost bond to a Phase I bond is acceptable as long as the ABS can continue to operate in a solvent manner and is approving Missouri's proposed requirement with that condition.

(v) *Withdrawn regulations.* In its March 18, 1988, amendment submittal Missouri proposed to add the following regulation requirements: At 10 CSR 40–7.011(2)(D), the requirement that "except as noted in subsection (2)(E), the amount of bond shall be two thousand five hundred dollars ($2,500) per permitted acre or an amount as set by the commission for the following permitted areas:"; at 10 CSR 40–7.010(2)(E), a requirement that "the amount of bond on permitted coal preparation areas shall be ten thousand dollars ($10,000) per acre."; and at 10 CSR 40–7.010(2)(F), a requirement that "the minimum amount of bond applied to a single mine shall be ten thousand dollars ($10,000). For the purposes of this subsection, a mine is defined as an organic mining operation occupying one (1) or more permit areas and utilizing equipment primarily maintained at common locations." Subsequent to the submittal of the above proposed regulation changes, Missouri submitted a major rewrite of its bonding regulations on January 12, 1989, effectively withdrawing the March 18, 1988, proposal. Therefore, the Director is taking no action on the superceded March 18, 1988, proposed regulation changes.

(c) *10 CSR 40–7.011(3), Incremental Bonding.* Missouri's existing incremental bonding regulations at 10 CSR 40–7.011(3) (A) and (B) provide the same requirements as the Federal regulations at 30 CFR 800.11 (1) and (2). In a letter dated November 6, 1989, pursuant to 30 CFR Part 732, Missouri was notified of an additional program amendment requirement to provide for counterpart Federal regulation provision of 30 CFR 800.11(b)(4) that requires separately bonded increments within a permit area be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the regulatory authority become necessary.

In this review, the Director has identified other deficiencies with the Missouri incremental bonding regulations. Missouri does not provide counterparts to the Federal regulations that (1) require the operator to identify the initial and successive areas of increments for bonding on the permit application map and specify the bond amount to be provided for each area or increment as required by the Federal regulation at 30 CFR 800.11(b)(3), and (2) require that the applicant submit an incremental bonding schedule as required by 30 CFR 800.11(d)(3). The Director is requiring Missouri to further amend its program at 10 CSR 40–7.011(3) to fix these deficiencies.

(d) *10 CSR 40–7.011(4), Bond Amounts.* (i) *$2,500 Phase I fixed rate.* At 10 CSR 40–7.011(4)(A), Missouri proposes to modify its regulations to phase in its newly proposed Phase I bond option and the Phase I fixed bond rate of $2,500 per acre for (1) any permit approved on or before April 30, 1986, but for which no bond has been submitted; (2) any permit totally bonded at $500 per permitted acre, but for which work had not begun on or before April 30, 1986; (3) permits with incremental bonding where a given increment was bonded at $500 per acre but for which work had not begun on or before April 30, 1986, or any increment within a permitted area that was not bonded on April 30, 1986; and (4) any new permit submitted after April 30, 1986.

An analysis of the $2,500 per acre fixed bond rate was previously provided in this notice at Finding B.3.(a)(i). That finding concluded that the fixed rate of $2,500 per acre was inconsistent with the Federal regulation at 30 CFR 800.11(e)(1) that requires that an ABS assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time.

Accordingly, the Director finds that Missouri's proposed regulation at 10 CSR 40–7.011(4), to the extent that it sets the Phase I performance bond at a fixed rate of $2,500 per acre does not meet the requirements of the Federal regulations at 30 CFR 800.11(e)(1). The Director is not approving the proposed change and is requiring Missouri to amend its regulation in a manner consistent with the required amendment the Director placed on Missouri at Finding B.3.(a)(i).

(ii) *$500 fixed rate bond.* At 10 CSR 40–7.011(4)(B), Missouri sets a $500 per acre fixed rate Phase I performance bond amount for all permitted areas not covered in 10 CSR 40–7.011(4)(A) 1 through 4. As now proposed, the $500 Phase I bond is no longer tied to the bond Fund, that is, if the Phase I bond amounts were inadequate, Missouri could not use money from the CMLR Fund to complete required reclamation. Past experience has shown that even with assistance of the CMLR Fund, the $500 per acre bond rate was insufficient to complete required reclamation and to allow the bond pool to meet its obligation to reclaim defaulted land as required by the Federal regulation at 30 CFR 800.11(e).

The Director finds that Missouri's regulation at 10 CSR 40–7.011(4)(B), to the extent that it grandfathers some acreage at the Phase I performance bond at a fixed rate of $500 per acre, does not meet the requirements of the Federal regulation at 30 CFR 800.11(e)(1) that the regulatory authority have available sufficient money to complete the reclamation plan for any areas which may be in default at any time. The Director is requiring Missouri to amend its regulation that allows a Phase I bonding at the $500 per acre fixed rate to provide for performance bond amounts in a manner consistent with the Federal program requirements.

(iii) *$10,000 fixed rate coal preparation area bond.* At 10 CSR 40–7.011(4)(C), Missouri's regulation sets the Phase I performance bond at a fixed rate of $10,000 per acre for permitted coal preparation areas. Discussion of the $10,000 per acre fixed rate bond for preparation areas has been previously provided at Finding B.3.(a)(ii) of this notice. That finding concluded that Missouri's $10,000 per acre fixed rate bond for coal preparation areas does not meet the ABS requirements of 30 CFR 800.11(e)(1). The same reasoning and conclusion apply to this proposed

regulation. Therefore, the Director is not approving the $10,000 per acre fixed bond rate and is requiring Missouri to amend its program to provide for performance bond amounts in a manner consistent with the Federal program requirements.

(iv) *Open pit bond.* At 10 CSR 40–7.011(4)(D), Missouri proposes to set, for mines with less than 1,000 bonded acres, a minimum amount of Phase I bond of $10,000 for a single mine, or the equivalent of 20 acres at $2,500 per acre, of bond for each acre of open pit area, whichever is greater. The proposed regulation defines a single mine as an organic mining operation occupying one or more permit areas and utilizing equipment primarily maintained at common locations.

These same minimum bonding standards have been previously discussed at Finding B.3.(a)(iii) of this notice. In Finding B.3.(a)(iii), the Director concluded that the open pit minimum bond had not been shown to be sufficient to complete the required reclamation in the event of bond forfeiture and is requiring Missouri to (1) demonstrate that the open pit minimum bond would be sufficient to assure the completion of the required Phase I reclamation, or (2) amend its program to provide an amount that assures Phase I reclamation requirements can be met. For the same reasons set forth in Finding B.3.(a)(iii) of this notice, the Director finds that Missouri's proposed regulations at 10 CSR 40–7.011(4)(D) does not meet the requirements at 30 CFR 800.11(e)(1) and is requiring Missouri to amend its regulations in a manner consistent with the amendment required at Finding B.3.(a)(iii) of this notice.

(v) *Full-cost bond liability.* At 10 CSR 40–7.011(4)(E), Missouri proposes to require that the amount of full cost bonds shall be based on estimates of the cost to reclaim the bonded area in the event of bond forfeiture and that the amount shall be determined by the director of the Missouri LRC from the information in the permit. Counterpart Federal regulations at 30 CFR 800.14(a)(1) require, as does the proposed Missouri rule, that the bond amount be determined by the regulatory authority. The Federal regulations also contain requirements that are not found in the Missouri program. These include (1) at 30 CFR 800.14(a)(3), the requirement that the bond amount reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential; (2) at 30 CFR 800.14(a)(4), the requirement that the amount of the bond be based on, but not limited to, the estimated cost submitted by the permit applicant; and at 30 CFR 800.14(b), that the amount of the bond be sufficient to assure the completion of the reclamation plan if the work has to be performed by the regulatory authority in event of forfeiture. The Director notes that while the above Federal regulation requirements are not found in the Missouri regulation, its statutory language at RSMo 444.830.1 does include these requirements for a full-cost bond. The Director therefore finds that Missouri's program does provide requirements that are no less stringent than and no less effective than the Federal program requirements, although to avoid confusion, the State is encouraged to reference the statutory requirements in its regulations.

(vi) *Full-cost bond adjustment.* At 10 CSR 40–7.011(4)(F), Missouri proposes that the amount of the full cost bond and the terms of each acceptance of the applicant's bond may be adjusted by the commission from time to time as affected land acreage are increased or decreased or where the cost of future reclamation changes. Counterpart Federal regulations at 30 CFR 800.15(a) include similar requirements except for one substantive difference and one omission. Missouri's proposed regulation states that the commission "may" adjust the bond from time to time, whereas the Federal regulations require that the regulatory authority "shall" adjust the bond. Missouri's use of the term "may" could allow discretion to the LRC that is not allowed by the Federal regulations. Also the Director notes that Missouri's regulation is in conflict with its statutory counterpart at RSMo 444.830.4 that requires that the applicant's bond be adjusted by the commission from time to time. Missouri's use of the term "may" in its regulations conflicts with its statutory requirements and is less effective than the Federal regulations. The Director is not approving Missouri's proposed change and is requiring Missouri to amend its program to be consistent with its statutory requirements and no less effective than the Federal requirements.

Missouri's proposed regulations also lacks a counterpart to the Federal regulation that authorizes, but does not compel, the regulatory authority to specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill the above requirement. The Director however, finds that since it is discretionary the omission of this Federal provision does not render Missouri's program less effective than the Federal program requirements.

A second requirement of Missouri's proposed rule at 10 CSR 40–7.011(4)(F) authorizes the State director to require permittees to provide surveyed measurements of the pit size at any time during the operation and to require that such surveys be certified by a registered professional engineer or registered land surveyor. The Federal program does not include a requirement for measurement of the size of mine pits. However, the Director finds that this requirement is not inconsistent with the Federal requirements and will aid Missouri in the administration of its program since bonding rates are based in part on the extent of the open pit. Therefore, the Director is approving the proposed change.

Missouri's proposed regulations do not include provisions corresponding to the Federal regulations at 30 CFR 800.15 (b), (c) or (d). These regulations include (1) at 30 CFR 800.15(b)(1), the requirement that the regulatory authority notify certain parties of any proposed bond adjustment; (2) at 30 CFR 800.15(b)(2), the requirement that the regulatory authority provide the permittee an opportunity for an informal conference on a bond adjustment; (3) at 30 CFR 800.15(c), the provision that allows permittees to request bond amount reductions upon submission of certain information and specifies that certain types of bond reductions are not considered bond releases; and (4) at 30 CFR 800.15(d), the requirement that the regulatory authority review bond adequacy upon permit revision, and, if necessary, require adjustment to conform to the revised permit.

The Director is therefore requiring Missouri to further amend its regulation at 10 CSR 40–7.011(F) to provide the above requirements in order to be no less effective than the Federal regulations at 30 CFR 800.15 (b), (c) and (d).

(e) *10 CSR 40–7.011(5), Types of Bonds.* (i) *10 CSR 40–7.011(5)(A) Surety Bonds.* (1) Non-cancellation of surety bond. Missouri's approved provision at 10 CSR 40–7.011(5)(A)2 allows a surety company to cancel a bond for any lands affected after the surety's 60-day notice of cancellation period expires. The State regulation also requires the bonding obligation to remain in effect for permitted acreage affected prior to expiration of the 60-day notice period. The surety company's notice of cancellation becomes effective when received by Missouri. The Federal regulation counterpart at 30 CFR 800.20(b) restricts a surety's cancellation

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request to only those lands not disturbed. Rather than becoming effective upon receipt of a notice, the Federal regulation requires prior consent by the regulatory authority to a cancellation for it to take effect.

As discussed in the March 13, 1979, Federal Register (44 FR 15118), the Federal regulation incorporates the:

"first principal [sic] of surety law, i.e., the surety undertakes the obligation to stand in the shoes of the principal, and his obligation may not be rescinded or terminated without the consent of the party to whom the duty is owed." The Federal Register further states that " * * * if arrangements satisfactory to the regulatory authority cannot be made, the burden will be on the surety to compel the permittee to suspend operations to prevent the surety's obligation from increasing as new areas are disturbed. The regulatory authority will have no obligation to suspend operations because the bond will remain in effect until cancellation is approved under the regulation."

The Director finds that Missouri's surety cancellation provision is less effective than its Federal Regulation counterpart at 30 CFR 800.20(b) and is requiring Missouri to further amend its regulation at 10 CSR 40-7.011(5)(A)2 to restrict a surety's cancellation request to only those lands not disturbed and then only with the prior consent of the regulatory authority.

(2) Surety financial restrictions. Missouri proposes to revise the provision at 10 CSR 40-7.011(5)(A)4 to clarify the financial restriction placed on surety companies. The provision would require that the State not accept bonds from a single surety company that has provided bonds for multiple permits issued to the same permittee that in total exceed 30 percent to the surety company's capital surplus account. While there is no direct counterpart in the Federal regulations, the Director finds that the proposed amendment is not inconsistent with the Federal regulation bonding requirements at 30 CFR part 800 that allow sureties licensed in a State to issue bonds and is approving the proposed change. Consistent with section 505(b) of SMCRA, this provision will further environmental protection by limiting the regulatory authority's exposure to surety insolvency.

(3) Incapacity of surety company. Missouri's approved provision at 10 CSR 40-7.011(5)(A)6 requires the State to issue a cessation order to the permittee if a surety company is insolvent and the permittee has not replaced bond coverage within 60 days. This same requirement for the issuance of a cessation order is included in 10 CSR 40-7.011(5)(B)7 regarding the required action to be taken if a bank that issues certificates of deposit should go into insolvency or bankruptcy and 10 CSR 40-7.011(5)(D)8 regarding self-bonding by corporations that no longer satisfy self-bonding conditions. The Federal counterpart at 30 CFR 800.16(e)(2) also requires the permittee to cease operations if bond coverage is not replaced within 90 days. In addition, the Federal counterpart requires the permittee to begin reclamation immediately upon expiration of the 90 days. The Director finds that the State's provisions are less effective than the Federal regulations since the State does not require the permittee to begin reclamation in accordance with the Federal regulation counterparts. Missouri is required to further amend its regulation to provide for no less effective than requirements as the Federal regulation at 30 CFR 800.16(e)(2).

(ii) *10 CSR 40-7.011(5)(B) Certificates of Deposit.* (1) Certificate of deposit amount. Missouri proposed to revise 10 CSR 40-7.011(5)(B)2, that requires that the value of a certificate of deposit securing a personal bond shall be in the same amount as the required bond amount, by adding "or in an amount greater than the bond." There is not a direct Federal counterpart to this regulation. However, since it does not affect the regulatory authority exposure, the Director finds that Missouri's proposed change at 10 CSR 40-7.011(5)(B)2 is not inconsistent with section 509(b) of SMCRA that requires the market value of securities, such as certificates of deposit, to be equal to or greater than the amount of bond required. The Director is therefore approving Missouri's proposed changes at 10 CSR 40-7.011(5)(B)2.

(2) Payee on a certificate of deposit. Missouri's approved provision at 10 CSR 40-7.011(5)(B)2 requires that a certificate of deposit be made payable to the State of Missouri as well as the operator. The Federal counterpart at 30 CFR 800.21(a)(3) requires that a certificate of deposit be made payable to the regulatory authority or be assigned to the regulatory authority in writing and upon the records of the bank. Section 509(d) of SMCRA requires that a security, such as a certificate of deposit, be deposited upon the same terms as the terms upon which a surety bond may be deposited. The Federal regulations at 30 CFR 800.16 require the bond to be payable to the regulatory authority. The Missouri regulation allows a certificate of deposit to be made payable to both the operator and the State. With an operator as a co-payee on a certificate, the State's control over the certificate for bond forfeiture purposes and its protection from third-party creditors of the permittee is less effective than the Federal regulation. Therefore, with respect to a certificate of deposit being made payable to both the operator and the State of Missouri, the Director finds that Missouri's regulation at 10 CSR 40-7.011(5)(B)2 is less effective than the Federal regulation at 30 CFR 800.21(3) and less stringent than SMCRA at section 509(d). The Director is requiring Missouri to further amend its provision at 10 CSR 40-7.011(5)(B)2 to be no less effective than the Federal regulation requirements at 30 CFR 800.21(a)(3).

(3) Issuing bank's insurance. At 10 CSR 40-7.011(5)(B)4, Missouri requires that the issuing bank or savings and loan company be protected by the Federal Deposit Insurance Corporation. It proposes to replace the word "protected" with the word "insured." The Federal counterpart to this regulation at 800.21(d)(4) similarly provides that the regulatory authority cannot accept an individual cash account in excess of the maximum insurable amount as determined by the Federal Deposit Insurance Corporation and 30 CFR 800.21(d)(1) requires that cash accounts and certificates of deposit be Federally insured or equivalently protected. Therefore, the Director finds that the revised Missouri regulation is no less effective than the Federal regulation.

(iii) *10 CSR 40-7.011(5)(D) Self-bonding.* (1) Definitions. At 10 CSR 40-7.011(5)(D)1, Missouri proposes to add the definitions of financial terms related to self-bonding. These terms are "current assets," "current liabilities," "fixed assets," "liabilities," "net worth," and "tangible net worth" at 10 CSR 40-7.011(5)(D)1.A, B, C, D, E, and F respectively. The definitions are identical to the corresponding Federal definitions at 30 CFR 800.23(a). Therefore, the Director finds the provisions added at 10 CSR 40-7.011(5)(D)1.A through F to be no less effective than the Federal regulations.

The Federal regulations on self-bonding at 30 CFR 800.23(a) also include a definition of "parent corporation" that the Missouri program does not contain. Prior to February 16, 1988, the Federal self-bonding regulations limited guarantors to eligible parent corporations of permittees applying for self-bonding. However, OSM amended the Federal regulations at 30 CFR 800.23(c)(2) on February 16, 1988, to allow eligible non-parent companies to apply as self-bonding guarantors provided that they met the conditions of continuous operations and financial capabilities. These applicants are referred to as "any corporate guarantor." Missouri's regulation at 10 CSR 40-7.011(5)(D)3 allows "any third party" guarantor to apply as a self-bonding guarantor provided the same continuous operation and financial capability conditions are met as well as requiring the third party guarantor to have a long term interest in the surface coal mining operation. Missouri's use of the phrase "any third party" is more inclusive and no less effective than the Federal regulation phrase "any corporative guarantor" including "parent guarantor." The Director therefore finds that the omission of the definition of "parent corporation" in the Missouri program does not render it less effective than Federal requirements.

(2) Conditions for acceptance of a self-bond. At 10 CSR 40-7.011(5)(D)2.A and B, Missouri proposes to add provisions stating that the commission may accept self-bonds if the applicant designates an agent for service of process, and the applicant has been in continuous operation as a business entity for 5 years prior to applying. These Missouri provisions are substantively identical to the Federal regulation requirements at 30 CFR 800.23(b) (1) and (2). Therefore, the Director finds Missouri's proposed regulation to be no less effective than the Federal regulation requirements and is approving the proposed change.

Additionally, the Federal regulation at 30 CFR 800.23(b)(2)(ii) provides that the regulatory authority may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations. Missouri does not provide for this exclusion, but this omission establishes a more rigorous and hence no less effective qualification standard for self-bond applicants than do the Federal regulations. Therefore, the Director finds the State's provisions at 10 CSR 40-7.011(5)(D)2.A and B to be no less effective than the corresponding Federal regulations and is approving the proposed changes.

(3) Self-bonding financial criteria. At 10 CSR 40-7.011(5)(D)2.C, Missouri proposes to add provisions that would establish financial criteria for the commission to accept self-bonds. Missouri's proposed regulations are substantively the same as those set forth in the Federal regulations at 30 CFR 800.23 (b)(3)(i), (b)(3)(ii), and (b)(3)(iii) with one exception. The Missouri regulations present the financial ratios of total liabilities to net worth and current assets to current liabilities as actual ratios rather than as decimal fractions. For example, the ratio of current assets to current liabilities is the relation between these two quantities, and is computed by dividing the current asset quantity by the current liability quantity. The result is expressed in the Federal regulations as a decimal fraction of 1.2. If this quantity were expressed as a ratio it would be 1.2:1.0, not 1.2 as stated in the Missouri regulation. The same applies to the ratio of total liabilities to net worth as expressed in the Missouri regulation. With the exception of the way in which the ratio values are expressed using the ratio sign (:) Rather than a decimal value, the Missouri provisions are no less effective than the Federal requirement. Therefore, the Director is approving this provision with the requirement that Missouri express the ratio values as decimal quantities as in the Federal regulation.

(4) Self-bonding financial information. At 10 CSR 40-7.011(5)(D)2.D, Missouri proposes to add the requirement that the applicant submit "financial statements for the last completed fiscal year audited by an independent certified public accountant and a report containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion." Missouri's proposed regulation is similar to the corresponding Federal regulation at 30 CFR 800.23(b)(4)(i) with one exception. The Federal regulation additionally requires that the accountant's audit or review opinion be prepared using generally accepted accounting principals. The Director finds that, with this exception, the Missouri provision is no less effective than the corresponding Federal regulation and is approving the provision with the requirement that Missouri further amend its regulation to add the condition that the audit or review report be prepared by an accountant in conformity with generally accepted accounting principles.

(5) Self-bonding third-party guarantee. Missouri proposes to add regulations at 10 CSR 40-7.011(5)(D)3 that would allow the LRC to:

Accept a written guarantee for an applicant's self-bond from a third-party guarantor with a long-term vested interest in the surface coal mining operation if the guarantor meets the conditions of paragraph (5)(D)2 as if it were the applicant. The applicant must still meet the requirements of paragraphs (5)(D)2.A, B and D of this rule. Copies of documents demonstrating that interest must be submitted to the State director. The written guarantee shall provide that (1) if the applicant fails, the guarantor is liable to complete the reclamation plan or provide funds to do so; (2) the guarantee shall remain in force unless the guarantor provides notice at least 90 days in advance of cancellation and the director accepts the cancellation; and (3) cancellation can be accepted only if the applicant obtains suitable replacement bond before cancellation.

The Missouri provisions are substantively similar to the corresponding Federal regulation at 30 CFR 800.23(c)(2). However, Missouri has not provided regulations that correspond to the Federal regulation at 30 CFR 800.23(c)(1) pertaining to requirements for a parent corporation guarantor because the Missouri provisions do not differentiate between parent guarantors and non-parent guarantors, but rather refer to any corporate guarantor as a third-party guarantor. Therefore, the omission of provisions for a parent guarantor does not render Missouri's regulations less effective than the applicable Federal self-bonding regulations. In addition, the Missouri regulation at 10 CSR 42-7.011(5)(D)3 requires a third-party guarantor to demonstrate a long-term vested interest in the surface coal mining operation. There is no direct Federal counterpart to this provision; however, the proposed change is not inconsistent with the Federal regulation provisions at 30 CFR 800.23(c)(2) in that it does not adversely affect the regulatory authority's risk exposure.

As discussed above, the Director finds that Missouri's proposed regulations at 10 CSR 40-7.010(5)(D)3 are no less effective than the Federal regulation requirements at 30 CFR 800.23(c) and is approving the proposed changes.

(6) Tangible net worth limitation. At 10 CSR 40-7.011(5)(D)4, Missouri proposes to limit the amount of an applicant's or third-party guarantor's proposed and outstanding self-bonds to 25 percent of the applicant's or third-party guarantor's tangible net worth in the United States. The Federal regulation at 30 CFR 800.23(d) provides for this same requirement but separately identifies the applicant, a corporate guarantor and a non-parent guarantor as needing to meet the 25 percent limit. Missouri's use of the term "third party guarantor" includes both a corporate or non-parent guarantor. Therefore, the Director finds that Missouri's proposed regulation is no less effective than the Federal regulation at 30 CFR 800.23(d) and is approving the proposed changes.

(7) Self-bond indemnity agreement. At 10 CSR 40-7.011(5)(D)5.A, Missouri proposes to add requirements for

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executing an indemnity agreement that would require execution of the agreement by all persons and parties who are to be bound by it, including the corporate guarantor, and shall bind each jointly and severally. If the applicant is a partnership, joint venture, or a syndicate, the agreement shall bind such partnership or party who has a beneficial interest, directly or indirectly, in the applicant. The provisions at paragraph (D)(5)A are substantively identical to the Federal regulations at 30 CFR 800.23 (e)(1) and (e)(3). However, as proposed, it is unclear if Missouri would require that an indemnity agreement be executed by a third party non-corporate guarantor since its proposed regulation only specifies the corporate guarantor. Missouri needs to require that a third party non-corporate guarantor also execute an indemnity agreement.

At 10 CSR 40-7.011(5)(D)(5)B, Missouri requires that corporations applying for a self-bond or corporations guaranteeing a permittee's self-bond submit an indemnity agreement signed by two corporate officers who are authorized to bind the corporations. The corresponding Federal regulation at 30 CFR 800.23(e)(2) requires submission of an indemnity agreement by both the applicant and the guarantor. Requiring only one entity to submit the agreement is inconsistent with the Federal regulation requirement and Missouri's provision at 10 CSR 40-7.011(5)(D)(5)A that requires all parties to execute the agreement, including the third-party guarantor. The Federal regulation at 800.23(e)(2) also requires an affidavit to be submitted with the indemnity agreement attesting to its validity under other applicable Federal and State laws to which the corporations may be subject. The Federal regulation at 30 CFR 800.23(e)(4) requires that the applicant, parent or non-parent corporate guarantor be required to complete the approved reclamation plan for the lands in default or pay to the regulatory authority an amount necessary to complete the approved reclamation plan not to exceed the bond amount. The regulation also provides that if permitted under State law, the indemnity agreement shall operate as a judgement when under forfeiture.

The Director finds that with the exception of (1) the lack of the requirement that the third party non-corporate guarantor also execute the indemnity agreement, (2) the lack of a requirement that both the applicant and guarantor sign the indemnity agreement, (3) the lack of a requirement to submit an affidavit with the indemnity agreement, (4) the lack of a requirement to complete the reclamation plan, and (5) the lack of a requirement for the agreement to operate as a judgement under forfeiture; the Missouri provisions are no less effective than the corresponding Federal regulations. Therefore, the Director is approving in part the provisions at 10 CSR 40-7.011(5)(D)(5) and is requiring Missouri to further amend its program to be no less effective than Federal regulations by providing the provisions identified above.

(8) Self-bonding financial information. At 10 CSR 40-7.011(5)(D)(6), Missouri proposes to require that annual updates to the financial information be provided by the applicant or the applicant and guarantor, if applicable. This provision is similar to and no less effective than the corresponding Federal regulation at 30 CFR 800.23(f) that provides the regulatory authority such discretion. Therefore, the Director is approving Missouri's proposed regulation.

(9) Self-bonding change to applicant's financial conditions. At 10 CSR 40-7.011(5)(D) 7, 8 and 9, Missouri has added requirements for notification of changes in financial conditions; for replacement of the self-bond; for issuance of a notice of violation and cessation of operations to the permittee for being without bond coverage; and forfeiture of the self-bond if the permit is revoked. The State's regulations are similar to the corresponding Federal regulations at 30 CFR 800.23(g). One exception is that upon notification that the financial condition of the permittee or third party guarantor no longer meets the criteria required for self-bonding status, the State immediately must issue a notice of violation against the operator and require the bond to be replaced within a 60 day period, whereas the Federal regulation allows a 90 day period to post an alternative bond but does not require that a notice of violation be issued. The Missouri regulation places a shorter time frame for replacement of a bond and therefore is no less effective than the Federal regulation requirements. The Director is therefore approving the proposed regulation.

2. 10 CSR 40-7.021 Duration and Release of Reclamation Liability

(a) *Criteria and Schedule for Release of Reclamation Liability.* (i) *Phase I release qualifications.* At 10 CSR 40-7.021(2), Missouri proposes to delete the reference to "pit reclamation" at paragraph (2)(A) and revise the regulation to provide that "an area shall qualify for release of Phase I bond liability upon completion of backfilling and grading, topsoiling and initial seeding of the disturbed area." The counterpart Federal regulation at 30 CFR 800.40(c)(1) includes a similar requirement for Phase I bond release but additionally requires the permittee to complete drainage control in accordance with the approved reclamation plan. At Finding B.1.(b) of this notice, a discussion of Missouri's definition of "Phase I reclamation" at RSMo 444.805(15) is provided. "Phase I reclamation" at RSMo 444.805(15) is defined in the same manner as stated in the regulation here. As discussed in that Finding, Missouri identified other areas of its regulations that the State felt assured that drainage controls would be in place prior to Phase I bond release. The Director found Missouri's clarification to be less stringent than the Federal program requirements. For the same reasons stated in Finding B.1.(b) of this notice, Missouri's requirements for Phase I bond release in its regulations are less effective than the Federal program requirement.

In an October 10, 1990, submittal to OSM, Missouri has proposed changes to its regulations that address this issue. The Director is therefore deferring his decision on this issue to that future rulemaking action.

(ii) Phase II release qualifications. At 10 CSR 40-7.021(2)(B)4, Missouri proposes to add the provision that in order to qualify for Phase II release, in part, a plan for achieving Phase III release must be approved for the area requested for release, and that the plan be incorporated into the permit. The Federal regulation at 30 CFR 800.40(c)(2) provides the Federal requirements for Phase II bond release. At these regulations, no requirement for a "plan" is imposed. While not required by the Federal regulations, the Director finds that Missouri's requirement for a plan to achieve Phase III release would assist reclamation and aid in the administration of its bond release program and is not inconsistent with Federal regulation requirements. The Director is therefore approving the proposed change.

For its Phase II release, Missouri additionally requires that (1) a permanent vegetative cover sufficient to control erosion is in place or an alternative erosion control practice as approved by the director has been implemented; (2) with respect to woodlands and wildlife areas, the stocking of trees and shrubs has been established; and (3) the lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of the regulatory program or the permit. The counterpart Federal regulation at 30 CFR 800.40(c)(2) provides the Federal requirements for Phase II bond release, including that (1) revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan; (2) the lands are not contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of SMCRA or the regulations; and (3) soil productivity for prime farmlands has been returned to equivalent levels of yield. The Missouri requirements differ from the Federal regulation requirements in that establishment of revegetation in accordance with the approved reclamation plan and the return of prime farmland soil productivity to equivalent levels of yield need not be met until the release of Phase III bond.

The Director finds that Missouri's bond release requirements for establishing vegetation in accordance with the approved reclamation plan and the return of prime farmland soil productivity levels at the Phase III rather than the Phase II level of bond release is less effective than the Federal requirements and is requiring Missouri to amend its program to be no less effective than Federal requirements.

(iii) Schedule for release. At 10 CSR 40-7.021(2)(D)1, Missouri proposes to add a provision that "Phase I bonds shall be released in full when Phase I liability is released, except that the total bond for a single mine shall not be below the equivalent of twenty (20) acres of bond for each acre of open pit or $10,000, whichever is greater, as required by 10 CSR 40-7.011(4)(D)." The Director has two concerns with this proposed requirement. First, the exception to a total Phase I bond release would appear to be in conflict with other areas of the Missouri program. At 10 CSR 40-7.001(1)(E) Missouri defines a Phase I bond to mean a performance bond conditioned on the release of Phase I liability. At RSMo 444.805(16) the State defines a Phase I reclamation bond as a bond filed by a permittee that may be released upon the successful completion of Phase I reclamation of a permit area in accordance with the approved reclamation plan. Neither definition clearly provides an exception to total release of the Phase I bond given at (D)1 if Phase I liability has been met. Secondly, Missouri's proposed provision bases the total release exception to a "single mine." The two definitions stated above do not limit the release of Phase I liability to a "single mine." The definition in Missouri's statute specifically states "permit area." At 10 CSR 40-7.011(4)(D), Missouri defines a single mine as "an organic mining operation occupying one (1) or more permit areas and utilizing equipment primarily maintained at common locations." As legal instruments, most bonds are drafted in such a manner as to limit liability to specific permits or subunits of a given permit; not an entire mine that may contain multiple permits. It is therefore questionable if Missouri could require that the reclamation bond liability of one permit be passed on to that of another permit even though such permits are located at a common mine. As proposed, Missouri's ABS holds the permittee responsible for Phase I bond liability and the CMLR Fund responsible for Phase II and III bond liability. Missouri's initial bond determinations are based on a permit-by-permit basis, not a total mine basis. To introduce a bond release approach that differs from that used in bond determination, introduces an inconsistency in the program that needs to be clarified. The Director is not approving the proposed language and is requiring Missouri to (1) clarify that the exception to Phase I bond release of its ABS as proposed here is not in conflict with other areas of its program and (2) either assure that each acre in a permit is covered by sufficient bond in and of itself or to the extent that any permit bonded acreage relies on a different and separate bonded permit acreage, provide a legal review and opinion that bond agreements can impose the liability of a bond for one permit area on to that of another, separate permit area.

(iv) Bond release percentages. Missouri proposes to add provisions at 10 CSR 40-7.021(2)(D)2 that specify the percentages of the bond amount to be released after completion of each of the three phases of reclamation. For full cost bonds, the State regulation states that "sixty percent (60%) shall be released when phase I liability is released, eighty-five percent (85%) released when Phase III liability is released, and one hundred (100%) released when Phase II liability is released." The counterpart Federal regulations at 30 CFR 800.40(c) are somewhat discretionary with respect to the percentages of bond amount that may be released. The Federal regulations at 30 CFR 800.40(c) allow the regulatory authority to release up to 60 percent of the total bond amount at the completion of Phase I. The amount that may be released at the completion of Phase II is based upon a recalculated bond amount to determine the amount needed to reestablish revegetation by a third party should the Phase II reclamation fail. The Federal rules do not allow mandatory release of fixed percentages of the bond amount at the completion of phases of reclamation. Section 519(b) of SMCRA requires the regulatory authority to consider the degree of difficulty to complete the remaining reclamation; whether water pollution is occurring, and if so, the cost to abate this; and the costs for a third-party to reestablish revegetation should be necessary following a Phase II release. As discussed in the Federal Register (44 FR 15122) March 13, 1979, since the regulatory authority is required to conduct this review, "* * * the bond release schedule and percentages cannot be made mandatory upon the regulatory authority."

Missouri's regulations lack the requirement to determine the costs to abate any water pollution, and lack the requirement to determine the remaining costs of reclamation, including the costs to a third-party to reestablish revegetation. Therefore, the Director finds that the Missouri regulations at 10 CSR 40-7.021(D)2 are less effective than the Federal regulations at 30 CFR 800.40(c) and inconsistent with the requirements of SMCRA at section 519(b). Accordingly, the Director is not approving these provisions and is requiring Missouri to amend its program to be no less stringent than the requirements of SMCRA and no less effective than the requirements of the Federal regulations.

(v) *Release of liability for temporary structures.* Missouri proposes to remove the regulations previously codified at 10 CSR 40-7.021(2)(A)3 and (2)(C) that addressed release of Phase I and Phase II bond liability on temporary structures such as roads, sediment ponds, diversions, and stockpiles of soil and overburden; and combine these bond release requirements for temporary structures at newly codified 10 CSR 40-7.021(2)(D)3. The proposed language would require that bonds be retained on unreclaimed temporary structures on an acre for acre basis where Phase I bonds apply and on a reclamation cost estimate basis where full cost bonding applies. For the purposes of this paragraph, reclamation costs would be determined by the State director and would be based on the information provided in the reclamation plan. The Federal regulations at 30 CFR 800.40 provide requirements for the release of performance bonds but do not explicitly address unreclaimed, temporary structures. However, the Director finds that Missouri's proposed regulations are not inconsistent with the Federal regulations since they would ensure that sufficient bond was retained to ensure

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reclamation of temporary structures. The Director therefore is approving the proposed language.

(b) *Procedures for obtaining release.* At 10 CSR 40-7.021(3) Missouri proposes to revise this provision to delete the reference to 10 CSR 40-7.021(2)(D), which is now a newly added paragraph pertaining to the schedule for release. Missouri's deletion of the reference to paragraph 7.021(2)(D) is consistent with the meaning of this provision at 10 CSR 40-7.021(3) that pertains to the criteria for release rather than the schedule for release. Therefore, the Director finds that this revised provision is no less effective than the Federal provisions at 30 CFR 800.40 and is approving the proposed change.

3. 10 CSR 40-7.031—Permit Suspension or Revocation, Bond Forfeiture and Authorization to Expend Reclamation Fund Monies

Under the currently approved Missouri bond program, bond cannot be forfeited and CMLR Fund monies cannot be expended until the permit has been revoked. Proposed statutory changes in Missouri's bond program necessitated minor editorial changes to its regulations at 10 CSR 40-7.031. The primary changes of this nature were at 10 CSR 40-7.031(2)(B)3 and (3)(D) to add the term "guarantor of self-bonding" to the provisions referring to other providers of bonding; and at (2)(C) to require the commission to issue its findings of fact, conclusions of law and order when declaring the permit revoked. These changes improve the clarity of the Missouri regulations and do not render them less effective than the corresponding Federal regulations at 30 CFR 800.50 and 843.13. The Director is approving the proposed changes.

4. 10 CSR 40-7.041—Form and Administration of the Coal Mine Land Reclamation Fund

(a) *10 CSR 40-7.041(1), Payment of Assessments.* (i) *Bonding option participation schedules.* At 10 CSR 40-7.041(1)(A), Missouri proposes to modify its regulation to require that until September 1, 1993, every permittee pay an assessment into the CMLR Fund (Missouri's ABS). After September 1, 1993, participation in the ABS becomes voluntary; thereafter, payment into the fund will depend upon what bonding option the operator in Missouri elects to use. As discussed in Finding B.2. of this notice, such option can not be approved since Missouri did not demonstrate that a non-mandatory participation option in its ABS will allow it to continue to meet the requirements of 30 CFR 800.11(e). The Director is not approving this provision and is requiring Missouri to remove this provision or to demonstrate that its ABS will be solvent consistent with the requirements of 30 CFR 800.11(e).

(ii) *Payments into the ABS Fund.* The proposed regulation at 10 CSR 40-7.041(1)(B) and (B)1 would (1) allow the commission to reinstate payments into the Fund after September 1, 1993; (2) raise the assessment rate from 30 cents to 45 cents for the first 50,000 tons sold and 20 cents to 35 cents for the second 50,000 tons sold; and (3) set the assessment payment schedule. The reinstatement of payments has been previously discussed at finding B.5.(e) of this notice. As in that Finding, the Director is not approving Missouri's reinstatement of payments proposal and is requiring Missouri to modify the system to ensure that the Fund will be operated in a manner that meets the requirements of 30 CFR 800.11(e), which could be demonstrated by Missouri through an actuarial study showing its soundness and financial solvency. The change in tonnage fee rates has also been discussed in finding B.5.(b) of this notice. As discussed at that Finding, the Director noted that fixed rate tonnage fees have not been demonstrated sufficient to generate the income needed to ensure a solvent ABS that meets the requirements of 30 CFR 800.11(e). The schedule for payment provides direction for the administration of the Missouri program and the Director finds the provision is not inconsistent with Federal regulation requirements. While the Director is approving the proposed framework for the payment of assessments, it is conditioned upon a demonstration that the revenues generated will assure that the ABS can be operated in a manner that will meet the requirements of 30 CFR 800.11(e).

(iii) *Lump sum buy-out option.* Proposed regulations at 10 CSR 40-7.041(1)(B) 3, 4, 5 and 6 incorporate the statutory requirements of RSMo 444.965.3 for a lump sum buy-out of the CMLR Fund, where a permittee elects not to participate or decides to withdraw after initially participating prior to September 1, 1993. More specifically, at (B)3 Missouri proposes to require that permittees who file full-cost bonds before September 1, 1993, pay a lump sum assessment. The sum shall be related to the company's projected average annual coal production for the years September 1, 1988, through September 1, 1993. The regulations then establish the amount of the lump sum payment, varying from $30,000 to a maximum of $125,000 based on projected average annual coal production of 0 to 100,000 tons. At (B)4, Missouri would establish that lump sum payments shall be due on the date the permittee files a full cost bond. At (B)5, the proposed regulations would allow a permittee, who pays a lump sum, a refund of any of the regular assessments that a permittee paid since January 1, 1988. Finally the proposed regulation at (B)6 would require that any permittee which receives its first permit and files a full cost bond after September 1, 1988, but before September 1, 1993, pay a percentage of the assessment commensurate to the percentage of time its permit is effective between those dates.

No counterpart Federal regulations exist for the above State proposal. As discussed in Finding B.5.(c) of this notice, the "buy out" feature of Missouri's bonding program is proposed to allow a transition in order to put in place the two-option bonding approach. The Director does not view such transition to be inconsistent with the Federal program requirements. However, no relationship has been shown by Missouri that the lump sum buy-out amount has anything to do with the ABS liabilities and its ability to meet the Federal requirements at 30 CFR 800.11(e). Therefore, as discussed in Finding 5.B.(c), the Director is not approving the proposed option for buy-out since Missouri has not demonstrated that past defaulted liabilities will be met and that the CMLR Fund's financial stability is, and can be maintained on an actuarially sound basis to meet the requirements of 30 CFR 800.11(e).

(iv) *$7 million Fund ceiling.* The proposed regulation at 10 CSR 40-7.041(1)(C), requires permittees who file a Phase I bond to continue payment of monthly assessments of 45 cents and 30 cents per the first and second 50,000 tons produced, respectively, into the CMLR Fund until September 1, 1993, unless the CMLR Fund balance is more than $7 million, or $2,500 times the number of acres mined, but not released, at the end of a fiscal year, at which time assessments cease until reinstated as provided at 10 CSR 40-7.041(1)(E). The general adjustment of the CMLR Fund assessment rates has been previously discussed in finding, 5.(e) of this notice. In that finding the Director did not approve Missouri's proposed adjustment to the assessment rate because the State did not provide an explanation sufficient to assure that the adjustment would meet the Federal requirements of 30 CFR 800.11(e)(1). For the same reason, the Director is not approving Missouri's proposed language here and is requiring Missouri to amend its regulation in a manner that is consistent with required changes it must make at RSMo 444.965.5.

(v) *Compensative assessment.* The proposed regulation at 10 CSR 40-7.041(1)(D) requires that persons obtaining a new permit after September 1, 1988, pay a compensative assessment regardless of the fund balance. The payments shall begin the month the permit is issued or when regular assessments ceased, and at the rate equal to the rate paid for regular assessments. Such assessments shall continue until the permittee has paid for the number of months assessments were in effect between September 1, 1988, and the month and year in which its first permit was received or until regular assessments are reinstated, whichever comes first.

The Director is approving the mechanism for compensative assessments but is concerned that Missouri's requirement for the compensative assessment has not been based on any relationship of what the Fund needs to be in compliance with 30 CFR 800.11(e). Therefore, the Director's approval is conditioned upon Missouri demonstrating that the amount this mechanism provides into the ABS is sufficient for the ABS to meet the requirements of 30 CFR 800.11(e).

(vi) *Reinstatement of rates.* At 10 CSR 40-7.041(1)(E), Missouri proposes the requirement for reinstatement rates. Such rates would only apply to permittees who file a Phase I bond. They include at (E)2, that after September 1, 1993, when the Fund balance is below $7 million, the assessment established in subsection (1)(A)1 shall be reinstated at a rate of 25 cents for the first 50,000 tons and 15 cents for the second 50,000 tons. This rate shall remain in effect until the Fund balance reaches $7 million or until September 12, 1998, whichever comes first. At (E)3, the proposed regulation would require that after September 1, 1998, whenever the Fund is below $2 million, the assessment established in (1)(A)1 be reinstated at a rate of 30 cents and 20 cents for the first and second 50,000 tons produced respectively, until the Fund reaches $3 million, at which time the rate would revert back to 20 cents and 15 cents. At (E)4 and (E)5, the original regulations that provided administrative direction for notification of the applicant and payment schedule were modified to change the original term of "surcharge" to "reinstated" in order to provide clarity to the modified program regarding reinstatement rates.

The reinstatement of rates has been previously discussed in Findings B.5.(e) and B.5.(f) of this notice. In those findings, the Director did not approve Missouri's proposal to provide Fund ceilings as a "trigger" mechanism and is requiring Missouri to provide a system that will insure flexibility of the CMLR Fund as an ABS to operate in an actuarially sound manner in order to secure sufficient money, on an as needed basis, that it can meet the requirements of 30 CFR 800.11(e). Missouri must amend its regulations at 10 CSR 40-7.041(1)(E) in a manner that meets the requirements of 30 CFR 800.11(e) and is consistent with statutory requirements.

(b) *10 CSR 40-7.041(2); Fund Ceiling and Reimbursements.* The proposed regulation requires the LRC to make refunds from the CMLR Fund to permittees filing Phase I bonds and having valid permanent program permits at the end of the previous fiscal year, if, at the first LRC meeting following the end of a fiscal year, the CMLR Fund balance exceeds (1) the greater of $7 million or $2,500 times the number of acres mined but not released at any time prior to September 1, 1993; (2) $7 million at any time between September 1, 1993, and September 1, 1998; and (3) $3 million at any time after September 1, 1998. Permittees subject to compensative payments shall be refunded only the amount which is in excess of what is due in compensative payments. Each permittee shall be refunded a fraction of the excess amount, exclusive of penalties since September 1, 1988.

Changes made to the above regulation provide a mechanism for excess Fund balance disbursement. However, Missouri's basis for reimbursement by the use of Fund ceiling amounts has no relationship to actual Fund liabilities that might exist and therefore does not assure that the ABS will continue to meet the requirements of the Federal regulations at 30 CFR 800.11(e)(1). The Director is not approving Missouri's proposed changes and is requiring Missouri to provide a Fund reimbursement system that will assure its ABS will continue to function in a manner that meets the requirements of 30 CFR 800.11(e)(1).

(c) *10 CSR 40-7.041(4), Expenditure of Reclamation Fund Monies.* Missouri proposes some modification to this existing section as follows:

(i) *Expenditure of Fund monies.* At 10 CSR 40-7.041(4)(A)(1), Missouri proposes to add language that would clarify the function and use of its 40 percent and 60 percent CMLR Fund portions. More specifically, it provides that all monies within the Fund as of September 1, 1988, shall be allocated to the 40 percent Fund portion and applied to the reclamation of those permits that have been revoked by the commission prior to September 1, 1988. Also all monies assessed after September 1, 1993, shall be allocated to the 60 percent portion. The monies in the 60 percent Fund portion may be utilized for any aspect of reclamation except Phase I reclamation. Discussion of the 40 percent and 60 percent Fund breakdown has been provided in Finding B.4.(a) of this notice. In that finding the Director did not approve the 40 percent portion of the Fund (Fund A) and is requiring Missouri to amend its program in a manner that will ensure sufficient funds are available to fully reclaim defaulted land. The Director also did not approve the separation of Fund B from Fund A and is requiring Missouri to demonstrate that the Fund's generation of monies will be adequate to reclaim all defaulted lands and meet the requirements of 30 CFR 800.11(e). Missouri is required to amend its regulation here in a manner that is consistent with changes to its statutory requirements.

(ii) *Prohibited expenditure of Fund monies.* At 10 CSR 40-7.041(A)2, Missouri proposes to add the requirement that no reclamation Fund monies shall be expended for reclamation of areas bonded by full cost bonds. The Director finds that this language is provided to specifically clarify the intent of Missouri's alternative bonding options and is not inconsistent with Federal requirements. The Director is approving the proposed change.

IV. Public Comments

For a complete history of the opportunity provided for public comment on the proposed amendments, please refer to the portion of this notice entitled "Submission of Amendment." No public comments were received nor was a request for a public hearing made.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.(h)(10)(i), comments were also solicited from various State and Federal agencies. Only those agency comments pertinent to the proposed changes to the bonding requirements proposed in the three amendments being considered in this rulemaking action are being discussed.

Region VII of the United States Environmental Protection Agency (EPA) provided several comments in a letter dated February 27, 1989 (Administrative Record No. MO-421). They are:

At 10 CSR 40-7.011, a permittee without bond coverage is provided a period not to exceed 60 days to replace bond coverage. EPA was concerned if the 60 days meant calendar days or working days and if the 60 day period was excessive for non coverage. The 60 day period specified by Missouri is

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associated with the issuance of a notice of violation (NOV). All specified periods of time associated with such notices are in calendar days not working days. With regard to 60 days being excessive, the comparable Federal regulation at 30 CFR 800.16(e)(2) requires that bond be replaced within a period not to exceed 90 days upon the incapacity of a bank or surety company. Missouri's regulation would actually establish place a more limited time for bond replacement than is required by Federal regulation. Therefore, Missouri's proposed regulation is not inconsistent with the Federal regulation requirements and is approvable.

At 10 CSR 40-7.041(1)(E) 2 and 3, EPA questioned why the CMLR Fund assessment reinstatement rate was based on tons of coal sold instead of tons of coal mined. There are no counterpart Federal regulations that address the structure of an ABS Fund and a related assessment system. The State has discretion to establish such systems. Missouri's choice to base fees on tons of coal sold versus tons of coal mined is therefore not in conflict with Federal program requirements and is an acceptable approach to assess fees.

At 10 CSR 40-7.041(4)(B)2, EPA expressed its concern that "subsidence" was not specially stated as an example of expeditious work that the commission could expend reclamation fund monies on before proceeds from bonds are expended or committed. While the Director agrees that the specific expression of subsidence would add clarity to Missouri's regulation, the Director does not view Missouri's language to exclude such activity from being eligible for reclamation Fund money expenditures. Missouri provides qualifying language that, "This work may include, but shall not be limited to, * * *" In addition, it states that expeditious work would include that "necessary to comply with the laws, regulations, conditions of the permit or reclamation plan." Based on the above language, the Director is convinced that, should subsidence be a problem, Missouri not only can address subsidence, but would be compelled to do so.

V. Director's Decision

The Director is approving or approving with conditions the proposed amendments as initially submitted by Missouri on July 8, 1988, and January 12, 1989, with the exception of those provisions found to be inconsistent with SMCRA or the Federal regulations and identified in the codified portion of this notice under 30 CFR 925.15(n).

The Director is not approving certain provisions of the Missouri amendment, as codified at 30 CFR 925.16(f), for reasons set forth in findings: B.1.(b) and C.2.(a)(i), concerning Phase I bond release drainage control; B.2., B.5.(a), C.4.(a)(i) and (b)(iii), concerning bond filing options; B.3.(a), concerning fixed rate Phase I reclamation bond amounts and the open pit bond; B.3.(d), concerning the State approval of an ABS; B.4.(a) (i), (ii) and C.4.(c)(i), concerning use of the 40% portion and 60% portion of the CMLR Fund; B.4.(b), concerning Fund B expenditures; B.5.(c) and C.4.(a)(iii), concerning the buy-out option; B.5. (e) and (f), concerning CMLR Fund adjustment and Fund ceilings; C.1.(a)(i), concerning the definition of self-bonding; C.1.(d) (i), (ii), (iii), (iv) and (vi), concerning fixed rate bond amounts, open pit bond and full-cost bond adjustment; C.2.(a)(iii), concerning schedule for bond release; C.2.(a)(iv), concerning mandatory fixed percentage bond release rates; C.4.(a) (iv) and (vi), concerning Fund balance caps; and C.4.(b), concerning Fund ceiling and reimbursements.

Additionally, the Director is approving some provisions with the condition that Missouri provide certain demonstrations as set forth in findings: B.3.(b), concerning an operators bond liability; B.3.(e), concerning liability under a Phase I bond; B.5.(b), concerning initial CMLR Fund assessment rates; B.5.(d), concerning the CMLR Fund ceiling; C.1(b)(iv), concerning bond filing options and changes in filing options; and C.4.(a) (ii) and (v), concerning payment of assessments.

The Director is deferring his decision as set forth in findings B.1.(b) and C.2.(a)(i), concerning Phase I bond release drainage control requirements.

The Federal regulations at 30 CFR part 925 codifying decisions concerning the Missouri program are amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency between State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. The Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to the Director as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. Thus, any changes to an approved program are not enforceable by the State until approved by the Director. In oversight of the Missouri program, the Director will recognize only the statutory and regulatory provisions approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Missouri of only such provisions.

VII. Procedural Requirements

1. *National Environmental Policy Act*

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exception from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that, for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), this rule will not have a significant economic effect on a substantial number of small entities. This rule will not impose any new requirements: rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 29, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter of the Code of Federal Regulations is amended as set forth below:

PART 925—MISSOURI

1. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.15 is amended by adding paragraph (n) to read as follows:

§ 925.15 Approval of regulatory program amendments.

* * * * *

(n) Portions of the amendments submitted to OSM on July 8, 1988, and January 12, 1989, are approved effective May 8, 1991. Revisions to the Revised Statutes of Missouri (RSMo) at section 444.805 (8) and (16), concerning definitions of full-cost bond and Phase I reclamation bonds; section 444.950.1, concerning a minimum bond at $10,000 per permitted operation; section 444.950.3, concerning self-bonding; section 444.980.1, concerning the establishment of a CMLR Fund. Revisions to the Missouri Code of Regulations (CSR) at 10 CSR 40-7.011(1)(E), (F) and (G), concerning the definitions of Phase I bond, full-cost bond and open pit; 10 CSR 40-7.011(4)(E), concerning full-cost bond liability; 10 CSR 40-7.011(4)(F), concerning pit size survey; 10 CSR 40-7.011(5)(A)4, concerning surety financial restrictions; 10 CSR 40-7.011(5)(B) 2 and 4, concerning certificate of deposit amount and issuing bank insurance; 10 CSR 40-7.011(5)(D), concerning the self-bonding program; 10 CSR 40-7.021(2)(B)4, concerning criteria and schedule for Phase II bond release of reclamation liability; 10 CSR 40-7.021(2)(D)(3), concerning release of bond for temporary structures; 10 CSR 40-7.021(3), concerning procedures for obtaining bond release; 10 CSR 40-7.031, concerning permit suspension or revocation, bond forfeitures and authorization to expend reclamation fund monies; 10 CSR 40-7.041(4)(A)2, concerning exclusion to Fund monies use.

(1) The following portions of the above amendments are approved with the condition that Missouri provide certain demonstrations: Revisions of RSMo at section 444.950.2, concerning the operator's bond liability; section 444.950.4, concerning liability under a Phase I bond; section 444.965.2, concerning initial CMLR Fund assessment rates; section 444.965.4, concerning the CMLR Fund ceiling. Revisions of Missouri regulations at 10 CSR 40-7.011(2)(C), concerning changes in bond filing options; 10 CSR 40-7.041 (1)(B) and (1)(B)1, concerning the assessment rate of payments; and 10 CSR 40-7.041(1)(D), concerning compensative assessments.

(2) The following portions of the above amendments are not being approved. Revisions of RSMo at section 444.805(15), concerning the definition of Phase I bond release; section 444.830.1, concerning bond filing options; section 444.950.1, concerning fixed rate Phase I reclamation bond amounts and the open pit bond; section 444.950.3, concerning approval of an ABS by the State only; section 444.980.5, concerning use of the 40% and the 60% portion of the CMLR Fund and Fund B expenditures; section 444.965.1, concerning the bond filing options; section 444.965.3, concerning the buy-out option; section 444.965.5 and 6, concerning CMLR Fund adjustment and Fund ceiling caps. Revisions of Missouri's regulations at 10 CSR 40-7.011(1)(C), concerning the definition of self-bonding; 10 CSR 40-7.011(2)(B), concerning bond filing options; 10 CSR 40-7.011(4) (A), (B), (C), (D) and (F), concerning fixed rate bond amounts, open pit bond and full-cost bond adjustment; 10 CSR 40-7.021(2)(A), concerning Phase I bond release criteria; 10 CSR 40-7.021(2)(D)1, concerning Phase I bond release and legal liability impact; 10 CSR 40-7.021(2)(D)2, concerning mandatory fixed percentage bond release rates; 10 CSR 40-7.041(1)(A), concerning bond option participation schedules; 10 CSR 40-7.041(1)(B) 3, 4, 5 and 6, concerning the lump sum payment schedule; 10 CSR 40-7.041(1)(C), concerning Fund balance caps; 10 CSR 40-7.041(1)(E), concerning reinstatement rates; 10 CSR 40-7.041(2), concerning Fund ceiling reimbursements; and 10 CSR 40-7.041(4)(A)1, concerning the 40% and 60% portions of the CMLR Fund.

(3) The decision on the following portions of the above amendment are being deferred. Revisions of RSMo section 444.805(12) and CSR 40-7.021(2)(A), concerning Phase I bond release drainage control.

3. Section 925.16 is amended by adding Paragraph (g) to read as follows:

§ 925.16 Required program amendments.

* * * * *

(g) By July 8, 1991, Missouri shall amend its program as follows:

(1) At RSMo 444.830.1; 444.965.1; 10 CSR 40-7.011(2)(B); and 10 CSR 40-7.041(1)(A); demonstrate that the resulting financial aspect of the proposed optional participation by an applicant of either a full-cost bond or Phase I bond will ensure that the ABS can meet the requirements of 30 CFR 800.11(e) or remove this provision.

(2) At RSMo 444.950.1 and 10 CSR 40-7.011(4) (A), (B), (C) and (D) to ensure that the Phase I reclamation bond amounts will cover the cost of reclamation and maintain the flexibility of conventional bonds in all situations and that the open pit minimum bond will be sufficient to assure the completion of the required reclamation in all cases.

(3) At RSMo 444.950.2, demonstrate that the combination of bond liability between the operator's Phase I bond and the CMLR Fund bond will meet the requirements of SMCRA.

(4) At RSMo 444.950.3 and 444.830.3 to require the Secretary of the Interior's approval before adopting an alternative bonding system or delete the provision.

(5) At RSMo 444.980.1 to clarify how the CMLR Fund money may be expended.

(6) At RSMo 444.960.5 and 10 CSR 40-7.041(4)(A)1 to insure that the 40% Fund portion (Fund A) will provide sufficient funding to fully reclaim those sites forfeited prior to September 1, 1988, and demonstrate that the 60% Fund portion (Fund B) generation of monies will be adequate to reclaim all defaulted lands as required by 30 CFR 800.11(e).

(7) At RSMo 444.965.2, .4, .5 and .8 and 10 CSR 40-7.041 (1)(B), (1)(C), (1)(D), (1)(E) and (2) to assure that the fee assessment structure of the CMLR Fund will insure that the Fund will operate in a financially solvent manner as required by 30 CFR 800.11(e).

(8) At RSMo 444.965.3 and 10 CSR 40-7.041(1)(B) 3, 4, 5, and 6; demonstrate that the buy out option would still allow the ABS to meet the requirements of 30 CFR 800.11(e)(1) or remove this provision.

(9) At 10 CSR 40-7.011(1)(C) to require both the permittee and corporate guarantor to execute the indemnity agreement for a self-bond.

(10) At 10 CSR 40-7.011(2)(A), to require that the performance bonds be conditioned upon the faithful performance of the Act, regulatory program, permit and reclamation plan.

(11) At 10 CSR 40-7.011(3) to require an operator to identify initial and successive areas of increments for bonding and specify the bond amounts for each; prohibit disturbance on succeeding increments, underground shafts, tunnels, or operations prior to acceptance of bond; and that the applicant must submit an incremental bonding schedule.

(12) At 10 CSR 40-7.011(4)(F), to require that the commission shall review the full-cost bond for adjustment, and add regulations that are no less effective than the requirements of the Federal regulations at 30 CFR 800.15 (b)(1), (b)(2), (c) and (d).

(13) At 10 CSR 40-7.011(5)(A)2 to restrict a surety cancellation to only those lands not disturbed and then only with prior consent of the regulatory authority.

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(14) At 10 CSR 40-7.011(5)(A)8 to require an operator to begin reclamation immediately upon the issuance of a C.O. if a surety company is insolvent and the permittee has not replaced bond coverage within 60 days.

(15) At 10 CSR 40-7.011(5)(B)2 to require that a certificate of deposit for a self bond be made payable to the regulatory authority only, or assigned to the regulatory authority in writing and upon records of the bank.

(16) At 10 CSR 40-7.011(5)(D)(2)C to express the financial ratio values as actual ratios rather than decimal fractions.

(17) At 10 CSR 40-7.011(5)(D)2.D, to add the requirement that the accountant's audit or review opinion be prepared using generally accepted accounting principles.

(18) At 10 CSR 40-7.011(5)(D)5.A, to add the requirements that the third party non-corporate guarantor also execute the indemnity agreement; that the applicant and guarantor must both sign the indemnity agreement; that an affidavit be submitted with the indemnity agreement attesting to its validity under applicable Federal and State laws; that the applicant, parent or non-parent corporate guarantor be required to complete the approved reclamation plan or pay the regulatory authority to complete the reclamation plan; and that the indemnity agreement shall operate as a judgment when under forfeiture.

(19) At 10 CSR 40-7.021(2)(B) to require that vegetation be established in accordance with the approved reclamation plan at the Phase II level and that prime farmland soil productivity yield levels be met at the Phase II level of bond release.

(20) At 10 CSR 40-7.021(2)(D)1. to clarify that its Phase I bond release for an ABS is consistently defined and used through out its program and to provide a legal opinion of its Phase I reclamation bond release and bond coverage liability.

(21) At 10 CSR 40-7.021(2)(D)2. to remove mandatory fixed percentage bond release amounts and provide the flexibility required in the Federal regulations.

* * * * *

[FR Doc. 91-10674 Filed 5-7-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD 5400.7-R]

DoD Freedom of Information Act Program Regulation

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense is amending this part to reflect administrative amendments and a recent U.S. District Court ruling in *Oglesby* v. *Department of the Army* that no record responses may be appealed. This document also amends the title from "DoD Freedom of Information Act Program" to "DoD Freedom of Information Act Program Regulation".

EFFECTIVE DATE: May 10, 1991.

ADDRESSES: Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), room 2C757, Pentagon, Washington, DC 20301-1400.

FOR FURTHER INFORMATION CONTACT: Mr. C. Talbott, telephone (703) 697-1180.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 286

Freedom of information.

PART 286—[AMENDED]

Accordingly, 32 CFR part 286 is amended as follows:

1. The authority citation for part 286 continues to read as follows:

Pub. L. 99-570; secs. 1801-1804; Pub. L. 99-661, sec. 2328; 5 U.S.C. 552.

2. The title of part 286 is revised to read "DoD Freedom of Information Act Program Regulation"

§ 286.13 [Amended]

3. Section 286.13, paragraph (a)(5) introductory text is amended by changing "§ 286.12" to "§ 286.13" and paragraph (5)(i)(F) after the words "or litigation before any" by adding "Federal, state, or military court, as well as records that qualify for the"

4. Section 286.27 is amended by revising paragraphs (b)(2) through (b)(6) as follows:

§ 286.27 Initial determinations.

* * * * *

(b) * * *

(2) The DoD Component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record.

(3) A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(4) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this part or DoD Component supplementing regulations.

(5) The request is withdrawn by the requester.

(6) The information requested is not a record within the meaning of the FOIA and this part.

* * * * *

5. Section 286.29(a) is amended by removing the last sentence and the period after the word "fees" and adding ", and for no record determinations when the requester considers such a response adverse in nature. Appeals of denials of Office of the Secretary of Defense and Joint Staff documents or fee waivers may be sent to the address in paragraph 2a of appendix B to part 286"

6. Appendix B to part 286 is amended by adding a new paragraph 2.n.; paragraph 3.g. is amended by changing "SOJ1-AG" to "SOJ6-SI (FOI Officer)"

Appendix B—[Amended]

* * * * *

2. * * *

n. Defense Finance and Accounting Service (DFAS). DFAS records may be requested from any of its regional offices or from its Headquarters. Requesters should send FOI requests to Defense Finance and Accounting Service, Crystal Mall 3, room 416, Washington, DC 20376-5001 for records of its Headquarters, or if there is uncertainty as to which DFAS region may have records sought.

* * * * *

Appendix H—[Amended]

7. Appendix H to part 286 is amended by adding "Defense Finance and Accounting Service" at the end of the list.

Dated: May 2, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-10638 Filed 5-7-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 11-91-04]

Drawbridge Operation Regulations; Mokelumne River

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary drawbridge operation regulation for the Highway 12 drawbridge across the Mokelumne River east of Isleton, California (the Mokelumne River Bridge), to limit openings for recreational vessels to three times an hour during peak highway traffic periods on summer weekends. This temporary regulation is being established to reduce serious highway traffic congestion at the bridge. Since this action should accommodate all the needs of marine traffic expected to pass the bridge, its impact is expected to be minimal.

EFFECTIVE DATE: This rule becomes effective on May 1, 1991 and terminates on October 31, 1991.

ADDRESSES: Comments should be mailed to Commander (oan-br), Eleventh Coast Guard District, Building 10, room 214, Coast Guard Island, CA 94501-5100. The comments will be available for inspection and copying during normal work hours between 7:30 a.m. and 4 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Wayne R. Till, Chief, Bridge Section, Aids to Navigation Branch (telephone: (415) 437-3514).

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rulemaking procedure would have been contrary to the public interest. Immediate action is needed to prevent serious highway traffic tieups on Highway 12, the principal east-west connecting roadway in the California Delta. A Local Notice to Mariners has been issued. A similar regulation was implemented during the 1990 boating season and was found to improve overland transportation without significant effect on water transportation. During the time that regulation was in effect, The Coast Guard received only two comments about the regulation, one for and one against.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESSES" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This temporary regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). This temporary regulation will have no appreciable consequences as it will not prohibit any vessels from using the waterway. Since there is little economic impact, a full regulatory evaluation is unnecessary, and the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

Drafting Information

The drafters of this rule are Wayne R. Till, project officer, and Lieutenant Commander Allen Lotz, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

Highway 12 is the main east-west highway in the Sacramento-San Joaquin River Delta in northern California. It crosses three major recreational waterways on drawbridges: The Sacramento River at Rio Vista, the Mokelumne River east of Isleton, and Little Potato Slough at Terminous. In the vicinity of the Rio Vista Bridge, it carries as many as 1,100 vehicles per hour on holiday weekends and has traffic backups as long as 8 miles. The new Little Potato Slough drawbridge is nearing completion and this summer the old drawbridge will be removed. The Coast Guard has authorized a 60 day closure of Little Potato Slough at the bridge to permit the safe removal of the old bridge. During that period, vessels will have to bypass the bridge by using the Mokelumne River or the Sacramento River. The additional vessel traffic will aggravate highway-marine traffic conflicts at the Mokelumne River Bridge and the Rio Vista Bridge.

Current regulations require the Mokelumne River Bridge to open on call from 6 a.m. until 10 p.m. during the summer. The temporary regulation will limit openings for recreational vessels to three times an hour during peak highway traffic periods on summer weekends. Those peak periods are from 10 a.m. to 2 p.m. Saturdays and 11 a.m. to 6 p.m. Sundays. Openings for commercial vessels are infrequent on weekends, and it is not safe for commercial vessels to stop in the narrow channel. Accordingly, commercial vessels are excluded from this regulation and will be provided openings upon signal.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33 of the Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Subpart B—Specific Requirements

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.175 is amended by adding (a)(1) to read as follows:

§ 117.175 Mokelumne River.

* * * * *

(a) * * *

(1) During the period May 1, 1991 to October 31, 1991, the draw of the Mokelumne River Bridge, mile 3.0, shall open upon signal, as specified in the permanent regulations, except that during the following periods the bridge need only open for recreational vessels on the hour, 20 minutes past the hour, and 40 minutes past the hour: Saturdays, 10 a.m. until 2 p.m., Sundays, 11 a.m. until 6 p.m.

* * * * *

Dated: April 23, 1991.

J. G. Schmidtman,

U.S. Coast Guard Acting Commander, Eleventh Coast Guard District.

[FR Doc. 91-10750 Filed 5-7-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD 11-91-05]

Drawbridge Operation Regulations; Sacramento River

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: At the request of a citizens group in Rio Vista, CA, the Coast Guard is establishing a temporary drawbridge operation regulation for the Highway 12 drawbridge across the Sacramento River at Rio Vista, California (the Rio Vista Bridge), to limit openings for recreational vessels to three times an hour during peak highway traffic periods on summer weekends and holidays. This temporary regulation is being established to reduce serious highway traffic congestion at the bridge. Since this action should accommodate all the needs of marine traffic expected to pass the bridge, its impact is expected to be minimal.

EFFECTIVE DATE: This rule becomes effective on May 1, 1991 and terminates on October 31, 1991.

ADDRESSES: Comments should be mailed to Commander (oan-br), Eleventh Coast Guard District, Building 10, room 214, Coast Guard Island, CA 94501-5100. The comments will be available for inspection and copying during normal work hours between 7:30 a.m. and 4 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Wayne R. Till, Chief, Bridge Section, Aids to Navigation Branch (telephone: (415) 437-3514).

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rulemaking procedure would have been contrary to the public interest. Immediate action is needed to prevent serious highway traffic tieups on Highway 12, the principal east-west connecting roadway in the California Delta. A Local Notice to Mariners has been issued. A similar regulation was implemented at the Mokelumne River Bridge during August-September 1988 and again from May-October 1990 and was found to improve overland transportation without significant effect on water transportation.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESSES" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This temporary regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is little economic impact, a full regulatory evaluation is unnecessary. This temporary regulation will have no appreciable consequences as it will not prohibit any vessels from using the waterway. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

Drafting Information

The drafters of this rule are Wayne R. Till, project officer, and Lieutenant Commander Allen Lotz, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

Highway 12 is the main east-west highway in the Sacramento-San Joaquin River Delta in northern California. It crosses three major recreational waterways on drawbridges: The Sacramento River at Rio Vista, the Mokelumne River east of Isleton, and Little Potato Slough at Terminous. In the vicinity of the Rio Vista Bridge, it carries as many as 1,100 vehicles per hour on holiday weekends and has traffic backups as long as 8 miles. The new Little Potato Slough drawbridge is nearing completion and this summer the old drawbridge will be removed. The Coast Guard has authorized a 60 day closure of Little Potato Slough at the bridge to permit the safe removal of the old bridge. During that period, vessels will have to bypass the bridge by using the Mokelumne River or the Sacramento River. The additional vessel traffic will aggravate highway-marine traffic conflicts at the Mokelumne River Bridge and the Rio Vista Bridge. Under a separate rulemaking, the Coast Guard will restrict recreational vessel openings of the Mokelumne River Bridge during this same period.

Current regulations require the Rio Vista Bridge to open on demand. The temporary regulation will limit openings for recreational vessels to three times an hour during peak highway traffic periods on summer weekends and major holidays. Those peak periods are from 2 p.m. until 6 p.m. Fridays and Memorial Day and Labor Day. Openings for commercial vessels are infrequent on weekends and holidays, and it is not safe for commercial vessels to stop in the narrow channel. Accordingly, commercial vessels are excluded from this regulation and will be provided openings upon signal.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33 of the Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Subpart B—Specific Requirements

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.189 is amended by adding paragraph (d) to read as follows:

§ 117.189 Sacramento River.

* * * * *

(d) During the period May 1, 1991, to October 31, 1991, the draw of the Rio Vista Bridge, mile 12.8, shall open upon signal, except that from 2 p.m. until 6 p.m. on Fridays and Memorial Day and Labor Day, the bridge need only open for recreational vessels on the hour, 20 minutes past the hour, and 40 minutes past the hour.

Dated: April 23, 1991.

J.G. Schmidtman,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 91-10749 Filed 5-7-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD2-91-01]

Drawbridge Operation Regulations: St. Croix River, Minnesota and Wisconsin

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule changes the regulations governing the opening requirements of the Chicago and Northwestern Railroad Drawbridge at Mile 17.3 of the St. Croix River (Hudson, WI), the Prescott Highway Drawbridge at Mile 0.3, and the Burlington Northern Railroad Drawbridge at Mile 0.2 (Prescott, WI). Currently these bridges open on signal from 1 March to 14 December, and with 24 hour advance notice from 15 December to last day of February. This change will extend the period during which 24 hour advance notice is required to 31 March—an extension of 1 month.

EFFECTIVE DATE: This regulation becomes effective on June 7, 1991.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, 314-539-3724.

SUPPLEMENTARY INFORMATION: On January 25, 1991, the Coast Guard published a Notice of Proposed Rule Making in the **Federal Register** at 56 FR 2883. Interested persons were invited to participate in this rulemaking by submitting written views, comments, data, or arguments no later than March 11, 1991. One comment was received.

Drafting Information

The drafters of this regulation are Wanda G. Renshaw, Project Officer, and Lieutenant M. A. Suire, Project Attorney, 1222 Spruce Street, St. Louis, MO 63103-3823, 314-539-3727.

Discussion

The swing span of the Chicago and Northwestern Railroad Bridge at Hudson, Wisconsin, and the vertical lift spans of the U.S. 16-61 Highway Bridge and the Burlington Northern Railroad Bridge, both at Prescott, Wisconsin, presently open on signal except that from December 15 through the last day of February, the draws open on signal provided at least 24 hours notice is given. Navigation through these bridges consists mainly of recreational craft and an occasional commercial tow. The Chicago and Northwestern Railroad Bridge is located in a reach of the river that is frozen during the winter months. Because of infrequent requests to open the draw due to river and weather conditions, the Railroad originally requested that the dates during which 24 hours notice is required for opening the draw be changed to November 15 through March 31. As a result of comments received from a commercial operator, Chicago and Northwestern later amended their petition and requested that the advance notice period be revised to require 24 hours notice between December 15 and March 31. Bridge logs confirm that a total of six openings occurred at this bridge during the periods March 1 through 31 for the navigation seasons 1983 through 1989. In considering Chicago and Northwestern's request, the openings of the railroad and highway drawbridges at Prescott were also reviewed. Draw opening logs document that both bridges were opened a combined total of two times in 1989 and six times in 1990 during the period December 15 through March 31. This change will relieve the bridge owner of the burden of having a drawtender in attendance from March 1 through March 31, and still provide for the reasonable needs of navigation.

In addition to the foregoing, this change will reinsert two subparagraphs, and renumber existing subparagraphs, for the regulation governing the operation of the S36 bridge at Stillwater, Minnesota, Mile 23.4. These subparagraphs were inadvertently omitted from the regulation at subsection 117.1099 when the reorganized regulations for drawbridges were published in the **Federal Register** on April 24, 1984 (FR 17450). The single comment received from Burlington Northern Railroad, fully supports this rule.

Federalism Assessment and Certification

This action has been analyzed in accordance with the principles and criteria outlined in Executive Order 12612. It has been determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment. This rule simply extends the advance notice period to March 31 for the occasional vessel that may require a bridge opening during the winter season.

Environmental Assessment and Certification

This action has been reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion Certification is available for review on the docket.

Economic Assessment and Certification

This rule has been reviewed under the provisions of Executive order 12291 and determined not to be a major rule. In addition, this rule is considered to be nonsignificant under the guidelines of DOT order 2100.5 dated May 22, 1980, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An economic evaluation has not been conducted and is deemed unnecessary as the impact of these regulations is expected to be minimal. Extending the advance notice period from the last day of February to March 31 is justified in view of the paucity of vessels requiring bridge openings during the winter season. Pursuant to 5 U.S.C. 601, *et seq.*, the Regulatory Flexibility Act, it is certified that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Final Regulation

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Part 117 is amended by revising § 117.667 to read as follows:

§ 117.667 St. Croix River.

(a) The draws of the Burlington Northern Railroad Bridge, Mile 0.2, and the U.S. 16-61 bridge, Mile 0.3, at Prescott, and the Chicago and Northwestern railroad bridge, Mile 17.3, at Hudson, shall open on signal; except that, from December 15 through March 31, the draw shall open on signal if at least 24 hours notice is given.

(b) The draw of the S36 Bridge, Mile 23.4, at Stillwater, shall open on signal as follows:

(1) From May 15 through October 15 Monday through Friday, except Federal holidays, from—

(i) 8 a.m. to 11 a.m., every hour on the hour;

(ii) 11 a.m. to 3 p.m., every hour and half hour;

(iii) 3 p.m. to 6 p.m., every hour on the hour;

(iv) 6 p.m. to 10 p.m., every hour and half hour; and

(v) 10 p.m. to 8 a.m., if at least two hours notice is given.

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(2) From May 15 through October 15 Saturdays, Sundays, and Federal holidays from—

(i) 8 a.m. to 11 a.m., every hour and half hour;

(ii) 11 a.m. to 8 p.m., every hour on the hour;

(iii) 8 p.m. to midnight, every hour and half hour; and

(iv) Midnight to 8 a.m., if at least two hours notice is given.

(3) From May 15 through October 15, at any time for emergencies.

(4) From October 16 through May 14, if at least 24 hours notice is given.

(c) The draw of the Soo Line Railroad Bridge, Mile 40.7, at Otisville, need not be opened for the passage of vessels.

3. Part 117 is further amended by revising § 117.1099 to read as follows:

§ 117.1099 St. Croix River.

(a) The draws of the Burlington Northern Railroad Bridge, Mile 0.2, and the U.S. 16–61 bridge, Mile 0.3, at Prescott, and the Chicago and Northwestern railroad bridge, Mile 17.3, at Hudson, shall open on signal; except that, from December 15 through March 31, the draw shall open on signal if at least 24 hours notice is given.

(b) The draw of the S36 Bridge, Mile 23.4, at Stillwater, shall open on signal as follows:

(1) From May 15 through October 15 Monday through Friday, except Federal holidays, from—

(i) 8 a.m. to 11 a.m., every hour on the hour;

(ii) 11 a.m. to 3 p.m., every hour and half hour;

(iii) 3 p.m. to 6 p.m., every hour on the hour;

(iv) 6 p.m. to 10 p.m., every hour and half hour; and

(v) 10 p.m. to 8 a.m., if at least two hours notice is given.

(2) From May 15 through October 15 Saturdays, Sundays, and Federal holidays from—

(i) 8 a.m. to 11 a.m., every hour and half hour;

(ii) 11 a.m. to 8 p.m., every hour on the hour;

(iii) 8 p.m. to midnight, every hour and half hour; and

(iv) Midnight to 8 a.m., if at least two hours notice is given.

(3) From May 15 through October 15, at any time for emergencies.

(4) From October 16 through May 14, if at least 24 hours notice is given.

(c) The draw of the Soo Line Railroad Bridge, Mile 40.7 at Otisville, need not be opened for the passage of vessels.

Dated: April 29, 1991.

W. J. Ecker,

Rear Admiral (Lower Half), United States Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 91-10872 Filed 5-7-91; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Nonmailability of Deceptive Solicitations

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its regulations to implement the Deceptive Mailings Prevention Act of 1990, Public Law No. 101–524 (November 6, 1990). Effective May 5, 1991, the Act makes solicitations by nongovernmental entities, which imply a Federal Government connection, approval, or endorsement they do not actually have, nonmailable unless they are contained in certain publications or display prescribed disclaimers.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Ventresco, (202) 268–3085.

SUPPLEMENTARY INFORMATION: On March 29, 1991, the Postal Service proposed (56 FR 13097) to amend its regulations on nonmailable written, printed, and graphic matter, contained in part 123 of the Domestic Mail Manual, to implement the Deceptive Mailings Prevention Act of 1990 (Public Law No. 101–524, November 6, 1990). The Act added new subsections (f) and (g) to section 3001 of title 39, United States Code. The new subsections deal with any solicitation by a nongovernmental entity containing terms or symbols that reasonably could be interpreted or construed as implying a Federal Government connection, approval, or endorsement. If the soliciting entity does not have such connection, approval, or endorsement, the solicitation is nonmailable unless it: (1) Is contained in a publication the addressee has ordered, and is not on behalf of the publisher; or (2) displays prescribed disclaimers, both on its envelope or outside cover or wrapper, and on the face of the solicitation itself. The Act authorizes the Postal Service to regulate the manner of displaying the prescribed disclaimers to ensure that they are conspicuous and legible.

We received three written comments on the proposed rule. Two expressed support for it. One expressed support for its anti-deception purpose, but also expressed concern that it could be applied to the solicitations of legitimate organizations based solely on a word such as "American" or "National" in the organization's name, or a symbol such as an eagle in the organization's logotype. To prevent such an "extreme interpretation", the commenter suggested that the rule expressly exclude mere use of such words or symbols as a criterion for determining nonmailability. The commenter also suggested exempting solicitations for renewal of membership and additional contributions, as those already having joined or contributed would be unlikely to be deceived.

The Act did not authorize the Postal Service to create any additional category of exempt solicitation. Moreover, the commenter's concern about an "extreme interpretation" is not well founded. The Act and the implementing regulations require that a standard reasonableness be observed in determining whether any term or symbol could be interpreted or construed as implying a Federal Government connection, approval, or endorsement. If a solicitation were challenged by the Postal Service, this determination would be made in administrative proceedings according the solicitor due process, including notice and the opportunity for a hearing before the Postal Service Judicial Officer Department (39 CFR parts 952, 953).

The Drug and Household Substance Mailing Act of 1990, Public Law No. 101–493 (October 31, 1990), effective April 29, 1991, redesignated the new subsections 3001 (f) and (g) as (h) and (i). By so doing, it inadvertently negated the Deceptive Mailings Prevention Act provision which made the mailing of nonmailable deceptive solicitations actionable as a false-representation scheme, and *prima facie* evidence to support the Postal Service's issuing the remedial orders authorized by section 3005(a) of title 39, United States Code. The heading and section 123.421 of the proposed regulations are being amended to reflect these consequences.

Based on the proposed rule, and after careful consideration of the comments received, as described above, the Postal Service adopts the following amendments to part 123 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 123—NONMAILABLE MATTER—WRITTEN, PRINTED, AND GRAPHIC

2. Redesignate Domestic Mail Manual 123.42, 123.43, and 123.44 as 123.43, 123.44, and 123.45, respectively, and insert the following before them:

123.42 Solicitations Deceptively Implying Federal Connection, Approval, or Endorsement (39 U.S.C. 3001(h) and 3001(i); 39 U.S.C. 3005).

123.421 Prohibited Solicitations.

A solicitation by a nongovernmental entity that contains any term or symbol—including, but not limited to, a seal, insignia, or trade or brand name—that could reasonably be construed or interpreted as implying any federal government connection, approval, or endorsement is nonmailable unless it conforms to 123.422a, 123.422b, or 123.422c. Compliance with 123.422a, 123.422b, or 123.422c will not avoid violation of 39 U.S.C. 3005 if the solicitation or accompanying information misrepresents a material fact such as the nature, value, quantity, quality, or efficacy of the products or services offered for sale, or of the activities of an organization asking for information or monetary contributions.

123.422 Permitted Solicitations.

A solicitation by a nongovernmental entity containing any term or symbol that could reasonably be construed or interpreted as implying federal government connection, approval, or endorsement is mailable if it meets at least one of the three following conditions.

a. The solicitation is by a nongovernmental entity that actually has the federal government connection, approval, or endorsement reasonably inferable from the solicitation's terms or symbols.

b. The solicitation appears in a publication for which the addressee has paid or promised to pay a consideration or which the addressee has otherwise indicated he or she desires to receive, and the solicitation is not on behalf of the publisher of the publication.

c. The solicitation displays the notice required by 123.422c(1) on the envelope or outside cover or wrapper in which the solicitation is mailed, and one of the two notices required by 123.422c(2) on the contents. These notices must be printed in boldface capital letters of a color prominently contrasting with the background against which they appear. "Color prominently contrasting" excludes any color or intensity that ordinary photocopying cannot reproduce legibly. The color, which can include black, must be at least as vivid as any other color on the fact of the solicitation and its envelope, or outside cover or wrapper. The required wording, type size and style, and placement for the notices are as follows:

(1) *On the Envelope, Cover, or Wrapper.* The face of the envelope or outside cover or wrapper must bear the notice: THIS IS NOT A GOVERNMENT DOCUMENT. The letters for printing this notice must be as large, bold, and conspicuous as any other letters on the face of such envelope, cover, or wrapper, but never smaller than 12-point type. The notice must appear in the upper right quadrant, below the postage stamp or other postage indicia and above the address, and it must be surrounded by a clear space not less than ¼ inch wide (see exhibit 123.422c(1)).

(2) *On the Contents.* The solicitation mailed within the envelope, cover, or wrapper must bear at the outset on its face one of these two headline notices, depending on its purpose as indicated in parentheses:

(a) THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY THE FEDERAL GOVERNMENT, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE FEDERAL GOVERNMENT (for the purchase of or payment for a product or service); (b) THIS ORGANIZATION HAS NOT BEEN APPROVED OR ENDORSED BY THE FEDERAL GOVERNMENT, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE FEDERAL GOVERNMENT (for information or the contribution of funds or membership fees). The letters for printing these notices must be as large, bold, and conspicuous as any other letters on the face of the solicitation, but never smaller than 30-point type. The notice must be surrounded by a clear space at least ½ inch wide. The notice must not be preceded, followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or introduces, modifies, qualifies, or explains the prescribed text, such as "Notice Required by Law" (see exhibit 123.422c(2)). The notice must not, by folding or any other device, be rendered unintelligible or less prominent than any other information on the face of the solicitation.

A transmittal letter making these changes in the Domestic Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

BILLING CODE 7710-12-M

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EXAMPLE

F.B.I.
P.O. Box 0000
Washington, DC 12345-6789

POSTAGE

THIS IS NOT A
GOVERNMENT DOCUMENT

MR E Z MARK
1 MAIN STREET
ANYTOWN XX 98765-4321

Exhibit 123.422c(1)

Note: Not drawn to scale.

EXAMPLE

F.B.I.
P.O. Box 0000
Washington, DC 12345-6789

THIS PRODUCT OR SERVICE HAS
NOT BEEN APPROVED OR ENDORSED
BY THE FEDERAL GOVERNMENT,
AND THIS OFFER IS NOT BEING
MADE BY AN AGENCY OF THE
FEDERAL GOVERNMENT.

Dear Mr. Mark:

Here is a truly incredible offer which a person of your astuteness will not want to pass up. Our company, Fascinating Business Incorporated, publishes a monthly report of little-known business information, to which you can now subscribe at the low, low annual rate of only etc.

Exhibit 123.422c(2)

Note: Not drawn to scale.

[FR Doc. 91-10835 Filed 5-7-91; 8:45 am]
BILLING CODE 7710-12-C

39 CFR Part 111

Nonmailability of Certain Household Substances, Pesticides, and Fragrance Advertising Samples

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its regulations to implement the Drug and Household Substance Mailing Act of 1990, Public Law No. 101-493 (October 31, 1990). This Act makes nonmailable: (1) Any unsolicited matter containing a "household substance" (as defined by section 2 of the Poison Prevention Packaging Act of 1970) which does not meet the Consumer Product Safety Commission's child-resistant packaging requirements; and (2) any fragrance advertising sample not prepared in a manner reasonably designed to prevent individuals from being unknowingly or involuntarily exposed to it. The amended regulations also provide that any "pesticide" (as defined by section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act) must meet comparable child-resistant packaging standards set by the Environmental Protection Agency.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Earl Hohbein, (202) 268-5309.

SUPPLEMENTARY INFORMATION: On March 7, 1991, the Postal Service proposed (56 FR 9664) to amend its regulations on nonmailable articles and substances, contained in part 124 of the Domestic Mail Manual (DMM), to implement the Drug and Household Substance Mailing Act of 1990 (Pub. L. 101-493, October 31, 1990). The Act added new subsections (f) and (g) to section 3001 of title 39, United States Code. Subsection (f) declares any matter which (1) is unsolicited by the addressee, (2) contains a "household substance" as defined by section 2 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471(2)), and (3) does not comply with the requirements for special child-resistant packaging (16 CFR part 1700) established for that substance by the Consumer Product Safety Commission (CPSC), to be nonmailable matter. Subsection (g) declares that matter which contains a fragrance advertising sample is nonmailable matter, unless the sample is sealed, wrapped, treated, or otherwise prepared in a manner reasonably designed to prevent individuals from being unknowingly or involuntarily exposed to the sample.

Section 1716 of title 18, United States Code, makes nonmailable any matter which may kill or injure another, or injure the mails or other property. It authorizes the Postal Service, however, to permit the mailing of any such matter which is not outwardly or of its own force dangerous or injurious to life, health, or property, under such regulations as the Postal Service shall prescribe as to preparation and packaging. Any "pesticide," as that term is defined by section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u)), is subject to child-resistant packaging standards (7 U.S.C. 136w(a)(1), (c)(3); 40 CFR part 157) set by the Environmental Protection Agency (EPA), which are consistent with the CPSC standards cited above. In order to serve more comprehensively the child-protection purposes of new 39 U.S.C. 3001(f), the Postal Service proposed to exercise its authority under 18 U.S.C. 1716 to make nonmailable any pesticide (as defined by 7 U.S.C. 136(u)) which does not comply with the child-resistant packaging standards established by the EPA (40 CFR part 157).

We received twenty-two written comments on the proposed regulation of fragrance advertising samples. Nineteen of these were from individuals reporting personal ill effects from exposure to fragrance advertising samples. These persons all expressed concern that the proposed requirement for preparation of such samples would not ensure adequate public protection. They suggested, instead, that such samples either be required to be sealed in impervious wrappers, such as foil wrappers, or else be excluded from the mail regardless of their manner of preparation. An organization which commented also criticized the proposed requirement as providing insufficient protection, and advocated requiring the use of a foil seal, but did not advocate absolute exclusion of fragrance advertising samples from the mail.

The Act neither absolutely excludes fragrance advertising samples from the mail, nor authorizes the Postal Service to impose such an exclusion. It does exclude such samples from the mail if they are not "sealed, wrapped, treated, or otherwise prepared in a manner reasonably designed to prevent individuals from being unknowingly or involuntarily exposed to the sample[s]." The Committee on Post Office and Civil Service, House of Representatives, in its report on the Act (H.R. Rep. No. 101-576, 101st Cong., 2d Sess., at 2 (Sept. 26, 1990)) described the standards by which it wanted compliance with this preparation requirement to be determined. These standards, duly included in the proposed regulation, require that the sample be incapable of activation "except by opening a glued flap or binder, or by removing an overlying ply of paper." Samples which would allow exposure to the fragrance without one's having opened such a flap or binder or removed such an overlying ply would not be in compliance with the regulation and would be nonmailable. Accordingly, the proposed regulation does provide adequate protection of the public, with no need to specify that the flap, binder, or ply be made of foil, or to use the term "impervious wrapper".

One industry representative suggested changing "fragrance advertising sample" to "fragrance advertising insert" because: (1) The California statute (section 26470, California Health and Safety Code), whose standards underlie proposed section 124.395, uses the term "fragrance advertising insert", and (2) postal regulations exclude product samples as supplements in publications mailed at the second-class rate (429.112f(2), DMM). However, the Act uses the term "fragrance advertising sample", not "fragrance advertising insert." Moreover, the cited report on the Act uses the term "fragrance advertising sample" in describing the preparation standards to be adopted. The report uses the word "insert" only in noting that "new section 3001(g) of title 39 * * * should not affect existing mail classification rules, regulations, or practices as they relate to fragrance advertising sample inserts" (H.R. Rep. No. 101-758, *supra*, at 2, 3). The concern that use of the word "sample" would operate to prevent properly prepared "fragrance advertising samples" from being included in second-class publications is not well founded. Section 429.112f(2) provides that "[p]roducts and product samples are ineligible as supplements [to a publication with second-class entry]." However, a "fragrance advertising sample" is—according to the plain meaning of that term—a sample of the fragrance of a product, distributed for advertising purposes. It is neither the product, itself, nor a sample of the product, but merely a sample of the fragrance of the product. Therefore, the mere fact that such samples contained in second-class publications would be subject to the proposed regulation's preparation requirement would not convert a "fragrance sample" into a "product sample" excluded by 429.112f(2).

The same commenter also criticized the proposed regulation for not using the exact wording of the California statute to describe the standards derived from that statute. The proposed regulation substantively embodies the California statute's standards because the House Committee on Post Office and Civil

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Service viewed them as standards which the Postal Service should adopt to carry out the legislative intent of the Act. Accordingly, the Postal Service adopted them specifically as formulated in the Committee's report (H.R. Rep. No. 101-758, *supra*, at 2). Another industry representative commented that it "earlier had the opportunity to comment on the language recommended by the Committee on Post Office and Civil Service that forms the basis of the Postal Service's proposed regulation", and that "[m]ajor manufacturers of fragrance samples have assured us that they are able to comply with these standards to ensure protection of the public against inadvertent exposure to fragrances."

We received two written comments dealing with both proposed sections 124.393 and 124.394, and one dealing only with section 124.394. One of the commenters asked whether labels required by nonpostal regulations would be required by the Postal Service's proposed regulations to be attached to or inserted in the package of the regulated matter. The proposed regulations contain no such requirement. If nonpostal regulations require such attachment or insertion of labels, however, the mere fact that the matter was being mailed would not absolve the mailer from satisfying the nonpostal requirement. As noted in 124.121, DMM, a mailer is responsible for complying with all applicable laws and regulations—both postal and nonpostal. The same commenter also expressed concern about how the Postal Service would know a mailer was in compliance with the proposed regulations if there were no CPSC or EPA child-resistant packaging requirements applicable to particular matter it wished to mail. Postal regulations (124.123b, DMM) recognize that prospective mailers must have an opportunity to demonstrate to acceptance clerks that matter is mailable as packaged. As part of such a demonstration, a mailer might present evidence, including but not limited to advice or rulings from the CPSC or EPA, to explain that the matter to be mailed satisfies or is exempt from child-resistant packaging requirements. Another means which the prospective mailer could employ in seeking to demonstrate that the matter is mailable would be certificates of compliance similar to those authorized in proposed section 124.396. Moreover, a prospective mailer may appeal an adverse mailability decision from the postmaster to obtain a review of that decision by the general manager of the rates and classification center serving the particular post office, and may appeal the general manager's decision via administrative proceedings before the Postal Service's Judicial Officer Department (124.126, DMM).

Another commenter supported proposed sections 124.393 and 124.394 with the understanding—which is quite correct—that they would not expand the scope of the CPSC or EPA child-resistant packaging requirements, but would merely make matter not complying with those requirements nonmailable. This commenter, however, appeared to be under the impression that, if matter were not made nonmailable by 124.393 or 124.394 it would therefore be absolutely mailable. Such an impression would be incorrect. The mere fact that matter complies with 124.393 or 124.394 would not mean that it might not be nonmailable under another postal regulation. For example, if matter were contained in child-resistant packaging satisfying CPSC or EPA requirements, but the matter constituted a Class A poison, it would be nonmailable under 124.36b, DMM. This same commenter also appeared to believe, incorrectly, that 124.394 applies only to unsolicited mailings. No such restriction was included in the proposed regulation, and its protection for children applies to solicited as well as unsolicited matter. Section 124.393 is limited to "matter which is unsolicited by the addressee" because the Act expressly imposed that limitation.

The third commenter expressed support for proposed 124.394, but suggested that its wording could be changed to make clearer that it is not intended to expand the EPA's child-resistant packaging requirements. We agree with this suggestion and, accordingly, are making clarifying changes in the wording.

In 124.393, the parenthetical citation to the codification of section 2 of the Poison Prevention Packaging Act of 1970 is being corrected.

Based on the proposed rule, and after careful consideration of the comments received, as described above, the Postal Service adopts the following amendments to part 124 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

Lists of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

PART 124—NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

2. After 124.392 add the following:

124.393 Household Substances (39 U.S.C. 3001(f)).

Any matter which is unsolicited by the addressee, contains a "household substance" as defined by section 2 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471(2)), and does not comply with the requirements for special child-resistant packaging established for that substance by the Consumer Product Safety Commission (16 CFR part 1700) is nonmailable.

124.394 Pesticides (18 U.S.C. 1716).

Any matter which contains a "pesticide" as defined by section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u)), and does not comply with child-resistant packaging standards established by the Environmental Protection Agency which are applicable to that particular matter (40 CFR part 157) is nonmailable.

124.395. Fragrance Advertising Samples (39 U.S.C. 3001(g)).

Any matter which is otherwise acceptable in the mails, but which contains or includes a fragrance advertising sample, is nonmailable unless the sample meets the following requirement: It must be sealed, wrapped, treated, or otherwise prepared in a manner reasonably designed to prevent individuals from being unknowingly or involuntarily exposed to the sample. A sample will be deemed to meet this requirement if it employs paper stocks with a maximum porosity of 20 Sheffield units or 172 Gurley-Hill units treated exclusively with microencapsulated oils, and is produced so that it cannot be activated except by opening a glued flap or binder, or by removing an overlying ply of paper.

124.396 Certificates of Compliance.

Customers offering matter for deposit in the mail, which would be nonmailable under 124.393, 124.394, or 124.395 but for compliance with the specified packaging and preparation requirements, may submit an accompanying written statement certifying that the matter is packaged or prepared in accordance with the applicable standards. The certifying statement may be made on the customer's letterhead, on a bulk mailing statement, or as a notice on the exterior of each item offered for mailing.

A transmittal letter making these changes in the Domestic Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,
Assistant General Counsel, Legislative Division.

[FR Doc. 91-10636 Filed 5-7-91; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300206A; FRL-3872-9]

RIN 2070-AB78

Calcium Hypochlorite and Chlorine Gas; Exemptions from Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In accordance with a previously announced policy, EPA is establishing exemptions from the requirement of a tolerance for residues of calcium hypochlorite and chlorine gas when applied preharvest or postharvest in solution to raw agricultural commodities.

EFFECTIVE DATE: This regulation becomes effective May 8, 1991.

ADDRESSES: Written objections, identified by the document control number [OPP-300206A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Walter C. Francis, Acting Product Manager (PM) 32, (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703)-557-3964.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 11, 1990 (56 FR 1153), EPA issued a proposed rule in accordance with EPA's document of February 1986, entitled "Guidance for the Registration and Reregistration of Pesticide Products Containing Sodium and Calcium Hypochlorite as the Active Ingredient," which concluded that under the Federal Food, Drug, and Cosmetic Act EPA is required to establish certain tolerances or exemptions from the need for tolerances for the use of calcium hypochlorite. In the same proposed rule EPA also proposed to exempt from the requirement of a tolerance residues of chlorine gas applied preharvest or postharvest in solution to raw agricultural commodities. The exemptions for calcium hypochlorite and chlorine gas do not apply to their use during food processing or as a food-contact surface sanitizer since these uses are under the jurisdiction of the Food and Drug Administration.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 23, 1991.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1054 is revised to read as follows:

§ 180.1054 Calcium hypochlorite; exemptions from the requirement of a tolerance.

Calcium hypochlorite is exempted from the requirement of a tolerance when used preharvest or postharvest in solution on all raw agricultural commodities.

3. Section 180.1095 is revised to read as follows:

§ 180.1095 Chlorine gas; exemptions from the requirement of a tolerance.

Chlorine gas is exempted from the requirement of a tolerance when used preharvest or postharvest in solution on all raw agricultural commodities.

[FR Doc. 91-10602 Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 9E3778/R1105; FRL-3847-5]

Pesticide Tolerance for 2-(2-Chlorophenyl)Methyl-4,4-Dimethyl-3-Isoxazolidinone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone, also referred to as clomazone, in or on the raw agricultural commodity peppers. This regulation was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: This regulation becomes effective May 8, 1991.

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ADDRESSES: Written objections, identified by the document control number [PP 9E3778/R1105], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 716, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 30, 1990 (55 FR 49646), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4, (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 9E3778 to EPA on behalf of the IR-4 Project, and the Agricultural Experiment Stations of North Carolina, Florida, New Jersey, Puerto Rico, Kentucky, Maryland, Georgia, and Arkansas.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodity peppers at 0.05 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the Federal Register, file written objections/and or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objection must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justiy the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 19, 1991.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.425 is amended in the table therein by adding and alphabetically inserting the raw agricultural commodity peppers, to read as follows:

§ 180.425 2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone; tolerance for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Peppers	0.05
* * * * *	

[FR Doc. 91-10903 Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-33

[FPMR Amendment E-266]

Public Utility Rate Cases; Responsibilities for Agencies Delegated Intervention Authority

AGENCY: General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The responsibilities are defined for agencies that receive delegations of authority from GSA to intervene in public utility rate cases. Also, reporting requirements are explained for these agencies. This action is necessary to improve GSA's monitoring and oversight of delegated rate cases. Adherence to these procedures will improve program effectiveness and will result in more timely reporting of rate case results.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. John Harvey, Director, Rate Case Division at 202/501-0190 or FTS 241-0190.

SUPPLEMENTARY INFORMATION: GSA has determined that this is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

List of Subjects in 41 CFR Part 101-33.

Administrative practice and procedure, authority delegations (Government agencies), Government procurement, and utilities.

Accordingly, 41 CFR Part 101-33 is amended as follows.

PART 101-33—PUBLIC UTILITIES

1. The authority citation for part 101-33 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101-33.2—Negotiation and Representation Involving Utility Services

2. Section 101-33.202 is revised to read as follows:

§ 101-33.202 Proceedings before regulatory bodies.

Pursuant to the provisions of section 201(a)(4) of the Property Act, executive agencies shall refer to GSA for consideration, all complaints and petitions involving public utility rates or services proposed to be brought before Federal and State regulatory bodies. Executive agencies seeking intervention authority shall submit their requests to GSA in writing. GSA will determine whether it will handle the proceedings, in cooperation with other interested agencies, or delegate the handling of the proceeding to the referring agencies, depending on which course of action is deemed to be in the best interest of the Government. Agencies delegated intervention authority shall be responsible for representing the interests of all Federal executive agencies in the utility's service jurisdiction, and shall give a diligent effort to identify those interests. To the extent that there is a divergence of interest between the agency receiving the delegation and other agencies served by the utility, the delegated agency shall promptly notify GSA of the situation. After completion of a case, the delegated agency shall provide a report that describes the results of the intervention effort; the report will include a copy of the Public Utility Commission's decision, a summary of the rates requested and approved by the Commission, an estimate of the impact on Federal executive agencies, and a discussion of the central issues of the case. The final report shall be provided to GSA within 90 days of the issuance of the Commission's decision.

Dated: April 12, 1991.

Richard G. Austin,
Administrator of General Services.

[FR Doc. 91-10892 Filed 5-7-91; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 910499-1099]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule and notice of 1991 fishery management measures; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) issues an emergency interim rule and notice of 1991 fishery management measures to establish fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California for 1991. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among non-treaty commercial and recreational and treaty Indian fisheries. The regulations also are calculated to allow a portion of the salmon runs to escape the ocean fisheries to provide for treaty Indian and non-treaty inside fisheries and spawning escapement. Most of the management measures comport with the regulations implementing the 1984 framework amendment to the Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California. Two deviations from the framework regulations also are included, necessitating implementation by an emergency interim rule.

DATES: *Effective:* Those management measures being implemented under 50 CFR part 661 are effective from 0001 hours Pacific Daylight Time (P.D.T.), May 1, 1991, until modified, superseded, or rescinded.

The amendments to part 661 are effective from 0001 hours P.D.T., May 2, 1991 until 2400 hours P.D.T., August 6, 1991.

Comments: Public comments will be accepted until May 17, 1991.

ADDRESSES: Comments on the management measures, including those being implemented under 50 CFR part 661 and those being implemented under emergency authority of section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), may be submitted to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115-0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731-7415.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, or Rodney R. McInnis at 213-514-6199.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries off Washington, Oregon, and California are managed under a "framework" fishery management plan for ocean salmon fisheries off the coasts of Washington, Oregon, and California (FMP). The framework FMP was approved in 1984 and has been amended three times since then (52 FR 4146, February 10, 1987; 53 FR 30285, August 11, 1988; 54 FR 19185, May 4, 1989). Regulations at 50 CFR part 661 provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the FMP, by notice in the Federal Register.

This notice and emergency interim rule implement management measures for the 1991 ocean salmon fisheries as recommended by the Pacific Fishery Management Council (Council) at its April 9-12, 1991 meeting. Most of the management measures in this rule comport with the framework regulations implementing the FMP. Deviations from the framework FMP and implementing regulations, recommended by the Council and requiring implementation through use of the emergency rulemaking authority of section 305(c) of the Magnuson Act, also are included. The emergency interim rule will remain in effect for 90 days and may be extended for a second 90-day period.

Schedule Used to Establish 1991 Management Measures

In accordance with the FMP, the Council's Salmon Technical Team (STT) and staff economist prepared several reports for the Council, its advisors, and the public. The first report, "Review of 1990 Ocean Salmon Fisheries," summarizes the 1990 ocean salmon fisheries and assesses how well the Council's management objectives were met in 1990. The second report, "Preseason Report I: Stock Abundance Analysis for 1991 Ocean Salmon Fisheries," provides the 1991 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 1990 regulations or regulatory procedures were applied to the 1991 stock abundance.

The Council met on March 12-15, 1991, in Millbrae, California, to develop proposed management options for 1991. Three commercial and three recreational fishery management options were proposed for further analysis and public comment. These options presented various combinations of management measures designed to protect weak stocks and provide for ocean harvests of more abundant stocks of coho and chinook salmon. After the March Council meeting, the STT and staff economist prepared a third report, "Preseason Report II: Analysis of Proposed Regulatory Options for 1991

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Ocean Salmon Fisheries," which analyzes the effects of the proposed 1991 management options. This report also was distributed to the Council, its advisors, and the public.

Public hearings on the proposed options were held April 2–3, 1991, in Olympia, Washington; Astoria and Coos Bay, Oregon; and Eureka and Sacramento, California.

The Council met on April 9–12, 1991, in Portland, Oregon, to adopt its final 1991 recommendations. Following the April Council meeting, the STT and staff economist prepared a fourth report, "Preseason Report III: Analysis of Council-Adopted Management Measures for 1991 Ocean Salmon Fisheries," which analyzes the environmental and socio-economic effects of the Council's final recommendations. This report also was distributed to the Council, its advisors, and the public.

Resource Status

Some salmon runs returning to Washington, Oregon, and California streams in 1991 are expected to be larger than in 1990. They include modest improvements in lower Columbia River spring chinook and many Washington coastal hatchery and Puget Sound natural coho salmon stocks.

Primary resource concerns are for Klamath River fall chinook; upper Columbia River spring and summer chinook; Snake River fall chinook; lower Columbia River fall hatchery chinook; Oregon Production Index area coho stocks destined for the Columbia River and the California and Oregon coasts, particularly Oregon coastal natural coho; and some Washington coastal and Puget Sound natural coho, particularly the Hood Canal and Skagit River stocks. Management of all of these stocks is impacted by interjurisdictional agreements among tribal, State, Federal, and/or Canadian managers.

Chinook Salmon Stocks

Abundance of California Central Valley fall-run chinook stocks is expected to be 85 percent of the abundance observed in 1990. Though the Central Valley stocks have suffered from the extended drought in California, they remain relatively abundant and are predicted to meet their spawning goal range of 122,000 to 180,000 fish in 1991. While there is no preseason stock abundance projection for the Sacramento River winter-run chinook, it is a consideration in establishing ocean fishing regulations because the run is listed as threatened under the Endangered Species Act (ESA). NMFS issued a Biological Opinion regarding the effect on Sacramento River winter-run chinook from the commercial and recreational fisheries for salmon in the ocean, which recommended that the ocean salmon fisheries be managed so as not to increase the impact on winter-run chinook.

Klamath River fall-run chinook are the primary management concern off southern Oregon and northern California. In 1991 the abundance of Klamath fall-run chinook is expected to be at a record low of 123,800 age-3 and age-4 fish at the beginning of the fishing season. The spawning escapement goal for the Klamath River system is between 33 and 34 percent of the potential adult salmon with a minimum of 35,000 natural spawners (fish that spawn outside of the hatcheries). Due to the low projected abundance for 1991, the minimum natural spawner requirement is the controlling factor in the escapement goal for the Klamath system. The Bureau of Indian Affairs (BIA) informed the Council that it believes that the low stock abundance constitutes an emergency under the Klamath Fishery Management Council's harvest sharing agreement and that harvest rates contained in the agreement must be reduced for 1991. The BIA also informed the Council that it had reserved 12,000 fall-run chinook for subsistence and ceremonial fishing by the tribes on the river. Past practice for the inriver fishery managers has been to allocate 20 percent of the inriver harvest to recreational fishermen and 80 percent to tribal fisheries. The 1991 level of abundance requires that restrictive management measures be applied over a broader area of the coast than in 1990 to reduce the ocean catch and ensure that sufficient numbers of fall-run chinook return to the Klamath River for inriver fisheries and to meet the natural spawner floor of 35,000 adults.

Oregon coastal chinook stocks include south-migrating and localized stocks primarily from southern Oregon streams, and north-migrating chinook stocks that generally originate in central and northern Oregon streams. Abundance of south-migrating and localized stocks is expected to be considerably below 1990 levels, and below the long-term average. These stocks are important contributors to ocean fisheries off Oregon and northern California. The generalized expectation for north-migrating stocks is for a continuation of average to above average abundance as observed in recent years. These stocks contribute primarily to ocean fisheries off British Columbia and Alaska. It is expected that the aggregate Oregon coastal chinook spawning escapement goal of 150,000 to 200,000 naturally spawning adults will continue to be met.

Estimates of Columbia River chinook abundance vary by stock as follows.

(1) *Upper Columbia River spring and summer chinook.* Numbers of upriver spring chinook predicted to return to the river (61,900) are 38 percent below the 1990 run size of 99,400 fish, but 9 percent greater than the 1979–1984 average of 56,600 fish. The 1991 stock status reflects a significant decline from recent improvements in the depressed status of this stock. Recent increases (1985–1990) from the poor returns in the early 1980's have been the result of increases of hatchery stocks. The natural stock component, while showing some improvement, remains depressed. Ocean escapement is expected to be significantly below the goal of 115,000 adults counted at Bonneville Dam. Upriver spring chinook are affected only slightly by ocean harvests off Washington and Oregon. Expected ocean escapement of adult upriver summer chinook is based on the previous 3-year average of ocean escapements (28,400). The 1991 stock status remains extremely depressed, with ocean escapement being about 64 percent below the lower end of the spawning escapement goal range of 80,000 to 90,000 adults counted at Bonneville Dam. Upriver summer chinook migrate to the far north and are not a major contributor to ocean fisheries off Washington and Oregon. However, concern that harvest rates on upriver spring and summer chinook stocks within Council authority do not increase still was a major factor in determining total allowable impacts in Council fisheries for 1991.

(2) *Lower Columbia River spring chinook.* Lower river spring chinook returns are projected to be 110,600 fish, 16 percent below the 1990 run of 130,800 fish, but 69 percent greater than the 1980–1984 average return of 65,000 fish. Lower river spring chinook stocks are important contributors to Council area fishery catches north of Cape Falcon, Oregon.

(3) *Columbia River fall chinook.* Four distinct fall chinook stock units initially were identified, and recently a fifth stock unit has been added, as follows.

(a) Upriver bright fall chinook ocean escapement is expected to be about 90,000 adults, 42 percent below the 1990 return of 156,100 adults, and 19 percent below the average return of 111,700 adults. The escapement goal for upriver bright fall chinook is 40,000 adults above McNary Dam. This stock has a northern ocean migratory pattern and contributes less than 10 percent to Council area fisheries north of Cape Falcon.

(b) Lower river natural fall chinook ocean escapement is forecast at about 15,000 adults, 28 percent below the 1990 run size of 20,900 adults.

(c) Lower river hatchery fall chinook ocean escapement is forecast at a near record low of 75,000 adults, a 26 percent increase over the observed record low return of 59,700 adults in 1990. This stock has been declining steadily since the record high return in 1987. Lower Columbia River fall chinook stocks normally account for more than half the total catch in Council area fisheries north of Cape Falcon, with lower river hatchery fall chinook being the single largest contributing stock. For 1990, lower river hatchery fall chinook is the primary resource constraint on ocean chinook harvests in the area north of Cape Falcon.

(d) Spring Creek hatchery fall chinook ocean escapement is projected to be about 55,000 adults, 204 percent greater than the 1990 return of 18,100 adults; the 1981–1985 average ocean escapement was 63,300 adults. The Spring Creek hatchery fall chinook stock has been rebuilding slowly since the record low return in 1987.

(e) In recent years, the mid-Columbia bright fall chinook stock has been increasing and is at a level worthy of consideration in management planning. These fall chinook are returns primarily from hatchery releases of bright stock in the area below McNary Dam, although some natural spawning in tributaries in that area is also occurring. Mid-Columbia bright fall chinook ocean escapement is projected to be about 45,000 adults, 14 percent below the 1990 return of 52,500 adults.

Washington coastal and Puget Sound chinook generally migrate to the far north and are affected insignificantly by ocean harvests from Cape Falcon to the U.S.-Canada border.

Coho Salmon Stocks

The Oregon Production Index (OPI) is an annual index of coho abundance from Leadbetter Point, Washington, south through California. Oregon coastal and Columbia River coho stocks are the primary components of the OPI. For use beginning in 1988, the Council adopted revised estimation procedures that were expected to more accurately predict abundance of the following individual OPI area stock components: Public hatchery, private hatchery, Oregon coastal natural (OCN) for rivers and lakes, and Salmon Trout Enhancement Program. Prediction methodologies are described in the Council's "Preseason Report I: Stock Abundance Analysis for 1988 Ocean Salmon Fisheries." The 1991 OPI is 1,661,300 coho, 22 percent above the 1990 preseason forecast of 1,378,900 coho, and 83 percent above the 1990 observed level of 919,800 fish. The 1991 estimate includes 421,900 OCN coho, 31 percent above the 1990 preseason forecast of 321,000 fish, and 105 percent above the 1990 observed level of 205,400 fish. The 1990 spawning escapement of the OCN stocks was 84,100 fish, 48 percent below the spawning escapement goal of 161,000 adults.

Most Washington coastal coho stocks are expected to be more abundant than forecast in 1990, while stock abundance for Puget Sound coho stocks is expected to be slightly below the 1990 forecast. Ocean escapements expected from 1991 Council management measures are sufficient to provide for some inside area fishery harvest and still achieve spawning escapement goals or minimum acceptable levels for most Washington coastal and Puget Sound natural coho stocks.

Skagit River and Hood Canal natural coho escapements are the primary resource conservation constraints in both ocean and inside fisheries. Skagit River natural coho will not meet the spawning escapement goal after inside fisheries take place. State and tribal managers negotiated a preseason agreement on a 1991 Skagit River spawning escapement goal based on the predicted low stock abundances and socio-economic concerns of treaty Indian and nontreaty Indian fishermen. The State and the tribes did not agree on a 1991 spawning escapement goal for Hood Canal natural coho stocks, but both proposed fisheries regimes that result in less than the existing goal of 19,100 natural spawners in 1991.

Pink Salmon Stocks

Two major stocks comprise the pink salmon population available to the ocean fisheries in odd-numbered years. The Fraser River pink run is forecast at 11 million compared with the 1977–1989 (odd years only) average run size of 14 million. The preliminary preseason forecast for Puget Sound origin pink salmon is for 2.2 million; the 1977–1989 average is less than 2 million.

The Fraser River Panel of the Pacific Salmon Commission has jurisdiction over all U.S. pink and sockeye salmon fisheries in the ocean waters north of approximately Carroll Island, Washington, and the inside waters of the Strait of Juan de Fuca and Puget Sound. The Fraser River Panel has notified the Council that it intends to maintain jurisdiction over the ocean commercial troll harvest of pink salmon during the 1991 fishing season, as was the case in 1989. Thus, regulations promulgated by the Fraser River Panel may supersede the Secretary's regulations for the ocean harvest of pink salmon in 1991 between 48° N. lat. and the U.S.-Canada border between 3 and 200 nautical miles of shore.

Emergency Actions

Facing critical resource conservation and socio-economic problems in coastal salmon fisheries and communities, the Council recommended, at its April meeting, 1991 annual management measures, some of which require deviation from the FMP and its implementing regulations. The Council requested the Secretary to implement those 1991 management measures through the emergency authority of section 305(c) of the Magnuson Act. The Council's request for emergency changes is based upon the following:

(1) The 1991 annual management measures, including the emergency changes, represent several complicated, negotiated compromises among numerous groups. The compromises are intended to protect, to the extent possible, the weakest salmon runs, to provide the greatest opportunity for users to harvest the more abundant stocks, and to alleviate depressed economic conditions in the salmon fishing industry and its dependent communities;

(2) There was insufficient time to amend the FMP through the formal Magnuson Act procedures, between February, when preliminary biological data on the abundance of coastal salmon runs first became available to the Council, and the first of May, when the major commercial fishing seasons begin;

(3) Substantial evidence was presented to the Council that the preseason ocean abundance for OCN coho stocks has been grossly overestimated during the past 3 years leading to an ocean harvest rate that was too high and spawning escapement falling short of its goal. The Council did not have time to thoroughly review and revise the ocean estimation methodology between February, when concern on current Council procedures was addressed in Preseason Report I, and April, when ocean salmon seasons are established. Therefore, the Council has recommended a reduction in the ocean harvest rate from 53 percent, which is the allowable rate established by amendment 7 to the FMP, to 48 percent to compensate for what it believes to be a faulty ocean abundance predictor. Unless amended by this emergency rule, the ocean harvest rate

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will be the 53 percent allowed under the FMP, and insufficient natural spawners are likely to escape the ocean fisheries to meet spawning needs; and,

(4) Unless amended by this emergency rule, the FMP establishes the spawning escapement goal for Hood Canal natural spawning coho as 19,100, the goal agreed to by the State of Washington and treaty Indian tribes under procedures in *U.S.* v. *Washington*. This year, both the State and tribes recognized that achieving the Hood Canal natural coho spawning escapement goal of 19,100 fish was not possible without unacceptable hardships to both non-treaty and treaty Indian fishermen. However, the parties could not agree on a revised goal. The Council adopted management measures that, in conjunction with anticipated restrictions on inside fisheries, would result in a projected spawning escapement of 16,000 Hood Canal natural coho. Emergency action is required to provide for a total allowable ocean coho catch in the area north of Cape Falcon that will not allow the attainment of the Hood Canal natural coho spawning escapement goal.

Therefore, NMFS is using its emergency authority under the Magnuson Act to add language to section IV.A. of the appendix to 50 CFR 661 and to replace language in footnote 4 to section IV.A. of the appendix to 50 CFR 661. Both emergency measures will be effective for an initial period ending 90 days from the date of publication of this emergency interim rule. The specific changes to the appendix are described below:

1. Reduction in OCN Ocean Harvest Rate From 53 to 46 Percent

The method of determining the OCN coho spawning escapement goal and harvest rate was adopted by the Council in 1986 and implemented by amendment 7 to the FMP (52 FR 4146, February 10, 1987). Amendment 7 established an OCN spawning escapement floor of 135,000 fish for estimated ocean abundances of 270,000 fish or less. The spawning escapement goal changes to 50 percent of the ocean abundance (50 percent harvest rate) for ocean abundances between 270,000 and 400,000 fish, and is capped at 200,000 fish for ocean abundances greater than 400,000 fish. The current ocean abundance predictor was adopted for use by the Council beginning with the 1988 fishing season following a detailed Council technical review in late 1987.

The ocean abundance predictor for OCN coho for rivers is based on a modified Ricker spawner/recruit model adjusted for ocean survival using Oregon Production Index public hatchery smolt to jack survival. The predictor for OCN coho for lakes production, which is approximately 5 percent of the total OCN stocks, is assessed independently based on the most recent 3-year average adult stock abundance.

Use of this OCN predictive methodology has had mixed results since 1984. The annual escapement goal, as calculated by amendment 7, was reached in 1984–1986, but not during the 1987–1990 4-year period. Despite a rigorous technical review of the OCN predictor by the Council in late 1987, the current predictor has consistently overestimated the actual ocean abundance. The excessive predictions were 133,000 fish (40 percent) in 1988, 143,300 fish (45 percent) in 1989, and 81,500 fish (36 percent) in 1990, for an average overprediction of about 40 percent. The 1990 OCN coho spawning escapement of 84,100 fish was significantly below both the 1990 calculated spawning escapement goal of 161,000 fish, and the escapement floor of 135,000 fish.

The STT expressed concern in its 1991 Preseason Report I over the extremely low escapement and the poor distribution of spawners by coastal regions. A second technical group, the Oregon Production Index Technical Team (OPITT), evaluated the OCN predictor for the 1991 season and concluded there was a high likelihood, as in 1990, of overestimating OCN ocean abundance and not reaching the 1991 spawning escapement goal or the OCN escapement floor of 135,000 fish.

Based on the current predictor, the OCN coho ocean abundance for 1991 is estimated to be 421,900 fish. In accordance with amendment 7, the spawning escapement goal would be 200,000 fish and the harvest rate would be 53 percent. However, the OPITT believes the actual ocean abundance is more likely to be closer to the 1988–1990 average abundance of 300,000 coho, which according to amendment 7, would require a 50 percent harvest rate and escapement of 150,000. In the absence of an emergency amendment, the harvest rate of 53 percent must be applied to the original abundance estimate that will drive the spawning escapement below the desired level if, as anticipated, the abundance estimate is too high. At this time, the Council is not able to implement a new predictive methodology that is more reliable than the current predictor. Therefore, the Council concluded that the harvest rate must be reduced in order to compensate for the overestimation bias, reverse the trend of failing to meet escapement goals, and better ensure protection of the stocks. The Council has recommended that the ocean harvest rate on OCN coho be established at 46 percent which is 7 percent below that required using the current predictor and 4 percent below the 50 percent harvest rate that would be required if the actual ocean abundance were 300,000 coho salmon. The Council believes that the additional conservatism regarding the harvest rate is warranted and is necessary to guard against the recent trend of overestimating the ocean abundance and underachieving spawning escapement goals.

2. Hood Canal Natural Coho Spawning Escapement Goal

The framework salmon FMP establishes some spawning escapement goals specifically and establishes others by incorporation. With respect to spawning escapement goals for Puget Sound coho salmon, the FMP incorporates by reference those goals agreed upon by the State of Washington and the treaty Indian tribes under the procedures of *U.S.* v. *Washington*. Under the agreement, the current spawning escapement goal for Hood Canal natural spawning coho salmon is 19,100 fish. The FMP also requires that the Council allow sufficient numbers of fish to escape the ocean fisheries to provide for some harvest in inside fisheries.

A new methodology used for estimating the total Hood Canal natural coho salmon run size for 1991 resulted in a significantly decreased run size prediction from the previously used methodology. Under the prior methodology, analysis of the 1991 ocean salmon fisheries recommended by the Council would have estimated the escape of sufficient number of coho salmon to meet the 19,000 fish spawning escapement goal. The new methodology more accurately reflects recent run sizes and is a conservative attempt to guard against the recent pattern of overestimating run sizes and not achieving escapement goals. However, the new methodology decreased the run size estimate to such a large extent that achievement of the spawning escapement goal is not possible in 1991 without almost complete closure of both non-treaty and treaty ocean and inside fisheries.

Based on the 1991 estimates of run size, the treaty tribes requested the Council to adopt an option with a 200,000 coho non-treaty total allowable ocean catch (TAC) which, combined with a restrictive set of inside fisheries proposals, would have resulted in a spawning escapement of about 17,000 Hood Canal wild coho. The treaty tribes argued that this package, though not achieving the 19,100 fish natural spawning escapement goal, would provide an acceptable balance between harvest and escapement and would spread the burden of conservation equitably among all harvesters. The State of Washington proposed a non-treaty ocean TAC of 320,000 coho with a different package of inside fisheries restrictions that would have achieved between 15,000 and 16,000 natural coho spawning escapement. The State and non-treaty ocean harvesters argued that the gains to spawning escapement by reducing the non-treaty ocean fisheries from 320,000 to 200,000 coho were so small that the economic hardship and disruption that would result were not justified. Escapement projections based on computer modeling showed that with an identical set of inside fisheries restrictions, reduction of the non-treaty ocean TAC from 320,000 to 200,000 coho increased Hood Canal natural spawning escapement by only about 400 fish. Under the 320,000 proposed TAC, ocean fisheries under the Council's authority would harvest only 8 percent of the total Hood Canal wild run, inside fisheries would harvest 11 percent, Canadian fisheries outside U.S. waters 34 percent, and 46 percent would return to spawn.

In response to the conservation concerns of the treaty tribes and other users, the State of Washington has offered to participate with the tribes in a rebuilding plan for Hood Canal natural coho stocks. The plan offered by the State included commitments to adopt a management plan for the 1992 fisheries that will achieve the agreed natural coho escapement goal in 1992, adopt management objectives for the 1993 run based on the results of 1991 and 1992, and develop an action plan containing stock assessment methods, harvest management actions, habitat programs, and fish culture actions all designed to rebuild the Hood Canal natural coho stocks to the agreed-upon escapement level. The brood year escapement that will produce the 1992 Hood Canal run was 15,300 compared to the 11,000 escapement which produced the 1991 return. The 1993 run will be produced by the lowest spawning escapement of record, 6,800 fish in 1990. The Secretary is concerned about the long-term conservation of Hood Canal natural coho stocks and encourages the State, tribes, and Council to work together to implement the action plan proposed by the State or a similar plan.

The Secretary concurs with the Council's recommended non-treaty ocean TAC of 320,000 coho based on the following factors. First, the Secretary is satisfied that the spawning escapement anticipated this year will not harm the long-term productivity of the Hood Canal coho stocks. Second, management regimes in the control of the Council are a minor component of the fisheries that affect the Hood Canal stocks. Almost total closure of ocean and inside fisheries could allow achievement of the 19,100 spawning escapement goal, but the impact of the ocean fisheries is substantially less than the impact of the Canadian fisheries or the U.S. inside fisheries. Neither the tribal option nor the State of Washington option offered to the Council in April anticipated meeting the 19,100 escapement goal. Third, there is no biological evidence that the difference of 400 spawners that could be provided under an ocean TAC of 200,000 coho rather than an ocean TAC of 320,000 is sufficient in terms of conservation of the species to justify the economic hardships and dislocation that would result from the lower TAC. Under the Council's recommendation, treaty and non-treaty harvest sharing obligations can be met through the aggregate harvest of both hatchery and wild stocks of Hood Canal coho.

In order to provide for a Hood Canal natural spawning escapement less than the agreed-upon 19,100 coho salmon, the 1991 ocean management measures for coho salmon north of Cape Falcon must be implemented by emergency interim rule.

Management Measures for 1991

The Council adopted allowable ocean harvest levels and management measures for 1991 that are designed to apportion the burden of protecting weak stocks equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs.

South of Cape Falcon

In the area south of Cape Falcon, Oregon, management measures were adopted based primarily on concerns for the Klamath River fall chinook, the Sacramento River winter chinook, and the OCN coho. The greatest constraint on the ocean management measures was the low abundance of Klamath River fall chinook.

The long-term harvest sharing agreement adopted by the Klamath Fishery Management Council calls for an ocean harvest rate of 32.5 percent of the Klamath fall chinook, to be reduced proportionately with the harvest rate for the inside fisheries when necessary to achieve the spawning escapement goal. It also describes an emergency situation as one in which the allowable Indian subsistence harvest would be less than 12,000 fish, in which case the Klamath Council should conduct discussions to resolve the emergency. The Klamath Council did not provide a recommendation to the Pacific Council. To meet the minimum level of 35,000 naturally spawning adults, a total of 47,300 adult spawners, including hatchery fish, is required. In the river, the Bureau of Indian Affairs (BIA) and the tribal fisheries managers have declared their intent to take 12,000 fall chinook, and the recreational fishery may receive an allocation of 3,000 fish, based on the allocations in recent years. To meet the needs expressed by these groups, the Council attempted to configure ocean salmon fisheries to allow about 63,000 fall chinook to return to the Klamath River while providing sufficient opportunity to harvest chinook in the ocean from other river systems. An ocean harvest rate of 12 percent would have achieved this return to the river.

The Pacific Council offered for public comment ocean management options that included ocean harvest rates ranging from 20 to 12 percent on Klamath fall chinook. During its April meeting, the Council narrowed its consideration to ocean salmon fishing seasons that would result in ocean harvest rates for Klamath chinook ranging from 12 to 16 percent. At either of these harvest rates, the ocean recreational fishing season along nearly 200 miles of the southern Oregon and northern California coast must be reduced to 80 percent of its 1990 impact on Klamath chinook and the commercial fishery must be closed completely until September 1 to avoid catching chinook that will return to the Klamath River in 1991. The difference between the management measures required to achieve the two rates is in the extent of the restrictions on commercial fishing north and south of that area.

To achieve the 12 percent ocean harvest rate of Klamath chinook, the commercial salmon fishery would have had to be closed between Florence, Oregon, and Point Arena, California (more than 300 miles of the coast), except for a small quota and limited area fisheries after September 1. In addition, the areas further north between Cape Falcon and Florence, Oregon, and to the south between Point Arena and Point San Pedro, California, must be closed for extended periods during the season to save Klamath chinook. These measures would result in a harvest of 93,000 fewer total chinook as well as significant numbers of coho

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salmon that would be lost due to restrictive chinook seasons and would return only 2,300 more fall chinook to the Klamath River. Fishing industry representatives also expressed concern that the extensive closed periods within the fishing season would cause the loss of markets for fresh troll-caught salmon, thereby lowering the value of the salmon that are landed.

Faced with this information, the Council recommended the seasons that result in a 16 percent ocean harvest rate on Klamath chinook. Because the harvest rate of Klamath chinook already has been reduced so greatly, any further savings can only be made by foregoing the opportunity to catch large numbers of fish from other chinook stocks to save an additional 2,300 Klamath chinook.

The ocean management measures adopted by the Council will return 60,300 fall chinook to the Klamath River. Of those fish, 47,300 will be required to meet the natural spawning escapement floor and hatchery needs (based on 26 percent hatchery fish in the run). The remaining 13,000 fish can be harvested in the river. The recent practice has been that the State of California and the BIA allocate 80 percent of the inriver harvest to the tribes and 20 percent to the recreational fishery. California's Department of Fish and Game indicated during the Council discussions that it would expect the recreational fishery in the river to receive the established allocation. If that allocation were made this year, the tribes would have a quota of 10,400 fall chinook, which is 1,600 less than their stated minimum need of 12,000 fish. The final quota for the recreational fishery in the Klamath River will be established by the State of California near the end of June.

The Council's goal in adopting this year's management regime was to allow the escapement goal to be met, while dividing the conservation burden equitably between ocean harvesters, the Indian fishermen, and the inside sport fishermen. The Council considered the needs expressed by the various user groups described above, and determined that the 16 percent ocean harvest rate most equitably apportioned the burden of conservation this year and achieves the goals of the FMP.

Commercial Troll Fisheries

Commercial troll fisheries during September and October in the area between the Florence South Jetty, Oregon, and Punta Gorda, California, will be limited to an overall guideline of 15,000 chinook between Florence South Jetty and Humbug Mountain, California, a 7,500 chinook quota between Sisters Rock and Mack Arch, and a 15,000 chinook quota between Trinidad Head and Punta Gorda. Troll fisheries in other areas south of Cape Falcon will not be limited by any chinook quotas. Troll fisheries south of Cape Falcon will be limited to an overall impact (catch and hooking mortality) quota of 390,000 coho and a preseason catch quota of 361,000 coho. There is a subarea impact ceiling of 271,000 coho south of Cascade Head, Oregon. A subarea catch of 90,000 coho in the subarea between Cape Falcon and Cascade Head may trigger a landing limit in that area matching that in effect, if required, for the area south of Cascade Head to Cape Arago until the overall coho quota is reached. A separate subarea catch quota of 5,000 coho south of Horse Mountain, California, is reserved preseason by deducting it from the overall preseason catch quota and subarea catch ceiling. This reserve will be available upon attainment of the overall catch quota or subarea catch ceiling minus the deduction. If either the overall quota or 75 percent subarea impact ceiling is exceeded before the fisheries can be closed, the overage will not be subtracted from the reserve. An inseason reallocation to the troll fishery of any portion of the south of Cape Falcon recreational quota projected to be in excess of sport fishery needs will be made no later than August 15.

From Point Arena to the U.S.-Mexico border, the commercial all-except-coho fishery will open May 1 through May 31, then reopen for all salmon June 1 through the earlier of September 30 or subarea coho quota, except that the area between Point Arena and Point San Pedro will close June 1 through June 7, June 13 through June 25, July 3 through July 10, and July 16 through July 31. If the subarea coho quota (5,000-fish reserve) is reached, the fishery will reopen for all salmon except coho and continue through September 30.

From Horse Mountain to Point Arena, the commercial troll fishery will open August 1 through the earlier of September 30 or subarea coho quota. As above, if the subarea coho quota (5,000-fish reserve) is reached, the fishery will reopen for all salmon except coho and continue through September 30.

The areas between Humbug Mountain and Sisters Rocks, Oregon, and between Punta Gorda and Horse Mountain, California, will be closed to commercial salmon fishing throughout the season. The all-except-coho fishery between Sisters Rocks and Mack Arch, Oregon, will open September 1 through the earlier of September 15 or 7,500 chinook quota, only within 0 to 6 nautical miles of shore. The fishery between Trinidad Head and Punta Gorda will open for all salmon September 1 through earlier of October 31 or 15,000 chinook quota, only within 0 to 6 miles of shore. Upon attainment of the coho quota, the seasons continue for all salmon except coho.

In the area between the Florence South Jetty and Humbug Mountain, the all-salmon fishery will open only between Florence South Jetty and Cape Arago June 24 through July 14, and August 1 through August 9 or coho quota; upon attainment of the coho quota, the fishery will reopen for all salmon except coho. In the entire area between Florence South Jetty and Humbug Mountain, the all-except-coho fishery will open September 1 through September 30 and October 8 through October 31 or the 15,000 chinook guideline. Between Cascade Head and the Florence South Jetty, the commercial troll season for all salmon except coho will open May 1 through June 23 with no more than four spreads per line June 1 through June 23, then reopen for all salmon June 24 through July 23 and August 1 through August 31 or coho quota without any restriction on spreads per line. Upon attainment of the coho quota, the fishery will reopen for all salmon except coho. In the area between Cascade Head and Cape Arago, when 80 percent of the coho quota or subarea catch ceiling south of Cascade Head is reached, landing restrictions may be implemented inseason during the remainder of the all-salmon season. Between Cape Falcon and Cascade Head, the all-except-coho fishery will open May 1 through June 30 with no more than four spreads per line in June, then reopen for all salmon July 1 through July 23 and August 1 through August 31 or coho quota without any restriction on spreads per line. Upon attainment of the coho quota, the fishery will reopen for all salmon except coho. When the estimated impact in this area reaches 25 percent of the overall coho impact quota south of Cape Falcon, landing restrictions may be instituted inseason to match those in effect, if any for the area between Cascade Head and Cape Arago. In the entire area between Cape Falcon and Florence South Jetty, the all-except-coho fishery will open September 1 through October 31.

Recreational Fisheries

The recreational fisheries south of Cape Falcon will be limited by an overall catch quota of 259,000 coho. Any portion of the recreational quota not needed to complete scheduled recreational seasons will be reallocated to the commercial fishery no later than August 15. The fishery south of Humbug Mountain does not close if the recreational coho quota is reached.

The all-salmon fishery between Point Arena and the U.S.-Mexico border opens on the nearest Saturday to March 1 through the nearest Sunday to November 1 with a two-fish daily bag limit. The conservation zone at the mouth of San Francisco Bay was closed March 2 through March 31 during 1991 and will be closed the nearest Saturday to March 1 through the nearest Friday to March 31 during 1992. This conservation zone was established to minimize the incidental harvest of Sacramento River winter-run chinook. Formal consultation with regard to the impacts that ocean salmon fisheries have on Sacramento River winter chinook may result in the modification of the 1992 opening dates and/or areas for this fishery.

The all-salmon fishery between Horse Mountain and Point Arena opens the nearest Saturday to February 15 through the nearest Sunday to November 15 with a two-fish daily bag limit; in 1992, this season will open on February 15.

The recreational all-salmon fishery between Humbug Mountain and Horse Mountain will open May 25 through September 30 with a two-fish daily bag limit, except only one may be a chinook; no more than six fish in 7 consecutive days; closed Tuesdays and Wednesdays of each week; and the conservation zone at the mouth of the Klamath River is closed August 1 through August 31. Additional days of the week may be closed inseason if the expected catch through the scheduled season closure exceeds 20,000 chinook based on an evaluation by the STT on or about July 10. The area between Trinidad Head and Punta Gorda will open for all salmon October 1 through October 31 with a two-fish daily bag limit, no more than six fish in 7 consecutive days, and only within 0 to 6 nautical miles of shore.

The recreational all-salmon fishery between Cape Falcon and Humbug Mountain will have two separate seasons, both of which will have a two-fish daily bag limit and no more than six fish in 7 consecutive days. The first season will open May 1 through May 26 only within the 27 fathom curve. The second season will open May 27 through July 31 and August 10 through September 15 or coho quota. The August 1 through August 9 closure may be rescinded inseason based on an evaluation by the STT on or about July 24 if the evaluation shows that the fishery will be able to continue until September 15 without the closure.

The STT analyzed the impact of the ocean commercial and recreational salmon seasons on the Sacramento River winter-run chinook and determined that the impact of the 1991 fisheries will be less than the impact of the 1990 fisheries. Therefore, these season and management measures comply the recommendations and incidental take conditions contained in the ESA section 7 Biological Opinion rendered by NMFS in March 1991.

North of Cape Falcon

From the U.S.-Canada border to Cape Falcon, ocean fisheries are managed to protect depressed upper Columbia River spring and summer chinook, lower Columbia River hatchery fall chinook, Hood Canal natural coho, and Skagit River natural coho. Ocean treaty and non-treaty harvests and management measures were established by the Council based on negotiations among fishery managers and user group representatives as authorized by the U.S. District Court in *U.S.* v. *Washington, U.S.* v. *Oregon*, and *Hoh Indian Tribe et al.* v. *Baldrige*. Not all fishery managers and user groups agreed with the management measures.

In the process of determining the total allowable chinook catch in the ocean north of Cape Falcon, the Council was concerned that the impacts on Snake River fall chinook salmon, the subject of a petition to list under the ESA, did not exceed prior years level of impacts. Analysis by the STT estimated about a 20 percent reduction in impacts under the Council's recommended 1991 non-treaty ocean TAC of 80,000 chinook salmon compared to 1990 impacts. As described earlier, the process of determining the non-treaty ocean coho salmon TAC was complicated by lack of agreement between certain Puget Sound tribes and the State of Washington.

All non-treaty commercial troll and recreational ocean fisheries will be limited by either an overall 80,000 chinook quota, or impacts on critical Washington coastal and Puget Sound natural coho stocks equivalent to the preseason coho quota of 320,000 (including coho hooking mortality associated with May/June chinook fisheries). The commercial troll fishery will be limited by overall quotas of 40,000 chinook and 67,000 coho.

Commercial Troll Fisheries

The commercial all-except-coho fishery from the U.S.-Canada border to Cape Falcon will open May 1 through the earlier of June 15 or 31,200 chinook guideline. The all-salmon fishery between the Leadbetter Point and Cape Falcon will open between August 10 through August 31 with guidelines of 19,500 coho and 2,000 chinook with fishing limited to a cycle of 3 days on and 3 days off. This fishery is subject to a possession and landing limit per opening of 150 coho and 10 chinook. The all-salmon fishery will continue in the area between Copalis Head and Cape Falcon September 1 through October 31 or a 32,500 coho quota or 3,000 chinook quota with a cycle of 4 days on and 3 days off. A possession and landing limit per opening of 200 coho is in effect, with the possibility of a chinook limit to be imposed inseason if necessary. The conservation zone at the mouth of the Columbia River is closed during all salmon seasons. The pink salmon fishery between the U.S.-Canada border and Carroll Island opens either August 16 or at a date to be determined by the Fraser River Panel of the Pacific Salmon Commission, and will close on September 15 with guidelines of 35,000 coho, 3,500 chinook, or 160,000 pink salmon. This season is limited to a cycle of 4 days on and 3 days off. Possession and landing limits are 80 coho and 10 chinook per opening. Fishing is limited to flashers with barbless, bare, blued or pink hooks or pink hoochies of 3 inches or less. The fishing area is open only seaward of the 100 fathom line.

Recreational Fisheries

Recreational all-salmon fisheries north of Cape Falcon are divided into four subareas. As in 1990, there is no all-except-coho season. The area between Leadbetter Point and Cape Falcon will open June 24 through September 15 with a 109,500 coho subarea quota. Within the subarea TAC an all-salmon season between the Red Buoy Line at the mouth of the Columbia River and Cape Falcon will open September 16 through September 26, 7 days a week with a subarea quota of 7,000 coho salmon and a two-fish bag limit. The area between the Queets River and Leadbetter Point will open June 24 through September 26 with a 88,400 coho subarea quota. The area between Cape Alava and the Queets River will open July 1 through September 26 with a 4,800 coho subarea quota. The area between the U.S.-Canada border and Cape Alava will open July 1 through September 26 with a 23,300 coho subarea quota. The fisheries in all subareas will be open Sunday through Thursday only with a two-fish daily bag limit and will close upon attainment of the subarea coho quota or overall chinook quota. The recreational fisheries will be limited by overall catch quotas of 40,000 chinook and 233,000 coho. Chinook guidelines for each subarea will provide a basis for inseason management measures to restrain chinook harvest but will not serve as quotas. The conservation zone

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at the mouth of the Columbia River is closed throughout the season, except that rescission of the closure will be considered based on a projection of the STT, on or about August 1, showing sufficient chinook are available to allow completion of the coho allocation in the Columbia River subarea.

Treaty troll fisheries north of Cape Falcon are governed by quotas of 33,000 chinook and 80,000 coho salmon. Treaty troll seasons, minimum length restrictions, and gear restrictions were developed by the tribes and agreed to by the Council. The all-except-coho seasons will open May 1 and extend through June 30, if the chinook quota is not reached. The all-salmon seasons will open no earlier than July 1 and extend through the earliest of September 30 or chinook or coho quota. The minimum length restrictions for all treaty ocean fisheries, excluding ceremonial and subsistence harvest, are 24 inches for chinook and 16 inches for coho.

The following tables and text reflect the management measures recommended by the Council for 1991 and, as specified, for 1992. The Secretary concurs with these recommendations and finds them responsive to the goals of the FMP, the requirements of the resource, and the socio-economic factors affecting resource users. The recommendations are consistent with requirements of the Magnuson Act and other applicable law including United States obligations to Indian tribes with treaty-secured fishing rights.

The following management measures are adopted for 1991 and, as specified, for 1992 under 50 CFR part 661.

BILLING CODE 3510-22-M

Table 1. Commercial management measures for 1991 ocean salmon fisheries.

(Note: This table contains important restrictions in Parts A, B, C, D, and E which must be followed for lawful participation in the fishery.)

A. SEASONS, SUBAREA QUOTAS, AND SPECIES
(shaded areas represent closures)

Apr	May	June	July	August	Sep/Oct
U.S.-Canada Border					U.S.-Canada Border
	May 1 thru earlier of June 15 or chinook guideline of 31,200. All except coho. Conservation Zone 1, Columbia River mouth, is closed (C.3). See D.1.			Opens earlier of August 16 or recommendation of the Pacific Salmon Commission thru earliest of September 15 or guidelines of 35,000 coho or 3,500 chinook or 160,000 pink. Cycle of 4 days on/3 days off. All salmon. Possession and landing limit of 80 coho and 10 chinook per opening. Flashers with barbless, bare, blued or pink hooks or pink hoochies of 3 inches or less only. Open only outside 100 fathom line. See D.2.	
				Carroll Island	
					Copalis Head
			Leadbetter Point		September 1 thru earliest of October 31 or quotas of 32,500 coho or 3,300 chinook. All salmon. Cycle of 4 days on/3 days off. Possession and landing limit per opening of 200 coho (chinook limit may be imposed inseason). Conservation Zone 1, Columbia River mouth, is closed (C.3). See D.4.
				August 10 thru earliest of August 31 or guidelines of 19,500 coho or 2,000 chinook. All salmon. Cycle of 3 days on/3 days off. Possession and landing limit per opening of 150 coho and 10 chinook. Conservation Zone 1, Columbia River mouth, is closed (C.3). See D.3.	
Cape Falcon					Cape Falcon
	May 1 thru June 30. All except coho. No more than 4 spreads per line June 1 thru June 30.	July 1 thru July 23. All salmon thru coho quota (E.2), then all except coho. See D.5.		August 1 thru August 31. All salmon thru coho quota (E.2), then all except coho. See D.5.	September 1 thru October 31. All except coho.
Cascade Head					Cascade Head
	May 1 thru June 23. All except coho. No more than 4 spreads per line June 1 thru June 23.	June 24 thru July 23. All salmon thru coho quota (E.2), then all except coho. See D.6.		August 1 thru August 31. All salmon thru coho quota (E.2), then all except coho. See D.6.	September 1 thru October 31. All except coho.
Florence South Jetty					Florence South Jetty

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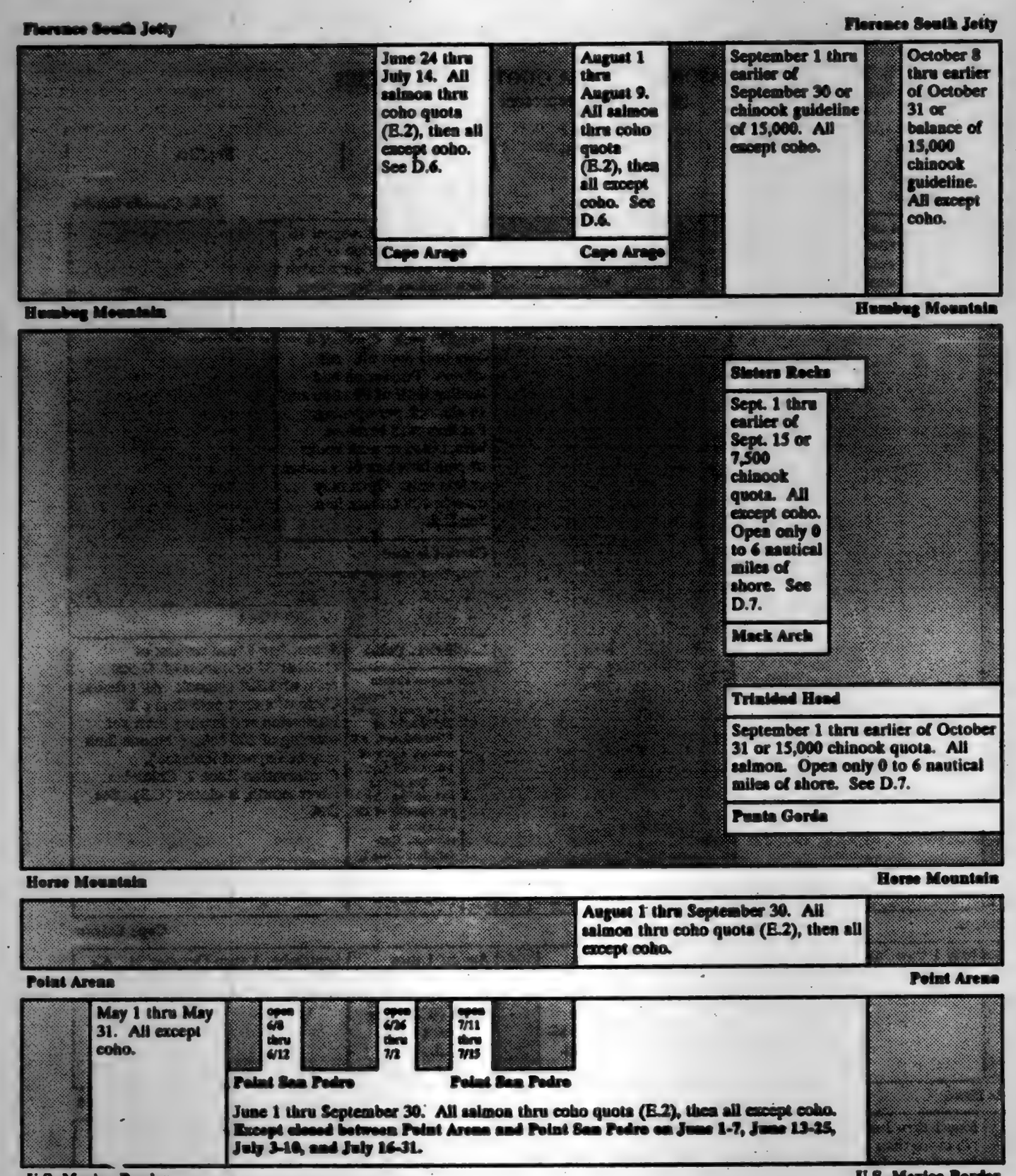

B. MINIMUM SIZE LIMITS (inches)

	Chinook		Coho		Pink
	Total Length	Head-off	Total Length	Head-off	
North of Cape Falcon	28.0	21.5	16.0	12.0	none
Cape Falcon to Humbug Mountain	26.0	19.5	16.0	12.0	none
South of Humbug Mountain	26.0	19.5	22.0	16.5	none

Chinook not less than 26 inches (19.5 inches head-off) taken in open seasons south of Cape Falcon may be landed north of Cape Falcon only when the season is closed north of Cape Falcon.

C. GENERAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS

1. Hooks - Single point, single shank barbless hooks are required.

2. Line Restriction - Off California, no more than 6 lines per boat are allowed.

3. Conservation Zone 1 - The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nautical miles due west from North Head along 46°18′00″ N. latitude to 124°13′18″ W. longitude, then southerly along a line of 167° True to 46°11′06″ N. latitude and 124°11′00″ W. longitude (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty, is closed.

4. Transit Through Closed Areas with Salmon on Board - It is unlawful for a vessel, which has been issued an ocean salmon permit by any state, to have troll gear in the water while transiting any area closed to salmon fishing while possessing salmon.

5. Landing Salmon in Closed Areas - Legally caught salmon may be landed in closed areas unless otherwise prohibited by these regulations.

6. Meeting Landing Restrictions - It is illegal to meet species ratio landing restrictions by including any salmon which have been previously landed.

7. Consistent with Council management objectives, the State of Oregon may establish some additional late season, all-salmon-except-coho fisheries in state waters.

D. POSSESSION, LANDING, AND SPECIAL RESTRICTIONS BY MANAGEMENT AREA

If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board, and the estimated time of arrival.

1. U.S.-Canada Border to Cape Falcon, May/June All-Except-Coho Season - The State of Oregon may require vessels landing fish from this fishery to the area south of Cape Falcon to notify the Newport office of the Oregon Department of Fish and Wildlife between 8 a.m. and 5 p.m. on the day of landing or the following weekday if such landing occurs on a weekend or outside office hours. The notification shall include the name of the vessel, port where delivery will be made and the number of chinook landed. Following any closure of this fishery, vessels must land and deliver the fish within 48 hours of the closure.

2. August/September Fishery North of Carroll Island - The fishery will follow a cycle of 4 days open and 3 days closed, continuing the cycle until reaching the earliest of September 15 or the coho, chinook, or pink harvest guideline. Each vessel may possess, land, and deliver no more than 80 coho and 10 chinook per open period. Vessels must land and deliver within the area or in adjacent closed areas. All salmon must be landed and delivered within 24 hours of each closure. The Fraser River Panel of the Pacific Salmon Commission intends to maintain jurisdiction over the level of ocean commercial harvest of pink salmon north of Carroll Island in 1991. The Panel is expected to set a harvest guideline of 160,000 pink salmon for this fishery. This fishery is open in an area of the EEZ north and west of the following coordinates: north of 48°00′15″ N. and west of a line from 48°00′15″ N., 125°19′15″ W. to 48°03′40″ N., 125°17′15″ W. to 48°07′45″ N., 125°11′15″ W. to 48°05′00″ N., 125°01′00″ W. to 48°13′00″ N., 124°57′30″ W. to 48°16′30″ N., 124°58′00″ W. to 48°23′00″ N., 124°50′00″ W. to 48°30′15″ N., 124°50′00″ W. This line generally follows the 100 fathom line except in the northernmost area.

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3. Leadbetter Point to Cape Falcon, All-Salmon Season - The fishery will follow a cycle of 3 days open and 3 days closed, continuing the cycle until reaching the earliest of August 31 or the coho or chinook harvest guideline. Unless precluded by a harvest guideline, the open periods will be: August 10-12, August 16-18, August 22-24, and August 28-30. Each vessel may possess, land, and deliver no more than 150 coho and 10 chinook per open period. All salmon caught in the area must be landed and delivered in the area or in adjacent closed areas within 24 hours of each closure.

4. Copalis Head to Cape Falcon, All-Salmon Season - The fishery will follow a cycle of 4 days open and 3 days closed, continuing the cycle until reaching the earliest of October 31 or the coho or chinook harvest guideline. Unless precluded by a harvest guideline, the open periods will be: September 1-4, September 8-11, September 15-18, September 22-25, September 29-October 2, October 6-9, October 13-16, October 20-23, and October 27-30. Each vessel may possess, land, and deliver no more than 200 coho per open period. No restriction on chinook (limit may be imposed inseason). All salmon caught in the area must be landed and delivered in the area or in adjacent closed areas within 24 hours of each closure.

5. Cape Falcon to Cascade Head During All-Salmon Season - When the estimated impact (combined catch and hooking mortality) in this area reaches 25 percent of the overall coho impact quota south of Cape Falcon, landing restrictions may be instituted to match those in effect (if any) for the area south of Cascade Head to Cape Arago. If landing restrictions are in effect, all mixed loads of coho and chinook or coho-only loads must be landed and delivered within the Cape Falcon to Cape Arago area or in adjacent closed areas.

6. Cascade Head to Cape Arago During All-Salmon Season - When 80 percent of the coho quota or subarea catch ceiling south of Cascade Head is reached, landing restrictions may be implemented during the remainder of the all-salmon season. These restrictions may include chinook per coho ratios or single daily coho landing limits. These restrictions may be adjusted inseason to assure complete harvest of the quota. When landing restrictions are in effect, mixed loads of chinook and coho must be delivered within this management area (or adjacent closed area). All chinook in possession must be delivered with the coho. There are no restrictions on the place of delivery of chinook-only loads. Chinook and coho salmon possessed or landed in this management area may not be returned or transferred to any vessels except vessels licensed to buy salmon.

7. Sisters Rocks to Punta Gorda - All salmon caught in fisheries in this area must be landed and delivered within the area.

E. QUOTAS

1. Chinook and Coho Quotas North of Cape Falcon - All non-treaty troll and recreational ocean fisheries will be limited by either: (a) an overall 80,000 chinook quota or (b) impacts on critical Washington coastal and Puget Sound natural coho stocks equivalent to the preseason coho quota of 320,000 (including hooking mortality associated with May-June chinook fisheries). The troll fishery will be limited by overall quotas of 40,000 chinook and 87,000 coho. Any transfers between subarea quotas of 5,000 fish or less shall be done on a fish-for-fish basis.

2. Coho Quotas South of Cape Falcon - The troll fishery from Cape Falcon to the U.S.-Mexico border will be limited to an overall combined catch and hooking mortality impact of 390,000 coho. The overall preseason catch quota for this impact is 361,000 coho. There is a 75 percent subarea impact ceiling (catch plus hooking mortality) within the overall impact which allows a harvest of no more than 271,000 south of Cascade Head. A subarea catch of 90,000 coho in the area between Cape Falcon and Cascade Head may trigger a landing limit in that area to match that in effect (if any) for the area south of Cascade Head to Cape Arago until the overall coho quota is reached. A separate subarea catch quota of 5,000 coho will be reserved preseason for the troll fishery south of Horse Mountain by deducting it from the overall preseason catch quota and the subarea catch ceiling. The subarea catch-quota reserve will be available upon attainment of the overall catch quota or the subarea catch ceiling minus the 5,000 deduction. If either the overall quota or 75 percent subarea impact ceiling is exceeded before the fisheries can be closed, the overage will not be subtracted from the 5,000 coho reserve. An inseason reallocation to the troll fishery of any portion of the south of Cape Falcon recreational quota projected to be in excess of sport fishery needs will be made no later than August 15.

3. Chinook Quotas Between Sisters Rocks and Punta Gorda - There are two chinook quotas governing September and October troll fisheries of: (1) 7,500 chinook between Sisters Rocks and Mack Arch, and (2) 15,000 chinook between Trinidad Head and Punta Gorda.

Table 2. Recreational management measures for 1991 ocean salmon fisheries.

(Note: This table contains important restrictions in Parts A, B, C, and D which must be followed for lawful participation in the fishery.)

A. SEASONS, SUBAREA QUOTAS, SPECIES, AND BAG LIMITS
(shaded areas represent closures)

Feb-Apr	May	June	July	August	Sep/Oct/Nov
U.S.-Canada Border					U.S.-Canada Border
			July 1 thru earliest of September 26 or overall chinook quota (D.1) or coho subarea quota of 23,300. Open Sunday thru Thursday only. All salmon. 2 fish per day. Inseason management may be used to maintain season length and keep chinook catch within a guideline of 2,000.		
Cape Alava					Cape Alava
			July 1 thru earliest of September 26 or overall chinook quota (D.1) or coho subarea quota of 4,800. Open Sunday thru Thursday only. All salmon. 2 fish per day. Inseason management may be used to maintain season length and keep chinook catch within a guideline of 200.		
Queets River					Queets River
		June 24 thru earliest of September 26 or overall chinook quota (D.1) or coho subarea quota of 88,400. Open Sunday thru Thursday only. All salmon. 2 fish per day. Inseason management may be used to maintain season length and keep chinook catch within a guideline of 21,200.			
Leadbetter Point					Leadbetter Point
		June 24 thru earliest of September 15 or overall chinook quota (D.1) or coho subarea quota of 109,500. Open Sunday thru Thursday only. All salmon. 2 fish per day. Conservation Zone 1, Columbia River mouth, is closed; closure may be rescinded based on STT evaluation on or about August 1 (C.2). Inseason management may be used to maintain season length and keep chinook catch within a guideline to be determined (D.1). September 16 thru earliest of September 26 or overall chinook quota (D.1) or coho subarea quota of 7,000. Open 7 days per week. All salmon. 2 fish per day. Open only south of the Red Buoy Line. Chinook guideline to be determined (D.1).			
Cape Falcon					Cape Falcon
	May 1 thru May 26. All salmon. 2 fish per day; no more than 6 fish in 7 consecutive days. Open only within the 27 fathom curve (C.5).	May 27 thru earlier of July 31 or coho quota (D.2). Closed August 1 thru August 9. Closure may be rescinded based on STT evaluation on or about July 24. All salmon. 2 fish per day; no more than 6 fish in 7 consecutive days.		August 10 thru earlier of September 15 or coho quota (D.2). All salmon. 2 fish per day; no more than 6 fish in 7 consecutive days.	
Humbug Mountain					Humbug Mountain

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Feb-Apr	May	June	July	August	Sep/Oct/Nov

Humbug Mountain — **Humbug Mountain**

May 25 thru September 30. All salmon. 2 fish per day, but only one may be a chinook; no more than 6 fish in 7 consecutive days. Closed Tuesdays and Wednesdays of each week. Additional days of the week may be closed inseason if the expected catch through the scheduled season closure exceeds 20,000 chinook based on STT evaluation on or about July 10 (C.6). Conservation Zone 2, Klamath River mouth, is closed August 1 thru August 31 (C.3).

Trinidad Head

October 1 thru October 31. All salmon. 2 fish per day; no more than 6 fish in 7 consecutive days. Open only 0 to 6 nautical miles of shore.

Punta Gorda

Horse Mountain — **Horse Mountain**

Nearest Saturday to February 15 thru nearest Sunday to November 15: All salmon. 2 fish per day.

Point Arena — **Point Arena**

Nearest Saturday to March 1 thru nearest Sunday to November 1. All salmon. 2 fish per day. Conservation Zone 3, mouth of San Francisco Bay, is closed March 2 thru March 31, 1991 (C.4). Beginning in 1992, Conservation Zone 3 is closed the nearest Saturday to March 1 thru the nearest Friday to March 31.

U.S.-Mexico Border — **U.S.-Mexico Border**

B. MINIMUM SIZE LIMITS (total length in inches)

	Chinook	Coho	Pink
North of Cape Falcon	24.0	16.0	None
Cape Falcon to Humbug Mountain	20.0	16.0	None
South of Humbug Mountain	20.0	20.0	None, except 20.0 off California

C. SPECIAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS

1. Hooks - Single point, single shank barbless hooks are required north of Point Conception, California.

2. Conservation Zone 1 - The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nautical miles due west from North Head along 46°18′00″ N. latitude to 124°13′18″ W. longitude, then southerly along a line of 167° True to 46°11′06″ N. latitude and 124°11′00″ W. longitude (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty is closed, except as follows: An opening of Conservation Zone 1 will be considered based on a projection of the STT, on or about August 1, showing sufficient chinook are available to allow completion of the coho allocation in the Columbia River subarea.

3. Conservation Zone 2 - The ocean area surrounding the Klamath River mouth bounded on the north by 41°38′48″ N. latitude (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124°23′00″ W. longitude (approximately 12 nautical miles of shore), and on the south by 41°26′48″ N. latitude (approximately 6 nautical miles south of the Klamath River mouth), is closed August 1 through August 31.

4. Conservation Zone 3 (Sacramento River Winter-Run Chinook Conservation Closure) - The ocean area bounded by a line commencing at Bolinas Point (Marin County, 37°54′17″ N. latitude, 122°43′35″ W. longitude) southerly to Duxbury Buoy to Channel Buoy 1 to Channel Buoy 2 to Point San Pedro (San Mateo County, 37°35′40″ N. latitude, 122°31′′0″ W. longitude) is closed March 2 through March 31, 1991 (beginning in 1992, the nearest Saturday to March 1 through the nearest Friday to March 31).

5. Area Within the 27 Fathom Curve - The ocean area that is bounded by a line from Cape Falcon to 45°46′00″ N., 124°01′20″ W. (approximately 1.6 nautical miles west of Cape Falcon) to 45°04′15″ N., 124°04′00″ W. (approximately 2.2 nautical miles northwest of Cascade Head) to 44°40′40″ N., 124°09′15″ W. (approximately 3 nautical miles west of Yaquina Head) to 44°08′30″ N., 124°12′00″ W. (approximately 3 nautical miles west of Heceta Head) to 43°40′15″ N., 124°14′30″ W. (approximately 0.5 nautical mile west of the Umpqua Whistle Buoy) to 43°31′30″ N., 124°17′00″ W. (approximately 1.7 nautical miles west of the beach) to 43°15′15″ N., 124°28′00″ W. (approximately 3 nautical miles west of the beach) to 43°01′30″ N., 124°29′05″ W. (approximately 2 nautical miles west of Four Mile Creek) to 42°56′00″ N., 124°33′10″ W. (approximately 2.4 nautical miles west of the mouth of Floras Creek) to 42°50′20″ N., 124°38′30″ W. (approximately 3.4 nautical miles west of Cape Blanco) to 42°40′30″ N., 124°28′45″ W. (approximately 1.1 nautical mile west of Humbug Mountain) to Humbug Mountain.

6. Inseason Management - To meet preseason management objectives, certain inseason regulatory modifications may be necessary, such as action to extend the duration of fisheries to the end of scheduled seasons or to keep within chinook harvest guidelines for management subareas.

   North of Cape Falcon - Such actions might include but are not limited to: closure from 0 to 3, or 0 to 6, or 3 to 200, or 5 to 200 nautical miles of shore; closure from a point extending due west from Tatoosh Island for 5 nautical miles, then south to a point due west of Umatilla Reef Buoy, then due east to shore; closure from the North Head at the Columbia River mouth north to Leadbetter Point; and change of species which may be landed.

   Additionally, the procedure for any inseason transfer of coho among the recreational subareas will be as follows: After conferring with representatives of the affected ports and the SAS recreational representatives north of Cape Falcon, National Marine Fisheries Service may transfer coho inseason among recreational subareas to help meet the recreational season duration objectives (for each subarea). Any transfers between subarea quotas of 5,000 fish or less shall be done on a fish-for-fish basis.

   Humbug Mountain to Horse Mountain - On or about July 10, the STT will evaluate recreational chinook landings and project the expected landings through the scheduled season closure. If the projected harvest exceeds 20,000 chinook, additional days per week may be closed.

7. Consistent with Council management objectives, the State of Oregon may establish some additional late season, all-salmon-except-coho fisheries in state waters.

D. QUOTAS

1. Chinook and Coho Quotas North of Cape Falcon - All non-treaty troll and recreational ocean fisheries will be limited by either: (a) an overall 80,000 chinook quota or (b) impacts on critical Washington coastal and Puget Sound natural coho stocks equivalent to the preseason coho quota of 320,000. The recreational fishery will be limited by overall catch quotas of 40,000 chinook and 233,000 coho.

   For the recreational subarea between Leadbetter Point and Cape Falcon, 7,000 coho will be reserved from within the overall 116,500 subarea quota to assure a fishery beginning September 16. In August, the STT will determine how many chinook to reserve from within the subarea chinook guideline of 16,600 to allow attainment of the 7,000 coho reserve.

2. Coho Quotas South of Cape Falcon - Overall recreational catch is limited to 259,000 coho salmon from Cape Falcon to the U.S.-Mexico border. Any portion of the recreational quota not needed to complete scheduled recreational seasons will be reallocated to the commercial fishery no later than August 15. The fishery south of Humbug Mountain does not close if the recreational coho quota is reached.

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Table 3. Treaty Indian management measures for 1991 ocean salmon fisheries.

(Note: This table contains important restrictions in Parts A, B, and C which must be followed for lawful participation in the fishery.)

A. SEASONS, SPECIES, MINIMUM SIZE LIMITS, AND GEAR RESTRICTIONS

Tribe and Area Boundaries	Open Seasons	Salmon Species	Minimum Size Limit (inches) Chinook	Coho	Special Restrictions by Area
Makah - That portion of the Fishery Management Area (FMA) north of 48°02'15" N. latitude (Norwegian Memorial) and east of 125°44'00" W. longitude	May 1 thru earlier of June 30 or chinook quota	All except coho	24	–	Barbless hooks. No more than 8 fixed lines per boat, or no more than 4 hand-held lines per person.
	No earlier than July 1 thru earliest of September 30 or chinook or coho quota	All	24	16	
Quileute - That portion of the FMA between 48°07'36" N. latitude (Sand Point) and 47°31'42" N. latitude (Queets River) east of 125°44'00" W. longitude	May 1 thru earlier of June 30 or chinook quota	All except coho	24	–	Barbless hooks. No more than 8 fixed lines per boat.
	No earlier than July 1 thru earliest of September 30 or chinook or coho quota	All	24	16	
Hoh - That portion of the FMA between 47°54'18" N. latitude (Quillayute River) and 47°21'00" N. latitude (Quinault River) east of 125°44'00" W. longitude	May 1 thru earlier of June 30 or chinook quota	All except coho	24	–	Barbless hooks. No more than 8 fixed lines per boat.
	No earlier than July 1 thru earliest of September 30 or chinook or coho quota	All	24	16	
Quinault - That portion of the FMA between 47°40'06" N. latitude (Destruction Island) and 46°53'18" N. latitude (Point Chehalis) east of 125°44'00" W. longitude	May 1 thru earlier of June 30 or chinook quota	All except coho	24	–	Barbless hooks. No more than 8 fixed lines per boat.
	No earlier than July 1 thru earliest of September 30 or chinook or coho quota	All	24	16	

B. SPECIAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS

1. All boundaries may be changed to include such other areas as may hereafter be authorized for that tribe's treaty fishery by a federal court.

2. Applicable lengths, in inches, for dressed, head-off salmon, are 18 inches for chinook and 12 inches for coho. Minimum size and retention limits for ceremonial and subsistence harvest are as follows:
Makah Tribe - None.
Quileute, Hoh, and Quinault tribes - Not more than 2 chinook longer than 24 inches in total length may be retained per day. Chinook less than 24 inches total length may be retained.

3 The areas within a 6-mile radius of the mouths of the Queets River (47°31'42" N. latitude) and the Hoh River (47°45'12" N. latitude) will be closed to commercial fishing. A closure within 2 miles of the mouth of the Quinault River (47°21'00" N. latitude) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C. QUOTAS

1. The overall ocean quotas for the Washington coastal tribes are: 33,000 chinook and 80,000 coho salmon. These quotas include troll catches by the Klallam and Makah tribes in Washington State Statistical Area 4B from May 1 through September 30.

BILLING CODE 3510-22-C

Gear Definitions and Restrictions

In addition to gear restrictions shown in Tables 1, 2, and 3, the following gear definitions and restrictions will be in effect.

Troll Fishing Gear

Troll fishing gear for the Fishery Management Area (FMA)—the Exclusive Economic Zone off the Coasts of Washington, Oregon, and California—is defined as one or more lines that drag hooks behind a moving fishing vessel.

In that portion of the FMA off Oregon and Washington, the line or lines must be affixed to the vessel and must not be disengaged from the vessel at any time during the fishing operation.

Recreational Fishing Gear

Recreational fishing gear for the FMA is defined as angling tackle consisting of a line with not more than one artificial lure or natural bait attached.

In that portion of the FMA off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington.

In that portion of the FMA off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed 4 pounds. There is no limit to the number of lines that a person may use while recreationally fishing for salmon off California.

Geographical Landmarks

Wherever the words "nautical miles of shore" are used in this rule, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this notice are at the following locations:

Umatilla-Tatoosh Line.	A straight line drawn southerly from the Cape Flattery light (48°23'50" N. latitude) to Umatilla Buoy (48°11'20" N. latitude).
Cape Alava	48°10'00" N. lat.
Carroll Island	48°00'16" N. lat.
Queets River	47°31'42" N. lat.
Copalis Head	47°09'50" N. lat.
Leadbetter Point.	46°38'10" N. lat.
North Head	46°18'00" N. lat.
Red Buoy Line	Seaward along the south jetty of the Columbia River to the visible tip of the jetty and then to Buoy #2SJ, then southwesterly to Buoy #4, continuing southwesterly to Buoy #2, and then to the Columbia River Buoy, then due west along 46°11'06" N. latitude.
Cape Falcon	45°46'00" N. lat.
Cascade Head	45°03'50" N. lat.
Florence South Jetty.	44°01'00" N. lat.
Cape Arago	43°18'20" N. lat.
Humbug Mountain.	42°40'30" N. lat.
Sisters Rocks	42°35'45" N. lat.
Mack Arch	42°13'40" N. lat.
Trinidad Head	41°03'30" N. lat.
Punta Gorda	40°15'30" N. lat.
Horse Mountain	40°05'00" N. lat.
Point Arena	38°57'30" N. lat.
Point San Pedro	37°35'40" N. lat.
Point Conception.	34°27'00" N. lat.

Inseason Notice Procedures

Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, 206-526-6667, and by U.S. Coast Guard Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF-FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed with the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen must monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing (50 CFR 661, appendix II.B.11.).

Classification

The 1991 and specified 1992 management measures described above are based on the most recent data available. The aggregate data upon which the measures are based are available for public inspection at the offices of the Regional Directors (see **ADDRESSES**) during business hours until the end of the comment period.

1992 Seasons

Seasons that begin prior to May 1 are set under the authority of 50 CFR Part 661, and not under the Secretary's emergency authority and, thus, are effective until modified, superseded, or rescinded.

Preseason Notice of 1991 Management Measures

Most of the actions in this notice are taken under 50 CFR part 661. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that they are consistent with the Magnuson Act and other applicable law, are in compliance with Executive Order 12291, and are covered by the Regulatory Flexibility Analysis (RFA) and Final Supplemental Environmental Impact Statement (SEIS) prepared for the framework amendment to the FMP. These actions impose no information collection requirements under the Paperwork Reduction Act.

Section 661.23 of the ocean salmon regulations states that the Secretary will publish a notice establishing management measures each year and will invite public comments prior to its effective date. If the Secretary determines, for good cause, that a notice must be issued without affording a prior opportunity for public comment, comments on the notice will be received by the Secretary for a period of at least 15 days after the filing of the notice with the **Federal Register**.

Because of the depressed status of some salmon stocks, and the need to reduce harvest in some areas to prevent overfishing and achieve the FMP's spawning escapement goals, the Secretary has determined that time does not permit a comment period prior to the date the management measures must be in effect. Comments will be accepted for 15 days after the effective date of this notice.

The public has had opportunity to comment on these management measures during the process of their development. The public participated in the March and April Council, STT, and Salmon Advisory Subpanel meetings, and in public hearings held in Washington, Oregon, and California in late March and early April, which generated the management actions recommended by the Council and approved by the Secretary. Written public comments were invited by the Council between the March and April Council meetings.

Emergency Actions

The Assistant Administrator also has determined that the measures described in the preamble that deviate from the framework FMP and its implementing regulations are necessary to respond to emergency situations and are consistent with the Magnuson Act and other applicable law. The measures falling under emergency authority of section

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306(c) of the Magnuson Act (emergency rule) involve the following as listed in the preamble: (1) reduction of the OCN coho ocean harvest rate from 53 to 46 percent; and, (2) provision for an ocean coho salmon TAC north of Cape Falcon, Oregon that will fall short of the 19,100 fish Hood Canal spawning escapement goal for natural spawners. He has determined that continuation of the regulations that the emergency measures are intended to replace would not prevent overfishing. In addition, implementing regulations in conformance with the existing plan and without using emergency authority would not adequately protect the OCN coho, would not achieve the optimum yield from the resource, and would not apportion the ocean and inside harvests equitably among fisheries, and that it is necessary to amend those portions of the framework FMP and its implementing regulations by emergency action pursuant to 16 U.S.C. 1855(c).

The Assistant Administrator finds that the reasons justifying promulgation of this emergency rule on an emergency basis also make it impracticable and contrary to the public interest to provide prior notice and opportunity for comment or to delay for 30 days the effective date of these emergency regulations, as required by section 553 (b) and (d) of the Administrative Procedure Act. The public had opportunities to comment on the substance of this emergency rule during meetings of the Council and its advisory committees in March and April, 1991. The public will also have an opportunity to comment on the emergency measures during the comment period provided by this emergency rule.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, California, and the San Francisco Bay Conservation and Development Commission. This determination has been submitted for review by the responsible agencies under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

The Council prepared an environmental assessment (EA) for this action and the Assistant Administrator concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Regional Directors (see **ADDRESSES**).

This emergency rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it was not required to be promulgated as a proposed rule and the rule is issued without opportunity for prior public comment. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act no initial or final regulatory flexibility analysis has to be or will be prepared.

This emergency rule does not contain policies with known federalism implications sufficient to warrant preparation of the federalism assessment under Executive Order 12612. Washington, Oregon, and California are expected to implement State regulations compatible with the Federal rule.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 1, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, the appendix to 50 CFR part 661 is amended as follows:

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

1. The authority citation for part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

Appendix [Amended]

2. In the appendix, section IV.A., the following sentences are added temporarily at the end of the first paragraph, effective May 2, 1991 to August 6, 1991, to read as follows:

In 1991 the Hood Canal natural coho will not be managed to meet the goals set through the District Court procedures. The coho will be managed to protect its long-term productivity.

3. In the appendix, section IV.A., in the table Summary of Specific Management Goals for Stocks in the Salmon Management Unit, footnote 4, which pertains to Oregon coastal natural (OCN) coho, is suspended and a new footnote 4a is added immediately following footnote 4 in the table. The footnote text is added as set forth below. This amendment is effective May 2, 1991, to August 6, 1991.

4a. In 1991 the OCN coho spawning escapement goal is based on an ocean harvest rate on OCN coho of 46 percent.

[FR Doc. 91-10832 Filed 5-2-91; 4:26 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 901189-1021]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of prohibition of retention of groundfish.

SUMMARY: The Director, Alaska Region, NMFS, (Regional Director) is prohibiting further retention of Pacific ocean perch (POP) by vessels fishing in the Bering Sea subarea and is requiring that POP be treated in the same manner as prohibited species. This action is necessary to prevent the total allowable catch (TAC) for POP in the Bering Sea subarea from being exceeded before the end of the fishing year. The intent of this action is to ensure optimum use of groundfish while conserving POP stocks.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), May 2, 1991, through midnight, A.l.t., December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) governs the groundfish fishery in the Exclusive Economic Zone within the Bearing Sea and Aleutian Islands (BSAI) management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations codified at 50 CFR 611.93 and 50 CFR part 675.

Section 675.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 1.4 to 2.0 million metric tons (mt) for all groundfish species in the BSAI management area. The TAC amounts for target species and the "other species" category are specified annually within the OY range and are apportioned by subarea under § 675.20(a)(2)(i).

The initial 1991 TAC specified for POP in the Bering Sea subarea was 3,885 mt, all of which was apportioned to domestic annual processing (DAP) (56 FR 6290; February 15, 1991). Under § 675.20(a)(9), when the Regional Director determines that the TAC of any target species of the "other species" category has been achieved prior to the end of a fishing year, the Secretary of Commerce will publish a notice in the Federal Register requiring that species or the "other species" be treated in the same manner as prohibited species, as described in § 675.20(c), for the remainder of the year.

The Regional Director has determined that the TAC for POP in the Bering Sea subarea will be reached on May 2, 1991. Therefore, he is issuing this notice under authority of § 675.20(a)(9) and is prohibiting retention of POP by vessels in the Bering Sea subarea and is requiring that POP be treated in the same manner as prohibited species under § 675.20(c) from noon, A.l.t., May 2, 1991, through midnight, A.l.t., December 31, 1991.

Classification

This action is taken under § 675.20(a)(9) and § 675.20(c) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 2, 1991.

Richard H. Schaefer,

Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-10831 Filed 5-3-91; 4:17 pm]

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Proposed Rules

Federal Register
Vol. 56, No. 89
Wednesday, May 8, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 230 and 250

RIN 3206-AA46

Organization of the Government for Personnel Management; Personnel Management in Agencies

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is proposing to reorganize and consolidate regulations contained in parts 230 and 250 regarding agency authorities for taking personnel actions and OPM oversight of agency actions. Specifically, this proposal is to consolidate these materials into part 250 and abolish part 230. A consolidation of the regulations contained in parts 230 and 250 was proposed in the **Federal Register** of May 20, 1983 (48 FR 22728), but was not finalized. The changes now proposed are part of OPM's effort to streamline its regulations and to maintain structural consistency between them and title 5 of the United States Code.

DATES: Comments must be submitted on or before July 8, 1991.

ADDRESS: Send or deliver written comments to Michael D. Clogston, Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, Room 7695, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Bruce Oland, (202) 606-2458.

SUPPLEMENTARY INFORMATION: This proposed rule is designed to improve the technical integrity of 5 CFR by (1) removing part 230—Organization of the Government for Personnel Management; (2) transferring regulations from part 230 to part 250—Personnel Management in Agencies; and (3) reorganizing part 250 to combine related regulations and to accommodate the added material.

The proposed changes are necessary to bring the organization of 5 CFR into parallel with the subject matter of title 5, United States Code. The Civil Service Reform Act of 1978 added a new 5 U.S.C. chapter 23. The subject matter in 5 CFR part 230 does not parallel that material.

These revisions add to, and refine the substance of, the regulations moved from part 230. Because the affected regulations cover closely related topics, i.e., the general personnel management authorities exercised by agencies (part 230) and the authorities agencies receive through delegation agreements with OPM (part 250), existing regulations in parts 230 and 250 overlap to some extent. The amended regulations combine these two parts, eliminating these redundancies and streamlining OPM's regulations.

Accordingly, this revision would remove 5 CFR part 230, subparts A and C, which currently are reserved. The regulations in subpart B of part 230 relating to the exercise of agency authority to take personnel actions would be transferred to 5 CFR part 250, subpart A, and would be retitled "Authority for Personnel Actions in Agencies." Section 230.201, which lays out the standards and requirements for agency personnel actions in general, would be redesignated as § 250.101. The former § 250.101 covering delegation agreements would be redesignated as § 250.102 since this section covers specific circumstances under which agencies may take personnel actions and logically follows the material inserted at § 250.101. Sections 230.202 and 250.102 would be combined into § 250.103 which would cover OPM's authority to take corrective action or suspend or withdraw agency authority, including withdrawals effected by revoking a delegation agreement. The text would include editorial changes to combine material from the two source sections.

Subpart D of part 230, entitled "Agency Authority to Take Personnel Actions in a National Emergency," would be redesignated part 250, subpart B. Section 250.201 refines material currently contained in Federal Personnel Manual chapter 230, section 4-3 on the nature of a national emergency. Section 250.202 is material from section 4-3 on termination of a national emergency. Sections 250.203 through 250.206 provide for appropriate agency flexibilities to address the unusual but very real personnel demands that may arise during national emergencies of varying degrees of severity. Section 250.207 is new material or record-keeping requirements. Cross-references to other regulations in 5 CFR would be updated.

Agencies and other interested parties are requested to submit comments regarding any substantive effect of these revisions on agencies' exercise of personnel authorities.

Related guidance in chapters 230 and 250 of the Federal Personnel Manual also will be revised and updated as part of this effort. Comments and suggestions for improving this FPM guidance are also welcome.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to the internal management of Federal agencies and does not substantively change existing regulations.

List of Subjects in 5 CFR Part 250

Authority delegations (Government agencies); Civil Defense; Government employees.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend 5 CFR parts 230 and 250 as follows:

PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT—[REMOVED]

1. In 5 CFR chapter 1, part 230 is removed.

PART 250—PERSONNEL MANAGEMENT IN AGENCIES

2. Part 250 is amended by revising subpart A and by adding subpart B to read as follows:

Subpart A—Authority for Personnel Actions in Agencies

Sec.
250.101 Standards and requirements for agency personnel actions.
250.102 Delegation agreements.
250.103 Taking corrective action or suspending or withdrawing agency authority.

Subpart B—Agency Authority to Take Personnel Actions in a National Emergency

250.201 Definition of National Emergency.
250.202 Termination of a National Emergency.
250.203 When OPM approval is required.
250.204 Agency authority to take personnel actions in a National Emergency posing immediate threat to life or property.
250.205 Use of authority by agencies with a defense-related mission.
250.206 Agency authority to make emergency appointments on an indefinite basis in a National Emergency.
250.207 Record-keeping requirements.

Authority: 5 U.S.C. 1104, 1302, 3301, 3302; Pub. L. 95-454, sec. 3(5); E.O. 10577, 12 FR 1259, 3 CFR, 1954-1958 Comp., p. 218.

Subpart A—Authority for Personnel Actions in Agencies

§ 250.101 Standards and requirements for agency personnel actions.

In taking a personnel action authorized by this chapter, each agency shall comply with the qualification standards and regulations issued by the Office of Personnel Management, the instructions published by OPM in the Federal Personnel Manual, and the provisions of any agreement developed between OPM and the agency in connection with delegation of a specific authority. When a personnel action is being taken as a result of (a) an order of a Court or a settlement agreement, or (b) a decision or order of or a settlement agreement or an arbitral award reached under the labor arbitration process or the rules and regulations of the Merit Systems Protection Board, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, or OPM, the agency shall follow the instructions in Federal Personnel Manual Chapter 296, and must comply with all other relevant substantive and documentary requirements, including those applicable to retirement, life insurance, and health benefits.

§ 250.102 Delegation agreements.

In certain circumstances, an agency will receive authorities through a delegation agreement developed between the agency and OPM. The agreement will set forth the conditions for application of the delegated authorities. The agreement will include a description of minimum standards of performance and the system of oversight to be used by the agency and by OPM in monitoring the use of each delegated authority.

§ 250.103 Taking corrective action or suspending or withdrawing agency authority.

If OPM finds that an agency has taken an action contrary to a law, rule, regulation, or standard which OPM administers, it may require the agency to take corrective action. OPM may suspend or withdraw any authority granted under this chapter to an agency, including any authority granted by delegation agreement, when it finds that the agency has not complied with qualification standards issued by OPM, the instructions published by OPM in the Federal Personnel Manual, or the regulations in this chapter; or that the suspension or withdrawal is in the interest of the service for any other reason. OPM may suspend or revoke a delegation agreement established under § 250.102 at any time, if it judges that the agency is not adhering to the provisions of the agreement.

Subpart B—Agency Authority to Take Personnel Actions in a National Emergency

§ 250.201 Definition of National Emergency.

(a) A national emergency meets all of the following conditions:

(1) It was declared by the President or Congress;

(2) It involves a danger to the United States' safety, security or stability which results from specified circumstances or conditions and which is national in scope; and

(3) It requires a national program specifically intended to combat the threat to national safety, security or stability.

(b) A national emergency is not initiated by a general Presidential or congressional statement that broad problems, such as unemployment, health care costs or rural poverty, constitutes a crisis or emergency, unless particular conditions are specifically cited as threatening the nation's safety, security or stability and a program is set up to meet the threat.

§ 250.202 Termination of National Emergency.

(a) A national emergency no longer exists if:

(1) It is officially terminated by the President or Congress; or

(2) The conditions which created the emergency are terminated or corrected.

(b) A national emergency is terminated whenever the specific circumstance or event which triggered the emergency is ended, even though broader related problems may not be resolved.

§ 250.203 When OPM approval is required.

(a) Agencies may take two types of actions covered by this part without OPM approval:

(1) Personnel actions necessary for effective functioning following an attack on the United States or other emergency posing an immediate threat of loss of life or destruction of property, as provided in § 250.204.

(2) Emergency-indefinite appointments made during a national emergency that meets the definition in § 250.201 and in accordance with the provisions of § 250.206.

(b) Use of emergency personnel authorities in any other situations requires prior OPM approval.

§ 250.204 Agency authority to take personnel actions in a National Emergency posing immediate threat to life or property.

(a) In a national emergency resulting from an attack on the United States or from another event that poses an immediate threat of loss of life or destruction of property, agencies are authorized to carry out whatever personnel activities may be necessary to the effective functioning of their organizations during a period of emergency without regard to any regulation or instruction of OPM, except those which become effective upon or following an attack on the United States. This authority applies only to actions under OPM jurisdiction.

(b) Actions taken under this section shall be as consistent as possible, under the circumstances, with qualification standards, regulations, and instructions which would pertain but for the national emergency.

(c) An employee may not acquire competitive civil service status by virtue of any action taken under this section.

(d) Use of the authority granted in paragraph (a) of this section shall be discontinued as soon as conditions permit the reapplication of the pertinent qualification standards, regulations and instructions. Actions taken, and authority to take actions, under this section may be adjusted or terminated in whole or in part by OPM.

§ 250.205 Use of authority by agencies with a defense-related mission.

Agencies with a defense-related mission may request OPM's approval to use the authority even without the existence of a declared national emergency when:

(a) The President has authorized the call-up of some portion of the military reserves for some military purpose;

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(b) The agency or department head certifies that this hiring authority is necessary;

(c) The Director of OPM confirms that normal procedures cannot meet surge employment requirements; and

(d) The interests of economy and efficiency of defense-related agencies require such appointments.

§ 250.206 Agency authority to make emergency appointments on an indefinite basis in a National Emergency.

(a) *Basic authority.* In a national emergency, an agency may make emergency appointments on an indefinite basis to continuing positions (normally those expected to last longer than a year) when it is not in the public interest to make career or career conditional appointments.

(b) *Appointment from registers.* Except as provided by paragraphs (c) and (d) of this section, an agency shall make appointments under this authority from appropriate registers of eligibles as long as there are available eligibles.

(c) *Appointment outside the register.* An agency may make emergency appointments under this authority outside registers of eligibles when all the following conditions are met:

(1) A number of vacancies must be filled immediately as a result of conditions created by the national emergency;

(2) Either the number of vacancies to be filled exceeds the number of immediately available eligibles or emergency conditions do not allow sufficient time to make this determination; and

(3) Available eligibles on registers are given prior or concurrent consideration for appointment to the extent possible within emergency time considerations.

(d) *Appointment noncompetitively.* An agency may give emergency appointments under this authority to the following classes of persons without regard to registers of eligibles and the provisions in § 333.102 of this chapter:

(1) Persons who were recruited on a standby basis prior to the national emergency in accordance with applicable requirements published in the Federal Personnel Manual;

(2) Members of the National Defense Executive Reserve, designated in accordance with section 710(e) of the Defense Production Act of 1950, Executive Order 11179 of September 22, 1964, and instructions issued by the agency authorized to implement the law and Executive order; and

(3) Former Federal employees eligible for reinstatement.

(e) *Tenure of emergency employees.*

(1) Emergency employees do not acquire a competitive status on the basis of their emergency appointments.

(2) An emergency appointment may be continued for the duration of the emergency for which it is made.

(f) *Trial period.*

(1) An employee's 1st year of service under emergency appointment is a trial period. Section 315.802(b) of this chapter provides for conditions under which prior service is counted toward completion of a trial period.

(2) An agency may terminate the appointment of an emergency employee at any time during the trial period, adhering to the procedures set forth in § 315.804 or § 315.805 of this chapter, as appropriate.

(g) *Eligibility for within-grade and merit increases.* An emergency employee serving in a position subject to the General Schedule or the Performance Management and Recognition System is eligible for within-grade or merit increases in accordance with parts 531 and 540, respectively, of this chapter.

(h) *Application of other regulations.*

(1) The term "indefinite employee" as used in the following includes an emergency employee: Part 351, subpart G of part 550, and part 752 of this chapter.

(2) The selection procedures of § 333.101 of this chapter apply to emergency employees appointed outside the register under paragraph (c) of this section.

(3) As provided in § 831.201 of this chapter, an employee serving under an emergency appointment under authority of this section generally is excluded from coverage under the Civil Service Retirement System.

(i) *Promotion, demotion, or reassignment.* An agency may promote, demote, or reassign an emergency employee to any position for which it is making emergency appointments.

§ 250.207 Record-keeping requirements.

(a) Agencies shall document actions taken under this subpart in accordance with instructions in FPM Supplement 296–33.

(b) Agencies shall maintain records of these actions in accordance with instructions in FPM Supplement 293–31.

[FR Doc. 91–10904 Filed 5–7–91; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 351

Reduction in Force Ratings for Retention-Longer Period to Credit Ratings; Clarification of Assignment Rights

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to issue regulations that will allow employees to receive retention service credit for performance ratings received during the 4-year period prior to the date the agency issues specific reduction in force notices. At present, employees receive additional service credit for reduction in force purposes based on ratings received during the 3-year period prior to the date the agency issues specific notices. The new regulations better ensure that employees competing for positions under OPM's reduction in force regulations receive credit for three actual annual performance ratings. The proposed regulations also make technical changes in how agencies (1) document the performance ratings that are used for retention purposes, (2) establish competitive areas that cover an Inspector General activity, and (3) offer temporary positions under OPM's reduction in force regulations.

DATES: Written comments will be considered if received no later than July 8, 1991.

ADDRESSES: Send or deliver written comments to: Associate Director, Career Entry Group, room 6F08, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Edward P. McHugh or Thomas A. Glennon, (202) 606–0960.

SUPPLEMENTARY INFORMATION: Section 5 CFR 351.504(b) presently provides that an employee's entitlement to additional service credit for performance for retention purposes is based on the three most recent annual performance ratings of record received by the employee during the 3-year period prior to the date the employee receives a specific reduction in force notice. Currently, employees who lack three actual ratings receive retention credit for performance on the basis of one rating of "Fully Successful" for each missing rating. In reviewing the experiences of agencies that were planning for possible reduction in force actions, we found that the use of a 3-year period occasionally resulted in employees receiving credit for fewer than three actual performance ratings for retention purposes,

particularly in situations where the agency used different performance rating cycles at an installation.

OPM now proposes to revise the retention regulations so that an employee's entitlement to additional service credit for reduction in force purposes will be based on the employee's three most recent annual performance ratings of record received during the 4-year period prior to the date the agency issues specific reduction in force notices.

In some cases agencies establish a cutoff date—a specified number of days prior to the date it issues reduction in force notices to employees—after which no new annual performance ratings are put on record and used for retention purposes. This procedure is implemented through an agency's performance management system or other appropriate issuance. The cutoff date option provides the agency with additional time to properly determine its employees' retention standing. These proposed regulations provide that, when a cutoff date is used, employees will receive performance credit for retention purposes based on the three most recent annual ratings received during the 4-year period prior to the cutoff date. The regulations also require that the awarding of additional service credit for reduction in force purposes must be uniformly and consistently applied by an agency, must be consistent with the agency's performance management system, and must be documented in the agency's performance appraisal system.

This new procedure for crediting performance ratings will be mandatory only after a transition period of 6 months from the date final regulations are published. During the 6-month transition period, agencies with ongoing reduction in force actions may, at their option, continue using the 3-year period for crediting ratings under the retention regulations, or change to the new 4-year period for crediting the ratings.

In another change, consistent with the Inspector General Act of 1978, Public Law 95–452, OPM proposes to add a new paragraph 5 CFR 351.402(d) recognizing that each Inspector General office must be in a separate reduction in force competitive area that is established only for that office.

Also, OPM proposes to add a new paragraph 5 CFR 351.704(d) which prohibits an agency from offering a competing employee assignment to a temporary position except in lieu of separation by reduction in force. This change is consistent with the final decision of the Merit Systems Protection Board in *Jones* v. *Department of the Army*. 42 M.S.P.R. 660 (1990). (A summary of the *Jones* decision may be found in Federal Personnel Manual Letter 351–24.) This revision ensures that an agency may satisfy a nontemporary employee's right of assignment under the reduction in force regulations only by offering the employee a nontemporary position. On other assignment right topics, OPM proposes to revise paragraph 5 CFR 351.701(a) to clarify longstanding policy that (1) promotion potential is not a consideration in determining whether an employee is offered assignment to another position, and (2) an employee who accepts assignment retains the same status and tenure in the new position. Finally, OPM proposes to revise 5 CFR 351.703 to provide that an agency may waive qualification in offering an employee assignment only to a vacant, rather than occupied, position. This change ensures that the retention provisions are uniformly and consistently applied in a reduction in force, as required by 5 CFR 351.201(c).

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

List of Subjects in 5 CFR Part 351

Government employees, U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend Part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

2. In § 351.402, paragraphs (a), (b), and (c) are republished for the convenience of the reader and paragraph (d) is added. As revised, the section reads as follows:

§ 351.402 Competitive area.

(a) Each agency shall establish competitive areas in which employees compete for retention under this part.

(b) A competitive area may consist of all or part of an agency. The minimum competitive area in the departmental service is a bureau, major command, directorate or other equivalent major subdivision of an agency within the local commuting area. In the field, the minimum competitive area is an activity under separate administration within the local commuting area. A competitive area must be defined solely in terms of an agency's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined.

(c) When a competitive area will be in effect less than 90 days prior to the effective date of a reduction in force, a description of the competitive area shall be submitted to the OPM for approval in advance of the reduction in force. Descriptions of all competitive areas must be made readily available for review.

(d) Each agency shall establish a separate competitive area for each Inspector General office in which only employees of that office shall compete for retention under this part.

3. Section 351.504 is amended by revising paragraph (b), the introductory text to paragraph (c), the introductory text to paragraph (d) and paragraph (c)(2) as set out below. The remainder of the section is republished for the convenience of the reader. As revised, the section reads as follows:

§ 351.504 Credit for performance.

(a) Annual performance ratings of record of outstanding (Level 5), exceeds fully successful (Level 4), fully successful (Level 3), minimally successful (Level 2), and unacceptable (Level 1), or equivalent, are those ratings established under Part 430 of this chapter.

(b)(1) An employee's entitlement to additional service credit for performance under this subpart shall be based on the employee's three most recent annual performance ratings of record received during the 4-year period prior to the date of issuance of specific reduction in force notices, except as provided in paragraph (b)(2) of this section.

(2) To provide adequate time to determine employee retention standing, an agency may provide for a cutoff date—a specified number of days prior to the issuance of specific reduction in force notices—after which no new annual ratings will be put on record and used for purposes of this subpart. When a cutoff date is used, an employee will receive performance credit for the three most recent annual ratings received during the 4-year period prior to the cutoff date.

(3) To be creditable for purposes of this subpart, a rating must have been issued to the employee, with all

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appropriate reviews and signatures, and must also be on record (e.g., the rating is available for use by the office responsible for establishing retention registers).

(4) The awarding of additional service credit based on performance for purposes of this subpart must be uniformly and consistently applied, and must be consistent with the agency's performance appraisal system, and other appropriate issuances that implement these policies. Each agency must specify in its performance appraisal system or other appropriate issuance:

(i) The types of annual performance ratings of record that are used for purposes of this subpart;

(ii) The conditions under which a rating is considered to have been received for purposes of determining whether it is within the 4-year period prior to either the date the agency issues specific reduction in force notices or the agency-established cutoff date for ratings, as appropriate; and

(iii) If the agency elects to use a cutoff date, the number of days prior to the issuance of reduction in force notices (i.e., general or specific) after which no new annual ratings will be put on record and used for purposes of this subpart.

(c) Service credit for employees who do not have three actual annual performance ratings of record received during the 4-year period prior to the date of issuance of specific reduction in force notices, or the 4-year period prior to the agency-established cutoff date for ratings permitted in paragraph (b)(2) of this section, shall be determined as follows:

(1) An employee who has not received an annual performance rating of record shall receive credit for performance on the basis of three assumed ratings of fully successful (Level 3) or equivalent.

(2) An employee who has received at least one but fewer than three previous annual performance ratings of record shall receive credit for performance on the basis of the actual rating(s) received and of one or two, assumed rating(s) of fully successful (Level 3) or equivalent, whichever is needed to credit the employee with three ratings.

(d) The additional service credit an employee receives for performance under this subpart shall be expressed in additional years of service and shall consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's last three (actual and/or assumed) annual performance ratings of record computed on the following basis:

(1) Twenty additional years of service for each performance rating of outstanding (Level 5) or equivalent;

(2) Sixteen additional years of service for each performance rating of exceeds fully successful (Level 4) or equivalent; or

(3) Twelve additional years of service for each performance rating of fully successful (Level 3) or equivalent.

(e) The current annual performance rating of record shall be the last annual rating except that:

(1) An employee who has received an improved rating following an opportunity to demonstrate acceptable performance as provided in Part 432 of this chapter shall have the improved rating considered as the current annual performance rating of record; and

(2) An employee's current annual performance rating of record shall be presumed to be fully successful when the employee had been demoted or reassigned under part 432 of this chapter because of unacceptable performance and as of the date of issuance of specific reduction in force notices has not received a rating for performance in the position to which demoted or reassigned.

4. Section 351.701 is amended by revising paragraph (a) to read as follows:

§ 351.701 Assignment involving displacement.

(a) *General.* When a group I or II competitive service employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent, or higher, is released from a competitive level, an agency shall offer assignment, rather than furlough or separate, in accordance with paragraphs (b), (c), and (d) of this section to another competitive position which requires no reduction or the least possible reduction in representative rate. The employee must be qualified for the offered position. The offered position shall be in the same competitive area and last at least 3 months. Upon accepting an offer of assignment, or displacing another employee under this part, an employee retains the same status and tenure in the new position. The promotion potential of the offered position is not a consideration in determining an employee's right of assignment.

* * * * *

5. Section 351.703 is revised to read as follows:

§ 351.703 Exception to qualifications.

An agency may assign an employee to a vacant position under sections 351.201(b) or 351.701 of this part without regard to OPM's standards and requirements for the position if:

(a) The employee meets any minimum education requirement for the position; and

(b) The agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

6. Section 351.704 is amended by adding a new paragraph (b)(4) as set out below. The remainder of the section is republished for the convenience of the reader. As revised, the section reads as follows:

§ 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under section 351.701 by assignment under section 351.201(b) or section 351.705 to a position having a representative rate equal to that to which he or she would be entitled under section 351.701.

(2) An agency may, at its discretion, choose to offer a vacant other-than-full-time position to a full-time employee or to offer a vacant full-time position to an other-than-full-time employee in lieu of separation by reduction in force.

(b) Section 351.701 does not:

(1) Authorize or permit an agency to assign an employee to a position having a higher representative rate;

(2) Authorize or permit an agency to displace a full-time employee by an other-than-full-time employee, or to satisfy an other-than-full-time employee's right to assignment by assigning the employee to a vacant full-time position.

(3) Authorize or permit an agency to displace an other-than-full-time employee by a full-time employee, or to satisfy a full-time employee's right to assignment by assigning the employee to a vacant other-than-full-time position.

(4) Authorize or permit an agency to assign a competing employee to a temporary position (i.e., a position under an appointment not to exceed one year), except as an offer of assignment in lieu of separation by reduction in force under this part when the employee has no right to a position under section 351.701 or section 351.704(a)(1) of this part. This option does not preclude an agency from, as an alternative, also using a temporary position to reemploy a competing employee following separation by reduction in force under this part.

[FR Doc. 91-10905 Filed 5-7-91; 8:45]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 319

[Docket No. 88-019-E]

RIN 0583-AA92

Labeling of Frankfurters and Similar Products Containing Binders and Extenders

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On March 22, 1991, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the Federal meat inspection regulations by deleting specific labeling requirements for prominent disclosure of the use of certain binders and extenders in frankfurters and similar products. Prior to the close of the comment period of April 22, 1991, FSIS had received requests to extend the comment period so that additional data and information can be provided. FSIS has determined that the requests should be granted and, therefore, is reopening the comment period for 15 days.

DATES: Comments must be received on or before May 23, 1991.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION: On May 17, 1988, FSIS received a petition from Protein Technologies International (PTI) to amend the standards of identity for frankfurters and similar cooked sausage and cheesefurters and similar meat food products to eliminate use limitations and prominent labeling requirements for certain binders as prescribed in part 319 of the Federal meat inspection regulations (9 CFR 319). The petitioner also requested deletion of § 317.8(b)(16) of the Federal meat inspection regulations (9 CFR 317.8(b)(16)) which requires prominent labeling of binders used in standardized sausages.

The petitioner contended that the use limitation on binders was imposed when standards were severely restrictive, and that removal of the use limitation would allow food processors to produce nutritional products economically. The petitioner further contended that prominent labeling of binders is duplicative because the binder must also be listed in the product label's ingredients statement which provides complete information about the contents of all meat and poultry products, and that such prominent labeling is not required for products that contain ingredients such as poultry products or mechanically separated (species) and flavoring materials.

In response to the PTI petition, FSIS published an advance notice of proposed rulemaking on August 24, 1988 (53 FR 32247) requesting comments and information concerning the PTI petition. FSIS received five comments; two opposed and two supported the petition, while one comment supported only portions of the petition.

On November 9, 1988, PTI submitted an amended petition which requested that FSIS initiate rulemaking only to remove the prominent labeling requirements for binders. The petitioner stated their desire to avoid delays that could result in resolving the more complex issues that may surface with proposing removal of the use limitations on binders.

On March 22, 1991, FSIS published a proposed rule to eliminate the requirement that the use of binders and extenders be prominently displayed on the product label when used in specific meat food products (56 FR 12126). Interested persons were given until April 22, 1991, in which to comment on the proposed rule. Prior to closure of the comment period, FSIS received requests to extend the comment period to allow additional time for information to be gathered and submitted. FSIS is interested in receiving this information and is, therefore, reopening the comment period for 15 days.

Done at Washington, DC on: May 2, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91-10887 Filed 5-7-91; 8:45 am]

BILLING CODE 3410-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 338

RIN AA81

Fair Housing

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Proposed rule.

SUMMARY: The FDIC proposes to amend its regulations governing fair housing in order to bring certain requirements therein into conformity with the Home Mortgage Disclosure Act ("HMDA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), and implemented by revisions to Regulation C ("Regulation C") adopted by the Board of Governors of the Federal Reserve System ("FRB") on December 11, 1989 (54 FR 51356 (Dec. 15, 1989)). More specifically, the FDIC proposes to revise the home loan application log-sheet ("FDIC log-sheet") currently prescribed by its fair housing regulations in order to conform it to the loan/application register prescribed by Regulation C ("HMDA register" or "HMDA LAR"). Regulation C requires certain insured State nonmember banks (among others) to maintain information regarding home loan applications in a register format. FDIC's fair housing regulations require certain insured State nonmember banks to maintain information regarding home loan applications in a similar format. As a result, certain insured State nonmember banks are presently required to keep two largely repetitive registers. This duplication in forms will no longer be required if the proposed rule is adopted. Instead, banks subject to the FDIC's long-sheet requirements will be able to satisfy those requirements by maintaining a HMDA register, provided that (i) data as to race or national origin, sex, and income are recorded for all applicants, and (ii) all the information required is entered on the HMDA register within 30 calendar days after final disposition of the loan application. The FDIC's ongoing commitment to enforce the civil rights and consumer protection laws will be furthered in that the HMDA register, in some respects, provides more detailed data, much of which is available to the public.

DATES: Comments must be received on or before July 8, 1991.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room F-400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m., and may be inspected in Room F-457 between 8:30 a.m. and 5 p.m., on business days. FAX number: (202) 898-3838.

FOR FURTHER INFORMATION CONTACT: Patricia A. McCormick, Fair Lending

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Analyst, Office of Consumer Affairs, (202) 898-3538 or call toll-free at 1-800-424-5488, or Valerie J. Best, Counsel, (202) 898-3812, or Adrienne George, Attorney, (202) 898-3743, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background Information

Part 338 of the FDIC's Rules and Regulations is the FDIC's fair housing lending regulation. Part 338 has two main purposes. First, it implements section 805 of title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-19), as amended by the Fair Housing Amendments Act of 1988. Second, it implements a substitute monitoring program as permitted by Regulation B, 12 CFR part 202, which itself implements the Equal Credit Opportunity Act of 1974 ("ECOA") (15 U.S.C. 1691-91f).

The ECOA forbids banks (and all other creditors) from discriminating against any applicant on a "prohibited basis" regarding any aspect of a credit transaction. The term "prohibited basis" includes race, color, religion, national origin, sex, marital status, and age. In order to monitor compliance with the ECOA, the FRB's Regulation B specifies data-gathering rules for most consumer loans. In the case of loans related to the purchase or refinancing of the borrower's dwelling, however, a monitoring program required by a sister federal financial regulatory agency may be substituted for the data-gathering program required by the FRB. 12 CFR 202.13(d). The FDIC adopted part 338, in part, to implement a substitute monitoring program as permitted by the FRB. The data-gathering requirements imposed by the FDIC are set forth in § 338.4 of the FDIC's rules and regulations.

Section 338.4 requires all insured State nonmember banks to collect information as to a home loan applicant's race or national origin, sex, marital status, and age. All insured State nonmember banks are required to retain identifying information such as the date of the home loan application, the name and address of the applicant, and the location of the property to which the application pertains. Additional requirements are imposed on any insured State nonmember bank which has an office in a primary metropolitan statistical area ("PMSA"), a metropolitan statistical area ("MSA"), or a consolidated metropolitan statistical area ("CMSA") that is not comprised of designated PMSAs, and which had total assets exceeding $10 million as of December 31 of the preceding calendar year. Such institutions must retain more extensive data on the applicant (such as employment, income, number of dependents, assets and liabilities), the subject property (such as the year built, market value, census tract), and the loan request (such as purpose, amount interest rate, closing costs, taxes and insurance, type of mortgage). 12 CFR 338.4(a)(2). The information may be requested on the loan application form or on a separate sheet of paper that refers to the loan application. The proposed rule will not affect the recordkeeping requirements described above. The proposed rule will, however, affect the additional recordkeeping requirements imposed by § 338.4(a)(2)(iv) concerning the maintenance of a log-sheet.

Compilation of Data Through a Log-sheet Format

The fair housing lending statutes described above do not specifically require the compilation of data in a log-sheet format. Nonetheless, the FDIC views the collection of certain information in a log-sheet format as necessary to assist FDIC examiners in conducting the fair housing portion of the examination more effectively. Log-sheets give examiners an overall perspective of a bank's home loan lending activities and save examiners' time. Institutions identified as possibly engaging in unlawful discrimination can then be subjected to an even more comprehensive compliance examination.

Because of the foregoing advantages, § 338.4 currently requires certain FDIC-supervised institutions to compile data regarding home loan applicants in a log-sheet format. The applicants' race or national origin, sex, marital status, and age are entered on the log-sheet. In addition, the type of loan and the case disposition are noted. Finally, identifying information—that is, the name and address of the applicant, the address of the property, and the date of the application—are recorded. The bank must be able to trace each entry on the log-sheet to the relevant application file.

As explained below, Regulation C now requires certain banks to maintain a home loan application register that requires much of the same data as the FDIC log-sheet. Examiners can use the HMDA register as easily as the FDIC log-sheet when conducting the fair housing segment of a compliance examination. No purpose is served by requiring banks to maintain the FDIC log-sheet when similar information is as readily available to the examiner by reference to the HMDA register.

Home Mortgage Disclosure Act

Prior to the enactment of FIRREA, HMDA had required that covered institutions disclose annually their originations and purchases of mortgage and home improvement loans itemized by census tract and type of loan. The Federal Financial Institutions Examination Council ("FFIEC") produced tables based on such data showing aggregate lending patterns in each MSA. In this way, possible instances of "redlining" could be detected.

FIRREA made major revisions to the HMDA. Following the mandate of FIRREA, the FRB, which has rulemaking authority with respect to HMDA, revised Regulation C. Regulation C now requires certain financial institutions to report data on home loan applications, not just on originations and purchases as was formerly the case. In addition, Regulation C now requires certain institutions to report the race or national origin, sex, and income of the applicant or borrower. It does not require institutions to report the marital status and age of the applicant or borrower, however. The data must be presented on a register in the format prescribed by Regulation C.

FDIC Proposed Rule

With the implementation of the HMDA register, the FDIC is proposing to revise the existing FDIC log-sheet to conform it to the HMDA register. As a result of the proposed revision, the home loan data required to be displayed in log-sheet format pursuant to § 338.4(a)(2)(iv) will be identical to that required by Regulation C. Institutions currently required to keep a FDIC log-sheet can satisfy that requirement by maintaining the HMDA register on a timely basis, as further explained below.

FDIC staff analysis supports the view that the HMDA register will be an effective substitute for—and even an improvement over—the existing FDIC log-sheet. The HMDA register has the following advantages. First, the HMDA register captures more items of information than does the FDIC log-sheet. Second, data reported in HMDA register format are compiled and made publicly available. Third, data will be reported on a uniform basis by all covered financial institutions. Fourth, recordkeeping requirements will be simplified by eliminating repetitive forms. The first and second factors are described in more detail later in this document in the section comparing the current FDIC log-sheet to the HMDA register.

It should be noted that the current FDIC log-sheet and the HMDA register differ in one material respect: Marital status and age are reported on the current FDIC log-sheet but not on the HMDA register. Because the FDIC is conforming its current log-sheet to the HMDA register, marital status and age will no longer be reported in register format. However, this information remains available from loan applications on file at the institution. Further, the FDIC has received almost no housing-related complaints alleging discrimination on the basis of marital status or age over the past several years. The FDIC therefore believes that the advantages of utilizing the HMDA register format outweigh the disadvantages.

Although the FDIC proposes to conform the format of its log-sheet to that of the HMDA register, the FDIC's reporting requirements differ from those imposed by Regulation C in two other respects: (i) The class of institutions required by the FDIC to record information concerning race or national origin and sex is broader, and (ii) the FDIC requires the register to be updated on a more timely basis. Both the FDIC regulations and HMDA currently require banks to report in log-sheet or register format if the bank has a home or a branch office in a MSA and had total assets exceeding $10 million as of the end of the preceding calendar year. HMDA, however, provides that race or national origin, sex, and income data may, but need not, be collected by an institution with assets on the preceding December 31 of $30 million or less. 12 CFR 203.4(b). As a result of this provision, subject institutions maintain a HMDA register but need not complete that portion of the register concerning race or national origin, sex, and income. The FDIC does not have a similar exemption.

The FDIC is not incorporating into its fair housing lending regulations the Regulation C exemption that allows banks with assets of $30 million or less as of the end of the preceding calendar year to report data on race or national origin, sex, and income at their option. Instead, the proposed rule will require all insured State nonmember banks with an office in a PMSA, MSA, or CMSA that is not comprised of designated PMSAs, and which had total assets exceeding $10 million as of December 31 of the preceding calendar year, to report the race or national origin, sex, and income of the applicant. The FDIC is of the opinion that the collection of such information in register format by all insured State nonmember banks with total assets in excess of $10 million and with an office in a PMSA, MSA, or CMSA not comprised of designated PMSAs, will allow for a more efficient compliance examination analysis.

Current FDIC regulations provide that a covered bank which had total assets of $50 million or less as of December 31 of the preceding calendar year and also received fewer than 25 home loan applications during that calendar year is not required to keep the FDIC log-sheet. 12 CFR 338.4(a)(2)(iv).

The FDIC proposes to delete its current exemption for covered banks which had total assets of $50 million or less as of December 31 of the preceding calendar year and also received fewer than 25 home loan applications. The FDIC proposes to delete this exemption in order to simplify its regulations and in order to make its regulations more consistent with the requirements of Regulation C. Further, as noted above, institutions that are exempt from maintaining a FDIC log-sheet by virtue of this provision are required by Regulation C to maintain a HMDA register (12 CFR 203.3(a)), although they may not be required to record data as to race or national origin, sex, and income. Consequently, deletion of the current exemption for covered banks which had total assets of $50 million or less and also received fewer than 25 home loan applications should not materially increase the recordkeeping burden for those banks.

The FDIC proposes to require that information reported in register format be kept current to within 30 days of the loan disposition date. At present, part 338 requires each bank to collect information during the initial contact with the applicant. 12 CFR 338.4(a)(2)(iii). The FDIC proposes to retain this requirement and to add a provision that all required data must be entered into the register within 30 calendar days after final action is taken on the loan application. In contrast, Regulation C does not specify a time limit for entering the required data on the register, but does require that the register be filed once a year. 12 CFR 203.4(a). The FDIC is of the opinion that the register must be kept up-to-date so that it can be a useful examination tool. Examiners conduct compliance examinations throughout the year. In order to effectively conduct the fair lending portion of these examinations, examiners need to have access to registers that are updated on a more frequent basis than once a year. Many banks use the registers for internal review and control. Registers that are continuously maintain will also better enable banks to monitor compliance with consumer protection laws and with the bank's own lending policies.

Part 338 Reorganized

As explained above, § 338.4 of the FDIC's fair housing lending regulations is, in part, a substitute monitoring program adopted under § 202.13(d) of Regulation B of the FRB. Furthermore, §§ 338.2 and 338.3 implement title VIII. Consequently, the definition currently employed in part 338 are based on the definitions used in Regulation B and title VIII. With the implementation of Regulation C and the HMDA register, however, the relevant definitions as to the register are those contained in Regulation C. In some instances, the same term (for example, "dwelling") is used in title VIII, Regulation B, and/or Regulation C, but is differently defined. As a result, home loans purchased and home improvement loans are required by Regulation C to be recorded on the HMDA register but are not covered by the recordkeeping requirements of Regulation B. Likewise, loans for multifamily dwellings (that is, dwellings for five or more families) are not covered by the Regulation B recordkeeping requirements, but are covered by Regulation C and so must be recorded on the HMDA register. On the other hand, loans for vacant land are covered by title VIII and the nondiscriminatory advertising and Equal Housing Lender Poster requirements, but are not subject to recordkeeping requirements. The FDIC proposes to reorganize part 338 in order to avoid any confusion that could be caused by the different definitions employed in title VIII, Regulation B, and Regulation C.

Comparison of Current FDIC Log-sheet and HUDA Register

Additional differences between the format of the current FDIC log-sheet and the HMDA register are listed below. As discussed above, the FDIC proposes to substitute the HMDA register for its current log-sheet. Consequently, all differences between the two forms will be resolved in favor of the HDA register.

1. *Type of loan application.* The HMDA register requires information as to the "type" of loan application (*i.e.*, for a conventional, government-insured or government-guaranteed loan). The current FDIC log-sheet does not have a similar requirement.

2. *Purpose of the loan.* At one time, home improvement loans were required to be reported on the FDIC log-sheet. The FDIC eliminated this requirement through a final rule published at 53 FR

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30831 (Aug. 16 1986). However, home improvement loans must be reported on the HMDA register.

The HMDA register includes applications for the purchase, improvement, or refinancing of any dwelling for five or more families. The FDIC log-sheet, on the other hand, limits reporting requirements to loan applications where the dwelling is or will be comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence. In other words, loan applications for dwellings which are primarily commercial (i.e., dwellings for five or more families) are excluded from the FDIC log-sheet but included in the HMDA register.

The HMDA register does not record any data concerning loans on unimproved land offered for sale or lease for the construction or location thereon of any residential building. The FDIC log-sheet requires that such loans be recorded. FDIC staff believes that this difference does not result in a significant loss of data.

3. *Disposition of loan application.* The log-sheet contains a category for "case disposition" but limits the choices therein to "accepted," "rejected," "other action," and "adverse action" (as defined in § 202.2(c) of the FRB's Regulation B, 12 CFR 202.2(c)). The HMDA register requires, under the heading of "action taken," codes for "loan originated," "application approved but not accepted by applicant," "application denied," "application withdrawn," "file closed for incompleteness" and "loan purchased by your institution." In addition, the HMDA register has a column which permits, but does not require, codes indicating the specific reasons for denial. The log-sheet has no reasons-for-denial category.

4. *Applicant's income.* The HMDA register calls for the loan applicant's income, while the FDIC log-sheet does not.

5. *Loans purchased.* Institutions must indicate on the HMDA register the secondary market entity which purchases a covered loan when either (1) the covered bank originates and then sells such a loan within the same calendar year, or (2) the covered bank purchases and then sells such a loan within the same calendar year. The FDIC log-sheet does not require information about loans purchased by the secondary market.

6. *Availability of data collected.* The data collected in FDIC log-sheets is not made public and is not tabulated by computer; therefore, FDIC log-sheets do not allow for statistical analyses by interested parties. On the other hand, data obtained from HMDA registers is aggregated by the FFIEC. The FFIEC will prepare individual disclosure statements for each reporting institution plus aggregate tables for each MSA showing lending patterns by location, age of housing stock, income level, sex, and racial characteristics. The disclosure statements and tables will be available to the public at central data depositories located in each MSA. In addition, a financial institution must make its mortgage loan disclosure statement (to be prepared by the FFIEC) available to the public no later than 30 calendar days after the institution receives it from the FFIEC.

Paperwork Reduction Act

This proposed regulation contains two collections of information subject to approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The first collection is imposed on State nonmember banks by the FRB's Regulation B (Equal Credit Opportunity). This recordkeeping requirement, found at section 338.7, has been approved through August 31, 1992, by the OMB in accordance with the requirements of the Paperwork Reduction Act under control number 3064–0065. The estimated annual recordkeeping burden for this collection is summarized as follows:

Number of Respondents: 8,400

Number of Responses per Respondent: 37.6

Total Annual Responses: 316,122

Hours per Response: 1

Total Annual Burden Hours: 316,122

This collection would be unchanged by this proposed rule, although the section in which it appears has been renumbered from § 338.4 to § 338.7.

In the second collection, found at § 338.8, the FDIC proposes to revise its fair housing lending recordkeeping requirements in order to bring them into conformity with the HMDA, as amended by FIRREA, and implemented by Regulation C of the FRB. More specifically, the FDIC proposes to revise its current log-sheet in order to conform it to the format prescribed by Regulation C. Upon adoption of a final rule, banks subject to both the FDIC's log-sheet requirements and the FRB's HMDA register requirements will be able to satisfy those requirements by maintaining only the HMDA register on a timely basis. The estimated effect of this change is displayed in the table below.

	Current approved burden	Proposed new burden
Number of respondents	9,322	3,500
Number of responses per respondent	1	1
Total annual responses	9,322	3,500
Hours per response	7.9	23.7
Total annual burden hours	73,701	82,950

Use of the current log-sheet has been approved by the OMB through September 30, 1991, under control number 3064–0046. The revisions to the FDIC's log-sheet contained in this proposed rule have been submitted to the OMB for review pursuant to section 3504(h) of the Paperwork Reduction Act. This table repesents only the burden associated with maintaining a log-sheet to comply with part 338. Some State nonmember banks must currently maintain both a HMDA register to comply with Regulation C, and a log-sheet to comply with Part 338. By eliminating that duplicative recordkeeping requirement, this proposed rule would reduce the burden imposed on those state nonmember banks by an estimated total of 73,701 hours annually.

Comments concerning the accuracy of these burden estimates, and suggestions for reducing the burdens, should be directed to the Office of Management and Budget, Paperwork Reduction Project (3064–0046), Paperwork Reduction Project (3064–0085), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F–451, 550 17th Street NW., Washington, DC 20429.

Regulatory Flexibility Act

The FDIC's Board of Directors hereby certifies that the proposed rule will not have a significant adverse economic impact on a substantial number of small entities because it will eliminate the need to maintain two largely repetitive forms, as described above, and so reduce the information-recording burden on affected banks.

List of Subjects in 12 CFR Part 338

Advertising, Banks, banking, Civil rights, Credit, Fair Housing, Mortgages, Reporting and recordkeeping requirements, Signs and symbols.

For the reasons set out in the preamble, title 12, part 338 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 338—FAIR HOUSING

1. The authority citation for part 338 is revised to read as follows:

Authority: 12 U.S.C. 1817, 1818, 1819, 1820(b); 12 U.S.C. 2801 *et seq.*; 15 U.S.C. 1691 *et seq.*; 42 U.S.C. 3605, 3608; 12 CFR part 202; 12 CFR part 203; 24 CFR part 110.

2. Section 338.1 is revised to read as follows:

§ 338.1 Purpose.

The purpose of this subpart A is to provide guidance on nondiscriminatory advertising, and, in addition, set forth the text of an equal housing lender poster that must be publicly displayed by insured State nonmember banks. This subpart A enforces provisions contained in section 805 of title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19 ("Fair Housing Act"), as amended by the Fair Housing Amendments Act of 1988, and implemented by rules and regulations enacted by the United States Department of Housing and Urban Development, 24 CFR parts 100 and 110.

§ 338.4 [Redesignated as § 338.7]

3. Section 338.4 is redesignated as section 338.7 and amended by revising paragraph (a)(1) introductory text, (a)(1)(i) heading, (a)(1)(i)(B)(*3*), (a)(2) introductory text, (a)(2)(i) heading, and (a)(2)(i)(B)(*3*), by redesignating footnote 2 in paragraph (a) as footnote 1, by redesignating footnote 3 in paragraph (a)(2)(ii) as footnote 2, by removing paragraph (a)(2)(iv); by revising paragraphs (c) and (d); by removing paragraphs (f) and (g), and by adding the OMB statement to the end of the section, as follows:

§ 338.7 Recordkeeping requirements.

(a) *Records to be retained.*[1] (1) A bank which has no office located in a primary metropolitan statistical area ("PMSA"), a metropolitan statistical area ("MSA"), or a consolidated metropolitan statistical area ("CMSA") that is not comprised of designated PMSAs, as defined by the Office of Management and Budget, or which has total assets as of December 31 of the preceding calendar year of $10 million or less shall request and retain the following information on home purchase loan applications (excluding applications received by telephone) for dwellings, occupied or to be occupied by the applicant as a principal residence, and containing one to four units:

(i) *Data on home purchase loan applicants.*

* * * * *

(B) * * *

(*3*) Location (street address, city, State, and zip code) of subject property.

* * * * *

(2) A bank which has an office in a PMSA, MSA, or CMSA that is not comprised of designated PMSAs, and which had total assets exceeding $10 million as of December 31 of the preceding calendar year shall request the following information on home purchase loan applications (excluding applications received by telephone) for dwellings, occupied or to be occupied by the applicant, and containing one to four units:

(i) *Data on home purchase loan applicants.*

* * * * *

(B) * * *

(*3*) Location (street address, city, State, and zip code) of subject property.

* * * * *

(c) *Record retention.* Each bank shall retain the records required by this section for 25 months after the bank notifies an applicant of action taken on an application. This requirement also applies to records of home purchase loans which are originated by the bank and subsequently sold. The Federal Deposit Insurance Corporation may by written notice extend the retention period.

(d) *Substitute system.* The recordkeeping provisions of § 338.7 constitute a substitute monitoring program adopted under § 202.13(d) of Regulation B of the Board of Governors of the Federal Reserve System (12 CFR 202.13(d)). A bank collecting the data in compliance with § 338.7 will be in compliance with the recordkeeping requirements of 12 CFR 202.13 of Regulation B.

* * * * *

(Approved by the Office of Management and Budget under control number 3064–0065)

§ 338.3 [Redesignated as § 338.4]

4. Section 338.3 is redesignated as § 338.4.

§ 338.2 [Redesignated as § 338.3]

5. Section 338.2 is redesignated as § 338.3 and paragraph (a)(1) is revised to read as follows:

§ 338.3 Nondiscriminatory advertising.

(a) * * *

(1) With respect to written and visual advertisement, this requirement may be satisfied by including in the advertisement a facsimile of the logotype with Equal Housing Lender legend contained in the Equal Housing Lender Poster prescribed in § 338.4(b).

* * * * *

6. A new § 338.2 is added to read as follows:

§ 338.2 Definitions applicable to subpart A of this part.

For purposes of subpart A of this part:

(a) *Bank* means an insured State nonmember bank as defined in section 3 of the Federal Deposit Insurance Act.

(b) *Dwelling* means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) *Handicap* means, with respect to person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) A record of having such an impairment, or

(3) Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(d) *Familial status* means one or more individuals (who have not attained the age of 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person,

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

§ 338.5 [Redesignated as § 338.9]

7. Section 338.5 is redesignated as § 338.9 and the last sentence is revised to read as follows:

§ 338.9 Mortgage lending of a controlled entity.

* * * The written agreement shall provide that the controlled entity shall:

(a) Comply with the requirements of this part,

(b) Open its books and records to examination by the Federal Deposit Insurance Corporation, and

(c) Comply with all instructions and orders issued by the Federal Deposit

[1] These records are to be retained for the purpose of monitoring compliance and may not be used for the purpose of extending or denying credit or fixing credit terms where prohibited by law.

Insurance Corporation with respect to its home loan practices.

8. A new § 338.5 is added to read as follows:

§ 338.5 Purpose.

The purpose of this subpart B is two-fold. First, this subpart B requires insured State nonmember banks to collect information about the applicant's race and other personal characteristics in applications for home loans. In some instances, additional information concerning the applicant, the loan, and the subject property must be collected. Such information is collected in order to monitor an institution's compliance with the Equal Credit Opportunity Act of 1974 (15 U.S.C. 1691–91f), and serves as a substitute monitoring program as permitted by Regulation B of the Federal Reserve System (12 CFR 202.13(d)). Second, this subpart B notifies banks of their duty to maintain a register of home loan applications pursuant to Regulation C of the Federal Reserve System, and requires that the register be updated on a timely basis. The register format required by Regulation C is shown in appendix A to subpart B of this part. Appendix B to subpart B of this part refers banks to the instructions contained in Regulation C (12 CFR part 203) for completion of the register.

9. A new § 338.6 is added to read as follows:

§ 338.6 Definitions applicable to subpart B of this part.

For purposes of subpart B of this part—

(a) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested.

(b) *Bank* means an insured State nonmember bank as defined in section 3 of the Federal Deposit Insurance Act.

(c) *Dwelling* means a residential structure whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium, cooperative unit, or mobile or manufactured home.

(d) *Home improvement loan* means any loan that:

(1) Is stated by the borrower (at the time of the loan application) to be for the purpose of repairing, rehabilitating, or remodeling a dwelling; and

(2) Is classified by the financial institution as a home improvement loan.

(e) *Home purchase loan* means any loan secured by and made for the purpose of purchasing or refinancing a dwelling.

10. A new § 338.8 is added to read as follows:

§ 338.8 Compilation of loan data in register format.

(a) A bank which has an office in a PMSA, MSA, or CMSA that is not comprised of designated PMSAs, and which had total assets exceeding $10 million as of December 31 of the preceding calendar year shall keep a register on applications for, and originations and purchases of, home purchase loans and home improvement loans by bank office. The register shall contain all of the information reflected on the sample form in appendix A to subpart B of this part (including race or national origin, sex, and income) and shall be in the format prescribed in appendix A to subpart B of this part. The bank shall be able to trace each entry on the register to the relevant application file, using an identifying number or code that can be used to retrieve the loan or application file.

(b) Notwithstanding any other provision of this part 338, the Board of Directors may require any bank to keep a register on applications for, and originations and purchases of, home purchase loans (including refinancings) and home improvement loans by bank office. The register shall contain all of the information reflected on the sample form in appendix A to subpart B of this part (including race or national origin, sex, and income) and shall be in the format prescribed in appendix A to subpart B of this part. The bank shall be able to trace each entry on the register to the relevant application file, using an identifying number or code that can be used to retrieve the loan or application file.

(c) All information required by this § 338.8 must be entered on the register within 30 calendar days after the loan application is finally disposed of (the application is denied or the loan goes to closing).

(d) *Record retention.* Each bank shall retain a copy of the completed register required by this § 338.8 for a period of not less than two years after its submission to the Federal Deposit Insurance Corporation pursuant to regulation C of the Federal Reserve System.

(e) *Review of records.* Each bank shall make all information collected pursuant to paragraph (a) of this section available to FDIC examiners for review upon request.

(Approved by the Office of Management and Budget under control number 3064–0046)

§§ 338.1 through 338.4 [Designated as Subpart A]

11. Sections 338.1 through 338.4 are designated as subpart A and a new subpart heading is added to read as follows:

Subpart A—Advertising

§§ 338.5 through 338.9 [Designated as Subpart B]

12. Sections 338.5 through 338.9 are designated as subpart B and a new subpart heading is added to read as follows:

Subpart B—Recordkeeping Requirements

13. Appendix A to the part is redesignated as appendix A to subpart B and revised to read as follows:

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Appendix A to Subpart B of Part 338—Loan Application Register

LOAN/APPLICATION REGISTER Page ____ of ____

Form FR HMDA-LAR

Control number (agency use only) |_|_|_|_|_|_|_|_|_|_|-|_|

Name of Reporting Institution

City and State

Application or Loan Information						Action Taken		Property Location				Applicant Information A = Applicant CA = Co-Applicant					Type of Purchaser of Loan	Reason(s) for Denial (Optional)
												Race or National Origin		Sex		Income in thousands		
Application or Loan Number	Date Application Received (mm/dd/yy)	Type	Purpose	Occupancy	Amount in thousands	Type	Date (mm/dd/yy)	MSA Number	State Code	County Code	Census Tract	A	CA	A	CA			

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14. A new appendix B to subpart B is added to read as follows:

Appendix B to Subpart B of Part 208—Instructions on Maintaining Loan Application Register

The format of the Loan Application Register is identical to that required by Regulation C of the Board of Governors of the Federal Reserve System. Instructions for completing the Loan Application Register are set forth at 12 CFR part 203, Appendix A, section II, entitled "Completion of Register."

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of April 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-10804 Filed 5-7-91; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-93-AD]

Airworthiness Directives; Boeing Model 737 Series Airplane

AGENCY: Federal Aviation Adminsitration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require the installation of additional protection on the wire bundles in circuit breaker panel to guard against damage from chafing and to protect the battery bus wiring from overloading. This proposal is prompted by reports of arcing and smoke emanating from the panel and discovery of undersized wiring to a battery bus. These conditions, if not corrected, could result in smoke and fire in the cockpit emanating from the panel and loss of safety essential systems.

DATES: Comments must be received not later than July 1, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-93-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew S. Wade, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2781. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the susbstance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-93-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Three operators of Model 737 series airplanes reported observing sparks and smoke emanating from the P6 electrical panel. Two incidents resulted in damage to more than 22 wires. The arcing and smoke were a direct result of abrasion between the quick release fastener, an adjacent nutplate, and the wire bundle contained within the P6-2 Circuit Breaker Panel. During a production line check by the manufacturer, another area of potential wiring interference was found at the access to the P6 disconnect panel. These conditions, if not corrected, could result in a fire behind the P6 panel and the loss of safety essential systems.

In addition, a fault analysis by the manufacturer reported finding a potential failure condition on some airplanes which could result in an overload to the 28 volt DC battery bus wiring located in the P6-2 Circuit Breaker Panel. Such an overload condition, if not corrected, could also result in a fire behind the P6 panel and subsequent loss of essential systems.

The FAA has reviewed and approved Boeing Service Bulletins 737-24-1077, Revision 1, dated August 16, 1990, which describes the modifications necessary to protect the wire bundles in the P6 panel from damage caused by chafing; and 737-24-1084, dated October 11, 1990, which describes replacement of the undersized wire in the P6-2 Circuit Breaker Panel, necessary on certain airplanes.

Since these conditions are likely to exist or develop on other airplanes of this same type design, and AD is proposed which would require modifications to the P6 panel and associated wire bundles in accordance with the service bulletins previously described.

There are approximately 682 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 384 airplanes of U.S. registry would be affected by this AD. It would take approximatley 10 manhours per airplane to accomplish both modifications on 324 airplanes and 6 manhours per airplane to replace the undersized wire on the other 60 airplanes. The average labor cost would be $55 per manhour. Based on these figures, the cost impact on U.S. operators is estimated to be $198,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons disucssed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Adminsitrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes as listed in Boeing Service Bulletin 737-24-1077, Revision 1, dated August 16, 1990, and Boeing Service Bulletin 737-24-1084, dated October 11, 1990, certificated in any category. Compliance required within 6 months after the effective date of this AD, unless previously accomplished.

To prevent chafing of wires and electrical overload of wires, and to remove the potential for a fire in the cockpit, accomplish the following:

A. For airplanes listed in Boeing Service Bulletin 737-24-1077, Revision 1, dated August 16, 1990: Modify the wire bundles and install a capped quick release receptacle and nutplace in accordance with the service bulletin.

B. For airplanes listed in Boeing Service Bulletin 737-24-1084, dated October 11, 1990: Replace the undersized wire with a 12 gage wire in the P6-2 Circuit Breaker Panel in accordance with the service bulletin.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 30, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10879 Filed 5-7-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-76-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require installation of modified leading edge slat offset gearbox "No-Back" brakes. Additionally, repetitive inspections of the leading edge slat drive system would be required in the interim for airplanes on which the existing No-Back brakes have not been reworked to limit the amount of grease used in the offset gearbox. This proposal is prompted by ground inspection reports of slat No-Back brakes not functioning properly due to oil contamination, and two incident reports of asymmetric leading edge slats resulting from a torque tube disconnect. A leading edge slat torque tube disconnection, combined with a latent failure of the No-Back brake(s), if not corrected, could result in uncommanded asymmetric movement of the leading edge slats, which could degrade lateral flight control and/or structural damage to the slat.

DATES: Comments must be received no later than June 26, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-76-AD, 1601 Lind Avenue SW., Renton, Washington, 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy J. Dulin, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2673. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-76-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Several operators have reported that approximately 70% of the leading edge slat No-Back brakes did not function properly during limited random ground inspections. It has been determined that the No-Back brakes did not function properly due to oil contamination of the No-Back brake stators and rotors. There also have been two reports of disconnection of the leading edge slat torque tube during flight, which resulted in asymmetric slats. In response to the torque tube disconnection problems, the FAA issued AD 90-09-51, Amendment 39-6659 (55 FR 29003, July 17, 1990), and AD 90-26-51, Amendment 39-6881 (56 FR 4538, February 5, 1991), to correct these problems.

Currently, there are no periodic maintenance requirements to check the

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performance of the No-Back brake. Any failures of the No-Back brake could be latent for the entire life of the aircraft. A leading edge slat torque tube disconnection, combined with a latent failure of the No-Back brake(s), could result in uncommanded asymmetric movement of the leading edge slats. This condition could degrade lateral flight control and/or cause structural damage to the slats; it could occur in any flight condition.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-27A0095, Revision 2, dated January 31, 1991, which describes procedures for visual inspection of the leading edge slat drive system, repair or replacement of failed parts, and modification of all offset gearbox No-Back brake. The modified No-Back brake assembly with phenolic reinforced fiber material bonded to the stators is immersed in grease by design. This No-Back brake assembly has successfully completed a qualification test.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of all leading edge slat offset gearbox No-Back brakes with modified No-Back brakes in accordance with the service bulletin previously described.

Additionally, repetitive inspections of the leading edge slat drive system and repair or replacement of failed parts would be required in the interim until modified No-Back brakes are installed, for those airplanes on which the existing No-Back brakes have not been reworked to limit the amount of grease used in the offset gearbox. Repetitive inspections of the leading edge slat drive system would not be required for those airplanes on which the existing No-Back brakes have been reworked to limit the amount of grease used in the offset gearbox.

There are approximately 364 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 131 airplanes of U.S. registry would be affected by this AD, that it would take approximately 392 manhours per airplane to accomplish the required No-Back brake modifications, and that the average labor cost would be $55 per manhour. The required parts would be provided by the manufacturer at no charge to the operator. It is estimated that 120 of the 131 U.S. registered airplanes would require a leading edge slat drive system inspection prior to installation of the modified No-Back brakes, that it would take approximately 72 manhours to accomplish the required inspection, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,299,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes; Groups 1, 2, and 3, as listed in Boeing Alert Service Bulletin 767-27A0095, Revision 2, dated January 31, 1991; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent uncommanded asymmetric movement of the leading edge slats due to failure of the No-Back brake combined with disconnect of the torque tube, accomplish the following:

A. For Group 1 and 2 airplanes with leading edge slat offset gearbox No-Back brakes that have not been reworked prior to the effective date of this AD to limit the amount of grease used in the offset gearbox, in accordance with Accomplishment Instructions, Part V, Offset Gearbox Inspection and Interim Rework of Boeing Alert Service Bulletin 767-27A0095, Revision 1, dated February 22, 1990, or Revision 2, dated January 31, 1991:

1. Within 2,000 flight hours after the effective date of this AD and thereafter at intervals not to exceed 3,000 flight hours, conduct a torque tube and overtravel stop inspection of the inboard and outboard leading edge slat drive system in accordance with the Accomplishment Instructions, Part I, of Boeing Alert Service Bulletin 767-27A0095, Revision 2, dated January 31, 1991. Repair or replace failed parts at the time specified in, and in accordance with the instructions provided in, parts I, II, III, IV, VI, and VII of that service bulletin, as applicable.

2. Within 18 months after the effective date of this AD, replace all inboard and outboard leading edge slat offset gearboxes with modified offset gearboxes in accordance with the Accomplishment Instructions, Part VII, of Boeing Alert Service Bulletin 767-27A0095, Revision 2, dated January 31, 1991. Accomplishment of this modification constitutes terminating action for the requirements of paragraph A.1. of this AD.

B. For all Group 3 airplanes and for those Group 1 and 2 airplanes on which the leading edge slat offset gearbox No-Back brakes have been reworked prior to the effective date of this AD to limit the amount of grease used in the offset gearbox, in accordance with the Accomplishment Instructions, Part V, Offset Gearbox Inspection and Interim Rework of Boeing Alert Service Bulletin 767-27A0095, Revision 1, dated February 22, 1990, or Revision 2, dated January 31, 1991: Within 24 months after the effective date of this AD, replace all inboard and outboard leading edge slat offset gearboxes with modified offset gearboxes in accordance with the Accomplishment Instructions, Part VII, of Boeing Alert Service Bulletin 767-27A0095, Revision 2, dated January 31, 1991.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 29, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10878 Filed 5-7-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-75-AD]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, which would require the installation of stronger springs in the rear and forward passenger and service doors, and an increase in the clearance between the side baulk blade and its abutment. This proposal is prompted by a report which indicates that constant high outward force on the door during the opening sequence may prevent the side baulk blade from retracting. This condition, if not corrected, could result in the crew or passengers not being able to open the doors during an emergency situation.

DATES: Comments must be received no later than July 1, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-75-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-75-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes. There has been a recent report indicating that constant high outward force on the door during opening sequence may prevent the side baulk blade from retracting. This condition, if not corrected, could result in the crew or passengers not being able to open the doors during an emergency situation.

British Aerospace has issued Service Bulletin 52-89-00668H, J, K & L, dated November 21, 1990, which describes procedures to modify the forward and rear passenger and service doors. The modification consists of installing stronger springs to increase tension at the side baulk blade from 11 pounds to 18 pounds. The modification also increases the clearance between the side baulk blade and its abutment, and shortens the plate which anchors the side baulk return springs. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the rear and forward passenger and service doors in accordance with the service bulletin previously described.

It is estimated that 74 airplanes of U.S. registry would be affected by this AD, that it would take approximately 50 manhours per airplane to accomplish the required actions, and that the average labor costs would be $55 per manhour. The required parts will be supplied to the operators at no cost by the manufacturer. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $203,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action in contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

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Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 146-100A, -200A, and -300A series airplanes; as listed in British Aerospace Service Bulletin 53-69-00668H, J, K & L, dated November 21, 1990, on which Modifications HCM00668H, J, K & L, and HCM00931A have not been accomplished; certificated in any category. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished.

To ensure that the forward and rear passenger and service doors open during an emergency situation, accomplish the following:

A. Install stronger springs to increase tension at the side baulk blade in the right and left rear and forward passenger and service doors (Modification HCM00668H, J, K & L); and increase the clearance between the side baulk blade and its abutment, and shorten the plate which anchors the side baulk return springs (Modification HCM00931A); in accordance with the Accomplishment Instructions of British Aerospace Service Bulletin 53-69-00668H, J, K & L, dated November 21, 1990.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this Ad.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 30, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10860 Filed 5-7-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-92-AD]

Airworthiness Directives; Short Brothers, PLC, Model SD3-30 and SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to all Short Brothers, PLC, Model SD3-30 series airplanes, and certain Model SD3-60 series airplanes, which currently requires changing the power source for the pilot/static heaters from the shedding busbars to the associated main busbars. This proposed action would require installation of a revised modification for changing the subject power source on certain airplanes, clarify the accomplishment procedures to ensure that proper methods are used to install the modification, and require a related change to the FFA-Approved Airplane Flight Manual (AFM). This proposal is prompted by the development of a revised modification kit necessary for installation in certain airplanes, and revised procedures to address the differences in busbar insallation among the affected airplanes. This condition, if not corrected, could result in incorrect airspeed and altitude information being provided to the pilot and/or co-pilot in the event of a generator or engine failure.

DATES: Comments must be received no later than July 1, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-92-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3719. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SE., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communmications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the propsed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-92-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On February 4, 1991, the FAA issued AD 91-04-06, Amendment 39-6867 (56 FR 5752, February 13, 1991), to require changing the power source for the pilot/static heaters from the shedding busbars to the associated main busbars on Model SD3-30 and SD3-60 series airplanes. That action was prompted by reports of loss of electrical power to the pilot/static heaters due to a generator failure. This condition, if not corrected, could result in incorrect airspeed and altitude information being provided to the pilot and/or co-pilot in the event of a generator or engine failure.

Since issuance of that AD, Short Brothers has issued Revision 2 to Service Bulletin SD330-24-25, and Revision 3 to Service Bulletin SD360-2418, both dated November 29, 1990. Due to differences in busbar installations, the instructions for changing the power source for the pilot/static heaters from the shedding busbars to the associated main busbars have been revised and are explained in these revisions to the service bulletins. These revised service bulletins also describe revised modification kits necessary for installation on airplanes having certain serial numbers; the original modification kit shipped to operators must be exchanged for the revised kit in order to ensure that the addressed problems are corrected. The revised service bulletins refer to certain Airplane Flight Manual (AFM) revisions related to procedures necessary to be followed during electrical system emergencies on airplanes incorporating the pilot static heater electrical power source modification.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 91-04-06 with a new airworthiness directive that would require changing the power source for the pilot/static heaters from the shedding busbars to the associated main busbars in accordance with the service bulletins previously described, and revising the AFM in accordance with the revisions referred to above.

It is estimated that 120 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The required modification kit will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $42,900.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flecibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegate to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6867 (56 FR 5752, February 13, 1991), AD 91-04-06, with the following new airworthiness directive:

Short Brothers, PLC: Applies to Model SD3-30 series airplanes, as listed in Short Brothers Service Bulletin SD330-24-25, Revision 2, dated November 29, 1990; and Model SD3-60 series airplanes, as listed in Short Brothers Service Bulletin SD360-24-18, Revision 3, dated November 29, 1990; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of power to the pitot/static heaters and subsequent incorrect airspeed and altitude information being provided to the pilot and/or co-pilot in the event of a generator or engine failure, accomplish the following:

A. For Model SD3-30 series airplanes, Serial Numbers SH3002 through SH3072: Within 180 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with Part A of the Accomplishment Instructions in Short Brothers Service Bulletin SD330-24-25, Revision 2, dated November 29, 1990. Following accomplishment of this modification, revised the Emergency and Normal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) by inserting Amendment Number SB 3.3-P15 or 3.6-P11, as applicable.

B. For Model SD3-30 series airplanes, Serial Numbers SH3073 and subsequent: Within 180 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with Part B of the Accomplishment Instructions in Short Brothers Service Bulletin SD330-24-25, Revision 2, dated November 29, 1990. Following accomplishment of this modification, revise the Emergency and Normal Procedures Sections of the FAA-approved AFM by inserting Amendment Number SB 3.3-P15 or 3.6-P11, as applicable.

C. For Model SD3-60 series airplanes, Serial Numbers SH3601 through SH3619: Within 180 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with the Part A of the Accomplishment Instructions in Short Brothers Service Bulletin SD360-24-18, Revision 3, dated November 29, 1990. Following accomplishment of this modification, revise the Emergency and Normal Sections of the FAA-approved AFM by inserting Amendment Number SB 4.3-P18, 4.6-P11 or 4.8-P8, as applicable.

D. For Model SD3-60 series airplanes, Serial Numbers SH3620 through SH3676: Within 180 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with the Part B of the Accomplishment Instructions in Short Brothers Service Bulletin SD360-24-18, Revision 3, dated November 29, 1990. Following accomplishment of this modification, revised the Emergency and Normal Sections of the FAA-approved AFM by inserting Amendment Number SB 4.3-P18, 4.6-P11 or 4.8-P8, as applicable.

E. For Model SD3-60 series airplanes, Serial Numbers SH3677 through SH3762: Within 180 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with the Part C of the Accomplishment Instructions in Short Brothers Service Bulletin SD360-24-18, Revision 3, dated November 29, 1990. Following accomplishment of this modification, revised the Emergency and Normal Procedures Sections of the FAA-approved AFM by inserting Amendment Number SB 4.3-P18, 4.6-P11, or 4.8-P8, as applicable.

F. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3719. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directortate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 30, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10861 Filed 5-7-91; 8:45 am]

BILLING CODE 4910-13-M

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-3966-4]

NO_x Emission Reduction Provisions and Announcement of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Intent to form an Advisory Committee To Negotiate Proposed Regulations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is considering establishing an advisory committee to negotiate regulations for reducing the emissions of nitrogen oxides (NO_x) from existing coal-fired boilers at electric power plants. These negotiations will help develop rules for two specific types of coal-fired utility units: Tangentially-fired boilers, and dry bottom wall-fired boilers. When these boilers are required to meet their Phase I SO_2 limitations (usually January 1, 1995), they will also need to comply with the NO_x emission rates set forth in these new regulations. The regulations will include requirements of low NO_x burner (LNB) technology, NO_x annual emission rates, and alternative emission limitations and emissions averaging. Any negotiating committee would be created under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act of 1990 (NRA), and would consist of representatives of the interests that will be significantly affected by the outcome of this rule.

EPA requests public comment on whether:

- It should establish a Federal Advisory Committee;
- It has properly identified interests it believes are affected by the key issues listed above; and
- Regulatory negotiation is appropriate for this rulemaking, and the extent to which the issues, and procedures are adequate and appropriate.

DATES: EPA will conduct a public meeting concerning this notice on May 22, 1991 in Alexandria, Virginia. The meeting will be held from 9:30 a.m. to 4 p.m. Comments on the issues raised by this notice and any applications and nominations for membership on the negotiating committee must be received by June 7, 1991.

ADDRESSES: The public meeting will be held at 1199 N. Fairfax Street, Alexandria, VA. Comments pertaining to the NO_x rule should be submitted (in duplicate if possible) to Air Docket Section (LE-131), EPA, attention Air Docket #A-90-52, 401 M Street, SW., Washington, DC 20460. A copy should also be sent to Zofia Kosim, ANR-445, EPA, Acid Rain Division, 401 M Street SW., Washington, DC 20460. Docket #A-90-52 contains materials relevant to this notice and may be inspected at room 1500M, 1st Floor, Waterside Mall, 401 M Street SW., Washington, DC between 8:30 a.m. and Noon, and 1:30 p.m. and 3:30 p.m. As provided in 40 CFR part 2, a reasonable fee maybe charged for copying.

FOR FURTHER INFORMATION CONTACT: For information pertaining to the establishment of the negotiation committee and associated administrative matters, contact Chris Kirtz, Director, Regulatory Negotiation Project, Regulatory Management Division, US EPA (PM -223Y), 401 M Street SW., Washington, DC 20460, telephone (202) 382-7565. For information pertaining to the NO_x rule and associated issues, contact Zofia Kosim at the address provided above or by phone (202) 475-9400.

SUPPLEMENTARY INFORMATION

Outline of Notice

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II. Subject and Scope of the Rule Proposed for Negotiation
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B. Selection as a Negotiation Item.
C. Underlying Issues for Negotiation.
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I. EPA's Regulatory Negotiations Project

EPA established the Regulatory negotiations Project in 1983 to explore and demonstrate the value of negotiation and other consensus-building techniques for developing better regulations which could be implemented in a less adversarial setting.

Negotiations are conducted through Advisory Committees chartered under the Federal Advisory Committee Act (FACA). The goal of the Committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the Agency's proposal. All procedural requirements of the Administrative Procedure Act and other applicable statutes continue to apply.

EPA has developed criteria for evaluation of potential items for negotiation. To qualify under EPA's selection criteria, an item must:

- Be planned for proposal;
- Have a relatively small number of identifiable parties, in an appropriate balance and mix, who have a good faith interest in negotiating;
- Present a limited number of related issues for which sufficient information is available for resolution; and
- Have a time factor that lends some urgency to reaching consensus.

The eight negotiations conducted to date have aided the Agency in better defining the issues and in crafting better approaches. The eight regulatory negotiations were:

- Nonconformance Penalties under the Clean Air Act, as amended; Final rule: August 30, 1985.
- Emergency Pesticide Exemptions under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Final rule: January 15, 1986.
- Farmworker Protection Standards for Agricultural Pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Proposed rule: July 8, 1988.
- Asbestos Containing Materials in Schools under the Asbestos Hazard Emergency Responsibility Act of 1986 (AHERA); Final rule: October 30, 1987.
- New Source Performance Standards for Woodburning Stoves under the Clean Air Act; Final rule: February 26, 1988.
- Underground Injection of Hazardous Waste under the Hazardous and Solid Waste Amendments of 1984. Final rule: July 26, 1988.
- Minor Permit Modifications under the Resource Conservation and Recovery Act (RCRA); Final rule: September 28, 1988.
- Fugitive Emissions from Equipment Leaks under the Clean Air Act (CAA); Committee agreement: December 1990.

In December 1986, the Program Evaluation Division of EPA's Office of Policy Planning and Evaluation completed an assessment of the regulatory negotiations program. The study confirmed that negotiation is especially appropriate in situations which involve the resolution of a limited number of related issues, none of which involve fundamental questions of value or extremely controversial national policy. The study further concluded that:

- Negotiated rulemaking can produce rules that are more pragmatic with better environmental results while still meeting statutory requirements.
- Negotiated rules are also more likely to be acceptable to the affected industries, the public interest sector, and State and local governments involved in developing them.
- Negotiation may also result in earlier implementation of a rule by reducing the time it takes to proceed from proposed to final rulemaking.

EPA believes that the benefits to all parties of regulatory negotiation are substantial, and is committed to continued use of regulatory negotiation and other consensus-based process for rulemaking when appropriate.

On November 29, 1990, the President signed the Negotiated Rulemaking Act of 1990 which has as its purpose "to establish a framework for the conduct of negotiated rulemaking" and "to encourage agencies to use the process when it enhances the informal rulemaking process."

II. Subject and Scope of the Rule Proposed for Negotiation

The subject of the proposed negotiated rulemaking process is the NO_x rule for tangentially-fired and dry bottom wall-fired coal-fired boilers affected in Phase I.

The regulations are required by title IV of the recently enacted Clean Air Act Amendments of 1990. The purpose of title IV is to reduce the adverse effects of acid deposition through reductions in the annual emissions of nitrogen oxides and sulfur dioxide from fossil fuel combustion processes in the lower-48 states and the District of Columbia. Section 407 of title IV requires that the EPA set allowable rates for the emission of nitrogen oxides from utility units.

This section contains provisions for reducing the contributions made by all types of coal-fired electric utility boilers to acid deposition, and requires that these reductions will be accomplished through compliance with prescribed emission limitations by specified deadlines. The prescribed emission limitations may be met either directly or through alternative methods of compliance.

EPA is here proposing that the NO_x rule for tangentially-fired and dry bottom wall-fired coal-fired utility boilers affected in Phase I be developed through negotiation.

A. Statutory Provisions

Emission Limitations

Section 407(b)(1) of the Act as amended establishes and lists maximum allowable NO_x emission rates for tangentially-fired and dry bottom wall-fired (other than units applying cell burner technology) coal-fired utility boilers affected in Phase I at 0.45 lb/mmBtu and 0.5 lb/mmBtu, respectively. A provision of the Act authorizes the Administrator to set a less stringent rate for any type of utility boiler, only if the maximum listed rate for that boiler type cannot be achieved using low NO_x burner technology. Affected utility boilers must comply with the established emission rates by January 1, 1995. After January 1, 1995, it shall be unlawful for any tangentially-fired and dry bottom wall-fired unit that is an affected coal-fired unit on that date to emit nitrogen oxides in excess of the emission rates set by the Administrator.

The applicable emission rates for tangentially-fired units, dry bottom wall-fired units, wet bottom wall-fired units, cyclones, boilers applying cell burner, and other types of boilers affected in Phase II will be established by January 1, 1997 in a separate rulemaking process. Revised performance standards to Section 111 for NO_x emissions from fossil fuel-fired steam generating units will be developed in another rulemaking process.

Alternative Emission Limitations

Section 407(d) requires that the permitting authority, upon request of an owner or operator of an affected unit, authorize an emission limitation less stringent than the applicable emission limitation upon a determination that a unit cannot meet the applicable limitation using appropriate control technology. The permitting authority shall base such determination upon a showing satisfactory to the permitting authority, in accordance with regulations developed during the proposed regulatory negotiation process, that the owner or operator has properly installed appropriate control equipment designed to meet the applicable annual emission rate and operated such equipment for a period of fifteen months (or such other period of time as determined by the Administrator through the regulations). In addition, the owner or operator must provide operating and monitoring data for such period to demonstrate that the unit cannot meet the applicable emission rate, and specify an emission rate that such unit can meet on an annual average basis.

If the owner or operator of tangentially-fired and dry bottom wall-fired units affected in Phase I demonstrates to the satisfaction of the Administrator the technology necessary to meet the applicable emission rates is not in adequate supply to enable its installation and operation at the unit, consistent with system reliability, by January 1, 1995, then the Administrator shall extend the deadline for compliance for the unit.

Emissions Averaging

Section 407(e) states that in lieu of complying with the applicable emission limitations, the owner or operator of two or more units subject to the applicable emission limitations, may petition the permitting authority for alternative contemporaneous annual emission limitations for such units that ensure that: (1) The actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than or equal to (2) the Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limtiations set in accordance with the applicable emission rates. If the permitting authority determines that these conditions can be met, the permitting authority shall issue operating permits for such units that allow contemporaneous annual emissions limitations. Such emission limitations shall only remain in effect while both units continue operation under the conditions specified in their respective operating permits.

B. Selection of Regulatory Rulemaking

EPA believes that the NO_x emission reduction rule is appropriate for development through negotiation. With help of an independent convener, EPA has made a preliminary inquiry of potential parties and representatives of identified interests to determine if the regulations satisfy the applicable selection criteria for negotiation. On the basis of this inquiry, EPA believes that the regulation meet the selection criteria and the negotiations can be successful. Affected interests are relatively small in number, and the convener's initial contacts indicate that an appropriate balance and mix of groups will be willing to participate in good faith. The Agency also believes that a committee comprised of representatives of these groups could reach a consensus in time for EPA to issue proposed regulations. EPA has adequate resources to devote to the negotiations, and it would use the consensus of the committee as the basis of the proposed NO_x rule.

C. Underlying Issues

EPA has identified the following issues which will be addressed in developing the NO_x rule for tangentially-fired and dry bottom wall-fired units affected in Phase I:

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1. A provision of section 407 authorizes the Administrator to set a less stringent emission rate only if the maximum listed rate for that boiler type cannot be achieved using low NO_x burner technology.

2. In considering whether to set a less (or more) stringent emission rate for a boiler type, the Administrator must determine the parameters for measuring emission rates. For example, the Administrator may consider whether it is appropriate to average emissions from several units. What should be the parameters for measuring and averaging emission rates?

3. Some utilities may face difficulty in purchasing and installing low LNB technology prior to the January 1, 1995 deadline. What is an appropriate basis for granting an extension of the deadline for compliance for a boiler unit will be evaluated.

4. What is the relationship between system load factors and NO_x emission rates? What effect does operation and maintenance have on this relationship?

5. Are fuel savings or higher boiler efficiency a byproduct of any of the NO_x control technologies?

6. It may be possible to reduce NO_x emission rates below the statutory targets. What incentives might produce early voluntary compliance with the NO_x rules and improve emission rates from individual boilers?

7. What should be the relationship between this NO_x emission rule and other provisions of the Act, including ozone nonattainment, continuous emission monitoring, and Phase II boilers?

8. Should the annual average lbs/MMBtu emission rate be converted to tons per year to facilitate the development and implementation of the alternate and averaging provisions? If so, should this be done? Should a tons per year value take precedence over the lbs/MMBtu limit?

D. Potential Interests and Participants

With the assistance of a convener, EPA has identified the following interests as those likely to be significantly affected by the NO_x emission reduction rule:

—Electric utility industry.
—Manufacturers of LNB technology and boilers.
—Environmental interest groups.
—State environmental protection, consumer, and utility regulatory agencies.
—The U.S. Department of Energy.
—Trade unions.

EPA proposes that the following persons be named to negotiate the proposed regulations if the Agency ultimately decides to proceed with the negotiations. These persons have indicated their willingness to participate: Randall E. Rush of Southern Company Services, Vincent J. Brisini of Pennsylvania Electric Company, Howard B. Couch of the Ohio Edison Company, Kris A. McKinney of Wisconsin Power and Light Company, Janet M. Anderson of the Northern States Power Company, John D. Kane of the Illinois Power Company, Bill H. Bonner of Texas Utilities, Allen Jensen of Babcock & Wilcox, John H. Eggers of ABB/Combustion Engineering, Inc., Vincent M. Albanese of Nalco, Ben Yamagata of Clean Coal Technology Coalition, Marchant Wentworth of the Izaak Walton League, David Hawkins of the Natural Resources Defense Council, Nancy Seidman of NESCAUM, James R. Hambright of the Pennsylvania Department of Environmental Resources, Scott Rubin of the Pennsylvania Consumer Council, John Pratapas of the Gas Research Institute, Doublas Carter of the U.S. Department of Energy, Ashley Brown of the Ohio Public Utility Commission, William J. Klienfelter of the International Brotherhood of Teamsters, and Larry Kertcher fo the U.S. Environmental Protection Agency.

III. Formation of the Negotiating Committee

A. Procedure for Establishing an Advisory Committee

As a general rule, an agency of the Federal Government is required to comply with the requirements of FACA when it establishes or uses a group which includes non-federal members as a source of advice. Under FACA, an Advisory Committee is established only after both consultation with GSA and receipt of a charter. EPA has prepared a charter and has initiated the requisite consultation process. Only upon the successful completion of this process and the receipt of the approved charter will EPA form the Committee and commence negotiations.

B. Participants

The number of participants in the group is estimated to be about 15 and should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiatons. One purpose of this notice is to help determine whether the standard that EPA is developing would substantially affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, we firmly believe that each interest must be adequately represented. Moreover, we must be satisfied that the group as a whole reflects a proper balance and mix of interests.

C. Requests for Representation

If, in response to this notice, an additional individual or representative of an interest requests membership or representation in the neogitating group, the Agency, in consultation with the facilitator, will determine whether that individual or representative should be added to the group. EPA will make that decision based on whether the individual or interest:

- Would be substantially affected by the rule; and
- Is already adequately represented in the negotiating group.

D. Final Notice

After evaluating the results of the organizational meeting, and reviewing any comments on this Notice and requests for representation, EPA will issue a final notice. That notice will announce the establishment of a Federal Advisory Committee and the date of the first meeting, unless: (1) EPA decides, based on comments or other relevant considerations, that such action is inappropriate, or (2) in the event EPA's charter request is disapproved. The negotiation process will begin once the Committee is appropriately chartered and notice is published in the **Federal Register**.

E. Tentative Schedule

EPA will hold a public meeting on May 22, 1991 at the address stated earlier in this notice. This meeting is open and potential participants are encouraged to attend. The purpose of this meeting is to: (1) Discuss whether negotiations should proceed, and if so, discuss how the negotiations should proceed and how the committee should function, (2) consider what issues and topics should and should not be covered, (3) identify participants on working groups, (4) answer questions, and (5) address any other procedural issues which may arise such as future meeting dates.

If EPA ultimately decides to establish the negotiating committee and its charter is approved, the Agency will publish a notice in the **Federal Register** announcing the committee's first meeting. It is expected that this meeting will be held in Alexandria, VA on June 12 at 1199 N. Fairfax Street, from 9 a.m. to 4 p.m. At this meeting, participants will complete action on procedural matters, determine how best to address the principal issues, and begin to address them.

IV. Negotiation Procedures

The following procedures and guidelines will apply to the Committee, if formed, unless they are modified as a result of comments received on this notice or during the negotiating process.

A. Facilitator

EPA will use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to:

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

B. Good Faith Negotiation

Since participants must be willing to negotiate in good faith and be authorized to do so, each organization must designate a senior official to represent its interest. This applies to EPA as well, and Larry Kertcher, Chief, Source Control Branch, Office of Atmospheric and Indoor Air Programs will be EPA's representative.

C. Administrative Support and Meetings

EPA's Regulatory Management Division will supply logistical, administrative, and management support. Meetings will be held in the Washington area at the convenience of the Committee.

D. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meeting which they consider most appropriate.

E. Defining Consensus

The goal of the negotiating process is consensus. In the negotiations completed to date, consensus has meant that each interest concurs in the result. We expect the participants to fashion their own working definition of this term.

F. Failure of Advisory Committee To Reach Consensus

In the event the Committee is unable to reach consensus, EPA will proceed to develop its own approach. Parties to the negotiation may withdraw at any time. If this happens, the remaining Committee members and the Agency will evaluate whether the Committee should continue.

G. Record of Meetings

In accordance with FACA's requirements, EPA will keep a record of all Advisory Committee meetings. This record will be placed in the public docket for this rulemaking. EPA will announce Committee meetings in the **Federal Register**. Such meetings will be open to the public.

Dated: May 3, 1991.

Richard Morgenstern,

Acting Assistant Administrator, Office of Policy, Planning, and Evaluation.

[FR Doc. 91-11070 Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 721

[OPTS-50577C; FRL-3992-9]

Aromatic Diamines; Extension of Comment Period for Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: EPA is extending the comment period for a proposed significant new use rule (SNUR) for aromatic diamines. As published in the **Federal Register** of March 28, 1991 (55 FR 12880), the comments were to be received on or before April 27, 1991. Two commenters, who are already engaging in commercial activities with one of these substances, requested additional time to prepare their responses. EPA is therefore extending the comment period in order to give all interested persons time to comment.

DATES: Written comments must be submitted to EPA by June 26, 1991.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. E-105, 401 M St., SW., Washington, DC 20460. Each comment must include the docket control number OPTS-50577C. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This extension of time will allow the public to review and comment on information that EPA considered in developing this proposal but which was not available in the docket at the time the proposal was issued. The docket now includes the following additional information: (1) Supporting data for the section 5(e) order for P-86-501/503; (2) toxicity data on P-86-503 provided by the submitter of the PMN for P-86-503; (3) four studies provided by one of the commenters; (4) EPA's assessment of these four studies; and (5) public comments submitted on this rulemaking. In developing this proposal, EPA considered the four studies on P-86-503 that were provided by a commenter but determined that the studies did not fundamentally alter EPA's analysis of the risks of this substance. In addition, the commenters have claimed that the SNUR did not take into account ongoing commercial activities of P-86-503. To date, the Agency has not received detailed information on such uses which would enable EPA to verify that the uses were ongoing. In addition, the submitter has waived CBI claims on the chemical substance represented by P-86-503. Its specific name is 4,4'-phenylene bis(1-methylethylidene)bisbenzenamine.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses,

Dated: May 1, 1991.

Mark A. Greenwood,

Director, Office of Toxic Substances.

[FR Doc. 91-10900 Filed 5-7-91; 8:45 am]

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Notices

Federal Register
Vol. 56, No. 89
Wednesday, May 8, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

McCoy Integrated Resource Projects, Gifford Pinchot National Forest, Lewis and Skamania Counties, WA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Randle Ranger District, USDA, Forest Service will prepare an environmental impact statement on a proposal to implement projects under the 1990 Gifford Pinchot National Forest Land and Resource Management Plan (Forest Plan). All proposed projects will comply with the Forest Plan which provides the overall guidance for management of the area.

The project planning area is in the Yellowjacket and McCoy Creek Drainages, in an area that includes a portion of the Dark Divide Roadless Area, on the Randle Range District. This area is located approximately 10 miles southeast of Randle, Washington. Specific activities for this proposal are integrated resource projects, some will not need analysis under the McCoy Environmental Impact Statement but are noted to indicate the integrated nature of the planning and analysis. The projects include but are not limited to: (1) Harvest of approximately 33 million board feet of timber from seven timber sales; (2) development of an associated road system of about 10 to 15 miles of new road, development of a long term access management plan for Forest Service Road 29 and all other roads that provide access to recreation sites and timber harvest activities; (3) replacement of the Langille Bridge on the existing road system; (4) reforestation of all harvested acres; (5) precommercial thinning, utilization of Pacific yew from harvest units, stewardship through contracts for bough and Christmas tree cutting, fertilization, and activities related to genetic tree selection and cultivation; (6) installation of temporary fish monitoring stations in Upper McCoy, Upper and Lower Yellowjacket and Pinto Creeks, installation of fish habitat structures, and channel cross-section studies; (7) erosion control and repair of past flood related road failures; (8) wildlife habitat improvements and enhancements such as browse planting, forage seeding, waterfowl nest structures, development of existing water impoundments for habitat, road closures, interpretive signing, and mountain goat habitat improvements; (9) reconstruction and relocation where needed of the Langille, Juniper and High Bridge Trails; (10) construction of access trails to form loops with longer ridge trails; (11) construction of the McCoy Horse Camp and several dispersed camping sites; (12) rehabilitation of Waddle Cabin; (13) data collection and interpretation of cultural resources specific to the McCoy Creek Mining History.

Implementation of the projects is scheduled for fiscal years 1992 through 1994. The Gifford Pinchot National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision making process for the proposal in order to provide interested and affected people information about how they may paticipate in and contribute to the planning process and final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by June 10, 1991.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Harry Cody, District Ranger, Randle Ranger District, Randle WA 98377.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed actions and Environmental Impact Statement to Laura B. Caruso, Team Leader, Randle Ranger District, phone (206) 497-7565.

SUPPLEMENTARY INFORMATION: The proposed actions are listed in Appendix A or D of the Forest Plan. The major parts of the proposal are summarized below:

TIMBER SALES

Fiscal year	Sale name	Legal description	Volume MMBF	New road miles	Harvest method
1992	Kidd North	T11N, R8E, Sec. 34, 35, WM.	4.0	3.5	ComThin/ Regen.
1992	McCoy 5	T10N, R8E, Sec. 3,4,9,10,15,21,22, & T11N, R8E, S33, WM.	4.8	1.0	Regen.
1992	Holdaway 2.	T9N, R8E, Sec. 4, 5,8,9,16,17, WM.	4.8	0.3	Regen.
1992	Langille 4	T10N, R8E, Sec. 7,8,17,18,19,20, WM.	3.5	0.9	Regen.
1993	Kidd South	T10N, R8E, Sec. 3, 10, WM.	1.9	3.0	ComThin/ Regen.
1993	McCoy 6/ A.	T10N, R8E, Sec. 4,5,8,9, WM.	3.1	1.30	ComThin/ Regen.
1993	Mermot	T9N, R7E, Sec. 1, 12; T9N, R8E, Sec. 6,7; T10N, R7E, Sec. 24, 25, 36; & T10N, R8E, Sec. 19,30,31, WM.	8.6	3.0	Regen.

Abbreviations used above:

T-Township; N-North; R-Range; E-East WMS-Willamette Meridian; MMBF-Million Board Feet; Regen-Regeneration harvest i.e., clearcut with reserve trees, shelterwood, or seed tree; ComThin-Commercial Thinning

RECREATION PROJECTS

Fiscal year	Trails: Trail name	Miles of construction/ reconstruction	Fiscal year	Other: Project name
1993	High Bridge	2.0	1994	McCoy Horse Camp.
1994	Juniper	11.8		
1994	Langille	10.4		

The McCoy EIS will tier to the Forest Plan, which provides the goals and objectives, forest-wide standards and guidelines, management area categories and prescriptions that will be used to implement all the proposed projects on the forest.

The McCoy Planning Area is about 29,782 acres in size. It contains about 11,482 acres outside of the Dark Divide Roadless Area and 16,800 undeveloped acres and 1,500 developed acres within the 55,000 acre Dark Divide Roadless Area. Dark Divide was considered but not selected for Wilderness Designation in the Washington Wilderness Act of 1984. The area is on both the Randle and Mt. St. Helens Districts but only projects on the Randle District will be considered. The Forest Plan allocates the McCoy Area into seven management area categories. They are: (1) Unroaded recreation/motorized—41% (no timber harvest); Unroaded recreation/non-motorized—7% (no timber harvest); (3) Roaded Recreation—2% (no timber harvest); (4) Timber Production—41% (full timber harvest); (5) Deer and Elk Winter Range—3% (limited timber harvest); (6) Pileated Woopecker—1% (no timber harvest); and (7) Wild and Scenic River—5% (limited timber harvest).

Issues that are currently identified to be addressed in the Environmental Impact Statement include the potential effects of management and activities on: The roadless area; visual quality both in and out of recreation areas; water quality and fisheries; Threatened, Endangered and Sensitive Species (including Northern Spotted Owl); Cultural Resources; and fragmentation of interior wildlife habitat in old-growth and second growth stands of trees.

A range of alternatives for the project area will be considered. One alternative will be no action and another will maximize timber harvest according to the Forest Plan Standards and Guidelines specified for the land allocations that permit timber harvest. Other alternatives will consider various timber sale, road development, and other resource management proposals that address the key issues. All action alternatives will be developed through an integrated resource analysis process and will consider recreation, wildlife, watershed, fisheries, and cultural resource projects.

Scoping (identifying and defining issues) and public involvement will continue throughout the process to identify any new issues, the depth of analysis needed for each issue, and to determine objectives for the alternatives. The Forest Service is seeking information, comments, and assistance from other agencies, organizations, or individuals who may be interested in or affected by the proposed project. This information will be used in the preparation of the Draft Environmental Impact Statement.

The Draft Environmental Impact Statement is expected to be filed with the Environmental Protection Agency and to be available for public review in October 1991. At that time, copies of the Draft Environmental Impact Statement will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. The Environmental Protection Agency will publish notice of availability of the Draft Environmental Impact Statement in the **Federal Register**. The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The Final Environmental Impact Statement is scheduled for completion in March 1992. In the Final Environmental Impact Statement, the Forest Service is required to respond to substantive comments received during the comment period for the draft Environmental Impact Statement. Ted C. Stubblefield (Gifford Pinchot National Forest, 6926 E. Fourth Plain Boulevard, P.O. Box 8944, Vancouver, WA 98668-8944), is the Responsible Official. He will decide which, if any, of the proposed project alternatives will be implemented. His decision and reasons for the decision will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 217).

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Dated: May 1, 1991.

Nancy Graybeal,

Deputy Forest Supervisor.

[FR Doc. 91-10924 Filed 5-7-91; 8:45 am]

BILLING CODE 3410-11-M

Management Direction on Northern Spotted Owls; National Forests in Oregon, Washington, and Northern California

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement for amendments to the Regional Guide for the Pacific Northwest Region and the Regional Guide for the Pacific Southwest Region in accordance with the requirements of 36 CFR 219.19.

DATES: Comments concerning the scope of the analysis should be received in writing by June 7, 1991.

ADDRESSES: Send written comments to Jerald N. Hutchins, Leader, Spotted Owl Team, c/o John F. Butruille, Regional Forester, 319 SW. Pine Street, P.O. Box 3623, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Jerald N. Hutchins, Leader, Spotted Owl Team, (503) 326-3628.

SUPPLEMENTARY INFORMATION: The Environmental Impact Statement (EIS) will establish standards and guidelines for maintaining viable populations of northern spotted owls in accordance with requirements of 36 CFR 219.19.

Northern spotted owls are known to be present on 13 National Forests in the States of Oregon and Washington, Pacific Northwest Region (the Mt. Baker-Snoqualmie, Gifford Pinchot, Siuslow, Umpqua, Siskiyou, Okanogan, Wentchee, Willamette, Winema, Olympic, Mt. Hood, Deschutes, and Rogue River) and 4 National Forests in northern California, Pacific Southwest Region (the Six Rivers, Mendocino, Klamath, and Shasta-Trinity). The counties encompassed by these National Forests are Benton, Clackamas, Coos, Curry, Deschutes, Douglas, Hood River, Jackson, Jefferson, Josephine, Klamath, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, and Wasco Counties in Oregon; and Chelan, Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, King, Kittitas, Klickitat, Lewis, Mason, Okanogan, Pierce, Skagit, Skamania, Snohomish, Whatcom, and Yakima Counties in Washington; and Colusa, Del Norte, Glenn, Humboldt, Lake, Mendocino, Shasta, Siskiyou, Tehama, Trinity Counties in California.

In June 1990, the Fish and Wildlife Service listed the northern spotted owl as a threatened species throughout its range. By notice in the **Federal Register** (55 FR 40412, October 3, 1990), the Secretary of Agriculture vacated the standards and guidelines in the Pacific Southwest and Pacific Northwest Regional Guides that pertained to the northern spotted owl and directed that, pending further direction from Congress or the Fish and Wildlife Service, timber management activities affecting the owl would comply with the Endangered Species Act and would be not inconsistent with the conservation strategy developed by the Interagency Scientific Committee to Address the Conservation of the Northern Spotted Owl. On March 7, 1991, Judge Dwyer (Federal District Court, Western Washington) ruled in *Seattle Audubon Society, et al.*, v. *Evans, et al.* that the Forest Service had violated the National Forest Management Act (NFMA) regulations (36 CFR part 219) by failing to follow the process required by the regulations for adopting management direction to assure the viability of the northern spotted owl.

This notice of intent initiates the process of amending the Regional Guides in accordance with 36 CFR part 219. The standards and guidelines established by these amendments will be reviewed when the Fish and Wildlife Service issues the Northern Spotted Owl Recovery Plan, and, if necessary, changed after that review through further amendments to the Regional Guides. Thus, this direction on management of northern spotted owl habitat is likely to be applicable only during the interim between its adoption and any further amendments to the Regional Guides necessitated by the Recovery Plan, tentatively scheduled to be completed in June 1992.

As the issues related to conservation of the northern spotted owl have been well established through extensive scientific study and public debate, the Forest Service proposes to use this record in scoping the draft EIS. Written comments from the public should be submitted as indicated at the beginning of this notice and would be most useful if sent by the date specified.

Alternatives which may be considered include a no-action alternative, an alternative that follows the recommendations of the Interagency Scientific Committee, and an alternative that incorporates any critical habitat proposals by the Fish and Wildlife Service.

The comment period on the draft EIS will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. If public meetings are used as one of the methods for public involvement on the draft EIS, they will be announced in newspapers of general circulation in the geographic area of such meetings well in advance of the scheduled dates. If public hearings are scheduled, they will be announced in the notice of availability.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that these interested in this proposed action participate by the close of the 90 day comment period on the draft EIS so that substantive comment and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The responsible official for this EIS and decision is F. Dale Robertson, Chief, USDA, Forest Service, P.O. Box 96090, Washington, DC 20090-6090.

A draft Environmental Impact Statement is expected to be available for agency and public review by January 1992, and a Final Environmental Impact Statement should be available by July 1992.

Dated: May 2, 1991.

Jeff M. Sirmon,

Deputy Chief, FS.

[FR Doc. 91-10847 Filed 5-7-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-614-502]

Low-Fuming Brazing Copper Rod and Wire From New Zealand; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 22, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on low-fuming brazing copper rod and wire from New Zealand for the period December 1, 1987 through November 30, 1988. The review covers one manufacturer/exporter, McKechnie Pacific Limited. As a result of our review, we determine the weighted average dumping margin to be 0.66 percent *ad valorem* for the review period.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 12169) the preliminary results of its administrative review of the antidumping duty order on low-fuming brazing copper rod and wire from New Zealand (50 FR 49740; December 4, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are low-fuming brazing copper rod and wire from New Zealand, principally of copper and zinc alloy ("brass") of varied dimensions in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated. During the review period, such merchandise was classifiable under item numbers 612.6205, 612.7220 and 653.1500 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 7406.21.50, 7408.11.60, 7408.19.00, 7408.21.00, 7408.22.50, 7408.29.50, 8311.10.00, 8311.20.00, 8311.30.60 and 8311.90.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States, McKechnie Pacific Limited (McKechnie), and the period December 1, 1987 through November 30, 1988.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists for the review period:

Manufacturer/exporter	Review period	Margin (percent)
McKechnie	12/01/87-11/30/88	0.66

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Pursuant to 19 CFR 353.6 the Department will disregard any *de minimis* weighted-average dumping margin (*e.g.*, less than 0.50 percent *ad valorem*) for purposes of the cash deposit of estimated antidumping duties. Because the Department has determined in a more recent review period (December 1, 1988 through November 30, 1989) that McKechnie's margin was 0.33 percent *ad valorem*, and therefore *de minimis*, no cash deposit shall be required for McKechnie or for a new exporter whose first shipment occurred after November 30, 1989. These deposit requirements shall be effective for all shipments of low-fuming brazing copper rod and wire from New Zealand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 1, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10922 Filed 5-7-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of

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Commerce, Room 1800, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 86-A0008."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 86-00008, issued on December 17, 1986 (51 FR 45928 December 23, 1986).

Summary of the Application

Applicant: Streamline Shippers Association, Inc. (SSA) 5525 So. Santa Fe Avenue, Vernon, California 90058.

Contact: Ronald N. Cobert, SSA Counsel, 1730 M Street, NW, Suite 400, Washington, DC 20036, Telephone: (202) 296-2900.

Application No.: 86-A0008.

Date Deemed Submitted: April 22, 1991.

SSA seeks to amend its Certificate by clarifying the "forwarder services" it will offer and revising its classes of members. These revisions require the following changes:

(1) Revise part (c) of Export Trade to read as follows:

Transportation Services (As They Relate to the Export of Products) include: Overseas freight transportation; inland freight transportation to a U.S. export terminal, port, or gateway; packing and crating; leasing of transportation equipment and facilities; terminal or port storage; wharfage and handling; forwarder services (including, but not limited to, preparing and/or processing export declarations; preparing or processing delivery orders or dock receipts; preparing, processing, or issuing bills of lading; preparing or processing consular documents, or arranging for their certification; and preparing and/or sending advance notifications of shipments or other documents to banks, shippers, or other consignees, as required); insurance; warehousing; foreign exchange; financing and financial services; export sale and trade documentation and services; overseas distribution; paying or charging commissions; marketing; advertising; communication and processing of foreign orders; accounting; clerical services; consulting; customs services; feasibility studies; investment services; legal services; management services; and translation services.

(2) Revise part 7(c) of the Export Trade Activities and Methods of Operation as follows:

(c) SSA shall have four classes of SSA Members: (1) Regular members, (2) NVOCC members, (3) transportation members; and (4) shippers' association members, and may prescribe the eligibility requirements for each class of member;

(3) Add the following definitions to clarify certain terms in revised part 7(c):

(1) "Regular members" include manufacturers, beneficial interest shippers, and similar entities.

(2) "NVOCC members" include any non-vessel operating common carrier under the Shipping Act of 1984, and which shall maintain a tariff on file with the Federal Maritime Commission and post a surety bond as required by regulations of the Federal Maritime Commission.

(3) "Transportation members" include any firm, or affiliate thereof, engaged primarily in the transportation business as an intermediary, direct carrier, or service organization.

(4) "Shippers' association members" include any shippers association, provided that for purposes of foreign commerce only, such shippers' association must maintain a list containing the names of its members and compliance data if any such member shall be a non-vessel operating common carrier as defined in the Shipping Act of 1984.

Dated: May 2, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-10834 Filed 5-7-91; 8:45 am]

BILLING CODE 3510-DR-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Order of Extraordinary Challenge Committee

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of order of the Extraordinary Challenge Committee established to review the January 22, 1991 binational panel decision in the panel review of the affirmative determination of threat of material injury made on remand by the U.S. International Trade Commission on October 23, 1990, respecting Fresh, Chilled or Frozen Pork from Canada, Secretariat File No. ECC-91-1904-01USA.

SUMMARY: On April 22, 1991, the Extraordinary Challenge Committee ordered that Oral Argument be heard on May 15, 1991, that each participant be permitted to file a Reply Brief of no more than 25 pages on or before May 2, 1991 and that the deadline for the Committee to file its decision be extended to June 14, 1991. Copies of the order of the Committee are available from the FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under article 1904.13 of the Agreement, where a Party alleges that a binational panel has seriously departed from a fundamental rule of procedure, has manifestly exceeded its powers, authority or jurisdiction or that a member of the panel has materially violated the Code of Conduct established pursuant to article 1910, and further alleges that any of these actions have materially affected the panel's decision and threaten the integrity of the binational panel review process, that party may request that an Extraordinary Challenge Committee be established under the procedure set out in Annex 1904.13 of the Agreement.

Under Annex 1904.13 of the Agreement, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Extraordinary Challenge Committees ("ECC Rules"). These ECC rules were published in the **Federal Register** on December 30, 1988 (53 FR 53222). The ECC Rules give effect to the provisions of chapter nineteen of the Agreement with respect to Extraordinary Challenge Committee proceedings conducted pursuant to article 1904 of the Agreement. The ECC rules are intended to result in decisions typically within 30 days after the establishment of the Extraordinary Challenge Committee. The Extraordinary Challenge Committee proceeding in this matter will be conducted in accordance with these ECC rules.

Dated: May 2, 1991.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 91-10865 Filed 5-7-91; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of Final Results of Antidumping Duty Administrative Review and Cancellation of Suspension Agreement made by the Department of Commerce, International Trade Administration, Import Administration, respecting Sheet Piling from Canada, Secretariat File No. USA-90-1904-03.

SUMMARY: Pursuant to rules 73(2) and 80(1)(a) of the Article 1904 Panel Rules ("Rules"), the Panel Review of the final determination described above was completed on April 22, 1991, the date following the filing of a consent motion to terminate the binational panel review of this matter. The panelists were discharged from their duties effective April 22, 1991.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: On December 19, 1990, Casteel, Inc., filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the Final Results of Antidumping Duty Administrative Review, but not the Cancellation of Suspension Agreement, respecting Sheet Piling from Canada made by the International Trade Administration, Import Administration, Import Administration File Number A-122-007. Notice of this determination was published in the **Federal Register** on November 21, 1990 (55 FR 49551). The Binational Secretariat assigned case no. USA-90-1904-03 to this request.

On April 19, 1991, Casteel, Inc. filed a Notice of Consent Motion Requesting Termination of Panel Review with an accompanying affidavit indicating the consent of all participants to the motion. The Notice of Consent Motion indicated that the motion was filed because Casteel, Inc. plans to cease production of sheet piling in Canada and relocate production to the United States by June 1991.

Rule 73(2) provides that "where a Notice of Motion requesting termination of a panel review filed by a participant is consented to by all the participants and an affidavit to that effect is filed * * * the panel review is terminated and, if a panel has been appointed, the panelists are discharged." Rule 80(1)(a) provides that the termination shall be effective on the day after the day on which the affidavit is filed. Pursuant to the authorities cited above, this Notice of Completion of Panel Review was effective and the panelists were discharged from their duties on April 22, 1991.

Dated: May 2, 1991.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 91-10866 Filed 5-7-91; 8:45 am]

BILLING CODE 3510-GT-M

National Institute of Standards and Technology

Announcing a Meeting of Fastener Quality Act Advisory Committee

AGENCY: National Institute of Standards and Technology, DoC.

ACTION: Notice of Advisory Committee Meeting open to the public.

SUMMARY: The National Institute of Standards and Technology (NIST) will hold a meeting of the Fastener Advisory Committee on May 29, and 30, 1991. The meeting will be for the purpose of providing advice to the Department of Commerce, pursuant to statute, on the implementation of the Fastener Quality Act of 1990 (Pub. L. 101-592). The meeting is open to the public.

DATES: The meeting will be held on May 29, 1991 from 1 p.m. to 5 p.m., and on May 30, 1991 from 9 a.m. to 4 p.m., or earlier if so adjourned.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building (101), Lecture Room B, Route 117 at Bureau Drive, Gaithersburg, Maryland 20899.

AGENDA: The Advisory Committee will receive reports from Commerce staff and will determine issues that need to be considered by the Committee to assist the Department of Commerce in implementing the provisions of the Fastener Quality Act.

PUBLIC PARTICIPATION: The meeting is open to the public. All interested persons wishing to attend the meeting should notify the contact person listed in this notice by May 22.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Edgerly, Deputy Director, Technology Services, National Institute of Standards and Technology, Building 221, Room A363, Gaithersburg, MD 20899, Telephone (301) 975-4500.

Dated: May 3, 1991.

John W. Lyons,

Director.

[FR Doc. 91-10923 Filed 5-7-91; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

American Lobster Fishery; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a public hearing and request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold a public hearing, in conjunction with a meeting, to receive comments on Amendment 4 to the American Lobster Fishery Management Plan (FMP). The amendment proposes to suspend the scheduled increases beyond 3¼ inches in the minimum size for American lobster in Federal waters.

DATES: The hearing will be held on Thursday, May 16, 1991, at 11:30 a.m. Written comments should be submitted on or before May 31, 1991, to the address below.

ADDRESSES: The hearing will be held at the Quality Inn, 291 Jones Road, Falmouth, MA. Written comments should be sent to Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906. Clearly mark the outside of the envelope "Lobster Management Comments."

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, 617-231-0422.

SUPPLEMENTARY INFORMATION: The proposed action would roll back the 3 9/32 inch minimum lobster size that became effective on January 1, 1991, to 3¼ inches. If the measure is approved, the minimum size will remain at 3¼ inches with the timing of future increases left open-ended.

The measure was proposed primarily because the major lobster-producing states have a 3¼ inch minimum size now in effect. Massachusetts legislation delays further increases beyond 3¼

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inches until January 1, 1992, and until Maine, New Hampshire, Rhode Island, and Connecticut also increase their minimum gauge sizes above 3¼ inches. Maine has passed similar legislation while New Hampshire has no legislation in place to increase its minimum size of lobster beyond 3¼ inches. Rhode Island regulations currently do not contain any increase beyond 3¼ inches.

Because the states produce more than three-fourths of the annual U.S. lobster harvest, Federal regulations that are in conflict with the states would serve no useful purpose. Lobster fishermen who operate in the exclusive economic zone, who hold Federal permits or have Federal endorsement of state permits would be subject to the 3⅝s minimum size limit under the current regulations. Enforcement by federal agents would be difficult and there would be little or no incentive for state agencies to enforce the Federal size.

Dated: May 3, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-10911 Filed 5-7-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Czech and Slovak Federal Republic

May 1, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 443 is being increased for special carryforward. As a result, the limit for Category 443, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 18369, published on May 16, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 1, 1991.

Commissioner of Customs,

Department of the Treasury,

Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 10, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Czechoslovakia and exported during the twelve-month period which began on June 1, 1990 and extends through May 31, 1991.

Effective on May 8, 1991, you are directed to amend the May 10, 1990 directive to increase the limit for Category 443 to 107,289 numbers [1], as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Czech and Slovak Federal Republic.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 91-10745; Filed 5-7-91; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

May 1, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a letter to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 20293, published on May 16, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 1, 1991.

Commissioner of Customs,

Department of the Treasury,

Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 10, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on June 1, 1990 and extends through May 31, 1991.

Effective on May 8, 1991, you are directed to amend further the directive dated May 10, 1990 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Dominican Republic:

Category	Adjusted twelve-month limit [1]
347/348/647/648.	1,257,308 dozen of which not more than 896,632 dozen shall be in Categories 347/348 and not more than 674,160 dozen shall be in Categories 647/648.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 91-10744; Filed 5-7-91; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after May 31, 1990.

DEPARTMENT OF DEFENSE

Department of the Army

Military Personnel Property Symposium; Meeting

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Notice of open meeting.

Announcement is made of a meeting of the Military Personnel Property Symposium. This meeting will be held on 29 May 1991 at the Best Western Old Colony Inn, Alexandria, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

PROPOSED AGENDA: The purpose of the sumposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the DOD 4500.34-R, Personal Property Traffic Management Regulation, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

FOR FURTHER INFORMATION CONTACT: All interested parties desiring to submit topics to be discussed should contact Mr. Moreno, Military Traffic Management Command, ATTN: MTPP-M, 5611 Columbia Pike, Falls Church, VA 22041-5050, (703) 756-1600. Topics to be discussed should be received as soon as possible.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-10880 Filed 5-7-91; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Open Systems Architecture for Command, Control and Communications (C^3) will meet on May 23 and 24, 1991. The meeting will be held at the Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8 a.m. and terminate at 4:30 p.m. on May 23 and 24, 1991. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide technical briefings for the panel members pertaining to their assessment of the current Navy C^3 systems architecture to support anticipated requirements, evaluate the performance of the present system relative to the existing threat, and provide recommendations for an overall architecture and architectural approach to meet future needs, as well as provide recommendations concerning use of current and future commercial data communication systems for both interim and continuing satisfaction of Department of the Navy needs. The agenda will include briefings and discussions related to current C^3 requirements, Desert Shield/Storm Lessons Learned, Copernicus Architecture, the Communications Support System, the World-wide Military C^3 System, the Defense Satellite Communications System, and Navy Tactical, Ashore Automation/Consolidation, Space and Surveillance, and Strategic C^3 Programs. These briefings and discussions will necessarily address current C^3 capabilities and limitations, as well as susceptibility to penetration or denial. These briefings and discussions contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Captain Gerald Mittendorff, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: May 3, 1991.

G.B. Roberts,

Federal Register Liaison Officer.

[FR Doc. 91-10916 Filed 5-7-91; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Intergovernmental Advisory Council on Education; Meetings

AGENCY: Intergovernmental Advisory Council on Education, Education.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the Intergovernmental Advisory Council on Education. This notice also describes the functions of the Council. Notice of these meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES AND TIMES: May 31, 1991, 9 a.m. to 4 p.m.

ADDRESSES: George Washington High School, Community School, 655 South Monaco Parkway, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Gwen A. Anderson, Executive Director, Intergovernmental Advisory Council on Education, room 3036, 400 Maryland Avenue SW., Washington, DC 20202-7576, (202) 401-3844.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

On May 31, the Intergovernmental Advisory Council on Education will meet from 9 a.m. to approximately 4 p.m. The meeting is open to the public.

The proposed agenda of the meeting includes discussion of (1) ways to improve the flow and coordination of information between Congress and state legislative bodies with respect to education legislation and (2) budget review and administrative issues that

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are related to the termination of the Council.

On May 31, the Executive Committee will meet from 6:30 p.m. to approximately 8:30 p.m. and on June 1 from 9 a.m. to 12 p.m. at the Registry Hotel, Executive Board Room, 3203 Quebec Street, Denver, CO. The meeting is open to the public. The proposed agenda of the meeting includes a review of the final recommendations to the President and the Secretary and other matters pertaining to the Executive Committee's responsibilities.

Records are kept of all Council proceedings, and are available for public inspection at the Office of the Intergovernmental Advisory Council on Education, 400 Maryland Avenue SW., room 3616, Washington, DC 20202-7570, from the hours of 9 a.m. to 5 p.m.

Dated: May 2, 1991.

William L. Smith,

Acting Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 91-10912 Filed 5-7-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Intent To Issue a Restricted Eligibility Solicitation for the Conduct of Feasibility Studies for the Siting of a Monitored Retrievable Storage Facility

AGENCY: U.S. Department of Energy.

ACTION: Notice of Intent ("Notice") to make grants of financial assistance on a restricted eligibility basis pursuant to 10 CFR 600.7(b)(1) in response to applications received from eligible States, Indian tribes and affected units of local government pursuant to section 406(b) of the Nuclear Waste Policy Act of 1982, as amended.

SUMMARY: Section 142(b) of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101 *et seq.*) ("Act"), authorizes the Secretary of Energy to site, construct and operate one monitored retrievable storage (MRS) facility subject to the conditions described in sections 143 through 149 of the Act. Section 145(a) contemplates that the MRS constructed upon such site as may ultimately be selected shall represent an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under the Act. The Office of Civilian Radioactive Waste Management's (OCRWM) current program objectives include the siting and construction of an MRS in accordance with the Act and in such a manner as to enable it to begin limited waste acceptance at the MRS facility as early as 1998.

Section 408(b) of the Act authorizes the Secretary of Energy to make grants of financial assistance to any State, Indian tribe or affected unit of local government to assess the feasibility of siting an MRS at a site under the jurisdiction of such State, Indian tribe or affected local unit of government. By means of this Notice, OCRWM gives notice of its intent to issue a restricted eligibility solicitation inviting the submission by eligible States, Indian tribes and affected units of local government of applications for grants of financial assistance for studies in order to assess the feasibility of siting an MRS at a site under the jurisdiction of such State, Indian tribe or affected unit of local government. Executive Order 12372 applies.

The terms "State", "Indian tribe" and "Affected unit of local government are defined at sections 401, 2(15) and 2(31) of the Act, respectively. Thus, the structure and language of the Act itself warrants the use of a restricted eligibility procedure for the grant of financial assistance in this instance.

On or about May 23, 1991 DOE will issue a solicitation for applications from States, Indian tribes and affected units of local government for grants of financial assistance for the purpose of studying the feasibility of locating an MRS at a site under the jurisdiction of such a defined entity. The solicitation will provide for two types of feasibility study grant applications: Preliminary (Phase 1) and advanced (Phase 2). Preliminary study grants will be for a maximum of $100,000 and be based upon conformance with eligibility requirements set forth in the solicitation document. There is no predetermined limit on the amount of an advanced study grant but such grants as may be awarded will be based upon and determined by eligibility requirements prescribed in the solicitation. Applications will be accepted through December 31, 1991; will be processed and acted upon in the order received, if complete; and will be subject to the availability of funds for such purpose at the time of a decision thereon. DOE currently has available the sum of $1.097 million for the purpose of such grants.

Requests for copies of the solicitation must be in writing to: U.S. Department of Energy, Office of Placement and Administration, Attn: Ms. Kristin Wright/PR-322.2, 1000 Independence Ave., SW., Washington, DC 20585.

The point of contact, Ms. Wright can be reached on (202) 586-4285.

Scott Sheffield,

Acting Director, Operations Division "B" Office of Placement and Administration.

[FR Doc. 91-10907 Filed 5-7-91; 8:45 am]

BILLING CODE 6450-01-M

NOXSO Corp.; Exclusive Patent Licenses

AGENCY: Department of Energy, Office of the General Counsel.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: Notice is hereby given of an intent to grant to NOXSO Corporation, of Library, Pennsylvania, an exclusive license to practice the invention described in U.S. Patent No. 4,878,442, entitled "NO_x Control for High Nitric Oxide Concentration Flows Through Combustion Driven Reduction." The invention is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Intellectual Property, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than July 8, 1991.

ADDRESSES: Office of Assistant General Counsel for Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Intellectual Property, U.S. Department of Energy, Forrestal Building, room 6F-067, 1000 Independence Avenue, Washington, DC 20585; Telephone (202) 586-4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

NOXSO Corporation, of Library, Pennsylvania, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 4,878,442, and has a plan for commercialization of the invention.

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on May 2, 1991.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 91-10908 Filed 5-7-91; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Consent Order With Occidental Petroleum Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of withdrawal of proposed consent order.

SUMMARY: On January 31, 1989, the Economic Regulatory Administration (ERA) executed a proposed Consent Order with Occidental Petroleum Corporation (Occidental), including its wholly-owned subsidiary, OXY USA Inc. (formerly Cities Service Oil and Gas Corp., successor in interest to Cities Service Company). The proposed agreement was entered into to resolve matters relating to Occidental's compliance with the federal petroleum price and allocation regulations during the period October 1979 through January 1981, and contemplated the payment by Occidental to DOE of $205,080,000, including interest, over an eight-year period. The proposed Consent Order was published for comment in 54 FR 22469 (May 24, 1989) and 54 FR 35371 (August 25, 1989), and a public hearing was conducted on the proposed agreement on September 27, 1989.

After consideration of all the written comments received in response to both notices and the oral presentations made at the public hearing, ERA determined to attempt to renegotiate the proposed agreement. This effort was unsuccessful. Accordingly, by this notice, ERA announces its withdrawal of the proposed Consent Order.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1669.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments received in response to August 25, 1989, Notice and at September 27, 1989, public hearing
III. Final determination on proposed Consent Order
IV. Conclusion

I. Introduction

On May 24, 1989, ERA gave Notice in the Federal Register of a proposed Consent Order between the Department of Energy (DOE) and Occidental which required Occidental to pay $205,080,000, including interest over eight years, to resolve matters relating to Occidental's compliance with DOE regulations during the period October 1979 through January 1981, including the matters adjudicated by the DOE's Office of Hearings and Appeals (OHA) in a September 30, 1986, Remedial Order issued to Occidental's wholly-owned subsidiary. *Cities Service Oil and Gas Corp.*, 17 DOE ¶ 83,021 (1988). Under the terms of the proposed Consent Order, persons claiming to have been harmed by the overcharge claims resolved by the proposed Consent Order would be able to present applications for refunds in an administrative claims proceeding before OHA. 10 CFR part 205, supart V.

The May 24 Notice solicited written comments to enable ERA to receive information from the public relevant to the decision whether the proposed Consent Order should be finalized as proposed, modified, or rejected. To ensure public understanding of the bases for the proposed settlement, the May 24 notice provided detailed information regarding the matters resolved by the proposed Consent Order and the considerations which formed the bases of the ERA's preliminary agreement to the proposed settlement terms. As of August 11, 1989, ERA had received eighteen submissions concerning the proposed Consent Order.

After review of those submissions, ERA on August 25, 1989, published a second Federal Register notice which responded to (1) various commenters' objections to the process utilized by ERA in reaching the proposed settlement with Occidental, (2) the proposal of energy Refunds, Inc. that The Permian Corporation should be made a party to the proposed Consent Order, (3) concerns about the proposed Consent Order's eight-year payout term expressed by Congressman John D. Dingell, Chairman of the House Energy and Commerce Committee, and by a group of five utilities, eighteen transporters, and four manufacturers (hereafter UTM), and (4) various commenters' reliance on selected portions of the OHA's Cities Remedial Order decision and ERA's litigation pleadings in that case to urge rejection or renegotiaton of the proposed settlement. 54 FR 35371.

In addition to the foregoing, the ERA in the August 25 notice invited additional written comments addressed to certain issues raised in some of the comments received in response to the May 24 notice. Specifically, ERA solicited further comment addressed to the following matters:

(1) Whether the eight-year payment period should be renegotiated;

(2) Whether, in a settlement context, it is appropriate to exclude consideration of all factors other than litigation risk, in reaching an appropriate level of compromise with Occidental;

(3) What additional significance, if any, should be attached to the undisclosed contents of documents subject to privilege claims or under seal in private litigation between Gulf Oil Corporation (now merged with Chevron U.S.A., Inc.) and Cities in federal and state courts.[1]

ERA also urged that all persons with specific information concerning the allegation made by Mr. Dingell and Chevron, that Cities had withheld relevant non-privileged documents from DOE, to provide the particulars regarding this matter to ERA during the 30-day additional comment period announced in the August 25 notice.

Lastly, ERA announced in the August 25 notice a public hearing to provide interested persons an opportunity to

[1] *Cities Service Co.* v. *Gulf Oil Corp.*, No. C-82-1986 (Dist. Ct. Okla.); *In re Gulf Oil/Cities Service Tender Offer Litigation*, No. 82 Civ. 5259 (S.D.N.Y.); *W. Alton Jones Foundation* v. *Chevron U.S.A., Inc.*, No. 87 Civ. 8982 (S.D.N.Y.).

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make oral presentations on the matters solicited for comment in the Notice.

Six written comments were received in response to the August 25 notice, and representatives of five of the respective commenters made oral presentations at a public hearing held on September 27, 1989. At the conclusion of the hearing, ERA held the hearing record open for an additional two weeks, to permit additional written submissions designed to resolve the allegation that Cities had withheld from DOE a document from the files of Arthur Young & Company, Cities' accountants in 1980 and 1981. ERA received seven post-hearing written submissions. Three submissions were made by Chevron; the remaining four post-hearing comments were from Mr. Dingell, Occidental, the Attorney General of Texas, and a group of fourteen States.

On September 28, 1990, the stay of the *Cities* litigation, entered to permit completion of notice and comment procedures on the proposed Consent Order, was dissolved at the parties' joint request. Thereupon, litigation was resumed before the Federal Energy Regulatory Commission (FERC) on OXY USA Inc.'s appeal from the *Cities* Remedial Order. On November 30, 1990, ERA issued a subpoena to OXY in furtherance of the Remedial Order's remand directive.

II. Comments Received in Response to August 25, 1989, Notice and at September 27, 1989, Public Hearing

In the 30-day period following the August 25 notice, written comments were received from (1) Texas, New Mexico, New Jersey, Pennsylvania and Minnesota (hereafter States I); (2) Alabama, California, Connecticut, Idaho, Indiana, Maryland, Michigan, Mississippi, Montana, Ohio, South Dakota, Vermont, Wisconsin, and Wyoming (hereafter States II); (3) Hawaii, Illinois, Kansas, Nebraska, Nevada, North Carolina, Guam, the Virgin Islands, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia (hereafter States III); (4) the UTM; (5) Chevron; and (6) Occidental. All of the commenters reiterated positions they has asserted in comments filed in response to the May 24 Notice. With respect to the three specific matters as to which the August 25 notice requested additional comment, the commenters stated as follows:

A. The Eight-Year Payout Term

Of the commenters which addressed the proposed Consent Order's payout term, all except Occidental opposed the eight-year payment period as excessive. States I asserted that Occidental's payment of the proposed settlement amount over eight years would impose unacceptable burdens on State governments charged with the responsibility of ensuring prompt and efficient restitutionary distribution to their citizens. Second, States I opposed the eight-year payout term on the grounds that when a company such as Cities violates a federal regulatory program "so egregiously," "retribution should be swift and painful," and "should always incorporate a degree of punishment." States I Comments at 7. In accordance with this view, these commenters deemed an appropriate payout period to be no longer than the time frame in which the alleged overcharges occurred, namely, thirteen months. Third, States I concluded from a review of Occidental's annual reports and Form 10-K filings that Occidental is financially able " to absorb its full restitutionary obligation in settlement" and to make the required payments in far less time than eight years. *Id.* at 7–8.

The UTM asserted the view, based on the statement in the August 25 Notice that Occidental has stockholders' equity of $6.2 billion, that the payment contemplated by the proposed Consent Order should be "immediate." UTM Comments at 1–2. States III suggested that the payment period should be renegotiated, and that any revised payment period should not exceed six years, like the payment period under the 1986 consent order with Texaco Inc.

In opposition to any alteration of the proposed payout term, Occidental stated that the eight-year payment period was a "critical provision," and that it was willing to enter into the settlement only if it could satisfy the proposed settlement's payment obligations from the estimated future earnings of OXY USA Inc., its operating subsidiary involved in the "tier trade" enforcement case. Occidental Comments at 2–4. Occidental emphasized that the eight-year payout provision was not based upon a finding of financial hardship. Rather, Occidental insisted on the eight-year term because it was assertedly the only way to ensure that the company would be able to pay any cash settlement without having to increase its borrowing. *Id.* at 4–5.

B. Consideration of Factors Other Than Litigation Risks

All of the commenters addressed their respective perceptions of the correctness of OHA's Cities Remedial Order decision, and all except Occidental viewed DOE's litigation risk at FERC and in the federal courts as minimal or non-existent.

States II reiterated their previously expressed view that the facts presented in the OHA proceeding, OHA's detailed analysis of those facts and the law applicable to them, OHA's ruling that Cities is liable under any one of several separate theories, the relevant FERC and court precedents, the limited scope of FERC review, and DOE's excellent record in defending OHA decisions in the district courts and the Temporary Emergency Court of Appeals, all militate in favor of the conclusion that there is a high probability that the Remedial Order will be sustained. States II Comments at 8. States II suggested that a 10% settlement discount would be appropriate. *Id.* at 9.

States I deemed it appropriate to consider any "legitimate" litigation risks in evaluating settlement of this case, as long as all relevant factors are considered, including, specifically, Cities' potential liability for Entitlements Program violations in addition to "other" regulatory violations.[3] The UTM expressed the view that the only proper consideration in offering a discount to settle this matter is the risk of reversal of the OHA Remedial Order either in FERC or the federal courts. For the reasons advanced in their comments in response to the May 24 Notice, the UTM believes that ERA's litigation risks in this case are "far less" than in other cases settled for twice or three times the percentage of the Remedial Order for which the proposed Consent Order proposed to settle. UTM Comments at 2–3. Chevron asserted that no factors other than OHA's Remedial Order decision bear a rational relation to the compromise of this litigation. Chevron based this conclusion on ERA's " 'full[ ] endorse[ment]' " of the Remedial Order decision (*see* August 25 notice, 54 FR 35374), and Chevron's view that the Remedial Order is "unassailable." Chevron Comments at 20.

[3] This comment appears to assume that the alleged Entitlements Program violation amount would be in addition to the $263.8 million price and price rule circumvention violation amount which OHA adjudicated in the 1986 Remedial Order. States II appear to share this view, based on their assertion that the May 24 notice failed to state Occidental's maximum overcharge liability because ERA omitted quantification of the Entitlements Program violation. States II Comments at 4 n.1.

ERA stated in its litigation pleadings before OHA that it sought to impose liability on Cities for violation of 10 CFR 211.66 (which ERA quantified as $254 million in principal amount) in the alternative, not in addition, to the $263.8 million principal overcharge amount arising from Cities' violation of 10 CFR 212.183(b), 210.62(c) and 205.202. For this reason, the May 24 notice stated Occidental's maximum potential liability as $263.8 million, plus interest. 54 FR 22470.

Occidental took issue with what it characterized as Chevron's and other commenters' erroneous contention that ERA's litigation risk assessment should have given "conclusive" weight to OHA's findings in the Cities Remedial Order. Occidental Comments at 6. Occidental pointed out that OHA is only the initial decisionmaker, and concluded that no commenter had shown that ERA erred in the exercise of its broad discretion in determining the appropriate weight to be accorded an OHA decision when assessing DOE's litigation risk on appeal. *Id.* at 7–10.

C. The "Withheld" and Additional Documents Issues

States I maintained that ERA has an "absolute responsibility" to order Cities to tender all documents which are the subject of privilege claims or under seal in private litigation between Cities and Chevron, because there "seems to be a general feeling" that these documents would have a "pronounced relevance" on the issue of Cities' alleged good faith in the subject "tier trade" transactions, and because of the ruling of a New York federal district court that documents which Cities claimed to be protected from disclosure where releasable under the "crime-fraud" exception to the attorney-client privilege. States I contended that ERA must learn the contents of the crime-fraud exception documents, as well as others under seal by court order, before it "completely exonerates" Occidental through the proposed Consent Order. States I Comments at 12.[3]

States II did not address the documents sealed by court order, but contended that DOE access to the crime-fraud exception documents would significantly reduce DOE's litigation risk, "perhaps to near zero," if DOE could obtain them. States II urged DOE to await the outcome of any appeals of the New York court's ruling on the status of the Cities documents, and if the documents become public, DOE could then decide its appropriate course. States II also maintained that DOE should in any event insist that Cities disclose the documents in question as a condition of DOE's approval of the proposed Consent Order. States II Comments at 12. Finally, States II asserted that if, as Chevron alleged, there are some Cities documents which are not the subject of any claim of privilege and which have somehow escaped DOE's grasp, these should be obtained forthwith. *Id.* at 12, 13.

The UTM maintained that after full litigation of the matter before OHA and the rendering of a decision in ERA's favor, the only appropriate consideration for settlement purposes is the assessment of litigation risk. Consistent with that position, the UTM stated that ERA should not consider any documents beyond those already in the OHA record. If ERA does consider additional submissions, then ERA should have available the documents which "evidently" have been withheld by virtue of Cities' assertion of privilege in private litigation. UTM Comments at 3–4. Regardless of the foregoing, UTM suggested that ERA should investigate the serious allegations "evidently made" by Chairman Dingell and by Chevron that Cities deliberately withheld documents subject to discovery, and sought to be discovered by ERA. *Id.* at 4.

In its comments, Chevron identified three categories of documents. First, there are documents (including deposition testimony) which Cities produced to Chevron in the Cities/Chevron litigation and which are subject to a confidentiality stipulation between the parties entered as a court order. Chevron Comments at 21. Second, Chevron identified documents as to which Cities asserted attorney-client and attorney work product privileges in Cities/Chevron litigation in New York federal district court, namely, the crime-fraud exception documents. *Id.* at 22. Third, Chevron identified documents produced by Cities to Chevron from the files of Arthur Young & Co., Cities' auditors in 1980 and 1981. These documents were subpoenaed by ERA and, according to Cities, produced to ERA. Chevron stated that it "ha[d] reason to believe that full production was not made to ERA." *Id.* at 23. Chevron further stated that Cities produced these documents to Chevron under the confidentiality order, and the only way Chevron could confirm its belief that Cities did not make full production to ERA was to obtain a copy of the set of the Arthur Young documents produced to ERA and compare it with the set of Arthur Young documents Cities produced to Chevron. *Id.* at 23.[4] Based on the contents of one contemporaneous Cities document,[5] Chevron suggested that ERA could not proceed responsibly either to measure its litigation risk or to reach a reasoned decision as to whether it wishes to hold Cities "fully accountable" by continuing prosecution without seeing the other contemporaneous Cities documents. Chevron urged ERA to demand these documents from Cities. Chevron Comments at 28–30.

Occidental made the following points regarding undisclosed documents: (1) DOE received every document that it requested of Cities and third parties, except for privileged documents. In those instances where Cities asserted a privilege, DOE either did not contest the assertion or it did contest and both parties accepted the litigated result; (2) Chevron was misleading DOE in attempting to frame the issue as though Cities was obstructing full disclosure by asserting attorney-client or attorney work product privileges. Cities, like all other litigants, was entitled to assert these privileges, and has abided by all court rulings where its privilege assertions have been rejected; (3) no reason exists for Cities to waive its document privileges as a precondition to DOE's entry into a consent order with Occidental. Occidental Comments at 11–12. Finally, Occidental recounted its efforts to identify an allegedly non-privileged Arthur Young document which Chevron asserted Cities had withheld from ERA. *Id.* at 12–15.

At the September 27, 1989, public hearing held on the proposed Consent Order, representatives of States I, States II, the UTM, Chevron, and Occidental reiterated and expanded upon their respective comments submitted in response to the May 24 and August 25 Notices on the issues of the dollar amount of the proposed settlement, the eight-year payout term, the correctness of OHA's Remedial Order decision and DOE's prospects of prevailing

[3] The cited crime-fraud exception ruling was made by Judge Michael Mukasey on March 13, 1989. Plaintiffs unsuccessfully sought reconsideration of this ruling, which Judge Mukasey affirmed in an oral ruling on October 11, 1989, and endorsed as an order on November 27, 1989. An appeal of that order to the Second Circuit Court of Appeals was dismissed on January 3, 1990, and the appellate court's mandate was issued February 16, 1990. The subject documents were produced to Chevron on or about February 21, 1990.

ERA's November 30, 1990, subpoena to OXY USA Inc. cited above seeks the crime-fraud exception documents as well as several other categories of documents, including all documents relating to Cities' tier trades produced to Chevron in those parties' private litigation.

Excerpts of two of the crime-fraud exception documents are quoted in an April 11, 1991, magistrate's Report and Recommendation issued in the *Jones* litigation cited in footnote 1 *supra*. At a show cause hearing on April 22, 1991, convened on Cities' motion, the magistrate denied Cities' requests to place the Report under seal (or, alternatively, redact allegedly "confidential" material therefrom), and to prohibit DOE's use of the Report or information contained therein.

[4] Chevron on May 10, 1989, made a Freedom of Information Act request for the Arthur Young documents produced to ERA. The ERA produced those documents to Chevron on September 29, 1989.

[5] The document in question is a draft Cities "talking paper" dated April 22, 1980, a week before Cities filed its declaratory judgment action against DOE in Delaware federal district court. ERA had submitted this document as an exhibit in the OHA proceeding on the *Cities* Proposed Remedial Order.

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throughout the remaining levels of administrative and judicial appeals, and the significance of ERA obtaining Cities documents at issue in the Cities/Chevron private litigation. Although the August 25 Notice indicated that oral presentations would be heard only on the specific issues as to which the August 25 Notice requested additional comment, the speakers at the hearing were permitted to address all aspects of the proposed settlement.

At the conclusion of the hearing, as panel chairman the undersigned announced that the record of the hearing would be held open for an additional two weeks, to permit Chevron and Occidental to confer and determine whether the allegedly withheld Arthur Young document referred to by Chevron at the hearing had or had not been produced to ERA in response to ERA's 1984 subpoena to Arthur Young.

ERA received seven post-hearing submissions, all of which related principally to the documents issue. In one of its three submissions, Chevron acknowledged that the document to which it had referred at the September 27 hearing, namely, a handrwitten paper from the files of Arthur Young & Co., had previously been produced to ERA. For its part, Occidental pointed out that the subject Arthur Young document was not only in DOE's possession but had been submitted by ERA in the Cities Proposed Remedial Order proceeding before OHA.[6]

In a second post-hearing submission, Chevron provided a copy of the transcript of New York Federal District Court Judge Mukasey's October 11, 1989, ruling that certain documents over which Cities claimed privilege are subject to the crime-fraud exception and should be produced to Chevron. (See footnote 3 supra.) States II, the Attorney General of Texas, and Chevron urged ERA to obtain the crime-fraud exception documents and other documents under seal by court order.

III. Final Determination on Proposed Consent Order

As part of the public review process on the proposed Consent Order, ERA has given extensive consideration to the numerous public comments, all of which (except Occidental's) expressed vigorous opposition to one or more of the settlement terms to which ERA preliminarily agreed. ERA is not persuaded that litigation risks, or any single factor, should comprise the exclusive consideration in determining an appropriate level of compromise. Nevertheless, based upon ERA's additional review of financial information and consideration of all the comments, including the public's widespread perception that the settlement terms are unreasonable, ERA concluded that two significant provisions of the proposed Consent Order—the payout term and the principal amount of the settlement—should be renegotiated. Efforts to renegotiate these provisions were ultimately unsuccessful.

Regarding the issues concerning Cities' documents, in the context of its renegotiation efforts and with the Cities/Chevron litigants' agreement and pursuant to court order, ERA sought and obtained access to the crime-fraud exception documents and related materials. The allegations that Cities improperly withheld non-privileged documents requested by DOE (which devolved into a question concerning one Arthur Young document) proved to be unfounded, as noted above.

DOE reviewed the crime-fraud documents and related materials for purposes of a potential settlement. However, DOE and Occidental were unable to agree on the single most important aspect of the settlement, the principal amount. Although it might have been possible to reach agreement on a significantly shorter payout term, the parties' inability to reach accord on a revised principal settlement amount mooted the secondary issue of payout term.[7]

IV. Conclusion

In consideration of all the foregoing, ERA has determined that the public interest is best served by withdrawing the proposed Consent Order, and it is so withdrawn.

Issued in Washington, DC on May 2, 1991.

Chandler L. van Orman,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 91-10909 Filed 5-7-91; 8:45 am]

BILLING CODE 6450-01-M

[6] States II requested ERA to publish a further **Federal Register** notice reporting the filing of the handwritten Arthur Young document submitted for the hearing record by Chevron, stating ERA's "preliminary" response to Chevron's assertions regarding that document, and inviting comment on the document, the Chevron assertions, and the ERA response. ERA submitted the cited Arthur Young document in the OHA proceeding in October 1985. ERA's position concerning that document is set forth in ERA's pleadings in the *Cities* litigation.

[7] ERA conducted a further review of financial information on the Occidental subsidiary sought to be held liable in the *Cities* litigation. While OXY USA Inc.'s financial posture would have made it difficult for the subsidiary to pay the entire proposed settlement amount immediately without substantial impairment of its business operations, eight years appeared to be unnecessary.

Federal Energy Regulatory Commission

[Docket No. RM87-17-000]

Natural Gas Data Collection System; Revised Instructions for Certificate Record Formats

Issued May 1, 1991.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Revised Instructions For Certificate Record Formats.

SUMMARY: The purpose of these revised instructions is to facilitate the automated analysis of the applicant's data. It will also minimize the manual intervention needed to aggregate the data from the various filings within a docket to avoid duplication of data in studies performed on an industry-wide basis. These instructions are revised to assist pipelines in complying with the electronic submission requirement for filing certificate applications, amendments and supplements in accordance with Orders Nos. 493 (53 FR 15,025 (Apr. 27,1988)), 493-A (53 FR 30,027 (Aug. 10, 1988)), and 493-B (53 FR 49,652 (Dec. 9, 1988)).

DATES: These revised instructions are available on May 1, 1991.

FOR FURTHER INFORMATION CONTACT: George D. Dornbusch, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, room 6106B, 825 North Capitol Street, Washington, DC 20426, (202) 208-1161.

SUPPLEMENTARY INFORMATION: The General Instructions for Natural Gas Pipeline Company Certificate Filings that were issued April 16, 1990, (55 FR 15,269, April 23, 1990) are being revised to include the following new instruction:

26. Amendments and Supplements to Original Docket Number.

a. When an amendment or supplement is filed under the original docket number, a complete refiling of structured data in FILE1 is required. This new FILE1 will combine all of the correct data and records from all previous filings made in the docket with any new or modified data pertinent to the instant amendment or supplement.

By way of example: If CP91-XXXX-000 is filed on April 1, 1991 and a response to a staff data request is filed in CP91-XXXX-000 on April 15, 1991, then FILE1 of the data response must contain all correct data from the previous original FILE 1 that are still valid in addition to the new data, if any, embodied in the data response. The same procedure holds true if an amendment is filed.

b. Any new or modified records or data elements in FILE1 must be annotated using the FOOTNOTE ID in FILE1 and FILE 2, the footnote file, and indicate that these particular records are being modified or added in the instant filing. FILE3 will continue to be filed as in the past, that is, it will contain only new information related to the particular amendment or supplement being filed.

c. If the supplemental response or the amendment being filed does not contain any new or modified data in FILE1, then the only information that must be filed in FILE1 is a CA01 record with the first eight fields filled in. These are Schedule ID, Record ID, Sequence Number, Company ID, Company Name, Date Filed, Filing Type, and Docket Number. All other data elements of the CA01 record must be left blank.

d. If an amendment is not to replace a previous original filing or amendment (*e.g.* the original filing or amendment was filed prior to the advent of the requirement that certificate applications be submitted on electronic media (November 1, 1989) or the amendment is an alternative to the previous application or amendment, etc.), it must be so stated in the beginning or introduction of the pleading of the amendment to be filed.

This new instruction is being incorporated into the General Instructions on disc D-1 of the certificates software package currently available through La Dorn Systems Corporation, c/o Federal Energy Regulatory Commission, 941 North Capitol Street, room 3308, Washington, DC 20426. (202) 898-1151.

This notice is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem. Your communications software should be set at full duplex, no parity, eight data bits and one stop bit. To access CIPS at 300, 1200 or 2400 baud dial (202) 208-1397. For access at 9600 baud, dial (202) 208-1781. FERC is using U.S. Robotics HST Dual Standard modems. If you have any problems in obtaining a copy of this notice through CIPS, please call (202) 208-2474. This notice will be available on CIPS for 30 days from the date of issuance.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in the Reference and Information Center (Room 3308) at the Commission's headquarters, 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10860 Filed 5-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1281-011]

Natural Gas Pipeline Company of America; Changes in Tariff

May 1, 1991.

Take notice that on April 26, 1991, Natural Gas Pipeline Company of America (Natural) submitted for filing the below listed tariff sheets to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective on their indicated effective dates:

Substitute Ninety-Seventh Revised Sheet No. 5	12/01/90
Substitute Sixty-Second Revised Sheet No. 5A	12/01/90
Substitute Sixty-Third Revised Sheet No. 5A	01/01/91

Natural states the tariff sheets are submitted in compliance with the Commission's Orders issued January 23, 1991, March 19, 1991, and April 5, 1991, at Docket Nos. CP89-1281-000, *et al.* The tariff sheets effective December 1, 1990, reflect: (1) the elimination of the Gas Inventory Demand Charge (GIDC) from Rate Schedules E-1 and AOR-1, and (2) a revised GIDC for Rate Schedules DMQ-1, G-1, WS-1 and WS-2. Substitute Sixty-Third Revised Sheet No. 5A supersedes the sheet setting out the revised GRI surcharge which became effective January 1, 1991, and reflects the charges set out on Substitute Sixty-Second Revised Sheet No. 5A.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on their indicated effective dates.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service lists at Docket Nos. CP89-1281-000 and TA90-1-28-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons who are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inpsection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10858 Filed 5-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-1910-000]

Southwestern Public Service Company, Complainant Red River Pipeline, Respondent; Complaint

May 1, 1991.

Take notice that on April 24, 1991, Southwestern Public Service Company (SPS), Post Office Box 1261, Amarillo, Texas 79170, filed in Docket No. CP91-1910-000, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) a complaint against Red River Pipeline (Red River), for the violation of section 311 of the Natural Gas Policy Act (NGPA) and its implementing regulations, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

SPS states that it is a fully integrated electric utility company serving areas in Texas, New Mexico, Oklahoma and Kansas. SPS further states that it sells approximately 25 percent of its electricity for resale in interstate commerce and thus is subject to Commission jurisdiction. SPS indicates that Red River is an intrastate natural gas pipeline that offers interruptible transportation pursuant to section 311 of the NGPA.

SPS requests that the Commission find Red River's refusal to provide interruptible transportation services for SPS to its Jones Station electric generating plant to be in violation of NGPA section 311 and the non-discriminatory access provisions of its implementing regulations. SPS claims that Red River's denial of transportation is unlawful because:

(1) Red River possesses the transportation capacity necessary to provide service to SPS;

(2) There are no operational restraints preventing transportation;

(3) In denying service, Red River relied on a condition ("no mid-point taps") that was not included in its

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Statement of Operating Conditions, filed with the Commission pursuant to 18 CFR 284.123;

(4) Red River's no mid-point tap condition cannot be a reasonable basis for denying service in this case since SPS has agreed to pay for all necessary facilities and mid-point taps are prevalent in the industry;

(5) Red River's condition is discriminatory as Red River has provided 311 transportation service to other shippers even when taps needed to be built; and

(6) Based upon information and belief, the no mid-point tap condition was not the real reason for denial of transportation service; such service was denied in order to protect marketing opportunities for two affiliates of Red River and to prevent those affiliates from being subjected to competition.

SPS requests that the Commission find Red River to be in violation of section 311 of the NGPA and that the Commission remedy the situation by (a) Ordering Red River to provide SPS the requested transportation services and to provide for or allow the construction of a tap and any other necessary facilitities or equipment, and (b) assessing a civil penalty against Red River in accordance with NGPA section 504. SPS states that if the Commission determines that, based on the record, there is insufficient information to evaluate the illegality of Red River's actions, SPS requests that the Commission institute a proceeding whereby further information can be elicited.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before May 31, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

SPS states that a copy of the complaint has been served on Red River. Red River's answer to the complaint shall also be due on or before May 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10859 Filed 5-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR91-16-000]

Wintershall Pipeline Corp.; Petition for Rate Approval

May 1, 1991.

Take notice that on April 25, 1991, Wintershall Pipeline Corporation filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 62.26 cents per MMBtu for transportation of natural gas on its Monroe Field system under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Wintershall states that it is an intrastate pipeline in Louisiana within the meaning of section 2(16) of the Natural Gas Policy Act of 1978. Wintershall's previous maximum interruptible transportation rate of 44 cents per MMBtu for section 311(a)(2) service on its Monroe Field system was approved by the Commission January 13, 1989 in Docket Nos. ST86-3342-000 and ST88-4552-000.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before May 21, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10857 Filed 5-7-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3955-2]

Performance Evaluation Reports for Fiscal Year 1990, Section 105 Grants; Missouri, Kansas, Iowa, Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to conduct yearly performance evaluations on the progress of the approved State/EPA Agreements. EPA's regulations (40 CFR 56.7) require that the Agency make available to the public the evaluation reports. EPA has conducted evaluations on the Missouri Department of Natural Resources, Nebraska Department of Environmental Control, Iowa Department of Natural Resources, and Kansas Department of Health and Environment. These evaluations were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act.

EFFECTIVE DATE: May 8, 1991.

ADDRESSES: Copies of the evaluation reports are available for public inspection at the EPA's Region VII Office, Air and Toxics Division, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Carol D. LeValley at (913) 551-7610 (FTS 276-7610).

Dated: April 17, 1991.

William Rice,

Acting Regional Administrator.

[FR Doc. 91-10902 Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00302; FRL-3887-5]

Revised Mutagenicity Test Guideline for Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the revised Mutagenicity Test Guideline. The revised Mutagenicity Test Guideline is being added as Addendum 9 to Subdivision F of the Pesticide Assessment Guidelines, which provides guidance for registrants in the conduct of tests to support registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Agency has made arrangements for these guidelines to be made available through the U.S. Department of Commerce, National Technical Information Service (NTIS).

ADDRESSES: Copies of the revised Mutagenicity Test Guideline may be obtained through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703) 487-4650. Orders may be placed by telephone to the NTIS Order Desk and charged against a deposit account or American Express, VISA, or MasterCard, or sent by mail with check, money order, or deposit account number. For rush orders, telephone 1-800-336-4700. From Virginia, Canada, or Mexico, call (703) 487-4650. The publication number is PB 91-158394.

FURTHER INFORMATION CONTACT: By mail: Kerry L. Dearfield, Health Effects Division (H7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 824D, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557-9780.

SUPPLEMENTARY INFORMATION: Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticides must be tested for a variety of health effects. Specific data requirements are codified in 40 CFR part 158, and guidelines for the fulfillment of the data requirements and for the conduct of studies are made available through the National Technical Information Service (NTIS).

The revised mutagenicity guideline has been reviewed and approved by the FIFRA Scientific Advisory Panel and made available for public comment.

The revised Mutagenicity Test Guideline will significantly improve EPA's ability to identify and characterize potential adverse effects in regards to a potential mutagenicity hazard. The guideline provides appropriate and specific guidance concerning the Office of Pesticide Programs (OPP) approach to mutagenicity testing for the registration of a pesticide.

The OPP approach towards mutagenicity testing and the assessment of such data are consistent with the Agency's Mutagenicity Risk Assessment Guidelines. Availability of the revised Subdivision F Mutagenicity Test Guideline will enhance the ability of pesticide registrants to plan, estimate costs, and design mutagenicity studies that the Agency will likely require.

Dated: April 25, 1991.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-10800 Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-100087; FRL-3889-1]

Science Applications International Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Science Applications International Corp. (SAIC) has been awarded a contract to perform work for the EPA Office of Water Enforcement and Permits, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SAIC consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable SAIC to fulfill the obligations of the contract and this notice serves to notify affected persons.

DATES: SAIC will be given access to this information no sooner than May 13, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-C0-0066, SAIC will provide technical support to EPA's Office of Water Enforcement and Permits, EPA Headquarters and EPA Regional Offices for program implementation and enforcement. SAIC will assist in the development of a program whereby technical, engineering, financial, information management, administrative, statistical, training, analysis, and other needed expertise will be provided through work assignments.

Under a work assignment SAIC will support the Office of Pesticide Programs in efforts to develop and implement a strategy to modify pesticide data bases. SAIC will provide technical support and on-going maintenance. This contract involves no subcontractors.

The Office of Water Enforcement and Permits and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), the contract with SAIC, prohibits use of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SAIC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Water Enforcement and Permits and work assignment manager in the Office of Pesticide Programs. All information supplied to SAIC by EPA for use in connection with this contract will be returned to EPA when SAIC has completed its work.

Dated: April 29, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-10527 Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-100088; FRL-3889-2]

Computer Science Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted

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information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Computer Science Corporation (CSC) has been awarded a contract to perform work for the EPA Office of Compliance Monitoring, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to CSC consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable CSC to fulfill the obligations of the contract and this notice serves to notify affected persons.

DATES: CSC will be given access to this information no sooner than May 13, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-W0-0043, task order 123, CSC will provide technical data handling support for EPA's Office of Compliance Monitoring, Laboratory Data Integrity Assurance Division information system. CSC will assist with data base program modifications, update documentation for report production and other Laboratory Data Integrity Assurance Division information system operations. This contract involves no subcontractors.

The Office of Compliance Monitoring and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), the contract with CSC, prohibits use of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, CSC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Compliance Monitoring. All information supplied to CSC by EPA for use in connection with this contract will be returned to EPA when CSC has completed its work.

Dated: April 26, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-10528, Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-100069; FRL-3989-3]

Syracuse Research Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FFDCA). Syracuse Research Corporation (SRC) has been awarded two contracts to perform work for the EPA Office of Environmental Criteria and Assessment and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SRC consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2). This transfer will enable SRC to fulfill the obligations of the contracts and this notice serves to notify affected persons.

DATES: Syracuse Research Corporation will be given access to this information no sooner than May 13, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-C1-0004, SRC will provide technical support to EPA's Office of Environmental Criteria and Assessment in the evaluation of health environmental effects including aquatic toxicity, and environmental fate studies on the chemicals arsenic and lindane. Other chemicals may be included in SRC's work later in the contract. Readers may contact the person named above in approximately 1 year to learn if chemicals other than arsenic and lindane will be involved in this contract. This contract involves no subcontractors.

The Office of Environmental Criteria and Assessment and the Office of Pesticide Programs have jointly determined that Contract No. 68-C1-0004, involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under these contracts. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2) the contract with SRC, prohibits use of the information for any purpose other than the purpose specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SRC has previously submitted for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. Records of information provide to this contractor will be maintained by the Project Officers for this contract in the EPA Office of Environmental Criteria and Assessment. All information supplied to SRC by EPA for use in connection with this contract will be returned to EPA when SRC has completed its work.

Dated: April 26, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-10529 Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-100068; FRL-3989-4]

Environmental Management Support Inc. and Dynamac Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Environmental Management Support Inc. (EMS) and its subcontractor Dynamac Inc. have been awarded a contract to perform work for the EPA Office of Drinking Water, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to EMS and its subcontractor Dynamac Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable EMS and its subcontractor to fulfill the obligations of the contract and this notice serves to notify affected persons.

DATES: EMS and its subcontractor Dynamac Inc. will be given access to this information no sooner than May 13, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-C0-0006, EMS and its subcontractor Dynamac Inc. will provide technical support to EPA's Office of Drinking Water in the development of detailed and comprehensive data base regarding organic and inorganic chemicals encountered in drinking water. EMS and its subcontractor Dynamac Inc. will assist in the preparation of two types of documents, health effect criteria documents and health advisories for the purposes of: (1) Establishing a core information base concerning the health effects of the chemicals in drinking water, and (2) compiling and evaluating data useful in determining maximum contaminant level goals for the following identified chemicals.

Asulam
Bentazon
Bromacil
Bromoethane
Coumaphos
Cyanazine
Cyromazine
Dacthal
Dalapon
Dicamba
1, 3-Dichloropropene
Diclofop-methyl
Diquat
Endothall
Endrin
Fluazifop-butyl
Fomasafen
Glyphosate
Haloxyfop-methyl
Harmony
Lactofen
Metalaxyl
Metalochlor
Methomyl
Metribuzin
Naphthalene
4-Nitrophenyl
Oxamyl
Picloram
Primisulfuron-methyl
Prometon
Prometryn
Simazine
Thiodicarb
Trifluralin

The Office of Drinking Water and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), the contract with EMS and its subcontractor Dynamac Inc., prohibits use of the information for any purpose other than purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor and subcontractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, EMS and its subcontractor Dynamac Inc. are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Drinking Water. All information supplied to EMS and its subcontractor by EPA for use in connection with this contract will be returned to EPA when EMS and its subcontractor have completed their work.

Dated: April 26, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-10530 Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-100066; FRL-3989-6]

Vigyan Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Vigyan Inc. has been awarded a contract to perform work for the EPA Office of Compliance Monitoring (OCM), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Vigyan Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable Vigyan Inc. to fulfill the obligations of the contract and this notice serves to notify affected persons.

DATES: Vigyan Inc. will be given access to this information no sooner than May 13, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-W9-0065, Delivery Order No. 002, Vigyan Inc. will provide automation support to EPA's Office of Compliance Monitoring by: (1) Developing an electronic document

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sharing system to coordinate compliance referral activities within OCM, (2) enhancing the pesticide document management system to better support laboratory studies, (3) investigating current security environments of the OCM data systems, and (4) assisting in the implementation of a geographic information system application. This contract involves no subcontractors.

The Office of Compliance Monitoring and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Vigyan Inc., prohibits use of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Vigyan Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Compliance Monitoring. All information supplied to Vigyan Inc. by EPA for use in connection with this contract will be returned to EPA when Vigyan Inc. has completed its work.

Dated: April 26, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-10531 Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50726; FRL-3931-1]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of a notification of intent to conduct small-scale field testing of a nonindigenous strain of *Metarrhizium anisopliae* from the Mobay Corporation.

DATES: Written comments must be received on or before May 22, 1991.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2690).

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from the Mobay Corporation of Kansas City, MO. The purpose of the proposed testing is to extend efficacy evaluations of this specific strain of *Metarrhizium anisopliae* to field trials on turf and ornamental potting soils. The field tests are to take place in Connecticut, Florida, Indiana, Kansas, Nebraska, New York, and Ohio for a total of less than 1 acre treated. Following the review of the application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: April 29, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-10899; Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-51782; FRL 3925-2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of 120 such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 91-669, June 11, 1991.

P 91-670, 91-671, 91-672, June 12, 1991.

P 91-673, 91-674, 91-675, 91-676, 91-677, 91-678, 91-679, 91-680, 91-681, 91-682, 91-683, 91-684, June 15, 1991.

P 91-685, 91-686, June 16, 1991.

P 91-687, June 19, 1991.

P 91-688, June 18, 1991.

P 91-689, 91-690, June 19, 1991.

P 91-691, 91-692, 91-694, 91-696, 91-697, June 22, 1991.

P 91-698, June 24, 1991.

P 91-699, 91-700, 91-701, June 22, 1991.

P 91-702, 91-703, 91-704, 91-705, 91-706, 91-707, 91-708, 91-709, 91-710, 91-711, 91-712, 91-713, 91-714, 91-715, 91-716, 91-719, June 23, 1991.

P 91-720, June 26, 1991.

P 91-721, 91-722, 91-723, 91-724, 91-725, 91-726, 91-727, 91-728, June 23, 1991.

P 91-730, 91-731, 91-732, 91-733, 91-734, June 24, 1991.

P 91-735, 91-736, June 25, 1991.

P 91-737, 91-738, 91-740, 91-741, 91-742, June 26, 1991.

P 91-743, 91-744, 91-745, 91-746, 91-747, 91-748, 91-749, 91-750, 91-751, 91-752, 91-753, 91-754, 91-755, 91-756, June 30, 1991.

P 91-757, 91-758, 91-759, July 1, 1991.

P 91-760, 91-761, July 2, 1991.

P 91-762, 91-763, 91-764, 91-765, 91-766, 91-767, July 3, 1991.

P 91-768, July 6, 1991.

P 91-771, 91-772, 91-773, 91-774, 91-775, 91-776, 91-777, July 7, 1991.

P 91-778, July 9, 1991.

P 91-780, 91-781, 91-782, 91-783, 91-784, 91-785, 91-786, 91-787, 91-788, July 10, 1991.

P 91-789, 91-790, 91-791, 91-792, July 13, 1991.

P 91-795, 91-796, 91-797, 91-798, 91-799, July 14, 1991.

Written comments by:

P 91-669, May 12, 1991.

P 91-670, 91-671, 91-672, May 13, 1991.

P 91-673, 91-674, 91-675, 91-676, 91-677, 91-678, 91-679, 91-680, 91-681, 91-682, 91-683, 91-684, May 16, 1991.

P 91-685, 91-686, May 17, 1991.

P 91-687, May 20, 1991.

P 91-688, May 19, 1991.

P 91-689, 91-690, May 20, 1991.

P 91-691, 91-692, 91-694, 91-696, 91-697, May 23, 1991.

P 91-698, May 25, 1991.

P 91-699, 91-700, 91-701, May 23, 1991.

P 91-702, 91-703, 91-704, 91-705, 91-706, 91-707, 91-708, 91-709, 91-710, 91-711, 91-712, 91-713, 91-714, 91-715, 91-716, 91-719, May 24, 1991.

P 91-720, May 27, 1991.

P 91-721, 91-722, 91-723, 91-724, 91-725, 91-726, 91-727, 91-728, May 24, 1991.

P 91-730, 91-731, 91-732, 91-733, 91-734, May 25, 1991.

P 91-735, 91-736, May 26, 1991.

P 91-737, 91-738, 91-740, 91-741, 91-742, May 27, 1991.

P 91-743, 91-744, 91-745, 91-746, 91-747, 91-748, 91-749, 91-750, 91-751, 91-752, 91-753, 91-754, 91-755, 91-756, May 31, 1991.

P 91-757, 91-758, 91-759, June 1, 1991.

P 91-760, 91-761, June 2, 1991.

P 91-762, 91-763, 91-764, 91-765, 91-766, 91-767, June 3, 1991.

P 91-768, June 6, 1991.

P 91-771, 91-772, 91-773, 91-774, 91-775, 91-776, 91-777, June 7, 1991.

P 91-778, June 9, 1991.

P 91-780, 91-781, 91-782, 91-783, 91-784, 91-785, 91-786, 91-787, 91-788, June 10, 1991.

P 91-789, 91-790, 91-791, 91-792, June 13, 1991.

P 91-795, 91-796, 91-797, 91-798, 91-799, June 14, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS-51785)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm L-100, Washington, DC, 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm EB-44, 401 M St., SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 91-669

Manufacturer. Minnesota Mining & Manufacturing (3M).

Chemical. (G) Silicone polymer.

Use/Production. (S) Polymeric low surface energy coating for tape. Prod. range: Confidential.

P 91-670

Manufacturer. Confidential.

Chemical. (G) Fluorinated cotelomer.

Use/Production. (G) Destructive and dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91-671

Manufacturer. Confidential.

Chemical. (G) Fluorinated cotelomer.

Use/Production. (G) Destructive and dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91-672

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Organopolysiloxane.

Use/Import. (S) Ingredient for silicone RTV component. Import range: 120-400 ky/yr.

P 91-673

Manufacturer. Confidential.

Chemical. (G) Polyether polyol.

Use/Production. (G) Polyurethane foam manufacturing. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Static acute toxicity: time LC50 96H > 1,000 mg/l species (rainbow trout). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit). Skin sensitization: positive species (guinea pig).

P 91-674

Importer. Confidential.

Chemical. (G) Rosin ester phenolic modified.

Use/Import. (S) Printing ink. Import range: Confidential.

P 91-675

Manufacturer. Confidential.

Chemical. (G) Modified acrylate/methacrylate polymer.

Use/Production. (G) Component of printing ink with open use. Prod. range: 48,000-400,000 kg/yr.

P 91-676

Manufacturer. Confidential.

Chemical. (G) Polymeric product of reactions of epoxy with organic acids and organic anhydride.

Use/Production. (G) Polymer for coating. Prod. range: Confidential.

P 91-677

Manufacturer. Confidential.

Chemical. (G) Polymeric product of reactions of epoxy with organics and organic anhydrides.

Use/Production. (G) Polymer for coating. Prod. range: Confidential.

P 91-678

Importer. Hoechst Celanese Corporative.

Chemical. (G) Fiber rective monoazo dyestuff.

Use/Import. (G) Polymer for coating. Import range: Confidential.

P 91-679

Manufacturer. Confidential.

Chemical. (G) (Disubstituted hydroxypolycycle) (alkylacetatoxypolycycle) substituted heteropolycycle.

Use/Production. (S) Organic synthesis. Prod. range: 15,000-45,000 kg/yr.

P 91-680

Importer. Bostik, Inc.

Chemical. (G) Polyurethane.

Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 91-681

Importer. Daicolor-Pope, Inc.

Chemical. (G) Polyacrylate ester.

Use/Import. (G) Matting agent for paint. Import range: Confidential.

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P 91-[illegible]

Importer. Daicolor, Inc.
Chemical. (G) Polyacrylate ester.
Use/Import. (S) Matting agent for paints. Import range: 5,000–20,000 kg/yr.

P 91-[illegible]

Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Ingredient in a casting formulation. Prod. range: 300,000–3,000,000 kg/yr.

P 91-[illegible]

Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Ingredient in a casting formulation. Prod. range: 300,000–3,000,000 kg/yr.

P 91-[illegible]

Importer. Confidential.
Chemical. (G) Rosin modified phenolic resin.
Use/Import. (G) Component of printing ink, an open nondispersive use. Import range: Confidential.

P 91-[illegible]

Manufacturer. Confidential.
Chemical. (G) Vinyl heteromonocycle polymer with mixed alkenes.
Use/Production. (S) Visocosity index improver for lubricant oils. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 3 g/kg species (rat). Acute dermal toxicity: LD50 > 5 g/kg species (rabbit). Eye irritation: moderate species (rabbit). Mutagenicity: negative. Skin irritation: moderate species (rabbit). Skin sensitization: negative species (guinea pig).

P 91-[illegible]

Importer. Confidential.
Chemical. (G) Sulfonic acid, alkylaryl, calcium salts, overbased.
Use/Import. (G) Petroleum product additive. Import range: Confidential.

P 91-[illegible]

Manufacturer. Dow Corning Corporation.
Chemical. (G) Dialkoxydialkylsiane.
Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

P 91-[illegible]

Manufacturer. Confidential.
Chemical. (G) Trisubstituted anthracene.
Use/Production. (G) Commercial and industrial use; component of coating solution. Prod. range: 700–2,500 kg/yr.

P 91-[illegible]

Manufacturer. Confidential.
Chemical. (G) Polymer of metacrylate esters, aryl olefin, and unsaturated urethane polymer.
Use/Production. (G) Dispersive coating. Prod. range: 250,000–1,500,000 kg/yr.

P 91-[illegible]

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.
Chemical. (G) Fluoroalkyl silane.
Use/Production. (G) Surface treatment. Prod. range: Confidential.
Toxicity Data. Skin irritation: strong species (rabbit).

P 91-[illegible]

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthalene sulfonic acid salt.
Use/Production. (S) Fiber reactive dye for textile coloration. Prod. range: 2,500–10,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 4056 mg/kg species (rat).

P 91-[illegible]

Importer. Organic Dyestuffs Corporation.
Chemical. (S) 2,7-Napthalene disulfonic acid, 5-((4-chloro-6-((4-((2-((sulfooxy)ethyl)sulfonyl phenyl)amino)-1,3,5-triazin-2-yl)amino)-4-hydroxy-3-(phenylazo)-trisodium salt.
Use/Import. (S) Shading color. Import range: 1,500–2,000 kg/yr.

P 91-[illegible]

Importer. Confidential.
Chemical. (G) *N,N,N,*-tetramethyl(alkyl bis(iminocarbonyl-p-phenylene azo(dihydro-methyl-oxo-substituted heteromonocycle-diyl)alkyl))alkyl)ammonium, mixed organic acid salts.
Use/Import. (S) Liquid dye for dyeing of paper. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit).

P 91-[illegible]

Manufacturer. Confidential.
Chemical. (G) Modified acrylic.
Use/Production. (G) Thermoplastic additive. Prod. range: Confidential.

P 91-[illegible]

Manufacturer. Americn Biltrite, Inc.
Chemical. (G) Urethane acrylate oligomer.
Use/Production. (G) Oligomer for a urethane coating. Prod. range: Confidential.

P 91-[illegible]

Manufacturer. Confidential.
Chemical. (G) Quaternary ammonium compound.
Use/Production. (G) Intermediate for the production of polymers. Prod. range: Confidential

P 91-[illegible]

Manufacturer. Confidential.
Chemical. (G) High solids alkyd resin.
Use/Production. (S) Metal finishes. Prod. range: Confidential.

P 91-701

Importer. Confidential.
Chemical. (G) Reaction product of 1,2-ethanediol and an organic acid.
Use/Import. (S) Acid donor for acid dyestuffs. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91-702

Manufacturer. Confidential.
Chemical. (G) *N*-(Alkylamino dithoic acid) acrylate divinyl benzene copolymer.
Use/Production. (S) Ion exchange resin. Prod. range: Confidential.

P 91-703

Manufacturer. Confidential.
Chemical. (G) *N*-(Sodium alkylamino carboxylate) acrylate divinyl benzene copolymer.
Use/Production. (G) Ion exchange resin. Prod. range: Confidential.

P 91-704

Manufacturer. Confidential.
Chemical. (G) *N*-(Sodium alkylamino carboxylate)acrylamide divinyl benzene copolymer.
Use/Production. (G) Ion exchange resin. Prod. range: Confidential.

P 91-705

Manufacturer. Confidential.
Chemical. (G) *N*-(Alkylamino phosphplic acid) acrylamide divinyl benzene copolymer.
Use/Production. (G) Ion exchange resin. Prod. range: Confidential.

P 91-706

Manufacturer. Confidential.
Chemical. (G) *N*-Alkylamino acrylamide divinyl benzene copolymer.
Use/Production. (G) Ion exchange resin. Prod. range: Confidential.

P 91-707

Manufacturer. Confidential.
Chemical. (G) *N*-(Sodium alkylamine carboxylate) acrylmide divinyl benzene copolymer.
Use/Production. (G) Ion exchange resin. Prod. range: Confidential.

P 91-708

Manufacturer. Confidential

Chemical. (G) *N*-(Alkylamino carboxylic acid) acrylamide divinyl benzene copolymer.
Use/Production. (G) Ion exchange resin. Prod. range: Confidential.

P 91-709

Importer. Degussa Corporation.
Chemical. (S) 3-Thiocyanatopropyltrieththoxysilane thiocyanic acid, 3-(triethoxysilyl)propyl ester.
Use/Import. (G) Reinforming agent. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 1.4 g/kg species (rat). Inhalation toxicity: LC50 > 22.2 g/kg species (rat). Eye irritation: none species (rabit). Static acute toxicity: time LC50 96H10–32 mg/k species (brachydanio rerio). Skin irritation: slight species (rabbit).

P 91-710

Manufacturer. Amoco Chemical Company.
Chemical. (G) Alkyl substituted doaromatic hydrocarbons.
Use/Production. (G) Industrial chemical. Prod. range: Confidential.

P 91-711

Manufacturer. Arizona Chemical Company.
Chemical. (G) Metal salt of fumerated rosin formaldehyde polymer.
Use/Production. (G) Printing ink component. Prod. range: Confidential.

P 91-712

Importer. Akzo Chemicals Inc.
Chemical. (S) Thioperoxydicarbonic diamide, tetrakis(phenyl)-.
Use/Import. (S) Acelerator for sulfur vulcanization. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Inhalation toxicity: LC50 > 5.03 mg/l species (rat). Eye irritation: moderate species (rabbit). Mutagenicity: negative. Skin irritation: negligible species (rabbit).

P 91-713

Manufacturer. Bedoukian Research, Inc.
Chemical. (G) Olefinic alcohol.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 91-714

Manufacturer. Confidential.
Chemical. (G) Acid functional acrylic.
Use/Production. (G) Ingredient in a dispersively used coating. Prod. range: 50,000–200,000 kg/yr.

P 91-715

Manufacturer. Confidential.
Chemical. (G) Acid functional acrylic.
Use/Production. (G) Ingredient in a dispersively used coating. Prod. range: 50,000–200,000 kg/yr.

P 91-716

Manufacturer. Ciba-Geigy Corporation.
Chemical. (S) Acetic acids,(2-hdyroxy-1-(methoxymethyl)ethoxy)-, C10–16-alkyl ethers.
Use/Production. (S) Corrosion inhibitor for synthetic oils. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: none species (Rabbit). Mutagenicity: negative. Static acute toxicity: time LC50 96H2.4 mg/l species (zebra fish). Skin irritation: moderate species (rabbit). Skin sensitization: positive species (guinea pig).

P 91-718

Manufacturer. Mete-General, Inc.
Chemical. (G) Silica-Gel-im mobilized amine-bound nitrogen-contained ligand.
Use/Production. (S) Removal of dissolved heavy metals from wastewater. Prod. range: Confidential.

P 91-720

Manufacturer. Westvaco Corporation.
Chemical. (G) Modified rosin ester amide.
Use/Production. (S) Resin for printing ink. Prod. range: Confidential.

P 91-721

Manufacturer. Westvaco Corporation.
Chemical. (G) Modified rosin ester amide, ammonium salt.
Use/Production. (S) Water based ink resin. Prod. range: Confidential.

P 91-722

Manufacturer. Westvaco Corporation.
Chemical. (G) Modified rosin ester amide, monoethanolamine salt.
Use/Production. (S) Water based ink resin. Prod. range: Confidential.

P 91-723

Manufacturer. Westvaco Corporation.
Chemical. (G) Modified rosin ester amide, morpholine salt.
Use/Production. (S) Water based ink resin. Prod. range: Confidential.

P 91-724

Manufacturer. Westvaco Corporation.
Chemical. (G) Modified rosin ester amide, *N,N*-dimethylethanolamine salt.
Use/Production. (S) Water based ink resin. Prod. range: Confidential.

P 91-725

Manufacturer. Westvaco Corporation.
Chemical. (G) Modified rosin ester amide, 2-amine-2-methyl-propanol salt.
Use/Production. (S) Water based ink resin. Prod. range: Confidential.

P 91-726

Manufacturer. Westvaco Corporation.
Chemical. (G) Modified rosin ester amide, 2-dimethylamino-2-methyl-propanol salt.
Use/Production. (S) Water based ink resin. Prod. range: Confidential.

P 91-727

Manufacturer. Westvaco Corporatio.
Chemical. (G) Modified rosin ester amide, triethylamine salt.
Use/Production. (S) Water based ink resin. Prod. range: Confidential.

P 91-728

Manufacturer. Westvaco Corporation.
Chemical. (G) Modified rosin ester amide, diethylaminoethanol salt.
Use/Production. (S) Water based ink resin. Prod. range: Confidential.

P 91-730

Importer. Ausimont USA, Inc.
Chemical. (G) Polyhydroxy terminated perfluoropolyoxyalkane.
Use/Import. (S) An intermediate for polycondensation polymers. Import range: Confidential.

P 91-731

Importer. Ausimont USA., Inc.
Chemical. (S) Alpha, omega bis(2-hydroxyethyloxy) perfluoropolyoxyalkane.
Use/Import. (S) An intermediate for polycondensation polymers. Import range: Confidential.

P 91-732

Manufacturer. Confidential.
Chemical. (G) Ammonium organophosphonate.
Use/Production. (G) Reaction rinse for improved corrosion protection and paint adhesion. Prod. range: Confidential.

P 91-733

Importer. Confidential.
Chemical. (G) Copolymer of acrylic and methacrylic esters.
Use/Import. (S) A coating additive used in paint formulate. Import range: Confidential.

P 91-734

Importer. Confidential.
Chemical. (G) Copolymer of methacrylic acid modified polyacrylat.
Use/Import. (S) A coating additive used in paint formulate. Import range: Confidential.

P 91-735

Manufacturer. Cook composites and polymers.
Chemical. (G) Medium oil alkyd.

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Use/Production. (S) High solids primer. Prod. range: 36,300–80,800 kg/yr.

P 91-739

Importer. Confidential.
Chemical. (G) Copolymer of alkaenoic acid alkyd ester, substituted acrylonitrile and acrylonitrile, crosslinked.
Use/Import. (G) Polyester additive. Import range: 4,000–12,000 kg/yr.

P 91-737

Manufacturer. Pressure Chemical Company.
Chemical. (S) 1,2-Bis(diphenylphosphino)ethane.
Use/Production. (S) Research chemical. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat).

P 91-738

Manufacturer. Pressure Chemical Company.
Chemical. (S) 1,2-Bis(diphenyl phosphino)ethane.
Use/Production. (S) Research chemical. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat).

P 91-740

Manufacturer. Confidential.
Chemical. (G) Acid functional polyester.
Use/Production. (G) Dispersively applied coating binder. Prod. range: 223,000–670,000 kg/yr.

P 91-741

Manufacturer. Rohm & Haas Company.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Acute dermal toxicity: LD50 > 5.0 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91-742

Manufacturer. Rohm & Haas Company.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Acute dermal toxicity: LD50 > 5.0 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91-743

Importer. Henkel Corporation.
Chemical. (G) Fatty acid ester.
Use/Import. (G) Plastic additive. Import range: Confidential.

P 91-744

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91-745

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91-746

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91-747

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91-748

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91-749

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91-750

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91-751

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91-752

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91-753

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91-754

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91-755

Manufacturer. Confidential.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Protective treatment for nylon fiber. Prod. range: Confidential.

P 91-756

Manufacturer. MTM Americas, Inc./Hardwicks Division.
Chemical. (G) Methacrylalkylbisbenzenesulfonamide.
Use/Production. (S) Plasticizer. Prod. range: Confidential.

P 91-757

Manufacturer. Huls America, Inc.
Chemical. (G) Alkylalkoxysilane.
Use/Production. (G) Catalyst additive. Prod. range: Confidential.

P 91-758

Manufacturer. Confidential.
Chemical. (G) Epoxy adduct.
Use/Production. (G) Intermediate for use in formulation of coating. Prod. range: Confidential.

P 91-759

Manufacturer. Confidential.
Chemical. (G) Functional vinyl acetate polymer.
Use/Production. (G) Wood adhesive for furniture and constructor. Prod. range: Confidential.

P 91-760

Manufacturer. Confidential.
Chemical. (G) Yellow shade naphthol.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 91-761

Manufacturer. Confidential.
Chemical. (G) Reaction product of poly alkyl amines and alkyl substituted phenolic amines.
Use/Production. (G) Epoxy hardener. Prod. range: Confidential.

P 91-762

Importer. Confidential.
Chemical. (S) Linear and branched undecanol.
Use/Import. (G) Surfactant raw material. Import range: Confidential.

P 91-763

Manufacturer. Confidential.

Chemical. (S) Polymer of ethylene oxide, alcohol, potassium hydroxide, and acetic acid.
Use/Production. (S) Surfactant for metal working. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Static acute toxicity: time LC50 96H10-100 mg/l species (zebra fish). Skin irritation: negligible species (rabbit).

P 91-764

Manufacturer. The C.P. Hall Company.
Chemical. (S) Polymer of hexanedioic acid dimethyl ester,; pentanedioic acid dimethyl ester, and 1,6-hexanediol.
Use/Production. (S) Intermediate for urethanes. Prod. range: Confidential.

P 91-765

Manufacturer. Confidential.
Chemical. (G) Polyfulfide polymer.
Use/Production. (G) Component of a formulated agent. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 317 mg/kg species (rat). Acute dermal toxicity: LD50 850 mg/kg species (rabbit). Inhalation toxicity: LC50 316 mg/M3 species (rat).

P 91-766

Importer. Confidential.
Chemical. (G) Polyoxyalkylene polyester urethane block polymer.
Use/Import. (G) Additive, open, nondispersive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 6,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91-767

Importer. Confidential.
Chemical. (G) Copolymer of butylmethacrylate, hydroxyethylmethacrylate ester and a heterocyclic vinyl compound.
Use/Import. (G) Additive, open nondispersive use. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91-768

Importer. MTC America, Inc.
Chemical. (G) Amino resin.
Use/Import. (S) Cross-linking agent for thermosetting coating. Import range: Confidential.

P 91-771

Manufacturer. Confidential.
Chemical. (S) 1,3-bis(disubstituted amino)-2-chloropropane.
Use/Production. (S) Starch modification. Prod. range: Confidential.
Toxicity Data. Static acute toxicity: time EC50 96H83.8 mg/l species (freshwater alga).

P 91-772

Manufacturer. Texaco Chemical Company.
Chemical. (S) 2-Propanamine, 1-methoxy-.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 3 g/kg species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 91-773

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Fatty acids, polymer with polyols and aromatic carboxylic acids.
Use/Production. (S) Industrial coatings. Prod. range: Confidential.

P 91-774

Manufacturer. Olin Corporation.
Chemical. (S) 1,2,4-Triazol-5-one.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91-775

Manufacturer. Olin Corporation.
Chemical. (S) 3-Nitro-1,2,4-triazol-5-one.
Use/Production. (S) Explosive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Skin irritation: slight species (rabbit). Skin sensitization: negative species (guinea pig).

P 91-776

Manufacturer. King Industrial, Inc.
Chemical. (G) Alkyl dicarboxylic acid monoester, strontrium salt.
Use/Production. (S) Lubricant additive. Prod. range: Confidential.
Toxicity Data. Eye irritation: strong species (rabbit). Skin irritation: moderate species (rabbit).

P 91-777

Manufacturer. Confidential.
Chemical. (S) Mixture of 4-methyl-1,4-hexadiene and 5-methyl-1,4-hexadiene.
Use/Production. (S) Common for polyolefin production. Prod. range: Confidential.
Toxicity Data. Mutagenicity: negative.

P 91-778

Manufacturer. Confidential.
Chemical. (G) Yellow shade naphthol.
Use/Production. (G) Open nondispersive use. Prod. range: Confidential.

P 91-780

Manufacturer. Confidential.
Chemical. (G) Glycol modified phthalate ester.
Use/Production. (G) Sunthetic fluid. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: slight species (rabbit).

P 91-781

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.
Chemical. (G) Polyamic acid.
Use/Production. (G) Polymer intermediate. Prod. range: Confidential.

P 91-782

Manufacturer. Confidential.
Chemical. (G) Polyimide.
Use/Production. (G) Mechanical parts. Prod. range: Confidential.

P 91-783

Manufacturer. Confidential.
Chemical. (G) Short oil alkyd resin solution.
Use/Production. (S) Metal primers. Prod. range: Confidential.

P 91-784

Manufacturer. Confidential.
Chemical. (G) Chlorinated diene polymer.
Use/Production. (G) A rubber adhesive. Prod. range: Confidential.

P 91-785

Importer. Shin-Etsu Silicones of America, Inc.
Chemical. (G) Organosiloxane.
Use/Import. (S) Cross-linking agent for silicone rubber compounds or coating. Import range: 200–400 kg/yr.

P 91-786

Importer. Shin-Etsu Silicones of America, Inc.
Chemical. (G) Organosiloxane.
Use/Import. (S) Cross-linking agent for silicone rubber compounds or coating. Import range: 600–900 kg/yr.

P 91-787

Importer. Zeon Chemicals U.S.A., Inc.
Chemical. (G) Acrylonitrile copolymer.
Use/Import. (S) Heat and oil resistant rubber. Import range: 5,000–50,000 kg/yr.

P 91-788

Manufacturer. Zeon Chemicals U.S.A., Inc.

Chemical. (G) Acrylonnitrile copolymer.

Use/Production. (S) Heat and oil resistant rubber. Prod. range: 5,000–50,000 kg/yr.

P 91-789

Manufacturer. Confidential.

Chemical. (G) Silane silicate resin.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 91-790

Manufacturer. Confidential.

Chemical. (G) Quaternized amino polymer.

Use/Production. (G) Stabilizing agent. Prod. range: Confidential.

P 91-791

Manufacturer. Confidential.

Chemical. (G) Modified aliphatic phosphite esters.

Use/Production. (G) Dispersively applied coating. Prod. range: 22,175–66,500 kg/yr.

P 91-792

Manufacturer. Confidential.

Chemical. (G) Polyester urethane acrylate oligomer.

Use/Production. (S) Modifier radiation coating. Prod. range: Confidential.

P 91-793

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Oligomer. Prod. range: 1,000–3,000 kg/yr.

P 91-794

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Oligomer. Prod. range: 1,000–3,000 kg/yr.

P 91-795

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Oligomer. Prod. range: 1,000–3,000 kg/yr.

P 91-796

Manufacturer. Confidential.

Chemical. (G) Polymer of alkaline glycols, benzene dicarboxylic acid capped with trimellitic anhydride.

Use/Production. (G) Degree of containment; open nondispersive use. Prod. range: Confidential.

Dated: May 2, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-10901; Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3954-6]

Revision of the Tennessee National Pollutant Discharge Elimination System (NPDES) Program to Issue General Permits

AGENCY: Environmental Protection Agency.

ACTION: Notice of Approval of the National Pollutant Discharge Elimination System General Permits Program of the State of Tennessee.

SUMMARY: On April 18, 1991, the Regional Administrator for the Environmental Protection Agency (EPA), Region IV approved the State of Tennessee's National Pollutant Discharge Elimination System General Permits Program. This action authorizes the State of Tennessee to issue general permits in lieu of individual NPDES permits. EPA has determined this program modification to be non-substantial for several reasons. First, at the time the state first publicly noticed the proposed modification in 1986, essentially no commenters specifically challenged the State's authority to administer a general permit program. Second, from consistency standpoint, EPA has traditionally viewed general permit program modifications as non-substantial. Finally, given the regulated community's need to know storm water permit application requirements, the finalization of this approval should proceed as expeditiously as possible.

FOR FURTHER INFORMATION CONTACT: Jim Patrick, Acting Chief, Facilities Performance Branch, U.S. EPA, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, 404/347-4793.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provides for the issuance of general permits to regulate discharge of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations or operating conditions, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits.

Tennessee was authorized to administer the NPDES program in December 1977. Their program as previously approved, did not include provisions for the issuance of general permits. There are several categories which could appropriately be regulated by general permits. For those reasons the Tennessee Department of Conservation requested a revision of their NPDES program to provide for issuance of general permits. The categories which have been proposed for coverage under the general permits program include: stormwater discharges from municipal and industrial sites, hydrostatic test water, non-contact cooling water of one million gallons per day or less, filter backwash water discharges from potable water treatment plants, underground storage tank remediation sites, and erosion control landfills.

Each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of Tennessee submitted in support of its request, copies of the relevant statues and regulations and proposed regulations. The State has also submitted a statement by the Attorney General certifying, with appropriate citations to the statues and regulations that the State will have adequate legal authority to administer the general permits program as required by 40 CFR 123.23(c) upon adoption of its proposed regulations. In addition, the State submitted a program description supplementing the original application for the NPDES program authority to administer the general permits program, including the authority to perform each of the activities set forth in 40 CFR 123.44. Based upon Tennessee's program description and upon its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program.

III. Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA must provide Federal Register notice of any action by the Agency approving or modifying a State NPDES program. The following table provides the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's Federal Register notice is to announce the approval of Tennessee's authority to issue general permits.

STATE NPDES PROGRAM STATUS

States	Approved state NPDES permit program	Approved to regulate federal facilities	Approved State pretreatment program	Approved state general permits program
Alabama	10/19/79	10/19/79	10/19/79	—
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75	—	—	03/04/83
Connecticut	09/26/73	01/09/89	08/03/81	—
Delaware	04/01/74	—	—	—
Georgia	06/28/74	12/03/80	03/12/81	—
Hawaii	11/26/74	06/01/79	08/12/83	—
Illinois	10/23/77	09/20/79	—	01/04/84
Indiana	01/01/75	12/09/78	—	04/02/81
Iowa	08/10/78	08/10/78	08/03/81	—
Kansas	06/28/74	08/28/85	—	—
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	—
Michigan	10/17/73	12/09/78	06/07/83	—
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	—
Missouri	10/30/74	06/26/79	08/03/81	12/12/85
Montana	06/10/74	06/23/81	—	04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78	—	—
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	08/13/80	—	—
North Carolina	10/19/75	09/28/84	08/14/82	—
North Dakota	06/13/75	01/22/90	—	01/22/90
Ohio	03/11/74	01/28/83	07/27/83	—
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78	—	—
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	08/26/80	04/09/82	—
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74	—	03/16/82	—
Virgin Islands	06/30/76	—	—	—
Virginia	03/31/75	02/08/82	04/14/89	—
Washington	11/14/73	—	09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/88
Wyoming	01/30/75	05/18/81	—	—
Total	39	34	27	17

Note: Complete State Programs (NPDES, Federal Facilities & Pretreatment): 27.

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State General Permits Program will not have a significant impact on a substantial number small entities. Approval of the Tennessee NPDES State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Tennessee NPDES State General Permits Program merely provides a simplified administrative process.

Dated: April 18, 1991.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 91-10789 Filed 5-7-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

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TRANSACTION GRANTED EARLY TERMINATION BETWEEN: 041591 AND 042691

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Spinnaker Investor Partners, L.P., Fiat S.p.A., Hesston Corporation	91-0792	04/15/91
Corning Incorporated, SciCor Inc, SciCor Inc	91-0766	04/16/91
Capina Mellunie by, William R. Berkley, Deltown Corporation	91-0723	04/17/91
Ragione Inc., Robert O. Naegele, Jr., Rollerblade, Inc.	91-0753	04/17/91
Forvaltnings AB Providentia, Saab-Scania AB, Saab-Scania AB	91-0796	04/17/91
AB Investor, Saab-Scania AB, Saab-Scania AB	91-0797	04/17/91
FPL Group, Inc., The Southern Company, Georgia Power Company's Scherer Unit no. 4	91-0732	04/18/91
The Restaurant Enterprises Group, Inc., Marriott Corporation, Marriott Family Restaurants, Inc.	91-0780	04/18/91
Automatic Data Processing, Inc., Robert F. White, Jr. Robert F. White & Co.	91-0787	04/18/91
Harry Gray, Mel Klein & Partners, L.P., Hanover Energy, Inc., Hanover Energy, Inc.	91-0784	04/19/91
American Financial Corporation, American Financial Corporation, Spelling Entertainment Inc.	91-0805	04/19/91
American Financial Corporation, Aaron Spelling, Spelling Entertainment Inc.	91-0811	04/19/91
First Bank System, Inc., First Interstate Bancorp, First Interstate Bancard Company, NA	91-0779	04/22/91
First Bank System, Inc., Wells Fargo, & Company, Wells Fargo Ag Credit	91-0768	04/24/91
Arida, Inc., The Hunter Company, Inc., The Hunter Company, Inc.	91-0786	04/24/91
JHM Mortgage Securities L.P., Dominion Banksharee Corporation, certain assets of Dominion Banksharee Mortgage Corp.	91-0813	04/25/91
Westdeutsche Landesbank Girozentrale, Security Pacific Corporation, Security Pacific Trade Finance Inc.	91-0773	04/26/91
The Broken Hill Proprietary Company Limited, SupraCote, Inc. Employee Ownership Plan, SupraCote, Inc.	91-0794	04/26/91
FFI Partners, American Stores Company, Alpha Beta Company	91-0803	04/26/91
Northern States Power Company, ASEA AB, Combustion Funding Corporation	91-0816	04/26/91
Northern State Power Company, BBC Brown Boveri Ltd., Combustion Funding Corporation	91-0817	04/26/91
Veba AG, Memec (Memory and Electronic Components) 'PLC, Memec (Memory and Electronic Components) 'PLC	91-0824	04/26/91
Acadia Partners, L.P., Alvey Holdings, Inc., Alvey Holdings, Inc.	91-0827	04/26/91
Klaus J. Jacobs, Asko Deutsche Kaufhaus Aktiengesellschaft, JAA Holdings, S.A.	91-0828	04/26/91
Oswaldo Cisneros, TPI Enterprises, Inc., TPI Enterprises, Inc.	91-0835	04/26/91
ITT Corporation, Security Pacific Corporation, Security Pacific Housing Securities Inc.	91-0840	04/26/91

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-10697 Filed 5-7-91; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Office of Business, Industry and Governmental Affairs; Business Advisory Board; Meeting

Meeting Notice: Notice is hereby given that the General Services Administration (GSA) Business Advisory Board will meet May 30, 1991, from 10 a.m. to 4 p.m. at GSA's Central Office, 18th and F Streets, NW., Room 5141A, Washington, DC. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. app. 2, and the implementing regulation, 41 CFR 101-6.

The purpose of the meeting is to provide a forum for discussion on key business and industry trends, emerging technologies and products, and other issues that may affect GSA's future policy and program formulation. The agenda for this meeting will include discussion on: Metrication; environmental obligations of the Federal government; electronic data interchange; and Workforce 2000.

The meeting will be open to the public.

For further information, contact James M. Davis (202/501-3903) or Mary Ann Webster (202/501-4177) of the Office of Business, Industry and Governmental Affairs, GSA/AL, Washington, DC, 20405.

Dated: April 30, 1991.

Donald C.J. Gray,

Associate Administrator for Business, Industry and Governmental Affairs, GSA.

[FR Doc. 91-10693 Filed 5-7-91; 8:45 am]

BILLING CODE 6820-BP-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be open to the public on Thursday, May 23, from 2 to 5:30 p.m., and on Friday, May 24, from 8 a.m. to 1 p.m.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S. Code, and section 10(d) of the Federal Advisory Committee Act, a meeting closed to the public will be held on May 23, 1991, from 9 a.m. to 12:30 p.m. to review, discuss, and evaluate grant applications. The discussion and review of grant applications could reveal confidential personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

ADDRESSES: The meeting will be at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Judith D. Moore, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 5600 Fishers Lane, room 18A-30, Rockville, Maryland 20857, (301) 443-6942.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research, on matters related to the actions of the Agency to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary. These members are:

Linda H. Aiken, Ph.D.; George A. Beller, M.D.; Mr. Edward C. Bessey; Joseph F. Boyle, M.D.; Linda Burnes-Bolton, Dr.P.H.; Joseph T. Curti, M.D.; Gary L. Filerman, Ph.D.; Juanita W. Fleming, Ph.D.; David Hayes-Bautista, Ph.D.; William S. Kiser, M.D.; Kermit B. Knudsen, M.D.; Norma M. Lang, Ph.D.; Mr. Walter J. McNerney; Lawrence H. Meskin, D.D.S., Ph.D.; Barbara Starfield, M.D.; and Sister M. Eileen Wilhelm.

There also are Federal ex officio Members. These members are:

Administrator, Alcohol, Drug Abuse and Mental Health Administration; Director, National Institutes of Health; Director, Centers for Disease Control; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

On Thursday, May 23, 1991, the closed portion of the meeting will begin with a session to review grant applications from 9 a.m. to 12:30 p.m. The open portion of the meeting, beginning at 2 p.m., will consist of presentations by principal investigators of several Patient Outcome Research Teams on medical effectiveness research programs sponsored by the Agency for Health Care Policy and Research (AHCPR). The meeting will recess at 5:30 p.m.

An open public meeting will recommence on Friday, May 24. The agenda for this day includes a presentation from officials of the Health Care Financing Administration, and updates and presentations from staff of AHCPR. The meeting will adjourn at 1 p.m.

Agenda items are subject to change as priorities dictate.

Dated: May 2, 1991.

J. Jarrett Clinton,

Administrator.

[FR Doc. 91-10928 Filed 5-7-91; 8:45 am]

BILLING CODE 4160-90-M

Centers for Disease Control

[Program Announcement No. 121]

Early Detection and Control of Breast and Cervical Cancer

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year (FY) 1991 for new competing cooperative agreements to initiate comprehensive breast and cervical cancer control programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of the early detection and control of cancer. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized by the Public Health Service Act (PHS Act), title XV, (42 U.S.C. 300k et seq.) established by Public Law 101-354, "Breast and Cervical Cancer Mortality Prevention Act of 1990", section 301(a) (42 U.S.C. 241(a)), and section 317(k)(3) (42 U.S.C. 247b(k)(3)).

Eligible Applicants

Eligible applicants are official state public health agencies excluding Colorado, Minnesota, South Carolina, and West Virginia. For this announcement, the term "state" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau. The official state public health agencies of Colorado, Minnesota, South Carolina, and West Virginia were funded during Fiscal Year 1990 under a similar announcement (Program Announcement Number 032) and are eligible during FY 1991 under Program Announcement 122.

Availability of Funds

Approximately $13,000,000 will be available in FY 1991 for initiating up to five comprehensive breast and cervical cancer screening and follow-up programs. Individual awards are expected to average $3,000,000 with a range from $2,500,000 to $3,500,000. Funding estimates are subject to change. The 12-month budget period is anticipated to begin on or about June 15, 1991. Continuation awards within the 1- to 5-year project period will be made on the basis of satisfactory programmatic progress and the availability of funds. CDC anticipates additional funds will be available in FY 1992 to cover continuation states and award cooperative agreements to approximately 4 additional states.

Requests for direct assistance (i.e., CDC personnel "in lieu of cash") for personnel to assist in organizing and conducting the project described in this announcement are encouraged.

Purpose

The purpose of entering into cooperative agreements with state health agencies is to support their efforts to provide comprehensive breast and cervical cancer control programs. Special attention should be given to ensure the participation of women who are of low income, uninsured, underinsured, minority, Native American and/or served by Health Resources and Services Administration primary care centers and/or Title X Family Planning fund recipients.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting the activities under A. below and CDC will be responsible for conducting activities under B. below.

A. Recipient Activities

The following eight elements are essential and integral components of the state's comprehensive breast and cervical cancer program activities:

1. Screening

The intent of this cooperative agreement is to increase screening among all groups of women in the state, with special efforts to reach those women who are of low income, uninsured, underinsured, minority, Native American and/or served by Health Resources and Services Administration primary care centers and/or title X Family Planning fund recipients. The program should include links with the public, private and voluntary sectors.

a. *Priority for Low Income Women (1504(a), PHS Act).* Cooperative agreements may not be awarded under section 1501 of the PHS Act unless the state involved agrees that low-income women will be given priority in the provision of services and activities pursuant to subsections 1501(a) (1) and (2), PHS Act.

b. *Statewide Provision of Services (1504(c), PHS Act).* Cooperative agreement funds may not be awarded under section 1501, PHS Act, unless the state involved agrees that services and activities under the grant will be made available throughout the state, including availability to members of any Indian tribe or tribal organization (as such terms are defined in section 4 of the Indian Self-Determination and Education Assistance Act).

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CDC may waive the requirement for Statewide Provision of Services if it is determined that compliance by the state with the requirement would result in an inefficient allocation of resources with respect to carrying out the purpose described in section 1501(a), PHS Act.

c. *Relationship To Items and Services Under Other Programs (1504(d), PHS Act).* Cooperative agreement funds will not be expended to make payment for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such items or services:

(1) Under any state compensation program, under an insurance policy, under any Federal or state health benefits program; or

(2) By any entity that provides health services on a prepaid basis.

d. *Limitation on Imposition of Fees for Services (1504(b), PHS Act).* If charges are to be imposed for the provision of services or activities under the cooperative agreement, such charges:

(1) Will be according to guidelines described in the interim final rule (42 CFR 405.534) of the Federal Register, Vol. 55, No. 251, December 31, 1990, pages 53510–53525, inclusive, which implements section 4163 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), which provides limited coverage for screening mammography services;

(2) Will be made according to a schedule of charges that is made available to the public;

(3) Will be adjusted to reflect the income of the woman involved;

(4) State poverty guidelines are to be used in establishing income eligibility requirements; and

(5) Will not be imposed on any woman with an income of less than 100 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

e. *Screening Services Guidelines (1503(a), PHS Act).* For those women who meet the above criteria, screening services can be made available according to the following guidelines:

(1) Only women age 40 or older will be eligible for screening mammography;

(2) Screening will include a physical examination and mammography according to the National Cancer Institute (NCI) guidelines and the American Cancer Society (ACS) guidelines for women age 40 and older;

(3) All women who are, or who have been sexually active, or who have reached the age of 18, should have an annual Pap test and pelvic examination; and

(4) After a woman has had three or more consecutive satisfactory normal annual examinations, the Pap test may be performed less frequently at the discretion of her physician.

f. *Coordination With Other Breast and Cervical Cancer Programs (1504(e), PHS Act).* Cooperative agreement funds may not be awarded unless the state agrees that the services and activities funded through the cooperative agreement shall be coordinated with other Federal, state, and local breast and cervical cancer activities.

2. Follow-Up

Providing follow-up and continuity of care is an essential component of any comprehensive breast and cervical cancer control program. A system must be in place to assure appropriate referrals, tracking, follow-up and treatment for those women who receive screening services through this program and whose screening tests are interpreted as abnormal or suspicious (1501(a)(2), PHS Act). For purposes of follow-up, cooperative agreement funds may be expended for the public health tracking system and for the following services using the same eligibility requirements outlined in section 1, Screening (above):

a. Cervical cancer—repeat Pap smears, colposcopy and colposcopy-directed biopsy; and/or

b. Breast cancer—repeat mammography and diagnostic mammography.

3. Public Education

Public education includes the systematic design and sustained delivery of a combination of methods which will contribute to the early detection and control of breast and cervical cancer. Successful public education programs are those that influence knowledge, attitudes and practices related to breast and cervical cancer screening in target populations. (1501(a)(3), PHS Act)

4. Professional Education

Health care providers play a central role in assuring that women are screened at appropriate intervals, that the screening tests are performed optimally and the women with abnormal test results receive appropriate diagnostic follow-up and treatment. A health care provider education program, which effectively transmits information on the efficacy and appropriate use of screening procedures, must inform providers and demonstrate an influence on practice, including an improved level of test interpretation and diagnostic and therapeutic follow-up for abnormal results. (1501(a)(4), PHS Act)

5. Quality Assurance

Quality assurance is necessary to ensure that screening tests are performed optimally (1501(a)(5), PHS Act). Include a description of the existing quality assurance program or the program that will be developed.

a. *Breast*—(1) *Use of Improved Screening Procedures (1503(b), PHS Act)* Cooperative agreement funds may not be awarded under section 1501 of the PHS Act unless the state involved agrees that, if any screening procedure superior to a procedure described in section 1503(a)(2)(A) of the PHS Act (i.e. physical examination of the breasts and mammography) becomes commonly available and is recommended for use, and entity providing screening procedures pursuant to the grant will utilize the superior procedure rather than the procedure described in such subsection.

(2) *Quality Assurance Regarding Screening for Breast Cancer (1503(c), PHS Act)* Cooperative agreement funds may not be awarded under section 1501 of the PHS Act, unless the state involved agrees that the state will assure the quality of any screening procedure for breast cancer conducted pursuant to such section and, in the case of mammography, will provide that:

(a) The equipment used to perform the mammography will be specifically designed for mammography and will meet appropriate radiologic standards for mammography such as those of the American College of Radiology;

(b) The mammography will be performed by an individual who is licensed by the state to perform radiological procedures or is certified as qualified to perform radiological procedures by the American Registry of Radiologic Technicologists or their equivalent;

(c) The results of the mammography will be interpreted by a physician who is certified as qualified to interpret radiological procedures by the American Board of Radiology or the American Osteopathic Board of Radiology or is certified as qualified to interpret screening mammography procedures by an appropriate program for assuring the qualifications of the individual with respect to such interpretations; and

(d) With respect to the first screening mammography performed on a woman for which payment is made pursuant to section 1501(a), PHS Act, there are satisfactory assurances that the results of the mammography will be placed in permanent medical records maintained with respect to the woman.

b. *Cervix*—(1) *Use of Improved Screening Procedures (1503(b), PHS Act).* Cooperative agreement funds may not be awarded under section 1501 of the PHS Act unless the state involved agrees that, if any screening procedure superior to a procedure described in section 1503(a)(2)(B) of the PHS Act (i.e. pelvic examination and Pap smear) becomes commonly available and is recommended for use, any entity providing screening procedures pursuant to the grant will utilize the superior procedure rather than the procedure described in such subsection.

(2) *Quality Assurance Regarding Screening for Cervical Cancer (1503(d), PHS Act).* Cooperative agreement funds may not be awarded unless the state involved agrees that the state will assure the quality of any screening procedure for cervical cancer conducted pursuant to such section and, in the case of the Pap smear (or other cytological screening procedure replacing the Pap smear pursuant to section 1503(b) of the PHS Act) will provide:

(a) The maximum number of cytology slides that any individual may screen in a 24-hour period;

(b) Requirements that a clinical laboratory maintain a record of the number of cytology slides screened during each 24-hour period by each individual who examines cytology slides for the laboratory and the number of hours devoted during each 24-hour period to screening cytology slides by such individual;

(c) Criteria for requiring rescreening of cytological preparations, such as random rescreening of cytology specimens determined to be in the benign category; focused rescreening of such preparations in high risk groups; and for each abnormal cytological result, rescreening of all prior cytological specimens for the patient, if available;

(d) Periodic confirmation and evaluation of the proficiency of individuals involved in screening or interpreting cytological preparations, including announced and unannounced on-site proficiency testing of such individuals, with such testing to take place, to the extent practicable, under normal working conditions;

(e) Procedures for detecting inadequately prepared slides, for assuring that no cytological diagnosis is rendered on such slides, and for notifying referring physicians of such slides;

(f) Requirements that all cytological screening be done on the premises of an appropriately qualified laboratory;

(g) Requirements for the retention of cytology slides by laboratories for appropriate periods of time; and

(h) Requirements of periodic inspection of cytology services by persons capable of evaluating the quality of cytology services.

Guidelines with Respect to Quality of Mammography and Cytological Services (1503(e), PHS Act). The Department of Health and Human Services (DHHS) will be establishing guidelines for assuring the quality of any mammography and cytological screening procedure conducted pursuant to section 1501(a) of the PHS Act.

Such guidelines with respect to mammography will include the provisions of subsections 1503 (c)(1) through (c)(4) of the PHS Act and such guidelines with respect to cytological screening procedures will include the provisions of subsections 1503 (d)(1) through (d)(8) of the PHS Act.

Cooperative agreement funds may not be awarded under section 1501 of the PHS Act unless the state involved agrees that the state will, with respect to any mammography or cytological screening procedure conducted pursuant to such section, ensure that the procedure is conducted in accordance with guidelines issued by DHHS.

With respect to circumstances in which a state receives a grant under section 1501, PHS Act, before the issuance of the DHHS guidelines, the absence of such guidelines will not affect (1) the obligation of the state pursuant to section 1501(a)(1) to provide for screening procedures and referrals or (2) the obligations under section 1503 (c) and (d) with respect to providing for quality in the screening procedures.

6. Surveillance

Monitoring the distribution and the determinants of breast and cervical cancer incidence and mortality is necessary to evaluate a comprehensive cancer control program (1501(a)(6), PHS Act). To do this, a surveillance system should include:

a. Collection of information on incidence, staging at diagnosis and mortality from breast and cervical cancers;

b. Identification of segments of the population at higher risk for disease and for failure to be screened;

c. Identification of factors contributing to the disease burden, such as behavioral risk factors and limited or inequitable access to early detection and treatment services;

d. Establishment of a surveillance system to monitor the number and characteristics of women screened and outcomes of screenings;

e. Monitoring of screening resources, including the number of mammography facilities, cytology laboratories and provides of cytology screening; and

f. Design and implementation of case studies and other epidemiologic investigations to determine factors associated with avoidable morbidity and mortality.

7. Evaluation

Attention should be given to the design and development of individual components to ensure that there can be meaningful evaluation. The evaluation plan should assess the implementation and effectiveness of intervention components, including:

a. Screening;

b. Follow-up;

c. Public education;

d. Professional education;

e. Quality assurance; and

f. Surveillance.

At a minimum, the evaluation plan should include the following:

a. A description of the evaluation plan and how evaluation results will be used; and

b. A description of methods to assess the implementation of program activities, changes in the program and changes in participant and provider behavior.

8. Breast and Cervical Cancer Control Plan and Coalition

A comprehensive breast and cervical cancer control program should include the following:

a. A state-level cancer control coalition which includes representation from key private, voluntary (e.g., American Cancer Society) and public cancer organizations, the state "Healthy People 2000" coalition (should such a coalition exist in the state), and consumers;

b. Goals and objectives to address breast and cervical cancer control;

c. Proposed strategies to meet those objectives; and

d. Assessment of existing and needed resources to implement the comprehensive breast and cervical cancer control program.

B. CDC Activities

CDC and other recipients financially assisted by CDC will collaborate with the state health agencies in developing the components of their comprehensive breast and cervical cancer control program to include the five following activities:

1. Convene recipients for regular information-sharing and training;

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2. Collaborate in the design and implementation of program activities;

3. Collaborate in the development of surveillance and data systems and in the state's analysis and evaluation of these data systems;

4. Collaborate in the development of public and professional education components; and

5. Collaborate in the development of quality assurance programs for mammography and cervical cytology.

Evaluation Criteria

The initial application will be reviewed and evaluated based upon the following weighted criteria:

1. The level of coordinated support and participation from community and voluntary agencies, professional health care organizations and providers toward integrating program elements into the health care delivery system for the at-risk population; (10 points)

2. The extent to which the applicant describes the breast and cervical cancer program needs of the target population, justifies the focus on these populations and the assurance of appropriate screening, follow-up and treatment services; (10 points)

3. The consistency of the specific and time-related measurable objectives with the stated purposes of the cooperative agreement; (10 points)

4. The qualifications and appropriateness of proposed personnel; (10 points)

5. The quality of the public education plan, including demonstrated ability to develop, implement and evaluate interventions for target populations; (10 points)

6. The quality of the professional education plan, including demonstrated ability to develop, implement and evaluate interventions for target populations; (10 points)

7. The quality of the mammography and cervical cytology quality assurance plan; (10 points)

8. The quality of the surveillance plan, demonstrated ability to analyze data and evidence of the continued existence of data sources; (10 points)

9. The documentation and appropriateness of the proposed or existing cancer plan and the role of the coalition in proposed activities; (10 points)

10. The quality of the applicant's evaluation plan; (10 points) and

11. The extent to which the budget is reasonable and consistent with the intended use of cooperative agreement funds. (Not Weighted)

Use of Cooperative Agreement Funds

A. Cooperative agreement funds shall be used to establish a public health response to prevent unnecessary breast and cervical mortality including:

1. Assuring screening of women for breast and cervical cancer as a preventive health measure;

2. Assuring appropriate referrals for follow-up services for women with abnormal screening tests;

3. Developing and disseminating public education programs for the early detection and control of breast and cervical cancer;

4. Improving the education, training and skills of health professionals (including allied health professionals) in the early detection and control of breast and cervical cancer;

5. Establishing mechanisms through which the states can monitor the quality of breast and cervical cancer screening procedures in the state, including the interpretation of such procedures;

6. Evaluating program activities through appropriate surveillance and monitoring. (1501(a), PHS Act)

B. Initially, and throughout the period of the cooperative agreement, at least 60 percent of the cooperative agreement funds are to be expended for services as described in Items 1 and 2 of this section. These services must be initiated upon receipt of funds. Developmental work for Items 3 through 6 (not more than 40 percent) must also be initiated upon receipt of funding and be fully operational by the end of the second year. (1503(a), PHS Act)

C. The state must ensure that no more than 10 percent of cooperative agreement funds will be expended for annual administrative costs. A state may not use in excess of 10 percent of amounts expended under the cooperative agreement for administrative functions. This 10 percent limitation is in lieu of, and replaces, the indirect cost rate. (1504(f), PHS Act)

D. Cooperative agreement funds shall not be used for treatment or treatment services.

Recipient Financial Participation

This program requires the state to make available non-Federal contributions in cash or in kind toward such cost in an amount equal to not less than $1 for each $3 of Federal funds provided. Such contributions may be made directly or through donations from public or private entities, including the payment for treatment services or the donation of treatment services as a result of state-based breast and cervical cancer control screening efforts. Funds provided or services assisted or subsidized to any significant extent by the Federal Government may not be included in determining the amount of such non-Federal contributions. For purposes of determining the amount of non-Federal contributions, states may include only non-Federal contributions in excess of the average amount of non-Federal contributions made by the state for the 2-year period preceding the first fiscal year for which the state is applying to receive a cooperative agreement for a comprehensive breast and cervical cancer control program. In making a determination of the amount o. non-Federal contributions for purposes of matching fund requirements, applicants may include any non-Federal amounts expended pursuant to Title XIX of the Social Security Act for the purpose of screening and follow-up for women at risk for breast and cervical cancer. (1502, PHS Act)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. This Order sets up a system for state and local review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. The due date for state process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.919.

Other Requirements

Recipients of Cooperauve Agreements must agree to:

(1) Establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the state under such section; and

(2) Upon request, provide records maintained pursuant to paragraph (1) to the Secretary or the Comptroller of the United States for purposes of auditing the expenditures by the state of the grant.

Recipients of Cooperative Agreements must agree to submit the following reports:

(1) Quarterly status reports on project activities, accomplishments and difficulties are to be submitted to CDC within 30 days after the end of each quarter.

(2) Annual financial status reports must be submitted no later than 90 days after the end of each budget period.

(3) Final financial status and program summary reports are required no later than 90 days after the end of the project period.

Projects involving the collection of information from 10 or more individuals and funded by a cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the completed application Form PHS-5161-1 must be submitted to Candice Nowicki, Grants Management Officer, Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Mailstop E14, Atlanta, Georgia 30305 on or before May 17, 1991. Applications will be considered to meet the deadline if they are received at the above address on or before the stated deadline date or if they bear a postmark of May 17, 1991, and are received in time for submission to the independent review group. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.

Applications which do not meet the above criteria will be considered late applications, will not be considered in the current competitive cycle and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, application package and business management technical assistance may be obtained from Gordon R. Clapp, Grants Management Specialist, Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Mailstop E14, Atlanta, Georgia 30305, telephone (404) 842-6508 or FTS 236-6508.

Programmatic technical assistance may be obtained from Duke Bell, Cancer Prevention and Control Branch, Division of Chronic Disease Control and Community Intervention, Mailstop K52, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333. telephone (404) 488-5463 or FTS 236-5463.

Please refer to Program Announcement Number 121 when requesting information and submitting any application in response to this Request for Assistance.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) of Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Dated: May 1, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-10862 Filed 5-7-91; 8:45 am]

BILLING CODE 4160-18-M

[Program Announcement No. 122]

Early Detection and Control of Breast and Cervical Cancer

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year (FY) 1991 for new competing cooperative agreements to initiate comprehensive breast and cervical cancer control programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of the early detection and control of cancer. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized by the Public Health Service Act (PHS Act), title XV, (42 U.S.C. 300k et seq.) established by Public Law 101-354, "Breast and Cervical Cancer Mortality Prevention Act of 1990", section 301(a) (42 U.S.C. 241(a)), and section 317(k)(3) (42 U.S.C. 247b(k)(c)).

Eligible Applicants

Eligible applicants are the official state public health agencies of Colorado, Minnesota, South Carolina, and West Virginia. These states are the only recipients of funds awarded under Program Announcement Number 032 in FY 1990.

This announcement implements provisions of title XV of the PHS Act (42 U.S.C. 300k et. seq.) established by Public Law 101-354, "Breast and Cervical Cancer Mortality Prevention Act of 1990", and replaces Program Announcement 032, published in the **Federal Register**, Vol. 55, No. 93, May 21, 1990, pages 20851-20854, inclusive. During FY 1990, the State health agencies of Colorado, Minnesota, South Carolina, and West Virginia were awarded cooperative agreements under Announcement 032 to develop comprehensive breast and cervical cancer control programs. Title IV sets forth significant new requirements in both the financial participation and recipient activities compared to the previously announced program. This announcement clearly defines the provisions of title XV and enables previously funded states to compete on the basis of experience for "screening and follow-up" components which constitute a second-year requirement for states applying for funds under Program Announcement 122.

Availability of Funds

Approximately $10,000,000 will be available in FY 1991 for initiating up to four comprehensive breast and cervical cancer screening and follow-up programs. Individual awards are expected to average $2,500,000 with a range from $2,000,000 to $3,000,000. Funding estimates are subject to change. The 12-month budget period is anticipated to begin on or about May 31, 1991. Continuation awards within the 5-year project period will be made on the basis of satisfactory programmatic progress and the availability of funds.

Requests for direct assistance (i.e., CDC personnel "in lieu of cash") for personnel to assist in organizing and conducting the project described in this announcement are encouraged.

Purpose

The purpose of entering into cooperative agreements with state health agencies is to support their efforts to provide comprehensive breast and cervical cancer control programs.

Special attention should be given to ensure the participation of women who are of low income, uninsured, underinsured, minority, Native American and/or served by Health Resources and Services Administration primary care centers and/or Title X Family Planning fund recipients.

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Program Requirements

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1. Screening

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a. *Priority for Low Income Women (1504(a), PHS Act)* Cooperative agreements may not be awarded under section 1501 of the PHS Act unless the state involved agrees that low-income women will be given priority in the provision of services and activities pursuant to subsections 1501(a)(1) and (2), PHS Act.

b. *Statewide Provision of Services (1504(c), PHS Act)* Cooperative agreement funds may not be awarded under section 1501, PHS Act, unless the state involved agrees that services and acitivities under the grant will be made available throughout the state, including availability to members of any Indian tribe or tribal organization (as such terms are defined in section 4 of the Indian Self-Determination and Education Assistance Act).

CDC may waive the requirement for Statewide Provision of Services if it is determined that compliance by the state with the requirement would result in an inefficient allocation of resources with respect to carrying out the purpose described in section 1501(a), PHS Act.

c. *Relationship to Items and Services Under Other Programs (1504(d), PHS Act)* Cooperative agreement funds will not be expended to make payment for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such items or services:

(1) Under any state compensation program, under an insurance policy, under any Federal or state health benefits program; or

(2) By any entity that provides health services on a prepaid basis.

(d) *Limitation of Imposition of Fees for Services (1504(b), PHS Act)* If charges are to be imposed for the provision of services or activities under the cooperative agreement, such charges:

(1) Will be according to guidelines described in the interim final rule (42 CFR 405.534) of the Federal Register, Vol. 55, No. 251, December 31, 1990, pages 53510–53525, inclusive, which implements section 4163 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), which provides limited coverage for screening mammography services;

(2) Will be made according to a schedule of charges that is made available to the public;

(3) will be adjusted to reflect the income of the woman involved;

(4) State poverty guidelines are to be used in establishing income eligibility requirements; and

(5) Will not be imposed on any woman with an income of less than 100 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

e. *Screening Services Guidelines (1503(a), PHS Act)* For those women who meet the above criteria, screening services can be made available according to the following guidelines:

(1) Only women age 40 or older will be eligible for screening mammography;

(2) Screening will include a physical examination and mammography according to the National Cancer Institute (NCI) guidelines and the American Cancer Society (ACS) guidelines for women age 40 and older;

(3) All women who are, or who have been sexually active, or who have reached the age of 18, should have an annual Pap test and pelvic examination; and

(4) After a woman has had three or more consecutive satisfactory normal annual examinations, the Pap test may be performed less frequently at the discretion of the physician.

f. *Coordination With Other Breast and Cervical Cancer Programs (1504(e), PHS Act)* Cooperative agreement funds may not be awarded unless the state agrees that the services and activities funded through the cooperative agreement shall be coordinated with other Federal, state, or local breast and cervical cancer activities.

2. Follow-Up

Providing follow-up and continuity of care is an essential component of any comprehensive breast and cervical cancer control program. A system must be in place to assure appropriate referrals, tracking, follow-up and treatment for those women who receive screening services through this program and whose screening tests are interpreted as abnormal or suspicious (1501(a)(2), PHS Act). For purposes of follow-up, cooperative agreement funds may be expended for the public health tracking system and for the following services using the same eligibility requirements outlined in section 1, Screening, (above):

a. Cervical cancer—repeat Pap smears, colposcopy and colposcopy-directed biopsy; and/or

b. Breast cancer—repeat mammography and diagnostic mammography.

3. Public Education

Public education includes the systematic design and sustained delivery of a combination of methods which will contribute to the early detection and control of breast and cervical cancer. Successful public education programs are those that influence knowledge, attitudes and practices related to breast and cervical cancer screening in target populations. (1501(a)(3), PHS Act)

4. Professional Education

Health care providers play a central role in assuring that women are screened at appropriate intervals, that the screening tests are performed optimally and that women with abnormal test results receive appropriate diagnostic follow-up and treatment. A health care provider education program, which effectively transmits information on the efficacy and appropriate use of screening procedures, must inform providers and demonstrate an influence on practice, including an improved level of test interpretation and diagnostic and therapeutic follow-up for abnormal results. (1501(a)(4), PHS Act)

5. Quality Assurance

Quality assurance is necessary to ensure that screening tests are performed optimally (1501(a)(5), PHS Act). Include a description of the existing quality assurance program or the program that will be developed.

a. *Breast*—(1) *Use of Improved Screening Procedures (1503(b), PHS Act).* Cooperative agreement funds may not be awarded under section 1501 of the PHS Act unless the state involved agrees that, if any screening procedure superior to a procedure described in section 1503(a)(2)(A) of the PHS Act (i.e. physical examination of the breasts and mammography) becomes commonly available and is recommended for use, any entity providing screening procedures pursuant to the grant will utilize the superior procedure rather than the procedure described in such subsection.

(2) *Quality Assurance Regarding Screening for Breast Cancer (1503(c), PHS Act).* Cooperative agreement funds may not be awarded under section 1501 of the PHS Act, unless the state involved agrees that the state will assure the quality of any screening procedure for breast cancer conducted pursuant to such section and, in the case of mammography, will provide that:

(a) The equipment used to perform the mammography will be specifically designed for mammography and will meet appropriate radiologic standards for mammography such as those of the American College of Radiology;

(b) The mammography will be performed by an individual who is licensed by the state to perform radiological procedures or is certified as qualified to perform radiological procedures by the American Registry of Radiologic Technicologists or their equivalent;

(c) The results of the mammography will be interpreted by a physician who is certified as qualified to interpret radiological procedures by the American Board of Radiology or the American Osteopathic Board of Radiology or is certified as qualified to interpret screening mammography procedures by an appropriate program for assuring the qualifications of the individual with respect to such interpretations; and

(d) With respect to the first screening mammography performed on a woman for which payment is made pursuant to Section 1501(a), PHS Act, there are satisfactory assurances that the results of the mammography will be placed in permanent medical records maintained with respect to the woman.

b. *Cervix*—(1) *Use of Improved Screening Procedures (1503(b), PHS Act).* Cooperative agreement funds may not be awarded under Section 1501 of the PHS Act unless the state involved agrees that, if any screening procedure superior to a procedure described in section 1503(a)(2)(B) of the PHS Act (i.e. pelvic examination and Pap smear) becomes commonly available and is recommended for use, any entity providing screening procedures pursuant to the grant will utilize the superior procedure rather than the procedure described in such subsection.

(2) *Quality Assurance Regarding Screening For Cervical Cancer (1503(d), PHS Act).* Cooperative agreement funds may not be awarded unless the state involved agrees that the state will assure the quality of any screening procedure for cervical cancer conducted pursuant to such section and, in the case of the Pap smear (or other cytological screening procedure replacing the Pap smear pursuant to section 1503(b) of the PHS Act) will provide:

(a) The maximum number of cytology slides that any individual may screen in a 24-hour period;

(b) Requirements that a clinical laboratory maintain a record of the number of cytology slides screened during each 24-hour period by each individual who examines cytology slides for the laboratory and the number of hours devoted during each 24-hour period to screening cytology slides by such individual;

(c) Criteria for requiring rescreening of cytological preparations, such as random rescreening of cytology specimens determined to be in the benign category; focused rescreening of such preparations in high risk groups; and for each abnormal cytological result, rescreening of all prior cytological specimens for the patient, if available;

(d) Periodic confirmation and evaluation of the proficiency of individuals involved in screening or interpreting cytological preparations, including announced and unannounced on-site proficiency testing of such individuals, with such testing to take place, to the extent practicable, under normal working conditions;

(e) Procedures for detecting inadequately prepared slides, for assuring that no cytological diagnosis is rendered on such slides, and for notifying referring physicians of such slides;

(f) Requirements that all cytological screening be done on the premises of an appropriately qualified laboratory;

(g) Requirements for the retention of cytology slides by laboratories for appropriate periods of time; and

(h) Requirements of periodic inspection of cytology services by persons capable of evaluating the quality of cytology services.

Guidelines With Respect To Quality of Mammography and Cytological Services (1503(e), PHS Act). The Department of Health and Human Services (DHHS) will be establishing guidelines for assuring the quality of any mammography and cytological screening procedure conducted pursuant to section 1501(a) of the PHS Act. Such guidelines with respect to mammography will include the provisions of subsections 1503 (c)(1) through (c)(4) of the PHS Act and such guidelines with respect to cytological screening procedures will include the provisions of subsections 1503 (d)(1) through (d)(8) of the PHS Act.

Cooperative agreement funds may not be awarded under section 1501 of the PHS Act unless the state involved agrees that the state will, with respect to any mammography or cytological screening procedure conducted pursuant to such section, ensure that the procedure is conducted in accordance with guidelines issued by DHHS.

With respect to circumstances in which a state receives a grant under Section 1501, PHS Act, before the issuance of the DHHS guidelines, the absence of such guidelines will not affect (1) the obligation of the state pursuant to Section 1501(a)(1) to provide for screening procedures and referrals or (2) the obligations under section 1503(c) and (d) with respect to providing for quality in the screening procedures.

6. Surveillance

Monitoring the distribution and the determinants of breast and cervical cancer incidence and mortality is necessary to evaluate a comprehensive cancer control program (1501(a)(6), PHS Act). To do this, a surveillance system should include:

a. Collection of information on incidence, staging at diagnosis and mortality from breast and cervical cancers;

b. Identification of segments of the population at higher risk for disease and for failure to be screened;

c. Identification of factors contributing to the disease burden, such as behavioral risk factors and limited or inequitable access to early detection and treatment services;

d. Establishment of a surveillance system to monitor the number and characteristics of women screened and outcomes of screenings;

e. Monitoring of screening resources, including the number of mammography facilities, cytology laboratories and providers of cytology screening; and

f. Design and implementation of case studies and other epidemiologic investigations to determine factors associated with avoidable morbidity and mortality.

7. Evaluation

Attention should be given to the design and development of individual components to ensure that there can be

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meaningful evaluation. The evaluation plan should assess the implementation and effectiveness of intervention components, including:

a. Screening;
b. Follow-up;
c. Public education;
d. Professional education;
e. Quality assurance; and
f. Surveillance.

At a minimum, the evaluation plan should include the following:

a. A description of the evaluation plan and how evaluation results will be used; and

b. A description of methods to assess the implementation of program activities, changes in the program and changes in participant and provider behavior.

8. Breast and Cervical Cancer Control Plan and Coalition. A comprehensive breast and cervical cancer control program should include the following:

a. A state-level cancer control coalition which includes representation from key private, voluntary (e.g., American Cancer Society) and public cancer organizations, the state "Healthy People 2000" coalition (should such a coalition exist in the state), and consumers;

b. Goals and objectives to address breast and cervical cancer control;

c. Proposed strategies to meet those objectives; and

d. Assessment of existing and needed resources to implement the comprehensive breast and cervical cancer control program.

B. CDC Activities

CDC and other recipients financially assisted by CDC will collaborate with the state health agencies in developing the components of their comprehensive breast and cervical cancer control program to include the five following activities:

1. Convene recipients for regular information-sharing and training;
2. Collaborate in the design and implementation of program activities;
3. Collaborate in the development of surveillance and data systems and in the state's analysis and evaluation of these data systems;
4. Collaborate in the development of public and professional education components; and
5. Collaborate in the development of quality assurance programs for mammography and cervical cytology.

Evaluation Criteria

The initial application will be reviewed and evaluated based upon the following weighted criteria:

1. The level of coordinated support and participation from community and voluntary agencies, professional health care organizations and providers toward integrating program elements into the health care delivery system for the at-risk population; (10 points)

2. The extent to which the applicant describes the breast and cervical cancer program needs of the target population, justifies the focus on these populations and the assurance of appropriate screening, follow-up and treatment services; (10 points)

3. The consistency of the specific and time-related measurable objectives with the stated purpose of the cooperative agreement; (10 points)

4. The qualifications and appropriateness of proposed personnel; (10 points)

5. The quality of the public education plan, including demonstrated ability to develop, implement and evaluate interventions for target populations; (10 points)

6. The quality of the professional education plan, including demonstrated ability to develop, implement and evaluate interventions for target populations; (10 points)

7. The quality of the mammography and cervical cytology quality assurance plan; (10 points)

8. The quality of the surveillance plan, demonstrated ability to analyze data and evidence of the continued existence of data sources; (10 points)

9. The documentation and appropriateness of the proposed or existing cancer plan and the role of the coalition in proposed activities; (10 points)

10. The quality of the applicant's evaluation plan; (10 points) and

11. The extent to which the budget is reasonable and consistent with the intended use of cooperative agreement funds. (Not Weighted)

Use of Cooperative Agreement Funds

A. Cooperative agreement funds shall be used to establish a public health response to prevent unnecessary breast and cervical mortality including:

1. Assuring screening of women for breast and cervical cancer as a preventive health measure;

2. Assuring appropriate referrals for follow-up services for women with abnormal screening tests;

3. Developing and disseminating public education programs for the early detection and control of breast and cervical cancer;

4. Improving the education, training and skills of health professionals (including allied health professionals) in the early detection and control of breast and cervical cancer;

5. Establishing mechanisms through which the states can monitor the quality of breast and cervical cancer screening procedures in the state, including the interpretation of such procedures;

6. Evaluating program activities through appropriate surveillance and monitoring.

(1501(a), PHS Act)

B. Initially, and throughout the period of the cooperative agreement, at least 60 percent of the cooperative agreement funds are to be expended for services as described in Items 1 and 2 of this section. These services must be initiated upon receipt of funds. Developmental work for Items 3 through 6 (not more than 40 percent) must also be initiated upon receipt of funding and be fully operational by the end of the second year. (1503(a), PHS Act)

C. The state must ensure that no more than 10 percent of cooperative agreement funds will be expended for annual administrative costs. A state may not use in excess of 10 percent of amounts expended under the cooperative agreement for administrative functions. This 10 percent limitation is in lieu of, and replaces, the indirect cost rate. (1504(f), PHS Act)

D. Cooperative agreement funds shall not be used for treatment or treatment services.

Recipient Financial Participation

This program requires the state to make available non-Federal contributions in cash or in kind toward such cost in an amount equal to not less than $1 for each $3 of Federal funds provided. Such contributions may be made directly or through donations from public or private entities, including the payment for treatment services or the donation of treatment services as a result of state-based breast and cervical cancer control screening efforts. Funds provided or services assisted or subsidized to any significant extent by the Federal Government may not be included in determining the amount of such non-Federal contributions. For purposes of determining the amount of non-Federal contributions, states may include only non-Federal contributions in excess of the average amount of non-Federal contributions made by the state for the 2-year period preceding the first fiscal year for which the state is applying to receive a cooperative agreement for a comprehensive breast and cervical cancer control program. In making a determination of the amount of non-Federal contributions for purposes of matching fund requirements, applicants may include any non-Federal amounts expended pursuant to Title XIX of the Social Security Act for the purpose of screening and follow-up for women at risk for breast and cervical cancer. (1502, PHS Act)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. This Order sets up a system for state and local review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. The due date for state process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.919.

Other Requirements

Recipients of Cooperative Agreements must agree to:

(1) Establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the state under such section; and

(2) Upon request, provide records maintained pursuant to paragraph (1) to the Secretary or the Comptroller of the United States for purposes of auditing the expenditures by the state of the grant.

Recipients of Cooperative Agreements must agree to submit the following reports:

(1) Quarterly status reports on project activities, accomplishments and difficulties are to be submitted to CDC within 30 days after the end of each quarter.

(2) Annual financial status reports must be submitted no later than 90 days after the end of each budget period.

(3) Final financial status and program summary reports are required no later than 90 days after the end of the project period.

Projects involving the collection of information from 10 or more individuals and funded by a cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the completed application Form PHS-5161-1 must be submitted to Candice Nowicki, Grants Management Office, Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Mailstop E14, Atlanta, Georgia 30305 on or before May 17, 1991. Applications will be considered to meet the deadline if they are received at the above address on or before the stated deadline date or if they bear a postmark of May 17, 1991, and are received in time for submission to the independent review group. Applications should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.

Applications which do meet the above criteria will be considered late applications, will not be considered in the current competitive cycle and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures application package and business management technical assistance may be obtained from Gordon R. Clapp, Grants Management Specialist, Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Mailstop E14, Atlanta, Georgia 30305, telephone (404) 842-6508 of FTS 236-6508.

Programmatic technical assistance may be obtained from Duke Bell, Cancer Prevention and Control Branch, Division of Chronic Disease Control and Community Intervention, Mailstop K52, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333, telephone (404) 488-5483 or FTS 236-5483.

Please refer to Program Announcement Number 122 when requesting information and submitting any application in response to this Request for Assistance.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Dated: May 1, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-10863 Filed 5-7-91; 8:45 am]

BILLING CODE 4160-18-M

Biomolecular Markers of Chronic Joint Trauma; NIOSH Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces the following meeting:

Name: Biomolecular Markers of Chronic Joint Trauma.

Time and Date: 9:30 a.m.-2:30 p.m., June 5, 1991.

Place: Robert A. Taft Laboratories, Taft Auditorium, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an open meeting for the review of a research protocol for a study to identify biomarkers of degenerative joint disease. The meeting will include discussions on the applicability of this research to the development of methods for future epidemiology studies of workers at risk for occupationally related chronic joint trauma.

Contact Person for Additional Information: J. Patrick Mastin, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop C-26, Cincinnati, Ohio 45226, telephone 513/533-8399 or FTS 684-8399.

Dated: May 2, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-10869 Filed 5-7-91; 8:45 am]

BILLING CODE 4160-19-M

Control Technology for Small Businesses: Autobody Repair and Painting Shops; NIOSH Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces the following meeting:

Name: Control Technology for Small Businesses: Autobody Repair and Painting Shops.

Time and Date: 9 a.m.-1 p.m., June 6, 1991.

Place: Alice Hamilton Laboratory, Conference Room C, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an open meeting for the review of a NIOSH project entitled "Control Technology for Small Businesses: Autobody Repair and Painting Shops." This project concerns an evaluation of engineering

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controls for air contaminants which are generated during autobody repair.

Contact Person for Additional Information: William A. Heitbrink, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop R-5, Cincinnati, Ohio 45226, telephone 513/841-4376 or FTS 684-4376.

Dated: May 2, 1991.

Elvin Hilyer

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-10870 Filed 5-7-91; 8:45 am]

BILLING CODE 4160-19-M

Immunization Practices Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.

Time and Date: 8:30 a.m.-5 p.m., June 3, 1991, 8:30 a.m.-1 p.m., June 4, 1991.

Place: Auditorium A, Building 2, CDC, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters to be Discussed: The Committee will discuss draft recommendations for statements on DTP, hepatitis, and smallpox/vaccinia; measles; cholera; and meningococcal vaccines and will consider other matters of relevance among the Committee's objectives. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Cheryl Counts, Staff Specialist, CDC (1-B46), 1600 Clifton Road, NE., Mailstop A20, Atlanta, Georgia 30333, telephone 404/639-3851 or FTS 236-3851.

Dated: May 2, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-10866 Filed 5-7-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 88F-0469]

General Electric Co.; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by General Electric Co. to provide for the safe use of polycarbonate resins produced by the condensation of 4,4'-isopropylidenediphenol, carbonyl chloride, terephthaloyl chloride, and isophthaloyl chloride used in contact with food. The previous filing notice is amended to designate the product of condensation of the reactants as a polyestercarbonate rather than a polycarbonate and to propose the establishment of a new food additive regulation.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-473-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 29, 1985 (50 FR 43795), FDA announced that a petition (FAP 5B3898) had been filed by General Electric Co., Pittsfield, MA 01201, proposing that § 177.1580 *Polycarbonate resins* (21 CFR 177.1580) be amended to provide for the safe use of polycarbonate resins produced by the condensation of 4,4'-isopropylidenediphenol, carbonyl chloride, terephthaloyl chloride, and isophthaloyl chloride for use in contact with food. Upon review of the chemistry of the condensation reaction and the properties of the product, a tetramer, it has been concluded that the new copolymer is a polyestercarbonate rather than a polycarbonate. Therefore, it is proposed to establish a new food additive regulation rather than to amend § 177.1580, as was originally proposed in the previous filing notice.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 26, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-10930 Filed 5-7-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0134]

Study of the State and Local Laws Relevant to Food Labeling; Public Meeting; National Academy of Sciences

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Committee on State Food Labeling of the National Academy of Sciences (NAS), Institute of Medicine, Food and Nutrition Board (the committee) will hold a public meeting to solicit information and comments pertaining to current State and local laws and regulations relevant to food labeling. Pursuant to section 6(b) of the Nutrition Labeling and Education Act of 1990 (Pub. L. 101-535) (the 1990 amendments), under contract with FDA, the committee is conducting a study: (1) Of State and local laws that require the labeling of food that is of the type required by sections 403(b), 403(d), 403(f), 403(h), 403(i)(1), and 403(k) of the Federal Food, Drug, and Cosmetic Act (the act), and (2) of those sections of the act and of the regulations issued by the Secretary to enforce those sections, to determine whether the sections and regulations adequately implement the purposes of those sections. The committee is also seeking any available information on the background to the development of the State and local statutes.

In order to consider all relevant information and comments in completing the study, the committee is requesting that all relevant information and comments be submitted before the public meeting announced herein.

DATES: The public meeting will be held on Thursday, May 30, 1991, at 10 a.m. Requests to make oral presentations at the public meeting must be submitted in writing and received by May 15, 1991. Written information and comments should be submitted by May 30, 1991.

ADDRESSES: The meeting will be held at the National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC. Registration for the meeting is free and no pre-registration is required. Attendees are asked to register at the Constitution Ave. entrance (parking will not be available). Written requests, to make oral presentations of information at the public meeting, and written information and comments must be submitted both to Donna V. Porter (**ADDRESSES** below), and to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Two copies of the written information must be submitted to each office.

FOR FURTHER INFORMATION CONTACT: Donna V. Porter, National Academy of Sciences, 2101 Constitution Ave. SW., Washington, DC 20418, (202) 707-7032, or

John Vanderveen, Center for Food Safety and Applied Nutrition (HFF-260), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, (202) 245-1064.

SUPPLEMENTARY INFORMATION: In order to carry out the mandate of section 6(b) of the Nutrition Labeling and Education Act of 1990 (Pub. L. 101-535), the Secretary of Health and Human Services, through FDA, has entered into a contract with NAS under which the committee is conducting a study: (1) Of State and local laws that require the labeling of food that is of the type required by sections 403(b), 403(d), 403(f), 403(h), 403(i)(1), and 403(k) of the act (21 U.S.C. 343(b), 343(d), 343(f), 343(h), 343(i)(1), and 343(k)), and (2) of those sections of the act and of the regulations issued by the Secretary to enforce those sections to determine whether the sections and regulations adequately implement the purposes of the sections. The committee is also seeking any available information on the background to the development of the State and local statutes.

In order to consider all relevant information in completing its study, the committee is announcing a public meeting to be held at NAS on May 30, 1991. The purpose of the public meeting is to discuss any information and comments relevant to the study. The committee is, therefore, requesting that all information to be presented at the public meeting, be submitted in writing (**ADDRESSES** above) by May 15, 1991. The committee is also requesting that all other relevant information and comments be submitted in writing to the same **ADDRESSES** by the date of the public meeting, May 30, 1991. Two copies of each submission must be sent to each of the offices listed above.

The Institute of Medicine was unable to schedule this public meeting before the May 8, 1991 deadline imposed by the 1990 amendments because of unforeseen circumstances. However, both the agency and the Institute of Medicine agreed with suggestions that a public meeting would contribute to the value of the study. Consequently, completion of the study report cannot be accomplished by the May 8, 1991 deadline imposed by the act. This delay is not expected to affect the publication of a proposed list of sections which are adequately being implemented by regulations, as required under section 6(b)(3)(A) of the 1990 amendments by August 8, 1991.

Dated: May 2, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-10673 Filed 5-7-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-970-01-4120-14-241A; ALES 43165]

Request for Public Comment on Fair Market Value, Maximum Economic Recovery and the Environmental Assessment; Coal Lease Application ALES 43165; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to Notice of Public Hearing and Comment Period.

SUMMARY: The Bureau of Land Management inadvertently omitted the following lands in the April 8, 1991 (56 FR 14271) Notice of Public Hearing and Comment Period:

Tuscaloosa County, Alabama

T. 17 S., R. 9 W., Huntsville Meridian,
Sec. 17, E2.

This in no other way affects the contents of the original notice and the acreage remains the same.

Denise P. Meridith,

State Director.

[FR Doc. 91-10910 Filed 5-7-91; 8:45 am]

BILLING CODE 4310-GJ-M

[CA-060-01-5440-10 ZBAF]

Proposed State of California Indemnity Selection Subsequent Low-Level Radioactive Waste Facility, San Bernardino County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final EIS/EIR.

SUMMARY: The Bureau of Land Management and the California Department of Health Services have prepared a joint final EIS/EIR for the proposed State of California indemnity selection for 1,000 acres and issuance of a right-of-way. Upon conveyance to the State of California, the land is proposed as a site for low-level radioactive waste disposal, which will be licensed by the State of California for 30 years. The facility would involve about 90 acres. The proposed facility is located at Ward Valley, about 23 miles west of the City of Needles, San Bernardino County, and would accept contaminated tools, clothing, waste paper and other products of nuclear medicine, power plants, and other generators of low-level radioactive waste from California, Arizona, North Dakota and South Dakota. The facility would be operated by the proposed licensee, U.S. Ecology, Inc. The alternatives assessed in the final EIS/EIR were an alternative site at Silurian Valley and No Action. The final EIS/EIR addresses impacts on wildlife, including the desert tortoise, visual resources, vegetation, Native Americans, cultural resources, hydrology and environmental health and safety.

DATES: Public comment period is open until June 3, 1991. Comments received after that date may not be considered in the Record of Decision.

ADDRESSES: Written comments may be sent to: District Manager, Desert District, Bureau of Land Management, Attn: LLRW, 6221 Box Springs Blvd., Riverside, CA 92507.

Dated: April 29, 1991.

Gerald E. Hillier,

District Manager.

[FR Doc. 91-10925 Filed 5-7-91; 8:45 am]

BILLING CODE 4310-40-M

[UT-020-01-4341-02]

Salt Lake District; District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Salt Lake District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 92-463, that a meeting of the Salt Lake District Advisory Council will be held on June 10, 1991, beginning at 9 a.m. at the Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah.

The agenda will include an update of multiple use of public lands in the Salt Lake District along with discussion regarding wild horse management, expanding Box Elder County elk herds; and a Rich County riparian update. Also the Council will tour Stansbury Island where private landowners have been experiencing property damage by the public that access adjacent BLM lands. The meeting will adjourn at 4:30 p.m.

Anyone whom would like to make a statement to the Council must notify the District Manager, 2370 South 2300 West, Salt Lake City, UT 84119, or (801) 977-4313 before 4:30 p.m. on June 7th, 1991. A time limit will be established per person by the District Manager.

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Dated: April 29, 1991.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 91-10889 Filed 5-7-91; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-020-01-4212-14; AZA-23855]

Arizona; Conveyance of Public Land in Yavapai County

April 9, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given to the conveyance of public land to Charles J. Day.

FOR FURTHER INFORMATION CONTACT: Mary Jo Yoas, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 640-5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713, 1719), Charles J. Day has purchased by competitive sale for $25,102.00 the following described land:

Gila and Salt River Meridian, Arizona

T. 8N., R. 5W.,
Sec. 15 NE¼NE¼NW¼.

The area described contains ten acres in Yavapai County, Arizona.

The purpose of this notice is to inform the public and interested States and local government officials of the transfer of this land out of Federal ownership.

Mary Jo Yoas,

Chief, Branch of Lands Operations.

[FR Doc. 91-10894 Filed 5-7-91; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service

North Carolina Environmental Sciences Review Panel; Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law No. 92-463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A-63, Revised. The North Carolina Environmental Sciences Review Panel will meet from 8:30 a.m. to 5 p.m. on Thursday and Friday, May 23-24, 1991 at the Guest Quarters, 2515 Meridian Parkway, Durham, North Carolina. The agenda will include the following:

Status of Report Sections
Physical Oceanography
Ecology/Normal Operations
Ecology/Offshore Accidental Situations
Ecology/Near and Onshore Accidental Situations
Socioeconomics

The meeting is open to the public. Upon request, interested parties may make oral or written presentations related to the purpose of the Panel. Requests should be made to Dr. Andrew Robertson, Federal Coordinator, 301-443-6933.

Dated: May 3, 1991.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 91-10886 Filed 5-7-91; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-474 and 475 (Final)]

Chrome-Plated Lug Nuts From the People's Republic of China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-474 and 475 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China (China) and Taiwan of chrome-plated lug nuts,[1] provided for in subheading 7318.16.00 of the Harmonized Tariff Schedule of United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202-252-1187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of chrome-plated lug nuts from China and Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigations were requested in petitions filed on November 1, 1990, by Consolidated International Automotive, Inc., Los Angeles, CA.

Participation in the investigations and public service list.—Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and address of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record on June 14, 1991, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on June 27, 1991, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 21, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 25, 1991, at the U.S. International Trade Commission Building. Testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is June 24, 1991. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is July 5, 1991; witness testimony must be filed no later than (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 5, 1991. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with § 201.16(c) and 207.3 of the rules, each document filed by the party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: April 29, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10914 Filed 5-7-91; 8:45 am]

BILLING CODE 7020-02-M

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[1] For purposes of these investigations, chrome-plated lug nuts include one-piece and two-piece chrome-plated lug nuts, finished or unfinished, which are more than 1 11/16 inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least ¾ inches (19.05 millimeters) but not over one inch (25.4 millimeters). The term "unfinished" refers to updated and/or unassembled chrome-plated lug nuts. The subject merchandise is used and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Chrome-plated lock nuts, and lug nuts plated with other substances, are not included in these investigations.

[Investigation No. 731-TA-41 (Final)]

Gray Portland Cement and Cement Clinker From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured [3] by reason of imports from Japan of gray portland cement and cement clinker, provided for in subheadings 2523.10.00, 2523.29.00, and 2523.90.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 15, 1990, following a preliminary determination by the Department of Commerce that imports of gray portland cement and cement clinker from Japan were being sold at LTFV within the meaning of section 733(a) of the act (19 U.S.C. 1673b(a)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 28, 1990 (55 FR 49435). The hearing was held in Washington, DC, on March 21, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 29, 1991. The views of the Commission are contained in USITC Publication 2376 (April 1991), entitled "Gray Portland Cement and Cement Clinker from Japan: Determination of the Commission in Investigation No. 731-TA-461 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: April 30, 1991.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10913 Filed 5-7-91; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Acting Chairman Brunsdale dissenting.

[3] Commissioner Lodwick and Commissioner Newquist determine that a domestic industry is materially injured by reason of the subject imports. Commissioner Rohr determines that a domestic industry is threatened with material injury by reason of the subject imports. Commissioner Rohr further determines, pursuant to section 735(b)(4), that he would have found material injury but for the suspension of liquidation of entries of the subject merchandise.

[Investigation No. 731-TA-483 (Final)]

Certain Personal Word Processors From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations No. 731-TA-483 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of certain personal word processors,[1] provided for in subheadings 8469.10.00 and 8473.10.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-252-1192).

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[1] For a comprehensive description of the merchandise subject to this investigation, see *e.g.*, International Trade Administration, *Preliminary Determination of Sales at Less Than Fair Value: Personal Word Processors from Japan*, (56 FR 16298, Apr. 22, 1991).

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Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain personal word processors from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on November 6, 1990, by Smith Corona Corp., New Canaan, CT.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on June 21, 1991, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on July 10, 1991 at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 20, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 1, 1991, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the International Trade Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is July 3, 1991. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. Witness testimony must be filed no later than three (3) days before the hearing; the deadline for filing posthearing briefs is July 18, 1991. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 18, 1991. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: May 2, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10915 Filed 5-7-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-303]

Certain Polymer Geogrid Products and Processes Therefor; Decision To Lift Suspension and Resume Investigation; Administrative Deadline for Completion of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to lift the suspension of the above-captioned investigation and resume its investigation effective May 6, 1991. The Commission has set an administrative deadline of August 22, 1991, for completion of the investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone 202-252-1104. Hearing-impaired individual's are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: On August 10, 1989, The Tensar Corporation, filed a complaint under section 337 alleging infringement of two U.S. patents exclusively licensed to Tensar covering polymer geogrid products and a process for making them. The Commission instituted an investigation of the complaint and issued a notice of investigation which was published in the Federal Register on September 20, 1989 (54 FR 38752). On July 11, 1990, the Commission determined not to review an initial determination (ID) designating the investigation "more complicated" and extending the statutory deadline for completion of the investigation by six months.

On September 20, 1990, the presiding administrative law judge issued an ID finding no violation of section 337 in the investigation. On October 4, 1990, in response to a joint request by complainant and respondents, the Commission suspended its investigation in order to allow the private parties to borrow exhibits from the Commission's record for use in a jury trial in concurrent district court litigation between the same parties, *Tenax Corp.* v. *The Tensar Corp.* Civil Action No. H-89-424, in the U.S. District Court for the District of Maryland. 55 FR 41394 (October 11, 1990).

On November 23, 1990, the jury trial concluded with a verdict of patent infringement in favor of Tensar. The parties returned the exhibits to the Commission on December 19, 1990. Since several post-trial motions were pending before the district court, the Commission determined, on December 31, 1990, to continue its suspension until the final judgment of the district court. 56 FR 873-874 (Jan. 9, 1991). On April 16, 1991, the district court issued a final judgment in the litigation.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone 202-252-1000.

This action is taken under the authority of section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(1) and Commission interim rule § 210.59 (19 CFR 210.59).

Issued: May 2, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10917 Filed 5-7-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-325]

Certain Static Random Access Memories and Integrated Circuit Devices Containing Same, Processes For Making Same, Components Thereof, and Products Containing Same; Commission Determination not to Review an Initial Determination Amending Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) amending the complaint in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1098.

SUPPLEMENTARY INFORMATION: On March 27, 1991, complainant SGS-Thomson Microelectronics, Inc. filed a motion to amend the complaint in the investigation. The amendment identifies an additional licensee under the patents at issue. On April 2, 1991, the Commission investigative attorneys filed a response indicating no opposition to the motion. Respondents took no position on the motion. On April 5, 1991, the presiding ALJ issued an ID (Order No. 4) amending the complaint. No petitions for review or agency comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C 1337, and Commission interim rule § 210.53(h). 19 CFR 210.53(h).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street SW, Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: May 2, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10918 Filed 5-7-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 392X)]

CSX Transportation, Inc.—Abandonment Exemption—in Kanawha and Fayette Counties, WV

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exemption Abandonments* to abandon its 23.16-mile line of railroad between milepost 0.0, at Paint Creek Junction, and milepost 22.12, at Kingston, including the 1.04-mile Imperial Branch (between milepost 0.0, at Imperial Junction, and the end of the branch line at milepost 1.04), in Kanawha and Fayette Counties, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 7, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by May 20, 1991.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by May 28, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab inito.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 13, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

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Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 1, 1991

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-10794 Filed 5-7-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31861]

Garden City Co-Op, Inc.; Corporate Family Transaction Exemption; Garden City Western Railway Co. and Garden City Northern Railway Co.

The Garden City Co-op, Inc. (Co-Op), a noncarrier, has filed a notice of exemption for a corporate family transaction merging The Garden City Northern Railway Co. (GCN) into the Garden City Western Railway Co. (GCW). The merger is expected to be consummated on September 1, 1991.

Both GCN and GCW are wholly owned subsidairies of Co-Op.[1] GCN operates approximately 30.59 miles of rail line in Finney and Scott Counties, KS. GCW operates a 14.5-mile line of railroad in Finney County, KS. GCN and GCW connect with each other, and individual with The Atchison, Topeka and Santa Fe Railway Company, at Garden City, KS.

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The proposed transaction is intended to effect bookkeeping efficiencies.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary P. March, 5725 S.W. 27th Street, Topeka, KS 66614.

[1] Co-Op's acquisition of GCW was exempted in Finance Docket No. 30091, and its acquisition of GCN and control of both GCW and GCN was exempted in Finance Dockst Nos. 31502 and 31503 respectively.

Decided: May 2, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-10920 Filed 5-7-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31867]

Joppa and Eastern Railroad Co.; Trackage Rights Exemption; Missouri Pacific Railroad Co.

Missouri Pacific Railroad Company has agreed to grant local trackage rights to Joppa and Eastern Railroad Company (J&E) over its approximately 2.5-mile line between milepost 359.5 and the end of the line at approximately milepost 362.0, north of Joppa, in Massac County, IL.[1] The trackage rights were to become effective on or after April 29, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Beverly S. Greer, 1416 Dodge Street, Room 830, Omaha, NE 68179; and John R. Molm, Troutman, Sanders, Lockerman and Ashmore, 1400 Candler Building, 127 Peachtree Street, NE., Atlanta, GA 30303-1810.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 2, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-10921 Filed 5-7-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal Committee on Apprenticeship; Reestablishment

Notice is hereby given that after consultation with the General Services Administration, it has been determined that the Federal Committee on Apprenticeship (FCA) whose charter expired December 2, 1990, is hereby reestablished for a period of two years. This action is necessary and in the public interest.

[1] The trackage rights agreement is an interim arrangement that would allow J&E to provide service over the line pending Commission approval of its lease of the line in Finance Docket No. 31856.

The Committee will be an effective instrument for providing assistance through advice and counsel to the Secretary of Labor and the Assistant Secretary of Labor for Employment and Training in their development and implementation of administration policies addressing a review of the apprenticeship training concept to determine its proper and most effective role in meeting future skilled training needs.

The apprenticeship program, in this country, is a highly structured program with applications primarily in the manufacturing and building trades. It is a long-term training program designed to produce multi-skilled, journey level workers.

The Department plans to preserve traditional apprenticeship, but will make improvements to the program and the way the apprenticeship system operates to ensure that it meets the needs of the industries it serves. The FCA will be primarily responsible for advising the Department on how best to proceed with its plans for strengthening the current apprenticeship system.

The Committee will consist of 26 individuals: Eight representatives of employers, eight representatives of labor, and ten representatives of the public.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the reestablishment of the Federal Committee on Apprenticeship. Such comments should be addressed to: Mr. Minor R. Miller, Executive Director, Federal Committee on Apprenticeship, Office of Work-Based Learning, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., room N-4649, Washington, DC 20210.

Signed at Washington, DC, this 3rd day of May 1991.

Lynn Martin,

Secretary of Labor.

[FR Doc. 91-10896 Filed 5-7-91; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program: Extended Benefits; New Extended Benefit Period in the State and West Virginia

This notice announces the beginning of a new Extended Benefit Period in the State of West Virginia, effective on April 14, 1991, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an entended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the 13-week period ending on March 30, 1991, equals or exceeds 5 percent and is 20 percent higher than the corresponding 13 week period in the prior two years, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on April 14, 1991. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(c)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(c)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC on May 1, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-10895 Filed 5-7-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-39]

Establishment of the Earth Observing System (EOS); Engineering Review Advisory Committee

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Establishment.

SUMMARY: Pursuant to sections 9 (a) and (c) of the Federal Advisory Committee Act, Public Law 92-463, and after consultation with the Committee Management Secretariat, General Services Administration, the National Aeronautics and Space Administration (NASA) has determined that establishment of the Earth Observing System (EOS) Engineering Review Advisory Committee is in the public interest in connection with the performance of duties imposed upon NASA by law.

ADDRESSES: National Aeronautics and Space Administration, Code SPS, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Mark A. Pine, Code SPS, National Aeronautics and Space Administration, Washington, DC 20546 (202) 453-1890.

SUPPLEMENTARY INFORMATION: The Administrator of the National Aeronautics and Space Administration (NASA), in consultation with the Office of Management and Budget, the National Space Council, and the Office of Science and Technology Policy, has determined that it is appropriate for NASA to establish the Earth Observing System (EOS) Engineering Review Advisory Committee to provide guidance on the implementation of the Earth Observing System (EOS) Program. The Committee will advise the NASA Administrator on possible alternatives for the implementation of the EOS Program, including the size of spacecraft, instrument configuration, and launch requirements and sequencing. The Committee is chaired by Dr. Edward Frieman and is composed of 8 members, selected from a cross section of qualified individuals with an extensive knowledge of global change science and/or the execution of spacecraft hardware and remote sensing instruments.

Dated: May 6, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-11004 Filed 5-7-91; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Combustion Engineering, Inc., Receipt of Application for Construction Permit and Facility Operating License

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application from Combustion Engineering, Inc. dated March 30, 1989, as supplemented August 21, 1989, April 26, July 12, October 29, 1990 and March 4, 1991, filed pursuant to section 103 of the Atomic Energy Act, as amended, for the design certification pursuant to 10 CFR part 52 of the System 80+ Standardized Nuclear Power Plant. A notice relating to the rulemaking pursuant to 10 CFR 52.51 for design certification including provisions for participation of the public and other parties will be published in the future.

A copy of the application is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2110 L Street,

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NW., Washington, DC. Previous correspondence on this application is filed under project number 675 and docket number 50-470. The new docket established for this application is 52-002.

Dated: at Rockville, Maryland this 1st day of May 1991.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director Standardization Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91-10885 Filed 5-7-91; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Advance notice of revisions to an existing system of records.

SUMMARY: The purpose of this document is to publish, as required by 5 U.S.C. 552a(e)(11), advance notice of modifications to Privacy Act system of records USPS 120.140, Personnel Records—Employee Assistance Program (EAP) Records. This document proposes to expand the population of the individuals and to modify the types of records covered by the system by limiting the records in this system to only those records collected and maintained as a result of program participation. After a review of the types of records maintained in this system, it was determined that records collected and maintained as a result of filling an EAP counselor position are maintained in Privacy Act systems of records 120.151 on non postal applicants and 120.180 on postal applicants. Also, other minor related corrections and revisions have been made to system 120.140.

EFFECTIVE DATE: The proposed notice will be effective without further notice on June 7, 1991, unless comments are received which would result in a contrary determination.

ADDRESSES: Comments may be mailed to:

Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington DC 20260-5010

or delivered to Room 8141 at the above address between 8:15 a.m., and 4:45 p.m. Comments received may also be inspected during the above hours in Room 8141.

FOR FURTHER INFORMATION CONTACT: Rubenia Carter, Records Office, (202) 268-4872.

SUPPLEMENTARY INFORMATION: The Employee Assistance Program is expanding its services to offer referral information to immediate family members of employees. A family member's alcohol and/or drug abuse problems often impact negatively on an employee's job performance and personal life. Referral of the family member to a community resource is a means of helping the affected employee. Other than certain demographic data, only information concerning the referral is maintained. The Postal Service does not receive progress or other information about the referral. Demographic data is also maintained about employee program participants. This data is collected for purposes of managing the program and is used to provide statistical reports without personal identifiers.

As provided by 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views or arguments on this proposal. Prior to publication of this proposal, a report describing the proposed changes has been filed with Congress and the Office of Management and Budget for their evaluation. A waiver of the 60-day advance period, pursuant to OMB Circular A-130, has been requested. If the waiver is granted, and unless comments suggest the need for revisions, it is expected that the system changes will become effective as proposed following the expiration of the 30-day comment period.

The most recent description of USPS 120.140 appears at 54 FR 43652, dated October 26, 1989. That description is modified as shown in italics below:

USPS 120.140

SYSTEM NAME:

Personnel Records—Employee Assistance Program (EAP) Records, 120.140.

SYSTEM LOCATION:

EAP Offices, *Headquarters, the Minneapolis Postal Data Center and certain contractor sites.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS employees *and immediate family members* who volunteer for or are referred to the Program which is established primarily to help postal employees in their efforts to recover from alcohol, drug abuse *and other problems which may adversely impact their personal lives, job behavior or performance.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of employee *participant,* personal information needed to assist in a program of recovery, information about referral, *problem,* progress and participation (number of counselling contacts and leave usage while a Program participant), *name of referred family member and name of community resource where referred. Demographic data collected on records subjects for statistical reporting includes marital status, ethnic group, gender, and age group.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.

PURPOSE(S):

To provide counselors with information needed to *maintain program operations* and counsel individuals under the Program. Also, used as a management data source for statistical reporting on the Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, magnetic tape/disk and computer printouts.

RETRIEVABILITY:

Name, *Social Security Number* or case number of participants.

SAFEGUARDS:

These restricted files are maintained in *locked* file cabinets with access limited to EAP personnel and in secured facilities. Automated records are protected through computer password security and encoding of personal identifiers.

RETENTION AND DISPOSAL:

a. Historical Case Record Cards—Destroy 25 years from the close of case to which card corresponds.

b. Case Files—(1) Deceased persons—*Destroy 1 year from date of cutoff;* (2) *Persons successfully completing the Program* and persons dropped from the Program for reasons of termination, retirement, withdrawal *or transfer*—Destroy *3* years from date of cutoff; (3) *Family member—Destroy 1 year from date of interview.*

Do not transfer to a federal records center.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters USPS, APMG, Employee Relations Department, 475 L'Enfant Plaza SW., Washington DC 20260-4200.

NOTIFICATION PROCEDURE:

Participants in the Program should address inquiries to the head of the facility where participating. Inquiries should contain full name, *Social Security Number,* and location of employment, *if applicable.* Headquarters employees should submit request to the System Manager.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

The participating employee, *family member referee,* EAP counselor and the referring source.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-10927 Filed 5-7-91; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: Systems of Records; Claimants Under Federal Tort Claims Act and Data Automation Program Records and Employees' Compensation Records

The Department of Transportation herewith publishes a notice relating to the proposed amendment of three systems of records maintained in connection with Claimants Under Federal Tort Claims Act, Data Automation Program records, and Employees' Compensation Records. Emergency Operating Records (Vital Records), DOT/SLS 155, is deleted from the Corporation's Systems of Records since it no longer exists.

Any person or agency may submit written comments on the proposed amendment of the systems to Edward Margosian, SLSDC Privacy Act Coordinator, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662-0520. Comments to be considered must be received by May 29, 1991.

If no comments are received, the proposed changes will become effective on the above-mentioned date. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, DC, April 19, 1991.

Paul T. Weiss,

Deputy Assistant Secretary for Administration.

DOT/SLS 151

SYSTEM NAME:

Claimants Under Federal Tort Claims Act.

SYSTEM LOCATION:

Office of the Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., room 5424, Washington, DC 20590

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals presenting claims for damages to personal property, or personal injuries, or death resulting in connection with Corporation activities, other than claims by Federal Government employees under the Federal Employees' Compensation Act (5 U.S.C. 8102).

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim documents on which are recorded name, address, age and marital status of claimants and details of claims, documented evidence relevant to the claims provided by claimants, and relevant, internal Corporation investigation documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. section 301, 44 U.S.C. section 3101, and 33 U.S.C. 984(a)(4).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The following routine uses apply:

- Used by Chief Counsel and others to determine allowability of claims.
- Used as reference material.
- See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Records are kept in locked file cabinets and are accessible only to the Chief Counsel and his secretary and persons specifically authorized by either.

RETENTION AND DISPOSAL:

Records are retained indefinitely since they are not extensive and are used for reference.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, NW., Room 5424, Washington, DC 20590

NOTIFICATION PROCEDURE:

An individual may inquire, in writing, to the system manager.

RECORD ACCESS PROCEDURES:

An individual may gain access to his/her records by written request to: Chief Counsel, Saint Lawrence Seaway Development Corporation, P.O. Box 44090, Washington, DC 20026-4090

CONTESTING RECORD PROCEDURES:

Contest of these records will be directed to the following: Director, Finance and Administration, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662-0520

RECORD SOURCE CATEGORIES:

Information is obtained directly from claimants on Standard Form 95 and supporting documentation provided by claimants and relevant, internal Corporation investigation documents

DOT/SLS 152

SYSTEM NAME:

Data Automation Program Records.

SYSTEM LOCATION:

Office of Finance and Administration, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662-0520

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and leave records, work measurement records, and travel vouchers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. section 301, 44 U.S.C. section 3101, and 33 U.S.C. 984(a)(4).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following routine uses apply:

- Payroll and voucher disbursement: GAO audits.
- See Prefatory Statement of General Routine Uses.

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DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to "consumer reporting agencies" (collecting on behalf of the U.S. Government) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape reels, diskettes, microfilm cassettes and supporting documents.

RETRIEVABILITY:

Records are retrievable by social security number and name.

SAFEGUARDS:

Records are kept in locked file cabinets or locked rooms accessible to appropriate supervisor, his/her immediate assistants and secretary.

RETENTION AND DISPOSAL:

Records are retained in accordance with GAO and GSA schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Finance and Administration, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662-0520

NOTIFICATION PROCEDURE:

The individual may inquire, in writing, to the system manager.

RECORD ACCESS PROCEDURE:

An individual may gain access to his/her records by written request to the system manager.

CONTESTING RECORD PROCEDURES:

Contest of these records will be directed to the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from employees, personnel records, and consultants.

DOT/SLS 153

SYSTEM NAME:

Employees' Compensation Records

SYSTEM LOCATION:

Office of Human Resources, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662-0520

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim forms on which are recorded employees' personal statistics and medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. section 301, 44 U.S.C. section 3101, and 33 U.S.C. 984(a)(4).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The following routine uses apply:

- For determining allowability of claims.
- Used as reference material.
- See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and microfilm cassettes.

RETRIEVABILITY:

Records are retrievable by name.

SAFEGUARDS:

Records are kept in locked file cabinets and are accessible to cognizant Personnel Officers.

RETENTION AND DISPOSAL:

Retained indefinitely for possible future use.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Officer, Office of Human Resources, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662-0520.

NOTIFICATION PROCEDURE:

The individual may inquire, in writing, to the system manager.

RECORD ACCESS PROCEDURES:

An individual may gain access to his/her records by written request to the system manager.

CONTESTING RECORD PROCEDURES:

Contest of these procedures will be directed to the following: Director, Finance and Administration, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662-0520.

RECORD SOURCE CATEGORIES:

Injured employees, witnesses, supervisors, hospitals, and physicians.

DOT/SLS 155

SYSTEM NAME:

Emergency Operating Records (Vital Records).

The system is deleted.

Appendix I—Saint Lawrence Seaway Development Corporation

1. *Introduction.* This appendix, with respect to the Saint Lawrence Seaway Development Corporation:

a. Describes the places and times at which records are available for inspection and copying;

b. Indicates the systems of records maintained;

c. Identifies the officials having authority to deny requests for access to records;

d. Describes the procedures to be followed in requesting correction of a record; and

e. Describes identification requirements which may be in addition to those delineated in § 10.35 of these regulations.

2. *Availability for Inspection and Copying:*

a. Place and time for records inspection and copying—Claimants Under Federal Tort Claims Act: Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Room 5424, Washington, DC 20590 (9:00 a.m. to 4:00 p.m.). Data Automation Program Records and Employees' Compensation Records: Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662-0520 (9:00 a.m. to 4:00 p.m.).

b. Systems of records located at each facility—Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Room 5424, Washington, DC. 20590: Claimants Under Federal Tort Claims Act. Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662-0520: Data Automation Program Records and Employees' Compensation Records.

c. Official having authority to deny requests for disclosure of records under this part: Associate Administrator, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662-0520.

3. *Systems of Records.* A complete listing of the systems of records maintained by the Saint Lawrence Seaway Development Corporation was published in the Federal Register, Privacy Act Issuances, 1989 Compilation, Volume II, pages 605-607.

4. *Access to Records.* Each individual desiring to determine whether a record pertaining to him or her is contained in a system of records or to obtain a copy of such record, shall make a request in writing to the address provided in Section 2 of this appendix. Each request shall specify the name of the requesting individual and the system of records in which the subject record is located or thought to be located.

5. *Requests to Correct or Alter a Record:*

a. Any person who desires to have his or her own record corrected shall submit a written request.

b. Only the individual to whom the record pertains may make the written request and it shall be signed by that person.

c. Request should state the reasons that the record should be corrected and that the request is made pursuant to the Privacy Act; alternatively the requester may mark "Privacy Act Amendment Request" on the envelope in which the request is submitted.

d. Requests for correction of records shall be submitted to the Personnel Officer, Office of Human Resources, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662-0520.

6. *Personal Identification Requirements.* Refer to § 10.35 for normal requirements. In those cases involving mail requests for sensitive records, e.g., medical records, the requester's signature shall be notarized.

Narrative Statement for the Department of Transportation, Saint Lawrence Seaway Development Corporation

EXPLANATION OF CHANGE:

The Department of Transportation, on behalf of the Saint Lawrence Seaway Development Corporation, proposes to amend three existing systems of records: Claimants Under Federal Tort Claims Act, DOT/SLS 151; Data Automation Program Records, DOT/SLS 152; and Employees' Compensation Records, DOT/SLS 153. DOT also proposes to delete Emergency Operating Records (Vital Records), DOT/SLS 155, since the system no longer exists.

PURPOSE OF SYSTEM:

DOT/SLS 151 contains statements regarding claims against the Corporation. This information is maintained in connection with Claimants Under the Federal Tort Claims Act. DOT/SLS 152 contains payroll and leave records, work measurement records, travel vouchers, and claim forms. DOT/SLS 153 contains information on employees' personal statistics and medical records. The purpose of this notice is to amend the three systems by changing the system location for DOT/SLS 151 from Massena, New York to Washington, DC, expanding descriptive information about DOT/SLS 151, and making minor changes to the title of system manager, street address, etc., in the two remaining systems of records. Minor changes are also being made to appendix I to incorporate those changes.

AUTHORITY UNDER WHICH THE SYSTEM IS MAINTAINED:

The authority to maintain these three systems of records is contained in 5 U.S.C. section 301, 44 U.S.C. section 3101, and 33 U.S.C. 984(a)(4).

EFFECT ON INDIVIDUAL RIGHTS:

Most of the information in the system is either provided voluntarily by individuals employed at the Saint Lawrence Seaway Development Corporation or by people who are involved in tort actions. The information will be used in accordance with the stated routine uses and will not unduly impact on individual privacy rights.

RELATIONSHIP TO GOVERNMENT AGENCIES:

The information in these systems will be provided to appropriate Federal, State, local or foreign governments in accordance with the stated routine uses and Prefatory Statement of General Routine Uses.

SECURITY:

All records are maintained in a secured work area limited to those persons whose duties require access. Computer processing of information requires operation numbers and individual passwords. A description of the steps taken to safeguard these records is given under the appropriate heading in each system notice.

COMPATIBILITY OF ROUTINE USES WITH THE PURPOSES FOR WHICH THE RECORDS WERE COLLECTED:

The routine uses are compatible with the purposes for which the information was collected.

OMB CONTROL NUMBER:

OMB 80-R111, Claim for Damages, Injury, or Death (Standard Form 95), applies to DOT/SLS 151.

[FR Doc. 91-10850 Filed 5-7-91; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

April 30, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0351.
Form Number: 3975.
Type of Review: Revision.
Title: Tax Practitioner Annual Mailing List Application and Order Blank.
Description: Form 3975 allows a practitioner a systematic way to remain on the mailing file (TPMF) and to order copies of tax forms materials.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 415,000.
Estimated Burden Hours Per Response: 3 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 16,325 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 91-10842 Filed 5-7-91; 8:45 am]

BILLING CODE 4830-01-M

[No. 15-12]

Delegation of Authority to the Director, Bureau of Alcohol, Tobacco and Firearms to Investigate Violations of 18 U.S.C. 1956 and 1957; Directive

May 1, 1991.

1. *Purpose.* This directive delegates to the Director, Bureau of Alcohol, Tobacco and Firearms (ATF) authority to investigate violations of 18 U.S.C. 1956 and 1957.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. 981, 1956(e) and 1957(e) and the authority delegated to the Assistant Secretary (Enforcement) by Treasury Order 101-05, there is hereby delegated to the Director, ATF:

a. Investigatory authority over violations of 18 U.S.C. 1956 or 1957 involving 18 U.S.C. 2341-2346 (trafficking in contraband cigarettes); Section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (relating to the importation of items on the U.S. Munitions Import List, except violations relating to exportation, intransit, temporary import, or temporary export transactions); and 18 U.S.C. 1952 (relating to travelling in interstate commerce, with respect to liquor on which Federal excise tax has not been paid); or any act or activity constituting an offense listed in 18 U.S.C. 1961(1), with respect to any act or threat involving arson, which is chargeable under State law and punishable for more than one year imprisonment; and

b. Seizure and forfeiture authority and related authority under 18 U.S.C. 981 relating to violations of 18 U.S.C. 1956 or 1957 within the investigatory jurisdiction

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of ATF under paragraph 2.a. above, and seizure authority under 18 U.S.C. 981 relating to any other violation of 18 U.S.C. 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. 981 where investigatory jurisdiction is with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. Forfeiture remission. The Director, ATF is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.b.

4. Redelegation. The authority delegated by this directive may be redelegated.

5. Coordination. a. If at any time during an investigation of a violation of 18 U.S.C. 1956 or 1957, the Director, ATF discovers evidence of a matter within the jurisdiction of another Treasury bureau, the Director, ATF will immediately notify that bureau of the investigation and invite that bureau to participate in the investigation. The Director, ATF shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level.

b. The Assistant Secretary (Enforcement) will settle disputes that cannot be resolved by the bureaus. The Assistant Secretary (Enforcement) will settle disputes over investigatory jurisdiction with the Internal Revenue Service in consultation with the Commissioner, Internal Revenue Service.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, the Director, ATF will adhere to the provisions on notice and coordination in the "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. 1956(e) or 1957(e).

6. Cancellation. Treasury Directive 15-12, "Delegation of Authority to the Director, Bureau of Alcohol, Tobacco and Firearms to Investigate Violations of 18 U.S.C. 1956 and 1957," dated October 6, 1988, is superseded.

7. Office of Primary Interest. Office of the Assistant Secretary (Enforcement).

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91-10843 Filed 5-7-91; 8:45 am]

BILLING CODE 4810-25-M

[No. 15-29]

Delegation of Authority to the Commissioner, United States Customs Service To Investigate Violations of 18 U.S.C. 1956 and 1957; Directive

May 1, 1991.

1. *Purpose.* This directive delegates to the Commissioner, United States Customs Service authority to investigate violations of 18 U.S.C. 1956 and 1957.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. 981, 1956(e) and 1957(e) and the authority delegated to the Assistant Secretary (Enforcement) by Treasury Order 101-05, there is hereby delegated to the Commissioner, United States Customs Service:

a. Investigatory authority over violations of 18 U.S.C. 1956 or 1957 involving 18 U.S.C. 542, 545, 549, 659, 1461-63, 1465, 2251-52, 2314, and 2321; 19 U.S.C. 1590; 21 U.S.C. 857; offenses under section 11 of the Export Administration Act of 1979 (50 U.S.C. App. Section 2410); offenses under section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705); offenses under section 16 of the Trading With the Enemy Act (50 U.S.C. App. 16); and offenses under section 38 of the Arms Export Control Act (22 U.S.C. 2778) (relating to the exportation, intransit, temporary import, or temporary export transactions);

b. Investigatory authority over violations of 18 U.S.C. 1956(a)(2)(B)(ii), involving a reporting violation under 31 U.S.C. 5316;

c. Investigatory authority over violations of 18 U.S.C. 1956(a)(3) relating to violations within the investigatory jurisdiction of the Customs Service under paragraphs 2.a. and b.; and

d. Seizure and forfeiture authority and related authority under 18 U.S.C. 981 relating to violations of 18 U.S.C. 1956 or 1957 within the investigatory jurisdiction of the Customs Service under paragraphs 2.a., 2.b., and 2.c., and seizure authority under 18 U.S.C. 981 relating to any other violation of 18 U.S.C. 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. 981 where investigatory jurisdiction is with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. Forfeiture Remission. The Commissioner, United States Customs Service is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.d.

4. Redelegation. The authority delegated by this directive may be redelegated.

5. Coordination. a. If at any time during an investigation of a violation of 18 U.S.C. 1956 or 1957, the U.S. Customs Service discovers evidence of a matter within the jurisdiction of another Treasury bureau or office, the U.S. Customs Service will immediately notify that bureau of office with investigatory jurisdiction of the investigation and invite that bureau or office to participate in the investigation. The Commissioner, U.S. Customs Service shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level or in the case of the Office of Foreign Assets Control, at the headquarters level.

b. The Assistant Secretary (Enforcement) will settle disputes that cannot be resolved by the bureaus. The Assistant Secretary (Enforcement) will settle disputes over investigatory jurisdiction with the Internal Revenue Service in consultation with the Commissioner, Internal Revenue Service.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, the U.S. Customs Service will adhere to the provisions on notice and coordination in the "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. 1956(e) or 1957(e).

6. Cancellation. Treasury Directive 15-29, "Delegation of Authority to the Commissioner, United States Customs Service to Investigate Violations of 18 U.S.C. 1956 and 1957," dated October 6, 1988, is superseded.

7. Office of Primary Interest. Office of the Assistant Secretary (Enforcement).

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91-10844 Filed 5-7-91; 8:45 am]

BILLING CODE 4810-25-M

[No. 15-42]

Delegation of Authority to the Commissioner, Internal Revenue Service To Perform Functions Under the Money Laundering Control Act of 1986, as Amended; Directive

May 1, 1991.

1. Purpose. This directive delegates to the Commissioner, Internal Revenue Service (IRS) investigatory, seizure and forfeiture authority under the Money Laundering Control Act of 1986, Public Law 99-570, subtitle H (October 27, 1986), as amended.

2. Delegation. By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. 981, 1956(e), 1957(e) and the authority delegated to the Assistant Secretary (Enforcement) by the Treasury Order 101-05, there is hereby delegated to the Commissioner, IRS:

a. Investigatory authority over violations of 18 U.S.C. 1956 and 1957 where the underlying conduct is subject to investigation under title 26 or under the Bank Secrecy Act, as amended, 31 U.S.C. 5311-5326 (other than violations of 31 U.S.C. 5316);

b. Seizure and forfeiture authority over violations of 18 U.S.C. 981 relating to violations of:

(1) 31 U.S.C. 5313 and 5324; and

(2) 18 U.S.C. 1956 and 1957 which are within the investigatory jurisdiction of IRS pursuant to paragraph 2.a. above; and

c. Seizure authority relating to any other violation of 18 U.S.C. 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. 981 where investigatory jurisdiction is solely with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. Forfeiture Remission. The Commissioner, IRS is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.b.

4. Redelegation. The authority delegated by this directive may be redelegated.

5. Coordination. a. If at any time during an investigation of a violation of 18 U.S.C. 1956 or 1957, IRS discovers evidence of a matter within the jurisdiction of another Treasury bureau, to the extent authorized by law, IRS will immediately notify that bureau of the investigation and invite that bureau to participate in the investigation. The Commissioner, IRS shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level.

b. The Assistant Secretary (Enforcement) will settle disputes that cannot be resolved by the bureaus in consultation with the Commissioner, IRS.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau of the Postal Service, IRS will adhere to the provisions on notice and coordination in the "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. 1956(e) or 1957(e).

6. Cancellation. Treasury Directive 15-42, "Delegation of Authority to the Commissioner, Internal Revenue Service to Perform Functions Under the Money Laundering Control Act of 1986, and the Bank Secrecy Act," dated October 6, 1988, is superseded.

7. Office of Primary Interest. Office of the Assistant Secretary (Enforcement).

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91-10845 Filed 5-7-91; 8:45 am]

BILLING CODE 4810-25-M

[No. 15-54]

Delegation of Authority to the Director, United States Secret Service To Investigate Violations of 18 U.S.C. 1956 and 1957; Directive

May 1, 1991.

1. Purpose. This directive delegates to the Director, United States Secret Service authority to investigate violations of 18 U.S.C. 1956 and 1957.

2. Delegation. By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. 981, 1956(e), 1957(e) and the authority delegated to the Assistant Secretary (Enforcement) by Treasury Order 101-05, there is hereby delegated to the Director, United States Secret Service:

a. Investigatory authority over violations of 18 U.S.C. 1956 and 1957 involving an offense under 18 U.S.C. 471-473 (counterfeiting of obligations or securities of the United States); 18 U.S.C. 500-503 (counterfeiting of blank or postal money orders, postage stamps, foreign government postage and revenue stamps, and postmarking stamps); 18 U.S.C. 657 (involving theft, embezzlement or misapplication by employees of the Federal Deposit Insurance Corporation); and 18 U.S.C. 1029 (fraud and related activity in connection with access devices); and

b. Seizure and forfeiture authority and related authority under 18 U.S.C. 981 relating to violations of section 1956 or section 1957 within the investigatory jurisdiction of Secret Service under paragraph 2.a. above, and seizure authority under 18 U.S.C. 981 relating to any other violations of 18 U.S.C. 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. 981 where investigatory jurisdiction is with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. Forfeiture Remission. The Director, United States Secret Service is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.b. above.

4. Redelegation. The authority delegated by this directive may be redelegated.

5. Coordination. a. If at any time during an investigation of a violation of 18 U.S.C. 1956 or 1957, Secret Service discovers evidence of a matter within the jurisdiction of another Treasury bureau, Secret Service will immediately notify that bureau of the investigation and invite that bureau to participate in the investigation. Secret Service shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level.

b. The Assistant Secretary (Enforcement) will settle disputes that cannot be resolved by the bureaus. The Assistant Secretary (Enforcement) will settle disputes over investigatory jurisdiction with the Internal Revenue Service in consultation with the Commissioner, Internal Revenue Service.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, Secret Service will adhere to the provisions on notice and coordination in the "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. 1956(e) or 1957(e).

6. Cancellation. Treasury Directive 15-54, "Delegation of Authority to the Director, United States Secret Service to Investigate Violations of 18 U.S.C. 1956 and 1957," dated October 6, 1988, is superseded.

7. Office of Primary Interest. Office of the Assistant Secretary (Enforcement).

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91-10846 Filed 5-7-91; 8:45 am]

BILLING CODE 4810-25-M

VOL 56 ISS 89 MY 8 1991 UMI

Sunshine Act Meetings

Federal Register
Vol. 56, No. 89
Wednesday, May 8, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 20496, May 3, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Approximately 10:30 a.m., Wednesday, May 8, 1991, following a recess at the conclusion of the open meeting.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposed employee retention incentive guidelines for Federal Reserve System automation consolidation.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: May 6, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11121 Filed 5-6-91; 3:30 pm]

BILLING CODE 6210-01-M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 4:00 p.m. CDT, Saturday, June 1, 1991.

PLACE: Harry S. Truman Library, Independence, MO.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Call to order.
2. Approval of minutes of September 24, 1990 meeting.
3. Report of the Chairman.
   a. Welcome and opening comments.
   b. Report on the 1991 class of Truman Scholars.
4. Report of Executive Secretary.
   a. Activities since last Board meeting.
   b. Presentation on the Truman Scholars Leadership Week.
   c. Presentation on the Truman Scholars Summer Institute.
   d. Financial status of the Truman Scholarship Foundation.
5. Resolution to empower the Chairman/Executive Secretary to enter/renew contracts, conclude agreements, and conduct other Foundation business.
6. New business.
7. Date, time and place of next Meeting.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Louis H. Blair, Executive Secretary, Telephone: (202) 395-4831.

Louis H. Blair,

Executive Secretary.

[FR Doc. 91-11024 Filed 5-6-91; 1:26 pm]

BILLING CODE 6820-AB-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Tuesday, May 14, 1991.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

STATUS: Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. National Credit Union Share Insurance Fund (NCUSIF) Insurance Premium.
3. Proposed Rule: New Part 709, Liquidation of Federal Credit Unions and Adjudication of Creditor Claims involving Federally Insured Credit Unions in Liquidation, NCUA's Rules and Regulations.
4. Proposed Rule: Part 747, New Subpart A, Uniform Rules of Practice and Procedure and Redesignation of Existing Subparts, NCUA's Rules and Regulations.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Tuesday, May 14, 1991.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Board Meeting.
2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8), (9)(A)(ii), and (9)(B).
3. Reconsideration of Denial of Insurance Coverage. Closed pursuant to exemptions (6), (8), (9)(B), and (10).
4. Appeal of Denial of Insurance. Closed pursuant to exemptions (5), (8), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91-11065 Filed 5-6-91; 1:27 pm]

BILLING CODE 7535-01-M

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. (CDT), Wednesday, May 8, 1991.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: Land Between The Lakes, Golden Pond Visitor Center, Golden Pond, Kentucky.

CHANGES IN THE MEETING: Each member of the TVA Board of Directors has approved the addition of the following item to the previously announced agenda:

F—Unclassified

6. Development of Socially/Economically Disadvantaged Businesses

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager, Media Relations, or a member of his staff can respond to requests for information about this meeting. Call 615-632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-479-4412.

Edward S. Christenbury,

General Counsel and Secretary of the Corporation.

[FR Doc. 91-11022 Filed 5-6-91; 10:38 am]

BILLING CODE 8120-08-M

federal register

Wednesday
May 8, 1991

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Air Traffic Operating and Flight Rules: O'Hare International Airport; Jet Aircraft Operation in Commuter Slots; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Authority

14 CFR Part 93

[Docket No. 26339; Notice No. 91-13]

RIN 2120-AE21

Operation of Jet Aircraft in Commuter Slots at O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action would amend the regulations pertaining to the allocation and definition of commuter operator slots (i.e., allocated instrument flight rules (IFR) takeoff and landing reservations) at O'Hare International Airport. Through this action, the FAA proposes to permit a limited number of commuter slots at O'Hare International Airport to be used by aircraft having a maximum seating capacity of up to 110 passenger seats. This proposed rule is in response to a petition for rulemaking submitted by American Airlines. The FAA proposes to limit the number of commuter slots available for operation of such aircraft to 25 percent of each operator's commuter slots at O'Hare International Airport, and to limit the number of such operations in any half hour. This change is proposed to remain in effect for a 2-year period to allow the FAA to evaluate the effect of the change on the operation of the airport and air traffic facilities. This action would relieve airlines at O'Hare of certain existing restrictions and permit (but not necessarily result in) additional jet service to some smaller communities while still preserving the class of commuter slots as distinct from air carrier slots.

DATES: Comments must be received on or before June 7, 1991.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, attention: Rules Docket, Docket No. 26339, 800 Independence Avenue, SW., Washington, DC 20591; or deliver comments in duplicate to: Federal Aviation Administration, Rules Docket, room 916, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the rules docket weekdays, except Federal holidays between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Patricia R. Lane, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591 telephone (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposal by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned decisions on the proposals. Comments are specifically invited on the overall economic, energy, reporting, and recordkeeping aspects of the proposals. Communications should identify the notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this advance notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26339." Communications received before the specified closing date for comments will be considered before taking any further action on the proposal. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this proposal will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular (AC) No. 11-2, "Notice of Proposed Rulemaking Distribution System," which describes the application procedures.

Background

The High Density Traffic Airport Rule, or "High Density Rule," 14 CFR part 93, subpart K, was promulgated in 1969 to reduce delays at five congested airports: JFK International, LaGuardia, O'Hare International, Washington National, and Newark International (at which limits are no longer in effect 33 FR 17896, December 3, 1968). The regulation limits the number of operations at each airport, by hour or half hour, during certain hours of the day. The limits were most recently amended in April 1984 (49 FR 8237, March 6, 1984). While allocations vary from hour to hour, the basic allocation is 120 slots each hour at O'Hare for operations by air carriers, 25 slots each hour for commuter operators, and 10 slots each hour for general aviation. The operating limits are in effect at O'Hare from 6:45 a.m. to 9:15 p.m. The limits on operations by scheduled air carriers and commuter operators are enforced by the allocation of takeoff and landing "slots" to individual operators (14 CFR 93.125: subpart S).

On August 22, 1989, the Department published amendment no. 93-57, a final rule which, among other changes, amended the definitions of "commuter" and "air carrier" aircraft in the High Density Rule (54 FR 34904; corrected 54 FR 37303, September 8, 1989). In response to the comments received and to the petition filed by Air Wisconsin to permit the use of larger propeller-driven aircraft in commuter slots, the FAA redefined commuter operations as those using turboprop or reciprocating aircraft having less than 75 passenger seats. On September 21, 1989, the Department suspended the effectiveness of this amendment to the extent it would prohibit operations by turbojet aircraft with less than 56 seats using commuter slots, to consider information presented by manufacturers currently developing small turbojet aircraft intended for commuter operations (54 FR 39843, September 28, 1989).

As a result, commuter slots currently may be used only with propeller-driven aircraft certificated with a maximum passenger seating capacity of less than 75 and turbojet aircraft with a maximum seating capacity of less than 56. The air carrier/commuter slot distinction was incorporated in the original High Density Airport Traffic Rule adopted in 1969 to protect the regional airline industry and to preserve air service in smaller, "commuter" markets within a short to medium range of the high density airports.

The American Airlines Petition

Summary

On September 6, 1990, American Airlines (AAL) filed a petition for rulemaking to permit the operation of Stage 3 jet aircraft with up to 110 passenger seats in commuter slots at O'Hare Airport. AAL argued that the change would permit it to upgrade service in a number of smaller markets from turboprops to jets. The FAA published the petition on October 2 with a 60-day comment period (55 FR 40191).

On November 8, 1990, the FAA requested supplemental information and comments concerning certain concerns of the agency that were not addressed in the original petition (55 FR 46956). In particular, Air Traffic Control (ATC) had concerns about the capacity of terminal facilities at O'Hare Airport for the additional turbojet operations that would result if the seat limitation of the commuter aircraft were raised as the petition had requested. Specifically, the FAA requested further comment on gate availability at O'Hare for the additional jet aircraft, and the potential for ground congestion and safety concerns should gates not be available.

In response, to the AAL petition, Canadair filed a separate petition for rulemaking on December 3, 1990, requesting that its petition be consolidated with the AAL petition because of its related subject matter. Specifically, Canadair requested that the definition of "scheduled commuter," as defined in § 93.123(c), be amended to include in the definition of commuter aircraft turbojet aircraft with a maximum seating capacity of less than 56 seats.

Currently, the 435 commuter slots at O'Hare are allocated to three carriers as follows:

American (AMR Eagle, Simmons)	281	(65%)
Air Wisconsin	118	(27%)
Great Lakes	36	(8%)
Total	435	

Comments on the Petition

Approximately 250 comments were received on the petition. Virtually all the supporting comments were based on the assumption that American would provide improved air service to the commenter's community. Most comments came from businesses and individual travelers in Fargo, ND; Peoria and Springfield, IL; Sioux Falls, IA; Madison, WI; Vail, CO; and Allentown, PA; and members of Congress and local government officials representing those cities.

Representatives of several other communities in the Midwest, including members of Congress, opposed the petition because it would act as an incentive to abandon existing turboprop service to small communities that could not support jet service, to permit the carrier to use the slots for jet operations in other markets. Several carriers (United, USAir, Delta, Air Wisconsin, Continental, Pan Am Express) also opposed the petition on grounds of the lack of small community service, the exclusive benefit and windfall to AAL, and the resulting increase in air and ground congestion at O'Hare.

The Suburban O'Hare Commission opposed the petition for the environmental impact on the surrounding communities of increased jet operations and the apparent policy decision to increase the jet capacity of O'Hare. The Chairman of the Commission also questioned whether the addition of a number of larger aircraft at O'Hare would affect the safety of operations in the air and on the ground. Finally, the Commission believes that AAL would determine that jet service to certain smaller communities was not economically beneficial and would discontinue air service to some cities, leaving those cities without air access to O'Hare.

In response to the FAA's request for supplemental information, AAL stated that it now had enough jet gates available each day at O'Hare to handle any increase in operations due to the use of jet aircraft in commuter slots. AAL believes that the number of available gates at O'Hare would act as a natural limit as to the number of operations that could be used by larger turbojet aircraft. Further, AAL stressed that due to the delivery schedule of the larger aircraft, it would not be able to use that many commuter slots with larger turbojet aircraft at this time, because the planes would not all be delivered in the immediate future.

Discussion of Comments

A. *Effect on arrival/departure operations at O'Hare.* Many of the comments in general support of the petition stated that air service to the commenter's community would be improved by the granting of AAL's petition, but typically did not discuss what effect the use of jet aircraft in commuter slots would have on arrival, departure, and ground operations at the airport. Most of the carriers commenting on the petition stated their belief that arrival and departure operations would be detrimentally affected by additional

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jet operations using the type of aircraft requested by AAL in its petition.

The FAA continually monitors operating conditions and system performance at the four high density traffic airports, to consider whether an easing of current High Density Rule restrictions is feasible. While the action requested by AAL in its petition has no benefit for ATC, the FAA is willing to consider such a request in the interest of imposing only the minimum level of industry regulation actually necessary for the safe and efficient operation of flight and ground operations at these airports. The agency's consideration is subject to cost-benefit analysis, environmental consideration, and the Office of the Secretary of Transportation's findings relating to service to small communities and effect on competition, as well as safe and efficient operations.

The FAA believes that unrestricted use of commuter slots by air carrier aircraft (as defined in § 93.123(c)(1)) would add greatly to delays and congestion of arrival and departure operations at O'Hare. The FAA is less concerned that a limited number of operations in commuter slots by the smaller jet aircraft described in AAL's petition, i.e., aircraft with a certified maximum seating capacity of 110 seats or less, would result in significant additional delays, if there is no increase in total operations. On the basis of an assessment of current O'Hare operations and delays and considering recent improvements in ATC resources and technical procedures in the Chicago area, the FAA believes that the trial use of turbojet aircraft with a certified maximum seating capacity of 110 or less in a limited number of commuter slots would not have a significant adverse effect on ATC or airport delays at O'Hare, if such operations are further limited during certain peak hours.

For this reason and as described in more detail below, the FAA is proposing to permit carriers holding commuter slots at O'Hare to conduct operations with aircraft having up to 110 passenger seats, with a limitation on the total number of such operations and on the number per half hour per two consecutive half hours. While AAL's petition mentioned only turbojet aircraft, the proposed rule is limited only by seat capacity of aircraft and not by engine type. The FAA requests comments on the expected effect of the resulting jet operations on arrival and departure operations at O'Hare.

B. *Effect on ground operations at O'Hare.* Additional information was solicited from AAL and the public on the availability of gates for the additional jet operations at O'Hare. AAL claims it is not using all of its jet gates now, so that the capacity exists for up to 71 added jet operations a day. Other commenters, especially the responding air carriers and the Suburban O'Hare Commission, stated that larger aircraft would cause severe ground congestion and resultant delays. These commenters questioned whether ATC would be able to handle the increase in the number of larger aircraft.

O'Hare is currently subject to substantial ground congestion. If a gate is not immediately available for an arriving aircraft, that aircraft must hold on the ramp until a gate becomes available. Aircraft waiting on the ramp can block ramp areas and even taxiways, exacerbating congestion and resulting in ground delays and increased complexity of controlling ground operations. To avoid the potential for increased ground congestion as a result of additional operations using terminal jet gates, the FAA is proposing to require that a gate be available for any operation of a commuter slot by an aircraft with up to 110 seats. This condition applies only to jet aircraft, because non-jet aircraft operating under the proposed rule would likely use the same ramp parking as the commuter aircraft they replace. The proposal to limit further the number of additional operations by aircraft of this size in peak hours also should tend to limit the impact of those operations on ground congestion.

c. *Effect on service to small communities.* The majority of support for the petition came from representatives or residents of small and mid-size cities for which AAL has promised additional flights and/or conversion of existing turboprop flights to jet service. Many of the commenters supporting the petition stated, incorrectly, that current FAA rules prevented the initiation or addition of jet service to the commenter's community. In fact, while the High Density Rule limits the number of jet operations by a carrier to the number of air carrier slots held, the rule does not limit a carrier's decision to use a non-international slot for one market rather than another. (Slots allocated for Essential Air Service (EAS) Program operations may be limited to particular markets, but no air carrier slots are now allocated for EAS operations.) Neither AAL nor any other carrier at O'Hare is limited by FAA regulations from using its domestic air carrier slots to serve any particular market. As of December 15, 1990, AAL held 569 air carrier slots at O'Hare. Of that number, 21 were leased to Simmons Airlines and operated with turboprop aircraft with less than 56 seats, and approximately 30 were not used at all but were kept above the 65 percent slot use requirement by rotational assignment of slot numbers. Accordingly, in recent months AAL has held more than 50 air carrier slots which are not used for jet operations. As a result, AAL (and other carriers) could at that time have provided much or all of the jet service requested by commenters, with no change in regulations and no cancellation of jet service in other markets.

Several other communities and carriers stated that they believed that AAL's requested change would actually hurt smaller communities. Air Wisconsin, for instance, stated that in the current air service market, smaller communities would not receive upgraded air service, but would in fact probably have their service cut, because it may not be economically advantageous to operate the larger jet service to or from the smaller communities. The representative from Coles County Airport Authority located in Mattoon, Illinois, essentially agreed with this assessment, and suggested that the FAA review AAL's past commitments and practices in regard to the smaller communities. (Records of the Department of Transportation Office of Aviation Analysis indicate that AAL's subsidiary commuter operators have suspended O'Hare service to eight Essential Air Service points since June 1989.) The representative stated that he believed that, regardless of AAL's promises, the smaller communities would lose their air service.

The Department of Transportation believes that all communities should have access to the air transportation system. The Department ensures that Essential Air Service is provided to eligible points and supports the availability of air service to other small communities. At the same time, the Department recognizes that the greatest utility of the finite capacity of such high density airports as O'Hare may favor the use of larger aircraft in higher density markets. In order to balance the interests of economic efficiency, on the one hand, and the Department of Transportation's interest in preserving feeder service to smaller markets in the Chicago region, on the other, the FAA proposes to cap the number of commuter slots that can be operated with 110-seat aircraft at 25 percent of the commuter slots held by each commuter operator at O'Hare. This will tend to preserve the category of commuter slots and mitigate the impact on commuter markets generally. Also, the 2-year limit proposed in this notice will serve to enable the Department to assess air service impacts as well as operational effects.

In the formulation of this proposal, the Department is relying heavily on assurances by AAL in its petition and comments that the use of turbojet aircraft in commuter slots will not reduce the quality of air service to smaller communities. If this proposal is made effective, the Department will closely monitor the use of commuter slots at O'Hare in order to evaluate whether AAL's actions are consistent with its representations in the petition. Should the use of commuter slots under such a rule fail to maintain service to smaller communities in the region, the Department will reevaluate the use of turbojet aircraft in commuter slots.

D. *Environmental review.* Even though commuter slot operations by 56- to 110-seat aircraft would not add to total operations at O'Hare, the proposal would substitute jets for turboprops in a certain number of operations. (While the proposed rule would permit *any* aircraft with 56 to 110 passenger seats to be used in commuter slots, the FAA presumes that carriers will choose to operate turbojets.) AAL represents that all of the new jet operations by AAL would use small Stage 3 jets, specifically Fokker 100's. However, the rule change requested by AAL permits carriers now operating small jets in air carrier slots to move those flights into commuter slots, freeing the slots for large jet operations. (Air Wisconsin currently operates 44 flights each day with 110-passenger jets in air carrier slots). Also, the FAA has not limited jet use to Stage 3 aircraft, in recognition of the agency's current rulemaking proposing to adopt a schedule for the phase-out of stage 2 aircraft operations throughout the United States by 1999 (56 FR 8628, February 28, 1991).

Regulations of the Council on Environmental Quality provide for initiation of environmental review of agency actions at the earliest possible time in the agency decisionmaking process. In view of the public and industry requests for expeditious consideration of the proposed rule, and the fact that the agency currently has no information on the potential impacts of the proposal, the issuance of this notice has not been delayed for completion of environmental review. However, the FAA requests comments on the potential environmental effects, if any, of the proposed rule.

The Proposal

For the above mentioned reasons, the FAA proposes to amend FAR part 93, subpart K and subpart S, (1) to clarify that the definition of commuter aircraft under the High Density Rule includes turbojet aircraft having a maximum passenger seating capacity of less than 56 seats, and (2) to permit the temporary operation of jets (or other aircraft) with a maximum passenger seating capacity of 56 to and including 110 in certain commuter slots at O'Hare International Airport, subject to specific conditions. First, the FAA would limit the maximum number of commuter slots that could be operated with air carrier aircraft under the proposed rule to 25 percent of the total number of commuter slots held by each slot holder at O'Hare. The cap would limit potential effects on airport operations and preserve at least 75 percent of existing commuter slots for small community service. No matter which carriers held or operated commuter slots, no more than 25 percent of the total number of commuter slots at O'Hare could be used for larger aircraft.

AAL stated that the lack of unlimited gates at O'Hare and the delivery schedule of the Fokker 100 aircraft would limit the extent of the use of jets in commuter slots, with the implication that no further restriction was necessary. However, AAL admitted that the lack of larger aircraft would only serve as a limiting factor temporarily. Also, other carriers may not be so limited. For these reasons, the FAA is concerned that the market conditions and apparent gate availability would not serve as an effective limit on the number of commuter slots that would be used by larger aircraft. A limit of 25 percent of all commuter slots minimizes potential ground and flight congestion, and preserves the segment of operations that typically provide air service to smaller communities in the Chicago region. The FAA notes that 25 percent of AAL's 281 commuter slots is 70, which corresponds almost exactly with the number of jet gates that AAL represents it has available throughout the day at O'Hare for additional operations of Fokker 100 aircraft.

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The second condition is that the number of commuter slots that could be used for operation of aircraft with 56 or more seats would be limited to a maximum number each half hour (beginning at 0645) and each two consecutive half hours. During most hours of the day, the limit would be a total of six in each half hour (beginning at 0645) and a total of 10 in any two consecutive half hours. In peak traffic hours the operations would be limited to two per half hour. This limitation would serve to distribute such operations throughout the day and prevent the scheduling of a too great a number of such operations in any one hour or half hour to be handled without significantly adding to airport delays. Full utilization of the authority, with this limitation on half-hour and consecutive half-hour operations, would permit a total of 108 new jet operations a day at O'Hare (with a like reduction in the number of turboprop operations).

The peak hours in which the limitation to two per half hour would apply are: 1015 through 1244, 1715 through 1944. O'Hare Airport, and airspace sectors in the Chicago region, are highly congested at the above times. This congestion often results in operating delays, and O'Hare currently experiences one of the highest levels of operating delays of any airport in the United States. The impact of the additional jet operations is not only the airport itself, but also on high altitude airspace handled by Chicago Center. The added jet operations would use altitudes higher than those used by turboprop aircraft. At certain times of day the en route airspace structure in the Chicago region is highly congested with through traffic as well as arrivals and departures to and from Chicago airports. The FAA believes that it is important to limit the addition of jet operations during those times of day, to avoid unacceptable operating delays for the traveling public and an unacceptable increase in ATC workload at what are already times of peak activity. The limitations per half hour and consecutive half hours on the number of 56- to 110-seat turbojet operations in commuter slots would be published in an appendix to part 93. A decision by ATC to amend these limits would be published in advance of the effective date of the change, in the Federal Register, as an amendment to the part 93 appendix.

Third, a carrier would be required to notify ATC 60 days in advance of the planned operation of a commuter slot with a 56- to 110-seat aircraft. ATC would have the authority to disapprove a request based on actual conditions at the time of the request, and also to grant a request with conditions such as operating only as an arrival or departure. ATC's approval, conditional approval, or disapproval would be issued more than 45 calendar days before the planned start date stated in the notice. ATC approval for a specific operation would be valid for 30 days after the planned start date, and then would expire if the operation had not commenced. If requests exceed the six or fewer commuter slots available for 56- to 110-seat aircraft operation in a half hour, the notice would be approved on a first-come first-served basis (based on proposed start date, not date of notice); however, a first-time notice would receive precedence over a refiling of an expired notice, to prevent carriers from "locking up" the six available slots long before intended operation. The FAA requests comments on whether the "first-come, first-served" provision, as proposed, would provide all affected operators equitable access to the use of commuter slots under the proposed rule.

Fourth, the FAA would require that any carrier intending to operate a commuter slot with a 56- to 110-seat jet aircraft have sufficient gates available for those operations, to prevent ramp and taxiway congestion which could result from additional jet operations.

Finally, the FAA believes that there is a need to limit the proposed amendment to a 2-year period in order to evaluate the impact on airport operations, especially delays, and on ATC resources and workload. At the end of 2 years, existing operations under this provision could be extended pending a study of impacts and rulemaking to revise, expand, or curtail the program. Within the 2-year period, AAL or any other holder of commuter slots at O'Hare could petition the FAA for rulemaking to modify the program to increase the number of turbojet aircraft permitted to use commuter slots or for any other adjustment. ATC would evaluate the request on the basis of actual experience to determine the predicted effect of the request on airport operations and the air traffic control system.

The proposed action represents a grant of the petition for rulemaking filed by Canadair, Inc., on December 3, 1990, and a partial grant of the petition for rulemaking filed by American Airlines on September 6, 1990.

Regulatory Evaluation

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this rule is not "major" as defined in the executive order; therefore, a full regulatory analysis, that includes the identification and evaluation of cost reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives.

Costs

This proposal is voluntary and would not impose any additional costs on part 121 operators. This rule would allow them to use some of their commuter slots (up to 25 percent) at O'Hare Airport for operations involving aircraft having up to 110 seats. A maximum of 108 operations per day using aircraft with up to 110 seats would be permitted to be used in commuter slots under this proposal. The number of commuter slots that could be used for these operations would also be limited to 6 in any half-hour slot period and 10 during any two consecutive half hours, except in certain peak hours when such operations would be limited to 2 per half hour.

As a result of the above limitations on the use of larger aircraft in commuter slots, the FAA believes that the proposal would not significantly alter the operating environment at O'Hare Airport for scheduled parts 135 or 121 air carrier operators. It is not expected that ground operations and departure and arrival procedures would be significantly affected. However, there might be some minor delays in enroute operations in the Great Lakes Region. The FAA solicits comments from the public regarding the impact that this proposal would have on operations at O'Hare Airport and in the Chicago region.

This proposed regulation would have no effect on the safety of either air or ground operations. ATC would retain the ability to delay arrival or departure of additional large airplane operations at O'Hare Airport in order to maintain safety.

In this evaluation, the FAA assumes that service to small airports would not be reduced as a result of this proposal. This proposal would allow air carrier operators to substitute larger and faster turbojet airplanes for smaller and slower turboprop airplanes and, thereby, improve service to the small airports that they currently serve. However, the FAA recognizes that the ability to use jets in commuter slots may serve as an incentive to remove those slots from use in markets that cannot support jet service, and the FAA solicits public comment regarding this assumption.

Benefits

This proposal benefit some of the passengers who fly to and from Chicago on any portion of their trip. As a result of this proposal, passengers on long commuter flights would be able to fly in larger and faster turbojet airplanes which would save them some time. For most commuter flights, which are short, turbojets would not provide any significant time savings. The FAA estimates that about 20 minutes could be saved on a long commuter flight by using turbojet airplanes instead of turboprop airplanes. The FAA estimates that approximately 50 passengers would be on each turbojet commuter flight. The estimated passenger time saved is, therefore, 16.7 passenger-hours per commuter flight. The FAA estimates that the value of passenger time is $34 per hour. Allowing turbojet airplanes with up to 110 seats to be used on long commuter flights would save $568 in passenger time per trip. This proposed regulation would allow 108 commuter slots to be used in this way. Thus, this proposal would save as much as $61,300 per day in passenger time if all 108 commuter slots are converted to turbojet commuter flights. The FAA solicits public comment regarding the assumptions used in estimating the benefits of this proposal.

Benefit Cost Comparison

The FAA finds that in the absence of significant delays, there would be no significant costs to this proposed regulation. However, there are measurable benefits. As a result, the FAA has determined that the proposed regulation would be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to specifically review rules which may have a "significant economic impact on a substantial number of small entities". The FAA has adopted criteria and guidelines for rulemaking officials to apply when determining if a proposed or existing rule has any significant economic impact on a substantial number of small entities.

The FAA defines a small entity as an operator who owns, but does not necessarily operate, nine airplanes. A substantial number of small entities is one-third of the small entities provided 11 or more small entities are substantially impacted. The FAA defines a significant economic impact as $4,000 per year for unscheduled operators, $57,000 per year for scheduled operators, and $101,000 per year for schedule operators whose fleets are entirely composed of aircraft with 60 or more passenger seats.

There are no small operators providing service to Chicago O'Hare Airport that have airplanes with 56 to 110 seats. Thus, the FAA determines that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Statement

The proposed regulation would only affect domestic operations at Chicago O'Hare Airport. Thus, it would not provide either an advantage or disadvantage to foreign air carriers providing service to and from the United States, nor would it provide either a trade advantage or disadvantage to US air carriers providing foreign service.

Paperwork Reduction Act

This proposal, if adopted, provides for no changes to the required reporting of information by air carrier and commuter operators to the FAA. Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget previously has approved the information collection provision of subpart S. OMB Approval Number 2120-0524 has been assigned to subpart S.

Federalism Determination

The proposal set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation, if adopted, would not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this proposal (1) would not be a "major rule" under Executive Order 12291; and (2) would be a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Further, I certify that under the criteria of the Regulatory Flexibility Act, this proposal would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 93

Aviation safety, Air traffic control.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, I propose to amend part 93 of the Federal Aviation Regulations (14 CFR part 93) as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106 (Revised Pub. L. 97-449, January 12, 1983); Public Law 101-508.

2. In § 93.123, paragraph (c) is revised to read as follows:

§ 93.123 High density traffic airports.

* * * * *

(c) For purposes of this subpart—

(1) The number of operations allocated to "air carriers except commuters," as used in paragraph (a) of this section refers to the number of operations conducted by air carriers with turboprop and reciprocating engine aircraft having a certificated maximum passenger seating capacity of 75 or more or with turbojet powered aircraft having a certificated maximum passenger seating capacity of 56 or more, or, if used for cargo service in air transportation, with any aircraft having a maximum payload capacity of 18,000 pounds or more.

(2) The number of operations allocated to "scheduled commuters," as used in paragraph (a) of this section, refers to the number of operations conducted by air carriers with turboprop and reciprocating engine aircraft having a certificated maximum passenger seating capacity of less than 75 or by turbojet aircraft having a certificated maximum passenger seating capacity of less than 56, or, if used for cargo service in air transportation, with any aircraft having a maximum payload capacity of less than 18,000 pounds.

(3) Notwithstanding the provisions of paragraph (c)(2) of this section, a limited number of operations allocated for "scheduled commuters" under paragraph (a) of this section may be conducted with aircraft described in

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§ 93.221(e) of this part pursuant to the requirements of § 93.221(e).

(3) Section 93.221 is amended by adding a new paragraph (e) to read as follows:

§ 93.221 Transfer of slots.

* * * * *

(e) Notwithstanding § 93.123(c)(2) of this part, a commuter slot at O'Hare International Airport may be used with an aircraft described in § 93.123(c)(1) of this part on the following conditions:

(1) Air carrier aircraft that may be operated under this paragraph are limited to aircraft with a maximum certificated passenger seating capacity of 56 to 110 seats.

(2) No more than 25 percent of the total number of commuter slots held by a slot holder at O'Hare International Airport may be used with an aircraft described in paragraph (e)(1) of this section.

(3) An air carrier or commuter operator planning to operate an aircraft described in paragraph (e)(1) in a commuter slot shall notify ATC at least 60 days in advance of the planned start date of such operation. The notice shall include the slot number, proposed time of operation, aircraft type, and planned start date. ATC will approve or disapprove the proposed operation no later than 45 days prior to the planned start date. If an operator does not initiate operation of a commuter slot under this section within 30 days of the planned start date first submitted to the FAA, the ATC approval for that operation will expire. That operator may file a new or revised notice for the same half-hour slot time; however, a first notice of planned operation by another carrier in the same half-hour slot time will receive priority in the event that proposed operations under this section exceed the number approved by ATC.

(4) ATC will not approve a number of operations by aircraft described in paragraph (e)(1) of this section in commuter slots in any half hour (beginning at 0645) or in any two consecutive half hours greater than the number indicated in appendix B to this part. ATC may approve fewer than the number of such operations listed in appendix B for any half hour or two consecutive half hours upon a determination that a greater number would have an adverse effect on airport delays.

(5) An operation may not be conducted under paragraph (e)(1) unless a gate is available for that operation without planned waiting time;

(6) For the purposes of this paragraph (e), notice to ATC shall be submitted in writing to: Director, Air Traffic System Management, ATM-1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

(7) The effectiveness of this paragraph (e) shall expire (2 years after the date of the enactment of this section).

4. Appendix B is added to part 93 to read as follows:

Appendix B to Part 93—Limits on the Number of Air Carrier Aircraft that May Be Used in Commuter Slots at O'Hare International Airport

The number of operations by aircraft described in § 93.221(e)(1) of this section in commuter slots at O'Hare International Airport may not exceed the following number indicated for each half-hour slot period and each two consecutive half hours:

Hours	Per half hour	Per 2 consecutive half hours
1015 through 1244	2	4
1715 through 1944	2	4
All other hours between 0645 and 2115	6	10

Issued in Washington, DC, on May 3, 1991.

L. Lane Speck,

Director, Air Traffic Rules and Procedures Service.

[FR Doc. 91-10888 Filed 5-3-91; 12:57 pm]

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federal register

Wednesday
May 8, 1991

Part III

Department of Education

Office of Special Education and Rehabilitative Services

Request for Input on the Long-Range Plan of the National Institute on Disability and Rehabilitation Research; Notice

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Request for Input on the Long-Range Plan of the National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The National Institute on Disability and Rehabilitation Research (NIDRR) is authorized to support research and related activities to improve the lives of individuals with disabilities, and to develop a Long-Range Plan for research on disability and rehabilitation. NIDRR invites interested parties to present comments at a series of public hearings on research and dissemination needs and opportunities during the coming decade in all areas of disability, including but not limited to: full community integration; employment; physical mobility and functioning; independent living and empowerment; vocational rehabilitation services; and knowledge dissemination and utilization. The purpose of the hearings is to obtain ideas from the public on the content and direction of a new NIDRR Long-Range Plan.

NIDRR encourages interested parties to attend a public meeting. Persons desiring to testify or seeking additional information should telephone Jacquie Price at (703) 684-5588; persons who are deaf and hearing impaired can call (202) 732-5136 for TDD services.

MEETING INFORMATION: The public hearings are scheduled to be held from 9 am to 5 pm on.

—May 21, 1991 in Columbia, South Carolina: Laffitte Conference Room, 1410 Boston Ave., South Carolina Vocational Rehabilitation Department, State Office Building, West Columbia, SC 29171-0015.

—May 30, 1991 in Chicago, Illinois: Heyworth Room, 2nd floor of the Rehabilitation Institute of Chicago, 345 E. Superior St., Chicago, IL 60611.

—June 10, 1991 in Boston, Massachusetts: Curtis Auditorium, Room #101, Sargent College of Allied Health Professions, 635 Commonwealth Ave., Boston, MA 02215.

—June 15, 1991 in Houston, Texas: Institute for Rehabilitation and Research, Texas Medical Center, 1333 Moursund St., Houston, TX 77030-3405.

—June 20, 1991 in Seattle, Washington: The HUB (Student Union Building), Room 200ABC, University of Washington, Seattle, WA 98195.

—June 25, in Oakland, California: Oakland Convention Center, room 208, Second Floor, Broadway at Tenth St., Oakland, CA 94704.

COMMENTS: For those who will not be able to attend the public hearings, NIDRR invites written comments. Written comments should be received by July 12, 1991.

ADDRESSES: Written comments should be addressed to Jacquie Price, Walcoff & Associates, 635 Slaters Lane, Suite 102, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Persons desiring to participate or seeking additional information should telephone (703) 684-5588; persons who are deaf and hearing impaired can call (202) 732-5136 for TDD services.

Dated: May 2, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91-10848 Filed 5-7-91; 8:45 am]

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federal register

Wednesday
May 8, 1991

Part IV

Department of Education

Congressional Methodology and the Family Contribution Schedule Methodology for the 1992-93 Award Year; Revision; Notice

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DEPARTMENT OF EDUCATION

Pell Grant, Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant and Stafford Loan Programs; Revision of the Need Analysis Systems for the 1992–93 Award Year

AGENCY: Department of Education.

ACTION: Notice of revision to the Congressional Methodology and the Family Contribution Schedule methodology for the 1992–93 award year.

SUMMARY: The Secretary of Education announces the annual update to tables used in the need analysis methodologies that an institution of higher education must use in calculating expected family contributions for the 1992–93 award year under the Pell Grant, campus-based (Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant), and Stafford Loan programs. The Secretary takes this action under the authority of title IV of the Higher Education Act of 1965, as amended (HEA).

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Radden, Program Specialist, Pell Grant Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4318, ROB–3), Washington, DC 20202–5444, telephone (202) 708–7888. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1 (800) 877–8339 (in Washington, DC (202) 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The need analysis methodologies are used to determine student eligibility for assistance under title IV of the Higher Education Act of 1965, as amended (HEA). There are two need analysis methodologies used under the above programs for determining a student's expected family contribution. One methodology, the Family Contribution Schedule, is used to calculate a student's expected family contribution for the Pell Grant Program. In the Pell Grant Program, a student's expected family contribution is known as the Pell Grant Index (PGI), formerly the student Aid Index (SAI). The second methodology, the Congressional methodology, is used to calculate a student's expected family contribution for the campus-based (Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant) and Stafford Loan programs. Both of these methodologies are established by statute.

The HEA provides for the following annual updates:

I. Pell Grant Family Contribution Schedule

Sections 411A through 411F of the HEA specify the criteria, data elements, calculations, and tables used to calculate expected family contributions for the Pell Grant program. The Secretary is required to publish a revised Family Size Offset table for each award year. The family size offset is an allowance for the family's basic living expenses that varies by family size and is offset against the effective family income.

The Secretary must revise the tables by increasing (or decreasing) the comparable amount for the preceding award year by a percentage equal to the percentage increase (or decrease) in the Consumer Price Index for Wage Earners and Clerical Workers published by the Department of Labor, and rounded to the nearest $100. Using the percentage change between the Consumer Price Index for Wage Earners and Clerical Workers for December 1989 and the Consumer Price Index for Wage Earners and Clerical Workers for December 1990 as a predictor, the Secretary determines that the family size offsets will increase by 6.1 percent for the 1992–93 award year. Accordingly, for the 1992–93 award year for the Pell Grant Program, the Family Size Offset Table is revised as follows:

FAMILY SIZE OFFSETS

Family members	Amount
1	$6,400
2	8,000
3	9,800
4	12,500
5	14,900
6	16,600

Note: Add $2,000 for each additional family member for families with more than six in the household.

The dependent student offset is an offset against the effective income of a dependent student and his or her spouse. The Secretary is required to publish necessary revisions in these offsets for each award year. The dependent student offsets for the 1992–93 award year are revised as follows:

DEPENDENT STUDENT OFFSETS

Marital Status	Amount
Single	$4,200
Married	6,000

II. Congressional Methodology

Part F of title IV of the HEA specifies the criteria, data elements, calculations, and tables for the computation of expected family contributions, and tables for the computation of expected family contributions for the campus-based and Stafford Loan programs. In addition, part F requires that four of the tables—the Standard Maintenance Allowance, the Adjusted Net Worth of a Business or Farm, the Asset Protection Allowance, and the Assessment Schedules and Rates—be adjusted each award year to take into account inflation for the 12 months between December 31 of the previous year and December 31 of the current year. The changes are based in general, upon increases in the Consumer Price Index.

For award year 1992–93 the Secretary is charged with updating the standard maintenance allowances, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 1990 and December 1991. However, since the Secretary must publish these tables before December 1991, the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for all Urban Consumers for 1991.

The Secretary estimates that the increase in the Consumer Price Index for all Urban Consumers for the period December 1990 through December 1991 will be 4.6 percent. Therefore, for the 1992–93 award year, the tables set forth in part F have been updated as follows in sections 1, 2, and 4 in accordance with this estimate and the other relevant provisions of part F. The Secretary must revise for each award year the table on asset protection allowance as provided for in section 478(d) of the HEA. The Asset Protection Allowance table for the award year 1992–93 has been updated below in section 3.

Part F also requires the Secretary to increase the amount specified for the Employment Expense Allowance to account for inflation based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-earner compared to a one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services. Therefore, the Secretary is increasing this allowance as described below in section 5.

1. Standard Maintenance Allowance

This allowance is the amount of reasonable living expenses that would

be associated with the maintenance of an individual or family. The allowance is offset against income for the family's basic living expenses, and it varies by family size. The standard maintenance allowances for parents of dependent students and independent students with dependents for award year 1992–93 are:

Family size (including student)	Number in college				
	1	2	3	4	5
2	$10,370	$8,600			
3	12,910	11,150	$9,380		
4	15,940	14,180	12,410	$10,640	
5	18,810	17,050	15,280	13,510	$10,500
6	22,010	20,240	18,470	16,700	14,930

For each additional family member add $2,490.
For each additional college student subtract $1,770.

2. Adjusted Net Worth (NW) of a Business or Farm

A portion of the full net value of a farm or business is excluded from the calculation of an expected contribution since: (1) The income produced from such assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for dependent students, independent students without dependents, and independent students with dependents.

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0.
1 to 75,000	0+40% of NW.
75,001 to 225,000	30,000+50% of NW over 75,000.
225,001 to 370,000	105,000+60% of NW over 225,000.
370,001 or more	192,000+100% of NW over 370,000.

3. Asset Protection Allowance

This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary education expenses. There are three asset protection allowance tables—one for parents of dependent students, one for independent students without dependents, and one for independent students with dependents.

DEPENDENT STUDENTS

If the age of the older parent is	Then the asset protection allowance is—	
	Two parents	One parent
25 or less	0	0
26	2,300	1,700
27	4,500	3,300

DEPENDENT STUDENTS—Continued

If the age of the older parent is	Then the asset protection allowance is—	
	Two parents	One parent
28	6,800	5,000
29	9,000	6,700
30	11,300	8,400
31	13,600	10,000
32	15,800	11,700
33	18,100	13,400
34	20,300	15,100
35	22,600	16,700
36	24,900	18,400
37	27,100	20,100
38	29,400	21,800
39	31,600	23,400
40	33,900	25,100
41	34,800	25,700
42	35,700	26,200
43	36,400	26,800
44	37,300	27,300
45	38,300	28,000
46	39,300	28,700
47	40,300	29,200
48	41,600	29,900
49	42,700	30,600
50	43,800	31,400
51	45,200	32,100
52	46,300	32,900
53	47,800	33,700
54	49,300	34,700
55	50,500	35,500
56	52,100	36,400
57	53,700	37,500
58	55,700	38,300
59	57,400	39,500
60	59,100	40,600
61	61,200	41,700
62	63,400	42,900
63	65,300	44,100
64	67,600	45,400
65 or more	69,900	46,900

INDEPENDENT STUDENTS WITHOUT DEPENDENTS

If the age of the student is—	Then the asset protection allowance is—
25 or less	0
26	1,700
27	3,300
28	5,000
29	6,700
30	8,400

INDEPENDENT STUDENTS WITHOUT DEPENDENTS—Continued

If the age of the student is—	Then the asset protection allowance is—
31	10,000
32	11,700
33	13,400
34	15,100
35	16,700
36	18,400
37	20,100
38	21,800
39	23,400
40	25,100
41	25,700
42	26,200
43	26,800
44	27,300
45	28,000
46	28,700
47	29,200
48	29,900
49	30,600
50	31,400
51	32,100
52	32,900
53	33,700
54	34,700
55	35,500
56	36,400
57	37,500
58	38,300
59	39,500
60	40,600
61	41,700
62	42,900
63	44,100
64	45,400
65 or more	46,900

INDEPENDENT STUDENTS WITH DEPENDENTS

If the age of the student is—	Then the asset protection allowance is—	
	married	unmarried
25 or less	0	0
26	2,300	1,700
27	4,500	3,300
28	6,800	5,000
29	9,000	6,700
30	11,300	8,400
31	13,600	10,000
32	15,800	11,700
33	18,100	13,400

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INDEPENDENT STUDENTS WITH DEPENDENTS—Continued

If the age of the student is—	Then the asset protection allowance is—	
	married	unmarried
34	20,300	15,100
35	22,600	16,700
36	24,900	18,400
37	27,100	20,100
38	29,400	21,800
39	31,600	23,400
40	33,900	25,100
41	34,800	25,700
42	35,700	26,200
43	36,400	26,800
44	37,300	27,300
45	38,300	28,000
46	39,300	28,700
47	40,300	29,200
48	41,600	29,900
49	42,700	30,600
50	43,800	31,400
51	45,200	32,100
52	46,300	32,900
53	47,800	33,700
54	49,300	34,700
55	50,500	35,500
56	52,100	36,400
57	53,700	37,500
58	55,700	38,300
59	57,400	39,500
60	59,100	40,600
61	61,200	41,700
62	63,400	42,900
63	65,300	44,100
64	67,600	45,400
65 or more	69,900	46,900

4. Assessment Schedules and Rates

Three separate assessment schedules—one for dependent students, one for independent students without dependents, and one for independent students with dependents—are used to determine the expected contribution toward educational expenses from family financial resources.

For dependent students, the expected parental contribution is derived from an assessment of the parents' adjusted available income (AAI). The AAI represents a measure of a family's financial strength which considers both income and assets. For a dependent student, the parents' AAI is assessed according to the following schedule:

If AAI is—	Then the assessment is—
Less then −$3,409	−$750.
−3,409 to 9,300	22% of AAI.
9,301 to 11,600	2,046+25% of AAI over 9,300.
11,601 to 14,000	2,621+29% of AAI over 11,600.
14,001 to 16,300	3,317+34% of AAI over 14,000.
16,301 to 18,700	4,099+40% of AAI over 16,300.
18,701 or more	5,059+47% of AAI over 18,700.

For independent students without dependents the expected family contribution is derived in part from an assessment of the student's available taxable income (ATI). The ATI is based on a calculation of taxable income minus a maintenance allowance and allowances for Federal, State and local income taxes and social security taxes. The assessment of the ATI for an independent student without dependents is computed according to the following schedule:

If AAI is—	Then the assessment is—
Less than $10,600	70% of ATI.
10,601 or more	$7,420+90% of ATI over $10,600.

For independent students with dependents, the expected contribution is derived from an assessment of the adjusted available income (AAI). The AAI represents a measure of a family's financial strength which considers both income and assets. The assessment of AAI for an independent student with dependents is computed according to the following schedule:

If AAI is—	Then the assessment is—
Less then−$3,409	−$750.
−3,409 to 9,300	22% of AAI.
9,301 to 11,600	2,046+25% of AAI over $9,300.
11,601 to 14,000	2,621+29% of AAI over 11,600.
14,001 to 16,300	3,317+34% of AAI over 14,000.
16,301 to 18,700	4,099+40% of AAI over 16,300.
18,701 or more	5,059+47% of AAI over 18,700.

5. Employment Expense Allowance

This allowance for employment-related expenses, that is used for the parents of dependent students and independent students with dependents, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two-earner family compared to a one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services.

The employment expense allowance for parents of dependent students and independent students with dependents is the lesser of $2,500 or 35 percent of earned income.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program)

Dated: May 1, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

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Wednesday
May 8, 1991

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 630

Additional Standards for Viral Vaccines; Poliovirus Vaccine Live Oral; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 630

[Docket No. 88N-0027]

Additional Standards for Viral Vaccines; Poliovirus Vaccine Live Oral

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations governing the manufacture of Poliovirus Vaccine Live Oral. FDA is amending the regulations to make the regulations consistent with current scientific knowledge and to remove unnecessary regulatory burdens. FDA is also amending the regulations to make its standards more consistent with the requirements for manufacturing and testing of oral poliovirus vaccine issued by the World Health Organization (WHO). The amendments will facilitate the licensure for U.S. distribution of oral poliovirus vaccine currently meeting international standards of safety and effectiveness.

DATES: Effective May 8, 1991. Additional written comments may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, by July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Steven F. Falter, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION:

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I. Introduction

In the **Federal Register** of May 5, 1986 (51 FR 16620), FDA issued a proposed rule to revise the additional standards for viral vaccines governing the manufacture of Poliovirus Vaccine Live Oral. Poliovirus Vaccine Live Oral (hereafter referred to as oral poliovirus vaccine) is a preparation of live, attenuated, poliovirus grown either in monkey kidney cell cultures or in a cell line of human or simian (monkey) origin. The trivalent form of the vaccine, containing a combination of the three types of poliovirus that may infect humans, is used in the United States for the immunization of children against paralytic poliomyelitis.

Oral poliovirus vaccine is a biological product subject to licensure under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262). Under the PHS Act, oral poliovirus vaccine must meet standards prescribed in regulations designed to ensure the continued safety, purity, and potency of the product. The additional standards for Poliovirus Vaccine Live Oral are currently codified in §§ 630.10 through 630.17 (21 CFR 630.10 through 630.17).

II. Reasons for the Rulemaking

In 1985, FDA undertook a review of the additional standards for oral poliovirus vaccine to determine how the regulations could be revised and updated. As described in the preamble to the proposed rule, FDA had several objectives for its regulatory review and subsequent rulemaking. FDA continues to believe that these objectives, cited below, are appropriate reasons for amending the regulations governing the manufacture of oral poliovirus vaccine.

1. *To update the regulations consistent with current scientific knowledge and the standards of the World Health Organization (WHO).* During the past 29 years, FDA and other health agencies worldwide have gathered considerable information and scientific understanding concerning the manufacture, testing, and use of oral poliovirus vaccine. With this increased scientific knowledge, the world's health agencies have recognized the need to update the standards by which oral poliovirus vaccine is manufactured and tested. Accordingly, FDA and other health agencies cooperated in the development of revised WHO standards concerning the manufacture and testing of any oral poliovirus vaccine. WHO published its revised standards in 1983 ("Requirements for Poliomyelitis Vaccine (Oral) (Requirements for Biological Substances No. 7)", World Health Organization Technical Report Series, No. 687, 1983). Most countries now will accept for domestic use oral poliovirus vaccine manufactured according to WHO standards. FDA has reviewed the revised WHO standards and believes that, for the most part, they are appropriate for ensuring the safety and effectiveness of oral poliovirus vaccine licensed for use in the United States. FDA has also reviewed its standards, independent of the WHO review, to identify areas where the regulations could be updated based on current scientific knowledge.

Accordingly, FDA proposed to revise its additional standards for oral poliovirus vaccine to be more consistent with the WHO standards and also proposed other amendments consistent with the findings of FDA's independent review of the current regulations.

2. *To facilitate the licensure of safe and effective vaccines.* Since 1979, only one manufacturer has remained licensed for Poliovirus Vaccine Live Oral Trivalent. The one manufacturer has consistently met the Nation's needs for oral poliovirus vaccine. FDA recognizes, however, that dependence on a sole source for an essential vaccine leaves immunization programs vulnerable to any of a variety of circumstances that may disrupt vaccine supplies from the sole manufacturer. Occasional minor outbreaks of poliomyelitis occurring in unimmunized populations in the United States and abroad illustrate the need to continue, uninterrupted, immunization of children with oral poliovirus vaccine. Multiple sources of oral poliovirus vaccine would ensure the continuation of immunization programs, even if supplies from one of the manufacturers were temporarily interrupted. Likely candidates for obtaining licensure of oral poliovirus vaccine include those manufacturers who are already supplying safe and effective oral poliovirus vaccines to other countries.

FDA believes that licensure of such vaccines will become feasible only if FDA's standards and international (WHO) standards are reasonably consistent. FDA has found that there are differences between FDA's standards and international standards that do not alter the assurances of safety and effectiveness of the vaccine provided by the standards. However, FDA believes that these differences may deter manufacturers from seeking licensure in the United States of oral poliovirus vaccine currently used safely and effectively in other countries. Accordingly, FDA proposed to amend the additional standards to be more consistent with acceptable international standards so as to facilitate the U.S. licensure of oral poliovirus vaccine from multiple sources.

3. *To reduce the regulatory burdens of the regulations.* Under the Regulatory Flexibility Act (Pub. L. 96-354) and Executive Order 12291, FDA is required to systematically undertake a periodic review of its regulations to identify and appropriately revise or remove unduly burdensome regulations. FDA has systematically reviewed the regulations in §§ 630.10 through 630.17 and proposed amendments to reduce or remove unduly burdensome regulations while ensuring the continued safety and effectiveness of oral poliovirus vaccine.

4. *To improve the clarity of the regulations.* FDA proposed numerous editorial amendments in the regulations. The editorial amendments are intended to make the regulations more readable, to remove ambiguities in terminology, and to clarify the regulations.

III. The Advisory Committee Meeting of January 1987

Among the comments submitted in response to the proposed rule, FDA received requests from the licensed manufacturer of oral poliovirus vaccine, from several scientists with expertise in vaccine manufacture and use, and from two members of Congress that the proposed rule be presented for consideration by an advisory committee of experts. The comments contended that a meeting with an advisory committee would provide a public forum at which interested persons could present their views regarding the rules and would offer an opportunity for experts to confirm that the proposed amendments will not impair the assurances of safety and effectiveness of oral poliovirus vaccine provided by the regulations. In fact, FDA had discussed the proposed amendments with FDA's Vaccines and Related Biological Products Advisory Committee (the Advisory Committee), on two occasions in sessions closed to the public. However, FDA decided, in light of the public interest in the rulemaking and in response to these requests, to provide an opportunity for public discussion and consideration of the issue at an advisory committee meeting.

In the **Federal Register** of January 16, 1987 (52 FR 1969), FDA announced a change in agenda of a previously scheduled meeting of the Advisory Committee to provide for public discussion of the proposed rule at a meeting on January 29, 1987. Also in the **Federal Register** of January 16, 1987 (52 FR 1933), FDA announced that the agency was reopening the comment period on the proposed rule until February 13, 1987. FDA reopened the previous comment period so that all information, including comments received as a result of the Advisory Committee meeting, would be available to the agency in its consideration of the rulemaking.

All interested persons were allowed to present their views to the Advisory Committee at the meeting on January 29, 1987. So that all presentations could be heard, the meeting was extended for a 2-hour session on January 30, 1987.

Approximately 1½ hours of the meeting were closed to the public to discuss proprietary information. A transcript of the meeting, excluding the discussion held in closed session, is available under the docket number in the heading of this document, from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

After completion of the public discussion, the Advisory Committee recommended that the final rule be issued as proposed, and that it should include several changes to particular provisions of the proposed regulations, mentioned at the meeting and discussed elsewhere in this preamble. The Advisory Committee issued several suggestions concerning FDA's policies for implementing the final regulations, particularly concerning the revised test for neurovirulence in monkeys, and recommended several areas that would be appropriate for further investigation. A summary of the Advisory Committee's suggestions and FDA's response, including a summary of several studies conducted by FDA in response to specific Advisory Committee suggestions, follows. The data discussed below were presented by FDA at an open meeting of the Advisory Committee on November 17, 1989. Lederle Laboratories also presented data at the same meeting.

1. The Advisory Committee suggested that FDA define and establish a policy for acting on individual extreme results (outliers) obtained in the revised neurovirulence test in monkeys. The Advisory Committee noted that results of the revised test are analyzed by comparing the mean value for neurovirulence of the test virus; therefore, it was possible that the neurovirulence displayed in one or more test monkeys could be extraordinarily high even though the mean values for neurovirulence of the test and reference virus may compare acceptably. The Advisory Committee acknowledged that the cause and significance of isolated extreme values are unknown, but recommended that procedures should be in place to evaluate extreme values if they should occur. The Advisory Committee suggested that the significance of outlier results be evaluated by further study.

FDA believes that extreme outlier scores have not been reproducible upon subsequent testing and are most probably due to the particular susceptibility of an occasional individual monkey to the virus. However, FDA believes that until it can be more definitely demonstrated that the occurrence of individual outlier scores bears no relationship to the relative neurovirulence of the poliovirus some consideration should be given to outlier values. As is discussed in response to comment 28, FDA is providing in § 630.16(b)(3) that each manufacturer must have a means, approved by FDA, for evaluating a neurovirulence test (revised test only) with one or more monkeys having outlier scores. For the purposes of this discussion and the regulations, an outlier score is defined as an individual monkey mean lesion score in a test of a monovalent virus pool that is greater than an individual monkey mean lesion score previously or concurrently associated with the Reference Attenuated Polivirus of the corresponding type.

FDA has developed additional evidence regarding the significance of outlier values. FDA reviewed the results of over 5 years of testing 100 lots of monovalent virus pools of vaccine virus in approximately 1,840 animals. FDA found six vaccine lots with a total of seven individual monkeys with neurovirulence individual scores that were higher than the individual scores previously associated with the homotypic reference preparation. Four of these vaccine lots were available for retesting. Upon retesting, all four lots demonstrated group mean neurovirulence scores well below that of the reference and no outlier values were demonstrated. Thus, the outlier scores initially observed were not reproduced upon subsequent retesting.

During a routine test at FDA using the type 2 poliovirus reference preparation (lot NB-2), one animal developed severe disease symptoms typical of wild poliovirus infection; the remaining animals tested normally. The animal was sacrificed on day 12 post inoculation, the neurovirulence was scored for the animal, and type 2 poliovirus recovered from the animal's tissue was also tested by the revised neurovirulence test in monkeys. The neurovirulence score for the original, severely diseased animal was 3.3. The scores that may be obtained in this test range from 0 to 4, with higher scores indicating greater neurovirulence. The group mean neurovirulence score for the poliovirus recovered from the very severely paralyzed animal upon inoculation into a group of monkeys was 0.86. The reference virus scored at 0.34. Although scoring slightly higher than the reference virus, the virus isolated from the severely paralyzed monkey had much lower neurovirulence scores upon inoculation into another group of animals than the score for the original

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monkey from which it was obtained, indicating that it was the one monkey's particular susceptibility to the virus rather than any particular property of the virus itself that resulted in the single extreme neurovirulence score. A similar event occurred when FDA was using the reference for type 1 poliovirus (lot NA4) in a routine test according to the current CFR standards, with scores in a single monkey being between 3 and 4. FDA did not attempt to recover the virus from that monkey.

Both the type 1 reference (NA4) and the type 2 reference (NB-2) are composed of virus from pools that were utilized as components in trivalent vaccine for immunization of children. None of the virus pools used in composing the references was reported to be associated with an increased risk of paralytic poliomyelitis in the field. Both reference preparations have been used extensively in neurovirulence testing, with only the isolated instances noted above in which an extreme neurovirulence score was observed. Accordingly, the virus used in these reference preparations has been proven to be safe in vaccines and to be reliable as reference preparations and the rare instances of outlier scores do not reflect any unusual neurovirulence on the part of the virus. FDA will continue to evaluate the significance of outlier values as they occur.

2. The Advisory Committee suggested that FDA develop a practical policy for limiting the number of reference virus preparations of the same type that may be available for use at any given time.

FDA agrees that the number of references virus preparations in use should be limited. As is discussed in response to comment 15, FDA is including in § 630.14(b) the requirement that only the FDA reference standards and, upon FDA approval, the WHO reference standards, may be used for the required neurovirulence testing.

3. The Advisory Committee suggested studies be initiated to understand better the relationship of the dose of poliovirus administered to monkeys and the resulting values displayed in the neurovirulence test in monkeys. The Advisory Committee agreed that the available data are adequate to support the dosage prescribed in the revised neurovirulence test; however, additional data are needed to determine completely the relationship of dose to response to monkeys as represented by a neurovirulence value.

In response to the Advisory Committee's suggestion, FDA undertook a dose response study using types 1, 2, and 3 vaccine viruses. Five 10-fold dilutions were prepared from each virus type and tested for neurovirulence in monkeys. The undiluted viruses (10^0) were comparable to the inocula used in the previous, CFR-specified test while the 10-fold dilution (10^{-1}) were comparable to the inoculum used in the WHO neurovirulence test. The virus dilutions from 10^0 to 10^{-3} all demonstrated typical neurovirulence in monkeys. For types 2 and 3 viruses, the 10^{-3} dilution also demonstrated typical neurovirulence. For each of the three virus types, the neurovirulence scores for the 10^{-1} dilution were actually slightly higher, both for individual monkeys and total group scores, than the scores of the undiluted (10^0) samples. The data show that there is a wide range of dilutions that will adequately demonstrate neurovirulence in monkeys and that the dilution to be used in the revised test is of adequate sensitivity in detecting neurovirulence.

4. Independent of the adoption of the proposed rule, the Advisory Committee suggested that FDA and vaccine manufacturers continue to study the relevance of the results of the neurovirulence test in monkeys to the incidence of vaccine-related disease in the United States.

FDA continually monitors the incidence of vaccine-associated poliomyelitis in the United States and other countries. Typically, less than 10 cases of vaccine-associated paralytic poliomyelitis are reported in the United States each year. No single vaccine lot has been associated with an increased incidence of poliomyelitis. The lots that have been identified as associated with a case of paralytic poliomyelitis have had typically low scores when tested by FDA and the manufacturer for neurovirulence in monkeys. In the United Kingdom and Canada, the incidence of vaccine-associated paralytic poliomyelitis occurring since testing using the revised WHO methodology began in the mid-1980's is at or below the previous levels associated with vaccine tested by methods similar to FDA's previous standards, demonstrating that the adoption of the WHO standards has continued to result in safe vaccine.

IV. Significant Changes to the Proposed Rule

In the proposed rule of May 5, 1986, FDA proposed to revise the additional standards for Poliovirus Vaccine Live Oral in 21 CFR 630.10 through 630.17. FDA proposed a number of changes in the biologics regulations that govern the manufacture of the vaccine. Each of the proposed changes was discussed in the preamble to the May 1986 proposed rule. For most of the proposed amendments no comments were received, or the comments supported the amendment, or the comments were technical and noncontroversial in nature.

Most of the comments received on the May 1986 proposed rule centered around FDA's proposal to amend the requirements for neurovirulence testing in monkeys in 21 CFR 630.16(b). FDA proposed to require use of a neurovirulence test that was based on the standards of WHO, adopted in 1982. The proposed revised test differed from the test required by FDA in several significant respects as outlined in the following chart.

	Current test	Proposed test
A. Intrathalamic inoculation	Thirty monkeys injected intrathalamically for each monovalent pool.	Intrathalamic inoculation not required.
B. Intraspinal inoculation:		
(1) Inoculum	Median tissue culture infective dose ($TCID_{50}$) of at least $10^{5.0}$ and dilutions of 1:1,000 and 1:10,000.	$TCID_{50}$ of between $10^{6.5}$ and $10^{7.5}$, no dilutions tested.
(2) Number of monkeys inoculated	Fifteen monkeys injected for each monovalent virus pool; five receiving undilute, five 1:1000, and five 1:10,000 diluted vaccine.	At least 12 monkeys inoculated if testing either Type 1 or Type 2 poliovirus, and at least 20 monkeys if testing Type 3 poliovirus.
(3) Reference attenuated poliovirus—type.	Reference Attenuated Poliovirus, Type 1, used as control for test, regardless of virus type being tested.	Referenced attenuated poliovirus of corresponding type (Type 1, Type 2, or Type 3) used as control.
(4) Reference attenuated poliovirus—frequency of testing.	Reference attenuated poliovirus tested at least every 10 production lots of vaccine, but must be tested within 3 months of test of vaccine lots.	Reference attenuated poliovirus tested concurrently with testing of vaccine, certain exceptions provided.

	Current test	Proposed test
(5) Basis of comparison	Comparative evaluation made of evidence of neurovirulence of poliovirus under test and reference attenuated poliovirus using histopathological criteria specified in the regulations.	Comparative evaluation made of magnitude of neurovirulence of polio virus under test with results of test using reference attenuated poliovirus by a mathematical method that is expected to reject poliovirus vaccine lots with neurovirulence identical to the reference at a frequency of not less than 1 in 100.

FDA is including several additional changes to the regulations, most of which are related to the test for neurovirulence in monkeys:

1. In § 630.10(b)(2)(ii), FDA will require that poliovirus strains other than the Sabin strain now in use be found comparable to the Sabin strain when inoculated in monkeys by the intrathalamic and intramuscular routes. In the May 1986 proposed rule, FDA proposed to remove entirely from the regulations requirements for intrathalamic and intramuscular testing. (For additional discussion see FDA's response to comment 22.)

2. In § 630.10(c)(1), FDA will permit the use of cell cultures other than primary monkey kidney cells for the preparation of seed virus. FDA's proposed rule would have required that seed virus used in vaccine manufacture be prepared in primary monkey kidney cell cultures. FDA's proposal was based on a history of neurovirulence testing that showed that repeated passages of the virus in human cells may increase the possibility of the virus reverting to a more neurovirulent state after ingestion. FDA is aware of the experimental methods of preparing virus in continuous simian (monkey) cell cultures that may not result in the same increased possibility of viral reversion. In addition, future research may result in the ability to genetically manipulate poliovirus so as to control or remove its neurovirulence properties, making a restriction on repeated passage through human cell lines unnecessary. Although inadequate data are available at this time to show that these alternative technologies will result in a safe and effective vaccine, FDA finds that a prohibition against the use of such technologies is not warranted. A manufacturer requesting licensure of an oral poliovirus vaccine with the seed virus prepared in a cell culture other than primary monkey kidney cells would need to submit extension data demonstrating that the seed virus is at least equivalent to that grown in monkey kidney cells in properties affecting safety and efficacy. The cell culture used in preparing the virus would be required to meet the standards prescribed in 21 CFR 610.18.

3. In § 630.14(b)(2), the WHO reference standards may be used as controls for evaluation of the monkey neurovirulence test only upon FDA approval. In the proposed rule of May 1986, FDA proposed that the WHO references could be used without FDA approval. (For additional discussion see FDA's response to comment 15.)

4. In § 630.16(b)(3), FDA will require that individual outlier scores be evaluated by a method approved by the Director, Center for Biologics Evaluation and Research (CBER). Outlier scores are neurovirulence scores in one or more monkeys that are higher than experienced up to that time with the reference virus. In the proposed rule of May 1986, only the mean neurovirulence score would be evaluated for determining the acceptability of a monovalent virus pool intended for vaccine use. (For additional discussion see FDA's response to comment 28.)

5. In § 630.17, FDA will permit the continued use of the previously codified neurovirulence test in monkeys as an alternative to the revised test included in § 630.16. In the proposed rule of May 1986, the revised test would replace the former test entirely.

It has always been FDA's position that both the previous test and the revised test for neurovirulence in monkeys are adequate for use in helping to ensure the continued safety of oral poliovirus vaccine. The revised test does have the advantages of providing a statistical basis for the comparison of neurovirulence properties among currently licensed vaccine, experimental vaccine, and vaccines in use internationally, and needing fewer monkeys than the previous test. Thus, FDA believes the revised test is the preferred test for use in its laboratories for monitoring oral poliovirus vaccines in general, and FDA intends to use primarily the revised test for testing of submitted lots FDA may decide to perform. However, FDA also believes that the former test is satisfactory for determining the acceptability of individual monovalent virus pools by a manufacturer. By permitting a manufacturer continued use of the formerly required test, expenses related to the initial validation of the revised test (see § 630.16(b)(4)) at the manufacturer's laboratories will be avoided and the manufacturer will be permitted to continue use of a test in which both FDA and the manufacturer have confidence. FDA is also including as § 630.1198(d) (21 CFR 630.19(d)) of the final rule the criteria for when the Director, CBER, may require additional neurovirulence testing of the seed virus when monovalent virus pools are tested according to § 630.17. This requirement was formerly included in § 630.10(c)(5). For clarification and consistency, FDA is changing the phrase "evidence of a change" to "evidence of a significant increase" and the phrases "production virus" and "seed virus strains" to "seed virus" in § 630.10(c)(6).

FDA has always interpreted this requirement to mean that only a significant increase in neurovirulence that may be related to instability of the seed virus or other similar problems requires the manufacturer to perform additional neurovirulence testing in monkeys. Questions about this interpretation have been raised in tort litigation (see below). This change in the wording of the regulation is to clarify the wording and to ensure that all interested persons are readily aware of this interpretation.

Questions about the agency's past interpretations of the oral poliovirus vaccine regulations have been raised in tort litigation brought against the United States. There is no doubt that FDA has broad authority to promulgate regulations governing the manufacture of oral poliovirus vaccine. It is undisputed that the original promulgation of the regulations in 1961 and subsequent amendments to the regulations since then were proper exercises of statutory authority. Questions have been raised in the litigation as to whether the regulations in effect at various times were followed in certain respects. Litigants have argued that in some instances the agency's interpretations of the regulations were impermissible.

In a recently issued opinion, the District Court for the District of Maryland in consolidated litigation brought under the Federal Tort claims Act (*In re Sabin Oral Polio Vaccine Products Liability Litigation*, No. MDL

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780 (D. Md. April 18, 1991)) found certain past agency interpretations of the oral poliovirus vaccine regulations to be impermissible. The court also found other interpretations that had been challenged by the plaintiffs to be acceptable. No final judgment or finding of liability has been entered in this litigation. The court specifically stated that its findings do "not imply that the public health is or has been endangered in any respect."

The agency continues to believe that since the regulations were first promulgated the interpretations by the Federal employees involved in the vaccine regulatory program were proper with respect to science, public policy, and law. Nevertheless, the agency is making some changes in these final regulations in several sections of the regulations so that disagreements about permissible interpretations will not affect the current implementation of these regulations and the important ongoing public health program to prevent poliomyelitis through the use of oral poliovirus vaccine.

In this final rule certain clarifying changes are being made. Clarifications are intended both to provide less ambiguous language and, to the extent courts have found that certain interpretations are not permissible, to change the regulations appropriately. It is clear that the agency has statutory authority to make changes to the existing regulations. Additional changes to the regulations being made pursuant to that authority include the following:

6. It has always been FDA's position that in interpreting the agency's regulations, including the oral poliovirus vaccine regulations, the agency may appropriately take into account the public health consequences of the interpretation. For example, previous § 630.16(b) (now recodified as § 630.17(b)) describes a comparative evaluation to be made of the evidence of the neurovirulence of the poliovirus vaccine under test and the Reference Attenuated Poliovirus with respect to specified factors. The agency's longstanding interpretation permits agency decisionmakers to take into account the effect on vaccine supply, and consequently on the public health, when interpreting this regulatory provision. Because questions about whether the language of the regulation permits this discretion have arisen in litigation brought against the United States, FDA is clarifying the wording of the regulation to remove any doubt about whether the agency may properly consider the public health consequences when interpreting any provision of the oral poliovirus regulations. This clarification, which adds § 630.19(d), is to make explicit the agency's intention that in interpreting these regulations FDA may consider any potential effect on individual or public health, including effects related to vaccine supply. By codifying this provision in the oral poliovirus regulations, the agency in no way intends to suggest that this same principle does not apply to other FDA regulations. When appropriate, the agency will continue to take into account the public health consequences of its interpretation of any regulation.

7a. Revised § 630.13(a) was proposed in order to remove confusion about permissible interpretations of the provision limiting the number of tissue culture passages from the original strain. The agency has consistently interpreted the phrase "original strain" to include material known as "Sabin Original Merck" (SOM), which was produced by scientists at Merck, Sharp, and Dohme in the 1950's and "Sabin Original Rederived" (SOR), which was produced by scientists at Pfizer, Ltd., in the 1960's, as well as material known as "Sabin Original" (SO), produced by Dr. Albert Sabin in the 1950's.

In tort litigation referred to above, questions have been raised concerning whether the phrase "original strain" could permissibly be interpreted as applying to any material other than SO. The agency continues to believe that the phrase "original strain" appropriately means SO, SOM, or SOR with respect to Sabin strain material. The amendment to § 630.13(a) is intended to embody the agency's interpretation in less ambiguous language.

Type 3 seed now being used to manufacture oral poliovirus vaccine in the United States, as well as many other places in the world, is produced from SOR, which is made from a virus clone derived from SOM. Revised § 630.13(a) specifically permits virus in vaccine to be five tissue culture passages from a clone derived from one of the first five tissue culture passages of the original strain. Consequently, there can be no doubt that currently available vaccine produced from seed made from SOR meets the requirements of this regulation.

The agency has also always interpreted this provision (§ 630.13(a)) to apply only to bulk tissue culture passages, not to other techniques, such as "plaque purification" steps. The agency does not wish the use of the word "passages" in proposed § 630.13(a) to be misconstrued to mean anything other than bulk tissue culture passages and has therefore amended the proposed language to repeat the phrase "tissue culture passage" throughout.

7b. Because some lots manufactured in the early period of production of oral poliovirus vaccine were made directly from strain material, questions have been raised in litigation against the United States concerning testing such strain material. Litigants have argued that strain material used directly to produce vaccine lots should be tested in accordance with the requirements governing seed material. The agency continues to believe that the early use of strain material to produce vaccine lots directly did not thereby mean that the strain material had to be qualified as seed material. As previously stated, the agency believes that SO (produced by Dr. Sabin), SOM (produced by Merck, Sharp, and Dohme), and SOR (produced by Pfizer, Ltd.) all constitute original Sabin strain material. Therefore, production of lots directly from any of these strain materials should not require that SO, SOM, or SOR be tested in accordance with the criteria for qualification of the seed virus in § 630.10(c).

New § 630.10(b)(4) has been added to embody this longstanding agency interpretation. The agency expects future vaccine lots to be prepared in a seed lot system, as specified in new § 630.10(c). However, this revision of § 630.10(c) is not intended to suggest that previous lots produced directly from strain material were or are unacceptable. Vaccine licenses based in part on lots manufactured directly from strain material remain valid.

7c. FDA is also amending § 630.16 (b)(1)(i) and (b)(1)(ii) (new § 630.17 (b)(1) and (b)(2)). Questions have been raised in litigation concerning the agency's longstanding interpretation of these provisions with respect to evidence of inoculation. Under these provisions at least 30 monkeys are injected intrathalamically, and three groups of at least 5 monkeys are injected intraspinally. In keeping with § 630.16(b)(1)(iii) (new § 630.17(b)(3)), which provides that a test is satisfactory if "at least 80 percent of the animals in each group survive the observation period," the agency has always interpreted the inoculation provisions to require that at least 80 percent of the minimum number of animals to be injected show evidence of inoculation. In other words, for the intrathalamic test at least 24 monkeys are to show evidence of inoculation, and for the intraspinal test at least 4 monkeys per group are to show evidence of inoculation in order to have a valid test. The language of § 630.10 (b)(1)(i) and (b)(1)(ii) (new § 630.17 (b)(1) and (b)(2)) have been revised to convey this interpretation more clearly.

7d. In the tort litigation, questions have also been raised about the permissible interpretation of neurovirulence test results under § 630.16(b)(1)(iii) (new § 630.17(b)(3)). This provision lists five factors to be considered in making a comparative evaluation of the evidence of neurovirulence of the virus under test and the Reference Attenuated Poliovirus. Under the unrevised regulations, as well as under new § 630.17(b)(3), the reference vaccine is required to be Type 1 vaccine. Historically, Type 3 vaccine has had more variable neurovirulence test results than has Type 1 vaccine.

Under the agency's longstanding interpretation of the neurovirulence test regulations, the comparative evaluation of the intraspinal test results has been made based on the final neurovirulence grade. This number given to lesions indicative of poliomyelitis is the higher of the severity score (at the site closest to the site of inoculation) and the spread score (at the site distant from the site of inoculation). Intrathalamic test results have in recent years been evaluated not through the final neurovirulence grade, but by looking for a match between test lot results and reference vaccine history with respect to both severity and spread scores for each monkey. Questions have been raised in litigation concerning whether this differential approach to evaluation for the intraspinal and the intrathalamic tests is permissible under the wording of former § 630.16(b)(1)(iii).

The agency believes that it is appropriate from both a scientific and a public policy perspective to continue to evaluate the intraspinal and the intrathalamic test results somewhat differently. The differences in manner and route of inoculation of the two tests lead to expected differences in test results. For example, injection of the inoculum directly into the spinal cord means that more spread of the virus is expected simply through physical transmission of the virus resulting from the injection itself, rather than through replication of the virus. Consequently, the spread scores have a different scientific significance in the intraspinal test than in the intrathalamic test.

The agency is revising § 630.16(b)(1)(iii) (new § 630.17(b)(3)) to state explicitly that the five factors listed may be weighted and interpreted as the Director, CBER, or other agency officials deem appropriate. The revised section specifically states that the factors may be considered in different ways for monkeys inoculated intraspinally and for monkeys inoculated intrathalamically. In keeping with past interpretations and with new § 630.16(d) (discussed above), new § 630.17(b)(3) states that other relevant factors, such as public health consequences, may also be considered in evaluating neurovirulence test results.

The agency expects that Type 3 vaccine results will continue to be more variable than Type 1 reference vaccine results and believes that the neurovirulence test regulations continue to allow room for appropriate judgments in making the comparisons between the various types of vaccine lots and the reference vaccine. The agency has always intended the neurovirulence test provisions of the regulations to allow for appropriate interpretations, and the agency intends this change to reflect and permit such reasonable flexibility.

7e. The agency is adding new § 630.19(e) to provide explicit authority for the Director, CBER, to approve an exception or alternative to any requirement in the additional standards for live oral poliovirus vaccine. A similar provision already exists for blood, blood components, and blood products at § 640.120 (see 55 FR 10420, March 21, 1990).

Modification of any particular test method or manufacturing process may be approved by the Director, CBER, under current § 610.9, based upon evidence that the modification will provide assurances of the safety, purity, potency, and effectiveness of the product equal to or greater than the assurances provided by the method specified in the regulations. Recognizing that this equivalent methods regulation does not necessarily apply to all aspects of licensing, collecting, processing, testing, storing, and distributing products, FDA revised the blood product regulations to authorize approval of exceptions or alternatives more broadly. Similarly, FDA believes that technological and scientific advances and concerns about the continued availability of oral poliovirus vaccine products support an amendment to § 630.19 to provide the Director, CBER, clear authority to approve an alternative or exception to particular requirements when warranted. The Director would approve such exception or alternative only if, in the judgment of the Director, the safety, purity, potency, and effectiveness of the final product is adequately maintained.

7f. The agency believes that it is in the best interest of the public health to remove any question about the status of the current vaccine supply, which is safe and effective vaccine. This vaccine was approved under the agency's longstanding interpretation of the regulations. These amended regulations embody those interpretations and make clear that the standards that were actually applied to approve the current vaccine are permissible. Therefore, new § 630.19(f) provides that, upon the effective date of the regulation, all vaccine previously released or distributed is deemed to meet the requirements of these amended regulations. Previously distributed vaccine that has not yet been administered, but is still within expiration date, may be administered without doubt as to its present legality under the agency's regulations.

V. Comments and FDA's Responses

FDA received 29 letters of comment from 11 different persons in response to the proposal. Five persons expressed complete support for FDA's proposed rule. Four persons, including the current manufacturer of oral poliovirus vaccine, Lederle Laboratories, opposed the rulemaking and provided most of the comments summarized below. Two persons had only technical questions concerning the rulemaking. A summary of the comments and FDA's responses follows:

A. General Comments

1. One comment urged that the proposed rule be reconsidered and subject to further study and review before being made final.

FDA believes that further study and review of the rule are not needed before the regulations are made final. Extensive studies by FDA and international collaborative studies involving FDA under the auspices of WHO have demonstrated the validity of the rule.

2. Two comments questioned FDA's reasons for the rulemaking. Specifically the comments contended that:

i. There is no advantage in the availability of multiple sources of oral poliovirus vaccine and, indeed, it may be a disadvantage because of an increased instability in vaccine supply due to adjustments in vaccine inventory levels.

ii. The current regulations are not unduly burdensome and the fact that a regulation is burdensome is not itself a valid reason to change the regulation.

FDA recognizes that a manufacturer may need to adjust product inventory in response to competitive pressures; however, such adjustments should not lead to disruption of the vaccine supply. FDA believes that the availability of multiple sources of vaccine provides greater flexibility in responding to any

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possible disruption in vaccine supplies from any single supplier.

FDA believes it is in the interest of the public health to remove any unnecessary regulatory barriers to the availability of safe and effective vaccine. Moreover, as discussed in the introduction to this rule, under the Regulatory Flexibility Act and Executive Order 12291, FDA has undertaken to review the regulations and remove or revise those regulations found to be unduly burdensome. FDA agrees that the fact that a regulation is burdensome is not necessarily a sufficient reason to change the regulation, if the regulation is necessary to protect the public health. However, the agency believes it is appropriate to select the least burdensome regulatory alternative that achieves the goal of effectively helping to ensure safe, pure, and potent biological products. FDA believes that the final rule will achieve this goal while also being less burdensome to manufacturers.

3. Two comments stated that the regulations should not be revised to facilitate U.S. licensure of oral poliovirus vaccine from multiple sources. The comments urged that any new applicants for U.S. licensure of oral poliovirus vaccine should be required to show initially that their vaccine meets current regulations as a means of validating both the new manufacturer's vaccine and the new standards.

Before FDA would license a new oral poliovirus vaccine, the manufacturer must have submitted extensive laboratory and clinical data demonstrating the safety and effectiveness of the vaccine. After licensure of the new vaccine, each subsequent lot of vaccine must be shown to continue to meet the safety and effectiveness standards. FDA believes that conformance with the revised standards will lead to the continued safety and effectiveness of the vaccine and that the additional step of meeting the former requirements is unnecessary.

FDA also believes that the revised standards have been adequately validated through extensive international experience and use of the revised test methods in FDA's own laboratory. Elsewhere in this preamble, FDA discusses the scientific validity of the revised test for neurovirulence in monkeys.

4. Three comments contended FDA should not rely on the epidemiological data provided by WHO as support of the safety of vaccine manufactured according to WHO standards. The reasons given for this comment were:

(a) The data from many other countries are less reliable than U.S. data.

(b) The data from the United Kingdom are largely from a period before vaccine tested by the current WHO standards was released, and the data from Canada are based on use of a vaccine with a highly attenuated type III seed (Pfizer RNA-derived seed).

(c) One comment cited data from Brazil concerning an outbreak of poliomyelitis caused by wild virus that may have been due to the use of a subpotent vaccine and argued that surveillance data from countries having such lower potency standards may not be relevant to the U.S. experience.

(d) Genetic comparison of the Sabin type 3 strains used in the United States with Sabin type 3 strains used in other countries demonstrates that the type 3 virus used for vaccine in the United States is more attenuated and more genetically stable than the type 3 virus used for vaccine in other countries.

Related to these assertions, the comments contended that epidemiological studies carried out in other countries are not valid as support for changing the requirements in the United States.

FDA recognizes that differences in vaccines, immunization policies, and target populations in each country make direct comparison of the incidence of vaccine-associated poliomyelitis among countries difficult. However, the fact that the revised neurovirulence testing has been used for a variety of vaccines in a number of countries without an increased incidence of vaccine-associated poliomyelitis occurring in any of these countries does further validate that the revised test has functioned successfully under a variety of conditions. In addition, when comparing the incidence of vaccine-associated poliomyelitis in countries such as the United Kingdom and Canada before and after the revised test was adopted, data demonstrate that there has been no increase, in fact in some cases a slight decrease, in the incidence of vaccine-associated poliomyelitis.

The data from Brazil, provided with a letter of comment, concerned the followup investigation of an outbreak of poliomyelitis caused by wild virus. The outbreak may have occurred because children were inadequately protected by a subpotent vaccine in use at the time in Brazil. The data had no relevance to the adequacy of the neurovirulence testing of the vaccine. FDA has not relied on data from Brazil in evaluating the adequacy of the revised test except to note that no country using the revised test has had an incidence of vaccine-associated poliomyelitis indicating a problem with vaccine neurovirulence. FDA is not proposing to change the potency requirements for oral poliovirus vaccine.

FDA believes that the clinical significance of any genetic differences between the vaccine manufactured in the United States and other countries has not been demonstrated. Almost all vaccines were derived from the same original Sabin strains. Differences in the degree of attenuation between the vaccine in the United States and other Sabin strain vaccines have not been documented by epidemiological evidence. Even if such a difference in attenuation were documented, such evidence would only further document that the revised test has been successful in screening out vaccines of unacceptable neurovirulence.

5. Three comments objected that the current manufacturer of oral poliovirus vaccine in the United States has not received any formal written request for participation in collaborative studies nor sufficient information to initiate collaborative studies regarding the proposed regulations. Five comments objected that the proposed rule has not been presented to an FDA advisory committee for formal review. The comments viewed the lack of collaborative studies and formal advisory committee review as departures from usual FDA policy.

FDA agrees that, until publication of the 1986 proposed rule, the current manufacturer of oral poliovirus vaccine, Lederle Laboratories, was kept informed of FDA's development of the revised neurovirulence test only on an informal basis. FDA provided formal notification of its intent to revise the neurovirulence test and other regulations by publication of the proposed rule on May 5, 1986.

FDA has performed collaborative studies with Lederle Laboratories concerning new potency test methods (see comment 17); however, FDA agrees that it has not performed collaborative studies concerning the test for neurovirulence in monkeys directly with the current manufacturer. Lederle Laboratories was invited to participate with FDA in the WHO collaborative studies but elected not to. After the proposed rule of May 1986, FDA met with Lederle Laboratories several times to discuss possible collaborative studies but no agreement on appropriate studies was reached. However, FDA has performed many studies to determine the acceptability of the revised test for neurovirulence in monkeys. FDA collaborated with other national health

agencies in testing programs as part of the initial development of the WHO revised standards. For the last 8 years, FDA has tested by the revised test for neurovirulence each lot of oral poliovirus vaccine submitted to FDA for release. Based on the experience of FDA, other national health agencies, and international manufacturers of oral poliovirus vaccine, FDA finds that the revised test methods can be implemented successfully in different laboratories to ensure the safety of oral poliovirus vaccine. Accordingly, FDA did not consider it necessary to conduct collaborative studies with the current manufacturer before initiating this rulemaking. Lederle Laboratories has also had an opportunity to conduct studies relevant to the proposed rules. The results of some of these studies were submitted to FDA in support of Lederle's comments and were presented at the Advisory Committee meetings of January 1987 and November 1989.

As discussed elsewhere in this preamble, FDA held a public meeting to discuss the proposed rule with FDA's Vaccines and Related Biological Products Advisory Committee on January 29, 1987, and again on November 17, 1989. FDA also had discussed the revised test for neurovirulence in monkeys with the Advisory Committee on two other occasions in 1982 and 1985. The Advisory Committee reviewed the revised test methods in sessions closed to the public in connection with a review of a pending license application. The Advisory Committee affirmed the acceptability of the revised methods and of vaccine tested by these methods.

Under § 14.75 (21 CFR 14.75), the Commissioner has determined that the portions of the minutes of the closed session of the Advisory Committee meetings of 1982 and 1985 concerning consideration of the WHO test methods may be made available for public disclosure without undue interference with agency or advisory committee operations. Therefore, those portions of the minutes, with some proprietary commercial information expunged, have been included in the docket for this rulemaking.

6. Numerous comments asked questions concerning the mathematical formulas and statistical methods used in the test for neurovirulence in monkeys.

FDA has not included an extensive discussion in this rule of the mathematics and statistical methods used in the test for neurovirulence in monkeys. The agency will allow each testing laboratory flexibility to select appropriate statistical methods for conducting the test, provided the laboratory uses recognized statistical methods meeting the general restrictions specified in the regulations. FDA's staff of statisticians and scientists remains available to any testing laboratory to help resolve specific problems that a laboratory may have in applying the revised test for neurovirulence in monkeys, including the methods of statistical analysis. Each manufacturer must submit to FDA a description of its statistical methods as part of its product license application, and any subsequent change to the methods must be submitted as an amendment to the product license application. FDA is amending § 630.16(b)(2) to clearly require that the method of evaluating neurovirulence involve concurrent testing of the monovalent virus pool and the reference attenuated poliovirus.

7. One comment agreed that the conservation of monkeys would be a positive outcome; however, the comment contended that FDA implied that monetary savings was an overwhelming consideration in redesigning the test for neurovirulence in monkeys. In addition, the comment stated that other factors, such as yields and batch size of vaccine pools and quality of animal care, influence total number of test monkeys used and the regulation and the availability of multiple suppliers of vaccine may actually increase the total number of test animals used.

FDA's statement that the revised test would conserve the number of test monkeys, a scarce and expensive resource, is an accurate statement and a reasonable factor in FDA's conclusion that the neurovirulence test should be revised. The preambles to this rule present the reasons for the rulemaking. The conservation of monkeys is only a minor, though relevant, reason.

FDA believes that the revised regulation will not encourage an increase in the use of test monkeys. The decision to change batch sizes of oral poliovirus vaccine is a business decision left solely to the manufacturer. FDA is not influencing by these amendments the yields or batch size or oral poliovirus vaccine. In the past, there has always been a lag period of many months between the time of formulation of a vaccine and its marketing, during which a manufacturer may adjust its production schedule to meet the projected demand for vaccine. Therefore, even if more than one manufacturer may produce vaccine for sale in the United States, the total production of vaccine should continue to meet demand. There should not be an increase in the total number of vaccine lots produced and in the number of monkeys used for testing the vaccine. The quality of animal care is closely regulated by FDA and other Federal and local government agencies, with resulting continued high standards of care. The standards of animal care will not be affected by this rulemaking.

8. One comment on the preamble to the proposed rule suggested that instead of the term "uniform" as it refers to test animals, the term "equivalent" is more appropriate (51 FR 16825). A comment also suggested that the term "human cell culture" or "human cell substrate" is more appropriate than "human cell line" when discussing proposed § 630.10(c)(1) (51 FR 16822).

FDA agrees with the comments. Because the terms appear only in the preamble to the 1986 proposed rule, no further action is necessary.

B. Effective Date—Transitional Period

9. One comment recommended that the transitional period during which seed virus and monovalent virus pools prepared and tested under the current regulations may be used for vaccine manufacture be extended to 2 years. (In the 1986 proposed rule, FDA proposed a transitional period of 180 days after the date of publication of the final rule.) The comment noted that such an extension is necessary to avoid disruption or oral poliovirus vaccine production while the manufacturer performs the four required neurovirulence tests on each of the three types of poliovirus reference material.

FDA agrees with the comment. However, because the regulations will permit the continued use of the current neurovirulence test, the methodology used for testing the seed virus and monovalent virus pools of the current licensed manufacturer will meet the requirements of the revised standards. Accordingly, no provision for a transition period will be necessary. FDA has removed from the final rule proposed § 630.10(c)(6), which provided a transition period for the use of seed viruses.

C. Criteria for New Vaccines

10. Four comments on proposed § 630.10 (a) and (c)(1) stated that the regulation should prohibit the passage in human cell cultures of poliovirus intended for vaccine manufacture. Three comments cited in vitro experiments that provided limited evidence that even single passage in a human cell culture may affect the neurovirulence of poliovirus after ingestion.

FDA does not believe that the use of human cell cultures to manufacture oral poliovirus vaccine should be prohibited. FDA recognizes that there is evidence illustrating potential problems in the

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passage of poliovirus for vaccine production, and FDA will carefully consider these potential problems when reviewing any application for the licensure of an oral poliovirus vaccine. For many years, an oral poliovirus vaccine produced using a single passage in a human cell culture was licensed and marketed successfully in the United States with a continuous record of clinical safety. The manufacturer of the vaccine withdrew its license in 1979 for reasons unrelated to vaccine safety and effectiveness. Oral poliovirus vaccine produced utilizing a single passage in human cell culture are in use elsewhere in the world and continue to demonstrate that such a vaccine can be safe for the routine immunization of infants and children. Through the licensure process and regulatory standards, any oral poliovirus vaccine marketed in the United States is demonstrated by the manufacturer to be safe and effective; therefore, a regulation prohibiting the use of human cell cultures is unwarranted.

11. One comment proposed § 630.10(b)(2) recommended that the regulations provide specific criteria for ensuring the safety of new vaccines manufactured from policvirus strains other than Sabin strains. The comment contended that specific criteria are necessary so that such a critical safety judgment is not made by the manufacturer of the vaccine. Another comment noted that the proposed neurovirulence test would not be appropriate for testing future DNA clone vaccines because too few monkeys may display neurovirulence, thereby invalidating the test.

FDA is amending § 630.10(b)(1) in the final rule by removing the requirements that Sabin strain virus be identified by historical records specified in the regulations. Consistent with the proposed rule, these requirements will apply to poliovirus strains other than the Sabin strain and are included in § 630.10(b)(2) of the final rule. Sabin strain viruses have been fully characterized, and FDA has always deemed it necessary to require a manufacturer of a Sabin strain vaccine to duplicate these efforts when seeking licensure with FDA. FDA finds that the historical data already available to the agency from the pioneer testing of Sabin strain virus and the extensive data necessary to qualify the seed virus (see §630.10(c)) are adequate to characterize the virus to be used in vaccine manufacture.

The development of a new oral poliovirus vaccine involving virus strains other than Sabin strains would most probably involve the use of biotechnologies as yet under investigation. Without knowing the origin and means of production of a vaccine composed of new strain of poliovirus, FDA cannot predetermine the specific evidence that would be necessary to document the safety of the vaccine. For example, with recombinant DNA-derived vaccines very different testing standards may be necessary. As with all new drugs and biological products, it is the manufacturer's responsibility to conduct the appropriate laboratory and clinical studies for investigating its vaccine, although FDA may provide advice and technical assistance. Under § 630.10(b), FDA would decide, most probably with the review and recommendations of scientific experts outside the agency, whether the evidence provided by the laboratory and clinical studies demonstrates that the new vaccine is at least as safe as oral poliovirus vaccine using Sabin strains. FDA believes that this system provides for the continued safety of oral poliovirus vaccine while providing the flexibility necessary for appropriately assessing new technologies.

12. One comment on the preamble to the proposed rule (51 FR 16621 and 16622) and proposed § 630.10(b)(2) questioned the incongruity of FDA stating in the preamble that any new oral poliovirus vaccine should at least be as safe and effective as the current vaccine using Sabin strains and its proposal to remove current § 630.10(b)(2) and to replace it with a general requirement that a new vaccine be shown to be at least as safe as the current vaccine. The comment questioned why the term "effective" was omitted from proposal § 630.10(b)(2).

FDA advises that the requirements in § 630.10(b)(2) concern only the demonstration of safety and potency of a new vaccine strain, potency being an element of the determination of effectiveness. Criteria for clinically demonstrating the effectiveness of a new vaccine, whether composed of Sabin strains or other strains of poliovirus, are included in §630.11.

13. One comment on proposed § 630.10(c)(2) requests that the regulation be clarified by adding the words "each of" so that it would read: "In addition, the neurovirulence of each of the first five consecutive monovalent virus pools * * *." FDA agrees with the comment. FDA is amending § 630.10(c)(2) accordingly and, for consistency, is amending similar wording in § 630.10(c)(3).

D. Tests on Monkey Kidney Cell Cultures

14. One comment stated that proposed § §630.13(b)(3)(iv) and 630.16(a)(6) (redesignated as § 630.18(a)(6)) are inconsistent because the former does not provide for use of a nonhuman cell system while the latter does. The comment requested that §630.13(b)(3)(iv) be amended to provide for the use of nonhuman cell systems.

FDA agrees with the comment. To make the wording consistent, FDA is amending § 630.13(b)(3)(iv) in the final rule by removing the word "human."

E. Reference Virus Preparations for Neurovirulence Testing

15. One comment on proposed §§ 630.14 and 630.16(b)(1) (redesignated as § 630.16(b)) stated that the proposed method for determining neurovirulence in monkeys is invalid scientifically. Based on a statistical prediction model using data generated by FDA's laboratories, the comment predicted that the current FDA type 1 reference standard (designated by FDA as NA-4) when tested against the WHO type 1 reference standard would fail the neurovirulence test in monkeys at a rate of 13 percent. The comment contended that the rejection rate is too high for an FDA reference preparation that has been shown to be a reliable standard for ensuring safe and effective vaccine in the past, indicating that the test method itself is invalid. The comment also disagreed with the existence of two reference standards (FDA and WHO reference standards) when the standards have not been shown to be equivalent.

FDA disagrees with the comment. The current FDA type 1 poliovirus reference (NA-4) is the same reference that has been used for neurovirulence testing since 1977. This reference is considered acceptable by WHO, and its suitability has been demonstrated by experience documenting the safety of vaccine used in the United States. The type 1 poliovirus reference available from WHO has been tested in comparison to the NA-4 reference on many occasions by FDA using the revised neurovirulence test, and in all cases it produced acceptable neurovirulence results. The WHO reference is therefore also acceptable. FDA has tested many lots of vaccine, shown to be acceptable through the use of the previously required neurovirulence test by the manufacturer, and all lots tested passed in comparison to both the NA-4 reference and the WHO reference using the revised test. This comparison testing has

demonstrated the adequacy of both references and the adequacy of the revised test method.

FDA appreciates the comment's general concern that any reference preparation available for use in the neurovirulence test be shown suitable for use in helping to ensure the continued safety of oral poliovirus vaccine. In evaluating the suitability of new reference preparations, whether prepared by FDA or WHO, FDA in general considers certain criteria. First, a new reference preparation should be shown to perform acceptably in the neurovirulence test in monkeys, consistent with the performance of accepted references and vaccine pools. Second, the reference preparation should be shown by experience, using vaccine containing either virus from the reference preparation lot or virus tested with the reference preparation, to result in the production of safe vaccine. The FDA and WHO reference preparations currently available have been shown to meet these criteria, and FDA considers them acceptable for use in the neurovirulence test.

Under § 630.14(b)(2) as proposed, a manufacturer could use a new WHO reference preparation without first determining that the new reference is acceptable to FDA. To ensure that FDA has the opportunity to review and approve a new reference preparation before it is used routinely, FDA is amending § 630.14(b)(2) to provide that use of a WHO reference preparation in the required neurovirulence test in monkeys is subject to FDA approval.

F. Test for Virus Titer

16. One comment on proposed § 630.16(b)(1) (redesignated as § 630.16(b)) asked for further clarification of the inoculum of $10^{6.5}$ to $10^{7.5}$ $TCID_{50}$ per milliliter proposed for use in the test for neurovirulence in monkeys. Specifically, the comment asked if the potency testing should be performed on the exact monovalent viral pool inoculation sample to be used for the neurovirulence test or if the test can be done on a representative sample of the undiluted monovalent virus pool.

FDA is amending the rule so that the test for infectivity may be performed either on an aliquot of the inoculation sample or on an aliquot of the undiluted monovalent virus pool. FDA recognizes that in some cases a dilution of a monoalen virus pool must be made to attain a suspension containing the required infectivity titer of $10^{6.5}$ to $10^{7.5}$ $TCID_{50}$ per milliliter. If a laboratory elects to test the undiluted monovalent virus pool, the method should be validated as being appropriate for determining infectivity of the inoculation sample.

17. One comment on §§ 630.15 and 630.16(b)(1) (redesignated as § 630.16(b)) asked that the regulations define the specific methodology for determining the $TCID_{50}$ because of the different potency values which may be obtained by different assay systems.

FDA agrees with the comment. FDA did not define in the proposed regulations the specific methodology for determining infectivity titers (potency) because several different systems have been found suitable for determining the potency of oral poliovirus vaccine. These systems include the use of monkey kidney or human cell cultures maintained in tubes, bottles, or microtiter plates.

The numerical value for potency obtained by a laboratory may vary, depending on the assay method used. Until the mid-1970's, FDA and vaccine manufacturers routinely used a titration method in rhesus monkey kidney (RMK) cell cultures. The requirements in former § 630.17(c) concerning the potency per human dose of vaccine are based on the use of the RMK test. In 1976, FDA initiated studies of a trivalent reference poliovirus to compare potency values determined by the RMK test with those determined by a procedure using a continuous human epithelial (HEp-2) cell culture. FDA found that the test in HEp-2 cells was acceptable and more sensitive (detects more virus) than the RMK test. FDA determined that potency values obtained by the RMK test could be converted readily to those obtained by the HEp-2 test by adding a correction factor of 0.6 $\log_{10}$ to reflect the increased sensitivity of the HEp-2 test. FDA began use of the HEp-2 test as an alternative potency test method in 1978. Subsequently, after collecting comparative data at its laboratory that confirmed FDA's findings, the current manufacturer of oral poliovirus vaccine submitted a license amendment to FDA to use the HEp-2 test. FDA approved the license amendment to use the HEp-2 test as an equivalent method, as then provided in 21 CFR 630.18 (now 21 CFR 610.9). The potency values in §§ 630.16(b), 630.17, and 630.19(c)(2) are based on the use of HEp-2 cells.

FDA agrees that all potency values in the regulations should be based on the same test and the test should be identified in the regulation. Accordingly, FDA is amending § 630.15(b) in this rule by converting the listed potency values to the comparable values based on the HEp-2 test by adding the correction factor of 0.6 $\log_{10}$ to each value. FDA emphasizes that this amendment does not change the potency requirements per human dose but only amends the expression of the requirements. FDA is also amending §§ 630.15(b), 630.16(b), 630.17(b), and 630.19(c)(2) in the rule to clarify that the listed potency values are based on the use of the HEp-2 test. Other methods for determining the potency of oral poliovirus vaccine may be acceptable provided they have been validated and approved by FDA. If another method is used, the potency values must be the equivalent of the values given in the regulations.

G. Tests for Safety

18. One comment on § 630.16(a)(1), (2), and (4) (redesignated as § 630.18(a)(1), (2), and (4)) recommended that FDA "give priority" to use of in vitro tests as alternatives to the animal tests described in the regulation. Another comment stated that the animal tests should no longer be required and tests in specific animal cell cultures should take their place for detecting exogenous infectious agents.

Section 630.18(a)(1) through (7) prescribes specific tests intended to help ensure that monovalent virus pools contain no demonstrable microbial agents except for the intended poliovirus. The tests in § 630.18(a)(1) through (4) utilize small laboratory animals. Considering the recent advances in technology, FDA is aware that new methods may be developed that provide equal or superior assurances that monovalent virus pools are free from other microbial agents. A manufacturer may apply to FDA to replace any of the tests prescribed in § 630.18(a)(1) through (7). As provided under the equivalent methods provision in § 610.9, FDA would approve the use of a different method upon a finding that the different method provides equal or greater assurances of product safety and purity.

H. Neurovirulence Test in Monkeys

19. Two comments on proposed § 630.16(b)(1) (redesignated as § 630.16(b)) stated that the proposed test for neurovirulence in monkeys has not been shown to correlate with clinical safety in the United States. One comment expressed concern over data cited in another letter of comment indicating that the rates of vaccine-related disease in some countries using vaccine manufactured under WHO standards are higher than in the United States and that adoption of the revised standards may result in an increase in the rate of vaccine-related disease.

FDA disagrees with the comments. For the past 8 years, FDA's laboratory has been applying the revised test to

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vaccines released for use in the United States. FDA also participated in a collaborative study with other national health agencies to validate the revised WHO test. The agency believes these data suffice to establish the validity of this safety test. In addition, recent WHO surveillance data show low rates of vaccine-related poliomyelitis, comparable to those found in the United States, in countries that use vaccine tested by the current WHO method. This surveillance data, FDA's experience, and the experience of other national control authorities and manufacturers also demonstrate that the use of the revised test results in the production of vaccine of equivalent clinical safety.

20. Two comments on proposed § 630.16(b)(1) (redesignated as § 630.16(b)) expressed concern that the proposed lowering of the dosage administered to each monkey in the neurovirulence test is inadequately supported by available data. The comments believed that the dose should be at least equivalent to the dose administered to humans in vaccine and that, for type 3 poliovirus particularly, the neurovirulence scores obtained in the proposed test may be lower than experienced in the currently required test. One of the comments stated that the allowable range of the test dose $10^{2.5}$ to $10^{6.5}$ $TCID_{50}$) is too wide and the dose of the monovalent virus pool and reference should be more closely aligned to assure comparability.

FDA believes that the dosage required in the revised test is adequately supported and appropriate for the neurovirulence test. As discussed in response to the Advisory Committee's comments, data show that appropriate neurovirulence is shown through a wide range of dilutions, and FDA believes the dosage results in optimal sensitivity of the test.

Under the former standards, FDA required a test dose containing at least $10^{7.0}$ $TCID_{50}$ per mL and no upper dosage limit was prescribed. In practical terms, undiluted virus has been used for the test which typically may vary in potency through approximately one log of virus per milliliter: the same range of potency values that is specified in this final rule.

21. One comment asked whether any vaccines rejected under the old standards have passed the proposed standards. If so, the comment recommended that the rules not be changed until further data are available to determine whether the rejected vaccine is too virulent for clinical usage.

FDA is not aware of an occasion where a monovalent virus pool failed to meet the previous neurovirulence testing requirements but met the revised neurovirulence testing requirements. There were three lots of vaccine virus for which the manufacturer considered the neurovirulence test results for the intraspinal test unacceptable, although FDA has reviewed the results and finds them to meet the specific requirements of the regulations.

22. Two comments recommended that the requirements for the intrathalamic test (former § 630.16(b)(1)(i)) be retained because a double-sited, intrathalamic and intraspinal, test is essential to distinguish clearly among strains and to monitor passaged virus for reversions. The comments claimed that the intrathalamic test differentiates the various poliovirus strains more clearly than the intraspinal test. The comments contended that the high percent of negative results found in the intrathalamic test is necessary to demonstrate that the monovalent virus pool is properly attenuated and that a single positive result may indicate a small increased in the potential of the pool to cause vaccine-related disease when administered to humans. One of the comments noted that historically three monovalent virus pools have been rejected because of high neurovirulence displayed in the intrathalamic test, and the public health implications of releasing pools that would fail the intrathalamic test under the current standards is unknown.

FDA recognizes that the intrathalamic test was of value during the early development of oral poliovirus vaccine in distinguishing neurovirulence properties among various strains of poliovirus. Accordingly, FDA is including in § 630.10(b)(2) a requirement that any strain other than the Sabin strain demonstrate comparable results when injected into monkeys by the intrathalamic route as well as the intramuscular and intraspinal routes as one of the methods for demonstrating strain suitability.

In routine testing of Sabin strain vaccine virus, the intrathalamic test has yielded occasional positive results that have not been reproducible. According to the information available to FDA, including information presented at public meetings, in each case that a monovalent virus pool was rejected or withdrawn because of a failure of the intrathalmic portion of the neurovirulence test, the results could not be corroborated by another laboratory. In each case the pool was tested both by the manufacturer's and FDA's laboratories. The results at one of the laboratories would show one or two monkeys with high neurovirulence scores, rather than a general pattern of high neurovirulence displayed in the 30 monkeys inoculated by the intrathalmic route. The results at the other laboratory did not include any monkeys with high neurovirulence scores.

The lack of reproducibility may be due in part to the use of type 1 virus as a reference for testing viruses of types 1, 2, and 3, even though types 2 and 3 viruses are recongized to have different characteristics when inoculated into monkeys. In addition, the intrathalamic test generally results in little or no signs of virulence in monkeys: therefore, even isolated outlier results can result in the failure of a test vaccine.

FDA believes that an advantage of the revised neurovirulence test will be a greater consistency and reproducibility in test results. As part of the WHO collaborative study to validate the revised neurovirulence test, the revised test was able to detect a higher neurovirulence in virus undergoing three or four passages when compared with virus having undergone two passages. Accordingly, FDA believes that the focusing of the revised test on the intraspinal portion of neurovirulence will result in a more reproducible evaluation of vaccine virus. As described earlier in this preamble, the formerly required neurovirulence test has been shown appropriate for assuring the continued safety and effectiveness of oral poliovirus vaccine through its long history of successful use. Therefore, FDA will continue to permit the use of the formerly required test.

23. One comment on proposed § 630.16(b)(1) (redesignated as § 630.16(b)(2)) stated that FDA should decide upon and require a standard method for evaluating and scoring poliovirus lesions. Furthermore, the comment asked that FDA make available to manufacturers its method of evaluating and scoring poliovirus lesions.

FDA does not believe it would be useful to include details of such a scoring system in the regulations. It is not essential that the scoring systems used in different laboratories be identical, as long as poliovirus specific lesions are graded in proportion to their severity in a consistent fashion within each laboratory. Previous experience has demonstrated that such scoring systems can be implemented by direct communications between FDA's laboratory staff and manufacturers. Upon request, FDA will cooperate with any labboratory in its efforts to establish an approriate scoring system. FDA's method of evaluating and scoring poliovirus lesions is available upon request.

I. Neurovirulence Test—Monkey Requirements

24. One comment on § 630.16(b)(1) (redesignated as § 630.16(b)) asked for further clarification of the term "quarantine group" as it refers to monkeys used in the neurovirulence test. Specifically, the comment asked to know the appropriate composition and qualification of a quarantine group. The comment expressed the belief that a quarantine group should consist of animals of comparable age and weight.

FDA agrees that to assure consistent test results the test monkeys should be within a standard age and weight range. FDA is amending § 630.16(b) in the final rule to require, whenever possible, that the monkeys used in testing be of comparable size and weight. Historically, FDA has used juvenile rhesus monkeys (*Macaca mulatta*) weighing between 4 and 6 pounds. Whenever possible, the monkeys in a quarantine group are taken as a group from a single source (breeding colony or importer). On some occasions, to assure optimal utilization of monkeys, FDA's laboratories may combine animals from more than one source to form a quarantine group. The monkeys are then quarantined in accordance with 21 CFR 600.11(f)(2)(i).

25. Two comments on proposed § 630.16(b)(1) and (b)(1)(iii) (redesignated as § 630.16(b) and (b)(4)) objected to two provisions permitting alternative procedures in the test for neurovirulence in monkeys. Specifically, the comments objected to the provisions in § 630.16(b)(1) and (b)(1)(iii), which permit, in the event of a monkey shortage, the testing of a monovalent virus pool without concurrent testing of the corresponding type Reference Attenuated Poliovirus. One of the comments also objected to the provision in § 630.16(b)(1) that, whenever possible, the test monkeys should be from the same quarantine group and distributed randomly between the two test groups. The comment objected to the words "whenever possible" in this provision. The comment requested that these provisions either be removed or the regulation should specify the exact conditions under which alternative procedures may be used.

FDA agrees in part with the comments. Although sufficient numbers of monkeys have been available to date, the monkey supply has occasionally been threatened. By including special provisions for testing vaccines under conditions where there is an actual shortage of monkeys, FDA is providing added assurance of the continued availability of safe vaccine. FDA agrees, however, that the conditions under which this special provision may be used should be better defined in the regulation.

If a monkey shortage should develop, FDA intends to review the evidence that an acute shortage has occurred and confirm that no alternative sources of test animals are available before permitting nonconcurrent testing of the vaccine and reference. FDA believes that the review and approval of the agency should be a precondition for such noncurrent testing. Accordingly, FDA is adding § 630.16(b)(5) to the final rule to provide that, in the case of a monkey shortage, monovalent virus pools may be tested without concurrent testing of the corresponding type Reference Attenuated Poliovirus only upon the approval of the Director, CBER. FDA is also including in § 630.16(b)(5) the criteria for evaluating a nonconcurrent test, formerly included in § 630.16(b)(1)(ii). FDA is amending proposed § 630.16(b) and (b)(4) by cross-referencing § 630.16(b)(5) and removing the provisions concerning nonconcurrent testing.

FDA believes that a laboratory should design its monkey quarantine procedures and testing regimen to assure that test monkeys are from the same quarantine group. However, FDA recognizes that it may occasionally be necessary to use monkeys taken from two quarantine groups. FDA believes that the occasional use of two quarantine groups does not impair the assurance of safety of the neurovirulence test, provided that the monkeys from each quarantine group are divided randomly between those used for testing the monovalent virus pool and those used for testing the Reference Attenuated Poliovirus. However, FDA finds that this provision in § 630.16(b)(1) was not worded clearly. Accordingly, FDA is amending, for clarity, the provision in the rule concerning the use of monkeys from a single quarantine group.

26. One comment on § 630.16(b)(1)(i) (redesignated as § 630.16(b)(1)) requested clarification of the requirement that a test of a virus pool shall include at least one group of monkeys but no more than three groups. The comment asked whether the term "groups" refers to the number of times a virus pool may be retested, the number of different virus pools that can be tested at one time, or the number of quarantine groups that may be tested.

None of the definitions of "groups" offered in the comment is correct. The term "group(s)" refers to the number of animals inoculated at any given period of time as defined in § 630.16(b). As provided in the regulations, more than one group of animals may be used for testing a single monovalent virus pool if, for example, an inadequate number of positive animals is obtained from testing one or two groups, or if statistical evaluation of results obtained from testing one or two groups of animals indicates that addition of one or two additional groups is desirable for optimum evaluation of neurovirulence.

27. One comment on proposed § 630.16(b)(1)(i) (redesignated as § 630.16(b)(1)) recommended that the 60-percent criterion for test validity, that is the percentage of monkeys that must be inoculated in a group and survive the 48-hour observation period after inoculation, be amended to require an 80-percent survival rate.

The proposed criterion for test acceptability based on the number of monkeys surviving 48 hours after inoculation is consistent with the previous regulations (§ 630.16(b)(1)(iii)). FDA has found this criterion sufficient for assuring test validity and the continued safety of oral poliovirus vaccine.

FDA recognizes that laboratories using monkeys from a domestically raised colony consistently experience survival rates after 48 hours of greater than the 80 percent recommended in the comment. However, laboratories using monkeys caught in the wild have occasionally experienced a survival rate of less than 80 percent but greater than 60 percent without impairing the assurances of safety provided by the test for neurovirulence in monkeys.

28. Two comments on proposed § 630.16(b)(1)(ii) (redesignated as § 630.16(b)(2)) noted that the results of the neurovirulence test would be evaluated by comparing the mean values of neurovirulence assigned to the monovalent virus pool and the reference preparation while the current test results are evaluated by comparing the neurovirulence scores of individual monkeys. The comment expressed concern that a situation might arise where the neurovirulence displayed in a single monkey may be extraordinarily high, even showing paralysis, although the mean values for the monovalent virus pool and reference preparation compare acceptably. The comments recommended that individual extreme values continue to be considered in evaluating the results of the neurovirulence test in monkeys.

FDA agrees that extreme or outlier neurovirulence scores should continue to be considered and is including in § 630.16(b)(3) a requirement that each

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manufacturer have a method of evaluating such outlier values when they occur. The method to be used by a manufacturer, including the criteria for determining the acceptability of the monovalent virus pool being tested, would be reviewed by FDA as part of the manufacturer's license application or as a license amendment.

FDA did not propose a specific method for evaluating outlier values. As stated by the Advisory Committee at its January 1987 meeting, the significance of outlier values has not been adequately determined. Thus far, the evidence gathered by FDA indicates that outlier scores are due to a particular susceptibility of an individual monkey to poliovirus rather than any distinctive properties of the poliovirus being tested. FDA intends to continue to evaluate outlier values as they occur by continuing the neurovirulence test with additional monkeys to see if there continue to be outlier scores or unacceptable neurovirulence according to the criteria in § 630.16(b)(2). Manufacturers may use a similar method to evaluate outlier scores. As additional evidence is gathered and our understanding of poliovirus increases, FDA expects that the appropriate methodology for evaluating outlier scores will change; therefore, FDA is leaving the regulations flexible to accommodate expected improvements in methodology.

J. Determination of Neurovirulence

29. One comment on proposed § 630.16(b)(1)(ii) (redesignated as § 630.16(b)(2)) stated that all manufacturers should be required to use the same mathematical model for evaluating data in the test for neurovirulence in monkeys. To ensure the continued availability of safe vaccine, the comment requested that acceptable and unacceptable neurovirulence scores be defined clearly in the regulations. The comment recommended that the performance of the mathematical model should be evaluated with currently produced and acceptable vaccine.

FDA does not believe that it is necessary for all manufacturers to use the same mathematical model. FDA has evaluated and found satisfactory a model based on the 1983 WHO standards (WHO Technical Report Series, No. 687, 1983). Details of the mathematical model are available upon request from FDA. The model includes the criteria for determining the acceptability of neurovirulence scores. FDA will consider manufacturers' proposals to use other mathematical models meeting the criteria of the regulations. The regulations provide adequate criteria to ensure that testing laboratories will have consistent test results provided a statistically sound mathematical model is selected.

K. Test with Reference Attenuated Poliovirus

30. One comment on proposed § 630.16(b)(1)(iii) (redesignated as § 630.16(b)(3)) stated that more than four tests of each Reference Attenuated Poliovirus should be required to define the variability of the assay.

FDA disagrees with the comment. In § 630.16(b)(1)(iii), FDA proposed to require that a laboratory perform a minimum of four tests on each reference virus preparation to define the performance of the reference and establish the variability of the assay. Experience at laboratories that have used this procedure has demonstrated consistently that four tests are adequate to define initially the performance of the reference and the variability of the assay. FDA recognizes, however, that if an assay displays unusual variability, more than four tests may be necessary. Each laboratory when establishing and validating its own procedures should employ appropriate statistical methods to evaluate the variability shown in the four tests of each reference to determine if additional tests may be necessary to adequately define assay variability. FDA is amending § 630.16(b)(3) in this rule to make clear that a minimum of four tests of each reference virus preparation is required but, regardless of the number of tests performed, the tests must be adequate to define the performance of the reference and establish the variability of the assay.

L. Tests for In Vitro Markers

31. Two comments on proposed § 630.16(b)(2) (redesignated as § 630.16(b)) asked that the requirements be amended to state clearly for which of the marker tests specified in the regulation alternative tests may be substituted. One of the comments stated that any substitute tests should be stipulated in the regulations. Another comment asked whether the marker tests are intended as safety tests or as tests of identity.

FDA agrees in part with the comment. The marker tests described in the regulation demonstrates that each monovalent virus pool retains the identity of the parent vaccine strain. FDA would approve other methods that provide comparable assurances of the continued identity of the virus. Accordingly, FDA is revising § 630.16(b) in this rule to clearly provide for the use of methods other than either or both of the prescribed marker tests, if shown to be of comparable value in identification of the attenuated strain. FDA is not aware of any alternative test that has yet been shown to be a suitable replacement for either of the required marker tests. Therefore, the agency cannot describe any alternative tests in the regulations at this time.

M. Consistency of Manufacture

32. One comment requested that the requirements of former § 630.16(b) be retained so as to require that each monovalent virus pool contained in a trivalent vaccine be one of a series of five consecutive lots shown to meet criteria for neurovirulence and in vitro markers. The comment contended that this requirement is necessary because, contrary to what FDA stated in the preamble to the proposed rule, factors other than the genetic instability of the seed virus, such as statistical variation among laboratories or test monkeys, may influence failure in the neurovirulence test in monkeys. The comment also requested clarification of FDA's statement in the preamble to the proposed rule (51 FR 16627) that failure of the neurovirulence test in monkeys is a random event related to the genetic instability of the seed virus.

FDA agrees that genetic instability of the seed virus is not the principal reason for failure of a monovalent virus pool, produced from an acceptable seed virus, to meet neurovirulence requirements. However, genetic instability could be the reason for a new seed virus failing to consistently produce vaccine virus of acceptable neurovirulence. Thus, acceptability of a seed virus can be demonstrated through its capacity to produce consistently acceptable monovalent virus pools. The former consistency requirements were based on the premise that the failure of a monovalent virus pool to meet neurovirulence requirements could be the result of a manufacturing deficiency. As a demonstration that the failure was not the result of a continuing manufacturing deficiency, FDA required that any monovalent virus pool intended for vaccine manufacture be one of five consecutive lots shown to meet neurovirulence and identity requirements. Thus, any time a monovalent virus pool failed, five consecutive lots had to be shown to meet neurovirulence requirements before any of the five lots could be released in trivalent vaccine. However, no criteria were provided to link the history of performance of monovalent virus pools with the continued qualification of the seed virus. Long experience has shown that the failure of a monovalent virus pool, produced from an acceptable seed virus, is usually unrelated to deficiencies in the manufacturing process, but is usually due instead to test variability. Accordingly, to ensure consistency of manufacture, FDA proposed to require that each of the first five monovalent virus pods from a new seed virus be shown to meet neurovirulence and marker requirements (§ 630.10(c)(3)). Thereafter, each time a monovalent virus pool from that seed is tested for neurovirulence, FDA proposed to require that the history of neurovirulence test results for pools produced from the same seed virus be reviewed to assure that the rate of failure of the test is not higher than predicted, based on test design and test variability (§ 630.10(c)(5)).

The revised methodology is at least as stringent as the former consistency requirements in detecting neurovirulence problems related to manufacturing defects, while having the added benefit of providing a statistical means for monitoring the continued qualification of a seed virus by evaluating its ability to consistently produce monovalent pools of acceptable neurovirulence. Under § 630.10(c)(5) of the final rule and FDA's method of statistical analysis, nearly 50 lots must be produced from a seed virus before a second failure would be permissible. FDA notes that the failure of a lot to meet neurovirulence requirements is always a cause for concern by FDA and the manufacture, and the possible reasons for any failure are carefully considered and appropriate followup action taken.

FDA continues to believe that these requirements provide assurances of consistency as rigorous as those provided by former requirements, while actually reducing the likelihood that a seed virus will be rejected on the basis of test variability unrelated to genetic stability. Accordingly, FDA continues to include § 630.10(c) (3) and (5) in the rule.

N. Samples and Protocols for Vaccine Release

33. FDA has made a clarifying editorial change to proposed § 630.17(a) (redesignated at § 630.19(a)). Through the addition of the phrase "by the manufacture," the introductory clause on vaccine release parallels the wording of § 610.1, the general provision on lot release of biological products. As under the current regulations, the manufacturer continues to be responsible not only for conducting all required tests on a vaccine, but also for ensuring that no lot of vaccine is released unless it meets all the requirements of the regulations.

34. One comment on proposed § 630.17(a)(4) (redesignated as § 630.19(a)(4)) recommended that FDA require manufacturers to submit protocols for only those monovalent virus pools that have undergone neurovirulence testing. The comment also asked FDA to specify what information should be submitted in a protocol for a partially tested monovalent virus pool.

FDA agrees in part with the comment. The purpose of § 630.19(a)(4) is to ensure that FDA is provided with a complete history, including neurovirulence test results, of all monovalent virus pools manufactured from the same seed virus so that the agency may evaluate the seed virus under the criteria of § 630.10(c)(5). For monovalent virus pools that have not been tested for neurovirulence, FDA agrees that submission of a protocol, containing a summary of manufacture and test results, is unnecessary. Accordingly, FDA is amending § 630.19(a)(4) to require that protocols be submitted only for those monovalent virus pools for which neurovirulence testing has been conducted in whole or in part. However, FDA believes that the agency should also be informed of the reasons that a manufacturer has halted testing of any monovalent virus pool, including those that have not been tested for neurovirulence, so that the agency has a complete history of the problems encountered in vaccine manufacture. FDA is amending § 630.19(a)(4) to require that a manufacturer report to FDA the reasons for halting testing of a monovalent virus pool that was not tested for neurovirulence. The report should be submitted on or before the time of submission of the protocol for the next monovalent virus pool produced in sequence from the same seed virus.

35. One comment on proposed § 630.17(c)(2) (redesignated as § 630.19(c)(3)) suggested that the required virus titer of monovalent virus pools submitted as a bulk sample to FDA be changed from no less than $10^{7.5}$ $TCID_{50}$ per milliliter (mL) to no less than $10^{6.5}$ $TCID_{50}$ per mL consistent with the virus titer specified in proposed § 630.16(b)(1).

FDA disagrees with the comment. FDA's laboratory should have the opportunity to test the monovalent virus pool for neurovirulence anywhere within the titer range of $10^{6.5}$ to $10^{7.5}$ $TCID_{50}$ per mL specified in § 630.16(b). In addition, the titer of the samples submitted should not be close to the minimum permissible for neurovirulence testing to allow for small differences in the determination of virus titers between the laboratories of the manufacturer and FDA. The titer of monovirulent virus pools are generally approximately $10^{8.5}$ $TCID_{50}$ per mL; therefore, manufacturers should be able to provide samples meeting the titer requirements of § 630.19(c)(3).

FDA has reviewed the requirements for the submission of samples and finds that a few changes are appropriate. FDA has redesignated proposed §§ 630.17(c)(2), 630.17(c)(3), and 630.17(c)(4) as §§ 630.19(c)(3), 630.19(c)(4), and 630.19(c)(5), respectively, in the final rule and has added a new § 630.19(c)(2) to require the submission of a 20-mL sample of preclarified (unfiltered) monovalent virus pool material. Unfiltered virus pool material is necessary for the performance of the test for Mycoplasma § 610.30 (21 CFR 610.30), which is often performed at FDA's laboratory. FDA has also reduced the volume of sample monovalent virus pool and of trivalent vaccine required for submission to FDA under §§ 630.19(c)(3) and 630.19(c)(4) (proposed §§ 630.17(c)(2) and 630.17(c)(3)) and has revised § 630.19(c), editorially.

36. One comment on proposed § 630.17(c)(4) (redesignated as § 630.19(c)(4)) asked that the requirement be removed or amended to assure that any change in sample volumes requested by FDA is reasonable and that the reason for such a request is stated at the time of the request.

The primary intent of § 630.19(c)(4) is to allow for minor changes in sample volumes to be sent to FDA as testing priorities change, without requiring amendment to the regulation. FDA will request an increase in sample volumes only after careful consideration and appropriate notification of manufacturers of oral poliovirus vaccine. The agency does not believe that it is necessary to amend the regulation to state the basic premise that such an administrative action is to be reasonable.

VI. Environmental, Economic, and Information Collection Considerations

The agency has determined under 21 CFR 25.24(c)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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The agency has examined the economic consequences of this rulemaking and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Many of the amendments in the final rule will relieve minor burdens or increase the flexibility of the regulations, resulting in minor economic benefits for the manufacturer of oral poliovirus vaccine. FDA believes the final rule will promote the licensure of alternative sources of oral poliovirus vaccine. The availability of alternative sources of vaccine would benefit the public by assuring a continual supply of this necessary vaccine. FDA estimates that the revised test for neurovirulence will reduce the number of primates required for the test by an average of 40 percent.

The agency concludes that the rule is not a major rule as defined by Executive Order 12291. Further, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

Section 630.19 of this final rule contains information collection requirements that will be submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980.

VII. Effective Date

The agency believes that the changes in the regulations included in this final rule are a logical outgrowth of the notice and comments already given. Therefore, the agency is not reproposing any of the provisions incorporated in the final rule. However, even if there had been no proposal, the Commissioner finds under 5 U.S.C. 553(b) and 21 CFR 10.40(e)(1) that it would be contrary to the public interest to delay publication of this final rule to provide an opportunity for comment. It is very important that there be no question about the legality of the current supply of vaccine, which is critically important for the protection of the public health. Any interested person may submit comments on the changes within 60 days, and the agency will consider the comments to determine whether the regulations should subsequently be modified or revoked.

Moreover, under 5 U.S.C. 553(d) and 21 CFR 10.40(c)(4), the Commissioner finds good cause for the amended regulations to become effective immediately upon publication because of an important public health interest. As previously discussed, the current vaccine supply in the United States consists of safe and effective vaccine. In order to be certain that it is clear that existing vaccine meets the requirements of the regulations, this final rule is effective immediately.

List of Subjects in 21 CFR Part 630

Biologics, Labeling.

Therefore, under the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 630 is amended as follows:

PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINES

1. The authority citation for 21 CFR part 630 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

2. Subpart B is revised to read as follows:

Subpart B—Poliovirus Vaccine Live Oral Trivalent

Sec.
630.10 Poliovirus Vaccine Live Oral Trivalent.
630.11 Clinical trails to qualify for license.
630.12 Animal source and quarantine; personnel.
630.13 Manufacture of Poliovirus Vaccine Live Oral Trivalent.
630.14 Reference virus preparations.
630.15 Potency test.
630.16 Test for neurovirulence.
630.17 Alternative test for neurovirulence.
630.18 Additional tests for safety.
630.19 General requirements.

Subpart B—Poliovirus Vaccine Live Oral Trivalent

§ 630.10 Poliovirus Vaccine Live Oral Trivalent.

(a) *Proper name and definition.* The proper name of this product shall be Poliovirus Vaccine Live Oral Trivalent. The vaccine shall be a preparation containing the three types of live, attenuated polioviruses grown in monkey kidney cell cultures, or in a cell line found by the Director, Center for Biologics Evaluation and Research, to meet the requirements of § 610.18(c) of this chapter. The vaccine shall be prepared in a form suitable for oral administration.

(b) *Criteria for acceptable strains.* (1) The Sabin strains of attenuated poliovirus, Type 1 (LS-c, 2ab/KP_3), Type 2 (P712, Ch, 2ab/KP_3), and Type 3 (Leon $12a_1b/KP_3$), or derivatives from them, may be used in the manufacture of vaccine.

(2)(i) Other poliovirus strains may be used in the manufacture of Poliovirus Vaccine Live Oral Trivalent provided that they are identified by historical records including:

(A) Origin,

(B) Techniques of attenuation,

(C) Antigenic properties,

(D) Neurovirulence for monkeys,

(E) Pathogenicity for tissue cultures of various cell types, and

(F) Established virus markers, including rct/40, and d.

(ii) The data shall be submitted to the Director, Center for Biologics Evaluation and Research, along with other data that establish:

(A) That each such strain is at least as safe as the Sabin strain of the corresponding type,

(B) That each such strain demonstrates results comparable to the Sabin strain when inoculated into monkeys by the intrathalamic and intramuscular routes, and

(C) That each such strain has been used to produce vaccines meeting the safety and potency requirements of §§ 630.11, 630.15, 630.16 or 630.17, and 630.18.

(3) The Director, Center for Biologics Evaluation and Research, may prohibit the use of a specified strain whenever the Director finds that it is practicable to use another strain of the same type that will produce a vaccine of greater safety and of at least equivalent potency.

(4) If vaccine lots have been produced directly from strain materials (e.g., Sabin Original, Sabin Original Merck, or Sabin Original Rederived), the strain material is not required to be tested in accordance with the provisions of § 630.10(c).

(C) *Criteria for qualification of the seed virus.* (1) Each seed virus used in vaccine manufacture shall be prepared from an acceptable strain in monkey kidney cell cultures, derived from animals which have met all of the requirements of § 630.12(a), or in a cell culture of a type determined to be suitable by the Director, Center for Biologics Evaluation and Research. The seed virus used in vaccine manufactures shall be demonstrated to be free of extraneous microbial agents except for unavoidable bacteriophage.

(2) Seed virus used for the manufacture of oral poliovirus vaccine shall meet the requirements of §§ 630.13, 630.16 or 630.17, and 630.18. In addition, the neurovirulence of each of the first five consecutive monovalent virus pools prepared from the seed virus shall meet the neurovirulence requirements prescribed in §§ 630.16(b)(2) or 630.17 (b)(3).

(3) A new seed virus may be used for production provided data are submitted in the form of a product license amendment that show the new seed virus and each of the first five consecutive monovalent virus pools prepared from it meet the safety requirements of §§ 630.13 and 630.16 or 630.17 and 630.18 and approval for the use of the seed virus is received in writing from the Director, Center for Biologics Evaluation and Research.

(4) Seed virus in vaccine manufacture shall be prepared in a seed lot system from a master virus seed lot at a passage level consistent with § 630.13(a).

(5) For monovalent virus pools tested in accordance with § 630.16(b), the use of the seed virus may continue provided that the frequency of monovalent virus pools produced with it which fail to meet the criteria of neurovirulence for monkeys prescribed in § 630.16(b)(2) is not greater than predicted on the basis of comparison with the corresponding reference preparation. If the frequency of monovalent virus pools produced with the same seed virus which fail to meet the criteria of neurovirulence for monkeys prescribed in §§ 630.16(b)(2) is greater than the predicted 1 percent on the basis of the 99-percent fiduciary one-sided upper limit, that seed virus shall be disqualified for further use in vaccine production.

(6) For monovalent virus pools tested in accordance with § 630.17, subsequent and identical neurovirulence tests of the seed virus shall be performed in monkeys whenever there is evidence of a significant increase in the neurovirulence of the seed virus, upon introduction of a new production seed lot, and as often as is necessary to otherwise establish, to the satisfaction of the Director, Center for Biologics Evaluation and Research, that the seed virus for vaccine manufacture has maintained its neurovirulence properties as set forth in § 630.17 (b)(3).

§ 630.11 Clinical trials to qualify for license.

To qualify for license, the antigenicity of the vaccine shall have been determined by clinical trials of adequate statistical design conducted in compliance with part 56 of this chapter, unless exempted under § 56.104 or granted a waiver under § 56.105, and with part 50 of this chapter. Such clinical trials shall be conducted with five lots of oral poliovirus vaccine that have been manufactured by the same methods. Type specific neutralizing antibody for each type of poliovirus in the vaccine shall be induced in 90 percent or more of susceptibles after a series of doses.

§ 630.12 Animal source and quarantine; personnel.

(a) *Monkeys*—(1) *Species permissible as source of kidney tissue.* Only Macaca monkeys, Cercopithecus monkeys, or other species found by the Director, Center for Biologics Evaluation and Research, to be equally suitable, which meet the requirements of § 609.11 (f)(2) and (f)(8) of this chapter, shall be used as the source of kidney tissue for the manufacture of Poliovirus Vaccine Live Oral Trivalent.

(2) *Experimental and test monkeys.* Monkeys that have been used previously for experimental or test purposes shall not be used as a source of kidney tissue in the processing of vaccine.

(3) *Quarantine; additional requirements.* Excluding deaths for accidents or causes not due to infectious diseases, if the death rate of any group of monkeys being conditioned in accordance with § 609.11(f)(2) of this chapter exceeds 5 percent per month, the remaining monkeys may be used for the manufacture of Poliovirus Vaccine Live Oral Trivalent only if all of the monkeys survive a new quarantine period.

(b) *Personnel.* All reasonably possible steps shall be taken to ensure that personnel involved in processing the vaccine are immune to all three types of poliovirus and do not excrete poliovirus.

§ 630.13 Manufacture of Poliovirus Vaccine Live Oral Trivalent.

(a) *Virus passages.* Virus in the final vaccine shall represent no more than five tissue culture passages from the original strain or no more than five tissue culture passages from a virus clone derived from one of the first five tissue culture passages of the original strain.

(b) *Virus propagated in primary monkey kidney cell cultures*—(1) *Continuous cell lines.* When primary monkeys kidney cell cultures are used in the manufacture of poliovirus vaccine, continuous cell lines shall not be introduced or propagated in vaccine manufacturing areas.

(2) *Identification of processed kidneys.* The kidneys from each monkey shall be processed separately. The resulting viral fluid shall be identified as a separate monovalent harvest and kept separately from other monovalent harvests until all samples for the tests prescribed in paragraphs (b)(3) and (b)(4) of this section relating to that pair of kidneys have been withdrawn from the harvest.

(3) *Monkey kidney tissue production vessels prior to virus inoculation.* Prior to inoculation with the seed virus and at least 3 days after complete formation of the tissue sheet, the tissue culture growth in vessels derived from each pair of kidneys shall be examined microscopically for evidence of cell degeneration. If such evidence is observed, the tissue cultures from that pair of kidneys shall not be used for poliovirus vaccine manufacture. To test the tissue found free of cell degeneration for further evidence of freedom from demonstrable viable microbial agents, the fluid shall be removed from the cell cultures immediately prior to virus inoculation and tested in each of four culture systems:

(i) Macaca monkey kidney cells,

(ii) Cercopithecus monkey kidney cells,

(iii) Primary rabbit kidney cells, and

(iv) Cells from one of the systems described in § 630.18(a)(6).

The fluid shall be tested in the following manner: Aliquots of fluid from each vessel derived from the same pair of kidneys shall be pooled and at least 10 milliliters of the pool inoculated into each system. The dilution of the pool with medium shall be no greater than 1:4 and the area of surface growth of cells shall be at least 3 square centimeters per milliliter of test inoculum. The cultures shall be observed for at least 14 days. At the end of the observation period, at least one subculture of fluid from the Cercopithecus monkey kidney cell cultures shall be made in the same tissue culture system and the subculture shall be observed for at least 14 days. If these tests indicate the presence in the monkey kidney tissue culture production vessels of any viable microbial agent, the viral harvest from these tissue cultures so implicated shall not be used for poliovirus vaccine manufacture.

(4) *Control vessels.* At least 25 percent of the cell suspension from each pair of kidneys shall be set aside and used to establish control cultures. The control cultures shall be examined microscopically for cell degeneration for an additional 14 days after the time of viral harvest. The culture fluids from such control cells shall be tested, both at the time of virus harvest and at the end of the additional observation period, by the method prescribed for testing of fluids in paragraph (b)(3) of this section. In addition, the control cell sheet shall be examined for presence of hemadsorbing viruses by the addition of guinea pig red blood cells.

(5) *Interpretation of test results.* At least 80 percent of the control vessels shall be free of cell degeneration at the

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end of the observation period to qualify the kidneys for poliovirus vaccine manufacture. If the test results of the control cells indicate the presence of any extraneous agent at the time of virus harvest, the virus harvest from that tissue culture preparation shall not be used for poliovirus vaccine manufacture. If any of the tests or observations described in paragraph (b)(3) or (b)(4) of this section demonstrate the presence in the tissue culture preparation of any microbial agent known to be capable of producing human disease, the virus grown in each tissue culture preparation shall not be used for poliovirus vaccine manufacture.

(6) *Temperature of kidney tissue production vessels after virus inoculation.* After virus inoculation, production vessels shall be maintained at 33.0 to 35.0 °C during the course of virus propagation.

(7) *Kidney tissue virus harvests.* Virus shall be harvested not later than 72 hours after virus inoculation. Virus harvested from vessels containing the kidney tissue from one monkey may be tested separately, or samples of viral harvests from more than one pair of kidneys may be combined, identified, and tested as a monovalent virus pool. Each pool shall be mixed thoroughly and samples withdrawn for testing as prescribed in § 630.18(a). The samples shall be withdrawn immediately after harvesting and prior to further processing, except that samples of test materials frozen immediately after harvesting and maintained at −60 °C or below, may be tested upon thawing, provided no more than one freeze-thaw cycle is employed.

(8) *Filtration.* After harvesting and removal of samples for the safety tests prescribed in § 630.18(a), the pool shall be passed through sterile filters having a sufficiently small porosity to assure bacteriologically sterile filtrates.

§ 630.14 Reference virus preparations.

(a) *Titration test controls.* The following reference viruses may be obtained from the Center for Biologics Evaluation and Research:

(1) Reference Poliovirus, Live, Attenuated, Type 1, as a control for correlation of virus titers in tissue cultures.

(2) Reference Poliovirus, Live, Attenuated, Type 2, as a control for correlation of virus titers in tissue cultures.

(3) Reference Poliovirus, Live, Attenuated, Type 3, as a control for correlation of virus titers in tissue cultures.

(4) Reference Poliovirus, Live, Attenuated, Trivalent, as a control for correlation of virus titers in tissue cultures.

(b) *Neurovirulence test controls.* (1) Except as provided in paragraph (b)(2) of this section, the following reference virus may be obtained from the Center for Biologics Evaluation and Research:

(i) Reference Attenuated Poliovirus, Type 1, as a control for evaluation of monkey neurovirulence tests.

(ii) Reference Attenuated Poliovirus, Type 2, as a control for evaluation of monkey neurovirulence tests.

(iii) Reference Attenuated Poliovirus, Type 3, as a control for evaluation of monkey neurovirulence tests.

(2) Alternatively, upon FDA approval, World Health Organization (WHO) reference standards of the corresponding type, WHO/I, WHO/II, and WHO/III, may be used as controls for evaluation of monkey neurovirulence tests.

§ 630.15 Potency test.

(a) *Test for virus titer.* The concentration of living virus in each monovalent virus pool and in each trivalent vaccine, expressed as infectivity titer per milliliter for cell cultures, shall be determined using the Reference Poliovirus, Live, Attenuated of the same type as a control or using another reference preparation of the same type that has been calibrated against the appropriate reference preparation listed in § 630.14(a). A titration of the monovalent virus pool or the trivalent vaccine shall not constitute a valid test unless the titration of the reference virus when tested in parallel is within $\pm 0.5 \log_{10}$ of its established titer. The titration of the parallel reference is intended to validate the test system and shall not be used to adjust the titer of the pool or lot under test.

(b) *Dose.* The human dose of trivalent vaccines shall be constituted to have infectivity titers in the final container material of $10^{6.0}$ to $10^{7.0}$ for type 1, $10^{5.1}$ to $10^{6.1}$ for type 2, and $10^{5.8}$ to $10^{6.8}$ for type 3, when assayed in HEp–2 cells, or the equivalent when titrated by a different method.

§ 630.16 Test for neurovirulence.

(a) Except as provided in § 630.17, the following test relating to safety prescribed in paragraph (b) of this section shall be performed on each monovalent virus pool after the filtration process.

(b) *Neurovirulence in monkeys.* Except as provided in paragraph (b)(5) of this section, each monovalent virus pool shall be tested concurrently with the corresponding type Reference Attenuated Poliovirus for neurovirulence by the intraspinal route of injection in Macaca monkeys. Whenever possible the monkeys should be of comparable age and weight and from the same quarantine group. The monkeys shall be distributed randomly between the two test groups. If the number of monkeys included in both groups precludes completion during a single workday, approximately equal numbers of monkeys shall be inoculated with the monovalent virus pool and the reference preparation during each of the testing days. A preinjection serum sample obtained from each monkey shall be shown to contain no neutralizing antibody in a dilution of 1:4 when tested against no more than 1,000 $TCID_{50}$ (mean tissue culture infectious doses) of each of the three types of poliovirus. The neurovirulence test is not valid unless the inoculation sample is shown to contain the equivalent of $10^{5.5}$ to $10^{7.5}$ $TCID_{50}$ per milliliter when a representative sample of the monovalent virus pool is titrated in HEp-2 cells in comparison with the Reference Poliovirus, Live, Attenuated of the appropriate type. All monkeys shall be observed for 17 to 21 days and any evidence of physical abnormalities indicative of poliomyelitis or other viral infections shall be recorded.

(1) *Intraspinal inoculation.* For tests with type 1 and type 2 monovalent virus pools and the Reference Attenuated Poliovirus of the corresponding types, each of a group of at least 12 monkeys after being suitably anesthetized shall be injected intraspinally into the enlargement of the lumbar cord with 0.1 milliliter of the inoculation sample. For tests with type 3 poliovirus materials, groups of at least 20 monkeys shall be injected as above after being suitably anesthetized. A test of a virus pool shall include at least one group of monkeys, and no more than three groups shall be inoculated, with the results from testing one, two, or three groups of monkeys being evaluated as prescribed in § 630.16(b)(2). In addition, if on examination there is no evidence of correct inoculation, additional animals may be inoculated in order to reestablish the minimum number of 11 positive monkeys for tests of types 1 and 2 virus pools and the minimum number of 18 positive monkeys for tests of Type 3 virus pools. A positive monkey is an animal which either survives for 11 or more days or succumbs or is sacrificed due to a severe poliovirus infection at any time before the 11th day of the observation period and in which neural lesions specific for poliovirus are seen in the central nervous system. If at least 60 percent of the animals of a group survive 48 hours after inoculation, those animals that did not survive may be replaced by additional animals. If less than 60 percent of the animals in a group survive 48 hours after inoculation, the test shall be considered invalid and shall be repeated.

(2) *Determination of neurovirulence.* At the conclusion of the observation period, the animals are sacrificed and a comparative evaluation shall be made of the evidence of neurovirulence of the monovalent virus pool under test and the Reference Attenuated Poliovirus of the corresponding type with respect to the histopathology of lesions caused by poliovirus. Animals dying or sacrificed when severely paralyzed or moribund during the test period, should be included in the evaluation, except that these examinations of these monkeys shall be made immediately after death. Histopathological examinations by a qualified pathologist shall be made of at least the lumbar and cervical enlargements, the medulla, the mesencephalon, the thalamus, and motor cortex of each monkey in the groups injected with the monovalent virus pool or with the reference under test. The magnitude of the neuropathology exhibited in the lumbar and cervical areas, the medulla, and mesencephalon of all positive monkeys inoculated with the monovalent virus pool shall be quantified and compared to the magnitude of the neuropathology determined based on the same type of evaluation of monkeys in the current test and all previous tests of the Reference Attenuated Poliovirus of the corresponding type. The monovalent virus pool may be used for poliovirus vaccine if a comparative analysis of the test results demonstrates that the numerical value assigned for neurovirulence of the monovalent virus pool is equal to or less than that of the Reference Attenuated Poliovirus of the corresponding type. If the numerical value assigned for neurovirulence of the monovalent virus pool is greater than that of the Reference Attenuated Poliovirus, the monovalent virus pool is acceptable if the difference is not greater than that calculated by a mathematical method that is expected to reject vaccines with neurovirulence identical to the reference at a frequency of not less than 1 in 100 when 1 group of monkeys is inoculated. If 2 groups are injected with the same monovalent virus pool under test, the frequency of rejection shall be not less than 5 in 100 and for 3 groups, not less than 10 in 100. If the difference in numerical values is greater than that calculated, irrespective of which reference preparation was used in the test, the monovalent virus pool shall be considered unacceptable and shall not be used for vaccine manufacture.

(3) *Outlier scores.* In the event that one or more monkeys inoculated with virus from the monovalent virus pool have individual mean lesion scores higher than that previously or concurrently associated with the Reference Attenuated Poliovirus of the corresponding type, but the monovalent virus pool meets the criteria for acceptable neurovirulence given in § 630.16(b)(2), the significance of the outlier scores shall be evaluated by a method approved by the Director, Center for Biologics Evaluation and Research before the vaccine may be released for use.

(4) *Test with Reference Attenuated Poliovirus.* Except as provided in paragraph (b)(5) of this section, the Reference Attenuated Poliovirus of the appropriate type shall be tested as prescribed in paragraph (b)(1)(i) of this section concurrently with the monovalent virus pool. More than one monovalent virus pool of the same type may be tested with the same corresponding Reference Attenuated Poliovirus. Initially, a minimum of four tests by the testing laboratory of each Reference Attenuated Poliovirus is required. These tests must be such as to provide sufficient experience to define the performance of the Reference Attenuated Poliovirus and establish the variability of the assay. Each test of the Reference Attenuated Poliovirus shall be considered acceptable and added to the previous testing experience only if the magnitude of its poliovirus neuropathology is statistically compatible with the results of all previous tests with the same reference preparations of the same type performed by the testing laboratory.

(5) *Alternative procedures in case of monkey shortage.* In the event of a shortage of test monkeys and upon approval of the Director, Center for Biologics Evaluation and Research, a monovalent virus pool may be tested without concurrent testing of the corresponding type Reference Attenuated Poliovirus. In such a case, the magnitude of the neuropathology of the monovalent virus pool shall be compared with the magnitude of the neuropathology exhibited in all previous tests of the corresponding Reference Attenuated Poliovirus.

§ 630.17 Alternative test for neurovirulence.

(a) In lieu of the neurovirulence test in § 630.16, the following test may be performed after the filtration process, on each monovalent virus pool or on each multiple thereof (monovalent lot).

(b) *Neurovirulence in monkeys.* Each monovalent virus pool or monovalent lot shall be tested in comparison with the Reference Attenuated Poliovirus, Type 1, for neurovirulence in Macaca monkeys by both the intrathalamic and intraspinal routes of injection. A preinjection serum sample obtained from each monkey must be shown to contain no neutralizing antibody in a dilution of 1:4 when tested against no more than 1,000 $TCID_{50}$ (mean tissue culture infectious dose) of each of the three types of poliovirus. The neurovirulence tests are not valid unless the sample contains at least $10^{7.6}$ $TCID_{50}$ per milliliter when titrated in HEp-2 cells in comparison with the Reference Poliovirus, Live, Attenuated of the appropriate type. All monkeys shall be observed for 17 to 21 days and any evidence of physical abnormalities indicative of poliomyelitis or other viral infections shall be recorded.

(1) *Intrathalamic inoculation.* Each of at least 30 monkeys shall be injected intracerebrally by placing 0.5 milliliter of virus pool material into the thalamic region of each hemisphere. Comparative evaluations shall be made with the virus pool under test and the Reference Attenuated Poliovirus, Type 1. Only monkeys that show evidence of inoculation into the thalamus shall be considered as having been injected satisfactorily. With respect to inoculation, a test is deemed valid if at least 24 monkeys are considered as having been injected satisfactorily. If on examination there is evidence of failure to inoculate virus pool material into the thalamus, additional monkeys may be inoculated in order to reestablish the minimum number of monkeys for the test.

(2) *Intraspinal inoculation.* Each of a group of at least five monkeys shall be injected intraspinally with 0.2 milliliter of virus pool material containing at least $10^{7.6}$ $TCID_{50}$ per milliliter when titrated in HEp-2 cells, and each monkey in additional groups of at least five monkeys shall be injected intraspinally with 0.2 milliliter of a 1:1,000 and 1:10,000 dilution, respectively, of the same virus pool material. Comparative evaluations shall be made with the virus pool under test and the reference material. Only monkeys that show microscopic evidence of inoculation into the gray matter of the lumbar cord shall be considered as having been injected satisfactorily. With respect to inoculation, a test is deemed valid if at least four monkeys per group are considered as having been injected

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satisfactorily. If on examination there is evidence of failure to inoculate intraspinally, additional animals may be inoculated in order to reestablish the minimum number of animals per group.

(3) *Determination of neurovirulence.* At the conclusion of the observation period comparative histopathological examinations by a qualified pathologist shall be made of the lumbar cord, cervical cord, lower medulla, upper medulla, mesencephalon and motor cortex of each monkey in the groups injected with virus under test and those injected with the Reference Attenuated Poliovirus, Type 1, except that for animals dying during the test period, these examinations shall be made immediately after death. If at least 60 percent of the animals of a group survive 48 hours after inoculation, those animals which did not survive may be replaced by an equal number of animals tested as prescribed in paragraph (b) of this section. If less than 60 percent of the animals of a group survive 48 hours after inoculation, the test must be repeated. At the conclusion of the observation the animals shall be examined to ascertain whether the distribution and histological nature of the lesions are characteristics of poliovirus infection. A comparative evaluation shall be made of the evidence of neurovirulence of the virus under test and the Reference Attenuated Poliovirus, Type 1, with respect to:

(i) The number of animals showing lesions characteristic of poliovirus infection;

(ii) The number of animals showing lesions other than those characteristic of poliovirus infection;

(iii) The severity of the lesions;

(iv) The degree of dissemination of the lesions; and

(v) The rate of occurrence of paralysis not attributable to the mechanical injury resulting from inoculation trauma. These five factors may be weighted and interpreted as the Director, Center for Biologics Evaluation and Research, or the Director's delegatees deem appropriate. Among permissible interpretations, the factors may be considered in different ways for monkeys inoculated intraspinally and for monkeys inoculated intrathalamically. Other relevant factors in addition to those listed in paragraph (b)(3)(i) through (b)(3)(v) of this section, such as public health consequences, may be considered in evaluating neurovirulence test results. The virus pool under test is satisfactory for poliovirus vaccine only if at least 80 percent of the animals in each group survive the observation period and if a comparative analysis of the test results demonstrates that the neurovirulence of the test virus pool does not exceed that of the Reference Attenuated Poliovirus, Type 1.

(4) *Test with Reference Attenuated Poliovirus.* The Reference Attenuated Poliovirus, Type 1, shall be tested as prescribed in paragraphs (b)(1) and (b)(2) of this section at least once for every 10 production lots of vaccine, except that the interval between the test of the reference and the test of any lot of vaccine shall not be greater than 3 months. The test procedure shall be considered acceptable only if lesions of poliomyelitis are seen in monkeys inoculated with the reference material at a frequency statistically compatible with all previous tests with this preparation.

§ 630.18 Additional tests for safety.

(a) *Tests prior to filtration.* Monovalent virus pools shall contain no demonstrable viable microbial agent, except for unavoidable bacteriophage and the intended attenuated live poliovirus. The vaccine shall be tested for the absence of other infectious agents, including polioviruses of other types or strains. Testing of each monovalent pool shall include the following procedures:

(1) *Inoculation of rabbits.* A minimum of 100 milliliters of each monovalent virus pool shall be tested by inoculation into at least 10 healthy rabbits, each weighing 1,500 to 2,500 grams. Each rabbit shall be injected with a total of 1.0 milliliter intradermally in multiple sites, and subcutaneously with 9.0 milliliters, of the monovalent virus pool and the animals observed for at least 3 weeks. Each rabbit that dies after the first 24 hours of the test, or is sacrificed because of illness, shall be necropsied and the brain and organs removed and examined. The monovalent virus pool may be used for poliovirus vaccine only if at least 80 percent of the rabbits remain healthy and survive the entire period and if all the rabbits used in the test fail to show lesions of any kind at the sites of inoculation and fail to show evidence of cercopithecid herpesvirus 1 or any other viral infection.

(2) *Inoculation of adult mice.* Each of at least 20 adult mice, each weighing 15 to 20 grams, shall be inoculated intraperitoneally with 0.5 milliliter and intracerebrally with 0.03 milliliter of each monovalent virus pool. The mice shall be observed for 21 days. Each mouse that dies after the first 24 hours of the test, or is sacrificed because of illness, shall be necropsied and examined for evidence of viral infection by direct observation and subinoculation of appropriate tissue into at least five additional mice which shall be observed for 21 days. The monovalent virus pool may be used for poliovirus vaccine only if at least 80 percent of the mice remain healthy and survive the entire period and if all the mice used in the test fail to show evidence of lymphocytic choriomeningitis virus or other viral infection.

(3) *Inoculation of suckling mice.* Each of at least 20 suckling mice less than 24 hours old shall be inoculated intracerebrally with 0.01 milliliter and intraperitonally with 0.1 milliliter of the monovalent virus pool. The mice shall be observed daily for at least 14 days. Each mouse that dies after the first 24 hours of the test, or is sacrificed because of illness, shall be necropsied and examined for evidence of viral infection. Such examination shall include subinoculation of appropriate tissue suspensions into an additional group of at least five suckling mice by the intracerebral and intraperitoneal routes and observed daily for 14 days. In addition, a blind passage shall be made of a single pool of the emulsified tissue (minus skin and viscera) of all mice surviving the original 14 days. The monovalent virus pool may be used for poliovirus vaccine only if at least 80 percent of the mice remain healthy and survive the entire period and if all the mice used in the test fail to show evidence of Coxsackie or other viral infection.

(4) *Inoculation of guinea pigs.* Each of at least five guinea pigs, each weighting 350 to 450 grams, shall be inoculated intracerebrally with 0.1 milliliter and intraperitoneally with 5.0 milliliters on the monovalent virus pool to be tested. The animals shall be observed for at least 42 days and rectal temperatures recorded daily for the last 3 weeks of the test. Each animal that dies after the first 24 hours of the test, or is sacrificed because of illness, shall be necropsied and its tissues shall be examined both microscopically and culturally for evidence of tubercle bacilli, and by passage of tissue suspensions into at least three other guinea pigs by the intracerebral and intraperitoneal routes of inoculation for evidence of viral infection. If clinical signs suggest infection with lymphocytic choriomeningitis virus, serological tests shall be performed on blood samples of the test guinea pigs to confirm the clinical observations. Animals that die or are sacrificed during the first 3 weeks after inoculation with the monovalent virus pools shall be examined for infection with lymphocytic choriomeningitis virus. Animals that die in the final 3 weeks shall be examined both microscopically and culturally for *Mycobacterium tuberculosis.* The monovalent virus pool may be used for poliovirus vaccine only if at least 80 percent of all animals remain healthy and survive the observation period and if all the animals used in the test fail to show evidence of infection with *Mycobacterium tuberculosis* or any viral infection.

(5) *Inoculation of monkey kidney tissue cultures.* At least 500 doses or 50 milliliters, whichever is a greater volume of virus, taken either from each undiluted monovalent virus pool or, in equal proportions from individual harvests or subpools, shall be tested for simian viruses in Macaca monkey kidney tissue cultures and, in the same volume, in Cercopithecus monkey kidney tissue cultures. A dilution of the virus pool in medium not to exceed 1:4 shall be used. The area of surface growth of the cells shall be at least 3 square centimeters per milliliter of test inoculum. The test poliovirus shall be neutralized by high-titer specific antiserum of nonprimate origin. The immunizing antigens used for the preparation of antisera shall be grown in a cell line other than the cell line used for testing the vaccine. The cultures shall be observed for at least 14 days. At the end of the observation period at least one subculture of fluid from the Cercopithecus kidney cell culture shall be made in the same tissue culture system and the subculture shall be observed for at least 14 years. The monovalent virus pool may be used for poliovirus vaccine only if all the tissue cultures fail to show evidence of the presence of simian viruses or any other viral infection.

(6) *Inoculation of human cell cultures.* At least 500 doses or 50 milliliters, whichever represents a greater volume of virus, taken from either a single monovalent pool or, in equal proportions from individual harvests or subpools, shall be tested for the presence of measles virus in either:

(i) Primary human amnion cells,

(ii) Primary human kidney cells, or

(iii) Any other human or nonhuman cell system of comparable suspectibility to unmodified measles virus.

The virus pool shall be diluted with medium not to exceed 1:4. The area of surface growth of cells shall be at least 3 square centimeters per milliliter of test inoculum. The test material shall be neutralized with poliovirus antiserum of other than primate origin if the tissue culture cell system used is susceptible to poliovirus. The immunizing antigens used for the preparation of antiserum shall be grown in a cell line other than the cell line used for testing the vaccine. The culture shall be observed for at least 14 days. The monovalent virus pool may be used for poliovirus vaccine only if all tissue cultures fail to show evidence of the presence of measles virus or any other viral infection.

(7) *Inoculation of a rabbit kidney tissue culture.* At least 500 milliliters of virus pool, taken from either a single monovalent pool or in equal proportions from individual harvests or subpools, shall be tested in primary rabbit kidney tissue culure preparations for evidence of cercopithecid herpesvirus 1. The virus pool shall be diluted with medium not to exceed 1:4. The area of surface growth of cells shall be at least 3 square centimeters per milliliter of test inoculum. The culture shall be observed for at least 14 days. The monovalent virus pool may be used for poliovirus vaccine only if all tissue cultures fail to show evidence of the presence of herpesvirus.

(b) *Tests for in vitro markers.* In addition to the neurovirulence test required by §§ 630.16 or 630.17, the following tests relating to safety shall be performed on each monovalent virus pools after the filtration process. Tests shall be performed on each monovalent virus pool using the marker tests described below or other methods shown to be of comparable value in indentification of the attenuated strain. The test results shall demonstrate that the monovalent virus pool under test and the seed virus have substantially the same marker characteristics.

(1) *rct/40 Marker.* Attenuated strains which grow readily at 40 °C (±0.5 °C) are classified as rct/40 positive (+) in contrast to the rct/40 negative (−) strains, which show an increased growth of at least 100,000 fold at 36 °C over that obtained at 40 °C. Comparative determinations shall be made in suitable culture vessels.

(2) *d Marker.* Attenuated strains which grow readily at low concentrations of bicarbonate under agar are classified as d positive (+) in contrast to the d negative (−) strains, which exhibit delayed growth under the same conditions. The cultures shall be grown in a 36 °C incubator, in suitable culture vessels in an environment of 5 percent CO_2 in air.

(c) *Final container sterility test.* The final container sterility test need not be performed provided aseptic techniques are used in the filling process.

§ 630.19 General requirements.

(a) *Vaccine release.* No lot of trivalent vaccine shall be released by the manufacturer unless each monovalent virus pool contained therein:

(1) Has been manufactured by the same procedures;

(2) Has met the criteria of neurovirulence for monkeys prescribed in §§ 630.16(b) or 630.17(b);

(3) Has met the criteria of in vitro markers prescribed in § 630.18(b); and

(4) Has been released for further manufacturing by the Director, Center for Biologics Evaluation and Research unless, at the Director's discretion, the Director determines that lot release by the Center for Biologics Evaluation and Research is not required. The protocols for all monovalent virus pools produced sequentially from the same seed and tested, in whole or in part, in accordance with §§ 630.16(b) or 630.17(b) shall be submitted to the Director, Center for Biologics Evaluation and Research, whether or not release of the pool for further manufacturing is requested. For monovalent virus pools not tested under §§ 630.16(b) or 630.17(b), the manufacturer shall report the reasons for partial manufacture to the Director, Center for Biologics Evaluation and Research.

(b) *Labeling.* In addition to the items required by other applicable labeling provisions of this chapter, the final container label shall bear a statement indicating that liquid vaccine may not be used for more than 7 days after opening the container. Labeling may include a statement indicating that, for frozen vaccine, a maximum of 10 freeze-thaw cycles is permissible provided the total cumulative duration of thaw does not exceed 24 hours, and provided the temperature does not exceed 8 °C during the periods of thaw.

(c) *Samples and protocols.* For each trivalent lot of vaccine and for each monovalent virus pool, the following materials shall be submitted in accordance with instructions received from the Director, Center for Biologics Evaluation and Research, 8800 Rockville Pike, Bethesda, MD 20892.

(1) A protocol that consists of a summary of the history of manufacture of each trivalent lot or monovalent virus pool, including any test results requested by the Director, Center for Biologics Evaluation and Research.

(2) Twenty milliliters of monovalent virus pool before filtration.

(3) Forty milliliters of monovalent virus pool after filtration. The titer of the sample shall be no less than the equivalent of $10^{7.5}$ $TCID_{50}$ per milliliter when titrated in HEp–2 cells; if the titer is greater than $10^{7.5}$ $TCID_{50}$ per milliliter, a correspondingly smaller volume may be submitted.

(4) A total of at least 50 single doses or the equivalent thereof of the trivalent vaccine.

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(5) When deemed appropriate, the Director, Center for Biologics Evaluation and Research, may require submission of samples or sample volumes other than those specified in paragraphs (c)(2), (c)(3), and (c)(4) of this section.

(d) *Public health implications.* In interpreting any provision of the regulations governing oral poliovirus vaccine, the agency may consider any potential effect on individual or public health, including effects related to vaccine supply.

(e) *Alternative procedures.* (1) The Director, Center for Biologics Evaluation and Research, may approve an exception or alternative to any requirement in subpart B of part 630 regarding Poliovirus Vaccine Live Oral. Requests for such exceptions or alternatives should ordinarily be made in writing. However, in limited circumstances such requests may be made orally and permission may be given orally by the Director, Center for Biologics Evaluation and Research. Oral requests and approvals must be followed by written requests and written approvals.

(2) FDA will publish a list of approved alternative procedures and exceptions periodically in the Federal Register.

(f) *Status of vaccine in distribution.* Poliovirus Vaccine Live Oral released or in distribution prior to May 8, 1991, is deemed to meet the requirements of supart B of part 630.

Dated: May 1, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 90-10929 Filed 5-7-91; 8:45 am]

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To express appreciation for the benefit brought to the Nation by Amtrak during its twenty years of existence. (May 3, 1991; 105 Stat. 184; 2 pages) Price: $1.00

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Rules and Regulations

Federal Register
Vol. 56, No. 90
Thursday, May 9, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 723

Farm Marketing Quotas, Acreage Allotments, and Production Adjustment; Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Final rule.

SUMMARY: This rule adopts as a final rule with minor changes and corrections, the proposed rule published in the Federal Register on March 14, 1991 (56 FR 10820). This rule amends the regulations at 7 CFR part 723 to implement the provisions of the Farm Poundage Quota Revisions Act of 1990 (Public Law 101–577, enacted November 15, 1990) with respect to the burley tobacco marketing quota program. This rule permits, effective for the 1991 and subsequent crop years, the sale of burley tobacco marketing quota from one farm to another farm in the same county; requires, beginning with the 1994 crop, that a burley tobacco farm quota will be reduced to zero if no tobacco is planted or considered planted in two out of the three immediate preceding years on the farm for which such quota is established; increases the burley tobacco lease limitation from 15,000 to 30,000 pounds for the receiving farm; permits the lease and transfer of burley tobacco quota from one county to any other county in the State of Tennessee; and restricts the transfer of burley tobacco quota which transfers with the divided land when a farm is divided through reconstitution.

In addition, this rule amends the regulations to require burley tobacco quotas to be reduced to zero when there is no cropland suitable for the production of a crop on the farm for which such quota is established; redefines the term "active burley tobacco producer"; revises the period required to share in the risk of producing flue-cured tobacco that is purchased or reallocated; sets forth the actions that will be taken by ASCS if burley and flue-cured tobacco dealers do not comply with end-of-marketing year purchase and resale reporting and inspection requirements; requires burley and flue-cured tobacco warehouse operators and dealers that purchase tobacco from processors and manufactures tobacco that is "in the form not normally marketed by producers" to maintain certain records and provide for the inspection and weighing of such tobacco by an ASCS representative; and provides for the collection of tobacco marketing assessments as set forth in the Omnibus Budget Reconciliation Act of 1990.

DATES: This rule is effective May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Raymond S. Fleming, Agricultural Program Specialist, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 447–4318.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

Information collection requirements contained in the current rule have been approved by OMB through May 31, 1992, under the provisions of 44 U.S.C., chapter 35 and have been assigned OMB #0560–0058 and #0560–0008. These information collections have not changed as a result of this final rule. Public reporting burden for the collections of information contained in this regulation is estimated to range from 5 minutes to 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This rule is necessary to implement the provisions of the Farm Poundage Quota Revisions Act of 1990 which amended the Agricultural Adjustment Act of 1938 (here in after referred to as the "1938 Act") and the Omnibus Budget Reconciliation Act of 1990. Additionally, this rule provides changes to the current regulations to strengthen the administration of the burley and flue-cured tobacco programs.

Discussion of Comments and Changes

In response to the proposed rule published on March 14, 1991, 16 timely filed letters containing 20 comments were received. Respondents included the following: One State farm organization, three State ASC Committees, one farming corporation, one State university and ten individuals. Two comments were received which did not relate to the substance of the proposed rule. Two comments were received that objected to any changes in the burley tobacco program and one comment was received that generally approved of all provisions of the proposed rule.

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The discussion of the comments are as follows.—(1) *Sale of burley tobacco marketing quota.* In response to the proposed rule one comment was received on this subject. The commenter suggested that there were few tobacco farmers left in his county and the value of the quota would be worthless and that to be fair to all farmers a farmer should be permitted to sell quota in any county in the State. The Farm Poundage Quota Revisions Act of 1990 does not provide for the sale of burley tobacco quotas across county lines. For this reason the suggested change provided in the comment is not adopted.

(2) *Loss of burley tobacco quota for nonuse.* In response to the proposed rule three comments were received. The commenters suggested that it was unfair for a farm to lose the burley tobacco quota if the farm had no planted or considered planted credit in two of the three preceding years. One comment suggested that this provision was particularly unfair to the elderly farmers who were unable to produce the tobacco and could not find someone to lease the quota at a fair market price.

The Farm Poundage Quota Revisions Act of 1990 provides that the burley tobacco quota established for a farm will be zero effective for the 1994 crop year on any farm that does not have burley tobacco quota planted or considered planted credit in two of the three immediate preceding years. The proposed rule is in accordance with the law, therefore this suggestion cannot be adopted.

(3) *Cross county leasing of burley tobacco quota.* In response to the proposed rule three comments were received. The commenters suggested that the lease and transfer of burley tobacco quota across county lines should be permitted in States other than Tennessee. One comment suggested that this change would increase production of burley tobacco more than any of the changes that had been proposed. One commenter from Kentucky stated that he is the sole tobacco farmer in the county and that the proposed rule discriminates against him.

The Farm Poundage Quota Revisions Act of 1990 only authorizes the lease and transfer of burley tobacco quota across county lines in the State of Tennessee. For this reason the suggested changes provided in the comments are not adopted.

(4) *Restriction on the division of burley tobacco quotas through reconstitutions.* In response to the proposed rule, four comments were received. Two commenters suggested that the provision, which requires owners of divided farms with less than 1,000 pounds of quota to take action by July 1 of the current crop year to increase the quota to a minimum of 1,000 pounds, or the quota will be reduced to zero, is too restrictive and in some cases inequitable. The comments suggested that burley farmers should have the opportunity to increase a farm's quota to 1,000 pounds for a period of one year after the reconstitution became effective. Two comments suggested approval of the proposed rule.

The Farm Poundage Quota Revisions Act of 1990 provides that when a farm is divided through reconstitution, the burley tobacco farm poundage quota which transfers with the divided land shall not be less than 1,000 pounds. The proposed rule provides that owners of divided farms with less than 1,000 pounds of quota can sell the quota, purchase additional quota to meet the 1,000 pound minimum, or combine the divided farm with other land owned by the same person so that the combined farm has at least 1,000 pounds of quota. The owners of divided farms in this situation must take action to comply with the law by July 1 of the current crop year or the quota is reduced to zero.

To be effective for the current crop year the law provides that a record of the sale of burley tobacco quota shall be filed with the county committee no later than July 1 of the crop year. To extend the time period past July 1 of the current crop year for a farm owner to comply with the 1,000 pound quota restriction would delay the implementation of a statutory provision by allowing the farm to receive and use a burley tobacco quota of less than 1,000 pounds. For this reason the suggested change provided in the comments is not adopted.

(5) *Owners of life estate right to sell tobacco allotment and quota.* In response to the proposed rule, four comments were received with respect to the proposal to allow persons with a life estate interest in a farm be considered the owner of the farm for purposes of transferring or selling the tobacco marketing quota or allotment established for the farm. Two of these comments opposed this proposal. Two comments made no recommendations, however, they suggested that the proposal may be in conflict with the laws of some tobacco producing states.

Tobacco marketing quotas and allotments are established by the Secretary of Agriculture under the provisions of the Agricultural Adjustment Act of 1938, as amended (The 1938 Act). Such quotas and allotments are the means by which Congress has determined to provide desired levels of supplies of tobacco and other commodities. ASCS proposed to set forth this provision in order to inform all producers of ASCS's policy with respect to holders of a life estate interest. This policy is based upon the fact, since such programs are operated on a national basis it is not feasible to take into consideration the variations of 50 State laws in implementing such programs. In addition, it has been well established by the Federal judiciary that the various price support and production adjustment programs administered by agencies of the Department of Agriculture do not create a property right under Federal or State law. However, in view of the comments received, ASCS has determined that further review of this issue is in order with respect to tobacco marketing quotas and allotments. Accordingly, the final rule does not contain any reference to the treatment of life estates interests by ASCS.

Minor Changes and Corrections to the Proposed Rule

Minor changes were made in several sections of the proposed rule. These changes are necessary to clarify certain provisions of the Farm Poundage Quota Revision Act of 1990 in keeping with the intent of Congress. The changes are as follows:

Section 723.201(e)(6) To clarify the determination of preliminary farm marketing quotas for burley tobacco beginning with the 1994 crop year.

Section 723.208(b)(6)(iii) To clarify farms exempt from the burley tobacco 1,000 pounds minimum quota limitation.

Section 723.216(e)(7)(i) and (f)(6)(i) To clarify the restrictions on selling quota from a farm that previously purchased quota or received reallocated quota.

Section 723.216(e)(8)(ii) To clarify the cropland limitation when purchasing burley tobacco quota.

Section 723.409(h) Erroneously published in the **Federal Register** on March 14, 1991, as a proposed revision to 7 CFR part 723. This provision relates to producer price support eligibility and producer refunds to Commodity Credit Corporation (CCC) therefore, this provision will be included in the final rule issued with respect to 7 CFR part 1464.

List of Subjects in 7 CFR Part 723

Acreage allotment, Marketing quotas, Reporting and recordkeeping requirements, Tobacco

Final rule

For the reasons set forth in the preamble, chapter VII, title 7, part 723 is amended as follows:

PART 723—TABACCO [AMENDED]

1. The authority citation for part 723 is revised to read as follows:

Authority: 7 U.S.C. 1301, 1311, 1312, 1313, 1314, 1314–1, 1314b, 1314b–1, 1314c, 1314–d, 1314–f, 1314–h, 1315, 1316, 1363, 1372–75, 1377, 1378, 1379, 1421, 1445, 1445–1, and 1445–2.

2. Section 723.104 is amended by amending paragraph (b) to remove the terms "active burley tobacco producer" and "active flue-cured tobacco producer" and add new terms "active burley and flue-cured tobacco producer" and "damaged tobacco". The definition of the term "base period" is revised to read as follows:

§ 723.104 Definitions.

* * * * *

(b) *Terms.* * * *

Active burley and flue-cured tobacco producer. (1) Any person who shared in the risk of producing a crop of burley or flue-cured tobacco in at least one of the three years preceding the current year, or

(2) Any person who intends to become a burley or flue-cured tobacco producer in the current year by sharing in the risk of producing the crop and who provides a certification of such intentions on a form approved by the Deputy Administrator.

* * * * *

Base Period. The 5 calendar years immediately preceding the year for which farm acreage allotments or marketing quotas are currently being established. For burley tobacco marketing quotas established effective for the 1994 and subsequent crop years, the base period shall be the 3 calendar years immediately preceding the year for which farm marketing quotas are currently being established. For all other kinds of tobacco the five year base period shall remain in effect.

* * * * *

Damaged tobacco. Any tobacco that is offered for sale at nonauction that has suffered a loss of value due to:

(1) fire, smoke, water or other natural causes or;

(2) deterioration resulting from aging such as rot, separation of leaves from stems, or other conditions that would cause such tobacco to be distinguishably different from that normally marketed in trade channels.

* * * * *

3. Section 723.201 is amended by adding paragraphs (b)(5) and (b)(6) to read as follows:

§ 723.201 Determination of preliminary farm acreage allotments and preliminary farm marketing quotas.

* * * * *

(b) * * *

(5) All the cropland on the farm has been determined by the county ASC committee to be no longer suitable for the production of a crop and provisions of part 704 of this chapter do not apply.

(6) Beginning with the 1994 crop year there was no acreage of burley tobacco planted or considered planted in 2 out of the 3 immediate preceding years.

* * * * *

4. Section 723.208 is amended by revising paragraph (b) to read as follows:

§ 723.208 Determination of acreage allotments, marketing quotas and yields for divided farms.

* * * * *

(b) *Burley tobacco.* (1) *Division of farm marketing quota.* The farm marketing quota for the divided farm shall be divided according to part 719 of this chapter. Other basic data shall be apportioned among the resulting farms in the same proportion as the farm marketing quota.

(2) *Divided burley tobacco farms with less than 1,000 pounds of quota.* If a farm is divided through reconstitution and the burley tobacco poundage quota which transfers with the resulting farms receive less than 1,000 pounds of quota, the owners of such farms shall take action by July 1 of the current crop year to increase the quota to a minimum of 1,000 pounds or the quota shall be reduced to zero. The quota on the divided farms may be increased by:

(i) Combining the farm having less than 1,000 pounds with other land owned by the same person so that the combined farm has a minimum of 1,000 pounds of farm marketing quota, or

(ii) Purchasing a sufficient amount of quota so that the farm has at least 1,000 pounds of quota.

(3) *Sale of Quota.* If the owners of the divided farms fail to increase the quota on such farms to a minimum of 1,000 pounds as provided in paragraph (b)(2), the owner must sell the quota by July 1 of the current crop year.

(4) *Effective Quota.* For the current crop year, the effective farm marketing quota on the divided farms shall be considered to be zero for leasing and planting purposes until the farm complies with the 1,000 pound minimum quota.

(5) *Reduction of Quota.* The county ASC committee shall reduce the quota to zero on the divided farms if the owners of such farms fail to take action as provided in paragraph (b) (2) and (3) of this section.

(6) *Farm Exemptions.* Farms exempt from the 1,000 pound minimum quota limitation are farm divisions:

(i) among immediate family members,

(ii) through probate or,

(iii) when no sale or change in ownership of land occurs or,

(iv) when the buyer and purchaser can furnish proof acceptable to the county ASC committee, in accordance with guidelines provided by the Deputy Administrator, that the transaction was finalized prior to November 15, 1990.

* * * * *

5. Section 723.216 is amended as follows:

A. By revising paragraphs (a)(1) (i), (ii), and (iii), and (e)(5)(iv);

B. By adding paragraph (e)(5)(ix);

C. By revising paragraphs (e)(6)(i), (e)(7)(i) introductory text and (e)(7)(iii);

D. By adding paragraphs (e)(7) (vii) and (viii);

E. By revising paragraph (e)(8) (ii) and (iii) and adding paragraph (e)(8)(v);

F. By revising paragraph (f)(6)(i) introductory text and paragraph (f)(7)(iii).

The revised and added text reads as set forth below.

§ 723.216 Transfer of tobacco acreage allotments or marketing quota by sale or lease.

(a) * * *

(1) *Types of Transfers.* * * *

(i) Cigar-filler (type 46) and cigar-filler (types 42, 43, and 44), tobacco transfers may be by lease only.

(ii) Flue-cured tobacco, transfers may be by:

(A) Sale, or

(B) Lease under certain natural disaster conditions provided in this section.

(iii) Burley tobacco, transfers may be by:

(A) Lease

(B) Owner, or

(C) Sale.

* * * * *

(e) * * *

(5) * * *

(iv) *filed on or before July 1.* Unless the receiving farm is administratively located in the same county as the transferring farm. However, for 1991 and subsequent crops burley tobacco producers in the State of Tennessee shall be permitted to lease and transfer burley tobacco quota to any other farm in the State.

* * * * *

(ix) *Divided farms with less than 1,000 pounds of quota.* If the farm has been divided by reconstitution and the divided farm has a farm marketing quota of less than 1,000 pounds subject to being reduced to zero pursuant to section 723.208(b).

(6) *Receiving farm restrictions.* * * *

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(i) *Filed on or before July 1.* If the transfer agreement is filed on or before July 1:

(A) Unless the receiving farm is administratively located in the same county as the transferring farm and the provisions of paragraph (e)(5)(iv) of this section are not applicable.

(B) If the pounds of quota being transferred to the farm exceed the smaller of 30,000 pounds or the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield.

* * * * *

(7) *Selling farm restrictions.* * * *

(i) *Previously purchased and/or reallocated quota.* If the farm marketing quota was bought and/or reallocated from quota previously forfeited as provided in § 723.219(i)(1), and the purchase and/or reallocation became effective within the current or any of the three preceding years; if the purchased and/or reallocated quota was obtained from quota purchased and/or reallocated as provided in paragraph (b) of this section within the four preceding years. However, this provision shall not be applicable if:

* * * * *

(iii) *Pounds for sale.* The pounds transferred by sale shall be based on part of all of the farm poundage quota.

* * * * *

(vii) *Consent of lien holder.* Requires consent of the lien holder, if the farm is subject to a lien, unless the lien holder agrees in writing to the transfer. However, consent of a lien holder is not required for a transfer of the pounds of quota from a farm for which forfeiture is required in accordance with the provisions of § 723.219.

(viii) *Quota is subject to an approved Conservation Reserve Program Contract.* If the quota has been reduced because of an approved Conservation Reserve Program contract according to part 704 of this chapter unless forfeiture is otherwise required.

* * * * *

(8) * * *

(ii) *Cropland limitation.* If the sum of the pounds of quota being transferred exceeds the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield.

(iii) *Quota previously sold.* If quota was sold from the farm in the current or either of the two preceding years.

* * * * *

(v) *Quota limitation.* If the sum of the pounds of quota being transferred in the current year exceeds the larger of: (A) 30 percent of the receiving farm's existing quota, or (B) 20,000 pounds.

* * * * *

(f) * * *

(6) * * *

(i) *Previously purchased and/or reallocated quota.* If a farm marketing quota includes quota that was purchased and/or reallocated from the quota which has been forfeited and the purchase and/or reallocation became effective in the current or any of the three preceding years. However, this provision shall not be applicable if:

* * * * *

(7) * * *

(iii) *Quota previously sold.* If the farm owner sold quota from a farm during the current or any of two preceding years.

* * * * *

6. Section 723.219 is amended by revising paragraphs (c) (1) and (2), adding paragraph (d)(3)(iii), and revising paragraph (h) to read as follows:

§ 723.219 Forfeiture of burley tobacco marketing quota.

* * * * *

(c) *Buyers of quota fail to share in the risk of production.*

(1) *Forfeiture required.* If any person buys burley tobacco quota and such person fails to share in the risk of producing the tobacco which was planted subject to such quota during any of the 3 crop years beginning with the crop year for which the purchase became effective, such person shall forfeit the purchased quota if it is not sold on or before December 31 of the year after the crop year in which such crop was planted. However, any purchaser or subsequent purchaser of quota required to be sold under the mandatory sale to prevent forfeiture, provisions of paragraph (b) of this section shall be required to share in the risk of production of such quota for five crop years beginning with the crop year for which the purchase became effective.

(2) Failure to utilize purchased quota for the production of tobacco shall not result in the forfeiture of such quota, but the three year period and the five year period which is specified in paragraph (c)(1) of this section shall be extended 1 year for each year for which the quota is not utilized.

* * * * *

(d) * * *

(3) * * *

(iii) The affected person knowingly failed to take steps to prevent forfeiture of burley tobacco quota.

* * * * *

(h) *Forfeiture of reallocated quota.* Any burley tobacco quota which is reallocated in accordance with the provisions of this section shall be forfeited if the applicant to whom the quota is reallocated fails to share in the risk of producing a crop of tobacco which is subject to such quota during any of the 3 years beginning with the crop year during which the quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner which is specified in paragraph (c)(4) of this section with respect to the forfeiture of purchased quota. Any forfeiture of quota shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco which is produced subject to such quota. While the failure to utilize a quota shall not subject the quota to forfeiture, the 3 year period which is specified in this paragraph shall be extended by 1 year for each year in which the quota is not utilized.

* * * * *

7. Section § 723.220 is amended by revising paragraphs (e)(1) and (2) and (k) to read as follows:

§ 723.220 Forfeiture of flue-cured tobacco acreage allotment and marketing quota.

* * * * *

(e) *Buyers of allotment fail to share in the risk of production.*

(1) *Forfeiture required.* If any person buys flue-cured acreage allotment and quota and such person fails to share in the risk of producing the tobacco which was planted subject to such quota during any of the three crop years beginning with the crop year for which the purchase became effective such person shall forfeit the purchased quota if it is not sold on or before December 31 of the year after the crop year in which such crop was planted.

(2) *Failure to utilize purchased allotment and quota.* Failure to utilize purchased allotment and quota for the production of tobacco shall not result in the forfeiture of such quota, but the 3 year period which is specified in paragraph (e)(1) of this section shall be extended 1 year for each year for which the quota is not utilized.

* * * * *

(k) *Forfeiture of reallocated allotment and quota.* Allotment and quota which is reallocated in accordance with the provisions of this section shall be forfeited if the applicant to whom the quota is reallocated fails to share in the risk of producing a crop of tobacco which is subject to such quota during any of the 3 years beginning with the crop year during which the quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner which is specified in paragraph (e)(4) of this section with respect to the forfeiture of purchased quota. Any forfeiture of quota shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco which is produced subject to such quota. While the failure to utilize a quota shall not subject the quota to forfeiture, the 3 year period which is specified in this paragraph shall be extended by 1 year for each year in which the quota is not utilized.

* * * * *

8. Section 723.401 is amended by adding paragraph (c) to read as follows:

§ 723.401 Registration of burley and flue-cured tobacco dealers and warehouse operators.

* * * * *

(c) *Disapproval of request for dealer card.* If the State ASC committee in the State in which the application is made has reasons to doubt that the applicant is a bonafide dealer or intends to become a bonafide dealer, the application may be disapproved until such time as the applicant furnishes information to substantiate to the satisfaction of the State ASC committee that such applicant's operation is bonafide.

9. Section 723.404 is amended by revising paragraphs (b)(1)(viii), (c)(2)(iii) and (c)(3)(ii), and the introductory text of paragraph (d)(5) and paragraphs (d)(6) and (8) and adding paragraph (d)(9) to read as follows:

§ 723.404 Dealers records and reports, excluding cigar tobacco buyers.

* * * * *

(b) * * *

(1) * * *

(viii) The amounts remitted for the No Net Cost and the Tobacco Marketing Assessments.

* * * * *

(c) * * *

(2) * * *

(iii) For nonauction purchases which are made by the dealer from producers, the dealer shall remit the producer's and the dealer's share of the No Net Cost and Tobacco Marketing Assessments as provided in part 1464 of this title. The dealer may deduct the producer's share of each assessment from the price paid for the tobacco. However, the No Net Cost Assessment shall not be remitted from a producer who identifies the tobacco for marketing with a marketing card which has zero pounds as the 103 percent entry on the marketing card. A marketing penalty at the full rate shall be collected on the marketings identified by such card. The amount of the No Net Cost and the Tobacco Marketing Assessments which is applicable to tobacco marketed during each marketing year will be the amount per pound which is approved and announced by the Secretary.

(3) * * *

(ii) For nonauction purchases which are made by the dealer from producers, the dealer shall remit the producer's and the dealer's share of the No Net Cost and Tobacco Marketing Assessments as provided in part 1464 of this title. The dealer may deduct the producer's share of each assessment from the price paid for the tobacco. However, the No Net Cost Assessment shall not be remitted from a producer if the marketing card used to identify a kind of tobacco shows a converted penalty rate of 100 percent. A marketing penalty at the full rate shall be collected on the marketings identified by such card. The amount of the No Net Cost and the Tobacco Marketing Assessments which is applicable for each kind of tobacco marketed during each marketing year will be the amount per pound which is approved and announced by the Secretary.

(d) * * *

(5) At the end of the dealer's marketing operation, but not later than April 1 for tobacco other than flue-cured and January 15 for flue-cured tobacco, such dealer shall for each kind of tobacco:

* * * * *

(6) Notwithstanding the provisions of paragraph (d)(5) of this section, any dealer having tobacco transactions after January 15 for flue-cured and April 1 for other than flue-cured shall make reports on Form MQ–79 at the end of each week, as provided in paragraph (d)(3) of this section.

* * * * *

(8) In addition to forms MQ–79 and MQ–72–2, if applicable, form MQ–79 (Supplemental) shall be executed to record information relating to each nonauction purchase of tobacco for which the No Net Cost and Tobacco Marketing Assessments are due from producers and dealers. The form MQ–79 (Supplemental) shall be forwarded to the State ASCS office at the same time as the purchase is reported on the MQ–79. A check, draft, or money order in the amount of the collections recorded on form MQ–79 (Supplemental) and made payable to Commodity Credit Corporation shall be submitted to the State ASCS office along with the forms MQ–79 and MQ–79 (Supplemental).

(9) Any flue-cured or burley dealer who fails to comply with all provisions of paragraph (d)(5) of this section by January 15 for flue-cured and April 1 for burley tobacco will be issued a notice of noncompliance and the dealer shall be given 15 days to either comply or show cause why compliance is not feasible. Failure to complete all required actions within 15 days from date of such notice shall result in such dealer not being issued a MQ–79–2 for the marketing year immediately following the marketing year in which the dealer failed to conform with the deadline of January 15 for flue-cured and April 1 for burley tobacco.

* * * * *

10. Section 723.406 is amended by adding paragraph (e) to read as follows:

§ 723.406 Provisions applicable to damaged tobacco or to purchases of tobacco from processors or manufacturers.

* * * * *

(e) *Dealer records and reports.* (1) Any dealer, warehouse operator or other persons who purchased tobacco classified as not in the form normally marketed by producers shall keep such records as will enable such person to report to the State ASCS office the following:

(i) Name of seller, pounds purchased, and date of purchase.

(ii) The disposition of such tobacco including name of buyer, pounds sold, date of sale,

(2) Upon request by the State ASCS office such person shall provide for the inspection and weighting of the tobacco to be witnessed by an ASCS representative.

11. Section 723.407 is amended by revising paragraphs (b)(7), (d), and (f)(3) to read as follows:

§ 723.407 Cigar tobacco buyer's records and reports.

* * * * *

(b) * * *

(7) The amounts remitted for the No Net Cost and Tobacco Marketing Assessments.

* * * * *

(d) The dealer shall remit the producer's and the dealer's share of the No Net Cost and Tobacco Marketing Assessments as provided in part 1464 of this title. The dealer may deduct the producer's share of each assessment from the price paid for the tobacco. The No Net Cost Assessment shall not be collected from a producer who identifies the tobacco for marketing with a marketing card which has a converted penalty rate of 100 percent on the marketing card. A marketing penalty at the full rate shall be collected on the marketings identified by such card. The amount of the No Net Cost and the Tobacco Marketing Assessments which

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is applicable to tobacco marketed during each marketing year will be the amount per pound which is approved and announced by the Secretary.

* * * * *

(f) * * *

(3) In addition to forms MQ-79 and MQ-72-2, if applicable, form MQ-79 (Supplemental) shall be executed to record information relating to each nonauction purchase of tobacco for which the No Net Cost and Tobacco Marketing Assessments are due from producers and dealers. The form MQ-79 (Supplemental) shall be forwarded to the State ASCS office at the same time as the purchase is reported on the MQ-79. A check, draft, or money order in the amount of the collections recorded on form MQ-79 (Supplemental) and made payable to Commodity Credit Corporation shall be submitted to the State ASCS office along with the forms MQ-79 and MQ-79 (Supplemental).

12. Section 723.410 is amended by revising paragraph (g) to read as follows:

§ 723.410 Penalties considered to be due from warehouse operators, dealers, buyers and others excluding producers.

* * * * *

(g) *Dealer tobacco—burley and flue-cured.* The burley or flue-cured tobacco resales by a dealer (as shown or due to be shown on Form MQ-79), which are in excess of such dealer's total prior purchases of the respective kind of tobacco shall be considered to be a marketing of excess tobacco and penalty thereon shall be due at the time the marketing takes place which results in the excess. If the resale which results in penalty being due is made at auction, the warehouse shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the marketing recorder. If the resale which results in penalty being due is made at nonauction, the purchaser shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the applicable State ASCS office.

* * * * *

13. Section 723.414 is amended by adding paragraph (c) to read as follows:

§ 723.414 Failure to keep records and make reports or making false report or record.

* * * * *

(c) *Misrepresentation and scheme or device.* A warehouse operator or dealer who is determined by ASCS to have knowingly:

(1) adopted any scheme or device which tends to defeat the purpose of the tobacco program,

(2) made any fraudulent representation,

(3) misused a MQ-76 or MQ-79-2, or

(4) sold excess tobacco, shall pay a marketing quota penalty as prescribed in this part.

Signed in Washington DC, on May 2, 1991.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91-10834 Filed 5-8-91; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 929

[FV-91-285 FR]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Suspension of a Provision Regarding the Month in Which To Conduct a Continuance Referendum Under the Cranberry Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action requests comments on the temporary suspension of an order provision which requires a continuance referendum to be conducted on the marketing order for cranberries during the month of May 1991. The order currently specifies that a continuance referendum should be conducted every four years in the month of May, commencing in 1975. The suspension of the continuance referendum date will allow the U.S. Department of Agriculture (Department) to delay conducting a continuance referendum until 1992, as recommended by the Cranberry Marketing Committee (Committee).

DATES: This suspension is effective May 9, 1991 through May 31, 1991. Comments which are received by May 24, 1991, will be considered prior to any finalization of this action.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456 telephone: (202) 475-3920.

SUPPLEMENTARY INFORMATION: This suspension is issued under Marketing Order No. 929 (7 CFR part 929), as amended, regulating the handling of cranberries grown in 10 states. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries subject to regulation under the cranberry marketing order and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This action suspends the provision in the order which specifies the month in which a continuance referendum should be conducted to determine if producers favor the continuance of the cranberry marketing order. That date is specified in § 929.66(d) of the order. This action was unanimously recommended by the Committee at its March 6, 1991, meeting.

Section 929.66(d) of the order currently provides that the Secretary shall conduct a referendum during the month of May 1975 to ascertain whether continuance of this part is favored by the producers, and that the Secretary shall conduct such a referendum during the month of May of every fourth year thereafter. A continuance referendum is therefore scheduled to be conducted in May of 1991.

In August 1989, the Committee recommended several amendments to the marketing order. The Administrator recently issued a Recommended Decision (January 18, 1991, 56 FR 1938) on these amendments. Exceptions to the Recommended Decision were due on March 15, 1991. Under the applicable rules of practice (7 CFR part 900), the next step in the amendment process is for the Secretary to consider the record including any exceptions to the Recommended Decision and then issue a Secretary's Decision and, if warranted, a Referendum Order. It is possible that any referendum on the order amendments could coincide with or closely follow conducting a continuance referendum.

Therefore, the Committee has recommended that the provisions regarding the May 1991 continuance referendum should be temporarily suspended in order to allow the Department to complete the amendatory proceeding prior to conducting a continuance referendum. Although this action will postpone the next continuance referendum for the cranberry marketing order until May 1995, as provided in § 929.66(d), the Committee has also recommended that the Secretary conduct a continuance referendum prior to May 1992. We expect that such continuance referendum would be conducted sometime between January 1992 and May 1992, following the cranberry harvest.

This action will not have a significant economic impact on small producers or handlers. The temporary suspension of the order provision will allow the Secretary to conduct a continuance referendum later than the May 1991 date as specified in the order. Thus, there is no significant economic impact anticipated.

Based on available information, the Administrator of the AMS has determined that the issuance of this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that the second sentence in § 929.66(d), does not tend to effectuate the declared policy of the Act for the period specified herein and should be temporarily suspended.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because the suspension needs to be effective as soon as possible since the month of May is specified in the order as the period in which to conduct a continuance referendum. In addition, a comment period of 15 days is deemed appropriate in order to receive comments before the end of the month of May.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 929.66 [Amended]

2. In paragraph (d) of § 929.66 *Termination,* the sentence "The Secretary shall conduct such a referendum during the month of May of every fourth year thereafter", is temporarily suspended through May 31, 1991.

Dated: May 3, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 91-11052 Filed 5-8-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 91-44]

Customs Regulations Amendment Pertaining to the Harbor Maintenance Fee

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to the harbor maintenance fee. The Omnibus Budget Reconciliation Act of 1990 amended the Internal Revenue Code to provide that, effective January 1, 1991, the fee of 0.04 percent of the commercial value imposed on commercial cargo loaded or unloaded at U.S. ports is increased to 0.125 percent. This amendment to the Customs Regulations reflects the legislative increase. Additionally, the Customs Regulations are being amended to reflect the replacement of various quarterly summary sheets with the Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, and to provide that refund requests and supplemental payments should be accompanied by a Harbor Maintenance Fee Amended Quarterly Summary Report, Customs Form 350.

EFFECTIVE DATE: May 9, 1991.

FOR FURTHER INFORMATION CONTACT: Pat Barbare, User Fee Task Force, 202-566-8648.

SUPPLEMENTARY INFORMATION:

Background

Section 4461(b) of the Internal Revenue Code, 26 U.S.C. 4461(b), previously provided for a fee of 0.04 percent of the commercial value to be imposed on commercial cargo loaded or unloaded at U.S. ports. Section 11214 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, increased this fee to 0.125 percent, effective January 1, 1991. Accordingly, § 24.24(a) of the Customs Regulations, (19 CFR 24.24(a)), is being amended to reflect this increase in the harbor maintenance fee.

Additionally, § 24.24(e), of the Customs Regulations (19 CFR 24.24(e)) is being amended to reflect the replacement of four formats, the quarterly domestic vessel movement summary sheet, quarterly export vessel movement summary sheet, quarterly foreign trade zone summary sheet, and quarterly cruise vessel summary sheet, with two forms. The first is the Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, to be used by exporters and others when remitting quarterly payments. The Harbor Maintenance Fee Amended Quarterly Summary Report, Customs Form 350, is to be used by quarterly payers when requesting a refund (overpayment of the harbor maintenance fee) or to make a supplemental payment (underpayment of the harbor maintenance fee). Customs received Office of Management and

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Budget approval for Customs Forms 349 and 350 under clearance number 151-0158. In addition, the mailing address for filing the forms has been changed, and all forms may now be filed at one address.

Inapplicability of Notice and Delayed Effective Date Provisions

Because these amendments merely implement the statutory provision and do not impose any additional burdens on, or take away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure is impracticable and unnecessary. Similarly, pursuant to 5 U.S.C. 553(d) (1), (3), a delayed effective date is not provided.

Executive Order 12291 and Regulatory Flexibility Act

In that this amendment does not meet the criteria for a "major rule" within the meaning of Executive Order 12291, Customs has not prepared a regulatory impact analysis. Similarly, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are not applicable.

Drafting Information

The principal author of this document was Michael Smith, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 24

Accounting, Customs duties and inspection, Imports, Taxes.

Amendments to the Regulations

Accordingly, part 24, Customs Regulations (19 CFR part 24), is amended as set forth below:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority for part 24, Customs Regulations (19 CFR part 24), is revised in part to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a–58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 31 U.S.C. 9701, unless otherwise noted.

* * * * *

Section 24.24 also issued under 26 U.S.C. 4461, 4462;

* * * * *

2. Section 24.24 is amended by revising paragraphs (a), (e) (1)(ii), (2)(ii), (3)(iii), (4)(ii), and adding (e)(5) to read as follows:

§ 24.24 Harbor Maintenance Fee

(a) *Fee.* Commercial cargo loaded on or unloaded from a commercial vessel is subject to a port use fee of 0.125 percent (.00125) of its value if the loading or unloading occurs at a port within the definition of this section, unless exempt under paragraph (c) of this section or one of the special rules in paragraph (d) of this section is applicable.

* * * * *

(e) *Collections*—(1) *Domestic vessel movements.* * * *

* * * * *

(ii) *Fee payment.* The shipper whose name appears on the Vessel Operation Report shall pay the accumulated fees on a quarterly basis in accordance with paragraph (f) of this section by mailing a check or money order payable to the U.S. Customs Service for all fees for which he is liable for the quarter and a Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, to U.S. Customs Service, P.O. Box 70915, Chicago, Illinois 60673–0915.

(2) *Export vessel movements.* * * *

* * * * *

(ii) *Fee payment.* The exporter whose name appears on the SED or equivalent documentation shall pay the accumulated fees on a quarterly basis in accordance with paragraph (f) of this section by mailing a check or money order payable to the U.S. Customs Service for all fees for which he is liable for the quarter to U.S. Customs Service, P.O. Box 70915, Chicago, Illinois 60673–0915. Accompanying the payment shall be either a Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, or if the exporter files Automated Summary Monthly Shipper's Export Declarations with the Bureau of the Census in accordance with Foreign Trade Statistics Regulations (15 CFR 30.39), a cover letter identifying the exporter, his exporter identification number (EIN), Census Bureau reporting symbol and the quarter for which the payment is being made.

(3) *Import vessel movements.* * * *

* * * * *

(iii) *Foreign trade zones.* In cases where imported cargo is unloaded from a commercial vessel at a port within the definition of this section and admitted into a foreign trade zone, the applicant for admission (the person or corporation responsible for bringing merchandise into the zone) who becomes liable for the fee at the time of unloading pursuant to paragraph (e)(3)(i) of this section, shall pay all fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by mailing a check or money order payable to the U.S. Customs Service for all fees for the quarter and a Harbor Maintenance Fee Quarterly Summary Sheet, Customs Form 349, to U.S. Customs Service, P.O. Box 70915, Chicago, Illinois 60673–0915. Fees shall be paid for all shipments unloaded and admitted to the zone, or in the case of direct deliveries under §§ 146.39 and 146.40 of this chapter, unloaded and received in the zone under the bond of the foreign trade zone operator.

(4) *Passengers.* * * *

* * * * *

(ii) *Fee payment.* The operator of the passenger-carrying vessel shall pay the accumulated fees on a quarterly basis in accordance with paragraph (f) of this section by mailing a check or money order payable to the U.S. Customs Service for all fees for which he is liable for the quarter and a Harbor Maintenance Fee Quarterly Summary Report, Customs Form 348.

(5) *Refund and supplemental payment.* Where a refund is requested or a supplemental payment is made, a Harbor Maintenance Fee Amended Quarterly Summary Report, Customs Form 350, should be mailed to the U.S. Customs Service, P.O. Box 70915, Chicago, Illinois 60673–0915, along with a copy of the Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, for the quarter(s) in which the refund is requested or a supplemental payment is made.

* * * * *

Michael H. Laane,
Acting Commissioner of Customs.

Approved: May 1, 1991.

Peter K. Nunez,
Assistant Secretary of the Treasury.

[FR Doc. 91–10790 Filed 5–8–91; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 90F–0204]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of poly(vinylidene fluoride) homopolymer and to increase the currently permitted weight-percent of vinylidene fluoride in vinylidene fluoride-hexafluoropropene copolymers for use as processing aids in the production of olefin polymers that

contact food. This action responds to a petition filed by Pennwalt Corp.

DATES: Effective May 9, 1991; written objections and requests for a hearing by June 10, 1991. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR 177.1520(b), effective May 9, 1991.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of June 27, 1990 (55 FR 26284), FDA announced that a food additive petition (FAP 9B4169) had been filed by Pennwalt Corp., Three Parkway, Philadelphia, PA 19102–1389, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for the safe use of poly(vinylidene fluoride) homopolymer and an increase in the weight-percent of vinylidene fluoride in vinylidene fluoride-hexafluoropropene copolymers, as adjuvants in the production of olefin polymers for food-contact use.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive uses are safe; however, review of the petition revealed that the name of the copolymer should be vinylidene fluoride-hexafluoropropene copolymers. Therefore, the agency is amending 21 CFR 177.1520(b) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before June 10, 1991 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 177.1520 is amended in the table in paragraph (b) by alphabetically adding two new entries under the headings "Substance" and "Limitations" to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(b) * * *

Substance	Limitations
* * *	* * *
Poly(vinylidene fluoride) homopolymer (CAS Reg. No. 24937–79–9), having a melt viscosity of 6 to 37 kilopoise at a shear rate of 100^{-1} seconds at 232 °C as determined by ASTM Method D 3835–79 (Reapproved 1983), "Standard Test Method for Rheological Properties of Thermoplastics with a Capillary Rheometer" using a capillary of 15:1 L/D, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC.	For use only as a processing aid in the production of olefin polymers complying with paragraph (c) of this section at levels not to exceed 1.0 percent by weight of the polymer. The finished polymers may be used only under the conditions described in § 176.170(c) of this chapter, Table 2, under conditions of use B though H.
* * *	* * *

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Substance	Limitations
Vinylidene fluoride-hexafluoropropene copolymer (CAS Reg. No. 9011-17-0), having a vinylidene fluoride content of not less than 67 percent but less than 100 percent by weight and a melt viscosity of 12 to 27 kilopoise at a shear rate of 100--1 seconds at 232 °C as determined by ASTM Method D 3835-79 (Reapproved 1983), "Standard Test Method for Rheological Properties of Thermoplastics with a Capillary Rheometer" using a capillary of 15:1 L/D, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Office of the Federal Register, 1100 S St. NW., Washington, DC 20408.	For use only as a processing aid in the production of olefin polymers complying with paragraph (c) of this section at levels not to exceed 1.0 percent by weight of the polymer. The finished polymers may be used only under the conditions described in § 176.170(c) of this chapter, Table 2, under conditions of use B though H.

* * * * *

Dated: April 26, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-11047 Filed 5-8-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AE57

Changes in the Vocational Training Program for Certain Pensioners

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Veterans' Benefits Amendments of 1989 changes the age requirement for the participation of certain veterans receiving VA pension in an evaluation of their potential for training and employment from under age 50 to under age 45. In addition, the law precludes a change in the veteran's rating as permanently and totally disabled unless the veteran is employed for twelve consecutive months. The intended effect of these regulatory changes is to implement statutory changes which affect the vocational training program.

EFFECTIVE DATE: These changes are effective December 18, 1989, the date of enactment.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-6496.

SUPPLEMENTARY INFORMATION: At pages 49397 and 49398 of the Federal Register of November 28, 1990, VA published proposed regulations implementing certain provisions of the Veterans' Benefits Amendments of 1989. Interested persons were given 30 days in which to submit their comments, suggestions or objections to the proposed regulatory amendments. Since no comments, suggestions or objections were received, these rules are adopted as final.

VA has determined that these regulations do not contain a major rule as that term is defined in Executive Order 12291, Federal Regulations. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

These regulatory amendments are retroactively effective. These are interpretive rules which implement statutory provisions. Moreover, VA finds that good cause exists for making these rules, like the section of the law which they implement, retroactively effective to the date of enactment. A delayed effective date would be contrary to statutory design; would complicate implementation of this provision of law; and might result in a denial of a benefit to a veteran who is entitled by law to that benefit.

The Secretary certifies that these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA) 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the initial and final flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the amendments only affect the rights of individual beneficiaries. No new regulatory burdens are imposed on small entities by these amendments.

The Catalog of Federal Domestic Assistance number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 11, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart I—[Amended]

1. The authority citation for subpart I continues to read as follows:

Authority: Pub. L. 98-543, 38 U.S.C. 210 and chapter 15, sections specifically cited.

§ 21.6015 [Amended]

2. In § 21.6015, paragraphs (a) and (b)(1), remove the numbers "50" where they appear and add, in their place, the numbers "45", and add the following to the authority citation in paragraph (a): ", Pub. L. 100-687, Pub. L. 101-237", and the following to the authority citation in paragraph (b)(2): ", Pub. L. 101-237".

§§ 21.6050 and 21.6059 [Amended]

3. In § 21.6050, paragraph (a), remove the numbers "50" where they appear and add, in their place, the numbers "45"; and remove the words "a pension" where they appear and add, in their place, the word "pension".

4. In §§ 21.6050 and 21.6059, remove the numbers "50" and add, in their place, the numbers "45" in the following places:

(a) Section 21.6050, paragraphs (c)(1), (c)(2) and (e)

(b) Section 21.6059, paragraphs (c)(1) and (d)

5. In addition to the amendments set forth above, in §§ 21.6050 and 21.6059, the following is added to the authority citation in the paragraphs cited below: ", Pub. L. 101-237".

(a) Section 21.6050, paragraphs (a), (c)(2) and (e)

(b) Section 21.6059, paragraphs (c)(4) and (d)

6. In § 21.6420, the authority citation to the introductory text is revised,

paragraph (a)(1) is revised, an authority citation is added to paragraph (a)(2), and paragraph (d) and its authority citation are added to read as follows:

§ 21.6420 Coordination with the Adjudication Division.

* * * * *

(Authority: 38 U.S.C. 524, Pub. L. 101-237)

(a) *Evaluation.* (1) The date an evaluation being provided a veteran under age 45, who is required to participate in such evaluation, is suspended because of unsatisfactory conduct or cooperation; and

(2) * * *

(Authority: 38 U.S.C. 524, Pub. L. 101-237)

* * * * *

(d) *Information to determine if the veteran's permanent and total disability rating is protected under § 3.343.* The information provided by the case manager includes:

(1) The employment was within the scope of the vocational goal identified in the veteran's individualized written plan of vocational rehabilitation, or in a related field, and the employment secured by the veteran requires the use of the training or services furnished under the rehabilitation plan.

(2) Employment was secured not later than one year after the date the veteran's eligibility for counseling expired. A veteran's eligibility for counseling expires on the date employment services are terminated by VA or the veteran completes rehabilitation to the point of employability and terminates program participation, whichever is later; and

(3) The veteran maintained his or her employment for 12 consecutive months.

(Authority: 38 U.S.C. 524, Pub. L. 101-237)

[FR Doc. 91-11028 Filed 5-8-91; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-511; RM-7500, RM-7614]

Radio Broadcasting Services; Burlington, IA and Hamilton, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of John M. Giannettino, allots Channel 276C3 to Burlington, Iowa, as the community's third local FM service. A counterproposal to allot Channel 276B to Hamilton, Illinois, was withdrawn. *See* 55 FR 47345, November 13, 1990. Channel 276C3 can be allotted to Burlington without the imposition of a site restriction. The coordinates for Channel 276C3 at Burlington are North Latitude 40-48-27 and West Longitude 91-06-48. With this action, this proceeding is terminated.

DATES: Effective Date: June 20, 1991. The window period for filing applications will open on June 21, 1991, and close on July 22, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-511, adopted April 23, 1991, and released May 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Channel 276C3 at Burlington.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11098 Filed 5-8-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-462; RM-7467]

Radio Broadcasting Services; Banks, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Robert Anthony Fogal, d/b/a Common Ground Broadcasting, substitutes Channel 296C3 for Channel 296A at Banks, Oregon, and modifies his construction permit to specify operation on the higher powered channel. *See* 55 FR 45622, October 30, 1990. Channel 296C3 can be allotted to Banks in compliance with the Commission's minimum distance separation requirements at the site specified in petitioner's construction permit without a site restriction. The coordinates for Channel 296C3 at Banks are North Latitude 45-39-57 and West Longitude 123-00-35. Since Banks is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 20, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-462, adopted April 23, 1991, and released May 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 296A and adding Channel 296C3 at Banks.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11099 Filed 5-8-91; 8:45 am]

BILLING CODE 6712-01-M

VOL 56 ISS 90 MY 9 1991 UMI

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 901199-1021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Director), has determined the annual primary allowance, and the second quarter seasonal apportionment of the secondary allowance, of Pacific halibut for the "Domestic Annual Processing (DAP) other fishery" have been reached. The Secretary of Commerce (Secretary) is prohibiting directed fishing for pollock and Pacific cod by vessels using trawl gear other than pelagic trawl gear in Zones 1 and 2H of the Bering Sea subarea for the remainder of the fishing year, and in the entire Bering Sea and Aleutian Islands Area from 12:00 (noon), Alaska local time (A.l.t.), May 3, 1991, through 24:00 (midnight), June 30, 1991. This action is necessary to prevent both the annual primary allowance and second quarter apportionment of the secondary allowance of halibut to the "DAP other fishery" from being exceeded. The intent of this action is to ensure optimum use of groundfish while conserving Pacific halibut stocks.

EFFECTIVE DATES: The closure of Zones 1 and 2H is effective 12 noon, A.l.t., May 3, 1991, through the remainder of the fishing year; closure of the remainder of the BSAI is effective 12 noon A.l.t., May 3, 1991, through 24:00, June 30, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) governs the groundfish fishery in the exclusive economic zone within the Bering Sea and Aleutian Islands Management Area (BSAI) under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and parts 620 and 675.

Amendment 16 to the FMP (56 FR 2700, January 24, 1991) established PSC limits of red king crab and *C. bairdi* Tanner crab in specific zones of the Bering Sea subarea, and for Pacific halibut throughout the BSAI area. Under § 675.21(a), the primary prohibited species catch (PSC) limit of Pacific halibut while conducting any trawl fishery for groundfish in the BSAI during any fishing year is 4,400 metric tons (mt), and the secondary PSC limit for halibut is 5,333 mt. Furthermore, § 675.21(b)(1) provides that the PSC limit of Pacific halibut be apportioned into PSC allowances by target fishery categories, one of which is assigned to the "DAP other fishery." Within the "DAP other fishery," the Pacific halibut bycatch allowance is further apportioned on a seasonal basis under § 675.21(b)(2). The final notice of initial specifications of groundfish for the BSAI for 1991 (56 FR 6290, February 15, 1991) established the annual 1991 primary Pacific halibut allowance for the "DAP other fishery" at 2,667 mt, and the second quarter seasonal apportionment of the secondary allowance at 1,293 mt. The cumulative amount of the secondary allowance available through the second quarter is 2,748 mt.

Under § 675.21(c)(2)(iii), if the Director determines that U.S. fishing vessels using trawl gear will catch the total primary PSC allowance of Pacific halibut in the BSAI while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** closing Zones 1 and 2H for the remainder of the fishing year to DAP trawl vessels using trawl gear other than pelagic trawl gear in the combined directed fishery for pollock and Pacific cod.

The Director has determined that the primary PSC allowance of Pacific halibut for the DAP "other fishery" will be reached on May 3, 1991. The Secretary is prohibiting directed fishing for pollock and Pacific cod, in the aggregate by, DAP vessels using trawl gear other than pelagic trawl gear in Zones 1 and 2H of the Bering Sea subarea from 12 noon, Alaska local time (A.l.t.), May 3, 1991, through the remainder of the fishing year.

Under § 675.21(c)(2)(iv), if the Director determines that U.S. fishing vessels using trawl gear will catch the secondary PSC allowance or seasonal apportionment of the PSC allowance of Pacific halibut in the BSAI while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** closing the Bering Sea and Aleutian Islands Area for the remainder of the season to DAP trawl vessels using other than pelagic trawl gear in the combined directed fishery for pollock and Pacific cod.

The Director has determined that the second quarter seasonal apportionment of the secondary PSC allowance of Pacific halibut for the DAP "other fishery" will be reached on May 3, 1991. Therefore, the Secretary is prohibiting directed fishing for pollock and Pacific cod, in the aggregate, by DAP vessels using trawl gear other than pelagic trawl gear in the Bering Sea and Aleutian Islands Area from 12 noon, Alaska local time (A.l.t.), May 3, 1991, through June 30, 1991.

In accordance with § 675.21(c)(2)(iii), after these closures, the aggregate of pollock and Pacific cod retained by vessels using trawl gear other than pelagic trawl gear in the Bering Sea and Aleutian Islands Area must comprise less than 20 percent of the aggregate amount of the other groundfish or groundfish products retained by the vessel during a weekly reporting period.

Classification

This section is taken under § 675.21 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 3, 1991.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-10932 Filed 5-3-91; 3:15 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 901199-1021]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of prohibition of retention of groundfish.

SUMMARY: The Director, Alaska Region, NMFS, (Regional Director) is prohibiting further retention of "other rockfish" by vessels fishing in the Bering Sea and Aleutian Islands (BSAI) management area and is requiring that "other rockfish" be treated in the same manner as prohibited species. This action is necessary to prevent the total allowable catch (TAC) for "other rockfish" in the BSAI area from being exceeded before the end of the fishing year. The intent of this action is to ensure optimum use of groundfish while conserving "other rockfish" stocks.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), May 3, 1991, through midnight, A.l.t., December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone within the Bearing Sea and Aleutian Islands (BSAI) management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations codified at 50 CFR 611.93 and 50 CFR part 675.

Section 675.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 1.4 to 2.0 million metric tons (mt) for all groundfish species in the BSAI management area. The TAC amounts for target species and the "other species" categories are specified annually within the OY range and are apportioned by subarea under § 675.20(a)(2)(i).

The initial 1991 TAC specified for "other rockfish" in the Bering Sea and Aleutian Islands subareas was 340 mt and 786 mt, respectively, all of which was apportioned to domestic annual processing (DAP) (56 FR 6290, February 15, 1991). Under § 675.20(a)(9), when the Regional Director determines that the TAC of any target species or the "other species" category has been achieved prior to the end of a fishing year, the Secretary of Commerce (Secretary) will publish a notice in the **Federal Register** requiring that a given target species or species group be treated in the same manner as prohibited species, as described in § 675.20(c), for the remainder of the year.

The Regional Director has determined that the TAC for "other rockfish" in both the Bering Sea and Aleutian Islands subareas will be reached on May 3, 1991. Therefore, the Secretary is issuing this notice under authority of § 675.20(a)(9) and is prohibiting retention of "other rockfish" by vessels in the Bering Sea and Aleutian Islands subareas and is requiring that "other rockfish" be treated in the same manner as prohibited species under § 675.20(c) from noon, A.l.t., May 3, 1991, through midnight, A.l.t., December 31, 1991.

Classification

This action is taken under § 675.20(a)(9) and § 675.20(c) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 3, 1991.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-10962 Filed 5-3-91; 4:27 pm]

BILLING CODE 3510-22-M

VOL 56 ISS 90 MY 9 1991 UMI

Proposed Rules

Federal Register
Vol. 56, No. 90
Thursday, May 9, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Parts 735, 736, 737, 738, 739, 740, 741, 742

Liquidation and Informal Hearing Procedures Under the U.S. Warehouse Act

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Stabilization and Conservation Service (ASCS) proposes to amend its regulations pertaining to licensed warehousemen under the U.S. Warehouse Act (USWA). The proposed amendments would provide: (1) Liquidation procedures for the closure of licensed grain warehouses; and (2) informal hearing procedures for licensed warehousemen. The informal process proposed will provide a hearing process that would allow warehousemen to be heard in a less formal atmosphere, and be simpler and faster than the formal hearing process. This proposed rule also outlines the ASCS procedure in actions concerning the closing and taking control of a warehouse which was licensed pursuant to the USWA. The intention of these actions is to protect all valid depositors and equitably disburse grain and grain sales proceeds when a USWA licensed warehouse has to be closed.

DATES: Comments must be received on or before July 8, 1991 in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Licensing Authority Division, U.S. Department of Agriculture (USDA), Agricultural Stabilization and Conservation Service, P.O. Box 2415, room 5962–S, Washington, DC 20013, telephone (202) 447–2121.

All submissions will be available for public inspection during regular business hours in room 5962–S, South Agriculture Building, USDA, 14th and Independence Avenue SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Lynda Moore, Agricultural Marketing Specialist, ASCS–USDA, telephone (202) 382–8004.

SUPPLEMENTARY INFORMATION:

Rulemaking Matters

This proposed rule has been reviewed under United States Department of Agriculture (USDA) procedures established in acccordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major". It has been determined that these provisions will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) Major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Mr. Keith D. Bjerke, Administrator, ASCS, has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, no regulatory flexibility analysis is required.

It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 28115 (June 24, 1983).

Informal Hearing Procedures

This proposed rule establishes an informal hearing process for USWA licensed warehousemen in addition to the current formal procedures provided for all warehousemen.

Formal hearings are conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings instituted by the Secretary under various statues. Decisions in such hearings are made by Administrative Law Judges. Decisions under this formal administrative process can be delayed for a period of years. Such delay is not to the advantage the depositor, the warehouseman, or ASCS. The informal process proposed will provide a hearing process that would allow warehousemen to be heard in a less formal atmosphere, and be simpler and faster than the formal hearing process. The warehouseman will still maintain his rights under the formal process for license suspension and revocation.

Licensed warehousemen would be given the opportunity to have an informal hearing provided by the ASCS Deputy Administrator, Commodity Operations (DACO) prior to the institution of more formal proceedings. The proposal outlines the procedures necessary for licensed warehousemen to request an informal hearing, defines the terms necessary, describes the nature of a hearing, and how the determination will be made.

Liquidation Procedures for Grain Warehouses

From 1916 until 1979 only two warehouses licensed under the United States Warehouse Act (USWA) were closed because of insolvency or bankruptcy with a corresponding loss to commodity depositors. Neither of those warehouse required regulatory liquidation authority. However, since 1979 the licensing authority (ASCS) has encountered an increasing number of warehouses failing under the economic pressures of this period. Most of those warehouses have insufficient commodities in store to deliver in accordance with the warehouse storage obligations. In many of these failures, the warehouseman lacks even the financial resources to conduct an orderly loadout and shutdown. In most of these instances ASCS, with the cooperation of the warehouseman or the trustee in bankruptcy, has been able to liquidate the storage stocks of the warehouse and equitably distribute to each valid depositor, that depositor's pro rata share of the value of the commodities remaining in store at the time of liquidation. With this increase in

the number of warehouses experiencing financial difficulty, ASCS believes that it is necessary to establish formally, its liquidation authority and procedure through the use of the rule making process.

This proposed rule outlines the ASCS procedures in actions concerning the closing and taking control of a warehouse which was licensed pursuant to the USWA. The intention of these actions is to protect all valid depositors and equitably disburse grain and grain sales proceeds when a USWA licensed warehouse has be be closed for any of the following reasons:

(1) A substantial shortage of stored commodity exists and is uncorrected within fifteen calendar days of discovery of the shortage by ASCS unless ASCS agrees, in writing, to an extension of the time period for regaining a balanced position;

(2) Substantial quality deterioration which is determined by ASCS to be uncontrolled by the warehouseman;

(3) Failure of the warehouseman to maintain the minimum financial requirements of the USWA and these regulations;

(4) Loss of control of the warehouse;

(5) At the warehouseman's request; or

(6) Commission of fraud.

List of Subjects in 7 CFR Parts 735 Through 742

Administrative practice and procedure, Agricultural commodities, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Proposed Rule

Accordingly, it is proposed that 7 CFR parts 735 through 742 be amended as follows:

PART 735—COTTON WAREHOUSES

PART 736—GRAIN WAREHOUSES

PART 737—TOBACCO WAREHOUSES

PART 738—WOOL WAREHOUSES

PART 739—DRY BEAN WAREHOUSES

PART 740—NUT WAREHOUSES

PART 741—SIRUP WAREHOUSES

PART 742—COTTONSEED WAREHOUSES

1. The authority citation for 7 CFR parts 735, 736, 737, 738, 739, 740, 741, and 742 continues to read as follows:

Authority: 7 U.S.C. 266.

2. Sections 735.89, 736.99, 737.78, 738.72, 739.80, 740.81, 741.73, and 742.84 are revised to read as follows:

§ _____ Procedure in hearings.

Informal hearings. Licensed warehousemen may request an informal hearing for the reconsideration or review of a determination made with respect to suspension or revocation of a license and compliance with the Act or program regulations in accordance with the following procedures:

(a) Warehousemen must request an informal hearing, in writing, to the Deputy Administrator, Commodity Operations (DACO), ASCS, within 30 calendar days of the disputed action. All such requests should be addressed to: Deputy Administrator, Commodity Operations, ASCS, P.O. Box 2415, room 3080–S, Washington, DC 20013. The envelope should be clearly marked: "Contents: USWA Informal Hearing Request".

(b) The request should clearly state the action or actions disputed; the date of occurrence; facts surrounding the matter being appealed; the name, mailing address, telephone and FAX number of the individual making the request; and whether the warehouseman wishes to appear in person at the hearing or conduct the hearing by telephone.

(c) Hearings will be held in Washington, DC or, under unusual circumstances, at such other location and time as DACO may designate. The warehouseman and/or an authorized representative (hereinafter referred to as the warehousemen) will be given access to all information available to the agency upon which the agency has based the determination being appealed unless it is stated in the initial determination being appealed from, that the information will not be made available because such release would conflict with an ongoing criminal investigation. If information is withheld under this exception the warehouseman will be advised generally of the nature of the information. The hearing will be conducted by a hearing officer which will either be DACO, or a designated representative. During the hearing the warehouseman shall be given the opportunity to present information relevant to the matter in question. The hearing officer may request or permit persons other than the warehouseman to present information at such hearing and may permit the warehouseman to question such persons. Such other persons whose attendance is requested by or permitted by the hearing officer may question the warehouseman or any other person in attendance at the discretion of the hearing officer. The hearing is nonadversarial in nature and witnesses will not be placed under oath. A transcript of the hearing may be requested by the warehouseman and placed in the hearing officer's file. The cost of the transcript will be for the account of the warehouseman. DACO may, at its discretion and at the expense of the Agency, order a trancript of the hearing for the purpose of the hearing officer's file. If a copy of the transcript ordered by DACO is requested by the warehouseman, it will be at the expense of the warehouseman. If, at the time of the scheduled hearing, the warehouseman is not present without just cause, the hearing officer shall, after a reasonable time, conclude the hearing. DACO may make a determination based on the evidence available at that time.

(d) If a transcript of the hearing is not available, the hearing officer will prepare a written summary of the hearing which will become a part of the hearing officer's file. The names of all persons present at the hearing shall be included.

(e) After the hearing officer has compiled his summary of the hearing and gathered all information relevant to the hearing, the hearing officer's file will be forwarded to DACO for DACO's determination. (If DACO was the hearing officer, DACO will compile the hearing officer's file before preceding with the determination. Before a determination is made, DACO may request that the warehouseman provide additional information pertaining to the appeal. DACO's determination may affirm, modify, or reverse the appealed determination. The warehouseman will be notified, in writing, of DACO's determination. DACO's determination concerning license suspension or revocation may be appealed pursuant to the formal hearing procedures found at 7 CFR 1.130 et seq. Nothing contained herein shall delay the effect of a temporary suspension of license imposed under 7 U.S.C. 246.

3. 7 CFR part 736 is further amended to add a new center hearing and § 736.87 to read as follows:

Liquidation Procedures

§ 736.87 Liquidation procedures.

(a) *Conditions.* After the suspension of a USWA warehouse license, the Deputy Administrator for Commodity Operations (DACO) may "close and take control of the warehouse" if any of the following have occurred:

(1) A substantial shortage of stored grain exists and remains uncorrected

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within fifteen calendar days of discovery of the shortage by ASCS unless ASCS agrees, in writing, to an extension of the time period for regaining a balanced position;

(2) Substantial quality deterioration exists which is determined by ASCS to be beyond the warehouseman's control;

(3) Failure of the warehouseman to maintain the minimum financial requirements of the USWA and those regulations;

(4) The warehouseman has lost control of the warehouse;

(5) The warehouseman requests closure; or

(6) The warehouseman has committed an act of fraud against ASCS, any depositor of grain for storage, or in any other functions connected with the commodity operations.

(b) *Definition.* For the purposes of this section the term "closing and taking control of a warehouse" shall mean actions such as taking possession of all the gains stored in the warehouse, and of all books, records, papers, and property used in connection with the operation of the warehouse, and necessary to implement the liquidation procedures under this section.

(c) *Expedited protection of grain depositors.* Upon DACO's determination that continued operation of the warehouse by the warehouseman is likely to result in a probable loss of grain to depositors DACO will immediately close and take control of the warehouse without a prior hearing under these regulations except that DACO will not begin liquidation of the grains in the warehouse until an expedited hearing, if requested, under these regulations, has been held.

(d) *Actions.* Upon closing and taking control of the licensed warehouse, DACO will:

(1) Give written notice of such action of the surety on the bond of the warehouseman.

(2) Notify all depositors, in writing, of the warehouse closure and liquidation.

(3) Publish a notice in local publications of the liquidation and claim procedure, so that all interested parties will be notified.

(4) Take control of all grains stored in the warehouse and of all grains stored at other locations which can be determined to have been accepted at the warehouse for storage but which were either forwarded to other locations or which were stored by the warehouseman in unlicensed space contrary to the terms of the USWA.

(5) Sell the grains. Proceeds of the sale will be held in trust in an interest-bearing account (hereinafter referred to as the "trust account") separately for each grain sold. Expenses incurred in the sale and the liquidation process will be deducted from the total proceeds prior to distribution of those proceeds to valid storage claimants (hereinafter referred to as "valid claimants").

(6) Determine which depositors are valid claimants. Valid claimants must show written evidence of ownership of the grain.

(7) Determine the dollar value of each valid claimant's share taking into consideration both the quality and quantity of the grain deposited for storage and reducing that amount by the amount of unpaid storage due from the depositor to the warehouse. The storage amounts deducted will be returned to the trust account: First of the grain for which the storage is charged if a shortage in either quality, quantity, or both exists for that grain; and second to the trust accounts representing other commodities which contain a shortage of either quality, quantity, or both, pro rata to the extent of the shortage.

(8) Provide written notice to all claimants as to whether the claimant's claim is allowed or disallowed in whole or in part, and if allowed the value of the claim. Provide a period of 30 days from the date of notification for all claimants whose claim was disallowed in whole or in part to appeal the determination. The notice of right to appeal should require that the claimant provide any additional information as to the bases of his claim with his written notice of appeal. If an appeal hearing is requested, DACO shall appoint a hearing officer who will conduct an informal hearing which will not be on the record and which shall be held at a location within a 70 mile radius of the warehouse. All written material submitted by the claimant with the hearing office's writtten summary of the claimant's oral presentation, if any, shall be part of the claim file for that claimant. Each claimant who appeals the initial adverse determination will be notified of the final determination on the claim within 30 days of the date of the hearing unless that time is extended by DACO for good cause (such as allowing time for the claimant to submit additional argument or evidence). No further administrative appeals will be allowed.

(9) If there is any shortage, a pro rata amount will be calculated. Pro rata shall be defined as the percentage of a valid claimant's interest to the amount of the trust account for the commodity.

(10) Distribute the trust account to all valid claimants no earlier than 60 days after notification of final determination to those unsuccessful claimants who have appealed their initial determination. If any unsuccessful claimant files for judicial review of the final determination in a court of competent jurisdiction within 60 days of notification of the final determination, distribution shall be partially made to the successful claimants, withholding a sufficient amount to make distribution of a pro rata share to the claimant who filed the request for judicial review if the claimant is successful.

(11) If possible, complete the liquidation and distribution processes in a six month period commencing on the date of closure notification to depositors.

(12) Revoke the license and return control of the warehouse to the warehouseman (or, upon demand and proof of legal right to the property, a valid receiver of the property) after all grain has been removed from the warehouse if the warehouse records have been removed for use in the claim determination procedure.

(13) If the warehouseman is under the authority of a court having jurisdiction under the provisions of title 11 of the United States Code (Bankruptcy) cooperate with the court to expedite any action necessary.

Signed at Washington, DC, on April 30, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91-10647 Filed 5-8-91; 8:45 am]

BILLING CODE 3410-05-M

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7 CFR Part 736

Grain Warehouses—United States Warehouse Act (USWA)

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Stabilization and Conservation Service (ASCS) proposes to amend and clarify the regulations governing grain warehousemen, inspectors, and weighers licensed under the U.S. Warehouse Act (USWA). ASCS regulates and implements the USWA. The Federal Grain Inspection Service (FGIS) regulates the United States Grain Standards Act (USGSA). This proposal responds to requests to eliminate confusion, and will make it clear that the USWA does not create a competitive conflict between USWA licensed inspectors and those licensed by FGIS under the USGSA and employed by independent grain inspection companies.

DATES: Comments must be received on or before July 8, 1991 in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments to: Director, Licensing Authority Division, U.S. Department of Agriculture (USDA), P.O. Box 2415, room 5962-S, Washington, DC 20013, telephone (202) 447-2121.

All submissions will be available for public inspection during regular business hours in room 5962-S, South Agriculture Building, USDA, 14th and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Lynda Moore, Agricultural Marketing Specialist, ASCS-USDA, telephone: (202) 382-8004.

SUPPLEMENTARY INFORMATION:

Rulemaking Matters

This proposal has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States enterprises to compete with foreign-based enterprises on domestic or export markets.

Keith Bjerke, Administrator, ASCS, has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (4 U.S.C. 601 et seq.). Consequently, no regulatory flexibility analysis is required.

It has been determined by an environmental evaluation that this action would have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consulting with State and local officials. See the notice related to 7 CFR, part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Inspectors and Weighers Licenses

FGIS regulates and implements the USGSA, and ASCS regulates and implements the USWA.

Under the USGSA, FGIS is responsible for administering a national inspection and weighing system for grain. The USGSA provides standards to serve as a common language for different grain qualities and conditions. The USGSA, with few exceptions, requires ("official") certifications of export grain sold by grade. FGIS ("official") inspection and weighing services are provided for grain remaining in the domestic market upon request.

The USWA provides for quality and quantity determinations to be made on grain stored or to be stored in a USWA licensed warehouse by a USWA licensed grader and weigher for the purpose of the warehouse receipt for merchandising. These weight and grade certificates issued under the USWA are not valid for the USGSA even though the Standards used are the same.

As the result of recent concern, primarily from individuals licensed by FGIS to perform "official" grades, we reviewed the USWA regulations covering grain grading. In order to clarify the scope and intention of the USWA and stress the separation of responsibilities, we are proposing the following amendments.

List of Subjects in 7 CFR Part 736

Administrative practice and procedure, Grains, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, it is proposed to amend 7 CFR part 736 as follows:

PART 736—GRAIN WAREHOUSES

1. The authority citation for 7 CFR part 736 continues to read as follows:

Authority: 7 U.S.C. 268.

2. Section 736.2 is amended by adding a new paragraph (aa) to read as follows:

§ 736.2 Terms defined

* * * * *

(aa) *Storage grain.* All grain received into, stored in, or delivered out of the warehouse which is not classified as nonstorage grain under § 736.19(c) of this part.

3. Section 736.19 is amended by revising paragraph (c) to read as follows:

§ 736.19 Grain must be inspected and weighed

* * * * *

(c) Except as provided in § 736.27 of this part, all storage grain delivered out of a warehouse must be inspected, graded and weighed by a licensed inspector or weigher, as applicable.

§§ 736.106, 736.107 [Removed]

4. Sections 736.106 and 736.107 are removed and reserved.

Signed at Washington, DC, on May 3, 1991.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91-11060 Filed 5-8-91; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 422

RIN 0960-AC91

Correction of Earnings Records After Expiration of Time Limitation

AGENCY: Social Security Administration.

ACTION: Proposed rule.

SUMMARY: In this proposed regulation, we are amending our rules on correcting records we establish and maintain to show the wages and self-employment income covered under the Social Security Act (the Act) for a worker or a self-employed individual. We may now correct our records at any time up to 3 years, 3 months, and 15 days after the year in which wages were paid or self-employment income was derived. After this time, we can make various revisions, including ones based on an employer's failure to report any covered wages for the period involved. In this proposed rule, we are implementing section 10304 of the Omnibus Budget Reconciliation Act (OBRA) of 1989 (Pub. L. 101-239). Under this statutory amendment, which was effective on December 19, 1989, we now also may correct an earnings record after the time limitation has expired to credit wages if an employer reported an amount of wages for an employee that is less than the correct amount.

DATES: Your comments will be considered if we receive them no later than July 8, 1991.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8 a.m. and 4:30 p.m. or regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

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FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 (301) 965-8471.

SUPPLEMENTARY INFORMATION: Under section 205(c)(2)(A) of the Act, 42 U.S.C. 405(c)(2)(A), the Secretary of Health and Human Services (the Secretary) is required to establish and maintain records of the wages and self-employment income of individuals and to furnish, upon request, a statement of the amounts credited to an individual's record of earnings and the periods for which the amounts are credited. Section 205(c)(3) of the Act states that the Secretary's records are evidence of a person's social security wages and self-employment income.

Section 205(c)(4) of the Act, (42 U.S.C.), authorizes the Secretary to correct an earnings record prior to the expiration of the statutory time limitation of 3 years, 3 months, and 15 days after the year in which the wages were paid or self-employment income was derived if it is brought to his attention that an entry is erroneous or that an amount has been omitted. Section 205(c)(5) of the Act provides that after the expiration of this limitation, the Secretary, under specified circumstances, may change, delete, or include an item of wages or self-employment income.

In this proposed rule, we are revising § 404.822(e)(5) to explain that we now may correct an earnings record after the time limit has expired to enter amounts of wages paid to an individual if less than the correct amounts paid by an employer had previously been entered on the record. This proposed rule implements section 10304 of OBRA, which amended section 205(c)(5)(H) of the Act. Before the OBRA amendment, section 205(c)(5)(H) provided that we could correct an earnings record after expiration of the time limitation to include wages paid during any period in a year to an individual by an employer, only if there was an absence of an entry in the Secretary's records of wages having been paid by such an employer to the individual in such period. Under this proposed rule, we will correct an earnings record after the expiration of the time limit to add wages that were paid to an individual, even if there is an entry in the Secretary's records. However, under the proposed regulation, we will not delete earnings after the end of the time limit for correcting earnings records.

We believe that the proposed rule is consistent with the intent of Congress as expressed in the House Report and the Conference Report on OBRA. These reports state that the current list of revisions the Secretary may make after the time limitation has expired would be expanded "to permit adding wages to a record where an entry for an employer is present but incorrect." See H.R. Rep. 386, 101st Cong., 1st Sess. 711 (1989). See Also H.R. Rep. 247, 101st Cong., 1st Sess. 961 (1989).

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the costs of the OBRA provision, which are expected to increase to $4 million for FY 1994, are required by law. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities because it affects only the correction of individuals' earnings records. Therefore, a regulatory flexibility analysis as provided in Public Law. 96-354, the Regulatory Flexibility Act, is not needed.

Paperwork Reduction Act

This proposed rule imposes no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors, and Disability Insurance.

20 CFR Part 422

Administrative practice and procedure; Freedom of information; Organization; and functions (Government agencies); Social Security.

Dated: January 18, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: March 27, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart I of part 404 is proposed to be amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

1. The authority citation for part 404, subpart I is revised to read as follows:

Authority: Secs. 205 (a), (c)(1), (c)(2)(A), (c)(4), (c)(5), (c)(6), (d), (p), and 1102 of the Social Security Act; 42 U.S.C. 405 (a), (c)(1), (c)(2)(A), (c)(4), (c)(5), (c)(6), (d), and (p), and 1302.

2. Section 404.822(e)(5) is revised to read as follows:

§ 404.822 Correction of the record of your earnings after the time limit ends.

* * * * *

(e) * * *

(5) *Less than correct wages on SSA records.* We may enter wages paid to you by an employer for a period if no part of those wages or less than the correct amount of those wages is entered on SSA records.

* * * * *

[FR Doc. 91-10942 Filed 5-8-91; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[GL-710-88]

RIN 1545-AM88

Review of Jeopardy Levy or Assessment Procedures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulatory amendment relating to the procedures for review of jeopardy levies and jeopardy and termination assessments. The Technical and Miscellaneous Revenue Act of 1988 extended the existing procedures for the review of jeopardy and termination assessments to the review of those jeopardy levies made less than 30 days after notice and demand for payment is made under I.R.C. § 6331(a). In addition, because it is believed Congress intended to permit administrative and judicial review of all jeopardy levy cases where the general notice requirements of section 6331 (a) and (d) are not met, the regulations extend review to include all such cases. The regulations also incorporate the modifications to I.R.C. section 7429 which now provide the Tax Court with concurrent jurisdiction with the federal district courts regarding the review of jeopardy assessments and jeopardy levies in certain circumstances, where previously only the district courts had jurisdiction with respect to the review of jeopardy assessments.

DATES: Written comments and requests for a public hearing must be received by June 24, 1991.

ADDRESSES: Send comments and request for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (GL-710-88), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Joseph W. Clark, 202-566-4574 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 7429 of the Internal Revenue Code. The regulations reflect the amendment of section 7429 by section 6237 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647).

Explanation of Provisions

Section 6237 of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Pub. L. No. 100-647, 102 Stat. 3573) amended section 7429 of the Internal Revenue Code to extend the existing procedures relating to the review of jeopardy and termination assessments to the review of certain jeopardy levies. The regulations specify that the Internal Revenue Service must give the taxpayer whose property has been subjected to jeopardy or termination assessment a written statement of the information on which the action is based within 5 days of the date the jeopardy or termination assessment is made. A written statement is also required within 5 days of the date of a jeopardy levy is made if the general notice requirements of section 6331 (a) and (d) are not met with respect to the levy. The taxpayer has 30 days from receipt of the written statement or, if no statement was provided, 30 days from the date the statement was required to be furnished to request administrative review. The taxpayer may commence judicial review of the reasonableness of the jeopardy assessment or levy by bringing a civil action in the appropriate court within 90 days after the earlier of (1) the date of notice of the administrative review determination or (2) the 16th day after the request for review was made. The regulations further reflect the grant to the Tax Court of concurrent jurisdiction with the federal district courts over challenges to jeopardy assessment and levies if the taxpayer has filed a petition with the Tax Court prior to the making of the jeopardy assessment or levy with respect to any deficiency covered by the jeopardy assessment or levy notice.

These amendments to the regulations are proposed to be effective for levies issued and jeopardy and termination assessments made on or after July 1, 1989, as provided in TAMRA.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits timely written comments on the proposed rules. Notice of the time, place and date for the hearing will be published in the *Federal Register*.

Drafting Information

The principal author of these proposed regulations is Joseph W. Clark, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

Lists of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is proposed to be amended as follows:

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7429-1 is revised to read as follows:

§ 301.7429-1 Review of jeopardy and termination assessment and jeopardy levy procedures; information to taxpayer.

Not later than 5 days after the day on which an assessment is made under section 6851(a), 6852(a), 6861(a), or 6862, or a levy is made under section 6331(a) without complying with the notice before levy provisions of section 6331(d), which would be required if not for jeopardy, the district director shall provide the taxpayer a written statement setting forth the information upon which the district director relies in authorizing such assessment or levy.

Par. 3. Section 301.7429-2 is revised to read as follows:

§ 301.7429-2 Review of jeopardy and termination assessment and jeopardy levy procedures.

(a) *Request for administrative review.* Any request for the review of a jeopardy or termination assessment or jeopardy levy provided for by section 7429(a)(2) shall be filed with the district director within 30 days after the statement described in § 301.7429-1 is given to the taxpayer. However, if no statement is given within the 5 day period described in § 301.7429-1, any request for review of the jeopardy or termination assessment or jeopardy levy shall be filed within 35 days after the date such assessment or levy is made. Such request shall be in writing, shall state fully the reasons for the request, and shall be supported by such evidence as will enable the district director to make the redetermination described in section 7429(a)(3).

(b) *Administrative review.* In determining whether the assessment is reasonable and the amount assessed is appropriate, or whether the jeopardy levy is reasonable, the district director

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shall take into account not only information available at the time the assessment or jeopardy levy is made but also information which subsequently becomes available.

(c) *Abatement of assessment.* For rules relating to the abatement of assessments made under sections 6851 and 6861 see §§ 301.6861–1(e), 301.6861–1(f) and 1.6861–1(d) of this chapter.

Par. 4. Section 301.7429–3 is revised to read as follows:

§ 301.7429–3 Review of jeopardy and termination assessment and jeopardy levy procedures; judicial action.

(a) *Time for bringing judicial action.* An action for judicial review described in section 7429(b) may be instituted by the taxpayer during the period beginning on the earlier of—

(1) The date the district director notifies the taxpayer of the determination described in section 7429(a)(3); or

(2) The 16th day after the request described in section 7429(a)(2) was made by the taxpayer;
and ending on the 90th day thereafter.

(b) *Extension of period for judicial review.* The United States government may not by itself seek an extension of the 20 day period described in section 7429(b)(3), but it may join with the taxpayer in seeking such an extension.

(c) *Jurisdiction for determination.*—In general, the United States district courts will have exclusive jurisdiction over any civil action for a determination described in section 7429(b). However, if a petition for a redetermination of a deficiency has been timely filed with the Tax Court prior to the making of an assessment or levy that is subject to the section 7429 review procedures, and one or more of the taxes and tax periods before the Tax Court as a result of the petition is also included in the written statement that was provided to the taxpayer, then the Tax Court will have jurisdiction concurrent with the district courts over any civil action for a judicial determination with respect to all the taxes and tax periods included in the written statement. In all other cases, the appropriate United States district court continues to have exclusive jurisdiction over such an action.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–10554 Filed 5–8–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Parolees in Special Drug and Alcohol Treatment Programs; Correction

AGENCY: United States Parole Commission.

ACTION: Proposed rule; correction.

SUMMARY: The U.S. Parole Commission published a proposed rule on Monday April 22, 1991, 56 FR 16287, concerning standard special alcohol and drug aftercare treatment conditions that contained an erroneous date for which comments must be received.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Office of General Counsel, 5550 Friendship Blvd., Chevy Chase, MD, 20815, Telephone, (301) 492–5959.

The **Federal Register** published on Monday, April 22, 1991, page 16287, column 2, the "**DATES**" section is corrected to read as follows: "**DATES:** Comments must be received by May 24, 1991."

Dated: May 6, 1991.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 91–11120 Filed 5–8–91; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD2–91–06]

Regulated Navigation Area; Monongahela River, Mile 81.0 to 83.0

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a Regulated Navigation Area [RNA] on the Monongahela River from mile 81.0 to mile 83.0 to ensure the safety of vessel traffic and workers during the construction of Grays Landing Lock. The construction of the lock has reduced the width of the river to 372 feet through this area.

DATES: Comments on this regulation must be received on or before June 24, 1991.

ADDRESSES: Comments should be mailed to Commander (d1), Second Coast Guard District, 1222 Spruce Street, room 2.102E, St. Louis, Missouri, 63103–2832, Attention: Docket CGD2–91–06. The comments and other materials referenced in this notice will be available for inspection and copying at this addressing during normal office hours of 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rhae A. Giacoma, Chief of Port Operations, c/o Commanding Officer, U.S. Coast Guard Marine Safety Office, suite 700, Kossman Building, Forbes Avenue & Stanwix Street, Pittsburgh, Pennsylvania 15222. The telephone number is (412) 644–5808.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD2–91–06) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if the comment so requests.

The proposed regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may beheld if sufficient written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant Commander Rhae A. Giacoma, Project Officer, Commanding Officer, U.S. Coast Guard Marine Safety Office, suite 700, Kossman Building, Forbes Avenue & Stanwix Street, Pittsburgh, Pennsylvania 15222; and, Lieutenant Michael A. Suire, Project Attorney, Commander (d1), Second Coast Guard District, 1222 Spruce Street, room 2.102E, St. Louis, Missouri 63013–2832.

Discussion of Proposed Regulations

The U.S. Army Corps of Engineers, Pittsburgh District, is constructing a new lock at Grays Landing, mile 82.0 on the Monongahela River. The project is estimated to be completed on or about 31 December, 1992.

The erection of a cofferdam and steel sheet pile cells which will support the upper guard wall at the Grays Landing Lock has narrowed the width of the River to 372 feet. In the interest of vessel safety, protection of the cofferdam and the safety of the persons who will be working in the cofferdam, the Coast Guard proposes to establish a Regulated Navigation Area [RNA] to control vessel traffic through the construction area. The proposed RNA would extend from mile 81.0 to mile 83.0 on the Monongahela River.

Traffic on this two-mile length of the river would be restricted to one-way passage, with no meeting, passing or overtaking authorized. Upbound vessels would give way to downbound vessels and, when approaching mile 81.0, in the area of Cats Run Light and the daymark located on the right descending bank, would contact any downbound vessels to arrange transit of the area. All downbound vessels, when approaching mile 83.0, in the vicinity of Warwick Mine on the left descending bank would contact any upbound vessels to arrange transit of the area. Deviations from these requirement would require pre-authorization by the Captain of the Port, Pittsburgh. In addition, all vessels would be required to remain at least 100 feet from the river face of the cofferdam and the upper guard wall cells.

An emergency safety zone established on November 28, 1990, on the Monongahela River from mile 81.0 to mile 83.0 imposes the described restrictions. This and successive safety zones will be in effect until an RNA is established. However, because the long-term nature of the construction project, an RNA is deemed to be more appropriate.

The Waterways Association of Pittsburgh, a local waterborne commerce organization, was contacted prior to establishing the Safety Zone to determine what impact, if any, it would have had on vessel traffic transiting the area. The Waterways Association stated that these restrictions would have no significant impact on commerce through this area since the configuration of the river has always necessitated caution in transit, and vessels have historically waited for one another to pass at certain points where the river bends.

Economic Assessment and Certification

The proposed regulations have been reviewed under the provisions of Executive order 12291 and have been determined not to be a major rule. In addition, these regulations are considered to be nonsignificant under the guidelines of DOT Order 2100.5 dated May 22, 1990, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An economic evaluation has not been conducted and is deemed unnecessary as the impact of these regulations is expected to be minimal. Vessel traffic is not expected to be delayed for any extended period of time, and operations in this area have historically involved brief waiting periods for vessels in meeting situations. Vessels have traditionally stood by and waited for single file transit through restricted areas of this river.

Pursuant to 5 U.S.C. 601, et seq., the Regulatory Flexibility Act, it is certified that, if adopted, this proposal will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment and Certification

This action is being reviewed by the Coast Guard. Preliminary analysis indicates this action will qualify for a Finding Of No Significant Impact in accordance with paragraph 2.B.5 of the NEPA Implementing Procedures, COMDTINST M16475.1B; or, as a Categorical Exclusion in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. Interested persons are nonetheless invited to participate in this rulemaking by submitting written views, data, or arguments in accordance with the procedures outlined earlier in this preamble. Copies of all documents being reviewed will be available on the docket for public review.

Collection of Information

This proposal contains no collection of information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment and Certification

This action is being analyzed in accordance with the principles and criteria outlined in Executive Order 12612, and it is expected that the proposed action does not have sufficient federalism implications to warrant preparation of a Federalism Assessment. As noted above, vessel traffic is not expected to be delayed for any extended period of time, and operations in this area have historically involved brief waiting periods for vessels in meeting situations. Vessels have traditionally stood by and waited for single file transit through restricted areas of this river.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Section 165.204 would be added to read as follows:

§ 165.204 Monongahela River, Mile 81.0 to 83.0—Regulated Navigation Area.

(a) The following is a regulated navigation area (RNA): The waters of the Monongahela River between mile 81.0 and mile 83.0.

(b) Transit of the RNA may be made only under the following conditions:

(1) Traffic is restricted to one-way passage, with no meeting, passing, or overtaking authorized.

(2) Upbound vessels must give way to downbound vessels and, when approaching mile 81.0, in the area of Cats Run Light and the daymark located on the right descending bank, are to contact any downbound vessels in the area to coordinate transit of the area in accordance with this section.

(3) Downbound vessels, when approaching mile 83.0, in the vicinity of Warwick Mine on the left descending bank, are to contact any upbound vessles in the area to coordinate transit of the area in accordance with this section.

(4) All vessels must remain at least 100 feet from the river face of the coefferdam and the upper guard wall cell which have been erected as part of the Grays Landing Lock construction.

(5) Any deviation from this section must be authorized by the Captain of the Port, Pittsburgh, PA, prior to entering the RNA.

Dated: April 9, 1991.

W. J. Ecker,

Rear Admiral (Lower Half), United States Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 91–11103 Filed 5–8–91; 8:45 am]

BILLING CODE 4910–14–M

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3955-1]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list.

This action proposes to add the White Chemical Corp. site in Newark, New Jersey to the NPL. The identification of a site for the NPL is intended primarily to guide the Environmental Protection Agency ("EPA") in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate.

DATES: Comments must be submitted on or before June 10, 1991.

ADDRESSES: Comments must be mailed, in triplicate, to Larry Reed, Acting Director, Hazardous Site Evaluation Division (Attn.: NPL Staff), Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Addresses for the Headquarters and Region 2 dockets are provided below. For further details on what these dockets contain, see the Public Comment Section, section I, of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, OS-245, Waterside Mall, 401 M Street, SW., Washington, DC 20460; 202/382-3046.

U.S. EPA, Region 2, Document Control Center, Superfund Docket, 26 Federal Plaza, 7th Floor, room 740, New York, NY 10278; Latchmin Serrano, 212/264-5540, Ophelia Brown, 212/264-1154.

FOR FURTHER INFORMATION CONTACT: Robert Myers, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the Superfund Hotline, Phone (800) 424-9346 or (703) 920-9810 in the Washington, DC metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Purpose and Implementation of the NPL
III. Contents of This Proposed NPL Update
IV. Regulatory Impact Analysis
V. Regulatory Flexibility Act Analysis

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 ("CERCLA" or "the Act") in response to the dangers of uncontrolled or abandoned hazardous substance sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, Stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP was further revised by EPA on September 16, 1985 (50 FR 37624), November 20, 1985 (50 FR 47912), and most recently on March 8, 1990 (55 FR 8666). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants.

Section 105(a)(8)(A) of CERCLA, as amended by SARA, requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, take into account the potential urgency of such action for the purpose of taking removal action." Removal action involves cleanup or other actions that are taken in response to emergency conditions or on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA are included in the NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if its scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of 40 CFR part 300, July 16, 1982 and amended on December 14, 1990 (55 FR 51532).

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. See 40 CFR 300.425(c)(2).

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without the computation of an HRS score, if all of the following occur:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority (available only at NPL sites) than to use its removal authority to respond to the release.

Based on these criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA prepares a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of 40 CFR part 300, is the NPL.

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on February 11, 1991 (56 FR 5598). At this time, the NPL contains 1,189 sites.

EPA may delete sites from the NPL where no further response is appropriate, as explained in the NCP at 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 33 sites from the final NPL, most recently on February 11, 1991 (56 FR 5598).

Pursuant to the NCP at 40 CFR 300.425(c)(3), this notice proposes to add one site to the NPL.

Public Comment Period

This **Federal Register** document opens a 30-day comment period for this proposed rule. Comments must be mailed to Larry Reed, Acting Director, Hazardous Site Evaluation Division at the address given above.

The Headquarters and Region 2 public dockets for the NPL (see **ADDRESSES** portion of this notice) contain documents relating to the proposal to add the White Chemical Corp. site in Newark, New Jersey, to the NPL. Both dockets contain the public health advisory issued by ATSDR and EPA memoranda supporting the findings that the release poses a significant threat to public health and that it would be more cost-effective to use remedial rather than removal authorities at the site. The dockets are available for viewing, by appointment only, after the appearance of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. The hours of operation for the Region 2 docket are from 8 a.m. to 5 p.m., Monday through Friday excluding Federal holidays.

An information written request, rather than a formal request under the Freedom of Information Act (FOIA), should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the 30-day comment period. During the comment period, comments are available to the public only in the Headquarters docket. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the Regional docket on an "as received" basis.

In past rules, EPA has attempted to respond to late comments, or when that was not practicable, to read all late comments and address those that brought to the Agency's attention a fundamental issue concerning the proposed listing. Although EPA intends to pursue the same policy with the site in this rule, EPA can guarantee that it will consider only those comments received during the formal comment period. EPA cannot delay a final listing decision solely to accommodate consideration of late comments.

II. Purpose and Implementation of the NPL

Purpose

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)):

> The priority lists serve primarily information purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine that CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site serves as notice to parties interested in the site, including any potentially responsible parties, that the Agency may initiate CERCLA-financed remedial action.

Implementation

EPA has limited, by regulation, the expenditure of Trust Fund monies for remedial actions to those sites that have been placed on the NPL, as outlined in the NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990). However, EPA may take enforcement actions under CERCLA or other applicable statutes against potential responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the main focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, EPA has the authority to take nonremedial response actions at any site, whether listed or not.

EPA's policy is to pursue cleanup of NPL sites using the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities, proceed directly with CERCLA-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for CERCLA-financed response action and/or enforcement action through both State and Federal initiatives. These determinations will take into account which approach is more likely to most expeditiously accomplish cleanup of the site while using CERCLA's limited resources as efficiently as possible.

Remedial response actions will not necessarily be funded in the same order as sites' HRS scores, since the Agency has recognized that the information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. In addition, certain sites, such as the White Chemical Corp. site, are based on other criteria. Thus, EPA relies on further, more detailed studies including the remedial investigation/feasibility study (RI/FS).

The RI/FS determines the nature and extent of the threat presented by the contamination (40 CFR 300.430(a)(2) (55 FR 8846, March 8, 1990). It also takes into account the amount of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in subpart E of the NCP (55 FR 8839, March 8, 1990). After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

III. Contents of This Proposed NPL Update

The White Chemical Corp. (WCC) site, in Newark, Essex County, New Jersey, is being proposed for the NPL on the basis of section 425(c)(3) of the NCP, 40 CFR 300.425(c)(3) (55 FR 8845, March 8, 1990). WCC is a former manufacturer of acid chlorides and flame retardant compounds. The site is located at a 4-acre facility (including two on-site laboratories) located on a densely-populated industrial region of New Jersey. It borders on two large manufacturing facilities to its west. One-quarter mile beyond the manufacturing facilities is Weequahic Park and several large housing projects as well as several high-rise senior citizen apartment buildings. The daytime population within one-quarter mile of the site is about 12,000 people. To the east and adjacent to the site is the Conrail railroad line, the major eastern corridor to New York. On the other side of the Conrail line is an Anheuser Busch Brewery. Approximately one-half mile

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further east is U.S. Highway No. 1 and Newark International Airport.

On June 30, July 7, and September 8 and 22, 1989, the New Jersey Department of Environmental Protection (NJDEP) inspected the WCC facility and found numerous violations of the Resource Conservation and Recovery Act (RCRA): Specifically, illegal treatment of hazardous waste and storage of hazardous waste without the necessary permits. NJDEP found open or damaged, bulging, and unlabeled containers, numerous spills into the ground, inadequate aisle space between drums, drums of different chemicals stored together, water-reactive materials in open yards, and ignitable waste stored within 50 feet of the property line.

NJDEP issued several notices of violation and assessment of penalties to WCC. However, NJDEP has received no responses to the notices. In early 1990, NJDEP issued several directives to WCC to cleanup the site. Again, there was no response. (The company currently is undergoing Chapter 11 bankruptcy proceedings.) At the request of NJDEP, EPA conducted a preliminary assessment of the site on May 4, 1990, which revealed the presence of more than 8,000 drums of various chemicals and wastes. On May 8, 1990, NJDEP issued a directive to WCC regarding its assessment.

On May 15, 1990, NJDEP began a removal action under the New Jersey Spill Compensation and Control Act However, by August 1990, after NJDEP had removed approximately 1,000 drums, the project ceiling of $825,000 was reached, halting the cleanup. As a result, on August 24, 1990, NJDEP requested EPA to assess the site for CERCLA removal consideration.

On September 27, 1990, EPA Region 2 requested that ATSDR review information regarding the site and characterize the threat to public health posed by the site. ATSDR responded to this request by conducting a Health Assessment under section 104(i)(6) of CERCLA on September 28, 1990. ATSDR concluded that the WCC site posed an imminent and substantial threat to public health due to uncontrolled storage of hazardous substances and conditions of ongoing airborne releases. On the basis of that threat, ATSDR has determined that the site warrants a Public Health Advisory, recommending dissociation of individuals from the release.

The advisory discusses two major areas of concern. The first is the threat of catastrophic release posed by the uncontrolled storage of hazardous substances at the site. The second involves reports of adverse health effects in nearby worker populations, and the evidence of continuous airborne releases from the site.

As a result of these concerns, ATSDR has recommended immediate actions to stabilize the site. (See "Public Health Advisory for White Chemical Company, Newark, Essex, New Jersey," issued by the ATSDR, November 21, 1990).

Further, EPA's assessment is that the site poses a significant threat to public health. (See memorandum dated December 28, 1990 from Richard L. Caspe, Director, Emergency and Remedial Response Division, Region 2, to Larry Reed, Acting Director, Hazardous Site Evaluation Division, EPA Headquarters). EPA emergency response staff currently are stabilizing and securing site conditions to address the immediate threat posed by the site. In addition, EPA has concluded it is more cost-effective to use remedial than removal authority for cleanup. The remedial activities anticipated for the long-term remedy at this site are likely to exceed the expenditure limit on CERCLA removal actions and will be more appropriately conducted under remedial authorities. Further, attempting to carry out such activities under the removal program would not represent cost-effective use of removal funds. (See the December 28, 1990 Caspe memorandum.)

Based on this information, and the references in support of the proposal, EPA concludes that the WCC site is appropriate for the NPL pursuant to 40 CFR 300.425(c)(3).

IV. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to inclusion on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of the economic implications of today's proposal to add one new site to the NPL, and finds that the kinds of economic effects associated with this proposed revision are generally similar to those identified in the regulatory impact analysis (RIA) prepared in 1982 for revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5862, February 12, 1985). This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Costs

EPA has determined that this proposed rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to the site included in this proposed rulemaking.

The listing of a site on the NPL may be followed by a search for potentially responsible parties and a remedial investigation/feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

Section 104 of CERCLA as amended provides that for privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will generally pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average-per-site and total cost basis.

EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	1,300,000
Remedial Design	1,500,000
Remedial Action	[2] 25,000,000
Net present value of O&M [3]	[2] 3,770,000

[1] 1988 U.S. Dollars.
[2] Includes State cost-share.
[3] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate.
Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

Costs to States associated with today's proposed rule arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites that are publicly-owned but not publicly-operated; and (2) at least 50% of the remedial planning (RI/FS and remedial designs), remedial action, and first-year O&M costs at publicly-operated sites. The State will assume the cost for O&M after EPA's period of participation. The WCC site is privately-owned. Therefore, using the budget projections presented above, the cost to the State of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately $2.5 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known if this site will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share startup costs for up to 10 years at 25% of sites.

Proposing a hazardous waste site for the NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to cleanup the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this proposed amendment to the NCP are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this proposal on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The benefits associated with today's proposal to place the WCC site on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL can accelerate privately-financed, voluntary cleanup efforts. Proposing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI-FS at this site.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule proposes revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. Proposing sites on the NPL does not in itself require any action by any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. A site's proposed inclusion on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected business at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impact from the listing of this site to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would only occur through enforcement and cost-recovery actions, which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: April 30, 1991.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 300—[AMENDED]

It is proposed to amend 40 CFR part 300 as follows:

1. The authority citation for part 300 is revised to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Appendix B to part 300 is proposed to be amended by adding to the end of Group 22 in the "National Priorities List (by Rank)" the following site to read as follows:

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APPENDIX B

[National Priorities List (by Rank)]

NPL rank	EPA Reg.	State	Site Name	City/County
		NJ	White Chemical Corp.	Newark/Essex.

Group 22 (HRS Scores 28.90–28.50, except for health-advisory sites).
Note: Number of cites proposed for listing: 1.

[FR Doc 91–10840 Filed 5–8–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

RIN 1004—AB71

[AA–610–00–4110–2411]

Assessments for Violations of Oil and Gas Operating Regulations, Orders, and Lease Terms and Conditions

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to propose rulemaking.

SUMMARY: The Bureau of Land Management (BLM) requests public review and comment on a proposal to amend the Federal oil and gas regulations at 43 CFR part 3160 and 43 CFR subpart 3163 to establish additional automatic assessments under certain circumstances and to increase assessment amounts for violations of the operating regulations, orders, and terms and conditions of Federal oil and gas leases. These proposed amendments are intended to result in more conscientious and timely compliance by operators of Federal oil and gas leases, protect the environment and public health and safety more fully, and increase the likelihood that all production from Federal oil and gas leases will be properly accounted for.

DATES: Comments should be submitted by July 8, 1991. Comments received or postmarked after this date may not be considered in developing the proposed rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240.

Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rudolph Baier, (202) 653–2153.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General (IG) of the Department of the Interior recently completed a review of the BLM's Federal oil and gas lease management program (Report No. 90–18, "Inspection and Enforcement Program and Selected Related Activities, Bureau of Land Management", November 1989). The review concluded that lease operators who committed violations of Federal oil and gas operating regulations, orders, and lease terms and conditions often did not fear punishment because of the current mandatory abatement periods before assessments are levied. The IG recommended that the operating regulations at 43 CFR 3163.1 be revised so that the BLM would have more latitude to immediately assess repeat violators of the oil and gas regulations.

The IG expressed concern that any requirement for an abatement period for violations would provide an opportunity for operator noncompliance without fear of monetary assessment, prolong the period during which public health and safety were compromised, increase the risk of damage to the environment, and decrease the likelihood of ensuring proper accounting for all production.

The regulations at 43 CFR 3163.1 (a) and (b) list the types of violations subject to assessment, the assessment amounts, and the violations that are subject to automatic assessment. These provisions have been in effect since April 1987. Although operator compliance rates may have improved since that time, BLM is considering expanding the automatic assessment system under certain circumstances to further increase operator compliance.

The proposed amendments would provide that the violations listed under 43 CFR 3163.1(a) be subject to automatic assessment under certain circumstances, and would expand the violations and raise the existing automatic assessment rates listed under 43 CFR 3163.1(b).

The circumstances under which the violations at 43 CFR 3163.1(a) would be subject to an automatic assessment would be if the same operator of the same lease, communizaiton agreement (CA), specific participating area of a unit (PA), or unit without a PA (unit) had been previously cited for two or more major violations within the previous 24 months. In those cases the authorized officer shall notify the operator that an automatic assessment shall be levied for any future major violations of that lease, CA, PA or unit. If the operator is subject to an automatic assessment the proposed rate will be $1,000 for each violation.

For existing automatic assessments, a daily rate of $1,000 will be imposed, but not to exceed $10,000 per violation for the following: (1) Failure to install proper well control equipment; (2) conducting the following activities without prior approval: drilling, redrilling, deepening or concerting a well for injection, storage, or disposal, or causing surface disturbance prior to these activities regardless of the surface ownership; (3) commencing abandonment of a well without prior approval; and (4) failure to obtain approval to vent/flare gas.

To promote national uniformity in the assessment system, the BLM will propose to eliminate the authority of State Directors to reduce the assessment amounts as provided for under 43 CFR 3163.1(e).

Public comment is sought on: (1) Whether or not the types of noncompliance and assessment rates proposed by the BLM for automatic assessment will further increase operator compliance, (2) the circumstances under which a violation should be subject to automatic assessment, (3) the appropriate assessment amount, and (4) the circumstances under which an operator may be released from automatic assessments for repeated major violations after notification.

James M. Hughes,
Deputy Assistant Secretary of the Interior.

[FR Doc. 91–11083 Filed 5–8–91; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–128, RM–7664]

Radio Broadcasting Services; Holbrook, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Navajo Broadcasting Company, Incorporated, permittee of Channel 221A, Holbrook, Arizona, seeking the substitution of Channel 221C1 for Channel 221A and modification of its construction permit (BHP–89018MF) accordingly. Petitioner's modification proposal at Holbrook does not lie within the Grade B contour of any television channel 6 station. Thus, a preclusion study for noncommercial educational FM channels 218, 219 and 220 is not required. Moreover, petitioner's proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 221C1 at Holbrook or require the petitioner to demonstrate the availability of an additional equivalent class channel. Coordinates for this proposal are 34–54–12 and 110–09–48.

DATES: Comments must be filed on or before June 27, 1991, and reply comments on or before July 12, 1991.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition fo filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John M. Pelkey, Esq., Haley, Bader & Potts, 2000 M Street, NW. suite 600, Washington, DC 20036–3374.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No. 91–128 adopted April 23, 1991, and released May 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center (202) 452–1422, 1714 21st St., NW. Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communication Commissions.

Andrew J. Rhodes,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–11100 Filed 5–8–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–129, RM–7664]

Radio Broadcasting Services; Lake Havasu City, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Bridge Broadcasting seeking the allotment of Channel 244C2 to Lake Havasu City, Arizona, as that community's fourth local FM service. Coordinates for this proposal are 34–29–02 and 114–19–18. Mexican concurrence will be requested for this allotment.

DATES: Comments must be filed on or before June 27, 1991, and reply comments on or before July 12, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner and its consultant, as follows: Bridge Broadcasting, Attn. Hillary Sosey, 2284 Casper Lane, Lake Havasu City, AZ 86403 and Larry G. Fuss, Contemporary Communications, P.O. Box 159, Fayetteville, GA 30214.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No. 91–129, adopted April 23, 1991, and released May 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center (202) 452–1422, 1714 21st St., NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–11101 Filed 5–8–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–130, RM–7593]

Radio Broadcasting Services; Ilwaco, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Michael T. McKenna seeking the allotment of Channel 297C3 at Ilwaco, Washington, as the community's first local FM transmission service. Channel 297C3 can be allotted to Ilwaco in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.7 kilometers (7.9 miles) west to avoid a short-spacing to the proposed allotment of Channel 296C3 at

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Castle Rock, Washington. The coordinates for Channel 297C3 at Ilwaco are North Latitude 46-18-28 and West Longitude 124-12-27. Since Ilwaco is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been requested.

DATES: Comments must be filed on or before June 27, 1991, and reply comments on or before July 12, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner and its counsel or consultant, as follows: Michael T. McKenna, P.O. Box 90277, Long Beach, California 90809 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No. 91-130, adopted April 23, 1991, and released May 6, 1991.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11102 Filed 5-8-91; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 56, No. 90
Thursday, May 9, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 3, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Extension

• Agricultural Marketing Service, Fresh Prunes Grown in Designated Counties in Washington and Umatilla County, Oregon Marketing Order No. 924, On occasion, Farms: Businesses or other for-profit; 87 responses; 22 hours, Richard Schultz (202) 245-5172.

• Agricultural Marketing Service, Sweet Cherries Grown in Designated Counties in Washington, Marketing Order No. 923, On occasion, Farms: Businesses or other for-profit; 241 responses; 68 hours, Richard Schultz (202) 245-5172.

• Agricultural Marketing Service, Irish Potatoes Grown in Washington, Marketing Order No. 946, Recordkeeping; On occasion; Monthly; Annually, Farms: Businesses or other for-profit; 1,662 responses; 261 hours, Richard Schultz (202) 245-5172.

• Food and Nutrition Service, Food Stamp Program Regulations, Part 275—Quality Control, Recordkeeping; On occasion; State or local governments; 53 responses; 266 hours, Lynn Jordan (703) 756-3472.

Extension

• Food and Nutrition Service, National Commodity Processing Program for Processing USDA Donated Food, FNS 513, 513A, 516, and 519A, 519B, Recordkeeping; Monthly; Quarterly; Annually, Businesses or other for-profit; 178,150 responses; 16,430 hours, Vicky Urcuyo (703) 756-3888.

Existing

• Federal Crop Insurance Corporation, Macadamia Tree Worksheet and Macadamia Tree Worksheet Continuation Form, FCI-74-A, On occasion, Individuals or households; Farms; 3,000 responses; 3,000 hours, Bonnie L. Hart (202) 245-5046.

• Federal Crop Insurance Corporation, Waiver To Transfer Segregation II and III—Peanuts To Quota Loan, FCI-513, Recordkeeping, Individuals or households; Farms; 3,000 responses; 750 hours, Bonnie L. Hart (202) 245-5046.

Existing

• Federal Crop Insurance Corporation, Notice of Damage or Loss, FCI-8, On occasion, Individuals or households; Farms; 1,500 responses; 1,500 hours, Bonnie L. Hart (202) 245-5046.

• Federal Crop Insurance Corporation, Peach Producer's Picking Records, FCI-555, On occasion, Individuals or households; Farms; 3,000 responses; 3,000 hours, Bonnie L. Hart (202) 245-5046.

• Federal Crop Insurance Corporation, Contract Changes, FCI-12-A, On occasion, Individuals or households; Farms; 40,362 responses; 30,272 hours, Bonnie L. Hart (202) 245-5046.

Existing

• Federal Crop Insurance Corporation, Statement of Facts, FCI-6, On occasion, Individuals or households; Farms; 75,000 responses; 75,000 hours, Bonnie L. Hart (202) 245-5046.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 91-11051 Filed 5-8-91; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Rocky Mountain Region: Colorado, Kansas, Nebraska, South Dakota, Eastern Wyoming; Legal Notice of Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Rocky Mountain Region will publish notice of decisions subject to administrative appeal under 36 CFR 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 217.5, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR 217 shall begin April 5, 1990.

FOR FURTHER INFORMATION CONTACT: John P. Halligan, Regional Appeals and Litigation Coordinator, Rocky Mountain Region, 11177 W. 8th Ave., Box 25127, Lakewood, Colorado 80225, Area Code 303-236-9430.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Rocky Mountain Region will give legal notice of decisions subject to appeal under 36 CFR 217 in the following newspapers which are listed by Forest Service unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and

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constructive notice of decisions that are subject to administrative appeal. As provided in 36 CFR 217.5(d), the timeframe for appeal shall be based on the date of publication of a notice of decision in the primary newspaper.

Decisions by the Regional Forester

The Denver Post, published daily in Denver, Denver County, Colorado, for decisions affecting National Forest System lands in the States of Colorado, Nebraska, Kansas, and eastern Wyoming and for any decision of Region-wide impact. In addition, notice of decisions made by the Regional Forester will also be published in the Rocky Mountain News, published daily in Denver, Denver County, Colorado. Notice of decisions affecting National Forest System lands in the State of South Dakota will also be published in the Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota. For those decisions affecting a particular unit, the newspaper specific to that unit will be used.

Arapaho and Roosevelt National Forests, Colorado

Forest Supervisor Decisions

The Denver Post, published daily in Denver, Denver County, Colorado.

District Ranger Decisions

Redfeather and Estes-Poudre Districts: Coloradoan, published daily in Fort Collins, Larimer County, Colorado.

Pawnee District: Greeley Tribune, published daily in Greeley, Weld County, Colorado.

Boulder District: Boulder Daily Camera, published daily in Boulder, Boulder County, Colorado.

Clear Creek District: Clear Creek Courant, published weekly in Idaho Springs, Clear Creek County, Colorado.

Sulphur District: Sulphur Sky High News, published weekly in Granby, Grand County, Colorado.

Grand Mesa, Uncompahgre and Gunnison National Forests, Colorado

Forest Supervisor Decisions

Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

District Ranger Decisions

Collbran and Grand Junction Districts: Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

Paonia District: Delta County Independent, published weekly in Delta, Delta County, Colorado.

Cebolla and Taylor River Districts: Gunnison Country Times, published weekly in Gunnison, Gunnison County, Colorado.

Norwood District: Telluride Times-Journal, published weekly in Telluride, San Miguel County, Colorado.

Ouray District: Montrose Daily Press, published daily in Montrose, Montrose County, Colorado.

Pike and San Isabel National Forests

Forest Supervisor Decisions

Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

District Ranger Decisions

San Carlos District: Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

Comanche District: Plainsman Herald, published weekly in Springfield, Baca County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the La Junta Tribune Democrat, published daily in La Junta, Otero County, Colorado, and in the Ark Valley Journal, published weekly in La Junta, Otero County, Colorado.

Cimarron District: Tri-State News, published weekly in Elkhart, Morton County, Kansas.

South Platte District: Daily News Press, published daily in Castle Rock, Douglas County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the High Timber Times, published weekly in Conifer, Jefferson County, Colorado, and in the Fairplay Flume, published weekly in Fairplay, Park County, Colorado.

Leadville District: Herald Democrat, published weekly in Leadville, Lake County, Colorado.

Salida District: The Mountain Mail, published daily in Salida, Chaffee County, Colorado.

South Park District: Fairpaly Flume, published weekly in Fairplay, Park County, Colorado.

Pikes Peak District: Gazette Telegraph, published daily in Colorado Springs, El Paso County, Colorado.

Rio Grande National Forest, Colorado

Forest Supervisor Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

District Ranger Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Routt National Forest, Colorado

Forest Supervisor Decisions

Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will also be used.

District Ranger Decision

Bears Ears District: Northwest Colorado Daily Press, published daily in Craig, Moffat County, Colorado. In addition, notice of decisions by the District Ranger will also be published in the Hayden Valley Press, published weekly in Hayden, Routt County, Colorado, and in the Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.

Yampa and Hahns Peak Districts: Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.

Middle Park District: Middle Park Times, published weekly in Kremmling, Grand County, Colorado.

North Park District: Jackson County Star, published weekly in Walden, Jackson County, Colorado.

San Juan National Forest, Colorado

Forest Supervisor Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

District Ranger Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

White River National Forest, Colorado

Forest Supervisor Decisions

The Glenwood Post, published Monday through Friday in Glenwood Springs, Garfield County, Colorado.

District Ranger Decisions

Aspen District: Aspen Times, published weekly in Aspen, Pitkin County, Colorado.

Blanco District: Meeker Herald, published weekly in Meeker, Rio Blanco County, Colorado.

Dillon District: Summit Sentinel, published twice weekly in Frisco, Summit County, Colorado.

Eagle District, Eagle Valley Enterprise, published weekly in Eagle, Eagle County, Colorado.

Holy Cross District: Vail Trail, published weekly in Minturn, Eagle County, Colorado.

Rifle District: Rifle Telegram, published weekly in Rifle, Garfield County, Colorado.

Sopris District: Valley Journal, published weekly in Carbondale, Garfield County, Colorado.

Nebraska National Forest, Nebraska

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota for decisions affecting National Forest System lands in the State of South Dakota.

The Omaha World Herald, published daily in Omaha, Douglas County, Nebraska for decisions affecting National Forest System lands in the State of Nebraska.

District Ranger Decisions

Bessey District: The North Platte Telegraph, published daily in North Platte, Lincoln County, Nebraska.

Samuel R. McKelvie National Forest: The Valentine Newspaper, published weekly in Valentine, Cherry County, Nebraska.

Fall River and Wall Districts: The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Pine Ridge District: The Chadron Record, published weekly in Chardron, Dawes County, Nebraska.

Black Hills National Forest, South Dakota and eastern Wyoming

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

District Ranger Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Bighorn National Forest, Wyoming

Forest Supervisor Decisions

Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will be used (see listing below).

District Ranger Decisions

Tongue District: Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming.

Buffalo District: Buffalo Bulletin, published weekly in Buffalo, Johnson County, Wyoming.

Medicine Wheel District: Lovell Chronicle, published weekly in Lovell, Big Horn County, Wyoming.

Tensleep District: Northern Wyoming Daily News, published daily in Worland, Washakie County, Wyoming.

Paintrock District: Greybull Standard, published weekly in Greybull, Big Horn County, Wyoming.

Medicine Bow National Forest, Wyoming

Forest Supervisor Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

District Ranger Decisions

Laramie District: Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

Douglas District: Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.

Brush Creek and Hayden Districts: Rawlins Daily Times, published daily in Rawlins, Carbon County, Wyoming.

Shoshone National Forest, Wyoming

Forest Supervisor Decisions

Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

District Ranger Decisions

Clarks Fork Distict: Powell Tribune, published twice weekly in Powell, Park County, Wyoming.

Wapiti and Greybull Districts: Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

Wind River District: The Dubois Frontier, published weekly in Dubois, Teton County, Wyoming.

Lander District: Wyoming State Journal, published twice weekly in Lander, Fremont County, Wyoming.

Dated: April 19, 1991.

H. Peter Wingle,

Acting Regional Forester.

[FR Doc. 91-10969 Filed 5-8-91; 8:45 am]

BILLING CODE 3410-11-M

Upper Wahoo Timber Sale, Wallowa-Whitman National Forest, Baker County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the USDA, Forest Service, will prepare an environmental impact statement (EIS) to analyze a timber sale and related activities, including possible road construction and reconstruction. Portions of this sale are within the Twin Mountain Roadless Area in the Elkhorn Mountains.

The timber sale proposal is located north and east of the communities of Sumpter and Bourne, near the headwaters of Crevice, Deer, Pole, and Wind Creeks. The project area is located on the Baker Ranger District, Wallowa-Whitman National Forest, about 15 air miles west of Baker City, Oregon. Activities for the Upper Wahoo proposal are planned for implementation in fiscal year 1992, harvesting approximately 5 million board feet of timber and constructing 1.5–2.0 miles of road.

The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision. Comments may be submitted in writing, by phone call, by visiting those involved in project planning, or any other means available. To supplement written and informal oral comments, a public meeting will also be held. The meeting will be held in Sumpter, Oregon at the Sumpter City Hall, May 13, 1991, at 7:30 p.m.

DATES: Comments concerning the scope of the analysis should be submitted by May 17, 1991.

ADDRESSES: Send written comments and suggestions concerning management of this area to Kenneth B. Koon, District Ranger, 3165 10th Street, Baker City, OR 97814.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Joanne Britton, Environmental Coordinator, 3165 10th Street, Baker City, OR 97814, or telephone (503) 523-4476.

SUPPLEMENTARY INFORMATION: This analysis will evaluate a range of alternatives, including the no action alternative. The proposal includes, but is not limited to, harvesting timber, constructing and closing roads, and associated activities such as reforestation, trail building, and fisheries enhancement activities.

Action alternatives would range from producing a little over 1 million board feet to yielding approximately 5 million board feet. Proposed road construction would range from about .5 miles to 2.0 miles. The analysis area is approximately 5,000 acres and may yield one or more sales, depending on feasibility of logging systems, transportation systems, and other management concerns.

The EIS will tier to the final EIS and the Wallowa-Whitman Land and Resource Management Plan (Forest Plan), which provides the overall guidance for management of this area for the next 10–15 years. The Forest Plan provides goals and objectives, forest-wide standards and guidelines, management area standards and guidelines, and management area prescriptions for the various lands and resources on the forest. This direction

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provides for management practices that will be utilized during the implementation of the Forest Plan.

Forest Plan direction for the Upper Wahoo project area is predominantly timber production emphasis, with a portion allocated to backcountry, which emphasizes dispersed recreation. Other portions of the project area are allocated to Old Growth habitat management.

The Forest Service proposal falls within the Twin Mountain Roadless Area. Twin Mountain was considered for Wilderness status during the latest Roadless Area Review, but was not recommended for wilderness or further study by the 1984 Oregon Wilderness Bill.

Tentative issues relevant to the analysis area include: impacts of harvest activities on the visual quality of this slope of the Elkhorns; impacts of human activities on water quality and peak flows: economic feasibility of timber values vs. costs to harvest; impacts of human activities on the integrity of the roadless character; and maintenance of ecological function (which includes forest health and biodiversity).

Public participation will be especially important at several points during the analysis, beginning with the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, tribes, and other individuals or organizations who may be interested in or affected by the proposals. The scoping process includes:

1. Identifying and clarifying issues.
2. Identifying key issues to be analyzed in depth.
3. Exploring alternatives based on themes which will be derived from issues recognized during scoping activities.
4. Identifying potential environmental effects of the proposals and alternatives (direct, indirect, and cumulative effects and connected actions).
5. Determining potential cooperating agencies and task assignments.
6. Developing a list of interested people to keep apprised of opportunities to participate through meetings, personal contacts, or written comment.
7. Developing a means of informing the public through the media and/or written material (e.g., newsletters, correspondence, etc.).

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be completed about September 1991. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process.

First, a reviewer of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 f.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled for completion February 1992. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Kennth B. Koon, District Ranger, Wallowa-Whitman National Forest, is the Responsible Official. As the Responsible Official, he will decide which, if any, of the proposed activities will be implemented. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: April 29, 1991.

Lynn W. Roehm,

Acting District Ranger.

[FR Doc. 91-11023 Filed 5-8-91; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Lemhi County Critical Area Treatment RC&D Measure Lemhi County, ID

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Paul H. Calverley, State Conservationist, Soil Conservation Service, 3244 Elder Street, room 124, Boise, Idaho 83705, telephone (208) 334-1601.

NOTICE: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lemhi County Critical Area Treatment RC&D Measure, Lemhi County, Idaho.

The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul H. Calverley, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

Lemhi County Critical Area Treatment RC&D Measure will stabilize an eroding bank adjacent to a county highway that is a hazard to vehicular traffic. The measure will stop soil and water from depositing on the county highway which may freeze in the winter causing a potential traffic hazard. Planned treatments include installation of plastic pipe in the road ditch to collect excess seep water from the steep bluff adjacent to the highway, vegetative establishment on disturbed soil sites, and placement of rock fill at the toe of an active slump to prevent further slippage.

The notice of a finding of no significant impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Paul H. Calverley. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

No administrative action on the proposal will be initiated until 30 days after the date of this publication in the Federal Register.

(The activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: April 9, 1991.

Paul H. Calverley,

State Conservationist.

FR Doc. 91-10970 Filed 5-8-91; 8:45 am]

BILLING CODE 3410-16-M

McEnery Road Critical Area Treatment RC&D Measure, CA

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environments Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the McEnery Road Critical Area Treatment RC&D Measure, Santa Cruz County, California.

FOR FURTHER INFORMATION CONTACT: Mr. Pearlie S. Reed, State Conservationist, Soil Conservation Service, 2121-C 2d Street, Davis, California 95616-5475, telephone (916) 449-2848.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federal action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Pearlie S. Reed, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this measure.

The measure concerns a plan for the installation of critical area treatment facilities. The planned works of improvement include installing about 900 feet of buried pipeline with a sediment basin at the inlet, an energy dissipator at the outlet, and riser inlets to collect surface runoff, and revegetating areas disturbed by construction.

An environmental assessment and a finding of no significant impact have been prepared and sent to the Environmental Protection Agency and to the State Clearinghouse. The basic data developed during the environmental assessment are on file and may be retrieved by contacting Mr. Pearlie S. Reed, State Conservationist, Soil Conservation Service, 2121-C 2d Street, Davis, California 95616-5475, telephone (916) 449-2848. A limited number of copies of the finding of no significant impact are available to fill single copy requests at the above address. Implementation of the proposal will not be initiated until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials)

Dated: April 30, 1991.

Monte J. Collins,

Assistant State Conservationist (Water Resources).

[FR Doc. 91-11027 Filed 5-8-91; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisons of the Rules and Regulations of the U.S. Commission on Civil Rights, that a subcommittee meeting of the Louisiana Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 3:30 p.m. on May 28, 1991, at the Baton Rouge Hilton, 5500 Hilton, Baton Rouge, Louisiana 70808-2522. The purpose of the meeting is to plan for a project on the disproportionate impact of environmental policies on minority communities in Louisiana.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division, (816) 426-5253 (TTY 816-426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 2, 1991.

Carol-Lee Hurley,

Chief Regional Programs Coordination Unit.

[FR Doc. 91-10971 Filed 5-8-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 530]

Resolution and Order Approving the Application of the City of Phoenix, Arizona, for a Special-Purpose Subzone at the Conair Corporation Small Appliance Plant in Glendale, AZ; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order.

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Phoenix, Arizona, grantee of FTZ 75, filed with the Foreign-Trade Zones Board (the Board) on August 20, 1990, requesting special-purpose subzone status for the small heating and kitchen appliance and telephone manufacturing plant of Conair Corporation, located in Glendale, Arizona, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved,

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and where a significant public benefit will result;

Whereas, the City of Phoenix, Arizona, Grantee of Foreign-Trade Zone No. 75, has made application (filed August 20, 1990, FTZ Docket 35-90, 55 FR 35014, 9/4/90) in due and proper form to the Board for authority to establish a special-purpose subzone at the Conair Corporation plant in Glendale, Arizona;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed August 20, 1990, the Board hereby authorizes the establishment of a subzone at the Conair plant in Glendale, Arizona, designated on the records of the Board as Foreign-Trade Subzone 75A, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, to the same extent as though the same were fully set forth herein, said grant of authority being subject to the provisions and restrictions of the Act and the regulations, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of other occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 3rd day of May, 1991, pursuant to Order of the Baord.

Eric L. Garfinkel,
Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 91-11096 Filed 5-8-91; 8:45 am]
BILLING CODE 3510-DS-M

[Order No. 521]

Expansion of Manufacturing Authority, Smith Corona Corporation Data Processing Products Plant, Cortland, NY

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, the County of Onondaga, New York, Grantee of Foreign-Trade Zone 90 and Subzone 90A, has applied to the Board on behalf of the Smith Corona Corporation (SCC) for authority to expand the scope of manufacturing activity conducted under zone procedures at the manufacturing plant of SCC in Cortland, New York (Subzone 90A) to include the manufacture of personal computers, word processors and components, as well as telecommunication and duplicating equipment;

Whereas, the application was accepted for filing on December 3, 1990, and notice inviting public comment was given in the **Federal Register** on December 10, 1990 (Docket 47-90, 55 FR 50728); and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that approval of the request would be in the public interest if it is given subject to a restriction requiring that privileged foreign status be elected on any foreign merchandise that is subject to antidumping or countervailing duty orders at the time of admission to the subzone;

Whereas, the Board hereby orders:

That the Grantee is authorized to expand the scope of manufacturing activity conducted under zone procedures at the Smith Corona plant in accordance with the application filed on December 3, 1990, subject to the foregoing restriction. The Grantee shall notify the Board for approval prior to the commencement of any other manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the Army District Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 3rd day of May, 1991.

Eric L. Garfinkel,
Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 91-11098 Filed 5-8-91; 8:45 am]
BILLING CODE 3510-DS-M

[Docket No. 24-91]

Foreign-Trade Zone 84—Houston, TX, Application for Subzone, Shaffer, Inc., Oil Drilling Equipment, Harris County, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, requesting special-purpose subzone status for the oil drilling equipment manufacturing plant of Shaffer, Inc., in Harris County, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 16, 1991.

The Shaffer plant (68 acres) is located at 12950 West Little York Road in Harris County, northwest of Houston, Texas. The facility employs 365 persons and is used to manufacture oil drilling machinery, such as blowout prevention, motion compensation and offshore well production control equipment. Some 20 percent of its components are foreign sourced, including compressors, blowout prevention equipment castings and parts, carbon black and hand-operated valve castings. Currently, 75 percent of the equipment is exported.

Zone procedures would exempt Shaffer from Customs duty payments on the foreign components used in machinery produced for export. The duty rates on most components and finished products range from 3.4 to 3.7 percent. Carbon black and hand-operated valve castings from the U.S.S.R. are assessed column 2 (non-MFN) duty rates of 20 percent and 45 percent respectively. With respect to carbon black from the Soviet Union, the company is seeking authority to choose the lower finished product rates that apply to rubber seals (5.3 percent) and blowout prevention castings (3.7 percent). Foreign merchandise and merchandise to be exported would also be exempt from state and local ad valorem taxes. The application indicates that zone savings will help improve Shaffer's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Regional Director, Inspection and Control, U.S. Customs Service, Southwest Region, suite 500, 5850 San Felipe Street, Houston, TX 77057-3012; and Colonel Brink P. Miller, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, TX 77553.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before June 27, 1991.

A copy of the application is available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, 2625 Fed. Courthouse Bldg., 515 Rusk St., Houston, Texas 77002.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 4213, Washington, DC 20230.

Dated: May 3, 1991.

John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 91-11097 Filed 5-8-91; 8:45 am]
BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Notice of Total Transshipment Charges Made to 1991 Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

May 6, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In notices published in the **Federal Register** on December 28, 1990 (55 FR 53321) and February 21, 1991 (56 FR 7015), CITA announced that charges would be made to the 1990 and 1991 quotas for the People's Republic of China as a result of U.S. Customs Service's determination that certain textiles produced in China and exported to the United States were transshipped in circumvention of the U.S.-China Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended.

At the time the charges for those transshipments were applied against the 1990 quotas, all Chinese 1990 exports of textiles and apparel subject to the 1990 quotas had not yet entered into the United States and, therefore, had not been counted against the 1990 quotas. This information is now available. Charges for those transshipments have been applied against 1990 quotas to the extent 1990 quota was available after charging all routinely reported 1990 exports. In accordance with standard Customs procedures, once the 1990 quotas were filled, the remaining charges for those transshipments were applied against the 1991 quotas.

Following is a list of the total charges applied against the 1991 quotas for those transshipments:

Category	Amounts charged to 1991 quotas
239	3,000 kilograms.
336	5,842 dozen.
341	103 dozen.
342	4,890 dozen.
345	72,803 dozen.
347/348	203,694 dozen.
351	294 dozen.
369-S [1]	569,461 kilograms.
445/446	112,872 dozen.
641	616 dozen.
645/646	120,529 dozen.
648	7,890 dozen.
649	4,200 dozen.
845	161,642 dozen.
847	18,628 dozen.

[1] Category 369-S: only HTS number 6307.10.2005.

Customs is currently conducting other investigations of such transshipments of textiles produced in China and exported to the United States. The charges that may result from these investigations will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc 91-11092; Filed 5-8-91; 8:45 am]
BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Operations Policy Advisory Group, Notice of Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 22 May 1991 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Public Law 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of title 5, United States Code, this meeting will be closed to the public.

Dated: May 3, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 91-10946 Filed 5-8-91; 8:45 am]
BILLING CODE 3810-01-M

DEFENSE LOGISTICS AGENCY

Membership of the Defense Logistics Agency, Department of Defense.

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of membership of the DLA PRBs.

SUMMARY: This notice announces the appointment of the members of the PRBs of the Defense Logistics Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Logistics Agency.

EFFECTIVE DATE: May 9, 1991.

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FOR FURTHER INFORMATION CONTACT: Mr. Herbert W. Johnson, Employee Development Specialist, Workforce Effectiveness and Development Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA, (703) 274-6040 or 274-6039.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the PRBs. They will serve a 1-year renewable term, effective upon publication of this notice.

Initial PRB

—Gary P. Quigley, Deputy General Counsel, Office of General Counsel
—Anthony W. Hudson, Staff Director, Office of Civilian Personnel
—Robert P. Arnold, Chief, Property Reutilization and Marketing Division, Directorate of Technical and Logistics Services

2nd Level Review

—James J. Grady, Jr., Deputy Executive Director, Directorate of Supply Operations
—Roger C. Roy, Assistant Director, Office of Policy and Plans
—Thomas J. Knapp, Assistant Director, Office of Information Systems and Technology

Anthony W. Hudson,
Staff Director, Civilian Personnel.

[FR Doc. 91-11049 Filed 5-8-91; 8:45 am]

BILLING CODE 3820-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FAR Case 90-39]

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Right of First Refusal for Employment.

ADDRESSES: Send comments to Ms. Maya Bernstein, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill, Office of Federal Acquisition Policy (202) 501-3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Right of Refusal of Employment is a regulation which establishes policy regarding adversely affected or separated Government employees resulting from the conversion from in-house performance to performance by contract. The policy will enable these employees to have an opportunity to work for the contractor who is awarded the contract. The information gathered will be used by the Government to gain knowledge of which employees, displaced as a result of the contract award, have gained employment with the contractor within 90 days of the contract start date.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *130;* responses per respondent, *1;* total annual responses, *130;* preparation hours per response, *3;* and total response burden hours, *390.*

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *100;* hours per recordkeeper, *.5;* and total recordkeeping burden hours, *50.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite FAR Case 90-39, Right of First Refusal of Employment.

Dated: May 2, 1991.

Beverly Fayson,
FAR Secretariat.

[FR Doc. 91-11025 Filed 5-8-91; 8:45 am]

BILLING CODE 6820-34-M

[OMB Clearance No. 9000-00XX]

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of OMB Request.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection regarding Helium.

DATES: Comments may be submitted on or before July 8, 1991.

ADDRESSES: Send comments to Ms. Maya Bernstein, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, Office of Federal Acquisition Policy, (202) 501-4755.

SUPPLEMENTARY INFORMATION:

Purpose: The Helium Act (Pub. L. 86-777) (50 U.S.C. 167a et seq.) and the Department of the Interior's implementing regulations (30 CFR Parts 601 and 602) require Federal agencies to procure all major helium requirements from the Bureau of Mines, Department of the Interior.

It has been the Department of the Interior's policy, consistent with Congressional intent that government helium be used in government contracts, and that all government contracts involving the use of significant amounts of helium require that government helium be used in performing the contract. The appropriate vehicle for the establishment of requirements pertaining to Government procurement is the Federal Acquisition Regulation (FAR).

Current FAR coverage on the subject references 30 CFR parts 601 and 602. These are Department of the Interior regulations dealing with helium sales and helium distribution. However, the FAR contains no substantive guidance on procurement of helium and does not require submission of information that will permit the Bureau of Mines to ascertain whether Federal agencies are using government helium and are requiring in their contracts that government helium be used in contracted-for work.

The new FAR coverage provides an appropriate level of guidance on the subject, including a requirement that offerors responding to contract solicitations provide information as to their forecast of helium required for performance of the contract.

Such information will facilitate enforcement of the requirements of the Helium Act and the contractual provisions requiring the use of government helium by agency contractors, in that it will permit corrective action to be taken if the Bureau of Mines, after comparing helium sales data against helium requirement forecasts, discovers apparent serious discrepancies.

The information is used in administration of certain Federal contracts to ensure contractor compliance with contract clauses. Without the information the required use of government helium cannot be monitored and enforced effectively.

Annual reporting burden: The annual reporting burden is estimated as follows: *Respondents,* 50; *responses per respondent,* 1; *total annual responses,* 50; *hours per response,* 1 hour (including reporting and recordkeeping); and *total annual burden hours,* 50.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-00XX.

Dated: May 1, 1991.

Beverly Fayson,
FAR Secretariat.

[FR Doc. 91-10891 Filed 5-8-91; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement for Proposed Thames River Dredging, Naval Submarine Base New London, CT

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500-1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for proposed dredging of the Thames River from its mouth to Naval Submarine Base (SUBASE) New London.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media, and has been placed in the following libraries:

Bill Library, 718 Colonel Ledyard Highway, Ledyard, CT
Groton Public Library, 52 Route 117, Groton, CT
Mitchell College Library, 437 Pequot AVE, New London, CT
New London Public Library, 63 Huntington ST, New London, CT
USCG Academy Library, US Coast Guard Academy, New London, CT
Waterford Public Library, 49 Rope Ferry RD, Waterford, CT

A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on May 29, 1991, from 7 p.m. to 11 p.m., in the Mitchell College Auditorium, Pequot Avenue, New London, Connecticut.

The public hearing will be conducted by the Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by June 24, 1991, to become part of the official record.

As discussed in the DEIS, the first SEAWOLF Class Submarine (SSN-21) is under construction at Electric Boat in Groton, Connecticut, and is scheduled for completion in 1995. Once delivered to the Navy, the SSN-21 must undergo a series of performance tests, evaluations and modifications. This "shakedown/post shakedown" testing is scheduled to occur at SUBASE New London. Dredging of the Thames River from its mouth to pier 33 is necessary as current channel depth is inadequate to provide safe transit for the SSN-21. The proposed action involves dredging about 2.7 million cubic yards and subsequent disposal of this material at the New London Disposal Site, which is in Long Island Sound.

Characterization of the sediments proposed for dredging revealed that this material is suitable for in-water disposal at the New London Disposal Site. Dredging operations will have a temporary, minor impact on water quality.

Additional information concerning this notice may be obtained by contacting Mr. Robert Ostermueller (Code 202, telephone (215) 897-6262), Northern Division, Naval Facilities Engineering Command, Building 77L, U.S. Naval Base, Philadelphia, PA 19112-5000.

Dated: May 2, 1991.

Wayne Baucino,
Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 91-10933 Filed 5-8-91; 8:45 am]

BILLING CODE 3810-AE-M

DELAWARE RIVER BASIN COMMISSION

Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin; Proposed Rule Revision and Public Hearing

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule revision and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on a proposed amendment to its Comprehensive Plan and Water Code in relation to water conservation performance standards for plumbing fixtures and fittings. The proposed amendment would revise a rule adopted by the Commission on May 24, 1989, and noticed in the June 7, 1989 and September 13, 1989 issues of the Federal Register (54 FR 24381 and 54 FR 37822). The hearing will be part of the Commission's regular business meeting which is open to the public.

DATES: The public hearing is scheduled for Wednesday, June 19, 1991 beginning at 1:30 p.m. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

ADDRESSES: The hearing will be held in the Oval Room, on the 43rd Floor of One World Trade Center, New York, New York. Written comments should be submitted to Susan M. Weisman, Commission Secretary, Delaware River

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Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883-9500.

SUPPLEMENTARY INFORMATION:

Background and Rationale

Commission Resolution No. 88-2 (Revised) amended a previously adopted rule, Resolution No. 88-2, in several ways, but in pertinent part by modifying the gallon per flush standard for water closets from 3.5 to 1.6 and revising the effective date of the regulation from January 1, 1990 to January 1, 1991. Resolution No. 88-2 (Revised) also modified the schedule for state or local compliance with the performance standards in the Commonwealth of Pennsylvania, which did not have statewide performance standards for plumbing fixtures and fittings. In the absence of such standards, Resolution No. 88-2 (Revised) called for the Commission to notify all municipalities within the Pennsylvania portion of the Basin of the requirement to adopt and enforce local regulations in compliance with Commission standards within one year of such notification.

On January 16, 1991 the Commission adopted Resolution No. 91-1 suspending temporarily the enforcement of Resolution No. 88-2 (Revised) until July 1, 1991 in recognition of the fact that the necessary changes in plumbing codes, regulations and statutes had not been fully implemented despite substantial progress toward compliance by the signatory states and certain local subdivisions. That resolution directed the Commission to consider possible change of the effective date of Resolution No. 88-2 (Revised) before July 1, 1991 in order to coordinate the effective date of the Commission's rule with amendatory changes at the state and local levels.

At this time, the Commission is proposing that the effective date of Resolution No. 88-2 (Revised) be revised from January 1, 1991 to July 1, 1991.

The subject of the hearing will be as follows:

Amendment to the Comprehensive Plan and Water Code of the Delaware River Basin Relating to Water Conservation Performance Standards for Plumbing Fixtures and Fittings.

Article 2 of the Water Code of the Delaware River Basin includes Commission policy relating to conservation, development and utilization of Basin water resources. It is proposed to:

Amend the Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin, which is referenced in 18 CFR part 410, by the deletion of existing subsections 2.1.5 (1)(b) and 2.1.5(1)(c) and addition of new subsections 2.1.5(1)(b) and 2.1.5 (1)(c) to read as follows:

2.1.5 Water conservation performance standards for plumbing fixtures and fittings:

(1)(a) * * *

(b) Any water conservation performance standards adopted prior to the effective date of this regulation that are not in compliance with the provisions of (a) shall be amended or revised to comply with the provisions of (a) by July 1, 1991.

(c) The Commonwealth of Pennsylvania is encouraged to adopt water conservation performance standards for plumbing fixtures and fittings that comply with the provisions of (a) by July 1, 1991. The Commission shall notify all municipalities within the Pennsylvania portion of the Basin of the requirement to adopt and enforce local regulations that comply with the provisions of (a) if Pennsylvania has not adopted such standards. Upon notification by the Commission, municipalities shall have one year to adopt such local regulations.

* * * * *

(Delaware River Basin Compact, 75 Stat. 688)

Dated: May 1, 1991.

Susan M. Weisman,

Secretary.

[FR Doc. 91-11026 Filed 5-8-91; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Grant and Cooperative Agreement Awards Amoco Production Co;

TITLE: Consortium to Experimentally Study the Effects of WAG Ratio on Viscous Instabilities.

AGENCY: U.S. Department of Energy, Bartlesville Project Office.

ACTION: Notice of Non-Competitive Financial Assistance (Grant) Award with Amoco Production Company.

SUMMARY: The Department of Energy (DOE), Bartlesville Project Ofice (BPO) announces that pursuant to 10 CFR 600.7(b)(2)(i) Criteria (B), it intends to make a non-competitive Financial Assistance (Grant) award through the Pittsburgh Energy Technology Center to Amoco Production Company for research.

SCOPE: The objectives of this research grant is to permit the DOE/BPO to become a member in a Consortium Agreement, conducted by Amoco Production Company, for Phase I of a Cooperative Research Program to experimentally study the effect of WAG ratio on viscous instabilities. Contact between Amoco Production Company and the Bartlesville Project Office regarding this activity has been limited to the review of a membership application/proposal. The proposed work is considered to be relevant to the DOE mission in that the program will provide a mechansim for communication and interactive research efforts between DOE and the industry in EOR gas flooding process techniques. The cooperative research program extends a unique opportunity to complete near-term research with well-recognized industry research personnel which can have a major impact on the operation of gas flooding EOR projects.

Consortium members and Amoco will form a Technical Advisory Committee (TAC) for the research program to experimentally study the effect of WAG ratio on viscous instabilities. The objective of the research work, is to determine if the Water-Alternate-Gas (WAG) is beneficial or detrimental to the gas flooding process. Current economic conditions and marginal quality of many candidate Enhanced Oil Recovery (EOR) reservoirs make it imperative that risk be reduced in the selection and operation of EOR floods. Experimental results will be used as a basis for improving the modeling and prediction of EOR projects. Because the viscosity of EOR solvents, such as carbon dioxide, are much lower than the oils they displace, detrimental flow phenomenon can occur. One such flow phenomenon is referred to as viscous instabilities, which when combined with the natural heterogeneity in the reservoir cause the solvents to channel. This results in a rapid solvent breakthrough and poor sweep of the reservior. To reduce the effect of viscous instabilities, the alternate injection of brine and solvent or Water-Alternate-Gas (WAG) injection has become a standard field operating practice for most EOR gas floods.

This grant to Amoco Production Company is considered suitable for noncompetitive financial assistance based on 10 CFR 600.7(b)(2)(i) Criteria (B).

The developing of the consortium for cooperative research between industry and the DOE has been encouraged. This consortium offers a unique opportunity for the DOE to have interactive research project with industry. This activity is being conducted by Amoco Production Company (applicant) using their own resources; however, DOE support of the activity would enhance their public benefits to be derived. DOE knows of no other entity which is conducting or is planning to conduct such an activity. Amoco Production Company has exclusive domestic capability to perform and coordinate this activity successfully because they have relevant technical personnel and equipment. This consortium will help establish better working relationships with the DOE and other oil companies involved in EOR, particularly in the gas flooding area. Amoco Production Company and the affiliated staff have a long history of high quality research in most of the EOR areas.

The objective of this proposed activity is to provide financial assistance on a cost-sharing basis to the Amoco Production Company by means of a research grant, which will allow Amoco to develop and advance new concepts and technology to enhance and increase oil recovery.

This project will benefit the public such that it will facilitate the cooperation between DOE personnel and the industry for solutions to EOR techniques, and it will provide a venue for the fruitful exchange of ideas between oil industry engineers and scientists.

The terms of the grant is twenty-four (24) months at an estimated value of $240,000.00. The DOE share is anticipated at $15,000.00.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921-118, Pittsburgh, PA 15236, Attn: Cynthia Y. Mitchell, Telephone: AC 412/892-4862.

Dated: April 29, 1991.

Carroll A. Lambton,

Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 91-11086 Filed 5-8-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent to Award Grant to Dr. Deborah D.L. Chung

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Dr. Deborah D.L. Chung of the State University of New York at Buffalo under Grant Number DE-FG01-91CE15520. The proposed grant will provide funding in the estimated amount of $98,976 to complete the development leading to commercialization of carbon fiber reinforced superconductor technology for tapes or cables, which is a highly promising new technology that would introduce ductility into manufacturing processes for the typically brittle high-temperature superconductivity (HTSC) materials.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Dr. Chung is meritoriously based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The invention is a unique technology to introduce ductility into manufacturing processes for the typically brittle high-temperature superconductivity (HTSC) materials. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation. The anticipated term of the proposed grant is 18 months from the date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR-322.2, 1000 Independence Ave., SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-11087 Filed 5-8-91; 8:45 am]

BILLING CODE 6450-01-M

Voluntary Agreement and Plan of Action to Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Friday, May 17, 1991, at the offices of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre Pascal, Paris, France, beginning at 9:30 a.m., and continuing on Saturday, May 18, if necessary. The agenda for the meeting is as follows:

1. Adoption of agenda.
2. Approval of Record Note of the IAB meeting of January 24, 1991.
3. Lessons from the Gulf Crisis.
4. Future work of the Gulf Crisis.
5. IAB organization.
6. Date of next IAB meeting.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of members of the IAB, their counsel, representatives of members of the IAB, their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, May 6, 1991.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 91-11088 Filed 5-8-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Halecrest Co.; Intent To Hold a Public Meeting in Rockaway Township, NJ, To Discuss the Supplement to the Draft Environmental Impact Statement (SDEIS) Prepared for the Proposed Mt. Hope Pumped Storage Hydroelectric Project

[Project No. 9401-000]

May 2, 1991.

The Commission staff will prepare and distribute to the public an SDEIS for the subject project. This document evaluates the environmental consequences of excavating an upper reservoir at an upland location rather than enlarging the existing Mt. Hope Lake. The SDEIS also considers an alternative design for the project transmission line and recently proposed measures to reduce local noise and traffic impacts during the project's six-year construction period.

The major findings, conclusions, and recommendations of staff's SDEIS will be discussed at a public meeting

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scheduled from 7 p.m. to 10 p.m. on Thursday, June 6, 1991, at the Copeland Middle School gymnasium, located on Lakeshore Drive within the White Meadow Lake section of Rockaway Township, New Jersey 07866.

At the scheduled meeting, which will be recorded by an official stenographer, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the proposed project for the Commission's public record.

For further information, please contact the FERC environmental coordinator, Jim Haimes at (202) 219-2780.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10872 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD91-05572T Colorado-16 Addition]

State of Colorado Oil and Gas Conservation Commission; Determination Designating Tight Formation

May 3, 1991.

Take notice that on April 22, 1991, the State of Colorado, Oil and Gas Conservation Commission (Colorado) submitted the above-referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sussex Formation in portions of Weld County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). Colorado's notice of determination covers all of sections 1-36 in Township 3 North, Ranges 64 and 65 West (6th P.M.), all of sections 1-3, 10-15, 22-27, and 34-36 in Township 3 North, Range 66 West (6th P.M.), all of sections 4-9, 16-21, and 29-33 in Township 4 North, Range 64 West (6th P.M.), all of sections 1-36 in Township 4 North, Range 65 West (6th P.M.), all of section 1, all of sections 4-9, the south half of section 11, all of sections 12-14, the east half of section 15, and all of sections 16-36 in Township 4 North, Range 66 West (6th P.M.), all of sections 19-36 in Township 5 North, Range 65 West (6th P.M.), and all of sections 19-32 and section 36 in Township 5 North, Range 66 West (6th P.M.), in Weld County. The notice of determination also contains Colorado's findings that the referenced portions of the Sussex Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR, §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10874 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-1909-000, et al.]

Panhandle Eastern Pipe Line Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Company

[Docket No. CP91-1909-000]

April 26, 1991.

Take notice that on April 24, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed an application with the Commission in Docket No. CP91-1909-000 pursuant to section 7(b) of the Natural Gas Act (NGA), requesting permission and approval to abandon a natural gas transportation service it provides for Seward County Gas Company (Seward), all as more fully set forth in the application which is open to public inspection.

Panhandle states that a Commission order issued July 25, 1983, in Docket No. CP83-111-000 (24 FERC ¶62,094) authorized it to transport and deliver up to 150 Mcf of natural gas per day for Seward on a firm basis under Panhandle's FERC Rate Schedule T-52. Panhandle receives the gas for Seward's account from the Quinque Oil and Gas Production Company in Seward County, Kansas, and delivers the gas to Seward's facilities near Hayne, Kansas. Upon abandonment of Panhandle's transportation service herein, Panhandle would continue to transport natural gas for Seward on an interruptible basis under the provisions of section 284 of the Commission's Regulations. No facilities are proposed to be abandoned herein.

Comment date: May 17, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. Trunkline Gas Company

[Docket No. CP91-1914-000]

April 29, 1991.

Take notice that on April 25, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-1914-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Tejas Power Corporation (Tejas) under the blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Trunkline proposes to implement a transportation agreement dated December 20, 1989, providing for a maximum transportation volume of 80,000 Mcf per day. It is indicated that Trunkline would receive the gas at specified points located in Illinois, Indiana, as well as onshore and offshore Louisiana and Texas and redeliver the gas at a specified point located in Bolivar County, Mississippi. Trunkline estimates peak day, average day, and annual volumes at 80,000 Mcf, 80,000 Mcf, and 29,200,000 Mcf, respectively. It is stated that Trunkline initiated a 120-day transportation service for Tejas on December 31, 1990, as reported in Docket No. ST91-8255-000.

Trunkline states that no new facilities would be required to implement the service and that it would charge the rates and terms and conditions of its Rate Schedule PT.

Comment date: June 13, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Transwestern Pipeline Company, et al.

[Docket No. CP91-1916-000[1], CP91-1917-000, CP91-1920-000]

April 29, 1991.

Take notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 13, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notices requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak Day,[1] average, annual	Points of receipt	Delivery	Start up date rate schedule	Related dockets [2]
CP91-1916-000 (4-25-91)	Transwestern Pipeline Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188.	Williams Gas Marketing Company.	50,000 37,500 18,250,000	AZ, NM, OK, TX	AZ, NM, OK, TX	04-01-91, ITS-1	ST91-8384-000, CP88-133-000.
CP91-1917-000 (4-25-91)	Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188.	NGC Transportation Inc.	12,000 9,000 4,380,000	OK	TX	02-27-91 FT-1	ST91-7828-000, CP88-435-000.
CP91-1920-000 (4-25-91)	United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478.	Tex/Con Gas Pipeline Company.	25,750 25,750 9,398,750	LA	MS, LA	04-01-91 ITS	ST91-8207-000 CP88-6-000

[1] Quantities are shown in MMBtu.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation services was reported in it.

4. Gas Transport, Inc.

[Docket Nos. CP91-1902-000, CP91-1903-000, CP91-1904-000]

April 29, 1991.

Take notice that on April 23, 1991, Gas Transport, Inc., 109 North Broad Street, Lancaster, Ohio 43130, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-291-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: June 13, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related[2] dockets
CP91-1902-000 (4-23-91)	Gas Transport, Inc.	Natural Gas Clearinghouse.	10,000 10,000 3,650,000	WV	WV, OH	3-1-91, ITS-1	CP86-291-000, ST91-7613-000.
CP91-1903-000 (4-23-91)	Gas Transport, Inc.	River Gas Company.	5,000 3,000 1,825,000	WV, OH	OH	2-9-91, ITS-1	CP86-291-000, ST91-7614-000.
CP91-1904-000 (4-23-91)	Gas Transport, Inc.	Gas Marketing Inc.	450 400 164,250	WV	WV	2-9-91, ITS-1	CP86-291-000, ST91-7612-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Columbia Gulf Transmission Company

[Docket No. CP91-1912-000]

April 29, 1991.

Take notice that on April 24, 1991, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama, Houston, Texas 77027, filed in Docket No. CP91-1912-000 a request pursuant to § 157.205) of the Commission's Regulations under the National Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for SJR Resources, Inc., a marketer, under the blanket certificate issued in Docket No. CP86-239-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia Gulf states that, pursuant to an agreement dated May 1, 1990, under its Rate Schedule ITS-2, it proposes to transport up to 100,000 MMBtu per day equivalent of natural gas. Columbia Gulf

indicates that the gas would be transported from Louisiana, and would be redelivered in Louisiana. Columbia Gulf further indicates that it would transport 50,000 MMBtu on an average day and 18,250,000 MMBtu annually.

Columbia Gulf advises that service under § 284.223(a) commenced October 8, 1990, as reported in Docket No. ST91-7884.

Comment date: June 13, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. Columbia Gulf Transmission Company

[Docket Nos. CP91-1922-000, CP91-1923-000]

April 30, 1991.

Take notice that Columbia Gulf Transmission Company, 3805 West Alabama, Houston, Texas 77027, (Applicant) filed in the above-mentioned dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-239-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule , the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 234.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: June 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMbtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1922-000 (4-25-91)	Unocal Exploration Corporation (producer).	25,000 10,000	OLA	LA	ITS-2, Interruptible	ST91-7999, 11-27-91.
CP91-1923-000 (4-25-91)	Eagle Natural Gas Co. (marketer).	9,125,000	30,000 15,000 10,950,000	OLA	LA	ITS-2, Interruptible

7. Florida Gas Transmission Company

[Docket Nos. CP91-1845-000,[4] CP91-1846-000]

Take notice that on April 24, 1991,[5] Florida Gas Transmission Company (Applicant), filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: June 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

April 30, 1991.

[6] The requests were tendered for filing on April 16, 1991; however, the fee required by Section 381.208 of the Commission's Rules was not paid until April 24, 1991. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

Docket No.	Applicant	Shipper name	Peak day,[1] average, annual	Points of Receipt	Points of Delivery	Start up date; rate schedule	Related [2] dockets
CP91-1845-000	Florida Gas Transmission Company, 1400 Smith St., Houston, TX 77002.	West Florida Natural Gas Company.	3,650 3,565 1,301,191	TX, LA	FL	11-5-90, FTS-1	CP89-555-000, ST91-8221-000.
CP91-1846-000	Florida Gas Transmission Company, 1400 Smith St., Houston, TX 77002.	Peoples Gas System, Inc.	*Phase I* 6,081 5,495 2,005,619 *Phase II* 6,081 5,592 2,040,987	TX, LA	FL	11-1-90, FTS-1	CP89-555-000, ST91-8222-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

8. Trunkline Gas Company

[Docket No. CP91-1919-000]

April 30, 1991.

Take notice that on April 25, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-1919-000 a request pursuant to § 157.205, 157.211 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 284.223) for authorization under the blanket certificate issued in Docket No. CP83-84-000 to construct and operate a new delivery point and for authorization under the blanket certificate issued in Docket No. CP86-586-000 to perform an interruptible transportation service for Shell Gas Trading Company (Shell) utilizing the new delivery point, both pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Trunkline proposes to implement a transportation agreement dated April 18, 1991, providing for a maximum transportation volume of 1,000 Mcf per day. It is indicated that Trunkline would receive the gas at specified points located in Tennessee and Illinois and from the onshore and offshore areas of Texas and Louisiana and redeliver the gas at a specified point located in Ship Shoal Block 241, Offshore Louisiana. Trunkline estimates peak day, average day and annual volumes of 1,000 Mcf, 1,000 Mcf, and 365,000 Mcf, respectively. Trunkline states that it would charge the rates and abide by the terms and conditions of its Rate Schedule PT.

Trunkline states that to implement the transportation service it proposes to construct and operate a delivery meter at the delivery point with Shell. Trunkline estimate a construction cost of the facility of $52,000, which would be reimbursed by Shell. It is indicated that Shell would own the meter and that Trunkline would operate and maintain the facility. It is also indicated that Shell would be required to provide a measuring station and associated facilities on Shell's existing platform on Trunkline's Line #319A-300 in Ship Shoal Block 241.

Comment date: June 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

9. Midwestern Gas Transmission Company, et al.

[Docket Nos. CP91-1927-000, CP91-1928-000]

April 30, 1991.

Take notice that on April 26, 1991, Midwestern Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252, and Columbia Gulf Transmission Company, 3805 West Alabama, Houston, Texas 77027, (Applicants) filed prior notice requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket Nos. CP90-174-000 and CP86-239-000, respectively, pursuant to section 7 of the NGA, all as more fully set forth in the requests that are open to public inspection.[6]

Information applicable to each transaction, including the shipper's identify; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day and annual volums; the service initiation date; and related ST docket number of the 120-day transaction under §284.223 of the Regulations, had been summarized by Applicants in the appendix.

Comment date: June 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket No., date	Shipper name, (type)	Peak day, average day, annual	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up
CP91-1927-000	Entrade Corporation (marketer).	[3] 150,000 150,000 54,750,000	IL, IN, KY, TN	IL, IN	10-3-89, IT, Interruptible	ST91-6324, 3-25-91.
CP91-1928-000	Stellar Gas Company (marketer).	[3] 60,000 20,000 21,900,000	LA, OLA	LA, OLA	7-13-89, ITS-2, Interruptible	ST91-7863, 3-1-91.

[1] Offshore Louisiana is shown as OLA.
[2] Dth.
[3] MMBtu.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a

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protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary

[FR Doc. 91-10973 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-31-004]

Arkla Energy Resources; Filing Revised Tariff Sheets

May 2, 1991.

Take notice that on April 29, 1991, Arkla Energy Resources (AER), a division of Arkla Inc., tendered for filing the following tariff sheets to become effective April 1, 1991:

2nd Revised Volume No. 1

1st Substitute 2nd Revised Original Sheet No. 11

2nd Revised Volume No. 1

1st Substitute 2nd Revised Original Sheet No. 16

AER states that the tariff sheets are being filed in response to the Committee's order dated March 29, 1991 on AER's annual PGA filing which requires AER to (1) eliminate costs in excess of the performance test level from its surcharge rate and (2) reflect the most recently filed rates by its pipeline suppliers in its current adjustment.

AER states that a copy of the filing is being served on all parties of record in the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10976 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-37-001]

Carnegie Natural Gas Co.; Compliance Filing

May 3, 1991

Take notice that on April 30, 1991, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Thirteenth Revised Sheet No. 8
Substitute Thirteenth Revised Sheet No. 9
First Revised Sheet No. 124

These revised tariff sheets are proposed to become effective June 1, 1991.

Carnegie states that these tariff sheets are being filed in compliance with the Commission's order issued on December 28, 1990, in Docket No. RP91-37-000, in which the Commission denied Carnegie authorization to continue to track standby charges incurred from Texas Eastern Transmission Corporation ("Texas Eastern"). Carnegie states that the filed tariff sheets are substantially indentical to the tariff sheets originally filed by Carnegie on November 30, 1990 in this docket, except that the rate summary shown on Substitute Thirteenth Revised Tariff Sheet Nos. 8 and 9, Second Revised Volume No. 1, reflect the removal of the standby charge tracker and the inclusion of the related Account No. 858 costs in Carnegie's base sales rates. In addition, Carnegie states that First Revised Sheet No. 124, Second Revised Volume No. 1, reflects the removal of the pertinent tariff language from Carnegie's Purchased Gas Adjustment ("PGA") Clause in the General Terms and Conditions of its FERC Gas Tariff. Carnegie enclosed schedules in support of its filing.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protect with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10977 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-142-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 3, 1991

Take notice that CNG Transmission Corporation ("CNG"), on April 30, 1991, pursuant to section 4 of the Natural Gas Act and section 154 of the Commission's regulations, filed the following revised tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Third Revised Sheet No. 32

The revised tariff sheet is filed to be effective on May 1, 1991.

CNG states that the filing would reduce CNG's currently effective fuel retention percentage and fuel charge rate from those currently in effect subject to refund. The lower levels reflect an emerging consensus in the settlement discussions among the parties to Docket No. RP90-143.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before May 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10978 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-51-003, TM91-5-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 2, 1991.

Take notice that on April 30, 1991, CNG Transmission Corp ("CNG"), pursuant to section 4 of the Natural Gas Act and § 12.9 of the General Terms and Conditions of its FERC Gas Tariff, submitted the following revised tariff sheets, to comply with the Commission's March 1, 1991 Order in Docket No. RP91-51-000 and the Commission's March 29, 1991 Order in docket No. RP91-98-000:

Fourth Revised Sheet No. 40A
Fourth Revised Sheet No. 44
Fourth Revised Sheet No. 49
Third Revised Sheet No. 52
First Revised Sheet No. 52A

The proposed effective date for these tariff sheets is May 27, 1991.

CNG states that copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10979 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3547-007]

The City of Easton, Pennsylvania and the Commonwealth of Pennsylvania Department of Environmental Resources; Surrender of Exemption

May 3, 1991.

Take notice that the City of Easton, Pennsylvania and the Commonwealth of Pennsylvania Department of Environmental Resources, exemptee for the Chain Dam Project, located on the Lehigh River in Northampton County, Pennsylvania, has requested that its exemption be terminated. The order granting exemption from licensing of a small hydroelectric project of 5 megawatts or less was issued on August 4, 1983. The exemptee has determined that it is no longer economically feasible to pursue the project. Construction has not started at the project.

The exemptee filed the request on April 1, 1991, and the exemption for Project No. 3547 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10975 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-433-003]

El Paso Natural Gas Co.; Notice of Compliance Filing

May 3, 1991.

Take notice that on April 19, 1991, Southern California Gas Company (SoCalGas), pursuant to the Commission's Order Amending Certificate in Docket No. CP88-433-001 issued March 20, 1991, submitted for filing its written procedures detailing SoCalGas' plan to implement the open access, nondiscriminatory transportation assignment program on the El Paso Natural Gas Company (El Paso) system, as approved by the Order.

SoCalGas' filing includes a settlement it has filed with the Public Utilities Commission of the State of California. SoCalGas requests the Commission to find that the settlement is consistent with the nondiscriminatory, open-access requirements for capacity brokering on El Paso as prescribed by the March 20, 1991 order.

SoCalGas states that copies of the filing have been served upon each person designated on the service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.14 and 385.211. All such protests should be filed on or before May 13, 1991. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10980 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

[Docket Nos. RP91-122-001 and TM91-7-4-000]

May 2, 1991.

Take notice that on April 30, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581, filed the tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, proposing changes in rates and tariff provisions:

First Revised Sheet No. 24A
Alternate 1st Rev. Sheet No. 24A
First Revised Sheet No. 145
First Revised Sheet No. 149

Granite State proposes an effective date of May 30, 1991 for the above listed tariff sheets.

According to Granite State, its filing is submitted to track changes to the tariff mechanism to flowthrough take-or-pay buydown and buyout costs that will be directly billed to Granite State by Algonquin Gas Transmission Company (Algonquin). It is stated that Granite originally filed tariff sheets to establish the tariff mechanism to flow through take-or-pay costs from Algonquin in its March 21, 1991 filing in Docket No. RP91-122-000. The Commission accepted the March 21, 1991 filing subject to Granite State making a filing to reallocate costs away from small captive customers consistent with Order No. 528-A, and to track Algonquin's compliance filing revising its allocation to small customers. It is stated that the instant filing tracks revisions to Algonquin's allocations of take-or-pay costs shown in Algonquin's most recent compliance filing on April 23, 1991 in Docket No. TM91-8-20-000, revising its allocation to small customers, and also reflects Granite State's reallocation of take-or-pay costs initially allocated to a small customer, to comply with Order No. 528-A.

According to Granite State the proposed rate changes and tariff provisions are applicable to its jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. and to a direct customer, Pease Air Force Base. Granite State further states that copies of its filing

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were served upon its customers and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10881 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-143-000]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

May 3, 1991.

Take notice that on May 1, 1991, Great Lakes Gas Transmission Limited Partnership ("Great Lakes"), tendered for filing proposed changes to the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2 and Original Volume No. 3, with a proposed effective date of June 1, 1994.

First Revised Volume No. 1
- Twenty-Fourth Revised Sheet No. 4
- Fortieth Revised Sheet No. 57(i)

Original Volume No. 2
- Twenty-Sixth Revised Sheet No. 53
- Eighteenth Revised Sheet No. 77
- Fourteenth Revised Sheet No. 151
- Eleventh Revised Sheet No. 223
- Eleventh Revised Sheet No. 243
- Fifth Revised Sheet No. 269
- Fifth Revised Sheet No. 270
- Eleventh Revised Sheet No. 294
- Sixth Revised Sheet No. 437
- Fifth Revised Sheet No. 465
- Sixth Revised Sheet No. 466
- Sixth Revised Sheet No. 603
- Fourth Revised Sheet No. 760
- Fourth Revised Sheet No. 865
- Fourth Revised Sheet No. 866
- Third Revised Sheet No. 905
- Fourth Revised Sheet No. 906

Original Volume No. 3
- Fourth Revised Sheet No. 2
- Fourth Revised Sheet No. 3

The proposed tariff changes are based on transportation volumes for the base period (twelve months ended February 28, 1991) as adjusted, and would produce increased revenues to Great Lakes of approximately $99,000,000.

Great Lakes states that the proposed rates are necessary to reflect the new facilities and services authorized by the Commission in Docket Nos. CP88-541, CP89-982 and CP90-691, *et al.* In addition, the proposed rates include increases in certain other costs. The proposed rates include an overall return of 12.16% which reflects an imbedded debt cost of 9.73% and a return on partner's capital of 15.50%.

In its filing, Great Lakes utilized its existing cost classification, allocation and rate design methodology used to determine the rates in the settlement agreement in Docket Nos. RP89-183, *et al.*, which was approved by the Commission on September 13, 1990. The cost of service included in the filing is exclusive of gas purchased costs because each of Great Lakes' customers pays the gas costs directly to their respective suppliers and will be providing Great Lakes' company use gas.

Great Lakes further states that it has served this filing on its customers and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such motions or protests should be filed on or before May 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10882 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

May 3, 1991.

Take notice that K N Energy, Inc. ("K N") on April 30, 1991 tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (Section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, First Revised Volume No. 1-B to reflect changes in the Current Adjustment. The filing proposes increases (decreases) to K N's rates per Mcf as set forth in the table below:

	Zone 1	Zone 2
CD, SF and WPS Commodity	$(0.1569)	$(0.1569)
D1 Demand	.0021	.0035
D2 Demand	.0073	.0087
WPS Demand	.0042	.0071
IOR Commodity	(0.1495)	(0.1467)

K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending August 31, 1991. The proposed effective date for the rate changes is June 1, 1991.

KN states that copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before May 10, 1991, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10883 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-5-15-000]

Mid Louisiana Gas Co.; Proposed Change of Rates

May 2, 1991.

Take notice that Mid Louisiana Gas Company ("Mid Louisiana") on April 30, 1991, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective June 1, 1991:

	Superseding
Eighty-First Revised Sheet No. 3a	Eightieth Revised Sheet No. 3a.

Mid Louisiana states that the purpose of the filing of Eighty-First Revised Sheet No. 3a is to reflect a $0.3246 per MCF decrease in its current cost of gas.

This filing is being made in accordance with section 19 of Mid Louisiana's FERC Gas Tariff. Mid Louisiana states that copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10884 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-31-004 and TM91-7-28-000]

May 3, 1991.

Natural Gas Pipeline Company of America; Changes in FERC Gas Tariff

Take notice than on May 1, 1991, Natural Gas Pipeline Company of America (Natural) submitted for filing Second Revised Sheet Nos. 182 and 183, and First Revised Sheet Nos. 184 and 185 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of the revised tariff sheets is June 1, 1991.

Natural states that the purposes of the filing are: (1) To track Colorado Interstate Gas Company's (CIG) recovery of interest on take-or-pay buyout, buydown, or other contract reformation costs (Transition Costs) allocated to Natural; (2) to track CIG's recovery of interest on Northwest Pipeline Corporation (Northwest) transition costs that were passed through to Natural from CIG; (3) to reflect accrued interest for the months of December 1990 through May 1991 for Natural's amortization of CIG and Northwest transition costs in accordance with the semi-annual interest adjustment provision of its FERC Gas Tariff; (4) to reflect revised allocation factors for Northwest consistent with Order No. 528-A, 54 FERC ¶61,219 (1991); and (5) to establish an amortization period for the outstanding balance of transition costs, including refunds.

Natural seeks any waivers which may be necessary to permit the tendered tariff sheets to take effect June 1, 1991.

Natural states that copies of the filing have been mailed to Natural's jurisdictional sales customers, interested state regulatory agencies, and all parties set out on the official service list in Docket Nos. RP89-131-000, *et al.*, RP89-183-000, *et al.*, and RP91-31-000, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10885 Filed 5-8-91;8:45am]

BILLING CODE 6717-01-M

North Penn Gas Co.; Proposed changes in FERC Gas Tariff

[Docket No. TQ91-2-27-000]

May 3, 1991.

Take notice that North Penn Gas Company (North Penn) on May 1, 1991, tendered for filing Sixth Revised Sheet No. 3A to its FERC Gas Tariff, First Revised Volume No. 1.

The revised tariff sheet is being filed pursuant to section 14 (PGA Clause) of the general Trems and Conditions of North Penn's FERC Gas Tariff to reflect changes in the cost of gas for the period June 1, 1991 through August 31, 1991 and is proposed to be effective June 1, 1991. The proposed change reflects a decrease in the average cost of gas for the G-1 Rate Schedule of $.99923 per Mcf.

While North Penn believes that no other waivers are necessary in order to permit this filing to become effective June 1, 1991, as proposed, North Penn respectfully requests waiver of any of the Commission's rules and Regulation as may be required to permit this filing to become effective June 1, 1991.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and state commissions shown on the attached service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve a to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary.

[FR Doc. 91-10886 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-27-002]

North Penn Gas Co.; Compliance Filing

May 3,1991.

Take notice that North Penn Gas Company (North Penn) on May 1, 1991, tendered for filing Third Substitute Fourth Revised Sheet No. 3A and Second Substitute Fifth Revised Sheet No. 3A to its FERC Gas Tariff, First Revised Volume No. 1.

North Penn states that the revised tariff sheets are filed in compliance with the Commissions letter order dated February 28, 1991, in the above

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referenced docket to correct several filing errors as outlined in the Commission's letter order.

North Penn states that pursuant to the settlement in North Penn's restatement proceeding in Docket No. RP90-23 and the Commission's February 28, 1991 order accepting the settlement, the tendered tariff sheets also reflect, beginning March 1, 1991, the recovery of the costs of company-owned production in its PGA and the removal of such costs from base rates.

North Penn further states that Third Substitute Fourth Revised Sheet No. 3A is North Penn's Annual PGA rate sheet proposed to become effective March 1, 1991 and is designed to reflect changes in the cost of gas for the period March 1, 1991 through May 31, 1991. North Penn notes that the changes in the cost of gas for this period result in a decrease of $.28828 per Mcf to the G-1 Rate Schedule. North Penn states that Second Substitute Fifth Revised Sheet No. 3A, proposed to become effective April 1, 1991, is filed to reflect the same changes.

North Penn requests waiver of any of the Commission's Rules and Regulations as may be deemed necessary in order to permit the proposed tariff sheets to become effective on their requested effective dates.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and state commissions shown on the service list attached to the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10987 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-58-000]

Northern Natural Gas Co.; Alaskan Natural Gas Transportation System (ANGTS) Semi-Annual Rate Adjustment

May 3, 1991.

Take notice that on May 1, 1991, Northern Natural Gas Company (Northern), tendered for filing with the Federal Energy Regualtory Commission (Commisison) its regulary scheduled semi-annual ANGTS rate adjustment, including the following tariff sheets, to be effective July 1, 1991 pursuant to Northern's FERC Gas Tariff:

Third Revised Volume No. 1

Sixty-Second Revised Sheet No. 4A
Ninety-Second Revised Sheet N. 4B
Sixtieth Revised Sheet No. 4B.1
Twentieth Revised Sheet No. 4G.2
Twelfth Revised Sheet No. 4H

Original Volume No. 2

Ninety-Ninth Revised Sheet No. 1c
Seventh Revised Sheet No. 1C.a

In this filiing, it is stated that, Northern Border Pipeline's estimated transportation costs for Northern Natural for 1991 have decreased causing a decrease in Northern's rates. Therefore, Northern is required to change its rates pursuant to paragraph 21.4 of its FERC Gas Tariff, Third Revised Volume No. 1 and Paragraph 4.4 of its FERC Gas Tariff, Original Volume No 2.

The Company states that copies of the finding have been mailed to each of its Gas Utility customers and to interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regualtory Commisison, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice should be filed on or before May 10, 1991. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10988 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-140-000]

Questar Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 2, 1991.

Take notice that Questar Pipeline Company (Questar) on April 30, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Volume Nos. 1, 1-A, 2 and 3, with a proposed effective date of June 1, 1991. Questar states that the proposed base rates would increase sales, transportation and gathering revenues by approximately $12.6 million based on the 12-month period ended December 31, 1990, as adjusted.

Questar states that the revision to base rates requested in the filing are necessary to recover the increased cost experienced by Questar in providing service to its customers, to reflect more accurately the volumes of sales and transportation on Questar's system and to incorporate into rates cost allocation and rate design methods appropriate for Questar's open access operations. Questar notes that the proposed base rate are based on a cost of service for the 12 months ended December 31, 1990, as adjusted for known and measurable changes which will become effective within the nine month period ending September 30, 1991.

Questar states that copies of the filing were served upon the company's jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available

for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10989 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-9-000]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 3, 1991.

Take notice that on April 30, 1991, South Georgia Natural Gas Company (South Georgia) tendered for filing the following revised sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Eighth Revised Sheet No. 4C

South Georgia states that the proposed tariff sheet is being filed with a proposed effective date of June 1, 1991. The aforesaid tariff sheet reflects changes in South Georgia's fixed take-or-pay surcharge to correspond to the revised direct bill take-or-pay surcharge of its upstream pipeline supplier, Southern Natural Gas Company, authorized on April 18, 1991, in Docket No. RM91-3-7-000, and to recoup certain interest charges paid by South Georgia to Southern Natural Gas Company in the preceding twelve-month period which had not be previously flowed through to South Georgia's customers.

South Georgia states that copies of South Georgia's filing were served upon all of South Georgia's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such motions or protests should be filed on or before May 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not make protestants parties to the proceeding. Any person wishing to become party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10990 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-67-000, RP-91-008, RP88-221-000, RP90-119-001, RP91-4-000 and RP91-119-000 (Phase I/Rates)]

Texas Eastern Transmission Corporation; Informal Settlement Conference

May 2, 1991.

Take notice that, at the request of Texas Eastern Transmission Corporation, a conference will be convened in this proceeding on May 17, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of reaching a stipulation as to the issues emanating from the Commission's order of April 10, 1991 in Docket Nos. RP90-119-000 and RP91-119-000.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Dennis H. Melvin (202) 208-0042 or Arnold H. Meltz (202) 208-0737.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10991 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-6-43-000]

Williams Natural Gas Company; Proposed Changes in FERC Gas Tariff

May 2, 1991.

Take notice that Williams Natural Gas Company (WNG) on April 29, 1991, tendered for filing First Revised Sheet Nos. 7 and 7A to its FERC Gas Tariff, First Revised Volume No. 1 to be effective June 1, 1991.

WNG states that the above referenced tariff sheets are being filed to track the Order Nos. 528 and 528-A filing made by Transwestern Pipeline Company in Docket Nos. RP91-104 and RP91-108. Transwestern's revised allocation was made effective on April 1, 1991 by Commission Order issued March 29, 1991.

WNG states that copies of its filing were served on all jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10992 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. IS89-21-000, IS89-31-000, IS90-32-000, IS90-40-000, IS91-1-000, SP91-3-000, SP91-5-000 and SP91-21-000 Docket Nos. IS90-39-000 and IS91-3-000]

Williams Pipe Line Company; Enron Liquids Pipeline Company; Informal Settlement Conference

May 2, 1991.

Take notice that a conference will be convened in this proceeding beginning on May 21, 1991 at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the Tariff Issues. Any party wishing to discuss any other issues in the above-referenced dockets may also do so at this conference.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Irene E. Szopo at (202) 208-1602, or Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10993 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-141-000]

Williston Basin Interstate Co.; Proposed Changes in FERC Gas Tariff

May 2, 1991.

Take notice that on April 30, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), filed with the Federal Energy Regulatory Commission, tariff sheets to its FERC Tariff, First Revised Volume No. 1, and Original Volume Nos. 1-A, 1-B and 2 as

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listed on appendix A attached to the filing. Williston Basin states that the proposed effective date is June 1, 1991.

Williston Basin states that the proposed revisions will decrease revenues from jurisdictional sales, transportation and storage services by approximately $365,000 when compared with the rates filed on April 4, 1991 to be effective February 1, 1991 in Docket Nos. RP90-3-000, *et al.* Williston Basin further states that the instant rates are based on its cost of service for the twelve months ended December 31, 1990, adjusted for changes which are known and measurable period ended September 30, 1991.

Williston Basin states that copies of the filing were served on the company's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10994 Filed 5-8-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $17,201,703.68, plus accrued interest, in alleged crude oil overcharge funds obtained from Diamond Shamrock R&M, Inc., Case No. LEF-0030. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATES AND ADDRESSES: Comments must be filed in duplicate by June 10, 1991, and they should be addressed to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a prominent reference to case number LEF-0030.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute crude oil overcharge funds obtained from Diamond Shamrock R&M, Inc. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has tentatively determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986) (MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of crude oil and refined products. Refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of crude oil price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for Refund should not be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted by June 10, 1991 and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: May 2, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy; Implementation of Special Refund Procedures

May 2, 1991.

Name of Firm: Diamond Shamrock R&M, Inc.

Date of Filing: March 27, 1991.

Case Number: LEF-0030.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

On March 27, 1991, the ERA filed a Petition for the Implementation of Special Refund Procedures for the distribution of funds obtained from Diamond Shamrock R&M, Inc. (Diamond Shamrock) as a result of the DOE's enforcement of the federal petroleum price and allocation regulations concerning the resale of crude oil for the period January 1, 1980 through January 27, 1981. Diamond Shamrock remitted $17,201,703.68 to the DOE pursuant to a December 1, 1987 Consent Order between the firm and the DOE. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds. Comments are solicted.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement,* 9 DOE ¶ 82,508 (1981) and *Office of Enforcement,* 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement subpart V procedures with respect to the monies received from Diamond Shamrock, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (MSRP). The MSRP, issued as a result of a court approved Settlement Agreement in In Re: *The Department of Energy Stripper Well Exemption Litigation,* M.D.L. No. 378 (D. Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of these funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP in all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 F.R. 29689 (August 20, 1986). That Order provided a period of thirty days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 F.R. 11737 [April 10, 1987] (the notice). The notice set forth generalized procedures and provided guidance to assist claimants who wish to file refund applications for crude oil monies under the subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of Federal crude oil price overcharges. The notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry would be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, the OHA stated that refunds would be calculated on the basis of a per-gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of crude oil overcharge monies that were in the DOE's escrow account at the time of settlement, or were subsequently deposited in the escrow account, and a portion of the escrow funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 notice, *see e.g., Shell Oil Co., 17 DOE ¶ 85,204 (1988) (Shell Oil); Ernest A. Allerkamp,* 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that court claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. In denying the Motion, the court concluded that the Settlement Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation,* 671 F. Supp. 1318, 1323 (D. Kan. 1987). The court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323-24. The States appealed the latter ruling, but the Temporary Emergency Court of Appeals affirmed the Kansas District Court's decision. *In re: The Department of Energy Stripper Well Exemption Litigation,* 857 F.2d 1481 (Temp. Emer. Ct. App. 1988).

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil subpart V proceeding that is the subject of the present determination. As noted above, $17,201,703.68 (plus interest) in crude oil funds is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of the alleged crude oil violation amount, or $3,440,340.74 (plus interest) for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. See *Mountain Fuel Supply Co.,* 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.,* 15 DOE ¶ 85,026 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to received a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses were unrelated to the petroleum industry and who were not subject to the DOE price regulations, are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond proof of the volumes of product purchased during the period of crude oil price controls. *A. Tarricone, Inc.,* 15 DOE ¶ 85,495 at 88,993-98 (1987). The end-user presumption of injury is, however, rebuttable. *Berry Holding Co.,* 16 DOE ¶ 85,405, at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on whether the specific end-user in question was injured, the applicant will be required to produce further evidence of injury. See *New York Petroleum,* 18 DOE at 88,701-03.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They may, however, use econometric evidence of the type employed in the *Report by the Office of Hearings and Appeals to the United States District Court of the District of Columbia, In re: The Department of Energy Stripper Well Exemption Litigation,* 8 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). *See* Petroleum Overcharge Distribution and Restitution Act section 3003(b)(2), 15 U.S.C. 4502(b)(2). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under subpart V. *See Mid-America Dairymen Inc. v. Herrington,* 878 F.2d 1446 (Temp. Emer. Ct. App. 1989); *accord, Boise Cascade Corp.,* 19 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amount involved in this determination ($17, 201,703.68) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *See Mountain Fuel,* 14 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program.* This yields a volumetric refund amount of $.00000851 per gallon.

As we stated in previous decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *Allerkamp,* 17 DOE at 88,176. Any party that has previously submitted a refund in the crude oil refund proceedings need not file another application. The deadline for filing an application for refund for crude oil implementation orders issued since January 18, 1981 is June 30, 1992. *Quintana Energy Corporation,* 211 DOE ¶ 85,032 (1991). It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1992, at the rate of $.0008 per gallon. However, while applicants that filed their claims by June 30, 1988 will receive a supplemental refund payment, we will decide in the future whether claimants that filed later Applications should receive additional payments.

B. Payments to the State and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $13,761,362.94 (plus interest), be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in exhibit H of the Stripper Well Exemption Litigation Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

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*The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism has the effect of evenly disbursing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. See *Amber Refining Inc.,* 13 DOE ¶ 85,227 at 88,984 (1985).

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Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with OHA within 30 days of its publication in the Federal Register.

It is therefore ordered that: The refund amount remitted to the Department of Energy by Diamond Shamrock R&M, Inc. pursuant to the consent order executed on December 1, 1987 will be distributed in accordance with the foregoing Decision.

[FR Doc. 91-11069 Filed 5-8-91; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Revision of 3067-0169.
Title: Write Your Own (WYO) Program.
Abstract: Under the Write Your Own (WYO) Program, private sector insurance companies may offer flood insurance to eligible property owners. The Federal Government is a guarantor of flood insurance coverage for WYO companies issued under the WYO arrangement. In order to maintain adequate financial control over Federal funds, the National Flood Insurance Program requires each WYO company to submit a monthly financial report.
Type of Respondents: Businesses or other-for-profit.
Estimate of Total Annual Reporting and Recordkeeping Burden: 594 Hours.
Number of Respondents: 90.
Estimated Average Burden Hours Per Response: 33 minutes.
Frequency of Response: Monthly.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: April 24, 1991.

Gail L. Kercheval,

Acting Director, Office of Administrative Support.

[FR Doc. 91-11071 Filed 5-8-91; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-903-DR]

Amendment to Notice of a Major Disaster Declaration; Kansas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA-903-DR), dated April 29, 1991, and related determinations.

DATES: April 30, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Kansas, dated April 29, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 29, 1991:

Cowley County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-11072 Filed 5-8-91; 8:45 am]

BILLING CODE 6718-02-M

Major Disaster and Related Determinations; Kansas

[FEMA-903-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA-903-DR), dated April 29, 1991, and related determinations.

DATES: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated April 29, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Kansas, resulting from severe storms and tornadoes on April 26-27, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide individual Assistance in the designated areas. Public Assistance may be provided at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint S. Richard Mellinger of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kansas to have been affected adversely by this declared major disaster:

The counties of Butler and Sedgwick for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91-11073 Filed 5-8-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-902-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-902-DR), dated April 23, 1991, and related determinations.

DATED: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Louisiana, dated April 23, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 23, 1991: The parishes of Bienville, Beauregard, and DeSota for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-11074 Filed 5-8-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-902-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-902-DR), dated April 23, 1991, and related determinations.

DATED: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice is hereby given that the incident p riod for this disaster is closed effective April 26, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-11075 Filed 5-8-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-902-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-902-DR), dated April 23, 1991, and related determinations.

DATED: April 25, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Louisiana, dated April 25, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 25, 1991: The parishes of Bossier and Webster for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-11076 Filed 5-8-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-902-DR]

Louisiana; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA-902-DR), dated April 23, 1991, and related determinations.

DATED: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated April 23, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707, as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from severe storms and flooding beginning on April 12, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide individual Assistance in the designated areas. Public Assistance may be authorized at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Graham L. Nance of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster: Caddo Parish for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91-11077 Filed 5-8-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-901-DR]

Maine; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maine (FEMA-901-DR), dated April 19, 1991, and related determinations.

DATED: April 24, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency

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Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that the incident period for this disaster is closed effective April 24, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-11078 Filed 5-8-91; 8:45 am]

BILLING CODE 6718-02-M

Texas; Amendment to Notice of a Major Disaster Declaration

[Docket No. FEMA-900-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-900-DR), dated April 12, 1991, and related determinations.

DATED: April 28, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Texas, dated April 12, 1991, is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 12, 1991:

The counties of Cameron, Jackson, and Victoria for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support; Federal Emergency Management Agency.

[FR Doc. 91-11079 Filed 5-8-91; 8:45 am]

BILLING CODE 6718-02-M

Texas; Amendment to Notice of a Major Disaster Declaration

[FEMA-900-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-900-DR), dated April 12, 1991, and related determinations.

DATED: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Texas, dated April 12, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 12, 1991:

The counties of Brazoria, Jackson, Victoria, and Willacy for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Acting Deputy, Associate Director, State and Local Programs and Support; Federal Emergency Management Agency.

[FR Doc. 91-11080 Filed 5-8-91; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Companhia de Navegacao Lloyd Brasileiro et al.; Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-009847-023.

Title: U.S. Atlantic Coast/Brazil Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro

Companhia de Navegacao Maritima Netumar

American Transport Lines, Inc.

Synopsis: The proposed amendment would reduce the parties' pool share from 50 percent to two percent for the remainder of the pool period, which ends September 30, 1991.

Agreement No.: 212-009847-024.

Title: U.S. Atlantic Coast/Brazil Agreement

Parties:

Companhia de Navegacao Lloyd Brasileiro

Companhia de Navegacao Maritima Netumar

American Transport Lines, Inc.

Synopsis: The proposed amendment would delete article 20(b) relating to the effectiveness of certain modifications of the agreement.

Agreement No.: 203-011330.

Title: Information System Agreement.

Parties:

P&O Containers, Ltd.

American President Lines, Ltd.

Sea-Land Service, Inc.

A.P. Moller-Maersk Line

Synopsis: The proposed Agreement would permit the parties to discuss and agree on the development, rationalization, purchase, lease, sale, pooling, interchange and marketing of common or compatible information systems.

Dated: May 3, 1991.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 91-10946 Filed 5-8-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Roy Eugene Barnes; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than May 28, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Roy Eugene Barnes, Mableton, Georgia; to acquire an additional 5.72 percent (totalling 11.93 percent) of the voting shares of Community Financial Corporation, Mableton, Georgia, and thereby indirectly acquire Community Bank & Trust Company, Mableton, Georgia.

Board of Governors of the Federal Reserve System, May 3, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11012 Filed 5-8-91; 8:45 am]

BILLING CODE 6210-01-F

Fifth Third Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 28, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Fifth Third Bancorp, Cincinnati, Ohio; to acquire 100 percent of the voting shares of The Farmers Exchange Bank, Millersburg, Kentucky.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Appleton City Bancshares, Inc., Appleton City, Missouri; to acquire at least 86.4 percent through a cash purchase of the voting shares of Deepwater State Bank, Deepwater, Missouri.

2. First Lindsay Corp., Lindsay, Oklahoma; to become a bank holding company by acquiring 88 percent of the voting shares of First National Bank of Lindsay, Lindsay, Oklahoma.

Board of Governors of the Federal Reserve System, May 3, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11011 Filed 5-8-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement No. 120]

Availability of Funds for Fiscal Year 1991 for Cooperative Agreements To Support State Pregnancy Nutrition Surveillance

Introduction

The Centers for Disease Control (CDC) announces a program for competitive cooperative agreement applications to implement and conduct the enhanced Pregnancy Nutrition Surveillance System (PNSS). The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of nutrition and maternal and infant health. (For ordering a copy of Healthy People 2000, see the section where to obtain additional information.)

Authority

This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended, and section 317(k)(3) of the Public Health Service Act (42 U.S.C. 247b(k)(3)).

Eligible Applicants

Because the intent of this cooperative agreement is to develop state capacity to continuously conduct program-based pregnancy nutrition surveillance, eligible applicants are restricted to the official public health agencies of all states, the District of Columbia, federally recognized Indian tribes, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau. No other applications will be accepted.

Availability of Funds

Approximately $1,000,000 will be available in Fiscal Year 1991 to fund up to 22 new and competing renewals. The average award is expected to be $45,000, ranging from $30,000 to $50,000. Funding estimates may vary and are subject to change. Priority will be given to states which have communities with the highest infant mortality rates. Awards are expected to begin on or about August 1, 1991, and will be made for a 12-month budget period within a 5-year project period.

Purpose

The purposes of this Cooperative Agreement are to:

A. Promote the development and use of standardized pregnancy nutrition surveillance methods in support of State programs for Maternal and Child Health (MCH), the Supplemental Food Program for Women, Infants, and Children (WIC), and Healthy Start communities to reduce pregnancy-related health risks and adverse pregnancy outcomes.

B. Assist states in monitoring trends in the prevalence of prenatal and early infancy nutrition and behavioral risk factors, which are major predictors of low birthweight and infant mortality.

C. Provide information needed by the states to assess coverage, targeting, and effectiveness of prenatal and early infancy programs, to redirect health care services accordingly; and to evaluate the extent to which service redirection results in improved health and nutrition outcomes.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting specified activities under A. below and CDC shall be responsible for conducting activities under B. below. The applications should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Identify and describe communities within the state which have high infant mortality rates.

2. Identify and describe public health programs, such as WIC, that have the capability of providing statewide data on pregnant and postpartum women.

3. Develop and maintain, in collaboration with CDC, a data collection system for PNSS, including the flow, editing, analysis, and application of data and the design and

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field test of a data collection tool in appropriate programs.

4. In accordance with guidelines to be provided by CDC, collect clinical and program data on risk factors associated with poor pregnancy outcomes among high-risk populations (e.g., those defined by tobacco use, weight gain, socioeconomic indicators, trimester of first prenatal visit, alcohol use).

5. Plan and implement procedures for ensuring the completeness and quality of the data, including personnel training and data editing.

6. Coordinate the surveillance system with various organizational units in the agency to ensure consistency and comparability in the data that are collected and to ensure a single point for data management.

7. With technical assistance and/or provision of software from CDC, produce a clean, edited tape for analysis that includes the specified maternal and postpartum data.

8. Develop and implement a plan for the analysis and use of surveillance data in appropriate prevention and intervention programs to reduce the prevalence of risk factors associated with low-birthweight outcomes.

9. Prepare and disseminate surveillance information, in collaboration with CDC, through presentation and publication in appropriate forums.

10. Propose an evaluation strategy and collaborate with CDC to assess the effectiveness and efficiency of the surveillance system to monitor the health risks of the high-risk prenatal population.

11. Describe potential plans for the feasibility and capability of linking the prenatal information with birth certificates and other related data systems and the general plan for using such information.

B. CDC Activities

1. Collaborate in the design of standardized data items, definitions, procedures, and methods to collect the desired surveillance information.

2. Provide training in the appropriate skills to develop, manage, and implement the surveillance project.

3. Provide technical support for data processing or assist State participants in developing appropriate data-processing capabilities.

4. Assist States to analyze, interpret, and use the surveillance data to improve the coverage, targeting, and effectiveness of state interventions toward reducing pregnancy-related health risks.

5. Collaborate with the recipient in preparing and presenting program-relevant surveillance findings to appropriate state and national audiences.

6. Collaborate with the recipient in evaluating the effectiveness and efficiency of the surveillance system to monitor and intervene upon the health risks of high-risk prenatal populations.

Evaluation Criteria

Eligible applications submitted under this announcement will be evaluated according to the following criteria:

A. Potential for Public Health Impact (10 points)

1. Evidence that the state has a high rate of nutrition and behavioral health risks associated with low birthweight and infant mortality. Evidence of areas of highest infant mortality, especially communities.

2. Evidence of state health department plans to improve the outcome of pregnancy through intervention programs to reduce risk factors occurring during pregnancy and of the state health department's ability to develop, implement, evaluate, and use surveillance activities to support effective program interventions.

3. The extent and availability of statewide data, such as 100 percent of clinics of the WIC Program and, where feasible, multiple program sources of data (e.g., WIC, prenatal clinics, Medicaid).

B. Capability (30 points)

1. The extent and appropriateness of previous efforts to monitor health risks of prenatal, pediatric, and other high-risk populations by using similar systems and data collection methods, such as the Pregnancy Nutrition Surveillance System, the Pregnancy Risk Assessment Monitoring System, the Pediatric Nutrition Surveillance System, or other statewide surveillance systems.

2. The ability to incorporate the PNSS data into one or more existing programs.

3. Evidence of strong working relationships with the organizational entities involved with this project.

4. Evidence that key project staff have experience in developing and implementing surveillance systems, analyzing data, and using data in evaluating and planning program activities.

C. Project Design (55 points total)

1. The appropriateness of goals, objectives, and activities stated in the overall plan related to: (40 points)

Program Development and Implementation (10 points)

a. The extent to which the applicant describes characteristics of the target population, participating programs and clinics, and, if relevant, the existing or planned health information data collection system into which PNSS will be incorporated (e.g., WIC certification data system).

b. The adequacy of procedures for selecting the target population, the extent to which information will be collected on the initial prenatal and subsequent postpartum visit, and evidence of the ability to consolidate information collected into a single record for analysis.

c. The adequacy of procedures for designing, implementing, and debugging the surveillance system. This includes the feasibility of the proposed time schedule for designing, pretesting, and evaluating the surveillance system, and the submission of quarterly data tapes to CDC.

Training and Data Quality (10 points)

The adequacy of proposed data management procedures to assure data quality (e.g., ensuring data completeness, training personnel, and validating the quality of data, data entry, and editing).

Data Analysis and Dissemination (10 points)

a. The adequacy of the applicant's plans to analyze the data on a timely basis and to share the data with CDC for providing national estimates.

b. The adequacy of the applicant's plans to apply surveillance findings to the planning and evaluation of intervention activities.

Program Evaluation (10 points)

How well the applicant understands what surveillance data will be needed and how the data will be used in evaluating and planning pregnancy risk-reduction activities.

2. The specific roles and responsibilities of participating units of the state health department are described in relationship to: Project management; design of instruments; data collection, analysis, interpretation, and dissemination; and enlisting the support of local health departments/agencies. (15 points)

D. Commitment (5 points)

Evidence that the organizational alignment is conducive to accomplishing the stated objectives, including written commitments from the appropriate organizational entities responsible for MCH and WIC activities, state vital records, state data processing, and other organizational units that would be expected to support activities related to the surveillance system.

E. (Not weighted)

The extent to which the applicant describes the total amount of funds requested in each of the object class categories and clearly links the budget items to objectives and activities proposed for the budget period.

Other Requirements

Paperwork Reduction Act

Projects involving the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

The intergovernmental review requirements of Executive Order 12372, as implemented by DHHS regulations in 45 CFR part 100, are applicable to this program. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (order than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCS is included in the application kit. The due date for state process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to accommodate or explain for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Application Submission and Deadline

A signed original and two copies of the application, PHS Form 5161-1, must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, Georgia 30305, on or before June 3, 1991.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Application:* Applications that do not meet the criteria in a. or b. above are considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, application package and business management technical assistance may be obtained from Nealeen Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, Georgia 30305 (404) 842-6508 or FTS 236-6508.

Please refer to Announcement Number 120 when requesting information and submitting an application.

Programmatic technical assistance may be obtained from Colette Zyrkowski, Division of Nutrition, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Mail Stop K-25, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 488-5099.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone (202) 783-3238).

Dated: May 3, 1991.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-11020 Filed 5-8-91; 8:45 am]

BILLING CODE 4160-18-M

Notice of Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces the following meeting.

Name: A Method for Sampling and Analysis of Indoor Air for Organic Compounds.

Time and Date: 1-5 p.m., June 11, 1991.

Place: Alice Hamilton Laboratory, Conference Room C, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an open meeting for the review of a NIOSH project entitled "A Method for Sampling and Analysis of Indoor Air for Organic Compounds." This project concerns the investigation of proposed sampling and analytical methodology for monitoring exposure to selected volatile organic compounds found in indoor air.

Contact Person for Additional Information: Eugene R. Kennedy, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop R-7, Cincinnati, Ohio 45226, telephone 513/841-4382 or FTS 684-4382.

Dated: May 3, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-11021 Filed 5-8-91; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Program Announcement of Funding Cycle for HIV/AIDS Dental Reimbursement Program

The Health Resources and Services Administration (HRSA), announces its intent to accept proposals for reimbursement of eligible dental schools and postdoctoral dental education programs for the documented, uncompensated costs of oral health care which has been provided to HIV-infected persons during the prior year. This program is authorized under section 788A(f) of the Public Health Services Act (the Act). Approximately $3 million is available during Fiscal Year (FY) 1991 for this program. The average award for the program will be unknown until requests are received and the formula for making awards is applied. Comments are invited on the proposed definitions and evaluation proposal.

Purpose

This authority requires the Secretary of Health and Human Services to distribute the available funds among all eligible applicants taking into account the number of patients with acquired immune deficiency syndrome (AIDS) or Human Immunodeficiency Virus (HIV) who have been served and the unreimbursed oral health care costs incurred by each institution as

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compared with the total number of HIV/AIDS patients served and costs incurred by all eligible applicants.

The Secretary will use the following formula to allocate funds among eligible applicants:

$$N = A\left[.8\left(\frac{IU}{TU}\right) + .2\left(\frac{IP}{TP}\right)\right]$$

In this formula, "N" represents the amount to be awarded to a given applicant. "A" represents the amount of funds appropriated to implement section 788A(f) in this fiscal year. "IU" represents the applicant institution's unreimbursed costs. "TU" represents the total unreimbursed costs for all applicants. "TP" represents the number of HIV-infected patients served by the applicant institution. "IP" represents the total number of HIV-infected patients served by all applicants.

Each award will be calculated by multiplying the total appropriation amount times the sum of the weighted proportions of each eligible applicant's unreimbursed costs and number of HIV-infected patients served to the total unreimbursed costs claimed and number of patients served by all eligible applicants, respectively.

The unreimbursed costs portion of this formula is weighted more heavily than the number of HIV/AIDS patients served, reflecting the thrust of this program to alleviate losses incurred in providing such care.

If HIV/AIDS patients were served but there are no documented, uncompensated costs, no reimbursement will be awarded. Documentation referenced in proposals will be subject to audit.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This HIV/AIDS Dental Reimbursement Program is related to priority area 18, HIV Infection. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202 783-3238.)

Eligibility

The Secretary is authorized to make this assistance available to public or private nonprofit schools of dentistry and to accredited post-graduate dental training programs that have documented the uncompensated costs of oral health care provided to HIV-infected persons. The Secretary shall not make an award under this authority if doing so would result in any reduction in State funding allotted for such purposes.

Statutory Requirements

Duration of Assistance

Each eligible dental school or program may annually submit a proposal documenting the unreimbursed costs of oral health care provided to HIV-infected patients by that school or hospital during the prior year. Reimbursement by the Secretary will be subject to reauthorization of this authority after FY 1991 and the availability of appropriations for the fiscal year involved.

Proposed Definitions for Fiscal Year 1991

Eligible applicant means a dental school or any postdoctoral dental education program which has documented uncompensated costs for the provision of oral health care to HIV-infected persons and which has been accredited by the Commission on Dental Accreditation.

Fee charged means the institution's normal charge for a particular service before any discount or sliding fee schedule is applied.

HIV/AIDS patient means a person who is infected with the human immunodeficiency virus—those patients who self identify as being HIV-infected or who present with signs, or symptoms, or medical historical data identified with HIV Infection—e.g. candidates (oral, esophageal, pulmonary, etc.), progressive generalized lymphadenopathy, oral hairy leukoplakia, Pneumocystis carinii pneumonia (PCP), Kaposi's sarcoma (oral and/or disseminated) and/or other HIV-associated fungal, viral, bacterial, and/or neoplastic processes as delineated by the Centers for Disease Control.

Post-doctoral dental education program means a program sponsored by a school of dentistry, hospital, or a public or private institution that offers post-doctoral training in the specialties of dentistry, advanced education in general dentistry, or a dental general practice residency; and has been accredited by the Commission on Dental Accreditation.

Prior year is the year for which uncompensated costs will be reimbursed, which for FY 1991 is defined as July 1, 1989–June 30, 1990.

Scope of services means those oral health and support services (i.e., laboratory services) which have been provided to the patient (and for which a fee was charged).

Unreimbursed oral health care costs means the balance remaining after subtracting the total income received from the HIV/AIDS patients served and/or third party payors or Medicaid, from the total of normal fees charged by the applicant institution for those patients. It refers to the cost of those *actual* uncompensated oral health services provided through the institution to an HIV-infected person.

How Proposals Will be Evaluated

The review of proposals will take into consideration compliance with the requirements of section 788A(f). In particular, evaluation of proposals will consider:

1. The total number of HIV-infected patients treated through the dental school/program and the percent range of uncompensated costs of their care;

2. Total fees charged for oral health services provided to the HIV-infected patients;

3. The total unreimbursed costs for oral health care provided to HIV-infected patients;

4. The number of HIV-infected patient visits and comparison of this number with the same number of non-HIV-infected patient visits for a control population of equal size;

5. The percentage of oral health service procedures provided to all HIV-infected persons using the following categories: diagnostic, oral pathology, preventive, restorative periodontics, prosthodontics, oral surgery, endodontics, and other adjuntive services and a comparative percentage of oral health service procedures for the same number of non-HIV-infiected patients;

6. Evidence of efforts to establish working relationships with HIV planning councils and care consorita authorized under titles I and II of the Ryan White CARE Act (Pub. L. 101-381); and

7. Indication of ongoing provision of oral health care services to persons with HIV infection.

Interested persons are invited to comment on the proposed definitions and evaluation proposal. Normally, the comment period would be 60 days. However, due to the need to implement this new program in Fiscal Year 1991, this comment period has been reduced to 30 days. All comments received on or before June 10, 1991 will be considered before the final definitions and proposed evaluation are established. No funds will be allocated or final selections made until a final notice is published stating whether the proposed definitions and evaluation proposal will be applied.

Written comments should be addressed to: Director, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8-101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated and Dental Health Professions, Bureau of Health Professions, at the address above weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Requests for additional information regarding the program aspects and business management issues and for proposal instructions should be directed to: Dental Health Branch, Division of Associated and Dental Health, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-15, Rockville, Maryland 20857, Telephone (301) 443-6837.

Completed proposals should be forwarded to the HIV/AIDS Dental Reimbursement Program Officer at the above address.

To receive consideration, proposals must meet the deadline of July 15, 1991 which means they must either be:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for review. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late proposals not accepted for processing will be returned to the applicant.

The proposal instructions for this program have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. Application materials will be available when OMB approval is received. The Program, HIV/AIDS Dental Reimbursement, is listed at 93.924 in the Catalog of Federal Domestic Assistance. Proposals submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: April 5, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-11048 Filed 5-8-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting of the Allergy and Clinical Immunology Subcommittee; Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Allergy, Immunology, and Transplantation Research Committee, and its subcommittees on June 25, 1991, at the Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

The meeting will be open to the public from 8 a.m. to 10 a.m. on June 25, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10 a.m. on June 25, until adjournment. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Olivia T. Preble, Acting Executive Secretary, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 3A10, Bethesda, Maryland 20892, telephone (301-496-8208), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: April 19, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-10936 Filed 5-8-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of the National Advisory Dental Research Council

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held at June 4-5, 1991, Conference Room 6, Building 31C, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9:30 a.m. to recess on June 4 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting of the Council will be closed to the public on June 4 from 8:30 a.m. to 9:30 a.m. and on June 5 from 9 a.m. to approximately 12 noon for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Brent Jaquet, Executive Secretary, National Advisory Dental Research Council, and Special Assistant to the Director, National Institute of Dental Research, National Institutes of Health, Building 31, room 2C39, Bethesda, Maryland 20892, (telephone 301-496-9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121-Diseases of the Teeth and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122-Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845-Dental Research Institute; National Institutes of Health)

Dated: April 19, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-10937 Filed 5-8-91; 8:45 am]

BILLING CODE 4140-01-M

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National Library of Medicine; Meeting of the Literature Selection Technical Review Committee

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on June 13-14, 1991, convening at 9 a.m. on June 13 and at 8:30 a.m. on June 14 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on June 13 will be open to the public from 9 a.m. to 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(9)(B), title 5, U.S.C., Public Law 92-463, the meeting will be closed on June 13 from 10:30 a.m. to approximately 5 p.m. and on June 14 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: April 10, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-10938 Filed 5-8-91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Heart Attack Alert Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Tuesday, June 11, 1991, from 8:30 a.m. to 3:30 p.m., at the Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, Maryland, 20814 (301) 897-9400.

The entire meeting is open to the public. The Coordinating Committee is meeting to discuss the goals, objectives, and activities of the newly established National Heart Attack Alert Program and its participating members.

Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary, contact: Judith H. LaRosa, Ph.D., R.N., Coordinator, National Heart Attack Alert Program, Office of Prevention, Education, and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A16, Bethesda, Maryland, 20892 (301) 496-1051.

Dated: May 1, 1991.

William F. Raub,

Deputy Director, NIH.

[FR Doc. 91-10939 Filed 5-8-91; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following study sections for May through June 1991, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Study section	May-June 1991 meetings	Time	Location
Allergy & Immunology—Mr. Howard M. Berman, rm. A19, tel. 301-396-7390.	June 17-19	8:30	Holiday Inn, Chevy Chase, MD.
Bacteriology & Mycology-1—Dr. Timothy J. Henry, rm. 236B, tel. 301-496-7340.	June 5-7	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Bacteriology & Mycology-2—Dr. William Branche, Jr., rm. 236A, tel. 301-496-7662.	June 5-7	8:30	Holiday Inn, Chevy Chase, MD.
Behavioral Medicine—Ms. Carol Campbell, rm. 306B, tel. 301-496-7109	June 12-14	8	Omni Georgetown Hotel, Washington, DC.
Biochemical Endrolnology—Dr. Michael Knecht, rm. 204, tel. 301-496-7430	June 16-18	8:30	Holiday Inn, Bethesda, MD.
Biochemistry—Dr. Adolphus P. Toliver, rm. 316B, tel. 301-496-7516	June 12-14	8:30	Holiday Inn, Chevy Chase, MD.
Bio-Organic & Natural Products Chemistry—Dr. Harold Radtke, rm. 2A07, tel. 301-496-6823.	June 27-29	9	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Biophysical Chemistry—Dr. John Beisler, rm. 334, tel. 301-496-7070	June 6-8	8	NIH, room 6, Bldg. 31C, Bethesda, MD.
Bio-Psychology—Dr. A. Keith Murray, rm. 325, tel. 301-496-7056	May 29-31	9	Omni Georgetown Hotel, Washington, DC.
Cardiovascular—Dr. Gordon L. Johnson, rm. 439A, tel. 301-496-7316	June 12-14	8	Hyatt Regency Hotel, Bethesda, MD.
Cardiovascular & Renal—Dr. Anthony Chung, rm. 353, tel. 301-496-7901	June 10-12	8:30	Holiday Inn, Crowne Plaza, Rockville, MD.
Cellular Biology and Physiology-1—Dr. Gerald Greenhouse, rm. 336, tel. 301-496-7398.	June 5-7	8	American Inn, Bethesda, MD.
Cellular Biology and Physiology-2—Dr. Gerhard Ehrenspeck, rm. 1A05, tel. 301-496-7661.	June 10-12	8:30	St. James Hotel. Washington, DC.
Chemical Pathology—Dr. Edmund Copeland, rm. 322, tel. 301-496-7078	June 19-21	8	Holiday Inn, Chevy Chase, MD.

Study section	May-June 1991 meetings	Time	Location
Diagnostic Radiology—Dr. Catherine Wingate, rm. 357, tel. 301-496-7650	June 19-21	8:30	AMA/Westin Hotel, Washington, DC.
Endocrinology—Dr. Harry Brodie, rm. 218, tel. 301-496-7348	June 16-18	12 p.m.	Dupont Plaza Hotel, Washington, DC.
Epidemiology & Disease Control-1—Dr. Scott Osborne, rm. 293C, tel. 301-496-7246.	June 5-7	8:30	Hyatt Regency Hotel, Bethesda, MD.
Epidemiology & Disease Control-2—Dr. H. M. Stiles, rm. 209B, tel. 301-496-7246.	June 5-7	8:30	One Washington Circle Hotel, Washington, DC.
Experimental Cardiovascular Sciences—Dr. Richard Peabody, rm. 434, tel. 301-496-7940.	June 5-7	8	One Washington Circle Hotel, Washington, DC.
Experimental Immunology—Dr. Calbert Laing, rm. A27, tel. 301-496-7238	June 12-15	8:30	Holiday Inn, Chevy Chase, MD.
Experimental Therapeutics-1—Dr. Philip Perkins, rm. 221, tel. 301-496-7839.	June 12-14	8:30	Key Bridge Marriott, Roselyn, VA.
Experimental Therapeutics-2—Dr. Marcia Litwack, rm. 207, tel. 301-496-8846.	June 27-29	8:30	Holiday Inn, Bethesda, MD.
Experimental Virology—Dr. Garnett V. Keefer, rm. 206, tel. 301-496-7474	June 17-19	8:30	NIH, room, 9, Bldg. 31C, Bethesda, MD.
General Medicine A-1—Dr. Harold Davidson, rm. 354A, tel. 301-496-7797	June 24-26	8:30	NIH, room 10, Bldg. 31C, Bethesda, MD.
General Medicine A-2—Dr. Mushtaq Khan, rm. 354B, tel. 301-496-7140	June 12-14	8:30	NIH, room 6, Bldg. 31C, Bethesda, MD.
General Medicine B—Dr. Daniel McDonald, rm. 220, tel. 301-496-7730	June 3-5	8	Holiday Inn, Chevy Chase, MD.
Genetics—Dr. David Remondini, rm. 225, tel. 301-496-7271	June 13-15	9	NIH, room 9, Bldg. 31C, Bethesda, MD.
Genome—Dr. Cheryl Corsaro, rm. 2A15, tel. 301-496-7866	June 20-21	8:30	Hotel Washington, Washington DC.
Hearing Research—Dr. Joseph Kimm, rm. 1A03, tel. 301-496-7484	June 10-12	8:30	St. James Hotel, Washington, DC.
Hematology-1—Dr. Clark Lum, rm. 355A, tel. 301-496-7508	June 6-8	8	Hyatt Regency Hotel, Bethesda, MD.
Hematology-2—Dr. Jerrold Fried, rm. 355B, tel. 301-496-7508	June 19-21	8:30	Holiday Inn, Georgetown, MD.
Human Development & Aging-1—Dr. Teresa Levitin, rm. 303, tel. 301-496-7025.	June 10-12	9	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Development & Aging-2—Dr. Louis Quatrano, rm. 305, tel. 301-496-7640.	June 10-12	8:30	Holiday Inn, Bethesda, MD.
Human Development & Aging-3—Dr. Anita Sostek, rm. 319C, tel. 301-496-8814.	June 17-19	8:30	Hyatt Regency Hotel, Bethesda, MD.
Human Embryology & Development—Dr. Arthur Hoversland, rm. 219B, tel. 301-496-7597.	June 17-19	8	Roselyn Westpark Hotel, Arlington, VA.
Immunobiology—Dr. William Stylos, rm. A27, tel. 301-496-7780	June 12-14	8:30	Holiday Inn, Chevy Chase, MD.
Immunological Sciences—Dr. Anita Corman Weinblatt, rm. A25, tel. 301-496-7179.	June 12-14	8:30	Holiday Inn, Georgetown, MD.
Mammalian Genetics—Dr. Jerry Roberts, rm. 234, tel. 301-402-1462	June 13-15	8:30	The Georgetown Inn, Georgetown, DC.
Medical Biochemistry—Dr. Alexander Liacouras, rm. 318A, tel. 301-496-7517.	June 13-15	8:30	One Washington Circle Hotel, Washington, DC.
Medicinal Chemistry—Dr. Ronald Dubois, rm. 2A09, tel. 301-496-7107	June 12-14	8:30	Holiday Inn, Crowne Plaza, Rockville, MD.
Metabolic Pathology—Dr. Marcelina Powers, rm. 435, tel. 301-496-5251	June 25-27	8	Holiday Inn, Georgetown, MD.
Metabolism—Dr. Krish Krishnan, rm. 339A, tel. 301-496-7091	June 5-7	8	Sheraton Potomac Inn, Rockville, MD.
Metallobiochemistry—Dr. Edward Zapolski, rm. 336, tel. 301-496-7733	June 20-22	8:30	Omni Georgetown Hotel, Washington, DC.
Microbial Physiology & Genetics-1—Dr. Martin Slater, rm. 238, tel. 301-496-7183.	June 10-12	8:30	Wind River Lodge, Estes Park, CO.
Microbial Physiology & Genetics-2—Dr. Gerald Liddel, rm. 226, tel. 301-496-7130.	June 10-12	8:30	Hyatt Regency Hotel, Bethesda, MD.
Molecular & Cellular Biophysics—Dr. Edmund Copeland, rm. 326, tel. 301-496-7060.	June 13-15	8:30	One Washington Circle Hotel, Washington, DC.
Molecular Cytology—Dr. Ramesh Nayak, rm. 233B, tel. 301-496-7149	June 6-8	8	Holiday Inn, Chevy Chase, MD
Neurological Sciences-1—Dr. Andrew Mariani, rm. 319A, tel. 301-496-7279	June 12-14	8:30	Hotel Washington, Washington, DC.
Neurological Sciences-2—Dr. Stephen Gobel, rm. 304, tel. 301-496-8606	June 11-13	8:30	Holiday Inn, Chevy Chase, MD.
Neurology A—Dr. Joe Marwah, rm. 303A, tel. 301-496-7095	June 20-22	8:30	Holiday Inn, Georgetown, DC.
Neurology B-1—Dr. Lawrence Sellin, rm. 306A, tel. 301-496-7846	June 18-20	8:30	Hotel Washington, Washington, DC.
Neurology B-2—Dr. Herman Teitelbaum, rm. 321, tel. 301-496-7422	June 18-21	8:30	The Savoy Suites Hotel, Washington, DC.
Neurology C—Dr. Kenneth Newrock, rm. 232, tel. 301-496-5591	June 26-29	8:30	Omni Georgetown Hotel, Washington, DC.
Nursing Research—Dr. Gertrude McFarland, rm. 352, tel. 301-496-0558	June 17-19	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Nutrition—Dr. Sooja Kim, rm. 348, tel. 301-496-7178	June 17-19	8	Holiday Inn Crowne Plaza, Rockville, MD.
Oral Biology & Medicine-1—Dr. Larry Pinkus, rm 219A, tel. 301-496-7618	June 10-13	8:30	Quality Inn Capitol Hill Hotel, Washington, DC.
Oral Biology & Mediciner-2—Dr. Larry Pinkus, rm. 219B, tel. 301-496-7618	June 3-6	8:30	Quality Inn Capital Hill Hotel, Washington, DC.
Orthopedics & Musculoskeletal—Ms. Ileen Stewart, rm. 350, tel. 301-496-7581.	June 19-21	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Pathobiochemistry—Dr. Zakir Bengali, rm. 320, tel. 301-496-7820	June 19-21	8:30	The Savoy Suites Hotel, Washington, DC.
Pathology A—Dr. Jaswant Bhorjee, rm. 337, tel. 301-496-7305	June 11-14	7 p.m.	Holiday Inn, Bethesda, MD.
Pathology B—Dr. Martin Paderathsingh, rm. A26, tel. 301-496-7244	June 11-14	7 p.m.	Ramada Inn, Betheeda, MD
Pharmacology—Dr. Joseph Kaiser, rm. 206, tel. 301-496-7406	June 26-28	8:30	American Inn, Bethesda, MD.
Physical Biochemistry—Dr. Gopa Rakhit, rm. 346A, tel. 301-496-7120	June 10-11	8:30	Holiday Inn, Chevy Chase, MD.
Physiological Chemistry—Dr. Jerry Critz, rm. 339B, tel. 301-496-7837	June 20-22	8:30	Sheraton Potomac Inn, Rockville, MD.
Physiology—Dr. Michael A. Lang, rm. 209, tel. 301-496-7878	June 13-15	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Radiation—Dr. Paul Strudler, rm. 328, tel. 301-496-7073	June 17-19	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Reproductive Biology—Dr. Dharam Dhindsa, rm. 210, tel. 301-496-7318	June 5-7	8	Holiday Inn, Bethesda, MD.
Reproductive Endocrinology—Dr. Abubekar A. Shaikh, rm. 325B, tel. 301-496-8657.	June 16-18	8	Dupont Plaza Hotel, Washington, DC.
Respiratory & Applied Physiology—Dr. Everett Sinnett, rm. 218A, tel. 301-496-7320.	June 17-19	8:30	Holiday Inn, Chevy Chase, MD.
Sensory Disorders & Language—Dr. Jane Hu, rm. 309, tel. 301-496-7805	June 12-14	8:30	Holiday Inn Capitol Hill, Washington, DC.
Social Sciences & Population—Dr. Samuel Rawlings, rm. 307, tel. 301-496-7906.	June 6-8	8:30	Omni Georgetown Hotel, Washington, DC.
Surgery & Bioengineering—Dr. Paul F. Parakkal, rm. 437, tel. 301-496-7506.	June 17-18	8	Holiday Inn, Chevy Chase, MD.
Surgery, Anesthesiology & Trauma—Dr. Keith Kraner, rm. 439, tel. 301-496-7771.	June 19-21	8	Holiday Inn, Bethesda, MD.

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Study section	May–June 1991 meetings	Time	Location
Toxicology-1—Dr. Alfred Merozzi, rm. 205, tel. 301-496-7570	June 19–21	9	American Inn, Bethesda, MD.
Toxicology-2—Dr. Alfred Merozzi, rm. 205, tel. 301-496-7570	June 12–14	9	American Inn, Bethesda, MD.
Tropical Medicine & Parasitology—Dr. Jean Hickman, rm. 1A03, tel. 301-496-1190.	June 10–11	8	Holiday Inn, Georgetown, DC.
Virology—Dr. Belinda Seto, rm. 306, tel. 301-496-7605	June 18–20	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Visual Sciences A-1—Dr. Anita Suren, rm. 325B, tel. 301-496-700	June 25–28	8:30	Holiday Inn, Bethesda, MD.
Visual Sciences A-2—Dr. Allen Dearry, rm. 319B, tel. 301-496-7795	June 19–21	8:30	The Georgetown Inn, Georgetown, DC.
Visual Sciences B—Dr. Leonard Jakubczak, rm. 325C, tel. 301-496-7251	June 12–14	8:30	Holiday Inn, Bethesda, MD.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: April 18, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-10940 Filed 5-8-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Public Health Service Award for Exceptional Achievement in Orphan Products Development

AGENCY: Office of the Assistant Secretary for Health, DHHS.

ACTION: Solicitation of nominations for the PHS award for exceptional achievement in orphan products development.

SUMMARY: The Office of the Assistant Secretary for Health and the Orphan Products Board are soliciting nominations for the PHS Award for Exceptional Achievement in Orphan Products Development. The award, which is presented by the Assistant Secretary for Health, is intended to encourage and give recognition to individuals or groups in the public and private sectors who engage in research or aid significantly in the development of orphan products for rare diseases or conditions.

DATES: Nominations must be received by July 1, 1991.

ADDRESSES: Nominations should be sent to Dr. John V. Kelsey, Executive Secretary, Orphan Products Board; Office of Orphan Products Development (HF-35); Food and Drug Administration; 5600 Fishers Lane; Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Dr. John V. Kelsey, Executive Secretary; Orphan Products Board; Office of Orphan Products Development (HF-35); Food and Drug Administration; 5600 Fishers Lane; Rockville, MD 20857. Phone: (301) 443-4903; FAX 443-4915.

SUPPLEMENTARY INFORMATION: To be considered for the this award, individuals or organizations must meet at least one of the following criteria:

1. Contribution of time, talent and/or resources that resulted in a significant achievement in the development and/or availability of orphan products for rare diseases or conditions.

2. Exhibition of outstanding leadership in directing program that advances the cause of orphan products for rare diseases or conditions.

3. Achievement of a scientific or technical breakthrough in the conception, evaluation, synthesis, or manufacture of an orphan product.

4. A single action or sustained activity that enhances orphan product development through work in research laboratories, clinics or in the community, or through other humanitarian activities.

The nomination should provide the following:

1. The name of the individual or, in the case of a group, the name of the organization and the name and title of the director and location.

2. A narrative statement not to exceed one page describing the nominee's contribution(s).

3. The names, addresses and telephone numbers of three persons or organizations familiar with the contribution(s) of the nominee. This can include the candidate, or members of his/her organization.

4. A suggested citation of 25 words of less.

5. Name, address, and telephone number of nominating individual or organization.

Nominations may be submitted at any time during the year but will be considered on an annual basis by the Board. The awards will next be presented at the public meeting of the Orphan Products Board which will take place in November or December of this year. In order to be considered for the current cycle, nominations must be received by c.o.b., Monday, July 1, 1991.

Dated: April 26, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-10944 Filed 5-8-91; 8:45 am]

BILLING CODE 4160-17-M

Availability of Grants for Minority HIV Education/Prevention Demonstration Projects

AGENCY: Office of Minority Health/Office of Assistant Secretary for Health, PHS/DHHS.

ACTION: Notice of availability of funds and request for applications under the Office of Minority Health's Program of Grants for Minority HIV Education/Prevention Projects.

Correction

Page 19244—Column one, under section titled **SUMMARY** the sentence currently reads:

"While the primary focus is on HIV infection education/prevention, all strategies must not only address HIV but must also include those health problems associated with risk behaviors underlying HIV transmission, e.g., STDs, substance abuse.

It should read:

"While the primary focus is on HIV infection education/prevention, all strategies developed must also include those health problems associated with risk behaviors. Specifically, they must include sexually transmitted diseases and substance abuse.

Page 19244—Column one, under the section titled "Disproportionate Effect of HIV on Minorities" the sentence currently reads:

"While Black and Hispanics respectively represent approximately 12% and 7% of the U.S. population, 28% of people with AIDS are Black and 1.6% are Hispanics."

It should read:

"While Black and Hispanics respectively represent approximately 12% and 7% of the U.S. population, 28% of people with AIDS are Black and 16% are Hispanics."

Page 19248—Column one, after "1. The need for HIV education/prevention for the targeted population specified by the application;" insert:

"Project Objectives/Intervention/Workplan (25 points)"

Dated: May 2, 1991.

William A. Robinson,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 91-10943 Filed 5-8-91; 8:45 am]

BILLING CODE 4160-17-M

National Vaccine Advisory Committee; Public Meeting

AGENCY: Office of the Assistant Secretary for Health.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing the forthcoming meeting of the National Vaccine Advisory Committee.

DATE: Date, Time and Place: June 6, 1991, at 9 a.m.; June 7, at 8:30 a.m.; Hubert H. Humphrey Building, room 703A, 200 Independence Avenue, SW., Washington, DC 20201. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Yuth Nimit, Ph.D., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program, 5600 Fishers Lane, Parklawn Building, room 13A-53, Rockville, Maryland 20857 (301) 443-0715.

Agenda: Open Public Hearing: Interested persons may formally present data, information, or views orally or in writing on issues pending before the Advisory Committee or on any of the duties and responsibilities of the Advisory Committee as described below. Those desiring to make such presentations should notify the contact person before May 23, 1991, and submit a brief statement of the information they wish to present to the Advisory Committee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 15 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Advisory Committee Discussion: There will be reports and discussions on three subcommittees: Vaccine Licensure and Regulation; Access to Care; and the National Vaccine Plan. A presentation will be made on using education and communication to increase demand for immunization services by a representative from the Academy for Educational Development. Meetings of the Advisory Committee shall be conducted, insofar as is practical, in accordance with the agenda published in the Federal Register notices. Changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Advisory Committee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person. Summary minutes of the meeting will be made available upon request from the contact person.

Dated: April 30, 1991.

Yuth Nimit,

Executive Secretary, NVAC.

[FR Doc. 91-10945 Filed 5-8-91; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-010-91-4410-08; 1784-010]

Arizona Strip District Advisory Council; Tour and Meeting

AGENCY: Bureau of Land Management, Arizona Strip District, Interior.

ACTION: Notice of field tour and meeting.

SUMMARY: The Arizona Strip District Advisory Council will tour the Parashant area and discuss the Resource Conservation Area designation and its future activity plan. Other topics to be discussed along the way are Resource Management Plan protests and resolution, off-highway-vehicle designations and the Approved Resource Management and Implementation Plan.

DATES: The Advisory Council will begin their tour at the Arizona Strip District Office, 390 North 3050 East, St. George, Utah at 8 a.m. on June 1, 1991. The Council will spend the night at the BLM Parashant field station and return to St. George mid afternoon on the 12th.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, 390 N. 3050 E., St. George, Utah 84770 (Phone 673-3545).

SUPPLEMENTARY INFORMATION: The tour is open to the public, but the public must provide their own transportation, food and sleeping arrangements for the tour. The Advisory Council will consider both oral and written statements from the public at arranged times along the tour. People interested in commenting should contact BLM at 801/673-3545 at least 5 days in advance.

Dated: May 2, 1991.

G. William Lamb,

District Manager.

[FR Doc. 91-11029 Filed 5-8-91; 8:45 am]

BILLING CODE 4310-33-M

[G-010-G1-0416-4111-15; OKNM 66726]

Proposed Reinstatement of Terminated Oil and Gas Lease; OKNM 66726

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2-3, A.W. Auguston petitioned for reinstatement of Oil and Gas Lease OKNM 66726 covering the following described lands located in Jackson County, Oklahoma.

T. 1S., R. 22 W.,
Sec. 28, SW¼NE¼.

Containing 40.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the land. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, October 1, 1990.

Dated: April 24, 1991.

Dolores L. Vigil,

Chief, Adjudication Section.

[FR Doc. 91-11063 Filed 5-8-91; 8:45 am]

BILLING CODE 4310-FB-M

[G-010-G1-0416-4111-15; OKNM 19641]

Proposed Reinstatement of Terminated Oil and Gas Lease; OKNM 19641

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2-3 Alex P. Aven petitioned for reinstatement of Oil and Gas Lease OKNM 19641 covering the following described lands located in Comanche County, Oklahoma.

T. 3 N., R. 10 W.,
Sec. 7, N½SE¼, SW¼SE¼, W½SE¼SE¼;
Sec. 18, W½NE¼NE¼, SE¼NE¼NE¼, W½NE¼, SE¼NE¼, SE¼.
Containing 450.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $10.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, October 1, 1990.

Dated: April 24, 1991.

Dolores L. Vigil,

Chief, Adjudication Section.

[FR Doc. 91-11064 Filed 5-8-91; 8:45 am]

BILLING CODE 4310-FB-M

[WY-920-41-5700; WYW113667]

Proposed Reinstatement of Terminated Oil and Gas Lease

May 1, 1991.

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW113667 for lands in Lincoln County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW113667 effective December 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Supervisory Land Law Examiner.

[FR Doc. 91-11031 Filed 5-8-91; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-41-5700; WYW113668]

Proposed Reinstatement of Terminated Oil and Gas Lease

May 1, 1991.

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW113668 for lands in Lincoln County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW113668 effective December 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Supervisory Land Law Examiner.

[FR Doc. 91-11032 Filed 5-8-91; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-41-5700; WYW80724]

Proposed Reinstatement of Terminated Oil and Gas Lease

Dated: May 1, 1991.

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement to oil and gas lease WYW80724 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accuring from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW80724 effective October 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Supervisory Land Law Examiner.

[FR Doc. 91-11035 Filed 5-8-91; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-41-5700; WYW70104]

Proposed Reinstatement of Terminated Oil and Gas Leases

Dated: May 1, 1991.

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW70104 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Minerals Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW70104 effective October 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Supervisory Land Law Examiner.

[FR Doc. 91-11034 Filed 5-8-91; 8:45 am]

BILLING CODE 4310-22-M

[CO-050-4212-14; COC-46399]

Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Proposed Sale of Public Land and Simultaneous Conveyance of Mineral Interests, Clear Creek County.

SUMMARY: The following land is being evaluated for sale and mineral conveyance under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713):

Sixth Principal Meridian, Colorado
T.5S., R.73W.,
Section 36: Lots 5, 6, 7, 8, 9, 10 and 11; containing 14.05 acres.

The purpose of the proposed sale(s) is to resolve longstanding inadvertent occupancy trespasses. If applicable the lands may also be sold under the Color-of-Title Act of 1928, as amended (67 Stat. 227; 43 U.S.C. 1068, 1068a).

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action, or two years from the date of publication of this notice, whichever occurs first.

DATES: Comment period is June 24, 1991.

ADDRESSES: Bureau of Land Management, Canon City District, P.O. Box 2200, Canon City, Colorado 81215-2200.

FOR FURTHER INFORMATION CONTACT: Priscilla McLain at the Northeast Resource Area Office at (303) 236-4300.

SUPPLEMENTARY INFORMATION: Detailed information on the bidding procedures and appraisal price will be published at least 45 days before the sale.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 91-11061 Filed 5-8-91; 8:45 am]

BILLING CODE 4310-JB-M

[WAOR 45733; (OR-130-01-4212-13; GP1-213)]

Amendment of Realty Action: Exchange of Public Lands in Lincoln, Pend Oreille and Stevens Counties, WA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: This notice amends the Realty Action published in Vol. 55, page 2,155 of the **Federal Register** on January 22, 1990, to include the following lands proposed for acquisition by exchange:

Willamette Meridian

T. 21 N., R. 32 E., Section 1, Lots 1, 2, 3, & 4, $S^{2}N^{2}$, S^{2};
Section 3, Those portions of the NE^{4}, $SE^{4}NW^{4}$ and $N^{2}SW^{4}$ lying South of the Great Northern Railroad Right of Way, SE^{4};
T. 21 N., R. 33 E., Section 6, Lots 3, 4, 5, 6, & 7, $S^{2}NE^{4}$, $SE^{4}NW^{4}$, $E^{2}SW^{4}$, SE^{4};
Section 7, Those portions of Lot 1 and the $NE^{4}NW^{4}$, lying North of the Great Northern Railroad Right-of-Way;

Aggregating 1, 497 acres more or less in Lincoln County, Washington.

Date of issue May 1, 1991.

Joseph K. Buesing,

District Manager.

[FR Doc. 91-11062 Filed 5-8-91; 8:45 am]

BILLING CODE 4310-GG-M

[CA-010-4760-08-CAZA]

Intent to Prepare Hollister Resource Management Plan Amendment, Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to 40 CFR 1501.7 and 43 CFR 1610.2(c), notice is hereby given that the Hollister Resource Area, as part of the Bakersfield District, California, will prepare an amendment to the Hollister Resource Management Plan and associated Environmental Impact Statement (RMP/EIS) for the Clear Creek Management Area.

SUPPLEMENTARY INFORMATION: The Hollister Resource Area, located in Central California, is divided into 16 Management Areas which total approximately 315,000 acres. Of those 16 Management Areas, the Clear Creek Management Area (CCMA) has approximately 48,000 acres, located in Western Fresno and San Benito Counties. The existing land-use plan for the Hollister Resource Area was completed in 1984 and the CCMA land-use plan was completed in 1986. This area is unique, since it contains the worlds largest asbestos deposit (fiberous serpentine). In 1991, the Environmental Protection Agency (EPA), investigated the public health risk due to asbestos exposure associated with this area. As a result of this Superfund investigation EPA issued clean-up orders for the Atlas Asbestos Mine located within the CCMA. BLM, in conjunction with the EPA Superfund study, will re-evaluate its land-use decisions to incorporate the concern of public health risks to asbestos exposure.

An additional area of concern to be discussed in the plan amendment is BLM's recent study of the ecology of the San Benito Evening Primrose, a federally listed threatened plant species. The San Benito Evening Primrose habitat is found in the asbestos-rich soils within the CCMA. Based upon this new information, a recovery plan for this plant species will be incorporated in this plan amendment.

It is anticipated that issues will focus on airborne asbestos emissions, recreation/off-highway vehicles, sensitive plant species, mineral exploration/development and public access. The interdisciplinary team that will develop alternative plans and analyze the associated impacts will include specialists representing the following disciplines: Soil science, air quality, hazardous material management, recreation, geology, botany, and lands/realty.

There will be extensive public involvement in this planning effort. This public involvement will include scoping meetings (listed below) to facilitate public input. Public meetings will focus on issues and alternatives to be addressed in the CCMA plan amendment. These meetings will be held in three separate locations as follows:

Wednesday, June 5, 1991—7 p.m.-9 p.m., Coalinga District Library, 305 N. 4th Street, Coalinga, CA 93210, Telephone (209) 935-1676.

Wednesday, June 12, 1991—7 p.m.-9 p.m., San Benito High School Auditorium, 1220 Monterey Street, Hollister, CA 95023, Telephone (408) 637-5831.

Wednesday, June 19, 1991—3 p.m.-5 p.m., San Jose Library—Santa Teresa Branch, 1290 International Circle, San Jose, CA 95119, Telephone (408) 281-1879.

DATES: The resource management planning process is scheduled to be completed by June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Robert E. Beehler, Area Manager, Hollister Resource Area, 20 Hamilton Court, Hollister, CA 95023. Documents relevant to BLM's planning effort are available for public review at the above address. All requests for documents that relate to the Superfund asbestos investigation should be forwarded to EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Attn: Dan Meer.

Dated: April 29, 1991.

Robert E. Beehler,

Authorized Officer.

[FR Doc. 91-11064 Filed 5-8-91; 8:45 am]

BILLING CODE 4310-40-M

[OR-050-4333-10; GP1-209]

Oregon; Draft Lower Deschutes River Management Plan/Environmental Impact Statement; Public Hearings

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent and availability of the Draft Lower Deschutes River Management Plan/Environmental Impact Statement (EIS).

SUMMARY: Pursuant to 43 CFR 1610.3 and 1610.4-5, the Department of the

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Interior, Bureau of Land Management, Prineville District Office, in cooperation with nine other managing agencies and the Deschutes River Management Committee, has developed the Draft Lower Deschutes River Management Plan/EIS.

SUPPLEMENTARY INFORMATION: The plan will result in resource management decisions for the lower 100 miles of the Deschutes River located in Wasco, Sherman and Jefferson Counties. Major management issues include boating, camping, fishing, wildlife habitat, water quality and quantity and cultural resources.

The draft plan and EIS will be available for public review from May 17, 1991 to September 30, 1991. The final plan is scheduled to be completed by the spring of 1992.

Copies of the Draft Lower Deschutes River Management Plan/EIS have been sent to the BLM and State Parks mailing list. Copies are also available at: BLM, Prineville District Office, 185 E. Fourth Street, Prineville, OR 97754 or Oregon State Parks Office, 525 Trade Street SE, Salem, OR 97310.

The public is invited to submit written comments on the preferred and other alternatives as well as the analysis of impacts contained in the document. Comments should be mailed to the Deschutes River Policy Group c/o Oregon State Parks Office, 525 Trade Street SE, Salem, OR 97310.

Public hearings will be held at:

Pendleton

Tuesday, June 11, 1991
Information Open House—2–4 p.m., Public Hearing—7–10 p.m., Pioneer Theater, Blue Mountain Community College, 2411 NW. Carden Avenue, Pendleton.

The Dalles

Wednesday, June 12, 1991
Information Open House—2–4 p.m., Oregon State Highway Office, 3313 NE. Frontage Road, The Dalles.
Public Hearing—7–10 p.m., Gymnasium, The Dalles Junior High School, 1401 I Street, The Dalles.

Portland

Thursday, June 13, 1991
Information Open House—2–4 p.m., room 290, Smith Memorial Center, Portland State University, 1825 SW. Broadway, Portland.
Public Hearing—7–10 p.m., Hearing Room, Portland Building, 1120 SW. Fifth, Portland.

Medford

Tuesday, June 18, 1991
Information Open House—2–4 p.m., Oregon Room, Bureau of Land Management, 3040 Biddle Road, Medford.
Public Hearing—7–10 p.m., Council Chamber, City Hall, 411 W. 8th, Medford.

Eugene

Wednesday, June 19, 1991
Information Open House—2–4 p.m., Public Library, 100 W. 13th, Eugene.
Public Hearing, Council Chamber, City Hall, 777 Pearl, Eugene.

Salem

Thursday, June 20, 1991
Information Open House—2–4 p.m., Public Hearing—7–10 p.m., Putnam Center, top floor, Willamette University, 900 State Street, Salem.

Madras

Monday, June 24, 1991
Information Open House—2–4 p.m., Public Hearing—7–10 p.m., Jefferson County Fire Station, Adams and J Street, Madras.

Warm Springs

Tuesday, June 25, 1991
Information Open House—2–4 p.m., Public Hearing—7–10 p.m., Agency Longhouse, 1253 Kot-Num Road, Warm Springs.

Bend

Wednesday, June 26, 1991
Information Open House—2–4 p.m., Public Hearing—7–10 p.m., Three Sisters Room, Riverhouse Motor Inn, 2075 N. Highway 97, Bend.

Maupin

Thursday, June 27, 1991
Information Open House—2–4 p.m., Public Hearing—7–10 p.m., Maupin High School Cafeteria, Maupin.

FOR FURTHER INFORMATION CONTACT: Brian Cunninghame, BLM, Prineville District, 185 E. Fourth Street, Prineville, Oregon 97754, (Telephone-503– 447–4115).

DATES: Comments must be received by September 30, 1991.

Dated: May 3, 1991.

James L. Hancock,
District Manager.

[FR Doc. 91–11058 Filed 5–8–91; 8:45 am]

BILLING CODE 4310-33-M

[ID-942-01-4730-12]

Idaho: Filing of Plats of Survey; Idaho

The supplemental plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., April 11, 1991.

The supplemental plat prepared to correct the longitude value at the corner of sections 4, 5, 8, and 9 and add the latitude and longitude values at the corner of sections 18 and 19 only (west boundary), T. 4 N., R. 29 E., Boise Meridian, Idaho was accepted April 3, 1991.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: April 29, 1991.

Gary T. Oviatt,
Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 91–11059 Filed 5–8–91; 8:45 am]

BILLING CODE 4310-GG-M

[ID-942-01-4730-12]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land will be officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., June 7, 1991.

The plat representing the dependent resurvey of Homestead Entry Survey No. 169 and the survey of tracts 37 and 38, and parcels A, B, C, and D of Homestead Entry Survey No. 169 in unsurveyed T. 26 N., R. 10 E., Boise Meridian, Idaho, Group No. 795, was accepted, April 5, 1991.

This survey was executed to meet certain administrative needs of the U.S. Forest Service, Region 1.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: April 29, 1991.

Gary T. Oviatt,
Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 91–11060 Filed 5–8–91; 8:45 am]

BILLING CODE 4310-GG-M

[G-010-G1-0415-4214-10; NMNM 82085]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs proposes to withdraw 120 acres of public land for locating a fish hatchery and for recreational use adjacent to Cutter Dam. This notice closes the land for up to 2 years from surface entry. The mineral estate is owned by the State of New Mexico.

DATES: Comments and requests for a public meeting must be received by August 7, 1991.

ADDRESSES: Comments and meeting requests should be sent to the New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, New Mexico 87504–1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, 505–988–6071.

SUPPLEMENTARY INFORMATION: On March 29, 1991, a petition was approved allowing the Bureau of Indian Affairs to file an application to withdraw the following described public land from settlement, sale, or entry under the general land laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 29 N., R. 8 W.,
sec. 32, SE¼NE¼ and E½SE¼.

The area described contains 120 acres in San Juan County.

The purpose of the proposed withdrawal is to locate a fish hatchery and for recreational use adjacent to Cutter Dam.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal, may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are those uses which do not conflict with the Bureau of Indian Affairs regulations, such as rights-of-way and permits.

The temporary segregation of the land in connection with a withdrawal application or proposal, shall not affect administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the Bureau of Reclamation.

Dated: April 30, 1991.

Frank Splendoria,
Acting, State Director.

[FR Doc. 91–11030 Filed 5–8–91; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-4214-11; NMNM 011867]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, proposes that a 3,928.50-acre withdrawal of National Forest land for use in connection with 13 recreation areas, two lookouts, one forest camp, and one administrative site continue for an additional 20 years. The land will remain closed to mining and will be opened to surface entry. The land has been and remains open to mineral leasing.

DATES: Comments should be received by August 7, 1991.

ADDRESSES: Comments should be sent to the New Mexico State Director, BLM, P.O Box 1449, Santa Fe, New Mexico 87504–1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, 505–988–6071.

SUPPLEMENTARY INFORMATION: The United States Department of Agriculture, Forest Service, proposes that the existing withdrawal made by Public Land Order No. 1085 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Rio Las Vocas Recreation Area (160.84 acres)

T. 20 N. R. 1 E.,
Sec. 2, lots 2 and 3, SW¼NE¼, and SE¼NW¼.

Clear Creek Recreation Area (120.08 acres)

T. 20 N., R. 1 E.,
Sec. 3, lots 3 and 4.
T. 21 N., R. 1 E.,
Sec. 34, E½SW¼SW¼ and W½SE¼SW¼

Penas Negras Recreation Area (160 acres)

T. 20 N., R. 2 E.,
Sec. 7, NE¼SE¼;
Sec. 8, N½SW¼ and NW¼SE¼.

Calaveras Forest Camp (140.33 acres)

T. 20 N., R. 2 E.,
Sec. 27, E½NE¼NE¼, E½W½NE¼NE¼, W½E½SE¼NE¼, E½W½SE¼NE¼, SW¼SW¼SE¼NE¼, NW¼NE¼NE¼SE¼, W½NE¼SE¼, E½SE¼NW¼SE¼, E½SW¼SE¼, and NW¼SE¼SE¼;
Sec. 34, lot 3, E½NW¼NE¼, and W½SW¼NE¼NE¼.

Dead Man's Lookout (144.37 acres)

T. 25 N., R. 2 E.,
Sec. 6, lots 6 and 7, and E½SW¼.

East Jemez Recreation Area (112.34 acres)

T. 18 N., R. 3 E.,
Sec. 2, lots 5, 6, and 7, N½NW¼SW¼NW¼, and SW¼NW¼SW¼NW¼.

Banco Bonito Recreation Area (121.48 acres)

T. 18 N., R. 3 E.,
Sec. 3, lots 9 and 10, NW¼SE¼, NW¼SW¼SE¼, and NW¼NE¼SW¼SE¼.

Jemez Falls Recreation Area (157.50 acres)

T. 18 N., R. 3 E.,
Sec. 2, SW¼SW¼, W½SE¼SW¼, and W½E½SE¼SW¼;
Sec. 3, NE¼NE¼SW¼SE¼, S½NE¼SW¼SE¼, S½SW¼SE¼, and SE¼SE¼;
Sec. 10, N½NW¼NE¼.

San Antonio Recreation Area (105 acres)

T. 19 N., R. 3 E.,
Sec. 8, NW¼SW¼, E½SW¼SW¼, E½NW¼SW¼SW¼, and W½W½SE¼SW¼;
Sec. 17, E½NW¼NW¼ and NW¼NE¼NW¼.

La Cueva Recreation Area (237.92 acres)

T. 19 N., R. 3 E.,
Sec. 20, lots 9 and 10, and SE¼SE¼;
Sec. 21, SW¼NW¼SW¼ and SW¼SW¼;
Sec. 28, NW¼NW¼;
Sec. 29, E½NE¼NE¼.

Jemez Canyon Recreation Area (178.86 acres)

T. 19 N., R. 3 E.,
Sec. 29, lot 8, SE½SE¼;
Sec. 32, lots 5 and 6, and W½NE¼NE¼.

Battleship Rock Recreation Area (250.28 acres)

T. 18 N., R. 3 E.,
Sec. 5, lots 1, 2 and 7.
T. 19N., R. 3 E.,
Sec. 32, lots 7 and 8, W½E½SE¼, and W½SE¼.

Las Conchas Recreation Area (94.84 acres)

T. 18 N., R. 4 E.,
Sec. 4, lots 17 and 18;

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Sec. 9, NE¼NE¼NW¼NW¼, W½NE¼ NW¼NW¼, and NW¼NW¼NW¼.

Encino Point Administrative Site (120 acres)

T. 22 N., R. 4 E.,
Sec. 19, E½E½NE¼SW¼, E½SE¼SW¼, SW¼SE¼SW¼, and W½SE¼.

Cochiti, Spruce, and Media Dia Canyon Recreation Area (1,585.04 acres)

T. 17 N., R. 5 E.,
Sec. 4, W½W½NE¼, E½W½, S½NW¼ SW¼, SW¼SW¼, and W½W½SE¼;
Sec. 5, SE¼NE¼SE¼, E½SE¼SE¼;
Sec. 9, S½SE¼NE¼ (excepting MS 1803), W½NE¼ (excepting MS 1803), E½ NW¼, NW¼NW¼, NE¼SW¼NW¼, and E½SE¼ (excepting MS 1803);
Sec. 10, S½SW¼NW¼ (excepting MS 1803), SW¼NE¼SW¼, NW¼SW¼ (excepting MS 1803), S½SW¼, and W½ SW¼SE¼;
Sec. 15, NW¼NW¼NE¼ and N½N½ NW¼.
T. 18 N., R. 5 E.,
Sec. 17, SW¼SE¼NW¼, N½SW¼, E½ SW¼SW¼, and SE¼SW¼;
Sec. 20, E½W½;
Sec. 28, SW¼SW¼NW¼ and W½SW¼;
Sec. 29, W½NE¼NE¼, NW¼NE¼, N½ SW¼NE¼, SE¼SW¼NE¼, SE¼NE¼, and E½NE¼NW¼;
Sec. 33, W½SW¼NE¼, SW¼NE¼NW¼, NW¼NW¼, NE¼SW¼NW¼, SE¼ NW¼, E½SW¼, and W½W½SE¼.

San Miguel Lookout (150 acres)

T. 18 N., R. 5 E., unsurveyed
Sec. 25, W½SW¼, that portion lying outside the Dome Wilderness;
Sec. 26, E½SE¼, that portion lying outside the Dome Wilderness.

Aspen Basin Recreation Aea (90 acres)

T. 16 N., R. 11 E., unsurveyed
Sec. 8, S½S½NE¼SW¼, N½SE¼SW¼, SE¼SE¼SW¼, S½SW¼SE¼, and S½ N½SW¼SE¼;
Sec. 17, N½NW¼NE¼.

The areas described aggregate 3,928.50 acres more or less in Sandoval, Rio Arriba, and Santa Fe Counties.

The purpose of the withdrawal is for use in connection with 13 recreation areas, two lookouts, one forest camp, and one administrative site, and for protection of substantial capital improvements on these facilities. The withdrawal currently segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. The land will be opened to operation of the public land laws and will remain open to mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: April 30, 1991.

Frank Splendoria,

Acting State Director.

[FR Doc. 91-11033 Filed 5-8-91; 8:45 am]

BILLING CODE 4310-FB-M

National Park Service

General Management Plan, Eugene O'Neill National Historic Site; Record of Decision

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91-190 as amended), and specifically to regulations promulgated by the Council on Environmental Quality at 40 CFR 1505.2, the National Park Service, Department of the Interior, has approved a Record of Decision (ROD) for the General Management Plan/Environmental Impact Statement for the Eugene O'Neill National Historic Site, Contra Costa County, California.

The National Park Service will implement the proposed plan as identified in the Final Environmental Impact Statement/General Management Plan issued in December 1990.

Copies of the Record of Decision may be obtained either from the Site Manager, Eugene O'Neill National Historic Site, P.O. Box 280, Danville, CA 94526, or the Western Regional Office, 600 Harrison St., suite 600, San Francisco, CA 94107-1372.

Dated: April 17, 1991.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 91-11016 Filed 5-8-91; 8:45 am]

BILLING CODE 4310-70-M

Delaware and Lehigh Navigation Canal National Heritage Corridor

AGENCY: Delaware and Lehigh Navigation Canal National Heritage Corridor Commission; National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATES: May 23, 1991 at 1 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Public Information Center, Eckley Miners' Village, PA (Eckley is eight miles east of Hazleton, off PA 940 in Luzerne County, with access from I-80 or I-81. (717) 636-2070.

FOR FURTHER INFORMATION CONTACT: Millie Alvarez, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, room P-208, Bethlehem, PA 18018 (215) 861-0345.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 100-692 to assist the Commonwealth and its political subdivision in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to National Park Service, Mid-Atlantic Regional Office, Division of Park and Resource Planning, 260 Custom House, 200 Chestnut Street, Philadelphia, PA, 19106, attention: Deirdre Gibson.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

Dated: April 23, 1991.

James W. Coleman, Jr.,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 91-11017 Filed 5-8-91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 25, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by March 24, 1991.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Sharp County

Crystal River Tourist Camp, Jct. of US 167 and Cave St., Cave City, 91000620

CALIFORNIA

Los Angeles County

Washington Building, 9720-9732 Washington Blvd., Culver City, 91000635

LOUISIANA

Caddo Parish

Central Fire Station, 801 Crockett St., Shreveport, 91000625
Central Railroad Station, 1025 Marshall St., Shreveport, 9100622
Shreveport Municipal Memorial Auditorium, 705 Grand Ave., Shreveport, 91000624
South Highlands Fire Station, 763 Oneonta, Shreveport, 91000626
YMCA, Downtown Branch, 400 McNeill St., Shreveport, 91000621

NEW YORK

Franklin County

First Congregational Church, 2 Clay St., Malone, 91000627

Onondaga County

Camillus Union Free School, Jct. of First and LeRoy Sts., Camillus, 91000628

TENNESSEE

Shelby County

Germantown Redoubt, Honey Tree Dr. S of jct. with Poplar Pike, Germantown, 91000623

WASHINGTON

Clallam County

Sequim Opera House, 119 N. Sequim Ave., Sequim, 91000632

Island County

Olympic Club, 230 1st St., Langley, 91000630

King County

1411 Fourth Avenue Building, 1411 Fourth Ave., Seattle, 91000633

Spokane County

Finch, John A., Memorial Nurses Home, N. 852 Summit Blvd., Spokane, 91000631
Sears, Roebuck Department Store, W. 902 Main Ave., Spokane, 91000629

[FR Doc. 91-11018 Filed 5-8-91; 8:45 am]

BILLING CODE 4310-70-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91-38)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on High Temperature Materials and Structures Technology.

DATES: June 11, 1991, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Dryden Flight Research Facility, Ames Research Center, Building 4800, room 2016 800 Lilly Drive, Edwards, CA 93523.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Venneri, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2760.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics, Exploration and Technology (OAET) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The AD Hoc Review Team on High Temperature Materials and Structures Technology, chaired by Professor Edgar A. Starke, Jr., is composed of ten members.

The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

TYPE OF MEETING: Open.

AGENDA: June 11, 1991.

8 a.m.—Welcome.
8:15 a.m.—Opening Remarks.
9 a.m.—High Temperature Materials and Structures Overview.
10 a.m.—Review of High Temperature Airframe Structures Testing Facilities and Requirements.
1 p.m.—Facilities Tour.
2:30 p.m.—Group Discussion.
5 p.m.—Adjourn.

Dated: May 3, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-11065 Filed 5-8-91; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 27-47]

Chem-Nuclear Systems Inc.; Finding of no Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Finding of no significant impact.

SUMMARY: The Nuclear Regulatory Commission (NRC) is renewing, in its entirety, pursuant to 10 CFR part 70, License Number 12-13536-01 issued to Chem-Nuclear Systems Incorporated of Barnwell, South Carolina, for disposal of special nuclear material at its low-level radioactive waste (LLW) disposal facility located near Barnwell, South Carolina. The NRC staff has determined that issuance of this amended license will have no significant adverse impacts on health and safety, or the environment.

FOR FURTHER INFORMATION CONTACT: LeRoy S. Person, Low-Level Waste Management Branch, Division of Low-Level Waste Management and Decommissioning, Nuclear Regulatory Commission, Washington, DC 20055, Telephone (301) 492-0575.

SUPPLEMENTARY INFORMATION:

(1) Proposed Action

The renewal, in its entirety, pursuant to 10 CFR Part 70, of License Number 12-13536-01 which authorizes Chem-Nuclear Systems, Incorporated to receive, possess, store and dispose of special nuclear material (SNM) at their commercial low-level radioactive waste (LLW) disposal facility located near Barnwell, South Carolina.

(2) NRC Position

The staff has prepared an Environmental Assessment for the licensing action (Reference 1). Based on the Environmental Assessment, the staff does not plan to prepare an Environmental Impact Statement.

(3) Reasons for the Finding of No Significant Impact

In the assessment, the staff considered three alternatives: (1) Denial of the renewal application; (2) renewal of the application as proposed; and (3)

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renewal of the license incorporating upgraded requirements. The staff has followed the third alternative and has determined that renewal of the SNM license will not result in any significant adverse impact on the environment. This conclusion is supported by the following findings:

(1) The renewal grants authority for disposal of the same quantities and concentrations of SNM as are presently disposed of at the Barnwell facility;

(2) Staff expects no significant adverse impacts associated with continued disposal of SNM which represents a small fraction of the source and byproduct material disposed of at the facility; and

(3) Staff believes a new condition providing more rigorous requirements on reporting SNM quantities in waste, a new condition on environmental monitoring and continued NRC and State of South Carolina cooperation in regulating waste disposal operations at the Barnwell disposal facility will provide further assurance of no incremental or significant adverse impact on the environment.

These areas are discussed in further detail in the Environmental Assessment.

(4) References.

(1) Environmental Assessment for Renewal of Special Nuclear Material License Number 12-13536-01 Issued to Chem-Nuclear Systems, Incorporated, April 1991.

(2) Safety Evaluation Report for Renewal of NRC License Number 12-13536-01 Issued to Chem-Nuclear Systems, Incorporated, dated April 1991.

(3) Chem-Nuclear Systems Incorporated's Application for a Special Nuclear Materials License, dated April 26, 1988.

(4) Revision to Chem-Nuclear, Inc.'s Operating Procedures, submitted to NRC with letter dated December 17, 1987.

Documents are available for public inspection, and copying at the Commission's Public Document Room, located at 2120 L Street, NW., Lower-Level, Washington, DC, and at the Local Public Document Room located at the Barnwell Public Library, Barnwell, South Carolina.

Dated at Rockville, Maryland, this 30th day of April, 1991.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Chief, Low-Level Waste Management Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 91-11056 Filed 5-8-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 27-47]

Chem-Nuclear Systems Inc.; License Issuance

AGENCY: Nuclear Regulatory Commission.

ACTION: License issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has renewed, in its entirety, pursuant to 10 CFR part 70, License Number 12-13536-01 issued to Chem-Nuclear Systems Incorporated of Barnwell, South Carolina, for disposal of special nuclear material at its low-level radioactive waste disposal facility located near Barnwell, South Carolina. The NRC staff has determined that issuance of this amended license will have no significant adverse impacts on health and safety, or the environment.

FOR FURTHER INFORMATION CONTACT: LeRoy S. Person, Low-Level Waste Management Branch, Division of Low-Level Waste Management and Decommissioning, Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-0575.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) has renewed, in its entirety, License Number 12-13536-01 issued to Chem-Nuclear Systems, Inc. for disposal of special nuclear material (SNM) at its low-level radioactive waste (LLW) disposal facility located near Barnwell, South Carolina. The renewed license supersede the previous license authorizing disposal activities at Chem-Nuclear Systems' facility near Barnwell, South Carolina. The amended SNM license incorporates new requirements for criticality safety and environmental monitoring and was prepared in accordance with NRC guidance regarding licensing of disposal of SNM at facilities located in and licensed by Agreement States. Following that guidance, NRC staff's principal focus in the review was on criticality safety and security of the SNM. NRC places reliance on the overall regulatory responsibility and program of the State for site design, operations, monitoring and closure.

The NRC staff has prepared a Safety Evaluation Report (SER) and an Environment Assessment (EA) for this renewal. They support the conclusion that issuance of the renewed license will have no significant adverse impacts on health, safety or the environment. Accordingly, a Finding of No Significant Impact was issued under separate cover. Copies of the SER, EA, and all other documents relative to the license renewal are available for public inspection at the Commission's Public Document Room located at 2120 L Street NW, Lower-Level, Washington, DC and at the local Public Document Room located at the Barnwell Public Library. The NRC finds that issuance of the license complies with the requirements of the Atomic Energy Act of 1954, as amended, and the requirements of title 10, chapter 1, Code of Federal Regulations.

Dated at Rockville, Maryland, this 30th day of April, 1991.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Chief, Low-Level Waste Management Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 91-11057 Filed 5-8-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-72]

University of Utah; Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of Orders authorizing the University of Utah (the licensee) to dismantle the AGN-201M reactor facility and dispose of the component parts, and termination of Facility License No. R-25, in accordance with the licensee's application dated July 17, 1990, as supplemented on July 18, 1990.

The first of these Orders would be issued following the Commission's review and approval of the licensee's detailed plan for decontamination of the facility and disposal of the radioactive components, or some alternate disposition plan for the facility. This Order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second Order terminating the facility license and any further NRC jurisdiction over the facility. Prior to issuance of each Order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By June 10, 1991, the licensee may file a request for a hearing with respect to issuance of the subject Orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules and Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch; or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: petitioner's name and telephone number; date petition was mailed; University of Utah; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. William Evans, Assistant to the Attorney General, Office of the Attorney General, 11th Floor, 36 South State Street, Salt Lake City, Utah 84111, attorney for licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated July 17, 1990, as supplemented on July 18, 1990. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 2nd day of May 1991.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91-11055 Filed 5-8-91; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Vocational Report.

(2) *Form(s) submitted:* G-251.

(3) *OMB Number:* 3220-0141.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 6,700.

(9) *Total annual responses:* 6,700.

(10) *Average time per response:* .5074.

(11) *Total annual reporting hours:* 3,400.

(12) *Collection description:* Section 2 of the RRA provides for payment of disability annuities to qualified employees and widow(er)s. The collection obtains the information needed to determine ability to work.

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ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 91-11037 Filed 5-8-91; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29157; File No. SR-Amex-90-16]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change Relating to Mandatory Comparison or Close-Out of Trades Not Later Than the Day After Trade Date

May 2, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] on July 30, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-Amex-90-16). The Commission published notice of the proposal in the **Federal Register** on February 19, 1991.[2] The Commission received no comments on the proposal.

I. Description of the Proposal

The proposal will adopt new rules and will amend or rescind certain existing rules to formalize the operational procedures for full implementation of the Amex's electronic equity trade comparison facility, known as the Intra-Day Comparison System ("IDC").[3]

Specifically, the proposal will add a new Amex Rule 731 (Resolution of Uncompared Trades) that will set forth in detail the mechanics of resolving uncompared equity trades through the facilities of IDC. These provisions of proposed rule 731 already are in full operation under: (1) The Commission order approving Amex Rule 719, which provided the enabling authority for Amex to require equity transactions to be compared or otherwise closed-out not later than one business day after the trade date (*i.e.* T+1);[4] (2) the Commission order approving IDC;[5] and (3) certain operational booklets and circulars, describing IDC operations, that Amex has issued to its membership over the past eighteen months.[6] Additionally, the proposal will modify substantially five Amex rules to incorporate IDC terminology and procedures: (1) rule 116 (Opening Automated Report Service), (2) rule 719 (Next Day Comparison), (3) rule 720 (Duty to Report Transactions), (4) rule 721 (Comparison of Transactions Not To Be Cleared), and (5) rule 722 (Comparison of Transactions Through A Registered Clearing Agency). The proposal also will provide minor conforming changes to rule 234 (Clearing of System Transactions) and Rule 728 (Comparison Does Not Create Contract).

The proposal will abrogate four Amex rules in their entireties: (1) rule 723 (Comparison of Transactions Excluded from Clearance), (2) rule 724 (Floor Agent to Resolve DKs),[7] (3) rule 725 (Comparison of DKs Not Sent to Floor), and (4) 726 (Comparison of Transactions Not Included in Clearance by Error). These rules, dealing with manual trade correction procedures, were superseded by IDC.

Although new rule 731 will provide for the resolution of uncompared equity trades not later than T+1, new rule 731A will not require the resolution of uncompared bond trades until T+5, the same as traditional Amex practices.[8] Rule 729 (Comparison on Seller's Option and "When Issued" Special Contracts) will require that written contracts must be exchanged not later than T+2 in "seller's option" bond trades for more than seven days, which are not submitted to a clearing agency for comparison pursuant to clearing agency rules.

Sections 4(e) and 6(g) of article IV of Amex's Constitution will be amended to delete references to specific clearing agencies (*i.e.*, American Stock Exchange Clearing Corporation and The Options Clearing Corporation) with respect to Amex procedures. These tie-in arrangements are being eliminated from Amex's rules to conform Amex's Constitution to current Amex practices. Likewise, rule 761 (Power of Substitution) will be amended so that the term "registered clearing agency" will replace all references to National Securities Clearing Corporation.[9] Finally, the proposal includes technical amendments to rules 785, 787, and 788 whereby the term "member organization" will replace the term "member form or member organization" in conformity with Amex's current usage.[10]

II. Rationale of the Proposal

Amex states in its filing with the Commission that the proposed rule change furthers the objectives of section 6(b)(5) of the Act [11] in that it fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

III. Discussion

The Commission believes the proposal is consistent with the Act. Section 6(b)(5) of the Act[12] states that the rules of securities exchanges should be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities. Further, section 17A(a) of the Act[13] expressly contemplates the goal of prompt and efficient clearance and settlement of securities transactions and encourages the use of automation to achieve this goal. That provision of the Act also states that inefficient procedures for the clearance and settlement of securities transactions impose unnecessary risks and costs on investors and on persons facilitating transactions on behalf of investors, and it further states that more efficient and safer procedures for clearance and settlement are necessary to protect investors and persons facilitating transactions on their behalf.

The proposed rule change is designated to help accelerate the comparison or close-out requirements for equity trades from T+5 to T+1 in order to shorten the time span for open transactions and thereby reduce the risks and inefficiencies involved in the post-trade processing of securities transactions. The Commission believes that the proposed rule change benefits the marketplace by: (1) Contributing to the prompt and efficient clearance and settlement of securities transactions; and (2) reducing the risk exposure to investors and to those facilitating transactions in their behalf, which includes Amex members and their clearing agencies. The proposal, moreover, is part of an industry-wide program that has been implemented by Amex and other SROs on an incremental basis over the past three years.[14]

The Commission already has approved related Amex rule changes, including: (1) Amex rule 719, the enabling rule for T+1 comparison or close-outs;[15] and (2) the implementation of Amex's IDC System, an automated trade correction system.[16] Proposed Amex rule 731, which details the mechanics of resolving uncompared equity trades through the facilities of Amex's IDC System, a system already is in full operation.[17] Additionally, the proposal will: (1) Modify five existing Amex rules (rules 116, 719, 720, 721, and 722) to incorporate IDC terminology and procedures; (2) provide minor changes to two existing Amex rules (Rules 234 and 728) to conform them to IDC; and (3) abrogate four Amex rules (rules 723, 724, 725, and 726) involving manual operations that were superseded by IDC.

Amex has represented that IDC's hardware and software are adequate for Amex's level of equity activity. Moreover, Amex has represented that IDC is not connected with any other computer system and that accelerating to a T+1 correction cycle will affect no other Amex system and will not affect the capacity of IDC itself. Also, Amex states that inasmuch as IDC uses private lines, security is not an issue.[18]

Secondly, the proposal includes certain housekeeping changes to Amex rules that are unrelated to IDC and T+1. These changes will eliminate from Amex's Constitution and Rules the vestiges of tie-in arrangements between trades on the Amex floor and any particular clearing agency. The tie-in arrangements relate to: (1) Post-trade processing, including the comparison, clearance, and settlement of securities transactions; and (2) depository requirements. Specifically, modifications to sections 4(e) and 6(g) of Amex's Constitution and to Amex rule 761 will eliminate from Amex rules references to any particular clearing agency.[19]

The Commission notes that section 11A(c)(5) of the Act [20] provides that no national securities exchange may limit or condition the participation of any member in any registered clearing agency. Section 6(b)(5) of the Act [21] requires that the rules of a national securities exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, and settling securities transactions. Section 6(b)(8) of the Act [22] prohibits the rules of a national securities exchange from imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. These sections of the Act complement section 17A(a)(2) of the Act,[23] which directs the Commission, having due regard for the maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities.

Moreover, when adopting the Securities Acts Amendments of 1975 ("1975 Amendments"),[24] Congress directed the Commission to eliminate barriers to competition that cannot be justified under the Act, especially where unnecessary restraints are embodied in SRO rules.[25] Section 31(b) of the 1975 Amendments authorized the Commission to identify such rules and to require the SROs to rescind them.[26] In a 1976 release, the Commission stated that the historic role of clearing agencies as adjuncts to securities markets led to the development of SRO rules and procedures that imposed restraints on competition by tying the clearance and settlement of securities transactions to the market in which those transactions occur. As an example of such rules, the Commission stated that the rules of several national securities exchanges subjected securities contracts to the requirements of the by-laws and rules of clearing agencies affiliated with those exchanges.[27] Accordingly, at the Commission's request, many such rules have been rescinded by the SROs.[28]

The proposed changes to the Amex Constitution and Rules will eliminate from Amex's rules the remaining tie-in provisions between clearing agencies and the Amex trading floor. As a result of the changes, the Amex rules will conform more strictly to the cited provisions of sections 6, 11A, and 17A of the Act.[29]

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[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 28873 (February 11, 1991), 55 FR 6694.

[3] For background on IDC, see Securities Exchange Act Release No. 28069 (May 29, 1990), 55 FR 23324 [File No. SR-Amex-90-01]. IDC refers to both: (1) Amex's T+1 comparison or close-out requirements and the electronic post-trade processing necessary for T+1, and (2) the Amex automated trade correction system for resolving uncompared trades.

[4] Securities Exchange Act Release No. 27851 (March 27, 1990), 55 FR 12759 [File No. SR-Amex-89-05].

[5] *Supra*, note 2.

[6] *E.g.*, Amex, "IDC User's Guide" (1990); Amex Floor Members Circular #90-209, "T+1 Comparison for Equities (IDC)" (March 8, 1990); Amex Information Circular #90-21, "Change in DK Procedure for T+2 and T+1 Comparison Processing" (January 22, 1990); Amex Information Circular #89-209, "Amex Procedures for Equity Intra-Day Comparison" (November 17, 1989); and Amex Information Circular #89-131 (August 15, 1989) "Staffing of Back Office and Trading Floor."

[7] The term "DK," or "Don't Know," is the Amex term for uncompared trades that require further action for their resolution.

[8] IDC includes only equity trades and not bond trades. The Amex's trades in U.S. Government securities already settle on T+1, but Amex's corporate bond trades are subject to T+5 comparison or close-out rules. Accordingly, the Commission expects Amex to expand IDC to include corporate bond trades.

[9] The term "registered clearing agency" means a clearing agency registered with the Commission pursuant to section 17A(b) of the Act. 15 U.S.C. 78q-1(b). See also section 3(a)(23) of the Act, 15 U.S.C. 78c(a)(23).

[10] Amex, by a 1978 rule change, eliminated mandatory tie-in procedures with specific clearing agencies. Securities Exchange Act Release No. 14636 (April 7, 1978), 43 FR 15619 [File No. SR-Amex-77-31]. That rule change rescinded forty-five Amex rules containing clearing agency tie-in provisions. The approval order noted, however, that the list was incomplete and would require additional rule changes to finish the task of eliminating all tie-in provisions.

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 15 U.S.C. 78q-1(a).

[14] *E.g.*, Securities Exchange Act Release Nos. 26627 (March 14, 1989), 54 FR 11470 [File No. SR-NYSE-88-36]; 27074 (July 28, 1989), 54 FR 32405 [File No. SR-NSCC-89-04]; 27851 (March 27, 1990), 55 FR 12759 [File No. SR-Amex-89-05].

[15] Securities Exchange Act Release No. 27851 (March 27, 1990), 55 FR 12759 [File No. SR-Amex-89-05].

[16] Securities Exchange Act Release No. 28069 (May 29, 1990), 55 FR 23324 [File No. SR-Amex-90-01].

[17] As stated, *supra*, note 10 Amex rule 719 is in operation pursuant to Commission orders approving rule 719 and the IDC System as well as several operational booklets and circulars issued by Amex to its membership.

[18] Letter from John L. Diesem, Senior Vice President, Amex, to Judith Poppelardo, Branch Chief, SEC, dated February 23, 1990.

[19] *Supra*, note 10. Amex has submitted to the Commission a letter that withdraws the unapproved and pending portion of File No. SR-Amex-77-31. Amex also states that those proposed and pending rule changes appear in slightly different form in File No. SR-Amex-90-16. Letter from Delia M. Emmons, Secretary, Amex, to Mary N. Revell, Branch Chief, SEC, dated August 28, 1990.

[20] 15 U.S.C. 78k-1(c)(5).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78f(b)(8).

[23] 15 U.S.C. 78q-1(a)(2).

[24] 89 Stat. 97, Pub. L. No. 94-29 [June 4, 1975].

[25] Senate Comm. on Banking, Housing, & Urban Affairs, Report to Accompany S. 249, No. 75, 94th Cong., 1st Sess. 12-14 (1975).

[26] 89 Stat. 97, 170.

[27] Securities Exchange Act Release No. 13027 (December 1, 1976), 41 FR 53557. *See also Bradford National Clearing Corp.* v. *Securities and Exchange Commission*, 590 F.2d 1085, notes 25 and 27 (D.C. Cir. 1978).

[28] *E.g.*, Securities Exchange Act Release No. 14636 (April 7, 1978), 43 FR 15619. This filing, a joint rule change by eight marketplaces, eliminated over 100 tie-in rules between the securities marketplaces and their affiliated clearing agencies.

[29] 15 U.S.C. 78f, 78k-1, and 78q-1.

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Amex bond trades (other than trades in U.S. Government securities) still are subject to T+5 comparison and close-out provisions.[90] More needs to be done in this area and the Commission expects Amex, working with its membership and interested clearing agencies, to develop systems (or enhance existing systems) to accelerate the mandatory comparison or close-out of Amex bond trades from T+5 to T+1.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act, particularly sections 6(b)(5) and 17A of the Act,[91] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[92] that the above-mentioned proposed rule change (File No. SR-Amex-90-16) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[93]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10866 Filed 5-8-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29151; File No. SR-CBOE-90-35]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval, and Notice and Order Granting Accelerated Approval, to Proposed Rule Change Relating to Amendments to Exchange Procedures Governing Administration of Securities Industry Arbitration

I. Introduction

On December 20, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change designed to amend certain of the CBOE's current arbitration rules and procedures.[3] According to the Exchange, the proposed amendments are based for the most part on proposals developed by the Securities Industry Conference on Arbitration ("SICA").

The proposed rule change was noticed in Securities Exchange Act Release No. 28773 (January 14, 1991), 56 FR 2570 (January 23, 1991). No comments were received on the proposal.

II. Description of the Proposal

1. Rule 18.15: Initiation of Proceedings

The Exchange proposes to amend rule 18.15(d) in order to set forth the standard for the joining and consolidation of multiple parties. According to proposed rule 18.15(d)(1), which relates to the permissive joinder of claimants and respondents, all persons may join in one action as claimants (or may be joined in one action as respondents) if they assert any right to relief (or any right to relief is asserted against them) jointly, severally, or arising out of the same transaction, occurrence or series of transactions or occurrences and if any questions of law or fact common to these claimants (respondents) will arise in the action.

Further, current rule 18.15(d)(2) authorizes the Director of Arbitration to determine whether such parties should proceed in the same or separate arbitrations. The CBOE proposes to supplement this rule by requiring that such determination be made only after the filing of all responsive pleadings.

In addition, proposed rule 18.15(d)(3) clarifies that the Director of Arbitration is authorized to determine preliminarily whether claims filed separately are related and whether to consolidate such claims. Further, proposed rule 18.15(d)(4) allows, but does not require, the arbitration panel to make any further determinations with respect to joinder, consolidation, and multiple parties and states that such determinations shall be final.

2. Rule 18.20: Adjournments

Currently, the party requesting an adjournment, subsequent to the appointment of arbitrators, must pay a fee equal to the deposit of costs, not to exceed $100. Pursuant to proposed rule 18.20(b), however, a party requesting an adjournment after the arbitrators have been appointed shall, if the adjournment is granted, deposit a fee equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed $1,000, for a second or subsequent adjournment requested by the same party. The Exchange is not amending those portions of current rule 18.20 which allow the arbitrators to waive the deposit of this fee or direct the return of the adjournment fee in their award.

Further, pursuant to proposed rule 18.20(c), if the arbitrators receive a third request for an adjournment which is consented to by all parties, the arbitrators may dismiss the arbitration without prejudice to either party, allowing the claimant to file a new arbitration. The Exchange believes that proposed rule 18.20 (b) and (c) will discourage adjournments of scheduled hearings and thus promote the efficiency and equity of the arbitration process.

3. Rule 18.31: Awards

Proposed rule 18.31(g) states that all monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. In addition, if such a motion has been filed, either party may request the Office of the Chairman to direct that the award be paid to an escrow account maintained by the Exchange. Such request must be filed with the Secretary of the Exchange within thirty-five days of receipt of such award.[4]

The Exchange believes that this proposal will encourage prompt payment of awards and will increase confidence in the arbitration process.

4. Rule 18.33: Schedule of Fees

The Exchange proposes to amend rule 18.33 in order to increase the total fees paid by claimants, and to increase the amounts which may be retained by the Exchange when a case is settled or withdrawn prior to a hearing. Currently, the Exchange may retain $100 when a case is resolved other than by a hearing (*i.e.*, through settlement or withdrawal of the claim), regardless of the amount of the claim or the number of claims or parties involved. Therefore, in order to promote the equitable nature of arbitration among the users of the forum in proportion to the size and complexity of the claim, the Exchange has proposed amendments to rule 18.33.

The amendment to rule 18.33(a) will require parties, at the time of filing a claim, counterclaim, third-party claim or cross-claim, to pay a non-refundable filing fee in addition to the deposit of a hearing session fee.[5] Rule 18.33(a) will permit the Exchange to retain the filing fee for all cases and rule 18.33(f) will allow the Exchange to retain the hearing deposit when a case is resolved in any manner other than by a hearing within eight business days of the first scheduled hearing session other than a pre-hearing conference.

Proposed rule 18.33(c) also permits the arbitrators to determine the amount chargeable to the parties as forum fees and who shall pay such fees. Further, the arbitrators may determine in the award that a party shall reimburse to another party any non-refundable filing fee or hearing session deposit.

Proposed rule 18.33(d) relates to claims filed separately and subsequently joined or consolidated pursuant to rule 18.15(d). According to the proposal, the hearing deposit and forum fees assessable per hearing session after joinder or consolidation shall be based on the cumulative amount in dispute. The arbitrators shall determine by whom such forum fees shall be borne.

Pursuant to proposed rule 18.33(e), if the dispute, claim or controversy does not involve, disclose or specify a money claim, the party filing the claim must pay a hearing session deposit equal to $600 (or such greater or lesser amounts as the Director of Arbitration or the panel of arbitrators may require, but not to exceed $1,500), in addition to a $250 non-refundable filing fee.

In addition, if a matter is submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session, including a pre-hearing conference with an arbitrator, proposed rule 18.33(g) allows the Exchange to assess forum fees and costs incurred pursuant to rules 18.15(e), 18.20 and 18.27 based on hearing session(s) held and scheduled within eight (8) business days of the Exchange receiving notice that the matter has been settled or withdrawn. Further, according to proposed rule 18.33(g), the arbitrators shall determine by whom such forum fees and costs shall be borne.

Finally, proposed Rule 18.33(h) clarifies the distinction made between customer claims and member claims by stating that a customer claim is any claim involving a customer and a member or person associated with a member, while any claim submitted by a member or a person associated with a member against another member is a member claim.

5. Rule 18.37: Failure to Honor Award

At present, the Exchange relies upon its implicit authority to seek disciplinary actions against any member, or person associated with a member, who fails to honor an arbitration award. Proposed rule 18.37 will explicitly state that any member, or person associated with a member, who fails to pay an award, will be subject to disciplinary proceedings in accordance with chapter 17 of the CBOE's Rules.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the portion of the proposed rule change regarding the amendments to Exchange rule 18.15(d): Joining and Consolidation—Multiple Parties. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-90-35 and should be submitted by May 30, 1991.

IV. Discussion and Conclusion

For the past several years, the Commission has devoted a significant portion of its time and resources to the oversight of self-regulatory organization ("SRO") arbitration. The Commission was instrumental in promoting the formation of SICA in 1977 and, since that time, has maintained a strong and continual interest in the arbitration rules and procedures in place at the various SROs, including the CBOE. The Commission has been supportive of SICA's most recent proposals to amend the Uniform Code of Arbitration, and has encouraged SROs to adopt these amendments into their rules. In fact, the CBOE's proposal herein is substantially similar to New York Stock Exchange, Inc. ("NYSE"), National Association of Securities Dealers, Inc. ("NASD"), Pacific Stock Exchange, Inc. ("PSE") and American Stock Exchange, Inc. ("Amex") proposals to amend their arbitration rules and procedures which recently were approved by the Commission.[6]

The Commission has reviewed carefully the Exchange's proposed rule change, and finds, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of section 6.[7] The Commission finds that the proposed rule change should improve the speed and efficiency of arbitration, while at the same time maintaining the traditional qualities of arbitration.

More specifically, the Commission finds that the proposed amendments to rule 18.15(d) should facilitate the joining, in appropriate cases, of claims by investors with similar allegations against their broker-dealers and associated persons. Amended rule 18.15(d) sets forth the elements required for the joinder and consolidation of actions and parties, establishes sufficiently clear standards for the

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[90] *Supra*, note 8.

[91] 15 U.S.C. 78f(b)(5) and 78q-1.

[92] 15 U.S.C. 78s(b)(2).

[93] 17 CFR 200-30.3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] The CBOE also filed three amendments to the proposal. Amendment No. 1, submitted to the Commission on March 27, 1991, revises the original proposal substantively by adding amendments to rule 18.15(d): Joining and Consolidation—Multiple Parties, and by revising the proposed filing fees applicable to member/member controversies. The remainder of Amendment No. 1 includes clarifying and technical revisions only. The CBOE has requested that the Commission grant accelerated approval, pursuant to section 19(b)(2) under the Act, to the substantive portion of Amendment No. 1 relating to the amendment to rule 18.15 (see letter from Mary Neal Harvey, Director of Arbitration, CBOE, dated April 2, 1991). In addition, on April 3, 1991, the CBOE submitted Amendment No. 2 to File No. SR-CBOE-90-35, which contained technical revisions. Finally, in Amendment No. 3, submitted to the Commission on April 30, 1991, the Exchange withdrew the portion of the proposed rule change adding rule 18.31(g), with the intention of resubmitting amendments to rule 1831 at a future date. Consequently, proposed rule 18.31(h) has become new proposed rule 18.31(g) (see letter from Mary Neal Harvey to Laurie Petrell, dated April 30, 1991).

[4] The last sentence of proposed rule 18.31(g) which refers to this 35 day requirement was added to the proposal in Amendment No. 1 to clarify the method by which an escrow account could be established pursuant to rule 18.31(g). The Municipal Securities Rulemaking Board ("MSRB") has a similar rule. See MSRB Rule G-35, Section 31. Awards.

[5] Proposed rule 18.33 contains schedules of filing fees, pre-hearing conference fees and hearing session deposit fees for customer and industry claimants. The customer claimant filing fee schedule ranges from a fee of $15 for claims under $1,001 to a fee of $300 for claims over $5 million. The hearing session deposit fee for customer claimants ranges from $15 to $75 for simplified arbitration cases (*i.e.*, claims $10,000 or less), and ranges from $15 for claims under $1,001 to $1,500 for claims over $5 million. The fee for a pre-hearing conference for customer claims ranges from $15 for claims of $1,000 or less to $300 for claims over $30,000. For industry claimants, the proposed filing fee ranges from $75 for claims less than $2,500 to $1,500 for claims over $1 million, and the hearing session deposit fee for such cases ranges from $600 for claims under $100,000 to $1,500 for claims over $1 million. Finally, the pre-hearing conference fee for member disputes ranges from $15 for claims equal to or less than $1,000 to $500 for claims greater than $100,000.

[6] *See* Securities Exchange Act Release No. 28421 (September 10, 1990), 55 FR 38181 (order approving File No. SR-NYSE-90-19); Securities Exchange Act Release No. 28066 (June 1, 1990), 55 FR 23493 (order approving File No. SR-NASD-90-03); Securities Exchange Act Release No. 28783 (January 15, 1991), 56 FR 2783 (order granting accelerated approval to File No. SR-PSE-90-31); and Securities Exchange Act Release No. 29067 (April 15, 1991) (order approving File No. SR-Amex-90-24).

[7] 15 U.S.C. 78f (1988).

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Director of Arbitration to determine preliminarily, and for the arbitration panel to make a final determination, regarding whether related claims should proceed in the same or a separate proceeding.

In addition, the Commission agrees with the Exchange that the proposed amendments to rule 18.20 should reduce the number of adjournments requested by the parties. In particular, the Commission believes that the amendment to rule 18.20(c), which grants the arbitrators express authority to dismiss cases without prejudice after repeated adjournments, should operate to discourage adjournments and thus should result in a more efficient allocation of the Exchange's arbitration resources and a more timely resolution of parties' disputes. The Commission further believes that the amendment to rule 18.20(b) that increases the fee for adjournments provides for an equitable method for the retention of reasonable fees to recover the costs associated with the empaneliment of the arbitrators following repeated adjournments, as well as a means to defray the arbitrators' compensation.

The Commission agrees with the Exchange that the amendment to rule 18.31 should encourage the prompt payment of awards and increase confidence in the arbitration process. The Commission believes that the portion of the amendment to rule 18.31(g) which requires that awards be paid within thirty (30) days of receipt, unless a motion to vacate has been filed with a court of competent jurisdiction, should ensure that parties' economic damages are more fully, fairly and promptly redressed. Further, the Commission believes that the portion of proposed rule 18.31(g) which allows either party to request, subsequent to the filing of such a motion and within 35 days of the date of the arbitrators' decision, that the Office of the Chairman of the Exchange direct that the award be paid to an escrow account maintained by the Exchange provides the party making such request ample time to do so, while not unduly prejudicing or prolonging the final outcome of the arbitration.[8]

The Commission believes that the general restructuring of the Exchange's fee provisions and the proposed fee increases provide for the equitable allocation of reasonable fees among Exchange members and other persons using its facilities. As stated above, the proposed amendment to rule 18.33 requires filing fees in addition to the hearing session deposits, provides a schedule of fees for a pre-hearing conference with an arbitrator, and permits the Exchange to retain the filing fee even when a case is resolved in any manner other than by a hearing. The Commission believes that rule 18.33's explicit fee structure should promote certainty regarding the fees for pre-hearing conferences through its published fees. Likewise, the Commission believes that the proposed amendment to rule 18.33, which requires parties to member controversies to pay a filing fee and provides a schedule of fees for a pre-hearing conference with an arbitrator, provides for an equitable schedule of fee assessments against Exchange members. The Commission believes, therefore, that the amendments to rule 18.33 equitably allocate reasonably apportioned fees among the users of the Exchange's arbitration forum in proportion to the costs associated with the respective parties.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that, because these rules will aid in the just resolution of disputes between investors and broker-dealers, the proposed rule change is consistent with section 6(b)(5) of the Act,[9] which requires that national securities exchanges have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, further investor protection and the public interest in the fair administration of arbitration proceedings conducted pursuant to such rules. In addition, the Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,[10] in that it provides for the equitable allocation of reasonable fees among Exchange members and other persons using its facilities.

The Commission finds good cause for approving the portion of the proposal relating to rule 18.15 prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. The Commission believes that accelerated approval of this portion of the proposal, set forth in Amendment No. 1, which amended rule 18.15,[11] is appropriate because the Commission previously has approved substantially identical proposals submitted by certain other SROs (see note 6, *supra*). Moreover prior to Commission approval of the adoption of this rule by the other SROs, the proposed rule changes were noticed in the **Federal Register**, and no comments were received on the proposals.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Dated: May 1, 1991.

Margaret H. McFarland,

Deputy Secretary.

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[8] As indicated in note 4, *supra*, the rules of the MSRB also require that upon the filing of a motion to vacate, the award shall be paid to an escrow account maintained by the MSRB.

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] 15 U.S.C. 78f(b)(4) (1988).

[11] See note 3, *supra*.

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30-3(a)(12) (1990).

[Release No. 34-29156; File No. SR-NYSE-91-09]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Proposed Rule Change Relating to the Overnight Comparison System That Will Permit Security Position Movements and the Comparison of "Ex-Clearing House" Transactions Through the System

May 1, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] notice hereby is given that on March 29, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change (File No. SR-NYSE-91-09) as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule changes from interested parties.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Changes

The NYSE proposes to add two enhancements to its Overnight Comparison System ("OCS")[2] that will:

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] OCS is a major automated system used by NYSE in its post-trade processing of securities transactions. While OCS provides several electronic systems, its principal function is to match the buy-side and sell-side of trades in order to produce compared trades. For information on OCS, see Securities Exchange Act Release No. 26627 (March 14, 1989), 54 FR 11470 [File No. SR-NYSE-88-36].

(1) Permit participants in its Correction System[3] to transfer stock, rights, and warrants positions among each other through OCS; and (2) permit comparison through OCS of trades executed on the NYSE floor for "cash," whereas previously such trades were compared pursuant to arrangements between the parties, *i.e.*, ex-clearing house.[4]

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in item IV below and is set forth in Sections (A), (B), and (C) below.

(A) SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(1) Purpose

(a) *Proposed "Step-Out Service"*. The NYSE proposes to offer the clearing community a product known as the "Step-Out Service." This Service will enable NYSE's clearing members to issue instructions to a qualified clearing agency[5] for the movement of securities positions between their accounts by pressing buttons on a computer terminal. Specifically, it will permit all or part of an open securities transaction, which was executed on the NYSE floor, to be transferred from one clearing firm to another clearing firm (*i.e.*, movements known as "flips" or "step-outs") prior to settlement of the trade. For all practical purposes, NYSE is proposing an electronic mail service between its clearing members and any qualified clearing agency of their choice. The Step-Out Service will be an adjunct to the Exchange's Correction System, which is a major component of OCS, but the Step-Out Service and the Correction System will not interface.[6]

The clearing members that participate in the proposed service will be able to place a record on their Step-Out Service terminal screens in the form of "buy" or "sell" transactions, where the identity of the security, the number of shares, price and contra clearing firm are stipulated. The contra, or receiving participant, may affirm, reject, or leave an item unaffirmed.[7] At the end of each trading day, the Exchange will transmit affirmed items to the appropriate qualified clearing agency where credits and debits will be made to the clearing firms' accounts, as applicable. The appropriate qualified clearing agency will merge them into the normal clearance and settlement cycles. By allowing these records to be merged into the clearance cycle with all other transactions, the clearance members can accommodate their business requirements through the normal comparison vehicle at a Qualified Clearing Agency, thereby adding to the efficiency of the comparison and clearing process without adding to expenses. The NYSE has determined that the per-item usage fee for the Step-Out Service will be $0.20, which is $0.20 less than the OCS $0.40 per-item usage fee (a fee differential that the Exchange has stated is justified because the Step-Out Service will utilize only a portion of OCS's capabilities).[8] The Exchange states that, in accord with its existing rules, the use of the Step-Out Service and any related failure of trade comparison or failure to receive or deliver securities will have no effect on the terms of any original securities contract or on the liabilities of the original parties.[9]

The NYSE further states that the proposal will offer advantages in several routine post-execution situations: (1) Institutional customers may wish to allocate executions among two or more Exchange clearing members; (2) a clearing member may wish to "give-up" (*i.e.*, substitute) another clearing member for itself after the original comparison has been completed; and (3) clearing members' customers may desire one average price rather than having two or more actual contract prices to be credited to another clearing firm.[10] The NYSE states further that the proposed rule change will permit its clearing firms to accomplish security movements between clearing accounts while using existing comparison systems that were not designed for this type of activity. The Exchange emphasizes that because the current clearance systems are unable to handle these trade flips efficiently, the process of effecting such security movements has become convoluted and prone to error.[11]

(b) *Proposed Comparison of "Ex-Clearing House" Transactions*. In March 1989, the Commission approved NYSE's Rule 130.[12] That rule, which was to be implemented over the eighteen months following its approval, established the principle that "regular way" transactions[13] in listed stocks, rights, and warrants must be compared or closed out within one business day after the trade date (*i.e.*, "T+1").[14] The "T+1" OCS became fully effective on August 6, 1990.[15]

Initially, the NYSE limited the use of the Correction System component of OCS to resolving uncompared transactions for regular way settlement in listed stocks that have been compared through a Qualified Clearing Agency. Subsequently, the Exchange requested and received approval from the Commission to use its Correction System to resolve uncompared transactions in stocks for "next day" and "seller's option" delivery[16] that also have been compared through a qualified clearing agency.[17] Transactions effected

[3] The "Correction System" is a major component of OCS. For information on the Correction System, see Securities Exchange Act Release No. 28773 (May 1, 1989), 54 FR 20227 [File No. SR-NYSE-89-03].

[4] *See* NYSE Rule 133.

[5] For the definition of "qualified clearing agency," see NYSE Rule 132.10.

[6] The Step-Out Service will have no execution capacity, and the size of a trade that is stepped-out cannot be expanded within the Step-Out Service. The Step-Out Service as part of the comparison cycle will be subject to review by the Exchange's audit trail and market surveillance units. Telephone conversation between Dennis Covelli, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, SEC (April 26, 1991).

[7] There can be no step-out of an item within the Step-Out Service unless the item is affirmed by the receiving participant. *Id.*

[8] For further information on the Step-Out Service usage fees, see Securities Exchange Act Release No. 29113 (April 22, 1991), ___ FR ___ [File No. SR-NYSE-91-10].

[9] NYSE Rule 142.

[10] NYSE states in the filing that its clearing firm community has requested a simple, expeditious, and cost-effective method whereby all or a part of a securities transaction executed on the NYSE floor can be transferred from one clearing firm to another clearing firm prior to settlement.

[11] For example, in one such system, a clearing firm participant may flip a position in a security to another clearing firm participant, but the receiving participant lacks the ability to reject the flip if it does not wish to accept it. (The authority to flip trades outside a comparison system is given through a signed agreement between the two participants of a qualified clearing agency.) In some instances, two comparison processes are required for each movement, resulting in an excessive net cost for each of them.

[12] Securities Exchange Act Release No. 11470 (March 20, 1989), 54 FR 11470 [File No. SR-NYSE-88-36].

[13] The term "regular way" means trade settlement on the fifth business day after the execution of a trade. NYSE Rule 64(3).

[14] This proposal applies expressly to "stocks," a term the NYSE's rules define as including stocks, rights, and warrants. NYSE Rule 4.

[15] Securities Exchange Act Release No. 28285 (July 30, 1990), 55 FR 31930 [File No. SR-NYSE-90-21].

[16] For definitions of "next day" and "seller's option" settlement, see NYSE rule 64.

[17] Securities Exchange Act Release No. 27808 (January 18, 1990), 55 FR 1749 [File No. SR-NYSE-89-43].

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on the Exchange for "cash" or "same day" delivery[18] were not included in that request because the processing schedules of qualified clearing agencies do not permit comparison of such transactions on a basis which would permit delivery of securities in compliance with the times specified in Exchange rules.[19]

The inability to compare "cash" transactions through the facilities of a qualified clearing agency has resulted in clearing firms using manual procedures to compare the trades with each other, a practice referred to as "ex-clearing house comparison."[20] These manual procedures apply to any ex-clearing house transaction made for "regular way," "next day," and "seller's option" delivery in stocks, rights, warrants, as well as "when issued" and "when distributed" securities.

The current ex-clearing house procedure involves manual delivering of a paper form to the office of the contra-party to the trade, verifying the trade details, attesting to form's accuracy, and stamping the form, before delivery can be effected. Because of the narrow time frame involved in "cash" transactions, it would not be unusual to have a comparison form stamped and physical delivery made at the same time, especially for "cash" transactions made late in the trading session.

The fact that these labor-intensive manual functions must be performed within a relatively short time frame for "cash" transactions has caused the Data Management Division ("DMD") of Wall Street, which is a division of the Securities Industry Association, to ask the Exchange to permit the use of OCS for the comparison of these types of trades. In considering this request, the Exchange recognizes that the comparison of ex-clearing house transactions are the last remaining Exchange comparison procedures that have not been automated for stocks, rights, and warrants.

Therefore, the NYSE proposes to permit its clearing members to display ex-clearing house transactions in stocks, rights, warrants, "when issued" and "when distributed" securities for "cash", "regular way", "next day" or "seller's option" delivery, as may be applicable, on their OCS terminals.

If both parties agree to the trade details, it can be so indicated on the screen. Both parties can produce a paper copy of the terminal screen, which will substitute for the paper forms and written contracts as required in rules 133(b) and 137(a). If the trade details are not correct, they can be resolved (1) on the same business day, if a "cash" transaction; or (2) on the next business day if subject to the overnight comparison requirements of rule 130. Thus, the Exchange's Correction System with its inherent electronic speed and accuracy can replace a manual, labor-intensive comparison process that is now in use. Nevertheless, the proposal will permit firms desiring to compare manually ex-clearing house transactions to continue to do so.

The NYSE represents that these two additional functions of the Correction System (*i.e.*, the Step-Out Service and automated comparison of ex-clearing house trades) will not diminish its capability to accommodate ordinary message traffic as well as peak traffic. Additionally, the Exchange represents that the Correction System's security measures are satisfactory to prevent internal and external violations.

(2) Statutory Basis for the Proposed Rule Changes

The NYSE believes that the Step-Out Service and the automated comparison of Ex-Clearing House "cash", "regular way", "next day" and "seller's option" transactions in stocks will help promote coordination with persons engaged in clearing and settling transactions in securities as called for in section 6(b)(5) of the Act.[21]

These proposed enhancements to the Exchange's OCS also meet the requirements of section 17A(a)(1) of the Act[22] in that they will help eliminate inefficient procedures for clearance and settlement that impose unnecessary costs on investors and persons facilitating transactions by and on behalf of investors.

(B) SRO's Statement on Burden on Competition

The NYSE does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) SRO's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

The NYSE has not solicited comments on the proposed rule changes. One unsolicited letter, however, has been received from the DMD. The letter requests that the NYSE take whatever action is necessary to permit the use of the OCS for the comparison of "cash" trades on trade date.[23] The NYSE states that this letter represents requests of some twenty-seven clearing member organizations which compare and clear about 90% of all transactions that take place on the Exchange each day.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for such finding; or (ii) as to which the SRO consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR-NYSE-91-09 and should be submitted by May 30, 1991.

[18] For definition of "cash" or "same day" settlement, see NYSE rule 64(1).

[19] See NYSE Rule 177. Under rule 177, transactions made for "cash" at or before 2 p.m. (ET) must have the securities delivered before 2:30 p.m., and transactions made for "cash" after 2 p.m. must have the securities delivered within 30 minutes after the time of the transaction.

[20] NYSE rules 133(b) and 137(a).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78q-1(a)(1).

[23] Letter from Ed Adinolfi, President, DMD, *et. al.*, to Dennis Covelli, Vice President, Post Trade Services, NYSE, dated December 5, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10967 Filed 5-8-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18127; 811-5380]

Application for Deregistration Under the Investment Company Act of 1940

May 1, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Associated Capital Institutional Trust.

RELEVANT SECTION OF THE ACT: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 3, 1991 and amended on April 23, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 28, 1991 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 580 California Street, suite 2200, San Francisco, California 94104.

FOR FURTHER INFORMATION CONTACT: Kimberly Warren, Staff Attorney, at (202) 272-3026 or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Massachusetts business trust and an open-end diversified management investment company registered under the Act. On June 1, 1988, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act. On the same date, applicant filed a registration statement under the Act and under the Securities Act of 1933. The registration statement became effective, and applicant's initial public offering commenced, on September 13, 1988.

2. Prior to December 31, 1990, all of the outstanding shares of applicant has been redeemed by the shareholders at their individual requests. The only remaining shareholders of applicant immediately prior to the time of liquidation were investment advisory clients of applicant's investment adviser. Each of these shareholders decided, without any formal or written solicitation by applicant, to liquidate its shares in applicant. Applicant liquidated all of its portfolio securities in the ordinary course in connection with the redemption by its shareholders of all outstanding shares.

3. Applicant's asset were liquidated in payment of voluntary redemptions of applicant's outstanding shares in accordance with procedures set out in applicant's prospectus. No formal trustee action was required to liquidate the applicant.

4. On December 27, 1990, applicant had 1,146,298.14 shares outstanding. As of the same date, applicant had an aggregate net asset value of $1,146,068.88, and a net share value per share of $.9998.

5. The expenses incurred in connection with the liquidation included legal and accounting fees and miscellaneous costs. Applicant's investment adviser, Associated Capital Investors, Inc., bore these expenses as well as applicant's organizational expenses.

6. As of the time of filing the application, applicant had no securityholders, assets, debts or other liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those related to its dissolution. Applicant intends to file a Certificate of Dissolution with the Commonwealth of Massachusetts.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10968 Filed 5-8-91; 8:45 am]

BILLING CODE 8010-01-M

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[24] 17 CFR 200.30-3(a)(12)

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2502]

Kansas (With Contiguous Counties in Oklahoma); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on April 29, 1991, and an amendment thereto on April 30, 1991, I find that the Counties of Butler, Cowley, and Sedgwick in the State of Kansas constitute a disaster area as a result of damages caused by severe storms and tornadoes on April 26-27, 1991. Applications for loans for physical damage may be filed until the close of business on June 27, 1991, and for loans for economic injury until the close of business on January 29, 1992, at the address listed below: U.S. Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155.

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Chase, Chautauqua, Elk, Greenwood, Harvey, Kingman, Marion, Reno, and Sumner in the State of Kansas, and Kay and Osage Counties in the State of Oklahoma may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 250212 and for

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economic injury the numbers are 730400 for Kansas and 731200 for Oklahoma.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 2, 1991.

Michael E. Deegan,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-10999 Filed 5-8-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2499]

Louisiana (With Contiguous Counties in Texas & Arkansas); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on April 23, 1991, and amendments thereto on April 25, 26, and 29, 1991, I find that the Parishes of Beauregard, Bienville, Bossier, Caddo, DeSoto, and Webster in the State of Louisiana constitute a disaster area as a result of damages caused by severe storms and flooding beginning on April 12 and continuing through April 26, 1991. Applications for loans for physical damage may be filed until the close of business on June 22, 1991, and for loans for economic injury until the close of business on January 23, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155.

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Parishes of Allen, Calcasieu, Claiborne, Jackson, Jefferson Davis, Lincoln, Natchitoches, Red River, Sabine, Vernon, and Winn in the State of Louisiana; Cass, Harrison, Marion, Newton, and Panola Counties in the State of Texas; and Columbia, Lafayette, and Miller Counties in the State of Arkansas may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125

The number assigned to this disaster for physical damage is 249906 and for economic injury the numbers are 729900 for Louisiana; 730000 for Texas; and 730100 for Arkansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 30, 1991.

Michael E. Deegan,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-11000 Filed 5-8-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2498]

New York; Declaration of Disaster Loan Area

Ulster County and the contiguous counties of Columbia, Delaware, Dutchess, Greene, Orange, and Sullivan in the State of New York constitute a disaster area as a result of damages caused by a fire which occurred at the Riverside Apartment/Town and Country Condominium Complex on Huguenot Street in the Village of New Paltz on February 11, 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 27, 1991 and for economic injury until the close of business on January 27, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Fl., Occidental Chemical Center, Niagara Falls, NY 14302.

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 249605 and for economic injury the number is 729600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 26, 1991.

Pat Saiki,

Administrator.

[FR Doc. 91-11001 Filed 5-8-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2500]

Oklahoma; Declaration of Disaster Loan Area

Oklahoma County and the contiguous counties of Canadian, Cleveland, Kingfisher, Lincoln, Logan, and Pottawatomie in the State of Oklahoma constitute a disaster area as a result of damages caused by fires which swept through a portion of Oklahoma City and into the Town of Luther on March 22, 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 28, 1991 and for economic injury until the close of business on January 29, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155.

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 250005 and for economic injury the number is 730200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 29, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-11002 Filed 5-8-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2501]

Oklahoma; Declaration of Disaster Loan Area

Atoka County and the contiguous counties of Bryan, Choctaw, Coal, Johnston, Pittsburg, and Pushmataha in the State of Oklahoma constitute a disaster area as a result of damages caused by severe storms and tornadoes which occurred on March 21, 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 28, 1991 and for economic injury until the close of business on January 29, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155.

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 250112 and for economic injury the number is 730300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 29, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-11003 Filed 5-8-91; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Concord, will hold a public meeting at 10 a.m. on Tuesday, June 4, 1991, at the James Cleveland Federal Building, Second Floor, room 207, 55 Pleasant Street, Concord, New Hampshire, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William K Phillips, District Director, U.S. Small Business Administration, P.O. Box 1257, 55 Pleasant Street, Concord, New Hampshire 03302-1257, telephone (603) 225-1400.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 1, 1991.

[FR Doc. 91-11004 Filed 5-8-91; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Providence, will hold a public meeting at 12 noon on Wednesday, June 12, 1991, at the Greenwood Inn, 1350 Jefferson Boulevard, Warwick, Rhode Island, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Anthony J. McMahon, District Director, U.S. Small Business Administration, 380 Westminster Street, Providence, Rhode Island 02903, telephone (401) 528-4580.

May 1, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-11005 Filed 5-8-91; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Lower Rio Grande Valley, will hold a public meeting at 1 p.m. on Wednesday, May 29, 1991, at the Rio Grande Valley Chamber of Commerce, FM 1015 & Expressway 83, Weslaco, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Miguel A. Cavazos, Jr., District Director, U.S. Small Business Administration, 222 E. Van Buren, suite 500, Harlingen, Texas 78550, telephone (512) 427-8625.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 1, 1991.

[FR Doc. 91-11006 Filed 5-8-91; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Madison, will hold a public meeting at 9 a.m. on Friday, May 10, 1991, at the Italian Community Center, Milwaukee, Wisconsin, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call C. A. Charter, District Director, U.S. Small Business Administration, 212 E. Washington Avenue, room 213, Madison, Wisconsin 53703, telephone (608) 264-5205.

May 1, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-11007 Filed 5-8-91; 8:45 am]

BILLING CODE 8025-01-M

AMT Capital Ltd.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1990)) AMT Capital Ltd. (the Applicant), 5910 North Central Expressway, suite 920, Dallas, Texas 75206 for a license to operate as a limited partnership small business investment company under the provisions of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661 *et seq.*) and the Rules and Regulations.

The general partners, its officers, directors of the Applicant are as follows:

Name	Title
AMT Capital, Inc.	Corporate General Partner.
Tom H. Delimitros	General Partner of Applicant. President and Director of Corporate General Partner.
Peter M. Walmsley	Director of Corporate General Partner; & Chairman of the Board of Directors of CGP.

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Name	Title
Debra F. Van Note	Vice President, Treasurer Secretary and Director of Corporate General Partner.
AMT Venture Partners Limited.	Limited Partner.

The Applicant, a limited partnership organized under the laws of the State of Texas and duly qulaified to do business in the State of Texas, will begin operations with approximately $1,600,000 of (paid-in capital and paid-in surplus) to be obtained through a private placement. The applicant will conduct its activities primarily in the State of Texas, and will consider investments in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the general partners and the probability of successful operations of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in the Dallas, TX area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 29, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91-11008 Filed 5-8-91; 8:45 am]

BILLING CODE 8025-01-M

[Application Number: 09090052]

Barclays Investment Corp.; Application for a Small Business Investment Company License

An application for a license to operate a Small Business Investment Company under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661, *et seq.*) has been filed by Barclays Investment Corporation (BIC or the Applicant), 222 Broadway (7th floor) New York, New York 10038, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1991).

The officers, directors, and major shareholder of the Applicant are as follows:

Graham L. McGahen.....Director/President
John Baerst.....Director/Secretary
Charles S. Hyle.....Director
Simon Eades.....Senior Vice President

Barclays Capital Corporation, a wholly-owned subsidiary of Barclays Bank PLC of 222 Broadway, New York, New York 10038, will be the sole shareholder of Barclays Investment Corporation.

The Applicant, a New York corporation, will begin operations with $5,000,000 in paid-in capital and paid-in surplus. BIC will conduct its activities primarily in the State of New York, but will consider investment in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed applicant. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 30, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91-11009 Filed 5-8-91; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0281]

NCNB Venture Company, L.P.; Filing of Application for Approval of Conflict of Interest Transaction

Notice is hereby given that NCNB Venture Company, L.P. (NCNB), One NCNB Plaza, suite 3800, Charlotte, North Carolina, a Federal Licensee under the Small Business Investment Act of 1958, as amended (Act), has filed for an application with the Small Business Administraiton (SBA) pursuant to section 312 of the Act and covered by § 107.903 of the SBA Rules and Regulations, governing Small Business Investment Companies (13 CFR 107.903 (1991)) for approval of a conflict of interest transaction falling within the scope of the section of the Act and Regulations.

Subject to such approval, NCNB proposes to provide funds to Quintiles Transnational Corporation (QTC), for the purpose of providing additional capital.

The proposed financing is brought within the purview of § 107.903 of the Regulations because Mr. S. Epes Robinson, a general partner of NCNB, is a board member of QTC. Additionally, Mr. S. Epes Robinson and Mr. Michael F. Elliot (also a general partner of NCNB) through a partnership named R&E Investors purchased shares in QTC amounting to 3.5 percent of QTC's outstanding shares.

Notice is hereby given that any interested person may, not later than ten (10) days from the date of publication of the Notice, submit written comments on the proposed transaction to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 30, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91-11010 Filed 5-8-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1366]

Advisory Committee on International Investment; Meeting

The Department of State will hold a meeting of the Advisory Committee on International Investment on May 28, 1991 from 9 a.m. to 12:30 p.m. The meeting will be held in room 1105 at the Department of State, 2201 "C" Street, NW., Washington, DC 20520.

This meeting will deal with Competition Policies, Environmental Issues and International Investment, Pending U.S. Legislation on International Investment, Trade in Services Negotiations in the Uruguay Round: And an update on Investment Developments in Eastern Europe.

Access to the Department of State is controlled and seating is limited. Therefore, members of the public wishing to attend the meeting must notify the Office of Investment Affairs at

(202) 647-1128 to arrange clearance for admittance no later than five days before the meeting. An identification with a photograph, name, date of birth and Social Security number will be required. All attendees should use the "C" Street entrance.

Dated: April 29, 1991.

Daniel T. Fantozzi,

Executive Secretary, Advisory Committee, Office of Investment Affairs.

[FR Doc. 91-11039 Filed 5-8-91; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Clark and Marathon Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to correct a previous notice advising the public that an environmental impact statement will be prepared for a proposed highway project on STH 29 in Clark and Marathon Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mrs. Jaclyn D. Lawton, P.E., Environmental Coordinator, Wisconsin Division, FHWA 4502 Vernon Boulevard, Madison, Wisconsin 53705-4905; Telephone: (608) 284-5967.

Carol Cutshall, Wisconsin Department of Transportation, Office of Environmental Analysis, 4802 Sheboygan Avenue, Madison, Wisconsin 53705; Telephone: (608) 266-9626.

William Nicholson, Wisconsin Department of Transportation, Highway 29 Project Management Team, 1681 Second Avenue South P.O. Box 8021, Wisconsin Rapids, Wisconsin 54495; Telephone: (715) 421-8365.

SUPPLEMENTARY INFORMATION: This is a correction to the orignial notice of intent, published Monday, March 25, 1991, [56 FR 12418] for an environmental impact statement (EIS) on a proposal to improve State Trunk Highway 29 (STH 29) in Clark and Marathon Counties, Wisconsin. The correct limits of study are from three miles west of Abbotsford to 1.5 miles west of Marathon City, a distance of approximately 27 miles.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 29, 1991.

Robert W. Cooper,

District Engineer.

[FR Doc. 91-11045 Filed 5-8-91; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Spokane County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Spokane County, Washington.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Division Administrator, Federal Highway Administration, suite 501, Evergreen Plaza, 711 South Capitol Way, Olympia, Washington 98501, Telephone (206) 753-9413; E.R. Burch, P.E., State Design Engineer, Washington State Department of Transportation, Transportation Building, Olympia, Washington 98504, Telephone (206) 753-6141.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation, will prepare an EIS on a proposal to construct a new multi-lane roadway with limited access control. The project study area lies in and near the City of Spokane extending from Interstate 90 north to the Little Spokane River and from Division Street eastward to Havana Street. The proposed project limits cover an area about 9.5 miles in length.

The primary transportation problem on Spokane's north side is projected population growth and associated travel demand and volumes. Should nothing be done to substantially improve the regional arterial system, the system's performance will seriously degenerate resulting in increased:

—travel time (lowering the level of service)

—frequency of accidents, and

—roadway maintenance and operating costs.

The proposed action is designed with the goal of meeting the regional objective of the development of a continuous system of arterials to help serve the transportation needs of the region and help mitigate projected traffic congestion.

Alternatives under consideration include:

1. Taking no action.

2. Non-structural possibilities including such things as satellite communities and increased use of car pooling and park and ride facilities.

3. Construction of High Occupancy Vehicle (HOV) lanes and light rail transit.

4. Construction of a new roadway facility. This will include evaluation of the best roadway alignment, best roadway design (eg. freeway, expressway, exclusive transits lanes, etc.) and interchange/intersection locations.

Additional alternatives involving varying mixes of the above strategies may be developed later in the process.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in the proposal.

A series of public open house meetings have been tentatively scheduled over the life of this project. In addition, a public hearing will be held. The time and place of each meeting will be advertised by public notice. Newsletters and coordination with the news media will supplement these activities. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 30, 1991.

Michael R. Brower,

Area Engineer, Olympia, Washington.

[FR Doc. 91-11038 Filed 5-8-91; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Announcing the Eighth Meeting of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

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SUMMARY: This notice announces the eighth meeting of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The Committee was established in accordance with the provisions of the Federal Advisory Committee Act to obtain independent advice on motor vehicle safety research. At this meeting the Committee will discuss research matters relating to NHTSA's R&D 5-year plan and proposed mission statements for the crashworthiness, crash data, and driver behavior subcommittees.

DATE AND TIME: The meeting is scheduled to begin at 10 a.m. on Thursday, May 30, 1991, and conclude at 5:30 p.m. that afternoon.

ADDRESSES: The meeting will be held in room 6230 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for motor vehicle safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

The meeting is open to the public, but attendance may be limited due to space availability. Participation by the public will be determined by the Committee Chairman.

A public reference file (number 86-01) has been established to contain the products of the Committee and will be open to the public during the hours of 9:30 a.m. to 4 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in room 5108 at 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366-2768.

FOR FURTHER INFORMATION CONTACT: Mary Coyle, Office of Research and Development, 400 Seventh Street, SW., room 6206, Washington, DC 20590, telephone (202) 366-5926.

Issued on: May 2, 1991.

George L. Parker,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 91-10996 Filed 5-8-91; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Applications for Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before May 24, 1991.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
8009-X	CNG Technologies, Inc., Austin, TX (See Footnote 1).	8009
9066-X	Volvo Cars of North America, Rockleigh, NJ (See Footnote 2).	9066
10256-X	Comdyne I, Inc., West Liberty, OH (See Footnote 3).	10256
10307-X	Olin Chemicals, Stamford, CT (See Footnote 4).	10307
10307-X	Olin Chemicals, Stamford, CT (See Footnote 5).	10307
10307-X	Vulcan Chemicals, Birmingham, AL (See Footnote 6).	10307

[1] To modify exemption to increase the allowance for pressure vessel to 4000 psig.

[2] To modify exemption to include an additional non-DOT specification fiberboard box as an outside container for transportation of airbags.

[3] To modify exemption to provide for larger size non-DOT specification cylinders for transportation of nonflammable and flammable gases.

[4] To modify exemption to authorize additional commodities classed as corrosive material.

[5] to authorize sodium hydroxide and potassium hydroxide solutions, classed as corrosive materials as additional commodities.

[6] To authorize the addition of caustic soda and caustic potash in DOT specification 111A100W1/W3 tank cars equipped with a safety vent rupture disc rated at 135 psig.

Application No.	Applicant	Parties to exemption
2709-P	TOPTH, Inc., Long Beach, CA.	2709
5704-P	TOPTH, Inc., Long Beach, CA.	5704
6563-P	National Welders Supply Company, Charlotte, NC.	6563
6805-P	National Welders Supply Company, Charlotte, NC.	6805
6874-P	Synergistic Performance Corporation, Emeryville, GA.	6874
8214-P	Honda Motor Co., Ltd., Tokyo 107, Japan.	8214
8214-P	American Honda Motor Co., Inc., Torrance, CA.	8214
8214-P	Morton Bendix, Inc., Maryville, TN (See Footnote 1).	8214
8236-P	Honda Motor Co., Ltd., Tokyo 107, Japan.	8236
8236-P	American Honda Motor Co., Inc., Torrance, CA.	8236
8273-P	Honda Motor Co., Ltd., Tokyo 107, Japan.	8273
8273-P	American Honda Motor Co., Inc., Torrance, CA.	8273
8451-P	Hi-Shear Technology Corporation, Torrance, CA.	8451
8556-P	National Welders Supply Company, Charlotte, NC.	8556
9066-P	Honda Motor Co., Ltd., Tokyo 107, Japan.	9066
9066-P	American Honda Motor Co., Inc., Torrance, CA.	9066

Application No.	Applicant	Parties to exemption
9419-P	National Welders Supply Company, Charlotte, NC.	9419
9507-P	National Welders Supply Company, Charlotte, NC.	9507
9723-P	Dynax Industries, Inc., St. Paul, MN.	9723
9723-P	Treatment One, Houston, TX.	9723
9970-P	Thiokol Corporation, Elkton, MD.	9770
10001-P	National Welders Supply Company, Charlotte, NC.	10001
10022-P	National Welders Supply Company, Charlotte, NC.	10022
10127-P	Bristol Aerospace Limited, Winnipeg, M.B., Canada.	10127
10453-P	Diversified CPC International, Inc., Channahon, IL.	10453
10457-P	DX Systems Company, Houston, TX.	10457
10457-P	DPC Industries, Inc., Houston, TX.	10457
10457-P	DXI Industries, Inc., Houston, TX.	10457
10457-P	DPC Industries Company, Houston, TX.	10457

[1] Request party status and to authorize an additional type packaging configuration for shipment of passive restraint systems classed as flammable solid.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 3, 1991.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91-11053 Filed 5-8-91; 8:45 am]

BILLING CODE 4910-60-M

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 10, 1991.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10575-N	Airco Industrial Gases, Murray Hill, NJ	49 CFR 174.67(i)(j)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)
10576-N	Simpson Tacoma Kraft Company, Tacoma, WA.	49 CFR 174.67(i)(j)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)
10580-N	Cryogas Engineering Ltd., Vancouver, B.C., Canada.	49 CFR 172.101, 173.315(a)	To authorize the use of a non-DOT specification cargo tank for transportation of flammable gases. (Mode 1.)
10581-N	Luxfer UK Limited, Nottingham, England.	49 CFR 178.46-11	To authorize an alternation testing procedure for DOT 3AL cylinders for shipment of those hazardous materials presently authorized for shipment in DOT Specification 3AL cylinders. (Modes 3 and 4.)
10583-N	GE Nuclear Energy, San Jose, CA	49 CFR 173.206, 178.245	To authorize a one time shipment of a non-DOT specification portable tank containing sodium, metal classed as a flammable solid. (Mode 1.)
10587-N	Gardner Technology Corporation, Alburtis, PA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h).	To authorize the manufacture, marking and sell of non-DOT specification portable tanks for shipment of liquid helium. (Modes 1, 2, and 3.)
10588-N	GE-Nuclear Energy, Wilmington, NC	49 CFR 173.420	To authorize the shipment of limited quantities of radioactive and corrosive material in 12" ANSI cylinders without valve brazing. (Mode 1.)
10589-N	Monsanto, St. Louis, MO	49 CFR 173.31(c)(3)	To authorize an alternative method for (acoustic emission test) for retesting and to discontinue internal shell inspection of tank cars. (Mode 2.)
10590-N	Sexton Can Company, Inc., Cambridge, MA.	49 CFR 173.304(d)(3)(ii), 178.33	To authorize shipment of certain flammable gases in a nonrefillable non-DOT specification inside container conforming with the DOT specification 2P except for diameter and capacity. (Modes 1, 2, and 3.)
10592-N	MG Industries, Valley Forge, PA	49 CFR 173.301(a)(1), 173.301(h)(i)(j), 173.304(a), 173.305(a)+(c), 173.34, 178.47.	To authorize the manufacture, marking and sell of non-DOT specification cylinders comparable to DOT specification 4DS cylinders for transportation of compressed gases. (Modes 1, 2, and 3.)
10594-N	U.S. Department of Energy, Washington, DC.	49 CFR 49CFR part 172, 173	To authorize shipment of radioactive materials, n.o.s. (uranium mill tailings) under special conditions in non-DOT specification packagings without labeling and placarding. (Modes 1 and 2.)

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NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10585-N	Allied Universal Corporation, Miami, FL	49 CFR 176.67(i)(j)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)
10586-N	Marathon Pipe Line Company, Houston, TX.	49 CFR 173.119, 173.304, 173.315	To authorize the use of trailer mounted mechanical displacement meter provers for transportation of petroleum crude oil. (Mode 1.)
10587-N	Westinghouse Electric Corporation, Pittsburgh, PA.	49 CFR 177.834(1)(2)(i)	To authorize the use of cargo heaters when transporting flammable liquids or flammable gases. (Mode 1.)
10588-N	Bulk Lift International, Inc., Carpentersville, IL.	49 CFR 172.331, 173.154, 173.164, 173.178, 173.182, 173.204, 173.217, 173.234, 173.245(b), 173.365, 49CFR.	To authorize the manufacture, marking and sell of oxidizers, corrosive material, poison B and non-DOT specification non-reusable bulk bags for shipment of certain flammable solids. (Modes 1, 2, and 3.)
10589-N	Roberts Meter Service Company, Longview, TX.	49 CFR 173.119, 173.304, 173.315	To authorize the use of a trailer mounted mechanical displacement meter prover for transportation of flammable liquids. (Mode 1.)
10600-N	W.R. Grace & Co., Baltimore, MD	49 CFR 178.96-7(a), 178.98-7(b)	To authorize the manufacture, marking and sell of 55-gallon 6B480 DOT-specification 16 gauge steel drums equipped with ¾" bung for transportation of metal catalyst, wetted. (Mode 1.)
10601-P	Pack-Lite System, Inc., Tulsa, OK	49 CFR CFR Part 173	To authorize the manufacture, marking and sell of a non-DOT specification polyethylene shipping container for use in transporting various commodities. (Modes 1, 3, and 4.)

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 3, 1991.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91-11054 Filed 5-8-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: May 3, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1061.
Former Number: 5885.
Type of Review: Extension.
Title: Supervisory Evaluation—ES&D and Single Function Executive Selection.
Description: This form is used for evaluation of applicants for the Executive Selection and Development Program and for single function executive positions.
Respondents: Individuals or households, Federal agencies or employees.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Response: 4 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 2,000 hours.
OMB Number: 1545-1062.
Form Number: 6423.
Type of Review: Extension.
Title: ES&D Qualifications Questionnaire.
Description: This form is used by the Executive Resources Board and Regional Screening Committees in screening applicants from within and outside the IRS who have applied for the Executive Selection and Development Program.
Respondents: Individuals or households, Federal agencies or employees.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Response: 3 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1,500 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-11043 Filed 5-8-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review.

Dated: May 3, 1991.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0003.
Form Number: SS-4 and SS-4PR.
Type of Review: Resubmission.
Title: Application for Employer Identification Number, Form SS-4; Solicitud de Numero de Identificacion Patronal, Form SS-4PR.
Description: Taxpayers required to have an identification number for use on any return, statement, or other document must prepare and file Form SS-4 or Form SS-4PR (Puerto Rico only) to obtain a number. The information is used by IRS and SSA in tax administration and by the Bureau of the Census for business statistics.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 2,112,737.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—7 minutes.
Learning about the law or the form—22 minutes.
Preparing the form—45 minutes.
Copying, assembling, and sending the form to IRS—20 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/Reporting Burden: 3,169,210 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-11044 Filed 5-8-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review.

Dated: May 3, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The public is advised that the Office of Management and Budget has approved a request from the Office of Thrift Supervision (OTS), for extension of a currently approved information collection entitled "Savings and Loan Holding Company Report H-(B)11 and H-(B)12, through June 30, 1991, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). OMB approval for the current version of H-(B)11 and H-(B)12 expired March 31, 1991.

The expiration of the current forms resulted in a lapse between the previous forms' expiration date and dissemination of the revised form. In that regard, the OMB's approval to extend the expiration date of these forms provide holding companies, during the transition period to the new form, the option of filing either the expired forms or the revised form that was approved by OMB April 9, 1991.

Office of Thrift Supervision

OMB Number: 1550-0060.
Form Number: H-(b)11.
Type of Review: Revision.
Title: Savings and Loan Holding Company Report.
Description: To determine a savings and loan holding company's adherence to the statutes, regualtions, and conditions of approval to acquire an insured institution and whether any of the company's activities would be injurious to the operation of any subsidiary savings association.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 750.
Estimated Burden Hours Per Response: 15 hours, 30 minutes.
Frequency of Response: Quarterly, Annually.
Estimated Total Reporting Burden: 46,500 hours.
Clearance Officer: John Turner (202) 906-6840, Office of Thrift Supervision, 1700 G Street, NW., 3rd Floor, Washington, DC 20552.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-11040 Filed 5-8-91; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review.

Dated: May 1, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: 9356.
Type of Review: New Collection.
Title: Application to Participate in the 1992—1040PC Project for Individual Income Tax Returns.
Description: Form 9356 will be filled in by tax preparers and software developers and submitted to IRS as an application for filing and/or producing software for Form 1040PC pilot.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 750 hours.
OMB Number: 1545-1074.
Form Number: 8743.
Type of Review: Extension.
Title: Information on Fuel Inventories and Sales.
Description: Form 8743 is used to provided information on fuel inventories and sales. This form enables IRS to monitor the excise tax liability for all taxable fuels. (Internal Revenue Code sections 4081, 4091, 4041 and 4042.) The form will be filed by refiners, importers or terminal operators.
Respondents: Individuals or households, businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 27,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—6 hours, 42 minutes.
Learning about the law or the form—18 minutes.
Preparing and sending the form to IRS—25 minutes.
Frequency of Response: Quarterly.
Estimated Total Recordkeeping/Reporting Burden: 801,360 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive

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Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-11041 Filed 5-8-91; 8:45 am]

BILLING CODE 4810-01-M

Public Information Collection Requirements Submitted to OMB for Review.

Dated: May 3, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0018.
Form Number: ATF Form 6 Part II (5330.3B).
Type of Review: Extension.
Title: Application and Permit for Importation Firearms, Ammunition and Implements of War.
Description: This information collection is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. The information is used to secure authorization to import such articles. Forms are used by all persons who are members of the United States Armed Forces.
Respondents: Individuals or households.
Estimated Number of Respondents: 9,000.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 4,500 hours.

OMB Number: 1512-0367.
Form Number: ATF REC 5220/1.
Type of Review: Extension.
Title: Tobacco Export Warehouse—Record of Operations.
Description: Tobacco Export Warehouses store untaxpaid tobacco products until they are exported. Record is used to maintain accountability over these products. Allows ATF to verify that all products have been exported or tax liabilities satisfied. Protects tax revenues.
Respondents: Businesses or other for-profit.
Estimated Number of Recordkeepers: 214.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: Other (Recordkeeping).
Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1512-0506.
Form Number: ATF Form 5300.29.
Type of Review: Extension.
Title: Application for Extension of Time for Payment of Tax.
Description: Under 26 USC 6161, provisions are made for ATF to grant extensions of time to pay tax to those who are experiencing undue hardship. This application is used to implement this provision.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 50.
Estimated Burden Hours Per Response/Recordkeeping: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/Reporting Burden: 13 hours.

OMB Number: 1512-0507.
Form Number: ATF Form 5300.26.
Type of Review: Extension.
Title: Federal Firearms and Ammunition Excise Tax Return.
Description: Excise tax return is completed by those owing excise tax on the manufacture or importation of firearms. The return is prescribed by statute for the collection of these taxes. ATF uses the form to identify the taxpayer, the taxpayer's liability and adjustments affecting the amount paid.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1,012.
Estimated Burden Hours Per Response/Recordkeeping: 6 hours.
Frequency of Response: Quarterly.
Estimated Total Recordkeeping/Reporting Burden: 24,289 hours.

OMB Number: 1512-0508.
Form Number: ATF Form 5300.28.
Type of Review: Extension.
Title: Application for Registration for Tax Free Transaction Under 26 USC 4221 (Firearms and Ammunition).
Description: 26 USC 4222 establishes the requirement for those who wish to sell or buy firearms or ammunition tax free. This form (ATF F 5300.28) implements this requirement.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 2,024.
Estimated Burden Hours Per Response/Recordkeeping: 45 minutes.
Frequency of Response: One-time only.
Estimated Total Recordkeeping/Reporting Burden: 1,519 hours.

OMB Number: 1512-0509.
Form Number: ATF Form 5300.27.
Type of Review: Extension.
Title: Federal Firearms and Ammunition Excise Tax Deposit.
Description: The tax deposit is completed by those owing Federal excise tax on the manufacture or importation of firearms and/or ammunition. The deposit is required by statute. ATF uses the form to identify the taxpayer and to correctly credit the taxpayer's liability.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1,012.
Estimated Burden Hours Per Response/Recordkeeping: 3 minutes.
Frequency of Response: Semi-monthly or monthly.
Estimated Total Recordkeeping/Reporting Burden: 1,215 hours.
Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-11042 Filed 5-8-91; 8:45 am]

BILLING CODE 4810-01-M

Office of Thrift Supervision

Augusta Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Augusta Federal Savings Association, Baltimore, Maryland, on April 25, 1991.

Dated: May 2, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10953 Filed 5-8-91; 8:45 am]

BILLING CODE 6720-01-M

Executive Savings Bank, F.S.B.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Executive Savings Bank, F.S.B., Marina del Rey, California, on April 25, 1991.

Dated: May 2, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10954 Filed 5-8-91; 8:45 am]

BILLING CODE 6720-01-M

Home Federal Savings and Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Home Federal Savings and Loan Association, F.A., Algona, Iowa, on April 25, 1991.

Dated: May 2, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10955 Filed 5-8-91; 8:45 am]

BILLING CODE 6720-01-M

John Hanson Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for John Hanson Federal Savings Bank, on April 25, 1991.

Dated: May 2, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10956 Filed 5-8-91; 8:45 am]

BILLING CODE 6720-01-M

Red River Federal Savings and Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Red River Federal Savings and Loan Association, F.A., Lawton, Oklahoma, on April 25, 1991.

Dated: May 2, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10957 Filed 5-8-91; 8:45 am]

BILLING CODE 6720-01-M

Sunbelt Federal Savings, FSB; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owner's Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Sunbelt Federal Savings, FSB, Irving, Texas, on April 25, 1991.

Dated: May 2, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10958 Filed 5-8-91; 8:45 am]

BILLING CODE 6720-01-M

Augusta Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owner's Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Augusta Federal Savings Bank, Baltimore, Maryland, OTS No. 4142, on April 25, 1991.

Dated: May 2, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10959 Filed 5-8-91; 8:45 am]

BILLING CODE 6720-01-M

Executive Bank, F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owner's Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Executive Bank, F.S.B., Marina del Rey, California OTS No. 7991, on April 25, 1991.

Dated: May 2, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10960 Filed 5-8-91; 8:45 am]

BILLING CODE 6720-01-M

Home Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Home Federal Savings and Loan Association, Algona, Iowa, OTS No. 3709, on April 25, 1991.

Dated: May 2, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10961 Filed 5-8-91; 8:45 am]

BILLING CODE 6720-01-M

John Hanson Savings Bank, F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for John Hanson Savings Bank, F.S.B., Beltsville, Maryland on April 25, 1991.

Dated: May 2, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10962 Filed 5-8-91; 8:45 am]

BILLING CODE 6720-01-M

Red River Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Red River Federal Savings and Loan Association, Lawton, Oklahoma, OTS No. 8520, on April 25, 1991.

Dated: May 2, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10963 Filed 5-8-91; 8:45 am]

BILLING CODE 6720-01-M

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Sunbelt Savings, FSB; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Sunbelt Savings, FSB, Irving, Texas, OTS No. 8513, on April 25, 1991.

Dated: May 2, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10984 Filed 5-8-91; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 90

Thursday, May 9, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, May 14, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, May 16, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes

Advisory Opinion 1991-11:
  Earth Research Group by counsel Mitchell Rogovin

Advisory Opinion 1991-13:
  New York State Public Employees Federation, AFL-CIO

Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone (202) 376-3155.

Delores Hanks,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-11218 Filed 5-7-91; 2:43 pm]

BILLING CODE 6715-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m., May 20, 1991.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. National Finance Center recordkeeping and agency liaison.
2. Benefits administration.
3. Investments.
4. Participant communications.
5. Approval of the minutes of last meeting.
6. Thrift Savings Plan activities report by the Executive Director.
7. Approval of the update of the FY 1991—FY 1992 budget document.
8. Investment policy review.
9. Frequency of Arthur Andersen reviews.
10. Audit recommendations.

CONTACT PERSON FOR MORE INFORMATION: Tom Brabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: May 6, 1991.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 91-11138 Filed 5-6-91; 5:08 pm]

BILLING CODE 6760-01-M

VOL 56 ISS 90 MY 9 1991 UMI

Corrections

Federal Register
Vol. 56, No. 90
Thursday, May 9, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Certain Round Shaped Agricultural Tillage Tools From Brazil; Final Results of Countervailing Duty Administrative Reviews

Correction

In notice document 91-9061 appearing on page 15862 in the issue of Thursday, April 18, 1991, make the following correction:

On page 15862, in the second column, in the last line, "not" should read "now".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

Correction

In notice document 91-10702 appearing on page 20599 in the issue of Monday, May 6, 1991, make the following correction:

On page 20599, in the second column, under TIME:, in the seventh line, "9 p.m." should read "9 a.m.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6846

[CO-930-4214-10; COC-48469]

Withdrawal of National Forest System Lands for Protection of Wild and Scenic Values on the South Platte River; CO

Correction

In rule document 91-8666 appearing on page 14865 in the issue of Friday, April 12, 1991, make the following correction:

On page 14865, in the second column, in the land description, in the fourth line from the bottom of the page, "N½NW½ SE¼," should read "N½NW¼SE¼,".

BILLING CODE 1505-01-D

federal register

Thursday
May 9, 1991

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 8 and 52
Federal Acquisition Regulation (FAR); Acquisition of Helium; Proposed Rule

VOL 56 ISS 90 MY 9 1991 UMI

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 52

[FAR Case 91-09]

Federal Acquisition Regulation (FAR); Acquisition of Helium

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering amending FAR parts 8 and 52 to provide guidance in the procurement of helium. Public Law 86-777, the Helium Act, requires that all major helium requirements be purchased from the Secretary of the Interior. This includes the procurement of helium by Federal agencies as well as by contractors for use in Government contracts. The proposed coverage will assist Government agencies and contractors in complying with the Helium Act (Pub. L. 86-777) by ensuring that contracting officers and contractors are aware of the requirements for using Bureau of Mines' helium in Government contracts.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 8, 1991, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAR Case 91-09 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR Case 91-09. Any questions pertaining to this FAR Case may be referred to Ms. Linda Klein at (202) 501-3775.

SUPPLEMENTARY INFORMATION:

A. Background

The Helium Act (Pub. L. 86-777) (50 U.S.C. 167a, *et seq.*) and the Department of the Interior's implementing regulations (30 CFR parts 601 and 602) require Federal agencies to procure all major helium requirements from the Bureau of Mines, Department of the Interior. This requirement may be satisfied by ordering against a GSA Federal Supply Schedule. For requirements not covered by a Federal Supply Schedule contract, or when schedule use is not required, this requirement may be satisfied by purchasing from the Bureau of Mines or a Bureau helium distributor. A major helium requirement has been defined as a requirement for 5,000 or more standard cubic feet of helium in a calendar month. The only exception provided is for helium acquired before contract award. The guidance being proposed includes a new provision and clause.

B. Regulatory Flexibility Act

The proposed changes to FAR part 8 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule, if implemented, will impose additional requirements on both Federal agencies and contractors in the procurement of helium. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 91-610 (FAR Case 91-09) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the proposed change to the FAR imposes recordkeeping information, collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* A request for a clearance has been submitted to OMB under separate cover.

List of Subjects in 48 CFR Parts 8 and 52

Government procurement.

Dated: May 1, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 8 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 8 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.002 [Amended]

2. In section 8.002, paragraph (g) is revised to read as follows:

* * * * *

(g) Helium (see Subpart 8.5—Acquisition of Helium).

* * * * *

3. Subpart 8.5, consisting of sections 8.500 through 8.505, is added to read as follows:

Subpart 8.5—Acquisition of Helium

Sec.
8.500 Scope of subpart.
8.501 Definitions.
8.502 Policy.
8.503 Exception.
8.504 Procedures.
8.505 Solicitation provision and contract clause.

Subpart 8.5—Acquisition of Helium

8.500 Scope of subpart.

This subpart implements the requirements of the Helium Act (50 U.S.C. 167a *et seq.*) concerning the acquisition of liquid or gaseous helium by Federal agencies or by Government contractors or subcontractors for use in the performance of a Government contract.

8.501 Definitions.

Bureau helium distributor means a private helium distributor which has established and maintains eligibility to distribute helium purchased from the Bureau of Mines, as specified in 30 CFR 602.

Bureau of Mines, as used in this subpart, means the Department of the Interior, Bureau of Mines, Helium Field Operations, located at 1100 South Fillmore Street, Amarillo, TX 79101-4318.

Helium requirement forecast means an estimate by the contractor or subcontractor of the amount of helium required for performance of the contract or subcontract.

Major helium requirement means a helium requirement during a calendar month of 5,000 or more standard cubic feet (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature) including liquid helium gaseous equivalent. In any month in which the major requirement threshold is met, all helium purchased during that month is considered part of the major helium requirement.

8.502 Policy.

All major helium requirements purchased by a Government agency or used in the performance of a Government contract shall be purchased from the Bureau of Mines. This requirement may be satisfied as follows:

(a) By ordering against a GSA Federal Supply Schedule contract (for contractor use and authorization procedures see subpart 51.1.).

(b) For requirements not covered by a Federal Supply Schedule contract, or when schedule use is not required (see 8.404-1), by purchasing from—

(1) The Bureau of Mines; or

(2) A Bureau helium distributor. A copy of the "List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies" may be obtained from the Bureau of Mines.

8.503 Exception.

The requirements of this subpart do not apply to contracts or subcontracts in which the helium was acquired by the contractor prior to award of the contract or subcontract.

8.504 Procedures.

(a) The contracting officer shall require that the successful offeror provide a helium requirement forecast prior to award of any contract, and a point of contact for helium requirements, including telephone number.

(b) Upon award of a contract containing the clause at 52.208-9, Required Sources of Helium, the contracting officer shall provide to the Bureau of Mines a copy of the contract, a contractor point of contact (including telephone number), and a copy of the helium requirement forecast submitted by the contractor.

(c) Upon notification by the Bureau of Mines of an apparent discrepancy between helium sales data and the contractor's helium requirement forecast, the contracting officer shall determine appropriate action and inform the Bureau of Mines.

8.505 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.208-8, Helium Requirement Forecast, in solicitations that contain the clause prescribed in 8.505(b).

(b) The contracting officer shall insert the clause at 52.208-9, Required Sources for Helium, in solicitations and contracts if it is anticipated that performance of the contract involves a major helium requirement.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Sections 52.208-8 and 52.208-9 are added to read as follows:

52.208-8 Helium Requirement Forecast.

As prescribed in 8.505, insert the following provision:

Helium Requirement Forecast

(a) *Helium requirement forecast* means an estimate by the contractor or subcontractor of the amount of helium required for performance of the contract or subcontract.

(b) Helium requirement forecast. The successful Offeror shall provide a helium requirement forecast and a point of contact and telephone number prior to award of any contract resulting from this solicitation.

(End of provision)

52.208-9 Required sources for Helium.

As prescribed in 8.505, insert the following clause:

Required Sources for Helium

(a) *Definitions.*

Bureau helium distributor means a private helium distributor which has established and maintains eligibility to distribute helium purchased from the Bureau of Mines, as specified in 30 CFR 602.

Bureau of Mines, as used in this clause, means the Department of Interior, Bureau of Mines, Helium Field Operations, located at 1100 South Fillmore Street, Amarillo, TX 79101-4318.

Helium requirement forecast means an estimate by the Contractor or subcontractor of the amount of helium required for performance of the contract or subcontract.

Major helium requirement means a helium requirement during a calendar month of 5,000 or more standard cubic feet (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature) including liquid helium gaseous equivalent. In any month in which the major requirement threshold is met, all helium purchased during that month is considered part of the major helium requirement.

(b) *Requirements.* (1) Except for helium acquired by the Contractor before the award of this contract, the Contractor shall purchase all major requirements of helium from—

(i) The Department of the Interior's Bureau of Mines;

(ii) A Bureau helium distributor (A copy of the "List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies" may be obtained from the Bureau of Mines.); or

(iii) A General Services Administration Federal Supply Schedule contract, if use is authorized by the Contracting officer (see 51.1);

(2) Promptly upon award of any subcontract or order that involves a major helium requirement, the Contractor shall provide to the Bureau of Mines, and to the Contracting Officer, written notification that includes—

(i) The prime contract number;

(ii) The name, address and telephone number of the subcontractor, including a point of contact; and

(iii) A copy of the subcontractor's helium requirement forecast.

(c) *Subcontracts.* (1) The Contractor shall insert this clause, including this paragraph (c), in any subcontract or order that involves furnishing of a major helium requirement.

(2) When a subcontract involves a major helium requirement, the following statement shall be included: *Helium furnished under this contract or order shall be helium that has been purchased from the Bureau of Mines, or a listed Bureau helium distributor.*

(End of clause)

[FR Doc. 91-10890 Filed 5-8-91; 8:45 am]

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Thursday
May 9, 1991

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Funding Availability for HUD-Administered Small Cities Community Development Block Grant Program; Fiscal Year 1991; Notice

VOL 56 ISS 90 MY 9 1991 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-3240; FR 3047-N-01]

Funding Availability for the HUD-Administered Small Cities Community Development Block Grant Program; Fiscal Year 1991

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1991.

DATE: Application is due by June 28, 1991.

SUMMARY: This Notice of Funding Availability (NOFA) announces the availability of funding for the HUD-administered Small Cities Program in New York State under the Community Development Block Grant (CDBG) Program for Fiscal Year 1991. The NOFA contains information concerning the deadline for filing grant applications; eligibility of applicants; available amounts; selection criteria; and the application process, including how to apply for funding, and how selections will be made.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, room 7184, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 708-1322. The TDD number is (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements related to this CDBG program have been approved by the Office of Management and Budget (OMB) and assigned approval number 2506-0020.

Outline

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I. Purpose and Substantive Description

A. Authority and Background.

1. Authority

Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320); 24 CFR part 570, subpart F.

2. Background

Title I of the Housing and Community Development Act of 1974, as amended (the HCD Act), authorizes the Community Development Block Grant (CDBG) Program. Section 106 of title I permits the States to elect to assume the administrative responsibility for the CDBG Program for nonentitled areas within their jurisdiction. Section 106 provides that HUD will administer the CDBG Program for nonentitled areas within a State which does not elect to assume the administrative responsibility for the program. This NOFA supplements subpart F of 24 CFR part 570, which sets out the requirements applicable to the CDBG Program in nonentitled areas.

In accordance with 24 CFR 570.420(e) and (h)(3), and with the requirements of section 102 of the Housing and Urban Development Reform Act of 1989 (Reform Act), HUD is issuing this NOFA for New York State's Small Cities Program for Fiscal Year (FY) 1991 to announce the allocation of funds for Single Purpose and Comprehensive grants, and to establish the deadline for filing grant applications. The NOFA also explains in detail how HUD will apply the regulatory threshold requirements for funding eligibility; and the selection criteria for rating and scoring applications for Comprehensive grants and for scoring projects in applications for Single Purpose grants. The NOFA includes a description of statutory amendments which apply to the program even though conforming regulations have not yet been adopted. Other informational aspects of the Small Cities Program will be provided in the "Review Process Statement," which will be made available to applicants by HUD's New York Regional Office and Buffalo Field Office.

3. Statutory Changes

The National Affordable Housing Act (NAHA) (Public Law 101-625, approved November 28, 1990) amended title I of the Housing and Community Development Act of 1974 (HCD Act). The amendments made by NAHA are applicable, as described below, to the funds made available under this NOFA.

a. *Principal Benefit Certification.* NAHA amended section 104(b)(3) of the HCD Act to increase the principal benefit certification from 60 to 70 percent. Applicants must certify that 70 percent of the funds of the CDBG grant shall be for activities which principally benefit low- and moderate-income persons. The principal benefit statement in the certification accompanying the application reflects the 70 percent requirement.

b. *Eligible Activities.*—

(1) *Economic Development—Section 105(a)(17).* NAHA amended section 105(a)(17) of the HCD Act with respect to the provision of assistance to for-profit entities. Recipients now may provide assistance to private for-profit entities when such assistance is appropriate to carry out economic development projects that shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods. The economic development assistance must be for activities that:

(a) Create or retain jobs for low- and moderate-income persons;

(b) Prevent or eliminate slums and blight;

(c) Meet urgent needs;

(d) Create or retain businesses owned by community residents;

(e) Assist businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents, or provide technical assistance to promote any of the activities in (a) through (e) above.

Activities which meet the national objective requirements under 24 CFR 570.208(a)(4), (b) or (c), also would meet the new statutory provisions of the first three categories above. For activities to be qualified under 24 CFR 570.208(a)(2) as benefiting an area containing sufficient percentage of low- and moderate-income residents (pending promulgation of revised rules) applicants also would have to determine that the assisted activity either qualifies as creating or retaining businesses owned by community residents or that the business assisted, provided goods or services that are needed by, and affordable to, low- and moderate-income residents of the area to be served. The amendment to section 105(a)(17) has eliminated the term "necessary or appropriate" determination required prior to the provision of CDBG assistance to a for-profit entity. At this point, HUD does not believe that the deletion of the term "necessary" materially alters the type of determination required to be made. Accordingly, the analysis described at 24 CFR 570.208(b), and in the supplemental guidance provided by memorandum, would continue to be applicable.

A second change in section 105(a)(17) requires that in the event CDBG assistance to a for-profit entity involves displacement of existing businesses and jobs in neighborhoods, then, to the extent practicable, such displacement shall be minimized. Pending implementation regulations, grantees must determine whether assistance to a for-profit entity will result in the displacement of existing businesses and jobs in neighborhoods, and if so, grantees must document what steps were taken to minimize such displacement.

(2) *Homeownership Assistance—Section 105(a)(20).* NAHA added to title I a new activity (direct assistance to persons of low- and moderate-income to facilitate and expand homeownership) under section 105(a)(20). Assistance provided under this provision shall not be considered as public service activities for purposes of the 15 percent cap on the use of CDBG funds for public services.

Under this provision, CDBG funds may be used to: subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers; finance the acquisition of housing that is occupied by low- and moderate-income homebuyers; acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that assistance under title I of the HCD Act may not be used by recipients or subrecipients to directly guarantee such mortgage financing); provide up to 50 percent of the downpayment required from low- and moderate-income buyers; and pay any reasonable closing costs associated with the purchase of a home incurred by a low- and moderate-income homebuyer.

(3) *Public Service Cap.* NAHA amended section 105(a)(8) of the HCD Act by placing the 15 percent cap for public services on each State's total nonentitlement CDBG allocation. Previously, the 15 percent cap for public services was applied to each recipient's grant.

As a result of this provision, HUD may award a grant to a recipient for public service activities with 100 percent of the funds spent for public service activities. However, any applications requesting funds for public service activities must be rateable under one of the existing Single Purpose or the Comprehensive grant categories. HUD will apply the 15 percent statewide cap to public service activities by funding public service activities in the highest rated applications until the cap is reached.

c. *Prohibition of Discrimination on Basis of Religion.* NAHA amended section 109(a) of the HCD Act to prohibit discrimination on the basis of religion or religious affiliation. No person shall be excluded from participation in, denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with CDBG funds on the basis of his or her religion or religious affiliation.

d. *Certification on Protecting Individuals Engaged in Nonviolent Civil Rights Demonstration.* NAHA added section 104(1) to the HCD Act, which provides that no CDBG funds may be obligated or expended to any unit of general local government that: fails to adopt and enforce a policy of prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; or fails to adopt and enforce a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location, which is the subject of such non-violent civil rights demonstration within its jurisdiction. The new certification has been revised consistent with section 104(1).

e. *Exemption from Davis Bacon Requirements For Volunteers.* NAHA amended Section 110 of the HCD Act to exempt volunteers from Davis-Bacon requirements. This amendment applies to any person serving as a volunteer that does not receive compensation for such services, or is paid expenses, reasonable benefits, or a nominal fee for such services, and is not otherwise employed at any time in the construction work for the project. This amendment applies to any volunteer services provided before, on, or after the date of enactment, except that it may not be construed to require the repayment of any wages paid before the date of enactment for services provided before that date. HUD will provide further instructions on this provision at a later date.

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4. Reform Act Requirements

On March 14, 1991, HUD published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD.

The HUD-administered Small Cities program is subject to the following subparts of part 12:

a. Since HUD makes assistance under the program available on a competitive basis, HUD must:

—Ensure that documentation and other information regarding each application submitted to HUD are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period (§ 12.14(b)). HUD will provide further guidance on how this material may be accessed in a later Notice published in the **Federal Register**.

—Publish a notice in the **Federal Register** at least quarterly indicating the recipients of the assistance (§ 12.16(a)).

b. If a unit of general local government receives assistance under the program on the basis of a competition, and then makes the assistance available on a competitive basis to a subrecipient, the unit of general local government:

—Must ensure that documentation and other information regarding each application submitted to the unit of general local government by an applicant are adequate to indicate the basis upon which assistance was provided or denied. The unit of general local government must make this material available for public inspection for a five-year period (§ 12.14(c)).

—Must notify the public of the subrecipients that receive the assistance (§ 12.16(b)).

Sections 12.14(c) and 12.16(b) are not yet effective, but their effectiveness will be announced in a later **Federal Register** notice. The provisions will apply to all decisions made regarding the assistance by a unit of general local government on or after the effective date of the notice. Although this provision is not effective now, grantee should be aware that publication of this subsequent Notice will make future decisions to award or deny assistance subject to these provisions.

c. In accordance with subpart C of the rule, units of general local government that seek assistance under the program from HUD for a specific project or activity must make the disclosures required under § 12.32. A subrecipient applicant must also make the disclosures, if a unit of general local government makes assistance received under the program available to the subrecipient for a specific project or activity.

Subpart C will be made effective through later publication of a Notice in the **Federal Register**. All applications solicited on or after the effective date of the notice will be subject to the requirements of subpart C. Although subpart C is not effective now, grantee should be aware that publication of this subsequent notice will make future decisions to award or deny assistance subject to subpart C.

d. In accordance with subpart D of the rule, if HUD makes assistance available to a unit of general local government for a specific housing project that contains other government assistance, HUD must certify that the assistance will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources. HUD may also make adjustments to assistance already provided on the basis of updated disclosures provided under subpart C.

Subpart D will be made effective through later publication of a Notice in the **Federal Register**. All applications solicited on or after the effective date of the Notice will be subject to the requirements of subpart D.

B. Allocation Amounts

1. Total Available Funding and Allocation

The nonentitlement CDBG funds for New York State for FY 1991 total $38,489,000 and will be allocated as follows:

a. *Buffalo Field Office.* $33,453,000 is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's Buffalo Field Office. Maximum grant amounts for units of general local government under the jurisdiction of the Buffalo Field Office will be $400,000 for Single Purpose grant applications and $600,000 for Comprehensive grant applications. The maximum amount for Single Purpose grant applications made jointly by units of general local government will be $600,000.

b. *New York Regional Office.* $5,036,000 is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's New York Regional Office. Maximum grants amounts for communities under the jurisdiction of the New York Regional Office will be $250,000 for Single Purpose grants and $400,000 for Comprehensive grants. The maximum amount for Single Purpose grant applications made jointly by units of general local government will be $300,000.

2. Distribution of Funds Between Single Purpose and Comprehensive Grants.

Generally, 80 percent of the funds allocated separately to the New York and Buffalo offices shall be for Single Purpose grants with the remaining 20 percent to be reserved for Comprehensive grants. However, in order to assure a competitive distribution of funds, each HUD office has the option to revise the division of funds between Single Purpose and Comprehensive grants to as low as 65 percent for Single Purpose and up to 35 percent for Comprehensive grants.

3. Funding Decisions

All funding decisions will be documented, and will be announced in accordance with the requirements of section 102 of the Reform Act.

C. Eligibility

1. Eligible Applicants

Eligible applicants are units of general local government in New York State, excluding: metropolitan cities; urban counties; units of government which are participating in urban counties or metropolitan cities even if only part of the participating unit of government is located in the urban county or metropolitan city; and Indian tribes eligible for assistance under section 106 of the HCD Act. Applications may be submitted individually or jointly.

2. Previous Grantees

Eligible applicants, which previously have been awarded Small Cities Program CDBG grants, are also subject to an evaluation of capacity and performance. Numerical thresholds have been established to assist HUD in evaluating a grantee's progress in implementing its program activities. (These standards apply to all CDBG Program grants received by the community.) Applicants generally will be determined to have performed adequately in the area(s) where the thresholds are met. Where a threshold has not been met, HUD will evaluate the documentation of any mitigating factors, particularly with respect to actions taken by the applicant to accelerate the implementation of its program activities.

3. Eligible Activities and National Objectives

Eligible activities under the Small Cities CDBG Program are those identified in subpart C of 24 CFR part 570. Each activity must meet one of the national objectives (i.e. benefit to low- and moderate-income persons, elimination of slums or blighting conditions, or meeting imminent threats to the health and safety of the community), and each grant must meet the requirements for compliance with the primary objective of principally benefitting low- and moderate-income persons, as required under the provisions of § 570.200(a) (2) and (3) and § 570.208, which supersede § 570.420(h)(2). As described in Section I.A.3.a. of this NOFA, the principal benefit requirement was increased by NAHA from 60 to 70 percent. The method of calculating the use of these funds for compliance with the 70 percent overall benefit requirement is set forth in § 570.200(a)(3) (i) through (v).

D. Types of Grants

1. Comprehensive Grants

a. *General.* Comprehensive grants are available to fund projects which meet the following criteria:

(1) Address a substantial portion of the identified community development needs within a defined area or areas:

(2) Involve two or more activities related to each other that will be carried out in a coordinated manner;

(3) Have a beneficial impact within a reasonable period of time.

HUD may make an exception to the requirement that all activities must be carried out in a defined area or areas if the applicant can demonstrate that the comprehensive strategy is a reasonable means of addressing identified needs.

If an application for a Comprehensive grant does not meet the requirements of the Comprehensive Grant Program, HUD will rate the proposal as a Single Purpose grant.

b. *Funding Requirements.* The total amount of funds requested for a Comprehensive grant must be within the established ceilings. Grant ceilings for each of the administering offices are indicated in section I.B.1. of this NOFA. Grant funds requested must be sufficient, either by themselves or in combination with funds from other sources, to complete the project within a reasonable amount of time. If other sources of funds are to be used with respect to a project, the source of those funds must be identified and the level of commitment indicated.

2. Single Purpose Grants

a. *General.* Single Purpose grants are designed to address and resolve a specific community development need. A Single Purpose grant may consist of more than one project. A project may consist of one activity or a set or activities. Each project must address community development needs in one of the following problem areas:

—Housing
—Public Facilities
—Economic Development.

Each project will be rated against all other projects addressing the same problem area, according to the criteria outlined below. It should be noted that each project within an application, will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (i.e. separate Needs Description, Community Development Activities, Impact Description and Program Schedule forms have been filled out, indicating project names). In some cases, it may be to the applicant's advantage to designate separate projects for activities that can "stand on their own" in terms of meeting the described need, especially where a particular project would tend to weaken the impact rating of the other activities, if they were rated as a whole, as has been the case with some economic development and housing projects. If, however, the projects tend to meet impact criteria to the same extent, or the weaker element is only a small portion of the overall project, there is no discernable benefit in designating separate projects.

b. *Funding Requirements.* The total amount of funds requested for a Single Purpose grant must be within the established ceilings. Grant ceilings are discussed in section I.B.1. of this NOFA. Grant funds requested must be sufficient, either by themselves or in conjunction with funds from other sources, to complete the project within a reasonable period of time. If other sources of funds are to be used with respect to a project, the source of those funds must be identified and the level of commitment indicated.

c. *Projects with Multiple Activities.* If a project consists of more than one activity, the activity that directly addresses the need must represent at least a majority of the funds requested. Other activites must be incidental to, and in support of the principal activity.

d. *Applications with Multiple Projects.* If an application contains more than one project, each project will be rated separately for program impact. Applicants should note that regardless of the number of projects, the total grant amount cannot exceed the appropriate grant ceilings identified in section I.B.1. of this NOFA.

3. Final Selection

The total points received by a project for all of the selection factors are added, and the project is ranked against all other projects from all applications, regardless of the problem areas in which the projects were rated. The highest ranked projects will be funded to the extent funds are available. Applicants will receive a single grant in the amount of the project or projects applied for which were ranking high enough to be funded. In the case of ties at the funding line, HUD will use the following criteria in order to break ties:

—The project receiving the highest program impact rating will be funded;

—If tied projects have the same program impact rating, the project having the highest combined score on the needs factors will be funded; and

—If tied projects have the same program impact ratings and equal needs factor scores, the project having the highest score on the percent of persons in poverty needs factor will be funded.

As soon as possible after the rating and ranking process has been completed, HUD will notify all applicants regarding their rating scores and funding status. Thereafter, applicants may contact HUD to discuss scores or any aspects of the selection process.

E. Selection Criteria/Ranking Factors

1. General

Complete applications received from eligible applicants by the application due date are rated and scored by HUD. Regardless of the type of grant sought (Single Purpose or Comprehensive), applications are rated and scored against four factors. These four factors are discussed in more detail in subsection 3 of this section E. Previous grantees of Small Cities Program CDBG grants, also undergo a performance evaluation. The criteria for determining adequacy of performance is discussed in subsection 2.

2. Performance Evaluation

As noted in section C of this NOFA, previous grantees of Small Cities Program CDBG grants are subject to an evaluation of performance and capacity to undertake the proposed program. For purposes of making performance evaluations, HUD will use any information available as of the application due date. Performance also

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will be evaluated using information which may be available already to HUD, including previously submitted performance reports, site visit reports, audits, monitoring reports and annual in-house reviews. Grantees may be requested to submit additional information, if generally available facts raise a question as to capacity to undertake the proposed program. No grants will be made to an applicant that does not have the capacity to undertake the proposed program. A performance determination will be made by evaluation of the following areas:

a. *Community Development Activities.* The following thresholds for performance in expending CDBG funds have been established for FY 1991 and pertain to all Single Purpose and Comprehensive Grants:

FY 1985 and earlier—Grants must be closed out
FY 1986—Grant funds 100% expended
FY 1987—Grant funds 95% expended
FY 1988—Grant funds 80% expended
FY 1989—Grant funds 30% expended
FY 1990—Recipients must be on target with respect to the latest Small Cities Program Schedule received by HUD.

Note: These standards will be used as benchmarks in judging program performance, but will not be the sole basis for determining whether the applicant is ineligible for a grant due to a lack of capacity to carry out the proposed project or program. Any applicant which fails to meet the percentages specified above, may wish to provide updated data to HUD, either in conjunction with the application submission or under separate cover, but in no case will data forwarded after the application due date be accepted.

b. *Compliance with Applicable Laws and Regulations.* An applicant will be considered to have performed inadequately if the applicant:

(1) Has not substantially complied or attempted to comply with the laws, regulations, and Executive Orders applicable to the CDBG Program, or has a civil rights suit brought by the Justice Department pending against it, or has not resolved a charge of discrimination against it issued by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400;

(2) Has not resolved or attempted to resolve findings made as a result of HUD monitoring; or

(3) Has not resolved or attempted to resolve audit findings.

An applicant will be ineligible for a grant where the inadequate performance in compliance with applicable laws and regulations evidences a lack of capacity to carry out the proposed project or program. An application also will not be accepted from a unit of general local government which has an outstanding audit finding or monetary obligation for any HUD program. Additionally, applications will not be accepted from any entity which proposes an activity in a unit of general local government that has an outstanding audit finding or monetary obligation for any HUD program. The HUD Regional Administrator may provide waivers to this prohibition, but in no instance will a waiver be provided where funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made.

3. Four Factor Rating

As noted in subsections 1 and 3 of this section E, all applications are rated and scored against four factors. These four factors are:

Need based on absolute number of persons in poverty;
Need based on the percent of persons in poverty;
Program Impact; and
Outstanding performance in fair housing and equal opportunity.

A maximum of 615 points is possible under this system with the maximum points for each factor being:

Need—absolute number of persons in poverty.	—75 points
Need—percent of persons in poverty.	—75 points
Program Impact	—400 points
Outstanding performance—FHEO	
Provision of assisted housing	20 points
Fair Housing Programs	20 points
Minority contracting	15 points
Equal opportunity employment.	10 points
Total	615 points

Each of the four factors is outlined below. All points for each factor are rounded to the nearest whole number. Applicants should note that there is a distinct difference in the methods used to evaluate Program Impact for Single Purpose grants versus Program Impact for Comprehensive grants. These differences are more fully discussed below.

a. *Need—Absolute number of persons in poverty.* HUD uses census data to determine the absolute number of persons in poverty residing within the applicant unit of general local government. Comprehensive and Single Purpose grant applicants are grouped and rated separately for this factor. Applicants which are county governments are rated separately from all other applicants. Applicants in each group are compared in terms of the number of persons whose incomes are below the poverty level. Individual scores are obtained by dividing each applicant's absolute number of persons in poverty by the greatest number of persons in poverty of any applicant and multiplying by 75.

b. *Need—Percent of persons in poverty.* HUD uses decennial census data to determine the percent of persons in poverty residing within the applicant unit of general local government. Comprehensive and Single Purpose grant applicants are grouped and rated separately for this factor. Applicants in each group are compared in terms of the percentage of their population below the poverty level. Individual scores are obtained by dividing each applicant's percentage of persons in poverty by the highest percentage of persons in poverty of any applicant and multiplying by 75.

c. *Program Impact—General.* In evaluating program impact, HUD will consider:

—Extent and seriousness of the identified needs;
—Results to be achieved;
—Number of beneficiaries, given the type of program;
—Nature of the benefit;
—Additional actions that may be necessary to fully resolve the need;
—Previous coordinated actions taken by the applicant to address the need;
—Environmental considerations;
—Whether displacement will be involved and what steps will be taken to minimize displacement and to mitigate its adverse effects or related hardships; and
—Where appropriate, housing site selection standards.

Assessments are done on a comparative basis and, as a result, it is important that each applicant present information in a detailed and uniform manner.

In addressing Program Impact criteria, applicant should adhere to the following general guidelines for quantification. Where appropriate, absolute and percentage figures should be used to describe the extent of community development needs and the impact of the proposed program. This includes, but is not limited to, appropriate units of measure (e.g. numbers of housing units or structures, linear feet of pipe, pounds per square inch, etc.), and costs per unit of measure. These quantification guidelines apply to the description of need, the nature of proposed activities, and the extent to which the proposed program will address the identified need.

Appropriate documentation should be provided to support the degree of need

described in the application. Basically, the sources for all statements and conclusions relating to community needs should be included in the application or incorporated by reference. Examples of appropriate documentation include planning studies, letters from public agencies, newspaper articles, photographs and survey data.

Generally, the most effective documentation is that which specifically addresses the subject matter and has a high degree of credibility. Applicants, which intend to conduct surveys to obtain data and information, are advised to contact the appropriate HUD office prior to conducting the survey for a determination as to whether the survey is statistically valid.

There are a number of program design factors related to feasibility which can alter significantly the award of impact points. Accordingly, it is imperative that applicants provide adequate documentation in addressing these factors. Common feasibility issues include site control, availability of other funding sources, validity of cost estimates, and status of financial commitments as well as evidence of the status of regulatory agency review and approval.

Past productivity and administrative performance of prior grantees will be taken into consideration when reviewing the overall feasibility of the program. Overall program design, administration and guidelines are other feasibility issues that should be articulated and presented in the application, since they are critical in assessing the effectiveness and impact of the proposed program.

(1) Program Impact—Single Purpose Grants.

Each project will be rated against other projects addressing the same problem area, so that, for example, housing projects only will be compared with other housing projects, according to the criteria outlined below. It should be noted that each project within an application will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (i.e. separate Needs Descriptions, Community Development Activities, and Impact Description and Program Schedule forms have been filled out, indicating separate project names).

In some cases, it may be to the applicant's advantage to designate separate projects for activities that can "stand on their own" in terms of meeting the described need, especially where a particular project would tend to weaken the impact rating of the other activities, if they were all related as a whole, as has been the case with some economic development projects. If, however, the projects tend to meet the impact criteria to the same extent, or the weaker element is only a small portion of the overall program, there is no discernable benefit in designating separate projects.

Applicants should bear in mind that the impact of the proposed project will be judged by persons who may not be familiar with the particular community. Accordingly, individual projects will be rated according to how well the application demonstrates in specific, measurable terms, the extent to which the impact criteria are met. General statements of need and impact alone will not be sufficient to obtain a favorable rating.

(a) *Program Impact—Single Purpose—Housing.* There are two distinct types of Single Purpose Housing projects: Housing Rehabilitation and Direct Homeownership Assistance. Separate rating criteria are provided for each type of project.

(i) *Housing Rehabiliation*—Needs. Each application should provide information on the total number of units in the project area, the number that is substandard, and the number of substandard units occupied by low and moderate income households. The purpose of this information is to establish the relative severity of housing conditions within the designated project area compared to other housing rehabilitation applications. The application also should describe the date and methodology of any surveys used to obtain the information, including an explicit and detailed definition of "substandard".

Surveys of Housing Conditions. Surveys of housing conditions serve several purposes in evaluating applications for housing rehabilitation activities. These include establishing the seriousness of need for such assistance in the project area, providing a basis for estimating overall budgetary needs, and providing an indication of the marketability of the project.

Project Design and Feasibility. The application should describe the project in sufficient detail to allow the reviewer to assess its feasibility and its probable impact on the conditions described. It also should describe project requirements in such a way that regulatory and policy concerns will be addressed.

In reviewing applications from grantees with prior housing rehabilitation projects, reasonableness of cost-per-unit, stated in the application, will be compared against the grantee's actual past performance. All applications should provide documentation to justify the cost-per-unit estimates, particularly grantees where past performance does not support the estimates in the applications.

It should be noted that HUD encourages communities to design projects supplementing CDBG rehabilitation funds with private funds wherever feasible and appropriate, especially in the case of rental units and housing not occupied by lower income persons. In such cases, the CDBG subsidy should be as low as possible, while retaining sufficient incentive to attract local participants. On the other hand, projects designed for low income homeowners should not require contributions at a level that puts the project out of reach of potential participants.

Where the creation of new units is proposed, either through new construction or conversion, the application should document the need for additional units based on vacancy rates, waiting lists, and other pertinent information. The proposed project clearly must support, or result in, additional units for low and moderate income persons. The units may result from the rehabilitation of currently vacant structures, conversion of non-residential structure for residential use, or new construction projects for which the proposed project will provide non-construction assistance.

Where the proposed project involves the use of Federally assisted housing, the applicant must identify and document the current commitment status of the Federal assistance. Lack of a firm financial commitment for assistance may adversely affect project impact. Applicants should address issues of site control and marketability, in addition to addressing feasibility from the standpoint of market financing.

The impact of the proposed project will be based on the degree of need, the number of units to be created, overall feasibility and the nature and cost of the proposed activities.

For projects consisting of more than one activity, the activity that directly addresses the need must represent at least the majority of funds requested. Other activities must be incidental to and in support of the principal activity. For example, public improvements included in a rehabilitation project that addresses housing need must: be a realtively small amount in terms of funds requested; clearly be in support of the housing objective; and demonstrate a positive and direct link to the national objective.

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For incidental activities claiming benefit to low and moderate income persons, the application must document that at least 51 percent of the residents of the service area meet the low/moderate income requirement. Funds should not be requested for activities that are not incidental to, and in support of the principal activity.

Scoring. Individual projects often vary in the extent to which they meet the criteria outlined above. Accordingly, it is difficult to define precisely those combinations of characteristics which constitute, for example, "maximum" versus "substantial" impact. Not all projects receiving a particular rating will match all the criteria point-by-point, in the same manner. The objective for non-target area projects, in as much as they are sparsely populated, only should be to assist low and moderate income persons. Accordingly, the following standards will be used for rating housing rehabilitation projects:

Maximum (400 points)

1. Severe need is shown in the project area, in terms of the proportion of units that are substantiated and the extent of disrepair in the units.

2. Project would be bring all, or almost all, of the units in the project area up to standard.

3. There are no feasibility questions, such as availability of other resources, marketability, or appropriateness of project design, which would hinder the timely completion of the project as proposed.

4. Benefits a large number of persons when compared to other housing projects.

Substantial (300 points)

1. Serious need is shown.

2. Project would bring most of the units in the area up to standard.

3. There are no major feasibility questions.

4. Benefits a substantial number of persons.

Moderate (200 points)

1. Serious need is shown, but is not as well documented as in other applications.

2. Project would bring units up to standard, but not to the same extent as other applications.

3. There may be some minor feasibility questions.

4. Benefits a significant number of persons.

Minimal (100 points)

1. Some need is evident, but it is not serious compared to other applications, or is not well documented.

2. Project may bring most units up to standard, but not to same extent as in other applications.

3. There are serious feasibility questions.

4. Benefits a small number of persons.

Insignificant (0 points)

1. Very little need has been demonstrated.

2. Project would not rehabilitate most units.

3. There are serious feasibility questions.

4. Benefits a very small number of persons.

(ii) *Direct Homeownership Assistance.* Homeownership activities are defined as activities which would promote homeownership within the applicant jurisdiction, focusing particularly on aiding low and moderate income persons in becoming homeowners. This is the first year in which direct homeownership activities are eligible activities under the Small Cities Program. Lacking any previous experience upon which to rely, and recognizing that activities which promote homeownership can take many different forms, HUD will not delineate what would constitute an acceptable project. While declining to identify any particulary type of proposed project as superior, HUD is identifying several criteria which must be addressed within the project design, in order for the application to receive the maximum project impact.

Applications must include a well developed description of homeownership needs in the applicant jurisdiction, focusing particularly on the needs of low and moderate income persons. The description also should include, if applicable, any alternative approaches which have been considered in meeting homeownership needs. Project feasibility must be addressed as part of the application.

The application must demonstrate that the proposed project would make effective use of all available funds. This would include any local, State or other Federal funds which would be utilized by the proposed project. If other such funds are included as part of the proposed project, the applicant must demonstrate that such funds are committed and truly available for the project.

Any efforts which would affirmatively further fair housing, by promoting homeownership among minorities as well as homeownership throughout the community, must be outlined in the application.

The application must explain how the project would benefit low and moderate income homebuyers, particularly focusing on first-time homebuyers. The application also should address any homeownership counselling services which would be provided to persons selected to participate in the proposed project.

Finally, the application should describe how the project would utilize public/private partnerships to promote homeownership, particularly in the sense that private sector financing would be accessible, as necessary, to project participants to compliment available public sector funds, including CDBG money.

HUD will review each application which meets the threshold against the following criteria:

Maximum (400 points)

1. Project design is appropriate to demonstrated homeownership need and alternative approaches to meeting the need are shown to have been considered. Additionally, there are no feasibility questions regarding the implementation and execution of the proposed project according to the schedule.

2. The application documents serious homeownership needs in the community and the proposed project would make effective use of available funds.

3. The proposed project would affirmatively further fair housing by including initiatives to reach out to potential minority homeowners and by promoting homeownership throughout the community.

4. The proposed project would target first-time homebuyers.

5. The proposed project would provide homeownership counseling to project participants.

6. The proposed project would compliment other Federal, State or local programs which promote homeownership.

7. The proposed project would utilize public/private partnerships in attempting to promote homeownership, particularly in regard to participation by local financial institutions.

Substantial (300 points)

1. Project design demonstrates a workable approach to homeownership assistance needs, and there are no major feasibility questions regarding implementation of the proposed project.

2. Substantial homeownership needs are documented by the application, and the proposed project would make effective use of available funds.

3. The proposed project would affirmatively further fair housing by promoting homeownership opportunities throughout the community.

4. The proposed project would encourage homeownership among first-time homebuyers.

5. The proposed project would encourage local financial institutions to lend to assisted homebuyers.

Moderate (200 points)

1. The proposed project has potential to meet homeownership needs in the community, and there are minor feasibility questions regarding implementation.

2. Homeownership needs in the commuity are documented, but not as well as in other applications.

3. The proposed project would include efforts to affirmatively further fair housing through homeownership.

4. The proposed project would educate and inform citizens of homeownership assistance available through the project.

5. The proposed project would not include private sector involvement.

Minimal (100 points)

1. There are serious feasibility questions regarding the implementation and execution of the proposed project.

2. The proposed project would have little impact upon homeownership needs in the community.

3. The proposed project would contribute minimally to fair housing in the community.

4. The proposed project would marginally aid first-time homebuyers versus all homebuyers.

Insignificant (0 points)

1. The proposed proejct has major feasibility questions which would inhibit its implementation and execution.

2. The proposed project does not address identified homeownership needs in the community.

3. The proposed project would not actively affirmatively further fair housing.

4. The proposed project would be of little benefit to first-time homebuyers.

(b) *Program Impact—Single Purpose—Public Facilities Affecting Public Health and Safety.* In the case of public facility projects, documentation of the problem by outside, third-party sources is of primary importance. In the case of water and sewer projects, documentation from public agencies is particularly helpful, especially where such agencies have pinpointed the exact cause of the problem and have recommended courses of action which would eliminate the problem. Such supporting documentation should be as up-to-date as possible: the older the supporting material, the more doubt arises that the need is current and immediate. Applicants also should be sure to indicate how the project would address public health and safety needs and conditions. Quantification also is essential in describing needs. Documentation from those affected should be included in the support quantification.

In order to show that the project is likely to impact upon the problem, the following items should be covered:

(1) Total project costs. Total project costs should be documented by qualified third party estimates, and be as recent as possible.

(2) Source of other funds. To the extent that CDBG funds will not cover all costs, the source of other funds should be identified and committed. If local funds are to be used, the applicant should show both the willingness and the ability to provide the funds).

(3) How the project will solve the problem. The applicant should demonstrate that the project will completely solve the problem and, if applicable, the applicant should address whether the proposal would be satisfactory to other State/local agencies which have jurisdiction over the problem.

(4) Cost effectiveness of the proposal. The applicant should address whether the proposal is the most cost effective and efficient among the possible alternatives considered.

(5) Reasonableness of service area. The applicant should address whether the service area claimed for the project is reasonable, in view of the nature of the proposed project, and if not, the applicant should address what effect a more realistic appraisal would have on overall benefit to low and moderate income persons.

(6) Project impact on public health and safety; and

(7) Other applicable feasibility issues have been addressed.

Individual projects often vary in the extent to which they meet the criteria outlined above. Therefore, it is difficult to define precisely those combinations of characteristics which constitute, for example, "maximum" versus "substantial" impact. Not all applications receiving a particular rating will match point-for-point all the criteria in the same way. The following standards will be applied:

Maximum (400 Points)

1. Need is serious, current and requires prompt attention.

2. Program would resolve the problem completely, either through funds requested or with the support of other resources already committed.

3. No other obstacles to timely and effective implementation of the program exist.

4. Benefits a large number of persons when compared to other public facility projects.

5. Demonstrates that applicant has considered and, as appropriate, will use alternative cost effective methods or material in the execution of the project.

6. Public health and safety concerns are fully resolved by the project.

Substantial (300 Points)

1. Serious need is shown.

2. Program would resolve the problem completely.

3. There are no major feasibility questions.

4. Benefits a sustantial number of persons.

5. Evidence that efforts have been made to minimize project costs through use of alternative methods and materials, as appropriate.

6. Public health and safety concerns are substantially resolved by the project.

Moderate (200 Points)

1. Serious need is shown, but is not as serious or well documented as other applications.

2. Program may not meet the need as completely as in some other applications.

3. There may be some questions relative to feasibility.

4. Benefits a significant number of persons.

5. Evidence that efforts have been made to minimize project costs.

6. Public health and safety concerns are partially met by the project.

Minimal (100 Points)

1. Some need is evident, but is not serious.

2. Only a portion of the need would be met or the problem would not be resolved completely.

3. There are serious feasibility questions.

4. Benefits only a small number of persons.

5. Little evidence that efforts have been made to minimize costs.

6. Public health and safety concerns are minimally addressed by the project.

Insignificant (0 Points)

1. No clear need has been demonstrated.

2. Program is not appropriate to meeting described needs, or there is serious doubt that there would be much impact on needs.

3. There are major feasibility questions.

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4. Benefits a very small number of people.

5. No evidence that efforts have been made to minimize project costs.

6. Public health and safety needs are not addressed by the project.

(c) *Program Impact—Single Purpose—Economic Development Projects.* Economic Development Projects are defined as those activities which directly address the employment needs of low and moderate income persons in the applicant jurisdiction. While most often provided in the form of direct loans or infrastructure improvements, economic development assistance also may include equity investments and interest subsidy grants. It is important to note that whatever the form of the assistance, it must be demonstrated clearly in the application that the proposed scope of activities cannot be undertaken without the provision of CDBG assistance.

As discussed earlier in this section of the NOFA, each individual Single Purpose project will receive a separate impact rating. Applicants whose proposed economic development program will include multiple proposals should determine the most appropriate form of submission. This determination will require a choice as to either the incorporation of all proposals into a single project or the submission of separate projects for each proposal (each transaction will be considered a separate project). The single project format presents an "all or nothing" situation. In determining the appropriate submission format, applicants should consider the ability of a transaction to rate well on its own, based on the magnitude of employment impact, size of the financial transaction and the other factors discussed in this section.

The submission of proposals as separate projects must be clearly designated by the applicant with individual Needs Descriptions, Community Development Activities, Impact Descriptions and Program Schedule forms, including an appropriate name for each project on HUD Form 4124.1.

In addition to the standard submission requirements, Small Cities applicants must submit information that demonstrates that CDBG funds are needed for the proposed project or activity, and that the CDBG Program's national objectives are met. HUD will evaluate this material as part of its Eligibility Review prior to considering an application for funding in the FY 1991 competition. The following is a discussion of some of the factors HUD will consider in assessing projects in these two key areas:

(i) *The Appropriate Determination.* HUD requires that economic development activities undertaken with CDBG funds be appropriate to carry out an economic development project. This means that the scope of the proposed activity cannot be accomplished without the use of CDBG funding, and that the amount and form (e.g., rate, term, etc.) of the CDBG assistance is reasonable and prudent. Where CDBG assistance will be provided directly to a for-profit development entity, such entity must demonstrate the financial necessity of the amount and form of the CDBG funding. Further, applicants should attempt to demonstrate that each economic development project has a reasonable likelihood of economic success.

Applicants must document in writing the financial analysis of the project's need for assistance, as well as public benefit factors that were considered in making its determination that assistance is appropriate. For the public benefit portion, the type of factors to consider include: the number and type of jobs to be made available, in relation to the needs of low- and moderate-income and other persons who are likely to be employed or retained for employment; and increases to the tax base including property, sales and income taxes or increases in needed services which result from the activity. This list is not exclusive, but, in any case, the applicant is expected to provide clear documentation on how the decision was reached.

The written documentation of the financial analysis of the project's need should use the following steps:

1. *Determine Project Type*—There are two basic types of projects: Real Estate Projects and User Projects. Determining the project type is important since each is evaluated differently.

a. In a Real Estate Project, the private developer buys/builds/renovates a piece of real property with the goal of selling or leasing that property to another party for a profit.

b. In a User Project, the entity seeking the assistance is also the owner/lessee and the occupant/user of the property. Typically User Projects involve the construction of, or an addition to, an industrial or commercial facility, or the procurement of equipment.

c. There also may be hybrid projects. An example is the manufacturing company which creates a subsidiary or independent entity to build and own a facility which the manufacturing company leases. In such situations the analysis must discover which entity/transaction is in need of CDBG assistance.

2. *Project Costs.* Evaluate the proposed project costs (the uses of funds to complete the project). Cross-check costs with appropriate industry standards. The goal is to conclude that all costs are reasonable. Cross-checking should include hard and soft costs, particularly developer's fees.

3. *Verify and Maximize Private Sources of Funding* (the sources of funds necessary to complete the project). Both private debt and equity must be verified. Verification means ascertaining that: the source of funds is committed; that the terms and conditions of the committed funds are known; and the source has the capacity to deliver. All private sources should be maximized for the given project. No CDBG funds should substitute for available private funds.

4. *Determine Reason for the Need for CDBG Assistance to Complete the Project.* There are three general, justifiable reasons for CDBG assistance to both Real Estate and User Projects.

a. *Financing Cap.* The amount that the private sector can raise is only a portion of the debt and equity funds necessary to complete the project. Therefore, a gap between sources and uses exists, and CDBG fills the gap.

b. *Rate of Return (ROR).* The private sector can raise sufficient debt and equity to complete the project, but the returns to the developer/user are inadequate to motivate an "economic person" to proceed with the project—that is, project risks outweigh rewards.

c. *Location.* For either a Real Estate or User Project in its most simplified version, the private sector entity is deciding between Site A and Site B for its project. The CDBG grantor wants the project at Site A, but the private entity argues that the project will cost less at Site B and that a subsidy will be required to equalize its costs to induce it to locate at Site A. The reasons for the cost differential are varied and must be evaluated on a case by case basis. Most common reasons are: on-site costs (e.g., soil conditions), prices of land (downtown versus suburban), distance to markets, and special off-site costs (e.g., road, sewers, etc.). The objective here is to quantify the cost differential to the extent possible between Site A and B so that the financial needs of the business may be judged in relationship to the public benefit and avoid an undue enrichment of the business.

5. *Size the CDBG Assistance.* Based on the type and extent of the need as detailed in Step 4, determine the minimum amount of CDBG funds necessary to stimulate the private investment. This analysis generally will require a 2 to 5 year proforma for the proposed project depending on the complexity of the project and when its financing is expected to stabilize. Ideally, the private sector applicant for CDBG funds will submit one proforma with 100 percent private financing and a second proforma with CDBG funding.

6. *Price the CDBG Loan.* If the CDBG subsidy is to be a loan to a private entity, the debt service payments should balance the maximum return to the public lender with the economic health of the project. Returns to the developer in excess of industry averages should be avoided, but too high an interest rate for the CDBG assistance may weaken the project. The most direct pricing procedure is to work backwards from the proforma's cash flow dollars available to service the CDBG loan (after project expenses, private loan debt service, and an appropriate return to the private entity) to an interest rate and term that equates to the available cash flow.

Where CDBG assistance is required by the applicant to provide necessary support activities for an economic development project (e.g., infrastructure improvements), the applicant must document the unavailability of other funding sources, including municipal bonding and other Federal and State programs.

Applicants also must demonstrate the reasonable likelihood of the project's success, from both a financial and employment standpoint. An analysis of market data which indicates an inordinate risk in the undertaking of the project will affect the overall rating of program impact.

(ii) *Meeting National Objectives: Employment and the Low/Moderate Income Test.* As previously stated in this NOFA, all CDBG-assisted activities must address one of the three broad national objectives. Since economic development projects usually result in new employment or the retention of existing jobs, these activities most likely would be categorized as principally benefitting low and moderate income persons. Therefore, the extent to which the proposed project will directly address employment opportunities for low and moderate income persons in the applicant jurisdiction will be a primary factor in HUD's assessment for the proposed program.

Projects that provide for economic development assistance will be considered to benefit low and moderate income persons where the criteria of 24 CFR 570.208(a)(4) is met. HUD will consider an activity to qualify under this provision where the activity involves jobs at least 51 percent of which are either: actually taken or retained by such persons; or can be considered to be available to them because:

—Special skills that only can be acquired with substantial training or work experience, or education beyond high school, are not a prerequisite to fill such jobs, *or* the business nevertheless agrees to hire unqualified persons and provide them training; and

—The local government or the assisted business take actions that would ensure that low and moderate income persons receive first consideration of filling such jobs.

When making judgments concerning whether an individual qualifies as a low and moderate income person, both the family size and income of the entire family must be considered. This consideration is necessary because a low and moderate income person is defined as a member of a low and moderate income family.

First, consideration means that a business gives objective consideration to the employment of low and moderate income persons. Such objective consideration normally will involve an interview. In order for the business to demonstrate that it considered a low and moderate income person, the business must either agree to: obtain and keep on file, for verification, the necessary information about the person to determine low and moderate income status; or agree to consider referrals from certain sources. The referrals may be from the locality or a State, County or local employment agency that agrees to refer individuals who they determine to be a low and moderate income person based on HUD's income levels and considering both family income and size. Such entities making referrals must maintain the documentation they use for verification. HUD also will categorically accept as low and moderate income persons those referred from Job Training Partnership Act (JTPA) program (except for the Dislocated Worker Program, Title III) because of the known income restrictions of that program.

HUD also will accept a written certification by a person of his or her family income and size to establish low and moderate income status. The certification may simply state that the person's family income is below that required to be low and moderate income in that area. The forms for such certification must include a statement that the information is subject to verification.

The first consideration approach has been developed by HUD with the expectation that, in most instances where it is applied, the outcome will be that over 51 percent of persons hired will be low and moderate income. Accordingly, grantees electing to use this approach will be expected to follow some basic principles. For example, merely considering 51 low and moderate income persons for 100 created jobs is normally not sufficient, because most jobs are not offered to, or taken by, the first person interviewed. The hiring practices of the business should be analyzed. If it appears that the normal practice is that only one of three persons interviewed are hired, than a comparable number of low and moderate income persons should be given first consideration for the jobs. The distance from residence and availability of transportation to the employment site also should be considered in determining whether a particular low and moderate income person can seriously be considered an applicant for the job. The business must be required to consider a sufficient number of low and moderate income job applicants in order to meet the intent of this requirement.

The application must contain adequate documentation to fully explain and support the process to be used to ensure that project(s) comply with the low and moderate income employment requirements. The documentation must be sufficient to show that the process has been developed and that program participants have agreed to adhere to that process.

Retained jobs are limited to the total of those jobs known to be held by low and moderate income persons at the time the assistance is provided, together with any other jobs that reasonably can be expected to become available through turnover to low and moderate income persons in a period of two years thereafter, using the same standards for newly created jobs.

Clearly, retaining a job that already is held by a low and moderate income person would qualify that job as benefitting a low and moderate income person. In determining whether the person already occupying a retained job is low and moderate income, it is the person's family income at the time the CDBG assistance is provided that is determinative. However, it is recognized that a business currently may be employing less than a majority of low and moderate income persons, or may be unable to ascertain the family size and total family income of some or all of its employees. Additionally, it is possible that a business might be unwilling to try to acquire such

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information. Accordingly, this accounts for why the standard for retained jobs gives credit for jobs based on jobs which will be made available to such persons over the next two years.

Accordingly, if an assisted business is able to demonstrate that at least 51 percent of the jobs it is retaining are held at the time the CDBG assistance is provided by low and moderate income persons, the activity would qualify as meeting the first national objective. Where the business does not know or cannot determine the income status of some or all of its employees' families at the time CDBG assistance was provided, or if a majority of the jobs currently are not held by low and moderate income persons, it still can qualify, if it can show that at least 51 percent of the retained jobs will be made available to low and moderate income persons over the two year period following receipt of the CDBG assistance. These two approaches can be used in combination, as well. Therefore, the total of those jobs known to be held by low and moderate income persons, together with jobs not known to be held by low and moderate income persons and that can reasonably be expected to become available through turnover to low and moderate income persons in a period of two years after the assistance is provided may be counted, provided low and moderate income persons are given first consideration as described previously for such turn-over jobs.

An example may be helpful to demonstrate how this would work. Assume that funding results in the retention of 100 jobs, of which 40 are known to be currently held by low and moderate income persons. Assume also that based on analysis of the business' past experience, an additional 15 of the retained jobs currently not held by low and moderate income persons are expected to turn over within the next two years, and the business agrees to ensure that special skills or education will not be a prerequisite, and that first consideration will be given to low and moderate income persons in the hiring for the 15 jobs expected to turn over. Under these circumstances, 55 percent of the total number of jobs would qualify as involving the employment of low and moderate income persons, i.e., 40 jobs "held by" and an additional 15 "made available".

To the extent feasible, the material listed below should be submitted for Economic Development projects. The material should be submitted for each proposed activity (e.g. each loan will be considered a separate activity), whether the proposed activity is presented as a separate project or as part of a project involving multiple activities. Since Economic Development projects are rated against each other, the more completely these submission requirements are met, the greater the potential exists for enhancing the impact score of the project.

1. A letter from each appropriate developmental entity which includes at least the following information:

a. A detailed physical description of the project with a schedule of events and maps or drawings as appropriate.

b. The estimated costs for the project, including any working capital requirements.

c. A discussion of all financing sources, including the necessity and terms of the CDBG assistance and the proposed lien structure. The amount, source and nature of any equity investment(s) must also be provided as well as a commitment to invest the equity.

d. A discussion of employment impact which includes a schedule of newly created positions. The schedule should identify the number, salary and skill level of each position.

The applicant must also demonstrate and document how persons from low and moderate households will be accorded first consideration for employment opportunities.

e. A discussion of all appropriate feasibility issues including, but not limited to: site control, zoning, public approvals and permits, corporate authorizations, infrastructure, environment and relocation.

f. An analysis and summary of market and other data which supports the anticipated success of the project.

2. A development budget showing all costs for the project, including professional fees and working capital.

3. Documentation to support project costs. Documentation generally should be from a third party source and be consistent with the following guidelines:

a. Acquisition costs should be supported by an appraisal.

b. Construction/renovation costs should be certified by an architect, engineer or contractor. Use of Federal Prevailing Wage Rates should be cited where applicable.

c. Machinery and equipment costs should be supported by vendor quotes.

d. Soft costs (e.g., legal, accounting, title insurance) need be substantiated only where such costs are anticipated to be abnormally high.

4. Letters from all financing sources discussing, at a minimum the amount and terms of the proposed financing, and the current status of the application for funding.

5. Historical financial data of the development entity, preferably for the last three years. This information may be submitted under separate cover with confidentiality requested. It is recognized that historical financial data may be unavailable or inappropriate for some projects (e.g., start-up companies and real estate transactions).

6. A two-to-five year cash flow pro forma with accompanying notes citing basic assumptions.

7. The applicant's assessment of the project's consistency with the CDBG program eligibility necessary/appropriate) standards and with the national objectives requirements.

(iii) *Review Criteria.* In evaluating and rating economic development projects, HUD will analyze the following factors:

1. *Employment.* The extent to which the proposed project will directly address employment opportunities for low and moderate income persons in the applicant's jurisdiction will be a primary factor in HUD's assessment of program impact. Applicants are reminded that for an activity to be consistent with the statutory objective of low/moderate income benefit, as a result of the creation or retention of jobs, at least 51 percent of created or retained employment opportunities must be held by, or made available to, persons from low and moderate income families. Applicants must fully document and describe employment benefits. In addition, applicants should address the following issues:

a. All employment data should be expressed in terms of full-time equivalents (FTEs). Only permanent jobs may be counted, but applicants should take into account such factors as seasonal and part-time employment.

b. The amount of CDBG assistance required to produce each full-time equivalent job will affect the impact assessment by HUD. Lower CDBG costs per job are preferable to higher CDBG costs per job. Such assessments of impact will be done on a comparative basis among all projects submitted, rather than by comparison to a given standard.

c. The use of CDBG funds to assist in the transfer of operations between communities will generally be considered as having no employment impact. Exceptions to this rule may include, among other things, an expansion in addition to the transfer or the demonstrated infeasibility of continuing operations at the current site. If the applicant proposes to assist in a transfer of operations based on an exception to the general rule, HUD should be contacted early in the planning process to discuss the viability of such a proposal. Failure to do so could result in the application receiving 0 impact points.

2. *Feasibility.* A high impact will not be given to projects which are likely to encounter feasibility issues which would hinder the timely completion of the project. Such issues include, but are not limited to: site control, zoning, public approvals and permits, infrastructure, environment, and relocation. Applicants should address these and any other applicable issues and provide documentation where appropriate.

Applicants also must demonstrate the reasonable likelihood of the project's success, from both a financial and employment standpoint. An analysis or market data, which indicates an inordinate risk in the undertaking of the project, will affect the overall rating of program impact.

3. *Leverage.* Leverage is defined as the amount of private debt and equity to be invested as a direct result of the CDBG-funded activity. While HUD does not prescribe a minimum standard for leverage, projects must conform to the requirements of the Appropriate Determination discussed above. Projects which fully conform with those requirements by providing the maximum feasible level of private investment will be considered as having appropriate leverage.

4. *Taxes.* While not a primary factor in the evaluation of impact, projects which will augment the applicant's tax base may have a positive effect on the rating of program impact. It is recognized, however, that good projects do not always result in increased tax revenues due to their nature.

5. *Repayment.* Where CDBG repayments are to be made in some manner to the applicant, the proposed use of those repayments for economic development purposes will be considered.

(iv) *Scoring.* Individual projects often vary in the extent to which they meet the criteria outlined above. It is, therefore, difficult to precisely define those combinations of characteristics which constitute, for example, "maximum" versus "substantial" impact. Not all applications, receiving a "maximum" rating will match all the criteria, point by point, in the same manner. The following standards will be applied:

Maximum (400 Points)

1. The analysis of market and other risk data provides reasonable assurance that the project will be successful.

2. The project will have a direct and positive impact on employment opportunities for persons from low and moderate income households, and the extent of that impact compares favorably with that of other applicants.

3. All appropriate feasibility issues have been addressed (including the submission of firm private financing commitments) and there is reasonable assurance that the project will be completed in a timely manner.

4. The Public Benefits (e.g., loan repayments, increases to the tax base including property, sales and income taxes to the area, other development likely to be stimulated by the activity) to be derived from the project are considerably relative to other proposals.

5. The infusion of CDBG funds will leverage a substantial investment of private and other dollars.

Substantial (300 Points)

The criteria for Maximum (400 Points) is met with either of the following exceptions:

1. While the project will have a direct and positive impact on employment opportunities for persons from low and moderate income households, the extent of that impact is less than that demonstrated by applicants receiving the maximum rating.

2. While there are no major feasibility problems, there are feasibility issues which have not been fully addressed and/or may have a negative effect on timely implementation of the project. However, overall success of the project appears achievable.

In addition:

3. The Public Benefits derived from this project will be greater than that received by the majority of applicants.

4. CDBG funds will leverage more private and/or other public dollars than the majority of projects in the competition.

Moderate (200 Points)

The project presents at least one of the following deficiencies which would affect the appropriateness of CDBG funding:

1. An analysis of the project indicates that the likelihood of the availability of other required financing is questionable.

2. There is a major feasibility issue which is likely to affect completion of the project.

3. The analysis of market and other risk data indicates a likelihood that the project will not create a significant employment impact.

4. The number of employment positions to be created is significantly low and/or the CDBG cost per employment position is significantly high in relation to other applications.

In addition:

5. There will be some Public Benefits resulting from this project.

6. CDBG dollars will leverage a moderate amount of private and/or other public funds relative to other projects.

Minimal (100 Points)

The project presents at least one of the following serious deficiencies which would affect the appropriateness of CDBG funding:

1. An analysis of the project indicates that other required financing is unlikely to be available.

2. There will be few, if any, Public Benefits resulting from this project.

3. CDBG dollars will leverage little private and/or other public investment in the project.

Insignificant (0 Points)

The activity presents at least one of the following serious deficiencies which indicates the inappropriateness of CDBG funding:

1. It is clear that the activity cannot be accomplished based on any combination of the following factors:

(1) Major feasibility issues.

(2) Inordinate risk.

(3) Unavailability of required financing.

2. The activity will not have a direct impact on employment opportunities for persons from low and moderate income households.

3. The completion of the project will result in no Public Benefits or will be detrimental to the community.

4. No other investment will be triggered by the use of CDBG funds for this activity.

(2) *Program Impact—Comprehensive Program Grants.* Comprehensive programs must address a substantial portion of the identifiable community development needs of a defined area(s). The extent to which activities are coordinated will be a major consideration in the evaluation of program impact. In defining an appropriate area for comprehensive treatment, applicants should consider the severity of condition within the area and the resources to be provided. The impact is greatest where community development needs will be substantially addressed over a reasonable period of time. Exceptions to the requirement that activities be concentrated within a defined area or areas may be made if the applicant can demonstrate that the proposed program represents a

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reasonable means of addressing the identified needs.

HUD will assess the impact of the program for each of the four program design criteria selected, based on the factors described below. Applicants must describe fully the extent to which the program will address each criterion selected. HUD will compare all programs which address a particular criterion. The best proposal for that criterion will be the standard by which all others will be judged, although that proposal will not necessarily be awarded a significant impact.

Assignment of Program Impact points for a Comprehensive Grant application is a two-step process. First, the potential of the proposed program of activities to achieve the results intended by each selected criterion when considered in relation to other communities selecting the same criterion is assessed. A numerical value is assigned, based on the following:

The results would have insignificant impact—0 Points
The results would have minimal impact—2 Points
The results would have a moderate impact—4 Points
The results would have a maximum impact—6 Points

After each of the four criteria selected by an applicant is rated and a value assigned, the values are summed. Then, the actual points are determined by dividing each applicant's Program Impact Score by the highest Program Impact Score achieved by any applicant and multiplying the result by 400.

Listed below are the ten design criteria and the standards which HUD has developed to evaluate each criterion. The applicant must select and address four of the criteria. In addition to these standards, the Submission Requirements and Review Criteria for Economic Development Projects under the Single Purpose Program, apply in determining the eligibility and rating for economic development proposals that are a part of a Comprehensive Program. It is particularly important that applicants fully address the economic development criteria should Criteria 5 and 6 be selected.

(a) *Criterion 1—Supports Comprehensive Neighborhood Conservation, Stabilization, Revitalization, New Housing Construction or Promotes Homeownership.* The applicant must describe the degree to which the identified needs of a defined area or areas will be addressed in a coordinated manner. In defining an area or areas, applicants should examine carefully the extent of needs and the resources available to address those needs. Where an area has not been defined, the applicant should describe fully the appropriateness of implementing activities on a communitywide basis.

In evaluating the impact of the proposed program, HUD will examine the following factors:

—Nature and severity of neighborhood needs.
—Extent to which needs will be addressed.
—Amount of funds required to implement neighborhood activities.
—Extent to which activities are coordinated to address housing, public facility and economic development needs. Program impact will be the greatest where a substantial portion of the needs within a defined area will be met.

The strongest consideration for housing rehabilitation programs is given to those applicants which have designed their housing programs by taking into account both structural conditions and appropriate financing mechanisms. The proposed program should be structured in a way to be marketable, given income and structural characteristics of the neighborhood area. The physical needs of residential or mixed use properties must be well stated and documented in terms of substandardness. Applicants will be expected to maximize the leveraging of private funds, encourage the participation of local financial institutions, and develop realistic program guidelines. Private funds available from financial lending sources should be established. If leveraging is infeasible, the applicant must fully document that fact. The most effective housing programs will be those which will address a substantial portion of the identified needs, while maximizing the impact of Federal funds.

For those programs that will support the construction of new residential units, project feasibility will be critical. While the extent of need and number of units to be created will be a primary consideration in evaluating the impact, issues of site control, marketability and assurance of private financing must be addressed, and must be documented.

Homeownership activities will be reviewed in terms of: how effectively the program would meet homeownership needs identified in the community; and the extent to which they would make effective use of available funds.

Public service activities also may be considered in conjunction with other activities under this criterion. Again, any such activities would need to meet demonstrated needs within the community.

The impact of public improvement activities will be assessed primarily on the documented severity of the need and the extent to which the proposed program will address that need. Those needs which directly affect the public safety and welfare will be considered the most severe.

Economic development activities also will be evaluated by the extent to which they will alleviate the identified problems. However, the assessed impact for these activities is often diminished due to feasibility concerns. In addition to quantifying the extent of the anticipated improvements, applicants must demonstrate that the proposed activities can be carried out—that is, documentation with respect to private participation in such activities must be thorough. Letters of only general interest, by either property owners or other private sector participants, do not necessarily ensure their participation in the program. Some degree of assurance of participation should be presented.

Review Criteria and Submission requirements for Housing described under the Single Purpose Program apply in evaluating and rating housing proposals that are a part of a Comprehensive Program.

(b) *Criterion 2—Provides Housing Choice within the Community either Outside Areas with Concentrations of Minorities and Low and Moderate Income Persons or in a Neighborhood which is Experiencing Revitalization and Substantial Displacement as a Result of Private Reinvestment, by Enabling Low and Moderate Income Persons to Remain in their Neighborhood.* If a proposed program provides housing choice within the community outside areas with concentrations of minorities and low and moderate income persons, the application must document that there are existing areas which do, in fact, contain concentrations of low and moderate income families and minorities. The proposed program, if implemented, must result in additional housing assistance being provided in areas of non-concentration. Communities with no minorities or minority concentrations may receive impact points where opportunities are provided outside areas of low and moderate income concentration. The degree of impact will be based upon the severity of needs, the number of unions to be provided, and the nature and cost of the activities.

In a neighborhood which is experiencing revitalization and substantial displacement as a result of private reinvestment, by enabling low and moderate income persons to remain in their neighborhood, the applicant must provide a detailed description of the revitalization efforts within the neighborhood, the amount of displacement of low and moderate income persons, and the manner in which the implementation of the proposed program will enable displaces to remain in the neighborhood. The degree of needs, nature and cost of activities, and percentage of needs to be addressed will be evaluated to determine program impact.

(c) *Criterion 3—Supports the Expansion of Housing for Low and Moderate Income Persons by Providing Additional Housing Units Not Previously Available.* The proposed program clearly must support, or result in, additional units for low and moderate income persons. The units may result from the rehabilitation of currently vacant structures, conversion of non-residential structures to residential use, or new construction projects for which the proposed program will provide non-construction or construction assistance. Where the proposed project involves the use of Federally assisted housing, the applicant must identify and document the current commitment status of the Federal assistance. Lack of a firm financial commitment for assistance may adversely affect program impact. Applicants should address the areas of site control and marketability, in addition to addressing feasibility from the standpoint of project financing. Consideration will not be given to proposed programs which will rehabilitate occupied units or displace current occupants. The impact of the proposed programs will be based upon the degree of needs, the number of units to be created, and the nature and cost of the proposed activities.

(d) *Criterion 4—Addresses a Serious Deficiency in a Community's Public Facilities.* Consideration will be given to the extent of deficiencies, and their relative seriousness, of the identified need. The following factors will be considered:

—Documentation of the seriousness of deficiencies. Appropriate documentation should be provided to substantiate the degree of seriousness. Those deficiencies which directly affect the public safety and welfare will be considered most severe.
—The nature and cost of the proposed activities in relation to the percentage of need to be addressed.
—The extent to which the proposed program will address a variety of deficiencies in public facilities within a defined area.
—Coordination with other activities within the defined area.
—The degree to which the application addresses such feasibility issues as, including but not limited to, the validity of cost estimates by qualified sources, the availability of other funds, site control, and environmental constraints.
—The number of persons to benefit.

(e) *Criterion 5—Expands or Retains Employment Opportunities.* Consideration will be given to proposed programs that will result in the creation of new jobs or retention of existing employment opportunities. The following factors will be considered:

—The number of jobs to be created or retained in relation to the identified needs. Documentation should be provided to substantiate the number and type (permanent or seasonal, full or part-time) of job claimed. Letters from local development agencies or expected participants which express more than general interest would be appropriate. While spin-off development will be recognized, impact will be greater where direct employment opportunities are proposed. With respect to job retention, evidence should be provided to demonstrate that without the proposed program, existing jobs would be lost. The applicant also must address the potential impact of job loss on the community.
—The extent to which CDBG funds are used to leverage private commitments. If leveraging is proposed, applicants should analyze the actual amount of additional funds required to make the project financially feasible. In designing a program to assist existing business expansion or retention, or to encourage new business development, applicants must address whether CDBG funds will be used for infrastructure, land assemblage or other financial incentives. These factors may be important considerations for a firm deciding where to locate and whether to expand or reduce the scope of its operation. CDBG funds may be more effectively used as a loan rather than a grant. In this regard, the CDBG funds would generate additional program resources through loan repayments to the community. It is considered especially advantageous if a revolving loan fund is established and repayments continue to be used to expand or retain employment opportunities.
—The relationship of the activity to other projects being implemented within the defined area.
—The number of persons to benefit.
—Particular attention will be given to the extent to which the Review Criteria and Submission Requirements for Economic Development Projects are addressed (see Single Purpose Program Criteria).

(f) *Criterion 6—Attracts or Retains Businesses Which Provide Essential Services.* Consideration will be given to proposed programs which will address the attraction or retention of businesses commonly associated with neighborhood needs (corner grocery stores, dry cleaners, pharmacies, etc.). The applicant must describe clearly the nature and anticipated impact of activities. Documentation in the form of letters from existing or new potential businesses offering a commitment to the program should be included. (Letters of only general interest by property owners do not necessarily ensure their participation in the program, or their willingness to secure debt if private lending is proposed). The following factors will be considered:

—The impact of the proposed program in relation to the identifiable neighborhood needs. The extent of area stability must be documented. In describing the needs of a business district or neighborhood commercial area, such factors as overall structural conditions, business turnovers, and vacancy rates over a period of time should be clearly presented. The formulation of a commercial revitalization program must be based on a thorough assessment of local needs and a realistic program design. An important consideration is whether the proposed program is designed to be marketable given income characteristics, local business condition, etc. The condition of supporting public facilities and improvements and their influence on the business environment must be established. If public improvements are proposed in connection with economic expansion or retention, applicants must address the extent to which the lack of these improvements impact on business.
—Attraction/retention must be fully documented by the applicant. With respect to business retention, evidence should be provided to demonstrate clearly and objectively that without the proposed CDBG Program, existing retail/commercial businesses would curtail their operations. The applicant also must document and address the potential

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impact of the business loss on the community and/or target area. HUD would accept as examples of clear and objective evidence a notice issued by the business to affected employees, a public announcement by the business, or financial records provided by the business that clearly indicate the need for closing or moving all or portions of the business out of the area.

—The amount of private funds to be leveraged. If leveraging is proposed, applicants should analyze the actual amount of private or public funds needed to make the project financially feasible. In this regard, the establishment of a revolving loan fund, in which repayments would continue to be used to attract or retain businesses providing essential services, would be considered a positive factor.

—The relationship of the activity to a comprehensive approach to meeting the overall needs of the neighborhood area.

(g) *Criterion 7—Removes Slums and Blighting Conditions.* Consideration will be given to proposed programs which will have a direct impact on the removal of slums and blighting conditions. Appropriate areas may include, but are not limited to deteriorated residential and/or commercial structures, inappropriate land uses, or blighting conditions such as repeated flooding and drainage problems, serious deficiencies in public facilities. Applicants should be aware that slum and blight activities can be carried out under the national objective of benefit to low and moderate income persons. If an applicant elects to qualify the activity on this basis, the degree of low and moderate income benefit must be demonstrated by the applicant.

Where residential or commercial rehabilitation activities are proposed as preventing or eliminating blighting conditions, the application must clearly document the number, type, and condition of deteriorating or deteriorated buildings in the designated target area. Detailed conditions of the physical condition of buildings or structures would be appropriate to establish the extent of substandard and blighting conditions. For rehabilitation of residential structures to be designed as eliminating blight and addressing an area's deterioration, the buildings must be considered substandard under local definition.

When an area is determined to be blighted, there must be a substantial number of deteriorated or dilapidated buildings, or the public improvements throughout the area must be in a state of deterioration. CDBG funds are not intended to be used to treat areas that would be widely regarded as attractive, rather than blighted. Additionally, the proposed CDBG program or project must be designed to eliminate or address a substantial portion of the identified blighting conditions or physical decay. CDBG assistance for facilities or structures, which are in good repair and show no real signs of deterioration, would not score well under this criterion. For instance, minor facade improvements to a commercial building alone would not indicate that a building is in poor condition. However, assistance to a commercial area which consists of deteriorating businesses, storefronts in serious need of rehabilitation, a high vacancy factor, and public improvements, such as parking areas and parking access improvements which are in need of physical upgrading, would have a direct impact on eliminating blighting conditions. Public improvements that are so deteriorated that they constitute a genuine threat to the continued viability of an area by discouraging private investment necessary to maintain properties may also be considered a blighting influence. The following factors will be considered:

—Extent and documented seriousness of conditions/needs. References to engineering studies, surveys or letters from appropriate local agencies should be included.

—Impact of the proposed program in relation to providing long-term permanent solutions to alleviate the identified need. Short-term or superficial improvements will not be considered to have a significant impact.

—Coordination with other projects and activities which will address needs within the defined area.

—Nature of any proposed re-use: degree of commitment for re-use.

(h) *Criterion 8—Resolves a Serious Threat to Health or Safety.* The applicant must describe the condition which poses a threat to public health and safety. A serious threat refers to a situation which demands immediate attention. This may be a condition that has just occurred or a condition which, though long standing, has intensified to become an immediate danger.

Applicants should be aware that imminent threat/urgent need activities can be carried out under the national objective of benefit to low and moderate income persons. If an applicant elects to qualify the activity on this basis, the degree of low and moderate income benefit must be demonstrated by the applicant. Consideration will be given to the following:

—The extent to which a serious threat to health or safety is documented, or of recent origin, or which recently became urgent. Documentation should include the identification of the existing conditions by appropriate agencies.

—The extent to which the serious threat will be resolved.

—The submission of documentation which demonstrates that other financial resources are insufficient or unavailable to resolve such needs.

—The degree to which the application addresses issues such as the validity of cost estimates by qualified sources; the availability of other funds; site control and environmental conditions; or other public body approvals.

—The number of persons to benefit, as well as the number of individuals actually threatened.

Note: This criterion is generally more restrictive than Criterion 4. The existing condition must pose a serious and immediate threat to the health or welfare of the target population.

(i) *Criterion 9—Supports Other Federal or State Programs Being Undertaken in the Community or Deals with the Adverse Impact of Another Recent Federal or State Action. The Other Federal or State Program or Action Must Be of Substantial Size or Impact in the Community in Relation to the Proposed Program.* The application must contain a complete description of the Federal or State Program(s) (excluding other CDBG Programs) which currently are underway, or a complete description of the adverse impact of a recent Federal or State action. A Federal or State program or action not yet initiated, only will be considered where the application documents the certainty and approximate date of the commencement of such program or action.

The proposed CDBG Program must demonstrate clearly the magnitude of the effect of the Federal or State Program or action on the community. The degree to which the proposed CDBG Program will support the Federal or State Program, and/or the extent to which the adverse impact of Federal or State action will be mitigated, also must be demonstrated.

In addition to the above, the nature and costs of the proposed activities will be considered in determining the degree of impact.

(j) *Criterion 10—Supports Energy Production or Conservation.* This

criterion will be judged, and points will be awarded, based upon the community's ability to demonstrate that the proposed program will support energy production or conservation. Applicants are urged to develop innovative approaches toward addressing energy needs with Small Cities CDBG funds. Energy considerations can be a factor in most activities proposed by smaller communities. Attention should focus on new methods of producing energy or conserving energy where possible. In developing and evaluating proposals, there are a number of energy aspects to consider. The following factors will be considered:

—Cost efficiency—Relationship of dollar amount of benefits to be derived. The applicant must document estimates of energy costs which are to be saved as a result of the proposed program. The proposed program should make maximum use of non-CDBG resources as well as CDBG funds. Appropriate documentation must be provided to ensure that the proposal is economically feasible.

—The extent to which the proposed program will support other programs currently aimed at addressing energy production or conservation needs of the community. From a management standpoint, proposed projects should be consistent with needs or objectives of any plan for energy management or conservation. Applicants should pursue the availability of other resources from Federal or State energy related programs. The degree of commitment of other resources should be established. State energy offices, private as well as municipally-owned utility companies, and home heating oil companies may be appropriate entities to be involved in the development and planning of proposals.

—The application should address whether the project is based on appropriate technology, materials and methods to maximize energy conservation. Engineering reports or studies would be appropriate evidence to support the overall feasibility of the project. The conversion of existing facilities, where appropriate, rather than proposing new construction may be more economical.

—While housing rehabilitation programs which include weatherization/winterization components will be considered, they generally will not be presumed as addressing a severe need unless unique conditions are specifically identified and cost savings are properly documented.

d. *Fair Housing and Equal Opportunity Evaluation.* Documentation for the 65 points for these items is the responsibility of the applicant. Claims of outstanding performance must be based upon actual accomplishments. Clear, precise documentation will be required. Maps must have a census tract or enumeration district base, and they must be in accordance with the 1980 Census data. Only population data from the 1980 Census will be acceptable for purposes of this section.

Please note that a "minority" is a person belonging to, or culturally identified as, a member of any one of the following racial/ethnic categories: Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan. For purposes of this section, women are not considered minorities.

Counties claiming points under this criteria must use county wide statistics (excluding entitlement communities). In the case of joint applications, points will be awarded based on the performance of the lead agency only.

The following factors will be used to judge outstanding performance in these areas. Please note that the criteria are the same for Comprehensive and Single Purpose applicants, and that points for outstanding performance may be claimed under each criteria:

(1) *Housing Achievements* (40 points total).

(a) 20 Points—Provision of Assisted Housing—Providing assisted housing for low and moderate income families, located in a manner which provides housing choice in areas outside of minority, or low and moderate income concentrations.

Points will be awarded where both of the following criteria are met:

(i) More than one-third of the housing assistance provided by the applicant in the last five (5) years (excluding section 8 existing and housing assistance provided in place) has been in Census Tracts (CT) or Enumeration Districts (ED) having a percentage of minority population which is less than the minority population in the community as a whole; and

(ii) With regard to the section 8 Existing Program, a community must show the location (CT or ED) of its currently occupied family units by race/ethnicity. Points will be awarded if more than one-half of the minority assisted families occupy units in areas which have a lower percentage of minority population than that of the community as a whole.

A community with no minorities must show the extent to which its assisted housing is located in outside areas of concentration of low and moderate income persons. In order to receive points under this criteria, applicants should follow the process outlined in (a) and (b) above, substituting low and moderate income persons and families for minority persons and families. Applicants addressing the first criterion, must use a map indicating the location of all assisted housing and a narrative which indicates the number of units and the type of assisted housing. The map also must show the general location of low and moderate income households and minority households, giving the numbers and percentages for both.

In order to qualify as housing assistance provided, the units being claimed must be part of a project located outside minority or lower income concentrated areas which has, at a minimum, received a firm commitment from the funding agency.

(iii) Points also may be awarded for efforts which enable low and moderate income persons to remain in their neighborhood when such neighborhoods are experiencing revitalization and substantial displacement as a result of private reinvestment. Applicants requesting points under this criterion would not need to meet the requirements of (a) and (b) in order to receive points. Points will be awarded where more than one half of the families displaced were able to remain in their original neighborhood through the assistance of the applicant. Applicants must show that:

—The neighborhood experienced revitalization;

—The amount of displacement was substantial;

—Displacement was caused by private reinvestment;

—Low and moderate income persons were permitted to remain in the neighborhood as a result of action taken by the applicant.

If the community is inhabited predominantly by persons who are members of minority and/or low-income groups, points will be awarded where there is a balanced distribution of assisted housing throughout the community.

(b) 20 Points—Implementation of a HUD-approved New Horizons Fair Housing Assistance Project or a Fair Housing Strategy that is equivalent in scope to a New Horizons Project.

The applicant must demonstrate that it is implementing a HUD-approved New Horizons Fair Housing Assistance Project or demonstrate participation in a HUD-approved county/State/regional New Horizons Project; or that the applicant is implementing a fair housing strategy that is equivalent in scope to a

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New Horizons Project. If the applicant is implementing a New Horizons Project, it must include:

—The date it was approved (by HUD); and
—Those actions taken to implement the plan.

If the applicant is implementing an equivalent fair housing strategy, it must include:

—The strategy being implemented;
—Those actions taken to implement the strategy.

Please note that a fair housing strategy must include the four elements of a New Horizons Project in order to be considered equivalent in scope:

—Local compliance activities;
—Educational programs to enhance the clarity and understanding of the community's fair housing policy. For communities with few or no minorities, this should include publication in the surrounding communities of the applicant's policy of fair housing for minorities and the disabled;
—Assistance to minority families; and
—Special programs (e.g. utilization of Community Housing Resource Board (CHRB) Programs, efforts to encourage local realtors to enter into voluntary agreements to encourage equal access to financial institutions, etc.).

The fair housing strategy must include goals for each of the above elements. The date of adoption or development of the strategy should be indicated, as well as the date proposed activities will be or have been implemented.

(2) *Entrepreneurial Efforts and Local Equal Employment.* Applicants may request points for both of these subfactors and must use the format sheets included in the application.

(a) *Minority Contracting.* Outstanding performance points will be given to those applicants who have demonstrated that they have utilized minority businesses to the following degree. The applicant must demonstrate that at least five percent of all its contracts, based on dollar value, have been awarded within the past two years to minority owned and controlled businesses (businesses that are at least 50 percent owned by minorities) provided that the minority population is five percent or less. If the minority population exceeds five percent, then the applicant must have a corresponding percentage of its contracts awarded to minority businesses; however, 20 percent of the total dollar value of its contracts will be sufficient for award of points for any applicant. The applicable percentage of minority population is the percentage of minorities in the applicant's jurisdiction, or is the county percentage, whichever is higher.

The applicant must provide the information as outlined in the suggested format, showing the name, address, telephone number, contract date and contract amount for each contract or subcontract with a minority business. This information is to be provided in addition to information required on the HUD Form 4124.4, and should be for the two-year period ending May 31, 1991.

(b) *Equal Opportunity Employment.* In order to be considered for points, if claimed, the applicant must document that its percentage of minority, permanent full-time employees is greater than the percentage of minorities within the county or the community, whichever is higher. Applicants with no full-time employees may claim points based on part-time employment provided that they document that the only permanent employment is on a part-time basis.

II. Application Process

A. Obtaining Applications

Applications may be obtained from either HUD's New York Regional Office or Buffalo Field Office. Applicants in New York, in the counties of Sullivan, Ulster, Putnam, and in non-participating jurisdictions in the urban counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Regional Office. All other nonentitled communities in New York State should submit their applications to the Buffalo Field Office.

The appropriate addresses for HUD's New York and Buffalo offices are:

Department of Housing and Urban Development, Office of Community Planning and Development, Attention: Small Cities Coordinator, 26 Federal Plaza, New York, NY 10278–0068, Telephone (212) 264–6500.

or

Department of Housing and Urban Development, Community Planning and Development Division, Attention: Small Cities Coordinator, 465 Main Street, Lafayette Court, Buffalo, NY 14203, Telephone (716) 564–5755.

B. Submitting Applications

Applications must be submitted to HUD no later than June 28, 1991. Final applications may be mailed, and if they are received after the deadline, must be postmarked no later than June 28, 1991. Any application not received or postmarked by June 28, 1991 is unacceptable and will be returned. Applications should be submitted to the appropriate HUD office at the address listed above in section A.

C. The Application

An application for the Small Cities Program CDBG Grants is made by the submission of:

(1) A completed HUD Form 4124, including HUD Forms 4124.1 through 4124.6 and all appropriate supporting material;

(2) A completed Standard Form 424; and

(3) A signed copy of certifications required under the CDBG Program, including, but not limited to the Drug-Free Workplace Certification, and the Certification Regarding Lobbying, pursuant to section 319 of the Department of the Interior Appropriations Act of 1989, generally prohibiting use of appropriated funds.

(4) Disclosure of other government assistance and identity of interested parties, as required by section 102 of the Reform Act, as implemented by 24 CFR 12.32, published on March 14, 1991 (56 FR 11046).

III. Checklist of Application Submission Requirements

HUD will conduct several informational meetings around the State to discuss the Small Cities Program and will conduct application workshops in conjunction with these meetings. The following is a list of dates and locations for these meetings and workshops:

Buffalo, NY.	Friday, May 10, 1991, Buffalo HUD Office, 6th Floor Conference Center, Lafayette Court Building, 465 Main Street, Buffalo, NY.	10 a.m. to 12 noon.
Colonie, NY.	Monday, May 13, 1991, Memorial Town Hall, Loudon Road, Route 9, Court Room, Newtonville, NY.	1 p.m. to 3 p.m.
Auburn, NY.	Tuesday, May 14, 1991, Holiday Inn, 75 North Street, Auburn, NY.	9:30 a.m. to 12 noon.
Goshen, NY.	Wednesday, May 22, 1991, Orange County Government Center, County Legislative Chambers, 255–275 Main Street, Goshen, NY.	10:30 a.m. to 2 p.m.

Please contact either the New York Regional Office or Buffalo Field Office for further information regarding these meetings. Applications will be available at these meetings, as well from the HUD offices previously identified in section II of this NOFA. In order to be considered for funding, complete applications must be received by HUD or postmarked before June 28, 1991. The following checklist is intended to aid applicants in determining whether their application is complete.

Application Completeness Checklist

Applicant: _____

Comprehensive Grant _____ Single Purpose Grant _____

Amount Requested $_____

1. Is amount of funds requested within established maximum? Yes No (Circle one)
2. Part I—Needs Description (HUD Form 4124.1)
   (a) Single Purpose Grants
   i—Program Area
   _____ Housing
   _____ Target Area
   _____ Non-target Area
   _____ Public Facilities
   _____ Economic Development (If an "appropriate" analysis is required but is not included, the applicant cannot be rated.)
   ii—Is description of community development needs included in application?
   (b) Comprehensive Grants
   i—Have four design criteria been selected and discussed in application?
   ii—Is description of community development needs included in application?
3. Part II—Community Development Activities (HUD Form 4124.2)
   (a) Has national objective been identified for each activity?
   (b) Will 70 percent of grant funds primarily benefit low and moderate income persons? (If not, the application cannot be rated.)
4. Part III—Impact Description (HUD Form 4124.3)
5. Part IV—Outstanding Performance (HUD Form 4124.4)
6. Part V—Program Schedule (HUD Form 4124.5)
7. Part IV—Maps
   (a) Location of proposed activities. (Applicants must show the boundaries of the defined area or areas.)
   (b) Location of areas with minorities by census tract. (If there are no minority areas, state so on the map.)
   (c) Housing conditions if project involves housing rehabilitation. (Number and location of each standard and substandard unit should be clearly identified.)
8. (a) Is Standard Form 424 complete?
   Yes No
   (b) Is original signature on at least one copy?
   Yes No
9. Is Certification signed with original signature?
   Yes No

IV. Corrections to Deficient Applications

Under no circumstances will HUD accept from the applicant unsolicited information regarding the application after the application deadline has passed.

HUD may advise applicants of technical deficiencies in applications and permit them to be corrected. A technical deficiency would be an error or oversight, which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. Examples of curable technical deficiencies would be a failure to submit the proper certification or failure to submit an application containing an original signature by an authorized official. Situations not considered curable would be, for example, a failure to submit program impact descriptions or project maps.

HUD will notify applicants in writing of any curable technical deficiencies in applications. Applicants will have 14 calendar days from the date of HUD's correspondence to reply and correct the deficiency. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

V. Other Matters

Environmental Impact

A Finding of No Significant Impact will respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA will provide financial assistance to the Small Cities Program of New York State, none of its provisions will have an affect on the relationship between the Federal Government and New York State, or the New York State's political subdivisions.

Family

The General Counsel, as the Designated Official for Executive Order 12606, The Family, has determined that the policies announced in this NOFA would not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. No significant change in existing HUD policies and programs will result from issuance of this NOFA, as those policies and programs relate to family concerns.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); 24 CFR 570, Subpart F.

Dated: May 2, 1991.

Anna Kondrates,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91–11013 Filed 5–8–91; 8:45 am]

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Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Public and Indian Housing; Lead-Based Paint; Hazard Identification and Abatement; Interim Guidelines; Correction

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-91-2058; FR-2687-N-05]

Lead-Based Paint; Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing, Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice; correction.

SUMMARY: On April 18, 1990 (55 FR 14556), the Department published in the **Federal Register** a notice announcing the issuance of Interim Guidelines providing information regarding the identification and abatement of lead-based paint in the Department of Housing and Urban Development's Public and Indian Housing Programs. On September 28, 1990 (55 FR 39674), the Department published in the **Federal Register**, a notice that revised chapter 8, "Worker Protection". The purpose of this document is to publish a corrected PHA/IHA certification to replace the one published in the April 18 document, and also to correct typographical errors contained in the September 28 notice.

EFFECTIVE DATE: May 9, 1991.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Director, Project Management Division, Office of Public and Indian Housing, room 4136, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (202) 708-1600. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The April 18, 1990 Interim Guidelines contained two certifications at the end of the document entitled, "appendix 14.4, Certification of Lead-Based Paint Abatement Completion" and "Certification of Lead-Based Paint Abatement". The certification entitled "Certification of Lead-Based Paint Abatement" was revised, and the revised certification should have been published in the September 28, 1990 notice. It is being published in today's document.

Paragraph 8.5.2.1 of chapter 8, as published in the **Federal Register** on September 28, 1990, identified 40μg/dl as the Occupational Safety and Health Administration's (OSHA) standard for medical removal. This standard, as confirmed by OSHA, should have been 50μg/dl. Additionally, paragraph 8.6 contains an inaccurate reference—a typographical error resulting from the renumbering of paragraphs. The correct reference should be "sections 8.5.3 through 8.5.5" instead of "8.6.3 through 8.6.5.

Accordingly, the following corrections are being made to FR Doc. 90-6123, published on April 18, 1990 (55 FR 14556), and to FR Doc. 90-23110, published on September 28, 1990 (55 FR 39674), respectively, to read as follows:

1. In FR Doc. 90-6123, published on April 18, 1990 (55 FR 14556), remove the certification on page 55 FR 14789, entitled "Appendix 14.4, "Certification of Lead-Based Paint Abatement", and add the revised certification entitled, "Appendix 14.4, Revised: Certification of Lead-Based Paint Testing Results".

2. In FR Doc. 90-23110, published on September 28, 1990 (55 FR 29674), on page 39677, in "Section 8.5.2.1, *Other Blood Lead Trigger Levels*", correct the first sentence, "The 40μg/dl medical * * *" to read "The 50 μg/dl medical * * *".

3. In FR Doc. 90-23110, published on September 28, 1990 (55 FR 29674), on page 39677, in "Section 8.6, *Medical Removal Protection*", correct the parenthetical at the end of the first paragraph "(see sections 8.6.3 through 8.6.5.)" to read "(see sections 8.5.3 through 8.5.5".

Dated: April 30, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

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APPENDIX 14.4

REVISED: CERTIFICATION OF LEAD-BASED PAINT TESTING RESULTS

The _____ certifies that it has conducted testing in
(PHA/IHA or Independent Testing Agency)

accordance with all Federal, State and local requirements of the units common areas, and exteriors in and on _____ which is to be
(Project No. and Name)

modernized. Testing has determined that this project:

Check One:

_____ contains lead-based paint hazards

_____ does not contain lead-based paint hazards

The _____ also certifies that if lead-based paint hazards
(PHA/IHA)

were found, the hazards will be abated.

_____ Date

_____ Executive Director

A14-111

[FR Doc. 91-11014 Filed 5-8-91; 8:45 am]

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Part V

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Part 570

Proposed Amendments to the Section 108 Loan Guarantee Program; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-91-1519; FR 2969-P-01]

RIN 2506-AB21

Proposed Amendments to the Section 108 Loan Guarantee Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: Section 108 of the Housing and Community Development Act of 1974 authorizes a program of community development loan guarantee assistance. The regulations governing this program are codified at 24 CFR part 570, subpart M. This proposed rule would amend these regulations to implement certain changes made to the section 108 Loan Guarantee Program by section 910 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) (the 1990 Act). The specific revisions proposed to be made to the section 108 Loan Guarantee Program are discussed in the Supplementary Information portion of this document.

DATES: *Comment due date:* June 10, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk (202) 708-2084 or (202) 708-3259 (TDD). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Paul D. Webster, Director, Financial Management Division, Office of Community Planning and Development, room 7178, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1871. A telecommunications device number (TDD) is available for the hearing-impaired at (202) 708-9300. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Burden

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. The sections of the proposed rule that contain information collection requirements include § 570.704 (a) and (b), which set forth the requirements for citizen participation plans. These requirements are similar to the citizen participation plan requirements set forth in §§ 570.301 and 570.431 of the Department's proposed rule amending 24 CFR part 570, published in the **Federal Register** on March 28, 1990 (55 FR 11556). In its paperwork submission to OMB for this rule proposing to amend the section 108 Loan Guarantee Program, HUD notes, and addresses, comments received on the paperwork burden imposed by the citizen participation plan requirements of §§ 570.301 and 570.431 of the March 28, 1990 proposed rule.

No person may be subjected to a penalty for failure to comply with these information collection requirements until the requirements have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

Justification for Shortened Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. The authorizing legislation for this proposed rule, section 910 of the Cranston-Gonzalez National Affordable Housing Act, states that the Department shall issue (1) proposed regulations no later than 90 days after the date of enactment of the Act, and (2) final regulations no later than 180 days after the date of enactment of the Act. The date of enactment of the Act was November 28, 1990. Despite the Department's best efforts to meet the February 26, 1991 statutory publication date of the proposed rule, it was unable to meet that deadline. However, in order to come closer to the deadline for the final rule, the Department is shortening its standard 60-day public comment period to 30 days. The Department believes that this shortened period is justified by the statutory rulemaking deadlines imposed by the Congress, and also by the fact that the amendments proposed by this rule are neither so extensive nor complex that a 30-day period is an inadequate amount of time for public comment.

Background

Section 108 of the Housing and Community Development Act of 1974 authorizes a program of community development loan guarantee assistance. The regulations governing this program are codified at 24 CFR part 570, subpart M (section 108 or section 108 Program). This proposed rule would amend these regulations to implement certain changes made to the section 108 Program by section 910 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) (the 1990 Act). The proposed revisions to be made to the section 108 Program are discussed in detail below.

Proposed Revisions

1. Purpose

A new § 570.700 is proposed to be added to the section 108 Program regulations to describe the purpose of subpart M. (Existing § 570.700 would be redesignated as § 570.702 and revised as discussed below.) New § 570.700 states that the regulations in subpart M contain the requirements governing the guarantee of notes or other obligations issued by public entities or by public agencies designated by public entities.

2. Definitions

A new section containing definitions is proposed to be added at § 570.701 to reflect the introduction of new terminology by the 1990 Act. (Existing § 570.701 would be redesignated as § 570.703 and revised as discussed below.) The term "eligible public entity" is used in the 1990 Act in lieu of "unit of general local government." Proposed new § 570.701 includes this term, but refers to it under the abbreviated form—"public entity." Public entity is defined to mean any unit of general local government, including units of general local government in nonentitlement areas.

Proposed new § 570.701 also includes terms which facilitate the differentiation of public entities with respect to requirements and limitations that vary according to a public entity's status under the Community Development Block Grant (CDBG) program. "Entitlement public entity" means a metropolitan city or urban county receiving a grant under 24 CFR part 570, subpart D (i.e., entitlement recipients under the CDBG program). The term "nonentitlement public entity" is defined to mean a unit of general local government in a nonentitlement area.

3. Eligible Applicants

The 1990 Act authorizes loan guarantee assistance to nonentitlement public entities. Existing § 570.700, entitled "Eligible Applicants," would be redesignated as § 570.702 and would be revised to include this new category of eligible applicants. However, the proposed rule would limit eligibility to nonentitlement public entities that are assisted in the submission of their applications by States that administer the CDBG program (under subpart I). Such assistance is authorized by the 1990 Act, and shall consist, at a minimum, of certifications by the State by which the State: (1) Agrees to make the pledge of grants required as security for the loan guarantee; (2) certifies that it possesses the legal authority to make that pledge; (3) certifies that the aggregate use of CDBG grant funds received by the State, guaranteed loan funds, and program income during the one, two, or three consecutive years specified by the State for its CDBG program will be for activities that benefit low and moderate income persons; and (4) agrees to assume the responsibilities described in § 570.710. (States would not be required to limit their assistance to public entities under section 108 to those units of general local government that are receiving CDBG grant funds under subpart I.)

Eligibility of nonentitlement public entities to apply for loan guarantee assistance would be limited to those assisted by States for several reasons. Applicants in nonentitlement areas where the State has elected not to administer the CDBG program would not be able to offer the pledge of future years' grants that HUD deems essential to adequately secure the guaranteed loan. Public entities in nonentitlement areas where the State has elected to administer the CDBG program, but that are not assisted by the State, also would be unable to provide the requisite pledge of future years' grants. Further, it would be inconsistent with the principles of Federalism for public entities in a nonentitlement area, where the State is administering the CDBG program, to be assisted under section 108, which also is administered as part of the CDBG program, unless the State agrees to be a party to such assistance.

Proposed new § 570.702 also would delete unnecessary language regarding designation of public agencies to be loan guarantee recipients.

4. Eligible Activities

Existing § 570.701, entitled "Eligible Activities," would be redesignated as § 570.703 and would be revised to include two new activities that can be undertaken with guaranteed loan funds. The 1990 Act authorizes guaranteed loan funds to be used to finance the construction of housing by nonprofit organizations for homeownership under the Housing Development Grants Program or the Nehemiah Housing Opportunity Grants Program. This new activity would be codified at proposed new § 570.703(l). It should be noted, however, that the Housing Development Grants and Nehemiah Housing Opportunity Grants programs have been terminated by section 289 of the 1990 Act, effective October 1, 1991. The proposed rule also authorizes establishment of debt service reserves with guaranteed loan funds. This new activity would be codified at proposed new § 570.703(m). Such reserves are discussed in more detail below.

5. Application Requirements

Existing § 570.702, entitled "Application Requirements," incorporates by reference the presubmission requirements for CDBG Entitlement Grants, codified at § 570.301 in subpart D. Existing § 570.702 would be redesignated as § 570.704 and would be revised to delete the reference to the presubmission requirements, and to instead list each of the presubmission requirements applicable to the section 108 Program. This change is proposed for greater clarity and in recognition that nonentitlement public entities are now eligible applicants. The presubmission requirements proposed to be listed in new § 570.704 are essentially the same as the statutory requirements for grantees under the CDBG program, including the requirement for a detailed citizen participation plan. Making section 108 Program applications subject to these requirements is necessary because Community Development Block Grants are pledged as security for, and may be used for the repayment of, the guaranteed loan. Proposed new § 570.704 would specifically require disclosure of section 108 security requirements to citizens, including the pledge of grants required under § 570.705(b)(2). To avoid duplication, the new § 570.704 makes it clear that the citizen participation plan requirement can be met by using the plan required for the CDBG program, modified to include information regarding the guaranteed loan funds. For example, if the procedures for public hearings in the citizen participation plan for the guaranteed loan funds are the same as the procedures for public hearings in the CDBG program, then the "write-up" for the citizen participation plan may be the same as that in the CDBG program; in fact, if the timing of the CDBG submission and the section 108 application coincide, the public hearings can cover both.

Existing § 570.702 also incorporates by reference the certifications required to be submitted in connection with Entitlement Grants, currently listed in § 570.303 of the subpart D regulations. Proposed new § 570.704 (i.e. § 570.702 as redesignated and revised) would delete that reference, and would list the certifications that are required to be submitted with an application.

Existing § 570.702(c), which concerns economic feasibility and financial risk, would be deleted under proposed new § 570.704. This provision prohibits HUD from making a determination with respect to the economic feasibility of projects proposed for funding with guaranteed loan funds. Although HUD still believes that such determination is the responsibility of the public entity, the longer repayment periods that will be available under this rule (see discussion below) may require HUD to also make such determination.

Existing § 570.702(c)(5) incorporates by reference amendment requirements for Entitlement Grants, codified at § 570.305. Proposed new § 570.704(c)(5)

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(formerly § 570.702(c)(5), as redesignated and revised) would delete that reference. However, § 570.704(c)(5) would retain the requirement for HUD approval if the public entity wishes to carry out an activity not previously described in its application or to substantially change the purpose, scope, location, or beneficiaries of an activity. Proposed new § 570.704(c)(5) also would be revised to add language requiring compliance with the citizen participation requirements in § 570.704(a)(2) for amendments.

A new provision would be added at § 570.704(f) to require compliance with the requirements of 24 CFR part 12, subpart C, for updating disclosures regarding other government assistance, interested parties, and sources and uses of funds. Such updating would be necessary during the period in which the application is pending, or in which guaranteed loan funds are being used by the public entity or its designated public agency.

Numerous changes of an editorial nature are proposed to be made to new § 570.704 in recognition that nonentitlement public entities are now eligible applicants. (Existing § 570.704, entitled "Federal Guarantee," would be redesignated as § 570.706.)

6. Loan Requirements

The 1990 Act made significant changes in the limitations on the amount of loan guarantee assistance that can be made available to a public entity. One of the changes provides that if 50 percent of the amount approved in an appropriation act during a fiscal year has been committed by HUD to public entities, HUD may limit the amount of commitments any one public entity may receive during that fiscal year. The amount any one entitlement public entity may receive may be limited to $35,000,000 and the amount any one nonentitlement public entity may receive may be limited to $7,000,000. If HUD limits the amount of loan guarantee assistance to any one public entity pursuant to this new provision, commitments made prior to that limitation will not be affected. Existing § 570.703, entitled "Loan Requirements," would be redesignated as § 570.705 and paragraph (a) of this section would be revised to implement the above discussed change.

The 1990 Act also provides for special priority for projects located in areas designated as enterprise zones by the Federal Government or by any State. Since assistance under section 108 is not based on competition, it is unnecessary to give priority to such projects unless funds are unavailable in the amount requested. If the aggregate amount of loan guarantee assistance requested exceeds funds available under an appropriation act, giving priority to projects located in enterprise zones would require limitations on amounts other applicants could receive. Since the 1990 Act has established a threshold for allowing HUD to impose limitations on amounts a public entity may receive (as discussed above), HUD believes that threshold is also appropriate for any limitation necessary to allow priority to be given to projects located in enterprise zones. Therefore, proposed new § 570.705(a)(1) specifies that HUD may limit the amount that any one public entity may receive to such amount as is necessary to allow HUD to give priority to activities carried out in enterprise zones designated by the Federal Government or by any State if the 50 percent threshold discussed above has been met.

Under the current regulations, HUD cannot approve an application if by doing so the amount of outstanding commitments or loans to a public entity (or its designated public agency) under section 108 would exceed an amount equal to three times its Community Development Block Grant. The 1990 Act increases the maximum amount to five times the Community Development Block Grant (excluding any defeased amounts). For entitlement public entities, proposed new § 570.705(a)(2)(i) would make this limitation applicable to the most recent grant made to a public entity under § 570.304.

In the case of a nonentitlement public entity, the proposed rule would apply the limit to the most recent Community Development Block Grant received by the State that assisted the public entity in the submission of its application. Further, this limitation would apply on an aggregate basis to all public entities assisted by that State. That is, HUD could not issue a commitment if by doing so it would cause the total outstanding commitments and loans under section 108 for all public entities assisted by a State to exceed five times the amount of the most recent grant to that State under subpart I. This limitation would be imposed by proposed new § 570.705(a)(2)(ii).

Calculation of the limitation on the basis of the State grant is necessary because the limitation on the amount of commitments or guaranteed loans should be based on the pledged grant that HUD relies on for security. Since it is the State's grant which HUD relies on for security, the limitation is based on that grant.

Proposed new § 570.705(b)(3) (formerly § 570.703(b)(3), as redesignated and revised) would specify that other security (i.e., security in addition to the pledge of grants under § 570.705(b)(2)) would be required for all loans with repayment periods of ten years or longer. HUD will evaluate loans with shorter repayment periods on a case by case basis and decide whether other security is necessary. Section 570.705(b)(3) also would describe in more detail the kinds of other security HUD may require to be furnished. Examples include program income, liens on real and personal property, debt service reserves, and increments in local tax receipts. If a debt service reserve is required to be established, but is not needed, it may be used (with HUD's approval) to defease or prepay the guaranteed loan in whole or in part.

Section 570.705(c) (formerly § 570.703(c), as redesignated and revised) would describe in more detail how Community Development Block Grants may be used in connection with the guaranteed loan. This section would provide that grants may be used to pay principal and interest due (including servicing and issuance costs), defease the guaranteed obligations, and establish debt service reserves as additional security. This section also would specify that HUD may use, in accordance with the contract required by § 570.705(b)(1), pledged grants for the payment of issuance costs or to defease guaranteed obligations.

The 1990 Act made a significant change in the repayment period of the guaranteed loan. Under current regulations, the general rule is that the repayment period cannot exceed six years. The 1990 Act prohibits HUD from denying a loan guarantee on the basis of the loan repayment period, unless the repayment period exceeds twenty years, or HUD determines the repayment period causes the guarantee to constitute an unacceptable financial risk. In accordance with this statutory change, § 570.705(f) (formerly § 570.703, as redesignated and revised) would provide that the loan repayment period cannot exceed twenty years. HUD will continue to ensure that the loan guarantee constitutes an acceptable financial risk.

7. Applicability of Rules and Regulations

Proposed new § 570.707 (formerly § 570.705, as redesignated and revised) would differentiate public entities with respect to the applicability of rules and regulations in other subparts. In the case of entitlement public entities, the provisions of subparts A, C, J, K, and O shall apply equally to guaranteed loan funds and other CDBG funds, except to the extent they are modified or augmented by subpart M.

In the case of nonentitlement public entities, the provisions of subpart I shall apply equally to guaranteed loan funds and to the Community Development Block Grants administered by the State.

8. Sanctions

Proposed new § 570.708 (formerly § 570.706, as redesignated and revised) would differentiate public entities with respect to the sanctions that will be applicable, in the event of performance deficiencies in the use of guaranteed loan funds (or program income derived therefrom) or violations of the contract entered into pursuant to § 570.705(b)(1) (the contract). Entitlement public entities will be subject to the actions authorized under subpart O or the contract. Nonentitlement public entities and States will be subject to actions authorized under subpart I or the contract cited above.

9. Allocation of Loan Guarantee Assistance

A new section would be added to subpart M, proposed new § 570.709, to implement the requirement of the 1990 Act for allocation of loan guarantee assistance between entitlement public entities and nonentitlement public entities. This section would provide that of the amount approved in any appropriation act for assistance under this subpart, 70 percent is to be allocated for entitlement public entities, and 30 percent is to be allocated for nonentitlement public entities. However, HUD may waive these percentage requirements in any fiscal year to the extent there is an absence of applicants under either category.

10. State Responsibilities

An additional new section would be added to subpart M, proposed new § 570.710, to describe the State's responsibilities with respect to public entities it assists in applying for loan guarantee assistance. Although section 108 is a discretionary program, and notwithstanding that loan guarantees (constituting contingent liabilities of the Federal Government) must be approved by HUD, it is HUD's intent to integrate section 108 loan guarantee assistance into the State's CDBG program. States are responsible for choosing the public entities they will assist under section 108. The States also are responsible for developing the procedures and requirements for determining which activities will be assisted, subject to the requirements of this subpart. For example, a State may choose to restrict the use of section 108 in nonentitlement areas, in which the State administers the CDBG program, to finance revenue generating activities, e.g., housing rehabilitation or economic development activities. Thus, given the longer repayment periods now available, a State may "match fund" such revenue generating activities with a source of financing (i.e., section 108) that allows the State to conserve grant funds for other, non-revenue generating activities. States may also choose to establish security requirements in addition to those required by HUD.

Upon approval of an application by HUD, the State is responsible for ensuring compliance by the public entity with all applicable requirements. The State shall administer guaranteed loan funds in the same manner as it administers Community Development Block Grant funds distributed to units of general local government. For example, monitoring requirements for guaranteed loan funds should be equivalent to those for grant funds.

Notwithstanding the State's responsibilities, HUD also will have responsibility for ensuring compliance with requirements affecting the security interests of HUD with respect to the guaranteed loan. For example, HUD will usually require borrowers to submit periodic reports regarding balances in escrow accounts and investments of guaranteed loan funds or funds pledged as security.

11. Section 102 of the Reform Act

On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

Section 12.30 of the rule specifies that applicants for section 108 loan guarantees must make a number of disclosures to the Department. These include information with respect to assistance from other government sources to be used with respect to the activities to be carried out with the assistance, the financial interests of persons in those activities, and the sources of funds to be made available for the activities and the uses to which the funds are to be put.

Section 12.50 requires that section 108 loan guarantees may be made available for housing projects, only to the extent the amount of the assistance will not be more than is necessary to make the assisted activity feasible, after taking into account assistance from other government sources.

These provisions are not yet effective for a number of HUD programs, including the section 108 loan guarantee program. When they are made effective, the section 108 rule will be amended to conform to the coverage contained i part 12.

Other matters

Environmental Impact

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entitites. No significant impact exists because this rule does not affect the amount of funds provided under section 108, but rather modifies and updates program administration and procedural requirements to conform to recently enacted legislation.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530) pursuant to Executive

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Order 12291 and the Regulatory Flexibility Act.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on the States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, this rule proposes to implement statutory requirements affecting eligible applicants, eligible activities, allocation of loan guarantee assistance, and loan terms under the section 108 Program. These requirements do not impinge upon the relationship between the Federal government and State and local governments. As a result, the rule is not subject to review under the Order.

Public Reporting Burden

The information collection requirements contained in this proposed rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. In accordance with 5 CFR 1320.21, the following table discloses the Department's estimated burden for each collection of information requirement in the proposed rule.

Description of information requirement	Reference in rule	Estimated No. of respondents	Hours per response	Total burden hours
Application/final statement	§ 570.704 (a) and (b)	50	39	1,950
Citizen participation plan	§ 570.704(a)(2)	50	40	2,000
Relocation, displacement acquisition	§ 570.704(d)	50	5	250
Equal Employment Opportunity, HUD/EEO-4	§ 570.707	50	1.25	63
Minority Business Enterprise	§ 570.707	50	3.4	170
General record keeping	§ 570.707	50	44	2,200
Total burden hours				6,633

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants; Grant programs—housing and community development; Grant programs—education, Guam, Lead poisoning, Loan programs—housing and community development; Low and moderate income housing; Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands, Student aid.

Accordingly 24 CFR part 570, subpart M, is proposed to be amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart M—Loan Guarantees

1. The authority citation for 24 CFR part 570 would be revised to read as follows:

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5300–5320); sec. 102, Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. 24 CFR part 570, subpart M, would be revised to read in its entirety as follows:

Subpart M—Loan Guarantees

Sec.
570.700 Purpose.
570.701 Definitions.
570.702 Eligible applicants.
570.703 Eligible activities.
570.704 Application requirements.
570.705 Loan requirements.
570.706 Federal guarantee.
570.707 Applicability of rules and regulations.
570.708 Sanctions.
570.709 Allocation of loan guarantee assistance.
570.710 State responsibilities.

Subpart M—Loan Guarantees

§ 570.700 Purpose.

This subpart contains requirements governing the guarantee under section 108 of the Act of notes or other obligations issued by public entities or by public agencies designated by public entities.

§ 570.701 Definitions.

Designated public agency means a public agency designated by a public entity to receive a loan guarantee under this subpart.

Entitlement public entity means a metropolitan city or an urban county receiving a grant under subpart D of this part.

Guaranteed loan funds means the proceeds from the issuance of notes or other obligations that are guaranteed under this subpart.

Nonentitlement public entity means a unit of general local government in a nonentitlement area.

Public entity means any unit of general local government, including units of general local government in a nonentitlement area.

§ 570.702 Eligible applicants.

The following public entities may apply for loan guarantee assistance under this subpart.

(a) Entitlement public entities.

(b) Nonentitlement public entities that are assisted in the submission of applications by States that administer the CDBG program (under subpart I). Such assistance shall consist, at a minimum, of the certifications required under § 570.704(b)(10).

§ 570.703 Eligible activities.

Guaranteed loan funds may be used for the following activities undertaken by a public entity or its designated public agency provided such activities meet the requirements of § 570.200. However, guaranteed loan funds may not be used to reimburse the CDBG program account or line of credit for costs incurred by the public entity or designated public agency and paid with CDBG grant funds or program income.

(a) Acquisition of improved or unimproved real property in fee or by long-term lease, including acquisition for economic development purposes.

(b) Rehabilitation of real property owned or acquired by the public entity or its designated public agency.

(c) Payment of interest on obligations guaranteed under this subpart.

(d) Relocation payments and other relocation assistance for individuals, families, businesses, nonprofit organizations, and farm operations who must relocate permanently or temporarily as a result of an activity financed with guaranteed loan funds, where the assistance is:

(1) Required under the provisions of § 570.496a (b) or (c) or § 570.606 (b) or (c); or

(2) Determined by the public entity to be appropriate under the provisions of § 570.496a(d) or § 570.606(d).

(e) Clearance, demolition and removal, including movement of structures to other sites, of buildings and improvements on real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section.

(f) Site preparation, including construction, reconstruction, or installation of public improvements, utilities, or facilities (other than buildings) related to the redevelopment or use of the real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section.

(g) Payment of issuance, underwriting, servicing, and other costs associated with private sector financing of notes or other obligations guaranteed under this subpart.

(h) Housing rehabilitation eligible under § 570.202.

(i) Activities eligible under § 570.203.

(j) Community economic development projects eligible under § 570.204.

(k) Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities (except for buildings for the general conduct of government), site improvements, and utilities, for an economic development purpose.

(l) Construction of housing by nonprofit organizations for homeownership under section 17(d) of the United States Housing Act of 1937 (Housing Development Grants Program—24 CFR part 850) or title VI of the Housing and Community Development Act of 1987 (Nehemiah Housing Opportunity Grants Program—24 CFR part 280).

(m) A debt service reserve to be used in accordance with requirements specified in the contract entered into pursuant to § 570.705(b)(1).

§ 570.704 Application requirements.

(a) *Presubmission and citizen participation requirements.* (1) Before submission of an application for loan guarantee assistance to HUD, the public entity must:

(i) Develop a proposed application that includes the following items:

(A) The community development objectives and public entity proposes to pursue with the guaranteed loan funds.

(B) The activities the public entity proposes to carry out with the guaranteed loan funds. Each activity must meet the applicable requirements of § 570.703 and be described in sufficient detail, including national objective to be met, amount of guaranteed loan funds expected to be used, and location, to allow citizens to determine the degree to which they will be affected. The application must also describe where citizens may obtain additional information about proposed activities.

(C) A description of the security requirements for the loan guarantee, including the pledge of grants required under § 570.705(b)(2) and other security the public entity or State proposes to offer to HUD. In the case of applications by nonentitlement public entities, the description shall note that the pledge of grants will be made by the State.

(ii) Fulfill the applicable requirements in its citizen participation plan developed in accordance with § 570.704(a)(2).

(iii) Publish community-wide its proposed application so as to afford affected citizens an opportunity to examine the application's contents and to provide comments on the proposed application.

(iv) Prepare its final application. Once the public entity has held the public hearing and published the proposed application as required by paragraphs (a)(1) (ii) and (iii) of this section, respectively, the public entity must consider any such comments and views received and if the public entity deems appropriate, modify the proposed application. Upon completion, the public entity must make the final application available to the public. The final application must describe each activity in sufficient detail to permit a clear understanding of the nature and eligibility of each activity and the amount of guaranteed loan funds to be used. The final application must also indicate which activities are expected to generate program income.

(2) *Citizen participation plan.* The public entity must develop and follow a detailed citizen participation plan and make the plan public. The plan must be completed and available before the application is submitted to HUD. The plan may be the plan required for the CDBG program, modified to include guaranteed loan funds. The public entity is not required to hold a separate public hearing for its CDBG program and for the guaranteed loan funds to obtain citizens' views on community development and housing needs. The plan must set forth the public entity's policies and procedures for:

(i) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the public entity's proposed and actual use of guaranteed loan funds, including but not limited to:

(A) The amount of guaranteed loan funds expected to be made available for the coming year, including program income anticipated to be generated by the activities carried out with guaranteed loan funds;

(B) The range of activities that may be undertaken with guaranteed loan funds;

(C) The estimated amount of guaranteed loan funds (including program income derived therefrom) proposed to be used for activities that will benefit low and moderate income persons;

(D) The proposed activities likely to result in displacement and the public entity's plans, consistent with the policies developed under § 570.606 or § 570.496a for minimizing displacement of persons as a result of its proposed activities.

(ii) Providing technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the public entity. Such assistance need not include the provision of funds to such groups.

(iii) Holding a minimum of two public hearings, each at a different stage of the public entity's program, for the purpose of obtaining the views of citizens and formulating or responding to proposals and questions. Together the hearings must address community development and housing needs, development of proposed activities and review of program performance. At least one of these hearings must be held before submission of the application to obtain the views of citizens on community development and housing needs. Reasonable notice of the hearing must be provided and the hearing must be held at times and locations convenient to potential or actual beneficiaries, with accommodation for the handicapped. The public entity must specify in its plan

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how it will meet the requirement for a hearing at times and locations convenient to potential or actual beneficiaries.

(iv) Meeting the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can reasonably be expected to participate.

(v) Providing affected citizens with reasonable advance notice of, and oppportunity to comment on, proposed activities not previously included in an application and activities which are proposed to be deleted or substantially changed in terms of purpose, scope, location, or beneficiaries. The criteria the public entity will use to determine what constitutes a substantial change for this purpose must be described in the citizen participation plan.

(vi) Responding to citizens complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The public entity's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days where practicable of the receipt of the complaint.

(vii) Encouraging citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas, and other areas in which guaranteed loan funds are proposed to be used.

(3) If an application for loan guarantee assistance is submitted by an entitlement public entity simultaneously with the public entity's submission for its entitlement grant, the public entity may use the statement of community development objectives and projected use of funds prepared for its annual grant pursuant to § 570.301 by including the activities to be undertaken with the guaranteed loan funds and describing the pledge of grants required under § 570.705(b)(2) and other security the public entity proposes to offer to HUD.

(b) *Submission requirements.* An application for loan guarantee assistance (or a final statement pursuant to paragraph (a)(3) of this section) may be submitted at any time. The application (or final statement) shall be submitted to the appropriate HUD field office and shall be accompanied by the following:

(1) A description of how each of the activities to be carried out with the guaranteed loan funds meets one of the criteria in § 570.208.

(2) A schedule for repayment of the loan which identifies the sources of repayment.

(3) For entitlement public entities only, a certification providing assurance that the public entity possesses the legal authority to make the pledge of grants required under § 570.705(b)(2).

(4) A certification providing assurance that the public entity has made efforts to obtain financing for activities described in the application without the use of the loan guarantee, the public entity will maintain documentation of such efforts for the term of the loan guarantee, and the public entity cannot complete such financing consistent with the timely execution of the program plans without such guarantee.

(5) The drug-free workplace certification required under 24 CFR part 24 (appendix C).

(6) The certification regarding debarment and suspension required under 24 CFR part 24 (appendix A).

(7) The anti-lobbying statement required under 24 CFR part 87 (appendix A).

(8) Certifications by the public entity that:

(i) It possesses the legal authority to submit the application for assistance under this subpart and to use the guaranteed loan funds in accordance with the requirements of this subpart.

(ii) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the person identified as the official representative of the public entity to submit the application and amendments thereto and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the public entity to act in connection with the application to provide such additional information as may be required.

(iii) Before submission of its application to HUD, the public entity has:

(A) Furnished citizens with information required by § 570.704(a)(2)(i);

(B) Held at least one public hearing to obtain the views of citizens on community development and housing needs; and

(C) Prepared its application in accordance with § 570.704(a)(1)(iv) and made the application available to the public.

(iv) It is following a detailed citizen participation plan which meets the requirements described in § 570.704(a)(2).

(v) The public entity will affirmatively further fair housing, and the guaranteed loan funds will be administered in compliance with:

(A) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. 2000d *et seq.*); and

(B) The Fair Housing Act (42 U.S.C. 3601-20).

(vi) In the aggregate, at least 70 percent of all CDBG funds, as defined at § 570.3(e), to be expended during the one, two, or three consecutive years specified by the entitlement public entity for its CDBG program will be for activities which benefit low and moderate income persons, as described in criteria at § 570.208(a).

(vii) It will comply with the requirements governing displacement, relocation, real property acquisition, and the replacement of low and moderate income housing described in § 570.496a or § 570.606.

(viii) It will comply with the requirements of § 570.200(c)(2) with regard to the use of special assessments to recover the capital costs of activities assisted with guaranteed loan funds.

(ix) (Where applicable, the public entity may also include the following additional certification.) It lacks sufficient resources from funds provided under this subpart or program income to allow it to comply with the provisions of § 570.200(c)(2), and it must therefore assess properties owned and occupied by moderate income persons, to recover the guaranteed loan funded portion of the capital cost without paying such assessments in their behalf from guaranteed loan funds.

(x) It will comply with the other provisions of the Act and with other applicable laws.

(9) In the case of an application submitted by a nonentitlement public entity, certifications by the State that:

(i) It agrees to make the pledge of grants required under § 570.705(b)(2).

(ii) It possesses the legal authority to make such pledge.

(iii) The aggregate use of CDBG grant funds received by the State, guaranteed loan funds, and program income during the one, two, or three consecutive years specified by the State for its CDBG program will be for activities that benefit low and moderate income persons.

(iv) It agrees to assume the responsibilities described in § 570.710.

(c) *HUD review and approval of applications.* (1) HUD will normally accept the certifications submitted with the application. HUD may, however, consider relevant information which challenges the certifications and require additional information or assurances from the public entity or State as warranted by such information.

(2) The field office shall review the application for compliance with requirements specified in this subpart and forward the application together with its recommendation for approval or disapproval of the requested loan guarantee to HUD Headquarters.

(3) HUD may disapprove an application, or may approve loan guarantee assistance for an amount less than requested, for any of the following reasons:

(i) HUD determines that the guarantee constitutes an unacceptable financial risk. Factors that will be considered in assessing financial risk shall include, but not be limited to, the following:

(A) The length of the proposed repayment period;

(B) The ratio of expected annual debt service requirements to expected annual grant amount;

(C) The likelihood that the public entity or State will continue to receive grant assistance under this part during the proposed repayment period; and

(D) The public entity's ability to furnish adequate security pursuant to § 570.705(b).

(ii) The requested loan amount exceeds any of the limitations specified under § 570.705(a).

(iii) Funds are not available in the amount requested.

(iv) The performance of the public entity or State under this part is unacceptable.

(v) Activities to be undertaken with the guaranteed loan funds are not eligible under § 570.703.

(vi) Activities to be undertaken with the guaranteed loan funds do not meet the criteria in § 570.208 for compliance with one of the national objectives of the Act.

(4) HUD will notify the public entity in writing that the loan guarantee request has either been approved, reduced or disapproved. If the request is reduced or disapproved, the public entity shall be informed of the specific reasons for reduction or disapproval. If the request is approved, HUD shall issue an offer of commitment to guarantee obligations of the public entity or the designated public agency subject to such conditions as HUD may prescribe, including the conditions for release of funds described in paragraph (d) of this section.

(5) *Amendments.* If the public entity wishes to carry out an activity not previously described in its application or to substantially change the purpose, scope, location, or beneficiaries of an activity, the amendment must be approved by HUD. Amendments by nonentitlement public entities must also be approved by the State. The public entity shall follow the citizen participation requirements for amendments in § 570.704(a)(2).

(d) *Environmental review.* The public entity shall comply with HUD environmental review procedures (24 CFR part 58) for the release of funds for each project carried out with loan guarantee assistance. These procedures set forth the regulations, policies, responsibilities and procedures governing the carrying out of environmental review responsibilities of public entities.

(e) *Displacement, relocation, acquisition, and replacement of housing.* The public entity (or the designated public agency) shall comply with the displacement, relocation, acquisition and replacement of housing requirements in § 570.496a or § 570.606 in connection with any activity financed in whole or in part with guaranteed loan funds.

(f) During the period in which the application is pending or in which the guaranteed loan funds are being used, the public entity shall comply with the disclosure requirements, under 24 CFR part 12, subpart C, for updating disclosures regarding other government assistance, interested parties, and sources and uses of funds.

§ 570.705 Loan requirements.

(a) *Limitations on commitments.* (1) If loan guarantee commitments have been issued in any fiscal year in an aggregate amount equal to 50 percent of the amount approved in an appropriation act for that fiscal year, HUD may limit the amount of commitments any one public entity may receive during such fiscal year as follows (except that HUD will not decrease commitments already issued):

(i) The amount any one entitlement public entity may receive may be limited to $35,000,000.

(ii) The amount any one nonentitlement public entity may receive may be limited to $7,000,000.

(iii) The amount any one public entity may receive may be limited to such amount as is necessary to allow HUD to give priority to applications containing activities to be carried out in areas designated as enterprise zones by the Federal Government or by any State.

(2) In addition to the limitations specified in paragraph (a)(1) of this section, the following limitations shall apply.

(i) *Entitlement public entities.* No commitment to guarantee shall be made if the total outstanding notes or obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under § 570.705(b)(1)) on behalf of the public entity and its designated public agency would thereby exceed an amount equal to five times the amount of the most recent grant made pursuant to § 570.304 to the public entity.

(ii) *Nonentitlement public entities.* No commitment to guarantee shall be made if the total outstanding notes or obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under § 570.705(b)(1)) on behalf of the public entity and other public entities assisted by a State would thereby exceed an amount equal to five times the amount of the most recent grant received by such State under subpart I.

(b) *Security requirements.* To assure the repayment of notes or other obligations and charges incurred under this subpart and as a condition for receiving loan guarantee assistance, the public entity (and State or designated public agency, where appropriate) shall:

(1) Enter into a contract with HUD, in a form acceptable to HUD, for repayment of notes or other obligations guaranteed hereunder;

(2) Pledge all grants made or for which the public entity or State may become eligible under this part; and

(3) Furnish, at the discretion of HUD, such other security as may be deemed appropriate by HUD in making such guarantees. Other security shall be required for all loans with repayment periods of ten years or longer. Such other security shall be specified in the contract entered into pursuant to § 570.705(b)(1). Examples of other security HUD may require are:

(i) Program income as defined in § 570.500(a);

(ii) Liens on real and personal property;

(iii) Debt service reserves; and

(iv) Increments in local tax receipts generated by activities carried out with the guaranteed loan funds.

(c) *Use of grants for loan repayment.* Notwithstanding any other provision of this part:

(1) Community Development Block Grants allocated pursuant to section 106 of the Act (including program income derived therefrom) may be used for:

(i) Paying principal and interest due (including such servicing, underwriting, or other costs as may be authorized by HUD) on the notes or other obligations guaranteed pursuant to this subpart,

(ii) Defeasing notes or other obligations guaranteed pursuant to this subpart; and

(iii) Establishing debt service reserves as additional security pursuant to paragraph (b)(3) of this section.

(2) HUD may apply grants pledged pursuant to paragraph (b)(2) of this section to any amounts due under the notes or other obligations guaranteed

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pursuant to this subpart, the payment of costs of issuance of notes or other obligations guaranteed pursuant to this subpart, or to the purchase or defeasance of such notes or other obligations, in accordance with the terms of the contract required by paragraph (b)(1) of this section.

(d) *Debt obligations.* Notes or other obligations guaranteed under this subpart shall be in the form and denominations prescribed by HUD. Such notes or other obligations may be issued and sold only under such terms and conditions as may be prescribed by HUD.

(e) *Taxable obligations.* Interest earned on obligations guaranteed under this subpart shall be subject to Federal taxation as provided in section 108(j) of the Act. All public entities or designated public agencies issuing guaranteed obligations must bear the full cost of interest.

(f) *Loan repayment period.* The repayment period for a loan guaranteed under this subpart shall not exceed twenty years.

(g) *Issuance, underwriting, servicing, and other costs.* Each public entity or its designated public agency issuing guaranteed obligations must pay the issuance, underwriting, servicing, and other costs associated with the private sector financing of the guaranteed obligations. Such costs are payable out of the guaranteed loan funds.

§ 570.706 Federal guarantee.

The full faith and credit of the United States is pledged to the payment of all guarantees made under this subpart. Any such guarantee made by HUD shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

§ 570.707 Applicability of rules and regulations.

(a) *Entitlement public entities.* The provisions of subparts A, C, J, K and O applicable to Entitlement grants shall apply equally to guaranteed loan funds and other CDBG funds, except to the extent they are specifically modified or augmented by the provisions of this subpart.

(b) *Nonentitlement public entities.* The provisions of subpart I and the requirements the State imposes on units of general local government receiving Community Development Block Grants or program income shall apply equally to guaranteed loan funds and Community Development Block Grants (including program income derived therefrom) administered by the State under the CDBG program, except to the extent they are specifically modified or augmented by the provisions of this subpart.

§ 570.708 Sanctions.

(a) *Entitlement public entities.* The performance review procedures described in subpart O apply to entitlement public entities receiving guaranteed loan funds. Performance deficiencies in the use of guaranteed loan funds (or program income derived therefrom) or violations of the contract entered into pursuant to § 570.705(b)(1) may result in the imposition of a sanction authorized pursuant to § 570.900(b)(7) against the pledged entitlement grants. In addition, upon a finding by HUD that the public entity has failed to comply substantially with any provision of the Act with respect to either the pledged entitlement grants or the guaranteed loan funds or program income, HUD may take action against the pledged grants as provided in § 570.913 and/or may take action as provided in the contract.

(b) *Nonentitlement public entities.* Performance deficiencies in the use of guaranteed loan funds (or program income derived therefrom) or violations of the contract entered into pursuant to § 570.705(b)(1) may result in an action authorized pursuant to § 570.499 or § 570.499a. In addition, upon a finding by HUD that the public entity has failed to comply substantially with any provision of the Act with respect to the pledged CDBG nonentitlement funds, the guaranteed loan funds, or program income, HUD may take action against the pledged funds as provided in § 570.499a and/or may take action as provided in the contract.

§ 570.709 Allocation of loan guarantee assistance.

Of the amount approved in any appropriation act for guarantees under this subpart in any fiscal year, 70 percent shall be allocated for entitlement public entities and 30 percent shall be allocated for nonentitlement public entities. HUD may waive these percentage requirements in any fiscal year to the extent that there is an absence of qualified public entities or proposed activities from entitlement or nonentitlement public entities.

§ 570.710 State responsibilities.

The State is responsible for choosing public entities that it will assist under this subpart. States are free to develop procedures and requirements for determining which activities will be assisted, subject to the requirements of this subpart. Upon approval by HUD of an application from a nonentitlement public entity, the State will be responsible for ensuring that the public entity complies with all applicable requirements governing the use of the guaranteed loan funds. The State shall administer guaranteed loan funds in the same manner as it administers Community Development Block Grant funds distributed to units of general local government. Notwithstanding the State's responsibilities described above, HUD will also have the responsibility for ensuring compliance with requirements affecting the security interests of HUD with respect to the guaranteed loan.

Dated: April 10, 1991.

Anna Kondratas,

Assistant Security for Community Planning and Development.

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federal register

Thursday
May 9, 1991

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Funding Availability for Fiscal Year 1991 and Deadlines for Submitting Program Descriptions; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-3133; FR-3039-N-1]

NOFA for Formula Allocations for the Rental Rehabilitation Program for Fiscal Year 1991 and Deadlines for Submission of Program Descriptions; and Criteria for Reallocating Rental Rehabilitation Program Grant Funds

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability for Fiscal Year 1991 and Deadlines for Submitting Program Descriptions.

SUMMARY: This NOFA announces allocations of Rental Rehabilitation Program grant funds for cities with populations of 50,000 or more, urban counties, consortia of units of general local government, and States for Fiscal Year 1991. It also announces the dates by which Program Descriptions must be submitted to HUD for these potential grantees to be considered for actual grants based on these allocations. In addition, it sets forth the more detailed criteria the Department will use to reallocate Rental Rehabilitation Program grant funds during Fiscal Year 1991.

DATES: Program Descriptions should be addressed to the CDP Division Director and must be submitted to the appropriate HUD Field Office by 4 p.m., local time, on or before June 24, 1991. However, upon request by a prospective grantee made before June 24, 1990, the deadline may be extended for good cause by not more than 30 days by the appropriate HUD Field Office. If an additional extension is needed for good cause, HUD Headquarters may grant a further extension, up to but not exceeding a date that will allow time for review and approval or disapproval of the description before the end of Fiscal Year 1991 (i.e., before October 1, 1991).

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Rehabilitation Management Division, room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410-7000; telephone (202) 708-2470. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755-2565. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements for the Rental Rehabilitation Program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned the control number 2506-0080.

I. Purpose and Substantive Description

(a) Authority

The Rental Rehabilitation Program (RRP) is authorized by section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o), as amended, hereinafter referred to as section 17. The program regulations are published at 24 CFR part 511. Section 511.30 contains the formula for allocating Rental Rehabilitation Program funds. Cities having a population of 50,000 or more, urban counties, consortia of units of general local government having a combined population of 50,000 or more, and States are eligible to receive formula allocations.

Normally, a locality must qualify for at least $50,000 to receive a direct formula allocation. Since the amount of funding available for allocation in Fiscal Year 1991 is $68,500,000, a reduction from the $126,508,000 that was allocated for the program in Fiscal Year 1990, a number of localities that received a grant based on a formula allocation in Fiscal Year 1990 have a formula amount less than $50,000 in Fiscal Year 1991. Pursuant to 24 CFR 511.31(b), these localities may accept their less-than-$50,000 formula amounts as direct grants, by submitting notice to HUD as described in this notice and in § 511.31(b). Alternatively, they may decline their direct grants, but will be eligible to participate in their State's program.

(b) Allocation Amounts

Appendix A to this notice contains the formula allocations for cities, urban counties, and consortia that receive an allocation of $50,000 or more. Appendix B to this notice contains the minimum formula allocations for States. HUD will administer the allocation of any State that elects not to administer the Rental Rehabilitation Program. Appendix C to this notice contains optional grant amounts for localities that participated in the Rental Rehabilitation Program last year as formula grantees and which may elect to participate as formula grantees in Fiscal Year 1991.

Grant amounts in appendices A, B, and C have been rounded to the nearest thousand.

Amounts for those localities listed in appendix C that do not elect to apply for grants based on their formula allocations will be added to the published allocations for the appropriate States. If a locality listed in appendix C elects not to accept its formula allocation, there is no assurance that it will receive funding under the applicable State program, since funding in such programs is under procedures set by the State grantee (or HUD if the State's program is HUD-administered).

(c) Eligibility

Cities having a population of 50,000 or more, urban counties, consortia of units of general local government having a combined population of 50,000 or more, and States are eligible to receive formula allocations. The eligibility of cities with populations of 50,000 or more and urban counties for formula allocations is determined by whether they were so classified for purposes of the Community Development Block Grant Entitlement Program (24 CFR part 570) for Fiscal Year 1990. The formula factors for allocating the Fiscal Year 1991 funds are the same as those used in prior years.

II. Application Process

The Program Description is the application for the Rental Rehabilitation Program.

Section 511.20(a) of the program regulation requires cities, urban counties, States, and consortia eligible to receive a grant based on a formula allocation to submit a Program Description to the appropriate HUD Field Office on or before June 24, 1991, the date specified in the DATE caption of this notice. The Program Description should be submitted to the Director of the Community Planning and Development (CPD) Division in the applicable HUD Field Office, not later than 4:00 p.m. local time on the stated date. Section 511.20(b) of the program regulations states the information that each prospective grantee must submit in its Program Description and 511.20(c) lists the certifications that each prospective grantee must submit with its Program Description.

Because entities listed in Appendix C (entities that would receive less than $50,000) have the option to apply directly to HUD or to participate in a State program, § 511.31(b) requires them to notify the appropriate HUD Field Office in writing of their decision within 30 days of publication of this notice. This notice also should be addressed to the CPD Director in the appropriate Field Office. This notification is necessary to allow HUD sufficient time to advise the affected States of any additional monies that they will be allocated. Entities listed in appendix C that decide to participate as formula grantees still must submit a Program Description to the CPD Division Director in the appropriate HUD Field Office within 45 days of the date of publication of this notice.

If one or more States choose not to participate in the Rental Rehabilitation Program, HUD will publish another notice in the **Federal Register** inviting eligible units of general local government, located in these States, to submit their Program Descriptions if they wish to participate in the HUD-Administered State Program. That notice will contain the submission deadline, selection criteria, and other information relevant to the HUD-Administered State Program.

Additional Certification Required

Section 511.20 of the program regulations requires potential grantees to submit a Program Description that includes the elements and certifications required by § 511.20(b) and (c), respectively. In addition to these certifications, potential grantees must provide a certification regarding lobbying.

Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan.

The Department's regulations implementing section 319 were published as an interim final rule in the Federal Register February 26, 1990 at 55 FR 6736 and are contained at 24 CFR part 87. The certification and disclosure requirements apply to all grants in excess of $100,000. However, since RRP grantees may receive additional RRP grant funds through reallocations, HUD takes the position that all potential grantees must submit this certification, and, if applicable, the disclosure. Potential grantees should refer to 55 FR 6736 or 24 CFR part 87 for the language for the certification and disclosure, which are contained in appendix A to part 87 and appendix B to part 87, respectively. As indicated in this certification and disclosure, the law provides substantial monetary penalties for failure to file the required certification or disclosure.

III. Checklist of Application Submission Requirements

The elements to be contained in the Program Description are stated at 24 CFR 511.20(b) and the certifications to be submitted with the Program Description are stated in 24 CFR 511.20(c), except for the anti-lobbying certification described in section II above.

IV. Corrections to Deficient Applications

If the Program Description is not complete or contains insufficient information to support each of the required elements, as described in 24 CFR 511.21(a)(3), the HUD Field Office will so notify the grantee. Pursuant to 24 CFR 511.21(b), the grantee will then have 20 days to submit the necessary supporting information. Thereafter, HUD may approve the grant based on the Program Description, conditionally approve the grant, or disapprove the grant, as stated in 24 CFR 511.21.

V. Reallocation of Rental Rehabilitation Grant Amounts

Under § 511.33(b), rental rehabilitation grant amounts are available during the year for reallocation to grantees "as HUD determines appropriate to promote the expeditious use of grant amounts, consistent with the sound development and administration of grantees' Rental Rehabilitation Programs." Rental rehabilitation grant amounts may become available for reallocation by HUD as a result of factors such as failure of a city, urban county, or consortium to apply for a grant based on a formula allocation of $50,000 or more or deobligation of RRP grant amounts based on the progress of a grantee in carrying out its Rental Rehabilitation Program.

The following criteria apply to reallocations during Fiscal Year 1991 of Rental Rehabilitation Program grant funds from any fiscal year that are still available for reallocation:

Threshold Factors

Unless there is an emergency need as described below, HUD will reallocate funds under 24 CFR 511.33(b) to a grantee only if:

(1) There is no outstanding finding that the grantee has failed to comply with any provision of the program regulations (24 CFR part 511);

(2) Eighty (80) percent or more of the units for which the grantee has completed rehabilitation with grant amounts from each of the last two previous grant years have rents that are affordable to lower income families (initial rents after rehabilitation were at or below the applicable Section 8 Fair Market Rent for the Existing Housing Program); and

(3) With respect to funds which the grantee has expended for completed projects for each of the last two previous grant years, the percentage of these funds used to benefit lower income families equals or exceeds the lower income benefit percentage applicable to the grantee under 24 CFR 511.10(a).

Other Factors

When reallocating funds, HUD will also consider:

(1) The extent to which the grantee has committed rental rehabilitation grant amounts to specific local projects in the last two grant years; and

(2) The extent to which, in the last two grant years for which projects have been completed, the grantee has expended grant amounts for completed projects:

(a) In excess of the required percentage benefit for lower income families under 24 CFR 511.10(a);

(b) For units with rents affordable to lower income families in excess of 80 percent of the units completed;

(c) In excess of the percentage required for units having two or more bedrooms and in excess of the equitable share of units having three or more bedrooms, under 24 CFR 511.10(b);

(d) With units which were occupied by very low income families before rehabilitation and those families were not displaced;

(e) In which the gross amount of public subsidy funds per unit has been minimized; and

(f) In which the amount of public subsidy funds as a percentage of total rehabilitation costs has been minimized.

Emergency Needs

Notwithstanding the reallocation criteria stated above, HUD may reallocate rental rehabilitation grant funds for emergency needs, such as the need for rehabilitation after a natural disaster.

Requests for Reallocations

Grantees may request a reallocation of funds at any time by sending a letter to the appropriate HUD Field Office. The letter should indicate the amount of funds requested and provide sufficient details to show the need for the additional funds. In addition, the letter should provide a schedule for committing and expending the requested funds, as required by 24 CFR 511.20(b)(8). The Field Office will review the grantee's program and based on the reallocation criteria, will determine whether the grantee is eligible for a reallocation. If the grantee is eligible and if funds are available for the

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requested reallocation, the funds may be reallocated to the grantee.

If funds are not available, the Field Office will hold the request and, if funds become available, may reallocate the requested funds, depending on the relative standing of the request in relation to other requests. Funds will be reallocated to grantees that are eligible for a reallocation based on the reallocation criteria, generally on a first come, first served basis. If there are a number of requests and an insufficient amount of funds available, the Field Office shall use the reallocation criteria to make and document reallocation decisions. The Field Office may choose to fund only those grantees which rank the highest or may choose to provide a lesser amount of what each eligible grantee has requested to the extent funds are available.

VI. Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA would not have Federalism implications and, thus, is not subject to review under this Order. This NOFA does not alter the established roles of State and local governments in the administration of the Rental Rehabilitation Program.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this NOFA does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

The Catalog of Federal Domestic Assistance program number is 14.230, Rental Housing Rehabilitation.

Authority: Section 17, United States Housing Act of 1937, 42 U.S.C. 1437o; Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 2, 1991.

Annie Kondratas,

Assistant Secretary for Community Planning and Development.

Appendix A—Rental Rehabilitation Program Formula Allocations—Fiscal Year 1991

State—locality	Dollars in thousands
AL—Birmingham	169
AL—Mobile	77
AL—Montgomery	71
AL—Jefferson County	58
AZ—Phoenix	247
AZ—Tucson	144
AR—Little Rock	84
CA—Anaheim	79
CA—Berkeley	97
CA—Fresno	110
CA—Glendale	78
CA—Inglewood	58
CA—Long Beach	231
CA—Los Angeles	1,969
CA—Oakland	249
CA—Pasadena	69
CA—Riverside	59
CA—Sacramento	134
CA—San Bernardino	82
CA—San Diego	406
CA—San Francisco	579
CA—San Jose	176
CA—Santa Ana	82
CA—Santa Monica	67
CA—Stockton	77
CA—Contra Costa County	73
CA—Fresno County	70
CA—Kern County	80
CA—Los Angeles County	962
CA—Marin County	69
CA—Orange County	133
CA—Riverside County	107
CA—Sacramento County	137
CA—San Bernardino County	106
CA—San Diego County	112
CA—San Joaquin County	52
CA—San Mateo County	78
CA—Santa Clara County	68
CA—Sonoma County	62
CO—Colorado Springs	75
CO—Denver	294
CT—Bridgeport	117
CT—Hartford	139
CT—New Haven	122
CT—Waterbury	63
DE—New Castle County	64
DC—Washington	422
FL—Ft. Lauderdale	72
FL—Hialeah	62
FL—Jacksonville	209
FL—Miami	316
FL—Miami Beach	151
FL—Orlando	63
FL—St. Petersburg	103
FL—Tallahassee	60
FL—Tampa	122
FL—Broward County	115
FL—Dade County	287
FL—Hillsborough County	80
FL—Orange County	87
FL—Palm Beach County	91
FL—Pinellas County	61
FL—Polk County	53
GA—Atlanta	256
GA—Columbus	79
GA—Macon	66
GA—Savannah	63
GA—De Kalb County	109
GA—Fulton County	59
HI—Honolulu	208
IL—Chicago	2,441
IL—Peoria	61
IL—Cook County	230
IL—Du Page County	60
IL—Madison County	63
IN—Evansville	57
IN—Fort Wayne	62
IN—Gary	66
IN—Indianapolis	208
IA—Des Moines	75
KS—Kansas City	58
KS—Wichita	67
KY—Lexington-Fayette	53
KY—Louisville	161
KY—Jefferson County	54
LA—Baton Rouge	115
LA—New Orleans	479
LA—Shreveport	81
LA—Jefferson Parish	92
ME—Portland	57
MD—Baltimore	580
MD—Baltimore County	120
MD—Montgomery County	104
MD—Prince Georges County	154
MA—Boston	546
MA—Brockton	53
MA—Cambridge	63
MA—Falls River	69
MA—Lawrence	56
MA—Lowell	58
MA—Lynn	57
MA—New Bedford	76
MA—Somerville	61
MA—Springfield	103
MA—Worcester	90
MI—Ann Arbor	61
MI—Detroit	639
MI—Flint	71
MI—Grand Rapids	55
MI—Kalamazoo	53
MI—Lansing	60
MI—Oakland County	68
MI—Wayne County	76
MN—Minneapolis	243
MN—St. Paul	118
MN—Hennepin County	65
MS—Jackson	60
MO—Kansas City	209
MO—St. Louis	364
MO—Springfield	57
MO—St. Louis County	130
NE—Lincoln	62
NE—Omaha	128
NV—Las Vegas	66
NV—Reno	51
NV—Clark County	76
NH—Manchester	55
NJ—Camden	66
NJ—East Orange	64
NJ—Elizabeth	74
NJ—Jersey City	209
NJ—Newark	372
NJ—Passaic	59
NJ—Paterson	131
NJ—Trenton	66
NJ—Union City	60
NJ—Bergen County	186
NJ—Burlington County	54
NJ—Essex County	88
NJ—Hudson County	180
NJ—Monmouth County	53
NJ—Union County	76
NM—Albuquerque	117
NY—Albany	90
NY—Buffalo	343
NY—Mount Vernon	54

Appendix A—Rental Rehabilitation Program Formula Allocations—Fiscal Year 1991—Continued

State—locality	Dollars in thousands
NY—New York	7,167
NY—Rochester	185
NY—Syracuse	149
NY—Utica	59
NY—Yonkers	119
NY—Nassau County	194
NY—Suffolk County	84
NY—Westchester County	112
NC—Charlotte	121
NC—Durham	68
NC—Greensboro	80
NC—Raleigh	69
NC—Winston-Salem	65
OH—Akron	111
OH—Cincinnati	331
OH—Cleveland	468
OH—Columbus	314
OH—Dayton	131
OH—Toledo	165
OH—Youngstown	63
OH—Cuyahoga County	79
OH—Hamilton County	72
OH—Montgomery County	51
OK—Oklahoma City	148
OK—Tulsa	124
OR—Eugene	62
OR—Portland	260
OR—Washington County	56
PA—Allentown	69
PA—Erie	64
PA—Philadelphia	1,076
PA—Pittsburgh	318
PA—Reading	58
PA—Allegheny County	224
PA—Bucks County	66
PA—Chester County	61
PA—Delaware County	73
PA—Lancaster County	54
PA—Luzerne County	59
PA—Montgomery County	60
PA—Washington County	60
PA—Westmoreland County	59
RI—Providence	158
SC—Charleston	56
SC—Columbia	51
SC—Greenville County	51
TN—Chattanooga	63
TN—Knoxville	68
TN—Memphis	296
TN—Nashville-Davidson	169
TX—Austin	193
TX—Corpus Christi	79
TX—Dallas	361
TX—El Paso	171
TX—Fort Worth	193
TX—Houston	692
TX—Lubbock	64
TX—San Antonio	306
TX—Waco	58
TX—Harris County	79
UT—Salt Lake City	102
VA—Newport News	58
VA—Norfolk	149
VA—Richmond	149
VA—Virginia Beach	66
VA—Arlington County	66
VA—Fairfax County	91
WA—Seattle	292
WA—Spokane	109
WA—Tacoma	84
WA—King County	112
WA—Pierce County	74
WI—Madison	104
WI—Milwaukee	361
PR—Mayaguez Municipio	68
PR—Ponce Municipio	77
PR—San Juan Municipio	302

Appendix B—FY 1991 Rental Rehabilitation Allocations to Communities and States

[Amounts in thousands of dollars]

State	Entitled places	Optional grants	Minimum state	Total funds
Alabama	375	101	411	887
Alaska	0	44	28	72
Arizona	391	162	134	687
Arkansas	64	53	342	459
California	6,373	1,261	1,388	9,022
Colorado	359	232	208	799
Connecticut	441	144	348	933
Delaware	64	47	19	130
DC	422	0	0	422
Florida	1,932	427	535	2,894
Georgia	690	107	596	1,393
Hawaii	258	0	36	294
Idaho	0	33	133	166
Illinois	2,854	381	788	3,993
Indiana	443	221	460	1,124
Iowa	76	151	329	556
Kansas	155	102	343	599
Kentucky	328	0	388	716
Louisiana	768	90	365	1,223
Maine	57	0	229	286
Maryland	968	43	166	1,177
Massachusetts	1,281	140	849	2,270
Michigan	1,313	146	766	2,225
Minnesota	426	78	320	824
Mississippi	80	0	364	444
Missouri	760	66	364	1,190
Montana	0	51	123	174
Nebraska	189	0	119	308
Nevada	193	0	51	244
New Hampshire	55	0	158	213
New Jersey	1,751	292	511	2,554
New Mexico	117	0	176	293
New York	6,538	549	889	8,976
North Carolina	375	122	577	1,074
North Dakota	0	28	76	104
Ohio	1,785	320	861	2,966
Oklahoma	272	56	352	680
Oregon	376	98	270	744
Pennsylvania	2,292	294	880	3,466
Rhode Island	158	64	189	411
South Carolina	157	62	382	601

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APPENDIX B—FY 1991 RENTAL REHABILITATION ALLOCATIONS TO COMMUNITIES AND STATES—Continued

[Amounts in thousands of dollars]

State	Entitled places	Optional grants	Minimum state	Total funds
South Dakota	0	29	95	124
Tennessee	648	18	379	1,045
Texas	2,090	458	1,186	3,734
Utah	192	109	93	394
Vermont	0	0	105	105
Virginia	583	228	378	1,189
Washington	665	153	341	1,159
West Virginia	0	66	226	292
Wisconsin	465	96	480	1,031
Wyoming	0	0	79	79
Puerto Rico	437	202	269	908
Total	42,078	7,334	19,096	68,500

APPENDIX C—RENTAL REHABILITATION OPTIONAL GRANTEES—FISCAL YEAR 1991

State—locality	Dollars in thousands
AL—Dothan	19
AL—Huntsville	49
AL—Tuscaloosa	43
AK—Anchorage	44
AZ—Glendale	25
AZ—Mesa	37
AZ—Tempe	36
AZ—Maricopa County	36
AZ—Pima County	28
AR—Fort Smith	27
AR—Pine Bluff	28
CA—Alameda	29
CA—Alhambra	32
CA—Bakersfield	40
CA—Bellflower	24
CA—Burbank	36
CA—Chula Vista	37
CA—Compton	35
CA—Costa Mesa	37
CA—Daly	21
CA—Downey	25
CA—El Cajon	35
CA—El Monte	42
CA—Escondido City	26
CA—Fremont	24
CA—Garden Grove	34
CA—Hayward	39
CA—Huntington Beach	48
CA—Huntington Park	39
CA—Lynwood	21
CA—Modesto	36
CA—Montebello	29
CA—Monterey Park	19
CA—National City	25
CA—Norwalk	19
CA—Oceanside	30
CA—Ontario	25
CA—Oxnard	39
CA—Pomona	36
CA—Redondo Beach	26
CA—Redwood City	23
CA—Richmond	30
CA—Salinas	32
CA—San Mateo	26
CA—Santa Clara	29
CA—South Gate	30
CA—Sunnyvale	30
CA—Vallejo	24
CA—Ventura	29
CA—Whittier	23
CA—Alameda County	48
CA—Ventura County	46
CO—Aurora	32
CO—Boulder	43

APPENDIX C—RENTAL REHABILITATION OPTIONAL GRANTEES—FISCAL YEAR 1991—Continued

State—locality	Dollars in thousands
CO—Fort Collins	33
CO—Greeley	28
CO—Lakewood	22
CO—Pueblo	40
CO—Adams County	34
CT—Danbury	28
CT—New Britain	40
CT—Norwalk	26
CT—Stamford	36
CT—West Haven	20
DE—Wilmington	47
FL—Clearwater	29
FL—Daytona Beach	39
FL—Gainesville	49
FL—Hollywood	37
FL—Lakeland	21
FL—Pensacola	26
FL—Pompano Beach	22
FL—Sarasota	22
FL—West Palm Beach	38
FL—Brevard County	31
FL—Escambia County	41
FL—Pasco County	28
FL—Volusia County	44
GA—Albany	43
GA—Cobb County	43
GA—Gwinnett County	21
ID—Boise	33
IL—Aurora	23
IL—Champaign	35
IL—Cicero	30
IL—Decatur	35
IL—Evanston	34
IL—Joliet	28
IL—Rockford	49
IL—Springfield	42
IL—Waukegan	21
IL—Lake County	35
IL—St. Clair County	49
IN—Anderson	23
IN—Bloomington	37
IN—Hammond	31
IN—Muncie	40
IN—South Bend	37
IN—Terre Haute	27
IN—Lake County	26
IA—Cedar Rapids	30
IA—Council Bluffs	18
IA—Davenport	40
IA—Iowa City	33
IA—Sioux City	31
KS—Lawrence	36
KS—Topeka	41

APPENDIX C—RENTAL REHABILITATION OPTIONAL GRANTEES—FISCAL YEAR 1991—Continued

State—locality	Dollars in thousands
KS—Johnson County	25
LA—Alexandria	28
LA—Lafayette	39
LA—Monroe	32
MD—Anne Arundel County	43
MA—Brookline	35
MA—Chicopee	20
MA—Malden	28
MA—Medford	21
MA—Quincy	36
MA—Pontiac	35
MI—Saginaw	42
MI—Genesee County	46
MI—Macomb County	29
MN—Duluth	49
MN—Dakota County	29
MO—Columbia	34
MO—St. Joseph	32
MT—Billings	29
MT—Great Falls	22
NJ—Bayonne	36
NJ—Irvington	46
NJ—Camden County	46
NJ—Gloucester County	41
NJ—Middlesex County	46
NJ—Ocean County	42
NJ—Somerset County	31
NY—Amherst Town	18
NY—Babylon Town	33
NY—Binghamton	45
NY—Huntington Town	20
NY—Islip Town	45
NY—New Rochelle	35
NY—Niagara Falls	42
NY—Schenectady	46
NY—Troy	43
NY—Union Town	22
NY—Dutchess County	33
NY—Erie County	44
NY—Monroe County	46
NY—Onondaga County	32
NY—Orange County	42
NC—Asheville	29
NC—Fayetteville	33
NC—High Point	29
NC—Wilmington	31
ND—Fargo	36
OH—Canton	45
OH—Hamilton City	31
OH—Lakewood	27
OH—Lorain	23
OH—Mansfield	25
OH—Springfield	45

APPENDIX C—RENTAL REHABILITATION OPTIONAL GRANTEES—FISCAL YEAR 1991—Continued

State—locality	Dollars in thousands
OH—Warren	22
OH—Franklin County	43
OH—Stark County	33
OH—Summit County	28
OK—Lawton	28
OK—Norman	28
OR—Salem	39
OR—Clackamas County	39
OR—Multnomah County	20
PA—Altoona	25
PA—Harrisburg	36
PA—Lancaster	37
PA—Scranton	49
PA—Upper Darby	24
PA—Beaver County	46
PA—Berks County	33
PA—York County	40
RI—Pawtucket	46
RI—Warwick	18
SC—Greenville	34
SC—North Charleston	28
SD—Sioux Falls	29

APPENDIX C—RENTAL REHABILITATION OPTIONAL GRANTEES—FISCAL YEAR 1991—Continued

State—locality	Dollars in thousands
TN—Clarksville	18
TX—Abilene	26
TX—Amarillo	36
TX—Baytown City	18
TX—Beaumont	44
TX—Brownsville	37
TX—Denton	25
TX—Galveston	34
TX—Garland	21
TX—Killeen	23
TX—Laredo	40
TX—Port Arthur	22
TX—San Angelo	24
TX—Tyler	27
TX—Wichita Falls	30
TX—Hidalgo County	47
UT—Ogden	29
UT—Provo	30
UT—Salt Lake County	44
VA—Alexandria	45
VA—Chesapeake	26
VA—Hampton	35

APPENDIX C—RENTAL REHABILITATION OPTIONAL GRANTEES—FISCAL YEAR 1991—Continued

State—locality	Dollars in thousands
VA—Lynchburg	26
VA—Portsmouth	47
VA—Roanoke	49
WA—Everett	26
WA—Clark County	46
WA—Snohomish County	46
WA—Spokane County	32
WV—Charleston	28
WV—Huntington	38
WI—Green Bay	33
WI—Racine	29
WI—Milwaukee County	34
PR—Aguadilla Municipio	25
PR—Arecibo Municipio	28
PR—Bayamon Municipio	46
PR—Caguas Municipio	37
PR—Carolina Municipio	44
PR—Guaynabo Municipio	22

[FR Doc. 91-11090 Filed 5-8-91; 8:45 am]

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federal register

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Part VII

The President

Proclamation 6289—Small Business Week, 1991

Presidential Determination No. 91-30—Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Presidential Determination No. 91-31—Drawdown From DOD Stocks for Disaster Assistance in the Gulf Region

Presidential Determination No. 91-32—Determination Under Section 2(b)(2)(D)(i) of the Export-Import Bank Act of 1945, as Amended—Mongolia

Presidential Determination No. 91-33—Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

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Presidential Documents

Title 3—

The President

Proclamation 6290 of May 7, 1991

Small Business Week, 1991

By the President of the United States of America

A Proclamation

The freedom we celebrate during this 200th year of our Bill of Rights has enabled the United States to become a strong and prosperous Nation. Able to enjoy the unfettered "pursuit of Happiness" and allowed to reap the fruits of our labor, we Americans have achieved unparalleled levels of innovation and productivity. This week we honor in a special way America's small business men and women—courageous, hardworking individuals who have taken advantage of our Nation's free enterprise system and helped to show that this is, indeed, a land of liberty and opportunity for all.

Each day America's small business men and women help to lead the way in the development of new technology and products and in the improvement of existing goods and services. These industrious leaders also help to create jobs and opportunities for millions of their fellow citizens while promoting the economic development of their communities. In so doing, they demonstrate that individual initiative and private enterprise are keys to advancement for both individuals and nations.

Driven by more than 20 million small businesses, America's thriving free enterprise system serves as a model for the world. Indeed, as nations in Eastern Europe and elsewhere move to restructure their economies—an immense task that will entail many challenges—America's small businesses provide an inspiring example of free market principles in action.

Our Nation's entrepreneurs understand the risks and challenges faced by business owners in a market-driven economy, but they also appreciate the rewards of taking an idea and making it work, creating jobs and meeting a payroll, and contributing to one's community. Today many small business owners contribute to their communities not only through their day-to-day activities but also through corporate philanthropy and voluntary service. Demonstrating that good citizenship is good business, many small business owners and their employees are reaching out to persons in need of a helping hand. These entrepreneurs are among the points of light that reflect our Nation's conscience and illuminate its social landscape.

Because small businesses enrich our lives in so many ways, because their owners and employees have a vital role to play in keeping America competitive, we must continue working to maintain a business climate that is conducive to their success. Doing so will require eliminating government regulations wherever they are counterproductive, offering incentives for investment, and reducing the tax rate on long-term capital gains. It will also require that we continue working for a level playing field in the international marketplace, eliminating barriers to the free flow of goods and services around the world. As they have demonstrated time and again, when given the freedom and the opportunity to put their talent and ideas to work, America's small business men and women not only succeed, they excel.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of May 5 through May 11, 1991, as Small Business Week. I urge all Americans to join me in saluting our Nation's small business men and women by observing that week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

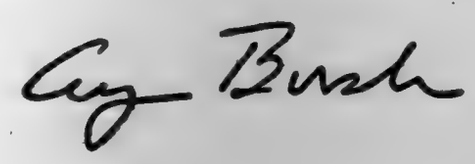

[FR Doc. 91-11201
Filed 5-9-91; 2:52 pm]
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Presidential Documents

Presidential Determination No. 91-30 of April 17, 1991

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that $15,250,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund (Emergency Fund) to meet the unexpected and urgent needs of refugees and migrants in Africa.

A total of $15,250,000 will be used to respond to urgent unforeseen refugee needs in Africa of which $4,000,000 will be contributed to UNHCR for South African repatriation; $10,000,000 will be contributed to international relief organizations for Ethiopian and Somali refugees and returnees in the Horn of Africa; and $1,250,000 will be used for emergency migration needs in Malawi.

You are directed to inform the appropriate committees of the Congress of this Determination and the obligation of funds under this authority, and to publish this memorandum in the Federal Register.

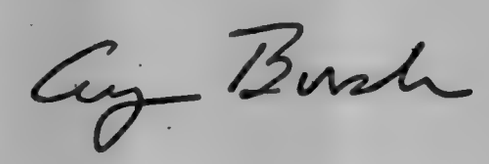

THE WHITE HOUSE,
Washington, April 17, 1991.

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Justification for Presidential Determination Authorizing the Use of Up to $15,250,000 of Funds From the United States Emergency Refugee and Migration Assistance Fund

Under Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended (the Act), 22 U.S.C. 2601(c)(1), the President may authorize the furnishing of assistance from the United States Emergency Refugee and Migration Assistance Fund (the Fund) to meet "unexpected urgent refugee and migration needs" whenever he determines it is "important to the national interest" to do so. A drawdown from the Fund in the amount of $15,250,000 is required to respond to such unexpected urgent needs in Africa.

South African Repatriation—$4,000,000

On March 21, the South African government agreed to a UNHCR role in the repatriation of exiled members of South African liberation movements. U.S. policy in South Africa strongly supports the negotiation process; the return of exiles is an essential element of that process.

UNHCR will issue an appeal for funds to repatriate an estimated 40,000 beneficiaries. An immediate U.S. response to this appeal will promote maximum international response to the UNHCR appeal.

Malawi—$1,250,000

Several factors have exacerbated Malawi's monumental refugee problem since the beginning of 1991. Interruption of the transportation food corridor, low donor commodity commitments, poor harvests, and flooding have imperiled some 950,000 refugees in Malawi.

In response, WFP has requested $12,000,000 for the purchase and transport of 35,000 MT of food to keep the pipeline running until new donor shipments arrive. UNICEF has issued a $925,000 appeal for emergency support and health care.

Horn Emergencies—$10,000,000

In late December 1990 serious fighting began in Somalia, ultimately ousting President Siad Barre from power. The fighting has resulted in hundreds of thousands of displaced persons in need of humanitarian assistance—with Ethiopian refugees leaving refugee camps for Kenya and Ethiopia, and Somalis crossing the border into Kenya and Ethiopia.

On March 8, UNHCR issued an emergency appeal for $42,000,000. UNHCR will provide immediate relief assistance to the 20,000 returnee population and move the 150,000 new Somali refugees, to the extent possible, to the existing refugee camps. WFP has appealed for an additional 150,000 MT of food for Ethiopia. The remoteness of the three separate areas where the returnees/refugees are located adds to the urgency of the situation. UNHCR will also assist up to 50,000 new Ethiopian and Somali refugees in Kenya and is programming $1,900,000 for this purpose.

[FR Doc. 91-11184
Filed 5-7-91; 11:28 am]
Billing code 4710-10-M

Presidential Documents

Presidential Determination No. 91-31 of April 19, 1991

Drawdown From DOD Stocks for Disaster Assistance in the Gulf Region

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(2) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2318(a)(2)) (the "Act"), I hereby determine that it is in the national interest of the United States to draw down defense articles from the stocks of the Department of Defense and defense services of the Department of Defense for the purpose of the provision of international disaster assistance in the Gulf Region. Such assistance will be available to meet urgent needs in the countries of the region, including Iran and Iraq.

Therefore, I hereby authorize the furnishing of up to $50 million of defense articles from the stocks of the Department of Defense and defense services of the Department of Defense, for the purposes and under the authorities of Chapter 9 of Part I of the Act.

In addition, pursuant to the authorities vested in me by section 552(c)(2) of the Act (22 U.S.C. 2348a(c)(2)), I hereby determine that, as the result of an unforeseen emergency, the provision of assistance under Chapter 6 of Paragraph II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States; and that such unforeseen emergency requires that immediate provision of assistance under that chapter. Therefore, I hereby direct the drawdown of commodities and services from the inventory and resources of the Department of Defense of an aggregate value of up to $25 million, and authorize that they be furnished under the authority of that chapter.

The Secretary of State is directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this memorandum in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, April 19, 1991.

[FR Doc. 91-11187
Filed 5-7-91; 12:17 pm]
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Presidential Documents

Presidential Determination No. 91-32 of April 19, 1991

Determination Under Section 2(b)(2)(D)(i) of the Export-Import Bank Act of 1945, as Amended—Mongolia

Memorandum for the Secretary of State

Pursuant to section 2(b)(2)(D)(i) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(2)(D)(i)), I determine that it is in the national interest for the Export-Import Bank of the United States to guarantee, insure, extend credit, and participate in the extension of credit in connection with the purchase or lease of any product by, for use in, or for sale or lease to Mongolia.

You are authorized and directed to report this determination to the Congress and to publish it in the Federal Register.

George Bush

THE WHITE HOUSE,
Washington, April 19, 1991.

[FR Doc. 91-11185
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Presidential Determination No. 91-33 of April 22, 1991

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that $10,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund (Emergency Fund) to meet the unexpected and urgent needs of refugees and other persons displaced by the crisis in the Middle East.

This drawdown provides $10,000,000 for the urgent needs of those displaced by the crisis in the Middle East. These funds will be contributed on a multilateral or bilateral basis as appropriate to international organizations, private voluntary organizations, and other governmental and non-governmental agencies engaged in the relief efforts and up to $100,000 will be used only to cover some of the related administrative expenses necessary to implement and monitor the use of this assistance.

You are directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this memorandum in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, April 22, 1991.

[FR Doc. 91-11189
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federal register

Friday
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Friday
May 10, 1991

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and New York City see announcement on the inside cover of this issue.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

NEW YORK, NY

WHEN: May 21, at 9:00 am
WHERE: 26 Federal Plaza
Room 305 B and C
New York, NY
RESERVATIONS: Federal Information Center
1-800-347-1997

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202-523-5240 (voice); 202-523-5229 (TDD)

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2636

Confidential Reporting of Payments to Charitable Organizations in Lieu of Honoraria; Deferral of Effective Date

AGENCY: Office of Government Ethics.

ACTION: Deferral of effective date of interim rule provision.

SUMMARY: The Office of Government Ethics (OGE) is deferring the effective date of its interim rule provision for the executive branch on confidential reporting of payments to charities in lieu of honoraria (56 FR 1727–1728, January 17, 1991). The regulation, 5 CFR 2636.205, will now become effective on October 15, 1991.

DATES: The effective date of 5 CFR 2636.205 is deferred until October 15, 1991.

ADDRESSES: Any comments or questions should be sent to Leslie L. Wilcox or William E. Gressman, Office of Government Ethics, suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

FOR FURTHER INFORMATION CONTACT: Ms. Wilcox or Mr. Gressman of OGE at the address above, telephone (202/FTS) 523–5757, FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics published 5 CFR 2636.205, the confidential reporting provision for payments to charitable organizations in lieu of honoraria, as an interim rule in the **Federal Register** last January 17, 1991 and provided for an effective date of May 15, 1991 (see 56 FR 1721–1730; the remainder of the interim regulation, entitled "Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria," was effective January 1, 1991 and continues in effect).

OGE is still working on a draft confidential standard reporting form to collect the information specified in 5 CFR 2636.205 and the underlying section of the Ethics in Government Act as amended, 5 U.S.C. appendix 102(a)(1)(A). Because the new form will collect information from some members of the public (terminees who file after leaving the Government) as well as current Federal employees, it must be submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35 (the § 2636.205 regulation itself was approved thereunder by OMB on April 10, 1991). In addition, since the form will be a standard form, OGE will also submit it to the General Services Administration (GSA) for its review and approval in accordance with standard form clearance procedures. In order to allow sufficient time for OGE to prepare the new reporting form, submit it to OMB and GSA for approval, and provide for a public comment period before final issuance of the form, the Office of Government Ethics has determined to defer the effective date of the 5 CFR 2636.205 reporting regulation until October 15, 1991.

Approved: May 6, 1991.

Stephen D. Potts,
Director, Office of Government Ethics.

[FR Doc. 91–11104 Filed 5–9–91; 8:45 am]

BILLING CODE 6345–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 919

[Docket No. FV–91–278]

Peaches Grown in Mesa County, Colorado; Amendment of Office of Management and Budget Form Number; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order; correction.

SUMMARY: This action corrects the reference to a form number assigned to the ballot material for the Mesa County peach grower continuance referendum order. The incorrect number (OMB No. 0581–0069) was listed in the referendum order published in the Federal Register on March 28, 1991, on page 12866. The correct number for Mesa County peach ballot material is OMB No. 0581–0139. This action is necessary to identify the correct form number assigned to the Mesa County peach marketing order referendum ballot material.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable, Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3919.

SUPPLEMENTARY INFORMATION: The document to be corrected was issued under Marketing Agreement and Order No. 919, as amended, (7 CFR part 919), regulating the handling of peaches grown in Mesa County, Colorado. The document, Docket No. FV–91–250, was published on March 28, 1991, at page 12865. Near the top of the first column of page 12866, an incorrect Office of Management and Budget (OMB) form number was listed for the Mesa County, Colorado, referendum ballot material. The correct form number should be OMB No. 0581–0139.

Therefore, the following correction is hereby made:

In the March 28, 1991, issue of the **Federal Register** (56 FR 12865), in the last paragraph of the third column, beginning on page 12866, the reference to the ballot material form number, as corrected, should read as follows:

* * * * *

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot material that will be used in the referendum herein ordered has been submitted to and approved by the Office of Management and Budget (OMB) and has been assigned OMB No. 0581–0139.

* * * * *

Dated: May 6, 1991.

Robert C. Kenney,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–11179 Filed 5–9–91; 8:45 am]

BILLING CODE 3410–02–M

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DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

FOIA Fee Schedule

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Establishment of FOIA fee schedule.

SUMMARY: The Defense Nuclear Facilities Safety Board published in the Federal Register issue of Wednesday, May 8, 1991, its final rule implementing the Freedom of Information Act (FOIA). This Fee Schedule is issued in conjunction with the rule to implement the fee provisions of the FOIA.

EFFECTIVE DATE: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004, (202) 208-6367.

SUPPLEMENTARY INFORMATION: The FOIA requires each federal agency covered by the act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(A)(i). On March 15, 1991, the Board published for comment in the Federal Register its proposed FOIA fee schedule (56 FR 11114). No comments were received in response to that notice and the Board is now establishing that fee schedule. The Board separately published for comment on March 8, 1991, its proposed rules implementing the FOIA (56 FR 9902). The Board's final rules implementing the FOIA were published in the Federal Register issue of Wednesday, May 8, 1991.

This notice establishes the Board's initial FOIA fee schedule. Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations issued today, the Board's General Manager will update this schedule once every 12 months.

Board Action

Accordingly, the Board establishes the following schedule of fees for services performed in response to FOIA requests:

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES

[Implementing 10 CFR 1703.107(b)(6)]

Search or review charge	$36.00 per hour.[1]
Copy charge (paper) (8.5" x 11").	$.05 per page or generally available commercial rate.[2]
Copy charge (3.5" diskette).	$5.00 per diskette.
Copy charge (audio cassette).	$3.00 per cassette.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES—Continued

[Implementing 10 CFR 1703.107(b)(6)]

Copying large documents (*e.g.*, maps, diagrams).	Actual commercial rates.

[1] Represents average hourly pay rate for Board employees, plus 22% for employee benefits.

[2] The Board will have records commercially copied when other Board business does not permit timely copying by Board personnel. The Board does not expect the generally available commercial rate to be higher than $.05 per page. However, that rate is not within the Board's control and may change during the course of coverage of this fee schedule.

Dated: May 6, 1991.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 91-11046 Filed 5-9-91; 8:45 am]

BILLING CODE 6820-KD-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

22 CFR Part 1104

Protection of Archaeological Resources

AGENCY: United States Section, International Boundary and Water Commission.

ACTION: Final rule.

SUMMARY: The United States Section, International Boundary and Water Commission (IBWC), by this rule intends to implement the provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-470LL), as amended. The purpose of the Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979.

EFFECTIVE DATE: This rule is effective on May 10, 1991.

ADDRESSES: United States Section, International Boundary and Water Commission, 4171 North Mesa, suite C-310, El Paso, Texas 79902-1422.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Echlin, U.S. Section Staff Environmentalist, (915) 534-6704.

SUPPLEMENTARY INFORMATION: Section 470 of the Archaeological Resources Protection Act of 1979 (15 U.S.C. 470aa, *et seq.*) requires each Federal agency to promulgate regulations for the protection of archaeological resources located on public lands under its control. The United States Forest Service, United States Department of Agriculture, developed a uniform agency regulation for that purpose, which is found at 36 CFR part 296.

The following final regulation is based upon the above-referenced uniform regulation, pursuant to the above-referenced Act. It applies to all public lands controlled by the United States Section, International Boundary and Water Commission, United States and Mexico. This agency controls various public lands, generally situated along the international boundary between the United States and Mexico, some of which contain known archaeological sites.

This final regulation expressly prohibits certain activities with regard to archaeological resources located on such public lands under the agency's control, and it establishes procedures for issuance of permits for other activities. It establishes procedures for imposition of civil penalties for violations, and provides for rewards for information leading to civil or criminal punishment of violators, in accordance with the underlying act. It also contains other rules pertaining to the agency's responsibilities for the protection of archaeological resources, including reporting requirements.

The proposed rule was published in the Federal Register (56 FR 389-395) on January 4, 1991. The comment period ended February 4, 1991, without comments received on the proposed rule.

List of Subjects in 22 CFR Part 1104

Protection of archaeological resources.

Title 22 CFR is amended by adding part 1104 as follows:

PART 1104—PROTECTION OF ARCHAEOLOGICAL RESOURCES

Sec.
1104.1 Purpose.
1104.2 Definitions.
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1104.7 Issuance of permits.
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1104.9 Suspension and revocation of permits.
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1104.13 Determination of archaeological or commercial value and cost of restoration and repair.
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1104.15 Civil penalty amounts.
1104.16 Other penalties and rewards.
1104.17 Confidentiality of archaeological resource information.
1104.18 Report to the Secretary of the Interior.

Authority: Pub. L. 86-95, 93 Stat. 721 (16 U.S.C. 470aa-11) (Sec. 10(a).) Related Authority: Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470a-t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1996).

§ 1104.1 Purpose.

(a) The regulations in this part implement provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-11) by establishing the definitions, standards, and procedures to be followed by the Commissioner in providing protection for archaeological resources, located on public lands through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources when disclosure would threaten the archaeological resources.

(b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

§ 1104.2 Definitions.

As used for purposes of this part:

(a) *Archaeological resource* means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.

(1) *Of archaeological interest* means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

(2) *Material remains* means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

(3) The following classes of material remains (and illustrative examples), if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (a)(5) of this section:

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits or graves, hearths, kilns, post molds, wall trenches, middens);

(ii) Surface or subsurface artifact concentrations or scatters;

(iii) Whole or fragmentary tools, implements, containers, weapons and weapon projectiles, clothing, and ornaments (including, but not limited to, pottery and other ceramics, cordage, basketry and other weaving, bottles and other glassware, bone, ivory, shell, metal, wood, hide, feathers, pigments, and flaked, ground, or pecked stone);

(iv) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including but not limited to, vegetable and animal remains, coprolites);

(vi) Human remains (including, but not limited to, bone, teeth, mummified flesh, burials, cremations);

(vii) Rock carvings, rock paintings, intaglios and other works of artistic or symbolic representation;

(viii) Rockshelters and caves or portions thereof containing any of the above material remains;

(ix) All portions of shipwrecks (including but not limited to, armaments, apparel, tackle, cargo);

(x) Any portion or piece of any of the foregoing.

(4) The following material remains shall not be considered of archaeological interest, and shall not be considered to be archaeological resources for purposes of the Act and this part, unless found in a direct physical relationship with archaeological resources as defined in this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked minerals and rocks.

(5) The Commissioner may determine that certain material remains, in specified areas under the Commissioner's jurisdiction, and under specified circumstances, are not or are no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this subparagraph shall be documented. Such Determination shall in no way affect the Commissioner's obligations under other applicable laws or regulations.

(b) *Arrowhead* means any projectile point which appears to have been designed for use with an arrow.

(c) *Commissioner* means the head of the United States Section, International Boundary and Water Commission, United States and Mexico, and his delegate.

(d) *Public lands* means lands to which the United States of America holds fee title, and which are under the control of the U.S. Section, International Boundary and Water Commission, United States and Mexico.

(e) *Indian tribe* as defined in the Act means any Indian tribe, band, nation, or other organized group or community. In order to clarify this statutory definition for purposes of this part, *Indian tribe* means:

(1) Any tribal entity which is included in the annual list of recognized tribes published in the Federal Register by the Secretary of the Interior pursuant to 25 CFR part 54;

(2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR part 54 since the most recent publication of the annual list;

(f) *Person* means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

(g) *State* means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(h) *Act* means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-11.), as amended.

§ 1104.3 Prohibited acts.

(a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands unless such activity is pursuant to a permit issued under

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§ 1104.7 or exempted by § 1104.4(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

§ 1104.4 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from public lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Commissioner for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Commissioner may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in § 1104.7(a) of this part.

(b) Exceptions:

(1) No permit shall be required under this part for any person conducting activities on the public lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removal as used in this part. This exception does not, however, affect the Commissioner's responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses, or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this part, provided that such collecting does not result in disturbance of any archaeological resource.

(3) No permit shall be required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Commissioner's direction, associated with the management of archaeological resources, need not follow the permit application procedures of § 1104.5. However, the Commissioner shall insure that provisions of §§ 1104.7 and 1104.8 have been met by other documented means, and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Commissioner, have been the subject of consideration under § 1104.8.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Commissioner shall issue a permit, subject to the provisions of §§ 1104.4(b)(5), 1104.6, 1104.7(a) (3), (4), (5), (6), and (7), 1104.8, 1104.9, 1104.11, and 1104.12(a) to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for purposes of conducting archaeological research, excavating and/or removing archaeological resources, and safeguarding and preserving any materials and data collected in a university, museum, or other scientific or educational institution approved by the Commissioner.

(e) Under other statutory, regulatory, or administrative authorities governing the use of public lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on public lands any activities related to but believed to fall outside the scope of this part should consult with the Commissioner, for the purpose of determining whether any authorization is required, prior to beginning such activities.

§ 1104.5 Application for permits and information collection.

(a) Any person may apply to the Commissioner for a permit to excavate and/or remove archaeological resources from public lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, locational maps, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in § 1104.7(a).

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archaeological resources on public lands, the names of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard and preserve these materials as property of the United States.

(c) The Commissioner may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.

(d) Paperwork Reduction Act. The information collection requirement contained in § 1104.5 of these regulations has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0037. The purpose of the information collection is to meet statutory and administrative requirements in the public interest. The information will be used to assist the Commissioner in determining that applicants for permits are qualified, that the work proposed would further archaeological knowledge, that archaeological resources and associated records and data will be properly preserved, and that the permitted activity would not conflict with the management of the public lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.

§ 1104.6 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.

(a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal religious or cultural site on public lands, as determined by the Commissioner, at least 30 days before issuing such a permit the Commissioner shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.

(1) Notice by the Commissioner to any Indian tribe shall be sent to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Commissioner.

(2) The Commissioner may provide notice to any other Native American group that is known by the Commissioner to consider sites potentially affected as being of religious or cultural importance.

(3) Upon request during the 30-day period, the Commissioner may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under § 1104.8.

(4) When the Commissioner determines that a permit applied for under this part must be issued immediately because of an imminent threat of loss or destruction of an archaeological resource, the Commissioner shall so notify the appropriate tribe.

(b)(1) In order to identify sites of religious or cultural importance, the Commissioner shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Commissioner's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on site eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w-3).

(2) If the Commissioner becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to public lands under the Commissioner's jurisdiction, the Commissioner may seek to communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.

(3) The Commissioner may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

§ 1104.7 Issuance of permits.

(a) The Commissioner may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

(i) A graduate degree in anthropology or archaeology, or equivalent training and experience;

(ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;

(iii) The demonstrated ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of a permit; and

(v) Applicants proposing to engage in historical archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the public lands concerned;

(4) Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with other approved uses of the public lands, and the proposed work has been agreed to in writing by the Commissioner pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f), paragraphs (a)(2) and (a)(3) of this section shall be deemed satisfied by the prior approval;

(5) Evidence is submitted to the Commissioner that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

(6) The applicant has certified that, not later than 90 days after the date the final report is submitted to the Commissioner, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit:

(i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit where the permit is for the excavation and/or removal of archaeological resources from public lands.

(b) When the area of the proposed work would cross jurisdictional boundaries, so that permit applications must be submitted to more than one Federal agency, the Commissioner shall coordinate the review and evaluation of applications and the issuance of permits.

§ 1104.8 Terms and conditions of permits.

(a) In all permits issued, the Commissioner shall specify:

(1) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location, and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of any university, museum, or other scientific or educational institutions in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Commissioner may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) Initiation of work or other activities under the authority of a permit

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signifies the permittee's acceptance of the terms and conditions of the permit.

(d) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisifed, whether or not the term of the permit has expired.

(e) The permittee may request that the Commissioner extend or modify a permit.

(f) The permittee's performance under any permit issued for a period greater than 1 year shall be subject to review by the Commissioner, at least annually.

§ 1104.9 Suspension and revocation of permits.

(a) *Suspension or revocation for cause.* (1) The Commissioner may suspend a permit issued pursuant to this part upon determining that the permittee has failed to meet any of the terms and conditions of the permit or has violated any prohibition of the Act or § 1104.3. The Commissioner shall provide written notice to the permittee of the suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(2) The Commissioner may revoke a permit upon assessment of a civil penalty under § 1104.14 upon the permittee's conviction under section 6 of the Act, or upon determining that the permittee has failed after notice under this section to correct the situation which led to suspension of the permit.

(b) *Suspension or revocation for management purposes.* The Commissioner may suspend or revoke a permit, without liability to the United States, its agents, or employees, when continuation of work under the permit would be in conflict with management requirements not in effect when the permit was issued. The Commissioner shall provide written notice to the permittee stating the nature of and basis for the suspension or revocation.

§ 1104.10 Appeals relating to permits.

Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit.

§ 1104.11 Relationship to section 106 of the National Historic Preservation Act.

Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with section 106 of the Act of October 15, 1966 (16 U.S.C. 470f). However, the mere issuance of such a permit does not excuse the Commissioner from compliance with section 106 where otherwise required.

§ 1104.12 Custody of archaeological resources.

(a) Archaeological resources excavated or removed from the public lands remain the property of the United States.

(b) The Commissioner may provide for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, when such resources have been excavated or removed from public lands under the authority of a permit issued by the Commissioner.

§ 1104.13 Determination of archaeological or commercial value and cost of restoration and repair.

(a) *Archaeological value.* For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in § 1104.3 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) *Commercial value.* For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in § 1104.3 of this part or conditions of a permit issued pursuant to this part shall be its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation, to the extent that its prior condition can be ascertained.

(c) *Cost of restoration and repair.* For purposes of this part, the cost of restoration and repair of archaeological resources damaged as a result of a violation of prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

(1) Reconstruction of the archaeological resource;

(2) Stabilization of the archaeological resource;

(3) Ground contour reconstruction and surface stabilization;

(4) Research necessary to carry out reconstruction or stabilization;

(5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

(6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Reinterment of human remains in accordance with religious custom and State, local, or tribal law, where appropriate, as determined by the Commissioner;

(8) Preparation of reports relating to any of the above activities.

§ 1104.14 Assessment of civil penalties.

(a) The Commissioner may assess a civil penalty against any person who has violated any prohibition contained in § 1104.3 or who has violated any term or condition included in a permit issued in accordance with the Act and this part.

(b) *Notice of violation.* The Commissioner shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Commissioner shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of a proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;

(4) Notification of the right to file a petition for relief pursuant to paragraph (d) of this section, or to await the Commissioner's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:

(1) Seek informal discussions with the Commissioner;

(2) File a petition for relief in accordance with paragraph (d) of this section;

(3) Take no action and await the Commissioner's notice of assessment;

(4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under paragraph (g) of this section.

(d) *Petition for relief.* The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Commissioner within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later). The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(e) *Assessment of penalty.* (1) The Commissioner shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion of informal discussions, whichever is later.

(2) The Commissioner shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Commissioner.

(3) If the facts warrant a conclusion that no violation has occurred, the Commissioner shall so notify the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Commissioner shall determine a penalty amount in accordance with § 1104.15.

(f) *Notice of assessment.* The Commissioner shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Commissioner shall include in the notice of assessment:

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in § 1104.15 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) *Hearings.* (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of the date of service of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Commissioner under paragraph (f) of this section or any offer of mitigation or remission made by the Commissioner.

(h) *Final administrative decision.* (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) *Payment of penalty.* (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed with a United States District Court as provided in section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Commissioner may request the Attorney General to institute a civil action to collect the penalty in a United States District Court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Commissioner is not represented by the Attorney General, a civil action may be initiated directly by the Commissioner.

(j) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

§ 1104.15 Civil penalty amounts.

(a) *Maximum amount of penalty.* (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § 1104.3 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the archaeological or commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition in § 1104.3 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the archaeological or commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) *Determination of penalty amount, mitigation, and remission.* The Commissioner may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of the penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors:

(i) Agreement by the person being assessed a civil penalty to return to the Commissioner archaeological resources removed from public lands;

(ii) Agreement by the person being assessed a civil penalty to assist the Commissioner in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on public lands;

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the

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person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation;

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances;

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) When the penalty is for a violation which may have had an effect on a known Indian tribal religious or cultural site on public lands, the Commissioner should consult with and consider the interests of the affected tribe(s) prior to proposing to mitigate or remit the penalty.

§ 1104.16 Other penalties and rewards.

(a) Section 8 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Commissioner may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State, or local government who furnish information or render service in the performance of their official duties, and persons who have provided information under § 1104.15(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

§ 1104.17 Confidentiality of archaeological resource information.

(a) The Commissioner shall not make available to the public, under subchapter II of chapter 5 of title 5 of the United States Code or any other provision of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(1) The Commissioner may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469–469c), without risking harm to the archaeological resource or to the site in which it is located.

(2) The Commissioner shall make information available, when the Governor of any State has submitted to the Commissioner a written request for information, concerning the archaeological resources within the requesting Governor's State, provided that the request includes:

(i) The specific archaeological resource or area about which information is sought;

(ii) The purpose for which the information is sought; and

(iii) The Governor's written commitment to adequately protect the confidentiality of the information.

§ 1104.18 Report to the Secretary of the Interior.

The Commissioner, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with section 13 of the Act.

Dated: April 15, 1991.

Conrad G. Keyes, Jr.,

Principal Engineer, Planning.

[FR Doc. 91-9971 Filed 5-9-91; 8:45 am]

BILLING CODE 4310-69-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 701 and 702

[T.D. 8340]

RIN 1545-AP21

Financing of Presidential Election Campaigns

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under new part 701, Presidential Election Campaign Fund (the "Fund"), and new part 702, Presidential Primary Matching Payment Account, of title 26 of the CFR, relating to the financing of presidential election campaigns. The final regulations clarify issues arising under sections 9008, 9006, and 9037 of the Internal Revenue Code of 1986, including the timing of certain transfers to the Fund, the establishment of certain accounts within the Fund, the transfer of certain amounts to the accounts, and the allocation of payments where amounts in the accounts are insufficient to fully satisfy all valid claims for payment. These final regulations are necessary because it is projected, for the 1992 and subsequent presidential elections, that there will be insufficient amounts in the Fund to fully satisfy all valid claims for payment. In addition, the regulations are necessary because, even if sufficient amounts are eventually deposited in the Fund to fully satisfy all valid claims, the Fund may not have sufficient amounts at the time those claims are presented. The final regulations affect all eligible recipients of amounts from the Fund.

DATES: This document is effective on May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Joel S. Rutstein of the Office of Assistant Chief Counsel (Income Tax and Accounting), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attn. CC:CORP:T:R: (IA–74–90), or telephone 202–566–4430 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Presidential Election Campaign Fund

Under section 6096, individuals whose tax liability for the taxable year is $1 or more may designate on their tax returns that $1 be paid over to the Presidential Election Campaign Fund. Chapter 95 of the Internal Revenue Code of 1986 (sections 9001 through 9013) established the Fund. Chapter 96 of the Code (sections 9031 through 9042) established the Presidential Primary Matching Account within the Fund.

Section 9006(a) requires the Secretary to transfer monies not in excess of the amounts designated by taxpayers under section 6096 to the Fund. Pursuant to Chapters 95 and 96, payments from the Fund are made for three purposes: (a) Payments to the national committee of each major and minor party for their nominating conventions ("convention payments"), (b) payments to the eligible candidates of a political party for President and Vice-President ("general election payments"), and (c) payments to eligible candidates seeking the nomination of a political party to be President ("primary matching payments").

For the purpose of making convention payments, section 9008 establishes a separate account in the Fund (the "Convention Account"). Payments from the Convention Account are made upon certification to the Secretary by the Federal Election Commission (the "Commission"). Pursuant to section 9008(a), payments from the Convention Account must be provided for before any general election payments are made.

No separate account is established by chapter 95 for the purpose of making general election payments. Section 9037(a) directs the Secretary to establish within the Fund an additional separate account for the purpose of making primary matching payments, called the Presidential Primary Matching Payment Account (the "Primary Account").

Pursuant to section 9037(a), the Secretary is directed to deposit into the Primary Account "the amount available after the Secretary determines that amounts for payments under section 9006(c) [general election payments] and for payments under section 9008(b)(3) [convention payments] are available for such payments."

Section 9037(b) directs the Secretary to transfer from the Primary Account those amounts certified by the Commission to candidates seeking nomination for President. In making transfers to candidates of the same political party, the Secretary is directed to seek to achieve an equitable distribution of such amounts, taking into account "the sequence in which * * * certifications [from the Commission] are received."

Pursuant to section 9006(c), convention payments are made beginning on July 1 of the calendar year preceding the year of the convention. Under sections 9005(a) and 9006(b), general election payments are made to candidates after they are nominated. Finally, section 9032(6) provides that primary matching payments are made beginning on the first day of the calendar year in which the presidential election is held.

Notice of Proposed Rulemaking

By letters dated February 12, 1990, and July 11, 1990, the Commission notified the Treasury Department that the Commission projected that the Fund would lack sufficient money to fully finance the 1992 and subsequent presidential elections. In its letter dated July 11, 1990, the Commission requested that the Treasury Department promulgate regulations to allocate amounts in the Fund in case of a shortfall. In response to this request, the Treasury Department published a notice of proposed rulemaking in the Federal Register on December 13, 1990, proposing regulations allocating amounts in the Fund in the event of a shortfall (55 FR 51301). Written comments responding to this notice were received. A public hearing was held on February 11, 1991. After consideration of the comments (including the comments presented at the public hearing), the proposed regulations are adopted as final regulations with the revisions discussed below.

Explanation of Provisions

Section 701.9006–1(a) provides that the Secretary shall determine at least once a month the amounts designated to the Fund by individuals under section 6096 and promptly transfer those amounts to the Fund. Amounts transferred to the Fund after September 30 of the year following a presidential election shall only be used to satisfy certifications relating to future presidential elections.

Section 701.9006–1(b) provides that the Secretary shall establish, within the Fund, three separate accounts, designated as the Presidential Nominating Convention Account, the Presidential and Vice Presidential Nominee Account, and the Presidential Primary Matching Payment Account.

Section 701.9006–1(c) provides that the Secretary shall deposit in the Presidential Nominating Convention Account such amounts as the Secretary determines, in consultation with the Federal Election Commission, are required to make the payments prescribed by section 9008(b)(3). The Secretary shall make this deposit only from amounts that have actually been transferred to the Presidential Election Campaign Fund under § 701.9006–1(a).

Section 701.9006–1(d) provides that after making the transfers prescribed by § 701.9006–1(c), the Secretary shall deposit in the Presidential and Vice Presidential Nominee Account such amounts as the Secretary determines, in consultation with the Federal Election Commission, are required to make the payments prescribed by section 9008(b). The Secretary shall make this deposit only from amounts that have actually been transferred to the Presidential Election Campaign Fund under § 701.9006–1(a).

Section 702.9006–1(e) provides that for a presidential election, after making the prescribed transfers to the Presidential Nominating Convention Account and the Presidential and Vice Presidential Nominee Account, including certain adjustments, the Secretary shall not make any additional deposits to those accounts until October 1 of the year following that presidential election.

Section 702.9037–1 provides that, after making the transfers prescribed by § 701.9006–1(c) and § 701.9006–1(d), the Secretary shall deposit any amounts in the Fund into the Presidential Primary Matching Payment Account. The Secretary shall make this deposit only from amounts that have actually been transferred to the Presidential Election Campaign Fund under § 701.9006–1(a). Promptly after the end of each month, the Secretary shall notify the Federal Election Commission of the total deposits made to the account in the month and the balance in the account at the end of the month. Finally, any amount remaining in this account after October 31 of the year following a presidential election shall be returned to the Fund.

Section 702.9037–2(a) provides that the Federal Election Commission shall certify to the Secretary the full amount of payment to which a candidate is entitled under section 9036. Except as provided in § 702.9037–2(c), promptly after the end of each calendar month, but not before the matching payment period described in section 9032(6), the Secretary shall pay the amounts certified by the Commission in the preceding calendar month to the candidates.

Section 702.9037–2(b) provides that promptly after all the payments under paragraph (a) have been made for a calendar month, the Secretary shall notify the Federal Election Commission of the amount paid to each candidate for the calendar month and the balance remaining in the Presidential Primary Matching Payment Account.

Section 702.9037–2(c) provides that if the amounts certified by the Federal Election Commission in a calendar month exceed the balance in the Presidential Primary Matching Payment Account on the last day of such month, the amount to be paid to a candidate is the amount determined by multiplying the amount certified by the Commission for the candidate in the calendar month by the ratio of the balance in the account on the last day of the calendar month over the total amount certified by the Commission for all the candidates in the calendar month. In addition, any amount certified by the Commission, but not paid to a candidate because of § 702.9037–2(c), is treated as an amount certified by the Commission for the candidate in the succeeding calendar month.

Section 702.9037–2(d) provides an example illustrating the rules in § 702.9037–2(c).

Public Comments

Commentators representing four organizations submitted comments on the notice of proposed rulemaking. Each commentator argued that the proposed regulation, if adopted, would cause less money to be paid from the Presidential Primary Matching Payment Account during the earlier months of a presidential election year.

In particular, these comments were directed at the provision of the proposed regulation requiring amounts in the Fund to be "set aside" for convention and general election payments before remaining amounts in the Fund may be used for making primary matching payments. Three commentators proposed the same alternative to the

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"set aside" method. Their proposal would require the Secretary to project the amount that would accumulate in the Fund between the time primary matching payments begin (January 1 of the presidential election year) and the time general election payments are made (typically July or August of the presidential election year). These projections would be used to estimate the amount of primary matching payments that could be made during that period while leaving an amount in the Fund sufficient to make the general election payments when those payments were due. The projection would be based on historical trends in taxpayer deposits to the Fund calculated by the Commission.

This alternative proposal is not adopted in the final regulations. The statutory scheme for the Fund sets out a priority: convention payments are to be made before general election payments are made. In turn, with regard to primary matching payments, the Secretary is specifically directed to make such payments only after determining that amounts are available to make convention and general election payments.

Any method requiring a projection of amounts that will be transferred to the Fund necessarily creates the possibility that the Secretary will be unable to satisfy the statutory priority of payments. For example, if the amount added to the Fund is lower than the amount projected, there may be insufficient amounts in the Fund to make general election payments when due. While this possibility can be mitigated to a certain extent by reducing the amounts actually paid to candidates to allow a margin for error, the possibility cannot be completely eliminated so long as a projection method is used. Permitting this possibility to exist would itself be inconsistent with the statutory priority of payments prescribed for the Fund.

The language of the statute reinforces this conclusion. Section 9037(a) requires the Secretary to determine that amounts for convention payments and general election payments are available before the Secretary makes primary matching payments (emphasis added). Use of the words "are available" demonstrates that Congress intended that the Secretary ensure conformity with the statutory priority of payments by actually setting aside amounts sufficient to make convention payments and general election payments before allowing primary matching payments to be made. Had Congress contemplated the use of projections in determining the amount of primary matching payments that could be made, it could have chosen words such as "will be available" or "are likely to be available" to reflect such an intent.

One commentator proposed the implementation of a "line of credit" that the Secretary could draw on in situations where there were insufficient amounts in the Presidential Primary Matching Payment Account. This proposal was not adopted because it is contrary to the clear language of section 9006(c). That section provides that where the Secretary determines that amounts in the Fund are insufficient to make all required payments, "moneys shall not be made available from any other source for the purpose of making such payments."

One commentator questioned whether proposed § 701.9006–1(e) would allow for adjustments to any of the accounts. Proposed § 701.9006–1(e) provides that after making transfers to the Presidential Nominating Convention Account and the Presidential and Vice Presidential Nominee Account for a presidential election, the Secretary shall not make any additional deposits to those accounts until October 1 of the year after that presidential election. The commentator pointed out that this rule could be interpreted to prevent the Secretary from making necessary adjustments to the funding of those accounts after their initial funding. For example, the commentator noted that an adjustment to the funding of the Presidential Nominating Convention Account to account for inflation is typically calculated in February of the election year. The commentator also noted that payments from the Presidential and Vice Presidential Nominee Account may be necessary for minor or new party candidates after the election, and that additional deposits may be necessary in order to make these payments.

Proposed § 701.9006–1(e) is not intended to prevent these types of adjustments. Therefore, proposed § 701.9006–1(e) has been revised to clarify that these types of adjustments may be made.

One commentator suggested that the Secretary notify the Commission monthly on the balance in the Presidential Primary Matching Payment Account. Proposed § 702.9037–1 has been revised to require such notification promptly after the end of each calendar month.

One commentator suggested that the regulations make clear that the Commission is required to certify to the Secretary the full amount of a payment to which a candidate is entitled. Proposed § 702.9037–2(a) has been revised to clarify this point.

Finally, one commentator questioned one effect of the rule in proposed § 702.9037–2(b). The commentator pointed out that this rule can result in an earlier-certified candidate receiving more than a later-certified candidate, despite the fact that both candidates may be certified for equal amounts. This effect is demonstrated in the example in proposed § 702.9037–2(c) that is adopted here as § 702.9037–2(d) without change. In this example, through March 1992, candidate X is certified for $2000x and is paid $1400x. Candidate Z is certified for $2600x and is paid $650x. This result occurs because no certifications were received for candidate Z in February. Although no certifications were actually received for candidates X and Y in March, under proposed § 702.9037–2(b), the unpaid certifications of candidates X and Y from February are treated as received in March.

The rule in proposed § 702.9037–2(b) has been moved to § 702.9037–2(c) and adopted without change, because Code section 9037(b) is clear that in seeking to achieve an equitable distribution of funds under Code section 9037(a), the Secretary shall take into account the sequence in which certifications are received.

Special Analyses

It has been determined that these final rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these final regulations is Joel S. Rutstein, Office of the Assistant Chief Counsel (Income Tax and Accounting), Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR Part 701

Campaign funds, Political candidates, Elections.

26 CFR Part 702

Campaign funds, Administrative practice and procedure, Political candidates.

Adoption of Amendments to the Regulations

Par. 1. Part 701 is added to read as follows:

PART 701—PRESIDENTIAL ELECTION CAMPAIGN FUND

Sec.
701.9006–1 Presidential Election Campaign Fund.

Authority: 26 U.S.C. 7805.

§ 701.9006–1 Presidential Election Campaign Fund.

(a) *Transfer of amounts to the Presidential Election Campaign Fund.* The Secretary shall determine at least once a month the amount designated by individuals under section 6096 to the Presidential Election Campaign Fund ("Fund") established under section 9006(a). The Secretary shall then promptly transfer from the general fund of the Treasury that amount to the Fund. Only amounts transferred to the Fund on or before September 30 following a presidential election shall be used to satisfy certifications relating to that presidential election.

(b) *Creation of separate accounts within the Presidential Election Campaign Fund.* The Secretary shall establish, within the Presidential Election Campaign Fund, three separate accounts, designated as the Presidential Nominating Convention Account, the Presidential and Vice Presidential Nominee Account, and the Presidential Primary Matching Payment Account.

(c) *Transfer of amounts to the Presidential Nominating Convention Account.* The Secretary shall deposit in the Presidential Nominating Convention Account such amounts as the Secretary determines, in consultation with the Federal Election Commission (the "Commission"), are required to make the payments prescribed by section 9008(b)(3). The Secretary shall make this deposit only from amounts that have actually been transferred to the Presidential Election Campaign Fund under § 701.9006–1(a).

(d) *Transfer of amounts to the Presidential and Vice Presidential Nominee Account.* After making the transfers prescribed by § 701.9006–1(c), the Secretary shall deposit in the Presidential and Vice Presidential Nominee Account such amounts as the Secretary determines, in consultation with the Commission, are required to make the payments prescribed by section 9008(b). The Secretary shall make this deposit only from amounts that have actually been transferred to the Presidential Election Campaign Fund under § 701.9006–1(a).

(e) *Limit on additional deposits.* After making the transfers prescribed by §§ 701.9006–1(c) and 701.9006–1(d) for a presidential election, including any transfers on account of adjustments under section 9008(b)(5) and post-election entitlements under section 9004(a)(3), the Secretary shall not make any additional deposits to those accounts until October 1 of the year following that presidential election.

(f) *Transfer of amounts to the Presidential Primary Matching Payment Account.* See § 702.9037–1 for rules relating to transfers of amounts to the Presidential Primary Matching Payment Account.

Par. 2. Part 702 is added to read as follows:

PART 702—PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT

Sec.
702.9037–1 Transfer of amounts to the Presidential Primary Matching Payment Account.
702.9037–2 Payments from the Presidential Primary Matching Payment Account.

Authority: 26 U.S.C. 7805.

§ 702.9037–1 Transfer of amounts to the Presidential Primary Matching Payment Account.

The Secretary shall deposit amounts into the Presidential Primary Matching Payment Account only to the extent that there are amounts in the Presidential Election Campaign Fund after the transfers prescribed by §§ 701.9006–1(c) and 701.9006–1(d). The Secretary shall make this deposit only from amounts that have actually been transferred to the Presidential Election Campaign Fund under § 701.9006–1(a). Promptly after the end of each month the Secretary shall notify the Federal Election Commission of the total deposits made to the account in the month and the balance in the account at the end of the month. Any amounts in the account after October 31 following a presidential election shall be returned to the Presidential Election Campaign Fund for the purpose of making the transfers prescribed by §§ 701.9006–1 (c), (d), and (f) for the next presidential election.

§ 702.9037–2 Payments from the Presidential Primary Matching Payment Account.

(a) *In general.* The Federal Election Commission (the "Commission") shall certify to the Secretary the full amount of payment to which a candidate is entitled under section 9036. Except as provided in paragraph (c) of this section, promptly after the end of each calendar month, but not before the beginning of the matching payment period under section 9032(6), the Secretary shall pay the amounts certified by the Commission in the preceding calendar month from the Presidential Primary Matching Payment Account to the candidate.

(b) *Notification to the Federal Election Commission.* Promptly, after all the payments under paragraph (a) of this section have been made for a calendar month, the Secretary shall notify the Commission of the amount paid to each candidate for the calendar month and the balance remaining in the Presidential Primary Matching Payment Account.

(c) *Payments to candidates in the case of shortfall.* If the amount certified by the Commission in a calendar month exceeds the balance in the Presidential Primary Matching Payment Account on the last day of the calendar month, the amount paid to a candidate for that month under paragraph (a) of this section is the amount determined by multiplying the amount certified by the Commission for the candidate during the calendar month by the ratio of the balance in the account on the last day of the calendar month over the total amount certified by the Commission for all the candidates during the calendar month. Any amount certified by the Commission, but not paid to a candidate because of this paragraph (c), is treated as an amount certified by the Commission for that candidate during the succeeding calendar month.

(d) *Example.* The provisions of paragraph (c) of this section may be illustrated by the following example.

Example. X, Y, and Z are eligible candidates. On February 11, 1992, the Secretary receives certifications by the Commission for X in the amount of $2000x and Y in the amount of $500x. There is no certification for Z. The Secretary does not receive any other certifications during February 1992. On February 29, 1992, the balance in the Presidential Primary Matching Payment Account is $1500x. Under paragraph (c) of this section, X's payment for February 1992 is $1200x ($2000x (the amount certified by the Commission for X during February 1992) multiplied by $1500x (the balance in the account on the last day of February 1992) over $2500x (the total amount certified by the

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Commission for all candidates during February 1992)). The amount not paid to X, $600x ($2000x minus $1200x), is treated as certified by the Commission for X during March 1992, the succeeding calendar month. Under paragraph (c) of this section, Y's payment for February 1992 is $300x ($600x multiplied by $1500x over $2300x). The amount not paid to Y, $200x ($600x minus $300x), is treated as certified by the Commission for Y during March 1992. On March 10, 1992, no certifications are received for X and Y, but the Secretary receives a certification by the Commission for Z in the amount of $2600x. The Secretary does not receive any other certifications during March 1992. On March 31, 1992, the balance in the account is $900x. Under paragraph (c) of this section, X's payment for March 1992 is $200x ($800x (the amount treated as certified by the Commission for X during March 1992) multiplied by $900x (the balance in the account on the last day of March 1992) over $3600x (the total amount treated as certified or actually certified by the Commission for all candidates during March 1992)). Under paragraph (c) of this section, Y's payment for March 1992 is $50x ($200x multiplied by $900x over $3600x). Under paragraph (c) of this section, Z's payment for March 1992 is $650x ($2600x multiplied by $900x over $3600x). The amounts not paid to X, Y, and Z for March 1992 are treated as certified by the Commission during April 1992.

Dated: April 18, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-11206 Filed 5-9-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Order No. 1491-91]

Organization of the Department of Justice; United States National Central Bureau, International Criminal Police Organization

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending § 0.34 of title 28 of the Code of Federal Regulations, which concerns the general functions of the Chief of the United States National Central Bureau, International Criminal Police Organization (INTERPOL-USNCB). The amendment revises paragraph (c) to reflect the Chief of INTERPOL-USNCB's participation in the Executive Committee of INTERPOL-USNCB.

EFFECTIVE DATE: April 30, 1991.

FOR FURTHER INFORMATION CONTACT: Maurice Rose, Special Assistant to the Deputy Attorney General, U.S. Department of Justice, Washington, DC 20530, (202) 514-1904.

SUPPLEMENTARY INFORMATION: In 1986, INTERPOL-USNCB's Management Policy Group was structured in a manner perceived at the time to be the most efficient and effective means of reviewing and developing INTERPOL programs and policies. The Chief of INTERPOL-USNCB served as a member of the Management Policy Group.

In actual practice over the years, responsibility for INTERPOL programs came to be centered in what is known as the Executive Committee in INTERPOL-USNCB. Thus, the structure and composition of the current Management Policy Group no longer adequately reflects the management needs of INTERPOL-USNCB. The formal creation of an Executive Committee of INTERPOL-USNCB and the restructuring of the Management Policy Group offer a more efficient and effective structure for reviewing, developing and implementing INTERPOL programs and policies. This amendment reflects these changes by eliminating the description of the Management Policy Group and by adding membership on the Executive Committee of INTERPOL-USNCB to the list of functions assigned to the Chief of INTERPOL-USNCB.

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities. It is not a major rule within the meaning of Executive Order 12291

List of Subjects in 28 CFR Part 0

Administrative practice and procedure, Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, 28 CFR part 0 is amended to read as follows:

PART 0—[AMENDED]

1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303, 3103; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 878(a), 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622, note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801, *et seq.*; 50 U.S.C. App. 1989b, 2001-2017p; Pub. L. No. 91-513, sec. 501; Pub. L. No. 101-203; EO 11919; EO 11267; EO 11300.

2. Paragraph (c) of § 0.34 is revised to read as follows:

§ 0.34 General functions.

* * * * *

(c) Serve as a member of the Executive Committee of INTERPOL-United States National Central Bureau (INTERPOL-USNCB).

* * * * *

Dated: April 30, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-10784 Filed 5-9-91; 8:45 am]

BILLING CODE 4410-01-M

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Jurisdiction and Reopening of Transfer Treaty Cases; Correction

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule; correction.

SUMMARY: The Parole Commission is correcting a typographical error which appeared in the publication of the final rule relating to reopening or modifying a release determination for inmates transferred pursuant to treaty.

EFFECTIVE DATE: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Staff Attorney, United States Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, Telephone (301) 492-5959.

The **Federal Register** published on Monday, April 22, 1991, page 16272, column 2, the first word of the first sentence of § 2.62 (k)(l) is corrected by removing the word "As" and replacing it with the word "At".

Dated: May 6, 1991.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 91-11119 Filed 5-9-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 91-019]

Empire State Regatta, Albany, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.104.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.104, for the Empire State Regatta to begin on Friday, June 7, 1991 at 12:01 pm through 8 pm on June 9, 1991. The regulations in 33 CFR 100.104 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: The regulations, 33 CFR 100.104 are effective from 12:01 pm on Friday, June 7, 1991 to 8 pm on June 9, 1991, and will be in effect each year thereafter during the same time period on the first or second weekend (Friday, Saturday, and Sunday) in June as published in a **Federal Register** Notice and the Coast Guard Local Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Lieutenant (jg) Eric G. Westerberg, (617) 223-8310.

DRAFTING INFORMATION: The drafters of this notice are LTJG E.G. Westerberg, project officer, First Coast Guard District Boating Safety Division, and LT R.E. Korroch, project attorney, First Coast Guard District Legal Division.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulation governing the 1991 running of the Empire State Regatta in Albany, New York. The regulations, 33 CFR 100.104, will be in effect from 12:01 pm on June 7, 1991 through 8 pm on June 9, 1991. A portion of the Hudson River will be closed during this time to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area between the Interstate Route 90 bridge and the Dunn Memorial bridge in Albany, New York. Further public notification, including the full text of the regulations will be accomplished through advance notice in the First Coast Guard District Local Notice to Mariners.

Dated: May 7, 1991.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 91-11173 Filed 5-9-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3955-6]

Colorado; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Colorado has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the Colorado application and has made a decision, subject to public review and comment, that the Colorado hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve the Colorado hazardous waste program revisions. The Colorado application for program revision is available for public review and comment.

DATES: Final authorization for Colorado shall be effective July 9, 1991 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on the Colorado program revision application must be received by the close of business June 10, 1991.

ADDRESSES: Copies of the Colorado program revision application are available from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses for inspection and copying: Hazardous Materials and Waste Management Division, Colorado Department of Health, 4210 East 11th Avenue, Denver, Colorado 80220, Phone: 303/331-4830; U.S. EPA Headquarters Library, PM211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382-5926; EPA Region VIII, Library, 999 18th Street, Denver, CO 80202-2405, Phone: 303/293-1444. Written comments should be sent to David Schaller, at the address below.

FOR FURTHER INFORMATION CONTACT: David Schaller, Section Chief, RCRA Management Branch, Program Support Section, 999 18th Street, Denver, CO 80202-2405, Phone: 303/293-7540.

SUPPLEMENTARY INFORMATION:

A. Background

The States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain others changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-266 and 124 and 270.

B. Colorado

Colorado initially received final authorization on November 2, 1984. Colorado received additional authorizations for revisions to its program on November 7, 1986 and July 14, 1989. On February 28, 1989 and on February 28, 1990, Colorado submitted applications for additional program modifications. Today, Colorado is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed the Colorado applications, and has made an immediate final decision that the Colorado hazardous waste program revision satisfies all requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional modifications to the Colorado hazardous waste program. The public may submit written comments on EPA's immediate final decision up until June 10, 1991. Copies of the Colorado application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of the Colorado hazardous waste program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The State of Colorado submitted a draft application for further revision of its authorized hazardous waste program on February 28, 1989. An amendment to this application which added changes to the program description, was received on May 25, 1989. EPA reviewed this application and on September 12, 1990 sent its comments to the State. Among the concerns of the EPA were a lack of adequate regulatory authority for the analysis required by its hazardous

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waste tank program and an ability by Colorado to require general waste analysis. The State's response to EPA's comments was received on January 21, 1991. This response adequately addressed the concerns of EPA on this application.

A second draft application which requested authorization of additional modification to the State hazardous waste program was received on February 28, 1990.

Both of the Colorado applications to modify its hazardous waste program authorization have been found to be consistent and equivalent to the federal hazardous waste program. Neither of these applications provide for the Colorado program to be broader in scope than is the EPA program.

Permits issued under the EPA program for treatment, storage, or disposal are deemed by the Colorado Department of Health to have a permit under Colorado Revised Statute 25-15-303(3). All EPA permits which have been issued for that part of the program which is being authorized today become State permits at the time of authorization. EPA will transfer permit applications to the State for completion under the State's regulations.

Colorado has adopted hazardous waste regulations similar to the EPA regulations under the Resource Conservation and Recovery Act. Because Colorado implements Colorado regulations when they become effective, the program in the application is similar to the federal program under the Resource Conservation and Recovery Act. The program is being and has been implemented in the past by Colorado.

Colorado has not requested hazardous waste program authority on Indian lands. The Environmental Protection Agency retains all hazardous waste authority under RCRA which applies to Indian lands in Colorado.

TABLE I.—PROVISIONS COVERED BY THIS PROGRAM AUTHORIZATION REVISION

HSWA or FR reference	State equivalent *
1. Liability Coverage, 51 FR 25350, 7/11/86.	266.16, 266.18.
2. Standards for Storage and Treatment Tank System, 51 FR 25470, 7/14/86.	260.10, 261.4, 262.34, 264.15, 264.110, 264.73, 264.110, 266.10; 264.190 through 264.199, 265.13, 265.15, 265.73, 265.110, 265.190 through 265.201, 266.10, 100.11, 100.41.
3. Corrections to Listing of Commercial Chemical Products and Appendix VIII Constituents, 51 FR 28296, 8/6/86.	261.33.
4. Biennial Report Correction, 51 FR 28555, 8/8/86.	264.75, 265.75.
5. Exports of Hazardous Waste, 51 FR 28664, 8/8/86.	261.5, 261.6, 262.41, 262.50 through 262.58, 262.60, 62.70, 263.20.
6. Waste Minimization Certification, 51 FR 55190, 9/1/86.	263.20.
7. Listing of EBDC, 51 FR 37725, 10/24/86.	261.32.
8. Land Disposal Restrictions, 51 FR 40572, 11/7/86 and 52 FR 21010, 6/4/87.	260.1, 260.3, 260.10, 260.20, 261.1, 261.4 through 261.7, 261.20, 261.30, 262.11, 263.12, 264.1, 264.13, 264.73, 265.1, 265.13, 265.73, 268.1, through 268.4, 268.6, 268.7, 268.30, 268.31, 268.40, through 268.44, 268.50, 100.41, 100.43, 100.60.
9. Revised Manual SW-846, 52 FR 8072, 3/16/87.	100.47, 260.11.
10. Closure/Post Closure Care, 52 FR 8704, 3/19/87.	265.228.
11. Definition of Solid Waste Corrections, 52 FR 21306, 6/5/87.	261.33, 267.20.
12. Part B Information Requirements, 52 FR 23447, 6/22/87.	100.41.
13. California List Waste Restrictions, 52 FR 25758, 7/8/87.	100.20, 100.63, 260.11, 262.70, 264.13, 265.13, 268.1, through 268.4, 268.7, 268.30, 268.32, 268.40, 268.42, 268.50.
14. List (Phase 1) of Hazardous Constituents for Ground-water Monitoring, 52 FR 25942, 7/9/87.	100.41, 264.98, 264.99.
15. Identification and Listing of Hazardous Waste, 52 FR 26012, 7/10/87.	261.33.
16. Exception Reporting for Small Quantity Generators of Hazardous Waste, 52 FR 35894, 9/23/87.	262.42, 262.44.
17. Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee, 52 FR 44314, 11/18/87.	266.16.
18. HSWA Codification Rule (Part 2)—Corrective Action Application Requirements, Corrective Action beyond facility boundary, Permit Modification, Permit As Shield, Permit Conditions to Protect Human Health And The Environment, And Post-Closure Permits. 52 FR 45786, 12/1/87.	100.10, 100.41, 100.46, 100.61.
19. Hazardous Waste Miscellaneous Units. 52 FR 46946, 12/10/87.	100.41, 260.10, 264.10, 264.15, 264.18, 264.73, 264.90, 264.111, 264.112, 264.117, 264.118, 264.600 through 264.603, 266.12, 266.13, 266.16.
20. Technical Corrections; Identification and Listing of Hazardous Waste, 53 FR 13382, 4/22/88.	100.20, 100.63.

* Unless indicated as otherwise, all references are to Sections of 6 CCR 1007-3.

C. Decision

I conclude that the Colorado application for program revision meets all of the statutory and established regulatory requirements by RCRA. Accordingly, Colorado is granted final authorization to operate its hazardous waste program as revised in the February 28, 1989 and February 28, 1990, applications in lieu of the federal hazardous waste program. Colorado now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out other aspects of the RCRA program, subject to the limitation of its February 28, 1989 and February 28, 1990 revised program applications and previously approved authorities. Colorado also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Colorado's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 30, 1991.

James J. Scherer,

Regional Administrator.

[FR Doc. 91-11169 Filed 5-9-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 281

[FRL-3935-5]

Georgia; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on State of Georgia Application for Final Approval.

SUMMARY: The State of Georgia has applied for final approval of its underground storage tank program under subtitle I of the Resources Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Georgia application and determined, subject to public review and comment, that the Georgia Underground Storage Tank Program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting approval to the State to operate its program unless adverse public comment shows the need for further review. The Georgia application for final approval is available for public review and comment.

DATES: Final authorization for the Georgia underground storage tank program shall be effective at 1 p.m. on July 9, 1991, unless EPA publishes a prior **Federal Register** action withdrawing this final rule. All comments on the Georgia final approval application must be received by the close of business on June 10, 1991.

ADDRESSES: Copies of the Georgia final approval application are available during the hours between 8 a.m. and 4 p.m. at the following addresses for inspection and copying: Georgia Environmental Protection Division, Underground Storage Tank Unit, 3420 Norman Berry Drive, 7th floor, Hapeville, Georgia 30354, phone: 404/669-3927 (after the 14th of June, please call to obtain the new address); U.S. EPA Headquarters Library, PM211A, 401 M Street, SW., Washington, DC 20460, phone: 202/382-5926; and U.S. EPA Region IV, Underground Storage Tank Section, 345 Courtland Street, NE., Atlanta, Georgia 30365, phone: 404/347-3866. Written comments should be sent to Chief, Underground Storage Tank Section, Attention John K. Mason, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, phone: 404/347-3866.

FOR FURTHER INFORMATION CONTACT: Jon E. Isbell, Georgia State Program Officer, Underground Storage Tank Section, U.S. EPA, Region IV, Atlanta, Georgia 30365, phone: 404/347-3866.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. To qualify for final authorization, a State's program must: (1) Be "no less stringent" than the Federal program; and (2) provide for adequate enforcement (sections 9004(a) of RCRA, 42 U.S.C. 6991c(b)).

On April 3, 1990, EPA acknowledged receiving from the State of Georgia a completed official application to obtain final approval to administer its underground storage tank program. Prior to its submission, the State of Georgia provided an opportunity for public notice and comment in the development of its underground storage tank program as required under section 281.50(b). The State adopted by reference the corresponding Federal UST regulations. The State's rules first became effective on July 1, 1988, and where amended February 18, 1990. On March 14, 1991, EPA received an amended application from the State which satisfied EPA's final review comments dated October 24, 1990.

B. Decision

After reviewing the amended Georgia application, I conclude that the State's program meets all of the requirements necessary to qualify for final approval. Accordingly, the State of Georgia is granted final approval to operate its underground storage tank program. The State of Georgia now has the responsibility for managing underground storage tank facilities within its borders and carrying out all aspects of the UST program. The State of Georgia also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA U.S.C. 6991d and to take enforcement actions under section 9006 of RCRA U.S.C. 6991e.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations in favor of the State of Georgia's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks within the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous materials, State program approval, and Underground storage tanks.

Authority: This notice is issued under the authority of Sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6974(b), and 6991(c).

Dated: April 29, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 91-11168 Filed 5-9-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or

show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood Insurance, Flood Plains.

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E. O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Guntersville (city), Marshall County (FEMA Docket No. 7000)	
Tennessee River: Within community	*596
Big Spring Creek:	
At mouth	*596
About 3.78 miles upstream of U.S. Highway 431	*604
Maps available for inspection at the City Hall, 341 Gunter Avenue, Guntersville, Alabama.	
ARKANSAS	
Ashdown (city), Little River County (FEMA Docket No. 7000)	
Hurricane Creek:	
At confluence of East Tributary	*298
Approximately 0.13 river mile upstream of State Route 32	*328
East Tributary:	
At its confluence with Hurricane Creek	*306
At the downstream side of State Route 32	*330
South Tributary:	
At its confluence with East Tributary	*318
Approximately 0.01 river mile upstream of State Route 32 (Franklin Street)	*325
Maps available for inspection at the City Hall, 200 N. 2nd Street, Ashdown, Arkansas.	
Bryant (city), Saline County (FEMA Docket No. 7000)	
Crooked Creek:	
At the downstream corporate limits	*361
Approximately .15 river mile upstream of State Route 183	*363
Crooked Creek Tributary:	
At the confluence with Crooked Creek	*373
Approximately .42 river mile upstream of confluence with Crooked Creek	*397
Bryant Tributary:	
At the confluence with Crooked Creek	*363
Approximately .16 river mile upstream of Yvonne Dam	*382
Hurricane Creek:	
Upstream side of Union Pacific Railroad	*350
Downstream side of Beone Road	*356
Maps available for inspection at the City Hall, 210 West 3rd Street, Bryant, Arkansas.	
Chester (town), Crawford County (FEMA Docket No. 7000)	
Clear Creek (Upper Reach):	
At downstream corporate limits	*539
Approximately 900 feet upstream of Brown Street	*562
Maps available for inspection at the Town Hall, Chester, Arkansas.	
Crawford county (Unincorporated Areas) (FEMA Docket No. 7000)	
Arkansas River:	
Approximately 6.5 navigation miles downstream of Interstate Route 540	*405
At upstream County boundary	*418
Lee Creek: Approximately .2 river mile upstream of County Route 64 (Ferns Road)	
Town Branch:	
Approximately 0.4 river mile upstream of the confluence with Red Lake	*384
Approximately 0.61 river mile upstream of State Route 59	*386
Flat Rock Creek:	
Approximately 0.82 river mile downstream of the confluence of Town Branch overflow	*396
Approximately 0.68 river mile upstream of Rudy Road	*472
Clear Creek (Upper Reach):	
Approximately .27 river mile downstream of Burlington Northern Railroad	*605
Approximately .25 river mile upstream of Brown Street	*662
Frog Bayou:	
Approximately 0.95 river mile downstream of Union Pacific Railroad	*422
At the confluence of Clear Creek (Lower Reach)	*751
Warloop Creek:	
Approximately 400 feet upstream of U.S. Route 71 and State Route 282	*752
Approximately 950 feet upstream of U.S. Route 71 and State Route 282	*756
Frog Bayou Tributary:	
At confluence with Frog Bayou	*426
Approximately 400 feet upstream of County Route 19 (Odham Lane)	*441
Clear Creek (Lower Reach):	
At the confluence with Frog Bayou	*751
At the Burlington Northern Railroad	*756
Pigeon Creek:	
At confluence with Frog Bayou	*660
Approximately 660 feet upstream of Wall Street	*746
Mulberry River:	
Approximately 550 feet downstream of confluence of Little Mulberry Creek	*392
At Interstate Route 40	*411
Little Mulberry Creek:	
At confluence with Mulberry River	*392
Approximately .92 mile upstream of U.S. Route 64	*410
Morris Branch Tributary: Approximately 0.6 mile upstream of Interstate Route 40 on-ramp (westbound lane)	*515
Maps available for inspection at Crawford County Courthouse, Van Buren, Arkansas.	
Kibler (city), Crawford County (FEMA Docket No. 7000)	
Curry Branch:	
Approximately 0.68 river mile from confluence with Frog Bayou	*450
Approximately 0.49 river mile upstream of South Cedar Road	*459
Maps available for inspection at the City Hall, Alma, Arkansas.	
Pulaski county (Unincorporated Areas) (FEMA Docket No. 7000)	
Arkansas River:	
At downstream County boundary	*230
At upstream County boundary	*275
White Oak Bayou:	
Confluence with Arkansas River	*258
Approximately 350 feet upstream of the confluence of Newton Creek	*260
Little Maumelle River:	
Confluence with Arkansas River	*252
Approximately 400 feet upstream of Missouri Kansas Texas Railroad	*255
Taylor Loop Creek:	
Confluence with Little Maumelle River	*254
City of Little Rock corporate limits	*254
Fourche Creek:	
Confluence with Arkansas River	*249
At the downstream corporate limits for the City of Little Rock	*249
Iron Creek:	
Confluence with Taylor Loop Creek	*254
Little Rock corporate limits	*254

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at 105 Main Street, Wallace Building, Room 902, Little Rock, Arkansas.	
CALIFORNIA	
Grass Valley (city), Nevada County (FEMA Docket No. 7000)	
Wolf Creek:	
Just downstream of Idaho-Maryland Road near intersection of Sutton Way	*2,528
Just upstream of confluence of White Water Creek	*2,558
Little Wolf Creek:	
Just upstream of State Highway 49	*2,399
Just upstream of South Auburn Street	*2,407
Just above a private drive, 1,000 feet upstream of South Auburn Street	*2,451
Approximately 360 feet upstream of a private drive	*2,452
Maps are available for review at City Hall, 125 East Main Street, Grass Valley, California.	
CONNECTICUT	
Derby (city), New Haven County (FEMA Docket No. 6999)	
Housatonic River:	
Approximately 700 feet upstream of confluence of Naugatuck River	*22
Approximately .2 mile downstream of upstream corporate limits	*40
Maps available for inspection at the City Clerk's Vault, City Hall, 35 Fifth Street, Derby, Connecticut.	
FLORIDA	
Baker County (unincorporated areas) (FEMA Docket No. 7000)	
St. Marys River:	
At downstream county boundary	*61
At confluence of Middle Prong St. Marys River	*99
North Prong St. Marys River:	
At confluence of Middle Prong St. Marys River	*99
About 1.0 mile upstream of State Road 2	*116
Middle Prong St. Marys River:	
At mouth	*90
Just downstream of State Road 250	*121
South Prong St. Marys River:	
At mouth	*70
Just downstream of State Road 125	*96
Little River:	
At mouth	*100
About 2.6 miles upstream of Baxter Road	*113
Turkey Creek:	
At mouth	*85
About 1.8 miles upstream of mouth	*107
Cedar Creek:	
At mouth	*77
Just downstream of State Road 229	*135
Maps available for inspection at the County Courthouse, 55 N. 3rd Street, MacClenny, Florida.	
Fort Pierce (city), St. Lucie County (FEMA Docket No. 6991)	
Atlantic Ocean: About 100 feet east of intersection of Indiatlantic Drive and South Ocean Drive	#1
Atlantic Ocean/Indian River:	
At intersection of Sunset Isles Road and Eucalyptus Avenue	*5
About 300 feet east of intersection of Indiatlantic Drive and South Ocean Drive	*14
Moorse Creek:	
At mouth	*5
Just upstream of South 25th Street	*22
Fivemile Creek: Within community	*17
Maps available for inspection at the Building Department, City Hall Annex, 315 Avenue A, Fort Pierce, Florida.	
Jefferson County (unincorporated areas) (FEMA Docket No. 7000)	
Rayoor Creek:	
At mouth	*71
At divergence with Wolf Creek	*81
Wolf Creek:	
About 0.97 mile downstream of CSX railroad	*81
Just upstream of CSX railroad	*88
Just downstream of U.S. Route 90	*90
Gulf of Mexico:	
Just south of intersection of State Road 59 and U.S. Route 98	*12
At mouth of Aucilla River	*23
Aucilla River:	
Just upstream of U.S. Route 98	*11
Just downstream of State Road 146	*56
Beasley Creek:	
At mouth	*64
About 2.0 miles upstream of State Road 257	*75
Ward Creek:	
About 0.85 mile upstream of mouth	*88
Just downstream of State Road 259	*93
Maps available for inspection at the County Courthouse, Monticello, Florida.	
Liberty County (unincorporated areas) (FEMA Docket No. 7000)	
Big Gully Creek:	
At mouth	*41
At confluence of South Creek	*52
South Creek:	
At mouth	*52
Just downstream of unnamed road	*82
Apalachicola River:	
At southern county boundary	*20
At northern county boundary	*72
Telogia Creek:	
About 3.0 miles upstream of mouth	*36
Just downstream of Apalachicola Northern Railroad	*58
Camp Branch:	
About 1700 feet upstream of mouth	*103
Just downstream of State Road 379	*122
Just upstream of State Road 379	*128
Just downstream of unnamed road	*131
Just upstream of unnamed road	*136
About 0.8 mile upstream of State Road 386A	*157
Black Creek:	
At county boundary	*20
About 4.5 miles upstream of county boundary	*34
Maps available for inspection at the County Courthouse, Bristol, Florida.	
Port St. Lucie (city), St. Lucie County (FEMA Docket No. 6991)	
Shinnecock Creek Tributary:	
At mouth	*7
About 0.97 mile upstream of mouth	*10
Winters Creek:	
About 1300 feet upstream of mouth	*7
About 1.9 miles upstream of mouth	*9
North Fork St. Lucie River:	
About 1.15 miles downstream of Port St. Lucie Boulevard	*7
About 2.6 miles upstream of Prima Vista Boulevard	*8
Indian River:	
About 50 feet east of Walton Road and State Road 707	*7
Along Shoreline	*11
Shinnecock Creek:	
About 500 feet upstream of mouth	*7
About 1.37 miles upstream of mouth	*7
Maps available for inspection at the Building Department, City Hall, 121 SW., Port St. Lucie Boulevard, Port St. Lucie, Florida.	
St. Lucie Village (town), St. Lucie County (FEMA Docket No. 6991)	
Indian River:	
About 700 feet east of intersection of Milton Road and Old Dixie Highway	*5
Just east of intersection of Chamberlain Boulevard and Indian River Drive	*9
Maps available for inspection at the St. Lucie Village Town Hall, St. Lucie Boulevard, St. Lucie Village, Florida.	
GEORGIA	
Calhoun (city), Gordon County (FEMA Docket No. 7000)	
Coosawattee River:	
About 0.72 miles downstream of North River Street	*550
About 1.76 miles upstream of North River Street	*555
Cochatobaga Creek:	
At mouth	*530
About 200 feet downstream of Lily Pond Road	*540
Tributary No. 1:	
At mouth	*533
About 1560 feet upstream of U.S. Route 41	*540
Tributary No. 2:	
At mouth	*537
About 750 feet upstream of State Route 53	*554
Maps available for inspection at the Building Inspection Department, County Courthouse, 316 N. River Street, Calhoun, Georgia.	
Spalding County (Unincorporated Areas) (FEMA Docket No. 7000)	
Sixat Creek:	
Just upstream of Barnesville Road	*678
About 700 feet upstream of South McDonough Road	*754
Cabin Creek:	
Just upstream of West Road	*686
Just downstream of Walters Mill Dam	*692
Just upstream of Walters Mill Dam	*708
Just downstream of McDonough Road	*720
Troublesome Creek:	
Just upstream of Smack Road	*705
About 1.75 miles upstream of Jordan Hill Road	*795
Maps available for inspection at the Building Inspector's Office, County Annex Building, Griffin, Georgia.	
KANSAS	
Cherokee County (unincorporated areas) (FEMA Docket No. 7000)	
Spring Lake: Within community	*919
Spring River:	
Just upstream of U.S. Highway 69	*919
Just downstream of Columbus Street	*927
Shoal Creek:	
At mouth	*919
Just downstream of State Highway 26	*933
Maps available for inspection at the County Courthouse, Columbus, Kansas.	

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Cowley County (unincorporated areas) (FEMA Docket No. 7006)	
Polecat Creek:	
About 1.9 miles upstream of mouth	*1,169
At northern county boundary	*1,207
Stewart Creek:	
About 2.1 miles upstream of mouth	*1,155
About 1.0 mile upstream of State Highway 15	*1,196
Rock Creek:	
About 1.3 miles upstream of mouth	*1,168
At northern county boundary	*1,213
Richland Creek:	
At mouth	*1,246
About 4600 feet upstream of County Highway 1	*1,272
Lower Dutch Creek:	
At mouth	*1,343
About 1.85 mile upstream of County Highway	*1,360
Dutch Creek:	
At mouth	*1,167
At confluence of Lower Dutch Creek	*1,243
Timber Creek Tributary 1:	
At mouth	*1,335
About 1.17 mile upstream of County Highway	*1,364
Timber Creek:	
At mouth	*1,132
At northern county boundary	*1,474
Walnut River:	
Just upstream of Union Pacific Railroad	*1,089
About 1.60 mile upstream of confluence of Timber Creek	*1,132
Cedar Creek:	
At mouth	*1,155
About 1,400 feet downstream of Timber Lake No. 35 Dam	*1,275
Rock Creek Tributary:	
At Eastern County Boundary	*928
About 2.93 mile upstream of confluence of Whartenby Creek	*1,005
Acker Creek:	
At Mouth	*936
At county boundary	*1,039
Bear Creek:	
At Mouth	*947
About 300 Feet upstream of Private Road	*1,027
Otter Creek:	
At eastern county boundary	*990
About 3,700 feet upstream of State Highway 38	*1,086
Cedar Creek Tributary:	
At Mouth	*936
About 2,350 feet upstream of U.S. Highway 166	*1,049
North Cedar Creek:	
At eastern county boundary	*990
About 4.1 miles upstream of U.S. Highway 166	*1,072
Arkansas River:	
Just upstream of Atchison, Topeka and Santa Fe Railway	*1,072
Just downstream of Atchison, Topeka and Santa Fe Railway	*1,146
Just upstream of Atchison, Topeka and Santa Fe Railway	*1,151
About 1,650 feet upstream of county boundary	*1,157
C Street Canal:	
Just downstream of Hickory Avenue	*1,108
About 0.35 mile upstream of 8th Street	*1,116
Black Crook Creek:	
At mouth	*1,121
Just downstream of Union Pacific Railroad	*1,131
Timber Creek Lake: Entire shoreline	1,289
Timber Lake No. 2: Entire shoreline	*1,467
Timber Lake No. 3: Entire shoreline	*1,469
Timber Lake No. 4: Entire shoreline	*1,446
Timber Lake No. 5: Entire shoreline	*1,429
Timber Lake No. 6: Entire shoreline	*1,413
Timber Lake No. 7: Entire shoreline	*1,415
Timber Lake No. 8: Entire shoreline	*1,392
Timber Lake No. 9: Entire shoreline	*1,372
Timber Lake No. 10: Entire shoreline	*1,399
Timber Lake No. 11: Entire shoreline	*1,409
Timber Lake No. 12: Entire shoreline	*1,399
Timber Lake No. 13: Entire shoreline	*1,349
Timber Lake No. 14: Entire shoreline	*1,362
Timber Lake No. 16: Entire shoreline	*1,329
Timber Lake No. 17: Entire shoreline	*1,327
Timber Lake No. 18: Entire shoreline	*1,315
Timber Lake No. 20: Entire shoreline	*1,392
Timber Lake No. 21: Entire shoreline	*1,321
Timber Lake No. 22: Entire shoreline	*1,301
Timber Lake No. 23: Entire shoreline	*1,306
Timber Lake No. 24: Entire shoreline	*1,289
Timber Lake No. 25: Entire shoreline	*1,277
Timber Lake No. 26: Entire shoreline	*1,248
Timber Lake No. 27: Entire shoreline	*1,236
Timber Lake No. 28: Entire shoreline	*1,225
Timber Lake No. 30: Entire shoreline	*1,199
Timber Lake No. 31: Entire shoreline	*1,219
Timber Lake No. 32: Entire shoreline	*1,262
Timber Lake No. 33: Entire shoreline	*1,290
Timber Lake No. 34: Entire shoreline	*1,289
Timber Lake No. 35: Entire shoreline	*1,301
Rock Lake No. 4: Entire shoreline	*1,251
Rock Lake No. 5: Entire shoreline	*1,295
Maps available for inspection at the County Courthouse, Winfield, Kansas.	
KENTUCKY	
Hopkins County (unincorporated areas) (FEMA Docket No. 7007)	
Pleasant Run:	
At mouth	*401
About 850 feet upstream of Illinois Central Railroad	*429
Otter Creek:	
Just upstream of State Route 1033	*381
About 1,350 feet upstream of Wolf Hollow Road	*435
Flat Creek:	
Just upstream of Free Henry Road	*402
Just downstream of CSX railroad (downstream crossing)	*419
Just upstream of CSX railroad (downstream crossing)	*420
About 1.4 miles upstream of U.S. Route 41A	*434
Green River:	
At northern county boundary	*367
At confluence of Pond River	*368
Drakes Creek:	
At confluence of Pleasant Run	*401
About 1.40 miles upstream of confluence of Craborchard Creek	*413
Craborchard Creek:	
At mouth	*409
About 1,300 feet upstream of Pennyrile Parkway	*412
Maps available for inspection at the County Courthouse, Madisonville, Kentucky.	
Marshall County (unincorporated areas) (FEMA Docket No. 7006)	
Little Cypress Creek:	
At mouth	*342
Just downstream of State Route 795	*362
Bennett Branch:	
At mouth	*343
About 2,800 feet upstream of Bennett Road	*346
East Fork Clarks River:	
About 500 feet downstream of Purchase Parkway	*358
About 3,000 feet upstream of confluence of Welch Creek	*374
Welch Creek:	
Just upstream of Walnut Grove-Olive Johnson Road	*396
About 1,700 feet upstream of U.S. Route 641	*442
Cypress Creek:	
At mouth	*342
Just downstream of Lakeview Church Road	*346
Little John Creek:	
At mouth	*346
About 400 feet downstream of State Route 95	*359
Tennessee River:	
At downstream county boundary	*342
About 2,100 feet downstream of Kentucky Dam	*345
Just upstream of Kentucky Dam	*375
About 1.9 miles upstream of U.S. Route 68	*375
Maps available for inspection at the County Courthouse, Vinton, Kentucky.	
LOUISIANA	
Iberville Parish (unincorporated areas) (FEMA Docket No. 7006)	
Lower Grand River:	
Approximately 0.8 mile upstream of downstream Parish Boundary	*7
At confluence of Bayou Plaquemine	*9
Bayou Plaquemine:	
At confluence with Lower Grand River	*9
Approximately 2.3 miles upstream of confluence with Lower Grand River	*10
Mound Ditch:	
Approximately 0.8 mile upstream with Lower Grand River	*9
Approximately 1.5 miles upstream of confluence with Lower Grand River	*9
Spanish Lake:	
Entire shoreline with community	*11
Bayou Manchac: At Bayou Paul Road	*18
Maps available for inspection at the Courthouse, 600 Mariam Street, Plaquemine, Louisiana.	
Sabine Parish (unincorporated areas) (FEMA Docket No. 7006)	
Bayou La Nana:	
Approximately .7 mile downstream of Kansas City Southern Railway	*200
At confluence of San Jose Creek	*203
Harpoon Bayou:	
At confluence of San Jose Creek	*203
Approximately 1.2 miles upstream of State Route 1217	*241
Phillips Creek:	
Approximately .7 mile downstream of State Route 1217	*225
Approximately .5 mile upstream of State Route 6	*247
Blackwell Creek:	
At the confluence with Phillips Creek	*229
Approximately .7 mile upstream of State Route 6	*255
San Jose Creek:	
At confluence with Harpoon Bayou	*203
Approximately 200 feet upstream of Kansas City Southern Railway	*222
San Jose Creek Tributary:	
At Kansas City Southern Railway	*222
Approximately 760 feet upstream of Kansas City Southern Railway	*234
Bayou Scie:	
Approximately 200 feet downstream of State Route 475	*182
Approximately .8 mile upstream of State Route 1216	*213
Midkiff Creek:	
Approximately .5 mile downstream of State Route 474	*239
Approximately 1,900 feet downstream of Mill Road	*258
Maps available for inspection at the Courthouse, Police Jury Office, Many, Louisiana.	
Zwolle (town), Sabine Parish (FEMA Docket No. 7006)	
Bayou Scie:	
Approximately 200 feet downstream of State Route 475	*162
Approximately 100 feet downstream of State Route 1216	*195
Maps available for inspection at the Town Hall, Zwolle, Louisiana.	
MAINE	
Addison (town), Washington County (FEMA Docket No. 7006)	
Atlantic Ocean	
Pleasant Bay:	
Shoreline at Seal Cove	*12
Shoreline at the Ladle (island)	*22
Pleasant River:	
Entire shoreline within community	*12
West River:	
Shoreline at Grays Cove	*12
Shoreline at Lane Road extended	*13
Indian River:	
Shoreline at Crowley Island Road	*12
Shoreline at north side of Doyle Island	*13

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Wohoo Bay:	
Shoreline at Cape Split Road extended	*15
Shoreline at Kent Cove	*22
Western Bay:	
Shoreline at Seabeck Rock	*13
Shoreline at west side of Outer Sand Island	*22
Maps available for inspection at the Town Hall, Addison, Maine.	
Berwick (town), York County (FEMA Docket No. 7006)	
Salmon Falls River:	
Approximately 0.5 mile downstream of New Dam Road	*70
Upstream corporate limits	*190
Maps available for inspection at the Town Hall, Berwick, Maine.	
Franklin (town), Hancock County (FEMA Docket No. 7006)	
Card Mill Stream:	
At confluence with Hog Bay	*11
At Donnell Pond Dam	*117
Mill Brook:	
At confluence with Taunton Bay	*11
At Great Pond Dam	*55
Egypt Bay: Entire shoreline within the community	*11
Taunton Bay: Entire shoreline within the community	*11
Hog Bay: Entire shoreline within the community	*11
Georges Pond: Entire shoreline within the community	*164
Great Pond: Entire shoreline within the community	*55
Donnell Pond: Entire shoreline within the community	*119
Maps available for inspection at the Town Office, Franklin, Maine.	
Gouldsboro (town), Penobscot County (FEMA Docket No. 7006)	
Pushaw Lake: Entire shoreline within community	*121
Maps available for inspection at the Town Office, Bangor, Maine.	
Houlton (town), Aroostook County (FEMA Docket No. 7006)	
Meduxnekeag River:	
Approximately 1,875 feet downstream of Lowery Road	*299
Approximately 330 feet upstream of upstream corporate limits	*379
B Stream:	
At confluence with Meduxnekeag River	*532
Approximately 110 feet upstream of "B" Road	*580
Pearce Brook:	
At confluence with Meduxnekeag River	*330
Approximately 0.7 mile upstream of Hollywood Road	*467
Brown Brook:	
At confluence with Pearce Brook	*368
Approximately 35 feet upstream of upstream crossing of U.S. Route 1	*469
Maps available for inspection at the Town Office, 21 Water Street, Houlton, Maine.	
Livermore Falls (town), Androscoggin County (FEMA Docket No. 7006)	
Androscoggin River:	
Downstream corporate limits (County boundary)	*231
Upstream corporate limits	*332
Maps available for inspection at the Town Office, Livermore Falls, Maine.	
Machiasport (town), Washington County (FEMA Docket No. 7006)	
Atlantic Ocean:	
Machias Bay:	
Along shoreline at Pettagrow Cove	*12
Along east shoreline of Howard Point	*20
Little Kennebec Bay:	
Along shoreline at Spruce Cove	*12
Along west shoreline of Point of Main	*17
Maps available for inspection at the Town Office, Machiasport, Maine.	
North Haven (town), Knox County (FEMA Docket No. 7006)	
Atlantic Ocean:	
West Penobscot Bay:	
Along shoreline at Wooster Cove	*23
Along shoreline of Mill Stream	*10
East Penobscot Bay:	
Along shoreline at Marsh Cove	*13
At Mullen Head	*15
Fox Islands Thorofare:	
Along shoreline at Cubby Hole	*11
At Crabtree Point	*16
Maps available for inspection at the Town Office, North Haven, Maine.	
Penobscot (town), Hancock County (FEMA Docket No. 7006)	
Clements Stream:	
Confluence with Penobscot River	*10
Approximately 425 feet upstream of State Route 166	*26
Mill Brook:	
Confluence with Northern Bay	*11
Approximately 0.5 mile upstream of State Routes 175 and 199	*67
Unnamed Stream:	
Approximately 80 feet upstream of confluence with Penobscot River	*10
Approximately 550 feet upstream of State Route 166	*36
Atlantic Ocean:	
Penobscot River:	
At confluence with Clements Stream	*10
Approximately 1,000 feet west of intersection of State Routes 166 and 175	*16
Northern Bay: Entire shoreline within community	*11
Bagaduce River: Entire shoreline within community	*11
Toddy Pond: Entire shoreline within community	*165
Maps available for inspection at the Penobscot Town Hall, Penobscot, Maine.	
Somerville (town), Lincoln County (FEMA Docket No. 7006)	
James Pond: Entire shoreline within community	*200
Long Pond: Entire shoreline within community	*187
Sheepscot River:	
At confluence with Long Pond	*187
Approximately 1 mile upstream of State Route 105	*200
Maps available for inspection at the Town Clerk's Office, Jefferson, Maine.	
Stetson (town), Penobscot County (FEMA Docket No. 7006)	
Pleasant Lake: Entire shoreline within community	*240
Maps available for inspection at the Town Offices, Stetson, Maine.	
MASSACHUSETTS	
Becket (town), Berkshire County (FEMA Docket No. 7006)	
Yokum Brook:	
At Maple Street	*1,189
Approximately 50 feet upstream of upstream crossing of State Route 9	*1,450
Walker Brook:	
Approximately 15 feet downstream of U.S. Route 20	*1,279
At downstream side of State Route 8	*1,267
Robinhood Lake: Entire shoreline within community	*1,533
Maps available for inspection at the Town Clerk's Vault, Town Hall, Becket, Massachusetts.	
Sandwich (town), Barnstable County (FEMA Docket No. 7006)	
Atlantic Ocean:	
On Cape Cod Canal approximately 1,500 feet inland of mouth	*10
Upstream end of Mill Creek	*11
Areas along entire shoreline adjacent to coastal frontal sand dunes and northeast of Salt marsh and Foster Roads and North Shore Boulevard	*13
At Scusset Beach	*15
Northeast of Carleton Drive East	*16
Maps available for inspection at the Building Inspector's Office, 270 Quaker Meetinghouse Road, Sandwich, Massachusetts.	
Savoy (town), Berkshire County (FEMA Docket No. 7006)	
Westfield River—Savoy Hollow Brook:	
Approximately 50 feet downstream of Griffin Hill Road	*1,092
Approximately 75 feet upstream of State Route 9A	*1,224
Maps available for inspection at the Town Clerk's Vault, Main Road, Savoy, Massachusetts.	
NEW HAMPSHIRE	
New London (town), Merrimack County (FEMA Docket No. 7006)	
Sunapee Lake: Entire shoreline within the community	*1,095
Otter Pond: Entire shoreline within the community	*1,129
Maps available for inspection at the Selectmen's Office, New London, New Hampshire.	
Tamworth (town), Carroll County (FEMA Docket No. 6997)	
Bearcamp River:	
At downstream corporate limits	*451
At upstream corporate limits	*593
Maps available for inspection at the Town Hall, Tamworth, New Hampshire.	
NEW JERSEY	
Dover (township), Ocean County (FEMA Docket No. 7006)	
Atlantic Ocean:	
At intersection of Peterson Lane and Ocean Terrace	*11
At intersection of Eighth Avenue and Ocean Avenue	*11
Entire shoreline within community	*13
Toms River:	
Approximately .4 mile upstream of Oak Ridge Parkway	*22
At upstream corporate limits	*58
Maps available for inspection at the Township Clerk's Office, Municipal Building, 33 Washington Street, Toms River, New Jersey	
Hope (township), Warren County (FEMA Docket No. 6997)	
Beaver Brook:	
Downstream corporate limits	*363
Downstream of Interstate 80	*434
Honey Run:	
At the confluence with Beaver Brook	*396
Approximately 30 feet upstream of State Route 610	*412
Maps available for inspection at the Hope Municipal Building, Hope, New Jersey.	
NEW MEXICO	
Valencia County (unincorporated areas) (FEMA Docket No. 7003)	
Rio Grande:	

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1.0 miles upstream of State Route 40	*4,660
Approximately 4.7 miles upstream of State Route 40	*4,673
Hells Canyon Wash:	
Approximately 1.1 miles downstream of State Route 236	*4,636
Approximately 0.6 mile upstream of Village of Scapes Farms corporate	*4,664
Maps available for inspection at the Planning and Zoning Office, County Courthouse, Las Lunas, New Mexico.	
NEW YORK	
Freedom (town), Cattaraugus County (FEMA Docket No. 7006)	
Clear Creek:	
At Bray Road	*1,632
At upstream crossing of State Route 98	*1,759
Maps available for inspection at the Town Clerk's Office, 1170 Eagle Street, Sandusky, New York.	
Harrison (town), Westchester County (FEMA Docket No. 7006)	
Blackwood Brook:	
Just upstream of Harrison Avenue	*44
At Ramapo Terrace Road	*73
Nelson Creek:	
At confluence with Blackwood Brook	*62
Approximately 1,760 feet upstream of Iroquois Trail	*104
Locust Creek:	
Approximately 840 feet upstream of confluence with Mamaroneck River	*38
Approximately 1,280 feet upstream of West Street	*48
West Branch Blind Brook:	
Approximately 240 feet upstream of confluence with Blind Brook	*128
At Beverly Road	*216
Maps available for inspection at Harrison Municipal Building, 1 Heinemann Place, Harrison, New York.	
Southport (town), Chemung County (FEMA Docket No. 7006)	
South Creek Tributary:	
At confluence with South Creek	*816
Approximately 0.7 mile upstream of Miller Hill Road	*1,280
Maps available for inspection at the Town Hall, 1130 Pennsylvania Avenue, Elmira, New York.	
NORTH CAROLINA	
Chatham County (unincorporated areas) (FEMA Docket No. 7006)	
Pokeberry Creek:	
About 1.2 miles downstream of U.S. Route 15	*346
Just downstream of SR 1828	*386
Lewis Creek:	
At mouth	*504
About 1.1 miles upstream of U.S. Route 421 Bypass	*530
Rocky River:	
About 600 feet downstream of confluence of Lewis Creek	*504
About 600 feet upstream of confluence of Lewis Creek	*504
Little Indian Creek:	
At mouth	*251
About 2.2 miles upstream of mouth	*254
Indian Creek:	
At mouth	*251
About 2,075 feet upstream of confluence of Bear Creek	*251
Deep River:	
About 350 feet downstream of confluence of Indian Creek	*251
About 1,200 feet upstream of confluence of Indian Creek	*251

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
New River:	
At downstream county boundary	*401
At eastern county boundary	*416
Maps available for inspection at the County Planning Office, County Health and Office Building, 112 East Street, Pittsboro, North Carolina.	
Cleveland County (unincorporated areas) (FEMA Docket No. 7002)	
Buffalo Creek:	
Just upstream of Road 198	*602
Just downstream of Kings Mountain Dam	*686
Muddy Fork:	
At mouth	*657
About 2,000 feet upstream of confluence of Muddy Fork Tributary	*754
Muddy Fork Tributary:	
At mouth	*750
Just downstream of SR 2008	*791
Kings Mountain Reservoir: Along shoreline	*739
Maps available for inspection at the Planning and Mapping Department, County Courthouse, Room 200, Shelby, North Carolina.	
Gates County (unincorporated areas) (FEMA Docket No. 7003)	
Harrell Swamp:	
At mouth	*27
Just upstream of SR 1320	*35
Jady Branch:	
About 2,800 feet downstream of Gum Branch	*11
Just downstream of State Road 137	*19
Raynor Swamp:	
About 1,000 feet downstream of confluence of Harrell Swamp	*27
About 500 feet upstream of confluence of Harrell Swamp	*27
Chowan River:	
At southern county boundary	*8
About 2.84 miles upstream of southern county boundary	*8
Maps available for inspection at the Building Inspection Office, County Courthouse, Gatesville, North Carolina.	
Martin County (unincorporated areas) (FEMA Docket No. 7002)	
Roanoke River:	
About 7.86 miles downstream of U.S. Route 13	*9
About 9.13 miles upstream of U.S. Route 13	*15
Maps available for inspection at the Building Inspection Office, County Governmental Center, Williamston, North Carolina.	
Sampson County (unincorporated areas) (FEMA Docket No. 7006)	
South River:	
About 0.93 mile downstream of U.S. Route 701	*32
About 1.73 miles upstream of State Road 24	*103
Great Coharie Creek:	
About 2.16 miles downstream of State Road 24	*95
About 700 feet upstream of SR 1311	*97
Williams Old Mill Branch:	
At confluence with Great Coharie Creek	*92
Just downstream of McKoy Street	*111
Just upstream of McKoy Street	*119
Just downstream of Cemetary Road	*132
Black River:	
About 600 feet downstream of State Road 411	*46
At confluence of Great Coharie Creek	*53
Beaverdam Swamp:	
About 1,050 feet downstream of SR 1800	*144
Just downstream of SR 1703	*171
Kill Swamp:	
About 1,100 feet downstream of U.S. Route 701	*139
Just downstream of Interstate 40	*146
Just upstream of Interstate 40	*164
Just downstream of SR 1710	*165
Maps available for inspection at the County Inspection Department, 313 East Rowan Road, Clinton, North Carolina.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Vance County (unincorporated areas) (FEMA Docket No. 7003)	
Tar River:	
About 1,200 feet downstream of confluence of Buffalo Creek	*222
About 4.1 miles upstream of U.S. Route 1	*246
Tabbs Creek:	
At mouth	*234
About 2,900 feet upstream of SR 1100	*238
Maps available for inspection at the County Manager's Office, County Courthouse, Henderson, North Carolina.	
NORTH DAKOTA	
Harwood (city), Cass County (FEMA Docket No. 7007)	
Sheyenne River:	
At northernmost corporate limit and between the Burlington Northern Railroad and Interstate Highway 29	*891
Intersection of Sendar Boulevard and Sendar Lane	*891
Just upstream of County Highway 22 and west of Interstate Highway 29	*893
At southern corporate limit and between Burlington Northern Railroad and Interstate Highway 29	*891
Red River of the North:	
At northernmost corporate limit and east of Burlington Northern Railroad	*890
Just downstream of County Highway 22	*890
At southernmost corporate limit and east of Burlington Northern Railroad	*891
Maps are available for review at the Harwood City Office, Main Street, Harwood, North Dakota.	
OHIO	
Blanchester (village), Clinton County (FEMA Docket No. 7006)	
Stonelick Creek:	
About 1,700 feet downstream of Wright Street	*956
About 1.2 miles upstream of Wright Street	*975
Maps available for inspection at the Village Hall, 101 East Main Street, Blanchester, Ohio.	
Delphos (city), Allen and Van Wert Counties (FEMA Docket No. 7006)	
Jennings Creek:	
Just upstream of Pohlman Road	*761
About 2,650 feet upstream of Norfolk Southern Railway	*773
Flat Fork Creek:	
About 2,100 feet downstream of Seventh Street	*763
About 3,200 feet upstream of Spencerville Avenue	*776
Maps available for inspection at the City Hall, 608 North Canal, Delphos, Ohio.	
Hancock County (unincorporated areas) (FEMA Docket No. 7006)	
Blanchard River:	
Just upstream of County Route 16	*749
Just downstream of County Route 2	*873
Eagle Creek:	
Just upstream of Sixth Street	*784
Just upstream of Township Road 32	*861
Lye Creek:	
Just upstream of Williams Street	*760
About 0.9 mile upstream of County Route 205	*767
Howard Run:	
About 800 feet downstream of County Route 95	*794
About 1,150 feet upstream of County Route 95	*798
Maps available for inspection at the County Courthouse, 300 South Main Street, Findlay, Ohio.	
Monroe (village), Butler and Warren Counties (FEMA Docket No. 7006)	
Shaker Creek:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just upstream of Conrail	*653
About 1.4 miles upstream of Union Road	*666
Millers Creek:	
About 1,400 feet downstream of Cincinnati Dayton Road	*653
About 0.5 mile upstream of State Route 63	*675
Maps available for inspection at the Village Hall, 233 South Main Street, Monroe, Ohio.	
OHIO	
Pickerington (village), Fairfield and Franklin Counties (FEMA Docket No. 7006)	
Georgas Creek:	
About 550 feet downstream of Long Road	*798
About 2,900 feet upstream of Long Road	*807
Blacklick Creek:	
About 1.52 miles downstream of Tussing Road	*604
About 1,500 feet upstream of Tussing Road	*629
Sycamore Creek:	
About 2,350 feet downstream of Hill Road South	*813
About 750 feet upstream of Conrail	*843
Sycamore Creek Overflow:	
Just downstream of Conrail	*833
About 2,550 feet upstream of Conrail	*842
Maps available for inspection at the Village Hall, 600 Hereford Drive, Pickerington, Ohio.	
Sellersville (village), Columbiana and Jefferson Counties (FEMA Docket No. 7006)	
Riley Run:	
Just upstream of Hall Road	*905
About 4,150 feet upstream of Sellersville Road	*950
Nancy Run:	
At mouth	*876
Just downstream of upstream Conrail railroad	*899
Maps available for inspection at the Village Hall, 38 Washington Street, Sellersville, Ohio.	
PENNSYLVANIA	
Armagh (township), Mifflin County (FEMA Docket No. 7007)	
Laurel Creek:	
At confluence with Laurel Creek Overflow Channel	*883
At upstream crossing of U.S. Route 322	*927
Laurel Creek Overflow Channel:	
At confluence with Honey Creek	*888
At confluence of Laurel Creek	*893
Honey Creek:	
At downstream corporate limits	*822
Approximately 240 feet upstream of the abandoned railroad bridge near Naginey Quarrey	*870
Maps available for inspection at the Township Office, 2nd Floor Mellon Bank Building, Main Street, Milroy, Pennsylvania.	
Austin (borough), Potter County (FEMA Docket No. 7006)	
Freeman Run:	
Approximately 400 feet downstream of downstream corporate limits	*1,311
Approximately 1.5 miles upstream of State Route 607	*1,441
West Branch of Freeman Run:	
At confluence with Freeman Run	*1,327
At upstream corporate limits	*1,446
Maps available for inspection at the Borough Office, Austin, Pennsylvania, call secretary for appointment (814) 647-8666.	
Brown (township), Mifflin County (FEMA Docket No. 7006)	
Kishacoquillas Creek:	
At downstream corporate limits	*570
Approximately 0.9 mile upstream of West Railroad Street	*611
Tea Creek:	
At confluence with Kishacoquillas Creek	*583
Approximately 600 feet upstream of State Route 1005 (Reedsville Road)	*643
Honey Creek:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At confluence with Kishacoquillas Creek	*583
At upstream corporate limits	*622
Maps available for inspection at the Township Building, Brown, Pennsylvania.	
Connellsville (township), Fayette County (FEMA Docket No. 7006)	
Youghiogheny River:	
At the downstream corporate limits	*863
At the upstream corporate limits	*944
Gailey Run:	
At the downstream corporate limits	*864
Approximately 280 feet upstream of CSX Transportation Bridge	*872
Mounts Creek:	
At the downstream corporate limits	*868
At the confluence of Whites Run	*927
Maps available for inspection at the Secretary's Office, 604 Rodgers Avenue, Connellsville, Pennsylvania.	
Hawley (borough), Wayne County (FEMA Docket No. 7007)	
Lackawaxen River:	
Downstream corporate limits	*864
Upstream side of Church Street	*867
Approximately 1,450 feet upstream of Church Street	*880
Approximately 180 feet upstream of U.S. Route 6	*883
Upstream corporate limits	*886
Maps available for inspection at the Borough Building, Hawley, Pennsylvania.	
Jackson (township), Venango County (FEMA Docket No. 7007)	
Sugar Creek:	
Approximately .5 mile downstream of State Route 427	*1,096
Approximately 1.0 mile upstream of TR 607	*1,202
East Branch Sugar Creek:	
At the confluence with Sugar Creek	*1,136
Approximately 1.3 miles upstream of TR-583	*1,154
Lake Creek:	
Approximately 100 feet downstream of Borough of Cooperstown corporate limits	*1,145
At TR 605	*1,236
Maps available for inspection at the Jackson Township Municipal Building, R.D. 1, Cooperstown, Pennsylvania.	
Osceola (township), Tioga County (FEMA Docket No. 7006)	
Cowanesque River:	
At downstream corporate limits	*1,146
Approximately 1,200 feet upstream of upstream corporate limits	*1,186
Maps available for inspection at the Township Office, Main Street, Osceola, Pennsylvania.	
Pike (township), Potter County (FEMA Docket No. 7006)	
Pine Creek:	
At downstream corporate limits	*1,341
At upstream corporate limits	*1,462
Maps available for inspection at the Secretary's Residence, 72 Clinton Street, Galeton, Pennsylvania. Call for appointment at (814) 848-7575.	
Roulette (township), Potter County (FEMA Docket No. 7006)	
Allegheny River:	
Approximately 1,000 feet downstream of confluence of Burt Hollow	*1,510
Approximately 160 feet upstream of confluence of Trout Brook	*1,548
Maps available for inspection at the Township Office, Railroad Avenue and Ought Street, Roulette, Pennsylvania.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Sadsbury (township), Crawford County (FEMA Docket No. 7007)	
Conneaut Lake: Entire shoreline within community	*1,075
Maps available for inspection at the Sadsbury Township Municipal Building, Conneaut Lake, Pennsylvania.	
Sandycreek (township), Venango County (FEMA Docket No. 7006)	
Allegheny River:	
At downstream corporate limits	*880
Approximately 500 feet upstream of upstream corporate limits	*891
Maps available for inspection at the Secretary's Home, R.D. #3, Emlenton, Pennsylvania.	
Sharon (township), Potter County (FEMA Docket No. 7006)	
Oswayo Creek:	
Approximately 1,280 feet downstream of T-395	*1,462
Approximately 1,460 feet upstream of the upstream corporate limits	*1,572
Honeoye Creek:	
At downstream corporate limits	*1,476
Approximately 0.6 mile upstream of State Route 4014	*1,[illegible]
Maps available for inspection at the Township Hall, Millport, Pennsylvania.	
Shinglehouse (borough), Potter County (FEMA Docket No. 7006)	
Oswayo Creek:	
At the downstream corporate limits	*1,471
Approximately 1,100 feet upstream of the upstream corporate limits	*1,494
Honeoye Creek:	
At the confluence with Oswayo Creek	*1,475
At the upstream corporate limits	*1,476
Maps available for inspection at the Borough Office, 40 Honeoye Street, Shinglehouse, Pennsylvania. Call secretary for appointment at (814) 697-6711.	
Shippingport (borough), Beaver County (FEMA Docket No. 7007)	
Ohio River:	
At downstream corporate limits	*884
At upstream corporate limits	*897
Maps available for inspection at the Municipal Building, Secretary's Office, P.O. Box 76, State Route 3016, Shippingport, Pennsylvania.	
Sterling (township), Wayne County (FEMA Docket No. 7007)	
West Branch Wallenpaupack Creek:	
Approximately 5,250 feet downstream of State Routes 191 and 196	*1,289
At confluence of Wilcox Creek and upstream corporate limits	*1,309
Maps available for inspection at the Township Building, Spring Hill Road, Sterling, Pennsylvania.	
Sweden (township), Potter County (FEMA Docket No. 7006)	
Mill Creek:	
Approximately 380 feet downstream of downstream corporate limits	*1,789
Approximately 1,580 feet upstream of State Route 44	*1,802
Maps available for inspection at the Township Secretary's Residence, call for an appointment (814) 274-8628.	
Valley (township), Montour County (FEMA Docket No. 7006)	
Indian Creek:	
At confluence with Mausee Creek	505
At Township Route 371	*609

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Moores Creek:	
Approximately 1,300 feet downstream of State Routes 642 and 46	*496
Approximately 300 feet upstream of confluence with Indian Creek	*506
Maps available for inspection at the Township Building, Indian Run Road, Valley, Pennsylvania.	
SOUTH CAROLINA	
Dillon County (unincorporated areas) (FEMA Docket No. 7000)	
Maple Swamp:	
About 500 feet downstream of 1st Avenue	*105
About 325 feet upstream of CSX Railroad	*198
Catfish Canal:	
About 350 feet downstream of U.S. Route 301	*87
Just upstream of State Highway 151	*97
Ropers Mill Branch:	
At mouth	*102
Just downstream of CSX Railroad	*119
Just upstream of CSX Railroad	*128
Just upstream of State Highway 165	*128
Little Pee Dee River:	
About 2,000 feet downstream of State Route 9	*99
About 1.4 miles upstream of Interstate 95	*103
Maps available for inspection at the County Courthouse, Dillon, South Carolina.	
TENNESSEE	
Benton County, (unincorporated areas) (FEMA Docket No. 7002)	
Tennessee River:	
About 5.75 miles downstream of CSX Railroad	*375
About 6 miles upstream of Interstate 40	*376
Cypress Creek:	
At mouth	*375
Just downstream of Old Route 69	*401
Charlie Creek:	
At mouth	*376
Just downstream of Washington Avenue	*444
Burnside Creek:	
At mouth	*375
Just downstream of Pisgrove Church Road	*423
Cane Creek:	
At mouth	*375
About 1,050 feet upstream of Post Oak Avenue	*427
Maps available for inspection at the County Courthouse, Camden, Tennessee.	
Weakley County (unincorporated areas) (FEMA Docket No. 7000)	
Mud Creek:	
Just upstream of State Route 22	*399
Just downstream of Brasfield Road	*411
Just downstream of State Route 89	*417
Maps available for inspection at the County Courthouse, Dresden, Tennessee.	
TEXAS	
Bastrop (city), Bastrop County (FEMA Docket No. 7000)	
Colorado River:	
Approximately .5 mile downstream of State Route 71	*352
At confluence of Piney Creek	*354
Gills Branch:	
Approximately 700 feet upstream of the confluence with the Colorado River	*393
Approximately 1,600 feet upstream of Farm Street	*397
Shallow Flooding: East Missouri-Kansas-Texas Railroad from Gills Branch to Cedar Street	#2
Maps available for inspection at the Bastrop City Hall, Bastrop, Texas.	
Bastrop County (unincorporated areas) (FEMA Docket No. 7000)	
Colorado River:	
Approximately 4.2 miles downstream of Missouri-Kansas-Texas Railroad	*339
Approximately 9.6 miles upstream of Loop 150	*345
Cedar Creek:	
Approximately 1.1 miles downstream of FM 535	*410
Approximately 3.7 miles upstream of FM 535	*422
Gills Branch:	
At the confluence with Colorado River	*353
Approximately 1,300 feet upstream of confluence with Colorado River	*353
Maps available for inspection at the County Courthouse, 804 Pecan, Bastrop, Texas.	
San Saba (city), San Saba County (FEMA Docket No. 7003)	
San Saba River:	
At downstream corporate limits	*1,198
Approximately .5 mile downstream of China Creek Road	*1,205
Maps available for inspection at the City Hall, San Saba, Texas.	
San Saba County (unincorporated areas) (FEMA Docket No. 7003)	
San Saba River:	
Approximately 1.03 miles downstream of Old Pecan Grove Road	*1,196
Approximately 2.6 miles upstream of China Creek Road	*1,212
Colorado River:	
At the downstream County boundary	*1,039
Approximately 11.7 miles upstream of downstream County boundary	*1,061
Maps available for inspection at the San Saba County Courthouse, San Saba, Texas.	
VERMONT	
Bethel (town), Windsor County (FEMA Docket No. 7000)	
White River:	
At downstream corporate limits	*533
At upstream corporate limits	*580
Second Branch White River:	
Approximately 650 feet downstream of downstream corporate limits	*526
At upstream corporate limits	*548
Third Branch White River:	
At confluence with White River	*541
Approximately 1,200 feet upstream of upstream corporate limits	*607
Maps available for inspection at the Town Clerk's Office, Town Hall, Bethel, Vermont.	
Glover (town), Orleans County (FEMA Docket No. 7000)	
Barton River:	
At the downstream corporate limits	*989
Approximately 150 feet upstream of Sleep Hill Road	*1,169
Maps available for inspection at the Town Clerk's Office, Glover, Vermont.	
Granville (town), Addison County (FEMA Docket No. 7007)	
White River:	
At downstream corporate limits	*922
Approximately 0.4 mile upstream of confluence of Alder Meadow Brook	*1,023
Alder Meadow Brook:	
At confluence with White River	*980
Approximately 600 feet upstream of upstream crossing of State Route 100	*1,038
Maps available for inspection at the Town Clerk's Vault, Granville, Vermont.	
Hancock (town), Addison County (FEMA Docket No. 7007)	
White River:	
At the downstream corporate limits	*873
At the upstream corporate limits	*922
Hancock Branch:	
At the confluence with White River	*905
Approximately 0.57 mile upstream of State Route 125	*1,116
Maps available for inspection at the Town Clerk's Vault, Hancock, Vermont	
Randolph (town), Orange County (FEMA Docket No. 7000)	
Third Branch White River:	
Approximately 2.0 miles downstream of confluence of Trout Brook	*606
Approximately 300 feet upstream of Central Vermont Railroad	*675
Second Branch White River:	
Approximately 0.4 mile downstream of confluence of Kingsbury Brook	*547
Approximately 0.5 mile upstream of confluence of Shows Brook	*664
Ayers Brook:	
At confluence with Third Branch White River	*622
Approximately 2.0 miles upstream of Peth Road Bridge	*699
Maps available for inspection at the Town Clerk's Vault, Randolph, Vermont.	
Rochester (town), Windsor County (FEMA Docket No. 7000)	
White River:	
At downstream corporate limits	*754
At upstream corporate limits	*873
West Branch White River:	
At confluence with White River	*621
Approximately 2 miles upstream of State Route 73	*987
Maps available for inspection at the Town Office, Rochester, Vermont.	
VIRGINIA	
Isle of Wight County (unincorporated areas) (FEMA Docket No. 7007)	
Blackwater River:	
Approximately 1.9 miles downstream of CSX Transportation	*14
Approximately 1.2 miles upstream of State Route 620	*33
James River:	
Adjoining Estuaries	*6.5
Shoreline along Mogarts Beach	*12
Maps available for inspection at the Department of Community Development, County Courthouse, Isle of Wight, Virginia.	
Page County (unincorporated areas) (FEMA Docket No. 7007)	
Dry Run:	
At confluence with Hawksbill Creek	*765
Approximately 1,000 feet upstream of State Route 611	*1,001
Pass Run:	
At confluence with Hawksbill Creek	*702
At confluence with Rocky Branch	*876
Rocky Branch:	
At confluence with Pass Run	*876
Approximately 70 feet upstream of State Route 612	*1,214
Hawksbill Creek:	
Approximately 1,200 feet downstream of State Route 642	*900
Approximately 1,300 feet upstream of State Route 642	*902
Maps available for inspection at the Administrative Building, 108 South Court Street, Luray, Virginia 22835.	
WISCONSIN	
Arcadia (city), Trempealeau County (FEMA Docket No. 6991)	
Trempealeau River:	
About 2,900 feet downstream of West Main Street	*726
About 1.5 miles upstream of West Main Street	*734
Turtle Creek:	
At mouth	*731

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 2,100 feet upstream of Oak Street	*740
Maps available for inspection at the City Hall, 203 Main Street, Arcadia, Wisconsin.	
Bloomer (city), Chippewa County (FEMA Docket No. 6991)	
Duncan Creek:	
About 1.2 miles downstream of Newman Street	*986
About 1.1 miles upstream of Bloomer Dam	*1,001
Maps available for inspection at the City Hall, 1503 Main Street, Bloomer, Wisconsin.	
Oneida County (unincorporated areas) (FEMA Docket No. 7000)	
Wisconsin River:	
About 5,000 feet downstream of confluence of Pelican River	*1,529
Just downstream of County Highway D	*1,579
Pelican River:	
About 600 feet upstream of mouth	*1,527
About 1.5 miles upstream of Germond Road	*1,531
Tomahawk River:	
About 4,000 feet downstream of confluence of Rocky Run	*1,487
About 1.3 miles upstream of confluence of Rocky Run	*1,494
Maps available for inspection at the County Courthouse, Rhinelander, Wisconsin.	
Rhinelander (city), Oneida County (FEMA Docket No. 7000)	
Wisconsin River:	
About 3,850 feet downstream of confluence of Pelican River	*1,528
Just downstream of Rhinelander Dam	*1,546
Just upstream of Rhinelandy Dam	*1,558
Pelican River:	
At mouth	*1,527
About 2,100 feet upstream of Oneida Avenue	*1,527
Maps available for inspection at the City Hall, 135 S. Stevens Street, Rhinelander, Wisconsin.	
Sturgeon Bay (city), Door County (FEMA Docket No. 7000)	
Little Creek:	
At mouth	*585
Just upstream of Michigan Street	*605
Sturgeon Bay:	
Within community	*586
Maps available for inspection at the City Hall, 36 S. Third Avenue, Sturgeon Bay, Wisconsin.	
WYOMING	
Cheyenne (city), Laramie County (FEMA Docket No. 7000)	
Crow Creek:	
Approximately 940 feet downstream of Morrie Avenue	*6,009
At Deming Drive	*6,022
Just upstream of West 9th Street	*6,035
Just downstream of West 19th Street	*6,055
Approximately 300 feet upstream of Westland Road	*6,072
Dry Creek:	
Approximately 500 feet upstream of U.S. Highway 30	*5,971
Just upstream of Hilltop Road	*6,011
Approximately 400 feet upstream of Mountain Road	*6,029
Just downstream of Seminole Road	*6,067
Just upstream of Education Drive	*6,131
Approximately 200 feet upstream of Viale Lane	*6,146
Western Hills Drain:	
(North Fork Dry Creek)	
Just upstream of Interstate Highway 25	*6,151
Just downstream of Evergreen Street	*6,166
At Ranger Drive	*6,177
Approximately 100 feet upstream of Hawthorne Drive	*6,212

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for inspection at the City Engineer's Office, 2101 O'Neil Avenue, Cheyenne, Wyoming.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Big Bear Lake (city), San Bernardino County, California (FEMA Docket No. 7002)	
Rathbun Creek:	
Approximately 600 feet upstream of Big Bear Lake	6,744
Approximately 200 feet downstream of SR18	6,785
Approximately 60 feet upstream of Elm Street	6,851
Approximately 320 feet upstream of Moonridge Road	6,908
At Lassen Drive	7,106
Maps are available for review at the City Hall, Community Development Department, 39707 Big Bear Boulevard, Big Bear Lake, California.	
FLORIDA	
St. Lucie County (Unincorporated Areas) (FEMA Docket No. 6991)	
Tenmile Creek Tributary:	
At mouth	*20
Just downstream of McCarty Road	*20
Tenmile Creek:	
At confluence with North Fork St. Lucie River	*10
Just downstream of Sunshine State Parkway	*16
Just downstream of Okeechobee Road	*21
Taylor Creek:	
About 500 feet upstream of mouth	*11
About 1.75 miles upstream of St. Lucie Boulevard	*19
Fivemile Creek:	
At mouth	*10
Just downstream of Whiteway Dairy Road	*17
Just downstream of Peterson Road	*17
Platts Branch:	
At mouth	*10
Just downstream of U.S. Route 1	*12
Winters Creek:	
At mouth	*7
About 1300 feet upstream of mouth	*7
Blakeslee Creek:	
At mouth	*7
About 500 feet upstream of mouth	*7
North Fork St. Lucie River:	
About 2.9 miles downstream of Port St. Lucie Boulevard	*7
At confluence of Tenmile Creek	*10
Atlantic Ocean/Indian River:	
About 750 feet west of Mimosa Avenue and Coconut Drive	*5
Along shoreline, about 1.2 miles east of Blue Hole Point	*15
Atlantic Ocean:	
About 150 feet east of Banyan Road and Tamarino Drive intersection	#1
About 250 feet east of Banyan Road and Tamarino Drive intersection	#2
Maps available for inspection at the Community Development Department, Administration Complex, 2300 Virginia Avenue, Fort Pierce, Florida.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
NEW MEXICO	
Hobbs (city), Lea County (FEMA Docket No. 6990)	
Shallow Flooding Area:	
Between Tenth Street	#1
Between Tenth Street and Texas-New Mexico Railroad	#1
From Texas-New Mexico Railroad to southwest area of Airport to northwest area of Airport	#1
From northwest area of Airport to southwest area of Airport	#1
From Tenth Street to northwest area of Airport	#1
Between Stanolind Road and Dunnam Street	#1
Between Turner Street and Green Acres Drive	#1
Between Green Acres Drive and Jefferson Street	#1
West of Jefferson Street to the Texas-New Mexico Railroad tracks	#1
North of State Route 18 going northwest and parallel to Texas-New Mexico Railroad tracks	#1
State Route 18 from Joe Harvey Boulevard to intersection of Silver Avenue and Knowles Road along Northwest Drive	#1
Between Joe Harvey Boulevard and Kiowa Street	#1
State Route 18 and McKinley	#2
North of crescent to 500 feet south of North Acres Drive	#2
Between Marland Boulevard and Herr Street	#3
Between Stadium Drive and Green Acres Drive	#3
Between Jefferson Street and approximately 1,000 feet west of the intersection of State Routes 18 and 132	#3
Ponding Area: Between Stadium Drive and Marland Boulevard	*3,619
Stream 2:	
Del Paso Boulevard	*3,636
Approximately 0.5 miles upstream of Foster Drive	*3,642
Stream 3:	
Del Paso Boulevard	*3,663
Approximately 0.6 miles upstream of Knowles Road	*3,672
Maps available for inspection at the City Hall, 300 N. Turner, Hobbs, New Mexico.	
NEW YORK	
Mamakating (town), Sullivan County (FEMA Docket No 7003)	
Basher Kill:	
At State Route 17	*513
Approximately 1.8 miles upstream of McDonald Road	*533
Homowack Kill:	
At corporate limits	*380
At second crossing of U.S. Route 209	*532
Tributary to Homowack Kill:	
Confluence with Homowack Kill	*531
Approximately 150 feet upstream of Fish Hatchery Road	*539
Pine Kill:	
At downstream corporate limits	*516
At confluence of Tributary to Pine Kill	*1,060
Tributary to Pine Kill:	
At the confluence with Pine Kill	*1,060
Approximately 2,115 feet upstream of Knoll Hill Road	*1,246
Platte Kill:	
At confluence with Shawangunk Kill	*362
At upstream corporate limits	*1,039
Tributary to Platte Kill:	
At confluence with Platte Kill	*598
Approximately 15 feet upstream of Rocks Gap and Pleasant Valley Road	*716
Sandburg Creek:	
At downstream corporate limits	*461
At upstream corporate limits	*639
Shawangunk Kill:	
At confluence of Platte Kill	*362
At upstream corporate limits	*364
Tributary 1 to Shawangunk Kill:	
At confluence with Shawangunk Kill	*364
Approximately 1,170 feet upstream of Ski Run Road	*541
Tributary 2 to Shawangunk Kill:	

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Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
At confluence with Shenangunk Hill	*380
Approximately 345 feet upstream of Ski Run Road	*[illegible]
Hillsey Brook:	
At corporate limits	*[illegible]
Approximately 130 feet upstream of Park Road	*1,[illegible]
Tributary 1 to Hillsey Brook:	
At downstream corporate limits	*705
Approximately 0.6 mile upstream of County Route 108A	*1,174
Tributary 2 to Hillsey Brook:	
At confluence with Hillsey Brook	*1,039
Approximately 140 feet upstream of Dawny Road	*1,118

Maps available for inspection at the Town Hall, Route 209, Wallkill New York.

Issued: April 23, 1991.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-11081 Filed 5-9-91; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61, 65, and 69

[CC Docket No. 87-313, FCC 91-115]

RIN 3060-AE36

Policy and Rules Concerning Rates for Dominant Carriers

AGENCY: Federal Communications Commission [FCC].

ACTION: Final rule; order on reconsideration.

SUMMARY: The Commission has adopted an Order on Reconsideration affirming its conclusion that incentive regulation (or "price cap" regulation) constitutes an improvement over rate of return regulation for local exchange carriers. This action results in the replacement of the rate of return regulatory model with one that directly limits rates by means of price caps. The Commission has affirmed its finding that the price cap method of regulation will promote efficiency and innovation, and will benefit consumers more effectively than rate of return regulation. The Order on Reconsideration provides some modification and clarification of the underlying Order.

EFFECTIVE DATES: Section 61.45(d) and 69.105(b) are effective June 30, 1991; all other provisions are effective June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Jacqueline Spindler, Common Carrier Bureau, (202) 632-6917.

SUPPLEMENTARY INFORMATION:

Background

Notice of Proposed Rulemaking, In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313. *Adopted:* August 4, 1987. *Released:* August 21, 1987. 52 FR 33962 (Sept. 9, 1987). By the Commission. Further Notice of Proposed Rulemaking, In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313. *Adopted:* May 12, 1988. *Released:* May 23, 1988. 53 FR 22356 (June 15, 1988). By the Commission. Supplemental Notice of Proposed Rulemaking, CC Docket No. 87-313. *Adopted:* March 8, 1990. *Released:* March 12, 1990. 55 FR 12528 (Apr. 4, 1990). By the Commission. Second Report and Order, CC Docket No. 87-313. *Adopted:* September 19, 1990. *Released:* October 4, 1990. 55 FR 42375 (Oct. 19, 1990). By the Commission, Commissioner Duggan concurring in part and dissenting in part and issuing a separate statement. See also Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 89-624, 5 FCC Rcd 7507 (1990).

Summary of Order on Reconsideration

This is a summary of the Commission's Report on Reconsideration in In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, FCC 91-115, Adopted: April 9, 1991, and Released April 17, 1991. Commissioner Duggan concurring in part and dissenting in part and issuing a statement.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1411 21st St., NW., Washington, DC 20037.

I. Introduction

1. This Order on Reconsideration generally affirms the Commission's *LEC Price Cap Order* adopted September 19, 1990, while providing some clarification and modification of that order. The *LEC Price Cap Order* concluded a comprehensive examination of incentive regulation for local exchange carriers by adopting a new system of regulating the interstate common carrier services of the largest of these carriers. The new regulatory system, known as price cap regulation, is designed to increase local exchange carrier productivity by harnessing profit-making incentives common to all businesses; to establish rate ceilings that require carriers to decrease rates after inflation; and to encourage carriers to provide innovative, high quality services.

2. This Order: (1) Clarifies the sharing and adjustment mechanism as to the imposition of interest and the use of total interstate data; (2) clarifies that inside wire amortizations will be treated as an exogenous cost change; (3) requires that inside wire amortizations and reserve deficiency amortizations be included in the annual price cap filings; (4) permits exogenous treatment of paybacks of excess deferred taxes; (5) permits the use of historical, instead of forecast, demand in the calculation of the national average carrier common line charge; (6) amends the tariff requirements for new service filings; and (7) clarifies service quality reporting requirements. These alterations to the price cap rules will become effective in time to permit price cap LECs to amend their first annual price cap tariffs, currently pending, to reflect the changes made in this Order on Reconsideration prior to the July 1, 1991 effective date of the tariff filings.

3. Price cap regulation of LECs is designed to produce greater benefits for both ratepayers and carriers than they would have received under the prior system of regulation. Unlike the previous, cost-plus system of regulation that capped profits, price cap regulation encourages LECs to earn reasonably higher profits than were formerly allowed. But in a regulatory system that caps prices, higher profits must be generated through productivity gains. LECs must become more efficient, and offer innovative, high quality services in order to succeed under a price cap regime. If a LEC fails to keep pace with the productivity requirement embedded in the cap, it risks seeing its earnings erode. Ratepayers benefit from the innovation that price cap regulation is intended to spur and from a series of protections built into the design of the price cap system itself. Foremost among these protections are the requirements that rates decrease on an inflation-adjusted basis and that LECs share higher achieved earnings with ratepayers.

4. The architecture of the price cap system for LECs begins with the design of the rate cap. As adopted, the cap is composed of a limited number of elements that together provide a benchmark of how price cap LECs' costs will change over time. For special access, traffic sensitive access, and interexchange offerings, the cap is composed of three elements. The first element, inflation, is measured by the Gross National Product Price Index (GNP-PI). Second, a productivity offset, selected on the basis of the amount by which LEC productivity growth has historically exceeded the economy generally, is subtracted from the inflation element. Third, specified exogenous cost changes that generally are outside the carriers' control, and often result from regulatory changes, are added to the formula. The cap is calculated once a year, for LEC tariffs effective July 1.

5. The formula used to cap non-traffic sensitive access rates, or common line charges, is slightly different. This difference stems from the unique characteristics of the carrier common line charge, which recovers a portion of non-traffic sensitive costs on a traffic sensitive, per minute basis. As adopted, the common line cap formula includes an adjustment that rewards LECs for half the growth in common line minutes. This formula recognizes the fact that LECs have some ability to influence interstate usage of local common lines, but that usage is also affected by other factors, including efforts and prices of long distance carriers. Due to the formula's characteristics, the Commission refers to the common line formula as the "Balanced 50/50" plan to distinguish it from the numerous other cap proposals that were considered for common line. It also recognizes that the Balanced 50/50 formula, while rewarding LECs for increasing demand, creates a more difficult challenge for LECs to meet than the common line formula previously proposed in this docket.

6. In addition to adopting a common line formula that is more challenging to LECs, the *LEC Price Cap Order* made important revisions to the productivity offset of 3 percent previously considered. Based on a staff study of LEC productivity since divestiture, as well as on a staff study of long term productivity, the price cap rules mandate a productivity offset of 3.3 percent, and include in the cap mechanism a means of inducing LECs to pursue even higher productivity gains if possible. Price cap LECs may elect to set their price caps by using a 4.3 percent productivity offset. Election of the higher productivity offset lowers the price cap, thereby benefiting ratepayers. However, election of the higher offset also permits the LEC to retain a larger share of its earnings, thereby benefiting the LEC if it can increase its productivity.

7. To ensure that the productivity offsets we selected for our LEC price cap system benefit ratepayers of each and every LEC regulated under price caps, the Commission imposed an incentive-based method of ensuring that ratepayers share in the benefits a price cap system can produce. If a LEC selects the 3.3 percent productivity offset and outperforms it, the LEC will be entitled to retain all of its earnings up to 100 basis points (or 1 percent) above the unitary rate of return established for rate of return carriers. A carrier using the 3.3 percent productivity offset to establish prices must share with its customers 50 percent of its earnings between 100 and 500 basis points (1 to 5 percent) above the unitary rate of return, and 100 percent of earnings in excess of 500 basis points above the unitary rate of return. Based on the 11.25 percent unitary rate of return currently in effect, this mechanism allows a carrier that dramatically exceeds the productivity requirements of the price cap formula to reach an effective equivalent of up to 14.25 percent rate of return.

8. If a carrier elects a more challenging productivity offset of 4.3 percent, the carrier lowers its rates an additional 1 percent, and can retain more of its earnings, if it is able to earn higher profits. In this case, the carrier can retain all of its earnings up to 200 basis points (or 2 percent) above the unitary rate of return established for rate of return carriers. This carrier would share with its customers 50 percent of its earnings between 200 and 600 basis points (2 to 6 percent) above the unitary rate of return, and 100 percent of its earnings in excess of 600 basis points above the unitary rate of return. In electing to lower prices to a level reflecting a higher 4.3 percent productivity offset, the carrier's effective maximum rate of return would be 15.25 percent. Thus, under the sharing mechanism, carriers that are able to produce significantly greater than anticipated gains in productivity, as evidenced by earnings well above those expected in a rate of return environment, are required to share the benefits of their performance with ratepayers in the form of rate decreases.

9. In addition to guarding against the possibility that the productivity offsets selected may be too low for a given company in a particular year, the price cap regulations guard against the possibility that the formula will force rates to a level that results in unusually low earnings. The plan includes a lower end adjustment mechanism to ensure that the plan automatically corrects itself should the established productivity factor for the industry prove to be too demanding for a given company. The lower adjustment mechanism is 100 basis points (1 percent) below the unitary rate of return. If a carrier's earnings drop below this level for one year, that carrier will be entitled to an automatic prospective upward adjustment to its cap in the following year.

10. Moreover, the Commission takes a cautious approach in applying price cap regulations to the LEC industry. Price cap regulation is mandatory only for the seven Regional Bell Operating Companies (RBOCs) and GTE Telephone Operating Companies (GTOC). Other LECs may elect price cap regulation at their option, as long as they are not participants in the National Exchange Carrier Association cost and revenue pools. Companies and their affiliates are required to enter price caps, or volunteer for price caps, on an "all-or-nothing" basis. The all-or-nothing rule is intended to prevent cost shifting from affiliates subject to price caps to affiliates regulated under rate of return. Average schedule affiliates, which do not have the same incentives to shift costs, are exempted from the all-or-nothing rule. The rules permit an annual opportunity for election of price cap regulation, but once regulated pursuant to price caps, LECs cannot elect to return to rate of return regulation.

11. Rather than establish one price cap for all of a LEC's interstate services, the plan divides interstate offerings into four groups, or baskets, each subject to its own cap. The groupings are borrowed from the interstate access structure contained in the Commission's part 69 rules. If a LEC elects the higher 4.3 percent productivity factor, it must do so for all four of its baskets. As discussed above, the common line basket is capped using the Balanced 50/50 method. The traffic sensitive basket and the special access basket use the index method. Interexchange services are capped based on the productivity offset we use to cap AT&T services, 3 percent, although a LEC electing a 4.3 percent offset (1 percent above the minimum productivity requirement) for its access baskets will, however, be required to use a 4 percent offset (1 percent above the 3 percent offset used for AT&T) for its interexchange basket.

12. Division of LEC services into four baskets, each subject to a separate cap, sharply limits LEC pricing flexibility and incentives to shift costs. To further protect ratepayers from substantial price changes, the price cap rules identify service categories within the baskets, and limit the annual price movements in these categories to plus or minus 5 percent per year, adjusted for

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changes in the cap. The traffic sensitive basket is subdivided into three service categories: local switching, local transport, and information. The special access basket contains four categories: (1) Voice grade, WATS, metallic, and telegraph; (2) audio and video; (3) high capacity and Digital Data Service; and (4) wideband data and wideband analog. The price cap rules also create separate subindices for two offerings within the high capacity and Digital Data Service category, one for DS1 and one for DS3 services. These separate subindices limit price movements of DS1 and DS3 services to plus or minus 5 percent per year, adjusted for changes in the price cap.

13. Together, the price cap limits and pricing bands used in the traffic sensitive and special access baskets form a "no-suspension zone" within which LECs may easily change prices. Rate changes that conform to these limits are presumed lawful and permitted to take effect under streamlined review, on 14 days' notice. Should a LEC decide to file rates outside the no-suspension zone, the price cap rules require more rigorous scrutiny. More extensive documentation is required, the presumption of lawfulness disappears, and longer notice periods apply. Above-cap and above-band filings carry a heavy burden of justification and a strong likelihood of suspension.

14. Special rules apply to new, restructured, and excluded services. New services, defined as those that expand a ratepayer's range of choices, are filed on 45 days' notice and must be accompanied by a showing demonstrating that the new service will increase net revenues for the LEC over a specified period of time. Once new services have been in effect for a period of time that allows the observation of demand, these services are included in the relevant price cap basket and service category. New offerings that represent fundamental changes to our part 69 access structure, such as the implementation of Open Network Architecture, may be subject to additional requirements established in other Commission proceedings. Restructured services, those that simply redefine existing offerings, are also subject to 45-day notice requirements, and are not presumed lawful. A few services, such as one-time and contract services and pre-subscription change charges, are excluded from price caps. These services are subject to traditional tariff review procedures. Applying standard statistical conventions, all indices were initialized at a level of 100, beginning six months before the implementation of price cap regulation on January 1, 1991. Therefore, July 1, 1990 rates are used as the starting point for price cap indices, adjusted downward to implement the 11.25 percent industry rate of return adopted by the Commission on the same day as the LEC price cap rules.

15. Price cap regulation is carefully designed to permit the continued operation of programs that provide assistance to small and high cost telephone companies and their subscribers. The price cap plan makes no changes to programs such as Link Up America, Lifeline Assistance, the Universal Service Fund, Long Term Support, and Transitional Support, that assist small carriers and their customers. Moreover, the *LEC Price Cap Order* pledges to begin further proceedings on issues of concern for small and mid-sized LECs.

16. To ensure its continued ability to evaluate the price cap system, as well as to evaluate whether the incentives created in the plan operate in the public interest, the Commission retains existing monitoring of LECs' operations. The Commission will also undertake a comprehensive performance review of the system after the end of the third year. The review, to be completed during the fourth year of the plan, will evaluate all aspects of local exchange carrier performance, and make any adjustments to the plan that are warranted.

17. Incentive regulation is expected to encourage LECs to maintain and enhance service quality and innovation. Nonetheless, the Order adopted additional service quality monitoring to respond to commenters' concerns and to provide data for the performance review to be undertaken at the end of three years. Semi-annual reporting continues to be required of the BOCs, and has been extended to GTOC. In addition, all LECs regulated under price caps are required to submit quarterly reports on post-dial delay, network blockage, complaints, trouble reports, installation intervals, repair intervals, and switch downtime. The *LEC Price Cap Order* directs the Common Carrier Bureau to devise a reporting system and to include it in the Bureau's automated reporting system, ARMIS. In addition to monitoring service quality parameters as revealed through network performance, price cap regulation includes a requirement that the LECs for whom price cap regulation is mandatory report on their investment in the telecommunications infrastructure. The new annual reporting requirement, which is based on reporting received from the RBOCs and GTOC in the rate of return proceeding, will monitor LEC network development as shown in LEC equipment and facilities.

II. Modifications on Reconsideration

A. Sharing and Interest

18. The *LEC Price Cap Order* concluded that adjustments of LEC PCIs to share high earnings with their customers should include an interest component. *LEC Price Cap Order*, 5 FCC Rcd at 6801, para. 124. While many parties support this determination, the LECs generally oppose interest payments. Supporting parties, including interexchange carriers and large users, urge that the Commission's requirements regarding the precise calculation of amounts to be shared by means of price cap adjustments be clarified to note the level at which interest should be included. Although some LECs argue against the imposition of interest in the sharing mechanism, the Commission determined that the inclusion of interest is a fairer reflection of the equities and creates a more effective price cap plan, since interest properly recognizes the true value of the delay in the recognition of those benefits. Rather than considering interest payment as a disincentive to achieve high productivity, the Commission states that it adds to the LECs' incentive to calculate the lowest possible rates for users. The Commission rejects challenges to its legal authority to impose interest on sharing.

19. In response to questions about calculation of interest, the Commission states that interest will be calculated based on the amount to be shared and the period of time that elapses between when the amount was earned and when it is paid. Stating that it will resolve matters concerning the implementation of sharing in the same frame of reference it used to develop this mechanism itself—the balancing of consumer interests and LEC incentives, and the desire to ensure that each receives or retains its proper share of productivity gains achieved through the operation of the price cap plan. To that end, the Commission states that interest amounts will be calculated from the day after the end of the period giving rise to the adjustment, to the midpoint of the period when the adjustment is in effect. The Commission also directs that amounts triggering sharing be "grossed up" to reflect relevant state, local, and federal taxes. Stating that the rate at which interest is calculated must not penalize or disadvantage the LEC, which has accepted and exceeded a challenging productivity offset through increasing its efforts and efficiency, and that the customer must likewise receive its fair share of these productivity gains, and must not be required to provide a below-market rate loan to the LEC, the Commission directs that interest be calculated at the level of the prescribed rate of return calculated in the *Represcription Order*.

B. Amortizations

20. In the *Further Notice* in this proceeding, the Commission proposed to treat as exogenous inside wire amortizations. *Further Notice*, 3 FCC Rcd at 3422–23, paras. 419–420. The Commission reasoned that, although the LECs were entitled to recover the amortized amounts from ratepayers, upon expiration of the inside wire amortizations, the costs should be removed from rates in recognition of the newly-deregulated status of inside wire. No further reference to inside wire amortizations is made in the discussions of exogenous costs in the *Second Further Notice* and the *LEC Price Cap Order*. The Commission finds on reconsideration that inside wire amortizations should be treated exogenously. The Commission stated in the *LEC Price Cap Order* that reserve depreciation amortizations generally will be treated as exogenous PCI reductions. *LEC Price Cap Order*, 5 FCC Rcd at 6806, para. 173. Upon reconsideration, it decides that amortizations ought to be reflected in annual price cap tariffs, effective July 1. It will allow exogenous adjustments for reserve deficiency amortizations and inside wire amortizations only on an annualized basis, to avoid excessive rate churn. Since the annualized exogenous treatment of reserve deficiency amortizations and inside wire amortizations that expire during the tariff year could result in a mismatch of revenues and expenses, the Commission directs carriers to normalize the amortization by booking to Account 1439, Deferred Charges, the excess amortization expenses during the amortization period, and charging the deferred amount to expense over the remainder of the tariff year.

C. Exogenous Treatment of Tax Changes

21. The Commission stated in the *LEC Price Cap Order* that if a LEC can show that a particular tax law change produces costs not reflected in the GNP–PI, the Commission will consider exogenous treatment of that tax law change. Finding that such a showing has been made with regard to two effects of the Tax Reform Act of 1986, the payback of excess deferred taxes and the repeal of the investment tax credit, the Commission grants LECs' requests for exogenous treatment of the flow-through of these changes. The Commission directs that each price cap LEC may include in its annual filing data showing the effect on its PCI.

D. NACCL Calculation

22. As adopted, the LEC price cap regulations are designed to make use of actual historical demand data, instead of forecast demand data. Elimination of demand forecasting is one of the ways in which price cap regulation reduces the administrative burden associated with regulation. In the case of the national average carrier common line rate, however, the *LEC Price Cap Order* required price cap carriers to continue to forecast common line demand pursuant to part 69.105(b). *LEC Price Cap Order*, 5 FCC Rcd at 6826, para. 329.

23. NECA, supported by the largest LECs, renews the suggestion that historical demand data can be used to calculate the national average carrier common line rate, and says this can be done without significantly affecting Long Term Support payments. The Commission states that it prefers the use of historical rather than projected data, and that it is not persuaded that any LEC would have any strong incentive to manipulate carrier common line rates or seriously threaten the objectives of the Long Term Support Program. The Commission believes that the benefits that may be derived from NECA's proposal outweigh any possible problems, and states that NECA's methodology will greatly simplify the preparation of the national average carrier common line rate, which is consistent with the goals of price cap regulation. Therefore, the Commission adopts NECA's methodology, and revises § 69.105(b) of the Rules accordingly.

E. New Services

24. The *LEC Price Cap Order* defines new services as those that expand customers' range of options. *LEC Price Cap Order*, 5 FCC Rcd at 6824, para. 314. The Commission decided, as it had done with AT&T, to fold new services into the cap at the first annual price cap filing following a base year in which the new service had been offered, a period of between 6 and 16 months, depending upon the timing of the introduction of the new service. Carriers were directed initially to support each new service tariff with a demonstration that the offering will yield positive net revenue, measured on a present value basis, within the lesser of a 24-month period after an annual price cap tariff that includes the new service takes effect, or 36 months from the date the new service becomes effective. The Commission decides on reconsideration to defer final determination of this matter to the part 69 ONA proceeding. It decides for the interim to supplement the net revenue "floor" with the retention of the traditional new services tariff review support, and to return to the issue of new service pricing in the part 69 ONA proceeding.

25. In addition to demonstrating that the new service generates net revenue, the Commission will require, on an interim basis, that LECs support new services with a traditional cost showing. The Commission believes that, as an interim solution, its decision to continue to use our pre-price caps approach pending completion of the part 69 proceeding is reasonable, and that, in the short term, neither carriers nor customers will be harmed by this interim approach.

F. Service Quality Monitoring

26. In the *LEC Price Cap Order*, the Commission reaffirmed its commitment to assuring the availability of high quality, innovative communications services, and to the development of the telecommunications infrastructure needed to provide those services. *LEC Price Cap Order*, 5 FCC Rcd at 6827, para. 332. One of the Commission's fundamental goals is to encourage the development of a competitive, innovative, and excellent American communications system. We believe that price cap regulation will serve even better than rate of return regulation to encourage the LECs to maintain and expand the excellence of the network. LECs have natural efficiency incentives to modernize the network: Modern facilities increase capacity (and thus revenues) while decreasing maintenance (and thus costs). Further, LECs are encouraged to upgrade their equipment and facilities in order to provide a broad range of services at a reasonable range of rates, since their interstate revenues are to a large extent usage-sensitive. LECs must provide high quality service on their large customers will complain or will find other service providers. Finally, opportunities presented by incentive regulation for enhancing efficiency in the LEC industry include the opportunity to provide better incentives for innovation. By creating incentives for carriers to become more productive, incentive regulation generates powerful motives to innovate.

27. Despite its conviction that incentive regulation will stimulate LECs

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to maintain and increase the high level of service presently available, the Commission decided in the *LEC Price Cap Order* to expand its data collection of service quality and infrastructure development indicators. In response to parties' expressed concerns, in the desire to accumulate a substantial database for our performance review, and in an abundance of caution, it directed the Common Carrier Bureau to develop reporting requirements to allow monitoring of LEC service quality and infrastructure development. The Bureau has reviewed the pleadings submitted here and has engaged in informal discussions with numerous sources. The Bureau's *March 8 Public Notice* suggests reporting modifications that respond to these pleadings and discussions. On reconsideration the Commission fine-tunes the expectations expressed in the *LEC Price Cap Order*, affirming its general conclusions.

Post-Dial Delay

28. The Commission has defined post-dial delay (PDD) as the time between the dialing of the last digit and the response of a "winkback," or the acknowledgement of signal receipt, from the interexchange carrier. *LEC Price Cap Order*, 5 FCC Rcd at 6828, para. 344. LECs have submitted arguments that this definition is unclear or impracticable, and that the measurement and reporting of post-dial delay would involve extreme difficulty and expense, while yielding minimal benefit. They argue that our other service quality reporting requirements provide data sufficient to monitor the same characteristics as would be monitored by post-dial delay data. On reconsideration, the Commission states that it is persuaded that the measuring and reporting of post-dial delay using the D-ASPEN system would be so expensive and burdensome as to be unwarranted on a cost-benefit basis. It is reluctant, however, to remove the post-dial delay reporting requirement from the service quality reports, despite great confidence in the other service quality reporting requirements. Since the Bureau is presently investigating service quality reporting requirements in some detail, and its *March 8 Public Notice* solicits further comment on post-dial delay reporting, and since one BOC suggests that information related to post-dial delay can be gleaned from data submitted in the ARMIS infrastructure reports, the Commission directs the Bureau to evaluate means of monitoring post-dial delay that are less burdensome that the D-ASPEN system. In particular, it asks the Bureau to investigate the feasibility of requiring price cap LECs to include in their service quality reports data with respect to post-dial delay based on calculations derived from facilities and routing data supplied in their infrastructure reports.

Other Service Quality Measurements

29. Some commenters assert that the transmission quality parameters in the monitoring reports could sufficiently monitor voice circuit quality if they are modified to reflect consistent standards, and are disaggregated geographically and by service, but that they are still inadequate to monitor data transmission quality. They also suggest that LECs be required to include in their tariffs specifications of service quality levels they will provide. The Commission states that it has repeatedly expressed the importance it attaches to service quality and infrastructure development, and that it is committed to taking the steps necessary to further improve them. It directs the Bureau to consider petitioners' arguments, and notes that the Bureau has solicited comment on the matters of geographic, demographic, and service category disaggregation, data transmission indicators, the inclusion of service quality parameters in LEC tariffs, and definitions and explanations generally, in its *March 8 Public Notice*. The Commission encourages interested parties to comment upon the costs and benefits of such steps, and it incorporates relevant comments from this proceeding in the Bureau's record.

Geographically Disaggregated Reporting

30. The *LEC Price Cap Order* requires that service quality data be filed at the study area level, and be disaggregated as to special access and switched access. *LEC Price Cap Order*, 5 FCC Rcd at 6830-31, paras. 359-360. In light of the comments submitted on reconsideration, the Commission states that the Bureau, in its proceeding, may further fine-tune the reporting requirements, to address concerns raised in the reconsideration pleadings, including questions of geographic and service-level disaggregation. The Commission directs the Bureau to balance the usefulness of service quality and infrastructure reports against the burden imposed upon price cap LECs to provide them. If the Bureau concludes that the level of geographic aggregation or service level detail should be adjusted, these and similar modifications are within the Bureau's delegated authority. To the extent that pleadings here are relevant to the Bureau's determinations, they are incorporated in the record of that proceeding.

Standards

31. The Commission declined to establish national standards, reasoning that the existing high level of service quality, in combination with price cap incentives and state monitoring programs, negated any need for standards at the present time. *LEC Price Cap Order*, 5 FCC Rcd at 6829-32, paras. 350-371. The Commission reiterates that it will consider developing standards, sanctions, and other appropriate enforcement mechanisms if we become aware that those measures are required. It delegates to the Bureau the question of requiring that LECs place service quality standards in their interstate access tariffs.

32. The Commission determined that infrastructure and service quality reports are to be included in ARMIS. *LEC Price Cap Order*, 5 FCC Rcd at 6828, 6829, paras. 342, 352. The reports currently filed in ARMIS are accounting reports, however, not service quality or infrastructure reports. ARMIS is located in and administered by the Accounting and Audits Division of the Bureau, while service quality and infrastructure are monitored by the Industry Analysis Division. While the new reports will be filed in ARMIS for convenience and accessibility, they will be in the purview of the Industry Analysis Division for purposes of monitoring and evaluation. Copies will be available both through ARMIS and through the Industry Analysis Division. The Bureau's proceeding will further clarify filing requirements.

III. Conclusion and Ordering Clauses

33. The rules adopted here revising tariff filing requirements and the adjustment formulas will be effective June 30, 1991, as specified below, in order to implement these revisions prior to the July 1, 1991 tariff effective date. We find good cause to make these rules effective on less than 30 days' notice after publication in the **Federal Register**. See 5 U.S.C. 553(b)(B). These revisions are necessary to insure that the substantial benefits of the price cap plan to the public are maximized. If these rules are not in effect when the price cap tariffs take effect on July 1, 1991, the benefits resulting from these rules will be delayed for a full year after that filing, or until July 1, 1992. Further, the rule revisions adopted here require only minor revisions to the companies' price cap filing submitted April 2, 1991, so that the companies required to take action within less than 30 days from **Federal Register** publication have adequate time to do so.

34. Accordingly, *It is ordered*, pursuant to sections 151, 154 (i) and (j), 201-205, 303(r), and 405 of the Communications Act, 47 U.S.C. 151, 154 (i) and (j), 201-205, 303(r), and 405, that the petitions for reconsideration, partial reconsideration and/or clarification filed in this proceeding are denied, except as provided herein.

35. *It is further ordered* that, pursuant to sections 154 (i) and (j), 201-205, 303(r), and 405 of the Communications Act, 47 U.S.C. 151, 154 (i) and (j), 201-205, 303(r), 405, and section 553 of title 5, United States Code, that §§ 61.45(d) and 69.105(b) of this Commission's Rules, 47 CFR 61.45(d) and 69.105(b), are amended as set forth below effective June 30, 1991.

36. *It is further ordered*, pursuant to sections 154 (i) and (j), 201-205, 303(r), and 405 of the Communications Act, 47 U.S.C. 151, 154 (i) and (j), 201-205, 303(r), and 405, that §§ 61.48(d), 61.49(g), 65.600(d), and 65.703 of this Commission's Rules, 47 CFR 61.48(d), 61.49(g), 65.600(d), and 65.703, are amended as set forth below effective 30 days after publication in the **Federal Register**.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

List of Subjects

47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Price cap tariff filing and review procedures.

47 CFR Part 65

Administrative practice and procedure, Communications common carriers, Reporting and recordkeeping requirement.

47 CFR Part 69

Communications common carriers reporting and recordkeeping requirements and telephone.

Amendments to the Code of Federal Regulations

Title 47 of the CFR, parts 61, 65, and 69, are amended as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.45 is amended by revising paragraph (d)(1)(ii), adding paragraph (d)(1)(viii), and revising paragraphs (d) (2) and (3) as follows:

§ 61.45 Adjustments to the PCI for local exchange carriers.

* * * * *

(d) * * *

(1) * * *

(ii) Such changes in the Uniform System of Accounts as the Commission shall permit or require

* * * * *

(viii) Inside wire amortizations.

(2) Local exchange carriers specified in § 61.41(a)(2) or (a)(3) of this part shall also make such temporary exogenous cost changes as may be necessary to reduce PCIs to give full effect to any sharing of base period earnings required by the sharing mechanism set forth in 47 CFR parts 61, 65 and 69. Such exogenous cost changes shall include interest, computed at the prescribed rate of return, from the day after the end of the period giving rise to the adjustment, to the midpoint of the period when the adjustment is in effect.

(3) Local exchange carriers specified in § 61.41(a)(2) or (a)(3) of this part shall, in their annual access tariff filing, recognize all exogenous cost changes attributable to modifications during the coming tariff year in the obligations specified in § 61.45(d)(1)(IV) as well as those changes attributable to alterations in their Subscriber Plant Factor and the Dial Equipment Minutes factor, and completions of inside wire amortizations and reserve deficiency amortizations.

* * * * *

3. Section 61.48 is amended by redesignating paragraph (d) as paragraph (d)(1), and adding new paragraph (d)(2) to read as follows:

§ 61.48 Transition rules for price cap formula calculations.

* * * * *

(d) * * *

(2) Carriers electing price cap regulation under § 61.41(a)(3) of this part in a year after 1991 shall file initial price cap tariffs not later than April 2 of the year of election, to be effective on July 1 of the year of election. Each PCI, API, and SBI shall be assigned an initial value prior to adjustment of 100, corresponding to the costs and rates in effect as of January 1 of the year of election.

4. Section 61.49 is amended by redesignating paragraph (g) as paragraph (g)(1), revising the last sentence of paragraph (g)(1), and adding new paragraph (g)(2) to read as follows:

§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.

* * * * *

(g)(1) * * * Each carrier making such a tariff filing must, at the time the new service is incorporated into the price cap index, submit data sufficient to make the API and PCI calculations required by §§ 61.46(b) and 61.44(c) of this part, and, as necessary, to make the SBI calculations provided in § 61.47 (b) or (c) of this part.

(2) In addition to the requirements of § 61.49(g)(1), each tariff filing submitted by a local exchange carrier specified in § 61.41(a) (2) or (3) of this part that introduces a new service that will later be included in a basket must be accompanied by cost data sufficient to establish that the new service will not recover more than a just and reasonable portion of the carrier's overhead costs.

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

5. The authority citation for part 65 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

6. Section 65.600 is amended by revising paragraph (d) to read as follows:

§ 65.600 Rate of return reports.

* * * * *

(d)(1) Each local exchange carrier or group of affiliated carriers subject to §§ 61.41 through 61.49 of this chapter shall file with the Commission within three (3) months after the end of each calendar year a report of its total interstate rate of return for that year. Such filings shall include a report of the total revenues, total expenses and taxes, operating income, and the rate base. Reports shall be filed on the appropriate form prescribed by the Commission (see § 1.795 of this chapter) and shall provide full and specific answers to all questions propounded and information requested in the currently effective form. The number of copies to be filed shall be specified in the applicable report form. At least one copy of the report shall be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection.

(2) Each local exchange carrier or group of affiliated carriers subject to §§ 61.41 through 61.49 of this chapter shall file with the Commission within fifteen (15) months after the end of each calender year a report reflecting any corrections or modifications to the report filed pursuant to paragraph (d)(1) of this section. Reports shall be filed on

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the appropriate form prescribed by the Commission (see § 1.796 of this chapter) and shall provide full and specific answers to all questions propounded and information requested in the currently effective form. The number of copies to be filed shall be specified in the applicable report form. At least one copy of the report shall be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection.

§ 65.703 [Amended]

7. Section 65.703 is amended by removing paragraph (h).

PART 69—ACCESS CHARGES

8. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

9. Section 69.105 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 69.105 Carrier common line.

* * * * *

(b) * * *

(2) For association Carrier Common Line tariff participants:

(i) The premium originating Carrier Common Line charge shall be one cent per minute, except as described in § 69.105(b)(3), and

(ii) The premium terminating Carrier Common Line charge shall be computed as follows:

(A) For each telephone company subject to price cap regulation, multiply the company's proposed premium originating rate by a number equal to the sum of the premium originating base period minutes and a number equal to 0.45 multiplied by the non-premium originating base period minutes of that telephone company;

(B) For each telephone company subject to price cap regulation, multiply the company's proposed premium terminating rate by a number equal to the sum of the premium terminating base period minutes and a number equal to 0.45 multiplied by the non-premium terminating base period minutes of that telephone company;

(C) Sum the numbers computed in paragraphs (b)(2)(ii) (A) and (B) of this section for all companies subject to price cap regulation;

(D) From the number computed in paragraph (b)(2)(ii)(C) of this section, subtract a number equal to one cent times the sum of the premium originating base period minutes and a number equal to 0.45 multiplied by the non-premium originating base period minutes of all telephone companies subject to price cap regulation, and;

(E) Divide the number computed in paragraph (b)(2)(ii)(D) of this section by the sum of the premium terminating base period minutes and a number equal to 0.45 multiplied by the non-premium terminating base period minutes of all telephone companies subject to price cap regulation.

(3) If the calculations described in § 69.105(b)(2) result in a per minute charge on premium terminating minutes that is less than once cent, both the originating and terminating premium charges for the association CCL tariff participants shall be computed by dividing the number computed in paragraph (b)(2)(ii)(C) of this section by a number equal to the sum of the premium originating and terminating base period minutes and a number equal to 0.45 multiplied by the sum of the non-premium originating and terminating base period minutes of all telephone companies subject to price cap regulation.

* * * * *

Statement of Commissioner Ervin S. Duggan Concurring in Part, Dissenting in Part

In Re: Policy and Rules Concerning Rates for Dominant Carriers (CC Docket No. 87-313), Order on Reconsideration

Last September, I dissented on one small part of our initial order adopting price caps for local exchange telephone companies. I had reservations about the common line formula that the majority chose—and because the Commission today chooses not to reconsider its choice of a common line formula, I will again dissent on that portion. As I said in my September statement, I question that formula because it gives the companies, rather than ratepayers, the full benefit of growth in demand over common lines. The formula could result in carrier common line rates under price caps that are higher than they would have been under rate of return regulation.

Today, however, I want to emphasize my support for this new endeavor, rather than any residual reservations I may have.

Today we launch a great undertaking: we reaffirm the adoption of price caps for local exchange telephone companies. Thus this Commission enters into a hopeful and promising partnership with the telephone companies—a partnership that I have every reason to believe will bear fruit in greater innovation, greater efficiency, and greater investment in new technology.

By adopting incentive regulation, we have offered the local exchange companies a challenge—to perform in a way that they have never had the incentive to do before. I'm excited about the possibilities. Incentive regulation, in my judgment, has the potential to advance this industry and to fundamentally improve the way that telephone companies do business.

Some people, including me, have occasionally voiced concerns about this new venture. They ask, for example, whether telephone companies will maintain high service quality levels under price caps. Those are serious concerns. But one of the FCC's primary responsibilities is to ensure that the high quality phone service we take for granted continues. Undeniably, price caps will provide incentives to cut costs. We need to be sure that cost-cutting measures do not cut into service quality or network investment—and we will do that. That is why we have asked the Common Carrier Bureau to determine what data we will need to monitor service quality and investment and to ensure that no degradation occurs.

Three items in particular seem worthy to me of comment as that monitoring proceeding goes forward.

First, it appears to me that we would benefit from receiving data that is broken down by service category and by geographic area. That would help the Commission learn whether cost-cutting measures under price caps were disproportionately affecting rural areas or services that face little competition.

Second, I hope parties will comment on the proposal that carriers should include service quality standards or goals in their tariffs. One benefit of having standards in the tariffs would be to enable customers and the Commission to measure a company's service quality against that of other carriers and against general industry performance. I wonder whether this might be a useful approach.

Third, all of us will watch with great interest, hoping that price caps does indeed provide incentives for investment in important technologies like signalling system 7.

Our monitoring of service quality and network investment is part of our responsibility to ensure that the incentives we have created are working as we have hoped. We have something else going for us: These companies have given the public the best telephone service in the world. They have a great tradition. Today we have every reason to believe that that tradition and these new incentives will work together to create a great new future for these companies and for American consumers.

[FR Doc. 91-11151 Filed 5-9-91; 8:45]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91-22; Notice 1]

Federal Motor Vehicle Safety Standards: Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Final rule; technical amendment.

SUMMARY: The most recent edition of title 49 of the Code of Federal Regulations contains errors with respect to NHTSA's air brake systems standard. This notice corrects those errors, so that the replacement for this edition of the Code of Federal Regulations will be accurate. No new obligations or duties are imposed on any party as a result of these corrections, since they merely incorporate the provisions as intended by the agency.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin L. Shaw, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366-2992.

SUPPLEMENTARY INFORMATION: It has come to this agency's attention that the most recent edition of title 49 of the Code of Federal Regulations (CFR), revised as of October 1, 1990, contains errors with respect to Standard No. 121, *Air brake systems.* (49 CFR 571.121.) It appears that certain amendments published in the **Federal Register** have not been properly incorporated into the CFR. This notice makes the following changes to correct this error.

First, what appears in the current CFR as the second sentence of S5.6 was actually an amendment to S6, as published at 43 FR 48648 (October 19, 1978). This correction notice moves this sentence to its proper place at the end of the text in S6 and deletes the sentence in S5.6. Second, the current CFR does not contain section S5.6.4, despite an amendment in 41 FR 29704 (July 19, 1976) which included this provision. Third, the current CFR does not include S6.1.10.1, despite an amendment correcting the standard to add this provision in 41 FR 32221 (August 2, 1976).

This amendment imposes no duties or responsibilities on any party, nor does it alter any existing obligations. Instead this amendment will ensure that the public will have a correct copy of Standard No. 121 in title 49 of the Code of Federal Regulations. Accordingly, NHTSA finds for good cause that notice and opportunity for comment on this rulemaking is unnecessary. In addition, because the amendments are technical in nature, the agency finds for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest, and the amendment is effective 30 days after publication in the **Federal Register**.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. In § 571.121, Standard No. 121, section S5.6 is revised to read as follows:

* * * * *

S5.6 *Parking brake system.* Each vehicle other than a trailer converter dolly shall have a parking brake system that under the conditions of S6.1 meets the requirements of S5.6.1 or S5.6.2, at the manufacturer's option, and the requirements of S5.6.3 and S5.6.4. However, any agricultural commodity trailer, heavy hauler trailer, or pulpwood trailer shall meet the requirements of this section or, at the option of the manufacturer, the requirements of § 393.43 of this title.

* * * * *

3. In § 571.121, Standard No. 121 is amended by adding S5.6.4 after S5.6.3.5 as follows:

* * * * *

S5.6.4 *Parking brake control—trucks and buses.* The parking brake control shall be separate from the service brake control. It shall be operable by a person seated in the normal driving position. The control shall be identified in a manner that specifies the method of control operation. The parking brake control shall control the parking brakes of the vehicle and of any air braked vehicle that it is designed to tow.

* * * * *

4. In § 571.121, Standard No. 121, section S6 is revised to read as follows:

* * * * *

S6 *Conditions.* The requirements of S5 shall be met by a vehicle when it is tested according to the conditions set forth below, without replacing any brake system part or making any adjustments to the brake system except as specified. Unless otherwise specified, where a range of conditions is specified, the vehicle must be capable of meeting the requirements at all points within the range. On vehicles equipped with automatic brake adjusters, the automatic brake adjusters must remain activated at all times. Compliance of vehicles manufactured in two or more stages may, at the option of the final-stage manufacturer, be demonstrated to comply with this standard by adherence to the instructions of the incomplete vehicle manufacturer provided with the vehicle in accordance with § 568.4(a)(7)(ii) and § 568.5 of title 49 of the Code of Federal Regulations.

* * * * *

5. In § 571.121, Standard No. 121 is revised by adding S6.1.10.1, as follows:

* * * * *

S6.1.10.1 The control trailer conforms to this standard.

* * * * *

Issued on: May 7, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-11176 Filed 5-9-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 900633-1095]

RIN 0648-AD18

Groundfish of the Gulf of Alaska, Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NOAA issues an interim final rule to implement revised Amendment 16 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea/Aleutian Islands (BSAI) and revised Amendment 21 to the FMP for the Gulf of Alaska (GOA) Groundfish Fishery. The interim final rule is effective immediately upon filing with the Office of the Federal Register. The public will have 30 days to comment on the interim rule. NOAA will respond to the comments received and issue a final rule.

These regulations will enhance prohibited species bycatch management in the BSAI and GOA by: (1) Holding operators of individual trawl vessels accountable for their bycatch of halibut and red king crab during their participation in specified groundfish fisheries, and (2) clarifying and revising fishery closures which are triggered by the attainment of prohibited species bycatch allowances specified for the "Domestic Annual Processing (DAP) other fishery" under 50 CFR 675.21. This action is deemed necessary to promote

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management and conservation of groundfish and other fish resources. It is intended to further the goals and objectives included in the FMPs that govern these fisheries.

DATES: Effective May 6, 1991. Comments on the interim final rule are invited through June 5, 1991.

ADDRESSES: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) prepared for revised Amendments 16 and 21 may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson (Fisheries Management Division, Alaska Region, NMFS) 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the GOA and BSAI areas are managed by the Secretary of Commerce (Secretary) according to FMPs prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fisheries at 50 CFR part 611 and for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fishery are found at 50 CFR part 620.

In the trawl, hook-and-line, and pot groundfish fisheries, incidental (bycatch) species, including crab, halibut, herring, and salmon are taken along with targeted groundfish species. Conflicts arise when bycatch in one fishery reduces the amount of a species available for harvest in another fishery. The bycatch problem also is a particularly contentious allocation issue because crab, halibut, herring, or salmon fishermen value the use of these species very differently than groundfish fishermen. During 1990, the Council adopted management measures to limit crab, halibut, and herring bycatch in the groundfish fisheries. During 1991, the Council is expected to consider additional bycatch management measures, including those to limit salmon bycatch.

At its June 25-30, 1990, meeting, the Council adopted Amendments 16 and 21 for submission to the Secretary for review and approval. The Amendments included authorization of a bycatch incentive program. The proposed rule to implement the Amendments contained several bycatch management measures, including a program to encourage individual groundfish vessel operators to avoid excessive bycatch rates of prohibited species (55 FR 38347, September 18, 1990). The Council anticipated that this "vessel incentive program," commonly referred to as the "penalty box" program, would reduce overall prohibited species bycatch rates within the BSAI and GOA groundfish fisheries. On November 9, 1990, the Secretary approved the management measures in Amendments 16 and 21, except for the penalty box program as described in §§ 672.26 and 675.26 of the proposed rule. The reasons for the denial are set forth in the final rule implementing the approved portions of Amendments 16 and 21 (56 FR 2700, January 24, 1991).

Based on the partial disapproval of Amendments 16 and 21, the Director, NMFS, Alaska Region (Regional Director), notified the Council that the penalty box program, as proposed under the Amendments, could not be implemented. Under section 304(b)(2) of the Magnuson Act, the Regional Director also recommended actions the Council could take to develop a vessel incentive program that would conform with applicable legal requirements.

Based on the Regional Director's recommendations, the Council adopted a revised vessel incentive program during a November 15, 1990, teleconference meeting to resubmit to the Secretary for review and approval under section 304(b)(3) of the Magnuson Act. Proposed regulations were published on January 16, 1991 (56 FR 1612), and comments were invited until January 31, 1991. Comments received are summarized and responded to in the "Public comments received" section.

On February 1, 1991, the Secretary approved revised Amendments 16 and 21 that would authorize an incentive program to reduce prohibited species bycatch. This interim final rule implements the revised Amendments by holding individual vessel operators and owners accountable for their bycatch of halibut and red king crab during their participation in specified groundfish fisheries. The following describes specific changes between the proposed rule and the interim final rule, the purpose of the vessel incentive program, and the specific elements of the vessel incentive program set forth in the final rule. The following also addresses clarifications and revisions to fishery closures under § 675.21(c)(2).

Changes Between the Proposed Rule and the Interim Final Rule

The interim final rule makes three substantive changes in the proposed rule. First, the interim final rule deletes proposed revisions to the BSAI fishery definitions set forth in § 675.21(b)(4) for purposes of monitoring prohibited species catch (PSC) limits and adds fishery definitions proposed for the fisheries included in the incentive program in a new § 675.26(b). The original intent of NMFS in proposing revisions to fishery definitions under § 675.21(b)(4) was to establish one set of fishery definitions for monitoring PSC limits and the incentive program. NMFS subsequently determined that the proposed fishery definitions did not allow for proper accounting of fishery bycatch allowances under § 675.21, and that such accounting would be accomplished more appropriately under the existing fishery definitions which are based on retained catch composition. The fishery definitions for the incentive program are based on total groundfish catch composition. They are moved from § 675.21(b)(4) to a new § 675.26(b). Furthermore, new § 675.26(b) includes only fishery definitions necessary to delineate the Pacific cod and flatfish fisheries that will be monitored under the incentive program.

Second, the interim final rule revises regulations at § 672.26(d) and § 675.26(d) to require that observers use random sampling procedures to sample hauls and to incorporate technical editorial changes. Although the methodology currently employed by NMFS is the best available for calculating vessel bycatch rates for the purposes of the incentive program, the interim final rule provides NMFS with flexibility to modify the methodology to incorporate new developments in the collection of larger sample sizes and computation of total catch weights.

Third, the interim final rule differs from the proposed rule by clarifying fishery closures under § 675.21(c)(2) to more closely conform this section with the intent of the regulations to limit the catch of prohibited species. This provision is discussed further under "Revision of fishery closures under § 675.21(c)(2)."

Justification for a Vessel Incentive Program

A vessel incentive program is necessary to encourage vessel operators to take actions while fishing that result in lower bycatch rates and better conservation and management of marine resources among competing users. Directed fishing for groundfish results in incidental fishing mortality of crab, halibut, and other prohibited species. The incidental take of crab and halibut is one of several competing uses of these resources. Crab and halibut also may be used as current or future target catch in their respective fisheries, or may contribute to the productivity of the crab and halibut stocks or the productivity of other components of the ecosystem. However, their uses, other than as incidental catch require that the crab and halibut remain in the sea.

Existing regulations at §§ 675.21 and 672.20(f) establish PSC limits to control the bycatch of crab and halibut in the groundfish trawl fisheries in the BSAI and halibut in the groundfish trawl, hook-and-line, and pot fisheries in the GOA. In 1990, the PSC limits resulted in the closures of specified trawl and hook-and-line fisheries and reductions in groundfish catch that imposed costs on entities that could have benefited from continued fishing in fisheries that would have otherwise remained open.

Problems facing the groundfish fisheries that are intended to be addressed by the vessel incentive program are: (1) No incentive exists for vessel operators to change fishing practices to reduce bycatch, and (2) the actions of a few operations, that fish in a manner that results in higher bycatch rates, can impose substantial costs on the rest of the fleet.

For a given PSC limit, or apportionment thereof, the amount of groundfish that can be harvested prior to a PSC-limit-induced closure is determined by the average bycatch rate of the fishery. Therefore, a PSC limit should act as an incentive to fishermen to reduce bycatch rates. The increased opportunity to harvest groundfish, which results from reduced bycatch rates, benefits the groundfish fleet as a whole. Practically, individual operations often harvest groundfish rapidly and ignore bycatch to meet directed catch expectations of the individual vessels before the fishery is closed.

This operating procedure results in bycatch rates that are unnecessarily high and that, in turn, cause the industry to reach PSC limits more quickly. A much higher cost on the fishery is imposed through foregone opportunity to harvest available groundfish than if the rate at which PSC limits are reached were reduced. A fishing operation that concentrates on keeping its bycatch rate low bears the costs of doing so in terms of decreased catch and increased operating costs to fish "cleaner." Currently, the operation does not receive benefits proportional to its reduction of bycatch or the costs it incurs to fish "cleaner." An operation that does not act to control its bycatch rates will not bear such costs. Also, it will not likely share the cost of the foregone opportunities it imposes on the fishery as a whole by contributing to premature closures. Indeed, such an operation may receive a disproportionately large share of the benefit of actions taken by others to reduce the fishery's average bycatch rate.

The vessel incentive program implemented by this interim final rule is intended to decrease the costs in terms of foregone opportunity that the PSC limits could impose on the trawl fisheries and to establish a comprehensive, effective, equitable, and efficient long-term bycatch management regime. The revised vessel incentive program differs from the penalty box program in three respects: (1) It will be applied to fewer BSAI and GOA fisheries having new target fishery definitions; (2) it will be based on seasonal fixed bycatch rate standards; and (3) it will rely upon civil penalties, civil forfeitures, and permit sanctions authorized under sections 307-310 of the Magnuson Act that could be assessed against those found in violation of the bycatch rate standards.

Description of the Vessel Incentive Program Under Regulations Implementing Revised Amendments 16 and 21

1. Scope of the Vessel Incentive Program

The revised incentive program applies to: (1) Halibut bycatch in the BSAI and GOA Pacific cod trawl fisheries, the BSAI flatfish fisheries, and the GOA "bottom rockfish" trawl fishery; and (2) red king crab bycatch in the BSAI flatfish fisheries in Zone 1, as defined in § 675.2. All catcher/processor vessels and catcher vessels (including those that deliver unsorted codends to mothership processors) participating in these fisheries and for which observer data are collected will participate in the incentive program.

The Council selected the Pacific cod, bottom rockfish, and flatfish trawl fisheries for inclusion under the revised vessel incentive program. These fisheries were selected because (1) NMFS has operational and administrative ability to monitor and enforce a vessel incentive program only for a limited number of fisheries in 1991, (2) NMFS and the groundfish industry have identified these fisheries as having higher halibut or crab bycatch rates than other groundfish fisheries, (3) they are the fisheries most susceptible to premature fishery closures under existing PSC limit restrictions, and (4) reduced bycatch rates in these fisheries will provide the greatest benefit to other groundfish trawl fisheries in terms of increased opportunity to harvest groundfish under shared bycatch allowances

2. Fishery Definitions

Under the interim final rule, fishery definitions for the BSAI and GOA groundfish trawl fisheries are set forth for purposes of determining whether a vessel will be held accountable for its weekly bycatch rate of crab and halibut under the incentive program. The fishery definitions for purposes of the incentive program are based on the species composition of a vessel's total groundfish catch. These definitions differ from those set forth under § 675.21(b)(4) which are based on the species composition of retained catch and are used for the purpose of monitoring PSC limits.

The analysis from which the incentive program fishery definitions are derived is set forth in the EA/RIR/FRFA prepared for the revised Amendments 16 and 21. The analysis is based on at-sea observer data on groundfish catch composition and corresponding prohibited species bycatch rates collected from the 1990 DAP fisheries. The hierarchy of fishery categories set forth below for the BSAI and the GOA fishery definitions are based upon NMFS' examination of historical observer data on groundfish catch composition and how closely a fishery's groundfish catch composition reflected intended target operations. For purposes of the incentive program, data on the species composition of a vessel's groundfish catch during any weekly reporting period will be derived from observer data collected from observed catch of allocated groundfish species.

BSAI fisheries. At the end of each weekly reporting period, a trawl vessel's BSAI catch composition of groundfish for which a total allowable catch (TAC) has been specified under § 675.20 will be used by NMFS to assign it to one of four fisheries for that week. The following four categories are listed in priority. The first of these categories which the vessel meets will determine the fishery to which the vessel is assigned.

1. Greenland turbot fishery, if Greenland turbot is at least 35 percent of the vessel's allocated groundfish catch.

2. Pacific cod fishery, if Pacific cod is at least 45 percent of the vessel's allocated groundfish catch.

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3. Flatfish fishery, if yellowfin sole, rock sole, and other flatfish comprise at least 40 percent of the vessel's allocated groundfish catch.

4. Other non-pelagic trawl fishery, if pollock is less than 95 percent of the vessel's allocated groundfish catch.

In the BSAI, a vessel would be subject to the vessel incentive program if NMFS assigns it to the Pacific cod or the flatfish fishery based on the vessel's weekly observed catch composition. Although neither the Greenland turbot fishery nor the "other non-pelagic trawl fishery" are included under the vessel incentive program, definitions for these fisheries are specified to clarify the hierarchy used to define the Pacific cod and flatfish fisheries.

GOA fisheries. Under the interim final rule, a trawl vessel's observed GOA groundfish catch of the TAC species each week, excluding arrowtooth flounder, will be used as a basis for assigning it to one of three fisheries for that week. Arrowtooth flounder is excluded because, although this species may comprise a large percentage of groundfish catch, it typically is not retained. The first of the following three categories that a vessel meets will determine the fishery to which the vessel is assigned by NMFS.

1. Pacific cod fishery, if Pacific cod is at least 45 percent of the vessel's allocated groundfish catch.

2. Bottom rockfish fishery, if rockfish (Pacific Ocean perch, shortraker/rougheye rockfish, slope rockfish, demersal shelf rockfish, and thornyhead rockfish, in the aggregate) is at least 30 percent of the vessel's allocated groundfish catch.

3. Other non-pelagic trawl fishery, if pollock is less than 95 percent of the vessel's groundfish catch.

A vessel would be subject to the vessel incentive program if it is assigned to either the Pacific cod fishery or the rockfish fishery.

3. Bycatch Rate Standards

Under the vessel incentive program, NOAA will establish a bycatch rate standard for each fishery monitored under the incentive program. Any vessel whose monthly bycatch rate exceeds a bycatch rate standard is in violation of these regulations.

Red king crab and halibut bycatch rate standards for vessels in the Pacific cod, rockfish, and flatfish trawl fisheries will be determined by NMFS on the basis of seasonal fixed bycatch rates that will be established semi-annually. NMFS will use seasonal bycatch rate standards to adjust for fluctuations in the factors that affect bycatch rates. The standards will be based on criteria listed below including observed average bycatch rates.

The halibut bycatch rate standards will be based on average bycatch rates observed in the BSAI or GOA. Halibut bycatch rate standards are established separately for each of the BSAI Pacific cod, BSAI flatfish, GAO Pacific cod, and GOA bottom rockfish fisheries.

The red king crab bycatch rate standards established for the BSAI flatfish fisheries will be based on bycatch rates observed in Zone 1. Compliance with red king crab bycatch rates standards will be monitored only for Zone 1.

Vessel owners will be provided notice of the bycatch rate standards against which they will be judged. Prior to January 1 and July 1 of each year, bycatch rate standards will be published by NMFS in the **Federal Register**. These standards will be in effect for specified seasons within the 6-month periods of January 1 through June 30 and July 1 through December 31, respectively. Inseason revisions to those bycatch rate standards may be made when deemed appropriate by the Regional Director through notice in the **Federal Register**. The bycatch rate standards for a fishery and revisions to those standards will be based on previous bycatch rates and other relevant criteria, including:

(A) Previous years' average observed bycatch rates for the fishery;

(B) Immediately preceding season's average observed bycatch rates for the fishery;

(C) The prohibited species bycatch allowances and associated fishery closures specified for the fishery;

(D) Anticipated groundfish harvests for that fishery;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Director.

The analysis presented in the EA/RIR/FRFA used bycatch rate standards equal to the average bycatch rate exhibited by vessels with the lowest bycatch rates in the GOA and BSAI. These vessels accounted for approximately 80 percent of the catch in the 1990 DAP trawl fisheries for Pacific cod, rockfish, and flatfish. For the GOA analysis, halibut bycatch rates were determined based on allocated groundfish catch excluding arrowtooth flounder.

At its December 3–7, 1990, meeting, the Council recommended alternative bycatch rate standards based on 1990 average quarterly bycatch rates exhibited by all vessels that participated in these fisheries. If a fishery had not operated during a quarter, the Council recommended using historical joint venture processing bycatch rates for that quarter. The Council also recommended that GOA bycatch rate standards for the Pacific cod trawl fishery be based on average bycatch rates observed in the Central Regulatory Area rather than in the GOA as a whole. The Council recognized that bycatch rates of halibut in the Central Regulatory Area are typically higher than in other areas of the GOA. A bycatch rate standard based on a GOA-wide average would be too conservative for the Pacific cod fishery in the Central Regulatory Area. These standards are set forth in Table 1.

Council recommendations for bycatch rate standards are generally higher than those analyzed in the EA/RIR/FRFA. However, the Council expressed its view that its recommended rates would meet the intent of the Council to reduce overall bycatch rates during the first year of a vessel incentive program.

The Secretary concurs in the Council's recommendation to exclude arrowtooth flounder when assigning a vessel to a fishery based upon its weekly GOA groundfish catch, because bycatch amounts of arrowtooth flounder continue to comprise a relatively large percentage of the catch in other directed groundfish fisheries. The Secretary is aware that some groundfish processors have expressed an interest in processing amounts of arrowtooth flounder caught as bycatch in other directed groundfish fisheries. The Secretary has determined, therefore, that contrary to the bycatch rate standards analyzed in the EA/RIR/FRFA, NMFS will include arrowtooth flounder when estimating bycatch rates for vessels participating in the GOA Pacific cod and bottom rockfish fisheries. This determination could result in lower estimates of bycatch rates for vessels that operate in directed fisheries with large bycatch amounts of arrowtooth flounder.

The Secretary has determined that neither the considerations for arrowtooth flounder bycatch in the GOA trawl fisheries discussed above, nor the bycatch rate standards recommended by the Council undermine the intent of the incentive program to reduce prohibited species bycatch rates. The Secretary also recognizes that experience obtained under the 1991 program could be used to refine bycatch management measures and associated bycatch rate standards under subsequent rulemaking. The Secretary, therefore, concurs in the Council's recommended bycatch rate standards.

TABLE 1.—BYCATCH RATE STANDARDS FOR THE 1991 VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA BY FISHERY AND QUARTER

Fishery and quarter	1991 bycatch standard
Halibut bycatch as kg of halibut/mt of allocated groundfish catch	
BSAI Pacific cod	
Qt 1	13.5
Qt 2	16.5
BSAI flatfish	
Qt 1	13.1
Qt 2	3.0
GOA rockfish	
Qt 1—2	40.0
GOA Pacific cod	
Qt 1	33.1
Qt 2	41.3
Zone 1 red king crab bycatch rates (number of crab/mt of allocated groundfish)	
BSAI flatfish	
Qt 1	2.66
Qt 2	1.50

4. Observer Sampling Procedures

For the purposes of the incentive program, fisheries observers will sample in a random manner catches taken by domestic fishing vessels to determine compliance with bycatch rate standards specified for the fishery. The sampling methods used by observers and the level of sampling that can be accomplished by an observer are limited by the physical characteristics of the variety of vessels involved in the groundfish fisheries and the diversity of processing and operational procedures used aboard those vessels. NMFS believes the random sampling methods established for observers are practical and reasonable, given such constraints and the intent to cause minimal disruption of fishing and processing operations. NMFS further believes the random sampling procedures will reasonably reflect a vessel's total catch composition of groundfish and prohibited species.

NMFS Observer Program guidelines will require observers to follow standardized procedures to sample the catch to obtain the necessary data for the incentive program. These procedures require an observer to sample at random at least 50 percent of a vessel's total number of trawl hauls retrieved while the observer is on board, as recorded in the vessel's daily logbook (which is required to be kept under §§ 672.5 and 675.5). Observers will take a minimum of 100 kilograms of fish from each haul sampled to estimate the species composition and prohibited species bycatch rates. Haul samples will be taken from different parts of the net, holding bins, or conveyor belts. Samples will be taken prior to sorting of the haul by the crew for processing or discarding of the catch. NMFS believes these sampling procedures adequately take into consideration any possible stratification of species that may occur within the catch.

It is a violation of 50 CFR parts 672.27 and 675.25 for any member of the crew of a vessel or processing plant to interfere with or bias the sampling procedure employed by an observer, including by sorting or discarding any catch before sampling. It also is a violation of these regulations to prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance an observer from collecting samples.

5. Calculations of Vessel Bycatch Rates

While an observer is at sea, the observer will report to NMFS on at least a weekly basis the total number of red king crab, total weight in kilograms of halibut, and total weight in metric tons of each allocated groundfish species in all of the samples taken by the observer from each trawl haul. Based on statistical methodologies set forth in incentive program guidelines, NMFS will calculate a vessel's bycatch rate for each fishery in which it participates during a month. Those calculations will be derived using the total round weight in kilograms of halibut or number of red king crab observed in haul samples taken by the observer during that month and the total round weight in metric tons of allocated groundfish in those samples. Upon request, the observer will give the vessel operator access to the data the observer collects while on board the vessel that will be used by NMFS to estimate the vessel's bycatch rate. The vessel operator, therefore, will be able to monitor the vessel's bycatch rate.

6. Determinations

At the end of each fishing month, NMFS will use observed data that has been checked, verified, and analyzed, to calculate the monthly bycatch rates of red king crab and/or halibut for each vessel during the periods it was assigned to each of the BSAI flatfish fishery, the BSAI/GOA Pacific cod fisheries, or the GOA bottom rockfish fishery during that month. Each calculated monthly bycatch rate will be compared with the corresponding fixed bycatch rate standard specified for each of those fisheries to which the vessel was assigned. A bycatch rate for a fishing month that is above the applicable bycatch rate standard constitutes a violation of the regulations implementing the vessel incentive program. Any such case will be referred for review to NOAA Office of General Counsel, the office responsible for bringing civil penalty and other legal proceedings.

For purposes of the vessel incentive program, a "fishing month" is defined as a time period calculated on the basis of weekly reporting periods. Each fishing month will begin on the first day of the first weekly reporting period that has at least 4 days in the associated calendar month and will end on the last day of the last weekly reporting period that has at least 4 days in that same calendar month. Based on this definition, the 1991 fishing months are specified as the following periods:

Month 1: January 1 through February 3;
Month 2: February 4 through March 3;
Month 3: March 4 through March 31;
Month 4: April 1 through April 28;
Month 5: April 29 through June 2;
Month 6: June 3 through June 30;
Month 7: July 1 through July 28;
Month 8: July 29 through September 1;
Month 9: September 2 through September 29;
Month 10: September 30 through November 3;
Month 11: November 4 through December 1; and
Month 12: December 2 through December 31.

7. Public Release of Vessel Bycatch Rates

A rule is being proposed, as part of a separate action, to implement changes to the Observer Plan authorizing NMFS to publicize inseason unverified observed bycatch rates of individual vessels. If such authority is approved, NMFS could post unverified weekly observed bycatch rates that could be used by vessel operators as guidance for adjusting fishing operations to reduce bycatch rates. At a minimum NMFS would continue to release a vessel's unverified observed bycatch rate to the vessel's operator or owner. Whether NMFS exercises authority for public release of observed bycatch rates, inseason weekly rates available to the industry would continue to be based on unverified observer data and subject to revision as observers are debriefed and their data are analyzed.

Revision of fishery closures under § 675.21(c)(2)

Directed fishing closures resulting from the attainment of prohibited species bycatch allowances specified for the "DAP other fishery" under § 675.21(c)(2) are clarified based on the standards for directed fishing set forth under § 675.20(h). Furthermore, closures of the directed trawl fishery for Pacific cod with other than pelagic trawl gear under § 675.21(c)(2) are revised so that directed fishing for Pacific cod with all trawl gear configurations is prohibited

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once the "DAP other fishery" reaches a prohibited species bycatch allowance.

This action is necessary to prohibit Pacific cod fishermen from circumventing the intent of fishery closures under § 675.21 to reduce prohibited species bycatch once a fishery has reached a specified prohibited species bycatch allowance. The intent of the Council when it adopted fishery closures that prohibited the use of other than pelagic trawls was to curtail halibut and crab bycatch once the "DAP other fishery" reached a bycatch allowance. The Council's intent for these closures and for the definition of pelagic trawl gear to reduce prohibited species bycatch rates was analyzed in the EA/RIR/IRFA prepared for Amendments 16/21. However, once 1991 fishery closures were implemented, some vessel operators continued to fish for Pacific cod with pelagic trawl gear on or near the bottom in a manner that maintained commercial harvests of Pacific cod, as well as high bycatch rates of prohibited species. In recognition of the fact that fishermen will continue to use pelagic trawl gear on or near the bottom once a closure under § 675.21(c)(2) has been implemented, NMFS is redefining the closures of the Pacific cod fishery to prohibit directed fishing of Pacific cod by all trawl vessels in the applicable portions of the BSAI once the "DAP other fishery" has reached a prohibited species bycatch allowance.

The closure modification is implemented under this interim final rule because NMFS had not anticipated the Pacific cod fishery to fish with pelagic trawl gear. Immediate action must be taken to prevent further directed trawl fishing for Pacific cod after the prohibited species bycatch allowance has been attained. During 1991, fishing for Pacific cod with pelagic trawl gear once the "DAP other fishery" attained its first quarter halibut bycatch allowance resulted in continued high halibut bycatch rates. Furthermore, additional bycatch amounts of halibut caught with pelagic trawl gear were credited against the following season's bycatch allowance. This situation is expected to continue once the second quarter's bycatch allowance is reached. As a result, the Council's intent for seasonal apportionment of the halibut PSC limit is undermined, smaller amounts of halibut bycatch are available to Pacific cod fishermen who use traditional non-pelagic trawl gear, and earlier closures to the traditional trawl fishery are triggered. Moreover, without this action, the halibut PSC limit established for trawl gear in the FMP will be exceeded by a significant amount.

Public Comments Received

Five letters of comment were received on the proposed rule to implement the incentive program during the public comment period (January 31, 1991). They are summarized and responded to as follows:

Comment 1. The bycatch rate standard proposed for the BSAI flatfish fishery during the second quarter of 1991 (0.3 percent) should be evaluated to ensure the PSC cap for halibut is not exceeded, but does not impose undue hardship on the fleet. Specifically, the second quarter bycatch rate standards are especially harmful to factory trawlers, which will be entering the rock sole fishery after the closing of the first pollock season.

Response: The bycatch rate standards established for the first half of 1991 were based on average bycatch rates exhibited by the 1990 Pacific cod and flatfish fisheries and the 1988–1990 joint venture processing (JVP) flatfish fisheries. The bycatch rate standard specified for the second quarter flatfish fishery (0.3 percent) was recommended by the Council for the following reasons: (1) This rate approximates JVP bycatch rates in the flatfish fishery over the past three years; (2) the rock sole roe fishery typically concludes by April 1 when the reduced bycatch rate standard would be effective; and (3) the DAP yellowfin sole fishery exhibited, through voluntary industry efforts to control halibut bycatch, halibut bycatch rates that averaged less than 0.2 percent during the third and fourth quarters of 1990. Based on this information, the second quarter bycatch rate standards should not impose more hardship on factory trawlers relative to other trawl vessels operating in the flatfish fisheries.

Comment 2. Established bycatch rate standards should allow for maximum utilization of a fishery's TAC without exceeding its prohibited species bycatch allowance. Sanctions should be authorized only if vessel bycatch rates would lead to exhaustion of the prohibited species bycatch allowance prior to full utilization of the TAC.

Response: Vessels participating in the 1990 and 1991 groundfish trawl fisheries typically exhibit average bycatch rates that lead to exhaustion of prohibited species bycatch allowances prior to full utilization of groundfish quotas. The intent of the incentive program is to reduce vessel bycatch rates in specified trawl fisheries, not to establish bycatch rate standards that are so low as to place most vessels in jeopardy of violation. Therefore, the Regional Director, after consultation with the Council, has specified 1991 bycatch rate standards for the first half of 1991 that are based on average fishery bycatch rates. Each vessel is in violation if its estimated bycatch rate for a month exceeds a bycatch rate standard. The Secretary recognizes that the bycatch rate standards specified for 1991 do not ensure full utilization of groundfish TACs under existing prohibited species bycatch allowances. He also recognizes that trawl vessel owners and operators may be unduly burdened if lower bycatch rate standards were implemented during the first year of the incentive program. Therefore, he has concurred in the Council's recommended bycatch rate standards for the first half of 1991.

Vessel operators should become increasingly proficient at avoiding bycatch and reducing bycatch rates to a level that would allow for fuller harvest of groundfish TACs. The Regional Director will consider any new evidence on the ability of domestic vessels to avoid bycatch as he specifies seasonal bycatch rate standards or inseason adjustments to those standards.

Comment 3. When establishing PSC limits, the Secretary should evaluate the value of the various fisheries and should set limits to ensure the maximum value to the nation.

Response: This rulemaking does not address existing PSC limits. The Secretary considered the costs and benefits associated with the PSC limits and associated bycatch management measures under Amendments 16 and 21 to the groundfish FMPs (56 FR 2700, January 24, 1991).

Comment 4. The halibut bycatch rates for each vessel should be calculated from total catch weights rather than from sampled weights from the catch. The methodology of basing the calculation of vessel bycatch rates on only sample weights from total catch will result in biased and inaccurate bycatch rates on any time sample weights do not constitute a uniform percentage of total catch weight. Specifically, the methodology proposed to calculate vessel bycatch rates will consistently overestimate halibut bycatch in the Pacific cod fishery because large catches of cod usually have low halibut bycatch rates while much smaller catches of cod have higher halibut bycatch rates.

Response: Observers will use random sampling procedures that NMFS believes will result in data that will reasonably reflect a vessel's catch composition. NMFS will use the best procedures available to sample hauls for purposes of the incentive program and will work with industry to develop procedures that could allow for larger sample sizes and determinations of total catch weights.

Comment 5. The vagueness, lack of definition, and arbitrariness inherent in the proposed incentive program are unfair to conscientious vessel operators who make every effort to maintain low bycatch rates to the extent that groundfish production is reduced. Specifically, (1) application of the proposed incentive program is likely to vary widely from vessel to vessel, (2) the amount of which the standard bycatch rate could be exceeded before NOAA General Counsel would prosecute a violation appears to be quite discretionary, and (3) the criteria for assessing the extent of civil penalties is vague and undefined.

Response: (1) Regulations to implement the incentive program have been revised to provide for uniform procedures that will be applied in determining violations. Any vessel that participates in a fishery monitored under the incentive program is subject to prosecution if its bycatch rate for a month exceeds a bycatch rate standard. (2) NOAA General Counsel will evaluate the evidence in each case subject to prosecution that is referred to it, and will initiate legal proceedings whenever warranted. (3) Evidence of a violation will be based upon calculations of bycatch rates using a standard methodology set forth in NMFS incentive program guidelines that will be applied to all vessels participating in the fisheries monitored under the incentive program. Under section 308 of the Magnuson Act (16 U.S.C. 1858), any person who is determined, after opportunity for a hearing before an administrative law judge, to have violated regulations implementing the incentive program is subject to a civil penalty of up to $100,000 for each violation. In determining the amount of a penalty to assess for a violation under these regulations, the Secretary must apply the standard prescribed by section 308, which provides that the Secretary will consider the nature, circumstances, extent, and gravity of the prohibited acts committed, and, with respect to the violator, the degree of culpability and history of prior offenses, ability to pay, and such other matters as justice may require.

Comment 6. Although the proposed bycatch rate standards were based on the best available information, experience to date indicates that they are too low and NMFS should be prepared to use the proposed inseason authority to adjust those rates if a compelling case can be made.

Response: The Regional Director has the inseason authority to revise bycatch rate standards based on the criteria and information set forth in §§ 672.26(c) and 675.26(c) of this rule.

The Secretary finds that the procedures described above will reasonably satisfy requirements for determining compliance with the vessel incentive program and, therefore, implements this final rule.

Classification

Upon receipt of a revised amendment from a Council, section 304(b)(3)(B) of the Magnuson Act (16 U.S.C. 1854(b)(3)(B)), as amended by Public Law 99-659, requires the Secretary to immediately review the revised proposed regulations submitted by the Council and thereafter publish such revised proposed regulations that would implement the revised amendments. The Secretary has determined that revised Amendments 16 and 21 and the interim final rule that implements these Amendments are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

The Council prepared an EA for revised Amendments 16 and 21. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), found that no significant impact on the quality of the environment will occur as a result of this rule. A copy of the EA may be obtained from the Council (see ADDRESSES).

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/FRFA prepared by the Council. A copy of the RIR is available from the Council (see ADDRESSES).

The Assistant Administrator concludes that this rule will have significant effects on a substantial number of small entities. These effects have been discussed in the EA/RIR/FRFA, a copy of which may be obtained from the Council (see ADDRESSES).

This rule does not contain any new collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Since the appropriate State agency did not reply within the statutory time period, consistency is automatically inferred.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

This rule must be effective immediately to reduce high bycatch rates of halibut and red king crab that occur in fast-paced groundfish fisheries. Additionally, the closure modifications under § 675.21(c) are necessary to reduce prohibited species bycatch rates once prohibited species bycatch allowances are reached, allow for longer periods of fishing before directed fishing for Pacific cod with non-pelagic trawl gear is prohibited, and avoid exceeding the halibut PSC limit established for trawl gear by a significant amount. The Assistant Administrator finds that reasons justifying promulgation of this rule make it contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under sections 553 (b) and (d) of the Administrative Procedure Act. Additional comment on the interim final rule will be accepted for a period of 30 days after the effective date.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels.

Dated: May 6, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.7, a new paragraph (f) is added as follows:

§ 672.7 General prohibitions.

* * * * *

(f) Exceed a bycatch rate standard specified for a vessel under § 672.26.

3. A new § 672.26 is added as follows:

§ 672.26 Program to reduce prohibited species bycatch rates.

(a) *General.* (1) A vessel's bycatch rate, as calculated at the end of a fishing month under paragraph (d) of this section, while participating in the fisheries identified in paragraph (b) of this section, shall not exceed bycatch

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rate standards referenced in paragraph (c) of this section.

(2) *Definitions for purposes of this section*—(i) *Observed or observed data* refers to data collected by observers who are certified under the NMFS Observer Program authorized under § 672.27.

(ii) *Bycatch rate* refers to the ratio of the total round weight of halibut, in kilograms, to the total round weight, in metric tons, of groundfish for which a TAC has been specified under § 672.20 of this part while participating in the Pacific cod or bottom rockfish fisheries as defined in paragraph (b) of this section.

(iii) *Fishing month* refers to a time period calculated on the basis of weekly reporting periods as follows: each fishing month begins on the first day of the first weekly reporting period that has at least 4 days in the associated calendar month and ends on the last day of the last weekly reporting period that has at least 4 days in that same calendar month. Dates of each fishing month will be announced in the Federal Register notices published under paragraph (c)(2) of this section.

(b) *Fisheries.* A vessel will be subject to this section if the groundfish catch of the vessel is observed on board the vessel, or on board a mothership processor that receives unsorted codends from the vessel, at any time during a weekly reporting period; and the vessel is assigned under paragraph (d)(3)(i)(A) of this section to either the Pacific cod fishery or the bottom rockfish fishery defined in paragraphs (b) (1) and (2) of this section. During any weekly reporting period, a vessel's observed catch composition of groundfish species for which a TAC has been specified under § 672.20 of this part, excluding arrowtooth flounder, will determine the fishery to which the vessel is assigned, as follows:

(1) The *Pacific cod fishery* means trawl fishing that results in an observed groundfish catch during a weekly reporting period that is composed of 45 percent or more of Pacific cod;

(2) The *bottom rockfish fishery* means trawl fishing that does not qualify as a Pacific cod fishery under paragraph (b)(1) of this section and results in an observed groundfish catch during a weekly reporting period that is comprised of 30 percent or more of rockfish species of the genus *Sebastes* and *Sebastolobus* in the aggregate, except for the rockfish species that comprise the pelagic shelf rockfish category (*Sebastes melanops, S. mystinus, S. ciliatus, S. entomelas,* and *S. flavidus*);

(3) Other non-pelagic trawl fishery if pollock is less than 95 percent of the vessel's observed groundfish catch.

(c) *Bycatch rate standards*—(1) *Establishment of bycatch rate standards.* (i) Prior to January 1 and July 1 of each year, the Regional Director will publish a notice in the Federal Register specifying bycatch rate standards for the fisheries identified in paragraph (b) of this section that will be in effect for specified seasons within the 6-month periods of January 1 through June 30 and July 1 through December 31, respectively. Bycatch rate standards will remain in effect until revised by a notice in the Federal Register. The Regional Director may adjust bycatch rate standards as frequently as he considers appropriate.

(ii) Bycatch rate standards for a fishery and adjustments to such standards will be based on the following information and considerations:

(A) Previous years' average observed bycatch rates for that fishery;

(B) Immediately preceding season's average observed bycatch rates for that fishery;

(C) The bycatch allowances and associated fishery closures specified under § 672.20(f);

(D) Anticipated groundfish harvests for that fishery;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Director.

(2) *Procedure.* (i) Bycatch rate standards or adjustments to such standards specified under this section will not take effect until the Secretary has published the proposed bycatch rate standards or adjustments to such standards in the Federal Register for public comment for a period of 30 days unless the Secretary finds for good cause that such notice and public comment are impracticable, unnecessary, or contrary to the public interest.

(ii) If the Secretary decides, for good cause, that bycatch rate standards or adjustments to such standards are to be made effective without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, bycatch rate standards or adjustments to such standards will be received by the Regional Director for a period of 15 days after the effective date of the notice.

(iii) During any such 15-day period, the Regional Director will make available for public inspection, during business hours, the aggregate data upon which bycatch rate standards or adjustments to such standards were based.

(iv) If written comments are received during any such 15-day period that oppose or protest bycatch rate standards or adjustments to such standards issued under this section, the Secretary will reconsider the necessity for the bycatch Standards or adjustment to such standards and, as soon as practicable after that reconsideration, will either:

(A) Publish in the Federal Register a notice of continued effectiveness of bycatch rate standards or adjustment to such standards, responding to comments received; or

(B) Modify or rescind bycatch rate standards or adjustment to such standards.

(v) Notices of adjustments to bycatch rate standards issued by the Secretary under paragraph (c) of this section will include the following information:

(A) A description of the adjustment to one or more bycatch rate standards specified for a fishery;

(B) The reasons for the adjustment and the determinations required under paragraph (c)(1)(ii) of this section; and

(C) The effective date and any termination date of such adjustment. If no termination date is specified, the adjustment will remain in effect until revised by subsequent notice in the Federal Register under paragraph (c) of this section.

(d) *Vessel bycatch rates*—(1) *Observed data.* For purposes of this section, observed data collected for each haul sampled during a day will include the date, position (Federal reporting area) where trawl gear for the haul was retrieved, total round weight of groundfish, in metric tons, in the portion of the haul sampled by groundfish species or species group for which a TAC has been specified under § 672.20 of this part, and total round weight of halibut, in kilograms, in the portion of the haul sampled.

(2) *Observer sampling procedures.* (i) NMFS will randomly predetermine the hauls to be sampled by an observer during the time the observer is on a vessel.

(ii) An observer will:

(A) Take samples at random from throughout the haul, and

(B) Take samples prior to sorting of the haul by the crew for processing or discarding of the catch.

(iii) An observer will sample a minimum of 100 kilograms of fish from each haul sampled.

(iv) While an observer is at sea, the observer will report to NMFS, on at least a weekly basis, the data for sampled hauls set forth in paragraph (d)(1) of this section.

(v) Upon request, the observer will allow the vessel operator to see all observed data set forth under paragraph (d)(1) of this section that the observer submits to NMFS.

(3) *Determination of individual vessel bycatch rates*—(i) *Calculation of monthly bycatch rates.* (A) For each vessel, the Regional Director will aggregate from sampled hauls the observed data collected during a weekly reporting period on the total round weight, in metric tons, of each groundfish species or species group for which a TAC has been specified under § 672.20 of this part to determine to which of the fisheries described in paragraph (b) of this section the vessel should be assigned for that week.

(B) At the end of each fishing month during which an observer sampled at least 50 percent of a vessel's total number of trawl hauls retrieved while an observer was on board (as recorded in the vessel's daily logbook required under § 672.5 of this part), the Regional Director will calculate the vessel's bycatch rate based on observed data for each fishery described in paragraphs (b) (1) and (2) of this section to which the vessel was assigned for any weekly reporting period during that fishing month. Only observed data that has been checked, verified, and analyzed by NMFS will be used to calculate vessel bycatch rates for purposes of this section.

(C) The bycatch rate of a vessel for a fishery described under paragraph (b) (1) or (2) of this section during a fishing month is a ratio of halibut to groundfish that is calculated by using the total round weight of halibut (in kilograms) in samples during all weekly reporting periods in which the vessel was assigned to that fishery and the total round weight of the groundfish (in metric tons) for which a TAC has been specified under § 672.20 in samples taken during all such periods.

(ii) *Compliance with bycatch rate standards.* A vessel has exceeded a bycatch rate standard for a fishery if the vessel's bycatch rate for a fishing month, as calculated under paragraph (d)(3)(i)(C) of this section, exceeds the bycatch rate standard established for that fishery under paragraph (c) of this section.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. In § 675.7, a new paragraph (g) is added as follows:

§ 675.7 Prohibitions.

* * * * *

(g) Exceed a bycatch rate standard specified for a vessel under § 675.26.

6. In § 675.21, the section and paragraphs (c)(2)(i), (c)(2)(ii), (c)(2)(iii), and (c)(2)(iv) are revised to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

* * * * *

(c) * * *

(2) * * *

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC bycatch allowances or seasonal apportionments of bycatch allowances of red king crabs or *C. bairdi* in Zone 1 while participating in the "DAP other fishery" as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the Federal Register closing Zone 1 to directed fishing for:

(A) Pollock by trawl vessels using other than pelagic trawl gear for the remainder of the year or for the remainder of the fishing season; and

(B) Pacific cod by vessels using trawl gear for the remainder of the year or for the remainder of the fishing season.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC bycatch allowance or seasonal apportionment of the bycatch allowance of *C. bairdi* in Zone 2 while participating in the "DAP other fishery," the Secretary will publish a notice in the Federal Register closing Zone 2 to directed fishing for:

(A) Pollock by trawl vessels using other than pelagic trawl gear for the remainder of the year or for the remainder of the fishing season; and

(B) Pacific cod by vessels using trawl gear for the remainder of the year or for the remainder of the fishing season.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the primary PSC bycatch allowance or seasonal apportionment of the bycatch allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery," the Secretary will publish a notice in the Federal Register closing Zones 1 and 2H to directed fishing for:

(A) Pollock by trawl vessels using other than pelagic trawl gear for the remainder of the year or for the remainder of the fishing season; and

(B) Pacific cod by vessels using trawl gear for the remainder of the year or for the remainder of the fishing season.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the secondary PSC bycatch allowance or seasonal apportionment of the bycatch allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery," the Secretary will publish a notice in the Federal Register closing the Bering Sea and Aleutian Islands Management Area to directed fishing for:

(A) Pollock by trawl vessels using other than pelagic trawl gear for the remainder of the year or for the remainder of the fishing season; and

(B) Pacific cod by vessels using trawl gear for the remainder of the year or for the remainder of the fishing season.

* * * * *

7. A new § 675.26 is added as follows:

§ 675.26 Program to reduce prohibited species bycatch rates.

(a) *General.* (1) A vessel's bycatch rate, as calculated at the end of a fishing month under paragraph (d) of this section, while participating in the fisheries identified in paragraph (b) of this section, shall not exceed bycatch rate standards referenced in paragraph (c) of this section.

(2) *Definitions for purposes of this section*—(i) *Observed or observed data* refers to data collected by observers who are certified under the NMFS Observer Program authorized under § 675.25.

(ii) *Bycatch rate* refers to:

(A) The ratio of total round weight of halibut, in kilograms, to the total round weight, in metric tons, of groundfish for which a TAC has been specified under § 675.20 while participating in the Pacific cod or flatfish fisheries, as defined in paragraph (b) of this section; and

(B) The ratio of number of red king crab to the total round weight, in metric tons, of groundfish for which a TAC has been specified under § 675.20 while participating in the flatfish fishery, as defined in paragraph (b) of this section.

(iii) *Fishing month* refers to a time period calculated on the basis of weekly reporting periods as follows: each fishing month begins on the first day of the first weekly reporting period that has at least 4 days in the associated calendar month and ends on the last day of the last weekly reporting period that has at least 4 days in that same calendar month. Dates of each fishing month will be announced in the Federal Register

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notices published under paragraph (c)(2) of this section.

(b) *Fisheries.* A vessel will be subject to this section if the groundfish catch of the vessel is observed on board the vessel, or on board a mothership processor that receives unsorted codends from the vessel, at any time during a weekly reporting period; and the vessel is assigned under paragraph (d)(3) of this section to either the Pacific cod fishery or the flatfish fishery as defined in paragraphs (b)(2) and (b)(3) of this section. During any weekly reporting period, a vessel's observed catch composition of groundfish species for which a TAC has been specified under § 675.20 of this part will determine the fishery to which the vessel is assigned, as follows:

(1) The *Greenland turbot fishery* means fishing with trawl gear during any weekly reporting period that results in an observed catch of Greenland turbot that is 35 percent or more of the total amount of groundfish caught during the week;

(2) The *Pacific cod fishery* means fishing with trawl gear during any weekly reporting period that:

(A) Results in an observed catch of Pacific cod that is 45 percent or more of the total amount of groundfish caught during the week, and

(B) Does not qualify as a "Greenland turbot fishery";

(3) The *flatfish fishery* means fishing with trawl gear during any weekly reporting period that:

(A) Results in an observed catch of yellowfin sole, rock sole, and "other flatfish," in the aggregate, that is 40 percent or more of the total amount of groundfish caught during the week, and

(B) Does not qualify as a "Greenland turbot" or "Pacific cod" fishery;

(4) The *"other non-pelagic trawl fishery"* means fishing with trawl gear during any weekly reporting period that:

(A) Results in an observed catch of pollock that is less than 95 percent of the total amount of groundfish caught during the week, and

(B) Does not qualify as a "Greenland turbot," "Pacific cod," or "flatfish" fishery.

(c) *Bycatch rate standards*—(1) *Establishment of bycatch rate standards.* (i) Prior to January 1 and July 1 of each year, the Regional Director will publish a notice in the **Federal Register** specifying bycatch rate standards for the fisheries identified in paragraph (b) of this section that will be in effect for specified seasons within the 6-month periods of January 1 through June 30 and July 1 through December 31, respectively. Bycatch rate standards will remain in effect until revised by a notice in the **Federal Register**. The Regional Director may adjust bycatch rate standards as frequently as he considers appropriate.

(ii) Bycatch rate standards for a fishery and adjustments to such standards will be based on the following information and considerations:

(A) Previous years' average observed bycatch rates for that fishery;

(B) Immediately preceding season's average observed bycatch rates for that fishery;

(C) The bycatch allowances and associated fishery closures specified under § 675.21;

(D) Anticipated groundfish harvests for that fishery;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Director.

(2) *Procedure.* (i) Bycatch rate standards or adjustments to such standards specified under this section will not take effect until the Secretary has published the proposed bycatch rate standards or adjustments to such standards in the **Federal Register** for public comment for a period of 30 days unless the Secretary finds for good cause that such notice and public comment are impracticable, unnecessary, or contrary to the public interest.

(ii) If the Secretary decides, for good cause, that bycatch rate standards or adjustments to such standards are to be made effective without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, bycatch rate standards or adjustments to such standards will be received by the Regional Director for a period of 15 days after the effective date of the notice.

(iii) During any such 15-day period, the Regional Director will make available for public inspection, during business hours, the aggregate data upon which bycatch rate standards or adjustments to such standards were based.

(iv) If written comments are received during any such 15-day period that oppose or protest bycatch rate standards or adjustments to such standards issued under this section, the Secretary will reconsider the necessity for the bycatch rate standards or adjustment to such standards and, as soon as practicable after that reconsideration, will either:

(A) Publish in the **Federal Register** a notice of continued effectiveness of bycatch rate standards or adjustment to such standards, responding to comments received; or

(B) Modify or rescind bycatch rate standards or adjustment to such standards.

(v) Notices of adjustments to bycatch rate standards issued by the Secretary under paragraphs (c) of this section will include the following information:

(A) A description of the adjustment to one or more bycatch rate standards specified for a fishery;

(B) The reasons for the adjustment and the determinations required under paragraph (c)(1)(ii) of this section; and

(C) The effective date and any termination date of such adjustment. If no termination date is specified, the adjustment will remain in effect until revised by subsequent notice in the **Federal Register** under paragraph (c) of this section.

(d) *Vessel bycatch rates.*—(1) *Observed data.* For purposes of this section, observed data collected for each haul sampled during a day will include the date, position (Federal reporting area) where trawl gear for the haul was retrieved, total round weight of groundfish, in metric tons, in the portion of the haul sampled by groundfish species or species group for which a TAC has been specified under § 675.20 of this part, and total round weight of halibut, in kilograms, and total number of red king crab, in the portion of the haul sampled.

(2) *Observer sampling procedures.* (i) NMFS will randomly predetermine the hauls to be sampled by an observer during the time the observer is on a vessel.

(ii) An observer will:

(A) Take samples at random from throughout the haul, and

(B) Take samples prior to sorting of the haul by the crew for processing or discarding of the catch.

(iii) An observer will sample a minimum of 100 kilograms of fish from each haul sampled.

(iv) While an observer is at sea, the observer will report to NMFS, on at least a weekly basis, the data for sampled hauls set forth in paragraph (d)(1) of this section.

(v) Upon request, the observer will allow the vessel operator to see all observed data set forth under paragraph (d)(1) of this section that the observer submits to NMFS.

(3) *Determination of individual vessel bycatch rates.*—

(i) *Calculation of monthly bycatch rates.* (A) For each vessel, the Regional Director will aggregate from sampled hauls the observed data collected during a weekly reporting period on the total round weight, in metric tons, of each groundfish species or species group for

which a TAC has been specified under § 675.20 of this part to determine to which of the fisheries described in paragraph (b) of this section the vessel should be assigned for that week.

(B) At the end of each fishing month during which an observer sampled at least 50 percent of a vessel's total number of trawl hauls retrieved while an observer was on board (as recorded in the vessel's daily logbook required under § 675.5 of this part), the Regional Director will calculate the vessel's bycatch rate based on observer data for each fishery described in paragraphs (b)(2) and (3) of this section to which the vessel was assigned for any weekly reporting period during that fishing month. Only observed data that has been checked, verified, and analyzed by NMFS will be used to calculate vessel bycatch rates for purposes of this section.

(C) The bycatch rate of a vessel for a fishery described under paragraphs (b)(2) or (3) of this section during a fishing month is a ratio of halibut to groundfish that is calculated by using the total round weight of halibut (in kilograms), or total number of red king crab, in samples during all weekly reporting periods in which the vessel was assigned to that fishery and the total round weight of the groundfish (in metric tons) for which a TAC has been specified under § 675.20 in samples taken during all such periods.

(ii) *Compliance with bycatch rate standards.* A vessel has exceeded a bycatch rate standard for a fishery if the vessel's bycatch rate for a fishing month, as calculated under paragraph (d)(3)(i)(C) of this section, exceeds the bycatch rate standard established for that fishery under paragraph (c) of this section.

[FR Doc. 91-11110 Filed 5-6-91; 4:29 pm

BILLING CODE 3510-22-M

VOL 56 ISS 91 MY 10 1991 UMI

Proposed Rules

Federal Register
Vol. 56, No. 91
Friday, May 10, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1099

[DA-91-008]

Milk in the Paducah, Kentucky Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal that would suspend portions of the producer milk definition of the Paducah, Kentucky milk order for an indefinite period. The suspension would increase the amount of milk that may be shipped directly from the farm to nonpool plants and still be priced under the order. The suspension was requested by Dairymen, Inc. (DI), a cooperative association that represents producers who supply the market. DI contends that the suspension is necessary because of changed marketing conditions and to permit the efficient marketing of milk of dairy farmers who have historically supplied the market.

DATES: Comments are due on or before May 17, 1991.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6274.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Paducah, Kentucky marketing area is being considered for and indefinite period:

In § 1099.13(c)(3), the words, "33 percent of".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days to permit completion of the required procedures to make the action effective as soon as possible, if this is found necessary.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would suspend portions of the producer milk definition of the Paducah, Kentucky milk order for an indefinite period. The proposal would allow more milk to be shipped directly from farms to nonpool plants and still be priced and pooled under the order.

The order provides that a handler may divert up to 33 percent of the producer milk that is received by the handler. A suspension would increase the diversion limits to a volume equal to the volume of producer milk actually received during the month. This provision was indefinitely suspended on November 2, 1988 (53 FR 44853) as it applied to a cooperative association.

The suspension was requested by Dairymen, Inc. (DI), a cooperative association that represents producers who supply the market and who indicated that their request was supported by Associated Milk Producers, Inc. (AMPI). DI contends that their association and AMPI operate under a common marketing agreement in the Paducah area and, therefore, diversions of producer milk to nonpool plants by each association are considered as diversions by one handler. DI contends, that in recent months, because of the tight diversion limits, the two associations, as a single handler, have not been able to pool all the milk of their membership which has historically been pooled in the order.

DI said that marketing conditions have changed since these diversion provisions were last modified. In recent years, DI's aid, the Turner Dairies' pool plant at Fulton, Kentucky, has relied on its Covington, Tennessee plant, which is fully regulated under the Memphis, Tennessee, order to produce a substantial proportion of its Class II products. The milk needed to process these Class II products, said DI, is from milk diverted from the Fulton, Kentucky, plant.

DI indicated that the Ryan Milk Company located at Murray, Kentucky (partially regulated handler) has a greater need for milk. Class I utilization at this plant, says DI, has increased to about 40 percent, therefore, diversions to such plant adds Class I sales to the Paducah, Kentucky pool. DI said that, historically, the source of milk at this plant has been producer milk diverted from pool plants regulated under the Paducah, Kentucky order.

List of Subjects in 7 CFR Part 1099

Milk marketing orders.

The authority citation for 7 CFR part 1099 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on May 6, 1991.

Daniel D. Haley,
Administrator.

[FR Doc. 91-11180 Filed 5-9-91; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket Nos. PRM-20-14, PRM-20-15, PRM-20-17, PRM-20-18]

Petitions Requesting Below Regulatory Concern Exemptions

AGENCY: Nuclear Regulatory Commission.

ACTION: Deferral of action.

SUMMARY: The Nuclear Regulatory Commission (NRC) has initiated a consensus-building process to clarify differences and to work toward resolving the issues related to the implementation of its "Below Regulatory Concern" policy with regard to waste disposal. The intent of this notice is to announce that during this consensus-building process the NRC will defer action on petitions for rulemaking that request below regulatory concern waste disposal exemptions.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, U.S. Nuclear Regulatory Commission, telephone (301) 492-1603.

SUPPLEMENTARY INFORMATION: On July 3, 1990 (55 FR 27522), the NRC published in the **Federal Register** its below regulatory concern policy statement that describes a framework for considering proposals for exemptions from regulation. The policy statement was developed to provide a framework to aid in determining when radiation levels are so low that they do not require the imposition of regulatory controls to ensure protection of the public health and safety and the environment. The below regulatory concern policy did not approve specific exemptions or establish binding standards. However, the policy statement provides guidance for making decisions on whether to grant specific exemptions in categories such as—

(1) The release of sites containing residual radioactivity;

(2) The distribution of consumer products containing small amounts of radioactivity;

(3) The disposal of certain wastes containing very low levels of radioactivity; or

(4) The recycling or reuse of slightly radioactive materials.

Since the adoption of its below regulatory concern policy, the NRC has received numerous comments concerning the waste disposal aspects of this policy. Comments have been received from members of Congress, State governments, local governments, local governments, the public, industry, Federal agencies, and governmental and professional associations. As a result, the NRC has initiated a consensus-building process. The goal of this process is to identify issues, clarify concerns, and develop recommendations to the Commission, which may, if appropriate, include revisions to the below regulatory concern policy as it relates to issues involving exemptions for disposal of wastes containing very low levels of radioactivity. The first step in this process will be to assess the feasibility of using consensus-building techniques to address below regulatory concern issues. This assessment will be presented for Commission review in May 1991 and will include a public meeting of the commission on this subject on May 21, 1991.

While carrying out this consensus-building process, the NRC will defer action on all pending or future petitions for rulemaking for below regulatory concern waste disposal exemptions. Generic staff technical activities directed at obtaining a more complete understanding of the characteristics and volumes of waste streams nationwide will continue. The decision to defer action on these petitions is not intended to reflect upon the merits of the petitions or the NRC's ultimate decision as to their disposition. The pending petitions on which the NRC intends to defer action are described below.

PRM-20-14 submitted by the University of Utah. The petitioner requests that the Commission amend its regulations in two areas. The first request is to expand the list of materials allowed to be disposed of under the provisions of 10 CFR 20.306 to include biodegradable animal bedding material and excreta. The second request is that a new section be added to the regulations to allow disposal of biodegradable animal tissue, bedding, and excreta containing very low concentrations of short-lived radionuclides in a sanitary landfill and to allow disposal of liquid scintillation medium containing very low concentrations of short-lived radionuclides in an approved hazardous waste landfill. The Commission noticed receipt of this petition in the **Federal Register** on January 30, 1984 (49 FR 3667).

PRM-20-15 submitted by the Edison Electric Institute and the Utility Waste Management Group. The petitioners request that the Commission issue a regulation governing the disposal of low-level, radioactively contaminated waste oil from nuclear power plants by establishing radionuclide concentrations in waste oil at which disposal may be carried out without regard to the radioactive content of the waste. The Commission received this petition on July 31, 1984, and published a proposed rule which, if adopted, would constitute a partial denial and a partial granting of the petition on August 29, 1988 (53 FR 32914).

PRM-20-17 submitted by the Rockefeller University. The petitioner requests that the Commission amend its regulations to expand the provisions of 10 CFR 20.306 under which a licensee may dispose of animal tissue containing small amounts of sulfur-35, calcium-45, chromium-51, iodine-125, and iodine-131 below specified concentrations without regard to its radioactivity by expanding the list of radioactive isotopes for which unregulated disposal is permitted. The petitioner also requests that the Commission make the unregulated disposal of these wastes a matter with which all jurisdictions must comply. The Commission noticed receipt of this petition in the **Federal Register** on October 21, 1988 (53 FR 41342).

PRM-20-18 submitted by the Rockefeller University. The petitioner requests that the Commission amend it regulations to expand the provisions of 10 CFR 20.306 to allow the on-site incineration of solid biomedical waste (paper, glass, and plastic trash) containing limited quantities of very low concentrations of hydrogen-3 and carbon-14. The Commission noticed receipt of this petition in the **Federal Register** on October 31, 1988 (53 FR 43896).

Dated at Rockville, MD, this 6th day of May 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

[FR Doc. 91-11213 Filed 5-9-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

10 CFR Part 1046

Docket No. SA-RM-91-1001

Security Skills Training and Qualifications Standards for Protective Force Personnel

AGENCY: Office of Security Affairs, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE) is proposing to amend part 1046 of chapter X of title 10 of the Code of Federal Regulations (CFR) by adding

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new sections setting forth requirements regarding access authorizations and security skills training and qualification, including firearms qualification, for DOE contractor personnel responsible for the protection of DOE facilities. One purpose of these regulations is to assure that protective force personnel meet the eligibility criteria of DOE regulations at 10 CFR part 710 for access to classified matter or significant quantities of special nuclear material. Another purpose is to assure that protective force personnel at DOE facilities can perform their normal and emergency duties effectively and without undue hazard to themselves, fellow employees, the plant site, and general public. Generally, the proposed regulations require protective force personnel to meet DOE security clearance standards and to complete successfully formal basic and annual training in security skills and knowledge. The proposed regulations also would require security inspectors (protective force personnel armed pursuant to section 161k. of the Atomic Energy Act of 1954, (42 U.S.C. 2201(k)) to pass firearms qualification tests. Each security inspector would be required to demonstrate firearms proficiency at least semiannually on DOE standardized courses of fire, with all firearms reasonably expected by DOE contractor management to be employed within the security inspector's assigned duties.

DATES: Written comments (five copies) must be received by 4:00 p.m., no later than July 9, 1991. DOE will hold 3 public hearings on the proposed rule. Indicated below are the dates of the hearings:

Argonne, Illinois Hearing: June 21—9:00 a.m.

Requests to speak at the hearing must be received by DOE on or before June 19, 1991.

Las Vegas, Nevada Hearing: June 14—3:00 p.m.

Requests to speak at the hearing must be received by DOE on or before June 12, 1991.

Oak Ridge, Tennessee Hearing: June 28—9:00 a.m.

Requests to speak at the hearing must be received by DOE on or before June 26, 1991.

ADDRESSES: Written (five copies) comments and requests to speak at the hearing should be addressed to:

William J. Desmond, Chief, Physical Security Branch, U.S. Department of Energy, Office of Security Affairs, SA-121, Washington, DC 20585, (301) 353-4244.

The hearing locations are:

Argonne, IL:
Holiday Inn Willowbrook, West Ballroom, 7800 Kingery Highway (Route 83), Willowbrook, IL 60521

Las Vegas, NV:
U.S. DOE, Nevada Operations Office, 2753 South Highland Drive, Auditorium, Las Vegas, NV 89109

Oak Ridge, TN:
American Museum of Science & Energy, Lecture Room 1&2, 300 South Tulane Avenue, Oak Ridge, TN 37830

Copies of the transcripts of the public hearings and written comments will be available for inspection and photocopying in the Freedom of Information (FOI) Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays.

Copies of the DOE "Firearms Qualification Courses," as revised, may be read in the FOI public reading rooms at the following additional locations:

U.S. DOE, Albuquerque Operations Office, National Atomic Museum, Building 20358—Kirtland Air Force Base, Wyoming Boulevard, Albuquerque, NM 87115
U.S. DOE, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. DOE, Idaho Operations Office, 1776 Science Center Drive, Idaho falls, ID 83402
U.S. DOE, Nevada Operations Office, 2753 South Highland Drive, Las Vegas, NV 89193-8518
U.S. DOE, Oak ridge Operations Office, 200 Administration Road, Oak Ridge, TN 37831-6510
U.S. DOE, Rocky Flats Office, Front Range Community College Library, 3645 West 112 Avenue, Westminster, CO 80030
U.S. DOE, Richland Operations Office, 825 Jadwin Avenue, Richland, WA 99352
U.S. DOE, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612
U.S. DOE, Savannah River Operations Office, Gregg-Granite Library, University of South Caroline-Aiken, 171 University Parkway, Aiken, SC 29801

Requests for copies of the DOE "Firearms Qualification Courses," as revised, should be submitted to: William J. Desmond, Chief, Physical Security Branch, U.S. Department of Energy, Office of Security Affairs, SA-121, Washington, DC 20585, (301) 353-4244.

FOR FURTHER INFORMATION CONTACT:

William J. Desmond, Chief, Physical Security Branch, U.S. Department of Energy, Office of Security Affairs, SA-121, Washington, DC 20585, (301) 353-4244

Jo Ann Williams, U.S. Department of Energy, Office of General Counsel, GC-12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-0806

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
III. Public Comment Procedures
IV. Procedural Requirements

I. Background

The Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) declares it "to be the policy of the United States that * * * the development, use, and control of atomic energy shall be * * * subject at all times to the paramount objective of making the maximum contribution to the common defense and security" (42 U.S.C. 2011). Congress specifically found that "(t)he development, utilization and control of atomic energy for military and for all other purposes are vital to the common defense and security," and that "(s)ource and special nuclear material, production facilities, and utilization facilities, are affected with the public interest, and regulation * * * of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public" (42 U.S.C. 2012(a) and (e)). One of the purposes of the Atomic Energy Act of 1954 is "to effectuate the policies set forth above by providing for * * * a program for Government control of the possession, use and production of atomic energy and special nuclear material * * * to make the maximum contribution to the common defense and security, "42 U.S.C. 2013(c). Responsibility for the "regulation" of Government-owned nuclear facilities and nuclear weapons was transferred to the Secretary of Energy by the Department of Energy Organization Act, (42 U.S.C. 7151). The authority to prescribe implementing regulation is found in section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201) and section 644 of the Department of Energy Organization Act (42 U.S.C. 7254).

The nation-wide nuclear program administered by the Secretary of Energy is conducted principally at nuclear facilities owned by the Federal Government. Most of these facilities, however, are operated under contracts with private industry and are protected by contractor protective force personnel. Because of the nature of the material, equipment, data, and personnel found at these facilities, each facility must be afforded a high degree of physical security. Such security is provided, in part, by the uninterrupted presence of armed and unarmed DOE or DOE contractor protective force personnel.

The threat of terrorist or other malevolent activities at sites where nuclear materials and weapons are located presents a real and present danger. DOE's protective force is the first line of human defense against terrorist or other assault on this Nation's nuclear facilities, weapons, materials, and technologies.

II. Discussion

Recognizing the need to formalize its security policies, particularly as they relate to contractor personnel, DOE has in recent years promulgated two-protective force-related regulations. To implement the statutory authority of its security inspectors to carry firearms and to make arrests under certain circumstances, DOE promulgated 10 CFR part 1047, "Limited Arrest Authority and Use of Force by Protective Force Officers" (50 FR 30929, July 31, 1985). In 10 CFR part 1046, "Physical Protection of Security Interests," DOE adopted regulations establishing medical and physical fitness qualification standards for protective force personnel (49 FR 46097 November 23, 1984).

DOE now proposes to amend its 10 CFR part 1046 to specify requirements for the contractor protective force in addition to the present medical and physical fitness requirements. DOE does not view this action as imposing new requirements, but simply as formalizing, and in some instances standardizing, long-standing requirements. DOE has historically utilized a series of internal orders to set forth its security policies, including requirements for protective force personnel. Such internal orders regarding security date back to the days of the Atomic Energy Commission, a predecessor agency of DOE.

The purpose of proposed § 1046.14 is to formalize the requirement that protective force personnel have appropriate current access authorization for the highest level of classified matter under that individual's protection. Security inspector personnel who have access to Category I or II quantities of special nuclear material (SNM) will be "Q" cleared. This security clearance requirement is mandated by Executive Order 12356, "National Security Information," and the Atomic Energy Act of 1954, as amended, as implemented by 10 CFR part 710.

Proposed § 1046.15(a) sets forth the requirement that protective force personnel successfully complete a formal training program established in accordance with a proposed appendix B "Security Training and Qualification." Just as in its internal orders on protective force training and qualification, DOE would not, in proposed § 1046.15(a) or proposed appendix B, generally specify detailed requirements. Instead, in most instances, performance-oriented requirements are specified and DOE contractors are given flexibility to develop and administer training programs to meet site-specific needs subject to DOE oversight and approval. This is also the approach used by the Nuclear Regulatory Commission (NRC) for the training and qualification of the security force of NRC licensees in 10 CFR part 73, appendix B, "General Criteria for Security Personnel."

Protective force personnel would be required by proposed Appendix B to be trained prior to initial assignment and annually thereafter. The employing contractor would be required to maintain individual training records until 5 years after termination of the individual as a member of the protective force, unless a longer retention period is specified by other requirements.

Proposed § 1046.15(b) would formalize and standardize DOE's security policy of requiring security inspectors to demonstrate firearms proficiency. Section 161k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(k)) provides statutory authority for DOE and DOE contractor security inspectors to carry firearms and to make arrests. Section 161k. states *inter alia*:

> k. (DOE may) authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. (DOE) may also authorize such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States and located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties.

Since enactment of section 161k. almost 40 years ago, DOE and its predecessor agencies have required each person armed pursuant to that section to demonstrate the ability to use the firearm effectively and safely. Firearms proficiency has been a critical element of internal orders on security policy. Over the years, the specifics of how proficiency must be demonstrated have been modified or adjusted to keep pace with protective requirements.

The development of the specific firearms qualification standards set forth in the proposed regulations began in 1987. While there had long been at least an annual qualification requirement under various approved courses of fire used at individual DOE installations, DOE foresaw a need for a standard course for each firearm at all of its installations.

In September of 1987 the DOE Firearms Working Group, a committee of firearms experts, was formed. Based on information from the DOE Central Training Academy, the Federal Bureau of Investigation, other law enforcement agencies, and the military the committee formulated courses of fire for the handgun, rifle, and shotgun (day and night qualification). Each course was designed to be as practical and combat-oriented as possible in order to prepare security inspectors for any possible firearms confrontation that might occur. Based on the validation report of this committee, DOE in October of 1988 published its "Firearms Qualification Courses." The "Firearms Qualification Courses" further define the specific firearms proficiency requirements of the current DOE internal order, DOE Order 5632.7 (February 1988), the substance of which DOE now proposes to formalize with this rulemaking. The October 1988 "Firearms Qualification Courses" have been revised to add courses on the submachine gun, light machine gun, and selective fire machine gun.

Briefly, proposed § 1046.15(b) would require that security inspectors demonstrate firearms proficiency by passing semiannual tests and would require that the testing be done under a standard course of fire for each of the firearms that the DOE contractor management reasonably expects the security inspector to employ within assigned duties. These courses are designed to evaluate competencies in types of lighting conditions under which the individual firearm may be used. The number of qualifying attempts is limited.

Proposed § 1046.16 would establish the requirement that DOE contractors formally evaluate and certify that protective force personnel have successfully completed all training and testing requirements set forth in appendix B. The DOE contractor must retain documentation of certification for each individual until 5 years after the termination of the individual as a member of the protective force, unless a longer retention period is specified by other requirements.

The proposed regulations would also (1) amend § 1046.3 to add a definition of the term "Special Response Team" (2) add a new § 1046.4 "Use of Number and Gender."

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III. Public Comment Procedures

A. Written Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposals set forth in this Notice.

Comments should be identified on the outside of the envelope and on the documents themselves, with the designation, "Part 1046 Amendments Rulemaking," Docket Number SA-RM-91-1001.

All comments received on or before the date indicated at the beginning of this notice will be considered by DOE before taking final action on this notice of proposed rulemaking.

All comments received will be available for public inspection in the DOE Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person submitting information which that person believes to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy as well as four copies from which the information claimed to be confidential has been deleted. DOE shall make the final determination regarding any such claim of confidentiality. This procedure is set forth in 10 CFR 1004.11 (53 FR 15661, May 3, 1988).

B. Public Hearings

DOE will hold three public hearings on this proposed rule. DOE has chosen the locations for these hearings so as to afford an opportunity for affected persons to select from different locations in order to participate in the rulemaking process. The hearing locations, dates and times are listed in the ADDRESSES and DATES section of this Notice. Speakers will be notified before the date of the hearing as to the time for their presentations. Speakers are requested to submit five written copies of their statement of DOE at the hearing.

A DOE panel will conduct each hearing. DOE reserves the right to schedule a person's respective presentation and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based upon the number of persons requesting to be heard. These will not be judicial or evidentiary-type hearings. Questions may be asked to speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements.

The hearings will be open to all persons on a space-available basis. It is the intention of DOE to provide a hearing site with sufficient seating capacity for the expected level of participation.

Any person wishing to make an unscheduled oral statement to the panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. Everyone who has signed in by 9:30 a.m. on the day of the hearing will be given an opportunity to address the panel. The hearing may be adjourned at any time if all persons present have had the opportunity to speak.

The hearings will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the transcript will be available for viewing at the address indicated in the "ADDRESSES" section of this notice.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

If DOE must cancel a hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**.

IV. Procedural Requirements

A. Executive Order 12291

This notice of proposed rulemaking was reviewed under Executive Order 12291 (46 FR 12193, February 27, 1981). DOE has concluded that the rule is not a "major rule" under the Executive Order because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, State, Federal, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Pursuant to section 3(c)(3) of Executive Order 12291, these proposed rules were submitted to the Director of OMB for a 10-day review. The Director has concluded his review under that Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*), requires, in part, that an agency prepare an initial regulatory flexibility analysis for any proposed rules unless it determines that the proposed rules will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular proposed rule, the agency must publish a notification and an explanation of that determination in the **Federal Register**. The rules proposed in this notice deal with training and qualification of protective force personnel. The proposed rules' economic impact on small businesses is negligible. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, DOE certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

DOE has determined that the proposed regulations are not a major Federal action with significant environmental impact and, therefore, do not require preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et. seq.*).

D. Paperwork Reduction Act

The collection of information requirements in these proposed rules will be submitted to the Office of Management and Budget in accordance with section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and procedures implementing that Act, 5 CFR 1320.1 *et seq.*

E. Section 404 of the Department of Energy Organization Act of 1977

Pursuant to the requirements of section 404(a) of the Department of Energy Organization Act (42 U.S.C. 7174), DOE has referred this notice of proposed rulemaking, concurrently with the issuance hereof, to the Federal Energy Regulatory Commission for its determination as to whether the proposal would significantly affect any matter within the Commission's jurisdiction. The Commission will have until the close of the comment period to make this determination.

List of Subjects in 10 CFR Part 1046

Government contractor employees, Medical and physical fitness, Security measures, firearms qualification standards, security skills and knowledge.

For the reasons set out in the preamble, part 1046 of chapter X, title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC, this 7th day of May, 1991.

John C. Tuck,

Under Secretary.

PART 1046—PHYSICAL PROTECTION OF SECURITY INTERESTS

1. The authority citation for part 1046 would be revised to read as follows:

Authority: U.S.C. 2011 *et seq.* and 42 U.S.C. 7101 *et seq.*

§ 1046.3 [Amended]

2. In § 1046.3, a definition for "Special Response Team member" would be added in alphabetical order to read as follows:

* * * * *

Special Response Team member. A security inspector who has been selected to be part of a unit specially trained to provide additional protection capability.

* * * * *

3. A new § 1046.4 would be added to read as follows:

§ 1046.4 Use of number and gender.

As used in this part, words in the singular also include the plural and words in the masculine also include the feminine and vice versa, as the use may require.

4. New §§ 1046.14, 1046.15 and 1046.16 would be added to read as follows:

§ 1046.14 Access authorization.

Protective force personnel shall possess current access authorization for the highest level of classified matter to which they potentially have access. Security inspector personnel who have access to Category I or II quantities of special nuclear material (SNM) will be "Q" cleared. The specific level of access authorization for each duty assignment shall be designated by the site security organization and approved by the Head of the Field Element. Security inspectors shall possess a minimum of an "L" or DOE Secret access authorization.

§ 1046.15 Training and qualification for security skills and knowledge.

(a) DOE contractors shall only employ as protective force personnel individuals who successfully meet the requirements of a formal training program established in accordance with appendix B, "Training and Qualification for Security Skills and Knowledge," to this subpart. The DOE contractor shall maintain individual training records until 5 years after the termination of the individual as a member of the protective force, unless a longer retention period is specified by other requirements.

(b) DOE contractors shall employ as security inspectors, including Special Response Team members, only individuals who are fully qualified and meet the firearms qualification standards set forth in appendix B to this subpart.

§ 1046.16 Certification.

DOE contractors shall employ as protective force personnel only individuals who have successfully completed all applicable training and qualification standards set forth in this subpart including appendices A and B. The DOE contractor shall maintain records of certification for each individual until 5 years after the termination of the individual as a member of the protective force, unless a longer retention period is specified by other requirements.

5. Appendix B to subpart B would be added to read as follows:

Appendix B to Subpart B of Part 1046—Training and Qualification for Security Skills and Knowledge

A. *Applicability.* This appendix B to subpart B of part 1046 specifies performance-oriented requirements for the security training and qualification of DOE contractor guards and security inspectors, including Special Response Team members.

B. *Training and qualifications.* (1) DOE contractors responsible for protective force personnel shall establish formal qualification requirements to ensure the competencies needed by protective force members to perform the tasks required to fulfill their assigned responsibilities. The qualification requirements shall be supported by a formal training program which develops and maintains, in an effective and efficient manner, the knowledge, skills and abilities required to perform assigned tasks. The qualification and training programs shall be based upon criteria established by the Central Training Academy (CTA) as approved by the Director, Office of Safeguards and Security and shall be approved by the Head of the Field Organization. The formal qualification and training program shall:

(a) Be based on a valid and complete set of job tasks, with identified levels of skills and knowledge needed to perform the tasks;

(b) Be aimed at achieving a well-defined, minimum level of competency required to perform each task acceptably;

(c) Employ standardized lesson plans with clear performance objectives as a basis for instruction;

(d) Include valid performance-based testing to determine and certify job readiness (i.e. qualification);

(e) Be documented so that individual and overall training status is easily accessible. Individual training records shall be retained until 5 years after termination of the employee as a member of the protective force, unless a longer retention period is specified by other requirements.

(2) DOE contractors responsible for training protective force personnel shall prepare and review annually a task analysis detailing all of the required actions for a specific job assignment. The task analysis shall be used to prepare a job description and as a basic input document for local training requirements.

(3) *Guards.*

(a) *Training requirements.* Prior to initial assignment to duty, each guard shall successfully complete a basic training course designed to provide the minimum level of skills and knowledge needed to competently perform all tasks associated with guard job responsibilities. The required tasks and minimum levels of competency shall be determined by a site-specific job task analysis, but shall include task areas found in (c) below as appropriate. The training program shall be approved by the Head of the Field Organization and where applicable will include, but not necessarily be limited to, the following types of instruction:

1. Orientation/standards of conduct;
2. Security education/operations and material control and accountability;
3. Safety training;
4. Legal requirements and responsibilities;
5. Weaponless self-defense;
6. Intermediate force weapons;
7. Communications;
8. Vehicle operations; and
9. Post and patrol operations.

(b) *Refresher training.* Each guard shall successfully complete a course of refresher training at least every 12 months to maintain the minimum level of competency required for the successful performance of tasks associated with guard job responsibilities. The type and intensity of training shall be determined by a site-specific job task analysis and shall be approved by the Head of the Field Organization. Failure to achieve a minimum level of competency shall result in the guard's placement in a remedial training program. The remedial training program shall be tailored to provide the guard with the necessary training to afford a reasonable opportunity to meet the level of competency required by the job task analysis. Failure to demonstrate competency at the completion of the remedial program shall result in loss of guard status.

(c) *Knowledge, skills and abilities.* Each guard shall possess the skills necessary to protect DOE security interests from theft and other acts that may cause adverse impacts on national security or the health and safety of the public. The requirements for each guard to demonstrate proficiency, familiarity, knowledge, skills, and abilities of the responsibilities identified in the job task analysis include, but are not limited to:

1. Procedures for conducting physical checks of repositories containing classified matter;

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2. Operation of all vehicles as required by duty assignment;
3. Site and facility policies and procedures governing the guard's role in site protection;
4. Federal and state-granted authority applicable to assigned activities and relative responsibilities between the protective force and other law enforcement agencies;
5. Post or patrol operations including:
a. Access control systems, procedures and operation
b. Contraband detection
c. Search techniques for persons, packages and vehicles
d. Badging and escort responsibilities
e. Familiarity and recognition of various types of sensitive matter being protected including the normal location, routine uses, and movements of the material at the duty post
f. Incident reporting
g. Methods of weaponless self defense
h. Elementary first aid and CPR
i. Basic fire fighting equipment and agents and their use.

(4) *Security inspectors.*

(a) *Training requirements.* Prior to initial assignment to duty, each security inspector shall successfully complete a basic training course designed to provide the minimum level of skills and knowledge needed to competently perform all tasks associated with security inspector job responsibilities. The required tasks and minimum levels of competency shall be determined by a site-specific job task analysis, but shall include task areas found in (c) below as appropriate. The training program shall be approved by the Head of the Field Organization and where applicable will include, but not necessarily be limited to, the following types of instruction:
1. Firearms training;
2. Orientation/standards of conduct;
3. Physical training;
4. Security education/operations and material control and accountability;
5. Safety training;
6. Legal requirements and responsibilities;
7. Tactical training;
8. Weaponless self-defense;
9. Intermediate force weapons;
10. Communications;
11. Vehicle operations; and
12. Post and patrol operations.

(b) *Refresher training.* Each security inspector shall successfully complete a course of refresher training at least every 12 months to maintain the minimum level of competency required for the successful performance of tasks associated with security inspector job responsibilities. The type and intensity of training shall be determined by a site-specific job task analysis and shall be approved by the Head of the Field Organization. Failure to achieve a minimum level of competency shall result in the security inspector's placement in a remedial training program. The remedial training program shall be tailored to provide the security inspector with the necessary training to afford a reasonable opportunity to meet the level of competency required by the job task analysis. Failure to demonstrate competency at the completion of the remedial program shall result in loss of security inspector status.

(c) *Knowledge skills and abilities.* Each security inspector shall possess the individual and team skills necessary to enable that security inspector to protect DOE security interests from theft, sabotage, and other acts that may cause adverse impacts on national security or the health and safety of the public and to protect life and property. The requirements for each security inspector to demonstrate proficiency, familiarity, knowledge, skills, and abilities of the responsibilities identified in the job task analysis include, but are not limited to:
1. Knowledge and proficiency in the use and care of all weapons as required by duty assignment;
2. Operation of all vehicles as required by duty assignment;
3. Operation of all communication equipment as required by duty assignment;
4. Knowledge of and the ability to apply site and facility policies and procedures governing the security inspector's role in site protection;
5. Knowledge of Federal and state-granted authorities applicable to assigned activities and the relative responsibilities between the protective force and local law enforcement agencies in both normal and emergency operations.
6. Knowledge of and the ability to apply DOE policy on the use of deadly force and limited arrest authority as set forth in 10 CFR part 1047;
7. Proficiency in post and patrol operations including:
a. Access control systems, procedures and operation
b. Contraband detection
c. Search techniques and systems for individuals, packages and vehicles
d. Badging and escort responsibilities
e. Response to and assessment of alarm annunciations and other indications of intrusion
f. Familiarity and recognition of various types of sensitive matter being protected including the normal location, routine uses, and movements of the material at the assigned duty post
g. Observation and physically checking buildings, rooms and repositories containing classified matter
h. Incident reporting
i. Response to civil disturbances (e.g., strikes, demonstrators)
j. Methods of self-defense and of arrest and detention
k. Elementary first aid and CPR
l. Familiarity with basic fire fighting equipment and agents and their use
m. Basic procedures and elements of investigations
n. Tactical skills

(5) *Special Response Team.*

(a) *Training requirements.* Prior to initial assignment to duties as a Special Response Team member, a security inspector shall successfully complete a basic training course designed to provide the minimum level of skills and knowledge needed to competently perform all tasks associated with Special Response Team job responsibilities. The required tasks and minimum levels of competency shall be determined by a site-specific job task analysis, but shall include the task areas identified for security inspectors and specialized task areas found in (c) below as appropriate. The training program shall be approved by the Head of the Field Organization.

(b) *Refresher training.* Each security inspector assigned as a Special Response Team member shall successfully complete a course of refresher training at least every 12 months to maintain the minimum level of competency required for the successful performance of tasks associated with security inspector and Special Response Team job responsibilities. The type and intensity of training shall be determined by a site-specific job task analysis and shall be approved by the Head of the Field Organization.

(c) *Knowledge, skills and abilities.* Special Response Team members shall be security inspectors with special training and shall possess the individuals and team skills to provide additional protection capability as demanded by the particular targets, threats and vulnerabilities existing at their assigned DOE facilities. In addition to security inspector requirements, the requirements for each Special Response Team member to demonstrate proficiency, familiarity, knowledge, skills, and abilities of the responsibilities identified in the job task analysis include, but are not limited to:
1. Operate as a member of a mobile disciplined response team to engage and defeat adversaries as defined by the approved threat guidance for the facility.
2. Provide and operate special weapons and other equipment which may be necessary to protect a particular facility or to effectively engage an adversary with advanced capabilities.
3. Operate from special tactical vehicles which may be necessary for the protection of a particular facility.

(6) *Specialized requirements.* Each person who is assigned specialized responsibilities outside the scope of normal security inspector and Special Response Team duties shall successfully complete the appropriate basic and required periodic training. This training shall enable the individual to achieve and maintain the minimum level of skill and knowledge needed to competently perform the tasks associated with the specialized job responsibilities, as well as maintain mandated certification, if applicable. Such personnel include, but are not limited to, flight crews, instructors, armorers, Central Alarms System operators, crisis negotiators, investigators, canine handlers, and law enforcement specialists. The scope of such duties shall be based on site-specific needs.

(7) *Supervisors.*

(a) *Training Requirements.* Protective force personnel who are assigned supervisory responsibilities shall successfully complete the appropriate basic and annual training necessary to achieve and maintain the minimum level of skill and knowledge needed to competently perform their supervisory job responsibilities. The required tasks and minimum levels of competency shall be determined by a site-specific job task analysis and the specialized task areas found in (b) below as appropriate.

(b) *Knowledge, skills and abilities.* Each supervisor shall possess the skills necessary to effectively direct the actions of assigned personnel to protect DOE security interests from theft and other acts that may cause adverse impacts on national security or the health and safety of the public. The requirements for each supervisor to demonstrate proficiency, familiarity, knowledge, skills, and abilities of the responsibilities identified in the job task analysis include, but are not limited to:
1. Knowledge of the duties and qualifications of all supervised personnel;
2. Familiarity with the basic operating functions of facilities for which the supervisor has protection responsibilities;
3. Assurance that subordinates and their equipment are ready for duty at the start of each duty shift and the inspection of each duty post at least twice per shift, personally or by other means;
4. Assurance that all duty logs and reports have been properly completed, distributed, and acted upon.

(8) *Training exercises.* Exercises of various types shall be included in the training process for the purposes of achieving and maintaining skills and assessing individual and team competency levels. The types and frequency of training exercises are to be determined by the Head of the Field Organization or by the training needs analysis conducted as part of the training program. The training program shall include as a minimum, the following:

(a) *General.* At least monthly, exercises shall be conducted involving each shift. These exercises are to be planned so as to exercise the protective force's ability to prevent the successful completion of those adversarial acts defined in the approved site-threat statement.

(b) *Special Response Teams.* Personnel assigned Special Response Team responsibilities shall participate in exercises at least monthly. Such exercises shall involve the type of situations and scenarios appropriate to site-specific conditions.

(c) *Local Law Enforcement Agencies.* Protective forces shall exercise at least annually in coordination with the FBI and local law enforcement agencies that would assist the protective force during an incident.

(d) A record of each training exercise shall be prepared for management review and planning and retained for a period of 5 years, unless a longer retention period is specified by other requirements.

(9) *Firearms qualification standards.*

(a) No persons shall be authorized to carry a firearm as a security inspector until the responsible Head of the Field Organization is assured that the individual who is to be armed as qualified in accordance with firearms standards.

(b) As a minimum, each security inspector shall meet the applicable firearms qualification standards every 6 months. The local DOE Operations Office shall permit the qualification to be accomplished any time prior to the actual 6 month anniversary date. The actual qualification date will serve to establish a new anniversary date for firearms qualification. In the case of a headquarters or field audit, or other situation directed by the Head of the Field Organization, a security inspector may be required to demonstrate the ability to meet qualification standards.

(c) Each security inspector shall qualify with all weapons required by duty assignment. Each security inspector shall be required to qualify with each firearm as indicated in the DOE requirements of the DOE qualification courses.

(d) Each security inspector shall qualify with the same type (model) of firearm and ammunition equivalent in trajectory and recoil as used while on duty. This ammunition shall be listed on the DOE approved ammunition list.

(e) Each security inspector shall be given a basic principles of firearms safety presentation prior to any range activity. This does not require that a firearms safety presentation be given for each course of fire, but does require that prior to the start of range training or qualification for a given period (e.g., initial qualification, semiannual (every 6 months) qualification, training or range practice) each security inspector shall be given a range safety presentation.

(f) Only courses of fire endorsed by the DOE Central Training Academy as meeting the operational needs of the DOE and approved by the Office of Safeguards and Security (SA–10) as standardized DOE qualification courses, shall be used for firearms qualification.

(g) Security inspectors shall be allowed two initial attempts to qualify semiannually. A Range Master or other person in charge of the range shall state to security inspector(s) on the firing line that "THIS IS A QUALIFYING RUN." Once this statement is made by the Range Master or person in charge, "this qualifying run" shall constitute a qualification attempt. Each security inspector shall be provided two qualifying attempts. The security inspector shall qualify during one of these attempts.

(h) Failure to qualify shall result in suspension of a security inspector's authority under section 161k. of the Atomic Energy Act of 1954 to carry firearms and to make arrests. The security inspector shall then enter a remedial firearms training program developed and approved by the Head of the Field Organization. The remedial firearms training program shall be tailored to provide the security inspector with the necessary training to afford a reasonable opportunity to meet the firearms qualification standards.

(i) Any security inspector who, upon completion of the remedial training course, fails to qualify after two subsequent, additional attempts shall lose the security inspector status and his authority to carry firearms and to make arrests under section 161k. of the Atomic Energy Act of 1954.

(j) Any security inspector who fails to qualify on three (3) consecutive semiannual qualification periods, with the same firearms, shall lose security inspector status.

(k) Any security inspector who is incapacitated shall be disarmed until fit for return to full duty status. In the event the return to duty occurs more than 6 months after the most recent qualification the security inspector shall requalify prior to being armed.

(l) An appropriate DOE record shall be maintained for each security inspector who qualifies or who attempts to qualify. Records shall be retained until 5 years after separation of a protective force officer from security inspector duties, unless a longer retention period is specified by other requirements. A supervisor or the training officer shall be designated in writing as the individual authorized to certify the validity of the scores.

[FR Doc. 91–11189 Filed 5–9–91; 8:45 am]

BILLING CODE 6450–01–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 619

RIN: 3052–AB13

Loan Policies and Operations; Definitions; Lending Authorities, Appraisal Standards, Participations and Lending Limits; Public Hearings

AGENCY: Farm Credit Administration.

ACTION: Notice of public hearings on proposed regulations relating to appraisal standards and lending limits.

SUMMARY: The Farm Credit Administration (FCA) announces forthcoming public hearings on proposed amendments to 12 CFR part 614 relating to lending limits and appraisals. The proposed regulations were published in the Federal Register on January 23, 1991, 56 FR 2452. The comment period for the proposed regulations ended on March 25, 1991. The FCA has decided to hold public hearings because of the substantial number of comment letters expressing concern about the potential impact of the lending limits and appraisal requirements of the proposed regulations. The hearings will provide an opportunity for Farm Credit borrowers, institutions and other interested parties to state their views and offer constructive suggestions on issues of concern in the proposed regulations.

DATES: Two public hearings will be held on the appraisal standards and lending limits. The first public hearing will begin at 8:15 a.m. on June 24 and 25, 1991, in Denver, Colorado. The second public hearing will begin at 8:15 a.m. on June 27 and 28, 1991, in Atlanta, Georgia. Requests to appear and present testimony for one of the public hearings must be submitted by May 20, 1991.

ADDRESSES: The hearings will be held at the Stapleton Plaza Hotel, 3333 Quebec Street, Denver, Colorado 80207 ([303] 321–3500/1–800–950–6070). The second hearing will be held at the Georgia International Convention and Trade Center, 1902 Sullivan Road, P.O. Box F,

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College Park, Georgia 30337 ((404) 997-3566). Submit requests to appear and present testimony for the specified public hearing in writing (in triplicate) to Dennis Carpenter, Senior Credit Specialist, Farm Credit Administration, McLean, VA 22102-5090.

FOR FURTHER INFORMATION CONTACT: Dennis Carpenter, Senior Credit Specialist, Policy and Risk Analysis Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4469, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: Public hearings will be held by the Farm Credit Administration Board on proposed amendments to its regulations relating to appraisal standards and lending limits for Farm Credit System (FCS) lending institutions. The amendments were published for comment as proposed regulations on November 3, 1988, 53 FR 44438. The proposed regulations were reproposed for comment on January 23, 1991, 56 FR 2452. For the purposes of this notice, these reproposed regulations will be referred to as "proposed regulations."

The proposed regulations would prescribe minimum appraisal standards and appraiser qualifications for all appraisals used to support the credit decisions of FCS institutions engaged in lending or leasing. The proposed regulations would require the board of directors of each institution to adopt policies and standards governing appraisals of real, personal and intangible property and qualifications of appraisers that are consistent with both the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Foundation and with the requirements of the regulation. The proposed regulation would be similar to appraisal regulations that have been adopted by other Federal financial institution regulatory agencies under the Financial Institutions Recovery, Reform and Enforcement Act of 1989, Public Law 101-73.

The proposed regulations would also prescribe a limit on extensions of credit to a single borrower of 20 percent of capital for all FCS direct lender institutions, except banks for cooperatives, provide for exceptions to the lending limitation, and provide rules for the attribution and aggregation of loans to separate but related borrowers for the purpose of making "single borrower" determinations.

A number of comment letters received by the FCA related to the rules of aggregation and attribution set forth in the proposed regulation in compliance with lending limits. Some of these letters reflect a misunderstanding of the intended application of the proposed regulations. To assure that testimony at the hearings is useful and productive, FCA makes the following clarifications regarding the correct applications of the proposed rules:

1. Under § 614.4358(a)(1) of the proposed regulation, a loan guaranteed by a subject borrower would be aggregated with the loans outstanding to that subject borrower. However, loans outstanding to a subject borrower would not be attributed to the borrower whose loan is guaranteed (name borrower) as a result of the subject borrower's guarantee. For example, if cooperative A (subject borrower) has a $50 million loan and A guarantees a $25 million loan made to cooperative B (named borrower), for the purpose of determining compliance with the lending limits, the proposed regulations would consider the lending institution as having made a $75 million loan to A and a $25 million loan to B. The lending limit is then applied separately to each borrower. If the lending limit is $75 million, the lending institution may not make any additional loans to A, unless the loans are participated to other lenders. Loans aggregating up to an additional $50 million may still be extended by the lending institution to B.

2. Under § 614.4359 of the proposed regulation, a loan or commitment that is within the legal lending limits when made, becomes nonconforming if a reduction in capital causes the loan or commitment to exceed the new lending limit. Since the loan or commitment was legal at the time it was made, the institution has not violated the lending limit regulation. Therefore, the nonconforming loan or commitment is not an illegal loan and does not have to be removed from the institution's collateral base. However, loans or commitments that if fully funded would exceed the lending limit on the day the loan or commitment is made, would violate the regulation and would be subject to the provisions of § 615.5090 and possible enforcement actions.

The FCA believes that these clarifications will alleviate some of the concern expressed in comments on the proposed regulations and will be of assistance to those presenting testimony in the public hearings.

In order to effectively address statements contained in some of the comment letters, the FCA requests comments on the following topics:

1. Number and dollar volume of loans that would exceed lending limits if proposed lending limits and associated aggregation and attribution rules were to be adopted.

2. Differences, if any, between the loan operations of banks for cooperatives and commercial banks that make large commercial loans that would warrant different treatment.

3. Alternatives to the lending limits, if any, that may be equally effective in controlling risk concentrations in institutions in which a few large customers constitute a majority of the outstanding loan volume.

4. An appropriate method of defining "control" in a cooperative structure.

In addition to comments on the preceding topics, the FCA invites testimony on all issues relating to appraisal and lending limit requirements under the proposed regulations. However, the FCA requests that testimony be confined to those requirements and their application to FCS institutions. Formal presentation at the hearings will be restricted to 10 minutes per person.

The first public hearing will be held in Denver, Colorado, beginning at 8:15 a.m. on June 24 and 25, 1991.

The second public hearing will be held in Atlanta, Georgia, beginning at 8:15 a.m. on June 27 and 28, 1991. Both hearings will address appraisal standards and lending limits requirements under the proposed regulations.

A person wishing to present testimony at a hearing must submit a written request that his or her name be placed on the calendar by May 20, 1991. The request should state the name, address and telephone number of the person wishing to testify and the general nature of his or her testimony. Requests will be honored in order of receipt. Persons will be notified by the FCA of acceptance of their requests and of the date and approximate time they are scheduled to testify. Written statements or detailed summaries of the text of testimony to be presented must be submitted to the FCA by June 10, 1991. A person who fails to make a timely submission of testimony will lose his or her place on the hearing schedule to the next person requesting to testify. In the event that more people wish to testify than time permits, the FCA will accept their written statements for the record.

The FCA will accept written comments on testimony presented at the public hearings. The comment period will end on July 31, 1991. The comments, as well as all documents and testimony received by the FCA as part of the public hearing process, will be available for public inspection at the FCA's offices in McLean, Virginia.

Dated: May 7, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-11196 Filed 5-9-91; 8:45 am]

BILLING CODE 6705-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Companies; Common Control for Debenture Leverage Eligibility

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 215(a)(1) of Public Law 101-574 forbids SBA to guarantee the debentures of any Licensee if, as a result thereof, the aggregate outstanding amount of SBA-guaranteed debentures issued by such Licensee and any other Licensee or Licensees under common control therewith would exceed $35 million. This proposed rule would notify the public of this limitation, and would amend the definition of "Control" to set forth the circumstances under which SBA would consider two or more Licensees to be under common control.

DATES: Comments will be accepted until July 9, 1991.

ADDRESSES: Written comments should be sent to Bernard Kulik, Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Investment Division, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Joseph L. Newell, Director, Office of Investment, Telephone (202) 205-6510.

SUPPLEMENTARY INFORMATION: The statutory language that imposes a cap of $35 million on the aggregate amount of SBA-guaranteed debenture leverage that any two or more "commonly controlled" Licensees may have outstanding at any time refers to "debentures guaranteed and outstanding under this title", meaning title III of the Small Business Investment Act, as amended. Since title III includes all the provisions of the Act pertaining to Small Business Investment Companies, the cap applies without regard to whether one or more Licensees in a group of "commonly controlled" Licensees is licensed under section 301(d) of the Act (an SSBIC), or under section 301(c) (an SBIC). However, the cap applies, as does this proposed regulation, only to SBA-guaranteed debentures, and therefore does not affect the eligibility of an SSBIC to sell its preferred securities to SBA, even if such SSBIC is under common control with other Licensees whose aggregate outstanding SBA-guaranteed debenture leverage equals or exceeds $35 million.

SBA does not believe that Congress intended the words "commonly controlled" to mean only "commonly owned", since there are many different methods of control other than mere ownership of record. Rather, SBA believes that the cap was imposed in order to accomplish two objectives: To limit the dollar amount of SBA-guaranteed debenture leverage available to a single group (resulting from ownership, investment, management or some other form of control); and to limit the dollar amount for which SBA would be at risk as a result of the business judgment of a similar single group. Consequently, the intention of this proposed regulation is that two or more Licensees will be deemed to be "commonly controlled" if there is an affiliate relationship between or among them, which could be based upon ownership of stock or partnership capital of the Licensees, or upon management by affiliated persons or entities, or other methods, even if there is no affiliation between or among the owners of the Licensees. A determination that two or more Licensees are "commonly controlled" is not precluded solely because of the absence of any affiliation between or among their respective owners, or any interlock of their respective officers and/or directors, or general partners or Control Persons. Licensees can be "commonly controlled" under the terms of the proposed rule if day-to-day management is contracted out to a single entity, or to two or more affiliated entities.

Section 215(a)(2) of Public Law 101-574 states that the above-described statutory change will become effective July 1, 1991, which will also be the effective date of any final rule based on this proposal. SBA is aware of at least two groups of Licensees that presently have outstanding SBA-guaranteed debentures in excess of $35 million. SBA does not believe that Congress intended to accelerate the maturity of any outstanding SBA-guaranteed debentures in excess of $35 million.

For many years it has been SBA's practice to allow Licensees with maturing SBA-guaranteed debentures to refinance such maturing debt with new ("roll-over") debentures, unless there were credit or regulatory considerations to the contrary. In reliance on SBA's practice, Licensees continued to extend long-term Financing to Small Concerns with scheduled or anticipated maturities subsequent to the maturity of the Licensee's own SBA-guaranteed debentures.

An abrupt change in SBA's long-established practice with respect to the refinancing of maturing debentures would have extremely serious effects, not only upon those Licensees that have reasonably relied upon SBA's practice, but also upon Small Concerns seeking Financing from Licensees affected by Public Law 101-574 and by SBA's implementing regulation. The Licensee's would be unable to pay their maturing SBA-guaranteed debt, and Small Concerns would receive no assistance from Licensees obliged to build up cash reserves in order to repay maturing debentures that can no longer be rolled over.

There is no indication that Congress desired any such consequences, either to the small business investment company industry, or to small business generally. Accordingly, this proposed rule would allow any Licensee that would otherwise be ineligible to obtain SBA's guaranty of its debentures, to receive such guaranty for the first refinancing of debentures outstanding on July 1, 1991 and maturing on or before July 1, 1998. After July 1, 1998 SBA will no longer guaranty debentures that refinance maturing debentures if such guaranty would thereby cause the outstanding aggregate amount of SBA-guaranteed debenture leverage issued by a group of which the debtor Licensee is a member to exceed $35 million. SBA considers a seven-year period sufficient warning to Licensees that may be affected.

Nothing in this proposed regulation will exempt any Licensee from eventual and complete compliance; SBA intends that after July, 1008, no group of Licensees under common control will have more than $35 million in outstanding SBA-guaranteed debenture leverage. Any excess debenture leverage outstanding before July, 2008 will represent any debentures issued to refinance outstanding debentures that matured on or before July 1, 1998. On or after July 1, 1991 Licensees, including companies already licensed on that date, that might otherwise have been able to obtain SBA's guaranty for debentures evidencing new leverage will be denied such guaranty if SBA has already guaranteed $35 million or more of outstanding debentures issued by other Licensees under common control with such Licensee.

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Compliance With Executive Orders 12291 and 12612, and the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12291. SBA has determined that this proposed regulation, taken as a whole, will constitute a major rule for purposes of Executive Order 12291, because it is likely to have an annual impact on the national economy of $100 million or more. One group of Licensees under common management has (as of July, 1990) outstanding SBA-guaranteed debentures in an aggregate amount in excess of $86 million; this group might have been eligible to borrow as much as $94.5 million more than SBA's guarantee, but for the limitation, imposed by stature and to be imposed by this proposed regulation, upon the aggregate debenture leverage eligibility of two or more Licensees that are commonly controlled. Another such group of Licensees has (as of July, 1990) outstanding SBA-guaranteed debentures in an aggregate amount of $31 million; and this second group might have been eligible to borrow as much as $13 million more with SBA's guarantee.

Regulatory Flexibility Act. For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* this regulation may have a significant economic impact on a substantial number of small entities. Pursuant to Executive Order 12291 and 5 U.S.C. 603, SBA offers the following regulatory flexibility and impact analysis.

1. This action is proposed in compliance with a statutory directive to SBA, set forth in an amendment to section 303(b)(1) of the Small Business Investment Act, 15 U.S.C. 683(b)(1).

2. The legal basis for this proposed regulation is section 308(c) of the Small Business Investment Act, 15 U.S.C. 687(c) and section 215(a) of Public Law 101–574.

3. This proposed regulation would apply to all currently operating Licensees, including all SSBICs.

4. The potential cost of this proposed regulation cannot be quantified or even estimated.

5. There are no federal rules which duplicate, overlap or conflict with this proposed regulation.

Executive Order 12612. SBA certifies that this proposed regulation would have no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12162.

Paperwork Reduction Act. For purposes of the Paperwork Reduction Act, 44 U.S.C., ch. 35 we hereby certify that this regulation, if adopted, will not impose any new recordkeeping requirement.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, part 107 of title 13, Code of Federal Regulations is proposed to be amended as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 is revised to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 661 *et seq.*, as amended, Pub. L. 100–590 and Pub. L. 101–162; 15 U.S.C. 687(c); 15 U.S.C. 683, as amended by Pub. L. 101–162 and Pub. L. 101–574; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 100–590.

2. Section 107.3 is amended by revising the definition of "Control" to read as follows:

§ 107.3 Definition of terms.[2]

* * * * *

Control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Licensee or a Small Concern, whether through the ownership of voting securities, by contract, or otherwise. Two or more Licensees shall be considered to be under common Control if they are affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or advised either by a common independent investment advisor or managerial contractor, or by two or more such contractors that are affiliates of each other, or otherwise. The term "affiliate" is defined in § 121.401 of this title.

* * * * *

3. Section 107.201 is amended by revising paragraph (b)(1) to read as follows:

§ 107.201 Funds to licensees.

* * * * *

(b) *SBA Guaranty.* (1) Subject to the restriction set forth in this paragraph (b)(1), SBA may in its discretion agree to guaranty a Licensee's debentures unconditionally, irrespective of the validity, regularity or enforceability of such debentures or any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor and, pursuant to its guaranty, to make timely payments of principal and interest, irrespective of any default by the issuing Licensee or acceleration of the maturity thereof by SBA. Except for the purpose of the effecting the first refinancing of such Licensee's SBA-guaranteed debentures that were outstanding on July 1, 1991 and maturing on or before July 1, 1996, SBA will in no other event guaranty the debentures of any Licensee, regardless of that Licensee's eligibility, if the aggregate amount of outstanding SBA-guaranteed debentures issued by that Licensee and all other Licensees under common Control therewith would thereby exceed $35,000,000.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 19, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–10996 Filed 5–9–91; 8:45 am]

BILLING CODE 8025–01–M

[2] Terms defined in this section are capitalized hereafter.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–952–86]

RIN 1545–AM20

Allocation and Apportionment of Interest Expense; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to allocation and apportionment of interest expense.

DATES: The public hearing will be held on Friday, June 21, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, June 7, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (INTL–952–86), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–566–3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 864(e) of the Internal Revenue Code of 1986. The proposed regulations appeared in the Federal Register for Tuesday, March 12, 1991 (56 FR 10397).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, June 7, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–11210 Filed 5–9–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, and 3

[Docket No. 910246–1046]

RIN 0651–AA43

Changes in Patent and Trademark Assignment Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Patent and Trademark Office (Office) proposes amendments to the rules of practice regarding assignments in patent and trademark cases to improve and clarify the rules, to codify changes in practice and to consolidate the rules. The Office proposes to combine the assignment rules currently in parts 1 and 2 into a new part 3 directed to assignments.

DATES: Written comments must be received on or before July 9, 1991 to ensure consideration. A public hearing will be conducted in Two Crystal Park, Suite 912, at 2121 Crystal Drive, Arlington, Virginia, beginning at 9 a.m. on July 17, 1991. Requests to present oral comments should be received on or before July 10, 1991.

ADDRESSES: Address written comments to the Office of the Deputy Assistant Commissioner for Patents, Commissioner of Patents and Trademarks, Box DAC, Washington, DC 20231, marked to the attention of Jeffrey V. Nase. Written comments will be available for public inspection in suite 913, on the 9th floor of Two Crystal Park, located at 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jeffrey V. Nase by telephone at (703) 557–4282 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The Office is proposing to amend the rules of practice in patent and trademark cases to revise, simplify, remove or clarify existing assignment rules or to codify certain practices which are currently in effect. Changes are proposed for rules relating to the documents that will be recorded; the requirements for recording a document; the effect of recording; new cover sheet requirements; the appointment of domestic representatives; and prosecution by assignees and issuance to assignees. While the present rules do not require a cover sheet to accompany each document submitted for recording, typically a cover letter is submitted to ensure proper processing of the document.

The Office has suggested and encouraged the public to use a cover letter, containing specific information concerning the document being submitted, with each document submitted for recording; see "Helpful Hints", 1114 Official Gazette 77 (May 29, 1990). The public has adopted the suggested procedure to such an extent that most documents now submitted for recordation are accompanied by a cover letter which contains the suggested data. Documents submitted for recording with cover sheets containing the specific information needed for recordation have enabled the Office to greatly improve the quality and efficiency of the recording process. To better ensure that the correct data is captured in recordation and recorded promptly, the Office is proposing to make a cover sheet mandatory. The proposed cover sheet will contain all the information necessary for the Assignment Branch to properly and promptly process the document.

Specific Rules Proposed To Be Deleted or Added

The existing rules of practice in Parts 1 and 2 of title 37 of the Code of Federal Regulations which are proposed to be deleted are §§ 1.32, 1.331, 1.332, 1.333, 1.334, 2.185, 2.186 and 2.187. These rules are proposed to be deleted in their entirety and rewritten and renumbered under a proposed new part 3. Table 1 is provided to assist readers in correlating present rules with the proposed rules.

TABLE 1

Present rule	Proposed rule
1.32	3.71 and 3.73.
1.331(a)	3.11.
1.331(b)	3.26.
1.331(c)	3.21.
1.332	3.51.
1.333	3.56.
1.334	3.61.
2.185(a)	3.11.
2.185(a)(1)	3.31.
2.185(a)(2)	3.26.
2.185(a)(3)	3.41.
2.185(a)(4)	3.61.
2.185(b)	3.31(b).
2.185(c)	3.51.
2.186	3.71 and 3.73.
2.187	3.85.

Consideration was given to moving § 1.12 (Assignment records open to public inspection.) to proposed new part 3. However, since this section primarily relates to records maintained by the Office and procedures for accessing those records, a tentative decision has been made to retain this section under the general heading "Records and Files" of the Patent and Trademark Office. Comments are requested on whether § 1.12 should be retained in part 1, or moved to proposed part 3.

Discussion of Specific Sections Proposed To Be Changed or Added

Section 1.12(a) is proposed to be revised to reflect the fact that all assignment records related to pre-1955 trademark records and pre-1957 patent records were transferred to the National Archives and Records Administration (NARA) during 1990. All assignments

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recorded on or after January 1, 1955, for trademarks and May 1, 1957, for patents continue to be maintained by the Office. The pre-1955/1957 records have been transferred to NARA to allow for greater accessibility to the public, improvement of file integrity for the older records, and preservation of these materials. The pre-1955/1957 assignment cards, digest books, and libers were stored in four locations: The Assignment Search Room (ASR) at the Office, the Federal Records Center, the National Archives in downtown Washington, and the National Archives location in Alexandria. Storage of information in these various locations made searching of old assignment records difficult. The materials located at the Federal Records Center could be ordered from the ASR. However, many times it took months to receive the materials.

All assignment records from 1837 to December 31, 1954, for trademarks and from 1837 to April 30, 1957, for patents are maintained and are open for public inspection in the National Archives Research Room located at the Washington National Records Center Building, 4205 Suitland Road, Suitland, Maryland 20746. Assignments recorded before 1837 are maintained at the National Archives and Records Administration, 841 South Pickett Street, Alexandria, Virginia 22304.

All requests for abstracts of title continue to be provided by the Office upon request and payment of fees set forth in §§ 1.19 and 2.6. Requests for copies and certified copies of the pre-1955 records for trademarks and pre-1957 records for patents should be directed to NARA since those records are not maintained by the Office. Since these records are maintained by NARA, it becomes more expeditious to request copies directly from NARA, rather than the Office, which would then have to route the requests to NARA. Payment of the fees required by NARA should accompany all requests for copies.

Another proposed change is to make clear that separate assignment records are kept for patents and trademarks, and to indicate that an extra charge will be imposed by the Office on requests for copies of recorded assignments if the correct reel and frame number are not identified.

Sections 1.17 and 1.46 are proposed to be amended to make reference to proposed § 3.61, which would replace § 1.334, and delete reference to § 1.334. The amount of the fee for recording a document would not be affected by this proposed rule change.

Section 1.104(e) is proposed to be amended to make reference to proposed part 3, which would replace § 1.331, and delete reference to § 1.331.

Section 3.1 is proposed to be added to set out definitions of terms used in proposed part 3. Terms which are defined include "application," "assignment," "document," "Office" (meaning Patent and Trademark Office), "recorded document," and "registration." Definitions are provided to make clear the intended meanings of the terms used in proposed part 3. These definitions are intended to be applicable only to proposed part 3. For example, the term "application" is defined, for the purpose of proposed part 3, to mean either an application for patent or an application to register a trademark, unless otherwise indicated.

Section 3.11 is proposed to replace and modify the practice set forth in §§ 1.331(a) and 2.185(a), which specify the documents the Office will record. This proposed section specifies that assignments of patents and registrations will be recorded, as well as other documents which affect title to applications, registrations and patents. Proposed § 3.11 would require that a completed cover sheet as specified in proposed §§ 3.28 and 3.31 be submitted with the document to be recorded.

Section 3.16 is proposed to be added to incorporate the limitation set out in 15 U.S.C. 1060 proscribing the assignment of an intent-to-use trademark application prior to the filing of a statement of use, except as a part of the sale of an on-going business. Because the proposed amendments to part 3 are intended to address all rules relating to assignments, it is appropriate to refer to the statutory requirements of an assignment of an intent-to-use trademark application.

Section 3.21 is proposed to replace and modify the practice of § 1.331(c). Proposed § 3.21 sets forth requirements for the recording of assignments of patents or patent applications. An assignment relating to a patent must identify the patent by number. The name of the inventor, the issue date and title of the invention as stated in the patent may also be given in the assignment to provide additional information on the patent being assigned. An assignment relating to a national patent application must identify the national patent application by application number (consisting of the series code and the serial number, e.g., 07/123,456) or serial number and filing date. An assignment relating to an international patent application which designates the United States of America must identify the international application number (e.g., PCT/US90/01234). The name of the inventor, date of filing and title or the invention as stated in the patent application may also be given in the assignment. If an assignment is executed concurrently with, or subsequent to, the execution of the patent application, but before the patent application is filed, it must identify the patent application by its date of execution, name of each inventor, and title of the invention so that there can be no mistake as to the patent application intended. Assignments submitted for recording that do not identify the patent or patent application as required by this section will not be recorded, but will be returned to the correspondence address which would be required to be provided on the cover sheet by proposed § 3.31(e).

Section 3.24 is proposed as a new section to set forth formal document requirements aimed at facilitating and expediting the recording process. This section proposes that documents submitted for recording be legible, using only one side of each page. The paper used should be bond weight paper preferably no larger than 8½ × 14 inches (21.6 × 33.1 cm.), and with a one-inch (2.5 cm.) margin on all sides. Documents submitted in this form are camera-ready and can be recorded expeditiously with little additional handling required. Documents submitted that fail to meet the legibility and only-one-side-of-the-paper requirements of this proposed section will be returned as set forth in proposed § 3.51.

Section 3.26 is proposed to replace and modify the practice of §§ 1.331(b) and 2.185(a)(2). Proposed § 3.26 provides that the Office will accept and record non-English documents provided they are accompanied by a verified English translation signed by the translator. Documents submitted that fail to meet the requirements of this proposed section will be return as set forth in proposed § 3.51.

Section 3.27 is proposed as a new section to set forth how documents submitted for recording should be addressed to the Office. To ensure prompt and proper processing, documents and their cover sheets should be addressed to the Commissioner of Patents and Trademarks, Box Assignments, Washington, DC 20231, unless they are filed together with new applications or with a petition under § 3.81(b). Petitions under § 3.81(b) should be addressed to the Commissioner of Patents and Trademarks, Box DAC, Washington, DC 20231. New applications and other petitions should be addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

Section 3.28 is proposed as a new section to set forth a new requirement aimed at facilitating and expediting the recording process. This section would require that all requests to record a document in the Office be accompanied by the document to be recorded and at least one cover sheet referring either to the patent applications and patents or to the trademark applications and registrations against which the document is to be recorded. Only one set of documents and cover sheets to be recorded should be filed. If a document to be recorded includes interests in, or transactions involving, both patents and trademarks, separate patent and trademark cover sheets must be submitted. If a document to be recorded is not accompanied by a completed cover sheet, the document and any incomplete cover sheet will be returned to the correspondence address for proper completion of the cover sheet and resubmission of the cover sheet and document. While the present rules do not require a cover sheet to accompany each document submitted for recording, typically a cover letter is submitted to ensure proper processing of the document. The Office is proposing to make a cover sheet mandatory in order to better ensure prompt and proper processing of all documents submitted for recording. The proposed cover sheet will contain all the information necessary for the Office to process the document.

Section 3.31 is proposed as a new section to set forth the formal requirements of the new cover sheet. This section proposes that each patent or trademark cover sheet must contain (1) the name of the party conveying the interest; (2) the name and address of the party receiving the interest; (3) a brief description of the interest conveyed or transaction to be recorded (e.g., assignment, license, change of name, merger, security agreement, etc.); (4) each application number, patent number or registration number against which the document is to be recorded, or an indication that the document is filed together with a patent application; (5) the name and address of the party to whom correspondence concerning the request to record the document should be mailed; (6) the number of applications, patents or registrations identified in the cover sheet and the total fee; (7) the date the document was executed; (8) an indication that the assignee of a trademark application or registration who is not domiciled in the United States has designated a domestic representative; and (9) the signature of the party submitting the document and verification of the correctness of information contained on the cover sheet. The verification must be in oath or declaration form unless (1) the submitted documents pertain only to patents and patent applications and the cover sheet is signed by a registered practitioner, or (2) the submitted documents pertain only to trademark applications and registrations and the cover sheet is signed by an attorney as defined in § 10.1(c). Sample cover sheets for patent documents and for trademark documents are shown in Appendices A and B.

Section 3.34 is proposed as a new section to set forth a procedure to correct errors in a recorded cover sheet. This section proposes that if a recorded cover sheet contains an error that is apparent when the cover sheet is compared with the recorded document, the error will be corrected only if a corrected cover sheet is filed for recordation. The corrected cover sheet must be accompanied by the originally-recorded document or a copy of the originally-recorded document and by a new assignment recording fee in the appropriate amount.

Section 3.41 is proposed to replace and consolidate practice under §§ 1.331(a) and 2.185(a)(3) regarding recording fees. Proposed § 3.41 would require that all requests to record documents be accompanied by the appropriate fee. A fee is charged for each application, patent and registration identified in the cover sheet. The recording fee for patents and patent applications is specified in § 1.21(h). The recording fee for registrations and trademark applications is specified in § 2.6(q).

Section 3.51 is proposed to replace and modify the practice of §§ 1.332 and 2.185(c). Proposed § 3.51 would set the date of recording of a document as the date the document meeting the requirements for recording set forth in this Part is filed in the Office. A document which does not comply with the identification requirements of § 3.21 will not be recorded. Other documents not meeting the requirements for recording, for example, a document submitted without a completed cover sheet, without the required fee, or without any required translation will be returned for correction to the sender where a return address is available. The returned papers would be accompanied by a letter which would indicate that if the returned papers are corrected and resubmitted to the Office within the time specified in the letter, the Office would consider the original date of filing of the papers as the date of recording of the papers. Applicants could use the certificate procedure under either § 1.8 or § 1.10 for resubmissions of returned papers if they desired to have the benefit of the date of deposit in the United States Postal Service. If the returned papers were not corrected and resubmitted within the specified period, the date of filing of the corrected papers would be considered to be the date of recording of the papers. Extensions of time would not be available to extend the specified period to resubmit the returned papers.

Section 3.54 is proposed as a new section to set forth the effect of recording a document. This proposed section would set forth that the recording of a document is not a determination by the Office of the validity of the document or the effect that document has on the title to an application, a patent, or a registration. The Office will determine, when necessary, what effect a document has, including whether a party has the authority to take an action in a matter pending before the Office. Examples of when the Office will need to determine whether a party has the authority to take an action in a matter pending before the Office include: (1) Prosecution by the assignee as in proposed § 3.71; (2) consent of an assignee to the filing of a reissue application as provided in § 1.172; and (3) execution of a disclaimer under § 1.321 by an assignee.

Section 3.56 is proposed to replace and modify the practice of § 1.333. Proposed § 3.56 provides that an assignment, which at the time of its execution is conditional on a given act or event, will be treated by the Office as an absolute assignment. This section serves as notification as to how a conditional assignment will be treated by the Office in any proceeding requiring a determination of the owner of an application, patent or registration. Since the Office will not determine whether a condition has been fulfilled, the Office will treat the submission of such an assignment for recordation as signifying that the act or event has occurred.

Section 3.61 is proposed to replace and modify the practice of § 2.185(a)(4). Proposed § 3.61 sets forth that an assignee of a trademark application or registration not domiciled in the United States must designate a domestic representative in writing to the Office. Assignees of patent applications or patents may designate domestic representatives if the assignee is not residing in the United States. 35 U.S.C. 293. The designation would be required

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to state the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the application, patent or registration or rights thereunder.

Section 3.71 is proposed to replace and modify the practice of §§ 1.32 and 2.186. Proposed § 3.71 sets forth that the assignee of record of the entire right, title and interest in an application for patent is entitled to conduct the prosecution of the patent application to the exclusion of the named inventor. Similarly, the assignee of record of the entire right, title and interest in an application for registration is entitled to conduct the prosecution of the trademark application to the exclusion of the applicant.

Section 3.73 is proposed as a new section to set forth the procedure by which an assignee can establish the right to take action in an application, patent or registration. The inventor is presumed to be the original owner of a patent application and any patent that may issue therefrom, unless there is an assignment. The original applicant is presumed to be the original owner of a trademark application and any registration that may issue therefrom, unless there is an assignment. Any action before the Office with respect to an assigned application, patent, or registration may be taken by the assignee of the entire right, title, and interest, provided ownership is established to the satisfaction of the Commissioner. The assignee may establish ownership by submitting to the Office documentary evidence of a chain of title from the original owner to the assignee or by specifying (e.g., reel and frame number, etc.) where such evidence is recorded in the office. Additionally, a statement signed by the party seeking to take action in a matter pending before the Office or its attorney or agent of record must also be submitted stating the evidence has been reviewed and certifying that, to the best of the party's, attorney's, or agent's knowledge and belief, title is in the party seeking to take the action. Documents submitted to establish ownership may be required to be recorded in the Office as a condition to permitting the requesting party to take action in a matter pending before the Office.

Section 3.81 is proposed to replace and modify the practice of § 1.334. Proposed § 3.81 would set forth the procedure for issuance of a patent to an assignee. If an assignment of the entire right, title, and interest is recorded before the issue fee is paid for a patent application, the patent may issue in the name of the assignee. If the assignee holds an undivided part interest, the patent may issue jointly to the inventor and the assignee. At the time the issue fee is paid, the name of the assignee must be provided if the patent is to issue solely or jointly to that assignee. If the assignment is submitted for recording after the date of payment of the issue fee, but prior to issuance of the patent, the assignee may petition that the patent issue to the assignee. Any such petition must be accompanied by the fee set forth in § 1.17(i)(1).

Section 3.85 is proposed to replace and modify the practice of § 2.187. Proposed § 3.85 would set forth the procedure for issuance of a registration to an assignee. The certificate of registration may be issued to the assignee of the applicant, or in a new name of the applicant, provided that the party files a written request in the trademark application record by the time the application is being prepared for issuance of the certificate of registration, and an appropriate document is recorded in the Office. If the assignment or name change document has not been recorded in the Office, then the written request must state that the document has been filed for recordation. The address of the assignee must be made of record in the trademark application file.

Other Considerations

The proposed rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these proposed rule changes will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these proposed changes is to require that a cover sheet accompany each document submitted for recording. The rule change includes no additional or increased fees. Substantive rights to use trademarks and patents are not adversely affected.

The Office has determined that these proposed rule changes are not a major rule under Executive Order 12991. The annual effect on the economy will be less than $100 million. Because most of the proposed changes reduce procedural burdens, there will be no major increase in costs or prices for consumers; individual industries; Federal, state or local government agencies; or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These proposed rule changes contain a collection-of-information requirement subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The proposed rule changes add a requirement for a cover sheet to be submitted with each document to be recorded that will expedite the recording process and improve quality. The public reporting burden for this requirement is estimated to be one-half hour per filing, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding the burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to the Commissioner of Patents and Trademarks, Attention: Office of Management and Organization, Washington, DC 20231; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Paperwork Reduction Projects 0651-0009 and 0651-0011.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 3

Administrative practice and procedure, Inventions and patents, Trademarks, Assignments.

For the reasons set out in the preamble, it is proposed to amend 37 CFR parts 1, 2, and 3 as follows, wherein removals are indicated by brackets ([ ]) and additions by arrows (>,<):

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.12 paragraphs (a) and (d) are proposed to be revised to read as follows:

§ 1.12 Assignment records open to public inspection.

(a) >(1) Separate assignment records are maintained in the Patent and Trademark Office for patents and trademarks.< The assignment records, relating to original or reissue patents, including digests and indexes>, for assignments recorded on or after May 1, 1957<, and assignment records relating to pending or abandoned trademark applications and to trademark registrations >recorded on or after January 1, 1955<, are open to public inspection >at the Patent and Trademark Office<, and copies of >those assignment records< [any instruments recorded] may be obtained upon request and payment of the fee set forth in § 1.19 [(a)(3)] >and 2.6 of this chapter.

(2) All records of assignments of patents recorded before May 1, 1957, and all records of trademark assignments recorded before January 1, 1955, are maintained by the National Archives and Records Administration (NARA). The records are open to public inspection. Certified and uncertified copies of those assignment records are provided by NARA upon request and payment of the fees required by NARA<.

* * * * *

(d) An order for a copy of an assignment >or other document should identify the reel and frame number where the assignment or document is recorded. If a document is identified without specifying its correct real and frame< [should give the identification of the record. If identified only by the name of the patentee and number of the patent, or in the case of a trademark registration by the name of the registrant and number of the registration, or by name of the applicant and serial number or international application number of the application], an extra charge as set forth in § 1.21(f) will be made for the time consumed in making a search for such assignment.

3. Section 1.17 is proposed to be amended by revising paragraph (i)(1) to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(i)(1) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph $120.00

§ 1.12—for access to an assignment record.
§ 1.14—for access to an application.
§ 1.53—to accord a filing date.
§ 1.55—for entry of late priority papers.
§ 1.60—to accord a filing date.
§ 1.62—to accord a filing date.
§ 1.103—to suspend action in application.
§ 1.177—for divisional reissues to issue separately.
§ 1.313—for amendment after payment of issue fee.
§ 1.313—to withdraw an application from issue.
§ 1.314—to defer issuance of a patent.
[§ 1.334—for patent to issue to assignee, assignment recorded late.]
§ 1.666(b)—for access to interference settlement agreement.
>§ 3.81—for patent to issue to assignee, assignment submitted after payment of the issue fee.<

* * * * *

§ 1.32 [Reserved]

4. Section 1.32 is proposed to be removed and reserved.

5. Section 1.46 is proposed to be revised to read as follows:

§ 1.46 Assigned inventions and patents.

In case the whole or a part interest in the invention or in the patent to be issued is assigned, the application must still be made or authorized to be made, and an oath or declaration signed, by the inventor or one of the persons mentioned in §§ 1.42, 1.43, or § 1.47. However, the patent may be issued to the assignee or jointly to the inventor and the assignee as provided in § [1.334] >3.81<.

6. Section 1.104 is proposed to be amended by revising paragraph (e) to read as follows:

§ 1.104 Nature of examination; examiner's action.

* * * * *

(e) Co-pending applications will be considered by the examiner to be owned by, or subject to an obligation of assignment to, the same person if:

(1) The application files refer to assignments recorded in the Patent and Trademark Office in accordance with [§ 1.331] >Part 3 of this chapter< which convey the entire rights in the applications to the same person or organization; or

(2) Copies of unrecorded assignments which convey the entire rights in the applications to the same person or organization are filed in each of the applications; or

(3) An affidavit or declaration by the common owner is filed which states that there is common ownership and states facts which explain why the affiant or declarant believes there is common ownership; or

(4) Other evidence is submitted which establishes common ownership of the applications.

In circumstances where the common owner is a corporation or other organization, an affidavit or declaration may be signed by an official of the corporation or organization empowered to act on behalf of the corporation or organization.

* * * * *

7. The heading prior to § 1.331 is proposed to be revised to read as follows:

[Assignments and Recording]
>Arbitration Awards<

§ 1.331 [Reserved]

8. Section 1.331 is proposed to be removed and reserved.

§ 1.332 [Reserved]

9. Section 1.332 is proposed to be removed and reserved.

§ 1.333 [Reserved]

10. Section 1.333 is proposed to be removed and reserved.

§ 1.334 [Reserved]

11. Section 1.334 is proposed to be removed and reserved.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

12. The authority citation for 37 CFR part 2 would continue to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

13. The heading prior to § 2.185 is proposed to be removed.

[Assignment of Marks]

§ 2.185 [Reserved]

14. Section 2.185 is proposed to be removed and reserved.

§ 2.186 [Reserved]

15. Section 2.186 is proposed to be removed and reserved.

§ 2.187 [Reserved]

16. Section 2.187 is proposed to be removed and reserved.

17. Part 3 is proposed to be added to read as follows:

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PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

Sec.
3.1 Definitions.

Documents Eligible for Recording

3.11 Documents which will be recorded.
3.16 Assignability of trademark prior to filing of use statement.

Requirements for Recording

3.21 Identification of patent or patent application.
3.24 Formal requirements for document and cover sheet.
3.26 English language requirement.
3.27 Mailing address for submitting documents to be recorded.
3.28 Requests for recording.

Cover Sheet Requirements

3.31 Cover sheet content.
3.34 Correction of cover sheet errors.

Fees

3.41 Recording fees.

Date and Effect of Recording

3.51 Recording date.
3.54 Effect of recording.
3.56 Conditional assignments.

Domestic Representative

3.61 Domestic representative.

Prosecution by Assignee

3.71 Prosecution by assignee.
3.73 Establishing right of assignee to prosecute.

Issuance to Assignee

3.81 Issue of patent to assignee.
3.85 Issue of registration to assignee.

Authority: 15 U.S.C. 1123; 35 U.S.C. 6.

§ 3.1 Definitions.

For purposes of this part, the following definitions shall apply:

Application means an application for patent or an application to register a trademark unless otherwise indicated.

Assignment means a transfer by a party of all or part of its right, title and interest in a patent or patent application, or a transfer of its entire right, title and interest in a trademark application or registration.

Document means a document which a party requests to be recorded in the Office pursuant to § 3.11 and which affects some interest in an application, patent, or registration.

Office means the Patent and Trademark Office.

Recorded document means a document which has been recorded in the Office pursuant to § 3.11.

Registration means a trademark registration issued by the Office.

Documents Eligible for Recording

§ 3.11 Documents which will be recorded.

Assignments of applications, patents, and registrations, accompanied by completed cover sheets as specified in §§ 3.28 and 3.31, will be recorded in the Office. Other documents, accompanied by completed cover sheets as specified in §§ 3.28 and 3.31, affecting title to applications, patents, or registrations, will be recorded as provided in this part or at the discretion of the Commissioner.

§ 3.16 Assignability of trademark prior to filing of use statement.

No application to register a mark under 15 U.S.C. 1051(b) is assignable prior to the filing of the verified statement of use under 15 U.S.C. 1051(d) except to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing.

Requirements for Recording

§ 3.21 Identification of patent or patent application.

An assignment relating to a patent must identify the patent by the patent number. An assignment relating to a national patent application must identify the national patent application by the application number (consisting of the series code and the serial number, e.g., 07/123,456) or the serial number and filing date. An assignment relating to an international patent application which designates the United States of America must identify the international application by the international application number (e.g., PCT/US90/01234). If an assignment is executed concurrently with, or subsequent to, the execution of the patent application, but before the patent application is filed, it must identify the patent application by its date of execution, name of each inventor, and title of the invention so that there can be no mistake as to the patent application intended.

§ 3.24 Formal requirements for document and cover sheet.

The document and cover sheet must be legible. Only one side of each page shall be used. The paper used should be bond weight paper, preferably no larger than 8½ × 14 inches (21.6 × 33.1 cm.), and with a one-inch (2.5 cm.) margin on all sides.

§ 3.26 English language requirement.

The Office will accept and record non-English language documents only if accompanied by a verified English translation signed by the individual making the translation.

§ 3.27 Mailing address for submitting documents to be recorded.

Documents and cover sheets to be recorded should be addressed to the Commissioner of Patents and Trademarks, Box Assignments, Washington, DC 20231, unless they are filed together with new applications or with a petition under § 3.81(b).

§ 3.28 Requests for recording.

All requests to record a document in the Office must be accompanied by the document to be recorded and at least one cover sheet as specified in § 3.31 referring either to each patent application and patent, or to each trademark application and registration, against which the document is to be recorded. If a document to be recorded includes interests in, or transactions involving, both patents and trademarks, separate patent and trademark cover sheets must be submitted. Only one set of documents and cover sheets to be recorded should be filed. If a document to be recorded is not accompanied by a completed cover sheet, the document and any incomplete cover sheet will be returned pursuant to § 3.51 for proper completion of a cover sheet and resubmission of the document and a completed cover sheet.

Cover Sheet Requirements

§ 3.31 Cover sheet content.

Each patent or trademark cover sheet required by § 3.28 must contain:

(a) The name of the party conveying the interest;

(b) The name and address of the party receiving the interest;

(c) A description of the interest conveyed or transaction to be recorded;

(d) Each application number, patent number or registration number against which the document is to be recorded, or an indication that the document is filed together with a patent application;

(e) The name and address of the party to whom correspondence concerning the request to record the document should be mailed;

(f) The number of applications, patents or registrations identified in the cover sheet and the total fee;

(g) The date the document was executed;

(h) An indication that the assignee of a trademark application or registration who is not domiciled in the United States has designated a domestic representative (see § 3.61); and

(i) The signature of the party submitting the document and verification of the correctness of information contained on the cover sheet. The verification must be in oath or declaration form unless:

(1) The submitted patent cover sheet is signed by a registered practitioner, or

(2) The submitted trademark cover sheet is signed by an attorney as defined in § 10.1(c) of this chapter.

A cover sheet may not refer to both patents and trademarks.

§ 3.34 Correction of cover sheet errors.

An error in a cover sheet recorded pursuant to § 3.11 will be corrected only if:

(a) The error is apparent when the cover sheet is compared with the recorded document to which it pertains and

(b) A corrected cover sheet is filed for recordation.

The corrected cover sheet must be accompanied by the originally-recorded document or a copy of the originally-recorded document and by an assignment recording fee as set forth in § 1.21(h) of this chapter for patents and § 2.6(q) of this chapter for trademarks.

Fees

§ 3.41 Recording fees.

All requests to record documents must be accompanied by the appropriate fee. A fee is required for each application, patent and registration against which the document is recorded as identified in the cover sheet. The recording fee is set in § 1.21(h) of this chapter for patents and in § 2.6(q) of this chapter for trademarks.

Date and Effect of Recording

§ 3.51 Recording date.

The date of recording of a document is the date the document meeting the requirements for recording set forth in this Part is filed in the Office. A document which does not comply with the identification requirements of § 3.21 will not be recorded. Documents not meeting the other requirements for recording, for example, a document submitted without a completed cover sheet or without the required fee, will be returned for correction to the sender where a correspondence address is available. The returned papers will be accompanied by a letter which will indicate that if the returned papers are corrected and resubmitted to the Office within the time specified in the letter, the Office will consider the original date of filing of the papers as the date of recording of the document. The certification procedure under either § 1.8 or § 1.10 of this chapter may be used for resubmissions of returned papers to have the benefit of the date of deposit in the United States Postal Service. If the returned papers are not corrected and resubmitted within the specified period, the date of filing of the corrected papers will be considered to be the date of recording of the document. The specified period to resubmit the returned papers will not be extended.

§ 3.54 Effect of recording.

The recording of a document pursuant to § 3.11 is not a determination by the Office of the validity of the document or the effect that document has on the title to an application, a patent, or a registration. When necessary, the Office will determine what effect a document has, including whether a party has the authority to take an action in a matter pending before the Office.

§ 3.56 Conditional assignments.

Assignments which are made conditional on the performance of certain acts or events, such as the payment of money or other condition subsequent, if recorded in the Office, are regarded as absolute assignments for Office purposes until cancelled with the written consent of all parties or by the decree of a court of competent jurisdiction. The Office does not determine whether such conditions have been fulfilled.

Domestic Representative

§ 3.61 Domestic representative.

If the assignee of a trademark application or registration is not domiciled in the United States, the assignee must designate, in writing to the Office, a domestic representative. An assignee of a patent application or patent may designate a domestic representative if the assignee is not residing in the United States. The designation shall state the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the application, patent or registration or rights thereunder.

Prosecution by Assignee

§ 3.71 Prosecution by assignee.

The assignee of record of the entire right, title and interest in an application for patent is entitled to conduct the prosecution of the patent application to the exclusion of the named inventor or previous assignee. The assignee of record of the entire right, title and interest in a trademark application or registration is entitled to conduct the prosecution of the trademark application or registration to the exclusion of the original applicant or previous assignee.

§ 3.73 Establishing right of assignee to prosecute.

(a) The inventor is presumed to be the owner of a patent application, and any patent that may issue therefrom, unless there is an assignment. The original applicant is presumed to be the owner of a trademark application unless there is an assignment.

(b) Any action before the Office with respect to an assigned application, patent, or registration may be taken by the assignee of the entire right, title, and interest provided ownership is established to the satisfaction of the Commissioner. Ownership may be established by submitting to the Office documentary evidence of a chain of title from the original owner to the assignee or by specifying (e.g., reel and frame number, etc.) where such evidence is recorded in the Office When a party holding ownership of an application through assignment(s) seeks to take action in a matter pending before the Office, a statement, signed by the party or its attorney or agent of record, must also be submitted specifying the documents placing ownership in the party, stating the evidence has been reviewed and certifying that, to the best of the party's, attorney's, or agent's knowledge and belief, title is in the party seeking to take the action. Documents submitted to establish ownership may be required to be recorded as a condition to permitting the requesting party to take action in a matter pending before the Office.

Issuance To Assignee

§ 3.81 Issue of patent to assignee.

(a) For a patent application, if an assignment of the entire right, title, and interest is recorded before the issue fee is paid, the patent may issue in the name of the assignee. If the assignee holds an undivided part interest, the patent may issue jointly to the inventor and the assignee. At the time the issue fee is paid, the name of the assignee must be provided if the patent is to issue solely or jointly to that assignee.

(b) If the assignment is submitted for recording after the date of payment of the issue fee, but prior to issuance of the patent, the assignee may petition that the patent issue to the assignee. Any such petition must be accompanied by the fee set forth in § 1.17(i)(1) of this chapter.

§ 3.85 Issue of registration to assignee.

The certificate of registration may be issued to the assignee of the applicant, or in a new name of the applicant, provided that the party files a written request in the trademark application by

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the time the application is being prepared for issuance of the certificate of registration, and the appropriate document is recorded in the Office. If the assignment or name change document has not been recorded in the Office, then the written request must state that the document has been filed for recordation. The address of the assignee must be made of record in the application file.

Dated: April 23, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

Note: Appendices A and B are published for informational purposes only and will not be codified in the Code of Federal Regulations.

BILLING CODE 3510-16-M

Appendix A to Part 3

PATENTS ONLY — PATENTS ONLY

To the Honorable Commissioner of Patents and Trademarks:
Please record the attached original document or copy thereof.

1. Name of Party(ies) conveying an interest:

2. Name and Address of Party(ies) receiving an interest:

Name:_____
Internal Address:_____
Street Address:_____
City:_____
State:_____ Zip:_____

3. Deacription of the interest conveyed:

☐ Assignment ☐ Change of Name ☐ Other _____
☐ Security Agreement ☐ Merger

4. Application number (s) or patent number (s). Additional sheet attached? ☐ Yes ☐ No
If this document is being filed together with a new application, the execution date of the application is:

_____
Date

A. Patent Application No.(s)

B. Patent No. (s)

5. Name and address of party to whom correspondence concerning document should be mailed:

Name:_____
Internal Address:_____
Street Address:_____
City:_____
State:_____ Zip:_____

6. Number of applications and patents involved:

7. Amount of fee enclosed or authorized to be charged:

8. Deposit account number (Attach duplicate copy of this form if paying by deposit account):

DO NOT USE THIS SPACE

9. Date of execution of attached document _____
10. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on:

_____
Date

Signature — Name of Person Signing

Appendix B to Part 3

TRADEMARKS ONLY — TRADEMARKS ONLY

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original document or copy thereof.

1. Name of Party(ies) conveying an interest:

Entity:
☐ Individual (s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☐ Corporation-State_____
☐ Other_____

2. Name and Address of Party(ies) receiving an interest:

Name:_____
Internal Address:_____
Street Address:_____
City:_____
State:_____ Zip:_____

Entity:
☐ Individual (s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☐ Corporation-State_____
☐ Other_____
Citizenship_____

If not domiciled in the United States, a domestic representative designation is attached:
☐ Yes
☐ No (The attached document must not be an assignment)

3. Interest Conveyed:
☐ Assignment ☐ Change of Name
☐ Security Agreement ☐ Merger
☐ Other_____

4. Application number (s) or registration number (s). Additional sheet attached? ☐ Yes ☐ No

A. Trademark Application No.(s)

B. Trademark Registration No. (s)

5. Name and address of party to whom correspondence concerning document should be mailed:

Name:_____
Internal Address:_____
Street Address:_____
City:_____
State:_____ Zip:_____

6. Number of applications and registrations involved:

7. Amount of fee enclosed or authorized to be charged:

8. Deposit account number (Attach duplicate copy of this form if paying by deposit account):

DO NOT USE THIS SPACE

9. Date of execution of attached document:_____
10. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on:

_____
Date

_____ _____
Signature Name of Person Signing

[FR Doc. 91-10841 Filed 5-9-91; 8:45 am]

BILLING CODE 3510-10-C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-132, RM-7692]

Radio Broadcasting Service; Neenah-Menasha, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Fox Valley Broadcasting, Inc., requesting the substitution of Channel 232C3 for Channel 232A at Neenah-Menasha, Wisconsin, and modification of the license for Station WROE to specify operation on the higher class channel. The coordinates for Channel 232C3 are 44-19-00 and 88-33-00.

DATES: Comments must be filed on or before June 28, 1991, and reply comments on or before July 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Thomas J. Hutton, Dow, Lohnes & Albertson, 1255 Twenty-Third Street, NW., Washington, DC 20237, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-132, adopted April 25, 1991, and released May 7, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW. Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11153 Filed 5-9-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-131, RM-7702]

Radio Broadcasting Services; Kings, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Donald Brady proposing the allotment of Channel 246A to Kings, Mississippi, as that community's first FM broadcast service. The coordinates for Channel 246A are 32-24-01 and 90-51-07.

DATES: Comments must be filed on or before June 28, 1991, and reply comments on or before July 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Donald Brady, 5880 Ridgewood Road, Apt. D-40, Jackson, Mississippi 39211 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-131, adopted April 24, 1991, and released May 7, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11154 Filed 5-9-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

48 CFR Chapter 9

Acquisition Regulation; 8(a) Contracting

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to amend the Department of Energy Acquisition Regulation (DEAR) to exempt procurements under the authority of section 8(a) of the Small Business Act from the formal Source Evaluation Board procedures set forth in Section 915.613, Alternate source selection procedures.

DATES: Written comments should be submitted no later than June 10, 1991.

ADDRESSES: Comments should be addressed to the Department of Energy, Procurement Policy Division, Office of Procurement, Assistance and Program Management (PR-121), 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Richard B. Langston, Office of Procurement, Assistance and Program Management (PR-121), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8247.

Laura Fullerton, Office of the Assistant General Counsel for Procurement and Finance (GC-34), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1900.

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SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under Executive Order 12612
E. National Environmental Policy Act
F. Public Hearing
III. Public Comments

I. Background

Under section 644 of the Department of Energy Organization Act, Public Law 95-91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in the position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR chapter 9.

The Department is proposing to amend the DEAR to specify that competitive acquisitions under the authority of section 8(a) of the Small Business Act are exempt from the Department's formal Source Evaluation Board procedures. This will be accomplished by adding a new section 919.805-2, Procedures, which furnishes background and recognizes the exemption.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive order, entitled "Federal Regulation," requires that certain regulations be reviewed by the OMB prior to their promulgation. This proposed rule was submitted to the Office of Management and Budget for review.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's proposed rule, when finalized, will revise certain policy and procedural requirements. DOE has determined that none of the revisions will have a direct effect on the institutional interests or traditional functions of the States.

E. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 *et seq.*) (1976), the Council on Environmental Quality Regulations (40 CFR part 1500-1508), or the DOE Guidelines (10 CFR 1021) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

F. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Public Law 95-91, the DOE Organization Act, and 5 U.S.C. 553, the Administrative Procedures Act, the Department does not plan to hold a public hearing on this proposed rule.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "ADDRESS" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

All written comments received (by the date indicated in the "DATE" section of this notice) will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule. Any person submitting information which that person believes to be confidential and which may be exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. DOE's generally applicable procedures for handling information, which has been submitted in a document and may be exempt from public disclosure, are set forth in 10 CFR 1004.11.

List of Subjects in 48 CFR Ch. 9

Government procurement.

For the reasons set out in the preamble, chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC, on May 7, 1991.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

1. The authority citation for chapter 9 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. A new subpart 919.8 is added to read as follows:

Subpart 919.8—Contracting With the Small Business Administration (the 8(a) Program)

919.805-2 Procedures.

Acquisitions involving section 8(a) competition are exempt from Department of Energy formal Source Evaluation Board procedures cited in subpart 915.6, Source Selection, but must still comply with source selection procedures set forth in the FAR in accordance with 13 CFR 124.311(f)(1).

[FR Doc. 91-11192 Filed 5-9-91; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 89-01; Notice 9]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision to Grant Exemption

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed decision to grant exemption from average fuel economy standards and to establish an alternative standard.

SUMMARY: This notice is being issued in response to a petition filed by Dutcher Motors, Inc. (Dutcher) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years (MY) 1993, 1994, and 1995 passenger automobiles, and that a lower alternative standard be established for the company for each of those years. This notice proposes that the requested exemption be granted and that an alternative standard of 17.0 mpg for each MY be established for Dutcher.

DATES: Comments on this notice must be received on or before June 24, 1991.

ADDRESSES: Comments on this notice must refer to the docket number and notice number of this notice and should be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Kee's telephone number is (202) 366-0846.

SUPPLEMENTARY INFORMATION:

Background

Section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act), provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standard for passenger automobiles if that standard is more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactures (worldwide) fewer than 10,000 passenger automobiles in the model year for which the exemption is sought (the affected model year) and that manufactured fewer than 10,000 passenger automobiles in the second model year before the affected model year. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

(1) Technological feasibility;
(2) Economic practicability;
(3) The effect of other Federal motor vehicle standards on fuel economy; and
(4) The need of the Nation to conserve energy.

The Act permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) A separate standard may be established for each exempted manufacturer; (2) classes, based on design, size, price, or other factors, may be established for the automobiles of exempted manufactures, with a separate average fuel economy standard applicable to each class; or (3) a single standard may be established for all exempted manufacturers.

In a petition dated December 5, 1990, Dutcher Motors (Dutcher) requested an exemption from the generally applicable fuel economy standards for MYs 1993, 1994, and 1995. In response to a previous petition requesting an alternate standard of 17.0 mpg for MY 1992, the agency has published a notice proposing to exempt Dutcher and set an alternative standard of 17.0 for that year (See 56 FR 3441; January 30, 1991). That company's petition for MYs 1993, 1994, and 1995 indicates that same basic vehicle produced for MY 1992 will continue to be produced in those later years.

Classification of Transitaxi as a Passenger Automobile

Due to differences in the definitions used by this agency under the Cost Savings Act for CAFE purposes and the Environmental Protection Agency under the Clean Air Act for emissions control purposes, the Transitaxi is classified differently by these two agencies. For MYs 1986 through 1988, the Environmental Protection Agency (EPA) classified the Dutcher model as a "light duty truck" for emissions compliance due to the model's derivation from existing truck components (40 CFR 86.02-2). However, for those years, NHTSA concluded that the Transitaxi is a "passenger automobile" for fuel economy purposes. The Transitaxi is a passenger automobile under the definition in 49 CFR 523.4 since it transports not more than 10 individuals and since it does not meet any configurational or usage criteria for light trucks given in 49 CFR 523.5. Dutcher plans no substantial change in the design of the Transitaxi for MYs 1993 through 1995, from the model produced in MYs 1986 through 1988. NHTSA therefore concludes that the Transitaxi to be produced in MYs 1993-1995 is a "passenger automobile" for fuel economy purposes.

Background Information on Dutcher

Dutcher Motors, Inc., a small company located in San Marcos, California, was chartered in 1984 to manufacture a limited quantity of a single model of special purpose vehicles called Transitaxi. Dutcher incorporates unique design features that facilitate use of the vehicle for handicapped and disabled individuals. The Transitaxi is designed to be used in any business providing shared-ride taxi service, demand response dial-a-ride systems, airport-to-hotel shuttles and/or feeder line service to city buses and rail lines.

Dutcher's principal stockholder is Cornelius Dutcher, who resides in San Marcos, California, which is also the location of its present office headquarters and production facility. Dutcher employs approximately eight workers. Dutcher does not control, is not controlled by and is not under common ownership with another manufacturer of passenger automobiles. For MYs 1993-1995, Dutcher intends to use General Motors (GM) engines and other GM parts, but will purchase these components in arms-length transactions from General Motors Corporation. The components will then be installed in the vehicle which will be designed and manufactured by Dutcher. The planned vehicle would have the largest interior volume index of any passenger automobile sold in the United States.

Dutcher has informally notified this agency that as a cost saving measure, it may contract with another small business to do the actual assembly work for the Transitaxi for MYs 1993 through 1995.

The Dutcher model that is the subject of this petition will have GM 3.8 liter, electronically fuel injected, V-6 engines. The Environmental Protection Agency (EPA) fuel economy test results for the MY 1989 Dutcher (the most recent model year for which testing was conducted) were a combined value of 18.4 mpg, somewhat higher than the earlier version of the Transitaxi that used a Ford engine. Vehicle specifications for the Transitaxi are as follows:

Maximum width—61.5 inches
Maximum length—196.8 inches
Maximum height—76.5 inches
Curb weight—4200 pounds
Interior volume index—350 cubic feet

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Net horsepower—155

Dutcher stated in a September 12, 1989 letter that the 1992 model would be similar to a 1990 prototype, which is 200 pounds lighter than the 1989 version. In light of this weight reduction, NHTSA estimates that Dutcher can achieve a fuel economy of 17.0 mpg for its MY 1992 vehicle. This estimate is derived by using a regression equation based on EPA's 1989 test car list applied to Dutcher's MY 1989 test data but with a reduction of 200 pounds and no other drivetrain changes. As was stated earlier, the Transitaxi model planned for MYs 1993–1995 is the same as the 1992 version.

NHTSA notes that Dutcher's petition states that its average fuel economy will be 16 mpg. The agency assumes that the 16 mpg figure is based on EPA test results for Dutcher's MY 1989 vehicle, and that it does not reflect the fuel economy improvement attributable to the 200 pound weight reduction discussed above.

Areas specifically addressed by the Dutcher petition (including submissions related to petitions for earlier model years) to improve its fuel economy include mix shift, weight reduction, engine improvements, and drive train and transmission improvements.

Methodology Used to Project Maximum Feasible Average Fuel Economy Level for Dutcher

Baseline Fuel Economy

To project the level of fuel economy which will be achieved by Dutcher in MYs 1993–1995, the agency considered whether there were technical or other improvements that would be feasible for these Dutcher vehicles, whether or not the company will actually incorporate such improvements in those vehicles. The agency assessed the technological feasibility and economic practicability of any changes.

NHTSA interprets "technological feasibility" as meaning that technology which would be available to Dutcher for use on its MY 1993 through 1995 automobiles, and which would improve the fuel economy of those automobiles. The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, and drive line improvements. Due to Dutcher's limited financial resources, small engineering staff, very low production volume, and assemblage of stock components, the petition will have few opportunities for technological improvements for fuel economy.

"Economic practicability" is interpreted as meaning the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its MYs 1993–1995 automobiles. In assessing that capability, the agency has always considered market demand since it is an implicit part of the concept of economic practicability. Consumers need not purchase what they do not want.

In accordance with the concerns of economic practicability, NHTSA has considered only those improvements which would be compatible with the basic design concepts of Dutcher automobiles. Hence, design changes that would make the cars unsuitable for transporting the wheelchair bound or other handicapped, and eliminating options usually available on cars, such as air conditioning, automatic transmission, power steering, and power windows, were not examined. Such changes to the basic design of the Dutcher could be economically impracticable since they might well significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.

Mix Shift

Since only one vehicle model is planned for MYs 1993–1995, the Dutcher corporate average fuel economy is based on the fuel economy of that one model, the Transitaxi, and cannot be averaged with the fuel economy of any other models.

Weight And Aerodynamic Drag Reduction

Dutcher stated in its petition that considerable engineering effort had gone into weight reduction of their model and special attention has been given to good aerodynamic design. For example, the Transitaxi is designed with a smooth front cowl, flush windows and door handles, and a bottom cover, all of which promote a low drag coefficient. The body is made primarily of fiberglass to reduce the weight of the vehicle. Dutcher states that it is considering using several kinds of low-friction, synthetic lubricants.

Technology for Fuel Economy Improvements

Because of the Dutcher's limited financial resources, small engineering staff, extremely low production volume, and assemblage of stock components, few opportunities for technological improvements for fuel economy exist. Dutcher purchases standard components, or better, for installation in its Transitaxis. Dutcher depends entirely on GM, the supplier of the engine, for technological improvements in fuel efficiency of the engine since the company does not have the financial resources and the staff to do it themselves. The transmission is a four-speed automatic transmission with lockup torque converter clutch, one of the more efficient transmission designs available. The driveshaft utilizes low friction, ball-type, constant-velocity, universal joints. The drivetrain is entirely at the rear of the vehicle. A Buick V-6 engine and 4-speed automatic transmission are mounted in transverse configuration.

Dutcher's dynamometer horsepower setting for the 1989 EPA certification testing, when compared to that of MY 1990 passenger vans and station wagons of smaller frontal area and interior volume, as indicated in the table below, shows that the Transitaxi uses good aerodynamic design equivalent to current industry standards. The agency has compared MY 1989 data for Dutcher versus MY 1990 data for the other vehicles as these are the most current data available to the agency. As earlier stated, except for the fact that the MY 1993–1995 versions will be approximately 200 pounds lighter, the agency anticipates no significant differences between the MY 1989 and MY 1993–1995 Transitaxis.

DYNAMOMETER SETTING COMPARISON

Model	Act. dyno. HP.	Frontal area, square feet	Interior volume index
Dutcher Transitaxi	14.7	37	350
* Ford Aerostar	11.7	31.3	178
* GM Astro	13.8	34.4	202
* Chrysler Caravan/ Voyager	10.2	n/a	213
Mercury Grand Marquis Wagon	12.5	26.6	165
* Chevrolet Lumina APV	9.8	29.4	158
* Ford E-150 Club Wagon	16.7	37.7	236

* These vehicles are classified by EPA as light trucks.

Thus, the only signficiant opportunity for improvment in these components will be the result of any improvments which GM decides for its own purposes to make in the engine and drivetrain it will supply for Dutcher. Dutcher's role will be limited to attempting to modify the drivetrain to meet emissions requirements.

Effect of Other Motor Vehicle Standards

As indicated above, a MY 1989 vehicle is the most recent Dutcher vehicle for which EPA testing was conducted. The fuel economy effects experienced by that vehicle as a result of Federal safety or emissions standards were reflected in the fuel economy values which the vehicle achieved in that EPA testing. That testing does not, however, reflect changes in government standards which took effect after MY 1989.

In NHTSA's recent light truck (i.e., light trucks and multipurpose passenger vehicles) fuel economy rulemaking, include the one for MYs 1992–94, the agency has discussed the effects of government regulations, both in process and recently completed, that may have an impact on fuel economy. See 55 FR 3609, February 2, 1990; 55 FR 12487, April 4, 1990; 56 FR 13773, April 4, 1991. This analysis is relevant to Dutcher, since, as indicated above, the Transitaxi is considered a light duty truck for purposes of EPA emissions standards, and NHTSA understands that Dutcher classifies the Transitaxi as a multipurpose passenger vehicle for purposes of safety standards.

While there have been some changes in government regulations which could effect fuel economy, e.g., safety standards whose application to light trucks could result in added weight, NHTSA does not know whether the fuel economy of the Dutcher Transitaxi will be affected. For example, the Transitaxi may meet new safety standards without any changes, or any weight increases may be so small as not to affect its fuel economy value. NHTSA has not included any adjustment in Dutcher's fuel economy to account for changed government standards since MY 1989 The agency specifically invites comments concerning whether the fuel economy of the Transitaxi will be affected by such changed standards and, if so, to what extent.

The Need of the Nation to Conserve Energy.

The agency recognizes there is a need to conserve energy, to promote energy security, and to improve balance of payments. However, as discussed elsewhere in this notice, NHTSA has tentatively determined that it will not be technologically feasible or economically practicable for Dutcher to achieve an average fuel economy in each of MYs 1993, 1994, and 1995 above 17.0 mpg. Since Dutcher probably cannot exceed 17 mpg, granting an exemption and setting an alternative standard at that level would not have any effect on fuel consumption and would not affect the need of the Nation to conserve energy.

Proposed Alternative Standard

Based on the foregoing discussion, this agency has tentatively concluded that it would not be technologically feasible and economically practicable for Dutcher to improve the fuel economy of its model year 1993 through 1995 automobiles above an average of 17.0 mpg, the same level proposed for MY 1992. The agency has also concluded that the national effort to conserve energy would not be affected by granting the requested exemption and establishing an alternative standard, and assumes that compliance with other Federal automobile standards would not adversely affect achievable fuel economy. Consequently, the agency tentatively concludes that the maximum feasible average fuel economy for Dutcher in MYs 1993–1995 will be 17.0 mpg. Therefore, the agency proposes to exempt Dutcher from the generally applicable standard of 27.5 mpg and to establish an alternative standard for Dutcher of 17.0 mpg for each of MYs 1993, 1994, and 1995. The proposal to establish a separate standard for Dutcher as opposed to a single standard for all exempted manufacturers or class standards, is consistent with past agency practice.

NHTSA has analyzed this proposal and determined that neither Executive Order 12291 nor the Department of Transportation regulatory policies and procedures apply, because the proposal would not establish a "rule," which term is defined in the Executive Order as "an agency statement of general applicability and future effect." The proposed exemption is not generally applicable, since it would apply only to Dutcher Motors, Inc., as discussed in this notice. If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted company would not have to pay civil penalties for failing to meet generally applicable fuel economy standards. Since this proposal sets an alternative standard at the level tentatively determined to be Dutcher's maximum feasible level for the 1993 through 1995 model years, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large would be minimal.

The agency has also considered the environmental implications, of this proposal in accordance with the National Environmental Policy Act and determined that this proposal, if adopted, would not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air would not be affected by the proposed exemption and alternative standard. Further, since the exempted passenger automobiles could not have achieved better fuel economy than is proposed herein, granting the proposed exemption would not affect the amount of fuel available.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 531

Energy conservation, gasoline, imports, motor vehicles.

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In consideration of the foregoing, it is proposed that 49 CFR part 531 be amended as follows:

1. The authority citation for part 531 would continue to read as follows:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. Section 531.5(b) is proposed to be amended by revising paragraph (b)(11), and the introductory text of paragraph (b) would be republished, to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(11) Dutcher Motors, Inc.

Model year	Average fuel economy standard (miles per gallon)
1986	16.0
1987	16.0
1988	16.0
1992	17.0
1993	17.0
1994	17.0
1995	17.0

* * * * *

Issued on: May 7, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-11177 Filed 5-9-91; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 56, No. 91
Friday, May 10, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Whimbleton Timber Sales, Mt. Baker-Snoqualmie National Forest, Skagit and Snohomish Counties, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site specific proposal to harvest and regenerate timber, construct and reconstruct roads, provide fish and wildlife habitat enhancement, watershed restoration, and enhance recreation within the Whimbleton Project Area. The project area is located within a portion of the Glacier Peak J and I, Roadless Area #6031. The proposals will be in compliance with the Mt. Baker-Snoqualmie National Forest Land and Resource Management Plan (Forest Plan) of June 1990, which provides overall guidance in achieving the desired future condition for the area, including a schedule for proposed activities for the next ten years. The proposed projects are located in the Sauk River drainage on the Darrington Ranger District and are scheduled in the Forest Plan for one fiscal year 1992 timber sale, and two fiscal year 1993 timber sales. The Mt. Baker-Snoqualmie National Forest invites written comments and suggestions on the scope of the analysis.

DATES: Comments concerning the scope of the analysis and should be received in writing by June 17, 1991.

ADDRESSES: Send written comments to Fred Harnisch, District Ranger, Darrington Ranger District, 1405 Emmens St., Darrington, WA 98241.

FOR FURTHER INFORMATION CONTACT: Dan Krutina, Timber Management Assistant, at the above address or (206) 436-1155.

SUPPLEMENTARY INFORMATION: The proposals include: Harvesting timber and constructing/reconstructing roads on three timber sales; watershed restoration; and enhancement of fish and wildlife habitat and recreation opportunities within the project area. Three proposed timber sales are listed in the Timber Program Activity Schedule, Forest Plan, appendix A. The Big Tenas Timber Sale is listed for 1992 and the Huckleberry and Tinhorn Timber Sales are listed for 1993. The Whimbleton project area is approximately 15,000 acres in size, and is located in all or portions of section 1, T.33N., R.10E.; and sections 5-8, 16-23, 25-30, 32-36, T.33N., R.11E., Willamette Meridian.

The environmental analysis of the proposed timber sales in this area have been ongoing for several years as separate analyses. Due to geographic proximity, similarity of issues, and the schedule of proposed timber sales, the environmental analysis for all three timber sales will be considered and documented in one EIS.

This EIS will be tiered to the Final EIS for the Mt. Baker-Snoqualmie National Forest Land and Resource Management Plan (June, 1990). The Forest Plan's direction for the Whimbleton project area is MA 17 (Timber Management Emphasis), MA 1B (Semi-Primitive Nonmotorized Dispersed Recreation), MA 15A (Mountain Goat Habitat), MA 12 (Mature and Old Growth Wildlife Habitat), and MA 14 (Deer and Elk Winter Range). MA 13 (Watershed, Wildlife and Fisheries Emphasis in Riparian Areas) will be mapped as part of the project. Timber harvest may be proposed only in MA 17, MA 14, and MA 13.

The project area includes a portion of the Glacier Peak J and I Roadless Area #6031, which were considered but not selected for wilderness designation in the 1984 Washington State Wilderness Act.

Interested environmental groups, individuals, timber purchasers and government agencies were invited to participate in the previous scoping and analysis of the separate timber sales. These individuals and groups were also invited to an Open House in 1990 to discuss the proposed Whimbleton EIS. A few comments have been received. An informational letter is being sent concurrently to interested people to update them on the analysis and the intent to prepare an EIS, and to invite further involvement. Further scoping meetings may be scheduled if additional issues are raised.

Preliminary issues identified are: impacts on deer, fish, and cavity nesting birds habitat; unstable soils; entry in roadless area; possible reforestation problems; connecting habitat and elevational corridors; long-term management of roads; cumulative effects of timber harvest and water quality; new perspectives in forestry; and Tupso trail development.

A range of alternatives for these projects will be considered. One alternative will consider maximizing timber production opportunities; another alternative will consider using helicopter logging in order to maintain the future option of allocating the area to other non-roaded use. At least one alternative will be designed to minimize fragmentation of large, contiguous blocks of old growth forest in the analysis area. At least one alternative will involve harvest practices that help maintain or enhance the diversity and sustainability of forest ecosystems. Other alternatives will consider various timber sale and road development proposals that address key issues.

The draft environmental impact statement is expected to be completed about January, 1992. Your comments and suggestions are encouraged and should be in writing. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after

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completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986), and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The final environmental impact statement is scheduled for completion by July, 1992. In the final EIS, the Forest Service will respond to comments and responses received on the draft EIS. The Forest Service is the lead agency. J. D. MacWilliams, Forest Supervisor, Mt. Baker-Snoqualmie National Forest, is the responsible official and will make a decision regarding this proposal. The decision and reason for the decision will be documented in a Record of Decision. The decision will be subject to Forest Service appeal regulations (36 CFR 217).

Dated: May 2, 1991.

Bernie Weingardt,

Deputy Forest Supervisor.

[FR Doc. 91-11198 Filed 5-9-91; 8:45 am]

BILLING CODE 3410-11-M

Rangeland Resource Planning

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of Agency directive.

SUMMARY: The Forest Service has revised its direction to employees on how to integrate consideration of rangeland resource management into the land and resource management planning process. The direction is contained in chapter 2240 of the Forest Service Manual, Amendment No. 2200-91-4 effective April 24, 1991. The amendment clarifies how allotment management planning is to be integrated with forest planning, emphasizes requirements to ensure consistency of allotment management plans, grazing permits, and other rangeland use authorizations with forest plan direction, and provides guidance on monitoring implementation of rangeland resource management direction contained in the Forest Plan. The direction applies to rangeland resource planning on all National Forest System lands.

ADDRESSES: Single copies of Amendment No. 2200-91-1 are available without charge by writing to the Distribution Section Directives and Regulations Branch, Information Systems Staff (809 RPE), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Edward F. Schlatterer, Range Management Staff, Forest Service, (202) 453-8455.

Dated: May 1, 1991.

David G. Unger,

Associated Deputy Chief.

[FR Doc. 91-11178 Filed 5-9-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-815]

Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that gray portland cement and clinker from Japan was being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of these imports.

Therefore, based on these findings, all unliquidated entries or warehouse withdrawals of gray portland cement and clinker from Japan, made on or after October 31, 1990, the date of publication in the Federal Register of the Department's affirmative preliminary determination (55 FR 45631), will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries or warehouse withdrawals made on or after the date of publication of this antidumping duty order in the Federal Register.

We are amending the final results of the antidumping duty investigation of gray portland cement and clinker from Japan (56 FR 12156, March 22, 1991) to correct a clerical error in the calculations. The correct cash deposit rate for Onoda Cement Co. Ltd. (Onoda) is 45.29 percent. The correct cash deposit rate for the "All Others" category of producer/exporters is 63.73 percent.

EFFECTIVE DATE: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta or David C. Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377-0188 or 377-3798, respectively.

Scope of Order

The products covered by this investigation are gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Microfine cement is specifically excluded from the scope of this order. Gray portland cement is currently classifiable under the harmonized tariff schedule (HTS) item number 2523.29, and clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under item number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage

SUPPLEMENTARY INFORMATION: In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(a)) (the Act), on March 22, 1991, the Department of Commerce (Department) made its final determination that gray portland cement and clinker from Japan is being sold at less than fair value (56 FR 12156). On April 29, 1991, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry. After publication of our final results, Onoda alleged that, for a small number of ESP sales, the Department had made a ministerial error in the calculation of United States price by deducting the verified freight charge from certain exporters' sales price (ESP) transactions with "picked up" terms of sales which did not incur the freight expense. We agree with Onoda. After correcting the calculations, the final estimated margin percentage for Onoda changes from the 47.79 percent published in the final determination to 45.29 percent. The "All Others" rate changes from the 65.22 percent published in the final determination to 63.73 percent.

Accordingly, pursuant to section 735(e) of the Act, we are correcting the ministerial error in the final determination of sales at less than fair value. The cash deposit rate for Onoda is now 45.29 percent. The cash deposit rate for the "All Others" category is now 63.73 percent. The cash deposit rate for Nihon Cement Co., Ltd. and its affiliates, Myojo Cement Co., Ltd. and Daiichi Cement Co., Ltd. remains unaffected by this amendment to the final determination.

Based on these findings, all unliquidated entries or warehouse withdrawals of gray portland cement and clinker from Japan, made on or after October 31, 1990, will be liable for the possible assessment of antidumping duties.

Further, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of gray portland cement and clinker from Japan. These antidumping duties will be assessed on all unliquidated entries of gray portland cement and clinker from Japan entered, or withdrawn from warehouse, for consumption on or after October 31, 1990, the date on which the Department published its preliminary determination notice in the Federal Register.

Suspension of Liquidation

On or after the date of publication of this notice in the Federal Register, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated dumping margin, as shown below.

Manufacturer/producer/exporter	Margin percentage
Onoda Cement Co., Ltd	45.29
Nihon Cement Co., Ltd	84.70
(Myojo Cement Co., Ltd.)	(84.70)
(Daiichi Cement Co., Ltd)	(84.70)
All Others	63.73

This constitutes the antidumping duty order with respect to gray portland cement and clinker from Japan, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Units, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This notice is published pursuant to sections 735(d) and 736(a) of the Act (19 U.S.C. 1673(d), 1673e(a)) and 19 CFR 353.21 and 353.28(c).

Dated: May 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-11197 Filed 5-9-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-506]

Oil Country Tubular Goods From Canada; Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by two respondents and petitioners, the Department of Commerce has conducted an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Canada. The review covers two exporters and the period June 1, 1989 through May 31, 1990. As a result of the review, the Department has preliminarily determined that margins exist.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph B. Kaesshaefer, Jr. or Robin Gray, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1986, the Department of Commerce ("the Department") published in the Federal Register (51 FR 21782, June 16, 1986) the antidumping duty order on oil country tubular goods from Canada. On June 29, 1990, two respondents and petitioners requested that we conduct an administrative review for the period June 1, 1989 through May 31, 1990. We published a notice of initiation of the antidumping administrative review on July 25, 1990 (55 FR 30490, July 25, 1990). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided in section 1202 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of OCTG from Canada. This includes API-specification oil country tubular goods and all other pipe with the following characteristics used in OCTG applications: Length of at least 16 feet; outside diameter of standard sizes published in the API or proprietary specifications for oil country tubular goods, with tolerances of plus ⅛ inch for diameters up through 8⅝ inches and plus ¼ inch for diameters greater than 8⅝ inches, minimum wall thickness as identified for a given outer diameter as published in the API or proprietary specifications for oil country tubular goods; and a minimum of 40000 PSI yield strength and a minimum 60000 PSI tensile strength. Additionally, oil country tubular goods with seams includes only pipe using the electric resistance welding technique. Furthermore, imports covered by this review include OCTG with non-standard size wall thickness greater than the minimum identified for a given outer diameter as published in the API or proprietary specifications for OCTG, with surface scabs or slivers, irregularly cut ends, ID or OD weld flash, or open seams; OCTG may be bent, flattened or oval, and may lack certification because the pipe has not been mechanically tested or has failed those tests. Since January 1, 1989, the merchandise is classifiable under HTS item numbers 7304.20, 7305.20, and 7306.20. The HTS item numbers are provided for

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convenience and Customs purposes. The written description remains dispositive.

The review covers the shipments of two exporters of oil country tubular goods from Canada to the United States and the period June 1, 1989 through May 31, 1990.

Sales Below Cost Allegation

Christianson Pipe Ltd.: On November 21, 1990, petitioners alleged that based on Christianson Pipe Ltd.'s ("Christianson") sales questionnaire response, Christianson sold OCTG in Canada below the cost of production. On January 30, 1991, the Department requested that petitioners revise the below cost allegation by following the Court of International Trade's ("CIT") direction in distinguishing the cost of production of two differently valued pipe products. In *IPSCO, Inc. and IPSCO Steel, Inc. v. United States* ("*IPSCO*"), 714 F. Supp. 1211 (CIT 1989), the CIT held that in determining the costs of producing limited service OCTG and prime OCTG, the Department "must find a reasonable means of allocating the combined cost of production between these two very differently valued products in a manner which takes into account * * * differences in value." *Id.* at 1215. On February 15, 1991, petitioners submitted a revised cost allegation. Based on the revised allegation, the Department determined that there were reasonable grounds to believe or suspect that Christianson's home market sales were priced below the cost of production, and the Department issued a cost of production questionnaire to the producer of Christianson's pipe, Prudential Steel Ltd. ("Prudential"), concerning the non-prime product. The Department requested that Prudential respond in accordance with the CIT's direction, that is, to provide a reasonable means of allocating the cost of manufacture behind the COP of prime and non-prime OCTG. On March 28, 1991, Prudential notified the Department that it would not be responding to the questionnaire.

Prudential Steel Ltd.: On November 21, 1990, petitioners alleged that Prudential sold OCTG in Canada below its cost of production. Petitioners based their allegation on the cost of producing prime merchandise in the United States compared to Prudential's home market sales of non-prime merchandise, which Prudential did not sell to the United States during the period of review. The Department determined that a cost investigation was not warranted since only Prudential's sales of prime pipe would be used as foreign market value.

Sales Below Cost Investigation—Christianson

In its cost of production allegation, petitioners alleged that Christianson had sold its merchandise in the home market at a price below the cost of producing that merchandise. Because Christianson, as an unrelated reseller, did not possess cost of production information, we requested the cost information from the producer, Prudential. We asked Prudential to follow the CIT's direction and provide information concerning their allocation of costs between different grades of pipe. Since Prudential refused to respond to the Department's cost questionnaire, the Department had to rely on best information available to determine the cost of producing the subject merchandise.

Petitioners' revised February 15, 1991 allegation included data for the cost of producing prime casing and tubing consistent with the methodology approved by the CIT. The Department used this cost data as best information available. However, we adjusted one component of the cost data submitted by the petitioners to take into account relevant information submitted by Prudential.

In *IPSCO*, the CIT required that the Department recognize the value difference between products sharing common costs in the allocation of those costs. The relative value of the products is one of the critical factors which determines the proportion of common costs allocated to the individual products. In general, there are several approaches the Department could use to derive a relative value ratio. The ratio could be derived by some method that is independent of the direct control of the firm producing the product under investigation. However, such a measurement is not normally available except in the case of commodity-type products. Where merchandise is fungible, and uniform grading standards are used (such as many agricultural products), market quotes may be used to establish an objective independent measure of relative value. The ratio could also be derived using information on an individual producer's sales of all merchandise which share common costs. This approach should only be used if the Department believes that the prices charged by that producer accurately reflect the products' differing values based on a sufficient volume of sales information. See *IPSCO*, 714 F Supp. at 1215, n.6.

However, in this review, the Department cannot use either of these approaches. There is no information on the record as to independent market quotes for prime and non-prime OCTG. Moreover, while Prudential did submit sales information for the record, the Department does not have the sufficient sales information for Prudential's products sharing common costs to determine whether prices charged accurately reflect differing values, but only sales information pertaining to a portion of Prudential's sales of prime and non-prime OCTG. While petitioner provided sales information in its below cost allegation, its information similarly did not cover a sufficient number of its products which share common costs. Since the most accurate relative value ratio would be based upon sales information for all of a producer's products sharing common costs, the Department found that neither the partial sales information provided by Prudential nor petitioners individually amounted to sufficient information to determine an accurate relative value ratio. Because the parties submitted sales information for different grades, types, and sizes of prime OCTG, the Department has determined that using both parties' sales information would result in more accurate relative value, as that relative value ratio derived from sales information would be based on a greater number of the products sharing common costs. Thus, the Department replaced the relative value ratio for prime and non-prime OCTG provided in petitioners' allegation with the average of the relative value ratios derived from the sales information submitted by both Prudential and petitioners.

Using the average relative value ratio, the Department then compared the cost of producing non-prime OCTG with Christianson's home market sales prices and found 86 percent of the home market sales were made at prices above cost of production. Consequently, we used only those sales made at prices above the cost of production in our determination of foreign market value ("FMV").

United States Price

Christianson: In calculating the United States price, the Department used purchase price as defined in section 772 of the Act. Purchase price was based on the f.o.b. Calgary price to unrelated purchasers as these sales were made prior to importation into the United States. For purchase price sales, where applicable, we made deductions for U.S. duty, U.S. user fees, U.S. brokerage, handling, and inland freight. In accordance with 772(d)(1)(c) of the Act, we added to the United States price the amount of the Federal sales taxes that would have been collected on the

export sale had it been subject to the tax. The British Columbia provincial tax was treated the same as the Federal sales tax.

Prudential: In calculating the United States price, the Department used purchase price as defined in section 772 of the Act. Purchase price was based on the f.o.b. Calgary price to an unrelated purchaser as these sales were made prior to importation into the United States. For purchase price sales, where applicable, we made deductions for U.S. duty, U.S. user fees, U.S. brokerage, and inland freight. Where contemporaneous sales of the identical merchandise were not found, we used sales of similar merchandise less the difference of merchandise adjustment.

Foreign Market Value

Christianson: In calculating the FMV, the Department used home market price as defined in section 773 of the Act since sufficient quantities of such or similar merchandise were sold in the home market to provide reliable basis for comparison. Home market price was based on the f.o.b. Calgary price to unrelated purchasers in the home market. We made adjustments, where appropriate, for inland freight expenses, federal and provincial sales taxes, differences in credit expenses, and differences in merchandise. We did not adjust for commissions because the indirect selling expenses incurred on sales to the United States were not provided. We made a circumstance of sale adjustment to FMV in the amount of the difference in the Federal and provincial tax between the two markets in order to insure a tax-neutral margin. This was done by adding to home market sales the amount of the tax added to U.S. price.

Prudential: In calculating the FMV, the Department used home market price as defined in section 773 of the Act since sufficient quantities of such or similar merchandise were sold in the home market to provide a reliable basis for comparison. Home market price was based on the f.o.b. Calgary price to unrelated purchasers in the home market. We made adjustments, where appropriate, for inland freight expenses, handling expenses, differences in credit expenses, and discounts. We did not adjust for commissions because the indirect selling expenses incurred on sales to the United States were not provided.

Preliminary Results of the Review

As a result of our comparison of the United States Price to foreign market value, we have preliminarily determined that the following margins exist.

Christianson Pipe Ltd	15.93
Prudential Steel Ltd	10.52

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested parties may request a hearing within 10 days of publication.

Any hearing, if requested, will be held 44 days after the date of publication of this preliminary notice or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this review for all shipments of the subject merchandise from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this review; for merchandise exported by manufacturers or exporters not covered in this review but covered in the final determination of sales at less than fair value (the original investigation), the cash deposit rate will continue to be the rate published in that final determination; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the original investigation of sales at less than fair value, whichever is the most recent; (3) the cash deposit rate for all other exporters/producers shall be 15.93 percent for shipments of OCTG. This is the highest non-BIA rate for any firms included in this review. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This deposit requirement is effective for all shipments of oil country tubular goods from Canada, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations.

Dated: May 3, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-11198 Filed 5-9-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-002]

Wool From Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 22, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on wool from Argentina for the period January 1, 1989 through December 31, 1989. Because there were no shipments of the subject merchandise to the United States or any program-wide change during the period of review, the cash deposit rate will remain unchanged from the previous review at 6.23 percent *ad valorem*.

EFFECTIVE DATE: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Marie MacKay, Office of Countervailing Compliance, International Trade Administration, U.S Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1991, the Department of Commerce (the Department) published in the Federal Register (56 FR 12181) the preliminary results of its administrative review of the countervailing duty order on wool from Argentina (48 FR 14423; April 4, 1983). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

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Scope of Review

Imports covered by this review are shipments of wool finer than 44s and not on the skin, from Argentina. During the review period, such merchandise was classifiable under item numbers 5101.11.60, 5101.19.60, 5101.21.40 and 5101.29.40 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customers purposes. The written description remains dispositive.

The review covers the period from January 1, 1989 through December 31, 1989.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine that there are no known unliquidated entries of the subject merchandise exported to the United States during the period January 1, 1989 through December 31, 1989. Given that there has been no demonstration of any program-wide change, the rate of cash deposit of estimated countervailing duties will remain unchanged at 6.23 percent *ad valorem*.

Therefore, the Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 6.23 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 2, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-11199 Filed 5-9-91; 8:45 am]

BILLING CODE 3510-DS-M

University of Pennsylvania; Disposition of Application for Duty-Free Entry of Scientific Instrument

We have been advised that the entry covered by Docket Number 87-205 (See notice at 52 FR 27039, July 17, 1987) was liquidated on November 7, 1988. We are treating the docket as a withdrawal pursuant to § 301.5(g) of the regulations and have discontinued processing.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-11200 Filed 5-9-91; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Riverside, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $230,400 in Federal funds and a minimum of $40,659 in non-Federal contributions for the budget period October 1, 1991 to September 30, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Riverside, California Geographic Service Area.

The I. D. number for this project will be 09-10-91017-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: (Selection Process/Procedures as required by DAO 203-26, Grants Administration) the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is June 20, 1991. Applications must be postmarked on or before June 20, 1991.

Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission is: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 West Peachtree Street NW., suite 1930, Atlanta, Georgia 30308-3516, (404) 730-3300.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105.

May 30, 1991 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at (415) 744-3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and, procedures applicable to Federal assistance awards.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Funding Authority for MBDA Awards: Executive Order 11625.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: May 8, 1991.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 91-11181 Filed 5-9-91; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's (Council) Bottomfish Advisory Subpanel (BAS), will hold a public meeting on May 9, 1991, beginning at 6:30 p.m., at the Western Pacific Regional Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI.

The BAS will develop its recommendations to the Council on alternative management measures for the Main Hawaiian Islands bottomfish fishery and proposed changes in the Northwestern Hawaiian Islands bottomfish limited entry program which have been requested by current permit holders.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: May 6, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-11139 Filed 5-9-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List, Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: June 10, 1991.

ADDRESSES: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 1, 15 and 22, 1991, the Committee for Purchase From the Blind and Other Severely Handicapped published notices (56 FR 8750, 11206 and 12193) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and servcies listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Line, Multi-Loop
1670-01-063-7760

Strap, Fuel Tank
2910-00-740-9419

Clamp, Loop
5340-01-156-3866
5340-01-161-6234

Services

Commissary Shelf Stocking and Custodial
Tinker Air Force Base, Oklahoma

Janitorial/Custodial
U.S. Army Reserve Center Florence, South Carolina

Janitorial/Custodial
U.S. Army Reserve Center Rock Hill, South Carolina

Janitorial/Custodial
U.S. Army Reserve Center York, South Carolina

Janitorial/Custodial
Buildings 108, 120 and 121 Fort Hood, Texas

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91-11182 Filed 5-9-91; 8:45 am]

BILLING CODE 6820-33-M

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Procurement List, Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 10, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Perforator, Paper
7520-00-139-3942
7520-00-163-2563

Services

Commissary Shelf Stocking and Custodial
Fort Benning, Georgia
Janitorial/Grounds Maintenance
U.S. Army Reserve Center
Independence, Missouri

E. R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 91-1163 Filed 5-9-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Addition, Correction

In notice document 90-10412, appearing on page 18743 in the issue of Friday, May 4, 1990 the following service is corrected to read:

Janitorial/Custodial Fort Worth Federal Center Fort Worth, Texas
Except for the following:
Warehouse #1—Section A-L
Warehouse #3—Bin Area A-F
Warehouse #8 thru #12—Office and Rest rooms
Warehouse #14—Rest rooms
Warehouse #23
Warehouse #24
Warehouse #30

E. R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 91-11164 Filed 5-9-91; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure and Realignment Commission

ACTION: Announcement of Public Hearings of the Defense Base Closure and Realignment Commission.

SUMMARY: Open public meetings of the Defense Base Closure and Realignment Commission will be held in Washington, DC in accordance with the following dates and times, with specific meeting locations as shown below, or to be determined and published in the **Federal Register**. Friday, May 10, 9:30 a.m., Longworth House Office Building Room 1100, Independence Ave. at New Jersey Ave., "hearings on land value and the environmental and economic impacts associated with the proposed base closures/realignments;" Friday, May 17, 9:30 a.m., Longworth House Office Building Room 1100, Independence Ave. at New Jersey Ave., "hearings on the General Accounting Office assessment of the DoD process for determining candidate bases for closure/realignment;" Tuesday/Wednesday, May 21-22, 9:30 a.m., location to be determined, "Congressional testimony from federal representatives of communities potentially affected by closures/realignments;" Thursday/Friday, June 6-7, 9:30 a.m., location to be determined, "Commission deliberation hearings on closure realignment candidates;" Thursday/Friday, June 13-14, 9:30 a.m., location to be determined, "Commission deliberation hearings on closure/realignment candidates;" Thursday/Friday, June 20-21, 9:30 a.m., location to be determined, "Commission deliberation hearings on closure/realignment candidates."

As previously published in the **Federal Register**, regional hearings outside the Washington, DC area will be held in accordance with the following schedule:

San Francisco, California: The first regional hearing will be on Monday and Tuesday, May 6th and 7th, 1991, at the California Palace of the Legion of Honor, Florence Gould Theatre, Lincoln Park, 34th & Clement Streets, San Francisco, CA from 9:30 to 4:30 p.m. Testimony is invited on the following facilities: Sacramento Army Depot, CA; Fort Ord CA; Castle AFB, CA; Hunters Point Annex, CA; Moffett Field Naval Air Station, CA; Naval Electronic Systems Engineering Center, Vallejo, CA; Whidby Island Naval Air Station, WA; Sand Point (Puget Sound) Naval Station, WA; and Naval Undersea Warfare Engineering Station, WA.

Los Angeles, California: The second regional hearing will be held on May 8, 1991 at the Los Angeles Museum of Science and Industry, Kinsey Auditorium, 700 State Drive (Harbour Freeway and Exposition Blvd. near Los Angeles Coliseum and University of Southern California), Exposition Park, Los Angeles. Testimony is invited on the following facilities: Naval Weapons Center, China Lake, CA; Pacific Missile Test Center Pt., Mugu, CA; Long Beach Naval Station, CA; Marine Corps Air Station, Tustin, CA; Integrated Combat Systems Test Facility, San Diego, CA; Naval Electronic System Engineering Center, San Diego, CA; Naval Space Systems Activity, Los Angeles, CA; and Naval Ocean System Center Detachment, Kaneohe, Hawaii.

Denver, Colorado: The third regional hearing will be on Monday, May 13, 1991 in Denver, Colorado at the Denver Auditorium, 131 Champa Street (3rd floor auditorium) (enter through glass doors under the bridge), beginning at 9:30 a.m. Testimony is invited on facilities in the following states: Colorado, Arizona, Idaho, New Mexico, and Missouri.

Fort Worth, Texas: The fourth regional hearing will be on Tuesday, May 14, 1991 in Forth Worth, Texas, beginning at 9 a.m. at the Will Rogers Memorial Center, 3400 Crestline Road, in the Central Texas Room. Testimony is invited on facilities in the following states: Texas, Louisiana, and Arkansas.

Jacksonville, Florida: The fifth regional hearing will be on Thursday, May 23, 1991, in Jacksonville, Florida, beginning at 9 a.m. at the Prime F. Osborn Convention Center, 1000 Water Street, Jacksonville, Florida. Testimony is invited on facilities in the following states: Florida, Georgia, Alabama, and South Carolina.

Philadelphia, Pennsylvania: The sixth regional hearing will be on Friday, May 24, 1991, in Philadelphia, Pennsylvania, beginning at 9 a.m. at the Philadelphia Civic Center, Pennsylvania Hall, 34th and Civic Center Blvd. Testimony is invited on facilities in the following states: Pennsylvania, New Jersey, and Maryland.

Boston, Massachusetts: The seventh regional hearing will be on Tuesday, May 28, 1991, in Boston, Massachusetts, beginning at 10 a.m. at Gardner Auditorium in the State House. Testimony is invited on facilities in the following states: Massachusetts, Maine, Rhode Island, and Connecticut.

Indianapolis, Indiana: The eighth regional hearing will be held on Thursday, May 30, 1991, in Indianapolis, Indiana, beginning at 9 a.m. at the Indianapolis Convention Center, White River Ballroom, 100 South Capital Street. Testimony is invited on facilities in the following states; Indiana, Michigan, Illinois, Ohio, and Kentucky.

Washington, DC: Hearings will be held in Washington, DC on Tuesday and Wednesday, May 21st and 22nd at a time and place to be determined and published in the **Federal Register**. Testimony is invited on facilities in the following states: Virginia, and the District of Columbia.

The Commission will consider all written testimony during its deliberations. All interested individuals and groups are invited to submit their testimony or comments in writing to: Defense Base Closure Commission, 1625 "K" Street, NW., suite 400, Washington, DC 20006. In order to ensure all written comments may be considered, please submit them so as to arrive at the Commission offices by May 30, 1991.

In some instances, less than 15 days notice is being given due to difficulties in confirming appropriate locations in certain metropolitan areas to accommodate large public hearings.

FOR FURTHER INFORMATION: Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, 202-653-0823.

Dated: May 6, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-11149 Filed 5-9-91; 8:45 am]

BILLING CODE 3810-01-M

Meetings; Defense Research and Development Laboratories Consolidation and Conversion Advisory Commission

AGENCY: Department of Defense (DoD) Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of Public Law 92-463, the "Federal Advisory Committee Act," notice is hereby given that the Federal Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories will hold a meeting on May 22nd and 23rd, 1991, in the Washington, DC area. The meeting will convene at noon on the 22nd, and adjourn at 3 p.m. on the 23rd. This session will be closed to the public.

The purpose of this meeting is to discuss technological factors involved in developing recommendations to the Secretary of Defense on consolidating, converting, or realigning various laboratories of the Department of Defense. The entire agenda for the meeting will consist of discussions of the key issues related to future military research and technology development. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Director of Defense Research and Engineering has determined, in writing, that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of title 5, United States Code.

This Notice of the May, 1991 meeting of the Commission is being published late due to the need to accelerate the schedule to meet the reporting dates mandated in section 246 of the National Defense Authorization Act for 1991. Operational necessity constitutes an exceptional circumstance not allowing Notice to be published in the **Federal Register** at least 15 days before the date of this meeting.

FOR FURTHER INFORMATION CONCERNING THIS MEETING, CONTACT: Dr. Michael Heeb, Executive Secretary to the DoD Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories, 5109 Leesburg Pike, suite 317, Falls Church, VA 22041, Phone (703) 756-9969.

Dated: May 6, 1991.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-11148 Filed 5-9-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

April 30, 1991.

The USAF Scientific Advisory Board Division Advisory Group (AG) for Aeronautical Systems Division (ASD) will meet on 29-30 May 1991 from 8 a.m. to 5 p.m. at Wright-Patterson AFB, OH.

The purpose of this meeting is to receive classified briefings and hold classified discussions on selected Air Force Programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.

[FR Doc. 91-11113 Filed 5-9-91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Electromagnetic Pulse Simulators From the Harry Diamond Laboratories Woodbridge Research Facility, Woodbridge, VA; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Announcement of time and place for public scoping meetings for the Environmental Impact Statement (EIS) on the relocation, upgrading and resumption of operation of certain inactive electromagnetic pulse (EMP) simulators now located at the Harry Diamond Laboratories Woodbridge Research Facility (HDL-WRF), Woodbridge, VA, and the construction and operation of a new EMP simulator, VEMPS II.

BACKGROUND: In an earlier **Federal Register** announcement (Vol. 54; No. 207; page 43847), the Department of Army announced its intent to prepare an EIS on the action described above. The alternatives to be addressed in the EIS will include the following:

a. Cease this type of testing, or

b. Conduct such testing by other means of simulation, or

c. Have other military, Federal departments or contractors conduct such testing, or

d. Relocate and operate those simulators at a number of undetermined, reasonable sites.

Potential relocation sites have since been identified and are located at the following installations: Dugway Proving Ground, White Sands Missile Range, and Yuma Proving Ground. White Sands Missile Range is the preferred installation.

MEETING DATES: The Army will conduct six scoping meetings to aid in identifying the significant issues related to the proposed action. The meetings

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will take place at the following places and times, near the specified installations:

White Sands Missile Range (WSMR), New Mexico

Socorro, NM, May 21, 1991, 7 p.m., Macey Center on Olive Lane, at New Mexico Institute of Mining and Technology,
Alamogordo, NM, May 22, 7 p.m., Civic Center, room A–B, 800 1st Street,
Las Cruces, NM, May 23, 7 p.m., Corbett Center Student Union, Dona Ana Room, New Mexico State University.

Yuma Proving Ground (YPG), Arizona:

Yuma, AZ, June 3, 7:30 p.m., Chilton Inn, 300 E. 32nd Street, Quartzsite, AZ, June 4, 7:30 p.m., Senior Citizens' Center, Moon Mountain Road.

Dugway Proving Ground (DPG), Utah:

Tooele, UT, June 5, 7:30 p.m., at the Senior Citizens' Center, 59 E. Vine Street.

SUPPLEMENTARY INFORMATION: These meeting are intended to provide a public forum for interested individuals or groups representatives to present their questions, concerns or other comments relevant to any environmental issues surrounding the proposed action. Particularly solicited is any information that would assist the Army in analyzing any potential environmental consequences of EMP simulator operations at the candidate installations. This includes information on other environmental studies, issues and alternatives which the EIS should consider, major impacts and recommended mitigating measures associated with EMP simulator operations at the alternative sites.

REGISTRATION: Individuals or group representatives are invited to register to speak at the meeting. To allow time for everyone who wishes to speak, the length of each presentation will be limited to ten minutes. On-site registration will be available.

POINT OF CONTACT: Anyone may express their views by writing to the following address: U.S. Army Harry Diamond Laboratories, ATTN: Public Affairs Officer, 2800 Powder Mill Road, Adelphi, Maryland 20783–1197.

To be considered in the draft EIS, comments and suggestions should be postmarked no later than July 8, 1991. For additional information, call (301) 394–2301.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 91–11202 Filed 5–9–91; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

[Docket No. 3710–GC]

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed 1992 Flow Improvement Act

LEAD AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Draft EIS.

SUMMARY: The Corps of Engineers (Corps), in conjunction with other Federal agencies, is considering several water management actions on the lower Snake and Columbia Rivers proposed for implementation in 1992 to assist the instream migration of juvenile and adult anadromous fish. The action under consideration would involve a range of measures intended to augment streamflows in the April-September migration period. These measures include modifying releases from Dworshak, Brownlee, and Grand Coulee Reservoirs; reducing pool elevations for the lower Snake and Columbia River projects; and various other strategies to provide higher river velocities during the salmon migration period. The actions are being considered in response to a need to protect four species of Snake River salmon that have been petitioned for listing as endangered species under the Endangered Species Act. The Corps of Engineers, Walla Walla District (Corps) is the lead agency. The U.S. Department of Energy, Bonneville Power Administration (Bonneville), and the U.S. Department of the Interior, Bureau of Reclamation (Reclamation) are cooperating agencies.

FOR FURTHER INFORMATION CONTACT: Mr. William F. MacDonald, Department of the Army, Walla Walla District, Corps of Engineers, CENPW–PL–ER, Building 603, Walla Walla, Washington 99362–9265, (509) 522–6625.

SUPPLEMENTARY INFORMATION: The proposed action is being considered under the authority of the Endangered Species Act, the Fish and Wildlife Coordination Act, and the authorizing legislation for the respective projects potentially involved in the proposed action. Additional information on the proposed action, alternatives, scoping, and the EIS process is summarized below.

1. Proposed Action

The proposed action is being considered in response to specific requests from the regional "Salmon Summit" to alter the operating regime of Corps reservoirs and other water resources projects during the salmon migration period. The Salmon Summit is a voluntary planning and action process undertaken to demonstrate regional commitment to protect anadromous fish stocks in the Columbia and Snake Rivers. Participants in the process include Congressional staff from Idaho, Montana, Oregon, and Washington; representatives from the four state governments; Federal water and power management agencies (including the Corps); Federal and state fisheries and wildlife agencies; Indian tribes and organizations; fishing, navigation, irrigation and other water user interests; and environmental groups and other interested publics. The proposed action is a part of the action plan for 1992 suggested by many participants of the Salmon Summit.

A preferred alternative for the proposed action has not yet been identified. Actions ultimately proposed for implementation in 1992 may involve some combination of measures involving Dworshak Reservoir on the North Fork Clearwater River in Idaho, Brownlee Reservoir on the Snake River in Idaho; the four Lower Snake River Project reservoirs in Washington; the reservoir at Grand Coulee Dam in Washington, as well as Arrow and Mica Reservoirs upstream; and the four reservoirs on the lower Columbia River in Oregon and Washington.

2. Alternatives

Alternatives being considered for the proposed action include a range of water management measures. The alternatives considered in the EIS will involve one or a combination of the following measures:

a. No action.

b. Dworshak Operations—Expand water budget volume and/or timing, provide summer releases for adult migrants, and/or shift flood control space to Grand Coulee.

c. Brownlee Operations—Modify volumes and phase of releases during water budget period, provide summer releases for adult migrants, and/or shift flood control space to Grand Coulee.

d. Lower Snake River Project Operations—Draw one to four reservoirs (Lower Granite, Little Goose, Lower Monumental, and Ice Harbor) to near minimum operating pool or below for varying periods.

e. Grand Coulee Operations—Accept flood control operations from Dworshak and Brownlee, and/or modify releases to meet lower Columbia target flows.

f. Lower Columbia Projects Operations—Draw one to four reservoirs (McNary, John Day, the Dallas, and Bonneville) to near minimum operating pool for varying periods.

g. Lower Columbia Flow/Purchase strategy—Establish lower Columbia flow targets that are met through foregoing sales of nonfirm power and/or purchasing power instead of generating during the January-April period, to allow for water storage in Grand Coulee and Arrow Reservoirs.

h. Other Water Management Operations—Could include changes to Non-Treaty Storage Operations.

3. Scoping Process

The Corps and the cooperating agencies invite affected Federal, state, and local agencies, Indian tribes, and other interested organizations and parties to participate in the scoping process for the EIS. Based on preliminary consideration to date, the following have been identified as significant issues requiring analysis in the EIS:

—Travel time and survival changes for downstream migrating anadromous juveniles.
—Disruption of commercial water transportation and associated secondary effects on other transportation modes and on producers.
—Physical impacts on irrigation intakes and resulting disruption of irrigation water supplies.
—Impacts to hydroelectric power and capacity generation and associated environmental and economic effects.
—Water quality effects from increased turbidity, temperature change, elevated dissolved gas levels, and possible release of contaminated sediments.
—Changes in upstream passage, timing, and survival of adult anadromous fish.
—Adverse effects on anadromous juveniles from spillway passage, dissolved gas supersaturation, and concentration of predators.
—Effects on domestic, municipal, and industrial water supplies, including effects of lowered water table.
—Bank stabilization/bank failure and related risks of damage to roads, bridges, and railroads.
—Physical impacts to recreational facilities and loss or displacement of recreational activity.
—Expose and potential damage to cultural resources.
—Erosion and sediment transport.
—Effects on resident fish.
—Loss of benthos and macrophytes and related aquatic effects.
—Effects on wildlife, including geese, furbearers, upland birds, and bald eagles.
—Physical impacts to water resource project facilities, such as debris booms, and navigation guidewalls.

The Corps, Bonneville, and Reclamation, as cooperating agencies, will share responsibility for determining and evaluating impacts within their respective areas of jurisdiction and expertise. The cooperating agencies welcome input to the EIS from other agencies and organizations that have special interest and expertise in key resource areas such as fisheries, water quality, navigation, and irrigation.

Other agencies desiring status as cooperating parties should submit written requests to the Corps.

The normal range of environmental review and consultation in accordance with other environmental statutes, rules, and regulations shall apply to the proposed action.

4. Scoping Meetings

Several scoping meetings for the EIS will be held in the region. Confirmation of dates and specific places for the meetings will be provided in a scoping letter that will be widely distributed throughout the region. Tentatively the meetings will be scheduled for early June 1991.

5. Draft EIS Availability

The draft EIS is tentatively scheduled for release to the public and agencies for review on approximately September 15, 1991.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 91–11326 Filed 5–9–91; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award a Grant to the Atlantic Council of the United States

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b)(2)(i)(B) and (D), it is making a noncompetitive financial assistance award. This award will be made under Grant Number DE–FG01–91IE10955 to the Atlantic Council of the United States (ACUS) to plan and conduct a Plenary Session entitled "U.S.-Japan Energy Dialogue".

SCOPE: The grant will provide $50,000 in funding to ACUS for two Executive Sessions and one Plenary Session. The remaining $168,000 necessary for these three Sessions will be provided through private funding to ACUS. The first Executive Session, in the Fall of 1991, will prepare for the Plenary Session to take place in Japan in the Spring of 1992. The second Executive Session, in the Fall of 1992, will prepare for the next Plenary Session.

The Plenary Session will bring together energy and financial leaders from American and Japanese private sectors to identify and discuss current and prospective policy issues to balance economic growth, energy and environmental issues. Participants will attempt to develop American and Japanese consensus on critical issues which then can be informally committed to policy makers.

ELIGIBILITY: Eligibility for this award is being limited to ACUS because of its previous experience in conducting the Executive and Plenary Sessions. Since 1980 ACUS has maintained an on-going dialogue with contacts in the Japanese private sector in the form of yearly meetings that bring together American and Japanese energy and financial leaders to discuss their viewpoints. DOE knows of no other entity which is conducting or is planning to conduct such an activity.

The term of the grant shall be eighteen months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn.: Gretchen Hukill, PR–322.1, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91–11193 Filed 5–9–91; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date & Time: Tuesday, May 28, 1991, 4 p.m. to 6 p.m., Tuesday, May 28, 1991, 8 p.m. to 10 p.m., Wednesday, May 29, 1991, 8 a.m. to 12:30 p.m.

Place: Regency Ballroom, Hyatt Regency Oak Brook, 1909 Spring Road, Oak Brook, IL 60521

Contact: Wallace R. Kornack, Executive Director, ACNFS, AC–21, 1000 Independence

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Ave., SW., Washington, DC 20585, 202/586-1770

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda

Tuesday, May 28, 1991

4 p.m. Chairman John F. Ahearne Opens Meeting, Review of Selected Technical Issues

6 p.m. Recess Meeting

8 p.m. Chairman Ahearne Opens Public Comment Session

10 p.m. Public Comment Session Concludes

Wednesday, May 29, 1991

8 a.m. Chairman Ahearne Reopens Meeting, Argonne National Laboratory Technical Issues, Selected Technical Issues, Subcommittee Reports, Committee Business

12:30 p.m. Meeting ends.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on May 7, 1991.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-11190 Filed 5-9-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 539-000, et al.]

Hydroelectric Applications; Kentucky Utilities Co., et al.; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: Application for New License.

b. Project no.: 539-000.

c. Date filed: July 16, 1973 and supplemented February 7, 1991.

d. Applicant: Kentucky Utilities Co.

e. Name of project: Kentucky River Lock and Dam No. 7 Hydro Project.

f. Location: On the Kentucky River near Harrodsburg, Lexington, and Danville, in Mercer County, Kentucky.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791 (a) – 825(r).

h. Applicant contact: Mr. David Lott Hardy, Alagia, Day, Marshall, Mintmire & Chauvin, 444 South Fifth Street, Box 1179, Louisville, KY 40201, (502) 585-4131.

i. FERC contact: Ed Lee (202) 219-2809.

j. Comment date: June 21, 1991.

k. Description of project: The run-of-river project would utilize the existing U.S. Army Corps of Engineers' Kentucky River Lock and Dam No. 7 and would consist of: (1) An existing reinforced concrete powerhouse housing three 750-kW generating units for a total installed capacity of 2250 kW; (2) an existing 33-kV transmission line; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 8200 MWh. Project energy generated would be used within the Applicant's power system. The original license expired August 18, 1976 and the project has been operating on annual license since that time.

Persons responding to this notice are also invited to submit any comments related to the Applicant's alleged anti-trust practices.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

2 a. Type of Application: New License.

b. Project no.: 1651-013.

c. Date filed: November 29, 1990.

d. Applicant: Swift Creek Power Co.

e. Name of project: Swift Creek.

f. Location: In Bridger—Teton National Forest, on Swift Creek, in Lincoln County, Wyoming, Township 32 N Range 118 W.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791 (a) – 825(r).

h. Applicant contact: Mr. E. Farley Eskelson, 699 East South Temple, suite 220, Salt Lake City, UT 84102, (801) 363-6111.

i. FERC contact: Michael Spencer at (202) 219-2846.

j. Comment date: June 28, 1991.

k. Initial license: A license was issued on November 30, 1942, and expires on October 31, 1992.

l. Description of project: The project consists of: (1) A 15-foot-high concrete dam; (2) a 48-inch-diameter, 7,000-foot-long penstock; (2) a powerhouse containing 2 generating units with a combined capacity of 800 kW; (4) a 30-foot-high earthen dam; (5) a 54-inch-diameter, 2,000-foot-long penstock; (6) a powerhouse containing 2 generating units with a combined capacity of 700 kW; (7) a 60-foot-long transmission line from the first powerhouse and a 100-foot-long line from second powerhouse to the Lower Valley Power and Light poles. The average annual generation is 8.0 GWh.

m. Purpose of project: Project power would sold.

n. This notice also consists of the following standard paragraphs: B, C, and D1.

3 a. Type of application: Amended Application to Amendment of License.

b. Project no.: 2389-009.

c. Date filed: December 17, 1990.

d. Applicant: Edwards Manufacturing Company, Inc.

e. Name of project: Edwards Dam.

f. Location: On the Kennebec River in the City of Augusta, Maine.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Anthony W. Buxton, Joseph G. Donahue, Preti, Flaherty, Beliveau & Pachos, 45 Memorial Circle, P.O. Box 1058, Augusta, ME 04332-1058, (207) 623-5167.

i. FERC contact: Robert H. Grieve, (202) 219-2855.

j. Comment date: June 12, 1991.

k. Description of project: The licensee requests authorization to install upgraded fish passage facilities suitable for passage of Atlantic salmon, American shad and alewife. The license does not propose to add the State of Maine as a co-licensee, nor request an extension of its license term as filed for on September 25, 1990.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4 a. Type of application: Amendment of License.

b. Project no.: 2801-016.

c. Date filed: March 8, 1991.

d. Applicant: Joseph A. Guerrieri.

e. Name of project: Glendale Project.

f. Location: The project is located on Housatonic River in Stockbridge, Berkshire County, Massachusetts.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Joseph A. Guerrieri, 503 Beverly Road, Newark, DE 19711, (302) 368-3468.

i. FERC contact: A.K. Das, (202) 219-2865.

j. Comment date: June 12, 1991.

k. Description of project: The licensee proposes to add superintendent's quarters, railroad unloading area, a bridge and an access road to the existing project features.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

5 a. Type of application: Minor License.

b. Project no.: 10522-001.

c. Date filed: October 12, 1991.

d. Applicant: Franklin Hydro, Inc.

e. Name of project: Whittlesey Dam.

f. Location: On the Salmon River in the Village of Malone in Franklin County, New York.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Mr. Frank O. Christie, 8 East Main St., Malone, NY 12953, (518) 483-1945.

i. FERC contact: Ms. Julie Bernt, (202) 219-2814.

j. Comment date: June 21, 1991.

k. Description of project: The proposed project would consist of: (1) An existing 19-foot-high concrete gravity dam owned by the Village of Malone; (2) an existing impoundment with a surface area of 3.5 acres at elevation 668.4 m.s.l. and a storage capacity of 25 acre-feet; (3) a proposed 645-foot-long, 7-foot-diameter penstock; (4) an existing powerhouse containing a new generating unit with a rated capacity of 420 kW; (5) an existing concrete tailrace; (6) a proposed 60-foot-long transmission line; and (7) appurtenant facilities. The average annual energy generation is estimated to be 1,800 MWh which would be sold to a local utility. The estimated cost for the construction of these facilities is $500,000.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

6 a. Type of application: Major License.

b. Project no.: 11053-000.

c. Date filed: November 21, 1990.

d. Applicant: The City of Hamilton, Ohio.

e. Name of project: Meldahl.

f. Location: On the Ohio River in Bracken County, Kentucky.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. Applicant contact: Mr. E. Leon Daggett, Director of Public Utilities, City of Hamilton Ohio, 20 High Street, Hamilton, OH 45011, (513) 868-5907.

i. FERC contact: Charles T. Raabe (202) 219-2811.

j. Comment date: June 28, 1991.

k. Competing application: Project No. 10395-001, *Date Filed:* July 22, 1988, *Due Date:* July 25, 1990.

l. Description of project: The proposed project would utilize the existing U.S. Army Corps of Engineers Captain Anthony Meldahl Locks and Dam, and would consist of: (1) An intake channel at the left bank; (2) a 312-foot-long and 245-foot-wide concrete power house containing 3—38,000-kW vertical Kaplan-type turbine/generator units; (3) a tailrace channel; (4) a 5-mile-long, 138-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 420,000,000 kWh. Applicant would utilize about 78% of the project power. The remainder of the project power would be sold to other utilities.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

7. a. Type of application: Preliminary Permit.

b. Project no. 11077-000.

c. Date filed: January 22, 1991.

d. Applicant: Alaska Power & Telephone Co.

e. Name of project: Goat Lake Water Power Project.

f. Location: On Goat Lake in the First Judicial District of Alaska, near the town of Skagway. The project would occupy lands within the Tongass National Forest. T27S, R60E, sections 9, 10, 11, 14, and 15.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. Applicant contact:

Robert S. Grimm, President, Alaska Power & Telephone Co., P.O. Box 222, Port Townsend, WA 98368, (206) 385-1733.

Vern J. Neitzer, Vice President, Alaska Power & Telephone Co., P.O. Box 459, Skagway, Alaska 99840.

i. FERC contact: Ms. Deborah Frazier-Stutely (202) 219-2842.

j. Comment date: June 21, 1991.

k. Description of project: The proposed project would consist of: (1) The existing 200 acre Goat Lake reservoir with a storage capacity of 5,000 acre-feet at normal surface elevation of 2,915 feet; (2) a screened intake; (3) a 30-inch-diameter steel siphon; (4) a valve house containing a vacuum pump and valve; (5) a 24-inch-diameter, 6,200-foot-long penstock; (6) a powerhouse containing two generating units with a combined installed capacity of 6,000 kW, producing approximately 35,040 MWH of energy annually; (7) a 15-foot-wide tailrace discharging project flows into the Skagway River; (8) an access road; and (9) a 25-kV transmission line to interconnect with the City of Skagway's distribution system.

No new access road will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit at $100,000.

l. Purpose of project: Project power would be used by the applicant to serve its customers.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. Type of application: Preliminary Permit.

b. Project no.: 11063-000.

c. Date filed: February 25, 1991.

d. Applicant: Mr. John C. Simmons.

e. Name of project: Argenta Falls Hydro Project.

f. Location: On Lake Fork of Gunnison River, in Hinsdale County, Colorado. T43N, R4W, in section 15.

g. Filed pursuant to: Federal Power Act, 16 USC 791(a)—825(r).

h. Applicant contact: Mr. John C. Simmons, P. Box 246, Lake City, Colorado 81235, (303) 944-2791.

i. FERC contact: Mr. Surender M. Yepuri, (202) 219-2847.

j. Comment date: June 24, 1991.

k. Description of project: The proposed project would consist of: (1) An existing natural rock diversion channel at elevation 8,910 feet (msl); (2) an existing headgate; (3) a 200-foot-long flume; (4) an 8-foot by 12-foot by 16-foot surge tank; (5) three 100-foot-long, 48-inch-diameter penstocks; (6) a powerhouse containing two generating units with a total rated capacity of 1.5 MW; (7) a short tailrace returning the discharge into the river; and (8) a 14.4 kV, 300-foot-long transmission line. The applicant estimates an annual output of 3.9 GWh and the cost of the work to be performed under the permit to be $100,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9 a. Type of application: Preliminary Permit.

b. Project no.: 11100-000.

c. Date filed: March 4, 1991.

d. Applicant: Hammond Hydroelectric Co.

e. Name of project: Hammond.

f. Location: In Challis National Forest, on Challis and Bear Creeks in Custer County, Idaho. Township 14 N Range 18 E. Sections 5, 6, 7, 12, and 13.

g. Filed pursuant to: Federal Power Act 16 USC 791(a)—825(r).

h. Applicant contact: Mr. Jack S. Hammond, P.O. Box 460, Troy, ID 83871-0460, (208) 835-8443.

i. FERC contact: Michael Spencer at (202) 219-2846.

j. Comment date: June 24, 1991.

k. Description of project: The proposed project would consist of: (1) 4-foot-high diversion dams on Challis and James Creeks; (2) a 13,000-foot-long, 42-inch-diameter pipeline from the diversion on Challis Creek to the confluence; (3) a 6,000-foot-long, 36-inch-diameter pipeline from the diversion on

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James Creek to the confluence; (4) a 3,400-foot-long, 30-inch-diameter steel penstock from the confluence to the powerhouse; (5) a powerhouse containing a generating unit with a capacity of 1,100 kW with an estimated average annual generation of 5.0 GWh; and (5) a 5.5-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $20,000.

l. Purpose of project: Project power would sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. Type of application: Preliminary Permit.

b. Project no.: 11101-000.

c. Date filed: March 4, 1991.

d. Applicant: LS, Inc.

e. Name of project: Prairie Dalles Power Project.

f. Location: On the Prairie River, near Merrill, Lincoln County, Wisconsin.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Mr. Ellis R. Langjohr, President, LS, Inc., 107 East Moonlight Avenue, Wausau, WI 54401, (715) 359-9049.

i. FERC contact: Mary C. Golato (202) 219-2804.

j. Comment date: June 21, 1991.

k. Description of project: The proposed project would consist of the following facilities; (1) An existing rubblestone masonry structure 400 feet long and 61 feet high; (2) an existing reservoir having a normal storage capacity of 1,627 acre-feet, a normal surface area of 122 acres, and a surface elevation of 1,425 feet mean sea level; (3) a rehabilitated penstock 6 feet in diameter; (4) a proposed powerhouse containing one turbine-generator unit having a total installed capacity of 800 kilowatts; (5) a proposed transmission line running about 7.8 mile long; and (6) appurtenant facilities. The dam is owned by Lincoln County. The applicant estimates that the average annual generation would be 4,000,000 kilowatthours. The cost of the studies under permit would be about $27,000.

l. This notice also consists of the following standard paragraphs: A3, A5, A7, A9, A10, B, and C.

11 a. Type of application: Preliminary Permit.

b. Project no.: 11109-000.

c. Date filed: March 18, 1991.

d. Applicant: North American Hydro, Inc.

e. Name of project: Delhi Milldam Hydro Project.

f. Location: On the Maquoketa River near Delhi, in Delaware County, Iowa.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Mr. Loyal Gake, North American, Hydro, Inc., P.O. Box 167, Neshkoro, WI 54960, (414) 293-4628.

i. FERC contact: Ed Lee (tag) (202) 219-2809.

j. Comment date: June 13, 1991.

k. Description of project: The proposed project would consist of: (1) An existing earth filled dam approximately 58.5 feet high and 700 feet long; (2) an existing 50-acre reservoir with a maximum storage of 880 acre-feet at pool elevation 896 feet MSL; (3) a powerhouse containing two 650-kW generating units for a total installed capacity of 1,300 kW; (4) a proposed 1.5-kV or equivalent transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 3,260 MWh. The cost of the work to be performed under the permit by the applicant would be $30,000. The existing dam and structures are owned by the Lake Delhi Recreation Association, R.R.2, Delhi, Iowa 52223.

l. Purpose of project: The applicant anticipates that the power generated will be sold to a nearby utility company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. Type of application: Preliminary Permit.

b. Project no.: 11111-000.

c. Date filed: March 22, 1991.

d. Applicant: A.L.L. Natural Resources.

e. Name of project: Crocker Burbank Mill Dam #6 Project.

f. Location: On the North Nashua River in Worcester County, Massachusetts.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact person: Mr. Paul V. Nolan, Energy Services & Development, Inc., 6219 N. 19th Street, Arlington, VA 22205, 703 534-5509.

i. FERC contact: Michael Dees, (202) 219-2807.

j. Comment date: June 20, 1991.

k. Description of project: The proposed project would consist of: (1) Rehabilitation of an existing dam 200 feet long and 20 feet high; (2) a 4-acre reservoir; (3) a powerhouse to contain 100 kW of installed capacity; (4) a new 13.8-kV transmission line 100 feet long; and (5) appurtenant facilities. The applicant estimates the average annual energy production to be 570 MWh and the cost of the work to be performed under the preliminary permit to be $12,000. The project energy would be sold to Fitchburg Gas and Electric. The dam is owned by Leo Collet.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13 a. Type of application: Preliminary Permit.

b. Project no.: 11119-000.

c. Date filed: April 4, 1991.

d. Applicant: Rattlesnake Hill Development.

e. Name of project: Rattlesnake Hill Pumped Storage Project.

f. Location: On an unnamed quarry and the Merriamack River, near Concord, Merrimack County, New Hampshire.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Rattlesnake Hill Development, Victor A. Engel, 145 Abbott Road, Concord, NH 03303, (603) 225-3068.

i. FERC contact: Mary C. Golato (tag) (202) 219-2804.

j. Comment date: June 25, 1991.

k. Description of project: The proposed project would consist of: (1) An existing abandoned rock quarry with a proposed earthern and concrete berm; (2) a reservoir with an approximate surface area of 1 acre, a storage capacity of 90 acre-feet, and a proposed maximum surface elevation of 575 feet U.S.G.S. datum; (3) a proposed 400-foot-long, 6-foot-diameter tunnel connected to a 1,700-foot-long, 6-foot-diameter penstock; (4) a proposed powerhouse containing one turbine/generator unit with a maximum installed capacity of 5,000 kilowatts; (5) a proposed 600-foot-long tailrace; (6) a proposed 1,000-foot-long transmission line; and (7) appurtenant facilities. The owner of the quarry is the John Swenson Granite Co., Inc. The applicant expects the project would have an average annual generation of 7,000,000 kilowatt hours. The cost of the studies for the permit would be about $40,000.00. The applicant states that due to availability of boring from wells and roads constructed in or adjacement to the upper reservoir and tunnel sites, no subsurface explanation will be required, and no disturbance of land, water, or habitat will occur.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14 a. Type of application: Preliminary Permit.

b. Project no.: 11121-000.

c. Date filed: April 9, 1991.

d. Applicant: Idaho Power Co.

e. Name of project: Shoshone II.

f. Location: On lands administered by the Bureau of Land Management, on the Snake River, in Jerome and Twin Falls County, Idaho. Township 9 S Range 17 E Section 36.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Mr. Lee Sherline, Leighton and Sherline, 1010 Massachusetts Avenue NW., suite 101, Washington DC 20001, (202) 898-1122.

i. FERC contact: Michael Spencer at (202) 219-2846.

j. Comment date: June 24, 1991.

k. Description of project: The proposed project would utilize the existing Idaho Power Company's Shoshone Falls dam and would consist of: (1) A concrete intake structure just upstream of the dam; (2) the north side alternative would have a 650-foot-long penstock; the south side alternative would have a 1,200-foot-long penstock; (3) the powerhouse for either alternative would contain generating units with a capacity of 92 MW with an estimated average annual generation of 198 GWh; and (4) the north side alternative would have a 400-foot-long transmission line; the south side alternative would have a 1,000-foot-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $1,500,000.

l. Purpose of project: Project power would be used by the applicant.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

15 a. Type of application: Preliminary Permit.

b. Project no.: 11122-000.

c. Date filed: April 9, 1991.

d. Applicant: Idaho Power Co.

e. Name of project: Upper Salmon C.

f. Location: On the Snake River, in Twin Falls County Idaho. Township 7 S Range 18 E Section 34.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Mr. Lee Sherline, Leighton and Sherline, 1010 Massachusetts Avenue NW., suite 101, Washington DC 20001, (202) 898-1122.

i. FERC contact: Michael Spencer at (202) 219-2846.

j. Comment date: June 24, 1991.

k. Description of project: The proposed project would utilize the existing Idaho Power Company's Upper Salmon Falls dam and would consist of: (1) A 6,900-foot-long, 18-foot-deep power canal; (2) a 22.5-foot-diameter, 350-foot-long steel penstock; (3) the powerhouse containing generating units with a capacity of 48 MW with an estimated average annual generation of 118 GWh; and (4) as 450-foot-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $1,500,000.

l. Purpose of project: Project power would be used by the applicant.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

16 a. Type of application: Preliminary Permit.

b. Project no.: 11123-000.

c. Date filed: April 9, 1991.

d. Applicant: Idaho Power Co.

e. Name of project: Oxbow Bypass.

f. Location: On the Snake River, in Baker County, Oregon. Township 7 S Range 48 E Section 20.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Mr. Lee Sherline, Leighton and Sherline, 1010 Massachusetts Avenue NW., suite 101, Washington DC 20001, (202) 898-1122.

i. FERC contact: Michael Spencer at (202) 219-2846.

j. Comment date: June 24, 1991.

k. Description of project: The proposed project would utilize the existing Idaho Power Company's Oxbow dam and would consist of: (1) A 60-inch-diameter, 275-foot-long steel penstock; (2) a 42-inch-diameter, 50-foot-long penstock; and (3) a powerhouse containing generating units with a capacity of 845 kW with an estimated average annual generation of 7.1 GWh. No new transmission lines would be needed.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $500,000.

l. Purpose of project: Project power would be used by the applicant.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

17 a. Type of application: Preliminary Permit.

b. Project no.: 11127-000.

c. Date filed: April 9, 1991.

d. Applicant: Portland General Electric Co.

e. Name of project: Cot Creek.

f. Location: In Mount Hood National Forest, on Cot Creek, in Clackamas County, Oregon. Township 6 S Range 6 E Section 4, and 33.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Mr. Gary W. Hackett, Portland General Electric Co., 121 SW Salmon Street, Portland, OR 97204, (503) 464-8005

i. FERC contact: Michael Spencer at (202) 219-2846.

j. Comment date: June 24, 1991.

k. Description of project: The proposed project would consist of: (1) A 10-foot-high dam; (2) a 10-inch-diameter, 9,000-foot-long penstock; (3) a powerhouse containing generating units with a capacity 1,200 kW with an estimated average annual generation of 3.5 GWh; and (4) a 3/4-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $200,000.

l. Purpose of project: Project power would be used by the applicant.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

18 a. Type of application: Transfer of License.

b. Project no.: 2180-005.

c. Date filed: April 3, 1991.

d. Applicant: Packaging Corporation of America.

e. Name of project: Grandmother Falls Project.

f. Location: On the Wisconsin River in Lincoln County, Wisconsin.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: Packaging Corporation of America, 1603 Orrington Avenue, Evanston, IL 60204, (708) 492-4401.

i. FERC contact: Mary C. Golato (202) 219-2804.

j. Comment date: June 15, 1991.

k. Description of project: Packaging Corporation of America proposes to transfer its license for the Grandmother Falls Project No. 2180 to PCA Hydro, Inc. Packaging Corporation of America and PCA Hydro, Inc. are subsidiaries of Tenneco, Inc., its parent company. The purpose of the transfer is to restructure the internal organization of Tenneco in order to facilitate its operation and maintenance.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

19 a. Type of application: Surrender of License.

b. Project no.: 8761-012.

c. Date filed: April 8, 1991.

d. Applicant: G.W. Hydro, Inc.

e. Name of project: Oologah.

f. Location: On the Verdigris River in Rodgers County, Oklahoma.

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant contact: David C. Wheelock, 5750 Balcones Drive, suite 210, Austin, TX 78731, (512) 453-6498.

i. FERC contact: Charles T. Raabe (tag) (202) 219-2811.

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j. Comment date: June 14, 1991.

k. Description of project: The proposed project would have utilized the existing U.S. Army Corps of Engineers' Oologah Dam and Reservoir and would have consisted of: (1) A 17.5-foot-diameter steel penstock approximately 420 feet long, installed in the northern outlet works conduit; (2) a reinforced concrete powerhouse 92 feet long and 63 feet wide housing two turbine-generators of 8.75 MW capacity each; (3) the 4.16-kV generator leads and the 700-foot-long, 4.16-kV underground cable; (4) the three-phase, 20/25-MVA, 4.16/138-kV stepup transformer and the one-mile-long, 138-kV overhead transmission line; and (5) appurtenant facilities.

The licensee has determined that the construction and operation of the project is no longer economically feasible. Therefore, licensee has requested that its license be terminated. The license was issued June 29, 1988, and would have expired May 31, 2038. The licensee has not commenced construction of the project.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particula application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) A preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATON", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable , and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027 (810 1st), at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. § 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses

should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 6, 1991, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 91–11125 Filed 5–9–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–146–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 3, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on May 1, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the tariff sheets:

Proposed To Be Effective June 1, 1991

First Revised Sheet No. 600A
Original Sheet No. 694
Original Sheet No. 695
Original Sheet No. 696
Original Sheet No. 697
Original Sheet No. 698
Original Sheet No. 699
Original Sheet No. 700
Sheet Nos. 701–799

Algonquin states that it is making the instant filing for the purposes of incorporating into its FERC Gas Tariff terms and conditions permitting Algonquin to track Account No. 858, Transmission and Compression by Others ("T&C") Costs as they are incurred for the purposes of securing system supply. Algonquin states that the intent of this filing is to remove the strong economic barriers which today prohibit Algonquin from purchasing its system supply on the spot market. Algonquin states that it could significantly reduce its cost of purchased gas if a T&C Tracker were in place, thus keeping Algonquin's sales services competitive and benefiting its customers, all as more fully set forth in Algonquin's instant filing.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–11127 Filed 5–9–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–145–000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 3, 1991.

Take notice that Florida Gas Transmission Company (FGT) on May 1, 1991, tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, with the proposed effective date of June 1, 1991:

First Revised Sheet No. 102
First Revised Sheet No. 248
Original Sheet No. 248A

FGT states that the purpose of this filing is to revise FGT's requirements for a valid request for firm sales and/or firm transportation service, and for being placed on FGT's Firm Service Log. FGT further states that the proposed changes will promote accurate requests for capacity, will provide FGT with the information necessary to allocate scare firm capacity on the FGT system as it becomes available and also will enable FGT to accurately plan future system expansions.

FGT requests waiver of any and all Commission rules, regulations and orders that may be necessary so as to permit the tariff sheets described above to become effective June 1, 1991.

FGT states that a copy of the filing was mailed to all holders of FGT's FERC Gas Tariff, Second Revised Volume No. 1 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–11128 Filed 5–9–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–144–000]

Great Lakes Gas Transmission Limited Partnership Proposed Changes in FERC Gas Tariff

May 3, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on May 1, 1991, pursuant to § 154.63(a)(1) of the Regulations of the Federal Energy Regulatory Commission ("Commission") tendered for filing the following tariff sheets to its FERC Gas Tariff proposed to be effective June 1, 1991:

First Revised Volume No. 1

First Revised Thirty-Ninth Revised Sheet No. 57(i)

Original Volume No. 2

Fifth Revised Sheet No. 50
First Revised Twenty-Fifth Revised Sheet No. 53
Fifth Revised Sheet No. 53–A
Eleventh Revised Sheet No. 53–B
Sixth Revised Sheet No. 53–F
Third Revised Sheet No. 53–G
Third Revised Sheet No. 53–H

Great Lakes advises that the primary purpose of this filing is to enable Great Lakes' transportation customer, TransCanada PipeLines Limited ("TransCanada"), to provide the company use gas needed by Great Lakes to transport TransCanada's gas volumes. The tariff sheets referenced above reflect the changes necessary to implement this change in Rate Schedule T–4 of First Revised Volume No. 1 and Original Volume No. 2 of Great Lakes' FERC Gas Tariff.

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Great Lakes further states that TransCanada has agreed that, effective June 1, 1991, it will provide that company use gas to Great Lakes, which is needed to transport volumes. Concurrent with the effectiveness of this change, TransCanada would no longer be subject to Great Lakes' PGA tariff provisions.

Great Lakes indicates that there are two major reasons for the proposed change. First, since customers in Great Lakes' open access program (implemented on November 1, 1990, pursuant to the Commission Order issued on September 13, 1990, in Docket No. CP88-2199-000), directly provide their company use gas, conversion of Great Lakes' traditional customers to a similar arrangement provides administrative convenience and uniformity. Second, it is critical to Great Lakes' planning to timely determine if it will need to purchase company use gas in the future. Gas purchase contracts, under which Great Lakes purchases most of its company use gas requirements from TransCanada terminate on November 1, 1991.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before May 10, 1991.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11129 Filed 5-9-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA91-1-34-001 and RP91-105-001]

Florida Gas Transmission Co.; Compliance Filing

May 3, 1991.

Take notice that on April 30, 1991, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheet:

Revised Alternate Fifteenth Revised Sheet No. 8

Tariff Revisions and Compliance

FGT states that by Commission Order in the above-referenced dockets, the Commission granted FGT a one-time waiver of the surcharge requirements of § 154.305(e) and permitted FGT to postpone the recovery of the commodity deferred balance until FGT's next Annual PGA filing. The Commission further directed FGT to refile the tariff sheet to remove the commodity surcharge. Accordingly, FGT has submitted the above-referenced tariff sheet. The effect of this change is a .2384¢/therm decrease in the jurisdictional resale rates from those set forth in the Annual PGA filing.

FGT further states that the Commission directed FGT to submit workpapers supporting the one-time exchange adjustment. This one-time exchange adjustment resulted from FGT's change in methodology from unit-of-purchases to unit-of-sales and was necessary to reflect the July 31, 1990 exchange imbalance in FGT's Account 191.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11124 Filed 5-9-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER91-150-000, ER91-150-001 and EL91-29-000]

Southern Company Services, Inc.; Initiation of Proceeding and Refund Effective Date

May 6, 1991.

Take notice that on May 2, 1991, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL91-29-000 under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

The refund effective date shall be 60 days after publication of this notice in the Federal Register.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11125 Filed 5-9-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-147-000]

Transcontinental Gas Pipe Line Corp. Tariff Filing

May 3, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on May 1, 1991 certain revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, which tariff sheets are listed in appendix A attached thereto. The proposed effective date of the revised tariff sheets is June 1, 1991.

Transco is proposing, pursuant to sections 35 and 37 of the General Terms and Conditions of its Volume No. 1 tariff, the partial recovery (*i.e.*, recovery of all amounts except those to be absorbed by Transco) from Settling Customers in Docket No. RP88-68 *et al.*, of approximately $57.8 million of Litigant Producer Settlement Payments (LPSP). Pursuant to section 33 of the General Terms and Conditions of Transco's Volume No. 1 tariff, Transco has also calculated Commodity LPSP Charges applicable to Sun Refining and Marketing Company, the only non-settling party in Docket Nos. RP88-68 *et al.*, based on approximately $84.7 million of LPSP payments. The LPSP costs reflected in the instant filing are proposed to be recovered over a two-year amortization period June 1, 1991 through May 31, 1993.

Transco states that copies of the instant filing were mailed to its customers, State Commissions and other interested parties. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenint form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before

May 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11130 Filed 5-9-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

National Petroleum Council Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council (NPC)

Date and Time: Wedensday, June 5, 1991, at 9:00 AM

Place: The Madison Hotel, Dolley Madison Ballroom, 15th & M Streets, NW., Washington, DC

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda:

—Call to order by Lodwrick M. Cook, Chairman, National Petroleum Council.
—Remarks by the Honorable James D. Watkins, Secretary of Energy.
—Consideration of a report of the NPC Committee on Refining, Kenneth T. Derr, Chairman.
—Progress Report of the NPC Committee on Natural Gas, Frank H. Richardson, Chairman.
—Administrative matters.
—Discussion of any other business properly brought before the National Petroleum Council.
—Public comment (10-minute rule).
—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, room, IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 7, 1991.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-11191 Filed 5-9-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3955-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 22, 1991 Through April 26, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in Federal Register dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. DS-NPS-K61001-AZ Rating 2

Grand Canyon National Park, North Rim Visitor Facilities, Development, Implementation, Coconino County, AZ.

Summary: EPA rated this document as Category 2—Insufficient Information, and requested more information regarding the project's purpose and need and the scope of alternatives analyzed to meet them. EPA asked for more information the project's potential air quality impacts and consistency with the 1976 Grand Canyon Master Plan.

Final EISs

ERP No. F-AFS-K03019-CA

M-70 Pipeline Replacement and System Optimization Project, Construction, Operation and Abandonment, Right-of-Way Grant, Special Use Permit and COE Permits, Angeles and Los Pardres National Forests, Los Angeles and Kern Counties, CA.

Summary: Review of this final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F-COE-E30094-NC

West Onslow Beach and New River Inlet Beach (Topsail Beach), Erosion Control and Hurricane Wave Protection Plan, Implementation, Pender and Onslow Counties, NC.

Summary: EPA continues to have some reservations about the long-term consequences of the proposal to dredge sand onto this section of eroding shoreline. EPA's concerns focus on certain of the underlying assumptions made about this specific project as well as some generic facets of beach nourishment per se.

ERP No. FS-COE-B35011-00

Western Long Island Sound (WLIS III) Dredged Material Disposal Site, Designation, CT and NY.

Summary: EPA believes that the proposed WLIS dredged material disposal site is environmentally acceptable and supports its designation. EPA will continue to coordinate with the Corps regarding on-going programmatic issues related to dredged material disposal, as part of EPA's regional ocean disposal program.

Dated: May 7, 1991.

Anne Norton Miller,

Director, FALD, Office of Federal Activities.

[FR Doc. 91-11172 Filed 5-9-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3955-6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed April 29, 1991 Through May 03, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910134, Draft EIS, AFS, MT, East Boulder Mine Project, Platinum and Palladium Mining, Construction and Operation, Plan of Operations Approval and COE section 404 Permit, Gallatin National Forest, Sweet Grass County, MT, Due: June 24, 1991, Contact: Leonard L. Lucero (406) 587-6701.

EIS No. 910135, Final EIS, AFS, MT, Lolo National Forest, Noxious Weed Management Plan, Implementation, Missoula, Mineral, Sanders, Granite, Powell, Lewis and Clark, Flathead, Ravalli and Lake Counties, MT, Due: June 10, 1991, Contact: Jerry Covault (406) 329-3727.

EIS No. 910136, Draft EIS, AFS, UT, Deep Creek and Snow Bench Timber Sales, Approval and Implementation, Thousand Lake Mountain, Fishlake National Forest, Loa Ranger District,

Wayne County, UT, Due: July 01, 1991, Contact: Gray O'Laing (801) 836-2811.

EIS No. 910137, Final EIS, UMT, GA, North Atlanta Corridor Transit Improvements, Medical Center Station to North Springs, Funding, Fulton and Dekalb Counties, GA, Due: June 10, 1991, Contact: Alex McNeil (404) 347-7875.

EIS No. 910138, Draft EIS, FAA, MA, Worcester Municipal Airport Parallel Taxiway Construction to Runway 11-29, Plan Approval Funding and COE section 404 Permit, Worcester County, MA, Due: July 01, 1991, Contact: John Silva (617) 273-7060.

EIS No. 910139, Draft EIS, USN, CT, Thames River Navigation Channel Dredging Project, Mouth of the River to Pier 33 at the Naval Submarine Base, Implementation and COE section 404 Permit, Groton and New London, New London County, CT, Due: June 24, 1991, Contact: LCDR R. P. Bachok (215) 897-6282.

EIS No. 910140, Final EIS, FHW, CA, I-5 Widening and Interchange Improvements, I-5 at Genesee Avenue, I-805 at Mira Mesa Boulevard and I-5 at Del Mar Heights Road, Funding, section 404 and Bridge Permits, City and County of San Diego, CA, Due: June 10, 1991, Contact: Leonard Brown (916) 551-1307.

EIS No. 910141, Final EIS, AFS, UT, Tippets Valley Timber Harvest Project, Timber Sale and Road Construction, Implementation, Dixie National Forest, Cedar City Ranger District, Iron County, UT, Due: June 10, 1991, Contact: Ronald S. Wilson (801) 865-3200.

EIS No. 910142, Second Final SUPPLE, COE, OR, Elk Creek Lake Project, Construction and Operation, Implementation, Updated and Additional Information, Jackson County, OR, Due: June 10, 1991, Contact: David Kurkiski (503) 326-6094.

EIS No. 910143, Second Draft SUPPLE, NOA, AK, Groundfish Fishery of the Bering Sea and Aleutian Islands, Fishery Management Plant, Amendment 18/23 Inshore/Offshore Allocation Alternative Approval and Implementation, AK, Due: June 24, 1991, Contact: Steven Pennoyer (907) 586-7221.

Amended Notices

EIS No. 910122, Draft EIS, NPS, MD, Antietam National Battlefield General Management Plan, Implementation, Washington County, MD, Due: June 30, 1991, Contract: Jacob J. Hoogland (202) 343-8214.

Published FR 04-26-91—Incorrect preparing agency.

Dated: May 7, 1991.

Anne Norton Miller,

Director, FALD, Office of Federal Activities.

[FR Doc. 91-11171 Filed 5-9-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3955-9]

Proposed Modification To Stipulation of Settlement; Sacramento Federal Implementation Plan for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed modification of settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed modification to a stipulation of settlement in litigation instituted against the Environmental Protection Agency ("EPA") regarding the fact that EPA has not promulgated a final rule establishing a Federal Implementation Plan (FIP) to attain the National Ambient Air Quality Standards for ozone in the Sacramento, California nonattainment area.

Environmental Council of Sacramento, et al. v. *EPA, et al*, E.D. Cal. No. CIVS-87-0420 EJG.

The parties to the litigation originally entered into a stipulation of settlement that was approved by the court on June 26, 1989. Under that agreement, EPA is to propose a FIP by June 26, 1991, and take final action by February 26, 1992. The parties have now agreed to modify that settlement to provide additional time for EPA to promulgate the FIP in order to enable EPA to make use of air quality modeling data currently being developed by the state and local air planning agencies. The modification extends the deadlines for both proposal and final action by one additional year.

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the proposed modification of the stipulation of settlement. EPA or the Department of Justice may withhold or withdraw consent to the proposed modification if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the proposed modification are available from Sara Schneeberg, Air and Radiation Division (LE-132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 382-7723. Written comments should be sent to Sara Schneeberg at the above address and must be submitted on or before June 10, 1991.

Dated: May 5, 1991.

E. Donald Elliott,

Assistant Administrator and General Counsel.

[FR Doc. 91-11290 Filed 5-9-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Travel Reimbursement Authority: Report

AGENCY: Federal Communications Commission.

ACTION: Publishing of report on travel reimbursement authority.

SUMMARY: In Public Law 101-396, the Congress authorized the Federal Communications Commission to accept reimbursement from non-government organizations for travel of employees of the Commission. The Federal Communications Commission must keep records of such travel by each event and prepare a report of all reimbursements allowed and provide copies of each report to the Senate Committee on Appropriations, House Committee on Appropriations, Senate Committee on Commerce, Science and Transportation, and the House Committee on Energy and Commerce.

DATES: This report is for the period January 1, 1991 through March 31, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard Keller, Office of the Managing Director (202) 632-0900.

SUPPLEMENTARY INFORMATION: The report for the period January 1, 1991 through March 31, 1991 is as follows:

Total Number of Sponsored Events	5
Total Number of Sponsoring Organizations	5
Total Number of Different Commissioners/Employees Attending	14
Total Amount of Reimbursement Expected	
Transportation	$7,239.00
Subsistence	6,435.44
Other Expenses	1,318.89
Total	$14,993.33

Individual Event Reports Attached.
Amount of Reimbursement Shown May Be Estimated

Sponsoring Organization: Satellite Broadcasting & Communications, Association of America; 225 Reinekers Lane, suite 600, Alexandria, VA 22314
Date of the Event: January 21, 1991.
Description of the Event: Satellite Broadcasting & Communication's 1991 Las Vegas Trade Show.
Commissioners Attending: None.
Other Employees Attending: Jonathan D. Levy—Industry Economist, Office of Plans and Policy.
Amount of Reimbursement:

Transportation	$280.00
Subsistence	226.68
Other Expenses	21.50
Total	538.18

Sponsoring Organization: Oklahoma Association of Broadcasters; 6520 N. Western, suite 104, Oklahoma City, OK 73116
Date of the Event: February 8, 1991.
Description of the Event: Oklahoma Association of Broadcaster's Winter Meeting.
Commissioners Attending: Commissioner James H. Quello.
Other Employees Attending: None.
Amount of Reimbursement:

Transportation	$366.00
Subsistence	161.00
Other Expenses	71.96
Total	598.96

Sponsoring Organization: NATPE International, 10100 Santa Monica Blvd., suite 300, Los Angeles, CA 90067
Date of the Event: January 14, 1991.
Description of the Event: NATPE Annual Program Conference.
Commissioners Attending: Commissioner James H. Quello; Commissioner Sherrie P. Marshall.
Other Employees Attending: None.
Amount of Reimbursement:

Transportation	$712.00
Subsistence	497.50
Other Expenses	228.58
Total	1,438.08

Sponsoring Organization: National Cable Television Association, 1724 Massachusetts Avenue, NW., Washington, DC 20036
Date of the Event: March 24-27, 1991.
Description of the Event: NCTA's 40th Annual Convention and Exposition.
Commissioners Attending: Chairman Alfred C., Sikes.
Other Employees Attending: Lauren J. Belvin, Legal Advisor to the Chairman, Linda Townsend Solheim, Director, Office of Legislative Affairs, Thomas P. Stanley, Chief Engineer, Office of Engineering and Technology; Richard M. Firestone, Chief, Common Carrier Bureau, William H. Johnson, Deputy Chief, Mass Media Bureau, Ronald Parver, Chief, Cable Television Branch, Mass Media Bureau.
Amount of Reimbursement:

Transportation	$2,452.00
Subsistence	2,253.26
Other Expenses	487.67
Total	5,192.93

Sponsoring Organization: INTV Association of Independent Television Stations, Inc., 1200 Eighteenth Street, NW., suite 502, Washington, DC 20036
Date of the Event: January 3-5, 1991.
Description of the Event: INTV's 1991 Annual Convention.
Commissioners Attending: Commissioner James H. Quello, Commissioner Sherrie P. Marshall, Commissioner Ervin S. Duggan.
Other Employees Attending: Byron F. Marchant, Legal Advisor to Commissioner Barrett, Peter D. Ross, Legal Advisor to Commissioner Marshall, Lauren J. Belvin, Legal Advisor to the Chairman, Linda Townsend Solheim, Director, Office of Legislative Affairs, Robert M. Pepper, Chief, Office of Plans and Policy.
Amount of Reimbursement:

Transportation	$3,419.00
Subsistence	3,297.00
Other Expenses	511.16
Total	7,227.16

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-11150 Filed 5-9-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

San Diego Unified Port District/Pasha Properties, Inc., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200327-002.

Title: San Diego Unified Port District/Pasha Properties, Inc. Terminal Agreement

Parties: San Diego Unified Port District (Port), Pasha Properties, Inc. (Pasha).

Filing Party: Mr. John M. Reardon, Deputy Director, Property Department, Port of San Diego, P.O. Box 488, San Diego, CA 92112.

Synopsis: The Agreement, filed April 29, 1991, provides for Pasha to operate motor vehicle processing activities at the Port's National City Marine Terminal Facility, Motor Vehicle Terminal Berths 24-3 and 24-4 for a 10-year term.

Agreement No.: 224-200027-002.

Title: Jackson County Port Authority/Ryan-Walsh Marine Terminal Agreement.

Parties: Jackson County Port Authority and Board of Supervisors of Jackson County, Mississippi (Port), Ryan-Walsh, Inc.

Filing Party: Mr. Fred S. Sherman, Executive Director, Jackson County Port Authority, 3033 Pascagoula Street, P.O. Box 70, Pascagoula, MS 39568-0070.

Synopsis: The Agreement, filed April 29, 1991, amends the basic agreement to: (1) Extend its term to December 31, 1995; (2) provide the rental terms for the extended term; and (3) provide that the Port's tariff charges not specifically addressed in the basic agreement are for the account of the Port.

By Order of the Federal Maritime Commission.

Dated: May 6, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-11111 Filed 5-9-91; 8:45 am]

BILLING CODE 6730-01-M

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Tampa Port Authority/Tampa Bay International Terminals, Inc.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200510.

Title: Tampa Port Authority/Tampa Bay International Terminals, Inc., Terminal Agreement.

Parties: Tampa Port Authority (Authority), Tampa Bay International Terminals, Inc. (TBIT).

Synopsis: The Agreement, filed April 22, 1991, provides for: The Authority to assess TBIT an incentive wharfage rate of $1.00 per net ton on steel billets and reinforcing bars moving export through the Port of Tampa, subject to a minimum annual volume of 15,000 net tons. The Agreement is effective through April 16, 1992.

By Order of the Federal Maritime Commission.

Dated: May 6, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–11133 Filed 5–9–91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Allan A. Armbruster, Jr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 31, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Allan A. Armbruster, Jr., Cozad, Nebraska, and Allan A. Armbruster, Jr., trustee for BJA Irrevocable Trust III; to acquire an additional 0.45 percent (totalling 16.97 percent) of the voting shares of Midwest Banco Corporation, Cozad, Nebraska, and thereby indirectly acquire First Bank and Trust Company, Cozad, Nebraska; Bank of Wilber, Wilber, Nebraska; and First State Bank, Enders, Nebraska.

2. Oren L. Benton, Aurora, Colorado; to acquire an additional 75.01 percent (totalling 100 percent) of the voting shares of TecNational Bank, Denver, Colorado.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Lacy J. Harber, Denison, Texas; to acquire 94.87 percent of the voting shares of North American Bancshares, Sherman, Texas, and thereby indirectly acquire American Bank and Trust, Denison, Texas, and American Bank of Sherman, N.A., Sherman, Texas.

Board of Governors of the Federal Reserve System, May 6, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11141 Filed 5-9-91; 8:45 am]

BILLING CODE 6210-01-F

Banco de Santander, S.A. de Credito; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Banco de Santander, S.A. de Credito, Santander, Spain; to acquire up to 24.1 percent of the voting shares of First Fidelity Bancorporation, Lawrenceville, New Jersey; First Fidelity, Incorporated, Newark, New Jersey; and Fidelcor, Inc., Rosemont, Pennsylvania, and thereby indirectly acquire First Fidelity Bank, N.A., New Jersey, Newark, New Jersey; Fidelity Bank, National Association, Malvern, Pennsylvania; First Fidelity Bank, N.A., North Jersey, Totowa, New Jersey; First Fidelity Bank, N.A., South Jersey, Burlington TWP, New Jersey; Merchants Bank, N.A., Allentown, Pennsylvania; Morris Savings Bank, Morristown, New Jersey; Fidelity Bank Delaware, New Castle, Delaware; and Merchants Bank, North, Wilkes-Barre, Pennsylvania.

In connection with this application, Applicant also proposes to acquire First Fidelity Community Development Corporation, Trenton, New Jersey, and thereby engage in activities designed to assist local and governmental groups in the economic revitalization, rehabilitation and development of both commercial and residental areas located in low and moderate income areas in the States of New Jersey and Pennsylvania pursuant to § 225.25(b)(6); Waller House Corporation, Philadelphia, Pennsylvania, and thereby engage in activities designed to assist in community development activities pursuant to § 225.25(b)(6); First Fidelity Capital Corporation, Newark, New Jersey, and thereby engage in extensions of consumer and commercial direct loans, lines of credit, letters of credit and other like indebtedness pursuant to § 225.25(b)(1), and lease financing transactions, personal and real property lease transactions, ownership, acquisition, sale and disposition of leases and lease finance documents and the underlying leased property prusuant to § 225.25(b)(5); Broad and Lombardy Associates, Inc., Newark, New Jersey, and thereby engage in acting as insurance agent or broker for credit life and health insurance in conjunction with credit transactions; acting as an insursance agent or broker for the sale of credit-related property and casualty insurance protecting real and personal property which serves as collateral for a credit transaction and liability coverage as part of a package on home, automobile and business policies, and acting as an insurance agent or broker for insurance for affiliates pursuant to § 225.25(b)(8); First Fidelity Trust, N.A., Florida, Boca Raton, Florida, and thereby engage in performing and carrying on any one or more of the functions or activities that may be performed or carried on by a national trust company in a manner authorized by applicable federal and state law pursuant to § 225.25(b)(3); First Fidelity Brokers, Inc., Newark, New Jersey, and thereby engage in retail securities brokerage services in New Jersey, New York, Florida, and Pennsylvania pursuant to § 225.25(b)(15); First Fidelity Trust Company, New York, New York, and thereby engage in performing functions or activities of a fiduciary, agency, or custodial nature in a manner authorized by federal and state laws except that it does not and will not, without the prior approval of the Board: accept deposits other than deposits that are generated from trust funds not currently invested and that are properly secured to the extent required by law and deposits representing funds received for a special use in its capacity as managing agent or custodian for an owner of, or investor in, real property, securities, or personal property or for such owner or investor in, real property, securities, or personal property or for such owner or investor as agent or custodian of funds held for investor as agent or custodian of funds held for investment or as escrow agent, or for an issuer of, capacities as paying agent, dividend disbursing agent, or securities clearing agent (which deposits are not and will not be employed by or for the account of the customer in the manner of a general purpose checking account or interest-bearing account); or make loans or investments other than call loans to securities dealers and the purchase of money market instruments such as certificates of deposit, commercial paper, government and municipal securities and bankers acceptances (which loans investments will not be used as a method of channeling funds to any of its nonbanking affiliates) pursuant to § 225.25(b)(3); Fidelcor Business Credit Corporation, New York, New York, and thereby engage in originating and servicing loans and other extensions of credit, commercial finance, factoring, general lending operations, data processing, participation of loans to affiliates of First Fidelity, with occasional participations to others pursuant to §§ 225.25(b)(1) and (b)(7); Fidelcor Business Credit Corporation of California, Inc., Los Angeles, California, and thereby engage in originating and servicing loans and other extensions of credit, commercial finance, factoring, general lending operations, data processing, participation of loans to affiliates of First Fidelity, with occasional participations to others, in California pursuant to §§ 225.25(b)(1) and (b)(7); Fidelcor Life Insurance Company, Phoenix, Arizona, reinsursance of credit life, disability and health insurance written by an outside insurance carrier in connection with loans extended by Fidelity Bank, N.A., and its affiliates pursuant to § 225.25(b)(8)(i); and Fidelcor Trading Inc., Philadelphia, Pennsylvania, and thereby engage in executing and clearing options in foreign currency pursuant to Board order dated March 19, 1984.

Board of Governors of the Federal Reserve System, May 6, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11142 Filed 5-9-91; 8:45 am]

BILLING CODE 6210-01-F

Marquette National Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Marquette National Corporation, Chicago, Illinois; to engage *de novo* through its subsidiary, Churchview Limited Partnership, Chicago, Illinois, in investing, as a limited partner, in a low income housing project for elderly residents pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Chicago, Illinois.

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Board of Governors of the Federal Reserve System, May 6, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11143 Filed 5-9-91; 8:45 am]

BILLING CODE 6210-01-F

Society Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than May 31, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Society Corporation, Cleveland, Ohio; through its subsidiary Green Machine Network Corporation, North Olmsted, Ohio, to engage in providing data processing services nationwide pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota, and Norwest Insurance, Inc., Minneapolis, Minnesota; through their subsidiary National Security Insurance Underwriters of Litchfield, Litchfield, Minnesota, to engage in general insurance agency business including the sale of life, accident and health, property, and casualty insurance products pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 6, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11144 Filed 5-9-91; 8:45 am]

BILLING CODE 6210-01-F

Synovus Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 31, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Synovus Financial Corporation, Columbus, Georgia; and TB&C Bancshares, Inc., Columbus, Georgia; to acquire 100 percent of the voting shares of Athens Federal Savings Bank, Athens, Georgia.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Emprise Financial Corporation, Wichita, Kansas; and thereby indirectly acquire Emprise Bank, N.A., Hays, Kansas.

Board of Governors of the Federal Reserve System, May 6, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11145 Filed 5-9-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91E-0136]

Determination of Regulatory Review Period for Purposes of Patent Extension; Altace™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Altace™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical

device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Altace™ (ramipril), which is indicated for the treatment of hypertension. It may be used alone or in combination with thiazide diuretics. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Altace™ (U.S. Patent No. 4,587,258) from Hoechst-Roussel Pharmaceuticals, Inc., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated April 15, 1991, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the approval of the active ingredient, ramipril, represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Altace™ is 2,551 days. Of this time, 1,738 days occurred during the testing phase of the regulatory review period, while 813 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: February 5, 1984. The applicant claims January 27, 1984, as the date the investigational new drug (IND) application for Altace™ became effective. However, FDA records indicate that the IND became effective on February 5, 1984.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: November 7, 1988. The applicant claims November 2, 1988, as the date the new drug application (NDA) for Altace™ (NDA 19-901) was initially submitted. However, FDA records indicate that the application was received on November 7, 1988.

3. The date the application was approved: January 28, 1991. FDA has verified the applicant's claim that NDA 19-901 was approved on January 28, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 632 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 9, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 6, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 3, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91-11140 Filed 5-9-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Final Review Criteria for Grants for Nurse Anesthetist Education Programs

The Health Resources and Services Administration (HRSA) announces the final review criteria for fiscal year 1991 for Grants for Nurse Anesthetist Education Programs.

Section 831(a) of the Public Health Service Act authorizes grants to public or private nonprofit institutions to cover the costs of:

1. Traineeships for licensed registered nurses to become nurse anesthetists; and

2. Projects to develop and operate programs for the education of nurse anesthetists.

This announcement addresses grants for projects to develop and operate programs for the education of nurse anesthetists.

To be eligible for a grant, an applicant must be a public or private nonprofit institution accredited by an entity or entities designated by the Secretary of Education and must meet such requirements as the Secretary shall by regulation prescribe.

For purposes of this program eligible projects will be limited to proposals for developing and operating new programs. This is in keeping with the intent of Congress that additional nurse anesthetist education programs be created (Senate Report 101-516, p. 55). An application may be submitted for a project at any stage of program development beginning with the planning period but prior to the graduation of a class. Projects which include a planning period must, before the end of the first year of the project, complete the Capability Review required to achieve Preaccreditation Status from the Council on Accreditation of Nurse Anesthesia Educational Programs (AANA Council). Projects for Nurse Anesthetist Programs which have achieved Preaccreditation status from the AANA Council must have students enrolled or accepted for enrollment, to be eligible. Projects for progams which have graduated a class or will be graduating a class before a grant can be awarded are not eligible.

The period of Federal support should not exceed three years.

National Health Objectives for the Year 2000

The PHS is encouraging applicants to submit proposals that address achievement of Healthy People 2000: National Health Promotion and Disease

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Prevention Objectives, (a recent Departmental report), as applicable. In developing your application for this program, please consider the 22 priority areas set forth in the report. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Training and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between Public Health Service supported education programs and service programs which provide comprehensive primary care services to the underserved.

Final Review Criteria

Proposed review criteria were published in the Federal Register on February 28, 1991 (56 FR 8854) for public comment. No comments were received during the 30-day comment period. The review criteria will be retained as proposed.

The HRSA will review applications taking into consideration the following criteria:

1. The national or special local need which the particular project proposes to serve with special emphasis on meeting shortages in underserved areas.
2. The potential effectiveness and impact of the proposed project including its potential contribution to nursing.
3. The administrative and managerial capability of the applicant to carry out the proposed project.
4. The appropriateness of the plan, including the timetable, for carrying out the activities of the proposed project and achieving and measuring the project's stated objectives.
5. The capability of the applicant to carry out the proposed project.
6. The reasonableness of the budget for the proposed project, including the justification of the grant funds requested.
7. The potential of the project to continue on a self-sustaining basis after the period of grant support.

This program is listed at 93.916 in the Catalog of Federal Domestic Assistance and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: May 6, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-11118 Filed 5-9-91; 8:45 am]

BILLING CODE 4160-15-M

Health Resources and Services Administration Public Health Service

Pre-application Technical Assistance Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Health Resources and Services Administration (HRSA) is conducting a pre-application technical assistance meeting concerning the funding available under section 340A of the Public Health Service Act (PHS), of the newly authorized Health Services to Residents of Public Housing Program which was enacted under Public Law 101-527. Grants under this program will be awarded to public or nonprofit private entities to provide health care services, health screening, health counseling and education to residents of public housing developments. Preference will be given to applicants receiving funds under the Health Care for the Homeless Program (section 340 of the PHS Act), community health centers program (section 330 of the PHS Act) or certified Resident Management Corporations (section 20 of the U.S. Housing Act of 1937).

PURPOSE: The purpose of this meeting is to provide technical assistance and an overview of the requirements of the program to those interested in applying for funding to provide health care services to residents in public housing.

Anyone interested in receiving additional information or attending the meeting should contact Mr. James Gray or Ms. Tracy McClintock, Division of Special Populations Program Development, room 7A-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-2512.

The meeting will be held as follows:

DATE AND TIME: May 29, 1991, 8:30 a.m. to 5 p.m.

PLACE: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

Dated: May 6, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-11219 Filed 5-9-91; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, April 26, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. HIV/AIDS Dental Reimbursement Program—New—Dental Schools will apply for reimbursement of documented uncompensated costs of oral health care for HIV infected persons. The Information will be used to determine eligibility and amount of reimbursement under this program. Respondents: Nonprofit institutions; Number of Respondents: 150; Number of Responses per Respondent: 1; Average Burden per Response: 2.5 hours; Estimated Annual Burden: 375 hours.

2. Loan Repayment Program for Service on Faculties of Certain Health Professions Schools Application.—New—Health professionals applying to Loan Repayment Program for Service on Faculties on Certain Health Professions Schools provide information needed to determine eligibility. Applicants provide information that identifies they are a disadvantaged health professions graduate, have a contract to serve as full-time faculty, and have creditable loans. Respondents: Individuals or households, businesses or other for-profit;

	No. of respondents	No. of hours per response	No. of responses per respondent
FLRP Application	100	1 hr	1
Lenders Confirmation of Loan	62	.05 hrs	1

Note: Estimated Annual Burden—131 hours.

3. 1991 Annual Census of State and County Mental Hospital Inpatient Services—New—This voluntary data collection will provide NIMH, the States, and researchers with statistics on the changes in the utilization of State and county mental hospitals, by different age-sex diagnosis subgroups. These data are needed to measure variability in service utilization patterns and to understand deinstitutionalization practices in the United States and each State. Respondents: State or local governments; Number of Respondents: 94; Number of Responses per Respondent: 1; Average Burden per Response: 2.0 hours; Estimated Annual Burden: 188 hours.

4. Loans for Disadvantaged Students and Scholarships for Disadvantaged Students—New—Health professions schools applying to participate in the Loans for Disadvantaged Students (LDS) and/or Scholarships for Disadvantaged Students (SDS) programs provide information on the application about the schools' programs and the race/ethnicity of full-time students and minority faculty. This information is needed to determine program eligibility. Respondents: Non-profit institutions; Number of Respondents: 500; Number of Responses per Respondent: 1; Average Burden Per Response: 5 hours; Estimated Annual Burden: 2500 hours.

5. 1992 National Home and Hospice Care Survey Pretest—New—This pretest is to evaluate questionnaires, response rates and methodology for the 1992 National Home and Hospices Care Survey (NHHCS). The NHHCS will provide estimate of the characteristics of people being served by hospices home health agencies. The data will provide information on the size and composition of the population using these services. Respondents: Businesses or other for-profit; Federal agencies or employees, non-profit institutions; small businesses or organizations; Number of Respondents: 1300; Number of Responses per Respondent: 1; Average Burden per Response; 0.25 hours; Estimated Annual Burden: 325 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address:

Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC 20503.

Dated: May 3, 1991.

James M. Friedman,

Director, Office of Health Planning and Evaluation.

[FR Doc. 91-10949 Filed 5-9-91; 8:45 am]

BILLING CODE 4160-17-M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, April 26, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Childhood Lead Poisoning Program Quarterly Report—New—CDC awards grants to state and community health agencies as the principal delivery points for childhood lead screening and related medical and environmental management activities. In order to properly manage recipient activities, CDC requests quarterly reports from the recipients. Respondents: State or local governments. Number of Respondents: 13; Number of Responses per Respondent: 4; Average Burden per Response: 2 hours; Estimated Annual Burden: 104 hours.

2. Investigational Use of New Animal Drugs—0910-0117—An investigational new animal drug application is required to permit the use of unapproved new animal drugs. A drug is not approved until these investigations are completed and the safety and effectiveness data obtained. Respondents: Businesses or other for-profit; and small businesses or organizations.

	Number of respondents	Number of hours per response	Number of responses per respondent
Reporting 21 CFR 511.1(b)(4)-(6)	174	42.5 hrs	21.7
Recordkeeping 21 CFR 511.1 (a)(3), (b)(3), (b)(7)(ii) and (b)(8)(i)	174	24.3 hrs	1.0

Note: Estimated Annual Burden—164,706 hours.

3. Health Education Assistance Loan (HEAL) Program Regulations—42 CFR Part 60—0915-0108—The notification, reporting and recordkeeping requirements insure that the lenders, holders and schools participating in the HEAL Program follow sound management procedures in the administration of Federally-insured student loans. Respondents: Individuals or households, businesses or other for-profit; nonprofit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Reporting	483	2.32 hrs	1.99
Notification	37,683	.27 hrs	11.0
Recordkeeping	483	.19 hrs	737.43

Note: Estimated Annual Burden—178,290 hours.

4. Scholarships for the Undergraduate Education of Professional Nurses (SUEPN)—New—Schools use the application to apply for funding under the SUEPN program. Information is required about the race/ethnicity of students to determine whether an applicant school meets the Federal Program requirements for giving

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preference to disadvantaged individuals in awarding financial assistance. Respondents: Nonprofit institutions; Number of Responses: 199; Number of Responses per Respondent: 1; Average Burden Per Response: .5 hours; Estimated Annual Burden: 95 hours.

5. Factors Associated with Premature Births: Missouri Followback Survey—0925-0315—More accurate information is needed to better understand why some women deliver very low birth weight infants or suffer fetal deaths. This Survey will collect population-based data which can be used to examine this major public health problem in order to design future intervention strategies to reduce infant mortality. Respondents: Individuals or households; State or local governments; small businesses or organizations.

	No. of respondents	No. of hours per response	Responses per respondent
Mother	1,250	0.8 hrs	1.2
Physician	2,144	0.5 hrs	1.0

Note: Estimated Annual Burden—2,272.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address:

Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Date: April 29, 1991.

James M. Friedman,

Director, Office of Health Planning and Evaluation.

[FR Doc. 91-10583 Filed 5-9-91; 8:45 am]

BILLING CODE 4160-17-M

Advisory Committee on the Food and Drug Administration; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the Advisory Committee on the Food and Drug Administration (FDA) will hold a meeting on Wednesday, May 15, 1991 from 8 a.m. to 11 a.m. The meeting is open to the public and will be held in the Auditorium of the Hubert H. Humphrey Building located at 200 Independence Avenue, SW., Washington, DC 20201.

The purpose of this meeting is to discuss the final recommendations of the Committee and present the Committee's Final Report to the Department of Health and Human Services.

Notice of this meeting is being published less than fifteen days in advance to meet the demands of the drafting process and the schedule of Secretary Sullivan, who intends to attend this meeting to receive the Final Report on behalf of the Department of Health and Human Services.

FOR FURTHER INFORMATION CONTACT: Carol Cooke, Advisory Committee on the Food and Drug Administration, Department of Health and Human Services, room 740-G Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201. Telephone number (202) 245-7305.

Dated: May 7, 1991.

Eric M. Katz,

Executive Director, Advisory Committee on the FDA.

[FR Doc. 91-11217 Filed 5-9-91; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-25]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: May 10, 1991.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing-and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: May 3, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 91-11091 Filed 5-9-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-930-01-2120-11-H009; G1-215]

Closure of Public Lands; Oregon

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following order closes public lands within the National Historic Oregon Trail Interpretive Center Project boundary in WM. T. 8S., R. 41E., section 31 and WM. T. 9S., R. 41E., Sections 5 & 6.

The purpose of this order is to close the lands in the project boundary for the duration of construction of the center. Use of these lands could pose a safety hazard to members of the public and workers at the site. Under the authority of 43 CFR 8364.1, the above described public lands are closed to public use and access through the completion of construction.

Persons exempt from this order include emergency service personnel, law enforcement personnel, and employees of the Bureau of Land Management performing official duties, contractors and sub-contractors working at the site, mining claim holders, and persons acting under specific authorizations granted by the Bureau of Land Management.

This closure shall remain in effect until further notice.

EFFECTIVE DATE: May 15, 1991.

FOR FURTHER INFORMATION CONTACT: Jack Albright, BLM Baker Resource Area, P.O. Box 987, Baker City, Oregon 97814, 503-523-6391.

Jack B. Albright,

Area Manager.

[FR Doc. 91-11115 Filed 5-9-91; 8:45 am]

BILLING CODE 4310-33-M

[CA-060-01-4130-15]

Intent to Prepare an EIS for the Proposed Fort Cady Project

AGENCY: Bureau of Land Management Interior.

ACTION: Notice of intent.

SUMMARY: The Barstow Resource Area, Bureau of Land Management, California Desert District, in coordination with the County of San Bernardino, will prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for a mining operation proposed by Fort Cady Minerals Corporation (FCMC). This document will meet the requirements of both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

The applicant, FCMC, proposes to construct and operate an in-situ solution borate mine and processing plant on their leased mining claims, in addition to lands belonging to the State of California, and lands leased from Southern California Edison Company and the Southern Pacific Land Company. The proposed Fort Cady Project is located approximately 38 miles east-southeast of Barstow, California near Pisgah Crater. The proposed mine and processing facilities would ultimately affect approximately 945 acres.

The EIS/EIR will assess the impacts of in-situ solution mining, construction and operation of the mine, processing plant, and solar evaporation ponds, construction and maintenance of access roads and rail spur, development of a water well system, and reclamation of disturbed lands.

In addition, the EIS/EIR will consider alternative technologies and alternate siting of components, including access roads and rail spur, solar evaporation ponds, processing facilities, and water wells.

The EIS/EIR will consider the following general issues: water resources (specifically, the potential for reduction in quantity of ground water, potential for contamination, or other changes to quality of ground and surface water and the potential for alteration of flood flows), wildlife resources, botanical resources, cultural resources, geologic hazards (including the potential for seismic activity due to changes in the geologic substructure), soils, changes to existing and potential land uses and transportation, visual resources, air quality, hazardous and solid waste (specifically, the potential for chemical and hazardous substance spills or discharges), socioeconomic and public safety issues, and cumulative impacts.

PUBLIC PARTICIPATION: Three public scoping meetings will be conducted prior to preparation of the EIS/EIR in order to receive public comments, concerns, and interests which will be addressed in the document.

Date, Time, and Location:

May 30, 1991—7 p.m.: Newberry Springs Community Building, 30894 Newberry Road, Newberry Springs, California 92365.

May 31, 1991—7 p.m.: Barstow Station Inn, 1505 East Main Street, Barstow, California 92311.

June 1, 1991—1 p.m.: San Bernardino County Government Center, Board Hearing Chambers, 385 N. Arrowhead Avenue, San Bernardino, California.

FOR FURTHER INFORMATION CONTACT: Michael E. Ford, Project Lead, Bureau of Land Management, Barstow Resource Area, 150 Coolwater Lane, Barstow, California 92311 (619) 256-3591.

Dated: May 3, 1991.

Daryl Albiston,

Acting Area Manager.

[FR Doc. 91-11116 Filed 5-9-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-060-01-4410-04-ADVB]

Meeting of the California Desert District Grazing Advisory Board

SUMMARY: Notice is hereby given, in accordance with Public Laws 92-463 and 94-579, that the California Desert District Grazing Advisory Board to the Bureau of Land Management, U.S. Department of the Interior, will meet Tuesday, May 14, 1991, from 9:00 a.m. to 4:30 p.m., in the California Desert Information Center, 831 Barstow Road, in Barstow, California.

The agenda for the meeting will include:

—Range management perspectives by Resource Area;
—Grazing management in riparian areas;
—Development of rangeland improvements;
—Review status of allotment management plans;
—Field review of sheep grazing operations;
—Update on sheep and cattle Section 7 consultation packages.

The meeting is open to the public, with time allotted for public comment after each agenda subject has been presented. Written comments are also accepted at the time of the meeting and will be incorporated into the minutes. During the afternoon portion of the meeting, Board members will participate in a field trip south of Barstow to view and discuss sheep grazing practices.

Summary minutes of the meeting will be maintained in the California Desert District Office, 6221 Box Springs Boulevard, Riverside, California 92507, and will be available for public inspection during regular business hours—8:00 a.m. to 4:30 p.m. (PDT)—within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, California Desert District Office, Larry Morgan, 6221 Box Springs Boulevard, Riverside, California 92507, (714) 653-1359.

Dated: May 1, 1991.

Gerald E. Hillier,

District Manager.

[FR Doc. 91-11207 Filed 5-9-91; 8:45 am]

BILLING CODE 4310-40-M

[NV-030-01-4212-11; N-42002]

Termination of Recreation and Public Purpose Classification and Order Providing for Opening of Land; Nevada

April 8, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification termination and opening order.

SUMMARY: This notice terminates recreation and public purpose classification N-42002 in its entirety. The land will be opened to the public land laws generally, including the mining laws.

EFFECTIVE DATE: Termination is effective with the publication of this document. The land will be open to entry at 10 a.m. on June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, (702) 785-6528.

SUPPLEMENTARY INFORMATION: Pursuant to the Recreation and Public Purposes Act (43 U.S.C. 869 et seq.), recreation

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and public purpose classification N-42002 is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada

T. 14 N., R. 27 E.,
Sec. 28, N½.

The area described contains 320.00 acres in Lyon County.

The classification was accomplished pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended, in response to an application by the State of Nevada for a prison honor camp. The land was leased to the State in January 1967 and the lease was relinquished in December 1987. The classification no longer serves a needed purpose and is hereby terminated. At 10 a.m. on June 10, 1991 the land will be open to the operation of the public land laws, subject to valid existing rights, existing classification and withdrawals, pending lawsuits, and requirements of applicable law. All valid applications received prior to or at 10 a.m. on June 10, 1991 will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10 a.m. on June 10, 1991, the land will also be open to the operation of the mining laws. Appropriation of land under the general mining law prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no right against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. The land remains open to the mineral leasing and material sale laws.

Alan J. Dunton,
Acting Deputy State Director, Operations.

[FR Doc. 91-11156 Filed 5-9-91; 8:45 am]

BILLING CODE 4310-HC-M

[WAOR 47036; OR-130-01-4212-11; GP1-214]

Realty Action: Lease of Public Lands for Recreation and Public Purposes Benton County, WA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described lands have been examined and found suitable for classification for lease or conveyance to the Benton County Fire District No. 4 under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Benton County will use the land for a fire station and training facility.

Willamette Meridian

T. 9 N., R. 28 E.,
Sec. 8, Lots 175 & 176;
Containing 5.00 acres more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for street and utility purposes granted to the City of West Richland under Right-of-Way OR 34586W.

Detailed information concerning this action is available for review at the Spokane District Office, East 4217 Main Avenue, Spokane, Washington, 99202.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease or classification of the lands to the District Manager, Spokane District Office, East 4217 Main Avenue, Spokane, Washington, 99202. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Date of Issue May 2, 1991.

Joseph K. Buesing,
District Manager.

[FR Doc. 91-11117 Filed 5-9-91; 8:45 am]

BILLING CODE 4310-33-M

[NV-930-01-4214-11; Nev-044346]

Proposed Continuation of Withdrawal, Nevada; Correction

April 5, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: This action will correct three errors in the **Federal Register** notice published as Document 91-3021 on February 8, 1991, on page 5233.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 702-785-6526.

SUPPLEMENTARY INFORMATION: The notice of proposed continuation published in the **Federal Register** on February 8, 1991, pages 5233 and 5234, as Document 91-3021 contains an error in the existing legal description and in addition one legal description and the resultant acreage were inadvertently omitted: The corrections are: 1. Third column, the third and last legal description under T. 45 N., R. 56 E., Sec. 32 should read, "N½NW¼NE¼SE¼." 2. Third column, at the end of all the legal descriptions, add the following: T. 36 N., R. 61 E., sec. 4, SE¼SE¼. 3. Third column, fifth line from the bottom, the acreage figure should read 830.00.

Alan J. Dunton,
Acting Deputy State Director, Operations.

[FR Doc. 91-11155 Filed 5-9-91; 8:45 am]

BILLING CODE 4310-HC-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

International Agreement for a Proposed Restricted Use Zone in the Rio Grande Boundary Segment at Brownsville, Texas and Matamoros, Tamaulipas; Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: Based on a Supplementary Environmental Assessment, the U.S. Section finds that the proposed action that the United States Government enter into an agreement with the Government of Mexico through the International Boundary and Water Commission (Commission) to establish a Restricted Use Zone in a 10.2-mile (16.4-kilometer) segment of the Rio Grande at Brownsville, Texas and Matamoros, Tamaulipas, pursuant to the 1970

Boundary Treaty between the United States and Mexico, is not a major federal action that would have a significant adverse effect on the quality of the human environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing section 102 of NEPA, published in the **Federal Register** September 2, 1987 (46 FR 44063); the U.S. Section hereby gives notice that an environmental impact statement will not be prepared for the proposed project.

FOR FURTHER INFORMATION CONTACT: Mr. M.R. Ybarra, U.S. Section Secretary, International Boundary and Water Commission, United States and Mexico, U.S. Section, 4171 North Mesa Street, C-310, El Paso, Texas 79902-1422. Telephone: (915) 534-6608.

SUPPLEMENTARY INFORMATION:

Proposed Action

The proposed action is for the United States Government to enter into an international agreement with the Government of Mexico through a Minute of the Commission establishing a Restricted Use Zone, measured perpendicular to the flow of the river, in a 10.2-mile (16.4-kilometer) segment of the Rio Grande defined in the upper reach as not less than 164 feet (50.0 meters) on either side of the centerline of the Rio Grande between River Mile 55.2 (88.8 kilometer) and River Mile 52.7 (84.8 kilometer), a transition length between River Mile 52.7 (84.8 kilometer) and River Mile 52.5 (84.5 kilometer) that progressively expands to 2,300 feet (701 meters), and not less than 2,300 feet (701 meters) between River Mile 52.5 (84.5 kilometer) and River Mile 45.0 (72.4 kilometer).

Alternatives Considered

Three alternatives were considered.

The Proposed Action, as described above, is the U.S. Section's Preferred Alternative. If the proposed zone is adopted by the two countries, the Governments of the United States and Mexico would meet their obligation under Article IV, paragraph B (1) of the 1970 Boundary Treaty to prohibit the construction of works in their respective territories which, in the judgment of the Commission, may cause deflection or obstruction of the normal flow or flood flows of the river. In the absence of this Commission's designated Restricted Use Zone, the Commission, on behalf of the U.S. and Mexico, is limited to prohibiting activities along lands adjacent to the main channel of the Rio Grande in both countries.

The No Action Alternative (Present River Levees with Possible Obstructions) is a continuance of the status quo through current practices and decisions. A no action alternative would be contrary to the provision in Article IV B (1) of the 1970 Boundary Treaty that requires the Commission to recommend to the two Governments a distance within which the two Governments would prohibit construction of works that in the judgment of the Commission may cause deflection or obstruction of the normal and flood flows of the boundary rivers. Moreover, there would not exist an acceptable, jointly developed technical basis that both Governments would apply when the Commission makes its judgment under Article IV B (1) of the 1970 Boundary Treaty.

The 1985 Proposed Action with Mexico Alternative creates a restricted use zone for the reach from Brownsville-Matamoros downstream to the mouth of the river at the Gulf of Mexico. Under this alternative, the width is 328 feet (100 meters), or a distance on either side of the river of not less than 49 feet (15 meters) landward of the high bank of the river. Under this alternative levees in either country could be built close to the river permitting proponents in each country to reclaim approximately two-thirds more of the floodplain than under the Proposed Action. However construction of levees so close to the river in one country would result in considerable adverse impacts in the other country, impacts which the 1970 Boundary Treaty seeks to avoid. Among impacts, the structural safety of the Gateway Bridge could be endangered.

Supplemental Environmental Assessment

The United States Section, International Boundary and Water Commission (U.S. Section), in October 1985, completed an environmental assessment (EA) and finding of no significant impact to recommend the establishment of a Restricted Use Zone for the remaining boundary river segments of the Colorado River and Rio Grande, including a segment at Brownsville-Matamoros much smaller than that in the Proposed Action. A Final Supplemental Environmental Assessment (FESA) was prepared on April 1991 as an addition to the "Final Environmental Assessment to Join with the Mexican Section, International Boundary and Water Commission, in Concluding a Minute on Recommendations for Implementation of Article IV, paragraph B (1) of the 1970 Boundary Treaty" (Final EA), dated October, 1985.

Findings of the Supplemental Environmental Assessment

The Final Supplemental Environmental Assessment finds that:

1. The Proposed Action is for the United States to enter into an international agreement to establish a Restricted Use Zone in the Brownsville-Matamoros area. Construction and floodplain management controls such as vegetative mowing are not part of the Proposed Action.

2. The Proposed Action places future proposed works under bilateral control against river flow obstructions and deflections for a greater area than that placed under such control in the Restricted Use Zone distances proposed in the Final EA of 1985. Without such control, problems arising from movement of the boundary river location could result in separation of tracts of land from one country to the other an occurrence which the 1970 Treaty seeks to prevent.

3. The bilateral designation of Restricted Use Zones is required by the 1970 Boundary Treaty, and the Governments of the United States and Mexico expect the IBWC to complete negotiations for this segment of the river within the earliest time possible. Failure to conclude the Restricted Use Zone agreement with Mexico would lead to a breach in U.S./Mexico relations, when the Government of Mexico is legitimately seeking to place a levee within the Mexican floodplain to protect urban developments that are not now protected. If the United States declines to establish a Restricted Use Zone, such an omission would be perceived as an act of bad faith by the U.S.

4. The Proposed Action will permit the U.S. Section to provide to entities and authorities in the United States a description of floodplain lands where works proposed would be subject to an IBWC determination that they may deflect or obstruct the river's normal or flood flows.

5. The U.S. Section of the IBWC will require all proponents of works in this restricted use zone to complete environmental studies in accordance with the National Environment Policy Act of 1969 (NEPA) and the other laws and regulations pertaining to protection of the environment, including but not limited to the Endangered Species Act of 1973; National Historic Preservation Act, as amended; Archaeological and Historic Preservation Act; Archaeological Resources Protection

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Act; Clean Water Act; Executive Order 11988; and Executive Order 11990.

6. The U.S. Section of the IBWC will advise all proponents of works in this restricted use zone to consult with the U.S. Army Corps of Engineers for applicability of requirements of that agency regarding activities along the river.

7. The Proposed Action would not impede the formal consultations process under section 7 of the Endangered Species Act with the United States Fish and Wildlife Service or the preparation of an environmental impact statement regarding its vegetative management practices on the Lower Rio Grande Flood Control Project.

8. The Proposed Action will not affect archeological or historical properties listed or eligible for listing on the National Register of Historic Places as determined in the Final EA dated October, 1985.

9. The Proposed Action for a Restricted Use Zone would not impede consideration of environmental impacts that may result from the existing Final EA dated October, 1985.

Based on the above, the Proposed Action does not constitute a major federal action that will cause a significant local or regional impact on the environment but merely seeks to give the Commission control over an expanded land base within which to make judgments purusant to the 1970 Boundary Treaty.

On the basis of the final supplemental enviornmental assessment, the U.S. Section has determined that an environmental impact statement is not required for the United States Government to enter into an agreement with the Government of Mexico to establish a Restricted Use Zone within a 10.2-mile reach, described hereinabove, and hereby provides a notice of a finding of no significant impact.

An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this notice.

The Finding of No Significant Impact (FONSI) and Final Supplemental Environmental Assessment (FSEA) have been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI and FSEA are available to fill single copy requests at the above address.

Dated: April 30, 1991.

Suzette Zaborowski,

Staff Counsel.

[FR Doc. 91-11157 Filed 5-9-91; 8:45 a.m.]

BILLING CODE 4710-03-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Judicial Conference Advisory Committee on Civil Rules; Meeting

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a three-day meeting of the Advisory Committee on Civil Rules. The meeting will be open to public observation, and will commence each day at 8:30 a.m.

DATES: May 22-24, 1991.

ADDRESSES: Administrative Office of the United States Courts, 811 Vermont Avenue, NW., room 638, Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, telephone (202) 633-6021.

Dated: May 3, 1991.

Peter G. McCabe,

Assistant Director, Office of Judges Program.

[FR Doc. 91-11220 Filed 5-9-91; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 20, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 20, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 29th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustments Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Alumax Mill Products (Wkrs)	Hawesville, KY	04/29/91	04/11/91	25,729	Alumium.
American Nickeloid Co (Wkrs)	Walnutport, PA	04/29/91	04/22/91	25,730	Prefinished raw materials.
Amp., Inc (Wkrs)	Weyers Cave, VA	04/29/91	04/18/91	25,731	Connector rotary table.
Arrow Shirt Co. (ACTWU)	Buchanan, GA	04/29/91	04/19/91	25,732	Shirts.
Atron/High Q (Wkrs)	Pellston, MI	04/29/91	04/10/91	25,733	Wire Harnesses.
Bayou Steel Corp (USWA)	LaPlace, LA	04/29/91	04/17/91	25,734	Steel.
C & D Sportswear Inc. (ACTWU)	Scranton, PA	04/29/91	04/19/91	25,735	Sportscoats.
C.M.S. Gilbreth Packaging Systems (Wkrs)	Kingston, Pa	04/29/91	04/13/91	25,736	Packing Machines.
Cable Electric Product (IBEW)	Providence, RI	04/29/91	04/08/91	25,737	Nite Lites.
Camp Hosiery, Inc. (Wkrs)	Lenoir City, TN	04/29/91	04/16/91	25,738	Hosiery.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Chapperal Coal Corp. (Wkrs)	Pikeville, KY	04/29/91	04/15/91	25,739	Coal.
Chromalloy Turbine Airfoils Div. (IUE)	Harrisburg, PA	04/29/91	04/15/91	25,740	Blades & Vanes.
Columbia Footwear Corp (UFCW)	Hazleton, PA	04/29/91	04/19/91	25,741	Casual footwear & sneakers.
Conlee Drilling Fluids (Wkrs)	Clyde, TX	04/29/91	04/18/91	25,742	Oil & Gas.
DST Systems, Inc. (Wkrs)	Abilene, TX	04/29/91	04/16/91	25,743	Oil well service.
Gadsden Sportswear (ILGWU)	E Gadsden, AL	04/29/91	04/09/91	25,744	Apparel.
General Safety Corp (Wkrs)	St. Clair Shores, MI	04/29/91	04/17/91	25,745	Auto safety belts.
INMAC Corp., Datacom Div (Wkrs)	San Jose, CA	04/29/91	04/19/91	25,746	Communication devices.
Lone Rock Timber/Sun Studs (Wkrs)	Roseburg, OR	04/29/91	04/15/91	25,747	Veneer.
Lori Lock Corp (Wkrs)	Southington, CT	04/29/91	04/16/91	25,748	Security locks.
Manhattan Industries (Wkrs)	Glen Rock, NJ	04/29/91	04/11/91	25,749	Shirts.
Marceau Sports (Wkrs)	Chaska, MN	04/29/91	04/11/91	25,750	Sweaters.
Maxwell Coffee, Div./Phil. Morris (UFCW)	Hoboken, NJ	04/29/91	04/16/91	25,751	Coffee.
Meisel-Peskin Co., Inc. (UFCW)	Brooklyn, NY	04/29/91	04/12/91	25,752	Fur.
North Country Glove (Wkrs)	Johnstown, NY	04/29/91	04/12/91	25,753	Ski Mittens.
S.D. Warren Div. of Scott Paper Co. (Wkrs)	Westbrook, ME	04/29/91	04/16/91	25,754	Paper.
Shelgo Inc. (Wkrs)	New York, NY	04/29/91	04/11/91	25,755	Shirts.
Supreme Processors (UFCW)	Newark, NJ	04/29/91	04/12/91	25,756	Furs.
Tootal American (Wkrs)	Old Fort, NC	04/29/91	04/16/91	25,757	Thread, zipers, needles etc.
U.S. Elect. Motors-Cedarburg Div. (Wkrs)	Cedarburg, WI	04/29/91	04/15/91	25,758	Electrical Motors.
Uniber Drilling Fluids, Inc. (Wkrs)	Denver, CO	04/29/91	04/12/91	25,759	Oil & Gas.
Union City Body Co., Inc. (UAW)	Union City, IN	04/29/91	04/19/91	25,760	Aluminum & Steel.
Wash. Apparel Grp., (Dee Cee) (Wkrs)	Franklin, KY	04/29/91	04/09/91	25,761	Men & Women's Apparel.
Wash. Apparel Grp., (Dee Cee) (Wkrs)	McMinnville, TN	04/29/91	04/09/91	25,762	Men & Women's Apparel.
Wash. Apparel Grp., (Dee Cee) (Wkrs)	Glasgow, KY	04/29/91	04/09/91	25,763	Men & Women's Apparel.
Wash. Apparel Grp., (Dee Cee) (Wkrs)	Cave City, KY	04/29/91	04/09/91	25,764	Men & Women's Apparel.
Youngland Industries (Wkrs)	New York, NY	04/29/91	03/19/91	25,765	Children's Apparel.

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of April 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,445; Vaagen Brothers Lumber Co., Ione, WA

TA-W-25,453; Champion Spark Plug Co., Toledo, OH

TA-W-25,454; Champion Spark Plug Co., Detroit, MI

TA-W-25,317; G. Heileman Brewing Co., Inc., Frankenmuth, MI

TA-W-25,366; Hollander Home Fashions Corp., Newark, NJ

TA-W-25,458; Eagle Bus Manufacturing, Brownsville, TX

TA-W-25,315; Energy Fuels Nuclear, Inc., Freedonia, AZ

TA-W-25,485; Wolf Bros., New York, NY

TA-W-25,432; Radel Leather Co., A/K/A Seton Co., Newark, NJ

TA-W-25,469; MHP Machines, Inc., Buffalo, NY

TA-W-25,410; Airwick Industries, Carlstadt, NJ

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,218; ARA Automotive Group, Grand Prairie, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,451; Callaway Safety Equipment Co., Inc., Kalkaska, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,362; General Dynamics, Fort Worth, TX

U.S. imports of military aircraft are negligible in the relevant time periods.

TA-W-25,449; Artistic Weaving Co., Clinton, NC

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,498; International Marine Industries, Inc., Guilford, CT

U.S. imports of radar apparatus for marine use declined in January through September 1990 compared to the same period of 1989.

TA-W-25,450; Bethany Mfg, Garland, TX

U.S. imports of oil and gas field machinery are negligible during period under investigation.

TA-W-25,479; Sanymetal Products, Inc., Cleveland, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,468; Mathies Coal Co., Finleyville, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,478; Samuel Blue AKA Etal Co., New York, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

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TA-W-25,516; Thomas & Betts Corp., Bridgewater, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,411; Arco Oil & Gas Co., Natural Gas Plant, Seminole, OK

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,467; The Lee Apparel Co., Wet Processing Dept., Plant #18, Lebanon, MO

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,415; Cyprus Tonopah Mining, Tonopah, NV

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,491; Tecumseh Products Co., Somerset, KY

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,420; Estey Co., Trenton Falls, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,421; Fisher Price, Inc., Brownsville, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,457; E.I. Du Pont Nemours & Co., Inc., Jonesboro, AR

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,477; Robvon Backing Ring Co., Avenel, NJ

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-25,473; Niederlander & Sons, Chehalis, WA

A certification was issued covering all workers separated on or after February 14, 1990.

TA-W-25,408; Airfoil Textron, Inc., Elwood, IN

A certification was issued covering all workers separated on or after February 5, 1990.

TA-W-25,494; W-I Forest Products, L.P., Sandpoint, ID

A certification was issued covering all workers separated on or after February 15, 1990.

TA-W-25,461; Style-A-Fashion, Paterson, NJ

A certification was issued covering all workers separated on or after January 31, 1990.

TA-W-25,305; Westminister Knit, Westminister, MD

A certification was issued covering all workers separated on or after December 28, 1989 and before April 1, 1991.

TA-W-25,480; Sherman Lumber Co., Sherman Station, ME

A certification was issued covering all workers separated on or after February 11, 1990.

TA-W-25,448; Albert Nipon Div., Philadelphia, PA

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-25,462; Hart & Cooley, Inc., Holland, MI

A certification was issued covering all workers separated on or after February 1, 1990 and before April 15, 1991.

TA-W-25,433; RPI, Inc., Lewiston, MI

A certification was issued covering all workers separated on or after February 8, 1990.

TA-W-25,581; Shelby Williams Industries, Inc., Morristown, TN

A certification was issued covering all workers separated on or after March 4, 1990.

TA-W-25,452; Megastar Apparel, Central Sportswear, Norlina, NC

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,500; Megastar Apparel, Kenbridge Sportswear, Kenbridge, VA

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,508; Megastar Apparel, Distribution Center, Chester, SC

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,558; Megastar Apparel Co., Albermarle, NC

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,559; Megastar Apparel Group, Headquartered in Paramus, NJ

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,561 & 25,562; Megastar Apparel, Carolina Sportswear, Warrenton, NC & Megastar Apparel Creedmoor Sportswear, Creedmoor, NC

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,563 & 25,563A; Megastar Apparel, H & H Manufacturing, Statham, GA & Megastar Apparel, Swainsboro Sportswear, Swainsboro, GA

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,564; Megastar Apparel, LaCrosse Sportswear, Lacrosse, VA

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,565; Megastar Apparel, Lexington Sportswear, Lexington, SC

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,568; Megastar Apparel, Louisburg Sportswear, Louisburg, NC

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,568; Megastar Apparel, Ace Sweater Mill, Union, SC

A certification was issued covering all workers separated on or after February 1, 1990.

I hereby certify that the aforementioned determinations were issued during the month of April, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, during normal business hours or will be mailed to persons to write to the above address.

Dated: May 3, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-11174 Filed 5-9-91; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia: DC91-1 (Feb. 22, 1991). p. 79, pp. 80-81, 84-87

Georgia: GA91-30 (Feb. 22, 1991). p. 283, p. 284

Maryland: DC91-1 (Feb. 22, 1991). p. 79, pp. 80-81, 84-87

Massachusetts: MA91-3 (Feb. 22, 1991). p. 453, p. 454

Mississippi:

MS91-23 (Feb. 22, 1991) .... p. 587, pp. 588-589

MI91-24 (Feb. 22, 1991) .... p. 591, pp. 592-593

MI91-25 (Feb. 22, 1991) .... p. 595, pp. 596-597

New York:

NY91-13 (Feb. 22, 1991) .... p. 901, pp. 902-905

NY91-19 (Feb. 22, 1991) .... p. 943

Pennsylvania: PA91-21 (Feb. 22, 1991). p. 1107, pp. 1108-1110

Tennessee: TN91-17 (Feb. 22, 1991). p. 1229, p. 1230

Virginia: DC91-1 (Feb. 22, 1991). p. 79, pp. 80-81, 84-87

Volume II

Iowa: IA91-5 (Feb. 22, 1991). p. 41, pp. 43, 45

Indiana:

IN91-1 (Feb. 22, 1991)..... p. 243, pp. 244, 246-248

IN91-2 (Feb. 22, 1991)..... p. 259, pp. 260-265, 269

Kansas: KS91-9 (Feb. 22, 1991). p. 361, p. 362

Michigan: MI91-2 (Feb. 22, 1991). p.461, pp. 462-465, 470

Kansas:

MO91-2 (Feb. 22, 1991) .... p. 673, pp. 674-683

MO91-9 (Feb. 22, 1991) .... p. 721, pp. 722-728

Missouri:

MO91-2 (Feb. 22, 1991) .... p. 673, pp. 674-683

MO91-9 (Feb. 22, 1991) .... p. 721, pp. 722-728

Ohio: OH91-2 (Feb. 22, 1991). p. 821, pp. 822-824, 826, 827, 830, 835

Texas:

TX91-21 (Feb. 22, 1991)..... p. 1071, p. 1072

TX91-43 (Feb. 22, 1991)..... p. 1137, p. 1138

Wisconsin:

WI91-1 (Feb. 22, 1991) ..... p. 1197, p. 1198

WI91-2 (Feb. 22, 1991) ..... p. 1201, p. 1202

WI91-6 (Feb. 22, 1991) ..... p. 1217, p. 1218

WI91-7 (Feb. 22, 1991) ..... p. 1221, p. 1222

WI91-10 (Feb. 22, 1991) .... p. 1247, p. 1249

WI91-11 (Feb. 22, 1991) .... p. 1259, p. 1260

WI91-12 (Feb. 22, 1991) .... p. 1263, p. 1264

WI91-13 (Feb. 22, 1991) .... p. 1267, p. 1268

WI91-14 (Feb. 22, 1991) .... p. 1271, p. 1272

Volume III:

Nevada: NV91-1 (Feb. 22, 1991). p. 299, pp. 300-302

Washington:

WA91-1 (Feb. 22, 1991)..... p. 451, pp. 453-454

WA91-2 (Feb. 22, 1991)..... p. 477, p. 479

WA91-3 (Feb. 22, 1991)..... p. 487, p. 488

WA91-8 (Feb. 22, 1991)..... p. 507, pp. 508-509, 346-347

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 3rd day of May 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-10947 Filed 5-9-91; 8:45 am]

BILLING CODE 4510-27-M

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Choreographers' Fellowships Section) to the National Council on the Arts will be held on June 3-4 and 6, 1991 from 9 a.m.-6:30 p.m., June 5 from 9 a.m.-9 p.m. and June 7 from 9 a.m.-6 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 7 from 3 p.m.-6 p.m. The topic will be policy discussion.

The remaining portions of this meeting on June 3-4 and 6 from 9 a.m.-6:30 p.m., June 5 from 9 a.m.-9 p.m. and June 7 from 9 a.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: April 29, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-11161 Filed 5-9-91; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Choreographers' Fellowships Prescreening Section) to the National Council on the Arts will be held on May 30-31, 1991 from 9 a.m.-6 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: April 29, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-11162 Filed 5-9-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Undergraduate Course and Curriculum Development Program; Announcement and Guidelines

Closing Dates: September 16, 1991 and June 15, 1992.

This printed information contains the essence of the announcement for this program, and is not a full copy of the actual brochure containing the guidelines for submission. Before submitting a proposal, obtain a printed copy of the guidelines by writing or calling the publications office of NSF.

This program in Undergraduate Course and Curriculum Development is part of NSF's overall plan to strengthen undergraduate science, engineering, and mathematics education throughout the United States. The program is managed by the Division of Undergraduate Science, Engineering and Mathematics Education (USEME). The Foundation will consider proposals for support in all fields supported by the Foundation. The amount of support is dependent on the availability of funds.

Inquiries

Questions about this program may be directed to the NSF staff by contacting: Undergraduate Course and Curriculum Development Program, Division of Undergraduate Science, Engineering and Mathematics Education, room 638, National Science Foundation, 1800 'G' Street, NW., Washington, DC 20550, Telephone: (202) 357-7051, Electronic mail: Bitnet: undergradanef, Internet: undergradanef.gov, TDD: (202) 357-7492.

Proposals must be received by the Proposal Processing Unit, room 223, National Science Foundation, 1800 G St. NW., Washington, DC 20550, postmarked no later than September 16, 1991 or June 15, 1992.

For information on electronic proposal submission contact the NSF Office of Information Systems at (202) 357-5802.

Leadership Projects in Science and the Humanities

The National Science Foundation's Division of Undergraduate Science, Engineering, and Mathematics Education (USEME), the National Endowment for the Humanities' (NEH) Division of Education Programs, and the Department of Education's Fund for the Improvement of Post-Secondary Education (FIPSE), have established joint procedures to consider proposals for the development of undergraduate courses and curricula that link meaningfully the study of science and the humanities. Proposed projects should have potential for leadership and replication at the national level. Prospective project directors for educational institutions should contact program officers at any one of the sponsoring agencies at the numbers provided below. Formal proposals must be preceded by a brief description of the plan to a program officer. NSF/USEME: (202) 357-7051; NEH/ED: (202) 786-0380; ED/FIPSE: (202) 708-5750.

I. Introduction

Undergraduate education in the sciences and mathematics is fundamental in the preparation of our Nation's future scientists, engineers, mathematicians, and teachers, and provides literacy essential for all citizens. In recognition of this critical role, the National Science Foundation announces the continuation of a program to support the development of improved and innovative introductory-level undergraduate courses and curricula in the sciences, engineering, and mathematics.

The goals of the program are:

- to encourage course and curriculum development to meet the Nation's need for
  - —high-quality scientists, engineers, and mathematicians,
  - —dedicated and able teachers of pre-college and college science and mathematics, and
  - —scientifically and technically literate citizens, and
- to inspire faculty to devote creative energy to educational activities that address the needs of their students and the Nation, and that enhance the faculty's professional and scholarly interests.

II. Program Description

A. Purpose

There is a need to revitalize the content, conduct, and quality of undergraduate education in the sciences, engineering, and mathematics, enhance interest in these disciplines among students entering our colleges and universities, increase the participation of underrepresented groups, and encourage the most capable students to prepare themselves for teaching at the college and pre-college level.

These challenges require new and innovative approaches to all aspects of the undergraduate learning experience, but especially to introductory-level curricula, courses, and laboratories. These courses are crucial in promoting the interest and enthusiasm of students with career aspirations in the sciences, mathematics, and engineering, including teaching, as well as educating students with non-scientific career objectives.

Proposals are therefore invited for introductory-level courses, curricula, and laboratories that aim to provide a sound foundation for all undergraduates to be responsible, scientifically literate citizens, prepared for careers in the sciences, engineering, and mathematics, and for subsequent learning in general. Of special concern are the large enrollment courses, which frequently involve the participation of teaching assistants.

All projects are expected to disseminate the knowledge gained and materials produced to an audience beyond the proposer's institution.

B. Scope of the Program

Types of courses and curricula. The emphasis of the program is on introductory-level courses, curricula, and laboratories—those that enroll primarily first- and second-year college students.

The program will seek to support creative, innovative approaches and projects. Of particular interest are projects designed to produce major changes and significant improvement in undergraduate science, mathematics, and engineering education beyond the recipient institution. Proposals may focus on an individual course or on the development of a comprehensive curriculum.

Proposals targeting individual courses or laboratories might explore, for example, the effectiveness of new field experiences and laboratory exercises that actively engage students and are designed to promote critical thinking, problem solving skills, and creativity; the utility of new instructional materials, information technologies and delivery systems; the value of providing more opportunities for students to communicate orally and in writing; and the impact of collaborative learning, student teaching, learning communities, and other innovations that aim to improve pedagogy in courses with large and small enrollments; the role of graduate and/or advanced undergraduate students as teaching assistants.

Proposals concerned with developing a comprehensive curriculum for first- and second-year students should include components that address the spectrum of students' interests (see *Target Audience* below). Because of budget limitations, at this time the program can only support proposals that are concerned with the design, development, and planning phase for large-scale curricular changes. Support for the implementation phase of such large-scale changes in curriculum may be provided by NSF in the future.

Although the kinds of activities described in this announcement are expected to comprise the majority of projects supported through this program, proposals that address other mechanisms for improving undergraduate education will be considered. Proposals for workshops, studies, or pilot projects, for example, are appropriate.

Target Audience. The target audience is undergraduates enrolled in introductory-level courses. This includes:

- Science, mathematics or engineering majors—to improve the education for undergraduates majoring in NSF-supported disciplines, as well as students majoring in other technical fields,
- Future teachers—to improve the education of undergraduates preparing for careers in teaching science and mathematics at the pre-college or college level,
- Non-science majors—to improve the scientific and technical literacy of undergraduates with major interest in fields other than science, mathematics, and engineering.

The Foundation encourages proposals to strengthen the undergraduate education and increase the participation of women, underrepresented minorities, and persons with disabilities, particularly if the projects represent models for increasing the numbers who choose careers in mathematics, science and engineering. Underrepresented minorities refers to: Blacks, American Indians, Hispanics, Alaskan Natives, and Native Pacific Islanders.

Eligible Fields/Disciplines. Proposals may be submitted for support in all fields supported by the Foundation.

Because all undergraduate students need to be prepared for the scientific and technological environment of the future, multidisciplinary and interdisciplinary proposals are encouraged, especially those that improve the scientific literacy of all students.

Specifically excluded is education in clinical fields such as medicine, nursing, clinical psychology, and physical education, social work, home economics, business, the arts, and the humanities. However, those interested in developing innovative courses and curricula that link the study of science and the humanities should refer to Leadership Projects in Science and the Humanities, described on the inside front cover of this announcement. In addition, education in scientific, mathematical, or engineering concepts that is part of a technical, professional or pre-professional program may be appropriate. The degree to which such projects will be competitive will depend upon the quality and currency of the basic science or engineering to be taught. Support for curriculum development in standard one or two-year calculus sequences is not provided under this program (see section VI, Other Programs).

Eligible Institutions, Departments, and Individuals. Proposals are invited from two-year colleges, four-year colleges, universities, professional societies, consortia of institutions, and other education-related organizations in

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the U.S. and its territories. Proposals from a formal consortium should be submitted by the consortium; proposals from an informal consortium should be submitted by one of the member schools.

Each principal investigator may submit only one proposal per closing date, but PIs from several science, mathematics, and engineering departments in an eligible institution may participate in the competition.

Project size. The funds available to support new proposals for this program in FY 91 were $9.5 million. The number and size of awards for FY 92 will depend on the quality of the proposals received and the availability of funds for this program. Projects may request support for up to five years.

III. Preparation and Submission of Proposals

A. General Information

Proposals submitted in response to this program announcement should be prepared in accordance with the NSF brochure, Grants for Research and Education in Science and Engineering (GRESE) (NSF 90-77, rev. 6/90), except as modified or elaborated by this announcement. Single copies of this brochure are available at no cost from the NSF Forms and Publications Unit, telephone (202) 357-7861, or via e-mail (Bitnet: pubs@nsf or Internet: pubs@nsf.gov). This publication is also available (without forms) on STIS, NSF's new online publishing system (see flyer NSF 91-10).

More comprehensive information is contained in the NSF Grant Policy Manual, (July 1989, NSF 88-47) available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The Grant Policy Manual ordinarily is not needed to prepare a proposal.

In the event that the submitting organization has never been the recipient of an NSF award, it is recommended that appropriate administrative officials become familiar with the NSF policies and procedures contained in the NSF Grant Policy Manual, Revised. If a proposal from such an institution is recommended for an award, the NSF Division of Grants and Contracts will request certain organizational, management, and financial information. These requirements are described in chapter III of the Manual.

B. Proposal Preparation

The proposal should contain the following information, assembled in the order indicated. All forms identified below are provided in the back of this announcement. A lengthy proposal is not encouraged; include only material essential for the review.

A complete proposal consists of the following parts:

1. Cover Sheet (NSF Form 1207).
2. Table of Contents.
3. Project Data and Summary Form.
4. Results from Previous NSF Support.
5. Project Description/Narrative.
6. Bibliography.
7. Biographical Sketch.
8. Budget (Form 1030).
9. Current and Pending Support (NSF Form 1239).
10. Appendices.

1. Cover sheet. (NSF Form 1207)

The first page of the proposal should be the cover sheet prepared in the form found in the appendix of this announcement. It is important that the cover sheet be completed with the full information requested. Most of the items are self-explanatory.

Note that if funds for this project are being requested from another Federal agency or another NSF program, this must be indicated in the upper right-hand section of the cover sheet. If they are not being requested at the time the proposal is submitted, but are requested subsequently, a letter so stating should be sent at that time to the USEME office, identifying the proposal by its NSF number.

The Title of the Proposed Project is one of several items used to direct the proposal to appropriate reviewers and to announce and advertise to the general public and scientific community the nature of the projects supported with NSF funds. It should therefore consist of informative key words that indicate, for example, the discipline (physics, chemistry, etc.), the target audience, and the nature of the problem and/or innovative solution.

2. Table of contents.

3. Project data and summary form.

Refer to the instructions on page following form. The information on this form is also used to direct the proposal to appropriate reviewers and to announce and advertise the nature of the projects that NSF supports. The summary should therefore include a clear, concise description of the problem or question being addressed, the specific goals, and objectives of the proposed project, the target audience, and the project's potential impact and significance.

4. Results from prior NSF support.

If the prospective principal investigator or co-principal investigator(s) received support from NSF grants pertaining to Undergraduate Education in the last five years, describe the earlier project and its outcomes in sufficient detail to permit a reviewer to reach an informed conclusion regarding the value of the results achieved. Include the NSF award number, amount, and period of support, the title of the project, a summary of the results of the completed work (not to exceed 3 double-spaced pages), and a list of publications and/or formal presentations that acknowledged the NSF award (do not submit copies with the proposal).

5. Project Description/Narrative. This section should not exceed 15 single-spaced pages (6 lines per inch) or 30 double-spaced pages (3 lines per inch). Use 1 inch margins, and a type size of 12 point or greater. Reviewers will not be responsible for reading additional narrative pages or smaller type.

The narrative presents most of the information that determines whether or not a grant will be awarded. A proposal should be written to respond to criteria that will be used by reviewers in judging the merit of the proposal. (See Evaluation and Review Criteria.) The narrative should include the following:

• *Problem or question:* Describe clearly and concisely the relevant problem or question that currently exists in the course or curriculum, or in the wider context of undergraduate education.

• *Goals and specific objectives:* Describe the goals and objectives of the current proposal, clearly indicating the novel and innovative aspects of the project.

• *Potential impact and significance:* Discuss the ways in which the course and/or curriculum would be improved by this project, and why the outcomes will be of interest and use to a wider community of educators. Both the scientific and pedagogical aspects of the proposed project will be weighed to assess the project's anticipated impact on science, mathematics or engineering education.

• *Procedure and Methods:* This section should reveal the experience and capability of the principal investigator(s), the time table and plan for executing the project, and the facilities available for realizing the project's objectives, and enable a group of colleagues to judge the suitability of the planned change for the intended audience in the academic setting described.

—Provide an historical perspective of the problem, its significance, and what others have done to address the same or similar questions. Make reference to the relevant literature so as to demonstrate the principal investigator's knowledge of the discipline and curricular issues.

—Describe how the course or curriculum will recognize and build on the background, preparation and pre-college experience of first- and second year college students.

—Describe specific lessons, experiments, student projects, course work, or new modes of instruction that will be developed, and the teaching methods to be employed.

—Describe plans to integrate the proposed innovations and their expected consequences into the institution's academic programs for majors, for students in other scientific or technical fields, and for students not majoring in the sciences, mathematics or engineering. Include information about the proposing institution(s) and the department, the students currently served, the student clientele for whom the project is being proposed, and the appropriate role and involvement of teaching assistants, and the curriculum that the proposed course or courses will be part of.

—Include justification of the major elements fo the budget. Any equipment requested must be justified for the instructional plan proposed.

• *Anticipated results of project activities.* Describe the type of knowledge that may be gained and the materials that may be produced (e.g., texts, scholarly publications, monographs, software, etc.).

• *Assessment and evaluation.* Describe the criteria that will be used to assess the quality and impact of the project, and how the information will be gathered and analyzed to evaluate the program's effectiveness. The breadth of the evaluation plan should be appropriate to the size and complexity of the project proposed.

• *Dissemination of results.* Describe plans to communicate the results of the project to other educators in the scientific, mathematical, and engineering community, both during and after the project.

6. Bibliography.

References to literature cited in the narrative.

7. Biographical sketches. Provide no more than a two-page biographical sketch for each person listed as Senior Personnel on the Summary Proposal Budget Form (Form 1030). In accordance with Importance Notice No. 107 (9/89), biographical sketches, in addition to data on educational background and career, must now include the following information, if applicable.

—A list of up to five publications most relevant to the work proposed and up to five other significant publications. Patents, copyrights, or software systems developed may be substituted for publications. These publications may overlap the continuing requirement for a list of all publications resulting from and citing prior NSF support. A complete list of publications for the past five years is no longer required. Only the list of up to ten will be used in merit review.

—A list of the names of graduate students with whom the PI has had an association as thesis advisor, and of postdoctoral scholars sponsored by the PI over the past five years, with a summary of the total numbers of graduate students advised and postdoctoral scholars sponsored.

—To avoid potential conflicts of interest in merit review, a list of scientists with whom the investigator has had a long-term association and/or with whom he/she has collaborated on a project or a book, article, report or paper within the last 48 months; and the investigator's own graduate and postdoctoral advisors.

For senior personnel included in line A.5 of the Summary Proposal Budget Form (Form 1030), provide a list of their names, titles, departments, and institutional affiliations.

8. Budget. NSF anticipates that the majority of the costs for the project activities will be for personnel time and personnel-related costs, including modest amounts of materials, supplies, equipment, computing services, etc. It is expected that the institutions will have the majority of computing facilities, equipment, and physical environment to achieve the goals of the project, and therefore NSF does not anticipate providing major equipment and facilities support. For multi-year projects the results of the project are expected to be integrated into the academic programs of the institutions within the period of the award, and therefore it is expected that the budgets will reflect the assumption of responsibility by the participating institution(s) as the educational innovations are fully implemented.

Eligible Costs. In developing the budget, include only items that represent new design and development costs. NSF funds may not be used to support expenditures that would have been undertaken in the absence of an award, such as the costs for normal teaching activities and normal curriculum development.

Cost Sharing. Institutional commitments are expected. Commitments may be in the form of funds, equipment, personnel time, etc., and they may be provided from the institution(s), industry, and/or other non-Federal sources.

Equipment costs must be matched by non-Federal funds equal to or greater than the funds requested from NSF.

Forms and Documentation. Use NSF Form 1030 for each annual budget and for the cumulative budget for all years of the project. Separate budget explanation pages should be attached (see "Budget Explanation Pages" on the reverse of Form 1030) and they should provide: (1) detail supporting the funds requested from NSF on Form 1030, and (2) a summary of the expenditures for the project as a whole—that is, for the combined total of requested NSF funds and institutional commitments.

9. Current and pending support (NSF Form 1239).

All current and pending externally-funded support to the principal investigator and co-principal investigators (if any), including this proposed project, must be listed on the form provided. This information is needed to assure that the project leaders will have time to carry out the project and that there is not duplication of support.

10. Appendices.

Facilities and Equipment. If appropriate, include a description of no more than two pages of the relevant and related facilities, plans for purchase of and justification for major items of equipment.

Letters of Commitment. As appropriate, official letters only, that verify specific institutional and other resource commitments.

Other Appendices. Other appendices provided should be relevant and concise.

C. Submission

Materials required:

1. Twelve (12) copies of the proposal.

2. One (1) copy of the NSF Form 1225 attached to the copy of the proposal bearing original signatures. Do not include the form within the body of the proposal, since this would compromise the confidentially of the information. While providing the information requested is voluntary, SUBMITTING THIS FORM IS REQUIRED by NSF. Omission of this form will cause delay in processing the proposal.

3. Current and Pending Support Form (1239).

4. One (1) copy of a Disclosure of Lobbying Activities form (in GRESE) for proposals requesting more than $100,000 from NSF.

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5. Two (2) sets of the following extra forms, with each set of forms stapled as a unit.

a. One copy of the Cover Sheet.

b. One copy of the Project Data and Summary Form.

c. One copy of the Budget, including explanation pages.

6. DO NOT send video tapes, computer diskettes, slides, books, etc.

These materials should be submitted to: Proposal Processing Unit, room 223, Attn: Undergraduate Course and Curriculum Development, National Science Foundation, 1800 G St. NW., Washington, DC 20550.

Check List:

_____1. Cover Sheet: Principal investigator's signature on one copy; Authorized Organizational Representative's signature on same copy.

_____2. Form 1225 (Information about Principal Investigator and Co-Principal Investigator(s). Submit only one copy, attached to signature copy. Submission of the form is required.

_____3. Disclosure of Lobbying Activities Form.

_____4. Current and Pending Support Form 1239.

_____5. Project Summary Form.

_____6. Budget (summary page and page for each year; check arithmetic for accuracy).

_____7. Narrative (does not exceed 15 single- or 30 double-spaced pages).

_____8. Correct number of complete copies of proposal and of extra forms. Submit in a single package.

_____9. Submit proposal so that it is postmarked no later than September 16, 1991 for consideration under the first closing date or June 15, 1992 for the second date.

The Principal Investigator and Co-Principal Investigators must have submitted NSF Form 98A, Final Report, for all completed NSF-funded projects.

IV. Evaluation and Review Criteria

Proposals will be evaluated by mail and/or panel review, according to the criteria outlined in *Grants for Research and Education in Science and Engineering* (NSF 90–77). These criteria address the:

• Capability of the principal investigator(s) and the adequacy of the institutional resources to carry out the proposed work;

• Intrinsic merit of the ideas contained in the proposed project;

• Utility or relevance of the proposed project to the needs of the proposing community;

• Expected impact of the proposed project on the national infrastructure of science, mathematics, and engineering;

More specifically, reviewers will seek to determine answers to the following questions.

A. Capability of People and Institution

To what extent:

(1) Is the proposal supported by the involvement of capable faculty (and where appropriate, teaching assistants), adequate facilities and resources, and an institutional and departmental commitment?

(2) Does the proposal show an awareness of current pedagogical issues, the extent of the problems, what others have done, and adequately acknowledge relevant literature in the field?

B. Merit of the Ideas

To what extent:

(1) Does the project address a major challenge facing U.S. undergraduate education at the introductory level, not only to individuals at the submitting institution, but also nationally?

(2) Are the goals and objectives, and the plans and procedures for achieving them, innovative, well-developed, worthwhile, and realistic?

(3) Are the plans for assessing progress and evaluating the results of the project adequate?

C. Utility to the Proposing Community

To what extent:

(1) Does the proposal design take into consideration the background, preparation, and experience of the target audience?

(2) Is the proposed course or curriculum integrated into the academic program of the proposing institution(s)?

D. Impact on National Infrastructure

To what extent:

(1) Are the anticipated results of significance, with potential for impact on a broad, national audience?

(2) Are plans for dissemination and communication of results appropriate and adequate?

(3) Does the proposal effectively address one or more of the following:

—The need to assure the highest quality education for those students pursuing careers in science, engineering and mathematics;

—The need to increase the participation of qualified women, minorities, and persons with disabilities in science, engineering, and mathematics;

—The need to prepare pre-college teachers of science and mathematics; and/or

—The need to provide a foundation for scientific and technological literacy?

V. Announcement and Administration of Awards

Announcement of Awards. The evaluation and processing of proposals will require approximately six months. Awards are expected to be made in the spring of 1992 and the winter of 1993. Decisions will be announced individually through written notices to the institution and to the principal investigator. Before such notice is dispatched, the Foundation can give no information concerning the probability that any particular proposal will be supported or declined. Proposers are strongly urged to refrain from making premature inquiries. Decisions will be announced as soon as they are made, not simultaneously. Thus, it is normal for some proposers to receive a decision earlier than others. The number of awards will depend on the quality of the proposals received and the availability of funds for this program.

Administration of Grant. Grants awarded as a result of this announcement will be administered in accordance with the terms and conditions of NSF GC–1 (10/88) or FDP–11 (10/90), "Grant General Conditions." Copies of these documents are available at no cost from the NSF Forms and Publications Unit, telephone (202) 357–7861, or via e-mail (Bitnet: pubs@nsf or Internet: pubs@nsf.gov). More comprehensive information is contained in the *NSF Grant Policy Manual (July 1989)* for sale through the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

Responsibility for results. The Foundation strongly encourages publication of the results of the projects it funds. The awardee, however, is wholly responsible for the conduct of the project and for preparation of the results for publication. The Foundation does not assume responsibility for project results or their interpretation.

Final Report. Within 90 days after the expiration of a grant, the principal investigator is required to submit a Final Project Report (NSF Form 98A), including the part IV Summary. Applicants should review this form prior to proposal submission so that appropriate tracking mechanisms are included in the proposal plan to ensure that complete information will be available at the conclusion of the project. Final expenditure information is supplied by the grantees through the Federal Cash Transactions Report (SF 272), normally submitted by the grantee's financial officer. Annual reports of progress are required of grantees, in accordance with Article 16 of NSF GC–1 (10/88), *Grant General Conditions.*

Change in Principal investigator. If a principal investigator leaves a project before its completion, the grantee institution is expected to explain the circumstances in a letter to the program officer named in the grant letter, and to nominate a suitable replacement. This letter should include the nominee's qualifications, curriculum vitae, and statement of current and pending support, and must be signed both by the nominee and by an official authorized to act for the institution in such matters. The appointment of a new PI is not effective until confirmed by the NSF.

VI. Other Related Undergraduate Programs

The Undergraduate Course and Curriculum Program is part of the National Science Foundation's evolving long range plan to add programs to support (1) Better undergraduate laboratory instruction, especially large-enrollment, introductory laboratories, (2) a better understanding of U.S. undergraduate science, engineering and mathematics education, and of teaching and learning processes, (3) improvement in the ways science, engineering and mathematics are taught at the introductory level to help assure the scientific and technological literacy of all students, and (4) an experimental, broad-based program to develop undergraduate courses and curricula.

The Program is an extension of the National Science Foundation's effort to encourage curriculum development, which began in 1988 with programs in calculus and engineering. It complements several other current NSF programs, such as those directed toward improving laboratory experience through instrumentation, providing research experiences for undergraduates, assisting faculty to enhance their discipline capability and teaching skills, and encouraging the development of alliances that will increase the quality and quantity of underrepresented minorities in the sciences and engineering.

Proposers interested in major, comprehensive engineering projects should consult the *Engineering Education Coalitions* initiative (NSF 89–107), and those interested in curriculum development projects in calculus and related courses, such as the differential equations and linear algebra courses that are typically included in the two-year calculus sequence, should consult the *Undergraduate Curriculum Development in Mathematics: Calculus* (NSF 89–82). The goal of the *Instrumentation and Laboratory Improvement Program* (ILI) is to improve the quality of the undergraduate curriculum by supporting projects to develop new or improved instrument-based undergraduate laboratory and/or field courses (NSF 90–101). The *Undergraduate Faculty Enhancement Program* (UFE) offers grants to support seminars, short courses, workshops, or similar activities for groups of undergraduate faculty from outside the grantee institution to learn about new techniques and new developments in their fields (NSF 90–112).

VII. Selected Bibliography

The following selected publications on undergraduate science, engineering and mathematics education and related issues are available at no cost from Forms and Publications Unit, room 232, National Science Foundation, Washington, DC 20550, by telephone (202) 357–7668, or e-mail (Bitnet: pubs@nsf or Internet: pubs@note.nsf.gov).

(1) *Undergraduate Science, Mathematics and Engineering Education*/National Science Foundation, National Science Board Task Committee on Undergraduate Science and Engineering Education, H.A. Neal, Chair—[Washington, DC]:National Science Foundation, 1986–1987. NSF Pub. No. NSB 86–100.

(2) *Report on the National Science Foundation Disciplinary Workshops on Undergraduate Education*: Recommendations of the disciplinary taskforces concerning issues in U.S. undergraduate education in the Sciences, Mathematics and Engineering/ Division of Undergraduate Science, Engineering, and Mathematics Education, Directorate of Science and Engineering Education—[Washington, DC]:National Science Foundation, 1989. NSF Pub. No. NSF 89–3.

(3) *Report on the National Science Foundation Workshop on Science, Engineering and Mathematics Education in Two-Year Colleges*/R.E. Parilla, Chair, Oct. 31–Nov. 1, 1988, Washington, DC—[Washington, DC]: Division of Undergraduate Science, Engineering, and Mathematics Education, Directorate of Science and Engineering Education, National Science Foundation, 1989. NSF Pub. No. 89–50.

(4) Wineke, W.R. and Certain, P. *The Freshman Year in Science and Engineering: Old Problems, New Perspectives for Research Universities.* A report of a conference sponsored by The Alliance for Undergraduate Education with support from the National Science Foundation. [University Park, PA]: The Alliance for Undergraduate Education, 1990.

(5) *An Exploration of the Nature and Quality of Undergraduate Education in Science, Mathematics and Engineering.* A Report of the National Advisory Group of Sigma Xi, The Scientific Research Society, sponsored by the National Science Foundation and the Johnson Foundation. Workshop held at Wingspread, Racine, WI., Jan. 23–26, 1989—[New Haven, CT]: Sigma Xi, 1989.

(6) *Entry-level Undergraduate Courses in Science, Mathematics and Engineering: An Investment in Human Resources.* An initiative of Sigma Xi, The Scientific Research Society, Committee on Science, Mathematics and Engineering Education, supported by the National Science Foundation and The Johnson Foundation. Workshop held at Wingspread, Racine, WI, June 21–24, 1990—[Research Triangle Park, NC]: Sigma Xi, 1990.

(7) *Career Access Opportunities in Science and Technology for women, minorities and persons with disabilities: Program announcement and guidelines.* Directorate for Education and Human Resources, National Science Foundation—[Washington, DC]: National Science Foundation, 1990. NSF Pub. No. 90–126.

(8) *Research Experiences for Undergraduates: Program announcement.* National Science Foundation—[Washington, DC]:National Science Foundation, 1990. NSF Pub. No. 90–79.

(9) *Alliances for Minority Participation: Program announcement and guidelines.*/ National Science Foundation—[Washington, DC]:National Science Foundation, 1990. NSF Pub. No. 90–44.

This printed information contains the essence of the announcement for this program, and is not a full copy of the actual brochure containing the guidelines for submission. Before submitting a proposal, obtain a printed copy of the guidelines by writing or calling the publications office of NSF.

Dated: May 3, 1991.

Herbert Levitan,

Program Director.

[FR Doc. 91–11146 Filed 5–9–91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Application for Licenses to Export Nuclear Material

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application",

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please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the applications for licenses to export nuclear grade graphite as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning these applications follows.

NRC EXPORT LICENSE APPLICATIONS

Name of applicant, Date of Appl., Date Received, Application number	Description of items to be exported	Country of destination
Pyrograph, Inc., 04/24/91, 04/26/91, XMAT0357	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	France.
Pyrograph, Inc., 04/24/91, 04/26/91, XMAT0358	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	Italy.
Pyrograph, Inc., 04/24/91, 04/26/91, XMAT0359	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	Sweden.

Dated this 3rd day of May 1991 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director for Exports, Security, and Safety Cooperation, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 91-11214 Filed 5-9-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 31st meeting on May 22 and 23, 1991, room p-110, 7920 Norfolk Avenue, Bethesda, MD, 8:30 a.m. until 5 p.m. each day. The entire meeting will be open to the public.

The purpose of the meeting will be to review and discuss the following topics:

A. Briefing by and discussion with representatives of the State of South Carolina regarding the implementation of their agreement state program.

B. Respond to the Staff Requirements Memorandum concerning the need for revision to 10 CFR part 61 as it relates to low-level waste form leachability and groundwater protection requirements.

C. The Committee may continue discussions which address dealing with uncertainties in implementing the EPA High-Level Waste Standards.

D. Discuss information obtained by members from attendance at the Second Annual International High-Level Radioactive Waste Management Conference and a field trip to Lunar Craters.

E. Briefing and discussion on a digital data set prepared for the Yucca Mountain site.

F. The Committee will hear a presentation by a representative of the DOE Office of Civilian Radioactive Waste Management on research being conducted in support of DOE's HLW repository characterization program.

G. The Committee will be briefed on Working Draft #3 of the Environmental Protection Agency's 40 CFR part 191, High-Level Waste Repository Standards if available.

H. The Committee will hear a report from its Working Group Chairman on a recent meeting concerning integration of geophysics into the site characterization of a high-level waste repository.

I. The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. The members will also discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the Federal Register on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492-4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: May 6, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91-11215 Filed 5-9-91; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of Public Law 100-203 of the Nuclear Waste Policy Amendments Act of 1987 (NWPAA), the Board's Panel on Transportation & Systems will hold a public hearing on August 15, 1991, in Denver, Colorado. The purpose of the hearing will be to help panel members gain a better understanding of the public's views on transportation issues currently under study by the Board as part of its review of the Department of Energy's (DOE) program to site and develop a permanent repository for the disposal of spent nuclear fuel and high-level radioactive waste. The DOE currently is characterizing a potential site at Yucca Mountain, Nevada.

This is the third in a series of hearings being conducted by the Panel on Transportation & Systems in recognition of the potential impacts that transporting spent fuel could have should the site at Yucca Mountain, Nevada, be found suitable for a high-level radioactive waste repository. The first hearing was held on August 17, 1990, in Amargosa Valley, Nevada. The second hearing was held on November 19, 1990, in Reno, Nevada. Future hearings may be held in other locations around the country.

This notice announces the date and location of the third hearing, provides procedures for participating in the hearing, and lists some of the issues that participants may want to address in their remarks before the panel.

Members of the public are welcome to make their views known by: (1) Preparing written testimony in advance of the hearing and presenting it formally before the panel, (2) speaking briefly on a walk-in basis before the panel, or (3) submitting a written statement for the record. Those wishing to speak before the panel should be prepared to answer questions. A transcript of the hearing will be made.

Requests to testify formally should be made in writing to Ms. Paula N. Alford, Director of External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235-4473. Requests to testify must be received no later than close of business on July 26, 1991.

Requests to speak briefly before the panel on a walk-in basis will be accepted on the day of the hearing. Persons wanting to make a brief statement before the panel are asked to appear at the Registry Hotel, 3203 Quebec Street, Denver, Colorado 80207; (303) 321-3333, on the day of the hearing to sign up for a five-minute time slot on a first-come, first-served basis. Time will be set aside during the late morning and late afternoon hours to hear from those wishing to provide walk-in testimony.

In lieu of appearing before the panel, interested parties may also submit written comments until November 30, 1991. Original statements should be submitted to: Chair, Panel on Transportation & Systems, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209.

DATES: The date and time of the hearing are: Thursday, August 15, 1991, from 9 a.m.-5 p.m.

ADDRESSES: The hearing will be held at the Grand Ballroom I, The Registry Hotel, 3203 Quebec Street, Denver, Colorado 80207; (303) 321-3333.

FOR FURTHER INFORMATION CONTACT: Ms. Paula N. Alford, Director of External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235-4473.

SUPPLEMENTARY INFORMATION:

Purpose

The Nuclear Waste Technical Review Board (the Board) was established by the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. 100-203) to evaluate the technical and scientific validity of activities undertaken by the DOE in its civilian nuclear waste disposal program. The waste to be disposed of consists primarily of commercial spent fuel with some defense high-level waste. While the Board's charge is broad, the act specifically directs the Board to evaluate activities relating to repository siting and the packaging and transport of high-level radioactive waste or spent nuclear fuel.

The Board created the Panel on Transportation & Systems to facilitate the evaluation of transportation issues relating to spent nuclear fuel and high-level radioactive waste. As part of its study of safety issues, the panel is holding several public hearings in various locations around the country. The Board wants to remain apprised of the public's views and concerns on issues related to transporting and disposing of spent fuel.

Presentation Procedures

Requests to testify should be made in writing by July 26, 1991, to Ms. Paula N. Alford, Director of External Affairs, NWTRB, 1100 Wilson Boulevard, suite 910, Arlington, Virginia, 22209. The written request should specify the following:

1. Name of the person testifying.
2. Title, if any.
3. Name of organization, if any.
4. Telephone number.
5. Length of time requested for formal presentation (time limit will be determined once all requests have been received).

If the contact person is different from the person testifying, please provide his or her name, title (if any), organization name (if any), and telephone number.

Persons testifying are asked to provide 10 copies of their testimony and any accompanying slides or other documentation by close of business on August 9, 1991, to the NWTRB, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209. Persons testifying also are asked to bring 50 copies to the hearing.

The Panel on Transportation & Systems will reserve time in addition to the scheduled presentations to hear the views of interested persons scheduled on a first-come, first-served basis. Presenters in this part of the hearing do not need to notify the panel in advance of their plans to attend, but they will be required to sign up the day of the hearing at The Registry Hotel, 3203 Quebec Street, Denver, Colorado 80207; (303) 321-3333.

To accommodate those wishing to make presentations and to allow for questions from panel members, a time limit will be placed on schedule and walk-in presentations. The amount of time permitted for each presentation will depend on the number of requests the panel receives. Those testifying will be notified of time constraints following receipt of their written requests. Walk-in presenters will be advised of their time constraints when they sign up. All participants should be prepared to answer questions from the panel. A transcript of the hearing will be made.

Issues

To date, panel members and other members of the Board have met with representatives of the Department of Energy (DOE) and the Nuclear Regulatory Commission (NRC) to discuss safety and risk assessment issues associated with the transportation of spent nuclear fuel and high-level radioactive waste. In its first two reports, the Board made a number of recommendations to the DOE on the following transportation issues: System safety, human factors engineering, risk assessment and management, and minimizing the handling of spent fuel. These issues were selected in part because of their importance in the early stages of transportation system planning. Consequently, the Panel on Transportation & Systems encourages comments from parties particularly interested in the following areas.

- System Safety is a management approach that involves applying safety engineering and management techniques to the design of transportation system hardware, software, and operations: The central question is, in what ways and to what extent should the DOE dedicate its

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management resources to such transportation safety activities?

• Human Factors Engineering involves applying what we know about human psychological, physiological, and physical limitations to the design and operation of industrial systems to optimize system safety and operability. The central question is, how can human error be reduced in the design, fabrication, maintenance, and operation of a transport system?

• Minimizing the Handling of Spent Fuel would reduce routine exposure and opportunities for accidents. The central question is, what are feasible innovative technologies and system management strategies?

• Risk Assessment and Management involves the development and use of analytical methods to estimate the probability and severity of safety hazards that may be encountered in spent fuel transportation and to methodically foresee and develop measures to prevent their occurrence. The central question is, how can the existing risk assessment tools be improved; are the needs of the users—including state, tribal, and local government planners—being considered sufficiently?

In addition to these early safety management and planning issues, the panel invites comments on safety considerations that will become increasingly important as the system for transporting spent nuclear fuel and high-level radioactive waste becomes more clearly defined and established. Safety issues that will grow in importance include:

• Transportation Cask Integrity: The question is, can transportation containers be designed and constructed to prevent the release of radioactive material under normal and accident conditions? If so, how can public confidence in transportation safety be enhanced?

• Transportation Operations: One of the main questions is, are current routing criteria adequate? If so, how can inspection and enforcement measures be improved?

• Emergency Preparedness: The central question is, what contingency plans need to be in place in communities located along routes used to transport spent nuclear fuel and high-level waste?

Dated: May 7, 1991.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91-11147 Filed 5-9-91; 8:45 am]

BILLING CODE 6820-AM-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of Form RI 25-14

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request to extend an information collection from the public. Form RI 25-14, Self-Certification of Full-Time School Attendance, is used to survey survivor annuitants who are between the ages of 18 and 22 to determine if they meet the requirements of section 8341(a)(4)(C), and section 8441(4)(C), title 5, U.S. Code, to receive benefits as a student.

Approximately 14,000 Self-Certifications of Full-Time School Attendance forms are completed annually; each requires approximately 12 minutes to complete, for a total public burden of 2,800 hours.

For copies of this proposal, contact C. Ronald Trueworthy, on (703) 908-8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., CHP 500, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ronald Rabbu, (202) 606-0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-11137 Filed 5-9-91; 8:45 am]

BILLING CODE 6325-01-M

PEACE CORPS

Agency Information Collection Activities Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of submission of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Peace Corps has submitted to the Office of Management and Budget, a request to approve the use of the National Agency Check Questionnaire for Peace Corps Volunteer Background Investigation through March 31, 1990. Section 22 of the Peace Corps Act (22 U.S.C. 2501 et seq.) mandates that "all persons employed or assigned to duties under the Act shall be investigated to insure that employment or assignment is consistent with national interest in accordance with standards and procedures established by the President."

For information about the collection:

Agency Address: Peace Corps, 1990 K Street, NW., Washington, DC 20526.

Title: National Agency Check Questionnaire for Peace Corps Volunteer Background Investigation.

Request: Approval of use.

Frequency of Collection: Recurring—voluntary.

General Description of Respondents: Individuals who have applied for Peace Corps service and have been nominated to a specific program.

Estimated Number of Respondents: 10,000.

Estimated Hours of Respondents to Complete Form: 2,500.

Respondent's Obligation to Reply: Voluntary.

Comments: Telephone comments on this proposal should be directed to Marshall Mills, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. Mr. Mills may be called at (202) 395-7304. A copy of the form may be obtained from Christopher Kent, Office of Placement, Peace Corps, 1990 K Street NW., room 9202, Washington, DC 20526. Mr. Kent may be called at (202) 606-3994. This is not a request to which 44 U.S.C 3504(h) applies. This notice is issued in Washington, DC on May 1, 1991.

Collins Reynolds,

Associate Director for Management.

[FR Doc. 91-11166 Filed 5-9-91; 8:45 am]

BILLING CODE 6051-01-M

Agency Information Collection Activities Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of submission of public use form review request to the office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Peace Corps has submitted to the Office of Management and Budget, a request to extend the use of the Peace Corps Applicant Questionnaire through March 1, 1994. The Questionnaire is completed by applicants for Peace Corps service who live outside the United States or Puerto Rico. The Questionnaire requests information regarding the applicant's motivation, commitment, social sensitivity, and adaptability for Peace Corps service. Peace Corps uses the information to evaluate an applicant's qualifications and suitability for international service. The information is provided voluntarily, and is protected by the Privacy Act of 1974. The information contained in the Questionnaire is available only to Peace Corps employees with specifically assigned duties requiring them to work with applicant records daily, and to other Peace Corps employees having the need for such records in the performance of their official duties.

Information about the form:

Agency Address: U.S. Peace Corps, 1990 K Street, NW., Washington, DC 20526

Title: Peace Corps Applicant Questionnaire.

Request: Extension of expiration date.

Frequency of Collection: On occasion.

General Description of Respondent: Individuals who apply for Peace Corps service living outside the U.S.

Estimated Number of Respondents: 30 annually.

Estimated Hours for Respondents to Furnish Information: Sixty (60) minutes each.

Respondents' Obligation to Reply: Voluntary.

Comments: Comments on this form request should be directed to Marshall Mills, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

A copy of the form may be obtained from Paul Keeley, Chief of Field Operations, Office of Recruitment, U.S. Peace Corps, 1990 K Street, NW., room 9340, Washington, DC 20526. Mr. Keeley may be called at 202/606-3766. This is not a request to which 44 U.S.C. 3504(h) applies. This notice is issued in Washington, DC on May 1, 1991.

Dated: April 4, 1991.

Collins Reynolds,

Associate Director for Management.

[FR Doc. 91-11166 Filed 5-9-91; 8:45 am]

BILLING CODE 6051-01-M

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to Railroad Retirement Accounts; Public Meeting

Notice is hereby given in accordance with Public Law 92-463 that the Actuarial Advisory Committee will hold a meeting on May 16, 1991, at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 18th Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the results and presentation of the 18th Actuarial Valuation. The text and tables which constitute the Valuation will have been prepared in draft form for review by the Committee. It is expected that this will be the last meeting of the Committee before publication of the Valuation.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

Dated: May 3, 1991.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-11123 Filed 5-9-91; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18133 812-7110]

National Home Life Assurance Company of New York, *et al.*

May 6, 1991.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: National Home Life Assurance Company of New York ("National Home"), National Home Life Assurance Company of New York Separate Account B (the "Separate Account") and the Vanguard Variable Insurance Fund (the "Fund").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Separate Account of a mortality and expense risk charge imposed under certain deferred variable annuity contracts called the Vanguard Variable Annuity Plan Contract (the "Contracts").

FILING DATE: The application was filed on April 11, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on May 31, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o Michael Berenson, Esq., Jorden Schulte & Burchette, 1025 Thomas Jefferson Street, NW, suite 400 East, Washington DC 20007.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272-3046 or Barry D. Miller, Senior Attorney, at (202) 272-3612, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. National Home is a stock life insurance company incorporated under the laws of the State of New York.

2. The Separate Account is registered with the commission as a unit investment trust under the 1940 Act. The Separate Account currently has four subaccounts, each of which invests solely in a corresponding portfolio of the Fund, an open-end diversified investment company.

3. The Fund is a member of the Vanguard Group of Investment Companies ("The Vanguard Group"). The Fund and the other funds in The Vanguard Group obtain at cost virtually all of their corporate management, administrative, shareholder accounting and distribution services through their jointly owned subsidiary, the Vanguard Group, Inc. ("Vanguard"). In Investment Company Act Release No. 11945 (February 25, 1981) ("Release 11945"), the Commission granted the exemptive relief necessary to implement this arrangement.

4. For the cost of administering and maintaining the contracts there is an annual charge of $25 per Contract plus a

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charge, assessed daily, equal to an annual rate of .10% of the net asset value of the Separate Account. These charges are guaranteed not to increase for the life of the Contracts and represent reimbursement for only the actual administrative costs expected to be incurred over the life of the Contracts.

Pursuant to the terms of a participation agreement among Vanguard, the Fund and National Home, Vanguard has assumed responsibility for performing National Home's administrative duties under the Contracts and has agreed to assume the expenses of administration. In exchange for its assumption of these duties and expenses, Vanguard will receive the payments discussed in the preceding paragraph which will not exceed the actual costs Vanguard will incur in performing these administrative duties. In the event that Vanguard's administrative duties under the agreement are terminated, the responsibilities assumed by Vanguard would revert to National Home.

5. There is no sales load imposed in connection with sales of Contracts. Vanguard, through its wholly owned subsidiary Vanguard Marketing Corporation, will be the sole distributor of the Contracts and will bear all expenses related to the distribution of such Contracts. As a member of The Vanguard Group, the Fund will participate in the payment of the distribution expenses of The Vanguard Group on the same basis as other Funds in The Vanguard Group. Pursuant to the Vanguard Modified Formula which is described in the application and in Release 11645, the Fund currently imposes a charge of approximately .04% annually, which will never exceed .20%, to cover its share of the costs of distributing the Vanguard Group of Investment Companies. No part of this fee will be paid to National Home nor will National Home receive any other payments from either Vanguard or the Fund. Also, no payments will be made to Vanguard by National Home in connection with distribution of the Contracts. Other than the fixed annuitization fee described in the application, Vanguard will not receive any payments from National Home.

6. Applicants state that, as a member of The Vanguard Group, the Fund and Contract owners will receive the same benefits received by the other funds in the group. Those benefits are summarized in the application and were discussed in Release No. 11645. Also, according to Applicants, the distribution process with respect to the Contracts is analytically virtually identical to that for which relief was granted in Release No. 11645. Vanguard will be the sole distributor of the Contracts. Sales of the Contracts will result in the sale of Fund shares and Vanguard will receive fees from the Fund for performing distribution services. As is the case with the other funds in The Vanguard Group, these distribution services will be performed internally at cost. Neither the Fund nor Vanguard will pay any external entity for these services. Therefore, Applicants believe that the relief afforded in Release No. 11645 is available in connection with the Fund's payment of distribution fees to Vanguard.

7. The Contracts provide for a mortality and expense risk charge which will be deducted on a daily basis at rates whose annual equivalents and approximate allocation between mortality and expense risks are as follows:

Assets	(In Percent)		
	Mortality	Expense	Total
First $500	.270	.180	.450
Next 250	.245	.155	.400
Next 250	.235	.140	.375
Next 250	.220	.130	.350
Next 250	.210	.115	.325
Over 1,500	.200	.100	.300

This charge is assessed daily and compensates National Home for the mortality and expense risks it assumes under the Contracts. National Home guarantees that this charge will never increase.

8. The mortality risk assumed by National Home arises from its obligations to continue to make Annuity Payments under the Contracts determined in accordance with the guaranteed annuity tables and other provisions of the Contracts, regardless of how long each annuitant lives and regardless of how long all payees as a group live. National Home also assumes a mortality risk as a result of its guarantee of a minimum payment in the event the Annuitant dies prior to the Annuity Date. In addition, National Home assumes a risk that the charges for the administrative expenses may be insufficient to cover the actual cost incurred by National Home for providing Contract administrative services which it is ultimately responsible for, although initially, Vanguard has assumed responsibility for providing those services. If the charge is insufficient to cover the actual cost of the mortality and expense risk, the loss will fall on National Home. Conversely, if the charge proves more than sufficient, the excess will be added to the surplus of National Home. Any surplus resulting to National Home from the mortality and expense charge can be used by National Home, at its discretion, for any business purpose.

9. National Home and the Separate Account represent that they have reviewed publicly available information regarding the aggregate level of the mortality and expense risk charges under comparable variable annuity contracts currently being offered in the insurance industry taking into consideration such factors as current charge levels, the manner in which they are imposed, the presence of charge level or annuity rate guarantees and the markets in which the Contracts will be offered. Based upon the foregoing, National Home and the Separate Account further represent that the mortality and expense risk charge under the Contracts is within the range of industry practice for comparable contracts. National Home and the Separate Account represent that they will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

10. National Home has concluded that there is a reasonable likelihood that the distribution financing arrangements of the Separate Account will benefit the Separate Account and the Contract owners. National Home will maintain and make available to the Commission on request a memorandum setting forth the basis for this representation. National Home and the Separate Account further represent that the Separate Account will only invest in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of any fund, formulate and approve any plan under rule 12b-1 of the 1940 Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11186 Filed 5-9-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35—25307]

Filing Under the Public Utility Holding Company Act of 1935 ("Act")

May 3, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to

provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and and amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 28, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declartion(s), as filed or as amended, may be granted and/or permitted to become effective.

The Connecticut Light and Power Company (70-7794)

The Connecticut Light and Power Comapny ("CL&P"), 107 Selden Street, Berlin, Connecticut 06037-1616, an electric public-utility subsidiary company of Northeast Utilities, a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

The application seeks approval of a long-term lease and the acquisition of various utility assets from The Farmington River Power Corporation and its parent, The Stanley Works ("Stanley"). The aggregate consideration to be paid by CL&P for the property leased and purchased will be $7.5 million. The allocation of this sum between the purchased and leased assets is subject to agreement by the parties and the Connecticut Department of Public Utility Control ("CDPUC"). The parties have proposed to the CDPUC that $6.5 million be allocated to rent for the initial term of the lease of the Rainbow Dam facility ("Dam") in Windsor, Connecticut and $1 million to the purchase of other property. The other property includes: The 22 mile long Rainbow Transmission Line between the Dam and New Britain, Connecticut; the Burritt Street substation in New Britain; part of the Black Rock Line; approximately nine acres of land about a mile downstream from the Dam; associated rights of way; water and flood rights; the right to use certain electric distribution facilities in New Britain; and, miscellaneous other property.

The lease of the Dam is for 30 years with CL&P's option to extend it for up to six additional ten year terms. Payment will be $6.5 million at closing for the initial period and $259,000 per year (adjusted for inflation) thereafter for any extensions.

In conjunction with this transaction, Stanley will execute a power purchase agreement to become a full requirements retail electric customer of CL&P for a period of at least 15 years. CL&P estimates the aggregate benefits of this transaction to ratepayers, over the course of the initial 30 year lease term, to be approximately $12 million.

Central and South West Corporation, et al. (70-7949)

Central and South West Corporation ("CSW"), a registered holding company, CSW Energy, Inc. ("Energy"), a wholly owned subsidiary company of CSW, CSW Development-I, Inc. ("Energy Sub"), a wholly owned subsidiary company of Energy all located at 1616 Woodall Rodgers Freeway, P.O. 660164, Dallas, Texas 75202 and ARK/CSW Development Partnership ("Joint Venture"), 23293 South Point Drive, Suite 100, Laguna Hills, California 92653, a general partnership and a subsidiary of Energy Sub have filed an application-declaration under section 6(a), 7, 9(a), 10, 12(b), 13(b) and 13(e) of the Act and rules 43, 45, 50(a)(5), 51, 86, 87, 90, 91 and 95 thereunder.

CSW, Energy, Energy Sub and the Joint Venture propose to create a special purpose limited partnership to be known as Oildale Cogeneration Partners, L.P. ("Partnership"), in order to invest in the Oildale Project ("Project"), a qualifying cogeneration facility, within the meaning of the Public Utility Regulatory Policies Act of 1978 ("PURPA") and 18 CFR 292.602. The Partnership would be organized as a limited partnership under the laws of the State of Delaware and its initial sole general partner ("General Partner") would be either: (1) A special purpose wholly owned subsidiary company of the Joint Venture ("JV Sub"); or (2) a Delaware general partnership between a subsidiary company of Energy ("Energy GP Sub") and a subsidiary company of ARK ("ARK GP Sub") and would hold a 1% interest in the Partnership.

If the General Partner is a corporation, JV Sub, then the JV Sub would be incorporated under the laws of the State of Delaware with an unthorized capital of up to 1,000 shares of common stock without par value, and the Joint Venture directly or indirectly would acquire all of the JV Sub's common stock at a subscription price of $1.00 per share. Alternatively, if the General Partner is a general partnership, then each of Energy GP Sub and ARK GP Sub would hold a one-half general partnership interest in the General Partner.

The initial limited partners of the Partnership will be Energy Sub or a to-be-formed wholly owned subsidiary company of Energy Sub ("Energy Sub 2") and ARK or a to-be-formed wholly owned subsidiary company of ARK ("ARK Sub"). Each limited partner would hold a 49.5% interest in the Partnership. Energy Sub 2 would be incorporated under the laws of the State of Delaware with an authorized capital of up to 1,000 shares of common stock without par value and Energy Sub will directly or indirectly acquire all of Energy Sub 2's common stock at a subscription price of $1.00 per share.

It is proposed that Joint Venture acquire the lessee interest and other assets or Catalyst Golden Bear Cogeneration Partnership ("Golden Bear"), a nonassociate California limited partnership, in the Project, pursuant to the terms and conditions in the Purchase Agreement, dated March 21, 1991, between Golden Bear and Joint Venture ("Agreement"). Prior to the closing of the transactions contemplated by the Agreement, Joint Venture will assign all of its rights and obligations under the Agreement to Partnership. At the closing of the transaction contemplated by the Agreement, the Partnership will acquire from Golden Bear a lease ("Lease") of the Project and will continue to perform the obligations of the lessee thereunder. The Project is currently owned by an owner trust established for the benefit of Saks & Co. ("Lessor"). Pursuant to the Lease, Partnership will pay rent to the Lessor in an amount sufficient to pay the debt service obligations of the Lessor on the financing for the Project. The Partnership will purchase the Project from the Lessor on the second anniversary of the date of the Partnership's acquisition of the lease from Golden Bear, or earlier if Lessor agrees. The price for acquisition of the Project from the Lessor shall be the assumption of the debt of the Lessor by the Partnership on a nonrecourse basis. The leader's recourse for payment shall be to the Project itself and not to the Joint Venture, Partnership, Energy, Energy Sub or any other related entity or their assets.

Partnership proposes to borrow, from banks to be determined, up to an

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aggregate principal amount of $31 million ("Loan") to acquire the lessee interest and other assets of Golden Bear. The total facility of $31 million will include: (1) Approximately $18 million to be used for the refinancing of the existing debt of the Project; (2) approximately $7.7 million to upgrade the Project; (3) approximately $4 million to cover the expenses of the acquisition; and (4) approximately $1.3 million for project working capital, spares and tools, accrued interest and start-up costs and to cover obligations of the Project in the event of unforeseen shortfalls in operating cash flow during the first two years of operation.

Loans made by the banks to Partnership will be evidenced by a promissory note ("Note"). It is proposed that the Commission except such financing transaction from the competitive bidding requirements of rule 50 pursuant to subsection (a)(5). CSW, Energy, Energy Sub and Joint Venture assert that competitive bidding is not feasible or adaptable to this transaction in view of the specialization and competitiveness of the existing market for this type of project financing.

Each Note shall be payable as to principal and bear interest from the effective date of such Loan at a rate not to exceed 11% and a term of up to 20 years. The terms of this financing will provide for the first year to be an upgrade/modification period on an interest only basis followed by up to a 20-year term period during which the Loan will be fully repaid using a mortgage type amortization schedule. The Partnership will pay certain bank fees in connection with such financing, including a structuring fee not to exceed 1% of the total credit facility, a facility fee not to exceed ½ of 1% of the total credit facility, a quarterly commitment fee of less than 1% of the amount of any unused loan commitment, and an annual administration fee not to exceed $25,000.

Energy Sub proposes to arrange for a letter of credit to be issued by a third party lender in the amount of $5 million or less (as set out below), and have a maturity of less than ten years or an equity commitment letter or similar document to be issued by Energy Sub or Energy (collectively "Support Agreement"). The fee for the letter of credit will not exceed 1%. Drawings under the letter of credit will be reimbursed by CSW, Energy or Energy Sub together with interest not to exceed 11%. The Support Agreement will be issued for the benefit of the lender of the debt on the Project and will be in the amount of $5 million, which will reduce to $3 million upon completion of the construction of the improvements on the Project. The amount of the Support Agreement will further reduce as deposits are made to a debt service reserve account from revenues of the Project. The Support Agreement will terminate when such deposits are in excess of a predetermined debt service reserve. The Support Agreement will be available for drawing by the Project lender only in the event that cash flow from the Project is not sufficient to pay debt service or operating expenses of the Project. The obligation to pay on the Support Agreement will be undertaken either directly by CSW or Energy Sub. In the event that Energy Sub is primarily obligated on the Support Agreement, then Energy Sub's obligation will be supported either by cash collateral, or by a commitment to provide equity or other assurance by CSW to Energy Sub. Any amounts paid by or for the account of Energy Sub or Energy will be reimbursed by the Partnership out of Project cash flow prior to distributions to partners. Partnership proposes to enter into a construction management agreement with Energy for the purpose of upgrading the assets of the Project.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11167 Filed 5-9-91; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement: Pulp and Paper Facility Proposed by Mead Corporation on the Tennessee River

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent and scoping notice.

SUMMARY: The Tennessee Valley Authority (TVA) is issuing this notice to advise the public that it intends to prepare an Environmental Impact Statement (EIS) for the siting of Mead Corporation's proposed 1,000-ton-per-day (tpd) bleached kraft pulp and paper facility to be located on the Tennessee River at the Smith Bend industrial site on Chickamauga Reservoir in Rhea County, Tennessee. TVA also requests comments on the proposed scope of this EIS. TVA approval of water use facilities and an easement across TVA lands will be required. Cooperating agencies include the U.S. Army Corps of Engineers (USACE) and the U.S. Fish and Wildlife Service (FWS).

DATES: Written comments on the proposed scope of the EIS are requested and must be received by June 10, 1991 to be considered. TVA, USACE, and FWS will hold public scoping meetings on June 7, 1991, at Roane County High School, Kingston, Tennessee, and June 8, 1991, at Rhea County High School, Evensville, Tennessee, starting at 7 p.m. and 9 a.m., respectively. TVA will hold a minimum of one public hearing during the public comment period on the draft EIS. Details of this hearing will be announced in local and regional newspapers when the draft EIS becomes available.

ADDRESSES: Written comments on the proposed scope of the EIS should be sent to M. Paul Schmierbach, Manager of Environmental Quality, Tennessee Valley Authority, 400 West Summit Hill Drive, SPB 2P, Knoxville, Tennessee 37902-1499.

FOR FURTHER INFORMATION CONTACT: For further information on this action, call Dale K. Fowler, Project Manager, Tennessee Valley Authority, 400 West Summit Hill Drive, SPB 2P, Knoxville, Tennessee 37902-1499. Telephone 615/632-6716.

SUPPLEMENTARY INFORMATION: To access the Tennessee River, the Mead Corporation is requesting that TVA sell it an industrial easement over portions of TVA land that adjoin the 2,500-acre Mead-owned Smith Bend site for its proposed 1,000-tpd bleached kraft pulp and paper facility. Smith Bend is located on the right bank of Chickamauga Reservoir (facing downriver) between Tennessee River Mile 522 and 525. Mead is also requesting approval of a proposed intake and effluent piping system and barge terminal under section 26a of the TVA Act. In addition, Mead is requesting approval from USACE, under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act, for the proposed intake and effluent piping systems and barge terminal and any other facilities that could affect established wetlands. The state of Tennessee will also be reviewing potential environmental impacts under its permitting jurisdiction.

Demand for pulp and paper products continues to increase domestically and internationally. The abundance of suitable raw materials, geographic location, climate, infrastructure, labor supply, and other factors combine to make the Tennessee Valley a desirable location for new pulp and paper facilities and other forest industries.

The proposed mill would produce high-quality coated publishing paper and market pulp for domestic and international markets. This would be a fully integrated mill for processing green wood into finished products for use in the printing industry and pulp for use at other papermills. Initially, approximately half of the 1,000 tons per day of bleached pulp would be used in the papermaking process and the other half would be processed and packaged for market pulp sales. Preliminary estimates for the total cost of the proposed project is in excess of $1 billion.

This mill would employ over 400 people on the mill site and some additional people offsite in support positions. During the anticipated two-to-three-year construction period, a peak of approximately 2,000 construction workers would be required.

Once in full operation, the proposed manufacturing facility would utilize approximately 1.4 million green tons of pulpwood annually, which would be procured from both existing and new sources of public and private supply. Most of the wood would be procured from a radius of approximately 85 miles of the proposed facility. The annual harvest area needed to support this facility would approximate 30,000 acres per year or less than 1/2 of 1 percent of the total 8.7 million acres of forested land within the sourcing area.

The EIS will evaluate the direct and indirect effects of the pending request. This will include the potential direct effects associated with constructing and operating the proposed intake and effluent piping systems and barge facility and use of the TVA property to access these facilities and any disturbances of wetlands. These are the activities over which TVA and USAGE have regulatory authority. In addition, the EIS will evaluate as indirect effects the potential consequences associated with constructing and operating the proposed pulp and paper facility.

In addition to the direct and indirect effects associated with the activities requiring TVA and USAGE approval, there are potential sourcing area effects (i.e., timber harvesting). However, attempting to identify the location of and assessing sourcing area impacts, which involve the future decisions of many private landowners, entails a substantial amount of uncertainty. Neither TVA nor USAGE have any regulatory authority over these private landowners' actions, and authorization from TVA or USAGE is not needed before harvesting can occur. However, TVA, USAGE, and FWS are concerned about such impacts and propose to include in the EIS, to the extent reasonable, information and analysis of possible sourcing area impacts. Comments are requested on preparing an EIS with this proposed scope, as further delineated below.

Alternatives proposed to be evaluated in the EIS include: (1) Approving the request as submitted, (2) approving the request with modifications or conditions to lessen potential environmental impacts, or (3) no action (denying the request). The availability of alternative sites and the siting process used by the applicant will also be discussed.

TVA proposes to assess the following as potential effects associated with the construction and operation of the proposed pulp and papermill facility: (1) Navigation impacts, (2) water quality impacts, (3) air quality impacts, (4) noise impacts, (5) terrestrial and aquatic species impacts (including endangered and threatened species), (6) wetlands, (7) cultural resource impacts, (8) flooding and floodplain impacts, (9) aesthetic impacts, (10) socioeconomic impacts, (11) solid and hazardous waste, and (12) potential impacts associated with truck traffic in the vicinity of the papermill. Any cumulative impacts resulting from the construction and operation of the facility will also be discussed.

Potential sourcing area harvesting effects which TVA proposes to assess include (1) Water quality and potential flooding impacts, (2) terrestrial and aquatic species impacts (including endangered and threatened species), (3) wetlands, (4) aesthetic impacts, (5) solid waste, (6) recreation/tourism, (7) impact on prime farmland, and (8) cultural resource impacts. Other potential cumulative sourcing area effects identified during the scoping process will also be considered for evaluation.

Dated: May 2, 1991.

M. Paul Schmierbach,

Manager, Environmental Quality.

[FR Doc. 91-11114 Filed 5-9-91; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Santa Clara County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescinding notice of intent.

SUMMARY: The FHWA is issuing this notice to adivse the public that a previous notice of intent for a proposed highway project in the cities of Cupertino, Los Altos, Mountain View, and Sunnyvale, California, has been withdrawn.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915. Telephone: (916) 551-1314.

SUPPLEMENTARY INFORMATION: The FHWA on March 16, 1987, published a notice of intent on page 8126 of the **Federal Register** describing a project proposed by the California Department of Transportation (CALTRANS). The FHWA and CALTRANS have subsequently determined that it is unlikely the project would be financed and constructed within a reasonable time period.

The notice is being published to advise interested parties that this project, involving State Route 85 between Routes 280 and 101, and Routes 101 and 237 in Sunnyvale and Mountain View, has been withdrawn. CALTRANS is considering a more limited project in the area of the Route 101/237 interchange which would improve access between Route 101 and the 6.3 mile section of Route 237 east of Mathilda Avenue currently being widened. A notice of intent for that project will be published later if appropriate. A proposal to construct a new interchange on Route 237 approximately one mile west of Route 101, previously included in the withdrawn project, is being pursued by State and local agencies without FHWA participation.

Comments or questions regarding this notice should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The Regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on: May 3, 1991.

C. Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 91-11160 Filed 5-9-91; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA Waiver Petition Docket Number RSOR-90-1]

Petition for Relief From the Requirements of Railroad Operating Practices Regulation

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that Metro-North Commuter Railroad Company (MNCR) has petitioned the Federal Railroad Administration (FRA) for permanent relief from the

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requirements of § 218.30 of FRA's rules entitled Railroad Operating Practices.

Part 218, Subpart B, Blue Signal Protection of Workmen, requires protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment, whose activities require them to work on, under, or between such equipment and subject them to danger of personal injury posed by any movement of such equipment.

Section 218.30, "Remotely Controlled Switches," states, in part, that:

(a) After the operator of the remotely controlled switch has received the notification required by § 218.27(c), he must line each remotely controlled switch against movement to that track and apply an effective locking device to the lever, button, or other device controlling the switch before he may inform the employee in charge of the workmen that protection has been provided.

The MNCR at Grand Central Terminal in New York, New York, currently complies with required procedures set forth in a prior waiver petition granted by the Federal Railroad Administration. The current system involves the participation of several employees who provide the required safety assurances. This system has served without incident. In the planning to renew the existing signal system at Grand Central Terminal, the participation of the several employees would no longer be necessary. Instead, train movements would be made on interlocking signal indication, not exceeding restricted speed. Track blocking protection is designed into the proposed system.

Therefore, the MNCR proposes the installation of a fully controlled and protected signalled interlocking to include blue signal protection through the provisions of track blocking. Under the proposed plan, the employee requesting the blue signal protection will contact the train dispatcher located in the operational control center directly. The train dispatcher will then initiate the protective provisions which will be reflected at his work station, at track side, and on the controlling locomotive. The train dispatcher will inform the employee that the protection requested is in effect. To cancel blue signal protection for a track, a two-step process must be followed. The process involves the requesting employee, the train dispatcher and logic assurances designed into the system. No other personnel would be involved.

The petitioner requests that this application pursuant to 49 CFR 218.30 be approved. Upon completion of the renewal project, Grand Central Terminal will be a fully controlled and protected signalled interlocking with an integral track blocking assurance feature. The MNCR believes that this proposal is in compliance with the spirit and purpose of the regulation.

Interested persons are invited to participate in this proceeding by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Communications concerning this proceeding should identify the appropriate FRA Waiver Petition Docket Number RSOR-90-1 and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before June 27, 1991 will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC.

Issued in Washington, DC on May 2, 1991.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 91-11134 Filed 5-9-91; 8:45 am]

BILLING CODE 4910-06-M

[FRA Docket Number H-90-2—Notice 2]

Test Program Waiver

In accordance with 49 CFR Section 311.51, notice is hereby given that the Federal Railroad Administration (FRA) has granted a waiver of compliance with the hand brake requirement of 49 CFR part 231, Safety Appliance Standards, to the National Railroad Passenger Corporation (Amtrak) for the purpose of conducting a test program.

The Amtrak test plan and request for a waiver were described in the original notice, FRA Docket Number H-90-2 [see 55 FR 28127, July 9, 1990]. Subsequently, this plan was somewhat revised by the petitioner. In both the original test program and the revised test program, Amtrak would operate two Coupler Mate II bogies and three RoadRailer Mark V vehicles behind a passenger train. The test was originally to be conducted in the Northeast Corridor at speeds up to 95 miles per hour. Instead, Amtrak will perform that portion of the test in the Northeast Corridor at a speed not to exceed 100 miles per hour.

Amtrak states that the RoadRailer equipment will consist of two Coupler Mate II trucks or bogies, one at either end of the RoadRailer vehicles. The Coupler Mate II will provide the connection between RoadRailer Mark V vehicles and conventional Amtrak passenger cars and locomotives equipped with standard automatic couplers. The two Coupler Mate II bogies in the test will be equipped with all the safety appliances required by the Safety Appliance Standards, 49 CFR part 231, with the exception of the handbrake described in § 231.1(a). The bogies are provided with an automatic spring biased parking brake which is used in lieu of the conventional type manually operated handbrake, and it is not necessary for a person to mount and dismount the Coupler Mate II bogie to apply or release the parking brake.

The RoadRailer vehicles, by design, cannot be subjected to traditional switching procedures conducted in railroad classification yards. In consideration of the unique handling of the RoadRailer units and the fact that there is no necessity for a person to ride on this special equipment, safety appliances, including hand brakes, have not been required, pursuant to a waiver, on the RoadRailers presently being operated by the Norfolk Southern Corporation. The Coupler Mate II bogie braking capability will be compatible with existing Amtrak passenger car air brake equipment.

Amtrak anticipates that testing will commence on or about June 4, 1991. The rail test will be multiphased, beginning first with yard operations of assembling, disassembling, coupling, and uncoupling of the RoadRailer consist to passenger rail cars and locomotives. Following successful conclusion of these yard tests the RoadRailer consist will be coupled to non-revenue trains and a series of road braking tests conducted at varying speeds. Finally, road tests of both empty and loaded RoadRailers in non-revenue service in the Northeast Corridor, up to 100 miles per hour, will be made to test the stability of the RoadRailer-passenger train consist.

Amtrak's recently submitted revised test program has also been expanded. After completion of the tests in the Northeast Corridor, Amtrak will operate the two Coupler Mate II bogies and three RoadRailer Mark V vehicles behind revenue passenger trains over various railroads throughout the country until the completion of the program, which will be on or about July 18, 1991. During that phase of the testing, the RoadRailer vehicles will be used to carry mail for the US Postal Service.

Issued in Washington, DC on May 3, 1991.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 91-11132 Filed 5-9-91; 8:45 am]

BILLING CODE 4910-06-M

Petition for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from The Union Tank Car Company a request for waivers of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Union Tank Car Company

[Docket Number SA-91-3]

The Union Tank Car Company (UTLX) seeks a waiver of compliance from certain sections of 49 CFR part 231, Railroad Safety Appliance Standards. UTLX is requesting a permanent waiver of the provisions of 49 CFR 231.21(b)(2) and 231.21(j)(2)(vi) requiring that platforms be of a minimum thickness of 1¾ inches. UTLX requests that this requirement be waived and instead requirements similar to those found in § 231.1(c)(4)(iii) be applied. Section 231.1(c)(4)(iii) refers to running boards and requires that they "shall be of material which provides the same degree of safety than wood of 1⅛ inches thickness. When made of material other than wood, the tread surface shall be of anti-skid design and constructed with sufficient open space to permit the elimination of snow and ice from the tread surface, at least 1¾ inches high.

The requirements of title 49, CFR 231.21 refers to "Tank Cars Without Underframes" § 231.21(b) refers to "End Platforms"—(1) Number. Two (2) Dimensions. Minimum width, 10 inches. Minimum thickness, 1¾ inches. Section 231.21(j) refers to "Operating platform, ladder and safety railing"—(1) Number. (vi) Operating platform, minimum width, 7 inches; minimum thickness, 1¾ inches. The Union Tank Car Company advised that typical construction of platforms by them and other manufacturers for tank cars without underframes is to construct a frame of members 2 inches to 3 inches deep with cross support members. A grating meeting the requirements of § 231.1(c)(4)(iii) is secured to the cross supports with bolts or rivets not less than ½-inch diameter.

The interest in this change stems from the basic operations of UTLX, which is the manufacturing, leasing and repairing of railroad cars.

This waiver would permit them to use grating designs of the same style and thickness on tank cars without underframes as used on other types of railroad cars. UTLX claims the option to use a thinner grating on platforms would allow greater flexibility in design and construction but would still maintain or exceed the existing levels of strength and safety.

UTLX contends that the platform thickness requirements for all car types except tank cars without underframes can be met with a component of any thickness so long as it provides the same degree of safety as wood 1⅛ inch thickness. Running boards and end platforms meeting this requirement have been used on other car types for many years and have been considered to be safe.

UTLX further stated that the basic use and function of running boards and platforms are identical. That is, they afford a place for a person to walk, stand, or cross over the car and in some instances may require a person to kneel, sit in order to perform inspection of valves, etc.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number—SA-91-3 and must be submitted in triplicate to the Docket Clerk, Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before June 24, 1991 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on April 29, 1991.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 91-11131 Filed 5-9-91; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 6, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: None.

Type of Review: New Collection.

Title: Taxpayer Service Optimal Level of Service Telephone Survey.

Description: These telephone interviews with the public are being conducted to obtain data on the toll-free telephone system. The data will be used in developing an approach to establish an optimal level of service for the Service's toll-free telephone system.

Respondents: Individuals or households.

Estimated Number of Respondents: 14,000.

Estimated Burden Hours Per Response: 10 minutes.

Frequency of Response: One-time survey.

Estimated Total Reporting Burden: 2,333 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-11163 Filed 5-9-91; 8:45 am]

BILLING CODE 4830-01-M

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Internal Revenue Service

[Project No. IRS-91-064]

Proposed Establishment of a Federally Funded Research and Development Center

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of intent.

SUMMARY: The Internal Revenue Service (IRS) announces its intention to sponsor and establish a Federally Funded Research and Development Center (FFRDC) to conduct research and advise IRS officials on technical aspects of Tax Systems Modernization (TSM). TSM is a long-term initiative of major importance involving the modernization and redesign of the tax processing and administrative systems and methods employed by the IRS. The FFRDC will be established under the authority of 48 CFR subpart 35.017 and the Office of Federal Procurement Policy (OFPP) Policy Letter 84-1. This is the first of three announcements under the authority of 48 CFR 5.205(b).

Of paramount importance in fulfilling this requirement will be the absence of actual or potential conflicts of interest (whether personal or oganizational, real or apparent, or financial or non-financial) in recommendations that may be made to IRS officials. The scope of work of the FFRDC will be governed by a Sponsoring Agreement encompassing technology assessment, startegic planning, and acquisition support. These three major areas of support are described below. (1) Technology Assessment—The FFRDC will conduct continuing laboratory research and experimentation to evaluate new and emerging data processing and telecommunications technologies, concepts, and methodologies for potential use in TSM including recommendations on how the technologies, concepts, and methodologies may be timely applied to improving tax processing and taxpayer services. (2) Strategic Planning—The FFRDC will combine technical expertise with knowledge gained from research to provide ongoing advice to IRS officials on strategic plans and designs for TSM. Activities will include the review, critical assessment, verification of, as well as general participation in the development of high level plans, processes, and strategies for the timely delivery of systems that will meet TSM objectives. (3) Acquisition Support—The FFRDC will support and assist the acquisition of TSM components to ensure conformity with architectural standards and designs as well as the achievement of TSM goals and objectives. This will be accomplished through the review and evaluation of, and general participation in, the development of technical requirements and specifications for critical TSM acquisitions. The FFRDC will participate in the development of technical evaluation criteria and, as an observer on technical evaluation panels, in the evaluation of proposals. In addition, the FFRDC will conduct periodic reviews of the effectiveness and efficiency of operational TSM systems. This notice is not a request for competitive proposals, however, expressions of interest and qualification or capability statements from entities interested and capable of fullfilling this requirement in the Washington, DC, metropolitan area will be considered. The qualficiation or capability statements received will be used to select potentially qualified entities, which at a later date may be requested to submit more detailed cost and tecnical proposals.

DATES: Comments on this action, expressions of interest and qualification or capability statements must be received on or before August 8, 1991.

ADDRESSES: Responses to this notice must be mailed to the Internal Revenue Service, A/C Procurement, Office of End User Acquisitions, 1111 Constitution Avenue, NW., room 6418/ICC Building, P:HR:C:E, Washington, DC. 20224.

FOR FURTHER INFORMATION CONTACT: Michelle Faseru, Contracting Officer, (202) 401-4198 or Veonica Fernandez, Contract Specialist, (202) 401-4253.

SUPPLEMENTARY INFORMATION: Upon request, copies of a detailed scope of work for the intended FFRDC will be mailed to any interested party. Requests must be sent to the address stated above and must make reference to "Project no. IRS-01-064".

Dated: May 6, 1991.

Gregory D. Rothwell,

Assistant Commissioner (Procurement).

[FR Doc. 91-11211 Filed 5-9-91; 8:45 am]

BILLING CODE 4830-01-M

[Delegation Order No. 42, Rev. 24]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority; correction.

SUMMARY: This document contains corrections to Delegation Order No. 42, Rev. 24, which was published Friday, April 12, 1991, (56 FR 14973).

FOR FURTHER INFORMATION CONTACT: Theodore J. Cichoski (202) 401-4165 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The delegation order clarifies and extends the authority to execute consent agreements for fixing the period of limitations involving partnerships and S corporations items that have converted to nonpartnership items or nonsubchapter S items due to one or more of the events as described in section 6231(b)(1) (A) through (D) as referred to in section 6229(f).

Need for Correction

As published, the delegation order contains errors which may prove to be misleading and is need of clarification.

Correction of Publication

Accordingly, the publication of the delegation order, which was the subject of FR Doc. 91-8592, is corrected as follows:

1. On page 14973, column 1, under the heading "For Further Information Contact:", line 2, the language "320, 901 D Street SW., Washington, DC," is corrected to read "230, 901 D Street SW., Washington, DC,".

2. On page 14973, column 2, under the heading "Authority To Execute Consents Fixing the Period of Limitations on Assessment or Collection Under Provisions of the 1939, 1954, and 1986 Internal Revenue Codes", number 1, line 4, the language "6229(e); 26 CFR 301.6501(c)-1;26 CFR" is corrected to read "6229(b); 26 CFR 301.6501(c)-1;26 CFR".

3. On page 14973, column 2, under the heading "Authority To Execute Consents Fixing the Period of Limitations on Assessment or Collection Under Provisions of the 1939, 1954, and 1986 Internal Revenue Codes", number 2b, line 7, the language "Assurance Staff, Chief, Classification" is corrected to read "Analysis Staff, Chief, Classification".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-11212 Filed 5-9-91; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INSTITUTE OF PEACE

Jennings Randolph Program for International Peace; Fellowships

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The United States Institute of Peace announces its annual international competition for fellowships to begin in September 1992. The fellowships enable professionals and scholars to undertake original research and education projects that will increase knowledge and spread awareness on the part of the public and policy makers regarding the nature of violent international conflicts and the full range of ways to deal with them peacefully. Fellowships are awarded in three categories: Distinguished Fellow, Peace Fellow, and Peace Scholar. Distinguished and Peace Fellows are principally one-year awards for work to be done at the Institute. Peace Scholars are out-of-residence doctoral students working on their dissertations. In order to be considered in the current competition, Distinguished Fellow nominations and Peace Fellow applications must arrive at the Institute by October 15, 1991. Peace Scholar applications must arrive at the Institute by November 15, 1991.

DATES: See in summary above.

ADDRESSES: United States Institute of Peace; 1550 M Street, NW., suite 700FR; Washington, DC 20005-1708.

FOR FURTHER INFORMATION CONTACT: Barbara Cullicott, Program Administrator, Jennings Randolph Program for International Peace at the address given above; telephone: (202) 457-1700.

Dated: May 3, 1991.

Bernice Carney,

Director of Administration.

[FR Doc. 91-11112 Filed 5-9-91; 8:45 am]

BILLING CODE 3155-01-M

VOL 56 ISS 91 MY 10 1991 UMI

Sunshine Act Meetings

Federal Register
Vol. 56, No. 91
Friday, May 10, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:01 p.m. on Tuesday, May 7, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Recommendations regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,698
American Diversified Savings Bank, Costa Mesa, California

Case No. 47,696
Silverado Banking, Savings and Loan Association, Denver, Colorado

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: May 8, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-11259 Filed 5-8-91; 9:36 am]

BILLING CODE 6714-01-M

federal register

Friday
May 10, 1991

Part II

Environmental Protection Agency

40 CFR Part 70

Operating Permit Program; Proposed Rule; Notice of Opportunity for Public Hearing

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 70

[FRL-3961-6]

RIN 2060-AD18

Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of opportunity for public hearing.

SUMMARY: The EPA is proposing a new part 70 of chapter I of title 40 of the Code of Federal Regulations. This part will contain regulations requiring States to develop, and submit to EPA, programs for issuing operating permits to major stationary sources (including major sources of hazardous air pollutants listed in section 112), sources covered by new source performance standards (NSPS), sources covered by emissions standards for hazardous air pollutants pursuant to section 112, and affected sources under the acid rain program.

Title V of the Clean Air Act (Act) Amendments of 1990, Public Law 101-549, enacted on November 15, 1990, requires EPA to promulgate regulations within 12 months of enactment. Title V establishes timeframes for developing and implementing the State permit programs. Within 3 years of enactment, States must submit proposed permit programs to EPA for approval. Sources subject to the program must submit complete permit applications within 1 year after a State program is approved by EPA or, where the State program is not approved, within 1 year after a program is promulgated by EPA.

Part 70 sources must obtain an operating permit addressing all applicable pollution control obligations under the State implementation plan (SIP) or Federal implementation plan (FIP), the acid rain program, the air toxics program, or other applicable provisions of the Act (e.g., NSPS). Sources must also submit periodic reports to the State and EPA as appropriate concerning the extent of their compliance with permit obligations. The permit and compliance reports will be available to the public, subject to any applicable confidentiality protection procedures simiar to those contained in section 114(c). The EPA anticipates that this program will provide more efficient implementation of the Act, including improved enforcement, enhanced State air program resources, and a streamlined process for revising air pollution control requirements.

DATES: Comments on the proposed regulations must be received by July 9, 1991. The EPA is likely to be unable to extend the public comment period due to the strict 12 month deadline in the Act. The EPA will hold four public hearings on June 4-5, June 6, June 24-25 and July 1-2 at the addresses listed below. Requests to present oral testimony must be received on or before May 24, 1991. If possible, comments should be sent in both paper and computerized form. Two paper copies of each set of comments are requested. Comments generated on computer should also be sent on an IBM-compatible, 5¼ inch diskette and clearly labeled. Computer files created with the WordPerfect 5.1 software package should be sent as is. Files created on other software packages should be saved in an "unformatted" mode for easy retrieval into WordPerfect. Comments should refer to specific page numbers whenever possible.

DOCKET: Supporting information used in developing the proposed rules is contained in Docket No. A-90-33. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m. Monday through Friday, at the address listed below. A reasonable fee may be charged for copying.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (LE-131), Attn: Docket No. A-90-33, room M-1500, Waterside Mall, 401 M Street SW., Washington, DC 20460. The public hearings will be held in the Waterside Mall auditorium at the EPA's Headquarters Office in Washington, DC (June 4-5); at the Museum of Science and Industry—West Pavilion Auditorium, 57th Street and Lakeshore Drive, Chicago, Illinois (June 6); in the EPA Regional Office, 75 Hawthorne Street, San Francisco, California (June 24 and 25); in the EPA Regional Office, 1445 Ross Avenue, 12th floor, Dallas, Texas (July 1-2).

FOR FURTHER INFORMATION CONTACT: Michael Trutna at (919) 541-5345. Persons interested in attending the hearing or wishing to present oral testimony should contact Ms. Carol Bradsher in writing at the U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Management Division, Mail Drop 15, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background And Purpose
II. Implementation Principles
III. Proposal Summary
A. Applicability.
B. State Permit Program Submittals and EPA Approval.
C. The EPA Program Oversight.
D. Complete Permit Applications.
E. Permit Content.
F. Permit Issuance and Review.
G. Fee Demonstration.
H. Permit/SIP Relationship.
I. New Source Review/Title V Relationship.
J. Small Businesses.
K. Relationship With Section 112 (Air Toxics).
L. Relationship With Title IV (Acid Rain).
IV. Detailed Discussion of the Key Aspects of the Proposed Regulations
A. Section 70.1—Statement of Program Goals.
B. Section 70.2—Definitions.
C. Section 70.3—Applicability.
D. Section 70.4—State Program Submittals and Transition.
E. Section 70.5—Permit Application.
F. Section 70.6—Permit Content.
G. Section 70.7 and section 70.8(d)—Permit Issuance, Renewal, Reopenings, Operational Flexibility and Revisions.
H. Section 70.8—Permit Review by EPA and Affected States.
I. Section 70.9—Fee Determination and Certification.
J. Section 70.10—Federal Oversight and Sanctions.
K. Section 70.11—Requirements for Enforcement Authority.
V. Additional Topics of Discussion
A. Implementation Agreements Between State Agencies and EPA.
B. Relationship of Permit Programs to SIP's.
C. Implications for Acid Rain Program.
D. Judicial Review.
E. Implications for Section 112.
F. Information Management Support.
G. Relationship of Permit Fees to Section 105 Grants.
H. Integration of National Pollutant Discharge. Elimination System (NPDES) Program Concepts.
VI. Federal Operating Permit Program
A. Purpose.
B. Part 71 Default Program.
C. Acid Rain Program.
D. Maximum Achievable Control Technology (MACT) Extensions.
VII. Administrative Requirements
A. Public Hearing.
B. Docket.
C. Office of Management and Budget (OMB) Review.
D. Regulatory Flexibility Act Compliance.
E. Paperwork Reduction Act.
F. Federalism Implications.

This preamble is organized to meet the needs of readers who want just an overview of the operating permit program and for readers who want a detailed discussion of the concepts and issues behind today's proposal.

The first section provides background on the effort to amend the Act to include an operating permits program, the

purposes of that action, and the expected benefits. The information is useful to anyone seeking any level of information on the operating permits program.

The second section explains the principles EPA has followed while developing the proposed regulations, and the positions on associated issues. The reader should review the preamble and regulations with these principles in mind.

The program summary section (section III.) provides summaries of the major portions of the program. This section of the preamble is similar to an executive summary of a report and allows the reader to obtain general knowledge of the subjects, after which more detailed discussion can be sought in other parts of the preamble.

The detailed discussion of the regulations is in section IV. This section notes the provisions of the regulations, but also provides comprehensive background on the concepts behind the regulations and any issues or controversial aspects to be considered with respect to regulatory requirements. The design of the regulations generally follows the flow of Title V, as does the discussion in section IV.

Section V presents additional topics important to the operating permits program. These areas are not related to specific regulatory requirements proposed here, so a separate section of the preamble is devoted to their detailed coverage. The subjects covered can be found in the preamble outline above.

Another topic warranting separate coverage is the Federal operating permit program that EPA will implement in the event a State fails to submit an acceptable program or fails to adequately enforce an approved program. Other uses for the program will involve acid rain requirements and early emission reductions from hazardous air pollutant sources. This Federal program is discussed in section VI. of this preamble.

The final section (section VII.) contains the administrative requirements accompanying Federal regulatory actions. These include the topics listed in the preamble outline above.

There is some intended redundancy in this preamble; first because there is a separate summary, but second because a number of issues or topics are related to several regulatory requirements or other topics discussed. In the event the reader focuses on only certain topics, this overlap is intended so as not to ignore a specific issue or subject pertinent to a specific area, just because it is covered elsewhere.

The preamble includes many citations (e.g., (70.6)) to refer the reader to more detail or to the origin of certain requirements. These citation sections will not be followed by their origin such as "of this preamble" or "of Title V." Rather, the reader can recognize the origins of the sections by their nature:

A. Sections of the preamble begin with a roman numeral.

B. Sections of title V of the Act are in the 500's.

C. Sections of the proposed regulations range from 70.1 to 70.11.

D. Sections of the Act are referenced by a three-digit number, such as 112 and 408.

E. Sections of existing EPA regulations generally are preceded by 40 CFR.

This preamble makes frequent use of the term "State," usually meaning the State air pollution control agency which would be the permitting authority. The reader should assume that use of "State" may also include reference to a local air pollution agency or certain Indian tribes. These agencies can either be the permitting authority for the area of their jurisdiction or assist the State or EPA in implementing the title V permitting program. In some cases, the term "permitting authority" is used and can refer to both State and local agencies, when the local agency directly issues permits or assists the State in issuing permits. The term may also apply to EPA, where the Agency is the permitting authority of record.

I. Background and Purpose

The new title V of the Act introduces an operating permits program generally modeled after the NPDES program under the Clean Water Act (CWA). Some of the regulations proposed today are also modeled on NPDES regulations in 40 CFR parts 122, 123, and 124. The EPA, therefore, will generally look to the NPDES program precedent when resolving similar issues under the title V permit program. Part 70 sources must obtain an operating permit; States must develop and implement the program; and EPA must issue permit program regulations, review each State's proposed program, and oversee the State's efforts to implement any approved program, including reviewing proposed permits and vetoing improper permits. When a State fails to adopt and implement its own approvable program, EPA must apply sanctions against the State and ultimately also develop and implement a Federal permit program.

The addition of such a permitting program makes the Act more consistent with other environmental statutes, including the CWA and the Resource Conservation and Recovery Act, both of which have permit requirements. While to date there has not been an express Federal requirement that States have an operating permit program for air, a recent comprehensive survey of existing State permit programs indicates that about 40 State programs issue operating permits to at least construction projects. Over half of the existing State operating permit programs address both new and existing sources and require renewal of permits periodically. Many of these programs appear to match closely the intent of title V in that they have the basic components required by title V for issuing permits, collecting fees, providing for public participation, reopening permits, and issuing permits for a fixed term. The part 70 regulations have been designed to minimize the disruption to current State efforts by offering as much flexibility as is provided by the law, while ensuring that existing (and new) State programs will meet the requirements of the Act.

A primary benefit of the title V permit program is that it will in general clarify which requirements apply to a source in a single document and, thus, should enhance compliance with the requirements of the Act. Currently, a source's obligations under the Act, ranging from emissions limits to monitoring, recordkeeping, and reporting requirements, are in many cases scattered among numerous provisions of the SIP or Federal regulations. In addition, regulations are often written to cover broad source categories and, therefore, it may be unclear which, and how, general regulations apply to a source. Similarly, applicable provisions are sometimes not explicit as to reporting requirements (e.g., when to submit periodic compliance reports to EPA or the States). As a result, EPA often has no easy way to establish whether a source is in compliance with regulations under the Act.

The title V permit program will enable the source, States, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements. Increased source accountability and better enforcement should result. The program will also greatly strengthen EPA's ability to implement the Act and enhance air quality planning and control, in part, by providing the basis for better emission inventories.

Another benefit of the title V permit program is that it provides a ready vehicle for the States to administer significant parts of the substantially revised Federal air toxics program and

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the new acid rain program. This enhances EPA's ability to oversee all programs under the Act. Specifically, the Act requires that States use the permit system to administer the air toxics program. In addition, States will be responsible for reviewing and issuing permits to implement the second phase of the acid rain program (with permitting activities beginning in 1996), and will play a significant role in ensuring compliance with the acid rain requirements in 40 CFR parts 72 through 78 (to be promulgated at a later date).

Finally, an important benefit is that the permit program contained in these regulations will ensure that States have resources necessary to develop and administer the program effectively. In particular, the permit fees provisions of title V will require sources to pay their fair share of the costs of developing and implementing the permit program. To the extent the fees are based on emission levels, the fees will create an incentive for sources to reduce emissions.

II. Implementation Principles

The passage of the amendments of 1990 was a major accomplishment in the protection of public health and the environment in the United States. The new Act sets forth ambitious goals which can only be achieved through effective and expeditious implementation by EPA and State and local governments. Today's proposed rulemaking is one of the first of several important actions that EPA will be taking to accomplish its rule development responsibilities under the Act. The EPA believes that the following principles should guide the design and implementation of title V regulations and related programs.

These principles are necessary to preserve the legislative intent underlying the content of title V. The EPA intends that these principles be appropriately incorporated into all aspects of program development and implementation by both States and EPA. In particular, EPA will employ them when it is responsible for developing rules, overseeing State or local agency programs and permits, or issuing permits. The public is urged to frame its comments on today's proposal keeping in mind the extent to which sections of this proposal are consistent with the various implementation principles outlined below.

A. Ensure Environmental Protection

Congress's basic goal in adopting the title V permit program is to achieve improved air quality by establishing a broad-based tool to aid effective implementation of the Act and to enhance the Agency's ability to enforce the Act. The EPA believes it is important that other implementation objectives stated below complement this objective, not undercut the potential of title V for strengthening air quality management efforts across the country.

B. Incorporate Broad-Based Perspective for Rule Development

The EPA continually seeks a better understanding of the key concerns of those most affected by title V in order to have a broad-based perspective during the regulation development process. With this goal, the Agency hopes to make implementation efforts more effective and to minimize the chances for conflict. Today's proposal was developed with the benefit of insight from important affected parties (including State and local governments, major industries, small businesses, and environmental organizations) which were actively involved in the title V legislative process. The EPA is interested in receiving additional input from these and other interested parties during the public comment period.

C. Maintain an Effective Partnership With State and Local Governments

The EPA recognizes that the bulk of the responsibility for implementing title V falls upon State and local governments. Thus, a key principle in developing today's proposed rules has been to build upon existing operating permit programs and to provide the States with regulatory flexibility wherever possible to maintain existing program elements in implementing title V.

D. Minimize Redundancy in SIP's and Permit Programs

The title V permit program is designed to complement SIP's in achieving improved air quality management across the country. Because operating permits will contain more source-specific details than SIP's, EPA intends that source-specific permit changes be implemented wherever possible solely through the procedures in the permit program rather than through the SIP process. In this way, subject sources and governments will experience less burden and delay than would be associated with a multi-step procedure which includes the more cumbersome SIP revision process.

E. Encourage Early State Program Development

The EPA supports early adoption of the program by States in order that the title V framework enable them to implement more quickly other new Act programs. During the transition period, the EPA intends to assist States with their development of timely title V programs and their efforts to obtain interim program approval.

F. Minimize Small Business Concerns

The Act requires certain small businesses to become regulated for the first time via the requirement to obtain a title V operating permit. The EPA will be sensitive to the impact of these regulations on these sources by phasing-in and streamlining the permitting requirements as appropriate. Where possible, EPA intends to promulgate rules which employ cost-effective permitting techniques, such as general permits, to simplify the permit application and issuance process.

G. Promote Pollution Prevention

The EPA encourages permitting authorities to promote cost-effective pollution prevention alternatives where possible in their permitting activities. Permits can, consistent with the law, be used to define creative activities for shifting to inherently cleaner processes, including the maximum use of performance standards, both in meeting requirements for criteria pollutants and the acid rain program, and in meeting otherwise applicable requirements of section 112 of the Act.

H. Facilitate Use of Market-Based Incentives

The operating permit program is intended to be an effective administrative tool for achieving cost-effective improvements in air quality through market-based principles. Title V operating permits will be used to implement the requirements of title IV of the Act. Acid rain permit requirements must not hinder the effective operation of the allowance trading market. In addition, the title V permit program will be used to facilitate the incorporation of market-based incentives, to the extent they are consistent with the Act.

I. Allow Flexibility in State Programs and Source Permits

Except as necessary to ensure national consistency to support the market-based, acid rain allowance trading system, requirements for title V programs are intended to be flexible enough to allow States a reasonable range of options in designing their State programs for EPA approval. Unnecessary regulatory detail will unduly jeopardize approval of different but effective State and local programs. Sources must also be provided flexibility within their permits. Specifically, they should be allowed to make certain types of changes without having to undergo full permit-modification procedures. This will be especially important to some industries so that their market competitiveness is not jeopardized.

J. Establish Certainty for Permitted Sources

A title V permit should articulate a clear road map of source obligations to inspire confidence in the system. The permit shield provisions should be used by the permitting authority to provide a stable reference point from which to govern the operation of the source until the time of permit renewal, unless there are clear reasons that require an interim reopening of the permit (e.g., to incorporate newly-promulgated standards with near-term compliance dates).

K. Enable Effective and Efficient Information Transfer

The EPA intends that information contained in permits, permit applications, and compliance certification reports (to the extent not protected under laws of confidentiality) be used for several air quality management purposes. The EPA intends to promote consistent data submittals to track progress, consolidate current reporting burdens, and inform affected parties of a source's compliance status relative to its enforceable obligations.

L. Prioritize EPA Oversight on Overall Program Implementation

The EPA takes seriously its new responsibilities for reviewing permits and overseeing State/local program implementation. The Agency understands, however, that State and local governments have administered effective operating permit programs for many years and can be expected to do so in the future without "micro-management" from EPA. Concern has been raised that overuse of EPA's permit veto authority could lead to serious administrative roadblocks for permitting agencies. Within the limitations of its permit review responsibilities as stated in the Act, the Agency intends to place more priority on the oversight of overall program implementation than on the review of noncontroversial, individual permits so long as clean air goals are being achieved.

M. Promote Possibilities for Integrated Permit Programs

The EPA intends that the title V rulemaking provide the basis for opportunities to establish a permit program to consolidate the review of a source's impact with respect to the Clean Air Act and to other environmental media. In particular, the Agency encourages close coordination of the preconstruction and operating permit review programs for air to minimize duplication and delay. Comments are specifically solicited as to how integrated permitting can be promoted and not inhibited by this rulemaking.

N. Promote Simple and Streamlined Regulations

It is EPA's intent to simplify and streamline these regulations to the maximum extent possible. To this end, the Agency solicits comment as to how this proposal might be simplified and/or streamlined.

III. Proposal Summary

A. Applicability

The title V operating permits program requires all part 70 sources to submit permit applications to the appropriate permitting authority within 1 year of the effective date (i.e., date of EPA approval) of the State program. The proposed operating permit program applies to the following sources:

(1) Major sources, defined as follows:

(a) Air toxics sources, as defined in section 112 of the Act, with the potential to emit 10 tons per year (tpy) or more of any hazardous air pollutant, 25 tpy or more of any combination of hazardous air pollutants, or a lesser quantity of a given pollutant if the Administrator so specifies (501(2)(A)).

(b) Sources of air pollutants, as defined in section 302, with the potential to emit 100 tpy or more of any pollutant (501(2)(B)).

(c) Sources subject to the nonattainment area provisions of title I, part D, with the potential to emit pollutants in the following or greater amounts (501(2)(B)):

		TPY
(i)	Ozone (VOC's and NO_x[1])	
	Serious	50
	Transport regions not severe or extreme.	50 (VOC only)
	Severe	25
	Extreme	10
(ii)	Carbon monoxide	
	Serious (where stationary sources contribute significantly).	50
(iii)	Particulate Matter (PM-10)	
	Serious	70

[1] For this purpose, Title I treats volatile organic compounds (VOC) and oxides of nitrogen (NO_x) sources differently. In areas qualifying for an exemption under section 182(f), NO_x sources with the potential to emit less than 100 tpy would not be considered major sources under Part D of Title I. In areas not qualifying for this exemption, NO_x sources are subject to the lower thresholds created by section 182(f). In ozone transport regions, a lower threshold of 50 tpy for VOC sources is created by section 184(b). Because section 182(f) does not refer to section 184(b), the lower threshold in ozone transport regions applies to VOC sources, but not to NO_x sources. Whatever its location, any 100 tpy source would be considered a major source under section 302.

(2) Any other source, including an area source, subject to a hazardous air pollutant standard under section 112.

(3) Any source subject to NSPS under section 111.

(4) Affected sources under the acid rain provisions of title IV (501(1)).

(5) Any source required to have a preconstruction review permit pursuant to the requirements of the prevention of significant deterioration (PSD) program under title I, part C or the nonattainment area new source review (NSR) program under title I, part D.

(6) Any other stationary source in a category EPA designates in whole or in part by regulation, after notice and comment.

A major source is defined in terms of all emissions units under common control at the same plant site (i.e., within a contiguous area that are in the same major group industrial classification). Once subject to the part 70 operating permit program for one pollutant, a source must be reviewed for emissions of all pollutants regulated under the Act from all regulated emissions units located at the plant. As a general rule, all emissions of regulated pollutants are also subject to fee assessment. The program (including combinations of partial programs) applies to all geographic areas within each State, regardless of their attainment status, although for purposes of the acid rain permit program requirements, the program applies only within the contiguous 48 States.

The EPA is authorized, consistent with the applicable provisions of the Act, to exempt one or more source categories (in whole or in part) from the requirement to have a permit if the Agency determines that compliance with the part 70 regulations would be "impracticable, infeasible, or unnecessarily burdensome" (section 502(a)). The EPA may not, however, exempt any "major" or "affected" (i.e., acid rain) source from the permitting requirements. States may, if they wish, allow and/or charge fees for federally-exempted sources.

The EPA believes that coverage at the outset of all the sources described above would be both impractical and infeasible. Therefore, to promote an orderly phase-in of the program, EPA is proposing to defer initially from coverage for 5 years from the date of program approval all sources which are

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not major. Nonmajor sources in nonattainment areas will receive this deferral only if the permitting authority makes a showing that the State can effectively enforce its SIP obligations on such sources without using federally-enforceable operating permits. The Administrator also reserves the ability to determine on a case-by-case basis future inclusion of nonmajor sources which become subject to new section 112 standards.

Any source whose initial applicability is deferred may opt to obtain a permit prior to the end of the 5-year deferral period. All deferred sources will be required to submit permit applications by the end of the 5-year deferral period, unless they are sources or source categories that receive a continued exemption (i.e., EPA determines that permitting such source categories would be impracticable, infeasible, or unnecessarily burdensome) in a future rulemaking.

B. State Permit Program Submittals and EPA Approval

Title V requires EPA to promulgate regulations establishing the basic elements of a State permit program. State and local pollution control agencies or interstate compacts may implement provisions of title V, as long as all geographic areas within each State are covered by a permit program. (As mentioned, reference to the "State" will include reference to local agencies where appropriate which would allow granting of a partial program for a specific geographic area within a State.) The EPA oversees development of State programs and enforces the obligation to implement a program in each State. Should a State fail to develop a permit program, the EPA must implement a program for that State (501(4), 502(d)(1), and 302(b)).

(1) Minimum Program Requirements

Within 1 year of enactment of the 1990 Amendments (November 14, 1991), EPA must promulgate regulations establishing the minimum elements of a State operating permit program. These regulations must include the following elements:

(a) Requirements for permit applications, including standard application forms and criteria for determining the completeness of applications (502(b)(1)).

(b) Monitoring and reporting requirements (502(b)(2)).

(c) A permit fee system (502(b)(3)).

(d) Provisions for adequate personnel and funding to administer the program (502(b)(4)).

(e) Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act (502(b)(5)(A)).

(f) Authority to terminate, modify, or revoke and reissue permits "for cause."

(g) Authority to enforce permits, permit fee requirements, and the requirement to obtain a permit, including civil penalty authority in a maximum amount of not less than $10,000 per day for each violation, and "appropriate criminal penalties" (502(b)(5)(E)).

(h) Authority to assure that no permit will be issued if EPA timely objects to its issuance (502(b)(5)(F)).

(i) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete and for processing applications; for public notice, including offering an opportunity for public comment and a hearing; for expeditious review of permit actions, and State court review of the final permit action (502(b)(6)).

(j) Authority and procedures to provide that the permitting authority's failure to act on a permit or renewal application within the deadlines specified in the Act (section 503 and the deadlines for permitting under acid rain provisions in title IV) shall be treated as a final permit action solely to allow judicial review by the applicant or anyone else who participated in the public comment process to compel action on the application (502(b)(7)).

(k) Authority and procedures to make available to the public any permit application, compliance plan for noncomplying sources, permit, emissions or monitoring report, and compliance report or certification, subject to the confidentiality provisions similar to those of section 114(c) of the Act (502(b)(8)); the contents of the permit itself are not entitled to confidentiality protection (503(e)).

(l) Provisions to allow operational flexibility at the permitted facility (502(b)(10)).

(2) State Program Development.

Within 3 years of enactment (2 years after EPA is obligated to issue its permit program regulations), the Governor of each State shall submit to EPA a permit program meeting the requirements of title V. A State may submit its current or proposed program to EPA for approval any time after part 70 rules become final.

The Governor must also submit a legal opinion from the attorney general, attorney for those State air pollution control agencies with independent legal counsel, or the chief legal officer of an interstate agency stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out the program (502(d)(1)). The EPA encourages early action by each State to evaluate the potential of its existing enabling legislation to implement title V and to take additional actions, as needed, to ensure a timely and approvable program submittal.

Several States may need new legislative authority in a number of areas in order to fulfill the requirements of the Act, including (but not limited to): Authority to charge, collect, retain, and expand adequate permit fees, and to collect civil penalties of a maximum amount of at least $10,000 per day per violation. The EPA intends to assist States in identifying and obtaining any required new authorities.

(3) The EPA Review of Program Submittals.

Within 1 year after receiving the State's program, EPA shall approve or disapprove it, in whole or in part. The EPA may approve the program to the extent it meets the requirements of the Act and EPA's permit program regulations.

If EPA disapproves the program, or any part of it, EPA must notify the Governor of any revisions necessary for EPA approval. The State then has 180 days from this notice to revise and resubmit the program (502(d)(1)). When EPA approves a program, EPA must suspend issuance of Federal permits, but may retain jurisdiction over permits still under administrative or judicial review (502(e)).

(4) Interim Program Approvals.

If a program is not fully approvable, EPA may grant interim approval to a permit program, so long as the program "substantially meets" the requirements of title V. Criteria for satisfying the "substantially meets" test are proposed to include: (1) The commitment and capability to collect fees adequate to cover the costs of the State permitting program, (2) the legal authority to assure that affected sources comply with all applicable requirements under the Act, (3) fixed permit terms not to exceed 5 years, (4) the opportunity for public participation in the permit issuance process, (5) the opportunity for EPA to review and object to the issuance of any permit, and (6) the requirement that a proposed permit will not be issued if EPA objects to its issuance.

In the notice of final rulemaking granting interim approval, EPA must specify the changes the State must make

to receive full approval. The EPA may grant interim approval, which may not be renewed, for a period of up to 2 years. During the interim approval period, the State is protected from sanctions for failure to have a program and EPA is not obligated to promulgate a Federal permit program in the State (502 (g) and (d)(2)–(3)). Permits issued under a program with interim approval have full standing with respect to title V and the 1-year time period for source submittal of permit applications begins upon interim approval as does the 3-year time period for processing the initial permit applications discussed in the following section.

(5) State Permit Review.

As noted above (III.B.(4)), sources are required to submit permit applications to the permitting authority within 1 year of program approval, whether full or interim. For title IV (acid rain) sources, however, specific superseding deadlines are provided for the submission of applications for Phase II permit applications, which will not be due to States until January 1, 1996 (408(D)(2)). For the initial round of permit applications, the permitting authority must establish a phased schedule for processing permit applications submitted within the first full year after program approval. This schedule must assure that the permitting authority will act on at least one-third of the permits each year over a period not to exceed 3 years after approval (interim or full) of the program (503(c)). The EPA urges States to encourage early submittals of complete applications.

States are required to issue permits under the acid rain program by December 31, 1997 (408(D)(3)). For most States, this deadline will coincide roughly with the second year of initial permit action. Additionally, expedited review and issuance procedures may be required for permit applications for sources pursuing compliance extensions for early reductions of hazardous air pollutants under section 112(i)(5).

After acting on the initial round of applications, the permitting authority must act on a completed application and issue or deny a permit within 18 months after receiving the complete application. The permitting authority should also establish reasonable procedures to prioritize review of permit applications, especially in the case of applications for new construction or modifications as defined in Title I.

C. The EPA Program Oversight

Federal authority for oversight of State operating permit programs is described in § 70.10. Such oversight activities include situations where a State fails to submit an approvable permit program, or EPA determines that a permitting authority is inadequately administering and enforcing a permit program or an approved permit fee program.

(1) State Failure to Submit A Program

The EPA must apply sanctions to a State where the Governor has not submitted a program within 18 months after the deadline for submittal, or where 18 months have passed since EPA disapproved the program in whole or in part (502(d)(2)(B)). The sanctions are the same as those in Title I: A highway funding cutoff, and a two-to-one offset ratio for new or modified sources (179(b)). The EPA may apply the offset ratio sanction only in areas where the failure to submit or disapproval relates to an air pollutant for which the area is designated nonattainment. One sanction may be applied any time during the 18-month period following the date required for program submittal or program revision (502(d)(2)(A)). The EPA must apply one of these sanctions after the above-referenced periods elapse. If the EPA finds a lack of good faith effort on the part of the State, both sanctions are to apply until the State comes into compliance with the requirements of title V (179(a)(4)). If the State has no approved program 2 years after the date required for submission of the program, EPA must promulgate, administer, and enforce a Federal permit program for the State (502(d)(3)).

If the EPA determines that a State's fee program is not approvable or that a permitting authority is not adequately administering an approved fee program, the EPA will promulgate under part 71 a Federal permit program which the Agency will administer and enforce where the State fails to submit, correct, or implement its program. The Agency has the authority to collect reasonable fees from the permittees to cover the costs of administering the program. Any source that fails to pay fees shall be subject to additional penalties. Fees, penalties, and interest collected by the EPA will be deposited in a special U.S. Treasury fund for permitting activities and held for future appropriation.

(2) State Failure to Implement a Program

Whenever EPA determines that a permitting authority is not adequately administering and enforcing a program, EPA must notify the State (502(i)(1)). If EPA determines that the failure to administer and enforce the program persists 18 months after EPA's notice to the State, EPA must apply the same sanctions in the same manner as required for a failure to submit an approvable program (502(i)(2)). The EPA has the option of imposing any one of the sanctions before the 18-month period has passed (502(i)(1)). If the State has not cured the failure to administer and enforce the program within 18 months after EPA's notice, EPA must promulgate, administer, and enforce a Federal permit program within 2 years after the notice to the state (502 (i) (4)).

D. Complete Permit Applications

Permit Applications Each State program must establish specific criteria to be used in defining a complete permit application. A complete application is one that the permitting authority has determined to contain all the necessary information needed to begin processing the permit application. The permitting authority can determine, however, that the application is not complete if the source fails to provide timely updates to the application that the permitting authority needs to issue the permit within the specified deadlines.

The permitting authority must provide notice to the source when a complete application has been received. In the event that no notice is provided to the source within 30 days after receipt of the application by the permitting authority, the application shall be deemed complete.

A source which files a timely and complete application for a permit or a renewal will not be liable for failure to have a permit if the permitting authority delays in issuing or reissuing the permit, provided the delay in issuing the permit was not due to the applicant's failure to respond in a reasonable and timely manner to written requests from the permitting authority for additional information needed to evaluate the application. This protection also applies to sources requiring NSR permits. They must have filed a complete application for a title V operating permit and have a preconstruction permit before operating the new source or major modification (503(d)). In general, a complete application must be submitted according to the transition schedule approved within the program and in a timely way for subsequent renewals. "Timely" for renewals is proposed to mean 18 months prior to expiration of the permit, unless some other time is approved by the Administrator. Correspondingly shorter times might be appropriate when the fixed term of the permit is for less than 5 years or where the permitting authority is obligated to act on permit renewals in less than 18 months. In no event will EPA approve a time period which is shorter than 6 months before permit expiration.

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All complete applications must contain information which identifies a source, its applicable air pollution control requirements, the current compliance status of the source, the source's intended operating regime and emissions levels, and must be certified as to their truth, accuracy, and completeness by a responsible official after making reasonable inquiry. Each permit application must, at a minimum, include a completed standard application form (or forms) and a compliance plan, which describes how a noncomplying source plans to achieve all applicable air quality requirements under the Act. The plan must include a schedule of compliance and a schedule for the source to submit progress reports to the permitting authority no less frequently than every 6 months. All sources must submit a compliance certification report at least once a year. Parts 72 through 78 will contain specific requirements for acid rain affected sources regarding compliance schedules, progress reports, and compliance certifications.

The minimum data elements proposed for inclusion in all standard application forms, as well as the basic requirements for compliance plans for noncomplying sources, are presented in § 70.5 of the regulations. With the exception of certain Federal programs (e.g., acid rain), EPA will not require that any specific form be used by States as long as the minimum data elements are provided to EPA. However, the Agency will encourage the use of certain model forms as a preferred way to meet the requirements of § 70.5.

Additional information may be required from some subject sources. Those located in nonattainment areas under title I, part D of the Act may be required to fulfill the emissions statement requirements for certain sources of VOC's and NO_x. Similarly, sources of hazardous air pollutants subject to section 112 which are attempting to comply with alternative emissions limits will also need to submit additional information.

E. Permit Content

The State regulations required under Title V and proposed in § 70.6 must assure that permits meet all applicable requirements of the Act and include the following:

(1) A fixed term, not to exceed 5 years (502(b)(5)(B)), except that affected sources under title IV must have 5-year fixed terms (408(a)) and solid waste incinerators under section 129(e) must have up to a 12-year fixed term.

(2) Limits and conditions to assure compliance with all applicable requirements under the Act, including requirements of the applicable SIP (504(a)) and title IV.

(3) A schedule of compliance for noncomplying sources, which is defined as a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with applicable requirements under the Act (504(a) and 501(3)).

(4) Inspection, entry, monitoring, compliance certification, recordkeeping, and reporting requirements to assure compliance with the permit terms and conditions, consistent with any monitoring regulations that EPA promulgates under section 504(b) and title V (504(c)). Nothing in this regulation should be read to require continuous emissions monitoring in situations where it is not otherwise prescribed.

(5) A provision describing conditions under which any permit for a major source with a term of 3 or more years must be reopened to incorporate any new standard or regulation promulgated under the Act (502(b)(9)).

(6) Provisions under which the permit can be revised, terminated, modified, or reissued for cause.

(7) Provisions ensuring operational flexibility within a permit so that certain changes can be made within a permitted facility without a permit revision, provided that no "modification" (as defined in title I of the Act) would occur and a notice is provided to the permitting authority at least 7 days in advance where the permit would not allow such changes (502(b)(10)).

(8) A provision that nothing in the permit or compliance plan issued pursuant to title V of the Act shall be construed as affecting allowances (408(b)).

The operational flexibility provision contained in title V must be implemented carefully and fairly so that a source can respond quickly to changing business opportunities while, at the same time, the permitting authority is assured that the source will meet all the applicable requirements of the Act. Before considering EPA's proposed provisions on operational flexibility, however, it should be recognized that the nature of a permit is to allow anything that it does not expressly prohibit. That is, a source may not only do what its permit specifically allows, but also what the permit terms do not specifically prohibit. Thus, when § 502(b)(10) speaks of changes that do not result in exceedances of the emissions allowable under the permit, this means any change that does not violate an express prohibition in the permit is allowed. Several approaches to achieving this flexibility in permits are described in section IV.F.(5). The EPA solicits comments on these and any other suggested approaches.

F. Permit Issuance and Review

Proposed regulations concerning the processes for permit issuance, review, renewal, revision, and reopening are found in § 70.7. Briefly, these include:

(1) Timing of Permit Application, Review, and Issuance

Sources required to have a permit must submit a complete permit application and compliance plan (for noncomplying sources) to the permitting authority within 12 months of the effective date of the State program. The permitting authority may designate a period of less than 12 months for initial submission of applications. Permit applications and compliance plans required under title IV of the Act (acid rain) must be submitted on a schedule different from those required under title V. Phase II sulfur dioxide (SO_2) permit applications and compliance plans must be submitted to the States by January 1, 1996 (408(d)(2)). States must act on these applications by December 31, 1997 (408(d)(3)). These applications and compliance plans will be binding on the source until a permit has been issued. Applications with respect to NO_x under title IV will be due January 1, 1998.

(2) Permit Notification to EPA and Affected States

The permitting authority must provide notice to certain States and EPA of permit applications received and proposed permits. It must submit to EPA the following:

(a) The application for any permit, renewal, or revision, including any compliance plan, or any portion EPA determines it needs to review the application and permit effectively; and

(b) Each permit proposed to EPA and each permit issued as a final permit by the State (505(a)(1)).

In regard to notification of States, the permitting authority is required to notify all affected States of each permit application and each permit submitted for public comment. The authority must also notify each State within 50 miles of the applicant source. The permitting authority must give all such States an opportunity to submit written recommendations for the permit. If the authority refuses to accept those recommendations, it must provide its reasons for refusal in writing (505(a)(2)).

The EPA may waive its own and neighboring States' review of permits for any category of sources, except major sources, either when approving an individual program, or in a regulation applicable to all programs. The EPA may also waive its own right to review, but maintain the requirement for a State to notify neighboring States (505(d)). During phase II of the acid rain program, the Agency does not intend to waive its own right to review affected sources.

(3) The Agency Review and State Response

The EPA must by law object to any permit that would not be in compliance with the applicable requirements of the Act, including the applicable implementation plan. If EPA objects within 45 days after receiving either the proposed State permit or the notice that the permitting authority has refused to adopt a neighboring State's recommendations for the permit, the permitting authority must respond to EPA in writing. The EPA must provide the permitting authority and permit applicant a statement of reasons for the objection (505(b)(1)).

The permitting authority may not issue the permit with respect to title V if EPA objects, unless it revises the permit to meet EPA's objections. If the authority has already issued the permit, EPA will modify, terminate, or revoke the permit, and the permitting authority must reissue it to meet EPA's objection (505(b)(3)). The permitting authority has 90 days after EPA's objection to revise the permit (unless the permitting authority does so first). If the permitting authority fails to do so, EPA must issue or deny the permit (505(c)).

(4) Judicial Review and Public Petition

An approvable program must provide for judicial review in State court of the permit action whether the review is obtained by the applicant, anyone who participated in the public comment process, or any other person who could obtain judicial review of the action under applicable law (502(b)(6)).

Within 60 days after the expiration of the 45-day EPA review period, any person may petition the Administrator to veto a permit if EPA fails to object. The objections in the petition must have been raised during the comment period on the permit provided by the State issuance process, unless the petitioner shows that it was impracticable to raise the objections at that time. The petition shall not postpone the effectiveness of a permit that has been issued.

The Administrator shall grant or deny a petition within 60 days after it is filed. The EPA must issue an objection if the petitioner demonstrates to the satisfaction of the Administrator that the permit is not in compliance with the Act, including the applicable SIP and title IV requirements. If the Administrator denies the petition, the denial is subject to review in the Federal Court of Appeals under section 307 (505(b)(2)).

Where EPA objects to a permit and the State fails to meet EPA's objection, EPA must then issue or deny the permit. The Federal Court of Appeals may review EPA's final action in issuing or denying the permit under section 307. Title V provides that EPA's objection to a permit is not subject to judicial review until EPA takes final action on the permit (505(c)).

(5) Permit Shield and Reopenings

Section 504(f) of the Act defines the permit shield provision of title V, which enables States and the Administrator to provide sources with greater certainty as to their legal obligations under the Act. This section establishes that the permit may provide that compliance with the permit shall be deemed compliance with all other applicable provisions of the Act, if the applicable requirements of such provisions are included in the permit, or if the permitting authority, in acting on the permit, determines that such other provisions (which shall be referred to in such determinations) are not applicable and if this determination or a concise summary thereof is included in the permit. The EPA encourages States to employ the "permit shield" routinely to help stabilize the permit process and give greater certainty to the regulated community.

The EPA is soliciting comment on the potential scope and effect of the permit shield. It is possible to read the shield provision narrowly, limiting its protection to those requirements the permit explicitly addresses. The EPA believes, however, that the shield provision should be interpreted broadly, thus protecting a source from enforcement of a whole class of Act requirements if the permit addresses any one of those requirements.

Under either interpretation, EPA may limit the scope of the permit shield by rule. While EPA is proposing a broad interpretation of the shield in today's notice, the Agency intends to prohibit use of the shield in cases where the source initiates changes that result in requirements becoming applicable to the source beyond those contained in the permit (until such changes are later incorporated into the permit) or where an applicable requirement is omitted from a permit. In no event can any source seeking to obtain or renew a part 70 permit be shielded from enforcement action that results from violations of any applicable requirements (including orders and consent decrees) that occurred before the permit was issued or from requests for additional information pursuant to section 114 of the Act.

Any approvable program, at a minimum, must require that the permitting authority will revise all permits with terms of 3 or more years to incorporate applicable requirements under the Act that are promulgated after issuance of the permit. Such revisions must be made using the notice and comment procedures for permit issuance, and must be made within 18 months after the promulgation of the new requirement. No revision is required if the effective date of the requirement is after the expiration of the permit term (502(b)(9)). The EPA is proposing to interpret the provision as being applicable to major source permits with a remaining life of 3 or more years.

Approvable programs also must require that the permitting authority may terminate, modify, or revoke permits for cause (502(b)(5)(D)). "Cause," for example, may exist when the permit contains a material mistake made in establishing the emissions standards or limitations, or in other permit requirements. For purposes of acid rain, permit revision procedures will be governed by part 72.

Phase II acid rain permits will need to be reopened to incorporate NO_x provisions, which are not due until 1998. Excess emission offset plans and all allowance allocations and transfers, however, shall be deemed incorporated into each unit's permit, upon recordation or approval by the Administrator, without further permit revision and review.

If EPA finds that cause exists to reopen a permit, EPA must notify the permitting authority and the source. The permitting authority has 90 days after receipt of the notification to forward to EPA a proposed determination of termination, modification, or revocation and reissuance of the permit. The EPA may extend the 90-day period for an additional 90 days if a new application or additional information is necessary. The EPA then may review the proposed determination under the review procedures of permit issuance. If the permitting authority fails to submit a determination or if EPA objects to the determination, EPA may terminate, modify, or revoke and reissue the permit. The EPA must provide notice and "fair and reasonable procedures" when it terminates, modifies, or revokes and reissues a permit (505(e)). The Agency proposes that any permit

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reopenings accomplished by the permitting authority will supersede any applicable portion(s) of a permit shield that is in effect.

(6) Permit Revisions

Section 502(b)(6) does not define with precision how permit revisions are to be processed, thus leaving EPA discretion for construing this provision, as explained below. The EPA is today proposing three types of permit revisions that are needed to amend the part 70 permit to accommodate operational changes which do not qualify under the operational flexibility provisions of section 502(b)(10) (IV.F.(5)) as previously discussed. Instead, they trigger the need for revision to permits prior to their renewal.

The first class of permit revisions consists of minor permit amendments. These are changes which go beyond the activities allowed in the original permit that increase the total emissions allowed under the permit (for any regulated pollutant from emissions units addressed by the permit), but do not rise to the level of modifications subject to title I NSR procedures and do not violate any applicable Federal requirements.

Under such a "fast track" process for minor permit amendments, States are free to adopt procedures to allow such changes to take effect automatically after a specified period of time (no less than 7 days), as long as the permitting authority does not object during this period. The second class of permit revisions are administrative permit amendments. These changes are either insignificant ones which adjust details not important to air quality (e.g., change in source name) within part 70 permits or changes which have been already reviewed and processed under new source review procedures approved into the SIP. Changes qualifying as administrative permit amendments can be administratively incorporated into the operating permit by the permitting authority.

The third class of permit revisions is permit modifications. A permit modification is a revision to a part 70 permit that meets the requirements of section 707(d) of this part. A permit modification is subject to the same procedures required for initial permit issuance, including EPA review and the opportunity for public comment and hearing. After receipt of an application for a modified permit, permitting authorities will focus their efforts on review of the specific changes indicated in the application. However, they must also evaluate the application to confirm that it assesses the impacts of such changes on other aspects of the source's operations and assures continued ability to comply with all applicable requirements of the Act.

Sources subject to requirements of the acid rain program must hold allowances to cover their emissions of SO_2. These sources will have conditions in their permits prohibiting emissions exceeding the number of allowances held. Sources holding emissions allowances under the acid rain program may buy, sell, or trade those allowances. Allowance transactions registered by the Administrator will cause automatic amendment of the source's permit as a matter of law, without following either the permit modification or amendment procedures described above. Regulations governing allowance trading will be promulgated at 40 CFR part 73.

(7) Permit Renewal

Each permit is to have a fixed term not to exceed 5 years (except that permits for municipal waste combustors may have terms up to 12 years). Renewal permits are subject to the same requirements as those applying to initial permits, including the requirement for a timely and complete application and compliance plan for noncomplying sources and processing by the permitting authority within 18 months of a complete application.

The source will be able to operate after expiration of the permit only if it has submitted a timely and complete application for a new permit, as mentioned in the previous discussion on complete applications (III.D.). To maintain the protection afforded by having a complete application, the source applicant still must respond in a reasonable fashion upon written request by the permitting authority to provide additional information needed to develop and issue the permit. Should a permit expire before a source submits a complete application, the source's right to operate is terminated unless and until a complete application is filed with the reviewing authority (503(d)), subject to a grace period where only administrative penalties would be applicable. The source is then subject to enforcement action (for operating without a title V permit) for any period of time that it has operated without a renewed permit and without having submitted a complete application. The application shall be deemed to be complete 30 days from the date of its submission to the permitting authority, unless the permitting authority has already determined that the application is not complete. In addition, consistent with the established precedent in the NPDES program under the CWA, EPA is proposing that, except where inconsistent with State law or as provided in part 72 for the acid rain portions of a permit, the conditions of a permit where the fixed term has expired still remain enforceable until they are replaced by those in a reissued permit.

G. Fee Demonstration

A key requirement of State operating permit programs is that States establish an adequate permit fee program. Regulations concerning fee programs and appropriate criteria for determining the adequacy of such programs are set forth in § 70.9.

An approvable permit program must require the fee payer to pay an annual fee (or the equivalent over some other period) sufficient to cover all "reasonable (direct and indirect) costs" required to develop and administer the permit program (502(b)(3)(A)). The EPA proposes to interpret reasonable costs to include the costs of administering most air control program activities which involve sources subject to title V. All fees collected by a permitting authority under title V must be used solely to support the permit program (502(b)(3)(C)(iii)). The EPA is proposing that these fees must cover a broad range of costs, including:

(1) Reviewing and acting upon any application.

(2) Implementing and enforcing the permit, including any permit issued before enactment of title V, but not any court costs or other costs associated with an enforcement action.

(3) Emissions and ambient monitoring, including continuous emissions monitors (CEMS) (where applicable) and inspections.

(4) Preparing generally applicable regulations or guidance.

(5) Modeling analyses and demonstrations.

(6) Preparing inventories and tracking emissions (502(b)(3)7(A)(i)–(vi)).

(7) Permit-related functions performed by air pollution control agencies which do not issue permits directly.

(8) Development and administration of the State small business stationary source technical and environmental compliance assistance program as it applies to part 70 sources.

(9) Information management activities to support and track permit applications, compliance certifications, and related data entry.

The program must presumptively collect a fee amount from all permitted sources equal to at least $25 per ton (1990 baseline) for the actual emissions of each regulated pollutant, with the exception of carbon monoxide (502(b)(3)(B) (i) and (ii)) and with the further exceptions that the State is not required to count emissions of any pollutant from any one source in excess of 4,000 tpy (502(b)(3)(B)(iii)) or if these emissions are already accounted for within the emissions of another regulated pollutant (although the State is not precluded from doing so). The program need not collect the $25 per ton amount if it can provide a demonstration that a lesser amount will adequately support the direct and indirect costs of the program (502(b)(3)(B)(iv)). Conversely, States are free to use different approaches or charge more than $25 per ton and must do so if additional funds are necessary to cover the costs of the program. In any event, the permitting authority must provide for a periodic accounting of how the collected fees were used to support the program, and how they meet the presumptive minimum described above.

The EPA interprets title V to offer permitting authorities flexibility in setting variable fee amounts for different pollutants or different source categories, as long as the sum of all fees collected is sufficient to meet the reasonable direct and indirect costs required to develop and administer the provisions of title V of the Act, including section 507. The fee amount is to be increased each year according to the Consumer Price Index (CPI) at the time the index is published as defined by section 502(b)(3)(B)(v). In addition, the EPA interprets title V to direct States, at a minimum, to recover costs related to meeting Federal requirements, including the requirements of the applicable State plan that implements the relevant requirements of the Act. Nothing in this section is intended to provide States any additional authority (beyond what is otherwise authorized under State law) to levy fees beyond the amount necessary to offset the program costs of title V.

Section 408(c)(4) of the Act provides that during the years 1995 through 1999, no fee shall be required to be paid under section 502(b)(3) or under section 110(a)(2)(L) with respect to emissions from any unit which is an affected unit during Phase I of the acid rain program. The Agency interprets this provision to mean that EPA may not collect fees from Phase I-affected sources prior to the year 2000, but that States are not precluded from collecting fees from these sources for permitting activities pursuant to other requirements of the Act.

If EPA determines that a State's fee program is not approvable, or that a State is not adequately administering or enforcing an approved fee program, EPA may collect reasonable fees from permittees. Such fees shall be designed solely to cover EPA's costs of administering the Federal permit program (502(b)(3)(C)(i)). Sources failing to pay a fee assessed by EPA must pay a penalty of 50 percent of the fee amount, plus interest (502(b)(3)(C)(ii)). The EPA must deposit federally-collected fees, penalties, and interest in a special Treasury fund, subject to appropriation, to carry out EPA's permitting activities.

H. Permit/SIP Relationship

The SIP remains the basis for demonstrating and ensuring attainment and maintenance of the national ambient air quality standards (NAAQS). The permit program collects and implements the requirements contained in the SIP as applicable to the particular permittee. Since existing SIP's contain all relevant present and past requirements, proper implementation of the permit program will ensure that all SIP provisions applicable to a particular source be defined, clarified, interpreted (as necessary), and collected into a single document. The applicable requirements would include any recent SIP changes, whether as a result of a State or local SIP revision or of a Federal implementation plan (FIP) action by EPA. Where appropriate, EPA intends to promote the implementation of the permit program through the use of model permits for critical source types. Moreover, EPA proposes a broad interpretation of the shield, which requires that States with areas under a SIP call provide permitted sources a shield from compliance with any new SIP requirements in a manner consistent with how the State will meet any outstanding SIP call.

As previously discussed, title V affords reasonable operational flexibility to subject sources. The relationship between title V permits and SIPs is a key factor in determining the extent to which operational flexibility is available to sources, since each permit, in part, must assure compliance with the applicable implementation plan. EPA recognizes that it will take time to complete the transition from a regulatory system where SIPs are the primary tool for implementing and enforcing the Act, to one where operating permits ultimately assume primary responsibility for implementation and enforcement. Elsewhere in today's proposal, the EPA takes comment on ways to ensure a smooth transition to increasingly general, and thus more flexible, SIPs, combined with more detailed permits specifying the enforceable operating limits applicable to subject sources.

Permits issued pursuant to title V are not part of the SIP, but they, like SIP's, are federally-enforceable. Where reliance on tighter conditions found in permits is critical to satisfy an applicable requirement of the Act, the SIP demonstration must recognize the new permit limits in context of ensuring attainment and maintenance of the NAAQS and any other interim requirements to make reasonable further progress. At the option of the State, this might involve the periodic incorporation of these limits into the SIP to ensure their permanence. The EPA will allow, to the extent possible, batch submittals and/or expedited processing procedures for incorporation of these limits into the SIP. This will include the use of the SIP processing reforms announced in 54 FR 2214, January 19, 1989.

Today's proposal also solicits comment on ways to accomplish an upgrade of the SIP demonstration (relative to the results of the permit process) without making the SIP's so detailed as to limit future permit changes at affected sources. One concept proposed for comment would allow, as a substitute for having to incorporate even tighter permit requirement into the SIP, a single broad SIP provision. This provision would reflect the aggregate effect of tighter limits achieved in the permit program, but only to the extent necessary to demonstrate attainment and maintenance of the NAAQS or to meet any other requirement related to Reasonable Further Progress.

I. New Source Review/Title V Relationship

Decisions made under the NSR and/or PSD programs (e.g., best available control technology (BACT)) define applicable SIP requirements for the title V source and, if they are not otherwise changed, can be incorporated without further review into the operating permit for the source. The title V program is not intended to interfere in any way with the expeditious processing of new source permits. The permitting authority is required to have reasonable procedures and resources to assign priority to action on permits for new construction or modification (503(c)).

J. Small Businesses

The EPA has given serious consideration in this rulemaking to minimizing any undue impacts on small businesses. Accordingly, except for acid rain sources, EPA is proposing to defer initially the applicability from the

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permitting program of all nonmajor sources which would have been otherwise subject to title V provisions. These sources are believed to be disproportionately small businesses. The proposed exception to this deferral is for sources in nonattainment areas, where permitting of nonmajor sources may be deferred only if the permitting authority makes a showing that such action will not adversely affect the State's ability to meet its SIP obligations under the Act. The EPA would continue the permitting deferral for certain nonmajor sources if permitting them is demonstrated by EPA to be impracticable, infeasible, or unnecessarily burdensome in a future rulemaking.

For those small businesses still required to obtain, or those opting to obtain, a permit, and for other appropriate source categories, EPA is promoting the use of general permits where possible. A general permit is a single permitting document which can cover a category or class of many similar sources. Public notice and an opportunity for a public hearing must be provided by the permitting authority when considering issuance of a general permit (504(d)), but not when the individual sources subsequently submit requests for coverage and are evaluated for a permit reflecting the terms of the general permit. The permit issuance process for eligible sources can thus be greatly simplified which substantially reduces the administrative burden on both sources and the permitting authority.

Section 507 requires States to establish a small business stationary source technical and environmental compliance assistance program. The program must be adopted as part of the SIP consistent with sections 110 and 112. The States must submit the proposed program within 2 years after enactment of title V (507(a)). The State must also establish a Compliance Advisory Panel to monitor implementation of the program (507(e)).

The program must contain the following provisions for small business stationary sources:

(1) Mechanisms for developing information concerning compliance methods and programs to encourage lawful cooperation among such sources.

(2) Mechanisms to assist such sources with pollution prevention and accidental release detection and prevention.

(3) A State ombudsman for such sources to aid in implementation of the Act.

(4) A compliance assistance program to help such sources determine applicable requirements and receive permits.

(5) Mechanisms to assure that such sources receive notice of their rights under the Act.

(6) Mechanisms to assure that such sources are informed of their obligations under the Act, including referrals to qualified auditors.

(7) Procedures to consider requests from such sources to modify work practice or technological compliance methods, or the milestones for implementing such methods. Such requests would be based on the source's technological and financial capability. All such modifications must comply with the Act's requirements, and Federal regulations may only be modified if the regulation provides for the modification (507(a)(1)–(7)).

The EPA must establish a program for small business stationary sources within 9 months after enactment which must (1) assist the States in developing their programs, (2) issue guidance about alternative control technologies and pollution prevention methods, and (3) in States that fail to adopt a program, implement the requirement to assist such sources in determining applicable requirements and receiving permits (507(b)). The EPA must also have a Small Business Ombudsman to monitor implementation of the program (507(d)). Other oversight procedures are contained in title V to ensure the effectiveness of this SIP-based program.

To qualify for assistance from these programs, a source must meet all the following conditions:

(1) Be owned or operated by a person employing 100 or fewer individuals.

(2) Be a small business under the Small Business Act.

(3) Not be a major stationary source.

(4) Not emit 50 tons per year or more of any regulated pollutant.

(5) Emit less than 75 tpy of all regulated pollutants (507(c)(1)).

States may also include a source that is a major stationary source provided that the source does not emit more than 100 tpy of all regulated pollutants combined (507(c)(2)). The EPA or the State may exclude from the program any category of sources that has sufficient technical and financial capabilities to meet the requirements of the Act without the program. The EPA and the State must consult with the Small Business Administration and provide notice and opportunity for comment on such exclusions (507(c)(3)).

The State or EPA may reduce any fee required under the Act for small business stationary sources (507(f)). When developing regulations or control technique guidelines (CTG's) which require CEMS, EPA must consider the appropriateness of requiring CEMS at such sources. This provision does not apply to CEMS under the acid rain provisions of title IV (507(g)). The EPA must also consider the size, type, and technical capabilities of such sources when developing CTG's (507(h)).

K. Relationship with Section 112 (Air Toxics)

The operating permit program will implement existing section 112 standards for subject sources of hazardous air pollutants, as well as future standards to be promulgated under section 112 which describe requirements for the use of MACT, generally available control technology (GACT), and any technology used to reduce unreasonable residual risk. As noted earlier, a major source under section 112 is defined as any stationary source (or group of stationary sources) located in a contiguous area and under common control which has the potential to emit, after controls, 10 tpy or more of any hazardous air pollutant, 25 tpy or more of any combination of these pollutants, or a lesser quantity of a given pollutant if the Administrator so specifies.

Section 112(l) of the Act outlines a program for State implementation of section 112. The EPA proposes that the procedural requirements in section 112(l) to review and approve/disapprove State programs will be met by the promulgation of part 70, specifically as described in section V.E. of the preamble.

The State permit program submittal is required to contain a legal opinion affirming the adequacy of existing legal authority to implement and enforce certain section 112 provisions. Authority is needed to accept delegation of authority to implement and enforce MACT standards; to develop and enforce case-by-case determinations of MACT for new, reconstructed, or modified sources where no applicable emissions limitations have been yet established (112(g)); and to develop and enforce case-by-case determinations of MACT where EPA fails to issue a standard for a major source category or subcategory within 18 months of the scheduled promulgation date (112(j)).

The operating permit program will also be the principal long-term mechanism for implementing alternative emissions limitations for sources which demonstrate that they have achieved reductions of 90 percent or more in emissions of hazardous air pollutants, or reductions of 95 percent or more in emissions of particulate hazardous

pollutants. Existing sources which make sufficient early reductions will receive a 6-year extension from the compliance date for meeting the otherwise applicable standard (2(i)(5)).

L. Relationship With Title IV (Acid Rain)

Title IV mandates a two-phased acid rain control program which will be implemented, as in the case of other Act requirements, through title V operating permits. The requirements of part 70 will apply to the permitting of affected sources under the acid rain program, except as modified in 40 CFR parts 72 through 78, pursuant to title IV (506(b)). Compliance with the acid rain program requirements in parts 72 through 78 will not exempt or exclude the owner or operator of any source subject to those requirements from compliance with any other applicable requirements of the Act (403(f)).

Title IV sets forth certain permitting requirements that supplement the title V requirements addressed by today's proposal. Places where the acid rain permitting program may differ from the title V operating permit program have been highlighted, and some specific statutory requirements under title IV are included in this proposal. Most specific requirements of the acid rain permit program will be established in a separate rulemaking, with final rule promulgation 18 months after enactment. It is contemplated that the acid rain permit program rules will be promulgated at 40 CFR part 72. Other requirements for that program will be promulgated at parts 73 through 78 of 40 CFR. References to those sections are used in this rulemaking where appropriate.

Acid rain-specific permit content requirements must be included in permit applications, compliance plans, and operating permits under both phases of the acid rain program. The permitting process will be different for Phase I and Phase II. Section 408 provides that Phase I of the acid rain program (1995 through the end of 1999) will be implemented entirely through operating permits issued by the EPA. Phase II (beginning in 2000) will be implemented by operating permits issued by the States with federally-approved permit programs, or by the EPA in the event of State defaults. Thus, Phase II permitting will be in accordance with the process established by the rules proposed today, as supplemented by the acid rain-specific content regulations in part 72.

The acid rain permit regulations are anticipated to include a description of the relationship of the acid rain program to other programs incorporated in the permits, necessary definitions, applicability requirements, and necessary permit elements not included in the rule proposed here. These will include: (1) Acid rain-specific requirements for permits and compliance planning, including requirements for affected sources relying on one or more alternative compliance methods authorized by the statute (e.g., extensions, substitutions, reduced utilization, energy conservation or renewable energy, repowering, and options); (2) compliance certification and reporting requirements; (3) requirements for designated representatives for affected sources; and (4) excess emission offset planning and fee requirements.

Whether permits are issued by the State or EPA, acid rain permit application forms must be used, including a provision concerning the binding effect of permit applications, which must (at a minimum) state that the acid rain portion of the permit application and proposed compliance plan, including amendments thereto, submitted for an affected source under the acid rain program shall be binding on the owners and operators, and on the designated representative for the source, and shall be enforceable as a permit for purposes of the acid rain program until a permit is issued by the permitting authority.

All acid rain permits issued to affected sources must prohibit: (1) Annual emissions by affected units in excess of the applicable emissions limitation for NO_x; (2) annual emissions of SO_2 by affected units in excess of the number of allowances to emit SO_2 held by the owner or operator, or the designated representative, for use in that year by each affected unit; (3) any person from holding, using, or transferring any acid rain allowance, except in accordance with regulations at part 73; (4) the use of any allowance prior to the calendar year for which it was allocated; and (5) circumvention of any other provision of parts 72 through 78, or of the permit (403 (f), (g)). Standard terms must similarly be included in permits for acid rain affected sources in order to ensure a nationally consistent program. In order to facilitate such standardization, EPA plans to develop forms at the time of the acid rain rulemaking and to develop support for computer generated permitting.

When developing permit revision procedures, States should be aware that the statute forbids requiring permit revisions as a result of allowance transactions. In accordance with title IV, all acid rain allowance allocations and transfers will, upon being recorded by the Administrator in accordance with section 403 of the Act and part 72, be deemed a part of each unit's acid rain permit requirements, without need for any further permit review and revision. Nothing in a permit shall be construed as affecting allowances. In addition, no permit revision shall be required for increases in emissions that are authorized by allowances held for a unit pursuant to the acid rain program, provided that the emissions increases authorized under the acid rain program do not excuse noncompliance with any other emissions limitation, standard, or requirement under the Act, including under title I for the protection of ambient air quality standards, and that the acid rain requirements of the permit shall be governed by and consistent with the regulations at parts 72 through 78.

No permit or revision to it may be issued that is inconsistent with the requirements of the acid rain program, requirements of the Act, or requirements of parts 72 through 78. Examples of safeguards that will be developed under the part 72 rulemaking which should limit permit revisions include: (1) Permit revisions shall be effective only to the extent they are consistent with parts 72 through 78; and (2) limits on the use of the amendment authority, e.g., changes in the designated representative for purposes of a source's acid rain program requirement, shall be supported by a certification of redesignation in accordance with part 72.

Rules for Federal acid rain permitting during Phase I, and in the event of State defaults during Phase II, will be published at 40 CFR part 72. Acid rain permit content requirements, which must be included in permits issued by States with approved programs, will be promulgated at that time. Public comment is invited at this time regarding the impact of this general permit program rulemaking on the acid rain permit program. Public comment in response to the acid rain rulemaking proposal will, however, only be accepted with regard to the provisions proposed at that time. Comments will not be considered at that time reopening matters addressed by this rulemaking.

IV. Detailed Discussion of the Key Aspects of the Proposed Regulations

This portion of the preamble provides more detail on selected provisions of the proposed regulations. Issues are identified and EPA's proposed positions are discussed. Discussion is also included on the implications of the

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regulations and on the way implementation is expected to occur.

A. Section 70.1—Statement of Program Goals

The purpose, benefits, and certain concepts of the regulatory requirements in part 70 are introduced in this section of the regulations. Detailed discussion of some of these concepts appear subsequently in this preamble. The key concepts include: (1) The permitting program generally codifies existing regulatory requirements and does not impose new control requirements; (2) the SIP will continue to be the mechanism for demonstrating attainment and maintenance of the NAAQS; (3) the permits will assure compliance by the source with an applicable requirement of the Act; (4) States may implement a more extensive program consistent with the Act; and (5) EPA must implement a Federal permit program in the event a State fails to satisfactorily implement its program. This program, consequently, may be more limited in scope than the State program.

B. Section 70.2—Definitions

Many definitions of terms in other parts of the Act or EPA regulations are utilized in part 70. In addition, a number of new terms introduced in title V and many terms created in conjunction with developing part 70 are defined by this section. These new definitions include terms necessary to communicate effectively the new regulatory requirements, including "complete application," "part 70 permit," "part 70 source," "permitting authority," and "renewal."

C. Section 70.3—Applicability

(1) Section 70.3(a)—Sources Subject to Permitting

This section describes program coverage and source applicability by defining "part 70 sources." Operating permit programs must cover the types of stationary sources (except where EPA has exempted in whole or in part a source category, subject to certain limitations) previously described in detail (III.A.), which includes major sources. Section 70.3(a) covers the sources included in section 502(a).[2]

Source and Major Source: The EPA wishes to clarify how the definitions of "stationary source" and "major source" will be applied under the operating permit programs and to explain how these concepts will relate to the definitions of stationary source currently in effect in other programs under the Act.

Stationary Source: The EPA has patterned its proposed definition of "stationary source" for the permits program on the definition for "stationary source" contained in title I. The Agency proposes in § 70.2(d) that "stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant.

Major Source: The EPA is taking comment on how to interpret the section 501(2) definition of "major source." Section 501(2) provides, in relevant part, that "the term 'major source' means any stationary source (or any group of stationary sources located within a contiguous area and under common control)" that would be a major source under sections 112 or 302, or part D of title I of the Act. As discussed below, the Agency proposes that "stationary sources" are to be grouped to determine if a major source exists on the basis of the same industrial grouping, or "major group" in the Standard Industrial Classification Manual (SIC code). Accordingly, EPA will require all commonly owned or controlled pollutant emitting activities on contiguous or adjacent properties to obtain an operating permit if they are within the same SIC major group, and assuming the aggregated activities emit enough pollutants to trigger the applicable emissions thresholds provided in the Act.

The EPA believes that aggregating sources by SIC code at the source site to determine whether a source would be major is the approach intended by Congress. The definitions of major sources in part D of title I have language similar to the title V language. For example, section 182(c) states that, for any serious ozone nonattainment area, "the terms 'major source' and 'major stationary source' include (in addition to the sources described in section 302) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of volatile organic compounds." Although that definition does not explain whether equipment that does not emit VOC's would be excluded from the source if the remaining equipment emitted more than 50 tpy, the House Committee Report explaining the provision sheds light on that issue and on the title V definition. Specifically, the Report states the following:

The definition of "major source" here and elsewhere in the bill uses the term "group of sources located within a contiguous area and under common control." The Committee understands this to mean a group of sources with a common industrial grouping, i.e., the same two-digit SIC code. It is the approach followed today by EPA as a result of the Alabama Power litigation. It avoids the possibility that dissimilar sources, like a power plant and an adjacent coal mine, will be considered as the same "source" because of common ownership.

The legislative history reference therefore suggests that aggregation by SIC code should be done in a manner consistent with established NSR procedures. Accordingly, any equipment used to support the main activity at a site would also be considered as part of the same major source regardless of the 2-digit SIC code for that equipment. For example, an automobile manufacturing plant may consist of a foundry (SIC group 33), a power plant (SIC group 49), and an assembly plant (SIC group 37). Assume that the equipment is situated at the same site, under common ownership, and that the foundry and power plant are used solely to supply the assembly plant. In this example, all three activities would be considered to be part of one major source. However, if less than 50 percent of the output of the foundry was dedicated to the mentioned auto assembly plant, it would be considered as a separate source. If the power plant supported both the foundry and the assembly plant, it would be considered part of the source that consumes the largest percentage of the power generated.

The EPA solicits comment on whether or not to combine sources according to 2-digit SIC code when determining if those stationary sources constitute a major source under the title V permit program.

The Amendments require all major stationary sources to be permitted, even if the Act does not impose other substantive requirements on the facility. For example, in some States there are existing major stationary sources in attainment areas for which there are no applicable emission limits in a SIP. Title

[2] EPA notes that clean-up activities at hazardous waste Superfund sites will not be required to obtain title V permits, just as they currently need not receive CAA new source review permits. The Agency has previously decided that under the Comprehensive Environmental Response, Compensation, and Liability Act, such permitting is not appropriate. See the National Oil and Hazardous Substances Pollution Contingency Plan, 55 FR 8782–87 (March 6, 1990), and 40 CFR 300.5 (:definitions of "applicable requirements" and relevant and appropriate requirements). Similarly, facilities that are required to obtain permits for other reasons need not include CERCLA remediation-related information on emissions in their applications; such facilities must, however, include such information on those emissions as is otherwise required, because they are subject to applicable requirements under the Clean Air Act.

V requires such major sources to obtain a permit although, under appropriate circumstances, States may choose to issue general permits to reduce the paperwork burden.

Section 112 requires that EPA publish a list of major and area source categories emitting one or more of the listed hazardous air pollutants before EPA sets standards that may apply to their toxic emissions. Title V requires major sources to obtain a permit, even if a MACT standard has not yet been promulgated and the source is otherwise unregulated under the Act. Even so, the permitting process for many of these sources will be meaningful. Those undergoing construction, modification, or reconstruction will be subject to new substantive controls pursuant to section 112(g). It is unlikely that major sources to which section 112 would be applicable would not be regulated elsewhere under the Act. That is, many of the pollutants regulated under section 112 are also VOC's or particulate matter and are regulated by SIP regulations designed to implement the ozone or PM-10 NAAQS. As discussed more fully in section V.E., title V permits will also be the vehicle that a permitting authority uses to codify emission limits and monitoring requirements proposed by sources to meet the early reduction requirement under section 112(i)(5), which defers application of MACT.

The EPA also solicits comment on whether the Agency should exempt from permitting requirements those sources that are "major" by virtue of the quantity of their emissions of particular pollutants, but whose emissions are not in any way actually regulated by a standard or other requirement under the Act. Arguably, issuing permits for such sources would serve no useful purpose under the Act.

Potential Emissions: In determining whether the amount of emissions from a stationary source will qualify the source as major and subject to part 70, EPA will rely on the concept of "potential to emit" (302(j), relevant sections of part D of title I, and 112(a)(1)). In so doing, EPA will determine potential emissions using the maximum capacity of a source to emit a pollutant, taking into account any federally-enforceable physical or operational limitation on that capacity (including any air pollution control equipment).

Including the federally-enforceable limitations on a source in the definition of potential emissions appears to create a circular definition problem. A source which enforceably restricts its emissions below the threshold for major stationary sources may be able to exempt itself from the permitting requirement, assuming no other provision of the Act captures that source in the program. However, the source seeks to exempt itself from one of the very programs capable of making enforceable the limits that create the exemption, but must first meet all substantive procedures and requirements in the process.

States may address this question using several techniques. They may decide not to include such operational limits in the definition of major stationary source for their operating permitting program, thereby assuring that such sources are permitted. A program might be able to permit such sources using general permits designed to impose capacity limits on a category of sources generically. States may then issue such sources State operating permits, without subjecting them to the federally-approved permit program, and submit those State permits as SIP revisions to make the limits federally enforceable. Alternatively, States may choose to submit their State operating permit programs to the extent that they focus on smaller sources to EPA for approval as a SIP revision. To be approved by EPA, a program must meet the requirements set forth in the requirements EPA articulated in its approval of the definition of "Federal enforceability" in the NSR program (see 54 FR 27274 (June 28, 1989)). This would then create a framework under which federally-enforceable permits could be subsequently issued by the States to limit the potential to emit of borderline sources without a need for case-by-case EPA approval.

The EPA also takes comment on the possibility of allowing such sources the option to submit to the appropriate permitting authority (with a copy to the EPA Regional Office) a commitment containing specific physical or operational conditions that would restrict the source's potential emissions to a level below the applicability thresholds stated in § 70.3(a). It must be signed by a responsible officer of the source with authority to make legally-binding commitments for the source. A commitment of this type must ensure that participating sources conduct adequate monitoring and submit monthly reports describing pollutant emissions to the permitting authority. The permitting authority and EPA could then continually verify the source's compliance with its commitment, and the source would not be required to obtain a part 70 permit.

The commitment must include an agreement that the source would submit a title V permit application within a short time (e.g., 30 days) after it determines that its emissions exceed the appropriate title V applicability threshold for the previous 12-month period. Failure by a source to meet its agreement and submit a title V permit application would make the source subject to appropriate enforcement penalties.

In addition, comment is solicited on: (1) Applicable methods for ensuring the Federal enforceability of such commitments, (2) ways of providing adequate public review and comment on these commitments, and (3) ways that State programs can cover the costs of administering such a program.

(2) Section 70.3(b)—Source Category Exemptions

Section 502(a) authorizes EPA, consistent with applicable provisions of the Act, to exempt one or more source categories, in whole or in part, from the requirement to have a permit. The EPA must determine that compliance with the permitting requirements is infeasible, impracticable, or unnecessarily burdensome on such source categories. The EPA may not exempt any major source from the permit requirements.

The EPA proposes to use the authority available under section 502(a) to defer initially the applicability of the title V program to all sources that would otherwise be subject but are not major or affected sources under the Act. The EPA finds that without this deferral, compliance by all these nonmajor sources with the permitting requirements would be "impracticable" and "infeasible" within the meaning of section 502(a). This finding is grounded in EPA's judgment that the initial years of the program will see EPA and the States significantly burdened by thousands of permit applications for major sources. This is so in part because the Act greatly broadens the definition of major source for title V purposes to include relatively small sources for the nonattainment and the toxics provisions. Nationwide, EPA estimates that over 34,000 sources are included in the definition of major source.

Dealing with these applications, at a time when the regulations are new and untried, is likely to tax Federal and State resources up to or beyond their limits. Limited numbers of qualified staff will be available, and in heavy demand by sources and permitting authorities alike. State and local agencies will be challenged to expand rapidly while maintaining effective management of programs and personnel. This initial wave of permitting will be difficult for permitting authorities. Creating the initial permits will require far more

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attention than the subsequent processing in later years of permit renewals and modifications, which will often involve changes to only some aspects of the initial permits, or no changes at all.

Including the thousands of nonmajor sources covered by section 502(a) would greatly increase the workload on EPA and the State, with relatively minor air quality benefits, and at a time when they will be strained beyond capacity. This conclusion is based on EPA's judgment and experience in implementing new programs, most of which have not approached the scale of the permit program. The EPA's understanding of the number of nonmajor sources is preliminary, since the Agency has had little time between enactment and this proposal to study the coverage of the program in detail. Although EPA believes the current showing (as discussed in more detail below) amply supports this proposal (especially in light of the observation from *Alabama Power* that a deferral requires far less justification than an outright exemption, 636 F.2d at 360, n. 86), EPA requests any more detailed information and comments on its conclusion that including all sources in the permitting process during the initial glut of application processing would be impracticable and infeasible.

For several reasons, initially excluding minor sources poses few risks to air quality progress. Nonmajor sources emit less than major sources. Concentrating resources on major sources during the first phase of the program will make efficient use of those resources. Not only will the sources deferred from the program not be significant contributors to pollution impacts, many of them will still be covered by Federal regulations under the Act. Nonmajor sources will be subject to NSPS or existing national emission standards for hazardous air pollutants (NESHAP) regulations that generally already contain many of the same monitoring, recordkeeping, and reporting requirements that would apply to major sources and represent one of the major benefits of the permit program. Therefore, permitting these sources is less urgent than permitting major SIP sources. As stated above, a State with an ozone SIP that relies on emission reductions from nonmajor sources will have to make a special showing to defer such sources from the program. Finally, it would be especially burdensome on small businesses and small governments to force them through this program during the time when the States and EPA are gaining experience in implementing new programs under title V. Small businesses and small governments do not have the same legal and technical resources that are sometimes necessary to handle successfully a new program. Thus, EPA finds that permitting such nonmajor sources during the first 5 years of the program would be unnecessarily burdensome on those sources and impracticable to the States.

The EPA further proposes to end automatically the exemption for these nonmajor sources on or before a date 5 years from the effective date of the permit program in the State (approval of either a part 70 or part 71 program). In deciding which of these categories should continue to be exempted, the EPA will consider the relative administrative burden associated with reviewing the prospective category and whether and to what extent this burden would be acceptable. In determining acceptability, EPA will consider the possibility of using general permits or other alternatives to permitting each source individually. The EPA solicits comment and information concerning which source categories might be especially appropriate for permanent exemptions (notwithstanding the possible use of general permits), such as asbestos demolition and renovation operations under the NESHAP program and woodstoves under the NSPS program. The Agency also asks for comment on any other criteria that should be used to judge the effect of permanently deferring nonmajor sources, including the burden on sources and permitting authorities, and the aggregate effect on air quality of any permanent exemption.

Today's proposal to defer the initial applicability of nonmajor sources is limited in two important respects. First, the initial deferral does not automatically apply to sources which otherwise qualify as a subject source based on emissions of a pollutant for which its area of location is classified as nonattainment. Typically, this will involve ozone nonattainment areas. A permitting authority may exempt nonmajor VOC and NO_x sources from its program in those areas only if the authority submits to EPA an inventory of such sources and demonstrates that the State can assure compliance with its nonattainment area SIP obligations without permitting such sources during the first 5 years of the program. The EPA must approve the deferral for such sources. The EPA also solicits comment on the appropriateness of limiting the scope of the nonattainment exemption demonstration to only the larger of the nonmajor sources (i.e., no demonstration is needed for deferred applicability if nonmajor sources are below a certain size) otherwise subject to title V or only those that would not qualify for general permits.

The deferred applicability of certain sources would not preclude a source from requesting and receiving a part 70 permit. The EPA proposes that States allow into the operating permit program sources wanting to participate. Some companies have business reasons to seek an operating permit. For example, a lender may wish to determine that air emissions from a facility are permitted under the law. As a result, there may be sources that a permitting authority determines does not need a permit for air pollution control purposes, but which have independent business reasons to seek operating permits. In such cases, the Agency also strongly urges the use of general permits (as discussed below) to minimize any undue burden.

Finally, the Administrator reserves the right to restrict the presumption for the deferred applicability of nonmajor sources for any sources subject to a standard under section 112 which is promulgated after the final date of these regulations. The EPA would decide during the rulemaking process for the new section 112 standard how the title V program would apply to those affected sources which are nonmajor.

In connection with the deferral of nonmajor sources from the program for the first 5 years, EPA is soliciting comment on the waiver of EPA authority to review the permits for such sources if States choose to include them in the program. Some States may decide to include some or all nonmajor sources in their permit programs despite EPA's deferral. Section 506(a) authorizes States to adopt additional permitting requirements not inconsistent with the Act. Section 505(d) authorizes EPA to waive the requirement that the permitting authority notify EPA or neighboring States of each permit for nonmajor sources. The EPA could use this authority to reduce the administrative burden on the permitting authority, EPA, and the neighboring States. The EPA invites comments on the advantages and disadvantages of this approach. The proposed regulations do not provide for such a waiver, under the assumption that most States will take advantage of the deferral for nonmajor sources.

In no instance would affected sources under title IV of the Act be eligible for an exemption from the permitting requirements since section 408(a) provides that permits shall be the

vehicle for implementation of the acid rain requirements of the Act. The Agency anticipates that most affected sources under the acid rain program, with the possible exception of voluntary opt-ins or transfer sources, would be considered "major" under some other title of the Act and would not be eligible for exemption from the operating permits program.

(3) Section 70.3(c)—Emissions Units and Part 70 Sources

This section requires that State programs assure in the permitting process that all emissions units at a major source will comply with all applicable Act requirements for their emissions of all pollutants regulated under the Act (504(a)). Including all these emission units in the permit does not mean that permits must impose emission standards or limits on all such units. The permit must impose any "applicable requirements" that are federally enforceable and apply to those emission units. The permit application must identify all units in the major source, however, and the permitting authority's fee program should account for the emissions of regulated pollutants from all such units.

Accordingly, all the activities emitting regulated pollutants at the major source must be addressed in the application for a permit, even though only one emissions unit or subset of units has triggered the title V permitting requirement. Conversely, the title V permit need not contain limits for emission units not otherwise regulated under the Act (e.g., not regulated by the SIP and/or under sections 111–112).

Some States prefer to permit by emissions unit, especially at large sources with many emissions units. As long as the collection of individual emissions unit permits assure that all applicable requirements would be met which would be required under a permit for the whole source, and the State permits the entire source according to the Act's schedule, the State may permit each unit individually, or in groups within a source. Where feasible, the entire facility should be permitted at one time. States are encouraged to permit at least all logical or similar emissions units at the same time.

The determination of whether a source, or group of contiguous, commonly-controlled sources within the same 2-digit SIC code as described earlier, is a major source requiring a permit depends on the magnitude of emissions from the source or set of sources. If a source or group of sources has several emission units which the State does not regulate and subsequently permit, the State's application process must identify them if the regulated and nonregulated emissions of applicable pollutants together would make the source major, and the State's fee schedule must account for the cost involved with surveying the source's nonregulated emissions of regulated pollutants. One way to implement such a program may be to issue each source a permit with sourcewide information and general requirements, and then incorporate more detailed individual emissions unit permits that are issued to cover those units specifically regulated under the Act. If a nonmajor source is required to get a permit solely because it is regulated under an NSPS or a NESHAP, the permit must include only those units covered by the NSPS or NESHAP. For example, consider a saw mill containing an oil-fired boiler subject to an NSPS, an older wood-fired boiler, and various wood-working equipment. If emissions for the source as a whole are not large enough to meet the threshold for a major source, the permit must include only the NSPS boiler.

This section also clarifies which pollutants must be included in the permits of sources subject to title V. As under existing EPA policy developed in the NSR program (45 FR 52676, August 7, 1980), if one or more regulated pollutants emitted by a source triggers the requirement to have an operating permit, the permit must account for all the pollutants regulated under the Act emitted from that source, even if those pollutants do not themselves meet the applicable "major" threshold under the Act. This is appropriate since part 70 permits must assure compliance by the source with each applicable standard, regulation, or requirement under the Act and not just the ones for which the source has major emissions (504(a)). For example, a VOC source in a severe ozone nonattainment area that has the potential to emit 30 tpy VOC is a major stationary source under part D of title I and required to obtain a permit. If that source also has a small process boiler which has the potential to emit only 25 tpy of SO_2 in an SO_2 attainment area, the boiler must also be included in the permit, at least for the purposes of emissions information and fee calculation, even in the unlikely event the SIP imposes no limits on that boiler's operation.

The EPA also wishes to clarify that NO_x emissions, as well as nitrogen dioxide (NO_2) emissions, are included under the definition of "regulated pollutant." The NSPS contains restrictions on NO_x emissions (40 CFR 60.44). The acid rain program also regulates NO_x. Therefore, NO_x emissions are included in the definition of "regulated pollutant" under section 502(b)(3)(B)(ii) (40 CFR 50.11) and in determinations of a source's potential to emit, and fee calculations must account for all NO_x emissions.

(4) Section 70.3(d)—Fugitive Emissions

This section specifies that, once a source is found to be subject to the title V permitting requirements, fugitive emissions at a subject source are to be included in the total emissions of a source for all purposes of permitting, including collection of fees.

The EPA is also proposing to consider fugitive emissions in determining if a source would be major with respect to section 302 for only those source categories that have previously been subjected to the rulemaking required in section 302(j) (45 FR 52676 (August 7, 1980)).

D. Section 70.4—State Program Submittals and Transition

(1) Section 70.4(a)—Date for Submittal

This section of the regulations requires States to submit their operating permit programs to EPA for approval within 3 years of enactment (i.e., by November 14, 1993) (502(d)(1)). This deadline is a fixed date and does not depend on the date EPA promulgates the regulations in this proposal. This section of the regulations also requires a State to revise the existing, approved operating permit program and submit it to EPA for approval within 1 year of any revision to the part 70 permit program requirements that EPA determines would necessitate such a change. Permitting programs that would be implemented within a State, such as by local agencies, would have to be designated by the Governor and submitted within the 3 years after enactment.

(2) Section 70.4(b)—Elements of the Initial Program Submission

There are certain minimum critical elements that need to be included in an acceptable program when it is submitted to EPA for approval. The submittal must include the State-adopted regulations establishing the permit program and the procedures the permitting authority will use to apply the permitting regulatory requirements. The EPA also solicits comment on whether the State statutes that authorize the regulations and provide for judicial review of final permit decisions should also be part of the submittal.

The submittal must include a legal opinion that the permitting authority has

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the authority to carry out the program and perform the following tasks. First, the permitting authority must be capable of issuing permits and establishing a fixed term of 5 years for affected sources under the acid rain program, and a fixed term for each permit for all other sources, except certain municipal waste combustors, not to exceed 5 years. Second, permitting authorities must assure that the permit contains each of the emission limits and any other requirements that apply to the source from the SIP and other Act requirements. Specifically, the enabling legal authority must allow the permitting authority to impose and enforce all Federal requirements (including those to be implemented through any applicable FIP). Third, the permitting authority must be able to terminate the permit if necessary or revoke and reopen the permit to modify its content for appropriate reasons (70.7). Fourth, the permitting authority must be able to enforce the requirement to obtain a permit, to enforce the provisions in the permit (70.11), to collect applicable permit fees applied to the source (IV.I.), to collect civil penalties assessed for each source's violation of its permit, and to apply appropriate criminal penalties as a result of permit violations. Fifth, the permitting authority must be able to provide public access to the permit application, the permit itself, the compliance plan, and reports, except that confidential information may be submitted separately and not be made available to the public. Sixth, the permitting authority must agree to comply with program-specific regulations such as those established under Title IV. No permit program will be approved in whole or in part, unless it is adequate to ensure timely and effective implementation of, and compliance by, affected sources with all requirements established under the acid rain program. Program adequacy shall ensure adequate resources to support inspections necessary for ensuring compliance by affected sources with emissions monitoring requirements of part 72 (502(f)). Finally, the permitting authority must also be able to ensure that the source is notified that no Title V permit has been issued if EPA objects to it within the timeframe allowed for EPA review of permits.

The submittal must contain the permit application form or forms to be used, the criteria the State will follow in determining if a source has provided the required information and filled out the application completely, and the procedures the State will use in processing the applications in an expeditious manner. The Agency currently intends to require the use of forms for the acid rain program by States with approved permit programs. Forms can be revised periodically as the State program develops without the need to go through rulemaking every time (i.e., through implementation agreements). The EPA also recommends that the submittal contain certain procedures for insuring compatibility with the national data system; the Aerometric Information and Retrieval System (AIRS). The requirement for completeness criteria is in § 70.5. The procedures for processing applications must be in accordance with the requirements in § 70.7 for permit issuance, renewal, revision, and reopenings.

The submittal must contain a demonstration that the revenue collected under the permit fee program is sufficient to cover the reasonable direct and indirect costs of developing and administering the permit program. The demonstration should include sufficient revenue to fund air pollution control agencies which do not issue permits directly but carry out permit-related activities. The permit fee program is discussed under § 70.9. This demonstration must be accompanied by a statement from the Governor or his designee (e.g., local official in the case of a local agency program) that the program has adequate personnel and funding to implement the program. The statement need not provide certain details such as those related to the number of positions. The statement must describe the air quality program and where the permitting function fits in, details about the personnel who will administer the program, and a cost estimate for developing and administering the program for the years covered in the transition period after the program is approved.

The EPA is also proposing to require as part of the program submittal a commitment that the permitting authority submit to EPA, at least annually, information about enforcement activities relevant to the permit program. This information would include but not be limited to the number of criminal and civil enforcement actions commenced and concluded by the permitting authority, the penalties, fines and sentences obtained in those actions and the number of administrative orders issued. This information is crucial for EPA to be able to fulfill properly its oversight duties regarding whether the program is being properly implemented and enforced.

The EPA is concerned that lapsing of permits or the conditions and terms of permits would cause serious enforcement problems and leave the State and EPA without important monitoring information that sources will be required to submit under the terms of the permit. For example, the particularized and detailed control requirements in the permit would become unenforceable the day the permit expired; States and EPA would be able to enforce only the requirements in the underlying regulations. Thus, if the source had submitted a timely and complete application, it could continue to operate in the event the State failed to act on the application in a timely manner, with possibly no clear control limitations applying to the source.

The EPA is proposing to address this potential problem in several ways. First, under the proposed regulations, sources are required to submit their application for a permit renewal 18 months before expiration of the permit. This is the maximum allowed time period for action on the permit by the permitting authority. This time limit should be reduced correspondingly to reflect permits with terms of less than 5 years or to reflect situations where the permitting authority must issue permit renewals in less than 18 months. In no event can the deadline for renewal applications occur so as to allow less than 6 months for processing. Second, the proposed regulations allow EPA to issue a permit itself if the permitting authority has failed to act on the permit during the time allowed to do so.

Finally, EPA is proposing to require that the State permit program include a requirement under State law that, in the event that a timely and complete application for a permit renewal is submitted to the permitting authority before expiration of the permit term, (1) the permit itself shall not expire until the renewal permit has been issued or denied, or (2) the permit can expire but all its conditions and requirements shall remain in effect until the renewal permit has been issued or denied. The first option within this third approach, which EPA encourages States to adopt, is consistent with the way that Federal permits issued under the Federal Administrative Procedure Act remain in effect if a timely and sufficient application for renewal has been submitted (5 U.S.C., section 558(c)). The EPA is concerned, however, that having the permit itself remain in effect may not be allowed under some State administrative procedure acts. The EPA is therefore proposing to give States the option of adopting, under State law, a

requirement that all terms and conditions of the permit remain in effect after the permit itself lapses if a timely and complete application has been submitted. The substantive effect of choosing one option or the other should be minimal at most. The EPA solicits comment on these and other proposed ways of dealing with the lapsing permit problem.

The EPA believes that a transition plan for processing the first wave of permits is also a necessary part of the State program submittal. This plan should provide a phased schedule for acting on the initial submission of all permit applications during the first year after program approval. The EPA solicits comment on other acceptable strategies for initially processing permits and for keeping the original information current and appropriate for processing.

To meet the title V requirements, the transition plan would need to provide that the initial permit applications be submitted no later than the first year after program approval, and that State action on them be spread out over a period up to 3 years after program approval, with approximately one-third of the applications being acted on in each of the 3 years. The State's transition plan will likely need to require some applications to be filed before EPA's approval of the program so that the State can act on the first third of the applications within the first year after program approval.

When the permitting authority plans their timetable for initial issuance of title V permits, they should be aware that initial SO_2 permits for Phase II acid rain affected sources must be issued by December 31, 1997. Acid rain permit applications for NO_x, are due on January 1, 1998 (408(d)(3)). States should also be aware that EPA proposes to require that any permit application submitted which contains an early reduction demonstration for hazardous air pollutants according to part 63, subpart D regulations must be issued or denied within 9 months of receipt of the complete application. This proposed procedure is discussed further in section V.E.(4) of this preamble. In addition, EPA proposes to require States to submit a timetable for phasing in the reissuance of part 70 permits in the future upon their expiration.

The EPA believes the most important first step in terms of program development is eliminating legislative impediments to meeting operating permit program requirements. New authority may be needed to develop regulations, issue permits to sources (including noncomplying ones), charge fees and retain them in the air agency, collect penalties, hire sufficient levels of personnel, and provide for adequate public participation (including the opportunity for public hearings). Since many State legislatures meet only periodically, the schedule for legislative sessions could be a critical factor in States obtaining the needed authority in the appropriate time period. States need to consider this possible constraint and take whatever action is necessary as early as possible to obtain the needed authority and eliminate any complications that could be caused.

While in the process of developing legislative authority for an operating permit program, the State may also want to consider including legislative authority necessary to implement other titles of the Act. For example, to obtain approval for the acid rain portion of the operating program, State legislative authority must be sufficient to ensure that no permit will be issued that is inconsistent with the requirements of the acid rain program requirements of the Act, of part 70, or of parts 72 through 78 (408(A)). State law or regulation should limit the State's authority to modify acid rain program requirements, and the State authority should ensure adequate inspection resources to ensure compliance with emissions monitoring and compliance program requirements. A certification from the Attorney General or other authorized official that adequate legal authority exists will be needed to support the permit program submission.

Another important aspect of a State operating permit program will be to ensure that the permitting authority is capable of carrying out the program. This will primarily involve hiring and training of personnel, along with support functions, such as larger office space and increased administration capabilities. States will face early program-building demands, the degree depending on the State's current involvement in operating permits. The demand for this infrastructure will increase when a State wishes to submit a program early. Efforts to ensure this capability is one of the first steps a State should make. Grant funds provided for by section 105 of the Act have been provided to support program build-up. These funds are meant to give programs in part the boost needed until permit fee provisions become effective and State permitting efforts become self-sufficient through the permit fee revenues. The EPA solicits comment on other ways to accomplish "ramp up" of State capabilities. These might range from interim program approvals to an initial registration of subject sources coinciding with an early partial fee collection (IV.I.).

In part, section 506 specifies that nothing in title V shall prevent a State from establishing additional permitting requirements as long as they are not inconsistent with the Act. Accordingly, States may wish to include requirements from State control programs in an operating permit that are not required by Federal law. However, EPA does not intend to participate in any permit actions that do not arise from federally-recognized permit requirements. For example, the State may have a program designed to enforce specific ambient concentrations of toxic air emissions which as yet have no counterpart under Federal law. The question becomes whether, and to what extent, those provisions translated into more rigorous emissions limits on the source become federally enforceable (i.e., enforceable under the Act by the United States or citizens) if the State includes them in a permit and EPA does not veto that permit.

The EPA is proposing that only those provisions of a permit identified as being required under the Act or necessary for its implementation will be federally enforceable. Each provision, required or needed under the Act, will have to be clearly marked for EPA to consider it federally enforceable. EPA does not intend to routinely sort out provisions relating to State programs included in operating permits, unless those provisions bear no reasonable relation to the purposes or provisions of the Act. To promote this result further, EPA is proposing to require an explicit statement of the regulatory basis for all title V permit conditions.

The EPA does not believe that Congress intended title V to be a forum for the State to establish any additional requirements that would become federally enforceable. The primary purpose of the title V permitting program is to assure that subject sources comply with all requirements of the Act. State limits related to the requirements of the Act include transactions related to emissions trading or offsets for NSR or to an applicable Federal standard (e.g., those promulgated under sections 111 or 112 of the Act). Additional State limits can clutter the title V permit with conditions that may confuse enforcement activities and limit the operational flexibility of the source. The permitting authority should segregate those permit conditions that are federally enforceable so that EPA oversight can be focused on the most critical concerns in the limited time afforded for EPA's 45 day review.

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On the other hand, a State may have an interest in maintaining a permit as a comprehensive statement of the source's air pollution control obligation. The proposed regulations allow a State to do this. If it wants to take this approach, it would be the option of the permitting authority to identify and attach to the part 70 permit those provisions which are to be enforced by the State but not EPA.

Public comment is solicited on how to resolve two additional issues related to this principle. These two issues involve whether, and to what extent, EPA can or should approve, (1) more expansive source coverage than required by title V; and, (2) State provisions which limit the flexibility of source owners or operators to less than that provided for in title V.

The first issue may arise quite frequently, since most existing State and local operating permit programs typically apply more broadly than to just the major sources and others covered by title V. The EPA proposes to approve a broader program containing more sources or source categories than required by EPA if a State submits one, but EPA reserves the right to promulgate a narrower program for EPA implementation should the State default on its implementation obligation. The EPA believes that this proposal is fully consistent with section 116, which permits States to adopt more stringent air pollution requirements than required by the Act. It is also consistent with 506(a), which states that nothing in title V shall prevent a permitting authority "from establishing additional permitting requirements not inconsistent with (the) Act." The EPA may also opt to waive review of some or all of the permits for the additional sources under a more inclusive State program, depending on the degree of administrative burden, or for other reasons (505(d)). Comment is solicited on whether, and to what extent, EPA should approve broader State programs.

The second issue concerns whether State operating permit programs can differ from Act requirements aimed at protecting sources once they meet certain requirements. In other words, may States be "more stringent" than title V by removing some protections that Congress apparently intended to ensure. Examples of these provisions include: (1) Section 502(a) which shields sources from the requirement to have a valid title V operating permit, if they have filed a timely and complete application but have not yet received their permits (i.e., application shield); and (2) section 502(b)(10) which contains the requirement for States to allow sources operational flexibility within permits.

As noted previously, section 116 of the Act authorizes States to be more stringent than EPA rules in their requirements, as long as they relate to control of air pollution. Section 506(a) perhaps may qualify this longstanding authority, however, by stating that nothing in title V shall prevent a permitting authority from establishing additional permitting requirements "Not inconsistent with the Act." Moreover, EPA believes that even section 16 would not allow the Agency to grant complete program approval of a State permit program that does not meet all the requirements of section 502(b), including the requirement in section 502(b)(10) that States allow certain changes within permitted facilities without requiring that the permit be revised.

(3) Sections 70.4 (c), (d), and (e)—Partial Programs, Interim Approval, and EPA Review of Program Submittals

These sections of the regulations describe the type of approvals, other than full approval, that EPA may give a State permit program. These approvals are all subject to a public comment process, and EPA is required to take approval actions (as appropriate) within 1 year of State program submittal. There are three related concepts which EPA is proposing to use for implementing the above position on partial program submittals: Full approval, partial programs, and a whole program in the State.

Full Approval: The EPA will grant full approval only if a program meets all the requirements specified in the part 70 regulations. For full approval, all program elements required by part 70 will have to be met to an acceptable degree, and stronger elements of a program cannot compensate for one or more weak areas.

Partial Program: A partial program is one that does not cover all the sources in a State, because the program is limited geographically to a local program or the program does not cover certain source categories, or both. The EPA, in general, intends to grant full approval to partial programs which are limited in their geographic coverage if they meet all the requirements of part 70. However, States must provide compelling reasons for not taking review responsibility for all subject source types in order for EPA to grant approval for a source category-limited program. In no event does EPA intend to approve as a partial program one which would permit the source for some but not all of the applicable requirements under the Act.

Under section 502(f), for EPA to approve a partial program, minimum requirements must be met, specified in section 502(f), with regard to titles I, III, IV, and V. A partial program, at a minimum, must apply and ensure compliance with "this title" (i.e., title V) and each of the following: (1) All requirements established under title IV applicable to 'affected sources.' (2) all requirements established under section 112 applicable to 'major sources,' 'area sources,' and 'new sources.' (3) all requirements of title I (other than section 112) applicable to sources required to have a permit under this title. The EPA thus interprets the language in section 502(f) to mean that a "partial" program is one that is a full program (i.e., standard application, permit fees, public participation, inclusive permit provisions, fixed term, etc.) for those sources or areas to which the program applies.

Whole Program: A whole program is a program that meets the requirements of part 70 and covers all the part 70 sources in the entire State. For the State to avoid sanctions under section 502, the State must have an approved whole program (502(d)(2) and (3)). It is possible for a State under this proposal to obtain approval for a whole program by submitting several fully-approvable partial programs. The combination of these programs must permit all the part 70 sources in the State consistent with part 70. This interpretation of section 502(f) avoids the confusion created when two permitting authorities permit the same source for different Act requirements. In a State relying on a combination of partial programs, EPA will not approve a whole program until it has approved all the partial programs covering all the part 70 sources in the State.

The EPA will act on any partial program as it is submitted, consistent with the 12-month deadline in section 502(d)(1). The EPA will fully approve a partial program if it meets part 70. A State may submit a partial program, but fail to submit a whole program. If EPA approves the partial program or several partial programs within the State, those programs define the permitting authority for the sources they cover. The State remains subject to sanctions, however, for failure to submit a whole program. Ultimately, section 502 provides that EPA will become the permitting authority for those sources not covered by any of the partial programs in the State.

Interim Approvals: Section 502(g) allows the Administrator to grant interim approval by rule to a State permit program if it "substantially meets" (but not fully) the requirements of title V. Interim approvals automatically expire on a date set by the Administrator not later than 2 years after such approval and may not be renewed. At the time of interim approval, the Administrator shall specify the changes that must be made before the program can receive full approval. The 1 year for permit application submittal and 3 years for permit processing do not start until the program receives full approval.

The EPA sees interim approval as being a good mechanism to allow States to gain early permitting experience while working on the final fully approvable program; to begin acquiring, through fee collection, the necessary resources for developing and implementing a full program; and to expedite the implementation by States of certain Act requirements (e.g., the granting of MACT extensions for early reductions) (V.E.). Interim approvals are appropriate, however, only where the relevant deficiencies are not critical over the 2-year (or less) period of time before a fully approvable program is due. If a program is not sufficient to receive interim approval, EPA will disapprove the program. The EPA's interim approval or disapproval will take place within 1 year of program submittal as indicated by § 70.4(e). Like full or partial approval, interim approval triggers the 12-month requirement for submission of permit applications and a 3-year phase-in for processing the applications (IV.D.(2)).

The EPA believes that the "substantially meets" test allows the Agency considerable discretion in judging where a State program could fail to fully meet title V yet still be adequate to produce viable permits. The EPA believes, as a minimum, the purposes of the permit program could be fulfilled if the following minimum criteria for interim approval are met:

(a) *Adequate fees.* A program must have the capability to collect adequate fees (presumptively $25/ton per regulated pollutant per year (1990 basis)) to fund development of the State's permit review program and its capabilities to implement it.

(b) *Applicable requirements.* The State must have the legal authority to assure that those sources in the interim program will comply with all applicable requirements under the Act. This must include, at a minimum, some type of monitoring and reporting provisions. Otherwise inadequate permits issued could be a damaging legacy over the term of the permits.

(c) *Fixed term.* The program must provide for a fixed permit term that would not exceed 5 years.

(d) *Public participation.* The program must provide for public notice of and an opportunity for public comment and a hearing on draft proposed permits.

(e) *EPA review.* The program must allow EPA an opportunity to review each proposed permit and to object to its issuance.

(f) *Permit issuance.* The program must provide that the proposed permit will not be issued if EPA objects to its issuance. A State might qualify for this by formally agreeing to "reopen for cause" any State-issued permit when EPA would object to it from a title V standpoint after the State had issued the permit pursuant to its existing procedures.

Public comment is solicited on which of those critical program elements that are required for full approval need not be met for interim approval. Any additional criteria beyond the six proposed should represent a deficiency that this approach is consistent with section 502(f). Operating permits are intended to incorporate the provisions in the existing applicable SIP (including those in a FIP) at the time the permit is under review. The EPA will approve permits with certain more stringent provisions than the explicit emissions limitation contained in the SIP, provided that these provisions implement other applicable federal requirements (e.g. tighter limits to achieve emissions offsets or early reductions pursuant to section 112(i)(5) of the Act). The Agency will not require the State to correct SIP deficiencies in permits. As explained in more detail in section V.B., a SIP demonstration must be periodically updated as needed to reflect reliance on any tighter conditions of permits to show attainment and maintenance. As indicated previously, States under one option can expedite the process where this would be accomplished by a SIP revision including several permits in one public notice and through the use of the SIP processing reforms announced in 54 FR 2214 on January 19, 1989.

(4) Section 70.4(f)—State Response to EPA Review of Program

The State must correct the deficiencies in programs EPA disapproves and submit the corrections to EPA within 180 days of the notice by EPA that the program was disapproved, or within another time period specified by the Administrator. For interim approvals, the State must submit corrections to EPA no later than 6 months before the end of the period for which the approval is granted. These provisions apply even though the State may submit a program before the end of the 3-year period provided by title V.

(5) Section 70.4(g)—Effective Date

The State program becomes effective on the date of EPA's full, interim, or partial approval.

(6) Section 70.4(h)—Individual Permit Transition

This section addresses how EPA would implement a permit program, in whole or in part, under a new part 71 in the event a State fails to submit or adequately implement an approvable program. The EPA will issue permits under such circumstances under a permit program as will be promulgated in part 71. Once EPA approves the State program and it is implemented, EPA will cease issuing permits. Any permits under review or issued under the part 71 program will continue under EPA's jurisdiction until they are replaced by permits issued under the approved State program. However, after EPA approves a part 70 program, States can request delegation of authority to maintain and enforce previously issued part 71 permits before their expiration. If such delegation is granted by the Administrator, the State can then collect appropriate fees from those sources consistent with § 70.9.

(7) Section 70.4(i)—Program Revisions

A program must be revised if EPA determines sometime after approval of a State operating permit program that the program inadequately implements the part 70 program. The State will have 180 days, or a longer time period established by EPA, to revise the program and submit the revisions to EPA. The Agency might set a longer time up to 2 years where legislative action is required at the State level to address problems.

E. Section 70.5—Permit Application

(1) General

The procedural elements of an approvable permitting program are essential to its success. The Act provides important direction with respect to how the permitting process should be implemented. This section of the preamble, and the two that follow it, describe EPA's proposed regulations for addressing these activities. Generally, they are described in the order in which they arise in implementing the program: the permit application submitted by the source, the drafting of the permit by the permitting authority, and the procedural aspects for issuing and managing permits.

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Title V sets forth explicit requirements regarding the application process. Sections 502(b) (5) and (6) require that State programs have standard application forms, criteria for determining their completeness in a timely fashion, and procedures for processing them. The EPA suggests that States provide procedures for transmittal of permit application data in a manner compatible with the national data system. Section 502(b) requires compliance plans for noncomplying sources to be submitted along with the permit applications. A complete application must be submitted according to the transition schedule approved within the program and in a timely way for subsequent renewals. "Timely" for submittal of renewal applications has been presumptively defined as 18 months prior to the permit expiration date, unless some other time is approved by the Administrator (e.g., situations where the permitting authority is required to issue permits sooner than 18 months or where the fixed term of the permit is less than 5 years). Any complete application must contain information which identifies the source and its emissions, the requirements applicable to it, the compliance status of the source and its intended operating regime, and a certification verifying the truth, accuracy, and completeness of the submitted information. More information may be required later by the permitting authority in writing as needed to complete the development of the part 70 permit. The applicant must respond in a reasonable and timely way to maintain a complete application and the protection that it provides (see additional discussion in IV.E.(5) and IV.G.(1)).

Additional information may be required for other program-specific purposes at a later date (e.g., pursuant to specific substantive program requirements such as for certain sources of VOC's and NO_x subject to the emissions statement requirements for nonattainment areas as stated in part D of title I). Sources of hazardous air pollutants subject to section 12 attempting to comply with alternative emissions limits may also need to submit additional information. In addition, States may require information to enable implementation of their additional program requirements related to the Act.

(2) The Permit Application Form

The EPA recognizes that a great range of factors bear upon what a good application form is and takes an approach which ensures the submittal of the wide-ranging information needed to issue a good permit. On the other hand, EPA recognizes that the amount of information needed can vary greatly depending upon type of source or pollutant and State and local air quality requirements. Moreover, the EPA has a philosophy of minimizing program disruption, to the extent possible. Most States already have application forms, and some of them are very comprehensive. Requiring an inflexible national form would likely be disruptive. The approach to application forms being proposed today recognizes appreciable flexibility for State programs. This flexibility extends to the format of the information submitted, as long as the minimum data elements are collected. In certain instances, however, needs for national consistency for purposes of oversight and good data management should prompt the use of standard units for source parameters. Furthermore, use of the AIRS as a State's data management system for the operating permits program may influence application format. A discussion of this is included in section IV.E.(6).

For these reasons, EPA will not prescribe any one, or few, forms that address all situations.[8] Consequently, EPA is proposing a list of minimum data elements that States must collect with the permit application forms. As long as these data are included in State forms, the forms will be found to satisfy these provisions.

The permit application provisions contained in § 70.5 were developed to balance these competing concerns. The key point is that States have considerable discretion, within a framework that is rigorous with respect to the types of information required, to develop application forms that best meet their particular program needs and policy choices. Some States may meet these requirements through relatively slight revisions of their current application forms.

The following is a brief discussion, organized by regulatory paragraph, of the types of minimal information prescribed by § 70.5:

[8] The acid rain program, however, will develop application forms likely to be required for all affected sources nationally. If so, the permitting authority will have to adopt these forms to have an approvable program for acid rain. The Agency believes that national consistency in application requirements is important for equality in the allowance-trading market and to ensure that all affected sources are subject to the same reporting burden. The Agency plans to encourage the use of electronic reporting, and may develop "expert" systems to assist permitting authorities in developing uniform, consistent acid rain permit requirements. These requirements will be promulgated in a subsequent rulemaking.

General company information: The applicant must list appropriate contacts and general background information (e.g., company name, location, responsible official, or designated representative).

Plant description: A description of the plant in terms of the processes and products involved (including identification by SIC code) can provide important perspective to the permitting authority regarding the applicable regulatory requirements.

Emissions related information: Emissions data are of critical importance to permitting. Section 70.5(b)(3) describes the core information needed for permitting. This includes, of course, direct emissions data regarding the pollutant's emitted, and their quantities over appropriate periods, and the points from which these emissions are produced. An adequate description of emissions necessarily entails submission of emissions related information on fuel and raw material use, a detailed description of air pollution control equipment (and citations to the relevant emissions standards), and limitations on source operator. Finally, the calculations on which these data are based must be included to assist the permitting authority in reviewing the application.

There are, in addition, a variety of decisions to be made with respect to how these data are addressed in the application. For example, the inclusion of the list of 189 pollutants, or groups of pollutants, in section 112(b) presents additional issues regarding the reporting of regulated pollutants. The EPA does not propose to mandate submittal of emissions information in the permit application for nonmajor sources of noncriteria pollutants. Many States may, of course, choose to require information about such pollutants, for example, in implementing their air toxics programs.

A description of emissions points is relevant to a variety of requirements (e.g., whether emissions are fugitive or stack), but EPA believes the regulations will allow application forms to reasonably limit the detail of this requirement where such is appropriate. For example, VOC emissions might be produced at many places in a chemical process facility, but an application might describe these adequately without individually describing minor emissions points such as valves and flanges.

A significant issue involves whether the application must include the information needed for ambient impact assessments. This includes stack parameters (e.g., height, diameter, plume temperature) and building height. The

EPA does not interpret compliance with the NAAQS to be an "applicable requirement" of the Act. Therefore, EPA is not including such information within the minimum data elements for applications unless it is required by an underlying regulation of the Act (e.g., regulations to ensure good engineering stack height consistent with section 123 of the Act). As explained further in section IV.F.(3)(a) below, EPA does not believe that any one permit can enforce the NAAQS, except perhaps in very limited circumstances. The State should be able to assess the cumulative impact of permitted sources on attainment and maintenance of the NAAQS (and increment consumption under the PSD program). To do this, the State may choose to collect emissions data related to the source's ambient impact. However, EPA is not proposing to require States to collect such information.

All applications under current State operating permit programs must require sufficient emissions information to allow a State to write a complete and enforceable permit. Emissions rates must be supplied for averaging periods appropriate to program needs and consistent with all applicable requirements. Depending upon the specific emissions limitation that applies to a source, emissions information may need to be collected on hourly, daily, and annual bases in order to assure compliance with emissions requirements or guarantee that emissions will stay below particular applicability thresholds for other regulatory requirements. The form of the required emissions data can also be influenced by other program needs. For example, all affected units under the acid rain program must install CEMS to monitor their SO_2 and NO_x, and other emissions (412).

Other information may also be needed in the permit application to define: (1) Control requirements, such as requirements that will become effective during the term of a permit, and applicable test methods (70.5(b)(a); and (2) reasonably anticipated alternative operating scenarios (70.5(b)(6).

The EPA recognizes that comprehensive permit applications for some industrial facilities can be quite large. For this reason, EPA proposes that States be granted more discretion with respect to what information is needed and when. For example, the Agency believes that States may want to permit, and therefore, receive several discrete applications from certain large complex sources (e.g., chemical plants) in order to keep the information current and the review process focused.

The preceding discussion outlines the approach to obtaining general information for most regulatory provisions. There are, however, several specific air program functions that might require additional specialized information. Examples include alternative emissions limits with respect to MACT, and acid rain allowance provisions. Even more common program requirements, such as the NSPS and NESHAP, might require certain additional information. It is unlikely that a State will wish to develop a single application form that addresses every possible air regulatory requirement. The EPA suggests that States follow the example of numerous current air programs and take a modular approach to application forms. Under this approach, all sources would complete the same basic application form, containing the information on the source and its emissions, as described in this section. To the extent that specialized regulatory requirements must be met, additional forms appropriate to those programs could be prepared and appended to the basic form.

(3) Testing, Monitoring, and Reporting Procedures, and Compliance Certification

(a) *Test Methods.* To establish initial compliance with each air pollution control requirement, each permit application must presumptively specify a test method. This requirement is contained in § 70.5(b)(4)(ii). A similar requirement also appears in § 70.5(b)(8)(ii). This latter and somewhat redundant requirement that the permit application specify a method for determining initial compliance may be satisfied by § 70.6(c), and merely appears in the regulation again to emphasize that there may be different test methods used for determining compliance (IV.E.(3)(c)).

The test method for establishing initial compliance will be the test method in the underlying regulation. If the underlying regulation is deficient in that it does not contain a test method, the permit application must suggest a test method. This is in accordance with section 504 of the Act which requires that permits assure compliance with the applicable regulation (IV.E.(3)(c)).

(b) *Information Necessary for Implementation and Enforcement.* To implement and enforce air pollution requirements, it is necessary that all permit applications specify the underlying monitoring, recordkeeping, and reporting requirements. This is broadly required by the language in § 70.5(b)(4)(i), and also by the compliance certification requirements under § 70.5(b)(8). Note that section 504 of the Act and § 70.6(a)(3)(ii) require that reporting of any required monitoring be submitted at least semiannually.

(c) *Test Methods, Monitoring, and Reporting for Compliance.* Section 70.5(b)(8)(ii) requires the permit application to state methods to be used for initially determining compliance monitoring and for determining compliance throughout the term of the permit, including a description of the monitoring, recordkeeping, and reporting requirements and test methods to be used. The method used for initially demonstrating compliance must be the test method or work practice specified in the underlying regulations (e.g., the SIP, NSPS, NESHAP, and the acid rain regulations) as discussed in section IV.E.(3)(a) above. If the underlying regulation is silent as to the appropriate test method, the permit, and therefore the permit application (where possible), must still include, and the reviewing authority must select, a test method. The EPA will evaluate any new test methods during its 45-day review period. This review will focus on any relevant information upon which the State relied in demonstrating attainment and maintenance of the NAAQS. In the event that an underlying Federal regulation is later revised to incorporate a specific test method or monitoring/reporting procedure, the permit must be revised to incorporate these requirements upon renewal, unless more than 3 years remains on the term of the permit, in which case the permit must be reopened.

Also, to ensure compliance with all the requirements of the permit throughout its term, the permit, and therefore the permit application, must specify an appropriate method to be used for determining compliance. This "compliance method" may be CEMS, frequent compliance calculations, stack tests, or surrogate monitoring parameters, such as incinerator temperature or scrubber pressure drop. In some cases, the compliance techniques will be the same as the technique used to determine initial compliance. Periodic monitoring of the operation of the source or pollution control device may typically be appropriate, compliance techniques. In the case of a work practice standard, the compliance technique could consist of a record which documents continual application of that work practice. In many cases, the monitoring requirements in the underlying regulation will suffice for assessing compliance. If the regulation is silent

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regarding monitoring techniques, the reviewing authority will need to specify one, taking into account cost, availability, reliability and accuracy of the technique, and the averaging time of the ambient standard. Where the underlying standard is unclear, an additional consideration would be consistency of the averaging time of the technique with the applicable ambient air quality standard.

Where surrogate monitoring parameters are used for determining compliance, the permit application should provide an acceptable operating range of monitoring values based on values achievable during a performance test (i.e., during the initial compliance test) or based on best engineering judgment. Operation of the facility outside of these specified monitoring values would be a violation of the permit and any good operating practice requirements, if applicable, such as contained in 40 CFR 60.11(d) for NSPS-affected sources.

Where CEMS or emission calculations are chosen for the compliance method, the resulting data could be used directly to enforce the emission limit. Therefore, recorded CEMS emissions, or VOC emission calculations, for example, in excess of the emission limit would constitute a violation of the emission limit. Of course, CEMS are not appropriate for use with respect to some source categories. For other source categories, CEMS are appropriate or are mandated by the Act (e.g., for acid rain sources). For those cases, States should explore the possibility of requiring compliance calculations. Further, until EPA specifies enhanced monitoring techniques, the choice as to the appropriate compliance technique remains the primary responsibility of the permit reviewing authority. In the case of a work practice, the compliance technique could consist of a record which documents continual application of that work practice.

After a source has demonstrated initial compliance in accordance with the underlying regulations, either the initial or the compliance technique may be used in the periodic (at least annual) compliance certifications. It is, however, necessary that a compliance technique be specified and used to establish whether compliance throughout the reporting period was continuous or intermittent, in accordance with the statutory requirements in titles V and VII for compliance certification (IV.E.(3)(d)).

(d) *Compliance Certifications.* As required by § 70.5(b)(8)(iii), the permit application must contain a schedule for submission of compliance certifications. The Act requires that similar certifications be submitted at least annually. States should require certifications more frequently for sources or source categories with a recent history of compliance problems. The required frequency of certifications should also consider the frequency of any other reporting requirements, such as excess emission reports and the title V requirements in section 504(a) for at least semiannual compliance reporting. Under section 503(b)(1), all sources must monitor and report every 6 months. The State should consider a combined report as opposed to submission of separate reports.

Section 70.5(b)(10) provides that the certification, as well as all other documents required under part 70, must state that "to the best of the signer's knowledge, information and belief formed after reasonable inquiry, the statements and information in the compliance certification are true, accurate and complete." This language is similar to that in rule 11 of the Federal Rules of Civil Procedure, upon which it was modeled. The provision makes clear that the signer must make a reasonable (under the circumstances) inquiry before attesting to the truth, accuracy, and completeness of the information and statements.

(4) Compliance Plans for Noncomplying Sources

In accordance with section 503(b), each permit application for sources that are out of compliance with applicable requirements of the Act must be accompanied by a compliance plan which describes how the source will comply with the applicable requirements of the Act for which it is not in compliance.[4] Submission of these compliance plans is also required for permit renewals and permit modifications, in accordance with § 70.7. Compliance plans must describe the techniques used to achieve compliance.

As required in § 70.5(b)(7), a compliance plan consists of the following elements:

(a) *Description of How Source Will Achieve Compliance.* Sources that are out of compliance at the time of application must describe how they will comply with the underlying Act requirements. The plan must specify the requirement for which the source is not in compliance (as already required by § 70.5(b)(7)(iii) and described in section IV.E.(4)(c)), describe the equipment and/or changes in operation necessary to come into compliance, and include a schedule of compliance (IV.E.(4)(d)). Note that neither the plan nor the permit will alter the source's legal liability for any violation of the SIP or Act.

This requirement in § 70.5(b)(7) should not be confused with the provision of § 70.5(b)(8) that requires the permit application to specify the test methods and monitoring to be used for determining compliance. Rather, the compliance plan specifies the means that will be used to achieve compliance. It should be noted that adoption of compliance plans and the ensuing schedules of compliance do not protect a source from enforcement action or penalty assessment for existing or previous violations of the applicable requirements. While permit applications and compliance plans (for noncomplying sources) for general title V sources will focus on the information necessary to enforce the applicable requirements under the Act, permit applications and compliance plans for sources receiving acid rain permits under title IV of the Act will have to meet independent requirements to be specified in future rulemakings to implement the title IV permit program.

While the Agency is proposing that the general requirement for a compliance plan only apply to noncomplying sources and affected sources under the acid rain program, including sources which are in compliance with applicable requirements, must submit compliance plans with their permit applications detailing how each unit will comply with the acid rain requirements of the Act (408(b)). Requirements for acid rain compliance plans will be set forth at part 72. Depending on the method of compliance chosen, acid rain compliance plans will include, for example, deadlines for obtaining design engineering and construction contracts, and information on the type of technology proposed. In addition, requirements for operation and maintenance of CEMS or alternative monitoring methods for acid rain affected sources will be promulgated at part 75 and will be included in each source's permit.

(b) *A Description of How the Source Will Monitor Compliance With Those Requirements.* All permit applications must describe how the source will monitor compliance. Section 70.5(b)(8)(ii) regarding permit application requirements for compliance certification specifies that each permit application specify the monitoring method to be used.

(c) *A Schedule of Compliance.* Section 70.5(b)(7)(iii) defines "schedule of compliance" as a schedule of remedial measures including an enforceable sequence of actions with milestones, leading to compliance with all applicable requirements of the Act for sources that are not in compliance. This schedule must specify a date by which the source must achieve compliance, and interim milestones for all remedial measures necessary to meet that compliance date. Examples of interim milestones for cases where new equipment is necessary to come into compliance include the award date for the contract to obtain the control device, the date of initiation of onsite construction and/or installation of the device, the date of completion, and the date of testing/calibration. Similar deadlines could be established for installation of monitors. For a work practice standard, interim milestones could pertain to training of personnel. All schedules of compliance must be contained in the permit.

(d) *A Schedule for Submission of Progress Reports, To Be Submitted No Less Frequently Than Every 6 Months.* Within § 70.5(b)(7)(iv) and in accordance with section 503(b), each permittee which is not in compliance with all applicable requirements of the Act is also required to submit progress reports to the permitting authority no less frequently than every 6 months. These reports must describe the source's progress in meeting the requirements of the compliance plan, and the ensuing schedule of compliance. (The required content of the progress report is specified in § 70.6(c)(5)). The compliance plan must set forth the schedule for submission of these reports.

(5) What Is a Complete Permit Application?

A determination by the permitting authority that an application is complete is important to the source. Submittal of a timely and complete application protects the source (except to the extent construction or modification is involved) from enforcement for failure to have an operating permit (503(d)), and begins any prescribed periods for agency action on issuing a permit, including automatic denial in some States. (A more detailed account of the importance of this action can be found in section IV.G.). Furthermore, a complete acid rain permit application and compliance plan is binding on the source and is enforceable until the permit has been issued. The importance of this determination, combined with the fact that it can be difficult to make, has traditionally made the completeness determination the subject of dispute in the issuance of permits. The Act, probably for these reasons, requires that permitting programs contain "criteria for determining in a timely fashion the completeness of applications" (502(b)).

The basis for determining the completeness of an application should be the information contained in the permit application itself. An approved State standard application form or forms should provide for the submittal of all information necessary to process the application and incorporate the applicable regulatory requirements into a permit. However, this determination is also a function of the type of source, the applicable requirements, and SIP or attainment status. Thus, depending on the circumstances, the permitting authority may need more information than that specified on the application form.

The permitting authority should also assure that certain supplemental information is included with the application before ruling that it is complete. The application should be accompanied by the compliance plan, to the extent that one is required, and a certification of whether the source is in compliance. Pursuant to section 503(c), the application must be signed by a responsible official (the designated representative for acid rain affected sources), who shall certify the truth, accuracy, and completeness of the information submitted after reasonable inquiry. In addition, an application should include the calculations upon which the application data are based to facilitate review of the application.

Various procedural disputes could arise from these determinations. For example, while permit review is under way, it sometimes becomes apparent that more information is needed. The State must be able to request it, without being bound by its initial determination. The EPA is proposing that the determination of completeness and the associated protection provided to the source to operate without a permit would remain in effect during this process, assuming an adequate and reasonably timely response by the source. Similarly, EPA is proposing that if a source has submitted a timely application which it, in good faith, believes to be complete, but which is later determined by the permitting authority to be incomplete, the protection would not be lost if the source cured the defect within the expeditious time period specified by the permitting authority.

The regulations being proposed today would require notification to the applicant of the completeness determination. It further states that where this notification is not provided within 30 days of receipt of the application by the permitting authority, the application shall be deemed complete. This date also marks the time from which the permitting authority has a maximum of 18 months to process the permit. Failure by the source to respond in an adequate and timely manner to written requests for additional required information would subject the source to penalties for operating without a title V permit (502(a), 503(d), 40 CFR 70.5(c)).

(6) Data Management

Because considerable information will be necessary to implement the permitting requirements of the Act, data management is important. The EPA is considering changes to the Air Facility Subsystem of its AIRS data management system to meet State and national permitting needs. If such a system were developed, States will be charged with ensuring that AIRS contains the minimum permitting data elements identified by EPA. Separate data bases will be developed for acid rain sources to facilitate the tracking of emissions and allowances and to provide information to the market on compliance choices.

Data management concerns will influence what information States collect and the format in which it is collected. The effect on types of information required in standard application forms should be relatively slight. The information included in the current AIRS system is of the type normally required by a State to write a permit for a source. The influence on format is likely to be more significant. For this system to work efficiently, the data must be presented in units and a format that are readily incorporated into the data system. The EPA is investigating data processing enhancements that would expedite the permitting process generally. Examples include electronic permit application and data submissions.

The EPA solicits comments on the data management aspects of the permit program, particularly the potential use of AIRS for this purpose, and any enhancements the system might need.

[4] Sources subject to the acid rain program are required to submit compliance plans that show in detail how they intend to meet their title IV requirements. Title IV regulations are likely to supersede the part 70 compliance plan requirements in certain respects. Specifically, they will modify and limit what provisions sources may be required to include in the acid rain portion of their compliance plans. Title IV (section 408(b)) also provides that nothing in it regarding compliance plans or in title V shall be construed as affecting allowances.

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F. Section 70.6—Permit Content

Permits issued by the permitting authority must include provisions that assure that the source will meet all of its obligations under the Act. Permits should include, therefore, emission limitations and standards; a schedule of compliance; requirements for conducting monitoring and data analyses and providing emissions statements; provisions for inspection, entry, monitoring and reporting; and a process for public access to these data, consistent with available protection from disclosure pursuant, to section of 114 of the Act. The permit must also provide for periodic progress reports with respect to any applicable compliance plan for noncomplying sources, as well as periodic reports concerning compliance with the permit requirements. The reports must be signed by a responsible official (designated representative for acid rain) who must identify the requirements applicable to the source; verify the truth, accuracy, and completeness of any submitted information; and certify whether the source has complied with them.

(1) Core Permit Elements

A part 70 permit will typically contain certain core elements: An introductory section providing the source's name, address, key contacts, and various standardized conditions; a description of the source and its processes and emissions; a statement of the applicable regulatory requirements, including monitoring, recordkeeping, and reporting; and provisions relevant to their enforcement. The requirements with respect to permit content, located in several parts of title V, are consolidated in § 70.6. This preamble addresses them under the following three topic areas.

(a) *Emission Limitations, Standards, and Other Necessary Conditions.* Section 504(a) states that each permit "shall include enforceable emissions limitations and standards" and "such other conditions as are necessary to assure compliance with the applicable requirements of this Act, including the requirements of the applicable implementation plan." The basis or citation of each of these requirements (e.g., NSPS, PSD) should be included with them. This will reduce confusion as to the origin of any limitation standard, or other condition, and insure that EPA, the source, and the general public agree on the regulatory requirements that apply to the permit. For example, changing a restriction on operating hours might subject the source to the "source obligation" provisions of the PSD program, but this result might not be obvious if the operating permit had included the origin of the limitation.

The regulations also require the permit to identify any difference in form between the emission standard in the permit and the regulation that is the basis for the standard. This will allow EPA and citizen groups to readily identify these types of permits for heightened review. This requirement should not be too burdensome for permitting authorities since these types of permits should be relatively rare.

The EPA notes that section 504(a) of the Act requires that each permit "shall include enforceable emission limitations and standards * * * and such other conditions as are necessary to assure compliance with applicable requirements of this Act." Thus, Congress seemed to contemplate that for some types of applicable requirements, the requirements might not have to be incorporated wholesale into the permit; rather, "conditions" that would assure compliance with those requirements might suffice. While EPA expects that in the ordinary case the requirements would have to be included in the permit, there may be some cases where this would make no sense. For example, new section 112(r) requires certain facilities to prepare and implement a risk management plan to prevent or minimize accidental releases of certain hazardous substances. It would be of little benefit to mandate that the entire plan be incorporated into the permit, requiring revisions to the permit whenever a minor change were made to the plan. The plan is to be submitted to States and local planning entities and is to be made available to the public. The plan would be a public document anyway, and would be enforceable independent of the permit. The EPA, therefore, is considering requiring only that the permit state that the source must have and comply with a section 112(r) plan, and shall make it available to the public under section 114(c).

The EPA solicits comment on what other types of requirements might not be addressed in the permit. If EPA determines it is appropriate to allow permits to include conditions in lieu of certain applicable requirements, the Agency would plan to specifically list such requirements either in the part 70 regulations or in future guidance, whichever is appropriate.

The EPA wishes to stress the importance of good permit writing to the enforceability of a permit. If permit provisions are not clearly written and carefully specified, compliance may well be thwarted, regardless of how well the direct compliance measures already discussed are addressed. Failure to use consistent or appropriate units in emissions limitations or failure to adequately describe the facility or unit to which an emission limitation applies, such that application of the emissions limitation is unclear, can thus be grounds for an EPA objection to the permit. Useful guidance as to what makes a permit enforceable is contained in EPA's September 23, 1987 document entitled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency." That guidance provides a checklist of key areas to consider in assuring enforceability, including applicability, compliance date, specificity of conduct, any incorporation by reference, recordkeeping requirements, and exemptions and exceptions.

Other emissions-related issues include appropriate provisions for startup and shutdown procedures, and scheduled maintenance. A permit might also contain provisions regarding upset conditions.

The determination of what are the "applicable requirements" that must be addressed by the permit is an important matter that is addressed separately in section IV.F.(3).

(b) *Compliance Certifications, Monitoring, and Reporting Requirements.* The provisions of section 504(a)–(c) underscore the emphasis that title V places on demonstrating compliance with all terms of operating permits. Specific elements for noncomplying sources include a schedule of compliance, a requirement that the permittee submit the results of any required monitoring no less often than every 6 months, and "such other measures as are necessary to assure compliance" with all applicable requirements under the Act (504(a)). In addition, each permit shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions (504(c)).

Certifications of compliance are required by both title V and title VII (Enforcement). Section 504 specifies that each permit must contain compliance certification requirements, and section 703 of title VII further requires submission of compliance certifications for all major stationary sources and other sources as specified by the Administrator. The enforcement agency will evaluate these certifications to determine if further inspection or enforcement activity is warranted. Certifications, as discussed in more detail below, must include any periods of noncompliance, reasons for the noncompliance, how noncompliance was corrected, and how it will be prevented in the future. Certifications are required by the statute to be submitted at least annually, and are required to identify whether compliance has been continuous or intermittent. Certifications and all reports must be signed by a responsible official who shall certify its truth, accuracy and completeness.

The operating permit itself must require periodic certifications of compliance. The minimum content of these certifications is specified in § 70.6(c)(6)(iii), which are, for the most part, self-explanatory. The compliance certification must document not only the current compliance status at the time of preparation of the report, but also whether compliance over the reporting period was continuous or intermittent (i.e., whether there were periods of noncompliance). These compliance certifications place the responsibility to monitor compliance on the source. Also, the certified report should identify periods of missing data and the cause for the missing data.

A compliance certification must be submitted for each emission standard, work practice, or operating restriction. However, it is not necessary to submit separate reports. One report certifying all the contents therein would suffice. As indicated by § 70.6(c)(6), the permit must specify the frequency of the required submittals of the certifications and the method for assessing compliance, and require that all such reports be certified by a responsible official.

If appropriate, requirements for testing of compliance must be contained in the permit itself. Section 70.6(c)(6)(ii) further requires inclusion of a compliance technique. To make the applicable standards enforceable, all permits must specify both an initial compliance testing method, and a method to assess compliance with applicable requirements of the Act. The source must keep records of this required testing and monitoring and periodically report to the permitting authority. Affected sources under the acid rain program will be required to comply with nationally promulgated monitoring and reporting requirements. Performance certifications, quality assurance reports, monitoring, recordkeeping requirements, and electronic reporting options will all be established nationally. These requirements will be promulgated in a subsequent rulemaking at parts 72 through 78, and States must have the authority to incorporate the requirements into their approved programs.

The term "monitoring" refers to many different types of data collection. It could include, but is not limited to, periodic stack sampling, continuous emission or opacity monitoring, ambient air monitoring, or measurements of various parameters of process or control devices (e.g., temperature, pressure drops, voltages). Monitoring, recordkeeping, and reporting provisions are also essential to make standards enforceable. Hence, § 70.6(a)(3) requires these provisions, including the § 503(b)(2) requirement for prompt reporting of deviations from permit conditions.

Section 504(a) of the Act and § 70.6(a)(3) of the proposed regulations require permittees to submit the results of all required monitoring at least every 6 months. These reports must be certified for truth, accuracy, and completeness by a responsible official. The data must be submitted in a format consistent with the underlying standard. For example, if the SIP limitation for a coating facility is 2.9 pounds of VOC per gallon of coating, that is how the information should be presented in the monitoring report. Enforcement personnel should not have to do any calculations or conversions of raw monitoring data to the applicable standard to be able to determine compliance.

(c) *Other Permit Provisions.* The permit should also contain various other provisions, not directly related to emissions requirements or their enforcement, that are important to permit management. For example, permits should specify their expiration dates and procedures for renewal. The permitting authority would also be likely to include requirements that become applicable at a future date. These include such matters as the transition from the Federal Phase I permitting to the State Phase II permitting of sources subject to acid rain requirements. Fee amounts and provisions for their payment must also be included.

(2) *Program Specific Elements*

(a) General. The preceding discussion of core permit elements described the range of items to be contained in an operating permit. In many cases, these will fully satisfy the permitting provisions. It is important to keep in mind, though, that title V permits can be used to support a wide range of air quality management functions. For example, emissions inventory updates will be an important component for VOC nonattainment plans. The permitting program and the nonattainment plan should be developed in coordination with one another. At the discretion of the permitting authority, operating permits could require additional information that could be used in inventory development. The EPA solicits comment on whether, and how, such coordination should occur.

There are procedures for the development of alternative emissions limits under the NESHAP program (V.E.). Additional permitting information is necessary for the early implementation of those standards. Permit conditions must also be structured so as to provide for an orderly transition to Act requirements that are not yet established, such as MACT requirements.

(b) Acid Rain. Notwithstanding section 506(a), no permit shall be issued that is inconsistent with the requirements of the acid rain program, or of parts 72 through 78.

State legislative or regulatory authority should contain this limitation. The Agency plans to rely on its permit oversight authority to ensure national consistency with the acid rain program to allow approval of State permit programs that contain more general provisions, and to facilitate the allowance trading program.

Title IV requires that certain provisions be included in all acid rain permits issued by EPA or the States. Specifically, all permits issued to affected sources under the acid rain program shall prohibit (1) annual emissions by affected units in excess of the applicable emissions limitation for NO_x; (2) annual emissions of SO_2 by affected units in excess of the number of allowances to emit SO_2 held by the owner or operator, or the designated representative, for use in that year by each such affected unit; (3) any person from holding, using, or transferring any acid rain allowance, except in accordance with regulations at part 73; (4) the use of any allowance prior to the calendar year for which it was allocated; and (5) contravention of any other provision of title IV, parts 72 through 78, or of the permit (403 (f), (g)).

(3) Applicable Requirements of the Act and the SIP

Title V requires that operating permits assure compliance with each applicable standard, regulation, or requirement under the Act, including the applicable implementation plan (502(b)(5)(A), 504(a), and 505(b)(1)). Efficient operation of the permit program requires that the

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permitting authority and EPA clearly understand and agree on what requirements under the Act apply to a particular source. The EPA expects to oversee the inclusion of the Act's applicable requirements in the operating permits. Where there is a question with the permitting authority over what requirements of the Act or SIP apply to a source, EPA will exercise its authority under section 505(b)(1) to object to permits that fail to assure compliance with the applicable requirements as clarified in the available record. The EPA proposes the following guidance for defining applicable requirements:

(a) NAAQS. The EPA interprets "applicable requirements" of the Act and the SIP to mean limitations, standards, and/or requirements directly applicable to sources. Typically, EPA will enforce the requirement that the States implement the NAAQS through SIP's. For example, title I requires that certain ozone nonattainment areas demonstrate a 3 percent reduction in VOC emissions each year. That is a planning obligation on the State, which the State may implement in any number of ways. For example, it could require a 3 percent reduction from each VOC emitting source in the State, or it could place stringent controls on some categories while not controlling other categories. The EPA is not planning to review VOC limits in individual source permits to determine whether the State is meeting the 3 percent reduction requirement, although EPA in its SIP review may look at the collection of permits the State has issued under title V to determine if the State has met its 3 percent reduction obligation.

In the case of SO_2, lead, or perhaps PM-10, however, a particular source (such as a power plant or smelter) may be located such that whether the SIP will assure attainment or maintenance of the NAAQS will depend entirely on the limits placed on that source. Even in such cases, EPA solicits comment on EPA's proposed position not to require that permits assure attainment and maintenance of the NAAQS. The permit would not be required to assure protection of the NAAQS even in those cases where EPA has issued a notice of SIP deficiency.

The EPA will, therefore, not object to a permit (that otherwise complies with the applicable SIP) on the grounds that the permit does not assure attainment of the NAAQS. Where more than one source substantially contributes to the NAAQS violation, EPA will not use individual permit actions to impose limits on sources beyond those required in a SIP. It is the State's responsibility to decide what limits the SIP should impose on the various sources. While the State may choose to remedy the inadequate SIP using a series of individual permits, EPA's review of individual permits will not be the appropriate forum for reviewing the adequacy of such planning decisions. The EPA must, however, review these planning decisions when the permitting authority, as required by the Act, updates the attainment demonstration or incorporates individual permit limits into the SIP. The EPA emphasizes that, for the preceding case to be grounds for potential objection, the relationship between the single source's emissions and the NAAQS violation must be very direct and clear.

(b) SIP Ambiguity. Some SIP requirements will be vague as to a significant provision (e.g., averaging time, monitoring, and/or reporting requirements), requiring considerable time during the permitting process to make the operating permit enforceable. In such cases, the SIP will be ambiguous when applied to a particular source, and the State must judge how to define the enforceable permit conditions. Where the State's interpretation of a requirement is both inconsistent with the State's demonstration of attainment and maintenance of the NAAQS and undermines the level of emissions reduction EPA anticipated the rule would achieve, EPA will object to the permit. In making this decision, EPA will look to the available record, including the assumptions the State made in the SIP.

The narrative description accompanying the SIP is not directly enforceable on sources, but it is reasonable for EPA to look to the assumptions made in the SIP in deciding how an ambiguous SIP should be applied to a particular source. For example, if the State grants the source an extended averaging time for compliance demonstrations that is inconsistent with the underlying SIP narrative, EPA will object to that permit, unless the SIP is changed to accommodate the longer averaging times. These State interpretations of ambiguous SIP regulations may need to be incorporated into the SIP if they critically affect the NAAQS demonstration. As discussed more extensively in section V.B, EPA believes that this might be accomplished periodically through the SIP revision process. Failure on the part of the State to revise the SIP may result in the issuance of a notice of SIP deficiency by EPA to the State.

The permit requires certain information to make it enforceable. There are situations in which a SIP, standing alone, is an inadequate basis on which to issue an approvable (i.e., enforceable) permit. For example, the SIP may contain gaps as to test methods or averaging times. The operating permit process should, at least temporarily, fill these gaps to the extent required by title V. However, this does not relieve the State of any obligation it might have to revise the applicable SIP in response to an EPA SIP call.

To promote and expedite permit decisions by State review authorities that address SIP ambiguity, EPA believes that the concept of a model permit appears promising. Under this concept, conditions for various source types would be developed by EPA. These conditions would incorporate all relevant standards and requirements in enforceable terms, address any gaps in applicable SIP limit(s), and would agree with the assumptions concerning the SIP control strategy demonstration. Permitting authorities could adjust the conditions of the "model," as necessary, during the permit process. While a model permit would not define the only acceptable means to avoid an EPA veto, it could streamline EPA permit review on aspects that do not differ from the model conditions. The EPA solicits comment on this concept and on how best to develop and implement it.

(c) SIP's and FIP's. When a State fails to submit or implement a SIP, EPA may have to impose a FIP under section 110(c) of the Act. When a FIP applies to an area, operating permits for sources in that area must assure compliance with the FIP measures. Failure of a permitting authority to implement the FIP requirements in its permits will be cause for EPA to find that the State failed to administer the permitting program under section 502(i). The EPA may choose to issue permits for sources subject to the FIP and to collect the permit fees.

Other important concerns arise regarding permit program approval and implementation of an inadequate SIP. These issues are discussed in detail in section V.B.

(d) New Source Review. The requirement under title V that operating permit programs assure compliance with all applicable requirements under the Act includes the requirements imposed in any NSR permit. Any requirements established during the preconstruction review process also apply to the source for purposes of implementing title V. If the source meets the limits in its NSR permit, the title V operating permit would incorporate those limits without

further review. The intent of title V is not to second-guess the results of any State NSR program.

Operating permits may conveniently help States implement their NSR programs. If a source "nets out" of NSR by restricting operations at the facility, it may seek an operating permit revision to make that restriction federally enforceable. If a new source needing offsets finds a facility to provide them, the donor facility's permit may be modified to enforce the offsets.

(e) Tighter or Equivalent Requirements. The determination of whether a permit provision relaxes an applicable requirement is an issue, since section 505(b) subjects to EPA veto permits that are not in compliance with the applicable requirements of the Act, including those of the SIP. To minimize concerns about potential relaxations of SIP requirements, permitting authorities are required to express new limitations in terms consistent with those in the SIP (e.g., averaging times) to facilitate comparison with the existing SIP requirement. Where the SIP allows expressing the permit limitation in terms other than those used in the SIP, the burden of demonstrating equal or greater stringency rests with the State. This demonstration must accompany the draft proposed, proposed, and final versions of any permit.

(f) National Emergencies. There are several provisions in the Act authorizing the President to waive applicable requirements of the Act to meet national emergencies or address the national security interest (110(f) and 112(i)(4)). The EPA does not believe it is reasonable for the title V permit program to restrict the operation of these emergency waiver provisions. For example, where the President has made a finding under section 110(f) that it is necessary to suspend a part of a SIP because of a national energy emergency, requiring all the permits that implement the suspended SIP provisions to go through a time consuming reopening procedure would defeat the urgency of the President's finding. Therefore, EPA will interpret such provisions to allow a waiver not only of the applicable requirement under the Act, but also as it appears in any permit implementing the requirement. Obviously, the waiver of the requirement as it appears in the permit will be coextensive with the waiver of the underlying applicable requirement in the Act, and will only be effective after the underlying requirement has been waived according to the procedural requirements in the Act.

(4) Relationship Between the Permit and the Application

The permit application must provide the information necessary for the permitting authority to process the permit. Much of the application need not be incorporated into the permit, however, even though it was needed for preparing the permit. Key elements of the application (e.g., emission limits, the compliance plan and the schedule of compliance for noncomplying sources, and monitoring methods) are not federally enforceable unless repeated or incorporated into the permit (except in the case of acid rain applications).

Nevertheless, existing State practice typically considers most, if not all, of the permit application to be enforceable. In many States, a permit refers to the entire application, and sometimes incorporates it by reference. This practice makes all the source's assertions in the application enforceable, even if they are not critical to implementation of the permit.

Under title V, this practice is not required. Instead, the draft rule requires the permitting authority to determine which details are necessary for incorporation into a part 70 permit because they assure compliance with applicable requirements. Any provisions of the application incorporated in the permit must be readily available to the public and do not qualify for protection as confidential information.

Public comment is solicited as to what type of information contained in the application should be incorporated into the permit. In addition, EPA solicits comment on whether applications (as well as permits) can cross reference applicable regulations and other requirements instead of repeating them.

Regardless of the balance between the information contained in the application and that contained in the permit, certainly some portion of the application will be referenced by the permit and therefore will be made federally enforceable. Because determining this balance can be difficult, and because it is important to the title V permitting process that a source's air pollution control obligations be clearly defined, the permitting authority should specifically address in the permit the status role of the assertions made in the application.

(5) Operational Flexibility

The operational flexibility provisions in § 70.7(d) of the regulations are discussed in section G(7) of the preamble.

(6) General Permits

Section 70.6(f) reflects section 504(d), which authorizes permitting authorities to issue a "general permit covering numerous similar sources." The EPA anticipates that States will use this authority to reduce the administrative burden of the title V permitting program for both the permitting authority and the permitted sources. General permits may be especially useful in easing the burden of the program on small businesses. Therefore, the Agency wishes to clarify its understanding of how this authority will operate in the context of operating permit programs generally.

(a) Determining Where To Use General Permits. In most instances EPA intends to allow those permitting authorities with approved programs to determine whether to issue general permits, and for what source categories. If, however, a permitting authority determines that a general permit should apply to a category of major sources or a category of affected sources under the acid rain program, the permitting authority must submit the general permit to EPA as a program modification. Prior to issuing the general permit, the permitting authority must determine whether there are source categories for which general permits might be appropriate. Criteria in any such determination are source size and similarity of sources within the category; categories made up of numerous, small, and nearly identical sources, are ideal. Initially, EPA does not anticipate issuing any nationally applicable general permits. In the future, EPA intends to develop model general permits for appropriate categories of sources subject to Federal standards. The permitting authorities may then adopt these models as appropriate to the circumstances in their States. The EPA solicits comment on which categories would be most appropriate for the development of general permits. In particular the EPA solicits comment on the idea that such permits be prepared for woodstoves, gas stations, dry cleaners, and several of the source categories subject to the radionuclide NESHAP to the extent that these sources would not be exempt from review.

Permitting authorities may also choose to develop general permits for categories of numerous, identical emissions units within larger sources. For example, a general permit for degreasers could specify standard operating conditions or maintenance requirements. A general permit for a large manufacturing operation with numerous permitted emissions units could specify the terms of the model permit for the type of degreaser the facility uses, along with the terms specific to that source.

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(b) Issuing General Permits. Title V requires that the permitting authority provide notice and an opportunity for a public hearing when issuing a general permit. In contrast to section 502(b)(6), governing issuance of standard permits, section 504(d) does not explicitly require an opportunity for public comment with respect to individual sources when issuing a general permit. Nonetheless, the EPA suggests that permitting authorities provide the public an opportunity to comment on general permits. Otherwise, the interested public may insist on a public hearing, even if only for the satisfaction of submitting a comment. The notice for the general permit must allow the public an opportunity to review the scope of the source category under the permit (but not necessarily a listing of specific source sites that might be covered), the terms and conditions which the permit will impose on that category, and the application process by which individual sources will receive the right to operate under the general permit.

There may be opportunities for States to consolidate the issuance of general permits with the adoption of SIP regulations. Section 110(a) (2) and (3) require that States provide reasonable notice and a public hearing for all revisions to its SIP. A State may determine that a new SIP regulation will apply to a source category for which general permits would be appropriate. The State could use the same notice and hearing for both the SIP rule and the general permit. After the State finalizes the SIP rule and is ready to issue the general permit, it could then submit the general permit to EPA for review under section 505.

Once the permitting authority has afforded opportunity for public input on issuing the general permit, it may permit individual sources under the general permit without additional opportunity for public input. Section 504(d) provides that sources covered by a general permit are not relieved of their obligation to file an application as otherwise required under title V. Therefore, sources covered by a general permit will have to submit an application to the permitting authority, and may be asked to also submit an appropriate permitting fee. Depending on the complexity of the source category under the general permit, such application processes could simply be a brief application (such as a form application) requesting a permit consistent with the general permit, or a more detailed statement establishing that the source qualifies for the permit. The EPA expects that applications for general permits will typically be quite simple, because the sources in each category will be very similar.

Within limits discussed below, it is for the permitting authority to balance the desire for a simple application against the flexibility gained by broadening a source category and introducing variables into the application process. Once the permitting authority accepts the application, it can issue the individual permit by mailing the applicant the appropriate permit. All general permits, and the individual permits issued under them, must conform to all requirements (e.g., they must have monitoring, recordkeeping, and compliance certification provisions of these regulations).

The EPA is also considering an alternative approach for applying general permits to individual sources. Under this alternative, rather than issue individual permits to applicants, the permitting authority might simply construct the general permit so that it applies automatically to any source within the source category covered by the general permit. The individual source must submit an application identifying and describing the source, so that the permitting authority and the public could determine whether the general permit applies to the applicant, but the authority would not need to notify the source through an individualized permit that the general permit applies. Of course, the permitting authority might still notify some applicants that the general permit did not apply to them. Beyond that, a source could opt out of this approach by requesting that the permitting authority issue a specific individual permit for the source.

The main advantage of this approach is that it would reduce the administrative burden associated with requiring the permit authority to issue individual permits to the potentially hundreds or thousands of sources that would be subject to general permits. The main disadvantage is that a citizen or inspector visiting the source would not be able to view, at the source, a permit issued by the State specifically for that equipment. Rather, he would need to rely on the wording of the general permit (residing, perhaps, only in the offices of the permitting authority) to determine whether the general permit indeed applied to the source. Moreover, the public would not be able to challenge the general permit's applicability to a particular source during the permitting process since the permitting authority would not make such an applicability determination as part of that process. The EPA solicits comment on whether it should allow State programs to employ this or other streamlined methods of general permitting in light of their advantages and disadvantages, or whether individual permits need to be issued to each source covered by the terms of a general permit.

(c) Overseeing General Permits. The EPA will treat the issuance of a general permit as it would that of any other permit. Therefore, general permits will be subject to the review process under section 505, including neighboring State and EPA review. The general permit must include clear criteria for determining whether a source qualifies for the permit, the terms and conditions applicable to the source, and an application process for obtaining individual coverage under the general permit. As with regular permits, EPA will use its review opportunity under section 505(b) to determine whether the terms and conditions of the general permit assure compliance with the requirements of the Act applicable to that source category in the relevant State. Unlike regular permits, EPA must make a judgment at this stage in the process whether the general permit and its application process are reasonably structured to permit qualified sources and exclude unqualified sources. There may be cases where EPA must object to a general permit because the permitting authority is applying it to an inappropriate source category or is not asking for the information necessary to apply it accurately to specific sources.

After the permitting authority has issued the general permit, EPA will not engage in any direct review under section 505 of the permitting authority's approval of each source's application to operate under the general permit. The EPA must, however, continue to receive a copy of all final permits issued to individual sources. The Administrator may later determine by audit or inspection that, although a source is operating under a general permit, it does not in fact qualify for the permit.

The EPA then has several courses of action available. If the source has clearly misapplied the criteria for receiving the general permit, EPA may enforce against the source, under section 113, for a failure to meet the qualifying criteria, which must be included as terms of the general permit, as discussed above. The EPA may enforce as well for failure to meet any applicable requirement of the Act. The source may also be liable for filing a false application if it misrepresented its qualifications for the general permit. If the qualifying criteria as they apply to a particular source are unclear, EPA may use its authority under section 505(e) to terminate the general permit for that source, and require issuance of a regular permit. Finally, if EPA determines that a properly-issued general permit, when applied to its source category, proves to be impracticable or fails to assure compliance with the Act, EPA may revoke or reopen the general permit under section 505(e).

G. Section 70.7 (and Section 70.6(d))—Permit Issuance, Renewal, Reopenings, Operational Flexibility and Revisions

The Act sets forth detailed provisions with regard to the process by which permits are issued. This section of the preamble describes EPA's proposed regulations for permit issuance, renewal, and reopenings, including those requirements regarding essential permit issuance procedures necessary for obtaining approval for a State program. The requirements for permit revisions were discussed in the previous section of this preamble (IV.F.).

(1) The Application Process and State Review

As noted in section IV.E., the submittal of a complete application is a crucial part of the permit-issuance process. States are required to have procedures for both determining the completeness of applications and for expeditiously processing them. Because of the critically important nature of this step, the proposed regulations would require States to promptly notify sources of the results of the completeness determination (40 CFR 70.7(a)(2)).

Pursuant to section 503(d), the timely submittal of a complete application and the continued timely submittal of any additional information creates a legal "shield" from enforcement action if this source is also operating within the terms of a permit. For purposes of permit renewals, "timely" will mean submittal of the application 18 months prior to the expiration date of the permit, unless another time is approved by the Administrator. A correspondingly shorter time would be needed for permits with fixed terms shorter than 5 years, or where the State is required to act on the renewal application in less than 18 months. In no event will the time for submittal be less than 6 months before permit expiration.

It should also be noted that the complete application does not shield the source from compliance with substantive air pollution control requirements. (There is one specialized exception to this rule in the case of applications for acid rain permits. This is discussed in section IV.G.(5)(a) below.)

Despite the protection provided by the "shield" when a timely and complete permit application is filed, EPA believes that it makes no sense to deprive a source of such protection where an application is only slightly overdue. Otherwise, a permitting authority's failure to act on an application during the prescribed review period could shut down a source, even if the application were only a few days late. The EPA proposes to solve this problem by providing in § 70.7(b) that the shield will not be lost because a complete application was submitted less than 3 months late. This proposal is supported by the language in § 503(d), which states that, under most circumstances, if a source has submitted a timely and complete application, "the source's failure to have a permit shall not be a violation of this Act." Nothing in the Act prohibits EPA from exercising its discretion to extend this application shield in other, appropriate circumstances. The proposed regulations make clear, however, that a source remains subject to enforcement action and penalties for failure to submit a timely and complete application for the entire period that the application was late.

The EPA also proposes that the application shield should still apply where a source submits a timely application that the permitting authority determines to be incomplete, regardless of whether there was "good faith" on the part of the source to file the required information. If the source cures any deficiency during the expeditious time period specified by the permitting authority (i.e., a few days), then the application shield can apply from the time when the "good faith" application was submitted.

State programs are required to have procedures for expeditious and efficient processing of permits. Pursuant to § 503(c), the permitting authority shall issue or deny the permit within 18 months of receipt of a complete application. (During the initial phase-in of the program, however, any shorter timetable specified in the transition plan will supersede the 18-month requirement.) The program must provide that failure of the permitting authority to act within this time period shall be treated as a final permit action solely for purposes of judicial review in State court of an action brought to require that action be taken by the permitting authority on the application without additional delay (502(b)(7)). In other words, while the failure to issue a permit can be reviewed judicially, the permit cannot be deemed to be approved or disapproved at that time. One potential difficulty in obtaining program approval arises from provisions for default permit issuances under State law. Some State statutes provide that a permit based upon the submitted application will be automatically issued after the passage of a certain time period if the State permitting authority has failed to act. Such default issuance is inconsistent with the State permit-processing requirements of title V and, obviously, with the requirements for Federal oversight contained in section 505.

Although section 503(d) of the Act makes it clear that existing sources can receive the shield from enforcement action for failure to have a permit, until final action is taken by the review authority on the application, the status of sources subject to preconstruction-review permitting is less clear. One reading of the section is that the application shield is not available to sources subject to NSR permitting under the Act (e.g. PSD), and that those sources must have title V operating permits before commencing operation. The EPA believes that a better reading consistent with the goals of section 503(d), and of title V generally, is one that affords protection equally to existing and to new sources.

There are several reasons which support this proposal. First, sources that have recently undergone the careful scrutiny involved in obtaining a PSD or NSR permit present much less of a relative risk to air quality goals even if they are allowed the benefits of the shield, than would existing sources. Second, title V provides a review process that, while efficient, could cause expense and delay to the initial operation of a source that typically will have excellent air pollution controls. There is nothing in the legislative history that indicates Congress intended such harsh treatment for new or modified sources. A third reason arises from the fact that the subsection specifies only NSR permits *required by the Act.* It would be anomalous to allow the application shield to new sources that have undergone State NSR procedures, which generally address smaller sources and are less rigorous than the NSR mandated by the Act. In view of these factors, EPA believes that section 503(d) should be interpreted as a reemphasis of the important, independent requirements of the Act with respect to NSR permits, rather than a denial of the application shield to these sources.

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If EPA adopts the alternative position in its final rulemaking, all sources obtaining NSR permits will also be required to obtain title V operating permits before commencing operation (i.e., it is not sufficient that the source submit a timely and complete application before operating) (503(d)). This has prompted interest in the possibilities for integrating or coordinating these two permitting systems. The EPA is aware that some States currently integrate their processes for issuing construction and operating permits, and wishes to minimize disruption of existing practices. In addition, this practice might address the concern expressed by some industry representatives that early issuance of the operating permit would aid in qualifying for construction loans. The EPA concludes that such program integration would be consistent with title V. States preparing such programs must, however, carefully scrutinize them so as to maintain consistency with the requirements of title V. For example, the term of the operating permit would begin running immediately upon issuance of the integrated permit. Payment of emissions fees, submittal of compliance plan for noncomplying sources and certification, and future permit renewal must also be addressed.

(2) Public Comment

Title V emphasizes the importance of a well established, procedural basis for permit issuance. Public comment is a cornerstone of this, and the following discussion examines the provisions of title V on this subject.

(a) Public Information and Notice. Pursuant to section 502(b)(6), State programs are to have formal procedures for providing public notice of certain permitting actions. Each permitting issuance, renewal and modification must be supported by an official record that is available to the public. The notice should include both substantive information, regarding the source itself, and procedural information, regarding the public's opportunities for participation. The extent of source-specific information required for the notice will vary, depending on the size and type of source and the applicable requirements, but should at least include the source's name and type of facility, size, regulated emissions, and principal regulatory requirements. The procedural information, which can be standardized, should describe the public's opportunity for comment, including the availability of the official record, the duration of the comment period, and the opportunity for a hearing. Notices for hearings should briefly describe the procedure by which the hearing can be requested.

The process for publishing public notices of permitting actions has always been of considerable practical interest to State agencies because extensive publications of notices in newspapers of general circulation can be time consuming and can entail appreciable expense. For this reason, State agencies have generally not used this form of publication, except for certain types of sources or regulations, or where specifically required by Federal law, most notably under the PSD and nonattainment NSR provisions of the Act (40 CFR 51.166(q)). The proposed regulations require that the State provide public notice "by advertisement in the area affected" (70.7(i)(2)). The EPA solicits comment on public notice procedures, including any currently used by State programs, that might be less administratively burdensome than individual newspaper publication, while still meeting the requirements of title V. This issue is of particular importance to this program because of the large number of permits involved and the fact that most permitting actions incorporate SIP limits that have already undergone public review, and should therefore be noncontroversial. Options to be considered include the use of State publications analogous to the Federal Register and of bulk processing of notices.

Section 505(a)(1) requires that the permitting authority transmit to the Administrator "a copy of each permit application (and any application for a permit modification or renewal), or such portion thereof, including any compliance plan, as the Administrator may require" as necessary to carry out EPA's responsibilities under the Act, and a "copy of each permit proposed to be issued and issued as a final permit." The potential use of various approaches to streamline or focus the process of State information submittal to EPA has been a topic of considerable interest, given the number of permits and amount of information involved.

Mechanisms for waivers of the EPA notification requirements are discussed in section IV.H. In addition, the notification requirement might be streamlined pursuant to section 505(a)(1)(A), which requires the submittal to EPA of permit applications "or such portion thereof * * * as the Administrator may require" to carry out EPA's responsibilities. The EPA solicits comment as to the extent of this flexibility and how this information submittal process can be streamlined to agree with EPA's responsibilities as guarantor of the permitting process. Examples of such practices might include summary sheets with certifications (instead of comprehensive submittals) for certain routine permitting, or the use of electronic submittals. For acid rain, summary sheets with certifications will not be authorized in lieu of submitting complete applications and draft permits to EPA. The Agency, however, is considering the use of electronic submittals of applications and draft permits for acid rain affected sources to minimize the submission burden.

Section 505(a)(2) also requires the permitting authority to notify all States "whose air quality may be affected and that are contiguous" to the subject State, or that are within 50 miles of the source, of each permit application or proposed permit forwarded to the Administrator. This regulation would require that the same draft proposed permit for which the permitting authority offers public notice and an opportunity for public comment and hearing be provided to those affected States. The permitting authority shall provide an opportunity for those States to submit written recommendations. If those recommendations are not accepted, the permitting authority shall so notify that State and EPA in writing and provide its reasons. This process appears straightforward. Particular administrative details, such as how much of an application should be transmitted, may be appropriately addressed by agreements between the relevant States.

The one area where clarification might be necessary is in the definition of the term "may be affected" in section 505(a)(2)(A). The 50-mile geographic trigger, contained in section 505(a)(2)(B), appears to provide adequate protection for virtually any case and would be relatively simple to administer; compared, for example, to alternatives that attempt to define a significant ambient impact. The EPA solicits comment on whether any other trigger would provide any further safeguard, beyond the 50-mile test, needed to implement the "may be affected" test for certain pollutants.

There has been some interest regarding whether State permitting authorities would be required to publish notice both of proposed State action on the permit (prior to EPA review) and of final permit issuance (following EPA review), or only the latter. The EPA proposes not to require the latter notice

(b) Opportunity for a Hearing. The EPA believes the requirement in title V for an opportunity for a public hearing

can be implemented in an informal manner. It is not requiring States in its proposed rules to provide a full "trial-type" hearing with a verbatim transcript and opportunity for cross-examination. The Agency proposes that a public hearing for purposes of title V be an open meeting for concerned parties to express their concerns. A summary of comments received should be placed in the public record.

The EPA also solicits comment as to the degree of discretion that State agencies should have to condition the opportunity for a hearing upon certain reasonable criteria. These might include the relevance of the issues presented by the requesters, and whether factual issues (in contrast to issues of law) are presented. The granting of a request for a hearing might also be linked to the quality of information provided by the requester to support the request (e.g., whether the request reflects comments of sufficient technical (or, possibly, legal) scope that they would benefit from the exchange of ideas afforded by the public hearing process).

(c) Publicly Available Records. Title V places considerable emphasis upon providing public access to permit information. Section 502(b)(8) requires that the permitting authority make available to the public any permit application, required compliance plan for noncomplying sources, permit, and monitoring or compliance report, subject to the provisions of section 114(c). (The EPA notes that section 114(c) governs information to be provided to EPA, not to a State, and thus the provision does not apply where the State is the permitting authority. The Agency interprets Congress's reference to section 114(c) as authorizing the States to use the same, or substantially similar, confidentiality criteria, otherwise the reference would be meaningless except where EPA is the permitting authority. The EPA solicits comment on this interpretation.)

Section 503(e) requires that each application, compliance plan for noncomplying sources (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title shall be available to the public. The applicant may separately submit material subject to State procedures which correspond to the section 114(c) confidentiality provisions of the Act. In no event will the contents of a permit be entitled to section 114(c) protection. To the extent the permitting authority chooses to make the application or other supporting material an enforceable part of the permit, these materials would also be publicly available.

(3) State Permit Appeals

The proposed regulations require State operating permit programs to contain appropriate appeals procedures. Many States currently provide an administrative process to consider appeals from permitting decisions, and EPA anticipates that these procedures will continue to be used under the title V permitting program. For those cases in which a State does not offer such an administrative process, the Act still requires the State to provide for judicial review in the State courts. States may require that judicial review only be available to those petitioners who first have gone through the administrative appeals procedure (502(b)(6)). Further discussion of this topic is provided in section V.D. It should be kept in mind that permits cannot be issued with respect to title V until the Federal review is complete. Because of the statutory 18-month period for final action on permit applications, it is expected that State permitting authorities will generally issue final permits at the end of State and Federal review, regardless of any pending appeals of the permitting decision. However, the EPA does recognize that, in some cases, the nature of the appeal might prompt changes to the permit that could significantly affect commitments by the source. In such cases State programs should have the discretion to withhold final action on the permit while the administrative appeal is pending. The permit challenge procedures adopted by the States should limit the effect of permit challenges, as is done in the NPDES program. State authorities should provide that only the portions of a permit specifically challenged may be stayed during the challenge. All other provisions of the permit should remain in effect. The Agency is proposing that permit challenge procedures limiting the effect of challenges be criteria for State program approval.

To ensure the integrity of the various programs implemented through the permit, each permit should also contain a severability clause. This clause should be designed to ensure that challenges to portions of the permit do not affect the applicability of the unchallenged permit requirements. This provision, should further ensure that only those specific requirements being challenged may be stayed pending administrative or judicial review. The Agency is proposing that a severability clause be criteria for permit program approval and expects to veto permits lacking this clause.

(4) Terminate, Modify, or Revoke and Reissue

Section 505(e) provides that if cause exists to terminate, modify, or revoke and reissue a permit under title V, the Administrator shall notify the permitting authority and the source. The permitting authority then has 90 days to forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend this period for an additional 90 days if a new or revised permit application is necessary, or if additional information is needed from the source. The Administrator may review proposed determinations pursuant to the same section 505 criteria used to review any proposed permit issuance.

If the permitting authority fails to submit the required determination, or if EPA objects to it and the permitting authority fails to resolve the objection within 90 days, the Administrator may, pursuant to appropriate administrative procedures, terminate, modify, or revoke and reissue the permit. The criteria for Federal reopening of a permit for cause to terminate, modify, or revoke and reissue are essentially the same as required for State programs. These are discussed in the following preamble section.

(5) Permit Shield and Reopenings

(a) *Shield.* Once a permit is properly issued with respect to title V (i.e., EPA does not object to the permit in its final form and adequate public participation has occurred), it is the comprehensive statement of the source's obligations under the Act. In accordance with section 504(f), the permit, upon issuance, shields the source from enforcement for failure to obtain a permit as set forth in section 502(a).

Section 504(f) states that: "Compliance with a permit issued in accordance with this title shall be deemed compliance with section 502. Except as otherwise provided by the Administrator, by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of this Act that relate to the permittee if (1) the permit includes the applicable requirements of such provisions, or (2) the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof. Nothing in the preceding

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sentence shall alter or affect the provisions of section 303, including the authority of the Administrator under that section."

The Act describes a number of situations which are not protected by the permit shield. First, section 504(f), which provides for the shield, precludes the shield from being applied when implementing section 303. Section 303 gives the Administrator emergency powers to respond to pollution that produces imminent and substantial endangerment to the health of persons. Second, section 504(f) gives the Administrator the authority to exempt, by rule, certain situations from the shield. Pursuant to this authority, the Administrator is proposing that a permit shield not afford any protection from liability to a source that is not in compliance with a standard or regulatory requirement of the Act at the time an operating permit is issued. Further, the EPA is proposing that the permit shield would apply to any permit provisions added or modified by any type of permit revision. For a minor permit amendment made under the "fast track" approach, the shield would apply immediately when the revision becomes effective, i.e., when the permitting authority fails to object.

In addition, if any applicable requirements were omitted from the permit during the permit issuance process (i.e., not addressed as opposed to misinterpreted), the source will not be shielded from enforcement of those requirements. Otherwise, emissions subject to omitted regulations, including hazardous air pollutants, could be emitted entirely unrestricted until the permitting authority or EPA reopens the permit. The Administrator is requesting comments on these proposals and any additional recommendations as to other situations which should be exempted from the shield, by rule, under section 504(f). The Agency is also proposing that the permit shield be disallowed with respect to the acid rain portion of the permit consistent with new section 408(h). Section 408(h)(2) modifies the effect of section 504(f), disallowing the permit shield to the extent the acid rain portion of the permit is inconsistent with title IV. Each permit should, therefore, clarify that the shield does not apply to acid rain requirements, notwithstanding any generic shield language.

After a permit has been issued, any permit shield can be preempted by the permitting authority or the EPA only when the permit is reopened for cause. The Act contains several occasions for reopening an issued permit, and they are discussed below in this section.

While use of the shield remains discretionary with the permitting authority, EPA believes that the section 504(f) permit shield provision of the Act brings about certain benefits to a permittee, as well as to the permitting program. Therefore, the Administrator encourages the permitting authority to employ the shield to help stabilize the permit process and to give greater certainty to regulated sources. Because of the shield, unclear provisions or changes in interpretations will not affect a shielded source after a permit has been issued, unless it is later reopened for cause. Uncertain regulatory provisions should therefore be resolved in a public forum during the permit processing stage. On the other hand, in nonattainment areas where the State anticipates new requirements becoming applicable to a permitted facility during the permit term, the permitting authority may choose to limit the scope of the shield for those provisions. Doing so would save the permitting authority and affected sources the inconvenience of reopening a series of permits to allow the State to implement its SIP obligations.

The EPA proposes that the permit shield under § 504(f) remain in effect, to the extent the source is entitled during the term of the expiring permit, until a renewed or modified permit is issued, except where inconsistent with State law or as provided in parts 72 through 78 for the acid rain portions of a permit, provided the source submits a complete application for permit renewal in a timely manner.

The Agency also solicits comment on how comprehensively to interpret the scope of the shield. One approach is to interpret it quite broadly. For example, if all the applicable requirements of § 112 are met in a part 70 permit at the time of permit issuance, and are explicitly identified in the permit as meeting § 112, the source could be shielded by the permitting authority from any future § 112 requirements for the term of the permit. Section 502(b)(9) provides support for this interpretation by calling for the automatic reopening of a major source permit with a term of 3 or more years in order to incorporate applicable new standards and regulations promulgated under the Act after the issuance of a permit. On the other hand, § 504(f) can be read to shield the source only from those requirements (read narrowly) that were the subject of the permit-issuance process and included in the permit. Under this interpretation, the section 502(b)(9) provision for reopenings would be viewed as a requirement to ensure the timely incorporation into the permit of major, new regulatory requirements in order to maintain the permit as the consolidated repository of all applicable Act requirements.

The EPA interprets the shield broadly by distinguishing between the applicable "provisions" of the Act and the applicable "requirements" of the Act. To expand on the example mentioned above, if the permit imposes the specific "requirements" of an applicable MACT standard, or determines that there are no such requirements under § 112, then the source is protected from application of the "provisions" of § 112 for the duration of the permit term.

The regulations as they are now structured follow this broad interpretation of the shield. The proposed shield provision in § 70.6(h) protects a source from new requirements that become applicable after issuance of the permit.

(b) Permit Reopening. After a permit has been issued, any established permit shield under section 504(f) can be preempted by a permit reviewing authority or the EPA where the permit would be reopened for cause. The Act contains several occasions for reopening an issued permit, and provides several instances in title IV where changes to the permit are to be incorporated without reopening.

One occasion for reopening a permit is in section 505(b)(3). It provides that if the EPA objects to a permit, the EPA shall, if a permit has already been issued, either modify, terminate, or revoke such a permit, and the permit reviewing authority may afterwards only issue a revised permit in accordance with § 505(c).

Another occasion for reopening a permit is for cause. Section 502(b)(5)(D) requires that a permitting authority must have adequate authority to terminate, modify, or revoke and reissue permits for cause. Both the permit-reviewing authority and the EPA can require a permit to be reopened for cause. The EPA interprets this to mean a compelling reason to reopen a permit, for example, where a substantial error has been made in permit processing or data submittal whose correction cannot wait until renewal, or where fraud on the part of the source has been found. Reopening of the permit "for cause" would also be appropriate in order to incorporate the NO_x limits for affected sources under the acid rain program. Permit applications for NO_x are not due from affected sources until after the statute requires States to have issued permits for these sources. To include NO_x limits in these permits prior to reissuance, the permits will need to be reopened. (States should be aware, however, that permit revision procedures for acid rain sources will be affected by part 72 regulations.) Cause should not include trivial matters (i.e., changes in a permit which cause an inconvenience to a source but do not have a significant effect on assuring compliance with Act requirements). The EPA is requesting recommendations for events and situations which provide cause for both the EPA and a permitting authority.

The EPA proposes not to require a permit to be opened for cause until after a permitting authority has had an opportunity to act expeditiously under its own authority to reopen a permit for cause. If EPA notifies the State, pursuant to section 505(e), it will then get 90 days to make the appropriate change. The EPA further proposes that permit reopenings be processed under the permit issuance process, with one important exception: The EPA proposes to require the permitting authority to provide the source 30 days advance notice before reopening and revising a permit for cause when it is reopened pursuant to section 502(b)(9), as discussed below.

Certain changes cause permits to be reopened automatically as defined in § 502(b)(9). The EPA believes that § 502(b)(9) should be read to require that the permitting authority reopen permits for major sources with 3 or more years remaining in the permit's life (rather than reopen all permits with original terms of 3 or more years) to incorporate standards and regulations promulgated under the Act which are promulgated after the issuance of such a permit. The EPA has rejected the alternative interpretation stated in the parenthetical because it would lead to absurd results. For example, a major source permit with a 35-month term, and 34 months remaining until expiration, would not have to be reopened upon promulgation of an applicable standard or regulations; yet a major source permit with a 40-month term, and 19 months remaining until expiration, would. Besides being unreasonable, this would create a strong incentive for States to issue permits with artificially short permit terms, thus creating much additional paperwork with no corresponding environmental benefit. It would also be disruptive of existing State permit programs because many now issue permits with 5-year terms. The EPA therefore believes that the alternative interpretation was not the result intended by Congress.

Revisions must be made as expeditiously as practicable according to § 502(b)(9), but no later than 18 months after the promulgation of such standards and regulations. The 30-days advance notice to affected sources is again proposed as a requirement for the permitting authority.

Finally, certain changes will cause a revision to the permit by operation of law without necessitating any sort of reopening of the permit. For example, all acid rain allowance allocations and transfers shall, upon recordation by EPA, and in accordance with § 403 of the Act and part 73, be deemed a part of each unit's acid rain permit requirements, without any further permit review and revision (403(d)(1)). In addition, excess emission offset plans shall be deemed included into the permit upon approval by the Administrator, but without any further permit review or revision (411(b)).

(6) Permit Renewals

Section 502(a) of the Act states that it is a violation for a source subject to title V to operate without a permit. Furthermore, § 502(b)(5)(B) requires that permits be issued with a fixed term of 5 years for acid rain affected sources and with a fixed term not to exceed 5 years for all other sources, except for solid waste incineration units subject to § 129(e), which can have terms of up to 12 years. The § 502(a) requirement to have a valid permit is qualified in part by § 503(b) which states the source is not in violation of section 502(a) if a complete and timely application for renewal has been filed by the source owner, unless the delay in final action was due to the failure of the applicant to submit any required information requested to process the application. The EPA proposes that a timely submittal must allow sufficient time, before the expiration date of the permit, for the permitting authority to review and reissue the permit. The EPA believes, at a minimum, that this time must include the 45 days for EPA oversight and adequate time for permit processing, including public participation. In some cases, additional time may be necessary to be consistent with other review procedures. Therefore, EPA proposes the timetable for application submittal by the source be included as a condition within the permit and be for a period of 18 months unless a different time period is approved by the Administrator. This time presumptively would be correspondingly reduced in the case of permits with fixed terms of less than 5 years or where the permitting authority is obligated to act on the application in less than 18 months.

Section 502(b) (5)–(7) requires applications for permit renewal and the subsequent permits to be subject to the same requirements as were the initial applications and permits with respect to permit content and processing. This includes allowing up to 18 months to process a complete application. Section 502(b)(5)(C) specifically requires that, upon renewal, all permits incorporate all applicable emission limitations and other requirements of the SIP. The EPA is proposing in § 70.7 to minimize the burden of processing permit renewals by taking advantage of the fact that, in many cases, much of the data and analyses pertinent to the earlier permit is still applicable for the permit renewal. Upon certification by the source owner or operator that no significant change has occurred at the source since the time the existing permit was issued, a permit-renewal application can, at the option of the permitting authority, reference the relevant material submitted in earlier applications as an alternative to resubmitting the material. In addition, the renewal application must contain, in accordance with § 502(b)(9), those items related to new regulatory requirements which have become applicable to the source, any other regulatory requirements which have been determined to apply to the source, any other changes which would ordinarily require or permit modification.

Although referenced material in the renewal application was at one time subject to public comment and EPA review under the permit-renewal process, it is again subject to all the provisions of the permit-review process. Section 505(a) requirements for the transmission and notice of permit applications specially affirm their applicability to renewals as well as those applications processed during the original issuance of the permit.

If the term of a permit expires before a complete application is submitted, the source's right to emit is terminated. The source is subject to enforcement action if it continues to operate even though a complete application is eventually submitted until it receives a new permit. The EPA proposes that the permit shield described in § 504(f), remain in effect with respect to requirements addressed in the permit provided the source submits a complete and timely application for permit renewal. However, the permit shield will be disallowed if requirements are inconsistent with the acid rain title.

Issues arise as to what requirements are enforceable on the source after the

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fixed term of its current permit expires and the source owner has not received a new permit. The EPA proposes that expired permit terms should remain enforceable as they are in the NPDES program, except where inconsistent with State law or as provided in part 72 for the acid rain portions of a permit. In addition, any new requirements, from which the source was previously insulated by the permit shield in § 504(f), would apply upon expiration of the permit (IV.G.(5)).

Section 502(b)(9) deals with the need for certain permits to be reopened in the event that applicable standards and regulations are promulgated after the issuance of such permit (70.7). This type of permit revision must be treated as a permit renewal and is subject to all the requirements described today which address permit renewals.

Finally, as permits which were processed in the transition period are reviewed, EPA encourages reviewing authorities to establish new fixed terms (e.g., terms of 3, 4, and 5 years) in these permits that balance the future workload. That is, the reviewing authority should define new schedules for renewal within reissued permits which take advantage of the 5-year timeframe opportunity rather than the 3 years required for transition.

(7) Operational Flexibility and Permit Revisions

(a) *General.* During discussions preceding the proposal of these regulations, many in the regulated community expressed concern over the ability of states to make changes in permits to reflect routine operational changes. Several different aspects of the permit program provide substantial flexibility for industry to make changes in operations without having to obtain prior governmental approval in the form of amendments to the existing terms of their permit.

Sections 70.6(d) and 70.7 of this proposed regulation set forth the framework for operational flexibility and permit revisions. More specifically, they establish minimum procedures for four classes of changes at sources: (1) Changes under the CAA section 502(b)(10) that require no prior revisions to the permit (see § 70.6(d)); (2) changes classified as "minor permit amendments" (see § 70.7(f)); (3) changes classified as "administrative permit amendments" (see § 70.7(e)); and, (4) changes classified as "permit modifications" (see § 70.7(d)). The last three of these are grouped together under the term "permit revisions" (see § 70.2(v)). These changes are discussed below.

(b) *Flexible Source Operation Under CAA section 502(b)(10).* The first, and perhaps the most important, source of flexibility is the general principle, articulated elsewhere in this preamble, that emissions or other practices not specifically prohibited by a permit are allowed if otherwise legal under the SIP and applicable federal or state law (see preamble discussion at section IV.E.5.b). Air permits summarize existing restrictions; a permit change is *not* affirmatively required to authorize every change in practices which are otherwise legal under the SIP or federal law merely because an existing permit does not address the practice. Thus, changes in industrial practices and procedures that do not run afoul of the terms of a permit can be made without seeking any change to the terms of the permit. For example, an industry would be free to alter its production processes in ways that alter its emissions unless some term of the permit (or other provision of the law) prohibits the change. Permits should be drafted with this principle in mind, so that they do not include unnecessary detail or restrictions which might unduly hamper industrial flexibility to change operations at a later date. See discussion of designing flexible permits in section (f) below. The states do, of course, have the ability to devise permit programs that would enable sources to choose between: (1) Making changes that do not violate the permit without including them in their permits; and, (2) including such changes in the permit pursuant to the procedures established by the state. In the latter case, the sources would have the benefit of a permit shield.

If the explicit terms of the permit do prohibit a practice (for example, if a compliance plan for a noncomplying source contains specific provisions regarding how a source plans to comply which it then not wishes to change), the operational flexibility provisions under section 502(b)(10) of the Act (§ 70.6(d)) provide a "fast track" process for changing the terms of the permit without undue delay provided that the changes do not involve an increase in the level of regulated emissions allowable under the permit.[5]

Although section 502(b)(10) avoids having the States and EPA continually repeat the full permit-review process for minor changes in operation, it does not alter a source's obligation to comply with any requirements of the Act that apply to its operations. This conclusion is suggested by the interaction of the "permit shield" provisions in section 504(f) with the "operational flexibility" provisions in section 502(b)(10). The permit shield provides that compliance with a permit is deemed to be in compliance with the requirements of the Act to the extent the permit contains those requirements of the Act or contains a specific finding that a requirement does not apply. To the extent a permit does not address requirements that apply to a change in operations at a facility, those requirements are necessarily outside the scope of the protection provided under the permit shield provision, unless the permit has been revised.

Where the change would not be allowed in the permit but would not exceed allowable emissions under the permit, EPA interprets section 502(b)(10) to require that the source give at least 7 days advance written notice to both the permitting authority and EPA. This notice must contain sufficient information to determine what new requirements of the Act apply (if any) to the changed operations. Of course, the permitting authority must incorporate any new requirements upon renewal. The EPA is therefore taking comment on its proposal to require an update of the permit after notification has occurred, provided that the new version of the permit be made publicly available.

The EPA believes that this proposal gives certainty as to what requirements are applicable to the source and assures the permit is consistent with section 502(b)(10), which specifies how sources may act without the need for a permit revision to incorporate changes not anticipated during permit issuance. In any case, upon renewal, the new conditions would be eligible for protection by the shield.

(c) *Minor Permit Amendment.* There remains a class of changes in facilities that would result in emissions above what is allowed in the permit that do not rise to the level of "modifications" under title I of the Act.[6] For example, a permit

[5] Section 502(b)(10) requires that title V programs "allow changes within a permitted facility * * * without requiring a permit revision, if the changes are not modifications under any provision of title I and if the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions)," provided that there is written notification at least 7 days in advance, unless the permitting authority provides in its regulations a shorter timeframe for emergencies. See the following footnote for what constitutes a "modification" under CAA title I.

[6] Title I of the Act includes several different definitions of "modification" for purposes of different programs. For purposes of the new source performance standards (NSPS), the statutory definition of "modification" is found at 111(a)(4), and EPA's implementing regulations are found at 40 CFR 60.14. For nonattainment new source review (NSR),

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might include emission limitations based on a RACT requirement in a SIP. If the permittee changes operations so as to become subject to a less stringent RACT limit in the SIP, it cannot increase its emissions to levels authorized by the new RACT limit without a change to the permit emission limitation. EPA has extensively considered whether additional provisions might permit increased emissions above permit allowables, as long as such increases would not violate any applicable requirement.

The Clean Air Act provides procedures for changing or revising permits. Section 502(b)(6) requires:

> adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permits actions, including * * * revisions * * *

With regard to permit changes that are considered "revisions" for purposes of section 502(b)(6), EPA notes that the statute does not mandate specific procedures to be used for making "revisions" to permits. The primary thrust of section 502(b)(6), as EPA reads it, is a pronounced Congressional concern that the procedures used to issue or revise permits should not result in undue delay, as evinced by Congress's use of the terms "streamlined" and "expeditious". Beyond that, section 505 does not clearly prescribe which, if any, types of permit modifications must undergo EPA review.

EPA believes that the statutory language leaves substantial discretion to the states, as permitting authorities, to devise appropriate procedural schemes for making expeditious revisions to permits, including "fast-track" procedures to facilitate operational flexibility. As a matter of policy, EPA believes that states should be encouraged to implement expedited review procedures for changes that result in emission increases above permit allowables, but that are not title I modifications and do not violate any applicable federal requirements, as long as such procedures include a minimum of 7 days' notice. (Today's proposal includes a minimum set of procedures incorporating this 7 day notice requirement; see § 70.7(f)). The notice would go to the permitting authority and the Administrator. After waiting the required 7 days, the source may make the change unless the permitting authority objects to the notice change within the 7 day period.

EPA will review the procedures for revising permits proposed by states in their permit programs in conjunction with EPA's review of the applicable implementation plan. No particular form of procedures for revising permits is required. The basic test is whether a state's procedural system, taken as a whole, can assure that the national ambient air quality standards and other substantive requirements of the Act will be maintained and enforceable. See section 110(a). If the state's procedures can be administered in a way that would provide adequate mechanism for tracking permit revisions (either ex ante or ex post) to ensure that the substantive standards of the Act are met, EPA should ordinarily approve them, rather than speculate that the procedures might be misapplied. If a state subsequently applies its procedure for revising permits in a way that results in violations of air quality standards or other requirements of the Act, EPA has adequate remedies available to it under the Act, see, e.g. section 110(k)(5) (calls to order revisions to SIP found inadequate); section 502(i) (assure adequate permit programs).

EPA solicits comment on what are the appropriate criteria for EPA to use in approving state procedures for revising permits.

(d) *Administrative Permit Amendments.* The second type of permit revision is defined in part 70 as an administrative permit amendment and includes administrative changes such as correction of typographical errors, changes in address, change of ownership, etc. (for a full list, see § 70.2(c)). The EPA proposes that administrative permit amendments can be handled by direct correspondence from the permitting authority to the facility after the appropriate information related to the changes has been supplied by the facility. Administrative permit amendments will address only the items prompting the amendment(s). A copy of the amendments should be supplied to EPA and a copy also placed in the record, which is available to the public in accordance with section 503(e).

The EPA is proposing that the following types of changes can, at the discretion of the permitting authority, be handled as administrative permit amendments and that such changes should be reported to EPA, but no later than the date specified for the at least semi-annual reporting on the source's compliance status. These types of revisions include changes in mailing address, ownership of the source (or part of the source) unless restricted by title IV, contact persons, changes in individuals who have assigned responsibilities, (including the responsibility to sign permit applications), and similar changes as determined by the permitting authority.

The Agency also believes that correction of typographical errors should be accomplished through the administrative permit amendment procedures, rather than the permit modification procedures. In addition, the Agency requests comments on whether the permit amendment procedures are appropriate for requiring more frequent monitoring, and for exempting a unit from permitting requirements where emissions from the unit have terminated, so long as the termination of emissions from that unit does not result in an increase in emissions from any other unit or units. The EPA invites the public to propose other types of changes that should be handled by the administrative permit amendment process and comment on these suggestions.

In addition, EPA is today proposing to treat one other type of change initiated by an existing source as administrative permit amendment and eligible for the mentioned expedited processing. Changes which have been processed under the preconstruction review process which has been approved by EPA into the SIP have already in a source-specific way been subjected to sufficient technical review and adequate

see sections 171(a)(4), 182(c)(6) and 182(c)(7) of the Act, as well as 40 CFR 51.165(a)(1). Section 51.165(a)(1)(x), in particular, exempts from treatment as a modification (for NSR purposes) a change resulting in a net emissions increase below the following levels: CO—100 tons/year; NOx, SO2 and VOC—40 tons/year; lead—0.6 tons/year. New section 182 of the Act, however, now sets lower *de minimis* levels for various ozone nonattainment classifications. For attainment area new source review (prevention of significant deterioration, or PSD), see section 165(a) and 169(1)(c) of the Act, and 40 CFR 51.166(b). Revised section 112(b)(6) of the Act provides that PSD shall not apply to the toxic air pollutants listed in revised section 112(b)(1). EPA plans to revise the NSR and PSD regulations to reflect these statutory changes. For sources of hazardous air pollutants, see section 112(a)(5) and 112(g)(1)(A), for which EPA has yet to develop implementing regulations.

Some States may have more expansive definitions of "modification" than required under Federal law, which the States use to impose BACT or other new source requirements. The EPA encourages States to examine whether they wish to use the State or the Federal definition of modification to require permitting under title V. The EPA does not interpret title V to require that the definition of "modification" must be identical as a matter of State law for the purposes of both reopening the permit and imposing substantive new source requirements. The State may use the Federal definitions of modification under title I to trigger permitting, while retaining its own definition of modification for imposing new source requirements, which may be informal, such as those described below for permit amendments. For title V permits, however, the State definition at least must be consistent with the definition of modification contained in the federally-approved.

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opportunity for public participation. The Administrator believes that to require the permit revision procedure described in section 502(b)(6) to be followed simply to incorporate the results of the NSR program is unnecessary and redundant. Moreover, subjecting sources to another review could subject vast numbers of sources to significant delay and uncertainty without any real environmental benefit. The EPA believes, therefore, that the permitting authority should be allowed to revise the part 70 permit administratively to reflect NSR limits.

EPA also solicits comment on whether the reviewing authority could instead issue a separate permit incorporating both preconstruction review and part 70 requirements for those activities involved in the modification. These requirements would be incorporated into the conditions of the permit of the entire source upon its renewal.

(e) *Permit Modifications.* The third type of permit revision is a "permit modification", which includes any proposed revision to reflect a change at the source that would constitute a modification under any provision of title I of the Act (except as provided in § 70.2(c)(5). See § 70.7(d). For purposes of title V, certain changes in monitoring procedures which could increase emissions would also be included in the definition of permit modification. Such changes are situations where the proposed monitoring technique, in conjunction with permit emission limits, will allow emission measurements to deviate from the actual emission levels allowed in the permit by more than the applicable thresholds that trigger title I modifications. Before a permit modification can be issued, the proposed changes must be reviewed by the permit authority and submitted to the public and EPA for comment in accordance with the procedures proposed in § 70.8. The EPA stresses that only the subject material associated with, or affected by, the modification need be exposed to review and comment.

The Administrator proposes that a permit modification would not affect the expiration date of the permit. Adjusting the fixed term of individual conditions would place the permit renewal schedule on multiple tracks, and would be both confusing and resource intensive. The only parts of a permit that require change are those which relate directly to the material being modified. Of course, a State may choose to issue a new permit, rather than simply modify the existing one. Acid rain permits, however, must be issued for a fixed term of 5 years. In order to promote national consistency in acid rain permitting, the Agency is recommending that, when modifying provisions in a permit for an acid rain-affected source, the permit not be reissued.

(f) *Designing Flexible Permits.* Permits should allow the source reasonable operating flexibility while enforceably imposing the Act's requirements. Operational flexibility is often a concern to manufacturers who must respond quickly to changing economic conditions and market opportunities if they are to remain competitive in the global market place. It is also important to regulators. Processing unnecessary permit modifications for routine changes takes time and provides little environmental benefit. To the extent that permitting authorities can accommodate a source's anticipated emissions, the source will be less likely to have to reopen its permit, and the public will be better apprised of the requirements applicable to the facility over time.

The following examples of industrial operations underscore the need for operational flexibility. Various aspects of automobile plant operation frequently change, not only from one model year to the next but also within the model year. Pharmaceutical batch plants produce small quantities of chemicals to meet consumer demands for new or specialized products. Although the types of chemical feedstocks and corresponding emissions can generally be predicted over the longer run, short-run market demands are often unpredictable and the manufacturer must be able to respond quickly. Leasing of chemical and petroleum storage tanks at ports and pipeline terminals presents another challenge because of the wide range of chemicals handled, often on short notice.

Several State permitting authorities confront these issues now, and many regulatory agencies have found creative ways to give industry flexibility while ensuring that the underlying requirements of the program are still met. These approaches have been recognized by the affected parties as appropriately implementing and making enforceable the requirements of the Act, while providing industry with needed operational flexibility. The EPA is proposing a policy for incorporating flexibility that is consistent with existing State permitting practices.

While EPA believes that operational flexibility is important to the fair and efficient implementation of the permitting program, this practice must be carefully implemented if title V permits are to ensure application of all regulatory requirements and reasonable enforcement of those requirements. Therefore, this relief is necessarily limited in several important ways.

First, it is clear that allowing sources flexibility is a way of meeting the applicable requirements, not of avoiding them. A source cannot be granted a level of flexibility in its title V permit that would allow it to avoid application of applicable requirements of the Act, whether imposed by NSR, NSPS, NESHAP, or through implementation plans.

Second, any limits must be clearly enforceable. Any alternative limits can be issued only to the extent that they are allowed by the underlying applicable requirements.

Third, the degree of flexibility available to the source may vary with circumstances specific to the source or pollutant. For example, if carbon adsorption is used for emissions contrc the permit may need to pay special attention to species of VOC's (e.g., some may "break through" the carbon bed, or a different type of carbon bed may be indicated for alcohols).

When developing a flexible permit that accommodates several operating scenarios within the terms of the permit, the permitting authority must assure that the permitted source monitor and record the operating scenario under which the source is operating at all times.

The EPA is evaluating administrative mechanisms that would provide for permit drafting such that a source could, in the course of normal operation, readily change production methods without needing to apply for a modified permit for each change. This exemption from permit revision would not, of course, exempt from permit review any operational changes that cause a source to be newly subject to any requirements of the Act. The permitting authority must ensure that any permit conditions designed to provide operational flexibility must be clearly identified as such to be highlighted for EPA review. Various types of candidate approaches are described below. Public comment is solicited on these and other approaches to implement the requirement to provide operational flexibility.

(i) Permit in the Alternative: The permit can list the pollutants and control requirements for the anticipated operating scenarios. The permit would specify the source's pollution control requirements for each anticipated process or product line to be used. For example, the permit for a chemical batch processing facility can allow for various configurations and operating practices that the facility plans to use, obviating the need for obtaining additional approval when the changes are made.

(ii) Permit by Classes of Chemical: State programs often provide that groups of chemicals can be treated interchangeably for certain purposes. For example, a State's requirements for VOC emissions from storage facilities may be based on classes of compounds, classified by vapor pressure, rather than single compounds, e.g., the most volatile compounds could be stored only in pressurized tanks, those of intermediate volatility could be stored in floating roof tanks with double seals, while those of lowest volatility could be stored in fixed roof tanks. One State reports that it uses this approach in addressing the needs for operational flexibility in permitting extensive tank farms providing contract storage of chemical and petroleum products at a port and pipeline terminal. The State clearly specifies control requirements based upon five classes of chemicals, allowing the facility complete freedom to store any chemical in any tank with the required, or higher, level of control. This is enforceable because it allows a field inspector to determine compliance unambiguously for any chemical stored in any tank, without burdensome restrictions on the facility's freedom to manage its operations efficiently.

(iii) Permit in Anticipation of the Most Restrictive Case: A State may appropriately allow considerable flexibility if the worst case emissions scenarios are dealt with in the permit, or if the source agrees to specific controls or other limitations, such as those on capacity utilization. For example, a source might be given great flexibility in the type of VOC emitted, if it agreed to provide emissions controls consisting of both carbon adsorption and incineration. Another example reported by a State involves a chemical storage facility that routinely is asked to store any of numerous types of chemicals, often on short notice. The source and State came to an agreement whereby a very wide range of chemicals could be stored, if stored in pressurized tanks and the emissions were flared.

H. Section 70.8—Permit Review by EPA and Affected States

(1) General

Under the permit review process spelled out in section 505(b), the Administrator shall object in writing to the issuance of any permit determined not to be in compliance with the applicable requirements of the Act, including the SIP. To minimize delay, the Act limits EPA's opportunity to object to 45 days after receipt of a proposed permit. To approve a proposed permit, EPA need take no action. A "proposed" permit, for purposes of sections 505 (a)(1) and (b)(1), is one the State submits to EPA after the public notice period and after it considers any public comments. The submittal of the proposed permit must also contain any notice required in section 505(a)(2)(B) describing why the permitting authority failed to accept recommendations on the proposed permit from any affected State (i.e., one whose air quality may be affected and are contiguous to the State in which the emissions originate, or that is within 50 miles of the source). If the State so chooses, the permit will automatically be issued at the end of the 45-day review period, unless EPA has objected to its issuance. The objection must be accompanied by a written statement of the reasons for the objection, and both must be provided to the applicant.

Each permit must contain all provisions required by title V, such as monitoring, reporting, and compliance certification requirements. Failure to include these provisions is a basis for EPA veto. All permits involving SIP-regulated sources must interpret, implement, and apply the SIP in an enforceable manner to the permitted source. For example, if the SIP fails to specify a test method, the permitting authority must specify one in the permit. Failure to properly apply a SIP to the particular permitted source so that it is fully enforceable is a basis for EPA veto.

If EPA does not object, any person may petition the Administrator to do so within 60 days after the expiration of the 45-day review period (505(b)(2)). If petitioned, the Administrator has 60 days to determine whether to grant or deny the petition, and he shall grant the petition if it demonstrates that the permit is not in compliance with the requirements of the Act, including those of the applicable SIP. If he denies a petition, the denial is subject to judicial review under section 307 of the Act. Regulations implementing this process are set forth in § 70.8(d). It should be noted that a petition does not postpone the enforceability of a permit that has been issued.

A timely EPA objection, unless withdrawn, is effectively a veto, for the State permitting authority may not issue the permit as a part 70 permit, unless it is revised to satisfy EPA's objection and resubmitted for approval (505 (b)(3) and (c)). The EPA proposes that, once the Agency approves the revised permit in writing, the permit may be issued. Pursuant to section 505(c), if the permitting authority fails to make the necessary changes and submit the revised permit to EPA within 90 days of the objection, EPA must issue the permit with changes, or deny the permit. This action by EPA would be subject to judicial review (V.D.). While the possible EPA objection to the issuance of a part 7 permit is being resolved, all applicable requirements of the Act still apply, except for the section 502(a) requirement to obtain a part 70 permit (assuming that the source has filed a complete application and any required supplementary material). The EPA intends to use the part 71 process (discussed in section VI) in issuing any permit for which the Agency becomes the permitting authority.

Section 505(b)(1) provides that EPA has a duty to object to a permit when it "contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this Act." The EPA views this duty as a discretionary one, however, since it is predicated on a determination by the Administrator of noncompliance. That determination is discretionary. (cf. Sierra Club v. Train, 557 F.2d 485 (5th Cir. 1977) holding that section 113 enforcement is discretionary despite parallel construction.) In any case, any duty to object is not enforceable by citizen suit. That is clear from the structure of the statute, which provides in section 505(b)(2) a petition process for citizens who wish EPA to veto a permit, and from the legislative history, which shows that the petition process is a replacement for the Senate bill's approach, which would have imposed on the Administrator a nondiscretionary obligation under section 304, to object to unlawful permits. Finally, a citizen suit would not lie under the applicable case law to compel a veto under section 505(b)(1), since no explicit statutory deadline is provided (see cf. Sierra Club v. Thomas, 828 F.2d 783, 791 (D.C. Cir. 1987)).

Even the petition process under section 505(b)(2) leaves the Administrator with an element of discretion. Although the Administrator must grant or deny any petition within 60 days, he must object only "if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable implementation plan." This language plainly puts the burden of showing a violation on the petitioner. It remains discretionary whether the Administrator should object in cases where the record does not clearly disclose failure to comply. The

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petitioner must also raise objections "with reasonable specificity" during the comment period before the Date, or to demonstrate to the Administrator in the petition to object that it was impracticable to do so. The EPA believes that Congress did not intend for petitioners to be allowed to create an entirely new record before the Administrator that the State has had no opportunity to address. Accordingly, the Agency believes that the requirement to raise issues "with reasonable specificity" places a burden on the petitioner, absent unusual circumstances, to adduce before the State the evidence that would support a finding of noncompliance with the Act.

(2) Waiver of EPA Review

The statute provides two different mechanisms that allow EPA to waive the notification requirements discussed above. First, at the time of the approval of a State program, EPA may waive the notification requirements for any category of sources (including any class, type, or size within the source category), except that EPA cannot waive the requirement in the case of major sources (505(d)(1)). The Agency will not waive its right of review of permits for acid rain affected sources. Second, EPA may waive the notification requirements on a nationwide basis, through the promulgation of regulations applicable to all permitting programs. The same restriction against waiving the requirements in the case of major sources applies to this option as well (505(d)(2)). When EPA waives the notification requirements by either of these means, the Agency ordinarily will not perform the permit review generally required by section 505(b).

The EPA is not proposing any categories of sources for national waivers from review. Comments are invited, however, with respect both to potential categories for such a waiver and to the appropriate use of waivers at the State level, and on means of implementing them, such as through agreements with the States. Similarly, EPA seeks information on the use of waivers on a State-specific basis and the use of various mechanisms, such as audits and agreements between EPA and the States regarding coordination of activities, to efficiently implement such waivers or to set priorities for EPA review of State permitting (V.A.).

The EPA also solicits comment on the potential use of various review practices for quality-assuring the permitting process and carrying out the Administrator's responsibilities under section 505. Although EPA wishes to minimize administrative burdens, the Agency takes seriously its responsibility for quality assuring permitting, for which it shares enforcement responsibility.

Public comment is also solicited on the legal availability and appropriateness of waivers of notification for particular classes of sources, on a State-specific basis, after approval of a permit program. Section 505(d)(1) provides that the Administrator may waive this requirement "at the time of approval of a permit program under this title." Although this clause could be read as referring only to initial approval of the State program, it seems consistent with good oversight practice and the spirit of title V itself that such waivers could be granted through EPA rulemaking whenever appropriate. Such practice would not be inconsistent with any of the statutory safeguards and, indeed, waivers may be more effectively tailored once a State has established a track record and a working relationship with the EPA Regional Office with respect to permitting various types of sources.

(3) EPA Veto

The general framework for EPA's veto of State operating permits is set forth above. The following are various issues that may arise from the implementation of this process.

(a) *Inadequate information provided by permitting authority.* Although EPA's duty to object to permits that are inconsistent with the requirements of the Act is clear, EPA also believes that it can object to the issuance of a permit where the materials submitted by the State permitting authority to EPA do not provide enough information to allow a meaningful EPA review of whether the proposed permit is in compliance with the requirements of the Act (including the SIP). Although section 505 may not expressly provide for objection to a permit on this ground, EPA believes that not allowing the Agency to object under these circumstances could severely hamper its oversight role. Without adequate information, it will be impossible to determine whether a proposed permit conflicts with the requirements of the Act. Given Congress' clear intention that EPA veto permits conflicting with these requirements, EPA believes that this form of objection is reasonable and necessary (301). Of course, EPA needs to work with States to develop a clear understanding in advance as to the amount and type of information needed to exercise reasonable Federal oversight.

When EPA objects to issuance of a proposed permit because the State has not provided enough information, it will accompany the objection with a statement of what additional information is needed. The State would then be responsible for forwarding the additional information to EPA within 90 days. Once this needed information is supplied to EPA, the Agency's 45-day review period will begin anew. If the additional information is not supplied, EPA will deny the permit or issue it with whatever changes are necessary to ensure compliance with the Act. The EPA solicits comment on this approach to obtaining adequate information and its authority for so implementing it.

(b) *Failure of a State to issue.* The Act requires that a permitting authority issue or deny a permit within 18-months of receipt of a complete application. Further, the State is required to provide the Administrator copies of proposed and final permits to be issued. Where the permitting authority fails to provide these permits to EPA due to failure to issue or deny within the 18-month timeframe, this may be considered grounds for an EPA objection. The EPA would then request a proposed permit from the State with any additional information needed. If the permit is not received within 90 days, the Administrator will issue the permit.

(c) *Streamlining the process through early Federal participation.* Some States have expressed concern that EPA objections could unnecessarily slow some permitting exercises. One implementation approach that might allay this concern could be early EPA participation in the State's permitting action. For example, a State and EPA could agree that, for certain permits or classes of permits, EPA would review draft permit materials submitted to EPA even prior to the State's release of the draft proposed permit for public comment on permit issuance. Alternatively, the Agency could require that summary forms with certifications be filled out to prioritize the need for more extensive EPA involvement. The EPA could indicate, either officially or informally, whether it would object to any aspect of the proposed permit based on the draft and/or summary form. This might prove to be an effective way to enhance State and EPA cooperation on permit issuance. Such procedures might be formally established in implementation agreements between EPA Regional Offices and the States.

(d) *Status of proposed permit if EPA objects.* If EPA objects to a proposed permit, the permit, as proposed, does not get issued. During this period of review

and negotiation, the previously-issued permit and all applicable regulatory requirements continue to apply, except where inconsistent with State law or as provided in part 72 for the acid rain portions of a permit. For acid-rain-affected sources, if the previously-applicable permit has expired, the permit application and compliance plan will be binding on the source until the new permit is issued (408(d)(3)).

(e) *EPA action upon veto.* Pursuant to section 505(c), if the permitting authority fails to submit a revised permit meeting EPA's objection within 90 days of the objection, the Administrator shall issue or deny the permit. The EPA's issuance of permits will be made pursuant to the Federal permitting program to be contained in parts 71 and 124 (VI.). This program will be proposed at the same time that EPA takes final action on today's proposal regarding State programs and will closely parallel the permitting practice required for State programs. Part 71 will contain all necessary provisions for EPA to administer a State program where a State defaults, although EPA may choose to make it effective only for certain areas and/or sources in order to address areas of concern.

(f) *Public petitions regarding decisions not to veto.* Given the brevity of the EPA review period and the complex nature of many permits, there will be occasions in which EPA may not recognize that certain permit provisions do not comply with the requirements of the Act. If this happens, the statute provides an opportunity for citizens to petition EPA to reconsider its decision not to object to issuance of the permit. Within 60 days after expiration of the 45-day EPA review period, any person may petition the Administrator to object. This petition must be in writing, and the petitioner must provide a copy to the State permitting authority and to the permit applicant (505(b)(2)).

The petition must specifically state why the petitioner believes that the permit conflicts with applicable requirements of the Act and cite the particular provisions alleged to be inconsistent. Moreover, section 505(b)(2) provides that "(t)he petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objections arose after such period)." This section of the statute specifically provides that filing of the petition does not postpone the effectiveness of the permit. Thus, the new permit remains in full effect, and the source may operate under its provisions pending EPA's consideration of the petition. Sources should be aware, however, that under these circumstances EPA may object to the permit. Upon such objection, particular provisions of the permit may no longer shield the source from enforcement of certain other requirements of the Act. In other words, the source may become subject to revised or additional requirements. It therefore may be advisable for sources to await the outcome of the petition process before making changes that are consistent with the recently issued, but contested, permit.

The Administrator is required to grant or deny such a petition within 60 days after it is filed. If he grants the petition, he will object to the permit as not being in compliance with the requirements of the Act (505(b)(2)). If the permit has already been issued, "the Administrator shall modify, terminate, or revoke such permit and the permitting authority may thereafter only issue a revised permit in accordance with paragraph (c)" (505(b)(3)). In other words, the permitting authority must follow the same procedure as if EPA's objection had been made during the 45-day review period. In accordance with the proposed policy on reopening permits for cause, EPA is proposing not to require a permit to be modified, terminated, or revoked until the permitting authority has had an opportunity to act expeditiously under its own authority.

In the event that the Administrator denies the petition, the permit remains unaffected, as if no petition had been filed. Denials of petitions will be accompanied with a statement of the reasons for this action.

I. Section 70.9—Fee Determination and Certification

(1) Section 70.9(a)—Fee Requirement

This section establishes the requirement for an owner or operator of a source subject to the requirement to obtain a permit to pay an annual fee sufficient, in aggregate, to fund the permit program. This provision is designed to ensure the permitting authority's ability to perform the necessary air quality permitting and associated management functions entrusted to it. The State is also charged in this provision with assuring that the revenue generated from permit fees be used solely to offset the appropriate costs associated with the permit program.

The Act provides that the State program must ensure that part 70 sources pay fees sufficient to cover "all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title, including (the small business stationary source technical assistance program) and including the reasonable costs of (certain enumerated activities)." A State fee program must also cover the development and implementation costs of any local agency program (502(b)(3)(A)).

The Act further provides that the fees "shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program" (502(b)(3)(C)(iii)). The EPA wishes to confirm that this restriction applies to State, as well as Federal, collection of fees. Although the restriction is located in section 502(b)(3)(C) (which primarily addresses EPA collection of fees), it references the general fee provisions "under this subsection." The legislative history confirms this interpretation. For example, the report of the Senate Committee on Environment and Public Works provides that fees shall be utilized to support the air pollution control program of the State *permitting authority* (emphasis added) (S. Rep. No. 228, 101st Cong., 1st Sess. 351 (1989)).

If the State program fails to provide an adequate fee schedule, or does not implement its fee program properly, EPA is authorized in section 502(b)(3)(C)(i) to assess an amount appropriate to cover EPA's costs associated with administering an EPA-promulgated permit program. The EPA also solicits comment on whether the Agency may assess fees to cover other costs such as the State costs in developing and administering the permit program. The EPA also solicits comment on whether, additionally, EPA may assess and return to the State, a sum to cover air program costs related to the permit program (e.g., the portion of SIP-development costs related to part 70 sources).

The EPA may undertake the action stated above regardless of whether it or a State agency ultimately issues the permit. Penalties and interest may be collected as appropriate.

(2) Section 70.9(b)—Fee Schedule Adequacy

Section 70.9(b) describes the criteria against which the adequacy of any fee schedule submitted to EPA by a State will be evaluated. Essentially, a fee schedule can be judged to be adequate if it meets one or both of two tests. A fee program is adequate if it results in the collection of revenues sufficient to

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recover all the reasonable direct and indirect costs of supporting the development and administration of the permit program, including those itemized in section 502(b)(3)(A). The alternative test for approval focuses on whether the proposed fee program would result in the aggregate collection of fees equal to or greater than an amount of $25 per ton per year (annually adjusted for CPI changes) for each regulated pollutant that the subject sources emit.

The critical issue associated with implementing the first test to be resolved by this rulemaking is defining the scope of program costs that can be recovered through fee collection. The specifically enumerated costs include: (1) Reviewing and acting on permit applications; (2) implementing and enforcing permit terms and conditions (not including court or enforcement-action costs); (3) emissions and ambient monitoring; (4) modeling, analyses, and demonstrations; and (5) preparing inventories and tracking emissions (502(b)(3)(A)(i)–(vi)).

The EPA believes that the statutory provisions make clear that permit fees must recoup direct "permitting" costs, including costs of developing the permit program, reviewing permit applications, holding hearings, issuing new and renewal permits, and conducting inspections and other aspects of permit enforcement (except for enforcement actions or court costs). This includes activities performed by air pollution control agencies which do not issue permits directly and surveillance activities on certain smaller sources to ensure that they are not subject to the Title V permit program. For some sources (e.g., SO_2), these costs will include the costs related to ambient monitoring near the source, as well as source-specific modeling and attainment demonstrations to the extent that the costs are incurred as part of regulating the part 70 sources.

The EPA further believes that indirect permit program costs include the costs arising from permitted sources for SIP development (e.g., for VOC sources, the portion of the costs for areawide monitoring, modeling, development of attainment demonstrations, and development of SIP regulations to be codified into permits that arise from regulation of part 70 sources but not the portion of the additional costs arising from regulation of non-part 70 sources). Indeed, each source, at the option of the permitting authority, could be subjected to a permit process that occurs concurrently with the SIP process and under which the applicable SIP requirements and support analyses would be accomplished with all costs directly borne by the source. However, defining applicable requirements and gathering relevant data can be viewed as more economical than requiring that part 70 sources individually perform these functions to assure that acceptable permits can be issued. In addition, indirect permit program costs include the portion of overhead costs attributable to the above-specified activities, as well as information management activities to support and track permit application, compliance certifications, and related data entry.

Permit fees must also cover the costs to support development of programs under which the permitting authority assumes responsibility for administering regulations under sections 111 or 112, to the extent those costs are related to emissions from sources which may be subject to permitting. Permit fees required by the Act may not be used to recoup costs attributable to mobile or area sources as defined in section 110 (e.g., the costs of inventorying mobile or area sources, and the additional costs incurred as a result of including these sources in performing areawide monitoring, modeling, and attainment demonstrations). Conversely, fee revenues collected from non-part 70 sources cannot be used to offset the costs of a part 70 permit program and thereby reduce fees required to be collected from part 70 sources.

Defining indirect permit program costs to include SIP development costs also makes sense from the standpoint of parity between sources of different types of pollutants. As noted above, permit fees cover the costs associated with monitoring and modeling for an SO_2 source when SO_2 NAAQS violations can be directly linked to that source's emissions and such monitoring and modeling that are part of the permit issuance or revision process. Although ozone NAAQS violations generally result from areawide emissions, not the emissions of a single source, emissions from individual sources contribute to the need for basinwide monitoring, modeling, and attainment demonstrations.

The EPA interprets the legislative history as consistent with EPA's position that permit fees must recoup not only direct permit costs, but also the SIP development costs arising from permitted sources. The Senate bill clearly treated SIP development costs as part of the permit program costs (S. Rep. No. 228, 101st Cong., 1st Sess. 351 (1989)). Senate conferees emphasized that the Conference Agreement required fees to cover a broad range of direct and indirect permit program costs, including "the establishment of air emission standards" (136 Cong. Rec. 516, 941 (daily ed. Oct. 27, 1990) (Chafee-Baucus statement of Senate Managers, S. 1630, the Clean Air Act Amendments of 1990)). The EPA interprets this as a reference to establishing emission standards or limits for permitted sources, which may be done through the SIP and subsequently codified into permits. In addition, the Senate conferees emphasized the primary role of the permit program in implementing the other requirements of the Act, including attainment of the NAAQS (136 Cong. Rec. 516, 936 (daily ed. Oct. 27, 1990) (Statement of Sen. Baucus)). These statements indicate that the indirect costs of the permit program include SIP development costs. Although the Conference Agreement seemed to narrow the requirements of the Senate bill, it appears that the purpose of this was to assure that only permitted source-related costs, not mobile source-related or area source-related costs, were covered by permit fees (136 Cong. Rec. 516, 941 (daily ed. Oct. 27, 1990) (Chafee-Baucus Statement of Managers)).

The statements by the House Committee and House Conference members are less detailed on the scope of permit fees (H. Rep. No. 490, 101st Cong., 2d Sess. 343, 345 (1990); 136 Cong. Rec. E 3,712 (daily ed. Nov. 2, 1990) (Statement of Rep. Dingell)). However, EPA does not read them to be inconsistent with the statements in the Senate. As a result, EPA interprets the legislative history to accord with its view that permit fees must recoup the portion of SIP development costs attributable to stationary sources.

The second option for fee schedule approval comes directly from section 502(b)(3)(B) which provides that "(t)he total amount of fees collected by the permitting authority shall conform to the following requirements * * * The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that" the program will result in a collection, in the aggregate, from sources all subject to the requirement to obtain a permit, of at least $25 per ton of regulated pollutant, not including amounts of regulated pollutant emitted by any source in excess of 4,000 tpy of that regulated pollutant. The Administrator may determine that an amount less than $25 is acceptable if the Administrator "determine(s) that such lower amount adequately reflects the reasonable costs of the permit program." This latter procedure is addressed in the first option for fee schedule approval discussed above. A regulated pollutant is defined under section 502(b)(3)(B)(ii) to include VOC's, pollutants regulated under section 111 or 112, and each NAAQS pollutant (except for carbon monoxide).

The EPA takes the position that these provisions intended to establish a presumption that a fee program that collected from all subject sources, in the aggregate, the $25 amount on an annual basis would meet the requirements of covering the costs of the permit program. Accordingly, if a State submits a fee program that provides for collection of the $25 amount, EPA will presume that the fee program meets the Act's requirements, and will propose to approve it. However, if public comment, or other information brought to EPA's attention, reasonably suggests that the $25 amount is not adequate to recoup the required costs, then EPA will scrutinize the State's costs to determine whether the $25 amount is adequate.

The EPA believes this position is consistent with the Act because of the very presence of the $25 minimum amount provisions. Congress could have simply required permit fees to recoup permit program costs without specifying a minimum amount. The presence of the $25 minimum amount indicates that Congress presumed that this amount would suffice to recoup the costs. Indeed, several statements by Congressmen found in the legislative history indicate that they viewed the permit fee program as, in general, a $25/ton fee program. (136 Cong. Rec. 52107 (daily ed. March 5, 1990, (statement of Sen. Chafee); 136 Cong. Rec. E3674 (daily ed. Nov. 2, 1990) (statement of Rep. Bilirakis)). The EPA takes comment, however, on whether it should interpret the Act to require a State to show that the fee amount recoups State costs.

To make an acceptable demonstration, several clarifications are needed. The statute is ambiguous as to exactly when a substance becomes a "pollutant regulated under section 111 or 112," as that phrase is used in section 502(b)(3)(B)(ii). For example, for hazardous pollutants, a pollutant listed in the statute under section 112(b) might be considered to become a "regulated pollutant" for purposes of title V at any of the following times: (1) At the time of enactment of the 1990 Act Amendments, (2) when EPA first promulgates a MACT standard for that pollutant, or (3) when a MACT standard for that pollutant first becomes applicable to the permitted source. The term "regulated pollutant" is susceptible to each of these readings, and neither the statute nor the legislative history of the Act Amendments provides guidance as to which of these three possibilities was intended by Congress.

The EPA is proposing to adopt the second of the above options, because it considers a substance to be truly regulated when a standard is first promulgated that addresses that pollutant. The EPA considers the other two options to be viable, however, and therefore solicits comment on whether it should instead adopt either one of them. Similarly, following the second option described above, EPA proposes that a pollutant becomes a "regulated pollutant" when it is first addressed by a section 111 standard, but solicits comment on whether it should be considered regulated for purposes of title V only when the standard becomes applicable to the permitted source.

This same question does not arise for VOC's and the NAAQS pollutants (other than carbon monoxide), because the definition of those terms in section 502(b)(3)(B)(ii) does not include the qualifying term "regulated." Thus, EPA believes that fees must be assessed for emissions of all of these pollutants at the source. The EPA also believes that NO_x, as well as NO_2 (a NAAQS pollutant), is to be considered a regulated pollutant. The NSPS program currently contains standards relating to NO_x emissions (40 CFR 60.44).

The regulations also presume that the State will base a demonstration that it is meeting the cost-per-ton test on the actual emissions of all the part 70 sources in the State. Using actual emissions to set fees in this fashion creates an incentive for sources to reduce actual emissions to reduce their fees. The State, however, must demonstrate that this method supports the program consistently and that the State can accurately determine the fee base. If the permitting authority can address the difficulties of determining its actual emissions fee base and supporting its program, the regulations give the State the flexibility to incorporate such incentives into its fee structure. The proposed definition of actual emissions in § 70.2 would presumptively use emissions actually emitted over the preceding calendar year. Thus, after the initial startup of the program, the permitting authority could rely on actual emissions data developed and reported by the permittees (presumptively required as a permit condition) to define the basis for assessing fees for the next year.

Alternatively, EPA could use the definition of actual emissions used in EPA's NSR regulations. This definition defines actual emissions with reference to emissions during the 2-year period preceding the relevant permitting date, or any 2-year period that falls within 5 years of that date, "upon a satisfactory determination that it is more representative of normal source operation." In the context of the PSD program, EPA is now exploring the option of allowing sources subject to title IV to use any 2-year period falling within the 5-year period preceding the relevant date, without a showing satisfactory to the permitting authority that 2-year period is indeed more representative of the source's normal source operation. The EPA solicits comment on using this alternative, for at least affected sources under title IV, to determine actual emissions for purposes of calculating fees under title V.

The Act and regulations provide that the State can also choose other approaches for determining the total emissions, provided sufficient revenue will be raised to offset the applicable costs of developing and implementing the program. For example, the potential to emit of all part 70 sources might be chosen. Relying on the sources' potential to emit (considering emissions limits or the requirement to use control equipment that are federally enforceable) may allow the State to predict total fee revenue with greater reliability. The State can determine its sources' potential to emit by examining their permits, and that potential will not vary as much a source's actual emissions from year to year. Also, relying on potential emissions creates an incentive for a source to reduce its potential emissions, thereby aiding the State in demonstrating attainment and maintenance of the NAAQS under its SIP.

The EPA also proposes that the calculation of revenue associated with the presumptive $25/ton number may, but is not required to, consider income from any regulated pollutant emissions beyond the 4000 tpy level from any part 70 source. In addition, the Agency proposes that no double counting occur. That is, to the extent that the emissions of a source are regulated for more than one reason (e.g., toxics and VOC) in determining the amount of fee revenue, the permitting authority is not required to include any amount of regulated pollutant that is otherwise regulated and included in the fees owed by the part 70 source.

As mentioned, the $25 per ton figure is to be used relative to the aggregate of all

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sources subject to the permitting program. That is, the State may differentiate among source categories and pollutants in assessing the fees, as long as the permitting authority demonstrates that the total fees collected are sufficient to support the permit program or meet the $25-per-ton amount in the aggregate. This ability to differentiate also includes affected sources subject to title IV, notwithstanding section 406(c)(4). This section provides that during the years 1995 through 1999, no fee can be required to be paid under section 502(b)(3) or under section 110(a)(2)(L) with respect to emissions from any unit which is an affected unit under Phase I of the acid rain program. The Agency interprets this provision to mean that EPA may not collect fees from Phase I-affected sources prior to January 1, 2000. States, however, are not precluded by that provision from fee collection at these facilities pursuant to other requirements of the Act.

(3) Section 70.9(c)—Fee Adjustment

In future years after the establishment of a permit fee program, fee schedules may need to be modified due to either inflation or to a substantial increase in program costs. For example, a future NESHAP may be promulgated covering source categories with large numbers of individually small sources in terms of how much of the regulated pollutant is emitted. Monitoring the compliance of these sources may substantially increase the resource demand on the State agency. The Amendments specifically require for recalculation of permit fees each year after enactment, by a percentage that is tied to the CPI. However, the EPA is concerned that the mechanism for modifying permit fees may not be in place. Of main concern is whether the State agency has authority to modify permit fees or, alternately, must the State legislature approve any revision. Accordingly, EPA urges States to provide enabling legislation that gives the agencies sufficient legal authority and flexibility to manage their fee structures. The EPA solicits comments on problems associated with providing State agencies with the authority up front to revise permit fees and on what factors should constrain future increases beyond those needed to account for CPI changes. Specifically, EPA would like information on the way permit fee revisions are currently handled and whether revisions to the permit fees required under this title should be handled in a similar fashion.

(4) Section 70.9(d)—Fee Demonstration

This section requires the State to provide a demonstration that program costs will be covered. A specific demonstration of the adequacy of permit fees in covering program costs would be required in two cases. The first case is where the fee amounts to less than $25 per ton per year. As indicated above, the lesser fee would be approved by EPA only if it can be shown that the revenues collected with this fee adequately support the program. The EPA believes that States seeking to collect less than the $25 amount must persuasively demonstrate that a lesser amount will adequately cover the required costs. To make this demonstration, the States must submit a detailed accounting of the required costs and anticipated fee collections. The EPA believes that the Act's provisions establish a strong presumption in favor of fees at least equivalent to $25/ton, and that States seeking to collect less bear the burden of demonstrating that less is nevertheless adequate.

Section 502(b)(4) requires that State programs must also provide for adequate personnel and funding to administer the permit program. In the past, inadequate resources have often prevented State agencies from completely fulfilling their air quality management responsibilities under the Act. This requirement is designed to overcome that aspect of the resource problem.

(5) Legislative Authority

Appropriate legislative authority must exist for the permitting authority to have the ability to assess and collect fees. Many State agencies already have such authority and require at least a nominal payment for the processing of air permit applications. However, some States do not collect permit fees and will need to obtain from their legislatures the authority for the permit fee program. Further, many States with permit fee programs may need authority to substantially increase their fee structures.

After the appropriate authority has been established, a requirement for program adequacy is the demonstration that the fees collected will be retained to support the permitting program. This should include, where applicable, provisions for providing funding to other air pollution control agencies which perform air permit program activities but do not issue permits directly. In reviewing permit program plans, EPA will be looking for a system which tracks the payment and disposition of fees. It is vital that the permit fees not be diverted for some other use. However, EPA would like to give the States as much flexibility as possible in handling permit fee retention. For example, in some States it may not be possible for the air agency to administer the collection and distribution of the permit fees. In this case, EPA would consider it acceptable for the fees to be paid to a State general fund, rather than directly in the air agency fund, provided all such funds are assured to be returned to the air agency on an annual (or similar period) basis. In any event, EPA believes that periodically (e.g., every 2 to 3 years) a document summarizing the collection and subsequent use of permit fees should be provided to the Agency, as well as to the public.

(6) Transition Problems

State agencies will likely experience some transition problems as they convert to the air quality management program called for in the Act. With respect to the permit fee requirement, EPA would like to accommodate existing programs to the extent possible. Of particular concern are the discontinuities potentially caused in States where the State agency collects permit fees but a local agency carries out most of the permitting responsibilities. The EPA believes that an understanding on fee assessment and collection needs to be reached at the State level before program submission, and that local agencies should be compensated in a manner commensurate with their level of permit activities. The EPA proposes that there does not need to be one uniform State fee structure, particularly where one would unnecessarily disrupt existing programs. Further, EPA feels that consultation with State and local agencies prior to plan submission will help to resolve potential problems. Given these concerns, comments are solicited on how EPA input should be coordinated.

Other types of transition issues relate to the early collection of fees. Section 502(b)(3)(A) requires that "sources subject to the requirement to obtain a permit" pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to *develop and administer* the permit program (emphasis added). The EPA proposes to interpret these provisions to authorize the imposition of fees on sources that State reasonably expects to be permit applicants, and to impose those fees prior to the date the source is required to submit an application. If these permit fees were restricted to the date the program becomes effective or the sources are required to submit an application, potentially insurmountable transition problems could exist for States trying to build up their capabilities to allow for effective implementation of the program. Given the clear mandate in title V for the timely submittal of State permit programs, EPA believes that States should be allowed reasonable opportunities to collect fees which fund the development of their required part 70 program. One approach might be to collect such fees during an early identification or registration of subject sources. Other reasonable strategies might involve fee payment by sources subject to a State program which has received interim EPA approval. The EPA solicits comment as to what approaches are appropriate for agencies to collect fees prior to program approval.

(7) Small Source Fees

The Act requires the establishment of a technical and environmental compliance program for small businesses. Part of the goal of this program is to alleviate the financial burden placed on small businesses by the new requirements embodied in the Act. The EPA is promoting, and solicits public comment on, establishing a relaxation or waiver in permit fees for small businesses where necessary. This $25 per ton is essentially an accounting technique, not a presumptive fee requirement. The EPA invites comments on other adjustments to the fee schedule for small sources that may be necessary.

J. Section 70.10—Federal Oversight and Sanctions

The EPA periodically will audit State permit programs to ensure that the programs are being administered in accordance with EPA's regulations and the conditions under which they were approved.

As in the case where the State fails to develop and submit an approvable program, where EPA determines that a permitting authority "is not administering and enforcing" a permit program as required, the Agency may (and in some cases, must) apply sanctions against the State (502(i)). Such a determination ordinarily will follow an EPA audit of the program. A consistent pattern or practice of failure by the State to adequately carry out its program, however, may give rise to an EPA determination that the State is not adequately administering and enforcing it, regardless of whether a formal audit has been conducted recently. A dispute over a single permit rarely will give rise to a general finding of failure to carry out the program on the part of the State. Moreover, the statute makes it clear that only EPA may make the determination that a permitting authority is failing to adequately administer or enforce the program.

When EPA makes such a determination, it must notify the permitting authority. For the first 18 months following this notification, EPA may apply any of the sanctions provided in section 179(b), but is not required to do so (502(i)(1)). After 18 months, if the permitting authority has not corrected its program, EPA "shall apply the sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a)" (502(i)(2)).

The two sanctions provided for in section 179(b) are (1) a prohibition on the award of Federal highway funds or the approval of any Federal highway project by the Secretary of Transportation, other than for safety or mass transit, and (2) a requirement that sources subject to NSR requirements of section 173 obtain emission offset reductions in a ratio of at least two-to-one. Section 502(i)(3) further provides that EPA shall not apply the section 179(b)(2) sanction (regarding the requirement to obtain two-to-one offsets) in any area for failure to administer and enforce the permit program unless the failure "relates to an air pollutant for which such area has been designated a nonattainment area." The EPA believes that failures to carry out a permitting program rarely will be pollutant-specific failures. If the failure does not relate to only one pollutant, EPA has the authority to apply the section 179(b)(2) offset sanction in any area that is designated nonattainment under section 107 for at least one pollutant.

As discussed above, the Act's legislative history on the operating permits title shows that EPA should take over permitting of sources only as a last resort. The States are far better equipped to issue operating permits. However, section 502(i)(4) requires EPA to step in and take over permitting if a State has not corrected the cited deficiencies in its program within 2 years of the date that EPA determined the permitting authority was not adequately administering or enforcing its program. Thus, EPA shall promulgate, administer and enforce a Federal permitting program for a State 6 months after the date that EPA is required to apply sanctions against the State. Part 71 will contain all necessary provisions for EPA to administer and enforce a Federal permitting program for a State. The EPA shall publish notice in the **Federal Register** that it intends to administer and enforce such programs for a State within 6 months after the date that EPA is required to apply sanctions against the State. Whenever EPA determines that the State has corrected the deficiencies in its program, the Agency will cease administering the Federal permits program and return permitting authority to the State.

K. Section 70.11—Requirements for Enforcement Authority

This section was added to promote greater consistency with the NPDES program and to ensure that the basic framework for effective enforcement of title V would be in place. This section contains specific requirements for enforcement authority consistent with those contained in 40 CFR 123.27, with appropriate adjustments to conform to the Act.

The EPA encourages State and local permitting authorities also to have administrative enforcement authority similar to section 113 of the Act as amended, although it is not required by § 70.11. Having administrative enforcement authority in addition to judicial enforcement authority has many advantages. First, administrative cases generally have lower forum for minor or straightforward violations. Reliance on the judiciary for all enforcement cases also may cause significant delays in pursuing violations considering how overburdened State and Federal judiciaries are. For both these reasons, more violations may be pursued if the permitting authority has administrative enforcement authority.

V. Additional Topics of Discussion

A. Implementation Agreements Between State Agencies and EPA

(1) General

The operating permits program set forth in title V is designed to streamline the regulation of major sources by incorporating all of the various Act requirements to which a source is subject into a single document. The effective implementation of this new program will undoubtedly require a high level of cooperation and coordination between State and/or local air pollution control agencies and EPA. It is important, therefore, that directors of State and local air control agencies establish an implementation agreement with the appropriate EPA Regional Office. Such an agreement would define the manner in which the permits

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program is to be administered by the permitting authority and reviewed by the EPA Regional Office.

An implementation agreement should be administrative in nature. It should establish the policies, responsibilities, and procedures to be followed by the two parties in administering title V. It should define the relative program responsibilities and priorities regarding such topics as reporting and data requirements, administrative deadlines, enforcement of permits by the States, and procedures for permit and program review. It should not be used as a substitute for rulemaking (i.e., to make additions or modifications to the permit regulation) or the SIP.

Such an agreement should be developed during the period that the States are developing their title V programs, and it should be submitted along with the State program submittal. Submittal of the agreement at this time is critical because it will require the permitting authority to analyze the administrative aspects of the program in an organized manner and show that such details have been considered before development of program requirements and agreed to before subsequent approval by EPA. Both the permitting authority and EPA will benefit from this in the long run. It is important to note that implementation agreements with State and/or local control agencies will be made publicly available in the EPA docket for this regulatory action but will not be subject to the Federal rulemaking process.

The concept for the implementation agreement stems from the use of a memorandum of agreement (MOA) between State agencies and EPA Regional Offices in the NPDES program under the CWA. The NPDES program provided the basic blueprint for the Title V legislation and has successfully used the MOA concept to enhance program implementation. Experience shows that the MOA has led to better State/Federal communications.

The implementation agreement identified in this section can come in any format and does not have to take the specific form of an MOA. It need only cover the types of issues described in the next section. The EPA solicits comments on the need for a model MOA and its anticipated usefulness.

The benefits associated with an implementation agreement are numerous. First, as previously noted, it will provide for better interagency communications. Second, State and local permitting authorities should gain greater certainty about EPA's oversight activities under the program. Third, an implementation agreement can complement section 105 grant agreements and conditions and can help define how EPA Regional Offices will relate to States. Fourth, the implementation agreement can be used to allow for minor program changes (e.g. changes on a State permit application form) in the future without rulemaking.

(2) Recommended Topics Within Implementation Agreement

The Administrator proposes for comment that a typical implementation agreement may include provisions relating to the following topics:

(a) *Meetings between the permitting authority and EPA.* Both parties agree that either can call meetings to review operating procedures, resolve problems, or otherwise enhance implementation of the permit program.

(b) *Legal authority.* The permitting authority agrees to develop and maintain legal authority and resources for effective program implementation.

(c) *Accounting report.* The permitting authority agrees to provide an accounting report to EPA covering the timeframe specified by the Agency which demonstrates how revenues from permit fees were spent by the agency and how they are used in meeting the designated air agency's maintenance of effort program requirements contained in section 105.

(d) *Required submission of documents.* Both parties agree to identify the kinds of documents and the frequency with which they are to be submitted by one party to the other. Examples include copies of permits the State has decided to revise, revoke, or terminate. The EPA agrees to keep the State agency informed about new regulations, reports, policies, and litigation settlements. State agrees to notify contiguous States and other States within 50 miles of all permit applications.

(e) *Public file.* The permitting authority agrees to maintain an adequate public file (excluding information entitled to protection from disclosure under section 114(c) of the Act) for each permittee. The types of reports to be included in each file are to be specified in the agreement. Public information will be made available to any party upon request for the applicable duplicating fee.

(f) *EPA funding.* The EPA may provide additional section 105 funding support for the State program, particularly during the program transition period, where such funding is necessary and available.

(g) *Technical support and assistance.* The EPA agrees to provide technical support and assistance for interpretation of national regulations, automated transmission of data to EPA, and general technical assistance in processing permits.

(h) *Information management.* State permit information systems should be compatible with the national operating system with regard to a set of minimum standard data elements, as well as standardized program procedures, including timely submittal of required data. These requirements are to be defined in subsequent guidance.

(i) *Priorities for permit processing.* Both parties agree to identify and implement priorities (e.g. sources subject to new source review) for permit processing.

(j) *Enforcement.* The State agrees to maintain a vigorous enforcement program, including the following:

(i) Quarterly reports of compliance information to EPA.

(ii) Annual reports of State enforcement activity.

(iii) An automated compliance monitoring tracking system.

(iv) Timely review of compliance records, monitoring reports, inspection reports, and compliance certifications.

(v) Compatibility with and/or use of AIRS, including information transfer procedures conforming with national requirements to be developed.

(vi) Certification of reports by a responsible official.

(vii) Appropriate enforcement actions taken in a timely manner.

(viii) Timely field inspections in accordance with approved procedures.

(ix) Procedures for receiving and properly considering information submitted by the public about violations.

(k) *Program review.* The EPA will conduct the following activities to ensure that program objectives are met:

(i) Timely review all information submitted by the State agency.

(ii) Meet with State and/or local officials periodically to discuss program implementation.

(iii) Examine files and documents at the State agency for selected facilities to determine that permits are processed, issued, revised, renewed, and enforced in a manner consistent with Federal requirements.

(iv) Review and certify periodically the legal authority upon which the State's program is based and notify EPA of findings.

(v) Hold public hearings on draft proposed permits, as necessary.

(vi) Review the State and/or local agency's public participation policies and procedures as needed.

(vii) Respond promptly to proposed program changes.

(l) *Program Changes.* The permitting authority agrees to take the following actions regarding changes in its permitting program:

(i) Seek and adopt legislation (or other actions) to maintain compliance with the permitting program.

(ii) Notify EPA of any proposed substantial change in the program and transmit the text of any such change.

(iii) Notify the EPA within 10 days of any change to the program and transmit the text of such revisions.

B. Relationship of Permit Programs to SIP's

(1) General

Under the Act, the SIP remains the primary means of assuring attainment and maintenance of the NAAQS. Requirements in the underlying SIP will form the basis for the permit requirements. As previously mentioned, section 504(a) requires each permit issued under title V to include, among other things, "such * * * conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan." Section 505 requires that EPA object to any permit that "contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this Act, including the requirements of an applicable implementation plan."

A previous section on applicable requirements (IV.F.) discusses various ways of ensuring that the permit would implement and not relax the applicable SIP requirements. Where SIP requirements are clear, the part 70 permit must adopt these limitations and reestablish them as permit conditions that implement the SIP. Where the SIP requirements are ambiguous or absent, the permit could provide a way of resolving questions as to how the SIP applies and is enforced. Where the SIP is being changed, (e.g., in SIP-call areas) the permit must not unduly insulate the source from the future requirements.

The provisions in section 504(a) indirectly limit the flexibility offered by section 502(b)(10), which requires that State programs allow certain changes within a permitted source without a permit revision so long as, among other things, the "changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions) * * *." Since the permit must reflect the SIP, if the SIP does not authorize changes from unit-specific emissions limits or caps contained in the SIP without a SIP revision, the "operational flexibility" provision cannot be read to authorize such changes absent a SIP revision. (Congress's deletion of the Senate bill provisions authorizing permits to modify SIP's, in conjunction with its addition of the section 504(a) language requiring permits to reflect the SIP, suggest strongly that Congress rejected the view that permits could modify or otherwise override the applicable SIP.)

This limitation on the ability of permits to modify SIP's creates a dilemma for EPA. On one hand, if a SIP sets detailed unit-specific emissions limits that constrain the ability of the source to choose alternatives without submitting them as SIP revisions, then the permit for a source subject to those limits would have to reflect those limits, and each time the source wanted to make a change to its plant that would require a change to those limits, it would first need to obtain a SIP revision and a permit revision. This would essentially add a permit-revision step to an otherwise cumbersome double-step process of obtaining SIP revisions (revision by the State followed by EPA approval of the revision). The resulting regulatory gridlock would be inconsistent with one of the apparent purposes of the permit program: to accomplish air quality management with less reliance on the SIP revision process.

On the other hand, title I of the Act prescribes various minimum requirements that SIP's must meet to ensure attainment and maintenance of the NAAQS. Any effort to introduce into the SIP system enough flexibility to avoid the regulatory gridlock described above will need to respect those title I requirements. Thus, the challenge EPA and the States face in this regard is to explore creative ways of implementing title I so as to meet its requirements for SIP's while minimizing the need for processing SIP revisions to accommodate each and every permit and permit revision.

The starting point for meeting this challenge is section 110(a)(2)(A) which requires that each SIP "include enforceable emission limitations, and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as, schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act."

This provision makes the required contents of SIP's hinge on what is "necessary or appropriate" to meet the applicable requirements. Thus, any effort to explore the option of introducing flexibility into SIP's must focus on the other requirements for SIP's in title I and elsewhere in the Act.[7] For example, SIP's for ozone nonattainment areas must include certain requirements concerning reasonably available control technology (RACT) (182(a)(2)(A) and (b)). For all but marginal ozone nonattainment areas, the SIP must be revised to provide for certain prescribed amounts of emissions reduction (182(b)(1) and (c)(2)(B)), as well as emissions reductions necessary to provide for timely attainment of the ozone NAAQS (182(b)(1) and (c)(2)(A)). The SIP's for PM_{10} nonattainment areas also must include both technology-based and attainment-based provisions (189(a) and (b)). Under section 110(k) and (l), EPA has the responsibility for ensuring that each plan meets these requirements.

Resolution of this issue requires a thorough study of the SIP requirements in the Act. The EPA has begun this study and intends to publish later this year a discussion of its findings in the preamble for title I SIP requirements. That notice will discuss how EPA will provide more flexibility in the SIP requirements.

In advance of the title I notice, EPA wants to solicit comments on several ways to resolve this issue. The EPA's approach can be separated into three options. First, EPA will explore efficient ways to implement requirements of the current SIP's through title V permits and seek means to keep unnecessary permit details out of SIP's. This will avoid the need for a SIP change for every change to a title V permit. For example, a permit must sometimes contain details, such as descriptions of source-specific monitoring or reporting elements, on which the SIP is ambiguous. In many cases, requiring a SIP revision as well as a permit change would be unnecessary. In some instances, however, a SIP revision might be necessary to reflect more stringent permit limits imposed to meet, for example, a title I milestone or progress requirement. As mentioned, EPA is taking comment on how the SIP might reflect the effect of tighter permit limits in a way that does not require an excessive number of SIP revisions.

Second, EPA will add more flexibility by developing ways for sources to demonstrate compliance with RACT limits. One way is through the use of protocols defining equivalent means of compliance. Two of these are in use, one for cancoaters (see 45 FR 86824,

[7] Both titles II and V contain some SIP-submittal requirements (See, e.g., sections 211 (M) and 507).

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December 8, 1986) and one for automobile and light-truck topcoaters (see report no. EPA-450/3-88-018, December 1988). The EPA intends to develop equivalency protocols for other sources subject to RACT. These protocols, where possible, will provide sources with additional options for meeting RACT limits.

Third, EPA might allow the expanded use of emissions trading and marketable permits to achieve SIP objectives. EPA believes marketable permits could implement a SIP that contained both a source-specific limit and a general rule governing the trading of emissions. This approach would be similar to the allowance trading system EPA expects to adopt under the acid rain provisions and could afford trading opportunities without requiring SIP revisions or permit revisions.

The comparison between the acid rain trading system and a system of trading or marketable permits in ozone nonattainment areas deserves further discussion due to major differences between the two. The acid rain system allows nationwide trading; a nonattainment system would be limited to a metropolitan area, and to smaller areas if the SIP attainment strategy relied on a grid-based model. Compliance in the acid rain system is through CEMS. The absence of in-stack monitors for VOC's may require that compliance be determined through time-consuming recordkeeping calculations. Acid rain sources are of one type: Large utility boilers, which already are highly regulated. Sources of VOC span many source categories and can be very small, down to 10 tons per year, several of which are not familiar with complicated regulatory mechanisms. Trades in the acid rain system are incomplete until recorded by EPA. A system requiring a similar EPA oversight of each trade may be unworkable for VOC's.

The EPA takes comment on how it could structure a trading system for VOC's and NO_x in ozone nonattainment areas. The Agency also takes comment on how to create a system that could effectively track trading of allowances among numerous and disparate VOC and NO_x sources in a large ozone nonattainment area within the need for permit or SIP revision. In particular, the EPA solicits comment on how it should build enforceable conditions into title V permits that maintain compliance with the permitted emission limits regardless of how a source's control measures or its allowance holdings may vary.

The timing of these options is important. Many sources will soon be faced with deadlines requiring compliance with line-by-line RACT limits, and if EPA is to implement one or all of these options, it must consider how these RACT limits could be made to fit with the three options. For instance, the scope of option three could be restricted if RACT limits (with or without equivalence protocols) were applied so as to require the same level of emissions reductions at each affected emissions source. Although EPA already has construed the statute to allow some degree of trading among emissions sources (see 51 FR 43814, December 4, 1986), the third option described above might expand that opportunity further. Thus, delaying that option for several years might restrict sources to the more limited options for purposes of any initial compliance dates. On the other hand, it may be difficult to implement the third option before approved State permit programs are in place.

The EPA solicits comment on all aspects of these options, particularly on whether EPA should adopt some, all, or none of the options outlined above. The EPA also solicits comment on how quickly EPA should move to accept any of the options and on what safeguards are needed to ensure that SIP objectives and title I requirements are met. The EPA also solicits comments on other possible approaches.

The EPA also solicits comment on any practical questions related to putting an allowance trading system in place for VOC's and NO_x. Examples of such questions are: How to reconcile the need for a basinwide trading system with the requirement in certain areas for photochemical dispersion modeling, and whether it is practical for SIP-regulated sources to operate under emissions caps or allowances.

The preceding discussion on the three options applies only to the ozone precursors VOC and NO_x. The EPA does not intend to apply such an approach to permitted stationary sources of SO_2, CO, PM_{10}, or lead. This is because any change that affects quantity or characteristics of emissions of these pollutants at a particular emissions unit can produce a corresponding change in air quality more significant than is the case for VOC or NO_x. Consequently, the permit could not be approved until the SIP has tested such changes for attainment of air quality standards. The preceding discussion also does not alter the Emissions Trading Policy Statement. That policy allows trading for SO_2, CO, PM_{10}, and lead if supported by an air quality modeling demonstration.

For illustration, the remainder of this section discusses one example of when States might issue permits that depart from the SIP without securing advance EPA approval of those permits as case-by-case SIP revisions, namely, the case of permits that establish new, more restrictive requirements on a subject source. For example, some States may include enforceable emission limits in their permit program derived from State an air quality initiative within the SIP to gain needed reductions from the permit program, or to implement an emissions trade proposed by the source. The State will want to rely these new tighter limits established in the permit program in its demonstration of attainment and maintenance of the NAAQS. Clearly, the tighter restrictions within these permits are federally-enforceable and can be relied upon by the SIP demonstration once incorporated into the SIP. Since SIP demonstrations must extend beyond the 5 year maximum fixed life of permits, the SIP itself may ultimately need to contain the new permit limits. That is, the SIP demonstration cannot depend for the longer term on more stringent permit restrictions which could be relaxed to the currently applicable SIP requirement and/or expire at the end of the fixed term identified in the permit (not to exceed 5 years). As explained above, the EPA has proposed that the latter not be allowed to occur. Under that proposal, the State's law would have to provide that the terms of the permit would remain enforceable, even after the fixed term of the permit expires, provided that the source has filed a timely and complete application for permit renewal.

The question then becomes how to incorporate the effect of these permits into the SIP's attainment demonstration without creating even a greater potential for regulatory gridlock similar to that mentioned previously. The EPA believes that the gridlock problem can in significant part be minimized while still addressed by relying upon the SIP revision process. First, the Agency believes that the process for inserting new limits established within permits into the SIP need only occur periodically and not for each permit upon its issuance. The envisioned process would be a relatively straightforward incorporation of the new permit restrictions into the SIP as new applicable requirements (III.H.) that all future versions of the permit must meet. In addition, to the extent possible, EPA would utilize the SIP processing reforms outlined in 54 FR 2214 on January 19, 1989. This process would add only the time needed to accomplish one SIP revision addressing the permits of several sources and thus effectively preserve most of the added air quality management efficiency accomplished through the permit process. In addition, the State, presumably at the same time, would update its SIP demonstration under title I based on the reductions and/or clarifications it has implemented using title V permits. The EPA solicits comment on this approach for using permits to complement the existing SIP program.

Alternatively, EPA may be able to approve into the relevant SIP's provisions that, in advance of permit issuance, would credit the States for changes that, without further EPA SIP-revision approval, tighten the otherwise applicable source-specific limits in the SIP. If EPA approved such rules into a SIP, permit tightenings would accord with the SIP, and hence would satisfy section 504(a) without the need for EPA to approve each such tightening separately as a SIP revision. (As previously discussed, without such rules, EPA might eventually need to approve each tightening (e.g. an emissions offset) as a SIP revision to the extent that the State relies upon it in demonstrating attainment and maintenance with the applicable NAAQS.) Beyond that, the Agency takes comment on the possibility of approving into the SIP a provision which would ensure an aggregate effect from tightenings accomplished within the permit program, provided that no aspect of the underlying SIP would be relaxed. The provision would necessarily contain tracking requirements to assess the progress achieved, periodic and defined updates of the demonstration to verify results, and other safeguards as needed to guide EPA when to use its veto authority on an individual permit basis. The EPA solicits comment on use of such a generic permits provision.

The EPA solicits comment on these and any other options for streamlining SIP's so as to minimize the need for SIP revisions to accommodate permits and permit revisions.

(2) Other SIP/Permit Concerns

(a) SIP Calls. A State subject to a SIP call will have to coordinate carefully its operating permit program with its obligation to revise the SIP. Section 504(f) states that compliance with a permit issued in accordance with title V, unless limited by EPA rulemaking, may at the discretion of the reviewing authority also represent compliance with other applicable requirements, subject to certain limitations. As discussed previously, at the discretion of the permitting authority, EPA's proposed interpretation would generally protect a source from new requirements during the term of the permit, unless the permit were to be reopened. Permitting authorities issuing operating permits in these areas therefore may choose to shield sources from changes in the SIP during the permit term. This action should be coordinated with the schedule for accomplishing areawide air quality requirements developed by the State or promulgated by EPA into the deficient SIP.

(b) *Consolidated actions.* A State may choose to consolidate actions on permits and SIP's in some situations. In the case described previously, where a new SIP provision is promulgated during the first 2 years of a 5-year permit, the State may choose to process the reopening of the applicable permits along with the SIP revision to meet its obligation under section 502(b)(9). In the less likely case where the State is proposing to relax the SIP, the State may choose to reopen the applicable permits along with the SIP relaxation, specifying that the new relaxed permit limit is effective upon EPA's approval of the relaxation as a SIP revision. In both cases, States may be able to consolidate public participation procedures to save time and administrative resources.

C. Implications for Acid Rain Program

Title IV mandates a two-phased acid rain control program which will be implemented through operating permits. The acid rain title (title IV) sets forth permitting requirements supplemental to the requirements of title V addressed by today's proposal. Where discrepancies exist between requirements under title V and requirements under title IV, the acid rain requirements supersede those of title V (506(b)). Acid rain-specific permit content requirements must be included in operating permits under both phases. The permitting process will be different for Phase I and Phase II. Section 407 provides that Phase I of the acid rain program (1995 through the end of 1999) be implemented entirely through operating permits issued by the Administrator. Phase II (beginning in 2000) will be implemented by operating permits issued by States with federally-approved permit programs, or by EPA in the event a State defaults. Phase II permitting will be, thus, in accordance with the process established by the rules proposed today, as supplemented by acid rain-specific content regulations.

Today's proposal does not address specific supplemental permitting requirements for acid rain, provided for in title IV. Those requirements will be addressed in a separate rulemaking, with final rule promulgation required 18 months after enactment. The acid rain permit regulations will include a description of the relationship of the acid rain program to other programs incorporated in the permits, necessary definitions, applicability requirements, and necessary permit elements not included in the rule proposed today. These will include: (1) Acid rain-specific requirements for permits and compliance planning, including requirements for affected sources relying on one or more alternative compliance methods authorized by the statute (e.g., extensions, substitutions, banking, pooling, purchasing of allowances at sale or auction, energy conservation or renewable energy, repowering, etc.), (2) compliance certification and reporting requirements, (3) requirements for affected source-designated representatives, and (4) excess emission offset planning and fee requirements.

Rules for Federal acid rain permitting during Phase I, and in the event of State defaults during Phase II, will be published at 40 CFR part 71. In addition, acid rain permit content requirements, which must be included in permits issued by States with approved programs, will be proposed at that time, and will be added to (or incorporated in) the part 70 rules proposed here. Public comment is invited at this time regarding the impact of this general permit program rulemaking on the acid rain permit program. Public comment in response to the acid rain rulemaking proposal will, however, only be accepted with regard to the provisions proposed at that time. Comments will not be considered at that time reopening matters addressed by this rulemaking.

D. Judicial Review

The 1990 Act Amendments and the regulations proposed today provide an opportunity for judicial review of State and certain Federal final actions on a proposed permit. Generally, a final State action prior to submitting a proposed permit to EPA is reviewable in State court. An EPA issuance or denial of a permit, or an EPA denial of a petition to object to a permit, would be reviewable in the appropriate Federal court of appeals for the circuit where the State is located.

(1) Review of State Action

Section 502(b)(6) requires that a State operating permit program provide "an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law." This requirement for State program approval is repeated in § 70.4. A State must make a showing, through the submission of copies of State

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statutes or regulations, that such an opportunity for judicial review of the final State action on the permit is available in State court. This opportunity will not be available until after the permit has been issued (i.e., after the end of the EPA review period) or after it has been denied by the State (in which case there will not be any EPA review).

State law will govern the effect a petition for judicial review of the State's final action on the proposed permit has on the action. For example, nothing in the Act or the regulations proposed today would prevent a State court from staying the effect of the State action in approving or disapproving the permit. States may also require that petitioners go through State Administrative appeals procedures before they may petition for judicial review in State court.

One of the primary goals behind title V was to have greater certainty for sources and State and Federal enforcement personnel as to what requirements under the Act apply to a particular source. In order to achieve that certainty, the terms of permits should not be subject to challenge in enforcement proceedings. Section 307 clearly establishes this rule for circumstances in which EPA is the implementing authority. With this goal in mind, EPA solicits comment on whether permitting authorities should, as a minimum program element, be required to provide, through rule, legislation, or permit term, a comparable exclusive, time-related route for judicial review of permits. After this judicial review opportunity passes, no one, including the source, could challenge a permit. Permitting authorities would be granted flexibility regarding the length and structure of this review period. Sources would, in any case, specifically be precluded from challenging the requirements and conditions of their permits in State or Federal civil and criminal enforcement actions.

Section 502(b)(6) requires all approvable programs to provide "an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law." Thus, EPA would, through this rule, only add that this mandated State judicial review process would be the exclusive means for challenging a permit.

This would have advantages for the permittee, the permitting authority, and EPA. The advantages for permittees would be the added certainty and stability of their permit gained by having their permit no longer subject to challenge. Enforcement at the State and Federal level would benefit significantly. Currently, many enforcement actions are seriously hindered by disputes with sources over which Act requirements apply. If the permit could not be challenged in enforcement actions, these disputes would no longer arise.

The EPA is particularly interested in comments from potential permitting authorities on whether it is advisable to require States to limit the time for challenging terms of operating permits and what obstacles they would encounter in implementing such a requirement.

EPA also takes comment on the need for specific regulatory requirements in part 70 regarding judicial review of acid rain requirements contained in title V permits. An important principle of the acid rain program, embodied in title IV and in section 506(b), is national consistency. Judicial review in State courts could have a significant impact on the acid rain program because it would result in inconsistent requirements being imposed on acid rain sources depending on the State in which they are located.

To maintain this national consistency, the EPA proposes to require that challenges to acid rain requirements be reviewed in Federal courts only, using Federal administrative and judicial appeals procedures. The basis for this approach is found in section 506(b) of the Act as well as § 70.1(e) of these regulations, which states that the requirements of part 70 shall apply to affected sources under the acid rain program, "except as provided herein or modified in parts 72 through 78 of this chapter." The EPA solicits comment on whether it should adopt this approach.

(2) Review of EPA Action

Also subject to judicial review are EPA's final actions in (1) issuing or denying a permit where, following an EPA objection to a proposed permit, the State fails to submit a revised, acceptable permit, and (2) denying a petition to object to a proposed permit. Where EPA objects to issuance of a proposed permit under section 505(b) because provisions are not in compliance with applicable requirements of the Act, and then must actually issue or deny the permit itself, that latter action is subject to a judicial review under section 307(b) in the appropriate Federal court of appeals. The appropriate court will be the circuit in which the State is located. Section 505(c) expressly States that "no objection (by EPA) shall be subject to judicial review until the Administrator takes final action to issue or deny a permit under this subsection" following the permitting authority's failure to submit a permit revised to meet the objection. Thus, a petition for review of EPA's action may not be filed until that time; if one were filed before then, the court would lack subject matter jurisdiction.

The above-quoted language also makes clear that, where EPA objects to issuance of a permit, and the permitting authority revises the permit to address EPA's comments, EPA's objection is not subject to judicial review. Otherwise, Congress would have specified other circumstances when an EPA objection would be subject to judicial review. Where the State revises the permit, therefore, the finally-issued permit will be subject to judicial review only in State court. Where a petition for review of EPA's issuance or denial of a permit is filed in the Federal court of appeals, the judicial record shall constitute all materials regarding the permit submitted to EPA and any other materials that the Agency relied upon in objecting to the permit forwarded by the State, as well as any materials relied upon in issuing or denying the permit.

Under section 505(b)(2), a person may under certain circumstances petition the Administrator to object to issuance of a permit if the Agency has failed to object to its issuance during the 45 day review period specified in section 505(b)(1). If the Administrator approves the petition, that action is not a final action subject to judicial review. Rather, as described above, only issuance or denial of the permit by EPA would be subject to judicial review.

A final decision by the Administrator to deny the petition is subject to judicial review, however. This opportunity for review is expressly granted by section 505(b)(2). Such review shall be under the conditions specified in section 307(b). A petition for review of the petition denial therefore must be filed within 60 days of the denial, in the Federal court of appeals for the circuit in which the State is located. The record for judicial review of this final decision shall constitute the petition submitted to the Administrator, all materials submitted by the State to EPA for review of the permit, and any other materials relied upon by EPA in denying the petition. When EPA's denial of a petition is challenged in court, the already issued permit, of course, remains in effect. The Agency is proposing to require, as a criterion for approval of the State operating permit program, that each State have a provision in their administrative

procedures act placing a bar on when permits or conditions of permits may be challenged after issuance. This bar would disallow challenges to permit conditions after a specified period of time, such as 30 days. The purpose of the provision is to ensure that permittees do not attempt to escape liability for violations of permit conditions by challenging those conditions after they are in violation or after the State or EPA attempts to take an enforcement action. To provide States with flexibility, the Agency solicits comment on allowing time bars on permit challenges of up to 4 months.

E. Implications For Section 112

Section 112 includes a list of 189 hazardous air pollutants some sources of which will be subject to emissions standards under section 112. The EPA must publish a list of source categories or subcategories of major sources that emit these pollutants within 1 year after enactment. The EPA then must issue MACT standards for each listed source category or subcategory according to a prescribed regulatory schedule. For example, standards for 40 categories must be set within 2 years of enactment. The standards for new sources are to be based on the maximum emissions reductions achieved on the best controlled similar source, while the standards for existing sources must, in general, be at least as stringent as the average of the best controlled 12 percent of the sources in the category. Companies that accomplish early reductions of emissions receive a 6-year compliance extension from meeting the MACT requirements, if they reduce their annual emissions of listed hazardous air pollutants by 90 percent over a given baseline (95 percent for particulate pollutants) subject to certain criteria. All sources subject to section 112 must obtain a permit issued pursuant to a title V permit program.

(1) Applicability

The proposed part 70 program would implement for subject sources existing section 112 standards as well as future section 112 standards requiring the use of MACT, GACT, any technologies to reduce unreasonable residual risk, and any accidental release requirements mandated under section 112(r). In the development of MACT standards, EPA intends to develop model permit conditions as guides to the implementation of these standards through permitting. All major sources as defined in section 112, and any other source subject to standards under section 112 (unless exempted through rulemaking by the Administrator) are subject to the part 70 permit program. "Major source" is defined by section 112 as any stationary source (or group of stationary sources) located within a contiguous area, and under common control, that has the potential to emit, after considering controls, of 10 tpy or more of any hazardous air pollutant (defined initially as a list of 189 which is subject to change), or 25 tpy or more of any combination of these pollutants. The Administrator may also establish a lesser quantity for a major source on the basis of potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

As discussed under § 70.3, the part 70 permitting process applies to all regulated emissions units on the premises of a "major" source. In addition, the part 70 permit process applies to "area" sources (as defined in section 110) which have one or more aspects of its plant site subject to section 112 unless exempted by rulemaking. Once affected by the permitting process, compliance with all applicable requirements of the Act, including those contained in the SIP and section 112, must be assured within each part 70 permit. In addition, where there is no applicable section 112 standard to implement, part 70 permits must still impose any applicable control requirements described in sections 112(g) or 112(j).

(2) Section 112(l) Programs

Section 112(l) outlines a program for State implementation of section 112. A State may develop and submit to the EPA a program for the implementation and enforcement (including a review of enforcement delegations previously granted) of emissions standards and other requirements for air pollutants subject to section 112, including requirements for the prevention and mitigation of accidental releases pursuant to section 112(r). These programs would be similar to the existing programs used by States to enforce existing section 112 standards and the program envisioned by title V. Such a program may provide for partial or complete delegation of the Administrator's authorities and responsibilities to implement and enforce emissions standards (provided they would be no less stringent than those promulgated by EPA) and prevention requirements. The program should clarify the process by which delegation of authority is accomplished and whether it must be repeated for each new standard that is promulgated.

The EPA is required by section 112 (l)(2) to publish guidance within 12 months of enactment which, in part, should aid states in developing their programs. Section 112(l)(5) states that the EPA shall disapprove the State's program under the following circumstances:

(a) The authorities are inadequate to assure compliance by all sources within the State with each applicable standard, regulation, or requirement established by the Administrator under section 112.

(b) Adequate authority does not exist, or adequate resources are not available to implement the program.

(c) The schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious.

(d) The program is otherwise not in compliance with the guidance issued by the EPA, or is not likely to satisfy, in whole or in part, the objectives of the Act.

The EPA proposes that the procedural requirements in section 112(l) to review and approve/disapprove State programs will be met by the promulgation of part 70. The requirements for an adequate part 70 submittal (III.B., IV.D.) contain equivalent approval criteria which are substantially the same as those contained in section 112(l)(5). Part 70 also contains several additional and more specific requirements that assure implementation of all Act requirements, including MACT, applicable to subject sources through a permit program. The EPA also believes that State efforts to develop and implement a title V permit program should not be diluted by encouraging the development of separate but similar programs to implement just section 112.

Where section 112(l) identifies additional program requirements (such as those relating to enforcement of MACT or GACT requirements at non-permitted sources or the handling or storing any substance listed pursuant to section 112(r)), States are free to submit these as provisions within their title V permit programs in order to meet section 112(l). Implementation of these provisions would then be a cost appropriate for recovery from the required fee schedule (IV.I.). Accordingly, EPA solicits comment on today's proposal to consolidate section 112(l) programs with Title V permit programs.

(3) Statement of Adequate Legal Authority

The part 70 submittal must contain a legal opinion from the State's Attorney General affirming the adequacy of

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existing legal authority to implement and enforce the program. With respect to section 112, the enabling legal authority should be adequate to accept delegation of authority to implement and enforce new MACT standards in a timely way. In the case where a State cannot immediately accept implementation responsibilities upon promulgation of a new MACT standard, then the impact of any delay associated with State implementation should not be significant. Moreover, any part 70 permits issued to affected sources during the time before the State can accept implementation responsibility for a given standard should be issued in a manner which does not interfere with section 112 enforcement. One possibility would be for the State to disallow use of the section 504(f) "permit shield" in such circumstances.

The statement of adequate legal authority must also confirm that the State has the ability to implement sections 112(g) and 112(j). In the case of section 112(g), States acting as the part 70 permitting authority must be able to develop and enforce a case-by-case determination of MACT, after the effective date of the permit program, on new, reconstructed, or modified sources where no applicable emissions limitations have been established by the EPA. These case-by-case MACT determinations must be consistent with EPA guidance due for publication not later than 18 months after the date of enactment.

Section 112(j) requires that in the event EPA fails to issue a standard for a major source category or subcategory within 18 months of the scheduled promulgation date for the standard, a permit must be issued that contains emissions limitations equivalent to the limitation that would have applied had the emissions standard been issued on time. Under section 112(j), the State must have adequate authority after the effective date of the permit program (but not prior to 42 months after the date of enactment) to develop and enforce these case-by-case determinations of MACT.

(4) Alternative Emissions Limitations for Early Reductions

Section 112(i)(5) provides an extension for existing sources to comply with otherwise applicable standards for hazardous air pollutants provided certain criteria concerning early reductions are met. This subsection requires that the Administrator or a State acting pursuant to a title V permit program issue a permit allowing an existing source (for which the owner or operator demonstrates that the source has achieved a reduction of 90 percent or more in emissions of hazardous air pollutants, 95 percent in the case of particulate hazardous pollutants, from the source) to meet an alternative emissions limitation reflecting such reduction in lieu of meeting a standard under section 112(d). This extension would apply for a period of 6 years from the compliance date for the otherwise applicable standard, provided that the reduction occurs before the standard is proposed. The one exception is specified in section 112(i)(5)(B) wherein existing sources that make a federally-enforceable commitment prior to proposal to achieve the reductions, can have until January 1, 1994 to achieve the reduction. The EPA is issuing regulations for determining when reductions are sufficient and verifiable.

Under this guidance, a source owner or operator wishing to qualify for a hazardous air pollutant standard compliance extension under the early reduction program must submit a permit application containing a demonstration that sufficient reductions have been achieved. The permitting authority would evaluate and either approve or deny the early reduction demonstration, normally as part of the permit review and issuance process. In most cases if a source is denied a compliance extension, the source will have to meet the applicable hazardous air pollutant standard within the normal compliance period specified in the standard. A problem would arise when a source which has applied for an extension receives word that the early reduction demonstration has been denied, and the denial comes only a short time before, or even after, the normal compliance deadline of the applicable hazardous air pollutant standard. Under this scenario, the source would not have adequate time to install appropriate controls to meet the standard.

Sources submitting complete permit applications to States may not be issued permits for as long as 3 years after the date of initial State program approval or for 18 months in all other instances. Review times this long can create problems for sources seeking such extensions.

An illustration of the potential problem can be made using the upcoming standard for ethylene oxide sterilizers. The EPA intends to promulgate a hazardous air pollutant standard under section 112(d) by April of 1993 for sterilizing facilities using ethylene oxide. The compliance period for this standard likely will range up to 24 months, with a subsequent final compliance date of April 1995. Under the early reduction program, a sterilizer source will have until December 31, 1993 to achieve reductions and qualify for a compliance extension. The source must submit by December 1, 1993 a permit application demonstrating reductions achieved and must submit any source test data to complete the demonstration by March 31, 1994, which leaves approximately 1 year from the time the source submits a complete permit application to the time the source may potentially have to comply with the applicable hazardous air pollutant standard. Clearly, if the State takes 18 months (until September 30, 1995) to review the application and then denies the compliance extension, the source would already be in violation of the standard.

Therefore, for permit applications involving early reduction demonstrations according to section 112(i)(5) of the Act, it is proposed that the permitting authority be required to issue the permit within 9 months of receipt of a complete application. The EPA proposes a shortened permit review period for this special situation under authority provided in section 301 of the Act. The Agency urges permitting authorities to be sensitive to the need to propose this change in the permit review period to ensure effective implementation of section 112 without placing sources in undue jeopardy of violating a hazardous air pollutant standard. The early reduction provisions in section 112 offer a significant opportunity to achieve rapid improvements in air quality across the country. The Agency takes comment on this proposed position.

The part 70 permit process, where available, is the intended implementation mechanism for granting all qualifying sources the extension for meeting otherwise applicable MACT standards including those referred to in the special case above. Questions arise as to how this process will occur in the time period before the effective date of a part 70 State permit program. In the subsequent discussion of the part 71 program (VI.), the process is outlined for EPA to issue title V permits, including those for MACT extensions.

The EPA believes that actions required of sources before the part 71 regulations can be promulgated (i.e., approximately 18 months after enactment) need not be incorporated into a permit before these regulations are in place. Instead, the Act allows the source to develop a federally-enforceable commitment which would be submitted to the appropriate EPA Regional Offices for review. If accepted and put in force, the federally

enforceable commitment registers the source's intent to participate in the early reduction program. When part 71 regulations become effective, and after the source has achieved the required reductions, the source would submit a complete permit application, including the early reduction demonstration.

The EPA intends to delegate the technical and administrative responsibility where possible for developing enforceable agreements or part 71 permits (as applicable) to States who request such authority prior to the approval of their part 70 programs. The EPA solicits comments on how this approach for accomplishing early implementation of the section 112(i)(5) requirement can be accomplished.

F. Information Management Support

The EPA acknowledges the importance of an integrated information management approach for the development and implementation of programs mandated by the Act Amendments of 1990. As partners in implementing the Act, it is recognized that State and local agencies have data needs that may, in some cases, be quite different from the Agency's. It is the Agency's intent to support an integrated information management approach that acknowledges individual needs and existing infrastructure (including forms), yet enables EPA to address its national responsibilities. Accordingly, the information management activities associated with meeting the Act's requirements must seek to fulfill both national and individual program needs. In addition, they should be guided by a template that promotes compatibility with, if not direct use of AIRS, which is the Agency's principal data system for implementing the Act.

The following will accomplish this:

(1) Standard data elements needed for complete application will be identified to meet basic program needs.

(2) Standard information management procedures for program implementation and administration will be defined.

(3) Use of implementation agreements, supported by appropriate guidance, will be encouraged to identify appropriate information reporting requirements.

Nationally consistent information management is necessary to ensure the effective functioning of the allowance trading market under the acid rain program. In a separate rulemaking, the Agency will propose application requirements and forms to be used by all affected sources under the acid rain program. As a condition of approval of State operating permit programs, permitting authorities will be expected to use these forms.

The Agency solicits comments on how best to implement these objectives for data collection and management.

G. Relationship of Permit Fees to Section 105 Grants

Once fully established, a State's permit fee program should recover a significant portion, though not all, of its air program expenses. Section 105 of the Act continues to require States to contribute a specified percentage and maintain a certain level of overall air program support from year to year. Regardless of the continued stature of the Federal air grant program or the changing sources of State program support, EPA has interpreted the Act (title VIII, section 802) as requiring States to continue to satisfy their maintenance of effort (MOE) provisions. States will, therefore, need to report that portion of their permit fee revenue that will be used to help meet their annual MOE obligation. EPA plans to provide further clarification through its upcoming revision of the air portion of the part 35 regulations governing financial assistance to State and local agencies for continuing environmental programs. The EPA is taking this opportunity to solicit comment on its interpretation of the interrelationship of permit-fees, grants and the MOE requirement.

H. Integration of National Pollutant Discharge Elimination System (NPDES) Program Concepts

One of the principles previously identified for designing and implementing title V programs is to promote, not preclude, reasonable integration of title V permit programs with other permit programs. Accordingly, EPA has evaluated the NPDES regulatory provisions for possible inclusion of relevant concepts within the part 70 regulation. The Agency is proposing to merge the programs where this incorporation would not interface with implementation of other important principles previously identified to preserve the legislative intent underlying the content of title V (II)., such as maintaining, where possible, existing State operating permit programs and allowing reasonable flexibility in their future development and implementation.

There are numerous existing regulations which apply to the NPDES permit program under the CWA which have been reviewed to determine whether they have applicability to the title V operating permit program. Based on the successful implementation of the NPDES program by the Agency and the States, and based on the Agency's future direction toward consolidated permitting programs, many of these regulations have been adapted for air and proposed for incorporation into part 70. Those which have been included pose no great burden on either the permitting authority or the permittee. In fact, in many cases these requirements represent good business practices and will expedite review and implementation of the program and of individual permits. General provisions which are included relate to both program requirements as well as to permit requirements.

Program areas which have been addressed include enforcement authorities required of the permitting authority, compliance and enforcement tracking requirements, program submittal requirements including Attorney Generals' statements requirements, and information transfer requirements. Permit provisions addressed by the regulation include property rights, inspection and entry rights, standard recordkeeping requirements, signatory and reporting requirements.

The NPDES regulations in parts 122–124 also include requirements regarding program approval/disapproval procedures, public review procedures, and EPA oversight requirements. Where appropriate, excerpts from these regulations have been extracted in whole or in part and incorporated into part 70. However, at this time the specific requirements of §§ 124.10 through 124.14 have not been included. The Agency recommends that permitting authorities consider these parts when developing their permit programs; and at this time the Agency is soliciting comments on including requirements regarding public notice, hearings, and comment periods on title V permit actions.

The proposed incorporation of several specific features from the NPDES program adds to the considerable common ground already shared by the two programs as a result of their basic design (i.e., title V was modeled in large part on the structure of the NPDES program). Based on this strong linkage between the air and NPDES programs, the EPA Administrator further proposes that a presumption for issue-resolution of title V implementation concerns be established based on the relevant experience obtained from carrying out the NPDES program. Comment is solicited on the appropriateness of this approach and where it should be limited in its scope.

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VI. Federal Operating Permit Program

A. Purpose

This preamble previously discusses the criteria for determining if a State operating permit program meets the requirements of title V and the responsibility of EPA if the State-submitted program is not approvable or if a State does not adequately implement an approved program. The action EPA must take is discussed under sections III.C. and IV.J. In brief, EPA must establish and implement an operating permit program that meets the requirements of title V for a State in either event of the State's not developing or implementing a program. The EPA intends to propose in a subsequent Federal Register notice a new part 71 which would set forth the elements of an operating permit program which EPA would implement. Part 124 (containing procedural regulations on the issuance of EPA permits) will be amended to provide similar procedural rules for Federal issuance.

Also to be included in part 71 would be provisions regarding the requirements for EPA issuing permits (1) for Phase I sources of acid rain precursors and (2) for sources of hazardous air pollutants which elect under section 112(i)(5) to demonstrate a 90/95 percent or greater early emissions reduction to receive an extension from MACT standards. Both of these permitting provisions are subsequently discussed in this section. These permitting requirements would fall on the EPA during the period prior to a State submitting and gaining approval for an operating permits program under part 70. The parts 71 and 124 regulations also would serve as the basis for EPA permitting sources on certain Indian lands. Although section 301(d) authorizes EPA to treat Indian tribes as States for certain purposes, including issuing title V permits, EPA has not yet promulgated regulations on this matter. Many tribes probably will not seek to (1) to be treated as a State, or (2) run a title V program. Where the tribe does not permit sources on Indian lands, EPA plans to carry out the permitting itself.

When reviewing the proposed part 70, the public is encouraged to also consider the possible provisions that would be in a part 71 Federal permitting program. The EPA is soliciting comment on the concepts discussed in this preamble section concerning a Federal permitting program. These comments will be considered in developing a subsequent Federal permit program proposal notice.

B. Part 71 Default Program

The part 71 program that EPA would implement if a State defaults on developing or implementing an acceptable title V program must meet the same criteria that a State must meet for approval as part of the part 70 program submittal. These part 71 provisions could, therefore, act as a model for the regulation portion of a State operating permit program.

Under part 70, States are asked to establish certain requirements or procedures within certain constraints, e.g., permit fee structure, standard application form, permit review phase-in, public participation. For a part 71 program, EPA must spell out details of these requirements or procedures just as the State must do in its program submittal. The EPA solicits comments on preliminary thoughts as to the nature of the approaches that EPA would take on these items.

(1) SIP Ambiguity

A basic requirement of title V is that permits are issued such that all applicable requirements of the Act are met. If an approved SIP has ambiguous provisions that are not clear or certain provisions necessary for a control strategy demonstration are missing, EPA does not typically intend to "fix" or revise the SIP in the permit. The permit will generally adopt the provisions of the approved SIP and any changes that are necessary will be achieved through the SIP call mechanism. The EPA will, however, prescribe any clarifications or new requirements as needed to ensure that the applicable requirements are written in enforceable terms. The EPA reserves the right to issue a source-specific FIP (in the event a State fails to correct SIP deficiencies) which would then be implemented in the subsequent permit. Public comment is solicited on this approach.

(2) Complete Application/Data Elements

The EPA will specify the elements of a standard application form and include such a form in an appendix to part 71. Criteria will be provided for filling out the form and specifying what constitutes a complete application. Public comment is solicited on the contents of an application.

(3) Transition/Permit Review Phase-In

The EPA will phase in over a 3-year period the review of initial permit applications submitted under a part 71 program. About one-third of the applications will be reviewed each of the 3 years. Public comment is solicited on the criteria for phase-in. The phase-in approach could be to review the largest, most serious sources first. The EPA does not recommend that the less serious, smaller sources be reviewed first, even though the review staff might obtain some experience before addressing the larger sources. An alternative approach could be to first address sources of hazardous air pollutants that are not necessarily presently regulated specifically for those pollutants. This approach would assist in preparation of better emission inventories. Another approach would be to address sources for which MACT standards have been set and leave to the last those sources for which MACT standards are likely to be set in the near future.

(4) Public Participation/Public Hearings

Public comment is solicited on the appropriateness of procedures for processing part 71 permits similar to those found in 40 CFR part 124. In particular, the Agency solicits comment on reasonable criteria for determining the need for a public hearing and on reasonable procedures for processing actions to reopen existing part 71 permits.

(5) Permit Fees

The EPA is authorized to collect permit fees if a State defaults on its program and EPA must implement part 71. The default fee schedule in part 70 is based on a $25/tpy rate (1990 basis). The EPA would implement this rate on sources under a part 71 program, based on the actual emissions of the subject sources over the preceding calendar year. Public comment is solicited on the appropriateness of this rate and on the possibility (notwithstanding the exemptions for small businesses) of charging higher rates on sources with lower emission rates (i.e., hazardous air pollutant sources of 10 to 25 tpy). These small sources will require permit process resources far in excess of the fees they would pay under a $25/tpy schedule. For these sources, EPA could charge a permit fee to cover reasonable costs for review time and for follow-up compliance activities. The EPA may not, however, collect fees for emission from affected sources under Phase I of the acid rain program (408(c)(4)).

(6) Compliance Plan for Noncomplying Sources/Certification

The permit application of a noncomplying source must be accompanied by a compliance plan and each application must contain a certification that the application contents are true, accurate and complete. The certification must be signed by a responsible official who is subject to criminal prosecution for false information in an application. All certifications for affected sources under the acid rain program must be signed by the designated representative for that source. Criteria for eligibility as a designated representative will be promulgated in a separate rulemaking. Public comment is solicited on whether the selection of this official must meet similar criteria to that contained in the NPDES program (70.2(bb)). The EPA will include in part 71 the specifics for an approvable compliance plan for noncomplying sources.

(7) Permit Reopenings/Amendments

The EPA would reopen and revise a permit under certain circumstances. New MACT standards or revised SIP requirements on the source would cause an automatic reopening of permits with remaining terms of 3 or more years. The EPA believes that material error or inaccuracies should also represent cause for reopening. The reopened and revised permit would go through the full public participation procedures as if the permit were new or being reissued at the end of its normal lifetime. If a permit needed minor changes, such as some administrative error that did not affect the emissions or compliance, the changes could be made through an administrative amendment with no public participation or other formal procedures. Public comment is solicited on reasons for reopening a permit and on the process of administratively amending a permit.

(8) Operational Flexibility

The EPA intends to provide reasonable flexibility upon request to sources to operate in different modes without reopening and revising the permit. The various operating scenarios or worst case situation would have to be specified in the permit, including the corresponding level of control, after which the source could choose the most appropriate operation configuration at any specific time and be within the permit. The effect of any operational flexibility would have to be demonstrated to assure that all requirements of the Act would be met. In particular, EPA intends to make available the options described previously in the § 70.7 discussion on designing flexible part 70 permits. Public comment is solicited on any restrictions to this possible practice.

(9) Geographic Applicability

If EPA implements a part 71 program, it will be for the part of the State not covered by an acceptable program. If EPA approves a local agency operating permit program, EPA will cease implementation of the part 71 program for that geographic area and the local agency will assume responsibility for issuing operating permits. Previously-issued Federal permits may be formally adopted and enforced by the local agency. If an approved local agency program is already in place when EPA adopts a part 71 program, it will only be for the part of the State not covered by the local program. Public comment is solicited on this approach.

(10) Permit Shield

The EPA has the same option to institute a shield under part 71 as the States have under a part 70 program and would intend to use it wherever it would not be precluded in the part 70 proposal. The permit shield will be disallowed to the extent that it is inconsistent with the acid rain program. Under a part 71 Federal operating permit program, however, sources can still be subjected to State requirements enforced by the State outside the permit. This could also be the case under a State program. The EPA proposes to recognize and to enforce only the conditions of the federally-approved permit and to reopen for cause the permits of sources in SIP call areas as new regulations would otherwise become applicable. Public comment is solicited on the acceptability of EPA's position on this issue.

(11) Noncriteria Limits

The EPA will in general not implement the requirements of an air toxics program for the State under a part 71 program. If sources of hazardous air pollutants were subject to only State rules, EPA would not adopt these in a part 71 permit unless they were also part of a criteria pollutant control strategy. Any MACT standard would, of course, be adopted and a permit could be reopened for a new MACT standard. Public comment is solicited on this approach.

C. Acid Rain Program

In a subsequent Federal Register notice, EPA will propose its program for controlling sources of acid rain precursors as required by title IV of the Act. That program will consist of two phases, the first to be implemented by an EPA permitting program and the second to be implemented by State operating permit programs. The specific requirements for which sources will be controlled and to what extent will be covered by the subsequent notice. The discussion herein addresses only the permitting portion of the acid rain program.

The Phase I permitting program would address the 107 largest sources of sulfur and nitrogen oxide compounds beginning 2 years after enactment. This would be before State operating permit programs are required. The EPA would, therefore, need to establish a permit program to address the Phase I sources. This program would be a component of part 71 and would consist of those portions of part 71 appropriate to fulfill the permitting requirements of the acid rain sources, e.g., standard application, public participation, compliance plan for noncomplying sources, and certification.

The acid rain regulations would establish the requirement for operating permits and emission reductions on the Phase I sources and also refer to the applicable sections of part 71, rather than rewriting the same sections. Public comment is solicited on the appropriate portions of part 71 to apply to the acid rain sources in this permitting program. Specifically, comment is solicited on the following:

(1) Permit Content

The permits for Phase I would only address those emissions that contribute to acid rain and would be issued by EPA, rather than the States. Requirements of the Act other than those implementing title IV would not be included in these permits. Phase II of the acid rain program will be implemented by States with approved operating permits programs. The Agency expects that States will include the title IV requirements in the facility's operating permit under the part 70 program which would also address all other requirements of the Act.

(2) Term

The term of all acid rain permits must be 5 years (408.(a)).

(3) Shield

Sources under a Phase I permit will, for Federal purposes, only address title IV and applicable SIP requirements for sulfur or nitrogen oxide emissions. The shield in title V will not apply beyond these requirements and would not apply with respect to title IV-based requirements. States could, however, establish and enforce more stringent requirements on a source.

(4) Permit Fee

Acid rain precursor sources would be required to pay an annual permit fee during Phase II of the acid rain program. No fee requirements would be imposed by EPA for the Phase I acid rain permits.

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States may, of course, require permit fees for non-acid permitting prior to commencement of Phase II. Thus, States may impose fee requirements for SO_2 or NO_x if these pollutants are regulated at the source pursuant to provisions of the Act other than Title IV.

D. Maximum Achievable Control Technology (MACT) Extensions

The section 112 program for establishing MACT standards includes provisions for a 6-year extension for MACT application if sources make certain demonstrations with respect to their emissions. To obtain an extension, the source must reduce emissions by 90/95 percent or greater over 1987 emission levels. The mechanism for the early evaluation of a demonstration from a proposed source will be a part 71 permit. Any application for a MACT extension, therefore, would be accompanied by a permit application adopting emission limits at levels indicated in the demonstration so that they would become federally-enforceable (V.E.).

The program to issue permits for MACT extension purposes will be, as for the Phase I acid rain program, a separate portion of part 71 which would refer to appropriate portions of the part 71 program. These permits would only address those hazardous air pollutant emissions associated with the MACT standard, would not have an associated permit fee, would not shield sources from other more stringent State requirements, and would be for a 5-year fixed term. Public comment is solicited on this approach.

VII. Administrative Requirements

A. Public Hearing

One public hearing and two public meetings will be held to discuss the proposed regulations. Persons wishing to make oral presentations at the public hearing should contact EPA at the address given in the ADDRESSES section of this preamble. If necessary, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket address given in the ADDRESSES section of this preamble.

A verbatim transcript of the public hearing, written statements, and a summary of the public meetings will be available for public inspection and copying during normal working hours at EPA's Air Docket in Washington, DC (see ADDRESSES section of this preamble).

B. Docket

The docket for this regulatory action is A-90-33. The docket is an organized and complete file of all the information submitted to or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials) (307(d)(7)(A)). The docket is available for public inspection at EPA's Air Docket, which is listed under the ADDRESSES section of this notice.

C. Office of Management and Budget (OMB) Review

nder Executive Order 12291 (E.O. 12291), EPA must judge whether a regulation is "major," and therefore subject to the requirement "to the extent permitted by law" to prepare a Regulatory Impact Analysis (RIA) in connection with each major rule. Major rules are defined as those likely to result in the following:

(1) An annual cost to the economy of $100 million or more.

(2) A major increase in costs or prices for consumers or individual industries.

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

The total cost of implementing the operating permit programs in all States would incur annualized costs in excess of $100 million. The requirements for these costs are contained in section 502(b)(3) of title V. Although some of these costs represent some baseline costs, due to existing State permitting and not new costs, the Agency has declared these regulations to be major. Accordingly, a Regulatory Impact Analysis has been prepared.

Given the mandate within title V to develop these regulations, the Agency has taken steps to provide for the timely accomplishment of the required objectives. In following the implementation principles previously described in section II., EPA has proposed to allow flexibility in permit design, use general permits to expedite the review process for certain smaller sources, and to phase-in implementation of certain requirements. The Agency has thus lowered the overall societal cost and any adverse economic impact associated with meeting the environmental objectives of title V. In addition, with permit fee revenue collections from subject sources State and local agencies will have the resources to develop and implement an accountable and enforceable operating permit program.

These regulations and the draft RIA were submitted to OMB for review as required by E.O. 12291. Any written comments from OMB to EPA, and any EPA responses to those comments, will be included in Docket A-90-33.

D. Regulatory Flexibility Act Compliance

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the Federal Register, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). That analysis is not necessary, however, if an Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has established guidelines for determining whether an RFA is required to accompany a rulemaking package. The guidelines state the criteria for determining when the number of affected small entities is "substantial" and whether there is a significant impact. The determination of significant impact for small businesses essentially depends upon compliance costs, production costs, and predicted closures. For small governments, the determination of significant impact depends upon compliance costs, operating costs, and recordkeeping costs.

A regulatory flexibility screening analysis was prepared to examine the potential for significant adverse impacts on small entities associated with specific permitting provisions. This analysis has revealed that without specific mitigation provisions, substantial numbers of small entities may be adversely impacted. Since potential adverse impacts could exist, EPA is proposing to use the concept of general permits and deferred applicability of non-major sources to mitigate any such potential impacts. To the extent any remaining significant adverse impacts are probable, the small business assistance program provisions of title V could provide further relief. Consequently, EPA does not believe that large numbers of small entities will be adversely affected or will experience disproportionate significant impacts. As such, the Agency proposes to certify that this rule, if promulgated, will not have a significant and disproportionate adverse economic impact on a substantial number of small business entities and thereby does not require an RFA. The EPA, however, solicits any information or data which might affect this proposed certification. The EPA will reexamine this issue any subsequent analysis of information received would also be available in the docket and will be taken into account before promulgation.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An ICR document has been prepared by EPA and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM-223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2706.

The average annual burden hours for the collection of information is approximately 92 hours for large sources, 58 hours for small sources, and 32 hours per State/local agency response. The total annual burden is estimated to be around 1.5 million hours.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden by July 9, 1991 to: Chief, Information Policy Branch (PM-223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

F. Federalism Implications

The proposed part 70 regulations reflect the congressionally-intended requirements in title V of the Act for States to develop operating permit programs. The basic elements required by these regulations are directly from title V, such as standard applications form, public participation, permit content, monitoring and reporting requirements, and compliance plans.

The Work Group that developed these proposed rules received input from State and local air pollution agency representatives concerning the concept of building on existing State and local agency permit programs so as to minimize the disruption, of, and maximizing the utilization of, existing practices.

For these reasons, a federalism assessment has not been prepared. The EPA, however, solicits comment on any perceived discretion it has in designing the program being proposed today and will consider the need for such an assessment based on comments received during the public comment period. Any information indicating the need for a federalism assessment will be available in the docket.

List of subjects in 40 CFR Part 70

Air pollution control, Prevention of significant deterioration, New source review, Fugitive emissions, Particulate matter, Volatile organic compounds, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Lead, Operating permits.

Dated: April 23, 1991.

F. Henry Habicht,

Acting Administrator.

The reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended by adding a part 70 as set forth below.

PART 70—STATE OPERATING PERMIT PROGRAMS

Sec.
70.1 Program overview.
70.2 Definitions.
70.3 Applicability.
70.4 State program submittals and transition.
70.5 Permit applications.
70.6 Permit content.
70.7 Permit issuance, renewal, reopenings, operational flexibility and revisions.
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70.9 Fee determination and certification.
70.10 Federal oversight and sanctions.
70.11 Requirements for enforcement authority.

Authority: 42 U.S.C. 7401, et seq.

§ 70.1 Program overview.

(a) The regulations in this part provide for the establishment of comprehensive State air quality permitting systems consistent with the requirements of title V of the Clean Air Act (Act) (42 U.S.C. 7401, *et seq.*). These regulations define the minimum elements required by the Act for operating permit programs and the corresponding standards and procedures by which the Administrator will approve, oversee, and withdraw approval of State operating permit programs. This permitting process is a key element in the implementation of the Act's regulatory requirements to all stationary sources to which it applies.

(b) This permitting program is designed to promote timely and efficient implementation of goals and requirements of the Act. Such a system offers many benefits: A better organized and clearer process for implementing air pollution control requirements, improved information management, more efficient enforcement, greater certainty for sources and the public, reasonable operational flexibility for industry to respond to market-based demands, greater speed in addressing various source-specific actions that previously had to be processed as State implementation plan (SIP) revisions, and increased and more predictable funding for State air pollution permitting programs.

(c) All sources subject to these regulations must obtain a permit to operate that assures compliance by the source with all applicable requirements of the Act. While Title V does not impose substantive new requirements, it does require that fees be imposed on sources and that certain procedural measures be adopted especially with respect to compliance.

(d) Nothing in this part shall prevent a State, or interstate permitting authority, from establishing additional requirements not inconsistent with this Act. No permit, however, can be less stringent than the applicable provisions of the Act, including the applicable implementation plan. In the case of Federal intervention in the permit process, the Administrator reserves the right to implement the State program, in whole or in part, or the standard Federal program contained in part 71 of this chapter (EPA expects to issue part 71 regulations in May, 1992.)

(e) The requirements of this part 70, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or modified in parts 72 through 79 of this chapter, or would otherwise be inconsistent with title IV of the Act (EPA expects to issue regulations in parts 72 through 79 in May, 1992.)

(f) Issuance of State permits under this part may be coordinated with issuance of permits under the Resource Conservation and Recovery Act, the National Pollutant Discharge Elimination System, and section 404 permits, whether issued by the State, the Environmental Protection Agency (EPA), or the Corps of Engineers.

§ 70.2 Definitions.

The following definitions apply to this part 70. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable requirements of the Act.

(a) *Act* means the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

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(b) *Actual emissions* means the actual rate of emissions in tons per year of any regulated pollutant emitted from a part 70 source over the preceding calendar year or any other period defined by the permitting authority to be consistent with the fee schedule approved pursuant to § 70.9 of this part. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and in-place control equipment, types of materials processed, stored, or combusted during the preceding calendar year.

(c) An *administrative permit amendment* is a permit revision that accomplishes one or more of the following changes:

(1) Corrects typographical errors.

(2) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source.

(3) Requires more frequent monitoring or reporting by the permittee.

(4) Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the permitting authority.

(5) Incorporates into the part 70 permit the requirements from preconstruction review permits or exemptions authorized under an approved new source review program in the applicable implementation plan.

(6) Any other change that the permitting authority determines to be similar to those in § 70.2 (c)(1)–(4).

(d) *Affected source* means a source that includes one or more affected units under title IV of the Act.

(e) *Affected States* are all States:

(1) Whose air quality may be affected and that are contiguous to the State in which a part 70 permit, permit modification or permit renewal is being proposed; or

(2) That are within 50 miles of the permitted source.

(f) *Affected unit* means a *unit* as that term is defined in title IV of the Act, that is subject to the emission reduction requirements or limitations of title IV of the Act.

(g) *Applicable requirements* or an *applicable requirement* of the Act include all of the following as they apply to emissions units in a part 70 source, unless the context of the regulation requires otherwise:

(1) Requirements of the applicable implementation plan approved or promulgated by EPA under title I of the Act that implement the relevant requirements of the Act, including any revisions to that plan, in part 52 of this chapter.

(2) Terms and conditions of any preconstruction permits issued pursuant to title I, part C or D of the Act.

(3) Requirements of any standard and any other requirements promulgated under section 111 of the Act.

(4) Requirements of any standard promulgated for hazardous air pollutants and any other requirements under section 112 of the Act.

(5) Requirements of the acid rain program under title IV of the Act and parts 72 through 79 of this chapter.

(6) Any monitoring, reporting, and certification requirements established pursuant to section 504(b) or section 114(a)(3) of the Act.

(7) Standards and regulations governing solid waste incineration, under section 129 of the Act.

(8) Standards and regulations for consumer and commercial products, under section 183(e) of the Act.

(9) Standards and regulations for tank vessels, under section 183(f) of the Act.

(10) Requirements of the program to control air pollution from Outer Continental Shelf sources, under section 328 of the Act.

(11) Requirements of the program to protect stratospheric ozone, under title VI of the Act.

(h) A *complete application* is one that the permitting authority has determined, consistent with the criteria in § 70.5(c) of this part, to contain all the information needed to begin to process the application. A determination that an application is complete continues in effect, provided that the source submits by the date(s) specified by the permitting authority any additional information reasonably determined by the permitting authority in writing to be necessary for developing and issuing the part 70 permit.

(i) *Designated representative* means a responsible person or official authorized by the owner or operator of an affected unit, in accordance with title IV of the Act and parts 72 through 79 of this chapter, to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to the unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit. For purposes of acid rain program permit requirements, whenever the term "responsible official" is used in this part, it shall refer to the "designated representative" of the affected source or affected unit, for whom a certificate of designation has been submitted in accordance with part 72 of this chapter.

(j) A *draft proposed permit* is the version of a permit for which the permitting authority offers public notice and an opportunity for public comment and hearing.

(k) *Emissions unit* means any part of a stationary source which emits or has the potential to emit any regulated pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of the acid rain program.

(l) The *EPA* or the *Administrator* means the Administrator of the U.S. EPA or his designee.

(m) *Federally-enforceable limitation* means all limitations and requirements enforceable by the Administrator.

(n) A *final permit* is the version of a part 70 permit issued by the permitting authority that has completed all administrative concurrence and procedures at the State and Federal levels.

(o) *Flexible source operation* refers to any change provided for in § 70.6(d).

(p) *Fugitive emissions* are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

(q) A *general permit* is a standardized part 70 permit that may be made applicable to numerous similar sources.

(r) *Major source* means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person or persons under common control) belonging to a single major industrial grouping and that is any of the following:

(1) A major source as defined in section 112 of the Act for the following:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule.

(ii) For radionuclides, such term shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers).

(ii) Kraft pulp mills.

(iii) Portland cement plants.

(iv) Primary zinc smelters.

(v) Iron and steel mills.

(vi) Primary aluminum ore reduction plants.

(vii) Primary copper smelters.

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(ix) Hydrofluoric, sulfuric, or nitric acid plants.

(x) Petroleum refineries.

(xi) Lime plants.

(xii) Phosphate rock processing plants.

(xiii) Coke oven batteries.

(xiv) Sulfur recovery plants.

(xv) Carbon black plants (furnace process).

(xvi) Primary lead smelters.

(xvii) Fuel conversion plant.

(xviii) Sintering plants.

(xix) Secondary metal production plants.

(xx) Chemical process plants.

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(xxiii) Taconite ore processing plants.

(xxiv) Glass fiber processing plants.

(xxv) Charcoal production plants.

(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(xxvii) All other stationary source categories regulated under section 111 or 112 of the Act.

(3) A major stationary source as defined in part D of title I of the Act including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tons or more per year of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons or more per year in areas classified as "serious," 25 tons or more per year in areas classified as "severe," and 10 tons or more per year in areas classified as "extreme;" except that the references in this clause to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that such source shall not be subject to any requirement otherwise applicable to such source under section 182(f) of the Act.

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tons or more per year of volatile organic compounds.

(iii) For carbon monoxide nonattainment areas (A) That are classified as "serious," and (B) In which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons or more per year of carbon monoxide.

(iv) For particulate matter (PM_{10}) nonattainment areas classified as "serious," sources with the potential to emit 70 tons or more per year of PM_{10}.

A stationary source or group of stationary sources shall be considered as part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources belong to the same Major Group (i.e., which have all the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 033–055–00176–0, respectively). Notwithstanding the other provisions of this subsection, the activities of any vessel shall not be considered part of a major source.

(s) A *minor permit amendment* is a revision to a part 70 permit that meets the requirements of § 70.7(f).

(t) A *part 70 permit* is any permit issued, renewed, amended, or revised pursuant to this part.

(u) A *part 70 source* is any source subject to the permitting requirements of this part, as provided in §§ 70.3(a) and 70.3(b) of this part.

(v) A *permit modification* is a revision to a part 70 permit that meets the requirements of § 70.7(d) of this part.

(w) A *permit revision* is any permit modification, administrative permit amendment, or minor permit amendment.

(x) *Permitting authority* means either of the following:

(1) The Administrator, in the case of EPA-implemented programs.

(2) The State air pollution control agency, local agency, other State agency, Indian tribe or other agency authorized by the Administrator to carry out a permit program under this part.

(y) *Potential to emit* means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally-enforceable. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in title IV of the Act.

(z) A *proposed permit* is the version of a permit that the permitting authority forwards to the Administrator for review after closure of the public notice period and after considering any public comments (including those from any affected State).

(aa) *Regulated pollutant* means the following:

(1) Nitrogen oxides or any volatile organic compound.

(2) Any pollutant for which a national ambient air quality standard has been promulgated.

(3) Any pollutant that is addressed by any standard promulgated under section 111 or 112 of the Act.

(bb) *Renewal* is the process by which a permit is reissued at the end of its term.

(cc) *Responsible official* means one of the following:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency, either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA).

(dd) The term *State* includes all non-Federal permitting authorities, including local agencies and interstate associations as well as statewide programs. The term "State" also encompasses those Indian tribes that

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the Administrator has determined, pursuant to section 301(d) of the Act, to treat as States. "State" shall have its conventional meaning where such meaning is clear from the context. For purposes of the acid rain program, the term "State" shall be limited to authorities within the 48 continuous States and the District of Columbia as provided in section 402(14) of the Act.

(ee) *Stationary source* means any activity or piece of equipment at a building, structure, facility, or installation that emits or may emit any air pollutant.

(ff) *Whole program* means a part 70 permit program, or any combination of partial programs, that meet all the requirements of these regulations and cover all the part 70 sources in the entire State. For the purposes of this definition, State does not include local permitting authorities, but refers only to the entire State, Commonwealth, or Territory.

§ 70.3 Applicability.

(a) *Sources subject to permitting: Part 70 Sources.* A State permitting program under this part must provide for permitting of at least the following sources:

(1) Any major source as defined in § 70.2(q) of this part.

(2) Any source, including an area source, subject to a standard or regulation promulgated under section 111 of the Act.

(3) Any source, including an area source, subject to a standard or regulation promulgated under section 112 of the Act.

(4) Any affected source subject to title IV of the Act and the acid rain program requirements of parts 72 through 79 of this chapter, including any election source as defined in title IV of the Act.

(5) Any source in a source category designated by the Administrator pursuant to this section. These source categories include [reserved].

(b) *Source category exemptions.* A State permitting program under this part may provide for exemptions of source categories from the requirements of this part consistent with the Administrator's designations pursuant to this section.

(1) Except as provided in paragraphs (b)(2) and (4) of this section, all sources listed in paragraph (a) of this section that are not major sources, as defined in § 70.2 of this part (i.e., nonmajor sources) or affected sources under the acid rain program in parts 72 through 79 of this chapter, and for which the State has made and the Administrator has approved the showing described in paragraph (b)(2) of this section, may be exempted from the obligation to obtain a part 70 permit for a period of 5 years from the effective date of the part 70 or part 71 program, as applicable, in the State.

(2) In the case of sources covered in paragraph (a) of this section that are not a major source that emit any pollutant or precursor to a pollutant for which the area in which such sources are located is designated nonattainment, the State shall submit both of the following:

(i) An inventory or quantification of such sources in nonattainment areas which would be exempted from the program.

(ii) A demonstration that the State can assure compliance with the State's nonattainment area applicable implementation plan obligations applicable to such sources without relying on the part 70 permit program for the first 5 years of the program.

(3) In the case of nonmajor sources subject to a standard promulgated under section 112 of the Act after (date of promulgation), the Administrator shall determine whether to exempt any or all applicable sources at the time that the new standard is promulgated.

(4) Any source listed in paragraph (a) of this section exempt from the requirement to obtain a permit under this section may opt to apply for and receive a permit under a program approved pursuant to these regulations.

(5) The following source categories are exempted from the obligation to have a part 70 permit: [reserved]

(c) Emissions units and part 70 sources.

(1) For part 70 sources subject to the part 70 program because they are major sources under § 70.2(q) of this part, the permitting authority shall include in the permit all applicable requirements for all regulated emissions units in the major source.

(2) For any nonmajor part 70 source subject to the part 70 program under paragraphs (a) and (b) of this section, the permitting authority shall include in the permit all requirements of the Act applicable to emissions units which trigger classification as a part 70 source.

(3) The emissions of regulated pollutants from any units not directly subject to applicable requirements must be described for fee purposes, unless the permitting authority pursuant to § 70.9(b)(2)(v) of this part has exempted it from the collection of fees.

(d) *Fugitive emissions.* Fugitive emissions from a part 70 source shall be reviewed and included in the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of "major source" in § 70.2(q)(2) of this part.

§ 70.4 State Program submittals and transition.

(a) *Date for submittal.* Not later than November 15, 1993, the Governor of each State shall submit to the Administrator for approval a proposed whole permit program, under State law or under an interstate compact, meeting the requirements of this part. If this part 70 is subsequently revised such that the Administrator determines that it is necessary to require a change to an approved State program, the required revisions to the program shall be submitted within 12 months of the final changes to this part 70, unless the Administrator authorizes some other time.

(b) *Elements of the initial program submission.* Any State that seeks to administer a program under this part shall submit to the Administrator a formal letter of submittal from the Governor or his designee requesting EPA approval of the program and at least three copies of a program submission. The submission shall contain the following:

(1) A complete program description describing how the State intends to carry out its responsibilities under this part.

(2) The regulations that comprise the program, evidence of their procedurally correct adoption (including any required notice of public comment and any significant comments received), and copies of all applicable State or local statutes and regulations that authorize the part 70 regulations, including those governing State administrative procedures.

(3) A legal opinion from the Attorney General for the State, or the attorney for those State, local, or interstate air pollution control agencies that have independent legal counsel, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out all aspects of the program. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions that demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program. The legal opinion shall also include a demonstration of adequate legal authority to carry out the requirements of this part, including authority to carry out each of the following:

(i) Issue permits that assure compliance with each applicable standard, regulation, or requirement under the Act by all sources required to have a part 70 permit.

(ii) Incorporate appropriate monitoring, recordkeeping, reporting, and compliance certification requirements into part 70 permits.

(iii) Issue permits for a fixed term of 5 years in the case of permits with acid rain provisions and issue all other permits for a period not to exceed 5 years except for permits issued for solid waste incineration units combusting municipal waste subject to section 129(e) of the Act.

(iv) Issue permits for solid waste incineration units combusting municipal waste subject to section 129(e) of the Act for a period not to exceed 12 years and review such permits no less than every 5 years.

(v) Incorporate into permits emission limitations and all other applicable requirements, conditions, and prohibitions under the Act, including those in an applicable implementation plan.

(vi) Terminate, modify, or revoke and reissue permits for cause.

(vii) Enforce permits, permit fee requirements, and the requirement to obtain a permit, as specified in § 70.11 of this part.

(viii) Make available to the public any permit application, compliance plan, permit, and monitoring and compliance report under section 503(e) of the Act, with the exception of that information entitled to confidential treatment pursuant to section 114(c) of the Act.

(ix) Not issue a permit for the purposes of part 70 if the Administrator timely objects to its issuance pursuant to § 70.8(c) of this part.

(x) Provide an opportunity for judicial review in State court of the final permit by the applicant, any person who participated in the public comment process provided pursuant to § 70.7(i) of this part, and any other person who could obtain judicial review of such actions under State laws.

(xi) Ensure that the acid rain portions of permits for affected sources meet the requirements of parts 72 through 79 of this Chapter.

(xii) Ensure that the authority of the State/local permitting Agency is not used to modify the acid rain program requirements.

(xiii) Issue and enforce general permits if the State seeks to implement the general permit program.

(4) Relevant permitting program documentation not contained in the State regulations, including the following:

(i) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program.

(ii) Criteria for monitoring source compliance including inspection strategies and inspector training certification.

(5) A complete description of the State's compliance tracking and enforcement program, unless the State has an agreement with EPA that provides this information.

(6) A showing of adequate authority and procedures to determine within 30 days of receipt whether applications (including renewal applications) are complete, and to take final action on such applications within 18 months. Any failure to take final action in a timely manner shall be treated as a final permit action solely for purposes of obtaining judicial review in a State Court to require that actions be taken by the permitting authority on such application without additional delay.

(7) A demonstration, consistent with § 70.9 of this part, that the permit fees required by the State program are sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Part 70 permit program.

(8) A statement from the Governor that adequate personnel and funding have been made available to develop and administer the program. This statement shall include the following:

(i) A description in narrative form of the scope, structure, coverage and processes of the State program.

(ii) A description of the organization and structure of the State agency or agencies that will have responsibility for administering the program, including the information specified in this paragraph. (If more than one agency is responsible for administration of a program, each agency must have jurisdiction over a class of activities.)

The responsibilities of each agency must be delineated, their procedures for coordination must be set forth, and an agency may be designated as a "lead agency" to facilitate communications between EPA and the other agencies having program responsibility.

(iii) A description of the State agency staff who will carry out the State program, including the number, occupation, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(iv) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

(v) An estimate of the costs of establishing and implementing the program for the first 4 years after approval, and a description of how the State plans to meet those costs.

(9) A commitment from the State to submit, at least annually to the Administrator, information regarding the State's enforcement activities including, but not limited to, the number of criminal and civil, judicial and administrative enforcement actions commenced and concluded; the penalties, fines and sentences obtained in those actions; and the number of administrative orders issued.

(10) A requirement under State law that, if a timely and complete application for a permit renewal is submitted to the permitting authority, then one of the following shall occur:

(i) The permit shall not expire until the renewal permit has been issued or denied.

(ii) All the terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied. These terms and conditions do not include the permit shield contained in § 70.6(h) of this part.

(iii) The renewal permit shall be issued or denied before the expiration of the part 70 permit.

Notwithstanding this paragraph, if the permitting authority fails to act in a timely way on a permit renewal, EPA may invoke its authority under section 505(e) of the Act to terminate, revoke, and reissue the permit.

(11) A transition plan providing a schedule for submittal and final action on initial permit applications for all part 70 sources. This plan shall provide for submittal of permit applications by all part 70 sources by no later than one full year after the effective date of the permit program (or a partial or interim program), and assure that at least one third of such applications will be acted upon annually over a period not to exceed 3 years after such effective date, and provide that any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Act shall be acted upon within 9 months of receipt. It shall also provide for the submission of permit applications, whether for initial permits or permit renewals, and for the permitting of affected sources under the acid rain program in accordance with

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the deadline provided in parts 72 through 79 of this chapter.

(12) Any permitting programs, such as those of local air pollution control agencies, providing for the issuance of permits by a permitting authority other than the State, shall be consistent with all the elements required in paragraphs (b)(1) through (11) of this section.

(c) *Partial programs.* The EPA may approve a partial program if, at a minimum, it applies and ensures compliance with title V of the Act and with all the requirements following, as they apply to the source categories covered by the partial program:

(1) All requirements of title V of the Act and of these regulations.

(2) All requirements established under title IV of the Act applicable to affected sources.

(3) All requirements established under sections 111 and 112 of the Act applicable to major sources, area sources, and new sources.

(4) All other requirements of title I of the Act (other than section 112 of the Act).

Approval of any partial program does not relieve the State from its obligation to submit a whole program or from application of any sanctions for failure to submit a fully approvable whole program.

(d) *Interim approval.* If a program (including a partial permit program) submitted under this part substantially meets the requirements of this part, but is not fully approvable, the Administrator may by rule grant the program interim approval. The EPA will not grant interim approval to any program unless it meets each of the following minimum requirements:

(1) *Adequate fees.* The program must provide for collecting permit fees adequate to meet the requirements of § 70.9 of this part.

(2) *Applicable requirements.* The program must provide for adequate authority to issue permits that assure compliance with all applicable requirements of the Act, including the requirements of the applicable implementation plan, for those sources covered by the program.

(3) *Fixed term.* The program must provide for fixed permit terms, consistent with paragraph (b)(3)(iii) and (iv) of this section.

(4) *Public participation.* The program must provide for public notice of and an opportunity for public comment and a hearing on draft proposed permits.

(5) *EPA review.* The program must allow EPA an opportunity to review each proposed permit and to object to its issuance.

(6) *Permit issuance.* The program must provide that the proposed permit will not be issued if EPA objects to its issuance.

In the notice of final rulemaking granting interim approval, the Administrator shall specify the changes that must be made before the program can receive full approval and the conditions for implementation of the program until that time. Such interim approval shall expire on a date set by the Administrator (but not later than 2 years after such approval), and may not be renewed. Sources will become subject to the program according to the schedule approved in the State program. Permits granted under an interim approval shall expire at the end of their fixed term, unless renewed under a fully- or partially-approved program.

(e) *EPA review of permit program submittals.* Within 1 year after receiving a program submittal, the Administrator shall approve or disapprove the program, in whole or in part, by publishing a notice in the **Federal Register**. Any EPA action disapproving a program, in whole or in part, shall include a statement of the revisions or modifications necessary to obtain approval. The Administrator shall approve State programs that conform to the applicable requirements of this part.

(1) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the 1-year review period (i.e., the period of time allotted for formal EPA review of a proposed State program) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the 1-year review period shall not begin until all the necessary information is received by EPA.

(2) If the State's submission is materially changed during the statutory review period, the one-year review period shall begin again upon receipt of the revised submission.

(f) *State response to EPA review of program.*—(1) *Disapproval.* The State shall submit to EPA changes to the program that address the revisions or modifications required by the Administrator's action disapproving the program, or any part thereof, within 180 days of receiving notification of the disapproval or such other time as specified by the Administrator, but not to exceed 2 years.

(2) *Interim approval.* The State shall submit to EPA changes to the program addressing the deficiencies specified in the interim approval no later than 6 months prior to the expiration of the interim approval.

(g) *Effective date.* The effective date of a permit program, or partial or interim program approved under this part, shall be the effective date of approval by the Administrator.

(h) *Individual permit transition.* Upon approval of a State program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program. After program approval, EPA shall retain jurisdiction over any permit (including general permit) that it has issued unless arrangements have been made with the State to assume responsibility for these permits. Retention of jurisdiction shall include the processing of any permit appeals or modification requests; the conduct of inspections; and the receipt and review of monitoring reports. If any permit appeal or modification request is not finally resolved when the federally-issued permit expires, EPA may, with the consent of the State, retain jurisdiction until the matter is resolved. Upon request by a State, the Administrator may delegate authority to implement all or part of a permit issued by EPA, if a part 70 program has been approved for the State. The delegation may include authorization to the State to collect appropriate fees, consistent with § 70.9 of this part.

(i) *Program revisions.* Either EPA or the State with an approved program may initiate a program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, forms, procedures, or priorities.

(1) *Mandatory.* If the Administrator determines that a State is not adequately administering the requirements of this part, or that the State's permit program is inadequate in any other way, the program, or its means of implementation by the State, shall be revised to correct the inadequacy. The program shall be revised within 180 days, or such other period as the Administrator may specify, following notification by the Administrator, or within 2 years if the State demonstrates that additional legal authority is necessary to effectuate the program revision.

(2) Revision of a State program shall be accomplished as follows:

(i) The State shall submit a modified program description, Attorney General's statement, or such other documents as EPA determines to be necessary under the circumstances.

(ii) Whenever EPA determines that the proposed program revision is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to interested persons and shall be published in the **Federal Register** and in enough of the largest newspapers to provide appropriate coverage. The public notice shall summarize the proposed revisions and provide for the opportunity to request a public hearing.

(iii) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Act.

(iv) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the **Federal Register**. Notice of approval of non-substantial program revisions may be given by a letter from the Administrator to the Governor or his designee.

(v) Any permitting agency with an approved program shall notify EPA whenever it proposes to transfer all or part of the program to any other agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until the revision has been approved by the Administrator under this paragraph.

(3) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as he determines are necessary.

(j) *Sharing of information.* (1) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information to EPA under this section. Any information obtained from a State accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter.

(2) The EPA shall furnish to States with approved programs the information in its files which the State needs to implement its approved program. Any such information submitted to EPA under a claim of confidentiality will be subject to the conditions in part 2 of this chapter.

(k) *Administration and enforcement.* Any State that fails to adopt a complete, approvable part 70 program, or that EPA determines is not adequately administering or enforcing such a program, shall be subject to certain Federal sanctions as set forth in § 70.10 of this part.

§ 70.5 Permit applications.

(a) *Duty to apply.* Any person who owns or operates a part 70 source required to have a permit under this part shall submit a timely and complete permit application in accordance with this section. For a source applying for a part 70 permit for the first time, a timely application is one that is submitted 12 months after the source becomes subject to the permit program or such earlier date as the permitting authority may establish. For purposes of a permit renewal, where a State in its program approval has not met either § 70.4(b)(10)(i) or (ii) of this part, a timely application is one that is submitted 18 months prior to the date of permit expiration, or such other time as may be approved by the Administrator. The Administrator shall approve a corresponding reduction in the 18 months requirement if the permitting authority is required to issue part 70 permits for terms less than 5 years or to act on part 70 permits in less than 18 months, except that in no event shall a time less than 6 months before permit expiration be approved.

(b) *Standard application form and required information.* The State program under this part shall provide for a standard application form or forms. The permitting authority may use its discretion in developing application forms that best meet program needs and administrative efficiency, but the forms and attachments chosen shall include, as a minimum, the key elements specified below:

(1) General company information, including company name and address (or plant name and address if different from the company name), owner's name and agent, plant site manager/contact.

(2) A plant description in terms of the processes and products (including identification by Standard Industrial Classification Code).

(3) The following emissions related information:

(i) All emissions of regulated pollutants and all emissions of pollutants subject to regulation for which the source is major.

(ii) Identification and description of all emissions points in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(iii) Emissions rates in total tons per year and in such other terms as are necessary to establish compliance consistent with the applicable standard reference test method.

(iv) Fuels, fuel use, and raw materials used.

(v) Identification and description of air pollution control equipment.

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable for all pollutants regulated at the part 70 source.

(vii) Other information required by any applicable requirements (including information related to stack height limitations developed pursuant to section 123 of the Act), such as the location of emissions units, flow rates, building dimensions, and stack parameters (including height, diameter, and plume temperature) for all pollutants regulated at the part 70 source, except for VOC's.

(viii) Calculations on which the above items are based.

(4) The following air pollution control requirements:

(i) Citation and description of applicable State and Federal air pollution control requirements, including requirements that will become effective during the term of a permit, if such requirement has been promulgated at the time of permit application.

(ii) Description of any applicable test method for determining compliance with each requirement.

(5) Such other information, specific to particular program requirements of the Act, as may be necessary to implement and enforce those other requirements of the Act.

(6) Additional information as necessary to define reasonably anticipated alternative operating scenarios, which must be included in the part 70 permit.

(7) A compliance plan for sources that are not in compliance with all applicable requirements. With respect to the requirements for which the source is not in compliance, such a compliance plan shall include the following:

(i) A description of how those requirements under the Act will be achieved.

(ii) A description of the compliance status of the source with respect to such requirements.

(iii) A schedule of compliance that includes a schedule of measures, including an enforceable sequence of actions with milestones, leading to compliance with all such requirements of the Act. The compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or

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administrative order to which the source is subject.

(iv) A schedule for submission of certified progress reports no less frequently than every 6 months or such other shorter period as specified in the underlying applicable requirement.

(v) An explanation of any proposed exemptions from otherwise applicable air pollution control requirements.

The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source under Title IV of the Act, except as specifically superseded by part 72 of this chapter, with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(8) Requirements for compliance certification, including the following:

(i) A certification of compliance by a responsible official consistent with paragraph (b)(10) of this section that addresses all air pollution control requirements applicable to the source, except, in the case of an affected source under the acid rain program, the designated representative of the source shall make this certification.

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually or for such other shorter period as specified by the underlying applicable requirement.

(iv) A statement that the source is in compliance with any applicable enhanced monitoring and compliance certification requirements of the Act.

(9) The use of nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by part 72 of this chapter.

(10) Any application form, report, or compliance certification submitted pursuant to regulations under this part shall require certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, to the best of the signer's knowledge, information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(c) *Completeness determination.* The program shall provide criteria and procedures for determining in a timely fashion when applications are complete. To be deemed complete, an application must provide all information necessary pursuant to paragraph (b) of this section to begin to process the application for the particular source. This information must be sufficient to evaluate the subject source and determine applicable regulatory requirements. The program shall require that a responsible official certify the submitted information consistent with paragraph (b)(10) of this section. Unless a determination that an application is not complete is made by the permitting authority within 30 days of receipt of the application, an application shall be deemed to be complete. If, during the processing of an application after it has been determined to be complete, the reviewing authority determines that additional information is necessary in order to evaluate or take final action on that application, such information may be requested in writing from the source. The source's ability to continue operation without a permit as set forth in § 70.7(b) of this part shall remain in effect from the time that the permitting authority determines that the application is complete until the final permit is issued, as long as the applicant submits such requested additional information by the deadline specified by the permitting authority.

(d) *Duty to supplement or correct application.* If the applicant becomes aware that he failed to submit any relevant facts or submitted incorrect information in a permit application, he shall promptly submit such supplementary facts or corrected information.

§ 70.6 Permit content.

(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that are applied to assure compliance with all applicable requirements of the Act, including the requirements of the applicable implementation plan as are necessary to ensure compliance with applicable requirements of the Act, at the time of permit issuance.

(i) The permit shall specify and reference the origin of and authority for each requirement incorporated therein, and identify any difference in form as compared to the regulation upon which the limit or requirement is based.

(ii) The permit shall state that where another applicable requirement of the Act is more stringent than any applicable requirement of parts 72 through 79 of this chapter, both provisions shall be incorporated into the permit and shall be federally-enforceable.

(2) Permit duration. The permitting authority shall issue permits for a fixed term of 5 years in the case of affected sources under title IV of the Act, and for a term not to exceed 5 years in duration in the case of all other sources. Notwithstanding this requirement, the permitting authority shall issue permits for solid waste incineration units combusting municipal waste subject to section 129(e) of the Act for a period not to exceed 12 years and review such permits no less often than every 5 years. Permit requirements shall not remain in effect where inconsistent with State law or as provided in part 72 of this chapter for the acid rain portions of a permit.

(3) Monitoring and related recordkeeping and reporting requirements:

(i) The permit shall set forth monitoring, recordkeeping, and reporting requirements that are required to assure compliance with requirements of the Act that are applicable to the source, including those implementing Parts 72 through 79 of this chapter. Such requirements shall assure use of consistent terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable emissions limitations, standards, and other requirements contained in the permit.

(ii) To meet the requirements of paragraph (a)(3)(i) of this section with respect to monitoring, the permit shall:

(A) Incorporate all applicable emissions monitoring and analysis procedures or test methods required under the Act, including any procedures and methods promulgated pursuant to section 504(b) or 114 of the Act.

(B) Specify required monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity.

(C) The permit shall, as necessary, specify requirements concerning the proposed use, maintenance, and, when appropriate, installation of monitoring equipment or methods.

(iii) To meet the requirements of paragraph (a)(3)(i) of this section with respect to recordkeeping, the permit shall require the following:

(A) Records of monitoring information that include the following:

(*1*) The date, place as defined in the permit, and time of sampling or measurements.

(*2*) The date(s) analyses were performed.

(*3*) The company or entity which performed the analyses.

(*4*) The analytical techniques or methods used.

(*5*) The Results of such analyses.

(B) A record of changes made at the source that result in emissions of a regulated pollutant subject to an applicable requirement, but not otherwise regulated under the permit and the emissions resulting from those changes.

(C) The permittee to retain records of all monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(iv) To meet the requirements of paragraph (a)(3)(i) of this section with respect to reporting, the permit shall:

(A) Require reports of any required monitoring to be submitted no less often than every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with § 70.5(b)(10) of this part.

(B) Require prompt reporting of deviations from permit requirements including those attributable to upset conditions as defined in the permit, the cause of such deviations, and any corrective actions or preventive measures taken.

(4) A condition prohibiting emissions exceeding any allowances that the source lawfully holds under the acid rain program, pursuant to title IV of the Act.

(i) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program and that do not violate any other permit term or condition.

(ii) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other requirement under the Act.

(iii) Any such allowance shall be accounted for according to the procedures established in parts 72 through 79 of this chapter.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(i) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(ii) *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iii) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(iv) *Property rights.* This permit does not convey any property rights of any sort, or any exclusive privilege.

(v) *Duty to provide information.* The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the permitting authority copies of records required by the permit to be kept.

(7) A provision to ensure that a part 70 source pays fees to the permitting authority consistent with the fee schedule approved pursuant to § 70.9 of this part.

(8) Emissions trading. A provision stating that no permit revision shall be required for increases in emissions allowed through emissions trading to the extent such trades are authorized by the applicable requirements of the Act, including any applicable implementation plan.

(b) *Federally-enforceable requirements.* All applicable requirements under the Act in a part 70 permit are enforceable by the United States and citizens under the Act. The State permitting authority shall specifically designate as not federally enforceable any State provisions in the permit which are more stringent than the applicable requirements under the Act.

(c) *Compliance requirements.* All part 70 permits shall contain the following elements with respect to compliance:

(1) Requirements for monitoring and analysis of pollutants regulated under the Act, including any prescribed by rule by the Administrator, sufficient to determine if each emissions unit of the source complies with any applicable emission limits, standards or requirements. States may establish testing requirements based on level of emissions expected, testing of similar units, likelihood of noncompliance, or other criteria submitted to and approved by the Administrator.

(2) Compliance certification, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a part 70 permit shall contain a certification by a responsible official or, for requirements under title IV of the Act a designated representative, of the permittee consistent with § 70.5(b)(10) of this part.

(3) Inspection and entry requirements that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), to perform the following:

(i) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit.

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit.

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit.

(iv) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

(4) For sources covered by § 70.5(b)(7) of this part, a schedule of compliance.

(5) For sources covered by § 70.5(b)(7) of this part, progress reports consistent with an applicable schedule of compliance to be submitted no less frequently than semiannually, or such other more frequent period as specified in the underlying applicable regulation and contain the following:

(i) Required and actual dates for achieving the activities, milestones, or compliance required by the schedule of compliance.

(ii) Where appropriate, an explanation of why any deadlines were not met, and any preventive or corrective measures adopted.

(6) Requirements for compliance certification with applicable requirements relevant to the source, including emission limitations, standards, or work practices. Permits shall include:

(i) The frequency (not less than annually or such more frequent periods

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as specified in the underlying requirement) of submissions of certifications.

(ii) A means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices.

(iii) A requirement that the compliance certification describe the following:

(A) The applicable requirements that are the basis of the certification.

(B) The current compliance status.

(C) Whether compliance was continuous or intermittent.

(D) The methods used for determining compliance, currently and over the reporting period, and whether the method used is the test method for initial compliance or a means for determining continuing compliance.

(E) Such other factors as the permitting agency may require.

(iv) A requirement that all compliance certifications showing noncompliance be submitted to EPA as well as the permitting authority.

(v) Such additional requirements as may be specified pursuant to section 114(a)(3) of the Act.

(7) Such other provisions as the permitting authority may require.

(d) *Flexible source operation.* (1) The permitting authority shall issue permits that allow changes to a Part 70 source without requiring a permit revision before the source makes such changes, if those changes are not modifications under any provision of title I of the Act and do not exceed the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions for any timeframe addressed in the permit.

(2) If a part 70 source wishes to make a change that would increase any emission above a level allowed in the permit, and such change is not a modification under any provision of title I of the Act and would not be prohibited by any applicable requirement under the Act, then the source shall be required to revise its permit pursuant to procedures established by the State. Such procedures may provide for maximum operating flexibility, provided they meet the requirements set forth under § 70.7(f).

(3) The permitting authority shall meet the requirement contained in paragraph (d)(1) of this section by the following.

(i) Issuing a permit that would identify reasonably anticipated operating scenarios provided by the source as long as each such operating scenario is not prohibited by applicable requirements under the Act. This shall include the identification of all applicable emissions limitations, standards, other requirements and prohibitions that would apply to each emissions unit, so as to ensure enforceability under each scenario. Any changes, including emissions increases, which are included in such reasonably anticipated scenarios, shall be allowed without requiring a permit revision.

(ii) For pollutants regulated at the source, allowing changes in the operation of a facility which are not included in the permit as a reasonably anticipated operating scenario that would not increase either the rate of emissions or total emissions beyond what are allowed under any timeframe addressed by the permit. For any such change, the source shall provide the permitting authority and EPA with 7 calendar days advance written notification. Such notification shall describe the proposed changes, including changes in emissions, and any requirements that would be applicable as a result of the changes.

(iii) Not allowing changes that would constitute modifications or reconstructions under sections 110, 111, or 112 under the Act without requiring a permit revision pursuant to § 70.7 of this part, or requirements under the acid rain program without appropriate review under those programs and permit revision procedures under this section.

(iv) Neither notification nor permit revision is required for changes at the source that are allowed for and regulated by the permit, or that are not regulated or prohibited by the permit.

(v) Accomplishing the timely update of the part 70 permit pursuant to the same procedures for processing administrative permit amendments contained in § 70.7(e) of this part.

(e) *Reopenings.* Each permit shall address reopenings, consistent with the requirements of § 70.7(g) of this part.

(f) *General permits.* The permitting authority may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to conventional part 70 permits. Any source covered by a general permit must apply to the permitting authority for use of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in parts 72 through 79 of this chapter.

(g) *Temporary sources.* The permitting authority may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No such permit shall be issued unless it meets the following conditions:

(1) It contains conditions that will assure compliance with all applicable requirements of the Act at all authorized locations.

(2) It contains a requirement that the owner or operator notify the permitting authority at least 20 days in advance of each change in location.

(3) It contains conditions that will assure compliance with all other provisions of this section.

(4) It does not address any affected source under title IV of the Act.

(h) *Permit shield.* (1) The permitting authority may provide that compliance with the Part 70 permit shall be deemed compliance with other applicable provisions of the Act if, for each such provision, either of the following conditions is met:

(i) The permit includes all the applicable requirements of such provisions.

(ii) The permitting authority in acting on the permit application makes a determination relating to the permittee that the specified provisions referred to in such determination are not applicable to the source and the permit includes the determination or a concise summary thereof.

(2) A Part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this subsection or in any Part 70 permit shall alter or affect the following:

(i) The provisions of section 303 of the Act (emergency orders), including the authority of the Administrator under that section.

(ii) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance.

(iii) The applicable requirements of the acid rain program, consistent with section 408(a) of the Act.

(iv) The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

(i) *Property limitation.* The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

§ 70.7 Permit issuance, renewal, reopenings, operational flexibility and revisions.

(a) *Action on application.* (1) A permit modification, renewal, or reopening may be issued only if all of the following conditions apply:

(i) The permitting authority has received a complete application for a permit, except that a complete application need not be received before issuance of a general permit under § 70.6(f) of this part.

(ii) The permitting authority has complied with the public participation procedures for permit issuance specified in paragraph (i) of this section.

(iii) The conditions of the permit provide for compliance with the applicable requirements of the Act, and regulations promulgated under Act.

(iv) The Administrator has received a copy of the permit and any notices required under §§ 70.8(a) and 70.8(b) of this part, and has not objected to issuance of the permit under § 70.8(c) of this part within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under § 70.4(b)(11) of this part or in parts 71 and 72 of this chapter for the permitting of affected sources under the acid rain program, the program shall provide that the permitting authority take final action on each permit application (including request for permit modification or renewal) within 18 months after receiving a complete application.

(3) The program shall also contain reasonable procedures to prioritize action on applications for construction or modification under title I, parts C and D of the Act.

(4) The permitting authority shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority provides an applicant a notice of incompleteness (outlining additional information requirements, within 30 days of receipt of an application, the application shall be deemed complete.

(5) The permitting authority shall develop a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and any other person expressing an interest.

(6) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under sections 110, 165, 172, or 173 of the Act.

(b) *Requirement for a permit.* (1) Except as provided in the following sentence, no part 70 source may operate after the time that it is required to submit a timely and complete application under an approved permit program except in compliance with a permit issued under a permit program approved under this part or part 71 of this chapter. The program shall provide that if a part 70 source submits a timely and complete application for permit issuance (including for modification or renewal), the source's failure to have a part 70 permit is not a violation of this part until the permitting authority takes final action on the permit application, except as noted in paragraph (b)(1) (i) through (iii) of this section.

(i) This protection shall cease to apply if the applicant fails to submit by the deadline specified by the permitting authority any additional information needed to process the application and requested in writing by the permitting authority subsequent to the completeness determination made pursuant to paragraph (a)(4) of this section to process the application.

(ii) This process shall not affect the requirement that any source have a preconstruction permit under sections 110, 165, 172, or 173 of the Act.

(2) The protection provided by paragraph (b)(1) of this section to operate without a permit shall also apply if the application or requested additional information is submitted less than 3 months after the required submittal date. Nothing in this paragraph shall be deemed to prevent the permitting authority or EPA from bringing an enforcement action and assessing penalties against a source for failing to submit a timely application. In such case, penalties may be assessed for the entire period from the time the application was required to be submitted to the time a complete application was actually submitted.

(3) The protection provided by paragraph (b)(1) of this section to operate without a permit shall also apply if the source submits a timely application and if the permitting authority determines it to be incomplete despite good faith effort on the part of the source; provided that the source cures the defect during an expeditious time period specified by the permitting authority. Nothing in this paragraph shall be construed to limit the exception to such protection that is set forth in the introductory text of paragraph (b)(1) of this section:

(c) *Permit renewal and expiration.* The program shall provide the following:

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation and Federal oversight, that apply to initial permit issuance.

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application is submitted consistent with paragraph (b) of this section.

(d) *Permit modifications.* (1) A permit modification includes any proposed revision to address a change at the source, including monitoring, that would constitute a modification under any provision of title I of the Act, as provided in § 70.2(c)(5).

(2) Notwithstanding § 70.6(d) of this part, and paragraph (e) of this section, any relaxation in the reporting requirements or to milestones with the schedule of compliance for a noncomplying source in the current version of the part 70 permit are subject to § 70.7(d) as a permit modification.

(3) Permit modifications shall be subject to the same procedural requirements, including those for public comment and Federal oversight, as original permit issuance, except that the required review shall cover only the proposed changes rather than the unchanged activities of the permittee. Nothing in this provision shall limit the authority of the permitting authority or EPA under paragraphs (g) and (h) of this section.

(e) *Administrative permit amendments.* An Administrative permit amendment shall be made by the permitting authority administratively and consistent with the requirements of paragraph (f)(3) of this section without being subject to advance notification or the procedural requirements applicable to a permit modification. The principles governing what constitutes administrative or minor permit amendments for purposes of the acid rain portion of the permit shall be governed by part 72 of this chapter.

(f) *Minor permit amendments*—(1) *Applicability.* The permitting authority may treat any proposed revision to a part 70 permit as a minor permit amendment in accordance with this subsection if the proposed revision:

(i) Does not constitute a modification under any provision of title I of the Act; and

(ii) Complies with all applicable requirements of the Act relevant to the source.

(2) *Notice.* (i) At least 7 calendar days before making the proposed change, the source applicant shall submit a notice to the permitting authority and the Administrator. The permitting authority may provide in its regulation a different timeframe for notices involving emergencies.

(ii) Such notification shall describe the proposed changes, including changes in emissions, any requirements that would be applicable as a result of the changes, and the revised permit language under which the source proposes to operate.

(iii) The source may implement the proposed change unless the permitting authority notifies the source within the

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period for prior notice, established pursuant to § 70.7(f)(2)(i), that the proposed change does not qualify as a minor permit amendment or would not meet all applicable requirements of the Act. In the event that the source fails to demonstrate to the satisfaction of the permitting authority that the proposed change qualifies for processing as a minor amendment under this paragraph, the proposed change shall be processed as a permit modification under the procedures set forth in paragraph (d) of this section. In such event the change shall not occur until the permit is revised following the EPA review period.

(3) *Permit revision.* (i) The permitting authority shall take no more than 60 days from receipt of the notice required in paragraph (f)(2) of this section to revise the part 70 permit and may use administrative procedures to incorporate the changes comprising the minor permit amendment, provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(ii) The permitting authority shall submit a copy of the revised permit to the Administrator and make it readily available at the offices of the permitting authority.

(g) *Reopening for cause.* (1) Each issued permit shall include provisions addressing the conditions for revision prior to the expiration of the permit. Such revisions shall be made as expeditiously as practicable. Reopenings shall be performed for the following reasons:

(i) Additional requirements under the Act become applicable to a major part 70 source and for which 3 or more years remain on the original term of the permit. Such revisions shall be made not later than 18 months after the promulgation of relevant standards or regulations. No such revision is required if the effective date of the requirement is later than the date on which the permit is due to expire.

(ii) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Excess emissions offset plans shall be deemed to be incorporated into the permit upon approval by the Administrator.

(iii) The permitting authority or EPA determines that the permit contains a material mistake made in establishing the emissions standards or limitations, or other requirements of the permit.

(iv) The EPA determines that the permit must be revised to assure compliance with the applicable requirements of the Act.

(2) The permitting authority shall terminate, modify, or revoke and reissue permits for cause.

(3) Proceedings to reopen a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

(4) Reopenings under paragraph (g)(1)(i) of this section shall not be initiated before a notice of such intent is provided to the affected part 70 source by the permitting authority at least 30 days in advance of the date that the permit is to be reopened, except that the permitting authority may provide a shorter time period in the case of an emergency.

(5) The permitting authority shall reopen a part 70 permit pursuant to this § 70.7(g) whenever the permitting authority or the Administrator determine that any permit revision accomplished pursuant to § 70.7(f) does not assure compliance with all applicable requirements of the Act or did not qualify for processing under § 70.7(f).

(h) *Reopenings for cause by EPA.* (1) If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to paragraph (g) of this section, the Administrator shall notify the permitting authority and the permittee of such finding in writing.

(2) The permitting authority shall, within 90 days after receipt of notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the permitting authority must require the permittee to submit additional information.

(3) The Administrator shall review the proposed determination from the permitting authority within 90 days of receipt. The permitting authority shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes.

(4) If the permitting authority fails to submit a proposed determination pursuant to paragraph (h)(2) of this section or fails to resolve any objection pursuant to paragraph (h)(3) of this section, the Administrator shall terminate, modify, or revoke and reissue the permit after taking the following actions:

(i) Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in paragraph (h)(1), (2) and (3) of this section.

(ii) Providing the permittee an opportunity for comment on the Administrator's proposed action and for a hearing, which shall be held after exhaustion of the procedures in paragraphs (h)(1), (2) and (3) of this section.

(5) The EPA's decision to terminate, modify or revoke and reissue the permit shall constitute final action for purposes of judicial review under section 307 of the Act.

(i) Public participation in permit issuance. All permit issuance proceedings, including renewals, modifications, and reopenings, shall provide an opportunity for public participation on the draft proposed permit. The State shall develop such procedures after considering the requirements of part 124 of this chapter and the adopted procedures shall at a minimum include the following:

(1) Availability for public inspection in at least one location in the community in which the source is located of the information submitted by the applicant, and the permitting authority's analysis of the proposed action as set forth in the statement of basis.

(2) A public notice, by advertisement in the area affected, of the opportunity for submittal of public comment and for a public hearing with a copy of the notice to the Administrator, unless EPA agrees not to require the notice for some or all permits.

(3) A period of no less than 30 days for submittal of public comments.

(4) A public hearing, as deemed appropriate by the permitting authority because a request for such has been made that raises significant issues affecting the terms and conditions of the permit and such hearing would contribute to the permitting exercise.

(5) Such notice and opportunity for participation by other States as is provided for by § 70.8 of this chapter.

§ 70.8 Permit review by EPA and affected States.

(a) *Transmission of information to the Administrator.* (1) The permit program shall require that the permitting authority shall provide, or require the applicant to provide, to the Administrator a copy of each permit application, including the compliance plan, and each proposed permit and final permit. If the permitting authority and Administrator so agree, the permitting authority may submit to the Administrator a permit application summary form and any relevant portion of the permit application or compliance plan, in place of such full application and compliance plan specified in this paragraph.

(2) The Administrator may waive the requirements of paragraphs (a)(1) and (b)(1) of this section for any category of sources (including any class, type, or size within such category) other than major sources according to the following:

(i) At the time of approval of a State program pursuant to this part.

(ii) By regulation.

(3) Any State permitting authority shall keep for 5 years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of this part.

(b) *Affected State review.* (1) The program shall provide that the permitting authority give notice of each draft proposed permit to any affected State on or before the time that the permitting authority provides this notice to the public under § 70.7(i) of this part.

(2) The program shall provide that the permitting authority, as part of the submittal of the proposed permit to the Administrator, shall notify the Administrator and any affected State in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the affected State submitted during the public comment period. The notice shall include the permitting authority's reasons for not accepting any such recommendation.

(c) *EPA objection.* (1) The Administrator shall object, pursuant to section 505(b) of the Act, to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements of the Act including requirements of the applicable implementation plan. No permit shall be issued for the purpose of part 70 if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and notice pursuant to paragraphs (a) and (b) of this section.

(2) Any EPA objection under paragraph (c)(1) of this section shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The Administrator shall provide the permit applicant a copy of the objection.

(3) Failure of the permitting authority to do any of the following also shall constitute grounds for an objection:

(i) Submit the required items and notices under paragraphs (a) or (b) of this section.

(ii) Submit any information necessary to adequately review the proposed permit.

(4) If the permitting authority fails, within 90 days after the date of an objection under paragraph (c)(1) of this section, to submit a proposed permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of part 71 of this chapter. If the permitting authority submits a revised permit within this time period that only partially meets the Administrator's objection, the Administrator may grant further time for revision of the permit, not to exceed an additional 90 days.

(d) *Public petitions to the Administrator.* The program shall provide that if the Administrator does not object in writing pursuant to paragraph (c) of this section, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to take such action. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in § 70.7(i) of this part, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. A petition for review does not stay the effectiveness of the permit or its requirements. If EPA objects to the permit as a result of petition filed pursuant to this paragraph, the permitting authority shall suspend the permit until EPA's objection has been resolved.

(e) *Prohibition on default issuance.* Consistent with § 70.4(b)(3)(ix) of this part, for the purposes of Federal law and title V of the Act, no State program may provide that a part 70 permit (including a permit renewal or modification) will issue until affected States and EPA, have had an opportunity to review the proposed permit as required under this section. When the program is submitted for EPA review, the State Attorney General or independent legal counsel shall certify that no applicable provision of State law requires that a permit be issued after a certain time if the permitting authority has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit), unless EPA has waived such review for EPA, affected States, or both.

§ 70.9 Fee determination and certification

(a) *Fee requirement.* (1) The program shall require that the owners or operators of sources subject to the requirement to obtain a permit under this part pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable direct and indirect costs of developing and administering the permit program. Procedures for determining this sum are set forth in this section.

(2) The State shall provide that the revenue generated from permit fees will be used solely to support the reasonable cost of the development and implementation of the air pollution control program in all areas relevant to the permit program, including support of local agencies that do not issue permits directly, but that support permit issuance or enforcement.

(b) *Fee schedule adequacy.* The State program shall establish a fee schedule that meets either of the following tests:

(1) *Program support test.* The fee program shall result in the collection and retention of revenues sufficient to support the reasonable direct and indirect costs of developing and implementing the permitting program (considering any associated overhead charges for personnel, equipment, buildings, and vehicles), including but not limited to the following activities:

(i) Reviewing and acting on any application for a permit or permit revision.

(ii) Implementing and enforcing the terms of any part 70 permit, (not including any court costs or other costs associated with any formal enforcement action).

(iii) Emissions and ambient monitoring, including adequate resources to audit and inspect source-operated monitoring programs.

(iv) Preparing generally applicable regulations, or guidance.

(v) Modeling, analyses, or demonstrations.

(vi) Preparing inventories and tracking emissions.

(vii) Providing support to part 70 sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program contained in section 507 of the Act.

(2) *Cost-per-ton test.* The fee program shall result in the collection and retention, from all sources subject to the permitting program, of an amount not less than $25 per ton in the aggregate, as adjusted pursuant to the criteria set forth in paragraph (c) of this section, of each regulated pollutant that the part 70 sources emit.

(i) For the purposes of determining the required minimum fee amount, carbon monoxide shall be excluded from the definition of "regulated pollutant."

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(ii) In determining the required minimum fee amount, the permitting authority is not required to include any amount of a regulated pollutant that:

(A) The part 70 source emits in excess of four thousand (4,000) tons per year of that regulated pollutant:

(B) The emissions of such pollutant are otherwise regulated and already included in the fees owed by the part 70 source.

(iii) For those regulated pollutants emitted by part 70 sources, but to which no State or Federal air pollution control requirements are applicable, the emissions fee requirements contained in this section remain applicable. The plan may, at the State's discretion, include criteria (such as *de minimis* amounts) to exclude any such emissions of regulated pollutants from the fee requirement, to the extent that such exemptions are consistent with the resource adequacy determination required by § 70.4(b)(7) of this part.

(iv) For the purpose of determining the total tons of regulated pollutants that the Part 70 sources in the State emit, the State shall base its calculation on the actual emissions of each regulated pollutant.

(v) Nothing in the cost-per-ton provisions of this paragraph shall restrict a permitting authority from collecting more or less than the amount determined under this paragraph from any one part 70 source or any class or category of part 70 sources, as determined by the permitting authority, provided the permitting authority collects a total amount of fees sufficient to meet the program support requirements of paragraph (b)(1) of this section. For example, States may reduce fee amounts for small businesses as authorized by section 507(f) of the Act.

(c) *Fee adjustment.* (1) The program shall provide that the fees collected pursuant to this section shall be increased (consistent with the need to cover reasonable costs) in December of each year by the percentage, if any, by which the Consumer Price Index for that calendar year exceeds the Consumer Price Index for the calendar year 1989.

(i) The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

(ii) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.

(2) The Administrator reserves the right to adjust the fees required pursuant to this test upward if significant amounts of toxic pollutants are subject to permit review.

(d) *Fee demonstration.* The permitting authority shall provide a demonstration that the fee schedule selected will result in the collection and retention of fees in an amount sufficient to satisfy the applicable tests specified in paragraphs (a) and (b) of this section. The Administrator will not approve a demonstration pursuant to paragraph (b) of this section unless it contains an initial accounting (and periodic updates as required by the Administrator) of how fee revenues are used to cover the costs of meeting the various functions of the permitting program.

§ 70.10 Federal oversight and sanctions.

(a) *Failure to submit an approvable program.* If a State fails to submit a fully approvable whole part 70 program, or a required revision thereto, in conformance with the provisions of § 70.4 of this part, or if an interim approval expires and the Administrator has not approved a whole part 70 program.

(1) At any time the Administrator may apply any one of the sanctions specified in section 179(b) of the Act.

(2) Within 18 months after the date required for submittal or the date of disapproval by the Administrator, the Administrator shall apply such sanctions in the same manner and with the same conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a) of the Act.

The Administrator shall promulgate a whole program or a partial program as appropriate for such State if full approval of a whole part 70 program has not taken place within 2 years after the date required for such submission.

(b) *State failure to administer or enforce.* Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part and any agreement between the State and the Administrator concerning operation of the program.

(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering or enforcing a Part 70 program, or any portion thereof, the Administrator shall notify the authority of the determination and the reasons therefore. The Administrator shall publish such notice in the **Federal Register**.

(2) If, after 90 days from issuing the notice under paragraph (b)(1) of this section, the permitting authority fails to take action to assure adequate administration and enforcement of the program, the Administrator may take any one or more of the following actions:

(i) Withdraw approval of the program or portion thereof using procedures consistent with § 70.4(e) of this part.

(ii) Apply any of the sanctions specified in section 179(b) of the Act.

(iii) Promulgate, administer, or enforce a program or partial program.

(3) Whenever the Administrator has made the finding and issued the notice under paragraph (b)(1) of this section, the Administrator shall apply the sanctions under section 179(b) of the Act within 18 months after that notice. These sanctions shall be applied in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a) of the Act.

(4) Whenever the Administrator has made the finding and issued the notice under paragraph (b)(1) of this section, the Administrator shall, unless the State has corrected such deficiency within 18 months after the date of such finding, promulgate a whole or partial program within 2 years of the date of such finding.

(5) If the permitting authority's failure is a failure to act on one or more timely and complete applications (including renewal applications) within 18 months of the date that a complete application was filed, the Administrator may issue or deny the permits as appropriate.

(6) Nothing in this section shall limit the Administrator's authority to take any enforcement action against a source for violations of the Act or a permit issued under rules adopted pursuant to this section in a State that has been delegated responsibility by EPA to implement a part 71 program.

(c) *Criteria for withdrawal of State programs.* (1) The Administrator may withdraw program approval when the approved program no longer complies with the requirements of this part, and the permitting authority fails to take corrective action. Such circumstances, in whole or in part, include the following:

(i) Where the permitting authority's legal authority no longer meets the requirements of this part, including the following:

(A) Failure of the permitting authority to promulgate or enact new authorities when necessary.

(B) Action by a State legislature or court striking down or limiting State authorities.

(ii) Where the operation of the State program fails to comply with the requirements of this part, including the following:

(A) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits.

(B) Repeated issuance of permits that do not conform to the requirements of this part.

(C) Failure to comply with the public participation requirements § 70.7(i) of this part.

(D) Failure to collect, retain, or allocate fee revenue consistent with § 70.9 of this part.

(iii) Where the enforcement program fails to comply with the requirements of this part, including the following:

(A) Failure to act on violations of permits or other program requirements.

(B) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed.

(C) Failure to inspect and monitor activities subject to regulation.

(d) *Federal collection of fees.* If the Administrator determines that the fee provisions of a part 70 program do not meet the requirements of § 70.9 of this part, or if the Administrator makes a determination under paragraph (b)(1) of this section that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under title V of the Act, collect reasonable fees from part 71 sources or part 70 sources or both to cover the Administrator's costs of administering the provisions of the permitting program promulgated by the Administrator, without regard to the requirements of § 70.9 of this part.

§ 70.11 Requirements for enforcement authority.

All programs in order to be approved under this part must contain the following provisions:

(a) Any agency administering a program shall have available, as remedy for violations of program requirements, the following authority:

(1) To restrain immediately and effectively any person by order or by suit in court from engaging in any activity in violation of a permit and which is presenting an imminent and substantial endangerment to the public health or welfare, or the environment.

(2) To sue in courts with jurisdiction to enjoin any violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit.

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, according to the following:

(i) Civil penalties shall be recoverable for the violation of any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, entry or monitoring activities or, any regulation or orders issued by the permitting authority. These penalties shall be recoverable in a maximum amount of not less than $10,000 a day for each violation. State law shall not include mental state as an element of proof for civil violations.

(ii) Criminal fines shall be recoverable against any person who knowingly violates any applicable standards or limitations; any permit condition; or any fee or filing requirement. These fines shall be recoverable in a maximum amount of not less than $10,000 a day for each violation.

(iii) Criminal fines shall be recoverable against any person who knowingly makes any false statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any monitoring device or method required to be maintained by the permitting authority. These fines shall be recoverable in a maximum amount of not less than $10,000 for each instance of violation.

(b) (1) The civil penalty or criminal fine(s) (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent required under the Act.

(c) A civil penalty assessed, sought, or agreed upon by the permitting authority under paragraph (a)(3) of this section shall be appropriate to the violation.

[FR Doc. 91-10148 Filed 5-9-91; 8:45 am]

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federal register

Friday
May 10, 1991

Part III

Department of Education

Bilingual Vocational Instructor Training Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.099]

Bilingual Vocational Instructor Training Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

Note to applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of program: The Bilingual Vocational Instructor Training Program provides financial assistance for conducting training for instructors aides, counselors, or other ancillary personnel in bilingual vocational education and training programs for individuals with limited English proficiency.

Eligible applicants: State agencies or public and private non-profit educational institutions.

Deadline for transmittal of applications: July 12, 1991.

Deadline for intergovernmental review: September 10, 1991.

Available funds: $433,200.

Estimated range of awards: $187,000–$430,000.

Estimated average size of awards: $216,000.

Estimated number of awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 18 months.

Applicable regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations) Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), Part 82 (New Restrictions on Lobbying), Part 85 (Government-wide Debarment and Suspension (Nonprocurement), Government-Wide Requirements for Drug-Free Workplace (Grants)), and Part 86 (Drug-Free Schools and Campuses).

Invitational Priority

The Secretary is particularly interested in applications that meet the following invitational priority:

Applications that address a national or statewide need for inservice training for personnel in bilingual vocational education and training programs for individuals with limited English proficiency.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses. The Secretary assigns the 15 points, reserved in 34 CFR 408.30(b), as follows: 10 points to selection criterion (b)—Plan of operation—in 34 CFR 408.31(b) for a total of 30 points for that criterion; and 5 points to selection criterion (c)—Quality of key personnel—in 34 CFR 408.31(c) for a total of 25 points for that criterion.

(a) *Need.* (20 points)

(1) The Secretary reviews each application for specific information that shows the need for the proposed training in the local geographic area.

(2) In making this determination the Secretary looks for information that shows—

(i) The need for the proposed training;

(ii) Specifically how the need will be met; and

(iii) Ongoing and planned activities in the community that pertain to the need, where appropriate.

(b) *Plan of operation.* (30 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (25 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the projec .

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (c)(2) (i) and (ii) will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project; as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference: See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Approved under OMB Control No. 1830-0013)

Additional Factors

(a) After evaluating the applications according to the selection criteria, and consulting with the appropriate State board, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the equitable distribution of projects under this program within the affected State.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 17, 1990, pages 38210–38211.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.099, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CDFA #84.099), Washington, DC 20202-4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Eduation, Application Control Center, Attention: (CFDA #84.099), room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC 20202-4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED Form 80-0013) and instructions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80-0014) and instructions. (NOTE: ED Form 80-0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Laura Karl, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4512, Mary E. Switzer Building), Washington, DC 20202-7327. Telephone (202) 732-2365. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 Area Code, telephone 708-9300) between 8:00 a.m. and 7:00 p.m. Eastern time.

Program Authority: 20 U.S.C. 2441(b).

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Dated: May 2, 1991.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

Appendix A

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 0 9 9

TITLE: Bilingual Vocational Instructor Training

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

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Budget Part II—Information

For the Bilingual Vocational Instructor Training Program (CFDA No. 84.099), Section. A, B, and C should include budget estimates for the entire project period.

Note: Sections D and E need not be completed to apply for this program.

All applications should contain a breakdown by the object class categories shown in Section B, Lines 6a through 6j.

Section A. Budget Summary

Line 1. Columns (a) through (g)—Enter on Line 1 the catalog program title in Column (a) and the catalog program number in Column (b). Leave Columns (c) and (d) blank. Enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for either the entire project period or the first year of the project, as appropriate.

Section B. Budget Categories

Lines 6a through 6i—Fill in the total requirements for Federal funds by object class categories for either the entire project period or the first year of the project, as appropriate.

Line 6a—Personnel: Show salaries and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in Line 6f.

Line 6b—Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits to personnel are treated as part of the indirect cost rate.

Line 6c—Travel: Indicate the amount requested for travel of employees.

Line 6d—Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $300 or more per unit.

Line 6e—Supplies: Include the cost of consumable supplies to be used in this project. These should be items which cost less than $300 per unit with a useful life of less than two years.

Line 6f—Contractual: Show the amount to be used for: (a) procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (b) subgrants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

Line 6g—Construction: Construction expenses generally are not allowed.

Line 6h—Other: Indicate all direct costs not clearly covered by lines 6a through 6g. If there are trainee costs or stipends, enter the total cost of these expenses. The maximum allowance for stipends is $3.35 per contact hour.

Line 6i—Total Direct Charges: Show total of lines 6a through 6h.

Line 6j—Show the amount of indirect cost to be charged to the project.

Note. The indirect cost rate for training projects cannot exceed eight percent of total direct charges.

Line 6k—Enter the total of the amounts on Lines 6i and 6j.

Section C. Non-Federal Resources

Line 8—Enter any amounts of non-Federal resources that will be used on the grant. If any in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the catalog program title.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter the totals of Columns (b), (c), and (d).

Section F. Other Budget Information

Prepare a detailed budget Narrative that explains, justifies, and/or clarifies the budget figures shown in sections A, B, and C.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding the priority, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

Please limit the Application Narrative to no more than 30 double-spaced, typed, 8½"×11" pages (on one side only).

Include as an appendix to the Application Narrative supporting documentation, also on 8½"×11" paper, (e.g., letters of support, footnotes, resumes, etc.) or any other pertinent information that might assist the Secretary in reviewing the application.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0013, Washington, DC 20503. (Information collection approved under OMB control number 1830–0013. Expiration date: 10/31/92.)

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OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse. (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (4-88) Back

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-809 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

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Standard Form - LLL

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Part IV

Environmental Protection Agency

40 CFR Part 744

Land Application of Sludge from Pulp and Paper Mills Using Chlorine and Chlorine Derivative Bleaching Processes; Proposed Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 744

[OPTS-62100; FRL 3873-2]

RIN 2070-AC23

Proposed Regulation of Land Application of Sludge from Pulp and Paper Mills Using Chlorine and Chlorine Derivative Bleaching Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would regulate the use, disposal, and distribution in commerce of process wastewater treatment sludges intended for land application from pulp and paper mills employing chlorine or chlorine derivative-based bleaching processes (hereafter referred to as "paper mill sludge" or "sludge"). This rule is proposed under the authority of section 6(a) of the Toxic Substances Control Act (TSCA) to prevent unreasonable risks to wildlife and humans presented by exposure to 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD) and 2,3,7,8-tetrachlorodibenzofuran (TCDF) present in paper mill sludge. TCDD and TCDF are chemical reaction products of pulp bleaching processes involving the use of chlorine and chlorine derivatives. TCDD, has been classified by EPA as a probable human carcinogen. Highest exposure from paper mill sludge land application occurs through the dietary pathway (risks from consuming food grown and animals grazed on sludge-amended lands) and through the runoff pathway (risks from consuming fish from sludge-contaminated surface waters).

DATES: Written comments in triplicate must be received on or before August 8, 1991. If EPA receives requests from interested persons wishing to make oral comment, it will hold an informal hearing in Washington, DC September 17, 1991. The exact time and location of the hearing may be obtained by contacting the Environmental Assistance Division at (202) 382-3532. Written requests to participate in the informal hearing must be received by August 8, 1991. For further information regarding the hearing, see Unit XII of this preamble.

ADDRESSES: Non-confidential comments should be sent in triplicate to: U.S. Environmental Protection Agency, Rm. NEG-004 (TS-793), 401 M St., SW., Washington, DC 20460, Attention: OPTS-62100. Comments should also include the docket number (OPTS-62100). Non-confidential comments will be placed in the rulemaking record for public inspection. See Unit XI of this preamble for information on submitting comments containing confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), U.S. Environmental Protection Agency, 401 M St. SW., rm. E-543B, Washington, DC 20460, telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This document proposes to regulate the use, disposal, and distribution in commerce of sludge intended for land application from pulp and paper mills using chlorine or chlorine-derivative bleaching processes.

I. Authority

Section 6(a) of TSCA authorizes EPA to regulate chemical substances or mixtures if the Agency finds that there is a reasonable basis to conclude that activities involving them present or will present an unreasonable risk of injury to human health or the environment. Section 6(a)(1) authorizes EPA to prohibit or limit the manufacturing, processing, or distribution in commerce of such substances. Section 6(a)(2) authorizes EPA to prohibit or limit manufacturing, processing, or distribution in commerce of such substances for particular uses. Section 6(a)(3) authorizes labelling or warning rules. Sections 6(a)(4) and 6(a) authorize EPA to require records maintenance and monitoring. Sections 6(a)(5) and 6(a)(6) authorize rules prohibiting or otherwise regulating, respectively, commercial use or disposal of substances or mixtures. These sections of TSCA provide EPA the authority to propose this rule.

II. Introduction and Background

A. Litigation History

On October 22, 1984, the Environmental Defense Fund (EDF) and the National Wildlife Federation (NWF) filed a citizen's petition under section 21 of TSCA requesting that EPA regulate certain polyhalogenated dibenzo-*p*-dioxins (PHDDs) and polyhalogenated dibenzofurans (PHDFs) from all known sources (PHDDs and PHDFs include TCDD and TCDF). EPA denied the petition, prompting a lawsuit brought by EDF and NWF. Before the case was to go to trial, the plaintiffs and EPA reached a settlement and signed a consent decree on July 27, 1988 (*EDF v. Thomas*, DC District Court, Civil Action No. 85-0973).

The consent decree required EPA to perform a number of activities under its various statutes. The activity which eventually led to this proposal was a multi-media, multi-pathway risk assessment for 2,3,7,8-TCDD and 2,3,7,8-TCDF emissions from chlorine bleaching pulp and paper mills. EPA, the Food and Drug Administration (FDA), and the Consumer Product Safety Commission (CPSC) performed the risk assessment, which consists of 10 separate assessments examining aproximately 120 exposure pathways, including sludge use and disposal. The sludge assessment is entitled "Assessment of Risks from Exposure of Humans, Terrestrial and Avian Wildlife, and Aquatic Life to Dioxins and Furans from Disposal and Use of Sludge from Bleached Kraft and Sulfite Pulp and Paper Mills" (EPA 560/5-90-013, July 1990) (hereafter referred to as the "Integrated Risk Assessment"). Chapters 3 and 6 on wildlife and human health risks from land application served as the basis for this proposed rule. EPA revised these chapters for this proposed rule. The revised risk assessments are "Environmental Risk Assessment for TCDD and TCDF-Contaminated Pulp Sludges on Terrestrial and Aquatic Wildlife" (January 31, 1991), for chapter 3, and "Human Health Risk Assessment for Dioxin in Sludge: Technical Support Document for the Proposed Land Application Rule" (April 1991), for chapter 6. The original sludge assessment and these revised documents are in the rulemaking record.

By April 30, 1990, the consent decree required EPA to take at least one of four possible actions with respect to the matters considered in the risk assessment. The four options were:

1. Commit to propose regulations in the Federal Register by April 30, 1991.

2. Commit to refer under TSCA section 9 some or all matters under consideration to another Federal agency or agencies by October 30, 1990.

3. Determine that regulations and/or referrals are unnecessary.

4. Determine that EPA does not have sufficient information to make one of the above determinations, and establish a schedule to obtain the required information by April 30, 1991, then within 180 days take at least one of the options.

On April 30, 1990, in a letter signed by the Deputy Administrator and addressed to M.V. Patten, counsel for NWF, and K. Florini, counsel for EDF, EPA decided that with respect to paper mill sludge land application, it would exercise option 1, and for paper mill sludge landfills and surface impoundments, it would exercise option 4. Under the terms of the consent decree, EPA will use its best efforts to either promulgate this land application rule in final form or to withdraw it within 18 months of the publication of this proposed rule.

B. History of Dioxin in the Paper Industry

The initial discovery of chlorinated dibenzo-*p*-dioxins and dibenzofurans (CDDs/CDFs) and theories about their formation and presence in various media led to the National Dioxin Study, published in August 1987. This was a nationwide, multimedia evaluation initiated at the request of Congress in House Report 98-223. The study was requested in response to growing public concern over the high toxicity and persistence of CDDs and CDFs, and the numerous incidents of contamination and exposure in the United States and abroad. It was the first major nationwide CDD/CDF investigation undertaken by the Federal Government. An unanticipated result of the study was the strong implication that some pulp and paper mills could be sources of TCDD/TCDF.

These findings prompted EPA, the American Paper Institute (API), and the National Council of the Paper Industry for Air and Stream Improvement (NCASI) to enter into an agreement on June 20, 1988, entitled "USEPA/Paper Industry Cooperative Dioxin Screening Study - Agreement", to jointly screen five bleached kraft pulp and paper mills for CDD/CDF production and release. The results of the "5-mill study", published as "U.S. EPA/Paper Industry Cooperative Dioxin Screening Study" (March 1988), verified that CDDs/CDFs were present in the treated effluent, wastewater treatment sludges, and bleached pulps, and that TCDD and TCDF were formed during the bleaching of kraft pulps with chlorine and chlorine derivatives. In addition it showed that, in terms of toxicity, the principal CDDs and CDFs formed were the 2,3,7,8-TCDD/TCDF congeners.

The EPA/Paper Industry Cooperative Dioxin Study (July 1990), commonly referred to as the "104-mill study," was conducted from April 1988 to August 1989 at 87 kraft (sulfate) and 17 sulfite pulp mills. The preliminary results from this study served as the database for the integrated risk assessment and the revisions to the integrated assessment for this proposed rule.

Concentrations of TCDD and TCDF were measured from treated wastewater effluents, sludges, and all bleached pulp lines. Data on wastewater treatment operations, wastewater discharge characteristics, and paper mill sludge management practices were also collected. The results indicated that the TCDD/TCDF concentrations in kraft mill pulp were considerably higher than concentrations in sulfite mill pulp, and that the concentrations of TCDF were roughly an order of magnitude higher than those of TCDD. The major finding of the study was the widespread presence of TCDD and TCDF in treated effluents, sludges, and bleached pulps from kraft and sulfite mills.

C. Generation, Use, and Disposal of Paper Mill Sludge

Paper mill sludge is the result of processes used to treat process wastewater (effluent) before it is released into receiving waters. In treating effluent, solids are settled out which contain chlorinated organics, including TCDD and TCDF, which are chemical reaction products of the chlorine used in the pulp bleaching process.

Approximately 2,500,000 dry metric tons (DMT) of paper mill sludge are generated annually by all 104 chlorine bleaching mills. Some mills use more than one disposal practice. The integrated risk assessment shows approximate sludge volumes broken down by practice, extrapolated from the 104-mill study. But because the mills did not report exact sludge volumes going to each disposal practice, it is unknown exactly how much sludge is actually disposed of through land application. EPA estimated that approximately 20 percent of the total sludge generated annually from all mills is land applied. More recent information on sludge volumes per disposal practice is contained in the "Regulatory Impact Assessment for Land Application of Bleached Pulp and Paper Mill Wastewater Treatment Sludges", dated February 12, 1991, located in the rulemaking record.

The distribution of land applied sludge among the various land application practices is unknown; however, EPA estimates that approximately 80 percent goes to silvicultural land, 10 percent to agricultural land, and 10 percent to mine reclamation.

Paper mill sludges come in three forms: primary, secondary, and a mixture of the two. Primary paper mill sludge is a sedimentary product composed of wood fiber, lime, and other waste products that is low in nutrients but high in organic carbon. It is potentially beneficial as an organic amendment, but it may also deplete the soil of plant-available nitrogen as soil bacteria digest the wood fibers. Secondary paper mill sludge is a product of biological treatment and contains microbes and the nutrients added to encourage microbial growth. It is normally produced in lesser quantities, has a higher nutrient content and is valuable as a substitute for fertilizer, and may also provide organic matter. The benefits of paper mill sludge as a soil amendment depend on the characteristics of the particular sludge, the mill's sludge management practices, and the characteristics of the soil to which the sludge is applied.

D. Recent Scientific Developments

EPA is undertaking a reassessment of the risks of exposure to dioxin, in light of scientific advances that provide additional understanding of those risks. The reassessment will include ecological risks, human toxicity, and exposure. EPA cautions that it cannot draw conclusions about the results of the reassessment until a complete review of it has been performed. The reassessment is expected to be completed by mid-1992, and will then be subjected to a peer review by scientific experts, as well as public comment.

This reassessment has been prompted by several factors, including the general consensus among participants in the October 1990 Banbury Conference that work should begin on a new biologically-based model for assessing the toxicity of dioxin. In addition, the results of a number of new studies and reports indicate that exposure and risk factors also need to be reviewed.

EPA is evaluating the potential impacts of this scientific reassessment on Agency dioxin programs. Until this evaluation is complete, however, EPA plans to continue with all dioxin-related activities, including this proposed rule.

III. Description of the Proposed Rule

A. General Provisions

This rule would require generators of paper mill sludge to ensure that certain requirements are followed when such sludge is applied to land. The requirements include TCDD/TCDF soil concentration limits, management practices, and monitoring, recordkeeping, and reporting requirements, which collectively define the level of control that paper mill sludge generators must attain.

B. Land Application Restrictions

1. *Maximum soil concentration.* Section 744.125(b) of the rule proposes a limit of 10 ppt TCDD/TCDF in the soil following land application of paper mill sludge. EPA has established this maximum soil concentration to limit the

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risks to humans and wildlife from dietary exposure to TCDD/TCDF. The 10 ppt soil concentration limit is expressed as a toxicity equivalent (TEQ), which describes the toxicity of individual CDDs/CDFs or of mixtures of CDDs/CDFs as an equivalent concentration of TCDD. For the purpose of this proposed rule, the TEQ is calculated by adding the measured concentration of TCDD (that is, 2,3,7,8-TCDD) to one-tenth the measured concentration of TCDF (that is, 2,3,7,8-TCDF), found in the soil and sludge samples. Other CDDs/CDFs are not considered since their contribution to the overall toxicity is insignificant. For the remainder of this proposed rule discussion, TCDD/TCDF refers to the TCDD TEQ.

The concentration of TCDD/TCDF in the soil following paper mill sludge land application depends on whether or not soil incorporation occurs. If the sludge is incorporated, the soil will dilute the TCDD/TCDF concentration of the sludge, producing a concentration in the soil that reflects the sludge/soil mixture. Section 744.125(b) specifies a formula to calculate the TCDD/TCDF concentration of the sludge/soil mixture, and requires incorporation to a minimum depth of 15 centimeters. The formula takes into account the level of TCDD/TCDF already present in the soil prior to sludge application, the mass of the soil, and the mass and TCDD/TCDF concentration of the sludge. If the sludge is not incorporated, then the sludge concentration will be considered the soil concentration and therefore cannot exceed 10 ppt.

2. *Management practices.* The following management practices are also proposed to address risks to human health posed by sludge and sludge/soil runoff.

a. *Set back.* Section 744.125(c)(1) would require that sludge not be applied to land that is 10 meters or less from intermittent or perennial surface waters.

b. *Vegetative Cover.* Section 744.125(c)(2) would require that a vegetative cover be established on the land to reduce erosion. For nonagricultural land — land not being used to grow food, feed, fiber, or oilseed crops — it would adopt the U.S. Department of Agriculture (USDA), Soil Conservation Service (SCS), *Practice Standard 342, Critical Area Planting* ("Standard 342"), as the guideline for the choice of species and the methods and dates for planting. This standard is tailored to each local geographical region, and requires the planting of perennial species. Copies of the standard designed for the area in which a sludge land application site is located can be obtained from the state office of the USDA/SCS, for the state in which the land is located. A list of state telephone numbers entitled "USDA Soil Conservation Service Directory of State Offices" is available in the rulemaking record. Alternatively, or for site uses which, like agriculture and forestry, are not specifically covered by Standard 342, the applier could use an equivalent standard approved by EPA prior to any sludge land application at the site. Samples of standards which EPA may consider equivalent would include soil conservation plans which meet the guidelines mandated for participation in any Federal Government soil programs, or which comply with state erosion and sediment control regulations.

In addition to requirements for establishing a vegetative cover, the rule would require that no area to which sludge has been applied be allowed to remain uncovered for more than 30 days. This would preclude mills or appliers from allowing a large site to remain untreated during the entire time that sludge is applied.

Where sludge is incorporated into bare soil or cleared lands such as timber harvest areas or idle fields, it may be necessary to shape the site for runoff control in preparation for seeding. This requirement is frequently cited in Standard 342 as a necessary step to ensure revegetation. Section 744.145(d)(2) would require that any surface preparation necessary for successful vegetative establishment be done in accordance with the USDA SCS *Engineering Field Manual*, or with any state engineering standards that may be required as part of a state permit. This manual, or its state counterparts, can be obtained by contacting the state office of the USDA SCS. A list of state telephone numbers entitled "USDA Soil Conservation Service Directory of State Offices" is available in the rulemaking record.

In addition to requiring the establishment of a vegetative cover, § 744.125(c)(3) would require periodic follow-up maintenance to ensure that an adequate stand of vegetation is established, and that any rill and gully erosion is corrected in a timely manner. Such maintenance would be required for the first 3 years following planting. For the purpose of this rule, adequate vegetative cover would be a stand of vegetation which, in the judgment of a trained agronomist or person of similar knowledge, would protect the site from surface runoff and erosion.

c. *Other requirements.* Section 744.125(c)(4) and (c)(5) would also prohibit sludge land application to frozen, flooded, or snow-covered land, unless the mill could demonstrate that the application would not cause a pollutant discharge that would violate any requirements of the Clean Water Act (CWA). Any land application of sludge which would restrict the flow of a base flood, reduce the temporary water storage capacity of the floodplain, or pose a hazard to human health, wildlife, or land or water resources because of the presence of sludge in the runoff from the base flood would also be prohibited. These practices have been similarly prohibited in the Standards for the Disposal of Sewage Sludge (54 FR 5746, Feb. 6, 1989) (hereafter referred to as "municipal sewage sludge rule") under the CWA.

C. Monitoring, Sampling, and Analytical Protocols

Section 744.130 of the proposed rule identifies the procedures to be followed in the collection of sludge and application site soil samples and in their analysis to determine their TCDD/TCDF concentration.

The proposed rule would require sampling of the sludge, and also sampling of the soil at the land application site. Sludge sampling is needed to determine the TCDD/TCDF concentration in the sludge to calculate the amount of sludge which may be applied. Site sampling is needed to determine if the site contains prior TCDD/TCDF contamination, such as from a previous application of sludge. For example, if site testing was not required, a facility might apply sludge at a rate that would not, in itself, be enough to exceed the 10 ppt limit of TCDD/TCDF in the soil, only to find later that the site contains more than the allowable limit because the new application, combined with the concentration already present in the soil, exceeded 10 ppt.

The sludge sampling protocol is a composite core sampling approach. It would require that the pool, compound, impoundment, or other storage structure containing sludge intended for land application be overlaid by a grid dividing the area into 20 units of roughly equal size, and that a core sample be drawn from the center of each of those units. Each core sample would extend to the full depth of the storage area. Once taken, the 20 cores would be aggregated to produce 1 composite, homogenous sample. One analytical sample would be drawn from the composite sample, to determine the TCDD/TCDF concentration of the sludge. Sludge sampling would be required on a quarterly basis.

A similar protocol would be used in collecting soil samples from each proposed land application site prior to sludge spreading. The number of cores taken would depend upon the size of the site. If the entire site, defined as the contiguous land area on which a single mill or applier is proposing to apply paper mill sludge during a 1-year period, is less than or equal to 100 hectares in area, that entire site would be divided into 20 units of roughly equal size, and core samples would be drawn from each unit to a depth of 15 centimeters. Those samples would be aggregated into a single, homogenous composite sample, from which one analytical sample would be drawn to determine the TCDD/TCDF concentration in the soil at the site. If, on the other hand, the entire site exceeded 100 hectares in area, the site would be divided into areas of equal size not to exceed 100 hectares. A site totalling 150 hectares, for example, would be divided into two areas of 75 hectares each. Each such area would be divided into 20 units of equal size, and one core sample to a depth of 15 centimeters would be drawn from each unit. To determine the TCDD/TCDF concentration in the soil for the entire site, all of the cores drawn from the smaller areas within the site would be aggregated into a single, homogenous sample, from which one analytical sample would be drawn. Section 744.125(b) of the proposed rule requires soil sampling before each land application where the same site, or the same fields or other lands within a site, are used for repeated land application.

Section 744.130 provides that the analysis of sludge and soil samples be conducted in accordance with USEPA Method 1613 (56 FR 5090, "Water Programs; Guidelines Establishing Test Procedures for the Analysis of Pollutants", February 7, 1991). Method 1613 is a high resolution capillary column gas chromatography, high resolution mass spectrometry (HRGC/HRMS) method which permits the analysis of tetra- through octa-chlorinated dibenzodioxins and dibenzofurans using isotope dilution. Method 1613 has undergone extensive peer review and comment, and has been proposed as a standard for interim approval under section 304(h) of the CWA. It was designed to permit detection of CDDs/CDFs in waters, soils, sludges, and other matrices. Use of this method would permit the identification and quantification of TCDD/TCDF concentrations in terms of TEQs.

D. Recordkeeping and Reporting Requirements, Implementation, and Enforcement

The proposed rule would impose recordkeeping and notice requirements on anyone who generates paper mill sludge through processes involving chlorine bleaching, and who proposes to use, dispose of, or distribute or market such sludge for land application. Pulp and paper mills not using chlorine bleaching processes, or mills which use chlorine bleaching but which do not use, dispose of, or distribute or market their sludge for land application, would not be subject to these requirements.

Section 744.135 would require each generator of land-applied paper mill sludge to maintain records tracking the fate of all sludge utilized in land application, and to prepare and submit to the EPA an annual report summarizing that information. Each specific land application site would have to be identified by its full legal description, and the mill would be required to maintain in its records an original USGS 7.5-minute topographic map, or, if that is unavailable, a 15-minute map, showing the location and boundaries of the sludge land application site. For each site, the mill would be required to record the number of hectares in the site, the pre-application TCDD/TCDF concentration in the soil at the site, the total amount of sludge by dry weight applied to the site, the total amount of sludge by dry weight applied per hectare, the TCDD/TCDF concentration of the sludge applied to the site, the method of land application used to spread the sludge (with a statement indicating whether or not the sludge was incorporated into the soil by plowing, disking, harrowing, or some other method), and the last date when sludge was applied to that site. The mill would be required to maintain the original laboratory reports of all sludge and soil TCDD/TCDF testing, and to record the dates of and observations made during site inspections.

The records would have to be maintained at the sludge-generating facility for at least 3 years. Where more than one facility is controlled by a single owner or operator, the records for all of those facilities could be maintained at a single plant, provided that the location of the records is identified at each facility and that the recordkeeping location is normally occupied for 8 hours a day.

A notice requirement would also apply to mills engaged in sludge land application activities. Section 744.125(a) would require a generator to supply written notice to EPA 45 days prior to the land application of pulp and paper mill sludge to any site. The notice would have to contain the name and address of the mill, the distributor, and the applier; the TCDD/TCDF concentration of the sludge to be applied at the site; the pre-application TCDD/TCDF concentration of the soil at the site; one original USGS 7.5 minute series topographic map (or a 15-minute series map, if the 7.5 is unavailable) indicating the boundaries of the land application site or sites; and two statements, certifying that the mill has the legal right to apply sludge at the sites described in the notice, and that the information supplied in the notice is accurate and complete.

E. Other Requirements

The proposed rule contains some additional miscellaneous provisions addressing the distribution and marketing of sludge and enforcement and inspection issues.

Section 744.127 would define distribution and marketing as the commercial sale or give-away of paper mill sludge or of a product derived from such sludge, either in containers (e.g., bags) or in bulk form. This definition would include any original sale or give-away by the generator of the sludge, as well as any subsequent transaction performed by a distributor.

Section 744.127 of the proposed rule would specify that, with respect to paper mill sludge which is distributed or marketed, the generator of the sludge remains responsible for compliance with all of the procedures governing the land application of such sludge, including the soil concentration limits, and the management practice, recordkeeping, and notice requirements.

Sludge land application activities may be subject to regulation under other existing statutes. For example, generators and appliers must adhere to the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531 to 1544), and all mine reclamation activities must comply with the provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 to 1211, 1231 to 1328). In addition, the application of paper mill sludge to agricultural land may result in residues in crops that are subject to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.

IV. Unreasonable Risk Standard

To take action under TSCA section 6, EPA must find that there is a "reasonable basis to conclude" that activities involving a chemical substance or mixture present or will present an "unreasonable risk" of injury

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to human health or the environment. It is important to note at the outset that section 6 does not require a factual certainty, but only a "reasonable basis to conclude" that a risk is unreasonable. The legislative history of TSCA makes it quite clear that EPA may take regulatory action to prevent harm even thought there are uncertainties as to the threshold levels of risk. EPA's decisions, of necessity, are nearly always based on considerations of scientific theories, projections from available data, modelling using reasonable assumptions and extrapolations from limited data (TSCA House Report at 32, H. Rept. 1341, 94th Cong., 2d Sess., July 14, 1976).

Although TSCA uses unreasonable risk as its basic standard for deciding on appropriate action with respect to chemical substances, it does not define what is meant by unreasonable risk. The only guidance in the statute is provided in section 6(c), which establishes the requirement that to make an unreasonable risk determination under section 6(a), EPA must consider the following:

1. The effects of the chemical on health and the magnitude of its exposure to humans.

2. The effects of the chemical on the environment and the magnitude of its exposure to the environment.

3. The benefits of the chemical for various uses and the availability of substitutes.

4. The reasonably ascertainable consequences of regulation, after consideration of the effect on the national economy, small businesses, technological innovation, the environment, and public health.

Section 6(c) offers no further guidance to decisionmakers. In particular, it does not discuss how each of these factors are to be weighed in relationship to each other.

Consequently, guidance on implementation of the unreasonable risk standard in regulatory decisionmaking requires consideration of the legislative history. The House Report on TSCA (H. Rept. 1341, 94th Cong., 2nd Sess. at 13–15, 32) provides the most useful pertinent explanation. Consistent with the reluctance of Congress to define unreasonable risk, the House Report states that the standard cannot be defined in precise terms but, instead, requires exercise of judgment by the decisionmaker. Also consistent with the four considerations outlined in section 6(c), the House Report describes the finding of unreasonable risk as involving a balancing of the probability that harm will occur, and the magnitude and severity of that harm, against the adverse effects (social and economic) on society of proposed Agency action to reduce the harm. In other words, unreasonable risk involves a weighing of the risks to be reduced by Agency action and the consequences of the action. With respect to risk, the House Report states that: "...risk is measured not solely by the probability of harm, but instead includes elements both of probability of harm and severity of harm and those elements may vary in relation to each other."

This standard becomes highly judgmental in the case of health and environmental risks covered by EPA where, as a practical matter, much of the scientific evidence contains a high degree of uncertainty and risk is characterized in terms of probability. Because of the significant ranges of uncertainty in these probability estimates, there are generally no definitive answers as to what the risk may be. Therefore, in evaluating risk, EPA considers the various relationships among such factors as the strength of the evidence on toxicity (usually in animal tests), the effects that are predicted to occur (e.g. death vs. reversible effects), and extrapolations (using various modelling techniques) as to the numbers of individuals exposed and the levels of exposure.

It is important, moreover, to distinguish between risk and unreasonable risk. The finding of unreasonable risk cannot be made considering risk alone. As the House Report states: "***the implementation of the [unreasonable risk] standard will of necessity vary depending on the specific regulatory authority which the Administrator seeks to exercise." The probability and severity of risk (with all the associated uncertainties) must be weighed against the impact of any action EPA proposes to take. The greater the probability or the more severe the potential risk shown by the evidence, the more restrictive could be EPA action. Conversely, evidence of lesser probability or less severe harm would justify more measured responses. Evidence on risk may justify, for example, minimal costs such as a labeling requirement even if the evidence would not justify the costs of more extreme measures.

Using this analysis, EPA has concluded that the continued uncontrolled land application of paper mill sludge containing TCDD/TCDF presents an unreasonable risk of injury to human health and the environment. The factors leading to this conclusion involve the high toxicity of TCDD/TCDF, the extent of wildlife exposure (as well as some consideration for human exposure), and the relatively low cost of imposing the least burdensome controls which should reduce the risk to reasonable levels. These individual factors are discussed in more detail in subsequent units of this preamble. Unit V of this preamble contains EPA's risk assessments, including the types of effects predicted by animal studies, the strength of the evidence on toxicity, and the levels of exposure extrapolated from modelling. Important assumptions used in the assessment methodology and briefly described in Unit V of this preamble are set out in detail in the integrated risk assessment and the revisions to the integrated assessment, which are available in the rulemaking record. Unit VI of this preamble discusses EPA's analysis of the social and economic consequences of this rule In Unit VII of this preamble, EPA discusses the balancing of the considerations raised in Units V and VI of this preamble to describe its finding of unreasonable risk.

V. Risk Assessment Summary

A. Introduction

This unit describes EPA's assessment of risks from the land application of paper mill sludge, and from alternative disposal methods. The assessment describes methods, results, and associated uncertainties. Unit B of this preamble describes the assessment of risks to wildlife, and Unit C of this preamble describes the assessment of human health risks. At the end of each unit is a discussion of conclusions that are relevant to the unreasonable risk finding in Unit VII of this preamble. This risk assessment evaluates existing data on land application, including application to agricultural and silvicultural lands, as well as mine reclamation. Landfilling and surface impounding are also evaluated. Incineration is qualitatively assessed. The applicable exposure pathways, including runoff to surface water, migration to ground water, and contamination of soil and air, are examined for each practice.

The integrated risk assessment served as the basis for this proposed rule. During development of this proposed rule, EPA revised the integrated assessment, particularly the human health assessment and the discussion of other sludge disposal practices. In general, the exposure and risk assessment models were not changed, but less conservative values were used for some of the key parameters. Summary discussions of the revisions follow.

The revisions to the integrated assessment estimate risks from current management practices, then assess risks under several options EPA considered for regulating land application. Details of risk assessment methodologies, results, and uncertainties are available in the integrated assessment and in the wildlife and human risk assessment revisions performed for this rule. Copies of all three are in the rulemaking record.

The revised risk assessments estimate exposures to measured TCDD and TCDF in sludge from the 104–mill study only, since these congeners account for most of the CDD/CDF toxicity in the sludge. Also, since TCDF is less toxic than TCDD, an estimation of total toxicity was necessary. A means of comparing relative toxicities of TCDD/TCDF to human health, referred to as the Toxic Equivalency Factor (TEF) system, has been accepted by members of the North Atlantic Treaty Organization (NATO) and by EPA. Under this system, TCDD, the most toxic congener, is assigned a value of 1. All other congeners are assigned fractional values, representing their lower relative toxicities. The concentration of any particular form or mixture of CDDs/CDFs can therefore be expressed in terms of an equivalent concentration of TCDD. The human health TEF for TCDF is 0.1. Therefore, when exposures involving both TCDD and TCDF are discussed throughout this proposed rule, the values are expressed as Toxic Equivalents (TEQs) to TCDD, comprising the sum of the identified TCDD concentration and 0.1 times the TCDF concentration.

B. Wildlife Risk Assessment

1. *Introduction.* A summary of the wildlife risk assessment as revised from the integrated assessment is presented below. It begins with a synopsis of toxicity information used in the assessment, and continues with a summary of relevant exposure analyses. EPA used two methods to assess environmental exposures and risks to terrestrial wildlife from land application of paper mill sludge: (1) Laboratory-generated pharmacokinetic models using environmental parameters reported for several states, and (2) evaluation of field monitoring data from a paper mill sludge land application program in Wisconsin.

Risks to selected terrestrial wildlife species from land application are discussed, as are risks from runoff to terrestrial and aquatic wildlife in general. Risks from landfills, surface impoundments, and incineration are then analyzed, analytical uncertainties are discussed, and general conclusions are presented.

2. *Toxicity values.* In its risk assessment, EPA used available toxicity values from laboratory animal studies as "benchmark" toxicity values. Such benchmarks serve as toxic effect standards, to which estimated or measured wildlife exposure levels are compared to estimate risks. Risk assessors prefer to use no observable adverse effect levels (NOAELs) for the most sensitive species as benchmarks, since they represent levels below which no adverse effects to the most sensitive, and thus any other species, are expected. However, some benchmark toxicity values used in this assessment are laboratory lowest observable adverse effect levels (LOAELs). This is because, for a number of species, there are no laboratory NOAELs determined from studies involving TCDD/TCDF. Use of LOAELs rather than NOAELs introduces greater uncertainty into estimating risks, because the LOAELs themselves are effect levels, with unquantified gaps existing between these lowest observed effect levels and the presumed no effect levels.

In the terrestrial scenarios, the chronic rat dietary LOAEL of 10 ng/kg/day TCDD for decreased fertility and neonatal survival was used for small mammalian species, i.e., those less than 1 kg (2.2 lbs), such as shrews and moles. For larger mammals, such as opossum and skunk, the dietary toxicity LOAEL value of 1.7 ng/kg/day TCDD for increased abortions in rhesus monkeys was considered more appropriate.

For birds, different toxicity values were used for year-round resident species, migratory species, and embryos. A NOAEL toxicity value of 100 ng/kg/day (TCDD) was used from a 21–day study with white leghorn chicks, and was adjusted for the appropriate duration of exposure for species that are year-round residents (6 ng/kg/day TCDD) and for migratory species that are present in the treated areas for only 6 months (11 ng/kg/day TCDD). A LOAEL toxicity value of 65 ppt (TCDD), as determined by direct injection of TCDD into chicken eggs, was used for avian embryos. Fish toxicity data for the aquatic risk assessment were based on a 0.038 pg/L chronic estimate. That estimate was derived from a 28–day exposure/28–day depuration study on rainbow trout yielding 45 percent mortality at a 38 pg/L lowest observable adverse effect concentration (LOAEC). This value was adjusted by three factors of 10 to account for differences in species sensitivity, variations in acute and chronic toxicities, and differences in laboratory to field toxic effects. A 3 ng/kg (3000 pg/kg) chronic threshold estimate was used for wildlife that consume fish.

For most toxicity values in the wildlife assessment, EPA relied upon these animal experiments. Due to the lack of definitive wildlife data regarding TCDF chronic toxicity, however, EPA used as the best value available the human health TEF for 2,3,7,8-TCDF of 0.1. The use of data extrapolated from human studies to wildlife appeared reasonable, since numerous human cancer studies are based on extrapolations of laboratory animal data to humans.

The key benchmark toxicity values used in the wildlife assessment are summarized in the following Table 1:

TABLE 1.—BENCHMARK TOXICITY VALUES

Species	Endpoint(effects)	Toxicity value
Terrestrial:		
Mammals:		
Rat	LOAEL(F1 and F2 decreased fertility)	10 ng/kg/day
Rhesus monkey	LOAEL(abortions)	1.7 ng/kg/day
Birds:		
Leghorn chicken	NOAEL	100 ng/kg/day
Migratory adults(Chronic)	NOAEL Estimate	11 ng/kg/day
Non-migratory adults(Chronic)	NOAEL Estimate	6 ng/kg/day
Chicken(eggs)	LOAEL(cardiovascular malformations)	65 ng/kg
Aquatic:		
Fish:		
Rainbow trout	LOAEC(45% mortality)	38 pg/L

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TABLE 1.—BENCHMARK TOXICITY VALUES—Continued

Species	Endpoint(effects)	Toxicity value
Chronic[1]	Estimate	0.038 pg/L
Piscivorous Wildlife(chronic threshold)	Estimate	3 ng/kg

[1] EPA estimates.

These benchmark toxicity values were selected while considering toxicological and metabolic differences in sensitivity among: (1) Wildlife groups (e.g., mammals versus birds versus fish); (2) life stages (e.g., adult birds versus embryos); and (3) animal size (e.g., small versus large mammals). In addition to addressing these differences in sensitivity, the use of several toxicity values also suggested some range of risks. There are many more studies on different species within these animal groups. However, EPA selected what it believed to be the most sensitive test result for each of the relevant groups in order to support a decision that would be protective of the environment.

3. *Exposure modelling.* The terrestrial and aquatic wildlife risk assessments were largely based on pharmacokinetic models. The models were used to estimate TCDD/TCDF levels in various biota, as well as the risks to terrestrial birds and mammals from dietary exposures of contaminated earthworms and insects, exposures to fish from surface waters, and exposures to birds and mammals feeding on benthic organisms and fish. Risk assessments were made for several native species representative of wildlife found in different generic habitats, including silvicultural, agricultural, and mine reclamation sites, as well as nearby aquatic areas. Within each land application scenario, exposure levels were estimated for several states. Assessments of potential risks were limited to only one route of exposure per species, because the toxicity data for other routes were unavailable.

Each exposure estimate begins with a projection of soil concentration. The estimate of soil concentration takes into account a number of factors including the frequency and rate of application of sludge, the concentration of TCDD/TCDF in the sludge, and the extent of soil incorporation.

To calculate individual animal exposure, the model accounts for the rate at which prey bioconcentrates TCDD from its environment, the amount of prey ingested by the animal daily, the absorption rate of TCDD by the animal from its diet, the body weight of the animal, the fraction of the animals diet that consists of TCDD bearing prey, and the fraction of the animal's diet that consists of soil.

The parameters used in the land application models were selected to bound the range of wildlife exposures that may be associated with land application practices. EPA generally used three values for each parameter: a high, a low, and a best estimate thought to represent typical exposures. The assessment focused on the best estimate.

Wherever possible, best estimate analyses used mean values and assumed good management practices, such as installing control structures to prevent runoff, and uniform vegetative cover. In comparison, assumptions used in the models for assessments of low and high (worst case) exposures were compilations of all exposure assumption values from either the low range or the high range as appropriate, resulting in an estimate of the lowest of risks or the highest of risks. The low and high risk estimates are discussed at length in the wildlife risk assessment.

Some of the key parameters used in the wildlife risk assessment and their best estimate assumptions are provided in the following Table 2. A complete list of these assumptions, as well as the low and high values, can be found in the wildlife risk assessment documents in the rulemaking record. Table 2 reads as follows:

TABLE 2.—KEY PARAMETERS AND ASSUMPTIONS

Parameter	Assumption
Earthworm Bioaccumulation Factor.	3.5
Insect Bioaccumulation Factor.	1
Fish Bioaccumulation Factor (from sediment).	0.1
Bird Whole-body Elimination Rate.	$T_{1/2}$ = 21 days
Percent Transfer of TCDD/TCDF, Hen/Egg.	4.8
Mix of Food Sources	Species Specific
Amount of TCDD/TCDF Absorbed from Diet.	75%

4. *Risk determination.* The potential for adverse effects on each wildlife species is expressed as a risk quotient (RQ), a ratio comparing the estimated TCDD/TCDF exposure of a typical species member in a particular environment with the benchmark toxicity value selected for that species, as listed in Table 1. As this ratio increases, the likelihood of adverse effects increases. Thus, if estimates show a typical shrew to be exposed to 52 ng/kg/day in its diet, EPA would estimate an RQ value of 5.2 for the shrew, employing the rat dietary LOAEL of 10 ng/kg/day for small mammals. Note that the discussion of RQ pertains to a "typical" individual; assessment data are insufficient to allow discussion of risk to populations. EPA based some of the RQs within the risk assessment on LOAELs, since laboratory-derived NOAELs often did not exist, and wildlife toxicity data were limited for many species. Note that RQ values based on LOAELs cannot be directly compared to RQs based on NOAELs. If the RQ for a species is based on a NOAEL, an RQ of 1 means no likely adverse effect for a member of that species. However, if the RQ is based on a LOAEL, which indicates an observed adverse effect, an RQ of 1 means there still might be an adverse effect for that species' member.

For this risk assessment EPA determined soil concentrations that would produce wildlife exposures corresponding to RQ values of 1 for the most exposed avian and mammalian species, which for this evaluation were the woodcock embryo and the shrew. In both cases, the RQs were based on LOAELs. Without accounting for uncertainties, the soil concentration resulting in an RQ of 1 is 3 ppt for the woodcock embryo and 4 ppt for the shrew.

a. *Risks to terrestrial wildlife.* EPA used two methods to assess potential environmental risks to terrestrial wildlife posed by land application: (1) The laboratory-generated pharmacokinetic models discussed above; and (2) field monitoring data from a paper mill sludge land application program in Wisconsin, wherein TCDD concentrations in soils and in animals, as well as in eggs of select bird species, were measured. The risk levels determined in the pharmacokinetic modelling are

discussed below, followed by a discussion of the field data.

(1) *Pharmacokinetic modelling.* Using the modelling method, land application practices (type of application, application rate, area receiving sludge, and depth of incorporation) were first identified for known land application areas. EPA estimated expected soil concentrations, averaged over 1 year, from measured TCDD/TCDF concentrations in sludge in the 104–mill study, and proceeded to model for TCDD (or TCDD/TCDF) uptake by various species. Exposures were then compared to the appropriate benchmark toxicity values for those species.

(a) *Silvicultural land application.* When sludge is applied as a soil amendment on silvicultural sites, it is generally not incorporated into soil. In the absence of this incorporation, the soil surface exposure levels are essentially equivalent to the sludge levels.

RQs were estimated for sites where sludge application to silvicultural lands were reported in the 104–mill study. Differences in potential risks from land application as modelled were primarily due to the differences in TCDD/TCDF levels measured in sludge in the 104–mill study, and to different application rates at different sites. Risks in silvicultural areas were highest for woodcock embryos, because woodcocks feed primarily on earthworms, which were estimated to readily bioaccumulate TCDD/TCDF.

The range of RQs for the best estimate TCDD TEQ exposures were greater than 1 for many species at various locales, although less than 1 for some species at others. The estimated RQs of greatest concern included: 36 for adult woodcocks and 65 for embryos; 57 for shrews; 23 for bats; 19 for moles; and 11 for robin embryos. The TCDD TEQ RQ values for the best estimate analysis ranged down to an RQ of 0.01 for avian embryos at several locations.

(b) *Mine reclamation.* Some pulp and paper mills use their sludges in reclaiming lands disturbed by mining operations. Best estimate RQs greater than 1 were calculated for all but one terrestrial wildlife species assessed for this land application practice. The most exposed species were the small mammals and birds. Calculated RQs included: 32 to 56 for the shrew; 31 for woodcock embryos; 13 to 22 for the bat; 11 to 19 for the mole; 5.1 to 9.2 for robin embryos; and 1.4 to 2.3 for the skunk.

(c) *Agricultural land application.* Some pulp and paper mills apply their sludges to agricultural fields as soil amendments. The sludge is typically incorporated into the soil to a depth of 15 cm, as discussed in EPA's Integrated Risk Assessment.

RQs greater than 1 were estimated for 3 out of 10 terrestrial wildlife groups. The most exposed species were the shrew (RQ = 3.5), the bat (RQ = 1.4), and the mole (RQ = 1.2). However, the sludge and soil TCDD levels were very low at some sites considered in the evaluation, and the associated RQ values did not exceed 1 for any terrestrial species at those locations.

(d) *Accounting for uncertainty in risk estimates based on modelling studies.* As noted above, EPA estimated soil concentration levels equivalent to laboratory LOAELs for the most sensitive species—the woodcock embryo and the shrew, 3 ppt and 4 ppt respectively. However, because of uncertainties in both the pharmacokinetic model and the benchmark toxicity values, 3 ppt and 4 ppt may be either overestimates or underestimates. For decision making purposes, EPA believes it is appropriate to discuss not only the soil concentration that is most likely to be equivalent to laboratory LOAELs, but also the ranges of soil concentrations within which the actual equivalent to the LOAEL or NOAEL might reasonably be expected to occur.

EPA addressed uncertainty in estimating the toxicity of TCDD/TCDF to wildlife by applying uncertainty factors. For each major source of uncertainty EPA applied a factor of 10. Since the benchmark toxicity values used in this analysis are based on LOAELs derived from laboratory studies, EPA applied two factors of 10 to account for the uncertainties of using LOAELs as opposed to NOAELs, and of considering laboratory species to be as sensitive as wildlife.

Uncertainty in the pharmacokinetic model for estimating exposure was addressed by running the model with high, most likely (best estimate), and low values for the key parameters. The Agency took care to ensure that the high and low estimates were based on reasonable rather than extreme variations in the key parameters. For the woodcock embryo, the TCDD/TCDF levels in soil equivalent to the LOAEL were estimated to be 130, 3, and 0.5 ppt for low, best estimate, and high exposure assumptions, respectively. For the shrew, soil concentrations equivalent to the LOAEL were estimated to be 60, 4, and 1.6 ppt TCDD, respectively.

After accounting for uncertainty in both the toxicity and the exposure estimates, EPA determined that the range of soil levels at which adverse effects might occur in the woodcock extends from a high of 130 ppt to a low of 0.03 ppt, and the range for the shrew extends from 60 ppt to 0.04 ppt. The high range values (130 ppt for the woodcock and 60 ppt for the shrew) were estimated by using the lowest exposure assumptions from the pharmacokinetic model, without any uncertainty factor applied for toxicity estimates. The low range soil levels (0.03 ppt for the woodcock and 0.04 ppt for the shrew) were derived by adjusting the most likely exposure scenario from the pharmacokinetic model by two factors of 10. These factors were used to account for uncertainty due to use of LOAELs rather than NOAELS, and for reliance upon laboratory data as opposed to field observations.

(2) *Monitoring data analysis of terrestrial wildlife risks.* Risks to terrestrial wildlife were also assessed using the results of field monitoring of paper mill sludge applied to a Wisconsin forest plantation. The results of this study are presented here for comparison with the pharmacokinetic modelling results.

During the Wisconsin field study, TCDD/TCDF levels were measured in sludge, soil, earthworms, insects, deer mice, and several species of female birds and their eggs. Population studies were made on earthworms, deer mice, eastern bluebirds, and tree swallows. The initial results from the field study were reported by S.G. Martin et al. in "Effects of Paper Industry Sludge Containing Dioxin on Wildlife in Red Pine Plantations" (1987). TCDD in the study area's soil was measured at 11 ppt. Earthworm, deer mouse, and insectivorous bird populations were generally larger in the sludge-spread areas than in other areas. Furthermore, litter invertebrate diversity and density were unaffected by sludge, although soil invertebrate diversity and density were reduced.

No chemically-induced conditions were found during gross and histological examinations of a total of 91 animals. Species examined included deer mice and several birds. Adult robins and bluebirds in sludge-treated areas had elevated levels of liver mixed-function metabolizing enzymes, which suggest exposure to some toxic substance or substances. The report concluded that "the risk of harm to wildlife appears to be extremely low".

A second report, "Evaluation of the Effects of Dioxincontaminated Sludge on Wild Birds" by D.A. Thiel et al. (1988), and its summary, concluded that there were no adverse effects on either reproduction or growth in eastern bluebirds and tree swallows from land

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application of paper mill sludge. However, the summary did not discuss the TCDD levels that had been measured in a number of American robin eggs. In the text of the report, the authors expressed concern for the 140 ppt (mean) TCDD level found in a composite sample of six American robin eggs. At that time the authors concluded that the robin egg sample may have been contaminated, because the TCDD/TCDF levels were so high and the TCDD:TCDF ratio did not match results from the eggs of other bird species. The authors used a LOAEL toxicity value of 10,000 ppt for eastern bluebirds in that study to assess risks to avian embryos.

In an unpublished report entitled "Dioxin Analyses Related to the NEKOOSA Biogreen Program", dated November 1, 1989 and prepared for the Dioxin Work Group, Thiel summarized the monitoring data from all of the Wisconsin field studies, including new data on TCDD/TCDF levels in robin eggs. Thiel concluded that the sludge land application program may be exposing some robin eggs to as much as 140 ppt TCDD. The author assessed potential risks to all bird eggs, using a new LOAEL toxicity value of 1,000 ppt in eggs derived from a ring-necked pheasant egg injection study. An EPA assessment of potential risks to bird eggs indicated that one out of nine sets of robin eggs was within a factor of 10 of the 1,000 ppt egg LOAEL. Seven out of nine sets of robin eggs, four out of sixteen eastern bluebird eggs, and two out of four tree swallow eggs were within a factor of 100 of that LOAEL.

EPA believes the Wisconsin field population studies contain major limitations, which allow considerable uncertainty in study results. Bird and mammalian species in the sludge-treated areas that were predicted to be the most exposed, such as shrews, woodcocks, or other animals that normally feed heavily on the most contaminated food source (earthworms), were not monitored. Some monitoring of robin nests was conducted, and eggs were never found in newly-built robin nests. Thiel and Martin concluded that predation of robin nests was too severe for population surveys to be successful.

It is neither unexpected nor inconsistent with the pharmacokinetic model that results of the population surveys on deer mice, as well as on bluebirds and swallows, did not indicate any adverse effects. The model used by EPA predicts few effects for these species at the exposure levels found in Wisconsin. Their diets are such that they are unlikely to ingest as much TCDD/TCDF as woodcocks, robins, or other species that feed heavily on prey such as earthworms, which bioaccumulate TCDD/TCDF to the highest levels. The salient fact is that toxicity data on TCDD/TCDF are sparse for wildlife species. Therefore, there are no means for accurately predicting which local species are the most TCDD sensitive and should be monitored for adverse effects.

A further limitation of the Wisconsin study involved the sample sizes collected for analysis. EPA believes these population samples were too small to accommodate the assessment methodology. Therefore, the monitoring data lacked adequate sensitivity to fully assess risks.

The land application of sludge in the study area also introduced overall limitations to the analysis. Land application dramatically altered soil properties such as moisture content, density, and porosity, so that study area soils were no longer comparable to those in control plots. Limitations in the comparability of survey and modelling results were due to the environmental conditions prevailing in the survey area from one year to the next. For example, greater availability of earthworms in a study year due to increased rainfall could have caused robins to feed on more earthworms and thus ingest more TCDD/TCDF. Since the pharmacokinetic model limited the robin diet to 2 percent earthworms, the model might have underestimated exposures from a soil concentration of 11 ppt TCDD than actual field uptake would indicate.

b. *Risks to aquatic organisms and wildlife feeding on aquatic organisms.* Risks to aquatic wildlife were also addressed through modelling for all best estimate and worst-case land application scenarios. Sediments adjacent to, and downstream from, land application sites are predicted to be contaminated by TCDD/TCDF. Under current sludge handling practices, TCDD/TCDF contaminated sludges/soils can be transported to the aquatic environment via runoff from land application sites.

The extent of downstream contamination of a surface water depends on many factors, including levels of TCDD/TCDF in the runoff, sediment carrying rates, and the amount of runoff entering the aquatic environment. The amount of sludge/soil runoff entering surface water similarly depends on numerous parameters, including the amount and intensity of precipitation, the inherent erodibility of the soil/sludge matrix, the soil's existing moistness and hydrologic properties, the length and degree of slope, the use of mulch or vegetative cover, the employment of vegetative management practices, and the distance to surface water. All but three of these parameters--precipitation, soil moisture/hydrologic properties, and soil erodibility--can be controlled using conventional soil conservation and agronomic practices, and by ensuring that sludge is not applied close to surface waters. For purposes of this analysis, the hydrologic, geologic, and climatic conditions, siting parameters, and soil conservation and agronomic practices in the sludge management area were assumed to be the same as in the surrounding drainage area.

TCDD/TCDF concentrations in whole body fish, surface water, and benthic organisms were estimated from projected sediment concentrations. However, because studies on benthic organisms were unavailable, animal and water concentration data from studies of typical and MEI human exposures were used to assess risks to fish and wildlife. In the runoff model providing values for that assessment, TCDD/TCDF concentrations in sediments were a function of particulate deposition. The concentrations in fish and the surface water were then determined directly from sediment levels. Water column concentrations were estimated from the sediment using partition coefficients for TCDD and TCDF.

A bioaccumulation factor (BAF) of 3.5 times the sediment contamination levels calculated for the human health risk assessment was used for "best estimates" of potential risks to bird and mammalian species feeding on benthic organisms accumulating TCDD/TCDF. This value is the same average BAF assumed for earthworms in contaminated soils. It was selected because earthworm exposures to soil are similar to benthic species' exposures to sediments, which assumes that TCDD/TCDF bioaccumulation levels in benthic organisms in sediments will at least equal TCDD/TCDF uptake levels from soil by earthworms.

Best estimate and high risk estimates for TCDD/TCDF bioaccumulation from sediments to fish were 0.1 and 10 times sediment levels, respectively. The model did not consider TCDD/TCDF bioconcentration in fish from water, bioaccumulation via the food web (especially benthic prey), or any additive component of all potential exposure routes.

The RQ for fish was determined using the surface water concentrations for TCDD/TCDF divided by the total TCDD TEQ estimate of 0.038 pg/L, as noted in

Table 1. RQs for birds and mammals feeding on benthos and fish were determined using body burden concentrations in both benthos and fish divided by the chronic threshold estimate of 3 ng/kg, as noted in the same table.

Assessments of risks in the aquatic environment were limited only to those for fish, wildlife consuming benthic organisms, and wildlife consuming fish, due to the lack of data for other (and combined) exposures.

(1) *Risks to fish.* The RQs for fish and aquatic wildlife were comparatively low for all land application "best estimates." However, these results should be evaluated with some caution because the study used to determine TCDD toxicity to fish was based on relatively long exposures (28 days). There have been some laboratory tests in which lethality has been observed several days after TCDD exposures as short as 6 hours, although the TCDD/TCDF concentrations involved were higher. It is thus possible that the toxicity factor for determining the fish RQ could be a smaller number than the value used in this assessment. The RQs, then, would be higher. While this risk assessment indicated very low risk to fish, therefore, it does not account for the fact that death could occur in some fish even though they were exposed for only a few hours while passing through a contaminated segment of a surface water.

(2) *Risks to wildlife feeding on benthic organisms.* Bioaccumulation of TCDD/TCDF by benthic organisms from contaminated sediments is a likely source of TCDD/TCDF in the aquatic food web. Because no benthic organism best estimate RQ exceeded 1, however, EPA has determined that feeding on benthos in TCDD/TCDFcontaminated streams poses low, if any, risks to wildlife.

(3) *Risks to wildlife feeding on fish.* In assessing the risks to wildlife from consuming contaminated fish, the uptake of TCDD/TCDF by fish was assumed to occur directly from sediments. EPA used BAFs estimated from fish/sediment studies, and the same TCDD/TCDF sediment concentrations as in the benthic scenario. Best estimate RQs for land application were all less than 1 for wildlife that consume fish. Therefore, it appears that land application poses minimal risks to fish-eating mammals and birds.

c. *Wildlife risks from landfills and surface impoundments.* A number of pulp and paper mills reported sludge disposal in landfills, some of which were municipal landfills. The risk estimates for landfilling in this assessment, however, were based on scenarios involving disposal in typical paper mill sludge landfills. Estimates for these facilities have been generalized to describe exposures and risks from disposal in municipal landfills.

Some pulp and paper mills identified in the 104-mill study store or dispose of sludge in surface impoundments. "Surface impoundments" are defined as facilities in which sludge is deposited on land without a cover layer of soil. For this analysis, it was assumed that the sludge contained in such facilities had a higher moisture content than the sludge deposited in landfills, at least while the facilities were active.

Both a best estimate and a worst-case assessment were made for landfill/surface impoundment disposal of sludge. The best estimate scenario for landfills assumed good management practices. In this assessment, the best estimate scenario assumed adequate runoff controls and a final soil cover. The best estimate case for surface impoundments used good management practices and considered surface impoundments surrounded by earthen embankments to prevent runoff into adjacent streams.

The distribution of TCDD/TCDF concentrations in sludge for mills that use landfills was determined. The mean concentrations reported were 62.1 ppt TCDD and 504.6 ppt TCDF. Mean TCDD/TCDF concentrations were used for the best estimate of risks to terrestrial species in landfill areas in the assessment. Worst case risks were estimated using 90th percentile exposure levels.

The best estimate risks to terrestrial wildlife from landfills appeared to be minimal. Sludge provides little, if any, nutritional value to terrestrial species other than microbes, earthworms, and some insects. Frequent disposal of additional sludge and final covering with soil minimizes the introduction and growth of resident populations of soil organisms. Risks to wildlife at closed landfills would be reduced to the degree that sludges are covered with soil.

For surface impoundments, the good management scenario was assumed to yield no runoff and thus no risks to aquatic organisms in adjacent streams.

The assumed frequency and duration of use of the surface impoundments by foraging wildlife were not different for the best estimate and the worst-case scenarios. Consequently, in the assessment of risks from good and poor management practices, no differences in potential exposure levels to terrestrial wildlife feeding in the surface impoundments were determined.

The best estimate risk quotients for landfills/surface impoundments were all less than 1 for wildlife that consume fish. Landfills and surface impoundments that use good management practices posed no risks because it was assumed that runoff was controlled from these sites. Therefore, it appears that best estimate risks to fish-eating mammals and birds from these paper mill sludge management practices are minimal. The risks to wildlife are not unlike estimates for land application scenarios, except that standing water in surface impoundments is also likely to attract migratory or resident waterfowl. Species such as herons and ducks, which might be found feeding at the surface impoundments, would likely be at risk.

Moist sludge/soil and accumulation of standing water in surface impoundments provide suitable habitats for the growth of populations of soil invertebrates, such as earthworms, and possibly some aquatic species, such as tadpoles and some insects. Bioaccumulation of TCDD/TCDF in the food web could present risks to mammalian and avian species feeding in the area. A qualitative analysis of the risks to visiting birds from feeding at surface impoundments indicated that the level of risk would be dependent on the concentrations of TCDD and TCDF present in the sludge.

Potential risks to fish were estimated to be low (RQ less than 1) for all best estimate landfill and surface impoundment scenarios.

d. *Wildlife risks from incineration.* Insufficient data were available to determine the concentrations of TCDD/TCDF in ambient air or in ash that would result from pulp and paper mill incinerators/combustors. It is currently unknown whether additional TCDD/TCDF might be formed during combustion from the available precursors, and whether the combustion process is efficient enough to destroy existing TCDD/TCDF in sludge. Absence of data on TCDD/TCDF levels in stack emissions and ash, and lack of appropriate modelling data on particulate size distribution preclude the use of complicated models to estimate downwind deposition of TCDD/TCDF on soil, plants, and in aquatic habitats. Therefore, no definitive environmental risk assessment for potential effects on wildlife was made for this disposal method. Based on the economic analysis in Unit VI of this preamble, however, EPA expects that, because of its expense, incineration will not be used to any greater extent than currently as an alternative to land application.

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5. *Analytical uncertainties.* EPA solicits comment on the analytical uncertainties in this wildlife risk assessment. It is important to recognize that certain basic assumptions made in the risk assessment were critical to developing the structure of the proposed rule, and that changes to that rule may occur as a result of comments on those assumptions received from the public and the peer review. Important assumptions include, among others: nondegradation of TCDD/TCDF within land-applied paper mill sludge; the selection of particular uptake and BAFs; basing risk projections on laboratory studies with direct injection of TCDD into avian eggs, as opposed to field observations; and presuming that runoff TCDD/TCDF concentration at the point of runoff discharge into surface waters directly determines impacts on fish and humans.

a. *Non-degradation of TCDD/TCDF.* EPA has no reliable data concerning the rate of environmental degradation of TCDD/TCDF. To assure appropriate protection of the environment, therefore, EPA assumed no degradation would occur. Based on studies of other organic compounds, some scientists believe that TCDD/TCDF may decay in soil. Half-lives are estimated from 5 to 20 years. It is unclear whether decay would take place in any of the scenarios in this assessment, and if so, how rapidly. If the TCDD and/or the TCDF do degrade, dietary uptake would be reduced and the RQs in the current assessment could be overestimates.

b. *Selection of uptake and bioaccumulation factors.* In the risk assessment EPA selected a number of factors that reflect differences in dietary uptake and bioaccumulation in each of the species under study. For each exposure pathway modelled, EPA also used a variety of different factors and assumptions, which varied considerably for each representative species. If each factor deviates by a small amount, such as two or three times, in one modelling process as compared to another, multiplication alone could result in large differences in the calculated RQ. EPA is interested in comments on the choice of factors and assumptions within the wildlife assessment.

However, it may not matter whether there are small discrepancies in any particular factors, given the overall range of uncertainty in the risk assessment. Risk assessments based on limited data are not very precise, and can only allow for broad parameters of inquiry. EPA acknowledges that in any assessment of risk, there are numerous variables that cannot be verified by direct observation. Errors in these factors can easily cancel each other out. Assumptions and inferences are made in all assessments, and any assessment has a great range of uncertainty. EPA endeavors to examine a reasonable range of factors and arrive at broad conclusions for developing policy that is protective of the environment. As in the case of this risk assessment, EPA evaluates assessment parameters and, as a matter of policy, is conservative in judgments about risk.

Wherever possible in this assessment, EPA used high, low, and "best estimates" for each uptake and bioaccumulation factor. EPA believes this allowed the Agency to develop an appropriate range of risk estimates.

Finally, field monitoring data of levels in soil and levels found in bird embryos compare favorably with EPA's pharmacokinetic modelling. Field data showed measured TCDD levels of 11 ppt in soil, and of 140 ppt TCDD in a composite of six robin eggs. EPA's modelling predicted that a soil concentration of 3 ppt would result in having 65 ppt in a woodcock egg (the LOAEL value from the chicken egg study). The ratio of field measurements of 11 ppt in the soil compared to 140 ppt in the egg is approximately the same as that from modelling of 3 ppt in soil to 65 ppt in eggs, and is well within the range of scientific uncertainty.

c. *Reliance on laboratory studies.* Toxicity data for TCDD/TCDF used in the pharmacokinetic model came from studies on laboratory and domestic species rather than on native wildlife. It was assumed for purposes of the assessment that wild species are as sensitive as laboratory animals. There are some indications that this is appropriate, because toxicity values are very close for some wildlife species and the more sensitive laboratory animals. For example, acute oral LD_{50} values for wild mink (4.3 μg/kg) and bobwhite quail (15 μg/kg) are close to those for the laboratory guinea pig (0.6 to 2.5 μg/kg) and the domestic chicken (25 to 50 μg/kg). However, controversy exists over whether effects observed under laboratory conditions would be significant or even occur under field conditions.

In general, some scientists prefer field studies over modelling based on laboratory studies, because the field studies involve interaction between the entire ecosystem and the chemical being tested, and are more realistic because they involve actual populations. Conversely, some scientists prefer using models based on laboratory studies to predict effects, because they allow greater control over variables, and they more reliably identify adverse effects than field study observations. In the case of TCDD laboratory studies, however, great variability in parameter values were found for different species. This is an important limiting factor on the predictive value of modelling.

Considerable controversy has arisen over the bird embryo toxicity value. The embryo benchmark toxicity value of 65 ppt in the egg was determined by injecting chicken eggs. This test method is not reflective of normal routes of exposure. Also, blind sampling and clear dose-response relationships were not evident in the test. Furthermore, because a large number of controls died, the 65 ppt lowest dose value at which effects were observed is suspect.

While EPA acknowledges these weaknesses, the Agency considers the 65 ppt value to be reasonable. This is because a laboratory study involving ring-necked pheasants indicates that the level at which adverse effects were observed — 1000 ppt in the egg — is also a LOAEL. Furthermore, the pheasant egg study is not yet published. EPA thus considers the chicken embryo study to be the best available published data for the most sensitive avian species. Even if EPA were to use the pheasant figure of 1,000 ppt as the benchmark toxicity value for bird embryos, there would not be a significant difference in the final result. If EPA used the same bioaccumulation and uptake factors it used in the pharmacokinetic models, the RQ = 1 value (from a LOAEL) for the best estimate in EPA's modelling would be 46 ppt TEQ in soil. Using the 0.01 (combined) adjustment factor to account for uncertainties, the model would still indicate that adverse effects might occur at levels as low as 0.5 ppt.

It should be emphasized that the pheasant study is still a LOAEL. This may indicate that there could be other effects which the study is not sensitive enough or structured to find, such as infertility or egg shell thinning. Finding these effects would, for example, require an avian reproduction study. Therefore, risk assessment based on any egg injection study may underestimate risk. Even if EPA were to disregard the avian embryo study, its evaluations of soil levels would not materially change. EPA has determined that the RQ of 1 soil concentration level for a mammal (the shrew) is only slightly higher than that for the woodcock embryo (4 versus 3 ppt).

An argument has been made that, instead of relying on laboratory data, EPA should consider, as definitive, field observations in the Wisconsin studies.

Levels of 11 ppt for TCDD in soil yielded no obvious adverse effects on individuals or populations. EPA cannot determine from field studies whether the lack of observed effects results from the absence of the effects or from the inability to detect them using the studies' techniques. In the wild, animals that die are quickly devoured by scavengers. Affected animals frequently crawl into hiding, and are difficult to find and count. Furthermore, failure to find an effect can simply result from a number of factors unrelated to whether there is, in fact, a risk. For example, too few subjects may be observed, or available, in the environment to find any effects from low-level contamination. In addition, species variation and varying behavior patterns unrelated to contaminant toxicity and exposures can cause population cycling. In such a case, the fact that no effect was observed does not mean there was no effect from the contaminant. Furthermore, short-term observations in the field would not likely find reproductive dysfunctions, which would require long-term population observations.

EPA expects much interest about its use of laboratory studies in this risk assessment, and thus solicits comments about how it should weigh the use of models and laboratory data against field data, as from the Wisconsin studies, in its decision making.

d. *General uncertainties in the terrestrial assessment.* A major uncertainty in the terrestrial risk assessment involves whether the representative species EPA chose to evaluate in its exposure assessment are, in fact, appropriate surrogates for actual exposed animals. EPA believes that the natural history of each representative species indicates that it would fill a niche parallel to those occupied by the animals actually exposed.

EPA acknowledges the possibility that the terrestrial assessment could underestimate risks for a number of reasons. For example, uncertainties in the risk assessments result because NOAELs are unavailable for many species, although the use of adjustment factors when calculating final TCDD/TCDF soil concentrations reduces the potential for underestimating risks. Also, chronic effects for many sensitive endpoints used in the risk assessment models are unavailable because the studies were not run to equilibrium in the test animals. Furthermore, only one route of exposure was considered for each species; multiple routes could have resulted in higher RQs. Finally, risks may be underestimated by the use of 1-year average TCDD/TCDF soil levels. Higher soil concentrations and therefore greater risks could result from multiple applications over a number of years of paper mill sludge with varying TCDD/TCDF concentrations.

e. *General uncertainties in the aquatic assessment.* EPA assumed that the contaminant concentration in a surface water is equivalent to the runoff concentration from the entire drainage area, with no dilution in the surface water. This directly affects exposures to fish, benthos, and aquatic mammals, since this assumption regarding runoff concentrations is especially conservative.

EPA, however, believes it is appropriate to be conservative in this case. First, the assessment of risk to aquatic species was limited to only one route of exposure, due to the absence of data. For example, only the dietary exposures of aquatic mammals and birds were addressed. Uptake from contaminated sediments was the only route of exposure considered for bioaccumulation in benthic organisms. Uptake from dietary or water column exposures were not estimated. Toxicity to fish was estimated only from water column exposures. No dermal or dietary exposures were considered. Second, risk assessments were based on an average, whole-body TCDD concentration. This may significantly underestimate exposures for some predators. For example, the highest chemical levels are normally found in the viscera and outer skin of fish and aquatic organisms. For scavenger birds and mammals such as the bald eagle and other species that tend to feed mostly on the softer viscera, the risk may be higher than predicted for the average body concentration of TCDD/TCDF in aquatic organisms.

f. *Individual versus population risk.* The extent of the potential risks to fish and wildlife populations from paper mill sludge land application is difficult to assess. The quantification of adverse effects on populations was not attempted, because doseresponse curves are not available for the benchmark toxicity data, and the number of wildlife affected for each species are unknown. However, the estimated exposure levels are sufficient in many scenarios to exceed NOAEL, LOAEL, and threshold toxicity levels for individuals of many species of terrestrial and aquatic wildlife. The risk quotients are sufficiently high within many scenarios to suggest that significant adverse effects are likely for some individuals. This also applies to risks from sludge landfilling and surface impounding.

EPA specifically requests comment on possible methodologies to permit the collection and assessment of information concerning the population and ecosystem effects of TCDD/TCDF. This issue will be raised during the peer review of the wildlife risk assessment.

6. *Conclusion.* The available studies on TCDD/TCDF indicate that they produce effects at very low concentrations. Many of the key studies used in this risk assessment provided LOAELs rather than NOAELS, meaning that adverse effects were observed even at the lowest doses used in the experiments. Had NOAELs been determined, EPA would have greater confidence that doses lower than the lowest dose used in the studies were unlikely to cause adverse effects. Current paper mill sludge land application practices, however, result in soil concentrations that are significantly higher than exposure levels at which effects were predicted from laboratory studies.

Pharmacokinetic modelling has indicated that a range of TCDD/TCDF soil concentrations from 0.03 to 130 ppt may produce effects in the most exposed species. Using best estimate data assumptions (i.e., the middle of the range of values), the model itself shows effects occurring in soils with TCDD/TCDF concentrations at or below 3 ppt in the most exposed avian (woodcock embryo) species and 4 ppt in the most exposed small mammal (shrew) species. Including an adjustment factor of 100 (combined) to take into account the uncertainties of species variation and the extrapolation from laboratory to field conditions, and the use of a LOAEL rather than a NOAEL, the model indicates that effects to individuals may occur at soil concentrations as low as 0.03 or 0.04 ppt. The model cannot estimate the risks to populations.

The Wisconsin field studies have supported the EPA's model at least with respect to the extent to which a TCDD/TCDF concentration in the soil may produce certain concentrations in the eggs of several bird species. The ratio of a measured soil concentration to measured egg concentrations compared favorably, i.e., within an order of magnitude, to the ratio of a soil concentration estimated from modelling to the egg concentration obtained from a laboratory study. In contrast to the modelling results, however, the field study did not report significant adverse effects at a soil concentration of 11 ppt within the individual birds and mammals which it observed, nor did it report population effects in the recorded species occupying the study site.

Because of the uncertainties associated with modelling, laboratory

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studies do not conclusively prove the potential for adverse effects in wildlife. The weakness of field studies is that the failure to observe adverse effects does not mean that effects are not occurring. Given the lack of precision in the two approaches, however, their results are consistent, particularly in that the measured TCDD/TCDF uptake in eggs was similar to the uptake projected by modelling.

EPA cannot say with a high degree of confidence the level at which wildlife effects will begin to occur. On the basis of laboratory tests and modelling extrapolations, however, it has estimated that threshold toxicity is in the range of 0.03 to 130 ppt, with the low range including the aforementioned uncertainty factors, and the high range unadjusted. The model indicates 3 to 4 ppt as the most probable lowest soil level for observable adverse effects to typical individuals in the most exposed species. The results of the field study do not dismiss concerns that individual effects might occur at lower levels, but they failed to demonstrate clear adverse effects at 11 ppt.

Because EPA acknowledges uncertainties within the risk assessments for wildlife and human health, it is assembling a peer review group to analyze the assessment methodologies, assumptions, and results. This review will be completed and its results will be considered before the final rule is promulgated.

EPA has received preliminary comments from several parties, including the American Paper Institute (API) and the Environmental Defense Fund (EDF), on its uses of certain toxicity data and assessment methodologies. Copies of these preliminary comments are in the rulemaking record.

C. Human Risk Assessment for Land Application

Of the 120 exposure pathways examined in the integrated assessment, approximately 24 pertained to human exposure to paper mill sludge. Sixteen of the 24 pathways examined human exposure to sludge from land application. This unit describes the models and major assumptions used in the integrated assessment and the modifications that have been performed since that time for the "critical exposure pathways" (defined as those producing the highest MEI risks) used in this rulemaking. While EPA is concerned about the exposures from the other pathways, it believes that by reducing the exposure from the critical pathways, exposures from other pathways will also be reduced.

1. *Integrated assessment* — a. *Land application.* For each exposure pathway, EPA developed, for current practices, estimates of maximum incremental carcinogenic risk to the MEI and to the exposed population as a whole. The integrated assessment used the same methodologies to assess exposure to the MEI and to the estimated exposed population as a whole. However, the MEI evaluation used reasonable worst-case input values, while typical or average input values were used in the population risk assessment. For the population risk assessment, the size of the exposed population also had to be estimated. The risks were estimated based on lifetime exposures (assumed to be 70 years).

The exposures estimated for each pathway were combined with the EPA cancer potency estimates for TCDD/TCDF to obtain individual risk. Individual cancer risk for a typical exposed individual was converted to annual total population risk (in cases per year) by multiplying the number of persons exposed by the individual risk and dividing by the average human life-span.

Population risks were estimated based on the mean TCDD/TCDF concentration in paper mill sludge across all of 104 mills, while the 90th percentile paper mill sludge concentrations were used in the analysis of risks to the MEI. This approach was favored over using practice-specific sludge concentrations, since the disposal practices of particular mills may shift over time.

The risks from land application practices were estimated based on generic descriptions of practices on agricultural land, silvicultural land, and reclaimed mine sites.

Exposure pathways differed somewhat depending on the type of land receiving the sludge. Two pathways were considered in developing human exposure estimates for silvicultural land application and mine reclamation: ingestion of water contaminated by soil eroded from the land application site, and ingestion of fish caught in water contaminated by eroded soil. Human risk estimates from agricultural land application considered the two pathways above and also evaluated exposure through ingestion of agricultural products (animals and crops) grown on sludge-amended land, through dermal contact, through direct ingestion of TCDD/TCDF-contaminated soil, through inhalation of volatilized contaminants and through inhalation of contaminated suspended particulates.

The critical pathways from the integrated assessment were (1) ingestion of agricultural products (animals and crops) grown in contaminated soil (when this pathway is discussed collectively with the equivalent pathway for wildlife, it is termed the "dietary pathway"); and (2) ingestion of fish caught in water contaminated by sludge or soil/sludge run-off (also referred to as the "runoff pathway"). The following discusses the exposure models used for these two pathways.

(1) *Ingestion of agricultural products.* Dietary exposures can occur when the TCDD/TCDF in sludge are absorbed into the tissue of crops which are subsequently ingested by humans. TCDD/TCDF in sludge can also be absorbed into the tissues of animal feeds or pasture grasses, which are then consumed by livestock. In addition, grazing animals can also ingest the sludge-amended soil that adheres to the leaves or roots of pasture grasses. The meat and dairy products produced by these livestock may then be consumed by humans. For the integrated assessment, the most exposed individual was assumed to be a subsistence farmer who eats both vegetable and animal food grown on his/her own sludge-amended land, while population exposure was assumed to occur through ingestion of foods sold on the market.

To evaluate dietary exposure, a model was created using information regarding paper mill sludge land application rates and sludge contaminant concentrations to calculate the uptake of contaminants by crops and by animals feeding on crops and pasture. The exposure calculation consisted of three steps. First, the model calculated tissue concentrations of contaminants in each food and feed crop as a result of land application. Second, the model estimated concentrations of the contaminants in meat or dairy products due to direct ingestion of sludge/soil and to ingestion of contaminated feed crops by livestock. Third, the model totaled the amount of each contaminant in all crops and animal products ingested by humans to estimate total typical or MEI exposure.

The specific models used to calculate MEI exposure differed somewhat from those used to estimate total population exposure. MEI exposure to crops was estimated by multiplying the daily dietary consumption of each crop by the fraction of that crop produced in sludge-amended soil, by the soil concentration, and by the crop-specific uptake rate. The daily dietary consumption rates for each type of crop were obtained for the integrated assessment from EPA's Tolerance Assessment System (TAS).

For the MEI, maximum daily consumption rates across all age-gender groups were used. The percentage of the daily consumption of vegetation assumed to originate in sludge-amended soil reflects the percentage of foods consumed in farms that have home gardens.

Added to the exposure from home-grown crops was the exposure from home-slaughtered animals raised on contaminated feed or pasture. The level of contamination in animals was calculated as the product of the contaminant concentration in feed crops (and in sludge-amended soil adhering to pasture grasses), the daily consumption of feed (and of sludge-amended soil), and uptake rates into animal tissue. The MEI dose is then obtained by multiplying animal tissue concentration by human consumption rates. An important input to this calculation is the fraction of a grazing animal's diet that consists of paper mill sludge. The integrated assessment assumes that about 8 percent of a grazing animal's diet consists of sludge-amended soil. Based on the parameters in the integrated assessment, the estimated lifetime risk is 2×10^{-3} for the MEI under current practices as determined in the 104-mill study.

Population dose is not directly dependent on TAS estimates of daily consumption. Rather, the total amount of contaminated food is estimated, using information on crop or animal product yield per acre applied. This total amount of food is then divided over the entire number of people who could buy from the market in which the product is distributed. In this case, the total available dose is *not* dependent on the size of the exposed population. Therefore, the estimate of the size of the exposed population does not affect the estimated incremental cases per year.

(2) *Ingestion of fish.* Particles of paper mill sludge or soil from the surface of a land application site can be transported by erosion to nearby lakes or streams. Fish living in these waters can accumulate TCDD/TCDF, which can also lead to exposure to those persons consuming the fish.

The methodology to estimate exposure from fish ingestion and surface water ingestion begins with the estimation of contaminant concentrations in water and sediment. The Universal Soil Loss Equation (USLE), site size, drainage area, and sediment delivery ratios are used to estimate the fraction of a lake or stream's sediment that originates from the paper mill sludge land application site. For the population exposure analysis, an average site size was compared to the size of a drainage area corresponding to a major stream, assumed to be 5,000 square miles (1,295,547 hectares). For the MEI analysis, a worst-case (i.e., large) site size was coupled with a worst-case (i.e., small) drainage area; under these conditions, the site would contribute a relatively large fraction to the sediment in the stream.

Once the fraction of sediment that the land application site contributes is determined, the fraction is multiplied by the concentration of TCDD/TCDF in soil particles on the site surface. The analysis then derives estimates of the concentration of contaminants in "dry" sediment. This contaminant load is then partitioned between adsorbed and dissolved phases, based on the assumption of equilibrium partitioning between the two phases.

Exposure through fish ingestion can be derived from estimated sediment concentrations. Based on the assumption that sediment concentrations are the best predictor of fish concentrations of hydrophobic compounds like TCDD and TCDF, the methodology uses empirically-derived bioaccumulation factors to estimate concentrations of contaminant in freshwater fish as a function of concentrations in stream or lake sediment. Estimated contaminant concentrations in fish tissue are multiplied by an estimated amount of fish consumed daily to yield a human dose of TCDD or TCDF. The analysis assumed fish consumption of 6.5 grams per day for a typical individual for the population exposure analysis. Since these overall averages include a large proportion of individuals who eat no freshwater fish at all, particular populations may consume larger quantities. In particular, subsistence fishers are likely to consume fish at a higher rate than a typical individual. The MEI analysis used 140 grams per day (roughly one meal per day) to represent a consumption rate for a subsistence fisher. Based on the parameters used in the integrated assessment, the estimated lifetime risk for the MEI is 2×10^{-1} under current practices.

Finally, the estimated typical exposures are combined with estimates of the size of exposed populations to derive estimates of total population risk. The size of the exposed population for both water and fish ingestion is estimated by assuming that the size of the exposed population is positively correlated with the size of the contaminated surface water and that the size is positively correlated with the drainage area. This relationship is quantified by multiplying the drainage area of the contaminated stream by the national average population density.

For fish ingestion exposure pathways, the analysis assumed that the entire exposed population ingests or eats fish contaminated at the mouth of the drainage area. Since the population exposed will inhabit a large area (1,295,000 hectares or 5,000 square miles), this assumption is conservative. In reality, dilution and dispersion of the contaminant will probably have occurred before much of the population is exposed.

b. *Landfill and surface impoundment exposure models.* Since very little information was provided in the 104-mill study on specific practices associated with these types of disposal scenarios, theoretical representations of industrial landfills and surface impoundments receiving paper mill sludge were constructed. Typical parameter values were used for the population risk analysis; worst-case assumptions were used for the MEI analysis. According to previous EPA studies on nonhazardous industrial landfills, 30 acres was thought to be a representative area for industrial landfills, which have an average active lifetime of 14 years. Landfills for the MEI analysis were assumed to be 60 acres in size. For both analyses, the landfill was assumed to be 6 meters deep. Typical surface impoundments were assumed to be 25 acres, with worst-case impoundments being twice that size. Both typical and worst-case surface impoundments were assumed to be 3 meters deep, and each facility was assumed to have 3 impoundments. For the integrated assessment, there were no data on the design and operating characteristics of paper mill landfills. To be conservative, it was assumed that there was no daily or final cover on these sites, and that they did not have liners, leachate collection systems, berms or any other runoff controls.

The integrated assessment estimated human exposure to TCDD/TCDF through four exposure pathways associated with landfills and surface impoundments:

(1) Inhalation of volatilized TCDD/TCDF emitted from the land application site surface.

(2) Groundwater contamination.

(3) Ingestion of drinking water from surface water contaminated by sludge-amended soil eroded from the site.

(4) Ingestion of fish caught in contaminated water bodies.

The pathway producing the highest risk estimate was fish ingestion.

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Since landfills and surface impoundments were assumed to be uncovered, particles of paper mill sludge or soil from the landfill or surface impoundment surface could be transported by erosion to nearby lakes or streams. If humans consume water or fish from these lakes or streams, they may be exposed to TCDD/TCDF from the landfilled or impounded paper mill sludge. This analysis conservatively assumed that runoff from an inactive surface impoundment will result in the same amount of soil transport per unit area as was estimated for landfills without cover. The methodology to estimate risks from this pathway was identical to that used for land application sites, although the particular input parameters, such as the size of the site, varied.

c. *Incineration.* For incineration, only one exposure pathway, inhalation of stack emissions, was evaluated. Deposition and subsequent exposure to the contaminated soil were not assessed for lack of data.

Risks were determined for each mill using two different methods for determining emission rates. EPA was provided data on stack gas concentrations from one incinerator that burned sludge. Therefore, in the first method, referred to as the stack gas method, emission rates were calculated by multiplying each incinerator's operating hours by each incinerator's stack gas volume and the TCDD/TCDF equivalent stack gas concentration obtained for the incinerator with measured data. Emission rates were developed in units of TEQs.

In the second method, referred to as the sludge concentration method, the sludge concentration data from the 104-mill study were used. Since information on the effectiveness of existing control devices in removing TCDD/TCDF was unavailable, it was assumed as a worst case that these devices were unable to remove TCDD/TCDF and that all the TCDD/TCDF present in paper mill sludge was emitted to the atmosphere. Emission rates were estimated by multiplying the amount of paper mill sludge burned per hour at each mill by the concentration of TCDD/TCDF reported to be present in each paper mill's sludge. If sludge concentrations were unavailable, the average emission rate for all other pulp and paper mills incinerating sludge was used. While in one sense this method can be considered worst case, it must be noted that secondary formation of TCDD/TCDF as products of incomplete combustion as well as from other chlorinated organics was not considered.

Overall, it must be realized that both of these methods are limited in their ability to estimate the risks of incinerating sludge. The major problem with the stack gas method is the limited data, while the sludge concentration method was limited by the lack of information on control device effectiveness and accounting for secondary formation of TCDD/TCDF.

2. *Revisions made since the integrated assessment.* Since the completion of the integrated risk assessment, EPA has made a number of revisions to its analyses in an attempt to provide more realistic estimates of risk for the two exposure pathways, ingestion of agricultural products and fish ingestion, for which the greatest risks from land application were projected. EPA is focussing its additional analyses for this regulation on these two pathways since they would be the critical factors in developing regulatory limits. There may well be a number of revisions which would be appropriate for the other exposure pathways. However, since the analysis of those pathways is likely to affect regulatory limits less severely than the agricultural product and fish ingestion pathways, EPA is not at this time planning to revise those portions of the integrated assessment. The revised human health risk assessment, entitled "Human Health Risk Assessment for Dioxin in Sludge: Technical Support Document for the Proposed Land Application Rule" (April 1991), can be found in the rulemaking record.

a. *Land application.* Since the integrated assessment was completed, a statistical refinement of the paper mill sludge concentration data was performed. The recalculated mean and 90th percentile concentrations were incorporated into the risk analysis for this proposed rule, although the changes were relatively minor.

The subsistence farmer daily dietary consumption rates have been changed since the integrated assessment. The new values represent the weighted average lifetime daily consumption rates rather than the maximum values across all age-gender groups. The new values are based on an EPA reassessment of an FDA dietary assessment. The percentage of the daily consumption assumed to originate in paper mill sludge-amended soil reflects the percentage of foods consumed in farm homes that have home gardens.

The amount of sludge/soil which a grazing animal ingests has been revised from 8 percent to 3 percent of its diet, based on further review of available information.

In the original MEI analysis a very small drainage area (40 square miles) was used with the largest site size. The assessment now uses the average size of the cataloging units in the United States, or approximately 1,700 square miles (approximately 440,000 hectares), as the appropriate drainage area size. The cataloguing units have been defined and described by the U.S. Geological Survey in its publication entitled "State Hydrologic Unit Maps, Open File Report 84-708" (1984).

The distance between the site and surface water also has been changed in this assessment. In the original assessment, a value of 30 meters was used. To be consistent with other regulatory activities in EPA, a distance to stream of 10 meters is now assumed for the MEI. A sensitivity analysis has shown this parameter to have minimal impact on the assessment. If 30 meters was the setback distance instead of 10, there would only be a factor of 1.3 difference in exposure level. Similarly, if the setback distance was 1 mile as opposed to 10 meters, the exposure level would change by only a factor of 3.

Finally, the vegetative cover parameter has been changed. The integrated assessment assumed that the vegetative cover parameter differed between agricultural land application sites and the surrounding drainage area. It is now assumed that the vegetative cover of the land application site and the surrounding drainage area is the same for each land application practice (silvicultural land is surrounded by silvicultural land only, agricultural land by agricultural land only).

b. *Landfills and surface impoundments.* Under section 308 of the CWA, EPA is collecting data on management practices at landfills and surface impoundments. When these data are available (expected in spring 1991) EPA will decide whether regulatory action is necessary to ensure adequate controls. Under the terms of the Consent Decree in *EDF v. Thomas*, EPA must announce by October 1991 whether it considers current controls to be adequate or whether it will propose regulations. Therefore, for the purposes of this rule, EPA assumes that good management practices either are or will be in place at industrial landfills and surface impoundments where paper mill sludge is disposed. This means that the analysis now assumes that berms and other runoff controls are in place at both landfills and surface impoundments. In addition, the runoff analysis assumes that final covers are applied to the landfill and to the filled surface impoundments.

c. *Results of the revised assessment.* The results presented are those based on the modifications mentioned above. The estimated MEI risk from the land application of paper mill sludge from the consumption of fish contaminated by runoff to surface water and from the consumption of produce, meat and dairy products grown on sludge-amended land is on the order of 10^{-3}.

Some of the major assumptions which resulted in this risk are provided in Table 3. The human health technical support document in the rulemaking record for this rule contains a complete list of the parameters and their assumptions used in the analysis. Table 3 reads as follows:

TABLE 3.— KEY ASSUMPTIONS

Parameter	Assumption
Percent of cow's diet that is soil.	3
Beef, hog, and chicken fat bioconcentration factors (BCFs).	6
Milk fat BCF	5
Fish fillet BCF	5
Human agricultural product consumption rate.	Weighted average daily lifetime (varies by food item)
Fish consumption rate (subsistence fisher).	140 grams/day
Drainage area	440,000 hectares
Distance to stream	10 meters
TCDD/TCDF degradation	none

The revised assumptions for landfills and surface impoundments resulted in virtual elimination of the estimated risks from exposure pathways associated with erosion from those sites. Again, it is important to note that if the information under CWA section 308 is inconsistent with the assumptions of adequate runoff controls, then EPA is committed under the consent decree to develop regulations to ensure adequate controls.

d. *Population risks.* Since the integrated assessment, some of the assumptions used in assessing population risks have been changed. These changes included assumptions for TCDD/TCDF concentrations, disposal practices, and land application site sizes. However, these changes do not reflect recent developments in pulp and paper manufacturing processes which may have caused significant reductions in TCDD/TCDF levels in some mills. In addition, two mills may have stopped using land application as a disposal method pending publication of this proposed rule.

During the 104-mill study, 12 mills practiced land application. Of the 12 mills, 1 was applying sludge to agricultural land, 4 were applying to silvicultural land, 2 were practicing mine reclamation, and 5 were distributing and marketing sludge as a soil amendment to smaller volume users. Entry of mills into the practice of land application is not assumed to result from this proposed rule. The effects of the proposed rule on the risk were examined for the 12 mills only.

Total annual population health risks are presented in terms of estimates of the total number of cancer cases predicted for the population as a function of the options under consideration in the regulatory impact analysis. Any other effects, including longterm noncarcinogenic effects, have not been addressed. Estimates of human health risk in terms of total population cancer cases for various TCDD/TCDF concentrations in soil range from 0.3 cases per year under current practices to 0.0002 cases per year. The maximum risk reduction which could be expected from any regulatory option is approximately 0.3 cases per year.

3. *Conclusions.* From the analyses performed for this rulemaking it can be seen that:

(a) The MEI risks are on the order of 10^{-3} for land application.

(b) The population risks range from 0.3 to 0.0002 cancer cases per year.

4. *Uncertainties.* The limits developed for this rule were calculated based on those pathways estimated to have the highest risk in the assessment supporting this rule. This section identifies and describes those inputs to the exposure models that significantly influenced the risk estimates. Full descriptions of the models can be found in the rulemaking record.

a. *Construction of the reasonable worst-case scenario.* As discussed above, exposure and risk were estimated for the MEI based on a combination of typical and worst-case assumptions for many model input parameters. Combining a number of worst-case assumptions can lead to overly conservative scenarios because there is little likelihood that all worst-case conditions would occur in a single real situation. For this reason, for certain inputs, such as human dietary consumption and drainage area, typical values were used in the MEI assessment for this rule. EPA believes that the combination of worst-case and typical parameter values used builds in the appropriate degree of conservatism.

b. *Behavior of TCDD in soil.* To ensure sufficient protection of the MEI, this analysis assumes that there is no decay of TCDD or TCDF in paper mill sludge applied to land. It is unclear whether decay would take place in soil incorporation scenarios, or in lower layers of contaminated sludge at these sites. However, the proposed rule will allow monitoring to determine whether degradation has occurred and whether additional sludge can be applied.

c. *Drainage area.* Drainage area is a key parameter in the assessment of risks via fish and water ingestion. The size of the drainage area relative to the size of the land application site is an important factor in determining the magnitude to which the runoff from the land application site will be diluted in the surface water body. As explained earlier, the drainage area now used in the MEI analysis is the mean USGS cataloging unit.

d. *Model used to estimate runoff.* To estimate soil erosion from land application sites, the assessment used the USLE model and assumed that the parameters affecting the sediment delivery ratio (such as slope and vegetative cover) were essentially the same for the site and for the drainage area as a whole.

e. *Ingestion of soil by grazing animals.* Ingestion of sludge-amended soil by grazing animals accounts for a significant portion of the risk from the dietary pathway. EPA has revised its assumption and now assumes that soil represents a smaller percentage of a grazing animal's diet (3 percent), although higher values have sometimes been reported. EPA is also considering longterm average values as low as 1.5 percent if the animal does not graze exclusively on the sludge-amended field or if the grass cover is more dense. Changes in the ingestion rates used for the analysis would result in proportional changes in the calculated risks to humans.

f. *Uptake rates into animal tissue.* Because ingestion of animal products accounts for a significant portion of the human dietary health risk, the rate at which animals are assumed to take up TCDD/TCDF from their food is a particularly important parameter. In the best estimate analysis, EPA assumed an uptake rate of 4 in the soil for all animals except fish, which were assumed to have an uptake rate of 0.1 to 10 in feed or sediment. For the MEI analysis, the uptake rates ranged from 5 to 6, depending on the animal, except for fish, which had an assumed uptake rate of 10 in feed or sediment. It has been suggested that the average uptake rate could be as low as 2 for animals other than fish, and that an uptake rate of 1

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should be used for fish in the MEI analysis. Reduction in uptake rates would result in proportional reductions in calculated risks to humans.

g. *Human exposure from diet.* The quantity of each food group in the human diet was originally taken from the TAS for the age and gender group with the highest daily consumption rate. Since these consumption rates were higher than would be expected for any one single individual over a lifetime, the dietary consumption values have now been changed to correspond to a weighted average daily consumption rate calculated from a reanalysis of FDA dietary data.

The MEI analysis also assumed that a relatively higher percentage of the diet originates from sludge-amended soil. This assumption reflects the fact that the MEI for this scenario is a member of a rural farm family that raises its own crops and slaughters its own animals. As much as 60 percent of certain food items are assumed to originate from the farm garden.

h. *Rate of human consumption of fish.* The MEI was assumed to consume fish at a rate of 140 grams per day. This is the 90th percentile value for a recreational fisher and one which EPA considers a reasonable rate of consumption for a subsistence fisher.

5. *Range of potential soil concentration and hectare limits for regulation.* The two critical pathways for human risks, agricultural product ingestion and fish ingestion, have different critical parameters contributing to risk. TCDD/TCDF concentration in soil is the critical parameter for estimating risk in the agricultural product ingestion pathway. In the fish ingestion pathway, TCDD/TCDF concentration in soil and size of the land application site are the critical parameters for estimating risk.

Since agricultural product TEQs are a function of the soil concentration, a soil concentration for different risk ranges must be calculated. The calculation of the soil concentration ranges proceeds through the risk assessment steps, but in reverse order. It therefore begins with a risk level and ends with a soil concentration.

For cancer risks ranging from 1×10^{-4} to 1×10^{-6}, the reference intake range from 0.6 pg/kg/day to 0.006 pg/kg/day is calculated from EPA's slope factor for TCDD of 1.6×10^{5} $(mg/kg/day)^{-1}$. The soil concentration range is calculated by dividing the intake range by a model that moves TCDD/TCDF from the soil to the MEI. This model uses assumptions regarding TCDD/TCDF uptake rates from soil into food products, daily consumption rates for the food items, the fraction of the food item originating from sludge-amended sources, and the bioavailability of TCDD/TCDF from the diet. The resulting calculated TCDD/TCDF soil concentration range is 12 ng/kg (ppt) for a 10^{-4} risk to the MEI to 0.12 ng/kg (ppt) for a 10^{-6} MEI risk.

Determining limits to control exposure through the fish ingestion pathway also requires reversing the risk assessment steps. In general, the fish ingestion TEQs are determined by the TEQs in the sediment. The sediment concentration levels are a function of the soil concentration levels and the size of the land application site.

The derivation of limits begins with the same intake range as the agricultural product ingestion pathway. The intake range translates into a fish filet concentration range from 0.3 ng/kg to 0.003 ng/kg for carcinogenic risks to the MEI of 1×10^{-4} to 1×10^{-6}, respectively, with a corresponding sediment concentration range of 60 pg/kg to 0.6 pg/kg. The sediment concentration is a function of the inverse relationship between soil concentration and size of the land application site. Table 4 shows the relationship between ranges of soil concentrations derived to achieve a range of risk levels for the subsistence farmers of 1×10^{-4} to 1×10^{-6} and ranges of hectare limits needed to achieve the same risk ranges to subsistence fishers. The table shows that to achieve a 1×10^{-4} risk level for both subsistence farmers and fishers, the soil concentration would be 12 ppt and the hectare limit would be 833. Since there is a linear inverse relationship between soil concentration and site size, the site size increases if the soil concentration decreases. Thus, if the soil concentration were 10 ppt, the site size could increase to 1000 hectares. Table 4 reads as follows:

TABLE 4.—SOIL CONCENTRATIONS, HECTARE LIMITS, AND RISK RANGES

Subsistence Fisher Risk Level	Subsistence Farmer Soil Concentration/Risk level		
	0.12 ppt(1×10^{-6})	1.2 ppt(1×10^{-5})	12 ppt(1×10^{-4})
1×10^{-6}	833 ha	83.3 ha	8.33 ha
1×10^{-5}	8330 ha	833 ha	83.3 ha
1×10^{-4}	83,300 ha	8333 ha	833 ha

6. *Other relevant information.* An example of contamination of agricultural products is a residence located near the Koppers Oroville wood preserving facility in Oroville, California. Preliminary sampling indicates that CDD/CDF levels in soil at the residence range from 36 to 42 pg/g TEQs. Contamination has been measured in beef cattle, range-fed chickens and chicken eggs, with levels in eggs ranging from 9 to 23 pg/g TEQ of egg. Assuming a 70 kg person consumes one 60 gram egg per day for 70 years, the calculated lifetime excess cancer risk is approximately 10^{-3}.

EPA is also concerned about potential reproductive effects from exposure to TCDD/TCDF. However, the daily dose which would lead to an estimated lifetime incremental cancer risk of 1×10^{-4} for the MEI is lower than the reference dose (RfD) for reproductive effects.

VI. Economic Analysis of the Proposed Rule

In support of the unreasonable risk finding presented in Unit VII of this preamble, and in compliance with Executive Order 12291, EPA performed an economic analysis of this proposed rule. The full "Regulatory Impact Assessment for Land Application of Bleached Pulp and Paper Mill Wastewater Treatment Sludges" (April 19, 1991) (RIA) is contained in the rulemaking record. This unit summarizes the RIA and identifies the likely risk reduction advantages of the regulatory alternatives. Details on risk reduction are discussed in Unit V of this preamble.

A. Benefits of Sludge Land Application

Beneficial uses of sludge arise from its nutrient supplement and soil conditioning value. Any reduction in beneficial uses from this proposed rule would therefore be a negative impact of the rule, while increases in beneficial uses would be a positive impact. As discussed more fully below, if technical and economic considerations would cause a mill to cease land application in response to this proposed rule, those lost benefits would add to the cost of the rule. Alternatively, if more mills could land apply after the proposed rule, the costs of the rule would be concomitantly reduced. Increased land application could occur because of reduced uncertainty (for example, mills may have been waiting for proposal of this rule before commencing with land application), or because of production process changes that reduce TCDD/TCDF concentrations in their sludge to acceptable levels.

Many potential benefits of paper mill sludge would be lost if it were disposed of in surface impoundments or landfills rather than through land application. These benefits include nutrient and soil conditioning value when applied to agricultural and silvicultural lands, and nutrient and fill value when applied to mining sites. In mine reclamation, the sludge offers both practical and aesthetic returns by reducing acidic discharge into streams and providing the basis for vegetative growth which may encourage the return of animal species. In forestry, it may permit the growth of taller trees and, by providing a richer soil environment for earthworms and insects, may attract larger populations of some bird species. Additionally, land application offers a means of beneficial use of a waste material which would otherwise be consigned to disposal through landfilling, incineration, or surface impoundment.

The cost analysis developed estimates of these benefits based on the nutrient composition of paper mill sludge and on prices for similar soil supplements. The analysis used 1990 retail fertilizer prices published by the USDA and by The Fertilizer Institute to derive an average nutrient value of $7.28 per dry metric ton (DMT) based on the nutrient composition of the sludge as reported by NCASI and the Technical Association of the Pulp and Paper Industry (TAPPI). The value of soil conditioning was estimated at $4.00/DMT based on the price of rough finished compost and on the likelihood that a different soil conditioner would be used on the land if sludge were not applied. For agricultural and forestry sites, the total nutrient and soil conditioning value was estimated at $11/DMT. Similarly, for mining, the weighted average of the nutrient value and fill value of the sludge was estimated at $6.62/DMT. These values, representing the loss of beneficial uses of sludge, were added to the cost of the regulation for those land appliers who were predicted to change disposal practices as a result of the regulation.

It is possible that additional mills may begin to land apply upon promulgation of the final rule if they can meet its restrictions. Such mills may have refrained from incurring the initial costs associated with land application in anticipation of regulatory action. This cost analysis used the 12 mills which performed land application during the 104-mill study as a baseline. The scenario of additional mills starting to practice land application following regulation was not considered. If more mills were to begin land application following regulation and this decreased their disposal costs, then the real cost of the regulation would be lower than estimated in the cost analysis.

The scarcity of municipal landfill space was not considered for purposes of this analysis because, for the baseline mills, municipal landfills were estimated to be the most expensive disposal option. If additional mills were to begin land applying, demand for municipal landfill space could be reduced. This effect has not been evaluated in the cost analysis.

Current regulations require the reclamation of mine sites to restore aesthetic beauty. Therefore, EPA assumed that the reclamation of a site would occur with other materials if sludge were not available. Thus, EPA believes that the aesthetic value of the sludge is captured in the price of substitute fill material such as granite or soil.

B. Overview of Analysis

EPA evaluated a range of limits on the TCDD/TCDF concentration in soil where sludge has been land applied. Additional activities to assist in controlling exposure have also been considered, including the limitation of the amount of land in a drainage area which could be treated with sludge, the construction of berms around land application sites, testing for TCDD/TCDF concentrations in sludge and soil, and recordkeeping. In addition, management practices designed to assist in controlling runoff from land application sites within a drainage area have been examined. These include the establishment of permanent vegetative cover, notice requirements preceding land application in a drainage area, and restrictions on the time and place of application.

The data base for this economic analysis was, again, the 104-mill study. Statistics on concentrations of TCDD/TCDF in paper mill sludge came directly from the "USEPA/Paper Industry Cooperative Dioxin Study, 'The 104-Mill Study', Statistical Findings and Analyses" (July 1990). Because the 104-mill study did not contain mill-specific economic and practice information, cost data were developed using algorithms from the 1985 EPA handbook entitled "Estimating Sludge Management Costs" (EPA 625/685-010), developed in support of EPA's municipal sewage sludge rule. To make information from the 104-mill study consistent with the more generic cost data, mills were grouped by size category based on annual sludge production volumes in dry metric tons, and were generically categorized by TEQ values associated with reported sludge concentrations of TCDD/TCDF.

C. Current Sludge Disposal Practices

Twelve mills utilized land application during the 104-mill study. Of the mills not practicing land application, the majority used landfills, while others used surface impoundments or incinerators to dispose of their sludge.

Of the 12 mills, 1 was applying to agricultural land, 4 were applying to silvicultural land, 2 were providing sludge for strip mine reclamation, and 5 were distributing and marketing sludge as a soil amendment to smaller volume users. In this analysis, the costs of the regulation were examined within the context of the proposed rule's effect on the 12 mills because it was assumed that no additional mills would commence land application.

Developments in paper manufacturing technology since the 104-mill study may affect the results presented in this analysis. Two mills are believed to have stopped practicing land application pending publication of this proposed rule. In addition, the industry has submitted preliminary data indicating that changes in pulp washing and bleaching processes have substantially reduced TCDD/TCDF concentrations at a number of mills. This information suggests that the economic analysis may understate the number of mills able to continue land application activities and that the cost of the rule may be overstated.

D. Costs of the Proposed Rule

1. *Costs of sludge disposal.* To estimate the potential impact of rules on the land application of paper mill sludge, the baseline costs of sludge disposal were first determined. The baseline costs consist of the costs of sludge management and disposal, including land application and other methods reported in the 104-mill study. Sludge production and concentration data were used to develop five

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representative size classes of mills. Existing EPA cost algorithms for the analysis of municipal sewage sludge disposal costs were adapted and modified for estimating the costs of disposal of paper mill sludge, and additional engineering costs were used in the calculation of costs of disposal to landfill and surface impoundment.

These analyses generally showed land application to be the least costly means of disposal at current costs, assuming that all mills face the same set of market and technological factors. Site-specific circumstances, such as the distance to suitable land application sites, may vary, however, and partially explain why all mills do not currently use land application. Table 5 below shows, for example, the total costs and costs per ton for an average size mill which generates 22,500 dry metric tons (DMT) of sludge per year. This table breaks out land application by type of use, including agricultural and silvicultural land application, mine reclamation and distribution/marketing.

Table 5 shows that costs for sludge land application are generally lower than costs for other disposal methods. At $30.35/DMT, mine reclamation is the least costly type of land application, partly because it is assumed that the mining company, rather than the mill, incurs the costs of transporting sludge to the site. In both mine reclamation and agricultural land application, site owners perform the application, while in silvicultural land application ($75.56/DMT) the mill transports sludge and applies it to its own sites. Table 5 reads as follows:

TABLE 5.—CURRENT ESTIMATED TOTAL COSTS PER YEAR AND COSTS PER TON TO 22,500 DMT/YEAR PULP AND PAPER MILL OF LAND SPREADING AND ALTERNATIVE DISPOSAL OPTIONS[1]

Type of Disposal	Total cost ($000/yr)	Cost/DMT
Land application:		
Agricultural	$906	40.40
Forestry	1,700	75.56
Mining	683	30.35
Distribution and marketing	2,072	92.11
Alternatives to land application:		
Onsite landfill	$2,555	113.54
Surface impoundment	2,148	95.46
Incineration	3,144	139.75
Municipal landfill	3,645	162.00

[1]Source: ERG estimates.

2. *Costs for soil concentration limits.* EPA considered several regulatory options designed to limit the soil concentration of TCDD/TCDF to certain levels. These limits were considered to protect wildlife and the subsistence farmer MEI by controlling exposure through the dietary pathway. Table 6 below shows the soil concentration limits considered and the associated costs of regulating at each level. Column 2 of the table shows the number of mills that EPA predicted would be able to continue land application at each concentration level based on the reported TCDD/TCDF levels in the sludge generated at each mill. The third column indicates the total costs of sludge disposal for the 12 mills at each concentration level, and the fourth column indicates the estimated cost of each regulatory option (total costs less baseline costs).

To evaluate the costs of these regulatory options, EPA first needed to determine the number of mills which could continue land application under each soil concentration limit. To do this, EPA made the following assumptions. Mills practicing silvicultural land application or mine reclamation were assumed to not incorporate sludge into the soil. Therefore, if their reported sludge concentration exceeded the soil concentration limit, they were assumed to cease land application activities. Mills applying to agricultural lands or distributing/marketing sludge were assumed to incorporate sludge into soil. Soil concentrations were calculated using the formula described in this proposed rule to calculate TCDD/TCDF concentration in the soil. If the resulting soil concentration exceeded the limit, then the mill was assumed to cease land application.

If a mill was predicted to cease land application, it was assumed to choose the next least costly sludge disposal method. Based on the analysis described in the previous section, EPA found the next least costly disposal method to be surface impounding ($95.46/DMT). Surface impounding may require considerable land in close proximity to the mill's wastewater treatment facility, and a lack of available land could limit the feasibility of this option. The considerably higher cost of disposal to municipal landfills ($162.00/DMT) reflects the general trend towards higher tipping fees for high volume wastes. Disposal to on-site landfills is estimated to cost $113.54/DMT, while the construction and operation of dedicated sludge incinerators is estimated to cost $139.75/DMT. Incineration costs include requirements for compliance with relatively stringent air quality standards.

This analysis attempted to include costs incurred by parties other than the mill, as well to as account for the loss of beneficial uses of land applied sludge as a consequence of regulation. The primary non-mill costs were sludge transportation and application, which might be borne by owners of land application sites. As discussed previously, the beneficial uses of land applied sludge were valued at $11/DMT of sludge for the purposes of this analysis, and were counted as a cost of the regulation in each instance where a mill was estimated to discontinue land application as a result of the rule.

The requirements prohibiting application to frozen, snowcovered, or flooded land, and requiring setbacks and vegetative cover, are not expected to cause changes in the procedures currently followed by land appliers, and therefore should not increase their costs.

Under these assumptions, Table 6 indicates that the baseline costs of sludge disposal were estimated at $28.2 million per year for the 12 mills. The costs of the options ranged from $1.3 million per year for a 200 ppt soil concentration limit to $13.4 million per year for 0.5 ppt or less. Table 6 reads as follows:

TABLE 6.—COSTS OF REGULATORY OPTIONS

Concentration Limits (ppt)	Mills Able to Meet Regulatory Limit	Annual Costs ($millions)	
		Total Costs of Sludge Disposal	costs of Option Above Baseline[1]
Baseline(current practices)	12	$28.2	–
200	10	27.5	1.3
100	8	30.1	3.9
30	7	31.3	5.1
10	6	31.7	5.5
5	4	36.7	12.5
3	4	36.7	12.5
1	3	36.8	12.6
0.5	1	39.6	13.4
0.3	1	39.6	13.4
0.05	1	39.6	13.4
0.03	0	39.6	13.4
Ban	0	39.5	13.3

[1] Total costs of option minus costs of current practices.

Note: Costs of options 2 to 12 include estimated Agency costs of $0.1 million per year for enforcement and administration. Under several of the options, although no mills are predicted to continue land application, there is no assurance that this will actually occur and enforcement and administrative costs will be incurred by the Agency. Costs of option 13 (ban on land application) are lower than options 2 to 12 by $0.1 million since administrative and enforcement activities will not be needed.

Source: ERG estimates.

3. *Costs of hectare limits combined with soil concentration limits.* Soil concentration limits are designed to reduce the risks from TCDD/TCDF exposure to wildlife and the subsistence farmer. However, EPA also evaluated the cost of reducing risks to subsistence fisher MEIs through exposure from the runoff pathway. To address all of these risks, EPA examined several regulatory options which combined soil concentration limits with limits on the number of hectares in a drainage area to which paper mill sludge could be applied in order to restrict risks to the fisher MEI to levels of 10^{-3}, 10^{-4}, and 10^{-5}. Under the concentration and hectare limits which would limit the MEI subsistence fisher risk to 10^{-5}, all mills were predicted to cease land application activities. Thus, the action was similar to a ban. EPA estimated that the regulatory option limiting risks to the MEI fisher to 10^{-3} would cost approximately $8.8 million annually, and would allow three mills to continue land application.

Several options were examined which combined soil concentration and hectare limits associated with a 10^{-4} risk to the subsistence fisher. The soil concentration and hectare limit of 10 ppt and 1,000 is the only combination which limits both the subsistence farmer and the subsistence fisher to a 10^{-4} risk level. Any combination with a soil concentration limit below 10 ppt implies less than a 10^{-4} risk to the subsistence farmer while maintaining a risk of 10^{-4} to the subsistence fisher. Soil concentrations greater than 10 ppt increase risk to the subsistence farmer while holding risk to the subsistence fisher at 10^{-4}.

The costs of soil concentration and hectare limits were examined by predicting the number of mills which would be unable to continue land application, and then evaluating the costs to these mills to switch to other disposal practices. These costs, in addition to costs incurred by EPA in administering the rule and costs to individuals losing the beneficial use of land applied sludge, were included in the cost of each regulatory option.

The number of mills predicted to continue land application was determined using two steps. First, a mill's ability to meet the soil concentration limit was considered. The basic methodology behind this determination was described in the previous section. Second, of the mills that could meet the soil concentration limit, the area required to dispose of the mill's total sludge volume was determined. If this area exceeded the hectare limit, the mill was assumed to cease land application. This area was determined by dividing total annual sludge volume by the optimal application rate. In the analysis, optimal application rates were based on typical rates that promote productivity in the growth of vegetation (ie. field crops in agriculture). Estimates regarding these optimal rates were based on contacts in several states and from NCASI Technical Bulletin #439.

The estimated effect of a combined soil concentration and hectare limit of 10 ppt and 1,000 hectares is that two mills would be able to continue land application. The cost of this regulatory option is estimated to be $8.5 million per year, while the cost of a 10 ppt soil concentration limit only is estimated at $5.5 million per year. Therefore, a cost of $3 million per year could be attributed to the addition of the fixed hectare limit to protect the subsistence fisher to a 10^{-4} risk level. If, however, a hectare limit designed to limit risk to 10^{-3} were added to a 10 ppt soil concentration, it is predicted that no additional cost would be incurred over the cost of the soil concentration limit alone. The predicted annual costs of the combined soil concentration and hectare limits decrease from $13.4 million to $8.5 million for options ranging from a 200 ppt and 50 hectare limit to a 10 ppt and 1,000 hectare limit. As soil concentrations become more restrictive than 10 ppt (and their associated hectare limits become less restrictive), the costs of the options begin to increase.

The hectare limit per drainage area was calculated assuming that land application operations would produce the maximum permitted 10 ppt TCDD/TCDF concentration in soil. If the soil concentration were maintained below 10 ppt, however, the land application size could be proportionally increased without increasing the risk to the subsistence fisher. For example, if the TCDD/TCDF concentration in soil following application were 5 ppt, 2,000 hectares in the drainage area could be treated without raising the risk to the fisher above the 10^{-4} level.

EPA considered implementing a flexible hectare and soil concentration approach, which would still limit the maximum soil concentration to 10 ppt to contain wildlife and human subsistence farmer risks, but which would allow mills to spread on land areas larger than 1,000 hectares if their soil concentrations were lower than 10 ppt. The cost of this flexible hectare option with a 10 ppt soil concentration limit was estimated at $7.7 million annually, which represents an annual increase of $2.2 million over the concentration limit only option. This annual cost would be approximately $0.8 million lower than the cost of the fixed 10 ppt and 1,000 hectare limits, largely because the increased flexibility in application area was predicted to permit two additional mills to continue land application.

If more stringent soil concentration limits were to be applied with a flexible hectare limit, for example, if the soil concentration were limited to a maximum of 5 ppt rather than 10 ppt, the estimated annual cost for the option would increase to $12.6 as fewer mills were able to meet first the soil concentration limit and then the land area restriction.

Important assumptions underlie the development of the costs of options associated with any combination of soil concentration and hectare limits. The restrictiveness of hectare limits depends on the assumption that land application is not merely for disposal, but is intended to provide some benefits such as fertilizer or inexpensive fill material. To promote the benefits of the sludge, optimal land application rates are assumed to be strictly followed. If the rate of sludge land application required to meet the hectare limit was lower or higher than the economically optimal rate, it was assumed that the mills or land appliers would choose to cease land application.

This assumption presents a worst case analysis in that some land appliers may choose to apply sludge at rates considerably different from the optimal one. There is some anecdotal evidence that mills are applying at highly variable rates for the same type of site and that mills are land applying on sites considerably smaller than 1,000 hectares. In addition, some users may choose to land apply only part of their sludge volume and to dispose of the rest through alternative means. According to the 104-mill study, 91 mills used one disposal method, while 13 used 2 or 3 methods. Based on this finding and because the economic analysis showed that all disposal methods demonstrated economies of scale (that is, $/DMT for disposal decrease as annual sludge volume increases), it was assumed for this analysis that mills would use one disposal method.

The size of a drainage area assumed in the risk assessment was approximately 1,700 square miles (appr. 440,000 hectares), based on the average cataloging unit as defined by USGS. This analysis assumed that mills are

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located at the center of a drainage area and that all areas available for land application are within one drainage area. This assumption does not capture all contingencies, but based on the actual location of each of the 12 mills currently land applying, it is reasonable. For example, a mill may be located on the border between two drainage areas, allowing for land application in both. Or more than one mill may be land applying within a drainage area, which would mean that the hectare limits could be more stringent on a per mill basis.

The costs of other management practices have been considered but not included in the cost of the options presented. As an alternative to hectare limits for controlling runoff, the installation of berms was considered. The estimated costs for the construction of berms surrounding land application sites were based on costs for berms for landfills and surface impoundments, and amounted to $21.90 per linear meter. This figure does not include other costs which may also be significant, such as engineering design and equipment costs.

E. Risk Reduction Advantages

Unit V of the preamble discusses the ecological and human health risks associated with exposure to TCDD/TCDF. In this economic analysis, the value of risk reduction resulting from various regulatory options is discussed.

For wildlife exposed to land application sites, potential adverse effects to highly sensitive individuals include reproductive effects and mortality. This could mean that reductions in populations or species diversity could occur. Related ecological damages may include reduced aesthetic values and diminished recreational activities associated with the damaged ecological amenity. The reduction or prevention of such damages are part of the value of the regulation. With regard to human health, exposure to TCDD/TCDF may increase cancer risks and the incidence of adverse reproductive effects. Associated economic damages may include increased medical costs and loss of labor productivity.

The proposed regulation is intended to reduce risks to wildlife and decrease ecological damages. The reduction in damages was not addressed quantitatively due to the lack of specific information regarding exposed populations and population effects. Rather, the analysis included a characterization of land application sites including species (and species surrogates) which may be affected by exposure to paper mill sludges at these sites. The value of the reduction in damages is discussed in terms of increased recreational potential such as hunting, fishing and birdwatching, and the potential for increased aesthetic values associated with the ecological amenity.

In addition to ecological risk reduction, the net change in the number of cancer cases predicted for the population as a result of the proposed regulation is an indication of some of the advantages of the rule. These numbers are more thoroughly discussed in Unit V of the preamble. However, the number of cancer cases that would be avoided by the imposition of a 10 ppt concentration limit is predicted to be 0.31 cases per year.

To the extent that human and ecological damages are prevented or controlled by the regulation, the value of the regulation is increased. The balancing of reduced risks and economic impacts of the regulation is discussed in Unit VII of the preamble.

F. Limitations of the Regulatory Analysis

Several factors were not considered in the analysis because of a lack of available data or because simplifying assumptions were made to be able to use the sludge cost model. The incorporation of these factors might result in a lower estimate of regulatory costs than estimated by EPA's cost analysis. The analysis assumed that mills engaged in land application apply all of their reported sludge volumes. In some cases, mills land apply only a portion of their sludge, and the cost to such mills of switching to another disposal method is likely to be overstated in EPA's analysis. Second, since the 104–mill study, 2 of the 12 mills may have discontinued land application; using a baseline which deleted these mills would lessen the costs associated with a regulatory option.

Furthermore, TCDD/TCDF concentrations may have decreased since reported in the 104–mill study due to voluntary changes in the pulp washing and bleaching processes. In an informal submission, one company reported achieving a 96 percent overall reduction in TCDD/TCDF formation since 1988, and provided sample test sheets showing sludge 2,3,7,8-TCDD concentrations below 10 ppt. (Letter from Stephen H. Tabor, Westvaco, to Julie Lyddon, EPA, January 30, 1991). Decreases in TCDD/TCDF concentrations of this sort throughout the industry could lower the cost of the regulation since more mills may be able to meet the lower concentration limits than this analysis determined.

Also, if mills do not follow the land application rates assumed in the analysis and apply only a portion of their sludge to small areas, the cost of a hectare limit could be less than estimated in the analysis. Finally, as previously discussed, the analysis did not consider the possibility that additional mills may begin land application following promulgation of the final rule. To the extent that entry would occur, the costs of the regulation could be less than the estimated costs in this analysis.

On the other hand, the cost of the regulation might be underestimated because of several factors. For example, if transportation distances to alternative disposal sites are greater than estimated, the cost to switch to alternative disposal methods would be greater. Lastly, site specific factors not captured by the economic models may cause some mills to switch to more expensive disposal alternatives such as industrial landfills. This could occur if, for some reason, surface impoundment costs are higher than estimated for a particular mill, or if a mill does not have available land in the immediate vicinity on which to build a surface impoundments.

G. Summary of the Regulatory Impact Assessment

Examination of Table 6 shows that a 10 ppt limit represents a relatively small incremental cost of $0.4 million per year over a 30 ppt limit. The increase in stringency from 30 ppt to 10 ppt does not yield additional risk reduction in terms of additional cancer cases avoided, but may yield increased wildlife protection and some potential for ecological damage reduction. Increasing the stringency to 5 ppt, however, represents a much larger incremental cost estimated at $7.0 million annually, with no change in risk reduction to human health, but a possible decrease in risk to wildlife.

The addition of hectare limits would decrease the number of cancer cases per year from a predicted level of 0.02 cases at 10 ppt to near zero cases per year (residual risk is predicted to remain). The hectare limit, however, would decrease the risk to the MEI subsistence fisher to 1×10^{-6} with an incremental cost of approximately $3.0 million annually over a concentration limit alone.

Increasing regulatory stringency from a 30 ppt soil concentration and 333 hectare limit to a 10 ppt soil concentration and 1,000 hectare limit would result in no predicted increase in annual costs, but a further increase in stringency to a 5 ppt soil concentration and 2,000 hectare limit would be accompanied by an approximately $4.8 million increase in annual costs. No further reduction in the annual number of cancer cases is predicted when moving from a 30 ppt and 333 hectare limit to a 10 ppt and 1,000 hectare limit. Risks to wildlife, however, could decrease.

H. Cost Impact

Despite the uncertainties inherent in the analysis, EPA believes that the proposed rule will have a negligible impact on the national economy since the total cost is estimated at $5.5 million. The impact on the industry is also expected to be minimal based on available net income data for 7 out of the 12 firms engaged in land application. The combined annual net income of these 7 mills is over $2.5 billion, while total compliance costs for the 6 mills which are projected to stop land application under the proposed rule are estimated at $5.5 million.

It should be emphasized that these large companies are frequently horizontally and vertically integrated; that is, the majority of sales is likely to be from operations other than the paper mill. Moreover, EPA recognizes that compliance impacts and sludge disposal options may be evaluated at the mill or site level rather than at the company level. These data were not available at the time of the cost analysis. It is expected that the paper companies will provide more recent information to EPA, allowing for improved accuracy in the economic analysis and the avoidance of assumptions which could misrepresent current practices. EPA will also continue to evaluate its minimal impact determination as additional information becomes available under other information gathering activities.

VII. Unreasonable Risk Finding

A. Finding for Proposed Rule

EPA finds that, due to the presence of TCDD/TCDF in paper mill sludge, current paper mill sludge land application practices present an unreasonable risk of injury to the environment. EPA believes that the requirements in this proposed rule will protect adequately against unreasonable risk while imposing the lowest burden on society.

Specifically, EPA believes that current paper mill sludge land application practices present an unreasonable risk because: (1) They cause high apparent levels of TCDD/TCDF exposure to wildlife; and (2) for an apparently low cost, the practices could be altered to reduce the TCDD/TCDF concentration to levels that would substantially limit risk. To restrict the risk to reasonable levels while still retaining the benefits of land application, EPA has determined that those practices should be changed to reduce post-land application TCDD/TCDF levels in soil to the lowest concentrations that would still allow substantial continuation of sludge land application.

This decision was reached after weighing the scientific evidence of human and environmental risk derived from pharmacokinetic models and field studies (discussed in Unit V of this preamble) against the economic consequences of restricting land application (discussed in Unit VI of this preamble). These consequences include the loss of the benefits of the practice and the relatively low social and financial costs of imposing the proposed limitations. These limitations, furthermore, are designed to force paper mills to develop all reasonable means to reduce TCDD/TCDF levels in sludge.

For the final rule, EPA will consider a range of regulatory options justified by scientific evidence and appropriate public policy. Those options could include imposing limits on the amount of land in a drainage area to which sludge could be applied. They could also include banning the land application of paper mill sludge, although EPA does not at present believe that a ban is justified.

1. *Introduction.* EPA has extensively studied 2,3,7,8-TCDD. Its toxicity at very low levels is well known, and is discussed in the background documents contained in the rulemaking record. Other CDD/CDF congeners are also considered toxic, but are lower in toxicity than 2,3,7,8-TCDD. Issues regarding the toxicity of the other congeners have been considered in the development of the TEFs, which have been accepted by the international community. Because most of the toxicity of paper mill sludge is attributable to TCDD and TCDF, only these two congeners are addressed in this proposed rule.

TCDD has caused cancer in animals and, therefore, may pose a risk of cancer to humans. Animal tests also show significant noncancer effects for TCDD at lower dose levels than for almost all other toxic chemicals. For a number of species, laboratory tests show adverse effects even at the lowest administered dose. For these species, a NOAEL has not been established, and risk analysis is based on the LOAEL, the lowest laboratory dose level which shows adverse effects.

Toxicity, however, is not the only factor which must be considered in determining whether regulation is warranted. The extent of animal and human exposure must also be assessed, and the beneficial uses of the sludge and the costs of potential regulation must be considered. The EPA risk assessment for this rule has focussed primarily on the levels at which animals and humans are exposed to TCDD/TCDF from paper mill sludge. The following discussion explains how EPA used the evidence on these matters to reach its decision.

2. *Risk estimates* — a. *Wildlife.* In performing its risk assessment, EPA analyzed data from both pharmacokinetic modelling and field studies. Both approaches have drawbacks: modelling, which relies on laboratory techniques, may not fully account for conditions in the wild, while field studies cannot definitively demonstrate the absence of adverse effects.

Pharmacokinetic modelling indicates that at current practices, as determined from measurements in the 104–mill study, some wildlife species are receiving doses of TCDD/TCDF that far exceed the dose levels at which laboratory studies showed reproductive effects. Under EPA's RQ analysis, which shows by how many times estimated exposure levels exceed the laboratory NOAEL or LOAEL for a particular species, some species have RQs ranging from 30 to 65. For many species, the RQ exceeds 1. This is of special concern because many species' RQs are based on LOAELs, not NOAELs. This means that those species may be subject to significant adverse effects even at an RQ of 1.

EPA supports the conclusions of its pharmacokinetic modelling even though a number of uncertainties are associated with it. Both the toxicity and exposure models are reasonable. With respect to toxicity, EPA believes that the bird embryo LOAEL of 65 ppt in the egg and the rat LOAEL of 10 ng/kg/day in the diet were appropriate benchmark toxicity values to represent the most exposed avian and small mammal species. The reasons supporting these choices are in the risk assessment summary (Unit V of this preamble) and the support documents. In conducting environmental risk assessments, EPA generally attempts to identify the species within an ecosystem which is most likely to demonstrate adverse effects. For this rulemaking, EPA believes that it is appropriate to choose the most exposed species to determine appropriate risk management levels in the environment.

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With respect to exposure, some field measurements seem to corroborate the results of uptake and bioaccumulation modelling. For example, EPA's best estimate modelling projected that a 3 ppt TCDD concentration in soil would result in 65 ppt TCDD levels in bird eggs, the LOAEL in a chicken egg study. One field measurement has shown an 11 ppt soil TEQ resulting in a 140 ppt concentration in a composite of six robin eggs. The ratio of 65/3 (21.7) projected in the model is generally consistent with 140/11 (12.7) observed in the field study. There is a wide variation in field measurements, however. Several have shown lower levels in eggs than models would have anticipated, and in some cases TCDD was not detected.

Although EPA relies on pharmacokinetic modelling, it acknowledges that there is a significant degree of uncertainty in modelling predictions, and that risks to some or to all wildlife species at the projected exposures may be insignificant. Published reports of field observations at a soil concentration close to that in the proposed rule have indicated no adverse effects. However, as noted in the risk assessment summary, given the constraints on field study observations, the failure to observe adverse effects does not demonstrate that no such effects occurred.

Furthermore, EPA's modelling only predicts risk to individuals within a species. EPA has insufficient information to estimate risks to populations. That is, EPA cannot say what percentage of a population may be adversely affected at any particular dose, nor can it predict what impact any potential effects would have on the population or the ecosystem as a whole.

The wildlife risk assessment shows a range of modelled soil TCDD/TCDF concentration values from 0.5 to 130 ppt at which individuals in sensitive species may be affected. However, EPA's best estimate modelling indicated that adverse effects would probably begin to occur at or below 3 or 4 ppt. Applying a one hundred-fold uncertainty factor to that LOAEL, as discussed in the risk assessment, would produce a level of 0.03 to 0.04 ppt. Although this level is 100 times lower than the LOAEL for the most sensitive species, it does not generate the same level of confidence as a NOAEL, and does not demonstrate an absence of risk.

Field study results have proven consistent with certain of the assumptions used in modelling, particularly with regard to TCDD/TCDF concentrations in soil producing particular concentrations in bird eggs. At an 11 ppt soil concentration, no adverse effects were observed in individuals of the particular species studied, and no significant population effects were observed. Although field studies cannot demonstrate the absence of effects on individuals, this result may suggest that, at least with respect to population effects, the threshold effect level may be 11 ppt or higher.

b. *Human health effects.* Human cancer risks to the general population appear to be relatively low. Even under current practices, EPA estimates that 0.0062 to 0.3 cases per year may be attributable to land application.

3. *Risk reduction and economic consequences.* EPA's choice of the 10 ppt soil concentration limit is based on balancing the risk considerations discussed above with the economic consequences of regulation.

For wildlife, the proposed 10 ppt limitation reduces RQs based on the wildlife risk model from levels as high as 65 to an RQ of approximately 3 for the most exposed species. With respect to wildlife risks, EPA would ideally prefer setting a soil concentration limit which would reduce exposures to the level where risk is insignificant. EPA accordingly evaluated the 0.03 ppt TCDD/TCDF soil concentration limit which modelling suggested as protective. However, this soil concentration, besides being 33 times lower than the analytical limit of detection and therefore difficult if not impossible to enforce, would effectively ban paper mill sludge land application. Because of the benefits of land application, both in terms of the sludge's value as a soil conditioner and as an alternative means of disposal, as noted in the analysis in Unit VI of this preamble, EPA does not currently advocate a ban.

EPA's analysis indicates that a 10 ppt TCDD/TCDF soil concentration is the lowest practicable level that would still allow substantial spreading. EPA's analysis of the 104–mill study shows that 6 of the 12 mills currently spreading could continue land application at the 10 ppt soil concentration limit. EPA has received subsequent information indicating that TCDD/TCDF levels throughout the industry have been substantially decreased as a result of bleaching process changes, and that other mills may be able to spread at the 10 ppt limit. Furthermore, mills not currently land applying may choose to begin the practice.

EPA cannot precisely estimate the extent to which land application can continue. For the purpose of this proposal, however, the 10 ppt TCDD/TCDF soil concentration limit seems appropriate. In choosing 10 ppt as the soil concentration limit, EPA acknowledges that all hypothetical risks will not be eliminated. This level, however, is below the 11 ppt concentration at which no effects were observed in the field, and is well within the range of the scientific uncertainty in EPA's pharmacokinetic modelling.

In addition to addressing risks to wildlife, the 10 ppt level is estimated to reduce cancer risks to the general human population to nearly zero.

There appears to be little incremental risk reduction from imposing levels lower than 10 ppt, while the incremental costs would be comparatively high. EPA estimates a total cost of $5.5 million for the 10 ppt soil concentration limit in this proposed rule. A further restriction to 5 ppt has been estimated to add $4.8 million to that total, an approximately 60 percent incremental cost. In addition, lower levels would produce virtually no incremental risk reduction in statistical cancer risks for the general population.

The 10 ppt soil concentration may still result in the bioaccumulation of TCDD/TCDF throughout the food web and pose a risk of reproductive and developmental toxicity to birds and small mammals. The 10 ppt level is three times the lowest level at which adverse effects were observed in laboratory chicken egg injection studies, and is two times the laboratory LOAEL for small mammals. Further risk reduction could be achieved by setting a lower soil concentration limit. Given the uncertainty of the models, however, there is no assurance that a limit below 10 ppt would result in significant risk reduction. Given the balance between the incremental costs of lower soil concentration limits and the considerable uncertainty in extrapolating from laboratory experiments to the wild, and in determining what adverse effect may actually occur in chronically exposed wildlife, EPA believes that the remaining risks at 10 ppt are reasonable. EPA specifically invites comment on alternative TCDD/TCDF soil concentrations.

In implementing this limit, EPA specifically elected to apply it to all paper mill sludge land application, even though that restriction may effectively eliminate distribution and marketing to small volume users. Distribution and marketing is of concern to EPA because, according to currently available information, most sludge would have to be incorporated into the soil to meet the proposed 10 ppt TCDD/TCDF soil concentration limit. Permitting distribution and marketing for general, unsupervised use — for example, by homeowners in gardens — could result in unincorporated application, producing high soil TCDD/TCDF concentrations and significantly increasing health and environmental risks. EPA requests comment on the degree of risk that may be presented by distribution and marketing applications, and on the appropriate level of regulation for such activities.

B. Alternative Finding

The proposed rule is driven by the risk of injury to the environment, not by human cancer effects. However, because of the uncertainties in the science, EPA acknowledges that there is a range of acceptable policies under the unreasonable risk standard of TSCA. Accordingly, EPA is soliciting comment on an alternative finding to allow for the inclusion of a limitation on the amount of land in a drainage area to which paper mill sludge may be applied, in order to protect human MEI's from cancer risks.

As discussed in Unit V of this preamble, EPA's risk assessment indicated that current paper mill sludge land application practices could present significant lifetime cancer risks to two categories of potential human MEI's: subsistence farmers and subsistence fishers. Under current practices, lifetime cancer risks for subsistence farmers and fishers are estimated to be on the order of 10^{-3}.

The 10 ppt soil concentration in the proposed rule would have the effect of limiting risks to the subsistence farmer to a 10^{-4} level. A soil concentration limit alone, however, would only partially address risk to the the subsistence fisher. Risk to the fisher MEI could result from the runoff of TCDD/TCDF from an application site, and is a function of both the soil concentration and the amount of land in a given drainage area to which TCDD/TCDF was applied. To control this runoff risk, it may be reasonable to impose a limit on the amount of land in a drainage area to which sludge could be applied.

To protect the MEI fisher to a 10^{-4} risk level, EPA may implement an application area size limit of 1,000 hectares per drainage area. Combining that hectare limit with the 10 ppt soil concentration limit, based on the 104–mill data, would mean that 2 of the 12 mills currently spreading would be predicted to continue the practice. That reduction in the number of spreading mills would amount to an approximately $3.0 million increase in the cost of the regulation, as described in Unit VI of this preamble. Reducing MEI fisher risks to a 10^{-5} level, however, would effectively ban land application.

EPA has not included a hectare limit as part of this proposed rule because the incremental cost of such a provision appears to be excessive in light of the hypothetical nature of the risk and of the low aggregate risk, and in view of the limited aggregate risk reduction which would be achieved. Currently available data has not demonstrated the actual existence of individuals in the subsistence fisher category who would be placed at risk by sludge land application activities, and EPA expects that any such population would be very small. Further, EPA's modelling shows almost no human cancer risks to the general population from runoff. The uncertainties associated with the risk assessment would not in themselves preclude the Agency from imposing an area limit. However, in view of the nature and uncertainties of the subsistence fisher risk assessment coupled with the relatively high incremental cost of the area limitation, the Agency has chosen to suspend imposition of the area limitation until some of the uncertainty has been reduced, significant population risks have been identified, or the incremental costs have been shown to be lower than currently estimated.

EPA reserves the option of imposing a hectare limit if it proves justified, however. As described in Unit II of this preamble, ongoing studies like those discussed at the Banbury Conference are exploring and further defining the health hazards of TCDD/TCDF, and may offer additional support for the conclusions drawn in the risk assessment. In addition, information concerning the existence and size of the subsistence fisher population may require EPA to revise its estimate of the actual risk and of the potential risk reduction which may be achieved by imposing such a limit. Finally, although EPA has considered the 1,000 hectare limit as restrictive in its economic analysis in Unit VI of this preamble, EPA acknowledges that the limit actually may not be significantly restrictive. Thus, the $3.0 million may be an overestimate, and the incremental cost could actually be very low. The 10^{-4} risk level may be readily achievable. Under such circumstances, EPA would find the imposition of a hectare limit warranted if the population risks including risks to subsistence fishers exceeded the cost of the hectare limit.

VIII. Other Regulatory Options Considered

A. Drainage Area Limitations

The requirements discussed in this unit are proposed as the means by which limitations could be imposed in the final rule upon the amount of land in a drainage area to which paper mill sludge could be applied, as discussed in Units V, VI, and VII of this preamble. Comment on these potential provisions is specifically requested.

If drainage area hectare limitations were imposed, mills would be required to specify in their notice filings and records the drainage area of each of their application sites by reference to the USGS Hydrologic Cataloguing Unit Number for the location of the site. In all site-related records and notices, mills would be required to indicate the total number of hectares in each drainage area to which sludge was applied, and the TCDD/TCDF concentration of that sludge. Where a mill proposes to use several sites in a single drainage area, it could identify and list all of the sites in a single notice. For the purpose of this rule option, the USGS Hydrologic Cataloguing Unit in which the land application site was located would be considered the drainage area for the site.

In order to implement this option, the regulation would include several additional provisions. Section 744.125(a) of the proposed rule would include a requirement that the drainage area of the site be specified by reference to the USGS Cataloguing Unit Number for the area containing the site, and that the number of hectares in the drainage area to which sludge would be applied also be specified.

Section 744.125(a) of the proposed rule would also be altered to include a paragraph requiring the generator of paper mill sludge, at least 15 days prior to filing a notice, to conduct a diligent inquiry, search and review of the notices on file with EPA to determine whether its land application activities, incombination with those already described in existing notices, would exceed the hectare limitation on spreading in a given drainage area. If a 1,000 hectare limit were imposed, for example, and existing notices covered 800 hectares, the generator proposing additional operations in that drainage area could not submit any notice describing land application sites totalling more than 200 hectares. If existing notices covered all 1,000 of the permitted spreading hectares in a drainage area, no generator could file any further notice for land within that drainage area.

A new section, 744.125(d), would be inserted into the proposed rule to establish the drainage area hectare limit, and to define the USGS Hydrologic Cataloguing Unit including

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the site as the drainage area for the site. For example, if a 1,000 hectare limit were imposed, the section would specify that paper mill sludge could not be applied such that the combined total of all land application activities exceeds 1,000 hectares in each drainage area. If flexible hectare limits were imposed to vary with the actual soil concentration, this subsection would include a formula for calculating the number of hectares corresponding to the permitted total TCDD/TCDF load for the drainage area.

Section 744.135 of the proposed rule would include the requirement that the drainage area for each site be identified, and that the number of hectares in each drainage area, as well as the TCDD/TCDF concentration and weight of sludge applied to that area, be recorded.

B. Permit Systems

As an alternative to the drainage area limit systems described above, EPA is considering promulgating one of two permit systems. Each is intended to provide more land application flexibility by taking into account site-specific factors. One system is intended to be an alternative means of meeting national requirements; the other would allow for the development of requirements based on site-specific determinations of unreasonable risk.

1. *National standard permits.* In the first permit system, the national unreasonable risk standard described in the current proposal and modified by the addition of a hectare limit would serve as the standard for judgment of each permit. EPA would continue to limit the soil concentration to 10 ppt, but would allow for variation in the hectare limit. By keeping the 10 ppt limit, unreasonable risks to wildlife and humans from ingestion of food crops grown and animals grazed on sludge-amended lands would still be prevented. If a mill could demonstrate that it could control runoff to limit risks to the human subsistence fisher MEI to less than 10^{-4}, then EPA could consider allowing the mill to apply to more than 1,000 hectares.

Mills would be required to demonstrate that they could control the annual amount of sludge or sludge/soil runoff from the land application site after runoff controls are in place. Land application would have to be controlled to the extent that total annual runoff from the entire drainage area would not exceed a 10^{-4} risk to the subsistence fisher. In addition, any mill intending to land apply sludge would have to control runoff from its site to the extent that the 1,000 hectare national runoff standard would not be exceeded. This requirement is particularly important if there is more than one land application site in a drainage area, and is of greater importance if more than one mill is land applying in a single drainage area. Total runoff would probably be determined by manipulating the USLE and a sediment delivery ratio specified by EPA, followed by a determination of the risks from that amount of runoff.

This system would allow for more flexibility in the amount of sludge a mill could dispose of through land application. For example, if a mill intended to apply paper mill sludge such that the resulting soil concentration on a plot of land were to be 5 ppt, then the mill could apply sludge up to 2,000 hectares. The mill costs for this permit option are estimated at $10,000-$13,300 per permit. EPA's cost of administering this permit option are estimated at $1900 per permit.

2. *Site-specific permits.* In this permit system, unreasonable risk would be determined by EPA on a site by site basis. There would be no 10 ppt/1,000 hectare limits; instead, the maximum soil concentration and maximum hectare limits would be determined in conjunction with the appropriate levels of wildlife and human risk for that drainage area. Mills would be required to demonstrate that their sludge management practices adequately control exposure and release. EPA would determine whether resulting exposures produce unreasonable risk based on sitespecific factors such as the nature and behavior of potentially exposed human and environmental populations, runoff controls, other sources of TCDD/TCDF, the size of the drainage area, slope of the site, soil type, local economic conditions, benefits from land application at a particular site, and others. If a mill could convince EPA that risks from land application in a particular drainage area could be adequately controlled, then EPA would grant the permit. The risk levels in the current proposal could possibly serve as national guidelines. This approach would give EPA more flexibility in evaluating unreasonable risk in the context of conditions within each drainage area. EPA cost for administering this permit option is estimated to be $3,600 per permit.

In both permit systems, mills would have flexibility in their land application practices. EPA could track the total land area and resulting soil concentration(s) in the drainage area from all land application activities including past land application. Permits could also facilitate resolution of disputes between multiple mills intending to apply in the same drainage area in that EPA could grant or deny permits based on the total drainage area risk.

In both permit systems, local risks would be calculated by EPA using the same procedures as used for the risk assessments performed for this rule. The analyses would be modified by EPA as appropriate to reflect local conditions. EPA would perform the risk assessments for each potential land application site prior to approving permits. EPA may also allow the mills to perform the risk assessments. If this were the case, the methodologies would be provided by EPA through a guidance document. EPA would publish the guidance document upon promulgation of the final rule. Based on discussions with risk assessment consultants, mill costs for the site-specific permits are estimated to range from $50,000 to $150,000 per site.

3. *Administrative procedures.* To issue permits, EPA would require the mill to receive the approval of the appropriate Regional Administrator or the Director of the Office of Toxic Substances (OTS). The permit application would include a complete land application program description, the legal location and description of the site, the TCDD/TCDF TEQ (as defined in this proposed rule) concentration in the sludge to be land applied, the resulting soil concentration, the sludge management practices to be used, and how the site would be managed including staffing and funding descriptions. Application requirements would also include any information that the Regional Administrator or the OTS Director identifies as reasonably necessary to approve the permit.

The Regional Administrator or OTS Director would approve the land application permit with any conditions that he/she determines are necessary to ensure that the land application activity will not present an unreasonable risk of injury to human health or the environment from TCDD/TCDF. The approval would be in writing and signed by the Regional Administrator or OTS Director. EPA is considering placing the permit systems on a 5-year renewal cycle, at the end of which time the permit process described above would begin again. During the time in which permits would be developed, no mill would be allowed to land apply sludge. Land application could commence upon approval and issuance of the permit.

EPA is also considering accepting determinations of unreasonable risk from applicable state authorities to meet the federal requirements under TSCA, if the states could demonstrate that the same TSCA principles of unreasonable risk were used. EPA would retain the authority to reject state determinations. EPA could also delegate to the states the authority to conduct inspections which the Agency could use in determining whether permit violations have occurred. EPA is also considering allowing the states to act as representatives of the Agency in enforcing permits. In such cases, EPA would retain the authority to determine whether a permit violation has occurred, and would bring the enforcement action. EPA specifically requests comment on whether a site-specific permit system should be administered at the federal or the state level.

If either permit option were chosen, EPA expects that it would be in place within 18 months of the date of this proposal, consistent with the Consent Decree in *EDF/NWF v. Thomas* [see Unit II.A of this preamble]. The effective date of the final rule would probably be delayed to allow the mills time to develop their permit applications. EPA wishes to emphasize that it does not intend to re-propose this rule if it decides to promulgate any of the permit systems discussed in this unit. Therefore, EPA requests that all interested parties submit thorough, complete comments on these permit options.

C. Alternative Recordkeeping Requirements

An additional provision considered by EPA would have required that information on sludge land application activities be entered into official legal records pertaining to the land, including but not limited to the deed for any property onto which paper mill sludge has been applied.

IX. Alternative Statutory Approaches

Sections 6(c) and 9(b) of TSCA require EPA to take regulatory action on a chemical substance or mixture under other statutes administered by the Agency if actions under those statutes could eliminate or reduce to a sufficient extent the risks posed by the substance or mixture. TSCA may still be used, however, if the Administrator determines that it is in the public interest to take action under it. In this unit, EPA describes its consideration of the RCRA and CWA as statutory mechanisms for addressing the risks posed by paper mill sludge.

A. Resource Conservation and Recovery Act (RCRA)

Under RCRA Subtitle D section 4004(a), EPA has the authority to promulgate regulations containing criteria for distinguishing between proper disposal facilities (for example sanitary landfills or land application areas) and open dumps [42 U.S.C. 6944(a)]. The criteria are to assure that "there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste" at proper disposal facilities. Those facilities that do not satisfy the criteria are considered to be engaging in "open dumping", which is prohibited by RCRA section 4005(a).

EPA could utilize the authority under section 4004(a) of RCRA to establish limits on the levels of TCDD/TCDF in paper mill sludge for land application. However, EPA's authority to enforce such rules issued under section 4004(a) is limited under RCRA. Because TSCA will provide EPA with more direct enforcement authority (under sections 11, and 15 through 17) than RCRA Subtitle D, EPA has determined that it is in the public interest to utilize the authority of TSCA section 6 to protect against the risks from land application (as defined in this rule) of paper mill sludge.

EPA has authority under RCRA Subtitle C section 3001 to list pulp and paper mill sludge contaminated with TCDD/TCDF as a hazardous waste (42 U.S.C. 6921). Such a listing would subject paper mill sludge to the full set of regulations applicable to generators, transporters, and owners and operators of treatment, storage, and disposal facilities that have been promulgated under RCRA Subtitle C (42 U.S.C. 6921 et seq.; 40 CFR parts 260–271).

Although RCRA Subtitle C provides EPA with authority to address the risks posed by the disposal of paper mill sludge to human health and the environment, the Administrator has determined that it is in the public interest to utilize the authority provided under TSCA section 6(a) at this time, rather than RCRA Subtitle C, to reduce those risks. As indicated above, once paper mill sludge is listed as a hazardous waste under RCRA section 3001, the sludge would be subject to the full range of hazardous waste management regulations. By utilizing the authority of TSCA section 6(a), EPA can specifically tailor regulatory requirements to the particular risks that paper mill sludge presents to human health and the environment. For example, use of TSCA authority allows EPA to address the specific disposal practice of land application through this regulation while it continues to investigate whether additional regulations are required for other storage and/or disposal practices.

B. Clean Water Act (CWA)

Because paper mill sludge is generated through the treatment of pulp and paper mill process wastewaters, EPA also considered regulating paper mill sludge land application under CWA. EPA considered such an approach in order to promote regulatory efficiency. This strategy would have relied on in-place CWA permit programs to implement paper mill sludge land application requirements.

Two provisions of the CWA potentially provide authority to regulate the land application of paper mill sludge. Section 405 of the CWA requires EPA to develop regulations that identify pollutants that may be present in municipal sewage sludge which may adversely affect human health and the environment, and to develop specific numerical pollutant limits [33 U.S.C. 1345(d)]. In the Water Quality Act amendments of 1987, Congress expanded the scope of the regulations required by section 405(d) to include sludges generated by industrial manufacturing and processing facilities that treat municipal sewage along with industrial wastes and wastewater [Conf. Rept. 1004, 99th Cong., 2d Sess. 160 (1986)].

In February 1989, pursuant to its authority under section 405, EPA proposed standards for the disposal of sewage sludge when it is applied to land, placed in surface disposal sites, disposed of in sludge-only landfills, incinerated, or distributed and marketed for home garden use. However, as explained in the preamble to the "Standards for the Disposal of Sewage Sludge" (54 FR 5746, 5792-93, February 6, 1989), EPA did not have sufficient data to develop standards for sludge from industrial facilities at the time of that proposal. EPA further indicated that, after evaluation of certain data, it would determine whether additional regulations should be developed for industrial facilities that co-treat municipal sewage with industrial wastewater and anticipated that any further regulations would be developed under the joint authority of RCRA and CWA section 405.

EPA has decided that the public interest dictates regulation of paper mill sludge under section 6(a) of TSCA rather than section 405 of the CWA. Section 405 does not authorize comprehensive regulation of industrial treatment sludge, but only of industrial sludge with a municipal sewage component. Consequently, facilities that generate wastewater sludge that is not derived, in part, from the treatment of

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sanitary wastes as well as industrial wastewater would not be subject to any regulation developed under section 405. This statutory anomaly could encourage some facilities to re-pipe municipal sewage from any combined treatment facility merely to avoid regulation, a result clearly at odds with environmental protection. By contrast, any TSCA regulation would apply whether or not the sludge resulted from co-treatment of process wastewater and sanitary flow.

EPA also considered regulating paper mill sludge under section 304(e) of the CWA [33 U.S.C. 1314(e)]. Section 304(e) provides EPA with the authority to publish best management practice (BMP) regulations. These may be supplemented with effluent limits which control plant site runoff, spillage, leaks, sludge and other waste disposal, and drainage from raw material storage which may contribute significant amounts of toxic or hazardous pollutants to waters of the United States. Such regulations and applicable controls must be included in any National Pollutant Discharge Elimination System (NPDES) permit issued for a point source within the affected industrial category under section 402 of CWA.

EPA concluded that regulation under section 304(e) is inappropriate at this time. BMP regulations for environmentally sound management of paper mill sludge would become enforceable only when incorporated in CWA NPDES permits issued to point source dischargers. These permits are issued for fixed terms not to exceed 5 years, and may be modified during the permit term under specific conditions [40 CFR 122.46 and 122.62]. Under EPA's current regulations, new BMP regulations for a point source category are not cause for a modification of NPDES permits. Consequently, unless the specific terms of an NPDES permit provided for its automatic reopening to incorporate newly developed BMPs, such BMPs would not be included until the permit was reissued. As a result, in certain instances there could be some time lag between the issuance of CWA BMP regulations for paper mill sludge and a legal requirement to comply with the conditions dictated by the regulations.

There would be no similar problem with regulations issued under TSCA section 6(a) because such requirements are effective immediately upon issuance of a final rule, and do not require incorporation into specific existing permits.

X. Export Notification

Section 12(b) of TSCA requires any person who exports or intends to export to a foreign country a chemical substance or mixture for which a rule has been proposed or promulgated under section 6 to notify EPA of such exportation or intent to export. Since paper mill sludge is a mixture of chemical substances, it would be subject to export notification requirements.

EPA anticipates that the burden of export notification requirements will be minimal. EPA does not believe that a significant amount of sludge is exported. Companies are required only to provide notification the first time they export or intend to export paper mill sludge to each country in a calendar year. The notification consists of the company's name and address, name of the mixture, the TSCA section 6 action that triggered the notice, countries that are to receive the export, and the export date or intended export data. Exporters should see 40 CFR 707.60 through 707.75 for further details on the export notification requirements.

XI. Confidential Business Information

Any person who submits written comments containing confidential business information (CBI) must mark the comments as "Confidential Business Information". Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as "Confidential Business Information" will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be CBI must prepare and separately submit a public version of the comments that EPA can place in the public file. CBI comments should be submitted in triplicate to: Document Control Office (TS-790), U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. CBI comments should be mailed in a double envelope with "CBI" and the docket number OPTS-62100 marked on the inner envelope, and the comments should be marked with docket number OPTS-62100.

XII. Hearing Procedures

If persons request time for oral comment, EPA will hold informal hearings in Washington, DC. Any informal hearing will be conducted in accordance with EPA's "Procedures for Conducting Rulemaking Under Section 6 of the Toxic Substances Control Act" (40 CFR part 750). Persons or organizations desiring to participate in the informal hearing must file a written request to participate. The written request must be sent to the Environmental Assistance Division at the address listed under FOR FURTHER INFORMATION CONTACT. The written request must include:

1. A brief statement of the interest of the person or organization in the proceeding.

2. A brief outline of the points to be addressed.

3. An estimate of the time required.

4. If the request comes from an organization, a non-binding list of the persons to take part in the presentation.

Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed. Organizations which do not submit comments on the proposed rule will not be allowed to participate at the hearing, unless the Record and Hearing Clerk grants a waiver of this requirement in writing.

The deadline for receipt of written requests to participate in a hearing is in the DATES section of the preamble.

XIII. Rulemaking Record

A. General Information

EPA has established a record of this rulemaking (docket number OPTS-62100). The record includes basic information considered by EPA in developing this proposed rule. EPA will supplement the record with additional information as it is received.

EPA will accept additional materials for inclusion in the rulemaking record at any time between this proposal and designation of the complete, closed docket. EPA will identify the complete record by the date of promulgation. A public version of this record containing nonconfidential materials is available for reviewing and copying from 8 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, U.S. Environmental Protection Agency, Rm. NEG004, 401 M St., SW., Washington, DC 20460.

B. Support Documents

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(2) USEPA, OPTS/OSW. "Estimates of Exposure and Risks to Wildlife from Land Applications of Pulp and Paper Sludge." Ch. 3. In: *Assessment of Risks from Exposure of Humans, Terrestrial and Avian Wildlife, and Aquatic Life to Dioxins and Furans from Disposal and Use of Sludge from Bleached Kraft and Sulfite Pulp and Paper Mills.* (July 1990):329-365. EPA 560/5-90 013. [Aka "Integrated Risk Assessment"]

(3) USEPA, OPTS/OSW. "Estimates of Exposure and Risks to Humans Based on Generic Disposal/Reuse Scenarios." Ch. 6. In: *Assessment of Risks from Exposure of Humans, Terrestrial and Avian Wildlife, and Aquatic Life to Dioxins and Furans from Disposal and Use of Sludge from Bleached Kraft and Sulfite Pulp and Paper Mills.* (July 1990):427-535. EPA 560/5-90 013. [Aka "Integrated Risk Assessment"]

(4) USEPA, OPTS, HERD. "Environmental Risk Assessment for TCDD and TCDF-Contaminated Pulp Sludges on Terrestrial and Aquatic Wildlife". (July 31, 1991):96pp. B. Rabert. [Revision to Ch 3. in Ref. 2].

(5) USEPA, OSW." Human Health Risk Assessment for Dioxin in Sludge: Technical Support Document for the Proposed Land Application Rule". (April 1991). Prepared under contract by Abt Associates. [Revision to Ch. 6 in Ref. 3].

C. Other References

(1) API. Preliminary comments re: EPA's uses of certain toxicity data and assessment methodologies. American Paper Institute.

(2) EDF. Preliminary comments re: EPA's uses of certain toxicity data and assessment methodologies. Environmental Defense Fund.

(3) EDF/NWF. Citizens Petition of October 22, 1984 requesting EPA to regulate chlorinated dibenzo-*p*-dioxins (CDDs) and chlorinated dibenzofurans (CDFs). Environmental Defense Fund and National Wildlife Fund. Filed at OPTS 210016.

(4) EDF and *NWF v Thomas*. Consent Decree, July 27, 1988, U.S. District Court Civil Action No. 85-0973. (July 27, 1988):22pp.

(5) Martin S. G., D. A. Thiel et al. "Effects of Paper Industry Sludge Containing Dioxin on Wildlife in Red Pine Plantations". In: *TAPPI 1987 Environmental Conference Proceedings*, Portland, Oregon. (1987):363-377.

(6) NCASI. "The Land Application and Related Utilization of Pulp and Paper Mill Sludges". *Technical Bulletin 439.* (August 6, 1984.) National Council of the Paper Industry for Air and Stream Improvements, Inc.

(7) Nekoosa Paper Inc. "Dioxin Analysis Related to the Nekoosa Biogreen Program". Nekoosa Report to Dioxin Work Group. Unpublished Report. (November 1, 1989):19pp. D.A. Thiel.

(8) Thiel, D.A., S.G. Martin et al. "Evaluation of the Effects of Dioxin-Contaminated Sludge on Wild Birds." In: *TAPPI 1988 Environmental Conference Proceedings*, Portland, Oregon. (1988):487-507.

9. U.S. Congress, House of Representatives. "Legislative History of the Toxic Substance Control Act." House Report on TSCA H. Rept.1341, 94th Cong., 2nd Session (July 14, 1976): 1,13 15,32.

(10) U.S. Congress, House of Representatives. H. Rept. 223, 98th Cong., 1st Session. (May 24, 1983):19-22.

(11) U.S. Congress, House of Representatives. Conf. Rept. 10594, 99th Cong., 2nd Session, 169 (October 1986):1-3,160-161.

(12) USDA, SCS. Soil Conservation Service Directory of State Offices. Telephone numbers for obtaining *Practice Standard 342, Critical Area Planning and Engineering Field Manual.* Soil Conservation Service, U.S. Department of Agriculture.

(13) USDOI, USGS. State Hydrologic Unit Maps, Open File Report 84-708. (1984). U.S. Geological Survey, U.S. Department of the Interior.

(14) USEPA. "Standards for Disposal of Sewage Sludge; Proposed Rule." 54 FR 5746 at 5782-93. (Feburary 6, 1989). [Aka Municipal Sewage Sludge Rule].

(15) USEPA. "Water Programs; Guidelines Establishing Test Procedures for the Analysis of Pollutants; Proposed Rule." 56 FR 5090. (Febuary 7, 1991).

(16) USEPA, AX. Letter from F.H. Habicht, II, Deputy Administrator, to M.V. Putten, Counsel, NWF and K. Florini, Counsel, EDF re: Consent Decree. (April 30, 1990):2pp.

(17) USEPA/API/NCASI. Agreement of June 20, 1988. USEPA/Paper Industry Cooperative Dioxin Screening Study: [Agreement]. (June 20, 1988): 6pp.

(18) USEPA, OHEA, ECAO. "Reanalysis of the FDA Revised Total Diet Food List." In: *Appendix I to Development of Risk Assessment Methodology for Land Application and Distribution and Marketing of Municipal Sludge.* ECAO-CIN-459. (1987):34pp.

19. USEPA, ORD. *Estimating Sludge Management Costs. 1985 EPA Handbook.* (1985). EPA 625/6-85/010.

(20) USEPA, OPTS, OSW. "Assessment of Risks from Exposure of Humans, Terrestrial and Avian Wildlife, and Aquatic Life to Dioxins and Furans from Disposal and Use of Sludge from Bleached Kraft and Sulfite Pulp and Paper Mills". (July 1990):708pp. Prepared under contract Nos 68-02-4283 and 68 D9-0169 by Abt Associates, Inc., Cambridge, MA. EPA 560/5 90-013. [Aka: "Sludge Assessment" and "Integrated Risk Assessment"].

(21) USEPA, OW, OWRS. U.S. EPA/Paper Industry Cooperative Dioxin Screening Study. (March 1988): EPA 440/1-88-025. [Aka "5-Mill Study"].

(22) USEPA OW, OWRS. EPA/Paper Industry Cooperative Dioxin Study. "104-Mill Study." *Statistical Findings and Analysis.* (July 1990):171pp.

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XIV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of this rule, EPA estimates that the cost would be approximately $5.5 million.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act [5 U.S.C. 605(b)], EPA has determined that this rule would not have a significant impact on a substantial number of small businesses.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 1595) and a copy may be obtained from Sandy Farmer, Information Policy Branch, 401 M St., SW., (PM-223), Washington, DC 20460, or by calling (202) 382-2740.

Send comments regarding this burden estimate or any other aspect of these information collection requirements, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or

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public comments on the information requirements contained in this proposed rule.

List of Subjects in 40 CFR Part 744

Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Sludge, Toxic substances.

Dated: May 1, 1991.

William K. Reilly,

Administrator.

Therefore, 40 CFR chapter I, subchapter R is proposed to be amended by adding part 744 to read as follows:

Part 744—Industrial Sludge

Subpart A—General Provisions

744.1 Purpose and scope.
744.3 Definitions.

Subparts B-F—[Reserved]

Subpart G—Land Application of Industrial Sludge from Pulp and Paper Mills Using Chlorine and Chlorine Derivative Bleaching Processes

744.120 Purpose and applicability.
744.123 Definitions.
744.125 Land application.
744.127 Distribution and marketing.
744.130 Sampling protocols and analytical methods.
744.135 Recordkeeping.
744.157 Enforcement.
744.158 Inspections.

Authority: 15 U.S.C. 2605.

Subpart A—General Provisions

§ 744.1 Purpose and scope.

The purpose of this part is to establish requirements under section 6 of TSCA for the manufacturing, processing, use, disposal, distribution in commerce, and/or marketing of industrial sludges, particularly those contaminated with polychlorinated dibenzo-pdioxins and/or polychlorinated dibenzofurans.

§ 744.3 Definitions.

The following definitions apply to this part:

CWA means the Clean Water Act, Public Law 92-500, as amended.

Dibenzofuran or *furan* means any of a family of compounds which has as a nucleus a triple-ring structure consisting of two benzene rings connected through a pair of bridges between the benzene rings. The bridges are a carbon-carbon bridge and a carbon-oxygen-carbon bridge at both substitution positions.

Dibenzo-p-dioxin or *dioxin* means any member of a family of compounds which has as a nucleus a triple-ring structure consisting of two benzene rings connected at the para positions by a pair of oxygen atoms.

EPA means the U. S. Environmental Protection Agency.

HSWA means the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, as amended.

Industrial sludge means any solid, semi-solid, or liquid residue removed during the treatment of industrial process wastewater. Municipal sewage sludge is not included in this definition.

Person means an individual, association, partnership, corporation, municipality, commission, State or Federal agency, political subdivision of a State, or any interstate body, or an agency or employee thereof.

Polychlorinated dibenzofuran or *CDF* means any member of a class of dibenzofurans with two to eight chlorine substituents.

Polychlorinated dibenzo-p-dioxin or *CDD* means any member of a class of dibenzo-*p*-dioxins with two to eight chlorine substituents.

RCRA means the Resource Conservation and Recovery Act, Public Law 94-580, as amended.

Municipal sewage sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater and domestic sewage or the treatment of domestic sewage. Municipal sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, Type III marine sanitation device pumpings, and municipal sewage sludge products.

State means one of the several states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Toxicity equivalent or *TEQ* means the total toxicity of individual CDDs and CDFs or of mixtures of CDDs and CDFs expressed as an equivalent concentration of 2,3,7,8-tetrachlorodibenzo-*p*-dioxin or 2,3,7,8-TCDD. For the purpose of this part, the TEQ is calculated by adding the concentration of 2,3,7,8-TCDD to one-tenth the concentration of 2,3,7,8-tetrachlorodibenzofuran, or 2,3,7,8-TCDF. Other CDDs and CDFs are not considered.

TSCA means the Toxic Substances Control Act, Public Law 94-469, as amended.

USGS means the U.S. Geological Survey.

Subparts B-F—[Reserved]

Subpart G—Land Application of Industrial Sludge from Pulp and Paper Mills Using Chlorine and Chlorine Derivative Bleaching Processes

§ 744.120 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to establish requirements for the use, disposal, and distribution in commerce, and marketing of process wastewater treatment sludges intended for land application from pulp and paper mills employing chlorine or chlorine derivative-based bleaching processes. Such sludge is generally contaminated with 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD) and/or 2,3,7,8-tetrachlorodibenzofuran (TCDF). This subpart contains general requirements, numeric TCDD/TCDF concentration limits, and management practices that protect public health and the environment from any reasonably anticipated adverse effects from TCDD/TCDF in paper mill sludge.

(b) *Applicability.* (1) This subpart establishes regulatory requirements for paper mill sludge which is applied to land, and which is distributed in commerce and marketed for such land application purposes. This subpart governs any person who generates or manufactures paper mill sludge, any person who uses or disposes of such sludge by applying it to land, and any person who distributes in commerce or markets such sludge for application to land.

(2) Any person who uses or disposes of paper mill sludge through the practices identified in paragraph (b)(1) of this section shall do so in accordance with the regulatory requirements in this subpart.

(c) *Exclusions.* This subpart does not apply to:

(1) Municipal sewage sludge under parts 257, 258 or 503 of this chapter.

(2) Sludge determined to be hazardous under Subtitle C of RCRA.

(d) *Saving clause.* Nothing in this subpart precludes States from imposing requirements which are more stringent than the requirements in this subpart for the use, disposal, distribution in commerce, and marketing of the sludge subject to this subpart.

§ 744.123 Definitions.

In addition to the definitions in § 744.3, the following definitions apply to this subpart:

Agricultural land means land used for the production of food, feed, fiber, or oilseed crops.

Applier means a person who receives paper mill sludge from a pulp and paper mill or from a distributor and who applies such sludge to the land.

Base flood means a flood that has a 1 percent or greater chance of occurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years, on the average, over a significantly long period.

Distribution and marketing means the give-away or sale of paper mill sludge either in containers (e.g., bags) or in bulk form by generators, manufacturers, and/or distributors of paper mill sludge.

Distributor means a person who is distributes in commerce and/or markets paper mill sludge.

Floodplain means the lowland and relatively flat areas adjoining inland and coastal waters, including flood prone areas of offshore islands, inundated by a base flood.

Generator means the owner or operator of a pulp or paper mill producing sludge.

Land application means the application of liquid, de-watered, dried, or composted paper mill sludge to the land by spraying or spreading onto the surface of the land, by injection below the surface of the land, or by incorporation into the soil.

Manufacturer means the person who prepares a paper mill sludge product for distribution and marketing.

Nonagricultural land means land not used for the purpose of growing food, feed, fiber, or oilseed crops. This includes, but is not limited to, silvicultural land and reclaimed land such as strip mines.

Pulp and paper mill means any facility which employs chlorine and/or chlorine derivative bleaching processes, or any facility which buys pulp produced with such processes on the open market or otherwise uses such pulp in its production processes.

Pulp and paper mill sludge or *paper mill sludge* means sludge generated during the treatment of process wastewater from chlorine and/or chlorine derivative bleaching processes. This includes products derived from such sludge (e.g., a mixture of such sludge and wood chips).

2,3,7,8-tetrachlorodibenzofuran or *TCDF* means the member of the class of dibenzofurans containing four chlorine atoms substituted at the 2, 3, 7, and 8 positions on the benzene rings.

2,3,7,8-tetrachlorodibenzo-p-dioxin or *TCDD* means the member of the class of dibenzo-*p*-dioxins containing four chlorine atoms substituted at the 2, 3, 7, and 8 positions on the benzene rings.

TCDD/TCDF concentration means the measured level in parts per trillion or nanograms per kilogram of TCDD and TCDF present in soil and in sludge, expressed as a TEQ.

§ 744.125 Land application.

(a) *Notice requirements.* At least 45 days prior to the commencement of land application of paper mill sludge, the generator of the sludge shall provide written notice by registered mail to the EPA regional office for the site of the proposed land application activity. Such notice shall contain:

(1) The name and address of the generator of the sludge.

(2) The name and address of the manufacturer of the sludge, if any.

(3) The name and address of the distributor of the sludge, if any.

(4) The name and address of the person who receives the sludge and applies the sludge to the land.

(5) The measured TCDD/TCDF concentration, in parts per trillion (ppt) or nanograms per kilogram (ng/kg), of the sludge to be applied to the land, expressed as a TEQ.

(6) The measured TCDD/TCDF concentration, in parts per trillion (ppt) or nanograms per kilogram (ng/kg), of the soil at the land application site, expressed as a TEQ.

(7) The identification of the total number of hectares at the site to which sludge is to be applied.

(8) An original USGS 7.5-minute series topographical map, or if unavailable, a 15-minute series map, showing the boundaries of the sludge land application site.

(9) A statement certifying that the generator has the legal right, including but not limited to property title, lease, or easement, to apply sludge to the land application site(s) specified in the notice.

(10) A statement certifying that, to the best of the generator's knowledge and belief, all information provided in the notice is complete and accurate.

(b) *Soil TCDD/TCDF concentration limits.* (1) Paper mill sludge shall not be applied in a manner which would cause the TCDD/TCDF concentration in the soil at the land application site to exceed 10 parts per trillion.

(2) Soil sampling as specified in § 744.130(b) shall be conducted before any application of paper mill sludge to the site, and between successive applications where the same land is subject to repeated applications of such sludge.

(3) Where soil incorporation as described in paragraph (b)(4) of this section is not used, the TCDD/TCDF concentration in the paper mill sludge shall be considered to be the TCDD/TCDF concentration in the soil.

(4) Paper mill sludge may be incorporated into the soil by plowing, disking, harrowing, or other methods. The minimum depth for incorporation shall be 15 centimeters. Where incorporation is used, the resulting TCDD/TCDF concentration in the soil shall be determined by the application of the following formula:

$$SC = \frac{[(ESC)(2.7 \times 10^6\ kg/ha)] + [(TS)(SLC)(1{,}000\ kg/DMT)]}{(2.7 \times 10^6\ kg/ha) + [(TS)(1{,}000\ kg/DMT)]}$$

where:

SC = TCDD/TCDF concentration in soil (ng/kg) following incorporation.

ESC = Existing soil concentration (ng/kg) at the site as determined by laboratory test. (Where test results indicate no detectable TCDD/TCDF, the ESC shall be assumed to be the detection limit in soil for the test method used.)

TS = Total paper mill sludge to be applied to the site in dry metric tons per hectare (DMT/ha).

SLC = TCDD/TCDF concentration in sludge (ng/kg).

1,000 kg/DMT = Conversion factor between kg and DMT.

2.7×10^6 kg/ha = Mass of soil in the top 15 centimeters of a hectare of land.

(c) *Management practices.* (1) Paper mill sludge shall not be applied to land that is 10 meters or less from an intermittent or perennial surface water.

(2) A vegetative cover shall be established on land on which paper mill sludge is applied. No site where such sludge has been applied shall remain bare or otherwise unprotected from erosion for more than 30 days. Where sludge is applied to nonagricultural land, the vegetative cover shall consist of perennial species. If land application occurs outside the planting dates for perennial species, mulch or temporary plantings shall be used to protect the site from erosion, and a perennial vegetative cover shall be planted on

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nonagricultural lands during the first planting season following sludge application. The species mix for temporary and permanent vegetation, the methods and dates for planting, and any other requirements for nonagricultural land vegetative establishment such as, but not limited to, fertilizer, lime, and grazing deferment, shall be in accordance with the United States Department of Agriculture, Soil Conservation Service *Practice Standard 342, Critical Area Planting*, or an equivalent standard approved by EPA prior to use. Furthermore, any diversions, terraces, waterways, or other land-shaping activities necessary for erosion and sediment control shall be implemented in accordance with the United States Department of Agriculture, Soil Conservation Service *Engineering Field Manual*, or if available, any state engineering standards that may apply as part of a state permit, or an equivalent standard approved by EPA prior to use.

(3) Vegetative cover which has been established on land application sites shall be inspected by an agronomist, or person of equivalent knowledge and experience, at least twice each year during the growing season, for a period of three years following planting. Such inspections shall be conducted to evaluate the progress of vegetative recovery and to correct any fertility deficiencies, repair and re-plant any areas where rill or gully erosion has occurred, re-plant any other bare areas, and take any additional action necessary to ensure the successful establishment of a vegetative cover. Such actions as may be required shall be done in a timely manner.

(4) Paper mill sludge shall not be applied to the land if such sludge would:

(i) Restrict the flow of a base flood.

(ii) Reduce the temporary water storage capacity of the floodplain.

(iii) Pose a hazard to human health, wildlife, or land or water resources because of such sludge in the runoff from the flood base.

(5) Paper mill sludge shall not be applied to frozen, snowcovered, or flooded land unless it can be demonstrated that the land application will not cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of CWA.

§ 744.127 Distribution and marketing.

Following the distribution and marketing of paper mill sludge, the generator of such sludge shall remain responsible for compliance with all the procedures specified in this subpart.

§ 744.130 Sampling protocols and analytical methods.

(a) *Sludge sampling protocol.* Paper mill sludge samples shall be collected in accordance with the following procedures:

(1) The pool, compound, impoundment or other storage area containing the sludge which is to be used for land application shall be overlaid with a grid dividing the area into 20 units of equal size.

(2) One core sample shall be drawn from the center of each unit, with each core extending to the full depth of the storage area.

(3) The 20 core samples shall be combined into a single composite sample, which shall be thoroughly blended to produce a homogenous mixture.

(4) One analytical sample shall be drawn from the composite sample, and shall be analyzed in accordance with the procedures specified in paragraph (c) of this section.

(5) Sampling shall be conducted quarterly.

(b) *Soil sampling protocol.* Soil samples shall be collected in accordance with the following procedures:

(1) If the paper mill sludge application site, consisting of all contiguous land upon which such sludge is to be spread within a 1-year period, is less than or equal to 100 hectares in area:

(i) The entire site shall be overlaid by a grid dividing the site into 20 units of equal size.

(ii) One core sample shall be drawn from the center of each unit, to a depth of 15 centimeters.

(iii) The 20 core samples shall be combined into a single composite sample, which shall be thoroughly blended to produce a homogenous mixture.

(iv) One analytical sample shall be drawn from the composite sample, and shall be analyzed in accordance with the procedures specified in paragraph (c) of this section.

(2) If the paper mill sludge application site, consisting of all contiguous land upon which such sludge is to be spread within a 1-year period, is greater than 100 hectares in area:

(i) The site shall be divided into areas of equal size not to exceed 100 hectares.

(ii) Each such area within the site shall be overlaid by a grid dividing the area into 20 units of equal size.

(iii) One core sample shall be drawn from the center of each unit, to a depth of 15 centimeters.

(iv) All of the core samples drawn from all of the areas within the site shall be combined into a single composite sample, which shall be thoroughly blended to produce a homogenous mixture.

(v) One analytical sample shall be drawn from the composite sample, and shall be analyzed in accordance with the procedures specified in paragraph (c) of this section.

(c) *Analytical methods.* Paper mill sludge and soil samples collected in accordance with paragraphs (a) and (b) of this section shall be analyzed in accordance with USEPA Method 1613, under appendix A to part 136 of this chapter, to determine their respective TCDD/TCDF concentrations.

§ 744.135 Recordkeeping.

(a) Each generator of paper mill sludge which uses, disposes of, or distributes or markets such sludge for land application shall develop and maintain records on the disposition of all such land-applied sludge. These records shall form the basis of an annual report document to be prepared by each mill and sent by registered mail to the EPA regional office for the site of the land application activity on or before February 1 of each year, covering the preceding calendar year. Generators with one or more mills shall maintain these records and and a copy of these reports at one of the mills that is normally occupied for 8 hours a day, provided that the identity of this mill is available at each mill that generates such sludge. The following information for each mill shall be included in the annual report document. All units of measure shall be expressed in dry metric tons, hectares, and either nanograms per kilogram or parts per trillion.

(1) The weight of all paper mill sludge used in, distributed and marketed for, or disposed of by land application.

(i) For each land application site:

(A) The location of the site, using the full legal description common to the geographic area and identifying the drainage area to which it belongs.

(B) The land area of the site.

(C) An original USGS 7.5-minute series topographic map, or if unavailable, a 15-minute series map, showing the location and boundaries of the sludge land application site.

(D) The pre-application TCDD/TCDF concentration in the soil at the site.

(E) The total amount of paper mill sludge by weight applied to the site.

(F) The total amount of paper mill sludge by weight applied to each hectare.

(G) The TCDD/TCDF concentration of the paper mill sludge applied to the site.

(H) The original laboratory reports of all paper mill sludge and soil TCDD/TCDF testing relating to the site.

(I) The method (e.g., surface spraying, spreading, or injection into the soil) used to apply the paper mill sludge to the land and a statement about whether and how the paper mill sludge will be incorporated into the soil.

(J) The dates of and observations made during the biannual site inspections.

(K) The last date of application.

(ii) For all paper mill sludge distributed and marketed for land application, the names, addresses, and telephone numbers of all persons receiving such sludge; the amount of such sludge by weight received by each person; the TCDD/TCDF concentration of such sludge; and for each land application site, the information specified in paragraph (a)(2)(i) of this section.

(2) Immediately upon discovery, report any unauthorized use, disposal, distribution in commerce, and/or marketing of paper mill sludge through land application to EPA.

(b) The records identified in paragraph (a) of this section shall be maintained for at least 3 years.

§ 744.157 Enforcement.

(a) Failure to comply with any provision of this subpart is a violation of section 15 of TSCA [15 U.S.C. 2614].

(b) Failure or refusal to establish and maintain records, or to permit access to or copying of records as required by section 11 of TSCA [15 U.S.C. 2610] is a violation of section 15 of TSCA [15 U.S.C. 2614].

(c) Failure or refusal to permit entry or inspection as required by section 11 of TSCA [15 U.S.C. 2610] is a violation of section 15 of TSCA [15 U.S.C. 2614].

(d) Violators are subject to the civil or criminal penalties in section 16 of TSCA [15 U.S.C. 2615] for each violation.

(e) EPA will seek to enjoin the use, disposal, distribution in commerce and marketing of paper mill sludge and sludge products for land application in violation of this subpart, or take any other actions under the authority of sections 7 or 17 of TSCA [15 U.S.C. 2606 or 2616] that are appropriate.

§ 744.158 Inspections.

EPA may conduct inspections under section 11 of TSCA [15 U.S.C. 2610] to ensure compliance with this subpart.

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Part V

Department of Health and Human Services

Office of Community Services

Fiscal Year 1991 Community Food and Nutrition Program; Request for Applications; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS 91-4]

Request for Applications Under the Office of Community Services' Fiscal Year 1991 Community Food and Nutrition Program

AGENCY: Office of Community Services, Family Support Administration, Department of Health and Human Services.

ACTION: Request for applications under the Office of Community Services' Community Food and Nutrition Program.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 681A of the Community Services Block Grant Act of 1981 as amended. This Program Announcement contains forms and instructions for submitting an application. Grants made under this program announcement are subject to the availability of funds for support of these activities.

CLOSING DATE: The closing date for submission of application is: July 9, 1991.

CONTACT: Office of Community Services, Office of State and Project Assistance, 370 L'Enfant Promenade SW., Washington, DC 20447. You may also call (202) 401-5252. Attention: James Hearn, Chief, Community Food and Nutrition Program.

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Part G—Contents of Application and Receipt Process

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Part A—Preamble

1. Legislative Authority

The Community Services Block Grant Act as amended authorizes the Secretary of Health and Human Services to make funds available under several programs to support program activities which will result in direct benefits targeted to low-income people. This Program Announcement covers the grant authority found at Section 681A, Community Food and Nutrition, which authorizes the Secretary to make funds available for grants to be awarded on a competitive basis to eligible entities for local and statewide and national programs (1) to coordinate existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low-income communities; (2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate new programs in underserved or unserved areas; and (3) to develop innovative approaches at the State and local levels to meet the nutrition needs of low-income people.

2. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

—Displaced worker: An individual who is in the labor market but has been unemployed for six months or longer.
—Indian tribe: A tribe, band, or other organized group of Native American Indians recognized in the State or States in which it resides or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.
—Innovative project: One that departs from or significantly modifies past program practices and tests a new approach.
—Migrant farmworker: An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.
—Seasonal farmworker: Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.
—Underserved area (as it pertains to child nutrition programs): A locality in which less than one-half of the low-income children eligible for assistance participate in any child nutrition program.
—Budget Period: The term "budget period" refers to the interval of time into which a grant period of assistance (project period) is divided for budgetary and funding purposes.
—Eligible Entity: States and local public and private non-profit agencies/organizations.
—Project Period: The term "project period" refers to the total time a project is approved for support, including any approved extensions.
—Self-Sufficiency: A condition where an individual or family does not need and is not eligible for public assistance.

Part B—Application Prerequisites

1. Eligible Applicants

Eligible applicants are States and local public and private non-profit agencies/organizations with a demonstrated ability to successfully develop and implement programs and activities similar to those enumerated above. OCS encourages Historically Black Colleges and Universities to submit applications. In addition, applicants for the $150,000 set-aside must be either: (1) Indian tribes, (2) private non-profit groups whose governing board is comprised of a majority of Indians and whose primary purpose is serving Indian populations, or (3) groups whose sole purpose is serving migrant and seasonal farmworker populations.

Proof of non-profit status must be included in the Appendices of the Project Narrative where applicable.

2. Availability of Funds and Grant Amounts

a. FY 91 Funding

The amount of funds available for grant awards under the CFN Program in FY 91 is $_____.

b. Grants Amounts

No individual grant request will be considered for an amount which is in excess of $50,000 in OCS funds.

c. Mobilization of Resources

OCS would like to mobilize as many resources as possible to enhance projects funded under this program. Proposals submitted by applicants whose programs will leverage other resources, either cash or third party in-kind, will be looked upon favorably and will be eligible to receive additional points in the competitive review process.

3. Project Periods and Budget Periods

For most projects OCS will grant funds for one year. However, in rare instances, depending on the characteristics of any individual project and on the justification presented by the applicant in its proposal, a grant may be made for a period of up to 17 months.

4. Administrative Costs/Indirect Costs

There is no administrative cost limitation for projects funded under this program. However, applicants who do not propose to charge any administrative costs to the OCS grant will receive rating preference.

OCS accepts approved indirect cost rates as allowable costs. Applicants should enclose a copy of the current approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. However, it should be understood that indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant.

5. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits targeted toward low-income people as defined in the most recent Annual Update of Poverty Income Guidelines published by DHHS.

Attachment A to this announcement is an excerpt from the most recently published guidelines. Annual revisions of these guidelines are normally published in the Federal Register in February or early March of each year and are applicable to projects being implemented at the time of publication. Grantees will be required to apply the most recent guidelines throughout the project period. The Federal Register may be obtained from public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

No other government agency or privately defined poverty guidelines are applicable to the determination of low income eligibility for this OCS program.

6. Number of Projects in Application

An application may contain only one project and this project must address the basic criteria found in Part C. Applications which are not in compliance with these requirements will be ineligible for funding.

7. Multiple Submittals

There is no limit to the number of applications that can be submitted as long as each application contains a proposal for a different project.

8. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the eligible applicant is primarily to serve as a conduit for funds to other organizations.

Part C—Purpose

The Department of Health and Human Services is committed to improving the health and well-being of individuals through improved preventive health care and promotion of personal responsibility. The Department seeks to unify the approach to health promotion and disease prevention activities with personal messages aimed at families and communities, in various settings and environments in which individuals and groups can most effectively be reached.

The Department is specifically interested in improving the health status of minority and low-income persons. HHS encourages community efforts to improve the coordination and integration of health services for all low-income families, and to identify opportunities for integrating other programs and services for this population.

1. Projects Funded Under this Program Should

a. Be designed and intended to provide nutrition benefits, including those which incorporate the benefits of disease prevention, to a targeted low-income group of people;

b. Provided outreach or public education to inform low-income individuals and displaced workers of the services available to them under the various Federally-assisted nutrition programs;

c. Focus on one or more legislatively mandated program activities:

(1) Coordination of existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low-income populations; (2) assistance to low-income communities in identifying potential sponsors of child nutrition programs and initiating new programs in underserved or unserved areas; and (3) development of innovative approaches at the State and local levels to meet the nutrition needs of low-income people.

2. Project Elements

Projects Must

Focus on one or more of the legislatively mandated program activities in the above—Part C.

3. General Projects

The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the problem to be solved. The application must contain a detailed and specific work program that is both sound and feasible. Projects funded under this announcement must produce permanent and measurable results that fulfill the purposes of this program as described in the above Part C. The OCS grant funds, in combination with private and/or other public resources, must be targeted to low-income individuals and communities.

Applicants will certify in their submission that projects will only serve the low-income population as stipulated in the DHHS Poverty Guidelines (Attachment A). If an applicant is proposing a project which will affect a property listed in or eligible for inclusion in the National Register of Historical Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, applicant should consult with the State Historic Preservation Officer. The applicant should contact OCS early in the development of its application to.

OCS for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act may result in the application

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being ineligible for consideration for funding.

In the case of projects proposed for funding which mobilize or improve the coordination of existing public and private food assistance resources, the guidelines governing those resources apply. However, in the case of projects providing direct assistance to beneficiaries through grants funded under this program, beneficiaries must fall within the official DHHS poverty income guidelines Poverty Guidelines as set forth in Attachment A.

Any proposal submitted by an applicant requesting funding for the continuation of a project for which it received OCS funds in FY 1990, or for implementation of a project similar to one for which it received OCS funds in FY 1990, will not be eligible for funding in FY 1991.

Submissions which propose the use of grant funds for the development of any printed or visual materials must contain convincing evidence that these materials are not available from other sources. OCS will not provide funding for such items if justification is not sufficient. Any films or visual presentations approved for development under the grant must be submitted to the Office of Community Services for clearance by the Department of Health and Human Services prior to dissemination. In cases where material outlays for equipment are requested, specific evidence must be presented that there is a definite programmatic connection between the equipment usage and the outreach requirements described in Part C(1)(b) of the announcement.

OCS also is interested in projects that address the needs of homeless families, welfare in public housing, low-income and minority health initiatives.

OCS welcomes project proposals which seek to develop innovative approaches to promote health particularly among low-income and minority populations. These proposals should have as their goals the reduction of incidences of premature death and chronic disease among these populations.

4. Set-Asides

In recognition of the special needs of Indians and Migrant and Seasonal Farmworkers, a $150,000 set-aside will be established to afford priority consideration to proposals submitted by agencies serving these populations.

Applications which are not funded within this limited set-aside will also be considered competitively within the larger pool of eligible applicants. See Part D, Section 2, (Criterion II) for special instructions on developing a work program.

Part D—Review Criteria

Applications which pass the initial screening and pre-rating review (See Part F, Section 5) will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the Announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements as described in Part F.

Applicants Should Write Their Project Narrative to the Review Criteria Using the Same Sequential Order

Note: The following review criteria reiterate collection of information requirements contained in Part D of this announcement. These requirements are approved under OMB Control Number 93.033.

Criteria for Review and Evaluation of Applications Submitted under this Program Announcement

1. Criterion I: Analysis of Needs/Priorities (Maximum: 13 Points)

(a) Target area and population to be served are adequately described (0–5 points).

In Addressing the Above Criterion, the Application Should Include the Following

The applicant should include a description of the target area and population to be served including specific details on the minority population(s).

(b) Nature and extent of problem are adequately described and documented (0–8 points).

In Addressing the Above Criterion, the Applicant Should Include the Following

Applicant should discuss the nature and extent of the problem including specific information on minority population(s).

2. Criterion II: Adequacy of Work Program (Maximum: 15 Points)

(a) Set forth realistic quarterly time targets by which the various work tasks will be completed (0–7 points).

(b) Activities are adequately described and appropriately related to goals (0–8 points).

In Addressing the Above Criterion, the Applicant Should Include the Following

The application should address the basic criteria and legislative-mandated activities found in Part C–(c) and should include:

(a) Project priorities and rationale for selecting them;

(b) Goals and objectives; and (c) Project activities.

3. Criterion III: Significant and Beneficial Impact (Maximum: 38 Points)

(a) Applicant proposes to significantly improve or increase nutrition services to low-income people and such improvements or increases are quantified. (0–12 points).

(b) Project incorporates minority low-income health prevention activities along with nutritional services (0–8 points).

(c) Project will significantly leverage or mobilize other community resources and such resources are detailed and quantified (0–6 points).

(d) Project builds on an existing outreach activity (0–5 points).

(e) Proposal addresses a problem which can be resolved by one-time OCS funding or demonstrates that non-Federal funding is available to continue the project without Federal support (0–7 points).

Quantitative data must be provided with regard to items (a), (b), (c), and (d).

4. Criterion IV: Coordination/Services Integration (Maximum: 15 Points)

Other appropriate organizations will be involved in project implementation so as to avoid duplication and to achieve an improved delivery system (0–15 points).

In Addressing the Above Criterion, the Applicant Should Include the Following

If the applicant is receiving funds from the State for community food and nutrition activities, the applicant should address how the funds are being utilized and, if they will be used in the project for which OCS funds are being requested, their usage should be specifically described.

5. Criterion V: Organization Experience in Program Area and Staff Responsibilities (Maximum 12 points)

(a) *Organization experience in program area (0–4 points).* Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population. Organizations which propose providing training and technical assistance have detailed competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization.

(b) *Management History (0–4 points).* Applicants must fully detail their ability to implement sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Applicants should submit any available documentation on their management practices and progress reporting procedures along with a certification by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

(c) *Staffing skills, Resources and Responsibilities (0–4 points).* The application describes in brief resume form the experience and skills of the proposed project director showing that the individual not only well qualified, but that his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project.

The application must indicate that the applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan.

In Addressing the Above Criterion, the Applicant Should Include the Following

The applicant must fully describe the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project. It must clearly show that sufficient time of the Project Director and other senior staff will be budgeted to assure timely implementation and oversight of the project and that the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

6. Criterion VI: Adequacy of Budget (Maximum: 7 points)

(a) Budget is adequate and administrative costs are appropriate in relation to the services proposed (0–3 points).

(b) Administrative costs are fully assumed by applicant (0–4 points).

In Addressing the Above Criterion, the Applicant Should Include the Following

The applicant should describe how the project will continue after the completion of the grant, including what funds will be available for its continuation.

Part E—Additional Instructions for Completing Application Package

(Approved by the OMB under Control Number 93.033.)

The standard forms attached to this announcement shall be used when submitting applications for all funds under this announcement.

It is recommended that the applicant reproduce the SF–424 (Attachment B), SF–424A (Attachment C), and SF–424B (Attachment D), and that the application be typed on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, the applicant should write "NA" for "Not Applicable."

The application should be prepared in accordance with the standard instructions in Attachments B and C corresponding to the forms, as well as the OCS specific instructions set forth below:

1. SF–424 "Application for Federal Assistance"

ITEM

1. For the purposes of this announcement, all projects are considered "Applications"; there are no "Pre-Applications." Also for the purposes of this announcement, construction projects are those which involve major renovations or construction. All others are considered non-construction.

5/6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "Other." Proof of non-profit status such as IRS determination, Articles of Incorporation, or by-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are "New".

9. Enter "DHHS–FSA/OCS".

10. The Catalog of Federal Domestic Assistance number for the OCS program covered under this announcement is "93.033".

. The title is "Community Services Block Grant Discretionary Awards—Community Food and Nutrition Program."

15a. For purposes of this Announcement, this amount should reflect the amount requested for the entire project period.

15b-e. These items should reflect both cash and third party in-kind contributions for the total project period.

2. SF–424A—"Budget Information-Non-Construction Programs"

See Instructions accompanying this page as well as the instructions set forth below:

In completing these sections, the "Federal Funds" budget entries will relate to the requested OCS Community Food and Nutrition Program funds only, and "Non-Federal" will include mobilized funds from all other sources—applicants, state, and other. Federal funds other than those requested from the Community Food and Nutrition Program should be included in "Non-Federal" entries.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal (mobilized funds).

Section A—Budget Summary

Line 1–4
Col. (a):
Line 1 Enter "OCS Community Food and Nutrition Program";
Col. (b):
Line 1 Enter "93.033".
Col. (c) and (d): Not Applicable
Col. (e)–(g)
For each line 1–4, enter in columns (e), (f) and (g) the appropriate amounts needed to support the project for the entire project period.
Line 5 Enter the figures from Line 1 for all columns completed, (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column #1. Allowability of costs are governed by applicable cost principles set forth in 45 CFR part 74 and 92.

A separate itemized budget justification should be included to

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explain fully and justify major items, as indicated below. The budget justification should immediately follow the Table of Contents.

Column 5: Enter total requirements for Federal funds by the Object Class Categories of this section.

Personnel-Line 6a: Enter the total costs of salaries and wages.

Justification

Identify the project director. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits-Line 6b; Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification

Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Travel-Line 6c: Enter total costs of out-of-town travel by employees of the project. Do not enter costs for consultant's travel or local transportation.

Justification

Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment-Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property", for purposes of non-governmental entities, means tangible personal property having a useful life of more than two years and an acquisition cost per unit of $500. Non-expendable personal property", for purposes of governmental entities, means tangible personal property having a useful life of more than one year and an acquisition value of $5,000 or more.

Justification

Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies-Line 6e. Enter the total costs of all tangible personal property (surplus) other than that included on line 6d.

Other-Line 6h. Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publications, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. With the exception of local governments, applicants should enclose a copy of the current approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

The total amount shown in Section B, Column (5), Line 6k, should be the same as the amount shown in Section A, Line 5, Column (e).

Program Income-Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from Column 1 to Column 5 for all line items.

Justifications

Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of "Non-Federal" resources that will be used to support the project. "Non-Federal" resources mean other OCS funds for which the applicant is applying. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, (See Section B.6) and whether it is cash or third-party in-kind. The firm commitment of these required funds must be documented and submitted with the application in order to be given credit in the criterion. Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8:

Col. (a): Enter the project title.

Col. (b): Enter the amount of cash or donations to be made by the applicant.

Col. (c): Enter the State contribution.

Col. (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Col. (e): Enter the total of columns (b), (c), and (d).

Lines 9, 10, and 11 should be left blank.

Line 12: Carry the total of cash of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, Column (f).

Justification

Describe third party in-kind contributions, included.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 12 month budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the total of Lines 13 and 14.

Section F—Other Budget Information

Line 21—Include narrative justification required under Section B for each object class category for the total project period.

Line 22—Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF-424B "Assurances-Non-Construction"

All applicants must sign and return the "Assurances" with the application.

4. Project Narrative

Each narrative should include the following major Sections:

a. Analysis of Need
b. Project Design (Work Programs)
c. Organizational Experience in Program Areas
d. Management History
e. Staffing and Resources
f. Staff Responsibilities

The project narrative must address the specific purpose mentioned in Part C of this Program-Announcement. The narrative should provide information on how the application meets the evaluation criteria in part D of this Program Announcement.

Part F—Application Procedures

1. Availability of Forms

Applications for awards under this OCS program must be submitted on Standard Forms (SF) 424, 424A, and 424B. Part F and attachments B, C, and D to this Program Announcement contain all the instructions and forms required for submittal of applications. The forms may be reproduced for use in submitting applications. Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources they may be obtained by writing or telephoning the office listed in the section entitled "For Further Information" at the beginning of this announcement.

2. Application Submission

The date by which applications must be received is indicated under "Closing Date" at the beginning of this announcement. An application will be considered to be received on time under either one of the following two circumstances:

a. Applications may be mailed to: Family Support Administration, Division of Grants Management, 6th floor OFM/DGM, 370 L'Enfant Promenade, SW., Washington, DC 20447.

b. Hand delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Family Support Administration, Division of Grants Management, 901 D Street, SW., Sixth Floor OFM/DGM, Washington, DC 20447.

An application will considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated post mark. Before relying on this method, applicants should check with their local post office. In some instances packages presented for mailing after a pre-determined time are postmarked with the next day's date. In other cases, postmarks are not routinely placed on packages. Applicants are cautioned to verify that there is a date on the package, and that it list the correct date of mailing, before accepting a receipt.

Applications which have a postmark later than the closing date, or which are hand-delivered after the closing date, will be returned to the sender without consideration in the competition.

One signed original application and four copies is required. The first page of the SF-424 must contain in the lower right-hand corner, one of the following designations:

FN—for general grants.

SA—for projects where migrant and seasonal farmworker organizations and Indian tribes or Indian organizations are applying specifically for set-aside funds described in part B.

3. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Program," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Virginia, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nine jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants must submit any required material to the SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions, so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards. Therefore, the comment period for State processes will end 60 days after the date of publication of this Announcement to allow time for FSA to review, consider and attempt to accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to FSA, they should be addressed to: Department of Health and Human Services, Family Support Administration, Division of Grants Management, 6th Floor, 370 L'Enfant Promenade SW., Washington, DC, 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G of this announcement.

4. Application Consideration

Applications which meet the screening requirements in section 5 below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement. Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be

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considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years: Comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances OCS or other Federal agency grants. OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applications

a. Initial Screening

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a completed Standard Form (SF) 424.

(2) The SF–424 must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

b. Pre-rating Review

Applications which pass the initial screening will be forwarded to reviewers for analytical comment and scoring based on the criteria detailed in Section below and the specific requirements contained in Part C of this Announcement. Prior to the programmatic review, these reviewers and/or OCS staff will verify that the applications comply with this program announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements found in Part B.

(2) *Number of Projects:* The application contains only one project.

(3) *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries as defined in the DHHS Poverty Income Guidelines (Attachment A).

(4) *Grant Amount:* The amount of funds requested does not exceed $50,000 in OCS funds.

(5) *Program Focus:* The application addresses the purposes described in Part C of this announcement.

(6) *Continuation or Duplication of Projects:* The applicant does not propose the continuation of a project funded by OCS in FY 1990 nor does the applicant propose undertaking a project similar to one for which it received funds in FY 1990. An a180X may be disqualified from the competition and returned if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Applications which pass the initial screening and pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this announcement.

Part G—Contents of Application Package and Application

(Approved by the Office of Management and Budget under Control Number [to be inserted])

1. Application Package

Each application submission must include: A signed original and four additional copies of the application.

Each copy of the application must contain in the order listed each of the following:

a. *Table of Contents* with page numbers noted for each major section and subsection of the proposal and each section of the appendices. Each page in the application, including those in all appendices, must be numbered consecutively.

b. *Standard Form 424. Application for Federal Assistance.* (See Attachment B) The SF–424 should be completed in accordance with instructions provided with the form, as well as OCS specific instruction set forth in Part E of this Announcement.

Applicants must also be aware that the applicant's legal name as required in SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

c. *Standard Form 424A, Budget Information.* (See Attachment C) Pages 1 and 2 should be completed.

d. *Standard Form 424B. Assurances—Non-Construction Programs.* (See Attachment D) This form must be signed and submitted with the Application.

e. *Restriction on Lobbying Activities*—Certification for Contracts, Grants, Loans, and Cooperative Agreements: (Required only if lobbying has actually taken place or is expected to take place in trying to obtain the grant for which the applicant is applying.) Fill out, sign and date form found at Attachment H.

f. *Disclosure of Lobbying Activities*—SF–LLL: Fill out, sign and date form found at Attachment H.

g. *Project Narrative*—(See Part E, Section 4.)

Please note the following:

—Applications may not exceed 30 pages in their entirety.
—The SF–424 must contain an original signature of the certifying representative of the applicant organization.
—Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore applications must be submitted on 8½×11 inch paper only. They must not include colored, oversized or folded materials, organizational brochures, or other promotional materials, slides, films, clips, etc., in the proposal. Such materials will be discarded if included.
—Applications should be submitted in ringbinders that will allow for easy separation and reassembly.
—While applications must be comprehensive, OCS encourages conciseness and brevity in the presentation of materials and cautions the applicant to avoid unnecessary duplication of information.
—All applicants will receive an acknowledgment postcard with an identification number which will be noted on the acknowledgment. This number must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgment is not received within three weeks after the deadline date, applicants must notify FSA by telephone (202) 401–9230.
—Applicant should also submit a mailing label for the acknowledgment card.

Part H—Award Recipient Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Notice of Grant Award which provides the amount of Federal funds approved for use in the project, the budget period for which support is provided, and the terms and conditions of the award.

In addition to the General Conditions and Special Conditions (where the latter

are warranted) which will be applicable to grants, grantees will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental).

Grantees will be required to submit quarterly progress and financial reports (SF–269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 and 92.

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying when applicant has engaged in lobbying activities or is expected to lobby in trying to obtain the grant. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds, and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the nonappropriated funds and (3) to file quarterly up-dates about the use of lobbyists if any event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance, and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H for certification and disclosure forms to be submitted with applications for this program.

Attachment I indicates the regulations which apply to all applicants/grantees under the Discretionary Grants Program.

Dated: May 3, 1991.

Eunice S. Thomas,

Director, Office of Community Services.

ATTACHMENT A—1991 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$6,620
2	8,880
3	11,140
4	13,400
5	15,660
6	17,920
7	20,180
8	22,440

For family units with more than 8 members, add $2,260 for each additional member.

Poverty Income Guidelines for Alaska

1	$8,290
2	11,110
3	13,930
4	16,750
5	19,570
6	22,390
7	25,210
8	28,030

For family units with more than 8 members, add $2,820 for each additional member.

Poverty Income Guidelines for Hawaii

1	$7,610
2	10,210
3	12,810
4	15,410
5	18,010
6	20,610
7	23,210
8	25,810

For family units with more than 8 members, add $2,600 for each additional member.

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Attachment B—SF 424, Application for Federal Assistance and Instruction for the SF-424

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)
6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify) _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision; If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ ☐☐☐☐ TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (Cities, counties, states, etc.):	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Attachment C—SF 424A, Budget Information—Non-Construction Programs and Instructions for the SF-424A

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d) Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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Attachment D—SF 424B, Assurances—Non-Construction Programs

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

BILLING CODE 4150-04-C

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Attachment E—U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements Grantees Other than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the U.S. Department of Health and Human Services determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of the grant, or governmentwide suspension or debarment.

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) the dangers of drug abuse in the workplace;

(2) the grantee's policy of maintaining a drug-free workplace;

(3) any available drug counseling, rehabilitation, and employee assistance programs; and

(4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) make it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) abide by the terms of the statement; and

(2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted;

(1) taking appropriate personnel action against such an employee, up to and including termination; or

(2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state or local health, law enforcement or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), and (f)

B. The grantee shall insert in the space provided below, the site(s) for the performance of work done in connection with the specific grant (Street address, city, county, state, zip code):

Attachment F—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The ability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G—State Single Point of Contact

Alabama

Mrs. Mencell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3485 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Telephone (205) 284-8005

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280-1315

Arkansas

Mr. Joseph Gillenbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371-1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323-7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866-2156

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Telephone (203) 566-3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736-3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone (202) 727-6111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Telephone (904) 488-8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656-3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548-3016 or 548-3085

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782-6639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232-5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281-3725

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564-2382

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289-3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Telephone (301) 225-4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727-7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373-7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960-4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202, State Capitol, Helena, Montana 59620, Telephone (406) 444-5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, NV 89710, ATTN: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-9025.

New Mexico

Dorothy E. (Duffy) Rodriquez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan, Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6901 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843-9770

Oregon

Attn: Dolores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, Oregon 97310, Telephone (503) 373-1998

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783-3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 285 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778

Utah

Utah State Clearinghouse, Attn: Carolyn Wright, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 538-1547

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination,

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Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51, Olympia, Washington 98504-4151, Telephone (206) 753-4978

West Virginia

Fred Catlip, Director, Community Development Division, Governor's Office of Community, and Industrial Development, Building No. 6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Telephone (608) 266-1741

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, (608) 266-0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750

Attachment H—Restrictions on Lobbying and SF-LLL and Instructions

RESTRICTIONS ON LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3 The undersigned shall require that the language of this certification be included in the award documents for subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or grantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Signature

Title

Organization

Date

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
   - ☐ a. contract
   - b. grant
   - c. cooperative agreement
   - d. loan
   - e. loan guarantee
   - f. loan insurance

2. Status of Federal Action:
   - ☐ a. bid/offer/application
   - b. initial award
   - c. post-award

3. Report Type:
   - ☐ a. initial filing
   - b. material change

   For Material Change Only:
   year _____ quarter ____
   date of last report _____

4. Name and Address of Reporting Entity:
   - ☐ Prime
   - ☐ Subawardee
     Tier ____, *if known:*

   Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

   Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

   CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
   $

10. a. Name and Address of Lobbying Entity
    (if individual, last name, first name, MI):

    b. Individuals Performing Services *(including address if different from No. 10a)*
    (last name, first name, MI):

    (attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
    $ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
    - ☐ a. cash
    - ☐ b. in-kind; specify: nature _____
      value _____

13. Type of Payment *(check all that apply):*
    - ☐ a. retainer
    - ☐ b. one-time fee
    - ☐ c. commission
    - ☐ d. contingent fee
    - ☐ e. deferred
    - ☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

    (attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

    Signature: _____
    Print Name: _____
    Title: _____
    Telephone No.: _____ Date: _____

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Standard Form - LLL

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB 0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

BILLING CODE 4150-04-C

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Attachment I—DHHS Regulations Applying to all Applicants/Grantees under the Community Food and Nutrition Program

The following DHHS regulations apply to all applicants/grantees under the Community Food and Nutrition Program:

Title 45 of the *Code of Federal Regulations:*

Part 16—Procedures of the Department Grant Appeals Board
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
Section 74.62(a) Non-Federal Audits
Section 74.173 Hospitals
Section 74.174 (b) Other Nonprofit Organizations
Section 74.364 Final Decisions in Disputes
Section 74.710 Real Property, Equipment and Supplies
Section 74.715 General Program Income
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility for Financial Assistance
Subpart F—Drug Free Workplace Requirements
Part 80—Non-discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services
Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Nondiscrimination on the basis of sex in the admission of individuals to training programs
Part 84—Nondiscrimination on the Basis of Handicap in Programs
Part 91—Nondiscrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (Federal Register, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment J—Optional Checklist for Use in Submitting OCS Grant Applications

Optional Checklist (for Use of Applicant Only) to Verify Contents of Application

	Check
A. Application contains:	
1. Table of Contents	[ ]
2. Completed SF 424, Application for Federal Assistance	[ ]
3. Completed SF 424A, Budget Information—Non-Construction Programs	[ ]
4. Signed SF 424B, Assurances—Non-Construction Programs	[ ]
5. A project narrative with the following components:	
a. Analysis of need	[ ]
b. Project design	[ ]
c. Organizational experience in program	[ ]
d. Management history	[ ]
e. Staffing and resources (resume or job description)	[ ]
f. Staff responsibilities	[ ]
6. Relevant portions of the organization's by-laws and articles of incorporation confirming eligibility	[ ]
7. A *signed* copy of Certification Regarding the Anti-Lobbying Provision:	[ ]
8. A completed Disclosure of Lobbying Activities form, if appropriate:	[ ]
9. A self-addressed mailing label which can be affixed to a postcard to acknowledge receipt of application:	[ ]
B. Application does not exceed a total of 30 pages	[ ]
C. Application includes one original and four copies, printed on white 8½ by 11 inch paper, and presented in a ring binder	[ ]
D. Applicant is aware that in signing and submitting the application for funds under the CFN Program, it is certifying that it has read and understood the Federal Guidelines concerning a drug-free workplace and the debarment regulations set forth in attachments E and F respectively	[ ]

[FR Doc. 91-11067 Filed 5-9-91; 8:45 am]
BILLING CODE 4185-84-M

federal register

Friday
May 10, 1991

Part VI

Department of Health and Human Services

Office of Refugee Resettlement

Refugee Resettlement Program; Proposed Availability of Funding for Formula Grants; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Refugee Resettlement Program; Proposed Availability of Funding for Formula Grants for FY 1991 Targeted Assistance for Services to Refugees in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), FSA, HHS.

ACTION: Notice of proposed availability of funding for formula grants for FY 1991 targeted assistance for services to refugees [1] in local areas of high need.

SUMMARY: This notice announces the proposed availability of funds and award procedures for FY 1991 targeted assistance formula grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provision in localities with large refugee populations, high refugee concentrations, and high use of assistance, and where specific needs exist for supplementation of currently available resources.

This notice proposes to apply the same formula for the allocation of targeted assistance funds as was used in FY 1990, updated to take into account FY 1990 arrivals.

DATE: Comments on the proposals contained in this notice must be received by June 10, 1991.

ADDRESS: Address written comments, in duplicate, to: Director, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

APPLICATION DEADLINE: The deadline for applications will be established by the final notice; applications should not be sent in response to this proposal.

Applications from States for grants under this notice must be received on time. An application will be considered to be received on time under either of the following two circumstances:

A. The application was sent via the U.S. Postal Service or by private commercial carrier not later than 45 days after publication of the final notice unless it arrives too late to be considered by the reviewers. (Applicants are responsible for assuring that the U.S. Postal Service or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.)

B. The application is hand-delivered on or before the closing date to the Division of Grants Management, ACF, 6th floor, 901 D Street, SW., Washington, DC 20447. Hand-delivered applications will be accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday (excluding Federal legal holidays) up to 4:30 p.m. of the closing date.

Late applications will be returned to the sending agency.

To be considered complete an application package must include a signed original and one copy of Standard Form 424, 424A, and 424B, dated April 1988. A copy should also be sent to the ACF Regional Administrator. The package must also include the following three certifications by the applicant: Drug-Free Workplace, Debarment, and Anti-Lobbying. (We will provide copies of these materials to all targeted assistance States.)

GRANT REGULATIONS: Grants are subject to the administrative regulations published under title 45 of the Code of Federal Regulations, part 74, sections 74.62(a), 74.174(b), 74.304, 74.710, and 74.715, and Part 92.

FOR FURTHER INFORMATION ON APPLICATION AND GRANT PROCEDURES, STATES SHOULD CONTACT: Shirley Parker, Division of Grants Management, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone (202) 401-4616.

FOR FURTHER PROGRAMMATIC INFORMATION, STATES SHOULD CONTACT: Ron Munia, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone (202) 401-4559.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

This notice announces the proposed availability of funds for grants for targeted assistance for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

The Office of Refugee Resettlement (ORR) has available $48,795,000 in FY 1991 funds for the targeted assistance program (TAP) as part of the FY 1991 appropriations for the Department of Health and Human Services (Pub. L. 101-517).

The Conference Report on appropriations reads as follows with respect to the targeted assistance funds (H. Con. Rept. 101-908, p. 27):

The conference agreement for targeted assistance includes the same funding level as provided in fiscal year 1990 to continue the current program of support to communities affected as a result of the massive influx of Cuban and Haitian entrants during the Mariel boatlift. The conference agreement also provides that 10 percent of the total appropriated for targeted assistance by used for grants to localities most heavily impacted by the influx of refugees such as Laotian Hmong, Cambodians, and Soviet Pentecostals, including secondary migrants who entered the United States after October 1, 1979. The conferees expect these grants to be awarded to communities not presently receiving targeted assistance because of previous concentration requirements and other factors in the grant formulas, as well as those who do currently receive targeted assistance grants. This agreement is consistent with the policy established in Public Law 101-166, the fiscal year 1990 Appropriations Act, and Public Law 101-302, the fiscal year 1990 Supplemental Appropriations Act.

The conferees intend that the State of California, which has 49 percent of the nation's refugees, shall be held harmless in the formula allocation of targeted assistance funds as a result of any reductions to the total amount appropriated for the targeted assistance program. California's total share of funding under the formula allocation in fiscal year 1991 should be no less than the percentage share of California's allotment under fiscal year 1990 appropriations, excluding funds appropriated by Public Law 101-302, the fiscal year 1990 Supplemental Appropriations Act. In determining the hold harmless allocation to California, the total amount appropriated for targeted assistance will be used.

In accordance with the Conference Report language, the Director of the Office of Refugee Resettlement (ORR) proposes to use the $48,795,000 appropriated for FY 1991 targeted assistance as follows:

- $25,373,400 is proposed for allocation under the updated formula, as set forth in this notice.
- $18,542,100 will be awarded to Florida for the Dade County public schools and Jackson Memorial Hospital, Miami, the same amount as was provided in FY 1990 less the 2.41 percent reduction required by sec. 514(b) of the FY 1991 Appropriations Act (Pub. L. 101-517).
- $4,879,500 (10% of the total) will be awarded to the most heavily impacted localities under a competitive grant announcement which will be published separately setting forth application requirements and evaluation criteria. States will be able to apply on behalf of impacted counties that do not receive TAP formula grants as well as those that do.

This notice proposes slight changes in requirements regarding the use of the FY 1991 targeted assistance formula allocations, as follows: (1) Encourages the use of bilingual women on service agency staffs to ensure adequate service access by refugee women; (2) encourages States and counties to treat day care services as a priority employment-related service in order to allow women with children the opportunity to participate in employment services or to accept or retain employment; and (3) clarifies that if a job placement resulting from TAP services has not resulted in sufficient earnings to terminate cash assistance, TAP services may continue to be provided to the refugee as part of a self-sufficiency plan after job placement to help the refugee retain employment or move to self-sufficiency.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placement.

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605), which provides that targeted assistance grants shall be made available "(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity."

Services funded under the targeted assistance allocations are required to focus primarily on those refugees who, either because of their considerable and protracted use of public assistance or continued difficulty in securing employment, constitute a major resettlement problem for the affected jurisdiction which cannot be addressed without additional services. In order to ensure sufficient emphasis on services to appropriate clients, each State is required to assure that, for each qualified local area, cash assistance recipients (time-eligible and time-expired recipients under any program of the State or locality) will make up a percentage of the FY 1991 targeted assistance clientele which is not less than the State's final FY 1990 dependency rate.

Reflecting section 412(a)(1)(A)(iv) of the INA, the Director expects States to "insure that women have the same opportunities as men to participate in training and instruction." In addition, States are expected to make sure that services are provided in a manner that encourages the use of bilingual women on service agency staffs to ensure adequate service access by refugee women. In order to facilitate refugee self-support, the Director also strongly encourages States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States and counties are encouraged to treat day care services as a priority employment-related service in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To be eligible for day care funded through targeted assistance, a refugee would have to be participating in TAP employment services or have accepted employment. For an employed refugee, TAP-funded day care would be limited to 6 months after the refugee becomes employed.

Funds awarded under this program are intended to help fulfill the Congressional intent that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" (section 412(a)(1)(B) of the INA). Therefore at least 85% of targeted assistance funds are required to support projects which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program. General or remedial educational activities—such as adult basic education (ABE) or preparation for a high school equivalency or general education diploma (GED)—may be provided only within the context of an individual employability plan for a refugee which is intended to result in job placement in less than one year. Services may continue to be provided as part of a self-sufficiency plan for a refugee after job placement (a) to help the refugee retain employment or (b) to move the refugee to self-sufficiency if the placement has not resulted in sufficient earnings to enable the refugee's cash assistance to terminate. Targeted assistance funds cannot be used for long-term training programs such as vocational training that lasts for more than a year or educational programs that are not intended to lead to employment within a year.

The degree of success of targeted assistance programs would be measured in terms of job placements, job retention, and reductions in cash assistance—the principal objectives of the authorizing legislation.

In order to meet extreme and unusual needs, up to 15% of a local area's allocation could be used for services which are not directed toward the achievement of a specific employment objective in less than one year but which are essential to the adjustment of refugees in the community, provided such needs are clearly demonstrated and such use is approved by the State, or by ORR in the case of State-administered local programs.

Cases in which a county plan contains proposed program activities not allowable under section VII, below, could be entertained by a State only where extreme and unusual need exists and is clearly demonstrated in the county's proposed plan. Such cases would be considered to involve a change in program scope or objectives and will therefore be subject to ORR prior approval.

A State could request a waiver in order to be able to allow a county to use more than 15% for non-employment-related services. ORR will approve such a request only in the most extreme circumstances of need.

The award of funds to States under this notice would be contingent upon the completeness of a State's application as described in section IX, below.

II. [Reserved for discussion of comments in final notice.]

III. Authorization

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and nationality Act (INA), as amended by

[1] In addition to persons admitted to the United States as refugees, eligibility for targeted assistance includes Cuban and Haitian entrants, certain Amerasians from Vietnam who are admitted to the U.S. as immigrants, and certain Amerasians from Vietnam who are U.S. citizens. (See section III of this notice on "Authorization.") The term "refugee," used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services, including the targeted assistance program.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the targeted assistance program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival.

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the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100-202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100-461), 1990 (Pub. L. 101-167), and 1991 (Pub. L. 101-513).

IV. Eligible Grantees

The following requirements, which have previously applied to TAP, would continue to apply with respect to FY 1991 awards:

Eligible grantees are those agencies of State governments which are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for FY 1991 targeted assistance awards. The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

The State agency will submit a single application on behalf of all county governments of the qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans will be developed by the county government or other designated entity and submitted to the State.

A State with more than one qualified county is permitted, but not required, to determine the allocation amount for each qualified county within the State. However, if the State chooses to determine county allocations differently from those set forth in this notice, the allocations proposed by the State are subject to ORR approval.

Applications submitted in response to this notice are not subject to review by State and area wide clearinghouses under Executive Order 12372, "Intergovernmental Review of Federal Programs."

V. Qualification and Allocation Formula

The Director of ORR proposes to base the FY 1991 TAP formula allocations on the same formula as in FY 1990 updated to reflect arrivals through September 30, 1990.

Under this formula, one portion of the allocation is based on refugee and Cuban/Haitian entrant arrivals during FY 1980-1982; funds for this portion of the formula are allocated on the same proportionate basis among participating counties as in FY 1990. The second portion, of the allocation is based on refugee and entrant placements in these counties during calendar year (CY) 1983—September 30, 1990, and on cash assistance dependency rates. Because of the lack of more recent dependency rate data, the Director proposes to use States' dependency rates as of September 30, 1989.

In determining whether additional counties would be eligible to participate in this targeted assistance formula allocation, the Director has applied the same four criteria used previously, including the same cutoff points, to the updated information on refugee arrivals, concentrations, dependency rates, and receipt of cash assistance. As before, a county would have to meet three out of the four criteria in order to qualify. (For a detailed discussion of these criteria, see the FY 1989 TAP notice published in the **Federal Register** of July 3, 1989, section V, "Qualification and Allocation Formula," subsection on "Formula Used to Date" (54 FR 27944).) In applying these criteria, ORR has found that no county not currently participating in TAP meets at least three out of the four criteria.

For the participating counties, the $25,373,400 which is proposed to be allocated by formula would be apportioned as follows:

a. $11,418,030, or 45%, would be allocated on the basis of the formula which has been used for all previous targeted assistance allocations ("old formula") and which is based on initial placements during FY 1980-1982 and other factors as described under "Formula Used to Date" in the reference cited above.

b. $13,955,370, or 55%, would be allocated on the basis of arrivals during CY 1983—September 30, 1990 ("new formula").

The above percentages are based on the proportion of initial placements in these counties during the two periods: 340,737, or 45%, during the old-formula period; and 410,549, or 55%, during the new-formula period.

The old-formula allocation of $11,418,030 follows the same distribution among counties as in the past.

The new-formula allocation of $13,955,370 is based on the number of initial placements in each county during CY 1983—September 30, 1990, multiplied by the State's time-eligible [2] dependency rate as of September 30, 1989. The weighted index resulting from this calculation was used to determine each county's share of the new-formula funds. We continue to believe that, in the absence of additional data, each county's proportionate share of the number of initial placements and the State's time-eligible dependency rate provide good indicators of relative need.[3]

VI. Proposed Allocations

Table 1 lists the participating counties, the amount of each county's proposed allocation which is based on the old formula, the number of placements in each county during CY 1983—September 30, 1990, the State's dependency rate as of September 30, 1989, the amount of each county's allocation which is based on the new formula, and the county's total proposed allocation.

Although Table 1 shows an amount for each county, the Director proposes, in the case of a State which contains more than one qualified county, to continue to permit the State to determine (in accordance with the requirements set forth in this notice) the appropriate allocation of the State's targeted assistance award among the qualified counties in the State. The Director sees this as continuing ORR's practice of providing as much authority and flexibility as possible to States in determining the relative needs of the qualified counties within a State. Thus each such State, as in the FY 1990 TAP, would be responsible for determining an appropriate and equitable basis for allocating the funds among the qualified counties in the State and for including in its application for approval by ORR a description of this allocation basis, the data to be used, and the allocation proposed for each county.

Table 2 provides State totals for the proposed county allocations set forth in Table 1.

[2] The term "time-eligible" means refugees in their first 24 months in the U.S., the time-period for which States could claim cash and medical assistance costs against ORR's grants to the States as of the end of FY 1989. "Time-expired" refers to refugees who have been in the U.S. more than 24 months.

[3] More specific data might include the estimated county population of refugees who arrived during CY 1983—FY 1990 and actual numbers of time-expired refugees who are receiving cash assistance. However, it is not possible to estimate county refugee populations reliably because of lack of county-level information on secondary migration. Data are not universally available on the receipt of cash assistance by time-expired refugees.

TABLE 1.—PROPOSED TARGETED ASSISTANCE ALLOCATIONS: FY 1991

County	State	Arrivals Jan. 1983–Sept. 1990 (A)	Percent receiving assistance (9/30/89) (B)	Portion of FY 1991 proposed allocation under old formula (C)	Portion of FY 1991 proposed allocation under new formula (D)	Total FY 1991 proposed allocation* (E)
1 Alameda	CA	10,339	80.1	$267,451	$533,588	$821,039
2 Contra Costa	CA	2,865	80.1	82,189	147,860	230,049
3 Fresno	CA	8,231	80.1	158,730	424,795	583,525
4 Los Angeles	CA	69,507	80.1	1,451,567	3,587,202	5,038,769
5 Merced	CA	2,734	80.1	193,743	141,100	334,843
6 Orange	CA	23,162	80.1	645,910	1,195,373	1,841,283
8 Sacramento	CA	7,545	80.1	246,030	389,392	635,422
9 San Diego	CA	14,220	80.1	481,416	733,883	1,215,299
10 San Francisco	CA	15,219	80.1	373,598	785,441	1,159,039
11 San Joaquin	CA	6,699	80.1	248,259	345,730	593,989
12 Santa Clara	CA	19,046	80.1	480,840	982,949	1,463,789
13 Stanislaus	CA	2,349	80.1	44,918	121,230	166,148
14 Denver	CO	4,715	38.0	94,836	112,898	207,734
15 Broward	FL	923	18.5	157,090	10,760	167,850
16 Dade	FL	28,741	18.5	2,740,546	335,037	[1]21,617,683
17 Hillsboro	FL	1,658	18.5	49,367	19,328	68,695
18 Palm Beach	FL	607	18.5	65,259	7,076	72,335
19 Honolulu	HI	2,229	67.7	104,429	95,086	199,515
20 Cook/Kane	IL	20,686	19.5	490,550	254,174	744,724
21 Sedgwick	KS	2,705	24.9	116,897	42,441	159,338
22 Orleans	LA	2,794	7.2	79,857	12,676	92,533
23 Montgomery/Prince Georges	MD	5,026	18.0	97,150	57,005	154,155
24 Middlesex	MA	4,029	60.3	76,746	153,086	229,832
25 Suffolk	MA	10,585	60.3	176,138	402,187	578,325
26 Hennepin	MN	6,222	75.4	123,745	295,611	419,356
27 Ramsey	MN	6,174	75.4	173,993	293,331	467,324
28 Jackson	MO	1,648	16.9	45,428	17,549	62,977
29 Essex	NJ	4,025	18.8	26,289	47,681	73,970
30 Hudson	NJ	1,346	18.8	175,915	15,945	191,860
31 Union	NJ	791	18.8	35,314	9,370	44,684
32 New York	NY	58,899	25.1	392,498	931,540	1,324,038
33 Multnomah	OR	6,120	49.2	266,670	251,733	518,403
34 Philadelphia	PA	11,070	39.7	182,537	276,922	459,459
35 Providence	RI	3,578	43.1	130,377	97,171	227,548
36 Harris	TX	12,491	18.3	213,965	144,035	358,000
37 Salt Lake	UT	4,968	22.3	65,045	69,808	134,853
38 Arlington	VA	1,935	20.4	112,718	24,873	137,591
39 Fairfax	VA	4,948	20.4	135,916	63,603	199,519
40 King/Snohomish	WA	14,990	47.1	324,694	444,879	769,573
41 Pierce	WA	2,730	47.1	69,390	81,022	150,412
Total		410,549	46.5	$11,418,030	$13,955,370	$43,915,500

[1] The allocation for Dade County, Florida, includes $18,542,100 for Jackson Memorial Hospital (Miami) and the Dade County (Miami) public schools, the same amount as in FY 1990, less the 2.41% reduction applied to the FY 1991 HHS appropriation. This is referred to in the Conference Report on the appropriation "to continue the current program of support to communities affected as a result of the massive influx of Cuban and Haitian entrants during the Mariel boatlift." The amounts are $10,380,039 for Jackson Memorial and $8,162,061 for the Dade County schools.

In accordance with the Conference Report, California has been held harmless in the formula allocation, accounting for approximately 29.86% of the funds awarded in both FY 1990 and FY 1991.

TABLE 2.—PROPOSED TARGETED ASSISTANCE ALLOCATIONS BY STATE: FY 1991

State	FY 1991 proposed allocation
California	$14,083,214
Colorado	207,734
Florida	[1] 21,826,563
Hawaii	199,515
Illinois	744,724
Kansas	159,338
Louisiana	92,533
Maryland	154,155
Massachusetts	806,157
Minnesota	886,660
Missouri	62,977
New Jersey	310,514
New York	1,324,038
Oregon	518,403
Pennsylvania	459,459
Rhode Island	227,548
Texas	358,000
Utah	134,853
Virginia	337,110
Washington	919,985
Total	$43,915,500

[1] The allocation for Florida includes $18,542,100 for Jackson Memorial Hospital (Miami) and the Dade County (Miami) public schools. See footnote to Table 1.

VII. Allowable Activities and Client Prioritization

At least 85% of a county's FY 1991 targeted assistance funds would be used to support activities permissible under section 412(c) of the INA which have specific employment objectives and are directly related to aiding refugees in finding and retaining jobs within less than one year's participation in the targeted assistance program. Examples of these activities are: Job development; job placement; job-related and vocational English; short-term job

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training specifically related to opportunities in the local economy; on-the-job training; business and employer incentives (such as on-site employee orientation, vocational English training, or bilingual supervisor assistance); and business technical assistance. These funds may be used for general or remedial educational services—such as adult basic education (ABE) or preparation for a high school equivalency or general education diploma (GED)—only if such service is provided within the context of an individual employability plan for a refugee which is intended to result in job placement within less than one year. Services may continue to be provided as part of a self-sufficiency plan for a refugee after job placement (a) to help the refugee retain employment or (b) to move the refugee to self-sufficiency if the placement has not resulted in sufficient earnings to enable the refugee's cash assistance to terminate. Targeted assistance funds cannot be used for long-term training programs such as vocational training that lasts for more than a year or educational programs that are not intended to lead to employment within a year.

The Director of ORR expects States to "insure that women have the same opportunities as men to participate in training and instruction." In addition, States are expected to make sure that services are provided in a manner that encourages the use of bilingual women on service agency staffs to ensure adequate service access by refugee women.

In order to facilitate refugee self-support, the Director also strongly encourages States to implement strategies which address simultaneously the employment potential of both male and female wage earners, particularly in the case of large families. States are encouraged to treat day care services as a priority employment-related service in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To be eligible for day care funded through targeted assistance, a refugee would have to be participating in TAP employment services or have accepted employment. For an employed refugee, TAP-funded day care would be limited to 6 months after the refugee becomes employed.

Up to 15% of a local area's allocation could be used for other services which are permissible under section 412(c) of the INA and which are identified and demonstrated in the county plan to be essential services in addressing extreme and unusual needs of the refugee population in the targeted assistance area even though they do not have the specific objective of job placement within less than one year. Subject to State review and approval, a maximum of 15% of the allocation amount for each area could be used in funding these services.

In the event that a State might wish to grant a local area's request to allocate more than 15% of its funds for such non-employment-related services, the State would be required to obtain formal prior approval by the Director of ORR. Only the most extreme needs would be considered adequate justification for a local area to use more than 15% of its TAP funds for these services. In order to justify the provision of services for extreme and unusual needs, a county plan would have to identify the target population, demonstrate clearly the nature and extent of the needs, and describe how the use of more than 15% of its targeted assistance funds to address such needs would contribute to the adjustment of the refugee population.

Services funded under TAP would be required to focus primarily on those refugees who, either because of their considerable and protracted use of public assistance or continued difficulty in securing employment, constitute a major resettlement problem for the affected jurisdiction which cannot be addressed without additional services. In order to ensure sufficient emphasis on services to appropriate clients, each State would be required to provide an assurance in its application to ORR that, for each qualified local area, cash assistance recipients (time-eligible and time-expired recipients under any program of the State or locality) would make up a percentage of the FY 1991 targeted assistance clientele which is not less than the State's final FY 1989 dependency rate as determined by ORR.

This client prioritization requirement would not apply to the 15% funds described above.

VII. Application and Implementation Process

Under the FY 1991 targeted assistance program, as in FY 1990, States would apply for and receive grant awards on behalf of qualified counties in the State. A single allocation would be made to each State by ORR on the basis of an approved State application. The State agency would, in turn, receive, review, and determine the acceptability of individual county targeted assistance plans.

TAP is a multi-year program, with grant project periods issued for periods of 3 years and grant funding generally limited to 12-month budgets within the grant project period. In the event that targeted assistance funds are appropriated in future years, additional 12-month budget period applications will be considered as noncompetitive continuation grant applications so long as they are within the total grant project period.

Although funding for educational services in Dade County, FL, and for medical services at Jackson Memorial Hospital in Miami, FL, is part of the appropriation amount for targeted assistance, the scope of activities for these special projects will be administratively determined. Applications for those funds are therefore not subject to provisions contained in this notice but to other requirements which have been conveyed separately. Similarly, the requirements regarding the 10% of the targeted assistance appropriation that will be awarded separately will be addressed in the grant announcement for those funds.

IX. Application Requirements

The proposed State application requirements for grants for the FY 1991 targeted assistance formula allocations are as follows:

States that are currently operating under approved management plans for their FY 1990 targeted assistance program and wish to continue to do so for their FY 1991 grants may provide the following in lieu of resubmitting the full currently approved plan:

The State's application shall provide:

A. Assurance that the State's current management plan for the administration of the targeted assistance program, as approved by ORR, will continue to be in full force and effect for the FY 1991 targeted assistance program, subject to any additional assurances or revisions required by this notice which are not reflected in the current plan. Any proposed modifications to the approved plan will be described separately in the application and are subject to ORR review and approval.

B. Timetables for awarding funds to the local areas consistent with the conclusion of services under the FY 1990 program as modified by no-cost extensions of prior-year targeted assistance funds and service periods, including budgets with an estimated carryover of unobligated balances from the prior-year budget period. New budget periods are to be for 12 months; however, budget periods greater than 12 months but less than 18 months will be considered if adequately justified.

C. A line item budget and justification for State administrative costs limited to a maximum of 5% of the total award to the State.

D. Revised information and description of any proposed plan modifications. Any proposed changes must address and reference all appropriate portions of the FY 1990 application content requirements to ensure complete incorporation in the State's management plan.

E. If an unobligated balance is available from a prior year, a State must indicate at the time of application how any proposed carryover of unobligated funds will be used. If this information is not available when the application is submitted, the State must submit a supplement to the application explaining how the unobligated funds will be used to expand the program. The proposed budget must also be adjusted accordingly.

F. This paragraph applies only to States administering the program locally: States that have administered the program locally or provide direct service to the refugee population (with the concurrence of the county) must submit a program summary to ORR for prior review and approval. The summary must include a description of the proposed services; a justification for the projected allocation for each component including relationship of funds allocated to numbers of clients served, characteristics of clients, duration of training and services, projected outcomes, and cost per placement. In addition, the program component summary should describe any ancillary services or subcomponents such as day care, transportation, or language training.

G. This paragraph applies only to States with two or more counties receiving targeted assistance funds: As in FY 1990, a State with two or more local areas which qualify for the program may choose to determine respective county allocations. If the State chooses to determine county allocations differently from those set forth in Table 1 of this notice, the State should provide a description of the State's proposed allocation plan. The allocation approach should be based upon existing FY 1990 funds, prior-year funds carried forward, and indicators of refugee need for targeted assistance services. The application should contain a description of the allocation approach, data used in its determination, and the calculated allocation amount for each county. States are encouraged to revise allocation formulas to assure appropriate funding among eligible counties for the duration of the grant such that targeted assistance activities within the State conclude simultaneously. The allocation formula is subject to ORR approval. If the State chooses not to determine county allocation amounts, the State must provide the allocations which are specified in this notice.

H. Assurances that, for each qualified local area, cash assistance recipients (time-eligible or time-expired recipients under any program of the State or locality) will make up a percentage of the FY 1991 targeted assistance clientele no less than the State's final FY 1989 dependency rate, as determined by ORR, unless a waiver of this requirement is granted by ORR.

I. Assurance that at least 85% of targeted assistance funds will support projects which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program.

J. The following certifications: Drug-Free Workplace, Debarment, and Anti-Lobbying.

X. Review, Technical Assistance, and Award Policy

Applications will be considered on a non-competitive basis. They will be reviewed and approved in accordance with the criteria set forth in this announcement. Continuation awards will be considered based on the receipt of the required program and financial reports and ORR's determination that continued funding is in the best interest of the Government. The Department will provide technical assistance to the applicant if it is necessary in order to develop a proposal which warrants the award of funds at the proposed allocation amount and if such assistance is requested by the applying State agency. Final determination as to the acceptability of applications is at the discretion of the Director of ORR

XI. Reporting Requirements

FY 1991 TAP grants must be tracked separately from previous TAP grants, both financially and programmatically. For the FY 1991 program, States are required to submit semiannual reports and one final report as in previous years on the services provided in each targeted area. States are required to report on the number of job placements and retentions, cash assistance recipients placed on jobs, costs per placement, and other items specified in the "Reporting Requirements for Targeted Assistance Grants for Services for Refugees in Local Areas of High Need," OMB No. 0970-0042, expiration date February 28, 1991. Semiannual reports covering activity through September 30 and March 31 of each year are due on October 31 and April 30 of each year. A final cumulative report is due 90 days after the end of the full grant period.

Dated: April 25, 1991.

Chris Gersten,

Director, Office of Refugee Resettlement.

Attachment A—DHHS Regulations Applicable To All Applicants/Grantees

The following DHHS regulations apply to all applicants/grantees.

Title 45 of the *Code of Federal Regulations:*

Part 16—Departmental Procedures of the Grant Appeals Board

Part 74—Administration of Grants (non-governmental)

Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):

Sections 74.62 (a) Non-Federal Audits
74.173 Hospitals
74.174(b) Other Nonprofit Organizations
74.304 Final Decisions in Disputes
74.710 Real Property, Equipment and Supplies
74.715 General Program Income

Part 75—Informal Grant Appeals Procedures

Part 76—Debarment and Suspension from Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Nondiscrimination:

Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964

Part 81—Practice and Procedures for Hearings Under Part 80 of this Title

Part 83—Nondiscrimination on the Basis of Sex in the Admission of Individuals to Training Programs

Part 84—Nondiscrimination on the Basis of Handicap in Programs

Part 91—Nondiscrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance

Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments

Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities.

BILLING CODE 4100-04-M

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Attachment B—SF-424, Application For Federal Assistance and Instructions For the SF-424

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1	Self-explanatory.
2	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3	State use only (if applicable).
4	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: —"New" means a new assistance award. —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Attachment C—SF–424A, Budget Information—Non-Construction Programs and Instructions for the SF–424A

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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Attachment D—SF-424B, Assurances—Non-Construction Programs

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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Attachment E—SF-424C, Budget Information—Construction Programs and Instructions for the SF-424C

OMB Approved No. 0348-0041

BUDGET INFORMATION — Construction Programs

NOTE: Certain Federal assistance programs require additional computations to arrive at the Federal share of project costs eligible for participation. If such is the case you will be notified.

COST CLASSIFICATION	a. Total Cost	b. Costs Not Allowable for Participation	c. Total Allowable Costs (Column a-b)
1. Administrative and legal expenses	$ .00	$ .00	$ .00
2. Land, structures, rights-of-way, appraisals, etc.	$ .00	$ .00	$ .00
3. Relocation expenses and payments	$ .00	$ .00	$ .00
4. Architectural and engineering fees	$ .00	$ .00	$ .00
5. Other architectural and engineering fees	$ .00	$ .00	$ .00
6. Project inspection fees	$ .00	$ .00	$ .00
7. Site work	$ .00	$ .00	$ .00
8. Demolition and removal	$ .00	$ .00	$ .00
9. Construction	$ .00	$ .00	$ .00
10. Equipment	$ .00	$ .00	$ .00
11. Miscellaneous	$ .00	$ .00	$ .00
12. SUBTOTAL	$ .00	$ .00	$ .00
13. Contingencies (sum of lines 1-11)	$ .00	$ .00	$ .00
14. SUBTOTAL	$ .00	$ .00	$ .00
15. Project (program) income	$ .00	$ .00	$ .00
16. TOTAL PROJECT COSTS (subtract #15 from # 14)	$ .00	$ .00	$ .00
FEDERAL FUNDING			
17. Federal assistance requested, calculate as follows: (Consult Federal agency for Federal percentage share). Enter the resulting Federal share.	Enter eligible costs from line 16c Multiply X ———— %		$ .00

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INSTRUCTIONS FOR THE SF-424C

This sheet is to be used for the following types of applications: (1) "New" (means a new [previously unfunded] assistance award); (2) "Continuation" (means funding in a succeeding budget period which stemmed from a prior agreement to fund); and (3) "Revised" (means any changes in the Federal government's financial obligations or contingent liability from an existing obligation). If there is no change in the award amount there is no need to complete this form. Certain Federal agencies may require only an explanatory letter to effect minor (no cost) changes. If you have questions please contact the Federal agency.

Column a. — If this is an application for a "New" project, enter the total estimated cost of each of the items listed on lines 1 through 16 (as applicable) under "COST CLASSIFICATIONS."

If this application entails a change to an existing award, enter the eligible amounts *approved under the previous award* for the items under "COST CLASSIFICATION."

Column b. —If this is an application for a "New" project, enter that portion of the cost of each item in Column a. which is *not* allowable for Federal assistance. Contact the Federal agency for assistance in determining the allowability of specific costs.

If this application entails a change to an existing award, enter the adjustment [+ or (-)] to the previously approved costs (from column a.) reflected in this application.

Column c. — This is the net of lines 1 through 16 in columns "a." and "b."

Line 1 — Enter estimated amounts needed to cover administrative expenses. Do not include costs which are related to the normal functions of government. Allowable legal costs are generally only those associated with the purchase of land which is allowable for Federal participation and certain services in support of construction of the project.

Line 2 — Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements).

Line 3 — Enter estimated costs related to relocation advisory assistance, rep acement housing, relocation payments to di pla d persons and businesses, etc.

Line 4 — Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).

Line 5 — Enter estimated engineering costs, such as surveys, tests, soil borings, etc.

Line 6 — Enter estimated engineering inspection costs.

Line 7 — Enter estimated costs of site preparation and restoration which are not included in the basic construction contract.

Line 9 — Enter estimated cost of the construction contract.

Line 10 — Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.

Line 11 — Enter estimated miscellaneous costs.

Line 12 — Total of items 1 though 11.

Line 13 — Enter estimated contingency costs. (Consult the Federal agency for the percentage of the estimated construction cost to use.)

Line 14 — Enter the total of lines 12 and 13.

Line 15 — Enter estimated program income to be earned during the grant period, e.g., salvaged materials, etc.

Line 16 — Subtract line 15 from line 14.

Item 17 — This block is for the computation of the Federal share. Multiply the total allowable project costs from line 16, column "c." by the Federal percentage share (this may be up to 100 percent; consult Federal agency for Federal percentage share) and enter the product on line 17.

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Attachment F—SF-424D, Assurances—Construction Programs

OMB Approved No. 0348-0042

ASSURANCES — CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.

4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.

5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.

6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

10. Will comply with all Federal statues relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibit discrimination of the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other non-discrimination provisions in the specific statute(s) under which application for Federal assistance is being made, and (j) the requirements on any other non-discrimination Statute(s) which may apply to the application.

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11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), the Contract Work Hours and Safety Standards Act (40 U.S. §§ 327-333) regarding labor standards for federally assisted construction subagreements.

14. Will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

19. Will comply with all applicable requirements of all other Federal laws, Executive Orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

BILLING CODE 4160-04-C

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Attachment G—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Telephone (205) 284-8905

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280-1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371-1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323-7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, room 520, Denver, Colorado 80203, Telephone (303) 866-2156

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Telephone (203) 566-3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736-3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004,Telephone (202) 727-6111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Telephone (904) 488-8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656-3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548-3016 or 548-3085

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782-6539

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232-5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281-3725

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564-2382

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289-3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Telephone (301) 225-4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727-7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373-7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223

Mississippi

Cathy Mallett, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960-4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444-5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Attn: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-9025

New Mexico

Dorothy E. (Duffy) Rodriquez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843-9770

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, N.E., Salem, Oregon 97310, Telephone (503) 373-1998

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783-3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778

Utah

Utah State Clearinghouse, Attn: Carolyn Wright, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 538-1547

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51, Olympia, Washington 98504-4151, Telephone (206) 753-4978

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #8, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Telephone (608) 266-1741

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, (608)-266-0267

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM. Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750

Attachment H—DHHS Certification Regarding Drug-Free Workplace Requirements—Grantees Other Than Individuals

Attachment H—U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the U.S. Department of Health and Human Services determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of the grant, or governmentwide suspension or debarment.

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) the dangers of drug abuse in the workplace;

(2) the grantee's policy of maintaining a drug-free workplace;

(3) any available drug counseling, rehabilitation, and employee assistance programs; and

(4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Make it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) abide by the terms of the statement; and

(2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) taking appropriate personnel action against such an employee, up to and including termination; or

(2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), and (f).

B. The grantee shall insert in the space provided below, the site(s) for the performance of work done in connection with the specific grant (Street address, city, county, state, zip code):

_____

_____

_____

Attachment I—Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered

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transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commissions of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause of default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and all solicitations for lower tier covered transactions.

BILLING CODE 4160-04-M

Attachment J—Restrictions on Lobbying and SF-LLL and Instructions

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3 The undersigned shall require that the language of this certification be included in the award documents for subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or grantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Signature

Title

Organization

Date

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
   - ☐ a. contract
   - b. grant
   - c. cooperative agreement
   - d. loan
   - e. loan guarantee
   - f. loan insurance

2. Status of Federal Action:
   - ☐ a. bid/offer/application
   - b. initial award
   - c. post-award

3. Report Type:
   - ☐ a. initial filing
   - b. material change

   For Material Change Only:
   year _____ quarter ____
   date of last report _____

4. Name and Address of Reporting Entity:
   - ☐ Prime
   - ☐ Subawardee Tier ____, *if known:*

   Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

   Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

   CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
   $

10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):

    b. Individuals Performing Services (including address if different from No. 10a) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):
    $ _____ ☐ actual ☐ planned

12. Form of Payment (*check all that apply*):
    - ☐ a. cash
    - ☐ b. in-kind; specify: nature _____
      value _____

13. Type of Payment (*check all that apply*):
    - ☐ a. retainer
    - ☐ b. one-time fee
    - ☐ c. commission
    - ☐ d. contingent fee
    - ☐ e. deferred
    - ☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB 0348-0046

Reporting Entity: _____ Page _____ of _____

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[FR Doc. 91-11068 Filed 5-9-91; 8:45 am]
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federal register

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May 10, 1991

Part VII

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 2

Revision of Patent and Trademark Fees; Proposed Rule

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 910373-1073]

RIN 0651-AA45

Revision of Patent and Trademark Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (PTO) proposes to amend the rules of practice in patent and trademark cases, parts 1 and 2 of title 37, Code of Federal Regulations, to adjust certain patent and trademark fee amounts and to amend certain procedures in accordance with the applicable provisions of H.R. 1613.

In brief, the PTO is proposing to establish a two-year fee cycle for fiscal years 1992 and 1993. During the 1992–1993 fee cycle, fees set under 35 U.S.C. 41 (a) and (b) would remain at the present level. Fees set under 35 U.S.C. 41(d), 35 U.S.C. 376, and section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), would be adjusted. The small entity subsidy would be continued, but would apply only to patent application filing fees.

DATES: Written comments must be submitted on or before June 12, 1991; a public hearing will be held on June 12, 1991, at 9 a.m. Requests to present oral testimony should be received on or before June 11, 1991.

ADDRESSES: Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Frances Michalkewicz, suite 507, Crystal Park 1, or by FAX to (703) 557–8664. The hearing will be held in suite 912 on the 9th floor of Building 2, Crystal Park, located at 2121 Crystal Drive, Arlington, Virginia. Written comments and a transcript of the hearing will be available for public inspection in suite 507 of Building 1, Crystal Park, at 2111 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Frances Michalkewicz by telephone at (703) 557–1610 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: This proposed rule change is designed to adjust the Patent and Trademark Office fees in accordance with the provisions of H.R. 1613.

Patent and trademark fees were set on October 1, 1982, in accordance with the provisions of title 35, United States Code, and the provisions of section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113).

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) imposed a 69 percent surcharge on all patent fees set under 35 U.S.C. 41 (a) and (b). Section 10101 of Public Law 101–508 requires the Commissioner to make recommendations for any statutory changes necessary to implement new fee proposals. Furthermore, the PTO's authorizing legislation (Pub. L. 100–703) will expire on September 30, 1991. Legislation to authorize appropriations for the Patent and Trademark Office for fiscal years 1992 and 1993 and for other purposes has been introduced as H.R. 1613.

Background

Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. Subsections 41 (a) and (b) of title 35, United States Code, establish a number of statutory fees. Among them are fees for filing a patent application, issuing a patent, and maintaining a patent in force.

Section 10101 (a) of Public Law 101–508 imposes a 69 percent surcharge on all fees authorized by 35 U.S.C. 41 (a) and (b), effective November 5, 1990. Section 1(c) of H.R. 1613 would require the Commissioner to keep section 41 (a) and (b) fees at this level.

Section 41(h) of title 35, United States Code, authorizes the 50 percent reduction in the fees paid under 35 U.S.C. 41(a) and 35 U.S.C. 41(b) by independent inventors, small business concerns, and nonprofit organizations, who meet the prescribed definitions. Section 4(d) of H.R. 1613 would amend 35 U.S.C. 41(h) to apply the 50 percent reduction only to patent application filing and claim fees when those fees are paid upon filing the application.

Section 4(a) of H.R. 1613 would amend 35 U.S.C. 41(d) to allow the Commissioner to establish fees for all other processing, services, or materials related to patents and not specified in 35 U.S.C. 41(a) and (b) to recover, in the aggregate with other revenues, the estimated cost of the operations of the PTO.

Section 376 of title 35, United States Code, authorizes the Commissioner to set fees for patent applications filed under the Patent Cooperation Treaty. H.R. 1613 makes no modifications to 35 U.S.C. 376.

Section 4(b) of H.R. 1613 would amend subsection 41(f) of title 35, United States Code, to provide that all fees set under 35 U.S.C. 41(a) and (b) may be adjusted every two years beginning October 1, 1993, by fluctuations in the Consumer Price Index (CPI) over the previous two years.

Section 4(c) of H.R. 1613 would amend subsection 41(g) of title 35, United States Code, to allow new fee amounts established after October 1, 1991, to take effect thirty days after notice in the **Federal Register**.

Section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), authorizes the Commissioner to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for all other services and materials relating to trademarks and other marks. The current section 31 also precludes any fee for the filing or processing of an application for the registration of a trademark or other mark or for the renewal or assignment of a trademark or other mark from being adjusted more than once every three years.

Section 42(c) of title 35, United States Code, provides that trademark fees available to the Commissioner are to be used exclusively for the processing of trademark registrations and for other services and materials related to trademarks. Section 4(f) of H.R. 1613 would modify 35 U.S.C. 42(c) so that trademark fees could be used to support a fair share of trademark-related activities including administrative, legislative, international and outreach programs that to date have been funded from taxpayer revenues. Trademark fees could be reprogrammed for other authorized PTO activities not specified above only upon compliance with the guidelines for reprogramming set forth in the Department of Commerce's annual appropriations act.

Section 4(g) of H.R. 1613 would allow trademark fees to be adjusted every two years, and after October 1, 1991, would allow new fee amounts to take effect thirty days after notice in the **Federal Register**.

General Procedures

Recovery Level Determinations

The PTO proposes to recover its operating costs for fiscal years 1992 and 1993 as stated in the President's Fiscal Year 1992 Budget. The budget request for fiscal year 1992 totals $461,790,000 and the estimate for fiscal year 1993 totals $554,899,000. Recovery levels were guided by OMB Circular A–25, "User Fees," and OMB Circular A–130, "Management of Federal Information Resources."

Workload Projections

Determination of future year workloads varies by fee code. Principal workload projection techniques are as follows:

Patent and trademark application workloads were projected from statistical regression models using recent application trends. Patent issues are projected from an in-house patent productivity model and reflect examiner production achievements and goals. Patent maintenance fee workloads utilize patents issued 3.5, 7.5 and 11.5 years prior to payment and assume payment rates of 80 percent, 50 percent and 25 percent, respectively. Trademark affidavit projections are based on filing trends for marks registered five to six years prior. Trademark renewal projections are based on marks registered 20 years prior to 1989. Service fee workloads follow linear trends from prior year activities. Workload estimates are calculated by the Office of Budget and the office responsible for the fee activity.

Income Projections

For each patent statutory fee, the amount of each fee set forth in the **Federal Register** of November 26, 1990, at 55 FR 49040 was multiplied by the projected workload for 1992 and 1993 to project the income from that fee item during the two-year period. The sum of the projected incomes from all patent statutory fees for the two-year period was subtracted from the two-year budget requests of $913,433,000 for patents. The result was the amount that would have to be recovered from patent non-statutory fees and Patent Cooperation Treaty fees.

Section 4(a) of H.R. 1613, along with 35 U.S.C. 376, would allow the PTO to set fees to recover in the aggregate with revenues projected to be generated from patent statutory fees, the estimated cost of patent operations for the two-year period, 1992–1993. Each of the proposed fee amounts was multiplied by the projected workload during the fee cycle to project the income from that fee item. The sum of revenues projected to be generated from patent statutory fees, patent non-statutory fees, and Patent Cooperation Treaty fees equals the President's Budget request for patents for fiscal years 1992 and 1993.

Section 4(g) of H.R. 1613 would allow the PTO to set trademark fees to recover the estimated cost of the trademark operations for the two-year period, 1992–1993. The two-year budget request for trademarks is $99,956,000.

A comparison of existing and proposed fee amounts is included as an Appendix to this proposed notice.

Any fee amount that is paid on or after October 1, 1991, would be subject to the new fee schedule. Under H.R. 1613, the small entity subsidy would be continued, but would apply only to patent application filing and claims fees. Fees set in 35 U.S.C. 41(a)(1) for additional claims would be subject to reduction for small entities only if the additional claims were included in the application as filed. No small entity reduction would apply for claims presented later than on filing the application. Fee amounts established by 35 U.S.C. 41(a)(2), (a)(3)(c), (a)(3)(d), (a)(5)–(a)(8), and 41(b) that are paid on or after October 1, 1991, would no longer be reduced by 50 percent for small entities.

For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing, where authorized under 37 CFR 1.8, will be considered to be the date of receipt in the PTO. A "Certificate of Mailing under section 1.8" is not "proper" for items which are specifically excluded from the provisions of § 1.8. Section 1.8 should be consulted for those items for which a Certificate of Mailing is not "proper." Such items include, inter alia, the filing of national and international applications for patents and the filing of trademark applications. The provisions of 37 CFR 1.10 relating to filing papers and fees with an "Express Mail" certificate, however, do apply to any paper or fee (including patent and trademark applications) to be filed in the PTO. If an application or fee is filed by "Express Mail" with a proper certificate dated on or after the effective date of the rules, the amount of the fee to be paid is the fee established herein if a change is being made in the fee. In order to ensure clarity in the implementation of the fee proposals, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.12 Assignment Records Open to Public Inspection

Section 1.12, paragraph (a), if amended as proposed, would change the reference for payment of a fee to § 1.19(b)(3), and add a reference to the fee set in the trademark rules at § 2.6(b)(5). Section 1.12, paragraph (d), if amended as proposed, would change the reference for payment of a fee to § 1.21(j), and add a reference to the fee set in the trademark rules at § 2.6(b)(10).

37 CFR 1.13 Copies and Certified Copies

Section 1.13, if amended as proposed, would revise paragraph (b) to be consistent with proposed revisions to paragraphs 1.19(b) and 2.6(b).

37 CFR 1.16 National Application Filing Fee

Section 1.16, paragraphs (b)–(d), (i) and (j), if revised as proposed, would clarify that the reduced fee amounts to be paid by a small entity are applicable only when the claims are filed with the original application. Fees for presentation of claims in an original application later than on filing are set forth in proposed new 37 CFR 1.17 (p) and (q).

Section 1.16, paragraph (e), if revised as proposed, would adjust the patent application surcharge fee as authorized by section 4(a) of H.R. 1613, and would eliminate the two-tier fee structure, as authorized by section 4(d) of H.R. 1613. All applicants would pay the same fee amount.

37 CFR 1.17 Patent Application Processing Fees

Section 1.17, paragraphs (a)–(g), (l) and (m), if revised as proposed, would eliminate the two-tier fee structure as authorized by section 4(d) of H.R. 1613. All applicants would pay the same amount.

Section 1.17, paragraphs (h)–(k) and (n)–(o), if revised as proposed, would adjust the fee amounts as authorized by section 4(a) of H.R. 1613.

Section 1.17, if revised as proposed, would add new paragraphs (p) and (q).

Proposed new paragraph (p) would set forth fees for presentation to claims in an original application later than on filing.

Proposed new paragraph (q) would set forth fees for presentation of claims in a reissue application later than on filing.

37 CFR 1.18 Patent Issue Fees

Section 1.18, if revised as proposed, would eliminate the two-tier fee structure as authorized by section 4(d) of H.R. 1613. All applicants would pay the same amounts.

37 CFR 1.19 Document Supply Fees

Section 1.19, if revised as proposed, would establish that the Office would sell certified or uncertified copies of documents at the same flat fee. Most requests for documents are for certified copies. Customers who need uncertified copies of documents or copies of

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portions of documents also would be able to make those copies themselves at a self-service copy charge, per page. The Office no longer would compare and certify documents that were not made by Office staff.

Section 1.19, subparagraph (a)(1), if revised as proposed, would adjust the fee amount as authorized by section 4(a) of H.R. 1613. Subparagraph (a)(1), if revised as proposed, also would clarify and set fees for different levels of service available for obtaining copies of patents in black and white. In addition to regular service, the PTO would provide for expedited local service to be fulfilled within one workday for orders delivered to the Public Service Window at double the fee amount set for regular service; and expedited service via electronic ordering service and delivered by overnight express delivery service as previously provided by subparagraph (a)(6). There are two Public Service Windows at the PTO: One in the Patent Search Room and another in the Trademark Search Library. Unless otherwise requested, copies of patents would be delivered to the Public Service Window in the Patent Search Room.

Section 1.19, subparagraph (a)(2), if revised as proposed, would adjust the fee amount as authorized by section 4(a) of H.R. 1613, and delete reference to copies of statutory invention registrations, which would be provided by renumbered subparagraph (a)(3).

Section 1.19, if revised as proposed, would delete existing subparagraph (a)(3). In the future, the PTO only would provide certified or uncertified copies of documents at a flat fee, as set forth in renumbered subparagraph (b)(3).

Section 1.19, renumbered subparagraph (a)(3), if revised as proposed, would clarify and set fees for different levels of service available for obtaining copies of utility patents or statutory invention registrations containing color drawings. In addition to regular service, the PTO would provide for expedited local service to be fulfilled within one work day for orders delivered to a Public Service Window at double the fee amount set for regular service.

Section 1.19, if revised as proposed, would delete subparagraphs (a)(5) and (a)(6). The service formerly provided under subparagraph (a)(5) would be provided under subparagraphs (a)(1)(ii) and (a)(2)(iii), and the service formerly provided under subparagraph (a)(6) would be provided under (a)(1)(iii).

Section 1.19, subparagraph (b)(1), if revised as proposed, would adjust the fee amount as authorized by section 4(a) of H.R. 1613, and also clarify and set fees for different levels of service available for obtaining certified copies of patent applications as filed. In addition to regular service, the PTO would provide for expedited service, fulfilled within five work days, excluding mailing time, at double the fee amount set for regular service.

Section 1.19, subparagraph (b)(2), if revised as proposed, would reduce the fee for providing a certified or uncertified copy of a patent file wrapper and contents.

Section 1.19, if revised as proposed, would delete subparagraphs (b)(3) and (b)(4). Certified or uncertified copies of Office records would be provided under the renumbered (b)(3). Expedited service as currently provided under subparagraph (b)(4) would be provided under subparagraph (b)(1)(ii).

Section 1.19, if revised as proposed, would renumber subparagraph (b)(5) as (b)(3), and adjust the fee amount as authorized by section 4(a) of H.R. 1613. Section 1.19, subparagraph (b)(3), if revised as proposed, would establish that the PTO provides copies of certified documents, but does not certify documents provided by the public.

Section 1.19, if revised as proposed, would renumber subparagraph (b)(6) as (b)(4) and would adjust the fee amount as authorized by section 4(a) of H.R. 1613.

Section 1.19, paragraphs (d)–(f), if revised as proposed, would adjust the fee amounts as authorized by section 4(a) of H.R. 1613.

Section 1.19, if revised as proposed, would delete paragraph (g) because the PTO no longer would certify copies that are not prepared by the PTO.

Section 1.19, if revised as proposed, would renumber paragraph (h) as (g), and adjust the fee amount in renumbered paragraph (g) as authorized by section 4(a) of H.R. 1613.

37 CFR 1.20 Post-Issuance Fees

Section 1.20, paragraphs (a)–(c), if revised as proposed, would adjust the fee amounts as authorized by section 4(a) of H.R. 1613.

Section 1.20, paragraph (d), if revised as proposed, would eliminate the two-tier fee structure as authorized by section 4(d) of H.R. 1613. All would pay the same amounts.

Section 1.20, paragraphs (e)–(g), if revised as proposed, would adjust the fee amounts as authorized by section 4(a) of H.R. 1613 to make them comparable to the amounts established by § 41(b) and set forth in the Federal Register of November 20, 1990, at 55 FR 49040 under 37 CFR 1.20(h)–(j), respectively.

Section 1.20, paragraphs (e)–(g), if revised as proposed, would provide for the payment of maintenance fees on original and reissue patents, except design or plant patents, based on all applications filed on or after December 12, 1980. Paragraphs (e)–(g) formerly provided for the payment of maintenance fees on original and reissue patents, except design or plant patents, based on applications filed on or after December 12, 1980, but before August 27, 1982. Paragraphs (h)–(j), which are proposed to be deleted, provided for the payment of maintenance fees on original and reissue patents, except design or plant patents, based on applications filed on or after August 27, 1982. The distinction in the maintenance fee due based on the application filing date would be eliminated by section 4(a) of H.R. 1613. Section 4(d) of H.R. 1613 would eliminate the two-tier fee structure for the payment of maintenance fees. All would pay the same amounts.

Section 1.20, if revised as proposed, would delete paragraphs (h)–(j). The fees for maintaining all original or reissue patents, except design or plant patents, including those based on applications filed on or after August 27, 1982, would be set forth in paragraphs (e)–(g).

Section 1.20, if revised as proposed, would renumber paragraph (k) as paragraph (h), and adjust the fee amounts as authorized by section 4(a) of H.R. 1613. This paragraph would provide for a surcharge for payment of a maintenance fee during the six-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980. Paragraph (h) formerly provided for a surcharge for late payment of maintenance fees on original and reissue patents, except design or plant patents, based on applications filed on or after December 12, 1980, but before August 27, 1982. Paragraph (l), which is proposed to be deleted, provided for a surcharge for late payment of maintenance fees on original and reissue patents, except design or plant patents, based on applications filed on or after August 27, 1982. Section 4(d) of H.R. 1613 would eliminate the two-tier fee structure for the payment of maintenance fees. All would pay the same amounts.

Section 1.20, if revised as proposed, would delete paragraph (l). The fees for the late payment of a maintenance fee for all original or reissue patents, except design or plant patents, based on applications filed on or after December 12, 1980, are set forth in proposed renumbered paragraph (h).

Section 1.20, if revised as proposed, would renumber paragraphs (m) and (n) as paragraphs (i) and (j), and adjust the fee amounts as authorized by section 4(a) of H.R. 1613.

37 CFR 1.21 Miscellaneous Fees and Charges

Section 1.21, if revised as proposed, would reserve paragraph (f) and delete paragraphs (p) and (q).

Section 1.21, paragraphs (a), (c)–(e), (h), and (i)–(n), if revised as proposed, would adjust the fee amounts as authorized by section 4(a) of H.R. 1613.

Section 1.21, subparagraph (a)(4), if revised as proposed, would provide a certificate of good standing for $10.00 and a certificate that is suitable for framing at double that fee amount.

Section 1.21, subparagraph (b)(1), if revised as proposed, would eliminate the fee requirement for reinstating a deposit account. This fee requirement has been found to be unnecessary because the Office no longer suspends accounts when there is no activity. The fee amount for establishing a deposit account would remain at $10.00.

Section 1.21, if revised as proposed, would delete paragraph (f), since this service would be provided under revised paragraph (j). Paragraph (f) would be reserved.

Section 1.21, paragraph (g), if revised as proposed, would establish a self-service copy charge amount, per page. The self-service copy charge would be applied to the per copy amounts on CopiShare cards as previously provided by this paragraph, and the marginal cost for each printed page generated from the Automated Patent System, as previously provided by paragraph (q).

Section 1.21, paragraph (j), if revised as proposed, would eliminate the fee for providing duplicate passes. The Office would continue to provide duplicate passes free of charge.

Proposed new paragraph (j) would establish one fee amount for each hour of service, or fraction thereof, requested from the PTO. Examples of services would be searching PTO records, as previously provided by this paragraph; PTO staff assistance to conduct a search using the Automated Patent System, as previously provided in paragraph (p); and other miscellaneous requests for services where PTO staff are providing direct labor support to customers.

Section 1.21, paragraph (k), if revised as proposed, would require the payment of the actual cost for performing special services provided by the PTO. Generally, services provided by the PTO would be charged at the $40.00 hourly rate set forth in paragraph (f) of this section. Paragraph (k) is reserved for non-labor charges, such as computer services, special supplies, extra mailing costs, etc., that are authorized by the customer.

37 CFR 1.24 Coupons

Section 1.24, if revised as proposed, would adjust the fee for the purchase of coupons for patents and trademarks to make it comparable to the fee required for the purchase of copies of patents and trademarks, and to adjust the amount of the coupon books.

37 CFR 1.26 Refunds

Section 1.26, paragraph (c), if revised as proposed, would provide for a refund of $2,250 if the Commissioner decides not to institute reexamination proceedings. The $2,250 refund would apply to those instances where the proposed reexamination fee of $3,000 under 37 CFR 1.20(c) was paid. The current $1,500 refund would be made in those cases where the current $2,000 reexamination fee was paid.

37 CFR 1.27 Statement of Status as Small Entity

Section 1.27, if revised as proposed, would clarify that small entity status is available only when paying the application filing fees, in accordance with section 4(d) of H.R. 1613.

37 CFR 1.28 Effect on Fees of Failure to Establish Status as a Small Entity

Section 1.28, if amended as proposed, would revise paragraphs (a) and (c), and delete paragraph (b) to clarify that small entity status is available only when paying the application filing fees, in accordance with section 4(d) of H.R. 1613. Paragraph (b) would be reserved.

37 CFR 1.171 Application for Reissue

Section 1.171, paragraph (a), if revised as proposed, would change the reference for payment of a fee to § 1.19(b)(4).

37 CFR 1.298 Withdrawal of Request for Publication of Statutory Invention Registration

Section 1.298, if revised as proposed, would adjust the handling fee for withdrawal of a statutory invention registration as authorized by section 4(a) of H.R. 1613.

37 CFR 1.362 Time for Payment of Maintenance Fees

Section 1.362, if amended as proposed, would revise paragraphs (a) and (e) to refer to renumbered paragraphs in § 1.20, and would revise paragraph (b) to clarify that maintenance fees are not required for any plant or design patents.

37 CFR 1.366 Submission of Maintenance Fees

Section 1.366, if amended as proposed, would revise paragraph (d) to delete reference to small entity status when paying maintenance fees, in accordance with section 4(d) of H.R. 1613. There would be no reduction in any maintenance fee paid after the effective date of these rules for small entity status.

Section 1.366, if amended as proposed, would delete paragraph (f) since it refers exclusively to a change in small entity status prior to, or at the time of paying, the first maintenance fee. Section 4(d) of H.R. 1613 would eliminate the two-tier fee structure for the payment of maintenance fees. All would pay the same amounts.

Section 1.366, if amended as proposed, would renumber paragraph (g) as paragraph (f), and eliminate the reference to § 1.28(a) since the small entity provisions would no longer apply to maintenance fees.

37 CFR 1.378 Acceptance of Delayed Payment of Maintenance Fee in Expired Patent to Reinstate Patent

Section 1.378, if amended as proposed, would revise paragraphs (a)–(c) and (e) to refer to renumbered paragraphs in § 1.20.

37 CFR 1.445 International Application Filing, Processing, and Search Fees

Section 1.445, if revised as proposed, would adjust the fees authorized by 35 U.S.C. 376 for international application processing as set forth in 37 CFR 1.445(a) in accordance with section 4(a) of H.R. 1613.

37 CFR 1.482 International Preliminary Examination Fees

Section 1.482, if revised as proposed, would adjust the fees in paragraph (a) in accordance with section 4(a) of H.R. 1613.

37 CFR 1.492 National Stage Fees

Section 1.492, if revised as proposed, would adjust the fees in paragraphs (a)–(f) in accordance with section 4(a) of H.R. 1613. Section 1.492, if revised as proposed, would eliminate the two-tier fee structure in paragraphs (a)–(e).

Section 1.492, if revised as proposed, would add new subparagraph (a)(5) to set forth a fee upon entering the national stage when a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office. The

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proposed fee amount includes a reduction equivalent to approximately 20 percent of the cost of conducting a search.

37 CFR 1.740 Application for Extension of Patent Term

Section 1.740, paragraph (a)(14), if revised as proposed, would change the reference to the rule for extension of a patent term to § 1.20(j).

37 CFR 1.770 Express Withdrawal of Application for Extension of Patent Term

Section 1.770, if revised as proposed, would change the reference to the rule for extension of a patent term to § 1.20(j).

37 CFR 2.6 Trademark Fees

Section 2.6, if revised as proposed, would be divided into two sections. Revised paragraph (a) would include all Trademark process fees and revised paragraph (b) would include all Trademark service fees. Paragraphs (a) and (u) would be renumbered as subparagraphs (a)(1) and (a)(2); paragraphs (v), (b), (s), (c)–(l) would be renumbered as subparagraph (a)(4)–(a)(16), respectively; and paragraph (m) would be renumbered as subparagraph (a)(18). New subparagraphs (a)(3) and (a)(17) would be added.

Paragraph (n) would be renumbered as subparagraph (b)(1); paragraphs (o), (q), (r), and (w) would be renumbered as subparagraphs (b)(5)–(b)(8), respectively; and paragraph (t) would be renumbered as subparagraph (b)–(11). New subparagraphs (b)(2)–(b)(4), (b)(9) and (b)(10) would be added.

Subparagraph (a)(1), if revised as proposed, would adjust the fee amount established pursuant to the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), in accordance with section (g) of H.R. 1613.

Subparagraph (a)(2), if revised as proposed, would delete reference to filing an amendment for a statement of use. New subparagraph (a)(3) would be established for filing a statement of use under section (1)(d)(1) of the Act, per class. This would clarify that a $100 fee amount is due for each action requested.

Subparagraph (a)(5), if revised as proposed, would delete the words "an application" from the rule.

Subparagraph (a)(6), if revised as proposed, would clarify the requirement for paying an additional fee for a renewal application made within three months of the expiration of the registration. Subparagraph (a)(6), if revised as proposed, would adjust the fee amount established pursuant to the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), in accordance with section (g) of H.R. 1613.

Subparagraphs (a)(12)–(a)(16), if revised as proposed, would adjust the fee amounts in accordance with section (g) of H.R. 1613.

Subparagraph (a)(16), if revised as proposed, would delete reference to filing a notice of opposition. New subparagraph (a)(17) would be established for filing a notice of opposition, per class. This would clarify that the proposed $400 fee amount is due for each class requested.

Subparagraph (a)(18), if revised as proposed, would adjust the fee amount in accordance with section (g) of H.R. 1613.

Section 2.6(b), if revised as proposed, would establish that the Office would sell certified or uncertified copies of documents at the same flat fee. Most requests for documents are for certified copies. Customers who need uncertified copies of documents or copies of portions of documents also would be able to make those copies themselves for a self-service copy charge, per page. The Office no longer would compare and certify documents that were not made by Office staff.

Subparagraph (b)(1), if revised as proposed, would adjust the fee amount in accordance with section (g) of H.R. 1613, and would delete reference to a copy showing title and/or status. In addition, this subparagraph would clarify the levels of service available for obtaining printed copies of trademarks. In addition to regular service provided by subparagraph (b)(1)(i), the PTO would provide, in new subparagraph (b)(1)(ii), for expedited local service to be fulfilled within one workday for orders delivered to a Public Service Window at double the fee amount for regular service. There are two Public Service Windows at the PTO: One in the Patent Search Room and another in the Trademark Search Library. Unless otherwise requested, all copies of trademarks would be delivered to the Public Service Window in the Trademark Search Library. New subparagraph (b)(1)(iii) would establish a fee for providing expedited service for a copy of a registered mark ordered by electronic ordering service and delivered to the customer within two workdays.

Under proposed new subparagraph (2), the PTO would provide a certified copy of a trademark application as filed. In addition to regular service provided under (b)(2)(i), the PTO would provide, in subparagraph (b)(2)(ii), for expedited service fulfilled within five workdays, excluding mailing time, at double the fee amount for regular service.

Under subparagraph (b)(3), the PTO would provide certified or uncertified copies of trademark file wrappers and contents at the same flat fee amount.

Subparagraph (b)(4), if revised as proposed, would adjust the fee amount in accordance with section (g) of H.R. 1613, and would provide certified copies of registered marks, showing title and/or status, as provided under the current § 2.6(n). In addition to regular service provided by (b)(4)(i) at a fee, the PTO would provide, in subparagraph (b)(4)(ii), for expedited service fulfilled within five workdays from receipt of request in the Trademark Post-Registration Division, excluding mailing time, at double the fee amount for regular service.

Subparagraph (b)(5), if revised as proposed, would adjust the fee amount in accordance with section (g) of H.R. 1613, and would provide certified or uncertified copies of trademark records, per document, except as otherwise provided in this section, at the proposed flat fee amount. The Office no longer would certify documents that are not prepared by the Office, as is provided for in existing paragraph (o). Further, expedited services are now included as subparagraphs (b)(2)(ii) and (b)(4)(ii).

Section 2.6, if revised as proposed, would delete existing paragraph (p). A self-service copy charge is provided in subparagraph (b)(9) of this section.

Subparagraph (b)(6), if revised as proposed, would adjust the fee amount in accordance with section (g) of H.R. 1613.

Subparagraph (b)(7), if revised as proposed, would adjust the fee amount in accordance with section (g) of H.R. 1613, and would clarify that the fee amount charged would cover a search of assignment records and an abstract of title and certification.

Section 2.6, if revised as proposed, would delete paragraph (x). This service would be provided under proposed subparagraph (b)(9).

Proposed new subparagraph (b)(9) would establish a self-service copy charge, per page, and would be a replacement for the services offered in paragraphs (p) and (x) which are proposed to be deleted. The self-service copy charge would be applied to the per copy amounts on CopiShare cards, and the marginal cost for each printed page generated from the Automated Trademark System, as previously provided by paragraph (x).

Proposed new subparagraph (b)(10) would establish one fee amount for each hour of service, or fraction thereof, requested from the PTO. Examples of services would be searching PTO records, as previously provided by this paragraph, and other miscellaneous requests for services where PTO staff are providing direct labor support to customers.

Subparagraph (b)(11), if revised as proposed, would clarify that the services to be provided would be those that are not specified elsewhere in the statute or rules. Adding this language makes the wording of this rule comparable to § 1.21(k). Generally, services provided by the PTO would be charged at the $40.00 hourly rate set forth in subparagraph (b)(10) of this section. Subparagraph (b)(11) is reserved for nonlabor charges, such as computer services, special supplies, extra mailing costs, etc., that are authorized by the customer.

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. There are no information collection requirements relating to patent and trademark fee rules.

The PTO has determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The General Counsel of the Département of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule change would not have a significant adverse impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). Since 1983, PTO has relied on fee income from patent statutory, patent non-statutory, PCT and trademark fees to partially fund its operating program. As a result of the Omnibus Budget Reconciliation Act of 1990, reliance on fee income has increased to 99.9 percent. PTO will recover approximately 76 percent of its budget from statutory patent fees, which are unchanged, and from the elimination of the small entity subsidy for many patent fees, which is required by the proposed legislation. Only approximately 24 percent of PTO's total budget for fiscal years 1992 and 1993 will be obtained from non-statutory patent, PCT and trademark fees. Since non-statutory patent fees are an adjunct to patent statutory fees (e.g., surcharges which can be avoided by timely paying fees and filing papers), it is anticipated that these fees will be paid primarily by other than small entities. Under PCT, fees are paid principally by U.S. nationals or foreign nationals seeking protection on the same invention in a number of countries. PCT is an alternative to filing separate patent applications directly in other countries. Most applicants for protection under PCT appear to be large entities. Less than 10 percent of the revenue generated over the two-year period will come from the payment of trademark fees. Small entities have the option of not registering their marks under the Federal system, but can choose to use their mark under common law. While the trademark filing fee has been increased from $175 to $250, the $175 fee was originally set in 1982. PTO has attempted to keep trademark filing fees as low as practicable to encourage small entities to enter the trademark system.

The PTO has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy would be less than $100 million. There would be no major increase in costs or prices for consumers; individual industries; Federal, state, or local government agencies; or geographic regions. There would be no significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, the PTO is amending title 37 of the Code of Federal Regulations, Chapter I, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.12 is proposed to be amended by revising paragraphs (a) and (d) to read as follows:

§ 1.12 Assignment records open to public inspection.

(a) The assignment records relating to original or reissue patents, including digests and indexes, and assignment records relating to pending or abandoned trademark applications and to trademark registrations, are open to public inspection, and copies of any instrument recorded may be obtained upon request and payment of the fee set forth in § 1.19(b)(3) and § 2.6(b)(5) of this chapter.

* * * * *

(d) An order for a copy of an assignment should give the identification of the record. If identified only by the name of the patentee and number of the patent, or in the case of a trademark registration by the name of the registrant and number of the registration, or by the name of the applicant and serial number or international application number of the application, an extra charge as set forth in § 1.21(j) and § 2.6(b)(10) of this chapter will be made for the time consumed in making a search for such assignment.

3. Section 1.13 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.13 Copies and certified copies.

* * * * *

(b) Such copies will be authenticated by the seal of the Patent and Trademark Office and certified by the Commissioner, or in his name attested by an officer of the Patent and Trademark Office authorized by the Commissioner, upon payment of the fee for requesting certified copies of Office documents.

4. Section 1.16 is proposed to be revised to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except design or plant cases:

By a small entity (§ 1.9(f)) $315.00
By other than a small entity 630.00

(b) In addition to the basic filing fee in an original application, on filing each independent claim in excess of 3 with the original application:

By a small entity (§ 1.9(f)) 30.00
By other than a small entity 60.00

(c) In addition to the basic filing fee in

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an original application, on filing each claim (whether independent or dependent) in excess of 30 with the original application.

(Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.9(f)) 10.00
By other than a small entity 20.00

(d) In addition to the basic filing fee in an original application, if the application as filed contains a multiple dependent claim(s) per application:

By a small entity (§ 1.9(f)) 200.00
By other than a small entity $100.00

(If the additional fees required by paragraphs (b), (c), and (d) are not paid on filing the claims for which the additional fees are due, they must be paid or the claims canceled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

(e) Surcharge for filing the basic filing fee or oath or declaration on a date later than the filing date of the application $300.00
(f) For filing each design application:
By a small entity (§ 1.9(f)) 125.00
By other than a small entity 250.00
(g) Basic fee for filing each plant application:
By a small entity (§ 1.9(f)) 210.00
By other than a small entity 420.00
(h) Basic fee for filing each reissue application:
By a small entity (§ 1.9(f)) 315.00
By other than a small entity 630.00
(i) In addition to the basic filing fee in a reissue application, on filing with the reissue application each independent claim which is in excess of the number of independent claims in the original patent:
By a small entity (§ 1.9(f)) 30.00
By other than a small entity 60.00
(j) In addition to the basic filing fee in a reissue application, on filing with the reissue application each claim (whether independent or dependent) in excess of 20 and also in excess of the number of claims in the original patent. (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):
By a small entity (§ 1.9(f)) 10.00
By other than a small entity 20.00

Note: See § 1.445 for international application filing and processing fees.)

5. Section 1.17 is proposed to be revised to read as follows:

§ 1.17 Patent application processing fees.

(a) Extension fee for response within first month pursuant to § 1.136(a) $100.00
(b) Extension fee for response within second month pursuant to § 1.136(a) 300.00
(c) Extension fee for response within third month pursuant to § 1.136(a) 730.00
(d) Extension fee for response within fourth month pursuant to § 1.136(a) 1,150.00
(e) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences 240.00
(f) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal 240.00
(g) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in appeal under 35 U.S.C. 134 ..... 200.00
(h) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph 200.00
§ 1.47—for filing by other than all the inventors or a person not the inventor.
§ 1.48—for correction of inventorship.
§ 1.183—for decision on questions not specifically provided for.
§ 1.183—to suspend the rules.
§ 1.295—for review of refusal to publish a statutory invention registration.
§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent.
§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in expired patent.
§ 1.644(e)—for petition in an interference.
§ 1.644(f)—for request for reconsideration of a decision on petition in an interference.
§ 1.666(c)—for late filing of interference settlement agreement.
§§ 5.12, 5.13, & 5.14—for expedited handling of foreign filing license.
§ 5.15—for changing the scope of a license.
§ 5.25—for retroactive license.
(i)(1) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph 200.00
§ 1.12—for access to an assignment record.
§ 1.14—for access to an application.
§ 1.53—to accord a filing date.
§ 1.55—for entry of late priority papers.
§ 1.60—to accord a filing date.
§ 1.62—to accord a filing date.
§ 1.103—to suspend action in application.
§ 1.177—for divisional reissues to issue separately.
§ 1.312—for amendment after payment of issue fee.
§ 1.313—to withdraw an application from issue.
§ 1.314—to defer issuance of a patent.
§ 1.334—for patent to issue to assignee, assignment recorded late.
§ 1.666(b)—for access to interference settlement agreement.
(2) For filing a petition to the Commissioner under § 1.102 of this part to make application special 200.00
(j) For filing a petition to institute a public use proceeding under § 1.292 ..... 1,340.00
(k) For processing an application filed with a specification in a non-English language (§ 1.52(d)) 300.00
(l) For filing a petition:
(1) For the revival of an unavoidably abandoned application under 35 U.S.C. 133 or 371, or
(2) For delayed payment of the issue fee under 35 U.S.C. 151 ..... 100.00
(m) For filing a petition:
(1) For revival of an unintentionally abandoned application, or
(2) For the unintentionally delayed payment of the fee for issuing a patent 1,050.00
(n) For requesting publication of a statutory invention registration prior to the mailing of the first examiner's action pursuant to § 1.104—$730.00 reduced by the amount of the application basic filing fee paid.
(o) For requesting publication of a statutory invention registration after the mailing of the first examiner's action pursuant to § 1.104—$1,460.00 reduced by the amount of the application basic filing fee paid.
(p) For presentation of claims in an original application later than on filing:
(1) for each independent claim in excess of 3 and in excess of the number previously paid for 60.00
(2) for each claim (whether independent or dependent) in excess of 20 and in excess of the number previously paid for (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.) $20.00
(3) for presentation of the first multiple dependent claim in an application 200.00

(If the additional fees required by paragraph (p) are not paid on presentation of the claims for which the additional fees are due, they must be paid or the claims canceled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)
(q) For presentation of claims in a reissue application later than on filing:
(1) for each independent claim in excess of the number of independent claims in the original patent and in excess of the number previously paid for 60.00
(2) for each claim (whether independent or dependent) in excess of 20 and in excess of the number of claims in the original patent and also in excess of the number previously paid for (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.) 20.00

6. Section 1.18 is proposed to be revised to read as follows:

§ 1.18 Patent issue fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent $1,050.00
(b) Issue fee for issuing a design patent 370.00
(c) Issue fee for issuing a plant patent 520.00

7. Section 1.19 is revised to read as follows:

§ 1.19 Document supply fees.

The Patent and Trademark Office will supply copies of the following documents upon payment of the fees indicated:

(a) Uncertified copies of patents:
(1) Printed copy of a patent, including a design patent, statutory invention registration, or defensive publication document, except patent or statutory invention registration containing color drawing:
(i) Regular service $3.00
(ii) Expedited local service 6.00
(iii) Expedited service for copy ordered by electronic ordering service and delivered to the customer within two workdays 30.00
(2) Printed copy of a plant patent in color 15.00
(3) Copy of a utility patent or statutory invention registration containing color drawing (see § 1.84(p))
(i) Regular service 30.00
(ii) Expedited local service 60.00
(b) Certified and uncertified copies of Office documents:
(1) Certified copy of patent application as filed
(i) Regular service 20.00
(ii) Expedited local service 40.00
(2) Certified or uncertified copy of patent file wrapper and contents 150.00
(3) Certified or uncertified copies of Office records, per document, except as otherwise provided in this section 25.00
(4) For a search of assignment records, abstract of title and certification, per patent 25.00
(c) Library service (35 U.S.C. 13): For providing to libraries copies of all patents issued annually, per annum 50.00
(d) For list of all United States patents and statutory invention registrations in a subclass 10.00
(e) Uncertified statement as to status of the payment of maintenance fees due on a patent or expiration of a patent 10.00
(f) Uncertified copy of a non-United States document, per document 15.00
(g) Additional filing receipts; duplicate; or corrected due to applicant error 20.00

8. Section 1.20 is proposed to be revised to read as follows:

§ 1.20 Post issuance fees.

(a) For providing a certificate of correction for application's mistake (§ 1.323) $100.00
(b) Petition for correction of inventorship in patent (§ 1.324) 200.00
(c) For filing a request for reexamination (§ 1.510(a)) 3,000.00
(d) For filing each statutory disclaimer (§ 1.321) 100.00
(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant 830.00
(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant 1,670.00
(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant 2,560.00
(h) Surcharge for paying a maintenance fee during the six-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980 ..... 300.00
(i) Surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee where the delay in payment is shown to the satisfaction of the Commissioner to have been unavoidable 700.00
(j) For filing an application fee extension of the term of a patent (§ 1.740) 1,000.00

9. Section 1.21 is proposed to be revised to read as follows:

§ 1.21 Miscellaneous fees and charges.

The Patent and Trademark Office has established the following fees for the services indicated:
(a) Registration of attorneys and agents:
(1) For admission to examination for registration to practice, fee payable upon application $300.00
(2) On registration to practice 100.00
(3) For reinstatement to practice 25.00
(4) For certificate of good standing as an attorney or agent 10.00
Suitable for framing 20.00
(5) For review of a decision of the Director of Enrollment and Discipline under § 10.2(c) 200.00
(6) For requesting regrading of an examination under § 10.7(c) 200.00
(b) Deposit accounts:
(1) For establishing a deposit account 10.00
(2) Service charge for each month when the balance at the end of the month is below $1,000 ..... 20.00
(3) Service charge for each month when the balance at the end of the month is below $300 for restricted subscription deposit accounts used exclusively for subscription order of patent copies as issued 30.00
(c) Disclosure document: For filing a disclosure document 10.00
(d) Delivery box: Local delivery box rental, per annum 100.00
(e) International type search reports: For preparing an international type search report of an international type search made at the time of the first action on the merits in a national patent application 35.00

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(f) Reserved

(g) Self-service copy charge, per page 0.25

(h) For recording each assignment, agreement or other paper relating to the property in a patent or application per property 40.00

(i) Publication in Official Gazette: For publication in the Official Gazette of a notice of the availability of an application or a patent for licensing or sale, each application or patent 20.00

(j) Labor charges for services, per hour or fraction thereof 40.00

(k) For items and services that the Commissioner finds may be supplied, for which fees are not specified by statute or by this part, such charges as may be determined by the Commissioner with respect to each such item or service ..... Actual Cost

(l) For processing and retaining any application abandoned pursuant to section 1.53(d) unless the required basic filing fee has been paid 300.00

(m) For processing each check returned "unpaid" by a bank 60.00

(n) For handling an incomplete or improper application under § 1.53(c), § 1.60 or § 1.62 ..... 300.00

(o) Marginal cost, paid in advance, for each hour of terminal session time, including print time, using Automated Patent System full-text search capabilities, prorated for the actual time used. The Commissioner may waive the payment by an individual for access to the Automated Patent System full-text search capability (APS-Text) upon a showing of need or hardship, and if such waiver is in the public interest 40.00

10. Section 1.24 is proposed to be revised to read as follows:

§ 1.24 Coupons.

Coupons in denominations of three dollars, for the purchase of patents, designs, defensive publications, statutory invention registrations, and trademark registrations are sold by the Patent and Trademark Office for the convenience of the general public; these coupons may not be used for any other purpose. The three-dollar coupons are sold individually and in books of 50 for $150.00. These coupons are good until used; they may be transferred but cannot be redeemed.

11. Section 1.26 is proposed to be amended by revising paragraph (c) to read as follows:

§ 1.26 Refunds.

* * * * *

(c) If the Commissioner decides not to institute a reexamination proceeding, a refund of $2,250 will be made to the requester of the proceeding. Reexamination requesters should indicate whether any refund should be made by check or by credit to a deposit account.

12. Section 1.27 is proposed to be amended by revising paragraph (a) as follows:

§ 1.27 Statement of status as small entity.

(a) Any person seeking to establish status as a small entity (§ 1.9(f) of this part) for purposes of paying filing fees in an application must file a verified statement in the application prior to or with the filing fee paid as a small entity. Such a verified statement need only be filed once in an application and remains in effect until changed.

* * * * *

13. Section 1.28 is proposed to be amended by revising paragraphs (a) and (c) and removing and reserving paragraph (b) to read as follows:

§ 1.28 Effect on fees of failure to establish status, or change status, as a small entity.

(a) The failure to establish status as a small entity (§§ 1.9(f) and 1.27 of this part) in any application prior to paying, or at the time of paying, any filing fee precludes payment of the filing fee in the amount established for small entities. A refund pursuant to § 1.26 of this part, based on establishment of small entity status, of a portion of the filing fees timely paid in full prior to establishing status as a small entity may only be obtained if a verified statement under § 1.27 and a request for a refund of the excess amount are filed within two months of the date of the timely payment of the full filing fee. The two-month time period is not extendable under § 1.136. Status as a small entity is waived for any filing fee by the failure to establish the status prior to paying, at the time of paying, or within two months of the date of payment of, the fee. Status as a small entity must be specifically established by a verified statement filed in each application in which the status is available and desired, except those applications filed under § 1.60 or § 1.62 of this part where the status as a small entity has been established in a parent application and is still proper. Once status as a small entity has been established in an application, the status remains in that application without the filing of a further verified statement pursuant to § 1.27 of this part unless the Office is notified of a change in status. Status as a small entity in one application does not affect any other application, including applications which are directly or indirectly dependent upon the application in which the status has been established, except those filed under § 1.60 or § 1.62 of this part. Applications filed under § 1.60 or § 1.62 of this part must include a reference to a verified statement in a parent application if status as a small entity is still proper and desired.

(b) [Reserved]

(c) If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error or that through error the Office was not notified of a change in status, the error will be excused if:

(1) Any deficiency between the amount paid and the amount due is paid within three months after the date the error occurred or

(2) Any deficiency between the amount paid and the amount due is paid more than three months after the date the error occurred and the payment is accompanied by a verified statement explaining how the error occurred and how and when it was discovered.

* * * * *

14. Section 1.171 is proposed to be revised to read as follows:

§ 1.171 Application for reissue.

An application for reissue must contain the same parts required for an application for an original patent, complying with all the rules relating thereto except as otherwise provided, and, in addition, must comply with the requirements of the rules relating to reissue applications. The application must be accompanied by a certified copy of an abstract of title or an order for a title report accompanied by the fee set forth in § 1.19(b)(4) to be placed in the file, and by an offer to surrender the original patent (§ 1.178).

15. Section 1.298 is proposed to be revised to read as follows:

§ 1.298 Withdrawal of request for publication of statutory invention registration.

A request for a statutory invention registration, which has been filed, may be withdrawn prior to the date of the notice of the intent to publish a statutory invention registration issued pursuant to § 1.294(c) by filing a request to withdraw the request for publication of a statutory invention registration. The request to withdraw may also include a request for a refund of any amount paid in excess of the application filing fee and a handling fee of $300.00 which will be retained.

Any request to withdraw the request for publication of a statutory invention registration filed on or after the date of the notice of intent to publish issued pursuant to § 1.294(c) must be in the form of a petition pursuant to § 1.183 accompanied by the fee set forth in § 1.17(h).

16. Section 1.362 is proposed to be amended by revising paragraphs (a), (b) and (e) to read as follows:

§ 1.362 Time for payment of maintenance fees.

(a) Maintenance fees as set forth in § 1.20 (e) through (g) are required to be paid in all patents based on applications filed on or after December 12, 1980, except as noted in paragraph (b) of this section, to maintain a patent in force beyond 4, 8 and 12 years after the date of grant.

(b) Maintenance fees are not required for any plant patents or for any design patents. Maintenance fees are not required for a reissue patent if the patent being reissued did not require maintenance fees.

* * * * *

(e) Maintenance fees may be paid with the surcharge set forth in § 1.20(h) during the respective grace periods after:

(1) 3 years through 3 years and 6 months after grant for the first maintenance fee,

(2) 7 years through 7 years and 6 months after grant for the second maintenance fee, and

(3) 11 years through 11 years and 6 months after grant for the third maintenance fee.

* * * * *

17. Section 1.366 is proposed to be amended by revising paragraph (d), removing paragraph (f), and redesignating paragraph (g) as (f) and revising it to read as follows:

§ 1.366 Submission of maintenance fees.

* * * * *

(d) Payments of maintenance fees and any surcharges should identify the fee being paid for each patent as to whether it is the 3½, 7½ or 11½ year fee, the amount of the maintenance fee and any surcharge being paid, any assigned payor number, the patent issue date and the United States application filing date. If the maintenance fee and any necessary surcharge is being paid on a reissue patent, the payment must identify the reissue patent by reissue patent number and reissue application serial number as required by paragraph (c) of this section and should also include the original patent number, the original patent issue date and the original United States application filing date.

* * * * *

(f) Maintenance fees and surcharges relating thereto will not be refunded except in accordance with § 1.26.

18. Section 1.378 is proposed to be amended to revise paragraphs (a)–(c) and (e) to read as follows:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.

(a) The Commissioner may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable and if the surcharge required by § 1.20(i) is paid as a condition of accepting payment of the maintenance fee. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but will be subject to the conditions set forth in 35 U.S.C. 41(c)(2).

(b) Any petition to accept the delayed payment of a maintenance fee filed under paragraph (a) of this section within six months of the expiration of the patent must include:

(1) The required maintenance fee set forth in § 1.20(e)–(g);

(2) The surcharge set forth in § 1.20(i); and

(3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be timely paid. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee.

(c) Any petition to accept the delayed payment of a maintenance fee filed under paragraph (a) of this section more than six months after the expiration of the patent must include:

(1) The required maintenance fee set forth in § 1.20(e)–(g),

(2) The surcharge set forth in § 1.20(i); and

* * * * *

(e) Reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a) of this section may be obtained by filing a petition for reconsideration within two months of, or such other time as set in, the decision refusing to accept the delayed payment of the maintenance fee. Any such petition for reconsideration must be accompanied by the petition fee set forth in § 1.17(h). After decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. If the delayed payment of the maintenance fee is not accepted, the maintenance fee and the surcharge set forth in § 1.20(i) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. The fee set forth in § 1.17(h) for filing the petition for reconsideration will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

19. Section 1.445 is proposed to be revised to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT rule 14) $320.00

(2) A search fee (see 35 U.S.C. 361(d) and PCT rule 16) where:

(i) No corresponding prior United States national application with basic filing fee has been filed 1,040.00

(ii) A corresponding prior United States national application with basic filing fee has been filed 720.00

(3) A supplemental search fee when required, per additional invention 200.00

(b) The basic fee and designation fee portions of the international fee shall be as prescribed in PCT rule 15.

20. Section 1.482 is proposed to be revised to read as follows:

§ 1.482 International preliminary examination fees.

(a) The following fees and charges for international preliminary examination are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A preliminary examination fee is due on filing the Demand:

(i) Where an international search fee as set forth in § 1.445(a)(2) has been paid on the international application

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to the United States Patent and Trademark Office as an International Searching Authority, a preliminary examination fee of $760.00

(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office, a preliminary examination fee of 1,140.00

(2) An additional preliminary examination fee when required, per additional invention:

(i) Where a supplemental search fee as set forth in § 1.445(a)(3) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority 250.00

(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office 380.00

(b) The handling fee is due on filing the Demand. Any necessary supplement to the handling fee shall be paid directly to the International Bureau.

21. Section 1.482 is proposed to be revised to read as follows:

§ 1.482 National stage fees.

The following fees and charges for international applications entering the national stage under 35 U.S.C. 371 are established by the Commissioner under 35 U.S.C. 376:

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office ... $560.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority 630.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office 850.00

(4) Where the international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office and the international preliminary examination report states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33 (1) to (4), have been satisfied for all the claims presented in the application entering the national stage (see § 1.495(b)) 60.00

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office 700.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3 ..... 80.00

(c) In addition to the basic national fee, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 [Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes) 20.00

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application 200.00

(If the additional fees required by paragraphs (b), (c), and (d) are not paid on presentation of the claims for which the additional fees are due, they must be paid or the claims cancelled by amendment prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

(e) Surcharge for filing the basic national fee or oath or declaration later than 20 months from the priority date pursuant to § 1.494(c) or later than 30 months from the priority date pursuant to § 1.495(c) 300.00

(f) For filing an English translation of an international application later than 20 months after the priority date (§ 1.494(c) or filing an English translation of the international application or of any annexes to the international preliminary examination report later than 30 months after the priority date (§ 1.495 (c) and (e)) 300.00

22. Section 1.740 is proposed to be amended by revising paragraph (a)(14) to read as follows:

§ 1.740 Application for extension of patent term.

(a) * * *

(14) The prescribed fee for receiving and acting upon the application for extension (see § 1.20(j)).

* * * * *

23. Section 1.770 is proposed to be revised to read as follows:

§ 1.770 Express withdrawal of application for extension of patent term

An application for extension of patent term may be expressly withdrawn before a determination is made pursuant to § 1.750 by filing in the Office, in duplicate, a written declaration of withdrawal signed by the owner of record of the patent or its agent. An application may not be expressly withdrawn after the date permitted for response to the final determination on the application. An express withdrawal pursuant to this section is effective when acknowledged in writing by the Office. The filing of an express withdrawal pursuant to this section and its acceptance by the Office does not entitle applicant to a refund of the filing fee. (§ 1.20(j)) or any portion thereof.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is proposed to be revised to read as follows:

§ 2.6 Trademark fees.

The following fees and charges are established by the Patent and Trademark Office for trademark cases:

(a) Trademark process fees.

(1) For filing an application, per class $250.00

(2) For filing an amendment to allege use under section 1(c) of the Act, per class 100.00

(3) For filing a statement of use under section 1(d)(1) of the Act, per class 100.00

(4) For filing a request under section 1(d)(2) of the Act for a six-month extension of time for filing a statement of use under section 1(d)(1) of the Act, per class 100.00

(5) For filing for renewal of a registration, per class 300.00

(6) Additional fee for filing a renewal application made within three months after the expiration of the registration, per class 200.00

(7) For filing to publish a mark under section 12(c), per class 100.00

(8) For issuing a new certificate of registration upon request of assignee 100.00

(9) For a certificate of correction of registrant's error 100.00

(10) For filing a disclaimer to a registration 100.00

(11) For filing an amendment to a registration 100.00

(12) For filing an affidavit under § 8 of the Act, per class 150.00

(13) For filing an affidavit under § 15 of the Act, per class 150.00

(14) For filing a combined affidavit under §§ 8 and 15 of the Act, per class 300.00

(15) For petitions to the Commissioner 200.00

(16) For filing to cancel, per class 400.00

(17) For filing a notice of opposition, per class 400.00

(18) For ex parte appeal to the Trademark Trial and Appeal Board, per class 200.00

(b Trademark service fees.

(1) For printed copy of registered mark, copy only:

(i) Regular service $3.00

(ii) Expedited local service 5.00

(iii) Expedited service for copy ordered by electronic ordering service and delivered to the customer within two workdays 30.00

(2) Certified copy of trademark application as filed:

(i) Regular service 20.00

(ii) Expedited local service 40.00

(3) Certified or uncertified copy of a trademark file wrapper and contents 50.00

(4) Certified copy of a registered mark, showing title and/or status:

(i) Regular service 25.00

(ii) Expedited local service 50.00

(5) Certified or uncertified copy of trademark records, per document except as otherwise provided in this section 25.00

(6) For recording trademark assignments and agreements or other papers relating to the property in a registration or application, per mark 40.00

(7) For a search of assignment records, abstract of title and certification, per registration 25.00

(8) Marginal cost, paid in advance, for each hour of terminal session time, including print time, using T-Search capabilities, prorated for the actual time used. The Commissioner may waive the payment by an individual for access to T-Search upon a showing of need or hardship, and if such waiver is in the public interest 40.00

(9) Self-service copy charge, per page 0.25

(10) Labor charges for services, per hour or fraction thereof 40.00

(11) For items and services that the Commissioner finds may be supplied, for which fees are not specified by statute or by this part, such charges as may be determined by the Commissioner with respect to each such item or service ..... Actual Cost

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NOTE.- The following appendix will not appear in the Code of Federal Regulations.

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Comparison of Existing and Proposed Fee Amounts

37 CFR Section Proposed	37 CFR Section Existing	DESCRIPTION	FEE AMOUNT Apr 17 1989	FEE AMOUNT Nov 5 1990	FEE AMOUNT Oct 1 1991
1.16(a)	1.16(a)	Basic Filing Fee	$370	$630	$630
1.16(a)	1.16(a)	Basic Filing Fee	$185	$315	$315
1.16(b)	1.16(b)	Independent Claims	$36	$60	$60
1.16(b)	1.16(b)	Independent Claims	$18	$30	$30
1.16(c)	1.16(c)	Claims in Excess of 20	$12	$20	$20
1.16(c)	1.16(c)	Claims in Excess of 20	$6	$10	$10
1.16(d)	1.16(d)	Multiple Dependent Claims	$120	$200	$200
1.16(d)	1.16(d)	Multiple Dependent Claims	$60	$100	$100
1.16(e)	1.16(e)	Surcharge - Late Filing Fee	$120	---	$300
	1.16(e)	Surcharge - Late Filing Fee (Small Entity)	$60	---	$300
1.16(f)	1.16(f)	Design Filing Fee	$150	$250	$250
1.16(f)	1.16(f)	Design Filing Fee	$75	$125	$125
1.16(g)	1.16(g)	Plant Filing Fee	$250	$420	$420
1.16(g)	1.16(g)	Plant Filing Fee	$125	$210	$210
1.16(h)	1.16(h)	Reissue Filing Fee	$370	$630	$630
1.16(h)	1.16(h)	Reissue Filing Fee	$185	$315	$315
1.16(i)	1.16(i)	Reissue Independent Claims	$36	$60	$60
1.16(i)	1.16(i)	Reissue Independent Claims	$18	$30	$30
1.16(j)	1.16(j)	Reissue Claims in Excess of 20	$12	$20	$20
1.16(j)	1.16(j)	Reissue Claims in Excess of 20	$6	$10	$10
1.17(a)	1.17(a)	Extension - First Month	$62	$100	$100
	1.17(a)	Extension - First Month (Small Entity)	$31	$50	$100
1.17(b)	1.17(b)	Extension - Second Month	$180	$300	$300
	1.17(b)	Extension - Second Month (Small Entity)	$90	$150	$300
1.17(c)	1.17(c)	Extension - Third Month	$430	$730	$730
	1.17(c)	Extension - Third Month (Small Entity)	$215	$365	$730
1.17(d)	1.17(d)	Extension - Fourth Month	$680	$1,150	$1,150
	1.17(d)	Extension - Fourth Month (Small Entity)	$340	$575	$1,150
1.17(e)	1.17(e)	Notice of Appeal	$140	$240	$240
	1.17(e)	Notice of Appeal (Small Entity)	$70	$120	$240
1.17(f)	1.17(f)	Filing a Brief	$140	$240	$240
	1.17(f)	Filing a Brief (Small Entity)	$70	$120	$240
1.17(g)	1.17(g)	Request for Oral Hearing	$120	$200	$200
	1.17(g)	Request for Oral Hearing (Small Entity)	$60	$100	$200
1.17(h)	1.17(h)	Petition - Not All Inventors	$120	---	$200
1.17(h)	1.17(h)	Petition - Correction of Inventorship	$120	---	$200
1.17(h)	1.17(h)	Petition - Decision on Questions	$120	---	$200
1.17(h)	1.17(h)	Petition - Suspend Rules	$120	---	$200
1.17(h)	1.17(h)	Petition - Expedited License	$120	---	$200
1.17(h)	1.17(h)	Petition - Scope of License	$120	---	$200
1.17(h)	1.17(h)	Petition - Retroactive License	$120	---	$200
1.17(h)	1.17(h)	Petition - Refusing Maintenance Fee	$120	---	$200
1.17(h)	1.17(h)	Petition - Refusing Maintenance Fee - Expired Patent	$120	---	$200
1.17(h)	1.17(h)	Petition - Interference	$120	---	$200
1.17(h)	1.17(h)	Petition - Reconsider Interference	$120	---	$200
1.17(h)	1.17(h)	Petition - Late Filing of Interference	$120	---	$200
1.17(h)	1.17(h)	Petition - Refusal to Publish SIR	$120	---	$200

NOTE: The November 5, 1990, column applies only to certain fee amounts.
Dashes indicate no change to the April 1989 fee amounts on November 5, 1990.

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37 CFR Section Proposed	37 CFR Section Existing	DESCRIPTION	FEE AMOUNT Apr 17 1989	FEE AMOUNT Nov 5 1990	FEE AMOUNT Oct 1 1991
1.17(i)(1)	1.17(i)(1)	Petition - For Assignment	$120	---	$200
1.17(i)(1)	1.17(i)(1)	Petition - For Application	$120	---	$200
1.17(i)(1)	1.17(i)(1)	Petition - Late Priority Papers	$120	---	$200
1.17(i)(1)	1.17(i)(1)	Petition - Suspend Action	$120	---	$200
1.17(i)(1)	1.17(i)(1)	Petition - Divisional Reissues to Issue Separately	$120	---	$200
1.17(i)(1)	1.17(i)(1)	Petition - For Interference Agreement	$120	---	$200
1.17(i)(1)	1.17(i)(1)	Petition - Amendment After Issue	$120	---	$200
1.17(i)(1)	1.17(i)(1)	Petition - Withdrawal After Issue	$120	---	$200
1.17(i)(1)	1.17(i)(1)	Petition - Defer Issue	$120	---	$200
1.17(i)(1)	1.17(i)(1)	Petition - Issue to Assignee	$120	---	$200
1.17(i)(1)	1.17(i)(1)	Petition - Accord a Filing Date Under §1.53	$120	---	$200
1.17(i)(1)	1.17(i)(1)	Petition - Accord a Filing Date Under §1.60	$120	---	$200
1.17(i)(1)	1.17(i)(1)	Petition - Accord a Filing Date Under §1.62	$120	---	$200
1.17(i)(2)	1.17(i)(2)	Petition - Make Application Special	$80	---	$200
1.17(j)	1.17(j)	Petition - Public Use Proceeding	$1,200	---	$1,340
1.17(k)	1.17(k)	Non-English Specification	$30	---	$300
1.17(l)	1.17(l)	Petition - Revive Abandoned Appl.	$62	$100	$100
	1.17(l)	Petition - Revive Abandoned Appl. (Small Entity)	$31	$50	$100
1.17(m)	1.17(m)	Petition - Revive Unintentionally Abandoned Appl.	$620	$1,050	$1,050
	1.17(m)	Petition - Revive Unintent Abandoned Appl. (Small Entity)	$310	$525	$1,050
1.17(n)	1.17(n)	SIR - Prior to Examiner's Action	$400	---	$730
1.17(o)	1.17(o)	SIR - After Examiner's Action	$800	---	$1,460
1.17(p)(1)	1.16(b)	Independent Claims - Later than on Filing	---	---	$60
1.17(p)(2)	1.16(c)	Claims in Excess of 20 - Later than on Filing	---	---	$20
1.17(p)(3)	1.16(d)	Multiple Dependent Claims - Later than on Filing	---	---	$200
1.17(q)(1)	1.16(i)	Reissue Independent Claims - Later than on Filing	---	---	$60
1.17(q)(2)	1.16(j)	Reissue Claims in Excess of 20 - Later than on Filing	---	---	$20
1.18(a)	1.18(a)	Issue Fee	$620	$1,050	$1,050
	1.18(a)	Issue Fee (Small Entity)	$310	$525	$1,050
1.18(b)	1.18(b)	Design Issue Fee	$220	$370	$370
	1.18(b)	Design Issue Fee (Small Entity)	$110	$185	$370
1.18(c)	1.18(c)	Plant Issue Fee	$310	$520	$520
	1.18(c)	Plant Issue Fee (Small Entity)	$155	$260	$520
1.19(a)(1)(i)	1.19(a)(1)	Copy of Patent	$1.50	---	$3
1.19(a)(1)(ii)	1.19(a)(5)	Patent Copy - Expedited Local Service	$3	---	$6
1.19(a)(1)(iii)	1.19(a)(6)	Patent Copy Expedited Service Via EOS	$25	---	$30
1.19(a)(2)	1.19(a)(2)	Plant Patent Copy	$10	---	$15
1.19(a)(3)(i)	1.19(a)(4)	Copy of Utility Patent or SIR in Color	$20	---	$30
1.19(a)(3)(ii)	1.19(a)(4)	Copy of Utility Patent or SIR in Color Expedited	$20	---	$60
1.19(b)(1)(i)	1.19(b)(1)	Certified Copy of Patent Application as Filed	$10	---	$20
1.19(b)(1)(i)	1.19(b)(4)	Certified Copy of Patent Application as Filed, Expedited	$20	---	$40
1.19(b)(2)	1.19(b)(2)	Cert. or Uncert. Copy of Patent File Wrapper and Contents	$170	---	$150
1.19(b)(3)	1.19(b)(5)	Cert. or Uncert. Copies of Office Records, per Document	$3	---	$25
1.19(b)(4)	1.19(b)(6)	Search of Assignment Records	$15	---	$25
1.19(c)	1.19(c)	Library Service	$50	---	$50
1.19(d)	1.19(d)	List of Patents in Subclass	$2	---	$10
1.19(e)	1.19(e)	Uncertified Statement	$5	---	$10

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37 CFR Section Proposed	37 CFR Section Existing	DESCRIPTION	FEE AMOUNT Apr 17 1989	FEE AMOUNT Nov 5 1990	FEE AMOUNT Oct 1 1991
1.19(f)	1.19(f)	Copy of Non-US Document	$10	—	$15
1.19(g)	1.19(h)	Duplicate or Corrected Filing Receipt	$15	—	$20
1.20(a)	1.20(a)	Certificate of Correction	$60	—	$100
1.20(b)	1.20(b)	Petition - Correction of Inventorship	$120	—	$200
1.20(c)	1.20(c)	Reexamination	$2,000	—	$3,000
1.20(d)	1.20(d)	Statutory Disclaimer	$62	$100	$100
	1.20(d)	Statutory Disclaimer (Small Entity)	$31	$50	$100
1.20(e)		Maintenance Fee - 3.5 Years	*	—	$830
1.20(f)		Maintenance Fee - 7.5 Years	**	—	$1,670
1.20(g)		Maintenance Fee - 11.5 Years	***	—	$2,500
1.20(h)		Surcharge - Maintenance Fee - 6 Months	****	—	$300
1.20(i)	1.20(m)	Surcharge - Maintenance After Expiration	$550	—	$700
1.20(j)	1.20(n)	Extension of Term of Patent	$600	—	$1,000
1.21(a)(1)	1.21(a)(1)	Admission to Examination	$270	—	$300
1.21(a)(2)	1.21(a)(2)	Registration to Practice	$90	—	$100
1.21(a)(3)	1.21(a)(3)	Reinstatement to Practice	$10	—	$25
1.21(a)(4)	1.21(a)(4)	Certificate of Good Standing	$10	—	$10
1.21(a)(4)	1.21(a)(4)	Certificate of Good Standing, Suitable Framing	$100	—	$20
1.21(a)(5)	1.21(a)(5)	Review of Decision of Director, OED	$100	—	$200
1.21(a)(6)	1.21(a)(6)	Regrading of Examination	$100	—	$200
1.21(b)(1)	1.21(b)(1)	Establish Deposit Account	$10	—	$10
1.21(b)(2)	1.21(b)(2)	Service Charge Below Minimum Balance	$20	—	$20
1.21(b)(3)	1.21(b)(3)	Service Charge Below Minimum Balance	$20	—	$20
1.21(c)	1.21(c)	Filing a Disclosure Document	$6	—	$10
1.21(d)	1.21(d)	Box Rental	$50	—	$100
1.21(e)	1.21(e)	International Type Search Report	$30	—	$35
1.21(g)		Self-Service Copy Charge	$0.15	—	$0.25
1.21(h)	1.21(h)	Recording Patent Property	$8	—	$40
1.21(i)	1.21(i)	Publication in the OG	$20	—	$20
1.21(j)		Labor Charges for Services	—	—	$40
1.21(k)	1.21(k)	Unspecified Other Services	Actual Cost	—	Actual Cost
1.21(l)	1.21(l)	Retaining Abandoned Application	$120	—	$300
1.21(m)	1.21(m)	Processing Returned Checks	$50	—	$60
1.21(n)	1.21(n)	Handling Fee - Incomplete Application	$20	—	$300
1.21(o)	1.21(o)	Terminal Use APS-TEXT	$40	—	$40
1.296	1.296	Handling Fee - Withdrawal SIR	$120	—	$300

* Incorporates maintenance fees payable at 3.5 years under PL 96-517 currently set at $245, and maintenance fees set under PL 97-247 currently set at $490 for large entities and $495 for small entities.

** Incorporates maintenance fees payable at 7.5 years under PL 96-517 currently set at $495, and maintenance fees set under PL 97-247 currently set at $990 for large entities and $495 for small entities.

*** Incorporates maintenance fees payable at 11.5 years under PL 96-517 currently set at $740, and maintenance fees set under PL 97-247 currently set at $1480 for large entities and $740 for small entities.

**** Incorporates surcharge for payment of maintenance fees during the 6 months grace period under PL 96-517 currently set at $120 and surcharge set under PL 97-247 currently set at $120 for large entities and $60 for small entities.

NOTE: The November 5, 1990, column applies only to certain fee amounts. Dashes indicate no change to the April 1989 fee amounts on November 5, 1990.

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37 CFR Section Proposed	37 CFR Section Existing	DESCRIPTION	FEE AMOUNT Apr 17 1989	FEE AMOUNT Nov 5 1990	FEE AMOUNT Oct 1 1991
1.445(a)(1)	1.445(a)(1)	Transmittal Fee	$170	—	$320
1.445(a)(2)(i)	1.445(a)(2)	PCT Search Fee - No U.S. Application	$550	—	$1,040
1.445(a)(2)(ii)	1.445(a)(2)	PCT Search Fee - Prior U.S. Application	$380	—	$720
1.445(a)(3)	1.445(a)(3)	Supplemental Search	$150	—	$280
1.482(a)(1)(i)	1.482(a)(1)	Preliminary Exam Fee	$400	—	$760
1.482(a)(1)(ii)	1.482(a)(1)	Preliminary Exam Fee	$600	—	$1,140
1.482(a)(2)(i)	1.482(a)(2)	Additional Invention	$130	—	$250
1.482(a)(2)(ii)	1.482(a)(2)	Additional Invention	$200	—	$380
1.492(a)(1)	1.492(a)(1)	Preliminary Examining Authority	$330	—	$560
	1.492(a)(1)	Preliminary Examining Authority (Small Entity)	$165	—	$560
1 492(a)(2)	1.492(a)(2)	Searching Authority	$370	—	$630
	1.492(a)(2)	Searching Authority (Small Entity)	$185	—	$630
1.492(a)(3)	1.492(a)(3)	PTO Not ISA nor IPEA	$500	—	$850
	1.492(a)(3)	PTO Not ISA nor IPEA (Small Entity)	$250	—	$850
1.492(a)(4)	1.492(a)(4)	Claims - IPEA	$50	—	$80
	1.492(a)(4)	Claims - IPEA (Small Entity)	$25	—	$80
1.492(a)(5)		Filing with EPO/JPO Search Report	—	—	$780
1.492(b)	1.492(b)	Claims - Extra Individual (Over 3)	$36	—	$60
	1.492(b)	Claims - Extra Individual (Over 3) (Small Entity)	$18	—	$60
1 492(c)	1.492(c)	Claims - Extra Total (Over 20)	$12	—	$20
	1.492(c)	Claims - Extra Total (Over 20) (Small Entity)	$6	—	$20
1.492(d)	1.492(d)	Claims - Multiple Dependents	$120	—	$200
	1.492(d)	Claims - Multiple Dependents (Small Entity)	$60	—	$200
1 492(e)	1.492(e)	Surcharge	$120	—	$300
	1.492(e)	Surcharge (Small Entity)	$60	—	$300
1.492(f)	1.492(f)	English Translation - After 20 Months	$30	—	$300
2.6(a)(1)	2.6(a)	Application for Registration	$175	—	$250
2.6(a)(2)	2.6(u)	Amendment to Allege Use	$100	—	$100
2.6(a)(3)	2.6(u)	Statement of Use	$100	—	$100
2.6(a)(4)	2.6(v)	Extension for Filing Statement of Use	$100	—	$100
2.6(a)(5)	2.6(b)	Application for Renewal	$300	—	$300
2.6(a)(6)	2.6(s)	Surcharge for Late Renewal	$100	—	$200
2.6(a)(7)	2.6(c)	Publication of Mark Under§12(c)	$100	—	$100
2.6(a)(8)	2.6(d)	Issuing New Certificate of Registration	$100	—	$100
2.6(a)(9)	2.6(e)	Certificate of Correction of Registrant's Error	$100	—	$100
2.6(a)(10)	2.6(f)	Filing Disclaimer to Registration	$100	—	$100
2.6(a)(11)	2.6(g)	Filing Amendment to Registration	$100	—	$100
2.6(a)(12)	2.6(h)	Filing Affidavit Under Section 8	$100	—	$150
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NOTE: The November 5, 1990, column applies only to certain fee amounts. Dashes indicate no change to the April 1989 fee amounts on November 5, 1990.

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Comparison of Existing and Proposed Fee Amounts

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NOTE: The November 5, 1990, column applies only to certain fee amounts.
Dashes indicate no change to the April 1989 fee amounts on November 5, 1990.

Dated: May 7, 1991.

Harry F. Manbeck, Jr.,
Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-11223 Filed 5-7-91; 4:25 pm]

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federal register

Friday
May 10, 1991

Part VIII

The President

Presidential Determination No. 91-34—Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum of May 3, 1991—Reports Required by Sections 4 and 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990

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Title 3—

The President

Presidential Determination No. 91-34 of April 25, 1991

Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), I hereby designate refugees from Tibet and Burma as qualifying for assistance under section 2(b)(2) of that Act, and determine that such assistance will contribute to the foreign policy interests of the United States.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this determination in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, April 25, 1991.

[FR Doc. 91-11368
Filed 5-8-91; 4:47 pm]
Billing code 3195-01-M

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Presidential Documents

Memorandum of May 3, 1991

Reports Required by Sections 4 and 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me by the Constitution and laws of the United States of America, including sections 4 and 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410), and section 301 of title 3 of the United States Code, I hereby delegate to you the responsibility for submitting reports on civil monetary penalties to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives and to the Congress as required by sections 4 and 6 of that Act.

You are authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, May 3, 1991.

[FR Doc. 91–11369.
Filed 5–8–91; 4:46 pm]
Billing code 3110–01–M

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H.R. 556/Pub. L. 102–49
Department of Veterans Affairs Health-Care Personnel Act of 1991. (May 7, 1991; 105 Stat. 187; 55 pages)
Price: $1.75

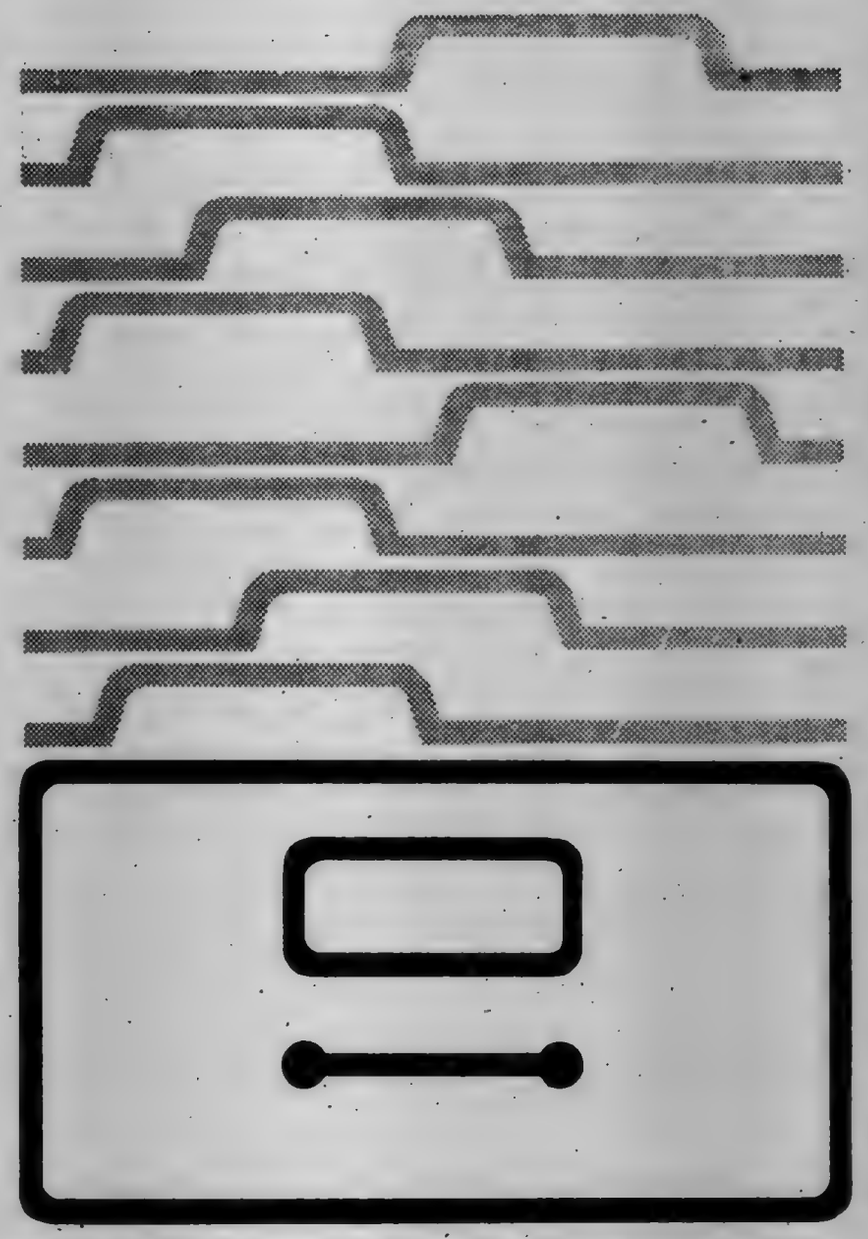

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in the Code of Federal Regulations (CFR)

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Rules and Regulations

Federal Register
Vol. 56, No. 92
Monday, May 13, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule moving the survey order month of the McLennan, Texas, Nonappropriated Fund (NAF) Federal Wage System (FWS) wage survey from April to May. In addition, the rule permanently changes the schedule for the McLennan wage area's full-scale surveys, which are conducted once every 2 years, from even to odd numbered fiscal years. This change better aligns the McLennan survey with the timing of another FWS survey conducted in a nearby wage area.

EFFECTIVE DATE: May 13, 1991.

FOR FURTHER INFORMATION CONTACT: Allan Summers (202) 606–2848.

SUPPLEMENTARY INFORMATION: On February 14, 1991, the Office of Personnel Management (OPM). published a proposed rule (56 FR 5959) to move the survey order month of the McLennan, Texas, Nonappropriated Fund (NAF) Federal Wage System (FWS) wage survey from April to May. In addition, it proposed to permanently change the schedule for full-scale surveys at McLennan, which are conducted once every 2 years, from even to odd numbered fiscal years. The proposed regulations provided a 30-day period for public comment. OPM received no comments during this period. The proposed rule is being adopted as a final rule.

Pursuant to section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately because of the need to conduct a full scale salary survey in May 1991 at McLennan, Texas.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they would affect only Federal employees and Federal agencies.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; Section 532.707 also issued under 5 U.S.C. 552, Freedom of information Act, Pub. L. 92–502.

2. Appendix B to subpart B is amended by revising the wage area listing for McLennan, Texas, to read as follows:

Appendix B to Subpart B of Part 532—Nationwide Schedule of Nonappropriated Fund Regular Wage Surveys

* * * * *

State	Wage area	Beginning month of survey	Fiscal year of full-scale survey odd or even
*	*	*	*
Texas	McLennan	May	Odd.
*	*	*	*

[FR Doc. 91–11221 Filed 5–10–91; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-90-303]

Fresh Tomatoes; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action revises the voluntary United States Standards for Grades of Fresh Tomatoes. When the voluntary U.S. standards are used, the size of the tomatoes in any standard type shipping container must be marked with one of four mandatory size designations (small, medium, large and extra large), each with a 5/8 inch overlap. This will eliminate the commingling of different sizes within a container. The California Tomato Board, the Florida Tomato Committee, the Florida Tomato Growers Exchange, the Florida Tomato Exchange, and the National Tomato Handler's Association, representing a major part of the fresh market tomato growers, packers, and wholesalers, had jointly requested that the United States Department of Agriculture update the size section of the U.S. Grade Standards for Fresh Tomatoes. The groups recommending this action indicated that these changes will promote uniform trading practices. The Agricultural Marketing Service (AMS), has the responsibility to develop and improve standards of quality, condition, quantity, grade, size, and packaging in order to encourage uniformity and consistency in commercial practices.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Leanne L. Skelton, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2056 South Building, Washington, DC 20090–6456, (202) 447–5410.

SUPPLEMENTARY INFORMATION: This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "nonmajor" rule.

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Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This revision of U.S. Standards for Grades of Fresh Tomatoes will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. This action revises the U.S. Standards for Grades of Fresh Tomatoes which will bring the standards into conformity with current marketing and packaging methods. In addition, under the Agricultural Marketing Act of 1946, the application of these standards is voluntary.

The United States Standards for Grades of Fresh Tomatoes were last revised in April 1976. The standards are issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The California Tomato Board, the Florida Tomato Committee, the Florida Tomato Growers Exchange, the Florida Tomato Exchange, and the National Tomato Handler's Association requested that § 51.1859 of the United States Standards for Grades of Fresh Tomatoes be amended to require that when the voluntary U.S. Standards are used, the size of the tomatoes in any standard type shipping container be marked on the container, establish four mandatory size designations (small, medium, large and extra large), each with a ⅛ inch overlap, and require that only one size be marked on a container. This will eliminate the commingling of different sizes within a container, if the voluntary U.S. standards are utilized. A proposal to revise the U.S. Standards for Grades of Fresh Tomatoes was published in the **Federal Register** on November 1, 1990 [55 FR 46070–46071] and invited interested parties to submit written comments.

The 60-day comment period ended December 31, 1990, during which time 290 comments were received.

Two hundred and thirteen comments, in favor of the proposal as published, were in the form of preprinted postcards signed by a wide variety of interested parties including growers, shippers, brokers, repackers, purveyors, wholesalers, sales personnel, consumers, researchers, consultants, box suppliers, and employees in tomato packinghouses. Although some of the postcards were from other areas of the United States they were primarily from the State of Florida.

Thirty-three additional comments, also in favor of the proposal, were form letters mostly from California signed by growers, shippers, repackers, brokers and a university professor.

Three comments, in form letter style, opposed the revision to the standard. However, none of these indicated a reason for opposition.

Additionally, one comment, from a grower/shipper in California was in favor of the revision if "vine ripe" tomatoes could continue to be place packed. Place packing is the practice of hand placing tomatoes in the package and using larger or smaller tomatoes in the corners of packages to ensure a tightly filled pack. This is done largely to prevent damage to the tomatoes caused by movement within the package. The standard would not prevent place packing as there would continue to be a tolerance of 10 percent allowed for offsize. Therefore, this could be done without actually commingling different sizes. Both Florida and California packers are currently packing tomatoes in place packs as well as in bulk 25-pound cartons and they do not expect to have problems meeting the requirements of the new standards. Furthermore, the use of the U.S. standards is voluntary.

In addition to the form letters and preprinted postcards, thirty-seven individual letters were received. Thirty-one comments were in favor of the revisions, stating that the changes will unify the tomato industry nationwide by providing only one definition for sizing tomatoes. Six comments received were opposed to the revision stating that "vine ripe" tomatoes are necessarily packed in a different manner than "muture/gassed green" tomatoes, and that these are sold by count-size, rather than weight. Four of these comments recommended a phase-in, or trail period, allowing the current and proposed standards to be used. The Agency feels that a phase-in, trial or study period is unnecessary and would cause confusion in the marketplace. One comment suggested that the revision will cause increased production costs, and thereby have a detrimental effect on production, and ultimately the consumers. One comment, from an importer of Mexican tomatoes, said the revision will limit the availability of fresh tomatoes during the winter months if another severe freeze were to happen in Florida. Additionally, he said it will reverse the progress toward the free trade agreement between the United States and Mexico. None of these comments provided data or analysis to support their views. In the absence of such information, and in light of the strong support from large segments of the tomato industry, the Agency has concluded that the proposed revisions in the U.S. Standards for Grades of Fresh Tomatoes would advance the purposes of the Agricultural Marketing Act.

The current standards to not require that the size be specified on the container. However, the current standards do provide that when the size of tomatoes is specified according to the size designations of section 51.1859, the size of the tomatoes must be within the ranges of the diameters specified. Current standards have six size designations with no overlap between size designations in that section, and commingling is allowed.

The revision will require any standard type shipping container to be marked. This means any container weighing 30 pounds or less, except consumer containers, will have to be marked to one of the size designations set forth in Table I if the voluntary U.S. standards are being utilitzed. Since the revision also requires that a container be marked with just one size, it will eliminate commingling of sizes such as medium-large, when tomatoes are certified to the U.S. grade. Consumer packages and their master containers will be exempt. However, if consumer packages or their master containers are marked, they can only be marked with a size listed in Table I, and then the same requirements will apply to this package as any other. If consumer packages or master containers are not marked in accordance with Table I, then size will not be determined unless specifically requested.

In addition, because they are too small to meet the size designations of Table I, cherry tomatoes, pear shaped tomatoes, and other similar types are exempt from marking requirements, but may be specified in terms of minimum diameter or minimum and maximum diameter.

When containers are marked either with a size designation or with a minimum, or a minimum and maximum diameter, the markings on at least 85 percent of the containers in a lot must be legible.

The groups recommending these revisions demonstrated that these changes will promote more uniform trading practices for the industry. They also asserted that by allowing sizes to overlap, the revised standards will eliminate difficulty they now experience in sizing tomatoes to meet existing size requirements. The Agency notes that the existing U.S. Standards for Grades of Fresh Tomatoes were developed prior to the widespread use of characteristically oblong, as opposed to the more traditional spherical-shaped, varieties.

Therefore, it appears that the revisions, as proposed, should be adopted.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. Section 51.1859 is revised to read as follows:

§ 51.1859 Size.

(a) The size of tomatoes packed in any standard type shipping container shall be specified and marked according to one of the size designations set forth in Table I. Individual containers shall not be marked with more than one size designation. Consumer packages and their master container are exempt; however, if they are marked, the same requirements would apply.

(1) When containers are marked in accordance with Table I, the markings on at least 85 percent of the containers in a lot must be legible.

(2) In determining compliance with the size designations, the measurement for minimum diameter shall be the largest diameter of the tomato measured at right angles to a line from the stem end to the blossom end. The measurement for maximum diameter shall be the smallest dimension of the tomato determined by passing the tomato through a round opening in any position.

(b) In lieu of marking containers in accordance with paragraph (a) of this section or specifying size in accordance with the dimensions defined in Table I, for Cerasiforme type tomatoes commonly referred to as cherry tomatoes and Pyriforme type tomatoes commonly referred to as pear shaped tomatoes, and other similar types, size may be specified in terms of minimum diameter or minimum and maximum diameter expressed in whole inches, and not less than thirty-second inch fractions thereof, or millimeters in accordance with the facts.

(1) Tomatoes of these types are exempt from marking requirements. However, when marked to a minimum or minimum and maximum diameter, the markings on at least 85 percent of the containers in a lot must be legible.

(c) For tolerances see § 51.1861.

TABLE I

Size designation	Inches	
	Minimum diameter [1]	Maximum diameter [2]
Small	2 5/32	2 9/32
Medium	2 9/32	2 13/32
Large	2 13/32	2 17/32
Extra large	2 17/32	

[1] Will not pass through a round opening of the designated diameter when tomato is placed with the greatest transverse diameter across the openings.
[2] Will pass through a round opening of the designated diameter in any position.

Dated: May 2, 1991.

Daniel Haley,

Administrator

[FR Doc. 91–11309 Filed 5–10–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 905

[Docket No. FV–91–274IR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule temporarily relaxes minimum grade and size requirements for domestic and export shipments of Valencia and other late type oranges, and grade requirements for domestic shipments of red and white seedless grapefruit. These relaxations are based on current and prospective crop and market demand conditions and maturity levels and size compositions of the remaining 1990–91 season Valencia and other late type orange and grapefruit crops grown in Florida.

DATES: *Effective* May 6, 1991. Comments which are received by June 12, 1991 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 90 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 12,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

The Citrus Administrative Committee (CAC), which administers the order locally, met April 2, 1991, and unanimously recommended the grade and size relaxations. The relaxations are based on the CAC's assessment of current crop conditions and the remaining available supply of marketable Valencia and other late type oranges and grapefruit. The CAC meets

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prior to and during each season to review the handling requirements, effective on a continuous basis, for each regulated citrus fruit. CAC meetings generally are open to the public, and interested persons may express their views at these meetings. The Department reviews CAC recommendations and information submitted by the CAC and other available information and determines whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for Florida citrus. Interim final rules were issued on October 19, 1990 (55 FR 42844, October 24, 1990) and on March 8, 1991 (56 FR 10791, March 14, 1991) that amended § 905.306 (7 CFR 905.306). These interim final rules temporarily relaxed the handling requirements for Florida citrus. Requirements for domestic shipments are specified in § 905.306 in table I of paragraph (a), and for export shipments in Table II of paragraph (b).

This action further amends § 905.306 by temporarily relaxing the handling requirements for Florida citrus as follows:

1. Reduces the minimum grade requirement for domestic and export shipments of Valencia and other late type oranges to U.S. No. 1 Golden from U.S. No. 1 for the period May 6, 1991, through September 22, 1991. The internal quality requirements of the U.S. No. 1 Golden grade are the same as those of the U.S. No. 1 grade. The external requirements of U.S. No. 1 Golden permit more discoloration than allowed under the U.S. No. 1 grade;

2. Reduces the minimum size requirement for domestic and export shipments of Valencia and other late type oranges to 2-4/16 inches in diameter (size 163) from 2-8/16 inches in diameter (size 125) for the period May 6, 1991, through September 22, 1991;

3. Reduces the minimum grade requirement for domestic shipments of white seedless grapefruit to U.S. No. 2 from Improved No. 2 for the period May 6, 1991, through May 19, 1991, and further reduces such requirement to U.S. No. 2 Russet for the period May 20, 1991, through August 18, 1991. The internal quality requirements of the U.S. No. 2 Russet grade are the same as the requirements for the Improved No. 2 and U.S. No. 2 grades. The external requirements of the U.S. No. 2 and U.S. No. 2 Russet grades permit additional amounts of discoloration than allowed under the Improved No. 2 grade; and

4. Reduces the minimum grade requirement for domestic shipments of red seedless grapefruit to U.S. No. 2 Russet from U.S. No. 2 for the period May 6, 1991, through August 18, 1991. The internal quality requirements of the U.S. No. 2 Russet grade are the same as those for the U.S. No. 2 grade. Externally, more discoloration is permitted under the U.S. No. 2 Russet grade than under the U.S. No. 2 grade.

The CAC recommended this action based on analysis of the grade and size composition of this season's remaining Florida Valencia and other late type orange and grapefruit crops. Relaxing the minimum grade requirements for Valencia oranges, and red and white seedless grapefruit as specified is expected to assure that fresh markets are supplied with the best quality fruit available from this season's remaining crops. These relaxations pertain only to the external characteristics of the fruit, not the internal quality, and recognize the fact that the external appearance of these fruits tends to deteriorate during the latter part of the season. Relaxing the minimum size requirement for Valencia and other late type oranges as specified is expected to make smaller fruit available of acceptable maturity and flavor to meet consumer needs. This action is expected to enable handlers to maximize shipments to fresh market channels consistent with the overall size and quality of the remaining crops and anticipated market demand.

The Valencia and other late type orange season normally begins in January and ends with shipment of late-bloom fruit during the following September, while the grapefruit shipping season normally begins in September and continues through the following August.

The minimum grade and size requirements for grapefruit imported into the United States specified in § 944.106 (7 CFR 944.106) were temporarily suspended beginning March 11, 1991, by a final rule published in the Federal Register on March 14, 1991. The grapefruit import requirements were issued under section 8e of the Act (7 U.S.C. section 608e-1).

Orange import requirements are specified in § 944.312 (7 CFR part 944), and are effective under section 8e of the Act. That section requires that oranges imported into the United States must meet the same minimum grade and size requirements as those specified for Texas oranges in § 906.365 (7 CFR Part 906.365) effective under Marketing Order No. 906. The findings and determinations for imported oranges in Part 944 are not changed by this action. Thus, no change in § 944.312 is necessary, and orange import requirements would continue to be based upon the requirements for Texas oranges.

Under the marketing order for Florida citrus, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This action reflects the CAC's and the Department's appraisal of the need to relax the grade and size requirements as hereinafter set forth. The Department's view is that this action will have a beneficial impact on producers and handlers since it would allow Florida citrus handlers to ship those grades and sizes of fruit available to meet consumer needs consistent with this season's crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the CAC, and other information, it is found that the relaxation set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action relaxes grade and size requirements currently in effect for Valencia and other late type oranges and the grade requirements for red and white seedless grapefruit; (2) Florida orange and grapefruit handlers are aware of this action, which was recommended by the CAC at a public meeting, and they will need no additional time to comply with the relaxed requirements; (3) shipment of the 1990-91 season Florida orange and grapefruit crops is currently in progress, and (4) this rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Note: This section will appear in the annual Code of Federal Regulations.

§ 905.306 [Amended]

2. Section 905.306, as amended by interim final rules published at 56 FR 10791 on March 14, 1991, is amended as follows:

A. In paragraph (a), Table I, the entries for "Valencia and other late type oranges", "seedless, red grapefruit", and "seedless, except red grapefruit" are revised to read as set forth below.

B. In paragraph (b), Table II, the entries for "Valencia and other late type oranges" are revised to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6.

(a) * * *

TABLE I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
Oranges			
* * *	* * *	* * *	
Valencia and other late type	05/06/91-09/22/91	U.S. No. 1 Golden	2 4/16
	On and after 09/23/91	U.S. No. 1	2 4/16
* * *	* * *	* * *	
Grapefruit			
* * *	* * *	* * *	
Seedless, red	05/20/91-06/18/91	U.S. No. 2 Russet (External); U.S. No. 1 (Internal)	3 8/16
	06/19/91-10/20/91	Improved No. 2 (External); U.S. No. 1 (Internal)	3 8/16
	On and after 10/21/91	Improved No. 2 (External); U.S. No. 1 (Internal)	3 8/16
Seedless, except red	05/06/91-05/19/91	U.S. No. 2 (External); U.S. No. 1 (Internal)	3 8/16
	05/20/91-06/18/91	U.S. No. 2 Russet (External); U.S. No. 1 (Internal)	3 8/16
	On and after 06/19/91	Improved No. 2 (External); U.S. No. 1 (Internal)	3 8/16
* * *	* * *	* * *	

(b) * * *

TABLE II

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
Oranges			
* * *	* * *	* * *	
Valencia and other late type	05/06/91-09/22/91	U.S. No. 1 Golden	2 4/16
	On and after 09/23/91	U.S. No. 1	2 4/16
* * *	* * *	* * *	

Dated: May 8, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-11301 Filed 5-10-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 286, and 299

[INS No. 1312-91]

RIN 1115-AB78

Establishment of Pilot Programs to Charge a User Fee at Selected Ports of Entry

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements section 210 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Public Law 101-515, by establishing criteria for pilot programs under which user fees may be charged and collected for inspection services provided at one or more land border ports of entry. This rule is necessary to enhance inspection services at land border ports of entry, while still safeguarding our borders.

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DATES: This interim rule is effective June 12, 1991. Written comments must be received no later than August 12, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. To ensure proper and timely handling please reference INS number 1312-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Donna Kay Barnes, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., room 7123, Washington, DC 20536, Telephone (202) 514-2725.

SUPPLEMENTARY INFORMATION: Commuter traffic over our land borders has increased significantly each year over the past decade and in fiscal year 1990 accounted for 87 percent of all inspections completed. At certain locations, traffic backups sometimes last several hours during specific times of the day. Such delays are both irritating and costly to the traveling public. Through automation and an increase in the inspection force, the Immigration and Naturalization Service could significantly reduce these delays. In order to speed the inspection of vehicular and pedestrian traffic, without inhibiting the mandate to prevent the illegal entry of both aliens and controlled substances into the United States, Congress has established a means to initiate several pilot projects to study the feasibility of charging fees to enhance services at land border ports of entry.

Revenue from the Inspections User Fee Account, authorized by Congress in 1986 and covering commercial air and sea arrivals at ports of entry, has enabled the Service to more than triple the number of available air and seaport inspectors from approximately 500 to over 1,500 currently. These inspectors are responsible for inspecting the remaining 13 percent of all applicants for entry into the United States. However, revenues from the air and sea account may not, by statute, be utilized to staff land border ports of entry. Since the receipt of additional appropriated inspectional positions has not kept pace with the growth in land border traffic, other means must be found to address the growing disparity in staffing.

In the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Pub. Law 101-515, Congress included language which allows for a test of the user fee concept on the land borders. This law allows the Attorney General to establish pilot projects which include the charging of a user fee and provides that the user fee collected may be utilized only to enhance inspection services. Pursuant to Pub. Law 101-515, such pilot projects are to be developed by the Attorney General after consultation with the Secretary of the Treasury and with Congress. The Immigration and Naturalization Service is required to provide a report to both Committees on Appropriations identifying each pilot project no less than 30 days prior to implementation. All such pilot projects will terminate on September 30, 1993, unless extended by Congress. In addition, the Attorney General is required to provide the Committees on Appropriations with quarterly reports on the status of any pilot project implemented. Pilot projects authorized by Pub. Law 101-515 may be established on both the northern and southern land borders of the United States.

There are a variety of ways in which such a user fee may be designed. In this rule, the Service seeks to use dedicated commuter lanes in order to enhance services to those border crossers who most frequently enter the United States over the land borders. Other proposals may be designed to serve specific locations with unique problems or traffic patterns.

Ports of entry may be selected to establish dedicated commuter lanes which are implemented pursuant to the land border user fee program based on the following criteria:

1. The location where the port of entry is located has an identifiable group of low risk frequent border crossers;
2. The establishment of the dedicated commuter lane will not significantly inhibit normal traffic flow; and
3. Sufficient Service personnel must be present to perform primary and secondary inspection functions.

Participation in the program will depend on the following conditions:

1. Applicants are citizens of the United States or citizens of the country contiguous to the port of entry where the dedicated commuter lane is located;
2. Applicants agree to furnish all information requested in the application and to submit to a full inspection of the registered vehicle and/or all passengers listed on the application prior to initial use of the commuter lane;
3. Applicants pay the required fee upon approval of the application;
4. Applicants agree to abide by all conditions imposed, such as but not limited to, limitations on the number and identity of vehicle passengers, state and federal laws regarding the importation of alcohol, and all other regulations under the jurisdiction of all federal inspection agencies;
5. Participation in the program is voluntary and limited to individuals who cross in regular passenger vehicles other than those owned by taxi companies and/or other transportation lines;
6. Participants understand that a full and complete vehicular and passenger inspection, for compliance purposes, is possible at any time while utilizing the expedited commuter lane;
7. Participants who violate the conditions for use of the dedicated lane may be removed from the program, and in addition, will be subject to the imposition of any applicable fines, penalties, or sanctions, as provided by law; and
8. Applications for participation in the commuter lane project may be denied at the discretion of the District Director with no appeal. Applicants will be notified of such denial.

Dedicated commuter lanes, as envisioned, will require the payment of an annual fee. This will eliminate the need to stop and pay a per use toll as well as the need for extensive new construction at ports of entry. Current technology presents several methods for collection and/or billing. Initially, until fee receipts are adequate to acquire the technology necessary to improve both the collection/billing procedure and rapid vehicle identification, a simple method involving windshield stickers or a similar item will be utilized.

The Service may develop and implement other methods of charging a user fee for inspection services at the land borders before September 30, 1993. At selected locations, a per vehicle user fee may be established as a pilot project. Specific criteria proposed for the designation of such per vehicle sites include:

1. Each port of entry selected must be a class A port located within 25 miles of another class A port of entry;
2. Space must be available to make facility modifications, if needed, for the collection of such a fee;
3. Sufficient Service personnel must be present to perform primary and secondary functions;
4. A memorandum of understanding, concerning the collection of such a fee, between the Service and various other affected federal inspection agencies must be in place; and
5. Site specific consultations must be held, through appropriate channels, with representatives of the government of the contiguous country as well as with representatives of the affected states and local communities.

Any pilot project involving the charging of a per vehicle fee for all passenger traffic crossing through a specific port of entry would be designed to include a group of vehicles which would be exempt from such a fee. These would include emergency vehicles and various government vehicles used for official business.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based on the "good cause" exception found at 5 U.S.C. 553(d). The reasons and necessity for immediate implementation of this interim rule are as follows: Because the summer months constitute the months of heaviest traffic across our land borders, it is in the best interest of the travelling public to start the dedicated commuter lane pilot program as soon as possible. Proceeding with interim regulations at this time will allow the affected agencies and the public to gain maximum benefits from the pilot program. Without the statistics and associated information collected during the busy summer months, there will be insufficient data on which to judge the effectiveness of the program.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirement contained in this regulation has been submitted to the Office of Management and Budget, under the provisions of the Paperwork Reduction Act for review and clearance.

List of Subjects

8 CFR Part 103

Administrative practice and procedures, Aliens, Authority delegations (Government agencies), Freedom of Information, Privacy Act, Reporting and recordkeeping requirements.

8 CFR Part 286

Fees, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 299

Administrative practice and procedure, Aliens, Forms, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by adding, in proper numerical sequence, the Form I-823 to the list of forms, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I-823. For participation in a dedicated commuter lane program under section 286 of this chapter—$25.00

* * * * *

PART 286—IMMIGRATION USER FEE

3. The authority for part 286 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

4. A new § 286.8 is added to read as follows:

§ 286.8 Establishment of pilot programs for the charging of a land border user fee for inspection services.

(a) *General.* Under the provisions of section 286(q) of the Act, the Service may establish pilot programs at one or more land border ports of entry to charge fees for immigration inspection services to be collected by the Commissioner. Individual ports of entry selected by the Commissioner to participate in such pilot programs may charge a fee to enhance inspection services and to recover the cost of:

(1) Hiring additional immigration inspectors, including all associated personnel costs such as salary, benefits, and overtime;

(2) Expansion, operation and maintenance of information systems for nonimmigrant control;

(3) Minor construction costs of adding new primary traffic lanes (with the concurrence of the General Services Administration);

(4) Procuring detection devices and conducting training to identify fraudulent documents used by applicants for entry to the United States; and

(5) Administration of the Land Border Inspection Fee Account.

(b) *Establishment of dedicated commuter lanes at selected ports of entry.* Dedicated commuter lanes are vehicular traffic lanes through which a group of identified low risk frequent border crossers, who have been prescreened and preauthorized, transit the border. Individual participation in the dedicated commuter lane program by border crossers is voluntary. Individuals whose applications for participation in the program are denied are not precluded from applying for admission to the United States through the regular inspection lanes.

(1) *Designation of participating ports of entry.* The following criteria shall be used in the selection of port of entry locations for the establishment of dedicated commuter lanes under a pilot program:

(i) The location has an identifiable group of low risk frequent border crossers, who cross a minimum of once weekly for a regular definable purpose;

(ii) The institution of a dedicated commuter lane program shall not significantly inhibit normal traffic flow; and

(iii) Sufficient Service personnel must be present to perform primary and secondary inspection functions.

(2) *Eligibility requirements for applicants.* Applicants for participation in the program must meet the following requirements:

(i) The applicant is a citizen of the United States or a citizen of the country contiguous to the specific port of entry sponsoring the commuter lane program in which the applicant seeks to participate;

(ii) Non-United States citizen applicants must be otherwise admissible to the United States;

(iii) Applicant agrees to furnish all information requested on the application, Form I-823, Application—Dedicated Commuter Lane Program;

(iv) Applicant agrees to a physical inspection of the registered vehicle prior to initial use of the dedicated commuter lane; and

(v) Applicant pays the required fee, upon approval of the application.

(3) *Conditions for use of the dedicated commuter lanes.* Participants in the dedicated commuter lane program must agree to abide by all conditions imposed, including, but not limited to:

(i) Limitations on the number and identity of passengers permitted in a designated vehicle;

(ii) Limitation of participation to individuals who cross in regular passenger vehicles other than taxis and

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other vehicles operated for hire by individuals or transportation companies;

(iii) The possibility of a full and complete vehicular and passenger inspection at any time during use of the dedicated commuter lane for entry into the United States;

(iv) State and federal laws regarding the importation of alcohol;

(v) All federal, state and local laws regarding the importation or possession of controlled substances as defined in section 101 of the Controlled Substance Act (21 U.S.C. 802); and

(vi) All other pertinent laws and regulations under the jurisdiction of any other federal inspection agency.

(4) *Approval of application.* (i) Applications for participation in a dedicated commuter lane program may be accepted, at the discretion of the District Director, on either a continuous or periodic basis; and

(ii) At the discretion of the District Director, applications without fee may be accepted from local, state, federal and foreign government agencies for participation by employees of those agencies traveling in specific government vehicles, while engaged in official government business.

(iii) Applications for participation in the dedicated commuter lane program must be submitted annually.

Authorization documents, such as decals or authorization letters, shall be valid for one year from date of approval.

(5) *Denial of application.* An application for participation in a dedicated commuter lane program may be denied at the discretion of the District Director with no appeal. Applicants will be notified of such denial.

(6) *Violation of conditions of the program.* A participant who violates any condition for the use of the dedicated commuter lane may be removed from the program at the discretion of the District Director, and shall be subject to the imposition of applicable fines, penalties, and/or sanctions as provided by law.

(7) *Responsibility of participant.* (i) It shall be the responsibility of the participant to notify the Service if an approved vehicle is sold, stolen, or disposed of otherwise. If the vehicle is sold, it is the responsibility of the participant to remove or obliterate any identifying decal or other authorization for participation in the program from the vehicle at the time of such sale. Upon purchase of a replacement vehicle, participants may submit a new properly executed Form I-823 with fee in order to receive a new decal, valid for one year from date of approval.

(ii) If a vehicle is stolen or damaged beyond repair, and an identifying decal authorizing that vehicle to use a dedicated commuter lane is affixed to the windshield, no replacement decal shall be issued. Participants must submit a new properly executed Form I-823 with fee.

(iii) If a windshield becomes broken and must be replaced, and an identifying decal authorizing that vehicle to use a dedicated commuter lane is affixed to the broken windshield, the Service may issue a replacement decal. The decal shall be valid to the date of the original decal. The program participant must submit a properly executed Form I-823, Application—Dedicated Commuter Lane Program, without fee, as well as a receipt, properly documented with the Vehicle Identification Number and the vehicle license tag number, for the purchase of a new windshield.

(c) *Establishment of per vehicle user fees at selected ports of entry.* A pilot program for the collection of a per vehicle fee for the immigration inspection of all travelers within a vehicle may be established.

(1) The following criteria shall be employed in the selection of port of entry locations for the establishment of programs charging a per vehicle user fee:

(i) A participating port of entry shall be a class A port of entry located within 25 miles of another class A port of entry;

(ii) Space shall be available for facility modification, if needed, for the collection of such a per vehicle fee;

(iii) Sufficient Service personnel shall be present to perform primary and secondary inspection functions;

(iv) A memorandum of understanding, concerning the establishment and implementation of the per vehicle user fee, with all other affected federal inspection agencies shall be in effect; and

(v) Site specific consultations shall be conducted, through appropirate channels, with government representatives of the country contiguous to the selected site as well as with representatives of the affected states and local communities.

(2) A per vehicle user fee shall not be charged or collected from passengers who:

(i) Travel in emergency vehicles;

(ii) Travel in United States, Canadian, or Mexican government vehicles on official business;

(iii) Are listed as foreign diplomats on the accreditation list maintained by the United States Department of State or who are in possession of a diplomatic visa (A-1 and A-2, G-1 through G-4), valid for entry into the United States;

(iv) Travel in International Water and Boundary Commission vehicles on official business; or

(v) Are American Indians born in Canada, as defined in 8 CFR 289.1, members of the United States armed forces entering under orders, and/or members of a force of a NATO country signatory to Article III of the Status of Forces Agreement entering under orders.

PART 299—IMMIGRATION FORMS

5. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

6. Section 299.1 is amended by adding, in proper numerical sequence, Form I-823, to the list of forms, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

I-823	(XXX)	Application—Dedicated Commuter Lane Program.

* * * * *

7. Section 299.5 is amended by adding the Form I-823, in proper numerical sequence, to the list of forms, to read as follows:

§ 299.5 Display of control numbers.

* * * * *

I-823	Application—Dedicated Commuter Lane Program.	1115-XXXX

* * * * *

Dated: April 22, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-11152 Filed 5-10-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-236-AD; Amendment 39-6913]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires modification of the vertical stabilizer forward closure rib by installation of a cover plate and a panel assembly over lightening and access holes. This amendment is applicable to eight airplanes that were not modified during production. This condition, if not corrected, could result in overpressurization of the vertical stabilizer, which could cause structural failure in the event of a rupture of the fuselage under the dorsal fin.

EFFECTIVE DATE: June 17, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington, 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Satish K. Pahuja, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2761. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-18-05, Amendment 39-6713 (55 FR 35576, August 31, 1990), to require modification of the vertical stabilizer forward closure rib by installation of a cover plate and a panel assembly over lightening and access holes on eight additional Model 767 series airplanes that had not been modified during production, was published in the Federal Register on December 5, 1990 (55 FR 50189).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Transport Association (ATA) of America requested that the proposed rule amend, not supersede, the existing AD. The ATA stated that the supersedure would not serve any useful purpose since no additional work is required for the airplanes that have already been modified in accordance with the existing AD; supersedure will require operators now in compliance with AD 90-18-05 to change their paperwork to reflect the new AD number. The FAA concurs that, in this case, a different approach may be warranted. The FAA's normal policy in this regard is that when an AD requires a substantive change, such as a change in its applicability, the "old" AD is superseded by being removed from the system and a new AD added. However, in reconsideration of the entire fleet size that would be affected by a supersedure action, as proposed, and the consequent workload associated with revising maintenance record entries, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to the eight airplanes that would have been added to the applicability of the existing AD. The final rule has been revised to reflect that this action does not supersede AD 90-18-05, Amendment 39-6713; airplanes listed in the applicability of AD 90-18-05 continue to be required to comply with the requirements of that AD. This new final rule is a separate AD action, and is applicable only to airplane line numbers 300 through 307.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are 306 Model 767 series airplanes of the affected design in the worldwide fleet; of this number, only 8 airplanes are considered in this AD action. It is estimated that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 28 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,080 for the additional airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, line number 300 through 307, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure of the vertical stabilizer from overpressurization in the event of a rupture of the fuselage under the dorsal fin, accomplish the following:

A. Within the next 18 months after the effective date of this amendment, install a cover plate and a panel assembly over the lightening and access holes in the vertical stabilizer forward closure rib, in accordance with Boeing Alert Service Bulletin 767-55A0007, dated June 22, 1989, or Revision 1, dated May 24, 1990.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

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C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective June 17, 1991.

Issued in Renton, Washington, on May 1, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11271 Filed 5-10-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-284-AD; Amendment 39-6694]

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) T90-26-54, which was previously made effective as to all known U.S. owners and operators of Boeing Model 747-400 series airplanes by individual telegrams. This AD prohibits the dispatch of an airplane with an inoperative thrust reverser. This action is prompted by a recent discovery of an error in the logic diagram of the signals from the thrust reverser to the flap control unit (FCU) computer. This condition, if not corrected, could cause all leading edge flaps between the number 1 and 4 engines to retract, which would compromise the ability to takeoff.

EFFECTIVE DATE: May 29, 1991, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T90-26-54, issued December 24, 1990, which contained this amendment.

FOR FURTHER INFORMATION CONTACT: Mr. Frank vanLeynseele, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2671. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: On December 24, 1990, the FAA issued telegraphic AD T90-26-54, applicable to Boeing Model 747-400 series airplanes, which prohibits dispatch with an inoperative thrust reverser. That action was prompted by an incident which uncovered the presence of an error in the logic diagram of the signals from the thrust reverser to the Flap Control Unit (FCU) computers. The Model 747-400 Master Minimum Equipment List (MMEL) permits dispatch of airplanes with one thrust reverser inoperative. If a second thrust reverser were to become unstowed or if there were an erroneous thrust reverser signal to the FCU, an uncommanded leading edge flap retraction will occur during the takeoff roll. This condition, if not corrected, could result in retraction of all leading edge flaps between the number 1 and 4 engines. The ability of the airplane to takeoff is compromised when some of the leading edge flaps are not fully deployed.

Since this condition is likely to exist or develop on other airplanes of this same type design, this airworthiness directive (AD) is issued to require that all thrust reversers be operative prior to flight. This AD has the effect of rescinding the authorization to dispatch with one thrust reverser inoperative as presented in the MMEL document. This is considered to be an interim action until the manufacturer develops and the FAA approves a corrective modification, at which time the FAA may consider further rulemaking action.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on December 24, 1990, to all known U.S. owners and operators of Boeing Model 747-400 series airplanes. These condition still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

90-26-54. Boeing: Amendment 39-6694. Docket 90-NM-284-AD.

Applicability: All Model 747-400 series airplanes, certificated in any category.

Compliance: Required within 10 days after the effective date of this AD, unless previously accomplished.

To prevent uncommanded leading edge flap retraction during takeoff roll, accomplish the following:

A. Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to add the following statement. This may be accomplished by inserting a copy of this AD in the AFM. "Dispatch with an inoperative thrust reverser is prohibited."

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment becomes effective May 29, 1991 as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T90-26-54, issued December 24, 1990, which contained this amendment.

Issued in Renton, Washington, on May 3, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11279 Filed 5-10-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-09-AD; Amendment 39-6695]

Airworthiness Directives; British Aerospace Model BAe 125-800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 125-800A series airplanes, which requires torquing the retaining nuts on the location plate on certain nose wheel assemblies. This amendment is prompted by reports of insufficiently torque-tightened retaining nuts on the location plate on certain nose wheel assemblies. This condition, if not corrected, could result in a loose wheel and possible loss of wheel from the axle.

EFFECTIVE DATE: June 18, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all British Aerospace Model BAe 125-800A series airplanes, which requires torquing the retaining nuts on the location plate on certain nose wheel assemblies, was published in the Federal Register on February 25, 1991 (56 FR 7612).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator, nor significantly increase the scope of the AD.

It is estimated that 108 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $11,880.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAe 125-800A series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent a wheel loosening from the axle and the possible loss of a wheel, accomplish the following:

A. Within 30 days after the effective date of this AD, inspect all nose wheels for nose wheel serial numbers, listed in paragraph 2.A.(2) of Dunlop Service Bulletin AH52339-A32-1046, dated July 27, 1990.

B. If the serial number on the nose wheel coincides with any of the serial numbers listed in paragraph 2.A.(2) of Dunlop Service Bulletin AH52339-A32-1046, dated July 27, 1990, retorque the location plate retaining nuts to 8 foot-pounds in accordance with the service bulletin.

Note: If the airplane maintenance records indicate that the nose wheel assembly has had the wheel halves disassembled and reassembled since the airplane was new, the required retorquing will have been accomplished at that time, and no further action is required.

Warning: Do not adjust the torque tightened main hub tie bolts with the tire inflated.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer

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may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective June 18, 1991.

Issued in Renton, Washington, on May 3, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11272 Filed 5-10-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-299-AD; Amendment 39-6746]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 (MD-80) Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes, which currently requires repetitive inspection of the four bolts connecting the flight controls elevator variable load feel torque tube to the elevator variable load feel mechanism, and correction of all discrepancies. This amendment requires removal of the bolts and self-locking nuts and installation of bolts with castellated nuts as terminating action for the repetitive inspection requirements of that AD. This amendment is prompted by reports of loss of load feel in the elevator control system due to missing or loose bolts. This condition, if not corrected, could result in degraded flight handling qualities of the airplane.

EFFECTIVE DATE: June 18, 1991.

ADDRESSES: The applicable service information may be obtained from Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Services, Mail Code 73-30. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Walter S. Eierman, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425 telephone (213) 988-5336.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-20-09, Amendment 39-6746 (55 FR 38543, September 19, 1990), applicable to McDonnell Douglas Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes, to require removal of the elevator variable load feel torque tube bolts and self locking nuts and installation of bolts with castellated nuts, was published in the Federal Register on February 1, 1991 (56 FR 3966).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association of America, on behalf of its members, had no objection to the proposed rule.

Paragraph D of the final rule has been revised to specify the current procedures for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

The applicability statement has been revised to reduce the number of airplanes affected by limiting the rule to the serial numbers listed in the McDonnell Douglas Service Bulletin. Airplanes on which this modification was incorporated prior to delivery will therefore not be affected by this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 732 Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 374 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The cost of parts to accomplish this modification is estimated to be less than $50 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $121,550.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6746 (55 FR 38543, September 19, 1990), AD 90-20-09, with the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes, serial numbers as listed in McDonnell Douglas MD-80 Service Bulletin A27-313, dated August 3, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent degradation of airplane flight handling qualities, accomplish the following:

A. Within 14 days after October 5, 1990 (the effective date of Amendment 39-6746, AD 90-20-09), and thereafter at intervals not to exceed 60 days, inspect the four bolts of the flight controls which attach the elevator variable load feel torque tube to the elevator variable load feel mechanism for loose or missing bolts and nuts, in accordance with Phase 1 of the Accomplishment Instruction of McDonnell Douglas Alert Service Bulletin A27-313, dated August 3, 1990.

B. Any discrepancies found during the inspections required by paragraph A. of this AD must be covered prior to further flight, in accordance with Phase 1 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A27-313, dated August 3, 1990.

C. Within 6 months after the effective date of this AD, modify the flight controls elevator variable load feel torque tube attachment to the elevator variable load feel mechanism by replacing the three self-locking bolts/nuts and one non-locking bolt with three castellated nut/bolts and one bolt with a drilled head for safety wire, in accordance with Phase 2 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A27-313, dated August 3, 1990. Such installation constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

D. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Services, Mail Code 73-30. These documents may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment supersedes Amendment 39-6746, AD 90-20-09.

This amendment becomes effective June 18, 1991.

Issued in Renton, Washington, on May 3, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11274 Filed 5-10-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket Number 90-ACE-25]

Alteration of Transition Area—Muscatine, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to alter the 700-foot transition area at Muscatine, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to Runway 23 at the Muscatine, Iowa, Municipal Airport utilizing radio navigation (RNAV) as an approach aid.

EFFECTIVE DATE: 0901 UTC, September 19, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On May 2, 1989, the FAA published a Notice of Proposed Rulemaking, which would amend § 71.181 of part 71 of the Federal Aviation Regulations so as to alter the transition area at Muscatine, Iowa (54 FR 18668). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One objection was received as a result of the Notice of Proposed Rulemaking. The objection was that the standard instrument approach procedure (SIAP) was to utilize the Muscatine VOR rather than the Moline VOR. After further consideration, the SIAP has been changed to utilize the Moline VOR.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G, dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the transition area at Muscatine, Iowa. The Muscatine Airport Commission has requested that the VOR approaches to Runway 5 and 30 and the VOR/DME to Runway 12 be canceled. In order to continue to provide the Muscatine Municipal Airport with instrument approach capability, the FAA is developing a new instrument approach procedure utilizing the RNAV on Runway 23 to serve the subject airport. The establishment of this new instrument approach procedure, based on this approach aid, entails alteration of the transition area at Muscatine, Iowa, at and above 700 feet above ground level, within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under instrument flight rules (IFR) and other aircraft operating under visual flight rules (VFR). Except for editorial changes, this amendment is the same as that proposed in the Notice.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.16 [Amended]

2. Section 71.181 is amended as follows:

Muscatine, Iowa [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Muscatine Municipal Airport (Latitude 41°22'00"N., Longitude 91°08'43"W.).

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Issued in Kansas City, Missouri, on April 26, 1991.

Clarence E. Newham,

Manager, Air Traffic Division, Central Region.

[FR Doc. 91-11276 Filed 5-10-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8336]

RIN 1545-AE34

Limitation of Foreign Tax Credit for Foreign Oil and Gas Taxes; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8336, which was published in the Federal Register on March 15, 1991 (56 FR 11063). The final regulations relate to the amendments made to section 907 of the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the Technical and Miscellaneous Revenue Act of 1986 (TAMRA).

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Richard L. Chewning, (202) 566-6285 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections contain amendments made by TEFRA requiring that foreign oil and gas extraction income (FOGEI) and losses from all foreign countries be aggregated before computing the limit on creditability of foreign taxes. The amendments also repeal the separate application of the foreign tax credit limitation to taxes on foreign oil related income (FORI). The amendments made by TAMRA remove dividends paid by a domestic corporation from inclusion within foreign oil related income.

Need for Correction

As published, T.D. 8336 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8336), which was the subject of FR Doc. 91-5583, is corrected as follows:

§ 1.907-0 [Corrected]

1. On page 11064, column 1, § 1.907-0 (table of contents), under the heading *"§ 1.907(b)-1 Reduction of creditable FORI taxes (for taxable years beginning after December 31, 1982).",* remove the following language:

"(a) In general.
(b) Amount of income, war profits, or excess profits tax.
(1) Dual capacity taxpayer.
(2) Non-dual capacity taxpayer.
(c) Amount that is not income, war profits, or excess profits tax.
(d) Examples."

§ 1.907(e)-1 [Corrected]

2. On page 11078, column 3, § 1.907(e)-1(c)(4), under Example 4-(i)(A), line 4 from the top of the column, the language "in 1963. On December 31, 1963, X made a pro" is corrected to read "in 1963. On December 31, 1963, Z made a pro".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-11207 Filed 5-10-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 602

[T.D. 8360]

RIN 1545-AL81

Requirements For Investments To Qualify Under Section 936(d)(4) As Investments in Qualified Caribbean Basin Countries

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the requirements that must be met for an investment to qualify under section 936(d)(4) as an investment in qualified Caribbean Basin Countries. Subject to such conditions as are prescribed by regulation, funds of possessions corporations that are invested by financial institutions in active business assets or development projects in a qualified Caribbean Basin country are to be treated as used in Puerto Rico for purposes of section 936(d)(2). The regulations prescribe the conditions for such an investment to qualify as for use in Puerto Rico under section 936(d)(4).

DATES: Effective May 13, 1991 except for the removal of § 1.936-10T which is effective June 12, 1991. These regulations are applicable to investments made by a possessions corporation in a financial institution that are used by a financial institution for investments in accordance with a specific authorization granted by the Commissioner of Financial Institutions of Puerto Rico after September 22, 1989. However, the taxpayer may choose to apply § 1.936-10T(c) for periods before June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Christine Halphen (202-377-9493, not a toll-free call) or W. Edward Williams (202-287-4851, not a toll-free call) of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (Attention: CC:CORP:T:R (INTL-955-86)).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget, in accordance with the requirements of the Paper Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1138. The estimated average annual burden per respondent/recordkeeper is 30 hours.

This estimate is an approximation of the average time expected to be necessary for a collection of information. It is based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Paperwork Reduction Project (1545-1138), Washington, DC 20503.

Background

On September 22, 1989, the Federal Register published proposed and temporary Income Tax Regulations (26 CFR part 1) [T.D. 8288, 1989-2 C.B. 124] under section 936(d)(4) of the Internal Revenue Code of 1986, which section was enacted by section 1231(c) of the Tax Reform Act of 1986 (100 Stat. 2085). Written comments responding to the notice of proposed amendment were received. Also, a request for public hearings was received and hearings were held on March 19, 1990. After consideration of all comments regarding the proposed amendments, many of those amendments are adopted by this Treasury Decision, some with revisions.

The significant comments and suggestions are described below.

Explanation of Provisions

Section 1.936-10(c)(1) is amended to clarify that a loan by a qualified financial institution may be made either directly or through a financial intermediary.

Comments were received regarding the ability of a qualified recipient to issue bonds directly to possessions corporations. In response to this comment, and in view of the statutory requirement that the investment be made by a financial institution, § 1.936-10(c)(3) is amended to expand the definition of a qualified financial institution to include certain single-purpose entities. This concept facilitates the direct borrowing of section 936 funds by qualified recipients, including by way of bond issuance. Also, § 1.936-10(c)(3)(i) is amended to eliminate the private letter ruling process for other institutions, because the concept of single purpose entities is expected to deal adequately with most situations. Rulings issued prior to the publication of these final regulations under the prior version of § 1.936-10(c)(3)(i) are unaffected by this change.

Comments were received regarding the restriction for investments in used business assets. In response to those comments, the five-year rule in § 1.936-10(c)(4)(ii)(B) is reduced to three years, effective for acquisitions after the date of publication of these final regulations. Suggestions to delete the rule were not adopted because of the legislative intent behind section 936(d)(4) to encourage capital formation in the Caribbean region rather than simply providing an opportunity for churning existing assets. For the same reason, suggestions to allow the use of section 936 funds to acquire land and existing real property structures or to refinance existing loans were not adopted.

In response to a comment regarding agribusiness projects, § 1.936-10(c)(4)(ii) is amended by adding a subdivision (E) regarding investments in plants and animals in relation to a farming business. A conforming amendment is made to § 1.936-10(c)(7) regarding temporary periods and refinancing of non-section 936 financing in the case of long term projects.

A number of comments were received suggesting raising or eliminating the 2 percent limit on issuance costs that may be financed out of amounts borrowed. In response to those comments, § 1.936-10(c)(4)(iii)(A) is amended to raise the limit to 3.5 percent. This limit is based upon a similar limit allowed under section 147(g) for certain small tax-exempt issues. The provision is further amended to clarify that the cost base for purposes of computing the limit is determined without regard to the costs of credit enhancement or bond insurance premiums.

Comments were received regarding the 10 percent limit imposed on the use of section 936 funds to finance the cost of inventory and other working capital requirements. Comments were also received to allow the use of section 936 funds to finance export activities. To address these comments the final regulations raise the 10 percent limit to 50 percent where the financing is in connection with an investment in a manufacturing or farming operation.

The earlier published proposed and temporary regulations had reserved on the issue of privatization. The final regulations also reserve on this issue. In the Notice portion of this Federal Register, the Internal Revenue Service is issuing proposed regulations relating to the use of section 936 funds to finance an investment that qualifies as a privatization.

Section 1.936-10(c)(7)(i) relating to the replacement of temporary non-qualified financing is amended to clarify that the provisions under the paragraph apply only to: (1) The refinancing of costs incurred in relation to an investment that was a qualified investment when the non-qualified financing was contracted for, or (2) the refinancing of costs incurred in relation to an investment that was not a qualified investment when the financing was contracted for, but in that case, the refinancing can only be to the extent of costs incurred after the investment has become a qualified investment. Also, § 1.936-10(c)(7)(i) is amended to clarify the meaning of non-qualified financing, *i.e.*, financing from sources other than section 936. Further, the requirement in § 1.936-10(c)(7)(i) that approval of the section 936 financing of a long-term project be obtained prior to the commencement of the project has been modified. The final regulations provide that only those eligible costs incurred after the filing of a plan with the Commissioner of Financial Institutions of Puerto Rico may be refinanced under § 1.936-10(c)(7)(i).

Comments were received to allow the use of more than one financial intermediary outside Puerto Rico. This suggestion was not adopted because of the concerns that multiple intermediaries outside Puerto Rico might unduly erode the savings from the use of section 936 funds and complicate the ability of the Commissioner and of the Commissioner of Financial Institutions of Puerto Rico to monitor the use of such funds for authorized purposes. However, the definition of a financial intermediary has been modified to include international organizations whose principal purpose is to foster economic development in developing countries.

A suggestion to allow the use of section 936 funds to fund equity investments was not adopted.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Christine Halphen and W. Edward Williams of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations.

List of Subjects

26 CFR 1.931-1 Through 1.936-10T

Guam, Income taxes, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.936-10T is removed.

Par. 3. New § 1.936-10 is added to read as follows:

§ 1.936-10 Qualified investments.

(a) *In general.* [Reserved]

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(b) *Qualified investments in Puerto Rico.* [Reserved]

(c) *Qualified investment in certain Caribbean Basin countries*—(1) *General rule.* An investment of qualified funds described in this section shall be treated as a qualified investment of funds for use in Puerto Rico if the funds are used for a qualified investment in a qualified Caribbean Basin country. A qualified investment in a qualified Caribbean Basin country is a loan of qualified funds by a qualified financial institution (described in paragraph (c)(3) of this section) directly to a qualified recipient (described in paragraph (c)(9) of this section) or indirectly through a single financial intermediary for investment in active business assets (as defined in paragraph (c)(4) of this section) in a qualified Caribbean Basin country (described in paragraph (c)(10)(ii) of this section) or for investment in development projects (as defined in paragraph (c)(5) of this section) in a qualified Caribbean Basin country, provided—

(i) The investment is authorized, prior to disbursement of the funds, by the Commissioner of Financial Institutions of Puerto Rico (or his delegate) pursuant to regulations issued by such Commissioner; and

(ii) The agreement, certification, and due diligency requirements under paragraphs (c) (11), (12), and (13) of this section are met.

A loan by a qualified financial institution shall not be disqualified merely because the loan transaction is processed by the central bank of issue of the country into which the loan is made pursuant to, and solely for purposes of complying with, the exchange control laws or regulations of such country. Further, a loan by a qualified financial institution shall not be disqualified merely because the loan is acquired by another person, provided such other person is also a qualified financial institution.

(2) *Termination of qualification*—(i) *In general.* An investment that, at any time after having met the requirements for a qualified investment in a qualified Caribbean Basin country under the terms of this paragraph (c), fails to meet any of the conditions enumerated in this paragraph (c) shall no longer be considered a qualified investment in a qualified Caribbean Basin country from the time of such failure, unless the investment satisfies the requirements for a timely cure described in paragraph (c)(2)(ii) of this section. Such a failure includes, but is not limited to, the occurrence of any of the following events:

(A) Active business assets cease to qualify as such;

(B) Proceeds from the investment are diverted for the financing of assets, projects, or operations that are not active business assets or development projects or are not the assets or the project of the qualified recipient;

(C) The holder of the qualified recipient's obligation is not a qualified financial institution;

(D) The qualified recipient's qualified business activity ceases to qualify as such; or

(E) The qualified Caribbean Basin country ceases to be a country described in paragraph (c)(10)(ii) of this section.

(ii) *Timely cure*—(A) *In general.* A timely cure shall be considered to have been made if the event or events that cause disqualification of the investment are corrected within a reasonable period of time. For purposes of this section, a reasonable period of time shall not exceed 60 days after such event or events come to the attention of the qualified recipient or the qualified financial institution or should have come to their attention by the exercise of reasonable diligence.

(B) *Due diligence requirements.* A time cure of a failure to comply with the due diligence requirements of paragraphs (c) (11), (12), and (13) of this section shall be considered to be made if the failure to comply is due to reasonable cause and, upon request of the Commissioner of Financial Institutions of Puerto Rico (or his delegate) or of the Assistant Commissioner (International) (or his authorized representative), the qualified financial institution (and its trustee or agent), if any), the financial intermediary, or the qualified recipient establishes to the satisfaction of the Commissioner of Financial Institutions of Puerto Rico (or his delegate) or of the Assistant Commissioner (International) (or his authorized representative) that it has exercised due diligence in ensuring that the funds were property disbursed to a qualified recipient and applied by or on behalf of such qualified recipient to uses that qualify the investment as an investment in qualified business assets or a development project under the provisions of this paragraph (c).

(iii) *Assumption of qualified recipient's obligation.* An investment shall not cease to qualify merely because the qualified recipient's obligation to the qualified financial institution (or to a financial intermediary, if any) is assumed by another person, provided such other person assumes the qualified recipient's agreement and certification requirements under paragraph (c)(11)(i) of this section and is either—

(A) A qualified recipient on the date of assumption, in which case such person shall be treated for purposes of this section as the original qualified recipient and shall be subject to all the requirements of this section for continued qualification of the loan as a qualified investment in a qualified Caribbean Basin country; or

(B) An international organization, the principal purpose of which is to foster economic development in developing countries and which is described in section 1 of the International Organizations Immunities Act (22 U.S.C. 288), if the assumption of the obligation is pursuant to a bona fide guarantee agreement.

(3) *Qualified financial institution*—(i) *General rule.* For purposes of section 936(d)(4)(A) and this section, a qualified financial institution includes only—

(A) A banking, financing, or similar business defined in § 1.864–4(c)(5)(i) that is an eligible institution described in paragraph (c)(3)(ii) of this section, but not including branches of such institution outside of Puerto Rico;

(B) A single-purpose entity described in paragraph (c)(3)(iii) of this section;

(C) The Government Development Bank for Puerto Rico;

(D) The Puerto Rico Economic Development Bank; and

(E) Such other entity as may be determined by the Commissioner by Revenue Procedure or other guidance published in the Internal Revenue Bulletin.

(ii) *Eligible institution.* An eligible institution means an institution—

(A) That is an entity organized under the laws of the Commonwealth of Puerto Rico or is the Puerto Rican branch of an entity organized under the laws of another jurisdiction, if such entity is engaged in a banking, financing, or similar business defined in § 1.864–4(c)(5)(i), and

(B) That is licensed as an eligible institution under Regulation No. 3562 (or any successor regulation) issued by the Commissioner of Financial Institutions of Puerto Rico (hereinafter "Puerto Rican Regulation No. 3562").

(iii) *Single-purpose entity.* A single-purpose entity is an entity that meets all of the following conditions:

(A) The entity is organized under the laws of the Commonwealth of Puerto Rico and is a corporation, a partnership or a trust, which conducts substantially all of its activities in Puerto Rico.

(B) The sole purpose of the entity is to use qualified funds from possessions corporations to make one or more qualified investments in a qualified Caribbean Basin country and the entity actually uses such funds only for such purpose.

(C) In the case of an entity that is a trust, one of the trustees is a qualified financial institution described in paragraph (c)(3)(i) of this section.

(D) The entity is licensed as an eligible institution under Puerto Rican Regulation No. 3562 (or any successor regulation).

(E) Any temporary investment by the entity for its own account of funds received from a possessions corporation, and the income from the investment thereof, and any temporary investment by the entity for its own account of principal and interest paid by a borrower to the entity, and the income from the investment thereof, are limited to investments in eligible activities, as described in section 6.2.4 of Puerto Rican Regulation No. 3562, as in effect on September 22, 1989.

(4) *Investments in active business assets*—(i) *In general.* For purposes of section 936(d)(4)(A)(i)(I) and this section and subject to the provisions of paragraph (c)(8) of this section, a loan qualifies as an investment in active business assets if—

(A) The amounts disbursed to a qualified recipient under the loan or bond issue are promptly applied (as defined in paragraphs (c) (6) and (7) of this section) by (or on behalf of) the qualified recipient solely for capital expenditures for the construction, rehabilitation (including demolition associated therewith), improvement, or upgrading of qualified assets described in paragraphs (c)(4)(ii) (A), (B), (E), and (F) of this section, for the acquisition of qualified assets described in paragraphs (c)(4)(ii) (B), (C), (E), and (F) of this section, for the expenditures described in paragraphs (c)(4)(ii) (D), (E), and (F) of this section, and, if applicable, for the financing of incidental expenditures described in paragraph (c)(4)(iii) of this section;

(B) The qualified recipient owns the assets for United States income tax purposes and uses them in a qualified business activity (as defined in paragraph (c)(4)(iv)); and

(C) The requirements of paragraph (c)(6) of this section (regarding temporary investments and time periods within which the funds must be invested) and of paragraph (c)(7) of this section (regarding the refinancing of existing funding and the time periods within which funding for investments must be secured) are satisfied.

(ii) *Definition of qualified assets.* For purposes of this paragraph (c), qualified assets mean—

(A) Real property;

(B) Tangible personal property (such as furniture, machinery, or equipment) that is not property described in section 1221(1) and that is either new property or property which at no time during the period specified in paragraph (c)(4)(v) of this section was used in a business activity in the qualified Caribbean Basin country in which the property is to be used;

(C) Rights to intangible property that is a patent, invention, formula, process, design, pattern, know-how, or similar item, or rights under a franchise agreement, provided that such rights—

(*1*) Were not at any time during the period specified in paragraph (c)(4)(v) of this section used in a business activity in the qualified Caribbean Basin country in which the rights are to be used,

(*2*) Are not rights the use of which gives rise, or would give rise if used, to United States source income, and

(*3*) Are not rights acquired by the qualified recipient from a person related (within the meaning of section 267(b), using "10 percent" instead of "50 percent" in the places where it appears) to the qualified recipient;

(D) Exploration and development expenditures incurred by a qualified recipient for the purpose of ascertaining the existence, location, extent or quality of any deposit of ore, oil, gas, or other mineral in a qualified Caribbean Basin country, as well as for purposes of developing such deposit (within the meaning of section 616 of the Code and the regulations thereunder);

(E) Living plants and animals (other than crops, plants, and animals that are acquired primarily to hold as inventory by the qualified recipient for resale in the ordinary course of trade or business) acquired in connection with a farming business (as defined in § 1.263–1T(c)(4)(i)), expenditures of a preparatory nature to prepare the land or area for farming (such as planting trees, drilling wells, clearing brush, leveling land, laying pipes, building roads, constructing tanks and reservoirs), expenditures for soil and water conservation of a type described in section 175(c)(1), and expenditures of a development nature incurred in connection with, and during, the preproductive period of property produced in a farming business (as defined in § 1.263–1T(c)(4)(ii));

(F) Other assets or expenditures that are not described in paragraphs (c)(4)(ii) (A) through (E) of this section and that the Commissioner may, by Revenue Procedure or other guidance published in the Internal Revenue Bulletin or by ruling issued to a qualified financial institution or qualified recipient upon its request, determine to be qualified assets.

(iii) *Incidental expenditures.* An amount in addition to the loan proceeds borrowed to make an investment in active business assets shall be considered an investment in active business assets if such amount is applied to finance expenditures that are incidental to making the investment in active business assets, provided such amount is disbursed at or about the same time the proceeds for making the investment in active business assets are disbursed. For purposes of this section, expenditures incidental to an investment in active business assets include only the following items:

(A) A reasonable amount of costs (other than the cost of credit enhancement or bond insurance premiums) associated with arranging the financing of an investment in active business assets, not to exceed 3.5 percent of the proceeds of the loan or bond issue.

(B) A reasonable amount of installation costs and other reasonable costs associated with placing an active business asset in service in the qualified business activity.

(C) An amount not in excess of 10 percent of the total amount of investment in qualified assets to finance the acquisition of inventory, and other working capital requirements, but if an investment is in connection with a manufacturing or farming business, the percentage limitation shall be 50 percent rather than 10 percent provided the excess over the 10 percent limitation is used to finance inventory property. For purposes of this paragraph (c), whether a business is a manufacturing business shall be determined under principles similar to those described in section 954(d)(1)(A) and the regulations thereunder; whether a business is a farming business shall be determined under § 1.263–1T(c)(4)(i).

(D) An amount not in excess of 5 percent of the sum of the investment in active business assets and the costs described in paragraphs (c)(4)(iii) (A), (B), and (C) of this section for the refinancing of an existing debt of the qualified recipient if such refinancing is incidental to an investment in active business assets. For this purpose, the replacement of an existing loan arrangement shall not be considered the refinancing of an existing indebtedness to the extent that the funds under such loan arrangement have not yet been disbursed to the qualified recipient.

(iv) *Qualified business activity.* A qualified business activity is a lawful industrial or commercial activity that is

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conducted as an active trade or business (under principles similar to those described in § 1.367(a)–2T(b) (2) and (3)) in a qualified Caribbean Basin country. A trade or business for purposes of this paragraph (c)(4)(iv) is any business activity meeting the principles of section 367 of the Code and described in Divisions A through I (excluding group 43 in Division E (relating to the United States Postal Service) and groups 84 (relating to museums, art galleries, and botanical and zoological gardens), 86 (relating to membership organizations), and 88 (relating to private households in Division I) of the 1987 Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, or in the comparable provisions of any successor Standard Industrial Classification Manual that is adopted by the Commissioner of Internal Revenue in a notice, regulation, or other document published in the Internal Revenue Cumulative Bulletin.

(v) *Period of use.* The period referred to in paragraphs (c)(4)(ii) (B) and (C) of this section shall be a five year period preceding the date of acquisition with the loan proceeds, if the date of acquisition is on or before May 13, 1991. If the date of acquisition is after May 13, 1991, then the period specified in this paragraph (c)(4)(v) shall be three years preceding the date of acquisition with the loan proceeds.

(5) *Investments in development projects*—(i) *In general.* Subject to the provisions of paragraph (c)(8) of this section, this paragraph (c)(5)(i) describes the requirements in order for a loan by a qualified financial institution to qualify as an investment in a development project for purposes of section 936(d)(4)(A)(i)(II) and for this section.

(A) The amounts disbursed under the loan or bond issue must be promptly applied (as defined in paragraphs (c) (6) and (7) of this section) by (or on behalf of) the qualified recipient solely for one or more investments described in paragraph (c)(4)(i)(A) of this section and in any land, buildings, or other property functionally related and subordinate to a facility described in paragraph (c)(5)(ii) of this section (determined under principles similar to those described in § 1.103–8(a)(3)), for use (under principles similar to those described in § 1.367(a)–2T(b)(5)) in connection with one or more activities described in paragraph (c)(5)(i)(B) of this section.

(B) The activities referred to in paragraph (c)(5)(i)(A) of this section are—

(*1*) A development project described in paragraph (c)(5)(ii) of this section in a qualified Caribbean Basin country; or

(*2*) The performance in a qualified Caribbean Basin country of a non-commercial governmental function described in paragraph (c)(5)(iv) of this section;

(C) The qualified recipient must own the assets for United States income tax purposes;

(D) The requirements of paragraph (c)(6) of this section (regarding temporary investments and time periods within which the funds must be invested) and of paragraph (c)(7) of this section (regarding the refinancing of existing funding and time periods within which funding for investments must be secured) must be satisfied.

(ii) *Development project.* For purposes of this paragraph (c), a development project is one or more facilities in a qualified Caribbean Basin country that support economic development in that country and that satisfy the public use requirement of paragraph (c)(5)(iii) of this section. Examples of facilities that may meet the public use requirement include, but are not limited to—

(A) Transportation systems and equipment, including sea, surface, and air, such as roads, railways, air terminals, runways, harbor facilities, and ships and aircraft;

(B) Communications facilities;

(C) Training and education facilities related to qualified business activities;

(D) Industrial parks, including necessary support facilities such as roads; transmission lines for water, gas, electricity, and sewage; docks; plant sites preparations; power generation; sewage disposal; and water treatment;

(E) Sports facilities;

(F) Convention or trade show facilities;

(G) Sewage, solid waste, water, and electric facilities;

(H) Housing projects pursuant to a government program designed to provide affordable housing to low or moderate income families, based upon local standards; and

(I) Hydroelectric generating facilities.

(iii) *Public use requirement.* To satisfy the public use requirement in paragraph (c)(5)(ii) of this section, a facility must serve or be available on a regular basis for general public use, as contrasted with similar types of facilities which are constructed for the exclusive use of a limited number of persons as determined under principles similar to those described in § 1.103–8(a)(2).

(iv) *Non-commercial governmental functions.* For purposes of paragraph (c)(5)(i)(B) of this section, the term "non-commercial governmental functions" refers to activities that, under U.S. standards, are not customarily attributable to or carried on by private enterprises for profit and are performed for the general public with respect to the common welfare or which relate to the administration of some phase of government. For example, the operation of libraries, toll bridges, or local transportation services, and activities substantially equivalent to those carried out by the Federal Aviation Authority, Interstate Commerce Commission, or United States Postal Service, are considered non-commercial governmental functions. For purposes of this section, non-commercial government functions shall not include military activities.

(v) [Reserved]

(6) *Prompt application of borrowed proceeds.* This paragraph (c)(6) provides rules for determining whether amounts disbursed to a qualified recipient by a qualified financial institution (or a financial intermediary) shall be considered to have been promptly applied for the purpose of paragraphs (c)(4)(i)(A) and (c)(5)(i)(A) of this section.

(i) *In general.* Except as otherwise provided in paragraphs (c)(6)(ii) and (c)(7)(iii)(B) of this section, amounts disbursed to a qualified recipient by a qualified financial institution (or a financial intermediary) shall be considered to have been promptly applied for the purpose of paragraphs (c)(4)(i)(A) and (c)(5)(i)(A) of this section if the amounts are fully expended for any of the purposes described in paragraphs (c)(4)(i)(A) or (c)(5)(i)(A) of this section no later than six months from the date of such disbursement and any temporary investment of such funds by the qualified recipient during such period complies with the rules of paragraph (c)(6)(iii)(A) of this section. Where the amounts disbursed are bond proceeds described in paragraph (c)(6)(iv)(A) of this section, the six-month period shall begin on the date of issuance of the bonds. In the event the qualified financial institution (or financial intermediary) invests any part of the bond proceeds before disbursement of those proceeds to the qualified recipient, all earnings from any such investment shall be paid to the qualified recipient or applied for its benefit.

(ii) *Special rules for long term projects financed out of bond proceeds.* In the case of a long term project described in paragraph (c)(6)(iv)(B) of this section that is financed out of bond proceeds, the six-month period described in paragraph (c)(6)(i) of this section shall be extended with respect to the amount of bond proceeds used to fund the project for such reasonable period of time as shall be necessary until completion of the project or until beginning of production (in the case of a farming business), but, in any event, not to exceed three years from the date of issuance of the bonds, and only if—

(A) The project that is financed out of bond proceeds was identified as of the date of issue;

(B) A construction and expenditure plan certified by an independent expert (such as an engineer, an architect, or a farming expert) is filed with, and approved by, the Commissioner of Financial Institutions of Puerto Rico (or his delegate) prior to the date of issue, which makes a reasonable estimate, as of the date of filing of the plan, of the amounts and uses of the bond proceeds and the time of completion or production, and includes a schedule of progress payments until such time;

(C) The terms of the construction and expenditure plan are disclosed in the public offering memorandum, private placement memorandum, or similar document prepared for information or disclosure purposes in relation to the issuance of bonds; and

(D) Any temporary investment of the bond proceeds complies with the rules of paragraph (c)(6)(iii)(A) and (B) of this section.

(iii) *Temporary investments*—(A) *During six-month period.* During the six-month period described in paragraph (c)(6)(i) of this section, during the first six months of the period described in paragraph (c)(6)(ii) of this section, and during the 30-day period described in paragraph (c)(7)(iii)(A) of this section, loan proceeds disbursed to a qualified recipient, bond proceeds, and income from the investment thereof, may be held in unrestricted yield investments, provided such yield reflects normal market yield for such type of investments and provided the income from such investments, if any, is or would be sourced either in Puerto Rico or in a country in which the investment in active business assets or development project is to be made.

(B) *During other periods.* During any other period, any temporary investment of bond proceeds, and of income from such investments, shall be limited to investments in eligible activities. For purposes of this paragraph (c)(6)(iii)(B), the term "eligible activities" shall mean those investments described in section 6.2.4 of Puerto Rican Regulation No. 3582, as in effect on September 22, 1989.

(iv) *Definitions*—(A) *Bond proceeds.* For purposes of this paragraph (c), bond proceeds shall mean the proceeds from the issuance of obligations by way of a public offering or a private placement by a qualified financial institution for investment in active business assets or a development project that has been identified at the time of issue and is described in a public offering memorandum, private placement memorandum, or similar document prepared for information or disclosure purposes in relation to the issuance of the bonds.

(B) *Long term project.* For purposes of this section, the term long term project means—

(*1*) A project, whether or not under a contract, for the construction, rehabilitation, improvement, upgrading, or production of qualified assets, or for expenditures, described in paragraph (c)(4)(ii) of this section (other than paragraph (c)(4)(ii)(C) of this section), which is reasonably expected to require more than 12 months to complete; or

(*2*) The production of property in a farming business referred to in paragraph (c)(4)(ii)(E) of this section, which is reasonably expected to require a preproductive period in excess of 12 months.

(7) *Financing of previously incurred costs.* Loan or bond proceeds which are disbursed after a qualified recipient has paid or incurred part or all of the costs of acquiring active business assets or investing in a development project shall be considered to have been applied for such purposes only as provided in this paragraph (c)(7).

(i) *Replacement of temporary non-section 936 financing of a qualified investment.* This paragraph (c)(7)(i) prescribes the maximum time limits within which temporary non-section 936 financing of qualified investments may be replaced with section 936 funds without being considered a prohibited refinancing transaction. This paragraph (c)(7)(i) applies to the refinancing of costs incurred with respect to investments that, at the time the costs were first incurred, were either qualified investments in a qualified Caribbean Basin country or were investments by a qualified recipient in active business assets or a development project in a qualified Caribbean Basin country. This paragraph (c)(7)(i) applies also to the refinancing of costs incurred with respect to any other investment. However, in the latter case, the amount of costs that may be refinanced with section 936 funds is limited to the amount of costs that are incurred with respect to the investment after the investment becomes a qualified investment in a qualified Caribbean Basin country. For purposes of this paragraph (c)(7)(i), the time when costs are incurred shall be determined under principles similar to those applicable under section 461(h) dealing with the economic performance test for the accrual of deductible liabilities. This paragraph (c)(7)(i) applies only to the situations described in this paragraph (c)(7)(i).

(A) In the case of an investment in active business assets or a development project, a loan shall be a qualified investment for purposes of this paragraph (c) if the loan proceeds are disbursed, or the obligations are issued, no later than six months after the date on which the qualified recipient takes possession of the asset or the facility or, if earlier, places the asset or the facility in service. However, in the case of a small project described in paragraph (c)(6)(v) of this section, the six-month period shall be one year.

(B) In the case of an investment in active business assets or a development project that is part of a long term project described in paragraph (c)(6)(iv)(B) of this section, a loan shall also be a qualified investment for purposes of this paragraph (c) if the loan proceeds are disbursed, or the obligations are issued, no later than six months after completion of the project or, in the case of a farming business, after the beginning of production, and in any event, no later than three years after the date on which the first payment is made toward the eligible costs of the project. The amount of the qualified investment may not exceed the sum of—

(*1*) The eligible costs relating to investments described in paragraph (c)(4)(i)(A) in the case of an investment in active business assets, or the eligible costs relating to investments described in paragraph (c)(5)(i) of this section in the case of a development project, but only to the extent of the costs that are incurred after the date described in paragraph (c)(7)(i)(D) of this section, and

(*2*) the portion of unpaid interest that would be required to be capitalized under U.S. tax rules and that accrued on prior temporary non-section 936 financing from the date described in paragraph (c)(7)(i)(D) of this section through the date the section 936 loan proceeds are disbursed or the section 936 obligations are issued.

(C) In order to qualify for the special rules of this paragraph (c)(7)(i), a plan must be filed with the Commissioner of Financial Institutions of Puerto Rico (or his delegate) stating the qualified recipient's intention to refinance the costs of the long term project with section funds.

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(D) The date referred to in paragraph (c)(7)(i)(B) (*1*) and (*2*) of this section is a date that is the later of—

(*1*) the date the plan described in paragraph (c)(7)(i)(C) is filed, or

(*2*) the date the investment becomes a qualified investment by a qualified recipient in active business assets or a development project in a qualified Caribbean Basin country.

(ii) *Refinancing of section 936 financing.* A section 936 loan or bond issue used to finance a qualified investment described in paragraph (c)(1) of this section may be refinanced with section 936 funds through a new loan or bond issue to the extent of the remaining principal balance on such existing qualified financing, increased by the amount of unpaid interest accrued through the date the new loan proceeds are disbursed or the new obligations are issued and that would be required to be capitalized under U.S. tax rules.

(iii) *Prompt application of borrowed proceeds*—(A) *In general.* In the case of a loan or bond issue described in paragraphs (c)(7) (i) or (ii) of this section, the rules of paragraph (c)(6) of this section shall apply but the six-month period described in paragraph (c)(6)(i) of this section shall be limited to 30 days from the date of disbursement of loan proceeds to the qualified recipient or from the date of issuance in the case of a bond issue.

(B) *Special rules for long term projects financed out of bond proceeds.* In the case of a long term project described in paragraph (c)(6)(iv)(B) of this section that is financed out of bond proceeds, the 30-day period described in paragraph (c)(7)(iii)(A) of this section shall be extended with respect to the amount of bond proceeds used for the permanent financing of the long term project for such reasonable period of time as shall be necessary until completion of the project or beginning of production (in the case of a farming business), but, in any event, not to exceed three years from the date of issuance of the bonds. For purposes of this paragraph (c)(7)(iii)(B), the period of time shall be considered reasonable only if—

(*1*) A construction and expenditure plan certified by an independent expert (such as an engineer, an architect, or a farming expert) is filed with, and approved by, the Commissioner of Financial Institutions of Puerto Rico (or his delegate) prior to the date of issue, which makes a reasonable estimate, as of the date of issue, of the amounts and uses of the bond proceeds and the time of completion or production, and includes a schedule of progress payments until such time; and

(*2*) The terms of the construction and expenditure plan are disclosed in the public offering memorandum, private placement memorandum, or similar document prepared for information or disclosure purposes in relation to the bond issue.

(8) *Miscellaneous operating rules*—(i) *Sale and leaseback.* An asset that is acquired and leased back to the person from whom acquired does not constitute an investment in an active business asset or an investment in a development project.

(ii) *Use of asset in qualified business activity.* For purposes of paragraph (c)(4)(i)(B), an asset shall be considered used or held for use in a qualified business activity if it is used or held for use in such activity under principles similar to those described in § 1.367(a)-2T(b)(5), or a successor provision.

(iii) *Definition of capital expenditures.* For purposes of this paragraph (c), capital expenditures mean those expenditures described in section 263(a) of the Code (without regard to paragraphs (A) through (G) of section 263(a)(1)), and those costs required to be capitalized under section 263A with respect to property described in section 263A(b)(1), relating to self-constructed assets.

(iv) *Loans through certain financial intermediaries.* A loan by a qualified financial institution shall not be disqualified from being an investment in active business assets or in a development project merely because the proceeds are first lent to a financial intermediary (as defined in paragraph (c)(8)(iv)(H) of this section) which, in turn, on-lends the proceeds directly to a qualified recipient, provided the requirements of this paragraph (c)(8)(iv) are satisfied.

(A) The loan to the qualified recipient must satisfy the requirements of paragraph (c)(4)(i) of this section in the case of an investment in active business assets, or of paragraph (c)(5)(i) of this section in the case of an investment in a development project.

(B) The qualified recipient and the active business assets or development project in which the proceeds are to be invested must be identified prior to disbursement of any part of the proceeds by the qualified financial institution to the financial intermediary.

(C) The effective interest rate charged by the qualified financial institution to the financial intermediary must not exceed the average interest rate paid by the qualified financial institution with respect to its eligible funds, increased by such number of basis points as is required to provide reasonable compensation to the qualified financial institution for services performed and risks assumed with respect to the loan to the financial intermediary that are not ordinarily required to be performed or assumed with respect to a deposit, loan, repurchase agreement or other transfer of eligible funds with another qualified financial institution. The average interest rate shall be the average rate, determined on a daily basis, paid by the qualified financial institution on its eligible funds over the most recent quarter preceding the date on which the rate on the loan to the financial intermediary is committed.

(D) The effective interest rate charged by the financial intermediary to the qualified recipient must not exceed the effective interest rate charged to the financial intermediary by the qualified financial institution, increased by such number of basis points as is required to provide reasonable compensation to the financial intermediary for services performed and risks assumed with respect to the loan to the qualified recipient.

(E) The financial intermediary must borrow from the qualified financial institution under substantially the same terms as it lends to the qualified recipient. In particular, both loans must have disbursement terms, repayment schedules and maturity dates for interest and principal amounts such that the financial intermediary does not retain for more than 48 hours any of the funds disbursed by the qualified financial institution nor any of the funds paid by the qualified recipient in repayment of principal or interest on the loan.

(F) The financial institution and the financial intermediary must agree to comply with the due diligence requirements described in paragraphs (c) (11), (12), and (13) of this section;

(G) The time periods and temporary investments rules in paragraphs (c) (6) and (7) of this section must be complied with; and

(H) For purposes of this paragraph (c), the financial intermediary must be—

(*1*) An active trade or business which a person maintains in a qualified Caribbean Basin country and which consists of a banking, financing or similar business as defined in § 1.864-4(c)(5)(i) (other than a central bank of issue); or

(*2*) A public international organization, the principal purpose of which is to foster economic development in developing countries and which is described in section 1 of the International Organizations Immunities Act (22 U.S.C. § 288).

For purposes of paragraphs (c)(8)(iv) (C) and (D) of this section, the determination of whether compensation is reasonable shall be made in relation to normal commercial practices for comparable transactions carrying a similar degree of commercial, currency and political risk. Reasonable credit enhancement fees and other reasonable fees and amounts charged to the financial intermediary or the qualified recipient with respect to the loan transaction in addition to interest shall be added to the interest cost in determining the effective interest rate.

(v) *Small project.* For purposes of this paragraph (c), a small project shall be a project (including the acquisition of an asset) for which the total amount of section 936 funds used for its financing does not exceed $1,000,000 in the aggregate, or such other amount as the Commissioner may publish, from time to time, in the Internal Revenue Bulletin.

(9) *Qualified recipient.* For purposes of this section, a qualified recipient is any person described in paragraphs (c)(9) (i) or (ii) of this section. The term "person" means a person described in section 7701(a)(1) or a government (within the meaning of § 1.892-2T(a)(1)) of a qualified Caribbean Basin country.

(i) In the case of an investment described in paragraph (c)(4) of this section (relating to investments in active business assets), a qualified recipient is a person that carries on a qualified business activity in a qualified Caribbean Basin country, and complies with the agreement and certification requirements described in paragraph (c)(11)(i) of this section at all times during the period in which the investment remains outstanding.

(ii) In the case of an investment described in pargraph (c)(5) of this section (relating to investments in development projects), a qualified recipient is the borrower (including a person empowered by the borrower to authorize expenditures for the investment in the development project) that has authority to comply, and complies, with the agreement and certification requirements described in paragraph (c)(11)(i) of this section at all times during the period in which the investment remains outstanding.

(10) *Investments in a qualified Caribbean Basin country*—(i) *Rules for determining the place of an investment.* The rules of this paragraph (c)(10)(i) shall apply to determine the extent to which an investment in an active business asset or a development project will be considered made in qualified Caribbean Basin Country.

(A) An investment in real property is considered made in the qualified Caribbean Basin country in which the real property is located.

(B) Except as otherwise provided in this paragraph (c)(10)(i)(B), an investment in tangible personal property is considered made in a qualified Caribbean Basin Country so long as the tangible personal property is predominantly used in that country. Whether property is used predominantly in a qualified Caribbean Basin country shall be determined under principles similar to those described in § 1.48-1(g)(1), (g)(2)(ii), (g)(2)(iv), (g)(2)(vi), (g)(2)(viii), and (g)(2)(x) (relating to investment tax credits for property used outside the United States) as in effect on December 31, 1985. A vessel, container, or aircraft shall be considered for use predominantly in a qualified Caribbean Basin country in any year if it is used for transport to and from such country with some degree of frequency during that year and at least 30 percent of the income from the use of such vessel, container or aircraft for that year is sourced in such country under principles similar to those described in section 863(c) (1) and (2) (relating to source rules for certain transportation income). Cables and pipelines which are premanently installed as part of a communication or transportation system between a qualified Caribbean Basin country and another country or among several countries which include a qualified Caribbean Basin country shall be considered used in a qualified Caribbean Basin country to the extent of 50 percent of the portion of the facility that directly links the qualified country to another country or to a hub, unless it is established by notice or other guidance published in the Internal Revenue Bulletin or by ruling issued to a qualified institution or qualified recipient upon request that it is appropriate to attribute a greater portion of the cost of the facility to the qualified Caribbean Basin country.

(C) An investment in rights to intangible property is considered made in a qualified Caribbean Basin country to the extent such rights are used in that country. Where rights to intangible property are used shall be determined under principles similar to those described in § 1.954-2T(b)(3)(vii) or a successor provision.

(ii) *Qualified Caribbean Basin Country.* For purposes of this section, the term "qualified Caribbean Basin country" means any beneficiary country (within the meaning of section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act, Public Law 98-67 (Aug. 5, 1983), 97 Stat. 384, 19 U.S.C. 2702(a)(1)(A)), which meets the requirements of section 274(h)(6)(A) (i) and (ii) and the U.S. Virgin Islands, and includes the territorial waters and continental shelf thereof.

(11) *Agreements and certifications by qualified recipients and financial intermediaries*—(i) *In general.* In order for an investment to be considered a qualified investment under section 936(d)(4) and paragraph (c)(1) of this section, a qualified recipient must certify to the qualified financial institution (or to the financial intermediary, if the loan is made through a financial intermediary) on the date of closing of the loan agreement and on each anniversary date thereof, that it is a qualified recipient described in paragraph (c)(9) of this section. In addition, the qualified recipient must agree in the loan agreement with the qualified financial institution (or with the financial intermediary, if the loan is made through a financial intermediary)—

(A) To use the funds at all times during the period the loan is outstanding solely for the purposes and in the manner described in paragraph (c)(4) of this section (regarding investment in active business assets) or in paragraph (c)(5) of this section (regarding investment in development projects);

(B) To comply with the requirements of paragraph (c)(6) of this section (regarding temporary investments and time periods within which the funds must be invested) and paragraph (c)(7) of this section (regarding the refinancing of existing funding and the time periods within which funding for investments must be secured);

(C) To notify the Assistant Commissioner (International), the qualified financial institution (or the financial intermediary, if the loan is made through a financial intermediary), and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) pursuant to paragraph (c)(14) of this section if it no longer is a qualified recipient or if, for any other reason, the investment has ceased to qualify as a qualified investment described in paragraph (c)(1) of this section, promptly upon the occurrence of such disqualifying event; and

(D) To permit examination by the office of the Assistant Commissioner (International) (or by the office of any District Director authorized by the Assistant Commissioner (International)) and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) of all necessary books and records that are sufficient to verify that the funds were used for investments in active business assets or development

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projects in conformity with the terms of the loan agreement.

(ii) *Certification by a financial intermediary.* In the case of a loan by a qualified financial institution to a financial intermediary, the financial intermediary must certify to the qualified financial institution (using the procedures described in paragraph (c)(11)(i) of this section) that it is a financial intermediary described in paragraph (c)(8)(iv)(H) of this section, and must furnish to the qualified financial institution a copy of the qualified recipient's certification described in paragraph (c)(11)(i) of this section and of its loan agreement with the qualified recipient. In addition, the financial intermediary must agree in the loan agreement with the qualified financial institution:

(A) To comply with the requirements of paragraph (c)(8)(iv) of this section; and

(B) To permit examination by the office of the Assistant Commissioner (International) (or by the office of any District Director authorized by the Assistant Commissioner (International)) and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) of all its necessary books and records that are sufficient to verify that the funds were used in conformity with the terms of the loan agreements.

(12) *Certification requirements.* In order for an investment to be considered a qualified investment under section 936(d)(4), section 936(d)(4)(C)(i) requires that both the person in whose trade or business such investment is made and the financial institution certify to the Secretary of the Treasury and the Commissioner of Financial Institutions of Puerto Rico that the proceeds of the loan will be promptly used to acquire active business assets or to make other authorized expenditures. This certification requirement is satisfied as to the qualified financial institution, the financial intermediary (if any), and the qualified recipient if the qualified financial institution submits a certificate to both the Assistant Commissioner (International) and to the Commissioner of Financial Institutions of Puerto Rico (or his delegate) pursuant to paragraph (c)(14) of this section upon authorization of the investment by the Commissioner of Financial Institutions and, in any event, prior to the first disbursement of the loan proceeds to the qualified recipient or to the financial intermediary (if any), in which the qualified financial institution—

(i) Represents that, as of the date of the certification, the qualified recipient and the financial intermediary (if any) have complied with the requirements described in paragraph (c)(11) of this section;

(ii) Describes the important terms of the loan to the financial intermediary (if any) and to the qualified recipient, including the amount of the loan, the nature of the investment, the basis for its qualification as an investment in active business assets or a development project under this section, the identity of the financial intermediary (if any) and of the qualified recipient, the qualified Caribbean Basin country involved, and the nature of the collateral or other security used, including any guarantee;

(iii) Agrees to permit examination by the Assistant Commissioner (International) (or by the office of any District Director authorized by the Assistant Commissioner (International)) and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) of all its necessary books and records that are sufficient to verify that the funds were used for investments in active business assets or development projects in conformity with the terms of the loan agreement or agreements with the financial intermediary (if any) and with the qualified recipient; and

(iv) In the case of a single-purpose entity that is a qualified financial institution, discloses the name and address of the entity's trustee or agent, if any, that assists the qualified financial institution in the performance of its due diligence requirement under paragraph (c) of this section, and represents that the trustee or agent has agreed with the qualified financial institution to permit examination by the Assistant Commissioner (International) (or by the office of any District Director authorized by the Assistant Commissioner (International)) and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) of all necessary books and records of such trustee or agent that are sufficient to verify that the funds were used for investments in active business assets or development projects in conformity with the terms of the loan agreement or agreements with the financial intermediary (if any) and with the qualified recipient.

(13) *Continuing due diligence requirements.* In order to maintain the qualification for an investment under paragraph (c)(1) of this section, the continuing due diligence requirements described in this paragraph (c)(13) must be satisfied.

(i) *Requirements of qualified recipient.* A qualified recipient must—

(A) Submit annually to the qualified financial institution or to the financial intermediary from which its qualified funds were obtained a copy of its most recent annual financial statement accompanied by an opinion of an independent accountant familiar with the financials of the qualified recipient disclosing the amount of the loan, the current outstanding balance of the loan, describing the assets financed with such loan and the qualified business activity in which such assets are used or the development project for which the loan is used, and stating that there are no reasons to doubt that the loan proceeds have been properly used and continue to be properly used, and

(B) Act in a manner consistent with its representations and agreements described in paragraph (c)(11) of this section.

(ii) *Requirements of qualified financial institutions.* Except as otherwise provided in paragraph (c)(13)(iii) of this section, a qualified financial institution described in paragraph (c)(3) of this section must maintain in its records and have available for inspection the documentation described in paragraph (c)(13)(ii) (A) or (B) of this section. In addition, the qualified financial institution is required to notify the Assistant Commissioner (International) and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) pursuant to paragraph (c)(14) of this section upon becoming aware that a loan has ceased to be an investment in active business assets or a development project under this section. For purposes of this paragraph (c)(13)(ii), multiple loans for investment in a single qualified business activity or development project will be aggregated in determining what due diligence requirements apply.

(A) In the case of a small project described in paragraph (c)(8)(v) of this section, the following documents must be maintained and available for inspection:

(*1*) The loan application or other similar document;

(*2*) The financial statements of the qualified recipient filed as part of the loan application;

(*3*) The statement required by section 6.4.3(a)(iii) of Puerto Rican Regulation No. 3582 or any successor thereof, signed by the qualified recipient (or its duly authorized representative), acknowledging the receipt of the loan proceeds, describing the assets financed with such loan and the business activity in which such assets are to be used or the development project for which the funds will be utilized, the collateral to be provided for the transaction including any guarantee, and the basis for its qualification as a qualified recipient;

(*4*) The loan documents; and

(*5*) In the case of a qualified financial institution that is a single-purpose entity, a copy of the agreement with the entity's trustee or agent, if any, described in paragraph (c)(12)(iv) of this section.

(B) In the case of a disbursement concerning a project that is not a small project described in paragraph (c)(8)(v) of this section, the following documents must be maintained and available for inspection, in addition to the documents required by paragraph (c)(13)(ii)(A) of this section:

(*1*) A memorandum of credit prepared by an officer of the qualified financial institution (or, in the case of a single purpose entity, an agent of the entity or a trustee for the entity, if any) and signed by the officer of the qualified financial institution, containing the details of the investigation and review that the qualified financial institution, or its trustee or agent, if any, conducted in order to evaluate whether the investment is qualified under paragraph (c)(1) of this section and the opinion of the officer of the qualified financial institution, or the opinion of an officer of the agent of, or of the trustee for, the qualified financial institution, if any, that there is no reasonable ground for belief that the qualified funds will be diverted to a use that is not permitted under the provisions of this section; in making this investigation and review, factors that must be utilized are ones similar to those listed in Puerto Rico Regulation No. 3582, section 6.4.2;

(*2*) The annual financial statement of the qualified recipient; and

(*3*) The written report of an officer of the qualified financial institution, or of an officer of an agent of, or of the trustee for, the qualified financial institution, if any, documenting discussions, both before and after the disbursement of the loan proceeds, with each recipient's accounting, financial and executive personnel with respect to the proposed and actual use of the loan proceeds and his analysis of the annual financial statements of the qualified recipient including an analysis of the statement of sources and uses of funds. After the loan disbursement, such discussions and review shall occur annually during the term of the loan. Such report shall include the conclusion that in such officer's opinion there is no reasonable ground for belief that the qualified recipient is improperly utilizing the funds.

(iii) *Requirements in the case of a financial intermediary.* Where a qualified financial institution lends funds to a financial intermediary which are on-lent to a qualified recipient—

(A) The obligation to maintain the documentation described in paragraph (c)(13)(ii) (A) or (B) of this section shall apply only to the financial intermediary and not to the qualified financial institution and the provisions of paragraph (c)(13)(ii) (A) or (B) of this section shall be read so as to impose on the financial intermediary any obligation imposed on the qualified financial institution.

(B) The financial intermediary shall forward annually to the qualified financial institution a copy of the documentation it is required to maintain in its records pursuant to the provisions of this paragraph (c)(13)(iii) and shall notify the Assistant Commissioner (International), the Commissioner of Financial Institutions of Puerto Rico (or his delegate) and the qualified financial institution pursuant to paragraph (c)(14) of this section upon becoming aware that a loan has ceased to be an investment in active business assets or a development project under this section. The qualified financial institution must maintain in its records and have available for inspection the documentation furnished by the financial intermediary pursuant to this paragraph (c)(13)(iii)(B).

(C) The qualified financial institution shall cause one of its officers (or one of the officers of its agent or trustee, if any) to prepare a written report documenting his analysis of the documentation furnished by the financial intermediary purusant to paragraph (c)(13)(iii)(B) of this section, his discussions, both before and after the disbursement of the loan proceeds, with the financial intermediary's accounting, financial and executive personnel with respect to the proposed and actual use of the loan proceeds, and his analysis of the annual financial statements of the qualified recipient including an analysis of the statement of sources and uses of funds. After the loan disbursement, such discussions and review shall occur annually during the term of the loan. Such report shall include the conclusion that in such officer's opinion there is no reasonable ground for belief that the qualified recipient is improperly utilizing the funds.

(14) *Procedures for notices and certifications.* Notices and certifications to the Assistant Commissioner (International) required under paragraphs (c) (11), (12) and (13) of this section shall be addressed to the attention of the Assistant Commissioner (International), Office of Taxpayer Service and Compliance, IN:C, 950 L'Enfant Plaza South, SW., Washington, DC 20024. Notices and certifications to the Commissioner of Financial Institutions of Puerto Rico required under paragraphs (c) (11), (12), and (13) of this section shall be addressed as follows: Commissioner of Financial Institutions, GPO Box 70324, San Juan, Puerto Rico 00936.

(15) *Effective date.* This paragraph (c) is effective May 13, 1991. It is applicable to investments by a possessions corporation in a financial institution that are used by a financial institution for investments in accordance with a specific authorization granted by the Commissioner of Financial Institutions of Puerto Rico (or his delegate) after September 22, 1989. However, the taxpayer may choose to apply § 1.936-10T(c) for periods before June 12, 1991.

OMB Control Numbers Under the Paperwork Reduction Act

Par. 4. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101(c) [Amended]

Par. 5. Section 602.101(c) is amended by removing "1.936-10T(c) . . . 1545-1138" and inserting in its place in the table:

"1.936-10(c) ..... 1545-1138."

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Dated: April 15, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-11208 Filed 5-10-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 602

[T.D. 8348]

RIN 1545-AB73

Limitations on Percentage Depletion in the Case of Oil and Gas Wells

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to limitations on percentage depletion in the case of oil and gas wells. Changes to the applicable tax law were made by the Tax Reduction Act of 1975 and the Tax Reform Act of 1976. These regulations clarify the circumstances under which percentage depletion is available in the case of oil and gas wells.

EFFECTIVE DATE: The amendments are effective on January 1, 1975 and apply to oil and gas which is produced after December 31, 1974, and to which gross income from the property is attributable after such year.

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FOR FURTHER INFORMATION CONTACT: Lisa A. Fagan, 202-566-4921 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504 (h)) under control number 1545-0019. The average burden associated with the collection of information in this final rule is reflected on forms 1065, 1041, and 706.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Officer for the Internal Revenue Service, Office of Management and Budget, Washington, DC 20503.

Background

On May 13, 1977, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 612, 613, 613A, 702, 703, and 705 of the Internal Revenue Code of 1954. These amendments were proposed to conform the regulations to section 501 of the Tax Reduction Act of 1975 (89 Stat. 47) and sections 1901 (a)(89) and 2115 of the Tax Reform Act of 1976 (90 Stat. 1779, 1907). A public hearing was held on August 31, 1977. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

In General

With certain exceptions, the Tax Reduction Act of 1975 repealed percentage depletion for oil and gas produced and sold after December 31, 1974. In general, exemption from the repeal of percentage depletion is provided for certain production of independent producers and royalty owners, sometimes called the small producer exemption. Initially, an exemption of 2,000 barrels of average daily production for oil (or up to 12,000,000 cubic feet for natural gas if the taxpayer so elects) was provided. The amount was reduced by 200 barrels a year for 5 years from 1976 through 1980, when the permanent exemption of 1,000 barrels per day was reached. The depletion rate for oil and gas covered under this exemption was also phased down gradually from 22 percent to 15 percent. In 1981, the rate was 20 percent; in 1982, 18 percent; in 1983, 16 percent; and in 1984 and thereafter the rate is reduced to a permanent level of 15 percent. In the case of secondary or tertiary production prior to 1984, the small producer exemption permits a taxpayer to take percentage depletion at a 22 percent rate on the exempt quantity.

Section 613A provides for certain limitations on the application of the small producer exemption. The deduction resulting from the small producer exemption may not exceed 65 percent of the taxpayer's taxable income from all sources (computed without regard to depletion, net operating loss carrybacks and capital loss carrybacks). Moreover, the exemption relating to average daily production is generally not available to a transferee of any interest in a proven oil or gas property transferred after December 31, 1974. The small producer exemption does not apply to a taxpayer who directly or through a related person sells oil or natural gas, or any product derived from oil or natural gas, through a retail outlet or to certain persons. If the taxpayer or a related person engages in the refining of crude oil and has refinery runs that exceed 50,000 barrels on any day during the taxable year, the small producer exemption is also not available to such taxpayer.

Businesses Under Common Control

A comment on the notice of proposed rulemaking suggested that § 1.613A-3(g) (redesignated as § 1.613A-3(h)) be clarified to indicate which subparagraph is applicable in a case where a group of corporations meets both the definitions of "component members of a controlled group" in subparagraph (1) and "businesses under common control" in subparagraph (2). The regulations have been revised to provide that the rules relating to aggregation of business entities under common control in subparagraph (2) are inapplicable to component members of a controlled group of corporations that are subject to subparagraph (1).

Subparagraph (2) of § 1.613A-3(h) (as redesignated) has also been revised to clarify that in determining whether the requisite ownership interest is held an interest owned by or for a corporation, partnership, trust, or estate is treated as owned directly both by itself and proportionately by its shareholders, partners, or beneficiaries, as the case may be.

An additional example has been provided in redesignated § 1.613A-3(h)(5) to illustrate the inapplicability of the requirement to allocate the tentative quantity among business entities under common control to a retailer entity.

Bonus and Advanced Royalty

The proposed regulations provided that a bonus payment does not qualify for percentage depletion and that advanced royalties, to the extent that actual production during the taxable year is insufficient to earn such royalties, do not qualify for percentage depletion. However, the Supreme Court, in *Commissioner* v. *Engle*, 464 U.S. 206 (1984), held that the adoption of section 613A by the Congress was not intended to disallow percentage depletion on a bonus or advanced royalty payment even when there was no actual production in the year of receipt. In light of the *Engle* case, the final regulations provide rules consistent with Announcement 84-89 (May 16, 1984) allowing percentage depletion for lease bonuses and advanced royalties received or accrued before August 17, 1986.

Sixty-Five Percent Limitation

Several comments indicated that it is improper for the regulations under § 1.613A-4(a) to require a reduction of the taxpayer's taxable income upon which the 65 percent limitation is computed by cost depletion on a property where cost depletion exceeds percentage depletion (before application of any of the limitations in section 613A) and asked that this provision be deleted. This suggestion was not adopted. Section 613A(d)(1) provides that only depletion on production from an oil or gas property which is subject to the provisions of section 613A(c) is to be disregarded. Since section 613A(c) is inapplicable to an oil or gas property the production of which is entitled to cost depletion, the taxpayer's taxable income must be reduced by the cost depletion deduction.

Retailer Exclusion

It was suggested that example (1) in § 1.613A-4(b)(2) be revised to provide that the retailer exclusion is inapplicable to both A and Corporation M if neither A nor Corporation M has gross receipts from retail sales in excess of $5 million even though their aggregate gross receipts exceed $5 million. This suggestion was not adopted. Section 613A(d)(2) provides that the computation of the $5 million is to be based on the combined gross receipts of all retail outlets. Accordingly, the gross receipts from retail outlets owned by the taxpayer or a related person of the taxpayer must be taken into account for this purpose since such retail outlets are

relevant to the determination of retailer status. An additional example has been provided to illustrate the application of this rule.

In response to a comment, example (5) (designated as example (4) in the proposed regulations) has been revised to make it clear that only gross receipts exceeding 5 million dollars from the sale of production by B to Corporation T would result in the characterization of B as a retailer.

Definition of Natural Gas Sold Under a Fixed Contract

In response to several comments, the regulations have been revised to increase the number of situations in which taxpayers may demonstrate by clear and convincing evidence that the price increases after February 1, 1975, do not take increases in tax liabilities into account.

Average Daily Production

Under the proposed regulations, the term "average daily production" means the taxpayer's aggregate production extracted after December 31, 1974, and to which gross income from the property is attributable during the taxable year, divided by the number of days in such year. Thus, under this provision, the applicable exemption amount and percentage depletion rate for production extracted in one year and sold in the next year are determined in accordance with the exemption amount and percentage depletion rate for the year to which gross income from the property is attributable, *i.e.*, the year of sale. Several comments suggested that the year of extraction should be the sole determinant of the exemption amount and the depletion rate since these limitations are expressed in section 613A in terms of the taxpayer's production and not in terms of sale. These comments were not adopted.

Section 613A(c)(1) provides that the allowance for depletion under section 611 shall be computed "in accordance with section 613" with respect to average daily production that does not exceed a taxpayer's depletable oil quantity. Section 613(a) provides that the allowance for depletion under section 611 shall be the specified percentage of the "gross income from the property." "Gross income from the property" in the case of oil and gas wells is the amount for which the taxpayer sells the oil and gas in the immediate vicinity of the well. (See § 1.613-3(a)). Accordingly, while section 613A(c) imposes limitations on the amount of qualified production in each calendar year and the percentage depletion rate for such year, the year to which production is attributable is the year in which percentage depletion is allowable and that is the year in which there is gross income from the property.

Furthermore, failure to adopt the rule in the proposed regulations would result in the exclusion of current-year production sold in a subsequent year from the calculation of percentage depletion with respect to the gross income from the property from such sale in such subsequent year. Thus, the income from the production would not be offset by the depletion deduction attributable to it. A similar mismatching would result in the calculation of percentage depletion with respect to production in excess of the depletable oil quantity under section 613A(c)(7).

The regulatory rule is not inconsistent with the holding in Rev. Rul. 81-168, 1981-1 C.B. 384. That ruling was concerned with whether oil produced in 1974 and sold in 1975 was subject to the limitations of section 613A which became effective on January 1, 1975. On the question of the effective date, the ruling holds that since the oil was extracted in 1974 it is not subject to the section 613A restrictions applicable to oil produced in 1975. The ruling deals solely with the effective date of section 613A and does not purport to interpret the provisions of section 613A. The ruling does not deal with the interaction of sections 613(a) and 613A when production occurs in 1975 or subsequent years.

Secondary or Tertiary Production

Several comments suggested that the term "secondary or tertiary production" should be defined to mean all production recovered from a well after the application of enhanced recovery processes (as distinguished from the increase in production after that application). This suggestion was not adopted because the higher statutory rate was intended to apply only to oil that would not have been produced absent the introduction of such processes. Furthermore, allowing all production to qualify for the higher rate would provide an incentive to introduce secondary or tertiary processes prematurely and in cases where the incremental production would otherwise be uneconomical even at the higher depletion rate.

Allocation of Basis to Partners

Section 613A(c)(7)(D) provides that, in the case of a partnership, the depletion allowance shall be computed separately by the partners based on each partner's proportionate share of the adjusted basis of each partnership oil or gas property. Proposed regulations interpreting this section are being reproposed and these new proposed regulations appear in the same issue of the Federal Register as this final regulation.

Retailer Definition

Section 1.613A-7(r)(2) has been revised to provide that in determining whether a taxpayer satisfies the $5 million small retailer exception of section 613A(d)(2), only sales by the taxpayer to a person specified in section 613A(d)(2)(B)(ii) shall be included (rather than all sales by that person). This provision is consistent with the holding in *Witco Chemical Corp.* v. *United States*, 742 F. 2d 615 (Fed. Cir. 1984). However, in view of the statutory language of section 613A(d)(2), the regulations do not follow the holding of *Witco* with respect to the definition of a retail sale. The statute clearly indicates that the bulk sales exclusion rule extends only to bulk sales of oil and natural gas and not to products derived from oil or natural gas. (See placement of parenthetical in section 613A(d)(2)). This is consistent with the legislative intent which was to exclude producers having large volume sales of crude or natural gas to industrial or commercial users from being deemed to be retailers.

The definition of "any product derived from oil or natural gas" has been revised to mean any product recovered from petroleum refineries or extracted from natural gas in field facilities or natural gas processing plants. As amended, this definition would not treat residue methane gas as a product. This revision is made solely for purposes of the retailer exclusion rule and does not in any way affect or change the cutoff rules for determining gross income from the property.

In response to a comment, the regulations have been revised to make it clear that bulk sales of oil or natural gas to industrial and commercial users are to be disregarded for purposes of determining a retail outlet.

As revised, the regulations define bulk sales of oil or natural gas to mean sales of such items in very large quantities. It is not necessary that the quantity sold be in excess of the quantity customarily sold to be considered sold in bulk.

Refiner Definition

The regulations have been revised to provide that the refinery runs of the taxpayer are to be based on the input into the refining process as opposed to the output. The regulations further provide that a refinery run will include only inputs of crude oil as opposed to

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crude oil products (feedstock) into the refining process.

Drafting Information

The principal author of this regulation is Walter H. Woo of the office of Assistant Chief Counsel (Passthroughs and Special Industries) of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a final Regulatory Flexibility Analysis is not required.

List of Subjects

26 CFR 1.611–0 through 1.617–4

Income taxes, Natural resources, Reporting and recordkeeping requirements.

26 CFR 1.701–1 Through 1.771–1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Paragraph (d) of § 1.612–3 is revised to read as follows:

§ 1.612-3 Depletion; treatment of bonus and advanced royalty.

* * * * *

(d) *Percentage depletion deduction with respect to bonus and advanced royalty.* In lieu of the allowance based on cost depletion computed under paragraphs (a) and (b) of this section, the payees referred to therein may be allowed a depletion deduction in respect of any bonus or advanced royalty for the taxable year in an amount computed on the basis of the percentage of gross income from the property as provided in section 613 and the regulations thereunder. However, for special rules applicable to certain bonuses and advanced royalties received in connection with oil or gas properties, see paragraph (j) of § 1.613A–3.

* * * * *

Par. 3. Section 1.613–1 is revised to read as follows:

§ 1.613-1 Percentage depletion; general rule.

(a) *In general.* In the case of a taxpayer computing the deduction for depletion under section 611 with respect to minerals on the basis of a percentage of gross income from the property, as defined in section 613(c) and §§ 1.613–3 and 1.613–4, the deduction shall be the percentage of the gross income as specified in section 613(b) and § 1.613–2. The deduction shall not exceed 50 percent of the taxpayer's taxable income from the property (computed without allowance for depletion). The taxable income shall be computed in accordance with § 1.613–5. In no case shall the deduction for depletion computed under this section be less than the deduction computed upon the cost or other basis of the property provided in section 612 and the regulations thereunder. The apportionment of the deduction between the several owners of economic interests in a mineral deposit will be made as provided in paragraph (c) of § 1.611–1. For rules with respect to "gross income from the property" and for definition of the term "mining," see §§ 1.613–3 and 1.613–4. For definitions of the terms "property," "mineral deposit," and "minerals," see paragraph (d) of § 1.611–1.

(b) *Denial of percentage depletion in case of oil and gas wells.* Except as otherwise provided in section 613A and the regulations thereunder, in the case of oil or gas which is produced after December 31, 1974, and to which gross income is attributable after that date, the allowance for depletion shall be computed without regard to section 613.

Par. 4. New § 1.613A–0 and the text of §§ 1.613A–2, 1.613A–3, 1.613A–4, and 1.613A–7 are added to read as follows:

§ 1.613A-0. Limitations on percentage depletion in the case of oil and gas wells; table of contents.

This section lists the paragraphs contained in §§ 1.613A–0 through 1.613A–7.

§ 1.613A–1 Post-1974 limitations on percentage depletion in case of oil and gas wells; general rule.

§ 1.613A–2 Exemption for certain domestic gas wells.

§ 1.613A–3 Exemption for independent producers and royalty owners.

(a) General rules.
(b) Phase-out table.
(c) Applicable percentage.
(d) Production in excess of depletable quantity.
(1) Primary production.
(2) Secondary or tertiary production.
(3) Taxable income from the property.
(4) Examples.
(e) Partnerships. [Reserved]
(f) S corporations. [Reserved]
(g) Trusts and estates.
(h) Businesses under common control; members of the same family.
(1) Component members of a controlled group.
(2) Aggregation of business entities under common control.
(3) Allocation among members of the same family.
(4) Special rules.
(5) Examples.
(i) Transfer of oil or gas property.
(1) General rule.
(i) In general.
(ii) Examples.
(2) Transfers after October 11, 1990. [Reserved]
(j) Percentage depletion with respect to bonuses and advanced royalties.
(1) Amounts received or accrued after August 16, 1986. [Reserved]
(2) Amounts received or accrued before August 17, 1986.
(k) Special rules for fiscal year taxpayers.
(l) Information furnished by partnerships, trusts, estates, and operators.

§ 1.613A–4 Limitations on application of § 1.613A–3 exemption.

(a) Limitation based on taxable income.
(b) Retailers excluded.
(c) Certain refiners excluded.

§ 1.613A–5 Election under section 613A (c)(4).

§ 1.613A–6 Recordkeeping requirements.

(a) Principal value of property demonstrated.
(b) Production from secondary or tertiary processes.
(c) Retention of records.

§ 1.613A–7 Definitions.

(a) Domestic.
(b) Natural gas.
(c) Regulated natural gas.
(d) Natural gas sold under fixed contract.
(e) Qualified natural gas from geopressured brine. [Reserved]
(f) Average daily production.
(g) Crude oil.
(h) Depletable oil quantity.
(i) Depletable natural gas quantity.
(j) Barrel.
(k) Secondary or tertiary production.
(l) Controlled group of corporations.

(m) Related person.
(n) Transfer.
(o) Transferee.
(p) Interest in proven oil or gas property.
(q) Amount disallowed.
(r) Retailer.
(s) Refiner.

§ 1.613A–2 Exemption for certain domestic gas wells.

(a) The allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to:

(1) Regulated natural gas (as defined in paragraph (c) of § 1.613A–7),

(2) Natural gas sold under a fixed contract (as defined in paragraph (d) of § 1.613A–7), and

(3) Any geothermal deposit in the United States or in a possession of the United States which is determined to be a gas well within the meaning of former section 613(b)(1)(A) (as in effect before enactment of the Tax Reduction Act of 1975),

and 22 percent shall be deemed to be specified in section 613(b) for purposes of section 613(a).

(b) For special rules applicable to partnerships, S corporations, trusts, and estates, see paragraphs (e), (f), and (g) of § 1.613A–3.

(c) The provisions of this section may be illustrated by the following examples:

Example 1. A is a producer of natural gas which is sold by A under a contract in effect on February 1, 1975. The contract provides for an increase in the price of the gas sold under the contract to the highest price paid to a producer for natural gas in the area. The gas sold by A qualifies under section 613A(b)(1)(B) for percentage depletion as gas sold under a fixed contract until its price increases, but is presumed not to qualify thereafter unless A demonstrates by clear and convincing evidence that the price increase in no event takes increases in tax liabilities into account.

Example 2. B is a producer of natural gas which is sold by B under a contract in effect on February 1, 1975. The contract provides that beginning January 1, 1980, the price of the gas may be renegotiated. Such a provision does not disqualify gas from qualifying for the exemption under section 613A(b)(1)(B) with respect to the gas sold prior to January 1, 1980. However, gas sold on or after January 1, 1980, does not qualify for the exemption whether or not the price of the gas is renegotiated.

§ 1.613A–3 Exemption for independent producers and royalty owners.

(a) *General rules.* (1) Except as provided in section 613A(d) and § 1.613A–4, the allowance for depletion under section 611 with respect to oil or gas which is produced after December 31, 1974, and to which gross income from the property is attributable after that date, shall be computed in accordance with section 613 with respect to:

(i) So much of the taxpayer's average daily production (as defined in paragraph (f) of § 1.613A–7) of domestic crude oil (as defined in paragraphs (a) and (g) of § 1.613A–7) as does not exceed the taxpayer's depletable oil quantity (as defined in paragraph (h) of § 1.613A–7), and

(ii) So much of the taxpayer's average daily production of domestic natural gas (as defined in paragraphs (a) and (b) of § 1.613A–7) as does not exceed the taxpayer's depletable natural gas quantity (as defined in paragraph (i) of § 1.613A–7), and the applicable percentage (determined in accordance with the table in paragraph (c) of this section shall be deemed to be specified in section 613(b) for purposes of section 613(a).

(2) Except as provided in section 613A(d) and § 1.613A–4, the allowance for depletion under section 611 with respect to oil or gas which is produced after December 31, 1974, and to which gross income from the property is attributable after that date and before January 1, 1984, shall be computed in accordance with section 613 with respect to:

(i) So much of the taxpayer's average daily secondary or tertiary production (as defined in paragraph (k) of § 1.613A–7) of domestic crude oil as does not exceed the taxpayer's depletable oil quantity (determined without regard to section 613A(c)(3)(A)(ii), as in effect prior to the Revenue Reconciliation Act of 1990), and

(ii) So much of the taxpayer's average daily secondary or tertiary production of domestic natural gas as does not exceed the taxpayer's depletable natural gas quantity (determined without regard to section 613A(c)(3)(A)(ii), as in effect prior to the Revenue Reconciliation Act of 1990), and 22 percent shall be deemed to be specified in section 613(b) for purposes of section 613(a).

(3) For purposes of this section, there shall not be taken into account any production with respect to which percentage depletion is allowed pursuant to section 613A(b) or is not allowable by reason of section 613A(c)(9), as in effect prior to the Revenue Reconciliation Act of 1990.

(4) The provisions of this paragraph may be illustrated by the following examples:

Example 1. A, a calendar year taxpayer, owns an oil producing property with 100,000 barrels of production to which income was attributable for 1975 and a gas producing property with 1,200,000,000 cubic feet of production to which income was attributable for 1975. Under section 613A(c)(4), the oil equivalent of 1,200,000,000 cubic feet of gas is 200,000 barrels, bringing A's total production of oil and gas to which income was attributable for 1975 to the equivalent of 300,000 barrels of oil. A's average daily production was 821.92 barrels (300,000 barrels ÷ 365 days) which is less than the depletable oil quantity (2,000 barrels) before reduction for any election by A under section 613A(c)(4). Accordingly, A may make an election with respect to A's entire gas production and thereby be entitled to percentage depletion with respect to A's entire 1975 income from production of oil and gas. A's allowable depletion pursuant to section 613A(c) and A's oil and gas properties would be the amount determined under section 613(a) computed at the 22 percent rate specified in section 613A(c)(5), as in effect prior to the Revenue Reconciliation Act 1990, for 1975.

Example 2. B, a calendar year taxpayer, owns oil producing properties with 365,000 barrels of production to which income was attributable for 1975. B was a retailer of oil and gas for only the last 3 months of 1975. B's average daily production for 1975 was 1,000 barrels (365,000 barrels ÷ 365 days).

Example 3. C, a calendar year taxpayer, owns property X with 500,000 barrels of primary production to which income was attributable for 1975 and property Y with 200,000 barrels of primary production to which income was attributable for 1975. Property Y had been transferred to C on January 1, 1975, on which date it was a proven property. Therefore, the exemption under section 613A(c)(1) does not apply to C with respect to production from property Y. In determining C's depletable oil quantity for the year, the production from property Y is not taken into account. Thus, C's average daily production for 1975 was 1,369.86 barrels (500,000 barrels ÷ 375).

Example 4. D owns an oil property with producing wells X and Y on it. In 1975 D converts well X into an injection well. Prior to the application of the secondary process, it is estimated that without the application of the process the annual production from well X would have been 50x barrels of oil and from well Y would have been 100x barrels of oil. For the taxable year in which injection is commenced production from well X is 10x barrels and from well Y is 180x barrels. Forty x barrels of oil [190x barrels of oil (actual production from the property)—150x barrels (estimate of primary production from the property)] qualify as secondary production.

Example 5. E, a calendar year taxpayer, owns a domestic oil well which produced 100,000 barrels of oil in 1980. The proceeds from the sale of 15,000 barrels of that production are not includible in E's income until 1981. The 15,000 barrels produced in 1980 are included in E's average daily production for 1981 and excluded from such production for 1980. The tentative quantity and the percentage depletion rate for 1981 are applicable to the 15,000 barrels of oil.

(b) *Phase-out table.* For purposes of section 613A(c)(3)(A)(i) and § 1.613A–7(h) (relating to depletable oil quantity)—

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In the case of production after 1974 and to which gross income from the property is attributable for the calendar year:	The tentative quantity in barrels per day is:
1975	2,000
1976	1,800
1977	1,600
1978	1,400
1979	1,200
1980 and thereafter	1,000

(c) *Applicable percentage.* For purposes of section 613A(c)(1) and paragraph (a) of this section—

In the case of production after 1974 and to which gross income from the property is attributable for the calendar year:	The applicable percentage is:
1975	22
1976	22
1977	22
1978	22
1979	22
1980	22
1981	20
1982	18
1983	16
1984 and thereafter	15

(d) *Production in excess of depletable quantity*—(1) *Primary production.* (i) If the taxpayer's average daily production of domestic crude oil exceeds his depletable oil quantity, the allowance for depletion pursuant to section 613A(c)(1)(A) and paragraph (a)(1)(i) of this section with respect to oil produced during the taxable year from each property in the United States shall be that amount which bears the same ratio to the amount of depletion which would have been allowable under section 613(a) for all of the taxpayer's oil produced from the property during the taxable year (computed as if section 613 applied to all of the production at the rate specified in paragraph (c) of this section) as the amount of his depletable oil quantity bears to the aggregate number of barrels representing the average daily production of domestic crude oil of the taxpayer for such year.

(ii) If the taxpayer's average daily production of domestic natural gas exceeds his depletable natural gas quantity, the allowance for depletion pursuant to section 613A(c)(1)(B) and paragraph (a)(1)(ii) of this section with respect to natural gas produced during the taxable year from each property in the United States shall be that amount which bears the same ratio to the amount of depletion which would have been allowable pursuant to section 613(a) for all of the taxpayer's natural gas produced from the property during the taxable year (computed as if section 613 applied to all of the production at the rate specified in paragraph (c) of this section) as the amount of his depletable natural gas quantity in cubic feet bears to the aggregate number of cubic feet representing the average daily production of domestic natural gas of the taxpayer for such year.

(2) *Secondary or tertiary production.* (i) If the taxpayer's average daily secondary or tertiary production of domestic crude oil exceeds his depletable oil quantity (determined without regard to section 613A(c)(3)(A)(ii), as in effect prior to the Revenue Reconciliation Act of 1990), the allowance for depletion pursuant to section 613A(c)(6)(A)(i), as in effect prior to the Revenue Reconciliation Act of 1990, and paragraph (a)(2)(i) of this section with respect to oil produced during the taxable year from each property in the United States shall be that amount which bears the same ratio to the amount of depletion which would have been allowable pursuant to section 613(a) for all of the taxpayer's secondary or tertiary production of oil from the property during the taxable year (computed as if section 613 applied to all of the production at the rate specified in paragraph (a)(2) of this section) as the amount of his depletable oil quantity (determined without regard to section 613A(c)(3)(A)(ii), as in effect prior to the Revenue Reconciliation Act of 1990) bears to the aggregate number of barrels representing the average daily secondary or tertiary production of domestic crude oil of the taxpayer for such year.

(ii) If the taxpayer's average daily secondary or tertiary production of domestic natural gas exceeds his depletable natural gas quantity (determined without regard to section 613A(c)(3)(A)(ii), as in effect prior to the Revenue Reconciliation Act of 1990), the allowance for depletion pursuant to section 613A(c)(6)(A)(ii), as in effect prior to the Revenue Reconciliation Act of 1990, and paragraph (a)(2)(ii) of this section with respect to natural gas produced during the taxable year from each property in the United States shall be that amount which bears the same ratio to the amount of depletion which would have been allowable pursuant to section 613(a) for all of the taxpayer's secondary or tertiary production of natural gas from the property during the taxable year (computed as if section 613 applied to all of the production at the rate specified in paragraph (a)(2) of this section) as the amount of his depletable natural gas quantity in cubic feet (determined without regard to section 613A(c)(3)(A)(ii), as in effect prior to the Revenue Reconciliation Act of 1990) bears to the aggregate number of cubic feet representing the average daily secondary or tertiary production of domestic natural gas of the taxpayer for such year.

(iii) This paragraph (d)(2) shall not apply after December 31, 1993.

(3) *Taxable income from the property.* If both oil and gas are produced from the property during the taxable year, then for purposes of section 613A(c)(7) (A) and (B) and paragraph (d) of this section the taxable income from the property, in applying the taxable income limitation in section 613(a), shall be allocated between the oil production and the gas production in proportion to the gross income from the property during the taxable year from each. If both gas with respect to which section 613A(b) and § 1.613A–2 apply and oil or gas with respect to which section 613A(c) and this section apply are produced from the property during the taxable year, then for purposes of section 613A(d)(1) and paragraph (a) of § 1.613A–4 the taxable income from the property, in applying the taxable income limitation in section 613(a), shall also be so allocated. In addition, if both primary production and secondary or tertiary production (to which gross income from the property is attributable before January 1, 1984) are produced from the property during the taxable year and the total amount of production is in excess of the depletable quantity, then for purposes of paragraph (d) of this section the taxable income from the property, in applying the taxable income limitation in section 613(a), shall also be so allocated.

(4) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example 1. A owns Y and Z oil producing properties. With respect to properties Y and Z, the percentage depletion allowable pursuant to section 613(a) (computed as if section 613 applied to all of the production at the rate specified in section 613A(c)(5)) for 1975 was $100x and $200x, respectively. A's average daily production for 1975 was 4,000 barrels. A's allowable depletion pursuant to section 613A(c) with respect to property Y was $50x ($100x depletion × 2,000 depletable oil quantity/ 4,000 average daily production). A's allowable depletion pursuant to section 613A(c) with respect to property Z was $100x ($200x depletion × 2,000 depletable oil quantity/ 4,000 average daily production).

Example 2. B owns gas producing properties which had secondary gas production for 1975 of 3,285,000,000 cubic feet, which under section 613A(c)(4) is equivalent to 547,500 barrels of oil. B's average daily secondary production of gas for 1975 was equivalent to 1,500 barrels (547,500 barrels ÷ 365). B elected to have section 613A(c)(4) apply to the gas production. With respect to the production, the percentage depletion allowable pursuant to section

613(a) (computed at the rate specified in section 613A(c)(6)(A), as in effect prior to the Revenue Reconciliation Act of 1990) was $150x. B also owns an oil producing property which had primary oil production for 1975 of 365,000 barrels. B's average daily production of oil for 1975 was 1,000 barrels (365,000 ÷ 365). With respect to the oil property, the percentage depletion allowable pursuant to section 613(a) (computed as if section 613 applied to all of the production at the rate specified in section 613A(c)(5), as in effect prior to the Revenue Reconciliation Act of 1990) was $100x. B's depletable oil quantity for 1975 was 500 barrels (2,000 barrels tentative quantity −1,500 barrels average daily secondary production). B's allowable depletion pursuant to section 613A(c) with respect to the oil property was $50x ($100x depletion × 500 depletable oil quantity/ 1,000 average daily production).

Example 3. Assume the same facts as in *Example 2* except that B's primary production was 6,000,000 cubic feet of natural gas daily rather than its equivalent under section 613A(c)(4) of 1,000 barrels of oil and that B elected to have that section apply to such gas. B's allowable depletion pursuant to section 613A(c) with respect to B's primary production is $60x, the same as in example (2).

Example 4. C is a partner with a one-third interest in Partnerships CDE and CFG with each partnership owning a single oil property. C's percentage depletion allowable under section 613(a) (computed as if section 613 applied to all of the production at the rate specified in section 613A(c)(5), as in effect prior to the the Revenue Reconciliation Act of 1990) for 1975 was $20x with respect to 495,000 barrels (his allocable share of Partnership CDE production) and $40x with respect to 600,000 barrels (his allocable share of Partnership CFG production). C's average daily production is 3,000 barrels (1,095,000 total production ÷ 365 days). C's allowable depletion pursuant to section 613A(c) with respect to C's share of the production of Partnership CDE is $13.33x ($20x depletion × 2,000 depletable oil quantity/ 3,000 average daily production). C's allowable depletion pursuant to section 613A(c) with respect to C's share of the production of Partnership CFG is $26.67x ($40x depletion × 2,000 depletable oil quantity/ 3,000 average daily production). See § 1.613A–3(e) for the rules on computing depletion in the case of a partnership.

Example 5. H owns a property which, during H's fiscal year which began on June 1, 1975, and ended on May 31, 1976, produced gas qualifying under section 613A(b) and oil qualifying under section 613A(c). For the fiscal year H's gross income from the property was $400x, of which $100x was from gas and $300x was from oil. For the oil his gross income from the property for the period beginning June 1, 1975, and ending December 31, 1975, was $100x and for the 1976 portion of the fiscal year was $200x. The percentage depletion allowance (before applying the 50 percent limitation of section 613(a) or the 65 percent limitation of section 613A(d)(1)) was $22x for the gas, $22x for the oil in 1975, and $44x for the oil in 1976. H's taxable income from the property for the fiscal year was $100x. In accordance with paragraph (d)(3) of this section, the taxable income from the property is allocated $25x to the gas:

$$\left[\$100\text{x taxable income from the property}\left(\frac{\$100\text{x gross income from gas from the property}}{\$400\text{x total gross income from the property}}\right)\right]$$

$25x to the 1975 oil:

$$\left[\$100\text{x taxable income from the property}\left(\frac{\$100\text{x gross income from 1975 oil from the property}}{\$400\text{x total gross income from the property}}\right)\right]$$

and $50x to the 1976 oil:

$$\left[\$100\text{x taxable income from the property}\left(\frac{\$200\text{x gross income from 1976 oil from the property}}{\$400\text{x total gross income from the property}}\right)\right]$$

With the application of the 50 percent of taxable income from the property limitation, the allowable percentage depletion (computed without reference to section 613A) is limited to $12.50x for the gas, $12.50x for the oil in 1975, and $25x for the oil in 1976.

(e) *Partnerships.* [Reserved]

(f) *S corporations.* [Reserved]

(g) *Trusts and estates.*

(1) In the case of production from domestic oil and gas properties held by a trust or estate, the depletion allowance under section 611 shall be computed initially by the trust or estate. The determination of whether cost or percentage depletion is applicable shall be made at the trust or estate level, but such determination shall not result in the disallowance of cost depletion to a beneficiary of a trust or estate for whom cost depletion exceeds percentage depletion. The limitations contained in section 613A (c) and (d), other than section 613A(d)(1), shall be applied at the trust or estate level in its computation of percentage depletion pursuant to section 613A and shall also be applied by a beneficiary with respect to any percentage depletion apportioned to the beneficiary by the trust or estate. The limitation of section 613A(d)(1) shall be applied by each taxpayer (*i.e.*, trust, estate or beneficiary) only with respect to its allocable share of percentage depletion under section 611(b) (3) or (4). For purposes of adjustments to the basis of oil or gas properties held by a trust or estate, in the absence of clear and convincing evidence to the contrary, it shall be presumed that no beneficiary is affected by any section 613A (d) limitations or by the rules contained in section 613A(c)(8) and (9) (relating to businesses under common control and members of the same family and to transfers, respectively), as in effect prior to the Revenue Reconciliation Act of 1990, or has any oil or gas production from sources other than the trust or estate.

(2) The provisions of this paragraph may be illustrated by the following examples.

Example 1. A is the income beneficiary of a trust the only asset of which is a domestic producing oil property. The trust instrument requires that an amount which equals 10 percent of the gross income from the property be set aside annually as a reserve for depletion. In 1975 the property a had production of 1,095,000 barrels of oil. The trust's gross income from the property in 1975 was $30,000x. In that year, after setting aside

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$8,000x of income for the reserve for depletion, the trustee distributed the remaining income to A which represented 80 percent of the trust's net income. The percentage depletion computed by the trust with respect to the production (computed as if section 613 applied to all of the production at the rate specified in section 613A(c)(5), as in effect prior to the Revenue Reconciliation Act of 1990) for 1975 was $6,800x. The trust's average daily production for 1975 was 3,000 barrels (1,095,000 ÷ 365 days). The trust's allowable depletion pursuant to section 613A(c) with respect to the production was $4,400x:

$$\left[\$6{,}800x \text{ depletion} \left(\frac{2{,}000 \text{ depletable oil quantity}}{3{,}000 \text{ average daily production}}\right)\right]$$

Pursuant to § 1.611–1(c)(4)(ii), the percentage depletion of $4,400x was apportioned between the trustee and A so that the trustee received $3,000x (an amount equal to the amount of income set aside for the reserve for depletion) and A received $1,400x of the depletion deduction. The $1,400x depletion received by A is attributable to 80 percent of the trust's depletable oil quantity, *i.e.*, 1,600 barrels per day.

Example 2. B, a retailer of oil and gas, is the income beneficiary of a trust the only asset of which is a domestic producing oil property. In 1975 the trustee distributed one-half of the trust's net income and accumulated the other one-half for the benefit of the remainderman. One-half of the percentage depletion computed by the trust with respect to the production from the property was apportioned to B. Since B is a retailer of oil and gas, B is not entitled to deduct any of the percentage depletion apportioned to B. However, B is entitled to take cost depletion with respect to one-half of the production from the oil property, notwithstanding the fact that depletion was computed at the trust level on the basis of percentage depletion.

(h) *Businesses under common control; members of the same family*—(1) *Component members of a controlled group.* For purposes of only the depletable quantity limitations contained in section 613A (c) and this section, component members of a controlled group of corporations (as defined in paragraph (1) of § 1.613A–7) shall be treated as one taxpayer. Accordingly, the group shares the depletable oil (or natural gas) quantity prescribed for a taxpayer for the taxable year and the secondary production of a member of the group will reduce the group's depletable quantity prior to its allocation among members in proportion to their production.

(2) *Aggregation of business entities under common control.* If 50 percent or more of the beneficial interest in any two or more entities (*i.e.*, corporations, trust, or estates) is owned by the same or related persons (taking into account only each person who owns at least 5 percent of the beneficial interest in an entity and with respect to such person his or her entire interest) as defined in paragraph (m) (2) of § 1.613A–7, the tentative quantity determined under the table in section 613A(c)(3)(B) (as in effect prior to the Revenue Reconciliation Act of 1990) for a taxpayer for the taxable year shall be allocated among all such entities in proportion to their respective production. This paragraph (h)(2) shall not apply to component members of a controlled group of corporations (as defined in § 1.613A–7 (1)). For purposes of determining ownership interest, an interest owned by or for a corporation, partnership, trust, or estate shall be considered as owned directly both by itself and proportionately by its shareholders, partners, or beneficiaries, as the case may be.

(3) *Allocation among members of the same family.* In the case of individuals who are members of the same family, the tentative quantity determined under the table in section 613A (c)(3)(B) (as in effect prior to the Revenue Reconciliation Act of 1990) for a taxpayer for the taxable year shall be allocated among such individuals in proportion to the respective production of barrels of domestic crude oil (and the equivalent in barrels to the cubic feet of natural gas determined under paragraph (h)(4)(ii) of this section) during the period in question by such individuals.

(4) *Special rules.* For purposes of section 613A (c)(6) and this section—

(i) The family of an individual includes only his spouse and minor children, and

(ii) Each 6,000 cubic feet of domestic natural gas shall be treated as 1 barrel of domestic crude oil.

(5) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example 1. A owns 50 percent of the stock of Corporation M and 50 percent of the stock of Corporation N. Both corporations are calendar year taxpayers. For 1975 Corporation M's production of domestic crude oil was 8,000,000 barrels (365,000 of which was secondary production) and Corporation N's was 2,000,000 barrels (all of which was primary production). The tentative quantity (2,000 barrels per day) determined under the table in section 613A (c)(3)(B) (as in effect prior to the Revenue Reconciliation Act of 1990) must be allocated between the two corporations in proportion to their respective barrels of production of domestic crude oil during the taxable year. Corporation M's allocable share of the tentative quantity is 1,600 barrels:

$$\left[2{,}000 \left(\frac{8{,}000{,}000}{10{,}000{,}000}\right)\right]$$

and Corporation N's allocable share is 400 barrels:

$$\left[2{,}000 \left(\frac{2{,}000{,}000}{10{,}000{,}000}\right)\right]$$

With respect to M's primary production, M's depletable oil quantity is 600 barrels (1,600 barrels – 1,000 barrels [365,000 secondary production ÷ 365 days]). N's depletable oil quantity, unaffected by M's secondary production, is 400 barrels.

Example 2. Assume the same facts as in *Example 1* except that Corporation M is a retailer and Corporation N is not selling its oil through Corporation M. Because Corporation M is a retailer, no portion of the tentative quantity is allocated to Corporation M. Accordingly, Corporation N's depletable oil quantity is the entire 2,000 barrels per day because section 613A (c), which contains the allocation requirements, is inapplicable to retailers.

Example 3. Corporations O and P are members of a controlled group and are treated as one taxpayer as provided in paragraph (h)(1) of this section. Corporation O owns oil properties A and B. Property A had primary production for 1975 of 800,000 barrels of oil. Property B had secondary production for 1975 of 365,000 barrels of oil. Corporation P owns oil property C which had primary production of 660,000 barrels for 1975. The allowable percentage depletion with respect to property B's secondary production was $360x. The controlled group's average daily production was 4,000 barrels [(800,000 + 660,000) ÷ 365]. The controlled group's depletable oil quantity was 1,000 barrels [2,000 tentative quantity – 1,000 average daily secondary production (365,000 ÷ 365)]. The allowable percentage depletion pursuant to section 613 (a) (computed as if section 613 applied to all of the production at the rate specified in section 613A (c)(5), as in effect prior to the Revenue Reconciliation Act of 1990) was $800x with respect to production from property A and $660x with respect to production from property C.

Corporation O's allowable depletion pursuant to section 613A (c) with respect to property B's secondary production (for which depletion is allowable before primary production) for 1975 was $360x. Corporation O's allowable depletion pursuant to section 613A (c) with respect to property A was $200x:

$$\left[\$800x \text{ depletion} \left(\frac{1{,}000 \text{ depletable oil quantity}}{4{,}000 \text{ average daily production}}\right)\right].$$

Therefore, Corporation O's allowable depletion pursuant to section 613A (c) was $560x ($360x relating to property B plus $200x relating to property A). Corporation P's allowable depletion pursuant to section 613A (c) with respect to property C was $165x:

$$\left[\$660x \text{ depletion} \left(\frac{1{,}000 \text{ depletable oil quantity}}{4{,}000 \text{ average daily production}}\right)\right]$$

(i) *Transfer of oil or gas property*—(1) *General rule*—(i) *In general.* Except as provided in paragraph (i)(2) of this section, in the case of a transfer (as defined in paragraph (n) of § 1.613A–7) of an interest in any proven oil or gas property (as defined in paragraph (p) of § 1.613A–7), paragraph (a)(1) of this section shall not apply to a transferee (as defined in paragraph (o) of § 1.613A–7) with respect to production of crude oil or natural gas attributable to such interest, and such production shall not be taken into account for any computation by the transferee under this section.

(ii) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

Example 1. On January 1, 1975, Individual A transfers proven oil properties to Corporation M in an exchange to which section 351 applies for shares of its stock. Since there is no allocation requirement pursuant to section 613A(c)(8) between A (the transferor) and Corporation M (the transferee), the transfer of the proven properties by A is a transfer for purposes of section 613A(c)(9) (as in effect prior to the Revenue Reconciliation Act of 1990) and percentage depletion is not allowable to Corporation M with respect to such properties.

Example 2. On January 1, 1975, Corporation N sells proven oil property to Corporation O, its wholly-owned subsidiary. Because the transfer was made between corporations which are members of the same controlled group of corporations, Corporation O is entitled to percentage depletion with respect to production from the property so long as the tentative oil quantity is allocated between the two corporations. If Corporation N were a retailer, the tentative oil quantity would not be required to be allocated between the two corporations (see example (2) of § 1.613A–3(h)(5)), and Corporation O would not be entitled to percentage depletion on the production from the property.

Example 3. B, owner of a proven oil property, died on January 1, 1975. Pursuant to the provisions of B's will, B's estate transferred the oil property on April 1, 1975, into a trust. On July 1, 1976, pursuant to a requirement in B's will, the trustee distributed the oil property to C. The transfer of the oil property by the estate to the trust and the later distribution of the property by the trust to C are transfers at death. Therefore, the trust was entitled to compute percentage depletion with respect to the production from the oil property when the property was owned by the trust and C is entitled to percentage depletion with respect to production from the oil property after the trust distributes the property to C.

Example 4. On January 1, 1975, property which produces oil resulting from secondary processes was transferred to D. The exemption under section 613(c) applies to D because section 613A(c)(9) (relating to transfers of oil or gas property), as in effect in 1975, does not apply with respect to secondary production. In addition, even if at the time of the transfer the production from the property was primary and D applied secondary processes to the property transferred and obtained secondary production, D would be entitled to percentage depletion with respect to the secondary production.

Example 5. On July 1, 1975, E and F entered into a contract whereby F is given the privilege of drilling a well on E's unproven property, and if F does so F is to own the entire working interest in the property until F has recoverd all the costs of drilling, equipping, and operating the well. Therefore, 50 percent of the working interest would revert to E. In accordance with the contract, 50 percent of the working interest reverted to E on July 1, 1976. F is entitled to percentage depletion because the transfer of the working interest to F occurred when the property was unproven on July 1, 1975, which is the date of the contract establishing F's right to working interest. E is entitled to percentage depletion with respect to this working interest since the reversion of such interest with respect to which E was eligible for percentage depletion is not a transfer. However if on the date of the contract E's property was proven (although not proven when E acquired the

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property). F would not be entitled to claim percentage depletion with respect to any of the working interest income. Nonetheless, E would still be entitled to percentage depletion with respect to E's working interest since the reversion of the interest is not a transfer.

Example 6. On January 1, 1975, G subleased an oil property to H, retaining a ⅛ royalty interest with the option to convert G's royalty into a 50-percent working interest. On July 1, 1975, the property was proven and on July 1, 1976, G exercised G's option. G is entitled to claim percentage depletion with respect to G's working interest since the conversion of the royalty interest which is eligible for percentage depletion pursuant to section 613A(c) into an interest which constituted part of an interest previously owned by G is not a transfer pursuant to § 1.613A–7(n)(6).

Example 7. I and J (both of whom are minors) are beneficiaries of a trust which owned a proven oil property. The oil property was transferred to the trust on January 1, 1975, by the father of I and J. For 1975, the trustee allocated all the income form the oil property to I. For 1976, the trustee allocated all the income from such property to J. On January 1, 1977, the trustee distributed the property to I and J as equal tenants in common. Since I, J, and their father are members of the same family within the meaning of section 613A(c)(8)(C), the transfer of the property to the trust by the father, the shifting of income between I and J, and the distribution of the oil property by the trust to I and J are not transfers for purposes of section 613A(c)(9) (as in effect prior to the Revenue Reconciliation Act of 1990). However, the distribution of the oil property will constitute a transfer to each distributee on the date on which the distributee reaches majority under state law.

Example 8. In 1975, K transferred a proven oil property productive at 5,000 feet to L. Subsequent to the transfer, L drilled new wells on the property finding another reservoir at 10,000 feet. The two zones were combined under section 614 as a single property. L is not entitled to percentage depletion on the gross income attributable to the production from the productive zone at 5,000 feet, but is entitled to percentage depletion on the gross income attributable to the production from the productive zone at 10,000 feet because that zone was not part of the proven property until the date of development expenses by L, which is after the date of the transfer. Accordingly, L's maximum allowable percentage depletion deduction for 1975 would be zero percent of gross income from the property with respect to the production from 5,000 feet, plus 22 percent of gross income from the property with respect to the production from 10,000 feet. This maximum deduction would be subject to the limitation provided for in section 613(a), *i.e.*, 50 percent of "taxable income from the property (computed without allowance for depletion)," such taxable income being the overall taxable income resulting from the sale of production from both zones, and would also be subject to the limitations provided in section 613A. The production from the productive zone at 5,000 feet is not taken into account in determining K's depletable oil quantity for the year.

Example 9. On July 1, 1975, M transferred an oil property with a fair market value of $100x to N. On February 1, 1976, N commenced production of oil from the property. The fair market value of the property on February 1, 1976, as reduced by actual costs incurred by N for equipment and intangible drilling and development costs, was $900x. Because the value of the property on transfer was not 50 percent or more of the value on February 1, 1976, the property transferred to N was not a proven property (see § 1.613A–7(p)). However, if there had been only marginal production from the property so that the fair market value of the property on February 1, 1976, was $40x rather than $900x, the property transferred to N would have been a proven property provided the other requirements of a proven property were met.

Example 10. O is the owner of a remainder interest in a trust created January 1, 1970. On that date, the trust held oil and gas properties. On January 1, 1976, O's interest for the first time entitled O to the trust's income from oil and gas production from the properties. The reversion of the remainder interest to O is not a transfer (see § 1.613A–7(n)(7)). Accordingly, the transfer of the interest in oil and gas property to O is deemed to have occurred on January 1, 1970, the date O's interest was created.

Example 11. On January 1, 1976, P, Q, and R entered into a partnership for the acquisition of oil and gas leases. It was agreed that the sharing of income will be divided equally among P, Q, and R. However, it was further agreed that with respect to the first production obtained from each property acquired P will receive 80 percent thereof and Q and R each will receive 10 percent thereof until $100x has been received by P. Assume these allocations have substantial economic effect under section 704 of the Code and the regulations thereunder. On February 1, 1976, Partnership PQR acquired an unproven property and production therefrom was shared pursuant to the partnership agreement. P is entitled to percentage depletion with respect to the production allocated to him since the transfer of right to the production is deemed to have been made on the date the partnership agreement became applicable to the specific property, at which time the property was unproven. See § 1.613A–7(n) for rules relating to the definition of transfer. Similarly, when $100x has been obtained and Q and R each commence receiving 33⅓ percent of the revenue, Q and R are entitled to percentage depletion with respect to their entire interests. However, if the property had been proven when acquired by the partnership, P, Q, and R would not be entitled to claim any percentage depletion with respect to production from the property.

Example 12. On December 30, 1960, S placed producing oil property in trust for the benefit of S's nephew, T, and executed a trust agreement which required the trustee of the trust to transfer the oil property to T on January 1, 1975. The trustee's transfer of the oil property to T on January 1, 1975, is deemed to have occurred on December 30, 1960 (see § 1.613A–7(n)). Since the transfer is deemed to have occurred before January 1, 1975, section 613A(c) applies with respect to the production from the oil property. Moreover, if the trustee was not required to transfer the oil property on a specific date but was given discretion to select the date of transfer, the transfer of such property would still be deemed to have occurred on December 30, 1960. However, the result would be different if the trust agreement had provided that the trustee, at the trustee's discretion, may transfer the oil property to T on January 1, 1975, but is not under any obligation to transfer the property to T on January 1, 1975, or on any other date. Since the transfer was discretionary, the date of the actual transfer governs.

Example 13. On January 1, 1974, U acquired an oil property. On February 1, 1974, U granted V an option to purchase the oil property. V exercised V's option on March 2, 1975, and subsequently the oil property was conveyed to V. The date of the transfer was March 2, 1975, the day V exercised V's option (on which date both parties were bound).

Example 14. On July 1, 1974, W executed a deed conveying oil and gas property to X. W delivered the deed to X on January 1, 1975. Under state law, the mere execution of the deed without delivery did not give X any rights in the property. Title to the oil property passed to X on the date of delivery. Therefore, the date of transfer was January 1, 1975.

Example 15. Y, owner of a proven oil property, transferred Y's interest therein on July 25, 1975, to a revocable trust of which Y is treated as the owner under section 676. Y is not deemed a transferee and section 613A(c) applies to Y because immediately preceding the transfer Y was entitled to percentage depletion on the production from the property.

Example 16. On January 1, 1975, a proven oil property was transferred to Z; therefore, section 613A(c)(1) did not apply with respect to the production from such property. After Z's death, neither Z's estate nor its beneficiaries are entitled to percentage depletion with respect to the decedent's oil property since Z was a transferee of proven property.

Example 17. Partnership ABC, owner of proven oil and gas properties, admitted D as a partner in 1975 in consideration of cash. The shares of Partners A, B, and C of the partnership income were proportionately reduced so that D had a 25 percent interest in the income. D is not entitled to percentage depletion with respect to D's share of partnership oil and gas income because D is a transferee for purposes of section 613A(c)(9) (as in effect prior to the Revenue Reconciliation Act of 1990). See § 1.613A–7(n).

Example 18. On January 1, 1975, E and F formed Partnership EF to which E contributed proven oil property. For 1975, pursuant to the partnership agreement 70 percent of the mineral income from the property was allocated to E and 30 percent of the mineral income from the property was allocated F. F is not entitled to percentage depletion with respect to production from the property because F is a transferee of an interest in proven property. However, E is not a transferee of an interest in proven property because E was entitled to percentage depletion on the oil produced with respect to the property immediately before the transfer. Therefore, E is entitled to percentage depletion with respect to the income allocated to E. However, if in 1976 the partnership agreement were revised so that E's interest in the income was increased by 10 percent, E would not be entitled to percentage depletion with respect to the additional 10 percent interest because E is a transferee with respect thereto.

Example 19. G is the owner of a ⅛ interest in a partnership owning a proven oil property, and as such is entitled to ⅛ of the income from the property. G received a distribution on July 1, 1975, from the partnership of a ⅛ interest in the proven oil property. Although the transfer of such interest is a transfer for purposes of section 613A(c)(9) (as in effect prior to the Revenue Reconciliation Act of 1990), G is still entitled to percentage depletion with respect to the ⅛ interest in the oil production from the property since G was entitled to percentage depletion on such production with respect to such property immediately before the transfer. If the entire property were distributed to G, G's percentage depletion allowance would still be based on only ⅛ of the oil produced.

Example 20. H and I contributed property X and property Y respectively to Partnership HI. The partnership agreement provides that all the gross income from property X is to be allocated to H and all the gross income from property Y is to be allocated to I. Assume these allocations have substantial economic effect under section 704 of the Code and the regulations thereunder. For 1975 H and I each received $100x gross income. Although the contributions of the properties by H and I are transfers for purposes of section 613A(c)(9) (as in effect prior to the Revenue Reconciliation Act of 1990), both H and I are entitled to percentage depletion with respect to the $100x income received since each was entitled to a percentage depletion allowance with respect to the property contributed immediately before the transfer. However, if no special allocation of income were made but H and I are to share equally in the income from both properties, each would be entitled to a depletion allowance based on only one-half of the production with respect to the property he had contributed. If property X produces $100x of gross income from the property and property Y produces $200x of gross income from the property, H would be entitled to percentage depletion but only with respect to $50x (50 percent of $100x) of gross income from the property and I would be entitled to percentage depletion with respect to $100x (50 percent of $200x) of gross income from the property.

(2) *Transfers after October 11, 1990.* [Reserved]

(j) *Percentage depletion with respect to bonuses and advanced royalties*—(1) *Amounts received or accrued after August 16, 1986.* [Reserved]

(2) *Amounts received or accrued before August 17, 1986.* (i) A lease bonus or advanced royalty received or accrued before August 17, 1986, with respect to oil or gas property shall be taken into account for purposes of percentage depletion in the taxable year such payment is includible in income. Percentage depletion shall be determined according to the depletion rate and depletable oil and natural gas limitations of section 613A(c)(1) and § 1.613A–3(a) applicable on the date of such inclusion. The payee of the bonus or advanced royalty shall apply the depletable oil and natural gas quantity limitations by attributing a specific number of barrels of oil or cubic feet of natural gas to the lease bonus or advanced royalty. The determination of the number of barrels of oil or cubic feet of natural gas shall be based on the average price of oil or gas produced from the property during the taxable year. If oil or gas is not produced from the property during that year, or if the oil or gas is not sold before conversion or transportation from the premises, the number of barrels of oil or cubic feet of gas shall be based on a price (as of the date of the bonus or advanced royalty) determined under the constructive pricing principles applicable under section 613(a), generally the representative market or field price. In the case where no oil or gas has been produced in such year, the constructive price applicable to the type of production expected to be produced from the property shall apply. However, if the first actual production from the property in a later year is different from the type of production upon which the conversion of the bonus or advanced royalty into barrels of oil or cubic feet of gas was based and the period of limitations on assessment has not expired (see section 6501) for the year in which the lease bonus or advanced royalty is includible in income, the taxpayer should promptly file an amended return, if necessary. In the amended return the conversion shall be recomputed taking into account the pricing applicable to the actual production. For purposes of paragraph (f) of § 1.613A–7, the number of barrels of oil or cubic feet of natural gas attributed to a lease bonus or advanced royalty is deemed to have been extracted on the date the bonus or advanced royalty is includible in the payee's income.

(ii) For purposes of applying the depletable oil and natural gas quantity limitations in taxable years after the year in which the advanced royalty payment is included in income, the payee of an advanced royalty which is recouped out of future production shall not include production which recoups the advanced royalty in such later years. The payor of a bonus or advanced royalty that is not recouped from future production may reduce the production to be taken into account for purposes of applying the depletable quantity limitations in each year in which the payor's gross income from the property is adjusted under § 1.613–2(c)(5)(ii) to reflect the bonus paid by an amount determined by dividing the portion of the bonus required to be excluded from the payor's gross income from the property by the price of oil or gas applicable to the payee for converting the bonus into barrels of oil or cubic feet of gas.

(iii) See § 1.612–3 (a)(2) and (b)(2) for rules relating to the requirement that certain depletion deductions allowed with respect to lease bonuses and advanced royalties be restored to income.

(k) *Special rules for fiscal year taxpayers.* In applying this section to a taxable year which is not a calendar year, each portion of such taxable year which occurs during a single calendar year shall be treated as if it were a short taxable year.

(l) *Information furnished by partnerships, trusts, estates, and operators.* Each partnership, trust, or estate producing domestic crude oil or natural gas, and each operator of a well from which domestic crude oil or natural gas was produced, shall provide each partner, beneficiary, or person holding a nonoperating interest, as the case may be, with all information in its possession necessary to determine the amount of his depletion deduction allowable with respect to such crude oil or natural gas. For example, for each property a partnership is required to provide each partner with partnership information relating to the partner's allocable share of gross income from the property, the partner's allocable share of operating expenses, the partner's allocable share of depreciation, the partner's share of allocated overhead, the partner's share of estimated reserves, the partner's share of production in barrels or cubic feet for the taxable year, the partner's original share of the partnership adjusted basis of properties producing domestic crude oil or domestic natural gas, the partner's allocable share of any adjustments made to the basis of such properties by the partnership, and the percentage by which existing partners

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must reduce their bases in a partnership oil or gas property upon entry of a partner by contribution. In addition, upon the disposition of an oil or gas property by the partnership, the partnership shall inform each partner of his allocable portion of the amount realized from the sale of the property.

§ 1.613A–4 Limitations on application of § 1.613A–3 exemption.

(a) *Limitation based on taxable income.* (1) The aggregate amount of a taxpayer's deductions allowed pursuant to section 613A(c) for the taxable year shall not exceed 65 percent of the taxpayer's taxable income (reduced in the case of an individual by the zero bracket amount for taxable years beginning after December 31, 1976, and before January 1, 1987) for the year, adjusted to eliminate the effects of:

(i) Any depletion with respect to an oil or gas property (other than a gas property with respect to which the depletion allowance for all production is determined pursuant to section 613A(b)) for which percentage depletion would exceed cost depletion in the absence of the depletable quantity limitations contained in section 613A(c) (1) and (6) (as in effect prior to the Revenue Reconciliation Act of 1990) or the taxable income limitation contained in section 613A(d)(1);

(ii) Any net operating loss carryback to the taxable year under section 172;

(iii) Any capital loss carryback to the taxable year under section 1212; and

(iv) In the case of a trust, any distributions to its beneficiaries, except in the case of any trust where any beneficiary of such trust is a member of the family (as defined in section 267(c)(4)) of a settlor who created inter vivos and testamentary trusts for members of the family and such settlor died within the last 6 days of the 5th month in 1970, and the law in the jurisdiction in which such trust was created requires all or a portion of the gross or net proceeds of any royalty or other interest in oil, gas, or other mineral representing any percentage depletion allowance to be allocated to the principal of the trust.

The amount disallowed (as defined in paragraph (q) of § 1.613A–7) shall be carried over to the succeeding year and treated as an amount allowable as a deduction pursuant to section 613A(c) for such succeeding year, subject to the 65-percent limitation of section 613A(d)(1). For rules relating to corporations filing a consolidated return, see the regulations under section 1502. With respect to fiscal year taxpayers, except as provided in § 1.613A–1 for taxable years beginning before January 1, 1975, and ending after that date, the limitation shall be calculated on the entire fiscal year and not applied with respect to each short period included in a fiscal year. For purposes of basis adjustments and determining whether cost depletion exceeds percentage depletion with respect to the production from a property, any amount disallowed as a deduction after the application of this paragraph shall be allocated to the respective properties from which the oil or gas was produced in proportion to the percentage depletion otherwise allowable to such properties pursuant to section 613A(c). Accordingly, the maximum amount which may be allowable as a deduction pursuant to section 613A(c) after application of this paragraph (65 percent × adjusted taxable income) shall be allocated to properties for which percentage depletion pursuant to section 613A(c) would be allowed in the absence of the limitation contained in section 613A(d)(1) by application of the same proportion. However, once it is determined that after application of this paragraph cost depletion exceeds percentage depletion with respect to a property, the maximum amount determined under the preceding sentence shall be reallocated among the remaining properties, and the portion of the amount disallowed which is allocable to such property shall be the amount by which percentage depletion pursuant to section 613A(c) before application of this paragraph exceeds cost depletion. See example (1) of paragraph (a)(2) of this section. If the taxpayer becomes entitled to the deduction in a later year (*i.e.*, because the disallowed depletion does not exceed 65 percent of the taxpayer's taxable income for that year after taking account of any percentage depletion deduction otherwise allowable for that year), then the basis of the taxpayer's properties must be adjusted downward (but not below zero) by the amount of the deduction in proportion to the portion of the amount disallowed to the respective properties in the year of the disallowance. However, if the property in question was disposed of by the taxpayer prior to the beginning of such later year, the amount of the deduction in such later year shall be reduced by the difference between the taxpayer's adjusted basis in the property at the time it is disposed of and the adjusted basis which the taxpayer would have had in the property in the absence of the 65-percent limitation.

(2) The application of this paragraph may be illustrated by the following examples:

Example 1. A owns producing oil properties M, N, and O. With respect to property M, the depletion allowable pursuant to section 613A(c) for 1975 without regard to section 613A(d)(1) was $60× (cost depletion would have been $40×). With respect to property N, the depletion allowable pursuant to section 613A(c) for 1975 without regard to section 613A(d)(1) was $90× (cost depletion would have been zero). With respect to property O, the depletion pursuant to section 613A(c) for 1975 without regard to section 613A(d)(1) was $80× (cost depletion would have been $10X). A's taxable income (as adjusted under § 1.613A–4(a)(1)) for 1975 was $100×; accordingly, A's percentage depletion pursuant to section 613A(c) for 1975 must be reduced from $200× to $65× (65 percent × $100× taxable income). Of that amount, $19.5×:

$$\left[65x \text{ dollars} \left(\frac{\$60x}{\$60x+\$90x+\$50x} \right)\right]$$

is tentatively allocated to property M, $29.25×:

$$\left[65x \text{ dollars} \left(\frac{\$90x}{\$60x+\$90x+\$50x} \right)\right]$$

is tentatively allocated to property N, and $16.25×:

$$\left[65x \text{ dollars} \left(\frac{\$50x}{\$50x+\$90x+\$60x} \right)\right]$$

is tentatively allocated to property O.

Since cost depletion of $40× with respect to property M exceeded the percentage depletion of $19.5× allowable on such property, A claimed the cost depletion. Accordingly, the only percentage depletion deduction allowable to A pursuant to section 613A(c) for 1975 is with respect to properties N and O. Therefore, the $65× ceiling applies to the percentage depletion allowable on properties N and O. Of that amount, $41.79×:

$$\left[65x \text{ dollars} \left(\frac{\$90x}{\$90x+\$50x} \right)\right]$$

is allocated to property N, and $23.21×:

$$\left[65x \text{ dollars} \left(\frac{\$50x}{\$50x+\$90x} \right)\right]$$

is allocated to property O.

Accordingly, A is allowed a total depletion deduction of $105× ($40× cost depletion on property M + $41.79× percentage depletion on property N + $23.21× percentage depletion on property O). The amount disallowed to A under section 613A(d)(1) is $95× ($200× aggregate depletion allowable before application of section 613A(d)(1) − $105× [$40× cost depletion allowable on property M + $41.79× percentage depletion allowable on property N after application of section 613A(d)(1) + $23.21× depletion allowable on property O after application of section 613A(d)(1)]). For purposes of basis adjustments, $20× ($60× percentage depletion before limitation − $40× cost depletion allowed) of the amount disallowed is allocated to property M. The balance of the amount disallowed of $75× is allocated $48.21×:

$$\left[75x \text{ dollars} \left(\frac{\$90x}{\$90x+\$50x} \right)\right]$$

to property N, and

$$\left[75x \text{ dollars} \left(\frac{50x}{\$50x+\$90x} \right)\right]$$

to property O.

Example 2. The amount disallowed to B as a deduction under this paragraph is $50x for 1975 and $125x for 1976 (including the $50x carried over from 1975). B may carry forward the $125x as a deduction to 1977 and subsequent years.

Example 3. C is a fiscal year taxpayer whose fiscal year ended on May 31, 1975. For purposes of applying the 65 percent of taxable income limitation, the period beginning January 1, 1975, and ending May 31, 1975, is treated as a short taxable year. The depletion allowable pursuant to section 613A(c) without regard to section 613A(d)(1) for such short taxable year was $80x and A's taxable income (as adjusted under § 1.613A–4(a)(1)) during such short taxable year was $100x. Only $65x (65 percent x $100x adjusted taxable income) of the deduction pursuant to section 613A(c) was deductible for such portion of 1975, in addition to any percentage depletion allowable for June 1, 1974, through December 31, 1974. With respect to the taxable year commencing June 1, 1975, and ending May 31, 1976, the 65 percent limitation is applied to the taxable income for the entire taxable year.

Example 4. Under the trust law of State X, a trustee is required to allocate 22 percent of gross mineral income to the principal of a trust for purposes of maintaining a reserve for depletion and the depletion deduction is entirely allocated to the trustee. In 1975 the gross income of a trust in State X the only assets of which were oil properties was $1,000. The trust's allowable percentage depletion pursuant to section 613A(c) without regard to section 613A(d)(1) was $220. The trust incurred expenses of $150 for the taxable year and made distributions to beneficiaries (who are not described in the exception for family members set forth in paragraph (a)(1)(iv) of this section) of $630 ($1,000 gross income −$220 allocated to principal −$150 expenses). The trust's deduction for personal exemption under section 642(b) is $300. For purposes of applying the 65 percent limitation, the trust's taxable income was $550 ($1,000 gross income −$150 expenses −$300 exemption). The limitation under section 613A(d)(1) was $357.50 (65% x $550 taxable income). Accordingly, the trust's percentage depletion allowance was unaffected by the 65 percent limitation.

Example 5. In 1980 the gross income of the estate of D was $1,000. The only assets of the estate were oil properties. The estate's adjusted basis in the oil properties was $0. The estate's allowable percentage depletion pursuant to section 613A(c) without regard to section 613A(d)(1) was $220. The estate incurred expenses of $150 for the taxable year and made distributions to beneficiaries of $425. The distributions thus equaled one half of the net income of the estate (ignoring depletion). Under section 611(b)(4), the percentage depletion is apportioned equally between the estate and its beneficiary. The distribution amount of $425 is deductible under section 661(a) in computing the taxable income of the estate. For purposes of applying the 65 percent limitation to the percentage depletion apportioned to the estate, the estate's taxable income was $0 ($1,000 gross income −$150 expenses −$425 distribution −$600 exemption). The limitation under section 613A(d)(1) was therefore also $0 (65% x $0 taxable income). Accordinly, the $110 amount is disallowed to the estate for the taxable year but may be carried forward by the estate as a deduction to 1981 and subsequent years. The beneficiaries shall apply the 65 percent limitation to the $110 percentage depletion apportioned to them based on their respective taxable incomes.

Example 6. In 1975 E sold an oil property for which E's adjusted basis was $20x. The amount disallowed for 1975 to E under section 613A(d) was $10x. The amount of the carryover under that section to 1976 was $0 ($10x disallowed amount −$10x [$20x adjusted basis of property on sale −$10x adjusted basis which taxpayer would have had in the property in the absence of the 65-percent limitation]). However, if the adjusted basis of the property on disposition had been $0, the amount of the carryover to 1976 would have been $10x ($10x disallowed amount −$0 adjusted basis of property on sale).

Example 7. In 1975 F owned producing properties M, N, O, P, Q, and R. With respect to property M, the allowable cost depletion was $100x (the allowable percentage depletion pursuant to section 613A(c) without regard to the depletable quantity and taxable income limitations contained in section 613A(c)(1), (6) and (d)(1) would have been $90x). With respect to property N, the allowable percentage depletion pursuant to section 613A(c) before applying section 613A(d)(1) was $80x (cost depletion would have been $0). With respect to property O, the allowable cost depletion was $80x (the allowable percentage depletion pursuant to section 613A(c) would have been $70x, except that the application of section 613A(d)(1) reduced allowable percentage depletion to less than $80x). With respect to property P, the allowable percentage depletion pursuant to section 613A(b) was $55x (cost depletion would have been $40x). With respect to property Q, which produces both gas subject to section 613A(b)(1)(B) and oil subject to section 613A(c), the allowable percentage depletion was $45x (cost depletion would have been $40x). With respect to property R, the allowable cost depletion was $60x (the allowable percentage depletion pursuant to section 613A(c) would have been $50x, except that the application of section 613A(c)(7)(A) reduced allowable percentage depletion to less than $40x). Under paragraph (a)(1)(i) of this section, for purposes of applying the 65 percent limitation under section 613A(d)(1), F's taxable income must be reduced by the allowable depletion with respect to property M (for which cost depletion exceeded percentage depletion even in the absence of section 613A(c)(1), (6), and (d)) and property P (for which all depletion is determined pursuant to section 613A(b)), but shall not be reduced by the allowable depletion with respect to properties N, O, Q, and R.

(b) *Retailers excluded.* (1) Section 613A(c) and § 1.613A–3 shall not apply in the case of any taxpayer who is a retailer as defined in paragraph (r) of § 1.613A–7.

(2) The application of this paragraph may be illustrated by the following examples (those that involve sales through retail outlets assume, unless

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otherwise stated, that the $5,000,000 gross receipts requirement section 613A(d)(2) is met):

Example 1. A, owner of producing oil and gas properties, also owns 5 percent in value of the stock of Corporation M, a retailer of oil and gas. None of A's production is sold through Corporation M. Since A may benefit from Corporation M's sales of oil and gas through A's ownership interest in Corporation M, A is considered to be selling oil or natural gas through Corporation M, a related person. Accordingly, the exemption under section 613A(c) does not apply to A, even though none of A's production is sold through Corporation M.

Example 2. Assume the same facts as in *Example 1* except that A has gross receipts of $2 million from sales of oil for the taxable year from A's retail outlets and Corporation M has gross receipts of $4 million from sales of oil for the taxable year from its retail outlets. For purposes of the $5 million gross receipts requirement of section 613A(d)(2), A is treated as having gross receipts of $6 million. Accordingly, the exemption under section 613A(c) does not apply to A.

Example 3. Corporation N, a retailer of oil and gas, owns 5 percent in value of the stock of Corporation O, owner of producing oil and gas properties. None of Corporation O's production is sold through Corporation N. Since Corporation O has no direct or indirect ownership interest in Corporation N, and therefore does not benefit from Corporation N's sales of oil and gas, and since none of Corporation O's production is sold through Corporation N, the exemption under section 613A(c) applies to Corporation O.

Example 4. Corporation P, a producer of oil, owns 70 percent in value of the stock of Corporation Q. Corporation Q owns 30 percent in value of the stock of Corporation R. Corporation R owns 30 percent in value of the stock of Corporation S, a retailer of oil and gas. P indirectly owns 6.3 percent (70 percent × 30 percent × 30 percent) in value of the stock of Corporation S. Since P may benefit from Corporation S's sales of oil and gas through P's indirect ownership interest in Corporation S, P is not entitled to percentage depletion.

Example 5. B is the owner of certain oil and gas properties in Texas and is also the owner of a service station in Washington, D.C., which B leases to Corporation T. None of B's production is sold to Corporation T. The exemption under section 613A(c) applies to B. However, if sales of B's production were made to Corporation T and the gross receipts from such sales of B's production to Corporation T exceed 5 million dollars, the exemption under section 613A(c) would not apply to B because B is selling oil or natural gas to a person given authority to occupy a retail outlet leased by the taxpayer, B.

Example 6. C has a ⅓ royalty interest and Corporation U has a ⅓ working interest in an oil property. Corporation V, a retailer of oil, owns 5 percent in value of the stock of Corporation U. C has no interest in either corporation. All of the production from the property is sold through Corporation V, C receiving from Corporation U ⅓ of its receipts therefrom. The exemption under section 613A(c) does not apply to Corporation U because Corporation U is selling oil of natural gas through Corporation V, a related person that is a retailer. However, the exemption applies to C because C, as owner of a nonoperating mineral interest, is not treated as an operator of a retail outlet merely because C's oil and gas is sold on C's behalf through a retail outlet operated by an unrelated person.

Example 7. D owns and operates retail grocery stores where refined oil may be purchased. D also owns oil and gas producing properties. If the sales of refined oil at each store location constitute less than 5 percent of the gross receipts from all sales made at that store, D is not considered a retailer by reason of such sales.

Example 8. Lessee E sells natural gas to lessor F directly from a wellhead gathering pipelines system for F's local agricultural use, in transactions incidental to the acquisition of a natural gas lease. The sales of natural gas to F are not sales through a retail outlet.

Example 9. Corporation W produces natural gas, some of which it sells at retail. For purposes of determining whether Corporation W is a retailer selling gas through a retail outlet within the meaning of § 1.613A–7(r), the business office of Corporation W where a purchaser would normally contact the corporation with respect to its sales to the purchaser is considered the place at which those sales of natural gas are made.

Example 10. G, husband, is the sole owner and operator of a retail outlet which sells oil and gas. H, wife, owns producing oil and gas properties. G is not related to H for purposes of section 613A(d).

Example 11. I, husband, and J, wife, are community property owners of 10 percent in value of the stock of Corporation X which is a retailer of oil and gas. I and J are each treated as owning 5 percent of Corporation X. Therefore, neither I nor J qualify for the exemption under section 613A(c).

Example 12. Corporation Y, an electing small business corporation as defined in section 1371 (as in effect prior to the enactment of the subchapter S Revision Act of 1982), owns producing oil and gas properties. K, a retailer of oil and gas, is a 50 percent interest shareholder of Corporation Y. None of Corporation Y's production is sold through K. Corporation Y is eligible for percentage depletion.

Example 13. Corporation Z, a producer of natural gas, makes bulk sales of natural gas to industrial users. For purposes of determining whether Corporation Z is a retailer under § 1.613A–7(r), the bulk sales are disregarded.

Example 14. L, a calendar year taxpayer, is the owner of a producing oil property. On September 1, 1976, L purchased a chain of gasoline service stations. Therefore, L was a retailer of oil and gas for the last 122 days of 1976. L's gross income from the oil property for the taxable year was $150x and L's taxable income from the property was $30x. L is treated as a retailer with respect to $50x of gross income from the property ($150x × 122/366) and $10x of taxable income from the property ($30x × 122/366). Therefore, L is entitled to percentage depletion with respect to $100x of gross income from the property ($150x minus $50x). However, the allowable percentage depletion is limited by the 50 percent of taxable income from the property limitation to $10x (50 percent times $20x taxable income ($30x minus $10x)).

Example 15. Corporation M is a partner in Partnership MNO which is the owner of an operating interest in a producing oil property. Corporation P, a retailer of oil and gas, owns 5 percent in value of the stock of Corporation M. Partnership MNO sells its production to Corporation P. Corporation M is retailing oil through Corporation P, a related person, because its share of the oil is being sold on its behalf by the partnership through a retail outlet operated by a person related to Corporation M. Therefore, the exemption under section 613A(c) does not apply to Corporation M.

Example 16. AA and BB are beneficiaries of a trust which is a retailer of oil and gas. AA has an interest in the income of the trust for AA's lifetime which, actuarially determined, represents more than 5 percent of the beneficial interests in the trust. BB's interest in the trust, which entitles BB to 5 percent of the corpus of the trust 5 years after AA's death, represents less than 5 percent of the beneficial interests in the trust prior to AA's death and represents more than 5 percent after AA's death. The trust is a related person of AA but not BB while AA is alive. Accordingly, during AA's lifetime BB is not disqualified from the exemption provided by section 613A(c), but AA is.

Example 17. Assume the same facts as in *Example 16*, except that AA's interest in the income of the trust represents 4 percent of the beneficial interests in the trust. AA is disqualified from the exemption provided by section 613A(c) with respect to the income from the trust but not with respect to income from other sources.

(c) *Certain refiners excluded.* (1) Section 613A(c) and § 1.613A–3 shall not apply in the case of any taxpayer who is a refiner as defined in paragraph (s) of § 1.613A–7.

(2) The provisions of this paragraph may be illustrated by the following examples:

Example 1. Corporation M owns a refinery which has refinery runs in excess of 50,000 barrels on at least one day during the taxable year. Corporation M also owns a 5 percent interest in Corporation N, owner of producing oil and gas properties. None of Corporation N's production is sold to Corporation M. The exemption under section 613A(c) does not apply to Corporation N because Corporation M, a related person of Corporation N, engages in the refining of crude oil.

Example 2. A and B are equal partners in Partnership AB, which owns oil and gas producing properties. A owns a refinery which has refinery runs in excess of 50,000 barrels on at least one day during the taxable year and which buys all of Partnership AB's production. B has no ownership interest in any refinery. B is not a refiner.

§ 1.613A–7. Definitions.

For purposes of section 613A and the regulations thereunder—

(a) *Domestic.* The term "domestic," as applied to oil and gas wells (or to production from such wells), refers to wells located in the United States or in a possession of the United States, as defined in section 638 and the regulations thereunder.

(b) *Natural gas.* The term "natural gas" means any product (other than crude oil as defined in paragraph (g) of this section) of an oil or gas well if a deduction for depletion is allowable under section 611 with respect to such product.

(c) *Regulated natural gas.* Natural gas is considered to be "regulated" only if all of the following requirements are met:

(1) The gas must be domestic gas produced and sold by the producer (whether for himself or on behalf of another person) before July 1, 1976,

(2) The price for which the gas is sold by the producer must not be adjusted to reflect to any extent the increase in liability of the seller for tax under chapter 1 of the Code by reason of the repeal of percentage depletion for gas,

(3) The sale of the gas must have been subject to the jurisdiction of the Federal Power Commission for regulatory purposes,

(4) An order or certificate of the Federal Power Commission must be in effect (or a proceeding to obtain such an order or certificate must have been instituted), and

(5) The price at which the gas is sold must be taken into account, directly or indirectly, in the issuance of the order or certificate by the Federal Power Commission. Price increases after February 1, 1975, are presumed to take increases in tax liabilities into account unless the taxpayer demonstrates to the contrary by clear and convincing evidence that the increases are wholly attributable to a purpose or purposes unrelated to the repeal of percentage depletion for gas (*e.g.*, where the record of the Federal Power Commission clearly establishes that the Commission did not take the repeal into account). Increases to reflect additional State and local real property or severance taxes, increases for additional operating costs (such as costs of secondary or tertiary processes), adjustments for inflation, increases for additional drilling and related costs, or increases to reflect changes in the quality of gas sold, are some examples of increases that are not attributable to the repeal of percentage depletion for gas. In the absence of a statement in writing by the Federal Power Commission that the price of the gas in question was not in fact regulated, the requirement of paragraph (c)(5) of this section is deemed to have been met in any case in which the Federal Power Commission issued an order or certificate approving the sale to an interstate pipeline company or, in a case in which it is established by the taxpayer that the Federal Power Commission has influenced the price of such gas, an order or certificate permitting the interstate transportation of such gas. In addition, an "emergency" sale of natural gas to an interstate pipeline, which, pursuant to the authority contained in 18 CFR 2.68, 2.70, 157.22, and 157.29, may be made without prior order approving the sale, is deemed to have met the requirements of paragraph (c) (3), (4), and (5) of this section. For purposes of meeting the requirements under this paragraph, it is not necessary that the total gas production from a property qualify as "regulated natural gas." The determination of whether mineral production is "regulated natural gas" shall be made with respect to each sale of the mineral or minerals produced.

(d) *Natural gas sold under a fixed contract.* The term "natural gas sold under a fixed contract" means domestic natural gas sold by the producer (whether for himself or on behalf of another person) under a contract, in effect on February 1, 1975, and at all times thereafter before such sale, under which the price for the gas during such period cannot be adjusted to reflect to any extent the increase in liabilities of the seller for tax under chapter 1 of the Code by reason of the repeal of percentage depletion for gas. The term may include gas sold under a fixed contract even though production sold under the contract had previously been treated as regulated natural gas. Price increases after February 1, 1975, are presumed to take increases in tax liabilities into account unless the taxpayer demonstrates to the contrary by clear and convincing evidence. Paragraph (c) of this section provides examples of increases which do not take increases in tax liabilities into account. However, if an adjustment provided for in the contract permits the possible increase in federal income tax liability of the seller to be taken into account to any extent, the gas sold under the contract after such an increase becomes permissible is not gas sold under a fixed contract. If the adjustment provided for in the contract provides for an increase in the price of the contract to the highest price paid to a producer for natural gas in the area, or if the price may be renegotiated, then gas sold under the contract after such an increase becomes permissible is presumed not to be sold under a fixed contract unless the taxpayer demonstrates by clear and convincing evidence that the price increase in no event takes increases in tax liabilities into account. For purposes of meeting the requirements of this paragraph, it is not necessary that the total gas production from a property qualify as "natural gas sold under a fixed contract," for the determination of "natural gas sold under a fixed contract" is to be made with respect to each sale of each type of natural gas sold pursuant to each contract.

(e) *Qualified natural gas from geopressured brine.* [Reserved]

(f) *Average daily production.* (1) The term "average daily production" means the taxpayer's aggregate production of domestic crude oil or natural gas, as the case may be, which is extracted after December 31, 1974, and to which gross income from the property is attributable during the taxable year divided by the number of days in such year. As used in the preceding sentence the term "taxpayer" includes a small business corporation as defined in section 1371 (as in effect prior to the enactment of the Subchapter S Revision Act of 1982) and the regulations thereunder. Notwithstanding the provisions of § 1.612–3 and except as provided in § 1.613A–3(j)(2), in computing the average daily production for a taxable year only oil or gas which has been actually produced by the close of such taxable year is taken into account. Average daily production does not include production resulting from secondary or tertiary recovery processes to which gross income from the property is attributable.

(2) In the case of a fiscal-year taxpayer, paragraph (f)(1) of this section shall be applied separately to each short taxable year under section 613A(c)(11), as in effect prior to the Revenue Reconciliation Act of 1990.

(3) In the case of a taxpayer holding a partial interest in the production from any property (including an interest of a partner in property of a partnership or a net profit interest) such taxpayer's production shall be considered to be that amount of such production determined by multiplying the total production (which is produced after December 31, 1974, and to which gross income from the property is attributable during the taxable year) of the property by the taxpayer's percentage participation in the gross revenues from the property during the year. However, the portion of trust (or estate) production allocable to a beneficiary shall not exceed that amount of the

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trust's (or estate's) depletable oil quantity determined by multiplying such quantity by the beneficiary's percentage interest in the trust's (or estate's) gross income from the property.

(g) *Crude oil.* For purposes of section 613A and the regulations thereunder, the term "crude oil" means—

(1) A mixture of hydrocarbons which existed in the liquid phase in natural underground reservoirs and which remains liquid at atmospheric pressure after passing through surface separating facilities,

(2) Hydrocarbons which existed in the gaseous phase in natural underground reservoirs but which are liquid at atmospheric pressure after being recovered from oil well (casinghead) gas in lease separators, and

(3) Natural gas liquid recovered from gas well effluent in lease separators or field facilities before any conversion process has been applied to such production.

(h) *Depletable oil quantity.* The taxpayer's depletable oil quantity, within the meaning of section 613A(c)(1)(A), shall be equal to the tentative quantity determined under the table contained in section 613A(c)(3)(B) (as in effect prior to the Revenue Reconciliation Act of 1990) and paragraph (b) of § 1.613A–3.

(i) *Depletable natural gas quantity.* The taxpayer's depletable natural gas quantity, within the meaning of section 613A(c)(1)(B), shall be equal to 6,000 cubic feet multiplied by the number of barrels of the taxpayer's depletable oil quantity to which the taxpayer elects to have section 613A(c)(4) apply. The taxpayer's depletable oil quantity for any taxable year shall be reduced (in addition to any reduction required to be made under paragraph (h) of this section) by the number of barrels with respect to which an election under section 613A(c)(4) for natural gas has been made. See § 1.613A–5.

(j) *Barrel.* The term "barrel" means 42 United States gallons.

(k) *Secondary or tertiary production.* For purposes of section 613A the term "secondary or tertiary production" means the increased production of domestic crude oil or natural gas from a property at any time after the application of a secondary or tertiary process. The increased production is the excess of actual production over the maximum primary production which would have resulted during the taxable year if the secondary or tertiary process had not been applied. The increased production may be due to an increase in either the rate or the duration of recovery. A secondary or tertiary process is a process applied for the recovery of hydrocarbons in which liquids, gases, or other matter is injected into the reservoir to supplement or augment the natural forces required to move the hydrocarbons through the reservoir. However, no process which must be introduced early in the productive life of the mineral property in order to be reasonably effective (such as cycling of gas in the case of a gas-condensate reservoir) is a secondary or tertiary process. A process (such as fire flooding or miscible fluid injection) introduced early in the productive life of the mineral property will not be disqualified as a secondary or tertiary process if a later introduction of the process in the property would still have been reasonably effective.

(l) *Controlled group of corporations.* The term "controlled group of corporations" has the meaning given to such term by section 1563(a), except that section 1563(b)(2) shall not apply and except that "more than 50 percent" shall be substituted for " at least 80 percent" each place it appears in section 1563(a).

(m) *Related person.* (1) A person is a "related person" to another person, within the meaning of section 613A(d)(2) and (4), paragraphs (b) and (c) of § 1.613A–4, and paragraphs (r) and (s) of this section, if either a significant ownership interest in such person is held by the other, or a third person has a significant ownership interest in both such persons. For purposes of determining a significant ownership interest, an interest owned by or for a corporation, partnership, trust, or estate shall be considered as owned directly both by itself and proportionately by its shareholders, partners, or beneficiaries, as the case may be. The term "significant ownership" means—

(i) With respect to any corporation, direct or indirect ownership of 5 percent or more in value of the outstanding stock of such corporation,

(ii) With respect to a partnership, direct or indirect ownership of 5 percent or more interest in the profits or capital of such partnership, and

(iii) With respect to an estate or trust, direct or indirect ownership of 5 percent or more of the beneficial interests in such estate or trust. The relative percentage ownership of beneficiaries of an estate or trust in the beneficial interests therein shall be determined under actuarial principles.

(2) A person is a "related person" to another person, within the meaning of section 613A(c)(8)(B) and paragraph (h)(2) of § 1.613A–3, if such persons are members of the same controlled group of corporations or if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), except that for this purpose the family of an individual includes only the individual's spouse and minor children.

(n) *Transfer.* The term "transfer" means any change in ownership for federal tax purposes after December 31, 1974, by sale, exchange, gift, lease, sublease, assignment, contract, or other disposition (including any contribution to or any distribution by a corporation, partnership, or trust), any change in the membership of a partnership or the beneficiaries of a trust, or any other change by which a taxpayer's proportionate share of the income subject to depletion of an oil or gas property is increased. However, the term does not include—

(1) A transfer of property at death (including a distribution by an estate, whether or not a pro rata distribution),

(2) An exchange to which section 351 applies,

(3) A change of beneficiaries of a trust by reason of the death, birth, or adoption of any vested beneficiary if the transferee was a beneficiary of the trust or is a lineal descendant of the settlor or any other vested beneficiary of the trust, except in the case of any trust where any beneficiary of the trust is a member of the family (as defined in section 267(c)(4)) of a settlor who created inter vivos and testamentary trusts for members of the family and the settlor died within the last six days of the fifth month in 1970, and the law in the jurisdiction in which the trust was created requires all or a portion of the gross or net proceeds of any royalty or other interest in oil, gas, or other mineral representing any percentage depletion allowance to be allocated to the principal of the trust.

(4) A transfer of property between corporations which are members of the same controlled group of corporations (as defined in section 613A(c)(8)(D)(i)),

(5) A transfer of property between business entities which are under common control (within the meaning of section 613A(c)(8)(B)) or between related persons in the same family (within the meaning of section 613A(c)(8)(C)),

(6) A transfer of property between a trust and members of the same family (within the meaning of section 613A(c)(8)(C)) to the extent that both (i) the beneficiaries of the trust are and continue to be members of the family that transferred the property, and (ii) the tentative oil quantity is allocated among the members of such family,

(7) A reversion of all or part of an interest with respect to which the taxpayer was eligible for percentage depletion pursuant to section 613A(c), or

(8) A conversion of a retained interest which is eligible for such depletion into an interest which constituted all or part of an interest previously owned by the taxpayer also eligible for such depletion.

However, paragraph (n) (2), (4), and (5) of this section shall apply only so long as the tentative quantity determined under the table contained in section 613A(c)(3)(B) (as in effect prior to the Revenue Reconciliation Act of 1990) is required to be allocated under section 613A(c)(8) between the transferor and transferee, or among members of a controlled group of corporations. In the case of an individual transferor, the allocation test of the preceding sentence shall not be failed merely because of the death of the transferor. For purposes of paragraph (n) (3) and (6), an individual adopted by a beneficiary is a lineal descendant of that beneficiary. For purposes of paragraph (n) (7) and (8), a taxpayer previously ineligible for percentage depletion solely by reason of section 613A(d) (2) or (4) will be considered to have been eligible for such depletion. A transfer is deemed to occur on the day on which a contract or other commitment to transfer the property becomes binding upon both the transferor and transferee, or, if no such contract or commitment is made, on the day on which ownership of the interest in oil or gas property passes to the transferee.

(o) *Transferee.* The term "transferee," as used in section 613A(c)(9) (as in effect prior to the Revenue Reconciliation Act of 1990), paragraph (i) of § 1.613A–3, and this section includes the original transferee of proven property and the original transferee's successors in interest. A person shall not be treated as a transferee of an interest in a proven oil or gas property to the extent that such person was entitled to a percentage depletion allowance on mineral produced with respect to the property immediately before the transfer. However, a person shall be treated as a transferee of an interest in a proven property to the extent that the interest such person receives is greater than the interest in the property the person held immediately before the transfer. For example, where the owner of a proven oil property transfers his or her entire interest therein to a partnership of which he or she is a member and, as a consequence, becomes entitled to a depletion allowance based on only one-third of the oil produced with respect to that property, the owner (the transferor) is not denied percentage depletion with respect to the one-third interest in oil production which the owner still possesses. If the partnership agreement had made an effective allocation (under section 704 and § 1.704.1) of all the income in respect of such property to the transferor partner, that partner would be entitled to percentage depletion on the entire oil production from that property. For this purpose, a person who has transferred oil or gas property pursuant to a unitization or pooling agreement shall be treated as having been entitled to a depletion allowance immediately before the transfer to that person of the interest in the unit or pool with respect to all of the mineral in respect of which the person receives gross income from the property pursuant to the unitization or pooling agreement, except to the extent such income is attributable to consideration paid by that person for such interest in addition to that person's contribution of the oil or gas property and equipment affixed thereto.

(p) *Interest in proven oil or gas property.* The term "interest in an oil or gas property" means an economic interest in oil or gas property. An economic interest includes working or operating interests, royalties, overriding royalties, net profits interests, and, to the extent not treated as loans under section 636, production payments from oil or gas properties. The term also includes an interest in a partnership, S corporation, small business corporation, or trust holding an economic interest in oil or gas property but does not include shares of stock in a corporation (other than an S corporation and small business corporation) owning such an interest. An oil or gas property is "proven" if its principal value has been demonstrated by prospecting, exploration, or discovery work. The principal value of the property has been demonstrated by prospecting, exploration, or discovery work only if at the time of the transfer—

(1) Any oil or gas has been produced from a deposit, whether or not produced by the taxpayer or from the property transferred;

(2) Prospecting, exploration, or discovery work indicate that it is probable that the property will have gross income from oil or gas from the deposit sufficient to justify development of the property; and

(3) The fair market value of the property is 50 percent or more of the fair market value of the property, minus actual expenses of the transferee for equipment and intangible drilling and development costs, at the time of the first production from the property subsequent to the transfer and before the transferee transfers his or her interest.

For purposes of this paragraph, the property is to be determined by applying section 614 and the regulations thereunder to the transferee at the time of the transfer. If the transfer is of an interest in a partnership, S corporation, small business corporation, or trust, the determination shall be made with respect to each property owned by the partnership, S corporation, small business corporation, or trust. The term "prospecting, exploration, or discovery work" includes activities which produce information relating to the existence, location, extent, or quality of any deposit of oil or gas, such as seismograph surveys and drilling activities (whether for exploration or for the production of oil or gas).

(q) *Amount disallowed.* The amount disallowed, within the meaning of section 613A(d)(1) and paragraph (a) of § 1.613A–4, is the excess of the amount of the aggregate of the taxpayer's allowable depletion deductions (whether based upon cost or percentage depletion) computed without regard to section 613A(d)(1) over the amount of the aggregate of such deductions computed with regard to such section. The disallowed amount shall be carried over to the succeeding year and treated as an amount allowable as a deduction pursuant to section 613A(c) for the succeeding year, subject to the 65-percent limitation of section 613A(d)(1) and the rules contained in § 1.613A–4(a).

(r) *Retailer.* (1) Except as otherwise provided in paragraph (r)(2) of this section, the term "retailer" means any taxpayer who directly, or through a related person (as defined in paragraph (m)(1) of this section), sells oil or natural gas, or any product derived from oil or natural gas—

(i) Through any retail outlet operated by the taxpayer or a related person, or

(ii) To any person—

(A) Obligated under an agreement or contract with the taxpayer or a related person to use a trademark, trade name, or service mark or name owned by such taxpayer or a related person, in marketing or distributing oil or natural gas or any product derived from oil or natural gas, or

(B) Given authority, pursuant to an agreement or contract with the taxpayer or a related person, to occupy any retail outlet owned, leased, or in any way controlled by the taxpayer or a related person.

For purposes of the preceding sentence, bulk sales (*i.e.*, sales in very large quantities) of oil or natural gas (but not

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bulk sales of any product derived from oil or natural gas) to commercial or industrial users shall be disregarded. In addition, sales of oil or natural gas (whether or not produced by the taxpayer), or of any product derived from oil or natural gas, which are made outside the United States shall be disregarded if no domestic production of oil, natural gas (or products derived therefrom) of the taxpayer or a related person is exported during the taxable year or the immediately preceding taxable year.

(2) Notwithstanding paragraph (r)(1) of this section, the taxpayer shall not be considered a retailer in any case where, during the taxable year of the taxpayer, the combined gross receipts from sales (excluding sales for resale) of oil or natural gas, or products derived therefrom, of all retail outlets taken into account under paragraph (r)(1) of this section (including sales through a retail outlet of oil, natural gas, or a product derived from oil or natural gas which had previously been the subject of a sale described in paragraph (r)(1)(ii) of this section) do not exceed $5 million. If the taxpayer's combined gross receipts for the taxable year exceed $5 million, the taxpayer will be treated as a retailer as of the first day in which a retail sale was made. For purposes of paragraph (r)(1) of this section, a taxpayer shall be deemed to be selling oil or natural gas (or a product derived therefrom) through a related person in any case in which any sale of oil or natural gas (or a derivative product) by the related person produces gross income from which the taxpayer may benefit by reason of the taxpayer's direct or indirect ownership interest in the related person. In such cases (and in any other case in which the taxpayer is selling through a retail outlet referred to in section 613A(d)(2)(A) or is selling such items to a person described in section 613A(d)(2)(B)), it is immaterial whether the oil or natural gas which is sold, or from which is derived a product which is sold, was produced by the taxpayer. A taxpayer shall be deemed to be selling oil or natural gas (or a derivative product) through a retail outlet operated by a related person in any case in which a related person who operates a retail outlet acquires for resale oil or natural gas (or a derivative product) which the taxpayer produced or caused to be made available for acquisition by the related person pursuant to an arrangement whereby some or all of the taxpayer's production is marketed. An owner of a nonoperating mineral interest (such as a royalty) shall not be treated as an operator of a retail outlet merely because the owner's oil or gas is sold on the owner's behalf through a retail outlet operated by an unrelated person. In addition, the mere fact that a member of a partnership is a retailer shall not result in characterization of the remaining partners as retailers. However, any partner of a partnership who has a 5 percent or more interest in any entity actually engaging in retail activities (including the partnership or another entity to which the partnership is related) is treated as a retailer. See paragraph (m)(1) of this section for rules on the ownership interest by partners in an entity related to a partnership. Similarly, if a trust or estate is a retailer, only its beneficiaries having a 5 percent or more current income interest from the trust or estate are treated as retailers. A person who is a retailer during a portion of the taxable year shall be treated as a retailer with respect to a fraction of that person's gross and taxable income from oil or gas properties for the taxable year, the numerator of which is the number of days during the taxable year in which the taxpayer is a retailer and the denominator of which is the total number of days during the taxable year; except that a person who ceases to be a retailer during the taxable year before the first production of oil or gas during such year shall not be treated as a retailer for any portion of such year.

(3) For purposes of this paragraph (r), the term "any product derived from oil or natural gas" means gasoline, kerosene, Number 2 fuel oil, refined lubricating oils, diesel fuel, butane, propane, and similar products which are recovered from petroleum refineries or extracted from natural gas in field facilities or natural gas processing plants. The term "retail outlet" means any place where sales of oil or natural gas (excluding bulk sales of such items to commercial or industrial users), or a product of oil or natural gas (excluding bulk sales of aviation fuels to the Department of Defense), accounting for more than 5 percent of the gross receipts from all sales made at such place during the taxpayer's taxable year, are systematically made for any purpose other than for resale. For this purpose, sales of oil or natural gas, or any product derived from oil or natural gas, to a person for refining are considered as sales made for resale.

(s) *Refiner.* A person is a refiner if such person or a related person (as defined in paragraph (m)(1) of this section) engages in the refining of crude oil (whether or not owned by such person or related person) and if the total refinery runs of such person and any related persons exceed 50,000 barrels on any day during the taxable year. A refinery run is the volume of inputs of crude oil (excluding any product derived from oil) into the refining stream. For purposes of this paragraph, crude oil refined outside the United States shall be taken into account. Refining is any operation by which the physical or chemical characteristics of crude oil are changed, exclusive of such operations as passing crude oil through separators to remove gas, placing crude oil in settling tanks to recover basic sediment and water, dehydrating crude oil, and blending of crude oil products.

Par. 5. Section 1.702-1(f) is amended by revising the heading and by adding a new sentence at the end thereof to read as follows:

§ 1.702-1 Income and credits of partner.

* * * * *

(f) *Cross—references.* * * * In the case of a disposition of an oil or gas property by the partnership, see the rules contained in section 613A(C)(7)(D) and § 1.613A-3(e).

Par. 6. Section 1.703-1 is amended by redesignating paragraph (a)(2)(vii) as paragraph (a)(2)(viii) and adding a new paragraph (a)(2)(vii), to read as follows:

§ 1.0703-1 Partnership computations.

(a) * * *

(2) * * *

(vii) The deduction for depletion under section 611 with respect to domestic oil or gas which is produced after December 31, 1974, and to which gross income from the property is attributable after such year.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 8. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.613A-3(l) * * * 1545-0919."

Dated: April 9, 1991.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-10856 Filed 5-10-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AB60

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This notice amends rules governing civil penalty assessment under section 24(b) of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1350(b)) to implement revised authority for the Secretary of the Department of the Interior (DOI) to assess civil penalties for failure to comply with regulations governing oil and gas and sulphur operations in the Outer Continental Shelf (OCS). This action will enable the Minerals Management Service (MMS) to assess a civil penalty without first providing notice and time for corrective action in cases where the failure constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella, Acting Chief, Engineering and Standards Branch, telephone (703) 787-1600.

SUPPLEMENTARY INFORMATION: The MMS regulations at 30 CFR part 250 address requirements for oil and gas and sulphur operations under a lease in the OCS. Included in these regulations are provisions in § 250.200, Remedies, which address the assessment of civil penalties. The provisions for civil penalties were developed pursuant to section 24(b) of the OCSLA (43 U.S.C. 1350(b)) which, prior to the August 18, 1990, amendment to the OCSLA, stated:

> If any person fails to comply with any provision of this subchapter, or any term of a lease, license, or permit issued pursuant to this subchapter, or any regulation or order issued under this subchapter, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty. * * *.

This provision in the OCSLA required that prior to assessment of a civil penalty, a person who was determined to be in violation of a requirement be provided with notice of failure to comply and given time to take corrective action. On August 18, 1990, section 8201 of the Oil Pollution Act of 1990 (PL 101-380) amended the OCSLA to redesignate previous section 24(b) as paragraph (1) of the new section 24(b), raise the maximum civil penalty assessment from $10,000 to $20,000 per day, require the Secretary of DOI, not less than every 3 years, to adjust the daily limit for assessment of civil penalties in accordance with the Consumer Price Index, and provide that:

> If a failure described in paragraph (1) constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, a civil penalty may be assessed without regard to the requirement of expiration of a period allowed for corrective action.

This rule modifies the regulations governing civil penalties to provide for the assessment of civil penalties if (1) a failure to comply with any provision of the OCSLA, any provision of a lease, license, or permit issued pursuant to the OCSLA, or any provision of any regulation issued under the OCSLA continued beyond any notice of failure and the expiration of any reasonable period allowed for corrective action or (2) such failure constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

The revision also establishes the maximum civil penalty at a level of $20,000 per day as provided for in the statute. This maximum level will be periodically adjusted as required by the statute.

This change to the regulations was proposed in the **Federal Register** on November 27, 1990 (55 FR 49301), with a public comment period through January 28, 1991. Ten comment letters were received during the comment period. A summary of the comments received and responses to the comments follows.

Comment: One commenter offered overall support of the rulemaking action while another commenter offered opposition to the rulemaking, claiming that the threat of a shut in was sufficient deterrent without imposing civil penalties and that the vast majority of lessees conduct business in a manner that makes this rule unnecessary.

Response: The MMS agrees that the vast majority of lessees are substantially in compliance with requirements of the OCSLA, MMS regulations, and conditions of the lease. However, in those cases where violations occur, this rule change provides MMS with broader authority to assess civil penalties. Congress specifically amended the OCSLA to provide this authority to MMS, and MMS believes that the authority should be responsibly exercised. The rule provides no added burden for those lessees in compliance with applicable requirements.

Comment: One commenter suggested that Congress did not intend that operations in the OCS constitute zero risk. The commenter cited several operations that should not be considered a threat as contemplated by Congress.

Response: The civil penalty provision does not establish a standard of zero risk. The acceptable risk is determined by requirements in the OCSLA, the lease, licenses, permits, and regulation or order issued under OCSLA. A civil penalty can only be assessed after a violation of a provision in one of these documents.

Comment: One commenter suggested that, in § 250.200(a)(1), the Regional Director be required to make a determination that the violation represents serious, irreparable, or immediate harm prior to appointing a Reviewing Officer.

Response: The determination of serious or irreparable harm is a very important determination under the new provision for assessment of civil penalties. The regulations require that the Reviewing Officer make that determination. A provision is being added to § 250.203 to require that such determinations be made based on substantial evidence in the record. It would be inappropriate for the Regional Director to make a determination of serious, irreparable, or immediate harm prior to appointing a Reviewing Officer.

Comment: One commenter recommended that § 250.203 be modified to require that a finding of serious, irreparable, or immediate harm be based on substantial information in the record.

Response: Section 250.203 has been modified to expand the conditions under which a case will be dismissed to include cases where there is not substantial evidence in the record that a threat of serious, irreparable, or immediate harm existed.

Comment: Many commenters recommended that the use of the phrase "penalty shall be assessed" be replaced with the phrase "penalty may be assessed" in § 250.200(a). Some also recommended that the regulation should state that the penalty may be compromised.

Response: The statute provided discretion to MMS to determine when to assess civil penalty. To ensure that this discretion is clear in the regulations,

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"shall" was changed to "may" in § 250.206(a) to make clear that discretion is present. This change, together with other provisions providing for discretion on the part of the Reviewing Officer to set civil penalty amounts, will adequately provide for MMS to compromise penalties when warranted.

Comment: Two commenters recommended that § 250.206(a) be modified to require that fines based on serious, irreparable, or immediate harm or damage (i.e., those civil penalties assessed without notice and time for corrective action) only be assessed for days after notice is given.

Response: The use of the phrase "constitutes or constituted" rather than the word "constitutes" indicates a congressional mandate to consider assessment of a civil penalty even in cases where the threat has ended prior to the discovery of the violation. Accordingly, it would be inappropriate and contrary to the intent of Congress to limit fines to days after receipt of notice in those cases where there is evidence of serious, irreparable, or immediate harm or damage.

Comment: Several commenters recommended that the regulation define what constitutes a serious, irreparable, or immediate harm to safety or the environment and provide criteria by which the size of the penalty will be determined.

Response: There will be many factors that influence whether a violation is determined to constitute a threat of serious, irreparable, or immediate harm or damage. These factors include whether or not an accident, e.g., blowout, fire, or oil spill, resulted from the violation, the likelihood of an accident resulting from the violation, the distance to environmentally sensitive areas, and the size of a possible oil spill that resulted or might have resulted from the violation. In addition, there will be much other information that will be gathered in the course of determining whether or not a violation constituted a threat of serious, irreparable, or immediate harm. The decision of what constitutes serious, irreparable, or immediate harm will be made on a case-by-case basis. The size of the penalty will also be made on a case-by-case basis. The MMS expects lessees to voluntarily comply with all regulations and does not believe that it is necessary to identify when failure to comply will result in a notice and time for corrective action prior to assessment of a civil penalty.

Author

This document was prepared by John V. Mirabella, Engineering and Technology Division, MMS.

Executive Order (E.O.) 12291

The MMS experience has shown that in the vast majority of cases, lessees conduct their activities in a manner that does not constitute a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment. The economic effect of this rule was estimated based on the number and magnitude of civil penalties in 1981 and 1982 since civil penalty procedures were similar to procedures that could be employed under the proposed amendment. The estimated economic effect was calculated assuming that the number of civil penalties will change in proportion to changes in drilling and production activity in the OCS and that the amount of each civil penalty will increase in proportion to the increase in statutory maximum levels. Based on these assumptions, the economic impact of the new rule is estimated to be $960,690 annually. Accordingly, DOI has determined that this rule will not have a significant economic effect on the economy and is not a major rule under E.O. 12291; therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The DOI has determined that this rule will not have a significant economic effect on a significant number of small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

Paperwork Reduction Act

The collection of information contained in this rule has been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned approval number 1010-0038.

Takings Implication Assessment

The DOI certifies that the rule does not represent a Government action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment has not been prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: March 20, 1991.

Barry Williamson,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR part 250 is amended as follows:

PART 250—[AMENDED]

1. The authority for 30 CFR part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95-372, 92 Stat. 629 (43 U.S.C. 1334).

2. In § 250.0, paragraph (n) is revised to read as follows:

§ 250.0 Authority for information collection.

* * * * *

(n) The information collection requirements in subpart N, Remedies and Penalties, have been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010-0038. The information is being collected to inform MMS of evidence relating to violations of provisions of the Act, leases, and OCS rules. The information is used to review violations and determine whether the imposition of a civil penalty is warranted. The requirement to respond is mandatory under 43 U.S.C. 1334. Public reporting burden for this collection of information is estimated to average 80 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010-0038.

3. In § 250.200, redesignate paragraph (c) as paragraph (d), revise paragraphs (a)(1) and (b), and add a new paragraph (c) to read as follows:

§ 250.200 Remedies.

(a)(1) Whenever the Regional Director determines, on the basis of available evidence, that a violation of or failure to comply with any provision of the Outer Continental Shelf Lands Act (Act), or any provision of a lease, license, or permit issued pursuant to the Act, or any provision of any regulation issued under the Act (hereinafter referred to as "violation") probably occurred and that such violation continued beyond actual notice of the violation and the expiration of any reasonable period allowed for corrective action or that the violation may constitute or may have constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, the Regional Director may direct the preparation of a case file, and appoint a Minerals Management Service (MMS) employee to serve as a Reviewing Officer. In making this determination, the Regional Director shall have the authority to summon witnesses, administrator oaths, and issue orders to produce evidence. Chairmen of investigative panels appointed by the Regional Director to investigate violations or other matters shall also have authority to summon witnesses, administer oaths, and issue orders to produce evidence while conducting investigations.

* * * * *

(b) The Reviewing Officer shall proceed with provisions of paragraph (c) of this section upon determining that there is sufficient evidence that a violation probably occurred and that:

(1) The violation continued beyond any notice of such failure and the expiration of any reasonable period allowed for corrective action, or

(2) The violation constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

(c) The Reviewing Officer shall notify, in writing, the person alleged to have committed the violation (hereinafter referred to as "party") of the following:

(1) The alleged violation, citing the applicable provision of the Act, or the applicable term of a lease, license, or permit issued pursuant to the Act, or the applicable provision of a regulation or order issued under the Act upon which the action is based;

(2) The amount of penalty that appears to be appropriate in the event it is determined that the party is responsible for the alleged violation based upon the material then available for the Reviewing Officer;

(3) The party's right to examine the material in the case file and to have a copy of all written documents provided upon request, except those which would, in a civil proceeding, disclose or lead to the disclosure of a confidential informant; and

(4) The fact that, subject to the provisions in § 250.201 of this part, the party has a right to a hearing before the Reviewing Officer prior to any finding of fact regarding the alleged violation.

* * * * *

4. In § 250.203, redesignate paragraph (b) as paragraph (c), revise paragraph (a), and add a new paragraph (b) to read as follows:

§ 250.203 Reviewing Officer's decision.

(a) The Reviewing Officer's decision shall be in writing and shall include the Reviewing Officer's conclusions and the basis for the conclusions. Any decision shall be based upon substantial evidence in the record. The Reviewing Officer shall dismiss the case and remand it to the Regional Director if the Reviewing Officer finds that:

(1) there is not substantial evidence in the record establishing that the alleged violation occurred,

(2) for a violation under § 250.200(b)(1) of this part, either the required notice of the alleged violation was not provided or that the alleged violation did not continue after the termination of any period provided for the taking of corrective action, or

(3) for a violation under § 250.200(b)(2) of this part, there is not substantial evidence on the record that, at the time of the discovery of the violation or during a time prior to the discovery of the violation, the violation constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

(b) A dismissal under paragraph (a) of this section is without prejudice to the Regional Director's right to refile the case and have it reheard if additional evidence is obtained. A dismissal following a rehearing is final and with prejudice.

* * * * *

5. In § 250.206, revise the heading and paragraph (a)(1) to read as follows:

§ 250.206 Civil penalties.

(a)(1) If the Reviewing Officer determines that a civil penalty is to be assessed, the penalty shall not exceed $20,000 for each day of the continuation of the violation. For violations described in § 250.200(b)(1) of this part, the penalty may be assessed for each day the violation continues after notice and a reasonable period for corrective action. For violations described in § 250.200(b)(2) of this part, the penalty may be assessed for each day the violation continued after it first occurred.

* * * * *

[FR Doc. 91-11314 Filed 5-10-91; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

Tolerance Processing Fees

CFR Correction

In title 40 of the Code of Federal Regulations, parts 150 to 189, revised as of July 1, 1990, § 180.33 appears twice, at pages 269 to 270 and again at pages 270 to 272. Section 180.33 Fees had been revised at 55 FR 5218, February 14, 1990. This revision starting at page 269 and ending on page 270 is the correct text.

The superseded text was incorrectly retained in the volume. The superseded text of § 180.33 at pages 270 to 272 is removed.

BILLING CODE 1505-01-D

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40 CFR Parts 261, 271, and 302

[FRL-FFFF-F; 3923-8]

RIN 2050-AB70

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; CERCLA Hazardous Substance Designation—Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038)

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule with request for comments.

SUMMARY: On November 2, 1990 the Environmental Protection Agency (EPA) promulgated regulations under the Resource Conservation and Recover Act (RCRA) to add two wastes to the list of hazardous wastes under 40 CFR 261.31. These wastes, designated as F037 and F038, are generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling wastewaters.

New information acquired by the Agency since the promulgation of the F037 and F038 listings indicates that inclusion of non-contact, once-through cooling waters in the definition of "oily cooling waters" has included within the scope of the listing separation sludges that are not similar in constituent

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concentration or oil/grease content to other sludges generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling waters. Based on the newly received information, the Agency is today promulgating an interim final rule revising the definition of wastes subject to the F037 and F038 listings to state that sludges from non-contact, once-through cooling waters are not included.

Further, the Agency is amending the definition of petroleum refinery secondary (emulsified) oil/water/solids separation sludge, F038, to clarify that floats generated in aggressive biological treatment units are not included in the listing description of that waste stream.

DATES: This interim final rule is effective May 2, 1991.

Comments on today's action and any additional data must be received on or before June 30, 1991.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F–91–PT1F–FFFFF and is located in the EPA RCRA Docket Room, M2427, 401 M Street, SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m. Monday through Friday, except Federal holidays. To review docket material, the public must make an appointment by calling (202) 475–9327. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost. Additional copies cost $0.15 per page. The public must send an original and two copies of their comments to the above docket. Place the Docket Number F–91–PT1F–FFFFF on your comments.

FOR FURTHER INFORMATION CONTACT: For general information about this rulemaking, contact the RCRA/Superfund Hotline at (800) 424–9346 or (703) 920–9810. For technical information, contact John Austin, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or by telephone at (202) 382–4769. For further information on the CERCLA portions of this rule, contact Gerain Perry, Response Standards and Criteria Branch, Emergency Response Division (OS–210), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; (202) 382–2198.

SUPPLEMENTARY INFORMATION: CERCLA section 103(a) requires that the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its RQ shall immediately notify the National Response Center of the release. The toll-free telephone number of the National Response Center is (800) 424–8802; in the Washington, DC metropolitan area, the number is (202) 267–2675.

A. Background

On November 2, 1990 (55 *FR* 46354) the Environmental Protection Agency (EPA) promulgated regulations under the Resource Conservation and Recovery Act (RCRA) adding two wastes to the list of hazardous wastes under 40 CFR 261.31. Those wastes, designated as F037 and F038, are generated in the primary and secondary separation of oil/ water/solids from petroleum refinery process wastewater and oily cooling wastewaters.

Development of listings for sludges generated in the primary and secondary treatment of process wastewaters and oily cooling wastewaters in the petroleum refining industry has been a long process, dating back ten years. Prior to promulgation of the final regulation, notices were published regarding primary and secondary treatment sludges on Novermber 2, 1980 (45 *FR* 74893), February 11, 1985 (50 *FR* 5637), and April 13, 1988 (53 *FR* 12182).

In the November 2, 1990 final rule, the preamble discussed the scope of the listing and described those process and oily cooling wastewaters generating the listed waste (55 *FR* 46364). The preamble indicated that "oily cooling waters" for the purposes of the listing included once-through cooling water from C_6 (six carbon) hydrocarbons and heavier operations. However, since publication of the final rule, the Agency has learned that the inclusion of non-contact, once-through cooling water (as opposed to once-through contact cooling water) in the definition of oily cooling waters unintentionally may extend the F037 and F038 listings to wastes that are not similar in constituent concentration to others included in the listing. The American Petroleum Institute (API) provided data, which is included in the docket for today's notice, that supports the conclusion that sludges from non-contact, once-through cooling waters are not similar to other primary and secondary oil/water/solids separation sludges generated at petroleum refineries and should, therefore, be excluded from the listings. Consequently, EPA has determined that sludges from once-through, non-contact cooling water should not be listed and is therefore today amending the listing description.

In addition, the Agency today is revising the definition of wastes subject to the F038 listing for petroleum refinery secondary (emulsified) oil/water/solids separation sludge, to clarify an ambiguity in the listing description. The revised language clarifies that both sludges and floats generated in aggressive biological treatment units, as defined in 40 CFR 261.31(b)(2)(i), and not included in the F038 listing, are excluded from the scope of that listing. It was not EPA's intent to include those floats in the F038 listing, and today's rule adds language to clear up any confusion on this issue.

B. Interim Final Rule

1. Non-Contact Once-Through Cooling Water

Section 3001 of RCRA requires EPA to list particular hazardous wastes that must be subject to the RCRA hazardous waste management system. Regulations listing specified wastes must be based on EPA-developed criteria codified at 40 CFR 261.11. The Hazardous and Solid Waste Amendments of 1984 (HSWA), among other provisions, added a new secton 3001(e)(2) directing EPA to make a determination whether or not to list as hazardous a number of wastes, including refinery wastes. In the previously published notices, the Agency explicitly discussed the inclusion of cooling waters from C_6 and heavier operations in the scope of the listings (see 53 *FR* 12164, April 13, 1988). However, the notice did not indicate that cooling water included non-contact, once-through cooling water, which is segregated wastewater used for cooling that does not come in contact with oil. Further, the Agency did not request comment or data on the composition of non-contact, once-through cooling water in any of the notices. Further, the cost of managing such wastes was not analyzed when EPA evaluated the regulatory impact of the listings.

After publication of the final rule, EPA received comments from the regulated community contending that waste produced in oil/water/solids separation of non-contact, once-through cooling water is not similar in constituent concentration to other wastes included in the listing. As noted above, API submitted data supporting their contention that non-contact, once-through cooling water should not have been included in the definition of oily cooling waters.

The Agency's inclusion of once-through cooling water from C_6 (six carbon) hydrocarbons and heavier operations in the definition of oily cooling waters was based on a 1989 API petroleum refinery waste disposal manual that was developed prior to implementation of current Clean Water Act (CWA) requirements. Discussion of liquid wastes in the manual described "once-through cooling water from surface condensers and coolers handling oil which will *not* vaporize rapidly on exposure to air (C_6 and heavier)" as one type of oily cooling waters. The manual indicated that such oily cooling waters were of concern because they can contain minor oil contamination from sources such as spills or leaks in heat exchange equipment. The manual made a clear distinction between oily cooling waters and oil-free cooling wastewaters, such as once-through cooling water from surface condensers and coolers which normally handle gaseous products (C_4 and lighter).

In response to CWA requirements related to surface water discharges that were promulgated after publication of the manual, API contends that refineries have changed processes and adapted their facilities to separate non-contact, once-through cooling water from other wastewaters. Thus, these wastewaters are segregated from other oily wastewaters. As a result, sludges from treatment of these wastewaters for the most part contain metals (*e.g.*, arsenic, nickel, lead, and chromium) at much lower levels than found in other primary and secondary oil/water/solids separation sludges. Further, the API data indicate that the semivolatile constituents of concern (*e.g.*, benzene, benzo(a)pyrene, and chrysene), when present, are detected at levels at least 100 times less than the average found in other wastes included in the F037 and F038 listings.

Based on the comments received by the Agency after promulgation of the November 2, 1990 final rule, EPA has concluded that wastes from the separation of non-contact, once-through cooling water are significantly different from the sludges the Agency intended to list as F037 and F038 and, thus, should not be included in the scope of these listings. The Agency, however, is not making a final listing determination on these wastes and may, in the future, evaluate sludges generated from non-contact once-through cooling waters. Today, the Agency is promulgating an interim final rule that amends the listing definitions for F037 and F038 to exclude sludge generated from non-contact, once-through cooling waters that are segregated for treatment from other process or oily cooling wastewaters. It should be noted that non-contact, once-through cooling waters that are mixed with the wastewaters that will generate the listed waste or with any other listed hazardous waste become subject to Subtitle C regulations under the mixture rule (40 CFR 261.3(a)(2)(iv)). It also should be noted that these wastewaters, and any sludges generated from them, could still exhibit one or more of the characteristics of hazardous waste, and if so, would be subject to appropriate RCRA Subtitle C controls.

2. Floats Generated in Aggressive Biological Treatment

The Agency also has learned that the F038 listing description published in the final rule on November 2, 1990 could be misinterpreted to include floats generated during or after aggressive biological treatment. Today's rule further revises the F038 listing definition to clarify that the F038 listing for petroleum refinery secondary (emulsified) oil/water/solids separation does not include floats generated in or downstream from aggressive biological treatment units. EPA believes this was clearly implicit in its discussion in the final rule. The Agency spelled out in detail what units were aggressive biological treatment units in the preamble to the final rule (see 55 *FR* 46356, November 2, 1990) and promulgated a detailed definition for such units under 40 CFR 261.31(b)(2)(i). The Agency believes its intent was plain in both the preamble discussion and the regulatory language. However, the Agency agrees that some potential for misinterpretation may exist and, therefore, is clarifying the listing description.

The Agency used the term "[a]ny sludge and/or float" to describe the listed F038 waste in the definition at 40 CFR 261.31 (55 *FR* 46398). This phrase indicated the Agency's intent to regulate all sludges and floats generated in the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters. However, the Agency used the term "sludges" to describe the waste generated in an aggressive biological treatment unit *not* included in the listing. By failing to include "and/or floats" the Agency did not mean to suggest floats generated in aggressive biological treatment units remained within the scope of the listing as well. However, because of the potential for some confusion, the Agency is amending the definition of F038 specifically to exclude floats generated in aggressive biological treatment units from the F038 listing.

EPA today is soliciting comments on its action today. In particular, the Agency is seeking additional data that would support or refute API's contention that non-contact, once-through cooling waters are substantially different from other wastewaters included in the definition of oily cooling waters, and comment on the data the Agency has received to date.

C. State Authority

1. Applicability of Rules in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under section 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim. Consequently, in light of today's revision, Table 1 in 40 CFR 271.1(j) also has been amended. Table 1 identifies Federal program requirements promulgated pursuant to HSWA that are effective regardless of a State's authorization status.

2. Effect on State Authorizations

EPA will implement the provisions of today's interim final rule in authorized States until their programs are modified to adopt the final listings for primary and secondary oil/water/solids separation sludge and the modification to the State's program is approved by EPA. See discussion in the final rule at 55 *FR* 46361 (November 2, 1990). In nonauthorized States EPA will, of

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course, implement the provisions of today's rule.

As previously noted, the primary and secondary oil/water/solids separation sludge listings were promulgated pursuant to a HSWA provision and must be adopted by States that intend to retain final authorization. However, today's rule revises and narrows the scope of the listing for primary and secondary oil/water/solids separation sludge from that of the final regulation as promulgated. Today's interim final rule (1) excludes non-contact, once-through cooling water from the F037 and F038 listings and (2) does not include within the scope of the F038 listing floats generated in or after aggressive biological treatment units. Consequently, such wastes are not hazardous wastes for the purposes of Federal regulation and regulation of these wastes is not required. At the same time, under section 3009 of RCRA, States remain free to impose more stringent requirements than those imposed under Federal regulations. As a result, States, as authorized by State statute, may chose to regulate the wastes from non-contact, once-through cooling wastes or aggressive biological treatment units or may require other more stringent conditions upon management of these wastes.

D. CERCLA Designation and Reportable Quantities

All hazardous wastes listed in 40 CFR 261.31 through 261.33, as well as any solid waste that meets one or more of the characteristics of a RCRA hazardous waste (as defined at 40 CFR 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, pursuant to CERCLA section 101(14). Therefore, the waste streams that were listed as hazardous waste in the November 2, 1990 rule (55 *FR* 46354) will, on the effective date of the rule, May 2, 1991, automatically become hazardous substances. CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs).

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its RQ shall immediately notify the National Response Center of the release. In addition to the reporting requirements under CERCLA, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) requires owners or operators of certain facilities to report the releases of a CERCLA hazardous substance or Extremely Hazardous Substance (EHS) to State and local authorities. EPCRA Section 304 notification must be given immediately after the release of an EHS in the amount of an RQ or more to the community emergency coordinator for each local emergency planning committee (LEPC) for an area likely to be affected by the release, and to the State emergency planning commission of any State likely to be affected by the release.

With the revision of the definitions of waste subject to the F037 and F038 listings, as discussed previously in today's notice, the Agency is revising the F037 and F038 listings in 40 CFR 302.4 and the codified list of CERCLA hazardous substances.

Under Section 102(b) of CERCLA, all hazardous wastes newly designated under RCRA will have a statutory RQ of one pound unless and until the RQ is adjusted by regulation under CERCLA. The November 2, 1990 rule provided that the RQ for the newly added F037 and F038 wastes would be one pound until revised under a CERCLA rulemaking. On March 27, 1991, the Agency published a separate rulemaking under CERCLA (56 *FR* 12626), which proposed to adjust the RQ for these wastes at one pound. The changes in today's rule do not change the proposed RQs.

E. Regulatory Requirements

1. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The overall effect of today's rule is to narrow the definition of those wastes subject to the F037 and F038 hazardous waste listings for petroleum refinery primary and secondary oil/water/solids separation sludge. The net effect of this proposal is to extend cost savings to the regulated community. Consequently, no regulatory impact analysis is required.

2. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The narrowing of the definition of oily cooling waters as applied to petroleum refinery primary and secondary oil/water/solids separation sludge (F037 and F038) promulgated today is deregulatory in nature and thus will only provide beneficial opportunities for entities that may be affected by the rule. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

3. Paperwork Reduction Act

There are no reporting, notification, or recordkeeping (information) provision in this rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 261

Hazardous wastes, hazardous constituents, recycling.

40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply, Interim and final State authorizations.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 1, 1991.

F. Henry Habicht, II,

Deputy Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. The table in § 261.31(a) is amended by revising the entries F037 and F038 to read as follows:

§ 261.31 Hazardous waste from non-specific sources

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
* * * * * * *		
F037	Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.	(T)
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge—Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing.	(T)
* * * * * * *		

PART 271—REQUIREMENT FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

3. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

4. Section 271.1(j) is amended by adding at the end of the following entry to Table 1.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* * * * * * *			
[Insert Publication Date]	Petroleum refinery primary and secondary oil/water/solids separation sludge listings.	[Insert FR page citation]	May 2, 1991.
* * * * * * *			

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

5. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

6. Section 302.4 is amended by revising the entries F037 and F038 in Table 302.4 to read as follows.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code +	Statutory RCRA waste no.	Final RQ Category	Final RQ Pounds (Kg)
* * * * * * *							
F037 Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing			1*	4	F037	———	**
F038			1*	4	F038	———	**

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TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code+	RCRA waste no.	Category	Pounds (KG)
Petroleum refinery secondary (emulsified) oil/water/solids separation sludge—Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from once-through non-contact cooling waters segregated for treatment from other process or all cooling wastes, sludges and floats generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing.	•	•	•	•	•	•	•

+ Indicates the statutory sources as defined by 4 below.
4 Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.
1* Indicates that the 1-pound RQ is a CERCLA statutory RQ.
The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory RQ applies.

[FR Doc. 91-11296 Filed 5-10-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 910497-1107]

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce changes the quota for wreckfish in the snapper-grouper fishery off the South Atlantic states in accordance with the framework procedure of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as amended. This notice establishes an annual quota for wreckfish of up to three million pounds (1,360,791 kilograms), whole weight, as follows: One million pounds (453,597 kilograms), whole weight, during each of the periods April 16, 1991, through July 15, 1991, and July 16, 1991, through October 15, 1991; with an additional one million pounds for the period October 16, 1991, through January 14, 1992, available if analysis of current data indicates that it is the appropriate harvest level for the resource. The intended effect is to protect the wreckfish resource.

EFFECTIVE DATE: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, (813) 893-3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species, including wreckfish, are managed under the FMP, prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

In accordance with procedures approved in Amendment 3 to the FMP, the Council recommended and NOAA published a proposed rule changing the wreckfish annual quota (56 FR 14496, April 10, 1991). That notice (1) described the framework procedure of the FMP through which the Council recommended the change; (2) specified the change; and (3) described the need and rationale for the change. Those descriptions and specifications are not repeated here. No comments were received on the proposed rule.

The Regional Director, Southeast Region, NMFS, concurs that the Council's recommended wreckfish quota is necessary to protect the resource and finds that it is consistent with the goals and objectives of the FMP. In addition, NOAA finds that it is consistent with the Magnuson Act and other applicable law. Accordingly, the Council's recommended wreckfish quota is implemented for the fishing year that commenced April 16, 1991.

Because this change in quota is for a fishing year that has already commenced, the Assistant Administrator for Fisheries, NOAA, finds for good cause, namely, to provide effective conservation and management of the wreckfish resource, that it is impracticable and contrary to the public interest to delay for 30 days the effective date of this rule under the provisions of section 553(d)(3) of the Administrative Procedure Act.

Other Matters

This action is authorized by 50 CFR 646.25 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 7, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 646.24 is revised to read as follows:

§ 646.24 Wreckfish quota and closure.

(a) Persons fishing for wreckfish are subject to a quota of up to 3 million pounds (1,360,791 kilograms), whole weight, each fishing year, distributed as follows:

(1) A quota of one million pounds (453,597 kilograms) is available on April 16;

(2) A quota of one million pounds (453,597 kilograms) is available on July 16; and

(3) A quota of one million pounds (453,597 kilograms) is available on October 16, unless the fishery is closed for the remainder of the fishing year by notice in the Federal Register.

(b) When a quota specified in paragraph (a) of this section is reached, or is projected to be reached, the Secretary will publish a notice to that effect in the Federal Register. After the effective date of such notice, until an additional quota is available, wreckfish may not be harvested or possessed in or from the EEZ and the purchase, barter, trade, offer for sale, and sale of wreckfish taken from the EEZ is prohibited. This prohibition does not apply to trade in wreckfish that were harvested, landed, and bartered, traded, or sold prior to the effective date of the notice in the Federal Register and where held in cold storage by a dealer or processor.

[FR Doc. 91-11295 Filed 5-10-91; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 681

[Docket No. 910494-1094]

Western Pacific Crustacean Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; closure of lobster fishery in the Northwestern Hawaiian Islands.

SUMMARY: The Secretary of Commerce (Secretary) issues this emergency interim rule amending current regulations promulgated under the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP). This rule is needed to provide immediate protection to the lobster stocks in the Northwestern Hawaiian Islands (NWHI) from heavy fishing pressure. An immediate closure will protect the spawning population before and during the summer peak spawning period and delay the opening of the fishery until after the FMP can be amended to establish a limited-entry plan and an annual harvest quota.

EFFECTIVE DATE: This emergency rule is effective from May 8, 1991, through 2400 hours local time August 12, 1991.

ADDRESSES: Copies of the environmental assessment may be obtained from, and comments should be addressed to, E.C. Fullerton, Director, NMFS Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, (808) 523-1368 or (FTS) 551-1974, or E.C. Fullerton, Director, NMFS Southwest Region, (213) 514-6196 or (FTS) 795-6196.

SUPPLEMENTARY INFORMATION: The FMP was developed by the Council and implemented under the Magnuson Fishery Conservation and Management Act (Magnuson Act) by regulations appearing at 50 CFR part 681.

Responding to concerns voiced by members of the NWHI lobster fishery about falling catch rates and lobster tail sizes, the Council directed its advisory committees to meet with industry representatives to work out solutions to the problem. At the same time, the NMFS Honolulu Laboratory analyzed data from commercial fishing logbooks and research cruises. The research and discussions indicated that the NWHI fishery could be in jeopardy, and that immediate action was required to protect and rebuild the lobster stocks.

A detailed analysis of the status of lobster stocks in the NWHI for 1990 is presented in a NMFS report (Polovina, J.J. Draft Report, March 1991. Status of lobster stocks in the Northwestern Hawaiian Islands, 1990. Honolulu Laboratory, Southwest Fisheries Science Center, NMFS, NOAA. Admin. Rep.. H-91-04. 16 pp.). Preparation of this report was accelerated at the Council's request, due to concern about the status of the stocks. The main findings of the report are:

1. Fishing effort in 1990 was 1.2 million trap-hauls, a 10 percent increase over 1989. The catch per unit of effort (CPUE) for slipper and spiny lobsters combined, however, was 0.66 lobsters/trap-haul, a 38 percent decrease from 1989, the lowest CPUE since the inception of the fishery in the late 1970s;

2. The current low population level is due to poor recruitment to the fishery beginning in late 1989, combined with heavy fishing pressure; and

3. Most significantly, the index of spawning stock biomass indicates that the 1990 spawning stock biomass was about 22 percent of the pre-exploitation level.

The recent poor recruitment to the fishery has resulted in a current spawning stock biomass that is close to 20 percent of the biomass in the absence of fishing, the threshold level of overfishing defined in amendment 6 to the FMP. There is no evidence that recruitment to the fishery has returned to normal levels. The Council agrees with its Crustacean Planning Team, its Scientific and Statistical Committee, and with members of the lobster industry that the fishery should be closed as soon as possible.

The closure will serve two purposes. The first is to protect the spawning population before and during the summer peak spawning period. The second is to delay the opening of the fishery until after amendment 7 to the FMP can be implemented. Amendment 7 will establish a limited entry program and a process to set an annual harvest quota. These actions are intended to rebuild the lobster stocks and maintain them at maximum sustainable yield levels.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable laws. This emergency rule is implemented for 90 days under section 305(c) of the Magnuson Act and may be extended for an additional 90 days with the agreement of the Council. The Assistant Administrator has determined that continuing the regulations now in force for the NWHI would result in serious reduction in the lobster resource and considerable economic loss to the fishery.

The Council prepared an environmental assessment (EA) for this action. The Assistant Administrator concluded that there will be no significant impact on the human environment. A copy of the EA is available (see ADDRESSES).

The Assistant Administrator finds that the reasons justifying promulgation of this rule on an emergency basis make it impractical and contrary to the public interest to provide notice and opportunity for comment, or to delay for any period the effective date of these emergency regulations, under the provisions of 553 (b) and (d) of the Administrative Procedure Act.

This emergency rule is exempt from the normal review procedures of Executive Order (E.O.) 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the regular procedures of that order.

The Council requested that the State of Hawaii concur with its finding that the proposed action is consistent with the State's approved coastal zone management program. The State of Hawaii has concurred with this determination.

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This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This rule is exempt from the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This emergency rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing.

Dated: May 7, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 661 is amended as follows:

PART 661—WESTERN PACIFIC CRUSTACEAN FISHERIES

1. The authority citation for part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 661.7, effective from May 8, 1991, through 2400 hours local time August 12, 1991, paragraph (b)(1) is suspended, and new paragraphs (b)(7) and (b)(8) are added, to read as follows:

§ 661.7 Prohibitions.

* * * * *

(b) * * *

(7) Possess on a fishing vessel any gear (trap) for the fishing or taking of lobsters.

(8) Fish for, take, or retain lobsters.

* * * * *

[FR Doc. 91-11206 Filed 5-8-91; 4:23 p.m.]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 92
Monday, May 13, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IL-066-89]

RIN 1545-AL81

Requirements For Investments to Qualify Under Section 936(d)(4) As Investments in Qualified Caribbean Basin Countries; Public hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing relating to the use of section 936 funds to finance an investment that qualifies as privatization.

DATES: The public hearing will be held on July 12, 1991, beginning at 10 a.m. Outlines of oral comments must be received by June 28, 1991.

ADDRESSES: The public hearing will be in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (IL-066-89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 936(d)(4) of the Internal Revenue Code. The proposed regulations appear in the proposed rules section of this issue of the Federal Register.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, June 28, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:30 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge of the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-11205 Filed 5-10-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[INTL-080-89]

RIN 1545-AL81

Requirements For Investments To Qualify Under Section 936(d)(4) As Investments in Qualified Caribbean Basin Countries

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the use of section 936 funds to finance an investment that qualifies as a privatization. The regulations prescribe conditions for such an investment to qualify as for use in Puerto Rico under section 936(d)(4). These regulations are necessary to give guidance as to whether the use of section 936 funds in a privatization transaction will qualify as for use in Puerto Rico under section 936(d)(4).

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for Friday, July 12, 1991, at 10 a.m., must be received by Friday, June 28, 1991. See notice of hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: Send comments, requests to appear and outline of oral comments to be presented to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, atten: CC:COPR:T:R (INTL-80-89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing on the proposed rulemaking, Felicia Daniels, Regulations Unit, 202-566-3935; concerning a particular provision of this proposed regulation, Christine Halphen (202-377-9483, not a toll-free call) or W. Edward Williams (202-287-4851, not a toll-free call) of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1). These regulations are proposed to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1986 (68A Stat. 917, 26 U.S.C. 7805).

On September 22, 1988, the Federal Register published proposed and temporary Income Tax Regulations (26 CFR part 1) [T.D. 8266, 1989-2 C.B. 134] under section 936(d)(4) of the Internal Revenue Code of 1986, which section was enacted by section 1231(c) of the Tax Reform Act of 1986 (100 Stat. 2085). The proposed and temporary regulations reserved on the issue of privatization. The final regulations published in the Rules and Regulations portion of this Federal Register also reserve on this issue.

Explanation of Provision

In general, the proposed regulations provide that a financing transaction effecting a privatization will be a qualified investment for purposes of section 936(d)(4) if the investment involves a transfer of ownership from a government entity to the private sector and has a positive developmental impact on the economy of a qualified

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CBI country. Section 1.936-10(c)(5)(v) of the proposed regulations lists six requirements for a qualified privatization. One of these requirements is that the United States Agency for International Development, or the Overseas Private Investment Corporation if it is sponsoring a transaction, certifies that the acquisition is expected to have a significant positive developmental impact in the qualified Caribbean Basin country where the privatization occurs. The regulations are proposed to be effective 30 days after their publication in the Federal Register as final regulations.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking which solicits public comment, it has been determined that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

It has also been determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal authors of these proposed regulations are Christine Halphen and W. Edward Williams of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and the Treasury Department participated in developing these proposed regulations.

List of Subjects in 26 CFR 1.931-1 Through 1.936-10T

Guam income taxes, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Proposed amendments to the regulations

The proposed amendments to 26 CFR part 1 is as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.936-10 is amended as follows:

1. Paragraph (c)(5)(i)(A) is amended by adding a new sentence at the end of the paragraph to read as set forth below;

2. Paragraph (c)(5)(i)(B)(*1*) is amended by removing the word "or" at the end of the paragraph.

3. Paragraph (c)(5)(i)(B)(*2*) is amended by adding the word "or" at the end of the paragraph, and paragraph (c)(5)(i)(B)(*3*) is added to read as set forth below.

4. Paragraph (c)(5)(v) is added to read as set forth below.

5. Paragraphs (c)(9)(i) and (ii) are revised to read as set forth below.

§ 1.936-10 Qualified investments.

* * * * *

(c) * * *

(5) * * *

(i) * * *

(A) * * * Solely for purposes of a qualified privatization described in paragraph (c)(5)(v) of this section, the amounts disbursed under the loan or bond issue may also be applied to an investment in a corporation, partnership, or trust.

(B) * * *

(*3*) A qualified privatization described in paragraph (c)(5)(v) of this section;

* * * * *

(v) *Qualified privatization.* This paragraph (c)(5)(v) is effective for investments made by a possessions corporation in a financial institution for investments in accordance with a specific authorization granted by the Commissioner of Financial Institutions of Puerto Rico (or his delegate) on or after [insert date that is 30 days after publication of the final regulations in the Federal Register]. For purposes of this section, a qualified privatization is a financing transaction that satisfies all of the requirements of this paragraph (c)(5)(v).

(A) The loan must be made to finance the acquisition, directly or through an investment in a corporation, partnership or trust, of any assets that are currently used in a trade or business or were used in a trade or business but are no longer so used at the time of acquisition and a plan exists to continue or resume using those assets in the conduct of an active trade or business. The loan can also be used to finance other costs associated with acquiring the trade or business or placing assets back in service, within the limits set forth in paragraph (c)(4)(iii) of the section.

(B) After the acquisition, the assets must be used in a trade or business conducted as a qualified business activity.

(C) The United States Agency for International Development (USAID) or the Overseas Private Investment Corporation (OPIC) must certify, prior to the acquisition, that, as a result of the transfer of the activity from the public to the private sector, the acquisition is expected to have a significant positive developmental impact in the qualified Caribbean Basin country where the trade or business is conducted. The determination of whether an acquisition has significant positive developmental impact depends upon an analysis measuring the extent to which incremental developmental benefits exceed incremental negative effects. Generally, developmental effects will be measured in relation to the impact of the acquisition on those economic factors generally used to measure the effect of an activity on the economy of a qualified Caribbean Basin country. Those factors include (but are not limited to) increased economic efficiency and innovation conducive to self-sustaining growth, decreased government expenditures or increased direct revenues to the government, an improved balance of payments of the qualified Caribbean Basin country (through expanded exports of goods or services), increased employment over time, reduced cost of capital, increased expenditures for maintenance and operations, increased capital expenditures, increased net output and improved market competitiveness. Negative factors include (but are not limited to) increased capital outflows (*e.g.*, expenditures abroad and repatriation to any foreign shareholders).

(D) During the 3-year period preceding the acquisition, the government of the qualified Caribbean Basin country must have owned an interest, directly or indirectly, in the acquired assets that, by value or voting interest, represented 50 percent or more of the total of such interests in the acquired assets, and such government must have exercised effective control over such assets.

(E) After the acquisition and during all the time that the loan is outstanding, no government or government-controlled entity may own, directly or indirectly, any interest in the acquired assets.

(F) No government or government-controlled entity may exercise any effective control, or managerial or operational responsibility or authority, over the acquired assets at any time during the time that the loan is outstanding. This restriction is not intended to restrict the normal exercise of regulatory authority by a government, provided such power is not exercised in a way that would defeat the intent of the provisions in this paragraph (c)(5)(v)(F).

* * * * *

(9) * * *

(i) In the case of an investment described in paragraph (c)(4) of this section (relating to investments in active business assets) or in paragraph (c)(5)(v) of this section (relating to qualified privatization), a qualified recipient is a person that carries on a qualified business activity in a qualified Caribbean Basin country, and complies with the agreement and certification requirements described in paragraph (c)(11)(i) of this section at all times during the period in which the investment remains outstanding.

(ii) In the case of an investment described in paragraph (c)(5) of this section (relating to investments in development projects), other than an investment described in paragraph (c)(5)(v) of this section, a qualified recipient is the borrower (including a person empowered by the borrower to authorize expenditures for the investment in the development project) that has authority to comply, and complies, with the agreement and certification requirements described in paragraph (c)(11)(i) of this section at all times during the period in which the investment remains outstanding.

* * * * *

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 91-11304 Filed 5-10-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-006-91]

RIN 1545-AP86

Limitations on Percentage Depletion in the Case of Oil and Gas Wells; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed amendments to final regulations that clarify the circumstances under which percentage depletion is available in the case of oil and gas wells. The proposed rules reflect changes to the applicable tax laws that were made by the Tax Reduction Act of 1975, the Energy Tax Act of 1978, the Technical Corrections Act of 1982, the Subchapter S Revision Act of 1982, the Tax Reform Act of 1984, the Tax Reform Act of 1986, and the Revenue Reconciliation Act of 1990.

DATES: The public hearing will be held on Monday, July 8, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, June 17, 1991.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS-006-91], room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is a notice of proposed rulemaking that contains proposed amendments to the Income Tax Regulations under section 613, 613A, and 705 of the Internal Revenue Code of 1986 (Code). These amendments are proposed to conform the regulations to section 403(a)(2)(B), (b), and (c) of the Energy Tax Act of 1978, sections 202(d)(2) and 203(b)(3)(B) of the Technical Corrections Act of 1982, section 5(a)(1) of the Subchapter S Revision Act of 1982, sections 25(b) and 722(e)(1) of the Tax Reform Act of 1984, section 412(a)(1) of the Tax Reform Act of 1986, and sections 11521 and 11522 of the Revenue Reconciliation Act of 1990. These proposed regulations appear in the proposed rules section of this issue of the Federal Register.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, June 17, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,
Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-10984 Filed 5-10-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-006-91]

RIN 1545-AP86

Limitations on Percentage Depletion in the Case of Oil and Gas Wells

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to final regulations which the Internal Revenue Service is issuing in the rules and regulations portion of this issue of the Federal Register. The final regulations clarify the circumstances under which percentage depletion is available in the case of oil and gas wells. The proposed rules contained herein reflect changes to the applicable tax law that were made by the Tax Reduction Act of 1975, the Tax Reform Act of 1976, the Energy Tax Act of 1978, the Technical Corrections Act of 1982, the Subchapter S Revision Act of 1982, the Tax Reform Act of 1984, the Tax Reform Act of 1986, and the Revenue Reconciliation Act of 1990.

DATES: Written comments and requests to appear at a public hearing scheduled for July 8, 1991 at 10 a.m. must be received by June 17, 1991. Outlines of oral comments must be received by June 17, 1991. See notice of hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: Send comments, requests to speak and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS-006-91), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Lisa A. Fagan, (202) 566-4821 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and

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Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in these regulations is in § 1.613A–3(e)(6)(i). This information is required by the Internal Revenue Service to verify that the partners' adjusted basis in oil and gas property has been adjusted to reflect the depletion allowance.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total reporting burden: 49,950 hours.

The estimated average burden associated with the collection of information in this notice of proposed rulemaking is .0333 hours per recordkeeper.

Estimated number of respondents: 1,500,000.

Background

This document contains proposed amendments to the Income Tax Regulations under sections 613, 613A, and 705 of the Internal Revenue Code of 1986 (Code). The rules contained herein are proposed to amend the final regulations that the Internal Revenue Service is issuing in the rules and regulations portion of this issue of the Federal Register. These amendments are proposed to conform the regulations to section 501 of the Tax Reduction Act of 1975, section 2115(c) of the Tax Reform Act of 1976, section 403(a)(2)(B), (b), and (c) of the Energy Tax Act of 1978, sections 202(d)(2) and 203(b)(3)(B) of the Technical Corrections Act of 1982, section 3(a) of the subchapter S Revision Act of 1982, sections 25(b) and 722(e)(1) of the Tax Reform Act of 1984, section 412(a)(1) of the Tax Reform Act of 1986, and sections 11521 and 11522 of the Revenue Reconciliation Act of 1990.

Explanation of Provisions

Although the provisions concerning oil and gas property held by partnerships were contained in the 1977 proposed regulations under section 613A, partnership provisions are being reproposed because the regulations proposed by this notice differ substantially from the regulations previously proposed. In the case of an entry of a new partner (or an additional contribution by an existing partner), the proposed amendments to the regulations require a partnership to allocate to the new partner his or her share of the aggregate of the partners' adjusted bases in each partnership oil or gas property. Concurrently, each existing partner is required to reduce his or her basis in each partnership oil or gas property by the percentage of the partnership's aggregate basis in the property that has been allocated to the new partner. The partnership may determine the partners' aggregate bases by using data submitted by partners or by using assumptions. Where a partner does not inform the partnership of the partner's basis in an oil or gas property, the partnership must use assumptions to determine the basis.

Use of the assumptions may result in the loss of a portion of the partners' collective basis in partnership property upon reallocation to an entering partner. A partnership may avoid the loss of any portion of the collective basis by using written data submitted by partners. A number of alternative methods of basis reallocation were considered and rejected on the ground the proposed method is the simplest and most administrable method. In particular, the proposed method minimizes required information on transfers and allows partnerships the flexibility to use written data with respect to some partners and assumptions with respect to others.

All other amendments proposed by this notice reflect legislation enacted after the issuance of the proposed May 13, 1977 regulations under section 613A. Consistent with *Commissioner* v. *Engle*, 464 U.S. 206 (1984) (holding that section 613A was not intended to disallow percentage depletion on a lease bonus or advanced royalty payment even when there is no actual production in the year of receipt), the final regulations under section 613A provide rules allowing percentage depletion for lease bonuses and advanced royalties received or accrued before August 17, 1986. However, section 412(a)(1) of the Tax Reform Act of 1986 enacted section 613A(d)(5) which overrules *Engle*. Thus, the proposed amendment of the regulations provides that any advanced royalty (to the extent that actual production during the taxable year is insufficient to earn such royalty), lease bonus, or other amount payable without regard to production that is received or accrued after August 16, 1986, is not taken into account in computing the percentage depletion allowance pursuant to section 613A(c).

The proposed amendments to the regulations also reflect the repeal by section 11521 of the Revenue Reconciliation Act of 1990 of the "transfer rule" which made transferred proven properties ineligible for percentage depletion. The proposed amendments interpret the term "transfer," for purposes of determining whether a transfer occurs following the effective date of the repeal, in the same manner as it was interpreted under prior law. Under the proposed regulations, the repeal of the transfer rule is effective for transferees of proven properties transferred after October 11, 1990. The amendments interpreting the repeal of the transfer rule are proposed to be effective after the date of publication of the proposed regulations. This effective date is intended solely to make the regulations prospective, and should not be construed as altering or in any way affecting the statutory effective date of the repeal of the transfer rule. In addition, it is intended that no transaction after October 11, 1990 shall cause a property to become ineligible for percentage depletion as a result of the application of the transfer rule. See proposed § 1.613A–3(j)(1) Examples 6 and 7.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests to Appear at the Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. Because the Treasury Department expects to issue final regulations on this matter as soon as possible, a public hearing will be held at 10 a.m. on July 8, 1991 in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW.1, Washington, DC. Comments and requests to appear must be received by June 17, 1991. Outlines of oral comments must be received by June 17, 1991. See notice of hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these proposed regulations is Walter H. Woo, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.611–0 through 1.617–4

Income taxes, Natural resources, Reporting and recordkeeping requirements.

26 CFR 1.701–1 through 1.771–1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR, chapter 1, part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Paragraph (a) of § 1.613–1 is amended by revising the second sentence to read as follows:

§ 1.613–1 Percentage depletion; general rule.

(a) * * * The deduction shall not exceed 50 percent (100 percent in the case of oil and gas properties for taxable years beginning after December 31, 1990) of the taxpayer's taxable income from the property (computed without regard to the allowance for depletion). * * *

* * * * *

Par. 3. Section 1.613A–2 is amended by revising paragraph (a)(3), redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding a new paragraph (b), to read as follows:

§ 1.613–2 Exemption for certain domestic gas.

(a) * * *

(3) Any geothermal deposit in the United States or in a possession of the United States that is determined to be a gas well within the meaning of former section 613(b)(1)(A) (as in effect before enactment of the Tax Reduction Act of 1975) for taxable years ending after December 31, 1974, and before October 1, 1978 (see section 613(e) for depletion on geothermal deposits thereafter).

* * * * *

(b) For taxable years ending after September 30, 1978, the allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to any qualified natural gas from geopressured brine (as defined in paragraph (e) of § 1.613A–7), and 10 percent shall be deemed to be specified in section 613(b) for purposes of section 613(a).

* * * * *

Par. 4. Section 1.613A–3 is amended as follows:

1. The text of paragraphs (e) and (f) is added as set forth below.

2. Paragraph (h)(1) is amended by revising the last sentence thereof to read as set forth below.

3. The text of paragraph (i)(2) is added as set forth below.

4. The text of paragraph (j)(1) is added as set forth below.

§ 1.613A–3 Exemption for independent producers and royalty owners.

* * * * *

(e) *Partnerships*—(1) *General rule.* In the case of a partnership, the depletion allowance under section 611 with respect to production from domestic oil and gas properties shall be computed separately by the partners and not by the partnership. The determination of whether cost or percentage depletion is applicable is to be made at the partner level. The partnership must allocate to each partner the partner's proportionate share of the adjusted basis of each partnership oil or gas property in accordance with the provisions of paragraphs (e)(2) through (e)(6) of this section. This allocation of the adjusted basis of oil or gas property does not affect a partner's adjusted basis in his or her partnership interest.

(2) *Initial allocation of adjusted basis of oil or gas property among partners*—(i) *General rule.* Each partner shall be allocated his or her proportionate share of the adjusted basis of each partnership domestic oil or gas property. The initial allocation of adjusted basis is to be made as of the later of the date of acquisition of the oil or gas property by the partnership or January 1, 1975.

(ii) *Allocation methods.* Except as otherwise provided in paragraph (e)(5) of this section, the provisions of this paragraph (e)(2)(ii) govern the determination under paragraph (e)(2)(i) of this section of a partner's proportionate share of the adjusted basis of oil or gas property. Each partner's proportionate share is determined in accordance with the partner's proportionate interest in partnership capital at the time of the allocation unless both—

(A) the partnership agreement provides that a partner's share of the adjusted basis of one or more properties is determined in accordance with his or her proportionate interest in partnership income, and

(B) at the time of allocation under the partnership agreement the share of each partner in partnership income is reasonably expected to be substantially unchanged throughout the life of the partnership, other than changes merely to reflect the admission of a new partner, an increase in a partner's interest in consideration for money, property, or services, or a partial or complete withdrawal of an existing partner.

If the requirements of paragraph (e)(2)(ii) (A) and (B) of this section are met, a partner's proportionate share is determined in accordance with his or her proportionate interest in partnership income. The partners' shares of adjusted basis are determined on a property-by-property basis. Accordingly, the basis of one property may be allocated in proportion to capital and the basis of another property may be allocated in proportion to income. See §§ 1.613A–3 (e)(5) and 1.704–1 (b)(4)(v) for special rules concerning allocation of the adjusted basis of oil and gas properties.

(3) *Adjustments by partnership to allocated adjusted bases*—(i) *Capital expenditures by partnership.* Appropriate adjustments shall be made to the partners' adjusted bases in any domestic oil and gas property for any partnership capital expenditures relating to such property that are made after the initial allocation. These adjustments shall be allocated among the partners in accordance with the principles set forth in paragraph (e)(2)(ii) of this section.

(ii) *Admission of a new partner or increase in partner's interest*—(A) *In general.* Upon a contribution of money, other property, or services to the partnership by a new or existing partner ("contributing partner") as consideration for an interest in the partnership, the partnership shall allocate, in accordance with paragraph (e)(3)(ii)(B) of this section, a share of the partnership's basis in each existing oil and gas property to the contributing partner, and each existing partner shall reduce, in accordance with paragraph (e)(3)(ii)(C) of this section, his or her share of the partnership's basis in such property.

(B) *Allocation of basis to contributing partner.* The partnership shall allocate

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to a contributing partner his or her proportionate share (determined under paragraph (e)(2)(ii) of this section in accordance with the partner's proportionate interest in partnership capital or income) of the partnership's adjusted basis in each existing partnership oil or gas property. For purposes of this allocation, the partnership's adjusted basis in such property equals the aggregate of its partners' adjusted bases in the property, as determined under paragraph (e)(3)(iii) of this section.

(C) *Reduction of existing partners' bases.* Each existing partner's basis in each existing partnership oil or gas property is reduced by the percentage of the partnership's aggregate basis in the property that is allocated to the contributing partner. Thus, if one third of the partnership's aggregate basis in a property is allocated to a contributing partner because the contributing partner has a one-third interest in partnership capital, after the admission of the contributing partner each existing partner's basis (including the contributing partner's pre-existing basis if such partner is also an existing partner) in each property equals the partner's basis (prior to the admission) reduced by one-third.

(iii) *Determination of aggregate of partners' adjusted bases in the property*—(A) *In general.* To determine the aggregate of its partners' adjusted bases for purposes of this paragraph (e)(3), the partnership must determine each partner's adjusted basis under either paragraph (e)(3)(iii)(B) (written data) or paragraph (e)(3)(iii)(C) (assumptions) of this section. The partnership is permitted to determine the bases of some partners under paragraph (e)(3)(iii)(B) and of others under paragraph (e)(3)(iii)(C). For this purpose, a partner's basis in an oil or gas property does not include any basis adjustment under section 743(b).

(B) *Written data.* A partnership may determine a partner's basis in an oil or gas property by using written data provided by a partner stating the amount of the partner's adjusted basis or depletion deductions with respect to the property unless the partnership knows or has reason to know that the written data is inaccurate. In determining depletion deductions, a partner must treat as actually deducted any amount disallowed and carried over as a result of the 65 percent-of-income limitation of section 613A(d)(1). If a partnership does not receive written data upon which it may rely, the partnership must use the assumptions provided in paragraph (e)(3)(iii)(C) of this section in determining a partner's adjusted basis in an oil or gas property.

(C) *Assumptions.* A partnership that does not use written data pursuant to paragraph (e)(3)(iii)(B) of this section to determine a partner's basis must use the following assumptions to determine the partner's adjusted basis in an oil or gas property:

(*1*) The partner deducted his or her share of deductions under section 263(c) in the first year in which the partner could claim a deduction for such amounts, unless the partnership elected to capitalize such amounts;

(*2*) The partner was not subject to the 65 percent-of-income limitation of section 613A(d)(1) with respect to the partner's depletion allowance under section 611; and

(*3*) The partner was not subject to the following limitations, with respect to the partner's depletion allowance under section 611, except to the extent a limitation applied at the partnership level: The taxable income limitation of section 613(a); the depletable quantity limitations of section 613A(c); or the limitations of sections 613A(d) (2), (3), and (4) (exclusion of retailers and refiners).

(iv) *Withdrawal of partner or decrease in partner's interest.* Upon a distribution of money or other property to a withdrawing partner as consideration for an interest in the partnership, the withdrawing partner's adjusted basis in each domestic oil or gas property is allocated to the remaining partners in proportion to their proportionate interest in partnership capital or income after taking into account any increase or decrease as a result of the event giving rise to the reallocation. A similar rule shall apply in the case of a diminution of a continuing partner's interest in the partnership.

(v) *Effective date.* The provisions of § 1.613A–3(e)(3) (i) through (iv) are generally effective for taxable years ending after December 31, 1974, but are not effective for purposes of allocations and adjustments made with respect to taxable years ending before May 13, 1991, if the partners used a different interpretation of section 613A(c)(7)(D) that was reasonable. A partnership that has employed such a reasonable interpretation need not reallocate basis of existing properties with respect to taxable years ending after May 13, 1991, except upon an event requiring reallocation under this paragraph (e)(3) (*e.g.*, entry of a new partner). An interpretation that resulted in more than one partner claiming the same basis is not reasonable for this purpose.

(4) *Determination of a partner's interest in partnership capital or income.* For purposes of this paragraph (e), a partner's interest in partnership capital or income is determined by taking into account all facts and circumstances relating to the economic arrangement of the partners. See the factors listed in § 1.704–1(b)(3)(ii).

(5) *Special rules on allocation of adjusted basis to partners.* An allocation or reallocation of the adjusted basis of oil or gas property is deemed to be in accordance with the partner's proportionate interest in partnership capital or income for purposes of this paragraph (e) where so provided in § 1.704–1(b)(4)(v). In addition, in connection with a revaluation described in § 1.704–1(b)(2)(iv)(*f*), the basis of an oil or gas property is allocated among the partners based on the principles used under § 1.704–1(b)(4)(i) of allocating tax items to take into account variations between the adjusted basis of the property and its fair market value. In the case of an oil or gas property contributed to a partnership by a partner, the partner's share of the adjusted basis shall be determined under section 704(c).

(6) *Miscellaneous rules*—(i) Each partner must separately keep records of his or her share of the adjusted basis in each domestic oil or gas property of the partnership, adjust his or her share of such basis pursuant to section 1016 (including adjustments for any depletion allowed or allowable with respect to such property), and use that adjusted basis each year in the computation of his cost depletion or in the computation of his or her gain or loss on the disposition (including abandonment) of the property by the partnership.

(ii) The adjusted basis of a partner's interest in a partnership is decreased (but not below zero) pursuant to section 705(a)(3) by the amount of the depletion deduction allowed or allowable to the partner with respect to a domestic oil or gas property to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to the partner under section 613A(c)(7)(D), as adjusted by the partner after the initial allocation. Section 705(a)(1)(C) does not apply to depletion deductions that are not included in a partner's distributive share under section 702. Accordingly, the adjusted basis of a partner's interest in a partnership is not increased under section 705(a)(1)(C) with respect to depletion of oil or gas properties. See § 1.705–1(a)(2)(iii).

(iii) Upon the disposition of an oil or gas property by the partnership, each partner must subtract the partner's adjusted basis in the property from his or her allocable portion of the amount realized from the sale of the property to determine gain or loss. The partner's allocable portion of amount realized must, except to the extent governed by section 704(c) (or related principles under § 1.704–1(b)(4)(i)), be determined in accordance with § 1.704–1(b)(4)(v). Except as otherwise provided (*e.g.*, section 751), the sale of a partnership interest is not treated as a sale of an oil and gas property.

(iv) In the case of a transfer of an interest in a partnership, the transferor partner's adjusted basis in each partnership oil or gas property carries over to the transferee partner. If an election under section 754 (relating to optional adjustment to the basis of partnership property) is in effect, such basis is adjusted in accordance with section 743.

(v) For purposes of section 732 (relating to basis of distributed property other than money) and section 734(b) (relating to optional adjustment to basis of partnership property), the partnership's adjusted basis in oil and gas property is an amount equal to the aggregate of its partners' adjusted bases in the property as determined under the rules provided in paragraph (e)(3) of this section.

(7) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. A, B, and C have equal interests in capital in Partnership ABC. On January 1, 1970, the partnership acquired a producing domestic oil property. On January 1, 1975, the partnership's basis in the property was $90x. The partnership allocated the adjusted basis of the property to each partner in proportion to the partner's interest in partnership capital. Accordingly, each partner was allocated an adjusted basis of $30x. Each partner must separately compute his or her depletion allowance. The amount of percentage depletion allowable for each partner for 1975 was $10x. On January 1, 1976, each partner's adjusted basis in the property was $20x ($30x minus $10x). On January 1, 1976, the oil property was sold for $150x. Each partner's gain was $30x ($50x allocable share of amount realized minus the partner's adjusted basis of $20x). Each partner must adjust the partner's adjusted basis in his or her partnership interest to reflect the gain.

Example 2. The facts are the same as in *Example 1* except that on January 1, 1976, the property was not sold but transferred by the partnership to partner A. A's basis in the property was $60x (the sum of A's, B's, and C's adjusted bases in the property).

Example 3. The facts are the same as in *Example 1* with the exception that in 1975 C was a retailer of oil and gas and was only entitled to a cost depletion deduction of $6x. C's gain from the sale of the mineral property was $25x ($50x allocable share of amount realized minus C's adjusted basis of $25x ($30x minus $5x)).

Example 4. D, a calendar year taxpayer, is a partner in Partnership DEF which owns a domestic producing oil property. On January 1, 1975, the partnership's adjusted basis in the property was $600x. On January 1, 1975, D's adjusted basis in D's partnership interest was $300x and D's adjusted basis in the partnership's oil property was $300x. D's allowable percentage depletion for 1975 with respect to production from the oil property was $50x. On January 1, 1976, D's adjusted basis in D's partnership interest was $250x and D's adjusted basis in the partnership's oil property was $250x ($300x minus $50x).

Example 5. On January 1, 1975, G has an adjusted basis of $5x in partnership GH's proven domestic oil property, which is the sole asset of the partnership. On January 1, 1975 G sells G's partnership interest to I for $100x when the election under section 754 is in effect. I has a special basis adjustment for the oil property of $95x (the difference between I's basis, $100x, and I's share of the basis of the partnership property, $5x). I is not entitled to percentage depletion with respect to I's distributive share of the oil property income because I is a transferee of an interest in a proven oil property. However, I is entitled to cost depletion and for this purpose I's interest in the oil property has an adjusted basis to I of $100x ($5x, plus I's special basis adjustment of $95x).

Example 6. On January 1, 1980, Partnership JK acquired a domestic producing oil property. On January 1, 1975, the partnership's adjusted basis in the property was zero. On January 1, 1975, L is admitted as a partner to the partnership. Since the partnership's adjusted basis in the oil property is zero, L's proportionate share of the basis in the property is also zero. L is not entitled to percentage depletion because L is a transferee of a proven oil property (see paragraph (g) of this section). Since the property's basis is zero, L is also not entitled to any cost depletion with respect to production from the property.

Example 7. (i) O and P have equal interests in capital in Partnership OP. On January 1, 1983, the partnership acquired an unproven domestic oil property X the basis of which is $200x to the partnership. The partnership allocates $100x of the basis of the property to each partner in accordance with each partner's proportionate interest in partnership capital. For the 1983 taxable year, O has a $10x cost depletion allowance and P has a $25x percentage depletion allowance. Accordingly, at the end of the 1983 taxable year, O's adjusted basis in the property is $90x, and P's adjusted basis in the property is $75x. On January 1, 1984, Q is admitted as an equal partner. The partnership does not use written data from the partners and must therefore assume that each partner was entitled to $25x depletion based on the assumptions provided in § 1.613A–3(e)(3)(iii). This would result in a $50x combined depletion allowance for the partners and an aggregate adjusted basis in the oil property of $150x. Accordingly, the partnership allocates $50x of the basis of the property to Q, one-third of the aggregate adjusted basis determined by the partnership. O and P must each reduce their basis in the property by one-third. Accordingly, after the admission of Q, O's adjusted basis in the property is $60x ($90x minus $30x), and P's adjusted basis in the property is $50x ($75x minus $25x).

(ii) Assume the same facts as in (i) of this *Example* except that O informs the partnership that its adjusted basis in the property is $80x (determined without regard to section 613A(d)(1)). The partnership uses the written data provided by O and determines the aggregate adjusted basis in the property to be $165x ($80x + $75X). Accordingly, the partnership allocates $55x (⅓ of $165x) of the basis of the property to Q, and O and P must each reduce their adjusted basis in the property by one-third, as in subdivision (i) of this example. Thus, after the admission of Q, O's adjusted basis in the property is $60x and P's adjusted basis in the property is $50x.

(f) *S corporations.* For purposes of section 613A(c)(13), adjustments to shareholders' adjusted bases in any domestic oil or gas property to reflect capital expenditures by S corporations, the addition of a new shareholder or an increase in a shareholder's interest by reason of a contribution to the S corporation, or the redemption of a shareholder's interest shall be made in accordance with principles similar to the principles under § 1.613A–3(e) applicable to the entry or withdrawal of a partner.

* * * * *

(h) * * *

(1) * * * Accordingly, the group shares the depletable oil (or natural gas) quantity prescribed for a taxpayer for the taxable year and the secondary production (to which gross income from the property is attributable before January 1, 1984) of a member of the group will reduce the other members' share of the group's depletable quantity.

* * * * *

(i) * * *

(2) *Transfers after October 11, 1990*—(i) *General rule.* Section 613A(c) (9) and (10), as in effect prior to the Revenue Reconciliation Act of 1990 (relating to prohibition of percentage depletion on transferred proven properties) has been repealed effective for transfers after October 11, 1990. Accordingly, a transferee of a proven oil or gas property transferred after October 11, 1990 is permitted to claim percentage depletion with respect to production from the property.

(ii) *Transfer.* The term "transfer" has the same meaning as under § 1.613A–7(n).

(iii) *Transferee.* A person shall not be treated as a transferee with respect to a transferred property to the extent that such person held an interest in the property but was not entitled to a

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percentage depletion allowance on mineral produced with respect to the property immediately before the transfer. Thus, for example, if a taxpayer who is not entitled to claim percentage depletion on a proven property transfers the property to a partnership for an interest in the partnership, the taxpayer is not a transferee with respect to the property in the hands of the partnership.

(iv) *Effective date.* The provisions of paragraph (i)(2) of § 1.613A–3 are effective for transfers occurring after May 13, 1991.

(v) *Examples.* The examples below illustrate the provisions of this subparagraph. The examples ignore the application of any restriction on percentage depletion other than the proven property transfer rule.

Example 1. On December 31, 1991, A transfers a proven oil property to B. B may claim percentage depletion with respect to production from the property regardless of whether production from the property was eligible for percentage depletion in A's hands (even if A were a retailer or refiner of oil or gas).

Example 2. On October 10, 1990, A transfers a proven oil property to B. B may not claim percentage depletion with respect to production from the property.

Example 3. On January 1, 1990, C purchases a proven oil property. Because C is a transferee of a proven property, production from the property is not eligible for percentage depletion in C's hands. On December 31, 1991, C contributes the property to Corporation M, and S corporation in which C owns 100 percent of the stock. The contribution of the property is a transfer, but C is not a transferee with respect to the property in the hands of the corporation. Accordingly, C may not claim percentage depletion with respect to production from the property. However, if prior to the contribution C had been entitled to claim percentage depletion with respect to production from the property, C would be entitled to claim percentage depletion with respect to production from the property after the contribution.

Example 4. On December 31, 1991, C contributes a proven oil property (with respect to which C is not entitled to claim percentage depletion) to Corporation N, and S corporation in which C owns 30 percent and D owns 70 percent of the stock. The contribution of the property is a transfer, but C is not a transferee with respect to the property in the hands of the corporation. Accordingly, C may not claim percentage depletion with respect to C's share of the production from the property. D is a transferee with respect to the property in the hands of Corporation N, and may claim percentage depletion with respect to D's share of production from the property.

Example 5. On December 31, 1991 D transfers a proven oil property (with respect to which D is not entitled to claim percentage depletion) to DE, an equal partnership between D and E. E is a transferee with respect to the property and may claim percentage depletion with respect to production from the property allocated to E under the DE partnership agreement. D is not a transferee with respect to the property, and may not claim percentage depletion with respect to production from the property allocated to E under the DE partnership agreement. However, if D had been entitled to claim percentage depletion with respect to production from the property, then D would be entitled to claim percentage depletion with respect to production from the property in the hands of DE.

Example 6. On January 1, 1990, Corporation P contributes a proven property to Corporation O, its wholly owned subsidiary. Under § 1.613–7(n)(4), the contribution is not treated as a transfer, but only for so long as the tentative quantity is required under section 613A(c)(8) to be allocated between P and O. On December 31, 1991, P sells 90% of the O stock to an unrelated person; accordingly, the tentative quantity is no longer required under section 613A(c)(8) to be allocated between P and O. After the sale of O stock, production from the property in O's hands is eligible for percentage depletion because a transfer of a proven property is deemed to occur upon the transfer of the stock.

Example 7. On October 10, 1990, G transfers a proven oil property to his minor son, H. G had been entitled to claim percentage depletion with respect to production from the property. Under § 1.613A–7(n)(5), H is permitted to claim percentage depletion for so long as G and H are related persons under section 613A(c)(8)(C). On December 31, 1991, H reaches majority and is no longer related to G under section 613A(c)(8)(C). H is entitled to continue to claim percentage depletion on production from the property because the property is treated as being transferred to H on December 31, 1991.

Example 8. On December 31, 1991, I sells a proven property to J, her husband. I had not been entitled to claim percentage depletion with respect to production from the property. Under § 1.613A–7(n)(5), the sale is not a transfer because it is made between persons related under section 613A(c)(8). Accordingly, J may not claim percentage depletion with respect to production from the property. If, however, I had been entitled to claim percentage depletion with respect to production from the property, J would be entitled to claim percentage depletion with respect to production from the property.

Example 9. On December 31, 1991, L inherits a proven property from K. K had not been entitled to claim percentage depletion with respect to production from the property. Under § 1.613A–7(n)(1), the inheritance is not a transfer. Accordingly, L may not claim percentage depletion with respect to production from the property. If, however, K had been entitled to claim percentage depletion with respect to production from the property, L would be entitled to claim percentage depletion with respect to production from the property.

Example 10. On December 31, 1991, Corporation R, a calender year taxpayer, made an S election effective for the taxable year beginning January 1, 1982 and succeeding taxable years. Since Corporation R is deemed to have transferred its oil and gas properties on January 1, 1982, the shareholders of Corporation R are eligible to claim percentage depletion with respect to the production from the properties.

Example 11. Assume the same facts as in *Example 10* except that Corporation R makes the S election on December 31, 1989, effective for the taxable year beginning January 1, 1990 and succeeding taxable years. Since Corporation R is deemed to have transferred its oil and gas properties on January 1, 1990, the shareholders of Corporation R are not eligible to claim percentage depletion with respect to the production from the properties.

(j) *Percentage depletion with respect to bonuses and advanced royalties*—(1) *Amounts received or accrued after August 16, 1986.* In computing the percentage depletion allowance pursuant to section 613A(c) with respect to amounts received or accrued after August 16, 1986, there shall not be taken into account any advance royalty (to the extent that actual production during the taxable year is insufficient to earn such royalty), lease bonus, or other amount payable without regard to production, even though the amount may be taken into account for purposes of sections 61 and 612 (relating to definitions of gross income and cost depletion, respectively).

* * * * *

Par. 5. Section 1.613A–7 is amended as follows:

1. The text of paragraph (e) is added as set forth below.

2. Paragraph (f)(1) is amended by revising the last sentence to read as set forth below.

3. Paragraph (h) is revised as set forth below.

4. Paragraph (n) is amended by adding the sentence set forth below after the first sentence thereof.

5. Paragraph (o) is amended by revising the first sentence thereof to read as set forth below.

6. Paragraph (r)(1) is amended by adding the sentence set forth below after the first sentence of the concluding text.

§ 1.613A–7 Definitions.

* * * * *

(e) *Qualified natural gas from geopressured brine.* The term "qualified natural gas from geopressured brine" means any natural gas which is determined in accordance with section 503 of the Natural Gas Policy Act of 1978 to be produced from geopressured brine and which is produced from any well the drilling of which began after September 30, 1978, and before January 1, 1984.

(f) * * *

(1) * * * Average daily production does not include production resulting from secondary or tertiary process to which gross income from the property is attributable before January 1, 1984.

* * * * *

(h) *Depletable oil quantity.* The taxpayer's depletable oil quantity, within the meaning of section 613A(c)(1)(A), shall be equal to the tentative quantity determined under the table contained in section 613A(c)(3)(B) and paragraph (b) of § 1.613A–3 (except that, in the case of determinations with respect to days prior to January 1, 1984, such quantity shall be reduced (but not below zero) by the taxpayer's average daily secondary or tertiary production for the taxable year).

* * * * *

(n) * * * For taxable years beginning after 1982, the term "transfer" includes an election by a C corporation to be an S corporation (properties deemed transferred by the C corporation on the day the election first becomes effective) and a termination of an S election (each shareholder's pro rata share of assets of S corporation deemed transferred to C corporation on the day that the termination first becomes effective). * * *

* * * * *

(o) * * * The term "transferee", as used in section 613A(c)(9), paragraph (i)(1) of § 1.613A–3, and this section includes the original transferee of proven property and his or her successors in interest (excluding successors in interest of proven property transferred after October 11, 1990). * * *

* * * * *

(r) * * *

(1) * * *

* * * Bulk sales made after September 18, 1982, of aviation fuels to the Department of Defense shall be also disregarded. * * *

* * * * *

Par. 6. Section 1.705–1 is amended by revising paragraph (a)(2)(iii), redesignating paragraph (a)(4) as paragraph (a)(6), and inserting new paragraphs (a)(4) and (a)(5), to read as follows:

§ 1.705–1 Determination of basis of partner's interest.

(a) * * *

(2) * * *

(iii) The excess of the deductions for depletion over the basis of the depletable property, unless the property is an oil or gas property the basis of which has been allocated to partners under section 613A(c)(7)(D).

* * * * *

(4) The basis shall be decreased (but not below zero) by the amount of the partner's deduction for depletion allowable under section 611 for any partnership oil and gas property.

(5) The basis shall be adjusted (but not below zero) to reflect any gain or loss to the partner resulting from a disposition by the partnership of a domestic oil or gas property after December 31, 1974.

* * * * *

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 91–10855 Filed 5–10–91; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 717]

RIN 1512–AA07

Benmore Valley Viticultural Area (91F–002P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms is considering the establishment of an American viticultural area in the southwestern corner of Lake County, California to be known as "Benmore Valley." Benmore Valley, at an elevation of 2,400 feet, is nestled in the Mayacmas Mountains, and is surrounded by peaks of up to 2,900 feet in height. It is located entirely within the North Coast viticultural area and does not overlap any other approved or proposed viticultural areas.

This proposal is the result of a petition submitted by Compliance Specialists, Santa Rosa, CA, on behalf of Vimark Inc. which owns vineyards in Benmore Valley. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific grape-growing areas where their wines come from, and better enables consumers to identify the wine they purchase.

DATES: Written comments must be received by June 27, 1991.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Notice No. 717).

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Disclosure Branch, 650 Massachusetts Avenue, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, Washington, DC 20226; telephone (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR part 4 allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 9.11, title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which are delimited in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate (U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF has received a petition proposing a viticultural area located in the southwestern corner of Lake County, California to be known as Benmore Valley. At an elevation of 2,400 feet, Benmore Valley is nestled in the Mayacmas Mountains, and is surrounded by peaks of up to 2,900 feet

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in height. This proposal is the result of a petition submitted by Compliance Specialists, Santa Rosa, California, on behalf of Vimark, Inc., a Benmore Valley vineyard owner. There are 125 acres of vineyards and no bonded wine cellars within the proposes area.

1. Evidence of Name.

Name derivation

Benmore Valley, at the 2,400' elevation, is identified by name on U.S.G.S. maps. The petition states the first use of the name Benmore can be traced back to the nineteenth century cattle rustler, Benjamin Logan Moore, or Ben Moore. His practice was to steal cattle in the adjacent Mendocino County, and then drive them to Lake County into the hidden valley that now bears his name, Benmore. He continued this practice for years until emigrating to South America to escape the law.

Local/national renown

The 1968 Lake County Historical Society publication, Pomo Bulletin, detailed the historical aspects of Ben Moore, and his life in Benmore Valley. The Benmore name has been incorporated into a number of local geographical areas including Benmore Creek, Benmore Trail, Benmore Ridge and Benmore Valley. The Benmore name is found on the Hopland, Purdys Gardens, and Lakeport U.S.G.S. maps. The name Benmore Valley is directly associated with the history of Lake County.

2. Evidence of Boundaries

The petitioner submitted a 1:24,000 scale U.S.G.S. map which is the largest scale map that describes the area. The boundaries of the proposed Benmore Valley viticultural area coincide in a general manner with those of the region known as Benmore Valley, which is so labeled on the Purdys Gardens and Hopland U.S.G.S. maps. The boundaries of the proposed viticultural area encompass the valley floor of Benmore Valley and a portion of the watershed surrounding it. A specific description of the boundaries appears in the proposed regulation of the boundaries appears in the proposed regulation at § 9.138.

3. Evidence Distinguishing the Geographic Features.

Climate

The petition demonstrates that Benmore Valley is characterized by a cooler climate than surrounding areas. Analysis of data from the University of California Hopland Field Station shows Benmore Valley to be a region I classification with fewer than 2,000 annual heat units. Adjacent areas in Mendocino County are warmer. McDowell Valley two miles distant is classified as a region II area with 2,500 to 3,000 annual heat untis, while the City of Hopland three miles distant is classified as having a region III climate with 3,000 to 3,500 annual heat units. Kelseyville and Middletown in Lake County are classified as region III or region IV climates and are much warmer. In addition, ten-year statistical data from the University of California Hopland Field Station shows that the growing season begins later in the year in Benmore Valley than adjacent areas. The date of the last frost in Benmore Valley occurs as much as one month later than in surrounding areas, including both higher mountain elevations, and lower valley areas. Although Benmore Valley does not experience high temperatures, the valley tends to warm up earlier and cool later than other coastal areas, and thus stay warm for a longer percentage of the day. This fact, together with the relative lack of fog in the valley, provides a suitable climate for grape-growing.

Soils

Soil types found within Benmore Valley differ from soils in the mountains surrounding the valley. The three soil types on the valley floor are Manzanita loam, which predominates, Still loam and Wolfcreek loam. These are deep, well-drained soils of slow to moderately slow permeability found on alluvial plains. These soils contrast sharply with those in the surrounding mountains. Soil types of the bordering mountains are complexes made of varying mixtures of Maymen, Etsel, Mayacama and Snook soils, all shallow, excessively drained soils derived from weather shale and sandstone.

Elevation

Benmore Valley can be described as a slight depression in the surrounding mountains. The valley itself is a high elevation upland valley, higher than most nearby areas, but isolated from other areas by even higher mountains immediately surrounding the valley. The valley floor elevation is 2,400 feet with the surrounding mountains averaging 2,800 feet, and rising to the north to just over 3000 feet in elevation.

Water

The petition states that three man-made lakes and a natural creek provide adequate natural water supply for vineyard production. There is a high water table, which contrasts with the surrounding mountain area with little water capactiy. Due to its high elevation, there are no watercourses which flow into the valley. This natural watershed boundary provides definition between the valley and its surrounding areas. The proposed boundaries closely follow the peaks that enfold the valley into seclusion from the surrounding world.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competiton, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning the proposed viticultural area. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which a respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting a comment is not exempt from disclosure. Any interested person who desires an opportunity to comment orally at a public hearing on the proposed viticultural area should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Nancy Sutton, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Accordingly, the Director proposes the amendment of 27 CFR part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in part 9 is amended by adding the title of § 9.138 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.138 Benmore Valley.

Par. 3. Subpart C is amended by adding § 9.138 to read as follows:

§ 9.138 Benmore Valley.

(a) *Name.* The name of the viticultural area described in this section is "Benmore Valley."

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Benmore Valley viticultural area are two U.S.G.S. maps. They are entitled:

(1) "Hopland, CA," 7.5 Minute Series, edition of 1960, (photoinspected 1975); and

(2) "Purdys Gardens, CA," 7.5 Minute Series, edition of 1956, (photoinspected 1975).

(c) *Location.* The Benmore Valley viticultural area is located in the southwest corner of Lake County, California. It lies entirely within the North Coast viticultural area.

(d) *Boundaries.* The beginning point is an unnamed peak of 2788 feet elevation found in the southeast portion of Section 35, R. 11 W., T. 14 N., on the "Purdys Gardens" U.S.G.S. map:

(1) Then southwest in a straight line to the point where an unnamed unimproved road crosses the south section line of section 35, R. 11 W., T. 14 N., west of Benmore Creek;

(2) Then following the unnamed unimproved road south to the intersection with the boundary between Lake and Mendocino Counties;

(3) Then following the county boundary between Lake and Mendocino Counties east and south to the intersection with the 2800 foot contour line;

(4) Then following the 2800 foot contour line in a northerly and then southernly direction to its intersection with the boundary between Lake and Mendocino Counties on the southern edge of Section 2, R. 11 W., T. 13 N.;

(5) Then following the boundary between Lake and Mendocino Counties east to the point of intersection of Sections 1, 2, 11, and 12, R. 11 W., T. 13 N.;

(6) Then southeasterly in a straight line to an unnamed peak of 2769 feet elevation in the center of Section 12, R. 11 W., T. 13 N.;

(7) Then south in a straight line to the point where the boundary between Lake and Mendocino Counties changes from an east-west direction to a north-south direction;

(8) Then in a straight line in an easterly direction to an unnamed peak of 2883 feet elevation in the southeastern portion of Section 5, R. 10 W., T. 13 N.;

(9) Then northeast in a straight line to the easternmost peak of an unnamed ridge with four peaks in the center of Section 5, R. 10 W., T. 13 N.;

(10) Then northerly in a straight line to an unnamed peak of 2847 feet elevation near the north section line of Section 5, R. 10 W., T. 13 N.;

(11) Then westerly in a straight line to the point of intersection between Section 5, R. 10 W., T. 13 N., Section 31, R. 10 W., T. 14 N., and Section 1, R. 11 W., T. 13 N.;

(12) Then northwest in a straight line to an unnamed peak of 2904 feet elevation in the north portion of Section 1, R. 11 W., T. 13 N.;

(13) Then northwest in a straight line to an unnamed peak of 2788 feet elevation, the point beginning.

Signed: May 3, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91-11289 Filed 5-10-91; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CCGD13 91-02]

Regatta; 1991 Bill Muncey Memorial Regatta, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish two areas of controlled navigation upon the waters of Lake Washington, Seattle, Washington, during the 1991 Bill Muncey Memorial Regatta. This event will be held on Sunday, 23 June 1991, from 8 a.m. PDT until 6 p.m. PDT. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event by establishing exclusionary zones to keep spectator vessels from interfering with the high speed boat races.

DATES: Comments must be received on or before June 27, 1991.

ADDRESSES: Comments should be mailed to LTJG D. A. Kearns, USCG Group Seattle, 1519 Alaskan Way S., Seattle, WA 98134-1192. The comments and other material referenced in this notice will be available for inspection and copying at USCG Group Seattle, 1519 Alaskan Way S., Seattle, WA 98134-1192. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG D. A. Kearns, Assistant Operations Officer, USCG Group Seattle, pH (206) 286-5412.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CCGD13 91-02) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the

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expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG D. A. Kearns, project officer, and LT D. K. Schram, project attorney, Coast Guard District Thirteen Legal Office.

Discussion of Proposed Regulations

The 1991 Bill Muncey Memorial Regatta consists of limited inboard, Z class hydroplane, and personal water craft races. The hydroplane and inboard races will be held on Lake Washington on a course adjacent to the U.S. Naval Air Station Sand Point recreational boat docks at Pontiac Bay, Seattle, Washington. The personal water craft races will be held on the water of Lake Washington adjacent to Magnuson Park, Sand Point, Seattle, Washington. A moderate number of spectator craft are expected to gather near the race course areas. To maintain the safety of all vessels, the Coast Guard will require non-participant vessels to remain outside the exclusionary areas.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12291, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Concerns

The proposed marine event appears to be categorically excluded from environmental assessment requirements. However, comments addressing possible impacts this proposed change may have on the human environment or potential inconsistencies with any federal, state or local law or administrative determination relating to the environment are solicited.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. There is virtually no commercial traffic in the proposed regulated areas of Lake Washington.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.35-1301 is revised to read as follows:

§ 100.35-1301 Bill Muncey Regatta, Lake Washington, Seattle, WA Regulated Area

By this regulation, the Coast Guard will restrict general navigation and anchorage on the waters of:

(a) Area (1), Lake Washington in an area bounded by the following points:

(1) Latitude 47-42'11" N, Longitude 122-16'24" W;

(2) Latitude 47-41'18.5" N, Longitude 122-15'18" W;

(3) Latitude 47-41'15" N, Longitude 122-15'46" W;

(4) Latitude 47-41'44" N, Longitude 122-16'16" W;

The exclusionary area is approximately 2400 yards long and extends approximately 700 yards into Lake Washington.

(b) Area (2), Lake Washington in an area bounded by the following points:

(a) Latitude 47-40'49" N, Longitude 122-14'46" W;

(b) Latitude 47-40'45" N, Longitude 122-14'38.5" W;

(c) Latitude 47-40'32" N, Longitude 122-14'47" W;

(d) Latitude 47-40'37" N, Longitude 122-14'59" W;

The exclusionary area is approximately 500 yards long and extends approximately 350 yards into Lake Washington.

(c) Special Local Regulations:

(1) Persons or vessels (other than participant and official vessels) shall not enter or remain in the exclusionary areas described in paragraphs (a) and (b) during the hours that this regulation is in effect. The Patrol Commander is also empowered to control the movement of vessels in the exclusionary areas described in paragraphs (a) and (b) and the adjoining waters during the period of time this regulation is in effect.

(2) Patrol of the described areas will be under the direction of Commander, Coast Guard Group Seattle, who will designate a Patrol Commander. The Patrol Commander is empowered to forbid vessels or persons from entering the exclusionary areas described in paragraphs (a) and (b) of this section during the hours this regulation is in effect.

(3) A succession of sharp, short signals by whistle, siren, or horn, from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signaled to stop shall comply with the orders of the Patrol vessels; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) Effective Dates: These regulations become effective on 23 June 1991, from 8:30 a.m. to approximately 1:30 p.m. PDT for Area (1) and from 1:30 p.m. to 5:30 p.m. PDT for Area (2).

Dated: May 3, 1991.

J.E. Verbeck, RADM, USCG,

Commander, Thirteenth Coast Guard District.

[FR Doc. 91-11088 Filed 5-10-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 52a

RIN 0906-AC27

National Institutes of Health Center Grants

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would incorporate changes necessitated by the revision of the Public Health Service (PHS) Act by the Health Research Extension Act of 1985 (Pub. L. 99-158), the National Deafness and Other Communication Disorders Act of 1988 (Pub. L. 100-553), and the Health Omnibus Programs Extension of 1988 (Pub. L. 100-607), and changes that have occurred in programs identified in existing regulations.

EFFECTIVE DATE: Comments on these proposed regulations must be received by July 12, 1991.

ADDRESSES: Comments should be sent to: Dr. John W. Diggs, Deputy Director for Extramural Research, Office of the Director, National Institutes of Health, Shannon Building, room 144, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: Dr. John W. Diggs, telephone (301) 496-1096.

SUPPLEMENTARY INFORMATION: Final regulations covering National Institutes of Health (NIH) Center Grants were published in the Federal Register on December 4, 1985 (50 FR 49692). On November 20, 1985, the Health Research Extension Act of 1985 (Pub. L. 99-158) was enacted, reauthorizing the authorities and programs of the National Institutes of Health. The new law had two effects on the NIH Center Grants regulations. First, the sections of the PHS Act that authorized three center grants programs were renumbered, thus requiring a change of the legal citations in the "Authority" section of these regulations. Second, the new law authorized new center grant programs. Later laws, Public Laws 100-553 and 100-607, authorized other new center grants programs. The purpose of the proposed amendment of the NIH Center Grants regulations is to incorporate these changes into the regulations.

In issuing the NIH Center Grants regulations in 1985, it was stated that since the basic policies governing the award of financial assistance under these programs are substantially similar, the NIH Center Grants regulations would be expanded to encompass comparable center grants programs. It is proposed, therefore, to make needed technical corrections and to amend the regulations to include all center grant programs mentioned in title IV of the Public Health Service (PHS) Act, including those specifically authorized in Public Laws 99-158, 100-553 and 100-607.

In addition, it is proposed to revise the regulations in several places to incorporate language used in the legislation authorizing the National Cancer Research and Demonstration Centers and include additional relevant HHS regulations in section 52a.8. For example, subsections 52a.1(a) and 52a.2(a) would be revised to include the word "planning" which is authorized for the National Cancer Research and Demonstration Centers in § 414 of the PHS Act. In addition, § 52a.3(a)(1) would be revised to include the language "public or private non-profit" which is also specifically authorized in section 414 of the PHS Act. Finally, § 52a.8 would be revised to reference new HHS regulations at 42 CFR part 50, subpart A regarding the responsibilities of PHS awardees and applicant institutions for dealing with and reporting possible misconduct in science published on August 8, 1989 (54 FR 32446), HHS regulations at 45 CFR part 93 regarding new restrictions on lobbying published on February 28, 1990 (55 FR 6736), and HHS regulations at 45 CFR part 76, subpart F, on drug-free workplace requirements published on May 25, 1990 (55 FR 21677).

As stated in § 52a.1, these proposed regulations do not apply to grants for construction, unless specifically noted, traditional research projects, or general research support. Although certain types of research project grants have been commonly referred to as "center grants", those grants differ from the support programs authorized by the PHS Act sections stated in these proposed regulations and are governed by the research project grant regulations in 42 CFR part 52.

The proposed regulations do not repeat provisions of the authorizing legislation and thus need to be read in conjunction with the cited sections of the PHS Act, as appropriate for the particular center grants program.

Information Collection Requirements

Sections 52a.4 and 52a.6 of this proposed rule contain information collections which are subject to OMB approval under the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The information collections have been approved by OMB under OMB Control No. 0925-0001. The applications (Standard Form PHS 398 Application for Public Health Service Grant and PHS 2590 Application for Continuation of Public Health Service Grant) used in the information collections specified in §§ 52a.4 and 52a.6 and the burden hours associated with the application requirements in these regulations are included with the approval of the applications in OMB Control No. 0925-0001.

Regulatory Impact and Regulatory Flexibility Analyses

These proposed regulations would extend existing policies and procedures governing the award and administration of discretionary grants to eligible institutions to support certain health research centers. While these centers would benefit those segments of the public afflicted by the health problems addressed by the centers, and physicians and other health professionals who receive training in those health areas, the centers would not have a significant economic or policy impact on a broad cross-section of the public. Therefore, the Secretary has determined that the regulations do not constitute a "major rule" under Executive Order No. 12291.

Furthermore, these regulations only affect those few institutions interested in obtaining financial assistance to carry out a center's authorized programs, subject to the normal accountability requirements for grant funds. No entity is obligated to apply for grant support. The regulations would not have a significant economic impact on a substantial number of small entities, and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6).

Family and Federalism Impact

This proposed rule has been reviewed under the requirements of Executive Order 12606, "The Family", and Executive Order 12612, "Federalism", and the Secretary has determined that the proposed rule would not have a significant potential negative impact on family well-being, States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Catalog of Federal Domestic Assistance

The *Catalog of Federal Domestic Assistance* numbered programs affected by these proposed regulations are:

93.173 Multipurpose Deafness and Other Communication Disorders Centers;
93.397 Cancer Centers Support;
93.837 Heart and Vascular Diseases Research;
93.838 Lung Diseases Research;
93.839 Blood Diseases and Resources Research;
93.846 Arthritis, Musculoskeletal, and Skin Diseases Research;
93.847 Diabetes, Endocrinology, and Metabolism Research;
93.848 Digestive Diseases and Nutrition Research;
93.849 Kidney Diseases, Urology and Hematology Research;
93.855 Immunology, Allergic and Immunologic Diseases Research; and
93.866 Aging Research.

List of Subjects in 42 CFR Part 52a

Acquired Immunodeficiency Syndrome; Alzheimer's disease; Arthritis; Blood; Blood diseases; Blood Resources research; Cancer; Communication disorders; Diabetes; Digestive diseases; Endocrine diseases; Grant programs—Aging related diseases and disorders; Health; Health professions; Hearing disorders; Heart

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diseases; Kidney diseases; Lung diseases; Medical research; Metabolic diseases; Musculoskeletal diseases; Sickle Cell Anemia; Skin diseases; and Urologic diseases.

It is proposed to amend subchapter D of title 42 of the Code of Federal Regulations by revising part 52a to read as follows:

Dated: November 9, 1990.

James O. Mason,

Assistant Secretary for Health.

Approved: April 4, 1991.

Louis W. Sullivan,

Secretary.

PART 52a—NATIONAL INSTITUTES OF HEALTH CENTER GRANTS

Sec.
52a.1 To which programs do these regulations apply?
52a.2 Definitions.
52a.3 Who is eligible to apply?
52a.4 What information must each application contain?
52a.5 How will NIH evaluate applications?
52a.6 Information about grant awards.
52a.7 For what purposes may a grantee spend grant funds?
52a.8 Other HHS regulations that apply.
52a.9 Additional conditions.

Authority: 42 U.S.C. 216, 289a–3, 289b–4, 289c–5, 289d–5, 289e–2, 289e–3, 295m–3, and 300cc–10.

§ 52a.1 To which programs do these regulations apply?

(a) These regulations apply to grants by the National Institutes of Health and its organizational components to support the planning, establishment, expansion and operation of research and demonstration, multipurpose, and other centers. Specifically, these regulations apply to National Cancer Research and Demonstration Centers (including payments for construction), as authorized by section 414 of the Act; National Research and Demonstrations Centers for Heart, Blood Vessel, Lung, and Blood Diseases, Sickle Cell Anemia, and Blood Resources (including payments for construction), as authorized by section 422 of the Act; Research and Training Centers (including diabetes mellitus, and digestive, endocrine, metabolic, kidney and urologic diseases), as authorized by section 431 of the Act; Multipurpose Arthritis and Musculoskeletal Disease Centers (including payments for alteration, but not construction), as authorized by Section 441 of the Act; Alzheimer's Disease Centers, as authorized by section 445 of the Act; Claude D. Pepper Older Americans Independence Centers, as authorized by section 445A of the Act; Multipurpose Deafness and Other Communication Disorders Centers, as authorized by section 464C of the Act; and Centers for Acquired Immunodeficiency Syndrome Research, as authorized by section 2316 of the Act; These regulations do not apply to:

(1) Grants for construction (see 42 CFR part 52b), except as noted above;

(2) Grants covered by 42 CFR part 52 (grants for research projects); or

(3) Grants for general research support under section 301(a)(3) of the Act (42 U.S.C. 241 (a)(3)).

(b) These regulations also apply to cooperative agreements made to support the centers specified in paragraph (a) of this section. When a reference is made in this part to "grants," the reference shall include "cooperative agreements."

§ 52a.2 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*).

Center means:

(a) For purposes of grants authorized in section 414 of the Act, a public or private agency or institution which provides for planning and basic and clinical research into, training in, and demonstration of advanced diagnostic, control, prevention and treatment methods for cancer.

(b) For purposes of grants authorized in section 422 of the Act, a public or private agency or institution which provides for planning and basic and clinical research into, training in, and demonstration of, management of blood resources and advanced diagnostic, prevention, and treatment methods (including emergency medical services) for heart, blood vessel, lung, or blood diseases, including sickle cell anemia.

(c) For purposes of grants authorized in section 431 of the Act, a single institution or a consortium of cooperating institutions, which conducts research, training, information programs, epidemiological studies, data collection activities, and development of model programs in diabetes mellitus and related endocrine and metabolic diseases.

(d) For purposes of grants authorized in section 441 of the Act, a facility which conducts basic and clinical research as well as research into orthopedic procedures, training, information programs for the health community and the general public.

(e) For purposes of grants authorized in section 445 of the Act, a public or private agency or institution which conducts basic and clinical research into, training in, information programs for the health community and the general public about, and demonstration of advanced diagnostic, prevention, and treatment methods for Alzheimer's disease.

(f) For purposes of grants authorized in section 464C of the Act, a single institution or a consortium of cooperating institutions which conducts basic and clinical research into, training in, information and continuing education programs for the health community and the general public about, and demonstration of advanced diagnostic, prevention, and treatment methods for, disorders of hearing and other communication processes and complications resulting from such disorders.

(g) For the purposes of grants authorized in section 2316 of the Act, a public or private entity for basic and clinical research into, and training in, advanced diagnostic, prevention, and treatment methods for acquired immunodeficiency.

(h) As required in a section of the Act cited in this part or at the determination of the Director of the NIH awarding organizational component, a center may use the facilities of a single institution or a consortium of cooperating institutions and, if practical, be part of an equitable geographical distribution of centers, and be part of an environment with proven research capabilities.

NIH means the National Institutes of Health and its organizational components that award grants.

Nonprofit as applied to any agency or institution means an agency or institution which is a corporation or an association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

§ 52a.3 Who is eligible to apply?

(a) Any public or private non-profit agency, institution, or consortium of agencies or institutions is eligible to apply for a grant under sections 414, 422, 441, 445, 445A and 2316 of the Act.

(b) Any public or private non-profit or for-profit agency, institution or consortium of agencies or institutions is eligible to apply for a grant under sections 431 and 464C of the Act.

(c) Any applicant under this part must be located in a State, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, or the successor States of the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

§ 52a.4 What information must each application contain?

Each application under this part must include detailed information as to the following:

(a) The personnel, facilities, and other resources available to the applicant with which to initiate and maintain the proposed center grants program;

(b) Any research, training, demonstration, or information dissemination activities in which the applicant is currently engaged; the sources of funding for these activities; and the relevance of these activities to the proposed center grants program;

(c) Proposed research, training, demonstration, and information dissemination activities;

(d) The proposed organizational structure of the center and the relationship of the proposed center to the applicant organization(s);

(e) The names and qualifications of the center director and key staff members who would be responsible for conducting the proposed activities;

(f) Proposed methods for monitoring and evaluating individual activities and the overall center program;

(g) Proposed methods for coordinating the center's activities, where appropriate, with similar efforts by other public and private organizations;

(h) The availability of any community resources necessary to carry out proposed activities;

(i) Efforts to be made to generate and collect income from sources other than NIH to be used to further the purposes of the center program. NIH encourages these efforts. Income may include, but is not limited to, that generated from the sale or rental of products or services produced by grant-supported activities, such as laboratory tests, computer time, and payments received from patients or third parties, where appropriate (the disposition of grant-related income is governed by 45 CFR 74.40–74.47 and 45 CFR 92.25);

(j) The proposed budget for the center and a justification for the amount of the grant funds requested; and

(k) Any other information that the Director of the awarding institute may request.

(Approved under OMB Control Number 0925–0001)

§ 52a.5 How will NIH evaluate applications?

(a) NIH considers the following in evaluating Center grant applications:

(1) The scientific and technical merit of the proposed program;

(2) The qualifications and experience of the center director and other key personnel;

(3) The statutory and program purposes to be accomplished;

(4) The extent to which the various components of the proposed program would be coordinated into one multidisciplinary effort within the center;

(5) The extent to which the center's activities would be coordinated with similar efforts by other organizations;

(6) The administrative and managerial capability of the applicant;

(7) The reasonableness of the proposed budget in relation to the proposed program; and

(8) Other factors which the awarding institute, center, or division considers appropriate in light of its particular statutory mission.

(b) Where required by statute or NIH policy, applications are reviewed by appropriate national advisory councils or boards before awards are made. NIH grants may be awarded generally only after approval recommendations from both appropriate scientific peer review groups and national advisory councils or boards.

§ 52a.6 Information about grant awards.

(a) The notice of grant award specifies how long NIH intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for 1–5 years.

(b) Generally, the grant will initially be for one year, and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the NIH that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application, nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

(Approved under OMB Control Number 0925–0001)

§ 52a.7 For what purposes may a grantee spend grant funds?

A grantee shall only spend funds it receives under this part according to the approved application and budget, the authorizing legislation, the terms and conditions of the award, the applicable cost principles prescribed in subpart Q of 45 CFR part 74 and 45 CFR 92.22, and the regulations of this part.

§ 52a.8 Other HHS regulations that apply.

Several other regulations and policies apply to this part. These include, but are not necessarily limited to:

42 CFR part 50, subpart A: Responsibilities of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science

42 CFR part 50, subpart D: Public Health Service grant appeals procedures

45 CFR part 16: Procedures of the Departmental Grant Appeals Board

45 CFR part 46: Protection of human subjects

45 CFR part 74: Administration of grants

45 CFR part 75: Informal grant appeals procedures

45 CFR part 76: Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)

45 CFR part 80: Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964

45 CFR part 81: Practice and procedure for hearings under part 80 of this title

45 CFR part 84: Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR part 86: Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR part 91: Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

45 CFR part 92: Uniform administrative requirements for grants and cooperative agreements to State and local governments

45 CFR part 93: New restrictions on lobbying

51 FR 16958 or successor: NIH Guidelines for Research Involving Recombinant DNA Molecules

Public Health Service Policy on Humane Care and Use of Laboratory Animals

§ 52a.9 Additional conditions.

NIH may, with respect to any grant award, impose additional conditions prior to or at the time of any award when, in NIH's preferred judgement, the conditions are necessary to assure or protect advancement of the approved program, the interests of the public

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health, or the conservation of grant funds.

[FR Doc. 91-11219 Filed 5-10-91; 8:45 am]

BILLING CODE 4140-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 91-72; FCC 91-87]

Emergency Medical Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: To improve the communications capabilities of entities engaged in the provision of life support activities, the Commission proposes to assign specific frequencies for use in a new Emergency Medical Radio Service (EMRS). In addition, the Commission proposes certain policies and rules intended to promote more efficient and effective licensing of private land mobile radio users eligible in the EMRS. This action will benefit the public interest by enhancing the quality and reliability of emergency medical service communications and promoting effective operation on EMRS frequencies.

DATES: Comments may be filed with the Secretary of the Commission no later than June 6, 1991, and reply comments no later than June 21, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Karen Kincaid, Land Mobile and Microwave Division, Private Radio Bureau (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rulemaking in PR Docket 91-72, FCC 91-87, adopted March 20, 1991, and released April 16, 1991. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this notice of proposed rulemaking may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452-1422.

Summary of Notice of Proposed Rulemaking

1. Under the Commission's existing rules, entities engaged in the rendition of emergency medical care are ordinarily licensed in the Special Emergency Radio Service (SERS). Frequencies in the SERS are shared by ten categories of eligible users including medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated places, communications standby facilities and emergency repair of public communications. Emergency medical service communications are generally encompassed in the broader category of medical services within the SERS. This category is shared by certain hospitals, institutions and organizations regularly engaged in providing medical care.

2. In their Petition for Rule Making filed in the instant proceeding, the International Municipal Signal Association and the International Association of Fire Chiefs, Inc. pleaded that the rapid increase in the number of EMS and SERS transmissions has overburdened available spectrum, hindering the quality and reliability of EMS communications to an extent that poses a threat to human life and safety. Likewise, in response to similar concerns, several Members of Congress have urged the Commission to study the available channels for communications between ambulances and hospitals and to develop a plan to ensure that sufficient frequencies are allocated for EMS purposes. In an effort to remedy the problems plaguing EMS providers, IMSA/IAFC request the Commission to establish a separate Emergency Medical Radio Service (EMRS) encompassing the emergency medical communications transmitted by licensees in each of the various categories under the existing regulatory arrangement. IMSA/IAFC request the Commission to assign certain frequencies derived primarily from the Special Emergency Radio Service to the EMRS and to amend the Commission's rules to enhance the utility of the proposed EMRS frequency assignments.

3. After carefully reviewing the record, including the comments and reply comments filed in response to the IMSA/IAFC petition, the Commission proposed to amend its rules to establish a separate Emergency Medical Radio Service. The Commission proposed to limit eligibility in the EMRS to persons or entities that provide basic or advanced life support services on an ongoing basis, stating that this limitation, in conjunction with restrictions upon the use of EMRS frequencies, will keep congestion on this spectrum to a minimum. In addition, the Commission proposed to designate the EMRS as a sub-category of the Public Safety Radio Services, noting that the safety of life and property aspects of the Public Safety Radio Services and EMS entities presently licensed in the SERS make these two groups uniquely compatible.

4. Under the Commission's proposal, the principal source of spectrum for the EMRS is the existing SERS frequencies limited primarily for EMS communications. This includes the ten MED channels, the five VHF frequencies available for use by medical services SERS licensees, and certain other SERS spectrum. The Commission stated that these frequencies are especially suitable for the EMRS because the majority thereof are already designated for emergency medical communications and because the current limitations on the use of most of these frequencies make their removal least disruptive to the remaining SERS licensees. Relatedly, the Commission stated that adequate resources exist to accommodate SERS licensees displaced from these frequencies. In addition to the above frequencies, the Commission proposed assigned five channels pair in the 220-222 MHz band to the EMRS.

Initial Regulatory Flexibility Analysis

5. The Commission believes that its rules governing the transmission of emergency medical communications should be amended to establish a discrete Emergency Medical Radio Service. The proposed action would help alleviate the congestion and interference currently hampering EMS communications by restricting access to the available frequencies and by assigning additional spectrum for EMS use.

Paperwork Reduction Act Statement

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements and will not increase or decrease burden hours imposed on the public.

List of Subjects in 47 CFR Part 90

Special Emergency Radio Service, Public Safety Radio Services, Emergency Medical Radio Service.

Rule Changes

Part 90 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082, 47 U.S.C. 154, 303.

2. A new § 90.27 is added to subpart B to read as follows:

§ 90.27 Emergency Medical Radio Service.

(a) *Eligibility.* Persons or entities engaged in the provision of basic or advanced life support services on an ongoing basis are eligible to hold authorizations in the Emergency Medical Radio Service to operate stations for transmission of communications essential for the delivery or rendition of emergency medical services to the extent that such services include the provision of basic or advanced life support. Applications submitted by persons or organizations other than governmental entities must be accompanied by a statement prepared by the governmental body having legal jurisdiction over the area to be served indicating that the applicant is included in the state's emergency plan or otherwise supporting the application.

(b) *Frequencies available.* The following table indicates frequencies available for assignment to stations in the Emergency Medical Service, together with the class of station(s) to which they are normally assigned and the specific assignment limitations explained in paragraph (c) of this section. (Frequencies below 450 MHz indicated for base or mobile stations may be authorized to fixed stations on a secondary basis to stations in the mobile service):

EMERGENCY MEDICAL RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Megahertz:		
72.00 to 76.00.	Operational-fixed.	1.
150-170	Base or mobile	2.
150.775	Mobile	
150.790	do	
155.325	Base or mobile	3, 4.
155.340	do	4, 5.
155.355	do	3, 4.
155.385	do	3, 4.
155.400	do	3, 4.
169-172	Mobile	6.
220.9025	Base	25.
220.9075	do	25.
220.9125	do	25.
220.9175	do	25.
220.9225	do	25.
221.9025	Mobile	25.
221.9075	do	25.
221.9125	do	25.
221.9175	do	25.
221.9225	do	25.
450 to 470	Fixed	7.
453.025	Base	19, 22.
453.050	Base or mobile	8.
453.075	Base	19, 22.
453.100	Base or mobile	8.
453.125	Base	19, 22.
453.150	Base or mobile	8.
453.175	Base	19, 22.
453.200	Base or mobile	8.
453.250	do	8.
453.300	do	8.
453.350	do	8.
453.400	do	8.
453.450	do	8.
453.500	do	8.
453.550	do	8.
453.600	do	8.
453.650	do	8.
453.700	do	8.
453.750	do	8.
453.800	do	8.
453.850	do	8.
453.900	do	8.
453.950	do	8.
454.025	Mobile	19, 22.
454.050	do	8.
454.075	do	19, 22.
454.100	do	8.
454.125	do	19, 22.
454.150	do	8.
454.175	do	19, 22.
454.200	do	8.
454.250	do	8.
454.300	do	8.
454.350	do	8.
454.400	do	8.
454.450	do	8.
454.500	do	8.
454.550	do	8.
454.600	do	8.
454.650	do	8.
454.700	do	8.
454.750	do	8.
454.800	do	8.
454.850	do	8.
454.900	do	8.
454.950	do	8.
460.525	Base or mobile	10.
460.550	do	10.
462.950	do	3, 11, and 12.
462.975	do	3, 11, and 12.
463.000	do	9, 13, and 20.
463.025	do	9, 13, and 20.
463.050	do	9, 13, and 20.
463.075	do	9, 13, and 21.
463.100	do	9, 13, and 21.
463.125	do	9, 13, and 21.
463.150	do	9, 13, and 21.
463.175	do	9, 13, and 21.
465.525	Mobile	10.
465.550	do	10.
467.950	do	3, 11, and 12.
467.975	do	3, 11, and 12.
468.000	do	9, 13, and 20.
468.025	do	9, 13, and 20.
468.050	do	9, 13, and 20.
468.075	do	9, 13, and 21.
468.100	do	9, 13, and 21.
468.125	do	9, 13, and 21.
468.150	do	9, 13, and 21.
468.175	do	9, 13, and 21.
470 to 512	Base or mobile	14.
806 to 824	Mobile	15.
851 to 869	Base or mobile	15.
928 and above.	Operational-fixed.	16.
929 to 930	Base only	24.
1427 to 1435.	Operational-fixed base or mobile.	17.
2450 to 2500.	Base or mobile	18.
10,550 to 10,680.	do	23.

(c) Explanation of assignment limitations appearing in the frequency table of paragraph (b) of this section:

(1) The frequencies available for use at operational-fixed stations in the band 72-76 MHz are listed in § 90.257(a)(1) of this part. These frequencies are shared with other services and are available only in accordance with the provisions of § 90.257 of this part.

(2) Rules concerning the use of this band for narrowband operations are set forth in § 90.271 of this part.

(3) A licensee regularly conducting two-way communications operations on this frequency may, on a secondary basis, also transmit one-way alert-paging signals to ambulance and rescue squad personnel.

(4) In addition to other authorized uses, the use of F1B, F1D, F2B or F2D emission is permitted on this frequency for the operation of biomedical telemetry systems subject to the following limitations: (i) New York, N.Y.-Northeastern New Jersey; Los Angeles-Long Beach, Calif.; Chicago, Ill.-Northwestern Indiana; Philadelphia, Pa.-N.J.; Detroit, Mich.; San Francisco-Oakland, Calif.; Boston, Mass.; Washington, D.C.-Md.-Va.; Cleveland, Ohio; St. Louis, Mo.-Ill.; Pittsburgh, Pa.; Minneapolis-St. Paul, Minn.; Houston, Tex.; Baltimore, Md.; Dallas, Tex.; Milwaukee, Wis.; Seattle-Everett, Wash.; Miami, Fla.; San Diego, Calif.; Atlanta, Ga.; Cincinnati, Ohio-Ky.; Kansas City, Mo.-Kans.; Buffalo, N.Y.; Denver, Colo.; San Jose, Calif.; New Orleans, La.; Phoenix, Ariz.; Portland, Oreg.-Wash.; Indianapolis, Ind.; Providence-Pawtucket-Warwick, R.I.-Mass.; Columbus, Ohio; San Antonio, Tex.; Louisville, Ky.-Ind.; Dayton, Ohio; Fort Worth, Tex.; Norfolk-Portsmouth, Va.; Memphis, Tenn.-Miss.; Sacramento, Calif.; Fort Lauderdale-Hollywood, Fla.; Rochester, N.Y.; Tampa-St. Petersburg, Fla.

(ii) The continuous carrier mode of operations may be used for telemetry transmissions on this frequency for periods up to two-minutes duration; following which there must be a break in the carrier for at least a one-minute period.

(iii) Georgraphical coordinations for the above—listed urbanized areas may be found at Table 1 of § 90.635 of this part.

(5) This frequency may be designated by common consent as an intersystem mutual assistance frequency under an area-wide medical communications plan.

(6) Frequencies in this band will be assigned for low power wireless microphones in accordance with the provisions of § 90.265 of this part.

(7) The frequencies available for use at fixed stations in this band and the

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requirements for assignment are set forth in § 90.261 of this part. Operation on these frequencies is secondary to stations in the Industrial and Land Transportation Radio Service where they are assigned for land mobile operations.

(8) This frequency is available in this service on a shared basis with all other Public-Safety Radio Services.

(9) The continuous carrier mode of operation may be used for telemetry transmission on this frequency.

(10) This frequency is shared with the Police and Fire Radio Services. This frequency may be designated by common consent for intra-system and inter-system mutual assistance purposes and is subject to the coordination requirements specified in § 90.175 of this part.

(11) This frequency is primarily authorized for use in the dispatch of medical care vehicles and personnel for the rendition or delivery of medical services. This frequency may also be assigned for intra-system and inter-system mutual assistance purposes. For uniformity in usage, the frequency pairs 462.950/467.950 and 462.975/467.975 MHz may be referred to as MED-9 and Med-10, respectively.

(12) This frequency is shared with Police Radio Service licensees authorized prior to April 16, 1976. This frequency is available on a primary basis to operations by licensees in the Emergency Medical Radio Service.

(13) For applications for new radio systems received after August 15, 1974, the eight frequency pairs listed below will be assigned in a block for shared operation under § 90.27(a) subject to the following:

(i) For uniformity in usage, these frequency pairs may be referred to by channel name as follows:

Frequencies base and mobile	Mobile only (MHz)	Channel name
Megahertz:		
463.000	468.000	MED-1
463.025	468.025	MED-2
463.050	468.050	MED-3
463.075	468.075	MED-4
463.100	468.100	MED-5
463.125	468.125	MED-6
463.150	468.150	MED-7
463.175	468.175	MED-8

(ii) Except as provided in paragraphs (c)(13) (iii) and (iv) of this section, mobile or portable stations must employ equipment that is both wired and equipped to transmit/receive, respectively, on each of these eight frequency pairs with transmitters operated on the 406 MHz frequencies.

(iii) Portable (hand-held) units operated with a maximum output power of 2.5 watts are exempted from the multi-channel equipment requirements specified in paragraph (c)(13)(ii) in this section.

(iv) Stations located in areas above line A, as defined in § 90.7 of this section will be required to meet multi-channel equipment requirements only for those frequencies up to the number specified in paragraph (c)(13)(ii) of this section that have been assigned and coordinated with Canada in accordance with the applicable U.S.-Canada agreement.

(14) Subpart L of this part contains rules for assignment of frequencies in the 470–512 MHz band.

(15) Subpart S of this part contains rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

(16) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

(17) This frequency band is available in this service subject to the provisions of § 90.259 of this Part.

(18) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modifications to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

(19) Paging licensees as of March 20, 1991 may continue to operate on a primary basis until [5 years from adoption of R & O in this proceeding].

(20) This frequency is authorized for use only for operations in biomedical telemetry stations. F1B, F1D, F2B, F2D, F3E, G1B, G1D, G2B, G2D and G3E emissions may be authorized. Entities eligible in this Radio Service may use this frequency on a secondary basis for any other permissible communications consistent with § 90.27(a).

(21) This frequency is authorized for use only in communications between medical facilities vehicles and personnel related to medical supervision and instruction for treatment and transport of patients in the rendition or delivery of medical services. F1B, F1D, F2B, F2D, G1B, G1D, G2B, G2D, F3E and G3E emissions are authorized. Entities eligible in this Radio Service may use this frequency on a secondary basis for any other permissible communications consistent with § 90.27(a).

(22) Local government highway radio call box operations first licensed prior to 3/31/80 on this frequency may continue to operate in accordance with § 90.17(c)(11) of this part.

(23) This band is available for Digital Termination Systems and for associated internodal links under part 94 of this chapter. No new licenses will be issued under this subpart but current licenses will be renewed.

(24) Frequencies in this band are available only for one-way paging operations in accordance with § 90.494 of this part.

(25) Rules concerning the use of this frequency are set forth in subpart T of this part.

3. Section 90.53 is amended by revising the table in paragraph (a) and by revising paragraphs (b) (7), (9) and (26) and removing and reserving paragraphs (b) (10), (13)–(20), (29), (32), and (34) to read as follows:

§ 90.53 Frequencies available.

(a) * * *

SPECIAL EMERGENCY RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Kilohertz:		
2000–3000	Fixed	1.
2726	Base or mobile	2.
3201	do	
Megahertz:		
33.02	do	3, 25.
33.04	do	25.
33.06	do	3, 25.
33.08	do	25.
33.10	do	3,25.
35.02	Mobile	27.
35.64	Base	4.
35.68	do	4.
37.90	Base or mobile	3, 25.
37.94	do	3, 25.
37.98	do	3, 25.
43.64	Base	4, 28.
43.68	do	4.
45.92	Base or mobile	25.
45.96	do	25.
46.00	do	25.
46.04	do	25.
47.42	do	5, 25.
47.46	do	25.
47.50	do	25.
47.54	do	25.
45.58	do	25.
47.62	do	25.
47.66	do	25.
72.00 to 76.00	Operational-fixed	6.
150–170	Base or mobile	30.
152.0075	Base	4, 31.
155.160	Base or mobile	25.
155.175	do	25.
155.205	do	25.
155.220	do	25.
155.235	do	25.
155.265	do	25.
155.280	do	25.
155.295	do	25.

SPECIAL EMERGENCY RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
157.450	Base	4, 11.
163.250	do	4
169–172	Mobile	33.
450 to 470	Fixed	12.
453.025	Base	26.
453.075	do	26.
453.125	do	26.
453.175	do	26.
458.025	Mobile	26.
458.075	do	26.
458.125	do	26.
458.175	do	26.
806 to 824	Mobile	21.
851 to 869	Base or mobile	21.
928 and above	Operational-fixed	22.
929 to 930	Base only	7.
1427 to 1435	Operational-fixed, base or mobile.	23.
2450 to 2500	Base or mobile	24.
10,550 to 10,680.	do	9.

(b) * * *

(7) Frequencies in this band are available only for one-way paging operations in accordance with § 90.494 of this part.

* * * * *

(9) This band is available for Digital Termination Systems and for associated internodal links under Part 94 of this Chapter. No new licenses will be issued under this subpart but current licenses will be renewed.

(10) [Reserved]

* * * * *

(13) [Reserved]

(14) [Reserved]

(15) [Reserved]

(16) [Reserved]

(17) [Reserved]

(18) [Reserved]

(19) [Reserved]

(20) [Reserved]

* * * * *

(26) Paging licensees as of March 20, 1991 may continue to operate on a primary basis until (5 years from adoption of R&O in this proceeding).

* * * * *

(29) [Reserved]

* * * * *

(32) [Reserved]

* * * * *

(34) [Reserved]

* * * * *

4. Section 90.55 is amended by revising the first sentence of the introductory text to read as follows:

§ 90.55 Paging operations.

Paging operations may be authorized in this service only on frequencies assigned under the provisions of §§ 90.53(b)(4), (25) and (26) of this part. * * *

* * * * *

5. Section 90.176 is revised to read as follows:

§ 90.176 Interservice sharing of frequencies in the 150–174 and 450–470 MHz bands.

(a) Entities eligible in the Public Safety Radio Services governed by this rule part may apply to use any of the above-mentioned frequencies allocated to these services. Applicants are required to make the showing set forth in paragraph (c) of this section.

(b) Entities eligible in the Special Emergency Radio Service or the Industrial and Land Transportation Radio Services governed by this rule part may apply to use any of the above-mentioned frequencies allocated to these services. Applicants are required to make the showing set forth in paragraph (c) of this section.

(c) Applications for frequencies available under this rule must be accompanied by:

(1) A determination by the applicable frequency coordinator that there are no satisfactory frequencies available within the applicant's own radio service in the area of desired operation;

(2) A demonstration that the frequency(ies) requested in another radio service are not assigned in that radio service in the area of desired operation;

(3) A statement from the frequency coordinator having responsibility for coordination in the radio service or group in which the frequency is assigned concurring in its assignment in the manner requested. In cases where concurrence is not given, the coordinator must provide an explanation why the requested sharing is inappropriate;

(4) A statement or showing that the proposed use of the assignment will not violate any of the technical limitations applicable in the service or services to which the frequency is regularly allocated.

6. The table in § 90.311(a) is amended by revising the column heading under "Public Safety Pool" to read "Fire, Police, Local Government, Highway Maintenance, Forestry Conservation and Emergency Medical Radio Services."

7. Section 90.555 is amended by revising the "Public Safety Services" list in paragraph (a), by revising the frequencies listed below in paragraph (b), and by adding the frequencies 220–220.9000 through 221.9250–222 MHz in paragraph (b) to read as follows:

§ 90.555 Combined frequency listing.

(a) * * *

Public Safety Services

PF—Fire.

PH—Highway maintenance.

PL—Local government.

PO—Forestry-conservation.

PP—Police.

PS—Special Emergency.

PM—Emergency Medical.

(b) Combined frequency list.

Frequency	Services	Special limitations
*	*	*
150.775	PM	Mobile.
150.790	PM	Do.
*	*	*
155.325	PM	Base or Mobile.
155.340	PM	Do.
155.355	PM	Do.
*	*	*
155.385	PM	Base or Mobile.
155.400	PM	Do.
*	*	*
220–220.9000	All Svcs. Exc. RS.	Subpart T.
220.9000–220.9250.	PM	Base.
220.9250–221.9000.	All Svcs. Exc. RS.	Subpart T.
221.900–221.9250.	PM	Mobile.
221.9250–222	All Svcs. Exc. RS.	Subpart T.
*	*	*
453.025	PM	
453.050	PL, PP, PF, PH, PO, PM.	
453.075	PM	
453.100	PL, PP, PF, PH, PO, PM.	
453.125	PM	
453.150	PL, PP, PF, PH, PO, PM.	
453.175	PM	
453.200	PL, PP, PF, PH, PO, PM.	
*	*	*
453.250	PL, PP, PF, PH, PO, PM.	
*	*	*
453.300	PL, PP, PF, PH, PO, PM.	
*	*	*
453.350	PL, PP, PF, PH, PO, PM.	
*	*	*
453.400	PL, PP, PF, PH, PO, PM.	
*	*	*
453.450	PL, PP, PF, PH, PO, PM.	
*	*	*
453.500	PL, PP, PF, PH, PO, PM.	
*	*	*
453.550	PL, PP, PF, PH, PO, PM.	
*	*	*
453.600	PL, PP, PF, PH, PO, PM.	
*	*	*
453.650	PL, PP, PF, PH, PO, PM.	
*	*	*
453.700	PL, PP, PF, PH, PO, PM.	
*	*	*
453.750	PL, PP, PF, PH, PO, PM.	

Frequency	Services	Special limitations
•	•	•
453.800	PL, PP, PF, PH, PO, PM.	
•	•	•
453.850	PL, PP, PF, PH, PO, PM.	
•	•	•
453.900	PL, PP, PF, PH, PO, PM.	
•	•	•
453.950	PL, PP, PF, PH, PO, PM.	
•	•	•
454.025	PM	
454.050	PL, PP, PF, PH, PO, PM.	
454.075	PM	
454.100	PL, PP, PF, PH, PO, PM.	
454.125	PM	
454.150	PL, PP, PF, PH, PO, PM.	
454.175	PM	
454.200	PL, PP, PF, PH, PO, PM.	
•	•	•
454.250	PL, PP, PF, PH, PO, PM.	
•	•	•
454.300	PL, PP, PF, PH, PO, PM.	
•	•	•
454.350	PL, PP, PF, PH, PO, PM.	
•	•	•
454.400	PL, PP, PF, PH, PO, PM.	
•	•	•
454.450	PL, PP, PF, PH, PO, PM.	
•	•	•
454.500	PL, PP, PF, PH, PO, PM.	
•	•	•
454.550	PL, PP, PF, PH, PO, PM.	
•	•	•
454.600	PL, PP, PF, PH, PO, PM.	
•	•	•
454.650	PL, PP, PF, PH, PO, PM.	
•	•	•
454.700	PL, PP, PF, PH, PO, PM.	
•	•	•
454.750	PL, PP, PF, PH, PO, PM.	
•	•	•
454.800	PL, PP, PF, PH, PO, PM.	
•	•	•
454.850	PL, PP, PF, PH, PO, PM.	
•	•	•
454.900	PL, PP, PF, PH, PO, PM.	
•	•	•
454.950	PL, PP, PF, PH, PO, PM.	
•	•	•
460.525	PP, PF, PM	
460.550	PP, PF, PM	
•	•	•
462.950	PM	Med 9.
462.975	PM	Med 10.
463.000	PM	Med 1.
463.025	PM	Med 2.
463.050	PM	Med 3.
463.075	PM	Med 4.
463.100	PM	Med 5.
463.125	PM	Med 6.
463.150	PM	Med 7.
463.175	PM	Med 8.
•	•	•
465.525	PP, PF, PM	
465.550	PP, PF, PM	
•	•	•
467.950	PM	Med 9.
467.975	PM	Med 10.
468.000	PM	Med 1.
468.025	PM	Med 2.
468.050	PM	Med 3.
468.075	PM	Med 4.
468.100	PM	Med 5.
468.125	PM	Med 6.
468.150	PM	Med 7.
468.175	PM	Med 8.
•	•	•

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-11268 Filed 5-10-91; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 56, No. 92
Monday, May 13, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for Pacific Northwest Region, Oregon and Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Northwest Region to publish legal notice of all decisions subject to appeal under 36 CFR 217. This action is necessary to implement the Secretary of Agriculture's final rule amending the Forest Service administrative appeal procedures, which was signed on December 5, 1990 and was published in the **Federal Register** on February 6, 1991 (56 FR 4914). The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after May 15, 1991. The list of newspapers will remain in effect until October 1991 when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James L. Schuler, Regional Appeals Coordinator, Pacific Northwest Region, PO Box 3623, Portland, OR 97208-3623, phone: (503) 326-2322.

SUPPLEMENTARY INFORMATION: On December 5, 1990 the Deputy Secretary of Agriculture signed a final rule amending the administrative appeal procedures 36 CFR 217 of the Forest Service to require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: The decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some forest supervisors and district rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Pacific Northwest Regional Office

Pacific Northwest Regional Forester decisions on Oregon National Forests:
The Oregonian, Portland, Oregon
Pacific Northwest Regional Forester decisions on Washington National Forests:
The Seattle Post-Intelligencer, Seattle, Washington
Columbia Gorge National Scenic Area Manager decisions:
The Oregonian, Portland, Oregon

Oregon National Forests

Deschutes National Forest

Deschutes Forest Supervisors decisions:
The Bulletin, Bend, Oregon
Bend District Ranger decisions:
The Bulletin, Bend, Oregon
Crescent District Ranger decisions:
The Bulletin, Bend, Oregon
Fort Rock District Ranger decisions:
The Bulletin, Bend, Oregon
Sister District Ranger decisions:
Sisters Nugget, Sisters, Oregon
Bend Pine Nursery managers decisions:
The Bulletin, Bend, Oregon
Redmond Air Center Managers decisions:
The Bulletin, Bend, Oregon

Fremont National Forest

Fremont Forest Supervisor decisions:
Herald and News, Klamath Falls, Oregon
Newspapers providing additional notice for Fremont Forest Supervisor decisions:
Lake County Examiner, Lakeview, Oregon
The Bulletin, Bend, Oregon
Bly District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Lakeview District Ranger decisions:
Lake County Examiner, Lakeview, Oregon
Paisley District Ranger decisions:
Lake County Examiner, Lakeview, Oregon
Silver Lake District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Newspaper providing additional notice of Silver Lake decisions:
The Bulletin, Bend, Oregon

Malheur National Forest

Malheur Forest Supervisor decisions:
Blue Mountain Eagle, John Day, Oregon
Bear Valley District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Burns District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Long Creek District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Prairie City District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon

Mt Hood National Forest

Mt Hood Forest Supervisor decisions:
The Oregonian, Portland, Oregon
Barlow District Ranger decisions:
The Oregonian, Portland, Oregon
Bear Springs District Ranger decisions:
The Oregonian, Portland, Oregon
Clackamas District Ranger decisions:
The Oregonian, Portland, Oregon
Columbia Gorge District Ranger decisions:
The Oregonian, Portland, Oregon
Estacada District Ranger decisions:
The Oregonian, Portland, Oregon
Hood River District Ranger decisions:
The Oregonian, Portland, Oregon
Zigzag District Ranger decisions:
The Oregonian, Portland, Oregon

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Ochoco National Forest

Ochoco Forest Supervisor decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Ochoco Forest Supervisor decisions:
Burns Times/Herald, Burns, Oregon
Central Oregonian, Prineville, Oregon
The Oregonian, Portland, Oregon
Register-Guard, Eugene, Oregon
Big Summit District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Big Summit decisions:
The Oregonian, Portland, Oregon
Register-Guard, Eugene, Oregon
Crooked River National Grassland District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Grassland decisions:
Madras Pioneer, Madras, Oregon
The Oregonian, Portland, Oregon
Register-Guard, Eugene, Oregon
Paulina District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Paulina decisions:
Blue Mountain Eagle, John Day, Oregon
The Oregonian, Portland, Oregon
Register-Guard, Eugene, Oregon
Prineville District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Prineville decisions:
Central Oregonian, Prineville, Oregon
The Oregonian, Portland, Oregon
Register-Guard, Eugene, Oregon
Snow Mountain District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Snow Mountain decisions:
Burns Times/Herald, Burns, Oregon
The Oregonian, Portland, Oregon
Register-Guard, Eugene, Oregon

Rogue River National Forest

Rogue River Forest Supervisor decisions:
Mail Tribune, Medford, Oregon
Applegate District Ranger decisions:
Mail Tribune, Medford, Oregon
Ashland District Ranger decisions:
Mail Tribune, Medford, Oregon
Butte Falls District Ranger decisions:
Mail Tribune, Medford, Oregon
J. Herbert Stone Nursery Managers decisions:
Mail Tribune, Medford, Oregon
Prospect District Ranger decisions:
Mail Tribune, Medford, Oregon

Siskiyou National Forest

Siskiyou Forest Supervisor decisions:
Grants Pass Courier, Grants Pass, Oregon
Chetco District Ranger decisions:
Curry Coastal Pilot, Brookings, Oregon
Galice District Ranger decisions:
Grants Pass Courier, Grants Pass, Oregon
Gold Beach District Ranger decisions:
Curry County Reporter, Gold Beach, Oregon
Illinois Valley District Ranger decisions:
Grants Pass Courier, Grants Pass, Oregon
Powers District Ranger decisions:
The World, Coos Bay, Oregon
Newspaper providing additional notice of Powers decisions:
Curry County Reporter, Gold Beach, Oregon

Siuslaw National Forest

Siuslaw Forest Supervisor decisions:
Corvallis Gazette-Times, Corvallis, Oregon
Alsea District Ranger decisions:
Corvallis Gazette-Times, Corvallis, Oregon
Hebo District Ranger decisions:
Headlight Herald, Tillamook, Oregon
Mapleton District Ranger decisions:
Siuslaw News, Florence, Oregon
Oregon Dunes National Recreation Area Manager decisions:
The World, Coos Bay, Oregon
Waldport District Ranger decisions:
Newport News Times, Newport, Oregon

Umatilla National Forest

Umatilla Forest Supervisor decisions:
East Oregonian, Pendleton, Oregon
Heppner District Ranger decisions:
East Oregonian, Pendleton, Oregon
North Fork John Day District Ranger decisions:
East Oregonian, Pendleton, Oregon
Pomeroy District Ranger decisions:
East Oregonian, Pendleton, Oregon
Walla Walla District Ranger decisions:
East Oregonian, Pendleton, Oregon

Umpqua National Forest

Umpqua Forest Supervisor decisions:
The News-Review, Roseburg, Oregon
Cottage Grove District Ranger decisions:
The News-Review, Roseburg, Oregon
Diamond Lake District Ranger decisions:
The News-Review, Roseburg, Oregon
North Umpqua District Ranger decisions:
The News-Review, Roseburg, Oregon
Tiller District Ranger decisions:
The News-Review, Roseburg, Oregon
Dorena Tree Improvement Center Manager decisions:
The News-Review, Roseburg, Oregon

Wallowa-Whitman National Forest

Wallowa-Whitman Forest Supervisor decisions:
Democratic Herald, Baker City, Oregon
Baker District Ranger decisions:
Democrat Herald, Baker City, Oregon
Eagle Cap District Ranger decisions:
Wallowa County Chieftain, Enterprise Oregon
Hells Canyon National Recreation Area Ranger decisions:
Occurring in Oregon
Wallowa County Chieftain, Enterprise, Oregon
Occurring in Idaho
Lewiston Morning Tribune, Lewiston, ID
La Grande District Ranger decision:
The Observer, La Grande, Oregon
Pine District Ranger decisions:
Democrat Herald, Baker City, Oregon
Unity District Ranger decisions:
Democrat Herald, Baker City, Oregon
Wallowa Valley District Ranger decisions:
Wallowa County Chieftain, Enterprise, Oregon

Willamette National Forest

Willamette Forest Supervisor decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Willamette Forest Supervisor decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Blue River District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Blue River decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Detroit District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Detroit decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Lowell District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Lowell decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
McKenzie District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of McKenzie decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany Oregon

Oakridge District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Oakridge decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Rigdon District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Rigden decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Sweet Home District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Sweet Home decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon

Winema National Forest

Winema Forest Supervisor decisions:
Herald and News, Klamath Falls, Oregon
Chemult District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Chiloquin District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Klamath District Ranger decisions:
Herald and News, Klamath Falls, Oregon

Washington National Forests

Colville National Forest

Colville Forest Supervisor decisions:
Statesman-Examiner, Colville, WA
Colville District Ranger decisions:
Statesman-Examiner, Colville, WA
Kettle Falls District Ranger decisions:
Statesman-Examiner, Colville, WA
Newport District Ranger decisions:
Newport Miner, Newport, WA
Republic District Ranger decisions:
Republic News Miner, Republic, WA
Sullivan Lake District Ranger decisions:
Newport Miner, Newport, WA

Gifford Pinchot National Forest

Gifford Pinchot Forest Supervisor decisions:
Columbian, Vancouver, Washington
Mt Saint Helens National Monument Manager decisions:
Columbian, Vancouver, Washington
Mt. Adams District Ranger decisions:
Enterprise, White Salmon, Washington
Packwood District Ranger decisions:
Chronicle, Chehalis, Washington
Randle District Ranger decisions:
Columbian, Vancouver, Washington
Wind River District Ranger decisions:
Columbian, Vancouver, Washington

Mt. Baker-Snoqualmie National Forest

Mt. Baker-Snoqualmie Forest Supervisor decisions:
Seattle Post-Intelligencer, Seattle, Washington
Darrington District Ranger decisions:
Everett Herald, Everett, Washington
Mt. Baker District Ranger decisions:
Skagit Valley Herald, Mt. Vernon, Washington
North Bend District Ranger decisions:
Valley Record, North Bend, Washington
Skykomish District Ranger decisions:
Everett Herald, Everett, Washington
White River District Ranger decisions:
Enumclaw Courier Herald, Enumclaw, Washington

Okanagon National Forest

Okanagon Forest Supervisor decisions:
Omak Chronicle, Omak, Washington
Tonasket District Ranger decisions:
The Gazette-Tribune, Oroville, Washington
Twisp District Ranger decisions:
Methow Valley News, Twisp, Washington
Winthrop District Ranger decisions:
Methow Valley News, Twisp, Washington

Olympic National Forest

Olympic Forest Supervisor decisions:
Daily Olympian, Olympia, Washington
Newspapers providing additional notice for Olympic Forest Supervisor decisions:
Mason County Journal, Shelton, Washington
Daily World, Aberdeen, Washington
Peninsula Daily News, Port Angeles, Washington
Bremerton Sun, Bremerton, Washington
Hood Canal District Ranger decisions:
Mason County Journal, Shelton, Washington
Quilicene District Ranger decisions:
Peninsula Daily News, Port Angeles, Washington
Newspaper providing additional notice for Quilicene decisions:
Bremerton Sun, Bremerton, Washington
Quinault District Ranger decisions:
The Daily World, Aberdeen, Washington
Soleduck District Ranger decisions:
The Forks Forum, Forks, Washington

Wenatchee National Forest

Wenatchee Forest Supervisor decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Wenatchee Forest Supervisor decisions:
The Yakima Herald-Republic, Yakima, Washington
Chelan District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Chelan decisions:
The Yakima Herald-Republic, Yakima, Washington
Cle Elum District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Cle Elum decisions:
The Yakima Herald-Republic, Yakima, Washington
Entiat District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Entiat decisions:
The Yakima Herald-Republic, Yakima, Washington
Lake Wenatchee District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Lake Wenatchee decisions:
The Yakima Herald-Republic, Yakima, Washington
Leavenworth District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Leavenworth decisions:
The Yakima Herald-Republic, Yakima, Washington
Naches District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Naches decisions:
The Yakima Herald-Republic, Yakima, Washington

Dated: May 6, 1991.

Richard A. Ferrero,

Acting Regional Forester.

[FR Doc. 91-11298 Filed 5-10-91; 8:45 am]

BILLING CODE 3410-11-M

Hoo Moose Timber Sale, Willamette National Forest, Linn County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA will prepare an environmental impact statement on a proposal to harvest and regenerate timber, and to construct and reconstruct

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roads in the Hensley subdrainage. The legal description of the planning area is: T.13S., R.3E., sections 11–15, 22–27; T.13S., R.4E., sections 7, 18–19. The Forest Service proposal will be in compliance with the 1990 Willamette National Forest Land and Resource Management Plan (Forest Plan), which provides the overall guidance for management of this area. This proposal is tentatively planned for fiscal year 1992.

The Willamette National Forest invites written comments and suggestions on the scope of the analysis in addition to those comments already received as a result of local public participation activities. The agency will also give notice of the full environmental analysis and decision-making process so that interested and affected people are made aware as to how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of the analysis should be received in writing by May 31, 1991.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Karen Barnette, District Ranger, Sweet Home Ranger District, Sweet Home, Oregon 97386.

FOR FURTHER INFORMATION: Direct questions about the proposed action and environmental impact statement to Donna Short, Plans/Presale Forester or Ken Schuetz, Project Coordinator (telephone: (503) 367–5168).

SUPPLEMENTAL INFORMATION: The proposal includes harvesting timber and constructing road under the Hen Moose Timber Sale. This analysis will evaluate a range of alternatives addressing the Forest Service proposal to harvest approximately 7.0 million board feet of timber from approximately 140 acres. Anticipated road construction is 0.8 miles. The analysis area is defined by the 4700-acre Hensley subdrainage.

The Forest Service is the Lead Agency. Forest Supervisor, Willamette National Forest, is the responsible official.

The EIS will tier to the Forest Plan. The Forest Plan provides goals and objectives, forest-wide standards and guidelines, management area standards and guidelines, and management area prescriptions for various lands on the Forest. This direction will be used in developing alternatives during the course of this analysis. The Hen Moose planning area has been allocated to the following Management Areas:

70 percent is in General Forest (MA 14a). This allocation emphasizes the production of optimum and sustainable levels of timber which are compatible with multiple use objectives and environmental requirements for soil, water, air and wildlife habitat quality.

16 percent is in Scenic—Modification Middleground (MA 11a). Emphasis is placed on maintaining the visual quality of the forest landscape as viewed from State Road 20.

7 percent is in Marten Habitat Area (MA 9c). Goals are to protect mature and old-growth habitat for the pine marten and all other plant and animal species dependant upon this habitat.

5 percent is in Riparian Areas (MA 15). Emphasis is placed on maintaining the role and function of rivers, streams, wetlands and lakes in the landscape ecology.

The proposed project area lies in a "high emphasis deer and elk management area" as identified by Oregon Department of Fish and Wildlife (ODFW) and Forest Service biologists. The project area also includes a portion of the Moose Lake Roadless Area, which was considered but not selected for wilderness designation.

Preliminary issues identified are roadless area quality, big game winter range, and water quality and fisheries habitat.

Initial scoping began in March of 1989. Preliminary analysis and alternative formulation are currently being conducted. The Forest Service will be seeking additional information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested or affected by the proposed project. Additional input will be used to help identify key issues and develop alternatives. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identification of potential issues;
2. Identification of issues to be analyzed in depth;
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental process;
4. Exploration of additional alternatives based on the issues identified during the scoping process; and
5. Identification of potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by July, 1991. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by September, 1991. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. The responsible official will document the decision and rationale for the decision in the Record of Decision. That decision will be subject to Forest Service appeal Regulations (36 CFR 217).

Dated: May 9, 1991.

John A. Nelson,

Acting Forest Supervisor.

[FR Doc. 91–11299 Filed 5–10–91; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Notice of Intent To Prepare a Draft Environmental Impact Statement and Conduct Public Scoping Meetings

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to prepare a draft environmental impact statement and conduct public scoping meetings.

SUMMARY: The Rural Electrification Administration (REA) intends to prepare a Draft Environmental Impact Statement (DEIS) and conduct public scoping meetings in connection with a project proposed by Public Service Company of New Mexico (PNM) and Plains Electric Generation and Transmission Cooperative, Inc. (Plains), both of Albuquerque, New Mexico. The project will consist of the construction, operation and maintenance of approximately 100–150 miles of 230 kV transmission line. The transmission line will interconnect either Plains' Escalante Generating Station near Prewitt, New Mexico, or PNM's Ambrosia Lake Substation near Grants, New Mexico, with Salt River Project Agricultural Improvement Power District's (SRP) Coronado Generating Station near St. Johns, Arizona.

DATES: REA will conduct the public scoping meetings as follows:

Tuesday, June 11, 1991, 6 p.m.—Courthouse, room 20, 201 West Hill, Gallup, New Mexico.

Wednesday, June 12, 1991, 1 p.m.—Nahat 'a' Dzill Navajo, Chapter Community Center, Sanders, Arizona.

Wednesday, June 12, 1991, 6 p.m.—4–H Community Center, 395 South First West, St. John, Arizona.

Thursday, June 13, 1991, 6 p.m.—Ramah Navajo Chapter House, Mountain View, New Mexico.

Thursday, June 13, 1991, 6 p.m.—Ramah, Fire Station, Ramah, New Mexico.

Friday, June 14, 1991, 1 p.m.—Thoreau Fire House, 1st Street, Thoreau, New Mexico.

Friday, June 16, 1991, 6 p.m.—Grants Convention Center, 515 West High, Grants, New Mexico.

ADDRESSES: All interested parties are invited to submit written comments to REA prior to, at, or within 30 days after the scoping meetings in order for the comments to be part of the final record. Comments should be sent to Mr. Martin G. Seipel, Director, Southwest Area—Electric, Rural Electrification Administration, South Agriculture Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Rankin, above address, telephone (202) 382–8932 or FTS 382–8931.

SUPPLEMENTARY INFORMATION: REA, in order to meet its requirements under the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations (40 CFR part 1500) and REA Environmental Policy and Procedures (7 CFR part 1794), intends to conduct public scoping meetings in connection with the preparation of an environmental impact statement. This notice is in connection with a potential request for a lien accommodation from REA by Plains for its share of the construction of the proposed transmission facilities. In addition, the Forest Service may be required to amend the Cibola Forest Management Plan depending on the final corridor selected. Several alternative corridors have been identified in McKinley and Cibola Counties, New Mexico, and Apache County, Arizona.

The overall purpose of the proposed project is to expand the power transfer capability of the transmission systems between SRPO in Arizona and Plains and PNM in New Mexico. Plains, a one third participant, needs to acquire additional capacity to serve its Arizona member cooperative, Navopache Electric Cooperative, Inc. PNM, a two thirds participant, needs to market excess power created by the loss of uranium mining operation loads. SRP, a non-participating beneficiary, will gain transmission access to the Four Corners area. The line will also provide additional emergency support for Plains, PNM and SRP in the event of a major operating problem.

Alternatives to be considered by REA include, among other options: No action; use of existing transmission facilities; alternative interconnection points; alternative voltages; and alternative routes.

The public scoping meetings to be conducted by REA will be held to solicit public input and comments including, but not limited to, the nature of the project, its possible location, alternatives and any significant issues and environmental concerns that should be addressed in the DEIS.

Requests for additional information concerning the meetings may be directed to REA at the address shown above. Copies of the Ambrosia-Coronado 230 kV Transmission Project Alternative Evaluation and Macro Corridor Analysis are available for public review at the offices of REA; Plains, 2401 Aztec Road, NW., Albuquerque, New Mexico; PNM, Alvarado Square, 5th Floor Document Control Center, Fourth and Silver, SW., Albuquerque, New Mexico, and at public libraries in McKinley and Cibola Counties, New Mexico and Apache County, Arizona.

Any REA approval will be subject to and contingent upon reaching satisfactory conclusions with respect to the environmental effects of the project, and final action will be taken only after compliance with environmental procedures required by NEPA.

Dated: May 7, 1991.

John H. Ameson,

Assistant Administrator—Electric.

[FR Doc. 91–11318 Filed 5–10–91; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Business and Professional Classification Report.

Form Number(s): B–625.

Agency Approval Number: 0607–0188.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 11,125 hours.

Number of Respondents: 44,500.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Bureau of the Census uses the quarterly Business and Professional Classification Report to collect information from a sample of newly established retail, wholesale, and service firms on sales size, type of operation, company organization, taxable or tax-exempt status, wholesale inventories and other wholesale inquiries, and to assign a new or more detailed Standard Industrial Classification (SIC) code for those firms. Businesses are asked to report only once in this survey. The Bureau uses the information collected to update the samples used in its retail, wholesale, and service surveys.

Affected Public: Businesses or other for-profit organizations, Small businesses or organizations

Frequency: Quarterly.

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Respondent's Obligation: Voluntary.
OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 8, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-11265 Filed 5-10-91; 8:45 am]

BILLING CODE 3510-07-F

International Trade Administration

[(A-533-601); (A-570-806); (A-583-811); (A-549-805)]

Postponement of Final Antidumping Duty Determinations: Steel Wire Rope From India, the People's Republic of China, Taiwan, and Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received requests from the respondents in each of the above-referenced antidumping duty investigations to postpone the final determinations, as permitted in section 735(a)(2) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673d(a)(2)). Based on these requests, we are postponing our final determinations as to whether sales of steel wire rope from India, the People's Republic of China (PRC), Taiwan, and Thailand have been made at less than fair value until not later than September 4, 1991.

EFFECTIVE DATE: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 377-1769.

SUPPLEMENTARY INFORMATION: In all of the above-referenced proceedings, we received requests, from respondents believed to export a significant proportion of the subject merchandise, that the Department postpone the final determinations until not later than 135 days after the publication date of the preliminary determinations, in accordance with section 735(a)(2) of the Act. The dates that we received the requests are as follows: April 22, 1991, (India); April 23, 1991, (Taiwan and Thailand); April 29, 1991, (PRC). Accordingly, we are postponing the final determinations until not later than September 4, 1991.

In accordance with 19 CFR 353.38, case briefs or other written comments and rebuttal briefs in at least ten copies must, respectively, be submitted to the Assistant Secretary for Import Administration no later than July 18, 1991, and July 25, 1991 (India); July 19, 1991, and July 26, 1991 (PRC); August 1, 1991, and August 8, 1991 (Taiwan); July 31, 1991, and August 7, 1991 Thailand). In accordance with 19 CFR 353.38(b) of the Department's regulations, we will hold separate public hearings with respect to each investigation, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The dates that the hearings will be held are as follows: July 29, 1991, 10 a.m. (India); July 30, 1991, at 10 a.m. (PRC); August 9, 1991, 2 p.m. (Thailand); August 12, 1991, 10 a.m. (Taiwan). All hearings will take place at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to participate in any of the hearings must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: May 1, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-11310 Filed 5-10-91; 8:45 am]

BILLING CODE 3510-DS-M

Travel and Tourism Administration

[Docket No. 910247-1047]

Catalog of Domestic Financial Assistance No. 11.952; Disaster Relief Tourism Promotion Financial Assistance; Financial Assistance for International Travel Promotion Projects for States Whose International Tourism Promotion Needs Have Increased Due to Disasters

AGENCY: United States Travel and Tourism Administration (USTTA), Department of Commerce.

ACTION: Notice of availability of financial assistance, limitations, and criteria.

SUMMARY: Funds are available from the USTTA to States, their political subdivisions, and combinations thereof, and to private or public nonprofit organizations and associations to assist international tourism promotion projects for States whose international tourism promotion needs have increased due to disasters. Pursuant to title I of Public Law No. 101-515, a total of $5,000,0000 is available to be awarded in accordance with the requirements of section 202 (a)(5) and (c) of the International Travel Act of 1961, as amended, subject to all Federal Government-wide and Department of Commerce regulations, policies, and procedures applicable to financial assistance awards and to the limitations and criteria set forth below.

DATES: Applications for an award of these funds will be accepted and considered on a quarterly basis beginning (April 1-June 30, 1991) and ending (July 1-September 30, 1991). Applications must be postmarked by the quarter closing date to be eligible for consideration in that quarter. Applicants will be advised of the success or failure of their applications, and awards will be made within three months from the quarter closing date. Applications failing to win awards in one quarter will not be considered for award in subsequent quarters unless formally resubmitted.

ADDRESSES: Application forms (Standard Forms 424 (Rev. 4-88), 424A, and 424B) are available from, and to be considered, one signed original and four copies together with the original and four copies of the information specified under the limitations and criteria set forth below, must be submitted to, the Office of the Assistant Secretary for Tourism Marketing, United States Travel and Tourism Administration, room 1862, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Karen M. Cardran, (202) 377-4752.

SUPPLEMENTARY INFORMATION: Notice is hereby given to States, their political subdivisions, and combinations therefore, and to private or public nonprofit organizations and associations, that pursuant to title I of Public Law No. 101-515, a total of $5,000,000 is available from the USTTA to assist international tourism promotion projects for States whose international tourism promotion needs have increased due to disasters.

Applications for an award of these funds will be accepted and considered on a consecutive calendar quarterly basis beginning (April 1-June 30, 1991). Applications must be postmarked by the quarter closing date to be eligible for consideration in that quarter. Applicants will be advised of the success or failure of their applications and awards will be made within three months from the quarter closing date. Applications failing to win awards in one quarter will not be considered for awards in subsequent quarters unless formally resubmitted.

Application forms (Standard Forms 424 (Rev. 4-88), 424A, and 424B) are available from, and to be considered, one signed original and four copies together with the original and four copies of the information specified under the limitations and criteria set forth below, must be submitted to the address set forth in the address section above.

In no event will the amount of any Federal funds awarded for any international tourism promotion project for a State whose international tourism promotion needs have increased due to disasters exceed 50 percent of the cost of such project. Funds will be awarded in accordance with the requirements of section 202 (a)(5) and (c) of the International Travel Act of 1961, as amended, subject to all Federal Governement-wide and Department of Commerce regulations, policies, and procedures applicable to financial assistance awards and to the limitations and criteria set forth below.

Where it is anticipated that the USTTA will be substantially involved in the implementation of the international tourism promotion project for which as award is to be made, consideration will be given to dispersing funds through use of a cooperative agreement.

Selection for award will be by the total final evaluation score. The final evaluation score for each application will be calculated by combining the component scores from the three evaluation criteria set forth under II, below (A. needs and effect evaluation criteria; B. general evaluation criteria; and C. project evaluation criteria), multiplied by the weights assigned in II for these criteria, below (0.4. for the needs and effect evaluation criteria; 0.2 for the general evaluation criteria; and 0.4 for project evaluation criteria). Applications will be reviewed and judged independently and objectively by a panel of four qualified individuals. Only applications with a final evaluation score in excess of 80 will be eligible for award. Such applications will be awarded financial assistance, subject to the availability of funds, in descending order starting with the application with the highest final evaluation score above 80.

The ward of financial assistance in Fiscal Year 1991 is subject to the following limitations and criteria:

I. Limitations

A. Financial assistance will be awarded only to States, their political subdivisions, and combinations thereof, and to private or public nonprofit organizations and associations, [1] and for the purpose of providing assistance for States [2] whose international tourism promotion needs have increased due to disasters. Funds must be used for tourism promotion projects that facilitate or encourage travel to the United States by residents of foreign countries.

B. In order to be considered as a disaster causing increased tourism promotion needs, a catastrophic event must have occurred triggering implementation of the appropriate response mechanisms of the State's emergency plan and the Under Secretary of Commerce for Travel and Tourism must find that the state is currently experiencing substantial loss of visitation and tourism-related employment as a result of the disaster, and that there is a realistic prospect for long-term revitalization of the tourism product. Applicants who have experienced a disaster for which the negative impact on tourism has already been entirely mitigated are not eligible for assistance. The application must include adequate verifiable documentation to support the requisite findings by the Under Secretary.

C. An applicant is eligible to receive only one award for any one disaster. The application must include documentation demonstrating that all programs to be considered in the application are effectively coordinated with other affected entities in the State.

D. The application must include a marketing plan that contains clearly stated objectives covering an appropriate period of time. The marketing plan must be targeted and integrated (in terms of multiple activities) with a generally cohesive approach. The marketing plan must contain procedures for credible evaluation and tracking.

E. Applications must include components of two or more of the following international promotion initiatives as defined in II, below: (1) Media Product Information; (2) Market Development; (3) Cooperative Advertising; (4) Trade Development; and (5) Consumer and Trade Literature.

General evaluation criteria and criteria for evaluating each specific type of proposed project and needs and effects are set forth under II, below.

F. Projects must be aimed at international market(s) in which: (1) The applicant is currently involved; or (2) if the applicant is not currently involved, that have greater potential than current markets for mitigating the tourism-related negative effects of the disaster. The application must include credible market research to support a market's potential.

G. The maximum amount an applicant may be awarded annually is $800,000. The minimum amount for which an applicant may apply is $50,000. Financial assistance provided to any State annually cannot exceed an aggregate of $1,200,000 for all recipients. In no event may the amount of any award for any project exceed 50 percent of the cost of such project. Financial assistance wil not be awarded unless it is determined that matching funds for available from State or other non-Federal sources.

H. Financial assistance will be awarded on a one-year basis. However, applicants filing long-term program plans and receiving awards may be eligible to reapply for up to two additional years of support. Applications for the second and third years of support will be reviewed competitively with all other applications. Awards for subsequent years are subject to the availability of funds. Long-term plans must reflect the ability of the applicant to carry out the

[1] As used in this notice, "private or public non-profit organizations or associations" means an institution, organization, or association, either private or public, which has tax exempt status as defined in section 501(c) of the Internal Revenue Code.

[2] As used in this notice, the terms "State", "States", and "United States" include the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territories of the Pacific Islands.

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program in consecutive years without additional Federal funds. Support for a second or third year will only be considered upon receipt of an application supported by a long-term market development program plan prepared by the applicant. The plan must be approved by USTTA and, for renewal consideration, must be deemed successful upon review at the conclusion of the preceding year grant period.

I. Recipients/applicants who have outstanding accounts receivable with the Department of Commerce will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

J. Awards of financial assistance are subject to the requirements of Executive Order No. 12372, "Intergovernmental Review of Federal Programs."

K. False information on an application can be grounds for denying or terminating funds and grounds for possible punishment by fine or imprisonment.

L. 15 CFR Part 24, or Office of Management and Budget (OMB) Circular A-110 applies, along with OMB Cost Principles.

M. Section 319 of Public Law No. 101-121 generally prohibits recipients of Federal contracts, grants and loans from using appropriated funds to lobby the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant, cooperative agreement, or loan. A "Certification of Contracts, Grants, Loans and Cooperative Agreements" and a SF-LLL, "Disclosure of Lobbying Activities," (if applicable), are required.

N. Awards are subject to 15 CFR part 26, Government-wide nonprocurement debarment and suspension regulations.

O. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement. Noncompliance subjects recipients to Government-wide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

II. Criteria

Each application for financial assistance will be reviewed for completeness upon receipt. The applicant will be contacted if the application is deemed incomplete. If the required information is not received within 10 working days from the date of notification, the application will not be considered further.

The final evaluation score for each application will be calculated by combining the component scores from the three evaluation criteria set forth herein (A. needs and effect evaluation criteria; B. general evaluation criteria; and project evaluation criteria), multiplied by the assigned weight for that criteria set forth herein (0.4 for the needs and effect evaluation criteria; 0.2 for the general evaluation criteria; and 0.4 for the project evaluation criteria). Only applications with a final evaluation score in excess of 60 shall be eligible for award. Such applications will be awarded financial assistance, subject to the availability of funds, in descending order starting with the application with the highest final evaluation score above 60.

A. Needs and Effect Evaluation Criteria (assigned weight—0.4).

Application demonstrates the need of affected area and the ability of the project to directly counteract the negative impact on tourism of the disaster.

(1) Application clearly reflects ability of project to offset negative impacts of the disaster which have not been largely mitigated by other aid. (40 points)

(2) Application includes documentation from State, local or Federal sources demonstrating the current degree of need. This must include documentation showing the: (a) current loss of visitation and tourism-related employment; (b) level of tourism prior to the disaster; (c) current level of tourism; (d) impact of tourism on the area economy versus other industries (*i.e.*, employment and income), and (e) extent to which the negative impact of the disaster on tourism has been mitigated. (60 points)

B. General Evaluation Criteria (assigned weight—0.2).

Application clearly states objectives that respond directly to the specialized international tourism promotion needs of the impacted area.

(1) Application states clear and achievable objectives to be carried out over an appropriate length of time. For multi-year initiatives, the application must demonstrate that the second or third year of the project can be funded without Federal assistance. (25 points)

(2) Application demonstrates that project is aimed at international markets that have been identified using credible market research. (25 points)

(3) Application demonstrates that project is fully integrated (in terms of multiple activities) with a generally cohesive approach. (25 points)

(4) Application demonstrates that applicant has the organizational quality and competence to effectively carry out the project. The application must include an organizational chart and a biographical sketch of the program director with the following information: Name, address, phone number, background and other qualifying experience for the project; a list of other key personnel, consultants, etc. engaged in the project, which includes names, training and background. For non-profit organization applications, the application must include a copy of the articles of incorporation, charter, trust statement or other similar document which sets forth the authorizing powers and purposes of the organization, together with bylaws or other code of regulations; a brief description of organizational arrangements for fiscal and managerial control, including the extent to which these overlap or are integrated with other organizations; a copy of a current financial statement of the organization; and a copy of the current Internal Revenue Service tax exemption letter which certifies the organization's not-for-profit status. (25 points)

C. Project Evaluation Criteria (assigned weight—0.4).

The project evaluation score will be determined by averaging the score(s) in each of the relevant project areas set forth below.

1. Media Product Information

Media product information projects are those that include the development of journalist familiarization tours and dissemination of product information on the destination.

The applicable criteria are:

a. Correlation of media programs with applicant's overall international tourism marketing strategy. (30 points)

b. Program timing and content, and potential acceptance by the target media. (25 points)

c. Project cost versus media space/time return (a minimum 10 to 1 return on investment is suggested). (20 points)

d. Measurement plan to assess program effectiveness. (25 points)

2. Market Development

Market development projects are those designed to develop increased travel to the impacted area from primary international markets of opportunity. Criteria are set forth for the following three types of such projects:

a. Operator/Agent Familiarization Tours.

1. Preliminary planning and packaging of the familiarization tour(s) to cities, States or regions for tour operators to introduce the touristic product for marketing to the foreign consumer. (30 points)

2. Plans for subsequent implementation of the familiarization tour program in coordination with USTTA or VISIT USA Committees. (45 points)

3. Measurement plan to assess project return versus outlay. (25 points)

b. Tour Package Development.

1. Preliminary planning for and packaging of tour development program, *i.e.*, selection of target market and components. (30 points)

2. Plans for subsequent implementation of the program in conjunction with tour wholesalers, etc. (45 points)

3. Measurement to assess program effectiveness. (25 points)

c. Special Travel Shows/Workshops.

1. Preliminary planning and packaging of product primarily in support of market development efforts in foreign markets. (30 points)

2. Plans for subsequent follow-up and implementation of the project. (45 points)

3. Measurement of project effectivness. (25 points)

3. Cooperative Advertising

Applications for advertising projects should include planned campaign details, including program narrative, description of proposed layouts, copy and specific media plans. If a complete media schedule is not available at the time application is made an outline of media plans will be accepted, provided that specific campaign details are forwarded to the Financial Assistance Office prior to the actual placement of the advertising in the media.

The applicable criteria are:

a. Basic marketing approach and objectives. (20 points)

b. Correlation with existing USTTA initiatives in this marketplace. (20 points)

c. Evidence that economic, marketing and statistical data necessary to develop marketing and advertising strategy is available. (10 points)

d. Creative interpretation of this strategy. (20 points)

e. Expected reach of the advertising campaign in relation to its cost and short-term impact on the market. (15 points)

f. Measurement plan to assess program cost/return effectiveness. (15 points)

4. Trade Development

Trade development projects are those which complement ongoing VISIT USA marketing programs directed toward the members of the travel trade in foreng markets. Target markets include: Argentina, Australia, Belgium, Brazil, Canada, Colombia, Ecuador, France, Germany, Hong Kong, Italy, Japan, Korea, Mexico, Nordic countries, the Netherlands, New Zealand, Spain, Switzerland, Taiwan, United Kingdom, and Venezuela. For application purposes, trade development projects are not concerned with either the development or promotion of tour packages.

Such projects may include: Trade-oriented travel missions, on-site training workshops/seminars, in-country training workshops/seminars, trade advertising, familiarization tours for foreign retail travel agents, and participation in foreign travel trade shows in which USTTA participates or serves as United States coordinator.

The applicable criteria are:

a. Techniques used to create an awareness and encourage selling of the destination by foreign travel trade. (25 points)

b. Implementation time and anticipated project benefits derived after grant expiration. (25 points)

c. Goals of project and methods used to measure program results. (50 points)

5. Consumer and Trade Literature

Consumer and trade literature must be designed specifically for use in foreign countries. Special attention should be devoted to designing literature to meet the needs of the target market.

The applicable criteria area:

a. Preliminary planning for design and content of brochures. (15 points)

b. Evidence that market planning research has been utilized to identify visitor preferences and information needs. (15 points)

c. Correlation between literature program and overall marketing plan. (25 points)

d. Strategy for distribution of literature. (25 points)

e. Measurement plan to assess program effectiveness. (25 points)

Classification: This notice of availability of financial assistance is issued under the authority of title I of Public Law No. 101-515 and section 202 (a)(5) and (c) of the International Travel Act of 1961, as amended.

This notice does not constitute a major rule within the meaning of section 1(b) fo Executive Order 12291 because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly a Regulatory Impact Analysis was not required or prepared.

The requirements of section 553 of the Adminstrative Procedure Act (5 U.S.C. 553) including having to give notice and an opportunity for comment do not apply to this notice because the notice relates to grants, benefits, or contracts. Since notice and an opportunity to comment is not required under any other statute, a Regulatory Flexibility Analysis is not required under the Regulatory Flexibility Act and was not prepared.

The Department has determined that the Federal assistance covered by this notice will not significantly affect the quality of the human environment. Therefore, no draft or final Environmental Impact Statement has been or will be prepared.

This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

All information collection requirements under this notice are consistent with those covered in Office of Management and Budget Circular A-110.

Linda M. Mysliwy,

Acting Deputy Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 91-11288 Filed 5-10-91; 8:45 am]

BILLING CODE 3510-11-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meetings and Public Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council and its Committees will hold a public meeting on May 16-17, 1991, at the Quality Inn, 291 Jones Road, Falmouth, MA., (telephone: 508-540-2000). The Council will begin its meeting at 10: a.m., on May 16. The meeting will reconvene on May 17 at 9: a.m.

On the first day, the Committee will hear a Lobster Committee report, conduct a public hearing on Amendment #4 to the Lobster Fishery Management Plan, and hear a report from the Scallop Committee during the afternoon. On the second day, the Groundfish Committee

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will discuss Amendment #4 to the Northeast Multispecies Fishery Management Plan (FMP), the prohibition of net strengtheners and the National Marine Fisheries Service (NMF) recommendations on the Exempted Fisheries Program. There will also be a presentation from NMFS on the status of the Surf Clam and Ocean Quahog Fishery Management Plan, followed by a discussion on the Council's use of Plan Development Teams.

FOR MORE INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231-0422.

Dated: May 7, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-11286 Filed 5-10-91; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Ad Hoc Bycatch Committee will hold a public meeting on May 13-14, 1991, in Juneau, AK. The meeting will begin on May 13 at 1 p.m., at the University of Alaska's Hendrickson Building, 11120 Glacier Highway, room 206, Juneau, AK.

The Bycatch Committee will review the Council's vessel incentive program and continue development of future bycatch control measures.

FOR MORE INFORMATION CONTACT: Brent Paine, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: May 7, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-11283 Filed 5-10-91; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will hold a public meeting on May 13, 1991, from 6:30 p.m., until 9 p.m., at the McCoy Pavilion, Ala Moana Beach Park, Honolulu, HI.

The Council is providing an opportunity for public input on the following issues:

Moratorium on New Entry into the Longline Fishery. Should longline vessels which do not meet the Hawaii limited entry permit criteria and fish exclusively outside the 200 mile Exclusive Economic Zone be allowed to land their catch in Hawaii?

Longline Area Closures. Should the area closure provisions around the Main Hawaiian Islands be modified during development of an amendment to allow for: (1) Exemptions for smaller vessels; (2) smaller or larger area closures for any given area; (3) seasonal openings?

What criteria should be used to define "indigenous fishermen" when making exemptions based on preferential fishing rights for indigenous fishermen?

Other fishery issues may also be discussed.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: May 7, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-11254 Filed 5-10-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Modification; Dr. Thomas Albert (P282)

Notice is hereby given that Dr. Thomas Albert, Senior Scientist, North Slope Borough, Department of Wildlife Management, P.O. Box 69, Barrow, Alaska 99723, requested a modification of Permit No. 519 issued on (50 FR 35186), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit, as modified, authorizes the Holder to collect, export and re-import specimen materials from bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga whales (*Delphinapterus leucas*), bearded seals (*Erignathus barbatus*) and ringed seals (*Phoca hispida*) taken during the Alaska Eskimo subsistence harvest or that are beached.

The Holder requests further modification to take sample 10 additional beluga whales. This would allow the number of sampled belugas to increase from 30 to 40. The animals sampled will be those taken in the subsistence hunt by Eskimo hunters from the village of Point Lay, Alaska. The animals to be sampled would be among the largest of those taken (ages to be determined through examination of teeth). Suitable tissues (blubber, liver, kidney, intra-abdominal fat, muscle) will be taken from all 10 in support of the tissue pollutant level study. The lungs, trachea and larynx from at least five will be collected in support of the respiratory tract morphology study. A complete skeleton will be collected from at least two animals in support of the bone morphology study. The Holder also requests a 1-year extension.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices:

BY APPOINTMENT: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20901 (301/427-2289).

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802 (907/586-7221).

Dated: May 6, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-11281 Filed 5-13-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification: NMFS, Southwest Fisheries Science Center (P77#49)

Notice is hereby given that pursuant to the provisions of § 217.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and Section 220.24 of the regulations on endangered species (50 CFR parts 217-222), Scientific Research Permit No. 707 issued to the Southwest Fisheries Science Center, P.O. Box 271, La Jolla, California 92038, on May 31, 1990 (55 FR 23266) is modified in the following manner:

Section A.1.a. is replaced by:

"a. 300 weaned and immature pups may be captured, weighed, measured, and released; 150 of these may be temporarily bleach marked;"

Section B.1 is replaced by:

"1. This research effort shall be conducted by the means, in the areas, and for the purposes set forth in the application and the modification request."

This modification becomes effective May 7, 1991.

Documents pertaining to the Permit and modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/427-2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731-7451 (213/514-6196); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, NOAA, 2570 Dole Street, room 106, Honolulu, Hawaii 96822-2396 (808/955-8831).

Dated May 7, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-11282 Filed 5-10-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application Denied; Clarrison's Sealions (P441)

On April 9, 1990, notice was published in the Federal Register (54 FR 13932) that an application had been filed by Clare and Peter Harrison, dba Clarrison's Sealions, 401 N. Oxford Drive, Englewood, Florida 34223, to take four (4) California sea lions *Zalophus californianus)* from captive-born stocks for public display.

Notice is hereby given that on May 7, 1991, the National Marine Fisheries Service denied Clare and Peter Harrison, dba Clarrison Sealions, a Permit based on inadequate information to determine compliance with the criteria for issuance of public display permits as set forth in the Marine Mammal Protection Act amendments and the National Marine Fisheries Service interim Policy on education and conservation programs. Specifically, that "A permit may be issued for public display purposes only to an applicant which offers a program for education or conservation purposes that * * * is acceptable to the Secretary * * *" (sec. 104(c)(2); Pub. L. 100-711 November 23, 1988).

The application and supporting documentation are available for review in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, suite 7324, Silver Spring, Maryland 20910; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: May 7, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-11283 Filed 5-10-92; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee; Fourth Renewal

The Commodity Futures Trading Commission has determined to renew again for a period of two years its advisory committee designated as the "Commodity Futures Trading Commission Agricultural Advisory Committee." The Commission certifies that renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, as amended.

The objectives and scope of activities of the Agricultural Advisory Committee are to conduct public meetings and submit reports and recommendations on issues affecting agricultural producers, processors, and lenders and others interested in or affected by the agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the committee.

Commissioner Kalo A. Hineman serves as Chairman and Designated Federal Official of the Agricultural Advisory Committee. The Committee's membership represents a cross-section of interested and affected groups including representatives of producers, processors, lenders and other interested agricultural groups.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Issued in Washington, DC this 6th day of May, 1991 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-11224 Filed 5-10-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF EDUCATION

Office for Civil Rights

Texas Equal Opportunity Plan for Higher Education; Report Availability

AGENCY: Department of Education.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Office for Civil Rights' proposed factual report on the implementation by the State of Texas of the Texas Equal Educational Opportunity Plan for Higher Education is available for inspection by the public from 9 a.m. to 4 p.m., Washington, DC time, Monday through Friday, excluding Federal holidays, at the following location: U.S. Department of Education, Switzer Building, 330 C Street, SW., Room 5332, Washington, DC.

This action is taken to obtain public comments on the report before a final decision is made on compliance with Title VI of the Civil Rights Act of 1964.

This State's equal educational opportunity plan for higher education expired in June 1986.

DATES: Comments on the proposed factual report will be accepted until July 12, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon H. McCoy at 202-732-1691 or TDD at 202-732-1653.

Dated: May 6, 1991.

Michael L. Williams,

Assistant Secretary for Civil Rights.

[FR Doc. 91-11228 Filed 5-10-91; 8:45 am]

BILLING CODE 4000-01-M

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DEPARTMENT OF ENERGY

Bonneville Power Administration

Echo Lake Substation Record of Decision

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Record of decision (ROD).

SUMMARY: BPA has decided to build its Echo Lake Substation (originally called the Snoqualmie Substation), south of Snoqualmie, Washington. This substation project was evaluated in the Supplement to the Environmental Statement, Fiscal Year 1975 Proposed Program, Maple Valley 500-kilovolt (kV) Transmission Line (1974). Alternative transmission line routes and substation sites were evaluated in the 1974 Environmental Statement. The transmission portion of the project has been built. A 130-acre substation site was selected, purchased, and cleared, but construction of the substation was delayed because the anticipated electrical load growth in the area did not materialize. Because loads have increased recently, the substation is needed now to help provide adequate voltage support in the Puget Sound area.

When the Maple Valley 500-kV Transmission Line Environmental Statement was written and decisions were made, a ROD was not required. The alternative substation sites discussed in the Environmental Statement were eliminated from reasonable consideration when the transmission line was built, and the proposed substation site was bought. To be consistent with present regulations, BPA has prepared this ROD, which focuses on the decision today: Whether or not to construct the substation.

FOR FURTHER INFORMATION CONTACT: John Taves, Environmental Coordinator, Division of Facilities Engineering, Bonneville Power Administration, P.O. Box 3621–EFBC, Portland, Oregon 97208 (503) 230–4996. Copies of the ROD are being sent to interested and affected agencies, organizations, and individuals.

SUPPLEMENTARY INFORMATION:

I. Alternatives. In arriving at a decision to proceed with the construction of the substation, BPA considered two alternatives:

A. No Action.

B. Build the substation on the site purchased for the project after the Final Environmental Statement (1974) was issued.

II. Decision Factors. In making its decision, BPA considered the following factors:

A. Ability to Meet the Need—Only the construction alternative meets the need to help provide adequate voltage support in the Puget Sound area. (This project is not one of the long-range alternatives associated with the Puget Sound Area Electrical Reliability Plan.).

B. Environmental Effects—Constructing and operating the substation would have little environmental impact.

The following documents relate to the project:

Supplement to the Environmental Statement, Fiscal Year 1975 Proposed Program, Maple Valley 500-kV Transmission Line. BPA. November 11, 1974.

Environmental Statement, Fiscal Year 1975 Proposed Program. BPA. August 23, 1974.

In response to the approximately 15-year delay of action from the original proposal, DOE prepared an analysis to determine whether a supplement to the existing EIS was required. On April 8, 1991, DOE determined that proceeding with the proposal to build the Echo Lake Substation does not present significant new circumstances or information relevant to environmental concerns, and thus an EIS supplement was not prepared.

C. Public Issues—Opportunities for public comment were provided through newspaper advertisements, a public meeting, and one-on-one contacts with persons in the community. There were no public concerns expressed about the project.

III. Environmentally Preferred Alternative. The No Action alternative is the environmentally preferred alternative, but it does not meet the need. The substation alternative would require about 12 acres of fenced area, and about 25 acres, total, of vegetation clearing. The substation would not affect endangered or threatened species, critical habitat, cultural resources, coastal zones, floodplains, wetlands, Prime or Unique farmland, or other sensitive environmental resources.

IV. Mitigation. No specific mitigation measures relevant to this substation were identified in the 1974 Environmental Statement, or through the recent analysis and review of the project. However, BPA applies standard mitigation measures to all projects to reduce impacts (such as keeping construction equipment properly maintained and operated to reduce exhaust fumes, keeping the vegetation clearing to the minimum necessary, using clearing techniques that reduce erosion potential and fire hazards, etc.). Implementation of the standard mitigation measures will be assured by including them in the construction specifications, with construction inspectors monitoring and enforcing those measures.

The Federal decisionmaker, by signing on original copy of this Record of Decision, is making a decision consistent with the agency's jurisdiction, which includes the Bonneville Project Act, 16 U.S.C. 832a(b).

Issued in Portland, Oregon, on April 26, 1991.

James J. Jura,
Administrator.

[FR Doc. 91–11317 Filed 5–10–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER91–393–000, et al.]

Tampa Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 2, 1991.

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Company

[Docket No. ER91–393–000]

Take notice that on April 19, 1991, Tampa Electric Company (Tampa Electric) tendered for filing revised cost support schedules showing a change in the daily capacity charge for its scheduled/short-term firm interchange service provided under interchange agreements with Florida Power Corporation, Florida Power & Light Company, Florida Municipal Power Agency, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Orlando Utilities Commission, Reedy Creek Improvement District, St. Cloud Electric Utilities, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., Utilities Commission of the City of New Smyrna Beach, Utility Board of the City of Key West, and the Cities of Gainesville, Homestead, Lake Worth, Lakeland, Starke, Tallahassee, and Vero Beach, Florida. Tampa Electric states that the revised daily capacity charge is based on 1990 Form No. 1 data, and is derived by the same method that was utilized in the cost support schedules submitted with the interchange agreements and in all previous annual revisions.

Tampa Electric requests that the revised daily capacity charge be made effective as of May 1, 1991, and therefore requests waiver of the Commission's notice requirements.

Tampa Electric states that a copy of the filing has been served upon each of the above-named parties to interchange agreements with Tampa Electric, as well as the Florida Public Service Commission.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER91–394–000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on April 22, 1991, tendered for filing an agreement between Niagara Mohawk and Lockport Energy Associates, L.P. (Lockport) dated April 11, 1991 providing for certain transmission services to Lockport. Niagara Mohawk states that this agreement provides for the transmission and delivery by Niagara Mohawk of specified quantities of power produced by Lockport to be sold by Lockport to New York State Electric & Gas Corporation (NYSEG) under separate agreement. Firm services under this agreement are proposed to commence as of the commercial operation date of Lockport's Production Facility, as that term is defined in the Lockport-NYSEG power purchase agreement. (The commercial operation data is currently projected by Lockport to be July 1992).

Niagara Mohawk requests waiver of the Commission's notice requirements, 18 CFR 35.3(b), 35.11.

Copies of this filing were served upon Lockport and the New York State Public Service Commission.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Service Company

[Docket No. ER90–450–001]

Take notice that on April 25, 1991, New Power Service Company on behalf of the New England Hydro-Transmission Corp. and New England Hydro-Transmission Electric Co., Inc. tendered for filing its Compliance Refund Report in compliance with the Commission's letter order issued on January 23, 1991 in this docket.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Tampa Electric Company

[Docket No. ER91–382–000]

Take notice that on April 19, 1991, Tampa Electric Company (Tampa Electric) tendered for filing cost support schedules showing recalculation of the Committed Capacity and Short-Term Power Transmission Service rates under Tampa Electric's agreement to provide qualifying facility transmission service for Royster Company (Royster) designated as Tampa Electric's Rate Schedule No. 28. Tampa Electric states that the recalculated transmission service rates are based on 1990 Form No. 1 data, and are developed by the same method that was utilized in the cost support schedules accompanying the initial filing of the transmission service agreement and in prior annual revisions.

Tampa Electric proposes that the recalculated transmission service rates be made effective as of May 1, 1991, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon Royster and the Florida Public Service Commission.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Idaho Power Company

[Docket No. ER91–380–000]

Take notice that on April 19, 1991, Idaho Power Company (IPC) tendered for filing two letter agreements regarding transmission service and a Transmission Service Agreement executed December 21, 1990 between Bonneville Power Administration (BPA) and Idaho Power Company. These three agreements apply to the provision of transmission service by IPC to BPA for the supply of power by BPA to the Oregon Trail Electric Consumer Cooperative, Inc. The two interim transmission service agreements apply to service provided by IPC to BPA from June 1, 1990 to December 20, 1990. An effective date of December 21, 1990 is requested for the Transmission Service Agreement. Unless extended, the TSA would terminate December 31, 2002.

IPC has requested waiver of the notice provisions of § 35.3 of the Commission's regulations in order to permit these Agreements to become effective upon their respective execution dates.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp Electric Operations

[Docket No. ER91–395–000]

Take notice that on April 29, 1991, PacifiCorp Electric Operations ("PacifiCorp"), tendered for filing an amendment to its filing for the Third Amendment to Interconnection Agreement with Sierra Pacific Power Company.

PacifiCorp renews its request, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that the rate schedule become effective on May 1, 1991.

Copies of this filing amendment have been supplied to Sierra Pacific Power Company, the Public Service Commission of Nevada and the Public Utility Commission of Oregon.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. The Washington Water Power Company

[Docket No. ER91–405–000]

Take notice that on April 29, 1991, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 an Agreement for the sale of Capacity and Energy between The Washington Water Power Company (WWP) and Public Utility District No. 1 of Pen Oreille County. WWP requests that the Commission accept the Agreement for filing, effective as of July 1, 1991.

A copy of the filing was served upon Public Utility District No. 1 of Pend Oreille Company.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Portland General Electric Company

[Docket No. ER91–352–000]

Take notice that on April 19, 1991, Portland General Electric Company (PGE), tendered for filing an Amendment to Portland General Electric Company and Pacific Gas and Electric Company Short-Term Power Sale Agreement dated March 27, 1991.

Copies of this amendment have been served on the persons named on the distribution list, as included in this filing.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Iowa Public Service Company

[Docket No. ER91–404–000]

Take notice that on April 30, 1991, Iowa Public Service Company tendered for filing an executed Firm Power Interchange Service Agreement whereby Iowa Public Service Company (IPS) will provide to Union Electric Company (UE) firm electric capacity and associated energy for the ten-year period June 1, 1991 through May 31, 2001 according to a specific schedule, but not less than 50 MW or more than 115 MW.

IPS requests a June 1, 1991 effective date, and therefore requests waiver of

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the notice requirements if FERC acceptance is not obtained prior to June 1, 1991.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. El Paso Electric Company

[Docket No. ER91-1-000]

Take notice that on April 25, 1991, El Paso Electric Company ("El Paso") tendered for filing additional explanatory materials in support of its firm transmission service agreement with Salt River Project Agricultural Improvement and Power District. The original filing was made on October 1, 1990, and Supplemental information has been supplied previously on October 29, 1990 and January 25, 1991.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Otter Tail Power Company

[Docket No. ER91-400-000]

Take notice that on April 22, 1991, Otter Tail Power Company (Otter Tail) tendered for filing an agreement between Otter Tail and Manitoba Hydro Electric Board (MHEB). Otter Tail states that the Agreement is for the sale of demand and energy from MHEB to Otter Tail for the months of May through October for 1991 and 1992.

Otter Tail requests a waiver of the Commission's notice requirements to allow this schedule to become effective on May 1, 1991.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas Gas and Electric Company

[Docket No. ER91-391-000]

Take notice that Kansas Gas and Electric Company on April 19, 1991, tendered for filing a proposed change in its FERC Electric Service Tariff No. 160. The proposed KCP&L Letter of Intent specifies voiding certain notices of both parties and continues the Lease Agreement throughout the operating life of the Wolf Creek Generating Station.

The Letter of Intent is required to outline an agreement between the parties and amend certain provisions of the Lease Agreement.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Cogen Technologies Baltimore, Inc.

[Docket No. QF91-123-000]

On April 26, 1991, Cogen Technologies Baltimore, Inc. of 1600 Smith Street, Suite 5000, Houston, Texas 77002, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Baltimore, Maryland at the site of FMC Corporation's (FMC) Agricultural Chemical complex, and will consist of two combustion turbine generating units, two waste heat recovery boilers, one or two extraction steam turbine generating unit(s) and a 3.7 miles 230 kV transmission line. Steam recovered from the facility will be used by FMC in the production of various agricultural chemicals (*e.g.*, insecticides, herbicides and fungicides), and by Vista Chemical Company in the production of various industrial chemicals (*e.g.*, plasticizers, solvents and resins). The maximum net electric power production capacity of the facility will be about 433 MW. The primary energy source will be natural gas. Installation of the facility is expected to begin by January, 1992.

Comment date: June 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power & Light Company

[Docket No. ER91-403-000]

Take notice that Florida Power & Light Company (FLP) on April 26, 1991, tendered for filing revised Cost Support Schedules C, F and G (together with Cost Support Schedule F Supplements) that: (1) Support the revised daily capacity charge for sales under Service Schedule B (Short-Term Firm Interchange Service) of FPL's Contracts for Interchange Service with Florida Municipal Power Agency, Florida Power Corporation, Fort Pierce Utilities Authority, City of Gainesville, City of Homestead, Jacksonville Electric Authority, Utility Board of City of Key West, Kissimmee Utility Authority, City of Lakeland, Utilities Commission, City of New Smyrna Beach, Orlando Utilities Commission, City of St. Cloud, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., City of Starke, Tampa Electric Company, and City of Vero Beach; and (2) support the revised Capacity Reservation Charges for sales under FPL's Agreements to provide Short Term Power and Energy with Utilities Commission, City of New Smyrna Beach, City of Lake Worth and Utility Board of City of Key West and revised Cost Support Schedules C-S, F-S, and G-S (together with Cost Support Schedule F-S Supplements) that support the revised daily capacity charge for sales under Service Schedule B-S (Short-Term Firm Interchange Service) of FPL's Supplementary Agreement Number One to the Contract for Interchange Service with Seminole Electric Cooperative, Inc. and Florida Municipal Power Agency. FPL states that the revised capacity charges have been calculated in accordance with the provisions of Service Schedule B and Service Schedule B-S and FPL's Agreements to provide Short Term Power and Energy and represent an updating of the currently effective capacity charges to reflect more current costs.

FPL requests an effective date of May 1, 1991, and therefore requests waiver of the Commission's notice requirements.

According to FPL, a copy of this filing was served upon all of the above named parties and the Florida Public Service Commission.

Comment date: May 16, 1991 in accordance with Standard Paragraph E at the end of this notice.

15. Philadelphia Electric Company and Public Service Electric and Gas Company

[Docket No. ER91-398-000]

Take notice that on April 23, 1991, Philadelphia Electric Company (PE) on behalf of itself and Public Service Electric and Gas Company (PS) tendered for filing as an initial rate under section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between PE and PS dated March 18, 1991.

PE states that the Agreement sets forth the terms and conditions for the sale of import capability which each party expects to have available for sale from time to time and the purchase of which will be economically advantageous to the other party. The rates for these services are negotiated but will not exceed $5.50 per MWh. In order to optimize the economic advantages to both PE and PS, PE requests that the Commission waive its customary notice period and allow this Agreement to become effective on April 29, 1991.

PE states that a copy of this filing has been sent to PS and will be furnished to the Pennsylvania Public Utility Commission and the New Jersey Board of Public Utilities.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11228 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

May 3, 1991.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Transfer of License.

b. Project No.: 2788-009.

c. Date Filed: April 22, 1991.

d. Applicant: F.W.E. Stapenhorst Inc. (licensee), Hydro Development Group Inc. (transferee).

e. Name of Project: Colliersville Hydroelectric Project.

f. Location: On the North Branch of the Susquehanna River in the Town of Milford, Otsego County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Robert G. Fitzgibbons, Hunton & Williams, P.O. Box 19230, 2000 Pennsylvania Ave., Washington, D.C. 20006, (202) 778-2201.

i. FERC Contact: Michael Dees (202) 219-2807.

j. Comment Date: May 28, 1991.

k. Description of Project: On April 22, 1991, the licensee and transferee filed a joint application to transfer the license for the Colliersville Hydroelectric Project No. 2788. The proposed transfer will not result in any change in the project. The transferee states that it would comply with all terms and conditions of the license. The purpose of the transfer is to comply with a stipulation and consent agreement between the licensee and transferee, and the Commission.

l. This notice also consists of the following standard paragraphs: B, and C.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426. An additional copy must be sent to: The Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 204-RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11232 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-1913-000, et al.]

United Gas Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipeline Company

[Docket No. CP91-1913-000]

May 1, 1991

Take notice that on April 14, 1991, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-1913-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act, to construct and operate a four-inch meter station, 3250 feet of four-inch pipeline and related facilities, in Rankin County, Mississippi, pursuant to United's blanket certificate issued in Docket No. CP82-430-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the proposed meter station, pipeline and related facilities will enable it to transport an estimated maximum of 5000 Mcf/d of natural gas for Harbert Oil and Gas Oil and Gas to serve Birmingham Steel Corporation under United's ITS Rate Schedule.

United further states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: June 17, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Company

[Docket Nos. CP91-1866-000, CP91-1866-000, CP91-1867-000, CP91-1868-000]

May 1, 1991

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 17, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[1] These prior notice requests are not consolidated.

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Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related[2] dockets
CP91-1895-000 4/18/91	Trunkline Gas Company, P.O. Box 642, Houston, TX 77251.	North Atlantic Utilities, Inc.	30,000 30,000 10,950,000	Offshore LA, TX, IN, IL, TN.	OH	PT, Interruptible, 3/01/91.	CP86-586-000, ST91-7728-000.
CP91-1896-000 4/18/91	Trunkline Gas Company, P.O. Box 642, Houston, TX 77251.	Tex/Con Gas Marketing Company.	50,000 50,000 18,250,000	IN, IL, TN, Offshore LA, TX.	OH	PT, Interruptible, 3/01/91.	CP86-586-000, ST91-7644-000.
CP91-1897-000 4/18/91	Trunkline Gas Company, P.O. Box 642, Houston, TX 77251.	Coast Energy Group, Inc.	35,000 35,000 12,775,000	Offshore LA, TX, IL, TN.	LA	PT, Interruptible, 3/19/91.	CP86-586-000, ST91-61-000.
CP91-1898-000 4/18/91	Trunkline Gas Company, P.O. Box 642, Houston, TX 77251.	EnTrade Corporation.	200,000 25,000 9,125,000	Offshore TX, LA	Offshore TX	PT, Interruptible, 3/07/91.	CP86-586-000, ST91-6305-000.

[1] Quantities are shown in MMBTU unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

3. Trunkline Gas Company

[Docket No. CP91-1918-000]

May 1, 1991.

Take notice that on April 29, 1991,[3] Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Seagull Marketing Services, Inc. (Seagull), a marketer, under the blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Trunkline proposes to implement a transportation agreement with Seagull dated July 31, 1988, providing for a maximum transportation volume of 30,000 Mcf per day. It is indicated that Trunkline would receive the gas at specified points located in Tennessee, Illinois, and the onshore and offshore areas of Texas and Louisiana and redeliver the gas, less fuel and unaccounted for line loss, to Mississippi River Transmission Corporation in Clay County, Illinois. Trunkline estimates peak day, average day, and annual volumes of 30,000 Mcf, 30,000 Mcf, and 10,950,000 Mcf, respectively. It is stated that Trunkline initiated a 120-day transportation service for Seagull on January 1, 1990, as reported in Docket No. ST91-6264-000.

Trunkline states that no new facilities would be required to implement the service and that it would charge the rates and abide by the terms and conditions of its Rate Schedule PT.

Comment date: June 17, 1991, in accordance with Standard Paragraph G at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP91-1911-000]

May 2, 1991.

Take notice that on April 24, 1991, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP91-1911-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate additional points of delivery for existing wholesale customers, under Columbia's blanket certificates issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia requests authorization to construct and operate facilities necessary to provide twelve additional points of delivery for Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Dayton Power & Light Company and Mountaineer Gas Company.

Columbia states that the additional points of delivery have been requested by Columbia's wholesale customers for residential and/or commercial service. It is said that the quantities to be provided through the delivery points are within Columbia's currently authorized level of service and would be within existing peak day and annual proposed Seasonal Entitlements of such customers. It is further said that the sales to be made through the proposed points of delivery would be under Columbia's currently effective Service Agreements with such customers under Rate Schedule CDS.

Comment date: June 17, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP91-1933-000]

May 2, 1991.

Take notice that on April 29, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-1933-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to construct and operate a 12-inch tap, 1.5 miles of 12-inch pipeline, a dual 8-inch meter station, a flow computer and related facilities in Calcasieu Parish, Louisiana, under its blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the proposed meter station, tap, pipeline, flow computer and related facilities will enable United to transport an estimated maximum of 55,000 Mcf of natural gas per day of firm capacity for Arcadian Gas to be delivered to the Arcadian Plant in Calcasieu Parish, Louisiana, under United's Rate Schedule ITS. United estimates the cost of Constructing the proposed facilities to be $1,156,000.

Comment date: June 17, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. Southern Natural Gas Company

[Docket No. CP91-1932-000]

May 2, 1991.

Take notice that on April 29, 1991, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP91-1932-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to construct and operate a sales tap in order to deliver gas to Conoco Inc. (Conoco), for use in the operation of its offshore production platform in Main Pass Block 311, Offshore Louisiana, under its blanket certificate issued in Docket No. CP82-406-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests authorization to construct and operate a sales tap in order to deliver gas, as necessary, to Conoco for use as start-up and emergency fuel use gas on Conoco's platform in Main Pass Block 311, Offshore Louisiana. Southern estimates the cost of constructing the facilities to be $76,300, which will be reimbursed by Conoco.

Southern states that it will deliver the gas to Conoco pursuant to an existing service agreement between Southern and Sonat Marketing Company (Sonat) dated March 28, 1988, wherein Southern agreed to transport, on an interruptible basis, up to a maximum of 4,000 MMBtu of natural gas per day on behalf of Sonat to Conoco. Southern states that it is currently providing the subject transportation service pursuant to the authority granted to Southern in its part 284, subpart G blanket certificate of public convenience and necessity issued in Docket No. CP88-316-000. It is stated that on March 14, 1991, Southern amended Exhibit B of the service agreement to provide for the delivery, on an interruptible basis, of natural gas to Conoco at its platform in Main Pass Block 311, Offshore Louisiana. Southern further states that upon completion of construction of the sales tap, Southern will provide the transportation service to the new point of delivery pursuant to the terms and conditions of the service agreement, Southern's Rate Schedule IT and the General Terms and Conditions thereto. It is stated that Conoco anticipates requesting up to 2,000 MMBtu of natural gas per day at the proposed facilities.

Comment date: June 17, 1991, in accordance with Standard Paragraph G at the end of this notice.

7. Williston Basin Interstate Pipe Line Company

[Docket No. CP91-1897-000]

May 2, 1991.

Take notice that on April 23, 1991, Williston Basin Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP91-1897-000, an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct, install and operate approximately 49.3 miles of 8⅝-inch diameter pipeline, an 1,100 horsepower reciprocal compressor unit, measuring, regulating and appurtenant facilities, all as more fully described in the application which is on file with the Commission and open to public inspection.

Williston Basin states that, on February 22, 1991, it executed both firm transportation and sales service agreements with Northern States Power Company (NSP) and that these agreements provide for the construction of the transmission facilities proposed herein. It is stated that the pipeline facilities would extend from a point on Williston Basin's existing transmission system near Valley City, Barnes County, North Dakota to a point near Mapelton, Cass County, North Dakota and that the compression facilities would be located 3 miles west of Cleveland, Stutsman County, North Dakota. Initial annual and daily deliveries to NSP are expected to be 2,920 MMcf and 8.0 MMcf, respectively.

The total cost to construct the facilities is estimated to be $7,644,716 and Williston Basin anticipates financing this cost with internally generated funds and/or short term bank loans. Williston Basin asserts that the total payments by NSP, as determined by Williston Basin's proposed Rate Schedule X-13 which is comprised of the aforementioned service agreements, would be no less than the total cost of service incurred by Williston Basin to provide the firm transportation service to NSP. Williston Basin further asserts that performing the proposed transportation service under proposed Rate Schedule X-13 would result in its existing customers being fully protected from the incurrence of any increases in system costs stemming from the operation of the new facilities proposed herein.

Comment date: May 23, 1991, in accordance with Standard Paragraph F at the end of this notice.

8. Great Lakes Gas Transmission Limited Partnership

[Docket Nos. CP91-1872-000, CP91-1873-000, CP91-1874-000, CP91-1875-000]

May 3, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership, Suite 1600, One Woodward Avenue, Detroit, Michigan 48226, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to § 157.205 and 248.223 of the Commission's Regulations under the National Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-2198-000, pursuant to section 7 of the National Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: June 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[3] The request was tendered on April 23, 1991; however, the fee required by § 381.208 of the Commission's Rules (18 CFR 381.208) was not until April 29, 1991. Section 381.108 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day average day, annual, Mcf	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1872-000 (4-19-91)	Michigan Consolidated Gas Company (LDC).	200,000 200,000 73,000,000	MI, MN	MI	10-22-90, IT Interruptible.	ST91-7805-000, 3-22-91.
CP91-1873-000 (4-19-91)	Pruflas U.S.A. Inc. (Marketer).	275,000 275,000 100,375,000	MN	MI, MN	10-31-90, IT Interruptible.	ST91-7886-000, 3-25-91.
CP91-1874-000 (4-19-91)	Tarpon Gas Marketing Ltd. (Marketer).	200,000 200,000 73,000,000	MI, MN	MI, MN	10-22-90, IT Interruptible.	ST91-7900-000, 3-1-91.
CP91-1875-000 (4-19-91)	Peco Petroleums Ltd. (Producer).	300,000 300,000 109,500,000	MI, MN	MI, MN	10-25-90, IT Interruptible.	ST91-7899-000, 3-1-91.

9. Transcontinental Gas Pipe Line Corporation, et al.

[Docket Nos. CP91-1934-000, CP91-1935-000, CP91-1937-000]

May 3, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related[2] dockets
CP91-1934-000 4-29-91	Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, TX 77251.	Coast Energy Group.	650,000 190,000 36,000,000	TX, LA, Off LA, MS, MD, VA, NJ, PA.	NJ, MD, MS, PA, VA, LA, TX.	3-21-91, IT	CP89-526-000, ST91-8225-000.
CP91-1935-000 4-30-91	Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, TX 77251.	Citizens Gas Supply Corporation.	225,000 225,000 82,125,000	TX, Off TX, LA, Off LA, MS, NJ, PA.	NJ, LA	3-01-91, IT	CP88-328-000, ST91-7987-000.
CP91-1937-000 4-30-91	Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, CO 80944.	Chevron U.S.A., Inc.	60,000 10,000 2,000,000	WY, KS, OK	OK	8-02-91, IT	CP86-589-000, ST91-4402-000.

[1] Quantities are shown in dekatherms, except Docket No. CP91-1937-000, which volumes are shown in Mcf.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

10. Viking Gas Transmission Company, et al.

[Docket Nos. CP91-1938-000, CP91-1939-000, CP91-1940-000]

May 3, 1991.

Take notice that Applicants filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificates pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, have been provided by Applicants and are summarized in the attached appendix.

Applicants states that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related[3] dockets
CP91-1939-000 (04-30-91)	Cibola Corporation (Marketer).	[1] 100,000 100,000 36,500,000	MN, WI, ND	MN, WI, ND	2-08-91, IT-2	ST91-6322-000.
CP91-1939-000 (04-30-91)	North Canadian Marketing Corp. (Marketer).	[2] 150,000 150,000 54,750,250	LA, TX, MA, NY	LA, MI, WV, NJ, TN, NY, PA, OH, KY, MA, TX.	04-09-91, IT	ST91-6352-000.
CP91-1940-000 (04-30-91)	Entrade Corporation (Marketer).	[3] 200,000 200,000 73,000,000	MA, NJ	CT	06-07-91, AIT-1	ST91-7903-000.

[1] Quantities are shown in dth unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.
[3] Quantities are shown in MMBtu unless otherwise indicated.

11. High Island Offshore System

[Docket No. CP91-1921-000]

May 3, 1991.

Take notice that on April 25, 1991, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91-1921-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for LaSER Marketing Company, a marketer, under the blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-82-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

HIOS states that, pursuant to an agreement dated April 1, 1990, under its Rate Schedule IT, it proposes to transport up to 580,000 Mcf per day of natural gas. HIOS indicates that the gas would be transported from Offshore Louisiana, and Offshore Texas, and would be redelivered in Offshore Louisiana, and Offshore Texas. HIOS further indicates that it would transport 580,000 Mcf on an average day and 211,700,000 Mcf annually.

HIOS advises that service under § 284.223(a) commenced February 27, 1991, as reported in Docket No. ST91-7675-000.

Comment date: June 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

12. Williston Basin Interstate Pipeline Company

[Docket No. CP91-1729-000]

May 3, 1991.

Take notice that on April 5, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, submitted in Docket No. CP91-1729-000 a request pursuant to § 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to add metering and appurtenant facilities under the blanket certificate issued in Docket No. CP82-487-000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. The filing was completed on May 3, 1991, upon Williston Basin's filing of the required fees.

Notice of the instant proposal was issued on April 9, 1991. Although the request under blanket authorization was tendered for filing April 5, 1991, the required fee (18 CFR 381.207) was not paid until May 3, 1991. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid. Therefore, it is necessary and appropriate that Williston Basin's request be further noticed to reflect the correct filing date, *i.e.*, May 3, 1991.

Comment date: June 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

13. Algonquin Gas Transmission Company et al.

[Docket No. CP91-1945-000, CP91-1946-000, CP91-1947-000, CP91-1948-000, CP91-1949-000, CP91-1950-000]

May 3, 1991.

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: June 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

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Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1945-000 (5-1-91)	Providence Gas Company.	36,129 25,129 3,945,479	NJ	RI	9-21-90, AFT-1, Firm.	ST91-8105-000, 1-18-91.
CP91-1946-000 (5-1-91)	Amarillo Natural Gas, Inc. (LDC).	300 225 109,500	AZ, NM, OK, TX	TX	11-9-90, ITS-1, Interruptible.	ST91-8378-000, 4-15-91.
CP91-1947-000 (5-1-91)	K N Gas Marketing, Inc. (Marketer).	150,000 112,500 54,750,000	Various	Various	4-1-91,IT-1, Interruptible.	ST91-8223-000, 4-1-91.
CP91-1948-000 (5-1-91)	Panda Resources, Inc. (Marketer).	50,000 37,500 18,250,000	Various	Various	4-11-91, IT-1, Interruptible.	ST91-8310-000, 4-11-91.
CP91-1949-000 (5-2-91)	Canoco, Inc. (Producer)	20,000 6,500 7,300,000	OTX	TX	10-3-90, ITS, Interruptible.	
CP91-1950-000 (5-2-91)	Angerman Associates, Inc.	10,120 150 54,750	PA, WV	PA, WV	3-28-91, ITS, Interruptible.	ST91-8404-000, 4-17-91.

[1] Offshore Texas is shown as OTX.

Applicant's address	Blanket docket
Algonquin Gas Transmission Company, 1284 Soldiers Field Road, Boston, Massachusetts 02135	CP89-948-000.
Black Marlin Pipeline Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188	CP89-2041-000.
Equitrans, Inc., 3500 Park Lane, Pittsburgh, Pennsylvania 15275	CP86-553-000.
Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188	CP86-435-000.
Transwestern Pipeline Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188	CP88-133-000.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11229 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on May 1, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be Effective June 1, 1991

Third Revised Sheet No. 21
Third Revised Sheet No. 22
Third Revised Sheet No. 26
Third Revised Sheet No. 27
Third Revised Sheet No. 28
Third Revised Sheet No. 29

Algonquin states that the revised tariff sheets listed above are being filed as part of Algonquin's regularly scheduled quarterly Purchased Gas Adjustment ("PGA") and is made pursuant to Algonquin's PGA Section 17 of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Third Revised Volume No. 1 to reflect the standby service costs to be charged by Texas Eastern Transmission Corporation ("Texas Eastern") and purchased gas costs to be charged by its suppliers, Texas Eastern, National Fuel Gas Supply Corporation ("National") and CNG Transmission Corporation ("CNGT").

Algonquin states that the instant filing reflects the purchases and sales projected to be made for the three month period beginning June 1, 1991 and the underlying costs of standby service and gas as set forth in its suppliers' filings dated March 29, 1991 in Docket No. TQ91-3-17 (Texas Eastern) and Docket No. TF91-3-16-001 (National) and March 28, 1991 in Docket No. RP91-125 (CNGT).

Algonquin states that the proposed effective date for the listed revised tariff sheets is June 1, 1991.

Algonquin further states that the effect of the change in rates is to increase the demand charges by $.0860 per MMBtu and to increase the commodity charges by 20.40¢ per MMBtu under all of Algonquin's firm sales rate schedules from those rates contained in Algonquin's Revision to the Surcharge Adjustment of April 18, 1991 in Docket No. TA91-1-20-001.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11235 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR91-18-000]

Aquila Gas Systems Corp.; Petition for Rate Approval

May 6, 1991.

Take notice that on April 30, 1991, Aquila Gas Systems Corporation (Aquila) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.3327 per MMBtu plus allowance for fuel for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Aquila's is an intrastate pipeline within the meaning of section 2(16) of the NGPA in the state of Oklahoma. Aquila's petition states that it owns facilities in the state of Oklahoma, which are the subject of this petition, which consist of approximately 300 miles of pipe line in Carter, Dewey, Ellis, and Woodward Counties, Oklahoma known as the Mooreland/Dewey System. The previous maximum interruptible transportation rate of $0.288 per Mcf for section 311(a)(2) service on the Mooreland/Dewey System was approved by the Commission December 21, 1988 in Docket Nos. ST83-429-001, *et al. Aquila states that it acquired this system from BP Gas Transmission Company in November 1989.*

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which intrastatre pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written documents and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before May 20, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11248 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-8-63-000]

Carnegie Natural Gas.; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that on May 1, 1991, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following Primary and Alternate tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective June 1, 1991:

Primary Tariff Sheets

Fourteenth Revised Sheet No. 8
Fourteenth Revised Sheet No. 9

Alternate Tariff Sheets

Alt Fourteenth Revised Sheet No. 8
Alt Fourteenth Revised Sheet No. 9

Carnegie states that pursuant to the PGA clause in its FERC Gas Tariff and § 154.308 of the Commission's regulations, it is proposing to adjust its sales rates effective June 1, 1991, as part of its scheduled Quarterly PGA filing. Carnegie states that it is filing two sets of tariff sheets to correspond with the Primary and Alternate tariff sheets which are pending Commission action in Carnegie's current section 4 rate proceeding in Docket No. RP91-37-000. Carnegie states that consistent with Carnegie's request pending before the Commission in Docket No. RP91-37-000, the referenced Primary tariff sheets reflect the continuation by Carnegie of its standby charge tracker, whereas the referenced Alternate tariff sheets reflect the elimination of Carnegie's standby charge tracker and the inclusion of the associated Account No. 858 costs in Carnegie's base sales rates.

Carnegie proposes in this filing that the Commission accept the referenced Primary tariff sheets, to become effective June 1, 1991, if the Commission grants Carnegie's request for interim authorization in Docket No. RP91-37-000 to continue to track Texas Eastern standby charges through its PGA Clause. Carnegie alternatively proposes that, if Carnegie's request for interim tracking authorization is denied by the Commission, the Commission accept the referenced Alternate tariff sheets to become effective June 1, 1991.

The revised rates reflect the following changes from Carnegie's last fully-supported Out-of-Cycle PGA filing in Docket No. TQ91-8-63-000: A $0.0537 per Dth increase in the demand components of its LVWS and CDS rate schedules; a $0.4061 per Dth increase in the commodity components of its LVWS and CDS rate schedules; a $0.4078 per Dth increase in the commodity component of its LVIS rate schedule; and a $0.0008 per Dth increase in the DCA component of its LVWS and CDS rate schedules. The referenced Primary tariff sheets also reflect a decrease in the Standby Charge Adjustment of $0.1093, from $0.3204 per Dth per Dth to $0.2111 per Dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and

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Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11235 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that CNG Transmission Corporation ("CNG") on May 1, 1991, pursuant to section 4 of the Natural Gas Act, part 154 of the Commission's Regulations, and section 12 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheets to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

Eighth Revised Sheet No. 31
Third Revised Sheet No. 34

CNG requests that the Commission allow the proposed tariff revisions to become effective on June 1, 1991, as CNG's regular quarterly purchased gas adjustment ("PGA") filing.

CNG states that the filing would increase CNG's RQ and CD commodity rates by 0.65 cents per dekatherm, increase D-1 demand rates by $0.01 per dekatherm and increase D-2 demand rates by 1.19 cents per dekatherm from the rates currently in effect. CNG also states that other rates will change correspondingly.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11245 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-33-000]

El Paso Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that El Paso Natural Gas Company on May 1, 1991, tendered for filing the following tariff sheets to its FERC Gas Tariff, with the proposed effective date of July 1, 1991:

Second Revised Volume No. 1

Ninth Revised Sheet No. 100
Ninth Revised Sheet No. 101

Third Revision Volume No. 2

Sixty-ninth Revised Sheet No. 1-D

Original Volume No. 2A

Seventy-first Revised Sheet No. 1-C

El Paso hereby submits a notice of a quarterly adjustment in rates for jurisdictional gas service rendered to sales customers served by El Paso's interstate gas transmission system under rate schedules affected by and subject to Section 19, Purchased Gas Cost Adjustment Provision (PGA) of the General Terms and Conditions in El Paso's FERC Gas Tariff, Second Revised Volume No. 1.

El Paso states that the tendered tariff sheets reflect an increase of $0.0593 per dth in the gas cost component of El Paso's jurisdictional sales rates as compared with the gas cost component of the rates reflected in El Paso's last Quarterly Adjustment in rates at Docket No. TQ91-3-33-000, effective April 1, 1991. El Paso also eliminated the credit Surcharge Adjustment of $.0096 per dth established in its last annual PGA filed May 1, 1990, at Docket No. TA90-1-33-000.

El Paso also requests waiver of the Commission's regulations to permit El Paso not to file an annual PGA, which would be filed to be effective July 1, 1991. El Paso's request is based on the possibility that its settlement in Docket No. RP88-44-000, *et al.*, could become effective by July 1, 1991, in which event its PGA adjustment scheduled for July 1, 1991, which is also its annual PGA filing, would not become effective. The tariff sheets filed by El Paso are stated by El Paso to be tendered to establish sales rates in accordance with Commission regulation and its tariff in the event the settlement is not effective by July 1, 1991.

El Paso states that copies of the filing were served upon all of its jurisdictional sales customers and to interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11237 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that on May 1, 1991, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets, with the proposed effective date of June 1, 1991:

Seventeenth Revised Sheet No. 8

Fifth Revised Sheet No. 8A

FGT states that the above-referenced tariff sheets are being filed to reflect the calculation of the Annual Unit Take-or-Pay Surcharge for the third annual recovery period pursuant to section 27 of the General Terms and Conditions of FGT's FERC Gas Tariff, Second Revised Volume No. 1. Section 27 contains tariff language that establishes a mechanism to flowthrough the fixed charge allocation of buyout and buydown costs billed to FGT by Southern Natural Gas Company and was approved by Commission Order dated June 16, 1989 in Docket No. RP89-44-001. The revised Take-or-Pay Surcharge is .300¢/therm or 3.00¢/MMBtu, as compared to the Surcharge underlying existing rates of .346¢/therm or 3.46¢/MMBtu.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11250 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-37-017]

High Island Offshore System; Report of Refunds

May 6, 1991.

Take notice that High Island Offshore System (HIOS), on April 15, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds, made in accordance with the provisions of article VI of the Stipulation and Agreement approved by the Commission on October 30, 1990, in Docket Nos. RP89-37-000, *et al.* The report summarizes amounts made by HIOS to its shippers of a refund received from ANR Pipeline Company (ANR) pursuant to its rate proceeding in Docket No. RP89-39-000 under ANR's Rate Schedule X-64.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure 18 CFR 385.211 and 385.214 (1990). All such protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11241 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-6-26-000]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that on May 1, 1991, Natural Gas Pipeline Company of America (Natural), tendered for filing the following tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, with the proposed effective date of June 1, 1991.

Second Revised Sheet No. 180
Second Revised Sheet No. 181

Natural states that the purpose of the filing is to reflect accrued interest for the months of December 1990 through May 1991 related to Natural's recovery of take-or-pay buyout, buydown, and other contract reformation costs (Transition Costs) under an Order No. 528 mechanism.

Natural seeks any waivers which may be necessary to permit the tendered tariff sheets to take effect June 1, 1991.

Natural states that copies of the filing have been mailed to Natural's jurisdictional sales customers, interested state regulatory agencies, and all parties set out on the official service list in Docket Nos. RP88-94-000, *et al.*, RP90-24-000 and RP91-22-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11246 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-29-000 and 001]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on May 1, 1991, tendered for filing the revised tariff sheets as identified in appendices A and B to its FERC Gas Tariff, Original Volume No. 1.

The proposed effective date of these revised tariff sheets is June 1, 1991.

Panhandle states that the revised tariff sheets filed herewith reflect a Commodity Rate decrease of (3.35¢) per Dt in the projected purchased gas cost component. The primary tariff sheets listed in appendix A also provide for the following adjustments in Panhandle's D1 and D2 demand rates: (1) An increase of $1.00 for D1 and (2) no change for D2 pursuant to Section 16.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

The primary tariff sheets filed herewith reflect revised billing determinants in the new service agreements between Panhandle and ten major customers which were filed with the Commission in Docket No. CP91-1828-000 on April 15, 1991. The instant PGA filing is based upon the Commission accepting and authorizing the new service agreements on or before June 1, 1991. In addition to the service agreements filed in Docket No. CP91-1828-000, Panhandle has also included revised billing determinants for Indiana Gas Company (Indiana Gas) to reflect a new service agreement which became effective March 1, 1991. Pursuant to an agreement dated as of March 1, 1991, Indiana Gas converted a portion of its sales service to transportation service in accordance with § 284.10 of the Commission's Regulations. In accordance with Order No. 500-J and § 284.10 such conversion is deemed to be an abandonment of the corresponding sales service.

Panhandle further states that in the event the service agreements filed in Docket No. CP91-1828-000 are not accepted and approved by June 1, 1991, Panhandle requests the Commission make effective on June 1, 1991 the alternate tariff sheets listed on appendix B hereto. The alternate revised tariff sheets filed herewith reflect the new service agreement for Indiana Gas Company. These tariff sheets reflect the Commodity Rate decrease of (3.35¢) per Dt in the projected purchased gas cost component, and the following adjustments in Panhandle's D1 and D2 demand rates: (1) An increase of $0.39 for D1 and (2) no change for D2 pursuant to section 16.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

Panhandle states that the above-referenced tariff sheets are being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to section 18 (Purchased Gas Adjustment Clause) of

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Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional rates effective June 1, 1991.

Panhandle states that copies of its filing have been served on all jurisdictional customers and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11236 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI91-75-000]

Peoples Natural Gas Co.; Division of UtiliCorp United Inc.; Application for a Blanket Certificate With Pregranted Abandonment

May 6, 1991.

Take notice that on April 24, 1991, Peoples Natural Gas Company, Division of UtiliCorp United Inc. of 1815 Capitol Avenue, Omaha, Nebraska 68102 (Applicant) filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of all NGPA categories of NGA gas, gas imported from Canada, and LNG, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 24, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11247 Filed 5-10-91; 8:45 am

BILLING CODE 6717-01-M

[Docket No. TA91-1-40-004]

Raton Gas Transmission Co.; Compliance Filing

May 6, 1991.

Take notice that on April 23, 1991, Raton Gas Transmission Co. (Raton) filed with the Commission revised tariff sheets and supporting documents to comply with the Commission's March 19, 1991 order in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11244 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-8-000]

South Georgia Natural Gas Company; Proposed Changes to FERC Gas Tariff

May 6, 1991.

Take notice that on May 1, 1991, South Georgia Natural Gas Company (South Georgia) tendered for filing Seventy-Third Revised Sheet No. 4 and Ninth Revised Sheet No. 43 to its FERC Gas Tariff, First Revised Volume No. 1. South Georgia states that these tariff sheets and supporting information are being filed with a proposed effective date of July 1, 1991, pursuant to the Purchased Gas Cost Adjustment clause of its FERC Gas Tariff and § 154.305 of the Federal Energy Regulatory Commission's (Commission) Regulations.

South Georgia states that the Current Adjustment reflects a decrease of approximately $269,000 in jurisdictional revenues which is attributable to a decrease in the demand component of $.047 per Mcf and a decrease in the commodity component of $.61 per MMBtu from South Georgia's Purchased Gas Cost Adjustment filing in Docket No. TQ91-4-8-000. The Surcharge Adjustment is $.0555 per MMBtu, and is based on a twelve-month amortization of the balance in South Georgia's Account No. 191 as of February 28, 1991, as adjusted for the March, 1991, overcollection.

Ninth Revised Sheet No. 43, Index of Purchasers, reflects the maximum daily quantity level submitted by the Cities of Sylvester and Dawson, Georgia, after a conversion from firm sales service to firm transportation service in accordance with § 284.10 of the Commission's Regulations.

South Georgia states that copies of the filing will be served upon all of South Georgia's jurisdictional purchasers, interested state commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (385.211 and 385.214). All such motions or protests should be filed on or before May 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11234 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-1926-000]

Tejas Power Corp. v. Columbia Gulf Transmission Co.; Complaint

May 3, 1991.

Take notice that on February 4, 1991, Tejas Power Corporation (Tejas), 14811 St. Mary's Lane, suite 200, Houston, Texas 77079, filed timely Motions for Leave to Intervene and Protests in Docket Nos. CP91-665-000 and CP91-669-000. In these proceedings, Columbia Gulf Transmission Company's (Columbia Gulf) filed prior notice of its intent to provide firm transportation services, under its part 284 blanket certificate, for Mobil Natural Gas, Inc. (Mobil) and Exxon Corporation (Exxon), respectively. By order issued April 29, 1991, in Docket Nos. CP91-665-000 and CP91-669-000, the Commission, among other things; (a) accepted Columbia Gulf's withdrawal of the prior notice filing in Docket No. CP91-665-000 to provide transportation service for Mobil (Mobil) and dismissed Tejas' protest in that docket; (b) authorized Columbia Gulf to provide under its blanket certificate transportation service for Exxon of up to 50,000 Dth per day as described in Docket No. CP91-669-000; (c) established a separate complaint proceeding in Docket No. CP91-1926-000 under section 5 of the Natural Gas Act to consider Tejas' allegations, as set forth in Tejas' protests and; (d) consolidated with the complaint proceeding the proceeding in Docket No. CP91-669-000, as it relates to the transportation service to Exxon of an additional 25,000 Dth per day. This notice establishes the separate consolidated complaint proceeding in Docket No. CP91-1926-000 and contains relevant information, all as more fully set forth in Tejas' February 4, 1991, intervention and protest, which is on file with the Commission and open to public inspection.

Tejas states that it was receiving, pursuant to section 311 of the Natural Gas Policy Act, firm transportation services from Columbia Gulf on Columbia Gulf's lateral systems under Rate Schedule FTS-2 and service agreements which expired on November 1, 1989. Tejas asserts that it sought to extend these transportation agreements, which included service through Columbia Gulf's West Lateral, but was informed that no capacity was available and that in order for Columbia Gulf to provide the capacity, Tejas would be required to pay between $5 and $6 million to Columbia Gulf for the construction of unspecified facilities. Tejas also contends that its request for transportation service predated Exxon's and Mobil's requests and that by fulfilling Exxon's and Mobil's requests first, Columbia Gulf has violated the first-come, first-served policy.

Tejas contends that Columbia Gulf built and paid for facilities in order to provide service for Exxon and Mobil and that, by refusing to do the same for Tejas, Columbia Gulf is acting in an unduly discriminatory manner. Tejas believes that Columbia Gulf is hoarding capacity on its lateral lines, either for its parent, Columbia Gas Transmission Corporation, or other shippers in violation of the provisions of Order Nos. 436 and 500.

Tejas requests that the Commission reject Columbia Gulf's prior notice filings, unless the pipeline can demonstrate that it has not unduly discriminated against Tejas. Tejas also challenges Mobil's right to section 311 transportation service on the grounds that Columbia Gulf is violating the Commission's rules and regulations regarding the first-come, first-served requirements and the prohibition against unduly discriminatory behavior in providing firm transportation, whether it is pursuant to section 311 or section 7(c). Tejas is primarily concerned with obtaining capacity on Columbia Gulf's system and wants Columbia Gulf to construct facilities, if they are required, on the same basis that the pipeline built such facilities for Exxon and Mobil.

All intervenors in the proceedings in Docket Nos. CP91-665-000 and CP91-669-000 are deemed to be intervenors in the complaint proceeding established herein, and all pleadings filed in the prior notice proceedings are deemed to be part of the record in Docket No. CP91-1926-000. Any person, including those who have intervened in the prior notice proceedings, desiring to be heard or to make any protest or comment with reference to said complaint should on or before May 20, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene, if necessary, and/or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Answers to the complaint are due on or before May 20, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11249 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-29-000]

Tennessee Gas Pipeline Company Compliance Filing

May 6, 1991.

Take notice that on May 2, 1991, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in response to the Commission's order on April 26, 1991 in the referenced docket:

Third Revised Volume No. 1

Substitute Third Revised Sheet No. 20
Substitute Third Revised Sheet No. 21
Substitute Second Revised Sheet No. 23
Substitute First Revised First Revised Sheet No. 24
Substitute Second Revised Sheet No. 25
Substitute Second Revised Sheet No. 26
Substitute Second Revised Sheet Nos. 36-42
Substitute Second Revised Sheet Nos. 275-279
Substitute First Revised Original Sheet Nos. 279A-B
Substitute Original Revised Sheet No. 279C
Substitute Second Revised Sheet Nos. 280-281

Original Volume No. 2

Substitute Twenty-Third Revised Sheet No. 5
Substitute Twenty-Second Revised Sheet No. 6
Substitute First Revised Seventh Revised Sheet No. 7
Substitute First Revised Eighth Revised Sheet No. 8
Substitute First Revised Seventh Revised Sheet No. 9
Substitute First Revised Twelfth Revised Sheet No. 10

Tennessee states that the purpose of this filing is to amend Tennessee's transition cost recovery mechanism to reflect: (i) A 50% reduction in the direct bill allocation to "small customers" and (ii) a volumetric surcharge of 0.8 cents per dkt resulting from a revised equitable sharing formula (25-25-50) for $25 million in "new costs."

Tennessee states that Tennessee has used an alternate equitable sharing formula for the principal payments first reflected in its November 16, 1990, filing in this docket: 25% absorbed by Tennessee, 25% allocated to direct bill recovery, and 50% allocated to volumetric recovery. This allocation was approved for these sums by the Commission in its Order of April 26, 1991.

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Tennessee states that the revised direct bill amounts reflect an allocation based upon 1988 AQL (Annual Quantity Limitation) factors adjusted to reduce the allocation factors of G and GS customers by 50%. Tennessee states that this reduction complies with Order 528-A, as well as the Orders of March 1 and April 26 in this docket. Tennessee state that by computing each customer's direct bill liability as of April 30, 1991, taking into account carrying charges on transition costs and interest on all customer payments, the revised allocations have been given effect as of November 16, 1991 as required by the Commission's Order of April 26, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 91-11238 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR91-17-000]

TEX/CON Gas Pipeline Co.; Petition for Rate Approval

May 6, 1991.

Take notice that on April 30, 1991, TEX/CON Gas Pipeline Company (TEX/CON) (formerly, BP Gas Transmission Company) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a mixium rate of $0.2512 per MMBtu plus 2% for fuel allowance for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

TEX/CON's petition states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA in the states of Louisiana and Oklahoma. TEX/CON states that it owns facilities in the State of Oklahoma, which are the subject of this petition, which consist of approximately 800 miles of 4 inch through 20 inch pipe lines in the Anadarko Basin in southwestern Oklahoma. TEX/CON's previous maximum interruptible transportation rate of $0.137 per MMBtu for section 311(a)(2) service was approved by the Commission December 21, 1988 in Docket Nos. ST83-429-001, *et al.*

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before May 20, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 91-11243 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that Trunkline Gas Company (Trunkline) on May 1, 1991 tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Eighty-Third Revised Sheet No. 3-A

The proposed effective date of this revised tariff sheet is June 1, 1991.

Trunkline states that the revised tariff sheet filed herewith reflects a commodity rate decrease of (0.10¢) per Dt in the projected purchased gas cost component.

Trunkline states that the above-referenced tariff sheet is being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to section 18 (Purchase Gas Adjustment Clause) of the General Terms and Conditions in Trunkline's FERC Gas Tariff, Original Volume No. 1 to reflect the change in Trunkline's jurisdictional rates effective June 1, 1991.

Trunkline states that copies of its filing have been served on all jurisdictional sales customers and applicable state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 91-11251 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-3-56-000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that Valero Interstate Transmission Company ("Vitco"), on April 12, 1991 tendered for filing the following tariff sheets as required by Orders 483 and 483-A and the Commission letter dated April 1, 1991 rejecting Docket No. TA91-1-56-000. These tariff sheets contain changes in Purchased Gas Cost Rates pursuant to such provisions:

FERC Gas Tariff, Original Volume No. 1

26th Revised Sheet No. 14.2

FERC Gas Tariff, Original Volume No. 2

34th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A.

The change in rates to Rate Schedule S-3 includes a decrease in purchased gas cost of $.3536 per MMBtu, a negative surcharge on Account 191 of $0.1509 per MMBtu and a surcharge of $0.3354 applicable to take-or-pay settlement costs.

The proposed effective date of the above filing is June 1, 1991. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by June 1, 1991.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 91-11239 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT91-25-000]

Viking Gas Transmission Co.; Tariff Filing Pursuant to Order No. 493

May 6, 1991.

Pursuant to the Commission's Order No. 493, Viking Gas Transmission Company ("Viking") has submitted for filing ten copies and a computer tape of its FERC Gas Tariff, Original Volume No. 1. Viking has repaginated its tariff sheets in compliance with Order No. 493.

Viking has requested that the filing become effective June 1, 1991.

Any person desiring to be heard or to protest this filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 91-11240 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-33-11]

Williams Natural Gas Co.; Report of Refunds

May 6, 1991.

Take notice that Williams Natural Gas Company (WNG), on February 21, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) its report of refunds, made to its jurisdictional sales and transportation customers for the period of January 1, 1988 through December 31, 1989.

The refunds were made pursuant to the Stipulation and Agreement (Settlement) filed February 2, 1989, and approved by Commission order issued June 21, 1990. The refunds are for (1) amounts received in excess of the maximum rate less 3.3 cents per Mcf for 1988, (2) the difference between the base rate charged and received and the Settlement base rates for January 1, 1989 through November 30, 1989, and (3) 1.2 cents per unit for December 1989. WNG transferred the refunds into an escrow account pursuant to article II of the Settlement.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1990)). All such protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 91-11242 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-25-NG]

Cascade Natural Gas Corp. Application for Blanket Authorization To Import Canadian Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on March 29, 1991, of an application filed by Cascade Natural Gas Corporation (Cascade) for blanket authorization to import from Canada up to 56 Bcf of natural gas for a two-year term beginning June 19, 1991. Cascade requests authority to import the natural gas at Sumas, Washington and Kingsgate, British Columbia, using the existing pipeline facilities of Northwest Pipeline Corporation and Pacific Gas Transmission Company. No new pipeline construction would be involved. Cascade also states it will submit quarterly reports to FE detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington DC, at the address listed below no later than 4:30 p.m., Eastern time, June 12, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586-9478.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3G-087, FE-53, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586-6233.

Lot Cooke, Office of Assistant General Counsel, for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: Cascade, a Washington corporation with its principal place of business in Seattle, Washington, is a public utility engaged in the distribution and sale of natural gas in intrastate commerce in 86 communities in the States of Washington and Oregon. Cascade currently holds a two-year blanket authorization to import up to 56 Bcf of natural gas from Canada through June 18, 1991. This authorization was issued June 12, 1989, in DOE/FE Opinion and Order No. 316 (1 FE Para. 70,225), as amended by DOE/FE Opinion and

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Order No. 318-A issued October 13, 1989 (1 FE Para. 70,245). Cascade's prior quarterly reports filed with DOE indicate that approximately 2.9 Bcf of natural gas was imported under Order No. 318, as amended, through December 31, 1990.

Cascade contemplates purchasing natural gas supplies from a variety of Canadian suppliers and reselling such supplies to its customers. Cascade will negotiate for gas supplies at competitive terms and conditions in order to supply gas to meet the demands of its system supply. These purchases generally will be on a month-to-month basis under 30-day spot market supply contracts.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under this arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C., 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses of this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties under this notice, in accordance with 10 CFR 590.316.

A copy of Cascade's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 3, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-11315 Filed 5-10-91; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 91-13; Certification Notice-61]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the Federal Register a notice reciting that the certification has been filed. Three owners and operators of proposed new electric base load power-plants have filed self-certifications in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies have filed self-certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
Cogen Technologies Baltimore Venture Ltd. Partnership's, Houston, TX	04-26-91	Topping Cycle	433	Baltimore, MD.
Nevada Cogeneration Associates #1, Salt Lake City, UT	05-01-91	Combine Cycle	85	Clark County, NV.
Nevada Cogeneration Associates #2, Salt Lake City, UT	05-09-91	Combine Cycle	85	Clark County, NV.

Amendments to the FUA on May 21, 1987 (Public Law 100-42), altered the general prohibitions to include only new electric base load power-plants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on May 6, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91-11316 Filed 5-10-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140148; FRL-3960-7]

Access to Confidential Business Information by Labat-Anderson, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Labat-Anderson, Incorporated (LAI), of Arlington, VA, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than May 23, 1991.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-W9-0052, contractor LAI, of 2200 Clarendon Boulevard, Arlington, VA, will assist EPA's Region V, Environmental Sciences Division (ESD) in assessing its records management needs, including TSCA CBI, and in identifying and analyzing alternative records management system approaches for ESD.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-W9-0052, LAI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. LAI personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide LAI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Region V facilities only.

Clearance for access to TSCA CBI under this contract may continue until September 31, 1994.

LAI personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: May 6, 1991.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-11291 Filed 5-10-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-59297A; FRL-3925-9]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME-91-13 and TME-91-14. The test marketing conditions are described below.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Rick Keigwin, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, rm. E-611, 401 M St. SW., Washington, DC 20460 (202) 382-2440.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury to human health or the environment.

EPA hereby approves TME-91-13 and TME-91-14. EPA has determined that test marketing of these new chemical substances described below, under the conditions set out in each TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the respective application. All other conditions and restrictions described in the applications and in this notice must be met.

The following additional restrictions apply to TME-91-13 and TME-91-14:

1. The TME substances shall only be manufactured at the site identified in the TME applications.

2. A bill of lading accompanying each shipment must state that the use of the substances is restricted to that approved in the specific TME.

3. The applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

a. Records of the quantity of each TME substance produced and the date of manufacture.

b. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

c. Copies of the bill of lading that accompanies each shipment of each TME substance.

TME-91-13

Date of Receipt: March 25, 1991.

Notice of Receipt: April 26, 1991 (56 FR 19360).

Applicant: Confidential.

Chemical: (G) Alkyl polyamine derivative.

Use: (G) Dispersive use.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

TME-91-14

Date of Receipt: March 25, 1991.

Notice of Receipt: April 26, 1991 (56 FR 19360).

Applicant: Confidential.

Chemical: (G) Alkyl polyamine derivative.

Use: (G) Dispersive use.

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Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: Confidential.
Risk Assessment: EPA identified no significant human health concerns for these test market substances. However, the Agency did identify potential environmental concerns for the test market substances. Based on Quantitative Structural Activity Relationships ("QSARs") derived from test data on structurally similar compounds, EPA expects toxicity to aquatic organisms to occur at a concentration of 2 parts-per-billion ("ppb") TME substance in surface waters. Although EPA expects that the TME substances will be released to surface waters during manufacturing operations, the Agency predicts that receiving stream concentrations will be significantly below the Agency's aquatic concern concentration. The Agency predicts no releases to water during use operations. Therefore, the test market activities described in these TME applications will not present an unreasonable risk of injury to human health or the environment. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to human health or the environment.

Dated: May 6, 1991.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 91-11232 Filed 5-13-91; 8:45 am]

BILLING CODE 6560-50-F

GENERAL SERVICES ADMINISTRATION

Corrections to a Notice of Intent to Prepare a Supplemental Draft Environmental Impact Statement for the Proposed Acquisition of Land for Construction of Office Space in Northern Virginia for use by the Department of the Navy

This is a correction to a notice published May 3, 1991 at 56 FR 20429.

This notice supercedes any other previous notices appearing in this publication concerning the preparation of a Supplemental Draft Environmental Impact Statement for the consolidation of the Naval Systems Commands in northern Virginia.

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500-1508), the General Services Administration (GSA) announces its intent to prepare a Supplemental Draft Environmental Impact Statement (SDEIS) for the acquisition of interests in land to construct thereon buildings to house the Naval Systems Command in at least 1,000,000 (one million) occupiable square feet of office and related space. All sites must have the capacity to house at least an additional 1,000,000 (one million) square feet of office and related space available for purchase at the option of the Government. The Navy will act as a cooperating agency during preparation of the EIS pursuant to 40 CFR 1501.6. Acquisition of land will allow the Government to construct office space for the Navy to consolidate its offices, which are scattered in 20 leased buildings in northern Virginia, into one location.

In response to a recent GSA advertisement, the Government received 20 expressions of interest from potential private and public offerors. These responses are listed in this notice in the interests of public information, and must satisfy the Government's site selection criteria in order to be considered as a potential Navy site. The possible alternatives are:

1. No Action—No change in the current pattern of office space usage by the Navy.

2. Franconia—This 72 acre Government-owned site is bounded by the Springfield Bypass (currently under construction) to the north, the Gray Concrete and Pipe company to the east, Loisdale Estates to the south, and Loisdale Road to the west.

3. Cameron Station—This 165 acre Government-owned site is bounded by Duke Street to the north, Holmes Run to the east and Backlick Run to the south. Cameron Station is currently under the control of the Department of the Army. Under provisions of the Defense Authorization Amendments and Base Closure and Realignment Act of 1988, Cameron Station is scheduled to be closed by 1995 and the land may be transfered or sold to other Federal, state or local agencies, or to the general public.

4. Cameron Station—This 21 acre privately-owned site is bounded by RF&P right-of-way to the north, Bluestone Road to the east, Eisenhower Avenue to the south, and Lake Cook to the west.

5. Van Dorn Street—This 32.8 acre privately-owned site is bounded by the creek abutting the Southern Railroad yard to the north, by the proposed intersection of Clermont Drive and Eisenhower Avenue to the east and south.

6. Seminary Road—This 55 acre privately-owned site is bounded by Seminary Road to the north, I-395 to the east, and North Beauregard Street to the west.

7. Potomac Greens—This 38 acre privately-owned site is approximately 2,200 feet south of Four Mile Run and 1,500 feet north of Slaters Lane, and is bounded by the George Washington Memorial Parkway to the east and the Metrorail right-of-way to the west.

8. Port Potomac—This 24.6 acre privately-owned site is bounded by Crystal City to the north, the RF&P railroad mainline right-of-way to the east, Four Mile Run to the south, and Jefferson Davis Highway and Crystal Drive to the west.

9. Crystal City—This privately-owned site includes the 16.8 acre Hayes Street site, which is bounded by Hayes Street to the west, 15th Street to the south, South Fern Street to the east and 12th Street to the north; and several existing buildings (Crystal Gateway 1, 2, and 3, and Jefferson Plaza 2) bounded on the north by 12th Street, on the east by Crystal Drive, on the South by 15th Street, and on the west by South Clarke Street.

10. Gallows Road—This 20 acre privately-owned site is bounded by Gatehouse Road to the north, I-495 to the east, Route 50 to the south, and Gallows Road to the west.

11. Kingstowne—This 150 acre privately-owned site is bounded by King Center Parkway to the north and west, Van Dorn Street to the east, and South King Center Drive to the south.

12. Cherokee Avenue—This 50 acre privately-owned site is bounded by Indian Run Park to the north and east, Cherokee Avenue to the south, and Shawnee Road to the west.

13. Bush Hill—This 59.4 acre privately-owned site is composed of three parcels; the first parcel is generally bounded by I-95 to the north, Overly Drive and Larpin Lane to the east, and Janes Way Court and Neville Court to the south; the second parcel is generally bounded by RF&P railroad right-of-way the north, I-95 to the south, and the end of Vine Street to the West; the third parcel is generally bounded by Eisenhower Avenue to the north, the City of Alexandria Boundary Line to the south, and is about 1,000 feet west of Clermont Avenue.

14. Turkeycock Run—This 115 acre privately-owned site is bounded by I-395 to the north and west, Turkeycock Run to the east, and Edsall Road to the south.

15. Industrial Road—This 100 acre privately-owned site is bounded by Edsall Road to the north, Industrial Drive to the east, and Industrial Road to the south.

16. Spring Mall Road—This 46 acre privately-owned site is bounded by Spring Mall Road to the northwest, Elder Road to the east, the intersection of Elder Road and Melia Avenue to the southeast, and Loisdale Road to the west.

17. Tysons Corner—This 19.9 acre privately-owned site consists of four existing buildings and associated parcels located near the intersection of Tysons Blvd. and Tysons Parkway.

18. Clarendon—This site consists of a 1.72 acre privately-owned parcel generally bounded to the northeast by 13th Street, to the southeast by Wilson Blvd., to the southwest by Herndon Street, and to the northwest by Hartford Street; and other parcels totaling 6.21 acres generally bounded to the north by Clarendon Blvd., to the east by Fillmore Street, to the south by Washington Blvd., and to the west by Highland Street.

19. South Fern Street—This privately-owned 27.7 acre site is bounded to the north by Army-Navy Drive, to the east by South Eads Street, to the south by 15th Street, and to the west by South Fern Street.

20. Eisenhower Avenue—This 16.8 acre privately-owned site is bounded by Mill Road to the north and east, Eisenhower Avenue to the south, and Stoval Street to the west.

Potential environmental impacts resulting from the proposed action include short term impacts during construction, and long term changes in traffic, socio-economic and fiscal conditions. GSA will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this proposed action. A public scoping meeting will be held on May 14, 1991, starting at 7 p.m. in the auditorium of the Lee Center located at 1108 Jefferson Street, Alexandria, Virginia; on May 15, 1991, starting at 7 p.m. at the Aurora Hills Recreation Center located at 735 South 18th Street, Arlington, Virginia; and on May 16, 1991, starting at 7 p.m. at the Hayfield High School Lecture Room located at 7630 Telegraph Road, Alexandria, Virginia. A short formal presentation will precede the request for public comments. GSA representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that Federal, state and county agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the SDEIS. In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes.

Agencies and the general public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address.

Written statements and/or questions regarding the scoping process should be mailed no later than May 31, 1991, to Mr. George Chandler—WPL, National Capitol Region, General Services Administration, 7th & D Streets SW., room 7062, Washington, DC 20407 (telephone 202/708-5334).

Dated: May 6, 1991.

Daniel Neal,

Deputy Director, NCR Planning Staff.

[FR Doc. 91-11225 Filed 5-10-91; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; Revision to Existing System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of revision of Privacy Act system of records.

SUMMARY: Notice is hereby given that HCFA is revising one of its systems of records, the Medicare Physician Supplier Master File, HHS/HCFA/BPO No. 09-70-0516, most recently published at 55 FR 18179, on May 1, 1990. The notice is being revised to rescind the routine use number six (6), published May 1, 1990, and to notify the public that Section 4164(b) of the Omnibus Budget Reconciliation Act (OBRA) of 1990 requires HCFA "to publish a directory of the unique physician identification numbers (UPIN) of all physicians providing services for which payment may be made under part B of title XVIII of the Social Security Act, and shall include in such directory the names, provider numbers, and billing addresses of all listed physicians." Release of the UPINs will enable HCFA to better execute regulations found at 42 Code of Federal Regulations (CFR) 421.200, as well as the provisions of section 6204 of OBRA 1989. The latter requires laboratories and other health care entities to disclose any ownership interest by physicians.

EFFECTIVE DATE: The proposed procedural change shall take effect without further notice upon publication (May 13, 1991).

FOR FURTHER INFORMATION CONTACT: Phillip Brown, Division of Operational Initiatives, Office of Program Administration, Bureau of Program Operations, Health Care Financing Administration, room 368, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 966-7158.

SUPPLEMENTARY INFORMATION:

Legislative Background

In 1988, HCFA established a new system of records, under the authority of section 9202(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) (42 U.S.C. section 1395ww(note)), to maintain a UPIN for each physician who provides services for which payment is made under Medicare. Notice of this system, the "Medicare Physician Identification and Eligibility System (MPIES)," HHS/HCFA/BPO, no. 09-70-0525, was most recently published at 54 FR 28119, on July 5, 1989.

Section 1862(a) of the Social Security Act states that "* * * no payment may be made under part A or part B for any expenses incurred for items or services which * * * are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member * * *." Further, regulations found at 42 CFR 421.200 require HCFA to implement methods and procedures for identifying utilization patterns that deviate from professionally established norms, both in the performance of services and in the referral of patients for other services or ordering of other services or supplies. To implement these restrictions on payment, through contractors, HCFA reviews claims data for services and supplies which are provided directly by the physician, or which the physician causes to be performed or provided, to ensure that the services are medically necessary and in line with professionally accepted norms. The proposed system to collect the necessary data requires labs and durable medical equipment (DME) suppliers, as well as consulting physicians, to show on the Medicare claim form the UPIN of the ordering or referring physician.

Section 6204 of OBRA 1989 requires HCFA carriers to establish, effective in

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January 1992, a system to identify the physician owners/investors in labs and other health care businesses so that HCFA can track the rate of physician referrals to businesses in which the physicians have a financial interest. The proposed tracking system would incorporate use of the UPINs to identify physician owners/investors.

Operational Background

The use of the UPIN is required in the above instances because it is the only nationally assigned number that is unique to the physician. Physicians billing multiple carriers have separate identification numbers at each carrier location. Moreover, a single carrier can assign multiple numbers to a single physician if that physician bills from multiple offices or is operating both a group and solo practice. Carriers may also assign one number to a group practice as a whole. It is impossible to establish any sort of separate billing pattern for individual physicians in group practices if the physician uses a number assigned to the group practice as a whole.

A nationally assigned number that is unique to the physician is required because many labs and DME suppliers have large geographic markets that include many carriers' jurisdictions and the physician number assigned by the local carrier to the physician would be meaningless to the processing carrier.

The data flow that was envisioned to enable Medicare to identify the referring or ordering physician requires the physician to include his or her UPIN on the referral or prescription/order for additional services or supplies; however, we have found that not all physicians comply with the request for this information in their paperwork. As such, the lab or DME supplier does not know the UPIN of the referring/ordering physician at the time it wishes to submit its claim for services/supplies.

To provide the information the lab or DME supplier needs to file its claim, as well as to permit the release of the UPIN to physicians and others who perform a service ordered or referred by another physician, in May 1990, HCFA added the UPIN and a new routine use to another Privacy Act system of records, the Medicare Physician Supplier Master File. That routine use was set forth, however, in a way which permits the disclosure of the UPIN *only* upon written request by a third party biller at the time it needs the information to complete a claim.

Proposed Change

Congress enacted OBRA 90 which requires HCFA to publish annually a directory containing the UPIN, the name, and the local carrier assigned provider number of each physician it has on its Physician Supplier Master File. The Government Printing Office will publish the directory. The directory will be divided into 22 volumes, recognizing logical marketing areas and limiting the number of pages in each volume. Initial copies of the directory would be provided at no cost to health care entities providing services to Medicare beneficiaries and submitting claims for which the requirement for the UPIN of the referring or ordering physician applies.

Requests by providers or suppliers for additional copies of directories and requests from other parties may be submitted to the Government Printing Office, which will offer the directory for sale. This charge will include the actual unit printing cost of the directory, an administrative handling charge, and postage and packaging. Because the directories are offered for sale, these requests are not processed as Freedom of Information Act requests.

We emphasize that the information in the directory will be *business* information only; no personal information about the physician will be published. Therefore, there is no unwarranted invasion of the individual physician's privacy. We point out also that the publication of directories will not establish access to either the Medicare Physician Identification and Eligibility System (09-70-0525) or the Medicare Physician Supplier Master File (09-70-0516). Access by third parties to those systems will continue to be limited to the routine uses established in the respective systems of records notices.

Therefore, we are rescinding routine use number six(6) of the Medicare Physican Supplier Master File, HHS/HCFA/BPO No. 09-70-516, (see below) published May 1, 1990. This provides notice to the public that the release of UPINs necessary to fulfill the requirements of OBRA will be accomplished through the publication of UPIN directories.

Rescind: Medicare Physician Supplier Master File, HHS/HCFA/BPO, No. 09-70-516.

(6) To certain third parties, e.g., physicians, suppliers, third party billers, laboratories, and providers, for purposes of allowing them to submit complete claims to Medicare including the UPIN of the physician who ordered the service or referred the patient, if HCFA:

a. Determines that the party has a claim involving the physician;

b. Limits the disclosure to the minimal segment of information necessary to effect the program purpose for which disclosure was authorized;

c. Requires the recipient of the information to make no further use of the record.

We are publishing the Medicare Physician Supplier Master File, HHS/HCFA/PBO No. 09-70-0516 below.

Dated: May 2, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

09-70-0516

SYSTEM NAME:

Medicare Physician/Supplier Master File HHS/HCFA/BPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Carriers under contract to the Health Care Financing Administration and the Social Security Administration. (See Appendix C, Section 4.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Physicians and suppliers who provide medical services or supplies to Medicare beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

A compilation of data designed to identify physicians, suppliers, and other health care practitioners (name, UNPIN, practice location, and specialty); historical charge data on which customary and prevailing charges are based; and other data needed for computing Medicare payments amounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1833, 1835, 1842 and 1874 of Title XVIII of the Social Security Act (42 U.S.C. 1395l, 1395n, 1395u, and 1395kk).

PURPPOSE(S):

To determine health care reasonable charges and the geographical area prevailing charges.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system may be disclosed (1) to a provider, the claimant or a prosepctive claimant, the name of a physician who has been found ineligible to submit claims under Section 1814(h) (Payment for Posthospital Extended Care Services) for Section 1814(i) (Payment for Posthospital Home Health Services) to Title XVIII of the Social Security Act. (2) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. (3) Disclosure may be made to the Title XIX State agency or the Titile XIX fiscal agents of the customary and prevailing charge screens and whatever other information is contained in the file and would be required to determine "reasonable charges" as required under section 103(i)(1) of the Social Security Act. (4) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States of any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(5) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidential to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tape, copy paper, disk, mocrofilm, and hard copy paper.

RETRIEVABILITY:

The records are retrieved by UPIN; by the practioner's/supplier's Employer Identification Number or other tax reporting number; and by the locally assigned billing number.

SAFEGUARDS:

Disclosure of records is limited to carrier personnel on a need-to-know basis. However, the UPIN is releasable to physicians, suppliers, third party billers, laboratories, and providers billing Medicare to ensure that the UPIN is included on Medicare claim forms and billings to identify the referring and/or ordering physicians.

The files are closed to unauthorized personnel. The determination as to which personnel are authorized will vary slightly in different carrier installations. All carriers have guards at the building entrance to prevent intrusion by individuals not employees or not having business with the carrier. One or more of the following security measures are used within the building: Color coded identification cards are used to establish the right of an employee to be in a specific area; cipher locks are used to protect files and computer areas; magnetic identification cards are used to gain access to security sensitive areas; video monitoring of sensitive areas is constant.

By law, HCFA is required to publish a directory containing the names, UPINs, and billing addresses of all physicians providing services for which part B Medicare payment may be made.

RETENTION AND DISPOSAL:

Submitted charge records are closed out the first quarter following the close of the previous fee screen year. Files are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Bureau of Program Operation, Director, Division of Carrier Procedures, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for records information should be directed to the carrier servicing the physician's or supplier's geographical area. Individuals who want to determine if they have a record in this system must provide their full name and address.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should reasonably specify the record contents being sought. (These access procedures are in accordance with Department regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the Systems Manager at the address specified above and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations, 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

Information contained in these records is furnished in part by the individual physicians or supplier and in part abstracted from Medicare Part B billing records and from the "Medicare Physician Identification and Eligibility System (MPIES)", HHS/HCFA/BPO, No. 09-70-0525.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91-11036 Filed 5-10-91; 8:45 am]

BILLING CODE 4120-03

Public Health Service

Indian Health Service; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HG (Indian Health Service) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Public Health Service (PHS), Chapter HG, Indian Health Service (IHS), 52 FR 47053-67, December 11, 1987, as most recently amended at 55 FR 50686-87, December 11, 1990, is amended to reflect the establishment of an organizational substructure for the Billings Area Office to more accurately reflect current activities in the Area Office.

Under *Chapter HG, Section HG-20, Functions,* after the statement for the *IHS Area Office (HGF), Information and Resources Management Programs,* insert the following:

Billings Area Office (HGFF)

Office of the Area Director (HGFF1). (1) Plans, develops and directs the Area Program within the framework of IHS policy in pursuit of IHS mission; (2) delivers and ensures the delivery of high quality comprehensive health services; (3) coordinates the Indian Health Service activities and resources internally and externally with those of other governmental and nongovernmental programs; (4) promotes optimum utilization of health care services through management and delivery of services to American Indians and Alaska Natives; (5) encourages the full application of the principles of Indian preference and EEO; and (6) provides Indian tribes and other Indian community groups with optional ways of participating in the Indian Health programs including an opportunity to participate in developing the goals and objectives for the Billings Area Indian Health Service.

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Office of Administrative Support (HGFF2). (1) Plans, coordinates, implements, and evaluates administrative management support activities; (2) advises the Area Director on all matters relating to Area management and administrative support activities; (3) provides guidance to the Area on program policy interpretation in budget formulation and execution, preparation of program planning and budgeting data, and financial management of grants and contracts; (4) participates in the allocation of the Area's human and manpower resources and funding resources; (5) interprets policy and provides direction in the conduct of the Area's management; (6) maintains necessary liaison with various components of the Indian Health Service and Public Health Service and other activities in the furtherance of the Area's management activities; (7) plans, coordinates, implements, and evaluates the Area Directives Control program; (8) coordinates the implementation of the Area internal control procedures for administrative functions; and (9) plans, coordinates, implements, and evaluates the Area third party billing and collection program (Medicare/Medicaid, private insurance), and medical records.

Office of Tribal Programs (HGFF3). (1) Participates in the development and advancement of tribal and Indian organizations' capability to manage health programs; (2) coordinates the Billings Area Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) activities and provides technical assistance to tribes, tribal leaders, and tribal health organizations in the planning and development of tribal management of Indian Health Service (IHS) functions; (3) serves as liaison on matters relating to tribal health programs; and (4) administers the urban health and community health representative programs, the tribal health/management programs, and auditing services.

Office of Program, Planning, Evaluation & Information Systems (HGFF6). (1) Plans, coordinates, implements, and evaluates a health planning system and facility construction design as well as determine unmet health needs; (2) advises on planning and evaluation activities, collection and use of health statistical data, and automated data processing (ADP) activities; and (3) serves as liaison for the coordination of health planning in conjunction with other agencies.

Office of Health Care Programs (HGFF7). (1) Plans, coordinates, implements directs, and evaluates the Area health care programs; (2) advises the Area Director on all matters related to health care program operations; (3) monitor and reviews health care operations including the coordination of reviews by Medicare/Medicaid and Joint Commission on Accreditation of Healthcare Organizations survey teams and other health professional review teams; and (4) identifies required program resources and/or realigns existing resources.

Office of Environmental Health and Engineering (HGFF9). (1) Plans, coordinates, implements, directs, and evaluates an environmental health and engineering program; (2) advises the Area Director on environmental health matters; (3) coordinates activities designed to effect environmental improvement in the Indian home, community, work, and institutional environments; (4) provides advisory and consulting services regarding sanitation practices, hazardous conditions, and those physical, social, and behavioral factors which affect the environment; (5) provides direction on constructing, maintaining, and improving the Indian Health Service health facilities; and (6) develops projects for institutional sanitation, community injury control and emergency preparedness.

Billings Area Service Units (HGFFA through HGFFE and HGFFH, HGFFJ, and HGFFK). Blackfeet Service Unit (HGFFA); Crow Service Unit (HGFFB); Flathead Service Unit (HGFFC); Fort Belknap Service Unit (HGFFD); Fort Peck Service Unit (HGFFE); Wind River Service Unit HGFFH); Rocky Boys Service Unit (HGFFJ): Northern Cheyenne Service Unit (HGFFK). (1) Plans, develops and directs health programs within the framework of IHS policy and mission; (2) promotes activities to improve and maintain the health and welfare of the service population; (3) delivers quality health services with available resources; (4) coordinates service unit activities and resources with those of other governmental and non-governmental programs; (5) participates in the development and demonstration of alternative means and techniques of health services management and health care delivery; (6) provides Indian tribes and other Indian community groups with optimal means of participating in service unit programs; and (7) encourages and supports the development of individual tribal entities in the management of the service unit.

Under *Section HG-30, Order of Succession,* following item number (4) add: During the absence of disability of the Area Director of the Billings Area Office, or in the event of a vacancy in that Office, the first Area Office official listed below who is available shall act as the Area Director, except that during a planned period of absence, the Area Director may specify a different order of succession. The order of succession will be:

(1) Deputy Area Director, Billings Area Indian Health Service,

(2) Associate Director, Office of Administrative Support,

(3) Associate Director, Office of Health Care Programs,

(4) Associate Director, Office of Program Planning, Evaluation and Information Systems,

(5) Associate Director, Office of Tribal Programs,

(6) Associate Director, Office of Environmental Health and Engineering.

Section HG-40 Delegations of Authority. Add the following new paragraph: All delegations and redelegations of authority made to IHS Area Offices which were in effect immediately prior to this reorganization, and which are consistent with the reorganization of January 16, 1989, shall continue in effect pending further redelegation.

Dated: May 6, 1991.

Everett R. Rhoades,

Assistant Surgeon General Director.

[FR Doc. 91-11267 Filed 5-10-91; 8:45 am]

BILLING CODE 4160-16-M

HEALTH AND HUMAN SERVICES

Social Security Administration

Supplemental Security Income Modernization Project; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting.

The Social Security Administration (SSA) announces a meeting of the Supplemental Security Income (SSI) Modernization Project (the Project). This notice also describes the proposed agenda, purpose, and structure of the Project.

DATES: June 26-27, 1991, 8:30 a.m. to 5 p.m.

ADDRESSES: Social Security Administration Headquarters, Altmeyer Building, Multipurpose Room, 6401 Security Boulevard, Baltimore, MD 21235 (Enter and obtain a visitor parking pass at the Security Boulevard main entrance if parking on Social Security Administration property.

FOR FURTHER INFORMATION CONTACT: SSI Modernization Project Staff, room 300, Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-3571.

SUPPLEMENTARY INFORMATION: SSA is undertaking a comprehensive examination of the SSI program, reviewing its fundamental structure and purpose. The SSI program has been in operation for over 17 years. The purpose of the Project is to determine if the SSI program is meeting and will continue to meet the needs of the population it is intended to serve in an efficient and caring manner, recognizing the constraints in the current fiscal climate.

The first phase of this Project is intended to create a dialogue that provides a full examination of how well the SSI program serves the needy aged, blind, and disabled.

To begin this dialogue, the Commissioner has involved 23 people who are experts in the SSI program and/or related public policy areas. The experts include a wide range of representatives of the aged, blind, and disabled from private and nonprofit organizations and Federal and State government as well as former SSA staff. Like members of the public attending this meeting, the experts will be able to express their individual views and concerns about the SSI program. Dr. Arthur S. Flemming, former Secretary of Health, Education and Welfare, will chair the meeting. The purpose of this initial dialogue is to exchange ideas and existing information about the program. This exchange will facilitate the sharing of ideas among attendees' constituencies, including advocacy groups, state and local government and academicians. The outcome will be a more informed public that has an interest in bringing individually produced innovative ideas for change in the SSI program to the Modernization Project.

This is the ninth in a series of meetings that have been held throughout the country. Each of these meetings will also be open to the public to the extent that space is available. All meetings will be announced in the **Federal Register**.

We welcome written comments that identify concerns and recommend improvements to any SSI programmatic or procedural issue. Written comments should be submitted to the Project Staff.

A summary of the meeting will be available at no charge. The transcript of the meeting will be available at cost. Summaries and transcripts may be ordered from the Project Staff. The transcript and all written submissions will become part of the record of these meetings.

Dated: May 7, 1991.

Peter Spencer,

Director, SSI Modernization Project Staff.

[FR Doc. 91-11270 Filed 5-10-91; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Motor Vehicle Use Restrictions; CA and NV; Notice: Route of Travel Designation Decisions for Eagle Lake Resource Area, Susanville District, Lassen County, CA, and Camping Regulations for all of Susanville District in Lassen, Modoc, Siskiyou, Plumas, Sierra, and Shasta Counties in California, and Washoe and Humboldt Counties in Nevada

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Designation of routes of travel for Motorized Vehicles on Public Lands Administered by the Bureau of Land Management (BLM) in the Eagle Lake Resource Area, and Camping Regulations for the Alturas, Surprise and Eagle Lake Resource Areas, Susanville District, California and Nevada.

SUMMARY: The purpose of these route designations is to provide for the management and protection of public land resources, persons and property using the public lands, and to minimize conflicts among the various users of those lands.

In accordance with title 43, Code of Federal Regulations, part 8340, (43 CFR 8340) notice is hereby given that the following portions of the Eagle Lake Resource Area administered by the Bureau of Land Management and used by motorized vehicles are open to all cross-country travel within the areas marked "Open" as shown on maps available at Eagle Lake Resource Area, Ref: Eagle Lake Basin Plan 01-20-91, Honey Lake-Beckwourth Management Framework Plan MFP 6-6-84, Cal-Neva MFP 6-30-75, Willow Creek MFP 6-30-72.

In accordance with 43 CFR 8340, notice is hereby given that off-highway vehicle use of motorized vehicles on the following portions of the Eagle Lake Resource Area administered by the Bureau of Land Management is limited to existing improved and unimproved roads (trails) within the areas marked "Limited" as shown on maps available at Eagle Lake Resource Area, Ref: Eagle Lake Basin Plan, 01-20-91, Honey Lake-Beckwourth Management Framework Plan (MFP) 6-6-84, Cal-Neva MFP 6-30-75, Willow Creek MFP 6-30-72.

In accordance with 43 CFR 8340, notice is hereby given that portions of the Eagle Lake Resource Area administered by the Bureau of Land Management are closed to all mortorized vehicle use, except for emergency vehicles, fire suppression and rescue vehicles, BLM operation and maintenance vehicles and other motorized vehicles on official business specifically approved by an authorized officer of the Bureau of Land Management. The boundaries of said areas are marked "Closed" as shown on maps available at Eagle Lake Resource Area, Ref: Eagle Lake Basin Plan, 01-20-91, Honey Lake-Beckwourth Management Framework Plan (MFP) 6-6-84, Cal-Neva MFP 6-30-75, Willow Creek MFP 6-30-72.

Certain roads and other areas specifically excepted from this closure are described in the supplementary rules. This closure is subject to valid existing rights.

In accordance with 43 CFR 8365.1-6, the following supplementary rules are hereby established for the Eagle Lake Resource Area.

1. Motorized vehicle use of Eagle Lake shoreline is hereby limited to constructed and/or maintained BLM designated access roads, boat launch access roads and parking areas as shown on BLM maps at on-site bulletin boards and information kiosks or available from the BLM Eagle Lake Resource Area Office, 2545 Riverside Drive, Susanville, CA 96130.

2. All motorized vehicle operations must be on authorized routes in accordance with State law governing vehicle licensing and operation on public roads and be within posted speed limits.

3. Motorized vehicle use is prohibited within the waters of Eagle Lake with the exception of vehicle use for small boat launching at designated launch sites. No vehicle shall remain in the waters of Eagle Lake any longer than necessary to launch or retrieve a boat from the water. Operation of water craft on the waters of Eagle Lake is governed by separate State of California regulations.

4. Firearms discharge is prohibited in all developed sites as per 43 CFR 8365.2-5(a). Developed sites at Eagle Lake are the North Eagle Lake Campground; Rocky Point east shoreline access area from the entrance road cattleguard south 1.3 miles and 300 feet from the lakeshore. In addition, firearms discharge is prohibited within 300 feet of Eagle Lake along Highway 139 from Highway 139 milepost 24.09 north to

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milepost 30.0; and on all public lands in T.32N, R.11E, M.D.M., section 15 and in section 22 W½ of NE¼, E½ of NW¼, SW¼ and SW¼ of SE¼.

5. In developed sites at Eagle Lake, inclusive of drive-in access areas along Rocky Point and Highway 139 as described in Supplementary Rule No. 4, all visitors must collect and dispose of all wash water (grey water) at vault toilets or at recreational vehicle dump stations.

6. In developed sites at Eagle Lake, inclusive of drive-in access areas along Rocky Point and Highway 139 as described in Supplementary Rule No. 4, all visitors must use toilets provided or use self-contained portable toilets. All wastes collected in portable toilets must be disposed of at designated waste dump stations.

In accordance with 43 CFR 8365.1–6, the following supplementary rules are hereby established for the entire Susanville District.

1. Firearms discharge is prohibited within ¼ mile of all trailheads on the Susanville District.

2. Persons camping on the public lands in the Susanville District are limited to a total of twenty-eight (28) days per year in each of the three (3) resource areas. A fourteen (14) day consecutive limit is established for any one location. Campers must move a minimum of 2 miles when changing from one location to another. Under special circumstances and upon request, the authorized officers may give written permission for extension of these limits.

3. No person may leave personal property unattended in campgrounds, developed recreation areas or elsewhere on public lands within the Susanville District for a period of more than seventy two (72) hours without written permission from the authorized officer.

4. No person shall discharge or ignite a firecracker, rocket or other firework, or explosive without authorization from the BLM.

5. No person shall cut or remove live standing trees or any portion thereof except when authorized by BLM permits or timber sale contracts.

6. Campfires are allowed in designated fire-safe areas or no existing natural bare mineral soil where ten (10) feet or more of clearance exists between the campfire area and adjacent vegetation. Persons using campfires are required to have a campfire permit issued by the Bureau of Land Management, the U.S. Forest Service, or the California Department of Forestry. All campfires are subject to seasonal fire restrictions.

DATES: These designations and regulations are effective upon publication of this notice and will remain in effect until rescinded or modified by the authorized officer. Enforcement of these designations and regulations will be implemented as routes are signed or as maps are printed and made available to public.

FOR FURTHER INFORMATION CONTACT: Stan Bales, Outdoor Recreation Planner, Eagle Lake Resource Area, 2545 Riverside Drive, Susanville, CA 96130 (916) 257–0456; hours 7:45 a.m. to 4:30 p.m., Monday through Friday. Maps of the open, limited and closed designations are available at the Eagle Lake Resource Area Office during business hours.

SUPPLEMENTARY INFORMATION: These vehicle route designations and supplementary rules are enforceable under the authority provided in the Federal Land Policy and Mangement Act (43 U.S. 1701 *et seq.*), Executive Order (EO) 11644 (Use of Off-Road Vehicle on Public Lands), and 3 CFR 74.332 as amended by EO 11989 (vol. 42, Federal Register, page 26959, May 25, 1977). Any person who violates or fails to comply with the vehicle route designations as governed by 43 CFR part 8341 is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000 and/or imprisonment not to exceed more than 12 months.

The camping stay limit is being established in order to assist the Bureau in reducing the incidence of long-term occupancy trespass under the guise of camping on public lands within the Susanville District. Of equal importance is the problem of long-term camping which creates conflicts with other authorized users and uses.

Authority of this camping stay limit is contained in 43 CFR, part 8360.

PENALTIES: Violations of any regulations in this part by a member of the public, except for the provisions of 8365.1–7, are punishable by fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Violations of supplementary rules authorized by 8365.1–6 are punishable in the same manner.

Dated: April 26, 1991.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 91–11158 Filed 5–10–91; 8:45 am]

BILLING CODE 4310–40–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 27, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by May 28, 1991.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Calhoun County

Downtown Anniston Historic District, Roughly bounded by Moore Ave., 14th St., Wilmer Ave. and 9th St., Anniston, 91000668.

West Fifteenth Street Historic District, 416—712 W. Fifteenth St., Anniston, 91000662.

Jefferson County

Automotive Historic District, Roughly bounded by First Ave. N., 24th St. S., Fifth Ave. S. and 20th St. S., Birmingham, 91000661.

CALIFORNIA

Butte County

South of Campus Naighborhood, Bounded by W. 2nd, Normal, W. 6th and Cherry Sts., Chico, 91000836.

WASHINGTON

Asotin County

US Post Office—Clarkston Main (Historic US Post Offices in Washington MPS), 949 6th St., Clarkson, 91000842.

Benton County

US Post Office—Prosser Main (Historic US Post Offices in Washington MPS), 1108 Meade Ave., Prosser, 91000853.

Clark County

US Post Office—Camas Main (Historic US Post Offices in Washington MPS), 440 NE., Fifth Ave., Camas, 91000839.

US Post Office—Vancouver Main (Historic US Post Offices in Washington MPS), 1211 Daniels, Vancouver, 91000859.

Cowlitz County

US Post Office—Kelso Main (Historic US Post Offices in Washington MPS), 304 Academy St., Kelso, 91000846.

US Post Office—Longview Main (Historic US Post Offices in Washington MPS), 1203 Larch St., Longview, 91000847.

Grays Harbor County

US Post Office—Hoquiam Main (Historic US Post Offices in Washington MPS), 620 Eighth St., Hoquiam, 91000845.

US Post Office—Montesano Main (Historic US Post Offices in Washington MPS), 211 Pioneer Ave. N., Montesano, 91000849.

Jefferson County

US Post Office—Port Townsend Main (Historic US Post Offices in Washington MPS), 1322 Washington, Port Townsend, 91000852.

Kitsap County

US Post Office—Bremerton Main (Historic US Post Offices in Washington MPS), 602 Pacific Ave., Bremerton, 91000838.

Lewis County

US Post Office—Centralia Main (Historic US Post Offices in Washington MPS), 214 W. Locust, Centralia, 91000840.

US Post Office—Chehalis Main (Historic US Post Offices in Washington MPS), 1031 NW. Cascade, Chehalis, 91000841.

Okanogan County

US Post Office—Okanogan Main (Historic US Post Offices in Washington MPS), 212 Second Ave. N., Okanogan, 91000850.

US Post Office—Omak Main (Historic US Post Offices in Washington MPS), 104 S. Main St., Omak, 91000851.

Pacific County

US Post Office—Raymond Main (Historic US Post Offices in Washington MPS), 406 Duryea St., Raymond, 91000854.

Pierce County

US Post Office—Tacoma Downtown Station (Historic US Post Offices in Washington MPS), 1102 S. A St., Tacoma, 91000857.

Skagit County

US Post Office—Sedro Woolley Main (Historic US Post Offices in Washington MPS), 111 Woodworth St., Sedro Woolley, 91000856.

Stevens County

US Post Office—Colville Main (Historic US Post Offices in Washington MPS), 204 S. Oak, Colville, 91000844.

Walla Walla County

US Post Office—Walla Walla Main (Historic US Post Offices in Washington MPS), 128 N. Second St., Walla Walla, 91000860.

Whatcom County

US Post Office—Lyden Main (Historic US Post Offices in Washington MPS), 600 Front St., Lyden, 91000848.

Whitman County

US Post Office—Colfax Main (Historic US Post Offices in Washington MPS), S. 211 Main St., Colfax, 91000843.

Yakima County

US Post Office—Sunnyside Main (Historic US Post Offices in Washington MPS), 713 E. Edison Ave., Sunnyside, 91000858.

US Post Office—Toppenish Main (Historic US Post Offices in Washington MPS), 14 Jefferson Ave., Toppenish, 91000858.

The commenting period has been waived for the following property:

WYOMING

Teton County

Lake Hotel, NW shore of Lake Yellowstone, Yellowstone National Park, 91000837.

[FR Doc. 91–11313 Filed 5–10–91; 8:45 am]

BILLING CODE 4310–70–M

LEGAL SERVICES CORPORATION

Grant Awards for Expansion and Development of Law School Civil Canical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation hereby announces its intention to award grants to twenty (20) law school clinical programs to assist LSC-eligible clients with their civil legal cases. Pursuant to the Corporation's announcement of funding availability in Volume 56, No. 19, pages 3285, 3286, and 3287 of the Federal Register of January 29, 1991, a total of $1,183,531 will be awarded to the following schools:

Name of School	State	Amount
1. Suffolk University	MA	$32,490
2. Syracuse University	NY	60,711
3. City University of New York.	NY	60,840
4. Yeshiva University	NY	59,524
5. George Washington University.	DC	49,337
6. Temple University	PA	72,230
7. University of Puerto Rico.	PR	55,000
8. Memphis State University.	TN	56,870
9. Nova University	FL	65,500
10. Stetson University	FL	50,000
11. Southern Illinois University.	IL	68,799
12. Northwestern University	IL	72,220
13. Indiana University	IN	52,960
14. University of Nebraska	NB	29,062
15. University of Iowa	IA	73,625
16. University of Wisconsin	WI	57,000
17. University of Denver	CO	75,000
18. University of California/Berkeley.	CA	75,000
19. University of Colorado	CO	75,000
20. D.C. Law Students in Court Program.	DC	42,363
Total		$1,183,531

These one-time, one-year grants are awarded under the authority of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(f) of the Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. Grant awards will become effective and grant funds will be distributed upon the expiration of this thirty-day public comment period.

DATES: All comments and recommendations must be received on or before the close of business on June 12, 1991, at the Office of Field Services, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses, III, Associate Director, Office of Field Services, (202) 863–1837.

Date Issued: May 8, 1991.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 91–11320 Filed 5–10–91; 8:45 am]

BILLING CODE 7050–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91–40)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Aviation Safety Reporting System Subcommittee.

DATES: June 19, 1991, 10 a.m. to 5 p.m.; and June 20, 1991, 9 a.m. to 1 p.m.

ADDRESSES: General Aviation Manufacturers Association, Conference Room, suite 801, 1400 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Mr. William Reynard, Office of Aviation Safety Reporting System, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/969–3969.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee, Aviation Safety Reporting System Subcommittee was established to provide overall advice and recommendations to the Office of Aeronautics, Exploration and Technology (OAET) on aviation safety needs. The Subcommittee, chaired by Captain C.R. Paty, is composed of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the Subcommittee members and other participants).

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Type of Meeting

Open.

AGENDA

June 19, 1991

10 a.m.—Welcome.
10:15 a.m.—Opening Remarks.
10:30 a.m.—Program Report.
11 a.m.—Operations Report.
1 p.m.—Research Report.
3 p.m.—Aviation Safety Reporting System Program Evaluation.
5 p.m.—Adjourn.

June 20, 1991

9 a.m.—Aviation Safety Reporting System Program Evaluation.
10:45 a.m.—New Business.
1 p.m.—Adjourn.

Dated: May 7, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-11287 Filed 5-10-91; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Availability of Draft Staff Technical Position; Investigations to Identify Fault Displacement and Seismic Hazards at a Geologic Repository

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the draft staff technical position (STP) on "Investigations to Identify Fault Displacement and Seismic Hazards at a Geologic Repository."

DATES: The comment period expires June 27, 1991.

ADDRESSES: Send comments to David L. Meyer, Chief, Regulatory Publications Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of this document may be obtained free of charge upon written request to Anne E. Garcia, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop 4-H-3, Washington, DC 20555. Telephone 301/492-0438. A copy of the draft STP is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street (Lower Level), NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael P. Lee, Project Manager, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop 4-H-3, Washington, DC 20555. Telephone 301/492-0421.

SUPPLEMENTARY INFORMATION: On August 24, 1989, the NRC published the "Notice of Availability" for the "Draft Technical Position (TP) on Methods of Evaluating the Seismic Hazard at a Geologic Repository" and solicited public comments (see 54 FR 35266). As a result, approximately 40 comments were received from three different parties. The NRC staff reviewed the comments and, as a result of these comments and a subsequent technical exchange with the U.S. Department of Energy (DOE), the State of Nevada, Nye County, Nevada and the Edison Electric Institute, changes and clarifications were incorporated into the TP. Staff responses to these comments have been documented separately as an appendix to the draft TP now renamed "Staff Technical Position on Investigations to Identify Fault Displacement and Seismic Hazards at a Geologic Repository."

10 CFR part 60 does not specify the manner in which potential fault displacement and seismic hazards at a candidate site for a geologic repository are to be investigated. Therefore, the Division of High-Level Waste Management has developed this STP in order to provide DOE with guidance on appropriate geologic repository investigations that can be used to identify fault displacement and seismic hazards. The NRC staff considers that a deterministic approach to investigations of fault displacement and seismic phenomena should be applied to DOE's site characterization program. Further, the staff considers that the approach taken in this STP to investigations of fault displacement and seismic phenomena is appropriate for the collection of sufficient data for input to analyses of the fault displacement and seismic hazards, both for the preclosure and postclosure periods of performance.

Finally, the STP introduces the concept of "susceptible" faults and describes an approach through which susceptible faults can be identified and characterized.

Dated at Rockville, Maryland this 6 day of May, 1991.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 91-11306 Filed 5-10-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 55-6615 License No. SOP-10561-1 EA 91-054]

Order Suspending License (Effective Immediately) and Order To Show Cause Why License Should Not Be Revoked

In the matter of David M. Manning Senior Reactor Operator:

I

David M. Manning (Licensee) is the holder of Senior Reactor Operator License No. SOP-10561-1 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 55 on September 9, 1988. The license authorizes the Licensee to manipulate, and supervise the manipulation of, the controls of the nuclear power reactor at the New York Power Authority's (Facility Licensee) Fitzpatrick Nuclear Power Plant in Scriba, New York.

II

On October 9, 1990, the Licensee, while on duty at the Fitzpatrick facility, was requested by the Facility Licensee to provide a urine sample to the nurse at the plant after being randomly selected as part of the routine fitness for duty chemical testing program required of the Facility Licensee by the NRC pursuant to 10 CFR 26.24. After receiving a sample from the Licensee, the nurse checked the temperature of the sample and found that the temperature was below specifications in 10 CFR part 26, appendix A, § 2.4(g)(14), for accepting the sample. As a result, the Licensee was requested to provide another urine sample to the Facility Licensee pursuant to the same section of the appendix. The Licensee refused to provide another sample. As a result, the Facility Licensee, in accordance with 10 CFR 26.27(c), removed the Licensee from licensed operator duties for cause, placed the Licensee on 14 days leave, and referred the Licensee to an Employee Assistance Program. Although the Licensee has completed the inpatient portion of that program, the Licensee is still in an outpatient status, is subject to monthly random testing, and has not been returned to the duties authorized by his part 55 license. However, the Licensee now has unescorted access

and is involved in licensed activities subject to the part 50 license at the Fitzpatrick facility.

III

On April 24, 1991, the Licensee was interviewed by an investigator from the NRC Office of Investigations concerning the circumstances surrounding the reasons why the temperature of his initial sample was below the specifications, as well as his refusal to provide a second urine sample to the Facility Licensee on October 9, 1990. During that interview, the Licensee indicated that when he received notice from the Facility Licensee that he was selected to provide a urine sample for the random drug test on October 9, 1990, he retrieved a bogus urine sample from his locker which he had previously stored there, a practice that he had started in August 1990 for this contingency, and went to the men's room on the way to the test and heated the sample to what he thought would be body temperature. The Licensee stated that he put the sample in his pants and went to the test facility where he provided that sample to the nurse. The Licensee admitted that, although he was informed by the nurse, shortly thereafter, that another sample was required because the temperature was below the specifications required by the testing program, he refused to provide another sample. The Licensee noted that because of his refusal to provide another sample as required by the fitness for duty program regulations, he was informed by his department supervisor, as well as the Resident Manager for the Fitzpatrick facility, that he would be placed on 14 days leave, and would be referred to the Employee Assistance Program for evaluation.

During the interview with the NRC investigator, the Licensee indicated that he did not want to provide the requested sample to the nurse when selected for testing on October 9, 1990 (a Tuesday) because he knew it was "dirty" from cocaine. The Licensee stated that he had used about 1 gram of cocaine on the Sunday before the test. The Licensee also noted that he had been using cocaine since 1977 and had also used "speed" during that time. The Licensee further indicated that on weekends he used cocaine in amounts from 1 to 3 grams.

The Licensee also admitted to the NRC investigator that he had previously been referred to the Employee Assistance Program as a result of a test that indicated cocaine use on an annual physical screening in August 1988. However, the Licensee stated that he had not used cocaine or any other controlled substance since October 1990, that he was now drug free, and that he had attended a thirty-day inpatient substance abuse clinic.

IV

The responsibilities associated with a senior reactor operator license issued pursuant to 10 CFR part 55 are significant with respect to the protection of the public health and safety. The character of the individual, which includes the individual's exercise of sound judgment, is a consideration in issuing an operator license. See Section 182a of the Atomic Energy Act of 1954, as amended. In determining whether or not an individual seeking a license to be a reactor operator has the necessary character, including sound judgment, the Commission may take into account a history of illegal drug use by the applicant. Prior to May 26, 1987 each applicant for a reactor operator license was required to certify that the applicant had no drug or narcotic habit on the Certificate of Medical History, NRC form 396. Since that time, the NRC has required an evaluation of the applicant prepared by a licensed medical practitioner as part of a license application. See 10 CFR 55.23(a). This evaluation is represented on a certificate of Medical Examination, NRC Form 396. See 10 CFR 55.23. Among the factors to be considered by the certifying physician are factors such as use of illegal drugs or abuse of alcohol. See form 396; also ANSI/ANS 3.4-1983, section 5.2.2.

In accordance with 10 CFR part 26, the Facility Licensee established a program to provide reasonable assurance that nuclear power plant personnel are not under the influence of any substance, legal or illegal, which affects their ability to safely and competently perform their duties, including measures for early detection of persons who are not fit to perform licensed activities.

V

The Licensee's actions described in sections II and III above raise significant concerns regarding the Licensee's integrity and trustworthiness. Specifically, these concerns are: (1) The Licensee intentionally engaged in a premeditated scheme to avoid detection of his drug use and to violate the fitness for duty program required by the NRC by storing a "clean" sample in his locker (which he admitted to have begun doing about three months prior to the test), and substituting that sample for the real sample that was required when he was selected for a random test; (2) notwithstanding his admitted use of cocaine between 1977 and October 1990, the Licensee, in a Certificate of Medical History (Form 396) signed by him on April 14, 1986, answered "No" to Question 24, "Have you ever had or do you now have any of the following? * * * Drug, narcotic habit or excessive drinking" (The Licensee did note on the form 396 that he was convicted of "Driving While Ability Impaired" in Oneida City Court, Oneida, New York in April 1982.); and (3) the Licensee refused to provide another sample to the Facility Licensee for testing when the temperature of the initial sample was below specifications because he knew that his sample would be "dirty" with cocaine even though the Facility License is required by part 26 to obtain a second sample, and the Licensee is required by part 55 to abide by all of the requirements of the Facility License. In addition, the Licensee's failure to conform to the prohibition against drug use in New York Power Authority's program and the Commission's requirements, which have the purpose of protecting the public health and safety, demonstrates an intentional disregard for the important obligations of a licensed operator. The above actions demonstrate a lack of trustworthiness by the Licensee and an inability or unwillingness to comply with the Commission's requirements. Therefore, the NRC does not have the necessary reasonable assurance that the Licensee will carry out his duties to operate the Fitzpatrick facility safely in a trustworthy manner and observe all applicable requirements including obligations relating to the fitness for duty requirements of the Facility License.

VI

Based on the above, if at the time the License was issued, the NRC had known of the Licensee's inability or unwillingness to refrain from the use of illegal drugs, and if the NRC had known of the Licensee's willingness to attempt to circumvent compliance with the Commission's regulations, the License would not have been issued. Section 186 of the Atomic Energy Act of 1954, as amended, and 10 CFR 55.61(b) provide that a license may be revoked for any reason for which a license would not be issued upon an original application.

Consequently, in view of the above and lacking the requisite reasonable assurance that the Licensee will abide by Commission requirements, I have determined that the public health and safety requires that the License be suspended. Pursuant to 10 CFR 2.204, I find that the public health and safety

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requires that this Order must be effective immediately.

VII

Accordingly, pursuant to sections 107, 161b, 161i, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 2.204, and 10 CFR part 55, *It is hereby ordered, effective immediately, that license no. SOP-10561-1 is hereby suspended pending further order.*

The Regional Administrator, NRC region I, may relax or terminate this condition for good cause shown.

VIII

Further, pursuant to sections 107, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 55, *It is hereby ordered that* the Licensee shall show cause why License No. SOP-10561-1 should not be revoked and why it should not have been suspended.

IX

Pursuant to 10 CFR 2.202(b), the Licensee shall show cause, as required by section VIII above, by filing a written answer under oath or affirmation within 20 days after the date of issuance of this order, setting forth the matters of fact and law on which the Licensee relies. Any other person adversely affected by this Order may submit an answer to this Order within 20 days of the date of this Order. The Licensee may answer this Order, as provided in 10 CFR 2.202(d), by consenting to the entry of an Order suspending or revoking its license. Any answer to this Order shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, attn: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

X

The Licensee or any other person adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, attn: Chief, Docketing and Service Section, Washington, DC 20555, and shall include a copy of the answer to the Order. Copies of the hearing request also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee if the hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

XI

In the absence of any request for hearing, the provision specified in Section VII above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order. If an answer to this Order is submitted as provided in section IX but a hearing is not requested, the Order may be relaxed or rescinded as provided in section VII. However, unless the Order is relaxed or rescinded, the Order provision of section VII is final.

In addition, in the absence of any request for a hearing and in the absence of adequate cause being shown as provided in sections VIII and IX, an Order will be issued making the provisions specified in section VIII effective and final without further proceedings.

Dated at Rockville, Maryland this 2nd day of May 1991.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

[FR Doc. 91-11305 Filed 5-10-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333, License No. DPR-59 EA 91-053]

Order Modifying License (Effective Immediately)

In the Matter of New York Power Authority, Fitzpatrick;

I

New York Power Authority (Licensee) is the holder of Facility Operating License No. DPR-59, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50. The License authorizes the operation of the Fitzpatrick facility in Scriba, New York, in accordance with the conditions specified therein.

II

On October 9, 1990, David M. Manning (Mr. Manning), a licensed Senior Reactor Operator licensed under 10 CFR part 55 at the Fitzpatrick facility, while on duty at the facility, was requested by the Licensee to provide a urine sample to the nurse at the plant after being randomly selected as part of the routine fitness for duty chemical testing program required of the Licensee by the NRC pursuant to 10 CFR 26.24. After receiving a sample from Mr. Manning, the nurse checked the temperature of the sample and found that the temperature was not within the range specified in 10 CFR part 26, appendix A, § 2.4(g)(14), for accepting the sample. As a result, Mr. Manning was requested to provide another urine sample pursuant to the same section of appendix A. Mr. Manning refused to provide another sample. As a result, the Licensee, in accordance with 10 CFR 26.27(c), removed Mr. Manning from licensed operator duties for cause, placed Mr. Manning on 14 days leave, and referred Mr. Manning to an Employee Assistance Program. Although Mr. Manning has completed the inpatient portion of that program, Mr. Manning is still in an outpatient status, is subject to monthly random testing, and has not been returned to the duties authorized by his part 55 license. However, Mr. Manning now has unescorted access and is involved in activities subject to the 10 CFR part 50 license at the Fitzpatrick facility.

III

On April 24, 1991, Mr. Manning was interviewed by an investigator from the NRC Office of Investigations concerning the circumstances surrounding the reasons why his initial sample was outside the acceptable temperature range, as well as his refusal to provide a second urine sample to the Licensee on October 9, 1990. During that interview, Mr. Manning indicated that when he received notice from the Licensee that he was selected to provide a urine sample for the random drug test on October 9, 1990, he retrieved a bogus urine sample from his locker which he had previously stored there and went to the men's room on the way to the test and heated the sample to what he thought would be body temperature. Mr. Manning stated that he put the sample in his pants and went to the test facility where he provided that sample to the nurse. Mr. Manning admitted that, although he was informed by the nurse, shortly thereafter, that another sample was required because the temperature was below the specifications required by the testing program, he refused to provide another sample. Mr. Manning noted that because of his refusal to provide another sample as required by the fitness for duty program regulations, he was informed by his department supervisor, as well as the Resident Manager for the Fitzpatrick facility, that he would be placed on 14 days leave, and would be referred to the Employee Assistance Program for evaluation.

During the interview with the NRC investigator, Mr. Manning indicated that he did not want to provide the requested sample to the nurse when selected for testing on October 9, 1990 (a Tuesday) because he knew it was "dirty" from cocaine. Mr. Manning stated that he had used about 1 gram of cocaine on the Sunday before the test. Mr. Manning also noted that he had been using cocaine since 1977 and had also used "speed" during that time. Mr. Manning further indicated that on weekends he used cocaine in amounts from 1 to 3 grams.

Mr. Manning also admitted to the NRC investigator that he had previously been referred to the Employee Assistance Program as a result of a test that indicated cocaine use during an annual physical screening in August 1988. However, Mr. Manning claimed that he had not used cocaine or any other controlled substance since October 1990, that he was now drug free, and that he had attended a thirty-day inpatient substance abuse clinic.

IV

In accordance with 10 CFR part 26, the Licensee established a program to provide reasonable assurance that nuclear power plant personnel are not under the influence of any substance, legal or illegal, which affects their ability to safely and competently perform their duties, including measures for early detection of persons who are not fit to perform licensed activities.

Mr. Manning's actions described above raise significant concerns regarding his integrity and trustworthiness. Specifically, these concerns are: (1) Mr. Manning intentionally engaged in a premeditated scheme to avoid detection of his drug use and to violate the fitness for duty program required by the NRC by storing a "clean" sample in his locker (which he admitted to have begun doing about three months prior to the test); and substituting that sample for the real sample that was required when he was selected for a random test; (2) notwithstanding his admitted use of cocaine between 1977 and October 1990, Mr. Manning, in a Certificate of Medical History (Form 396) signed by him on April 14, 1986, answered "No" to Question 24, "Have you ever had or do you now have any of the following? . . . Drug, narcotic habit or excessive drinking" (Mr. Manning did note on the form 396 that he was convicted of "Driving While Ability Impaired" in Oneida City Court, New York in April 1982.); and (3) Mr. Manning refused to provide another sample to the Licensee for testing when the temperature of the initial sample was below the specifications because he knew that his sample would be "dirty" with cocaine, even though the Licensee is required by part 26 to obtain a second sample, and Mr. Manning is required by part 55 and his Senior Reactor Operator's license to abide by all of the requirements of the Facility License. In addition, Mr. Manning's failure to conform to the prohibition against drug use in the Commission requirements, which have the purpose of protecting the public health and safety, demonstrates an intentional disregard for the important obligations of a licensed operator. The above actions demonstrate a lack of trustworthiness by Mr. Manning and an inability or unwillingness to comply with the Commission's requirements. Therefore, the NRC does not have the necessary reasonable assurance that Mr. Manning will carry out part 50 activities safely, in a trustworthy manner, and observe all applicable requirements including obligations relating to the Licensee's fitness for duty requirements.

V

Mr. Manning's actions described above are unacceptable and, accordingly, I have issued a separate Order suspending his 10 CFR part 55 license. Furthermore, as a result of his actions, I lack the requisite reasonable assurance that, with Mr. Manning involved in any activities licensed under 10 CFR part 50, the Licensee's current operations can be conducted such that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public health and safety require that License No. DPR-59 be modified to prohibit Mr. David M. Manning from involvement in licensed activities under this license. Furthermore, pursuant to 10 CFR 2.204, I find that the public health and safety require that this Order must be effective immediately.

VI

Accordingly, pursuant to sections 103, 161b, 161c, 161i, and 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR part 50, *It is hereby ordered, effective immediately, that:*

License No. DPR-59 is modified by adding the following condition:

Mr. David M. Manning shall not participate in any licensed activity under License No. DPR-59 without prior written approval of the Regional Administrator, region I. If such approval is sought, the Licensee shall provide a statement as to its basis for concluding that Mr. Manning will properly carry out licensed activities in light of his past conduct and lack of trustworthiness as described in this Order.

The Regional Administrator, NRC region I, may relax or terminate this condition for good cause shown.

VII

The Licensee, Mr. Manning, or any other person adversely affected by this Order may submit an answer to this Order or request a hearing on this Order within 20 days of the date of this Order. The answer may set forth the matters of fact and law on which the Licensee, Mr. Manning, or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer filed within 20 days of the date of this Order may also request a hearing. Any answer or request for hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee or Mr. Manning requests a hearing, that person shall set forth with particularity the manner in which the person's interest is adversely affected by the Order and should address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee, Mr. Manning, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

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In the absence of any request for a hearing, the provisions specified in section VI above shall be final 20 days from the date of this Order without further order or proceedings. An answer or request for a hearing shall not stay the immediate effectiveness of this order.

If an answer to this Order is submitted as provided above but a hearing is not requested, the Order may be relaxed or rescinded as provided in section VI. However, unless the Order is relaxed or rescinded, the Order is final as provided above.

Dated at Rockville, Maryland this 2nd day of May 1991.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

[FR Doc. 91-11304 Filed 5-10-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

Northeast Nuclear Energy Co., Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing and Opportunity for Public Comment on Antitrust Issues

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-49, issued to Northeast Nuclear Energy Company, et al (the licensee) for operation of the Millstone Nuclear Power Station, Unit 3, located at the licensee's site in New London County, Connecticut.

The proposed amendment would change Facility Operating License NPF-49, and authorize the transfer of Public Service Company of New Hampshire's (PSNH's) 2.875 percent ownership in Millstone Unit 3 to a newly formed and wholly owned subsidiary of Northeast Utilities (NU) as of the merger date. The new wholly owned subsidiary will also be called Public Service Company of New Hampshire.

Millstone Unit No. 3 is a nuclear-powered electric generating facility which has been constructed and is being operated by NNECO on behalf of 14 co-owners (a group of investor-owned and municipal utilities). The NRC Facility Operating License NPF-49 includes a list of co-owners. PSNH, one of the co-owners, is an electric public utility organized and operating under the laws of the State of New Hampshire.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below. The proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

As a result of the proposed license amendment, there will be no physical change to the Millstone Unit No. 3 facility and all limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications will remain unchanged. Also, the Millstone Unit No. 3 Quality Assurance Program and the Emergency Plan, Security Plan, and Operator Training and Requalification Program will be unaffected. In addition, there will be no changes to the operating organization or personnel as a result of the transaction described herein.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed amendment will not affect the physical configuration of Millstone Unit No. 3 or the manner in which it will operate. The Millstone Unit No. 3 plant design and design bases will remain the same. The current plant safety analyses will therefore remain complete and accurate in addressing the design basis events and in analyzing plant response and consequences.

The limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications for Millstone Unit No. 3 are not affected by the proposed license amendment. As such, the plant conditions for which the design basis accident analyses have been performed will remain valid. Therefore, the proposed license amendment cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. Since there will be no change in the physical design or operation of the plant, there will be no change to any of these margins. Thus, the proposed license amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 12th 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent to the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry and Howard, City Place, Hartford, Connecticut 06103-3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Antitrust Issues

Pursuant to 10 CFR 2.101 and 50.80 of the Commission's Regulations, the staff is publishing receipt of the licensee's request to transfer the stated ownership interest in Millstone Unit No. 3 from PSNH to the licensee.

Any person who wishes to express views relating to any antitrust issues believed to be raised by this transfer request should submit said views within 30 days of the initial publication of this notice in the Federal Register to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation. The Director of the Office of Nuclear Reactor Regulation will issue a finding whether significant changes have occurred since the completion of the previous antitrust review.

Although the staff is providing the opportunity for comments pursuant to the competitive aspects of the proposed transfer, the staff would like to note that it is aware of and is closely following the proceeding at the Federal Energy Regulatory Commission (FERC) that, among other concerns, is addressing competitive aspects of the proposed acquisition of PSNH by NU. The NRC

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will consider the FERC proceeding to the maximum extent possible in resolving issues brought before the NRC.

For further details with respect to this action, see the application for amendment dated March 21, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06109-3499.

Dated at Rockville, Maryland, this 6th day of May 1991.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Project Manager Project Directorate I-4 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation

[FR Doc. 91-11302 Filed 5-10-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-443-OLA (Ownership Interest Transfer) ASLBP No. 91-640-09-OLA]

Public Service Co. of New Hampshire, et al., Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Public Service Company of New Hampshire, Et al., Seabrook Station, Unit No. 1, Facility Operating License No. NPF-86

This Board is being established pursuant to a notice published by the Commission on February 28, 1991 in the Federal Register (56 FR 8373) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing for Transfer of Ownership Interest and Opportunity for Public Comment on Antitrust Issues." The proposed amendment would authorize a newly created entity, North Atlantic Energy Corporation (NAEC), to be included as a licensee and to acquire and possess Public Service Company of New Hampshire's (PSNH) ownership interest in Seabrook Station, Unit 1 (Seabrook).

The Board is comprised of the following administrative judges:

James P. Gleason, Chairman, 513 Gilmoure Drive, Silver Spring, Maryland 20901.

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Kenneth A. McCollum, 1107 West Knapp Street, Stillwater, Oklahoma 74075.

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1990).

Issued at Bethesda, Maryland, this 1st day of May 1991.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91-11308 Filed 5-10-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-482]

Wolf Creek Nuclear Operating Corp. Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing for Transfer of Ownership Interest and Opportunity for Public Comment on Antitrust Issues

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-42 issued to Wolf Creek Nuclear Operating Corporation (the licensee), for operation of the Wolf Creek Generating Station located in Coffey County, Kansas.

The Wolf Creek Generating Station is jointly owned by Kansas Gas and Electric Company (47 percent), Kansas City Power and Light Company (47 percent), and Kansas Electric Power Cooperative, Incorporated (6 percent). The Wolf Creek Nuclear Operating Corporation is responsible for operating the facility and acts as the agent for the owners.

By letter dated March 28, 1991, the legal counsel representing Kansas Gas and Electric Company (KG&E) submitted KG&E's request to transfer, pursuant to 10 CFR 50.80, its 47 percent undivided possession-only interest in NPF-42, the operating license for the Wolf Creek Generating Station. The proposed transfer is to a successor company, also to be called Kansas Gas and Electric Company, as a result of the pending merger of KG&E into a subsidiary of The Kansas Power and Light Company (KPL).

Also, by letter dated April 23, 1991, the legal counsel representing KG&E submitted a request to amend the Wolf Creek Operating License. The amendment would add a footnote to the license that recognizes the transfer of KG&E's possession-only interest in NPF-42 to a wholly owned subsidiary of KPL. The transfer will occur upon the merger of KG&E with and into that subsidiary, which is presently in existence and named KCA Corporation. It will be renamed Kansas Gas and Electric Company immediately upon consummation of the merger. No other changes to the license are associated with the merger.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment application. The staff has reviewed the licensee's analysis as follows:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluted. It reflects the merger of Kansas Gas and Electric Company into a wholly owned subsidiary of The Kansas Power and Light Company and as such has no effect on plant equipment or the technical qualification of plant personnel.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. It reflects the merger of Kansas Gas and Electric Company into a wholly owned subsidiary of The Kansas Power and Light Company and does not involve any change to the installed plant systems or the overall operating philosophy of Wolf Creek Generating Station.

3. The proposed change does not involve a significant reduction in a margin of safety. It does not involve any changes in overall organizational commitments. An ownership change alone does not reduce any margin of safety.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 12, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Rooms located at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas 66621. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, attention: Docketing and Services Branch, or may be delivered to the Commisison's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested

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that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George F. Dick: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petiton should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Donald P. Irwin, Esq., Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, attorney for KG&E and KPL.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Antitrust Issues

Pursuant to 10 CFR 2.101 and 50.80 of the Commission's regulations, the staff is publishing receipt of KG&E's request to transfer the stated ownership interest in Wolf Creek to a successor company, also to be called Kansas Gas and Electric Company, as a result of the pending merger of KG&E into a subsidiary of KPL.

Any person who wishes to express views relating to any antitrust issues believed to be raised by this transfer request should submit said views within 30 days of the initial publication of this notice in the Federal Register to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation.

Although the staff is providing the opportunity for comments pursuant to the competitive aspects of the proposed transfer, the staff would like to note that it is aware of and is closely following the proceeding at the Federal Energy Regulatory Commission (FERC) that, among other concerns, is addressing competitive aspects of the proposed acquisition of KG&E by KPL. The NRC will consider the FERC proceeding to the maximum extent possible in resolving issues brought before the NRC.

For further details with respect to this action, see the request for license transfer dated March 28, 1991, and the application for amendment dated April 23, 1991, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Rooms, located at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 7th day of May 1991.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Acting Director, Project Directorate IV-2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-11303 Filed 5-10-91; 8:45 am]

BILLING CODE 7590-01-M

OVERSIGHT BOARD

Oversight Board Meeting

AGENCY: Oversight Board.

ACTION: Change of meeting time.

SUMMARY: There has been a change of time for the Oversight Board meeting scheduled for Wednesday, May 15, 1991, at 12:30 p.m., as originally published in the Federal Register, May 2, 1991, page 20243. The new time is listed below.

DATES: Wednesday, May 15, 1991, 11:30 p.m.

ADDRESSES: Office of Thrift Supervision, 1700 G Street, NW., Washington, DC, Amphitheater, 2nd floor.

FOR FURTHER INFORMATION CONTACT: Brian Harrington, Press Officer, Office of Public Affairs, 1777 F Street, NW., Washington, DC 20232 (202) 786-9672.

Dated: May 9, 1991.

Jill Nevius,

Committee Management Officer.

[FR Doc. 91-11431 Filed 5-10-91; 8:45 am]

BILLING CODE 2222-01-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Public Reference Branch, Washington, DC 20549-1002.

Extensions

Rule 22d-1, File No. 270-275
Form ADV and Rule 203-1, File No. 270-36
Rule 204-1, File No. 270-41

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval rule 22d-1 under the Investment Company Act of 1940 (17 CFR 270.22dp1) and Form ADV (17 CFR 279.1) and Rules 203-1 (17 CFR 275.203-1) and 204-1 (17 CFR 275.204-1) under the Investment Advisers Act of 1940.

Rule 22d-1 provides registered investment companies that issue redeemable securities, their principal underwriters and dealers in their shares with an exemption from the uniform sales load provision of section 22(d) of the Investment Company Act of 1940 to permit the sale of redeemable securities at varying sales loads. The rule imposes a burden of about 15 minutes annually, per respondent.

Rule 203-1 prescribes Form ADV as the form for registration as an investment adviser. The information in Form ADV is used by the Commission to determine whether to declare effective an application for registration and is made available to the public to disclose the applicant's basic characteristics, general background and business practices. Form ADV takes an average of 8.96 hours to complete for the first time.

Rule 204-1 sets forth the circumstances requiring the filing of an amendment to Form ADV. A typical amendment to Form ADV takes about one hour to complete.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 1, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11278 Filed 5-10-91; 8:45 am]

BILLING CODE 8010-01-M

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission Office of Filings, Information and Consumer Services Public Reference Branch Washington, DC 20549-1002.

Extension

File No. 270-71, Form 12b-25
File No. 270-50, Form 8-K
File No. 270-49, Form 10-Q
File No. 270-2, Regulation S-K
File No. 270-156, Form 20-F

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. § 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval extension of the following: Forms 8-K, 10-Q, 12b-25, and 20-F, as well as Regulation S-K. The forms and regulation provide a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of publicly traded securities provide investors and the marketplace with adequate information. Form 12b-25 affects approximately 4,266 filers for a total of 10,665 burden hours; Form 8-K affects approximately 11,850 filers for a total of 71,100 burden hours; form 10-Q affects approximately 28,555 filers for a total of 5,425,450 burden hours; Form 20-F affects approximately 133 filers for a total of 280,630 burden hours; and Regulation S-K is assigned 1 burden hour for administrative convenience. The estimated burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of the Commission's rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0058, 0060, 0070, 0071, and 0288), New Executive Office Building, Room 3228, Washington, DC 20503.

Dated: May 1, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11279 Filed 5-10-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29164; File No. SR-NASD-90-62]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to Improvements in the NASD Code of Arbitration Procedure

The National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or Commission") on November 21, 1990 [1] a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] to amend part I, section 1 and part III, sections 25, 26, 41, and 42 of the NASD Code of Arbitration Procedure ("Code"). The proposal also amends a Resolution of the Board of Governors pertaining to Failure to Act Under Provisions of the Code of Arbitration Procedure.[3]

Notice of the proposed rule change, as amended by Amendment No. 1, together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 28824, January 25, 1991) and by publication in the Federal Register (56 FR 3847, January 31, 1991). The Commission received one comment letter on the proposed rule change. This order approves the proposed rule change.

The proposed changes to sections 25, 26, 41, and 42, with exception of the proposed Section 41(i), were previously adopted by SICA. The NASD originally intended that the proposed rule change would, in general, correct a reference to the NASD By-Laws; clarify procedures concerning joinder and consolidation of arbitration cases; clarify the authority of the Director of Arbitration and arbitrators to determine the venue of hearings; specify that awards bear interest until paid and provide for the immediate payment of arbitration fees and assessments imposed in awards [4] incorporate by reference the NASD Code of Arbitration Procedure in all agreements to arbitrate under the rules of the NASD; and deem inconsistent with just and equitable principles of trade a failure to honor an arbitration award rendered by arbitration forums sponsored by members of SICA and under the securities arbitration rules of the American Arbitration Association.

The comment letter received expressed concerns regarding the NASD's proposed change to section 41 of the Code.[5] Section 41 of the Code, subsections (a)-(f), delineates the rules governing awards rendered by arbitrators who serve at the NASD. Specifically, the commentator was concerned about NASD proposed rule 41(g). The commentator thought that it was unfair that interest begins to run well before the award is ever received by the customer or member firm. Furthermore, a customer or firm which seeks to timely comply with the rule as drafted must speculate, when attempting to calculate the amount of interest to add, as to the length of time it will take to both process the check and for the mails to deliver it. If the time period is underestimated, the opposing party might seek an additional check for the remaining interest, potentially starting the process anew.

In response to this comment and discussions with SICA, the NASD has decided to withdraw its proposed changes to sections 41(g) and 41(h) in order to reconsider this issue.[6]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.[7]

[1] The NASD filed three amendments to this proposed rule. Amendment No. 1 filed on December 11, 1990 clarified the discussion of joinder and consolidation. Amendment No. 2 filed on January 28, 1991 modified the language of section 42 of the Code of Arbitration Procedure to effect greater uniformity. Amendment No. 3 filed on April 22, 1991 withdrew in its entirety proposed section 41(g) and 41(h) to part III to the Code of Arbitration Procedure and requested proposed Section 41(i) be renumbered as 41(g). The amendments are available for inspection and copying in the public reference room.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] The NASD explains it has amended the Resolution of the Board of Governors in order to improve the efficiency of its arbitration process, and to provide recognition of the status of securities arbitration awards of members of the Securities Industry Conference on Arbitration ("SICA") and the American Arbitration Association.

[4] See NASD Amendment No. 3, withdrawing sections 41(g) and 41(h).

[5] See letter to Jonathan G. Katz, Secretary, SEC, from Theodore A. Krebsbach, Senior Vice President and Senior Counsel, Shearson Lehman Brothers, dated February 21, 1991.

[6] The commentator suggested the NASD could accomplish its goal, to have a losing party promptly pay an award, by simply approving proposed subsection 41(h).

[7] This proposed rule is consistent with the provisions of section 15A(b)(6) of the Act which

Continued

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It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change, SR-NASD-90-62, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 7, 1991.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 91-11286 Filed 5-10-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29159; File No. SR-NSCC-91-03]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing Relating to the Revisions to the Standards for Approved Issuers of Letters of Credit for Clearing Fund Purposes

May 3, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on April 17, 1991, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify NSCC's rules relating to the standards by which NSCC approves issuers of letters of credit used for Clearing Fund purposes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The acceptance by NSCC of letters of credit to secure a member's open account indebtedness to the Clearing Fund is subject to scrutiny, based on a number of areas of concern to NSCC, including whether the issuer of the letter of credit is a sufficiently liquid and creditworthy institution. In recent years, this concern has been heightened as the general financial status of the banking industry has become weaker.

In view of this development, NSCC plans to revise the current standards that it uses to determine whether a bank or trust company may be approved as an issuer of letters of credit for Clearing Fund purposes, which standards basically have not been changed since they were adopted in 1980, in order to update and strengthen them. These standards for approving issuers of letters of credit for Clearing Fund purposes would be revised such that any domestic or foreign bank would be required, in order to qualify as an issuing bank, to have: (1) Either (a) $300 million in total shareholders' equity and a short-term obligations rating of not less than A-2 (by Standard & Poor's Corporation) or P-2 (by Moody's Investors Service, Inc.), or (b) $150 million in total shareholders' equity and a short-term obligations rating of not less than A-1 or P-1, and (2) its letters of credit be able to be readily pledged by NSCC, pursuant to a line of credit arrangement established by NSCC as collateral to obtain credit in an amount equal to at least 80 percent of stated value.

These standards are subject to the following understandings, which have been made expressly clear in the rule filing:

(1) The relevant short term-ratings are those for the unsecured, uninsured, unguaranteed short-term obligations of the issuing bank, and not of its parent holding company;

(2) A bank may not be approved as a letter of credit issuer if one of its short-term obligations ratings is lower than A-2 or P-2; thus, a "split" rating of A-2/P-3 or P-2/A-3 is not acceptable;

(3) For a bank to be approved as an issuing bank for NSCC letter of credit purposes, it must confirm periodically that it is maintaining continued compliance with the applicable capital standards established for it by each of its regulatory authorities;

(4) The maximum maturity for a letter of credit issued for Clearing Fund purposes is one year (this requirement currently is contained in NSCC's standard letter of credit form);

(5) The Board has the authority, in its discretion, to determine that a particular bank, because of circumstances specific to that bank, may not either begin or continue to issue letters of credit on behalf of members for Clearing Fund purposes; and

(6) A foreign bank acting through a branch or agency in the United States may not be approved as a letter of credit issuer unless a sufficient guarantee of performance of such branch or agency is received by NSCC from the bank.

The new issuer standards would ensure that an issuing bank is of sufficient creditworthiness and liquidity, without unduly limiting the choice that members have as to which bank they use, to issue letters of credit on their behalf. Specifically, the $300 million equity/top three short-term obligations rating standard would ensure that only a domestic bank that is among the roughly 100 largest banks in the United States and that has a strong short-term obligations rating would be eligible to be approved as a letter of credit issuer. The alternative criterion would allow a smaller (roughly the top 200 largest in the U.S.), yet still sizable, bank that has a top short-term credit rating to be eligible to be approved as a letter of credit issuer. Thus, size would not be the sole factor in determining whether a bank is eligible to be approved as a letter of credit issuer.

Further, the second requirement (able to be readily pledged under NSCC's line of credit arrangement, which currently is with Bankers Trust Company, for at least 80 percent credit) would ensure that the liquidity benefits provided by the line of credit arrangement would be sufficiently realized.

(b) The proposed rule changes would help ensure the continued liquidity and creditworthiness of NSCC's Clearing Fund, and, thus, are consistent with the requirements of Section 17A of the Act and the rule and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change, Received From Members, Participants, or Others

Comments on the proposed rule changes have not yet been solicited or received. Members will be notified of the rule filings, and comments will be solicited, by an Important Notice. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of NSCC. All submissions should refer to File No. SR-NSCC-91-03 and should be submitted by June 3, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11286 Filed 5-10-91; 8:45 am]

BILLING CODE 8010-01-M

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requires the rules of the Association to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule changes will facilitate the arbitration process in the public interest.

[Release No. 34-28162; File No. SR-OCC-91-06]

Self-Regulatory Organizations; Options Clearing Corporation; Proposed Rule Change Relating to the Assessment of Applications for Clearing Membership and Business Expansion

May 3, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b), notice is hereby given that on March 29, 1991, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-OCC-91-06) described in items I, II, and III below, which items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Proposed Rule Change

Two separate purposes underlie this proposed rule change. The first is to establish an objective criterion to determine the experience of an applicant for clearing membership in clearing securities transactions. The second purpose is to provide for more timely action on business expansion applications.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Two separate purposes underlie this proposed rule change. The first is to augment OCC's standards for assessing the experience of back office personnel of applicants for clearing membership and to ensure the continued competency of back office personnel of existing clearing members. The second is to provide for more timely action on applications for business expansion submitted by clearing members.

Augmented Standards

Section .03c of the Interpretations and Policies ("Interpretations") to Section 1 of Article V of the By-laws provides that the Membership/Margin Committee ("MMC") will not recommend the approval of an application for clearing membership if the applicant lacks substantial experience in clearing securities transactions and does not, in the MMC's opinion, employ back office personnel with sufficient experience to compensate for the applicant's lack of background in clearing. The nature and depth of the experience of an applicant and its back office personnel currently are assessed on a subjective basis by OCC's staff in its routine operational orientation.

OCC has determined to use an additional standard to make such assessment. Accordingly, OCC proposes to add an interpretative paragraph to clause (c) of the Section 3 which would require a broker-dealer's applicant to be, or to employ an associated person who is, registered as a "Limited Principal—Financial and Operations" ("FINOP") with the National Association of Securities Dealers ("NASD").

An individual who is registered as a FINOP may supervise the preparation and filing of a broker-dealer's financial reports and provide overall supervision for person administering back office operations. By requiring a broker-dealer applicant to employ a FINOP, OCC will have an objective criterion to use in evaluating the experience of the applicant's back office personnel. OCC believes that this proposal is not unduly burdensome and is non-discriminatory because the FINOP examination is standard within the U.S. securities industry.

In addition to registered broker-dealers, OCC's By-laws permit non U.S. securities firms to apply for clearing membership in OCC. Certain non U.S. securities firms may apply to become exempt non U.S. members. Exempt non U.S. members may file financial reports with OCC under the financial and reporting standards of the country where its principal place of business is located and use the reporting forms established by its designated non U.S. regulatory agency. At this time, only non U.S. securities firms which are formed and operate under the laws of Canada (or any of its provinces) may apply to become exempt non U.S. members.[1] For

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[1] Securities Exchange Release No. 34735 (July 21, 1987), 52 FR 28400.

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these applicants, OCC proposes that they be required to employ at least one associated person who is registered as both a Principal/Director/Officer ("PDO") and as a Designated Registered Options Principal ("DROP") with the Investment Dealers Association of Canada ("IDAC").[2]

The IDAC has informed OCC that the PDO registration examination includes Canadian capital information. This examination should be an appropriate standard of evaluation because exempt Canadian clearing members file financial statements in accordance with Canadian capital requirements. In addition, the requirement that this same individual also be registered as a DROP is appropriate to ensure that he or she is knowledgeable about options transactions. OCC understands from the IDAC that DROP is appropriate to ensure that he or she is knowledgeable about options transactions. OCC understands from the IDAC that DROP study information primarily is based on materials that relate to the U.S. options markets.

Non U.S. securities firms, which are not eligible to apply for exempt status, are required to prepare their financial statements in accordance with U.S. accounting practices and the accounting and financial requirements of the Commission. Therefore, for such non U.S. securities firm applicants, OCC proposes that the applicant itself, or a person associated with the applicant be required to take and successfully complete any applicable OCC financial and operations examination.

Consistent with current procedures, the MMC may consider an applicant's execution of a facilities management agreement in determining compliance with this new requirement. In addition, the MMC would have the discretion to waive the requirement in exceptional cases and where good cause is shown, and to accept other evidence of the experience of an applicant's back office personnel.[3]

OCC also proposes to apply parallel requirements to existing clearing members in new Rule 214. OCC does not believe that the new rule will significantly burden existing clearing members because they are given substantial periods of time to comply and to maintain compliance with this new rule. The MMC further would be authorized to exempt or waive these requirements as described above. In the event a clearing member fails to comply with the requirements, the MMC is authorized to take certain actions until compliance is achieved. OCC believes that the proposed rule will promote the continued prompt and accurate clearance of securities transactions by clearing members.

Applications for Business Expansion

Section .03e to the "Interpretations" under Section 1 of Article V of the By-laws permits existing clearing members to apply for authorization to clear other types of transactions (*e.g.*, firm, customer or market-maker) or for other kinds of options transactions (*e.g.*, equity, index, Treasuries, foreign currency, market baskets), if the clearing member did not apply to clear for all types and kinds of transactions in its application for clearing membership.

Such applications for business expansion currently are submitted to the MMC for action. The MMC, however, does not meet on a monthly basis. Accordingly, up to eight weeks may pass before action appropriately could be taken on an application for business expansion.

To improve the timeliness of its response to such applications, OCC proposes to add an interpretative paragraph to Section .03e. That paragraph would authorize the Chairman or the Presdient to approve, on a temporary basis, any application for business expansion for which a clearing member has requested expedited treatment.

Consistent with current procedure, the interpretative paragraph would require the MMC to independently review the application at tis next scheduled meeting and to determine *de novo* whether to approve or disapprove such application. The proposed interpretative paragraph would further provide that, should the MMC's determination modify or reverse the decision of the Chairman or President, such determination would not invalidate any acts taken by OCC or the rights of persons arising therefrom. This provision is to ensure that OCC would not be required to "back-out" cleared and settled transactions from its books and records.

The proposed rule change is consistent with the purposes of section 17A of the Act, as amended, because it will provide for an objective means by which OCC may assess the experience in clearing securities transactions of an applicant for clearing membership and will facilitate the accurate clearance of securities transactions by promoting the continued competency of clearing members in preparing financial reports and in administering their back office operations. The proposed rule change is also consistent with section 17A because it facilitates a clearing member's increased participation in the options market by improving the timeliness by which OCC responds to an application for business expansion.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

OCC did not solicit nor did it receive any comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of OCC. All submissions should refer to file number SR-OCC-91-06 and should be submitted by June 3, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11294 Filed 5-10-91; 8:45 am]

BILLING CODE 8010-01-M

[2] The IDAC is the self-regulatory organization which oversees the registration of persons actively engaged in the Canadian securities business.

[3] The latter provision is based upon Section VII of Schedule C to the NASD By-Laws.

[Release No. 34-29163; File Nos. SR-PTC-90-05 and SR-PTC-90-06]

Self-Regulatory Organizations; Participants Trust Company; Order Approving Proposed Rule Changes Relating to Cash Settlement Accounts

May 3, 1991.

On October 15, 1990, and October 18, 1990, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934, as amended, ("Act") [1] two proposed rule changes (SR-PTC-90-05 and SR-PTC-90-06, respectively).[2] The proposals will amend certain parts of PTC's Rules concerning computation of the cash balance for a Limited Purpose Account ("LPA") and clarify PTC's Rules concerning the procedures for cash settlement. Notice of the proposed rule changes was published on February 12, 1991 to solicit comments from interested persons.[3] No comments were received. This Order approves the proposals.

I. Description

A. Calculation of the Cash Balance for LPAs (SR-PTC-90-05)

The proposed rule change will clarify what permitted charges may be made against the cash balance in an LPA. Specifically, the proposal will clarify that: (1) PTC has the right to charge an LPA for PTC fees or other charges associated with the LPA unless the Limited Purpose Participant ("LPP") makes alternative payment arrangements; (2) PTC may reverse the payment of principle and interest ("P & I") advances; and (3) PTC may give its lenders an interest in any P & I payments which is used to collateralize the borrowing. The proposal also clarifies any ambiguity concerning the netting of a participant's LPA balance with other account balances a participant may have in other accounts at PTC.

These changes were made to clarify to Collateralized Mortgage Obligation ("CMO") trustees and rating agencies the changes PTC could make to the cash balances of an LPA and the existence of any liens on the assets that underlie the CMO.[4]

The proposal will allow PTC to make alternate payment arrangements with an LPP to satisfy the LPA debit balance. PTC will permit two alternate payment arrangements. First, PTC will allow its participants to pre-fund an LPA debit balance.[5] Second, the LPP may direct PTC to charge another of the participant's accounts rather than charging the LPA.

PTC will charge the LPA only for the amounts expressly authorized in PTC's rules. PTC's rules currently provide that in computing the cash balance for an account maintained by a participant or an LPP the cash balance may be charged with "any amounts billed by the Corporation," and "other amounts payable by the LPP to the Corporation with respect to the LPA." [6] The proposal specifically deletes the broad language in Article II and replaces the deleted language with a list of the specific charges that are allowed. In this regard, the proposed rule changes effectively limit the permitted charges that may be made against the LPP.

Among the permitted charges that PTC may assess to the LPA is the reversal of principle and interest ("P & I") advances.[7] One of the services PTC provides as a clearing agency for mortgage-backed securities is the collection and distribution of P & I due to members listed as registered owners of securities on PTC's books. PTC will collect P & I from issuers and paying agents on the payment date and then credit the appropriate PTC participant account on the distribution date. When P & I payments are not received from the issuer or paying agent by the distribution date, PTC will advance P & I to participants or LPPs on distribution date.[8] Although it is unlikely that PTC will use it, PTC must have the authority ultimately to charge an LPP for those advances and for any costs associated with those advances. In that case, the LPP would be subrogated to PTC's claim against the issuer or guarantor for timely payment of P & I.

B. Procedures for Cash Settlement (SR-PTC-90-06)

The proposed rule change will clarify PTC's cash settlement procedures for participants and LPPs. The proposal amends PTC's cash settlement procedures to clarify that a participant or an LPP cannot set-off any debit balance of the participant or LPP against any external obligations owed by PTC to the participant of LPP.

The proposed rule change provides that a participant or an LPP shall satisfy its debit balance in full when it is due, without netting, defense, set-off or counterclaim. Specifically, the proposed rule change will clarify that an LPP may not offset any settlement obligation with obligations arising outside the depository. The provisions will expressly prohibit a participant or LPP from setting-off the settlement balance with amounts owed to the participant or LPP as a result of loans made to PTC by a participant or an LPP.

These provisions will govern a participant's or LPP's cash settlement obligations unless the participant or LPP has made arrangements with PTC to pre-fund the debit balance.[9] The debit

[1] 15 U.S.C. 78s(b) (1988).

[2] On October 15, 1990, PTC submitted SR-PTC-90-05. PTC submitted SR-PTC-90-06 on October 18, 1990. Both proposed rule changes were submitted pursuant to section 19(b)(3)(A) of the Act. PTC subsequently amended both proposals requesting review pursuant to section 19(b)(2). See letter from Lee Reznick, General Counsel, PTC, to Sonia Burnett, Attorney, Commission (dated December 6, 1990).

[3] Securities Exchange Act Release No. 28928 (February 5, 1991), 56 FR 5721.

[4] Before issuing a CMO, trustees for the CMO and rating agencies require a clear statement as to the charges that will be made to the cash balance for a LPA and existence of any liens on the assets that underlie the CMO. Since PTC's rules were silent on this issue (PTC's rules provide that PTC does not have a lien on securities in an LPA, however, prior to the rule change under consideration today, PTC's interest in the cash balance of an LPA was not mentioned in PTC's rules) and in light of PTC's interest in other assets on deposit at PTC, PTC's interest in an LPA was not apparent. *E.g.*, PTC has a first and prior lien on all securities in a participant's account (except securities that are fully paid for customer securities) and all securities and cash deposited by a participant or LPP in the participant's fund and all other cash and property held by PTC for the account of the participant or LPP. In addition, PTC may charge the participant's or LPP's account for depository services rendered. PTC's Rules, Article II, Rule 4.

[5] See section *B* of this Order.

[6] The permitted charges that PTC may assess against the LPA are listed in various sections of PTC's rules. Under the proposed rule change, the list of permitted charges will be essentially the same as the charges currently allowed under PTC's rules. See *e.g.*, PTC Rules, Article III, Rule 2, section 2(b) (Financing Payments) and section 4. (Adjustments).

[7] Other amounts that PTC may charge to the LPA are amounts billed by PTC, the correcting of errors in crediting the cash balance of the LPA and amounts transferred from the participant's LPA cash balance to another PTC participant's account.

[8] PTC may use its own funds, the cash portion of a participant's or LPP's mandatory deposit into the Participants Fund, or borrowed funds to finance the P & I advances. If PTC borrows funds in order to advance the P & I payment, PTC ordinarily will grant the lender a security interest in the right to the P & I payment and the lender would be entitled to the P & I payment when PTC receives it from the issuer or paying agent.

[9] This provision was proposed as a part of PTC's proposed amendments to its cash settlement provisions in an earlier rule filing, SR-PTC-89-03. See supra, n. 2 and accompanying text.

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balance may be pre-funded by making available funds to cover the debit balance before the payment is due. Pre-funding is an alternate payment arrangement and in essence, operates as a waiver of the Fed-wire payment to PTC. The option of whether to allow pre-funding and waive the Fed-wire payment is in the sole discretion of PTC.

II. Discussion

The Commission believes that PTC's proposal is consistent with the section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions while ensuring the safeguarding of funds and securities in PTC's possession or under PTC's control. The Commission believes that the proposal will further encourage the goal of immobilization of securities.

Section 17A(a)(1) of the Act states that inefficient procedures for the clearance and settlement of securities transactions impose unnecessary costs on investors and on persons facilitating transactions on behalf of investors. Additionally, that provision of the Act expressly encourages the use of automation to improve efficiency in the clearing, settling, and processing of information with respect to securities transactions.

When PTC implemented limited purpose participation in 1990, only issuers, warehouse lenders, and special clearing participants were eligible to become an LPP.[10] PTC expanded the scope of "limited purpose participation" in order to accommodate activities of existing members who used all of PTC's services and who needed LPP accounts to safekeep certain types of securities, such as Government National Mortgage Association securities ("GNMA") underlying CMOs.[11] PTC's proposal will provide clarity with respect to allowable offsets, charges and liens to the LPA to accommodate certain requirements of CMO trustees and rating agencies.[12] The clarifications in PTC's proposal also will provide consistency with PTC rules and procedures. PTC's proposed rule change, in essence, will allow PTC to continue to retain CMOs on deposit and further the goal of immobilization of securities consistent with the Act.

[10] Securities Exchange Act Release No. 28078 (June 1, 1990), 55 FR 23625.

[11] PTC expanded the scope of entities eligible to become an LPP to allow full-purpose participants or entities that would qualify as a full purpose participant to maintain an LPA. Securities Exchange Act Release No. 28078, n. 13 *supra*.

[12] The proposed rule change in this regard will consist largely of PTC bringing together the allowable charges and offsets in Article II, rather than referencing various sections of PTC's rules.

Section 17A(b)(3)(F) states that clearing agency rules should provide for the safeguarding of securities and funds which are in the clearing agency's custody or control. The use of an LPA is confined to deposits of certain types of securities by qualifying participants. Because an LPA is not intended for general use, specific procedures for calculating the cash balance and for making cash settlement will allow PTC to closely monitor the status of the LPA. By monitoring the status of the LPA, PTC will be able to ensure, consistent with industry practice, that the cash balance for the LPA is charged only for those amounts specified in PTC's rules and that PTC does not claim an interest in the LPA. The Commission believes this provision will facilitate the safeguarding of funds and securities that are in PTC's custody or control or for which PTC is responsible consistent with section 17A(b)(3)(F) of the Act.

Section 17A(b)(3)(F) of the Act states also that clearing agency rules should provide for the prompt and accurate processing of securities transactions. The Commission notes that by more clearly articulating its procedures for cash settlement, PTC will enable an LPP to more readily understand and comply with the requirements. Some PTC participants or LPPs are lending institutions from which PTC may borrow funds, or otherwise have business dealings with PTC in a capacity other than as a PTC participant or LPP. The proposed rule change provides that obligations of PTC that arise as a result of an association with PTC other than the participant's settlement activities, may not be set-off against the participant's settlement obligations. By clearly providing that an LPA debit balance shall not be netted, that an LPP shall not seek to set-off its LPA debit balance with obligations other than those items expressly provided for in PTC's rules and that the LPA debit balance shall be paid when it is due, the proposed rule change will help to protect the integrity of PTC's settlement process and thus the proposal will help promote efficient settlement of transactions at PTC. For these reasons, the Commission believes the proposal will promote efficiency in PTC's settlement process and the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

For these reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (SR-PTC-90-05 and 90-06) be, and are hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11282 Filed 5-10-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29160; File No. SR-PTC-91-06]

Self-Regulatory Organizations; Participants Trust Company; Filing of Proposed Rule Change Relating to Amendments to Its By-Laws

May 3, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 22, 1991, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies PTC's By-Laws to increase the number of directors on the Board of Directors of PTC ("Board") from 10 to 12. The rule change also makes a technical modification to the By-Laws to clarify that the number of directors may be changed by either the directors or the shareholders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The next of these statements may be examined at the places specified in item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose—The purpose of this proposed rule change is to increase the number of directors on the Board from 10 to 12, in order to enhance the representation, on the Board, of the various market participants using PTC's services.

The rule change also makes a technical change to the By-Laws to clarify that the number of directors can be changed by Board action, in addition to shareholder action. Section 8.7 of PTC's By-Laws provides for amendment to the By-Laws by the vote of the directors or the shareholders, which would include amending the By-Laws to change the number of directors. However, the current version of section 3.2 of the By-Laws requires that changes to the number of directors be made in accordance with section 3.2. The proposed rule change will amend section 3.2 to clarify that the number of directors may be changed by either the directors or the shareholders, pursuant to the authority granted in section 8.7.

(b) Basis—Since the proposed rule change will enhance the representation, on the Board, of various market participants using PTC's services, it is consistent with section 17A(b)(3)(C) of the Act and the rules and regulations thereunder applicable to PTC.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change, Received from Members, Participants, or Others

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of PTC. All submissions should refer to File No. SR-PTC-91-6 and should be submitted by June 3, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11283 Filed 5-10-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18134; International Series Rel. No. 268; 812-7717]

Advisors International Fund; Application

May 6, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Advisors International Fund.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and rule 12d3-1.

SUMMARY OF APPLICATION: Applicant seeks a conditional order permitting it to invest in equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment advisor in accordance with the conditions of the proposed amendments to rule 12d3-1.

FILING DATE: The application was filed on April 23, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 31, 1991, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 6 St. James Avenue, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney, at (202) 504-2274, or Max Berueffy, Branch Chief, at (202) 272-3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On January 14, 1991, Applicant filed a Notification of Registration on form N-8A and a Registration Statement on form N-1A under the Securities Act of 1933 and the Act. Applicant's investment manager is Bearbull (UK) Limited, which is wholly owned by Bearbull Limited, the holding company of the Bearbull Group, a financial services organization.

2. Applicant seeks to diversify its portfolio further by being permitted to invest in foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser ("foreign securities companies").

3. Applicant seeks relief from section 12(d)(3) of the Act and rule 12d3-1 thereunder to invest in securities of foreign securities companies to the extent allowed in the proposed

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amendments to Rule 12d3-1. See Investment Company Act Release No. 17096 (August 3, 1989), 54 FR 33027 (August 11, 1989). Proposed amendment rule 12d3-1 would, among other things, facilitate the acquisition by applicant of equity securities issued by foreign securities companies. Applicant's proposed acquisition of securities issued by foreign securities companies will satisfy each of the requirements of proposed amended rule 12d3-1.

Applicant's Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisition satisfies certain conditions set forth in the rule. Subparagraph (b)(4) of rule 12d3-1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since a "margin security" generally must be one which is traded in the United States markets, securities issued by many foreign securities firms would not meet this test.[1] Accordingly, applicant seeks an exemption from the "margin security" requirements of rule 12d3-1.

2. Proposed amended rule 12d3-1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (August 3, 1989), 54 FR 33027 (August 11, 1989).

[1] The staff of the Division of Investment Management notes that the Board of Governors of the Federal Reserve System recently amended Regulation T to include "foreign margin stock[s]." However, because of the restrictive requirements for inclusion on the Board's "List of Foreign Margin Stocks," securities issued by many foreign securities firms are not included in the definition of "foreign margin stocks" under Regulation T.

Applicant's Condition

Applicant agrees to the following condition is connection with the relief requested:

Applicant will comply with the provisions of the proposed amendments to rule 12d3-1 (Investment Company Act Release No. 17096 (August 3, 1989); 54 FR 33027 (August 11, 1989)), and as such amendments may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11280 Filed 5-10-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18136; 812-7656]

Convertible Holdings, Inc.; Application

May 6, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Convertible Holdings, Inc. ("Convertible Holdings").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for an exemption from section 18(a)(2)(B) of the 1940 Act.

SUMMARY OF APPLICATION: Convertible Holdings seeks an order permitting it to purchase its shares on a securities exchange subject to certain conditions.

FILING DATE: The application was filed on December 19, 1990. An amendment was filed on April 2, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 3, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Convertible Holdings, Inc., Box 9011, Princeton, New Jersey 08543-9011.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Staff Attorney, at (202) 504-2289, or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Convertible Holdings, a Maryland corporation, is a diversified, closed-end management investment company registered under the 1940 Act. It is a "dual-purpose" investment company with dual investment objectives of (a) long-term capital appreciation and (b) current and long-term growth of income. Convertible Holdings attempts to achieve its objectives by investing primarily in convertible debt securities and convertible preferred stocks. In accordance with its dual objectives, Convertible Holdings has a stated objective (a "Minimum Income Rate Objective") of obtaining a minimum rate of income return equal to 85% of the yield of the Value Line Convertible Index calculated on the same basis. If, at the end of any quarter, the Minimum Income Rate Objective has not been met, the fee payable in that quarter to Convertible Holdings' investment adviser, Merrill Lynch Asset Management, Inc. ("MLAM"), will be reduced by 25% of the fee.

2. Convertible Holdings has outstanding two classes of securities, "Capital Shares" and "Income Shares." Each class is separately listed for trading on the New York Stock Exchange (the "NYSE"). Convertible Holdings will maintain this structure until July 31, 1997, when the Income Shares will be redeemed at $9.30 per share plus accumulated and unpaid dividends. The Capital Shares will then be the sole remaining class of shares outstanding and the Board of Directors will decide whether to liquidate Convertible Holdings or to submit to the holders of the Capital Shares a proposal to convert to an open-end investment company.

3. The principal characteristics of Convertible Holdings' Capital Shares and Income Shares are described fully in the application. Capital Shares are common shares which will be entitled to any capital appreciation from all the assets of Convertible Holdings. Holders of Capital Shares will receive no

distributions from Convertible Holdings' Net Income[1] so long as Income Shares are outstanding. Income Shares are preferred shares which will be entitled to receive as dividends any Net Income earned on all assets of Convertible Holdings. The minimum cumulative dividend on the Income Shares is $1.00 per share annually. To the extent that any such cumulative dividend cannot be satisfied from Net Income, it will be paid from any net realized short-term or long-term capital gains. Convertible Holdings intends to redeem all Income Shares in 1997 for $9.30 per share plus accumulated and unpaid dividends. If total net assets are insufficient to redeem the Income Shares at such amount, the total net assets of Convertible Holdings will be distributed to the holders of the Income Shares on a pro rata basis. If there are accumulated and unpaid dividends on the Income Shares aggregating $2.00 or more per share, then the holders of the Income Shares will be entitled, voting separately as a class, to elect a majority of the full Board of Directors, and the holders of the Capital Shares will elect the remaining Directors. Such voting rights will continue until all dividend arrearages on the Income Shares have been paid or declared and set apart for payment. Except with respect to the election of Directors and as otherwise set forth in the application, all shareholders of Convertible Holdings vote as a single class and are entitled to one vote per share.

4. As indicated above, the Capital Shares and the Income Shares are separately listed and traded on the NYSE. The Capital Shares have historically traded at a discount to net asset value. The Income Shares, on the other hand, have historically traded at a premium to net asset value.[2] On a combined basis, the two classes together have traded at a discount from their combined net asset value. For example, on December 7, 1990, the per share net asset values for the Capital Shares and Income Shares were $7.55 and $9.57, respectively, for a combined net asset value of $17.12. At that date, the closing sale prices on the NYSE for the Capital Shares and Income Shares were $4.00 and $10.875, respectively, for a combined closing sale price of $14.875. The trading history of the Income Shares and the Capital Shares is set forth more fully in the application.

5. The existence of the discount in the trading for the Capital Shares, and for the two classes on a combined basis, has resulted in substantial dicontent on the part of a number of shareholders, particularly holders of Capital Shares. Consequently, management of Convertible Holdings and its Board of Directors have for some time considered potential alternative actions that might be taken to reduce the discount.

6. To address the problem of the discount, the Board of Directors of Convertible Holdings has approved a proposal of MLAM to repurchase equal numbers of Income Shares and Capital Shares in the open market, subject to receipt of the requested exemptive order and shareholder approval of an amendment to Convertible Holdings' Articles of Incorporation (the "Charter"), described in the application, that is ncessary in order to effect the purchase of Capital Shares and Income Shares. The frequency and amount of such purchases will be approved by the Board of Directors, subject to the conditions set forth below. Convertible Holdings does not intend to resell any of the Income Shares or Capital Shares that it proposes to repurchase.

7. In approving this proposal, Convertible Holdings' Board of Directors determined that the proposal provided several potential benefits in seeking to reduce the discount. In particular, it leaves the structure of Convertible Holdings unaffected so that it can continue in operation with its current objectives and capital structure. In addition, it involves less expense to Convertible Holdings than utilization of tender offers. Finally, as described below, open market purchases of Income Shares and Capital Shares will be effected at a price not in excess of the current combined per share net asset value of the Income Shares and Capital Shares. To the extent the aggregate purchase price of shares of both classes (including brokerage expenses) is less than the combined net asset values, the combined per share net asset value of the Income Shares and Capital Shares will increase. Convertible Holdings does not believe that any increase in its expense ratio resulting from a lower asset base after such purchases will be material to investors.

[1] "Net Income" includes all dividends, interest and other income (but not realized or unrealized gains, stock dividends and other capital items) earned by Convertible Holdings on its portfolio holdings, net of its expenses.

[2] The net asset values per share for the Income Shares and Capital Shares are determined as of the close of the NYSE on the last business day of each week and month. Net asset value of an income Share is equal to the lower of (a) $9.30 plus accumulated and unpaid net income per share or (b) the total net assets of Convertible Holdings divided by the number of Income Shares outstanding. Net asset value of a Capital Share is equal to the net assets of Convertible Holdings minus net assets attributable to Income Shareholders, divided by the number of Capital Shares outstanding.

Applicant's Legal Analysis

1. Convertible Holdings hereby requests an exemptive order pursuant to section 6(c) of the 1940 Act to the extent that the proposed purchases of Convertible Holdings' Income Shares and Capital Shares may violate section 18(a)(2)(B) of the 1940 Act. Section 18(a) prohibits a closed-end investment company that has a class of senior security [3] outstanding from purchasing its common stock unless the senior security meets certain requirements with respect to asset coverage. In the case of a class of senior security that is a stock, the required asset coverage is a minimum of 200% after deducting the amount of the purchase price of the common stock. 15 U.S.C. 80a-18(a)(2)(B). "Asset coverage" of a class of senior security that is a stock is defined in section 18(h) of the 1940 Act as "the ratio which the value of the total assets of such issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of such issuer plus the aggregate of the involuntary liquidation preference of such class of senior security which is a stock." The "involuntary liquidation preference" of a class of senior security which is a stock is defined as "the amount to which such class of senior security would be entitled on involuntary liquidation of the issuer in preference to a security junior to it." In the case of the Income Shares, the involuntary liquidation preference is $9.30 per share plus accumulated and unpaid dividends. Convertible Holdings would violate section 18(a)(2)(B) if it were to purchase its Capital Shares at a time when, giving effect to the purchase, the Income Shares did not have the prescribed asset coverage. As of January 31, 1991, the asset coverage of the Income Shares was 168.44%. Convertible Holdings believes, however, that its requested exemption from section 18(a)(2)(B) meets the standards of section 6(c).

2. Convertible Holdings believes that the proposed purchases would be appropriate in the public interest. In this regard, it submits that the exemptive order that it requests, if granted, would not in any way detract from the benefits that it provides as a dual-purpose fund. Moreover, there has been increasing

[3] A "senior security" is defined in section 18(g) of the 1940 Act as "any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends." The Income Shares are senior securities as defined in section 18(g).

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concern among Convertible Holdings' shareholders for it to take steps to address its discount problem.[4] The proposed repurchases would, as described above, potentially benefit holders of both Income Shares and Capital Shares.

3. Convertible Holdings believes that the proposed purchases will be consistent with the policies and purposes of the 1940 Act generally and of section 18. Section 18 is designed to prevent unduly complex capital structures, inequitable control of investment companies, leveraging, and potential conflicts of interest between various classes of securityholders. One of the most important aspects of that section is to protect the interests of holders of a closed-end investment company's senior securities by prohibiting such a company from purchasing its common shares if, giving effect to the purchase, the company does not have an asset coverage of 200%. Convertible Holdings anticipates that the proposed purchases will not comply with section 18(a)(2)(B) since it does not currently have the asset coverage required by that section. However, the proposed purchases are not being made to enhance the value of the holdings of a small, or controlling, group of common stockholders. Moreover, the purchases will have the effect of modestly increasing the asset coverage of the Income Shares for so long as they are made at a time when the combined market price of the Income Shares and Capital Shares is less than the net asset value represented by such Shares.

4. Convertible Holdings submits that the requested order would also be consistent with the protection of investors. Convertible Holdings will repurchase only equal numbers of Income Shares and Capital Shares, except that for the minimal differences described in the conditions to the requested order. Thus, Convertible Holdings will not discriminate against either class in conducting its repurchases. In addition, the repurchases will comply fully with section 23(c)(1) of the 1940 Act since they will be conducted on the NYSE or another securities exchange and will not commence unless the notice to Convertible Holdings' shareholders has been provided in accordance with section 23(c)(1).[5]

[4] Convertible Holdings notes, however, that presumably, as the 1997 "maturity" date of the Company approaches, both Income Shares and Capital Shares will trade at prices more closely approximating their respective net asset value.

[5] Moreover, shareholders will have the opportunity to vote on that very point at the 1991 annual meeting by voting on whether Convertible Holdings' Charter should be amended to permit the repurchases.

[6] The assumed commission rate to be utilized will be based on the commission rate paid by Convertible Holdings for prior purchases, as adjusted to take into account any changes in rates charged to institutions such as Convertible Holdings.

Applicant's Conditions

Convertible Holdings agrees that any order granted on the application will be conditioned on the following:

1. Convertible Holdings will not permit the number of outstanding shares of either class at any time to exceed by more than 1,000 the number outstanding of the other class.

2. Convertible Holdings will not permit the number of shares outstanding of either class to be out of balance with the number of shares outstanding of the other class to any extent for more than five consecutive trading days (except that if, at the expiration of such period, a purchase to redress an imbalance would be inconsistent with requirement No. 3 hereunder, Convertible Holdings will not make such a purchase until it can do so consistent with such requirement).

3. Convertible Holdings will not purchase shares of either class unless the unit (one Income Share and one Capital Share) net asset value determined at the close of business of the prior day exceeds the sum of (a) the per share purchase price of the shares being purchased (plus the assumed brokerage commission), plus (b) the higher of (i) the most recent market price or (ii) the lowest current asked price for shares of the other class (plus in either case an assumed brokerage commission).[6] For this purpose, unit net asset value will be determined by dividing Convertible Holdings' total net assets (not including any assets representing undistributed net investment income) by the number of Income or Capital Shares outstanding, whichever is the greater.

4. Purchases of either class will be effected on a national securities exchange and not exceed on any day 20% of the average daily trading volume for such shares as reported on the NYSE composite tape in the four weeks preceding the current week.

5. Convertible Holdings will notify all stockholders of its proposed repurchase program by letter or report which will discuss any discount in market value from net asset value. It will also inform the stockholders of Convertible Holdings' intention to redeem all outstanding Income Shares on July 31, 1997 at $9.30 per share plus accumulated and unpaid dividends to the redemption date and the fact that after such redemption, all of the remaining assets of Convertible Holdings will be owned by the holders of the Capital Shares.

6. In its quarterly reports to stockholders, Convertible Holdings will provide information as to the aggregate number of shares of each class purchased and the average price thereof.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11281 Filed 5-10-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended May 3, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47524.

Date filed: May 2, 1991.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 464 (Europe-Western Africa fares).

Proposed Effective Date: May 15, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-11230 Filed 5-10-91; 8:45 am]

BILLING CODE 4910-62-M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 3, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming applications, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47518.

Date filed: April 29, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 28, 1991.

Description: Application of V. Kelner Airways Limited, pursuant to section 402 of the Act and subpart Q of the Regulations, applies for issuance of a Foreign Air Carrier Permit to authorize it to engage in foreign nonscheduled air transportation of persons, property and mail between points in Canada and points in the U.S.

Docket Number: 47520.

Date filed: April 29, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 28, 1991.

Description: Application of Continental Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for renewal of the Denver, Colorado-London, United Kingdom authority in its certificate for Route 514 for period of five years.

Docket Number: 47522.

Date filed: April 30, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 28, 1991.

Description: Application of Japan Airlines, Company Ltd., pursuant to section 402 of the Act and subpart Q of the Regulations, applies to amend its foreign air carrier permit to authorize JAL to engage, in addition to its existing permit authority, in scheduled foreign air transportation of persons, property and mail, as follows: (1) Combination service between Tokyo, Japan and the coterminal points Seattle, Washington and Atlanta, Georgia; (2) combination and all-cargo service between Tokyo and Chicago, Illinois; (3) combination service between Tokyo and Sao Paulo/Rio de Janeiro, Brazil (with full traffic rights) via Los Angeles, California; (4) combination service between Tokyo and Washington, DC.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-11231 Filed 5-10-91; 8:45 am]

BILLING CODE 4910-62-M

Office of Hearings

[Docket 47224]

Miami/Tampa-Toronto Service Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on May 21, 1991, at 10 a.m. (local time), in room 5332, Nassif Building, 400 7th Street, SW., Washington, DC, before Administrative Law Judge Ronnie A. Yoder.

Dated at Washington, DC, May 7, 1991.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 91-11252 Filed 5-10-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Proposed Advisory Circular 21-QCCI; Quality Control for the Manufacture of Non-Metallic Compartment Interior Components

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of and requests comments on the proposed Advisory Circular (AC) 21-QCCI Quality Control for the Manufacture of Non-Metallic Compartment Interior Components. This notice is necessary to give all interested persons an opportunity to present their viewpoints on the proposed AC.

DATES: Comments must be received on or before August 12, 1991.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Production Certification Branch, AIR-220, 800 Independence Ave., SW., Washington, DC 20591. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert A. Robino Jr., AIR-220, at the address above, telephone (202) 267-8361.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named in the above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC by submitting such written data, views or arguments as they may desire. Commenters should identify AC 21-QCCI and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Production Certification Branch before issuing the final AC.

Background

The proposed AC provides information and guidance regarding quality control systems for the manufacture of non-metallic compartment interiors, and for demonstrating compliance with Federal Aviation Regulations (FAR) part 21.

Issued in Washington, DC, on April 17, 1991.

Andrew B. Lewis,

Acting Manager, Production Certification Branch.

[FR Doc. 91-11276 Filed 5-10-91; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 171; Airborne MLS Area Navigation Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the second meeting of Special Committee 171 to be held June 5-7, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of the first meeting's minutes, RTCA paper no. 151-91/SC171-19; (3) Technical presentations; (a) Status briefing on related MLS activities; (b) Data Link; (c) Advanced procedures updates; (d) Other; (4) Working Group reports; (a) Operations Working Group (WG-1); (b) Technical Working Group (WG-2); (5) Further development of initial work program and plan for accomplishment; (6) Working Group sessions; (7) In plenary; (a) Working Group progress; (b) Task assignment; (8) Other business; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 2, 1991.

Herb Goldstein,

Designated Officer.

[FR Doc. 91-11277 Filed 5-10-91; 8:45 am]

BILLING CODE 4910-13-M

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DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 16-91]

Treasury Bonds of May 2021

Washington, May 2, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $11,750,000,000 of United States securities, designated Treasury Bonds of May 2021 (CUSIP No. 912810 EJ 3), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated May 15, 1991, and will accrue interest from that date, payable on a semiannual basis on November 15, 1991, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 2021, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Thursday, May 9, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, May 8, 1991, and received no later than Wednesday, May 15, 1991.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10 percent. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500. That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement of the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5 must be made or completed on or before Wednesday, May 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, May 13, 1991. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount with be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the Principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Bond to be separated into the components described in section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstruction.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstruction transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender principal and interest on the Bonds.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of May 15, 2021, CUSIP No. 912810 EJ 3

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2021 due May 15, 2021, CUSIP No. 912803 AW 3.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) due:	
Nov. 15, 1991	ET 3
May 15, 1992	EU 0
Nov. 15, 1992	EV 8
May 15, 1993	EW 6
Nov. 15, 1993	EX 4
May 15, 1994	EY 2
Nov. 15, 1994	EZ 9
May 15, 1995	FA 3

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833
Nov. 15, 1995	FB 1
May 15, 1996	FC 9
Nov. 15, 1996	FD 7
May 15, 1997	FE 5
Nov. 15, 1997	FF 2
May 15, 1998	FG 0
Nov. 15, 1998	FH 8
May 15, 1999	FJ 4
Nov. 15, 1999	FK 1
May 15, 2000	FL 9
Nov. 15, 2000	FM 7
May 15, 2001	FN 5
Nov. 15, 2001	FP 0
May 15, 2002	FQ 8
Nov. 15, 2002	FR 6
May 15, 2003	FS 4
Nov. 15, 2003	FT 2
May 15, 2004	FU 9
Nov. 15, 2004	FV 7
May 15, 2005	FW 5
Nov. 15, 2005	FX 3
May 15, 2006	FY 1
Nov. 15, 2006	FZ 8
May 15, 2007	GA 2
Nov. 15, 2007	GB 0
May 15, 2008	GC 8
Nov. 15, 2008	GD 6

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833
May 15, 2009	GE 4
Nov. 15, 2009	GF 1
May 15, 2010	JU 5
Nov. 15, 2010	JV 3
May 15, 2011	JW 1
Nov. 15, 2011	JX 9
May 15, 2012	JY 7
Nov. 15, 2012	JZ 4
May 15, 2013	KA 7
Nov. 15, 2013	KB 5
May 15, 2014	KC 3
Nov. 15, 2014	KD 1
May 15, 2015	KE 9
Nov. 15, 2015	KF 6
May 15, 2016	KH 2
Nov. 15, 2016	KK 5
May 15, 2017	KM 1
Nov. 15, 2017	KP 4
May 15, 2018	KR 0
Nov. 15, 2018	KT 6
May 15, 2019	KV 1
Nov. 15, 2019	KX 7
May 15, 2020	KZ 2
Nov. 15, 2020	LB 4
May 15, 2021	LD 0

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MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

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[Department Circular—Public Debt Series—No. 15-91]

Treasury Notes of May 15, 2001, Series B-2001

Washington, May 2, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $11,750,000,000 of United States securities, designated Treasury Notes of May 15, 2001, Series B-2001 (CUSIP No. 912827 A8 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated May 15, 1991, and will accrue interest from the date, payable on a semiannual basis on November 15, 1991, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 2001, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. A note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR Part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Wednesday, May 8, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 7, 1991, and received no later than Wednesday, May 15, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Wednesday, May 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, May 13, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. the minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of May 15, 2001, Series B-2001, CUSIP No. 912827 AB 5

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series B-2001 due May 15, 2001, CUSIP No. 912827 BA 4.

Interest Components

Designation	CUSIP No. 912828
Treasury Interest (TINT) due	
November 15, 1991	ET 3
May 15, 1992	EU 0
November 15, 1992	EV 8
May 15, 1993	EW 6
November 15, 1993	EX 4
May 15, 1994	EY 2
November 15, 1994	EZ 9
May 15, 1995	FA 3
November 15, 1995	FB 1
May 15, 1996	FC 9
November 15, 1996	FD 7
May 15, 1997	FE 5

Interest Components—Continued

Designation	CUSIP No. 912828
November 15, 1997	FF 2
May 15, 1998	FG 0
November 15, 1998	FH 8
May 15, 1999	FJ 4
November 15, 1999	FK 1
May 15, 2000	FL 9
November 15, 2000	FM 7
May 15, 2001	FN 5

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ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

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[Department Circular—Public Debt Series—No. 14-91]

Treasury Notes of May 15, 1994, Series S-1994

Washington, May 2, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $13,500,000,000 of United States securities, designated Treasury Notes of May 15, 1994, Series S-1994 (CUSIP No. 912827 A7 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated May 15, 1991, and will accrue interest from that date, payable on a semiannual basis on November 15, 1991, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1994, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Tuesday, May 7, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, May 6, 1991, and received no later than Wednesday, May 15, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less then the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applications when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Wednesday, May 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, May 13, 1991. When payment has been submitted with the tender and the purchase price of the Notes alloted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes alloted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes alloted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-11312 Filed 5-8-91; 4:02 p.m.]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Program of Exchange With the Czech and Slovak Federal Republic

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Subject to the availability of funds, the United States Information Agency (USIA) invites applications from U.S. educational and other not-for-profit institutions to conduct a summer language exchange with the Czech and Slovak Federal Republic.

DATES: Deadlines for submissions: Proposals must be received at USIA by 5 p.m., Eastern Daylight Time, May 29, 1991; post marked or faxed documents will not be accepted. Duration: The duration of the grant should be from four to eight weeks. Programs are expected to take place between July and September 1991. No funds may be expended until the grant agreement is signed with the USIA's Office of Contracts.

ADDRESSES: Fifteen copies of the completed application, including required forms, should be submitted to the office below. U.S. Information Agency, Reference: Exchange with the Czech and Slovak Federal Republic, Office of the Executive Director, E/X, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should contact Mr. Ted Kniker or Ms. Debbie Trent at USIA, Academic Exchanges European Branch, E/AEE Room 208, Washington, DC 20547, Fax (202) 401-1726, Telephone (202) 619-4420, to request detailed application packets, which consist of all necessary forms, formats, and guidelines for preparing proposals. Copies of the bilateral agreement will also be included.

SUPPLEMENTARY INFORMATION: This exchange is to be conducted in pursuit of the goals established in the Program of Cooperation and Exchange between the governments of the United States and Czechoslovakia (now the Czech and Slovak Federal Republic). The purpose of this program is to conduct intensive summer language training programs for up to 20 participants from each country. Proposals should include participants from both the Czech and Slovak republics. Programs in the U.S. are expected to be conducted in English. Programs in the Czech and Slovak Federal Republic are expected to be conducted in the language of the host republic.

Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world." Programs and projects must conform with all Agency requirements and guidelines and are subject to final review by the USIA contracting officer. Applications for a substantive language and cultural training exchange will be accepted from accredited, degree-granting U.S. universities or colleges, consortia of such universities and colleges, university systems, and not-for-profit organizations engaged in international educational exchange programs. Support is offered for exchanges of language specialist for language programs of at least four weeks duration, and not to exceed eight weeks duration. Participants must be citizens of the United States or of the Czech and Slovak Federal Republic.

Applying institutions are expected to make their own arrangements directly with appropriate Czech and Slovak institutions.

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Language Qualifications

Participants are expected to have sufficient fluency in the language of the host country (or republic) to be able to pursue university level study and be able to converse with citizens of the country without the aid of interpreters.

Allowable Costs

Project awards will be made in a range of amounts but will not exceed $75,000. Awards to organizations with less than four years experience in international exchanges will be limited to $60,000. Therefore, budget submissions from such organizations should not exceed this amount. Grant-funed items of expenditure will be limited to the following categories:

—International Travel
—Domestic travel
—Maintenance or Per Diem
—Academic program costs, e.g., tuition, university fees
—Books
—Insurance
—Orientation
—Administration (salaries, benefits, other direct and indirect costs).*

*Please Note.—It is required that requested administrative funds not exceed 20 percent of the total amount requested; additional administrative expenses should be cost-shared.

Applications should demonstrate substantial cost-sharing; tuition waivers are highly desired.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein and in the application guidelines. Ineligible proposals will not be considered for funding. Eligible proposals will be forwarded to panels of USIA officers for advisory review in conformity with the criteria set forth herein and with the guidelines for preparing proposals prior to funding decisions by delegated officials. All eligible proposals will also be reviewed by the Agency's Office of General Counsel, the appropriate geographic area office, and the budget and contracts offices. Completed applications will be reviewed according to the following criteria

a. Adherence of proposed activities to the conditions described in the bilateral agreement between the United States and the Czech and Slovak Federal Republic.

b. Feasibility of the program plan and the capacity of the organization to conduct the exchange.

c. Agency evaluation and assessment of the organization's previous international exchange experience; for organizations that have not worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier effect/impact—the impact of the exchange activity on the wider community and on the development of continuing ties.

e. Cost effectivenes—greatest return on each grant dollar; degree of cost sharing exhibited.

f. Diversity and pluralism—preference will be given to proposals that demonstrate efforts to provide for the participation of individuals from different regions and of diverse backgrounds, to the extent feasible for the applicant institutions.

g. Preference will be given to proposals that include language educators as participants.

h. Preference will be given to proposals that include an area studies component.

Notification

All applicants will be notified of the result of the review process on or about June 21, 1991. Funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: May 6, 1991.

Warren J. Obluck,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-11257 Filed 5-10-91; 8:45 am]

BILLING CODE 8230-01-M

Public Diplomacy, U.S. Advisory Commission; Meeting

SUBJECT: U.S. Advisory Commission on Public Diplomacy Meeting.

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on May 15 in room 600, 301 4th Street, SW., Washington, DC from 11 a.m. to 12 noon.

The Commission will meet with Ms. Paula Dobriansky, Associate Director, Bureau of Programs, to discuss the Bureau's policy guidance role and overseas operations.

EFFECTIVE DATE: May 15, 1991.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Kalamets, (202) 619-4468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: May 7, 1991.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 91-11256 Filed 5-10-91; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 92
Monday, May 13, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, May 17, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 9, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11446 Filed 5-9-91; 3:24 p.m.]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 13, 20, 27, and June 3, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 13

Wednesday, May 15

2:00 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Federal Register Notice and Commission Order on Louisiana Energy Services' Application for License (Tentative)

Week of May 20—Tentative

Monday, May 20

9:00 a.m.
Briefing on Final Rule on Performance Based QA—Part 35 (Public Meeting)

Tuesday, May 21

10:00 a.m.
Briefing on BRC Consensus Process (Public Meeting)

2:00 p.m.
Briefing on Final Rule on License Renewal—Part 54 (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 27—Tentative

Friday, May 31

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 3—Tentative

Friday, June 7

1:30 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492-0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: May 8, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-11430 Filed 5-9-91 1:30 p.m.]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

Meeting

TIME AND DATE: 9:30 a.m., May 14, 1991.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket No. R90-1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, N.W., Washington, D.C. 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 91-11461 Filed 5-9-91; 3:42 p.m.]

BILLING CODE 7710-FW-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:19 p.m. on Tuesday, May 7, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) potential litigation resulting from non-disclosure of asset information, (2) the resolution of failed thrift institutions, (3) sale of assets, and (4) contracting activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, N.W., Washington, D.C.

Dated: May 8, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-11415 Filed 5-9-91; 11:42 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [56 FR 20496 May 3, 1991].

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STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, May 1, 1991.

CHANGE IN THE MEETING: Rescheduling.

The following items were not considered at a closed meeting on Tuesday, May 7, 1991, at 2:30 p.m. and have been rescheduled for Thursday, May 9, 1991, at 2:30 p.m.

Institution of administrative proceeding of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Commissioner Lochner, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kaye Williams at (202) 272-2400.

Dated: May 8, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11417 Filed 5-9-91; 11:42 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 13, 1991.

A closed meeting will be held on Tuesday, May 14, 1991, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Lochner, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 14, 1991, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

Settlement of injunctive action.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Gray at (202) 272-2300.

Dated: May 8, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11418 Filed 5-9-91; 11:42 am]

BILLING CODE 8010-01-M

Corrections

Federal Register

Vol. 56, No. 92

Monday, May 13, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

Correction

In notice document 91-9905 appearing on page 19351 in the issue of Friday, April 26, 1991, in the third column, the **EFFECTIVE DATE** should read "May 28, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-464-FNC]

RIN 0938-AD48

Medicare Program; Schedule of Limits for Skilled Nursing Facility Inpatient Routine Service Costs

Correction

In notice document 91-7225, beginning on page 13317, in the issue of Monday, April 1, 1991, make the following corrections:

1. On page 13317, in the 3rd column, under **ADDRESSES:**, in the 13th line, "Building, 3625" should read "Building, 6325".

2. On page 13318, in the first column, in the second complete paragraph, in the fifth line, "or" should read "and".

3. On the same page, in the 3rd column, in the 1st complete paragraph, in the 13th line, after "designation" insert "for".

4. On page 13319, in the 2nd column, in the last paragraph, in the 17th line from the bottom of the page, "able" should read "unable".

5. On page 13320, in the third column, under *H. Exception to Cost Limits*, in the third line, "§ 413.39(f)." should read "§ 413.30(f)."

6. On page 13321, in the first column, the second paragraph should read as set forth below.

"If the forecasted market basket rate differs from the actual rate by at least 0.3 of one percentage point, we will notify the Medicare intermediaries of the actual rate of increase or decrease and advise them to adjust retroactively each SNF cost limit."

7. On page 13322, in the first column, in the third table, in the second column, under the rule, the total was omitted and should read "$102.32".

8. On the same page, in the second column, under **V. Per Diem *****, in the seventh line, "section 18 (v)(1)(E)" should read "section 1861(v)(1)(E)".

9. On the same page, in the 3rd column, in the 1st complete paragraph, in the 16th line, "increase" should read "increases".

10. On page 13324, in the first column, under **Table I.**, in the third column of the table, in the first line, "$15.15" should read "15.25".

11. On page 13325, in the 3rd column, under **Table II.**, in the 10th line, "Report" should read "Rock".

BILLING CODE 1505-01-D

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-461 (Final)]

Gray Portland Cement and Cement Clinker From Japan

Correction

In notice document 91-10913 appearing on page 21391 in the issue of Wednesday, May 8, 1991, the investigation number should appear as set forth above.

BILLING CODE 1505-01-D

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federal register

Monday
May 13, 1991

Part II

Department of Education

34 CFR Parts 668 and 682
Student Assistance General Provisions;
Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 682

RIN 1840-AD42

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations. These regulations contain provisions that are common to the student financial assistance programs authorized under Title IV of the HEA (Title IV, HEA programs). These amendments are needed to implement changes made to the Higher Education Act of 1965, as amended (HEA), by section 3004 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), section 2003 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), and section 301 of the Student Right-to-Know and Campus Security Act (Pub. L. 101-542). Under section 3004 of Pub. L. 101-508, effective July 1, 1991, an institution will lose its eligibility to participate in the Guaranteed Student Loan (GSL) programs if the institution's cohort default rates for each of three consecutive fiscal years exceed thresholds established by the new law. Public Law 101-239 makes an undergraduate student ineligible to borrow under the Supplemental Loans for Students (SLS) loan program for attendance at an institution with a cohort default rate that equals or exceeds 30 percent. Public Law 101-239 also requires the Secretary to promulgate regulations to prevent institutions that have undergone institutional status changes such as branching, consolidation, change of ownership or control, or another such change from evading the consequence of their cohort default rate, such as their students loss of eligibility to borrow under the SLS program. Public Law 101-542 defines the term "cohort default rate." These regulations change the term and definition of fiscal year default rate as defined in § 668.15(f) to cohort default rate to reflect the statutory definition, and amend section 668.25 to clarify the procedure an institution must follow regarding the handling of title IV, HEA program funds and proceeds when the institution closes, ceases to provide instruction, or loses its eligibility to participate in the Title IV, HEA programs.

DATES: Comments must be received on or before June 12, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Pamela A. Moran, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4310, ROB-3), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Doug Laine or Pat Newcombe, Telephone Number (202) 708-8242, Guaranteed Student Loan Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4310, ROB-3), Washington, DC 20202. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

Background

The Secretary is proposing to revise 34 CFR 668.15 to implement recent legislative changes. The proposed rule changes the term and definition of fiscal year default rate as contained in § 668.15(f) to cohort default rate to match the statutory language and provides for the application of the cohort default rate to institutions that have changed their institutional status. This proposed rule also codifies the legislative change that prohibits an undergraduate student from obtaining an SLS loan for attendance at an institution with a cohort default rate that equals or exceeds 30 percent. Further, the proposed rule describes the legislative change under which an institution loses its eligibility to participate in the GSL programs based on the default rates of its former students. The proposed rule also delineates the exceptional mitigating circumstances the Secretary will consider if an institution appeals its loss of eligibility and describes the procedures under which the institution may appeal its loss of eligibility. Finally, the proposed rule prohibits institutions that close or cease to provide instruction from awarding title IV program funds. The GSL programs include the Stafford Loan, Supplemental Loans for Students (SLS), PLUS loan, and Consolidation Loan programs. Since institutions do not participate in the Consolidation Loan Program, an institution's loss of eligibility under the statute does not apply to that program.

Regulatory Changes

The Secretary is proposing to amend § 668.15. These proposed regulatory changes are required by the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), which added a new section 435(m) to the HEA and amended section 428A(a) of the HEA, the Student Right-to-Know and Campus Security Act (Pub. L. 101-542), which further amended section 435(m) of the HEA (Pub. L. 101-542), and by the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508).

The first group of proposed changes is technical in nature. New subsection 435(m) defines the term "cohort default rate." This new statutory definition is nearly identical to the definition of "fiscal year default rate" in § 668.15(f)(1) of the current regulations. However, the statutory definition provides that loans that are rehabilitated under section 428F of the HEA before the end of a fiscal year will not be considered as in default for the purposes of determining an institution's cohort default rate. The Student Right-to-Know and Campus Security Act further amended the definition of cohort default rate in section 435(m) of the HEA to provide that only loans for which the Secretary or guarantee agency has paid a claim for insurance will be included in the calculation of an institution's cohort default rate. The Secretary is proposing these amendments to the definition found in § 668.15(f) to ensure that the regulatory term and definition are consistent with the term "cohort default rate" and definition found in the statute. For purposes of consistency, the Secretary is also proposing to amend current regulatory references to "fiscal year default rate" to "cohort default rate."

The Secretary is also proposing in § 668.15 to establish regulatory standards regarding the applicability of cohort default rates if an institution's status has changed. Section 435(m) of the HEA requires the Secretary to publish regulations designed to prevent an institution participating in the SLS program from evading the application of a cohort default rate through institutional status changes such as branching, consolidation, and changes of ownership and control. Although section 435(m) only requires the Secretary to prescribe implementing regulations with respect to student eligibility for SLS loans at an institution with a cohort default rate that equals or exceeds 30 percent, the Secretary has decided, for purposes of consistency, to apply the definition of cohort default rate to all the Title IV, HEA programs and develop regulations applicable to all Title IV programs to prevent an institution from evading the application of the cohort default rate. However, the statutory requirement does not affect the Secretary's current regulations, policies and procedures that utilize an institution's cohort default rate as an indicator of the institution's ability to properly administer the Title IV student assistance programs and as a basis for the Secretary to require that an institution submit certain information under § 668.15 (b), (c), and (e) and as a basis to commence a proceeding to limit, suspend, or terminate the institution's eligibility to participate in the Title IV student assistance programs.

The Secretary is proposing to apply cohort default rates for institutions that change status in the following manner:

(1) For institutions that change status from a separate location of one institution to a free-standing institution, the Secretary determines the cohort default rate based on the new institution's status as of October 1 of the fiscal year for which a cohort default rate is being calculated.

(2) For institutions that change status from a free-standing institution to a separate location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from both the former free-standing institution and the other institution. This cohort default rate will apply to the new, consolidated institution and all of its current locations.

(3) For free-standing institutions that merge, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from both of the institutions that are merging. This cohort default rate will apply to the new, consolidated institution.

(4) For institutions that change status from a separate location of one institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the number of students who default during the applicable fiscal years from both of the institutions in their entirety, not limited solely to the respective locations.

Under the current institutional identification system, the Department and guarantee agencies are not able to determine the number of borrowers who enter repayment and the number of borrowers who default at a specific location of an institution.

The Department is now in the process of revising its institutional identification system and will issue institutional identifiers to each specific location of an institution. This revised system will allow the Secretary and guarantee agencies to determine the number of borrowers who enter repayment and the number of borrowers who default at a specific location of an institution. The Secretary currently anticipates that this revised system will be in place for fiscal year 1993. However, until this institutional identification system is revised, the Secretary will consider the cohort default rate of a location of an institution to be the same as the cohort default rate of the entire institution for the fiscal year for which the cohort default rate is being calculated. Thus, a location of an institution will be considered to have the cohort default rate of the entire institution if it changes status to a free-standing institution. Furthermore, the location will use the cohort default rate of the entire institution (in conjunction with the cohort default rate of the institution of which it is becoming a location) if it becomes a location of another institution.

The Secretary is also proposing to amend 34 CFR 668.15 to implement the statutory changes made to section 435(a) of the Higher Education Act of 1965 by Public Law 101-508. This statutory change provides that an institution loses its eligibility to participate in the GSL programs if that institution's cohort default rates for the three most recent fiscal years for which data are available were equal to or greater than 35 percent. In fiscal year 1993 and beyond, an institution with a cohort default rate that equals or exceeds 30 percent for each of the three most recent fiscal years for which data are available will be ineligible. For example, in fiscal year 1991 an institution's fiscal years 1987, 1988, and 1989 cohort default rates will be used to determine whether the institution will lose its eligibility to participate in the GSL programs. If the Secretary determines that the institution's cohort default rates were equal to or greater than the threshold percentage, the statute requires that the institution lose its eligibility to participate in the GSL programs for the remainder of the fiscal year in which the determination is made and for the two succeeding fiscal years. After this time period has elapsed, the institution must satisfy the Secretary that it meets all requirements for participation in the GSL programs and execute a new program participation agreement with the Secretary to again participate in the GSL programs.

Under the proposed rules, an institution's loss of eligibility to participate in the GSL programs is effective on the date the institution receives notice from the Secretary that its cohort default rates have exceeded the threshold percentages for the three most recent fiscal years. An institution may appeal its loss of eligibility to participate in the GSL programs under the procedures set forth in 34 CFR 668.15(g). An institution wishing to appeal its loss of eligibility must submit its appeal in writing to the Secretary within 30 days after receiving notification of its loss of eligibility. An institution wishing to appeal its loss of eligibility on the basis of exceptional mitigating circumstances must submit an appeal that addresses the criteria identified in 34 CFR 668.15(g). The Secretary will not consider other arguments for restoring an institution's eligibility as exceptional mitigating circumstances in such an appeal. While the appeal is pending, the Secretary, pursuant to authority granted him under section 435(a) of the HEA, will not permit an institution to participate in the GSL programs except to deliver subsequent disbursements to borrowers who had received the proceeds of a first disbursement prior to the institution's loss of eligibility.

The law provides that the Secretary may permit the institution to continue to participate in the GSL programs if the institution demonstrates to the satisfaction of the Secretary that the data used to calculate the school's cohort default rate or the calculation of that rate for any of the three fiscal years is not accurate and a recalculation would reduce the institution's cohort default rate for any of the three applicable fiscal years below the threshold percentage. In addition, an institution's eligibility to participate in the GSL programs would resume if the institution demonstrates to the satisfaction of the Secretary that exceptional mitigating circumstances, as defined in proposed § 668.15(g), make the institution's loss of eligibility inequitable. If the institution satisfactorily demonstrates that either of the above criteria apply to that institution, the eligibility of that institution is reinstated retroactively to the date the institution was first notified

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that its default rates exceeded the threshold rates.

The statute specifies that, if an institution appeals the loss of eligibility, the Secretary will issue a decision within 45 days after the institution submits its appeal. An institution wishing to appeal based on the use of inaccurate data should have the corrected data verified by the guarantee agency. An institution's appeal will not be considered to be filed with the Secretary until the corrected data is verified by the guarantee agency, and the time limit for the Secretary's consideration of the appeal does not start until the appeal is filed. The proposed regulations would require a guarantee agency to respond to an institution's request to verify its default rate data within 15 working days of the date the agency receives the institution's written request. The Department urges guarantee agencies to respond expeditiously to institutions' requests for verification of the accuracy of the data. The proposed regulations would also provide that, as part of its appeal, an institution may submit, in writing, information identifying the errors in the data or the exceptional mitigating circumstances that satisfy these proposed regulations. This information must be submitted to the designated Departmental official, acting on behalf of the Secretary, identified in the notification of the default rates sent to the institution. The designated Departmental official will consider the relevant information submitted by the institution, but no oral hearing will be provided. There will be no appeal from the decision of the designated Departmental official.

As required by statue, a historically black college or university within the meaning of section 322(2) of the Higher Education Act of 1965, a tribally controlled community college within the meaning of the Tribally Controlled Community College Assistance Act of 1978, and a Navajo community college under the Navajo Community College Act are not subject to loss of eligibility until July 1, 1994.

The Secretary is proposing to add a new subparagraph (g)(1)(ii) to section 668.15 to establish exceptional mitigating circumstances that would permit consideration of appeals by institutions. The Secretary anticipates that an institution will regain its eligibility to participate in the GSL programs on the basis of exceptional mitigating circumstances only in rare instances. As proposed, an institution appealing its loss of eligibility on the basis of exceptional mitigating circumstances must have reduced its default rate by 50 percent of the amount by which its cohort default rate exceeds the threshold percentage each year for the two most recent fiscal years for which the Secretary has calculated a default rate.

The Secretary is interested in receiving public comment on the following criteria that the Secretary might also consider adopting as exceptional mitigating circumstances that make the institution's loss of eligibility inequitable: (1) The socioeconomic status of the students served by the institution, (2) the progress of the institution in reducing the dollar value of defaulted loans, (3) the economic health and general state of employment in the region, (4) the historic mission of the school, and (5) the successful completion and job placement of students. The Secretary will consider adopting one or more of these criteria, or other criteria received in public comment, either as additional requirements or as alternative circumstances for justifying continuation of an institution's eligibility. The Secretary is particularly interested in receiving public comment as to whether objective data is available for an institution to substantiate that one or more of these criteria apply to the institution if it chooses to appeal its loss of eligibility.

Further, the Secretary is particularly interested in receiving public comment on other criteria that should be used to determine if there are exceptional mitigating circumstances that make the institution's loss of eligibility inequitable. The Secretary wants to solicit objective criteria from the public that can be statistically measured by the Secretary to determine if an exceptional mitigating circumstance exists.

The Secretary is proposing the reduction of default rate as an exceptional mitigating circumstance because he believes that an institution that has made exceptional progress in reducing its cohort default rate by half the excess over the statutorily permissible threshold rate each year for two consecutive years has taken appropriate action to significantly reduce the incidence of default. The Secretary believes it would be inequitable for a school that has demonstrated exceptional success in reducing its default rate to lose its eligibility because its default rate is slightly above the threshold rate.

As indicated above, the Secretary is proposing that, to prove that an exceptional mitigating circumstance exists, an institution must show that its default rate was reduced by at least 50 percent of the amount by which the institution's cohort default rate exceeds the threshold limit each year for the two preceding fiscal years. For example, if an institution had a fiscal year 1987 cohort default rate of 55 percent, it must have reduced its fiscal year 1988 rate to 45 percent or less (at least 50 percent of the difference between 55 percent and 35 percent). If the institution reduced its fiscal year 1988 cohort rate to 45 percent, it must reduce its fiscal year 1989 rate to 40 percent or less (at least 50 percent of the difference between 45 percent and 35 percent).

These proposed regulations complement the current regulations implementing the Secretary's default reduction initiative that were published on June 5, 1989 in the **Federal Register** (55 FR 24114). The default related regulatory requirements and sanctions contained in those regulations remain in effect. Therefore, an institution with a fiscal year 1989 cohort default rate that exceeds 60 percent remains subject to a limitation, supension, or termination action by the Secretary even if the institution's default rate was less than 35 percent in fiscal year 1987 or fiscal year 1988.

The proposed regulations would add a new section 668.15(i) to reflect section 428A(a)(2) of the HEA. Under the statutory provision, an institution loses its eligibility to participate in the SLS program if the Secretary determines that the institution's cohort default rate for the most recent fiscal year for which such rate is available is equal to or greater than 30 percent.

The proposed regulations would also amend section 668.25 to make a distinction between the treatment of institutions that close or stop providing educational instruction and the treatment of those that lose eligibility to participate in the Title IV, HEA programs for other reasons. Under the current regulations, if an institution loses its eligibility to participate in the Title IV, HEA programs during a payment period, that ineligible institution is allowed to credit or disburse Title IV, HEA program funds to those students to whom it made a commitment when the institution was eligible. This exception is made to enable a student to continue his or her education or training for the continuation of that payment period. However, the current regulations also allow an ineligible institution to credit or disburse Title IV, HEA funds even if the institution closes or stops providing educational instruction. In almost all cases, the student's obligation to pay the institution for training received is negated by the failure of the institution to deliver the educational services under the terms of the contract. Thus, closed institutions and institutions that discontinue providing educational instruction to students receive a "windfall" at the expense of the Federal Government, because most of the Title IV, HEA program assistance will be credited to the institution which, under the institutional refund policy, will likely pay for institutional costs for instruction not actually provided to the student. For example, most institutional refund policies allow an institution to retain a percentage of institutional charges higher than the percentage of the program completed by the student. It is not uncommon for an institution to retain 75% of the institutional charges for students who complete only 25% of the portion of the program for which they were charged, or, for an institution to retain 100% of the institutional charges for students who have completed slightly more than 25% of the portion of the program for which they were charged. Therefore, proposed § 668.25 would allow those institutions that have lost eligibility, but continue to provide educational instruction for the duration of the payment period, to award Title IV, HEA program funds to those students to whom they have made a commitment.

The proposed amendment to § 668.25 would also codify the procedure an institution must follow in delivering Stafford and SLS loan proceeds if an institution loses its eligibility to participate in the GSL programs. An institution may deliver to a student, or credit the student's account with, the proceeds of a second or subsequent disbursement of a Stafford loan or SLS loan only if the proceeds of the first disbursement were delivered to the student or credited to the student's account prior to the loss of eligibility.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations will only affect a small percentage of institutions that participate in the GSL programs.

Paperwork Reduction Act of 1980

Sections 668.15 and 668.25 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. [44 U.S.C. 3504(h)]

There is no annual public reporting burden associated with these regulatory revisions to §§ 668.15 and 668.25.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Building, Washington, DC 20503; Attention: Dan Chenok.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4310, Regional Office Building 3, Seventh and D Streets SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Student aid, Vocational education.

Dated: May 6, 1991.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan and PLUS program)

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend parts 668 and 682 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1094 and 1141, unless otherwise noted.

2. Section 668.15 is amended by removing the term "fiscal year default rate" and adding in its place the term "cohort default rate", in paragraphs (a)(1), (b) introductory text, (b)(1)(i), (b)(1)(ii) introductory text, and (e), by removing the reference "(f)" in paragraph (a)(1) and adding in its place "(h)", by redesignating paragraph (f) as paragraph (h), by revising newly designated paragraph (h)(1), and by adding new paragraphs (f), (g), and (i) to read as follows:

§ 668.15 Additional factors for evaluating administrative capability.

* * * * *

(f)(1) Except as provided in paragraph (f)(6) of this section, an institution loses its eligibility to participate in the GSL programs if the Secretary determines that the institution's cohort default rate, for each of the three most recent fiscal years for which the Secretary has determined the institution's rate, is equal to or greater than the applicable threshold rates.

(2) For purposes of the determinations made under paragraph (f)(1) of this section, the threshold rates are—

(i) 35 percent for each of fiscal years 1991 and 1992; and

(ii) 30 percent for fiscal year 1993 and all subsequent fiscal years.

(3) An institution that loses its eligibility under paragraph (f)(1) of this section may not participate in the GSL programs beginning on the date the Secretary notifies it that its cohort default rate exceeds the thresholds specified in paragraph (f)(2) of this section and continuing—

(i) For the remainder of the fiscal year in which the Secretary determines that the institution has lost its eligibility under paragraph (f)(1) of this section; and

(ii) For the two subsequent fiscal years.

(4) An institution that loses its eligibility to participate in the GSL

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programs under paragraph (f)(1) of this section may not regain its eligibility to participate in the GSL programs, following the period described in paragraph (f)(3) of this section, until the institution—

(i) Satisfies the Secretary that it meets all requirements for participation in the GSL programs and executes a new agreement with the Secretary for participation in the GSL programs; or

(ii) Is notified by the Secretary that the notice of ineligibility is withdrawn.

(5) If the Secretary withdraws an institution's loss of eligibility pursuant to paragraph (g)(4) of this section, the eligibility of the institution is made retroactive to the date of the notice of ineligibility.

(6) Until July 1, 1994, the provisions of paragraph (f)(1) of this section are not applicable to a historically black college or university within the meaning of section 322(2) of the HEA, a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978, or a Navajo community college under the Navajo Community College Act.

(g)(1) An institution wishing to appeal the loss of eligibility to participate in the GSL programs under paragraph (f)(1) of this section may submit an appeal in writing to the Secretary's designated Departmental official within 30 days after it receives notification of its loss of eligibility, demonstrating that—

(i) The calculation of the institution's cohort default rate for any of the three fiscal years relevant to the loss of eligibility is not accurate and a recalculation with corrected data verified by the cognizant guarantee agency or agencies, would produce a cohort default rate for any of those fiscal years below the threshold percentage specified in paragraph (f)(2) of this section; or

(ii) The institution has reduced its cohort default rate for each of the two most recent fiscal years for which the Secretary has calculated a cohort default rate for that institution by 50 percent of the amount by which its cohort default rate for the previous year exceeds the applicable threshold percentage specified in paragraph (f)(2) of this section.

(2) The Secretary issues a decision on the institution's appeal within 45 days after the institution submits an appeal that addresses the criteria in paragraph (g)(1) of this section to the Secretary's designated Departmental official.

(3) The decision is based on the consideration of written material submitted by the institution. No oral hearing is provided.

(4) The Secretary withdraws the notification of ineligibility to participate in the GSL programs sent to an institution under paragraph (f)(1) of this section, if the Secretary determines that the institution's appeal demonstrates that one of the factor's specified in paragraph (g)(1) of this section exists.

(5) A guarantee agency shall respond to an institution's request for verification of its default rate data for purposes of paragraph (g)(1)(i) of this section within 15 working days of the date the agency receives the institution's written request.

* * * * *

(h) * * *

(1)(i) *Cohort default rate* means, for any fiscal year in which 30 or more current and former students at the institution enter repayment on Stafford or SLS program loans received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on Stafford or SLS program loans received for attendance at that institution who default before the end of the following fiscal year. In determining the number of students who default before the end of that following fiscal year, the Secretary includes only loans for which the Secretary or a guaranty agency has paid claims for insurance, and, in calculating the cohort default rate, excludes any loans which, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate. For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment, the term "cohort default rate" means the average of the rates calculated under the preceding sentence for the three most recent fiscal years. In the case of a student who has attended and borrowed at more than one institution, the student (and his or her subsequent repayment or default) is attributed to each institution for attendance at which the student received a loan that entered repayment in the fiscal year. A loan on which a payment is made by the institution, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition. Any loan that has been rehabilitated under section 428F of the HEA before the end of that following fiscal year is not considered as in default for purposes of this definition.

(ii)(A) A cohort default rate of an institution applies to all locations of the institution as it exists on the first day of the fiscal year for which the rate is calculated.

(B) A cohort default rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(iii)(A) For institutions that change status from a location of one institution to a free-standing institution, the Secretary determines the cohort default rate based on the institution's status as of October 1 of the fiscal year for which a cohort default rate is being calculated.

(B) For institutions that change status from a free-standing institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from both the former free-standing institution and the other institution. This cohort default rate applies to the new, consolidated institution and all of its current locations.

(C) For free-standing institutions that merge, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from both of the institutions that are merging. This cohort default rate applies to the new, consolidated institution.

(D) For institutions that change status from a location of one institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the number of students who default during the applicable fiscal years from both of the institutions in their entirety, not limited solely to the respective locations.

* * * * *

(i) An institution loses its eligibility to participate in the SLS program if the Secretary determines that the institution's cohort default rate for the most recent fiscal year for which such rate is available is equal to or greater than 30 percent.

* * * * *

3. Section 668.25 is revised to read as follows:

§ 668.25 Loss of institutional eligibility to participate in the Title IV, HEA programs.

(a) If an institution closes, stops providing educational instruction, or loses its eligibility to participate in the Title IV, HEA programs it shall—

(1) Immediately notify the Secretary of that fact;

(2) Submit to the Secretary within 45 days after the effective date of closing, cessation of instruction, or loss of eligibility—

(i) All financial, performance, and other reports required by each appropriate Title IV, HEA program regulation; and

(ii) A letter of engagement for an audit or an audit report of all Title IV, HEA program funds it received;

(3) Inform the Secretary of the arrangements it has made for the proper retention and storage for a minimum of five years of all records concerning the administration of the Title IV, HEA programs;

(4) Inform the Secretary of how it will provide for the collection of any outstanding loans made under the National Defense/Direct Loan, Perkins Loan, or ICL programs;

(5) Continue to distribute refunds of unearned payments for institutional charges according to § 668.22.

(b) If an institution closes or stops providing educational instruction, it shall—

(1) Return to the Secretary, or otherwise dispose of under instructions from the Secretary, and unexpended Title IV, HEA program funds it has received except for its administrative allowance, if applicable; and

(2) Return to the appropriate lenders any GSL proceeds it has received but not delivered to the students or credited to the students' accounts.

(c) If an institution loses it eligibility to participate in the Title IV, HEA programs during a payment period, but continues to provide educational instruction to eligible students enrolled in its formerly eligible programs from the date that the institution lost its eligibility until the scheduled completion date of that payment period or period of enrollment, it may—

(1) For the Pell Grant and campus-based programs, use Title IV, HEA program funds in its possession or request additional funds from the Secretary, under conditions specified by the Secretary, if it does not possess sufficient funds, to satisfy any unpaid commitment made for that payment period to a student prior to the institution's loss of eligibility; and

(2) For the Stafford and SLS programs, if the proceeds of the first disbursement of a Stafford or SLS loan were delivered to the student or credited to the student's account prior to the institution's loss of eligibility, credit the student's account or deliver to the student any subsequent disbursement of that Stafford or SLS loan to satisfy any unpaid commitment made to a student for that period of enrollment for which the Stafford or SLS loan was made.

(d) For purposes of this section—

(1) A commitment under the Pell Grant Program occurs when a student is enrolled and attending the institution and has submitted a valid student aid report to the institution.

(2) A commitment under the campus-based and ICL programs occurs when a student is enrolled and attending the institution and has received a valid award letter from the institution; and

(3) A commitment under the GSL programs occurs when the Secretary or guaranty agency notifies the lender that the loan is guaranteed.

(Authority: 20 U.S.C. 1094)

4. Section 668.90(a)(3)(iii) is amended by removing the term "fiscal year default rate" and adding in its place the term "cohort default rate".

PART 682—GUARANTEED STUDENT LOAN PROGRAMS

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Sections 682.410(c)(1)(iii), 682.603(c), and 682.606(b)(2) are amended by removing the term "fiscal year default rate" and adding in their place the term "cohort default rate".

[FR. Doc. 91–11122 Filed 5–10–91; 8:45 am]

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Part III

Department of Education

Rehabilitation Services Administration

Rehabilitation Short-Term Training; Notice

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DEPARTMENT OF EDUCATION

Rehabilitation Services Administration

Rehabilitation Short-Term Training

AGENCY: Department of Education.

ACTION: Notice of Proposed Priorities for Fiscal Year 1991.

SUMMARY: The Secretary of Education proposes priorities for fiscal year 1991 for training activities to be supported under the Short-Term Training program of the Rehabilitation Services Administration (RSA).

DATES: Comments must be received on or before June 12, 1991.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Michael Morgan, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., (room 3038 Switzer Building), Washington, DC 20202-2575.

FOR FURTHER INFORMATION CONTACT: Richard Melia, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., room 3324 Switzer, Washington, DC 20202-2649. Telephone: (202) 732-1400. TDD users may contact the Program Specialist via the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION: The Short-Term Training program is authorized by title III, section 304 of the Rehabilitation Act of 1973, as amended. Under this discretionary grant program, Federal support may be provided for special seminars, institutes, workshops, and other short-term courses in technical matters relating to the delivery of vocational, medical, social, and psychological rehabilitation services.

Proposed Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary proposes to set aside funds and give an absolute preference to applications that respond to the proposed priorities described in this notice for fiscal year 1991. An absolute priority is one that permits the Secretary to select for funding only those applications proposing a project or projects that meet the priorities. RSA invites public comment on the merits of the proposed priorities, including suggested modifications to the proposed priorities.

The final priorities will be announced in the Federal Register. The final priorities will be determined by responses to this notice, available funds, and other departmental considerations. The publication of these proposed priorities does not bind the United States Department of Education to fund projects in these service areas, unless otherwise specified by statute. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received.

Priority 1—Rehabilitation Short-Term Training—Implementation of the Americans With Disabilities Act (ADA)

The purpose of the Rehabilitation Act of 1973, as amended, is to develop and implement, through research, training, and services, comprehensive and coordinated programs of vocational rehabilitation and independent living for individuals with disabilities in order to maximize their employability, independence, and integration into the workplace and the community. The Americans with Disabilities Act (Public Law 101-336), signed into law on July 26, 1990, guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications.

In order to assist in the implementation of the national policy of equal opportunity for individuals with disabilities mandated by the ADA in a manner consistent with the Rehabilitation Act of 1973, as amended, priority will be given to projects that provide a short-term training course for pre-service educators and post-employment trainers of personnel working in State vocational rehabilitation agencies, centers for independent living, client assistance programs, rehabilitation facilities, and community-based programs for individuals with disabilities.

The short-term training must be national in scope and conducted after the publication of final regulations to implement the employment and public accommodation provisions under Titles I and III of the ADA. These regulations will be promulgated by the Equal Employment Opportunity Commission and the Department of Justice and are expected to be published by July 26, 1991.

The short-term training must provide educators and trainers with the following: (1) An understanding of the ADA and any regulations implementing the ADA. (2) Specific vocational rehabilitation and independent living skills and knowledge of services needed for assisting employers in complying with the requirements of the ADA, including, but not limited to, accessibility surveys, job accommodation, worksite modifications, reasonable accommodations, and assessment of function limitations. (3) An understanding of the legal and professional liabilities of vocational rehabilitation and independent living professionals in the provision of services and information regarding compliance with the requirements of the ADA. (4) A course outline and sample course materials that can be incorporated in courses in their undergraduate and graduate rehabilitation education programs and in-service training programs for their respective agencies or programs, including regional rehabilitation continuing education programs (RRCEP), State vocational rehabilitation agency in-service training programs, and long-term training programs under section 304 of the Rehabilitation Act.

To avoid duplication, the project must coordinate training efforts with those activities to be funded by the National Institute on Disability and Rehabilitation Research that relate to training and technical assistance for the Americans with Disabilities Act.

Priority 2—Rehabilitation Short-Term Training—Improving the Competency of Vocational Rehabilitation Counselors in Marketing of Vocational Rehabilitation Services, Providing Job Placement, and Assessing a Client's Job Skills That May Be Transferred to Other Occupational Opportunities

Survey research findings published by the University of Wisconsin-Stout Research and Training Center (*Inservice and Continuing Education Needs of Rehabilitation Facility Personnel*, 1990), as well as the 1989 National Survey of Personnel Shortages and Training Needs in Vocational Rehabilitation by Pelavin Associates (September, 1989), indicate a significant shortage of qualified personnel with rehabilitation job development and job placement skills. In addition, the Secretary wishes to emphasize marketing strategies as a mechanism to encourage employers to hire and retain employees with disabilities. The impact of the Americans with Disabilities Act on business and industry will also create the need for job development and placement staff to provide technical assistance to employers on hiring and retaining employees with disabilities.

The Rehabilitation Services Administration believes that these

specialized needs for staff development in the areas of job development and job placement may be met through a concentrated training program of short duration that focuses on placement, marketing, and transferability of job skills.

The training must be designed to provide personnel in State vocational rehabilitation agencies and other rehabilitation professionals with—(1) The ability to better match client skills with employer demands in order to increase placements; (2) The knowledge to assess an individual's job skills that may be transferred to other occupational opportunities; (3) The skills to apply national and State occupational information, e.g., the information from the National Occupational Information Coordinating Council (NOICC) and State Occupational Information Coordinating Councils (SOICC), to facilitate competitive employment opportunities for individuals with disabilities; (4) The skills to develop marketing programs for the services of vocational rehabilitation agencies that will lead to improved placement outcomes of individuals with disabilities in private industry; and (5) The ability to assist private industries in the initiation of disability management programs.

The project must demonstrate potential for replication in other locations through the dissemination of training materials and protocols. After a project is funded, a manual must be produced that contains a course outline and training materials focused on the five areas listed above.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these priorities.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in room 3219, Mary E. Switzer Building, 330 "C" Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

(Authority: 29 U.S.C. 774)

Catalog of Federal Domestic Assistance No. 84.246, Rehabilitation Short-Term Training

Dated: May 7, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-11227 Filed 5-10-91; 8:45 a.m.]

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Monday
May 13, 1991

Part IV

Department of the Interior

Bureau of Indian Affairs

Interstate Highway Interchange Serving the Tulalip Indian Reservation, Snohomish County, WA; Notice of Intent to Prepare an Environmental Impact Statement (EIS)

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent to Prepare an Environmental Impact Statement (EIS) for an Interstate Highway Interchange Serving the Tulalip Indian Reservation, Snohomish County, WA

AGENCY: Bureau of Indian Affairs (BIA), Interior.

ACTION: Notice of intent to prepare an EIS and notice of public scoping meeting.

SUMMARY: This summary advises the public that the BIA intends to prepare an EIS for the Tulalip Tribe's proposal to construct an added point of access to Interstate 5 (I-5) at 88th Street NE. to provide crucial reservation access, improve traffic circulation on the reservation, and facilitate the tribe's economic development. Public scoping meetings will be held to receive input and preparation of this EIS. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in the scoping process are solicited.

DATES: Written comments should be received by June 12, 1991. Public scoping meetings will be held on May 29, 1991, at 7 p.m. in the Tulalip Tribe's Boardroom (Tribal Headquarters Building), 6700 Totem Beach Road, Marysville, Washington 98270, and on May 30, 1991, at 7 p.m. in the Marysville City Council Chambers (2nd floor Public Safety Building), 1635 Grove Street, Marysville, Washington 98270.

ADDRESSES: Comments should be addressed to Mr. Stanley Speaks, Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232-4169; telephone (503) 231-2206 or FTS 429-2206.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald J. Eggers, Area Environmental Officer, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232-4169; telephone (503) 231-2206 or FTS 429-2206.

SUPPLEMENTAL INFORMATION: The proposed I-5/88th Street NE. interchange would be located approximately 26 miles north of Seattle, Washington on that section of I-5 that separates the Tulalip Indian Reservation on the west from the City of Marysville on the east. The location is 1.7 miles north of the 4th Street interchange and 1.6 miles south of the 116th Street NE. interchange. A diamond configured interchange would be constructed with north and south on/off ramps, and a four lane I-5 overpass. The eastern approach of the 88th Street NE. connector includes construction of a bridge replacement over Quil Ceda Creek.

The purpose and need for this action is to provide crucial access to the Tulalip Reservation for a major tribal economic development project. Planned improvements for the Tulalip Tribe's Industrial/Business Park can thereby proceed; promoting a long-term, stable source of revenue and furthering economic development within the Tulalip Indian Reservation. The alternative access provided will significantly improve reservation traffic circulation, emergency vehicle response time and business accessibility. At present, the reservation's main entry/egress is the 4th Street interchange which is operating at or above its design capacity and has been improved to its practical limits.

In addition to improving the level of service at both the 4th Street and 116th Street NE. interchanges, construction of the I-5/88th Street NE. interchange will remedy traffic access and circulation impediments in the neighboring City of Marysville. The interchange's easterly connector will also provide vitally needed access to eastern Snohomish County and State Route 9.

The two principal alternatives are to construct the project as planned or not to construct the project. Other alternatives will be developed from comments received on this notice and after scoping meetings are held. The major impact to be expected if the proposed action is implemented will be on the operation of Interstate 5.

The significant issues to be covered during the scoping and planning process will include project need and purpose, project impact on I-5 traffic flow, regional and community growth, and preservation of wetlands.

The Tulalip Tribe has requested that the EIS prepared for the purpose of NEPA compliance also be made sufficient for utilization by participating State and local agencies complying with Washington's State Environmental Policy Act (SEPA). It is BIA's intention to assume lead agency status and to comply with this request. Therefore, comments should be directed at both NEPA and SEPA compliance.

The environmental review of this project will be conducted in accordance with the requirements of the NEPA of 1969, as amended (43 U.S.C. 4373 et seq.); Council of Environmental Quality Regulations (40 CFR, parts 1500 DM 1-7, and 1506); Department of the Interior Procedures (516 DM 1-7), and the BIA's Handbook (30 BIAM Supplement 1). The BIA will be the lead Federal Agency because it will fund a major portion of the project. However, the Federal Highways Administration and Washington Department of Transportation will act as cooperating agencies since each has a major role in project review and approval.

We estimate the Draft Environmental Impact Statement will be made available to the public by mid-summer, 1991.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs, by 209 DM 8.

Dated: May 6, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-11222 Filed 5-10-91; 8:45 am]

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federal register

Monday
May 13, 1991

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 23

Airworthiness Standards; Small Airplanes With Stall Speed Greater Than 61 Knots; Proposed Rules

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 23746; Notice No. 91-12]

RIN 2120-AD48

Airworthiness Standards; Small Airplanes With Stall Speed Greater Than 61 Knots

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the 61-knot stall speed limitation requirement applicable to normal, utility, and acrobatic category single-engine and certain multiengine small airplanes of less than 6,000 lbs. maximum weight. The proposal would require additional occupant protection requirements for those airplanes with a stall speed exceeding 61 knots. This proposal retains the current level of airplane occupant protection and permits the design and type certification of higher performance, single-engine airplanes capable of attaining an increase in cruise speeds with better specific fuel consumption. This improvement in performance and operating economics cannot be achieved without substantial increased cost and complexity if these designs are constrained by the present 61-knot stall speed limitation.

DATES: Comments must be submitted on or before September 10, 1991.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 23746, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 23746. Comments may be inspected in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel, ACE-7, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the information docket may be inspected in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between the hours of 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Victor F. Sokolowski, Standards Office (ACE-112), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-6941.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23746." The postcard will be date stamped and returned to the commenter.

Availability of Notice of Proposed Rulemaking (NPRM)

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request, from the above office, a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The current airworthiness standards for small airplanes, part 23 of the Federal Aviation Regulations (FAR), contain a requirement (§ 23.49(b)) that limits the stall speed (at maximum weight in the landing configuration) of single-engine and certain small multiengine airplanes to values not exceeding 61 knots (70 mph). This requirement dates back more than 50 years to the original Civil Air Regulations (CAR). At that time, it was considered necessary to protect "air passengers" by ensuring that passenger-carrying airplanes did not land at higher speeds. This is evident from early Civil Aviation Authority (CAA) publications, such as the November 1951, appendix B of the Civil Aeronautics Manual 8 (CAM 8). A copy of this report is available in the docket. The CAA report provided the following guidance on stall speed:

Stalling Speed Limit. The stalling speed at maximum weight in the configuration used during normal operations should not exceed 70 m.p.h.

Recommendation. Studies of forced landings show that, all other things being equal, the fatality rate is proportional to the stall speed, i.e., as the stall speed increases, the number of fatalities per accident increases. The record indicates that fatality rate increases rapidly above approximately 55 m.p.h. Therefore, it is strongly recommended that the stall speed not exceed 55 m.p.h. in the landing configuration at maximum weight.

As the airworthiness regulations evolved, the stall speed limit in the landing configuration was removed for certain airplanes. First it was eliminated for large, multiengine transport airplanes that had the capability to operate safely after the loss of power from one engine, and later it was eliminated for small multiengine airplanes that meet a one-engine-inoperative climb performance requirement at 5,000 feet altitude in the cruise configuration. The 61-knot stall speed limitation was retained for all single-engine airplanes and for multiengine airplanes with a maximum weight not exceeding 6,000 pounds that do not meet the one-engine-inoperative climb requirement of § 23.67(b)(1). The requirement was retained because an engine failure in these airplanes could result in a forced landing where occupant injury is more likely to occur. The retention of the limit on stall speed provides a correspondingly lower landing speed and minimizes the kinetic energy that must be absorbed in emergency landings. Thus a degree of crash protection is provided for the passengers and crew. Airplanes with the ability to climb and cruise after the failure of one engine are generally not forced into this emergency landing situation and, therefore, are permitted to have higher stall speeds.

The FAA has received petitions for exemption from § 23.49(b), the 61-knot stall speed requirement, applicable to type certification of single-engine airplanes. The FAA has also received many inquiries from aircraft manufacturers concerning possible relief from this requirement. The petitioners claim that this relief is needed to obtain the full performance and economic advantages of incorporating the latest turbine-powered design technology in single-engine airplanes and to provide a higher cruise speed with lower specific fuel consumption.

Based on the information contained in these petitions and inquiries, the FAA requested an independent study of the 61-knot stall speed issue by the "Small Aircraft Stall Speed Study Group." The study group was formed in December 1982 and consisted of Professor Robert W. Simpson, Massachusetts Institute of Technology (MIT), as Chairperson, and other professionals with expertise in aircraft design and airworthiness from various areas of the aviation community. The group also had representation from the FAA, National Transportation Safety Board (NTSB), and the National Aeronautics and Space Administration (NASA). The study group's report to the FAA was published in March 1983 and a copy of this report is available in the docket. The study group's report provided several recommendations, one of which was to remove the existing 61-knot stall speed requirement.

Also, the American Institute of Aeronautics and Astronautics' (AIAA) workshop on Revitalization of General Aviation in the United States (December 1989) cites only two rule changes that should be considered for this revitalization. One of these is relief from the 61-knot stall speed limitation. A copy of the AIAA report is available in the docket.

The Small Aircraft Stall Speed Study Group's recommendations were based on a review of the FAA accident/incident data base, consisting of 37,530 reports, for the 6-year period 1976-1981. The study group's analysis still is considered valid. The data studied were for emergency/forced landings, generally off the airport. The most significant results of that study showed that:

a. The percentage of fatal emergency landing accidents, where the pilot retained control until the crash, is small: 2.7 percent for single-engine and 3.5 percent for twin-engine airplanes.

b. Only 1 percent of fatal emergency landing accidents, where the pilot retained control until the crash, were caused by engine failures.

c. Fuel mismanagement was more significant than engine failure as a cause of all emergency landings, accounting for 50 percent.

d. The incidence of fatal accidents was higher for twin-engine airplanes than for single-engine airplanes in all categories of emergency/forced landings.

e. Occupant survivability in emergency landing accidents does not show a clear correlation to the stall speed. The outcome of an emergency landing is affected by many other factors, such as: structural crashworthiness of the airplane type, pilot skills, type of restraint system, actual speed at impact, weather, type of terrain at impact site, altitude of emergency, glide ratio of the airplane, etc.

In 1982, the General Aviation Safety Panel (GASP), which represented a broad constituency from the general aviation community, was formed for the purpose of recommending regulatory and nonregulatory means by which the FAA could improve general aviation safety. Also in 1982, the General Aviation Manufacturers Association (GAMA) submitted a petition for rulemaking to FAA to require shoulder harnesses in small airplanes. After several years of study and development of the interrelated recommendations of GAMA, GASP, and the Small Aircraft Stall Speed Study Group, the FAA amended part 23 with amendment 23-32 (50 FR 49872, November 13, 1985) and amendment 23-30 (53 FR 30602, August 15, 1988) to increase greatly airplane crashworthiness with new or increased requirements for: shoulder harnesses, dynamic testing of seats and restraint systems, sidefacing seats, retention of items of mass, restraint of baggage and cargo, turnover protection, external doors and emergency exits, and fuel tank installation. In addition, the FAA has recently published Notice No. 95-7A (55 FR 7299, February 20, 1990), Crash Resistant Fuel Systems for part 23 airplanes.

During the development of the airworthiness standards proposed by this rulemaking action, the FAA examined whether pilot training and qualification requirements might be necessary as a result of providing an alternative to the 61-knot stall speed limitation for single-engine airplanes. The Small Aircraft Stall Speed Study Group proposed in its March 1983 report that § 61.31(e) (General limitations, high performance airplanes) be amended to require additional flight instruction for pilots in command of a single-engine airplane that has a power-off stall speed in the landing configuration of more than 61 knots. The FAA studied this recommendation and concluded that the proposed additional flight instruction was already included in a normal flight training curriculum and that it did not relate to an increased stall speed. Regardless of the stall speed, all part 23 airplanes are certificated to the same airworthiness standards applicable to flight characteristics and performance, with the exception of the spin requirements of § 23.221 that depend on airplane category and number of engines. Therefore, an increase in stall speed above 61 knots should not, by itself, require increased pilot qualifications.

It is possible to design an airplane with higher wing loadings and still comply with the 61-knot stall speed requirement by incorporating larger and more complex high-lift systems. The use of such complex, high-lift systems may result in a reduction of the low speed flying qualities and lessen the level of safety of both normal and emergency operations in approach and landing conditions; however, the applicable part 23 airworthiness requirements apply. The use of complex high-lift systems may well increase the design, production, and maintenance cost of an airplane.

If the proposed rule change is adopted, the FAA expects that very few new single reciprocating engine airplanes will be introduced with a stall speed in the landing configuration (V_{s0}) greater than 61 knots. In recent years, most high performance small airplane designs have been turbine powered. Almost all of the reciprocating engine airplanes in production are based on designs that have been in existence for many years. Only a few have a V_{s0} exceeding 61 knots. The size of reciprocating aircraft engines has generally leveled off at 435 horsepower, thus limiting their application in high performance airplanes.

The 61-knot stall speed limit may have outlived its original reason for existence, i.e., to provide some protection for "air passengers" at a time (over 50 years ago) when airplane crashworthiness was minimal, engine reliability was comparatively low, airplane performance was often minimal, airfields were rudimentary, runways were shorter, and landing approach aids were minimal or nonexistent, etc. In the intervening years, all of these factors have improved to the extent that the 61-knot stall speed limit could be exceeded

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in part 23 airplanes without a degradation of safety when additional compensating occupant protection requirements are incorporated. This would permit the design and certification of faster, more efficient high performance single-engine airplanes utilizing the turbine engines available today.

This NPRM proposes an alternative to the current 61-knot stall speed requirement of § 23.49(b). The proposed alternative would permit both multiengine airplanes with a maximum weight not exceeding 6,000 pounds that do not meet the requirement for positive one-engine-inoperative climb performance and single-engine airplanes to be type certificated with a stall speed of more than 61 knots. This proposed amendment to the 61-knot stall speed requirement would require these single-engine, and multiengine, airplanes to incorporate crashworthiness enhancements that would provide airplane occupant protection equivalent to that provided occupants of similar airplanes having a stall speed not exceeding 61 knots. If this proposal were adopted, applicants would have the option of selecting the stall speed (and the corresponding occupant protection requirements) that is best for their particular airplane design.

General Discussion of Proposals

Section 23.49

The FAA proposes to amend part 23 of the Federal Aviation Regulations to permit type certification of both single and multiengine small airplanes with stall speeds greater than 61 knots, provided they incorporate additional occupant protection provisions to compensate for the increased kinetic energy dissipated during a forced landing. This would be accomplished by amending § 23.49 to require compliance with certain additional occupant protection requirements included in this proposal.

There are a number of airplane development programs under way that will expand the use of turbine engines in single-engine airplanes. More advanced types of engines with corresponding increases in power or thrust and improved fuel efficiency are also under development. Because these engines provide a significant increase in power-to-weight ratio and operate more efficiently at high altitudes, increased wing loadings are required for fuel efficient cruise. The current 61-knot stall limit is a constraint to the development of these airplanes incorporating such propulsion and aerodynamic improvements.

Section 23.67

This proposal would clarify the change made to § 23.67 by amendment 23-42 (56 FR 344, January 3, 1991). The provisions of § 23.67(b)(1) require that all airplanes with a stall speed of more than 61 knots meet the one-engine-inoperative climb gradient requirements. Therefore, a change to §§ 23.67 (b)(1) and (b)(2) is required to clarify that multiengine airplanes of less than 6,000 pounds maximum weight that include the improved occupant protection of § 23.562(d) and have a stall speed greater than 61 knots would only comply with the climb gradient determination requirements of § 23.67(b)(2)(i). This proposal does not change the one-engine-inoperative climb requirements.

Section 23.562

During the development of § 23.562, Emergency landing dynamic conditions, which was incorporated in amendment 23-36 (53 FR 30602, August 15, 1988), the supporting technical data presented by the NTSB was obtained from data for small airplanes whose stall speeds were not greater than 61 knots. Forced landings of airplanes whose stall speeds are greater than 61 knots will expose the airplanes' occupants to an increase in kinetic impact energy. The increase in kinetic impact energy is proportional to the square of the stall speed of the airplane in the landing configuration. To compensate for this increased energy level, additional occupant protection requirements beyond those stated in § 23.562 are included in this proposal. The emergency landing dynamic conditions express the impact energy level in terms of an impact velocity. The increased occupant protection requirement in this proposal is obtained by multiplying the ultimate load factors of § 23.561(b) and the peak deceleration of the seat/restraint system test of § 23.562(b)(1) by the square of the ratio of the increased stall speed to the stall speed of 61 knots. The use of the velocity ratio squared to obtain the increased occupant protection requirement is consistent with an analytical methodology found in the U.S. Army's Aircraft Crash Survival Design Guide, USARTL-TR-79-22C, Volume III—Aircraft Structural Crashworthiness, which addresses the conservation of momentum associated with an aircraft impact that has earth plowing. A copy of volume III of the design guide is available in the docket.

The FAA proposes to limit the maximum deceleration for the seat/restraint system dynamic test to 32g, which is the value that the FAA is considering proposing in a separate NPRM being developed for commuter category airplanes. The 32g limitation will be reached at a stall speed (V_{s0}) of 79 knots. At higher stall speeds, this maximum deceleration will remain constant at 32g.

In addition, the static upward ultimate load factor for acrobatic category airplanes will be limited to a value of 5.0g. Because of the maneuvers they perform, acrobatic category airplanes are designed to higher maneuvering limit load factors (both positive and negative) than normal and utility category airplanes. The maximum upward value required in this proposed rule for normal and utility category airplanes is 5.0g and is consistent with loads resulting from the negative limit load factor required by § 23.337 for acrobatic category airplanes. Under emergency landing conditions, all categories of small airplanes would experience similar forces; therefore, requiring acrobatic airplane seats to be designed to higher load factors would not be warranted.

Regulatory Evaluation Summary

Introduction

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this proposed regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual increase in consumer costs, a significant adverse effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the executive order; therefore, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains the regulatory flexibility determination required by the Regulatory Flexibility Act and an International Trade Impact Assessment. If more detailed economic information is desired, the reader may refer to the full regulatory evaluation contained in the docket.

Economic Evaluation

This evaluation examines the impact of an NPRM that would amend part 23 of the Federal Aviation Regulations (FAR). For normal, utility, and acrobatic category airplanes, § 23.49(b) currently requires that the stall speed (V_{s0}) may not exceed 61 knots for both single-engine airplanes and those multiengine airplanes that have a maximum weight of 6,000 pounds or less and cannot meet the one-engine-inoperative minimum climb gradient specified in § 23.67(b). The proposed rule would establish increased occupant restraint and crashworthiness requirements for airplanes to be type certificated with a stall speed of more than 61 knots under specific circumstances.

For airplanes designed with a V_{s0} greater than 61 knots, the proposal would require applicants to enhance the airplane's crashworthiness to a level that would provide equal levels of protection to occupants of aircraft with higher stalling speeds and to occupants of aircraft that do not exceed a 61-knot stall speed. In particular, the structural load factor requirements of § 23.561(b) and the peak deceleration requirements of the seat/restraint system test under § 23.562(b)(1) would have to be increased for higher stall speed airplanes by the square of the ratio of the proposed stall speed to a stall speed of 61 knots.

In addition to these substantive changes, the proposed rule also would make conforming changes to the one-engine-inoperative climb requirements of § 23.67(b). No significant costs or benefits are attributed to these provisions, and they are not considered further in the evaluation.

Significantly more efficient airplanes could be developed by employing the advantages of higher wing loadings if the affected airplanes were not limited to a stall speed of 61 knots. The potential benefits of removing the stall speed limit would vary with individual airplane designs, but case specific analysis has shown that a 20 percent gain in specific fuel consumption could be achieved. Evidence suggests that this efficiency gain, due to higher wing loading, could also be accomplished by incorporating a very high-lift flap system (wide-span trailing edge flaps and leading edge Kruger flaps) and still remain within the 61-knot limit. However, if higher wing loadings were combined with larger and more complex high-lift flap systems in order to meet the 61-knot requirement, there may be accompanying penalties in low speed handling qualities. These penalties may have a detrimental effect on both normal and emergency operations in approach and landing conditions.

In order to retain the current level of airplane occupant protection, the proposal would require additional occupant protection for airplanes that this rule would allow to be certificated with stall speeds above 61 knots. Specific estimates of the potential structural and weight penalty costs that could be incurred would be design specific and are not available for this evaluation. However, the proposal would establish requirements that would apply only to the airplane design elected by the applicant. By definition, the proposed amendment, including any associated costs, would be applicable only to applicants who have determined that it would be in their own best interests to design an airplane with a V_{s0} greater than 61 knots. The proposal would provide the applicant the option of selecting the combination of stall speed and occupant protection requirements that would be most cost-beneficial and best suited for its particular airplane design. The FAA believes, therefore, that the benefits of the proposed rule would exceed the costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small business entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions.

The FAA has determined that the proposed change to part 23 would not have a significant economic impact on a substantial number of small entities. The FAA's criteria for a small aircraft manufacturer is one with 75 or fewer employees. A substantial number is a number that is not fewer than 11 and is more than one-third of the small entities that would be subject to the proposed rule. A review of domestic general aviation manufacturing companies indicates that only 2 companies meet the size threshold of 75 employees or fewer. The proposed amendments to part 23 will therefore not affect a substantial number of small entities.

International Trade Impact Analysis

The provisions of this proposed rule will have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States. In the United States, foreign manufacturers would have to meet U.S. requirements, and thus they would gain no competitive advantage. In foreign countries, U.S. manufacturers would not be bound by part 23 requirements and could, therefore, implement the provisions of the proposed rule solely on the basis of competitive considerations.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA proposes to revise the airworthiness standards to permit single-engine and certain multiengine small airplanes of less than 6,000 pounds maximum weight to exceed the present 61-knot stall speed limitation. Airplane designs exceeding this limitation would be required to incorporate additional occupant protection to compensate for the higher kinetic energy that must be dissipated during emergency landings. This proposal would retain the current level of airplane occupant protection and permit the design and type certification of higher performance, single-engine airplanes capable of attaining an increase in cruise speeds with better specific fuel consumption. This improvement in performance and operating economics cannot be achieved without substantial increased cost and complexity if these designs are constrained by the present 61-knot speed limitation.

For the reasons discussed above, and based on the findings in the Regulatory Flexibility Determination and the

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International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 23

Aircraft, Air transportation, Aviation safety, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 23 of the Federal Aviation Regulations (14 CFR part 23) as follows:

PART 23—AIRWORTHINESS STANDARDS; NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g).

2. Section 23.49 is amended by revising the introductory text of paragraph (b); by redesignating paragraphs (c), (d), and (e) as (d), (e), and (f); and by adding a new paragraph (c) to read as follows:

§ 23.49 Stalling speed.

* * * * *

(b) Except as provided in § 23.49(c), V_{SO} at maximum weight may not exceed 61 knots for—

* * * * *

(c) All single-engine airplanes, and those multiengine airplanes of 6,000 pounds or less maximum weight with a V_{SO} of more than 61 knots that do not meet the requirements of § 23.67(b)(2)(i), must comply with § 23.562(d).

3. Section 23.67 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 23.67 Climb: One engine inoperative.

* * * * *

(b) * * *

(1) Each airplane of more than 6,000 pounds maximum weight must be able to maintain a steady climb gradient of at least 1.5 percent at a pressure altitude of 5,000 feet at a speed not less than 1.2 V_{SI} and at standard temperature (41° F) with the airplane in the configuration prescribed in paragraph (a) of this section.

(2) For each airplane of 6,000 pounds or less maximum weight, the following apply:

(i) Each airplane that meets the requirements of § 23.562(d), or that has a V_{SO} of 61 knots or less, must have its steady climb gradient determined at a pressure altitude of 5,000 feet at a speed of not less than 1.2 V_{SI}, and at standard temperature (41° F), with the airplane in the configuration prescribed in paragraph (a) of this section.

(ii) Except for those airplanes that meet the requirements prescribed in § 23.562(d), each airplane with a V_{SO} of more than 61 knots must be able to maintain the steady climb gradient prescribed in paragraph (b)(1) of this section.

* * * * *

4. Section 23.562 is amended by revising the introductory text of paragraph (b), by redesignating paragraph (d) as (e), and by adding a new paragraph (d) to read as follows:

§ 23.562 Emergency landing dynamic conditions.

* * * * *

(b) Except for those seat/restraint systems that are required to meet paragraph (d) of this section, each seat restraint system, for crew or passenger occupancy in a normal, utility, or acrobatic category airplane, must successfully complete dynamic tests or be demonstrated by rational analysis supported by dynamic tests, in accordance with each of the following conditions. These tests must be conducted with an occupant simulated by an anthropomorphic test dummy (ATD) defined by 49 CFR part 572, subpart B, or an FAA-approved equivalent, with a nominal weight of 170 pounds and seated in the normal upright position.

* * * * *

(d) For all single-engine airplanes with a V_{SO} of more than 61 knots at maximum weight, and those multiengine airplanes of 6,000 pounds or less maximum weight with a V_{SO} of more than 61 knots at maximum weight that do not comply with § 23.67(b)(2)(i):

(1) The ultimate load factors of § 23.561(b) must be increased by multiplying the load factors by the square of the ratio of the increased stall speed to 61 knots. The increased ultimate load factors need not exceed the values reached at a V_{SO} of 79 knots. The upward ultimate load factor for acrobatic category airplanes need not exceed 5.0g.

(2) The seat/restraint system test required by paragraph (b)(1) of this section must be conducted in accordance with the following criteria:

(i) The change in velocity may not be less than 31 feet per second.

(ii) The peak deceleration (g_p) of 19g and 15g must be increased and multiplied by the square of the ratio of the increased stall speed to 61 knots:

$$g_p = 19.0\,(V_{SO}/61)^2 \text{ or } g_p = 15.0\,(V_{SO}/61)^2$$

The peak deceleration need not exceed the value reached at a V_{SO} of 79 knots.

(iii) The peak deceleration must occur in not more than time (t_r), which must be computed as follows:

$$t_r = \frac{31}{32.2(g_p)} = \frac{.96}{g_p}$$

where—

g_p = The peak deceleration calculated in accordance with paragraph (d)(2)(ii) of this section

t_r = The rise time (in seconds) to the peak deceleration.

* * * * *

Issued in Washington, DC on May 1, 1991.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 91-10877 Filed 5-10-91; 8:45 am]

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federal register

Monday
May 13, 1991

Part VI

Environmental Protection Agency

40 CFR Part 152

Criteria for Classifying Pesticides for Restricted Use Due To Ground Water Concerns; Proposed Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 152

[OPP-36172; FRL 3930-2]

RIN 2070-AB69

Criteria for Classifying Pesticides for Restricted Use Due to Ground Water Concerns

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes two options for adding new criteria for selection of pesticide products as candidates for restricted use classification. Pesticide products classified for restricted use under authority of section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) may be purchased and used only by certified pesticide applicators or individuals under their supervision. The proposed criteria would require consideration of restricted use for pesticide products that may contaminate ground water. One option would add criteria consisting of either the measured persistence and mobility of an ingredient of a pesticide product, or the detection of the ingredient in ground water in at least three different counties. This is EPA's preferred option. Another option would consider an ingredient's persistence and mobility, and/or (depending on the product's data base) whether the ingredient had been detected in ground water in at least three different counties at levels greater than 10 percent of the Maximum Contaminant Level (MCL) or lifetime Health Advisory established under the Safe Drinking Water Act, or in 25 or more wells in 4 or more States.

DATES: Comments must be received on or before July 12, 1991.

ADDRESSES: Submit written comments, bearing the document identification number "OPP-36172", by mail to: Public Information Branch, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. In person, deliver comments to: Rm. 246, CM 1B 2, 1921 Jefferson Davis Highway, Arlington VA.

Information submitted in any comment concerning this proposed rule may be claimed to be confidential by marking any or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment with the CBI deleted must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Comments will be available for public inspection in room 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: David Alexander, Attorney-Advisor, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 1H3, WF 1B 1, 3d Floor, 2805 Jefferson Davis Highway, Arlington, VA (703) 308-8003.

SUPPLEMENTARY INFORMATION:

I. Background of the Restricted Use Program

As part of the FIFRA amendments of 1972, Congress gave EPA authority to classify certain pesticides for restricted use if unrestricted use may cause unreasonable adverse effects. EPA may require that a pesticide whose use is restricted be applied only by or under the direct supervision of a certified applicator or under other restrictions set by EPA. FIFRA section 3(d)(1)(C), 7 U.S.C. 136a(d)(1)(C), provides EPA with the following authority to classify pesticides for restricted use:

(C) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator, he shall classify the pesticide, or the particular use or uses to which the determination applies, for restricted use:

. . . . .

(ii) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its use without additional regulatory restrictions may cause unreasonable adverse effects on the environment, the pesticide shall be applied for any use to which the determination applies only by or under the direct supervision of a certified applicator, or subject to such other restrictions as the Administrator may provide by regulation . . . .

Congress added this authority to give EPA additional flexibility to regulate pesticides. Restricted use provides a means to maintain the benefits of use by imposing a variety of restrictions that will protect health and the environment and avoid the need for cancellation. See S. Rep. No. 838, 92d Cong., 2d Sess. 21 (1972); H.R. Rep. No. 511, 92d Cong., 1st Sess. 21 (1971). One restriction EPA may impose is classification of a pesticide product as restricted to use by or under the direct supervision of a certified pesticide applicator.

FIFRA section 11(e), 7 U.S.C. 136i(e), creates two classes of certified applicators, commercial and private. Congress anticipated that certification of applicators would be an important means for reducing both misuse and overuse of pesticides. Applicators who misuse pesticides could have their certification withdrawn. Withdrawing certification would seriously affect the business of commercial applicators and would prevent both commercial and private applicators from obtaining and using restricted pesticides. Moreover, the education and training required for certification provides an opportunity for reducing the hazards to humans and the environment from both misuse and overuse. See H.R. Rep. No. 511 at 21–22 (1971).

II. Current Regulations

The current regulation for restriction of end-use pesticide products to use by certified applicators is contained at 40 CFR 152.170. Sections 152.170(b) and (c) specify that a pesticide product will be considered for restricted use classification if any of several criteria are met. These criteria are based largely on the acute toxicity a pesticide product presents to man or non-target wildlife, or the chronic or delayed toxicity a pesticide product may pose to man.

Current §§ 152.170(a) and (e) set out requirements for restriction which are applicable to all classification actions. Section 152.170(a) specifies that an end-use pesticide product considered for restricted use will, in fact, be classified if further evaluation shows that restriction of the product would decrease the risk of adverse effects, the decrease in risks as a result of the restriction would exceed the decrease in benefits, and the labelling of the product will not be adequate to mitigate the risks.

Section 150.170(e) requires that labelling of an end-use product may be judged adequate only if several criteria are met, including: The directions for use must not require operations so complex that special training or experience is needed to perform them; the directions must not require equipment unavailable to the general public; failure to follow the directions in a minor way would result in few or no significant adverse effects; failure to follow directions for use would result in few or no significant adverse effects of a delayed or indirect nature via persistence or pesticide movement.

Pursuant to §§ 152.170(a)(3) and (4), EPA determines whether restriction would decrease the risk of adverse effects and, if so, whether the resulting decrease in risk of using the pesticide exceeds the decrease in benefits. To determine whether restriction of a pesticide product can reduce the risk of an adverse effect, EPA considers the training, experience, and equipment available to certified applicators which enable them to follow label directions designed to decrease the risk. EPA also considers the possibility that, because they have been trained to be aware of environmental effects, or because their livelihood may depend on it, certified applicators are more motivated to follow label directions, in addition to being more able to follow them.

In evaluating the degree of risk reduction achieved by restricting a use, EPA focuses on the types of risks that could be reduced by restriction. As a general matter, this has included reduction of risks to the applicator, as well as reduction of risk to non-applicators, fish and wildlife, and nontarget species. Conversely, in evaluating the impacts which restricting a use has on benefits, EPA focuses on benefits which would be lost if the use were restricted and also considers costs which would be increased as a result of restriction. An important concern is the extent to which the imposition of a restriction will limit access to, or the availability of, a product, or increase the cost of using it.

The decision whether to classify a pesticide for restricted use may also occur in the context of an evaluation of the overall risks and benefits associated with a use under FIFRA sections 3 and 6(b), rather than in the context of an incremental risk benefit analysis under 40 CFR 152.170(a). Evaluations of a pesticide's overall risks and benefits occur, for example, in the context of the Special Review process. Classification will be appropriate in a situation where, but for classification and imposition of restrictions, the risks of a use would exceed the benefits of the use. Thus, the option of restricting the use of a pesticide may allow the Agency to register, or continue the registration, of a product whose use may otherwise have to be denied or cancelled.

III. The Proposals

This proposal would add criteria to those in 40 CFR 152.170(b) stating that EPA may consider classifying a pesticide for restricted use if any of its ingredients has the reasonable potential for reaching ground water on a widespread basis. This Unit discusses two proposals (Options 1 and 2) and the rationale for each. The public docket for this proposal contains those documents cited here which are not widely available.

Pesticide ingredients discussed in these proposals include chemical components of a pesticide product, and metabolites and degradates of those components. In recent years pesticide ingredients have been detected in ground water. Such contamination has resulted from leaching of pesticides (both before and after applications), spills, misuse, improper disposal and other factors.

EPA believes early consideration of ways to reduce the likelihood of widespread, unacceptable ground water contamination is appropriate because, once ground water is contaminated, it may be difficult and expensive to reduce the contamination. The intent of the criteria is to allow the public and industry to predict which pesticide products EPA may consider as candidates for restriction. They will also guide internal EPA processes to focus attention on products which have a real possibility of meriting restricted use classification. However EPA will propose restricted use action only after further evaluation and only for products which meet the criteria and which it believes would benefit from restriction because restriction would decrease the risk of adverse effects, the decrease in risks exceed the decrease in benefits and label changes alone would not be adequate. Unit V of this preamble discusses in detail the process for determining whether EPA will propose the restriction of a candidate. However, this proposal does not discuss any specific products.

EPA is proposing two alternative approaches for adding new criteria for selecting pesticide products as candidates for restricted use classification due to ground water concerns. The first approach (Option 1) would add the measured persistence and mobility of an ingredient of a pesticide product, or the detection of an ingredient in ground water in three different counties as criteria. This is EPA's preferred approach. The risk basis of the second approach is more empirical (Option 2), and would add as criteria the measured persistence and mobility of an ingredient and/or (depending on the product's data base) whether the ingredient was found either: (a) In three or more counties at levels greater than 10 percent of the Maximum Contaminant Level (MCL) established under the Safe Drinking Water Act, or if no MCL has been established, above 10 percent of the lifetime Health Advisory Level (HAL), or (b) in at least 25 different wells in 4 or more States. The second option is presented to solicit full public comment and to allow EPA to adopt some or all of the elements of Option 2.

Option 1 specifies that EPA may consider restricting a pesticide product if either of two sets of criteria are met. Specifically, it would allow EPA to consider classifying a product for restricted use if both the persistence and mobility of an ingredient from that product are above specified levels. Alternatively, under Option 1, EPA could consider classifying a product for restricted use if an ingredient has been detected in ground water in at least three different counties. Before considering such detections EPA would confirm that the monitoring and analysis was performed by trained, qualified personnel using accepted procedures and that the detections were due to pesticidal activities as discussed in Unit V of this preamble.

Option 1 offers at least three main advantages. First, EPA believes that laboratory data on persistence and mobility are useful measures for predicting whether a pesticide has the potential for reaching ground water. Use of persistence and mobility would allow EPA to take action at the earliest opportunity to reduce the likelihood of ground water contamination before possible contamination increases. Second, basing Option 1 on detections at any level would allow EPA to consider action to reduce the likelihood of significant ground water contamination at the earliest possible time once contamination has been detected. Third, Option 1 is simpler to understand and administer and depends on less monitoring data than Option 2. Such simplicity may be appropriate in this rule because the criteria proposed are a screen for selecting candidates which will be considered for restricted-use. The main disadvantage of Option 1 is that it may result in EPA considering restricting some pesticide products whose ingredients may never result in unreasonable adverse effects on human health or the environment. In addition, since this approach is based on potential for contamination, it does not utilize as a trigger information on the severity of ground water contamination or the hazard associated with the pesticide.

Under Option 2, EPA would consider restricting a product's use based on three sets of criteria; these criteria are combined in varying ways under

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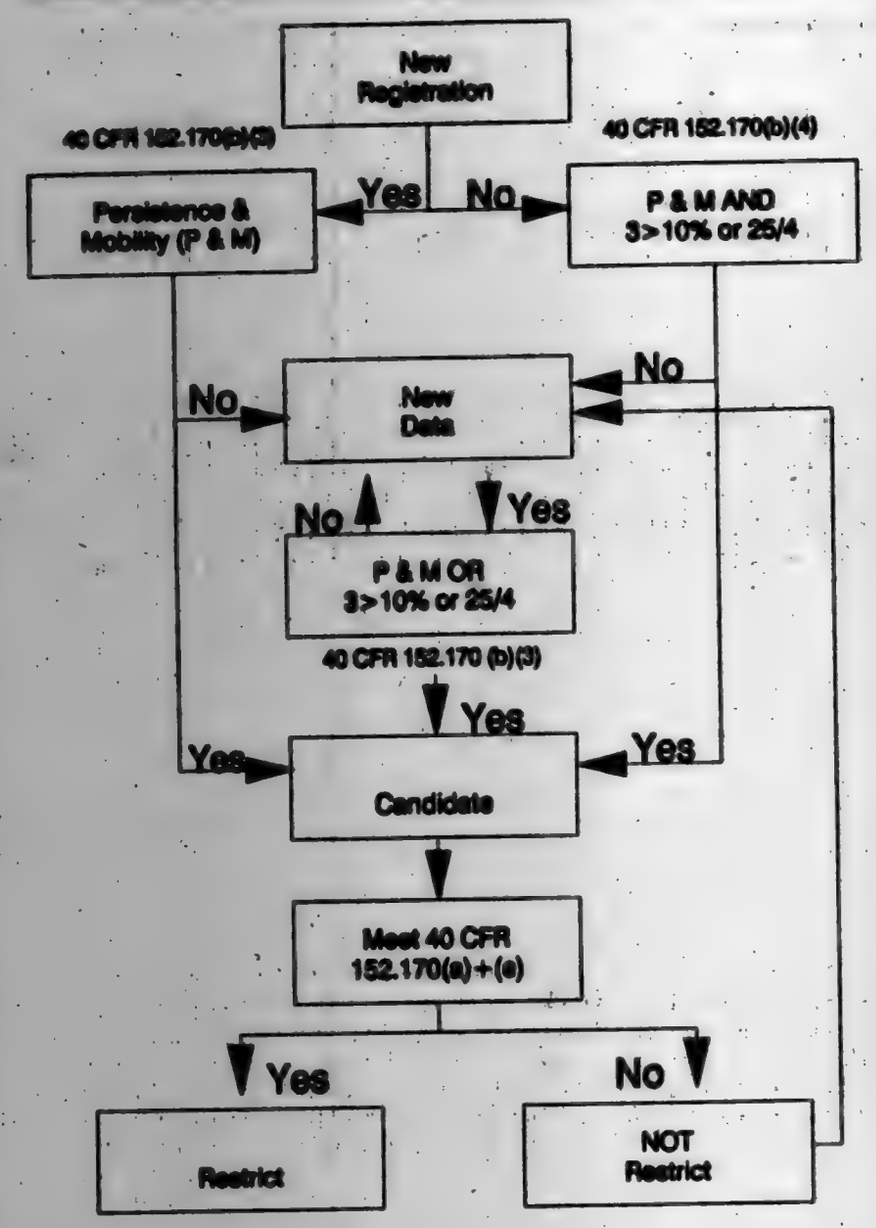

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different circumstances. The first criteria, as in Option 1, would be measured persistence and mobility data exceeding specified levels. The second criterion would be whether an ingredient has been detected in ground water in at least three counties above 10 percent of the Maximum Contaminant Level (MCL) if one has been established by EPA under the Safe Drinking Water Act, or if not, above 10 percent of a proposed or final lifetime Health Advisory Level (HAL). EPA would confirm these detections as in Option 1. The third criterion would be whether an ingredient has been detected, at any level, in 25 or more wells in 4 or more States.

For registered pesticides for which EPA does not receive new persistence, mobility or monitoring data, EPA would consider restricting the use of a pesticide that meets the following criteria: It is (1) Persistent and mobile, and (2) monitored levels of contamination either (a) exceed 10 percent of the MCL or HAL in at least 3 counties, or (b) occur in 25 or more wells in 4 or more States (see Unit IV of this preamble).

In the case of new registrations and for currently registered pesticides where new data (i.e. any new persistence, mobility or monitoring data) is submitted after promulgation of this rule, EPA would consider restricting the use of a pesticide if the following criteria are met: It is (1) Persistent and mobile, or (2) monitored levels of contamination either (a) exceed 10 % of the MCL or HAL in at least three counties, or (b) occur in 25 or more wells in 4 or more States. Option 2 is depicted in the following chart:

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Both Option 1 and 2 apply the same criteria to pesticide products undergoing registration for the first time. Since EPA will not possess ground water monitoring data for pesticides before they are registered, these products would be considered for restricted use based solely upon data indicating both persistence and mobility.

Option 2 offers several advantages. The first advantage is allowing EPA to take action to prevent further ground water contamination when a developing pattern of contamination shows that an ingredient has the potential to rise to levels which may pose unacceptable health risks. This potential is indicated by detection of the ingredient in three diverse locations at 10 percent of the EPA health standard (i.e., the MCL or HAL). The second advantage is that this option would allow EPA to prevent further ground water contamination by an ingredient when a developing pattern shows that it has the potential for exposing large numbers of people at low levels of contamination. The third advantage offered by Option 2 when EPA receives new data on the persistence or mobility of the ingredient is that it would allow EPA to take early action to reduce any ground water contamination before possible contamination occurs in ground water.

In contrast to Option 1, unless EPA has new persistence, mobility or monitoring data, Option 2 would avoid consideration of restricted use by EPA for chemicals which do not have both the potential for ground water contamination as measured by persistence and mobility data and either (a) the potential for exposure resulting in lifetime health effects on humans (as measured by detection of a fraction of the MCL or HAL), or (b) the demonstrated potential for exposing large numbers of people. Consequently, an advantage under Option 2 could be that the products considered for restricted use may more closely match those that are actually restricted by EPA after evaluation of the risks and benefits of restricting the specific product (see Unit IV of this preamble). The main disadvantage of Option 2 is that it depends more heavily than Option 1 on the availability of ground water monitoring data which is representative of the level and/or prevalence of an ingredient in ground water. Under Option 2, there is a greater possibility that lack of representative ground water data may allow low level contamination to occur before EPA considers restricted use.

To varying degrees, both of these options can result in taking action to reduce the likelihood of unacceptable ground water contamination. By identifying appropriate candidates for restricted use, EPA may avoid more stringent actions necessary to mitigate the possibility that ground water contamination may pose unreasonable adverse effects on human health and the environment.

EPA is interested in receiving comments on all scientific and policy aspects of the two approaches. For example, are these the right criteria for identifying pesticide products posing the greatest ground water risks? Can the reduction in risks outweigh the costs associated with using certified applicators (or someone under their supervision)? EPA is also interested in comments on the relationship between the two options and the overall approach proposed in EPA's Pesticides and Ground Water Strategy (the Strategy). Are there other risk-based criteria that EPA could adopt that would be defensible, easy to apply, and accomplish a purpose similar to the options presented? What potential does restricting the use of a pesticide product to use by certified applicators have for reducing misuse or inappropriate applicator and mixer/loader practices?

EPA is also interested in comments on the specifics. Should EPA base its criteria only on potential for exposure, as in Option 1, or should EPA consider demonstrated potential for significant exposure to small numbers of people and potential for exposure which may not be significant but may affect large numbers of people, as in Option 2? Should EPA base the criteria on laboratory persistence and mobility data for new pesticides and detections of pesticide ingredients in ground water for existing chemicals? Are the standards for persistence and mobility discussed in Unit IV of this preamble appropriate? Is detection in 3 different counties an appropriate standard for use in Option 1 and Option 2? Is a standard other than detection in 3 counties appropriate for use in discerning if ground water contamination has occurred in hydrogeologically distinct locations? What factors support a larger or smaller number of detections? Is the extra 10 fold safety factor (applied via use of 10 percent of the MCL/HAL as a trigger) appropriate, or is a risk-based trigger not desireable at all? Is detection in at least 25 wells in 4 or more States an appropriate indicator of potential for exposure to large numbers of persons at low levels? When an ingredient is not persistent, or not mobile, should EPA consider restricted use when the ingredient is found in ground water in three counties (Option 1), or in three counties above the MCL/HAL (Option 2), as discussed later in this Unit? In Option 2, should EPA use different criteria (i.e. persistence and mobility or detections, versus persistence and mobility and detections) depending on the date of receipt of data (i.e. new data as opposed to resubmitted data).

As discussed above, restricted use classification can result in risk reduction because restricted use pesticides may only be sold to, and used by, certified pesticide applicators or persons supervised by them. Such certified applicators are more likely to follow pesticide label instructions than non-certified applicators because they are better trained in pesticide mixing, loading, application, and disposal techniques and are more aware of the adverse environmental consequences of not following the label instructions than non-certified applicators. (See, e.g., *Evaluation of the EPA Private Applicator Pesticide Training and Certification Program: A Five State Study*, ABT Associates, 1981, pp. 77–99). In addition, failure to follow label instructions can jeopardize the license upon which a certified applicator's livelihood may depend. Lastly, certified applicators are trained in general techniques for protecting ground water which may not appear on pesticide labels.

To increase the risk reduction available from restricted use classification, EPA has proposed a recertification requirement for certified applicators, and a requirement that some or all candidates for certification or recertification be trained in, or demonstrate competence in, techniques used to minimize the potential for ground water contamination. EPA has already developed a training course containing basic information applicators must know if they are to minimize the risk of ground water contamination. States will use this course in developing training or retraining courses for certified applicators.

Restricted use classification will help EPA implement the Strategy. Classification will be useful because it will trigger recordkeeping requirements regarding sale and use of the affected products. This information is likely to be valuable for designing local pesticide management plans that States may use to address potential problems in light of local patterns of ground water vulnerability, value, and use. Restricting a pesticide may also make it easier to identify users who, in many States, are required to sign a registry at the point of purchase. This registry will improve

States' ability to work directly with users in implementing local management plans for pesticides that require them.

Restriction can also reduce the potential for ground water contamination when EPA requires label changes to a pesticide. Such changes are likely to require complex operations, equipment, or detailed knowledge or experience, and failure to follow changed label directions may result in significant risk of ground water contamination. Even when label changes are not required by EPA, restricted use classification can reduce the potential for ground water contamination because certified applicators are likely to exercise better judgement, in the absence of label directives, when contamination is a concern. For example, labels on certain pesticide products, which are applied from a tank into irrigation water drawn from ground water, direct the user to avoid allowing "back siphoning" of the tank of pesticide into the ground water. Due to their training, certified pesticide applicators will be more likely to be aware of the "back siphoning" problem, as well as and how to avoid it, reducing the likelihood of ground water contamination.

IV. Criteria for Considering Restricted Use Classification

EPA proposes to define "ground water" in a new § 152.161(b) as "water which is below the land surface in a zone of saturation at or above atmospheric pressure". (See *Basic Ground Water Hydrogeology*, Ralph C. Heath, U.S. Geological Survey Water Supply Paper 2220, 1983, "definition of terms", as well as p. 4).

EPA proposes to define "ingredient" in a new § 152.161(c) as "any component of a pesticide product, or a metabolite or degradate of any component." Under this definition EPA will consider classifying a pesticide end-use product for restricted use if any component meets the criteria, whether the component is an active ingredient, inert ingredient, impurity, or metabolite or degradate of these. Current § 152.161(b) is proposed to be renumbered § 152.161(d) to accommodate these changes.

EPA believes an ingredient has the potential to reach ground water if it is shown, via laboratory studies, that it is mobile and persistent. These criteria were discussed in connection with Options 1 and 2 and are contained in proposed § 152.170(b)(3)(i).

Mobility is an indication of the ability of an ingredient to move through soil toward ground water. Based on EPA's experience in recent years, as summarized below and in the docket to this rule, proposed § 152.170(b)(3)(i)(A) sets the criteria for mobility of an ingredient as any soil-water partition coefficient (K_d) less than or equal to 5, carbon-referenced sorption coefficient (K_{oc}) less than or equal to 500 ml./gm, or detection of an ingredient below 75 cm in the soil profile, when any of these results is indicated by studies conducted in accordance with the Pesticide Assessment Guidelines Subdivision N, or other reliable scientific data.

Persistence is a measure of the resistance of an ingredient to the factors which tend to break it down as it moves through the soil. Based on EPA experience to date, as summarized in this unit and in the public docket to this rule, proposed § 152.170(b)(3)(i)(B) sets the criteria for persistence of an ingredient as a half-life greater than 3 weeks as shown from any reliable laboratory aerobic soil metabolism studies or field dissipation studies, or resistance to hydrolytic degradation or photolytic degradation on soil or in water, under any conditions, resulting in degradation of less than 10 percent in a 30-day period, based on any reliable studies conducted in accordance with the Pesticide Assessment Guidelines Subdivision N, or other reliable scientific data.

Leaching of a pesticide is dependant on both half-life ($t_{1/2}$) and mobility (K_{oc} or K_d). While measures of either persistence or mobility considered individually may not be sufficient to indicate that an ingredient has the potential for reaching ground water, EPA believes that, if taken together, these measures indicate that an ingredient has that combination of longevity and speed of movement which could potentially result in ground water contamination, at least under some conditions which may exist in the environment. EPA bases this view on an assessment of 25 of 45 pesticide ingredients whose detection in ground water has been attributed to normal agricultural use. The 25 ingredients were those chemicals for which complete persistence and mobility data were readily available. No review was performed for the remaining 20 chemicals due to data gaps in the environmental fate data base.

This assessment showed that the chosen persistence and mobility measures predicted ground water contamination in 11 of 12 cases for ingredients detected in ground water in 3 or more counties, as in Option 1, and in 8 of 8 cases for ingredients detected in ground water above 10 percent of the MCL/HAL in 3 or more counties as in Option 2. It also showed that 8 of 12 ingredients found in ground water 1 or 2 times meet the persistence and the mobility measures. EPA believes that the chosen measures provide a good indication of increased likelihood of widespread ground water contamination. The assessment has been placed in the administrative record for this proposed rule. EPA is interested in receiving comment regarding whether the standards for persistence and mobility are appropriate when used in the contexts of Options 1 or 2.

EPA acknowledges that the criteria it has proposed for persistence and mobility are conservative. EPA believes utilization of conservative criteria for persistence and mobility may be appropriate to allow EPA to set standards for considering restriction of all pesticide products containing an ingredient which may reach ground water.

As a second criterion in Option 1 and 2, EPA would consider that an ingredient detected in ground water in three counties has the potential to reach ground water. Before using such detections EPA would confirm that the monitoring and analysis was performed by trained, qualified personnel using accepted procedures and that the detections were due to pesticidal activities as discussed in Unit V of this preamble. EPA believes that three counties are sites distant enough from each other that ground water contamination of each could not have resulted from a single pesticide application or other event. Under this approach EPA would consider that three detections are enough to indicate a developing pattern of ground water contamination. Where such a pattern of contamination is evident, under Option 1 restricted use classification would be considered even when laboratory data or controlled field studies on leaching potential are not available. Accordingly, § 152.170(b)(3)(ii) proposes detection in three different counties as a separate criterion for considering restricted use classification. EPA solicits comment on whether this criterion is appropriate for preventing widespread, unacceptable ground water contamination.

EPA is especially interested in receiving comments on whether detection in three different counties is an appropriate way of indicating potential for ground water contamination in different hydrogeological sites? For example will use of the "3 counties" standard be protective enough when detections occur in very large counties? Will the standard be overly broad in the context

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of detections in small, contiguous counties?

EPA is also especially interested in receiving comment on whether restricted use action should be considered when an ingredient is either not persistent, or not mobile, but is found in ground water at three locations. In other words, in cases where laboratory data do not predict an ingredient's potential for reaching ground water but the ingredient reaches ground water nonetheless, will the criteria plus EPA's further evaluation (e.g. presence of risk, ability to reduce it via restricted use, and other factors discussed in Unit V. of this preamble) be sufficient to determine whether the product merits restricted use?

Finally, under Option 2, EPA is proposing an approach which incorporates both level of exposure and degree of hazard. Using 10 percent of the MCL/HAL as the trigger for consideration of restricted use provides a ten fold safety margin between the levels which would trigger consideration of restricted use action and drinking water standards under the Safe Drinking Water Act. This margin of safety is designed to permit detection before drinking water standards are reached when contamination may be increasing as well as for any sampling bias in the existing ground water data base.

When levels of contamination do not exceed 10 percent of the MCL/HAL but are geographically widespread (i.e., detections in 25 different wells in 4 or more States) EPA would consider restricted use to prevent further contamination. EPA expects that adequate ground water monitoring data is and will be available to support this approach. EPA has completed a large survey to detect pesticides in ground water and will continue to receive information on incidents of ground water contamination from States, pesticide registrants and other sources. In addition, public water systems are, or soon will be, required to sample for selected pesticides when their ground water supplies are determined to be vulnerable to contamination.

To the extent that it differs from Option 1, Option 2 would read as follows:

Section 152.170 Criteria for restriction to use by certified applicators.

(b) * * *

(3) A pesticide product intended for outdoor use will be considered for restricted use classification if, based on studies, any of which are submitted to the Agency after [insert date of publication in the Federal Register] and conducted in accordance with the Pesticide Assessment Guidelines Subdivision N or other reliable scientific data the pesticide meets the requirements of paragraphs (b)(3)(i), (b)(3)(ii), or (b)(3)(iii) of this section.

(i)(A) It has any soil-water partition coefficient (K_d) less than or equal to 5 mL/kg, any carbon referenced sorption coefficient (K_{oc}) less than or equal to 500 mL/g, or it has been detected below 75 centimeters in the soil profile.

(B) It has any experimentally determined half life greater than 3 weeks as shown from laboratory aerobic soil metabolism studies or field dissipation studies, or it has any experimentally determined resistance to hydrolytic degradation, or photolytic degradation on soil or in water, under any conditions, resulting in degradation of less than 10 percent in a 30-day period.

(ii) It has been detected in ground water in at least 3 counties above 10 percent of the Maximum Contaminant Level if one has been established under the Safe Drinking Water Act, or above a level equal to a proposed or final lifetime Health Advisory, unless those detections have been shown not to be a result of pesticidal activities including, but not limited to mixing, loading, application or disposal.

(iii) It has been detected in ground water in at least 25 wells in at least 4 States, unless those detections have been shown not to be a result of pesticidal activities including, but not limited to mixing, loading, application or disposal.

(4) A pesticide product intended for outdoor use will be considered for restricted use classification if, based on studies submitted to EPA before [insert date of publication in the Federal Register] and conducted in accordance with the Pesticide Assessment Guidelines Subdivision N or other reliable scientific data, the pesticide meets the requirements of paragraphs (b)(4)(i) and (b)(4)(ii) or (b)(4)(iii) of this section.

(i)(A) It has any soil-water partition coefficient (K_d) less than or equal to 5 mL/kg, any carbon referenced sorption coefficient (K_{oc}) less than or equal to 500 mL/g, or it has been detected below 75 centimeters in the soil profile.

(B) It has any experimentally determined half life greater than 3 weeks as shown from laboratory aerobic soil metabolism studies or field dissipation studies, or it has any experimentally determined resistance to hydrolytic degradation, or photolytic degradation on soil or in water, under any conditions, resulting in degradation of less than 10 percent in a 30-day period.

(ii) It has been detected in ground water in at least 3 counties above 10 percent of the Maximum Contaminant Level if one has been established under the Safe Drinking Water Act, or above a level equal to a proposed or final lifetime Health Advisory unless those detections have been shown not to be a result of pesticidal activities including, but not limited to mixing, loading, application or disposal.

(iii) It has been detected in ground water in at least 25 wells in at least 4 States, unless those detections have been shown not to be a result of pesticidal activities including but not limited to mixing, loading, application or disposal.

V. Restricted Use Determinations

In determining whether a detection meets the criterion in § 152.170(b)(3)(ii), EPA proposes to exclude data about ingredients detected as a result of activities other than use of the product as a pesticide. For example, consideration of classification of a pesticide as restricted use would not be undertaken based on detections of ingredients known to result from industrial spills (as opposed to spills at or near mixing, loading, or application sites), leakage from secure waste disposal sites, or similar occurrences not connected with pesticidal activities. Pesticidal activities include such activities as mixing, loading, and disposing of pesticides, as well as application of pesticides. EPA will not take action to restrict use based solely on contamination resulting from nonpesticidal activities because classification is not likely to reduce the potential of such contamination. In contrast EPA may take restricted use action based on spills associated with pesticidal activities which result in instances of contamination in three diverse locations because these are the types of occurrences that restricted use classification can prevent or reduce.

Similarly, EPA will use detections shown to result from activities that constitute use of a pesticide other than in accordance with the labelling (i.e., misuse) to determine whether the criteria in § 152.170(b)(3)(ii) are met. FIFRA section 3(d), 5 U.S.C. 136a(d), directs EPA to restrict pesticides when used in accordance with "widespread and commonly recognized practices which may generally cause unreasonable adverse effects on the environment." Under Option 1, if either spills or misuse result in three instances of contamination by an ingredient, EPA will consider restricting the pesticide product which is the source of the ingredient. In such a case, in addition to other considerations discussed in Units IV and V of this preamble, EPA will consider whether the known instances of contamination indicate a widespread and commonly recognized practice and will only restrict the use of the pesticide if it does.

EPA solicits comment on the proposal to consider contamination resulting from misuse. EPA is especially interested in receiving comment on whether anecdotal evidence, more than three similar instances of misuse which results in contamination, or three or more instances of misuse spaced over a specific time period is necessary, under Option 1, for a conclusion that misuse

may represent widespread or commonly recognized practice.

If a pesticide first meets the criteria under Option 1 or 2 proposed in this rule, EPA would apply the existing criteria in § 152.170(a)(2) through (4), and (e) to determine whether restriction is warranted. Section 152.170(a)(2) specifies that EPA will only restrict a pesticide whose labelling is not, or cannot be made, adequate to mitigate the risk. Section 152.170(a)(3) specifies restriction only if that would reduce overall risk. Finally, § 152.170(a)(4) says restriction will be undertaken if the "decrease in risks of the pesticide as a result of restriction would exceed the decrease in benefits." This Unit discusses how those existing criteria may be applied when the Agency considers restriction of a pesticide because of its potential to contaminate ground water.

With regard to the determination in § 152.170(a)(3), EPA anticipates that in most cases restricting the use of a pesticide that meets one of the proposed criteria will reduce the risk of adverse effects. Both misuse and failure to exercise good judgement in using pesticides can contribute to the potential for ground water contamination, and restriction to use by, or under the supervision of, a certified applicator is an effective way to assure that pesticides are properly used.

Factors that are not specified in the new criteria may also indicate that restricted use classification will not reduce the risks of ground water contamination. In some cases, the risk of contamination may be insignificant because of the way the product is used. For example, a product intended for outdoor domestic use may have an insignificant contribution to the potential for ground water contamination because it is used in low volumes or concentrations. Risk may also be insignificant if ground water monitoring data indicate that an ingredient is unlikely to actually reach ground water at sites where it is handled or applied. This could occur if an ingredient of concern binds tightly to soil in the locations where the product is handled or applied. The presence of such factors will therefore tend to eliminate use of restricted use classification as a risk reduction measure. Laboratory data showing that an ingredient is either not persistent, or not mobile will prompt EPA to consider such factors carefully.

Ancillary data from the environmental fate studies which are used in proposed § 152.170(b)(3)(i) (Option 1 and 2) may also indicate a smaller leaching potential, and therefore, smaller risk. For example, leaching potential may be considered less significant if an ingredient tends to partition into an organic over an aqueous phase during extraction procedures, or if an ingredient moves very little through soil columns during a column leaching study. If an ingredient just hits the persistence and mobility triggers, ancillary environmental fate data, graphical or multiplicative indices developed to assess leaching potential will be considered. Those methodologies are discussed in "Soil Pesticide Interaction Potentials for loss", D.W. Goss, National Water Quality Technology Development Staff, USDA, Soil Conservation Service, Forth Worth, Texas; and "Groundwater Ubiquity Score: A Simple Method for Assessing Pesticide Leachability", Gustafson, D.I., *Environmental Toxicology and Chemistry*, Vol. 8, pp. 339–357, 1989. In short, when there is evidence that an ingredient will not reach ground water, EPA will not restrict the source product based on the fact that an ingredient meets the criteria for considering restriction.

EPA may also determine that the properties of a product are sufficiently understood that it is unlikely to reach ground water at levels which may cause unreasonable adverse effects. In making this determination, EPA will consider the risk which could be posed by the detected ingredient. EPA will consider the character of the toxicological concern, the weight of the evidence of any detections in view of the history of use, the availability of monitoring data, special circumstances associated with the detection and the risk presented by the highest levels of the ingredient which could reach ground water. If, considering these factors, EPA determines that the ingredient presents an insignificant risk, EPA will not restrict the product. Consideration of such factors, for example, would ensure that formation or leaching of carbon dioxide, a pesticide degradate which is innocuous, will not normally lead to restricted use classification.

A product that meets the criteria proposed in this proposed rule has the potential to contaminate ground water. It is possible that not every product that meets the proposed criteria will cause unacceptable contamination. However, EPA believes that the benefits of reducing the probability of such ground water contamination generally may exceed the relatively small costs of training and certifying applicators, paying for the services of commercial applicators and relabelling products.

EPA will consider any additional information that shows that the costs of restricted use classification are so great that they outweigh the decrease in risks which are achieved. This could arguably be the case for a domestic use product which may effectively be cancelled by a restricted use classification decision. In practice, however, EPA does not think that many domestic use products would avoid restriction solely on this ground. EPA believes that, because this rule addresses only outdoor uses of pesticides, hiring a certified applicator would generally be a viable option for homeowners who might have applied the unrestricted product.

As required by 40 CFR 152.170(a)(2) and (e), EPA will determine whether the labelling of an end-use product is adequate to mitigate the risk of ground water contamination. However, for the labelling to be adequate to mitigate the risk, § 152.170(e)(2)(B) requires that following directions designed to protect ground water must not involve complex operations, and § 152.170(a)(2)(C) requires that there be minimal possibility that contamination could result from a minor failure to follow label directions. EPA does not anticipate that labelling will often be adequate to mitigate the risk of contamination by products containing an ingredient which meets the proposed criteria because measures used to protect ground water will often involve complex operations or detailed knowledge of local conditions, and even minor failures to follow label directions can result in an unacceptable potential for contamination of ground water.

EPA will use § 152.170(b)(3)(i) to scrutinize new chemicals. This approach will allow EPA to decide whether to classify a new chemical for restricted use, without waiting for it to reach ground water. EPA also plans to continue efforts already underway to gather data regarding persistence and mobility of existing pesticide ingredients, as well as data regarding newly discovered metabolites and degradates of pesticides and data regarding pesticide ingredients found in ground water.

In order to initiate prompt action to reduce the likelihood of ground water contamination by the pesticides of greatest concern, at a minimum EPA intends to apply the criteria in this rule to a group of pesticides containing ingredients which currently meet both Option 1 and Option 2. In other words, at a minimum, EPA will give priority attention to products whose ingredients are known to be persistent and mobile and have been detected in ground water in three counties above the MCL or HAL, or are known to be persistent and mobile and have been detected in

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ground water in at least 25 different wells in at least 4 States. EPA will then evaluate which of these products meet the standards detailed in this Unit V, and EPA will propose restricted use classification for some or all of those pesticides in the Federal Register within the next 6 months but will not issue a final regulation to restrict those pesticides until after issuance of a Notice of Rulemaking which promulgates the criteria in Option 1, Option 2, or a combination of the two.

Action to restrict pesticides due to ground water concerns is currently authorized on a case-by-case basis under 40 CFR 152.170(d). EPA has undertaken several actions to restrict the use of pesticides under that section. EPA has considered continuing use of a pure case-by-case approach but has, instead, opted to propose an overall rule setting out the criteria EPA would use to determine a pesticide ingredient's potential for contamination. This rule will provide the public notice of the criteria EPA will use to determine which pesticides have potential to contaminate ground water and may upon further evaluation merit restricted use classification. At the same time, the objective standards proposed in this document will expedite EPA's decision making process because it sets out EPA's criteria, makes the outcome more predictable for the public and regulated industry, and ensures that classification decisions are consistent with one another.

As discussed above, EPA solicits comments and data relating to this decision, the criteria proposed in this document, and all aspects of this proposal. EPA is interested in comments and data that would either support the proposed criteria or suggest a different approach to classifying pesticides due to ground water concerns. EPA recently issued a final rule amending the restricted use classification procedures. See 53 FR 15986 (May 4, 1988) (codified at 40 CFR part 152, Subpart I). EPA is not reopening the May 4, 1988 rule for comment and is accepting comments only on the issue of adding criteria for ground water concerns to the existing rule.

VI. Statutory Review

Pursuant to FIFRA section 25, a copy of this proposed rule has been provided to the Secretary of Agriculture and the Scientific Advisory Panel for review. The Scientific Advisory Panel waived review.

The Secretary of Agriculture reviewed and offered comments on Option 1. The major comments, and EPA's response, are summarized below.

The Secretary of Agriculture suggested that a toxicity based contamination trigger level be incorporated into Option 1. EPA has not incorporated the suggestion but by including Option 2 in Unit III of this preamble, EPA is soliciting comment on an approach whose risk basis is more empirical because it includes toxicity standards in the criteria.

The Secretary also suggested that, the number of detections (i.e. detections in three different counties) specified in Option 1, be increased. EPA does not want to wait for a large number of instances of contamination to occur before considering restriction. However, EPA is soliciting further comment on the number of locations which would trigger consideration of restricted use.

The Secretary suggested that detections from misuse not be considered. However, EPA thinks that instances of misuse are among the kinds of activities classification as restricted use is most likely to decrease. The Secretary also said that K_d (soilwater partition coefficient) of less than or equal to 5, and migration 2.5 feet below the soil surface are overly conservative as measures of mobility. EPA knows that these values are conservative but may select them because they can be of concern when a pesticide has a high persistence.

The Secretary of Agriculture also suggested that K_{oc} be used as a measure of mobility in lieu of K_d because K_{oc} is cheaper and applicable in more soil types. K_d presently costs about $10,000 per soil type and EPA generally has test data for the four soil types for which EPA requires tests. EPA expects to have K_d data adequate for assessing the mobility of most pesticide active ingredients. EPA continues to believe that K_d is an appropriate test of an ingredient's mobility. EPA agrees that K_{oc} is also an adequate measure of mobility of an ingredient. K_{oc} is related to K_d as follows: $K_{oc} = K_d \times 100/$ percent of organic carbon in the soil. EPA has added it to both Option 1 and 2.

The Secretary of Agriculture also suggested that EPA not consider detections of an ingredient in non-potable water when determining potential for ground water contamination. EPA does not agree with this suggestion. Option 1 and 2 use three occurrences in water to predict potential for widespread contamination of ground water. EPA believes that the fact that an ingredient has leached to non-potable ground water is as valid an indication of potential for widespread contamination of ground water as any other instance of ground water contamination.

Lastly, the Secretary suggested that EPA add an upper limit for K_d since K_d is correlated with the potential of an ingredient to run off. EPA recognizes K_d is associated with the potential of an ingredient to run off. However, this proposal is concerned with mitigation of potential for ground water contamination. When EPA addresses potential for pesticide run off, K_d and/or K_{oc} will be considered.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order (E.O.) 12291, EPA must judge whether a proposed regulation is "major". Major regulations require a regulatory impact analysis. EPA has determined that this proposed rule is not a major regulation as defined in E.O. 12291 because the total impact on the economy is expected to be substantially less than $100 million, it is not expected to impose major costs on consumers, individual industries or Federal, State or local governments, or adversely affect employment, competitiveness or productivity of U.S. based enterprises. The rule was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

EPA has estimated that the impact of the rule will be $33 million (total present value over a 10-year period discounted at 10 percent). This is based on an estimate that up to 24 active ingredients may qualify for restriction under the rule. The details of this determination are in an Economic Impact Analysis which has been placed in the public docket for this rule.

B. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), I hereby certify that this rule will not have a significant impact on a substantial number of small businesses.

C. Paperwork Reduction Act

This rule does not contain information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et. seq.

List of Subjects in 40 CFR Part 152

Administrative practice and procedure, Environmental protection, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 24, 1991.

F. Henry Habicht II,

Acting Administrator.

Accordingly, 40 CFR chapter I, subchapter E, part 152 is proposed to be amended as follows:

PART 152—[AMENDED]

1. The authority citation for part 152 continues to read as follows:

Authority: 7 U.S.C. 136–136y. Subpart U also issued under 31 U.S.C. 9701 and Pub. L. 100–202.

2. In § 152.161 by removing the existing paragraph designations and inserting the following definitions in alphabetical order to read as follows:

§ 152.161 Definitions.

* * * * *

Ground water means water which is below the land surface in a zone of saturation, at or above atmospheric pressure.

Ingredient means any component of a pesticide product or a metabolite or a degradate of any component.

* * * * *

3. In § 152.170, by revising paragraph (a)(1) and adding paragraph (b)(3) to read as follows:

§ 152.170 Criteria for restriction to use by certified applicators.

(a) * * *

(1) It exceeds one or more of the specific criteria in paragraph (b) or (c) of this section, or evidence described in paragraph (d) of this section substantiates that the product or use poses a serious hazard that may be mitigated by restricting its use;

* * * * *

(b) * * *

(3) A pesticide product intended for outdoor use will be considered for restricted use classification if an ingredient of the product meets or exceeds the criteria in paragraph (b)(3)(i) or (b)(3)(ii) of this section:

(i)(A) Based on studies conducted in accordance with the Pesticide Assessment Guidelines Subdivision N or other reliable scientific data, it has any soil-water partition coefficient (K_d) less than or equal to 5 mL/kg, any carbon referenced sorption coefficient (K_{oc}) less than or equal to 500 mL/g, or it has been detected below 75 centimeters in the soil profile, and

(B) Based on studies conducted in accordance with the Pesticide Assessment Guidelines Subdivision N or other reliable scientific data, it has any experimentally determined half-life greater than 3 weeks as shown from laboratory aerobic soil metabolism studies or field dissipation studies, or it has any experimentally determined resistance to hydrolytic degradation, or photolytic degradation on soil or in water, under any conditions, resulting in degradation of less than 10 percent in a 30-day period.

(ii) Based on studies conducted in accordance with the Pesticide Assessment Guidelines Subdivision N or other reliable scientific data, it has been detected in ground water in at least three counties, unless those detections have been shown not to be a result of pesticidal activities including, but not limited to mixing, loading, application or disposal.

* * * * *

[FR Doc. 91–11294 Filed 5–13–91; 8:45 am]

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Part VII

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 4

Prohibition of Advance Disclosure of Funding Decisions; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 4

[Docket No. R-91-1491; FR-2806-F-02]

RIN 2501-AD02

Prohibition of Advance Disclosure of Funding Decisions

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule implements section 103 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) (Reform Act). Section 103 proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance from the Department. Section 103 also authorizes the Department to impose civil money penalties on employees who knowingly violate the prohibitions in the section and to impose other sanctions upon applicants for assistance who may benefit from the proscribed communications. The purpose of section 103 is to strengthen HUD's controls over the conduct of participants in its programs, and to avoid unfair competition, by controlling the flow and timing of information from the Department to the participants.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Telephone number (202) 708-3815. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Introduction

This rule implements an important part of the Department of Housing and Urban Development Reform Act of 1989 by specifying what types of information employees may not disclose in connection with the Department's selection of applicants for assistance. The proposed rule in this proceeding was published on November 23, 1990 (55 FR 49012).

The rule specifies which employees may or may not be subject to civil money penalties for improper disclosure of that information. Also, it provides that applicants for and recipients of assistance may be subject to sanctions other than civil money penalties if the Department believes that an employee has breached the disclosure proscriptions under this rule. The objective of this rule is to preclude any person from receiving or obtaining information from the Department that would give an applicant an unfair advantage over other applicants who are competing for the assistance. A detailed discussion follows.

The Selection Process and Covered Selection Information

The type of activity to which this rule applies is described generally as follows: The Department makes available funds for certain purposes either on an annual or a special basis. Those funds are the "assistance" with which this rule is concerned. The Department announces the availability of funding through a publication in the Federal Register, usually in the form of a Notice of Fund Availability (NOFA). Through publication of the NOFA, eligible persons are invited to apply for the assistance. After evaluating the applications, the Department selects one or more applicants to receive assistance. It is the improper disclosure of information regarding the selection that this rule is designed to proscribe and sanction. The Department will include in future NOFAs a section that alerts applicants to the requirements and consequences of this rule. Thus, even if a potential applicant might not be aware of this rule upon its implementation, the applicant will learn of it while reviewing the NOFA for a program in which it has an interest.

The critical time period for the rule's objective is the "selection process" discussed above. The statute defines the "selection process" as

> the period with respect to a selection for assistance that begins with the development, preparation, and issuance of a solicitation or a request for applications for the assistance and concludes with the selection of recipients of assistance, and includes the evaluation of applications.

However, since "development" and "issuance" are terms that are at opposite ends of a spectrum, the rule defines the selection process as beginning at the time when the HUD official who is responsible for a given assistance program forwards a written request (or a draft NOFA) to the relevant office within the Office of General Counsel for preparation of a solicitation (in whatever format) for publication in the Federal Register. This decision point is strictly an internal function and will occur before the publication of the solicitation in the Federal Register.

The proposed rule contained a provision for internal notification of particular employees to alert them to the beginning of a selection process and of the applicability of this rule's requirements. This provision (§ 4.100(b) in the proposed rule) has been stricken because the Department believes that the proposed procedure would be an infeasible means of notifying all potentially affected employees. Although the rule provides adequate notice to all HUD employees of their obligations under section 103, it will be augmented by internal instructions and training.

The types of assistance that are covered by this rule are extensive and are subject to change with the enactment of legislation that might amend current programs. Thus, this rule identifies the programs to which the rule currently will be applied, but cautions that the list is not exclusive. New funding programs will be added to the rule as they come into existence, but a new program (for example, a demonstration program) not codified in HUD regulations will be subject to the rule's prohibitions, whether or not the program appears in the listing contained in today's document.

This assistance is also of the type that entails a competition for its distribution. Thus, the Department's mortgage insurance programs and any contracts that are subject to the Federal Acquisition Regulation are excluded.

The information that is prohibited from being disclosed during the selection process is "covered selection information." As can be seen from its definition in § 4.5, "covered selection information" includes any information contained in an application and any information regarding the decision to select an applicant. The prohibition against disclosure applies to any HUD "employee", a term that is defined to include consultants or others who are retained on a contractual basis. However, "employee" does not include an independent contractor who is working under a procurement contract.

Excluded from "covered selection information" is information about program requirements, or about the timing of the decision points in the selection process. There are other items of information that are excluded from "covered selection information" as well. For example, employees may inform an applicant of its failure to qualify after a preliminary review for eligibility and completeness of its application, and about the reasons for the failure to qualify, but only employees who are authorized to have that information in the first instance may make the disclosure (§ 4.105(b)). An authorized employee is one who is officially involved in the selection process. The rule also permits an authorized employee to contact an applicant to obtain clarification of the application. Clarification would include a request by the employee for information, for example, to assure that the employee understood the terms of the application or that all applications were complete. Section 4.105(a) lists a number of permissible disclosures that employees may make, whether or not they are "authorized employees."

The rule defines "covered selection information" in part to mean any information "otherwise used in arriving at the Secretary's decision to make assistance available, unless that information is generally available to the public." (The statute defines "covered selection information" in part to mean "any information regarding the decision of the Secretary to make available assistance or other information that is determined by the Secretary to be information that is not generally available to the public * * * *".) If information is generally available to the public, its disclosure to a given applicant should afford no special benefit to that applicant, and an employee will not be subject to sanctions for having disclosed it.

The final rule sets out, in §§ 4.100 and 4.105, the circumstances under which disclosures may be made during the selection process. The Secretary has not chosen to provide in the rule for any other exercise of his discretionary power to permit disclosures to persons other than those described in the rule. Should the Secretary choose at a future time to enlarge the class of persons authorized to receive covered selection information, it would be necessary to amend part 4 to accomplish this purpose.

Prohibitions, Penalties and Procedures

This rule would subject a HUD employee to civil money penalties for knowingly and materially violating any prohibition against disclosing "covered selection information" during the selection process. It also would subject an employee to other available sanctions, regardless of the materiality of the disclosures made. To constitute a violation, the disclosure must have been made to a person not authorized to have the information, and any person who is not officially involved in the selection process is an unauthorized person. Thus, the unauthorized person could be someone within or outside the Department.

In the normal course of events, the employee who makes a disclosure would be an authorized employee, because an authorized employee is the person most likely to have covered selection information in the first instance. However, it is not the intention of this rule to impose absolute liability on employees, whether or not they are authorized employees. There will be situations in which disclosures to employees who are not involved in the selection process are necessary, or even routine. For example, to the extent that clerical staff might not be considered officially involved in the selection process, disclosures of covered selection information to them to accomplish clerical work would not subject the disclosing employee to a sanction of this rule. (Of course, a supervisor assigning work that includes sensitive information will be expected to alert the clerical employee to its confidential nature.) It is reasonable to expect that a HUD attorney, other than one who regularly advises authorized employees, might have need of covered selection information. A similar need might be warranted for an auditor or investigator of the Inspector General who is conducting an audit, inquiry or investigation. These are situations in which disclosure is proper, and the rule recognizes this. (§ 4.105).

Since it is the Department's policy to address conferences and meetings of potential applicants as part of its educational mission to inform the public of new programs, disclosures regarding program requirements that might not have been made public because they are recently formulated policy positions sometimes will be made. For the purpose of this rule, these types of disclosures, made at conferences, will be considered to be public statements.

Before the Department may refer an employee's case to the Departmental Civil Penalties Panel (a panel described in the proposed rule published on September 10, 1990, (55 FR 37290) to be codified at 14 CFR part 30) with a request to propose a civil money penalty, the Department must have made an initial determination through its Office of Ethics that the disclosure was made knowingly and materially. (The Office of Ethics was recently created by Secretary Kemp and charged with oversight responsibility for employee conduct.) "Knowingly" is a term used and defined throughout the Reform Act; it will be satisfied if the employee has actual knowledge of the violation. Also, it will be satisfied if the employee either acts with deliberate ignorance of, or with reckless disregard for, a prohibited disclosure. "Materially" is defined in this rule, and criteria for determining materiality are set forth at § 4.130(d). Further, a civil money penalty may be imposed only after an opportunity for a hearing before an administrative law judge pursuant to the provisions of proposed 24 CFR part 30.

Because of the variety of programs affected by this rule, it is not possible to identify specific bits of information that would be prohibited from being disclosed. However, the Department believes that this rule provides sufficient notice to employees of what conduct is unlawful through the definition of covered selection information and the examples of prohibited disclosures. Nevertheless, the Office of Ethics will publicize the requirements of this rule within the Department and conduct training for those employees who are likely to be directly affected by it.

This rule establishes a procedure to assure that an employee charged with a violation would receive fair treatment and procedural protection during the investigatory phase. The procedures prescribed by this rule call for a review of any alleged violation by the Office of Inspector General, which would conduct the appropriate investigations and provide the Office of Ethics with a report of the investigations. The Office of Ethics would then perform its own review and, among other options, would have the authority to discuss the violation with the employee alleged to have committed it. After concluding its review, the Office of Ethics could close the matter or refer it to the Departmental Civil Penalties Panel (DCPP) to consider the case for a civil money penalty. The Office of Ethics may refer the case to an appropriate HUD official for additional or alternative sanctions whether or not the violation is material (§ 4.130(e)).

Applicant Sanctions

Although this rule does not provide for civil money penalties with respect to applicants for assistance (none having been authorized by section 103 of the Reform Act), it does provide for other sanctions, for example, debarment, in the event of an employee's unlawful disclosure of information. Section 103 states that if the Secretary has information providing a reasonable basis to believe that an employee has violated the section—

> the Secretary shall (1) in the case of a selection that has not been made, determine whether to terminate the selection process or take other appropriate action; and (2) in the case of a selection that has been made, determine whether to impose certain sanctions or take any other actions that the Secretary considers appropriate.

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The statutory language is so flexible that the Department has decided to treat these matters on a case-by-case basis. However, the rule does provide guidance to the officials who will consider whether to impose other sanctions. That guidance is provided in the form of factors required to be considered in making the sanction decision (§ 4.200(c)).

The Reform Act provides no "linkage" between a sanction against an applicant and a referral for consideration of a civil money penalty against an employee. Accordingly, the rule provides that an action to sanction an applicant is independent of a decision by the DCPP to seek a civil money penalty against an employee. However, since the authorization to sanction an applicant is triggered by the Secretary's conclusion that there is a "reasonable basis" to believe that an employee has violated this rule (§ 4.200), and the same "reasonable basis" test exists under which the Office of Ethics is authorized to refer an employee case for a sanction (§ 4.130 (c) and (e)), a referral by the Office of Ethics for any type of authorized sanction may be a predicate for action to sanction an applicant.

Public Comments

The Department did not recieve any public comments on its proposed rule.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule provides for the imposition of sanctions on persons determined to have engaged in prohibited conduct, but these sanctions are not directed at small entities *per se*.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule regulates or prohibits certain kinds of conduct by employees of the Department and by persons who are made privy to information from these employees.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and others levels of government. The rule primarily will affect HUD employees and have negligible effect on States or their political subdivisions.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17373) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

Accordingly, the Department amends title 24 of the Code of Federal Regulations by adding a new part 4, to read as follows:

PART 4—PROHIBITION OF ADVANCE DISCLOSURE OF FUNDING DECISIONS

Subpart A—General Provisions

Sec.
4.1 Purpose.
4.5 Definitions.
4.10 Scope.

Subpart B—Prohibitions and Procedures

4.100 Prohibition of advance disclosure of funding decisions.
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4.110 Civil penalties.
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4.125 Review of Inspector General's Report by Office of Ethics.
4.130 Action by the Office of Ethics.

Subpart C—Applicant Sanctions

4.200 Administrative remedies.

Authority: Secs. 7(d) and 12(f), Department of Housing and Urban Development Act (42 U.S.C. 3535(d), 3537a).

Subpart A—General Provisions

§ 4.1 Purpose.

This part prescribes direct or indirect communication of certain information during the selection process by HUD employees to persons within or outside of the Department who are not authorized to receive that information. The purpose of the proscription is to preclude giving an unfair advantage to applicants who would receive information not available to other applicants or to the public. This part also authorizes the Department to impose a civil money penalty on a HUD employee who knowingly discloses protected information, if the violation of this part is material, and authorizes the Department to sanction the person who received information improperly by, among other things, denying assistance to that person.

§ 4.5 Definitions.

Applicant means any person that is being considered for or receiving assistance.

Application means a written request for assistance regardless of whether the request is in proper form or format.

Assistance means any grant, loan, subsidy, guarantee, or other financial assistance under a program administered by the Department that provides by statute, regulation, or otherwise for the competitive distribution of assistance. The term does not include any mortgage insurance provided under a program administered by the Department or any contract (*e.g.*, a procurement contract) that is subject to the Federal Acquisition Regulation (FAR) (48 CFR Ch. 1). The term includes those elements of the programs listed below that provide for the competitive distribution of assistance. (Because a competitive assistance program might be established after June 12, 1991, the effective date of this regulation, the list cannot be considered an exclusive one. The list included in this rule will be amended from time to time to reflect the addition of new competitive programs. However, the fact that a new competitive program has not yet been added to the list by a conforming amendment to the rule will not create the implication that the new program is outside the reach of the prohibitions on advance disclosure contained in this rule.)

(1) Section 312 Rehabilitation Loans under 24 CFR part 510 (except loan amounts less than $200,000 and loans for single family properties).

(2) Rental Rehabilitation Grants under 24 CFR part 511 (only HUD-administered grants under subpart F and technical assistance under subpart A).

(3) The following programs under title I of the Housing and Community Development Act of 1974:

(i) Community Development Block Grants under 24 CFR part 570 (only the HUD-administered Small Cities program under subpart F).

(ii) Special Purpose Grants (only technical assistance and assistance for Historically Black Colleges) under section 105 of the Department of Housing and Urban Development Reform Act of 1989.

(iii) The Work Study program under section 107(c) of the Housing and Community Development Act of 1974, and

(iv) Community Development Block Grants to Indian Tribes under title I of the Housing and Community Development Act of 1974.

(4) Emergency Shelter Grants under 24 CFR part 576 (only HUD reallocations under §§ 576.66 through 576.67).

(5) Transitional Housing under 24 CFR part 577.

(6) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(7) Section 8 Housing Assistance Payments—Existing Housing and Moderate Rehabilitation under 24 CFR part 882 (including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(8) Loans for Housing for the Elderly or Handicapped under section 202 of the Housing Act of 1959 (including operating assistance for Housing for the Handicapped, as authorized by section 162 of the Housing and Community Development Act of 1987; and Seed Money Loans under section 106(b) of the Housing and Urban Development Act of 1968).

(9) Section 8 Housing Assistance Payments—Loan Management Set-Aside under 24 CFR part 886, subpart A (except when used as an incentive in connection with an approved Plan of Action under the Emergency Low Income Housing Preservation Act of 1987, as amended).

(10) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C (except when used as an incentive in connection with an approved Plan of Action under the Emergency Low Income Housing Preservation Act of 1987, as amended).

(11) Housing Vouchers under 24 CFR part 887.

(12) Low-Rent Housing Opportunities under 24 CFR part 904.

(13) Indian Housing under 24 CFR part 905.

(14) Public Housing Development under 24 CFR part 941.

(15) Comprehensive Improvement Assistance under 24 CFR part 968.

(16) Resident Management under 24 CFR part 964, subpart C.

(17) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(18) Nehemiah Grants under 24 CFR part 280.

(19) Research and Technology Grants under title V of the Housing and Urban Development Act of 1970.

(20) Congregate Services under the Congregate Housing Services Act of 1978.

(21) Counseling under section 106 of the Housing and Urban Development Act of 1968.

(22) Fair Housing Initiatives under 24 CFR part 125.

(23) Public Housing Drug Elimination Grants under section 5129 of the Anti-Drug Abuse Act of 1988.

(24) Fair Housing Assistance under 24 CFR part 111.

(25) Public Housing Early Childhood Development Grants under section 222 of the Housing and Urban-Rural Recovery Act of 1983.

(26) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(27) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

(28) Planning and Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(29) Planning and Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

(30) Implementation Grants for HOPE for Homeownership of Single Family Homes under title IV, subtitle C, of the Cranston-Gonzalez National Affordable Housing Act.

(31) HOPE for Elderly Independence Demonstration under section 809 of the Cranston-Gonzalez National Affordable Housing Act.

(32) Capital advances (and project rental assistance) for Housing for the Elderly under section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act, or for Housing for Persons with Disabilities under section 811 of that Act.

Authorized employee means an employee whose responsibilities in connection with the selection process require that the employee have covered selection information to perform his or her official duties.

Covered selection information means any information

(1) That is required by statute, regulation, or order to be confidential;

(2) That is contained in an application or request for assistance;

(3) That is otherwise used in arriving at the Secretary's decision to make assistance available, unless that information is generally available to the public.

Department or HUD means the Department of Housing and Urban Development.

Disclose means providing information directly or indirectly to a person through any means of communication.

Employee includes persons employed on a full-time, part-time, or temporary basis, and to special government employees as defined in 18 U.S.C. 202. The term applies whether or not the employee is denoted as an officer of the Department. "Employee" is to be construed broadly to include persons who are retained on a contractual or consultative basis under an Office of Personnel and Training appointment. However, "employee" does not include an independent contractor, *e.g.*, a firm or individual working under the authority of a procurement contract.

Knowing or knowingly means having actual knowledge of, or acting with deliberate ignorance of or reckless disregard for, the requirements of § 4.100.

Material or materially means in some influential or substantial respect or having to do more with substance than with form.

NOFA means Notice of Fund Availability—a notice published in the Federal Register which announces the availability of assistance.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people.

Secretary means the Secretary of Housing and Urban Development.

Selection means the determination of which applicant or applicants for assistance are to receive assistance

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under the program for which assistance is sought.

Selection Official means the person within the Department who makes the final decision to provide assistance in response to an application or applications for assistance. The Selection Official may be denominated as Assistant Secretary, a Grant Officer or any other HUD employee authorized to make the decision.

Selection process means the period with respect to a selection for assistance that begins when the HUD official responsible for awarding the assistance involved, or his or her designee, makes a written request (which includes the selection criteria to be used in providing the assistance) to the Office of General Counsel (OGC) to prepare the NOFA, solicitation, or request for applications for assistance for publication in the Federal Register. The period includes the evaluation of applications, and concludes with the announcement of the selection of recipients of assistance.

§ 4.10 Scope.

(a) *Coverage.* The prohibitions against improper disclosure of covered selection information apply to any person who is an employee of the Department.

(b) *Applicability.* The prohibitions contained in this part apply to conduct occuring on or after June 12, 1991.

Subpart B—Prohibitions and Procedures

§ 4.100 Prohibition of advance disclosure of funding decisions.

(a) *In general.* Except as otherwise provided in § 4.105, during the selection process an employee shall not knowingly disclose any covered selection information regarding the selection process to any person other than an employee authorized to receive that information.

(b) *Examples of prohibited disclosures.* There are many disclosures that will be prohibited by this section, but since they will be fact-specific to a particular program, they cannot be specified here. However, the following are examples of types of information, the disclosure of which shall be a violation of this section:

(1) Information regarding any applicant's relative standing;

(2) The amount of assistance requested by any applicant;

(3) The identity of any applicant;

(4) The number of applicants;

(5) Any information contained in an application.

§ 4.105 Permissible disclosures.

(a) Notwithstanding the provisions of § 4.100, an employee is permitted to disclose information during the selection process with respect to:

(1) The requirements of a HUD program or programs, including unpublished policy statements, provided that the requirements or statements are disclosed on a uniform basis to any applicant;

(2) The dates by which particular decisions in the selection process will be made;

(3) Any information which has been published in the Federal Register in a NOFA or otherwise;

(4) Any information which has been made public through means other than the Federal Register;

(5) An official audit, inquiry or investigation, if the disclosure is made to an auditor or investigator authorized by the HUD Inspector General to conduct the audit or investigation;

(6) Legal activities, including litigation, if the disclosure is made to an attorney who is representing or is otherwise responsible to the Department in connection with the activities; or

(7) Procedures that are required to be performed to process an application, *e.g.*, environmental or budget reviews.

(b) An authorized employee, during the selection process, may contact an applicant for the purpose of:

(1) Communicating the fact of the applicant's failure to qualify, after a preliminary review for eligibility and completeness with respect to his or her application, and the reasons for the failure to qualify;

(2) Communicating the fact of the applicant's failure to be determined to be technically acceptable after a full review; or

(3) Seeking a clarification of the terms of the applicant's application. A clarification, for the purpose of this paragraph, may include a request for additional information consistent with regulatory requirements.

§ 4.110 Civil penalties.

(a) *In general.* Whenever any employee knowingly and materially violates the prohibition in § 4.100, the Secretary may propose a civil money penalty on the employee through the Departmental Civil Penalties Panel in accordance with the provisions of 24 CFR part 30.

(b) *Amount.* The amount of the penalty, as determined by the Secretary, may not exceed $10,000 for each violation.

(c) *Cumulative remedy.* A civil money penalty may be sought in addition to any other available civil remedy or any available criminal penalty and may be imposed whether or not the Secretary imposes other administrative sanctions.

§ 4.115 Procedure upon discovery of a violation.

(a) *In general.* When an alleged violation of § 4.100 comes to the attention of any person, including an employee, he or she may either—

(1) Contact the HUD Office of Ethics to provide information about the alleged violation; or

(2) Contact the HUD Office of Inspector General to request an inquiry of investigation into the matter.

(b) *Office of Ethics.* When the Office of Ethics receives information concerning an alleged violation of § 4.100, it shall refer the matter to the Inspector General stating the facts of the alleged violation and requesting that the Inspector General make an inquiry or investigation into the matter.

(c) *Inspector General.* When the Inspector General receives information concerning an alleged violation of § 4.100, he or she shall notify the Office of Ethics when the Inspector General begins an inquiry or investigation into the matter.

(d) *Protection of employee complainants.* (1) No official of the Office of Ethics, after receipt of information from an employee stating the facts of an alleged violation of this part, shall disclose the identity of the employee without the consent of that employee. The Inspector General, after receipt of information stating the facts of an alleged violation of this part, shall not disclose the identity of the employee who provided the information without the consent of that employee, unless the Inspector General determines that disclosure of the employee's identity is unavoidable during the course of an investigation. However, any employee who reports an alleged violation of this part known to that employee to be false, or made with willful disregard for the truth, is not so protected and may be subject to disciplinary action.

(2) Any employee who has authority to take, direct others to take, recommend or approve a personnel action is prohibited from threatening, taking, failing to take, recommending, or approving any personnel action as reprisal against another employee for providing information to investigating officials.

§ 4.120 Investigation by Office of Inspector General.

The Office of Inspector General shall undertake a review of every matter or complaint alleging a violation of § 4.100. If after a review the Office of Inspector General determines that further investigation is not warranted, it shall notify the Office of Ethics of that determination. If, after a review, the Office of Inspector General determines that additional investigation is warranted, it shall conduct the investigation and upon completion issue a report of the investigation to the Office of Ethics as to each alleged violation.

§ 4.125 Review of Inspector General's report by Office of Ethics.

After receipt of the Inspector General's report, the Office of Ethics shall review the facts and circumstances of the alleged violations. In addition, the Office of Ethics may—

(a) Return the report to the Inspector General with a request for further investigation;

(b) Discuss the violation with the employee alleged to have committed the violation; or

(c) Interview any other person, including employees who it believes will be helpful in furnishing information relevant to the inquiry.

§ 4.130 Action by the Office of Ethics.

(a) After review of the Inspector General's report, the Office of Ethics shall determine whether or not there is sufficient information providing a reasonable basis to believe that a violation of § 4.100 has occurred.

(b) If the Office of Ethics determines that there is no reasonable basis to believe that a violation of § 4.100 has occurred, it shall close the matter and send its determination to the Office of Inspector General.

(c) If the Office of Ethics determines that there is sufficient information to provide a reasonable basis to believe that a violation of § 4.100 has occurred, it shall:

(1) Send its determination to the Office of Inspector General; and

(2) Refer the matter to the Departmental Civil Penalties Panel (DCPP) for review as to whether to impose a civil money penalty in accordance with 24 CFR part 30; *provided*, however, that the Office of Ethics shall not make a civil money penalty recommendation unless it finds the violation to have been knowing and material. The DCPP may consider whether to impose a civil money penalty in a particular matter only upon referral from the Office of Ethics.

(d) In determining whether a violation is material, the Office of Ethics shall consider the following factors, as applicable:

(1) The content of the disclosure and its significance to the person to whom the disclosure was made;

(2) The time during the selection process when the disclosure was made;

(3) The person to whom the disclosure was made;

(4) The dollar amount of assistance requested by the person to whom the disclosure was made;

(5) The dollar amount of assistance available for a given competition or program;

(6) The benefit, if any, received or expected by the employee, the employee's relatives or friends, or any other person with whom the employee is affiliated;

(7) The potential injury to the Department; for example, the opportunity for litigation or administrative contest against the Department or the likelihood of the violation's bringing the Department into disrepute.

(e) If the Office of Ethics determines that there is sufficient information to provide a reasonable basis to believe that a violation of § 4.100 has occurred, it may, in addition to referring the matter to the DCPP, refer the matter to an appropriate HUD official for consideration of any other available disciplinary action. Any referral authorized by this paragraph shall be reported to the Inspector General and may be reported to the employee's supervisor.

Subpart C—Applicant Sanctions

§ 4.200 Administrative remedies.

If the Department receives or obtains information providing a reasonable basis to believe that a violation of § 4.100 has occurred, the Department may impose a sanction, as determined to be appropriate, upon an applicant for or a recipient of assistance who has received covered selection information.

(a) In the case of a selection that has not been made, the Secretary shall determine whether to terminate the selection process or take other appropriate actions.

(b) In the case of a selection that has been made, the Secretary shall determine whether to:

(1) Void or rescind the selection, subject to review and determination on the record after opportunity for a hearing;

(2) Impose sanctions upon the violating applicant selected, subject to review and determination on the record after opportunity for a hearing; for example, the Secretary may seek to debar the applicant after an opportunity for a hearing before an administrative law judge pursuant to 5 U.S.C. 554, et seq. and 24 CFR part 26;

(3) Permit the violating applicant selected to continue to participate in the program; or

(4) Take any other actions that the Secretary considers appropriate.

(c) In determining whether a sanction is appropriate and if so which sanction or sanctions should be sought, the Secretary shall give consideration to the applicant's conduct with respect to the violation. In so doing, the Secretary shall consider the factors listed at § 4.130(d), as well as any history of prior violations in any HUD program, the benefits received or expected, deterrence of future violations and the extent of any complicity in the violation.

(d) The Secretary may impose a sanction authorized by this section whether or not the Office of Ethics refers a case to the DCPP, or the DCPP proposes a civil money penalty against an employee.

Dated: April 25, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91-11260 Filed 5-10-91; 8:45 am]

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Part VIII

Environmental Protection Agency

40 CFR Subchapter R

Comprehensive Review of Lead in the Environment under TSCA; Advance Notice of Proposed Rulemaking

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Subchapter R

[OPTS-62094; FRL-4797-9]

Comprehensive Review of Lead in the Environment under TSCA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: EPA is exploring the desirability and feasibility of various approaches under the Toxic Substances Control Act (TSCA) to significantly reduce any unreasonable risks to human health and the environment from exposures to lead (Pb) as part of an Agency-wide initiative to control unacceptable Pb risks. For purposes of this ANPR, Pb will refer to elemental Pb and Pb-containing compounds. This regulatory investigation will explore use of TSCA section 6 to determine if uses of Pb present unreasonable risks. To that end, the Office of Toxic Substances intends to: (1) Control existing or new uses of Pb which pose an unreasonable risk of injury to health or the environment; and (2) explore the desirability and feasibility of discouraging overall consumption of Pb in general, while encouraging environmentally sound recycling of Pb products. The regulatory investigation will evaluate specific market approaches, such as fees and marketable permits where appropriate, which may offer more efficient ways of achieving the same goals.

EPA is issuing this ANPR to invite comment and to request information on the issues outlined in this document in order to determine if the risks are unreasonable. Discussion of issues relating to abatement of Pb already in the environment is beyond the scope of this document. However, these issues, along with the activities included in this ANPR and other Agency-wide activities, are discussed at length in the Agency's Strategy to Reduce Lead Exposures. To receive more information on the Agency Strategy or to receive a copy of the Strategy document, contact the office listed under "FOR FURTHER INFORMATION CONTACT."

DATES: Written comments must be received by the Agency no later than August 12, 1991.

ADDRESSES: Comments should be submitted in triplicate to: The TSCA Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, rm. NE-G004, 401 M St., SW., Washington, DC 20460, Attention: OPTS-62094.

Comments containing confidential business information (CBI) should be submitted in triplicate to: The Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, rm. E-105, 401 M St., SW., Washington, DC 20460, Attention: OPTS-62094. A sanitized copy of confidential comments must be provided in triplicate to the TSCA Public Docket Office.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division, Office of Toxic Substances, Environmental Protection Agency, rm. E-543, 401 M St., SW., Washington, DC 20460, 202/554-1404, TDD: 202/554-0551.

SUPPLEMENTARY INFORMATION: EPA is considering proposing rules to control Pb exposures, if unreasonable risks are present, under TSCA to:

1. Limit or, if appropriate, ban new or existing uses of Pb in specific products which present an unreasonable risk of injury to health or the environment.

2. Limit or, if appropriate, severely restrict overall Pb mining, importation, manufacturing, processing and distribution.

3. Limit or prohibit methods of disposal other than recycling for certain Pb products.

Rules based on (or using) economic incentives (as well as command and control rules) may achieve the goals of all the regulatory approaches mentioned above. Some examples of economic incentive approaches include a marketable permit system involving allocation by EPA (or by government-run auction or sale) of rights to produce or use Pb or fees on such production or use. EPA invites comment generally on the feasibility and desirability of promulgating economic incentive based rules to reduce the unreasonable risks posed by Pb in the environment. In addition, EPA invites comments on methods of integrating TSCA with other statutory authorities to achieve the goal of controlling unreasonable risks.

I. Regulatory Framework

This document announces initiation of a regulatory investigation of Pb under TSCA, and solicits comment on several regulatory approaches under consideration. The legal framework within which these approaches will be considered is described below.

TSCA conveys authority to regulate chemical substances. To regulate under section 6, TSCA requires a finding that there is a reasonable basis to conclude that activities involving the chemical substance, in this case Pb, present or will present an unreasonable risk of injury to health or the environment. The finding of unreasonable risk reflects a general cost/benefit analysis, in which the adverse health and environmental effects resulting from exposure to a substance are found to outweigh its overall societal benefits. Finding a risk "unreasonable" would involve weighing the health and environmental benefits of reducing specific Pb exposures--e.g., by limiting, or, if appropriate, banning particular Pb uses or products--against the societal costs of substituting other products or processes. EPA will also consider the desirability of overall reductions in Pb production and use if the Agency determines that the introduction of Pb into the environment, in general, presents unreasonable risks.

The regulatory initiatives discussed in this notice will be coordinated, within the framework of an overall Agency strategy to reduce unacceptable Pb exposures, with several other ongoing EPA research and control activities. These other activities include reviews of existing standards regarding Pb exposure under the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation and Liability Act. Potential actions include revision of the national primary drinking water regulations for Pb; an ANPR to solicit comments on options to encourage recycling; review of the New Source Performance Standard for secondary smelters; issuance of a Notice of Proposed Rulemaking on the National Ambient Air Quality Standards for Pb; promulgation of regulations for the use/disposal of sewage sludge; research to evaluate critical Pb issues such as the impact of abating Pb-contaminated soil on children's blood lead (PbB) levels; and a joint Agency effort to develop a program to reduce unacceptable exposures to Pb.

II. Background

Over the last two decades EPA has taken a number of actions to control exposure to Pb because of its toxic properties. Most notable of these actions has been the virtual removal of Pb from gasoline. As a result of this action, along with the voluntary phase-out of Pb solder in food cans by domestic manufacturers, the average PbB level in U.S. children has declined from about 17 micrograms per deciliter (μg/dl) to between approximately 4 and 6 μg/dl over the past decade.

A. Human Health Effects

Exposure to Pb can produce a spectrum of human health effects across a wide range of exposure levels. Recent studies indicate that these toxic effects may occur at exposure levels considerably lower than previously recognized. PbB is the most common index of Pb exposure. The current PbB level of concern may be reduced as more is learned about Pb toxicity.

Young children and fetuses are especially vulnerable to Pb. High PbB levels (> 40-60 in μg/dl) in children are associated with anemia, mental retardation, encephalopathy, and at extremely high levels (> 100 μg/dl), even death. There is also concern that high Pb exposures might play a role in spontaneous abortions. Even at low doses, where impacts are more subtle, Pb exposure has been associated with a variety of effects including slight increases in blood pressure in adults, and subtle deficits in attention span, hearing, learning abilities, and heme synthesis and vitamin D metabolism in children. Pb exposure is also associated with reproductive effects in men and women, and with decreased birth weight and decreased physical and mental development in neonates. Recent studies suggest that even children with subclinical effects (i.e., no obvious symptoms) might suffer significant and persistent changes.

While Federal government interest in Pb poisoning has focused on children, there is substantial evidence that exposed adults also face health risks. Since Pb is stored in bone, it may be mobilized during periods of stress or greater metabolic demands for calcium such as pregnancy and in individuals suffering from osteoporosis.

B. Environmental Effects

Pb is one of the most common toxicants in large and small animals. Pb poisoning is the most frequently diagnosed toxicological problem in veterinary medicine; its occurrence has been reported in all domestic species and in several species of zoo animals. Pb poisoning has also affected every major species of waterfowl in North America and has been reported in many birds elsewhere in the world. Sources of these exposures have typically included Pb wastes, Pb paint, spent Pb shot, fishing sinkers, and contaminated forage near Pb smelters.

Laboratory and field data show that at high concentrations, Pb can affect certain plants and inhibit photosynthesis, reduce growth, and alter species composition. Other studies also indicate that high Pb concentrations alter the composition of soil microbial communities and inhibit invertebrate activity resulting in delayed decomposition of organic matter, reduced nutrient supply, and altered soil properties, such as lower organic content.

Pb is toxic to all phyla of aquatic biota. Water Pb concentrations as low as 19 to 80 μg/l have been associated with increased mortality and impaired reproduction in aquatic invertebrates. Vertebrates (i.e., fish) appear even more sensitive. Studies have shown that freshwater vertebrates and invertebrates are more sensitive to Pb in soft than in hard water.

C. Current Uses of Pb

Some uses of Pb have the potential to be replaced by substitutes for a reasonable cost. Other uses, such as Pb-acid batteries and radiation shielding, may not be easily replaced. Given Pb's toxicity and persistence, EPA plans a comprehensive life cycle review of all uses of Pb to identify further steps which might be taken to reduce any unreasonable human and environmental risks. EPA requests information on the range of specific current uses of Pb, the amounts of Pb involved in each of these uses, and the potential risks associated with the uses and the cost of substitutes. Specific types of information requested are listed under Unit III.

III. Summary of TSCA Pb Pollution Prevention Regulatory Plan

This summary includes a description of activities the Agency is currently exploring under TSCA section 6 to reduce unreasonable risks from Pb uses, with the exception that Pb-acid battery recycling is not discussed here. The battery initiative was described in a separate Federal Register notice (55 FR 52884, December 24, 1990) and is currently the subject of an ongoing regulatory negotiation. Questions on the battery recycling regulatory negotiation should be addressed to Nancy Lauroa, U.S. EPA (TS-794), 401 M St., SW., Washington, DC 20460, telephone (202) 382-3945.

A. Phase-out of Current Uses of Pb Posing Unreasonable Risks

Initiative. EPA will initiate a regulatory investigation under TSCA section 6(a) to determine whether any of several specific current uses of Pb pose unreasonable risks. Specific uses or products tentatively identified for consideration include, but are not necessarily limited to: brass and bronze plumbing fittings and fixtures (e.g., faucets), Pb solder used to join pipes carrying drinking water, and Pb in nonresidential paint (e.g. for bridges, water towers, and roads).

Rationale. Several current uses of Pb have the potential to generate high human or environmental risk during or after use. For instance, new brass plumbing fixtures and Pb solder used to join pipes carrying drinking water can be major sources of Pb contamination of drinking water. It is also believed that Pb solder, banned from use in potable water supplies in a 1986 amendment to the Safe Drinking Water Act, is still being used by a number of professional plumbers and "do-it-yourselfers." Removal of Pb-based paint from bridges and similar structures can contribute to high human and environmental risks. EPA intends to investigate such uses, considering the benefits of each product relative to the risk, in order to determine if they pose an unreasonable risk, and, if necessary, control their use under TSCA.

EPA requests comments and information pertinent to brass and bronze plumbing fittings and fixtures, illegally installed Pb solder, Pb in nonresidential paint, and other high exposures, including: Actual exposures associated with these Pb uses and products, typical and high end PbB levels as well as exposure histories in workers and others exposed in each of the major use categories, environmental and ecosystem effects, annual volume of Pb consumption for each use, benefits of Pb in each use, available substitutes for Pb for each use, comparative health and environmental effects of the substitutes, the effectiveness of the current ban on Pb solder in drinking water systems and mechanisms to improve it, and other high exposure uses and products.

B. General Pb Reduction

Initiative. EPA is exploring, after considering the range of lead products, the possibility of using TSCA to limit or reduce general Pb production if the Agency determines that use of Pb presents an unreasonable risk of injury to health and the environment. Possible TSCA section 6(a) rules to achieve this end, based on a balancing of the benefits to society of various reductions against their associated costs, include: (1) Limitations or, if appropriate, bans on certain Pb uses and/or categories of uses; (2) restrictions on general consumption of Pb; and (3) economic incentives for reducing Pb use.

Under TSCA, the basis for any or all of these actions would be that continued environmental loading of Pb presents an unreasonable risk of injury to health and the environment. The finding of unreasonable risk reflects cost/benefit

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analysis in which EPA would be required to demonstrate that benefits to society of the exposure reduction actions exceed the cost of such controls. The Agency requests comments on the level (e.g., lifecycle, product category, or product) it should use for the cost-benefit analysis.

EPA also requests comment on the feasibility of the following approaches to reduce unreasonable risks from overall Pb production and use, which include but are not limited to the following:

1. EPA could focus on specific uses, or categories of uses, of Pb. This approach could be similar to the approach used for the phase-out of current Pb uses described above, or additional criteria could be used. EPA requests comment on the criteria which should be used in selecting uses for reductions, on examples of uses which might satisfy these criteria, and information on exposure and risk associated with various products and/or product categories, and the cost and risk of substitutes.

2. EPA could focus on reducing the use of Pb through market incentives. This approach could result in less toxic materials being substituted for Pb in products where those substitutions seem most feasible, without further EPA intervention. EPA requests comment on the feasibility of this approach, including whether these market incentives should focus only on virgin Pb or on all Pb, ways for EPA to estimate potential benefits (reductions in risk) likely to be achieved through this approach, whether this approach is likely to address the uses of greatest concern and, if those uses are not adequately addressed, ways to modify this approach so that the uses of greatest concern will be addressed.

3. EPA could focus on mandating recycling. EPA requests comment on the feasibility of this approach for uses other than batteries, including the questions noted below.

To further help EPA decide whether or not to limit production, consumption or use of Pb that pose unreasonable risks, the Agency requests comment and information on the following:

1. *Reducing the volume of Pb introduced into the environment.* i. The nature and strength of the relationship between general consumption of Pb under current and anticipated future patterns of usage and current and/or future human and environmental exposure.

ii. The effect of restricting the amount of virgin Pb refined and introduced into the environment on other metals which are coproduced with Pb.

2. *Current and future Pb use and consumption posing unreasonable risks.* i. The identity of current Pb uses, including specific products, and the amount of Pb used in specific products.

ii. The availability of feasible substitutes, and the cost increases and risks associated with such substitutes.

iii. Ongoing or planned research to identify substitutes for Pb in products.

3. *Recycling Pb.* i. The desirability of regulations to encourage recycling of Pb products in addition to Pb-acid batteries.

ii. The effectiveness of restricting production of virgin Pb as a means to encourage recycling.

iii. The relative effects of restricting virgin Pb versus restricting consumption of all Pb as a means of encouraging recycling.

4. *Product stewardship.* i. Identification of the life cycle of Pb (including Pb-containing products).

ii. Current industry procedures and practices to minimize exposure to Pb for each major use, from mining to disposal.

iii. Effectiveness of the above procedures and practices, including weaknesses either because of the inherent weakness of the practice or because of significant potential for people to fail to follow procedures.

iv. The effectiveness of various waste disposal methods for controlling unreasonable risks for discarded Pb products.

v. The extent/rate to which natural processes can be expected to reduce human or environmental exposure.

vi. Amount of Pb and risk, by product category, disposed of in municipal solid waste landfills.

5. *Means to reduce any unreasonable risks from Pb uses.* For any of the possible goals named above (regarding specific products or overall Pb use), identify:

i. Market mechanisms or economic incentives that could be applied to achieve them.

ii. Regulatory mechanisms that could be implemented to achieve them.

iii. Pollution prevention approaches.

iv. Methods of dealing with imports into the U.S. and exports of Pb and Pb-containing products under any of the above approaches to reducing unreasonable risks from Pb uses.

IV. Rulemaking Record

EPA has established a record for this advanced notice of proposed rulemaking (docket control number OPTS-62094). A public version of the record, without any confidential business information, is available in the TSCA Public Docket Office, from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Room NE-G004, 401 M St., SW., Washington, DC.

The following supporting documentation for this ANPR is available upon request from the address listed above:

1. Davis, J. Michael and David J. Svendsgaard, "Lead and Child Development," *Nature*, 329, (September 24, 1987): 297–300.

2. USDHHS, PHS, *Healthy People 2000: National Health Promotion and Disease Prevention Objectives*, February 1991.

3. USDHHS, PHS, Agency for Toxic Substances and Disease Registry (ATSDR), *The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress*, July 1988.

4. USEPA, *Strategy for Reducing Lead Exposures*, February 21, 1991.

5. USEPA, OAQPS, AQMD, *Review of the National Ambient Air Quality Standards for Lead: Assessment of Scientific and Technical Information*, OAQPS Staff Paper, June 1989.

6. USEPA, ORD, OHEA, ECAO, *Air Quality Criteria for Lead: Volume I*, EPA/600/8-83/028aF, June 1986.

7. USEPA, ORD, OHEA, ECAO, *Air Quality Criteria for Lead, Volume II*, EPA/600/8-83/028bF, June 1986.

8. USEPA, ORD, OHEA, ECAO, *Air Quality Criteria for Lead, Volume III*, EPA/600/8-83/028cf, June 1986.

9. USEPA, ORD, OHEA, ECAO, *Air Quality Criteria for Lead, Volume IV*, EPA-600/8-83/028dF, June 1986.

10. USEPA, ORD, OHEA, *Supplement to the 1986 EPA Air Quality Criteria for Lead - Volume I Addendum*, EPA/600/8-89/049F, August 1990.

11. USEPA, ORD, OHEA, *Evaluation of the Potential Carcinogenicity of Lead and Lead Compounds: In Support of Reportable Quantity Adjustments Pursuant to CERCLA Section 102, Review Draft*, EPA/600/8-89/045A, March 1989.

Dated: May 3, 1991.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-11296 Filed 5-10-91; 8:45 am]

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federal register

Monday
May 13, 1991

Part IX

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Nationwide Requirement To Use Nontoxic Shot for the Taking of Waterfowl, Coots and Certain Other Species Beginning in the 1991–92 Hunting Season; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA88

Migratory Bird Hunting: Nationwide Requirement To Use Nontoxic Shot for the Taking of Waterfowl, Coots, and Certain Other Species Beginning in the 1991-92 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The use of lead shot in waterfowl hunting poses an unnecessary risk to certain migratory birds because when the spent shot is consumed it often produces lead poisoning and death. Accordingly, this rule concludes the implementation program that began in 1986 to phase-in nationwide the requirement to use nontoxic shot for all taking of waterfowl, coots and certain other species by the 1991-92 hunting season.

EFFECTIVE DATE: September 1, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Staff Specialist, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634, Arlington Square, Washington, DC 20240 (703/358-1773), or write Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, 634 Arlington Square, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: This rule implements the final year (1991-92) of the 5-year component of the strategy to phase-in a nontoxic shot requirement for waterfowl hunting nationwide by the 1991-92 season, as set out by the preferred alternative of the Final Supplementary Environmental Impact Statement (SEIS) on the Use of Lead Shot for Hunting Migratory Birds in the United States. This SEIS was published in June 1986 (FES 86-16). The SEIS and consequent rulemakings imposing nontoxic shot requirements result from the Secretary of the Interior's responsibilities under the Migratory Bird Treaty Act, as amended (16 U.S.C. 701 *et seq.*; 40 Stat. 755), and the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531-1543; 87 Stat. 884), to decide whether, where and how migratory bird hunting will be allowed. A critical element in the Department of the Interior's deliberations and decision to implement and enforce regulations establishing nontoxic shot zones nationwide has been the determination that lead poisoning resulting from waterfowl hunting is a significant annual mortality factor in certain migratory birds.

Information detailing the scientific basis for concluding that lead shot from waterfowling is causing lead poisoning in certain migratory birds and the development of the strategy to eliminate lead toxicity as a major mortality factor, including discussions of the issues for and against lead/steel shot, appears in the SEIS and the preamble to the proposed rule on the criteria and schedule for implementing nontoxic shot zones for 1987-88 and subsequent years published in the Federal Register on June 27, 1986 (51 FR 23444). The final rule for that proposed rule was published in the Federal Register on November 21, 1986 (51 FR 42103). Information on the justification for selecting this strategy has also been set out in the Final SEIS (Alternative VII_2), the June 27, 1986, proposed rule and in the Record of Decision confirming the preferred alternative published in the Federal Register on August 20, 1986 (51 FR 29673). Additional information relating to the imposition of nontoxic shot zones nationwide, according to the 5-year schedule, is contained in the final rules for the 1987-88, 1988-89, 1989-90 and 1990-91 waterfowl hunting seasons published in the Federal Register on Tuesday, July 21, 1987 (52 FR 27352), Tuesday, June 28, 1988 (53 FR 24284), Thursday, April 13, 1989 (54 FR 14814) and Thursday, August 16, 1990 (55 FR 33626), respectively.

The remaining counties scheduled by the implementation plan to convert in their entireties to nontoxic shot use in the 1991-92 waterfowl season are those counties having had an average annual waterfowl harvest of 5 or less per square mile over the 10-year period 1971-80, as referenced by Carney *et al.* 1983 (Distribution of waterfowl species harvested in States and counties during 1971-80 hunting seasons. U.S. Fish Wildl. Serv., Spec. Sci. Rpt.—Wildl. No. 254, Washington, DC 20240). Counties converting in the last year of implementation are not listed in Appendix N of the SEIS, as they were for previous years. All counties, and other areas referenced in this rulemaking, are converted to nontoxic shot use for waterfowl and coot hunting in the 1991-92 hunting season. Thus, in this coming season, all of the waterfowl and coot harvest will occur in zones established for nontoxic shot.

The public is reminded here that 50 CFR 20.101, (Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands); 20.102, (Seasons, limits and shooting hours for Alaska); and 20.105, (Seasons, limits and shooting hours for waterfowl, coots and gallinules), have provisions for nontoxic shot use that take effect in the 1991-92 waterfowl hunting season. Hunters in Puerto Rico and the Virgin Islands will be required to use nontoxic shot for hunting waterfowl, coots and certain other species (as applicable). The State of Alaska will convert statewide to nontoxic shot use for waterfowl hunting. Section 20.105 of 50 CFR provides that "* * * areas of the United States outside of State boundaries, i.e., the United States' territorial waters seaward of county boundaries, and including coastal waters claimed by the separate States, if not already included under the zones contained in § 20.108, are designated for the purposes of § 20.21(j) as nontoxic shot zones for waterfowl hunting beginning in the 1991-92 season."

Also, this final rulemaking contains a typographical error correction for 50 CFR 20.105, Seasons, limits and shooting hours for waterfowl, coots and gallinules. The reference, therein, to § 20.2(j) should have been instead to § 20.21(j), which appears under subpart C—Taking.

Summary of General Public Comment on the Proposed Rule

Aside from official State responses, only three letters of comment were received on the proposed rule (56 FR 1446), for this final rule, during the announced 30-day comment period that closed on February 13, 1991. One of the letters was submitted by a private individual, a waterfowl hunter in Jackson, Mississippi. This letter is in opposition to the proposed action. The other 2 letters were sent by officials representing the Humane Society (Society) of the Untied States and the North American Wildlife Foundation (Foundation). The letter from the Foundation stated a cautionary position, and the letter from the Society supported the action, with further recommendations.

The Mississippi hunter wrote to protest the proposed requirement for use of nontoxic shot for waterfowl hunting "* * * anywhere in the Untied States except for areas of extreme hunting pressure over shallow water with nonpermeable soils. (Namely, public refuges and other similar hunting facilities.)" The writer prefers this "hotspot" approach to requiring the use of nontoxic shot. This individual continued by stating his opposition to steel shot because of its "ineffectiveness" in taking waterfowl, and that in his experience "* * * losses from crippling with steel shot far exceed dubious losses from waterfowl ingestion of lead shot." He stated that his comments apply to close range hunting over decoys. In addition, he advanced the argument that much of the hunting in the South is done over seasonally flooded areas that through normal agricultural practices are turned annually, and that many of these seasonally flooded areas are hunted infrequently and usually not every season. The Mississippi hunter closes by saying that "[T]hose of us in the conservation community have long been suspect of the so called [sic] 'scientific basis' used to justify the outlawing [of] lead shot. I challenge you and your Agency to conduct a new, fair and impartial study of the question and abide by its results."

The comments of the Foundation largely echoed the "ineffectiveness of steel" and "hotspot" themes contained in the Mississippi letter. The Foundation letter reports that there is a widespread perception in the waterfowling community that steel shot is inferior to lead shot and that more waterfowl, particularly geese, are being lost due to an increased crippling rate than were dying from lead shot ingestion. The Foundation's concern is for the "* * * overall impact of the widespread use of steel shot on waterfowl populations due to potentially increased crippling losses." The Foundation encouraged the Service to undertake research to determine if the change from lead to steel has actually reduced overall waterfowl mortality.

The Service response here addresses both of the above letters because both essentially raise the same issues. However, one letter does raise an issue not contained in the other, that of the validity of the scientific studies carried out on lead poisoning, that needs to be addressed. The Mississippi letter implies that the conservation community considers the "scientific basis" for the actions taken to eliminate lead poisoning in waterfowl and other migratory birds to be "suspect," and calls for new studies that are "fair and impartial."

On the basis of correspondence and other feedback to the agency from conservation organizations, as well as a series of legal actions, the Service believes that the course being pursued to eliminate the use of lead shot for waterfowl and coot hunting is the correct one. Further, the Service believes that the majority of responsible hunters are convinced of the validity of the scientific evidence gathered on lead poisoning of waterfowl, understand the need for this action and support the conversion of waterfowl and coot hunting to nontoxic shot. It may be true that a portion of the waterfowl hunting community continues to believe a change to nontoxic shot is not necessary, however, it is apparent that most States and the conservation community as a whole support the Service's conversion of waterfowl hunting from lead to nontoxic shot to eliminate lead poisoning in certain migratory birds.

The preferred alternative of the SEIS, published in 1986 (referenced earlier), originated with the International Association of Fish and Wildlife Agencies as a strategy recommendation to the Service for phasing out the use of lead shot for waterfowling. This came about because the preponderance of scientific evidence, collected by both State and Federal Governments, showed that the loss of waterfowl to lead poisoning was a serious problem. Too, the scientific basis for the actions taken by the Service to phase out lead shot for waterfowl hunting has been reviewed and found adequate by the courts. On September 28, 1987, the Federal District Court for the Eastern District of California affirmed the Service's right to impose nontoxic shot zones over the objections of the California Fish and Game Commission and the National Rifle Association, in part on the weight of the scientific evidence. Later, the Commission's appeal was rejected by the appellate court. Also, in 1989, the National Academy of Science (Academy) was asked by the International Shooting and Hunting Allicance to review the Service's actions and the scientific evidence that served as the basis for the decision to phaseout lead shot for waterfowl and coot hunting. After review, the Academy concluded there were no grounds for questioning the scientific evidence, the interpretation of that evidence or the actions of the Service in this matter.

With regard to the ineffectiveness of steel shot/crippling issue, the Service anticipated (and so advised the public) that there would be an initial increase in the unretrieved rates for the waterfowl hunting community as a whole because of hunters having to adjust to the different characteristics of steel shot loads. The Service also anticipated, and advised the public, that unretrieved harvest rates would likely drop again to approximately former levels as hunters made the adjustment. This pattern has been seen thus far in the reports provided by waterfowl hunters. There has been an overall increase in unretrieved harvest rates for ducks and geese over the last 4 hunting years. However, for ducks, the rate appears to have reached a peak in 1986 and declined in the last reported hunting year. For geese, the rate peaked in 1987 and has declined over the last 2 hunting years. In terms of rates: For ducks, the unretrieved harvest rate (UHR, in birds/total harvest) in 1985 was 18.5 percent, in 1988 was 20.0 percent, and in 1989 was 18.3 percent. For geese, the UHR in 1985 was 12.4 percent, in 1987 was 17.0 percent, and in 1989 was 13.7 percent. However, it remains to be seen whether or not these trends will continue. The source of this information is the annual, Federal hunter questionnaire that is sent out to a sample of the waterfowling community. Obviously, this information is subject to human error and is not an absolute representation of annual unretrieved harvest. Nevertheless, the information is valuable in terms of trends. It should be noted that, historically, early UHR's with lead shot were approximately as high as the more recent ones with steel.

Nevertheless, the slight rate increase in UHR experienced with steel the past few years cannot reasonably be interpreted as a substitution for the lead poisoning loss of previous years. Among other factors, an important consideration is that lead shot kills indiscriminately through ingestion, whether or not a species is legal to hunt, whereas steel shot UHR is incurred by those species in the waterfowl population that management has determined can best sustain harvest. The bulk of lead poisoning losses result from current year hunting; if deposition of lead shot by waterfowlers is discontinued most of the lead poisoning incidence will be stopped. The exception to this is where the substrates do not allow lead shot to sink out of the reach of feeding waterfowl. In these areas it may be many years before lead poisoning is eliminated.

The suggestion that steel shot requirements be limited to certain areas is commonly known as the "hotspot" approach. However, available information and analyses do not support this as the best alternative to eliminate lead poisoning in migratory birds. Many States and other commentors have agreed with this assessment in the past. States (e.g., New Jersey) that managed waterfowl hunting with steel shot on the basis of "hotspots" for a relatively long period of time consider this approach to be unworkable as it results in substantial difficulty in management and enforcement. Too, waterfowl with lead shot embedded from shooting outside of "hotspots" are able to transport a predator lead toxicity

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problem into widely dispersed geographic locations.

The (Humane) Society's letter of comment included a statement of strong support for the proposed action to complete implementation of the plan to require nontoxic shot for hunting waterfowl and coot nationwide. However, in pointing out the magnitude of the previous annual migratory bird mortality ascribed to lead poisoning, the Society stated that "[t]hese deaths are . . . also from lead shot spent by upland game hunters." The Society further stated that the potential for lead poisoning in migratory birds would continue while the use of lead shot is legal, and believes the nontoxic shot requirement should be extended to all types of hunting. Additional reference was made by the Society to making lead shot illegal, and it pointed out that the Service has legal responsibility to protect all migratory birds and endangered species under the Migratory Bird Treaties, Migratory Bird Treaty Act and the Endangered Species Act.

The Service's response to the above is that all migratory birds have been and will continue to be afforded necessary protections under the referenced Treaties and Acts. The Service's basic strategy and actions to eliminate lead poisoning in waterfowl and certain other migratory birds are supported by those authorities and others, including the National Environmental Policy Act (NEPA) of 1973, as amended.

While it is true that lead shot is in most instances legal for use by upland game hunters, there is no evidence that such use is inimical to the health and welfare of waterfowl or any other migratory bird population. Also, the Service does not have the authority to make manufacture or use of lead shot illegal, only to make its use illegal for hunting certain migratory birds, i.e., those for which a lead poisoning problem has been scientifically documented. Additionally, the Service does not have the authority to require nontoxic shot for taking many upland game species because many of these are nonmigratory birds and other species that are managed by the States.

State Responses for the Proposed Rule

It has been the policy of the Service to consult each year with the States over identification, implementation and enforcement of nontoxic shot zones. Twelve of the 50 States potentially affected by this final rulemaking responded. Those States (Alabama, Florida, Idaho, Indiana, Iowa, Maryland, Michigan, North Carolina, Oregon, Utah, Wisconsin and Wyoming) provided letters ranging from a simple nonobjection to those enthusiastically endorsing the conclusion of the nationwide nontoxic shot implementation. All of the other States, as well as Puerto Rico and the Virgin Islands, that failed to provide a response to the proposed rule are assumed not to object to this final rulemaking.

In summary, for the 1991–92 waterfowl hunting season, this rule amends § 20.108 of 50 CFR to expand the existing nontoxic shot requirement nationwide, corrects a regulatory reference mistake in § 20.105, and reminds the waterfowl hunting public of other nontoxic shot-related restrictions that become effective.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there could be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The Fish and Wildlife Service believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule will not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986, consultation was carried out on the potential impacts of the provisions of this rule on bald eagles. The "section 7" biological opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle. Also, a "section 7" biological opinion has concluded that the action being carried out is not likely to jeopardize the continued existence of the Aleutian Canada goose.

Authorship

The primary author of this proposed rule is Dr. Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of title 50 of the *Code of Federal Regulations* is amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–711), and the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712).

2. In § 20.105, the last sentence is amended by changing the reference "§ 20.2(j)" to read "§ 20.21(j)".

3. Section 20.108 is revised to read as follows:

§ 20.108 Nontoxic shot zones.

Beginning September 1, 1991, the contiguous 48 United States, and the States of Alaska and Hawaii, the Territories of Puerto Rico and the Virgin Islands, and the territorial waters of the United States, are designated for the

purpose of § 20.21(j) as nontoxic shot zones for hunting waterfowl, coots and certain other species. "Certain other species" refers to those species, other than waterfowl or coots, that are affected by reason of being included in aggregate bags and concurrent seasons.

Dated: April 12, 1991.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

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[6] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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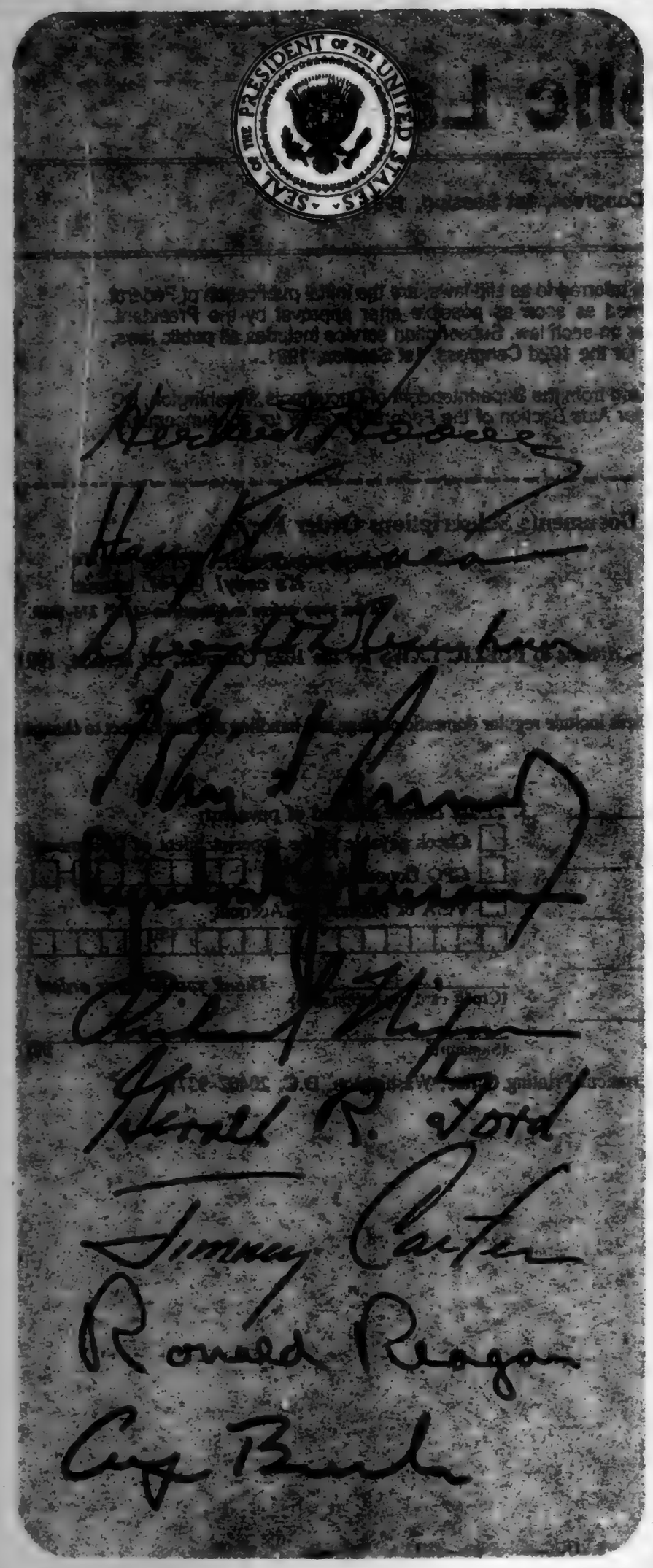

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

NEW YORK, NY

WHEN: May 21, at 9:00 am
WHERE: 26 Federal Plaza
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WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202-523-5240 (voice); 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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Rules and Regulations

Federal Register
Vol. 56, No. 93
Tuesday, May 14, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document expands the scope and applicability of the Department's uniform rules of practice governing adjudicatory proceedings to include actions initiated under section 492 of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) ("Act"). Section 492 of the Act provides that if the Secretary finds, on the record and after an opportunity for a hearing, that a person has violated the Act or the regulations issued under the Act, he/she may impose certain civil penalties for such violation(s). Accordingly, this rule will make the Department's uniform rules applicable to the administrative adjudications authorized under section 492 of the Act and will thus permit the orderly conduct of any such adjudications initiated by the Secretary.

EFFECTIVE DATE: May 14, 1991.

FOR FURTHER INFORMATION CONTACT: Ron Lewis, Timber Management Staff, USDA Forest Service, PO Box 96090, Washington, DC, 20090–6090; (202) 475–3755.

SUPPLEMENTARY INFORMATION: The Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (hereinafter referred to as "the Act") was signed into law on August 20, 1990. The Act prohibits the export of unprocessed timber originating from Federal lands and prohibits persons from acquiring unprocessed Federal timber to be used in substitution for exported unprocessed timber originating from private lands. These prohibitions are applicable to lands located west of the 100th meridian in the 48 contiguous States.

The Act establishes civil penalties for violations of the Act or regulations issued under the Act. The Act states that if the Secretary finds, on the record and after an opportunity for a hearing, that a person, with willful disregard for the Act's prohibition against exporting Federal timber, exported or caused to be exported unprocessed Federal timber in violation of the Act, the Secretary may assess a civil penalty of not more than $500,000 for each violation, or three times the gross value of the unprocessed timber involved in the violation, whichever amount is greater.

The Act further states that if the Secretary finds, on the record and after an opportunity for a hearing, that a person has violated any provision of the Act or regulations issued under the Act, the Secretary may assess the following penalties: Not more than $75,000 for each violation committed in disregard of such provision or regulation; not more than $50,000 for each violation if the person committing the violation should have known that such action constituted a violation; or not more than $500,000 if the person committed such violation willfully. The last three penalties may be assessed whether or not such violation caused the export of unprocessed Federal timber in violation of the Act.

The Act provides that a penalty assessed under the Act shall not be exclusive of any other penalty provided by law and shall be subject to review in an appropriate United States district court.

The Department's uniform rules of practice (7 CFR part 1, subpart H) govern the conduct of formal adjudicatory proceedings under numerous statutes. Accordingly, to insure consistency and uniformity in the conduct of the Department's administrative proceedings, it has been determined that civil penalty proceedings initiated under section 492(c) of the Forest Resources Conservation and Shortage Relief Act of 1990 should also be governed by these uniform procedures.

Environmental Impact

This action expands the applicability of the Department's uniform rules of practice governing adjudicatory proceedings. It will not affect the amount of timber to be sold from National Forest System lands, where such timber sales will be located, when they will be operated, the contract period, contract size, resource protection requirements, or any aspect of on-the-ground contract performance. This rule does not alter the requirement that each proposed timber sale be analyzed in compliance with the National Environmental Policy Act and its implementing regulations. As such, this action will have no impact on the quality of the human environment, individually or cumulatively. Therefore, documentation of analysis of environmental effects of this rule in an environmental assessment or an environmental impact statement is not required.

Controlling Paperwork Burdens on the Public

This action contains no new or additional recordkeeping and reporting requirements as defined in 5 CFR part 1320 and, therefore, imposes no additional paperwork burdens on the affected public.

Regulatory Impact

This action has been determined to be exempt from procedures under Executive Order 12291 and Departmental Regulation 1512–1 because it is administrative in nature. Further, this action has been determined to be exempt from the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because this action is not a rule as defined in that Act.

This rule relates to internal agency management concerning rules of agency procedure or practice in formal adjudicatory proceedings. The provisions of the Administrative Procedure Act concerning notice and opportunity for comment on agency rulemaking (5 U.S.C. 553) do not apply to the promulgation of agency rules of practice. For this reason this action is made effective upon publication in the **Federal Register**.

This final rule has been reviewed in accordance with Executive Order 12630; the rule does not concern private

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property. Therefore, it has been determined that the rule does not pose a risk of a taking of constitutionally protected private property.

List of Subjects in 7 CFR Part 1

Administration practice and procedures.

Therefore, for the reasons set forth in the preamble, Part 1 of subpart H of title 7 of the Code of Federal Regulations is amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS

Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

1. The authority citation for subpart H of part 1 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 61, 87a, 149, 150gg, 162, 163, 166, 228, 268, 499c, 608c(14), 1622, 1624(b), 2161, 2621, 2714, 2806, 3812, 4958, 4965, 4910; 15 U.S.C. 1828; 19 U.S.C. 2504, 1948(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134a, 134f, 135a, 194, 463(b), 621, 1043; 43 U.S.C. 1740, unless otherwise noted.

§ 1.131 [Amended]

2. Section 1.131(a) is amended by adding the following statutory reference in the list of statutes in alphabetical order: Forest Resources Conservation and Shortage Relief Act of 1990, section 492 (16 U.S.C. 620d).

Signed in Washington, DC on May 8, 1991.

Edward Madigan,

Secretary.

[FR Doc. 91-11423 Filed 5-13-91; 8:45 am]

BILLING CODE 3410-11-M

Agricultural Marketing Service

7 CFR Part 916

[Docket No. FV-91-906IFR]

Nectarines Grown in California; Modification of Size Requirements for Nectarines for the 1991 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule temporarily relaxes minimum size requirements established for the April Glo nectarine variety to "106" size. Currently, shipments of April Glo variety nectarines before May 31 of each year are subject to the more restrictive "96" size requirements in effect for non variety-specific nectarines. Examinations of April Glo nectarines in the Coachella Valley and in other areas of California indicate that such fruit will not develop to the "96" size level. The size characteristics for April Glo nectarines grown this year are expected to be identical to those of other varieties produced in the valley and other parts of the State which are subject to less restrictive size requirements. Additionally, this is the first year of sizable production for April Glo nectarines and total shipments throughout the state are not expected to exceed 10,000 packages.

DATES: This interim final rule becomes effective May 8, 1991. Comments received by June 13, 1991 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments should be sent to: Docket Clerk, U.S. Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Division, P.O. Box 96456, room 2025-S, Washington, DC 20090-6456. Three copies of all material should be submitted and will be available for public inspection in the office of the Docket Clerk during regular business hours. The comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, F&V, AMS, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 475-3919.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 916 (7 CFR part 916) regulating the handling of nectarines grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 245 handlers of nectarines are subject to regulation under the nectarine marketing order (7 CFR part 916). Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $3,500,000. There are about 740 producers of nectarines in the regulated area. Small agricultural producers have been defined by the SBA as those having annual receipts for the last three years of less than $500,000. The majority of these handlers and producers may be classified as small entities.

Shipments of California nectarines are regulated by grade, maturity, and size under Nectarine Regulation 14 (7 CFR 916.356) as amended and published in the Federal Register each year at the beginning of the marketing season (55 FR 24221, June 15, 1990). Because these regulations do not change substantially from season to season, they have been issued on a continuing basis subject to amendment, modification, or suspension as may be recommended by the Nectarine Administrative Committee (committee) and approved by the Secretary. Inspected shipments of California nectarines for the 1990 season totaled 18,443,100 packages. Such shipments were marketed primarily in the fresh market.

This interim final rule is based upon a unanimous recommendation of the committee and other available information. In recognition that larger-sized nectarines provide greater consumer satisfaction than those of smaller sizes, the committee has recommended, and the Secretary has approved, minimum size limits for nectarines. However, because of both seasonal and varietal influences which affect average fruit sizes by variety, different minimum size regulations have been issued for different varieties. Smaller minimum sizes generally have been mandated for earlier maturing varieties, while later maturing varieties, since they tend to attain a larger size at maturity, have been required to meet larger minimum sizes.

The April Glo variety is not currently produced in sufficient quantities (at least 10,000 containers per season) to qualify it as a "variety-specific" nectarine. The April Glo variety must therefore meet the minimum size requirements for early-season, non variety-specific nectarines which are specified rule in paragraph (a)(6) of section 916.356. Subparagraph (a)(6)(i) specifies that such nectarines, shipped through May 31, must be of a size that not more than 96 nectarines are packed in molded forms (tray pack) in a No. 22D standard lug box. Subparagraph (a)(6)(ii) specifies that not more than 67 such nectarines may be contained in a 16-pound sample of such nectarines. These are the least restrictive requirements for "non variety-specific" nectarines and, for the purposes of this document, are referred to as "96" size. Tighter requirements are specified for later season shipments in paragraphs (a)(7) and (a)(8).

The April Glo nectarine is a new variety in its first year of sizable production. Harvest of the variety began in the Coachella Valley on April 11, 1991, and was expected to continue for one week, depending on temperatures during the harvest period. Recent orchard examinations indicate that April Glo nectarines both in this valley and in other areas of California will not develop to size levels necessary to meet current size requirements. According to the committee, April Glo nectarines size similarly to the Mayfire variety which is subject to "108 size" minimum size requirement. The "108" size nectarines are of a size that, when packed in molded forms (tray pack) in a No. 22D standard lug box, will pack, in accordance with the requirements of standard pack, not more than 108 nectarines in the lug box; or are of a size that, in any other container, a 16-pound sample, representative of the nectarines in the package or container, contains not more than 92 nectarines.

About 30 to 40 percent of the crop in the Coachella Valley is expected to be "108" size. The total crop in the valley is expected to be about 5,000 containers. The percentage of the crop failing to meet the "96 size" in other parts of the state is expected to be lower, but large enough to warrant relaxation of the minimum size requirement. The total crop for California is not expected to exceed 10,000 packages. Therefore, for the 1991 season, the committee recommended that any shipments of April Glo variety nectarines, be subject to the less restrictive "106" minimum size.

This interim final rule relaxes the requirements specified in paragraphs (a)(6), (a)(7), and (a)(8) by exempting the shipment of April Glo nectarines from these requirements and adds a new paragraph (a)(9) specifying that April Glo nectarines shipped during the 1991 season must at least be "106" size.

This relaxation will allow shipment of the 108 size only in 1991 in that further evaluation of this new variety's sizing characteristics will be conducted in the Coachella Valley and other areas of the State. The modification in this interim final rule would assure fairness in the application of the non variety-specific size requirements for the April Glo variety and should not be detrimental to the industry's goal of marketing better quality, larger size fruit, since less than 10,000 packages of April Glos are expected to be shipped in 1991.

It is the Department's view that this relaxation in the size requirements for 1991 will provide additional marketing opportunities for nectarines produced in the Coachella Valley and other areas of California by recognizing the unique sizing characteristics of the April Glo variety. The amount of April Glo production represents a very small percentage of California's nectarine crop.

Based on available information, the Administrator of the AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the committee's recommendation, and other information, it is found that the modification of the size requirements, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause, it is impracticable, unnecessary, and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) Handling of 1991 crop April Glo nectarines in the Coachella Valley has already started, (2) this action relaxes size requirements by allowing "106" size nectarines of the April Glo variety to be shipped during the 1991 shipping season and the relaxation should apply to as many shipments as possible; and (3) no useful purpose would be served by delaying the effective date of these relaxed requirements.

The committee's recommendation, other information, and all written comments timely received in response to this notice will be considered prior to any finalization of this interim final rule.

List of Subjects In 7 CFR Part 916

Marketing Agreements, Nectarines, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 916 is amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 916 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 916.356 is amended by revising the introductory text of paragraphs (a)(6), (a)(7), and (a)(8) and by adding a new paragraph (a)(9) to read as follows:

Note: This section will appear in the *Code of Federal Regulation*).

§ 916.356 Nectarine Regulation 14.

(a) * * *

(6) During January 1 through May 31, of each fiscal period, any package or container of any variety of nectarines not specifically named in paragraphs (a)(2), (3), (4) or (5) of this section, except for April Glo variety nectarines, unless:

* * * * *

(7) During June 1 through June 30, of each fiscal period, any package or container of any variety of nectarines not specifically named in paragraphs (a)(2), (3), (4) or (5) of this section, except for April Glo variety nectarines, unless:

* * * * *

(8) During July 1 through December 31, of each fiscal period, any package or container of any variety of nectarines not specifically named in paragraphs (a)(2), (3), (4) or (5) of this section, except for April Glo variety nectarines, unless:

* * * * *

(9) During the 1991 shipping season, any package or container of April Glo variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of standard pack, not more than 108 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(9)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 92 nectarines.

* * * * *

Dated: May 8, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-11422 Filed 5-13-91; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 998

[Docket No. FV-91-257FR]

Expenses, Assessment Rate, and Indemnification Reserve for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures for administration and indemnification, establishes an assessment rate, and authorizes continuation of an indemnification reserve under Marketing Agreement 146 for the 1991-92 crop year (July 1 through June 30). This action is needed for the Peanut Administrative Committee (committee) to incur operating expenses, collect funds to pay those expenses and settle indemnification claims during the 1991-92 crop year. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1991, through June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2530-S, Washington, DC 20090-6456, telephone 202-475-3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 68 handlers of peanuts covered under the peanut marketing agreement, and approximately 46,960 producers in the 16 states covered under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Some of the handlers covered under the agreement are small entities, and a majority of producers may be classified as small entities.

Under the marketing agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of peanuts. They are familiar with the committee's needs and with the costs for goods, services and personnel for program operations and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who will be directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It applies to all assessable peanuts received by handlers from July 1, 1991. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on January 23-24, 1991, and unanimously recommended 1991-92 crop year administrative expenses of $985,000 and an administrative assessment rate of $0.54 per net ton of assessable farmers' stock peanuts received by handlers. In comparison, 1990-91 crop year budgeted administrative expenditures were $1,275,000 and the administrative assessment rate was $0.85 per ton. The $1,275,000 budgeted for 1990-91 included $320,000 for continuing operations during the first few months of the 1991-92 fiscal period.

Administrative budget items for 1991-92 which have increased compared to those budgeted for 1990-91 (in parentheses) are: Executive salaries, $131,775 ($125,500); clerical salaries, $140,000 ($130,000); field representative salaries, $251,352 ($237,000); employee benefits, $133,500 ($125,000); field travel, $95,000 ($92,000); office rent and parking, $51,000 ($48,000); and lab visitations $3,000 ($1,500). All other items are budgeted at about last year's amounts. The administrative budget includes $9,000 for contingencies.

At its February 27 meeting, the committee unanimously recommended 1991 crop indemnification expenses of up to $9,000,000 and an indemnification assessment of $15.00 per net ton of farmers' stock peanuts received by handlers to continue its indemnification program. There was no indemnification assessment in 1989 or 1990 crop peanuts. The $9,000,000 of indemnification coverage to be provided on 1991 crop peanuts include $5,000,000 in excess loss insurance to be purchased by the committee.

The total recommended assessment rate is $15.54 per ton of assessable peanuts ($0.54 for administrative and $15.00 for indemnification). Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Application of the recommended rates to the estimated assessable tonnage of 1,825,000 would yield $985,500 for program administration and $27,375,000 for indemnification. The $15.00 per ton indemnification assessment is needed to fund the approximate $14,250,000 deficit resulting from the large number of 1990 crop indemnification claims. The remaining indemnification assessment income will be used to pay indemnification expenses on 1991 crop peanuts and to build a reserve for subsequent crop years.

Notice of this action was published in the **Federal Register** on March 28, 1991 (56 FR12867). The comment period ended on April 29, 1991. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing agreement. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all the relevant matter presented, including the information and recommendations submitted by the committee, it is found and determined that this final rule will tend to effectuate the declared policy of the Act.

The budget and assessment rate approvals for the peanut program should be expedited to allow handlers sufficient time to finalize plans for handling 1991 crop peanuts. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. New § 998.404 is added to read as follows:

Note: This section will not appear in the annual *Code of Federal Regulations.*

§ 998.404 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1991, shall be in the amount of $985,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the committee not to exceed $9,000,000 for indemnification payments, pursuant to the terms and conditions of indemnification applicable to the 1991 crop, effective July 1, 1991, are authorized.

(c) *Rate of assessment.* Each handler shall pay to the committee in accordance with § 998.46 of the marketing agreement, an assessment at the rate of $15.54 per net ton of farmers' stock peanuts received or acquired other than from those described in §§ 998.31 (c) and (d). A total of $0.54 shall be for administrative expenses and a total of $15.00 shall be for indemnification. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired.

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1985 crop year pursuant to § 998.48 of the agreement, shall continue. That portion of the total assessment funds accrued from the $15.00 rate not expended in providing indemnification benefits on 1990 or 1991 crop peanuts shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

Dated: May 9, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-11440 Filed 5-13-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 302

[Docket No. 910487-1087]

Designation of Areas on the Basis of Per Capita Employment

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The purpose of this amendment to EDA's rule at 13 CFR 302.10 is to update area designation on the basis of per capita employment so that it is based upon the most current census data available.

DATES: Effective date: May 14, 1991. Submit comments by July 15, 1991.

ADDRESSES: Send comments to Joseph M. Levine, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., room 7001, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Joseph M. Levine, (202) 377-4687.

SUPPLEMENTARY INFORMATION: EDA is amending 13 CFR 302.10 to delete the phrases "between 1970 and 1980" and "as determined by the 1980 census". New language is being added stating "from the beginning to the end of the most recently available ten year period, from one census to the next", consistent with the Public Works and Economic Development Act of 1965, as amended, 42 USC 3121 (a)(7), which provides for area designation of "those areas where per capita employment has declined significantly during the next proceeding ten-year period for which appropriate statistics are available;" (emphasis added).

Under Executive Order 12291, the Department must judge whether a regulation is "major" within the meaning of section 1 of the order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation; or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has been or will be prepared.

This rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date, because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for this rule.

However, because the Department is interested in receiving comments from those who will benefit from the amendment, this rule is being issued as interim final. Public comments on the interim rule are invited and should be sent to the address listed in the "ADDRESSES" section above.

Comments received by July 15, 1991, will be considered in promulgating a final rule.

Since a notice and an opportunity for comment are not required to be given for the rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a)) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 13 CFR Part 302

Community development.

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Part 302 of 13 CFR is amended as follows:

PART 302—DESIGNATION OF AREAS

1. The authority citation for part 302 is revised to read as follows:

Authority: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

2. Section 302.10 is revised to read as follows:

§ 302.10 Designation on the basis of per capita employment.

The Assistant Secretary shall designate as redevelopment areas those areas which have suffered a significant decline in per capita employment of more than 1.2 percentage points from the beginning to the end of the most recent ten year census period for which data is available and which also have net out-migration during the same period, as determined by the most currently available census.

Dated: May 7, 1991.

L. Joyce Hampers,

Assistant Secretary for Economic Development.

[FR Doc. 91-11380 Filed 5-13-91; 8:45 am]

BILLING CODE 3610-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-ANM-13]

Amendment of Spokane Fairchild AFB Control Zone, Spokane, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Spokane Fairchild AFB Control Zone to provide additional controlled airspace for departing and arriving heavy military aircraft. The intent of this action is to assure that heavy aircraft operations will be contained within controlled airspace during critical departure and arrival phases of flight. The Control Zone would be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 90-ANM-13, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2536.

SUPPLEMENTARY INFORMATION:

History

On January 29, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Spokane Fairchild AFB, Washington Control Zone (56 FR 3232). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Accordingly, the rule is adopted as proposed, except for editorial changes to correct the coordinates of the Control Zone, which do not change the size of the Control Zone from that proposed. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the part of the Spokane Fairchild AFB, Washington, Control Zone that lies along runway 23 extended centerline, by extending that airspace to 3 miles northwest and 2.5 miles southeast of the centerline, and 8 miles southwest of the liftoff end of the runway. This amendment also clarifies the description of the part of the Control Zone that lies along the Spokane VORTAC 228 radial by deleting redundant references. This amendment provides additional controlled airspace for heavy military aircraft departing from and arriving at Fairchild AFB. This action will assure that heavy aircraft operations are contained within controlled airspace during critical phases of flight. The Control Zone will be depicted on aeronautical charts for pilot reference.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Spokane Fairchild AFB Control Zone, Spokane, Washington [Revised]

Within a 5 mile radius of Fairchild AFB (lat 47°36'55" N, long 117°39'20" W); within 3 miles northwest and 2.5 miles southeast of Runway 23 extended centerline, extending from the 5 mile radius zone to 8 miles southwest of the liftoff end of Runway 23; and within 4 miles northwest and 4.5 miles southeast of the Spokane VORTAC 228 radial extending 8 miles southwest of the VORTAC; to lat 47°30'19" N, long 117°34'45" W, to lat 47°40'47" N, long 117°36'25" W.

Issued in Seattle, Washington, on April 23, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91-11399 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ASO-6]

Revision of Transition Area, Pascagoula, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Pascagoula, MS Transition Area. This action realigns the existing 700-ft. transition area around the new Jackson County Airport located approximately six miles north of the old Jackson County Airport, which has been closed. A standard instrument approach procedure (SIAP) has been developed to serve the new airport and it is necessary that controlled airspace be provided for protection of instrument flight rules (IFR) operations. Concurrent with publication of the new SIAP, the operating status of the airport will change from visual flight rules (VFR) to IFR.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On March 7, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Pascagoula, MS Transition Area (56 FR 9862). This action proposed to realign the transition area around the new Jackson Conty Airport which is located approximately six miles north of the old airport, which has been closed. A standard instrument approach procedure has been developed to serve the new airport and it is necessary that controlled airspace be provided for protection of IFR aeronautical operations. Concurrent with publication of the instrument approach procedure, the operating status of the airport would be changed from VFR to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.161 of part 71 of the Federal Aviation Regulations were republished in FAA Order 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Pascagoula, MS Transition Area. This action realigns the transition around the new Jackson County Airport located approximately six miles north of the old airport which has been closed. A SIAP has been developed to serve the new airport. This action will provide the necessary controlled airspace for protection of IFR aeronautical operations. Concurrent with publication of the SIAP, the operating status of the airport will change from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore; (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.161 [Amended]

2. Section 71.161 is amended as follows:

Pascagoula, MS [Revised]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Jackson County Airport (lat. 30°27'45" N., long. 88°31'44" W.)

Issued in East Point, Georgia, on April 25, 1991.

Don Case,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91-11392 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 90-ANM-11]

Amend Time of Designation for Restricted Areas R-5704 Hermiston, OR; and R-6403 Tooele, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the times of designation for Restricted Areas R-5704 Hermiston, OR, and R-6403 Tooele, UT. The reductions more accurately align the published hours of operation for these areas with the using agencies' actual requirements for restricted airspace.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Mike Ostapiej, Military Operations Program Office ATM-420, Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9573.

The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the time of designation for Restricted Area R-5704 Hermiston, OR, from 0900 to 1700 local time Monday-Friday to 0800 to 1700 local time Monday-Thursday. In addition, the time of designation for Restricted Area R-6403 Tooele, UT, is changed from 0800 to 2000 local time Monday-Friday to 0800 to 2000 local time Monday-Thursday. After conducting a review of the annual utilization reports submitted for these areas, the FAA determined that the published time of designation could be reduced from five days per week to four days per week. Because this action simply reduces the designated hours that existing restricted airspace is in effect, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Sections 73.57 and 73.64 of part 73 of the Federal Aviation Regulations were republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

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PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 2983); 14 CFR 11.69.

§ 73.57 [Amended]

2. Section 73.57 is amended as follows:

R-5706 Hermiston, OR [Amended]

By removing the present Time of designation and substituting the following:

Time of designation. 0930-1700 local time, Monday-Thursday.

§ 73.84 [Amended]

3. Section 73.84 is amended as follows:

R-6402 Tooele, UT [Amended]

By removing the present Time of designation and substituting the following:

Time of designation. 0800-2000 local time, Monday-Thursday.

Issued in Washington, DC, on May 7, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-11394 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 90N-0179]

Investigational New Drugs; Revision to the Requirements for Foreign Clinical Studies Not Conducted Under an Investigational New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations pertaining to foreign clinical studies that are not conducted under an investigational new drug application (IND). The final rule amends the text of the Declaration of Helsinki to include revised language for the document.

DATES: Effective June 13, 1991. Comments by July 15, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, or Diane P. Goyette, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8042.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is amending its IND regulations pertaining to foreign clinical trials that are not conducted under an IND. The current regulation at 21 CFR 312.120(a) states that FDA will accept foreign clinical research that was not conducted under an IND provided that the studies are well designed, well conducted, performed by qualified investigators, and comply with ethical principles accepted by the world community. The regulation also states that foreign clinical research submitted in a new drug application must be conducted in accordance with the Declaration of Helsinki or the laws and regulations of the country in which the research was conducted, whichever provides greater protection of the individual (21 CFR 312.120(c)(1)). The regulation provides the text of the Declaration of Helsinki at 21 CFR 312.120(c)(4), but, due to an error in the version used as a reference, the regulation inadvertently omitted one provision regarding a subject's ability to abstain from participating in a study and language regarding freely given informed consent. Additionally, since the last publication of the Declaration of Helsinki in the IND regulations, the World Medical Assembly has revised the Declaration of Helsinki twice, once in Venice, Italy, in October 1983, and in Hong Kong in September 1989. The majority of the amendments are minor, such as replacing the word "doctor" with "physician." The revised Declaration of Helsinki also advises investigators to obtain informed consent from minors participating in a clinical study. Consequently, to ensure that investigators using the Code of Federal Regulations (CFR) have the current version of the Declaration of Helsinki, FDA is amending its IND regulations to include the revised language for that document.

FDA's amendment to its IND regulation is authorized by the Federal Food, Drug, and Cosmetic Act (the act). Section 505(i) of the act (21 U.S.C. 355(i)) authorizes the Secretary to promulgate regulations pertaining to the investigational use of drug products.

II. Description of the Final Rule

The final rule replaces the October 1975 version of the Declaration of Helsinki, as published in the CFR, with the September 1989 revision written by the World Medical Assembly in Hong Kong. Most changes are editorial, such as substituting the word "physician" for "doctor." The revised Declaration of Helsinki, however, does contain new requirements on independent committees and informed consent. In the 1975 version of the Declaration of Helsinki, section 2, under part "I. Basic Principles," directed investigators to transmit experimental protocols to a "specially appointed independent committee for consideration, comment, and guidance." The World Medical Assembly revised this section in 1989 to have experimental protocols sent "for consideration, comment, and guidance to a specially appointed committee independent of the investigator and the sponsor provided that this independent committee is in conformity with the laws and regulations of the country in which the research experiment is performed." As for informed consent, the 1975 version of the declaration of Helsinki, in section 11, part I, stated that a "responsible relative" could provide informed consent for physically or mentally incapacitated subjects and minors in accordance with national legislation. The World Medical Assembly revised this section in 1983 to require investigators to obtain consent from minors in addition to consent by the minor's legal guardian when the minor is "in fact able to give a consent." As revised, the section requires investigators to obtain consent from minors in addition to consent by the minor's legal guardian when the minor is "in fact able to give a consent."

Additionally, FDA is revising section 9, under part "I. Basic Principles," to correct an omission. When FDA published the October 1975 version of the Declaration of Helsinki, it inadvertently omitted the requirements that investigators inform potential subjects that they can abstain from participating in a clinical study and that investigators obtain the subject's "freely-given" informed consent. The September 1989 version retains these requirements, so the final rule inserts the missing language in the appropriate section.

For convenience, FDA is publishing the entire Declaration of Helsinki, as revised, including the introductory section.

The final rule is applicable to the acceptability of foreign studies that are not conducted under an IND. Because these amendments to the codified version of the Declaration of Helsinki contain only minor changes required to keep the codified version accurate and up-to-date, notice and public procedure would be unnecessary and therefore FDA finds that there is good cause to dispense with notice of proposed rulemaking, pursuant to 5 U.S.C. section 553(b)(B). FDA is therefore publishing this revision as a final rule effective June 13, 1991. However, the agency is giving interested persons a 60-day opportunity to comment on the final rule.

III. Environmental Impact

FDA has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

FDA has carefully considered the economic impact of this rule and has determined that it requires neither a regulatory impact analysis as specified by Executive Order 12291 nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96-354). The final rule applies only to the acceptability of studies conducted by investigators in clinical trials outside the United States without an investigational new drug application. Many, if not all, of these investigators should already be complying with the Declaration of Helsinki or their own nation's ethical standards, so the final rule will impose few, if any, additional requirements for investigators and will not result in any significant costs of other economic consequences. Consequently, the agency has determined that this final rule is not a major rule as defined in Executive Order 12291. For the same reason, this final rule, will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

V. Request for Comments

Interested persons may, on or before July 15, 1991, submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 312 is amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371); Sec. 351 of the Public Health Service Act (42 U.S.C. 262).

2. Section 312.120 is amended by revising paragraph (c)(4) to read as follows:

§ 312.120 Foreign clinical studies not conducted under an IND.

* * * * *

(c) * * *

(4) The "Declaration of Helsinki" states as follows:

Recommendations Guiding Physicians in Biomedical Research Involving Human Subjects

Introduction

It is the mission of the physician to safeguard the health of the people. His or her knowledge and conscience are dedicated to the fulfillment of this mission.

The Declaration of Geneva of the World Medical Association binds the physician with the words, "The health of my patient will be my first consideration," and the International Code of Medical Ethics declares that, "A physician shall act only in the patient's interest when providing medical care which might have the effect of weakening the physical and mental condition of the patient."

The purpose of biomedical research involving human subjects must be to improve diagnostic, therapeutic and prophylactic procedures and the understanding of the aetiology and pathogenesis of disease.

In current medical practice most diagnostic, therapeutic or prophylactic procedures involve hazards. This applies especially to biomedical research.

Medical progress is based on research which ultimately must rest in part on experimentation involving human subjects.

In the field of biomedical research a fundamental distinction must be recognized between medical research in which the aim is essentially diagnostic or therapeutic for a patient, and medical research, the essential object of which is purely scientific and without implying direct diagnostic or therapeutic value to the person subjected to the research.

Special caution must be exercised in the conduct of research which may affect the environment, and the welfare of animals used for research must be respected.

Because it is essential that the results of laboratory experiments be applied to human beings to further scientific knowledge and to help suffering humanity, the World Medical Association has prepared the following recommendations as a guide to every physician in biomedical research involving human subjects. They should be kept under review in the future. It must be stressed that the standards as drafted are only a guide to physicians all over the world. Physicians are not relieved from criminal, civil and ethical responsibilities under the laws of their own countries.

I. Basic Principles

1. Biomedical research involving human subjects must conform to generally accepted scientific principles and should be based on adequately performed laboratory and animal experimentation and on a thorough knowledge of the scientific literature.

2. The design and performance of each experimental procedure involving human subjects should be clearly formulated in an experimental protocol which should be transmitted for consideration, comment and guidance to a specially appointed committee independent of the investigator and the sponsor provided that this independent committee is in conformity with the laws and regulations of the country in which the research experiment is performed.

3. Biomedical research involving human subjects should be conducted only by scientifically qualified persons and under the supervision of a clinically competent medical person. The responsibility for the human subject must always rest with a medically qualified person and never rest on the subject of the research, even though the subject has given his or her consent.

4. Biomedical research involving human subjects cannot legitimately be carried out unless the importance of the objective is in proportion to the inherent risk to the subject.

5. Every biomedical research project involving human subjects should be preceded by careful assessment of predictable risks in comparison with foreseeable benefits to the subject or to others. Concern for the interests of the subject must always prevail over the interests of science and society.

6. The right of the research subject to safeguard his or her integrity must always be respected. Every precaution should be taken to respect the privacy of the subject and to minimize the impact of the study on the subject's physical and mental integrity and on the personality of the subject.

7. Physicians should abstain from engaging in research projects involving human subjects unless they are satisfied that the hazards involved are believed to be predictable. Physicians should cease any investigation if the hazards are found to outweigh the potential benefits.

8. In publication of the results of his or her research, the physician is obliged to preserve the accuracy of the results. Reports of experimentation not in accordance with the principles laid down in this Declaration should not be accepted for publication.

9. In any research on human beings, each potential subject must be adequately informed of the aims, methods, anticipated benefits and potential hazards of the study and the discomfort it may entail. He or she should be informed that he or she is at liberty to abstain from participation in the study and that he or she is free to withdraw his or her consent to participation at any time. The physician should then obtain the subject's freely-given informed consent, preferably in writing.

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10. When obtaining informed consent for the research project the physician should be particularly cautious if the subject is in a dependent relationship to him or her or may consent under duress. In that case the informed consent should be obtained by a physician who is not engaged in the investigation and who is completely independent of this official relationship.

11. In case of legal incompetence, informed consent should be obtained from the legal guardian in accordance with national legislation. Where physical or mental incapacity makes it impossible to obtain informed consent, or when the subject is a minor, permission from the responsible relative replaces that of the subject in accordance with national legislation.

Whenever the minor child is in fact able to give a consent, the minor's consent must be obtained in addition to the consent of the minor's legal guardian.

12. The research protocol should always contain a statement of the ethical considerations involved and should indicate that the principles enunciated in the present Declaration are complied with.

II. Medical Research Combined with Professional Care (Clinical Research)

1. In the treatment of the sick person, the physician must be free to use a new diagnostic and therapeutic measure, if in his or her judgment it offers hope of saving life, reestablishing health or alleviating suffering.

2. The potential benefits, hazards and discomfort of a new method should be weighed against the advantages of the best current diagnostic and therapeutic methods.

3. In any medical study, every patient—including those of a control group, if any—should be assured of the best proven diagnostic and therapeutic method.

4. The refusal of the patient to participate in a study must never interfere with the physician-patient relationship.

5. If the physician considers it essential not to obtain informed consent, the specific reasons for this proposal should be stated in the experimental protocol for transmission to the independent committee (I, 2).

6. The physician can combine medical research with professional care, the objective being the acquisition of new medical knowledge, only to the extent that medical research is justified by its potential diagnostic or therapeutic value for the patient.

III. Non-Therapeutic Biomedical Research Involving Human Subjects (Non-Clinical Biomedical Research)

1. In the purely scientific application of medical research carried out on a human being, it is the duty of the physician to remain the protector of the life and health of that person on whom biomedical research is being carried out.

2. The subjects should be volunteers—either healthy persons or patients for whom the experimental design is not related to the patient's illness.

3. The investigator or the investigating team should discontinue the research if in his/her or their judgment it may, if continued, be harmful to the individual.

4. In research on man, the interest of science and society should never take precedence over considerations related to the well-being of the subject.

* * * * *

Dated: April 11, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-11369 Filed 5-13-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-91-3256; FR-3068-N-01]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the list of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by increasing the mortgage limits for the Territory of Guam and the U.S. Virgin Islands.

Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: May 14, 1991.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, Room 9272; telephone (202) 708-2700. For manufactured homes: Robert J. Coyle, Director, Title I Insurance Division, room 9160; telephone (202) 708-2880; 451 Seventh Street SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA), 12 U.S.C. (1702-1749), authorizes HUD to insure loans and mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum loan and mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, section 214 of the NHA provides for special high-cost limits for insured mortgages in Alaska, Guam, Hawaii, and the Virgin Islands. (Authority to provide for special high-cost limits for the Virgin Islands was added by an amendment to section 214 contained in section 363 of the Cranston-Gonzalez National Affordable Housing Act, Public Law 101-625, approved November 28, 1990.)

The last comprehensive list of high-cost areas was published on January 12, 1990 (55 FR 1312), listing all areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and the applicable limits for each area. Amendments to the annual listing were published on June 14, 1990 (55 FR 24075), September 12, 1990 (55 FR 37462) and April 5, 1991 (56 FR 14021).

This Document

Today's document increases high-cost mortgage amounts for the Territory of Guam and the U.S. Virgin Islands. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

These amendments appear in two parts. Part I explains high-cost limits for manufactured home loans insured under Title I of the National Housing Act. Part II lists each revised high-cost area, with applicable limits for single family residences (including condominiums) insured under section 203(b), 234(c) and 214 of the National Housing Act.

List of Subjects

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian Natives, Indians: lands, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department publishes the revised dollar limitations as follows:

Part I Method of Computing Title I Limits

A. *Combination manufactured home and lot (excluding Alaska, Guam, and Hawaii):* The high-cost limit for a combination manufactured home and lot loan is determined by multiplying the combination home and lot loan maximum ($54,000) by the percentage by which the Secretary has increased the maximum mortgage amount for a one-family residence in the same geographic area under section 203(b) of the NHA. For the Virgin Islands, the maximum mortgage amount for a one-family residence has been increased under section 203(b) to 185% of the basic mortgage limit. Accordingly, the combination home and lot limit is $99,900 ($54,000 × 185%).

B. *Manufactured home lot only (excluding Alaska, Guam and Hawaii):* The high-cost limit for a manufactured home lot loan is determined by multiplying the lot loan maximum ($13,500) by the percentage by which the Secretary has increased the maximum mortgage amount for a one-family residence in the same geographic area under section 203(b) of the NHA. For the Virgin Islands, the maximum mortgage amount for a one-family residence has been increased under section 203(b) to 185% of the basic mortgage limit. Accordingly, the lot limit is $24,075 ($13,500 × 185%).

C. *Alaska, Guam and Hawaii limits:* Under section 2(b)(2) of the NHA, the maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. ($40,500 × 140%).

2. For combination manufactured homes and lots: $75,600. ($54,000 × 140%).

3. For lots only: $18,900. ($13,500 × 140%).

Part II Updating of FHA Sections 203(b), 234(c) and 214 Area Wide Mortgage Limits

REGION IV.—HUD FIELD OFFICE—CARIBBEAN OFFICE

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
U.S. Virgin Islands	$187,300	$210,950	$258,300	$295,700

REGION X.—HUD FIELD OFFICE—HONOLULU OFFICE

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Territory of Guam	$142,500	$160,500	$195,000	$225,000

Dated: May 8, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-11421 Filed 5-13-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Memphis, TN Regulation 91-02]

Safety Zone Regulations; Arkansas River, Main Street Bridge, From Mile 118.0 to Mile 119.5

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Arkansas River from mile 118.0 to mile 119.5. The safety zone is needed to protect commercial and recreational marine traffic from a safety hazard associated with a fireworks display occurring from the Main Street Bridge. The zone will extend one-half mile to the north and one-half to the south of the bridge. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 26 May 1991 at 9 p.m. and will terminate at 10 p.m. 26 May 1991, or upon completion of the fireworks display.

FOR FURTHER INFORMATION CONTACT: Coast Guard Marine Safety Office, Memphis, TN (901) 544-3941.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is ENS Randall Tucker, project officer for the Captain of the Port.

Discussion of the Regulation

The event requiring this regulation will occur on 26 May 1991. This safety zone is established in conjunction with a non-marine event fireworks display over the Arkansas River between mile 118.0 and mile 119.5, and is necessary to ensure the safety of commercial and pleasure craft in the area.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.533 CFR part 165.

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2. A new § 165.T214 is added to read as follows:

§ 165.T214 Safety Zone: Arkansas River from Mile 118.0 to Mile 119.5.

(a) *Location.* The following area is a safety zone: From mile 118.0 to mile 119.5, Main Street Bridge, on the Arkansas River at Little Rock, AR.

(b) *Effective date.* This regulation becomes effective on 26 May 1991 at 9 p.m. and will terminate at 10 p.m., 26 May 1991, or upon completion of the fireworks display.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, no vessel may enter or remain in this zone during the times indicated unless authorized by the Captain of the Port, Memphis, TN.

Dated: April 26, 1991.

M.J. Donohoe,

Captain of the Port, Memphis, Tennessee.

[FR Doc. 91-11387 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD1 91-034]

Safety Zone Regulations: Coney Island Channel, Brooklyn, NY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Coney Island Channel, New York. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with an airshow. Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation is effective on 26 and 27 May 1991 from 11 a.m. to 2:30 p.m. local time on those days.

FOR FURTHER INFORMATION CONTACT: MST1 S Whinham of Captain of the Port, New York, (212) 668-7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards

Drafting Information

The drafters of this regulation are LTJG C.W. Jennings, project officer, Captain of the Port, New York, and LT. R.E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with an airshow. This regulation is effective on 26 and 27 May 1991 from 11 a.m. to 2:30 p.m. local time on those days. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T1024 is added to read as follows:

§ 165.T1024 Safety Zone: Coney Island, Brooklyn, New York.

(a) *Location.* The following area is a Safety Zone: That portion of the waters of Coney Island Channel bound by a line drawn from Sheepshead Bay buoy "7" (LLN31665), thence southwest to approach buoy "1" (LLN31655), thence due west to Coney Island Channel buoy "11" (LLN32640), thence due north to Norton Point on Coney Island.

(b) *Effective date.* This regulation is effective on 26 and 27 May 1991 from 11 a.m. to 2:30 p.m. local time on those days.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: March 22, 1991.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-11386 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD1 91-031]

Safety Zone Regulations: Hempstead Harbor, Glen Cove, NY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Hempstead Harbor, Glen Cove, New York. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 8 p.m. local time 24 May 1991. It terminates at 10 p.m. local time 24 May 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York, (212) 668-7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards. .

Drafting Information

The drafters of this regulation are LTJG C.W. Jennings, project officer, Captain of the Port New York, and LT R. E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulations

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective for 8 p.m., 24 May 1991 to 10 p.m. 24 May 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T1031 is added to read as follows:

§ 165.T1031 Safety Zone: Hempstead Harbor, Glen Cove, New York

(a) *Location.* The following area has been declared a Safety Zone: That portion of the waters of Hempstead Harbor with a 1000 foot radius of the fireworks barge located 300 yards north of Bar Beach, Glen Cove, N.Y.

(b) *Effective date.* This regulation becomes effective at 8 p.m. local time 24 May 1991. It terminates at 10 p.m. local time 24 May 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: May 9, 1991.

R. M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-11385 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Memphis, TN, Regulation 91-01]

Safety Zone Regulations; Mississippi River Mile 734.8 to 736.7

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Lower Mississippi River between the Harahan Railroad Bridge at mile 734.8 and the Interstate 40 Bridge at mile 736.7. The safety zone is needed to protect commercial and recreational marine traffic from a safety hazard associated with a fireworks display occurring from a barge at mile 736.0. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 25 May 1991 at 9 p.m. and will terminate at 10 p.m., 25 May 1991, or upon completion of the fireworks display.

FOR FURTHER INFORMATION CONTACT: Coast Guard Marine Safety Office, Memphis, TN, (901) 544-3941.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is ENS Randall Tucker, project officer for the Captain of the Port

Discussion of the Regulation

The event requiring this regulation will occur on 25 May 1991. This safety zone is established in conjunction with a fireworks display originating on the Mississippi River at Mile 736.0 and is necessary to ensure the safety of commercial and pleasure craft in the area.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.T213 is added to read as follows:

§ 165.T213 Safety Zone: Mississippi River Mile 734.8 to Mile 736.7.

(a) *Location.* The following area is a safety zone: Mile 734.8 to 736.7 on the Mississippi River at Memphis, TN.

(b) *Effective date.* This regulation becomes effective on 25 May 1991 at 9 p.m. It terminates on 25 May 1991 at 10 p.m.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, no vessel may enter or remain in this zone during the times indicated unless authorized by the Captain of the Port, Memphis, TN.

Dated: 26 April 1991.

M.J. Donohoe,

Captain of the Port, Memphis, Tennessee.

[FR Doc. 91-11388 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD1 91-032]

Safety Zone Regulations: Upper Bay and East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Upper Bay and East River, New York. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into this zone, or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 8 p.m. local time 9 June 1991. It terminates at 10:30 p.m. local time 9 June 1991

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668-7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C. W. Jennings, project officer, Captain of the Port New York, and LT R. E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 8 p.m., 9 June 1991 to 10:30 p.m. 9 June 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

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1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new 165.T1032 is added to read as follows:

§ 165.T1032 Safety Zone: Upper Bay and East River, New York.

(a) **Location.** The following areas have been declared Safety Zones:

(1) For deep draft vessels and tugs with tows: All waters of the East River; south of the Harlem River Foot Bridge and south of a line drawn between Lawrence Point and Stony Point, north of a line drawn between the Brooklyn Battery Tunnel Ventilator on Governors Island and pier 7 Brooklyn, and east of a line drawn from the Fireboat pier in the Battery to a point due west at 40°42'15" North 74°01'34" West thence south to 40°41'36" North 74°01'34" West thence due east to a point on Governors Island at 40°41'36" North.

(2) For recreational vessels and commerical spectator craft: All waters of the East River; south of the Brooklyn Bridge, north of a line drawn between the Brooklyn Battery Tunnel Ventilator on Governors Island and pier 7 Brooklyn, and east of a line drawn from the Fireboat Pier in the Battery to a point due west at 40°42'15" North 74°01'34" West thence south to 40°41'36" North 74°01'34" West thence due east to a point on Governors Island at 40°41'36" North.

(b) **Effective date.** This regulation becomes effective at 8 p.m. local time 9 June 1991. It terminates at 10:30 p.m. local time 9 June 1991.

(c) **Regulations.** In accordance with the general regualtions in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: 22 April 1991.

R.M. Larrabee,

Captain, U.S. Coat Guard, Captain of the Port, New York.

[FR Doc. 91-11383 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR 165

[CGD1 91-030]

Safety Zone Regulations: Upper Hudson River, Albany, NY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Upper Hudson River, Albany, NY. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into this zone, or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 8:30 p.m. local time 8 June 1991. It terminates at 10:30 p.m. local time 8 June 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S Whinham of Captain of the Port, New York, (212) 668-7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C. W. Jennings, project officer, Captain of the Port New York, and LT R. E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 8:30 p.m., 8 June 1991 to 10:30 p.m., 8 June 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 USC 1225 1231; 50 USC 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T1030 is added to read as follows:

§ 165.T1030 Safety Zone: Upper Hudson River, Albany, NY.

(a) *Location.* The following area has been declared a Safety Zone: That portion of the waters within the Upper Hudson River, Albany, New York which lie between the Livingston Ave. Railroad Bridge and the Dunn Memorial Bridge.

(b) *Effective date.* This regulation becomes effective at 8:30 p.m. local time 8 June 1991. It terminates at 10:30 p.m. local time 8 June 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibit unless authorized by the Captain of the Port.

Dated: May 8, 1991.

R. M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-11384 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-14-M

Saint Lawrence Seaway Development Corp.

33 CFR Part 402

Tariff of Tolls

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. The Authority proposed and the Corporation agreed that the commodity tolls and vessel charges will be increased by approximately 5.75 percent each year for the 1991, 1992, and 1993 navigation seasons at the Welland Canal section and at the Montreal-Lake Ontario section of the St. Lawrence Seaway. All the Welland Canal revenues accrue to the Authority. The Authority proposed that the Corporation continue to receive 25% of the Montreal-Lake Ontario revenues. All of the Corporation's share of these revenues, however, will be returned to the person paying the toll or charge in accordance with section 805 of the Water Resources Development Act of 1986.

The Authority also proposed and the Corporation agreed that the definition of bulk cargo be amended to remove the reference to its not limiting the generality of the term since, as a practical matter, the cargo is strictly defined. The Authority further proposed changing the references to "domestic package freight" to "domestic cargo" to more accurately reflect current cargo of this type.

The Authority additionally proposed and the Corporation agreed that, as a result of the highly successful pilot new business incentive tolls program in the 1990 season, new toll discount and rebate programs will be established in the 1991, 1992, and 1993 seasons. These consist of: A new business incentive toll program that will give shipowners who move qualifying cargoes toll rebates of 25 and 50 percent; a 20 percent volume discount to movers of commodities that exceed a base level equal to the previous five-year average; and reductions in tolls of up to 65 percent for owners of U.S. and Canadian laker fleets that primarily are used for grain, but use those fleets for moving general cargo through the Seaway.

EFFECTIVE DATE: May 14, 1991.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590 (202) 366-0091.

SUPPLEMENTARY INFORMATION: The definition of "bulk cargo" (at 33 CFR 402.3(b)) is amended to delete the phrase, "without limiting the generality of the term or otherwise affecting its meaning", since, as a practical matter, the cargo is strictly defined. The definition of "bulk cargo" is amended by substituting the term "domestic cargo" for the term "domestic package freight" in § 402.3, subparagraph (b)(3), to more accurately reflect current cargo of this type. Similarly, the definition of "domestic package freight" (at 33 CFR 402.3(f)) is amended to change the term "domestic package freight" to "domestic cargo".

Section 402.9 is amended to provide: A new business 25 percent discount for qualifying upbound and downbound cargoes for transits beginning within the Seaway after the opening of navigation and prior to July 1 or beginning on or after October 1 in the years 1991, 1992, and 1993 and ending at the closing of navigation in those years; and a new business 50 percent discount for qualifying upbound and downbound cargoes for transits beginning on or after July 1 and prior to October 1 in the years 1991, 1992, and 1993. A new § 402.11 is added to provide a 20 percent volume discount to movers of commodities that exceed a base level equal to the previous five year average. As new § 402.13 also is added to provide a reduction in tolls of up to 65 percent for owners of U.S. and Canadian laker fleets that primarily are used for grain, but are also used for moving general cargo through the Seaway.

Finally, except for lack of tolls charged for government aid cargo, the Tolls Schedule for the Welland Canal Section and the Montreal-Lake Ontario Section is revised (33 CFR 402.8). The increase in tolls is approximately 5.75 percent each year for 1991, 1992, and 1993 on both the Welland Canal and Montreal-Lake Ontario Sections. For example, the previous toll for bulk cargo for the Welland section was $0.46 and for the Montreal-Lake Ontario Section was $0.93. Under the new Tolls Schedule, the 1991 charges are $0.49 and $0.98, the 1992 charges are $0.52 and $1.04, and the 1993 charges are $0.55 and $1.10 for the Welland and Montreal-Lake Ontario Sections respectively.

As provided in the 1978 Tolls Agreement between the Authority and the Corporation, the Joint Tolls Review Board has reviewed the estimated expenditures for 1991 and the projected revenues from tolls and other sources to determine the adequacy of the current toll structure and division in meeting the financial requirements of the Authority and the Corporation during fiscal year 1991. In addition, the Canadian Federal Government initiated a new large corporation tax in 1989, which has added an estimated $1.0 million expense in 1991 for the Authority.

In the Montreal-Lake Ontario Section, the cargo forecast used for 1991 was 42.3 million tons. The tonnage projection for Canadian grain, however, may be optimistic due to grain export volume. Based upon this 1991 forecast, the present toll structure and division would result in a 1.9 million dollar shortfall to the Authority and a 0.2 million shortfall to the Corporation, or 6% and 1.5% respectively. In the Welland Canal Section, the cargo forecast was 44.51 million tons in 1991. Based upon this, the Authority is forecasting a 1991 4.1 million dollar 10.9% shortfall.

To avoid these shortfalls, in 1991, the Authority needs an additional 8.6% in tolls revenue from both sections and the Corporation needs an additional 1.5% on the Montreal-Lake Ontario Section. Accordingly, The Authority and the Corporation are promulgating the new toll increase described in the foregoing and set forth below.

No comments were received in response to the January 18, 1991, Notice of Proposed Rulemaking. An exchange of diplomatic notes between Canada and the United States approving this amendment occurred on May 1, 1991.

Regulatory Evaluation

This final rule involves a foreign affairs function of the United States, and therefore, Executive Order 12291 does not apply. This final rule has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls relates to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne by foreign vessels.

Environmental Impact

This final rule does not require an environmental impact statement under the National environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

PART 402—[AMENDED]

Accordingly, the Saint Lawrence Seaway Development Corporation amends part 402—Tariff of Tolls (33 CFR part 402) as follows:

1. The authority citation for 33 CFR part 402 continues to read as follows:

Authority: 68 Stat. 93, 33 U.S.C. 981-990.

§ 402.3 [Amended]

2. In § 402.3, paragraph (b) introductory text, remove the words ", without limiting the generality of the term or otherwise affecting its meaning,".

3. In § 402.3, paragraphs (b)(3) and (f), remove the words "package freight" and add, in their place, the word "cargo".

4. Section 402.8 is revised to read as follows:

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§ 402.8 Schedule of tolls.

	Tolls					
	Montreal to or from Lake Ontario			Lake Ontario to or from Lake Erie		
	1991	1992	1993	1991	1992	1993
(a) For transit of the Seaway, a composite toll, comprising:						
(1) A charge in dollars per gross registered ton according to national registry of the vessel, applicable whether the vessel is wholly or partially laden, or is in ballast. (All vessels shall have an option to calculate gross registered tonnage according to prescribed rules for measurement in either Canada or the United States)	0.10	0.10	0.11	0.12	0.12	0.13
(2) A charge in dollars per metric ton of cargo as certified on ship's manifest or other document, as follows:						
—Bulk cargo	0.98	1.04	1.10	0.49	0.52	0.55
—General cargo	2.36	2.52	2.66	0.78	0.83	0.88
—Containerized cargo	0.98	1.04	1.10	0.49	0.52	0.55
—Government aid cargo	0.00	0.00	0.00	0.00	0.00	0.00
—Food grains	0.60	0.64	0.68	0.40	0.52	0.55
—Feed grains	0.60	0.64	0.68	0.40	0.52	0.55
(3) A charge in dollars per passenger per lock	1.06	1.12	1.18	1.06	1.12	1.18
(4) A charge in dollars per lock for complete or partial transit of the Welland Canal in either direction by cargo vessels, which may be shared by cargo vessels in tandem:						
(i) loaded: Per Lock	NA	NA	NA	390.00	415.00	440.00
(ii) in ballast: Per Lock	NA	NA	NA	290.00	310.00	325.00
(b) For partial transit of the Seaway:						
(1) Between Montreal and Lake Ontario, in either direction, 15 percent per lock of the applicable toll.						
(2) Between Lake Ontario and Lake Erie, in either direction, (Welland Canal), 13 percent per lock of the applicable toll.						
(c) Minimum charge in dollars per vessel per lock transited for full or partial transit of the Seaway:						
—Pleasure craft [1]	10.00	10.00	10.00	10.00	10.00	10.00
—Other vessels	14.00	15.00	15.00	14.00	15.00	15.00

[1] Includes Federal taxes where applicable.

5. Section 402.9 is revised to read as follows:

§ 402.9 Incentive tolls.

(a) Notwithstanding anything contained in this Tariff, the portion of the composite toll related to charges per metric ton of cargo charged on new upbound business and new downbound business shall be reduced by:

(1) Twenty-five percent for a transit beginning within the Seaway after the opening of navigation and prior to July 1 or the beginning on or after October 1 in the years 1991, 1992, and 1993 and ending at the closing of navigation in the years 1991, 1992, and 1993; or

(2) Fifty percent for a transit beginning on or after July 1 and prior to October 1 in the years 1991, 1992, and 1993.

(b) The reduction mentioned in paragraph (a) of this section shall be granted at the end of the applicable navigation season after payment of the full toll specified in the schedule under the tariff in § 402.8 of this part if:

(1) A vessel carries, for each consignee, 1,000 metric tons or more of new downbound or upbound business; and

(2) An application for a new downbound or new upbound business refund is submitted to the Authority or the Corporation for audit by the Authority or the Corporation.

(c) For the purposes of this section, "new downbound business" means:

(1) Downbound cargo that has not moved through a Seaway lock during the three navigation seasons of 1987 through 1989 or the three navigation seasons immediately preceding the season in which a new downbound business refund is submitted; or

(2) Downbound cargo that has moved through a Seaway lock in quantities representing less than five percent of the average of Seaway traffic to the particular destination during the three navigation seasons of 1987 through 1989 or the three navigation seasons immediately preceding the season in which a new downbound business refund is submitted. For the purposes of this paragraph (c)(2), "destination" means the country in which the cargo is unloaded, but if the cargo is unloaded in North America, "destination" means the port at which the cargo is unloaded.

(d) For the purposes of this section, "new upbound business" means:

(1) Upbound cargo that has not moved through a Seaway lock during the three navigation seasons immediately preceding the season in which a new upbound business refund is submitted; or

(2) Upbound cargo that has moved through a Seaway lock in quantities representing less than five percent of the average of Seaway traffic to the particular origin during the three navigation seasons immediately preceding the season in which a new upbound business refund is submitted. For the purposes of this paragraph (d)(2), "origin" means the country in which the cargo is loaded, but if the cargo is loaded in North America, "origin" means the port at which the cargo is loaded.

(e) When a particular cargo becomes new downbound business or new upbound business at any time during 1991, 1992, or 1993, it shall be considered as new downbound or new upbound business until the end of the 1993 navigation season.

6. A new § 402.11 is added to read as follows:

§ 402.11 Volume discount.

(a) A volume discount shall be granted to carriers at the end of the 1991, 1992, and 1993 navigation seasons after payment of the full toll specified in the schedule under the tariff in § 402.8 of this part if shipments of a commodity exceed the average amount of shipments for that commodity in the Seaway during the five navigation seasons immediately preceding the season in which the volume discount is applied. The volume discount shall be equal to a 20 percent reduction of the portion of the composite toll related to charges per metric ton of cargo paid for the shipments that surpass the average for the five preceding seasons. The volume discount shall be applied on a pro rata basis to all carriers of the particular commodity within one navigation season.

(b) If the conditions in paragraph (a) of this section are met, a volume discount shall be granted with respect to the following commodities:

(1) Grain;
(2) Other agricultural products;
(3) Iron ore;
(4) Other mine products;
(5) Coal;
(6) Coke;
(7) Petroleum products;
(8) Chemicals;
(9) Stone;
(10) Salt;
(11) Other bulk cargo;
(12) Iron and Steel;
(13) Other general cargo;
(14) Containers;

(c) Notwithstanding anything in this Tariff, a carrier shall not obtain, at the end of a navigation season, both a volume discount and a new downbound or upbound business refund with respect to the same shipment, but a carrier shall obtain the greater of the said discount or refund.

7. A new § 402.13 is added to read as follows:

§ 402.13 Vessels engaged primarily in the bulk trade.

Notwithstanding anything contained in this Tariff, the toll for general or containerized cargo for any vessel documented under the laws of the United States or registered in Canada in accordance with the laws of Canada that has been engaged primarily in the bulk trade exclusively within the St. Lawrence Seaway/Great Lakes system during the three navigation seasons immediately preceding the applicable season, shall be the toll charged for food grains specified in the schedule under the tariff in § 402.8 of this part.

Issued at Washington, DC on May 7, 1991.

Saint Lawrence Seaway Development Corporation.

Stanford E. Parris,

Administrator.

[FR Doc. 91-11338 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-61-M

Office of the Secretary

49 CFR Part 1

[Docket No. 1, Amdt. 1-243]

Organization and Delegation of Powers and Duties; Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) hereby delegates to the Maritime Administrator authority conferred by section 709, Public Law 101-595, enacted November 16, 1990, relating to the transfer of a vessel in the National Defense Reserve Fleet to a group of nonprofit organizations under certain circumstances.

EFFECTIVE DATE: May 14, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Somerville, Vessel Transfer and Disposal Officer, Maritime Administration, room 7324, 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366-5821; or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, room 10424, Department of Transportation, 400 Seventh Street, SW., room 10424, Washington, DC 20590, telephone: (202) 366-9307.

SUPPLEMENTARY INFORMATION: Section 709 of Public Law 101-595 authorizes the Secretary of Transportation, until November 16, 1992, to convey to a group of not less than two and not more than three nonprofit organizations, without consideration, all rights, title and interest of the United States Government in a vessel that is in the National Defense Reserve Fleet on November 16, 1990, is of not less than 4,000 displacement tons, has no usefulness to the Government, and is scheduled to be scrapped. The statute specifies conditions that must be satisfied precedent to transfer of a vessel. The Secretary is hereby amending regulations of the Office of the Secretary of Transportation, at 49 CFR 1.66, to delegate to the Maritime Administrator that authority. A corresponding change is being made to the Department's Organization Manual.

Since this amendment relates to Departmental organization, notice and comment are unnecessary, and the rule may become effective in fewer than thirty days after publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.66 is amended by adding a new paragraph (x) to read as follows:

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(x) Carry out the provisions of section 709 of Public Law 101-595, 104 Stat. 2998.

Issued on April 25, 1991.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 91-10995 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901194-1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) is prohibiting fishing for groundfish in the Gulf of Alaska (GOA) with trawl gear other than pelagic trawl gear. This action is necessary to limit the prohibited species catch (PSC) of Pacific halibut established for trawl gear to the allowance provided for by regulations implementing the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). It is intended to carry out the goals and management objectives included in the FMP.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 8, 1991, through midnight, A.l.t. June 30, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Alaska Region NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the Exclusive Economic Zone (EEZ) within the GOA is managed by the Secretary according to the FMP prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act. The FMP is implemented by regulations at 50 CFR 611.92 and parts 620 and 672.

The fishery for Pacific halibut is governed by the Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea. The Convention is carried out by the International Pacific Halibut Commission and is effective in the EEZ through the Northern Pacific Halibut Act of 1982 (the Act). Section 5(c) of the Act provides authority for the Council to develop regulations to manage the Pacific halibut resources off the coast of Alaska. The Council recommended, and the Secretary implemented, regulations at § 672.20(f) to control bycatches of

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Pacific halibut by U.S. fishermen through PSC limits.

Under § 672.20(f), annual halibut PSC limits are established and apportioned quarterly for trawl gear for the fishing year in the GOA. The notice of final specifications of groundfish total allowable catch (TAC) and halibut bycatch (56 FR 6722; March 1, 1991) established the 1991 first and second quarter seasonal apportionment of halibut for trawl gear as follows: January 1 through March 31, 600 metric tons (mt.); April 1 through June 30, 600 mt.

Under § 672.20(f)(1)(i), if, during the fishing year, the Regional Director (Director) determines that the catch of halibut by operators of vessels using trawl gear and delivering their catch to foreign vessels (JVP vessels) or operators of vessels using trawl gear and delivering their catch to U.S. fish processors or processing their catch on board (DAP vessels) will reach their proportional share of the seasonal allocation of the halibut PSC limit, the Director will publish a notice in the Federal Register prohibiting fishing by JVP or DAP vessels, as appropriate, with trawl gear other than pelagic trawl gear for the remainder of the season to which the PSC allocation applies.

The Director has determined that in the GOA, the DAP trawl groundfish fisheries have reached the PSC mortality limit of halibut apportioned to this gear type for the second quarter of 1991 (600 mt). Therefore, the Secretary prohibits fishing by DAP vessels with trawl gear other than pelagic trawl gear in the GOA from 12 noon A.l.t., May 8, 1991, through midnight A.l.t., June 30, 1991.

Classification

This action is taken under 50 CFR 672.20, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 8, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-11366 Filed 5-8-91; 4:00 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 93
Tuesday, May 14, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-91-11]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 12, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Ida Klepper, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9668.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 7, 1991.

Denise Donahue Hall,

Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26521.
Petitioner: Rinaldo Piaggio S.p.A.
Regulations Affected: Special Conditions 23-ACE-52.
Description of Petition: To provide clarification regarding application of Special Conditions to electronic flight instrument systems.
Petitioner's Reason for the Request: The petitioner believes that Special Conditions 23-ACE-52 require a higher level of safety than that required by the certification basis of the Model P.180 airplane.

[FR Doc. 91-11391 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 21 and 23

[Docket No. 091CE, Notice No. 23-ACE-59]

Special Conditions; The King's Engineering Fellowship Model 44 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for The King's Engineering Fellowship (TKEF) Model 44 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These design features are the installation of pusher propellers for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: Comments must be received on or before June 13, 1991.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Assistant Chief Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 091CE, room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Norman R. Vetter, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the development of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 091CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

The King's Engineering Fellowship, Municipal Airport, Orange City, Iowa

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51061, made initial application in 1972, for type certification in the normal category for its Model 44 airplane. TKEF Model 44 is an eight-place monoplane powered by twin reciprocating engines. Construction and configuration are conventional except for pusher propellers.

Type Certification Basis

The type certification basis for the Model 44 airplane is: part 23 of the FAR, effective February 1, 1965, through amendment 23-34, effective February 17, 1987; FAR 36, effective December 1, 1969, through the amendment effective on the date of type certification; exemptions, if any; and any special conditions that may result from this notice.

Discussion

TKEF plans to incorporate certain novel and unusual design features into the airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features are the installation of pusher propellers that were not envisaged by the existing regulations. Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis as provided by § 21.17(a)(2).

Propeller Ice and Exhaust Gas Impingement Protection

Because of the aft propeller location, ice shed from the wing leading edges, engine air inlet, and other parts of the airplane may impact the propeller blades. Impact of these shed ice fragments may have an adverse effect on the strength and fatigue characteristics of the propeller. Additionally, because the propeller is located aft of the engine, if exhaust gases are discharged into the propeller disc, they may adversely effect the strength and fatigue characteristics of the propeller material. Special conditions are proposed to provide the requisite level of safety.

Propeller Ground Clearance

The FAA has determined that § 23.925 is not adequate to address propeller clearance for TKEF Model 44 because of the aft location of the propellers. Existing § 23.925 requires at least seven inches of clearance between the propeller and the ground in the normal takeoff attitude and a positive clearance with the critical tire deflated and the strut bottomed. In addition to those regulations, the FAA proposes to require that a positive clearance exist between the propeller and the ground when the airplane is in the maximum pitch attitude attainable during normal takeoffs and landings.

Propeller Marking

Because of the aft propeller location, passengers and ground personnel may be less aware of the proximity of the propeller blades. Therefore, in the absence of specific regulations, a special condition is needed to require that the propeller blades be marked so that both sides of the propeller discs are conspicuous under normal daylight ground conditions.

Conclusion

In view of the design features discussed above, the following special conditions are proposed for TKEF Model 44 airplanes under the provisions of § 21.16 to provide a level of safety equivalent to that intended by the applicable regulations. This action is not a rule of general applicability and affects only the model of airplane identified in these proposed special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

Citation

The authority citation for these special conditions is as follows:

Authority: Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes the following special condition as part of the type certification basis for TKEF Model 44 airplane by adding the following:

1. Propeller Ice and Exchaust Gas Impingement Protection

(a) All areas of the airplane forward of the propellers that are likely to accumulate and shed ice into the propeller disc during any operating condition must be suitably protected to prevent ice formation, or it must be shown that any ice shed into the propeller disc will not create a hazardous condition.

(b) If the engine exhaust gases are discharged into the propeller disc, it must be shown by tests, or analysis supported by tests, that the propeller material is capable of continuous safe operation.

2. Propeller Ground Clearance

In addition to the propeller clearance requirements of § 23.925, the following apply:

(a) The airplane must be designed such that the propellers will not contact the runway surface when the airplane is in the maximum pitch attitude attainable during normal takeoffs and landings; and

(b) If a tail bumper or an energy absorption device is provided to show compliance with paragraph (a) of this special condition, the following apply:

(1) Suitable design loads must be established for the tail bumper or energy absorption device; and

(2) The supporting structure of the tail bumper or energy absorption device must be designed to withstand the loads established in subparagraph (b)(1) of this special condition. Inspection/replacement criteria must be established for the tail bumper or energy absorption device and provided as part of the information required by § 23.1529.

3. Propeller Marking

Each pusher propeller must be marked so that both sides of the disc are conspicuous under normal daylight ground conditions.

Issued in Kansas City, Missouri on April 30, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11305 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-16-AD]

Airworthiness Directives; Beech 33, 35, 36, 55, 58, and 95 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to Beech 33, 35, 36, 55, 58, and 95 series airplanes. The proposed action would require a one-time inspection of the pilot and copilot shoulder harnesses and the mandatory replacement of all washers that are not made of steel and do not meet a certain diameter and thickness. Improper washers may have been installed in the pilot and copilot shoulder harness "D" ring of the affected airplanes. The actions specified by this proposed AD are intended to prevent a malfunctioning shoulder harness that could result in passenger injury during an emergency situation.

DATES: Comments must be received on or before July 8, 1991.

ADDRESSES: Beech Service Bulletin No. 2394, dated December 1990, that is discussed in this AD and the parts that are referenced in this service bulletin may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. The service information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-16-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-16-AD, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Improper washers may have been installed in the pilot and copilot shoulder harness "D" ring of certain Beech 33, 35, 36, 55, 58, and 95 series airplanes, which has caused the "D" ring to slip over the bolt head. This condition causes the shoulder harness to malfunction, which, if not corrected, could cause passenger injury during an emergency situation. Beech has issued Service Bulletin (SB) No. 2394, dated December 1990, which specifies procedures for inspecting and replacing the washers on the pilot and copilot shoulder harness "D" ring. After reviewing the situation described above and examining all available information, the FAA has determined that AD action is necessary to correct this unsafe condition.

Since the condition described is likely to exist or develop in other Beech 33, 35, 36, 55, 58, and 95 series airplanes of the same type design, the proposed AD would require a one-time inspection of the pilot and copilot shoulder harnesses and the mandatory replacement of all washers that are not made of steel and do not meet a certain diameter and thickness in accordance with the instructions in Beech SB No. 2394, dated December 1990.

It is estimated that 5,600 airplanes in the U.S. registry will be affected by the proposed AD, that it will take approximately 2 hours per airplane to accomplish the proposed actions at $55 an hour, and that parts cost approximately $5 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $667,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Beech: Docket No. 91-CE-16-AD.

Applicability: The following model airplanes, certificated in any category.

Models	Serial Numbers
F33A	CE-634 through CE-1536.
V35B	D-9862 through D-10403.
A36	E-825 through E-2576.
B36TC	EA-1 through EA-569.
95-B55, 95-B55A	TC-1947 through TC-2456.
E55, E55A	TE-1078 through TE-1201.
58, 58A	TH-733 through TH-1609.
58P, 58PA	TJ-3 through TJ-497.
58TC, 58TCA	TK-1 through TK-151.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent malfunctioning pilot and copilot shoulder harnesses that could result in passenger injury during an emergency situation, accomplish the following:

(a) Inspect the washers on the "D" ring of the pilot and copilot shoulder harnesses in accordance with the instructions of Beech Service Bulletin (SB) No. 2394, dated December 1990.

(b) If the washers installed on the "D" ring do not meet the criteria in the instructions of Beech SB No. 2394, dated December 1990, prior to further flight, replace the washers with part number 100861X960YA.

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(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternate method of compliance or adjustment of the initial compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the document referred to herein or may obtain the service parts referenced in this document upon request to the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine the document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri on April 30, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11366 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-88-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, fitted with a main landing gear (MLG) outboard door having a wing-mounted aluminum hinge half, which currently requires inspections of MLG outboard door assemblies, hinges, linkages, and attachments for discrepancies, and repair of discrepant parts. This action would add similar requirements for inspections and repair of those airplanes fitted with a MLG outboard door having a wing-mounted titanium hinge half. This proposal is prompted by reports of MLG outboard doors separating from the airplane, and the generally poor condition of the door assemblies as reported by operators. This condition, if not corrected, could result in major structural damage to the horizontal stabilizer and adjacent control components of the airplane thereby causing severe controllability problems.

DATES: Comments must be received no later than July 3, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-88-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y.J. Hsu, Airframe Branch, ANM-120L; Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5323.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-88-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On January 14, 1991, the FAA issued AD 91-03-07, Amendment 39-6869 (56 FR 3024, January 28, 1991), to require inspections of both left and right MLG outboard door assemblies, hinges, linkages, and attachments for discrepancies; repair of discrepant parts; and the reporting of any findings of discrepancies to the FAA. That AD is applicable only to Model DC-9 and C-9 (Military) series airplanes fitted with a MLG outboard door having a wing-mounted aluminum hinge half. That action was prompted by reports of numerous instances of in-flight separation of the MLG outboard doors. This condition, if not corrected, could result in major structural damage to the horizontal stabilizer and adjacent control components of the airplane thereby causing severe controllability problems.

As indicated in the preamble to the existing AD, the FAA has determined that airplanes fitted with an MLG outboard door having a wing-mounted titanium hinge half must be similarly inspected for discrepancies since the addressed problems are likely to occur on these airplanes as well. The FAA indicated at that time that the proposed compliance time for inspection of these airplanes was sufficiently long to permit notice and public comment. This action provides that opportunity.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A32-244, dated November 20, 1990, which describes procedures for (1) inspections of the MLG doors for delamination; (2) inspections of the MLG door linkages and their attachments for corrosion, pitting, wear, and general condition; (3) inspections of the MLG door hinge lobes on both the wing-mounted hinge half and door-mounted hinge half for cracks and corrosion; (4) measurement of the hinge lobes, if bushed, for minimum wall thickness; (5) inspections of the hinge halves on the articulating door for cracks and corrosion; and (6) repair of discrepant parts identified as a result of these inspections and measurement. (This service bulletin is the same document referenced in AD 91-03-07.)

The service bulletin identifies those airplanes fitted with a MLG outboard door having a wing-mounted aluminum hinge half as "Group I airplanes," and those airplanes fitted with an MLG outboard door having a wing-mounted titanium hinge half as "Group II airplanes." This same nomenclature has been adopted in this proposed AD

action for the purposes of airplane identification.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 91-03-07 with a new airworthiness directive that would require inspections of both left and right MLG Group I and Group II outboard door assemblies (their hinges, linkages, and attachments) for discrepancies; and repair of discrepant parts in accordance with the service bulletin previously described. This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

The reporting requirements of the current AD would be deleted. The FAA has determined that sufficient information has been obtained from the operators to-date in regard to the general condition of the door assemblies.

In addition, the provision for submitting requests for alternative methods of compliance has been revised to specify the current procedure for submitting such requests.

There are approximately 920 Model DC-9 and C-9 (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 586 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $145,035.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6869 (56 FR 3024; January 28, 1991), AD 91-03-07, with the following new airworthiness directive:

McDonnell Douglas: Docket No. 91-NM-88-AD. Supersedes AD 91-03-07.

Applicability: Model DC-9-10, -20, -30, -40, and -50 series and C-9 (Military) series airplanes; fitted with left (LH) or right (RH) main landing gear (MLG) outboard door with a wing-mounted aluminum hinge half (Group I) or titanium hinge half (Group II); certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the loss of the LH or RH MLG outboard door, accomplish the following:

(a) For Group I airplanes, within 30 days after February 11, 1991 (the effective date of Amendment 39-6869, AD 91-03-07), and thereafter at intervals not to exceed one year, perform inspections in accordance with paragraph (c) of this AD.

(b) For Group II airplanes, within 50 days after the effective date of this AD, and thereafter at intervals not to exceed one year, perform inspections in accordance with paragraph (c) of this AD.

(c) Accomplish the following inspections in accordance with McDonnell Douglas Alert Service Bulletin A32-244, dated November 20, 1990, for both LH and RH MLG outboard door assemblies:

(1) Inspect MLG door for delamination; and

(2) Inspect MLG door linkages and their attachments for corrosion, pitting, wear, and general condition; and

(3) Inspect MLG door hinge lobes on both the wing-mounted hinge half and door-mounted hinge half for cracks and corrosion; and

(4) Measure the hinge lobes, if bushed, for minimum wall thickness of .065 inch or greater; and

(5) Inspect the hinge halves on articulating door for cracks and corrosion.

(d) If discrepancies are found as a result of the inspections required by paragraph (a) or (b) of this AD, prior to further flight, repair in a manner approved by the Manager of the Los Angeles Aircraft Certification Office (ACO).

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on May 3, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11367 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-34-AD]

Airworthiness Directives; Piper Model PA60-700P (Aerostar) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to Piper Model PA60-700P (Aerostar) airplanes. The proposed action would require revising the manifold pressure limitations that are in the pilot's operating handbook and printed on the airplane instrument panel. Service experience has shown that the manifold pressure limitations that are in the pilot's operating handbook and printed on the airplane instrument panel are incorrect. The actions specified in this AD are intended to prevent engine damage that could result from incorrect manifold pressure operations.

DATES: Comments must be received on or before July 8, 1991.

ADDRESSES: Piper Service Advisory No. 60-7, dated January 11, 1991, and the

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Pilot Operating Handbook (POH) Report VB-1220, Revision 4, dated December 14, 1990, that are discussed in this AD may be obtained from the Piper Aircraft Corporation, Customer Services, P.O. Box 1328, Vero Beach, Florida 32960-1328. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-34-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: W.H. Trammell, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-34-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Service experience has shown that the manifold pressure limitations that are in the pilot's operating handbook and printed on the instrument panel of Piper Model PA60-700P (Aerostar) airplanes are incorrect. The Piper Aircraft Corporation has issued Service Advisory No. 60-7, dated January 11, 1991, which specifies the installation of a placard that revises these limitations. This service advisory also includes the referenced placard. In order to continue to assure the airworthiness of Piper Model PA60-700P airplanes, the FAA has determined that the manifold pressure limitations should be revised.

Since the condition described is likely to exist or develop in other Piper Model PA60-700P (Aerostar) airplanes of the same type design, the proposed AD would require installing a placard (part number (P/N) 87369-77) to the airplane instrument panel in accordance with Piper Service Advisory No. 60-7, dated January 11, 1991. It would also require inserting Report VB-1220, Revision 4, dated December 14, 1990, into the limitations section of the PA60-700P Pilot's Operating Handbook and operating the airplane accordingly.

It is estimated that 25 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 hour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts are available from the manufacturer at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,375.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contracting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Piper: Docket No. 91-CE-34-AD

Applicability: Model PA60-700P (Aerostar) airplanes (serial numbers 60-8420001 through 60-8420025), certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

Note 1: The compliance time in this AD takes precedence over that cited in the referenced service bulletin.

To prevent engine damage that could result from incorrect manifold pressure operations, accomplish the following:

(a) Install placard, part number 87369-77, in accordance with the instructions in Piper Service Advisory No. 60-7, dated January 11, 1991, and operate the airplane accordingly.

Note 2: This placard (part number 87369-77) is enclosed in Piper Service Advisory No. 60-7, dated January 11, 1991, which may be obtained from the manufacturer at the address in paragraph (e) of this AD.

(b) Insert Report VB-1220, Revision 4, dated December 14, 1990, into the limitations section of the PA-60-700P Pilot's Operating Handbook and operate the airplane in accordance with these limitations.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the document and the part referred to herein upon request to the Piper Aircraft Corporation, Customer Services, P.O. Box 1328, Vero Beach, Florida 32960-1328; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on April 30, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11398 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ANM-07]

Proposed Amendment of Renton Control Zone, Renton, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Renton, Washington, Control Zone by enlarging the controlled airspace to accommodate a VHF omnidirectional range/distance measuring equipment (VOR/DME) radio navigation (RNAV) approach at Renton Municipal Airport. The amendment would ensure that aircraft operating under instrument flight rules (IFR) and utilizing the new approach would be segregated from other aircraft during the critical arrival phase of flight. The control zone would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before June 13, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 91-ANM-07, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2538.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at address listed above.

FOR FURTHER INFORMATION CONTACT: Bette Van Manen, ANM-536, Federal Aviation Administration, Docket No. 91-ANM-07, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2538.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 91-ANM-07." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration: Airspace and System Management Branch, ANM-530, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for future NPRM'S should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for establishment of a VOR/DME RNAV approach for Runway 33 to the Renton Municipal airport, Renton, Washington. The amendment would add, to the existing control zone, controlled airspace south of Renton Municipal and east of Seattle-Tacoma International Airport. This action would provide controlled airspace to ensure that aircraft operating under IFR and utilizing the new approach would be segregated from other aircraft during the critical arrival phase of flight. The control zone would be depicted on aeronautical charts for pilot reference. The dates and times the control zone would be effective would be established in advance by a Notice to Airmen (NOTAM), and thereafter, published in the Airport/Facility Directory. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G, dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows: Renton Control Zone, Renton, Washington: That airspace bounded by a line beginning at lat 47°32'10" N, long 122°12'40" W; thence clockwise along an arc of a 3-mile radius circle centered on the Renton Municipal Airport (lat 47°29'35" N, long 122°12'50" W) to lat 47°27'59" N, long 122°09'46" W; to lat 47°27'38" N, long 122°09'24" W; to lat 47°26'50" N, long 122°10'56" W; to lat 47°23'50" N, long 122°10'25" W; to lat 47°23'38" N, long 122°13'30" W; to lat 47°24'15" N, long 122°13'40" W; thence counterclockwise via an arc of a 5-mile radius circle centered on Seattle-Tacoma International Airport (lat

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47°26'58" N, long 122°18'36" W; to lat 47°27'08" N, long 122°11'58" W to lat 47°28'08" N, long 122°13'23" W; to lat 47°31'27" N, long 122°13'33" W, thence to point of beginning. This control zone shall be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on April 22, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91-11369 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 100

[CGD7 91-36]

Regatta; Suncoast Offshore Grand Prix, Sarasota, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering adopting special local regulations for the Suncoast Offshore Grand Prix. This event will be held on Sunday, July 7, 1991 between 10 a.m. e.d.t. and 3 p.m. e.d.t. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: Comments must be received on or before June 13, 1991.

ADDRESSES: Comments should be mailed to Brickell Plaza Federal Building, 909 S.E. First Avenue, room 918, Miami, Florida 33131-3050. Normal office hours are between 7 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG G. R. Patterson, Coast Guard Group St. Petersburg, FL at (813) 824-7533.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identifying this notice, CGD7 91-36, and the specific section of the proposal to which their comments apply, and give reasons for each comment. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG G. R. Patterson, project officer for Group St. Petersburg and LT G. G. Tanos, project attorney, Seventh Coast Guard District.

Discussion of Proposed Regulation

Approximately 80 power boats, 21 to 50 feet in length, will be participating in the Suncoast Offshore Grand Prix on July 7, 1991. Approximately 600 spectator craft are anticipated. Big Sarasota Pass will be closed to all marine traffic. Traffic will be permitted from New Pass northbound only behind the spectator fleet. Spectator craft will be permitted in the area but will be required to stay clear of the race lanes. These proposed regulations are needed to provide for the safety of life.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposal is expected to be minimal that a full regulatory evaluation is unnecessary since the proposed regulations will continue to provide for unrestricted northbound traffic in New Pass. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.35-07-36 is added to read as follows:

§ 100.35-07-36 Sarasota, Florida

(a) *Regulated Area.* Big Sarasota Pass is closed to all marine traffic and only northbound traffic behind the spectator fleet will be permitted from New Pass to provide for the safety of life during the Suncoast Offshore Grand Prix.

(b) *Special Local Regulations.* In accordance with this regulation, entry into the designated area is closed to all marine traffic not participating in the race. Spectator crafts will stay clear of race area.

(c) *Effective Dates.* This regulation becomes effective at 10 a.m. e.d.t. on July 7, 1991 and terminates at 3 p.m. e.d.t. on July 7, 1991.

Dated: April 23, 1991.

Norman T. Saunders,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 91-11362 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Parts 205, 250, 302, 304 and 307

RIN 0970-AA50

Computerized Support Enforcement Systems, Family Assistance Management Information Systems, JOBS Automated Systems

AGENCY: Office of Child Support Enforcement (OCSE), FSA, HHS Office of Family Assistance (OFA), FSA, HHA.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would implement section 123 of Public Law 100-485 (the Family Support Act of 1988), signed by the President on October 13, 1988. Under section 123, Automated Tracking and Monitoring Systems Made Mandatory: (1) States not having in effect on October 13, 1988 a statewide data processing and information retrieval system which automates all functional requirements of the title IV-D program under section 454(16) of the Act, must submit by October 1, 1991 and have approved within 9 months of submittal (July 1, 1992, at the latest) an advance planning document that provides for a statewide computerized child support enforcement system, and by October 1, 1995, must have in effect an operational system; (2) the Secretary may waive certain procedural and functional system requirements if the State meets specific conditions; and (3) enhanced funding for the planning, design, development, enhancement, installation and operation of automated child support enforcement systems is eliminated effective October 1, 1995. With regard to the waiver allowance, the terms procedural and functional system requirements are not specifically referenced in the statutory language; rather the language simply refers to the requirements under section 452(d) and 454(16) of the Act. Section 452(d) provides the conditions which the Secretary must consider in approving an initial and annually updated APD. Section 454(16), provides the approval conditions for a statewide automated data processing and information retrieval system. The sum of these requirements, which are further refined in regulation, represent the procedural and functional requirements referred to in this proposal.

These proposed regulations would also make certain conforming changes in the regulations covering the automated systems of the Aid to Families with Dependent Children program and the Job Opportunities and Basic Skills Training program.

DATES: Consideration will be given to written comments received by July 15, 1991.

ADDRESSES: Address comments to: Family Support Administration, Department of Health and Human Services, 370 L'Enfant Promenade, SW., Washington, DC 20447. Attention: Associate Administrator, Office of Management and Information Systems.

Comments will be available for public inspection Monday through Friday, 8 a.m. to 4:30 p.m. on the 4th floor of the Department's offices at the above address.

FOR FURTHER INFORMATION CONTACT: Richard Konkolewski (202) 252-5527.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Computerized Support Enforcement Systems.

Description: The advance planning document requirements set forth in the regulation enable OCSE to determine whether the system improves the efficiency of the administration of the State Child Support Enforcement program and assist OCSE in reviewing any proposed system a State is developing for 90 percent Federal financial participation as required by the Social Security Act. Existing reporting and recordkeeping activities have been incorporated into the proposed rule and are identified in the estimated burdens listed below. The OMB control number assigned to the existing reporting and recordkeeping requirements of 45 CFR 302.85 and 307.5 is OMB No. 0970-0045. These requirements have been approved by OMB for use through November 30, 1992.

Description of Respondents: State child support enforcement agencies.

Estimated Annual Reporting and Recordkeeping Burden:

Requirement	Average time
45 CFR 302.85(a)(1) and 45 CFR 307.5(b):	
APD implementation	6,400
APD planning	240
APD update	240
Total existing burden hours	6,880
Total proposed burden hours	6,880

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FSA has submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should direct them to the Family Support Administration, 370 L'Enfant Promenade, SW., Washington, DC, 20447 and the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for FSA.

Statutory Authority

These proposed regulations are published under the authority of several provisions of the Social Security Act (the Act), as amended by Public Law 100-485. Sections 452(d), 454(24) and 455(a)(1) of the Act contain a new requirement for mandatory, statewide automated data processing and information retrieval systems to carry out the State's child support enforcement plan. Section 402(a)(44) contains a new requirement that benefits and services under titles IV-A, IV-D and IV-F be furnished in an integrated manner and that applicants and recipients of Aid to Families with Dependent Children cooperate in the establishment of paternity.

The new section 454(24) provides that, if the State as of October 13, 1988, does not have in effect an automated data processing and information retrieval system meeting all of the requirements of section 454(16), the State:

(A) Will submit to the Secretary by October 1, 1991, for review and approval by the Secretary within 9 months after submittal an advance automated data processing planning document of the type referred to in such paragraph; and

(B) Will have in effect by October 1, 1995, an operational automated data processing and information retrieval system, meeting all the requirements of that paragraph, which has been approved by the Secretary.

The new section 452(d)(3) provides that the Secretary may waive any requirement of section 452(d)(1) or any condition specified under section 454(16) with respect to a State if:

(A) The State demonstrates to the satisfaction of the Secretary that the State has an alternative system or systems that enable the State, for purposes of section 403(h), to be in substantial compliance with other requirements of this part; and

(B)(i) The waiver meets the criteria of paragraphs (1), (2), and (3) of section 1115(c), or

(ii) The State provides assurances to the Secretary that steps will be taken to otherwise improve the State's Child Support Enforcement program.

The amended section 455(a)(1) repeals the 90 percent Federal reimbursement rate for automated systems for child support enforcement, effective September 30, 1995.

The amended section 454(16) clarifies that the automated child support enforcement system is intended to be a statewide system.

Sections 402(e), 452(d)(1), and 454(16) are amended to strike "automatic" each place it appears and replace it with "automated".

The new section 402(a)(44) provides that the State agency shall:

(A) Be responsible for assuring that the benefits and services under the programs under this part, part D, and part F are furnished in an integrated manner, and

(B) Consistent with the provisions of this title, ensure that all applicants for

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and recipients of aid to families with dependent children are encouraged, assisted, and required to cooperate in the establishment of paternity and the enforcement of child support obligations, and are notified of the paternity establishment and child support services for which they may be eligible.

These proposed regulations are also published under the general authority of section 1102 of the Act which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Background

Section 405 of Public Law 98-265 (the Social Security Disability Amendments of 1980) as implemented by 45 CFR part 307 authorized 90 percent Federal financial participation (FFP) on an open-ended entitlement basis to States that elected to plan, design, develop, install or enhance a statewide automated data processing and information retrieval system. To receive 90 percent funding, States must have an approved advance planning document (APD) which, when implemented, would result in an effective and efficient statewide, comprehensive computerized support enforcement system (CSES); i.e., would encompass all political subdivisions, represent the sole system effort in the State and control, account for and monitor all the factors in the support collection and paternity determination process under the State plan.

Beginning on October 1, 1984, section 6 of Public Law 98-378 (the Child Support Enforcement Amendments of 1984), as implemented by amending 45 CFR part 307, expanded the 90 percent FFP authority to include the rental or purchase of hardware on which such systems operate. This section also provided for 90 percent FFP to automate the new mandatory procedures set forth in section 466(a) of the Act, as implemented in regulations at §§ 302.70 and 303.100 through 303.106. Automation of these procedures was optional. To receive the 90 percent funding, automation had to take place in accordance with § 307.10.

The Office of Child Support Enforcement, established standards by which a State would be measured to determine if it had effectively automated the functional requirements set forth in section 454(16) of the Act and implemented at § 307.10. The standards are published in "Automated Systems for Child Support Enforcement: A Guide for States Seeking Enhanced Funding," which is available from the Office of Child Support Enforcement. This guide will be updated to reflect the statutory changes resulting from Public Law 100-485 and will be reissued under the title "Automated Systems for Child Support Enforcement: A Guide for States." Once a CSES meets these standards throughout the State, the CSES may be certified as eligible for hardware costs to be reimbursed at the 90 percent FFP rate, until September 30, 1995.

While the funding incentives and program requirements have produced an increase in State automated systems activity, the level of automation needed for all States to effectively operate their programs has not been achieved. To date only seven States have been certified as having statewide, operational computerized CSESs that meet requirements prescribed prior to the enactment of the Family Support Act. Two States are nearing statewide implementation and seventeen States are in the development or installation phase of CSES projects.

The remaining 28 States and jurisdictions are in various stages of the process. Many of these States have been unable to complete a statewide system or gain APD approval and, therefore, have not achieved program benefits in terms of effectiveness and efficiency that are associated with statewide, comprehensive automated systems. In many instances these States have met with resistance from local or contracted agencies which have responsibility for carrying out a title IV-D program-related functional requirement. For example: In one State, a county court organization under cooperative agreement to the State to operate a major program function would not cooperate in the statewide system. The court has its court-related activities, such as docket scheduling and collection of fines, on its own court computer. Although the court had limited automation for its title IV-D activities, the court and State title IV-D agency have failed to agree on automation, in part because the court wanted the software to be programmed for and to reside on the court's computer. Other States have experienced delays in automation due to: Lack of staff resources to manage a project of such magnitude; lack of top management support ot establish the working groups necessary to define requirements; and inability to adequately address the organizational arrangements in the State. Some States have automated systems, but the systems do not meet all program requirements. This may have happened because a State merely automated a manual process rather than using automation as a better way to carry out its responsibilities, or because program requirements changed significantly after a State began an automation project.

Effective automation of the Child Support Enforcement program is essential to effective program operations and administration. To address this need, Congress enacted section 123 of Public Law 100-485. Section 123 amends the State plan requirements under section 454 of the Act to mandate statewide, automated support enforcement systems. This requirement clearly recognizes that case processing changes and State legislative enhancements to State IV-D programs will have little impact without proper automated support. Program fragmentation and lack of uniformity in handling child support cases present problems in coordination, control and timeliness of services. Statewide child support systems will provide for better flow of information between States, courts and counties and will result in better coordinated and more standardized processes, greatly improving the effectiveness of the overall enforcement system.

Certain systems may already be in place which would enable the State, for purposes of section 403(h) of the Act, to be in substantial compliance with program requirements under an audit. Therefore, the law provides for a waiver of certain functional requirements and conditions for approval. To ensure that States would have adequate time to implement these mandatory systems, time frames are specified under which: States must submit APDs for review and approval; the Secretary must take action on State submissions; and under which each State must have an operational system in place. To encourage States to act quickly to develop efficient statewide systems, Congress directed a repeal of 90 percent FFP for CSESs by October 1, 1995, to coincide with the date when all systems must be operational. Because these are mandatory requirements for an approved State IV-D plan under section 454 of the Act, any State which fails to submit an approvable APD by October 1, 1991; or whose system fails to become operational by October 1, 1995 will be subject to the State IV-D plan disapproval process which could result in a loss of all IV-D funding. The conformity review procedures applicable to such actions are found at 45 CFR parts 213 and 301. These procedures are further outlined in program instruction OCSE-AT-88-21, issued on December 31, 1988.

In addition, Congress added provisions to Public Law 100-485 to emphasize work, child support and

family benefits. Section 604 of the law amended section 402(a) of the Act by adding a new subsection (44)(a) which requires that the State IV-A agency shall be responsible for assuring that benefits and services provided under parts A, D and F of title IV are furnished in an integrated manner. This section further provides under a new subsection (44)(b) that the State must ensure that all applicants for and recipients of AFDC are encouraged, assisted, and required to cooperate in the establishment of paternity and the enforcement of child support obligations and are notified of the paternity establishment and child support services for which they are eligible.

Proposed Regulatory Changes

Family Assistance Management Information Systems

To implement the statutory changes, we first propose to revise Aid to Families with Dependent Children regulations at 45 CFR 205.36, State plan requirements, as described below:

The introductory language to § 205.36 now requires at State option the establishment and operation, in accordance with an (initial and annually updated) advance "automatic" data processing planning document approved by FSA, of an automated statewide management information system designed effectively and efficiently to assist management in the administration of an approved AFDC State plan. We propose to change "automatic" to "automated" to conform to the statutory language in section 402(a) of the Act as amended by section 123(d) of Public Law 100-485.

We also propose to redesignate current paragraph (c) as paragraph (d) and add a new paragraph (c). Proposed paragraph (c) would require family assistance management information systems to electronically refer and exchange information with programs under titles IV-D—the Child Support Enforcement program, and IV-F—the Job Opportunities and Basic Skills Training program (JOBS) for purposes of assuring that services are provided in an integrated manner. This would assure that separate automated systems being developed under titles IV-A, IV-D, and IV-F, operate more efficiently by eliminating redundant data and paper exchange through the electronic exchange of information. This electronic exchange will serve to meet the intent of section 402(a)(44) of the Act which requires that the State IV-A Agency be responsible for assuring that benefits and services under title IV-A, title IV-D and title IV-F are furnished in an integrated manner. Because we believe that electronic data exchange is clearly necessary for proper integration of the IV-A, IV-D and IV-F programs we are proposing this electronic interface under the Secretary's general rulemaking authority provided in section 1102 of the Act. We are also amending Federal regulations at 45 CFR part 250, and 45 CFR part 307 to require this electronic exchange of data.

JOBS Automated Systems

To ensure that the automated systems developed under the new Job Opportunities and Basic Skills Training (JOBS) program will be able to engage in data exchange with key related programs, we propose to amend 45 CFR 250.81, State data systems options, to require a JOBS automated system to accept referrals and exchange data electronically with the title IV-A and title IV-D automated systems. This would assure more efficient operation and reduce redundant data and paper exchange. Accordingly, we are proposing to revise paragraph (a), which currently provides that State JOBS systems must be client-based and capable of producing at a minimum case record data, to add a requirement that such systems must be capable of accepting and exchanging data electronically with the title IV-A and title IV-D automated systems. As previously indicated, we are also proposing to amend Federal regulations at 45 CFR part 205, and 45 CFR part 307 to require this electronic exchange of data.

State Plan Requirement for Mandatory Computerized Support Enforcement Systems

Currently, 45 CFR 302.85, Computerized support enforcement systems eligible for 90 percent FFP, simply specifies that the State plan may provide for the establishment of a computerized support enforcement system funded at 90 percent FFP that meets the requirements in 45 CFR 307.10.

With the enactment of section 123 of Public Law 100-485, the State plan must provide that, if the State did not have in effect by October 13, 1988 a computerized support enforcement system that meets the requirements of § 307.10, the State must submit an APD for such a system to the Secretary by October 1, 1991 and have an operational system in effect by October 1, 1995.

Thus, we propose to change the title of § 302.85 from Computerized support enforcement systems eligible for 90 percent FFP to Mandatory computerized support enforcement systems. The proposed § 302.85(a) would reiterate the statutory requirement for a mandatory automated system for support enforcement. If the State did not have a system in effect by October 13, 1988, under paragraph (a)(1) the State must submit to the Secretary by October 1, 1991, and APD or APD update in accordance with § 307.5, Mandatory computerized support enforcement systems as proposed herein. Under paragraph (a)(2) as proposed, the State must have a certified operational computerized support enforcement system, approved by the Secretary, in effect by October 1, 1995. As proposed, the system must be developed in accordance with §§ 307.5 and 307.10 and the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States."

Each State must assess its system capabilities to determine if submission of an APD or APD update is required. Even those States that had in effect on October 13, 1988, a statewide comprehensive system may need to submit an APD or APD update to address how the new program requirements of Public Law 100-485, such as immediate income withholding will be incorporated into the State's automated system. In addition, States may need to address other mandatory procedures required under section 466 of the Act and implementing regulations under 45 CFR 302.70 in the APD since system requirements for these functions were optional prior to enactment of Public Law 100-485.

OCSE will not approve a system as meeting section 454(16) requirements unless such systems include automation of the programmatic requirements of the Child Support Enforcement Amendments of 1984 and the Family Support Act of 1988. Section 454(16) requires that the State establish a statewide automated system designed efficiently and effectively to control, account for, and monitor all the factors in the support enforcement collection and paternity determination process. Therefore, it is necessary that all States, even those that may have been certified, determine that their statewide system includes the automation of all new title IV-D requirements, and, if necessary submit an APD or APD update for approval. Submission requirements, as outlined in current program instructions, are as follows:

(A) For States without an approved APD for a statewide, comprehensive system—submit an APD to install a new system or modify an existing system which will meet the requirements of section 454(16) as implemented in part 307, or submit an APD in accordance

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with the waiver provisions of the Act. APDs for planning must be submitted in sufficient time to allow for the subsequent submission of an implementation APD, as defined in 45 CFR part 95, subpart F, by October 1, 1991. The APD must describe a system that will be completed and operational not later than October 1, 1995.

(B) For States with an approved planning APD—submit an implementation APD not later than October 1, 1991. The APD must describe a system that will be completed and operational not later than October 1, 1995.

(C) For States with an approved implementation APD—submit an APD update, not later than October 1, 1991, to automate the provisions of the Family Support Act of 1988 that will enable the program to meet all title IV–D requirements. The APD must include a schedule showing that the system will be completed and in operation by October 1, 1995.

(D) For States with a certified system that does not include the requirements of the Family Support Act—Submit an APD or APD update, not later than October 1, 1991, which outlines the State's plan to upgrade its automated capability needed to enable the program to meet all title IV–D requirements under 45 CFR parts 302 and 303 in accordance with § 307.10.

As indicated previously, any State which fails to submit the necessary APD or APD update by October 1, 1991 or fails to have a certified CSES in place by October 1, 1995, will be subject to IV–D State plan conformity proceedings which could result in the loss of all IV–D funding.

Proposed paragraph (b) contains provisions for waiver of Federal requirements related to an automated system for support enforcement as specified in section 123 of Public Law 100–485. Under paragraph (b)(1), a State may apply for a waiver of any condition for initial approval of an APD in 45 CFR 307.15(b) or any functional system requirement in 45 CFR 307.10. Waiver requests must be submitted and approved as part of the State's APD or APD update.

Proposed paragraph (b)(2) contains the conditions for receiving a waiver. Under this proposal, to obtain a waiver, the State must demonstrate that it has an alternative approach to APD requirements or an alternative system configuration, as defined in § 307.1, that enables the State to be in substantial compliance with program requirements in accordance with audits conducted under 45 CFR part 305. In addition, the State request must either meet the criteria set forth for waivers under section 1115(c)(1), (2), and (3) of the Act; or the State must provide written assurances that steps will be taken to otherwise improve the State's Child Support Enforcement program. Specific criteria for meeting these requirements are provided under proposed § 307.5 and are explained under that section of this preamble. Depending on the nature of a State's alternative system configuration, OCSE may conduct a system review to determine whether the State's system enables it to be in substantial compliance with the program requirements specified in the waiver request.

Change in Federal Financial Participation (Part 304)

To make part 304 regulations consistent with the statute, we propose to amend 45 CFR 304.20, availability and rate of Federal financial participation, at paragraph (c) to provide that FFP at the 90 percent rate for the planning, design, development, installation and enhancement of computerized systems that meet the requirement of § 307.30(a) is only available until September 30, 1995.

Computerized Support Enforcement Systems (Part 307)

We propose to amend 45 CFR part 307, Computerized support enforcement systems, throughout to conform part 307 to the changes required by section 123 of Public Law 100–485 and the proposed revisions to § 302.85, which were discussed earlier. With one exception, the words "eligible for 90 percent FFP" have been removed from the part 307 section titles to reflect these changes.

We are proposing to revise § 307.0, Scope of this part, to reflect the new requirement of Public Law 100–485 that all States install automated CSESs by October 1, 1995. This would be accomplished by referencing the new statutory language in the introductory section, and by adding a new paragraph (a) which would refer to the mandatory nature of CSES. Accordingly, we propose to delete references to optional development of comprehensive, statewide systems at the enhanced matching rate in current paragraphs (a), (b) and (d) through (g) since CSESs are no longer optional and 90 percent funding for such systems will not be available as of October 1, 1995. Current paragraphs (a) through (g) would be redesignated as paragraphs (b) through (h).

In § 307.1, Definitions, we propose to add several definitions intended to clarify what types of systems we will fund, what their overall specifications must be, and what approvals are required. The new definitions proposed are "Alternative approach", "Alternative system", "Alternative system configuration", "Base system", "Certification", and "Comprehensive." In addition, we propose to revise the definitions of "Computerized support enforcement system" and "Planning." We believe these proposed definitions accurately reflect the intent of Congress with regard to waivers for alternative systems, as well as specify the essential features that all automated systems must have.

"Alternative approach" to APD requirements would be defined under paragraph (a) to mean that a State's APD does not meet all conditions for APD approval in § 307.15(b), resulting in the need for a waiver under 45 CFR 307.5. The waiver of conditions for APD approval is authorized under section 454(d) of the Act, as amended by section 123 of Public Law 100–485 and implemented in proposed regulations under § 307.5. This waiver provision applies only to child support enforcement systems and not to other FSA systems which are subject to the requirements of 45 CFR part 95, subpart F, for example FAMIS systems.

"Alternative system" would be defined under paragraph (b) to mean the separate manual and/or automated processes that perform one or more required functions separately from the base system and which interfaces with the base system to ensure that the State can meet all requirements for purposes of the audit as prescribed in section 403(h) of the Act. The State must demonstrate that the alternative system is operational and can be linked to the base system in an effective and efficient manner. Under this proposed definition, these separate processes may involve geographic areas, such as counties, administrative jurisdictions, such as courts; or separate means by which the State meets particular program requirements, e.g., collection of support for non-AFDC cases.

"Alternative system configuration" would be defined under proposed paragraph (c) as an alternative to a comprehensive, statewide computerized support enforcement system (which previously was the only type of system eligible for enhanced funding at the 90 percent rate). It includes a base system which links electronically to an alternative system. The alternative system would not be part of the State's computerized support enforcement project, i.e., the development effort may be under other than IV–D control and separate from the base system (not the sole systems effort in the State). The base system and alternative system taken together comprise the alternative system configuration. Such configuration must include the processes necessary for the State to meet the functional requirements for a computerized support enforcement system under § 307.10.

"Based system" would be defined under paragraph (d) to mean the hardware, operational software, applications software and electronic linkages which allow the State to control, account for and monitor all support enforcement services and activities under the IV–D State plan in an alternative system configuration. The base system concept is key to an alternative system configuration, since it ensures overall IV–D agency control of the functions that a mandatory child support enforcement system must perform.

"Certification" would be defined under paragraph (e) to mean approval of an operational computerized support enforcement system based on a determination that the system has an efficient and effective design and, except where a waiver applies, is comprehensive. A system must be certified by October 1, 1995 in order to meet requirements for a mandatory automated system within statutory deadlines.

Certification may be granted in two stages. The first stage, level 1 certification, would be granted when a State system meets all functional requirements in § 307.10 and is installed and operational in a pilot or multiple pilot location and; level 2 certification will be granted when Statewide installation of the functionally comprehensive system is complete and the system is operational.

"Comprehensive" would mean in the proposed definition at paragraph (f), that the computerized support enforcement system meets the requirements of § 307.10 and the standards in the guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States." The definitions of certification and comprehensive reflect current operating policy, but heretofore have not been provided by regulation.

Under these proposed regulations, "Computerized support enforcement system" would be redefined under paragraph (g) to mean a comprehensive, statewide system, or an alternative system configuration. Either system must encompass all political subdivisions within the State and must be efficient and effective in its capture and use of all of the data necessary to carry out activities under the State plan under proposed paragraph (g)(1) and, under paragraph (g)(2) in its production of utilization and management information required for administration and audit purposes. This definition has been changed from the existing definition in paragraph (a) in three ways—(1) To allow for an alternative system configuration, where a waiver has been granted as permitted by statute; (2) to incorporate coverage of all political subdivisions of the State; and (3) to require efficient and effective operation. The two latter requirements, contained in statute at section 454(16) of the Act, have always been required by the program, but until now have not been explicitly stated in the definition.

Efficient and effective as referred to in the proposed definition of CSES under paragraph (g) is a standard that OCSE has always considered in certifying a system, in addition to whether the system is comprehensive in its ability to perform all required program functions. To be considered efficient and effective: A system must improve program management and administration; the design must appropriately apply computer technology; the project must not require duplicative application system development or software maintenance; procurement must provide for maximum free and open competition; and costs must be reasonable, appropriate and cost beneficial. As indicated, these do not represent new criteria for certifying systems; we are merely stating for clarity, basic factors which should be inherent in any automated systems effort. Because the phrase "efficient and effective" represents common terminology not specific to systems, the definition proposed here only refers to part 307 and may not be applicable in any other context.

We propose in paragraph (h) to revise the definition of "Planning" currently in paragraph (b) by adding language to clarify under paragraph (h)(3) that project plans will describe how systems will be designed "or transferred and adapted", since the latter reflects the most common form of system installation in States. The revised definition of Planning APD in 45 CFR part 95, which is applicable to this part as well, clearly indicates the Department's policy that States should thoroughly examine the possibility of transferring a system from another State.

We are proposing to redesignate current paragraph (c) which provides a list of terms defined in 45 CFR part 95 subpart F, 95.605 as paragraph (i) and to revise the list to include "Implementation Advance Planning Document" and "Planning Advance Planning Document." These terms were included in the final rule published in the **Federal Register** February 7, 1990 (55 FR 4363). Current paragraph (d) would be redesignated as paragraph (j) and would continue to reference the applicability of the definitions under 301.1 to part 307.

Mandatory Computerized Support Enforcement Systems

In order to have one place in the regulations that would provide a reference point for the multiple requirements related to the new mandatory systems, we propose to add a new 45 CFR 307.5, Mandatory computerized support enforcement systems. This new section would provide an outline of the requirements of section 123 of Public Law 100–485, including waiver options, APD requirements, and new limitations on FFP. Cross references in this proposed section would point to other relevent regulations containing more detailed requirements involving mandatory computerized support enforcement systems.

The proposed paragraph (a) contains the basic requirement that each State must have an operational computerized support enforcement system in effect by October 1, 1995, which is certified.

Under proposed paragraph (b), each State must submit its APD or APD unpdate by October 1, 1991 in accordance with § 307.15, and must have its APD approved no later than July 1, 1992. These deadlines are mandated by Public Law 100–485, which requires States to submit an APD to the Secretary by October 1, 1991 for review and approval by the Secretary within 9 months after submittal. The Secretary is committed to meeting the timeframe provided in the statute for assessing and acting on the approval of all APDs and APD updates submitted by States. New procedures have been implemented which will insure prompt action by the Office of adddress concerns which have been raised by States regarding the timeliness of the Office in reacting to State requests.

Proposed paragraph (c) delineates the waiver option. Under this provision, a State may apply for a waiver of any functional requirement in § 307.10 by presenting a plan for an alternative system configuration, or a waiver of any condition for APD approval in § 307.15(b) by presenting an alternative approach. Waiver requests must be submitted and approved as part of the State's APD or APD update; the waiver thus becomes part of the State's approved APD. The latter requirement is

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proposed in order to maintain all State requests to system approval in a single document with a single approval process. Disapproval of a waiver request is a final administrative decision and is not subject to appeal.

Paragraph (d) would provide the conditions for granting a waiver, taken from the statute, as discussed earlier. Under this provision a State may receive a waiver if, under proposed (d)(1) the State demonstrates it has an alternative approach to APD requirements or an alternative system configuration that enables the State, in accordance with an audit conducted under part 305 to be in substantial compliance with the requirements of title IV–D of the Act. In addition, under proposed paragraph (d)(2), the request must meet the criteria set forth in section 1115(c)(1), (2) and (3) of the Act or, under paragraph (d)(3) the State must provide written assurances that steps will be taken to otherwise improve the State's child support enforcement program.

As referenced in proposed paragraph (d)(2), section 1115(c) of the Act provides that in the case of any experimental, pilot, or demonstrating project undertaken under subsection (a) to assist in promoting the objective of part D of title IV, the project—

(1) Must be designed to improve the financial well-being of children or otherwise improve the operation of the child support program;

(2) May not permit modification in the child support program which would have the effect of disadvantaging children in need of support; and

(3) Must not result in increased cost to the Federal government under the program of AFDC.

Written assurances, as referenced in paragraph (d)(3), means clear and convincing documentation of the method the State intends to implement to fully comply with all State plan requirements and all standards for program operation provided under parts 302 and 303 of this chapter, respectively in the form of an action plan for implementing the alternative procedure or function.

Proposed paragraph (e) specifies APD submittal requirements for alternative system configurations. Under this paragraph, in addition to meeting the conditions for APD approval in § 307.15(b), the APD must: (1) Describe the State's base system, (2) include a detailed description of the separate automated or manual processes the State plans to use and how they will electronically interface with the base system, and (3) provide documentation showing that the alternative system configuration will enable the State to be in substantial compliance in accordance with section 453(h) of the Act and audits conducted under part 305 of this chapter. In addition, if the State is subject to an audit penalty Notice of failure to substantially comply with the requirements of title IV–D of the Act at the time a waiver is requested, the State must demonstrate under proposed paragraph (3), that the deficiency is not related to the system or caused by the performance of the system, or specify the corrective action being taken to modify the system to eliminate the deficiency.

As previously defined, an alternative system configuration is an alternative means for meeting the requirement for a statewide CSES and includes a base system which links electronically to separate automated or manual processes, which are not part of the State's systems project but which are necessary to meet the functional requirements of a Statewide CSES. The separate processes may include geographic areas, such as counties; administrative jurisdictions, such as courts; or, separate means by which the State meets particular program requirements.

Examples of the type of manual process in lieu of automation that we would consider for waiver would be:

a. For small caseload counties to process child support cases manually, and

b. For small caseload States, to manually generate notices pertaining to wage withholding, legal documents, and to manually track paternity establishment activities.

Examples of a prosecuting attorney's functions that we would consider for waiver would be:

a. The generation of legal documents, and

b. The transfer of hard copy data on obligation establishment to the State title IV–D agency for entry into the automated system.

Examples of a separate system or systems in a court or political subdivisions that we would consider for waiver would be:

a. The collection and distribution of non-AFDC payments on a statewide basis, and

b. A full range of functions performed by independent political subdivisions with interfaces to the State's automated system provided the required waiver conditions are met.

Proposed paragraph (f) would cover the APD submittal requirements for an alternative approach. In the case of an alternative approach to APD requirements, the State must demonstrate why meeting certain conditions for APD approval in § 307.15(b) are unnecessary or inappropriate. As proposed, a State may request a waiver to omit one or more of the APD mandatory content requirements provided under § 307.15(b) such as security or interface requirements. A State may also request a waiver of a requirement that has been stipulated by the Department in 45 CFR part 95 for inclusion in an annual APD update. If a State requests a waiver of a functional requirement, the State may also be exempted from meeting the procedural requirement for "sole system effort" described at § 307.15(b)(1). However, as a general rule, even when a waiver of an APD procedural requirement is granted, the State will still be required to perform an essential functional activity to assure that efficient and effective systems are developed. Therefore, a State would have to consider and act on each of the requirements stipulated in § 307.15(b) unless indicated otherwise by the Department.

Approval of a waiver will enable the Department to approve Federal funding for expenditures, and thus not unduly delay the start of a system project. In all instances when a waiver is granted for an alternate approach to an APD, our letter of Federal funding approval to the State will stipulate a submission date for essential data related to the waiver provision that may be required. Federal funding will be contingent on the receipt of acceptable data by the date stipulated for submission and on our determination that system efficiency and effectiveness are not at issue.

The law clearly recognizes that waiver allowances are necessary to address certain systems which may already be in place which enable the State to be in compliance with program requirements. However, we believe this waiver authority was intended for limited use and we do not anticipate that most States will request or qualify for such waivers. Waivers, by definition, represent the exception not the rule.

Proposed paragraph (g) describes OCSE review of waiver requests. Paragraph (g)(1) would provide that OCSE will review requests to assure that all necessary information is provided, that all processes provide for efficient and effective program operation, and that the conditions for waiver discussed above in paragraph (d) are met. Under paragraph (g)(2), we propose to specify that once a waiver is approved it becomes part of the State's approved APD. As part of the APD, a waiver would be subject to the APD suspension provisions in § 307.40. If an APD is suspended, enhanced Federal

funding will cease for any provisions of § 307.10 or § 307.15(b) that are covered by waiver until a determination that necessary corrective action has been taken. When a suspension is removed, waived provisions are automatically back in force.

As proposed in paragraph (g)(3), when a waiver is not approved, the APD will be disapproved. No administrative appeal is available in the case of an APD disapproval other than the hearing process established with respect to State plan conformity issues referred to earlier in this preamble. However, under this proposal, the State would be given the opportunity for developing an acceptable plan for automation.

The final paragraph in proposed § 307.5, paragraph (h), would cover FFP limitations for mandatory automated systems. Under paragraph (h)(1), the provisions for Federal funding for computerized support enforcement systems in §§307.30 (Federal financial participation at the 90 percent rate) and 307.35 (Federal financial participation at the applicable matching rate for computerized support enforcement systems) continue to apply. Subparagraph (h)(2) would add conditions for FFP specific to alternative system configurations. Under this provision, FFP would be available at the enhanced matching rate for development of the base system and for hardware, operational software, applications software and electronic linkages with the separate component of the alternative system configuration. FFP would be available at the applicable matching rate for minor alterations to the separate automated or manual processes that are part of an alternative system configuration and for operating costs including hardware, operational software and applications software of a CSES. "Minor" alterations as used here refer to simple modifications such as changing or adding data elements.

FFP would not be available for developing new systems or making major changes and enhancements to separate automated or manual processes so that an alternative system configuration could meet conditions for waiver. A "major" change would include any circumstance where significant developmental changes would be necessary to enable the State system to meet the waiver criteria, such as the development of software to perform a particular function.

Functional Requirements for Mandatory Systems

Current regulations at § 307.10(a) include functional requirements that must be met by all computerized support enforcement systems installed by States. The current § 307.10(b) includes provisions implemented by the Child Support Enforcement Amendments of 1984 that have been considered optional system functions.

We are proposing to revise § 307.10 by amending the title from "Computerized support enforcement systems" to "Functional requirements for computerized support enforcement systems", which is more descriptive of the section's actual content. Current paragraph (a) which introduces the mandatory nature of the minimum requirement for a CSES under the State plan would be inserted in the introductory language since all requirements are now mandatory. Paragraphs (a)(1) through (a)(2)(xiii) would be redesignated as paragraphs (a) through (b)(13) for simplicity. Newly designated paragraphs (b)(9), (10) and (13) would be revised to address new requirements as outlined below and new paragraphs (b)(14), (15) and (16) would be added.

Proposed paragraphs (a) through (b)(8) would continue to require that systems efforts proceed in accordance with initial and annually updated APDs approved under § 307.15 and account for all factors in the support enforcement process including maintenance and verification of necessary case file information; maintenance of data for purposes of Federal reporting requirements; maintenance of information on location, paternity establishment and support order establishment and enforcement; collection and distribution of payments, including incentive payments; maintenance of accounts receivable information; and maintenance of costs of all services rendered.

Under current requirements at § 307.10(a)(2)(ix), proposed to be redesignated here as § 307.10(b)(9), systems must be capable of accepting case referrals and update information from the State's AFDC program and use that information to identify and manage support enforcement cases. We are proposing to revise the requirement to stipulate that systems must be capable of accepting electronic case referrals and update information from the title IV–A program system. Thus, initiating AFDC case activity would automatically generate a child support case on the IV–D system insuring that cases are referred accurately and timely. This electronic exchange will serve to meet the intent of section 402(a)(44) of the Act which provides that the State IV–A agency be responsible for assuring that benefits and services under title IV–A, title IV–D and title IV–F are furnished in an integrated manner. As previously indicated, this would conform to the proposed changes to 45 CFR part 205, and 45 CFR part 250 requiring electronic exchange of data. The purpose of this proposal is to assure that separate systems being developed under titles IV–A, IV–D, and IV–F, operate more efficiently by eliminating redundant data and paper exchange and delays resulting from separate processes through the electronic exchange of information. Electronic exchange of case file information will also assist in self-sufficiency planning; allowing multiple aspects of a low-income family's needs to be addressed, and appropriate services to be initiated, in a prompt and coordinated way.

Proposed paragraphs (b)(10) and (b)(13) (currently paragraphs (a)(2)(x) and (xiii)) would be amended by replacing vague requirements such as "interfacing" and "ensuring compatibility" with more specific requirements focusing on "electronic linkages" and "electronic data exchange." Thus, systems would be required under proposed paragraph (b)(10) to be capable of transmitting information electronically to provide data to the State's AFDC program so that the IV–A agency can determine (and report back to the IV–D system) whether a collection of support causes a change in eligibility for or the amount of aid under the AFDC program. Paragraphs (b)(11) and (b)(12) would continue to require that systems provide necessary security to prevent unauthorized access to or use of data and provide management information on all IV–D cases, respectively. Under proposed paragraph (b)(13), the system would be required to be capable of accepting case referral and electronic data exchange with the State Medicaid system, and to provide for the transfer of the medical support information specified in 45 CFR 303.30 and 303.31. Standards for program operations requirements under 45 CFR 303.30 require the IV–D agency, when the IV–A or IV–E agency does not provide casefile information to the State Medicaid agency, to provide to the State Medicaid agency in a timely manner and in the most efficient and cost-effective means available case file information, including the availability and circumstances of any health insurance coverage. While those regulations provide that the State may use a manual or automated system to transmit the information, technology has evolved to such a degree that the requirements for efficiency and cost-effectiveness strongly dictate

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consideration of automated processes over manual processes for transferring information.

Similarly, under paragraph (b)(14), the State automated CSES will be required to provide electronic data exchange with the State title IV–F program. This will assure that benefits and services are provided in an integrated manner.

We propose to add paragraphs (b)(15) and (16) to ensure that systems are developed which sufficiently automate all remaining program functions not mentioned under other paragraphs of this section. State child support enforcement agencies are required beginning October 1, 1990, to meet new standards of program operation. These standards, mandated by the Family Support Act and published August 4, 1989 (54 FR 32284) impose specific case actions and timeframes for providing services which must be met for each phase of child support case processing. The standards prescribe requirements governing establishment and maintenance of case records; location of absent parents; establishment of support orders; enforcement of support orders and distribution of support payments. To meet these standards States will be required to keep extensive records of all activities and to maintain stringent controls over each case activity necessary. While these standards can be met by any well-managed program regardless of the stage of automation, we believe that automation would assist the State in successful implementation and ongoing maintenance of these requirements and would be of unquestionable benefit in terms of overall program management.

The optional systems functions under current paragraph (b) would become mandatory and would be included in proposed paragraph (b)(15). Under this paragraph, the State would be required to use automated processes to facilitate meeting State plan requirements under part 302 and Standards for program operations under part 303.

Under paragraph (b)(15) we propose to require at subparagraph (i) that the system provide for automated maintenance and monitoring of accurate records of support payments including electronic notice of any support arrearage. These features are currently included under paragraph (b) which allowed but did not require this system capability for purposes of developing and improving income withholding and other mandatory procedures included under section 466 of the Act and implementing regulations under 45 CFR 302.70. Because automated child support systems are now mandatory, we are proposing to require that these basic elements be mandatory components of a CSES.

Proposed (b)(15)(ii) would require that State systems provide automated maintenance of case records for purposes of the management and tracking requirements under § 303.2. Section 303.2 includes basic steps and timeframes effective October 1, 1990, which must be met in establishing IV–D cases and for maintaining necessary case records. Automated requirements under paragraphs (b)(15)(i) and (ii) would also facilitate State management by providing a clear audit trail of case processing activities, thus ensuring accurate recognition of State activity during the course of an audit conducted under 45 CFR part 305.

Proposed (b)(15)(iii) would require that title IV–D workers be provided, through the establishment of an electronic link, with on-line access to automated sources of absent parent employer and wage information maintained by the State. State-maintained employment data is usually updated quarterly and therefore is more current than the employment data maintained elsewhere, such as Social Security records. On-line access would facilitate wage withholding by providing employer identification information and would improve a State's ability to conduct reviews of support award amounts because of access to up-to-date income information. Under this proposed requirement, State systems must be able to conduct periodic matches for on-going case management purposes. Exceptions to proposed paragraph (b)(15)(iii) will be made for those States where automated employer and wage information is not available.

Proposed (b)(15)(iv) would require State systems to provide locate capability by automatically referring cases electronically to locate sources within the State such as State motor vehicle departments, State departments of revenue and other State agencies, and to the Federal Parent Locator Service and utilizing electronic linkages to receive locate information and place the information on-line to title IV–D case workers throughout the State. Records of all location attempts, dates and results should be maintained by the system. Traditionally, States have relied on manual or semi-automatic processes for locate capability, often treating locate as a separate function and not an integrated element of the statewide system effort. As a result, failure to substantially comply with the requirements for absent parent location is one of the most frequently cited audit deficiencies. Because location of the absent parent is critical to support enforcement, we believe that electronic access to locate sources should be fundamental to State CSES. We recognize that certain data, e.g. tax and 1099 data, are not available on-line to States and therefore will continue to be matched in a batch, off-line mode.

Paragraph (b)(15)(v), as proposed, would require that systems provide for electronic funds transfer for purposes of income withholding and interstate collection. This requirement is being included to ensure timely receipt of collections, disbursements and distribution of support payments. We believe there is tremendous value in eliminating costly, paper intensive processes and replacing them with modern streamlined electronic sytems. The title IV–D collection and distribution process lends itself very well to this advanced technology.

Proposed paragraph (b)(15)(vi) would require integrating all processing of interstate cases with the computerized support enforcement system, including the central registry.

Finally, under proposed paragraph (b)(16), to ensure the auditability of the system, a State's system would be required to provide automated processes that would enable OCSE to monitor State operations and assess program performance in the audit conducted in accordance with sections 403(h) and 452(a) of the Act. As indicated under paragraph (b)(15)(ii), a clear audit trail of case processing activities is vital to the success of an automated system and is critical to program management.

Auditability should be a management concern and relates to managment control responsibilities. Systems should contain an automated audit capability that will permit an expeditious review and analysis of all automated data that is used, produced, and reported by the system. This capability must provide for the retention and review of all case actions and activities that occur in or are processed by the system including dates of these activities.

In addition, all information and data (including, but not limited to, program, financial, and statistical data) produced by the system must be readily accessible, in a timely manner, for purposes of the audit conducted under 45 CFR part 305. The system must be capable of generating a history file that can be used to recreate and review a case event. While it is preferable that the system have a complete and accurate history file, the historical information can be maintained in hardcopy form, in an automated fashion or a combination of the two as long as it is maintained in a logical sequence which would make the information readily accessible. However this information is maintained, the State must ensure that a permanent record of all actions taken on each case and the results of those actions, where appropriate, is preserved. For example, both a record of the date of each locate attempt, as well as the source or sources queried and the date of each positive or negative result must be maintained. It should also be noted that the requirements for CSESs do not supersede any statutory or regulatory requirements for maintaining copies of legal or other documents. Such documents do not necessarily have to be maintained in hard-copy; microfiche, optical disk imaging or some other form of automated document retention could be utilized.

Computer systems that incorporate these characteristics allow auditors to perform in-depth reviews with minimal disruption to the system's operation and with limited technical programming assistance.

There are a number of acceptable computer-assisted techniques that may be used to meet these requirements. The preferred method is the installation and use of audit-related software packages that are available in three basic categories, as follows:

—Generalized audit software—performs general computing routines with a minimum of programming effort;
—Application audit software—performs predefined audit functions and routines; or
—Specialized audit software packages, a State may choose to develop an alternate method (or combination of methods) in implementing an automated audit capability. Software packages can be used to facilitate the implementation of some of these methods.

The State must choose the method or combination of methods that works best in the system operating environment and promotes user acceptance. However, regardless of the method pursued in meeting this requirement, the substantive evidential matter produced and retained by the system and the ability to locate and reconstruct processing must be maintained.

Approval of APDs

We are proposing to revise the title of § 307.15 which currently reads, Approval of advance planning documents for computerized support enforcement systems eligible for 90 percent FFP by deleting the reference to 90 percent funding since it is no longer pertinent. All States are required, as part of an approved IV–D state plan, to have a CSES in effect by October 1, 1995 and enhanced funding for that purpose will expire September 30, 1995.

Paragraph (a), Approval of an APD, would provide that the Office shall not approve the APD and annually updated APD unless the document, when implemented, will carry out the requirements of § 307.10. This wording would reflect the new definition contained in 45 CFR part 95 by replacing the word "initial" as used under the current paragraph (a) with "APD." The definition of APD in part 95 has been revised to include all types of APDs. In addition, to conform to other changes proposed herein, reference to § 307.10 would replace current reference to § 307.10(a) and optional provisions of § 307.10(b).

Paragraph (b) which provides conditions for initial approval would be revised to add "statewide" before "computerized support enforcement system" since the change reflects common terminology as applied to automated support enforcement systems. Paragraph (b)(1) which requires that the APD must represent the sole systems effort being undertaken by the State would be revised to add that if the State is requesting a waiver under § 302.85, the APD must specify the conditions for which waiver is requested. Under this requirement, a State must provide a brief description of each functional requirement under section 454(16) of the Act or any procedural requirement of section 452(d)(1) for which the State is requesting a waiver. As indicated previously, the statutory requirements under section 454(16) and 452(d)(1) are detailed in §§ 307.15(b) and 307.10 of this part.

Paragraph (b)(2) of this section which requires that the APD specify how the objectives of the system will be carried out throughout the State, including a projection of how the proposed system will meet the functional requirements and encompass all political subdivisions, would be revised to add the words "single State" to reflect common terminology as applied to automated support enforcement systems. Consistent with the requirements of this part, we also propose to modify paragraph (b)(2) to include language indicating that State APDs must show how the single State system will encompass all political subdivisions in the State by October 1, 1995.

Paragraphs (b)(3) through (b)(10) would continue to require that the APD assure the feasibility of the proposed effort and provide for a requirement analysis study; indicate how the results of the analysis study will be incorporated into the proposed system; contain a description of each component within the system; describe the security requirements; describe the projected resource requirements; contain a proposed budget and contain an implementation plan and backup procedures to handle possible failures.

We propose to revise paragraph (b)(11) which requires that the APD describe each alternative considered, by eliminating the references to model systems and State systems that must be considered and the reference to alternative system descriptions as an APD content requirement. The revised paragraph (b)(11) recognizes that States in most instances plan to transfer, adapt and install existing automated systems. We believe this is generally the most efficient and cost effective method that can be used by States to meet the October 1, 1995 automation deadline, unless a support enforcement system already in place can be easily modified to meet enhanced funding requirements. Thus, as proposed, paragraph (b)(11) would require that the APD describe each system considered during planning including the advantages of selecting the proposed solution. If a transfer system is not selected, a transfer system must be among those systems considered. If a system that is already in place in the State could be enhanced to meet the requirements, that system must be among the solutions considered. This conforms to 45 CFR part 95 language, under the definition of Planning APD, which specifies that States must assess other States' systems for transfer, to the maximum extent possible, of an existing system. In addition, under the definition of an implementation APD, States' are required to include a requirements analysis, feasibility study and a statement of alternative considerations including, where appropriate, a transfer of an existing system and an explanation of why such a transfer is not feasible if another alternative is chosen.

Paragraph (b)(12) would continue to require that the APD contain a cost benefit analysis of the proposed system and each alternative considered. The detailed costs identified should be summarized to compute the total estimated costs for each alternative. Likewise, the detailed benefits identified should be the basis to determine the total estimated benefits for each alternative. The resulting estimates will represent the total value of costs and benefits for each alternative. The cost/benefit analyses process could

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culminate in the selection of the most feasible alternative. The facts gathered during the process should justify selecting one alternative over another.

We propose to make a technical revision to paragraph (b)(13) which requires that the APD specify the basis for determining direct and indirect costs of the system during the development and operation by changing the reference to 70 percent FFP to Federal funding at the applicable matching rate to reflect changes which have been made to the regular matching rate for child support enforcement administrative expenditures.

Paragraph (b)(14) would continue to require that the APD contain a statement indicating the period of time the State expects to use the proposed system. A new proposed paragraph (b)(15) has been added to specify that the APD must contain any waiver granted in accordance with § 307.5.

Paragraph (c) would continue to specify the conditions for approval of an annual update.

We propose to make a technical change to the title of § 307.20—Submittal of advanced planning documents for computerized support enforcement systems eligible for 90 percent FFP by deleting the reference to the funding rate.

Review and Certification of Mandatory Automated Systems

Current regulations at § 307.25, Review of computerized support enforcement systems eligible for 90 percent FFP, provide that the Office will on a continuous basis review, assess and inspect the planning, design, development, installation, enhancement and operation of systems developed under § 307.10 to determine that the system: (a) Meets the requirements found in § 307.15 and (b) the conditions of § 307.10(a) and the current optional provisions of § 307.10(b).

We are proposing to delete the reference to 90 percent FFP in the title and to delete current paragraph (b) which makes reference to § 307.10(b) as an optional provision. These changes are consistent with other requirements proposed in these regulations.

We are proposing to add a new § 307.25(b) to reference in regulations, the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States" along with the requirement of § 307.10, as a criterion for determining whether a system may be certified. This change codifies that the guidelines are used as a basis to determine if completed systems meet certification requirements.

As indicated under the definition of certification, the Office will utilize, upon State request, a two-level certification process in order to provide States with the option to request functional certification of its CSES upon the completion and installation of a functionally comprehensive system in pilot locations. This optional provision was implemented because, in the past, some States especially those using contractor assistance to transfer another State's CSES, have requested that this Office review the system during the pilot test phase to help the State determine if it meets Federal certification requirements. The level 2 or full certification review would be achieved at the time the functionally approved level 1 certified State system becomes operational statewide. Since level 1 certification is optional, a State may elect to convert cases and proceed from pilot to statewide implementation without level 1 approval.

States may request level 1 certification when an automated CSES is installed and operational in a pilot or multiple pilot location(s). If a mandatory certification requirement of the automated CSES, (e.g. medicaid interface or security procedure) is not being utilized during pilot operation, the State must be able to demonstrate that the system will have the capability to perform that function. In addition, the State should be able to provide, at a minimum: System design, program documentation, user training and operational manuals. Functional certification will normally be based on the use of live data. However, test data may be used at the option of this Office.

States must request level 2 certification upon the completion of statewide installation of the functionally comprehensive CSES in all political subdivisions and agencies involved in child support enforcement in the State. The system should meet all functional requirements and be fully operational and include all active and inactive AFDC, non-AFDC, foster care and interstate cases. Certification (level 2) will enable the State to claim hardware costs for the operation of the system at the enhanced FFP rate until September 30, 1995. (Level 1 certification would not support 90 percent funding.)

States may be granted a conditional certification at either level 1 or 2 if the system meets all functional requirements but does not include a Federally-mandated change that occurred late in the development cycle, or if this Office finds discrepancies which are considered minor in nature and easily correctable. Conditional certification allows States to proceed with statewide conversion and installation or operation of a CSES while at the same time making corrections to the system.

A State would be eligible to receive conditional certification if the system met all functional requirements which were in effect prior to publication of this proposed rule in final form. We are providing conditional certification in recognition that this proposal suggests a number of system upgrades which may not have been anticipated by States. However, conditional certification would only be valid through September 30, 1995, at which time all States must have a fully certified system.

FFP Availability

We are proposing to revise § 307.30 to reflect changes required as a result of Public Law 100-485 as previously discussed in this preamble. We are proposing to revise the title by inserting "statewide" to read "Federal financial participation at the 90 percent rate for statewide computerized support enforcement systems."

Paragraph (a) provides the conditions that must be met for FFP. We propose to insert "Until September 30, 1995," in the introductory language since 90 percent funding is discontinued effective October 1, 1995 and to add reference to § 307.5, concerning the newly enacted waiver provision. Under the specific conditions, paragraph (a)(1) would continue to provide for an approved APD in accordance with § 307.15 and paragraph (a)(2) would continue to require that the system meet the requirements specified in § 307.10 but the reference to the optional requirement in § 307.10(b) would be eliminated to conform to other changes made under this proposal.

Paragraph 307.30(a)(3) would continue to provide the condition that the Office determine that the expenditures incurred are consistent with the approved APD.

Paragraphs (a)(4), (a)(5), and (a)(6) would continue to require a determination by the Office that the CSES is designed efficiently and effectively and provide for a written agreement by the State to use the system for a period of time which is consistent with the APD approved by the Office and for ownership rights of software, respectively.

Paragraph (b), which provides for reimbursement of hardware and proprietary software, would be revised in subparagraphs (1) and (2) to replace the effective date of October 1, 1984 with the limitation "Until September 30, 1995" to reflect the statutory deadline for 90 percent FFP. In addition, under (b)(2), we propose to correct the title of the OCSE guideline for automated enforcement systems.

Paragraphs (c), HHS rights to software and (d), Consequences of suspension of APD would remain unchanged.

Section 307.35 provides for Federal financial participation at the applicable matching rate for computerized support enforcement systems. We are proposing to make a technical change to amend § 307.35(a) to reflect the removal of the former optional provisions of § 307.10(b).

Suspension of APD Approval

Section 307.40 contains provision for suspension of approval of advance planning documents. We propose to make a technical change to the title by removing the reference to 90 percent FFP. In addition, we are proposing to amend § 307.40(a) by specifying that waivers of functional and procedural requirements, by their inclusion in APDs, are subject to the conditions of APD suspension as of the date the system approved and developed under § 307.10 ceases to comply substantially with the criteria, requirements, and provisions in the APD. A suspension of the APD could be imposed if it is determined that a State operating a system under an approved waiver failed to perform the mandatory functions imposed by § 307.10 or the waived functions are not being performed as described in the approved waiver. In both instances the State will have violated the conditions of approval as described in the APD.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule because it will not have an annual impact on the economy of $100 million or more, result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions, or otherwise meet the thresholds of the Executive Order. Over 40 States have already submitted plans indicating their intent to implement CSESs. Costs of upgrades necessary to meet this proposed rule for those States combined with the costs of the remaining States in implementing this proposal would not have an annual impact on the economy of $100 million or more.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act (Pub. L. 96-354) which requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities, the Secretary certifies that this rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

List of Subjects

45 CFR Part 205

Computer technology, Grant programs—social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements.

45 CFR Part 250

Aid to Families with Dependent Children, Grant programs—social programs, Employment, Education and training.

45 CFR Part 302

Child support, Grant programs—social programs, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 304

Child support, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 307

Child support, Grant programs—social programs, Computer technology, Reporting and recordkeeping requirements.

[Catalog of Federal Domestic Assistance Program No. 93.023, Child Support Enforcement Program.]

Dated: October 22, 1990.

Jo Anne Barnhart,

Assistant Secretary, Family Support Administration, and Director, Office of Child Support Enforcement.

Approved: February 6, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR parts 205, 250, 302, 304 and 307 are amended as set forth below.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for part 205 continues to read as follows:

Authority: Secs. 402, 403, 408, 411, 1102, and 1108(a) of the Social Security Act (42 U.S.C. 602, 603, 608, 611, 1302, and 1308(a)); sec. 9101, Pub. L. 99-509, 100 Stat. 1972; sec. 202., Pub. L. 100-485, 102 Stat. 2377.

2. Section 205.36 is amended by replacing the word "automatic" with the word "automated" in the introductory language; by redesignating paragraph (c) as (d); and by adding a new paragraph (c) to read as follows:

§ 205.36 State plan requirements.

* * * * *

(c) To electronically refer and exchange information with programs under titles IV-D and IV-F for purposes of assuring that benefits and services are provided in an integrated manner.

* * * * *

PART 250—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

1. The authority citation for part 250 continues to read as follows:

Authority: Sections 402, 403, 481, 451 note, 482 through 487, and 1102 of the Social Security Act as amended [42 U.S.C. 602, 603, 661, 662, 682 note, 683 through 687, and 1302]; Section 204(b) of Pub. L. 100-485, 102 Stat. 2381.

2. Section 250.81 is amended by revising paragraph (a) to read as follows:

§ 250.81 State data systems options.

(a) A State IV-A agency may integrate its JOBS Automated System (JAS) with an existing or planned title IV-A system. A State IV-A agency may also use a stand-alone system. Either option must be a client-based information system capable of:

(1) Producing at a minimum all data elements required in § 250.82; and

(2) Accepting referrals and exchanging data electronically with the title IV-A and title IV-D automated systems.

* * * * *

PART 302—STATE PLAN REQUIREMENTS

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. The table of contents of part 302 is amended by replacing "302.85 Computerized support enforcement systems eligible for 90 percent FFP." with "302.85 Mandatory computerized support enforcement systems."

3. Section 302.85 is revised to read as follows:

§ 302.85 Mandatory computerized support enforcement systems.

(a) *General.* The State plan shall provide that, if the State did not have in effect, by October 13, 1988, a computerized support enforcement system that meets the requirements in § 307.10 of this chapter, the State will:

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(1) By October 1, 1991, submit to the Secretary an advance planning document (APD) or APD update in accordance with § 307.5 of this chapter; and

(2) By October 1, 1995, have in effect and approved by the Secretary, a certified operational computerized support enforcement system in accordance with § 307.5 and § 307.10 of this chapter and the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States."

(b) *Waiver.* (1) *Request for waiver.* The State may apply for a waiver of any condition for initial approval of an APD in § 307.15(b) of this chapter, or any system functional requirement in § 307.10 of this chapter, by the submission of a request for waiver under § 307.5 of this chapter.

(2) *Basis for granting waiver.* The Secretary will grant a State a waiver if a State demonstrates that it has an alternative approach to APD requirements or an alternative system configuration, as defined in § 307.1 of this chapter, that enables the State, in accordance with part 305 of this chapter, to be in substantial compliance with all other requirements of this chapter; and either:

(i) The waiver request meets the criteria set forth in section 1115(c) (1), (2) and (3) of the Act; or

(ii) The State provides written assurances that steps will be taken to otherwise improve the State's Child Support Enforcement program.

PART 304—FEDERAL FINANCIAL PARTICIPATION

1. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

§ 304.20 [Amended]

2. Section 304.20 is amended by adding "Until September 30, 1995," at the beginning of paragraph (c).

PART 307—COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS

1. The authority citation for part 307 is revised to read as follows:

Authority: 42 U.S.C. 602 note, 652 through 655, 664, 666, 667, and 1302.

2. The table of contents for part 307 is revised to read as follows:

Sec.
307.0 Scope of this part.
307.1 Definitions.
307.5 Mandatory computerized support enforcement systems.
307.10 Functional requirements for computerized support enforcement systems.
307.15 Approval of advance planning documents for computerized support enforcement systems.
307.30 Submittal of advance planning documents for computerized support enforcement systems.
307.35 Review of computerized support enforcement systems.
307.30 Federal financial participation at the 90 percent rate for statewide computerized support enforcement systems.
307.35 Federal financial participation at the applicable matching rate for computerized support enforcement systems.
307.40 Suspension of approval of advance planning documents for computerized support enforcement systems.

3. Section 307.0 is revised to read as follows:

§ 307.0 Scope of this part.

This part implements sections 452 (d) and (e), 454 (16) and (24), and 455(a)(1)(A) and (B) of the Act which prescribe:

(a) The requirement for computerized support enforcement systems;

(b) The functional requirements that a statewide computerized support enforcement system must meet;

(c) The criteria the Office must determine exist prior to approving an advance planning document (APD);

(d) The requirements and procedures for the submittal of an APD;

(e) The requirement for continuous review of each approved statewide computerized support enforcement system;

(f) The availability of FFP at the 90 percent rate;

(g) The availability of FFP at the applicable matching rate; and

(h) The conditions under which the Office will suspend approval of an APD.

4. Section 307.1 is revised to read as follows:

§ 307.1 Definitions.

(a) "Alternative approach" to APD requirements means that the State has developed an APD that does not meet all conditions for APD approval in § 307.15(b) resulting in the need for a waiver under § 307.5.

(b) "Alternative system" means the separate manual and/or automated processes that perform one or more of the required functions separately from the base system and that interfaces with the base system to ensure that the State can meet all requirements for purposes of the audit precribed in section 403(h) of the Act. These separate processes may involve geographic areas, such as counties; administrative jurisdictions, such as courts; or separate means by which the State meets particular program requirements, e.g., collection of support for non-AFDC cases.

(c) "Alternative system configuration" means an alternative to a comprehensive computerized support enforcement system. It includes a base system with electronic linkages to an alternative system(s), which is not part of the State's computerized support enforcement project (i.e., not the State's sole system effort), but which is necessary to meet the functional requirements of the statewide, comprehensive computerized support enforcement system under § 307.10.

(d) "Base system" means the hardware, operational software, applications software and electronic linkages in an alternative system configuration which allow the State to monitor, account for and control all support enforcement services and activities under the State plan.

(e) "Certification" means approval of an operational computerized support enforcement system based on a determination that the system has an efficient and effective design and is comprehensive, except where a waiver applies.

(f) "Comprehensive" means that a computerized support enforcement system meets the requirements prescribed in § 307.10 of this part, as further defined in the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States."

(g) "Computerized support enforcement system" means a comprehensive, statewide system or an alternative system configuration which encompasses all political subdivisions within the State and which effectively and efficiently:

(1) Introduces, processes, accounts for and monitors data used by the Child Support Enforcement program in carrying out activities under the State plan; and

(2) Produces utilization and management information about support enforcement services as required by the State IV–D agency and Federal government for program administration and audit purposes.

(h) "Planning" means:

(1) The preliminary project activity to determine the requirements necessitating the project, the activities to be undertaken, and the resources required to complete the project;

(2) The preparation of an APD;

(3) The preparation of a detailed project plan describing when and how the computer system will be designed or tranferred and adapted; and

(4) The preparation of a detailed implementation plan describing specific training, testing, and conversion plans to install the computer system.

(i) The following terms are defined at 45 CFR part 95, subpart F, in § 95.605:

"Advance Planning Document";
"Annually Updated APD";
"Design" or "System Design";
"Development";
"Enhancement";
"Implementation Advance Planning Document";
"Initial APD";
"Installation";
"Operation";
"Planning Advance Planning Document";
"Requirements Analysis"; and
"Software".

(j) The definitions found in § 301.1 of this chapter are also applicable to this part.

5. Section 307.5 is added to read as follows:

§ 307.5 Mandatory computerized support enforcement systems.

(a) *Basic requirement.* By October 1, 1995, each State must have in effect an operational computerized support enforcement system, which is certified.

(b) *APD requirements.* By October 1, 1991, each State must submit an APD or APD update that meets the conditions set forth in § 307.15 of this part for review and approval by the Secretary.

(c) *Waiver option.* A State may apply for a waiver of any functional requirement in § 307.10 of this part by presenting a plan for an alternative system configuration, or a waiver of any conditions for APD approval in § 307.15(b) of this part by presenting an alternative approach. Waiver requests must be submitted and approved as part of the State's APD.

(d) *Conditions for waiver.* The Secretary may grant a State a waiver if: (1) The State demonstrates that it has an alternative approach to the APD requirements or an alternative system configuration that enables the State, in accordance with Part 305 of this chapter, to be in substantial compliance with other requirements of this chapter; and either:

(2) The waiver request meets the criteria set forth in section 1115(c) (1), (2), and (3) of the Act; or

(3) The State provides written assurance that steps will be taken to otherwise improve the State's Child Support Enforcement program.

(e) *APD submittal requirements for alternative system configuration.* APDs submitted by States which include requests for waiver for an alternative system configuration must, in addition to meeting conditions of § 307.15(b):

(1) Describe the State's base system;

(2) Include a detailed description of the separate automated or manual processes the State plans to use and how they will interface with the base system;

(3) Provide documentation that the alternative system configuration will enable the State to be in substantial compliance with title IV–D of the Act in accordance with section 403(h) of the Act and implementing regulations. In addition, if the State is subject to a Notice under § 305.99 of this part that it did not substantially comply with one or more of the requirements of title IV–D of the Act, at the time a waiver request is submitted, the State must:

(i) Demonstrate that the deficiency is not related to or caused by the performance of the system; or

(ii) Specify the corrective action taken to modify the system if the system contributed to the deficiency.

(f) *APD submittal requirements for alternative approach.* APDs submitted by States which include requests for waiver of conditions for APD approval in § 307.15(b) must demonstrate why meeting the conditions is unnecessary or inappropriate.

(g) *Review of waiver requests.* (1) The Office will review waiver requests to assure that all necessary information is provided, that all processes provide for effective and efficient program operation, and that the conditions for waiver in paragraph (d) of this section are met.

(2) When a waiver is approved, it becomes part of the State's approved APD. A waiver is subject to the APD suspension provisions in § 307.40 of this part.

(3) When a waiver is disapproved, the APD will be disapproved. The APD disapproval is a final administrative decision and is not subject to administrative appeal.

(h) *FFP limitations.* (1) The provisions of §§ 307.30 and 307.35 of this part apply to requests for FFP for costs of computerized support enforcement systems.

(2) FFP for alternative system configurations is further limited as follows:

(i) FFP is available at the enhanced matching rate for development of the base system and for hardware, operational system software, and electronic linkages with the separate components of an alternative system configuration.

(ii) FFP is available at the applicable matching rate for minor alterations to the separate automated or manual processes that are part of an alternative system configuration and for operating costs including hardware, operational software and applications software of a computerized support enforcement system.

(iii) FFP is not available for developing new systems or making major changes and enhancements to separate automated or manual processes so that alternative system configurations meet conditions for waiver.

6. Section 307.10 is revised to read as follows:

§ 307.10 Functional requirements for computerized support enforcement systems.

At a minimum, each State's computerized support enforcement system established under the title IV–D State plan at § 302.85 of this chapter must:

(a) Be planned, designed, developed, installed or enhanced in accordance with an initial and annually updated APD approved under § 307.15 of this part; and

(b) Control, account for, and monitor all the factors in the support collection and paternity determination processes under the State plan. At a minimum this must include:

(1) Maintaining identifying information such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal zip codes) on individuals against whom support obligations are sought to be established or enforced and on individuals to whom support obligations are owned, and other data as required by the Office, and assuring compatibility with the systems of different jurisdictions to permit periodic screening to determine whether an individual is paying or is obligated to pay support in more than one jurisdiction;

(2) Periodically verifying the information on individuals referred to in paragraph (b)(1) of this section with Federal, State and local agencies, both intrastate and interstate;

(3) Maintaining data necessary to meet Federal reporting requirements on a timely basis as prescribed by the Office;

(4) Maintaining information pertaining to:

(i) Delinquency and enforcement activities;

(ii) Intrastate, interstate and Federal location of absent parents;

(iii) The establishment of paternity; and

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(iv) The establishment of support obligations;

(5) Collecting and distributing both intrastate and interstate support payments;

(6) Determining, collecting and distributing both intrastate and interstate incentive payments;

(7) Maintaining accounts receivable on all amounts owed, collected, and distributed;

(8) Maintaining costs of all services rendered, either directly or by interfacing with State financial management and expenditure information;

(9) Accepting electronic case referrals and update information from the State's title IV–A program and using that information to identify and manage support enforcement cases;

(10) Transmitting information electronically to provide data to the State's AFDC system so that the IV–A agency can determine (and report back to the IV–D system) whether a collection of support causes a change in eligibility for, or the amount of aid under, the AFDC program;

(11) Providing security to prevent unauthorized access to, or use of, the data in the system;

(12) Providing management information on all IV–D cases under the State plan from initial referral or application through collection and enforcement;

(13) Provding electronic data exchange with the State Medicaid system to provide for case referral and the transfer of the medical support information specified in 45 CFR 303.30 and 303.31;

(14) Providing electronic data exchange with the State IV–F program for purposes of assuring that services are furnished in an integrated manner;

(15) Using automated processes to assist the State in meeting State plan requirements under part 302 and Standards for program operations under part 303 of this chapter, including but not limited to:

(i) The automated maintenance and monitoring of accurate records of support payments;

(ii) Providing automated maintenance of case records for purposes of the management and tracking requirements in § 303.2 of this chapter;

(iii) Providing title IV–D case workers with on-line access to automated sources of absent parent employer and wage information maintained by the State when available, by establishing an electronic link or by obtaining an extract of the data base and placing it on-line for access throughout the State;

(iv) Providing locate capability by automatically referring cases electronically to locate sources within the State (such as State motor vehicle department, State department of revenue, and other State agencies), and to the Federal Parent Locator Service and utilizing electronic linkages to receive return locate information and place the information on-line to title IV–D case workers throughout the State;

(v) Provding for electronic funds transfer for purposes of income withholding and interstate collections;

(vi) Integrating all processing of interstate cases with the computerized support enforcement system, including the central registry; and

(16) Providing automated processes to enable the Office of monitor State operations and assess program performance through the audit conducted under section 452(a) of the Act.

7. Section 307.15 is amended by revising paragraphs (a) and (b) to read as follows:

§ 307.15 Approval of advance planning documents for computerized support enforcement systems.

(a) *Approval of an APD.* The Office shall not approve the APD and annually updated APD unless the document, when implemented, will carry out the requirements of § 307.10 of this part. Conditions for APD approval are specified in this section.

(b) *Conditions for initial approval.* In order to be approvable, an APD for a statewide computerized support enforcement system described under § 307.10 must meet the following requirements:

(1) The APD must represent the sole systems effort being undertaken by the State in accordance with § 307.10. If the State is requesting a waiver under § 302.85 of this chapter, the APD must specify the conditions for which waiver is requested;

(2) The APD must specify how the objectives of the computerized support enforcement system in § 307.10 will be carried out throughout the State; this includes a projection of how the proposed system will meet the functional requirements of § 307.10 and how the single State system will encompass all political subdivisions in the State by October 1, 1995;

(3) The APD must assure the feasibility of the proposed effort and provide for the conduct of a requirements analysis study which addresses all system components within the State and includes consideration of the program mission, functions, organization, services, constraints, and current support related to the computerized support enforcement system;

(4) The APD must indicate how the results of the requirements analysis study will be incorporated into the proposed system design, development, installation or enhancement;

(5) The APD must contain a description of each component within the proposed computerized support enforcement system as required by § 307.10 and must describe information flows, input data, and output reports and uses;

(6) The APD must describe the security requirements to be employed in the proposed computerized support enforcement system;

(7) The APD must describe the intrastate and interstate interfaces set forth in § 307.10 to be employed in the proposed computerized support enforcement system;

(8) The APD must describe the projected resource requirements for staff, hardware, and other needs and the resources available or expected to be available to meet the requirements;

(9) The APD must contain a proposed budget including a description of estimated expenditures by category and amount for:

(i) Items that are eligible for Federal funding at the 90 percent rate; and

(ii) Items related to developing and operating the system that are eligible for Federal funding at the applicable matching rate;

(10) The APD must contain an implementation plan and backup procedures to handle possible failures in system planning, design, development, installation or enhancement;

(11) The APD must describe each system considered during planning including the advantages of selecting the proposed solution. If a transfer system is not selected as the proposed solution, a transfer system must be among those systems considered. If a system that is already in place in the State could be enhanced to meet the requirements for a computerized support enforcement system, that system must be among the solutions considered;

(12) The APD must contain a cost benefit analysis of the proposed computerized support enforcement system and all alternatives considered that describes the proposed improvements to the IV–D program in both qualitative and quantitative terms;

(13) The APD must specify the basis for determining direct and indirect costs of the computerized support enforcement system during development and operation, including the methodology for determining costs of planning, design, development, installation or enhancement that are eligible for 90 percent Federal funding versus costs of development and operations that are eligible for Federal funding at the applicable matching rate;

(14) The APD must contain a statement indicating the period of time and State expects to use the proposed computerized support enforcement system; and

(15) The APD must include any waiver requested in accordance with § 307.5 of this chapter.

* * * * *

§ 307.20 [Amended]

8. Section 307.20 is amended by deleting the words "eligible for 90 percent FFP" in the title.

9. Section 307.25 is revised to read as follows:

§ 307.25 Review and certification of computerized support enforcement systems.

The Office will review, assess and inspect the planning, design, development, installation, enhancement and operation of computerized support enforcement systems developed under § 307.10 of this part to determine the extent to which such systems:

(a) Meet the requirements found in § 307.15 of this part; and

(b) Can be certified as meeting the requirements described in § 307.10 of this part and in the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States".

10. Section 307.30 is amended by revising the title and paragraphs (a) and (b) to read as follows:

§ 307.30 Federal financial participation at the 90 percent rate for statewide computerized support enforcement systems.

(a) *Conditions that must be met for FFP.* Until September 30, 1995, Federal financial participation is available at the 90 percent rate in expenditures for the planning, design, development, installation or enhancement of a computerized support enforcement system as described in §§ 307.5 and 307.10 of this part if:

(1) The Office has approved an APD in accordance with § 307.15 of this part;

(2) The system meets the requirements specified in § 307.10;

(3) The Office determines that the expenditures incurred are consistent with the approved APD;

(4) The Office determines that the computerized support enforcement system or alternative system configuration is designed effectively and efficiently and will improve the management and administration of the State IV–D plan;

(5) The State IV–D agency agrees in writing to use the system for a period of time which is consistent with the APD approved by the Office; and

(6) The State or local government has ownership rights in software, software modifications and associated documentation that is designed, developed, installed, or enhanced with 90 percent FFP under this section subject to the Department of Health and Human Services license specified in paragraph (c) of this section.

(b) *Reimbursement of hardware and proprietary software.* (1) Until September 30, 1995, FFP at the 90 percent rate is available for expenditures for the rental or purchase of hardware for the planning, design, development, installation, enhancement or operation of a computerized support enforcement system as described in § 307.10.

(2) Until September 30, 1995, FFP at the 90 percent rate is available for expenditures for the rental or purchase of proprietary operating/vendor software necessary for the operation of hardware during the planning, design, development, installation, enhancement or operation of a computerized support enforcement system in accordance with the "Automated Systems for Child Support Enforcement: A Guide for States." FFP at the 90 percent rate is not available for proprietary application software developed specifically for a computerized support enforcement system. (See § 307.35 of this part regarding reimbursement at the applicable matching rate.)

* * * * *

11. Section 307.35 is amended by revising paragraph (a) to read as follows:

§ 307.35 Federal financial participation at the applicable matching rate for computerized support enforcement systems.

* * * * *

(a) The operation of a system that meets the requirements specified in § 307.10 of this part if the conditions for APD approval in §§ 307.5 and 307.10 of this part are met; or

* * * * *

12. Section 307.40 is mended by revising the title and paragraph (a)(1) to read as follows:

§ 307.40 Suspension of approval of advance planning documents for computerized support enforcement systems.

(a) *Suspension of approval.* (1) The Office will suspend approval of the APD for a computerized support enforcement system approved and developed under § 307.10 of this part as of the date that the system ceases to comply substantially with the criteria, requirements, and other provisions in the APD, including the conditions in § 307.15(b) of this part and the requirements in § 307.10 of this part covered under a waiver granted in accordance with § 307.5 of this part. Federal funding will be disallowed as described in § 307.30(d) of this part.

* * * * *

[FR Doc. 91–11288 Filed 5–13–91; 8:45 am]

BILLING CODE 4120–11–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 91–111; FCC 91–107]

Maritime Services; Miscellaneous Changes to Rules Governing the Maritime Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The proposed rules would clarify the maritime frequency tolerance requirements applicable to maritime transmitters, amend the certification requirements for field strength measurements of radiotelegraph ship installations and update and correct various maritime services rules. These actions are partially in response to requests from Mackay Communications (Mackay) and Exxon Communications Company (Exxon). The effect of the proposed changes will update and clarify the maritime rules.

DATES: Comments must be received on or before July 23, 1991, and reply comments must be received on or before August 7, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–7175.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, PR Docket No. 91-111, adopted April 4, 1991, and released May 8, 1991. The full text of this Commission decision including the adopted rule changes are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The full text of this decision including the adopted rule changes may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1114 21st Street, NW., Washington DC 20036.

Summary of Notice of Proposed Rule Making

In response to two requests, one filed by Mackay and the other by Exxon, the FCC proposes to clarify and update the frequency tolerance requirements for maritime transmitters and simplify the certification requirements for field strength measurements of radiotelegraph ship installations. Additionally, the FCC proposes to make a number of nonsubstantive revisions to conform the rules to the recent FCC fee collection program and other FCC and Safety Convention changes.

Ordering Clauses

Ex Parte Rules—Non-Restricted Proceeding

This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are discussed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203 and 1.1206(a).

Regulatory Flexibility Act

The Commission hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), that these rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. These amendments will permit licensees the option to use their employees to conduct certain field strength measurements and correct and clarify the frequency tolerance rules applicable to the maritime radio services. Additionally, they will propose to make a number of minor nonsubstantive changes to the maritime rules.

Paperwork Reduction

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease the burden hours imposed on the public.

Authority for issuance of the Notice or Proposed Rule Making is contained in sections 4(i) and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

A copy of the Notice of Proposed Rule Making will be served on the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 80

Maritime stations, Communications equipment.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 80 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

§ 80.5 [Amended]

2. Section 80.5 is amended by removing "Future" from the entry for *Future global maritime distress and safety system (FGMDSS)* to read *Global maritime distress and safety system (GMDSS).*

3. Section 80.23 is amended by adding a sentence at the end of the first paragraph, removing paragraph (c) and redesignating paragraphs (d) and (e) as (c) and (d) to read as follows:

§ 80.23 Filing of applications.

* * * Applications requiring fees as set forth at part 1, subpart G of this chapter must be filed with the Federal Communications Commission in accordance with § 1.1102 of the Rules.

* * * * *

4. Section 80.207(d) is amended by revising footnote 2 in the table to read as follows:

§ 80.207 Classes of emission.

* * * * *

(d) * * *

[2] Frequencies used in the automated multi-station system. See § 80.385(c).

* * * * *

5. Section 80.209 is amended by revising paragraph (a) and the table following paragraph (a) to read as follows:

§ 80.209 Transmitter frequency tolerances.

(a) The frequency tolerance requirements applicable to transmitters in the maritime services are shown in the following table. Tolerances are given as parts in 10^6 unless shown in Hz.

Frequency bands and categories of stations	Tolerances [1]
(1) Band 100–525 kHz	
(i) Coast stations:	
For single sideband emissions	20 Hz
For transmitters with narrow-band direct printing and data emissions.	10Hz [2]
For transmitters with digital selective calling emissions.	10 Hz
For all other emissions	100
(ii) Ship stations:	
For transmitters with single sideband emissions type accepted or type approved before November 30, 1977.	20 Hz
For transmitters with other emissions type accepted or type approved before November 30, 1977.	1000 [6]
For transmitters with narrow-band direct printing and data emissions.	10 Hz [2]
For transmitters with digital selective calling emissions.	10 Hz [3]
For all other transmitters type accepted or type approved after November 29, 1977.	20 Hz
(iii) Ship stations for emergency only:	
For transmitters type approved before November 30, 1977.	3000 [6]
For all transmitters type accepted or type approved after November 29, 1977.	20 Hz
(iv) Survival craft stations:	
For transmitters type approved before November 30, 1977.	5000 [6]
For transmitters type approved or type accepted after November 29, 1977.	20 Hz
(v) Radiodetermination stations:	
For all emissions	100
(2) Band 1600–4000 kHz	
(i) Coast stations and Alaska fixed stations:	
For single sideband and facsimile emissions.	20 Hz
For narrow-band direct/printing and data emissions.	10 Hz [3]
For digital selective calling emissions.	10 Hz
For all other emissions	50
(ii) Ship stations:	
For transmitters with narrow-band direct printing and data emissions.	10 Hz [2]
For transmitters with digital selective calling emissions.	10 Hz [3]
For all other transmitters	20 Hz
(iii) Survival craft stations	20 Hz
(iv) Radiodetermination stations:	
With power 200W or less	20
With power above 200W	10
(3) Band 4000–27500 kHz	
(i) Coast stations and Alaska fixed stations:	
For single sideband and facsimile emissions.	20 Hz
For narrow-band direct printing and data emissions.	10 Hz [2]
For digital selective calling emissions.	10 Hz
For Morse telegraphy emissions.	10
For all other emissions	15
(ii) Ship stations:	
For transmitters with narrow-band direct printing and data emissions.	10 Hz [2]
For transmitters with digital selective calling emissions.	10 Hz [3]
For all other transmitters	20 Hz
(iii) Survival craft stations:	50Hz
(4) Band 72–76 MHz	
Fixed stations:	
Operating in the 72.0–73.0 and 75.4–76.0 MHz bands.	5
Operating in the 73.0–74.6 MHz band.	50
(5) Band 156–162 MHz	
(i) Coast stations:	
For stations licensed to operate with a carrier power:	
Below 3 watts	10
3 to 100 watts	5
Above 100 watts	2.5
(ii) Ship stations:	10 [4]
(iii) Survival craft stations operating on 121.500 MHz:	50
(iv) EMRBs:	
Operating on 121.500 and 243.000 MHz.	50
Operating on 156.750 and 156.800 MHz.	10
(6) Band 216–220 MHz	
(i) Coast Stations:	
For all emission	5
(ii) Ship stations:	
For all emissions	5
(7) Band 400–406 MHz	
(i) EPIRBs operating on 406.25 MHz.	5
(ii) On-board stations	5
(iii) Radiolocation and telecommand stations.	5
(8) Band 1626.5–1646.5 MHz	
(i) Ship earth stations:	5

[1] Transmitters authorized prior to January 2, 1990, with frequency tolerances equal to or better than those required after this date will continue to be authorized in the maritime services provided they retain type acceptance and comply with applicable standards in this part.

[2] The frequency tolerance for narrow-band direct printing and data transmitters installed before January 2, 1992, is 15 Hz for coast stations and 20 Hz for ship stations. The frequency tolerance for narrow-band direct printing and data transmitters type accepted or installed after January 1, 1992, is 10 Hz.

[3] Until February 2, 1999, the frequency tolerance for DSC for ship station transmitters in the MF and HF bands that were installed before January 2, 1992, is 20 Hz. The frequency tolerance for DSC ship station transmitters in the MF and HF bands type accepted or installed after January 1, 1992, is 10 Hz. After February 1, 1999, the frequency tolerance for all DSC ship station transmitters in the MF and HF bands (regardless of installation date) is 10 Hz.

[4] For transmitters in the radiolocation and associated telecommand service operating on 154.585 MHz, 159.480 MHz, 160.725 and 160.785 MHz the frequency tolerance is 15 parts in 10^6.

[5] This frequency tolerance applies to ship station transmitters until February 1, 1999. Thereafter, the frequency tolerance is 20 Hz.

* * * * *

§ 80.375 [Amended]

6. Section 80.375(a) introductory text is amended by replacing the frequencies 121.500 kHz and 243.000 kHz with 121.500 MHz and 243.000 MHz respectively.

7. Section 80.377 is amended by revising the last sentence to read as follows:

§ 80.377 Frequencies for ship earth stations.

* * * The frequency band 1645.5–1646.5 MHz is reserved for use in the Global Maritime Distress and Safety System (GMDSS).

8. Section 80.802 is amended by revising paragraph (a)(2) to read as follows:

§ 80.802 Inspection of station.

(a) * * *

(2) At inspection, the minimum field strength capability of the main installation and reserve installation when connected to the main antenna may be shown by the licensee by one of the following methods:

(i) Producing a record of communications on 500 kHz over a minimum distance of 370 kilometers (200 nautical miles) for the main installation and 185 kilometers (100 nautical miles) for the reserve installation which demonstrates the transmission and reception of clearly perceptible signals from ship to ship by day and under normal conditions and circumstances, or

(ii) Provide documentation by a professional engineer, or a person holding a first or second class radiotelegraph certificate, or a general radiotelephone operator license, that the installation produces at 1.85 kilometers (one nautical mile) a minimum field strength of thirty (30) millivolts per meter for the main installation and ten (10) millivolts per meter for the reserve installation. The licensee shall provide, at a minimum, the name and license number of the individual making the measurements or record of communications.

* * * * *

[FR Doc. 91-11321 Filed 5-13-91; 8:45 am]

BILLING CODE 6712-01-M

§ 80.

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Notices

Federal Register
Vol. 56, No. 93
Tuesday, May 14, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Proposed Determinations Regarding Support Prices for Wool on Unshorn Lambs and for Mohair for 1991 Marketing Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: This notice sets forth certain proposed determinations concerning the price support levels for wool on unshorn lambs and for mohair for the 1991 marketing year. These determinations are required to be made pursuant to the National Wool Act of 1954, as amended.

EFFECTIVE DATE: Comments must be received on or before June 13, 1991 in order to be assured of consideration.

ADDRESSES: Mail comments to Bruce R. Weber, Director, Commodity Analysis Division, USDA-ASCS, room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Janise A. Zygmont, Agricultural Economist, Commodity Analysis Division, USDA-ASCS, room 3760, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447-6734. A Preliminary Regulatory Impact Analysis has been prepared and is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major." It has been determined that these proposed determinations will result in an annual effect on the economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that the Commodity Credit Corporation (CCC) publish a notice of proposed rulemaking in accordance with 5 U.S.C. § 553 or any other provision of law with respect to the subject matter of this notice.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The title and number of the Federal assistance program to which this notice applies are: National Wool Act Payments, 10.059, as found in the Catalog of Federal Domestic Assistance.

Section 703(a) of the National Wool Act of 1954, as amended ("Wool Act"), provides that the prices of wool and mohair to producers shall be supported by means of loans, purchases, payments, or other operations. It has been determined that the prices of wool and mohair will be supported for the 1991 to 1995 marketing years by means of payments to producers.

Section 703(b) of the Wool Act provides that the level of support for shorn wool for each of the marketing years 1991 through 1995 shall be 77.5 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of: (1) The average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to (ii) the average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent.

Based on current reported parity indices, the calculation for the 1991 shorn wool support price (grease basis) is as follows:

(1) Average parity index, calendar years 1987–1989:
- 1987–1110
- 1988–1167
- 1989–1220
- 3497 divided by 3 ..... 1165.7

(2) Average parity index, calendar years 1958–1960 ..... 297.2
(3) Ratio of 1165.7 to 297.2 ..... 3.9210
(4) 3.9210 × 62 cents per pound (1965 support price) $2.4310
(5) 77.5% × $2.4310 ..... $1.8840
(6) $1.8840 rounded to the nearest full cent $1.88

Section 703(c) of hte Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, which is determined to maintain normal marketing practices for pulled wool, and which is determined necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported. In order to provide such support on pulled wool, CCC has determined that it will continue to make such support through means of payments on wool on unshorn lambs.

The Wool Act provides that to the extent practicable, support price levels for wool and mohair shall be established and announced sufficiently in advance of each marketing year, as will permit producers to plan their production for such marketing year. Accordingly, the following methods for calculating the support prices for wool on unshorn lambs and for mohair for the 1991 marketing year are being proposed. Comments with respect to the following proposed determinations must be received by June 13, 1991 in order to be assured of consideration.

Proposed Determinations

A. Support Price—Wool on Unshorn Lambs

The support price for wool on unshorn lambs for the 1991 marketing year cannot be determined until the 1991 national average market price for shorn wool is calculated, which will occur by April 1992. It is proposed that the method for calculating the support price for wool on unshorn lambs shall be as follows: Once the national average market price for shorn wool is determined, the support price for wool on unshorn lambs will be determined by taking 80 percent of the difference between the 1991 support price for shorn wool and the 1991 national average market price for shorn wool, multiplied by 5 pounds (the amount of wool pulled from the pelt of an average 100-pound unshorn lamb). Historically, this formula has provided equitable support for wool on unshorn lambs relative to shorn wool and has helped to maintain normal marketing practices for pulled wool.

B. Support Price—Mohair

It is proposed that the support price for mohair for the 1991 marketing year shall be determined based on the October 1990 parity prices for mohair and shorn wool. The following percentages are being considered in the final computation of the mohair price:

(1) 85 percent of the percentage of parity at which shorn wool is supported.

(2) A percentage equal to the percentage of parity at which shorn wool is supported.

(3) 115 percent of the percentage of parity at which shorn wool is supported.

Interested persons are encouraged to comment on the proposed method of calculation for payments on wool on unshorn lambs and the proposed levels of price support for mohair. Consideration will be given to any data, views and recommendations which are submitted with respect to the above items.

The support programs conducted pursuant to the Wool Act are subject to the provisions of the Balanced Budget and Deficit Reduction Act of 1985, as amended. As a result, the proposed program support levels announced in this notice may be recalculated to comply with this Act.

Authority: 15 U.S.C. 714b and 714c and 7 U.S.C. 1781–1787.

Signed at Washington, DC on May 8, 1991.

Keith D. Bjerke,
Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-11409 Filed 5-13-91; 8:45 am]
BILLING CODE 3410-05-M

Forest Service

Interim Standards and Guidelines for Protection and Management of RCW Habitat Within ¾ Mile of Colony Sites; Apalachicola National Forest, FL, and Kisatchie National Forest, LA

AGENCY: Forest Service, USDA.

ACTION: Notice; availability of decision notice and finding of no significant impact.

SUMMARY: On May 3, 1991, the Southern Regional Forester made a decision to implement Alternative 4 and amend the National Forest Land and Resource Management Plans for the Apalachicola National Forest in Florida and the Kisatchie National Forest in Louisiana to include interim standards and guidelines for the protection and management of the red-cockaded woodpecker (RCW). Alternative 4 provides additional protection and management of RCW habitat with ¾ mile of RCW sites.

Alternative 4 was selected as the interim standards and guidelines from 4 alternatives analyzed in the Supplement to the May 9, 1990, Environmental Assessment (EA). The Supplement to the EA was distributed for public and other agency review and comment in January 1991. Comments received were considered by the Regional Forester in making the decision.

Based on a biological evaluation prepared for all alternatives, it was determined that alternative 4 is not likely to adversely affect any threatened or endangered species including RCW. The USDI Fish and Wildlife Service concurred with this determination. This decision is subject to 36 CFR 217. Appeals filed must meet the requirements of 36 CFR 217.9.

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and the Council on Environmental Quality implementing regulation 40 CFR 1508.27, the Forest Service gives notice, through the finding of no significant impact, that actions allowed under alternative 4 are not a major federal action and will not significantly affect, either individually or cumulatively, the quality of the human environment. Therefore, an environmental impact statement is not being prepared.

DATES: Implementation of the decision will begin on May 17, 1991. Appeals must be filed no later than June 24, 1991.

ADDRESSES: The decision notice, finding of no significant impact, supplement, and environmental assessment may be reviewed at the Southern Regional Office for the Forest Service at 1720 Peachtree Road NW, Atlanta, GA 30367. Copies of these documents are available upon request from this office.

FOR FURTHER INFORMATION CONTACT: Joseph M. Dabney, 1720 Peachtree Road NW., Atlanta, GA 30367. (404) 347-4338.

Dated: May 8, 1991.

Marvin C. Meier,
Deputy Regional Forester.

[FR Doc. 91-11379 Filed 5-13-91; 8:45 am]
BILLING CODE 3410-11-M

Soil Conservation Service

Colorado River Basin Salinity Control Program (CRBSCP), Moapa Valley Subevaluation Unit, Nevada

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Moapa Valley Subevaluation Unit, Clark County, Nevada.

FOR FURTHER INFORMATION CONTACT: William D. Goddard, State Conservationist, Soil Conservation Service, 1201 Terminal Way, room 219, Reno, Nevada 89502, telephone 702-784-5863.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, William D. Goddard, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns acceleration of ongoing conservation programs to reduce salinity in the Colorado River. The planned works of improvement include approximately 45 miles of pipeline to replace open ditch systems that serve approximately 4800 acres of irrigated land. Onfarm land treatment measures will include irrigation distribution systems, irrigation water management, irrigation pipelines, land leveling, and wildlife improvements.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meeting will be held at 7 p.m., Wednesday, May 29, 1991 at the Overton Community Center, Highway 169, Overton, Clark County, Nevada to determine the scope of the evaluation of the proposed action. Further information on the proposed

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action, or the scoping meeting may be obtained from William D. Goddard, State Conservationist, at the above address, or telephone (702) 784-5863.

(Catalog of Federal Domestic Assistance Program No. 10.902, Conservation Operations Program. Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 8, 1991.

William D. Goddard,

State Conservationist.

[FR Doc. 11378 Filed 5-13-91; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 519]

Resolution and Order Approving With Restriction the Application of the Port of Houston Authority for a Special-Purpose Subzone at the Hand Tool Plant of United General Supply in Houston, TX

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port of Houston Authority, grantee of FTZ 84, filed with the Foreign-Trade Zones Board (the Board) on January 26, 1990, requesting special-purpose subzone status at the hand tool distribution and hammer manufacturing facility of United General Supply, Inc., located in Houston, Texas, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations would be satisfied, and that the proposal would be in the public interest if approval were subject to a restriction that requires privileged foreign status to be elected on any foreign merchandise that is subject to antidumping or countervailing duty orders at the time of admission to the subzone, approves the application subject to the foregoing restriction.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish a Foreign Trade Subzone in Houston, TX

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u)(the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Port of Houston Authority, grantee of Foreign-Trade Zone 84, has made application (filed January 26, 1990, FTZ Docket 3-90, 55 FR 4646), in due and proper form to the Board for authority to establish a special-purpose subzone at the hammer manufacturing and hand tool distribution plant of United General Supply, Inc., in Houston, Texas;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the restriction accompanying this action;

Now, Therefore, in accordance with the application filed January 26, 1990, the Board hereby authorizes the establishment of a subzone at the United General Supply plant in Houston, Texas, designated on the records of the Board as Foreign-Trade Subzone No. 84D at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant or authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, to the restriction in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone facility in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 6th day of May, 1991, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Eric L. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. De Pontis, Jr.,

Executive Secretary.

[FR Doc. 91-11437 Filed 5-13-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-580-806]

Initiation of Antidumping Duty Investigation: Certain Portable Electric Typewriters From Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce ("the Department"), we are initiating an antidumping duty investigation to determine whether imports of certain portable electric typewriters ("PETs") from Singapore are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission ("ITC") of this action so that it may determine whether imports of PETs from Singapore are materially injuring, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before June 3, 1991. If that determination is affirmative, we will make our preliminary determination on or before September 23, 1991.

EFFECTIVE DATE: May 14, 1991.

FOR FURTHER INFORMATION CONTACT: Ross Cotjanle or Beth Graham, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-3534 or (202) 377-4105, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On April 18, 1991, we received a petition filed in proper form by Brother Industries (USA), Inc. of Bartlett, Tennessee ("Brother"), on behalf of the U.S. industry producing PETs. In compliance with the filing requirements of 19 CFR 353.12, petitioner alleged that imports of PETs are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended ("the Act"), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Brother has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(c) of the Act, and becasuse it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. Smith Corona Corporation ("Smith Corona") filed a submission on April 29, 1991, arguing that Brother is not an interested party entitled to file a petition because it is an assembler of imported parts suspected of circumventing the antidumping duty (AD) order on Portable Electric Typewriters from Japan. Smith Corona further argues that the Department should not initiate this investigation until it makes its final determination in its Anticircumvention Inquiry on the Antidumping Duty Order on PETs from Japan: Brother Industries, Ltd., and Brother Industries (USA), Inc.

With respect to the circumvention proceeding, the Department has made no determination whether Brother is circumventing the antidumping duty order on PETs from Japan. The inquiry is ongoing with a preliminary determination due August 23, 1991. Until the anticircumvention inquiry is completed, we cannot conclude that Brother is circumventing the AD order on PETs from Japan. Moreover, at this time, we are not persuaded that even if a party were found to be circumventing an AD order, it automatically would be precluded from being considered an interested party pursuant to 19 CFR 353.2(k)(3) with respect to another investigation. The Department will continue to consider this issue in the course of the instant proceeding. We do not believe that we have the authority to postpone initiation of this AD investigation because of the pending anticircumvention inquiry. Our only option is to decline to initiate. However, as discussed in this notice, the petition meets the requirements for initiation of an AD investigation.

Brother has stated that it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. In its April 19, 1991, submission, Smith Corona expressed its opposition to the petition. Consistent with our usual policy, we intend to poll opponents of the petition to determine whether opposition to the petition is so great as to warrant a conclusion that the petition was not filed on behalf of the domestic industry. If any other interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

United States Price/Foreign Market Value

Petitioner calculated United States price ("USP") using two methodologies. Petitioner's first methodology based U.S. price on a Smith Corona dealer price list dated July 1990. These dealer prices were adjusted for selling, general and administrative ("SG&A") expenses, movement charges, packing and, in certain cases, customs duties. Petitioner's second methodology based USP on prices advertised by retailers and charged to the ultimate consumer. The retail prices were reduced by a markdown percentage in order to account for dealer markup. These prices were adjusted for SG&A expenses, movement charges, packing and, in certain cases, customs duties. On May 1, 1991, petitioner amended its petition and submitted two methodologies for the computation of selling expenses. It submitted selling expenses segregated from production-related general and administrative expenses, and selling expenses based on a public disclosure worksheet from an administrative review on the order on Portable Electric Typewriters from Japan.

The Department is accepting the first USP methodology described above in its initiation of this investigation. However, we are rejecting the selling expenses methodologies submitted by petitioner. We are rejecting the first methodology because it is not possible to determine its accuracy. With respect to the second methodology, no explanation was provided indicating why the reported selling expenses from another proceeding and for another company are an appropriate approximation of selling expenses incurred by Smith Corona. Therefore, we made no deduction to USP for selling expenses. We also did not make a deduction for packing expenses in the calculation of USP, in order to be consistent with the Department's practice.

We are rejecting the second USP methodology because we believe petitioner's calculation of the markup of dealer price for the period April 1990 through June 1990 is distortive. Petitioner based this markup on a comparison of July 1990 dealer prices to retail prices advertised in previous months. Given the change in prices over this period, a contemporaneous comparison of dealer and retail prices would have provided a more accurate markup.

For foreign market value ("FMV"), petitioner provided three methodologies comparing USP to FMV; (1) FMV based on constructed value ("CV") for eight models; (2) FMV based on third country (United Kingdom) ("U.K.") dealer prices for four models; and (3) FMV based on home market retail prices for two models.

The Department is initiating this investigation on the basis of the first of the FMV methodologies described above. In its calculation of CV, petitioner used the material cost data gathered by an independent company which it hired, the statutory minimum of ten percent for general expenses, eight percent for profit, and Brother's packing expenses. Labor costs were based on Brother's financial data and adjusted for the labor rate in Singapore. Overhead was based on Brother's own information. CV was adjusted for selling, moving, and packing expenses. Because no deduction has been made to the USP for selling expenses, we made no deduction for selling expenses from CV. We are also disallowing the deduction of U.S. packing expenses from CV in order to be consistent with the Department's practice.

The Department is not accepting petitioner's second or third

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methodologies as a basis upon which to initiate this investigation. We are not initiating on these methodologies because petitioner did not provide sufficient information and documentation to support the FMV calculation.

Based on a comparison of USP and FMV, and adjusting for certain methodological inconsistencies in the petition, we calculated dumping margins ranging between 28.93 percent and 64.50 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the imposition of a duty under section 732 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on PETs from Singapore and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of PETs from Singapore are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 25, 1991.

Scope of Investigation

The merchandise covered by this investigation consists of certain portable electric typewriters (PETs) from Singapore which are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria: (1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability; (2) electric, regardless of source of power; (3) comprised of a single, integrated unit; (4) having a keyboard embedded in the chassis or frame of the machine; (5) having a built-in printer; (6) having a platen to accommodate paper; and (7) only accommodating its own dedicated or captive software, if any.

Based on petitioner's request, the Department has determined not to include all types of PETs which were determined to be within the scope of the antidumping order on PETs from Japan in the Department's final scope ruling signed on November 2, 1990 (see 55 FR 47358, November 13, 1990). PETs which meet all of the following criteria are excluded from the scope of this investigation: (1) Seven lines or more of display; (2) more than 32K of text memory; (3) the ability to perform "block move"; and (4) a "search and replace" function. A machine having some, but not all, of these four characteristics is included within the scope of the investigation.

The PETs subject to this investigation are provided for in subheadings 8469.21.00 and 8469.10.00 of the Harmonized Tariff Schedule ("HTS"). (Note that personal word processors also are provided for in subheading 8469.10.00.) The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-proprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determinations

The ITC will determine by June 3, 1991, whether there is a reasonable indication that imports of PETs from Singapore are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated. Otherwise, the Department will make its preliminary determination on or before September 25, 1991.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: May 8, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-11436 Filed 5-13-91; 8:45 am]

BILLING CODE 3510-DS-M

President's Export Council; Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of a closed meeting.

SUMMARY: The President's Export Council is holding a full Council meeting in Bason, Massachusetts. The meeting must be closed to the public to discuss classified material and for security reasons. The Council committees will discuss their work plans and issues relating to foreign market development, U.S. trade competitiveness, export promotion, export financing, export controls, and other matters properly classified under Executive Order 12356. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. export trade.

A notice of determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Centeral Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, 202-377-4217.

DATES: May 24, 1991, from 10 a.m. to 3 p.m.

ADDRESSES: World Trade Center, Boston, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Ms. Annette Richard, President's Export Council, room 3215, Washington, DC 20230.

Dated: May 7, 1991.

Wendy H. Smith,

Staff Director and Executive Secretary President's Export Council.

[FR Doc. 91-11370 Filed 5-13-91; 8:45 am]

BILLING CODE 3510-DR-M

University of Arizona, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 90-098R. *Applicant:* University of Arizona, Tucson, AZ 85719. *Instrument:* Mass Spectrometer System, Model MAT 252. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* See notice at 55 FR 30952, July 30, 1990.

Reasons: The foreign instrument provided an internal precision of 0.005°/00 for 70 bar μl samples of CO^2. *Advice Submitted By:* National Institutes of Health, February 21, 1991.

Docket Number: 90-172. *Applicant:* University of California, San Diego, CA 92093. *Instrument:* Rotating Anode X-ray Generator, Model FR-C. *Manufacturer:* Rigaku Corporation, Japan. *Intended Use:* See notice at 55 FR 41737, October 15, 1990. *Reasons:* The foreign instrument provides a power of 3.5kW over a focal spot of 0.1 to 1.0mm. *Advice Submitted By:* National Institutes of Health, February 21, 1991.

Docket Number: 90-174. *Applicant:* University of Florida, Gainesville, FL 32611-2046. *Instrument:* Mass Spectrometer, Model Magnetic Sector SIMS. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 55 FR 41737, October 15, 1990. *Reasons:* The foreign instrument provides: (1) Mass range to 2000 at 1.5kV, (2) mass resolution to 25 000 and (3) 256 × 256 pixel imaging capability. *Advice Submitted By:* National Institutes of Health, February 21, 1991.

Docket Number: 90-176. *Applicant:* University of Tennessee-Memphis, Memphis, TN 38163. *Instrument:* Automated Rapid Karyotyping for Chromosome Analysis, Model RK2. *Manufacturer:* Image Recognition Systems, Ltd., United Kingdom. *Intended Use:* See notice at 55 FR 41737, October 15, 1990. *Reasons:* The foreign instrument provides spatial resolution of 768 × 575 pixels and normalization of brightness and contrast for a 256-level grey scale. *Advice Submitted By:* National Institutes of Health, February 21, 1991.

Docket Number: 90-177. *Applicant:* University of Medicine and Dentistry of New Jersey, Camden, NJ 08103. *Instrument:* Mass Spectrometer, SIRA Series II. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 55 FR 41737, October 15, 1990. *Reasons:* The foreign instrument provides ability to measure stable isotope enrichments at a level of ±0.00005% or better with an abundance sensitivity (mass 44 to 45) of less than 4ppm. *Advice Submitted By:* National Institutes of Health, February 21, 1991.

Docket Number: 90-188. *Applicant:* The Ohio State University, Columbus, OH 43210. *Instrument:* Mass Spectrometer System, Model MAT 900. *Manufacturer:* Finnigan MAT Corp., West Germany. *Intended Use:* See notice at 55 FR 47788, November 15, 1990. *Reasons:* The foreign instrument provides: (1) mass range to 10 000, (2) resolution to 60 000, (3) 0.3 seconds/decade acquisition time and (4) continuous flow FAB. *Advice Submitted By:* National Institutes of Health, February 21, 1991.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-11439 Filed 5-13-91; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 910231-1031]

State Technology Extension Program

AGENCY: National Institute of Standards and Technology (NIST), Technology Administration, Department of Commerce.

ACTION: Notice of availability of funds for state government technology extension programs.

SUMMARY: The Director of the National Institute of Standards and Technology invites proposals for funding from state governments for projects that will create a plan for a new state-wide, coordinated technology extension program where none presently exists in order to enhance the competitiveness of small- and medium-sized firms through the application of science and technology.

CLOSING DATE FOR PROPOSALS: Proposals will be accepted until June 28, 1991. Proposals received with a postmark after the closing date will be disqualified and returned.

ADDRESSES: Applicants must submit one signed original plus six (6) copies of the proposal along with Standard Form 424 to: National Institute of Standards and Technology (NIST), Physics Building, room A-343, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: For questions or comments, telephone: Mr. Joseph Berke at (301) 975-5017.

SUPPLEMENTARY INFORMATION: 15 USC 2781 directs the Secretary of Commerce, through the Director of NIST, to "provide technical assistance to State technology programs throughout the United States, in order to help those programs help businesses, particularly small- and medium-sized businesses, to enhance their competitiveness through the application of science and technology". The Act also provides that such assistance from NIST "include, but not be limited to: (1) Technical information and advice from Institute personnel; (2) workshops and seminars for State officials interested in transferring Federal technology to businesses; and (3) entering into cooperative agreements when authorized to do so under this or any other Act". The objective of the NIST State Technology Extension Program is to develop a coordinated network of federal and state technology assistance programs and activities to assist U.S. small- and medium-sized businesses to enhance their productivity and competitiveness through the application of science and technology.

In August 1990, NIST entered into cooperative agreements with nine state governments for projects designed to: (1) Demonstrate methods for increasing the use of federal technology by businesses within the states; and (2) help businesses in the states take advantage of the services and information offered by the NIST Regional Centers for Transfer of Manufacturing Technology. These demonstration projects are scheduled to be completed by September 30, 1991. This year, NIST will provide grants to state governments to plan for the establishment of new efforts to promote state-wide, coordination of existing state and federal technology extension programs where none presently exist.

Invitation for Proposals: Proposals are invited from states for funding to create a plan for the establishment of a new effort aimed at state-wide coordination of federal and local technology extension programs where none presently exists in order to enhance the competitiveness of small- and medium-sized firms through the application of science and technology. Proposals must clearly identify the specific effort(s) to be undertaken.

Funding Available: Approximately $600,000 will be available to support grants under this program. The maximum amount to be awarded to any applicant is $100,000. Grants entered into under this program shall be available for one year.

Definitions: For purposes of this notice, the following definition applies: State-wide, coordinated technology extension programs link the capabilities of state technology development and business assistance programs to assure the availability of a wide range of

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business and technical specialists; support training as a critical component of technology deployment; emphasize client-directed problem solving, including assistance in identifying and adapting appropriate technology and know-how to individual clients' needs and markets; recognize businesses' needs for a variety of services; and emphasize the value of onsite personal field service in assisting firms.

Proposal Qualifications

Qualified Organizations: Eligible applicants under the program are any state government. There should be one proposal per state. The applicant must submit a letter with the proposal certifying that it has been designated by the state administration as lead organization in the submission of the proposal under this program.

Proposal Format: The Basic Proposal must not exceed 25 typewritten pages in length, including applicant's financial information. Financial information must be included in the body of the Basic Proposal. Appendices, or other relevant information, in support of the Basic Proposal, may be supplied separately. The total proposal, including accompanying material, should not exceed 50 pages.

Content of the Basic Proposal: The Basic Proposal must be submitted, with a Standard Form 424 (Rev 4-88), to the National Institute of Standards and Technology, Physics Building, room A-343, Gaithersburg, MD 20899. SF424 (Rev 4-88) forms may be obtained from the NIST Grants Office by calling Mrs. Sharon Green (301) 975-6328.

The Basic Proposal must include a description of the planned project sufficient to permit evaluation of the proposal in accordance with the proposal evaluation and selection criteria listed in this notice. Only those proposals that address the establishment of "a new effort to coordinate state-wide, local, and federal technology extension programs" will be considered. The Basic Proposal must as a minimum address the following:

A. A plan for identifying and developing the types of services to be provided by the new effort to coordinate existing state and federal technology extension programs.

B. A plan for identifying, obtaining the cooperation, and ensuring the coordination of existing state, federal, and private organizations within the state that could potentially be involved in the new effort to coordinate state-wide technology extension programs.

C. A plan for developing industrial and financial support for the new state-wide coordination effort once the technology extension program plan has been developed.

D. A budget for the project which identifies all sources of funds. NIST may provide financial support up to 50% of the total budget for the project, not to exceed $100,000 as the federal share. The applicant may count as part of its share of the budget: (1) Dollar contributions from state, county, industrial, or other sources; and, (2) in-kind contributions of personnel assigned to work on development of the extension program plan.

E. The qualifications of key personnel that will be developing the technology extension plan.

Proposal Evaluation and Selection Criteria: Proposals from applicants will be evaluated and rated on the basis of the following criteria by an impartial competitive review process. Consideration will be given to geographical diversity in making awards.

A. The applicant's strategy and methods to develop relevant information about the number, size, technical sophistication and type of existing extension programs that will represent the target of the new coordination effort. [20 points]

B. The applicant's strategy for involving existing technology training and education, technical assistance, technology demonstration, and economic development programs and services in the extension service planning process. Of particular importance is how such resources (e.g., training and education, technical and management assistance, basic and applied research, technology demonstration, business assistance) might be integrated into a new, effective, unified state-wide technology extension program. [30 points]

C. The strategy of the applicant to seek broad-based support (industrial, financial) for the creation of the coordination effort based upon the program plan developed under the proposal. [20 points]

D. The firmness and level of the applicant's total financial support for the project, and the ability of the applicant to meet the objectives of the proposal with the lowest level of federal resources possible. [20 points]

E. Qualifications and experience of principal investigator(s), the project team and the performing organization(s) in technology transfer, outreach, and training programs and planning grants. [10 points]

Proposal selection process: The proposal evaluation and selection process will consist of three principal phases: Proposal qualification; Proposal review and selection of finalists; and Award determination.

A. *Proposal Qualification*—All proposals will be reviewed by NIST to assure compliance with the proposal content and other basic provisions of this notice. Proposals which satisfy these requirements will be designated qualified proposals; all others will be disqualified at this phase of the evaluation and selection process.

B. *Proposal Review and Selection of Finalists*—The Director of NIST will appoint an evaluation panel to review and evaluate all qualified proposals in accordance with the evaluation and selection criteria set forth in this notice. From the qualified proposals a group of finalists will be selected based on this review. This review process should take approximately 30 days.

C. *Award Determination*—The Director of NIST or his designee shall select awardees based upon the rank order of applicants and the availability of funds. Upon the final award decision, a notification will be made to each of the proposing organizations.

Additional Requirements: Awards under this program shall be subject to all Federal and Departmental regulations, policies and procedures applicable to financial assistance awards. All applicants must submit a certificate ensuring that employees of the applicant are prohibited from engaging in the unlawful manufacturing, distribution, dispensing, possession or use of a controlled substance at the work site, as required by the regulations implementing the Drug-Free Workplace of 1988, 15 CFR part 26, subpart F. Applicants are subject to the Government wide Debarment and Suspension [Nonprocurement] requirements as stated in 15 CFR part 20. Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required to be submitted with the application.

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fines or imprisonment. Except where declared by law or approved by the head of agency, no award of federal funds shall be made to an applicant who is delinquent on a federal debt until the delinquent account is made current or satisfactory arrangements are made between affected agencies and the debtor. The grantee will administer the grant in accordance with title 15, part 24, of the code of Federal Regulations.

Classification: The State Technology Extension Program is being carried out under the authority of the Omnibus Trade and Competitiveness Act of 1988. The catalog number for this program in the Catalog of Federal Domestic Assistance is 11613. This document is consistent with Executive Order 12291. Executive Order 12372 is applicable to the extent permitted by law. This notice relating to public property, loans, grants, benefits, or contracts is exempt from all requirements of section 553 of the Administrative Procedure Act (5 U.S.C. 553(a)(2)) including notice and opportunity for comment. Therefore, a Regulatory Flexibility Analysis is not required and was not prepared for this notice for purposes of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). The program is not a major federal action requiring an environmental assessment under the National Environmental Policy Act. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. This notice contains collection of information requirements subject to the Paperwork Reduction Act which have been approved by Office of Management and Budget (OMB Control Number 0693-0010).

Dated: May 8, 1991.

John W. Lyons,

Director, National Institute of Standards and Technology.

[FR Doc. 91-11424 Filed 5-13-91; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Incidental Take of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of request for a Letter of Authorization.

SUMMARY: NMFS has received a request from BP Exploration Inc. for a letter of authorization that would allow a take of marine mammals (by harassment) incidental to exploration activities in the Beaufort Sea during the 1991/92 drilling season.

DATES: Comments should be received no later than June 13, 1991.

ADDRESSES: Dr. Nancy Foster, Director, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910. A copy of the requests may be obtained by writing to this address or by telephoning the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz, Office of Protected Resources, NMFS (301) 427-2322 or Ron Morris, Western Alaska Field Office (907) 271-5006.

SUPPLEMENTARY INFORMATION:

Background

Regulations governing the taking of marine mammals incidental to oil and exploration activities in Alaska were published July 18, 1990 (55 FR 29214). The regulations are based on section 101(a)(5) of the Marine Mammal Protection Act and NMFS' determination that the taking of six species of marine mammals (bowhead, gray and beluga whales and bearded, ringed and spotted seals) incidental to exploratory activity in the Beaufort and Chukchi Seas will have a negligible impact on the species or stocks and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. The regulations include permissible methods of taking, and require exploration companies to monitor the effects of their activities on marine mammals and to cooperate with the Alaska native communities to ensure that marine mammals are available for subsistence.

A Letter of Authorization must be requested annually by each group or individual conducting an exploratory activity where there is the likelihood of taking any of the six species of marine mammals identified in the regulations. NMFS grants the Letters based on a determination that the total level of taking by all applicants in any one year is consistent with the estimated level of activity used to make a finding of negligible impact and a finding of no unmitigable adverse impacts.

The regulations require the applicant to submit a request for a Letter of Authorization at least 90 days before the activity is scheduled to begin. NMFS must publish notices of each request in the Federal Register with an opportunity for public comment.

Requests for Letters of Authorization must include a plan of cooperation that identifies what measures have been and will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. It must include a description of the activity including the methods to be used, the dates and duration of the activity, and the specific location. Also, it must include a site-specific plan to monitor the effects on marine mammals that are present during exploratory activities.

Summary of Request From BP Exploration, Inc.

On May 3, 1991, NMFS received a request from BP Exploration, Inc. (BPX) for a Letter of Authorization that would allow non-lethal takes of bowhead, gray and beluga whales and bearded, ringed and spotted seals incidental to a marine coring program in the eastern Beaufort Sea during the open-water period of 1991. BPX plans to conduct the operation in the vicinity of Camden Bay during a 7-day period between August 1 and September 8, depending on weather and ice conditions. The request includes a description of the specific operations BPX plans to conduct, the measures it will take to minimize any potential conflicts between those activities and subsistence hunting, and a plan to monitor any effects of the activities on marine mammals.

Dated: May 6, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-11323 Filed 5-13-91; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Withdrawal of Notices of Intent to Grant Exclusive Licenses and Notice of Availability for Licensing

Notices of Intent to Grant Exclusive Licenses previously published for the following Government-owned inventions are hereby withdrawn. Each entry identifies in order, the serial number (SN), title, the name of the intended grantee, the date of the Federal Register notice and the Federal Register citation.

Department of Agriculture

SN 5,860,249 (4,139,465)
Selective Recovery of Nickel Cobalt, Managanese from Sea Nodules with Sulfurous Acid, Extraction Technology Corporation, 4/13/88, 53; 12176 (1988)

SN 6-072,205 (4,859,377)
Starch Encapsulation of BioControl Agents, Ecogen, Inc., 8/14/88, 53; 22200 (1988)

SN 6-683,428 (4,598,153)
Metaphit, Research Biochemicals, Inc., 11/10/88, 53; 45532 (1988)

SN 6-745,309 (4,700,150)
External Laser Frequency Stablizer, Stanford University, 5/10/88, 53; 18574 (1988)

SN 6-817,374
Novel Phenazine Antibiotic From Pseudomonas Fluorescens, Ecogen,

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Inc., 5/27/88, 53; 19821 (1988)
SN 7-005,885
Method to Predict Antigenic Sites Recognized by T-Lymphocytes Such as for Design of Vaccines, Molecular Vaccines, Inc., 5/11/88, 53; 16758 (1988)
SN 7-071,949 (4,895,716)
Serotype 2 Marek's Disease Vaccine, TriBio Laboratories et al, 6/14/88, 53; 22201 (1988)

Department of Health and Human Services

SN 6-634,380
Cloning cDNAs For the Human Interleukin-2 Receptor, Xoma Corporation, 11/10/86, 53; 45532 (1988)
SN 6-865,055 (4,894,007)
Use of Trimetrexate As Antiparasitic Agent, Warner-Lambert, Co., 5/11/88, 53; 16758 (1988)
SN 6-901,602
Human B Lymphotropic Virus (HBLV), Pan-Data Systems, Inc., 8/10/86, 53; 30065 (1988)
SN 7-037,178
New Antiretroviral Agents, Liposome Co., Inc., 3/31/88, 53; 10415 (1988)
SN 7-062,422 (4,882,346)
Chemical Differentiating Agents, Roberts Pharmaceutical Corporation, 11/9/88, 53; 45374 (1988)
SN 7-094,618
CSF-1 Facilitated Detection, Isolation and Propagation of Monocyte-Tropic Human Immunodeficiency Virus in Human Monocytes, Cetus Corporation, 6/15/88, 53; 22372 (1988)
SN 7-105,172
Immunotoxins, Xoma Corporation, 5/11/88, 53; 16758 (1988)
SN 7-110,346
New Recombinant Plasmid Containing HIV Reverse Transcriptase Gene, United States Biochemical Corporation, 10/11/88, 53; 39635 (1988)
SN 7-122,379
New-Inflammatory Agents, Magainin Sciences Corporation, 5/11/88, 53; 16757 (1988)
SN 7-137,798
Cloned DNA for Synthesizing Unique Glucocerebrosidase, Genzyme Corporation, 5/23/88, 53; 16831 (1988)
SN 7-142,978
Polyacrylamide Gels for Improved Detection of Proteins, Bio-Rad Laboratories, 7/11/88, 53; 26103 (1988)
SN 7-148,692
A Synthetic Antigen Evoking Anti-HIV Response, Liposome Company, Inc., 7/8/88, 53; 25649 (1988)
SN 7-159,847
Polyacrylamide Gels for Improved Detection of Proteins, Bio-Rad Laboratories, 7/11/88, 53; 26103 (1988)
SN 7-160,856
Resin-Modified Glass Ionomer Dental Cements, L.D. Caulk Division of Dentsply, 12/8/88, 53; 49583 (1988)
SN 7-165,173 (4,942,184)
Water Soluble, Antineoplastic Derivatives of Taxol, Eli Lilly & Co., 11/28/88, 53; 47848 (1988)
SN 7-169,033
Novel Neutrophil Chemotactic Factor, Cloned cDNA and Monoclonal Antibodies Thereto, Genelabs, Inc., 9/13/88, 53; 35346 (1988)
SN 7-209,108
Activated Killer Monocytes: Tumoricidal Activity and Method of Monitoring Same, Cetus Corporation, 12/7/88, 53; 49342 (1988)

Department of Interior

SN 6-838,490 (4,879,435)
Gas Content Determination Of Evaporite Formations Using Acoustic Emissions During Dissolution, Safewater, Inc., 5/2/88, 53; 15589 (1988)

The inventions listed above are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487-4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology.

[FR Doc. 91-11338 Filed 5-13-91; 8:45 am]

BILLING CODE 3510-04-M

Government-Owned Inventions; Withdrawal of Notices of Intent to Grant Exclusive Licenses and Notice of Availability for Licensing

Notices of Intent to Grant Exclusive Licenses previously published for the following Government-owned inventions are hereby withdrawn. Each entry identifies in order, the serial number (SN) title, the name of the intended grantee, the date of the Federal Register notice and the Federal Register citation.

Department of Agriculture

SN6-811,702 (4,479,286)
Apparatus To Extract Fine Trash and Dust During High-Velocity Discharging of Cotton from Opener Cleaner, Diversified Textile Machinery Comporation, 4/12/87, 52; 10605 (1987)
SN 6-415,778 (4,456,684)
Method for Screening Bacteria and Application Thereof for Field Control of Diseases Caused by Gaeumannomyces Graminis, Monsanto Corporation, 10/16/87, 52; 38505 (1987)
SN 6-419,637 (4,530,834)
Preparation of an Entomopathogenic Fungal Insect Control Agent, Ciba-Geigy, 6/12/87, 52; 22514 (1987)

Department of Health and Human Services

SN 5-719,669 (4,115,418)
1.2-diaminocyclohexane Platinum II Complexes Having Antineoplastic Activity Against L1210 Leukemia, Roberts Laboratories, 3/30/87, 52; 10128 (1987)
SN 5-807,129
Beta-endorphin, Pharmedic Corporation, 10/9/87, 52; 37817 (1987)
SN 5-807,194 (4,139,504)
Nonapeptides, Pharmedic Corporation, 10/9/87, 52; 37817 (1987)
SN 5-807,205 (4,127,531)
Hexapeptides, Pharmedic Corporation, 10/9/87), 52; 37817 (1987)
SN 5-807,206 (4,127,532)
Heptapeptides, Pharmedic Corporation, 10/9/87, 52; 37817 (1987)
SN 5-807,207 (4,127,533)
Octapeptides, Pharmedic Corporation, 10/9/87, 52; 37817 (1987)

SN 5-807-208 (4,127,534)
Tripeptides, Pharmedic Corporation, 10/9/87, 52; 37817 (1987)
SN 5-807,209
Tetrapeptides, Pharmedic Corporation, 10/9/87, 52; 37817 (1987)
SN 5-807,210 (4,127,535)
Dipeptides, Pharmedic Corporation, 10/9/87, 52; 37817 (1987)
SN 5-807,230 (4,127,541)
Decapeptides, Pharmedic Corporation, 10/9/87, 52; 37817 (1987)
SN 5-865,910 (4,175,133)
1,2-Diaminocyclohexane Platinum II Complexes Having Antineoplastic Activity Against L1210 Leukemia, Roberts Laboratories, 3/30/87, 52; 0128 (1987)
SN 6-282,806 (4,403,995)
Jet Controlled Catheter, Leonid Shturman, 2/13/87, 52; 4639 (1987)
SN 6-604,136 (4,670,461)
Substituted N-Methyl Derivatives of Mitindomide, Roberts Laboratories, 5/11/87, 52; 17623 (1987)
SN 6-696,538/6-707,012
Monoclonal Antibodies Against Chlamydial Genus Specific Lipopolysaccharide, Fairleigh Dickinson Labs, 10/27/87, 52; 41316 (1987)
SN 6-763,218
Method of Producing Improved immune Response, Molecular Vaccines, Inc, 11/25/87, 52; 45219 (1987)
SN 6-829,052
Robot End Effector, KBO Robotics, 7/27/87, 52; 29035 (1987)
SN 6-836,414
A Human Gene Related to But Distinct from EGF Receptor Gene, Triton Biosciences, 6/9/87, 52; 21717 (1987)
SN 6-843,727 (4,683,761)
Pertussis Toxin Gene: Cloning and Expression of Protective Antigen, American Cyanamid; Amgen; MicroGeneSys and SmithKline Beckman et al, 9/9/87, 52; 33963 (1987)
SN 6-888,960 (4,806,494)
Monoclonal Antibody Against Ovarian Cancer Cells (OVB-3), Xoma Corporation, 5/5/87, 52; 16429 (1987)
SN 6-903,879 (4,756,346)
Process and Apparatus for the Preparation of Multiple Gradients, Milton P. Radoecvich; Multiple Gradients, 9/8/87, 52; 33656 (1987)
SN 6-911,227 (4,892,827)
Recombinant Pseudomonas Exotoxin: Construction of an Active Immunotoxin With Low Side Effects, Xoma Corporation, 4/2/87, 52; 10605 (1987)
SN 6-911,863 (4,861,710)
Recombinant DNA Clone Encoding Laminin Receptor, Cancer Prognostics, Inc., 6/25/87, 52; 33042 (1987)
SN 7-019,000 (4,866,782)
Improved Malarial Immunogen, Molecular Vaccines, Inc., 11/13/87, 52; 45219 (1987)
SN 7-026,540 (4,796,622)
Oxyhydrogen Catalytic Thermal Tip for Angioplasty, Baxter Healthcare, Inc., 11/13/87, 52; 43636 (1987)
SN 7-066,969
Novel Interleukin 2 Receptor and Applications Thereof, Xoma Corporation, 11/25/87, 52; 45219 (1987)
SN 7-071,356
Preparation of Human Monoclonal Antibodies of Selected Specificity and Isotypes, Xoma Corporation, 11/19/87. 52; 44464 (1987)

The exclusive license granted on the following invention has been terminated. The invention is again available for licensing:

SN 6-789,612 (4,629,470)
Process for Dyeing Smooth-Dry Cellulosic Fabric, 10/29/87, 52; 41613 (1987)

The inventions listed above are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology-Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487-4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion

Patent Licensing Specialist Center for the Utilization of Federal Technology.

[FR Doc. 91-11339 Filed 5-13-91; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

May 8, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: June 1, 1991.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated February 14, 1989 between the Governments of the United States and Costa Rica establishes, among other things, specific limits and guaranteed access levels (GALs) for cotton and man-made fiber textile products in Categories 340/640, 342/642 and 347/348, produced or manufactured in Costa Rica and exported during the twelve-month period which begins on June 1, 1991 and extends through May 31, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 55 FR 50756, published on December 10, 1990).

Requirements for participation in the Special Access Program are available in Federal Register notices 54 FR 21206, published on June 11, 1989; 52 FR 29057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the

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implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 8, 1991.

Commissioner of Customs,

Department of the Treasury,

Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Memorandum of Understanding (MOU) dated February 14, 1989, between the Governments of the United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on June 1, 1991 and extending through May 31, 1992, in excess of the following restraint limits:

Category	Twelve-month restraint limit
340/640	648,070 dozen.
342/642	239,500 dozen.
347/348	966,060 dozen.

Imports charged to these category limits for the period beginning on June 1, 1990 and extending through May 31, 1991 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustments in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Costa Rica.

Additionally, pursuant to the MOU dated February 14, 1989; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on June 1, 1991, guaranteed access levels have been established for properly certified textile products assembled in Costa Rica from fabric formed and cut in the United States in cotton and man-made fiber textile products in the following categories which are exported from Costa Rica during the period June 1, 1991 through May 31, 1992:

Category	Guaranteed access levels
340/640	660,000 dozen.
342/642	250,000 dozen.
347/348	1,000,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of May 15, 1990, shall be denied entry unless the Government of Costa Rica authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 91-11435; Filed 5-13-91; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

May 8, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 15, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 336/636 and 338/339 are being increased to account for unused special carryfoward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 25660, published on June 25, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 8, 1991.

Commissioner of Customs,

Department of the Treasury,

Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 19, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1990 and extends through June 30, 1991.

Effective on May 15, 1991, you are directed to amend further the June 19, 1990 directive to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia:

Category	Adjusted twelve-month limit [1]
Level not in a group	
338/339	634,495 dozen.
Sublevel in Group II	
336/636	321,862 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 91-11436; Filed 5-13-91; 8:45am]

BILLING CODE 3510-DR-F

COMMISSION ON MINORITY BUSINESS DEVELOPMENT

[91-N-3]

Hearing

AGENCY: Commission on Minority Business Development.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a public hearing of the United States Commission on Minority Business Development will be held on Friday, May 30, 1991 in Detroit, Michigan. The hearing is open to the public.

The May 30th hearing will convene at 9 a.m. in room 860, 231 West Lafayette at the U.S. Federal Courthouse. The public hearing is for the purpose of receiving testimony from public and private sector decision-makers and entrepreneurs, professional experts, corporate leaders and representatives of key interest groups and organizations concerned about minority business development and participation in Federal programs and contracting opportunities.

A meeting of the Commissioners will be held on Thursday, May 29, 1991 at 12 noon in the Wayne County Commission Building, room 402 at 600 Randolph. This meeting is open to the public.

The Commission was established by Public Law 100-656, for purposes of reviewing and assessing Federal programs intended to promote minority business and making recommendations to the President and the Congress for such changes in laws or regulations as may be necessary to further the growth and development of minority businesses.

FOR FURTHER INFORMATION AND TESTIMONY INFORMATION: Contact Connie K. McCracken or Leo Salazar at 202-523-0030 at the Commission on Minority Business Development, 750 17th Street NW., suite 300, Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Transcripts of hearings will be available for public inspection during regular working hours at The Commission Office approximately 30 days following the hearing.

André M. Carrington,

Executive Director.

[FR Doc. 91-11327 Filed 5-13-91; 8:45 am]

BILLING CODE 6820-FD-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Architect-Engineer and Related Services Questionnaire, SF 254.

ADDRESSES: Send comments to Ms. Maya Bernstein, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill, Office of Federal Acquisition Policy, (202) 501-3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

This form is used by all Executive agencies to obtain uniform information about a firm's experience in architect-engineering (A-E) projects. The form is submitted annually as required by 40 U.S.C. 541-544 by firms wishing to be considered for Government A-E contracts. The information obtained on this form is used to determine if a firm should be solicited for A-E projects.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents,* 5,000; *responses per respondent,* 7; *total annual responses,* 35,000; *preparation hours per response,* 1; and *total response burden hours,* 35,000.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0004, Architect-Engineer and Related Services Questionnaire, SF 254.

Dated: May 8, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91-11331 Filed 5-13-91; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approved an information collection requirement concerning FAR subpart 27.2, Patients.

ADDRESSES: Send comments to Ms. Mary Bernstein, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill, Office of Federal Acquisition and Regulatory Policy, (202) 501-3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Patent Coverage in FAR subpart 27.2 requires the contractor to report each notice of a claim of patent or copyright infringement that came to the contractor's attention in connection with performing a Government contract above a dollar value of $25,000 (27.202-1, 52.227-2). The contractor is also required to report all royalties anticipated or paid in excess of $250 for the use of patented inventions by furnishing the name and address of licensor, date of license agreement, patent number, brief description of item or component, percentage or dollar rate of royalty per unit, unit price of contract item, and number of units (27.204-1, 52.227-6, 52.227-9). The information collected is to protect the rights of the patent holder and the interest of the Government.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents,* 50;

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responses per respondent, 1; *total annual responses*, 30; *preparation hours per response*, 5 hr; and *total response burden hours*, 15.

Obtaining Copies of Proposals:

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0098, Patents.

Dated: May 8, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91-11330 Filed 5-13-91; 8:45 am]

BILLING CODE 6820-61-M

Department of the Army

Availability, Draft Environmental Impact Statement

ACTION: Notice of availability of the Draft Environmental Impact Statement for the closure of Army Materials Technology Laboratory (AMTL).

AGENCY: U.S. Army Department of Defense.

SUMMARY: On December 29, 1988, the Secretary of Defense's Commission on Base Realignments and Closures recommended that Army Materials Technology Laboratory be closed, and relocation of the ceramics and related research functions to the U.S. Army Tank Automotive Research, Development, and Engineering Center at Detroit Arsenal, Michigan; the metal and metal-related functions to the U.S. Army Armament Research, Development, and Engineering Center at Picatinny Arsenal, New Jersey; and the corrosion prevention and control related research to the Belvoir Research, Development, and Engineering Center at Fort Belvoir, Virginia.

This Draft Environmental Impact Statement (EIS) considers the impact of the Commission's recommendations on Army Materials Technology Laboratory, Detroit Arsenal, Picatinny Arsenal, and Fort Belvoir, and the associated impact of minor relocations to Natick Laboratory, Massachusetts; Adelphi, Maryland; and Fort Devens, Massachusetts. The Army will prepare separate National Environmental Policy Act (NEPA) analyses to address the effects of construction at receiving installations and for AMTL remediation, property excessing and specific reuse alternatives.

No significant long-term adverse environmental or human health effects are expected at Army Materials Technology Laboratory, Detroit Arsenal, Picatinny Arsenal, and Fort Belvoir.

The Department of the Army is working with the local community to develop a plan to lessen the impacts of closure.

Execution of all or some of the decisions analyzed in the Draft EIS are subject to change based on the Defense Base Closure and Realignment Act of 1990. Specifically, the Secretary of Defense recommended to the newly formed Base Closure and Realignment Commission the formation of the Combat Materiel Research Laboratory (CMRL). Those Army Materials Technology Laboratory activities, less the Structures Element, scheduled to move to Picatinny Arsenal, New Jersey; Fort Belvoir, Virginia; and Detroit Arsenal, Michigan, would be realigned to Aberdeen Proving Ground, Maryland. The Structures Element would move to NASA-Langley Research Center at Hampton, Virginia. This recommendation, if approved, would be subject to additional environmental documentation and analysis.

The public is encouraged to comment on the Draft EIS. Public notices requesting input will be issued. A copy of the Draft EIS may be obtained by contacting Ms. Susan Brown, (617) 647-8536 or writing to Commander, U.S. Army Corps of Engineers, New England Division, 424 Trapelo Road, Waltham, MA 02254-9149.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 91-11325 Filed 5-13-91; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

CNO Executive Panel Long Range Planning Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Long Range Planning Task Force will meet May 31—1 June 1991 from 9 a.m. to 5 p.m. at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda of the meeting will consist of discussions of key issues regarding national security policy, and related intelligence. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

FOR FURTHER INFORMATION CONCERNING THIS MEETING, CONTACT: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: May 8, 1991.

Wayne T. Baucino,

Alternate Federal Register Liaison Officer.

[FR Doc. 91-11401 Filed 5-13-91; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ91-6-34-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

May 7, 1991.

Take notice that Equitrans, Inc. (Equitrans) on April 30, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective June 1, 1991.

Twenty-Seventh Revised Sheet No. 10
Eighteenth Revised Sheet No. 34

Equitrans hereby submits its regularly scheduled Quarterly Purchased Gas ge dm2:a14my3.074Adjustment filing in accordance with §§ 154.308 and 154.304 of the Commission's regulations and section 19 of Equitrans' FERC Gas Tariff, Original Volume No. 1.

The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is an increase in the demand cost of $0.0267 per dekatherm (Dth) and a decrease in the commodity cost of $0.9161 per Dth. The purchased gas cost adjustment to Rate Schedule ISS is a decrease of $0.9152 per Dth.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11349 Filed 5-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1281-012]

Natural Gas Pipeline Company of America; Interim Gas Inventory Charge Reconciliation Report

May 7, 1991.

Take notice that on April 30, 1991, Natural Gas Pipeline Company of America (Natural), filed pursuant to § 31.6 of its FERC Gas Tariff, the required Reconciliation Report for its Interim Gas Inventory Charge (IGIC).

The IGIC was authorized by an order issued by the Commission on January 24, 1990, approving a settlement in Docket No. CP89-1281. The IGIC became effective upon Natural's notice of acceptance filed January 26, 1990, and continued in effect through November 30, 1990, in accordance with section 31 of Natural's FERC Gas Tariff.

Natural alleges that Schedule I, attached to the report shows that Natural's recorded IGIC revenues accumulated via the 40¢ deficiency based charge exceeded by $5.5. million the Gas Supply Costs (IGIC expenses), per Natural's books as of November 30, 1990. Natural further maintains that as a result of further actualization of IGIC revenues and expenses during the December 1990, through April 30, 1991, period, this revenue excess decreased to $4.0 million.

Natural states that as presented on Schedule II, Natural's deferred purchased gas cost balance computed pursuant to the then effective section 18 (PGA) of its FERC Gas Tariff increased by approximately $10.0 million during the term of the IGIC. Natural claims that total purchased gas costs recorded during this period exceeded total gas costs recoveries recorded, exclusive of surcharge recoveries, by $46.9 million; $30.0 million of which pertained to an out of period adjustment for Natural's payment of a minimum bill obligation for 1986 and 1987 to Colorado Interstate Gas Company. Costs and revenues associated with the IGIC, as shown on Schedule I, have only been reflected in the adjusted ending deferred purchased gas cost account balance as shown on line 13 of Schedule II.

According to Natural, Schedules III and IV present Natural's performance assessment results computed in accordance with the Commission's Regulations at 18 CFR 154.308. Natural's traditional assessment periods:

November 1, 1989 through February 28, 1990
March 1, 1990 through May 31, 1990
June 1, 1990 through August 31, 1990 and
September 1, 1990 through October 31, 1990

are shown, along with the assessment computation for the month of November 1990, on Schedule III. Schedule IV presents as assessment computation for the IGIC period as follows:

January 28, 1990 through February 28, 1990
March 1, 1990 through May 31, 1990
June 1, 1990 through August 31, 1990
September 1, 1990 through October 31, 1990
November 1, 1990 through November 30, 1990

Natural asserts that since it has met the required performance assessment for the IGIC period, it will offset undercollections under the PGA with the overcollections under the IGIC for the IGIC period as permitted by § 31.6 of the Tariff.

Natural states that a copy of this filing has been mailed to its jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11351 Filed 5-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-684-004]

Questar Pipeline Co.; Tariff Filing

May 7, 1991.

Take notice that, on April 30, 1991, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, tendered for filing and acceptance First Revised Sheet Nos. 277 and 289, Second Revised Sheet Nos. 475 through 493, and Original Sheet Nos. 277A and 289A to Original Volume No. 3 of its FERC Gas Tariff.

Questar states that this filing revises receipt points shown in Rate Schedules X-24 and X-33, and reported the volumes of gas exchanged between Questar and Northwest Pipeline Corporation under Rate Schedule X-24. Questar further states that this filing was served upon its affected jurisdictional customers and the Wyoming and Utah public service commissions. Finally, Questar requests that the proposed tariff sheets become effective May 31, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed or before May 14, 1991. Protests will be considered by the Commissioin in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11350 Filed 5-13-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

FRL-3958-2]

Proposed Determination to Withdraw or Restrict the Specification of an Area for Use as a Disposal Site; Kuparuk River Unit, North Slope Borough, AK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed section 404(c) determination and notice of opportunity for public hearing.

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Section 404(c) of the Clean Water Act (CWA) (33 U.S.C. 1251 *et seq.*) authorizes the administrator of the EPA to prohibit, deny, withdraw or restrict the specification or use of any defined area as a disposal site whenever he determines, after notice and opportunity for public hearing, that the discharge of dredged or fill materials into such an area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreation areas. EPA's procedures for implementing section 404(c) are set forth in 40 CFR part 231. This notice of proposed 404(c) determination and opportunity for public hearing is being published by the Regional Administrator of the EPA's Region X office in Seattle, Washington. This notice includes the Regional Administrator's proposed determination covering the discharge of dredged or fill material into waters of the United States, specifically tundra wetlands, by ARCO Alaska, Inc. (ARCO), on lands owned by the State of Alaska, in the Kuparuk River Unit, North Slope Borough, Alaska. On March 12, 1981, the U.S. Army Corps of Engineers (Corps), Alaska District, issued a section 404 permit (no. 4–870872, Kuparuk River 95) to ARCO, authorizing the discharge. The Regional Administrator is considering whether to recommend that this specification of a disposal site be withdrawn or restricted.

The Corps permit authorizes ARCO to construct and operate Drill Site 3–L and an associated access road to the site in the Kuparuk River Unit, near its boundary with the Milne Point Unit, in Sections 35 and 36, Township 13 North, Range 9 East and Section 6, Township 12 North, Range 9 East, Umiat Meridian. The permit authorizes ARCO to discharge approximately 111,800 cubic yards of mined gravel into 21.5 acres of tundra wetlands to construct a roughly 575- by 1,270-foot drill site and a 30-foot wide by 8,400-foot long access road. The access road would extend in an east-west direction from Drill Site 3–K, located 1.7 miles west of the site. ARCO would mine the gravel from Mine Site E, approximately two miles north of the site. The pad's flowlines would roughly parallel the access road to connect with flowlines at Drill Site 3–K. ARCO plans to drill 24 wells from the site to tap this portion of the Kuparuk Oilfield. The Corps permit includes a special condition which prohibited ARCO from performing any of the authorized work if EPA gave notice during a ten-working-day period following issuance of the permit that it intended to initiate section 404(c) proceedings. EPA gave such notice to the Corps, ARCO and the State of Alaska on March 25, 1981. EPA has reason to believe that the authorized discharge of fill material into tundra wetlands at the specified site will result in unacceptable adverse effects on wildlife.

Purpose of Public Notice: This serves as a notice of proposed section 404(c) determination and initiation of public comment period covering the specified discharge, as described above. EPA would like to receive data or observations concerning (1) whether or not the discharge, as authorized by the Corps, would cause an unacceptable adverse effect on wildlife, as described in section 404(c) of the CWA; (2) the vegetative and hydrologic characteristics of the project area and observations of, or information concerning, wildlife utilization of the project area; (3) the availability of less environmentally damaging practicable alternatives to the proposed discharge, taking into account cost, logistics and the overall (basic) project purpose; (4) the adequacy of the authorized mitigation in offsetting project-related impacts to wildlife and their habitats; (5) endangered or threatened species affected by the project; (6) cumulative impacts of the project; (7) what corrective action, if any, could be taken to reduce the adverse impacts of the discharge; and (8) whether the Regional Administrator should recommend to the Assistant Administrator for Water that she withdraw or restrict the authorization for the discharge of fill material on the site.

Comments or requests for copies of the proposed determination should be submitted to the EPA Region X designated Record Clerk: Heather Dean, U.S. Environmental Protection Agency, Alaska Operations Office, room 537, Federal Building, 222 West 7th Avenue, #19, Anchorage, Alaska 99513.

Comments should directly address the issues enumerated above and should be submitted within 30 days from the date of this notice. EPA will fully consider all comments in reaching a decision to either withdraw the proposed determination or prepare a recommended determination to either withdraw or restrict the specification or use of all or portions of the site for the discharge of fill material. The Regional Administrator will either withdraw the proposed determination or forward a final regional recommendation and the administrative record to the EPA Assistant Administrator for Water in Washington, DC, for review and final determination. The procedures to be used in making the final determination are specified at 40 CFR 231.6.

Copies of all comments submitted in response to this notice will be available for public inspection during normal working hours (7:30 a.m. to 4:30 p.m.) at the above address.

Public Hearing: In accordance with 40 CFR 231.6, if the Regional Administrator finds a significant degree of public interest in this proposed determination or finds that it would otherwise be in the public interest to do so, EPA will conduct a public hearing to obtain comments on its proposal to withdraw or restrict the authorization for the discharge of fill material at this site. If the Regional Administrator decides to hold a public hearing, a separate public notice will be published in the Federal Register and local newspapers to announce the date and location of the hearing, as well as hearing procedures.

Supplementary Information and Background

A. *Description of the Section 404(c) Process:* The CWA prohibits the discharge of pollutants, including dredged and fill material, into the waters of the United States (including wetlands), except in compliance with, among other things, section 404 (33 U.S.C. 1344). Section 404 authorizes the Secretary of the Army, acting through the Chief of Engineers, to authorize the discharge of dredged or fill material at specified sites through the application of environmental guidelines developed by EPA in conjunction with the Secretary or where warranted by the economics of anchorage and navigation, except as provided in section 404(c). Section 404(c) authorizes the Administrator of EPA, after notice and opportunity for hearing, to prohibit or restrict the use of a defined site for disposal of dredged or fill material where he determines that such use would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

Regulations published in 40 CFR part 231 establish the procedures to be followed by EPA in exercising its section 404(c) authority. Whenever the Regional Administrator has reason to believe that use of a site may have an unacceptable adverse effect on the pertinent resources, she may begin the process by notifying the Corps of Engineers and the applicant that she intends to issue a proposed determination under section 404(c). Unless the applicant or the Corps persuades the Regional Administrator within 15 days that no unacceptable adverse effects will occur, the Regional Administrator publishes a notice in the Federal Register of her proposed determination, soliciting public comment and offering an opportunity for a public hearing. Today's notice represents this step in the process.

Following the public hearing, if one is held, and the close of the comment period, the Regional Administrator decides whether to withdraw her proposed determination or prepare a recommended determination. A decision to withdraw may be reviewed at the discretion of the Assistant Administrator for Water at EPA Headquarters. If the Regional Administrator prepares a recommended determination, she forwards it and the complete administrative record compiled in the region to the Assistant Administrator for Water for a final decision affirming, modifying or rescinding the recommended determination. The Corps of Engineers and the project proponent are provided with another opportunity for consultation before this final decision is made.

B. *Nature of Discharge:* The Corps permit authorizes ARCO to discharge gravel fill material into tundra wetlands for the construction of a 575- by 1,270-foot drill pad and a 30- by 8,400-foot east-west access road. The gravel would be obtained from Mine Site E, located approximately 2 miles north of the project site. EPA is particularly concerned with both the direct loss of 21.5 acres of high-value tundra wetlands and the potential secondary and cumulative impacts to surrounding high-value wetlands.

C. *Characteristics of the Site:* The Alaskan Arctic Coastal Plain, or North Slope extends from the Brooks Range in the south to the Arctic Ocean in the north. The terrain is low and flat, vegetated by wet and moist tundra communities, arranged in a complex pattern influenced by small variations in elevation, associated with frost action, coastal influences and local surface drainage patterns. Snow cover lasts eight to nine months a year. Roughly ninety-nine percent of the North Slope is currently classified as wetlands. Current oilfield development is generally localized to that portion of the North Slope located between Oliktok Point on the west and the Sagavanirktok River on the east. This project site is located in the Kuparuk River Unit, the westernmost oilfield development area, located generally south and east of Oliktok Point.

The project site lies in the heart of a major drained lake basin wetland complex with extensive deep pendent grass (*Arctophila fulva*) pond habitat. This complex occupies one of the few sizeable roadless areas remaining within the Kuparuk Oilfield development. This wetland type is known to have high value for nesting, brood-rearing and staging waterfowl and shorebirds and is relatively scarce in the eco-region. It contains a high interspersion of shallow lakes and ponds, flooded tundra, wet sedge meadows, and moist sedge/shrub tundra. The terrain is characterized by a series of low north-south ridges vegetated with moist sedge of tussock tundra, alternating with long, shallow lakes or drainages with a predominantly north-south drainage pattern. The Ugnuravik River and one of its tributaries border the area on the east and south. A large lake with extensive *Arctophila* stands is located to the northwest of the pad site. Numerous drainages flow northward from other drained lake basin complexes into this major *Arctophila* wetland. Other large, deep lakes, some with less extensive *Arctophila* stands, are located to the north and east of the pad site.

The pad location consists of primarily moist tussock-sedge, mixed shrub tundra on low-relief, high-center polygons. Shallow sedge (*Carex* spp.) and *Arctophila* ponds adjoin the pad site. The east-west road would cross shallow *Carex* ponds and wet sedge tundra, interspersed with low ridges vegetated by moist tussock-sedge, dwarf shrub tundra and moist tussock-sedge, mixed shrub tundra, with surface features of low-relief, high-center polygons or frost scars and hummocks. It would traverse the drained lake basin and cross numerous drainages and ponds which flow into the deep *Arctophila* lake system to the north.

The documentation to date indicates that the project area is utilized by numerous species of migratory waterfowl and shorebirds. The area appears to provide exceptionally high value habitat for nesting waterfowl. Tundra swan (*Cygnus columbianus*), a National Resource species, nest and raise their broods on the *Arctophila* lakes to the northwest and east of the pad site. The proximity of these two nests to each other is considered to be relatively rare. Greater white-fronted goose (*Anser albifrons*), also a National Resource species, nest in very high densities along the shorelines of the shallow ponds in the project area. Over half the North American population of these two species nest in Alaska. Numerous other migratory bird species utilize the aquatic and wet tundra habitats in the area for nesting, feeding and/or staging. These include Pacific & red-throated loons (*Gavia pacifica* and *G. stellata*), king eider (*Somateria spectabilis*), northern pintail (*Anas acuta*), oldsquaw (*Clangula hyemalis*), black-bellied & lesser golden plovers (*Pluvialis squatarola* and *P. dominica*), pectoral, semipalmated, western, stilt, and buff-breasted sandpipers (*Calidris melanotos*, *C. pusilla*, *C. mauri*, *C. himantopus*, and *Tryngites subruficollis*), dunlin (*Calidris alpina*), red and red-necked phalaropes (*Phalaropus fulicaria* and *P. lobatus*), long-billed dowitcher (*Limnodromus scolopaceus*), willow and rock ptarmigans (*Lagopus lagopus* and *L. mutus*), parasitic, long-tailed and pomarine jaegers (*Stercorarius parasiticus*, *S. longicaudus* and *S. pomarinus*), glaucous gull (*Larus hyperboreus*), and Lapland longspur (*Calcarius lapponicus*). Both loon species, as well as king eider, oldsquaw, both plover species, all five sandpiper species, dunlin, parasitic jaeger, and Lapland longspur are known to nest in the area.

Brant (*Branta bernicla*), a National Resource species, do not nest in the project area. However, brant from the nesting colony near the CPF–3 move their broods north directly through this area to various brood-rearing sites along the coast. This move already results in high mortality among the goslings, largely due to Arctic fox (*Alopex lagopus*) predation. Already impacted by the construction of CPF–3, these brant currently cross only one road, the Mine Site E road, 1.5 miles north of the project site, en route to their brood-rearing areas. The east-west access road to 3–L would present an additional impediment to their movement, possibly causing further delays in this migration and further reducing their survival rate.

Caribou (*Rangifer tarandus*) of the Central Arctic Herd use this area for calving, insect relief habitat and wintering. Extensive north-south caribou trails cross the project area and several thousand caribou have been observed moving north through the project area, en route to the coast. East-west access road/pipeline combinations are believed to impede this movement.

D. *Proceedings to Date:* On January 2, 1981, the Corps of Engineers, Alaska District, issued ARCO a section 404 permit (no. 4–800282, Beaufort Sea 123) to discharge gravel fill material on tundra wetlands to construct the exploratory drilling pad known as West Sak 17. This pad is located approximately 1.5 miles north-northwest of the currently proposed 3–L pad site. At ARCO's request the Corps modified the permit on May 9, 1984 to authorize a

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revised pad design, as well as construction of a 1,300-foot long north-south access road from the Mine Site E road. ARCO constructed a smaller than authorized pad, but utilized a wintertime ice road for access and never built the authorized gravel road. ARCO planned to develop this site as production pad 3–P, but never completed those plans.

On January 18, 1983, ARCO obtained a permit (no. B–820659, Kuparuk River 22) to discharge gravel fill for construction of a pad for the test well East Ugnu, located approximately 2 miles south of the 3–L site. The permit also authorized construction of a gravel access road from Drill Site 3–K to the northwest. ARCO developed a test well at the site but as with West Sak 17, accessed the pad via an ice, rather than gravel, road. On November 25, 1985 the Corps modified the permit to authorize expansion of the pad and construction of an access road from Drill Site 3–C to the west-southwest. The purpose of the project was to expand the exploratory drill site into production pad 3–L. ARCO never initiated this expansion.

At the June 5, 1987 Gravel Conference, ARCO presented plans to consolidate the planned 3–P and 3–L pads into a single 3–L pad between the two with an east-west access road from Drill Site 3–K to the west. In a December 21, 1987 meeting between the Corps, ARCO, EPA, the U.S. Fish and Wildlife Service (USFWS), the Alaska Department of Fish and Game (ADFG), and the Alaska Department of Natural Resources, the resource agencies expressed concern over the project's impacts on valuable wetlands, including the deep *Arctophila* lake to the northwest of the pad site. The agencies recommended that the access road be routed north-south from the Mine Site E road so that it would not cut across the drainage into the *Arctophila* lake, and that the idle West Sak 17 pad be removed to compensate for remaining impacts.

On January 27, 1988, the Corps of Engineers, Alaska District, gave public notice (no. 4–870872, Kuparuk River 95) that ARCO had applied for a section 404 permit to discharge gravel fill material into 35.4 acres of tundra wetlands for the construction of the new Drill Site 3–L and an east-west access road. EPA reviewed the proposed project for compliance with the CWA's section 404(b)(1) Guidelines and concluded from this review that the project failed to comply with these Guidelines due to the existence of a less environmentally damaging practicable alternative to the proposal. The alternative identified by EPA, as well as the USFWS and the ADFG, was the north-south access road route from the Mine Site E road, approximately 1.5 miles north-northwest of the pad site. EPA did not object to the east-west pipeline route. EPA's February 19, 1988 letter recommended that the permit be denied. At ARCO's request the Corps suspended processing of the permit on February 29, 1988 to allow ARCO time to attempt to resolve State of Alaska agency concerns.

After processing of the application resumed, EPA submitted a letter dated October 6, 1988, bringing to the Corps' attention additional information developed by the USFWS during summer field investigations. EPA's letter stated that the additional information revealed that the project site was of higher value than previously believed and that shifting the pad slightly to the north would impact somewhat less valuable habitat than the proposed site. The letter also stated, however, that the new information indicated that the project, even with a shifted pad, would neither avoid nor minimize to the extent practicable, the loss of important aquatic resources. Therefore, EPA again recommended denial of the permit. Meetings between EPA, the Corps, the USFWS, and ARCO on October 26 and November 30, 1988 involved discussion of unresolved agency concerns, but did not result in any change of position, except that ARCO agreed to shift the location of the pad to the slightly less valuable area to the north. On March 29, 1989, ARCO submitted revised plans shifting the location of the pad.

Pursuant to EPA's Memorandum of Agreement (MOA) with the Department of the Army under section 404(q) of the CWA, the Corps' Alaska District Regulatory Branch Chief notified EPA's Assistant Regional Administrator for Alaska Operations on September 11, 1989, that the Corps was initiating the informal consultation process to attempt to resolve outstanding issues. As this informal consultation failed to resolve these issues, the Alaska District Engineer then informed EPA's Assistant Regional Administrator for Alaska on February 26, 1990 that he intended to issue the permit, but would delay such action for 7 working days to allow EPA to request the Corps' North Pacific Division Engineer to review the permit decision.

After receiving an extension of the consideration period, EPA notified the Alaska District that it did intend to contact the Division Engineer to discuss EPA's unresolved concerns with the project. On March 13, 1990, EPA's Acting Regional Administrator for Region X discussed EPA's unresolved concerns with the Corps' North Pacific Division Engineer. Then, on March 20, 1990, the Acting Regional Administrator formally requested that the Division Engineer review the Alaska District's decision to issue the permit, citing concerns about the high wildlife values at the site and the existence of less environmentally damaging practicable alternatives. EPA's letter identified its preferred alternative as the use of the existing West Sak 17 and East Ugnu pads for production rather than the proposed 3–L pad. EPA stated that this alternative would result in less adverse impact by using previously disturbed areas for facilities construction and avoiding new construction in previously undisturbed, high-value drained lake basin habitat. The letter further stated that, if ARCO could demonstrate that this alternative was not practicable, the preferred alternative would then be the north-south access road route, because it would intercept a much lower volume of water; it would have a lower potential for interrupting drainage into the *Arctophila* lake occupied by the nesting tundra swans; it would cause less disturbance to the tundra swan nesting area; it would provide less of an impediment to migrating brant and caribou; it would impact lower value wetlands; and it would minimize cumulative impacts by eliminating the need for additional road construction for future access to West Sak 17.

In the absence of the Division Engineer, the Deputy Division Commander remanded the permit decision to the Alaska District Engineer on March 22, 1990 and directed him to review the decision in accordance with a clarified understanding of EPA's position. On August 1, 1990, the Alaska District Engineer informed the Acting Regional Administrator that he had fully considered EPA's concerns and still intended to issue the permit as proposed. He asserted that while a loss of valuable habitat would occur, practicable alternatives did not exist and mitigation would not be practicable. The District Engineer stated that he would delay permit issuance for 20 working days to allow EPA to request elevation of the permit decision to a higher level.

On August 29, 1990, EPA requested that the Assistant Secretary of the Army for Civil Works (ASACW) review the proposed permit decision under EPA's MOA with the Department of the Army. EPA's letter cited the availability of less environmentally damaging practicable alternatives and the Alaska District's decision regarding compensatory mitigation as the reasons for the requested review. The ASACW

informed the Assistant Administrator for Water on September 20, 1990 that he believed EPA had raised valid points which needed further consideration, but that he did not believe that elevation of the decision was necessary to address EPA's concerns. He remanded the permit decision to the Alaska District, directing them to further address the hydrologic analysis of the north-south route and consider new information submitted by the USFWS regarding the habitat values of the different alignments before making a final permit decision.

On March 8, 1991, ARCO submitted revised plans to the Corps. These plans incorporated ARCO's new smaller generic drill site layout, resulting in a reduction of total project impacts from 35.4 to 21.5 acres. The pad location and access road alignment remained the same.

On March 11, 1991, the Alaska District informed EPA that it had issued the permit for the revised Drill Site 3–L and east-west access road. The permit included a special condition which prohibited ARCO from performing any of the authorized work for a period of ten working days to allow EPA to consider whether to initiate section 404(c) proceedings. On March 25, 1991, EPA notified the Alaska District that it did intend to initiate such action. The permit special condition prohibits ARCO from performing any work until the section 404(c) process is completed, at which time the work shall be subject to EPA's final determination.

E. *Proposed Determination:* The Regional Administrator is considering a recommendation to withdraw or restrict the authorization of the discharge of fill material at all or parts of this site.

F. *Basis for Proposed Determination:*

1. *Section 404(c) Criteria.* The CWA requires that exercise of the final section 404(c) authority be based on a determination of "unacceptable adverse effect" on municipal water supplies, shellfish beds, fisheries, wildlife, or recreational areas. The regulations define "unacceptable adverse effect" in 40 CFR 231.2(e) as:

> Impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies or significant loss of or damage to fisheries, shellfishing or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the section 404(b)(1) Guidelines (40 CFR part 230).

The preamble to 40 CFR part 231 explains that one of the basic functions of section 404(c) is to oversee the application of the section 404(b)(1) Guidelines. Those portions of the Guidelines relating to the availability of less environmentally damaging practicable alternatives (40 CFR 230.10(a)), significant degradation of waters of the United States (40 CFR 230.10(c)), minimizing adverse impacts to aquatic resources (40 CFR 230.10(d)), and the determination of cumulative effects on the aquatic ecosystem (40 CFR 230.11(g)), are of particular importance in the evaluation of the unacceptability of environmental impacts in this case. The 404(b)(1) Guidelines require that no discharge of dredged or fill material shall be permitted if (1) there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem; (2) it would jeopardize the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended; (3) it would cause or contribute to significant degradation of the waters of the United States; or (4) it does not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem. In addition, the Guidelines state that the permitting authority should collect and solicit information concerning cumulative impacts and document and consider this information during the decision-making process. Thus, it is appropriate under section 404(c) to take into account whether the project will result in significant degradation to aquatic resources, particularly wildlife habitat, or whether proposed mitigation is adequate to offset project-related impacts to the aquatic environment.

The Administrator's section 404(c) authority may be used to withdraw or restrict a permit which the Corps has issued (as is the case with the 3–L project). Under the section 404(c) authority, the Administrator may totally prohibit all discharges of dredged or fill material to a defined area or may impose some partial prohibition, such as restriction from a particular activity or portion of the site.

2. *Adverse Impacts of Permit Issuance.* Construction of Drill Site 3–L and, in particular, the east-west access road, as authorized, could fragment a minimally disturbed, high value, drained lake basin wetland complex, adversely affecting high-density nesting habitat of tundra swans and greater white-fronted geese, both National Resource species, as well as other migratory waterfowl and shorebirds. The east-west access road would cross a series of ponds interspersed with moist and wet tundra that provides highly valuable habitat. This area drains northward to a lake that supports nesting tundra swans as well as extensive stands of *Arctophila*, an important food source for many species of waterfowl. The project could destroy or cause abandonment of nest sites of these and other species, as well as negatively affecting the quality of their feeding and brood-rearing habitats. The east-west access road could also impede the movement of brant, another National Resource species, to brood-rearing areas and caribou to insect-relief areas along the coast. The extensive culverting required for the east-west route could place the *Arctophila* lake and its resources at serious risk. The Alaska Department of Fish and Game has documented serious problems with well over half of the culverts it has examined on the North Slope.

G. *Unresolved EPA Concerns:* To date, EPA has reviewed numerous documents regarding the 3–L project provided by ARCO and its consultants, the Corps, the USFWS, and other Federal, state and local agencies. A thorough review of this information has not alleviated the following EPA concerns.

1. *Practicable Alternatives to the Proposed Project.* EPA has identified two less damaging practicable alternatives which would potentially achieve the basic project purpose.

The first and most important alternative to the project involves re-routing of the access road to extend south from the Mine Site E road instead of east from Drill Site 3–K. The north-south route would minimize direct impacts on the drained lake basin wetland complex and, by adjoining West Sak 17, would reduce cumulative impacts if that pad (Drill Site 3–P) is constructed in the future. ARCO has indicated that future expansion of Drill Site 3–P is possible. The terrain crossed by the north-south route drains to the east, away from the *Arctophila* lake. This route follows a ridge top near the western edge of the drainage area and does not cross any ponds or visible drainages, except where it merges with the east-west route. A ridge located between the *Arctophila* lake and the north-south route would at least partially block the nesting swans' view of traffic on the north-south route. By contrast, traffic on the east-west road would be in full view of nesting tundra swans, which are particularly sensitive to disturbance from traffic during egg-laying and incubation. Also, the north-south route would parallel the movement corridors of brant and caribou, minimizing impediments to their progress to brood-rearing and insect-relief areas, respectively. As above, pipeline alignment would be

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ARCO's choice. If ARCO elected to route the pipeline east-west, they would have to obtain a variance from the North Slope Borough's requirement of a maximum separation of 1,000 feet between roads and pipelines.

The second alternative would involve expansion of the two existing exploratory pads, West Sak 17 and East Ugnu, instead of construction of the new 3–L pad. This alternative would utilize ARCO's new generic drill site layout and north-south access roads. The West Sak 17 access road would extend south from the Mine Site E road to the pad, while the East Ugnu road would extend north from the existing Drill Site 1–R. Incorporating the existing fill pads at these two sites into the new generic drill site would result in an amount of new fill comparable to that of Drill Site 3–L. However, the relative habitat values of these two sites, situated on moist and drier tundra, are lower than the 3–L site, situated on moist and wet tundra. Also, the West Sak 17 and East Ugnu sites are located outside the high value drained lake basin wetland compex, are closer to existing roads and industrial development, and have already been disturbed. Thus, this alternative will have much less adverse impact on the high-density waterfowl nesting area. In addition, this alternative would not involve an east-west access road which would cut across the natural drainage and require extensive culverting, and also possibly impede the movement of brant and caribou. The alignment of pipelines from these drill sites to production facilities would largely be at ARCO's discretion.

2. *Mitigation.* EPA requested denial of the permit based on the availability of less environmentally damaging alternatives that would avoid significant adverse impacts, and therefore, did not request compensatory mitigation during the Corps' public interest review process or 404(b)(1) review. However, the USFWS recommendations on the project did include a request for such mitigation, which was not included as a requirement of the permit, as the Corps determined that it was not appropriate, given the extent of wetlands present on the North Slope. EPA is concerned that this approach does not fully consider the high value of the wetlands to be lost to this project nor the cumulative impacts of the incremental loss of such wetlands. EPA believes that practicable mitigation opportunities exist in the area, including the removal of gravel at idle and/or abandoned pads.

3. *Significant Degradation.* The project could cause or contribute to significant degradation of waters of the United States. It would cause a direct loss of 21.5 acres of high value wildlife habitat, penetrating the heart of a previously undisturbed drained lake basin wetland complex. The project could negatively affect high-density nesting habitat of tundra swans, greater white-fronted geese and other migratory waterfowl and shorebirds, directly destroying and possibly causing abandonment of numerous nests. It could also adversely affect the quality of waterfowl feeding and brood-rearing habitats. The east-west road could act as an impediment to the free passage of caribou and brant along major movement corridors. Finally, the road could potentially alter natural drainage patterns, particularly important spring break-up flows, and significantly impact additional habitat areas, including the deep *Arctophila* lake northwest of the pad site, which provides high value habitat for nesting tundra swans and other waterfowl species. EPA believes this direct and potential loss of wetland values could represent a significant cumulative impact on the regional environment of the North Slope of Alaska, which, to date, has lost 11,000 acres of wetlands to oilfield development.

FOR FURTHER INFORMATION CONTACT: Robert S. Burd, Director, Water Division, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553–1237.

Gerald A. Emison,

Acting Regional Administrator.

[FR Doc. 91–11420 Filed 5–13–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

U.S. Atlantic and Gulf/Hispaniola Steamship Freight Assoc., et al; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–010977–012.

Title: Hispaniola Discussion Agreement.

Parties:

United States Atlantic and Gulf/Hispaniola Steamship Freight Association,
United States/Dominican Republic Freight Association,
Zim Israel Navigation Co.,
U.S.A. Tecmarine Incorporated d/b/a Tecmarine Lines,
Seaboard Marine Ltd.,
Tropical Shipping and Construction Co. Ltd.
Antillean Marine Shipping Corporation.

Synopsis: The proposed amendment would delete United States/Dominican Republic Freight Association as a party to the Agreement.

Agreement No.: 203–011038–009.

Title: Southeastern Caribbean Discussion Agreement.

Parties:

United States Atlantic and Gulf/Southeastern Caribbean Conference
Trailer Marine Transport Corporation.
Seaboard Marine, Ltd.,
Tecmarine Line, Inc.,
Bernuth Lines,
North American Caribbean Line Ltd.,
Blue Caribe Line,
Kirk Line Ltd.

Synopsis: The proposed amendment would delete Kirk Line Ltd. and Trailer Marine Transport Corporation as independent carrier parties to the Agreement.

Agreement No.: 203–011162–008.

Title: Panam Discussion Agreement.

Parties:

United States Panama Freight Association,
Lykes Bros. Steamship Co. Inc.,
Ecuadorian Line, Inc.,
Central America Shippers, Inc.,
Nedlloyd Lines,
Transportes Navieros Equatorianos,
Sea-Land Service, Inc.

Synopsis: The proposed amendment would delete Sea-Land Service, Inc. as an independent carrier party to the Agreement.

Agreement No.: 232–011321–001.

Title: Maersk/Sea-Land Pacific Agreement.

Parties:

A.P. Moller-Maersk Line,
Sea-Land Service, Inc.

Synopsis: The proposed amendment would expand the geographic scope of the Agreement to include Indonesia. It would also permit the parties to agree upon their individual service offerings in the trade, including their use of feeder vessels, and any service limitations. In addition, it would add new provisions pertaining to termination or suspension of the Agreement and would revise the arbitration provisions of the Agreement.

By Order of the Federal Maritime Commission.

Dated: May 8, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–11347 Filed 5–13–91; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 3068.
Name: Ove Christensen.
Address: 7146 Mezzanine Way, Long Beach, CA 90808.
Date Revoked: March 2, 1991.
Reason: Failed to furnish a valid surety bond.

License Number: 2935.
Name: Air/Ocean International, Inc.
Address: 2517 Nearcliff Street, Torrance, CA 90505.
Date Revoked: March 26, 1991.
Reason: Surrendered license voluntarily.

License Number: 2313.
Name: Specialty Packaging Company, Inc.
Address: 11561 Westminster Ave., Garden Grove, CA 92843.
Date Revoked: March 28, 1991.
Reason: Surrendered license voluntarily.

License Number: 394.
Name: Universal Transcontinental Corporation.
Address: 55 Avenue of the Americas, New York, NY 10013.
Date Revoked: April 9, 1991.
Reason: Surrendered license voluntarily.

License Number: 2345.
Name: Wilson American Company, Inc. of Illinois.
Address: 2601 Greenleaf Ave., Elk Grove Village, IL 60007.
Date Revoked: April 9, 1991.
Reason: Surrendered license voluntarily.

License Number: 2092.
Name: Path International, Inc.
Address: 110 W. Ocean Blvd., suite 320, Long Beach, CA 90802.
Date Revoked: April 12, 1991.
Reason: Failed to furnish a valid surety bond.

License Number: 2047.
Name: Rhenue Transport International, Corporation.
Address: 80 Washington Street, Hoboken, New Jersey 07030.
Date Revoked: April 12, 1991.
Reason: Surrendered license voluntarily.

License Number: 3266.
Name: Newport Shipping Lines, Inc.
Address: 12821 Spring Street, Los Angeles, CA 90061.
Date Revoked: April 12, 1991.
Reason: Failed to furnish a valid surety bond.

License Number: 2840R.
Name: Amex International, Inc.
Address: 1725 K Street, NW., suite 402, Washington, DC 20006.
Date Revoked: April 23, 1991.
Reason: Surrendered license voluntarily.

License Number: 51.
Name: Florida International Forwarders, Inc.
Address: P.O. Box 522065, Miami, Florida 33152.
Date Revoked: April 30, 1991.
Reason: Surrendered license voluntarily.

Bryant L. Vanilskis,

Deputy Director, Bureau of Domestic Regulation.

[FR Doc. 91–11348 Filed 5–13–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

May 8, 1991.

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public)

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202–395–7340).

Final Approval Under OMB Delegated Authority of the Extension, Without Revision, of the Following Reports

1. *Report title:* Report of Changes in Foreign Investments.
Agency form number: FR 2064.
OMB Docket number: 7100–0108.
Frequency: On occasion.
Reporters: Member banks, bank holding companies and Edge and Agreement corporations.
Annual reporting hours: 300.
Estimated average hours per response: .5.
Number of respondents: 50.
Small businesses are not affected.
General description of report: This information collection is required [12 U.S.C. 602, 625, and 1844 and 12 CFR 211.7c] and given confidential treatment [12 U.S.C. 552(b)(4)].

This report provides information needed by the Federal Reserve to monitor foreign investments by U.S. banking organizations. The report is used to notify the Federal Reserve of foreign investment changes as required under Regulation K, and to provide a basis for updating the System's information on foreign investments.

2. *Report title:* Ongoing Intermittent Survey of Households.
Agency form number: FR 3016.
OMB Docket number: 7100–0150.
Frequency: Up to four times a year.
Reporters: Households and individuals.
Annual reporting hours: 140.
Estimated average hours per response: .07.
Number of respondents: 500.
Small businesses are affected.
General description of report: This information collection is voluntary [12 U.S.C. 225a, 263, 1828(c), 1842, 1843, and 4008, and 15 U.S.C. 1693b(a)]. No issues of confidentiality arise under the Freedom of Information Act [FOIA] or under the Privacy Act.

This survey provides the Federal Reserve with considerable flexibility in obtaining household-based information specifically tailored to the Federal Reserve's policy and regulatory and operational responsibilities.

3. *Report title:* Notification Pursuant to § 211.23(h) of Regulation K on Acquisitions Made by Foreign Banking Organizations.
Agency form number: FR 4002.
OMB Docket number: 7100–0110.
Frequency: On occasion (estimated average of two per year).

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Reporters: Foreign banking organizations.

Annual reporting hours: 160.

Estimated average hours per response: .5.

Number of respondents: 160.

Small businesses are not affected.

General description of report: This information collection is required [12 U.S.C. 1844(c) and 3108(a)] and confidential treatment may be requested.

Foreign banking organizations (FBO's) must inform the Federal Reserve of shares acquired in companies engaged in activities in the U.S., and of direct and indirect U.S. activities commenced by a subsidiary of the FBO.

4. *Report title:* Regulation K Requirements for Applications and Prior Notifications.

Agency form number: FR K-1.

OMB Docket number: 7100-0107.

Frequency: On occasion.

Reporters: State member and national banks, Edge and Agreement corporations and bank holding companies.

Annual reporting hours: 1538.

Estimated average hours per response: Varies from 10 to 19 hours.

Number of respondents: 101.

Small businesses are not affected.

General description of report: This information collection is required [12 U.S.C. 601-604(a), 1843(c)(13) and (c)(14) and 1844(c)] and confidential treatment may be requested by the applicant [5 U.S.C. 552(b)(4)].

The FR K-1 is a compilation of all the applications and prior notification requirements in Regulation K that govern the formation of Edge and Agreement corporations and the international and the international and foreign activities of U.S. banking organizations.

5. *Report title:* Report of Intercompany Transactions for Foreign Banking Organizations and their U.S. Bank Subsidiaries.

Agency form number: FR Y-8f.

OMB Docket number: 7100-0127.

Frequency: Semiannually.

Reporters: Foreign banking organizations.

Annual reporting hours: 1188.

Estimated average hours per response: 9.

Number of respondents: 60.

Small businesses are not affected.

General description of report: This information collection is required [12 U.S.C. 1844(c) and 12 CFR 225.5(b)] and is given confidential treatment [5 U.S.C. 552(b)(8)].

This report provides the Federal Reserve with information on intercompany transactions between foreign banking organizations and their U.S. bank subsidiaries. This report enables the system to monitor and supervise intercompany flows of funds to ensure that U.S. subsidiary banks are not engaging in any unsafe and unsound practices with their foreign owners.

Board of Governors of the Federal Reserve System, May 8, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11371 Filed 5-13-91; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0712]

Federal Reserve Fees for Check Collection Services; Modification of Criteria for Tiered Pricing Structure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final action.

SUMMARY: The Board has adopted modifications to the criteria for offering a tiered pricing structure in the Federal Reserve's check collection service. The modifications allow tiered pricing in all collection zones; allow for more than two tiers of prices where cost differences exist to justify them; and conform the approval process for the implementation of tiered pricing to the approval process for other price and service level changes. The Board has not adopted the proposed modification to eliminate the current requirement to offer a blended fee alternative to tiered prices within each collection zone where a tiered pricing structure has been implemented. In addition, the Board has clarified several existing tiered pricing criteria. The revised criteria will enable Federal Reserve Banks to set fees that more precisely reflect their costs of collecting checks drawn on paying banks within a given check collection zone. These costs are generally based on the location of, and volume of checks presented to, each endpoint.

EFFECTIVE DATE: The modifications are effective January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202)452-3874), Julius Oreska, Manager (202/452-3878), or Nalini T. Rogers, Senior Financial Services Analyst (202/452-3801), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired only: Telecommunications Device for the Deaf, Dorthea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

In November 1986, the Board approved a proposal to implement tiered pricing as a permanent price structure for RCPC deposits in the Minneapolis office and country deposits in the Kansas City office, and to establish criteria for the expansion of tiered pricing to other Federal Reserve Bank offices. (51 FR 43470, December 2, 1986). Tiered pricing enables Federal Reserve Banks to establish prices that more precisely reflect their costs to collect checks drawn on paying banks within a given check collection zone. Under a tiered pricing structure, different fees are assessed depending on whether a check is presented to a high-cost or low-cost endpoint [1] in a given check collection.[2] These costs are generally based on the volume of checks presented to, and the location of, each endpoint. A high-cost endpoint is generally one that receives a low volume of check presentments and/or one that is located in a remote location. A low-cost endpoint typically would be presented high volumes of checks and/or be centrally located. A small, remotely located paying bank may be included in the low-cost tier if its checks are presented to an intercept processor that also receives presentments on behalf of other paying banks. Tiered pricing may be adopted by Federal Reserve offices because the costs of clearing checks in collection zones may vary considerably between high- and low-cost endpoints and charging a single average fee does not reflect costs as precisely. The criteria for adopting a tiered pricing structure that were approved by the Board in 1986 are as follows:

1. Adoption of tiered pricing by an additional Federal Reserve Bank will require approval by the Board.

2. Tiered pricing will be offered as an option to the sender; an alternative fixed per item fee also will be offered for each deposit category.

3. Tiered prices may be used only where clear cost differences exist between groups of items within the collection zone.

4. Tiered prices may be used only where they have the potential to provide net savings for a substantial amount of deposited volume or a substantial number of depositing institutions.

In addition, the Board indicated that tiered pricing could be applied to all types of deposits in RCPC and country collection zones and that the number of price tiers within a collection zone generally should be limited to two.

Proposed Modifications to the Tiered Pricing Criteria

The Board believes that the ability of Federal Reserve Banks to reflect their costs more precisely through the use of tiered pricing would be facilitated if certain modifications were made to the tiered pricing criteria that were approved by the Board in November 1986. Therefore, in November 1990, the Board requested comment on four proposed modifications to the criteria for offering a tiered pricing structure in the check collection service (55 FR 47804, November 15, 1990). The proposed modifications are as follows:

1. Tiered pricing may be applied to deposits in all collection zones, provided clear cost differences exist.

2. Reserve Banks may offer more than two price tiers within a collection zone, provided that clear cost differences exist to justify more than two tiers.

3. Blended fees will not be offered as an alternative to tiered prices in a collection zone in which tiered pricing has been implemented.

4. The approval process for implementation of tiered pricing in additional Federal Reserve offices will be the same as the approval process for other price and service level changes.

The Board received 36 comments on the proposed modifications to the tiered pricing criteria. The following table reflects comments by category of respondents:

	Comments received
Commercial banks/Bank holding companies	16
Clearinghouses	5
Trade associations	5
Credit unions	3
Savings institutions	1
Federal Reserve Banks	3
Total	36

The following discussion describes the four proposed modifications, the comments that were received on each modification, and the final Board action with respect to each modification. A discussion of additional issues raised by the commenters is also provided.

1. *Tiered pricing may be applied to deposits in all collection zones, provided clear cost differences exist.*

In 1986, the Board indicated that the application of tiered pricing would be restricted to RCPC and country collection zones. City zone collection products were not considered likely candidates for tiered pricing because the Federal Reserve believed that, due to the compact geographic nature of a city zone, the cost differences that warrant tiered pricing generally would not exist. Subsequent analyses have indicated, however, that the volume distribution of checks among endpoints has a significant impact on check processing costs. In certain city zones, approximately 20 percent of the endpoints receive 70 to 90 percent of all checks presented in that zone. The checks drawn on these high-volume city endpoints are less costly to process than are checks drawn on lower-volume city endpoints. In addition, the transportation costs for certain city endpoints are very low or nonexistent.

The Board received ten comments that specifically addressed the modification to expand tiered pricing to all collection zones. Six commenters (three of whom were Federal Reserve Banks) supported the proposed modification, and four opposed the proposal. One commenter that supported the proposal recommended that the Board require tiered pricing in all collection zones. One commenter that opposed the proposal expressed doubt that cost differences within city zones would be sufficient to justify tiered pricing.

Eleven commenters (including one commenter that specifically opposed the proposal to expand tiered pricing to all collection zones) expressed concern that expanded use of tiered pricing would result in reductions in Federal Reserve prices for low-cost endpoints, in particular city endpoints, and would lead to shifts in volume from correspondent banks to Federal Reserve Banks. Two commenters indicated that tiered pricing may also result in a shift of mixed deposit volume from correspondent banks to Federal Reserve Banks. Seven commenters were concerned that tiered pricing provides the Federal Reserve the opportunity to randomly place selected endpoints in the low-cost tier category in order to attract additional check volume drawn on those endpoints.

The Board believes that Federal Reserve Banks should be permitted to implement tiered pricing in all collection zones, including city zones, provided that clear cost differences exist. The Board believes that pricing check collection products more accurately to reflect the cost of collecting checks drawn on different endpoints results in a more efficient payments mechanism. The Board does not believe, however, that tiered pricing should be mandatory in all collection zones, because clear cost differences may not exist in particular collection zones to warrant the adoption of tiered pricing. The Board has adopted the modification to apply tiered pricing to deposits in all collection zones, as proposed. A discussion of the competitive impact of the modifications to the tiered pricing criteria is provided later in this notice.

2. *Reserve Banks may offer more than two price tiers within a collection zone, provided that clear cost differences exist to justify more than two tiers.*

When the Board authorized tiered pricing in 1986, it indicated that, although there were no plans to approve more than two tiers to the price structure at that time, the Board might approve additional tiers and may request public comment on a proposal to expand beyond two tiers if conditions warranted. In certain collection zones, the variation in processing and transportation costs of collecting checks presented to different endpoints may result in a range of costs that can be grouped into more than two cost tiers. The Board therefore proposed a modification to the current tiered pricing criteria to allow more than two tiers within a collection zone.

Twelve comments were received on this proposed modification. Seven commenters (including three Federal Reserve Banks) supported the proposal, and five commenters opposed the proposed modification. One commenter that supported the modification recommended that multiple pricing tiers be required in all collection zones. Three commenters that opposed this proposal were concerned about the reconcilement complexities that more than two pricing tiers may create. Two of these commenters recommended that the number of permissible pricing tiers be limited to three.

The Board has adopted the proposed modification to permit more than two price tiers within a collection zone. The Board acknowledges that expansion of the permissible number of price tiers within a collection zone may complicate the billing reconcilement for some banks that deposit checks subject to tiered pricing, but believes that retention of the blended fee alternative, which is discussed below, addresses this concern. The Board does not believe that it should limit the number of tiers within a collection zone to three, if clear cost differences exist to justify additional tiers. The Board believes that such limitations may unnecessarily restrict Federal Reserve Banks' abilities

[1] An endpoint refers to the physical location at which the Federal Reserve Bank presents checks drawn on the paying bank.

[2] A collection zone is a geographic subdivision of a Federal Reserve territory. Each collection zone has a specified availability schedule under which credit will be given for a check deposited for collection at the Federal Reserve office serving that territory.

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to set fees to reflect their costs of collecting checks drawn on paying banks within a certain collection zone. The Board anticipates that Federal Reserve offices that adopt tiered pricing generally will implement two price tiers. Although three tiers may be used in certain circumstances in which there are significant cost differences between groups of endpoints, the Board does not envision the adoption of more than three price tiers in the foreseeable future.

3. *Blended fees will not be offered as an alternative to tiered prices in a collection zone in which tiered pricing has been implemented.*

Currently, Federal Reserve Banks are required to offer a blended fee as an option to the tiered pricing structure. This requirement was initially adopted to provide a pricing alternative primarily to smaller depositors concerned with the potential difficulties they would face in reconciling their bills under tiered pricing. The Board believed, that with the experience of the past several years, users of Federal Reserve check services have become accustomed to component pricing, i.e., pricing individual checks within a given deposit at different prices, since this is the billing procedure for the mixed deposit option used primarily by smaller depositors.[3] The elimination of a blended fee in the tiered pricing structure would thus have been consistent with the Federal Reserve's policy of pricing mixed deposits based on the actual composition of checks in a given deposit. Further, the Board believed that depository institutions that collected checks through the Federal Reserve could easily use the reconcilement procedures applicable to mixed cash letter deposits to reconcile the component pricing associated with tiered pricing. The Board therefore requested comment on a proposal to eliminate the requirement that blended fees be offered as an alternative to tiered pricing structures.

Nineteen comments were received on the proposal to eliminate the blended fee alternative. Thirteen commenters opposed the proposed modification, while six commenters (including three Federal Reserve Banks) supported the proposed change. Eight commenters based their opposition on the increased billing reconcilement complexities associated with tiered pricing. (Fifteen commenters, including the eight commenters referenced above, indicated general concern with the billing reconcilement problems associated with a tiered pricing structure.) Commenters noted that without a blended fee alternative, depository institutions that collect checks through the Federal Reserve would be forced to alter their billing reconcilement procedures significantly or to accept charges from the Federal Reserve without attempting to reconcile those charges. In addition, several of these commenters noted that tiered pricing of Federal Reserve check collection services would complicate the billing of correspondent bank check collection services to respondent banks. Four small and seven large depository institutions commented that they would experience difficulty monitoring and reconciling their bills from the Federal Reserve under a tiered pricing environment. Commenters opposed to the elimination of the blended fee alternative believed that depositors should be given the choice of a blended price or a tiered price option.

Based on an analysis of the comments received, the Board has determined that the blended fee should be retained as an alternative to the tiered pricing structure and has not adopted the proposed modification eliminating the blended fee alternative. The Board believes that retention of the blended fee option addresses commenters' concerns regarding the complexities associated with billing reconcilement.

A Federal Reserve Bank that adopts tiered pricing will provide a blended fee option to its depositors, if this form of pricing is requested by the depositor. A depository institution is not permitted to deposit checks under both the tiered and blended price options, thereby preventing depositors from depositing their low-tier checks under the tiered pricing option and their high-tier checks under the blended fee option. Because the blended fee is based on the composition of checks that is deposited under that option, if, in practice, depository institutions deposit under the blended fee option checks drawn on predominantely high-cost endpoints, then the blended price will tend to approach the high-tier price over time. The Board will continue to evaluate the need to offer a blended fee option and may determine to discontinue the blended fee alternative at some point in the future if circumstances warrant. For example, if the difference between the blended fee and the high-tier fee becomes insignificant due to the composition of checks deposited under the blended fee alternative, the Board may determine to discontinue the blended fee.

4. *The approval process for implementation of tiered pricing in additional Federal Reserve offices will be the same as the approval process for other routine price and service level changes.*

The Board approves the prices and service levels for all Federal Reserve Banks on an annual basis. In addition, Board approval is required for other proposed changes to the price or level of Federal Reserve Bank services, if the proposal raises significant policy or operational issues. The Board has delegated authority to the Director of the Division of Reserve Bank Operations and Payment Systems to approve routine price and service level changes.

Given that the adoption of tiered pricing in a Federal Reserve office is approved pursuant to the criteria that have been established by the Baord, the Board proposed to handle approval of tiered pricing structures under delegated authority, to conform the approval process with that used in other routine price and service level changes. The Board received eleven comments on the proposal to modify the approval process for tiered pricing structures. Eight commenters opposed the proposed modification, while three commenters (including two Federal Reserve Banks) supported the change. Three commenters that opposed this proposal believed that all tiered pricing proposals should be issued for public comment and be considered by the Board because of potential competitive implications. An additional five commenters that opposed the proposal indicated that each proposed tiered pricing application should, at a minimum, be subject to Board review and approval.

The Board believes that it is appropriate to conform the approval process for adoption of tiered pricing to the process used for other routine proposals. The adoption of a tiered pricing structure by a Federal Reserve office does not raise significant policy or operational issues because approval is subject to the criteria established by the Board. Consequently, the Board has adopted the proposal to amend the approval process for implementation of tiered pricing in additional Federal Reserve offices.

Additional Issues

Commenters raised several additional issues related to the pricing of Federal Reserve check collection services. Eleven commenters stated that the existing guidelines for tiered pricing structures should be further clarified, and thus were opposed to, or had reservations concerning, one or more of the proposed modifications. Specifically, ten commenters suggested that the Board provide greater specificity regarding the criterion permitting tiered pricing only where "clear cost differences exist between groups of items within a collection zone." Three commenters requested clarification of the criterion that "tiered prices may only be used where they have the potential to provide net savings for a substantial amount of deposited volume or a substantial number of depositing institutions."

The Board adopted the guideline that "clear cost differences" exist between groups of items in a collection zone to ensure that tiered pricing is implemented only in those situations where the resulting price differences between the tiers would be material. Currently, the Board considers the "clear cost difference" guideline to be met if the difference in cost between groups of endpoints supports at least a twenty percent difference in price between each tier, or, alternately, at least a 2 mill difference in price between each tier. The Board may modify this test in the future if it determines that changes in the cost basis and fee schedules for check collection services warrant a change in determining what constitutes "clear cost differences."

Currently, the Board believes that the "net savings" guideline would be satisfied if either twenty percent of depositing institutions would have the potential to realize a net savings or twenty percent of deposited volume would be classified as low-tier. In instances where a Federal Reserve Bank is implementing more than two tiers in a collection zone, the "net savings" guideline for volume would be satisfied if twenty percent of deposited volume would be classified as being in a tier(s) with a lower per item fee than the existing fee. These figures may also be subject to change in the future if the Board determines that market conditions support a change in the definition of "net savings." A Federal Reserve Bank must meet this guideline when it initially implements a tiered price structure in a collection zone.

Five commenters requested that the Board indicate the frequency with which endpoints in a collection zone will be reviewed to determine whether they should be calssified as either low-tier or high-tier and the amount of advance notice a Federal Reserve Bank would provide prior to reclassifying an endpoint in a different price tier. The classification of endpoints as either low-tier or high-tier will be reviewed annually in conjunction with the Board's review of all Federal Reserve check collection prices. In addition, redesignation of selected endpoints to a different tier may occur at other times during the year, if conditions warrant. The Federal Reserve provides a minimum of 30 days advance notice of price and service level changes, including reclassification of endpoints to a different price tier.

The Board received eight comments on the relationship between the proposal to modify the tiered pricing critieria and the Board's proposals to amend Regulation CC to provide for same-day settlement for checks presented by private-sector presenting banks and to modify the Interdistrict Transportation Service (ITS) price structure. Six commenters requested that the Board not take action on the proposed modifications to the tiered pricing criteria until the Board takes final action on the proposed same-day settlement rule, due to the competitive implications of both proposals. One commenter stated that the ITS, same-day settlement, and tiered pricing proposals should have been issued for comment simultaneously due to the potential cumulative impact on correspondent banks. Another commenter requested that the Board defer final action on the modifications to the tiered pricing criteria until the issue of ITS cost determination has been acted upon by the Board. The Board believes that the tiered pricing proposal is sufficiently independent of these other proposals and final action need not be deferred until the Board acts on the other proposals.

Two commenters questioned whether tiered pricing would adversely affect the negotiability of checks drawn on high-cost endpoints, given that the cost to collect those checks would increase under a tiered pricing structure. Significantly different Federal Reserve check collection fees currently apply to checks drawn on various endpoints and these existing price differences have not affected the negotiability of checks drawn on the relatively high-cost endpoints. While tiered pricing may result in an increase in the collection fee spread for checks drawn on low- and high-cost endpoints, the Board does not expect that this fee spread will negatively affect the negotiability of checks drawn on high-cost endpoints.

The criteria for offering a tiered pricing structure in the Federal Reserve's check collection service, as modified by the Board, are as follows:

1. Tiered pricing may be applied to deposits in any collection zone, provided clear cost differences exist between groups of checks within that collection zone.

2. Tiered prices may be used only where they have the potential to provide net savings for a substantial number of depositing institutions or a substantial amount of deposited volume.

3. A blended per item fee will be offered as a alternative to tiered prices for each deposit category.

4. Federal Reserve Banks may offer more than two price tiers within a collection zone, provided clear cost differences exist to justify more than two tiers.

Competitive Impact Analysis

All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the March 1990 policy statement "The Federal Reserve in the Payments Mechanism." (53 FR 11648, March 29, 1990) In this analysis, the Board determines whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such legal differences.

Six commenters expressed reservations about the competitive impact analysis provided with the Board's proposal to modify the tiered pricing criteria. Four commenters requested additional information on Federal Reserve volumes, costs, and price projections. Two commenters stated that a detailed competitive impact analysis should be performed with the respect to each tiered pricing proposal based on potential competitive implications.

The Board does not believe that tiered pricing will affect the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. The Board acknowledges that in some instances tiered prices may result in volume shifts between correspondent banks and Federal Reserve Banks; however, any volume shifts that may occur due to the adoption of tiered pricing by a Federal Reserve office would not be due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such legal differences. Tiered pricing is an

[3] Checks deposited in mixed cash letters are charged separate fees depending on whether the check is drawn on a paying bank in that Federal Reserve Bank office's city, RCPC, or country zone, or on a paying bank located in another Federal Reserve territory. Collecting banks are billed for, and receive availability on, the checks in mixed deposits based on the actual composition of checks in a given mixed cash letter.

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accepted price structure in the banking industry and is used by other providers of check collection services. The effect of the proposed modifications to the tiered pricing criteria will be to more accurately reflect the cost of collecting checks drawn on a particular paying bank in the price assessed for collecting those checks. A more precise alignment of costs and prices will not adversely affect the ability of other service providers to compete effectively with the Federal Reserve.

By order of the Board of Governors of the Federal Reserve System, May 8, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11372 Filed 5-13-91; 8:45 am]

BILLING CODE 6210-01-M

First National Bankshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 1991.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. The First National Bankshares, Inc., Tucumcari, New Mexico; to engage *de novo* through its subsidiary, First Security Trust Company, Tucumcari, New Mexico, in trust company activities of a fiduciary, agency, or custodial nature pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 8, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11377 Filed 5-13-91; 8:45 am]

BILLING CODE 6210-01-F

Dale M. Hermann, et al.; Change in Bank Control Acquisitions of Shares of Banks or Bank Holding Companies

CORRECTION

This notice corrects a previous **Federal Register** notice (FR Doc. 91-5105) published at page 9,218 of the issue for Tuesday, March 5, 1991.

Under the Federal Reserve Bank of San Francisco, the entry for Dale M. and Allen H. Hermann is amended to read as follows:

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Dale M. and Allen H. Hermann, Portland, Oregon, H. Lawrence Hull, Jr., Costa Mesa, California, and the Penelope Gehr Hull Trust, Dale M. Hermann, Trustee, to acquire an additional 11.99 percent of the voting shares of West Coast Bancorp, Portland, Oregon, for a total of 20.67 percent, and thereby indirectly acquire The Bank of Newport, Newport, Oregon.

Comments on this application must be received by June 3, 1991.

Board of Governors of the Federal Reserve System, May 8, 1991.

William W. Wiles

Secretary of the Board

[FR DOC. 91-11373 Filed 5-13-91; 8:45 am]

BILLING CODE 6210-01-F

Eugene J. Metzger, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 3, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Eugene J. Metzger, Arlington, Virginia; to acquire 10 percent of the voting shares of Ballston Bancorp, Inc., Arlington, Virginia, and thereby indirectly acquire The Bank of Northern Virginia, Arlington, Virginia.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Central Bank Employee Stock Ownership Plan, Monroe, Louisiana; to acquire 14.15 percent of the voting shares of Central Corporation, Monroe, Louisiana, and thereby indirectly acquire Central Bank, Monroe, Louisiana.

Board of Governors of the Federal Reserve System, May 8, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11374 Filed 5-13-91; 8:45 am]

BILLING CODE 6210-01-F

Provident Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Provident Bancorp, Inc., Cincinnati, Ohio; to acquire First Federal Savings and Loan Association, Lexington, Kentucky; Merit Savings Association, Cincinnati, Ohio; Peoples Federal Savings and Loan Association of Bellevue, Bellevue, Kentucky; and Thrift Savings and Loan Company, Cincinnati, Ohio, and thereby engage in savings and loan activities pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 8, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11376 Filed 5-13-91; 8:45 am]

BILLING CODE 6210-01-F

Security Pacific Corporation; Request for Exemption

Security Pacific Corporation, Los Angeles, California ("SPC"), has requested, pursuant to section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 *et seq.*) ("section 106"), that the Board grant an exemption in order to permit the combining of reduced-rate residential real estate mortgage products, which are offered through only one of its banking affiliates, with traditional banking products offered by its other affiliates at an aggregated lower cost to the customer. Although section 106 permits a bank to fix or to vary the consideration for extending credit or furnishing services on condition that a customer also obtain a traditional banking service (loan, discount, deposit or trust service) from that bank, it prohibits a bank from engaging in these same activities on condition that the customer obtain any additional credit or services from any other subsidiary of the bank's parent holding company. The Board may, however, grant an exception that is not contrary to the purposes of this provision. By order dated June 20, 1990 and by subsequent rulemaking (55 FR 47741), the Board granted an exception to this prohibition to allow banks owned by bank holding companies to offer a price reduction on credit cards issued to their customers if the customer also obtains a traditional banking product from any of the credit card bank's affiliates.

SPC proposes to combine residential real estate mortgage products, currently offered through only one of its banking affiliates, with other traditional banking products in such a way that the price to the consumer for the reduced-rate or reduced-fee mortgage products would be lower for the consumer who has previously purchased or agrees to purchase a traditional banking product or products from an affiliate of the mortgage lending bank subsidiary, than the price to the consumer for the products if purchased separately. The mortgage products offered by the single bank subsidiary of SPC and all linked traditional products offered by other banking and nonbanking affiliates of SPC would continue to be available separately to customers at separate prices.

In support of its request, SPC contends that its proposal is not anticompetitive in that the customer would not be required either directly or indirectly to accept one product in order to obtain another product. All products are available separately at separate prices and the prices of products are kept competitive through normal market forces. SPC concludes that it does not have enough economic power in real estate markets to cause a lessening of competition in the markets for the other traditional banking products with which residential real estate mortgages may be combined. Customers may freely choose to purchase combined or separate services from SPC affiliates or from competitors.

SPC also maintains that customers have been denied the benefit of the type of cost-cutting that centralization has sought to produce because centralization is not permitted in this case. SPC reorganized its residential mortgage lending activities so that virtually all such loans originate from one banking subsidiary, rather than being offered separately by each of its banking subsidiaries. Prior to this reorganization, SPC was permitted under section 106 to offer its products in combination. SPC maintains further that the only difference between its current proposal and activities expressly authorized under section 106 is the fact that SPC proposes to bundle products offered by more than one affiliate.

Notice of the request is published solely in order to seek the views of interested persons on the issues presented by the request and does not represent a determination by the Board that the request meets or is likely to meet the standard of section 106. The request may be inspected at the offices of the Board of Governors.

Any comments or request for hearing should be submitted in writing and received by William W. Wiles, Secretary of the Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than June 13, 1991.

Board of Governors of the Federal Reserve System, May 8, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11375 Filed 5-13-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93623-91-2]

Developmental Disabilities: Availability of Financial Assistance for the University Affiliated Program

AGENCY: Administration on Developmental Disabilities (ADD), Administration for Children and Families (ACF).

ACTION: Announcement of Availability of Financial Assistance for the University Affiliated Program.

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SUMMARY: The Administration on Developmental Disabilities announced that applications are being accepted in Fiscal Year 1991 from universities in eligible States, Territories and Insular areas for the purpose of establishing new university affiliated programs or satellite centers, or for conducting feasibility studies leading to the establishment of university affiliated programs or satellite centers. Up to four grants for new programs will be awarded to increase and improve services and programs for persons with developmental disabilities who live in the following geographical areas: Alaska, American Samoa, Delaware, Guam, Maine, Northern Mariana Islands, Nevada, Republic of Palau, Oklahoma, Puerto Rico, Rhode Island, Virgin Islands, Wyoming.

DATES: Closing date for receipt of applications is: July 15, 1991.

ADDRESSES: Applications should be sent to: Administration for Children and Families, Acquisition and Assistance Management Branch, 200 Independence Avenue, SW., HHH Building, room 341-F.2, Washington, DC 20201, Attn: Margaret A. Tolson.

FOR FURTHER INFORMATION CONTACT: Judy Moore, UAP Coordinator, Program Development Division, ADD. (202) 245-2911.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Background

The Developmental Disabilities program is authorized by the Developmental Disabilities Services and Facilities Construction Act, 42 U.S.C. 6000, *et seq.* (the Act). This Act makes funds available to assist States to assure that persons with developmental disabilities receive appropriate care, treatment, habilitation and support services. Programs funded under the Act are:

- Basic State formula grants;
- Systems for protection and advocacy of individual rights;
- Grants to University Affiliated Programs for interdisciplinary training, exemplary services/technical assistance and information dissemination; and
- Grants for Projects of National Significance.

B. Description of University Affiliated Programs

Under part D of the Act, grants are awarded to support a national network of university affiliated programs (UAPs) and satellite centers. These programs provide interdisciplinary training, exemplary service, technical assistance and information dissemination for allied health professionals, physicians and parents who provide services to or care for persons with developmental disabilities.

A major purpose of these grants is to ensure that there is a professional and paraprofessional work force prepared to meet the service needs of persons with developmental disabilities and their families. Section 153 of the Act (42 U.S.C. 6063) requires the Administration on Developmental Disabilities (ADD) to consider funding four new UAP or satellite center applicants in fiscal years 1991, 1992, and 1993.

This announcement solicits applications from universities to establish new university affiliated programs or satellite centers, or to conduct feasibility studies leading to the establishment of new UAPs or satellite centers in eligible States, Territories and Insular Areas.

The term "university affiliated program," as defined by section 102(18) of the Act, 42 U.S.C. 6001(18) means a program operated by a public or nonprofit private entity which is associated with, or is an integral part of, a college or university and which must carry out the following activities:

- *Training.* The UAP or satellite center must provide interdisciplinary training for personnel concerned with developmental disabilities, including parents or persons with developmental disabilities, professionals, paraprofessionals, students and volunteers. Training may be conducted at the facility and through outreach activities.
- *Service Demonstration.* The UAP or satellite center must provide a demonstration program of exemplary services relating to persons with developmental disabilities in settings which are integrated in the community.
- *Technical Assistance.* The UAP or satellite center must provide technical assistance to generic and specialized agencies. The purpose of the technical assistance is to assist the agencies to provide services to increase the independence, productivity, and integration into the community of persons with developmental disabilities, such as the development and improvement of quality assurance mechanisms.
- *Dissemination Activities.* The UAP or satellite center must have a mechanism to disseminate findings relating to the provision of exemplary services as referenced above. They must also provide researchers and government agencies sponsoring service-related research with information on the needs for further service-related research that will assist in increasing the independence, productivity, and integration into the community of persons with developmental disabilities.

A "satellite center" is defined as a public or private nonprofit entity which is affiliated with one or more university affiliated programs and which—

- Functions as a community and regional extension of such a university affiliated program or programs in the delivery of services to persons with developmental disabilities and their families who reside in geographical areas where adequate services are not otherwise available;
- May engage in interdisciplinary training, provision of exemplary services, technical assistance and information dissemination activities as described for a university affiliated program; or
- Provides for at least interdisciplinary training for personnel concerned with direct or indirect services to persons with developmental disabilities, and dissemination of findings relating to the provision of services to persons with developmental disabilities.

A "feasibility study" is a study to determine the need for and feasibility of establishing a new university affiliated program or new satellite center.

C. Eligible Applicants

Any public or non-profit organization associated with or an integral part of a college or university which is located in a State, Territory or Insular Area not now served by an ADD-funded UAP or satellite center is eligible to apply for funding to establish a university affiliated program or a satellite center, or to conduct a feasibility study. Those States, Territories and Insular Areas which have no organized ADD-sponsored program to provide interdisciplinary training and exemplary services on behalf of persons with developmental disabilities, experience greater shortages of properly trained personnel and appropriate services and do not receive the benefits or technical assistance provided by UAPs. These States, Territories and Insular Areas are:

Alaska	American Samoa
Delaware	Guam
Maine	Northern Mariana Islands
Nevada	Republic of Palau
Oklahoma	Puerto Rico
Rhode Island	Virgin Islands
Wyoming	

Based on section 153(d)(3)(A), 42 U.S.C. 6063(d)(3)(A) of the Act, unserved States have first priority for new UAP grants. This section of the Act requires the Department of consider applications for grants for four new UAPs (or satellite centers) for FY 1991, 1992, and 1993 in addition to the UAPs currently funded. Further, section 153(d)(3)(B), 42 U.S.C. 6063(d)(3)(A) of the Act states that such programs and centers shall, to the extent feasible, be geographically distributed for the purpose of serving States that are unserved by UAPs and satellite centers. This section of the Act allows the Secretary to consider applications from States that currently are served by a UAP or staellite center. Based on last year's submissions, we anticipate that we will receive a sufficient number of quality applications in FY 1991 from the States listed above. In future years, we will consider opening the competition to States already served by UAPs.

D. Available Funds

Subject to the availability of funds, ADD expects to award up to four grants for four university affiliated programs or satellite centers. ADD anticipates a minimum of $200,000 will be awarded for the establishment of a new UAP; a minimum of $150,000 will be awarded for the establishment of a new satellite center; and a minimum of $10,000 will be awarded for a grant to conduct a feasibility study.

Grants awarded to new UAPs and satellite centers will be for project periods of one to three years. Feasibility study grants will cover a six-month project period, and, upon completion of the study, the grantee must submit a feasibility study report and notify ADD in writing of its intention to apply for funds as a UAP or satellite center.

The 12-month budget period for UAPs and satellite centers begins July 1, 1991 and ends June 30, 1992. The budget period for feasibility study grants begins July 1, 1991 and ends December 31, 1991.

In FY 1990, potential grantees in 16 States, Territories and Insular Areas were eligible to apply to establish a university affiliated program or a satellite center, or to conduct a feasibility study. Also in FY 1990, ADD awarded two grants to establish university affiliated programs, one grant to establish a satellite center, and one grant to conduct a feasibility study.

Part II. Specific Responsibilities of the Applicant

A. Applicant Responsibilities

ADD is requesting applicants to prepare an application of no more than 60 double-spaced typewritten pages of text (40 pages of text for satellite centers); and no more than 14 pages of text and 10 pages of appendices for feasibility studies.

1. UAP or Satellite Center Applications

Applications must include all of the items below:

(a) A description and explanation of the ways the applicant program meets the legislative mandates for university affiliated programs or satellite centers under part D of the act, as appropriate;

(b) A description and explanation of the ways university affiliated program and satellite center applicants meet, or plan to meet, each of the applicable program criteria for UAPs and satellite centers (See 45 CFR part 1388);

(c) The assurance that the requirement to establish a consumer advisory committee comprised of consumers, family members, representatives of State protection and advocacy systems, developmental disabilities councils (including State service agency directors), local agencies, and private nonprofit groups concerned with providing services for persons with developmental disabilities has been met; and

(d) An assurance that the requirement to provide an opportunity for comment to the general public in the State and to the Developmental Disabilities State Planning Council in which the program will be conducted or the satellite center is located has been met. (See section 153(b)(5) of the Act, 42 U.S.C. 6063(b)(5).)

2. Feasibility Study Applications

Applications to conduct feasibility studies must include all of the items below:

(a) A description of the existing program and a description of the need for the establishment of a new UAP or satellite center;

(b) a description of the activities planned for determining the feasibility of implementing a program to address each of the four major areas of UAP responsibility;

(c) the responsibilities, extent of participation in the project and qualifications of faculty and staff; and

(d) an assurance of affiliation and cooperation with one or more colleges or universities.

B. Grantee Share of the Project

Applicants for university affiliated program, satellite center, and feasibility study projects must provide matching funds of at least 25 percent from a source other than the Federal Government (one dollar match for every three dollars of Federal financial assistance requested). If the Federal share is $75,000, the required non-Federal share is $25,000 for a total project cost of $100,000. If, however, the university affiliated program, satellite center, or feasibility study targets people who live in urban or rural poverty areas, the Federal share may not exceed 90 percent of the project's necessary costs.

Part III. Criteria for Review and Evaluation of Applications

In considering how the grantee will carry out the responsibilities under part II of this announcement, competing applications will be reviewed and evaluated against the following criteria:

A. Objectives and Need for Assistance (25 Points)

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Describe the needs of unserved or underserved populations within the State. Demonstrate the need for the assistance and state the principal and subordinate objectives for the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

B. Results or Benefits Expected (30 Points)

Identify results and benefits to be derived. The anticipated contribution to policy, practice, theory, and research should be indicated.

C. Approach (40 Points)

Outline a plan of action pertaining to the scope of work and detail how the proposed work will be accomplished for each project. Cite factors which might accelerate or decelerate the work and your reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization,

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cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their contribution.

D. Geographic Location (5 Points)

Give the precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached.

Part IV. The Application Process

A. Availability of Forms

All instructions and forms for submittal of applications are included in an application kit available upon request from the Administration on Developmental Disabilities. The application kit, including certifications regarding drug-free workplace, debarment and lobbying, as well as additional copies of this announcement may be obtained by writing or telephoning: Judy Moore, Administration on Developmental Disabilities, Program Development Division, 200 Independence Avenue, SW., Hubert H. Humphrey Building, Room 325D, Washington, DC 20201, Telephone (202) 245-2911.

B. Application Submission

One signed original and two copies of the grant application must be mailed or hand delivered to: Administration for Children and Families, Acquisition and Assistance Management Branch, 200 Independence Avenue SW., HHH Building, room 341-F.2, Washington, DC 20201, Attn: Margaret A. Tolson.

The original and the copies should be stapled in the upper left corner.

In order to be considered for a grant under this program announcement, an application must be submitted in accordance with the instructions provided in the application kit and in the manner required by this announcement. The application must be executed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

C. Application Consideration

Applications which are complete and conform to the requirements of this program announcement are subject to a competitive peer review and evaluation by qualified individuals. Applicants will be scored against the evaluation criteria listed above. The Commissioner, ADD, determines the final action to be taken with respect to each grant application for this program.

After the Commissioner has made the final selection, unsuccessful applicants will be notified in writing of this final decision. The successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds awarded, the budget period for which support is given, the non-Federal share requirements, and the total period for which project support is contemplated.

D. Closing Date for Receipt of Application

The closing date for receipt of all applications under this Program Announcement is July 15, 1991.

1. *Mailed applications:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the HDS Grants Office, or

b. Sent on or before the deadline date and receiving by the granting agency in time for the independent review under the Health and Human Services Grants Administration Manual, Chapter 1-62. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

2. *Applications submitted by other means:* Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date. Hand delivered applications will be accepted at the ACF Acquisition and Assistance Management Branch Office during the normal working hours of 9 a.m. to 5:30 p.m., Monday through Friday.

3. *Late applications:* Applications which do not meet criteria one and two above are considered late applications and will not be considered.

4. *Extension of deadline:* The Administration on Developmental Disabilities may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mail. However, if ADD does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

E. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96-511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for UAP grant applications by OMB.

F. Notifications Under Executive Order 12371, State Single Point of Contact

University Affiliated Programs, Satellite Centers and the relevant feasibility study grants are not covered by Executive Order 12372 (Form 424, Item 16).

(Catalog of Federal Domestic Assistance Program Number 93.632 Developmental Disabilities—University Affiliated Programs)

Dated: April 18, 1991.

Deborah L. McFadden,

Commissioner, Administration on Developmental Disabilities.

Approved: April 24, 1991.

Dennis N. Givens,

Deputy Assistant Secretary for Children and Families.

[FR Doc. 91-11342 Filed 5-13-91; 8:45 am]

BILLING CODE 4130-01-M

U.S. Advisory Board on Child Abuse and Neglect; Meeting

AGENCY HOLDING THE MEETING: Administration for Children, Youth, and Families.

TIMES AND DATES: 8 a.m. May 20, 1991–12:30 p.m. May 23, 1991.

PLACE:

8 a.m.–1:30 p.m. May 20, 1991, Hubert H. Humphrey Building, Auditorium, 200 Independence Avenue, SW., Washington, DC

1:30 p.m. May 20, 1991–12:30 p.m. May 23, 1991, Wyndham-Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC.

STATUS: The meeting is closed to public observation 8 a.m.–9 a.m. on May 20, 1991, 1:30 p.m. on May 20, 1991—10 p.m. on May 21, 1991, 9 a.m.–12:30 p.m. on May 23, 1991, and open to public observation at all other times.

MATTERS TO BE CONSIDERED: During portions of this meeting the Advisory Board will review, discuss and revise the second draft of its 1991 report to the Secretary of Health and Human Services and the Congress. Accordingly, those portions of the meeting will be concerned with a document that is exempt from mandatory disclosure under section 552(b)(5) of Title 5, United States Code. Therefore, those portions of the meeting will be closed in order to protect the free exchange of internal views among Advisory Board members and to avoid undue interference with the operation of the Advisory Board. During the open portions of this meeting the Advisory Board will: Conduct a public hearing on the second draft of the 1991 report; agree on procedures for clearing successive drafts of the 1991 report; review plans for the September Board meeting in Denver immediately prior to the Ninth National Conference on Child Abuse and Neglect including discussion of the Board's participation in the Conference; review the plans for releasing the second report in September at the Ninth National Conference; discuss Board governance procedures; receive an update on the Secretary's Initiative on Child Abuse and Neglect; discuss possible priorities for the use of FY 92 discretionary funds of the National Center on Child Abuse and Neglect; discuss with Jo Anne Barnhart, Assistant Secretary for Children and Families the newly-established Administration for Children and Families; and discuss with Wade Horn, Commissioner, Administration for Children, Youth, and Families, and David Lloyd, Director, National Center on Child Abuse and Neglect, matters related to the National Center including: developments in the program of the National Center since the September 1990 meeting; possible priorities for the use of FY 92 National Center discretionary funds; and Inter-Agency on Child Abuse and Neglect developments.

CONTACT PERSON FOR MORE INFORMATION: Eileen H. Lohr, Program Assistant, U.S. Advisory Board on Child Abuse and Neglect, room 2633 Switzer Building, Washington, DC 20201, (202) 245-0076.

Dated: May 7, 1991.

Byron D. Metzler-Gold,

Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 91-11340 Filed 5-13-91; 8:45 am]

BILLING CODE 4120-01-M

President's Committee on Mental Retardation; Meeting

AGENCY HOLDING THE MEETING: President's Committee on Mental Retardation

TIME AND DATE:

Executive Committee Meeting, Sunday, June 2, 1991, 7 p.m.–9 p.m.

Full Committee Meeting, Monday, June 3, 1991, 9 a.m.–5 p.m.

25th Anniversary Symposium, Tuesday, June 4, 1991, 1 p.m.–5 p.m.

PLACE: Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

STATUS: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

MATTERS TO BE CONSIDERED: Reports by members of the Executive Committee of the President's Committee on Mental Retardation (PCMR) will be given. The Committee plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

THE PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons with mental retardation; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect persons with mental retardation.

CONTACT PERSON FOR MORE INFORMATION: Sambhu N. Banik, Ph.D., 330 Independence Avenue, SW., room 5325—Wilbur J. Cohen Building, Washington, DC 20201-0601, (202) 619-0634.

Dated: May 7, 1991.

Sambhu N. Banik,

Executive Director, PCMR.

[FR Doc. 91-11341 Filed 5-13-91; 8:45 am]

BILLING CODE 4120-01-M

Health Care Financing Administration

[BPO-97-GNC]

Medicare Program; Criteria and Standards for Evaluating Common Working File Hosts

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice with comment period.

SUMMARY: This notice describes the criteria and standards to be used for evaluating the performance of Common Working File (CWF) hosts in the administration of the Medicare program, for the current evaluation period beginning June 1, 1991. The results of these evaluations will be considered whenever the Health Care Financing Administration enters into, renews/extends, or terminates a Medicare carrier contract which provides for the performance of CWF host services. Since these services are currently performed by Medicare carriers, this notice is published in accordance with section 1842(b)(2) of the Social Security Act which requires us to publish for public comment those criteria and standards against which we evaluate Medicare carriers.

DATES: The criteria and standards for CWF hosts are effective June 1, 1991. However, we will consider revising the criteria and standards based on public comments received in response to this notice. To ensure consideration, comments must be mailed or delivered to the appropriate address, as provided below, and be received by 5 p.m. on June 13, 1991.

ADDRESSES: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-97-GNC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following locations:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to BPO-97-GNC. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in room 309-G of the Department's office at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m., (202) 245-7890.

FOR FURTHER INFORMATION CONTACT: Larry Pratt, (301) 966-7452.

SUPPLEMENTARY INFORMATION:

Background

Under sections 1816(a) and 1842(a) of the Social Security Act (the Act), public or private organizations and agencies may participate in the administration of the Medicare program under agreements or contracts entered into with the Secretary. These Medicare contractors are known as fiscal intermediaries (section 1816(a) of the Act) and carriers (section 1842(a) of the Act). Intermediaries perform claims processing and benefit payment functions for part A of the program (Hospital Insurance) and carriers perform bill processing and benefit payment functions for part B of the program (Supplementary Medical Insurance). When claims are submitted by providers, and bills by beneficiaries, physicians, and suppliers of services, intermediaries and carriers are responsible for: (1) Determining the eligibility status of a beneficiary; (2) determining whether the services on the submitted claims or bills are covered under Medicare and, if so, the correct payment amounts; and (3) making appropriate payments to the provider, beneficiary, physician, or supplier of services.

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Traditionally, the Health Care Financing Administration (HCFA) has maintained centralized files containing minimal eligibility and utilization data for each Medicare beneficiary. The intermediaries and carriers queried this file in order to process claims.

In 1987, we began implementation of a new system for compiling beneficiary claims history and utilization data called the Common Working File (CWF). CWF is a Medicare part A/part B benefit coordination and prepayment claims validation system that uses a localized data base to maintain specific data on beneficiaries in a particular geographic area. The geographic areas in which CWF data base are located are referred to as "CWF sectors." There are currently nine processing sectors throughout the United States. The data base in each sector is maintained by a designated contractor called a "CWF host." A host runs the system for each sector and maintains a data base with information on all of the beneficiaries in the sector.

CWF serves two primary purposes: (1) To make available to Medicare contractors and their providers within the CWF sector Medicare beneficiary entitlement and utilization data; and (2) to provide intermediaries and carriers with a prepayment approval of part A claims and part B bills of all types. Accomplishing these purposes requires each Medicare contractor to communicate or "link up" to a specific CWF host within its sector. Under the CWF system, intermediaries and carriers (referred to as "satellites") who perform the traditional functions of claims processing and adjudication no longer access HCFA's files but are instead assigned to one of the nine CWF host sites. The satellites query the CWF system maintained by the CWF host when they get a bill/claim to determine the up-to-date utilization and entitlement status of the beneficiary before making payment. (While the beneficiary data base will reside within the CWF sector, HCFA will maintain in Baltimore, Maryland, a file of all beneficiaries which identifies the CWF sector in which each beneficiary record will reside.)

At the present time, CWF hosts are selected from existing Medicare contractors under the authority of section 1842 of the Act, which allows the Secretary to enter into or amend carrier contracts. We selected the current CWF hosts through a competitive bidding process from Medicare contractors who agreed to assume the additional CWF host responsibilities. These responsibilities are enumerated in the Proposal Submission Requirement document (PSR-88-05-CWFH, November 1988), which served as the basis for the selection of host contractors. Once selected, we contracted with the current CWF hosts through either amendments to part B contracts with existing Medicare carriers or execution of new part B contracts with existing Medicare intermediaries to fulfill the CWF host functions.

Provisions of this Notice

Section 1842(b)(2) of the Act requires us to develop and publish for public comment criteria, standards, and procedures to evaluate a carrier's performance of its functions under its contract with us. Prior to the inclusion of CWF host functions in part B contracts, we evaluated carrrier performance using criteria and standards, known as the Contractor Performance Evaluation Program (CPEP), which are similar to those used for intermediaries. (See 55 FR 39730, September 28, 1990.) However, with the implementation of CWF, and to comply with the requirements of section 1842(b)(2) of the Act, we are proposing to evaluate CWF host performance using the criteria and standards in this notice and to allow the public an opportunity to comment on them before they are implemented.

This notice announces the criteria and standards to be used to measure the effectiveness and efficiency of CWF hosts for the current evaluation period, beginning June 1, 1991. CWF hosts who are also performing traditional fiscal intermediary and/or carrier functions under a separate contract or contract amendment will continue to have those functions evaluated under the traditional criteria and standards (CPEP) for non-CWF host functions.

Criteria and Standards for CWF Hosts

General

There are four separate criteria proposed for evaluating CWF hosts. Within each functional criterion we have identified the performance standards which, when measured, will evidence how well each CWF host is performing. Each of these standards will fall into one of two basic key indicators or categories: Quality (accuracy of host's decisions, correspondence, reports, and documentation) or timeliness.

The initial evaluation period for the Medicare carriers currently serving as CWF hosts will begin June 1, 1991. To the extent possible, we will make every effort in future years to publish the criteria and standards that we will use to evaluate Medicare carrier performance prior to the beginning of the Federal fiscal year, October 1, as an integrated notice with the annual notice of CPEP. If this is accomplished, the CWF host criteria and standards will be used to measure performance for the entire Federal fiscal year (October 1 through September 30). If we do not publish a notice before the new fiscal year begins, the CWF host criteria and standards which were in effect for the previous fiscal year remain in effect to measure performance until they are changed.

When we are unable to publish the notice before the beginning of the fiscal year, we reserve the right to publish the CWF host criteria and standards notice at any subsequent time during the year. If we choose to publish a notice in this manner, the evaluation period for the CWF host standards and criteria will be revised to be effective no earlier than the first day of the first month following publication. Hence, any such standards and criteria will measure performance prospectively; that is, we will not apply new measurements to assess performance on a retroactive basis.

It is not our intention to revise either the evaluation period or the standards and criteria which will be used during the evaluation period once this information has been published in a notice. However, on occasion, either because of administrative mandate or Congressional action, there may be a need for changes which have direct impact upon the criteria and standards previously published, require the addition of new criteria and standards, or cause the deletion of previously published standards and criteria. Should such changes be necessitated, we will issue a notice prior to implementation of the changes. The evaluation period for any new standards and criteria or for any standards and criteria that have been changed will not be effective any earlier than the first day of the first month following publication. Also, if changes are warranted as a result of the public comments received on the standards and criteria, the notice will be republished and the effective date revised.

While we intend to publish annual criteria and standards for CWF hosts, we also plan to conduct semi-annual performance evaluations covering the periods of October through March and April through September. This approach will result in the availability of more timely performance data and will enhance the monitoring and managing of CWF host performance. For 1991 we will only evaluate the period June 1 through September 30. Instructional issuances for implementing the criteria and standards will be published as necessary to ensure the uniform and accurate implementation of the criteria and standards.

Action Based on Performance Evaluations

We may initiate action, as a result of CWF host performance evaluation, based on these performance criteria and standards. We plan to consider the results of the evaluation in our determinations on entering into, renewing/extending, or terminating contracts or contract amendments with Medicare carriers serving as CWF hosts. Such decisions are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, they depend on:

- Relative overall performance compared to other hosts;
- Number of standards in which acceptable or deficient performance occurs;
- Extent of each deficiency; and
- Relative significance of the standards for which acceptable or deficient performance occurs within the overall CWF host criteria and standards.

Decisions on contract actions are made after considering these factors in terms of their relative significance and impact on the effective and efficient administration of the Medicare program.

Scoring System

For CWF hosts, the maximum score attainable is 470 points. Each of the CWF functional criteria is assigned a given portion of the available points. One of the requirements for passing the CWF criteria and standards is that 70 percent of the available points for each criterion must be attained. In addition, within a functional criterion is one or more standards categorized as either a quality or timeliness measure. Each of the standards is assigned a portion of the total points for that functional criterion. Each standard has a method of evaluation that is used to calculate a rating based on a host's performance in that standard. The second requirement for passing the CWF criteria and standards is that 70 percent of the total points assigned to the quality standards and timeliness standards must also be attained.

A host's performance is evaluated against each applicable standard. Any rating below the passing level constitutes a deficiency. The host may be required to develop and implement a corrective action plan when performance problems are identified. The host will be monitored to assure effective and efficient compliance with the corrective action plan and improved performance where criteria and/or standards are not met.

Criteria and Standards

As stated previously, we will use four criteria to evaluate the overall performance of CWF hosts. They are—

1. Process Transactions;
2. Systems Security;
3. Satellite Services; and
4. Management.

The four criteria contain a total of 14 standards. There are three for Process Transactions, three for Systems Security, three for Satellite Services, and five for Management.

1. Process Transactions Criterion (Total Points=100) A CWF host must process transactions for satellites and HCFA and maintain complete, updated beneficiary entitlement and claims history records.

Standard 1=30 Points. Provide on-line access to CWF records. (Quality)
Passing Level=System available at least 98 percent of the required available hours.

The CWF host's system must be accessible to the satellite at least 98 percent of the required available hours as specified in section 3.4 of the CWF Host Proposal Submission Requirements.

Standard 2=30 Points. Meet turnaround time requirements for satellites. (Timeliness)
Passing Level=At least 98 percent of scheduled submissions returned timely.

The CWF host must guarantee a 24-hour turnaround time at least 98 percent of the time for all claims submitted by a satellite.

Standard 3=40 Points. Maintain and update beneficiary entitlement and claims history records. (Quality)
Passing Level=At least 95 percent of the submissions are accurate.

CWF hosts transmit to HCFA beneficiary entitlement and claims history data. The data are evaluated and validated by the CWF Data Quality Assurance Program (QAP). Output reports from the CWF Data QAP will be used to measure the hosts' performance.

2. Systems Security Criterion (Total Points=100) A CWF host must take measures to protect the confidentiality of records, and the security and integrity of computer programs, systems, and processes.

Standard 1=20 Points. Provide a contingency operating plan. (Quality)
Passing Level=The host contingency plan is in compliance with the Medicare Carriers Manual.

Carriers Manual Instruction 5135-5139 sets forth specific requirements for backup of the CWF host system should circumstances (e.g., a natural disaster) shut down the system. Such a backup will ensure continuation of key CWF host functions. The specific requirements in the manual will be used as the basis for scoring compliance in this standard.

Standard 2=40 Points. Comply with data retention requirements for Basic Data Access Method (BDAM) files. (Timeliness)
Passing Level=All BDAM files are retained for a minimum of four weeks.

The BDAM claims history files are those files that contain permanent claims history records. Each week the file is updated and a new expanded permanent file is created to prevent the loss of data; the previous week's file is retained for at least four weeks.

Standard 3=40 Points. Comply with data retention requirements for non-BDAM files. (Timeliness)
Passing Level=All non-BDAM files are retained for a minimum of 21 calendar days.

Non-BDAM files are those files that contain such information as beneficiary data and the current week's processed claims for the beneficiary.

3. Satellite Services Criterion (Total Points=55) A CWF host must provide services to its satellite sites, including operational and maintenance support.

Standard 1=25 Points. Notify satellites timely of major downtime. (Timeliness)
Passing Level=Affected satellite(s) notified within the required time frame that major downtime has occurred.

"Major downtime" is defined as an occurrence in which operations between a host and one or more satellites are interrupted for a period of one or more hours. The notification time requirement is specified in the CWF Host Proposal Submission Requirements as within 15 minutes of the discovery that major downtime has occurred or will occur.

Standard 2=10 Points. Distribute L-1001 reports timely. (Timeliness)
Passing Level=All reports distributed timely.

The L-1001 report is a daily report that contains information on utilization of part A services.

Standard 3=20 Points. Distribute CWF Performance reports timely. (Timeliness)

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Passing Level=All reports distributed timely.

CWF performance reports include information on transaction workloads. As specified in the CWF Operations Bulletin, the reports must be distributed by no later than the fifth day following the end of the month being reported.

4. Management Criterion (Total Points=215) A CWF host must take measures to effectively manage the operation of the host system and meet management information needs.

Standard 1=80 Points. Adhere to HCFA procedures and guidelines for change control processing. (Quality)

Passing Level=All written change control processing procedures and guidelines are appropriately followed.

Change control processing procedures and guidelines describe the actions to follow in reviewing, evaluating, and taking appropriate action on requests from satellites for software changes.

Standard 2=85 Points. Install, test, and implement CWF software releases timely. (Timeliness)

Passing Level=All software releases installed and operational timely.

Software releases will include a specific due date for installation.

Standard 3=65 Points. Install, test, and implement CWF software releases accurately. (Quality)

Passing Level=All software releases implemented in accordance with software documentation.

The system will be tested to ensure the software is functioning as appropriate.

Standard 4=10 Points. Submit timely and accurate Schedule II and IIA reports. (Quality)

Passing Level=All reports submitted timely and no reports contain errors.

The Schedule II and IIA are financial reports submitted to HCFA on a monthly basis. As specified in the CWF Operations Bulletin, the reports must be submitted no later than 30 days after the end of the month being reported.

Standard 5=35 Points. Report major downtime occurrences to HCFA timely. (Timeliness)

Passing Level=HCFA notified within the required time frame that major downtime has occurred.

A CWF host must notify HCFA of major downtime (over one hour interruption in operations) within two hours of discovery that major downtime has occurred or will occur.

Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed notice, we are unable to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of the preamble of this notice and, if we modify the criteria or standards, we will respond to the comments in the preamble of the notice that makes modifications.

Authority: Sec. 1102, 1816, 1842, and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395h, 1395u, and 1395hh.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance and Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: March 14, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-11411 Filed 5-13-91; 8:45 am]

BILLING CODE 4120-01-M

Statement of Organization, Functions, and Delegations of Authority; Consolidation of Systems Functions

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) is amended to reflect the consolidation of several systems functions in the Bureau of Data Management and Strategy (BDMS). Two divisions are being transferred from the Office of Budget and Administration (OBA) to BDMS. The two divisions affected are the Division of Administrative Systems and the Division of Medicare Operations Support. The functional statements for BDMS and OBA are amended to reflect the transfer of these activities between two of the major components within the Office of the Associate Administrator for Management.

The specific changes to part F. are as follows:

• Section FH.20.A., Office of Budget and Administration (FHA), is deleted and replaced by the following updated functional statement which reflects the transfer of two divisions of BDMS:

A. Office of Budget and Administration (FHA)

• Provides HCFA-wide policy direction, coordination and control in the areas of budget, financial and accounting operations, personnel, management evaluation and analysis, administrative services, project grants, contracting and procurement, and work planning. Develops and promulgates HCFA policy in these areas and executes these policies throughout HCFA.

• Designs systems support for personnel management, financial management, procurement, and facilities management programs within HCFA.

• Serves as the Chief Executive Officer for the Agency.

• Section FH.30.D., Bureau of Data Management and Strategy (FHE), is deleted and replaced by the following updated functional statement which reflects the additional responsibilities transferred from the Office of Budget and Administration:

D. Bureau of Data Management and Strategy (FHE)

• Manages statistical data systems on HCFA programs to support program decisions by various HCFA components, including the design and development of periodic statistical tabulations to assess the characteristics of HCFA beneficiaries and the utilization and cost of program benefits.

• Provides mathematical and statistical programming required to answer research inquiries.

• Develops and coordinates statistical and information policy.

• Develops common coding standards and quality assurance monitoring mechanisms.

• Provides technical information planning and developmental review of HCFA data collection initiatives.

• Coordinates the development of special purpose statistical data bases required for assessing the impact of proposals which change health care financing programs, special research and evaluation studies, and general data dissemination.

• Provides direction for the nationwide operation of a centralized automated data processing (ADP) facility for HCFA including systems analysis, systems security, programming, computer operations, and data transmissions.

• Provides applications software support to HCFA headquarters and regional offices in administrative management systems.

• Negotiates and administers agreements and provides ADP liaison between HCFA users and other external organizations for the provisions of ADP capacity and support services.

• Provides clerical support and data handling capability to control/examine, audit, investigate and process/release a variety of provider billing, query, enrollment and premium billing correspondence and transactions.

Dated: May 2, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 91-11410 Filed 5-14-91; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of Sickle Cell Disease Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, June 7, 1991. The meeting will be held at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 9, C-Wing, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to adjournment to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Divison of Blood Diseases and Resources, NHLBI, Federal Building, room 508, Bethesda, Maryland 20892, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 7, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-11432 Filed 5-13-91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of Clinical Applications and Prevention Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute, National Institutes of Health, on June 11-12, 1991, at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The entire meeting will be open to the public from 9 a.m. to recess on June 11 and 8:30 a.m. to adjournment on June 12 to discuss new initiatives, program policies, and issues. Attendance by the public will be limited to space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. William R. Harlan, Director, Division of Epidemiology and Clinical Applications, Federal Building, room 212, Bethesda, Maryland 20892, (301) 496-2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health.)

Dated: Dated: May 7, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-11433 Filed 5-13-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Open Meeting of the National Commission on Sleep Disorders Research

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Commission on Sleep Disorders Research, National Institue on Aging.

On June 5-7, 1991 there will be a working group meeting of the National Commission on Sleep Disorders Research from 8:30 a.m. to 5 p.m. at The Bethesda Ramada, located at 8400 Wisconsin Avenue, Bethesda, Maryland, 1-800-331-5252 or 301-654-1000. The meeting room will be posted in the hotel lobby. The Commission will meet to review the public testimony provided to date and the development of the National Plan. Attendance by the public will be limited to space available while the meeting is in progress. For additional information, please call William C. Dement, M.D., Ph.D., Chairman, National Commission on Sleep Disorders Research, at the Stanford University Sleep Disorders Center, 701 Welch Road, suite 2226, Palo Alto, CA., 415-725-6484.

Interested persons should contact Andrew Monjan, Ph.D., M.P.H., Executive Secretary, National Commission on Sleep Disorders Research, 9000 Rockville Pike, Building 31C, room 5C35, Bethesda, Maryland, 301-496-9350, for further details and substantive information on the meetings.

Dated: May 7, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-11434 Filed 5-13-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, telephone (202) 208-2685.

Title: Employer and Personal Reference Inquiry Form.

Abstract: The selecting official will conduct preemployment telephone inquiries on the tentatively selected applicant for all positions that have routine contact with or control over children to ensure suitability for employment. These preemployment inquiries will include three previous employers and three personnel references. With an annual turnover of approximately 1000 Bureau employees subject to the information collection, the inquiries will involve approximately 6000 public contacts per year. Bureau schools, with approximately 800 new employees each year, will assume the major burden for such inquiries.

Bureau form number:

Frequency: On occasion.

Description of respondents: Applicants for positions which have regular contact with or control over children.

Estimated completion time: 10 minutes per questionnaire.

Annual responses: 6000.

Annual burden hours: 1000.

Bureau clearance officer: Gail Sheridan, Information Collection Officer (202) 208-2685.

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Dated: April 8, 1991.

Rosal Eden,

Director, Office of Tribal Services.

[FR Doc. 91-11402 Filed 5-13-91; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[WY-060-01-4111-18]

Hazardous Materials Management; Closure of Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Boone Dome Oil and Gas Field partial closure.

SUMMARY: Notice is hereby given that an area within the Boone Dome oil field near the #6 well is closed to all public access and use. This restriction does not apply to employees of the Bureau of Land Management; employees of the Environmental Protection Agency; certain employees of the Wyoming State Department of Environmental Quality; and contractors of any of these named agencies. Private citizens are not allowed access without written approval of the undersigned. The current oil and gas lease operator is permitted access to the Boone Dome #6 well for normal operation and maintenance activities. The area closed is the NE¼SW¼ of Section 14, Township 35 North, Range 85 West of the Sixth Principal Meridian in Natrona County, Wyoming.

EFFECTIVE DATE: The closure is effective beginning April 18, 1991, and will terminate automatically on April 16, 1992, unless earlier terminated.

FOR FURTHER INFORMATION CONTACT: Bill Mortimer, Area Manager, Platte River Resource Area, (307) 261-7500.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has determined the need to close this area in order to protect public health and safety and to protect public lands and resources. This closure order is issued by the undersigned in accordance with 43 CFR 8364.1(a). Any person who violates this closure order may, upon conviction, be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed twelve (12) months.

Dated: May 6, 1991.

Don Whyte,

Acting District Manager.

[FR Doc. 91-11406 Filed 5-13-91; 8:45 am]

BILLING CODE 4310-22-M

[ID-010-00-4232-01-ADVB]

Boise District Advisory Council; Meeting

AGENCY: Boise District, Bureau of Land Management, Idaho.

ACTION: Notice of meeting.

SUMMARY: The Boise District Advisory Council will meet June 20 to discuss development of the Owyhee Resource Management Plan and other issues. The meeting is open to the public and a comment period will be held at 1 p.m.

DATES: The meeting will begin at 8:30 a.m. on Thursday, June 20 at the Lion's Hall in Jordan Valley, Oregon.

ADDRESSES: The Lion's Hall is located in Jordan Valley, Oregon.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Boise District, BLM, (208) 384-3393.

Dated: May 3, 1991.

J. David Brunner,

District Manager.

[FR Doc. 91-11403 Filed 5-13-91; 8:45 am]

BILLING CODE 4310-GG-M

[ID-030-01-4212-11]

Idaho Falls District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior

ACTION: Meeting of the Idaho Falls District Grazing Advisory Board.

SUMMARY: The Idaho Falls District Grazing Advisory Board will meet Thursday, June 6, 1991. Notice of this meeting is in accordance with Public Law 92-463. The meeting will be a field tour of allotments in the south end of the Big Butte Resource Area. The tour will begin at 9 a.m. at the Idaho Falls District Office at 940 Lincoln Road, Idaho Falls, Idaho 83401.

This meeting is open to the public, however interested persons must provide their own transportation. Anyone wishing to bring an item to the attention of the Board should mail their written material to be received at the address shown above prior to 8 a.m., June 6, 1991. The agenda for this meeting includes, but is not limited to an examination of the Rudeen Allotment and discussion of various management options. Monitoring procedures will also be discussed. Detailed minutes of the Board meeting will be maintained in the District Office and will be available for public viewing during regular business hours (7:45 am to 4:30 pm, Monday through Friday) within 30 days following the meeting.

Dated: May 8, 1991.

Lloyd H Ferguson,

District Manager.

[FR Doc. 91-11404 Filed 5-13-91; 8:45 am]

BILLING CODE 4310-GG-M

[MT-020-01-4320-02]

Montana; Miles City District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: The Miles City District Grazing Advisory Board will meet May 21, 1991, at 10 a.m. in the District Office Conference Room on Garryowen Road at Miles City, Montana.

The agenda for the meeting will include: (1) Range Program Summary. (2) Range Improvement Contracts. (3) Grazing Policy Issues. (4) Cherry Creek Watershed Plan.

The meeting is open to the public. The public may make oral statements or file written statements for the Board to consider. Summary minutes of the meeting will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301.

Donald E. Nelson,

Acting District Manager.

[FR Doc. 91-11405 Filed 5-13-91; 8:45 am]

BILLING CODE 4310-84-M

[ID-942-01-4730-12]

Idaho; Filing of Plats of Survey

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., May 2, 1991.

The plat representing the dependent resurvey of portions of the east and north boundaries and subdivisional lines, and the subdivision of section 1, T. 2 S., R. 37 E., Boise Meridian, Idaho, Group No. 786, was accepted on October 24, 1990.

The plat representing the dependent resurvey of portions of the north boundary, subdivisional lines, and original meanders of the right bank of the Blackfoot River, and the subdivision of certain sections, T. 2 S., R. 38 E., Boise Meridian, Idaho, Group No. 786, was accepted on October 24, 1990.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 American Terrace, Boise, Idaho 83706.

Dated: May 3, 1991.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 91-11407 Filed 5-13-91; 8:45 am]

BILLING CODE 4310-GG-M

[ID-942-01-4730-12]

Idaho; Filing of Plats of Survey

The plat of the following described land will be officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., June 14, 1991.

The plat representing the dependent resurvey of Mineral Survey No. 1281, Newsome Creek Junction Placer and the survey of tracts 37 and 38, in unsurveyed T. 30 N., R. 7 E., Boise Meridian, Idaho, Group No. 796, was accepted, April 26, 1991.

This survey was executed to meet certain administrative needs of the U.S. Forest Service, Region 1.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: May 3, 1991.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 91-11408 Filed 5-13-91; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010-0053); Washington, DC 20503, telephone (202) 395-7340, with copies to John V. Mirabella; Acting Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817.

Title: 30 CFR part 250, subpart D, Drilling Operations.

OMB approval number: 1010-0053.

Abstract: This information is needed to ascertain the conditions of a drilling site. This is necessary to mitigate the hazards inherent in drilling operations and to increase the margin of safety of personnel and the environment.

Bureau form number: None.

Frequency: On occasion.

Description of respondents: Federal Outer Continental Shelf oil and gas lessees.

Estimated completion time: 5.1 hours.

Annual responses: 1,460.

Recordkeeping hours: 15,570.

Annual burden hours: 23,056.

Bureau clearance officer: Dorothy Christopher, (703) 787-1239.

Dated: April 5, 1991.

Carolita U. Kallaur,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 91-11332 Filed 5-13-91; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 2, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by May 29, 1991.

Beth L. Savage,

Chief of Registration, National Register.

ARKANSAS

Clay County

Knob School—Masonic Lodge, AR 141, Knob, 91000679

Johnson County

Johnson County Courthouse, Jct. of Main and Fulton Sts., Clarksville, 91000680.

CALIFORNIA

Siskiyou County

Harlow, William, Cabin, Elliot Cr. Rd. #1050, 1 mi. from Joe Bar Subdivision, Seiad Valley vicinity, 91000666.

GEORGIA

Houston County

Log Dogtrot House, 0.5 mi. E of jct. of GA 247 and Story St., Kathleen vicinity, 91000661.

NEW HAMPSHIRE

Rockingham County

Newington Center Historic District (Boundary Increase), Merrimac Dr. N. of Short St., Newington, 91000665

NEW JERSEY

Atlantic County

Santa Rita Apartments, 66 South Carolina Ave., Atlantic City, 91000675.

Camden County

Centennial House, 17-19 E. Chestnut Ave., Merchantville, 91000674.

Mercer County

Pleasant Valley Historic District, Centered on jct. of Pleasant Valley Rd. with Woodens Ln. and Hunter Rd., Hopewell and West Amwell Twps., Lambertville vicinity, 91000676.

Morris County

Schooley's Mountain Historic District, Roughly along Schooley's Mt. Rd., Pleasant Grove Rd. and Flocktown Rd., Washington Twp., Schooley's Mountain, 91000677.

NEW YORK

Dutchess County

Wheeler Hill Historic District, Wheeler Hill Rd., Wappinger, 91000678.

Schenectady County

Foster Building, 508 State St., Schenectady, 91000664.

VERMONT

Chittenden County

Burlington Montgomery Ward Building, 52-54 Church St., Burlington, 91000673.

WISCONSIN

Dane County

Edgewood College Mound Group Archeological District (Late Woodland Stage in Archeological Region 8 MPS), Address Restricted, Madison, 91000669.

Merrill Springs Mound Group II Archeological District (Late Woodland Stage in Archeological Region 8 MPS), Address Restricted, Madison, 91000670.

Mills Woods Mount (Late Woodland Stage in Archeological Region 8 MPS), Address Restricted, Madison, 91000667.

Phlaum—McWilliams Mound Group (Late Woodland Stage in Archeological Region 8 MPS), Address Restricted, Madison, 91000668.

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Spring Harbor Mound Group (Late Woodland Stage in Archeological Region 8 MPS), Address Restricted, Madison, 91000668.

Iowa County

Sample Mound Group Archeological District (Late Woodland Stage in Archeological Region 8 MPS), Address Restricted, Arena, 91000672.

Walworth County

Maples Mound Group (Late Woodland Stage in Archeological Region 8 MPS), Address Restricted, Whitewater, 91000671.

[FR Doc. 91-11322 Filed 5-13-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 376X)]

CSX Transportation, Inc.; Discontinuance of Trackage Rights Exemption in Ross County, OH

Applicant has filed a notice of exemption under 49 CFR 1152 subpart B—*Exempt Abandonments and Discontinuances* to discontinue its trackage rights over a 3.9-mile line of railroad owned by the City of Jackson, OH and operated by the Indiana and Ohio Eastern Railroad (I&O) between milepost 91.6, at RA junction, and milepost 95.5, at West junction, in Ross County, OH. I&O will continue to operate the line.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 13, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[2] must be filed by May 24, 1991. Petitions for reconsideration must be filed by June 3, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 17, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 8, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-11425 Filed 5-13-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Advisory Panel for the Dictionary of Occupational Titles; Open Meeting

AGENCY: Employment and Training Administration, LABOR.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

SUMMARY: The Advisory Panel for the Dictionary of Occupational Titles (APDOT) was established in accordance with the federal Advisory Committee Act (Pub. L. 92-463) on August 28, 1990.

The APDOT was established as part of the Secretary of Labor's Workforce Quality Agenda to improve the quality of the work force. The APDOT will assist the Department of Labor in meeting the goals of the Secretary's agenda by providing a diversified range of user perspectives on the Dictionary of Occupational Titles (DOT). The DOT is a document which is used extensively in business, education and government. It defines, classifies and describes occupations in the labor market. The last edition of the DOT was published in 1977. The APDOT will provide advice on a new edition.

The APDOT will report to and advise the Assistant Secretary for Employment and Training on the development, publication and dissemination of the DOT.

Time: The meeting will begin at 9 a.m. on June 6, 1991, and continue until 4:45 p.m. that day; and will reconvene at 9 a.m. on June 7, 1991, and adjourn at 3 p.m. that day.

Place: The Department of Labor, 200 Constitution Avenue, NW., C5515, Seminar Room 1A, Washington, DC 20210.

Agenda: Matters to be considered as part of the agenda for the APDOT meeting include:

- Discussion of the DOL Workforce Quality Agenda including the Secretary's Commission on Achieving Necessary Skills and the National Advisory Commission on Work-Based Learning. APDOT attention will focus on the relation of these initiatives to the DOT Review.
- Discussion of the working paper, *The Changing world of Work: Implications for the DOT Review Initiative, and the APDOT Management Report.*
- Presentation of APDOT Work Products.
- International Labour Organization Presentation on labor market tools currently used or under development in various economic competitor nations including: Australia, France, Germany, Japan, Sweden and the United Kingdom.

Public Participation: The meeting will be open to the public. A half hour (9 a.m.-9:30 a.m.) on June 7 will be set aside for public comments. Individuals wishing to speak to the panel should call Dr. Marilyn Silver at 202-535-0161. Seating will be available for the public on a first-come, first-serve basis.

Individuals or organizations wishing to submit written statements should sent 10 copies to Dr. Marilyn B. Silver, Executive Director, Advisory Panel for the Dictionary of Occupational Titles, room N4470, U.S. Department of Labor 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Dr. Marilyn B. Silver, Executive Director, Advisory Panel for the Dictionary of Occupational Titles, Room N4470 U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 535-0161.

Signed at Washington, DC this 1st day of May, 1991.

Roberta T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 91-11414 Filed 5-13-91; 8:45 am]

BILLING CODE 4510-30-M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under the attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

The Employment and Training Administration has established a voice-mail service for the H-1A nurse attestation process. Call Telephone Number: 202-535-0643 (this is not a toll-free number). At that number, a caller can:

(1) Listen to general information on the attestation process for H-1A nurses;

(2) Request a copy of the Department of Labor's regulations (20 CFR part 655, subparts D and E, and 29 CFR part 504, subparts D and E) for the attestation process for H-1A nurses, including a copy of the attestation form (form ETA 9029) and the instructions to the form;

(3) Listen to information on H-1A attestations filed within the preceding 30 days;

(4) Listen to information pertaining to public examination of H-1A attestations filed with the Department of Labor;

(5) Listen to information on filing a complaint with respect to a health care facility's H-1A attestation (however, see the telephone number regarding complaints, set forth below); and

(6) Request to speak to a Department of Labor employee regarding questions not answered by Nos. (1) through (4) above.

Regarding the Complaint Process

Questions regarding the complaint process for the H-1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202-523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 28 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the ADDRESSES section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the ADDRESSES section of this notice.

Signed at Washington, DC, this 3rd day of May 1991.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS, APPROVED ATTESTATIONS, 04/22/91 TO 04/30/91

CEO-name, facility name/address	State	Approval date
Mr. Joseph Wm. Hummel, Southern Calif. Permanente Me, Kaiser Foundation Hosps., Los Angeles, CA 90027, 213-667-4011	CA	04/26/91
Mr. Richard T. Williams, Long Beach Mem. Med. Ctr., 2801 Atlantic Avenue, Long Beach, CA 90801, 213-595-2283	CA	04/26/91
Ms. Patrice Dowd, Kaiser Foundation Hosp., 99 Montecello Rd., San Rafael, CA 94903, 415-499-3000	CA	04/26/91
Mr. Frank Puglisi, Martinez Memorial Hosp., 2500 Alhambra Avenue, Martinez, CA 94553, 415-370-5122	CA	04/26/91
Mr. Charles E. Cowen, Petaluma Valley Hosp., 400 N. McDowell Blvd., Petaluma, CA 94954, 707-778-1111	CA	04/26/91
Ms. Pearl S. Scully, GEMS Professional Services, U, 3325 Wilshire Blvd., Suite 304, Los Angeles, CA 90010, 213-389-9407	CA	04/26/91
Mr. John H. Chappell, Kaiser Foundation Hospital, 250 Hospital Parkway, San Jose, CA 95119, 408-972-7000	CA	04/26/9[illegible]

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DIVISION OF FOREIGN LABOR CERTIFICATIONS, APPROVED ATTESTATIONS, 04/22/91 TO 04/30/91—Continued

CEO-name, facility name/address	State	Approval date
Ms. Leah D. Rama, First Choice Nursing Ser., In, 6290 Sunset Blvd., Ste. 1600, Los Angeles, CA 90028, 213-462-6144	CA	04/26/91
Ms. Nancy A. Kulas, Franciscan Convel. Hosp., Beverly Enterprises—CA., Inc., Merced, CA 95340, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Hy-Lond Convel. Hosp.—Merce, Beverly Enterprises—CA., Inc., Merced, CA 95340, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, San Luis Convel. Hosp., Beverly Enterprises—CA., Inc., Newman, CA 95360, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Clovis Convel. Hosp., Beverly Enterprises—CA., Inc., Clovis, CA 93612, 916-635-3606	CA	04/29/91
Mr. Guy R. Sexton, St. Luke's Subacute Care Hosp. & Nursing Centre, San Leandro, CA 94578, 415-357-6351	CA	04/29/91
Ms. Nancy A. Kulas, Fowler Convel. Hosp., 1306 East Sumner, Fowler, CA 93625, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, DBA San Andreas Convalescent, Beverly Enterprises—CA., Inc., San Andreas, CA 95249, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Beverly Enterprises—Calif., DBA Mark Twain Convalescent Hosp., San Andreas, CA 95249, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Rainiree Convalescent Hosp., Beverly Enterprises—CA., Inc., Fresno, CA 93727, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, DBA Julia Convalescent Hosp., Beverly Enterprises, CA., Inc., Mountain View, CA 94043, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Hy-Lond Convel. Hosp., Beverly Enterprises, CA., Inc., Sunnyvale, CA 94087, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Hillcrest Convel. Hospital—Beverly Enterprises, CA., Inc., Fresno, CA 93726, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Beverly Manor—Yreka, Beverly Enterprises, CA., Inc., Yreka, CA 96097, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Hy-Pana Convel. Hosp.—Stock, Beverly Enterprises, CA., Inc., Stockton, CA 95207, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Hy-Lond Convel. Hosp.—Sacra, Beverly Enterprises, CA., Inc., Sacramento, CA 95841, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Chateau Convel. Hospital, Beverly Enterprises, CA., Inc., Stockton, CA 95204, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, London House, Beverly Enterprises, CA., Inc., Sonoma, CA 95476 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Beverly Manor—Redding, Beverly Enterprises, CA., Inc., Redding, CA 96001, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Hy-Pana Convel. Hosp.—Fresn, Beverly Enterprises, CA., Inc., Fresno, CA 93726, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Fresno Care & Guidance, Beverly Enterprises, CA., Inc., Fresno, CA 93702, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Beverly Manor—Chico, Beverly Enterprises, CA., Inc., Chico, CA 95926, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Valley Care & Guidance, Beverly Enterprises, CA., Inc., Fresno, CA 93706, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Beverly Manor—Fresno, Beverly Enterprises, CA., Inc., Fresno, CA 93721, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Fairmont Rehab. Hosp., Beverly Enterprises, CA., Inc., Lodi, CA 95240, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, DBA Modesto Convalescent Hosp., Beverly Enterprises, CA., Inc., Modesto, CA 95350, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Westgate Manor, Beverly Enterprises, CA., Inc., Madera, CA 93637, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Sanger Convalescent Hospital, Beverly Enterprises, CA., Inc., Sanger, CA 93657, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, London House, Beverly Enterprises, CA., Inc., Santa Rosa, CA 95405, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Beverly Manor—Monterey, Beverly Enterprises, CA., Inc., Monterey, CA 93940, 916-635-3606	CA	04/29/91
Country View Convel. Hosp., Beverly Enterprises, CA., Inc., Fresno, CA 93706, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Beverly Manor—Bakersfield, Beverly Enterprises, CA., Inc., Bakersfield, CA 93301, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Beverly Manor—San Francisco, Beverly Enterprises, CA., Inc., San Francisco, CA 94117, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, San Jose Care & Guidance, Beverly Enterprises, CA., Inc., San Jose, CA 95127, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Westgate Convalescent Ctr., Beverly Enterprises, CA., Inc., San Jose, CA 95129, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Shafter Convalescent Hospital, Beverly Enterprises, CA., Inc., Shafter, CA 93263, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Royal Oaks Convalescent Hosp., Beverly Enterprises, CA., Inc., Galt, CA 95632, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Selma Convalescent Hospital, Beverly Enterprises, CA., Inc., Selma, CA 93662, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Beverly Manor—Santa Clara, Beverly Enterprises, CA., Inc., Santa Clara, CA 95054, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Beverly Manor—Stockton, Beverly Enterprises, CA., Inc., Stockton, CA 95204, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Novato Convel. Hosp., Beverly Enterprises, CA., Inc., Novato, CA 94947, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Kings Vista Convel. Hosp., Beverly Enterprises, CA., Inc., Fowler, CA 93625, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Hy-Lond Convel. Hosp., Fresno, Beverly Enterprises, CA., Inc., Fresno, CA 93726, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Sierra Vista Care Center, Beverly Enterprises, CA., Inc., Napa, CA 94558, 916-635-3606	CA	04/29/91
Ms. Nancy A. Kulas, Reedley Convel. Hosp., Beverly Enterprises, CA., Inc., Reedley, CA 93654, 916-635-3606	CA	04/29/91
Mr. Louis Rubino, Hollywood Community Hosp., 6245 DeLongpre Avenue, Los Angeles, CA 90028, 213-462-2271	CA	04/30/91
Mr. Ronald T. Turnbull, The Stamford Hospital, Shelburne Rd. at West Broad St., Stamford, CT	CT	04/29/91
Mr. Thomas P. Ferry, Alfred I. duPont Institute, 1600 Rockland Road, Wilmington, DE 19899, 302-651-4000	DE	04/30/91
Ms. Carolina Calderin, Pan American Hospital, 5959 NW 7th Street, Miami, FL, 305-264-1000	FL	04/25/91
Sister M. Fidelis, Lourdes Noreen McKeen Residen, 315 South Flagler Drive, West Palm Beach, FL 33401, 407-655-8544	FL	04/25/91
Mr. Edward Tudanger, Palmetto General Hospital, 2001 West 68 Street, Hialeah, FL 33016, 305-823-5000	FL	04/26/91
Ms. Patricia C. Friel, St. Mary's Hosp., 601 45th St., West Palm Beach, FL 33407, 407-881-2771	FL	04/26/91
Mr. Bob Sherman, Abbey Delray South, 1717 Homewood Boulevard, Delray Beach, FL 33445, 407-272-9600	FL	04/26/91
Mr. William Foley, Saint Joseph's Hospital of At, 5665 Peachtree Dunwoody Rd., N.W., Atlanta, GA 30342, 404-851-7001	GA	04/29/91
Mr. Richard B. Hubbard/Thomas Hill, Cobb Hospital & Medical Cente, 3950 Austell Rd., Austell, GA 30001, 404-944-5030	GA	04/30/91
Mr. Charles E. Windsor, St. Mary's Hospital, 129 North 8th Street, East St. Louis, IL 62201, 618-274-1900	IL	04/25/91
Mr. Bradley Aller, Glenwood Terrace, Ltd., 19330 S. Cottage Grove, Glenwood, IL 60425, 708-758-6200	IL	04/26/91
Mr. Gerald M. Herman, St. Elizabeth's Hosp., 211 South Third Street, Belleville, IL 62222, 618-234-2120	IL	04/26/91
Mr. Maurice I. Aaron, Woodbridge Nursing Pavilion, 2242 North Kedzie Avenue, Chicago, IL 60647, 312-486-7700	IL	04/30/91
Mr. John Birdzell, St. Catherine Hospital, Lakeshore Health System, East Chicago, IN 46312, 219-391-7600	IN	04/30/91
Mr. Lyman V. Ginger, Cardinal Hill Hospital, 2050 Versailles Hosp., Lexington, KY 40504, 606-254-5701	KY	04/26/91
Mr. J. William Hankins, St. Patrick Hospital, 524 S. Ryan St., Lake Charles, LA 70601, 318-491-7672	LA	04/25/91
Ms. Linda Shyavitz, Sturdy Memorial Hospital, Inc., 211 Park Street, Attleboro, MA 02703, 508-222-5200	MA	04/26/91
Mr. Alfred J. Smialek, Middlesex County Hospital, 775 Trapelo Rd., Waltham, MA 02254, 617-894-4600	MA	04/29/91
Mr. Morton I. Rapoport, University of Maryland Med. S, 22 S. Greene St., Baltimore, MD 21201, 301-327-2757	MD	04/29/91
Ms. Marilyn Gilbert, Rahway Geriatrics Ctr., Inc., 1777 Lawrence St., Rahway, NJ 07065, 201-499-7927	NJ	04/25/91
Mr. Benjamin Miller, Delaire Nursing & Convel. Ctr, 400 West Stimpson Avenue, Linden NJ 07036, 201-862-3399	NJ	04/26/91
Mr. Robert Van Dyk, Christian Health Care Center, 301 SICOMAC Avenue, Wyckoff, NJ 07481, 201-848-5300	NJ	04/26/91
Mr. Harvey Adelsberg, Daughters of Miriam, Ctr. of Aged, Clifton, NJ 07015, 201-772-3700	NJ	04/26/91
Mr. Paul G. Cranmer, Woods Edge Care Center, Krupp Yield Plus Ltd. Partnership, Bridgewater, NJ 08807, 908-526-8600	NJ	04/30/91
Mr. Miguil A. Fuentes, Bronx-Lebanon Hospital Ctr., 1276 Fulton Avenue, Bronx, NY 10456, 212-518-5661	NY	04/26/91
Mr. Floyd D. Loop, The Cleveland Clinic Foundati, 9500 Euclid Avenue, H-18, Cleveland, OH 44195, 216-444-2340	OH	04/30/91
Mr. Jack Campbell, St. David's Health Care Syste, 919 E. 32nd St., Austin, TX 78705, 512-476-7111	TX	04/29/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS, APPROVED ATTESTATIONS, 04/22/91 TO 04/30/91—Continued

CEO-name, facility name/address	State	Approval date
Mr. Paul Herzog, Vista Hills Med. Ctr., 10301 Gateway West, El Paso, TX 79925, 915-595-9000	TX	04/30/91
Mr. Peter Bigelow, Providence Medical Center, 500—17th Ave., Seattle, WA 98124, 206-362-2060	WA	04/30/91
Mr. Laurel L. Wilkening, University of Washington Med., 1959 N.E. Pacific Street, RC-36, Seattle, WA 98195, 206-685-3247	WA	04/30/91
Total Attestations—84		

[FR Doc. 91-11413 Filed 5-13-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for Management of Technical Assistance Services

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for the mangement of technical assistance services to up to 45 developing nonprofit arts organizations selected for participation in the FY 91 Advancement Program. The work involves the engagement and coordination of a team of nonprofit management consultants who will work on-site with assigned organizations over a fifteen month period from September 1991 through December 1992. Consultants will assist each organization with the development of a multi-year artistic and management plan and provide additional services in areas of identified need such as board and staff development, financial systems and controls, fundraising plans and strategy, marketing, public relations, or program development. Those interested in receiving the Solicitation package should reference Program Solicitation PS 91-07 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 91-07 is scheduled for release June 7, 1991 with proposals due on July 8, 1991.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Anna L. Mott or William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202/682-5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 91-11333 Filed 5-13-91; 8:45 am]

BILLING CODE 7537-01-M

Performance Review Board; Membership

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: This notice announces a revision in the membership of the SES Executive Resources and Performance Review Board.

DATES: Effective May 10, 1991, Claire del Real, Director of Communications Policy, has been designated to replace Marguerite Sullivan, Director, Office of Publications and Public Affairs, as a Member of the SES Performance Review Board. Ms. del Real will serve the unexpired portion of Marguerite Sullivan's term through December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Timothy G. Connelly, Director of Personnel, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Lynne Cheney,

Chairperson.

[FR Doc. 91-11344 Filed 5-3-91; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-309]

Maine Yankee Atomic Power Co.; Consideration of Licensing Action and Opportunity for Public Comment

Maine Yankee Atomic Power Station has approximately 10,500 gallons of slightly contaminated chemical cleaning solution that has been stored on site since 1987. The solution was used to clean the secondary side of steam generators, and contains quantities of metal oxides and chemicals that are categorized as hazardous by the U.S. Environmental Protection Agency (EPA). Maine Yankee Atomic Power Company (Maine Yankee, the licensee) has arranged for disposal of this material in accordance with EPA regulations, by and at an EPA licensed facility.

By letter dated April 26, 1990, Maine Yankee submitted a request to the NRC for transfer of this chemical cleaning solution. In their request, Maine Yankee addressed specific information required by 10 CFR 20.302(a), provided a detailed description of the material, thoroughly analyzed and evaluated the information pertinent to the effects on the environment of the proposed disposal, and committed to follow specific procedures to minimize the risk of unexpected exposures. The staff has reviewed the Maine Yankee request to transfer this material and has prepared a preliminary Safety Evaluation Report.

The staff's report describes the material; its radiological properties, proposed disposal method, and radiological impact on both the public and workers associated with the transfer and processing. The maximum potential exposure to a disposal site worker or the general public (an intruder) would be 0.34 millirem per year, based on 2000 hours of continuous occupancy of a spot directly above the buried material. The potential radiation exposure from various air and water borne pathways was also evaluated. Each of these pathways was at least ten times less than the maximum potential exposure directly above the buried material.

The staff concludes that the licensee's request to transfer the slightly contaminated cleaning solution is acceptable. Although this submittal is based on the above 10 CFR 20.302(a) requirements, the staff has determined that more appropriate regulatory requirements for considering this request are 10 CFR 20.301(a) and 10 CFR 30.41(b)(7). Section 20.301(a) of 10 CFR part 20 requires that licensed radioactive material be disposed of only by transfer to an authorized recipient or, as stated in 10 CFR 30.41(b)(7), "As otherwise authorized by the Commission in writing." The licensee will transfer the by-product material

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(waste cleaning solution) to an EPA licensed facility, for disposal under the provisions of 10 CFR 20.301(a) and 10 CFR 30.41(b)(7). Maine Yankee was informed of the staff's conclusion in a letter dated March 6, 1991. Maine Yankee does not, however, intend to transfer the material until the end of the 30-day comment period associated with this Notice.

The Commission is seeking public comments on this proposed transfer. Any comments received within 30 days after the date of publication of this Notice will be considered for inclusion in the final Safety Evaluation Report and in making any final determination. When published, the final Safety Evaluation Report will be made available to the public.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC.

For further details with respect to this action, see (1) Maine Yankee Atomic Power Company letter, dated April 26, 1990, and (2) NRC Letter to C.D. Frizzle, President, Maine Yankee Atomic Power Company, signed by E.H. Trottier, dated March 6, 1991.

Both of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578. A copy of each may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 7th day of May, 1991.

For the Nuclear Regulatory Commission.

Patrick M. Sears,

Project Manager, Project Directorate I-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-11428 Filed 5-13-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co., San Diego Gas & Electric Co., the City of Anaheim, California, and the City of Riverside, California (San Onofre Nuclear Generating Station, Unit Nos. 2 and 3); Exemption

I

The Southern California Edison Company, San Diego Gas & Electric Company, The City of Anaheim, California, and The City of Riverside, California (the licensee) hold Facility Operating License Nos. NPF-10 and NPF-15, which authorize operation of the San Onofre Nuclear Generating Station, Unit Nos. 2 and 3 (the facilities). The licenses provide, among other things, that the facilities, are subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. These facilities are pressurized water reactors located in San Diego County, California.

II

General Design Criterion (GDC) 52 of appendix A to 10 CFR part 50 requires that each reactor containment be designed so that periodic integrated leakage rate testing can be conducted to assure containment isolation integrity. Section III.D.1(a) of appendix J to 10 CFR part 50 requires that the third Type A test in a 10-year service period shall be conducted when the unit is shut down for the 10-year unit inservice inspection (ISI).

The Type A tests are conducted to measure the primary reactor containment integrated leakage rate. They are also known as the containment integrated leak rate tests (ILRT). These tests are required by appendix J to assure that the containment leakage following a large break loss-of-coolant accident is less than the maximum allowable leak rate assumed in the accident analysis. In addition to the Type A tests, appendix J requires Type B and Type C tests of leakage through containment penetrations and containment isolation values to also assure containment integrity during an accident. This requested exemption does not affect the requirements on (1) the Type B and Type C tests in appendix J or (2) the maximum allowed containment leakage rate in appendix J and the San Onofre Unit Nos. 2 and 3 Technical Specifications.

The containment is required to be operable when the unit is at reactor system conditions above cold shutdown and refueling. The containment is not required for cold shutdown or refueling.

By letter dated April 8, 1991, the licensee requested an exemption from the Type A testing requirements in Section III.D.1(a) of appendix J. This is an exemption from conducting the third Type A test in a 10-year service period during the unit shutdown for the 10-year inservice inspection (ISI). For example, the third Type A test for the first 10-year service period for San Onofre 2 is scheduled for the San Onfore Unit 2 Cycle 6 refueling outage in August 1991. The licensee contends that, because the 10-year ISI has been extended beyond 1991, (Cycle 7 refueling outage) the inspection is not necessary for the Unit 2 Cycle 6 refueling outage and, therefore, must be uncoupled from the third Type A test in each 10-year service period which is required by appendix J. (A similar situation exists for Unit 3). To perform a fourth Type A test during the same shutdown as the 10-year plant ISI (Cycle 7 refueling outage) would only satisfy the Technical Specification requirement to perform a Type A test during the same shutdown for the 10-year plant ISI. Additionally, performing a fourth containment ILRT, for the sole purpose of being done during the same outage as the 10-year ISI, would not necessarily enhance the purpose, or provide further assurance of containment integrity above that which has already been demonstrated.

The 10-year ISI is not related to the integrity of the containment pressure boundary. The purpose of the appendix J test program is to ensure that leakage through the primary reactor containment does not exceed allowable leakage rate values. The purpose of the ISI program is to ensure that structural integrity of Class 1, 2, and 3 components is maintained in accordance with ASME Code requirements. Therefore, the proposed separation has no safety consequences because the requirements on containment integrity in appendix J and the San Onofre Unit Nos. 2 and 3 Technical Specifications, and on structural integrity of Class 1, 2, and 3 components in the ASME Code are not being changed by the proposed exemption.

The staff has considered the appendix J exemption request for uncoupling the third Type A test of each 10-year service period from the 10-year unit ISI and concludes it is justified on the grounds that the third Type A test within each 10-year service period and the 10-year ISI may be scheduled separately, and the safe operation of San Onofre Unit Nos. 2 and 3 does not require that the two tests be conducted in the same outage. The licensee is still required to

conduct the 10-year ISI in accordance with section XI of the ASME Code.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemptions are (1) authorized by law, (2) will not present an undue risk to public health and safety, and are (3) consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption—namely, that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule in that the San Onofre Unit Nos. 2 and 3 containment will continue to provide a reliable and acceptable means of containment isolation integrity within the leakage requirements of appendix J; and the San Onofre Unit Nos. 2 and 3 Technical Specifications and the 10-year ISI will still be conducted in accordance with the ASME Code.

When appendix J was adopted, the end of the 10-year service period and the 10-year inservice inspection outage were contemplated to be concurrent milestones; however, these milestones are unrelated within the meaning of containment integrity because the 10-year ISI is not conducted to assure containment integrity. The Type A, B, and C tests of appendix J assure containment integrity. The rule did not anticipate extended outages that would extend the 10-year ISI in accordance with the ASME Code. Performing the 10-year ISI early and concurrent with the third Type A test in a 10-year service period is not necessary to assure containment isolation integrity and would impose a hardship on the licensee with little or no increase in the level of quality or safety at San Onofre Unit Nos. 2 and 3.

Accordingly, pursuant to 10 CFR 50.12(a)(2)(ii), the Commission hereby grants an exemption from the requirements of section III.D.I(a) of appendix J to 10 CFR part 50 to the licensee for operation of the San Onfore Nuclear Generating Station Unit Nos. 2 and 3, as described above.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment. This was noticed in the Federal Register (56 FR 20629, May 6, 1991).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 7th day of May 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-11429 Filed 5-13-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Forms Under Review by Office of Management and Budget

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), this notice announces forms which have been submitted to OMB's Office of Information and Regulatory Affairs for renewal:

SF-269, Financial Status Report—Long Form
SF-269a, Financial Status Report—Short Form
SF-424, Application for Federal Assistance (Facesheet)
SF-424a, Budget Information—Nonconstruction Programs
SF-424b, Assurances—Nonconstruction Programs
SF-424c, Budget Information—Construction Programs
SF-424d, Assurances—Construction Programs

The forms are standard application and financial expenditure forms currently prescribed in OMB Circular A-102, "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments," and Circular A-110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Nonprofit Organizations." Federal agencies use the applications to qualify and select grantees and the financial expenditure forms to monitor the status of grant funds.

REPORTING ESTIMATES: Following are the reporting estimates for each of the forms:

Form	Average burden (hours)	Annual forms submitted
SF-269	.50	200,000
SF-269a	1.50	200,000
SF-424	.75	400,000
SF-424a	3.00	360,000
SF-424b	.25	360,000
SF-424c	3.00	40,000
SF-424d	.25	40,000

FOR FURTHER INFORMATION CONTACT: Palmer Marcantonio, Financial Management Division, Office of Management and Budget, room 10235, New Executive Office Building, Washington, DC 20503.

ADDRESSES: Written comments should be sent to: Edward Springer, OMB Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3235, New Executive Office Building, Washington, DC 20503.

Frank Hodsoll,

Executive Associate Director for Management.

[FR Doc. 91-11355 Filed 5-13-91; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 8, 1991.

The Above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Duracell International, Inc.
Common Stock, $.5 Par Value (File No. 7-6806)
Pet Incorporated
Common Stock, $.01 Par Value (File No. 7-6807)
Blackstone 1998 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7-6808)
National Health Laboratories, Inc.
Common Stock, $0.01 Par Value (File No. 7-6809)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are inivited to submit on or before May 29, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written commetns should file three copies thereof with the Secretary of the

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Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11352 Filed 5-13-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application to Withdraw From Listing and Registration; Seitel, Inc., Common Stock, $.01 Par Value (File No. 1-10165)

May 8, 1991.

Seitel, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs of expenses attendant on maintaining the dual listing of its common stock on the New York Stock Exchange, Inc. and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before May 29, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11354 Filed 5-13-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application to Withdraw From Listing and Registration; Uno Restaurant Corporation, Common Stock, $.01 Par Value (File No. 1-9573)

May 8, 1991.

Uno Restaurant Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs of expenses attendant on maintaining the dual listing of its common stock on the New York Stock Exchange, Inc. and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before May 29, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11353 Filed 5-13-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1390]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: The Department of State is requesting reinstatement of approval for the Nonimmigrant Visa Application form and the Application for Immigrant Visa and Alien Registration. The Nonimmigrant Visa Application is used by aliens who desire to travel to the United States in nonimmigrant status. The information provided on the form assists in identifying the applicant and in determining the applicant's eligibility for a nonimmigrant visa. The Application for Immigrant Visa and Alien Registration is needed to assist consular officers in determining whether an applicant is entitled to immigrant visa status and whether any grounds of ineligibility apply to the applicant, and provides the Immigration and Naturalization Service with information for registration of the alien after admission. The following summarizes the information collection proposals submitted to OMB:

1. Type of request—Reinstatement.
   Originating office—Bureau of Consular Affairs.
   Title of information collection—Nonimmigrant Visa Application.
   Frequency—On occasion.
   Form No.—OF-156.
   Respondents—Aliens Applying for Nonimmigrant Visas.
   Estimated number of respondents—8,000,000.
   Average hours per response—1 hour.
   Total estimated burden hours—8,000,000.
2. Type of request—Reinstatement.
   Originating office—Bureau of Consular Affairs.
   Title of information collection—Application for Immigrant Visa and Alien Registration.
   Frequency—On occasion.
   Form No.—OF-230 (I & II).
   Respondents—Aliens Seeking Immigrant Visas.
   Estimated number of respondents—600,000.
   Average hours per response—1 hour.
   Total estimated burden hours—600,000.

Section 3504(h) of Public Law 96-511 does not apply.

Additional information or comments: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395-7340.

Dated: May 2, 1991.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 91-11334 Filed 5-13-91; 8:45 am]

BILLING CODE 4710-10-M

[Public Notice 1391]

Advisory Committee to the United States Section Inter-American Tropical Tuna Commission; Partially Closed Meeting

The Advisory Committee to the United States Section of the Inter-American Tropical Tuna Commission will meet on June 4, 1991, at the Scripps Institute of Oceanography, Martin Johnson House (T-29), 8602 La Jolla Shores Drive, La Jolla, California. This session will discuss the 1990 and 1991 fishing years, the status of the tuna and dolphin stocks of the eastern Pacific Ocean, and developments affecting the fishery since the last annual meeting of the Commission. The morning session will be open to the public.

The Advisory Committee will also meet in an afternoon session on June 4, 1991. This session will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States negotiating position to be taken Annual Meeting of the Inter-American Tropical Tuna Commission to be held in Tokyo, Japan, June 18-20, 1991. The members of the Advisory Committee will examine various options for the negotiating position at the Special Meeting, and these considerations must necessarily involve review of classified matters. Accordingly, the determination has been made to close the afternoon session pursuant to section 19(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 19(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Brian S. Hallman, Deputy Director, Office of Fisheries Affairs (OES/OFA), room 5806, U.S. Department of State, Washington, DC 20520-7818. Mr. Hallman can be reached by telephone on (202) 647-2335.

Dated: May 1, 1991.

David A. Colson,

Deputy Assistant Secretary, Oceans and Fisheries Affairs.

[FR Doc. 91-11335 Filed 5-13-91; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1392]

Overseas Schools Advisory Council; Meeting

The Overseas Schools Advisory Council, Department of State, will hold its annual meeting on Wednesday, June 12, 1991, at 9:30 a.m. in Conference Room 1105, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas which are assisted by the Department of State and which are attended by dependents of U.S. government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Entrance to the Department of State is controlled but can be facilitated by making attendance arrangements in advance. Persons planning to attend the meeting should so advise the office of Dr. Ernest N. Mannino, Department of State, telephone 703-875-7800, no later than five days before the meeting. Notification should include name, date of birth and Social Security number. All attendees must use the C Street entrance to the building.

Dated: April 29, 1991.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 91-11336 Filed 5-13-91; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice 1393]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Fire Protection; Meeting

The Working Group on Fire Protection of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on June 5, 1991 at 9 a.m. in room 4315 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. The purpose of the meeting will be to prepare for discussions anticipated to take place at the 36th Session of the International Maritime Organization (IMO) Subcommittee on Fire Protection (FP), scheduled for June 24-28, 1991. The meeting will focus on proposed amendments to SOLAS for new passenger ships.

Members of the public may attend up to the seating capacity of the room. For further information regarding the meeting of the SOLAS Working Group on Fire Protection (June 5, 1991) contact Mr. Jack Booth at (202) 267-2997.

Dated: May 2, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee

[FR Doc. 91-11337 Filed 5-13-91; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-91-19]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 3, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800

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Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 8, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25168.

Petitioner: Evergreen International Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.583(a)(8).

Description of Relief Sought: To extend Exemption No. 4856, as amended, which allows petitioner to transport employees/dependents on its DC-8-60 (DC-8) cargo flights. Exemption No. 4856, as amended, will expire on September 30, 1991.

Docket No.: 26468.

Petitioner: Pacific Southwest Airmotive.

Sections of the FAR Affected: 14 CFR 145.45(e).

Description of Relief Sought: To allow petitioner to maintain copies of the repair station manual in a central location so that the manual is not required to be distributed to each supervisor and inspector.

Docket No.: 26525.

Petitioner: F R Aviation Limited.

Sections of the FAR Affected: 14 CFR 61.77(a).

Description of Relief Sought: To allow petitioner's pilots to be issued special purpose pilot certificates for which they are otherwise not eligible, on Falcon 20 series aircraft, because these aircraft have a seating capacity of 10 and a maximum payload of 6,000 pounds. These pilots would not be subject to §§ 61.55, 61.57, and 61.58, which prescribe requirements for recent flight experience and proficiency checks.

Docket No.: 26528.

Petitioner: Bell Helicopter Textron, Inc.

Sections of the FAR Affected: 14 CFR 133.45(e).

Description of Relief Sought: To allow petitioner to conduct emergency lifesaving and training exercises implementing the Dallas/Fort Worth Metroplex Helicopter Emergency Lifesaver Plan. These exercises involve lifting personnel in a suspended Billy Pugh safety net in a helicopter that does not have the capacity of sustained flight in the event of an engine failure.

Docket No.: 26538.

Petitioner: A.C.E. Flyers, Inc. dba Jay Hawk Air.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought: To allow pilots employed by Jay Hawk Air to perform the preventive maintenance function of removing and/or replacing the passenger seats of aircraft used in part 135 operations.

Docket No.: 13203.

Petitioner: The Boeing Company.

Sections of the FAR Affected: 14 CFR 25.807(c)(1) and (c)(4), 25.809(f)(1), and 25.813(b).

Description of Relief Sought/Disposition: To amend Exemption No. 1870C, which permits the carriage on the upper deck of Boeing 747-100 airplanes of five noncrewmembers, plus three crewmembers for those airplanes that have been converted to an all-cargo main-deck configuration. These airplanes are unofficially referred to as "747 Special Freighters." The amendment would change the wording of the exemption to include all 747-100 and 747-200 airplanes modified to the Special Freighter configuration under the Supplemental Type Certification process. *Grant, April 3, 1991, Exemption No. 1870D.*

Docket No.: 23336.

Petitioner: Simulator Training, Inc.

Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part 121, appendix H.

Description of Relief Sought/Disposition: To reinstate Exemption No. 4797, which allowed petitioner and persons who contract for services from petitioner to use FAA-approved simulators to meet certain training and testing requirements. *Grant, August 31, 1990, Exemption No. 5232.*

Docket No.: 23543.

Petitioner: Arnautical, Inc.

Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part 121, appendix H.

Description of Relief Sought/Disposition: To renew Exemption No. 4481, as amended, which allows petitioner to use FAA-approved simulators to meet certain training and testing requirements. *Grant, July 20, 1990, Exemption No. 4481B.*

Docket No.: 25388.

Petitioner: American Airlines.

Sections of the FAR Affected: 14 CFR 121.291 and appendix D of part 121.

Description of Relief Sought/Disposition: To allow petitioner to initiate operation of an MD-11 airplane following a successful partial ditching demonstration. *Petition withdrawn, January 4, 1991.*

Docket No.: 24605.

Petitioner: World Jet Corporation.

Sections of the FAR Affected: 14 CFR 91.161(a)(4) and 135.165(b).

Description of Relief Sought/Disposition: To extend and amend Exemption No. 4961, which allows petitioner to operate certain airplanes using a single long-range navigation system and single high-frequency communication system. The amendment would add the Gulfstream G1159, Gulfstream G1159A, Canadair CL-600, and Canadair CL-601 to the list of airplanes covered by the exemption. *Grant, August 3, 1990, Exemption No. 4961A.*

Docket No.: 24983.

Petitioner: Lowa, Ltd.

Sections of the FAR Affected: 14 CFR 61.58(c).

Description of Relief Sought/Disposition: To extend Exemption No. 4702, which allows a pilot to complete the entire 24-month pilot-in-command check in an FAA-approved simulator provided that the pilot taking the flight check has completed at least three takeoffs and landings within the preceding 90 days in a Boeing 707. *Grant, August 29, 1990, Exemption No. 4702B.*

Docket No.: 25252.

Petitioner: Robert A. Carollo dba North American Airline Training Group.

Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part 121, appendix H.

Description of Relief Sought/Disposition: To renew Exemption No. 4959, which allows petitioner to use FAA-approved simulators to meet certain training and testing requirements. *Partial Grant, July 20, 1990, Exemption No. 4959A.*

Docket No.: 25431.

Petitioner: Helicopter Association International.

Sections of the FAR Affected: 14 CFR 21.181(a)(1) and 135.143(b).

Description of Relief Sought/Disposition: To allow petitioner's members who operate single-engine helicopters in Part 135 operations to operate those helicopters with certain inoperative instruments and equipment. *Partial Grant, October 22, 1990, Exemption No. 5248.*

Docket No.: 26012.

Petitioner: Federal Express Corporation.

Sections of the FAR Affected: 14 CFR 121.547(c) and 121.583(a).

Description of Relief Sought/Disposition: To amend Exemption No. 5129, which allows petitioner to transport medical personnel assigned to Projects Orbis without complying with all of the passenger-carrying requirements specified in §§ 121.291, 121.309(f), 121.310, and 121.391. The amendment would eliminate the restriction that allows the petitioner to use only its Boeing 747 and Douglas DC-10. *Denial, August 10, 1990, Exemption No. 5129A.*

Docket No.: 26067.

Petitioner: SimuFlite Training International.

Sections of the FAR Affected: 14 CFR 135.303; 135.293; 135.297; 135.299; 135.337(a)(2), (a)(3), and (b)(2); 135.339 (a)(2), (b), and (c); and part 121, appendix H.

Description of Relief Sought/Disposition: To allow petitioner to use certain highly qualified instructor pilots to train the pilots of part 135 certificate holders in initial, transition, upgrade, differences, and recurrent training in approved simulators, without the petitioner's instructor pilots meeting all the applicability training requirements of subpart H of part 135 and the employment requirements of appendix A of part 121, and without the petitioner's holding an air carrier operating certificate. In addition, the exemption would allow certain highly qualified pilot check airmen training by the petitioner to check the certificate holder's pilots in flight checks required by part 135 without the petitioner's pilot check airmen meeting all of the applicable requirements of the regulations. *Partial grant, June 7, 1990, Exemption No. 5187.*

Docket No.: 26602.

Petitioner: FlightSafety International.

Sections of the FAR Affected: 14 CFR 135.303; 135.293; 135.297; 135.299; 135.337(a)(2), (a)(3), and (b)(2); 135.339(a)(2), (b), and (b)(2); part 121, appendix H.

Description of Relief Sought/Disposition: To amend Exemption No. 5241, which allows petitioner to offer simulator training, instructor, and check airmen to part 135 operators of airplanes. The amendment would allow the petitioner also to offer approved helicopter simulator training, approved instructors, and check airmen to part 135 operators of helicopters. *Grant, February 8, 1991, Exemption No. 5241A.*

Docket No.: 26314.

Petitioner: Lineas Aereas Del Caribe, S.A.

Sections of the FAR Affected: 14 CFR 91.805.

Description of Relief Sought/Disposition: To allow petitioner to operate a one-way nonrevenue flight with a DC-8-33 aircraft (N59AJ, S/N 45272) that does not meet the operating noise limits established in part 36. *Grant, February 12, 1991, Exemption No. 5274A.*

Docket No.: 26349.

Petitioner: Vocational Industrial Clubs of America, Inc.

Sections of the FAR Affected: 14 CFR 147.21.

Description of Relief Sought/Disposition: To allow students from part 147 schools to compete in skills competitions during school hours, and allow these hours to be credited toward school time. *Grant, April 10, 1991, Exemption No. 5297*

Docket No.: 26460.

Petitioner: Delta Air Lines, Inc.

Sections of the FAR Affected: 14 CFR 121.310(m).

Description of Relief Sought/Disposition: To allow petitioner to operate L-1011-385-3 aircraft without conforming to the 60-foot distance requirement between emergency exits. *Grant, April 23, 1991, Exemption No. 5301*

Docket No.: 26492.

Petitioner: Wrangler Aviation, Inc.

Sections of the FAR Affected: 14 CFR 121.358(c)(1).

Description of Relief Sought/Disposition: To allow petitioners to submit a request for approval of a retrofit schedule for installations of windshear equipment on an L-1011 freighter aircraft after the June 1, 1990, date specified in the regulations. *Grant, April 16, 1991, Exemption No. 5298*

Docket No.: 090CE.

Petitioner: Aero Twin, Inc.

Sections of the FAR Affected: 14 CFR 23.3(a) and part 135, appendix A.

Description of Relief Sought/Disposition: To increase the number of allowable seats in a normal category airplane, excluding the pilot seats, from 9 to 13 and to change all one-engine-inoperative requirements to one-engine-operative requirements. *Denial April 16, 1991, Exemption No. 5299*

[FR Doc. 11400 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-13-M

Research, Engineering, and Development Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92-362; 5 U.S.C. app. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Research, Engineering, and Development (R,E&D) Advisory Committee to be held Monday, June 3, 1991, at 10 a.m. The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, in the MacCracken Room on the tenth floor.

The agenda for this meeting will be focused primarily on a discussion of the future R&D program—how the Committee will review the current R,E&D Plan, and what actions are needed to build a long-term R&D program.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or plan to access the building to attend the meeting should contact Ms. Jan Peters, Special Assistant to the Executive Director of the R,E&D Advisory Committee, ASD-6, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-3096.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on May 8, 1991.

Martin T. Pozsky,

Executive Director, Research, Engineering, and Development Advisory Committee.

[FR Doc. 91-11390 Filed 5-13-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

May 7, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under

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the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1004.
Form Number: IRS Form 1120-REIT.
Type of Review: Revision.
Title: U.S. Income Tax Return for Real Estate Investment Trusts.
Description: Form 1120-REIT is filed by a corporation, trust, or association electing to be taxed as a REIT (real estate investment trust) in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120-REIT to determine whether the REIT has correctly reported its income, deductions, and tax liability.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 176.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—55 hrs., 43 min.
Learning about the law or the form—17 hrs., 31 min.
Preparing the form—34 hrs., 5 min.
Copying, assembling, and sending the form to the IRS—4 hrs., 17 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 19,642 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 91-11345 Filed 5-13-91; 8:45 am]
BILLING CODE 4830-01-M

Office of Thrift Supervision

Century Federal Savings Bank, FSB Chicago, IL; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Century Federal Savings Banks, FSB, Chicago, Illinois, on May 3, 1991.

Dated: May 8, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-11356 Filed 5-13-91; 8:45 am]
BILLING CODE 6720-01-M

First Federal Savings and Loan Association of Pittsburg, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings and Loan Association of Pittsburg, F.A., Pittsburg, Kansas, on May 3, 1991.

Dated: May 8, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-11357 Filed 5-13-91; 8:45 am]
BILLING CODE 6720-01-M

Liberty Savings Bank, FSB, Marietta, OH; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Liberty Savings Bank, FSB, Marietta, Ohio, on May 3, 1991.

Dated: May 8, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-11358 Filed 5-13-91; 8:45 am]
BILLING CODE 6720-01-M

Newton Savings Bank, FSB; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Newton Savings Bank, FSB, Fairfield, New Jersey, on May 3, 1991.

Dated: May 8, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-11359 Filed 5-13-91; 8:45 am]
BILLING CODE 6720-01-M

Security Federal Savings and Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Security Federal Savings and Loan Association, F.A., Albuquerque, New Mexico, on May 3, 1991.

Dated: May 8, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-11360 Filed 5-13-91; 8:45 am]
BILLING CODE 6720-01-M

Alamo Federal Savings Association of Texas; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Alamo Federal Savings Association of Texas, San Antonio, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 3, 1991.

Dated: May 8, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-11367 Filed 5-13-91; 8:45 am]
BILLING CODE 6720-01-M

Century Federal Savings Bank Chicago, IL; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Century Federal Savings Bank, Chicago, Illinois, OTS No. 5242, on May 3, 1991.

Dated: May 8, 1991.

By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-11360 Filed 5-13-91; 8:45 am]
BILLING CODE 6720-01-M

First Federal Savings and Loan Association of Pittsburg; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings and Loan Association of Pittsburg, Pittsburg, Kansas, OTS No. 2711, on May 3, 1991.

Dated: May 8, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-11361 Filed 5-13-91; 8:45 am]
BILLING CODE 6720-01-M

Liberty Savings Bank, Marietta, OH; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Liberty Savings Bank, Marietta, Ohio, on May 3, 1991.

Dated: May 8, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-11362 Filed 5-13-91; 8:45 am]
BILLING CODE 6720-01-M

Newton Savings Bank, SLA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Newton Savings Bank, SLA, Newton, New Jersey (OTS No. 6497), on May 3, 1991.

Dated: May 8, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-11363 Filed 5-13-91; 8:45 am]
BILLING CODE 6720-01-M

Security Federal Savings and Loan Association of Albuquerque; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Security Federal Savings and Loan Association of Albuquerque, Albuquerque, New Mexico, OTS No. 6236, on May 3, 1991.

Dated: May 8, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-11364 Filed 5-13-91; 8:45 am]
BILLING CODE 6720-01-M

Sentry Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Sentry Federal Savings Bank, Norfolk, Virginia, OTS No. 5301, on May 3, 1991.

Dated: May 8, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-11365 Filed 5-13-91; 8:45 am]
BILLING CODE 6720-01-M

VOL 56 ISS 93 MY 14 1991 UMI

Sunshine Act Meetings

Federal Register
Vol. 56, No. 93
Tuesday, May 14, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 15, 1991.

LOCATION: Room 556, Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. *Pride in Public Service Award* (10 minutes)
   The Commission will present the Pride in Public Service Award to May's recipient.
2. By FY 93 Priorities
   The Commission will consider priorities for fiscal year 1993.
3. *All Terrain Vehicles*
   The Commission will consider options and recommendations related to All Terrain Vehicles (ATVs).

For a recorded message containing the latest agenda information, call (301) 492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492-6800.

Dated: May 8, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91-11540 Filed 5-10-91; 1:57 pm]

BILLING CODE 6355-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Notice

May 8, 1991.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-40), U.S.C. 552B:

DATE AND TIME: May 15, 1991, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 857th Meeting—May 15, 1991—Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 6731-003, Aquenergy Systems, Inc. and Conerose Power Corporation

CAH-2.
Project Nos. 4665-005, 10457-001 and 10470-002, Long Lake Energy Corporation

CAH-3.
Project No. 2436-001, New York State Electric & Gas Corporation

CAH-4.
Omitted

CAH-5.
Omitted

CAH-6.
Omitted

CAH-7.
Omitted

CAH-8.
Project No. 10613-001, Town of Summersville, West Virginia
Project No. 10634-001, City of Manassas, Virginia

CAH-9.
Omitted

CAH-10.
Docket No. UL89-8-003, Sheldon Jackson College

CAH-11.
Project No. 9558-002, Carry Falls Corporation

CAH-12.
Project No. 6902-026, City of New Martinsville, West Virginia

CAH-13.
Project No. 4354-013, Owyhee Irrigation District, Gem Irrigation District and Ridgeview Irrigation District

CAH-14.
Docket No. RM90-3-000, California Save Our Streams Council

Consent Agenda—Electric

CAE-1.
Docket No. ER91-322-000, Pennsylvania Power & Light Company

CAE-2.
Docket Nos. ER91-325-000, ER91-180-000 and EL91-39-000, Southern Company Services, Inc.

CAE-3.
Docket Nos. ER91-337-000 and EL91-31-000, Pacific Gas and Electric Company

CAE-4.
Docket No. ER91-176-000, PSI Energy, Inc. and Consumers Power Company

CAE-5.
Docket No. EL90-46-001, City of New Orleans, Louisiana v. Entergy Corporation, Arkansas Power and Light Company, New Orleans Public Service, Inc., Louisiana Power and Light Company, Mississippi Power and Light Company and System Energy Resources, Inc.

CAE-6.
Docket No. ER91-26-001, PacifiCorp Electric Operations and Arizona Public Service Company

CAE-7.
Docket No. EL90-12-003, Cajun Electric Power Cooperative, Inc. v. Louisiana Power & Light Company
Docket No. EL90-15-002, Louisiana Energy and Power Company Authority v. Louisiana Power & Light Company

CAE-8.
Docket Nos. QF88-202-003 and QF88-203-003, GEO East Mesa Limited Partnership (GEM 1 Facility, GEM 2 Facility)

CAE-9.
Docket Nos. ER91-177-002, 007 and 011 (Phase II), Southern California Edison Company

CAE-10.
Docket No. EL91-19-000, Concerned Citizens for the Environment v. Inter-Power of New York, Inc.

CAE-11.
Docket No. ER90-314-000, Wisconsin Public Service Corporation

CAE-12.
Docket Nos. ER90-368-001 and ER90-522-001, Metropolitan Edison Company

CAE-13.
Docket No. ES91-22-000, Gulf States Utilities Company

Consent Agenda—Oil and Gas

CAG-1.
Docket No. RP91-136-000, Centra Pipelines Minnesota Inc. (formerly Inter City Minnesota Pipelines, Ltd. Inc.)

CAG-2.
Docket No. RP91-133-000, Florida Gas Transmission Company.

CAG-3.
Docket No. RP91-99-000, Northern Border Pipeline Company

CAG-4.

Docket No. RP91-10-000, Wintershall Pipeline Corporation

CAG-5.
Docket Nos. RP91-26-003 and 004, El Paso Natural Gas Company

CAG-6.
Docket Nos. TA91-1-46-000, 001 and 002, Kentucky West Virginia Gas Company

CAG-7.
Docket No. TM91-4-18-000, Texas Gas Transmission Corporation

CAG-8.
Docket Nos. TA91-1-24-003, 000, RP90-162-001 and TM91-1-24-001, Equitrans, Inc.

CAG-9.
Docket No. RP91-56-000, Williston Basin Interstate Pipeline Company

CAG-10.
Docket No. RP91-38-000, Florida Gas Transmission Company

CAG-11.
Omitted

CAG-12.
Docket Nos. RP89-48-011, CP88-133-002, CP89-1126-001, RP89-222-008, CP89-254-004 and CP89-686-002, Transwestern Pipeline Company

CAG-13.
Docket Nos. RP86-189-020, RP86-105-021 and RP87-25-009, ANR Pipeline Company

CAG-14.
Docket No. RP91-95-002, Mississippi River Transmission Corporation

CAG-15.
Docket Nos. TQ90-4-49-002 and RP90-113-002, Williston Basin Interstate Pipeline Company

CAG-16.
Docket Nos. RP88-262-011 and CP89-017-005, Panhandle Eastern Pipe Line Company

CAG-17.
Docket No. RP90-104-008, Texas Gas Transmission Corporation

CAG-18.
Omitted

CAG-19.
Omitted

CAG-20.
Docket Nos. RP85-122-019 and RP87-30-024, Colorado Interstate Gas Company and Natural Gas Pipeline Company of America
Docket No. RP90-170-000, Colorado Interstate Gas Corporation

CAG-21.
Docket No. RP86-136-019, National Fuel Gas Supply Corporation

CAG-22.
Docket No. RP91-47-001, National Fuel Gas Supply Corporation

CAG-23.
Docket No. RP89-183-007, Williams Natural Gas Company

CAG-24.
Omitted

CAG-25.
Docket Nos. CP89-1227-011, RP86-259-047, RP89-136-025 and RP90-124-008, Northern Natural Gas Company

CAG-26.
Docket Nos. CP89-1261-010 and TA90-1-28-003, Natural Gas Pipeline Company of America

CAG-27.
Docket No. RM91-3-005, Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs
Docket Nos. TA88-2-25-007, RP88-146-005, TA88-3-25-008, RP89-12-008, RP89-13-005, RP89-158-004, TQ89-4-25-002, TQ89-5-25-002, TQ90-1-25-004, TA90-1-25-003, TM90-5-25-002, TM90-4-25-002, TQ90-3-25-002, TM90-6-25-002, TQ90-4-25-002, TM91-2-25-002, TQ91-2-25-002, RP88-146-001, 003, RP89-12-003, 006, TA88-3-25-001, 004 and TM89-3-25-003, Mississippi River Transmission Corporation

CAG-28.
Docket No. RM91-2-008, Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs
Docket Nos. RP88-267-012 and RP91-69-003, South Georgia Natural Gas Company
Docket Nos. RP85-209-032, *et al.*, and RP89-147-000, United Gas Pipe Line Company

CAG-29.
Docket Nos. RP86-136-009, RP89-49-011, RP90-14-001 and CP89-1582-003, National Fuel Gas Supply Corporation

CAG-30.
Docket Nos. IS87-14-000, IS91-25-000 and OR88-3-000, Buckeye Pipe Line Company, L.P

CAG-31.
Docket No. RM91-2-000, Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs
Docket Nos. RP88-248-000 and RP89-62-000, Arkla Energy Resources, a division of Arkla, Inc.

CAG-32.
Docket No. RP85-39-000, Wyoming Interstate Company, Ltd.

CAG-33.
Docket Nos. RP85-60-000 and 002, Overthrust Pipeline Company

CAG-34.
Docket No. RM89-16-002, Order Implementing the Natural Gas Wellhead Decontrol Act of 1989

CAG-35.
Omitted

CAG-36.
Docket No. CI91-1-000, Arcadian Corporation

CAG-37.
Docket No. CI85-673-009, LaSER Marketing Company
Docket No. CI86-27-010, Transco Energy Marketing Company
Docket No. CI86-168-009, Tenngasco Corporation
Docket No. CI86-377-006, Arkla Energy Marketing Company
Docket No. CI86-503-006, Sonat Marketing Company
Docket No. CI87-223-006, OXY USA, Inc.
Docket No. CI87-307-006, MidCon Marketing Corporation
Docket No. CI87-476-006, TXG Gas Marketing Company
Docket No. CI87-547-006, Enron Gas Marketing, Inc.
Docket No. CI87-786-006, Val Gas, L.P.
Docket No. CI87-811-005, CNG Trading Company
Docket No. CI87-825-008, V.H.C. Gas System, L.P.
Docket No. CI87-863-005, Meridian Oil Trading, Inc.
Docket No. CI88-328-004, Ringwood Gas Marketing Company
Docket No. CI88-648-004, Western Gas Marketing USA Limited
Docket No. CI89-194-004, Coastal Gas Marketing Company
Docket No. CI89-332-003, Columbia Gas Development Corporation
Docket No. CI89-361-003, Equitable Resources Marketing Company
Docket No. CI89-479-003, Western Gas Processors, Ltd.
Docket No. CI91-15-002, CanStates Petroleum Marketing

CAG-38.
Docket No. CP88-433-002, El Paso Natural Gas Company

CAG-39.
Docket Nos. CP89-1253-001 and CP90-67-001, Tennessee Gas Pipeline Company

CAG-40.
Docket No. CP90-1169-001, Michigan Consolidated Gas Company
Docket No. CP90-2164-001, Natural Gas Pipeline Company of America
Docket Nos. CP77-253-028 and CP91-231-001, Panhandle Eastern Pipe Line Company

CAG-41.
Docket No. CP89-480-006, Pacific Gas Transmission Company

CAG-42.
Docket No. CP91-588-001, Southern Natural Gas Company

CAG-43.
Docket No. CP90-2095-001, Williams Natural Gas Company

CAG-44.
Docket Nos. CP90-154-003 and CP90-333-002, Tennessee Gas Pipeline Company
Docket No. CP90-910-002, Tennessee Gas Pipeline Company, United Gas Pipe Line Company and Midwestern Gas Transmission Company

CAG-45.
Omitted

CAG-46.
Docket Nos. CP90-1567-000, CP89-1582-000 and RP89-49-000, National Fuel Gas Supply Corporation

CAG-47.
Docket No. CP90-2155-000, Southern Natural Gas Company

CAG-48.
Omitted

CAG-49.
Omitted

CAG-50.
Docket No. CP91-1252-000, Questar Pipeline Company

CAG-51.
Docket No. CP91-212-000, Panhandle Eastern Pipe Line Company

CAG-52.
Docket No. CP90-1248-000, Texas Eastern Transmission Corporation and United Gas Pipe Line Company

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Docket No. CP90-1254-000, United Gas Pipe Line Company

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Docket No. CP89-173-000, Tennessee Gas Pipeline Company
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Docket No. CP87-62-000, Texas Eastern Gas Transmission Company

CAG-55.
Docket No. CP91-1823-000, Colorado Interstate Gas Company

CAG-56.
Docket No. CP91-1901-000, Colorado Interstate Gas Company

CAG-57.
Docket Nos. CP91-1876-000 and CP91-1877-000, Columbia Gulf Transmission Company

CAG-58.
Docket No. CP90-1913-000, Columbia Gulf Transmission Company

CAG-59.
Docket No. CP91-1914-000, Trunkline Gas Company

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CAG-61.
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CAG-62.
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Docket No. CP88-833-001, Washington Natural Gas Company

Hydro Agenda

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Oil and Gas Agenda

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II. Producer Matters

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III. Pipeline Certificate Matters

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PC-2
Docket Nos. CP89-634-005 and 006, Iroquois Gas Transmission System, L.P. Order on rehearing.

Lisewood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 91-11469 Filed 5-9-91; 4:55 pm]
BILLING CODE 6717-01-M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 10:00 a.m., Tuesday, May 21, 1991.

PLACE: Madame Walker Theater, 617 Indianapolis Avenue, Indianapolis, IN 46202.

STATUS: This meeting will be open to the public.

MATTER TO BE CONSIDERED: The Board will consider the following:

The Federal Home Loan Bank System: A Strong Affordable Housing Partner

1. The Role of the Government

A. Honorable William Hudnut, Mayor of Indianapolis.
B. M.D. Higbee, Director, Department of Metropolitan Development, Indianapolis.

2. The Role of the Lender

A. Fred Hash, Assistant Vice President/Community Investment Officer, Federal Home Loan Bank of Indianapolis.
B. Robert H. McKinney, Chairman and CEO, First Indiana Corporation.
C. Jerry VonDeylen, President, Union Federal Savings Bank of Indianapolis.

3. The Role of Community Based Development

A. James Higgs, Director of Housing Development and President, HCJ Corporation, Eastside Housing Development Corporation.
B. Thomas R. Creasser II, Director, Indianapolis Neighborhood Housing Partner, Inc.
C. Tenant Resident of Affordable Housing Project.

CONTACT PERSON FOR MORE INFORMATION: Elaine Baker, Executive Secretary to the Board, (202) 408-2837.

J. Stephen Britt,
Executive Director.
[FR Doc. 91-11542 Filed 5-10-91; 1:58 pm]
BILLING CODE 6725-01-M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:30 a.m. Wednesday, May 22, 1991.

PLACE: Madame Walker Theater, 617 Indianapolis Avenue, Indianapolis, IN 46202.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board will consider the following:

1. Funds Management Policy
2. First Quarter Actual to Budget Performance.
3. Bank Examination Division Report.
4. Strategic Plan
5. Federal Home Loan Bank Presidents Compensation Study.
6. 1991 Incentive Compensation Plans.
7. Board Management Issues.

The above matters are exempt under one or more of sections 552(c)(2), (6), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. § 552b(c)(2), (6), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine Baker, Executive Secretary to the Board, (202) 408-2837.

J. Stephen Britt,
Executive Director.
[FR Doc. 91-11543 Filed 5-10-91; 1:58 p.m.]
BILLING CODE 6725-01-M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, May 21, 1991.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 28709 (Sub-No. 1), *Grand Trunk Western Railroad Company—Merger—Detroit and Toledo Shore Line Railroad Company.*

Ex Parte No. 328, *Investigation of Tank Car Allowance System.*

Ex Parte No. MC-177 (Sub-No. 2), *Rate Reasonableness and Unreasonable Practices in Undercharge Cases.*

MC-C-30117, *Regular Common Carrier Conference—Petition for Declaratory Order—Range of Discounts and Customer Account Codes.*

Ex Parte No. MC-180 (Sub-No. 1), *Petition for Rulemaking—Discounting Practices.*

Motor Common Carrier Tariff Filing Moratorium Proposal.

Trucking Regulatory Reform Proposal.

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of External Affairs, Telephone: (202) 275-7252, TDD: (202) 275-1721.

Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 11522 Filed 5-10-91; 1:56 pm]
BILLING CODE 7035-01-M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability and the National Conference on the Prevention of Primary and Secondary Disabilities. This notice also describes the functions of the National Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (P.L. 94-409).

DATES:
June 3, 1991, 8:30 a.m. to 5 p.m.
June 4, 1991, 8:30 a.m. to 5 p.m.
June 5, 1991, 8:30 a.m. to 5 p.m.

National Conference on the Prevention of Primary and Secondary Disabilities.

June 6, 1991, 8:30 a.m. to 5 p.m.
June 7, 1991, 8:30 a.m. to 5 p.m.
June 8, 1991, 8:30 a.m. to 12:00 noon.

LOCATION: Atlanta Airport Hilton Hotel, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: National Council on Disability, 800 Independence Avenue, SW, Suite 814, Washington, D.C. 20591, (202) 267-3846, TDD: (202) 267-3232.

The National Council on Disability is an independent federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in title IV of the Rehabilitation Act of 1973 (as amended by Public Law No.95-602 in 1978), the National Council was initially an advisory board within the Department of Education. In 1984, however, the National Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Public Law 98-221).

The National Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR). In addition, the National Council is mandated to provide guidance to the President's Committee on Employment of People With Disabilities.

The quarterly meeting of the National Council shall be open to the Public. The proposed agenda includes:

Report from Chairperson and Executive Committee
Update on NIDRR
Update on the implementation of the Americans with Disabilities Act
Update on research policy studies: education; technology; and, health insurance
Discussion of the Reauthorization of the Rehabilitation Act of 1973
Committee Meetings/Committee Reports
Unfinished Business
New Business
Announcements
Adjournment
National Conference on the Prevention of Primary and Secondary Disabilities

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed at Washington, DC on May 10, 1991.

Ethel D. Briggs,
Executive Director.
[FR Doc. 91-11570 Filed 5-10-91; 8:45 am]
BILLING CODE 8820-90-M

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Corrections

Federal Register
Vol. 56, No. 93
Tuesday, May 14, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Update to Official Staff Commentary

Correction

In rule document 91-7888 beginning on page 13751 in the issue of Thursday, April 4, 1991, make the following corrections:

§ Supplement I to part 226 [Corrected]

1. On page 13754, in the third column, in Supplement I to part 226 in comment 4(a)-6, in the sixth line from the bottom of the page, insert ")" after "transactions".

2. On page 13755:

a. In the first column, in Supplement I to part 226, in comment 5a(b)(2), under 2. *Enhancements.*, in the fourth line, insert ")" after "services".

b. In the third column, in Supplement I to part 226, in amendment k., in the second line, "first" should read "third".

c. In the same column, in Supplement I to part 226, in comment 9(c)(1)-6, under 6. *Changes* ***, in the fifth line, insert "a" after "of"; and in the first line of the last paragraph, "required" should read "requirement".

3. On page 13756:

a. In the first column, in Supplement I to part 226, in comment 9(c)(1)-6, the parenthetical phrase beginning in the first line and ending in the third line should read "(See the commentary to § 226.5b (d)(5)(iii), (d)(12)(x), and (d)(12)(xi) for a discussion of representative examples.)".

b. In the same column, in Supplement I to part 226, in comment 12(a)(2)-2, under 2. *Substitution* ***, in the seventh line, "addition" was misspelled.

c. In the second column, in Supplement I to part 226, in comment 17(c)(1)-11, in the first line "*transaction.*" should read "*transactions.* d. In the third column, in Supplement I to part 226, in comment 19(b)-5, in the fourth line, "5. *Example* ***" should read "5. *Examples* ***".

4. On page 13757, in the first column, in Supplement I to part 226, in comment 20(c)-3, in the third line, "parties" should read "parties'".

5. On the same page, in the same column, in Supplement I to part 226, in comment 28(a)-15, in the second paragraph, in the last line, "then" should read "than".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AEA-17]

Proposed Alteration of VOR Federal Airway V-43; Pennsylvania

Correction

In proposed rule document 91-4336 beginning on page 7625 in the issue of Monday, February 25, 1991, make the following correction:

On page 7626, in the second column, under V-43 [Amended], in the fourth line "167'" should read "267'".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91-16; Notice 1]

RIN 2127-AD97

Federal Motor Vehicle Safety Standards: Tire Selection and Rims; Vehicles Other Than Passenger Cars

Correction

In proposed rule document 91-8852 beginning on page 15315 in the issue of Tuesday, April 16, 1991 make the following corrections:

1. On page 15316, in the 1st column, in the 15th line from the bottom of the page, after "vehicle" insert ")".

§ 571.120 [Corrected]

2. On page 15317, in the third column, in § 571.120, in amendatory instruction 4., in the first line, "§ 5.1.2" should read "S5.1.2".

3. On page 15317, in the third column, in § 571.120, S5.1.2., in the sixth line "(GAMR)" should read "(GAWR)".

4. On page 15318, in the first column, in the fourth line from the bottom "1000" should read "11000".

BILLING CODE 1505-01-D

federal register

Tuesday
May 14, 1991

Part II

Department of Health and Human Services

Community Services Office

Request for Applications Under the Office of Community Services' Fiscal Year 1991 Demonstration Partnership Program (DPP); Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS 91-2]

Request for Applications Under the Office of Community Services' Fiscal Year 1991 Demonstration Partnership Program (DPP)

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Announcement of availability of funds and request for applications under the Office of Community Services' Demonstration Partnership Program (DPP).

SUMMARY: The Office of Community Services (OCS) announces that applications will be accepted for grants pursuant to the Secretary's authority under section 408 of the Human Services Reauthorization Act of 1986, as amended. This announcement contains forms and instructions for submitting an application. Grants made under this program announcement are subject to the availability of funds for support of these activities.

DATES: The closing date for submission of applications is July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Office of Community Services, Attn: Demonstration Partnership Program, 370 L'Enfant Promenade SW., Fifth Floor, Washington, DC 20447, Telephone (202) 401-2333.

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Part A—Preamble

1. Legislative Authority

Section 408 of the Human Services Reauthorization Act of 1986 as amended (Pub. L. 99-425), authorizes the Demonstration Partnership Program. The purpose of the Program is to stimulate the development of new approaches, to provide for greater self-sufficiency of the poor, to test and evaluate such new approaches, to disseminate project results and evaluation findings so that such approaches can be replicated, and to strengthen the integration, coordination, and redirection of activities to promote the maximum self-sufficiency among the poor.

The Secretary is authorized under section 408(a) of Public Law 99-425, as amended, to make grants from funds appropriated under this Program to eligible entities for the development and implementation of new and innovative approaches to deal with particularly critical needs or problems of the poor which are common to a number of communities.

In addition, the Secretary is authorized under section 408(c) of Public Law 99-425, as amended to make grants to eligible entities for the purpose of demonstrating new and innovative approaches to addressing the problems of, and providing opportunities for leadership development, community involvement, and educational success to, disadvantaged persons between the ages of 14 and 25 from populations experiencing conditions such as a high poverty rate, high unemployment, high dropout rate, low labor force participation, low enrollment in college of participation in other post high school training classes, high incidence of involvement in violence, and a high rate of incarceration. This authority is referred to as the "High Risk Youth Initiative" throughout this document.

The authorizing legislation states that no more than two grants may be made to an eligible entity to carry out a particular program and the continuation grant may not exceed 80 percent of the amount of the grant previously received to carry out the program. The legislation also requires (1) That not less than 10 percent and not more than 25 percent of the funds appropriated for each fiscal year to carry out the Demonstration Partnership Program be available for grants to replicate programs in additional geographical areas, and (2) that each application must contain an assurance that the applicant will obtain an independent, methodologically sound evaluation of the effectiveness of the activities carried out with such grant and will submit such evaluation to the Secretary.

2. Definitions of Terms

For purposes of this program announcement, the following definitions apply:

Budget Period: The term "budget period" refers to the interval of time into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.

Case Management: For purposes of this announcement, case management includes but is not limited to: Assessment of the client's needs, development of a comprehensive service plan, and delivery of the most efficient and effective mixes of services.

Eligible Entity: Any organization which (1) Was officially designated as a community action agency or a community action program under the provisions of section 210 of the Economic Opportunity Act of 1964 for fiscal year 1981 and did not lose its designation; or (2) was a limited purpose agency designated under title II of the Economic Opportunity Act of 1964 for fiscal year 1981 which served the general purposes of a community action agency under title II of such Act and did not lose its designation; or (3) received financial assistance under section 222(a)(4) of the Economic Opportunity Act of 1964 in fiscal year 1981; or (4) received a grant in fiscal year 1984 under the waiver provision of Public Law 98-139; or (5) was created under section 673(1)(C) of the Community Services Block Grant Act to serve a geographic area not previously served; or (6) came into existence during fiscal year 1982 as a direct successor in interest to a community action agency or community action program and meets all the requirements under section 675(c)(3) of the Community Services Block Grant Act; or (7) is an organization that serves migrant and seasonal farmworkers and that received Community Services Block Grant funds in Fiscal Year 1988. Most "eligible entities" are current recipients of Community Services Block Grant funds. The majority of "eligible entities" are community action agencies. In those cases where "eligible entity" status is unclear, a final determination on eligibility will be made by OCS.

Family: For purposes of this announcement, family includes the definition of nuclear family, as well as the inclusion of household members and/or the extended family.

Hypothesis: An assumption made in order to test its validity. It should assert a relationship between an intervention and an outcome on a target population. For example, there will be a significant increase in the proportion of (target population) making progress toward self-sufficiency (outcome) who receive and/or participate in (intervention) as compared to those who do not. The outcome must be measurable.

Innovative project: One that departs from or significantly modifies past program practices and tests a new approach(es).

Intervention: Any planned activity within a project that is intended to produce changes in the target population and/or the environment and can be formally evaluated.

Outcomes evaluation: Information that is gathered on the measurable results of a program that measure its impact on clients in order to improve it or lead to its replication. It may include definitions and measurements of interventions and goals, assessment, assignment and data collection techniques for the treatment and control groups, the experimental design, and statistical significance. It should answer the question, "Did this program work?"

Partnership(s): A partnership is an arrangement between an eligible entity and another organization or organizations that provides for substantive collaborative policy and service provision role for each of the partners in the conduct of the project.

Process evaluation: Information that is gathered on the internal dynamics, development and implementation of a program to help improve it or lead to its replication. It may include timeliness, descriptions of treatment and control groups, client selection, descriptions of interventions, and partnerships and funding arrangements. It should answer the question, "Why did this program work/not work?"

Project Period: The term "project period" refers to the total time a project is approved for support, including any extensions.

Self-sufficiency: A condition where an individual or family does not need and is not eligible for public assistance.

Part B—Application Prerequisites

1. Eligible applicants

Eligible applicants are those "eligible entities" defined in part A, section 2., Definitions of Terms, of this announcement and whose eligibility status and capability have been certified by the State Director of the Community Services Block Grant program. Eligible entities submitting applications for continuation grants must have received a Demonstration Partnership Program grant in a prior fiscal year and which grant expired or will expire prior to October 1, 1991.

2. Availability of Funds and Grant Amounts

(1) Under the replication set-aside, grant requests will be considered for an amount up to $350,000 in OCS funds. It is anticipated that up to 15% of the total funds available will be funded under this set-aside.

(2) Under the continuation set-aside, grant requests will be considered for an amount not to exceed 80% of the amount of the DPP grant previously received. It is anticipated that up to 15% of the total funds available will be granted under this set-aside.

(3) Under the High-Risk Youth Initiative, grant requests will be considered for an amount up to $350,000 in OCS funds. It is anticipated that up to 25% of the total funds available will be granted under this set-aside.

(4) For general demonstrations, grant requests will be considered for an amount up to $350,000 in OCS funds. It is anticipated that at least 45% of the total funds available will be granted under this category.

The Office of Community Services expects to award up to $4,050,000 in the fourth quarter of Fiscal Year 1991 for all projects under this Program.

3. Prohibition on the Use of Funds

The use of funds for the purchase, construction or improvement of real property is prohibited. This prohibition includes expenditures for weatherization and home repairs.

4. Project Periods and Budget Periods

Project periods for continuation grants will be for a minimum of 18 months and a maximum of 30 months. Each project period will include a basic service period plus a six (6) month follow-up period. Project periods and budget periods for all other grants will be for a minimum period of 30 months (24 months of service and 6 months evaluation follow-up). To insure funding stability throughout the project period, proposed projects must have sufficient non-OCS funds committed so that, combined with FY 91 OCS grant funds, grantees will have sufficient resources to complete their proposed projects.

5. Matching Funds

(a) High-Risk Youth Initiative—OCS will fund up to 80% of the total cost of each project. Thus, if an applicant is requesting $200,000 in OCS funds, at least $40,000 in additional funds must be committed to the project from private or public sector sources.

(b) All Other Programs—OCS will fund up to 50% of the total cost of each project. Therefore, if an applicant is requesting $200,000 in OCS funds, at least $200,000 in additional funds must be committed to the project from private or public sector sources.

Public sector resources that can be counted toward the minimum match include funds from State and local governments, and funds from various block grants allocated to the States by the Federal Government if the authorizing legislation for these block grants permits such use.

Note: The CSBG Act does not permit such use.

Funds identified by the applicant as those which will be counted toward the minimum match requirement may be in the form of grantee-incurred costs, cash, or third-party in-kind contributions fairly converted into their dollar equivalent. Such funds must be definitely committed or contingent only on receipt of an OCS grant, must be applied to specific project activities within the OCS-approved project and used only for project purposes for the duration of the OCS grant. The firm commitment of the specific amounts of matching funds and/or the dollar value of third-party in-kind contributions must be documented in the project application. Documentation of matching funds must be in the form of letters of commitment or letters of intent from the donor, contingent only upon receipt of OCS grant funds.

If the match is to be used as a revolving loan fund, the funds must be

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specifically set-aside for eligible low-income recipients of the project.

Funds obligated prior to the approved OCS starting date for a grant cannot be considered as matching funds.

6. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits for low-income persons whose incomes are up to 125% of the DHHS poverty income guidelines as defined in the most recent Annual Revision of Poverty Income Guidelines published by DHHS.

Attachment A to this announcement is an excerpt from the guidelines currently in effect. Annual revisions of these guidelines are normally published in February or early March of each year. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines also may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

No other government agency or privately defined poverty guidelines are applicable for the determination of low-income eligibility for this OCS program.

7. Partnership Agreement

An applicant is required to obtain a signed letter of commitment or intent from the prospective partner(s). See part C, item 1.g.

8. Sub-Contracting or Delegating Projects

An applicant will not be funded where the proposal is for a grantee to act as a straw-party, that is, to act as a mere conduit of funds to a third party without performing a substantive role itself. This prohibition does not bar subcontracting or subgranting for specific services or activities needed to conduct the project.

9. Third-Party Evaluation

The third-party evaluation required for each project under this program, must be conducted by an independent entity, i.e. an entity organizationally distinct from, and not under the control of, the applicant.

10. Maintenance of Effort

The activities funded under this program announcement must be in addition to, and not in substitution for, activities previously carried on without Federal assistance and the applicant must certify compliance with this requirement. Also, funds or other resources currently devoted to activities designed to meet the needs of the poor within a community, area, or State must not be reduced in order to provide the required matching contributions.

When legislation for a particular block grant permits the use of its funds as match, the applicant must show that it has received a real increase in its block grant allotment and must certify that other anti-poverty programs will not be scaled back in order to provide the match required for this project. The applicant must also provide a current listing of all sources of funds and projects conducted in the applicant's current operating year.

Part C—Purposes of the Demonstration Partnership Program

The Secretary has identified several priorities to guide selection of HHS policies and programs through program directions. Program directions that are relevant to the Demonstration Partnership Program include the following:

(1) Improve the integration, coordination and continuity of the various HHS funded services potentially available to families currently living in poverty.

(2) Improve access of youth living in low-income families to needed support services, including employment training, other transition to work services, and adolescent pregnancy related services. (In meeting this program direction the Secretary has indicated his interest in focusing on youth with moderate and severe disabilities, minority youth, and other at-risk youth.)

(3) Improve access of young children and their families living in poverty to a wide array of developmental, support services, and income assistance.

The purposes of this program are: (1) To stimulate eligible entities to develop new approaches to provide for greater self-sufficiency of the poor; (2) to test and evaluate the new approaches; (3) to disseminate project results and evaluation findings so that the new approaches can be replicated; and (4) to strengthen integration, coordination, and redirection of activities to promote maximum self-sufficiency among the poor.

1. Project Elements

Projects must:

(a) Involve new and innovative approaches and/or significant new combinations of resources, both of which should be included in the partnership agreements;

(b) Involve activities which can be incorporated into, or be closely coordinated with, eligible entities' ongoing programs;

(c) Be structured in a way that will, within the limits of the type of assistance or activities contemplated, most fully and effectively promote the purposes of the Community Services Block Grant Act as amended;

(d) Include a procedure that integrates services through a case management approach which, at a minimum, includes: assessment of the client's needs, development of a comprehensive service plan, and delivery of the most efficient and effective mixes of services. However, case management should not be the key assumption to be tested in the hypothesis;

(e) Include an independent, methodologically sound evaluation of the effectiveness of the activities carried out with the grant;

(f) Target specific groups;

(g) Include partnerships between the applicant and one or more organizations resulting in improved methods of assisting low-income families and individuals to achieve self-sufficiency;

(h) Have the potential for producing a measurable and major impact on the causes of poverty, be applicable to other localities with similar problems, and have the potential for widespread replication by eligible entities; and

(i) Be conducted on a scale broad enough to permit a valid evaluation.

2. General Demonstration Projects

All proposals submitted under this category must focus on developing new ways of promoting individual and family self-sufficiency within the context of the community. OCS is interested in demonstrations that test the sophisticated targeting of services to special groups that will also improve the environment in which they live. For the purposes of this announcement, a community is defined as a group having common interests and participating in a common socio/economic life.

At a minimum, every individual should achieve a self-sufficiency goal appropriate to the age group. For adult populations (18+) that goal should include a job which will allow individuals to provide for basic needs with the potential of becoming self-sufficient within a reasonable period of time or enrollment in an educational program which will lead to such a job.

The applicant should include, when appropriate to the project, a definition of self-sufficiency that is broad enough to include social, psychological and community measures, e.g. personal responsibility and self-esteem.

The applicant will be expected to propose solutions that depart from or modify conventional approaches used by eligible entities and that also show promise of increasing self-sufficiency.

Innovative departures may be identified by examining the projects funded under the Demonstration Partnership Program in Fiscal Years 1987–1989 found in Attachment K. Proposed projects must differ significantly from previously funded projects in such areas as target population, the timing and delivery mechanism(s) of the interventions, the multiple benefits/outcomes to the individual/family and community and the self-sustaining nature of the outcomes.

The proposed solutions may be multi-dimensional. They may address both the individual and family progress toward greater socio-economic and psychological self-sufficiency; they may involve two or more generations as both providers and beneficiaries of services; and/or they may address issues of community and institutional change, etc.

Applications which propose early intervention or prevention strategies are encouraged when those strategies further the achievement of self-sufficiency.

OCS welcomes project proposals which utilize a systems approach to address community needs and planned outcomes. Grant applications that propose new social, economic and emotional support systems, that show promise of leading to a stronger alliance with and more active integration of the target population into the community, that show promise of generating long-term community commitment for serving the target population, and/or demonstrate major outcomes which have strong potential for self-sustainability after the grant expires will be viewed favorably. Long-term community commitment may be demonstrated through the forging of mulitple partnerships with both public and private institutions and organizations which result in mutual benefits to the low-income targeted population and the larger community.

Applicants should identify and address any systemic barriers which may exist to efforts by community organizations attempting to help individuals and families become self-sufficient when appropriate to the project. Frequently such efforts are hindered by legislative, administrative, and regulatory requirements at the Federal, State, and local levels. The conduct of the demonstration, however, should not be dependent upon receiving waivers of such existing rules or regulations.

3. Set-Asides

a. Replication Set-Aside

The Demonstration Partnership Program is required to make available not less than 10% and not more than 25% of its annual appropriation to fund projects in other geographical areas that replicate projects previously funded under the Demonstration Partnership Program. The purpose of this set-aside is to replicate a program that has demonstrated a significant potential for dealing with particularly critical problems of the poor that exist in a number of communities.

For FY 1991 OCS will accomplish this by funding eligible entities to replicate any one of the Demonstration Partnership Programs funded in FY 1987 or FY 1988 except for those projects which exclusively test the efficacy of case management as a means of achieving self-sufficiency. Where possible, applicants should include concepts of self-sustainability and community impact measures. Applications for replication grants must involve areas outside of the original area of testing. Replicable projects can be identified by examining Summaries of FY 1987—FY 1989 projects found in appendix K.

Any OCS funds proposed to be used specifically for the revolving loan fund must be matched, 1 for 1, with cash from a non-OCS source.

b. Continuation Grants

Eligible entities who have previously received funds under the Demonstration Partnership Program and whose grants expire prior to October 1, 1991 may apply for a Continuation grant.

If there has been a gap in the provision of services to the treatment group since the expiration of the DPP grant, the applicant must provide information on both the positive and the negative impacts on that population caused by the gap in services, as well as its effects on the validity of evaluation data and on the research design.

OCS is interested in continuing projects for which there is evidence that (1) the particular approach being tested is likely to yield important results if the project is operational for a longer period of time, and (2) the additional documentation made possible by the continuation grant will result in a more valid and useful study.

The authorizing legislation states, "not more than two grants may be made to an eligible entity to carry out a particular program." The legislation also indicates that any grant made subsequent to the initial grant may not exceed 80 percent of the amount of the grant previously received. Therefore, in keeping with the legislative requirements, only one continuation grant will be made to any eligible entity for a particular project and funding will not exceed 80% of the original grant amount.

Applications for continuation grants must contain the following components of the initial project: The same hypotheses and interventions, characteristics of the target population, partnerships and third-party evaluator. However, additional components may be added if they will not distort the final evaluation outcomes.

c. High-Risk Youth Initiative

Grants will be made to eligible entities for the purpose of demonstrating new and innovative approaches directed to disadvantaged persons between the ages of 14 and 25. In addition to promoting self-sufficiency, all proposals submitted under this category must provide opportunities for leadership development, community involvement, and educational success to "high risk" youth. This population is defined as youth who experience such conditions as high poverty rate, high unemployment, high dropout rate, low labor force participation, low enrollment in college or participation in other post high school training classes, high incidence of involvement in violence and a high rate of incarceration.

Services provided may include but are not limited to, assessment and development of employability plans, remedial education, motivational activities, life skills instruction, community service, mentoring, access to information on available financial aid, campus visits, career education, cultural enrichment and employment training, placement and follow-up.

One of the models OCS is interested in developing under this category is that of an Apprenticeship Program in which the applicant will enter into partnerships with both a school district and/or secondary schools and local businesses/employers to aid students in becoming self-sufficient after graduation. These partnerships, at a minimum, must allow for the development of structured curriculum leading to specific job skills and employment through the provision of part-time jobs which include training an mentoring components and which culminate in full-time employment after graduation. The applicant in its partnership agreements must include the following elements to assure total commitment from both the school

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district/secondary schools and the participating businesses/employers:

Participating businesses/employers will—

—Help to design programs of work experience and courses to prepare the youth for employment in the field;
—Enter into an agreement with each of the students who will participate in the program;
—Develop a structured relationship between an experienced worker in the business and each student wherein the worker serves both as a mentor and a trainer to the student/apprentice and formally evaluates the student's performance;
—Provide part-time jobs during the school year and summer jobs which offer the opportunity to learn the skills necessary to perform in the field; and
—Offer a full-time, pre-defined position to each of the students upon his/her graduation.

—Participating school districts/secondary schools will

—Sponsor presentations by employers about the work world, on-site visits to business facilities, and activities related to job sampling;
—Develop a structured curriculum track which begins in high school and culminates in full-time employment after graduation;
—Communicate the student's performance in courses to the employer, where feasible, to help establish the link between school and work;
—Incorporate the evaluation of each student's work performance into his/her school record; and
—make the necessary provisions to allow the grantee to provide the necessary social services and opportunities for community service to each student in the treatment group.

Under this model there must be a minimum of 60 students in the treatment group and 60 students in the comparison group.

Possible comparison groups would include students who have access to and are participating in part-time jobs and/or summer JTPA experiences to see if the additional components listed above improve the likelihood of the disadvantaged high school student achieving self-sufficiency.

Part D—Review Criteria

Applications which pass the initial screening and pre-rating review (see part E, section 5) will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements as described in part C.

Applicants should write their project narrative to the review criteria using the same sequential order.

Note: The following review criteria reiterate collection of information requirements contained in part E of this announcement. These requirements are approved under OMB Control 0970-0062.

Criteria for Review and Evaluation of Applications Submitted Under General Projects and Replication Projects and High Risk Youth Initiative (General)

Criterion I: Organizational History and Management Capability (Maximum: 10 points)

(i) Organizational History (0–3 Points)

—The applicant has experience in developing and operating innovative projects that utilize a variety of resources;
—The applicant has recent experience in collaborative planning, programming and operations; and
—The applicant has experience in designing and/or managing staff-conducted or third-party evaluations.

In addressing the above criterion, the applicant should include the following: Each applicant must document its past efforts and current capability to address both the poverty problem and the research problem specified in the application. The applicant should demonstrate that it has (1) experience in developing and operating innovative projects that utilize a variety of resources in a cooperative and problem solving arrangement with other agencies; (2) experience specifically related to the problem(s) and activities proposed in the application; and, (3) experience in designing and/or managing staff-conducted or third-party evaluations.

(ii) Management Capability (0–7) points)

—The applicant's proposed project director, as well as the proposed primary person responsible for conducting the third-party evaluation, are well qualified and their professional experiences are relevant to the successful implementation of this project;
—The position description(s) are relevant to the effective implementation of the project; and
—The applicant describes and logically shows that sufficient time of senior staff, including the organization's director, has been budgeted to assure timely implementation and cost effective management of the project.

In addressing the above criterion, the applicant should include the following: The applicant must fully describe the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project. It must show clearly that sufficient time of the Executive Director and other senior staff will be budgeted to assure timely implementation and oversight of the project. Applications must also fully describe the experience and skills of the primary person responsible for conducting the third-party evaluation. If the project director and/or the person responsible for conducting the evaluation have not yet been identified, include a position description for each of these persons.

Criterion II: Analysis of Need (Maximum: 10 points)

(i) The poverty problem (0–5 points)

—The application clearly describes the poverty problem and the problem is deemed to be significant.

In addressing the above criterion, the applicant should include the following: The applicant should identify the factors that contribute to the perpetuation of the poverty problem, document the extent to which the problem exists in the local community, discuss known examples of this problem in other localities and regions, and analyze the impact of the problem nationwide. The application should also include a description of the target area and population to be served as well as a discussion of the nature and extent of the poverty problem.

(ii) The research problem (0–5 points)

—The applicant provides a summary of the results of past research related to the problem and any documented efforts utilizing the innovative strategy (or intervention) specified in the application; and
—The applicant has explained how the proposed approach constitutes an innovative departure or significant modification of past DPP projects.

In addressing the above criterion, the applicant should include the following: Applicant should provide a summary of the results of its research conducted in order to identify previous and current attempts to address the poverty problem and describe the limitations of these attempts. The applicant should explain how the proposed approach constitutes an innovative departure or significant modification of past DPP projects and how it adds to the body of knowledge.

Criterion III: Project Design (Maximum: 45 points)

(i) The Hypothesis(es) (0–10 points)

—The hypothesis(es) is significant, relevant, and can be tested to determine its validity.

In addressing the above criterion, the applicant should include the following: A testable hypothesis that permits measurement of the extent to which the target population has achieved greater self-sufficiency as a result of its involvement in the project.

(ii) The Work Program (0–15 points)

—The application clearly describes the implementation and conduct of the major activities which relate to the stated hypothesis;
—The application includes specific plans for conducting measurable activities on a quarterly time frame and identifies projected lengths for each proposed intervention;
—The application includes a measurable definition of self-sufficiency, including a measurement of earned income, when applicable;
—The project interventions will allow participants to progress toward self-sufficiency as defined by the applicant;
—The applicant identifies an adequate sample size in both the participant and comparison groups for reliable evaluation findings and for achieving significant impact in the community; and,
—The applicant clearly demonstrates that the interventions are innovative and appropriate to the hypothesis and to the target population.

(iii) Significant and Beneficial Impact (0–12 points)

—The proposed project will have the potential for producing a measurable and potentially major impact upon the causes of poverty and will result in a substantial increase in the self-sufficiency of the poor;
—The anticipated results are specified and the expected benefits for the target group(s) are delineated.

In addressing the above criteria, the applicant should include the following: (1) A thorough description of the intervention(s) that will be carried out to test the hypothesis including measurable objectives, intended project outcomes, and intended impact on the problem(s) that is being addressed;

(2) a description of both the target group and the comparison group including major characteristics and the size of each group. In describing the major characteristics of the target group, the applicant should include, at a minimum: age, sex, ethnic group, socio-economic status, number of years completed education, period of public assistance dependency, employment status and other categories which identify the target population as "at risk". In determining an adequate sample size for both the participant and the comparison groups, the applicant should have initially identified a large enough group that will allow for attrition and still result in service and comparison groups of 40–45 participants each when the project terminates;

(3) the rationale for the approach being proposed to overcome this problem, an explanation showing how the approach proposed by the applicant is a departure from or a significant modification of previous and current approaches, and why the applicant believes that testing this approach will lead to positive outcomes;

(4) methods of outreach;

(5) quarterly target dates for the entire project period;

(6) if appropriate, a plan for identifying impediments to achieving self-sufficiency that are caused by legislative, administrative, and regulatory requirements at the Federal, State, and local levels; and,

(7) a measurable definition of "self-sufficiency".

(iv) Services Integration (0–8 points)

—The application includes information that shows the ways in which it will incorporate the project into its organizational structure and shows how the implementation, if successful, will be self-sustaining and enhance integration, coordination and access of services for the target population of the community.

In addressing the above criteria, the applicant should include the following: (1) Information that shows how it will assure that resources necessary to continue the project will be mobilized, how it will incorporate the project into its existing organizational structure and how the new activities will result in changes, if any to current projects; and (2) an explanation of why one or both of the following apply: (a) This demonstration, if successful, will show how to use existing anti-poverty resources more efficiently, and/or (b) services or activities conducted under this demonstration, if successful, will be self-sustaining and will enhance integration of the target population into the community.

Criterion IV: Third-Party Evaluation (Maximum: 15 points)

The Evaluation Plan

—Includes a specific working definition of "self sufficiency" (consistent with the broad definition contained in part A) for this project that permits the measurement of incremental movement of individuals and families from dependency toward self-sufficiency. (0–4 points)
—Provides for a process evaluation covering the following elements: Partnerships, staffing, all pertinent policies and procedures, client outreach, services and process for service provision, applicant and community linkages, other community resources, changes from the original plan, critical elements of program implementation and an implementation summary; (0–4 points)
—Provides for the completion of an outcome evaluation which specifies the hypotheses, and describes the design, sample size, subject selection, interventions, outcomes, measurement instruments, time and number of measurements, data collection procedures, and statistical procedures. The outcome evaluation report will yield findings, an interpretation of findings, and identify major issues for replication; (0–4 points) and
—Provides for an adequate sample size in both the participant and comparison groups and a rationale for their selection. (0–3 points)

In addressing the above criterion, applicant should include the following: A plan for a methodologically sound third-party (i.e. independent) evaluation of the demonstation project which must include: (1) Provision for a process evaluation that will include procedures to be used to (a) compare information about participants and non-participants (the comparison group) and (b) isolate and systematically assess competing explanations for the observed outcomes. When the use of a comparison group is not practical, the applicant must propose an alternative method to validate the hypothesis. The process evaluation should include the following elements: partnerships, staffing, all pertinent policies and procedures, client outreach, services and service provision, applicant and community linkages, other community resources, community integration, changes from original plan, elements of program implementation and an implementation summary. The results should be incorporated into a policies and procedures manual;

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(2) provision for an outcome evaluation that will clearly identify the hypothesis to be tested, the changes (outcome objectives) to be produced, the activities (interventions) that will produce the changes, and the methods (measurement instruments, performance measures and data collection procedures) for measuring the performance as well as the time and number of measurements and statistical procedures. Outcomes should include measurements of self-sustainability and community benefits;

(3) an acceptable working definition, consistent with the broad definition contained in Part A, of "self-sufficiency" for this project that permits the measurement of incremental movement of individuals and families from dependency toward self-sufficiency;

(4) an adequate sample size in both the participant and comparison groups as well as a rationale for subject selection; and

(5) include realistic plan for disseminating the project findings, once they have been approved by OCS, to other eligible entities and to States upon request.

Criterion V: Partnerships (Maximum: 15 points)

—The partners have the necessary skills and resources to fulfill the objectives of the agreement;
—The partnership arrangements are fully described and clearly relate to the objectives of the proposed project; and
—All partners are involved in the planning and implementation of the project.

In addressing the above criteria, the applicant should include the following: The applicant should submit for each of the partners supporing documentation on the skills and/or resources committed to this project and a description of the partners' involvement in the project.

Criterion VI: Budget Impact and Match (Maximum: 5 points)

(i) The project, if successful, will result in either or both of the following:
—Continued provision of services, after completion of the demonstration project, without additional OCS or other Federal funds; and/or
—More efficient use of existing anti-poverty resources.

(ii) The match resources are necessary and logical for the proposed project.

In addressing the above criterion, the applicant should include the following: The applicant should describe how the project will continue after completion of the demonstration, what funds will be available for its continuation and how the match will be used in the project.

Criteria for Review and Assessment of Applications Submitted under High-Risk Youth Initiative (Apprenticeship Program) Criterion I: Organizational History and Management Capability (Maximum: 10 points)

(i) Organizational History (0–3 Points)

—The applicant has experience in developing and operating innovative projects that utilize a variety of resources;
—The applicant has recent experience in collaborative planning, programming and operations; and
—The applicant has experience in designing and/or managing staff-conducted or third-party evaluations.

In addressing the above criterion, the applicant should include the following: Each applicant must document its past efforts and current capability to address both the poverty problem and the research problem specified in the application. The applicant should demonstrate that it has (1) experience in developing and operating innovative projects that utilize a variety of resources in a cooperative and problem solving arrangement with other agencies, (2) experience specifically related to the problem(s) and activities proposed in the application, and, (3) the applicant has experience in designing and/or managing staff-conducted or third-party evaluations.

(ii) Management Capability (0–7 points)

—The applicant's proposed project director, as well as the proposed primary person responsible for conducting the third-party evaluation, are well qualified and their professional experiences are relevant to the successful implementation of this project;
—The position description(s) is relevant to the effective implementation of the project; and
—The applicant describes and logically shows that sufficient time of senior staff, including the organization's director, has been budgeted to assure timely implementation and cost effective management of the project.

In addressing the above criterion, the applicant should include the following: The applicant must fully describe the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project. It must show clearly that sufficient time of the Executive Director and other senior staff will be budgeted to assure timely implementation and oversight of the project. Applications must also fully describe the experience and skills of the primary person responsible for conducting the third-party evaluation. If the project director and/or the person responsible for conducting the evaluation have not yet been identified, include a position description for each of these persons.

Criterion II: Analysis of Need (Maximum: 10 points)

(i) The Poverty Problem (0–5 points)

—The application clearly describes the poverty problem in the target area and the problem is deemed to be significant.

In addressing the above criterion, the applicant should include the following: The applicant should identify the factors that contribute to the perpetuation of the poverty problem, and document both the extent to which the problem exists in the local community and the extent to which the target population suffers negative impact.

(ii) The Research Rationale (0–5 points)

—The applicant provides a strong argument for testing the proposed *Apprenticeship Program* in its community. Additionally, the applicant highlights any enhancements proposed to the model and explains how the proposed additions/enhancements are innovative and will contribute to the evaluation findings.

In addressing the above criterion, the applicant should include the following: Applicant should explain why the proposed approach should be tested in the selected community and school district(s), defend any innovative departures or significant modifications of the model and state how it adds to the body of knowledge.

Criterion III: Project Design (Maximum: 40 points)

(i) The Hypothesis(es) (0–5 points)

—The hypothesis(es) is significant, relevant, and can be tested to determine its validity.

In addressing the above criterion, the applicant should include the following: A testable hypothesis that permits measurement of the extent to which the target population has achieved greater self-sufficiency as a result of its involvement in the project.

(ii) The Work Program (0–15 points)

—The application clearly describes the implementation and conduct of the major activities which relate to the stated hypothesis;
—The application includes specific plans for conducting measureable activities on a quarterly time frame and identifies projected lengths for each proposed intervention;
—The application includes a measurable definition of self-sufficiency, including a measurement of earned income, when applicable;
—The project interventions will allow participants to progress toward self-sufficiency as defined by the applicant;
—The applicant identifies a minimum of 80 students in both the participant and comparison groups for reliable evaluation findings and for achieving significant impact in the community; and
—The applicant clearly demonstrates that the interventions are innovative and appropriate to the hypothesis and to the target population.

(iii) Significant and Beneficial Impact (0–20 points)

—The proposed project will have the potential for producing a measurable and potentially major impact upon the causes of poverty and will result in a substantial increase in the self-sufficiency of the poor;
—The anticipated results are specified and the expected benefits for the target group(s) are delineated; and
—The applicant includes information that shows the ways in which it will incorporate the project into its organizational structure and shows how the implementation, if successful, will be self-sustaining and enhance integration of the target population into the community.

In addressing the above criteria, the applicant should include the following: (1) A thorough description of the intervention(s) that will be carried out to test the hypothesis including measurable objectives, intended project outcomes, and intended impact on the problem(s) that is being addressed;

(2) a description of both the target group and the comparison group including the major characteristics and the target group, the applicant should include, at a minimum: age, sex, ethnic group, socio-economic status, number of years completed education, period of public assistance dependency, employment status and other categories which identify the target population as "at risk". In determining an adequate sample size for both the participant and comparison groups, the applicant should have initially identified a large enough group that will allow for attrition and still result in service and comparison groups of at least 80 participants each when the project terminates;

(3) the rationale for the approach being proposed to overcome this problem, an explanation showing how the approach proposed by the applicant is a departure from or a significant modification of previous and current approaches, and why the applicant believes that testing this approach will lead to positive outcomes;

(4) methods of outreach;

(5) quarterly target dates for the entire project period;

(6) if appropriate, a plan for identifying impediments to achieving self-sufficiency that are caused by legislative, administrative, and regulatory requirements at the Federal, State, and local levels; and

(7) a measurable definition of "self-sufficiency".

Criterion IV: Third-Party Evaluation (Maximum: 10 points)

The Evaluation Plan

—Includes an acceptable working definition of "self-sufficiency" (consistent with the broad definition contained in Part A) for this project that permits the measurement of incremental movement of individuals and families from dependency toward self-sufficiency; (0–2 points)
—Provides for a process evaluation covering the following elements: Partnerships, staffing, all pertinent policies and procedures, client outreach, services and process for service provision, applicant and community linkages, other community resources, changes from original plan, critical elements of program implementation and an implementation summary; (0–3 points)
—Provides for the completion of an outcome evaluation which specifies the hypotheses, and describes the design, sample size, subject selection, interventions, outcomes, measurement instruments, time and number of measurements, data collection procedures, and statistical procedures. The outcomes evalaution report will yield findings, an interpretation of findings, and identify major issues for replication. (0–3 points)
—Provides for an adequate sample size in both the participant and comparison groups and a rationale for their selection. (0–2 points)

In addressing the above criterion, applicant should include the following: A plan for a methodologically sound third-party (i.e. independent) evaluation of the demonstration project which must include:

(1) Provision for a process evaluation that will include procedures to be used to (a) compare information about participants and non-participants (the comparison group) and (b) isolate and systematically assess competing explanations for the observed outcomes. When the use of a comparison group is not practical, the applicant must propose an alternative method to validate the hypothesis. The process evaluation should include the following elements: partnerships, staffing, all pertinent policies and procedures, client outreach, services and service provision, applicant and community linkages, other community resources, community integration, changes from original plan, elements of program implementation and an implementation summary. The results should be incorporated into a policies and procedures manual;

(2) provision for an outcome evaluation that will clearly identify the hypothesis to be tested, the changes (outcome objectives) to be produced, the activities (interventions) that will produce the changes, and the methods (measurement instruments, performance measures and data collection procedures) for measuring the performance as well as the time and number of measurements and statistical procedures. Outcomes should include measurements of self-sustainability and community benefits;

(3) an acceptable working definition, consistent with the broad definition contained in Part A, of "self-sufficiency" for this project that permits the measurement of incremental movement of individuals and families from dependency toward self-sufficiency;

(4) an adequate sample size in both the participant and comparison groups as well as a rationale for subject selection; and

(5) a realistic plan for disseminating the project findings, once they have been approved by OCS, to other eligible entities and to States upon request.

Criterion V: Partnerships (Maximum: 20 points)

—The partnership arrangements for the participating businesses/employers include the following critical elements identified in the model, i.e. the participating businesses/employers agree to:
—Help to design programs of work experience and courses to prepare the youth for employment in the field;

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—Enter into an agreement with each of the students who will participate in the program;
—Develop a structured relationship between an experienced worker in the business and each student wherein the worker serves both as a mentor and a trainer to the student/apprentice and formally evaluates the student's performance;
—Provide part-time jobs during the school year and summer jobs which offer the opportunity to learn the skills necessary to perform in the field; and
—Offer a full-time, pre-defined position to each of the students upon his/her graduation. The participating school districts/secondary schools agree to:
—Sponsor presentations by employers about the work world, on-site visits to business facilities, and activities related to job sampling;
—Develop a structured curriculum track which begins in high school and culminates in full-time employment after graduation;
—Communicate the student's performance in courses to the employer, where feasible, to help establish the link between school and work;
—Incorporate the evaluation of each student's work performance into his/her school record; and
—Make the necessary provisions to allow the grantee to provide the necessary social services and opportunities for community service to each student in the treatment group.

In addressing the above criteria, the applicant should include the following: The applicant should submit for each of the partners supporting documentation on the skills and/or resources committed to this project and a description of the partners involvement in the project.

Criterion VI: Budget Impact and Match (Maximum: 5 points)

(i) The project, if successful, will result in either or both of the following:
—Continued provision of services, after completion of the demonstration project, without additional OCS or other Federal funds; and/or
—More efficient use of existing anti-poverty resources.

(ii) The match resources are necessary and logical for the proposed project.

In addressing the above criterion, the applicant should include the following: The applicant should describe how the project will continue after completion of the demonstration, what funds will be available for its continuation and how the match will be used in the project.

Criterion VII: Mobilization of Additional Public-Private Contributions (Maximum: 0-5 points)

The applicant documents additional leveraging of public and/or private sources, cash and/or in-kind contributions valued at an amount equal to 80% of the OCS funds requested. These funds, if possible, should be contributed by the primary partnerships.

In addressing the above criterion, the applicant should include the following: The applicant should document the value of such contributions. Contributions of at least 80% of the OCS funds requested will receive the maximum number of points for this criterion. Lesser contributions will be given consideration based upon the value documented.

Criteria for Review and Assessment of Applications Submitted for Continuation Grants Only

Criterion I: Project Design: (Maximum: 20 points)

Project Design: 20 points

—The applicant has presented all the elements of the original design, including the hypothesis and interventions, a timeline of interventions, description of target population and comparison group, partnerships, and third party evaluation plan. In describing the target group(s), applicant has included the number of participants and beneficiaries together with their major characteristics that are relevant to the hypothesis, as well as a similarly definitive description of the comparison group;
—The applicant has demonstrated that to date a significant number of project clients have been successful in moving toward self-sufficiency; and
—The changes made to the original project, if any, have the effect of enhancing the original project design and do not distort it.

In addressing the above criterion, the applicant should include the following: A description of both the target group and the comparison group including the major characteristics and the size of each group; a restatement of the original hypothesis and interventions, partnerships and third-party evaluation including a rationale for any changes, additions or deletions; the number of clients who have moved toward self-sufficiency, and information supporting such program outcomes such as income-producing employment secured, wages earned, educational attainments, stabilization of living conditions, etc.

Criterion II: Preliminary Evaluation (Maximum: 20 points)

The application, through its preliminary evaluation, demonstrates that:
—The mix of interventions for the clients have had an impact in their movement toward self-sufficiency. This has been documented in both qualitative and quantative terms;
—Intake assessment, assignment procedures to treatment and control groups, and data collection procedures are adequate; and
—The written policies and procedures which resulted from the initial funding highlight the critical elements of program implementation.

In addressing the above criterion, the applicant should include the following: Qualitative and quantitative information showing how the interventions have produced evaluation results that are statistically significant and replicable; the adequacy of sample sizes of both treatment and comparison groups, measurement instruments and data collection procedures, and a copy of the current policies and procedures which highlights the critical elements of program implementation to date.

Criterion III: Research Significance: (Maximum: 20 points)

—The applicant has demonstrated that a longer service period is needed to assure evaluation results have statistical significance;
—The applicant has documented that the continuation of its project will result in substantial progress toward self-sufficiency of a greater number of clients;
—The applicant has demonstrated that a continuation of the grant will result in a more valid and useful study and will add to the body of knowledge; and
—If those instances where there has been a gap in the provision of services to the treatment group since the expiration of the DPP grant, the applicant has provided information that indicates that the validity of the evaluation data will not be negatively affected nor will the research design.

In addressing the above criterion, the applicant should include the following: Evidence that the particular approach being tested is likely to yield important results if the project is operational for a longer period of time; the additional documentation made possible by the continuation grant will result m a more valid and useful study including what the anticipated contributions to policy, practice, theory and/or research will be. The applicant additionally should describe how the continuation of the current project will result in substantial progress toward self-sufficiency of the current clients or an expanded group.

Criterion IV: Continuation of Third-party Evaluation (Maximum: 15 points)

—The applicant identifies any changes in the definition of self-sufficiency, design, interventions and/or sample size of the comparison/control groups and indicates what changes will be made in the evaluation design as a result of additional funding.

In addressing the above criterion, the applicant should include the following: Revised evalution design which incorporates any changes in definition, design and/or sample sizes.

Criterion V: Institutional and Community (Maximum: 15 points)

—The applicant has adequately documented positive changes that its organization, that of its partners, and/or other relevant institutions have made on their on-going programs as a result of the project funded under the initial grant;
—The applicant shows that there has been a continuing involvement among the partners; and
—The applicant identifies how it plans to integrate the target population into the community.

In addressing the above criterion, the applicant should include the following: Evidence that the project has had a beneficial impact on the institutions involved, i.e. the applicant, partners, other relevant organizations. Identify the initial/original partner(s)' involvement in the project and include any increase/decrease of that involvement. Describe how the target population will be integrated into the community.

Criterion VI: Budget Appropriateness (Maximum: 10 points)

—Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project.

In addressing the above criteria, the applicant should include the following: Detailed budget description that explains budget categories and relates them to the objectives of the project.

Part E—Instructions for Completing Applications

(Approved by the Office of Management and Budget under Control Number 0970-0062.)

The standard forms attached to this announcement shall be used when submitting applications for all funds under this announcement.

It is suggested that you reproduce the SF-424, SF-424A, and SF-424B, and type your application on the copies. If an item on the SF-424 cannot be answered or does not appear to be related or relevant to the assistance requested, write "NA" for "Not Applicable."

Prepare your application in accordance with the standard instructions given in Attachments B and C corresponding to the forms, as well as the OCS specific instructions set forth below:

1. SF-424—"Application for Federal Assistance"

Items:

1. For the purposes of this announcement, all projects are considered "Applications"; there are no "Pre-Applications." Also for the purposes of this announcement, there are no Construction projects.

5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "Other."

9. Enter "DHHS-ACF-OCS, Office of Community Services".

10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.035. The title is "Community Services Block Grant Discretionary Awards—Demonstration Partnership Program."

11. In addition to a brief descriptive title of the project, indicate for which priority area funds are being requested. The following letter designations must be used: General projects: "DP", Replication Set-Aside: "DR", Continuation Set-Aside: "DC", High Risk Youth Initiative (General) "DY", High Risk Youth Initiative Set-Aside: "DA", (Apprenticeship Program).

15a. For purposes of this Announcement, this amount should reflect the amount requested for the entire project period.

15b-e. These items should reflect both cash and in-kind contributions for the total project period.

2. SF-424A—"Budget Information—Non-Construction Programs"

See instructions accompanying this page as well as the instructions set forth below:

In completing these sections, the "Federal Funds" budget entries will relate to the requested OCS Demonstration Partnership Program funds only, and "Non-Federal" will include mobilized funds from all other sources—applicant, state, and other. Federal funds other than those requested from the Demonstration Partnership Program should be included in "Non-Federal" entries.

Sections A and D of SF-424A must contain entries for both Federal (OCS) and non-Federal (mobilized) funds.

Section A—Budget Summary

Lines 1-4
Col. (a): Line 1 Enter "OCS Demonstration Partnership Program";
Col. (b): Line 1 Enter "93.035".
Col. (c) and (d): Not Applicable
Column (e)—(g)

For each line 1-4, enter in columns (e), (f) and (g) the appropriate amounts needed to support the project for the entire project period.

Line 5 Enter the figures from Line 1 for all columns completed, (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column #1, the second budget period of 12 months in Column #2 and the remaining months in Column #3. Leave Column #4 blank.

Allowability of costs are governed by applicable cost principles set forth in 45 CFR parts 74 and 92.

A separate budget justification should be included to explain fully and justify major items, as indicated below.

Column 5: Enter the total requirements for Federal funds by the Object Class Categories of this section.

Personnel—Line 6a: Enter the total costs of salaries and wages.

Justification

Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b; Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification

Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Travel—Line 6c: Enter total costs of out-of-town travel by employees of the project. Do not enter costs for consultant's travel or local transportation.

Justification

Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances. Travel costs to attend two national workshops in Washington, DC by the project director should be included. (See Line 6h and Line 21 for additional instructions).

Equipment—Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having a useful life of more than two years and an acquisition cost per unit of $500 for non-profit organizations and a useful life of one year and an acquisition cost per unit of $5,000 or more for public organizations.

Justification

Only equipment required to conduct the project may be purchased with Federal funds. The applicant organization or its subgrantees must not have such equipment, or a reasonable facsimile, available for use in the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e: Enter the total costs of all tangible personal property (surplus) other than that included on line 6d.

Justification

Specify general categories of supplies and their costs.

Contractual—Line 6f: Enter the total costs of all contracts, including the cost of the third-party evaluation contract. Travel costs for the chief evaluator to attend two national workshops in Washington, DC should be included. OCS' experience with this program has shown that a quality evaluation contract can be purchased for 8%–10% of the OCS budget.

Justification

Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and selection process of the awards as part of the budget justification. Also provide back-up documentation identifying the name of contractor, purpose of contract, and major cost elements.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit sections A and B of this Form SF-424A, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6f. Provide draft Request for Proposal in accordance with 45 CFR part 74, Appendix H. Applicants who anticipate evaluation procurements that will exceed $10,000 and will be awarded without competition should include a sole source justification in the proposal. For successful applicants the grant award letter accompanying the Notice of Grant Award will comprise approval of this action.

Construction—Line 6g: Construction costs are not permitted under the Demonstration Partnership Program.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. With the exception of local governments, applicants should enclose a copy of the current rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

The total amount shown in section B, column (5), line 6k, should be the same as the amount shown in section A, line 5, column (e).

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification

Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Column 5: Carry totals from Column 1 to Column 5 for all line items.

Section C—Non-Federal Resources

This section is to record the amounts of "non-Federal" resources that will be used to support the project. "Non-Federal" resources mean other than OCS funds for which the applicant is applying. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, (See section B.6) and whether it is cash or third-party in-kind. The firm commitment of these required funds must be documented and submitted with the application in order to be given credit in the Partnerships' criterion.

Except in unusual situations, this documentation must be in the forms of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8:

Column (a): Enter the project title.

Column (b): Enter the amount of cash or donations to be made by the applicant.

Column (c): Enter the State contribution.

Column (d): Enter the amount of cash and third-party in-kind contributions to be made from all other sources.

Column (e): Enter the total of columns (b), (c), and (d).

Lines 9, 10, and 11 should be left blank.

Line 12:

Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount of Section A, Line 5, column (f).

Justification

Describe third-party, in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 12 month budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the total of Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project

No entries are required for OCS grants.

Section F—Other Budget Information

Line 21—Include a narrative justification for each object class category required under section B for the total project period. This narrative justification should be on a separate page and should immediately follow the SF-424A in the application package.

Line 22—Enter the type of HHS or other Federal agency's approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF-424B "Assurances-Non-Construction"

All applicants must fill out, sign, date and return the "Assurances" (see Attachment D) with the application.

Part F—Application Procedures

1. Availability of Forms

Attachments B, C, and D contain all of the standard forms necessary for the application for awards under this OCS program. These attachments and parts D and E of this announcement contain all the instructions required for submittal of applications.

Additional copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled "FOR FURTHER INFORMATION CONTACT:" at the beginning of this announcement.

2. Application Submission

Applications must be submitted to FSA by the closing date. Refer to "DATE" at the beginning of this document for the specific date.

Applications may be mailed to: Administration for Children and Families, Division of Grants Management, 6th Floor OFM/DGM, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Hand-delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, on or prior to the established closing date at: Administration for Children and Families, Division of Grants Management, Sixth Floor, 901 D Street, SW., Washington, DC 20447.

An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date.

Note: In some instances packages presented for mailing after a pre-determined time are postmarked with the next day's date. In other cases, postmarks are not routinely placed on packages. Applicants are cautioned to verify that there is a date on the package, and that it is the correct date of mailing, before accepting a receipt.

Applications which have a postmark later than the closing date, or which are hand-delivered after the closing date, will be returned to the sender without consideration in the competition.

Applications once submitted are considered final and no additional materials will be accepted.

One signed original application and four copies should be submitted.

3. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Virginia, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nine jurisdictions need take no action regarding Executive Order 12372. Applicants for projects to be administered by federally recognized Indian Tribes are also exempt from the requirements of Executive Order 12372. Applicants must submit any required material to the SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions so that the OCS can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in a delay in grant award.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule under 45 CFR 100.10. It is helpful in tracking SPOC comments if the SPOC will clearly indicate the applicant organization as it appears on the application SF-424.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Grants Management, 6th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447. A list of the Single Points of Contact for each State and Territory is included as Appendix G of this announcement.

4. Application Consideration

Applications which meet the screening requirements in section 5 below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to the purposes outlined in part C, and evaluation criteria published in this announcement.

Applications will be reviewed by persons outside of the OCS unit which

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will be directly responsible for management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will be considered in rank order of the averaged scores. However, highly ranked applications are not guaranteed funding since other factors are taken into consideration, including: The timely and proper completion of projects funded with OCS funds granted in the past 5 years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to determine the applicant's performance record.

5. Criteria for Screening Applications

a. Initial Screening

All applicants will receive an acknowledgement with an assigned identification number. This number, along with any other identifying codes, must be referenced in all subsequent communications concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401-9230. All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 "Application for Federal Assistance" (SF-424), a budget (SF-424A) and signed "Assurances" (SF-424B) completed according to instructions published in part E and Attachments B, C and D of this program announcement.

(2) A project narrative must also accompany the standard forms.

(3) The SF-424 and the SF-424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

b. Pre-Rating Review

Applications which pass the initial screening will be forwarded to reviewers and/or OCS staff prior to the programmatic review to verify that the applications comply with this program announcement in the following areas:

(1) *Eligibility:* Applicant is an "eligible entity" as defined in Part A, Section 2. In order to establish eligibility, the application must contain a letter signed by the State Director of the Community Services Block Grant program certifying that the applicant is an "eligible entity" as defined by this program announcement and that it has the capacity to operate the proposed project.

Applicants must also be aware that the applicant's legal name as required on the SF-424 (item 5) must match that listed as corresponding to the Employer Identification Number (item 6).

(2) *Target Populations:* The application clearly serves low-income participants and beneficiaries as defined in Part B-6.

(3) *Matching Funds:* The required match has been firmly committed in the form of letters of commitment by the donors or letters of intent and are included in the application.

(4) *Grant Amount:* The amount of funds requested does not exceed $350,000 in OCS funds for general, replication or high-risk youth initiative projects. The amount requested for continuation projects does not exceed 80 percent of the initial grant.

(5) *Project Evaluation:* A third-party project evaluation plan is included.

(6) *Replication Project:* The proposed project will be operated in a geographic area outside of the original area of testing.

(7) *Partnership Agreements:* A letter of commitment or intent from the prospective partner(s) is included.

(8) *Continuation Project:* All elements of the original design, including the hypothesis and interventions, characteristics of the target population, partnership(s), and third-party evaluation are included.

An application may be disqualified from the competition and returned if it does not conform to one or more of the above requirements.

Part G—Contents of Application and Receipt Process

(Approved by the Office of Management and Budget under Control Number 0970-0062.)

1. Contents of Application

Each application submission should include a signed original and four additional copies of the application.

Each application should include the following in the order presented:

a. Table of Contents;

b. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in attachments E and F.

c. "Budget Information-Non-Construction Programs" (SF-424A);

d. A narrative budget justification for each object class category required under section B, SF-424A.

e. Filled out, signed and dated "Assurances—Non-Construction Programs" (SF-424B, attachment D.

f. Restrictions on Lobbying—Certification for Contracts, Grants, Loans, and Cooperative Agreements: fill out, sign and date form found at attachment H.

g. Disclosure of Lobbying Activities, SF-LLL: Fill out, sign and date form found at attachment H, if appropriate.

h. An Executive Summary—not to exceed 300 words.

i. A project narrative that will include all of the following components according to the project type. Specific information/data required under each component is described in part D, Review Criteria.

Applicable to continuation projects only:

(i) Project Design.

(ii) Preliminary Evaluation (No narrative required for preliminary evaluation. Attach as appendices.)

(iii) Research Significance.

(iv) Continuation of Third-Party Evaluation.

(v) Institutional and Community Impact.

(vi) Budget Appropriateness.

Applicable to general, replication and high-risk youth initiative projects only:

(i) Organizational History and Management Capability.

(ii) Analysis of Need.

(iii) Project Design.

(iv) Third-Party Evaluation.

(v) Partnerships.

(vi) Budget Impact and Match.

(vii) Mobilization of Additional Public-Private. Contributions (High Risk Youth Initiative Apprenticeship Program only).

j. Maintenance of Effort Certification.

k. Appendices, including letter signed by State CSBG Director; letters signed by the partners; statement regarding the

date of incorporation; IRS letter on non-profit status, where applicable; Single Point of Contact comments, if applicable and available; resumes; Certification Regarding Lobbying; letters of match commitment or letters of intent; a current listing of all sources of funds and projects operated in the applicant's current operating year; and, for continuation projects only, the preliminary evaluation of the original project.

The total number of pages for the entire application package, excluding appendices, should not exceed 50 pages. Pages should be numbered sequentially throughout, excluding appendices, beginning with the SF-424 as Page #1.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ x 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included. The applications should be two-holed punched at the top center and fastened separately with a compressor slide paper fastener, such as an ACCO clip, or a binder clip. The submission of bound applications, or applications enclosed in binders is specifically discouraged.

2. Acknowledgement of Receipt

All applicants will receive an acknowledgement postcard with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgement post-card. This number and the program priority area letter code must be referred to in all subsequent communication with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401-9320.

Part H—Post-Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Notice of Grant Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, the total project period for which support is contemplated, and the total financial participation from the award recipient.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of 45 CFR parts 74 and 92.

Project directors and chief evaluators will be required to attend a national DPP evaluation workshop in Washington, DC which will be scheduled shortly after the effective date of the grant. They also will be required to attend, as presenters, a workshop on utilization and dissemination to be held at the end of the project period.

Grantees will be required to submit quarterly progress and financial reports (SF 269) throughout the project period, as well as a final progress and financial report within 90 days of the termination of the project. An interim evaluation report, along with the written policies and procedures resulting from the process evaluation, will be due 30 days after the first twelve months of the project period and a final evaluation report will be due 90 days after the expiration of the grant. These reports will be submitted in accordance with instructions to be provided by OCS, and will be the basis for the dissemination effort to be conducted by the Office of Community Services.

Grantees are subject to the audit requirements in 45 CFR parts 74 (non-governmental), 92 (governmental) and OMB Circular A-133.

Section 1352 of Public Law 101-121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients on Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) To certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or nonappropriated funds on or after December 22, 1989 and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. See attachment H for certification and disclosure forms to be submitted with the applications for this program.

Attachment I indicates the regulations which apply to all applicants/grantees under the Demonstration Partnership Program.

Eunice S. Thomas,

Director, Office of Community Services.

ATTACHMENT A—1991 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$6,620
2	8,880
3	11,140
4	13,400
5	15,660
6	17,920
7	20,180
8	22,440

For family units with more than 8 members, add $2,260 for each additional member.

Poverty Income Guidelines for Alaska

1	$8,290
2	11,110
3	13,930
4	16,750
5	19,570
6	22,390
7	25,210
8	28,030

For family units with more than 8 members, add $2,820 for each additional member.

Poverty Income Guidelines for Hawaii

1	$7,610
2	10,210
3	12,810
4	15,410
5	18,010
6	20,610
7	23,210
8	25,810

For family units with more than 8 members, add $2,600 for each additional member.

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Attachment B—SF 424, Application for Federal Assistance and Instructions for the SF-424

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED | Applicant Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

3. DATE RECEIVED BY STATE | State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in boxes: ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative | b. Title | c. Telephone number

d. Signature of Authorized Representative | e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Attachment C—SF 424A, Budget Information—Non-Construction Programs and Instructions for the SF–424A

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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Attachment D—SF 424B, Assurances—Non-Construction Programs

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

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Attachment E—U.S. Department of Health and Human Services Certificate Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(Continued on reverse side of this sheet)

HHS—Certification Regarding Drug-Free Workplace Requirements—continued from reverse page

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) _____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Signature _____ **Date** _____
Title _____
Organization _____

DGMO Form#2 Revised May 1990

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Attachment F—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principles:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Telephone (205) 284-8905.

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280-1315.

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371-1074.

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323-7480.

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, room 520, Denver, Colorado 80203, Telephone (303) 866-2156.

Connecticut

Under Secretary, Attn: Intergovernmental Review coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Telephone (203) 566-3410.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736-3326.

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone (202) 727-6111.

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Telephone (904) 488-8114.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656-3855.

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548-3016 or 548-3085.

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782-6639.

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232-5610.

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281-3725.

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564-2382.

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333; Telephone (207) 289-3261.

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Telephone (301) 225-4490.

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, room 1803, Boston, Massachusetts 02202, Telephone (617) 727-7001.

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373-7111.

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960-4280.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834.

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444-5522.

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, NV 89710, Attn: John B. Walker, Clearinghouse Coordinator.

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155.

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613.

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-9025.

New Mexico

Dorothy E. (Duffy) Rodriquez, Deputy Director, State Budget Division, Department of Finance & Administration, room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605.

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499.

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224-2094.

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Fund Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698.

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843-9770.

Oregon

Attn: Dolores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, Oregon 97310, Telephone (503) 373-1998.

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernment Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783-3700.

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656.

Please direct correspondence and question to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, room 477, Columbia, South Carolina 29201, Telephone (803) 734-0493.

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212.

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676.

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778.

Utah

Utah State Clearinghouse, Attn: Carolyn Wright, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 538-1547.

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3320.

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop CH-51, Olympia, Washington 98504-4151, Telephone (206) 753-4978.

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010.

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Telephone (608) 266-1741.

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, (608)-266-0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574.

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285.

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950.

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444.

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Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 22 & 23 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750.

Attachment H—Restriction on Lobbying and SF-LLL and Instructions

BILLING CODE 4150-04-M

RESTRICTIONS ON LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3 The undersigned shall require that the language of this certification be included in the award documents for subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordnace with its instructions.

Signature

Organization

Date

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter ____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier ____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

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Standard Form - LLL

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB 0348-0046

Reporting Entity: _____ Page _____ of _____

BILLING CODE 4150-04-C

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Standard Form - LLL-A

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Attachment I—DHHS Regulations Applying to all Applicants/Grantees Under the Demonstration Partnership Program

The following DHHS regulations apply to all applicants/grantees under the Demonstration Partnership Program:

Title 45 of the *Code of Federal Regulations:*

Part 16—Department of Grant Appeals Process

Part 74—Administration of Grants (non-governmental)

Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):

Sections 74.62(a) Non-Federal Audits

74.173 Hospitals

74.174(b) Other Nonprofit Organizations

74.304 Final Decisions in Disputes

74.710 Real Property, Equipment and Supplies

74.715 General Program Income

Part 75—Informal Grant Appeal Procedures

Part 76—Debarment and Suspension from Eligibility for Financial Assistance Subpart F—Drug Free Workplace Requirements

Part 80—Non-Discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964

Part 81—Practice and Procedures for Hearings Under Part 80 of this Title

Part 83—Non-discrimination on the basis of sex in the admission of individuals to training programs

Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance

Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (Federal Register, March 11, 1988)

Part 93—New Restrictions on Lobbying

Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment J—Optional Checklist (For Use of Applicant Only) to Verify Contents of Application

Optional Checklist (for use of applicant only) to verify contents of application

	Check
A. Application contains:	
1. Table of Contents	[ ]
2. Completed and signed SF-424, Application for Federal Assistance	[ ]
3. Completed SF-424A, Budget Information—Non-Construction Programs	[ ]
4. Narrative budget justification for each object class category required under Section B, SF-424A	[ ]
5. Signed SF-424B, Assurances—Non-Construction Programs	[ ]
6. A signed and dated copy of Certification Regarding Lobbying	[ ]
7. A completed, signed, and dated Disclosure of Lobbying Activities form, if appropriate	[ ]
8. An Executive Summary	[ ]
9. A project narrative with the required components	[ ]
10. Maintenance of Effort Certification	[ ]
11. Letter signed by CSBG Director confirming eligibility	[ ]
12. IRS letter on non-profit status, where applicable	[ ]
13. Single Point of Contact Comments, if applicable and available	[ ]
14. Letters of match commitment or letters of intent	[ ]
15. A current listing of all sources of funds and projects operated in the applicant's current operating year	[ ]
16. [For continuation projects only] The preliminary evaluation of the original project	[ ]
17. A self-addressed mailing label which can be affixed to a postcard to acknowledge receipt of application	[ ]
B. Application does not exceed a total of 50 pages	[ ]
C. Application includes one original and four copies, printed on white 8½ by 11 inch paper, two holed punched at the top center and fastened separately with a compressor slide paper fastener, such as an ACCO clip, or a binder clip. The submission of bound applications, or applications enclosed in binders, is specifically discouraged	[ ]
D. Applicant is aware that in signing and submitting the application for funds under the DPP Program, it is certifying that it has read and understood the Federal Guidelines concerning a drug-free workplace and the debarment regulations set forth in attachments E and F respectively	[ ]

Attachment K—Descriptions of FY 1987–FY 1989 Demonstration Partnership Projects

Small Business Development Program

Grantee

ACCORD Corporation, Belmont, New York.

Overview of Program

Purpose of the Program

The Small Business Development Program (SBDP) provided opportunities for self-employment to public assistance recipients. SBDP helped participants overcome barriers to business success by addressing such issues as: (1) Lack of management systems and tools; (2) lack of basic socioeconomic security; (3) lack of capital resources for investment; and (4) institutional/regulatory constraints on public assistance recipients.

Target Population

The program targeted its services and support to self-employed recipients on public assistance or struggling business owners whose only recourse was public assistance in periods of inadequate income from their business.

Description of the Program

SBDP had two primary components: A work training agreement and a revolving loan fund. The work training agreement obligated the participant to undertake programmed activities, to perform work as prescribed, and, to render all work income to the program. By this transfer, the Community Action Agency functioned as the interim owner/operator of participating business, while the participant preserved eligibility for public assistance benefits and was able to accumulate investment capital. Thus, SBDP was structured so the public assistance benefits of program participants were not offset by revenues generated by business operations. This arrangement protected the participant from the Department of Social Services' (DSS) ceiling on allowable assets, work relief and job training obligations, and DSS's recoupment of benefits for reported earnings. The agreement also established the program's commitment to provide management training and counseling through technical workshops one-to-one counseling, development of management tools, and support services.

The second component, the revolving loan fund, provided capital required for stable operation of the incipient businesses. Managed by a special loan committee, the loan fund gave participants access to small loans (average of $1,250 per participant) under more lenient credit and collateral criteria than used by conventional lending institutions. The fund also supported a credit line for each participant that allowed incremental draws up to $500 per participant. This credit was made available through a strict requisition process and was eventually repaid through accumulated income.

Structured to accept eight participants every 6 months, three 6-month cycles have been conducted allowing a total of 24 participants to enter the program. Selection of participants from the pool of candidates was subject to specific criteria to ensure the greatest potential of success. Businesses operated by participants were typically home-based, service oriented, labor intensive, and sole proprietorships. Involvement of hired employees was usually temporary or part-time help. Businesses with significant employee needs, such as retail sales, were not considered good candidates because of up-front costs of operation.

Partnerships

The primary partnership was with the Allegheny County Department of Social Services. Other participating agencies included: Allegheny County Private Industry Council; Board of Cooperative Educational Services (BOCES); The State Education Department, Bureau of Economic Development Coordination; New York State Department of Labor, and Literacy Volunteers.

Job Start Community Linkage Project

Grantee

Central Vermont Community Action Council, Inc., Barre, Vermont.

Overview of Program

Purpose of the Program

The purpose of this project was to determine the effectiveness of a statewide effort of community action agencies and the state government to assist low-income people to achieve self-employment and self-sufficiency through the availability of technical assistance and small low-interest loans.

Target Population

The Community Linkage Project was targeted to low-income Vermonters who possessed the skills, ambition and desire for self-improvement which made them potential candidates for starting or operating successful small businesses, and who, with the assistance offered by the program, had the capacity to be contributing and "bankable" members of their local economy.

Description of the Program

The Community Linkage Project was designed to increase the outreach efforts and increase the success rates of existing small businesses initiated under the state-run Vermont Job Start Program. Before the Community Linkage Project, Vermont Job Start had been an effective mechanism for enabling selected lower income Vermonters to develop or sustain small business ventures which allowed them to be self-supporting. However, the program was underutilized, and at the time of the DDP Grant award, over $200,000 in Job Start Funds had gone unallotted.

Central Vermont Community Action, Inc. headed a consortium of State Community Action Agencies which worked with the State Economic Opportunity Office (SEOO) to provide community-based outreach to Job Start applicants and Job Start loan recipients. The Community Action Agencies met with local businesses and civic groups and provided direct outreach to low-income individuals to increase the public awareness of the program; provided one-on-one technical assistance to Job Start applicants in preparing their applications; and provided on-going technical assistance and training to Job Start loan recipients.

Partnerships

Central Vermont Community Action Council, Inc. entered into a consortium with the following Community Action Agencies: Bennington-Rutland Opportunity Council (BROC); Champlain Valley Office for Economic Opportunity (CVOEO); North East Kingdom Community Action (NEKCA); and Southeastern Vermont Community Action (SEVCA). The consortium of community action agencies acted in partnership with the State Economic Opportunity Office Job Start Program.

Young Families C.A.N. (Comprehensive Assistance Network)

Grantee

City of Phoenix, Human Resources Department, Phoenix, Arizona.

Overview of Program

Purpose of the Program

Movement toward the goal of self-sufficiency requires a combination of public and private resources to meet interrelated problems which maintain poverty and dependence on the public welfare system. Young Families Comprehensive Assistance Network (C.A.N.) was designed to demonstrate that changes in program structure, eligibility criteria and the service delivery process can help promote the self-sufficiency of teenage parents who might otherwise become long term dependents of the welfare system.

Target Population

The target population of the project was welfare dependent adolescent (teenage) parents. The project provided services to women between the ages of 12 to 19 who had as least one young child.

Description of the Program

Young Families C.A.N. was designed to provide a comprehensive, integrated and flexible system for teenage mothers. Through intensive casework, Young Families C.A.N. coordinated services and assisted in the development and access to other needed services. Additionally, the program allowed identification of systemic barriers and service gaps as well as a mechanism to resolve system deficiencies.

Client needs were reviewed and addressed through four support or service levels. These support levels were: intensive case coordination and counseling; functional-area expertise and resource development; systemic change, coordination and advocacy; and the availability of discretionary cash resources. Through the case plan, issues such as housing, medical care (including eye and dental care), education, parenting, housing, budgeting, drug and/or alcohol use, family relationships, independent living skills, transportation, child care, family planning and others were addressed by referral, support groups, counseling and direct assistance. Clients "contracted" to work on and complete activities in several of these areas.

Through a partnership with the welfare agency, the Young Families C.A.N. project was able to facilitate problem-solving and communication around specific issues that surfaced as system barriers for project clients. Once an issue was identified, the welfare staff were informed of the potential problem and a meeting was scheduled for key welfare and project staff to discuss the situation. Issues related to AFDC benefit reductions due to changes in living situations, transportation subsidies, section 8 housing vouchers and others were reviewed and resolved through this mechanism.

Partnerships

Young Families C.A.N. was operated by the City of Phoenix Human Resources Department. The primary partnership was with the Arizona Department of Economic Security.

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Family Self-Sufficiency Demonstration Project

Grantee

Northeast Kansas Community Action Program, Inc. (N.E.K.-C.A.P., INC.), Hiawatha, Kansas.

Overview of the Program

Purpose of the Program

The Family Self-Sufficiency Project provided a comprehensive array of tested services to low-income families so that families participating in the project became self-sufficient.

Target Population

Participating families had a head-of-household who is between ages 16 and 45; family members' combined income was less than 125 percent of the federal poverty level. The target population included: pregnant teens, drug and alcohol-dependent persons, school dropouts, illiterates, victims of abuse, handicapped persons, and persons with severe mental and physical problems.

Description of the Program

This grant incorporated two related but distinct projects: the Family Self-Sufficiency Project , operated by the Northeast Kansas Community Action Agency (NEK-CAP) of Hiawatha, Kansas; and the Partners for Tomorrow project, operated by Yamhill County (Oregon) CAP (YCAP).

The Family Self-Sufficiency Project expanded upon a preexisting project, the Total Family Approach to Self-Sufficiency Program, started by NEK-CAP in 1979. Families sign a contract when they enter this program and are then assigned an outreach worker who helps them identify and overcome problems in achieving self-sufficiency. Family members take steps to acquire the knowledge, skills, and attitudes they need to become self-sufficient; NEK-CAP staff work to mobilize public- and private-sector resources on behalf of their clients. Specific program activities included:

- Expanded the existing self-sufficiency program so that an additional 70 families would become self-sufficient
- Worked with the Kansas State Department of Social and Rehabilitation Services (SRS) to make a Job Club available to SRS clients and project participants
- Placed public assistance recipients in employment through the comprehensive assistance provided by the project
- Involved additional area businesses in the program and obtained commitments to employ project participants
- Worked with the City of Hiawatha and the Hiawatha Industrial Development Committee to plan day care training facilities, a homeless shelter, a shelter for victims of domestic violence, and a Job Club center.

The client interventions included assessments of family problems and needs; information and referral; provision of immediate assistance to meet basic needs (food, clothing, shelter, medical care); provision of counseling for a full range of personal and interpersonal problems; a job readiness program; and job placement services.

North Dakota State Self Reliance Program

Grantee

Southeastern North Dakota, Community Action Agency (SENDCAA), Fargo, North Dakota.

Overview of the Program

Purpose of the Program

SENDCAA stresses that most social service programs seem to address only the immediate needs of a client; that people are not getting out of poverty, but getting used to poverty. In reaction to this philosophy, the purpose of this project was "to help people help themselves out of poverty".

Target Population

The program targeted its services to individuals who had an annual income under 125 percent of poverty and who received one or more forms of direct assistance (fuel assistance, AFDC, or food stamps).

Description of the Program

The North Dakota Self-Reliance Project involved a program and case management approach enacted through a consortium of community action agencies across the state of North Dakota. The project utilized a case management approach where Self-Reliance Coordinators (SRCs) provided direct service as well as referral options to low-income individuals.

Services provided either directly or through referral included relationship building, resume writing, advocacy, job retention skills, assertiveness training, money management, career information and testing, child care information and education, education information, training in goal setting and interviewing skills, counseling and support, self-reliance information and information about stress management techniques.

Through the provision of such services the project sought to lower the immersion of low income individuals in entitlement and welfare programs as well as improve their non-economic functioning and self-reliance. Non-economic functioning and self-reliance included such objectives as: broadening clients' useful and productive social support networks and maximizing the use of such networks; increasing stability and lower levels of disorganization in the lives of project participants; and to improve client participants' ability to cope.

Partnerships

SENDCAA entered into partnerships with the other seven community action agencies in the State; the Office of Intergovernmental Assistance; North Dakota Department of Human Services; Bank of North Dakota; and Job Service North Dakota (JTPA program).

I. Project Independence

Grantee

City of Alexandria, Department of Human Services, Division of Economic Opportunity, Alexandria, Virginia.

Overview of Program

Purpose of the Program

Project Independence is targeted towards a subgroup of homeless, low-income or long-term welfare-dependent, single parent families, entering an emergency shelter. To increase self-efficiency, comprehensive community services will be offered through a coordinated case management mechanism. Additionally, the program seeks to involve the absent partners of single parents.

Target Population

The program will serve 25 single parent families over the 2-year funding term. All beneficiaries of the project will be within 125 percent of the Federal poverty guidelines for the appropriate family size. Project participants will be solicited from one of the three shelters that serve Alexandria.

Description of the Program

Within 48 hours of placement in a temporary shelter, an initial assessment of the family situation will be made. The assessment will include: Employment and training, income maintenance, education, family stress, housing needs, and family therapy and treatment. From this assessment, the Project Independence case management team will select the families for the project. The selected families will have a unified service plan developed, and services related to each of the family needs will be provided.

The project specifically funds rental subsidies and employment training. After the family is in a shelter for 30 days, they will be placed in transitional apartment housing. The project will provide 100 percent subsidy of rental costs during the first 3 months, 80 percent subsidy for the next 6 months, and 50 percent subsidy for the remaining 6 months.

Partnerships

Key partnerships for the project are with the Division of Social Services (will provide social work intake and assessment), Office of Employment and Training and the Landlord/Tenant Division of the Office of Housing (for assistance with participants moving to permanent housing from transitional housing). Additionally, linkages will be maintained with the Salvation Army (owns transitional apartments), Coalition for the Homeless and organizations that sponsor the homeless shelters.

II. Community Partnership Self-Sufficiency Project

Grantee

Central Oregon Community Action Agency Network (COCAAN), Bend, Oregon.

Overview of Program

Purpose of the Program

The project will serve long-term and young welfare recipients with low-literacy and aptitude skills in three small, rural central Oregon counties. Through an intervention approach of individualized case management, basic education, job training, job development, and supportive services, participants will achieve improved self-sufficiency.

Target Population

The program is targeted to serve 80 individuals who have received ADC (AFDC) for at least 6 months, and have scores below 245 on the language and arithmetic sections of the Basic Adult Skills Inventory System (BASIS) assessment test.

Description of the Program

Through the Community Partnership Self-Sufficiency Program, intensive interpersonal case management and job development services will be added to an already established service delivery mechanism. The primary focus of services will be the delivery of case management services, basic education and literacy assessments, adult basic education, job development and child care and transportation subsidies. Persons meeting the program criteria will be randomly assigned to either the program or to a control group to allow for the evaluation of the program.

The case management services will provide an integrated management information system that facilitates referrals and information sharing across agency lines. The case managers will provide assessment, contracting (individualized plans), coordinating/facilitating, and serve as a focal point for inter-agency accountability. The basic education and literacy assessment includes achievement testing and counseling. The adult basic education component encompasses adult basic education, GED, English as a Second Language, and high school diploma achievement. The Job Development element will include coordination, placement, market oriented training, employer education and aptitude testing.

Self-sufficiency is defined as the measurable progress of each participant to provide for his/her family's economic and social needs through the obtainment of literacy, life skills and/or employment.

Partnerships

Partnerships will be formed with the State of Oregon Employment Division, Redmond and Bend Employment Offices, Central Oregon Community College, Oregon State University County Extension Programs, Central Oregon Intergovernmental Council, Oregon State Alcohol and Drug Training Office, County Mental Health Offices, Crook, Deschutes and Jefferson Child Care Council and the Consumer Credit Counseling of Central Oregon.

III. The Club-Career and Life United in Boston

Grantee

Action for Boston Community Development, Inc., Center for Jobs, Education and Career Training, Boston, MA.

Overview of Program

Purpose of the Program

The Club (Career and Life United in Boston) is designed to provide a full range of education, skills training and employability development programs and services to young, minority males.

Target Population

Club membership will be open to black and Hispanic males, between the ages of 18 to 24. The members will not have completed any post-secondary schooling and will have an income up to 125 percent of the poverty level. Within this pool of individuals applicants for the Club must have a 6.5 to 10.0 grade reading ability and be free of major alcohol or drug abuse problems.

Program Description

The Club will focus on the economic and social development of its members through personal, interpersonal and social action including self-help, leadership development, social support, family involvement and community service. Individualized Career and Life Plans will be developed for each club member and will include some form and combination of paid work experience, job training and/or education, family involvement and community service. Mentors will be assigned to each member to serve as a role model. As part of the Club benefits, a weekly stipend to cover individual plan-related expenses will be paid.

The project describes the outcomes and objectives from both a life and career perspective. The life planning steps incorporated into the project include: improved financial planning, management and control and active involvement and service in the community at large. The career planning steps included in the project are: career assessment and planning, education, and employability development. Through career and life planning, the project seeks to increase participant earnings; upgrade jobs; improve job performance; increase parental support; increase spouse and family involvement/integration/reunification and achieve individual goals articulated in the plan. The Club will foster this through a group process, focused on a self-help concept.

Partnerships

Partnerships will be formed with the Franklin Institute (technical training and English as a Second Language preparatory programs), Jobs for Youth, Home Builders, City of Boston, and Northeastern University. Other partnerships will be explored as well.

IV. Teen Parent Self-Sufficiency Project

Grantee

Snohomish County Division of Community Services, Everett, WA.

Overview of Program

Purpose of the Program

The goal of the Teen Parent Self-Sufficiency Project (TPP) is to establish a community-based case management partnership to provide an enhanced,

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integrated program of services to 50 teen parents and their families (including a committed male partner if there is one) to increase the teen parents' self-sufficiency. TPP counselors will provide brokering, advocacy, mentoring, counseling, group facilitation, and guidance to participants. By involving the male partners in educational and employment-related services, the self-sufficiency of the total family will be increased and the outcomes for both mother and father will be more positive.

Target Population

Participants will be enrolled in the program through aggressive outreach efforts in schools, care clinics, and the regional welfare office. Females will be eligible for the program if they are 16–18 years of age, pregnant or parenting, have not completed high school or the GED, are enrolled in the DSHS Family Independence Program (FIP), and are not under the custodial care of their own parents. Males will be eligible if they are the partners of eligible females, or are the fathers who wish to assume some financial responsibility for the child. It is estimated that the program will begin with 50 female enrollees; additionally, 50 comparison subjects will be selected for evaluation purposes.

Description of the Program

The Teen Parent Self-Sufficiency Project will work alongside the already existing FIP, a 5-year demonstration project that has gained strong support at the state, regional, and local levels. Participants will receive the enhanced services already provided to FIP enrollees, as well as enhanced self-sufficiency services, which constitute the interventions of the TPP program. Participants will receive supportive services in three areas: (1) *Individual*—an action plan developed with the participant, problem identification and problem solving, identification and appropriate use of resources, communication skill building, life skills training, assistance in locating and accessing community services (housing, education/training, child care, transportation, medical care), counseling and referrals, and follow-up/progress monitoring; (2) *Couples*—counseling and referral related to interpersonal communication skills, parenting skills, household management, financial management, extended family relations, health care, and intimacy; (3) *Group*—develop appropriate support groups for teen mothers and their partners.

The project's two case managers will use the established network of health and education services to develop a self-sufficiency plan for each male partner, and will also provide individual counseling and peer group-support. The CAP/FIP Case Manager Partnership will bring the full resources of the community to the teen parent participants.

Thirty Section 8 housing certificates provided by the local housing authority will be used as incentives for those participants who complete the first phase of their self-sufficiency plan. A client support fund will be established to provide for supplemental day care, transportation, supplemental educational expenses and supplies, and miscellaneous support such as stipends for teen moms who volunteer as role models, advocates, or peer counselors; assistance for car problems, child care seats, and clothing; and assistance for life enrichment needs such as children's books and recreational opportunities.

Self-sufficiency is defined as "A process through which an individual reaches economic independence with decreased reliance on social service/income maintenance programs over time."

Partnerships

Key partnerships for this project include the University of Washington School of Social Work (evaluation); The Washington State Department of Social and Health Services; The Washington State Employment Security Department; and the Housing Authority of the City of Everett. Two full-time case manager positions will be funded by the State Department of Social and Health Services. A percentage of the project director's and project coordinator's time will be funded by Snohomish County.

VI. Family Self-Sufficiency Project

Grantee

Knoxville—Knox County Community Action Committee, Knoxville, Tennessee.

Overview of Program

Purpose of the Program

The family self-sufficiency project will serve participants of job training programs. Forty unemployed young men and women (female heads of household) will be targeted to receive integrated family support services. The support services will assist the participants achieve family self-sufficiency. Additionally, the project will promote family unification.

Target Population

Participants will have family incomes at or below 125 percent of the Federal poverty income guidelines. Only 25% will be AFDC recipients, and 60% will be in broken homes, separated or estranged families. Participants will be selected from several local programs including JTPA, Head Start, public housing authority and others. Once identified, stabilization services (hunger, eviction, etc.) will be provided when required. A comprehensive family needs assessment will be conducted to include a physical examination, basic skills testing and employability evaluation. Information related to housing, income, family relationships, child care and transportation will also be obtained.

Description of the Program

The project is designed to deal with two factors: the inability of the poor to secure jobs with wages and benefits that allow self-sufficiency and the failure of job training programs to provide the types of supportive services needed for self-sufficiency. To assist the poor in securing jobs and receiving programs that will lead to self-sufficiency, a case managed, integrated service delivery process will be offered to the 40 participants.

A Comprehensive Family Development Plan will be completed for each participant family. As part of the Plan, an individualized employability plan will be developed based on the educational and vocational assessment. The employability plan will have salary and benefits targets for the participant to achieve. Once the actual job placement is known, the plan will be updated to reflect this information. The services provided to the participant families include: case management (coordination of services); basic skills and job training (GED, training, etc.); child care; housing; transportation (secure and maintain own vehicle); health and nutrition (health risk appraisal); personal development and life skills (cultural assimilation) and improving and/or reestablishing family relationships.

Partnerships

The project will form partnerships with the County Department of Human Services (child care and Medicaid), Planned Parenthood, Department of Housing and Urban Affairs, Knoxville's Community Development Corporation, Habitat for Humanity, Knoxville Chamber of Commerce (jobs), Knox County Department of Health, Casey Jones Insurance Company (health insurance), Urban League and the Family Self-Sufficiency Task Force. The Task Force will be formed specifically for this project and will be composed of representatives from partnership agencies and other related members.

VII. Intervention to Prevent Homelessness

Grantee

Lincoln Action Program, Inc., Lincoln, Nebraska.

Overview of Program

Purpose of the Program

The objective of the project is to stem homelessness through early intervention by a Family Preservation Team, a network of about 25 human service agency representatives who meet weekly to review a family and develop a community plan to address their problems. The effectiveness of the family preservation team will be compared to that of single-agency services and conventional program services.

Target Population

This project will target at-risk families, as determined by emergency food basket requests submitted to the Lincoln Action Program. An estimate of 400 families will request food assistance during the grant period.

Description of the Program

Of the 400 families identified, 200 will be randomly selected for intervention service based on an individualized family plan. These families will be stratified based on a family risk (for homelessness) scale score. Half of the families scoring high on the scale will receive the family preservation team intervention services; the other high risk families will get single-agency program services, including outreach assistance. Families scoring low on the scale will also receive single agency program services. The other 200 families will be used as a control group in which families will receive "conventional program services" (the requested food and be offered minimal referrals without follow up or additional services). The control group families will also be stratified into high and low risk groups to allow for comparisons across treatments and between strata.

Early family intervention will result in a number of outcomes related to increased family self-sufficiency. Projected outcomes for the families targeted for early intervention include a reduction in repeat requests for emergency food, an increase in employment wages of individuals in families requesting emergency food, a decrease in the number of households at-risk of losing their homes, and an improvement in family poverty levels.

Partnerships

Key partnerships have been formed between Lincoln Action Program and The Family Preservation Team, The Lincoln Fellowship of Churches food pantry network, and SRI Research Center, which will perform the evaluation.

IX. Minority Male Opportunity and Responsibility Project

Grantee

Community Relations-Social Development Commission, Milwaukee, WI.

Overview of Program

Purpose of the Program

To enable and encourage young minority males to become self-sufficient and more involved with family and community through participation in a long-term, case managed program of educational and vocational services.

Target Population

Minority males aged 18–25 enrolled in the Milwaukee County General Assistance program. Participants will have reading and math skills between the third- and seventh-grade levels and will not have had employment of greater than 3 months duration. Priority will be given to enrolling participants who have had court-determined paternity of a child or children with only 1 mother.

Description of Program

The program will provide a full range of educational and vocational training skills within the framework of long term case management. The goals of the program are to assist participants in becoming self-sufficient, reducing dependence on public assistance, and increasing social responsibility in terms of family and community.

Staff from the Milwaukee County Department of Social Services will recruit 300 potential participants during initial enrollment and assessment for the General Assistance program. Fifty randomly selected volunteers will serve as the primary comparison group; 75 as a secondary comparison group; and 150 of the remaining recruits will be enrolled in the program.

Each participant will enroll in basic skills training and, with the help of his project case manager, develop an individual development plan (IDP) which will encompass individual career and life goals and the steps for achieving them. Case managers will meet with clients twice a month to monitor progress toward goals.

After attending basic skills training for 3 to 6 months participants will choose one of three education/employment tracks which will include varying combinations of education, job training and job development, and paid employment. Participants will also be required to complete a parenting skills training course and will be encouraged to take part in community activities. Case managers will refer clients to other community services needed to make progress toward goals outlined in the IDP, including: alcohol and drug abuse treatment services, community involvement opportunities, legal services, health care, mental health services, and transportation assistance.

Partnerships

The program has established partnerships with the Milwaukee County Department of Social Services, Milwaukee Area Technical College (MATC), Project Transition (a program assisting low income people attending MATC), New Concept Self Development (will provide parenting class), the Milwaukee Foundation, and Steller Associates.

X. Job Start Venture Development Project

Grantee

Aroostook County Action Program, Presque Isle, Maine.

Overview of Program

Purpose of the Program

The Job Start Venture Development Project is designed to assist low-income persons in certain distressed Maine counties to start their own small businesses.

It seeks to: (1) Increase the interest level of low-income and disadvantaged persons to seek self-employment and business development as a way to move out of dependency; (2) improve the success rate of converting interested inquirers regarding venture development programs to actual borrowers; (3) improve the credit-worthiness of borrowers for self-employment and small businesses; and (4) move successful participants toward economic self-sufficiency.

Target Population

This project is targeted to individuals in certain distressed Maine counties with incomes no greater that 125% of the Federal poverty level. It is expected to serve a minimum of 200 eligible clients.

Description of the Program

The program will consist of two components. The first, designed for low-income individuals with some business

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knowledge and work experience, offers participants a training program in which they can develop their own business plans. Upon finishing the program, graduates will receive priority for Job Start loans to launch their own ventures.

The second component is designed for individuals with little or no knowledge of basic business practices or who have psychosocial problems such as low self-esteem. These participants will enroll in a training program as part of a "business support group," a small group of five or more people at similar stages of business interest or skills designed to help its members develop their own business ideas. As participants mature, the support group will serve as a loan committee and determine who receives loans. The business support program is modelled on several successful programs in other countries, including some carried out by Accion Internacional in the third world.

Partnerships

The Aroostook County Action Program has formed key partnerships with the Finance Authority of Maine, the Washington-Hancock Community Agency, and Community Concepts, Inc.

XI. Linkages: A Self-Sufficiency Development Project

Grantee

Ramsey Action Programs, Inc., St. Paul, Minnesota.

Overview of Program

Purpose of the Program

Linkages will use intensive recruitment, case management, and Designing Changes program (services and skills training) to promote self-sufficiency among recipients of an energy assistance program.

Target Population

Program participants will be clients in the State's Energy Assistance program. Non-elderly, non-disabled households, in Ramey and Washington Counties, who are applying for the third or subsequent time will be screened for inclusion. These individuals must be employable, have no prior involvement in Designing Changes Program, and not eligible for the Minnesota PATHS program.

Description of the Program

Linkages is a partnership between Ramsey Action Programs, Inc., the State of Minnesota, and a research firm. Ramsey Action Programs, a Community Action Agency, is the coordinating partner. This is a 24-month project.

There are three project objectives: (1) To develop and test the operation of an identification and recruitment protocol which will encourage repeat users of Energy Assistance to participate in the Designing Changes Self-Sufficiency project; (2) to study the recruitment process and the results of paticipation in Designing Changes; and (3) to assist the participating individuals in the achievement of greater self-sufficiency as indicated by gains in employment, education or employment skills, and/or greater skills in satisfaction in meeting the challenges of work and family life.

Applicants to the Energy Assistance program will be screened on criteria for Designing Changes priority groups. Those who meet the criteria will be randomly assigned to receive the Designing Changes recruitment or to receive standard Energy Assistance service without recruitment. Four groups will result: (1) Individuals recruited and who participate in Designing Changes Program (approximately 120 individuals); (2) individuals recruited but who do not participate in Designing Changes Program (approximately 360 individuals); (3) individuals not recruited and who participate in the Designing Changes Program (approximately 35 individuals); and (4) individuals not recruited and who do not participate in Designing Changes Program (approximately 1965 individuals).

Recruitment for Designing Changes will be done by intake workers from that program who will be trained in using recruitment materials and techniques. Applicants will be invited to an orientation session to promote the program, and follow-up personal interviews will be conducted.

Those who enroll in the Designing Changes program will be completely assessed to identify their needs. After assessment, they will be assigned to a case manager who will assist them in examining options and identifying goals. The Designing Changes program is structured in modular style, with particular grouping of activities available to address different need areas. Each module is designed to build skills in a specific area. Upon the identification of personal and family goals, case workers will assist participants to create a personal plan to achieve their goals, using program modules as well as other programs in the community. In addition, participants will work with Designing Changes staff skilled in training, job development, and other relevant fields. Finally, a job development component of the program will work with each participant to locate or create appropriate employment opportunities.

Partnerships

The program is a partnership between Ramsey Action Programs, the Minnesota Department of Jobs and Training, and Wilder Research Center. Ramsey Action Programs will coordinate Linkages and provide recruitment, intake, case management, and Designing Changes program services. The Minnesota Department of Jobs and Training will provide information and be responsible for the dissemination of the project's results. Wilder Research Center will conduct the evaluation of the project.

XII. Single Parent Economic Independence Demonstration Project (SPEID)

Grantee

Davis County Private Industrial Council, Farmington, Utah.

Overview of Program

Purpose of the Program:

The SPEID project uses public and private resources to assist single parents in making a successful transition from public assistance to employment. A "holistic" approach is used to serve clients struggling to overcome multiple barriers to reach economic independence. The objectives of the project are: (1) To improve economic and non-economic outcomes for single parents; (2) to increase private sector involvement; and (3) to create a comprehensive delivery case management system appropriate for continuance and replication.

Target Population

Single parents who: (1) Have minor children for which the parent has either custody or joint custody; (2) have been out of the labor force for a substantial number of years and who, because of divorce, separation, death or disability of a spouse, must return to the labor market; and (3) who meet the program's definition of being economically disadvantaged.

Description of the Program

The project uses a two-pronged approach to assist participants achieve economic independence. First, a comprehensive delivery/case management system helps single parents during the transition from being a welfare recipient to being a labor force participant. Second, a public/private partnership provides program participants work experience

internships and an introduction to the labor market.

Through the comprehensive delivery/case management system, participants are provided all support services, education, and training components needed to successfully complete private sector work experience and obtain long-term employment. A case manager is assigned to each single parent to follow him/her into the labor market to help overcome employment barriers and examine pre-vocational components that best prepare clients for the workplace. The public/private partnership component provides work experience through internships. Each single parent is assigned to an intern position and a workplace mentor to help the participant become integrated into the workplace and develop job networking skills.

During the first year, the project has been developed in four Service Delivery Areas (SDA) throughout the state. The project is being expanded to five other areas during the second year. The Davis County Department of Human Services acts as the lead agency for the grant and contracts with Private Industry Councils (PIC) in each area to administer the local SPEID Project.

Partnerships

There are a number of partnerships in this project at both the state and local levels.

State level partnerships include: the Department of Community and Economic Development's Office of Community Services and Office of Job Training for Economic Development, the SPEID Consortium, the State Technical Oversight Unit, the State Job Training Coordinating Council.

Partnerships at the local level are: the Davis County Department of Human Services (the lead agency), nine PICs (one for each SDA), and nine Local Technical Support Units.

In addition, there is an evaluation team composed of: the University of Utah-Human Resources Management Program, the Office of Job Training for Economic Development-Management Information System, and the Employment Security Labor Market Information Services.

I. N.E.W.=S. Non-Traditional Employment for Women=Self-Sufficiency

Grantee Information

Grantee

Panhandle Community Services (PCS), Amarillo, TX.

Overview of Program

Purpose of the Program

N.E.W.=S. will provide employment training, in non-traditional jobs for women, along with counseling, support services, and placement assistance to low-income women with dependent children. The training and support services will improve the self-sufficiency of single parent families and reduce welfare dependency.

Target Population

Single women who are: head of household, 18 years of age or older, with dependent child(ren) under age of 17 years, physically able to compete in non-traditional jobs, and have incomes at or below 125 percent of the poverty level. These women will be residents from the 25 counties in the Texas panhandle.

Description of the Program

This project is an extension of a 2-year HUD self-sufficiency pilot project to train single parents with a high school education (or GED) for employment. N.E.W.=S. will differ from the HUD pilot project in a number of ways: (1) It will serve a more difficult segment of the population, those without a high school education; (2) training will be for only one year; (3) clients will be trained in non-traditional occupations; (4) more support services will be provided in areas such as child care, transportation, and health care; (5) the entire family will be worked with; and (6) a unique vocational assessment process will be used.

Training in non-traditional areas will include: Carpentry, plumbing, welding, building maintenance, truck driving, meat processing, and law enforcement. Job training will be accompanied with intensive testing, counseling, utilization and coordination of support services for the total family constellation. These services will be offered to a total of 30 clients.

Self-sufficiency is defined as: where an individual or family by reason of non-traditional employment or other unforeseen circumstances, is not eligible for public assistance.

Partnerships

Amarillo College and Texas State Technical Institute will provide training in non-traditional fields. Frank Phillips College and Clarendon College will also provide training on an "as needed" basis. Retired Senior Executives will be the third party evaluator.

II. Business Incubator Demonstration Project

Grantee Information

Grantee

West Central Missouri Rural Development Corporation, Appleton City, Missouri.

Overview of Program

Purpose of the Program

The purpose of the Business Incubator Demonstration Project is to demonstrate that self-employment, as opposed to employment, is a viable option for obtaining self-sufficiency. (Self-sufficiency is defined operationally as having an income above 125 percent of the poverty guidelines.) Project participants will be given bank loans and technical assistance to start up small businesses.

Target Population

Low-income people, especially displaced farmers and farmworkers; owners of existing struggling businesses whose personal income meets the CSBG guidelines; individuals providing service functions (woodcutting, repair, landscaping, etc.) who intend to package services better or to merge for better opportunity; persons involved in small business startups and entrepreneurial ventures.

Description of the Program

Participants will be recruited, trained if necessary, provided with technical assistance to develop a business plan and apply for a bank loan, and advised/monitored after the loan has been received to ensure that payments are made and the business remains healthy.

Partnerships

Partners include West Central's Outreach, Intake, Assessment, and Referral Division (OIARS); the Retired Senior Volunteer Program (RSVP); the Western Missouri Private Industry Council; the West Central Missouri Rural Development Corporation; and the Appleton City Bank.

III. Partners in Progress

Grantee Information

Grantee

Community Action Agency of South Central Michigan, Battle Creek, MI.

Overview of the Program

Purpose of the Program

Partners in Progress will provide low-income women with supportive case management services and specialized

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vocational and entrepreneurial training that will promote self-sufficiency.

Target Population

The project will serve low-income women within a four-county service area. The target population includes teenagers, single parents, displaced homemakers, and women of color. A total of 150 women will be served.

Description of the Project

The CAA's Wenuya's Concerns Office (WCO) operated innovative employment and training programs and acts as an employment referral service for women. Partners in Progress will expand WCO support services to low-income women in the four-county area, provide vocational and entrepreneurial skills, and develop a Women's Small Business Incubator and Self-Employment Project.

Specific activities and services to be offered include:

• Supportive services: case management, counseling, group support meetings, and specific women-related services. Family focus activities will include home visitation, educational field trips, and after-school activities to increase parenting skills and promote family enrichment.

• Vocational/entrepreneurial training: Enrollment will occur once per year or on an open-entry/open-exit basis. Training will be provided by Calhoun Area Vocational Center and Kellogg Community College; special curricula will be developed by these institutions and other local area employment-related organizations. Interests, abilities, and special needs of prospective applicants will be assessed by project staff; motivational assessment will be the primary indicator for entrepreneurial training. Tuition assistance programs will be used whenever possible and sponsorship of students solicited from business and professional women's organizations. When no other source is available, the project will pay training costs. Participants pursuing non-traditional careers or those not ready for self-employment ventures will receive job search and placement services following training. Specialized entrepreneurial training will be given in Calhoun County in cooperation with the Calhoun-Barry Small Business Center and the Albion College Women's Center. A 12-week workshop series will be offered to participants, and will include market analysis, management, marketing, financial, and resource development. Each participant will construct a business plan for her venture. Successful completers will be allowed to participate in the incubator project (see below).

• Small business incubator: Participants completing entrepreneurial training will be given an opportunity to develop small businesses through a low-risk incubator model project. Home-based and independent ventures will be encouraged. Business areas to be explored include a catering service, a downtown errand service, handywoman services, computer services, cottage industries, in-home child care provider training and referral service, and cleaning services. The project will provide office space to member businesses. Each business will access training, technical assistance, marketing and related services through WCO on a fee-for-service basis, thus enabling the project to sustain itself. New businesses will be accepted into the incubator project twice during the project period and spin-off businesses will be encouraged.

Partnerships

The grantee CAA serves as the fiscal agent and the CAA WCO serves as project coordinator. Partners include Calhoun Area Vocational Center which provides training, the Calhoun-Barry Small Business Center, which provides technical assistance in business development, and the Battle Creek Investment Growth Corporation, a loan fund which assists small businesses in the area.

IV. Self-Sufficiency Plus

Grantee Information

Grantee

Bi-County Community Action Council, Inc., Bemidji, Minnesota.

Overview of Program

Purpose of the Program

The project represents a multi-agency effort to meet the needs of the target population, non-elderly low-income households. The premise of the program is that agency networking at the program level and case management services at the client level will increase satisfaction with life and the self-sufficiency of program participants.

Target Population

The target population includes all non-elderly low-income households from Beltrami and Cass Counties (a total population of 3,644 households). It is estimated that the project will serve approximately 206 households and 700 individuals (beneficiaries). Of these, 95% of the households receive some form of public assistance, 48% will be female headed households, 78% will be without employment at the time of enrollment in the program, 75% of the households will have children, and 15% of the households will be Native American.

Description of the Program

All non-elderly low-income individuals residing in Beltrami and Cass Counties will be sent letters describing the Self-Sufficiency Plus program and requesting consent for participation. For those who express interest in the program and are assigned to the treatment group, an orientation meeting will be held. The orientation sessions will help the participants identify career values and interests. After the orientation meeting, those randomly selected to participate in the program will receive a follow-up counseling session with the project coordinator to assist them in selecting a service provider.

Case management services are provided at the next intervention phase. Counseling, referral and supportive services will be provided by the case manager. The case manager assists the participants in developing realistic, step-by-step action plans oriented towards achieving self-sufficiency goals.

Self-sufficiency will be viewed from three perspectives: educational attainment, involvement in public assistance programs and employment status. Educational attainment will be measured by: number of months enrolled in a formal educational program, number of educational certificates and diplomas received and the number of courses completed. Involvement in public assistance will be measured by: total public assistance payments (includes payments under individual assistance programs received by participants) and the number and type of public assistance programs for which the participants are eligible and/or in which they are enrolled. Employment will be measured by: the number of hours worked per week, number of participants employed full time and part time and the monthly earned income of participants.

The project will establish a monthly forum for participating agencies to discuss ways to improve the program and the provision of services to the target population. The project also proposes to establish a consumer advisory committee to provide recommendations to the agencies on how to improve the program.

Partnerships

Self-Sufficiency Plus will form partnerships with Bemidji State University (education and training), Bemidji Technical Institute (education, training and social services), Adult Basic Education and General Education Development Programs, Red Lake Tribal Social Services, Bemidji American Indian Employment Council (education, training, employment, and support services), Bi-County Community Action Council (case management), and Rural Minnesota CEP (JTPA sponsor—to provide employment and case management).

V. Capital Opportunities

Grantee Information

Grantee

Human Resource Development Council, Inc., Bozeman, Montana.

Overview of Program

Purpose of the Program

The project will establish a loan fund to offer capital options to low income citizens who want to establish and develop a micro-business (5 or less employees). Entrepreneurial training, technical assistance, and support in combination with access to small low interest loans will enable participants to start or expand their own business and become self-sufficient.

Target Population

Dislocated workers, victims of farm closure, AFDC recipients, displaced homemakers, persons age 18–21, and other economically disadvantaged individuals of Gallatin, Park, Meagher, and Madison Counties in Montana.

Description of the Program

Capital Opportunities (CO) is a partnership between a community incubator, business support services, and a loan for micro-businesses. Headwaters Entrepreneur Resources, Inc. (HERI), is an existing community incubator that provides entrepreneurial training, technical assistance, and support to individuals interested in starting their own business. CO will establish a loan fund for low income persons, form a loan review board, pursue additional loan fund capital, establish a loan fund manager, pursue state waivers regarding AFDC and self-employment, advocate for business insurance, and advocate for commercial loans.

Participants will receive training and support by HERI to develop a business plan and apply for a loan from the loan fund. The loan fund review board will approve loans based on established criteria. Clients who get loans will continue to have access to the services of HERI and other partners. Loanees will be monitored on a regular basis so that a potential weakness in a business will be identified in time for remedial technical assistance.

Partnerships

The project has two levels of partnerships. The primary partnership is District IX, Human Resource Development Council, Inc. (HRDC), and Headwaters Entrepreneur Resource, Inc. (HERI), the micro-business incubator.

A number of sub-partnerships are listed including the Chamber of Commerce, business associations, Montana State University, educational entities, city commissions, county commissions, local banking community, Montana Department of Commerce, Montana Department of Labor, Montana Department of Social and Rehabilitative Services, and other human service providers. These sub-partnerships will provide the necessary community linkages.

VI. Headstart Opportunities for Parents Through Employment—Project HOPE

Grantee Information

Grantee

Columbus Metropolitan Area Community Action Organization, Columbus, Ohio.

Overview of Program

Purpose of the Program

The Headstart Opportunities for Parents through Employment—Project HOPE is designed to provide intensive employment services aimed at promoting the self-sufficiency of program participants. The use of case managers as a liaison between the employer and the employee will assist in improved workplace functioning and improve job retention. Project HOPE is also designed to identify individuals with entrepreneurial talents and skills and assist them in starting a business. Goals of the program include:

• To provide economic stability and training to ensure the assumption of community and family responsibility for low-income and Head Start families

• The formation and effective coordination of economic and social resource development systems that assume an advocacy position for low-income and unemployed populations

• To provide a data base to effect legislation and policy changes as they relate to public assistance recipients

• To provide more effective and efficient uses of private and public resources in the area of job development.

Target Population

The target population will be a pool of approximately 200 Head Start families. For the purposes of the project (and reflecting the demographics of the Franklin County Head Start population), each family will consist of an adult parent or parents between the ages of 15 to 35 with children related by marriage or adoption. The majority of Head Start parents are black, on public assistance, single heads of households and unemployed.

Description of the Program

Once a family is identified and recruited, a comprehensive assessment will be provided. This assessment will include measures of family functioning and employment status information. The support needs of the family will also be reviewed. After the assessment period is completed, clients will be engaged in a four-week pre-employment and motivational training program designed to ready them for the world of work and life planning. Clients will then be ready for training and/or job placement.

The project will include an entrepreneurial program for clients who would benefit from a small business development program.

Partnerships

An Interagency Council will be formed to function as an intervention as well as a partnership. The members of the Council and their respective services are listed below. The Private Industry Council of Franklin County will provide skill training, basic education, GED preparation and on-the-job training. The Columbus Area Chamber of Commerce will provide linkages with employers. Additional employment assistance will be provided by the Building Trades Council (pre-apprenticeship screening and preparation for training). Day care services will be provided by the Franklin County Human Service Department. The City Department of Human Services will also serve on the Council. Their participation will allow job development with the city. The Small Business Resource Center will provide workshops and assistance in entrepreneurial activities.

VII. Family Self-Sufficiency Project

Grantee Information

Grantee

Mid-Iowa Community Action, Inc., Marshalltown, Iowa.

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Overview of Program

Purpose of the Program

The Family Self-Sufficiency Project is designed to assist AFDC recipients achieve self-sufficiency. The interventions focus on self-sufficiency as a set of competencies that can be developed. The measurement of self-sufficiency is related to a reduction in AFDC benefits. Self-sufficiency competency development will be coupled with a case managed approach.

Target Population

The project will serve AFDC recipients residing in Hardin, Marshall, Poweshiek, and Tama counties. Project participants must have a working age (18-60) adult in the family and an income no greater than 125 percent of the poverty guidelines. Applicants who have been off of assistance less than two consecutive months, or are an unemployed parent or disabled adult are not eligible.

Description of the Program

Income maintenance workers, during eligibility intake interviews, will discuss with AFDC applicants ways to increase their self-sufficiency. These workers (trained to provide "nurturing interviews") will describe the Family Development program to eligible AFDC recipients and encourage them to enroll in the program. The Family Development program consists of an in-depth assessment of the family; defining the self-sufficiency competencies including the focus for new skill development; teaching family goal-setting and goal-seeking skills; teaching families how to find and use the resources which meet their self-sufficiency needs; and teaching families how to establish support networks with appropriate community organizations and institutions. The self-sufficiency competencies that will be addressed include: problem-solving, social networking, family relations, self-esteem and parental attitudes.

Based on this assessment, goals and objectives are set to further develop self-sufficiency. Client case reviews by the two responsible agencies (Department of Human Services and Mid-Iowa Community Action) are then held monthly.

Partnerships

The project will link three agencies as participating partners. The Mid-Iowa Community Action will provide the primary intervention—the Family Development services. The local subdistrict office of the Department of Human Services will provide the initial intervention provided to the clients, the nurturing eligibility interview and orientation to the Family Development program. The National Resource Center for Family Based Services, part of the University of Iowa School of Social Work, will develop and provide training in interview techniques to project staff.

VIII. Operation Community Uplift

Grantee Information

Grantee

Clackamas County, Social Services Division, Oregon City, Oregon.

Overview of Program

Purpose of the Program

This project is designed to raise the level of self-sufficiency of people in public housing.

Target Population

The target population will comprise residents of Clackamas Heights and Oregon City View Manor Housing projects. This population is predominantly very low income, female heads-of-household with a high percentage of children living in poverty.

Description of the Program

Through an array of services designed to increase community participation and empower the community to make educated employment decisions, this project hopes to raise the self-sufficiency level of the residents of two housing projects in suburban Portland. Participants will be encouraged to join self-help groups, workshops, and seminars. They will be provided intensive case management support assistance and employment-related assistance. Participants' progress toward self-sufficiency will be measured both qualitatively—by feeling better about themselves and being actively involved in helping others in the community—and quantitatively, by the elimination of need for food stamps or AFDC.

Partnerships

- Housing Authority.
- Camp Fire.
- Department of Human Services.
- Oregon Department of Human Resources.
- United Way.

IX. Homeless Family Self-Sufficiency Project

Grantee Information

Grantee

Multnomah County Department of Human Services, Portland, Oregon.

Overview of the Program

Purpose of the Program

The purpose of this project is to assist homeless families in acquiring the resources necessary and establishing a social network that will enable them to move toward self-sufficiency.

Target Population

This project is targeted to homeless families at less than 125% of the poverty level.

Description of the Program

Participating families will undergo an initial needs assessment to identify immediate concerns and problems. Families will then be provided a case manager who will provide "easy access to emergency, maintenance, and self-sufficiency services in a way that supports the integrity of the family."

For the purposes of this project, a family that exhibits self-sufficiency is one that is able to function within the minimum norms of the community with regard to maintaining permanent shelter and income, reasonable family functioning, appropriate parenting practices, and demonstrates the ability to maintain an interdependent social support system and use this resource in times of crisis.

On a preliminary basis, personal and family functioning is defined as the capacity of the family and its members to carry out their responsibilities both to themselves and to others. Included here are activities concerned with maintaining good mental, physical, and emotional health, rearing children, and maintaining a household. The grantee proposes the creation of a Family Resource Center to make available personal resources through the provision of medical services, independent living skills training, self-image support groups and other groups that will facilitate the maintenance of mental, physical, and emotional health.

Housing adequacy is defined as a continuum from true homelessness to having stable shelter. Existing church night shelters, 90-day transitional units, and permanent housing will provide environmental resources. Client cash stipends will be made available to pay rent and deposits when necessary to secure transitional and stable housing. Operationally, stability of housing will be defined as a family moving no more than once during the year after leaving ninety day transitional housing.

Economic self-sufficiency is defined by the acquisition of adequate income, preferably through permanent employment. This will be measured with a series of graduated steps, with the end criteria being at least one adult family member having a full-time job three months after project completion that pays sufficiently to cover the family's expenses. Economic resources will be made available in the form of employment through a local Job Corps Program and local businesses with temporary positions. An employment counselor at the Family Resource Center will later assist participants in locating more permanent positions which match their interests.

Financial assistance will be provided through public assistance programs until adequate employment is obtained. Volunteers will also be available to train families in financial planning. Realistically, public welfare or AFDC support may be the most appropriate source of income for some families, so the scaling will have to reflect this type of support as a reasonable goal.

Social support resources are defined on the basis of a family's social network, including friends, relatives, and community groups. The notion here is that families who are not isolated but rather who have interdependent sources of emotional and informational support will be better able to achieve self-sufficiency. Social networks will be formed with cooperation from church, civic, cultural/ethnic, and existing recreational/leisure groups.

Partnerships

Partnerships have been established with the following agencies:

- Coalition for Homeless Families.
- Community Action Agency of Portland.
- Portland State University, Regional Research Institute (Evaluation).
- State Adult and Family Services.
- Private Industry Council.
- Oregon State Extension Services.
- REACH Community Development Corporation.
- Mercy Corps International.
- Local Businesses.

X. Partnership for Youth Self-Sufficiency

Grantee Information

Grantee

County of San Diego, Department of Social Services, San Diego, California.

Overview of Program

Purpose of the Program

The Partnership for Youth Self-Sufficiency is designed to provide employment preparation, skill training and employment to at-risk high school youth. The project will work with students identified as "at risk" of dropping out of school, thus improving these students' chances of achieving a high school education and an adequate employment status.

Target Population

The project will serve tenth, eleventh and twelfth graders attending San Diego High School who have been previously identified as educationally at risk. A total of 160 students will be served. Students for the project will come from AFDC households; multiple ethnic groups will be represented including Hispanic, black, Asian, Philipino, Indo-Chinese and white students.

Description of the Program

Four existing programs at San Diego High School will be used to identify a pool of students who would be appropriate for the program. Once students are identified and enrolled in the program, the Department of Social Services' social worker, who is colocated on campus, will work with school personnel to develop employment plans parallel to the students' academic plans. At this stage, academic counseling, high school diploma planning, employment assessment and employment planning all occur. Based on the assessments, the student is then referred to appropriate academic courses (ESL, reading classes, math lab, etc.). Life skills training will also be provided, and each student will take a decision-making class. Students requiring pre-employment training will receive classroom instruction in these skills.

Job skill training will be provided to the students through on-the-job training (OJT). Actual job placement monitoring and followup will also be available to the student once OJT has been successfully achieved. The social workers will provide counseling and problem-solving assistance as needed during the job placements.

Partnerships

The project represents a partnership/joint effort of the San Diego Unified School District, San Diego High School, the Department of Social Services (Community Action Partnership Program, Employment Services Bureau), and San Diego State University.

XI. Homeless Employment Partnership

Grantee Information

Grantee

Metropolitan Development Council, Tacoma, Washington.

Overview of the Program

Purpose of the Program

The Project will provide case managed personal maintenance and employment related services to enable homeless men to become employed. The project will attempt to achieve a permanent change in life style from vagrancy to stable living.

Target Population

Employable homeless men in the Tacoma/Pierce County area.

Description of the Program

Through a consortium of service providers the grantee works with homeless men to become employed. This consortium, Homeless Employment Partnership (HEP), attracts potential program participants through personal maintenance services such as laundry, clothing, and phone lines. Homeless men are invited to a weekly pre-employment information workshop that explains the Comprehensive Competencies Program (CCP), an individualized training program to prepare individuals for employment. Interested persons are assessed for employability; those who meet assessment criteria are randomly assigned to an intervention group (CCP) or a waiting list control group.

The CCP is the primary intervention. It entails up to 180 hours of individualized academic and functional training that extends over 2 months with instruction given for about 4 hours a day. The program uses a computerized system of instruction and can result in the elevation of up to two grade levels. Training is provided in basic academic competencies, employment related skills, life skills aimed at improving self-esteem, health, nutrition, budgeting, consumer skills, and self-sufficiency (on time and task skills). Program participants are also taught how to conduct an effective job search. After training, participants spend a month working closely with a job placement counselor for job searching and placement.

Periodically, fifteen men will enter the CCP. Clients in the waiting control group enter CCP after their term on the waiting list. About 120 men are anticipated to enter the program of the grant period. Outcome data are collected at 30 days after completing CCP and at 6 months.

Followup will include biweekly employer/employee contact and monthly contact until the end of 3 months of employment. Individual/group counseling will be available to the participants for the duration of the project.

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Partnerships

HEP is a partnership of five agencies: Metropolitan Development Council, Pierce County Community Action Agency, Martin Luther King Ecumenical Center, Tacoma Urban League, and Hospitality Kitchen.

XII. Bright Center Demonstration Partnership Project

Grantee Information

Grantee

North Coast Opportunities, Inc. (NCO), Ukiah, CA.

Overview of Program

Purpose of the Program

Bright Center Demonstration Partnership Program will provide a 2-year comprehensive job training and self-employment training program designed to help low-income women become self-sufficient.

Target Population

In each of the 2 years, the project will serve 50 low-income women, ranging in age from 18 to 50, and with an average of 2.3 children each. Fifteen percent of project participants will be ethnic minorities. The target group will include AFDC recipients, JTPA-eligible and GAIN-eligible trainees, and other low-income women.

Description of the Program

The project is part of a community-wide effort to stimulate economic development in the county, and includes establishment of a loan guarantee fund to provide financing for business start-ups by low-income women. Combination of resources (occupational, child care, health services, loans, etc.) creates a full-service approach to job placement and job creation, a significant departure from traditional efforts.

Intensive outreach efforts will include advertising via inserts to welfare checks, flyers, and publicizing success stories. NCO's Head Start program and other programs and community organizations will help recruit participants, and the Department of Social Services will present the NCO self-employment training option to AFDC recipients reporting self-employment income, and will promote the Bright Center alternative to all participants in GAIN, the state welfare-reform-training program.

Applicants will be asked to complete self-directed assessment activities prior to enrollment. Those interested in the self-employment option will be given additional screening including credit and debt history analysis and review of the potential of the applicant's business idea.

Enrollees will meet weekly during the first month of the program to participate in goal setting, values clarification, personal effectiveness, and entrepreneurship. Individual action plans will be developed by the end of the first month, at which point participants will separate into either the Job Training or Self-Employment component.

All participants will engage in Personal and Family Development, including three-hour weekly workshops and support groups. This component is designed to help participants with problems such as addictive, dysfunctional family patterns and balancing parenting and work demands. Workshops will be given by project staff and Mendocino County Department of Public Health. Child care will be available to participants during classes, labs, training, workshops and support groups. Child care will be funded from matching contributions from the JTPA, NCO, and utilization of OCS grant funds as necessary.

Job training will be provided in one 2-semester cycle per year to 20 participants. Each will develop an individual employment plan including basic skills and vocational classes, GED classes, adult literacy tutors, community college classes, and work experience in coordination with volunteer employers. Each participant will spend 15 hours a week in these activities. Clients will participate in 8 weeks of job readiness training for 2 hours per week.

Self-employment training, the most significant departure from the standard Bright Center program, involves a partnership with the Mendocino County Office of Education to provide training to women who wish to start a business. Fifteen women each semester (30 total in Year 1) will receive 180 hours of instruction.

A Loan Guarantee Fund will be established to serve as a source of startup financing for self-employment training graduates. $10,000 in unrestricted funds has already been allocated by the NCO Board of Directors, and further development of the fund through community and foundation support is expected. Completion of a business plan is a prerequisite to access the fund. The Savings Bank of Mendocino County will provide services of a loan officer to review loan proposals and help develop the fund's operational procedures.

Continuous support will be offered to program completers who have secured a job or started a business. Job Training graduates can attend bimonthly 2-hour evening support groups, and graduates will stay in touch via frequent mailers questionnaires, and requests to serve as mentors and role models for current clients. Self-employment training (SET) graduates will be supported through the partnership of NCO and Ukiah Community Center. Using funds provided through a grant from the Irvine Foundation in San Francisco, the partnership proposes to establish a company to offer business planning and technical assistance, other business incubator services, and business financing for low-income female entrepreneurs. SET graduates will also have access to the loan fund and business incubator services. NCO's Business Services Group will provide services on a sliding fee schedule. SET graduates will also be referred to Mendocino Development corporation for additional services.

Partnerships

Partners are North Coast Opportunities, Inc., (NCO) (the CAA grantee), Mendocino County Office of Education—Regional Occupational Programs, and the Ukiah Community Center. Other cooperating agencies are the Mendocino County Youth Project and the Mendocino County Department of Public Health. Two other NCO projects involved are Head Start and Rural Communities Child Care.

XIII. Developing Black Males

Grantee Information

Grantee

Operation Threshold, Inc., Waterloo, Iowa.

Overview of Program

Purpose of the Program

This program is designed to provide third- and fourth-grade black males with environmental (family foundation, role models) and culturally relevant educational support to overcome fourth grade failure syndrome. In the long run, these students will then have a better opportunity of finishing high school and obtaining employment.

Target Population

The program's target population comprises third- and fourth-grade black males from low income, female head-of-household homes.

Description of the Program

This program focuses largely on the notion of self-concept. It aims to improve the child's self-concept by (1) Enrolling his family in a self-sufficiency program, and thus increasing self-esteem in the whole family, (2) training teachers in more effective methods for interacting with black male students, so that the students do not feel they are viewed as "problems", and (3) providing an adult black male role model to fill the father role and to show the students that they can do positive things with their lives.

While work is being done with the children to build their self-concepts and improve their academic performance, staff will also work with the students' families through Project MOVE, an existing self-sufficiency program. Staff will coordinate, with other agencies, "a variety of resources to help the family meet their basic needs while the parent moves toward employment." The parents will remain involved in the self-sufficiency program as long as their children are involved in the other components of the project.

Partnerships

Waterloo District Schools.

XIV. DuPage County Demonstration Partnership Program

Grantee Information

Grantee

DuPage County Department of Human Resources, Wheaton, Illinois.

Overview of the Program

Purpose of the Program

The DuPage County Self-Sufficiency Program will attempt to improve the self-sufficiency of AFDC recipients through a comprehensive intervention involving education and job training, housing assistance (already being provided by the DuPage Housing Authority), and intensive case management.

Target Population

AFDC recipients who are already receiving housing assistance.

Description of the Program

Not available. Since the original application was submitted, the program design has changed, because the grantee received much less funding than requested. In particular, no new housing assistance will be provided; rather, clients will be those who are already receiving housing assistance at the time of program enrollment. No description of the revised program has been provided.

Partnerships

The original plan was for DuPage County Department of Human Resources (the grantee) to provide job placement and training, and DuPage County Housing Authority to make housing certificates or vouchers available to appropriate participants and to screen and refer housing clients to the job placement and training program. It is not clear now what the Housing Authority is contributing to the partnership, other than referral of clients.

XV. High Risk Youth

Grantee Information

Grantee

Yolo County Community Partnership Agency, Woodland, California.

Overview of Program

Purpose of the Program

The program will increase the number of youth who graduate from high school by providing self-esteem building/motivation training, literacy skills training, individual counseling, and summer work experience.

Target Population

Youth between the ages of 16 and 18 who are at risk of dropping out of school, who meet program criteria, and go to school within the Washington Unified School District, a rural county. These are primarily youth from low income families in an area of high unemployment.

Description of the Program

The project is designed to increase the number of high risk youth who complete high school and enter the labor market with basic educational and employment skills. The focus will be on low income youth who are referred to an alternative school, Yolo High School, by City Police Departments, school attendance review boards, the Yolo County Probation Department, Department of Social Services, and other sources.

Specific needs of the youth will be met by providing a 190-hour self-esteem building/motivational curriculum combined with the traditional academic curriculum; a participant centered approach to learning; ongoing individual personal, academic, and career counseling; and pre-employment skills training. Nine skill areas are covered in the self-esteem/motivational curriculum. These areas include: lifestyle, values, self-esteem, communication, self-responsibility, handling conflict, coping with stress, career exploration, and goal setting.

Partnerships

Partnerships will include the Yolo County Probation Department, Washington Unified School District, and the Department of Social Services.

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Part III

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Three Types of Consumer Products; Final Rule

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DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-88-101]

Energy Conservation Program for Consumer Products: Final Rule Regarding Energy Conservation Standards for Three Types of Consumer Products

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act (NECPA), the National Appliance Energy Conservation Act (NAECA), and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE or Department) to administer an energy conservation program for these products. Among other things, the NAECA amendments to EPCA require DOE to consider amending the energy conservation standards for dishwashers, clothes washers, and clothes dryers.

DOE has determined that revised energy conservation standards for clothes washers, clothes dryers and dishwashers would result in a significant conservation of energy and would be economically justified. Therefore, the Department is today amending Title 10, part 430 of the Code of Federal Regulations to add new standards for these products. More stringent standards, including the maximum technologically feasible levels, were considered by the Department, but rejected based upon consideration of the economic analyses. These standard levels are to take effect May 14, 1994.

EFFECTIVE DATE: May 14, 1994.

ADDRESSES: A copy of the Technical Support Document may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, room 1E-190, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Copies of the Technical Support Document may be obtained from: U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

FOR FURTHER INFORMATION CONTACT:

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Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-41, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6587.

U.S. Department of Energy, CE-43.1, Docket No. CE-RM-88-101, Forrestal Building, room 6B-025, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6526.

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I. Introduction

a. Authority

Part B of Title III of the EPCA, Public Law 94-163, as amended by NECPA, Public Law 95-619, by NAECA, Public Law 100-12, and by NAECA 1988, Public Law 100-357,[1] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as "covered products") are: Refrigerators, refrigerator-freezers and freezers; dishwashers; clothes dryers; water heaters; central air conditioners and central air conditioning heat pumps; furnaces; direct heating equipment; television sets; kitchen ranges and ovens; clothes washers; room air conditioners; fluorescent lamp ballasts; and pool heaters; as well as any other consumer product classified by the Secretary of Energy. Section 322. To date, the Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts: Testing, labeling, and Federal energy conservation standards. DOE, in consultation with the National Institute of Standards and Technology (NIST), is required to amend or establish new test procedures as appropriate for each of the covered products. Section 323. The purpose of the test procedures is to produce test results that measure the energy efficiency, energy use, or

[1] Part B of Title III of EPCA, as amended by NECPA, NAECA, and NAECA 1988, is referred to in this notice as the Act. Part B of Title III is codified at 42 U.S.C. 6291 et seq. Part B of Title III of EPCA, as amended by NECPA only, is referred to in this notice as NECPA.

estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. Section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323(d)(1). Test procedures appear at 10 CFR part 430, subpart B.

The Federal Trade Commission (FTC) is required by the Act to prescribe rules governing the labeling of covered products for which test procedures have been prescribed by DOE. Section 324(a). These rules are to require that each particular model of a covered product bears a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). Disclosure of estimated operating cost is not required under section 324 if the FTC determines that such disclosure is not likely to assist consumers in making purchasing decisions, or is not economically feasible. In such a case, FTC must require a different useful measure of energy consumption. Section 324(c). At the present time there are FTC rules requiring labels for the following products: Room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, refrigerators and refrigerator-freezers, central air conditioners and central air conditioning heat pumps, and fluorescent lamp ballasts. 44 FR 66475, November 19, 1979, 52 FR 46888, December 10, 1987, and 54 FR 28031, July 5, 1989.

For each of 12 of the covered products, the Act prescribes an initial Federal energy conservation standard. Section 325(b)-(h). The Act establishes dates of applicability for the standards in 1988, 1990, 1992 or 1993, depending on the product, and specifies that the standards are to be reviewed by the Department within 3 to 10 years, also depending on the product. Section 325(b)-(h). After the specified period, DOE may promulgate new standards for each product; however, the Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or decreases the minimum required energy efficiency of a covered product. Section 325(l)(1). The Department's current review of standards is for dishwashers, clothes washers, and clothes dryers. Section 325(g)(4)(A).

Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(l)(2)(A).

Section 325(l)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit comments on a proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of the covered products which are likely to result directly from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

In addition, section 325(l)(2)(B)(iii) establishes a rebuttable presumption of economic justification in instances where the Secretary determines that "the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure * * *."

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Act. Section 327(a)-(c). Exemptions to this general rule include: (1) State standards prescribed or enacted before January 8, 1987, and applicable to appliances produced before January 3, 1988 (section 327(b)(1)); (2) State procurement standards which are more stringent than the applicable Federal standard (section 327(b)(3) and (f)(1)-(4)); (3) State regulations banning constant burning pilot lights in pool heaters (section 327(b)(4)); and (4) State standards for television sets effective on or after January 1, 1992, may remain in effect in the absence of a Federal standard for such product (section 327(b)(6) and 327(c)).

b. Background

The purpose of this rulemaking is to review the energy conservation standards for clothes washers, clothes dryers and dishwashers.

As directed by the Act, DOE published an advance notice of proposed rulemaking, with a 60-day comment period that ended July 18, 1988. 53 FR 17712, May 18, 1988. (Hereafter referred to as the advance notice). The advance notice presented the product classes that DOE planned to analyze and provided a detailed discussion of the analytical methodology and analytical models that the Department expected to use in performing the analysis to support this rulemaking. The Department invited comments and data on the accuracy and feasibility of the planned methodology and encouraged interested persons to recommend improvements or alternatives to DOE's approach.

On August 9, 1989, DOE published a notice of proposed rulemaking concerning clothes washers, clothes dryers, and dishwashers. (Hereafter referred to as the proposed rule.) 54 FR 32744, August 9, 1989. For clothes washers, the Department did not propose a specific standard level; rather, DOE solicited comments and information within a range of standard levels. This range of standard levels considered is shown in Table 1-1, below. For clothes dryers, the Department proposed a prescriptive standard that would require clothes dryers to be equipped with an automatic termination device, either a moisture termination or temperature termination device. For dishwashers, the Department proposed a minimum energy efficiency standard. These proposed standards are shown in Table 1-1 below.

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TABLE 1-1.—PROPOSED STANDARD LEVELS FOR CLOTHES WASHERS, CLOTHES DRYERS, AND DISHWASHERS

[Clothes washers]

Product class	Energy factor (cu. ft./kWh/cycle)—January 1, 1993
1. Top Loading, Compact (1.6 ft.³ capacity or less)	Must have an unheated rinse option to 1.02 cu. ft./kWh/cycle.
2. Top Loading, Standard 1.61 to 2.74 ft.³ capacity or greater)	Must have an unheated rinse option to 1.32 cu. ft./kWh/cycle.
3. Top Loading, Large (2.75 ft.³ capacity or greater)	Must have an unheated rinse option to 1.21 cu. ft./kWh/cycle.
4. Top Loading, Semi-Automatic	Must have an unheated rinse option.
5. Front Loading	Must have an unheated rinse option.
6. Suds Saver	Must have an unheated rinse option.

[Clothes dryers]

Product Class	Requirement—January 1, 1993
1. Electric, Standard	Shall have moisture or temperature termination.
2. Electric, Compact (120V)	Shall have moisture or temperature termination.
3. Electric, Compact (240V)	Shall have moisture or temperature termination.
4. Electric Heat Pump	[Reserved].
5. Gas, Standard	Shall have moisture or temperature termination.
6. Gas, Compact	Shall have moisture or temperature termination.

[Dishwashers]

Product Class	Energy Factor (loads/kWh)—January 1, 1993
1. Compact Dishwasher (115V)	0.58.
2. Standard Dishwasher (115V)	0.41.
3. Water Heating Dishwasher, Compact (115V)	Must be equipped with option to dry without heat.
4. Water Heating Dishwasher, Standard (115V)	0.44.
5. Water Heating Dishwasher, Compact (220V)	Must be equipped with option to dry without heat.
6. Water Heating Dishwasher, Standard (220V)	Must be equipped with option to dry without heat.

During the 60-day comment period ending October 10, 1989, DOE received 40 written comments, and testimony from 12 participants at the public hearing held in Washington, DC, on September 20, 1989. The issues raised are addressed in Section III of this notice.

On September 28, 1990, DOE published an Advance Notice of Proposed Rulemaking in the Federal Register regarding energy conservation standards for nine types of consumer products, including clothes washers. (55 FR 39824). Clothes washers were included in this advance notice because subsequent to the close of the comment period in this rulemaking, DOE became aware of a clothes washer design option currently in use in Europe which was not included in the proposed rule and upon which no comment was received. This design option (horizontal wash tub axis in top-loading washers) appears to have the potential for saving significant amounts of energy. Due to the absence of any comment, the horizontal axis design option was not considered for inclusion in this Final Rule as discussed below.

II. General Discussion

a. Maximum Technologically Feasible Levels

The Act requires that in considering any new or amended standards, the Department must consider those that "shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." (Section 325 (1)(2)(A)). Accordingly, for each class of product under consideration in this rulemaking, a maximum technologically feasible (max tech) design option was identified. The max tech level is one that can be carried out by the addition of design options, both commercially feasible and prototypes, to the baseline units. DOE believes that the max tech feasible level must be capable of being assembled, but not necessarily manufactured, by the effective date of the amended standards.

The max tech levels were derived by adding energy-conserving engineering design options to the respective classes in order of decreasing consumer paybacks. For example, the max tech level for clothes dryers includes heat pumps, an expensive design that pays back the slowest of all designs. A complete discussion of each max tech level, and the design options included in each, is found in the *Engineering Analysis*. See Technical Support Document, chapter 3.

Table 2-1 presents the Department's max tech levels for clothes washer, clothes dryer, and dishwasher classes:

TABLE 2-1.—MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Products & product classes	Unit energy consumption
Clothes Washers:	
Top Loading, Compact [1]	189 kWh/yr.
Top Loading, Standard Capacity [2]	339 kWh/yr.
Clothes Dryers:	
Compact, Electric, 120V [3]	140 kWh/yr.
Compact, Electric, 240V [3]	151 kWh/yr.
Standard, Electric [4]	398 kWh/yr.
Standard Gas [4]	3.5/MBtu/yr.
Dishwashers:	
Compact, 115V	510 kWh/yr.
Standard, 115V	699 kWh/yr.

kWh/yr. = kilowatt hours per year
MBtu/yr. = thousand British thermal units per year.
[1] Capacity equals 1.45 ft.³
[2] Capacity equals 2.4 ft.³
[3] Capacity equals 3.45 ft.³
[4] Capacity equals 5.9 ft.³

The Department believes that these are the max tech levels from an engineering analysis standpoint. Each of the levels was evaluated in accordance

with the economic justification factors specified in the Act to determine economic justification.

The Department evaluated each max tech level to determine if it would be economically justified at the time the standards would become effective. DOE rejected energy conservation standards that had unacceptable impacts on consumers or manufacturers, e.g., unusually long payback periods and substantially adverse impacts on manufacturers' returns on equity (ROE), or that could result in a lessening of the utility of the product.

b. Energy Savings

1. *Determination of Savings.* The Department forecasted energy consumption through the use of the Lawrence Berkeley Laboratory Residential Energy Model (LBL-REM), which forecasted energy consumption over the period of analysis for candidate standards and the base case.[5] The Department quantified the energy savings that would be attributable to a standard as the difference in energy consumption between the candidate standard's case and the base case.

The LBL-REM is an improvement of the Oak Ridge National Laboratory Residential Energy End Use Model (ORNL Model), which was used by DOE in previous standards rulemakings. The LBL-REM is explained in the TSD. Appendix B to that document addresses the LBL-REM in detail. The LBL-REM contains algorithms to project average efficiencies, usage behavior, and market shares for each product.

The market share calculations for the dishwasher, clothes washer, and clothes dryer analyses contain the following steps: Potential purchasers may purchase any competing technology within an end-use, or none. For dishwashers, the decision to purchase or not is modeled, and the fraction of the total that chooses each class, e.g., standard 115V, is specified exogenously. Long-term market share elasticities have been assumed with respect to equipment price, operating expense, and income. The effects of standards are expected to be lower operating expense and increased equipment price. The percentage changes in these quantities are used, together with the elasticities, to determine changes in sales volumes resulting from standards. Higher equipment prices will decrease sales volumes, while lower operating expenses will increase them. The net result depends on the standard level selected, and associated equipment prices and operating expenses.

The LBL-REM is used to project residential energy use over the relevant time periods for these three products with and without amended standards. By comparing the energy consumption projection at alternative standard levels with NAECA's 1988 standards, the Department estimated the amount of energy projected to be saved during the period 1993–2015.[6] The energy saved is expressed in Quads, i.e., quadrillions of Btu's. With respect to electricity the savings are quads of source or primary energy, which is the energy necessary to generate and transmit electricity. The Act defines "energy use" as the quantity of energy directly consumed by a consumer product at point of use. This is generally called "site" energy, as opposed to "source" energy. There are major differences between these types of energy. In 1987, the amount of electrical energy consumed at the site was less than one-third of the amount of source energy that was required to generate and transmit the site electrical energy.[4] Therefore, it is important to identify whether the electricity involved is site or source energy.

The LBL-REM projections are dependent on many assumptions. Among the most important are responsiveness of household appliance purchases to changes in energy prices and consumer income, future energy prices, future levels of housing construction, and options that exist for improving the energy efficiency of appliances. As is the case with any complicated computer model simulation, the validity of the outputs is critically dependent on the inputs.

2. *Significance of Savings.* Under section 325(l)(3)(B) of the Act, the Department is prohibited from adopting a standard for a product if that standard would not result in "significant" energy savings. While the term "significant" has never been defined in the Act, the U.S. Court of Appeals, in *NRDC* v. *Herrington*, 768 F.2d 1355 (DC Cir. 1985), concluded that Congressional intent in using the word "significant" was to mean "non-trivial." *Id.* at 1373. Thus, for the rulemaking, DOE believes that each standard level considered results in significant energy savings.

c. Rebuttable Presumption

NAECA established new criteria for determining whether a standard level is economically justified. Section 325(l)(2)(B)(iii) states:

"If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified."

If the increase in initial price of an appliance due to a conservation standard would repay itself to the consumer of energy savings in less than three years, then it is presumed that such standard is economically justified.[5] This presumption of economic justification can be rebutted upon a proper showing.

d. Economic Justification

As noted earlier, section 325(l)(2)(B)(i) of the Act provides seven factors to be evaluated in determining whether a conservation standard is economically justified.

1. *Economic Impact on Manufacturers and Consumers.* The engineering analysis identified improvements in efficiency along with the associated costs to manufacturers for each class of product. For each design option, these costs constitute the increased per unit cost to manufacturers to achieve the indicated energy efficiency levels. Manufacturer, wholesaler, and retailer markups will result in a consumer purchase price higher than the manufacturer cost.

To assess the likely impacts of standards on manufacturers, and to determine the effects of standards on different-sized firms, the Department used a computer model that simulated hypothetical firms in the three industries under consideration. This model, the

[5] The base case for these three products represents NAECA's 1988 standards, which are design standards only.

[5] LBL-REM was programmed to analyze a single standard level or alternate standard levels over the entire period. That is, the fact that a standard might be revised during subsequent rulemakings was not considered by the model. The Department believes that it is not possible to predict what result such reviews may have, and therefore it would be speculative to model any particular result. Therefore, for purposes of this rulemaking, each standard level that was analyzed was projected to have been in place from the time of implementation to the year 2015.

[4] Energy Information Administration, *Electric Power Annual 1987*, Tables 25 and 63. DOE/EIA-0348(87), 1987

[6] For this calculation, the Department calculated cost-of-operation based on the DOE test procedures. Therefore, the consumer is assumed to be an "average" consumer as defined by the DOE test procedures. Consumers that use the products less than the test procedure assumes will experience a longer payback while those that use them more than the test procedure assumes will have a shorter payback.

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Lawrence Berkeley Laboratory Manufacturer Impact Model (LBL-MIM), is explained in the TSD. See Technical support Document, appendix C. LBL-MIM provides a broad array of outputs, including shipments, price, revenue, net income, and ROE. An "Output Table" lists values for all these outputs in the base case and in each of the standards cases under consideration. It also gives a range for each of these estimates. A "Sensitivity Chart" shows how ROE would be affected by a change in any one of the model's nine control variables.

For consumers, measures of economic impact are the changes in purchase price and annual energy expense. The purchase price and annual energy expense, i.e., life-cycle cost (LCC), of each standard level are presented in chapter 6 of the TSD. Under section 325 of the Act, LCC analysis is a separate factor to be considered in determining economic justification.

2. *Life-cycle Costs.* One measure of the effect of proposed standards on consumers is the change in operating expense as compared to the change in purchase price, both resulting from standards. This is quantified by the difference in LCC between the base and standards cases for the appliance classes analyzed. The LCC is the sum of the purchase price and the operating expense, including maintenance expenditures, discounted over the lifetime of the appliance.

The LCC was calculated for the range of efficiencies in the Engineering Analysis for each class in the year standards are imposed using consumer discount rates of 2, 7, and 15 percent. The purchase price is based on the factory costs in the Engineering Analysis and includes a factory markup plus a distributor and retailer markup. Energy price forecasts are inputs that are taken from the 1989 *Annual Energy Outlook* of the Energy Information Administration (DOE/EIA—0383(89)). Appliance usage inputs are taken from the relevant test procedures and recent Procter and Gamble data. (Procter and Gamble (P&G) No. 27, at 2–3.[6]

The differences in LCC between the base case and various levels of standards for dishwashers, clothes washers, and clothes dryers are presented in chapter 6 of the TSD. These LCC's are calculated at a 7 percent discount rate; a higher rate, e.g., 15 percent, gives a smaller difference, while a lower rate, e.g., 2 percent, produces a greater difference. This results because the consumer benefits, i.e., reduced operating expenses, accrue over the life of the appliance, and are discounted back to some base year. Therefore, the lower the discount rate, the greater the resulting consumer benefits after discounting. In addition, as can be seen in the various LCC curves, the use of a higher discount rate results in a flatter curve.

When the LCC numbers are plotted graphically (on the Y axis) against unit energy consumption (on the X axis), the data generally produce a curve that is concave from above in shape. This means that at first the LCC curve will decline as efficiency improvements are made, will reach a minimum (which may or may not be discrete), and then rise. This indicates that the first efficiency improvements will produce energy savings, the value of which will more than pay for the design change. As additional efficiency improvements are made, it becomes increasingly costly to save more energy, and, eventually, the value of the energy savings will not cover the expenditures for the design improvements.

The minimum of the LCC curve was of particular interest in the analysis. The minimum of the curve represents that level of efficiency improvements that maximizes the difference between the value of energy saved and the additional consumer expenditures for the relevant efficiency improvements. Therefore, design options that corresponded to the minimum point were considered as standard levels for each class.

The Department conducted a net present value (NPV) analysis to assess the differential economic impacts on consumers that would occur from the adoption of amended standards for these three products compared to a base case with no change in the NAECA-imposed 1988 standards. See Technical Support Document, chapter 5. The LBL-REM calculates the total expenditure for each product (discounted total value of energy consumption from 1993 through the last year of use for those products purchased through the year 2015), plus the total discounted expenses for equipment purchased from 1993 through 2015, with more stringent standards and with NAECA 1988 standards. The NPV analysis is similar to the LCC analysis, in that the greatest NPV should occur at the standard level that corresponds to the LCC minimum for the product.[7] The NPV for each product at the different standard levels is identified in section IV of this notice.

3. *Energy Savings.* While the significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, the Act requires DOE, in determining the economic justification of a standard, to consider the total projected savings that are expected to result directly from revised standards. DOE used the LBL-REM results, discussed earlier, in its consideration of total projected savings. The savings for the three products are provided in section IV of this notice.

4. *Lessening of Utility or Performance of Products.* This factor cannot be quantified. In establishing classes of products and design options, the Department tried to eliminate any degradation of utility or performance in the three products under consideration in this rulemaking. That is, to the extent that comments, or DOE's own research, indicated that a product included a utility or performance-related feature that affected energy efficiency, a separate class with a different efficiency standard was created for that product. In this way, the Department attempted to minimize the impact of this factor as a result of the standards that were analyzed.

5. *Impact of Lessening of Competition.* The determination of this factor is to be made by the Attorney General. This determination is presented for each product in section IV of today's notice. In addition, a copy of the Attorney General's letter containing the findings is published below.

Dear Mr. Davis: By letter dated October 24, 1989, the Department of Energy ("DOE") transmitted to the Attorney General a notice of proposed rulemaking (54 FR 32744) addressing energy standards for three classes of household appliances. Section 325 of the Energy Policy and Conservation Act, as amended in 1987 (42 U.S.C. 6295), requires the Attorney General to determine the impact, if any, of any lessening of competition likely to result from the proposed standards. Competitive impact is one of seven criteria to be considered by DOE in evaluating proposed standards. This letter contains the competitive impact determination of the Department of justice ("Department").

Summary

The evidence available to the Department does not indicate that any significant lessening of competition is likely to result from the imposition of the proposed standards for dishwashers and clothes dryers contained in DOE's Notice of Proposed Rulemaking. For dishwashers, it is the Department's judgment based on the available evidence, that no significant adverse competitive impact is likely; but, under certain limited conditions described below, an unquantifiable adverse competitive impact would be possible. For clothes dryers, the evidence affirmatively suggests that no adverse competitive impact is likely. The evidence available to the Department indicates that a significant lessening of competition may result from the imposition of the proposed standards for clothes washers under certain conditions.

The Notice of Proposed Rulemaking discusses some standard levels higher than the levels proposed but states that DOE concluded that these higher standards are not economically justified. Accordingly, the Department's competitive impact determination considers only the standards actually proposed and does not cover higher standards discussed but not proposed in the Notice of Proposed Rulemaking.

Discussion

In appraising the competitive effect of the proposed standards in the context of this statute, the Department has examined the relevant markets within which the standards will operate. The Department has then considered whether adoption of the standards would be likely to contribute to increased concentration levels and other relevant market conditions that would facilitate either oligopolistic pricing or actual price fixing. The Department has also considered whether, independent of or in conjunction with any increase in concentration, the standards would be likely to facilitate oligopolistic pricing or price fixing by increasing product homogeneity.

In this instance, the Department has utilized the HHI computations, commonly employed in market analysis and described in the Department's Merger Guidelines ("Guidelines"), as an initial "screen." At levels of concentration below 1,000, the number of competitors ordinarily is sufficient to make competitive pricing likely and to defeat oligopolistic pricing. Even if the standards resulted in increased costs and reduced the number of competitors, or increased product homogeneity in some measure, the Department generally would expect that markets with that level of concentration would continue to enjoy a substantial measure of competition.

The analysis of dishwashers, clothes washers, and clothes dryers is not completed by applying this screen because the risk of an adverse competitive impact is not diminished by the existing market structure as reflected in the HHI figures. Based on data contained in the technical support document, dishwashers, clothes washers, and clothes dryers have HHI figures of about 3,000, 3,100, and 3,300, respectively. These figures reflect high levels of concentration (according to the Guidelines, markets with HHI levels above 1,800 are highly concentrated). It is thus prudent to examine more closely the possibility that the standards could increase concentration within a market, increase product homogeneity, or both.

The possibility that concentration might increase depends primarily on whether compliance with the standards both (1) increases costs significantly and (2) results in such increased costs being felt more severely by some firms than others. Although increased costs may reduce demand, that alone would not necessarily affect market structure. However, concentration could increase if the cost increases are both significant and affect smaller firms more severely than large ones; costs that vary with output (e.g., adding an automatic termination device) should not disadvantage smaller firms while fixed costs or costs independent of output (e.g., redesign of a dishwasher) might disadvantage a smaller firm with a lesser number of units across which to spread the same fixed costs.

Nevertheless, before such asymmetrical cost increases could affect competition adversely, the increases would have to be sufficiently severe and asymmetrical that they would force from the market one or more of the smaller significant competitors or substantially decrease their market share. In addition, levels of concentration would have to rise substantially because of this effect. Unlike a merger, where the acquiring firm is likely to become substantially larger and the other firms would remain the same size, the common result of a firm exiting the market would be that each of the remaining significant competitors is likely to increase its market share to a limited extent. Finally, other market conditions (e.g., entry barriers) would have to be conducive to oligopolistic pricing or price fixing.

The available evidence in this instance does not demonstrate that such a lessening of competition would be likely to occur if DOE adopts the proposed standards for dishwashers. This evaluation is based on information concerning the identity and size of the principal competitors and other market conditions. However, for this class of products, the evidence does not wholly foreclose the possibility of an anticompetitive impact. For example, some evidence indicates that increases in fixed costs may occur and affect some smaller competitors much more severely than some larger ones. If the smaller firms thereby lose market share to their larger rivals, then the HHI for dishwashers could increase significantly (according to the Guidelines, a 50 point increase in the HHI in a highly concentrated market is significant). Other evidence, however, indicates that the market share of the largest competitor also may be significantly decreased, thus decreasing market concentration. If DOE concludes that its standards for dishwashers will alter significantly the structure of the market by substantially decreasing the relative size of the smallest significant competitors without a sufficiently large, compensating decrease in the largest firm's size, then a further review of the competitive impact would be warranted.

For clothes dryers, the evidence affirmatively suggests that no adverse competitive impact is likely. The evidence indicates that adding automatic termination devices will achieve the desired result and that the fixed costs associated with the addition will be minimal and will not disproportionately affect smaller competitors.

For clothes washers, the available evidence indicates that a significant lessening of competition may occur under certain conditions. The Notice of Proposed Rulemaking indicates that proposed standard levels 1 and 2 can be met by eliminating the warm rinse option and adding thermostatic mixing valves. The available evidence indicates that some manufacturers may not be able to comply with the proposed standards by making just these design changes and may need to undertake more substantial redesign or retooling that would impose substantial fixed costs. If all competitors can meet the proposed standards by making the suggested design changes, then a significant lessening of competition is not likely. If, however, as the available evidence indicates, some competitors, such as Speed Queen, will have to engage in more substantial redesign or retooling to meet the proposed standards, then substantial increases in fixed costs will occur. These increased fixed costs are likely to affect smaller competitors much more severely than larger ones. If DOE concludes that its standards for clothes washers will drive the smallest significant competitor, Speed Queen, out of the market or significantly decrease its market share, then a further review of the competitive impact would be warranted.

The available evidence does not indicate a substantial threat that the standards for dishwashers, clothes washers, and clothes dryers would threaten competition by increasing product homogeneity. The dishwasher and clothes washer standards are performance rather than design standards, so that they can be met by different combinations of features. The clothes dryer standard is a prescriptive standard requiring all dryers to have an automatic termination device. The standard, however, allows manufacturers to choose between a moisture or temperature termination device. In addition, the energy-using characteristics of dishwashers and clothes washers, as well as the automatic termination device required for clothes dryers, represent only one aspect of these products, and existing variation in many other features would be expected to continue.

In making its determination, the Department has relied on the facts set forth in DOE's technical support document, as well as other information that could be collected by the Department in the time allowed and without the benefit of compulsory process.

Sincerely,

James F. Rill,

Assistant Attorney General.

6. *Need of the Nation to Conserve Energy.* The results of the environmental effects from each standard level for each product will be reported under this factor in the product specific discussion (section IV) of this notice.

7. *Other Factors.* This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any

[6] Comments on the proposed rule have been assigned docket numbers and have been numbered consecutively. Statements that were presented at the September 20, 1989, public hearing are identified as Testimony.

[7] The NPV of a standard, per appliance, is calculated for all affected appliances that are purchased in the projection period, while the LCC is calculated only for the lifetime of an appliance that is purchased in the first year of the relevant standard. Therefore, NPV and LCC estimates, per appliance, may not correlate exactly.

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other factors that the Secretary deems to be relevant. One such factor is the estimated water savings from more efficient dishwashers and clothes washers.

III. Discussion of Comments

The Department received 49 written comments in response to the August 1989, proposed rule, and received testimony from 12 persons at the September 20, 1989, public hearing. These comments addressed all aspects of the analysis. In this section, the Department will present discussions of the general analytical issues raised by the comments, followed by discussions of the product-specific issues.

a. General Analytical Comments

Markup

The Natural Resources Defense Council (NRDC), the Ohio Office of Consumers' Counsel (Ohio) and General Electric Appliances (GEA) commented on manufacturer markups used in the analysis. (NRDC, No. 5 at 20 and No. 16 at 51; Ohio, No. 22 at 2; and GEA, No. 21 at 26).

NRDC commented that the record does not support the markup assumption between factory and retail of approximately 1.5. (NRDC, No. 16 at 51).

The markups used in the analysis have been derived from manufacturer data over the history of this program, including the earlier 1980 rulemaking. Moreover, NRDC is mistaken regarding the markup used in the analysis. The total markup from manufacturer cost to retail price used is approximately 2.00, with the actual amount positively related to the unit's efficiency. The markup from manufacturer cost to manufacturer selling price, and from manufacturer selling price to retail price were considered separately. The markup to manufacturing selling price is approximately 1.37, while that to retail price is approximately 1.46. A complete discussion of the markup is found in the TSD. See Technical Support Document, appendix C. DOE has reviewed NRDC's comment and finds no basis for changing the markup.

In the analysis for the proposed rule, marginal variable costs to manufacturers were assumed to be passed on with a markup. The NRDC took exception to this, claiming that marginal variable costs cannot be marked up, only passed on. (NRDC, No. 16 at 51).

In response, the Department notes that the NRDC's contention is valid only in instances of perfect competition. Perfect competition is an economic model of a market with the following characteristics: Each economic agent, i.e., buyer and seller, is so small relative to the market that it cannot influence price; the products of each seller are homogeneous, i.e., perfect substitutes; there is free mobility of all resources, including free and easy business entry into, and exit out of an industry; and all economic agents in the market have complete and perfect knowledge of the future.

Obviously, with these restricting requirements, no market has been or can be perfectly competitive.

One identifying characteristic of a perfectly competitive market is that firms are all producing at their optimal levels and thus no firm wishes to increase sales. Clearly, perfect or pure competition is not present here. Under conditions of imperfect competition, i.e., all forms of market structure except for perfect competition, marginal costs, i.e., the variable costs associated with the last unit of output, are passed on with a markup, and it is the ability to do so which is evidence of market power. Therefore, based on the consideration of the above, the Department has included a markup for all variable costs in the final rule.

In commenting on the impact of design options' costs and efficiencies on manufacturers' ROE, the Association of Home Appliance Manufacturers (AHAM) stated that the DOE analysis underestimated the negative impact of standards on manufacturers' profitabilities, or ROE's. In some cases, the analysis even suggested that return on equity would be increased by the imposition of standards. AHAM stated further that it appeared to be the relatively high cost/low efficiency design options that were the likely prospects for increasing ROE for the manufacturers. AHAM stated, "These conclusions not only defy common sense, but they contradict real world experience documented in the TSD." (AHAM, No. 29 at 2).

In response, the Department notes that AHAM is incorrect in believing that the TSD shows relatively high cost/low (incremental) efficiency design options are the likely prospects for higher ROE. In fact, there is no such correlation. In the case of standards, ROE may increase because of the manufacturers' ability to mark up marginal costs to buyers. It depends little on the energy efficiency nature of a design option. Therefore, this unsupported assertion that DOE's economic analysis selects high cost and less appropriate energy efficiency standards is wrong.

In the manufacturer analysis for the proposed rule, the Department noted that appliance prices had risen more slowly than consumer and producer price indexes, despite increased energy and component prices during the last two decades.

From its statements, AHAM concluded that the Department

"recognized that even though appliance manufacturers experienced increasing costs for components, manufacturers were unable to completely push these costs through to the consumer in the form of higher prices." (AHAM, No. 29 at 6).

The Department believes that AHAM's conclusion is incorrectly drawn. Saying that appliance prices have risen more slowly than standard inflation indices and that energy and component prices for appliance manufacturers have also risen implies nothing about whether or not manufacturers can completely pass costs through to the consumer. If energy and component prices have not risen as fast as inflation indices, manufacturers could pass through costs and the overall rise in the level of appliance prices would still be less than that of the Consumer Price Index. What's relevant is how appliance prices have risen relative to the increased costs of manufacturer inputs, not relative to inflation indices.

AHAM and Whirlpool suggested that the modeling of manufacturers' impacts was simplistic in that it assumed manufacturers' customers are individual end-users of the product purchased and, as such, have little power to control the prices they pay. These comments suggested that manufacturers face large retailers and buying groups who have monopsony power, i.e., who can put pressure on the manufacturers' selling prices. (AHAM, Testimony at 6 and No. 29 at 3–4; Whirlpool, No. 20 at 2).

On this point, both AHAM and Whirlpool are mistaken; the LBL–MIM does account for monopsony power, i.e., powerful purchasing groups, in the market for these products. The model does not simply assume that manufacturers face "individual end users." In fact, the LBL–MIM projects results of 32, 33, and 24 firms for the dishwasher, clothes washer, and clothes dryer industries, respectively. This is clearly higher than observed industrial concentration, since the four largest firms in each industry control over 90 percent of market share. The number of firms is estimated from data on revenues, costs, and ROE. The Department attributes this result of "greater than observed" competition to the monopsony power of these large buyers in the market, and it is part of the model. A "simplistic model" where profitability was estimated from the observed number of firms would result in a much higher degree of profitability.

In its comment, Whirlpool appears to try to point out that the retailers are gaining even more power. This may well be true, but Whirlpool does not suggest that appliance standards will in any way contribute to this increase in monopsony power. DOE's task is to analyze how the position of manufacturers will differ from what it would have been without standards, not from what it is today.

In the manufacturer impact analysis, the Department concluded that there would be real increases in the pricing of appliances in the future. Whirlpool took exception to this conclusion:

"As we look to the future, sales of appliances will decline into 1990 and then grow for the next several years, however, this growth will be markedly slower than recent years. In fact growth in sales of the core products should average about 1.2 percent for the 1989 to 1994 time frame versus 1.9 percent for the previous ten years, which included a deep recession. During the strong growth years, prices of appliances have risen only 1.4 percent (since 1982) while inflation as measured by the Consumer Price Index has risen almost 29 percent. To remain profitable in this scenario, the industry has continued to improve costs and productivity, however, costs have risen more rapidly than productivity improvements in recent years. Therefore, most manufacturers were forced to raise prices in late 1988 and mid-1989. But, as industry volumes are declining, many manufacturers are searching for ways to increase their own sales levels to support plant fixed costs and capacity. The easy answer has been price discounting. With this approach, profit margins fall and smaller companies are likely to be impacted more significantly since they do not have the economies of scale. The DOE assumes real gains in pricing in future years which would not seem appropriate based on these facts." (Whirlpool, No. 20 at 1–2)

Whirlpool's assertion is that DOE assumes "real gains in pricing in future years which would not seem appropriate based on these facts." Whirlpool, however, provided only two comments about industry price setting, and both supported DOE's analysis.

Whirlpool's first point is that "costs have risen more rapidly than productivity improvements in recent years. Therefore most manufacturers were forced to raise prices * * *." This is exactly the situation described by the long run part of MIM; standards will cause cost increases much greater than productivity improvements, which will force most manufacturers to raise prices.

Whirlpool's second point is that "as industry volumes are declining, many manufacturers are searching for ways to increase their own sales levels. * * * The easy answer has been price discounting." Whirlpool is saying that volumes are declining despite what was just said about volumes increasing at the rate of 1.9 percent over the last ten years. Whirlpool must therefore be referring to a short run phenomenon. The Department recognizes this short-run phenomenon which occurs regularly during downturns in the business cycle. DOE has run regressions to estimate the amount of price decline that is caused by the shortfall in sales during a slump, and then assumed that a shortfall in sales due to standards would cause the same short-run response in price. This analysis has been incorporated in the LBL–MIM's short-run analysis and the results are reported in chapter 7 of the TSD.

AHAM and Whirlpool were critical of the Department's conclusion that standards-induced, higher-priced appliances will lead to increased sales, profits, ROE, and competitiveness for the appliance industry. (Whirlpool, No. 20 at 3; AHAM, No. 29 at 6).

These comments are essentially critical of the LBL–MIM's operating expense elasticity. It is the operating expense elasticity that results in greater sales under standards. Whirlpool commented that the analysis uses too large an operating expense elasticity, and AHAM argues that a smaller operating expense elasticity would prevent the estimated price increases. AHAM stated that consumers' appliance purchase decisions are not usually influenced by energy efficiency factors, but, rather, by quality, price, and brand.

The Department's estimates of operating expense elasticity come from econometric work done by Oak Ridge National Laboratory (ORNL), which is cited in the TSD. Unfortunately, the comments do not provide an adequate basis for improving or replacing those estimates. DOE agrees that energy efficiency is probably not as important as the three factors cited by AHAM. It is not clear, however, that the comments contradict ORNL's estimated elasticities of −0.125, −0.055, and −0.257 for dishwashers, clothes washers, and clothes dryers, respectively. The Department agrees that operating expense elasticities may warrant further research. However, the commentators supply no quantitative information to justify any revisions.

The LBL–MIM is capable of predicting either an increase or decrease in ROE in the short run. While there may be a positive increase in shipments at some standard levels, an examination of the other standard levels illustrates the case of decreased shipments. In the short run, the model often predicts price will decline, with a loss in profit. In the long run, however, (in the Department's analysis, about eight years) the change in shipments will be compensated for by changes in the industry's capacity which will eliminate the short-run decreases in firms' ROE's.

Whirlpool stated that a long-run result of energy conservation standards would be to lower profit margins. As a consequence, this could force remaining smaller manufacturers out of business or into consolidation with larger firms, thereby hurting competition. (Whirlpool, No. 20 at 3).

In response, the Department notes that because of the increasing industry fixed costs from investments in automation and productivity improvements, there has been an historic trend to increasing industrial concentration in the industries involved. Energy conservation standards have played no role in this trend and, given the size and direction of the predicted changes in ROE, they are unlikely to influence concentration to an appreciable degree.

LBL Residential Energy Model

The Environmental Defense Fund (EDF) commented that there is no basis for the LBL–REM's assumption that consumers respond to LCC when purchasing appliances, and that the opposite appears true. (EDF, No. 19, at 4).

The LBL–REM is used to project residential energy use during the relevant time periods. The model's projections are dependent on many assumptions; among the most important are responsiveness of household appliance purchases to changes in energy prices and consumer income, future energy prices, future levels of housing construction, and options that exist for improving the energy efficiency of appliances. As is the case with any complicated computer model simulation, the validity of the outputs is dependent on the inputs. While it may be argued that there is or is not a direct link between appliance purchase decisions and LCC, the Department's appliance standards analyses have shown that appliance efficiency, in general, has improved over the last 20 years. There may be certain appliance types or classes whose efficiencies have not increased or increased very little, but overall appliance efficiency has increased. This is supported by numerous filings to the Department on the appliance standards rulemakings and other information available to the Department, including submittals to the FTC for the appliance labeling program. See Technical Support Document:

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Energy Conservation Standards for Consumer Products: Refrigerators, and Furnaces, DOE/CE-0277, (November, 1989) and Supplement to March 1982 Consumer Products Efficiency Standards Engineering Analysis and Economic Analysis Documents, DOE/CE-0045 (July, 1989). The Department utilizes all available information on appliance choice to calibrate the energy use forecasts of the LBL-REM; and while there may be questions concerning a particular algorithm, the Department believes that the LBL-REM provides reasonable forecasts.

DOE does not believe that most consumers actually calculate LCC; rather, that purchase decisions can be characterized as if an implicit tradeoff is being made between equipment price and operating expense. LBL-REM characterizes that implicit tradeoff in an LCC framework by using observed purchase behavior in order to project future efficiency choices that are a function of both equipment price and operating expense.

To calculate energy savings that can result from standards, EDF proposed an alternative methodology, which consisted of freezing efficiencies at current levels for the base case, and calculating energy savings against the fixed levels. DOE believes that if energy prices became sufficiently different from current values, appliance consumers would make a different choice of efficiency from what they are doing now. Thus, there is no basis for freezing the efficiency. Therefore, DOE rejects EDF's proposal.

Energy Prices

The Environmental Protection Agency (EPA), State of Oregon Department of Energy (ODOE) and the New York State Energy Office (NYSEO) commented on the appropriate values of energy prices for use in the analysis. (EPA, No. 36 at 3; ODOE, No. 15 at 3; and NYSEO, No. 32 at 11). EPA and ODOE argued that DOE should use marginal costs of energy and that by not using marginal costs, DOE underestimated the savings to society. NYSEO, on the other hand, agreed with the Department that it is "most appropriate for DOE to use national average energy prices and usage rates."

DOE has reviewed EPA's and ODOE's comments and disagrees. The purpose of the analysis is to estimate the impacts of standards on the Nation, including consumers and manufacturers. In analyzing the impacts of the standards on consumers, DOE performs LCC analysis as required by section 325(l) of the Act. Furthermore, DOE analyzes the payback of each standard level as required by section 325(l)(2)(B)(iii) of the Act. In each analysis, the Department is required to consider the expense to the consumer. The consumer, as EPA recognized in its comment, pays the average cost, not the marginal cost. Similarly, in evaluating the effect of the standard on the Nation, DOE uses the LBL-REM to forecast energy savings and NPV. DOE believes that this calculation captures the effect of the standard on the Nation, whereas the marginal cost would overestimate the impacts, since not all energy used is at the marginal rate, and the marginal rate is typically the highest cost energy to produce. Therefore, after considering the above, DOE rejects the proposal to use marginal energy prices.

Payback

In accordance with section 325(l)(2)(B)(iii) of the Act, DOE is required to calculate the payback of each standard in the first year of the standard. In order to calculate this payback, DOE uses the forecast of efficiency from the LBL-REM and compares the increase in price of the appliance at each standard level to this level and the energy savings during the first year. AHAM commented that DOE should consider incremental payback, i.e., the individual payback of each design option, rather than the combined payback as presented in the August 1989 proposal. (Gants, Testimony at 7; AHAM, No. 29 at 4–6). The EDF, however, urged DOE to use the cumulative payback. (EDF, No. 3 at 3–4).

DOE has reviewed AHAM's proposal and disagrees; the Act clearly requires the Department to consider the cumulative impact of the standard in calculating payback in accordance with section 325(l)(2)(B)(iii). The Department, however, does consider individual paybacks when ordering the design options in the engineering analysis, and it considers incremental paybacks when evaluating the economic impact of standards. Therefore, in consideration of the above, the Department continues to calculate cumulative paybacks.

Whirlpool raised the issue of the difference in savings that exists for dishwashers and clothes washers, depending on whether the unit is connected to an electric or gas water heater. (Whirlpool, No. 20, at 6).

In reporting the paybacks and LCC results in the proposed rule, DOE presented only those for units connected to electric water heaters. DOE did not report the values for products connected to either gas or oil water heaters, products which represent over 50 percent of the market. The energy use analysis and NPV calculation in the LBL-REM, however, did include a consideration of electric, gas and oil water heaters. After considering the issue, the Department decided to present payback and LCC results for dishwashers and clothes washers connected to either electric water heaters or gas water heaters. DOE is not presenting results for oil water heaters because the annual cost-of-operation of oil water heaters is nearly equal to that of gas water heaters; therefore the results for dishwashers and clothes washers connected to gas water heaters is representative of those connected to oil water heaters.

Rebuttable Presumption

Congresswoman Claudine Schneider (Schneider), ODOE, NRDC, NYSEO, EPA, Congressman John Dingell (Dingell), and Public Citizen argued that DOE has failed to prove why level 3 for dishwashers and clothes dryers and level 4 for clothes washers are not economically justified. (Schneider, No. 10 at 2 and Schneider *et al.*, No. 31 at 2; ODOE, No. 15 at 2; NRDC, No. 16 at 22–25; NYSEO, No. 32 at 4; EPA, No. 36 at 1; Dingell, No. 35 at 1–2; and Public Citizen, No. 34 at 1). ODOE argued that DOE had not adequately rebutted standards with paybacks less than three years, and that DOE should accept all measures with paybacks less than three years.

DOE has reviewed these comments. Today's Final Rule reflects the Department's consideration of these comments and includes more detailed discussion of the basis of the final rule.

Life-cycle Cost

NRDC claimed that higher standard levels were rejected in the proposed rule because the Department had suggested that "usage of an appliance, and therefore savings, may be a function of utility costs." NRDC stated that the Department made this assertion despite any empirical information to support it. Furthermore, NRDC charged that the proposed rule then stated, again without any empirical information to support the assertion, that consumers in areas with higher utility rates may already be purchasing the higher levels of efficiency in existing products. NRDC noted that the Department claimed that, if this were true, average savings could be lower than those that had been reported in the TSD (DOE/CE-0267, July 1989) that had been prepared for the proposed rule.

NRDC then stated that the Department's assertion is not only unsupported, "it is actually contradicted by the only regional data that has ever been submitted to DOE records concerning appliance efficiency as a function of utility costs." NRDC cited the 1983 appliance proceedings, wherein the Carrier Corporation had submitted data showing that the areas of the country with the highest air conditioning expenses, i.e., New York (high rates) and Florida (high usage), had air conditioner efficiencies that were the same as the national average air conditioner efficiencies. Therefore, NRDC concluded: "Unless the assumptions of regional price- or usage-induced variation in appliance efficiency for these products are valid, DOE's whole rationale for reducing the level of proposed standards vanishes." (NRDC, No. 16 at 16–17).

NRDC is correct in stating that the Department did not present any empirical information to support its assertion that consumers in areas that have high energy expenses would tend to purchase appliances with efficiencies higher than the national average; NRDC is not correct, however, in concluding that if the assertion is invalid, the rationale for reducing the level of proposed standards vanishes. That is because there are seven factors of economic justification that the Department considered in arriving at its conclusions.

NYSEO charged that the Department was incorrect in raising the issue of regional impacts solely from the viewpoint of consumers who live in high energy price areas buying more efficient appliances than the national average, thereby leading to an overestimation of energy savings from standards. There is just as much reason to assert, according to NYSEO, that consumers who live in low energy price areas buy less efficient appliances than the national average, thereby leading to an underestimation of energy savings from standards. Without empirical information on the foregoing and to the extent to which either of these effects might be greater, the Department's use of national average energy prices and usage rates is no more likely to overstate the energy savings from standards than it is likely to understate the energy savings. (NYSEO, No. 32 at 10–11).

The Department is unaware of any data source that provides regional variation in usage, e.g., cycles per year by region, for dishwashers, clothes washers, and clothes dryers. However, because differences in regional energy prices are available, the Department conducted a sensitivity analysis of the life-cycle cost by design option for each class, utilizing regional residential energy prices for the lowest and highest priced census regions. The results of these sensitivities are reported in chapter 9 of the TSD accompanying this rulemaking.

The Northwest Power Planning Council (NPPC), ODOE, NRDC, EDF, and NYSEO argued that DOE should adopt standards beyond the LCC minima and suggested that DOE should not place undue weight on the LCC component of the analysis. (NPPC, No. 13 at 2; ODOE, No. 15 at 1; NRDC, No. 16 at 9–14; EDF, No. 29 at 2; and NYSEO, No. 32 at 17 and 21). NRDC maintained further that DOE is violating the requirement of the Act by comparing one standard level with another standard level of lower efficiency. NRDC argued that "if Congress had intended DOE to set standards at the level that maximizes economic benefits, or at a conservatively low level that minimizes risk considering economic benefits, it would have said so." (NRDC, No. 16 at 11). Additionally, NRDC stated that "coincidence with minimum life cycle cost point is not a criterion set forth in the statute. If [a trial standards level] is 'technologically feasible' * * * and had economic benefits * * * it must at least be considered for the final rule as being the level achieving the maximum improvement in energy efficiency that is technologically feasible and economically justified." (NRDC, No. 16 at 12). Additionally, NYSEO stated that DOE cannot, consistent with the Act, reject a standard level as not economically justified just because it is not the optimum standard from an LCC perspective.

DOE agrees. No standard is rejected because it is not the optimum standard from an LCC perspective. However, DOE disagrees with the contention that the Department cannot consider that a standard level beyond the minimum LCC point is a burden, since it could preclude consumers from being able to buy the most cost-units. The Department believes that factor is consistent with the Act and can be considered under either section 325(l)(2)(B)(i) (I) or (VII).

Need of the Nation To Save Energy

Several comments took issue with the Department's failure to consider a number of societal benefits in the proposed rule, including environmental impacts and reduced dependence on foreign oil. (Schneider, Nos. 10 and 31, at 2; ODOE, No. 15 at 3; NRDC, No. 16 at 3–8; Ohio, No. 22 at 3; Washington State Energy Office (Washington), No. 36 at 2; and Public Citizen, No. 34 at 2). Public Citizen pointed out that in the proposed rule the Department limited consideration of "the need for national energy conservation" to the need for the U.S. to reduce consumption of imported oil. Public Citizen argued that the Department failed to consider global warming, acid rain, and radioactive waste. In addition, Public Citizen pointed out that imports of oil reached 7.712 million barrels per day in 1988, the highest level since 1979, and that this poses an increased risk to national security and worsens the U.S. trade imbalance. Also, NRDC argued that standards improve electric utilities' demand projections and reduce the uncertainty over the need to construct electrical generating plants.

The Department agrees with these comments, and to the extent DOE had data, included these factors in the consideration of the *Need of the Nation To Conserve Energy*. Currently, the Department is not able to project the impact standards will have on radioactive waste; therefore, this concern was not considered.

Michael Shepard of the Rocky Mountain Institute (RMI) suggested that the Department should attempt to estimate the effects of standards on low-income people, who, it was stated, would be most affected by the price increases caused by standards. In particular, RMI urged the Department to consider the impacts of standards on the prices of used appliances. (RMI, No. 12 at 2).

The Department notes that insufficient data were provided in comments to analyze this issue. LBL-REM does not presently distinguish among income levels. Nevertheless, because the Department is sensitive to this issue, it is a valid area for future research.

Citing several studies, Paul Cantanella of the Ohio Office of the Consumers' Counsel (OOCC) stated that energy conservation can create social benefits: "By redirecting consumer purchases from energy to appliances and personal (sic) consumption, aggressive conservation can significantly increase employment and economic growth." (OOCC, No. 2 at 5).

The Department agrees that appliance standards can produce social benefits beyond the benefits that accrue to the purchasers of the more energy-conserving appliances. In fact, the environmental effects that are expected from each standard are examples of such social benefits; these have not only been quantified, but have also been considered in the development of the selected standard levels.

Utility Analysis

The NRDC raised several issues regarding the Department's analysis of the impact of standards on utilities.

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First, NRDC pointed to a risk factor not considered by the Department that argues in favor of more stringent standards. Specifically, NRDC suggested that more stringent standards reduce the risk of utilities' overbuilding or underbuilding capacity. NRDC charged that in the utility analysis, the Department assumed that utilities will not consider the impact of appliance conservation standards in their energy demand forecasts. NRDC commented that this premise formed a basis for the analysis that showed reduced utility revenue from standards, and it is unfounded. (NRDC No. 16 at 16 and 58).

The Department agrees that standards reduce the uncertainty in forecasting electricity or gas sales faced by utilities, and that this is a benefit. However, the Department believes that quantifying this effect is not feasible. Uncertainty in utilities' forecasts for residential electricity or gas sales is caused by several factors, including projections of population, household formations and locations, and the ages and efficiencies of the household appliances. By establishing minimum efficiency standards on new appliances, the range of efficiencies in the marketplace is narrowed, and this should enable utilities to reduce somewhat the uncertainty in their forecasts. Given the number of variables on which such forecasts depend, the extent to which the forecast uncertainty is reduced by minimum appliance efficiency standards would likely be quite small. In addition, it would be extraordinarily difficult to estimate. This effect is discussed in the TSD, but not quantified.

NRDC also commented that the Department's model of utility ratemaking seems flawed. The Department performed calculations of the economic impacts of standards in terms of real dollars; in addition, DOE evaluated future power costs for electrical supply in real dollars. Public utility commissions, however, compute electric utility rates in terms of nominal dollars. As a result, NRDC suggested that there would be no revenue loss as a result of appliance standards; instead, there would be rate decreases. (NRDC, No. 16 at 60–61).

In response, the Department does not believe that the use of real dollars to evaluate utility impacts is misleading. The reader can convert to nominal dollars by assuming an inflation rate, and applying it to the annual impacts reported in the TSD.

Secondly, there is no easy translation of the impacts of standards into rate changes. Rates are determined as a function of the specific financial circumstances of each utility. The Department believes that the effects on utility rates of the energy savings in this rulemaking are so small as not to justify the enormous effort required to quantify them. As a result, the Department is not changing its utility analysis.

Environmental Analysis

Environmental Impact Statement. A large number of comments discussed the environmental effects of appliance standards. Virtually all of the comments on this subject stated that the proposed rule would have a significant environmental impact on air pollution, including significant effects on acid rain and global warming. As a result, the comments concluded that the Department's Environmental Assessment was insufficient, and that the Department should have prepared a complete Environmental Impact Statement (EIS). (Schneider, Testimony at 2; Goldstein, Testimony at 23; Miller, Testimony at 6–7; Osann, Testimony at 2; Schneider, No. 10 at 2; Alexander, No. 14 at 3; NRDC, No. 16 at 62; EDF, No. 19 at 9; OOCC, No. 22 at 6; Schneider *et al*, No. 31 at 2; and Public Citizen, No. 34 at 3).

In addition, the EDF argued that DOE underestimated the economic benefit of the potential reductions in SO_2 emissions due to standards. (EDF, No. 19 at 3–4). EDF argued that the correct approach to estimating potential benefits is to multiply the average cost of emission reductions by the total emissions reductions over the entire period, rather than the marginal cost by the annual savings in a particular year.

DOE agrees with EDF and added that calculation to the Final Rule. The results of this calculation are shown under the *Need of the Nation To Conserve Energy* and in the environmental analysis as presented in section V of today's final rule.

The National Wildlife Federation (NWF), NRDC, and Public Citizen argued that if DOE had performed a complete EIS, the Department would have been able to calculate more of the impacts of the standards, including the impacts of more stringent standards such as those requiring heat pump clothes dryers and the impact of standards on the water consumption of clothes washers and dishwashers. (Osann, Testimony at 2; NRDC, No. 16 at 67–68; Public Citizen, No. 34 at 3–4). Alexander argued that by failing to recognize the full potential that strong appliance efficiency standards can achieve, the rule will allow more pollution of the environment. (Alexander, No. 14 at 3).

DOE disagrees with the comments that a full EIS should have been performed. None of the comments took issue with the Department's calculation of SO_2, CO_2, or NO_x reductions; rather, they argued that more stringent standards would have saved more energy and resulted in fewer emissions.

DOE agrees with this claim and notes that the proposed rule's EA presented the reductions in emissions at each standard level; these reductions were found not to be significant. With respect to comments that more stringent standards, e.g., requiring heat pump clothes dryers, would have beneficial environmental impacts, the Department has added this design option to the analysis, and the results are presented below.

Furthermore, the Department has added to the consideration of the *Need of the Nation to Conserve Energy* the environmental impacts of the standards, both for the total period analyzed and for a representative year. By so doing, the Department is ensuring that those environmental effects resulting from the different standard levels were considered in the economic justification criteria.

The Department continues to present the results for the year 2015 because by that time nearly the full impact of the standards would have occurred. In earlier years, e.g., 1995, which is two years after the standards go into effect, the standards would have had only limited effect on the marketplace. In later years, when more of the products in the marketplace have been subject to standards, the standards will have a greater impact on energy consumption and the environment.

Finally, NRDC argued that the courts require the Agency to consider:

"(1) whether the agency took a hard look at the problem; (2) whether the agency identified the relevant areas of environmental concern; (3) as to the problems studied and identified, whether the agency made a convincing case that the impact was insignificant; and (4) if there was an impact of true significance, whether the agency convincingly established that changes in the project sufficiently reduced it to a minimum." (NRDC, No. 16 at 63).

The Department has analyzed the environmental impacts of the standards as shown in the EA accompanying today's final rule. The EA considers the impacts of all the candidate standards, including the maximum technologically feasible levels and other levels rejected for economic considerations. In addition, as noted above, the environmental impacts were considered as part of the Department's economic analysis for each candidate standard level as shown in section IV of today's final rule.

In analyzing the environmental impact of standards, the Department considers the impacts to be in three areas: Energy consumption, power plant emissions and water consumption. These considerations are discussed elsewhere in this rule. Additional areas of potential impact are power plant construction and nuclear waste disposal. The Department is unable to measure if standards will have any effect on nuclear waste. However, the Department generally believes that the standards will not have any effect on nuclear waste because no new nuclear power plants that are not currently under construction or already scheduled for construction will come on line during the period of analysis. The Department believes that today's final rule will not affect utilities' decisions with respect to nuclear power plant construction. While it is possible to estimate the number of potential power plant savings, as if there were one national electric utility determining U.S. power plant construction, each individual utility makes its own decisions as to the number, size and type of generating units, subject to governmental review. Such decisions are usually made at a "local" level. The standards, however, are national standards and thus it is impossible to estimate to what extent, if any, standards would affect power plant construction.

The NWF commented that the EA for the proposed rule did not discuss the effects of the various options on water consumption. (NWF, No. 11 at 2).

In the analysis for the final rule, the Department did make specific calculations of the impacts on water consumption of the different candidate standard levels. See Technical Support Document, sections 5.1.6. and 5.2.6. As noted above, these water savings estimates were considered in the standards' selection decisions under Other Factors.

Discount Rate

Eleven comments addressed the discount rate used in the analysis. (Schneider, No. 10, at 2 and No. 31 at 3; RMI, No. 12 at 2; NPPC, No. 13 at 1; NRDC, No. 16 at 44–51; Whirlpool, No. 20 at 3; Ohio, No. 22 at 8; AHAM, No. 29 at 7; New York, No. 32 at 7; Washington, No. 33 at 1; and Public Citizen, No. 34 at 2).

The proposed rule used a discount rate of seven percent both for the calculation of LCC and, in the LBL–REM, for calculating energy use and NPV. The use of the discount rate in the projection of energy use is significant because the LBL–REM projects marketplace demand for more efficient appliances based on the LCC. The LBL–REM assumes that as the price of energy increases, the LCC will increase. This results because the value of the energy savings resulting from more efficient equipment is greater, which, in turn, causes the marketplace to demand more efficient appliances.

Whirlpool, AHAM, and NYSEO commented that the use of a seven percent discount rate was reasonable. NYSEO commented that the use of the seven percent rate was the "most reasonable," while Whirlpool stated that the seven percent value is plausible and provides a calculation, with market assumptions, that results in 8.5 percent as an "average" consumer discount rate. (NYSEO, No. 32 at 7; and Whirlpool, No. 20 at 3). The Whirlpool calculation provided values for the fraction of appliance purchases being financed by various means; however, Whirlpool did not provide any basis for the values, nor did Whirlpool state from where or how these values were derived.

The approach Whirlpool proposed is similar to that put forward by the Department in the November 1989 Final Rule for refrigerators, refrigerator-freezer, freezers, and small gas furnaces. (54 FR 47916, November 17, 1989). In that Final Rule, DOE selected a seven percent discount rate based on a methodology derived from the Court decision. *NRDC* v. *Herrington*, supra at 110. As DOE discussed in the November 17, 1989, Final Rule, the applicability of the Court decision changed somewhat with the passage of the Tax Reform Act of 1986 [Pub. L. 99–514]. The Tax Reform Act will have phased out the tax deductibility of interest paid on consumer loans by the time amended standards will be applicable. Based on the revised methodology, DOE calculated a range of real, after-tax, finance rates that consumers could incur; this range is from less than 1 percent to slightly more than 15 percent. As explained in the November 17, 1989, final rule, DOE selected seven percent for the analysis because it was near the mid-point of the potential consumer finance rates. In addition, DOE found that this approach has another advantage: It has a reasoned theoretical basis in that it is related to the opportunity cost of money for purchasing consumer durables; as such, it is justified in terms of the alternate consumer investment opportunities that are foregone in order to finance the purchases of appliances.

Some comments urged a discount rate of less the seven percent, based on the rates associated with appliance purchases. These included Schneider, The American Council for an Energy-Efficient Economy (ACEEE), and Public Citizen. [Schneider, No. 10 at 2, and Schneider, *et al.*, No. 31 at 3; ACEEE, Testimony at 4–5; and Public Citizen, No. 34 at 2].

None of these comments urging a lower consumer rate, based on real, after-tax rates associated with consumer purchases of appliances offered any empirical basis for the recommendation of a rate below seven percent. Ideally, if DOE could obtain empirical data on the methods that consumers use to pay for their appliance purchases, the Department could use a weighted average, real, after-tax, finance rate for a consumer discount rate in the analysis. Therefore, unless and until any broad-based empirical data can be developed on the methods consumers use to finance purchases of appliances, the Department will continue to use seven percent, for the reasons mentioned above.

Nevertheless, because the range of real, after-tax rates of finance is so broad, the Department has expanded its sensitivity runs from using 5 and 10 percent rates to using 2 and 15 percent rates. It is believed that this broader range of sensitivities will better reflect the wide variation in actual consumer financing rates, and, therefore, better capture the significance of any differences resulting from the range of rates.

Water Savings

EPA commented that the Department should calculate the value of water savings based on the marginal costs, not the average cost, and that the savings should be considered in the decision-making process. (EPA, No. 36 at 5).

The Department disagrees with EPA regarding the cost of water used in the analysis. As discussed above, the analysis is intended to provide an estimate of the impact of standards on consumers and the Nation. Individual consumers do not pay the marginal cost of water, as they do not pay the marginal cost of energy. Therefore, the analysis continues to use the average cost of water. However, the Department agrees with EPA regarding the consideration of water savings in the decision-making process, and, as noted above, included water savings in the economic analysis under Other Factors.

Test Procedures

NRDC commented that the existing test procedures should be used to the extent practical, and that the Department should propose modification wherever the analysis

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suggests that changes are warranted. In those cases where the existing test procedure does not evaluate the performance of a design, DOE should evaluate the energy savings using an assumed test procedure. (NRDC, No. 16, at 24–25).

DOE interprets NRDC's comment to endorse setting standards based on a prospective test procedure rulemaking. This option, in DOE's opinion, is not an alternative in setting standards. For most products, moreover, the Act requires only that the test procedure be in place before a standard can be prescribed. Section 321(a)(6). Furthermore, as DOE's test procedure rulemaking history shows, most test procedures that have been adopted, including amendments to existing test procedures, include numerous changes from what was published in the proposed rule. These changes often affect the measure of a product's energy use. Therefore, if a standard could be adopted based on a prospective test procedure, DOE would question such a process because, in all likelihood, the final test procedure will be different from that proposed.

A number of other comments were raised regarding this issue, particularly with respect to automatic termination for clothes dryers and higher spin speeds for clothes washers. These comments will be addressed in detail in the product-specific discussion of today's final rule. However, with respect to the general issue of how the Department is to analyze the impacts of standards, section 325(l)(2)(B)(iii) of the Act requires the Department to base the payback calculation on the applicable DOE test procedure. Therefore, for the purpose of determining whether a standard level meets the rebuttable presumption test under section 325(l)(2)(B)(iii), the Department used the existing test procedure, including the test procedure's annual cycles of operation.

Based on information provided in comments on the proposed rule, and discussed below, the Department believes that the usage information in the test procedure for certain appliances, e.g. dishwashers, clothes washers and clothes dryers, does not reflect current usage practices. Additionally, the Department believes that use of the test procedure usage information in the LBL–REM and the LCC will result in incorrect estimates on the impact of standards on the Nation and consumers, since current usages are generally lower than test procedure assumptions. Therefore, for the purpose of calculating LCC, energy savings and NPV, DOE used usage values which it considers to be reflective of current consumer usage patterns of the particular appliances. This approach is similar to what was done in the November 17, 1989, Final Rule for refrigerators, refrigerator-freezers, and freezers and small gas furnaces. Also, in the LCC analysis, the Department performed a sensitivity analysis which included the calculation of LCC using the test procedure values. The results of that analysis are shown in the TSD. See Technical Support Document, chapter 6.

Baseline Unit

Whirlpool, GEA, Nyle Corporation (Nyle), AHAM, and NRDC provided comments about the baseline unit used in the analysis for the proposed rule. (Whirlpool, No. 20 at 12, 13, and 32; GEA, No. 21 at 1, 10, and 20; Nyle, No. 24 at 4; AHAM, No. 29 at 1 and 2; and NRDC, No. 16 at 40–42). NRDC commented that the baseline unit should be the average efficiency, i.e., the shipment weighted energy factor (SWEF). Conversely, Whirlpool, GEA and AHAM each commented that the baseline unit was not representative of typical clothes washers, clothes dryers, and dishwashers.

The baseline unit is not the SWEF, but is a construction of the engineering analysis. It is used to estimate the cost and efficiency of a range of energy-conserving design options, including those in the max tech level. This information is used in the economic analysis, both in the LBL–REM and LBL–MIM. The Department did use the SWEF, however, for the purpose of projecting energy consumption, NPV, paybacks under the rebuttable presumption test, and impacts on manufacturers. In that way, the impacts on manufacturers, consumers and the Nation are calculated by comparing what would happen under different standard levels to what is expected to occur without any changes to the extant standards.

In the November 17, 1989, final rule for refrigerators, refrigerator-freezers, and freezers, and small gas furnaces, the Department used the maximum allowable energy use set by the Act as the baseline for refrigerators, refrigerator-freezers, and freezers for 1990. However, for the purposes of this analysis, the Department did not have similar guidance from the Act. The Act prescribes only design standards for clothes washers, clothes dryers, and dishwashers; products meeting this standard have a range of efficiencies. Therefore, for the Final Rule, the Department reviewed available data, including comments on the proposed rule and manufacturers' submittals to the FTC for the appliance labeling program, to identify the range of efficiencies available in each class for each product type. A model with an efficiency slightly higher than the least efficient unit was then used as the baseline unit for the engineering analysis. Data and information from comments submitted in response to the August 9, 1989, proposed rule were then used as input to the economic analysis for the purpose of calculating impacts of standards.

Finally, Nyle commented that the baseline energy factor for clothes dryers was unrealistic. (Nyle, No. 24 at 4). Nyle went further to say that it had never seen a residential clothes dryer near this efficiency.

DOE does not understand this comment, since the efficiency estimates used in the engineering analysis included the results of testing reported to DOE. Furthermore, Nyle's comment is the only one that takes issue with the measure of efficiency. Therefore, DOE believes that Nyle must have misinterpreted the test procedure. The Department has not made any changes to the analysis in response to this comment.

Appliance Usage Data

P&G and AHAM provided information in their comments regarding clothes washer and dishwasher annual cycles of operation and clothes washer temperature use factors. (P&G, No. 27 at 2, and AHAM, No. 29 at 10–12). The P&G data show that the number of clothes washer cycles per year is declining; based on 1989–89 survey data, it is now 380 cycles per year, down from the test procedure value of 416. Similarly, the P&G data show that the number of dishwasher cycles per year is lower than the test procedure value, 286 cycles per year versus 322; however, the P&G data show that 1988–89 usage was higher than 1986–87, 286 versus 260. These new data are used in the economic analysis in the calculation of LCC, energy savings and NPV, as described above.

AHAM also argued that if the new usage data are not used, the energy savings potential will be overestimated and the payback period understated for each standard level. (AHAM, No. 29 at 10).

AHAM is correct with respect to the payback period; however, as explained above in the discussion of payback period, the Department is required by section 325(l)(2)(B)(iii) of the Act to use the "applicable test procedure," which the Department interprets as the extant test procedure. Therefore, DOE rejects AHAM's comment with respect to payback period. With respect to energy savings, as discussed above, DOE used the new usage data in the LBL–REM to calculate energy savings.

Maintenance Expenses

AHAM proposed that maintenance expenditures should be included in the analysis and that they should equal 5–10% of the price of the appliance. (Gantz, Testimony at 7). This estimate was based on what typically is charged to consumers for extended warranties. ACEEE and the EDF disagreed with an arbitrary maintenance expense figure. Maintenance expenditures should be included to the extent that increases (or decreases) in them can be documented; to add an arbitrary "fudge-factor" is not appropriate.

DOE agrees with ACEEE and EDF and has not adopted AHAM's recommendation. The only maintenance expenses to be used in the analysis are the incremental changes, positive or negative, from the baseline unit.

Maximum Technological Feasibility

DOE received six comments that it did not consider all commercially available technologies. (Schneider, No. 10 at 1; Schneider *et. al.*, No. 31 at 1, NWF, No. 11 at 2, NRDC, No. 16 at 9, EDF, No. 19 at 1, and EPA, No. 36 at 4). Schneider and EDF argued that DOE had not evaluated all commercially feasible options identified in the proposed rule's TSD. NWF and EPA went beyond these comments to identify specific technologies for each product type for the Department to consider in the final rule. NRDC made the general argument that the Department had failed to propose standards that were at the max tech level and economically justified. The Department has considered these design options and others, where data are available, in the Final Rule. The design options considered are discussed in more detail in the product specific discussion below and in the TSD. See Technical Support Document, chapter 3 and appendix A.

b. Product-Specific Comments

1. *Clothes Washers.*

Classes

The Department had proposed six classes of clothes washers; top loading compact, standard, and large; top loading semi-automatic; front loading; and suds saving. Speed Queen commented that it was opposed to the creation of a large capacity, top-loading clothes washer class. It recommended that the classes be compact and standard sizes. (Speed Queen, No. 23 at 1, 2). The company further commented that the standards as proposed, i.e. having a lower standard for large capacity machines than for standard capacity ones, would encourage manufacturers to build large units. Since the DOE test procedure rates capacity by measuring the total volume of the tub, companies could be subject to the lower energy factor by increasing the volume of the washer that is above the water fill and not need to incorporate design options which affect energy use.

In response to Speed Queen's comment, EDF and ACEEE stated that DOE should evaluate the relationship between energy use and volume. (EDF, No. 19 at 8, and ACEEE, No. 18 at 2). Whirlpool commented that the energy factor for clothes washers could be redefined to be equal to maximum basket volume divided by energy consumption. (Whirlpool, No. 20 at 22).

DOE has reviewed these comments and agrees that separate classes for standard and large size top loading clothes washers may result in manufacturers' redesigning products in order to meet the lower standard, as Speed Queen suggested, and that this could result in reduced energy savings. In addition, DOE investigated the relationship between energy use and capacity and found very poor statistical correlation (of $R^2=0.05$) between energy use and volume. This analysis was based on 1989 manufacturers' data supplied to the FTC as part of the appliance labeling program. In consideration of the above, DOE established three classes of top loading clothes washers for the final rule, standard (greater than 1.6 ft^3 capacity), compact (1.6 ft^3 capacity or less), and semi-automatic.

NWF commented that front-loading clothes washers should not have been placed into a separate class as DOE proposed. (Osann, *Testimony* at 3). NWF suggested, however, that if front loaders are a separate product class, then design options should be considered to make them more efficient. AHAM commented that front loaders can use less water, but because of configuration and size, they do not represent a large consumer market, and as a result, DOE had rightfully designated them as a separate product class. (AHAM, No. 29 at 21).

DOE reviewed the comments of NWF and AHAM and found they both have some merit. DOE agrees with AHAM that each type of machine, top- and front-loading, has a distinct consumer utility, and that typically there is a difference in energy efficiency between the two. However, DOE has found that there are now horizontal-axis, top-loading clothes washers manufactured in Europe; this indicates that the difference in efficiency is not dependent on door placement, i.e., the utility related feature does not necessarily determine the product's performance. DOE believes that the horizontal rotation design of front loaders, which uses less water and therefore energy, can now be incorporated into top loaders as well. The Department has therefore added the horizontal axis design option to the top loading clothes washer engineering analysis, while retaining front loading as a separate class. See Technical Support Document, chapter 3, and appendix A.

Elimination of Warm Water Rinses

AHAM, Whirlpool and Maytag commented that the elimination of warm water rinses should not be considered as a design option because it would reduce consumer utility. (Whirlpool, No. 20 at 14, AHAM, No. 29 at 18 and 19, and Maytag, No. 17 at 2, and No. 40 at 6). Each commented that warm rinse has a utility for arthritic people and those living in cold regions of the U.S. Also, Whirlpool testified that some woolen articles call for warm wash and rinse to prevent shrinkage. (Whirlpool, Testimony at 5). Furthermore, AHAM and Maytag commented that in order to avoid reaction to laundry chemicals, some consumers find it necessary to use a warm rinse. (AHAM, No. 29 at 19, and Maytag, No. 40 at 6). In addition, AHAM and Maytag commented that dryer energy would be increased three percent with a cold rinse.

NRDC, on the other hand, argued that there is no evidence that warm rinse provides significant utility to consumers. (NRDC, No. 16 at 42–44). NRDC further stated that not having a warm rinse has become acceptable to the market since 45 percent of Whirlpool's clothes washers do not have this option. Also, P&G commented that it "supports the use of cold water rinsing in clothes washers in general, and finds no performance reasons negating this move." (P&G, No. 27 at 4).

The Department notes that there are presently clothes washer models being sold that do not provide warm rinse choices. The energy savings from elimination of warm rinse are substantial (26 percent with 1975 P&G data used in the DOE test procedure and 19 percent with 1986–87 P&G data). It is a low cost, high energy savings option. The Department reviewed the comments and determined there is no evidence that a warm rinse is necessary in the washing process, especially in light of

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the large number of clothes washers sold without it. Therefore, DOE included the elimination of warm rinse as a design option in the engineering analysis.

Whirlpool proposed that if the Department were to adopt a standard based on the elimination of warm rinse, the standard should be a prescriptive standard allowing the use of a warm water rinse that would have to be selected each time it was desired, i.e., a cold rinse default setting. (Whirlpool, No. 20 at 14.).

The standard considered was based on the elimination of warm water rinse. However, being a performance standard, it could also be met by a machine with a warm water rinse if other design options to improve efficiency were included. The Department notes that there are already models on the market with warm water rinse that could meet this standard.

Higher Spin Speeds

RMI, Public Citizen, NRDC, and EDF commented that the removal of water by increased clothes washer drum spin speeds could significantly reduce clothes dryer energy consumption and should be considered as a design option in the clothes washer analysis. (RMI, No. 12 at 6, Public Citizen, No. 34 at 1, NRDC, No. 16 at 35–36, and EDF, No. 19 at 1 and 3). NRDC and EDF recognized that the present DOE test procedure cannot evaluate this option, but that the TSD gives a feasible method of evaluating such a change, and that DOE should evaluate this option based on a revised test procedure. (NRDC, No. 16 at 35, and EDF, No. 19 at 1).

DOE rejects this proposal. As discussed above, the Act requires standards to be based on the applicable test procedure. Since the test procedure does not provide for this design, it cannot be included as a candidate for standards.

Thermostatically Controlled Mixing Valves

In the proposed rule, the Department calculated energy savings for this design option based on the assumption that the valves would control the hot water wash temperature to 120 °F.

In testimony at the public hearing, Whirlpool and Speed Queen contended that 120 °F is too low a wash temperature for washing clothes stained with grease and oil. (Schornhorst, *Testimony* at 6–8; Coates, *Testimony* at 4–6). These views were supported in comments offered by P&G and AHAM. (P&G, No. 27 at 3; AHAM No. 29 at 19–20). These companies believe that clothes washers' performance would decrease at the lower temperature of 120 °F.

On the other hand, ACEEE stated that only a small segment of the population requires a hot wash temperature for clothes washing; for them, ACEEE argued that manufacturers could provide washing machines that would use 130° water for their hot water washes, while achieving the necessary energy savings elsewhere.

P&G, however, contended that virtually all purchasers of washing machines would have need of an occasional 130 °F hot water wash. Therefore, P&G strongly supported an 130 °F or better inlet water temperature be considered for all clothes washers in order to remove greasy soils.

Given P&G's extensive work in researching the solubility and the effectiveness of different laundering agents, the Department puts great credibility in its comments. As a result, for the Final Rule, the Department calculated energy savings for the thermostatically controlled mixing valves based on the assumption that the valves would control the hot water wash temperature to 130 °F. This reduced the estimated energy saving potential of that design option from that proposed.

Plastic Tub

Maytag, Whirlpool and AHAM all commented on the plastic tub design option. (Maytag, No. 17 at 2, Whirlpool, No. 20 at 19, and AHAM, No. 29 at 21). AHAM said that the design was technically feasible, but that incorporating it would require a major capital investment since plastic is not a direct substitute for steel. Whirlpool agreed that the effect of reducing thermal mass would be to improve efficiency, but stated that the savings are not achievable without sophisticated and expensive temperature controls. Maytag stated, however, that one of the means it used to reach proposed level 1, a 1.13 energy factor, was plastic tubs. Maytag did support AHAM's comment that the materials are not interchangeable. Maytag stated that when a plastic tub is used, greater clearances must be allowed to prevent any contact with the spinning wash basket.

After reviewing these comments, DOE believes that reduced thermal mass by the use of a plastic tub has energy-conserving potential and is, therefore, a viable design option. Accordingly, the Department included this design in the analysis for this rulemaking.

Motor Efficiency

Maytag, Whirlpool, and AHAM discussed the feasibility of increasing motor efficiency. (Maytag, No. 17 at 13–14, Whirlpool, No. 20 at 16 and 17, and AHAM, No. 29 at 20). Maytag stated that its motor suppliers were not capable of manufacturing a permanent split capacitor (P.S.C.) motor that would meet its torque requirements. Similarly, AHAM commented that motor efficiency can be increased, but that such motors do not provide adequate starting torque.

On the other hand, Whirlpool commented that its motor efficiency could be increased to the level calculated in the TSD but that the additional motor price would be $14.60 instead of $4.00, as estimated in the TSD. Additionally, Whirlpool stated that the improved motor would weigh more, requiring a change to the washer suspension system which would add an additional $.50 to $1.00 to each machine and cost 5 million dollars for retooling. In Whirlpool's opinion, this would not be economically justified.

In light of the comments received, DOE re-evaluated the motor cost data discussed in the TSD, including Whirlpool's, and has revised the estimated cost increase for the improved motor from $4.00 to $7.50. DOE recognizes that in some instances a heavier motor could exceed the capacity of the suspension system, requiring redesign and retooling, but DOE did not consider any retooling cost for this design option. The entire $7.50 incremental cost for this design was treated as a variable cost.

Other Design Options

Comments were received concerning the possibility of including the additional design options of manual fill control, partial fill control and adjustable speed drives. (NRDC, No. 16 at 17, EPA, No. 36 at 4, RMI, No. 12 at 3, NWF, No. 11 at 3, and Public Citizen, No. 34 at 1).

With respect to improved fill control, AHAM commented that in 1987, 98.5 percent of clothes washers were equipped with manual water level switches. (AHAM, No. 29 at 22). Based on the comments submitted by AHAM, DOE concluded that the design options of manual fill control and partial fill control were adequately considered by the proposed baseline which incorporated manual water level controls.

With respect to adjustable speed motors, the Department notes they have the potential to save energy in space heating and cooling equipment, as mentioned in the RMI comment when the load varies over time. (RMI, No. 12 at 3). However, in the case of clothes washing where the load is more constant, DOE does not believe that adjustable speed motors are applicable for energy saving purposes.

2. *Clothes Dryers.*

Heat Pumps

RMI, NPPC, NRDC, Maytag, Whirlpool, Ohio, Nyle Corporation (Nyle), AHAM, Washington State Energy Office (WSEO), and Public Citizen all discussed whether heat pump clothes dryers were technologically feasible, and/or whether they should be a separate class or design option for electric clothes dryers. (RMI, No. 12 at 7, NPPC, No. 13 at 2, NRDC, No. 16 at 28–33, Maytag, No. 17 at 9 and No. 40 at 3, Whirlpool, No. 20 at 58, Ohio, No. 22, at 7, Nyle, No. 24, at 1 and 2, AHAM, No. 29 at 26, WSEO, No. 33 at 2, Public Citizen, No. 34, at 1).

RMI, NPPC, NRDC, Ohio, Nyle, WSEO, and Public Citizen all argued that heat pump clothes dryers are technologically feasible and should be considered as a design option, not a separate class.

Nyle reported its success in manufacturing commercial heat pump dryers or closed cycle dehumidification dryers. Nyle has manufactured and installed hundreds of systems in commercial applications utilizing heat pumps for drying leather, wood, food, paper, and pharmaceuticals. (Nyle, No. 24 at 3). Nyle argued that this technology can be applied to clothes drying, and stated that the company is working with a commercial dryer manufacturer to offer a commercial line of heat pump clothes dryers. Nyle believes that this technology can also be extended to residential clothes dryers.

Maytag and Whirlpool both commented that two problem with heat pump clothes dryers are lint and water build-up, which would affect the performance and, possibly, the safety of the unit. (Maytag, No. 17 at 9 and No. 40 at 3, and Whirlpool, No. 20 at 58). Maytag cited its experiences with closed cycle condenser dryers and combination washer/dryers in which lint accumulation was a major problem, which contributed to Maytag's eliminating them from the marketplace.

Whirlpool also commented that a heat pump clothes dryer would require at least eight inches additional depth compared to a conventional electric dryer. (Whirlpool, No. 20 at 57). This was based on its assumption that the dryer would require a heat pump with a capacity of 10,000 Btu/hour and would have a volume of more than 8,000 cubic inches. Whirlpool contended that in order to add the heat pump system to a dryer and maintain the same width (29") and height (35"), the additional depth for the system would be at least 8". Nyle, on the other hand, argued that the system fits into cabinets that are the same size as, and similar in appearance to, conventional dryers. (Nyle, No. 24 at 1).

Based primarily on Nyle's comments and experience, DOE is convinced that heat pump clothes dryers are technically feasible. DOE recognizes that lint build-up may be a problem, but also notes that Whirlpool implies that lint is a continuing problem in all clothes dryers. While Nyle did not address lint *per se*, DOE presumes that it is coping with the lint problem in its commercial models. DOE is not convinced that lint build-up is such a large problem as to preclude the technology. DOE is also convinced, based on Nyle's experience, that heat pump clothes dryers can be made to fit the same size space as conventional dryers by extending the back of the cabinet as far as the vent pipe extends in a conventional dryer and moving the control panel forward. Based on the comments, DOE has concluded that heat pump clothes dryers do not provide distinct utility to the consumer, and has included heat pumps (or closed cycle dehumidification systems) as a design option in the analysis for today's final rule.

Microwave Clothes Dryers

RMI, Rudy Pesci (Pesci), and NRDC supported the incorporation of microwave drying in clothes dryers, while Maytag and Whirlpool opposed the adoption of this technology as a design option in the analysis. (RMI, No. 12 at 7, Pesci, No. 30 at 1, NRDC, No 37 at 2, Maytag, No. 40 at 3, and Whirlpool, No. 39 at 3, 5, and 6). RMI suggested that such a technology be considered in future proceedings, while Pesci and NRDC supported its consideration in this rulemaking. Pesci provided copies of patents issued for microwave clothes dryers, and technical and cost information concerning the technology, including limited test data on an operating prototype. NRDC commented that the only drawback is its inability to dry fabrics with metal threads.

On the other hand, Maytag and Whirlpool stated that safety problems exist with the unit, with Whirlpool even putting sample garments in a microwave oven set to full power to demonstrate some of the potential safety problems. (Maytag, No. 40 at 3, and Whirlpool, No. 39 at 3, 5, and 6).

DOE reviewed Whirlpool's comments and concluded that its experience of putting clothing in a microwave oven is not applicable to the prototype microwave dryer experience. DOE believes, based on the Pesci and the NRDC statements, that although some limitations exist with microwave clothes dryers, microwave clothes drying is a technically feasible design option. The Department, therefore, included it as a design option in the analysis for today's final rule.

Finally, NRDC provided information with respect to the cost and efficiency of microwave ovens and magnetrons. (NRDC, No. 37 at 2). NRDC stated that the prototype microwave clothes dryer made by Mahan Micro, Ltd., has a magnetron (the microwave generator) with an efficiency of 55 percent and that more efficient magnetrons are available, units with efficiencies as high as 75 percent. As part of an upcoming rulemaking on kitchen ranges and ovens, DOE has been gathering data regarding microwave ovens and magnetrons. Based on those data, DOE is unaware of magnetrons with efficiencies less than 75 percent. Apparently, the industry standard is a 75 percent efficient magnetron; the efficiency of the device is reduced when installed. The installed efficiency is generally in the 55 to 60 percent range. Based on the information available to the Department, DOE believes that the microwave clothes dryer that Mahan Micro, Ltd. manufactured actually has a magnetron of 75 percent efficiency. Therefore, the analysis is based on a 75 percent efficient magnetron, and DOE knows of no higher magnetron efficiencies at this time. With respect to the retail price of microwave clothes dryers, NRDC suggested a retail price of $325 to $625, or a $25 to $325 increase over the baseline unit. DOE used a price increase of $395 and believes that the higher figure is more reasonable, particularly in light of the added features required, including humidity sensing and the magnetron.

Exhaust Heat Recovery

Public Citizen commented that DOE did not adequately examine the recycle exhaust heat design option. (Public Citizen, No. 34 at 1).

DOE disagrees; this design option was included in the proposed rule as standard level 4. In addition, it was included in the analysis for today's Final Rule. See Technical Support Document, appendix A.

EDF commented that DOE did not give a basis for not considering inlet air preheat. (EDF, No. 19 at 3). DOE did

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consider inlet air preheat, as discussed in the TSD, but did not explain why it was not chosen as a standard level. DOE identified three methods of recovering heat that is generally lost from clothes dryers; they are recycled exhaust heat, non-condensing inlet air preheat, and condensing inlet air preheat. DOE believes the three methods of exhaust heat recovery are mutually exclusive. That is, only one can be used on a dryer. After examining the three different approaches, DOE found that the methods are approximately equal in their contribution to clothes dryer energy consumption, but that the option of recycle exhaust heat had a lower manufacturer cost and, therefore, was chosen as the design option for exhaust heat recovery.

In addition, Whirlpool and AHAM commented that each design has technical problems. (Whirlpool, No. 20 at 52; and AHAM, No. 29 at 25 and 29). Recycle exhaust heat has safety problems due to the potential of larger pieces of lint breaking off and being ignited by the electric resistance element or by the flame in a gas clothes dryer. Both inlet air preheat options have performance problems caused by the buildup of lint in the heat exchanger. DOE agrees with AHAM's and Whirlpool's comments concerning the technical problems with each design; however, as stated previously, the Department believes that lint is a problem in all dryers. These technologies may exacerbate the problem, but the Department is not convinced that the problem is so large as to render the technologies infeasible. Therefore, the Department has included exhaust heat recovery as a design option based on recycle exhaust heat because of its lower cost.

NRDC, EDF, Nyle, and Whirlpool each questioned the Department's estimate of the energy savings potential of this design option of this in clothes dryers. (NRDC, No. 16 at 37–39; EDF, No. 19 at 3; Whirlpool, No. 20 at 34; and Nyle, No. 24 at 4 and 5). NRDC, EDF, and Nyle argued that DOE had underestimated the savings. EDF estimated that 80 percent of the heat is exhausted, not 20 percent as estimated by DOE. NRDC cited a report by D. Hekmat and W.J. Fisk, *Improving the Energy Efficiency of Residential Clothes Dryers*, to support its argument that the energy savings potential was underestimated. Whirlpool, however, referred to an analysis submitted to the Federal Energy Administration in 1976 which claimed that "about 92% of the theoretical maximum energy utilization in the dryer drum is already being attained." (Whirlpool, No. 20 at 34)

DOE reviewed these conflicting comments, but was not convinced that any changes should be made to the analysis regarding the heat loss, i.e., energy conservation potential, of clothes dryers.

Automatic Termination

DOE received a number of comments regarding the method of automatic termination, moisture or temperature, and the energy savings for each. ODOE recommended that moisture sensors should be the required option, while Dingell urged that DOE resolve the question of whether moisture sensing devices really save more energy than temperature sensing devices. (ODOE, No. 15 at 5; and Dingell, No. 35 at 3). NYSEO and NRDC both argued that the rationale used in the proposed rule (the test procedure gives both forms of automatic termination the same energy savings credit) is not sufficient to support a standard that would allow either option since the standard is a design standard, not an efficiency standard. (NRDC, No. 16 at 33; and NYSEO, No. 32 at 28). AHAM commented that manufacturers have found little difference between the two technologies. (AHAM, No. 29 at 25). Whirlpool provided results from a three year field test that measured a 13.0 percent savings for temperature sensors and a 13.6 percent savings for moisture sensors. (Whirlpool, No. 20 at 33).

Based on the Whirlpool data, DOE concluded that the credit given by the test procedure is justified and therefore based consideration of today's Final Rule on the credit given by the test procedure.

Timed Dry

Maytag, ACEEE, EDF, Whirlpool, GEA, and AHAM all commented that timed dry was required in certain instances. For example, Maytag commented that automatic termination is not effective when drying items on a stationary rack inside the dryer. In addition, Maytag commented that timed dry is necessary for those occasional loads that are not sensed properly by automatic controls or for partial drying prior to ironing. (Maytag, No. 17 at 7 and 8). Whirlpool agreed with Maytag and provided an extensive discussion of the situations where timed dry would be necessary. (Whirlpool, No. 20, at 37–47). ACEEE and EDF commented that the elimination of timed dry would decrease utility, and that it should be allowed, if the maximum setting were no longer than 30 minutes. (ACEEE, No. 18 at 2; and EDF, No. 19 at 7).

Maytag, Whirlpool and GEA stated that they would support a standard that would allow timers in conjunction with, but not overridden by, automatic controls. (Maytag, No. 17 at 10; Whirlpool, No. 20 at 47; and GEA, No. 21 at 22). GEA further stated that there should not be a limit on the setting for timed dry.

After reviewing the comments, DOE concluded that this feature, timed dry, is of benefit to consumers and should remain as a manually selected option. DOE is not able to determine if there is a basis for a limit on the timed dry; therefore, one is not specified.

Reduced Air Flow

RMI commented that reduced air flow could save energy, but that it would reduce consumer utility. (RMI, No. 12 at 7). DOE agrees, and therefore did not include it in the Final Rule.

3. *Dishwashers.*

General

Whirlpool commented that the proposed standard level 1 is technically feasible and cost justified, while Maytag commented that an energy factor of 0.37 for standard sized dishwashers is achievable. (Whirlpool, No. 20 at 6; and Maytag, No. 17 at 6).

DOE determined that standard levels more stringent than these are technically feasible and cost justified, as discussed below.

Water Temperature

P&G stated that its studies show that 130 °F water is needed for satisfactory fatty and greasy soil removal in dishwashers. (P&G, No. 27 at 3). P&G states that the wash temperature may not reach 130 °F until the third water fill. P&G's data indicate that the average tap temperature is 132.5 °F. P&G said that the water heater temperature should stay at 140 °F and that the dishwasher inlet temperature should be left unchanged. In addition, AHAM referenced a P&G report that shows "the need for 130–140 °F water in dishwaters." (AHAM, No. 29 at 17). Also, GEA stated that reduced inlet water temperature can be accomplished only through use of water heating dishwashers. (GEA, No. 21 at 4).

On the other hand, ACEEE and NRDC both commented that the Department had not presented evidence that loads containing animal fats would be insufficiently cleaned by lower water temperatures. (ACEEE, No. 10 at 6; and NRDC, No. 16 at 34).

DOE reviewed the P&G study and found that P&G studied four kinds of fat at three temperatures (90 °F, 120 °F, and

140 °F). 120 °F water appeared to remove most of the fats after one use and wash. However, on a seventh use and wash, the removal of one of the fats (pork) was inadequate.

The Department notes that there was no discussion of what took place between the first and seventh uses and washes to cause the problem. Additionally, there was no discussion of the use of alternative detergents. Furthermore, the comments do not address dishwashers with booster heaters such as water heating dishwashers.

NRDC, Portland General Electric (PGE), and ACEEE commented that booster heaters should be considered as a design option, not as a separate class. (NRDC, No. 16 at 34–35; PGE, No. 23 at 2; and ACEEE, No. 18 at 4).

After reviewing the comments, the Department has concluded that a water heating dishwasher, which is essentially the same as a standard dishwasher with a booster heater, does not offer a distinct utility to the consumer. Accordingly, the Department dropped from consideration water heating dishwashers, both 115 and 220 volts, as separate classes, and added, as a design option for standard dishwashers, booster heaters, which allow a 120 °F water heater set point while providing for the use of higher wash water temperature when necessary.

Improved Food Filter

GEA commented that reduced water consumption with an improved food filter would result in units with unacceptable washing performance. GEA further commented that its experience indicates that the addition of food filters saves 0.67 gallons of water per cycle, not the 2.2–2.3 gallons used in the proposed rule. (GEA, No. 21 at 3, 4, and 8). Whirlpool stated that an improved food filter allows the reduction of water use by 20 percent (5 to 4 fills). (Whirlpool, No. 20 at 6).

After consideration of the above, DOE has retained the improved food filter as a possible design option to reduce hot water usage, as was done in the proposed rule. The intent of this design option is to reduce water usage from the 12 gallons used by the baseline model to 9.5 gallons used by two of the top rated dishwashers in the Consumer Report test submitted by NWF. The magnitude of this water reduction is compatible with Whirlpool's experience of improving the food filter. While there are other ways to reduce water usage, DOE used the improved food filter as being representative of this concept.

Three Fill

NWF, NRDC and ACEEE commented that a three-fill option for dishwashers should be fully analyzed. (NWF, No. 11 at 3; NRDC, No. 16 at 34; and ACEEE, No. 18 at 4). NRDC stated that DOE must analyze whether these models provide utility comparable to the four-fill models. AHAM commented that three-fill units have been manufactured but have shown poor performance. (AHAM, No. 29 at 16). Whirlpool stated that it is the manufacturer that produced the three-fill model referred to in the TSD, and that it no longer manufactures the model because of consumer complaints about performance. (Whirlpool, No. 20 at 13). Maytag commented that it had made a three-fill dishwasher that Consumer Reports criticized for poor washability; it could clean "prerinsed" dishes but not those that were not rinsed. Maytag discontinued the model because it could not provide comparable utility to four-fill models. (Maytag, No. 40 at 5 and 6).

DOE reviewed the comments and concluded that three-fill models do not provide the performance required of dishwashers. The Department, therefore, did not include this option in the analysis for today's final rule.

Fill Control

NRDC commented that the Department should have considered an improved fill control as a design option. (NRDC, No. 16 at 34). AHAM and Maytag commented that improved fill controls do not work properly if the unit is not level, and that tolerances are manufactured into the unit to allow for this. (Maytag, No. 17 at 5; and AHAM, No. 29 at 15).

DOE agrees with Maytag and AHAM that out-of-level installation can affect dishwasher performance.

DOE finds, however, that an improved fill control is technologically feasible in that dishwashers can be installed level; therefore, DOE included it as a design option.

IV. Product-Specific Discussion

a. Clothes Washers

1. *Efficiency Levels Analyzed.* DOE examined a range of standard levels, including the 1988 NAECA standards for two classes of clothes washers. As discussed in the proposed rule, the Department did not consider standards for top loading semi-automatic, front loading and suds saving clothes washers. Today's final rule retains the 1988 NAECA standard for these three classes. The impacts of any revised standards for the two classes considered were compared to the 1988 NAECA standards. The impacts of the base case are generally not presented because they are calculated to be zero.

Table 4–1 presents the efficiency levels that had been selected for analysis. Alternate levels were selected to generate a range of impacts for analysis. These efficiency estimates are for standard and compact capacity, top-loading clothes washers. Standard level 1 corresponds to efficiencies achieved by elimination of all warm rinses; level 2 corresponds to efficiencies achieved by adding a more efficient motor; level 3 adds thermostatic mixing valves and a plastic tub; level 4 adds, to level 1, a horizontal-axis tub rotation; and level 5 adds, to level 4, thermostatic mixing valves and a plastic tub.

TABLE 4–1.—STANDARD LEVELS ANALYZED FOR TOP-LOADING CLOTHES WASHERS

Size	Energy factor (cu. ft./kWh)					
	Baseline	1	2	3	4	5
Compact *	0.67	0.90	0.92	0.96	3.07	3.19
Standard **	0.88	1.18	1.19	1.24	3.07	3.19

* Capacity less than 1.6 ft.³
** Capacity equal to or greater than 1.6 ft.³

2. *Payback Period.* Table 4–2 presents the payback period for the efficiency levels analyzed for the most prevalent class of product (standard clothes washers). For standard capacity, top-loading clothes washers connected to an electric water heater, standard level 1 satisfies the rebuttable presumption test, i.e., the additional price of purchasing a

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product will be less than three times the value of the energy savings that the consumer will receive during the first year. In addition, for standard capacity, top-loading clothes washers connected to a gas water heater, standard levels 1 and 2 satisfy the rebuttable presumption test.

TABLE 4-2.—PAYBACK PERIODS OF DESIGN OPTIONS (YEARS) FOR STANDARD SIZE, TOP-LOADING CLOTHES WASHERS

Standard level	Payback period	
	With gas water heater	With electric water heater
1	0	0
2	2.2	0.8
3	7.2	2.7
4	5.6	2.6
5	6.8	3.2

3. *Significance of Energy Savings.* To estimate the base case energy savings by the year 2015 due to revised standards, the energy consumption of new clothes washers sold under the NAECA standards, i.e., the base case, is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the LBL-REM projects that over the period 1993–2015, the following energy savings could result for each:

Level 1—0.57 Quad.
Level 2—0.66 Quad.
Level 3—0.81 Quad.
Level 4—5.69 Quads.
Level 5—5.92 Quads.

4. *Economic Justification*

A. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the level 1 efficiency is $1; to meet levels 2–5, the manufacturers' incremental cost increases are $7.50, $19, $83.50, and $19, respectively, for a standard, top-loading clothes washer. See Technical Support Document, table 3.16.

At those levels of efficiency, the incremental consumer price increases are $0, $11.50, $30.30, $129.10, and $30.20 for standard levels 1–5, respectively. See Technical Support Document, table 6.7.

The per unit reduction in annual cost of operation (energy expense) at level 1 is $25.70 and $11.40 for a top-loading standard-sized clothes washer connected to an electric water heater and a gas water heater, respectively; standard level 2 would reduce energy expenses by an additional $1.10 and $1.10; standard level 3 by $0.60 and $0.20; standard level 4 by $43.80 and $23.80; and standard level 5 by $0.20 and $0.10, respectively. See Technical Support Document, Table 6.7.

The LBL-MIM results for clothes washers show that standard level 1 would cause manufacturers to have a decrease in ROE from 6.05 percent in the base case to 5.86 percent (a decline of 3.1 percent). Standard levels 2, 4, and 5, are projected to reduce a prototypical manufacturer's ROE by 0.1 percent, 77.2 percent, and 80.8 percent, respectively, while standard level 3 is projected to raise it by 4.30 percent. See Technical Support Document, Table 7.17. This industry has displayed continuing consolidation for several decades, especially during periods of low earnings. By decreasing profitability, especially as DOE projects at standard levels 4 and 5, standards could lead to an increase in the financial burden on the industry, thereby possibly contributing to greater consolidation and less competitiveness than is likely in the base case. See Technical Support Document, Section 7.4.

The Department assumed for the Engineering Analysis that manufacturers would elect to eliminate the warm/warm setting and warm water rinse option before adding other design options, because these actions would result in minimal increases in manufacturer costs, i.e., $0.50 per design option. All of the other design options considered in the analysis, e.g., improved motor, plastic tub, would cause a significant increase in manufacturer costs in comparison to the first two options. Unlike all other design options considered in this analysis (for clothes washers, clothes dryers, and dishwashers alike) the elimination of the warm/warm setting and warm water rinse option is perceivable by the consumer. Other design options, improved motors for example, are design features that would not be apparent to the consumer. In the event some consumers demand that the warm/warm setting and warm water rinse option be retained, manufacturers may retain these features and use design options which would have additional greater fixed and variable costs than estimated in order to meet the standard. This was given great weight in today's final rule as discussed below.

Furthermore, since financial data of the type needed to characterize the prototypical manufacturer are generally not available, DOE had to make a number of assumptions based on the limited data publicly available, e.g., Securities and Exchange Commission 10K reports and company annual reports.

This approach was originally discussed in the Advance Notice of Proposed Rulemaking (53 FR 17712, May 18, 1988), and the Department did not receive any comments that indicated a change in approach was warranted.

B. *Life-cycle Cost and Net Present Value.* Compared to the base case, the LCC analysis indicates that at each possible standard level, the increase in purchase price would be offset by savings in operating expenses. See Technical Support Document, Figure 6.7. The lower life-cycle costs indicate that no standard level would cause any economic burden on the average consumer. Of the five candidate standard levels, level 4 had the lowest consumer life-cycle cost. Of the levels considered without horizontal axis, level 1 had the lowest consumer life-cycle cost.

Compared to the base case, standard level 1 would cause reductions in life-cycle costs of $106.30 and $43.00 for a top loading standard-sized clothes washer connected to an electric water heater and a gas water heater, respectively; standard level 2 would reduce life-cycle costs by $89.10 and $34.80; standard level 3, by $52.80 and $2.30; standard level 4 would reduce life cycle costs by $287.10 and $81.50; while standard level 5 would result in decreases of $225.60 and $42.60, respectively, compared to the base case. See Technical Support Document, Table 6.2.

Compared to the minimum LCC point (standard level 1), standard level 2 would cause an increase in life-cycle costs of $2.00 for a top-loading standard-sized clothes washer connected to either an electric or gas water heater; standard level 3 would increase life-cycle costs by an additional $25.00 and $28.00; while standard level 4 would cause reductions in life-cycle costs of $228.00 and $136.00 compared to level 1; and standard level 5 would result in an increase in life-cycle cost, compared to level 4, of $28.00 and $30.00, respectively. See Technical Support Document, Section 6.1.3.

While DOE examined the effect of different discount rates (2, 7, and 15 percent) on the LCC curves and generally found little impact, the Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of clothes washers. Similarly, DOE did not consider different energy prices, including regional prices, in the LCC analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate. However, DOE did examine the effect of a usage rate different from the 416 cycles per year set by the DOE test procedure. Recent Procter and Gamble data appear to indicate that the national average clothes washer annual usage rate is 406 cycles per year, more than 2 percent less than the test procedure representative average use cycle. The slightly lower usage numbers result in the lower life-cycle cost estimates that were presented above. See Technical Support Document, Section 6.1.1.

The NPV analysis, a measure of the net savings to society, indicates that standard level 1 would produce a NPV of $528 million to consumers. The corresponding NPV numbers for levels 2–5 are $508 million, minus $135 million, $1.294 billion, and $196 million, respectively. See Technical Support Document, Table 5.13. The negative NPV at standard level 3 indicates that at this standard level, society would spend more to purchase and operate washing machines, as measured in 1987 dollars, than under the base case.

C. *Energy Savings.* As indicated above, standards will result in significant savings of electricity consumption for clothes washers.

D. *Lessening of Utility or Performance of Products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of clothes washers.

E. *Impact of Lessening Competition.* The determination of this factor was made by the Attorney General. In its review of the proposed standards for clothes washers, the Department of Justice (DOJ) concluded that "a significant lessening of competition may occur under certain conditions," such as the need for the smaller competitors to undertake substantial redesign or retooling. (DOJ, NO. 38, at 4).

In the Notice of Proposed Rulemaking, standard level 1 and 2 were met by eliminating the warm rinse option and adding thermostatic mixing valves. DOJ found that "some manufacturers may not be able to comply with the proposed standards by making these design changes and may need to undertake more substantial redesign or retooling that would impose substantial fixed costs." If, as DOE believes, some manufacturers may elect to retain the warm/warm setting and warm water rinse in response to marketplace demands, then manufacturers will have greater costs than estimated thus far, and these increased costs are likely to affect smaller competitors more severely than larger ones.

F. *Need to Save Energy.* Clothes washers use electricity directly and are responsible for the water heater energy consumption that is necessary to supply the heated water to the clothes washer. Water heater energy consumption is either in electricity or natural gas, depending upon the water heater. Consequently, clothes washers are responsible for both gas and electricity consumption. In 1987, 1.6 percent of source electricity (or, .442 Quad) and 1.4 percent of natural gas consumption (or, .241 Quad) were accounted for on a national basis by clothes washers.

In addition, decreasing future electricity demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D [8]. The greatest decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For standard level 5, in the year 2015, the estimated SO_2 reduction would be 89,418 tons. This reduction represents 0.55 percent of the United States SO_2 emissions that are expected to be emitted by power plants in that year.

Standard level 5 would also result in a decrease in nitrogen dioxide (NO_x) emissions for the year 2015 of 74,997 tons. This decrease represents 0.7 percent of the total NO_x emissions expected to be emitted by power plants in that year.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. Standard level 5 is estimated to reduce United States CO_2 emissions by about 0.43 percent for the year 2015. In 2015, standard level 4 is expected to reduce SO_2, NO_x and CO_2 emissions by .53, .67, and .41 percent, respectively. Standard level 3 reductions are expected to be .07, .08, and .08 percent for SO_2, NO_x and CO_2, respectively in 2015.

For SO_2, NO_x, and CO_2 emissions in 2015, the respective reductions under standard level 2 are .06, .08, and .05 percent; for standard level 1, the respective emissions reductions would be .05, .08, and .04 percent.

G. *Other Factors.* After the closing date of the record for the proposed rule, DOE became aware of a new type of washing machine now available in Europe. DOE believes that this new design, top-loading with horizontal-axis rotation, has great energy savings potential. However, since DOE did not propose any standards based on this design and there is no information on this technology in the record, DOE does not believe that it could establish a standard based on this design in today's final rule. Based on the limited data acquired to date, DOE has analyzed design options based on this technology. The results are presented below; however, DOE notes that all aspects of these analyses are subject to change as more data become available.

Based on the great energy savings potential of this design, DOE is evaluating this technology as soon as possible and has included clothes washers in the Advance Notice of Proposed Rulemaking for Nine Products. 55 FR 39624, September 28, 1990. In light of this, DOE considered whether to issue a final rule for clothes washers today or whether to repropose a new rule instead. Because of the time involved in reproposing and the energy savings thus lost, DOE decided to issue a final rule today for clothes washers to achieve energy savings now but giving great consideration to minimizing retooling costs for manufacturers. Minimizing retooling costs was given great weight in today's Final Rule because DOE is reconsidering clothes washer standards presently. If this reconsideration results in standards based on a top-loading horizontal axis rotation design, major redesign and retooling would be necessary. DOE does not believe it would be economically justified to impose a major retooling at this time.

5. *Conclusion.* Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 5, for amended clothes washer standards.

[8] As a result of provisions in the recently enacted Clean Air Act Amendments of 1990 (Pub. L. 101-549, November 15, 1990), the calculated reductions of SO_2 and NO_x have been overestimated.

For SO_2, any emission reductions caused by appliance standards prior to the year 2000, will be part of much greater SO_2 reductions that are required by the new amendments. After the year 2000, SO_2 reductions achieved through appliance standards or any other means by those emitting SO_2 can be earned as credits. These are credits to emit an amount of SO_2 equivalent to the amount of the SO_2 reduction that created the credits. The new amendments allow those earning the credits either to sell them to others or to "bank" them for future use. Therefore, after the year 2000, to the extent that appliance standards result in SO_2 credits being earned, and to the extent that such standards-induced credits are sold and used by others, the National SO_2 reductions will not occur.

The new law also requires that utility boilers emit lower levels of NO_x. As a result, the expected emissions of NO_x will be less than was assumed in the Department's estimation of the NO_x savings achievable through the present appliance standards revisions. The actual NO_x reductions resulting from today's standard revisions will be less than those presented here.

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Of the standard levels analyzed, level 5 will save the most energy (5.92 quads between 1993 and 2015). In order to meet this standard, the Department assumes that all clothes washers will be top-loading, horizontal-axis machines. Such machines are presently available in Europe.

In addition to the top-loading, horizontal-axis, technology, standard level 5 would involve changes that can presently be incorporated, namely, the elimination of warm rinses, an improved motor, thermostatic mixing valves, and a plastic tub.

As mentioned above, the principal technology on which this standard level is based, top-loading, horizontal-axis rotation, was brought to the attention of the Department after the close of the comment period on the proposed rule. Since no one has had a chance to comment on it, and since no comments on it were volunteered during the comment period, the Department believes that it cannot issue a final rule based on this technology. Furthermore, the results of the analysis are not considered to be firm and are subject to possible change following public comment and further analysis in a separate proceeding. Based on the above and because the top-loading, horizontal-axis rotation design represents the predominant energy saving feature in standard level 5, standard level 5 was not considered for this Final Rule.

Standard level 4, also, is based principally on the same horizontal axis technology as standard level 5. For the reasons mentioned above, therefore, the Department believes that it cannot consider it for this final rule.

The next most stringent standard level is standard level 3. This standard level is projected to save 0.81 quad of energy between 1993 and 2015. Among the level's other positive impacts are the projections of lower LCC's than those for the baseline (by $52.80 and $2.30 for clothes washers connected to electric water heaters and gas water heaters, respectively). In addition, for households with electric water heaters, the payback for standard level 3 is projected to be only 2.7 years. Furthermore, the LBL–MIM projects that the ROE of a prototypical manufacturer would be 6.31 percent, which would exceed the base case projection of 6.05 percent. However, this standard would preclude the purchase of the most cost-effective unit; it would cause an increase in LCC (compared to the minimum LCC point) of $25.00 and $28.00 for a top-loading standard-sized clothes washer connected to an electric water heater and a gas water heater, respectively.

On the other hand, the payback to consumers with gas water heaters would be 7.2 years, half that of the appliance's 14.1 years average lifetime. In addition, this standard level would raise the purchase price to consumers by 11 percent, resulting in a decline in shipments of nearly two million units between 1993 and 2015. As a consequence, the NPV of this standard would be a negative $135 million, the lowest of any standard level. The negative NPV and increase in LCC (compared to the minimum LCC point) of this standard level are troubling to the Department, for they indicate that at this standard level, society would spend more to purchase and operate washing machines than under the base case.

Additionally, standard level 3 could involve substantial increased costs to manufacturers. As noted above, the improved motor design option used to achieve the energy savings of this standard level added $7.50 to the per unit cost of manufacturing clothes washers. Analytically, the Department treated this cost as a variable cost as it assumed that all parts would be purchased. Earlier, however, it was noted that Whirlpool had commented that because an improved motor would require an improved suspension system, the company would have to undertake $5 million in tooling costs for the improved suspension system. While the Department did not treat any of the costs in its analysis for this standard level as fixed costs, it recognizes that fixed costs could be substantial for some other manufacturers, as well. While not treated as such in the analytical output, DOE believes that retooling costs for standard level 3 could be significant. Since DOE has decided to consider the horizontal axis technology with its associated fixed costs as soon as possible, the Department issues a final rule today that imposes minimal impacts on manufacturers' retooling costs.

The Department, therefore, concludes that the burdens of standard level 3 for clothes washers outweigh the benefits, and rejects the standard level.

Standard level 2 would save 0.68 quad of energy between 1993 and 2015, and would repay itself to the consumer in 0.8 years (for electric water heat), and 2.2 years (for gas water heat), thereby passing the rebuttable presumption test for both water heating fuels. Among the level's other positive impacts are the projections of lower LCC's than those of the baseline (by $69.10 and $34.80 for clothes washers connected to electric water heaters and gas water heaters, respectively).

However, compared to the minimum LCC point, this standard level would cause an increase in life-cycle cost of $2.00 for top-loading standard-sized clothes washers connected to either an electric water heater or a gas water heater. This standard level could involve substantial increased costs to manufacturers. As noted above, the improved motor design option used to achieve the energy savings of this standard level added $7.50 to the per unit cost of manufacturing clothes washers. Analytically, the Department treated this cost as a variable cost as it assumed that all parts would be purchased. Earlier, however, it was noted that Whirlpool had commented that because an improved motor would require an improved suspension system, the company would have to undertake $5 million in tooling costs for the improved suspension system. While the Department did not treat any of the costs in its analysis for this standard level as fixed costs, it recognizes that fixed costs could be substantial for some other manufacturers, as well. While not treated as such in the analytical output, DOE believes that retooling costs for standard level 2 could be significant. Since DOE has decided to consider the horizontal axis technology with its associated fixed costs as soon as possible, the Department issues a final rule today that imposes minimal impacts on manufacturers' retooling costs.

In addition, as discussed above, DOE believes that some manufacturers may elect to continue to offer the warm/warm setting and warm water rinse option. If this were to occur, a standard at this level could result in manufacturers needing to undertake more substantial redesign or retooling which would impose substantial fixed costs and which would likely affect smaller competitors more severely than larger ones.

Therefore, the Department concludes that the burdens of standard level 2 for clothes washers outweigh the benefits, and rejects the standard level as not being economically justified.

After carefully considering the analysis, the Department is amending the NAECA-imposed 1988 standard for clothes washers with standard level 1 for clothes washers. The Department concludes that standard level 1 for clothes washers saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1993–2015, these savings are calculated to be 0.57 quad of primary energy. Such savings would total more than 4.7 percent of base case energy use. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_x and SO_2 by as much as 0.02 and 0.01 percent, respectively, by the year 2015. However, as discussed above, to the extent that SO_2 credits will be used, the SO_2 reductions will not occur. Furthermore, the standard will reduce emissions of CO_2 by 11.663 million tons, or 0.01 percent, over the forecast period.

The standard is also expected to reduce water use by six billion gallons over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is immediate since the small cost of changing the controls to eliminate any warm rinse settings is not expected to be added to the retail price of a clothes washer. This standard has the lowest LCC and is expected to result in a reduction in LCC of approximately $106.30 and $43.00 for clothes washers connected to electric water heaters and gas water heaters, respectively. Additionally, the standard is expected to have only a moderate impact on the prototypical manufacturer's ROE, causing a 0.19 percentage point decline. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

b. Clothes Dryers

1. *Efficiency Levels Analyzed.* Standard level 1 corresponds to efficiencies achieved by the addition of moisture- or temperature-termination; level 2 corresponds to efficiencies achieved by adding insulation; level 3 adds exhaust heat recycling efficiencies; level 4 adds, to level 3 electric dryers, microwave clothes drying efficiencies; and level 5 adds, to level 3 for electric dryers, efficiencies achievable with heat pump clothes drying. These standard levels are presented in Tables 4–3 and 4–4.

TABLE 4–3.—STANDARD LEVELS ANALYZED FOR STANDARD CAPACITY ELECTRIC AND GAS CLOTHES DRYERS

Standard level	Energy factor electric	(lb/Kwh) gas
Baseline	2.80	2.30
1	2.95	2.61

TABLE 4–3.—STANDARD LEVELS ANALYZED FOR STANDARD CAPACITY ELECTRIC AND GAS CLOTHES DRYERS—Continued

Standard level	Energy factor electric	(lb/Kwh) gas
2	3.01	2.67
3	3.21	2.84
4	4.07	
5	8.61	

TABLE 4–4.—STANDARD LEVELS ANALYZED FOR COMPACT ELECTRIC CLOTHES DRYERS

	Energy Factor (lb/KWh)	
	Compact, 120V	Compact, 240V
Standard level baseline	2.70	2.50
1	3.07	2.84
2	3.13	2.90
3	3.33	3.08
4	4.23	3.92
5	8.95	8.28

2. *Payback Period.* Table 4–5 presents the payback periods for the efficiency levels analyzed for the most prevalent classes of product (standard electric and gas). For standard-size electric clothes dryers, only standard levels 1 and 2 satisfy the rebuttable presumption test; these levels result in paybacks to the consumer in less than 3 years.

For standard gas clothes dryers, however, there is no standard level whose efficiency improvement will repay itself to the consumer in less than 3 years.

TABLE 4–5.—PAYBACK PERIODS OF DESIGN OPTIONS (YEARS) FOR STANDARD ELECTRIC AND GAS CLOTHES DRYERS

Standard level	Payback periods	
	Electric	Gas
1	1.2	4.4
2	2.5	9.3
3	5.7	21.2
4	6.0	
5	6.9	

3. *Significance of Energy Savings.* The Department estimated the energy savings that are expected to result by the year 2015 from the energy consumption of new electric and gas clothes dryers sold in the absence of amended standards and compared it to the energy consumption of new electric and gas clothes dryers sold under amended standards. When energy conservation standards are imposed, the LBL–REM projects that over the period 1993–2015, the following energy savings from clothes dryers would occur:

	Electricity	Gas
Level 1	.58 Quad	.03 Quad.
Level 2	.76 Quad	.05 Quad.
Level 3	1.4 Quads	.12 Quad.
Level 4	3.63 Quads	.02 Quad.
Level 5	6.61 Quads	.22 Quad.

The negative gas savings at levels 4 and 5 are a result of those standards imposing such a large price increase on electric clothes dryers that a substantial switch to gas dryers occurs. This switch is so great that aggregate gas consumption exceeds that of the base case, i.e., there are negative savings of gas at those standard levels: See Technical Support Document, Table 5.18.

4. *Economic Justification.* A. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the level 1 efficiency is $8 for a standard electric or gas unit. To meet levels 2–5, the additional cost increases, compared to the baseline, are $14.60, $44.60, $102.10 and $164.60, respectively, for electric dryers; for gas dryers, the additional per unit cost, compared to the baseline, to meet standard levels 2 and 3 are $14.60 and $44.60, respectively. See Technical Support Document, Tables 3.22 and 3.25.

At these levels of efficiency, the incremental consumer price increases, compared to the baseline, for electric clothes dryers are $13, $23.70, $72.30, $167.50, and $395.30. For gas dryers, the consumer price increases at levels 1–3 are $13.00, $23.70, and $72.30, respectively. See Technical Support Document Tables 6.9 and 6.10.

The per unit reduction in annual cost of operation (energy expense) of standard electric clothes dryers at level 1 is $9.20, standard level 2 would reduce energy expenses by an additional $1.30; standard level 3 by $4.00; standard level 4 by an additional $13.10; and standard level 5 by an additional $25.70. For gas dryers, the annual cost of operation at level 1 is reduced by $2.60; standard level 2 would reduce energy expenses by an additional $0.40; and standard level 3 by $1.10. See Technical Support Document, Table 6.9.

The LBL–MIM results for clothes dryers estimate that standard level 1 would cause manufacturers to have an increase in ROE from 6.8 percent in the base case to 9.6 percent. At standard levels 2 through 5, the ROE's (compared to the base case ROE) are 7.9, minus 2.3, minus 15.5 and minus 30.3 percent, respectively. See Technical Support Document, Table 7.25.

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The reason for the striking decline in ROE under standard levels 3–5 is thought to be the industry's price elasticity of demand. These standard levels cause such a large price increase that a significant decline in the quantity of dryers demanded occurs. In LBL–MIM, this decrease in units demanded causes a greater reduction in revenue than in variable costs and, as a result, a decrease in profit and ROE.

This industry has displayed continuing consolidation for several decades, especially during periods of low earnings. By increasing profitability, as DOE projects at standard levels 1 and 2, standards could lead to a reduction in the rate of such consolidations, thereby possibly contributing to more robust competitiveness than is likely in the base case.

The Department's characterization of the prototypical manufacturer in the base case assumes that manufacturers' typical clothes dryer designs are based on the combination of options presented in the Engineering Analysis for the baseline unit. If manufacturers use a different combination of design options to produce clothes dryers that minimally comply with the 1994 standard, the Department may have inappropriately characterized the financial position of the prototypical manufacturer in the LBL–MIM. Furthermore, since financial data of the type needed to characterize the prototypical manufacturer are generally not available, DOE had to make a number of assumptions based on the limited data that is publicly available, e.g., Securities and Exchange Commission 10K reports and company annual reports.

This approach was originally discussed in the advance notice of proposed rulemaking (53 FR 17712, May 18, 1988), and the Department did not receive any comments that indicated a change in approach was warranted.

B. *Life-Cycle Cost and Net Present Value.* The LCC analysis indicates that at each possible standard level for standard electric dryers, but only at level 1 for gas dryers, the increase in purchase price would be offset by savings in operating expenses. See Technical Support Document, Table 6.1. Also, of the candidate standard levels, standard level 2 for standard electric clothes dryers and standard level 2 for gas clothes dryers had the lowest LCC. This indicates that at these levels the standard would not cause any economic burden on the average consumer because of the decreasing LCC.

Based on 1989 usage patterns, compared to the base case, standard level 1 would cause a reduction in LCC of $76.80 for standard electric clothes dryers and $12.10 for standard gas clothes dryers; standard level 2 would reduce LCC from the base case for an electric dryer by $42.20, but raise that of a gas dryer by $1.50; standard level 3 would result in an LCC decrease from the base case of $32.30 for a standard electric dryer, but an increase of $39.30 for a gas clothes dryer; standard level 4 for a standard electric dryer would result in a decrease in LCC of $66.20, compared to the base case; and standard level 5 would result in a $90.00 decrease in LCC, compared to the base case. See Technical Support Document, Table 6.1.

While DOE examined the effect of different discount rates (2, 7, and 15 percent) on the LCC curves and generally found little impact, the Department did not consider higher discount rates. Since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchases of clothes washers. Similarly, DOE did not consider different energy prices, including regional prices, in the LCC analysis. Since this is to be a national standard, DOE believed the National average energy prices were appropriate. However, DOE did examine the effect of a usage rate different from the 416 cycles per year set by the DOE test procedure. Recent Procter and Gamble data appear to indicate that the national average clothes washer annual usage rate is 400 cycles per year, more than 2 percent less than the test procedure representative average use cycle. The slightly lower usage numbers result in the lower life-cycle cost estimates that were presented above. See Technical Support Document, section 6.1.1

The NPV analysis indicates that standard level 1 would produce an NPV of $1.283 billion over the forecast period (of which $1.212 billion would be attributed to the standard on electric dryers). At standard level 2, the NPV would be $1.301 billion, of which $1.292 billion would come from the standard on electric dryers. Standard level 3 would produce an electric dryer NPV of $1.009 billion and a gas dryer NPV of minus $231 million, for a total NPV for the standard of $778 million. Standard level 4 would produce a $6.811 billion NPV for electric dryers, but, under this standard level, the NPV for gas dryers would be a negative $294 million, leaving the standard's NPV at $1.527 billion. Lastly, standard level 5 would produce an NPV of $808 million (of which the standard would produce an NPV of $1.285 billion and minus $478 million on electric and gas dryers, respectively). See Technical Support Document, Table 5.22.

C. *Energy Savings.* As indicated above, standards will result in savings of energy consumption by clothes dryers. The cumulative energy savings over the 1993–2015 period would range from 0.82 Quad at standard level 1 to 6.39 Quads at standard level 5. See Technical Support Document, Table 5.18.

D. *Lessening of Utility or Performance of Products.* As indicated above, DOE established classes of products in order to ensure that the standards analyzed would not lessen the existing utility or performance of clothes dryers.

E. *Impact of Lessening Competition.* The determination of this factor was made by the Attorney General. In its comments on the proposed rule, The Department of Justice concluded that the proposed standard was not likely to produce a competitive impact (DOJ, NO. 36 at 4).

F. *Need to Save Energy.* Clothes dryers use electricity and natural gas as their energy sources. Between 1993 and 2015, without amended standards, clothes dryers are expected to consume 14.84 quads of energy. Standard level 1 would save .61 quads, or 4.1 percent, of that amount, while standard levels 2–5 would save 5.5, 10.2, 26.5, and 45.6, percent, respectively. The savings at standard levels 4 and 5 are due almost entirely to electric clothes dryers.

In addition, as noted above for clothes washers, decreasing future electricity demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D.* The greatest decreases in air pollution caused by amended standards on clothes dryers will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For standard level 5, in the year 2015, the estimated SO_2 reduction would be 171,240 tons. This reduction represents 1.06 percent of the United States SO_2 emissions that are expected to be emitted by power plants in that year.

Standard level 5 would also result in a decrease in nitrogen dioxide (NO_x) emissions for the year 2015 of 125,372 tons. This decrease represents 1.16 percent of the total NO_x emissions expected to be emitted by power plants in that year. Standard level 5 is estimated to reduce United States CO_2 emissions by about 0.89 percent for the year 2015.

In 2015, standard level 4 is expected to reduce SO_2, NO_x, and CO_2 emissions by .52, .59 and .31 percent, respectively. Standard level 3 reductions are expected to be .20, .20 and .13 percent

*Also see footnote number 5, above.

for SO_2, NO_x and CO_2, respectively in 2015.

The reductions of SO_2, NO_x, and CO_2 for standard level 2 in 2015 are expected to be .11, .13, and .07 percent, respectively, while the respective reductions at standard level 1 are .08, .10, and .05 percent.

G. *Other Factors.* There were no additional factors affecting clothes dryers considered in this review.

5. *Conclusion.* Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 5, for amended electric clothes dryer standards. In this conclusion, discussion of standards for electric clothes dryers will be presented first, followed by the discussion of standards for natural gas clothes dryers.

A. *Electric Clothes Dryers.* Of the standard levels analyzed, level 5 will save the most energy (6.39 quads). The technologies that would be involved in meeting this standard level are temperature- or moisture-sensing automatic termination, insulation, and a heat pump. The Department is not aware of the existence of any residential-sized heat pump clothes dryers.

The consumer payback of this standard is 6.9 years, less than one-half the estimated 17.1 years average lifetime of clothes dryers. At $921, this standard level is at the LCC minimum, and is $127 less than the LCC of the baseline unit. The standard, however, would increase the purchase price of electric clothes dryers by 132 percent ($395), thereby precluding many consumers from being able to purchase the product. Under this standard, shipments of electric clothes dryers are expected to decrease by nearly 19 percent, or 16.3 million units over the 1993–2015 period. The NPV is estimated to be $1.285 billion.

Because of the decline in shipments, resulting in large part from the great price increase, the standard would have a devastating impact on the prototypical manufacturer's ROE, driving it down from a positive 6.8 percent in the base case to a negative 30.3 percent (a decline of 546 percent). Such a loss situation would undoubtedly have adverse competition impacts. The Department, therefore, concludes that the burdens of this standard level outweight the benefits, and, consequently, rejects standard level 5.

The next most stringent standard level for electric clothes dryers is standard level 4. This standard level would save the second greatest amount of energy (3.63 quads).

The principal energy-conserving technology in standard level 4 is microwave energy. Microwave clothes dryers have been built and undergone limited testing.

The consumer payback of this standard level in 6.0 years. It has the second lowest LCC which, at $945, is $103 below the base case. At $467, its price is nearly 56 percent more expensive that the baseline unit; this would preclude many consumers from being able to purchase the product. Shipments would decrease by more than 15 percent, or 13.1 million units over the 1993–2015 period. The NPV is $1.811 billion, the highest of any standard level.

Because of the 15 percent decline in shipments under standard level 4, the prototypical manufacturer's ROE would decline from a positive 6.8 percent in the base case to a negative 15.5 percent (a decline of nearly 328 percent). This would also likely have adverse competitive effects. The Department, therefore, concludes that burdens of standard level 4 outweigh the benefits, and rejects standard level 4 for electric clothes dryers.

Standard level 3 for electric clothes dryers, the next most stringent level, would save 1.4 quads of energy.

This standard level would involve automatic termination, insulation, and recycling of exhaust heat, all designs that can presently be found on clothes dryers.

The consumer payback is 5.7 years. The LCC, at $979, is $69 below the baseline. The purchase price, $372, is 24 percent more expensive that the baseline unit, which could preclude many consumers from being able to purchase the product. Shipments would decline by nearly 3 percent, or 2.4 million units over the forecast period. The NPV is $1.009 billion, the lowest of any standard level.

Because of the price increases and shipments decline, the impact on the prototypical manufacturer's ROE would be to drop from a positive 6.8 percent in the base case to a negative 2.3 percent (a decline of 134 percent—this result includes level 3 for gas dryers as well). This could lead to adverse impacts on competition. Accordingly, the Department believes the burdens of level 3 outweigh the benefits, and rejects this standard level.

The next most energy-conserving standard level is standard level 2. After carefully considering the analysis, the Department is amending the NAECA-imposed 1988 standard for electric clothes dryers with standard level 2. The Department concludes that level 2 standards for electric clothes dryers save a significant amount of energy, are technologically feasible and economically justified.

As discussed above, there will be significant energy savings at this level of efficiency. During the period 1993–2015, these savings are calculated to be 0.76 quad of primary energy. Such savings would total more than 5 percent of base case energy use. In addition, the standards will have a positive effect on the environment.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 2.5 years for electric clothes dryers. This standard also results in a reduction in LCC of $79. In addition, the standard will result in an NPV to the nation of $1.292 billion. Additionally, the standard is expected to have a positive impact on the prototypical manufacturer's ROE, causing an increase from 6.8 percent in the base case to 7.9 percent under this standard.

Lastly, by increasing profitability, this standard level could have positive competitive effects.

B. *Gas Clothes Dryers.* Of the standard levels analyzed, level 3 will save the most energy (0.12 quad). The technologies that would be involved in meeting this standard level are temperature or moisture termination, insulation, and recycling of exhaust heat. These technologies are all presently available. The consumer payback of this standard is 21.2 years. At $582, it is at the LCC maximum, and is $33 more expensive than the baseline unit. The standard would increase the purchase price of a gas clothes dryer by $72, or 21 percent, thereby precluding some consumers from being able to purchase the product. Shipments of gas clothes dryers are expected to decline 1.1 million units (5.1 percent) during 1993–2015. The net present value is a negative $231 million.

The prototypical manufacturer's ROE at level 3 would, as noted above, decline from a positive 6.8 percent in the base case to a negative 2.3 percent (which includes the result at level 3 for electric clothes dryers). This could lead to negative competitive impacts. The Department believes that the burdens of this standard level outweigh the benefits and, therefore, rejects standard level 3 for gas clothes dryers.

The next most energy-conserving standard level is standard level 2. After

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carefully considering the analysis, the Department is amending the NAECA imposed 1993 standard for gas clothes dryers with standard level 2. The Department concludes that level 2 standards for gas clothes dryers save a significant amount of energy, are technologically feasible and economically justified, and that the benefits of the standards outweigh the burdens.

As discussed above, there would be significant energy savings at this level of efficiency. During the period 1993–2015, these savings are calculated to be 0.05 quad of primary energy. Such savings would total 4.1 percent of base case energy use.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 9.3 years. In addition, the standard would result in an NPV to the nation of $9 million. The standard is expected to have a positive impact on the prototypical manufacturer's ROE, causing a 1.1 percentage point increase (this includes level 2 results for electric dryer production, also). This standard results in a reduction in LCC of $3. The standard, however, is beyond the minimum life-cycle cost point, thereby precluding consumers from purchasing the most cost-effective unit.

c. Dishwashers

1. *Efficiency Levels Analyzed.* Table 4–6 presents the efficiency levels selected for analysis for 1993. Alternate levels were selected to generate a range of impacts for analysis. Initially, the levels were selected for the class of standard dishwasher (115 volt). Level 5 corresponds to the highest efficiency level identified in the engineering analysis. Levels 4 through 1 correspond to successively lower efficiencies than that of level 5. Each level was analyzed discretely in the engineering analysis. Standard levels for the compact class of dishwashers were based on the combination of design options for the standard dishwasher (115 volt).

TABLE 4–6.—ALTERNATIVE EFFICIENCY LEVELS FOR 1993 FOR DISHWASHERS (ENERGY FACTOR=LOADS/KWH/YR.)

Product class	Level analyzed					
	Baseline	1	2	3	4	5
Compact Dishwasher (115V)	0.48	0.58	0.60	0.62	0.62	
Standard Dishwasher (115V)	0.32	0.38	0.39	0.45	0.46	0.47

2. *Payback Period.* Standard level 1 involves efficiencies achievable by reducing the use of hot water from 12.0 to 9.5 gallons per cycle, which was achieved with an improved food filter; level 2 involves additional efficiencies achievable with an improved motor; level 3 adds, to level 2, a booster heater that heats 20 percent of the incoming water; level 4 adds, to level 3, an improved motor; and level 5 adds, to level 4, an improved fill control. Table 4–7 presents the payback period for the efficiency levels analyzed for the most prevalent class of product (standard dishwasher (115 volt)). For dishwashers connected to an electric water heater, all five standard levels meet the rebuttable presumption test in that the payback is less than three years. For dishwashers connected to gas water heaters, however, only standard levels 1 and 2 satisfy the rebuttable presumption test.

TABLE 4–7.—PAYBACK PERIODS (YEARS) STANDARD DISHWASHER (115 VOLTS)

Standard level	Payback period	
	With gas water heater	With electric water heater
1	1.9	0.7
2	2.6	1.2
3	4.2	1.1
4	4.3	1.4
5	5.9	2.0

3. *Significance of Energy Savings.* To estimate the energy savings by the year 2015 due to amended standards, the energy consumption of new dishwashers sold in the absense of amended standards is compared to amended standards. When revised energy conservation standards are imposed, the LBL–REM projects that over the period 1993–2015, the following savings would be attributable to the increased standards:

Level 1—0.42 Quad.
Level 2—0.48 Quad.
Level 3—0.73 Quad.
Level 4—0.87 Quad.
Level 5—0.99 Quad.

4. *Economic Justification.* A. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the level 1 efficiency (improved food filter) is $7.50, while the addition of improved motor efficiency in standard level 2 costs an additional $4.00. Standard level 3 provides efficiencies obtained by substituting for the improved motor a booster heater that heats 20 percent of the water passing through it; this adds another $6 in manufacturing costs. Standard level 4 adds back an improved motor to standard level 3, adding $4 to manufacturing costs. Lastly, standard level 5, the max tech level, achieves efficiencies obtained by adding an improved fill control to standard level 4; this adds another $8 in manufacturing costs. See Technical Support Document, Table 3.3.

Compared to the baseline, standard level 1 would cause a price increase of $10.80 for a standard dishwasher. Standard level 2 would have a $17.10 higher price, while standard level 3's dishwasher would be $28 more expensive. Under standard level 4, a dishwasher would be $32.30 more expensive while level 5's price would exceed that of the baseline by $45. See Technical Support Document, Table 6.4.

The per unit reductions in annual cost of operation (energy expense) at level 1 are $12.00 and $5.50 for a standard-sized dishwasher connected to an electric water heater and a gas water heater, respectively; standard level 2 would reduce energy expenses by an additional $1.00 and $1.00; standard level 3 by $7.10 and $1.30; standard level 4 by $1.00 and $1.00; and standard level 5 by $1.20 and $0.80, respectively. See Technical Support Document, Table 6.4.

The LBL–MIM projects manufacturers' long-run ROE to be 6.77 percent for dishwashers in the base case. At level 1, the LBL–MIM predicts that a prototypical dishwasher manufacturer would have an ROE of 6.65 percent, a decrease of 1.8 percent. At level 2, the manufacturer's ROE is expected to be 6.59 percent, a 2.7 percent decline. At level 3, the LBL–MIM projects that the prototypical dishwasher manufacturer's ROE would be 6.45 percent, a decrease of 4.7 percent from the base case. The expected ROE for the prototypical manufacturer at level 4 is 6.51 percent, a decline of 3.8 percent, while the

expected ROE at level 5 is 6.74 percent, a decline of only 0.4 percent from the base case. See Technical Support Document, Table 7.9.

The Department's characterization of the prototypical manufacturer in the base case assumes that manufacturers' typical dishwasher designs are based on the combination of options presented in the Engineering Analysis for the baseline unit. If manufacturers use a different combination of design options to produce dishwashers that minimally comply with the 1993 standard, the Department may have inappropriately characterized the financial position of the prototypical manufacturer in the LBL–MIM. Furthermore, since financial data of the type needed to characterize the prototypical manufacturer are generally not available, DOE had to make a number of assumptions based on the limited data publicly available, e.g., Securities and Exchange Commission 10K reports and company annual reports.

This approach was originally discussed in the Advance Notice of Proposed Rulemaking (53 FR 17712, May 18, 1988), and the Department did not receive any comments that indicated a change in approach was warranted.

B. *Life-Cycle Cost and Net Present Value.* The LCC analysis indicates that for each possible standard level the increase in purchase price would be offset by savings in operating expenses. Standard level 4 corresponds to the minima of the LCC curves. See Technical Support Document, Table 6.3. This indicates that the standard level would not cause any economic burden on the average consumer. Compared to the base case, standard level 1 would cause reductions in LCC of $67.80 and $34.30 for a standard dishwasher connected to electric and gas-fired water heaters, respectively; standard level 2 would reduce LCC by $59.40 and $24.30, respectively; level 3 would result in decreases of $94.80 and $22.00, respectively; standard level 4 would reduce LCC by $96.50 and $24.00 for dishwashers drawing water from an electric- or gas-fired water heater, respectively. Lastly, standard level 5, the max tech level, would reduce LCC by $92.10 and $15.50, respectively.

While DOE examined the effect of different discount rates (2, 7, and 15 percent) on the LCC curves and generally found little impact, the Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchases of clothes washers. Similarly, DOE did not consider different energy prices, including regional prices, in the LCC analysis. Since this is to be a national standard, DOE believed the National average energy prices were appropriate. However, DOE did examine the effect of a usage rate different from the 322 cycles per year set by the DOE test procedure. Recent Procter and Gamble data appear to indicate that the national average clothes washer annual usage rate is 286 cycles per year, more than 11 percent less than the test procedure representative average use cycle. The slightly lower usage numbers result in the lower life-cycle cost estimates that were presented above. See Technical Support Document, section 6.1.1.

The NPV analysis indicates that if a standard were adopted at level 1, there would be an NPV of $300 million from energy savings over the period 1993–2015. At levels 2–5, the corresponding NPV's would be $327 million, $272 million, $434 million, and $129 million, respectively. See Technical Support Document, Table 5.6.

C. *Energy Savings.* As discussed above, DOE concluded that standards, at each candidate standard level, resulted in a significant saving of energy. The cumulative energy savings over the 1993–2015 period would range from 0.42 quad at standard level 1, to .99 quad at standard level 5. See Technical Support Document, Table 5.3.

D. *Lessening of Utility or Performance of Products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of dishwashers. However, there is no assurance that future utility or performance of dishwashers would not be lessened as a result of standards-induced disincentives to investments in energy-using new features. In addition, the Department believes adoption of any of the design options considered will also not affect utility or performance.

E. *Impact of Lessening Competition.* The determination of this factor was made by the Attorney General in the Justice Department's review of the proposed standards. In that review, which is presented above, DOJ concluded that the proposed standard level for dishwashers would not result in a lessening of competition. (DOJ, No. 38 at 3). DOJ did not, however, evaluate the competitive effects of more stringent standards.

F. *Need to Save Energy.* Dishwashers use electricity as a primary energy source, both for operation of the motors and for the electric coils that are used in the drying cycle. In addition, that portion of water heater electricity consumption that provides hot water to the dishwasher is considered to be indirect dishwasher electricity consumption. Similarly, since some of the hot water that is supplied to dishwashers comes from gas water heaters, dishwashers are responsible for indirect gas consumption, too.

As with amended standards on the other two product types in this notice, decreasing future electricity demand as a result of standards on dishwashers will decrease air pollution. See Technical Support Document, Appendix D.[10] The greatest decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For standard level 5, in the year 2015, the estimated SO_2 reduction would be 15,090 tons. This reduction represents .09 percent of the United States SO_2 emissions that are expected to be emitted by power plants in that year.

Standard level 5 would also result in a decrease of 12,490 tons of nitrogen dioxide (NO_x) emissions for the year 2015. This decrease represents .12 percent of the total NO_x emissions expected to be emitted by power plants in that year.

Standard level 5 is estimated to reduce United States CO_2 emissions by about .07 percent for the year 2015.

In 2015, standard level 4 is expected to reduce SO_2, NO_x and CO_2 emissions by .08, .10, and .06 percent, respectively. Standard level 3 reductions are expected to be .06, .08, and .05 percent for SO_2, NO_x and CO_2, respectively in 2015.

In 2015, standard levels 2 and 1 would each reduce SO_2 power plant emissions by .04 percent. NO_x power plant emissions by .05 percent, and U.S. CO_2 emissions by .03 percent.

G. *Other Factors.* As noted above, one other factor considered in this rulemaking was the water savings that could result from more efficient dishwashers.

5. *Conclusion.* As noted above, the Act requires that, in establishing standards, the Department look first at that standard that maximizes energy savings, i.e., the max tech level of efficiency. For dishwashers, the max tech level is standard level 5.

Of the standard levels analyzed, level 5 saved the most energy (0.99 quad). In order to meet this standard, DOE assumes that all dishwashers would have booster heaters that allow the consumer to reduce the thermostat setting on their water heaters to 120 °F. If this occurs, the energy savings resulting from the standard are likely to be even greater since the analysis

[10] Also see footnote 8, above.

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accounts for only the savings in reduced water heater energy consumption for that water used by the dishwasher, not the total household hot water consumption. The total amount of the savings, however, is unknown since some consumers may elect not to reduce their water heater thermostat setting. In addition, this standard level had the largest positive impact on the environment due to reduced water use, and reduced emissions of CO_2, NO_x, and SO_2.

The technologies required to meet this standard level are reduced water use, improved motor efficiency, booster heater and improved fill control. Although these technologies are available now in some dishwashers, the last item, improved fill control, requires that the unit be installed levelly to achieve its maximum energy savings. Current product designs allow for overfill in order to provide for units out-of-level.

The consumer payback of this standard ranges from 2 years for a dishwasher connected to an electric water heater to 5.9 years for one connected to a gas water heater. The payback for dishwashers connected to gas water heaters is nearly half of the product's 12.6 year average lifetime. While the LCC of level 5 is lower than that of the baseline unit, it is greater than the minimum LCC point, thereby possibly precluding consumers from purchasing the most cost-effective unit. The LCC would be approximately $138 and $32 lower for dishwashers connected to electric water heaters and gas water heaters, respectively. The standards, however, are projected to increase the purchase price of dishwashers approximately 15 percent, thereby precluding some consumers from being able to purchase the product. The sales of dishwashers are expected to decrease by two percent due to standards, or over two million units over the period analyzed. As a result of the decreasing sales, and increase in LCC from the minimum, this standard is expected to have an NPV of $129 million, the lowest of any standard level. The standard is expected to have minimal impact on the prototypical manufacturer, causing its ROE to decrease by 0.03 percentage points.

As stated above, standard level 5 is the max tech level which, by definition, incorporates all of the design options identified to improve energy efficiency. In conducting the engineering analysis, DOE did not make any provisions for tolerances on performance estimates. Given this fact, DOE is concerned about establishing the standard at the max tech level without consideration of a tolerance. If one or more of the design options do not perform exactly as calculated, or if they do not perform as efficiently in concert together as expected, the manufacturers would have no other design options to which to turn. The max tech level therefore becomes a special case that the Department believes can be considered only with allowance for tolerances. Since the analysis did not consider tolerances, DOE believes it must reject level 5, but notes that level 4, which is being selected, requires an energy factor improvement from the baseline which is only 7 percent less than that required by level 5. Thus, level 4, as analyzed without any tolerance, is equivalent, on a performance basis, to level 5 with a 7 percent tolerance.

The next most energy-conserving standard level is standard level 4. After carefully considering the analysis, the Department is amending the NAECA-imposed 1988 standard for dishwasters with standard level 4 for dishwashers. The Department concludes that level 4 standards for dishwashers save a significant amount of energy, are technologically feasible and economically justified.

As discussed above, there would be significant energy savings at this level of efficiency. During the period 1993–2015, these savings are calculated to be 0.87 quad of primary energy. Such savings would total more than 12 percent of base case energy use. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_x and SO_2 as much as 0.10, and 0.08 percent, respectively, in the year 2015. However, as discussed above, to the extent that SO_2 credits will be used, the SO_2 reductions will not occur. Furthermore, the standard will reduce emissions of CO_2 by 17.864 million tons, or 0.08 percent, over the forecast period.

The standard is also expected to reduce water use by more than 200 billion gallons over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level ranges from 1.4 years for dishwashers connected to electric water heaters to 4.3 years for one connected to a gas water heater. This standard is also at the minimum of the LCC curve, resulting in a reduction in LCC of approximatelay $142 and $39 for dishwashers connected to electric water heaters and gas water heaters, respectively. In addition, the standard would result in an NPV to the nation of $434 million, the largest of any standard level. Lastly, the standard is expected to have only a modest impact on the prototypical manufacturer's ROE, causing a 0.26 percentage point drop.

V. Environmental, Regulatory Impact, Federalism, and Regulatory Flexibility Reviews

The Department has reviewed today's proposed action in accordance with the Department's obligations under:

- The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), the Council on Environmental Quality regulations implementing the procedural provision of NEPA regulations (40 CFR part 1500 et seq.), and the Department's own NEPA regulations (10 CFR part 1021);
- Executive Order 12291 (46 FR 13193, February 19, 1981) which pertains to agency review of the impact of Federal regulations;
- Executive Order 12612 (52 FR 41685, October 30, 1987) which pertains to agency consideration of Federal actions that would have a substantial direct effect on States, on the relationship between the Federal Government and the States, and on the distribution of power and responsibilities among the various levels of government; and
- The Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) which requires, in part, that an agency prepare an initial regulatory flexibility analysis for any proposed rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and explanation of that determination in the **Federal Register**.

a. Environmental Review

In issuing the proposed rule, the Department prepared an Environmental Assessment (EA) (DOE/EA-0386) that was published within the Technical Support Document (DOE/CE-0287, July 1989). The environmental effects associated with various standard levels were found not to be significant, and a Finding of No Significant Impact (FONSI) was published along with the proposed rule. (54 FR 32766, August 9, 1989)

In conducting the analysis for the final rule, the Department included and evaluated several design options suggested by comments on the proposed rule. As a result, the energy savings estimates and resulting environmental effects in the final rule differ slightly from those presented in the proposed rule. Nevertheless, most of the environmental effects analyzed for the final rule fall within the range of impacts that were described in the EA that was prepared for the proposed rule.

For example, in the year 2010, the savings of sulfur dioxide (SO_2), nitrogen dioxide (NO_x), and carbon dioxide (CO_2) from the standard on clothes washers are expected to be 8,449 tons, 6,556 tons, and 730,000 tons, respectively. In the EA, savings of SO_2, NO_x, and CO_2 in 2010 from the clothes washer standards totalled up to 21,596 tons, 15,875 tons, and 1.677 million tons, respectively. Since the FONSI was issued for these larger savings, the final rule's smaller savings can, the Department concludes, also be considered not significant.

Similarly, in the year 2010, the savings of SO_2, NO_x and CO_2 from the standard on clothes dryers are expected to be 17,725 tons, 12,200 tons, and 1.157 million tons, respectively. These expected savings are all less than the amounts reported in the FONSI, wherein the SO_2, NO_x, and CO_2 savings totalled up to 38,230 tons, 25,841 tons, and 2.398 million tons, respectively.

The SO_2, NO_x, and CO_2 savings from the dishwasher standard are expected to be 13,867 tons, 10,366 tons and 1.102 million tons, respectively, in 2010. These environmental effects fall outside the results reported in its FONSI. Nevertheless, they fall within the range of impacts which were discussed in the paragraphs above for clothes washers and clothes dryers, and for which FONSI's were issued.

Since all of the environmental effects expected from this final rule fall within ranges of environmental impacts that have been found not to be significant, the Department has concluded that these environmental effects also are not significant. Therefore, the Department has determined that an Environmental Impact Statement (EIS) was not required. Nevertheless, as noted above, the environmental effects were considered in selecting the final standards for these appliances.

b. Regulatory Impact Review

Executive Order 12291 (46 FR 13193, February 19, 1981) directs that, in proposing a major rule,[11] an agency perform a regulatory analysis. Such an analysis presents major alternatives to the regulation that could substantially achieve the same regulatory goal at lower cost, as well as a description of the costs and benefits (including potential net benefits) of the proposed rule.

DOE has determined that this proposed rule is a "major rule." Accordingly, a Final Regulatory Impact Review has been prepared and submitted to the Office of Management and Budget (OMB). OMB has reviewed the Regulatory Analysis under Executive Order 12291.

The Regulatory Analysis is summarized below. This summary focuses on the major alternatives considered in arriving at the proposed approach to improving the energy efficiency of consumer products. The reader is referred to the complete draft "Regulatory Impact Analysis," which is contained in the TSD, available as indicated at the beginning of this notice. It consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the economic impact of the proposed standard.

It should be noted at the outset that none of the alternatives that were examined for these three products saved as much energy as the proposed rule. Also, most of the alternatives would require that enabling legislation be enacted, since authority to carry out those alternatives does not presently exist.

Alternatives for Achieving Consumer Product Energy Conservation Six major alternatives were identified by DOE as representing feasible policy alternatives for achieving consumer product energy efficiency. These alternatives include:

- No New Regulatory Action.
- Informational Action.

—Product labeling
—Consumer education

- Prescriptive Standards.
- Financial Incentives.

—Tax credits
—Rebates

- Voluntary Energy Efficiency Targets.
- The Proposed Approach (Performance Standards).

Each alternative has been evaluated in terms of its ability to achieve significant energy savings at reasonable costs, and has been compared to the effectiveness of the final rule.

If no new regulatory action were taken, then no new standards would be implemented for dishwashers, clothes washers, and clothes dryers. This is essentially the "base case" for each appliance. In this case, between the years 1993 and 2015 there would be expected energy use of 34.18 Quads of primary energy, with no energy savings and a zero net present value.

Several alternatives to the base case can be grouped under the heading of informational action. They include consumer product labeling and DOE's public education and information program. Both of these alternatives are mandated by the Act. One base case alternative would be to estimate the energy conservation potential of enhancing these programs. To model this possibility, the Department assumed that market discount rates would be lowered by five percent for purchasers of these three products. This resulted in energy savings equal to .01 Quad, with expected consumption equal to 34.18 Quads. The net present value is estimated to be $10 million.

Another method of setting standards would entail requiring that certain design options be used on each product, i.e., prescriptive standards. For these three products, prescriptive standards are assumed to be implemented as standards at one level below the performance standards, with the exception of clothes washers which are already at standard level 1. For example, prescriptive dishwasher standards are assumed to be at standard level 3 instead of level 4 as in the performance standards. The lower standards level entails slightly smaller expenditures for tooling and purchased parts. Consequently, the economic impacts that are expected before the implementation date should be slightly smaller for prescriptive standards. This resulted in energy consumption, between 1993 and 2015, of 32.14 Quads, and savings of 2.04 Quads. The net present value, in 1987 dollars, was $2.12 billion.

Various financial incentive alternatives were tested. These included tax credits and rebates to consumers, as well as tax credits to manufacturers. The tax credits to consumers were assumed to be 15 percent of the increased expense for higher energy efficiency features of these appliances, while the rebates were assumed to be 15 percent of the increase in equipment prices. The tax credits to consumers showed a modest change from the base case, saving .24 Quad with a net present value of $720 million. Consumer rebates showed more sizable changes; they

[11] "Major rule" means any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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would save 1.16 Quads with a net present value of $1.86 billion.

Another financial incentive that was considered was tax credits to manufacturers for the production of energy-efficient dishwashers, clothes washers, and clothes dryers. In this scenario, an investment tax credit (ITC) of 20 percent was assumed. The tax credits to manufacturers had almost no effect: the energy consumption estimates are 34.19 Quads with savings equal to −.01 Quad, and a net present value equal to $320 million.

The impact of this scenario is so small because the ITC was applicable only to the tooling and machinery costs of the firms, i.e., the firms' fixed costs, and most of the design improvements that would likely be adopted to manufacture more efficient versions of these products would involve purchased parts. Expenses for purchased parts would not be eligible for an ITC.

Two scenarios of voluntary energy efficiency targets were examined; in the first one, the proposed energy conservation standards were assumed to be voluntarily adopted by all the relevant manufacturers in five years, and, in the second scenario, the proposed standards were assumed to be adopted in 10 years. In these scenarios, the five year delay would result in energy consumption by these appliances of 32.62 Quads, energy savings of 1.56 Quads, and a net present value of $360 million; the 10 year delay would result in 33.28 Quads of energy being consumed, 0.90 Quad being saved, and a net present value of $530 million.

These scenarios assume that there would be universal voluntary adoption of the energy conservation standards by these appliance manufacturers, an assumption for which there is no reasonable assurance.

Lastly, all of these alternatives must be gauged against the performance standards that are being proposed in this notice. Such performance standards would result in energy consumption of dishwashers, clothes washers, and clothes dryers to total an estimated 31.92 Quads of primary energy over the 1993–2015 time period. Savings would be 2.26 Quads, and the net present value would be an expected $2.26 billion.

As noted at the beginning of this section, none of the alternatives that were considered for these products would save as much energy as the proposed rule.

c. Federalism Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed by any substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The Department finds that today's final rule will not have a substantial direct effect on State governments. State regulations that may have existed on these three products were preempted by the Federal standards established in NAECA. States could petition the Department for exemption from such preemption, and none have done so. Today's final rule has no added effect on States. Thus, based on the foregoing, the Department finds that the preparation of a federalism assessment for this rulemaking is not warranted.

The Act provides for subsequent State petitions for exemption from preemption, which necessarily means that the determination as to whether a State law prevails must be made on a case-by-case basis using criteria set forth in the Act. When DOE receives such a petition, it will be appropriate to consider preparing a federalism assessment consistent with the criteria in the Act.

d. Regulatory Flexibility Review

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires an assessment of the impact of regulations on small businesses. Small businesses are defined as those firms within an industry that are privately owned and less dominant in the market.

In this rulemaking, three different products and, hence, industries are being addressed. Regulatory flexibility issues will be discussed for the dishwasher, clothes washer, and clothes dryer industries for which standards are being prescribed.

First, the energy conservation standard on those dishwasher manufacturers who could be considered small businesses will be discussed.

Dishwasher manufacturing firms can be divided into two groups: Those that compete on large sales-volume products and those that compete in small, specialized markets. Small firms are generally forced to specialize in small market niches that offer some protection from the cost advantage that large firms hold when they can produce in volume. This effect can even be observed among the major producers in the tendency of the smaller major producers to produce somewhat more specialized products.

There are significant differences among the major firms. As the Department learned from discussions with industry consultants, average cost has an inverse relationship to firm size. Thus, the industry has economies of scale, and large firms (to the extent that their facilities are up-to-date) have lower average costs than small firms. This fact, coupled with increasing competitiveness of the national and international markets, probably accounts for the continuing consolidation that has been occurring for several decades. The fact that the consolidation has been producing larger firms strongly corroborates the finding that large firms have a cost advantage.

A principal implication of consolidation is that the smaller of the firms will be, on average, in more danger of failing or being bought out than will the large firms. Because of the greater precariousness of smaller firms, any decrease in average profitability is more likely to damage seriously a smaller firm, and an increase in average profitability is more likely to mean the difference between success and failure for a smaller firm.

From the point of view of competitiveness, a decrease in average profitability could speed up the process of consolidation, producing a less competitive industry, while an increase in average profitability could help maintain the current levels of competition. Either effect might well be temporary, because, in the long run, the number of firms should be determined by the industry's cost structure and by the way a single firm's elasticity of demand relates to the number of competing firms.

Although larger firms have a cost advantage due to economies of scale, the very small firms in the dishwasher manufacturing industry have found market niches in which to survive profitably. The small firms sell dishwashers primarily to the replacement and kitchen remodel markets, which tend to offer higher profit margins than does the builder market. As a result, it is possible, according to industry consultants, that small firms would have an easier time passing through increased variable costs that result from the standard, and thus may be affected more positively than the large firms.

Second, the impact of the energy conservation standard on clothes washer manufacturers needs to be addressed. The standard is an efficiency level that was achieved by the elimination of a warm rinse option. For those manufacturers who choose to meet the standard by eliminating that option, there will be essentially a zero cost increase resulting from the standard.

Finally, the impact of the energy conservation standards on clothes dryer manufacturers needs to be addressed. The LBL–MIM indicates, through its prediction of an increase in typical ROE, that the proposed standards are likely to slow down the consolidation process temporarily. This would lead to a temporary slowing down of the continuing decrease in this industry's competitiveness. However, this prediction would be tempered by the observation that if standards were technologically difficult to meet, they could hurt some smaller firms the most, since smaller firms tend to have less sophisticated research and development capabilities. This is not a significant issue since the standard levels on clothes dryers will not be technologically difficult to meet.

In view of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that today's action will not have a "significant economic impact on a substantial number of small entities."

In conclusion, for each of these three industries, the Department finds that the standard levels prescribed in today's Final Rule will not "have a significant economic impact on a substantial number of small entities," and it is not necessary to prepare a regulatory flexibility analysis.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

In consideration of the foregoing, part 430 of chapter II of Title 10, Code of Federal Regulations, is amended as set forth below.

Issued in Washington, DC, April 25, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 is revised to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. In section 430.32, paragraphs (f), (g) and (h) are revised to read as follows:

§ 430.32 Energy conservation standards and effective dates.

* * * * *

(f) *Dishwashers.* (1) Dishwashers manufactured between January 1, 1988, and May 14, 1994 shall be equipped with an option to dry without heat.

(2) Dishwashers manufactured on or after May 14, 1994, shall have an energy factor no less than:

Product class	Energy factor (cycles/KWh)
i. Compact Dishwasher (less than 22 inches in exterior width)	0.62
ii. Standard Dishwasher (equal to or greater than 22 inches in exterior width)	0.46

* * * * *

(g) *Clothes washers.* (1) Clothes washers manufactured between January 1, 1988, and May 14, 1994, shall include an unheated rinse water option.

(2) Clothes washers manufactured on or after May 14, 1994, shall have an energy factor no less than:

Product class	Energy factor (cu. ft./Kwh/cycle)
i. Top Loading, Compact (less than 1.6 ft^3 capacity).	0.90.
ii. Top Loading, Standard (1.6 ft^3 or greater capacity).	1.18.
iii. Top Loading, Semi-Automatic.	Not Applicable.[1]
iv. Front Loading	Not Applicable.[1]
v. Suds saving	Not Applicable.[1]

[1] These classes shall have an unheated rinse water option.

* * * * *

(h) *Clothes dryers.* (1) Gas clothes dryers manufactured between January 1, 1988, and May 14, 1994, shall not be equipped with a constant burning pilot.

(2) Clothes dryers manufactured on or after May 14, 1994, shall have an energy factor no less than:

Product class	Energy factor (lbs/KWh)
i. Electric, Standard (4.4 ft^3 or greater capacity)	3.01
ii. Electric, Compact (120v) (less than 4.4 ft^3 capacity)	3.13
iii. Electric, Compact (240v) (less than 4.4 ft^3 capacity)	2.90
iv. Gas	2.67

* * * * *

[FR Doc. 91–10265 Filed 5–13–91; 8:45 am]

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Tuesday
May 14, 1991

Part IV

Department of Education

Office of Special Education and Rehabilitative Services: National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Research Training Grants for Fiscal Year 1992; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.133P]

Office of Special Education and Rehabilitative Services: National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Research Training Grants for Fiscal Year 1992

Purpose of Program: The purpose of this program is to expand capability in the field of rehabilitation research by supporting projects that provide advanced training in rehabilitation research. These projects provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience, including experience in management or basic science research, in fields pertinent to rehabilitation, in order to qualify those individuals to conduct independent research on problems related to disability and rehabilitation.

Deadline for Transmittal of Applications: September 30, 1991.

Applications Available: September 20, 1991.

Available Funds: $450,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 3.

Project Period: 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 81, 82, 85, and 86 and the regulations for this program in 34 CFR parts 350 and 360.

Priorities: Specific priorities for this program are contained in the program regulations at 34 CFR 360.32. The Secretary gives preference to applications that meet one or more of the following competitive priorities as contained in the regulations: engineering and rehabilitation technology fields, such as prosthetics and orthotics, engineering; design; architecture; computer applications; or biomechanics (§ 360.32(a)(3)) and rehabilitation counseling (§ 360.32(a)(4)).

Under 34 CFR 75.105(c)(2)(ii) an application that meets these competitive priorities is selected by the Secretary over applications of comparable merit that do not meet the priorities.

For Further Information Contact: Sean Sweeney, National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 732-1202). Deaf or hearing-impaired individuals may call (202) 732-5079 for TDD services.

For Applications Contact: Donna McGee, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 732-1141.

Program Authority: 29 U.S.C. 760-762.

Dated: May 8, 1991.

Robert R. Davila,

Assistant Secretary, Special Education and Rehabilitative Services.

[FR Doc. 91-11343 Filed 5-13-91; 8:45 am]

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Tuesday
May 14, 1991

Part V

Department of the Interior

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics Meeting; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation meetings.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) will conduct follow-up consultation meetings to obtain written and oral comments concerning changes in Indian education programs currently under consideration by the BIA; and, other potential changes or issues. Changes currently under consideration and included in consultation booklets being issued are as follows:

1. Indian School Equalization Program (ISEP)—Proposed changes to 25 CFR 39.

2. Minimum Academic Standards for the Basic Education of Indian Children and National Criteria for Dormitory Situations—Proposed changes to 25 CFR 36.

3. Long-range Education Plan—Proposed plan to support the BIA FY 1991 budget initiative.

4. Johnson O'Malley (JOM)—Proposed change to 25 CFR 273.

DATE AND TIME: July 17, 1991, 9 a.m. until 6 p.m. (local time) at each site listed below.

MEETING SITES

Locations	Local contact	Telephone
1. Alaska—Anchorage	Carol Baker	907/586-7193
2. Arizona—Phoenix	Harvey Jacobs	602/562-3557
3. California—Sacramento	Fayette Bobby	916/978-4680
4. Minnesota—Minneapolis	Betty Walker	612/349-3636
5. Montana—Billings	Larry Parker	406/657-6375
6. New Mexico—Albuquerque	Val Cordova	505/766-3034
7. New Mexico—Gallup	Larry Holman	505/786-6150
8. Oklahoma—Oklahoma City	Jim Baker	918/687-2460
	Sam Johnson	405/247-6673
9. Oregon—Portland	Van Peters	503/230-5682
10. South Dakota—Aberdeen	Jim Davis	701/477-6471
	Tony Pulira	605/856-4478
11. Tennessee—Nashville	Lena Sanders	703/235-3233

Written comments concerning the consultation hearings must be received no later than August 28, 1991, in the Bureau of Indian Affairs, Office of Indian Education Programs, room 3511, MS 3530 MIB, 1849 C Street, NW., Washington, DC 20240, ATTN: Mr. Edward Parisian, Director, Office of Indian Education Programs.

FOR FURTHER INFORMATION CONTACT: Edward Parisian, Joe Christie or Jim Martin at the above address or call (202) 208-6123, 208-6175, or 208-3550.

SUPPLEMENTARY INFORMATION: The meetings are a follow-up to similar meetings conducted by the BIA in May, 1990 and January, 1991. The purpose of the consultation is to provide, as required by 25 U.S.C. 2010(b), Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential changes or issues being considered by the BIA regarding Indian education programs.

A consultation booklet for the July meetings is being distributed to Federally recognized Indian tribes and Bureau-funded schools. The booklets will also be available from local contact persons and at each meeting.

Dated: May 8, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-11426 Filed 5-13-91; 8:45 am]

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federal register

Tuesday
May 14, 1991

Part VI

National Science Foundation

45 CFR Part 689

Misconduct in Science and Engineering; Final Rule

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NATIONAL SCIENCE FOUNDATION

45 CFR Part 689

Misconduct in Science and Engineering

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: The National Science Foundation is amending 45 CFR part 689 regarding misconduct in science and engineering. The amendments clarify the scope of the misconduct regulations and the procedures followed by the Office of Inspector General in misconduct cases; they also conform the regulations to the authority of the Office of Inspector General over the duties of the former Division of Audit and Oversight in NSF's Office of Budget, Audit, and Control.

EFFECTIVE DATE: May 14, 1991.

FOR FURTHER INFORMATION CONTACT: Monte Fisher, PhD (Assistant Counsel to the Inspector General), 202-357-9457.

SUPPLEMENTARY INFORMATION: Amendment of 45 CFR part 689 is necessary to make technical changes and clarify certain procedures regarding the handling of allegations of misconduct in science or engineering by the National Science Foundation. This amendment, including the response to the comments received, has been coordinated with the Office of Science and Technology Policy of the Office of the President, the Office of Scientific Integrity Review of the Public Health Service, HHS, and the Office of Scientific Integrity of the National Institutes of Health, PHS.

Analysis of Comments

NSF published proposed amendments in the **Federal Register** on February 13, 1991 (56 FR 5789) for public comments. The comment period ended on March 15, 1991. NSF received seven letters: four from universities, two from university associations, and one from a professional association.

The letters tended to express similar concerns, which will be addressed specifically below:

1. Scope of the definition of "Misconduct" in 45 CFR 689.1(a)

Three letters objected to the extension of the definition of "misconduct" to explicitly cover not just "research", but all "activities funded by NSF," particularly including science and engineering education.

Two of the letters feared the amended definition would proscribe activities beyond the reasonable purviews of NSF. Two letters were concerned that institutions, when handling allegations of non-research misconduct, would be compelled by this regulation to use the standards and procedures they had specifically developed to deal with allegations of research misconduct and which they believe may be inappropriate for dealing with allegations not involving research. Two letters, while favoring the fact that the NSF definition would be more like PHS's when the second and third clauses of NSF's current definition were deleted, were concerned because the NSF definition would be less like PHS's when "research" was replaced by "activities funded by NSF". It was asserted that this lack of congruence between PHS's and NSF's definitions would make more onerous the institutions' responsibilities in resolving allegations of misconduct.

Response

Applicability to all "Activities Funded by NSF": A substantial, and increasing, portion of NSF funding supports science and engineering education rather than research. One of NSF's directorates devotes almost all of its resources in support of science and engineering education, and all directorates support science and engineering education at some level; in many NSF activities, research and education are inextricably combined. In these circumstances, NSF must be able to ensure integrity in proposing, conducting, and reporting results from NSF-funded science and engineering education as well as research.

There must be no question that an NSF grantee who, for example, makes false statements in a proposal for a science or engineering education grant has committed misconduct under this definition. Similarly, an NSF grantee has engaged in misconduct if he or she commits plagiarism in the writing of a paper, book, or other publication under an NSF education award.

The substantive language in the definition of misconduct should apply as well to science and engineering education as it does to research. Fabrication, falsification, plagiarism, and other serious deviation from accepted practices are as opprobrious to science and engineering educators as to those engaged in research.

Institutional Procedures: NSF has not set out comprehensive procedures to be followed by institutions handling allegations of misconduct under this regulation. The basic requirements, as described in § 689.3, are that the institution conduct an inquiry within 90 days, conduct an investigation if warranted within 180 days, notify NSF before and during the investigation, and provide NSF with a copy of the investigation report. Within that framework, institutions have broad discretion in how to handle their misconduct cases. Many institutions have apparently implemented more elaborate procedures. While these detailed procedures are sufficient for dealing with allegations under NSF's regulation, they are not necessary.

The institutional guidelines in NSF's misconduct regulation are extremely flexibile and thus amenable to the handling of misconduct allegations by institutions in a manner they find to be most appropriate. Under the NSF regulation it would be perfectly acceptable for an institution to handle allegations of research misconduct in one way and handle allegations of misconduct under science and engineering education grants differently.

NSF and PHS Consistency: The second and third clauses of NSF's current definition of misconduct are deleted by this amendment, at the request of PHS, to eliminate an apparent inconsistency between the PHS and NSF definitions. That the express amendment of the NSF definition of misconduct to reach more than just research results in its beign broader than PHS's definition is an unavoidable consequence of the great emphasis that NSF places on funding science and engineering education. With such a large portion of NSF's resources going to fund activities advancing education in science and engineering, it is essential that NSF be able to ensure the integrity of those activities.

If is worth noting that the NSF definition is not inconsistent with the PHS approach: the definition used by PHS adequately covers PHS's activities, and NSF has simply supplemented the PHS definition to cover all NSF activities.

2. Explicit Inclusion of Retaliation Against Good Faith Whistleblowers in the Definition of "Misconduct"

All of the letters, while decrying retaliation against good faith whistleblowers—in principle—and agreeing that whistleblowers should be protected, in principle, insisted that such retaliation was not "scientific misconduct" and should be dealt with in some other way. Some letters expressed concern that institutions, when handling allegations of misconduct based on retaliation against a good faith whistleblower, would be compelled by this regualtion to use the more elaborate standards and procedures they had specifically developed to deal with allegations of research misconduct more akin to fabrication, falsification, and plagiarism, which standards and procedures are [in unspecified ways] inappropriate for dealing with such allegations of retaliation. Two alternatives were suggested: The Whistleblower Protection Act of 1989, and the provision in the PHS rule regarding whistleblowers.

Response

Retaliation as misconduct: The stories of retribution against good faith whistleblowers are legion and need not be recounted here. Whistleblowers are, of course, an invaluable source of information about instances of misconduct. More importantly, however, NSF believes strongly that retaliation against good faith whistleblowers is a serious deviation from accepted practices in the scientific and engineering community; it can also be a furtherance and propagation of the misconduct being reported. Such retaliation should be vigorously proscribed.

Institutional procedures: As discussed above, NSF's regulation does not require that all misconduct cases be handled according to elaborate procedures. If institutions have established procedures for handling research misconduct cases and they choose to use those procedures for dealing with all misconduct cases involving NSF funding as well, that is acceptable to NSF. There is no requirement, however, that the institutions use elaborate procedures when dealing with any or all misconduct cases involving NSF funding. Within the loose bounds of the guidelines in § 689.3, institutions can use whatever procedures they find most suitable for handling any cases encompassed by the definition of misconduct in this regulation, including those involving retaliation against good faith whistleblowers. For example, under NSF's regulation it would be acceptable for an ombudsman at an institution to handle misconduct allegations based on retaliation against good faith whistleblowers.

Alternatives: Comparable protection of good faith whistleblowers, and sanctions against those who retaliate against them, are not available via either of the alternatives suggested in letters received by NSF. The Whistleblower Protection Act of 1989 (Pub. L. 101-12, 103 Stat. 16) applies only to employees of the Federal government Under the PHS rule, each institution that receives PHS funds is required to have policies and procedures in place that provide for "undertaking diligent efforts to protect the positions and reputations of those persons who, in good faith, make allegations." See 42 CFR 50.103(d)(13). The PHS rule provides no explicit authority for any action to be taken by PHS against someone who, while enjoying PHS financial support, retaliates against a good faith whistleblower.

NSF wants to expand on the PHS rule and make it very clear that retaliation against a good faith whistleblower under the aegis of NSF funding is misconduct and will not be tolerated. Here again it is worth noting that there is no inconsistency with the PHS approach: PHS requires institutions to protect whistleblowers, and NSF is merely supplementing the PHS approach to place a greater emphasis on the protection of whistleblowers.

3. Express Limits on the Scope of the Definition of Misconduct

One letter recommended that NSF should add the reassurance included in the PHS definition that misconduct "does not include honest error or honest differences in interpretations or judgments of data." See 42 CFR 50.102. Another was concerned that "the sincere espousal of outdated or questionable theories, or the advocacy of politically unpopular views might be inappropriately treated as 'misconduct in education'." A third letter found deep significance in the comma being added to the definition, which led it to inquire: "Does NSF intend to write rules that govern not only the integrity of the scientific process, but the total moral and ethical integrity of the person?"

Response

Express exclusions: There is no need to add a "does not include" provision to the definition of misconduct. Ordinary errors, ordinary differences in interpretations or judgments of data, scholarly or political disagreements, personal or professional opinions, or private moral or ethical behavior or views are not, and could never be considered to be, misconduct under this definition.

Commas: The conduct proscribed in the definition of misconduct—"[f]abrication, falsification, plagiarism, or other serious deviation from accepted practices," is expressly limited to the context of "proposing, carrying out, or reporting results from, activities funded by NSF". The purpose of the comma proposed to be added after "practices" in the definition was to clarify that the expression "in proposing, * * *" applies to each of the preceding terms "[f]abrication, * * *". Apparently, the opposite effect was perceived. In response to this comment, the commas will not be added after "accepted practices" and after "results from". The intention remains the same, however: the expression "in proposing, * * *" applies to each of the preceding terms, as does the expression "activities funded by NSF".

4. Suggested Revisions of Provisions of Part 689 Not Being Revised By This Amendment

Several letters suggested amendment of portions of the regulation that were not proposed for amendment at this time.

Response: This amendment is intended to address certain specific problems, not to generally overhaul the regulation. The additional changes suggested by some of the letters will be considered when NSF next reviews its regulations. Under the Administrative Procedure Act, it is not appropriate for NSF to initiate new changes that were not addressed in the proposed rule.

List of Subjects in 45 CFR Part 689

Misconduct, Debarment and suspension, Fraud.

For the reasons set out in the preamble, title 45, chapter VI of the Code of Federal Regulations, is amended as set forth below:

PART 689—MISCONDUCT IN SCIENCE AND ENGINEERING

Sec.
689.1 General policies and responsibilities.
689.2 Actions.
689.3 Role of awardee institutions.
689.4 Initial NSF handling of misconduct matters.
689.5 Investigations.
689.6 Pending proposals and awards.
689.7 Interim administrative actions.
689.8 Dispositions.
689.9 Appeals.

Authority: Sec. 11(a), National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

§ 689.1 General policies and responsibilities.

(a) "Misconduct" means

(1) fabrication, falsification, plagiarism, or other serious deviation from accepted practices in proposing, carrying out, or reporting results from activities funded by NSF; or

(2) retaliation of any kind against a person who reported or provided information about suspected or alleged misconduct and who has not acted in bad faith.

(b) The NSF will take appropriate action against individuals or institutions upon a determination that misconduct has occurred in proposing, carrying out, or reporting results from activities

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funded by NSF. It may also take interim action during an investigation. Possible actions are described in § 689.2.

(c) NSF will find misconduct only after careful inquiry and investigation by an awardee institution, by another Federal agency, or by NSF. An "inquiry" consists of preliminary information-gathering and preliminary fact-finding to determine whether an allegation or apparent instance of misconduct has substance. An investigation must be undertaken if the inquiry determines the allegation or apparent instance of misconduct has substance. An "investigation" is a formal examination and evaluation of relevant facts to determine whether misconduct has taken place or, if misconduct has already been confirmed, to assess its extent and consequences or determine appropriate action.

(d) Before NSF makes any final finding of misconduct or takes any final action on such a finding, NSF will normally afford the accused individual or institution notice, a chance to provide comments and rebuttal, and a chance to appeal. In structuring procedures in individual cases, NSF may take into account procedures already followed by other entities investigating the same allegation of misconduct.

(e) Debarment or suspension for misconduct will be imposed only after further procedures described in applicable debarment and suspension regulations, as described in §§ 689.7 and 689.8, respectively. Severe misconduct, as established under these regulations, is an independent cause for debarment or suspension under the procedures established by the debarment and suspension regulations.

(f) The Office of Inspector General (OIG) oversees and coordinates NSF activities related to misconduct, conducts any NSF inquiries and investigations into suspected or alleged misconduct, and except where otherwise provided, speaks and acts for NSF with affected individuals and institutions.

§ 689.2 Actions.

(a) Possible final actions listed below for guidance range from minimal restrictions (Group I) to the most severe and restrictive (Group II). They are not exhaustive and do not include possible criminal sanctions.

(1) Group I Actions.

(i) Send a letter of reprimand to the individual or institution.

(ii) Require as a condition of an award that for a specified period an individual, department, or institution obtain special prior approval of particular activities from NSF.

(iii) Require for a specified period that an institutional official other than those guilty of misconduct certify the accuracy of reports generated under an award or provide assurance of compliance with particular policies, regulations, guidelines, or special terms and conditions.

(2) Group II Actions.

(i) Restrict for a specified period designated activities or expenditures under an active award.

(ii) Require for a specified period special reviews of all requests for funding from an affected individual, department, or institution to ensure that steps have been taken to prevent repetition of the misconduct.

(3) Group III Actions.

(i) Immediately suspend or terminate an active award.

(ii) Debar or suspend an individual, department, or institution from participation in NSF programs for a specified period after further proceedings under applicable regulations.

(iii) Prohibit participation of an individual as an NSF reviewer, advisor, or consultant for a specified period.

(b) In deciding what actions are appropriate when misconduct is found, NSF officials should consider:

(1) How serious the misconduct was;

(2) Whether it was deliberate or merely careless;

(3) Whether it was an isolated event or part of a pattern;

(4) Whether it is relevant only to certain funding requests or awards involving an institution or individual found guilty of misconduct.

(c) Interim actions may include, but are not limitd to:

(1) Totally or partially suspending an existing award;

(2) Totally or partially suspending eligibility for NSF awards in accordance with debarment-and-suspension regulations;

(3) Proscribing or restricting particular research activities, as, for example, to protect human or animal subjects;

(4) Requiring special certifications, assurances, or other, administrative arrangements to ensure compliance with applicable regulations or terms of the award;

(5) Requiring more prior approvals by NSF;

(6) Deferring funding action on continuing grant increments;

(7) Deferring a pending award;

(8) Restricting or suspending use of individuals as NSF reviewers, advisors, or consultants.

(d) For those cases governed by the debarment and suspension regulations, the standards of proof contained in those regulations shall control. Otherwise, NSF will take no final action under this section without a finding of misconduct supported by a preponderance of the relevant evidence.

§ 689.3 Role of awardee institutions.

(a) Awardee institutions bear primary responsibility for prevention and detection of misconduct. In most instances, NSF will rely on awardee institutions to promptly:

(1) Initiate an inquiry into any suspected or alleged misconduct;

(2) Conduct a subsequent investigation, if warranted; and

(3) Take action necessary to ensure the integrity of research, the rights and interests of research subjects and the public, and the observance of legal requirements or responsibilities.

(b) If an institution wishes NSF to defer independent inquiry or investigation, NSF expects it to;

(1) Inform NSF immediately if an initial inquiry supports a formal investigation.

(2) Keep NSF informed during such an investigation.

(3) Notify NSF even before deciding to initiate an investigation or as required during an investigation

(i) if the seriousness of apparent misconduct warrants;

(ii) if immediate health hazards are involved;

(iii) if NSF's resources, reputation, or other interests need protecting;

(iv) if Federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or

(v) if the scientific community or the public should be informed.

(4) Provide NSF with the final report from any investigation.

(c) If an institution wishes NSF to defer independent inquiry or investigation, it should complete any inquiry and decide whether an investigation is warranted within 90 days. It should similarly complete any investigation and reach a disposition within 180 days. If completion of an inquiry or investigation is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(d) Awardee institutions should maintain and effectively communicate to their staffs appropriate policies and procedures relating to misconduct, which should indicate when NSF must or should be notified.

§ 689.4 Initial NSF handling of misconduct matters

(a) NSF staff who learn of alleged misconduct will promptly and discreetly inform OIG or refer informants to OIG.

(b) to the extent possible the identify of informants who wish to remain anonymous will be kept confidential. To the extent allowed by law, documents and files maintained by NSF during the course of an inquiry or investigation of misconduct will be treated as investigative files exempt from mandatory pubic disclosure upon request under the Freedom of Information Act.

(c) If alleged misconduct may involve a crime, OIG will determine whether any criminal investigation is already pending or projected. If not, OIG will determine whether the matter should be referred to the Department of Justice.

(d) Otherwise OIG may:

(1) Inform the awardee institution of the alleged misconduct and encourage it to undertake an inquiry;

(2) Defer to inquiries or investigations of the awardee institution or of another Federal agency;

(3) At any time proceed with its own inquiry.

(e) If OIG proceeds with its own inquiry it will normally complete the inquiry no more than 60 days after initiating it.

(f) On the basis of what it learns from an inquiry and in consultation as appropriate with other NSF offices, OIG will decide whether a formal NSF investigation is warranted.

§ 689.5 Investigations

(a) When an awardee institution or another Federal agency has promptly initiated its own investigation, OIG may defer an NSF inquiry or investigation until it receives the results of that external investigation. If it does not receive the results within 180 days, OIG will ordinarily proceed with its own investigation.

(b) If OIG decides to initiate an NSF investigation, it must give prompt written notice to the individual or institutions to be investigated, unless notice would prejudice the investigation or unless a criminal investigation is underway or under active consideration. if notice is delayed, it must be given as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law-enforcement policies.

(c) If a criminal investigation by the Department of Justice, the Federal Bureau of Investigation, or another Federal agency is underway or under active consideration by these agencies or the NSF, OIG will determine what information, if any, may be disclosed to the subject of the investigation or to other NSF employees.

(d) An NSF investigation may include:

(1) Review of award files, reports, and other documents already readily available at NSF or in the public domain;

(2) Review of procedures or methods and inspection of laboratory materials, specimens, and records at awardee institutions;

(3) Interviews with parties or witnesses;

(4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(5) Cooperation with other Federal agencies;

(6) Opportunity for the subject of the investigation to be heard; and

(7) Full adjudicatory hearings or other formal proceedings, as described in appropriate regulations.

(e) NSF may invite outside consultants or experts to participate in an NSF investigation. They should be appointed in a manner that ensures the official nature of their involvement and provides them with legal protections available to federal employees.

(f) OIG will make every reasonable effort to complete an NSF investigation and to report within 120 days after initiating it. If OIG cannot report within 120 days, it should submit to the Deputy Director within 90 days an interim report and an estimated schedule for completion of the final report.

§ 689.6 Pending proposals and awards.

(a) Upon learning of alleged misconduct OIG will identify potentially implicated awards or proposals and when appropriate, will ensure that program and DGC officials handling them are informed (subject to § 689.5(c)).

(b) Neither a suspicion or allegation of misconduct nor a pending inquiry or investigation will normally delay review of proposals. To avoid influencing reviews, reviewers or panelists will *not* be informed of allegations or of ongoing inquiries or investigations. However, if allegations, inquiries, or investigations have been rumored or publicized, the responsible Assistant Director may, in consultation with OIG, either defer review or inform reviewers of the status of the matter.

§ 689.7 Interim administrative actions.

(a) After an inquiry or during an external or NSF investigation the Deputy Director may order that interim actions (as described in § 689.2(c)) be taken to protect Federal resources or to guard against continuation of any suspected or alleged misconduct. Such an order will normally be issued on recommendation from OIG and in consultation with DGC, OGC, the responsible Directorate, and other parts of the Foundation as appropriate.

(b) When suspension is determined to be appropriate, the case will be referred to the suspending official pursuant to 45 CFR 620.410(a), and the suspension procedures of 45 CFR part 620 will be followed, but the suspending official (see § 620.105(i)) will be either the Deputy Director or an official designated by the Deputy Director.

(c) Such interim actions may be taken whenever information developed during an investigation indicates a need to do so. Any interim action will be reviewed periodically during an investigation and modified as warranted. An interested party may request a review and modification of any interim action.

(d) The Deputy Director will make and OIG will retain a record of interim actions taken and the reasons for taking them.

(e) Interim administrative actions are not final agency actions subject to appeal.

§ 689.8 Dispositions.

(a) After receiving a report from an external investigation by an awardee institution or another Federal agency, OIG will assess the accuracy and completeness of the report and whether the investigating entity followed usual and reasonable procedures. It will either recommend adoption of the findings in whole or in part or, normally within 30 days, initiate a new investigation.

(b) When any satisfactory external investigation or an NSF investigation fails to confirm alleged misconduct and the Deputy Director concurs,

(1) OIG will noitfy the subject of the investigation and, if appropriate, those who reported the suspected or alleged misconduct. This notification may include the investigation report.

(2) Any interim administrative restrictions that were imposed will be lifted.

(c) When any satisfactory investigation confirms misconduct,

(1) In cases in which debarment is considered by OIG to be an appropriate disposition, the case will be referred to the debarring official pursuant to 45 CFR 620.311, and the procedures of 45 CFR part 620 will be followed, but:

(i) The debarring official (see § 620.105(g)) will be either the Deputy Director, or an official designated by the Deputy Director.

(ii) Except in unusual circumstances, the investigation report will be included

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among the materials provided to the subject of the investigation as part of the notice of proposed debarment (see § 620.312).

(iii) The notice of the debarring official's decision (see § 620.314(d)) will include instructions on how to pursue an appeal to the Director.

(2) In all other cases,

(i) Except in unusual circumstances, the investigation report will be provided by OIG to the subject of the investigation, who will be invited to submit comments or rebuttal. Comments or rebuttal submitted within the period allowed, normally thirty days, will receive full consideration and may lead to revision of the report or of a recommended disposition.

(ii) Normally within 45 days after completing an NSF investigation or receiving the report from a satisfactory external investigation, OIG will submit to the Deputy Director the investigation report, any comments or rebuttal from the subject of the investigation, and a recommended disposition. The recommended disposition will propose any final actions to be taken by NSF. Section 689.2 lists possible final actions and considerations to be used in determining them.

(iii) The Deputy Director will review the investigation report and OIG's recommended disposition. Before issuing a disposition the Deputy Director may initiate further hearings or investigation. Normally within thirty days after receiving OIG's recommendations or after completion of any further proceedings, the Deputy Director will send the affected individual or institution a written disposition, specifying actions to be taken. The decision will include instructions on how to pursue an appeal to the Director.

§ 689.9 Appeals.

(a) An affected individual or institution may appeal to the Director in writing within 30 days after receiving the Deputy Director's written decision. The Deputy Director's decision becomes a final administrative action if it is not appealed within the 30 day period.

(b) The Director may appoint an uninvolved NSF officer or employee to review an appeal and make recommendations.

(c) The Director will inform the appellant of a final decision within 30 days after receiving the appeal. That decision will be the final administrative action of the Foundation. Findings from completed investigations may be shared with scientific review groups if the information bears directly on an investigator's scientific integrity or if necessary to provide an accurate account of relevant facts.

Dated: April 26, 1991.

National Science Foundation.

Walter E. Massey,

Director.

[FR Doc. 91-10709 Filed 5-13-91; 8:45 am]

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federal register

Tuesday
May 14, 1991

Part VII

The President

Proclamation 6290—Infant Mortality Awareness Day, 1991

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Presidential Documents

Title 3—

The President

Proclamation 6299 of May 10, 1991

Infant Mortality Awareness Day, 1991

By the President of the United States of America

A Proclamation

In the past, this Nation's high rate of infant mortality has stood in tragic contradiction to our enviably high standard of living and to our traditional reverence for human life. Fortunately, however, that unconscionable trend is changing. According to the Department of Health and Human Services, preliminary data indicate that the United States infant mortality rate in 1990 was 9.1 deaths per 1,000 live births—the lowest ever recorded and a substantial reduction over the past decade.

The infant mortality rate is affected by a number of different factors, including the failure of many pregnant women to obtain adequate prenatal care. Although the government cannot fulfill the primary responsibility of parents in caring for their children, public officials at the Federal, State, and local levels have been working together with health care providers and other concerned Americans to help expectant mothers protect the lives of their unborn children through proper nutrition and prenatal care.

Advances in science and technology have enabled us to see how such behaviors as substance abuse and smoking can lead to low birth weights, disability, chronic illness, and early susceptibility to death among infants. Advances in science have also enabled us to save the lives of babies who are born prematurely or who develop dangerous conditions while still in the womb. In an effort to bring this information to pregnant women and to cut existing rates of infant mortality by half in 10 high-risk areas within 5 years, we have launched a national campaign against infant mortality. This includes the "Healthy Start" program, a pilot project that will bring early prenatal care to thousands of low-income mothers while helping to identify which government programs work best.

Each and every human life is precious, and every one deserves care and protection. On this occasion let us renew our determination to ensure that every child in America receives the best possible start in life, beginning with quality prenatal care throughout pregnancy for expectant mothers.

The Congress, by House Joint Resolution 194, has designated May 12, 1991, as "Infant Mortality Awareness Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim May 12, 1991, as Infant Mortality Awareness Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-11600
Filed 5-13-91; 10:22 am]
Billing code 3195-01-M

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6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–275–3030).

H.J. Res. 214/Pub. L. 102–41

Recognizing the Astronauts Memorial at the John F. Kennedy Space Center as the national memorial to astronauts who die in the line of duty. (May 8, 1991; 105 Stat.242; 1 page) Price: $1.00

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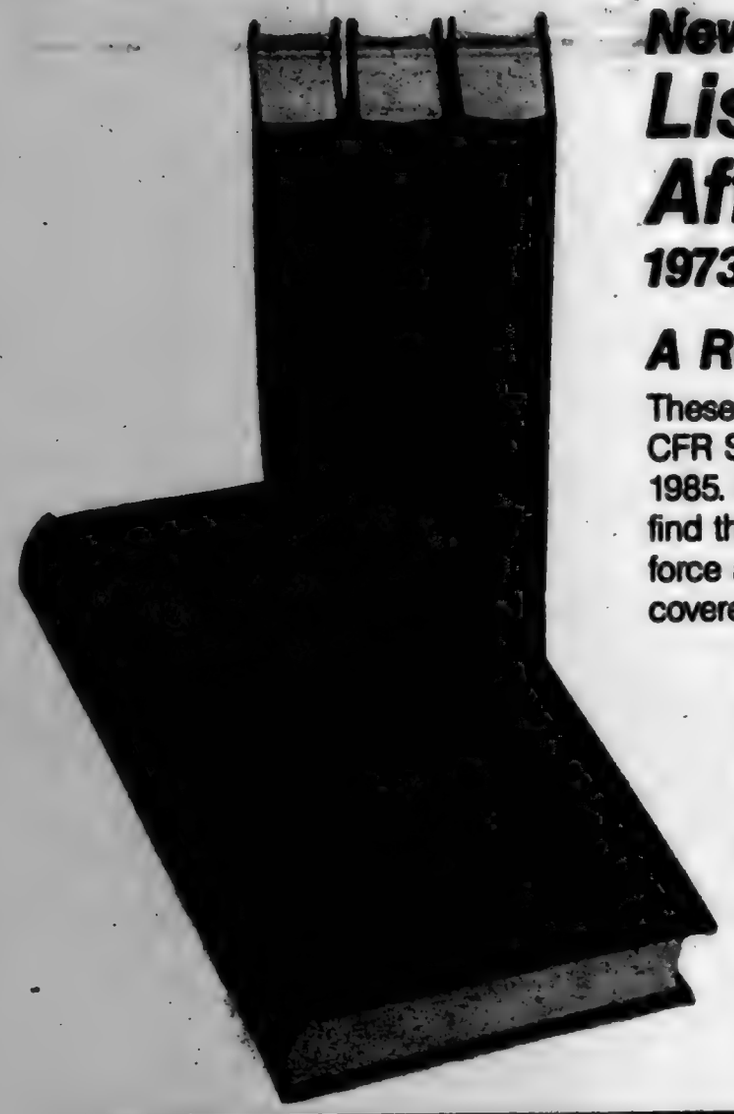

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1973-1985

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These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

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Briefings on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHERE: 26 Federal Plaza
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New York, NY
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WASHINGTON, DC

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1100 L Street, NW, Washington, DC
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NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-061]

Imported Fire Ant Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the imported fire ant quarantine and regulations by designating all or portions of the following counties as generally infested areas: 1 county in Alabama, 1 county in Arkansas, 14 counties in North Carolina, 1 county in Oklahoma, 2 counties in South Carolina, and 1 county in Texas. The rule affirmed by this action expanded the regulated areas and imposed certain restrictions on the interstate movement of regulated articles from those areas. The rule was necessary to prevent the artificial spread of the imported fire ant.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the Federal Register and effective on February 7, 1991 (56 FR 4933-4936, Docket Number 90-249), we amended the Imported Fire Ant regulations in 7 CFR 301.81-2a by designating all or portions of the following counties as generally infested areas: Madison County in Alabama; Jefferson County in Arkansas; Anson, Cumberland, Duplin, Hoke, Hyde, Lenoir, Martin, Pitt, Richmond, Robeson, Sampson, Scotland, Tyrrell, and Washington Counties in North Carolina; Love County in Oklahoma; Abbeville and Union Counties in South Carolina; and Webb County in Texas.

Comments on the interim rule were required to be received on or before April 8, 1991. We did not receive any comments. The facts presented in the interim rule still provide a basis of this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in Alabama, Arkansas, North Carolina, Oklahoma, South Carolina, and Texas. Thousands of small entities move these articles interstate from these States, and many more thousands of small entities move these articles interstate from other States.

Based on information compiled by the Department, we have determined that approximately 149 small entities within the newly regulated areas move articles interstate from the specified areas in those States. Further, the overall economic impact from this action is estimated to be approximately $20,906.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Imported fire ant, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR 301.82-2a that was published at 56 FR 4933-4936 on February 7, 1991.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 9th day of May 1991.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-11513 Filed 5-14-91; 8:45 am]

BILLING CODE 3410-34-M

7 CFR Part 319

[Docket No. 91-036]

Importation of Avocados from New Zealand

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Fruits and Vegetables regulations to allow the importation into the United States of avocados from New Zealand, subject to our inspection at the port of first arrival and disinfection or treatment if injurious

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insects are found. We are taking this action as the result of a request from the Government of New Zealand and because we have determined that there is no significant pest risk associated with the importation of avocados from New Zealand under these circumstances.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Griffin, Head, Permit Unit, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8645.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* prohibit or restrict the importation into the United States of certain fruits and vegetables to prevent the introduction and dissemination of injurious insects, including fruit and melon flies, that are new to or not widely distributed within and throughout the United States. Section 319.56-6 provides guidelines for the inspection, disinfection, or refusal of entry for imported fruits and vegetables at the port of first arrival and at the destination point in the United States at the option of the United States Department of Agriculture (USDA).

In a proposed rule published in the Federal Register on February 4, 1991, (56 FR 4160-4161, Docket 90-231), we proposed to amend the regulations in 7 CFR part 319 by adding a new § 319.56-2a to allow the importation into the United States of avocados from New Zealand, subject to inspection at the port of first arrival, and disinfection or treatment if any injurious insects are found.

Comments on the proposed rule were required to be received on or before March 6, 1991. We received one comment by the closing date. The commenter favored the proposed rule, agreeing with our conclusion that New Zealand is free from certain injurious insects.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document changes the Fruit and Vegetable regulations by listing avocados from New Zealand as enterable into the United States under certain restrictions. Avocados from New Zealand will be allowed entry into the United States subject to inspection. Disinfection or treatment will also be required if any injurious insects are found by the inspector.

No increase in pest infestations are foreseen, because New Zealand is free from certain injurious insects and any other injurious insects will be easily detectable by an inspector. Therefore, no adverse economic consequences are expected in the United States as a result of this regulatory change.

According to the United States Department of Commerce, avocados are produced on 6,902 fruit-and-tree-nut farms in the United States. Eighty-six percent or 5,920 of these farms are located in California. The other significant producing State is Florida. Information on the size of these U.S. fruit-and-tree-nut-producing farms is unavailable, and no data concerning avocado-only-producing farms is known. In general, 46 percent of the farms producing fruit-and-tree-nuts in California and Florida are run by operators whose principal occupation is farming, the remaining 54 percent are run by operators whose principal occupation is other than farming. Approximately 17 percent of farms in California and Florida which produce fruit-and-tree-nuts have sales of agricultural products in excess of $100,000, while 10 percent have sales between $50 to $100,000, 27 percent have sales between $10 to $50,000, and 46 percent have sales below $10,000. Farms run by operators whose principal occupation is not farming are more likely to have sales below $10,000.

According to the Agricultural Marketing Service and the Economic Research Service of USDA, U.S. avocado production currently totals 175-200 thousand metric tons annually, and U.S. imports of avocados currently total 4.5-5.5 thousand metric tons annually. Most of these imports arrive from Chile. Annual avocado supplies in the United States thus total approximately 180-206 thousand metric tons.

New Zealand produces one thousand metric tons of avocados annually. It is unlikely that U.S. imports of avocados from New Zealand would total more than 500 metric tons annually. Avocado imports from New Zealand would likely arrive in the United States during the late summer and fall months (July-December) as do imports from Chile. Imports from New Zealand, therefore, will compete with only a portion of U.S. production. Approximately 50 percent of U.S. avocado production is currently available between July and December and total U.S. supplies (U.S. production plus imports) during July-December range from 92-106 thousand metric tons. The additional avocados expected from New Zealand as a result of this regulatory change will add only 0.5 percent to the total available supply in the United States during July-December. This slight increase in supply is unlikely to cause an appreciable change in U.S. avocado prices, and thus no impact on U.S. avocado producers or consumers will be expected as a result of this regulatory change. However, U.S. importers of avocados will be expected to realize a small economic benefit due to the slight increase in supply.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR, subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we are amending 7 CFR part 319 as follows:

1. The authority citation for Part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

2. In subpart—Fruits and Vegetables, a new § 319.56-2t is added to read as follows:

§ 319.56-2t Administrative instructions; conditions governing the entry of avocados from New Zealand.

Avocados may be imported into the United States from New Zealand in accordance with § 319.56-6 and all other applicable requirements of this subpart.

Done in Washington, DC, this 10th day of May 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-11515 Filed 5-14-91; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 1002

[DA-91-009]

Milk in the New York-New Jersey Marketing Area; Amendments to Classification and Accounting Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action approves the tentative amendments to the classification and accounting rules and regulations issued by the Acting Market Administrator of the New York-New Jersey marketing order on April 2, 1991, after consideration of proposed changes at a public meeting held March 12, 1991. Amendment of the classification and accounting rules and regulations is necessary to make such regulations conform to order amendments effective April 1, 1991. The revision of the rules substantially all relate to the adoption of three classifications of milk and uniform product definitions.

EFFECTIVE DATE: May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Pursuant to provisions of § 1002.46 of the order, as amended, regulating the handling of milk in the New York-New Jersey marketing area (7 CFR part 1002), the Acting Market Administrator of said order or April 2, 1991, issued tentative amendments to the classification and accounting rules and regulations.

A copy of the stenographic record of the meeting called by the Acting Market Administrator concerning such amendments to the rules and regulations and the tentative amendments to the rules and regulations were each forwarded by the Acting Market Administrator to the Secretary. Upon consideration of such tentative amendments in the light of the stenographic record, said amendments to the classification and accounting rules and regulations are hereby approved.

It is hereby determined that it is unnecessary and impractical to defer the effective date of the amendments to the classification and accounting rules and regulations for 30 days after publication in the Federal Register in that:

(1) A copy of the tentative amendments was mailed on March 1 and March 4, 1991, to all handlers operating pool plants and other interested parties, thus affording such persons a reasonable time to prepare for the effective date herein specified;

(2) Amendments to the marketing order, as amended, to which such amended rules and regulations apply were effective April 1, 1991; and

(3) The said amended rules and regulations are required by provisions of the order, as amended, to be effective on the first day of the month following their approval.

Accordingly, the said amendments to the classification and accounting rules and regulations shall be effective on and after May 1, 1991.

The tentative amendments issued by the Market Administrator and hereby approved are set forth below.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Effective Date: May 1, 1991.

Signed at Washington, DC, on May 2, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

List of Subjects in 7 CFR Part 1002

Milk marketing orders.

Therefore, pursuant to the provisions of § 1002.46 of the order regulating the handling of milk in the New York-New Jersey marketing area, the classification and accounting rules and regulations of part 1002 are amended as set forth as follows.

PART 1002—[AMENDED]

1. The authority citation for 7 CFR part 1002 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 1002.102 is revised to read as follows:

§ 1002.102 Milk and milk products.

Milk, Fluid milk products, Fluid cream products, and other dairy products containing or produced from skim milk and/or butterfat are as defined pursuant to prevailing federal and/or state standards of identity.

§§ 1002.103 through 1002.127 [Removed]

3. Sections 1002.103 through 1002.127 are removed.

4. Section 1002.128 is revised to read as follows:

§ 1002.128 Dispenser insert.

A *dispenser insert* when used in conjunction with a fluid milk product or products included in § 1002.41(c)(1) means that the product is in a container from which it may be dispensed through a self-contained valve or other mechanical means for human consumption on the premises of the purchaser.

5. Section 1002.129 is revised to read as follows:

§ 1002.129 Packaged; consumer packages.

The term *packaged* or *consumer packages* when used in conjunction with a fluid milk product or product included in § 1002.41(c)(1) means that the product is in a container of 8 quarts or less or dispenser insert of any size. Any such product in any other container will be considered to have been handled in bulk.

6. Section 1002.140 is revised to read as follows:

§ 1002.140 Method.

Skim milk and butterfat shall be accounted for at the plant on a monthly basis and shall be classified separately pursuant to §§ 1002.40 through 1002.46 in the following manner:

(a) On the basis of the skim milk and butterfat in fluid milk products and products included in § 1002.41(c)(1) which are held at a plant, moved from a plant, dumped at a plant, destroyed or lost under extraordinary circumstances, or used at the plant to produce products other than fluid milk products or products included in § 1002.41(c)(1);

(b) On the basis of the fluid skim milk equivalent and butterfat content of all products, other than fluid milk products and products included in § 1002.41(c)(1), which are reprocessed, converted, or combined with another product during

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the month or for which the handler fails to establish a disposition.

7. In § 1002.141, paragraphs (a), (b), (e) and (f) are revised to read as follows:

§ 1002.141 Preliminary accounting for other than fluid milk products and products included in § 1002.41(c)(1) at pool plants.

(a) Separately tabulate the total pounds of each product, other than a fluid milk product or product included in § 1002.41(c)(1), contained in opening inventory and received at the plant.

(b) Separately tabulate the total pounds of each product, other than a fluid milk product or product included in § 1002.41(c)(1), contained in closing inventory at or moved from the plant.

* * * * *

(e) When a product other than a fluid milk product or product included in § 1002.41(c)(1) manufactured during the month is reprocessed, converted, or combined with another product during the same month, the fluid milk products, products included in § 1002.41(c)(1), and other source milk used in the first instance shall be considered to have been used directly in the product resulting from such reprocessing, conversion, or combining.

(f) When condensed skim milk or skim milk powder manufactured in a month are used in the same month to fortify a fluid milk product or a product included in § 1002.41(c)(1), the skim milk equivalent of that portion of such products which is in excess of the volume included in the fortified product shall be determined and accounted for in accordance with § 1002.246 (b) and (c).

8. In § 1002.142, paragraph (a) is revised to read as follows:

§ 1002.142 Skim milk and butterfat to be accounted for at a pool plant.

(a) Tabulate and total the pounds of skim milk:

(1) In milk received from dairy farmers at the plant;

(2) In fluid milk products and products included in § 1002.41(c)(1) in the opening inventories at the plant, separately in bulk and packaged form;

(3) In fluid milk products and products included in § 1002.41(c)(1) in transit from other pool plants in accordance with § 1002.221(b), separately in bulk and packaged form;

(4) In fluid milk products and products included in § 1002.41(c)(1) received at the plant from other plants separately in bulk and packaged form or from units;

(5) In other source milk other than a fluid milk product or a product included in § 1002.41(c)(1) determined to be a receipt pursuant to § 1002.141(c) at its skim milk content or equivalent. The total of the skim milk so tabulated shall be known as the total skim milk to be accounted for.

* * * * *

9. In § 1002.143, paragraph (a) is revised to read as follows:

§ 1002.143 Skim milk and butterfat accounted for at a pool plant.

(a) Tabulate, total, and classify the pounds of skim milk:

(1) In fluid milk products and products included in § 1002.41(c)(1) transferred to other plants, disposed of from the plant, dumped at the plant, or destroyed or lost under extraordinary circumstances;

(2) In fluid milk products and products included in § 1002.41(c)(1) in closing inventories at the plant;

(3) In fluid milk products and products included in § 1002.41(c)(1) in transit from other pool plants in accordance with § 1002.221(b);

(4) In fluid milk products, products included in § 1002.41(c)(1), and in other source milk used in the plant in the manufacture of other than fluid milk products or products included in § 1002.41(c)(1);

(5) In the skim milk equivalent of skim milk powder and condensed skim milk determined pursuant to § 1002.246 (b) and (c) to be in excess of the volume included in the fluid milk products and products included in § 1002.41(c)(1) accounted for in paragraph (a) (1) and (2) of this section.

In the event that the skim milk in fluid milk products or products included in § 1002.41(c)(1) is classified in more than one class, the tabulation should be subdivided to show the quantity of skim milk in each class. The total of all skim milk so tabulated shall be known as the skim milk accounted for.

* * * * *

10. Section 1002.145 is revised to read as follows:

§ 1002.145 Shrinkage allowance.

Shrinkage shall be allocated to a handler's receipts and classified at each plant as follows: Add to the skim milk and butterfat in Class III the skim milk and butterfat determined pursuant to paragraph (a) (1) and (2) of this section: Provided, that the skim milk and butterfat assigned to Class III pursuant to paragraph (a)(1) of this section may not exceed the skim milk and butterfat determined in paragraph (b) of this section. Add to the skim milk and butterfat in Class I-A and Class I-B the amounts determined in paragraph (c) of this section.

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) of this section, which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in pool milk received from producers, in milk received from pool units, and in milk received from units other than pool units, exclusive of the quantity for which Class II or Class III utilization was requested by the handler;

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from other pool plants;

(3) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from plants other than those defined in § 1002.8 (b) or (d), excluding the quantity for which Class II or Class III classification is requested by the handler; and

(5) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1) through (4) of this section.

(c) Shrinkage in excess of the amounts assigned to Class III pursuant to paragraphs (a) and (b) of this section shall be assigned pro rata to Class I-A and Class I-B in accordance with the respective volumes of skim milk and butterfat actually accounted for in each such class.

11. Section 1002.180 is revised to read as follows:

§ 1002.180 Assignment at a plant which is not a pool plant, an other order plant nor a producer-handler plant under any other order.

Skim milk or butterfat transferred in the following forms from a pool plant or pool unit to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(a) As Class I-A milk, if transferred in the form of a packaged fluid milk product; and

(b) As Class I-A milk, if transferred in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(1) The transferring handler claims classification pursuant to the assignment set forth in paragraph (c) of this section in the handler's report submitted to the market administrator pursuant to § 1002.30 for the month within which such transaction occurred;

(2) The operator of such transferee plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification;

(3) In determining the nonpool plant's utilization for purposes of this section, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a second nonpool plant shall be classified pursuant to the same assignment procedure with respect to receipts and utilization at such second nonpool plant, except that classification of such transfers in Class I-A and Class I-B shall not be less than the quantities which would be assigned to those classes if the transfer of such products had been directly from a pool plant or pool unit.

(c) Skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at the transferee plant pursuant to paragraph (b)(2) of this section:

(1) Packaged receipts of fluid milk products from Federal order sources shall first be assigned to route disposition in Federal order marketing areas (assigning receipts to sales in the same market to the extent possible) and any residual shall be assigned to Class I-B route sales.

(2) Such bulk transfers and other bulk receipts of fluid milk products at such transferee plant from pool plants and units and from other order plants shall next be assigned to any remaining route disposition in any Federal order marketing area. For this purpose receipts from each Federal order market shall first be assigned to remaining route sales in such marketing area and any remainder of such receipts shall be prorated with all Federal order receipts to remaining route disposition in all Federal order marketing areas.

(3) Receipts from dairy farmers shall then be assigned to any remaining route sales in the marketing area.

(4) Remaining receipts from dairy farmers and other unregulated other source receipts (excluding opening inventory) in the form of fluid milk products shall be assigned pro rata to Class I-B, Class II, and Class III utilization at such plant to the extent of such utilization available at such plant and any remainder of such receipts shall be assigned pro rata to Class I-A bulk sales to plants regulated under this order and Class I bulk sales to plants regulated under other orders.

(5) Receipts of bulk fluid cream products from plants defined pursuant to § 1002.8 (b) and (d) shall be assigned pro rata among such plants to any remaining Class II and Class III utilization on a pro rata basis, then to any remaining Class I-A disposition and finally any Class I-B disposition.

(6) Any remaining receipts of fluid milk products or bulk fluid cream products being assigned pursuant to this paragraph shall be assigned pro rata with remaining receipts from other order plants, first to remaining Class I-A utilization, then to Class I-B utilization, then to Class II utilization, and finally to Class III utilization at such plant: *Provided*, That if on inspection of the books and records of such plant the market administrator finds that there is insufficient utilization to cover such receipts, the remainder shall be classified as Class I-A.

(7) Any remaining Class I-A route disposition in any Federal marketing area shall be subject to the pricing specified in § 1002.60(d)(2).

12. Section 1002.220 is revised to read as follows:

§ 1002.220 Method of accounting for closing inventories.

Skim milk and butterfat in the form of fluid milk products and products included in § 1002.41(c)(1) shall be accounted for and classified by the handler at the time of filing reports in accordance with § 1002.30 as follows:

(a) As Class I-A in the form of packaged fluid milk products at a pool plant.

(b) As Class II in the form of packaged products included in § 1002.41(c)(1).

(c) As Class III in the form of bulk fluid milk products and bulk products included in § 1002.41(c)(1) at a pool plant or such products in bulk or packaged form at a plant not defined in § 1002.8 (b) or (d).

13. In § 1002.221, the introductory text is revised to read as follows:

§ 1002.221 Method of accounting for fluid milk products and products included in § 1002.41(c)(1) in transit at the end of a month from a pool plant to a pool plant.

All fluid milk products and products included in § 1002.41(c)(1) transferred from a pool plant but not received until the following month at the transferee pool plant shall be considered in transit and shall be accounted for in the following manner:

* * * * *

14. In § 1002.222, the introductory text is revised to read as follows:

§ 1002.222 Method of accounting for fluid milk products and products included in § 1002.41(c)(1) in transit at the end of a month from a pool plant to a plant other than a pool plant.

All fluid milk products and products included in § 1002.41(c)(1) transferred from a pool plant but not received until the following month at a transferee plant which is not a pool plant shall be considered in transit and shall be accounted for in the following manner:

* * * * *

15. Section 1002.233 is revised to read as follows:

§ 1002.233 Weights and equivalents of condensed skim milk and skim milk powder.

In the absence of information establishing the weight or skim milk equivalent of condensed skim milk and skim milk powder, the following table shall be used:

CONDENSED SKIM MILK

Percent total solids in the mixture	Weight per gallon (pounds)	Skim equiv. factor	Skim equiv. factor
A	B	C	D
Less than 24.5	9.10	2.281	1.333
24.5 but less than 25.5	9.22	2.851	1.915
25.5 but less than 26.5	9.26	2.965	2.033
26.5 but less than 27.5	9.30	3.079	2.151
27.5 but less than 28.5	9.34	3.193	2.269
28.5 but less than 29.5	9.38	3.307	2.387
29.5 but less than 30.5	9.42	3.421	2.505
30.5 but less than 31.5	9.46	3.536	2.624
31.5 but less than 32.5	9.51	3.649	2.742
32.5 but less than 33.5	9.55	3.763	2.860
33.5 but less than 34.5	9.59	3.877	2.977
34.5 but less than 35.5	9.63	3.991	3.095
35.5 but less than 36.5	9.68	4.105	3.214
36.5 but less than 37.5	9.72	4.219	3.331
37.5 but less than 38.5	9.77	4.333	3.450
38.5 but less than 39.5	9.81	4.447	3.567
39.5 but less than 40.5	9.85	4.561	3.685
40.5 but less than 41.5	9.90	4.675	3.803
41.5 but less than 42.5	9.95	4.789	3.922
42.5 but less than 43.5	9.99	4.903	4.039
43.5 but less than 44.5	10.04	5.017	4.157
44.5 but less than 45.5	10.08	5.131	4.275
45.5 but less than 46.5	10.13	5.245	4.393
46.5 but less than 47.5	10.18	5.359	4.511
47.5 but less than 48.5	10.23	5.473	4.629
48.5 but less than 49.5	10.28	5.587	4.748
49.5 but less than 50.5	10.33	5.701	4.866

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CONDENSED SKIM MILK—Continued

Percent total solids in the mixture	Weight per gallon (pounds)	Skim equiv. factor	Skim equiv. factor
A	B	C	D
50.5 but less than 51.5	10.37	5.616	4.993
51.5 but less than 52.5	10.43	5.929	5.102
52.5 but less than 53.5	10.48	6.043	5.220
53.5 but less than 54.5	10.53	6.157	5.337
54.5 but less than 55.5	10.58	6.271	5.456
Skim milk powder		11.009	10.360

18. Section 1002.242 is revised to read as follows:

§ 1002.242 Skim milk and butterfat in lowfat milk.

(a) The butterfat content of lowfat milk shall be the same as the butterfat in the milk, cream, and skim milk used to make the product.

(b) Skim milk in lowfat milk shall be the weight of the product less the butterfat content determined pursuant to paragraph (a) of this section.

(c) In the absence of information showing the ingredients used in the production of lowfat milk, either prevailing minimum butterfat standards for lowfat milk or actual butterfat tests are to be allowed.

17. In section 1002.246, paragraph (b) is revised to read as follows, and in paragraph (c), the words "Class II" are changed to "Class III".

§ 1002.246 Skim milk equivalent of condensed skim milk and skim milk powder.

* * * * *

(b) When condensed skim milk or skim milk powder are used to fortify fluid milk products or products included in § 1002.41(c)(1), the skim milk equivalent of that portion of such product which is in excess of the volume included in the fortified fluid milk product or product included in § 1002.41(c)(1) shall be determined by multiplying the pounds of condensed skim milk and skim milk powder by the factor in column D in the table in § 1002.233. The skim milk equivalent so determined shall be accounted for as a Class III disposition. Condensed skim milk and skim milk powder used to fortify fluid milk products and products included in § 1002.41(c)(1) will be considered to contribute no butterfat to the product so fortified.

* * * * *

18. Section 1002.248 is revised to read as follows:

§ 1002.248 Skim milk and butterfat in churn buttermilk and churn buttermilk products.

Skim milk and butterfat on hand at or leaving the plant in the form of churn buttermilk and churn buttermilk products together with the skim milk and butterfat contained in the butter shall be considered the net result of the fluid milk products, products included in § 1002.41(c)(1), and other source milk used: Provided, That if skim milk and butterfat in churn buttermilk and churn buttermilk products are held in closing inventory or disposed of from the plant in the form of a fluid milk product or product included in § 1002.41(c)(1), such skim milk and butterfat contained in these products shall be treated as fluid milk products or products included in § 1002.41(c)(1). The skim milk and butterfat claimed to have been used in the manufacture of butter shall be reduced by the quantities of skim milk and butterfat determined to be contained in these fluid milk products or products included in § 1002.41(c)(1).

19. Section 1002.249 is revised to read as follows:

§ 1002.249 Skim milk and butterfat used to manufacture products other than fluid milk products and products included in § 1002.41(c)(1).

Skim milk and butterfat, in the form of fluid milk products, products included in § 1002.41(c)(1), and other source milk, claimed to have been used in the manufacture of other than fluid milk products and products included in § 1002.41(c)(1) will be allowed as claimed in the light of the skim milk and butterfat contained in the finished products. The evaluation of each claim shall include a full consideration of all available information.

20. Section 1002.280 is revised to read as follows:

§ 1002.280 Procedure for establishing fluid milk products and products included in § 1002.41(c)(1) dumped.

Fluid milk products and products included in § 1002.41(c)(1) that are dumped may be classified as Class III only to the extent that the following procedure is followed:

(a) The market administrator is given prior notice and the opportunity to verify the fluid milk products and products included in § 1002.41(c)(1) to be dumped.

(1) Prior notice is given during normal business hours by telephone to the office of the market administrator.

(2) Prior notice at other times is given by speaking to any authorized person on a list of special telephone numbers provided by the market administrator.

(b) Route returns are dumped between the hours of 9 a.m. and 4:45 p.m., Monday through Friday, except holidays. Notice is given by calling the office of the market administrator prior to 3 p.m. of the day dumpage takes place.

(c) On dumpage other than route returns, a representative sample of the dumped product taken by the handler is made available to the market administrator.

[FR Doc. 91-11821 Filed 5-14-91; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150—AD91

Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations for light-water nuclear power plants to change the procedure for calculating the amount of radiation embrittlement that a reactor vessel receives. The pressurized thermal shock rule (PTS rule) establishes a screening criterion. This criterion limits the amount of embrittlement of a reactor vessel beltline material beyond which the plant cannot continue to operate without justification based on a plant-specific analysis. The final amendment does not change the screening criterion. The PTS rule also prescribes the procedure that must be used for calculating the amount of embrittlement for comparison to the screening criterion. The final amendment updates the procedure and makes it consistent with the one given in Regulatory Guide 1.99, Revision 2, published in May 1988.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Allen L. Hiser, Jr., Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-3988.

SUPPLEMENTARY INFORMATION:

Background

Pressurized thermal shock events are system transients in a pressurized water reactor (PWR) that can cause severe overcooling followed by immediate repressurization to a high level. The thermal stresses caused by rapid cooling of the reactor vessel inside surface combine with the pressure stresses to increase the potential for fracture if an initiating flaw is present in low toughness material. This material may exist in the reactor vessel beltline, adjacent to the core, where neutron radiation gradually embrittles the material during plant lifetime. The degree of embrittlement depends on the chemical composition of the steel, especially the copper and nickel contents.

The toughness of reactor vessel materials is characterized by a "reference temperature for nil ductility transition" (RT_{NDT}), which is determined by destructive tests of material specimens. For many reactors now in operation, toughness of the beltline materials at room temperature is low. As temperature is raised, toughness increases slowly at first; but at the temperature defined as RT_{NDT}, toughness begins to increase much more rapidly. The transition in toughness from low values to high that takes place above RT_{NDT} means that vessel materials are quite tough at normal operating temperatures. Radiation embrittlement moves RT_{NDT} to higher temperatures. Correlations based on test results for unirradiated and irradiated specimens have been developed to calculate the shift in RT_{NDT} as a function of neutron fluence for various material compositions. The value of RT_{NDT} at a given time in a vessel's life is used in fracture mechanics calculations to determine whether assumed pre-existing flaws would propagate as cracks when the vessel is stressed.

The Pressurized Thermal Shock (PTS) rule, 10 CFR 50.61, adopted on July 23, 1985 (50 CFR 29937), establishes a screening criterion. This screening criterion establishes a limiting level of embrittlement beyond which operation cannot continue without further plant-specific evaluation. The screening criterion is given in terms of RT_{NDT}, calculated as a function of the copper and nickel contents of the material and the neutron fluence according to the procedure given in the PTS rule, and called RT_{PTS} to distinguish it from other procedures for calculating RT_{NDT}.

The PTS rule requires each PWR licensee to report the results of the calculations of predicted RT_{PTS} values for each beltline material (including the copper, nickel and fluence values that provided the basis for the calculations) from the time he submits his report to the expiration date of the operating license (EOL). The PTS rule further provides that if RT_{PTS} for the controlling material is predicted to exceed the screening criterion before EOL, the licensee should submit plans and a schedule for flux reduction programs that are reasonably practicable to avoid reaching the screening criterion. Finally, the PTS rule requires licensees of plants that would reach the screening criterion before EOL despite the flux reduction program to submit a plant-specific safety analysis justifying operation beyond the screening criterion. The licensee must submit the analysis at least 3 years before the plant is predicted to reach that limit. Regulatory Guide 1.154, "Format and Content of Plant-Specific Pressurized Thermal Shock Safety Analysis Reports for Pressurized Water Reactors" provides guidance for the preparation of the report and describes acceptance criteria that the NRC staff would use.

In response to the PTS rule, the licensees of operating reactors have submitted the fluence predictions and material composition data and these have now been accepted. Of greater importance are the flux reduction programs that have been undertaken by licensees for those plants having high values of RT_{PTS}.

On December 28, 1989 (54 FR 52946), the Commission published the proposed rule to change the procedure for calculating RT_{PTS} to reflect recent findings that embrittlement is occurring faster than predicted by the PTS rule for some reactor vessel materials. Although the PTS rule was adopted on July 23, 1985, the procedure for calculating RT_{PTS} was developed in 1981–1982 and not updated because a number of licensees were using the 1982 formulations as the basis for flux reduction programs. Meanwhile, plant surveillance data were being added to the data base and there were extensive new and more accurate correlations made. These culminated in Revision 2 to Regulatory Guide 1.99, "Radiation Embrittlement of Reactor Vessel Materials," published in May 1988. Revision 2 provides the basis for pressure-temperature limit calculations. Peer review of the new correlations was provided by the public comments on Revision 2.

In the regulatory analysis prepared for Revision 2, and repeated in the regulatory analysis for this amendment, the NRC evaluated the impact of amending the PTS rule to be consistent with the Guide. Copper and nickel contents and fluence values for each PWR reactor vessel were taken from the PTS submittals from licensees. When the values of RT_{PTS} were recalculated using these quantities and the procedure developed for Revision 2, the results were higher for approximately half the vessels, including three vessels where the value may be over 60°F higher than previously thought. This would increase the probability of PTS-induced vessel failure by a factor of at least 30 for those plants.

The NRC believes these changes in the nonconservative direction are greater than can be absorbed by the uncertainties believed to exist and taken into account by the NRC when the RT_{PTS}-based screening limit was set. (A margin of 48°F is added in the calculation of RT_{PTS} to cover not only the uncertainty in the formula for embrittlement but also the uncertainties in the copper, nickel, and fluence values entered in the formula.) Based on this new information, the probability of reactor vessel failure by fracture during a PTS event is presently higher in some vessels than the probability based on the procedure for calculating RT_{PTS} which is given in the present PTS rule. Moreover, a few of those reactor vessels will reach the screening criterion in the 1990's. Thus, the current PTS rule needs to be amended.

A 75 day comment period expired on March 12, 1990. Comments were received from 15 respondents.

Summary of Public Comments

The proposed amendments have been modified in response to the comments received and will be published in final form, as modified, to become effective 30 days after publication of this final rule. Changes were made in response to the public comments to introduce flexibility and technical improvement in the calculation of RT_{PTS} by requiring consideration of the plant-specific surveillance data and operating conditions when they would have a significant effect on the date the screening criterion would be reached. Another change was made to loosen the reporting schedule for licensees whose reactor vessels will not become highly embrittled. A summary of the public comments and staff responses follows:

1. Validity of a Limited Revision

Several comments questioned broad issues in the PTS rule and urged that a limited revision not be undertaken. Some comments said that the screening criterion should be raised (made less conservative) because they believed that the calculated probability of fracture would be reduced if the new embrittlement formula was substituted for the old in those calculations. Other comments pointed out changes in the assumptions about flaw size and

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location, as well as updated information about the expected severity and frequency of PTS transients as reasons to revisit the screening criterion. Still other comments questioned the use of a single parameter, RT_{PTS}, in the screening criterion and asked for consideration of a multiparameter criterion.

Staff Response

A general response to the comments is as follows. First, the scope of the proposed amendment is narrow: to make technical corrections in the embrittlement formula for calculation of RT_{PTS} values to compare to the screening criterion. A general revision of the PTS rule must wait until further research is done. Second, the screening criterion is not a safety limit. It is a tripwire which triggers a plant-specific safety analysis, i.e., it defines which licensees need to do that analysis and when it should be done. Third, the screening criterion is not linked directly to a predicted frequency of through-wall cracking. Only when the plant-specific analysis is done (using plant-specific systems and fracture parameters) is the criterion for continued operation based on a through-wall crack frequency of 5×10^{-6} per reactor year. It is Regulatory Guide 1.154, "Format and Content of Plant-Specific Pressurized Thermal Shock Safety Analysis Reports for Pressurized Water Reactors" (not 10 CFR 50.61) which states that this frequency is the staff's primary acceptance criterion for continued operation.

In specific response to the issue of conservatism, the Regulatory Analysis for the proposed rule summarized the results of some studies of the effects on through-wall crack frequency when calculated using the proposed embrittlement formula instead of the one used in the original PTS rule and Monte Carlo analyses done earlier. These studies showed that the PTS rule is more conservative than previously thought for some accident scenarios, but not for all. The results did not justify raising the screening criterion.

2. Alternative Use of Plant-Specific Surveillance Data

Eleven out of fifteen comments urged the addition of this alternative to the proposed RT_{PTS} calculation method based on copper and nickel contents and fluence, noting that this alternative is allowed in calculating pressure-temperature limits using R.G. 1.99.[1] The strongest need for this alternative is for plants nearing the screening criterion. In the plant-specific PRA (probabilistic risk analysis) required as the basis for allowing a plant to operate beyond the screening criterion, any embrittlement information may be used if justification is given. Noting this, commenters said that the use of plant-specific surveillance data would in some cases make the PRA results favorable; therefore, it should be permissible to use such data in calculating RT_{PTS}, thereby avoiding the time and expense of the PRA analysis.

Staff Response

The proposed amendment to the PTS rule is prescriptive on the issue of calculating RT_{PTS}, because not many plants meet the criteria for "credible" surveillance data given in R.G. 1.99 in all respects and because the criteria are somewhat subjective. Lengthy disputes over credibility are anticipated, based on experience in applying R.G. 1.99 elsewhere. Moreover, in many cases there is a difficult choice to be made between reliance on a very small amount of plant-specific surveillance data, or a calculated value based on a large data base of specimens most of which were irradiated in other reactors.

Nevertheless, in response to the widespread comments, it is agreed that there is need for some flexibility in the PTS rule to permit consideration of all available information. A new paragraph (b)(3) has been added and the existing paragraphs (b)(3) through (b)(6) have been renumbered. The intent of the new paragraph (b)(3) is to provide flexibility for use in two kinds of special situations. Commenters dwelt on the situation where surveillance data showed the vessel to be significantly less embrittled than indicated by the proposed embrittlement formula. In the other situation, there is information from surveillance data or other information such as the operating temperature of the reactor vessel that shows the vessel may be significantly more embrittled than calculated by the proposed rule.[2] Thus, some flexibility has been added to the rule to ensure that significant information is not ignored.

Several of the commenters on this issue recommended that Position C 2, "Surveillance Data Available," as well as the criteria for credibility of the surveillance data, given in R.G. 1.99, be incorporated in the PTS rule in total. The staff has rejected this suggestion in an effort to keep the implementation of the PTS rule as simple as possible. It is anticipated that only those licensees whose vessels are approaching the screening criterion would make use of paragraph (b)(3). Its use requires review and approval by the staff, at which time the guidelines in R.G. 1.99 may be appropriate, but not necessarily so.

3. Use of Measured Values of RT_{NDT}

Several comments said that the changes in wording of the requirement in paragraph (b)(2)(i) that "measured values must be used if available . . ." represented a change in the rule which reduced its flexibility.

Staff Response

There is no change in intent. The words were changed in the proposed rule to remove any ambiguity. A further clarification was made in the final rule by adding the words "if credible values are available." The intent is to allow a licensee to offer justification for not using a particular measured value if he does not have confidence in it.

4. Only a Few Plants are Affected Significantly, but the Proposed Rule Adds a Regulatory Burden on All and a Public Relations Burden Also

The proposed PTS rule "reorders" the list of reactor vessels in terms of their sensitivity to PTS events, and should be revised to reduce these impacts by increasing flexibility in the requirements or by a multiparameter approach.

Staff Response

To limit the effort required by the industry, the PTS rule prescribes a screening criterion to separate out those plants that should do the PRA analysis, based on the level of embrittlement of the reactor vessels, i.e., the rule describes who should do the analysis, and when they should do it. Yet, the foregoing comments request that either some kind of intermediate screening procedure be established that considers several parameters instead of only RT_{PTS}, or that the objective should be accomplished by introducing flexibility into the rule.

The staff has rejected the suggestion of a "mini-PRA" as an intermediate procedure, because that opens the door to very misleading conclusions. When the PTS rule was in the early formative stages, there were proposals for a deterministic criterion. However, it soon became clear that there was no way to choose the design transient from among the array of transients of increasing severity but lower frequency. Extending this reasoning to PRAs, the staff concludes that a partial PRA is inappropriate. These comments have been rejected, but paragraph (b)(1) has been modified to reduce the reporting burden for all plants except those expected to reach the screening criterion before the end of their operating life. These modifications are in addition to the amendments to paragraph (b)(1) that were published in the proposed rule to simplify the reporting requirements.

5. Use of "Adequate Protection" Exception to the Backfit Rule

One comment said that flexibility in granting exemptions to the rule or exceptions to the required submittal schedules would be reduced if exception was taken to the backfit rule (10 CFR 50.109) on the basis that the amendments to the PTS rule were needed to provide adequate protection to the health and safety of the public.

Staff Response

The staff has continued to cite "adequate protection," because it believes that the amendment to the PTS rule is necessary to assure that there is no undue risk to public health and safety from pressurized thermal shock. Characterizing the amendment as "necessary to assure adequate protection" does not preclude the NRC from granting exemptions to the rule, so long as licensees propose alternatives which assure adequate protection. The staff also notes that the PTS rule, paragraphs (b)(5), (b)(6) and (b)(7), provides procedures for the kind of case-by-case review that would normally be the basis for an exemption. There is even what amounts to an appeal procedure in paragraph (b)(7) whereby a licensee whose plant-specific analysis and proposed corrective actions are not approved can again request consideration of additional modifications to equipment, systems and operation of the facility in addition to those previously proposed.

Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required.

The PTS rule is one of several regulatory requirements the function of which is to ensure reactor vessel integrity. This amendment to the PTS rule updates the procedure for calculating the level of embrittlement of the reactor vessel beltline as a result of neutron radiation. Use of the updated procedure will not result in any adverse changes in power level, effluents, or other operational characteristics of a nuclear power reactor. Therefore, this rule is not expected to have any significant effect on the environment. Moreover, since the use of the updated procedure is likely to result in more accurate and conservative predictions of transition to nil ductility, the risk of an accident and attendant environmental consequences is likely to be reduced under the new amended rule.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Allen L. Hiser, Jr., Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-3968.

Paperwork Reduction Act Statement

This rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These information collection requirements were approved by the Office of Management and Budget Approval No. 3150-0011.

Public reporting burden for this collection of information is estimated to average approximately 331 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), Division of Information Support Services, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019 (3150-0011), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC staff prepared a regulatory analysis for the final rule, which describes the factors and alternatives considered by the Commission in deciding to propose this rule.

A copy of the regulatory analysis is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555. Single copies of the analysis may be obtained from Allen L. Hiser, Jr., Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-3968.

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule specifies minimum fracture toughness properties of irradiated pressure vessel materials to ameliorate the effects of PTS events on nuclear facilities licensed under the provision of 10 CFR 50.21(b) and 10 CFR 50.22. The companies that own these facilities do not fall within the scope of the definition of "small entities" as set forth in the Regulatory Flexibility Act or the Small Business Size Standards in regulations issued by the Small Business Administration at 10 CFR part 121.

Backfit Analysis

The NRC has concluded, on the basis of the documented evaluation required by 10 CFR 50.109(a)(4), that the backfit requirements contained in this amendment are necessary to ensure that the facility provides adequate protection to the public health and safety, and, therefore, that a backfit analysis is not required and the cost-benefit standards of 10 CFR 50.109(a)(3) do not apply. The documented evaluation given in the regulatory analysis includes a statement of the objectives of and reasons for the backfits that would be required by the rule and sets forth the basis for the NRC's conclusion that these backfits are not subject to the cost-benefit standards of 10 CFR 50.109(a)(3).

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and 5 U.S.C. 553, the NRC is adopting

[1] Radiation Embrittlement of Reactor Vessel Materials, Regulatory Guide 1.99, Revision 2, May, 1988.

[2] The irradiation temperatures represented in the data base that was correlated to obtain the formula in the PTS rule ranged from 525 to 580 degrees Fahrenheit. Operation below that temperature range is considered to cause more embrittlement.

the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation of part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.48 (a) and (b), and 50.54(c) are issued under sec. 161b, 161i and 161o, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.7(a), 50.10 (a)–(c), 50.34 (a) and (e), 50.44 (a)–(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i)(1), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a) (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49 (d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.8, paragraph (b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.46, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.63, 50.64, 50.71, 50.72, 50.80, 50.82, 50.90, 50.91, and appendixes A, B, E, G, H, I, J, K, M, N, O, Q, and R.

* * * * *

3. In § 50.61, paragraph (b) is revised to read as follows:

§ 50.61 Fracture toughness requirements for protection against pressurized thermal shock events.

* * * * *

(b) *Requirements.*

(1) For each pressurized water nuclear power reactor for which an operating license has been issued, the licensee shall submit projected values of RT_{PTS} for reactor vessel beltline materials by giving values for the time of submittal, the expiration date of the operating license, the projected expiration date if a change in the operating license has been requested, and the projected expiration date of a renewal term if a request for license renewal has been submitted. The assessment must use the calculative procedures given in paragraph (b)(2) of this section. The assessment must specify the bases for the projection, including the assumptions regarding core loading patterns. The submittal must list the copper and nickel contents, and the fluence values used in the calculation for each beltline material. If these quantities differ from those submitted in response to the original PTS rule and accepted by the NRC, justification must be provided. If the value of RT_{PTS} for any material in the beltline is projected to exceed the PTS screening criterion before the expiration date of the operating license or the proposed expiration date if a change in the license has been requested, or the end of a renewal term if a request for license renewal has been submitted, this assessment must be submitted by December 16, 1991. Otherwise, this assessment must be submitted with the next update of the pressure-temperature limits, or the next reactor vessel material surveillance report, or 5 years from the effective date of this rule, whichever comes first. These submittals must be updated whenever there is a significant change in projected values of RT_{PTS}, or upon a request for a change in the expiration date for operation of the facility.

(2) The pressurized thermal shock (PTS) screening criterion is 270°F for plates, forgings, and axial weld materials, or 300°F for circumferential weld materials. For the purpose of comparison with this criterion, the value of RT_{PTS} for the reactor vessel must be calculated as follows, except as provided in paragraph (b)(3) of this section. The calculation must be made for each weld and plate, or forging, in the reactor vessel beltline.

Equation 1. $RT_{PTS} = I + M + \Delta RT_{PTS}$

(i) "I" means the initial reference temperature (RT_{NDT}) of the unirradiated material measured as defined in the ASME Code, Paragraph NB-2331. Measured values must be used if credible values are available; if not, the following generic mean values must be used: 0°F for welds made with Linde 80 flux, and −56°F for welds made with Linde 0091, 1092 and 124 and ARCOS B-5 weld fluxes.

(ii) "M" means the margin to be added to cover uncertainties in the values of initial RT_{NDT}, copper and nickel contents, fluence and the calculational procedures. In Equation 1, M is 66°F for welds and 48°F for base metal if generic values of I are used, and M is 56°F for welds and 34°F for base metal if measured values of I are used.

(iii) ΔRT_{PTS} is the mean value of the adjustment in reference temperature caused by irradiation and should be calculated as follows:

Equation 2: $\Delta RT_{PTS} = (CF) f^{(0.28 - 0.10 \log f)}$

(iv) CF (°F) is the chemistry factor, a function of copper and nickel content. CF is given in table 1 for welds and in table 2 for base metal (plates and forgings). Linear interpolation is permitted. In Tables 1 and 2 "Wt-% copper" and "Wt-% nickel" are the best-estimate values for the material, which will normally be the mean of the measured values for a plate or forging or for weld samples made with the weld wire heat number that matches the critical vessel weld. If these values are not available, the upper limiting values given in the material specifications to which the vessel was built may be used. If not available, conservative estimates (mean plus one standard deviation) based on generic data [1] may be used if justification is provided. If none of these alternatives are available, 0.35% copper and 1.0% nickel must be assumed.

(v) "f" means the best estimate neutron fluence, in units of 10^{19} n/cm^2 (E greater than 1 MeV), at the clad-base-metal interface on the inside surface of the vessel at the location where the material in question receives the highest fluence for the period of service in question.

TABLE 1.—CHEMISTRY FACTOR FOR WELDS, °F

Copper, Wt-%	Nickel, Wt-%						
	0	0.20	0.40	0.60	0.80	1.00	1.20
0	20	20	20	20	20	20	20
0.01	20	20	20	20	20	20	20
0.02	21	28	27	27	27	27	27
0.03	22	35	41	41	41	41	41
0.04	24	43	54	54	54	54	54
0.05	26	49	67	68	68	68	68
0.06	29	52	77	82	82	82	82
0.07	32	55	85	95	95	95	95
0.08	36	58	90	108	108	108	108
0.09	40	61	94	115	122	122	122
0.10	44	65	97	122	133	135	135
0.11	49	68	101	130	144	148	148
0.12	52	73	103	136	153	161	161
0.13	56	76	106	139	162	172	176
0.14	61	79	109	142	168	182	188
0.15	66	84	112	146	175	191	200
0.16	70	88	115	149	178	199	211
0.17	75	92	118	151	184	207	221
0.18	79	96	122	154	187	214	230
0.19	83	100	126	157	191	220	238
0.20	88	104	129	160	194	223	245
0.21	92	108	133	164	197	229	252
0.22	97	112	137	167	200	232	257
0.23	101	117	140	169	203	236	263
0.24	106	121	144	173	206	239	268
0.25	110	126	148	176	209	243	272
0.26	113	130	151	180	212	246	276
0.27	116	134	155	184	216	249	280
0.28	122	138	160	187	218	251	284
0.29	128	142	164	191	222	254	287
0.30	131	146	167	194	225	257	290
0.31	136	151	172	198	228	260	293
0.32	140	155	175	202	231	263	296
0.33	144	160	180	205	234	266	299
0.34	149	164	184	209	238	269	302
0.35	153	168	187	212	241	272	305
0.36	158	172	191	216	245	275	308
0.37	162	177	196	220	248	278	311
0.38	166	182	200	223	250	281	314
0.39	171	185	203	227	254	285	317
0.40	175	189	207	231	257	288	320

TABLE 2.—CHEMISTRY FACTOR FOR METAL, °F

Copper, Wt-%	Nickel, Wt-%						
	0	0.20	0.40	0.60	0.80	1.00	1.20
0	20	20	20	20	20	20	20
0.01	20	20	20	20	20	20	20
0.02	20	20	20	20	20	20	20
0.03	20	20	20	20	20	20	20
0.04	22	28	28	28	28	28	28
0.05	25	31	31	31	31	31	31
0.06	28	37	37	37	37	37	37
0.07	31	43	44	44	44	44	44
0.08	34	48	51	51	51	51	51
0.09	37	53	58	58	58	58	58
0.10	41	58	65	66	67	67	67
0.11	45	62	72	74	77	77	77
0.12	49	67	79	83	86	86	86
0.13	53	71	85	91	96	96	96
0.14	57	75	91	100	106	106	106
0.15	61	80	98	110	115	117	117
0.16	65	84	104	118	123	125	125
0.17	69	88	110	127	132	135	135
0.18	73	92	115	134	141	144	144
0.19	76	97	120	142	150	154	154
0.20	82	102	125	149	159	164	165
0.21	86	107	129	155	167	172	174
0.22	91	112	134	161	176	181	184
0.23	95	117	138	167	184	190	194
0.24	100	121	143	172	191	199	204
0.25	104	126	148	176	199	209	214
0.26	109	130	151	180	205	216	221
0.27	114	134	155	184	211	225	230
0.28	118	138	160	187	216	233	239
0.29	124	142	164	191	221	241	248
0.30	129	146	167	194	225	249	257
0.31	134	151	172	198	228	255	266
0.32	139	155	175	202	231	260	274
0.33	144	160	180	205	234	264	282
0.34	149	164	184	209	238	268	290
0.35	153	169	187	212	241	272	298
0.36	158	173	191	216	245	275	303
0.37	162	177	196	220	248	278	308
0.38	166	182	200	223	250	281	313
0.39	171	185	203	227	254	285	317
0.40	175	189	207	231	257	288	320

[1] Data from reactor vessels fabricated to the same material specification in the same shop as the vessel in question and in the same time period is an example of "generic data."

TABLE 1.—CHEMISTRY FACTOR FOR WELDS, °F—Continued

TABLE 2.—CHEMISTRY FACTOR FOR METAL, °F—Continued

(3) To verify that the values of RT_{PTS} calculated as required by paragraph (b)(2) of this section are bounding values for the specific reactor vessel, licensees shall consider plant-specific information that could affect the level of embrittlement. This information includes but is not limited to the reactor vessel operating temperature and surveillance results. Results from the plant-specific surveillance program shall be integrated into the embrittlement estimate if,

(i) The plant-specific surveillance data has been deemed credible as defined in Regulatory Guide 1.99 Revision 2, and

(ii) The RT_{PTS} value changes significantly.[2]

Any information that is believed to improve the accuracy of the RT_{PTS} value significantly shall be reported to the Director, Office of Nuclear Reactor Regulation. Values of RT_{PTS} that have been modified using the procedures of this paragraph are subject to the approval of the Director, Office of Nuclear Reactor Regulation when used as provided in this section.

(4) For each pressurized water nuclear power reactor for which the value of RT_{PTS} for any material in the beltline is projected to exceed the PTS screening criterion before the expiration date of the operating license, or the projected expiration date if a change in the license has been requested, or the end of a renewal term if a request for license renewal has been submitted, the licensee shall submit by March 16, 1992, an analysis and schedule for implementation of such flux reduction programs as are reasonably practicable to avoid exceeding the PTS screening criterion set forth in paragraph (b)(2) of this section. The schedule for implementation of flux reduction measures may take into account the schedule for submittal and anticipated Commission approval of detailed plant-specific analyses, submitted to demonstrate acceptable risk at values of RT_{PTS} above the screening limit due to plant modifications, new information or new analysis techniques.

[2] Changes to RT_{PTS} values are considered significant if either the value determined in paragraph (b)(2) of this section or the alternate value determined in paragraph (b)(3) of this section, or both values, exceed the screening criterion, prior to the expiration of the operating license, including any renewed term, if applicable, for the plant.

(5) For each pressurized water nuclear power reactor for which the analysis required by paragraph (b)(4) of this section indicates that no reasonably practicable flux reduction program will prevent the value of RT_{PTS} from exceeding the PTS screening criterion before the expiration date of the operating license, or the projected expiration date if a change in the operating license has been requested, or the end of a renewal term if a request for license renewal has been submitted, the licensee shall submit a safety analysis to determine what, if any, modifications to equipment, systems, and operation are necessary to prevent potential failure of the reactor vessel as a result of postulated PTS events if continued operation beyond the screening criterion is allowed. In the analysis, the licensee may determine reactor vessel materials properties based on available information, research results, and plant surveillance data, and may use probabilistic fracture mechanics techniques. This analysis must be submitted at least 3 years before the value of RT_{PTS} is projected to exceed the PTS screening criterion or by one year after the effective date of this amendment, whichever is later.

(6) After consideration of the licensee's analyses (including effects of proposed corrective actions, if any) submitted in accordance with paragraphs (b)(4) and (b)(5) of this section, the Commission may, on a case-by-case basis, approve operation of the facility at values of RT_{PTS} in excess of the PTS screening criterion. The Commission will consider factors significantly affecting the potential for failure of the reactor vessel in reaching a decision.

(7) If the Commission concludes, pursuant to paragraph (b)(6) of this section, that operation of the facility at values of RT_{PTS} in excess of the PTS screening criterion cannot be approved on the basis of the licensee's analyses submitted in accordance with paragraphs (b)(4) and (b)(5) of this section, the licensee shall request and receive Commission approval prior to any operation beyond the criterion. The request must be based upon modifications to equipment, systems, and operation of the facility in addition to those previously proposed in the submitted analyses that would reduce the potential for failure of the reactor

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vessel due to PTS events, or upon further analyses based upon new information or improved methodology.

Dated at Rockville, MD, this 6th day of May, 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91-11307 Filed 5-14-91 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice to waive the "Nonmanufacturer Rule" for multiple products.

SUMMARY: This notice advises the public that the Small Business Administration (SBA) is establishing a waiver of the "Nonmanufacturer Rule" for the products listed in SUPPLEMENTARY INFORMATION. These Products are being granted waivers because no small business is supplying them to the Federal government. The effect of a waiver is to allow an otherwise qualified regular dealer to supply the product of any domestic manufacturer on a Federal contract set aside for small business or awarded through the SBA 8(a) program.

EFFECTIVE DATE: May 15, 1991.

FOR FURTHER INFORMATION CONTACT: James Fairbairn, Industrial Specialist, phone (202) 205-6465.

SUPPLEMENTARY INFORMATION:

PSC	Product lines granted waivers
3805	Loaders.
3820	Drill Rigs.
4710	Pipe and Tubing, High Nickel Alloy.
5805	Digital EPBX Equipment.
6810	Soda Ash, Ethyl Acetate, Propylene Glycol, Caustic Soda, Methylene Chloride, Acetone, 1,1,1,-Trichloroethane, Heptane, HPLC, Methanol, Nitric Acid, Toluene, Hydrochloric Acid NN-Dimethyl Formamine, Ammonium Sulfate, Benzene.
7220	Vinyl Surface, Tile and Roll; Carpet Tile; Woven Carpet, 6-Feet Vinyl Back Broadloom.
9510	Bars and Rods, High Nickel Alloy.
9515	Plate, Sheet, Strip and Foil; Stainless Steel and High Nickel Alloy.
9520	Structural Shapes, High Nickel Alloy.
9525	Wire, Nonelectrical, High Nickel Alloy.
9530	Bars and Rods, High Nickel Alloy, Titanium, Aluminum, Nickel-Copper, Nickel-Copper-Aluminum, Copper, Copper-Nickel, Aluminum-Bronze and Naval Brass.
9540	Structural Shapes, Angles, Channels, Tees and Zees, Aluminum and High Nickel Alloy.
9546	Plate, Sheet, Strip, Foil and Wire; High Nickel Alloy.

After an initial survey of these product lines, SBA notified the public by notice in the **Federal Register** on December 18, 1990 (Vol. 55, No. 243 p. 51913), of its proposed intention to grant a waiver for the products indicated. After a thirty day comment period, small business sources were identified for only two products in the proposed waiver list, poultry and sulfuric acid. These products were therefore deleted from the final waiver list, and we now publish a final waiver for these products on this list. The basis for a waiver is that no small business manufacturer or processor is supplying these specific product lines to the Federal government.

On November 15, 1988, Public Law 100-656 incorporated into the Small Business Act the existing SBA policy that recipients of contracts set aside for small business or the SBA 8(a) Program shall provide the products of small business manufacturers or processors. This requirement is commonly known as the "Nonmanufacturer Rule". The SBA regulations imposing this requirement are found in 13 CFR 121.906(b) and 121.1108(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. A class of products is considered to be a particular Product and Service Code (PSC) under the Federal Procurement Data System or an SBA recognized product line within a PSC. To be considered in the Federal market, a small business must have been awarded a contract by the Federal government to supply that particular class of products within the past three years. SBA has been requested to issue a waiver for each of the products listed above because of an apparent lack of any small business manufacturers or processors for them within the Federal market. SBA searched its Procurement Automated Source System (PASS) for small business manufacturers or processors that have sold to the Federal government. When no small business manufacturers or processors were identified within the Federal market by the PASS search, we published a notice to the public in the **Federal Register** stating our proposed intention to grant waivers for these products unless new information was found. The notice described the legal provisions for a waiver, how SBA defines the market, and requested information as to whether small businesses manufacturers have sold them to the Federal government during the past three years.

We received only three comments on the notice of intent to issue a waiver for these products. The Department of the Treasury strongly supports the proposal to waive the rule for a wide range of chemicals and metal products Waiver for the products is thought to help both the agency and small business. Two other government agencies identified new small business sources for poultry and sulfuric acid. They have thus been deleted from the Proposed Rule. This waiver is being granted pursuant to statutory authority under section 303(h) of Public Law 100-656. A waiver for the designated products is for an indefinite period, but is subject to an annual review or upon receipt of information indicating that the conditions required for a waiver no longer exist. If SBA determines that the conditions required for a waiver no longer exist, the waiver will be determined. That termination will be published in the **Federal Register**.

Dated: April 29, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-10997 Filed 5-14-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-210-AD; Amendment 39-6997]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires repetitive inspections for cracking of the frame structure and skin in the fuselage section 41 and repair, if necessary. Such cracking, if not corrected, could result in sudden decompression of the fuselage. This amendment eliminates the X-ray inspection option for all airplanes, eliminates the borescope inspection for all airplanes that have accumulated more than 20,000 flight cycles, reduces the repetitive inspection intervals in

certain areas, and eliminates deferral of crack repair. This amendment is prompted by recommendations of the FAA-sponsored Boeing Model 747 Structures Working Group.

EFFECTIVE DATE: June 24, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 86-23-06 R1, Amendment 39-5563 (52 FR 7567, March 12, 1987), applicable to Boeing Model 747 series airplanes, to require repetitive inspections for cracking of body frames and skin in the fuselage section 41 and repair, if necessary, was published in the **Federal Register** on January 10, 1991 (56 FR 968).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters, the manufacturer and the Air Line Pilots Association (ALPA), fully supported the proposed rule.

Another commenter, the Air Transport Association (ATA) of America on behalf of its members, expressed no objection to the deletion of the x-ray and borescope inspections for airplanes with greater than 20,000 flight cycles; however, two members requested that the proposed rule be revised to defer repair of cracks at body station (BS) 400 bulkhead and at the nose wheel well forward canted bulkhead, as permitted by the existing AD 86-23-06 R1, since these areas have been safely monitored since 1973. The FAA does not concur. Since the issuance of that AD, the FAA has determined that the areas adjacent to the frames, such as the skin panels from BS 360 to 540, stringers 6 to 14, the nose wheel well vertical beams and webs, and BS 256 canted bulkhead chords and fuselage skin, are also prone to cracking and are the subject of other AD's. Based upon these findings of cracks in the adjacent areas, the FAA has determined that, in order to assure the continued operational safety of these airplanes, deferral of repairs of known cracks cannot be permitted.

Paragraph F. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 685 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 202 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3,612 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $40,129,320.

It should be noted that the total cost impact figure indicated above includes the labor costs of approximately 2,400 manhours for previously-required inspections that continue to be required by this new AD action. The additional costs imposed by new requirements of this AD action include labor charges for approximately 1,200 additional manhours.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding amendment 39-5563 (52 FR 7567, March 12, 1987), AD 86-23-06 R1, with the following new airworthiness directive:

AD 91-11-01. Boeing: Amendment 39-6997. Docket No. 90-NM-210-AD. Supersedes AD 86-23-06 R1.

Applicability: Model 747 series airplanes, listed in Boeing Alert Service Bulletin 747-53A2285, Revision 7, dated January 25, 1990, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent sudden decompression of the fuselage, accomplish the following:

A. Within the next 500 flight cycles after the effective date of this AD, or prior to accumulating the flight limit specified in Boeing Drawing 624U0001, Sheet 3, Revision A, dated December 14, 1989, whichever occurs later, accomplish the inspections contained in Boeing Alert Service Bulletin 747-53A2285, Revision 7, dated January 25, 1990. Repeat these inspections at intervals not to exceed those specified in the drawing.

B. If any cracking is found, repair in accordance with FAA-approved procedures prior to further flight. Concurrent with performing any repair, visually inspect adjacent structures in accordance with Section III of Boeing Alert Service Bulletin 747-53A2285, Revision 7, dated January 25, 1990, and repair any cracks in accordance with FAA-approved procedures prior to further flight.

C. For the purpose of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin differential pressure was greater than 2.0 PSI.

D. For Model 747SR airplanes only, based on continued mixed operation of lower cabin differentials, the initial inspection thresholds and the repetitive inspection intervals

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specified in this AD may be multiplied by a 1.2 adjustment factor.

E. For structure that has been installed during previous airplane modification/repair, the inspection thresholds referenced in paragraph A of this AD are measured from the time of replacement of that structure.

F. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

H. Installation of new and improved body frame structure in accordance with FAA-approved procedures or Boeing Service Bulletin 747-53-2272, dated January 12, 1987, is considered terminating action for the repetitive inspections required by this AD for the structure replaced and other adjacent structure (considered to be stingers, clips, and skin associated with the frame).

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-5563, AD 86-23-05 R1. This amendment (39-6897, AD 91-11-01) becomes effective June 24, 1991.

Issued in Renton, Washington, on May 7, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11495 Filed 5-14-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-05-AD; Amendment 39-7000]

Airworthiness Directives; Short Brothers, PLC, Model SD3-60

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers, PLC, Model SD3-60 series airplanes, which requires modification of the wiring for the emergency lighting system and the installation of two new relays. This amendment is prompted by reports which indicate that the emergency lighting system will not illuminate automatically if normal airplane power is interrupted or lost. This condition, if not corrected, could result in failure of the emergency lights to illuminate during an emergency.

EFFECTIVE DATE: June 24, 1991.

ADDRESSES: The applicable service information may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Short Brothers, PLC, Model SD3-60 series airplanes, which requires modification of the wiring for the emergency lighting system and the installation of two new relays, was published in the **Federal Register** on February 11, 1991 (56 FR 5375).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator, nor significantly increase the scope of the AD.

It is estimated that 88 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $113,520.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AD 91-11-04. Short Brothers, PLC: Amendment 39-7000. Docket 91-NM-05-AD.

Applicability: Model SD3-60 series airplanes, Serial Numbers SH3601 through SH3704, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent a failure of the emergency lighting system to illuminate during an emergency, accomplish the following:

A. For Serial Numbers SH3601 through SH3661, and SH3669 through SH3705: Within 2,400 hours time-in-service or within 6 months after the effective date of this AD, whichever occurs first, modify the wiring for the emergency lighting system and install two new relays between CB243 and the left and right under voltage units, in accordance with part A. of Short Brothers Service Bulletin SD360-33-22, Revision 1, dated November 1990.

B. For Serial Numbers SH3662 and SH3666 through SH3704: Within 2,400 hours time-in-service or within 6 months after the effective date of this AD, whichever occurs first, modify the wiring for the emergency lighting system and install two new relays between CB243 and the left and right under voltage units, in accordance with part B. of Short Brothers Service Bulletin SD360-33-22, Revision 1, dated November 1990.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39-7000, AD 91-11-04) becomes effective June 24, 1991.

Issued in Renton, Washington, on May 7, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11494 Filed 5-14-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-283-AD; Amdt. 39-6996]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 (MD-80) Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-80 (MD-80) series and Model MD-88 airplanes, which currently requires repetitive inspections of the left and right engine forward mount upper and lower cone bolt through-bolts and the through-bolt nuts. This amendment requires installation of castellated nuts and cotter pins as terminating action for the repetitive inspection requirements of that AD. This amendment is prompted by reports of recent incidents involving loose and missing through-bolt nuts and/or partially backed-off through-bolts. This condition, if not corrected, could result in separation of the engine from airplane.

EFFECTIVE DATE: June 24, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Publications, C1-HCO (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y.J. Hsu, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5323.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-12-51, Amendment 39-6684 (55 FR 31821, August 6, 1990), applicable to McDonnell Douglas Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes, to require installation of castellated nuts and cotter pins as terminating action for the repetitive inspection requirements of that AD, was published in the **Federal Register** on January 8, 1991 (56 FR 650).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters indicated total agreement with the proposal.

One commenter contended that if a repair is required before further flight, the requirements for that repair should be specified in the AD so that the operator does not have to wait for the approval from the Manager of the Los Angeles Aircraft Certification Office. The FAA disagrees. The repair requirements generally vary from one condition to the other, and each repair scheme can only be addressed on a case-by-case basis. Furthermore, operators have the option of accomplishing the terminating action prior to the required compliance time, whereby the required inspections and consequent repairs can be terminated.

Several commenters requested that the proposed 18-month compliance time for the accomplishment of the terminating action be extended to accommodate operators' current maintenance schedules. Three commenters recommended that it be extended to 24 months or 30 months after the effective date of the new AD, basically for the economic reason that engines may have to be removed on an unscheduled basis; these commenters suggested that an acceptable level of safety can be retained by continuing the 30-day repetitive inspections in accordance with paragraphs B. of the AD. One commenter recommended that the compliance time be extended to 24 months after receipt of parts in sufficient quantities, or by February 28, 1993, due to the fact that new bolts P/N PBF 1559D, as required in Option 2 specified in the AD, will not be readily available until February or March 1991; this commenter contended that Option 2 is the only viable approach to accomplish this required terminating action. The FAA disagrees with all of these suggestions. In developing an appropriate compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the terminating modification within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. The manufacturer has advised that an ample number of required parts for the affected fleet will be available within the 18-month compliance time. However, under the provisions of paragraph F. of the final rule, operators may apply for alternative methods of compliance if the application is accompanied by data substantiating that an acceptable level of safety will be provided.

Two commenters recommended that the reporting requirements of paragraph D. of the AD for the repetitive inspections portion be deleted. These commenters contended that inspection data serves no more useful purpose beyond the first inspection. The FAA agrees. Paragraph D. of the AD has been revised to require submission of a report only after performing the initial inspection in accordance with paragraph A. of the AD.

The date of McDonnell Douglas Service Bulletin 71-51 was incorrectly cited in the Notice as September 28, 1990; the correct date of that service

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bulletin is September 28, 1990. The final rule reflects this corrected date.

Paragraph F. of the final rule has been revised to specify the current procedures for submitting requests for approval of alternative methods of compliance.

In addition, the economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interests require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

There are approximately 831 Model DC-9-81, -82, -83, and -87 series airplanes, and Model MD-88 airplanes, of the affected design in the worldwide fleet. It is estimated that 397 airplanes of U.S. registry would be affected by this AD, that it would take approximately 58 manhours per airplane to accomplish the required actions, and that the average labor costs would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,266,430.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6984 (55 FR 31821; August 6, 1990), AD 90-12-51, with the following new airworthiness directive:

AD 91-11-02. McDonnell Douglas: Amendment 39-6999. Docket No. 90-NM-226-AD. Supersedes AD 90-12-51.

Applicability: Model DC-9-81, -82, -83, and -87 (MD-81, -82, -83 and -87) series airplanes and Model MD-88 airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent damage to the engine, cone bolts, and pylon, or separation of an engine from the airplane, as a result of the loss of a through-bolt, accomplish the following:

A. Within seven days after August 23, 1990 (the effective date of Amendment 39-6984, AD 90-12-51), inspect the through-bolt nut, P/N SP563978-1216, for proper torque and conditions in accordance with McDonnell Douglas MD-80 Alert Service Bulletin A71-51, dated May 23, 1990. If any of the following discrepancies are found, take corrective action as required below:

Condition A: If the torque stripe is misaligned, prior to further flight, accomplish the following:

I. Remove and replace the nut in accordance with paragraph C. of this AD, and

II. Apply a new torque stripe.

Condition B: If the torque stripe is aligned properly, within 10 calendar days, verify that the torque on the nut is 250 inch-pounds (in-lb) or more.

I. If the torque is 250 in-lb or more, remove and replace the torque stripe.

II. If the torque is less than 250 in-lb, reinstall the nut in accordance with paragraph C. of this AD and apply a new torque stripe.

Condition C: If the torque stripe is missing, and the nut is seated, and the through-bolt head is seated and positioned properly (there is no gap between the nut base and washer, or the washer and engine mount flange bushing, or the through-bolt head and retainer, or the retainer and engine mount flange bushing), within 10 calendar days, apply 30 in-lb of torque:

I. If the nut turns remove and replace the nut in accordance with paragraph C. of this AD and apply a new torque stripe.

II. If the nut does not turn, torque to the required range of 250 in-lb to 300 in-lb, and apply a new torque stripe.

Condition D: If the torque stripe is missing and there is a gap between the nut base and washer, or the washer and engine mount flange bushing, or the through-bolt head and retainer, or the retainer and engine mount flange bushing; prior to further flight, apply 30 in-lb of torque:

I. If the nut turns, remove and replace the nut in accordance with paragraph C. of this AD and apply a new torque stripe.

II. If the nut does not turn, torque to the required range of 250 in-lb to 300 in-lb, and apply a new torque stripe.

Condition E: If the nut is missing and the through-bolt has not migrated, prior to further flight, install a new nut in accordance with paragraph C. of this AD and apply a new torque stripe.

Condition F: If the nut is missing and the through-bolt is mission or partially backed-out, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Repeat the inspections required by paragraph A. of this AD at intervals not to exceed 30 calendar days; except that, if the torque stripe is aligned properly, the corrective action identified in Condition B, above, is not required.

C. Nut installation method and requirements:

1. Remove and replace the nut.

2. Remove the existing torque stripe.

3. Ensure that the through-bolt head is properly positioned and in place.

4. Measure the running torque of the nut on the through-bolt. If the running torque is less than 30 in-lb or more than 100 in-lb, discard the nut and replace it with a new nut. If the running torque is 30 in-lb or more but less than 100 in-lb, continue with the installation procedure.

5. Ensure that the final installation torque is at least 250 in-lb but less than 300 in-lb.

D. Within 10 days after performing the initial inspection required by paragraph A. of this AD, submit a report of any discrepancies to the Manager, Los Angeles Manufacturing Inspection District Office, 3229 East Spring Street, Long Beach, California 90806-2425. The report must include the airplane's serial number.

E. Within 18 months after the effective date of this AD, install castellated nuts and cotter pins in accordance with McDonnell Douglas MD-80 Service Bulletin 71-51, dated September 28, 1990. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

F. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager of the Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Publications, C1-HCO (54-60). These documents may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment supersedes Amendment 39-6984, AD 90-12-51.

This amendment becomes effective June 24, 1991.

Issued in Renton, Washington, on May 7, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11669 Filed 5-14-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-267-AD; Amdt. 39-6999]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 (MD-80) Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-80 (MD-80) series airplane and Model MD-88 airplanes, which currently requires inspection of passenger service unit (PSU) oxygen doors for proper seating, and readjustment, if necessary. This amendment requires installation of door stops as terminating action for the required repetitive inspections. This amendment is prompted by reports of PSU oxygen doors being pushed up past the door seal, which has caused the door to jam. This condition, if not corrected, could result in passenger oxygen not being readily available for use in the event of a cabin depressurization.

EFFECTIVE DATE: June 24, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, Attn: Business Unit Manager, Technical Publications, C1-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach California.

FOR FURTHER INFORMATION CONTACT: Robert T. Razzeto, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-22-05, Amendment 39-6780 (55 FR 42356, October 19, 1990), applicable to McDonnell Douglas Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes, to require modification of the PSU panel door frame by adding door stops, was published in the Federal Register on February 1, 1991 (56 FR 3984).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

One commenter, the manufacturer, agreed with the rule as proposed.

Two commenters, Air Transport Association (ATA) and an operator, expressed concern with the proposed 12-month compliance time. They believe that a 12-month compliance time will create undue airplane routing and maintenance scheduling problems. These commenters suggested that the compliance time be extended to 24 months. The FAA does not concur. In developing an appropriate compliance time, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of require parts and the practical aspect of installing the required modifications during operators' normal maintenance schedules. The compliance time, as proposed, represents the maximum interval of time allowable wherein the modification could reasonably be accomplished, parts could be obtained, and an acceptable level of safety could be maintained.

Paragraph D. of the final rule has been revised to specify the current procedures for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 732 Model DC-9-80 MD-80 series and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 374 airplanes of U.S. registry will be affected by this AD, that it will take approximately 36 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The cost of parts to accomplish the modification is approximately $10 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $620,940.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

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PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1422; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6780 (55 FR 42358, October 19, 1990), AD 90-22-05, with the following new airworthiness directives:

AD 91-11-03. McDonnell Douglas: Amendment 39-6999. Docket 90-NM-287-AD.

Applicability: Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent passenger service unit (PSU) oxygen doors from being jammed closed, accomplish the following:

A. Within 45 days after November 5, 1990 (the effective date of Amendment 39-6780, AD 90-22-05), and thereafter at intervals not to exceed 45 days, inspect all PSU oxygen doors for proper closure, in accordance with McDonnell Douglas Alert Service Bulletin A25-315, Revision 1, dated August 24, 1990.

B. Any jammed PSU oxygen doors found during the inspection required by paragraph A. of this AD must be readjusted prior to further flight, in accordance with Phase I of paragraph 2 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A25-315, Revision 1, dated August 24, 1990.

C. Within 12 months after the effective date of this AD install PSU oxygen door stops in accordance with Phase II of paragraph 2 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A25-315, Revision 1, dated August 24, 1990. Such installation constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

D. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

Note: Previously granted approval for an alternative method of compliance to AD 90-22-05 also constitutes approval for this AD.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, Attn: Business Unit Manager, Technical Publications, C1-HCW (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment supersedes Amendment 39-6780, AD 90-22-05.

This amendment (39-6999, AD 91-11-03) becomes effective June 24, 1991.

Issued in Renton, Washington, on May 7, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11493 Filed 5-14-91; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 229, 260, and 269

[Release Nos. 33-6892, 39-2282; File No. S7-11-91, International Series Release No. 298]

RIN 3235-AE13

Rules and Forms to Implement the Trust Indenture Reform Act of 1990

AGENCY: Securities and Exchange Commission.

ACTION: Final Rules and Forms and Solicitation of Comments.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting new rules and a new form, and revising existing rules and forms, to implement amendments to the Trust Indenture Act of 1939 ("Trust Indenture Act" or "Act") effected by the Trust Indenture Reform Act of 1990 ("1990 Reform Act"). The new and revised rules and forms are to be used in applying for (a) exemptions from one or more provisions of the Act, (b) post-effective determinations of the eligibility of trustees under indentures relating to securities to be offered on a delayed basis, (c) determinations of the eligibility of foreign persons to act as sole trustees under qualified indentures, and (d) orders staying a trustee's duty to resign. The Commission also is amending current forms to conform them to amendments to the Act, which no longer authorizes refusal of qualification on the basis of pre-default conflicts of interest. The Commission is soliciting public comment on the new rules and form and the amendments to existing rules and forms adopted today. Finally, the Commission is alerting the public to an apparent drafting error in the Reform Act, concerning trustee reports under section 313 of the Act.

EFFECTIVE DATE: May 15, 1991.

DATES: Comment letters on the rules and forms being adopted should be received by July 1, 1991.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6-9, Washington, DC 20549. Comments letters should refer to File No. S7-11-91. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Felicia Smith, (202) 272-2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rules 5a-2 [1] and 7a-15 [2] and Forms T-1 [3] and T-2 [4] under the Act.[5] The Commission also is adopting Rules 4d-7 and 4d-8,[6] Rules 5b-1 through 5b-3,[7] Rules 10a-1 through 10a-4,[8] Rules 10b-4 through 10b-6 [9] and Form T-6 [10] under the Act. In addition, the Commission is adopting Rules 30-1(e)(5) through 30-1(e)(8) [11] relating to delegation of authority. Finally, the Commission is adopting Item 512(k) [12] of Regulation S-K under the Securities Act of 1933 (the "Securities Act").[13]

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[1] 17 CFR 260.5a-2.
[2] 17 CFR 260.7a-15.
[3] 17 CFR 269.1.
[4] 17 CFR 269.2.
[5] 15 U.S.C. 77aaa *et seq.*
[6] 17 CFR 260.4d-7 and 260.4d-8.
[7] 17 CFR 260.5b-1—260.5b-3.
[8] 17 CFR 260.10a-1—260.10a-4.
[9] 17 CFR 260.10b-4—260.10b-6.
[10] 17 CFR 269.9.
[11] 17 CFR 200.30-1(e)(5)—200.30-1(e)(8).
[12] 17 CFR 229.512(k).
[13] 15 U.S.C. 77a *et seq.*

I. Executive Summary

The Commission is adopting a new form and new procedural rules, and amending existing forms and rules, to carry out the statutory changes enacted by the 1990 Reform Act.[14] This recently enacted legislation modernizes the Trust Indenture Act in response to the significant changes in debt instruments and distribution techniques that have occurred in the five decades since passage of the Act. The 1990 Reform Act streamlines qualification procedures by providing that the indenture provisions mandated by the Act are now applicable as a matter of law. The Commission also has been granted authority to adapt the statute to accommodate new financing techniques. The Act now authorizes the Commission, acting by rule or order, to grant exemptions from the Act's provisions, to determine the eligibility of trustees under indentures for securities to be sold on a delayed basis after indenture qualification, and to permit foreign persons to act as sole trustee under qualified indentures. The Commission also has the authority to stay a trustee's duty to resign under specified circumstances.

More specifically, the Act, as amended, permits the Commission to waive or modify one or more of the statutory requirements where necessary or appropriate in the public interest and consistent with the protection of investors and statutory purposes.[15] To accommodate this new exemptive authority, the Commission is adopting rules to provide procedures for making exemptive applications.[16]

The provisions of the 1990 Reform Act permit a registrant to delay the naming of a trustee under an indenture where the securities are to be sold on a delayed basis and authorize the Commission to determine the eligibility of such a trustee after the indenture has been qualified.[17] In accordance with that grant of authority, the Commission is adopting procedural rules and amendments to Forms T-1 and T-2 that would permit these forms to be used as applications to determine the eligibility of an institutional or individual trustee designated to act as an indenture trustee in such circumstances. The Commission also is adopting a new provision under Regulation S-K that requires a registrant that intends to use the new procedure for delayed determination of the trustee's eligibility to include in its registration statement an undertaking to file the required application.[18]

In light of the continuing internationalization of the securities markets, the 1990 Reform Act added a provision authorizing the Commission to permit a foreign person to act as sole trustee under a qualified indenture where specific conditions are met.[19] The Commission is adopting rules setting forth the application procedure for obtaining that authorization. In addition to procedural rules, the Commission is adopting new Form T-6, which would be used by applicants to provide information to the Commission concerning trust powers and regulation in the foreign jurisdiction, as well as the eligibility of U.S. institutional trustees to act as sole indenture trustee in the foreign jurisdiction.[20]

In connection with adoption of the post-default standard for determining whether a trustee has a disqualifying conflict of interest, the 1990 Reform Act provides that a trustee may apply for a stay of its duty to resign upon specified conditions.[21] The Commission is adopting rules to provide an application procedure for seeking such a stay.[22]

Technical revisions are being adopted to conform existing rules and forms to the statutory amendments. Existing Form T-1 is being amended to reflect its potential use by foreign trustees, and Forms T-1 and T-2 are being amended to reflect the new post-default standard for determining conflicts of interest. In this regard, so long as there has been no default, applicants will be required to provide only limited information with respect to their eligibility to act as trustee under sections 310(a)(1), 310(a)(2), and 310(a)(5).[23] Amendments to rules 5a-2 and 7a-15 make it clear that the Act's general requirements regarding forms of application are applicable to Form T-6.

The Commission is adopting rules authorizing the Director ("Director") of the Division of Corporation Finance ("Division") to grant orders for applications made in accordance with the newly adopted rules and forms, and to accelerate the effectiveness of certain applications.

Finally, the Reform Act amended section 313(a) [24] of the Act, which relates to trustees' reports. Section 313(a) no longer requires an annual report of the trustee. A report now is required only on the occurrence of specified events. Late in the legislative process there was an apparent drafting error in this provision, as a result of which a report is required in certain instances where no report should be necessary and no report is required in a situation where one should be provided. The Commission intends to recommend a technical amendment of the statute to Congress. The Commission is recommending that, until such time as the amendment can be made, trustees should prepare their reports consistent with the Congressional intent as opposed to the literal language of the statute.[25]

II. Discussion of Proposals

A. Applications for Exemption

As amended, section 304(d) of the Act permits the Commission conditionally or unconditionally to exempt "any person, registration statement, indenture, security or transaction, or any class or classes of persons, registration statements, indentures, securities, or transactions" from one or more provisions of the Act, to the extent any such exemption is "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended" by the Act. Under the Act as amended, the Commission "may, in its sole discretion, decline to entertain any application for an order of exemption * * *."

Changes in the types of debt securities, in the methods of public financing and in the character of relations between obligors and their financial intermediaries have produced situations where the strictures of the Act did not serve its own intent.[26] With the broad exemptive authority granted by the 1990 Reform Act, the Commission will be able to adapt the statutory requirements to particular situations and developing market conditions under standards that look to the statute's fundamental purposes. Both exemptive rules and orders are contemplated.

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[14] Title XV, Public Law No. 101-550, 1990 U.S. Cong. and Ad. News (104 Stat.) 2713, 2721-32.

[15] Section 304(d), 15 U.S.C. 77ddd(d).

[16] See, *infra* II.A. "Applications for Exemption," for discussion of Rules 4d-7 and 4d-8.

[17] Section 305(b)(2), 15 U.S.C. 77eee(b)(2).

[18] See, *infra* II.B. "Applications for Determining Eligibility of a Person Designated as Trustee for an Offering on a Delayed Basis," for discussion of Rules 5b-1 *et seq.*, Item 512(j) of Regulation S-K, and the amendments to Forms T-1 and T-2.

[19] Section 310(a)(1), 15 U.S.C. 77jjj(a)(1).

[20] See, *infra* II.C. "Applications for Determining Eligibility of a Foreign Person to Act as Sole Trustee" for a discussion of Rules 10a-1 *et seq.*, and Form T-6.

[21] Section 310(b), 15 U.S.C. 77jjj(b).

[22] See, *infra* II.D. "Applications for Stay of Trustee's Duty to Resign," for a discussion of Rules 10b-4 *et seq.*

[23] 15 U.S.C. 77jjj(a)(1), 77jjj(a)(2), and 77jjj(a)(5).

[24] 15 U.S.C. 77mmm(a).

[25] See *infra*, III "Interpretation of section 313 of the Act."

[26] See S. Rep. No. 101-155, 101st Cong., 1st Sess. 46-47 (1989) ("Senate Report").

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The Commission is adopting rules to specify procedures under which applications for exemptive orders may be made. Rules 4d–7 and 4d–8 establish procedures for the filing and content of applications for exemption from the requirements of one or more provisions of the Act.[27]

Rule 4d–7 contains technical filing requirements. It also provides that existing procedures for incorporation by reference may be used in connection with such applications.[28]

Rule 4d–8 requires that the application contain a statement of the relevant facts on which the request for relief is based, including a justification for exemption from any statutory protections, and a discussion of any benefits expected for security holders, trustees and obligors. An application for exemptive relief will not be entertained if it does not contain a justification for the requested relief that is adequate to permit consideration of the application; rather, a request will be made that the application either be withdrawn or amended. In addition, an applicant may be requested to furnish additional information or documents.

The authority to issue orders granting exemptive relief pursuant to application under section 304(d) has been delegated to the Director of the Division through the adoption of Commission Rule 30–1(e)(5). The rule does not provide the Division Director with delegated authority to deny an application under section 304(d), or to exercise the statutory authority to decline to entertain such an application. Accordingly, if the Division believes that a denial is appropriate or that the Commission should not entertain the application, the matter will be submitted to the Commission for its consideration.

The Commission solicits comment on the exemptive procedures adopted.

B. Applications for Determining Eligibility of a Person Designated as Trustee for an Offering on a Delayed Basis

Section 305(b)(2) of the Act, as amended, facilitates qualification of indentures used in connection with delayed offerings of debt securities pursuant to rule 415 under the Securities Act[29] Prior to the amendment, indenture qualification was coordinated fully with the effectiveness of the registration statement. That procedure was based on the assumption that, as was the case when the Act became law, the indenture terms would be fixed and the trustee identified by the time the registration statement became effective. However, the indentures used in delayed offerings now permitted under rule 415 frequently do not specify business terms until the actual sale of the securities at some date later than the effective date.[30]

Under the Act as amended, all indentures for registered debt securities will continue to be filed with the registration statement, and qualified at the time the registration statement becomes effective. However, pursuant to section 305(b)(2) and the rules being adopted today, the issuer of any securities to be sold on a delayed basis will be permitted to file an application to determine the eligibility of the trustee designated to serve under the indenture after the sale of such securities. This procedure also will be available for indentures relating to debt securities that must be included on a registration statement, although they may never be issued (*e.g.*, equity securities exchangeable into debt or debt securities that may be issued in lieu of cash interest or dividend payments).[31] In the event a registrant fails to file an application in a timely fashion or the designated trustee is not eligible to act as an indenture trustee and such issuer fails to file an application to designate an eligible trustee, section 309(b) of the Act[32] authorizes the Commission to issue a stop order pursuant to section 8(d) of the Securities Act[33] suspending the effectiveness of the related registration statement.[34]

Rules 5b–1 through 5b–3 and the amendments to Forms T–1 and T–2 implement the optional procedure for delayed qualification of trustees serving under indentures used in connection with delayed offerings. Rule 5b–1 specifies that Forms T–1 and T–2 are the appropriate forms for applications for determining such eligibility.[35] The forms require information from the designated trustee that will permit the Commission to determine whether the trustee meets the eligibility requirements of Section 310(a) of the Act.[36] The forms also require the applicant to provide the file number of the related registration statement to assist the Commission staff in identifying applications under section 305(b) (2). Forms T–1 and T–2 include a box that must be checked to indicate that the form is being filed to determine the eligibility of the trustee pursuant to section 305(b) (2).

Rule 5b–2 provides that applications are subject to the Act's general requirements as to form and content of applications.[37] Rule 5b–3 sets forth specific technical filing requirements for applications pursuant to section 305(b)(2). In particular, the rule specifies that applications shall be filed no later than the second business day following the initial date of public offering or sales after effectiveness of the registration statement with respect to such securities or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

As specified in the Act, if the trustee meets the eligibility requirements of the Act, the application will become effective the tenth day after it is filed or such earlier date as the Commission may determine, having due regard to the adequacy of information provided, the public interest, and the protection of investors. It is anticipated that the ten day period will be accelerated in almost all cases. If the Commission finds that the trustee does not meet the eligiblity standards of the Act, it will issue a refusal order prior to the effective date of the application.[38]

It is anticipated that the incidence of ineligible trustees will be minimal, because the provisions of section 310(a) only require that the trustee be authorized to exercise corporate trust powers; be subject to supervision or examination by Federal, State, Territorial or District of Columbia authority; have a combined capital and surplus of at least $150,000; and not be the obligor on the securities or a person affiliated with the obligor.[39]

The authority to accelerate the effective date of applications filed under section 305(b)(2) has been delegated to the Director of the Division through the adoption of Commission Rule 30–1(e)(6).

In connection with the new procedures available for determining trustee eligibility for delayed offering, the Commission is amending Item 512 of Regulation S–K. A registrant filing a registration statement with respect to securities to be sold on a delayed basis that wishes to take advantage of the new procedure, and thus to determine the eligibility of its designated trustee on a delayed basis, would be required to undertake that it will file an application to determine eligibility of its designated trustee at such time as required by, and otherwise in accordance with, the Commission's rules. The undertaking would notify the Commission that the registrant intends to postpone the designation of a trustee under an indenture for the securities to be sold on a delayed basis.

Comment is requested on the procedures adopted for determining trustee eligibility for delayed offerings. In particular, comment is requested on the time period within which the application is required to be filed. Should it be a shorter or longer period (*e.g.*, 1 business day or 5 business days)? With respect to the notification to be provided by the proposed undertaking, commenters may wish to address alternative ways in which the registrant's intention to rely on section 305(b)(2) could be indicated.

C. Applications for Determining Eligibility of a Foreign Person to Act as Sole Trustee

Section 310(a)(1) gives the Commission the authority to permit a corporation or other person organized and doing business under the laws of a foreign government to act as sole trustee under an indenture of a foreign obligor. As provided in the statute, permission to serve as sole trustee may be granted to those foreign persons that are authorized under the laws of a foreign jurisdiction to exercise corporate trust powers and are subject to supervision or examination by authority of such foreign government or a political subdivision thereof that is substantially equivalent to U.S. supervision or examination.[40] The Commission's authority under section 310(a) may be exercised by rule or order. The statute also provides that, in making its determination, the Commission shall consider whether, under the foreign law, a United States institutional trustee is eligible to act as sole trustee under an indenture relating to securities sold within the foreign jurisdiction.

Rules 10a–1 through 10a–4 adopted today, provide procedures for applications to determine the eligibility of a foreign person to serve as sole trustee. The Commission also is adopting Form T–6 as an application form for that purpose.

Rule 10a–1 specifies that Form T–6 will be the appropriate form for making applications under section 310(a)(1). Rule 10a–2 provides that the Commission's general requirements as to form and content of applications will be applicable to applications under section 310(a)(10). Rule 10a–3 addresses other technical filing requirements.

In connection with applications under section 310(a)(1), Form T–6 may be used in two circumstances. First, a foreign institution may use the form to apply for a determination that, in the future, it may exercise sole trust powers under qualified indentures. In this case, the form requires the applicant to discuss the applicable statutes or rules in the foreign jurisdiction that provide for supervision or examination substantially equivalent to that provided for in the United States and provide for eligibility of U.S. persons to act as sole trustees in the foreign jurisdictions. Copies of the statutory and regulatory provisions, as well as published administrative interpretations, must be filed as exhibits to the Form T–6, and the instruction to item 15 of the form indicates that opinions of counsel addressing these two matters may be required.

In connection with its current release, the Commission is also requesting comment on the requirements and procedures employed in the supervision and examination of institutional trustees by United States authorities that should be considered by the Commission for comparative purposes in item 15 of Form T–6. In addition, commenters may wish to provide their views on specific factors that applicants should identify in addressing whether, under foreign law, a United States institution trustee would be eligible to act as sole trustee under an indenture relating to securities sold within the foreign jurisdiction.[41]

Secondly, Form T–6 also may be used in those cases where the trustee wishes to obtain an order under section 310(a)(1) at the same time as the issuer files a registration statement relating to the indenture securities. In such cases, additional items on the form must be completed to assure that the trustee meets the eligibility requirements of paragraph (a)(1), (a)(2), and (a)(5) of section 310. The instructions to the form indicate that, where the foreign trustee has previously obtained an order or the Commission has adopted a rule permitting the trustee to act as a sole trustee on indentures to be qualified under the Act, Form T–1 is the appropriate form to be used in connection with the qualification of indentures.[42]

Rule 10a–4 provides that an applicant must designate an agent for service of process in the United States and consent to service of process on such agent at the time an application on Form T–6 is filed. The rule also requires foreign trustees that have been authorized to act as sole trustee, by Commission rule or order, to furnish a consent to service of process as an exhibit to any statement of eligibility to act as trustee filed on Form T–1. Form F–X, proposed by the Commission in connection with the Multijurisdictional Disclosure System ("MJDS") for Canadian issuers, would satisfy these requirements.[43] It is

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[27] The grant of exemptive authority to the Commission under section 304(d) parallels a similar provision in the Investment Company Act of 1940 ("Investment Company Act") [15 U.S.C. 80a–6(c)]. The rules adopted under section 304(d) are in many respects identical or similar to the rules applicable to exemptive applications under section 6(c) of the Investment Company Act. See 17 CFR 270.0–2 and 17 CFR 270.0–5.

[28] See Rules 7a–39—7a–32, 17 CFR 260.7a–39—7a–32.

[29] 17 CFR 230.415.

[30] *See* Senate Report at 47.

[31] *Id.*

[32] 15 U.S.C. 77iii(b).

[33] 15 U.S.C. 77h(d).

[34] *See* Senate Report at 47–48.

[35] Forms T–1 and T–2 are the only forms available for applications under section 305(b)(2). Form T–1 may be used by a foreign trustee for this purpose, but only if it has previously received an order or is the subject of a Commission rule permitting the trustee to act as sole trustee under indentures to be qualified. See General Instruction A to Form T–1. Accordingly, obligors will not be able to use a foreign trustee that does not have a previous order or is not the subject of a Commission rule to act as trustee under Section 305(b) (2).

[36] The forms would provide the following information with respect to a domestic institutional trustee: (A) whether it is organized and doing business under the laws of the United States, any State or Territory or the District of Columbia; (b) whether it is authorized under the laws of any of these jurisdictions to exercise trust powers; (c) whether it is subject to supervision or examination by representatives of any of these jurisdictions; (d) whether it has a minimum combined capital and surplus of $150,000; and (e) whether it is an obligor or affiliated with any obligor on the indenture securities. In the case of a foreign trustee, the same information would be elicited, along with a copy of the rule or order granting authority to act as sole trustee on identures to be qualified under the Act. In the event that the Form T–2 is used to determine the eligibility of an individual to act as a co-trustee, the information provided would establish that the individual was not an obligor or affiliated with an obligor on the indenture securities.

The form also would require information with respect to any defaults on the indenture securities. If a default has occurred, institutional trustees, domestic or foreign, and individual trustees would be required to provide additional information relating to conflicts under section 310(b) of the Act.

[37] Rule 5a–2 and Rules 7a–15 through 7a–37, 17 CFR 260.5a–2, 7a–15—7a–37.

[38] If a refusal order is issued, the obligor is required to provide a "successor trustee" within five calendar days.

[39] See Senate Report at 48.

[40] Persons not meeting the statutory standard may seek permission to serve as sole trustee under section 304(d) of the Act. See Senate Report at 48.

[41] Similarly, as part of the proposed multijurisdictional disclosure system with Canada, the Commission recently published for comment proposed rule 10a–5 that would permit certain trust companies incorporated under the laws of Canada or a political subdivision of Canada to act as sole trustee under an indenture relating to securities sold in the United States. The release proposing rule 10a–5 contained a summary of significant provisions of Canadian trust regulation. Although the Commission preliminarily concluded that the supervision and examination of institutional trustees in Canada was substantially equivalent to the supervision and examination of institutional trustees in the United States, commenters were invited to address the issue. See Securities Act Release No. 6899 (March 22, 1991).

[42] Form T–1 is being amended to require foreign trustees to provide information evidencing the grant of an order or rule permitting them to act as sole trustee. See Item 15 of Form T–1.

[43] *See* Securities Act Release No. 6879 (Oct. 22, 1990) [55 FR 46288]; Securities Act Release No. 6941 (July 24, 1991) [54 FR 32228].

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anticipated that, on the adoption of Form F-X as part of the MJDS, the Commission will amend Rule 10a-4 and Forms T-1 and T-6 to require the use of that form by foreign trustees making application under the Act.

Authority to issue orders under section 310(a)(1) has been delegated to the Director of the Division through the adoption of Commission Rule 30-1(e)(7). The Director does not have authority to deny applications under this section.

Comment is solicited on the procedure for obtaining authorization for a foreign entity to act as sole trustee.

D. Applications for Stay of Trustee's Duty to Resign

Prior to the 1990 Reform Act, the Act provided a 90-day grace period after a conflict arose during which a trustee could eliminate the conflict and restore its eligibility rather than resign. Because the amended statute recognizes a conflict of interest only after a default under the indenture, a trustee need not resign because of a conflict until 90 days after a default occurs. The statutory amendments also created a procedure under which a trustee with a conflict of interest may apply to the Commission within the 90-day period after certain defaults for permission to continue to serve after the expiration of that period.[44]

The new application procedure should prevent unnecessary resignations for curable technical defaults. Continued permission to serve requires, after opportunity for hearing, showings that the default may be cured or waived during a reasonable period and that the trustee's continued service would not be inconsistent with the interests of holders under the indenture. The statute provides that, during the pendency of its application, the applicant will not be required to resign. No relief from the duty to resign is available under the procedure for payment defaults, whether of principal, interest or sinking or purchase fund installment.[45]

Rules 10b-4 through 10b-6 implement the application procedures for a stay of the duty to resign. Rule 10b-4 contains technical filing requirements and procedures for incorporation by reference.

Rule 10b-5 requires that the application contain a statement of the reasons why the applicant is deemed to be entitled to a stay of resignation. The rule states that the applicant should provide information with respect to the nature of the default, the reasonableness of the time before the default will be cured or waived, the procedure to be followed in connection with the cure or waiver, and the basis for a conclusion that a stay will not be inconsistent with the interest of the holders of the indenture securities.

Rule 10b-6 provides for notice of a proceeding initiated by the filing of an application. The applicant is required to provide a draft of a notice of application as an exhibit to the application. The Commission will then publish in the Federal Register a notice of the application for a stay of the duty to resign, including a statement as to the earliest time on which action may be taken. That notice also will provide an opportunity for interested persons to submit information bearing on the application and to request a hearing.

The authority to issue notices with respect to applications for stay orders and to issue orders granting stays of the duty to resign has been delegated to the Division Director through adoption of Commission Rule 30-1(e)(8). As with the other delegations adopted today, the Division Director does not have delegated authority to deny an application for a stay under section 310(b).

The Commission solicits comment on the exemptive procedure adopted.

E. Technical Amendments

In connection with the new post-default standard for determining conflicts of interest, section 305(b)(1) of the Act [46] was amended to remove the provision requiring the Commission to refuse qualification of the indenture if it finds that any person designated as trustee has a conflict of interest within the meaning of section 310(b) of the Act. Since, under the Act, as amended, disqualifying conflicts only arise upon a default under the indenture, a finding by the Commission at the time of qualification that the trustee has no impermissible conflict of interest is no longer necessary.[47] Accordingly, Forms T-1 and T-2 are being amended; information about potential conflicts of interest will not be required where there have been no defaults. Disclosure of the existence of a default will be required. Where a default is disclosed, the full range of information will continue to be required.

In addition, Form T-1 is being amended to add a provision requiring foreign trustees to identify the order or rule under section 310(a) permitting them to act as sole trustee under a qualified indenture and to specify that the exhibits provided by foreign trustees should contain information sufficient to determine eligibility under section 310(a)(2) of the Act. Finally, technical amendments are being made to rules 5a-2 and 7a-15 to make it clear that the general requirements for forms of application apply to new Form T-6.

III. Interpretation of Section 313 of the Act

An apparent drafting error in the 1990 Reform Act has come to the attention of the Commission. Section 411 of the statute amends section 313(a) of the Act, the provision requiring reports by the indenture trustee, by changing the former requirement of annual reporting to a requirement that arises only on the occurrence of specified events.[48] As with the remainder of the Act's prescriptive provisions, section 313 was amended so that its duties are imposed as a matter of law, without reference to the terms recited in the indenture.

Late in the legislative process, section 411 [49] was amended to add a provision requiring reports of the creation of relationships or material changes to such relationship that, but for the absence of default under the indenture, would constitute impermissible conflicts of interest under section 310(b) of the Act.[50] Due to the error in the redesignation of the section, section 313(a)(4) (concerning reports with respect to indebtedness of the obligor to the trustee) in the amended Act mistakenly does not include the intended addition of language restricting the reporting obligations to changes in indebtedness, while section 313(a)(6) (concerning reports with respect to releases and substitutions of collateral), which should have been substantively unaffected by the amendment, erroneously includes the addition.[51]

The Commission intends to recommend a technical amendment to the Congress correcting the misdesignation that now exists within section 313(a). Until such time as the amendment can be made, trustees should prepare their reports consistent with the Congressional intent. In other words, reports of indebtedness of the obligor to the indenture trustee should be prepared if changes to the amount, interest rate, maturity or collateral for the indebtedness to the trustee have occurred. This is in contrast to the suggestion of the misdesignated text that annual reporting of indebtedness is required whether or not such changes have occurred.[52]

IV. Charts Reflecting Revisions to Forms

The following charts highlight the substantive changes between the former and revised Forms T-1 and T-2.

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[44] Section 310(b), 15 U.S.C. 77jjj(b).

[45] See Senate Report at 34.

[46] 15 U.S.C. 77eee(b)(1).

[47] *See Senate Report at 47.*

[48] The Act now reads as follows:

Section 313. (a) The indenture trustee shall transmit to the indenture security holders as hereinafter provided, at stated intervals of not more than 12 months, a brief report with respect to any of the following events which may have occurred within the previous 12 months (but if no such event has occurred within such period no report need be transmitted):

(1) Any change to its eligibility and its qualifications under section 310;

(2) The creation of or any material change to a relationship specified in paragraphs (1) through (10) of section 310(b);

(3) The character and amount of any advances made by it, as indenture trustee, which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of the indenture securities, on the trust estate or on property or funds held or collected by it as such trustee, if such advances so remaining unpaid aggregate more than one-half of 1 per centum of the principal amount of the indenture securities outstanding on such date;

(4) The amount, interest rate, and maturity date of all other indebtedness owing to it in its individual capacity, on the date of such report, by the obligor upon the indenture securities, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in paragraph (2), (3), (4), or (6) of subsection (b) of section 311;

(5) Any change to the property and funds physically in its possession as indenture trustee on the date of such report;

(6) Any change to any release, or release and substitution of property subject to the lien of the indenture (and the consideration thereof, if any) which it has not previously reported;

(7) Any additional issue of indenture securities which it has not previously reported; and

(8) Any action taken by it in the performance of its duties under the indenture which it has not previously reported and which in its opinion materially affects the indenture securities or the trust estate, except action in respect of a default, notice of which has been or is to be withheld by it in accordance with an indenture provision authorized by subsection (b) of section 315.

[49] Section 411(5).

[50] The new requirement appears in the Act as section 313(a)(2).

[51] The error in the redesignation caused the attachment of the words "any change to" to subparagraphs (1), (4) and (5), as they existed before the amendment, instead of subparagraphs (1), (3) and (4). The misdesignation can be seen through a comparison of section 411 of S. 1712, Report No. 101-115 (101st Cong. 1st Sess.) (1989), with section 411 of the statute as enacted.

[52] The mistaken addition of "any change to" in section 313(a)(6) has no apparent effect on the obligation to report actions respecting the property secured by the lien of an indenture.

A. Revisions to Form T-1

Former Form T-1	Revised T-1
Facing Page	A legend has been added, requiring a check mark when the form is used to determine the eligibility of a trustee pursuant to Section 305(b)(2), and a line has been added for the file number of the related delayed offering registration statement where the Form T-1 is used as an application under Section 305(b)(2). Line two has been modified to require jurisdiction of incorporation in order to include information on foreign trustees. A line has been added requiring foreign trustees to provide the name, address and telephone number of any agent for service.
General Instruction A.	General Instruction A has been expanded to indicate that Form T-1 shall be used for statements of eligibility of foreign trustees under trust indentures to be qualified where a prior order or rule has been issued or promulgated under section 310(a)(1) or 304(d) of the Act; and for applications to determine the eligibility of a trustee pursuant to section 305(b)(2) of the Act.
General Instruction B.	A new General Instruction B has been added to indicate those items of the Form T-1 that must be answered where obligations are not in default, and the items required to be answered when obligations are in default.
General Instructions B through F.	Old General Instructions B, C and D have been redesignated General Instructions C, D and E. Old Instruction E has been combined with New General Instruction B. Old General Instruction F has been revised to require information with respect to underwriters for one year instead of three years in accordance with the amendment to section 310(b) of the Act.
General Instructions.	A new General Instruction G has been added to require certain information on the cover page of Form T-1 when the form is being used as an application under section 305(b)(2) of the Act.
Item 1	No change.
Item 2	Reference to affiliations with the underwriters has been deleted.
Items 3 through 11.	No change.
New Items	Item 12 has been added to provide information concerning the indebtedness of the obligor to the trustee in response to new section 310(b)(10) of the Act. New Item 13 requires information concerning defaults by the obligor. New Item 14 requires disclosure with respect to affiliations with the underwriters. New Item 15 requires information concerning Commission rules or orders authorizing foreign trustees to act as sole trustees under indentures qualified or to be qualified under the Act.
Item 12	Item 12 has been redesignated Item 16.
Instructions as Exhibits.	The instructions have been expanded to require translations of any documents that are not in English and to require foreign trustees to provide financial information adequate to meet the requirements of section 310(a)(2) of the Act.
Exhibits 1 through 4.	No change.
Exhibit 5	Exhibit 5 is modified to make it clear that the exhibit is required only when the obligor is in default.
Exhibit 6	Exhibit 6 has been modified to indicate that the consent under section 321(b) is only required by United States institutional trustees.
Exhibit 7	No change.
New Exhibits	New exhibit 8 requires a copy of the order pursuant to which a foreign trustee is acting as sole trustee. New exhibit 9 requires the filing of a consent to service of process by foreign trustees.
Signature	The Signature has been moved below the instructions for the exhibits. In addition, the form requires the trustee to specify its form of organization and the jurisdiction in which the form was executed.

B. Revisions to Form T-2

Former T-2	Revised T-2
Facing Page	A legend has been added, requiring a check mark when the Form T-2 is used to determine the eligibility of a trustee pursuant to section 305(b)(2), and a line has been added for the file number of the related delayed offering registration statement where the Form T-2 is used as an application under section 305(b)(2).
General Instruction A.	General Instruction A has been expanded to indicate that Form T-2 shall be used to determine the eligibility of an individual trustee pursuant to section 305(b)(2) of the Act.
General Instruction B.	A new General Instruction B has been added to indicate those items of the Form T-2 that must be answered when obligations are not in default, and the items required when obligations are in default.

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Former T-2	Revised T-2
General Instructions B through F.	Old General Instructions B, C and D have been redesignated General Instructions C, D and E. Old Instruction E has been combined with new Instruction B. Old General Instruction F has been revised to require information with respect to underwriters for one year instead of three years in accordance with the amendment to section 310(b) of the Act.
General Instructions.	A new General Instruction G has been added to require indexation on the cover page of Form T-2 when the form is being used as an application under section 305(b)(2) of the Act.
Item 1	Reference to affiliations with underwriters has been deleted.
Items 2 through 7	No change.
New Items	Item 8 has been added to provide information concerning the indebtedness of the obligor to the trustee in response to new section 310(b)(10) of the Act. New Item 9 requires information concerning defaults by the obligor. New Item 10 requires disclosure with respect to affiliations with the underwriters.
Item 8	Item 8 has been redesignated Item 11.
Signature	The Signature has been moved below the instructions for the exhibits.

V. Cost Benefit Analysis

To evaluate the benefits and costs associated with the described rules and forms, the Commission requests commenters to provide views and data as to the costs and benefits associated with various application procedures under the rules and forms. The procedures will enable obligors and trustees (the typical applicants) to reduce substantially the amount of time and expense required to comply with the present procedure for qualification of the trustees. The rules relate to procedures for exemptions and actions by the Commission made possible as a result of the amendments to the Act. The benefit to obligors and trustees, as a result of the flexibility now present in the statute that enables the Commission to grant various exemptions and stays of a trustee's duty to resign, and permit appointment of a foreign trustee for offerings made in the United States by foreign obligors, greatly outweighs any burden.

The rules will also benefit public security holders, by reducing costs incurred in (a) providing for indenture trustees at the effective date of registration statements when the offerings of indenture securities will be made on a delayed basis, and (b) needless resignations of indenture trustees because of technical non-payment defaults that may be easily cured within a reasonable time frame. In addition, the rules facilitate the expansion of investment opportunities for United States citizens, due to the removal of barriers to foreign registrants making public issuances of debt securities in the United States.

VI. Effective Date

Prior to the effective date of the amendments to Forms T-1 and T-2, trustees filing statements of eligibility under the Act may use existing Forms T-1 and T-2 (17 CFR 269.1 and 269.2). If the trustee, or the obligor on the indenture securities to which the Form T-1 or T-2 relate, represents that there is no existing default under any indenture of the obligor on which the trustee is the indenture trustee, the trustee may limit its responses to Items 1, 2, and 12 of existing Form T-1 and items 1 and 8 of existing Form T-2.

Individuals or entities wishing to apply for an exemption under section 304(d) of the Act or for a stay of trustee's duty to resign under section 310(d) of the Act may voluntarily use the procedures being adopted prior to publication in the Federal Register.

Individuals or entities wishing to make an application under section 305(b)(2) or 310(a)(1) of the Act may voluntarily use the procedures set forth for making an application under section 304(d) until the effective date of the amendments to Forms T-1 and T-2 and new Form T-6 (17 CFR 269.9).

The Congressionally mandated changes included in the 1990 Reform Act modernize the provisions of the Act and permit issuers and trustees to save time and expense in connection with compliance with the Act. The statute became law on November 15, 1990. The rules and forms being adopted and amended provide procedures for the affected parties to take advantage of the new statutory provisions. Because of the procedural nature of the provisions being adopted, and because of the desirability of permitting the public to take advantage of the provisions of the 1990 Reform Act, the Commission is adopting the new and amended rules and forms without providing for notice and comment. This action is taken in accordance with the provisions of 5 U.S.C. 553(b), which provides that subsection (b) of the section does not apply to rules of agency procedure.[55] While the rules and forms are being adopted, the Commission also is requesting that the public comment on the rules and forms by July 1, 1991. The Commission will consider the comments received to determine whether amendments to the new rules and forms would be appropriate.

The new and amended rules and forms will be effective immediately upon publication in the Federal Register, in accordance with the Administrative Procedure Act, which allows effectiveness in less than 30 days after publication for "good cause." 5 U.S.C. 553(d)(3). The 1990 Reform act provisions have already been enacted. The permissive nature of the statutory provisions and the benefits that will accrue from these changes support a conclusion that the new and amended rules and forms should be adopted as quickly as possible.

VII. Request for Comments

Any interested persons wishing to submit written comments on the rules and forms adopted and amended, or to submit comments on other matters that might have an impact on the rules and forms, are requested to do so by July 1, 1991.

Persons wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Comments letters should refer to File No. S7-11-91. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

VIII. Statutory Bases and Text of Regulations and Forms

The amendments to rules 5a-2 and 7a-15 and Forms T-1 and T-2 are being adopted pursuant to the authority set forth in sections 304, 305, 307, 308, 310, 314, and 319 of the Trust Indenture Act of 1939, as amended [15 U.S.C. 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, and 77sss].

Rules 30-1(e)(5), 30-1(e)(6), 30-1(e)(7), and 30-1(e)(8), amending the delegation of authority of the Division Director, are being adopted pursuant to the authority set forth in the Public Law No. 87-592, 76 Stat. 394 [15 U.S.C. 78d-1, 78d-2] and sections 304, 305, 307, 308, 310, 314, and 319 of the Trust Indenture Act of 1939, as amended [15 U.S.C. 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss].

Rules 4d-7, 4d-8, 5b-1, 5b-2, 5b-3, 10a-1, 10a-2, 10a-3, 10a-4, 10b-4, 10b-5, 10b-6, and Form T-6 [269.9] are being adopted pursuant to the authority set forth in sections 304, 305, 307, 308, 310, 314, and 319 of the Trust Indenture Act of 1939, as amended [15 U.S.C. 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, and 77sss].

Item 512(j) of Regulation S-K is being adopted pursuant to the authority set forth in sections 5, 6, 7, 8, 10, and 19 of the Securities Act of 1933, as amended [15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77s] and sections 304, 305, 307, 308, 310, 314, and 319 of the Trust Indenture Act of 1939, as amended [15 U.S.C. 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss].

[55] For the same reason, the new and amended rules and forms are not subject to the Regulatory Flexibility Act, 5 U.S.C. 603, 604, although the Chairman of the Commission has executed a certification conforming to that Act.

List of Subjects in 17 CFR Parts 200, 229, 260, and 269

Administrative practice and procedure; Authority delegations (Government agencies); Organization and functions (Government agencies), Reporting and recordkeeping requirements, Securities, Trusts and trustees.

IX. Text of Regulations and Forms

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 subpart A is revised to read as follows:

Authority: 15 U.S.C. 77s, 77t, 77w, 78d-1, 78d-2, 78w, 79t, 77ddd, 77eee, 77ggg, 77hhh, 77nnn, 77sss, 80a-37, and 80b-11, unless otherwise noted.

2. By amending § 200.30-1 by adding paragraphs (e)(5), (e)(6), (e)(7), and (e)(8) to read as follows:

§ 200.30-1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(e) * * *

(5) To authorize the issuance of orders exempting any person, registration statement, indenture, security or transaction, or any class or classes of persons, registration statements, indentures, securities, or transactions from the requirements of one or more provisions of the Act pursuant to section 304(d) of the Act (15 U.S.C. 77ddd(d)) and rule 4d-7 thereunder (17 CFR 260.4d-7 of this Chapter).

(6) To determine to be effective prior to the 10th day after filing thereof an application for determining the eligibility under section 310(a) of the Act of a person designated as trustee for delayed offerings of debt securities under the Securities Act pursuant to section 305(b)(2) of the Act and rule 5b-1 [17 CFR 260.5b-1 of this chapter] thereunder.

(7) To authorize the issuance of an order permitting a foreign person to act as sole trustee under qualified indentures pursuant to section 310(a) of the Act and rule 10a-1 through 10a-4 thereunder [17 CFR 260.10a-1 through 260.10a-4 of this chapter].

(8) To issue notices with respect to applications for, and authorize the issuance of orders granting, a stay of a trustee's duty to resign pursuant to section 310(b) of the Act and Rule 10b-4 [17 CFR 260.10b-4 of this chapter] thereunder.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

3. The authority citation for part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

4. § 229.512 is amended by adding paragraph (j) to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(j) *Qualification of trust indentures under the Trust Indenture Act of 1939 for delayed offerings.* Include the following if the registrant intends to rely on section 305(b)(2) of the Trust Indenture Act of 1939 for determining the eligibility of the trustee under indentures for securities to be issued, offered, or sold on a delayed basis by or on behalf of the registrant:

"The undersigned registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of section 310 of the Trust Indenture Act ("Act") in accordance with the rules and regulations prescribed by the Commission under section 305(b)(2) of the Act."

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

5. The authority citation for part 260 is revised to read as follows:

Authority: 15 U.S.C. 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss.

6. By adding new § 260.4d-7 to read as follows:

§ 260.4d-7 Application for exemption from one or more provisions of the Act.

(a) Three copies of every application for an order under section 304(d) of the Act (15 U.S.C. 77ddd(d)) and of every amendment thereto shall be filed with the Commission at its principal office.

(b) One copy shall be manually signed by a duly authorized officer of the applicant (or individual customarily performing similar functions with respect to an organization, whether incorporated or unincorporated), or by a natural person seeking exemption under section 304(d) of the Act.

(c) Such applications shall be on paper no larger 8½ × 11 inches in size. If reduction of large documents would render them illegible, such documents may be filed on paper larger than 8½ × 11 inches in size. The left margin shall be at least 1½ inches wide and if the application is bound, it shall be bound on the left side.

(d) The application shall be typed, printed, copied, or prepared by a process which produces copies suitable for repeated photocopying and microfilming. All typewritten or printed matter shall be set forth in black ink to permit photocopying. If printed, the application shall be in type not smaller than 10-point, roman type, at least two points leaded.

(e) Rules 7a-28 through 7a-32 (§§ 260.7a-28 through 260.7a-32 of this chapter) relating to incorporation by reference shall be applicable to applications for exemption pursuant to section 304(d) of the Act.

7. By adding new § 260.4d-8 to read as follows:

§ 260.4d-8 Content.

(a) Each application for an order under section 304(d) of the Act (15 U.S.C. 77ddd(d)) shall contain the name, address, and telephone number of each applicant and the name, address, and telephone number of any person to which such applicant wishes any questions regarding the application to be directed.

(b) Each application shall contain a statement of the relevant facts on which the request for relief is based, including a justification for the exemption(s) requested and a discussion of any benefit expected for security holders, trustees and/or obligors.

8. By revising § 260.5a-2 to read as follows:

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§ 260.5a–2 General requirements as to form and content of statements of eligibility and qualification.

Rules 7a–15 through 7a–37 [§§ 260.7a–15 through 260.7a–37 of this chapter] under section 307 under the Trust Indenture Act shall be applicable to statements filed on Forms T–1, T–2, and T–6.

9. By adding new § 260.5b–1 to read as follows:

§ 260.5b–1 Application pursuant to section 305(b)(2) of the Trust Indenture Act for determining eligibility of a person designated as trustee for offerings on a delayed basis.

Forms T–1 and T–2 (17 CFR 269.1 and 269.2) shall be used for applications filed for the purpose of determining the eligibility under section 310(a) of the Act of a person designated as trustee for debt securities registered under the Securities Act of 1933 which are eligible to be issued, offered, or sold on a delayed basis by or on behalf of the registrant.

10. By adding new § 260.5b–2 to read as follows:

§ 260.5b–2 General requirements as to form and content of applications.

Rule 5a–2 [§ 260.5a–2 of this chapter] and rules 7a–15 through 7a–37 [§§ 260.7a–15 through 260.7a–37 of this chapter] shall be applicable to applications pursuant to rule 5b–1 [§ 260.56b–1 of this chapter].

11. By adding new § 260.5b–3 to read as follows:

§ 260.5b–3 Number of copies—Filing—Signatures.

(a) Three copies of every application pursuant to rule 5b–1 [§ 260.5b–1 of this chapter] and of every amendment thereto shall be filed with the Commission at its principal office by the issuer upon the indenture securities. Such application shall be filed no later than the second business day following the initial date of public offering or sales after effectiveness of the registration statement with respect to such securities, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

(b) One copy shall be manually signed by the applicant's duly authorized officer (or individual customarily performing similar functions with respect to any organization, whether incorporated or unincorporated), or by the individual trustee, as applicable.

12. By revising § 260.7a–15 to read as follows:

§ 260.7a–15 Scope of §§ 260.7a–15 to 260.7a–37.

The rules contained in §§ 260.7a–15 to 260.7a–37 shall govern applications for exemption filed pursuant to section 304(c) or 304(d) of the Act, applications for qualification of indentures filed pursuant to section 307, statements of eligibility and qualifications of trustees filed pursuant to section 305, 307, or 310(a) of the Act, applications for the stay of the trustee's duty to resign filed pursuant to section 310(b) of the Act, and reports filed pursuant to section 314(a) of the Act.

13. By adding new § 260.10a–1 to read as follows:

§ 260.10a–1 Application for determining eligibility of a foreign person to act as sole trustee pursuant to section 310(a)(1) of the Act.

Form T–6 (17 CFR 269.9 of this chapter) shall be used for an application filed to obtain authorization for a corporation or other person organized and doing business under the laws of a foreign government to act as sole trustee under an indenture qualified or to be qualified under the Act.

14. By adding new § 260.10a–2 to read as follows:

§ 260.10a–2 General requirements as to form and content of applications.

Rule 5a–2 [§ 260.5a–2 of this chapter] and rules 7a–15 through 7a–37 [§§ 260.7a–15 through 260.7a–37 of this chapter] under section 307 of the Act shall be applicable to applications on Form T–6 pursuant to section 310.(a)(1) of the Act and Rule 10a–1 [§ 260.10a–1 of this chapter].

15. By adding new § 260.10a–3 to read as follows:

§ 260.10a–3 Number of copies—Filing—Signatures.

(a) Three copies of every application pursuant to rule 10a–1 [§ 260.10a–1 of this chapter] and of every amendment thereto shall be filed with the Commission at its principal office.

(b) One copy shall be manually signed by the applicant's duly authorized officer (or individual customarily performing similar functions with respect to any organization, whether incorporated or unincorporated).

16. By adding new § 260.10a–4 to read as follows:

§ 260.10a–4 Consent of trustee to service of process.

At the time of filing an application pursuant to rule 10a–1 [§ 260.10a–1 of this chapter] and at such time as it files a statement of eligibility to act as trustee under an indenture qualified under the Act, an indenture trustee organized and doing business under the laws of a foreign government shall furnish to the Commission a written consent of the trustee and power of attorney designating a U.S. person with an address in the United States as agent upon whom may be served any process, pleadings, subpoenas or other papers in any Commission investigation or administrative proceeding and any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, or of the District of Columbia or Puerto Rico, where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities in relation to which the indenture trustee proposes to act as trustee pursuant to any rule or order under section 310(a) of the Act and stipulates and agrees that any such suit, action or proceeding may be commenced by the service of process upon said agent for service of process, and that such service shall be taken and held in all courts to be as valid and binding as if due personal service thereof had been made.

17. By adding new § 260.10b–4 to read as follows:

§ 260.10b–4 Application for stay of trustee's duty to resign pursuant to section 310(b) of the Act.

(a) Three copies of every application for a stay of a trustee's duty to resign under section 310(b) of the Act and of every amendment thereto shall be filed with the Commission at its principal office.

(b) One copy shall be manually signed by a duly authorized officer of the applicant (or individual customarily performing similar functions with respect to an organization, whether incorporated or unincorporated) or by a natural person seeking a stay under section 310(b) of the Act.

(c) Such applications shall be on paper no larger than 8½ × 11 inches in size. If reduction of large documents would render them illegible, such documents may be filed on paper larger than 8½ × 11 inches in size. The left margin shall be at least 1½ inches wide and if the application is bound, it shall be bound on the left side.

(d) The application shall be typed, printed, copied, or prepared by a process which produces copies suitable for repeated photocopying and microfilming. All typewritten or printed matter shall be set forth in black ink to permit photocopying. If printed, the application shall be in type not smaller than 10-point, roman type, at least two points leaded.

(e) Rules 7a–28 through 7a–32 [§§ 260.7a–28 through 260.7a–32 of this chapter] relating to incorporation by reference shall be applicable to applications for stay pursuant to section 310(b) of the Act.

18. By adding new § 260.10b–5 to read as follows:

§ 260.10b–5 Content.

(a) Each application for a stay of a trustee's duty to resign under section 310(b) of the Act shall contain the name, address, and telephone number of each applicant and the name, address, and telephone number of any person to which such applicant wishes any questions regarding the application to be directed.

(b) Each application shall contain a statement of the reasons why the applicant is deemed to be entitled to a stay of resignation with reference to the provisions of section 310(b) of the Act. The statement shall address the nature of the default, the reasonableness of the period before the default will be cured or waived, the procedures to be used to cure or obtain a waiver of the default, and the reasons why a stay will not be inconsistent with the interests of the holders of the indenture securities.

19. By adding new § 260.10b–6 to read as follows:

§ 260.10b–6 Notices—Exemptive Application Procedure.

(a) A proposed notice of the proceeding indicated by the filing of the application shall accompany each application for a stay of a trustee's duty to resign under section 310(b) as an exhibit thereto and if necessary shall be modified to reflect any amendments to such application.

(b) Notice of the initiation of the proceeding will be published in the **Federal Register** and will indicate the earliest date upon which an order disposing of the matter may be entered. The notice will also provide that any interested person may, within the period specified therein, submit to the Commission in writing any facts bearing upon the desirability of a hearing on the matter, and may request that a hearing be held stating the person's reasons therefore and the nature of his or her interest in the matter.

(c) An order disposing of the matter will be issued following the expiration of the period of time referred to in paragraph (b) of this section, unless the Commission thereafter orders a hearing on the matter.

(d) The Commission will order a hearing on the matter, if it appears that a hearing is necessary or appropriate in the public interest or for the protection of investors:

(1) Upon the request of any interested person, or

(2) Upon its own motion.

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

20. The authority citation for part 269 is revised to read as follows:

Authority: 15 U.S.C. 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss.

21. By adding new § 269.9 to read as follows:

§ 269.9 Form T–6 for application under section 310(a)(1) of the Trust Indenture Act for determination of the eligibility of a foreign person to act as institutional trustee.

This form shall be used for the filing of an application pursuant to rule 10a–1 [§ 260.10a–1 of this chapter] to obtain authorization for a corporation or other person organized and doing business under the laws of a foreign government to act as sole trustee under an indenture qualified or to be qualified under the Act.

§§ 269.1, 269.2 and 269.9 [Amended]

22. By revising Forms T–1, (§ 269.1), and T–2 (§ 269.2) and adding Form T–6 (§ 269.9) to read as follows:

Note: The Text and Instructions of Forms T–1, T–2 and T–6 do not appear in the Code of Federal Regulations.

OMB Approval

OMB Number: 3235–0110, Expires: March 31, 1994, estimated average burden hours per response: 15.

Securities Act of 1933 File No.: _____

(If application to determine eligibility of trustee for delayed offering pursuant to Section 305(b)(2))

Securities and Exchange Commission

Washington, DC 20549

Form T–1

Statement of Eligibility Under the Trust Indenture Act of 1939 of a Corporation Designated to Act as Trustee

Check if an Application to Determine Eligibility of a Trustee Pursuant to Section 305(b)(2) _____

_____

(Exact name of trustee as specified in its charter)

_____

(Jurisdiction of incorporation or organization if not a U.S. national bank)

_____

(I.R.S. Employer Identification Number)

_____

(Address of principal executive offices)

_____

(Zip code)

_____

(Name, address and telephone number of agent for service)

_____

(Exact name of obligor as specified in its charter)

_____

(State or other jurisdiction of incorporation or organization)

_____

(I.R.S. Employer Identification No.)

_____

(Address of principal executive offices)

_____

(Zip code)

_____

(Title of the indenture securities)

General Instructions

A. Rule as to the Use of Form T–1

Form T–1 shall be used for statements of eligibility of corporations designated to act as trustees under trust indentures to be qualified pursuant to sections 305 or 307 of the Trust Indenture Act of 1939. Form T–1 also shall be used for statements of eligibility of foreign trustees under trust indentures to be qualified pursuant to sections 305 or 307, where a prior order has been issued pursuant to section 301(a)(1) or 304(d), or the Commission has promulgated a rule under such sections permitting the trustee to act as a sole trustee under the indenture to be qualified. Finally, Form T–1 shall be used for applications to determine the eligibility of a trustee pursuant to section 305(b)(2) of the Act.

B. Obligations Deemed To Be in Default

Item 13 requires disclosure of defaults of the obligor on securities issued under indentures under which the applicant is trustee.

If the obligor is not in default, the applicant is required to provide responses to items 1, 2, and 16 of Form T–1. In addition, time 15 would be applicable to foreign trustees. If the obligor is in default, the applicant must respond to all of the items in the Form T–1.

An obligor shall be deemed to be in default upon the occurrence of acts or conditions as defined in the indenture, but exclusive of any period of grace or requirement of notice.

C. Application of General Rules and Regulations

The General Rules and Regulations under the Trust Indenture Act of 1939 are applicable to statements of eligibility on this form. Attention is particularly directed in rules 0–1 and 0–2 as to the meaning of terms used in the rules and regulations. Attention is also directed to rule 5a–3 regarding the filing of statements of eligibility and qualification and to rule 7a–16 regarding the inclusion of items, the differentiation between items and answers, and the omission of instructions.

D. Scope of Items and Instructions

The items and instructions require information only as to the trustee, unless the context clearly shows otherwise.

E. Calculation of Percentages of Securities

The percentages of securities required by this form are to be calculated in accordance with the provisions of rule 10b–1.

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F. Items Relating to Underwriters

Wherever any item of the form requires information with respect to an underwriter for the obligor, the information is to be given as to every person who, within one year prior to the date of filing the statement of eligibility and qualification, acted as an underwriter of any security of the obligor outstanding on the date of filing the statement and as to every proposed principal underwriter of the securities proposed to be offered. The term "principal underwriter" means an underwriter in privity of contract with the issuer of the securities as to which he is an underwriter.

G. Coordination With Delayed Offering Registration Statement

When the Form T-1 is used for applications to determine the eligibility of a trustee pursuant to section 305(b)(2), the following provisions shall apply:

1. The file number under the Securities Act of 1933 for the delayed offering registration statements to which the application applies shall be placed in the upper right hand corner of the cover page of the Form T-1.

2. The description of the indenture securities included under "Title of Securities" should specify whether the application relates to a single tranche or to all of the securities registered pursuant to the delayed offering registration statement.

Item 1. General Information

Furnish the following information as to the trustee—

(a) Name and address of each examining or supervising authority to which it is subject.

(b) Whether it is authorized to exercise corporate trust powers.

Item 2. Affiliations with the Obligor

If the obligor is an affiliate of the trustee, describe each such affiliation.

Instructions. 1. The term "affiliate" is defined in Rule 0-2 of the General Rules and Regulations under the Act. Attention is also directed to Rule 7a-28.

2. Include the name of each such affiliate and the names of all intermediary affiliates, if any. Indicate the respective percentage of voting securities or other bases of control giving rise to the affiliation.

Item 3. Voting Securities of the Trustee

Furnish the following information as to each class of voting securities of the trustee:

As of _____ (Insert date within 31 days).

Col. A	Col. B
Title of class	Amount outstanding

Instructions. The term "voting security" is defined in section 303(16) of the Act.

Item 4. Trusteeships Under Other Indentures

If the trustee is a trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the obligor are outstanding, furnish the following information:

(a) Title of the securities outstanding under each such other indenture.

(b) A brief statement of the facts relied upon as a basis for the claim that no conflicting interest within the meaning of section 310(b)(1) of the Act arises as a result of the trusteeship under any such other indenture, including a statement as to how the indenture securities will rank as compared with the securities issued under such other indenture.

Item 5. Interlocking Directorates and Similar Relationships With the Obligor or Underwriters

If the trustee or any of the directors or executive officers of the trustee is a director, officer, partner, employee, appointee, or representative of the obligor or of any underwriter for the obligor, indentify each such person having any such connection and state the nature of each such connection.

Instructions. 1. Notwithstanding General Instruction F, the term "underwriter" as used in this item does not refer to any person who is not currently engaged in the business of underwriting.

2. The term "employee," "appointee," and "representative," as used in this item, do not include connections in the capacity of transfer agent, registrar, custodian, paying agent, fiscal agent, escrow agent, or depositary, or in any other similar capacity or connections in the capacity of trustee, whether under an indenture or otherwise.

Item 6. Voting Securities of the Trustee Owned by the Obligor or Its Officials

Furnish the following information as to the voting securities of the trustee owned beneficially by the obligor and each director, partner, and executive officer of the obligor:

As of _____ (Insert date within 31 days).

Instructions. 1. Names of persons who do not own beneficially any of the securities specified may be omitted.

2. No information need be given in any case where the amount of voting securities of the trustee, owned beneficially by the obligor and its directors, partners, and executive officers, taken as a group, does not exceed 1 percent of the outstanding voting securities of the trustee.

Col. A	Col. B	Col. C	Col. D
Name of owner	Title of class	Amount owned beneficially	Percentage of voting securities represented by amount given in Col. C

Item 7. Voting Securities of the Trustee Owned by Underwriters of Their Officials

Furnish the following information as to the voting securities of the trustee owned beneficially by each underwriter for the obligor and each director, partner, and executive officer of each such underwriter:

As of _____ (Insert date within 31 days).

Instructions. 1. Instruction 1 to Item 6 shall be applicable to this item.

2. The name of each director, partner, or executive officer required to be given in Column A shall be set forth under the name of the underwriter of which he is a director, partner, or executive officer.

3. No information need be given in any case where the amount of voting securities of the trustee owned beneficially by an underwriter and its directors, partners, and executive officers, taken as a group, does not exceed 1 percent of the outstanding voting securities of the trustee.

Col. A	Col. B	Col. C	Col. D
Name of owner	Title of class	Amount owned beneficially	Percentage of voting securities represented by amount given in Col. C

Item 8. Securities of the Obligor Owned or Held by the Trustee

Furnish the following information as to securities of the obligor owned beneficially or held as collateral security for obligations in default by the trustee:

As of _____ (Insert date within 31 days).

Instructions. 1. As used in this item, the term "securities" includes only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay monies lent to a person by one or more banks, trust companies, or banking firms, or any certificate of interest or participation in any such note or evidence of indebtedness.

2. For the purposes of this item the trustee shall not be deemed the owner or holder of (a) any security which it holds as collateral security (as trustee or otherwise) for an obligation which is not in default, or (b) any security which it holds as collateral security under the indenture to be qualified, irrespective of any default thereunder, or (c) any security which it holds as agent for collection, or as custodian, escrow agent or depositary, or in any similar representative capacity.

3. No information need be furnished under this item as to holdings by the trustee of securities already issued under the indenture to be qualified or securities issued under any other indenture under which the trustee is also trustee.

4. No information need be given with respect to any class of securities where the amount of securities of the class which the trustee owns beneficially or holds as collateral security for obligations in default does not exceed 1 percent of the outstanding securities of the class.

Col. A	Col. B	Col. C	Col. D
Title of class	Whether the securities are voting or nonvoting securities	Amount owned beneficially or held as collateral security for obligations in default	Percent of class represented by amount given in Col. C

Item 9. Securities of Underwriters Owned or Held by the Trustee

If the trustee owns beneficially or holds as collateral security for obligations in default any securities of an underwriter for the obligor, furnish the following information as to each class of securities of such underwriter any of which are so owned or held by the trustee:

As of _____ (Insert date within 31 days).

Col. A	Col. B	Col. C	Col. D
Title of issuer and title of class	Amount outstanding	Amount owned beneficially or held as collateral security for obligations in default by trustee	Percent of class represented by amount given in Col. C

Instruction. Instructions 1, 2, and 4 to Item 8 shall be applicable to this item.

Item 10. Ownership or Holdings by the Trustee of Voting Securities of Certain Affiliates or Security Holders of the Obligor

If the trustee owns beneficially or holds as collateral security for obligations in default voting securities of a person who, to the knowledge of the trustee (1) owns 10 percent or more of the voting securities of the obligor or (2) is an affiliate, other than a subsidiary, of the obligor, furnish the following information as to the voting securities of such person:

As of _____ (Insert date within 31 days).

Col. A	Col. B	Col. C	Col. D
Title of issuer and title of class	Amount outstanding	Amount owned beneficially or held as collateral security for obligations in default by trustee	Percent of class represented by amount given in Col. C

Instruction. Instructions 1, 2, and 4 to item 8 shall be applicable to this item.

Item 11. Ownership or Holdings by the Trustee of any Securities of a Person Owning 50 Percent or More of the Voting Securities of the Obligor

If the trustee owns beneficially or holds as collateral security for obligations in default any securities of a person who, to the knowledge of the trustee, owns 50 percent or more of the voting securities of the obligor, furnish the following information as to each class of securities of such person any of which are so owned or held by the trustee:

As of _____ (Insert date within 31 days).

Col. A	Col. B	Col. C	Col. D
Title of issuer and title of class	Amount outstanding	Amount owned beneficially or held as collateral security for obligations in default by trustee	Percent of class represented by amount given in Col. C

Instruction. Instructions 1, 2 and 4 to Item 8 shall be applicable to this item.

Item 12. Indebtedness of the Obligor to the Trustee

Except as noted in the instructions, if the obligor is indebted to the trustee, furnish the following information:

As of _____ (Insert date within 31 days).

Col. A	Col. B	Col. C
Nature of indebtedness	Amount outstanding	Date due

Instructions. 1. No information need be provided as to: (a) The ownership of securities issued under any indenture, or any security or securities having a maturity of more than one year at the time of acquisition by the indenture trustee; (b) disbursements made in the ordinary course of business in the capacity of trustee of an indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depositary, or other similar capacity; (c) indebtedness created as a result of services rendered or premises rented; or indebtedness created as a result of goods or securities sold in a cash transaction; (d) the ownership of stock or of other securities of a corporation organized under section 25(a) of the Federal Reserve Act, as amended, which is directly or indirectly a creditor of an obligor upon the indenture securities; or (e) the ownership of any drafts, bills of exchange, acceptances, or obligations which fall within the classification of self-liquidating paper.

2. Information should be given as to the general type of indebtedness, such as lines of credit, commercial paper, long-term notes, mortgages, *etc.*

Item 13. Defaults by the Obligor

(a) State whether there is or has been a default with respect to the securities under this identure. Explain the nature of any such default.

(b) If the trustee is a trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the obligor are outstanding, or is trustee for more than one outstanding series or securities under the indenture, state whether there has been a default under any such indenture or series, identify the indenture or series affected, and explain the nature of any such default.

Item 14. Affiliations With the Underwriters

If any underwriter is an affiliate of the trustee, describe each such affiliation.

Instructions. 1. The term "affiliate" as defined in Rule 0-2 of the General Rules and Regulations under the Act. Attention is directed to rule 7a-28.

2. Include the name of each such affiliate and the names of all intermediate affiliates, if any. Indicate the respective percentage of voting securities or other bases of control giving rise to the affiliation.

Item 15. Foreign Trustee

Identify the order or rule pursuant to which the foreign trustee is authorized to act as sole trustee under indentures qualified or to be qualified under the Act.

Item 16. List of exhibits

List below all exhibits filed as a part of this statement of eligibility

Instructions. Subject to rule 7a-29 permitting incorporation of exhibits by reference, the following exhibits are to be filed as a part of the statement of eligibility of the trustee. Such exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may be referred to by the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for under item 16. If the certificate of authority to commence business (Exhibit 2) and/or the certificate to exercise corporate trust powers (Exhibit 3) is contained in another exhibit, a statement to that effect shall be made, identifying the exhibit in which such certificates are included. If an applicable exhibit is not in English, a translation in English shall also be filed. In response to exhibit 7, foreign trustees shall provide financial information sufficient to provide the information required by section 310(a)(2) of the Act.

1. A copy of the articles of association of the trustee as now in effect.

2. A copy of the certificate of authority of the trustee to commence business, if not contained in the articles of association.

3. A copy of the authorization of the trustee to exercise corporate trust powers, if such authorization is not contained in the documents specified in paragraph (1) or (2) above.

4. A copy of the existing bylaws of the trustee, or instruments corresponding thereto.

5. A copy of each indenture referred to in item 4, if the obligor is in default.

6. The consents of United States institutional trustees required by section 321(b) of the Act.

7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.

8. A copy of any order pursuant to which the foreign trustee is authorized to act as sole trustee under indentures qualified or to be qualified under the Act.

9. Foreign trustees are required to furnish a consent to service of process (*see* Rule 10a-4 under the Act).

Signature

Pursuant to the requirements of the Trust Indenture Act of 1939 the trustee, _____, a [state form of organization] organized and existing under the laws of _____, has duly caused this statement

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of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of _____, and State [or other jurisdiction] of _____, on the _____ day of _____, _____ (Year)

(Trustee)
By:

(Name and Title)

Instruction. The name of each person signing the statement of eligibility shall be typed or printed beneath the signature.

OMB Approval

OMB Number: 3235-0111, Expires: March 31, 1994, Estimated average burden hours per response: 5.

Securities Act of 1933 File No.: _____
(If application to determine eligibility to trustee for delayed offering pursuant to Section 305(b)(2))

Securities and Exchange Commission

Washington, DC 20549

Form T-2

Statement of Eligibility Under the Trust Indenture Act of 1939 of an Individual Designated to Act as Trustee

Check if an application to determine eligibility of a trustee pursuant to section 305(b)(2) _____

(Name of trustee)

(Social Security Number)

(Business address: street, city, state and zip code)

(Exact name of obligor as specified in its chapter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

(Address of principal executive offices)

(Zip code)

(Title of indenture securities)

Special Instructions for Completing Form T-2

Under sections 304, 305, 307, 308, 309, 310, and 319 of the Trust Indenture Act of 1939, the Commission is authorized to solicit the information required to be supplied by this form for statements of eligibility of individuals designated to act as trustees.

Disclosure of the information specified in this form is mandatory prior to processing statements of eligibility, except for social security account numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining eligibility of trustees. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social Security account numbers, if furnished, will assist the Commission in identifying persons desiring to qualify as trustees and, therefore, in promptly processing filings.

Failure to disclose the information requested by this form, except for social security account numbers, may result in enforcement action by the Commission to compel compliance with the Federal securities laws.

General Instructions

A. Rule as to Use of Form T-2

Form T-2 shall be used for statements of eligibility of individuals designated to act as trustees under trust indentures to be qualified pursuant to sections 305 or 307 of the Trust Indenture Act of 1939. Form T-2 shall be used for applications to determine the eligibility of an individual trustee pursuant to section 305(b)(2) of the Act.

B. Obligations Deemed to be in Default

Item 9 requires disclosure of defaults by the obligor on securities issued under indentures under which the applicant is trustee.

If the obligor is not in default, the applicant is required to provide responses to items 1 and 11 of Form T-2. If the obligor is in default, the applicant must respond to all of the items in the Form T-2.

An obligation shall be deemed to be in default upon the occurrence of acts or conditions as defined in the indenture, but exclusive of any period of grace or requirement of notice.

C. Application of General Rules and Regulations

The General Rules and Regulations under the Trust Indenture Act of 1939 are applicable to statements of eligibility on this form. Attention is particularly directed to rules 0-1 and 0-2 as to the meaning of terms used in the rules and regulations. Attention is also directed to rule 5a-3 regarding the filing of statements of eligibility and to rule 7a-16 regarding the inclusion of items, the differentiation between items and answers, and the omission of instructions.

D. Scope of Items and Instructions

The items and instructions require information only as to the trustee, unless the context clearly shows otherwise.

E. Calculation of Percentages of Securities

The percentages of securities required by this form are to be calculated in accordance with the provisions of rule 10b-1.

F. Items Relating to Underwriters

Wherever any item of the form requires information with respect to an underwriter for the obligor the information is to be given as to every person who, within one year prior to the date of filing the statement of eligibility and qualification, acted as an underwriter of any security of the obligor outstanding on the date of filing the statement and as to every proposed principal underwriter of the securities proposed to be offered. The term "principal underwriter" means an underwriter in privity of contract with the issuer of the securities as to which he is an underwriter.

G. Coordination with Delayed Offering Registration Statement

When the Form T-2 is used for applications to determine the eligibility of a trustee pursuant to section 305(b)(2), the following provisions shall apply:

1. The file number under the Securities Act of 1933 for the delayed offering registration statement to which the application applies shall be placed in the upper right hand corner of the cover page of the Form T-2.

2. The description of the indenture securities included under "Title of Securities" should specify whether the application relates to a single tranche or to all of the securities registered pursuant to the delayed offering registration statement.

Item 1. Affiliations with Obligor

If the obligor is an affiliate of the trustee, describe each such affiliation.

Instructions. 1. The term "affiliate" is defined in rule 0-2 of the General Rules and Regulations under the Act. It should be noted that a corporation or other business entity may be an affiliate of an individual within the meaning of the definition. Attention is also directed to rule 7a-28.

2. Include the name of each such affiliate and the names of all intermediary affiliates, if any. Indicate the respective percentage of voting securities or other bases of control giving rise to the affiliation.

Item 2. Trusteeships Under Other Indentures

If the trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the obligor are outstanding, file a copy of each such indenture as an exhibit and furnish the following information:

(a) Title of the securities outstanding under each such other indenture.

(b) A brief statement of the facts relied upon by the trustee as a basis for the claim that no conflicting interest within the meaning of section 310(b)(1) of the Act arises as a result of the trusteeship under such other indenture, including a statement as to how the indenture securities will rank as compared with the securities issued under such other indenture.

Instruction. Attention is directed to rule 7a-29 permitting incorporation of exhibits by reference.

Item 3. Certain Relationships Between the Trustee and the Obligor or an Underwriter

If the trustee is a director, officer, partner, employee, appointee or representative of the obligor or of any underwriter for the obligor, state the nature of each such connection.

Instructions. 1. Notwithstanding General Instruction F, the term "underwriter" as used in this item does not refer to any person who is not currently engaged in the business of underwriting.

2. The terms "employee," "appointee," and "representative," as used in this item, do not include connections in the capacity of transfer agent, registrar, custodian, paying agent, fiscal agent, escrow agent, or depositary or in any other similar capacity or connections in the capacity of trustee, whether under an indenture or otherwise.

Item 4. Securities of the Obligor Owned or Held by the Trustee

Furnish the following information as to securities of the obligor owned beneficially by the trustee or held by the trustee as collateral security for obligations in default:

As of _____ (Insert date within 31 days).

Col. A	Col. B	Col. C	Col. D
Title of class	Whether the securities are voting or nonvoting securities	Amount owned beneficially or held as collateral security for obligations in default	Percent of class represented by amount given in Col. C

Instructions. 1. As used in this item, the term "securities" includes only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay monies lent to a person by one or more banks, trust companies, or banking firms, or any certificate of interest or participation in any such note or evidence of indebtedness.

2. For the purposes of this item the trustee shall not be deemed the owner or holder of (a) any security which it holds as collateral security (as trustee or otherwise) for an obligation which is not in default, or (b) any security which it holds as collateral security under the indenture to be qualified, irrespective of any default thereunder, or (c) any security which it holds as agent for collection, or as custodian, escrow agent or depositary, or in any similar representative capacity.

3. No information need be furnished under this item as to holdings by the trustee of securities already issued under the indenture to be qualified or securities issued under any other indenture under which the trustee is also trustee.

4. No information need be given with respect to any class of securities where the amount of securities of the class which the trustee owns beneficially or holds as collateral security for obligations in default does not exceed 1 percent of the outstanding securities of the class.

Item 5. Securities of Underwriters Owned or Held by the Trustee

If the trustee owns beneficially or holds as collateral security for obligations in default any securities of an underwriter for the obligor, furnish the following information as to each class of securities of such underwriter any of which are so owned or held by the trustee:

As of _____ (Insert date within 31 days).

Col. A	Col. B	Col. C	Col. D
Name of issuer and title of class	Amount outstanding	Amount owned beneficially or held as collateral security for obligations in default	Percentage of voting securities represented by amount given in Col. C

Instruction. Instructions 1, 2, and 4 to Item 4 shall be applicable to this item.

Item 6. Holdings by the Trustee of Voting Securities of Certain Affiliates or Principal Holders of Voting Securities of the Obligor

If the trustee owns beneficially or holds as collateral security for obligations in default voting securities of a person who, to the knowledge of the trustee (1) owns 10 percent or more of the voting securities of the obligor or (2) is an affiliate, other than a subsidiary, of the obligor, furnish the following information as to the voting securities of such person:

As of _____ (Insert date within 31 days).

Col. A	Col. B	Col. C	Col. D
Name of issuer and title of class	Amount outstanding	Amount owned beneficially or held as collateral security for obligations in default	Percent of class represented by amount given in Col. C

Instruction. Instructions 1, 2, and 4 to Item 4 shall be applicable to this item.

Item 7. Holdings by the Trustee of any Securities of a Person Owning 50 Percent or More of the Voting Securities of the Obligor

If the trustee owns beneficially or holds as collateral security for obligations in default any securities of a person who, to the knowledge of the trustee, owns 50 percent or more of the voting securities of the obligor, furnish the following information as to each class of securities of such person any of which are so owned or held by the trustee:

As of _____ (Insert date within 31 days).

Col. A	Col. B	Col. C	Col. D
Name of issuer and title of class	Amount outstanding	Amount owned beneficially or held as collateral security for obligations in default	Percent of class represented by amount given in Col. C

Instruction. Instructions 1, 2, and 4 to Item 4 shall be applicable to this item.

Item 8. Indebtedness of the Obligor to the Trustee

Except as noted in the instructions, if the obligor is indebted to the trustee, furnish the following information:

As of _____ (Insert date within 31 days).

Col. A	Col. B	Col. C
Nature of indebtedness	Amount outstanding	Date due

Instructions. 1. No information need be provided as to: (a) The ownership of securities issued under any indenture, or any security or securities having a maturity of more than one year at the time of acquisition by the indenture trustee; (b) disbursements made in the ordinary course of business in the capacity of trustee of an indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depository, or other similar capacity; (c) indebtedness created as a result of services rendered or premises rented, or indebtedness created as a result of goods or securities sold in a cash transaction; (d) the ownership of stock or of other securities of a corporation organized under section 25(a) of the Federal Reserve Act, as amended, which is directly or indirectly a creditor of an obligor upon the indenture securities, or (e) the ownership of any drafts, bills or exchanges, acceptances, or obligations which fall within the classification of self-liquidating paper.

2. Information should be given as to the general type of indebtedness, such as lines of credit, commercial paper, long-term notes, mortgages, etc.

Item 9. Defaults by the Obligor

(a) State whether there is or has been any default with respect to the securities under this indenture. Explain the nature of any such default.

(b) If the trustee is a trustee under another indenture under which any other securities, or certificates of interest or participation in other securities, of the obligor are outstanding, or is trustee for more than one outstanding series of securities, state whether there has been a default under any such indenture or series, identify the indenture or series affected, and explain the nature of any such default.

Item 10. Affiliations with the Underwriters

If any underwriter is an affiliate of the trustee, describe each such affiliation.

Instructions. 1. The term *affiliate* is defined in rule 0-2 of the General Rules and Regulations under the Act. Attention is directed to rule 7a-28.

2. Include the name of each affiliate and the names of all intermediate affiliates, if any. Indicate the respective percentage of voting securities other bases of control giving rise to the affiliation.

Item 11. List of Exhibits

List below all exhibits filed as a part of this statement of eligibility.

Instruction. Subject to rule 7a-29 permitting incorporation of exhibits by reference, exhibits filed as a part of the statement of eligibility of the trustee shall be appropriately lettered or numbered for convenient

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reference. Exhibits incorporated by reference may be referred to by the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for under item 11.

Signature

Pursuant to the requirements of the Trust Indenture Act of 1939 I, _____, have signed this statement of eligibility in the City of _____, and State of _____, on the _____ day of _____, _____ (Year).

(Signature of trustee)

Instruction. The name of each person signing the statement of eligibility shall be typed or printed beneath the signature.

OMB Approval

OMB Number: 3235-0091, Expires: March 31, 1994, estimated average burden hours per response: 17.

Securities and Exchange Commission

Washington, DC 20549

Form T-6

Application Under section 310(a)(1) of the Trust Indenture Act of 1939 for Determination of Eligibility of a Foreign Person to Act as Institutional Trustee

(Exact name of trustee as specified in its charter)

(Jurisdiction of incorporation or organization)

(Address and telephone number of principal executive offices)

(Name, address and telephone number of agent for service)

(Exact name of obligor as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

(Address of principal executive offices)

(Zip code)

(Title of the indenture securities)

General Instructions

A. Rule as to the Use of Form T-6

1. Items 1, 15, and 16 of Form T-6 shall be used by corporations or other persons organized and doing business under the laws of a foreign government to make application to act as a sole trustee under trust indentures to be qualified pursuant to section 310(a)(1) of the Trust Indenture Act of 1939 ("Act").

2. Subject to the provisions of General Instruction C, Items 1 through 16 of Form T-6 shall be used for statements of eligibility under section 310(a) of the Act of corporations or other persons organized and doing business under the laws of a foreign government that are seeking an order authorizing their eligibility under section 310(a)(1) to act as a sole trustee under trust indentures to be qualified under the Act; and at the same time are seeking to establish their eligibility to act as trustee under a particular indenture being qualified pursuant to section 305 or 307 of this Act.

3. Form T-1, rather than Form T-6, shall be used for statements of eligibility of foreign trustees under trust indentures to be qualified pursuant to section 305 or 307, where a prior order has been issued pursuant to section 310(a)(1) or 304(d).

B. Timing of Orders in Response to Applications on Form T-6

1. Orders in response to Forms T-6 filed pursuant to Instruction A.1. above will be issued at such time as the Commission shall determine.

2. Orders in response to Forms T-6 filed pursuant to Instruction A.2. above will be issued at the time the registration statement and indenture to which it relates are declared effective and qualified.

C. Obligations Deemed to be in Default

Item 13 requires disclosure of defaults by the obligor on securities issued under indentures under which the applicant is trustee.

If the obligor is not in default, the applicant is required to provide responses to items 1, 2, 15, and 16 of Form T-6. If the obligor is in default, the applicant must respond to all of the items in the Form T-6.

An obligation shall be deemed to be in default upon the occurrence of acts or conditions as defined in the indenture, but exclusive of any period of grace or requirement of notice.

D. Application of General Rules and Regulations

The General Rules and Regulations under the Trust Indenture Act of 1939 are applicable to statements of eligibility on this form. Attention is particularly directed to rules 0-1 and 0-2 as to the meaning of terms used in the rules and regulations. Attention is also directed to rules 10a-3 regarding the filing of statements of eligibility and to rule 7a-16 regarding the inclusion of items, the differentiation between items and answers, and the omission of instructions.

E. Scope of Items and Instructions

The items and instructions require information only as to the trustee, unless the context clearly shows otherwise.

F. Calculation of Percentages of Securities

The percentages of securities required by this form are to be calculated in accordance with the provisions of rule 16b-1.

G. Items Relating to Underwriters

Wherever any item of the form requires information with respect to an underwriter for the obligor, the information is to be given as to every person who, within one year prior to the date of filing the statement of eligibility, acted as an underwriter of any security of the obligor outstanding on the date of filing the statement and as to every proposed principal underwriter of the securities proposed to be offered. The term "principal underwriter" means an underwriter in privity of contract with the issuer of the securities as to which he is an underwriter.

Item 1. General Information

Furnish the following information as to the trustee—

(a) Name and address of each examining or supervising authority to which it is subject.

(b) Whether it is authorized to exercise corporate trust powers.

Item 2. Affiliations with Obligor

If the obligor is an affiliate of the trustee, describe each such affiliation.

Instructions. 1. The term "affiliate" is defined in rule 0-2 of the General Rules and Regulations under the Act. Attention is also directed to rule 7a-30.

2. Include the name of each such affiliate and the names of all intermediary affiliates, if any. Indicate the respective percentage of voting securities or other bases of control giving rise to the affiliation.

Item 3. Voting Securities of the Trustee

Furnish the following information as to each class of voting securities of the trustee:

As of _____ (Insert date within 31 days.)

Col. A	Col. B.
Title of class	Amount outstanding

Instruction. The term "voting security" is defined in section 303(16) of the Act.

Item 4. Trusteeships Under Other Indentures

If the trustee is a trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the obligor are outstanding, furnish the following information:

(a) Title of the securities outstanding under each other indenture.

(b) A brief statement of the facts relied upon as a basis for the claim that no conflicting interest within the meaning of section 310(b)(1) of the Act arises as a result of the trusteeship under any such other indenture, including a statement as to how the indenture securities will rank as compared with the securities issued under such other indenture.

Item 5. Interlocking Directorates and Similar Relationships With the Obligor or Underwriters

If the trustee or any of the directors or executive officers of the trustee is a director, officer, partner, employee, appointee, or representative of the obligor or of any underwriter for the obligor, identify each such person having any such connection and state the nature of each such connection.

Instructions. 1. Notwithstanding General Instruction F, the term "underwriter" as used in this item does not refer to any person who is not currently engaged in the business of underwriter.

2. The term "employee," "appointee," and "representative," as used in this item, do not include connections in the capacity of transfer agent, registrar, custodian, paying agent, fiscal agent, escrow agent, or depositary, or in any other similar capacity or connections in the capacity of trustee, whether under an indenture or otherwise

Item 6. Voting Securities of the Trustee Owned by the Obligor or Its Officials

Furnish the following information as to the voting securities of the trustee owned beneficially by the obligor and each director, partner, and executive officer of the obligor:

As of _____ (Insert date within 31 days.)

Instructions. 1. Names of persons who do not own beneficially any of the securities specified may be omitted.

2. No information need to be given in any case where the amount of voting securities of the trustee, owned beneficially by the obligor and its directors, partners, and executive officers, taken as a group, does not exceed 1 percent of the outstanding voting securities of the trustee.

Col. A	Col. B	Col. C	Col. D
Name of owner	Title of class	Amount owned beneficially	Percentage of voting securities represented by amount given in Col. C

Item 7. Voting Securities of the Trustee Owned by Underwriters or Their Officials

Furnish the following information as to the voting securities of the trustee owned beneficially by each underwriter for the obligor and each director, partner, and executive officer of each such underwriter:

As of _____ (Insert date within 31 days.)

Instructions. 1. Instruction 1 to Item 6 shall be applicable to this item.

2. The name of each director, partner, or executive officer required to be given in Column A shall be set forth under the name of the underwriter of which he is a director, partner, or executive officer.

3. No information need be given in any case where the amount of voting securities of the trustee owned beneficially by an underwriter and its directors, partners, and executive officers, taken as a group, does not exceed 1 percent of the outstanding voting securities of the trustee.

Col. A	Col. B	Col. C	Col. D
Name of owner	Title of class	Amount owned beneficially	Percentage of voting securities represented by amount given in Col. C

Item 8. Securities of the Obligor Owned or Held by the Trustee

Furnish the following information as to securities of the obligor owned beneficially or held as collateral security for obligations in default by the trustee:

As of _____ (Insert date within 31 days).

Instructions. 1. As used in this item, the term "securities" includes only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay monies lent to a person by one or more banks, trust companies, or banking firms, or any certificate of interest or participation in any such note or evidence of indebtedness.

2. For the purposes of this item the trustee shall not be deemed the owner or holder of (a) any security which it holds as collateral security (as trustee or otherwise) for an obligation which is not in default, or (b) any security which it holds as collateral security under the indenture to be qualified, irrespective of any default thereunder, or (c) any security which it holds as agent for collection, or as custodian, escrow agent or depositary, or in any similar representative capacity.

3. No information need be furnished under this item as to holdings by the trustee of securities already issued under the indenture to be qualified or securities issued under any other indenture under which the trustee is also trustee.

4. No information need be given with respect to any class of securities where the amount of securities of the class which the trustee owns beneficially or holds as collateral security for obligations in default does not exceed 1 percent of the outstanding securities of the class.

Col. A	Col. B	Col. C	Col. D
Title of class	Whether the securities are voting or nonvoting securities	Amount owned beneficially or held as collateral security for obligations in default	Percentage of class represented by amount given in Col. C

Item 9. Securities of Underwriters Owned or Held by the Trustee

If the trustee owns beneficially or holds as collateral security for obligations in default any securities of an underwriter for the obligor, furnish the following information as to each class of securities of such underwriter any of which are so owned or held by the trustee:

As of _____ (Insert date within 31 days).

Col. A	Col. B	Col. C	Col. D
Title of issuer and title of class	Amount outstanding	Amount owned beneficially or held as collateral security for obligations in default by trustee	Percentage of class represented by amount given in Col. C

Instructions. Instructions 1, 2, and 4 to Item 8 shall be applicable to this item.

Item 10. Ownership or Holdings by the Trustee of Voting Securities of Certain Affiliates or Security Holders of the Obligor

If the trustee owns beneficially or holds as collateral security for obligations in default voting securities of a person who, to the knowledge of the trustee (1) owns 10 percent or more of the voting securities of the obligor or (2) is an affiliate, other than a subsidiary, of the obligor, furnish the following information as to the voting securities of such person:

As of _____ (Insert date within 31 days).

Col. A	Col. B	Col. C	Col. D
Title of issuer and title of class	Amount outstanding	Amount owned beneficially or held as collateral security for obligations in default by trustee	Percent of class represented by amount given in Col. C

Instruction. Instructions 1, 2, and 4 to Item 8 shall be applicable to this item.

Item 11. Ownership or holdings by the Trustee of Any Securities of a Person Owning 50 Percent or More of the Voting Securities of the Obligor

If the trustee owns beneficially or holds as collateral security for obligations in default any securities of a person who, to the knowledge of the trustee, owns 50 percent or more of the voting securities of the obligor, furnish the following information as to each class of securities of such person any of which are so owned or held by the trustee:

As of _____ (Insert date within 31 days).

Col. A	Col. B	Col. C	Col. D
Title of issuer and title of class	Amount outstanding	Amount owned beneficially or held as collateral security for obligations in default by trustee	Percent of class represented by amount given in Col. C

Instruction. Instructions 1, 2, and 4 to Item 8 shall be applicable to this item.

Item 12. Indebtedness of the Obligor to the Trustee

Except as noted in the instructions, if the obligor is indebted to the trustee, furnish the following information:

As of _____ (insert date within 31 days).

Col. A	Col. B	Col. C
Nature of indebtedness	Amount outstanding	Date due

Instructions. 1. No information need be provided as to: (a) The ownership of securities issued under any indenture, or any security or securities having a maturity of more than one year at the time of acquisition by the indenture trustee; (b) disbursements made in the ordinary course of business in the capacity of trustee of an indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depositary, or other similar capacity; (c) indebtedness created as a result of services rendered or premises rented; or indebtedness created as a result of goods or securities sold in a cash transaction; (d) the ownership of stock or of other securities of a corporation organized under section 25(a) of the Federal Reserve Act, as amended, which is directly or indirectly a

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creditor of an obligor upon the indenture securities; or (e) the ownership of any drafts, bills of exchange, acceptances, or obligations which fall within the classification of self-liquidating paper.

2. Information should be given as to the general type of indebtedness, such as lines of credit, commercial paper, long-term notes, mortgages, etc.

Item 13. Defaults by the Obligor

(a) State whether there is or has been a default with respect to the securities under this indenture. Explain the nature of any such default.

(b) If the trustee is a trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the obligor are outstanding, or is trustee for more than one outstanding series of securities under the indenture, state whether there has been a default under any such indenture or series, identify the indenture or series affected, and explain the nature of any such default.

Item 14. Affiliations With the Underwriters

If any underwriter is an affiliate of the trustee, describe each such affiliation.

Instructions. 1. The term "affiliate" is defined in rule 0-2 of the General Rules and Regulations under the Act. Attention is directed to rule 7a-29.

2. Include the name of each affiliate and the names of all intermediate affiliates, if any. Indicate the respective percentage of voting securities or other bases of control giving rise to the affiliations.

Item 15. Substantial Equivalency of Trust Regulation in the Foreign Jurisdiction and Eligibility of United States Trustees to Act as Sole Trustees in the Foreign Jurisdiction

(a) A discussion should be provided of the regulation in the applicant's home jurisdiction relating to the supervision or examination of indenture trustees, including regulatory provisions and their administration.

(b) The regulatory provisions and their administration in the home jurisdiction shall be compared with United States regulation and administration with respect to supervision and examination of indenture trustees. The application shall discuss whether home jurisdiction supervision or examination of trustees is substantially equivalent to that in the United States.

(c) The application shall discuss the eligibility of United States persons to act as sole trustees in the applicant's home country.

Instruction. An opinion of counsel addressing (1) whether supervision or examination of indenture trustees in the applicant's home jurisdiction is substantially equivalent to that applicable in the United States, and (2) the eligibility of United States trustees to act as sole trustee in the applicant's home jurisdiction, may be required.

Item 16. List of Exhibits

List below all exhibits filed as a part of this statement of eligibility.

Instruction. Subject to Rule 7a-29 permitting incorporation of exhibits by reference, the following exhibits are to be filed as a part of the statement of eligibility of the trustee. Such exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may be referred to by the designation given in the previous filing.

Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for under Item 16. If the certificate of authority to commence business (Exhibit 2) and/or the certificate to exercise corporate trust powers (Exhibit 3) is contained in another exhibit, a statement to that effect shall be made, identifying the exhibit in which such certificates are included. If the applicable exhibit is not in English, a translation in English shall also be filed. In response to exhibit 7, foreign trustees should provide financial information sufficient to provide the information required by section 310(a)(2) of the Act.

1. A copy of the articles of association of the trustee as now in effect.

2. A copy of the certificate of authority of the trustee to commence business, if not contained in the articles of association.

3. A copy of the authorization of the trustee to exercise corporate trust powers, if such authorization is not contained in the documents specified in paragraph (1) or (2) above.

4. A copy of the existing bylaws of the trustee, or instruments corresponding thereto.

5. A copy of each indenture referred to in item 4, if the obligor is in default.

6. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.

7. Trustee's consent to service of process (*see* rule 10a-4 under the Act).

8. Copies of applicable statutes, rules, regulations, and the administrative interpretations of those provisions affecting (a) substantial equivalency of regulation with respect to supervision or examination of the trustee in the foreign jurisdiction to that of trustees subject to the jurisdiction of the laws of the United States, any State, Territory, or the District of Columbia; and (b) eligibility of United States persons to act as sole indenture trustees in the foreign jurisdiction.

Signature

Pursuant to the requirements of the Trust Indenture Act of 1939 the trustee, _____, a _____ [state form of organization] organized and existing under the laws of _____, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of _____, and State [or other jurisdiction] of _____, on the _____ day of _____, _____(Year)

_____

(Trustee)

By:

_____

(Name and Title)

Instruction. The name of each person signing the statement of eligibility shall be typed or printed beneath the signature.

By the Commission.

Dated: May 8, 1991.

Margaret H. McFarland,

Deputy Secretary.

Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the rules and forms under the Trust Indenture Reform Act of 1990 will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reasons for this certification are that small entities are not generally impacted by the requirements of the Act, because they are not involved as obligors on or trustees under qualified indentures. In addition, because the requirements of the Act are inapplicable to underwriters, they are unaffected by the Act.

Dated May 8, 1991.

Richard C. Breeden.

[FR Doc. 91-11416 Filed 5-14-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 91-46]

RIN 1515-AA80

Cargo Release Notification to Certain Vessel and Air Carriers and Bonded Facilities That Are Not Part of the Automated Manifest System

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide that Customs may notify certain parties of the release of their cargo by posting in a conspicuous place in the customhouse at ports of entry at the start of each business day a computer-generated list of shipments which have been authorized for release from Customs custody. Release notification will be communicated in this manner to vessel carriers, air carriers and bonded facilities which are not participants in the Automated Manifest System, if entry data has been transmitted through the Automated Broker Interface, and Customs determines that documentation is not required to be physically filed in paper form. This procedure will greatly decrease the amount of paperwork involved in Customs processing of release notifications.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Leo Morris, Office of Cargo Enforcement and Facilitation, (202) 566-6151.

SUPPLEMENTARY INFORMATION:

Background

Section 1448 of title 19, United States Code (19 U.S.C. 1448) provides that no merchandise shall be removed from the place of unlading until a permit for its delivery is issued by Customs. Pursuant to 19 U.S.C. 1484(j), merchandise shall be released from Customs custody only to or upon the order of the carrier by whom the merchandise is brought to the port at which entry is made, except that merchandise in a bonded warehouse shall be released from Customs custody only to or upon the order of the proprietor of the warehouse.

Prior to Customs efforts to automate, carriers and bonded warehouse proprietors were notified of the release of their shipments by Customs by receiving a paper copy of a Customs document (usually the Customs Form 3461) for each shipment which was authorized for release by Customs.

In Customs efforts to automate all phases of its entry processing of merchandise into a single automated system, the Automated Commercial System (ACS), Customs has developed a new method of informing carriers and bonded facilities of the release of cargo.

Two integral modules of the ACS, the Automated Manifest System (AMS), and the Automated Broker Interface (ABI), play a role in the creation of the new method of notification of cargo release.

ABI permits qualified trade participants to interface directly with Customs computer and transmit entry release and entry summary data for merchandise being imported. ABI speeds entry processing and provides two-way communication between the user and Customs. In this manner, participants are able to ensure the accuracy and completeness of data by accessing Customs automated reference files. Further, when Customs determines to release a shipment, it can transmit this message electronically to an ABI entry filer.

AMS is, in essence, both an imported merchandise inventory control system and a cargo release notification system. AMS permits qualified carriers to transmit their manifest data (a list of the goods transported by the carrier) to Customs. By comparing information provided in the AMS with automated Customs entry data submitted through ABI, Customs is able to make informed decisions with respect to the allocation of resources for the inspection of merchandise. One of the advantages AMS provides to participants is an electronic notification of Customs action authorizing the release of the cargo and its delivery to the consignee.

While AMS and ABI participants receive electronic status notifications regarding the release of cargo when entry data is furnished via ABI, vessels, aircraft or bonded facilities which are not participants in AMS do not receive electronic notification of the releases. Accordingly, a broker may receive electronically through ABI a cargo release notification before a carrier or bonded facility operator is aware that Customs has approved the release of the cargo. Until a recent test program, non-AMS carriers were notified of the release of their cargo in the same manner as pre-automation; they were notified of release of shipments by receipt of paper copies of documents authorizing release.

Proposals Published

On August 15, 1988, Customs published a notice in the **Federal Register** (53 FR 30696), proposing to discontinue the practice of providing separate copies of release documents with respect to transactions of non-AMS carriers and bonded facility operators for which entry data is furnished via ABI and which based on Customs analysis represent the most minimal risk of violation of the Customs laws. Customs proposed with respect to these types of transactions that if it determines that the cargo may be released without submission of paper documents through review of entry data submitted electronically through ABI and its selectivity criteria (the categories of information which guide Customs judgment in evaluating and assessing the risk of a transaction; see T.D. 90-92 published in the **Federal Register** (55 FR 49679) on December 3, 1990—the final regulations on electronic entry filing), it will post this information in a conspicuous place in the customhouse at the port of entry where the cargo was imported, as well as transmit a message through ABI to the ABI entry filer that the cargo is released. It should be noted that the electronic message the ABI entry filers will receive informing them of the cargo's release is not an official release notice. Pursuant to the proposal, the official notice to non-AMS carriers and bonded facility operators for transactions for which entry data is furnished through ABI and paper documentation is not required to be filed will be the posting of the computer-generated list of released shipments which will appear at the start of each business day at the customhouse at the Customs port of entry where the cargo was imported.

Ten comments were received regarding this initial proposal. After reviewing the comments, Customs determined that the proposal required modification. Subsequently, on September 13, 1990, Customs republished a modified proposal in the **Federal Register** (55 FR 37716), soliciting further comment.

Discussion of Comments on Modified Proposal

Only two letters were received in response to the modified proposal and both letters raised similar issues to those raised in comments on the previous notice. An analysis of the comments follows:

Comment: The posting of paperless releases for nonautomated ocean carriers should be delayed until most ocean carriers are using AMS.

Response: Customs processes over 60 percent of the ocean bills of lading through AMS at the present time. Seventy-five percent of ocean tonnage imported into the U.S. is carried on AMS carriers. As evidenced by these statistics, this regulation, which affects only those carriers which are not on AMS when the entry data for cargo is transmitted through ABI, will affect release notifications relating only to a small percentage of the merchandise carried by ocean carriers. As the purpose of this regulation is to reduce reliance on paper documents and to promote participation in AMS and the majority of ocean cargo is processed through AMS already, it would be counterproductive to wait for the many small steamship lines to automate. Automated port authorities and service centers are available to serve them.

Comment: The posting of releases processed the previous day denies the carrier timely notice of cargo releases.

Response: Customs agrees that the posting of releases from the previous day is not as timely as electronic release. However, this procedure does not cause an indefinite delay. Carriers will be notified of the release of merchandise under this procedure at the most 24 hours after entry is presented. The timeliness of this procedure does not vary much from the timeliness of receiving a paper release on a Customs Form 3461, which is the system still in effect for carriers who are not on AMS when entry data is not transmitted through ABI.

Comment: Customs should adopt one of the following three options rather than adopt this regulation: (1) Continue to provide non-AMS carriers with a timely paper release; (2) designate the release provided by the broker as "official"; or (3) provide non-AMS carriers and/or their agents the release electronically.

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Response: These options are not viable. One of the purposes of this regulation is to give incentive to non-AMS carriers to automate. Accordingly, maintaining the status quo and continuing to provide non-AMS carriers with paper releases would be counter to the purpose of this regulation. Regarding the second suggested option, Customs cannot, pursuant to statute, consider the release provided by the broker as "official." Pursuant to 19 U.S.C. 1448, no merchandise shall be removed from the place of unlading until a permit for its delivery is issued by Customs. Pursuant to 19 U.S.C. 1484(j), merchandise shall be released from Customs custody only to or upon the order of the carrier by whom the merchandise is brought to the port at which entry is made, except that merchandise in a bonded warehouse shall be released from Customs custody only to or upon the order of the proprietor of the warehouse. In other words, pursuant to statute, Customs must provide the release notification to the carrier and it is the carrier (or warehouse proprietor) which is liable for unpaid duties for merchandise which is mistakenly released or misdelivered. Accordingly, the release provided by the broker cannot be deemed "official." Regarding the third option, we fail to understand how one without electronic capability can be electronically notified of release.

Comment: With posting of releases on the customhouse wall, a carrier has no paper document to complete its manifest file to show evidence that Customs released certain merchandise in the event that Customs audits.

Response: Customs maintains the release records for paperless entries. Customs auditors would not generally look for any evidence from carriers unless there is a misdelivery, and in that event, the auditors would be looking for documents like delivery orders rather than notices of release.

Conclusion

After careful consideration of all the comments received and further review of the matter, Customs has determined that the amendment should be adopted. Accordingly, this document provides that a report posted at the customhouse will serve as release notification to vessel carriers, air carriers and bonded facilities when the manifest is not filed through the Automated Manifest System, the entry has been filed through the Automated Broker Interface and Customs determines that paper documentation need not be filed. The only modification to the document is the reference to electronic entry filing. The proposed regulation described the criterion that Customs determines that paper documentation need not be filed as "the cargo qualifies for electronic entry filing". To be consistent with Treasury Decision 90-92, this language has been changed to read, "Customs has approved the cargo for release without submission of paper documents after reviewing the entry data submitted electronically through ABI and its selectivity criteria (see § 143.34)."

Executive Order

This document does not meet the criteria for a "major rule" as defined in section 1(b) of Executive Order 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Carrier, Release of merchandise, Vessels.

Amendments to the Regulations

Part 4 of the Customs Regulations (19 CFR part 4) is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4, Customs Regulations (19 CFR part 4) continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3.

2. Section 4.38(a), Customs Regulations, is revised to read as follows:

§ 4.38 Release of cargo.

(a) No imported merchandise shall be released from Customs custody until a permit to release such merchandise has been granted. Such permit shall be issued by the district director only after the merchandise has been entered and, except as provided for in § 141.102(d) or part 142 of this chapter, the duties thereon, if any, have been estimated and paid. Generally, the permit shall consist of a document authorizing delivery of a particular shipment or an electronic equivalent. Alternatively, the permit may consist of a report which lists those shipments which have been authorized for release. This alternative cargo release notification may be used when the mainfest is not filed by the carrier through the Automated Manifest System, the entry has been filed through the Automated Broker Interface, and Customs has approved the cargo for release without submission of paper documents after reviewing the entry data submitted electronically through ABI and its selectivity criteria (see § 143.34). The report shall be posted in a conspicuous area to which the public has access in the customhouse at the port of entry where the cargo was imported.

(1) Where the cargo arrives by vessel, the report shall consist of the following data elements:

(i) Vessel name or code, if transmitted by the entry filer;

(ii) Carrier code;

(iii) Voyage number, if transmitted by the entry filer;

(iv) Bill of lading number;

(v) Quantity released; and

(vi) Entry number (including filer code).

(2) Where the cargo arrives by air, the report shall consist of the following data elements:

(i) Air waybill number;

(ii) Quantity released;

(iii) Entry number (including filer code);

(iv) Carrier code; and

(v) Flight number, if transmitted by the entry filer.

(3) In the case of merchandise traveling via in-bond movement, the report will contain the following data elements:

(i) Immediate transportation bond number;

(ii) Carrier code;

(iii) Quantity released; and

(iv) Entry number (including filer code).

When merchandise is released without proper permit before entry has been made, the district director shall issue a written demand for redelivery. The carrier or facility operator shall redeliver the merchandise to Customs within 30 days after the demand is made. The district director may authorize unentered merchandise brought in by one carrier for the account of another carrier to be transferred within the port to the latter carrier's facility. Upon receipt of the merchandise the latter carrier assumes liability for the merchandise to the same extent as

though the merchandise had arrived on its own vessel.

* * * * *

Carol Hallett,
Commissioner of Customs.
Approved: May 9, 1991.
Peter K. Nunez,
Assistant Secretary of the Treasury.
[FR Doc. 91-11463 Filed 5-14-91; 8:45 am]
BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 301

[T.D. 8342]

RIN 1545-AO85

Extension of Time for Making Elections; Correction

AGENCY: Internal Revenue Service.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to Treasury Decision 8342, which was published in the **Federal Register** on April 5, 1991 (56 FR 14023). The temporary regulations relate to the amendments to the regulations under 26 CFR part 301 concerning the extension of time for making elections for applications for relief when that time is not expressly prescribed by statute.

EFFECTIVE DATE: April 5, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara B. Walker, (202) 566-5985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction permits the Commissioner to grant taxpayers an extension of time for making these elections or applications under any subtitle of the Code other than subtitle E, governing Alcohol, Tobacco, and Certain Other Excise Taxes; subtitle G, governing the Joint Committee on Taxation; subtitle H, governing the Financing of Presidential Elections; and subtitle I, governing the Trust Fund Code.

Need for Correction

As published, T.D. 8342 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of temporary regulations (T.D. 8342), which was the subject of FR Doc. 91-8078, is corrected as follows:

1. On page 14023, in the preamble under the heading "Explanation of Provisions", column 3, last paragraph, line 3 from the bottom of that column, the language "subtitles now included in § 301.9100-1 of" is corrected to read "subtitles now included in § 301.9100-1T of".

Dale D. Goode,
Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).
[FR Doc. 91-11209 Filed 5-14-91; 8:45 am]
BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning June 1, 1991. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after June 1, 1991, which will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: June 1, 1991.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850, 202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employer Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the Subpart C formulas to determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since March 1, 1991. This amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after June 1, 1991, which set reflects a decrease of ¼ percent in the immediate interest rate from 7 percent to 6¾ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

Finally, three previously published rate sets (numbers 63, 89, and 90) each omitted one day (i.e., the last day of the final month) from the valuation date period. This amendment corrects these errors.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after June 1, 1991, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because

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it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Sets 83 and 89 through 91 of appendix B are revised and Rate Set 92 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Cy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2,k_3, n_1, and n_2 are defined in § 2619.45

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	On or after	And, before		k_1	k_2	k_3	n_1	n_2
* * * *		*		*		*		
83 * * * *	3-1-90	6-1-90	7.50	1.0675	1.0550	1.0400	7	8
		*		*		*		
89	12-1-90	1-1-91	7.50	1.0675	1.0550	1.0400	7	8
90	1-1-91	3-1-91	7.25	1.0650	1.0525	1.0400	7	8
91	3-1-91	6-1-91	7.00	1.0625	1.0500	1.0400	7	8
92	6-1-91		6.75	1.0600	1.0475	1.0400	7	8

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-11484 Filed 5-14-91; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of June 1991.

EFFECTIVE DATE: June 1, 1991.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW, Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month	The values for i_t are														
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}
* * * *		*		*		*		*			*		*		
June 1991	.07	.06875	.0675	.06625	.065	.06375	.06375	.06375	.06375	.06375	.06125	.06125	.06125	.06125	.06125

Issued at Washington, DC, on this 9th day of May 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-11483 Filed 5-14-91; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9F3793/R1114; FRL-3990-9]

RIN-2070-AB78

Pesticide Tolerances for Clofentezine

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide clofentezine (3,6-bis(2-chlorophenyl)-1,2,4,5,tetrazine) in or on walnuts and almonds and for clofentezine and its metabolite 3-(2-cloro-4-hydroxyphenyl)-6-(2-chlorophenyl)-1,2,4,5-tetrazine in or on meat, fat, and meat by-products of cattle, goats, hogs, horses, and sheep and milk. This regulation to establish maximum permissible levels for residues of the insecticide was requested pursuant to a petition submitted by Nor-Am Chemical Co.

EFFECTIVE DATE: May 15, 1991.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3793/R1114], must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 1401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 12, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-2386.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 1, 1989 (54 FR 46119), EPA issued a notice which announced that Nor-Am Chemical Co., P.O. Box 7495, 3509 Silverside Rd., Wilmington, DE 19803, had submitted a pesticide petition (PP 9F3793) to EPA proposing to amend 40 CFR part 180 by establishing a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act for residues of the insecticide clofentezine ([3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine]) in or on walnuts at 0.02 part per million (ppm), almond nutmeat at 0.5 ppm, and almond hulls at 5 ppm and for clofentezine and its metabolite 3-(2-chloro-4-hydroxyphenyl)-6-(2-chlorophenyl)-1,2,4,5-tetrazine in or on meat, fat, and meat by products except liver of cattle, goats, hogs, horses, and sheep at 0.05 ppm; liver of cattle, goats, hogs, horses, and sheep at 0.4 ppm; and milk at 0.01 ppm. The metabolite 3-(2-chloro-4-hydroxyphenyl)-6-(2-chlorophenyl)-1,2,4,5-tetrazine is present as an animal metabolite only based on metabolism studies submitted by the petitioner.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing. A conditional registration for the use of clofentezine on almonds and walnuts is being issued concurrently with this tolerance. The conditional registration will automatically expire on September 30, 1993. The Agency has reviewed avian reproduction studies and found them to be deficient. The Agency is requiring that the avian reproduction be repeated. The chronic risks of clofentezine to avian species cannot be fully evaluated until new avian reproduction studies are submitted and reviewed by the Agency. However, because of the relatively low exposure rate and duration (only a single application is allowed), its low acute toxicity to birds, and the low acute and chronic toxicity to mammals, the Agency believes that the potential chronic effects to avian species which may occur during the conditional registration period would not be significant.

The Agency has also identified two aquatic studies, an aquatic invertebrate life-cycle study and a fish life-cycle study, that are needed to fully evaluate the potential chronic toxicity of clofentezine to aquatic organisms based on it ovicidal mode of action. Due to the rapid hydrolysis of the compound, the Agency does not expect chronic exposures to occur to aquatic animals. However, since transient exposures to reproducing adults, eggs, or developing embryos from clofentezine could cause some effects, the Agency is requiring the above-described studies.

The Agency is requiring the restricted-use classification for clofentezine as a prudent measure in the absence of data to fully evaluate the chronic toxicity of clofentezine to aquatic and avian organisms. After the data described above have been submitted and evaluated, the Agency will determine if a continued restricted-use classification is warranted for clofentezine.

The toxicological data considered in support of the tolerance include a 1-year dog feeding study with no-observed-effect level (NOEL) of 50 ppm (1.25 mg/kg/day) (effects observed at 1,000 and 20,000 ppm included elevated serum cholesterol and triglyceride levels); a mouse oncogenicity study which was negative at the doses tested, 50 ppm (7.5 mg/kg/day), 500 ppm (75 mg/kg/day), and 5,000 ppm (750 mg/kg/day); a multi-generation rat study with a NOEL of 400 ppm (20 mg/kg/day) (highest dose tested (HDT)); a rat teratology study which was negative at 3,200 mg/kg/day (HDT) and had a developmental NOEL of 3,200 mg/kg/day; a rabbit teratology study which was negative at 3,000 mg/kg/day (HDT) and also has a NOEL of 1,000 mg/kg/day for maternal toxicity (reduced body weight gain and food consumption) and developmental toxicity (reduced litter and fetal body weights); and a 2-year rat chronic feeding/oncogenicity study which showed an increase in the incidence of centrilobular hepatocyte hypertrophy and showed a statistically significant increase in thyroid follicular cell tumors in male rats at 400 ppm (20 mg/kg/day) (HDT). Gene mutation, chromosomal aberrations, and DNA damage tests were negative for genetic toxicity.

The registrant (Nor-Am) also submitted additional thyroid studies intended to show that there was an indirect mechanism for the follicular cell tumor associated with clofentezine's liver toxicity. The Agency has reviewed the data in accordance with criteria outlined in a draft document entitled, "Thyroid Follicular Cell Carcinogenesis: Mechanistic and Science Policy Consideration," prepared by the Technical Panel of the Agency's Risk Assessment Forum (December 18, 1987). While this document is still undergoing Agency review, and the assessment

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procedures set forth therein have not been adopted by the Agency, the draft does provide a useful framework in which to consider the issue. Although the additional thyroid function studies suggest the possibility of an indirect mechanism for follicular cell tumor induction that may be associated with clofentezine's liver toxicity, the Agency believes that additional data are necessary to more completely define the mechanism of clofentezine's thyroid tumor induction in terms of the criteria listed in the document cited above. Based on the rat chronic feeding/oncogenicity study, the Agency has classified clofentezine as a possible human carcinogen (Group C). The qualitative designation "C" refers to EPA's weight-of-the evidence classification, which in this case shows clofentezine to be a "possible human carcinogen." The classification is based on the Agency's "Guidelines for Carcinogenic Risk Assessment," published in the Federal Register of September 24, 1986 (51 FR 22992). The Agency believes a quantitative risk assessment based on the thyroid incidence is not appropriate for the following reasons:

1. The increased tumor incidence was marginally increased above the control incidence only at the highest dose tested (20 mg/kg/day) in the chronic feeding study.

2. The increased incidence was observed only in male rats.

3. The thyroid tumor incidence in the chronic feeding study's highest dose group (20 percent) was slightly greater than the historical range provided by limited group data (7.5 to 15 percent) from two other studies.

4. The additional thyroid function studies suggest the possibility of an indirect mechanism for follicular cell tumor induction that may be associated with clofentezine's liver toxicity.

5. The mouse was negative for carcinogenic effects at all dose levels, i.e., 50, 500, 5,000 ppm (equivalent to 7.5, 75, and 750 mg/kg/day, respectively).

6. There are no close structural analogs with carcinogenic concerns identified.

7. Clofentezine was not found to be mutagenic in several acceptable studies.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) also reviewed the weight-of-the-evidence consideration and classification of the oncogenic potential of clofentezine. Its review included the additional thyroid studies submitted by Nor-Am that were available at that time. The SAP concluded that thyroid tumors in male rats from the chronic feeding/oncogenicity study with clofentezine did not provide adequate evidence of a potential carcinogenic hazard to humans and that the carcinogenic potential of clofentezine belongs in Group D (not classifiable as to human carcinogenicity).

The Panel's interpretation was based on observed increases in thyroid-stimulation hormone (TSH) levels and the incidence of thyroid follicular cell hyperplasia which may be responses to decrease in blood levels of circulation thyroid hormones (triiodothyroxine (T3) and tetra-iodothyroxine (T4)) observed in clofentezine tested rats. This sequence of reduced circulating thyroid hormones and increased TSH levels and follicular cell hyperplasia is known to lead to thyroid tumors in rats, and thePanel noted, "Exposure to agents that cause this sequence in rats has not resulted in increased TSH, hyperplasia and thyroid tumors in humans." Therefore, the Panel concluded that there was inadequate data for suggesting human carcinogenicity or a quantitative risk assessment.

Nor-Am has since submitted additional thyroid studies intended to show the mechanism of clofentezine's thyroid tumor induction. The Agency has reviewed these data, but as previously stated, the Agency continues to believe that additional data are needed to more completely define the mechanism of clofentezine's thyroid tumor induction and that the available data are not sufficient to change the classification of clofentezine from Category "C" to Category "D." However, the Agency does agree with the SAP that a quantitative risk assessment is not appropriate.

Based on the 1-year dog feeding study with a NOEL of 1.25 mg/kg/day and using a safety factory of 100, the acceptable daily intake (ADI) for humans is 0.013 mg/kg of body weight/day. The theoretical maximum residue contribution (TMRC) for this chemical utilizes 2.3 percent of the ADI. The current action will contribute 0.000517 mg/kg/day of residue to human diet utilizing an additional 1.7 percent of the ADI. This results in a total utilization of 4 percent of the ADI.

The nature of the residue is understood. An adequate analytical method, high-performance liquid chromatography (HPLC), is available for enforcement.

Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: By mail: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW.,Washington, DC 20460. Office location and telephone number: Crystal Mall #2, rm. 242, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-4432.

Based on the information cited above, the Agency has determined that the establishment of the tolerance by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below, with an expiration date of September 30, 1994. After receipt and evaluation the avian reproduction studies, the Agency will consider establishing permanent tolerances without an expiration date for residues of this chemical.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the Federal Register, file written objections and/or a request for a hearing with the Hearing Clerk at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the other grounds for the objections. If a hearing is granted, the objection must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 29, 1991.

Douglas D. Campt,
Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.446, by revising paragraph (b) and adding new paragraph (c), to read as follows:

§ 180.446 Clofentezine tolerances for residues.

* * * * *

(b) Tolerances to expire September 30, 1994, are established for the residues of the insecticide clofentezine (3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine) in or on the following raw agricultural commodities:

Commodity	Parts per million
Almond, hulls	5.0
Almond, nutmeat	0.5
Nectarines	1.0
Peaches	1.0
Walnuts	0.02

(c) Tolerances to expire September 30, 1994, are established for the combined residues of clofentezine and the 3-(2-chloro-4-hydroxyphenyl)-6-(2-chlorophenyl)-1,2,4,5-tetrazine metabolite in or on the following commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, liver	0.4
Cattle, meat	0.05
Cattle, mbyp (except liver)	0.05
Goat, fat	0.05
Goat, liver	0.4
Goat, meat	0.05
Goat, mbyp (except liver)	0.05
Hog, fat	0.05
Hog, liver	0.4
Hog, meat	0.05
Hog, mbyp (except liver)	0.05
Horse, fat	0.05
Horse, liver	0.4
Horse, meat	0.05
Horse, mbyp (except liver)	0.05
Milk	0.01
Sheep, fat	0.05
Sheep, liver	0.4
Sheep, meat	0.05
Sheep, mbyp (except liver)	0.05

[FR Doc. 91-11109 Filed 5-14-91; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Office of Child Support Enforcement

45 CFR Parts 302, 303, and 304

RIN 0970-AA84

Child Support Enforcement Program: $50 Pass-through; Presumptive Support Guidelines; Mandatory Genetic Testing; Paternity Establishment; Laboratory Testing

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements five provisions of the Family Support Act of 1988 (Pub. L. 100-485), signed by the President October 13, 1988, which amend title IV-D of the Social Security Act (the Act), the authority for the Child Support Enforcement program. The provisions amend the Act to require payment to the family, and disregard, for purposes of eligibility for Aid to Families with Dependent Children (AFDC), of the first $50 of child support payments for each month which were made in the month when due; to require that State guidelines be used as a rebuttable presumption of support levels; to require the child and all other parties in a contested paternity case to submit to genetic testing upon request; to specify that the requirement for a State law permitting paternity establishment up to a child's eighteenth birthday also applies to any child for whom a paternity action was previously dismissed under a statute of limitations of less than 18 years; and to provide 90 percent Federal matching for laboratory costs incurred in determining paternity.

EFFECTIVE DATE: May 15, 1991. It should be noted that the statutory effective dates of certain of these provisions occur before the publication date of these final rules. The statutory provisions are effective on these effective dates, regardless of the absence of final implementing regulations.

FOR FURTHER INFORMATION CONTACT: Policy Branch, OCSE, specifically:
Andrew Hagan, (202) 252-5375—$50 pass-through, 90% Federal matching for laboratory costs, mandatory genetic testing, and paternity establishment until age 18.
Craig Hathaway, (202) 252-5367—Presumptive guidelines.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Public reporting burden for the information collection requirements 45 CFR 302.56 (g) and (h) are estimated to be a one-time burden of 40 hours to develop criteria to determine when application of guidelines would be inappropriate, 10 minutes per case to meet the requirements for findings justifying deviation from the guidelines and a one-time burden of 100 hours to gather data for use in the initial review of a State's guidelines. A notice will be published in the Federal Register when the Office of Management and Budget approves these information collection requirements under section 3507 of the Paperwork Reduction Act.

Statutory Authority

This final rule is published under the authority of the following provisions of the Act, as amended by Public Law 100-485: Section 457(b)(1) (with respect to the $50 pass-through), section 467(b) (with respect to presumptive support guidelines), section 466(a)(5) (with respect to State laws and procedures requiring parties to submit to genetic testing and State law and procedures for the establishment of paternity), and section 455(a)(1) (with respect to 90 percent matching for laboratory testing). The final rule is also published under the general authority of section 1102 of the Act, which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Background and Description of Regulatory Provisions

1. Pass-through of Child Support Payments

Section 2640 of the Deficit Reduction Act (Pub. L. 98-369) amended section 457(b)(1) of the Act to require States to pay the first $50 of such amounts collected periodically which represent the monthly support obligation to the AFDC family. The statute also amended section 402(a)(6)(A)(vi) of the Act to require States to disregard "the first $50 of any child support payments received in such month" when determining AFDC eligibility and the amount of the AFDC payment. These changes resulted in

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AFDC families having up to $50 of additional disposable income each month.

Section 102 of Public Law 100-485 amends sections 402(a)(8)(A)(vi) and 457(b)(1) of the Act, effective January 1, 1989, to clarify that the first $50 of support payments received in a month which was due for a prior month must be paid to the family if paid by the absent parent in the month when due. Under the new law, the AFDC family may not be denied the $50 payment when the absent parent pays support on-time but there is a delay in transmitting the payment from the point of collection to the agency responsible for distribution.

This is consistent with regulation at 45 CFR 302.51(a) (final regulation published on June 9, 1988 (53 FR 21642)), which provides that the date of collection of a child support payment for purposes of distribution is the date on which payment is received by the State IV-D agency or by the legal entity of any State or political subdivision actually making the collection, whichever is earliest. We expanded the date of collection rule, however, with respect to payments made through wage or other income withholding as indicated below. Regulations were also revised to clarify the applicability of § 302.51(a) and to ensure appropriate information exchange in interstate cases, as follows:

45 CFR 302.51—Distribution of Support Collections

Under § 302.51(a)(1), for purposes of distribution in IV-D cases, amounts collected, other than collections made through Federal or State income tax refund offset, shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amounts, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months. Under § 302.51(a)(2), in AFDC and title IV-E foster care cases in which conversion to a monthly amount is necessary because support is ordered to be paid other than monthly, the IV-D agency may round off the converted amount to whole dollar amounts for the purpose of distribution under §§ 302.51 and 302.52.

Under paragraph (a)(3), amounts collected through Federal or State income tax refund offset must be distributed in accordance with the requirements in §§ 303.72(h) and 303.102(g), respectively. Under paragraph (a)(4), with respect to payments made through wage or other income withholding and received by the IV-D agency on or after January 1, 1989, the date of collection for distribution purposes in all IV-D cases must be the date the wages or other income are withheld to meet the support obligation. This is consistent with instructions published by OCSE on November 18, 1988. See OCSE-AT-88-17. If an employer fails or neglects to report the exact date of withholding, the State agency may impute wages to have been withheld in the month wages were due to be withheld in accordance with the court or administrative order.

Effective June 9, 1988, § 302.51(a)(5)(i) defines the date of collection for distribution purposes in all IV-D cases, other than for those payments made through tax refund offset or withholding and addressed under paragraphs (a) (3) and (4), as the date on which the payment is received by the IV-D agency or the legal entity of any State or political subdivision actually making the collection, whichever is earliest. Under paragraph (a)(5)(ii), effective January 1, 1989, States may use as the date of collection (for collections other than those made through withholding or Federal or State income tax refund offset) either the date of collection as defined under paragraph (a)(5)(i) or the date a payment is mailed, as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier.

The first sentence in § 302.51(b)(1) is revised as follows: Of such amounts as are collected periodically which represent monthly support payments, the first $50 of any payments for a month received in that month and the first $50 of payments for each prior month received in that month which were made by the absent parent in the month when due, shall be paid to the family.

45 CFR 303.7—Provision of Services in Interstate IV-D Cases

The regulation governing provision of services in interstate IV-D cases (which was published as a final rule on February 22, 1988 (53 FR 5246) and amended June 9, 1988 (53 FR 21642)) is amended to require under § 303.7(c)(7)(iv) that the responding State IV-D agency forward support payments to the location specified by the initiating State IV-D agency no later than 15 calendar days from the date of initial receipt in the responding State. In addition, paragraph (c)(7)(iv) is revised to require the responding State IV-D agency to inform the initiating State IV-D agency of the date of collection as defined under § 302.51(a) or that the collection was made through State income tax refund offset.

45 CFR 303.100—Procedures for Wage or Income Withholding

Section 303.100(d)(1)(ii) is amended to require that the IV-D agency's notice to employers concerning wage withholding state that employers must report to the IV-D agency, or such other individual or entity as the State may direct, at the time they forward support withheld from wages or other income, the date such amounts were withheld from the absent parent's wages.

2. State Guidelines for Child Support Award Amounts

Section 18 of the Child Support Enforcement Amendments of 1984 (Pub. L. 98-378) amended title IV-D of the Act to add section 467 requiring each State, as a condition of State IV-D plan approval, to establish guidelines for child support award amounts within the State. The State was required to make the guidelines available to all judges and other officials who have the power to determine awards, but the guidelines were not required to be binding on them.

Section 103 of Public Law 100-485 amended section 467 of the Act, effective October 13, 1989, to delete the clause that the State guidelines need not be binding upon judges or other officials and to require that the State's guidelines be used to create a rebuttable presumption in any judicial or administrative proceeding for the award of child support that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. The statute further provided that a written finding or specific finding on the record that application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case. The State must review the guidelines at least every four years to ensure that their application results in the determination of appropriate child support award amounts.

In response to the Child Support Enforcement Amendments of 1984, a er of States implemented presumptive guidelines rather than the advisory guidelines required under the statute. Therefore, some States may already be in compliance with the requirement in Public Law 100-485. However, the concern has been raised that some States may have implemented procedures for using guidelines which are more restrictive than the new requirements. For example, procedures requiring that guidelines be followed in setting all support awards without the possibility of rebuttal appear not to comply with the requirements of the new law. We advise States in this position that changes to their guidelines and accompanying procedures will be necessary to conform to the requirements of Public Law 100-485 unless Congress clarifies an intent to the contrary.

Regulations were revised in response to the requirements under section 103 of Public Law 100-485 outlined above as follows:

45 CFR 302.50—Support Obligations

Under former regulation at § 302.50(b)(2), when there was no court order for support, States were required to establish a support obligation, in an amount determined in writing by the IV-D agency in accordance with a formula which meets criteria prescribed under § 302.53. We replaced the reference to the formula and the criteria under § 302.53 with reference to § 302.56, Guidelines for setting child support awards.

45 CFR 302.53—Formula for Determining the Amount of the Obligation

Former regulation at § 302.53, which required that, for cases without court orders for support, States must utilize a formula in setting support amounts which takes into consideration a er of criteria, is deleted.

45 CFR 302.56—Guidelines for Setting Child Support Awards

Paragraph (a) of 45 CFR 302.56 requires each State, effective October 13, 1989, to establish one set of guidelines by law or by judicial or administrative action for establishing and modifying child support award amounts within the State. Paragraph (b) of this section requires the State to have procedures for making guidelines available to all persons in the State whose duty it is to set child support award amounts.

Paragraph (c) requires that at a minimum the guidelines established under paragraph (a): (1) Take into consideration all earnings and income of the absent parent; (2) be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and (3) provide for coverage of the child(ren)'s health care needs.

Paragraph (d) requires States to include a copy of the guidelines in the State plan.

Paragraph (e) requires that each State review and revise, if appropriate, its guidelines at least once every four years to ensure that their application results in the determination of appropriate child support award amounts.

Paragraph (f) requires States, effective October 13, 1989, to provide that there will be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) is the correct amount to be awarded.

Under paragraph (g), only a written or specific finding on the record of a proceeding for the award of child support that the use of the guidelines would be inappropriate in a particular case shall be sufficient to rebut the presumption in that case. Such finding must be predicated on criteria established by the State. While development of the specific criteria for rebuttal is being left to each State's discretion, we require under this paragraph that the State's criteria must take into consideration the best interests of the child. The written findings or findings on the record that rebut State guidelines must clearly state the nature and extent of the variation from the guidelines.

Under paragraph (h), States must gather data and use this information to make any revisions as part of their review and revision of their guidelines.

3. State Laws Providing for Paternity Establishment

Section 466(a)(5) of the Act, added by the Child Support Enforcement Amendments of 1984, Public Law 98-378, requires that States have in effect laws requiring the use of procedures which permit the establishment of the paternity of any child at any time prior to such child's eighteenth birthday. The implementing regulation at 45 CFR 302.70(a)(5) requires, effective October 1, 1985, that the State plan provide that the State has in effect such a law and has implemented such procedures.

Section 111(b) of Public Law 100-485 amends section 466(a)(5) of the Act by redesignating the above requirement as section 466(a)(5)(A) and adding a new requirement under paragraph (B) to require each State to have in effect laws requiring the use of procedures under which the State is required (except in cases where the individual involved has been found under section 402(a)(26)(B) of the Act to have good cause for refusing to cooperate) to require the child and all other parties in a contested paternity case to submit to genetic tests upon the request of any party, effective November 1, 1989. Further, paragraph (c) of section 111 of Public Law 100-485 amends section 454(6) of the Act to allow States to impose a fee for performing genetic tests on any individual who is not an AFDC recipient.

In addition, section 111(e) of Public Law 100-485 amends section 466(a)(5)(A) of the Act (as amended by section 111(b)), retroactive to August 16, 1984 (the effective date of Public Law 98-378), to provide that the State law requirement permitting the establishment of paternity of any child prior to the child's 18th birthday, also applies to any child for whom paternity has not yet been established and any child for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

To address these statutory changes we made the following regulatory revisions:

45 CFR 302.70—Required State laws

We amended 45 CFR 302.70 to reiterate the statutory changes outlined above by revising the introductory language in paragraph (a) regarding effective dates and by revising paragraph (a)(5) to redesignate the former contents as § 302.70(a)(5)(i) and adding at the end thereof "including for any child for whom paternity has not yet been established and any child for whom a paternity action was previously dismissed under a statute of limitations of less than 18 years."

We added a new § 302.70(a)(5)(ii) to require that, effective November 1, 1989, States have in effect laws providing for procedures under which the State must, with two exceptions, require the child and all other parties in a contested paternity case to submit to genetic tests upon the request of any party. The exceptions are in AFDC or Medicaid cases in which good cause has been found for refusing to cooperate or, in cases in which, in accordance with § 303.5(b), the IV-D agency has determined that it would not be in the best interest of the child to establish paternity in a case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending.

45 CFR 303.5—Establishment of Paternity

We amended § 303.5 by adding paragraphs (d) and (e). Section 303.5(d)(1) requires, upon the request of any party in a contested paternity case, the IV-D agency to petition the court or administrative authority to require that all parties submit to genetic testing, unless, in the case of an individual

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receiving AFDC or Medicaid, there has been a determination of good cause for refusal to cooperate under §§ 232.40 through 232.49 or 42 CFR 433.147, respectively, or if, in accordance with § 303.5(b), the IV–D agency has determined that it would not be in the best interest of the child to establish paternity in a case involving incest of forcible rape, or in any case in which legal proceedings for adoption are pending. Under paragraph (d)(2), a contested paternity case is any legal action in which the issue of paternity may be raised under State law and one party denies paternity.

Paragraph (e)(1) provides that the IV–D agency may charge any individual who is not receiving AFDC or Medicaid a reasonable fee for performing genetic tests. Under paragraph (e)(2), any fees charged must be reasonable so as not to discourage those most in need of paternity establishment services from seeking them and may not exceed the actual cost of the genetic tests. Paragraph (e)(3) requires that, if paternity is established and genetic testing is performed, the IV–D agency must attempt to obtain a judgment for the costs of the genetic tests from the party who denied paternity or, at State option, from each party so long as the total amount requested does not exceed the actual costs of the genetic tests. A parallel change was made to § 303.7(d) to require the responding State IV–D agency to attempt to obtain a judgment for genetic testing costs from the party who denied paternity, instead of the putative father, who may not be the contesting party in all cases. Paragraph (e)(4) of § 303.5 requires the IV–D agency to use any amount collected under paragraphs (e) (1) and (3) which exceeds the costs of performing genetic tests to reimburse any fee paid under paragraph (e)(1).

4. Increased Federal Financial Participation for Laboratory Testing to Determine Paternity

Section 112 of Public Law 100–485 amends section 455(a)(1) of the Act to provide 90 percent Federal matching for States' costs for laboratory testing to determine paternity. The amendment is effective with respect to laboratory costs incurred on or after October 1, 1988.

45 CFR 304.20—Availability and Rate of Federal Financial Participation

We amended § 304.20 by adding a new paragraph (d) to specify that 90 percent Federal matching is available for laboratory costs of paternity determination incurred on or after October 1, 1988. This matching rate is available for laboratory costs incurred in determining paternity in a specific case, including, for example, the costs of obtaining and transporting blood and other samples of genetic material, repeated testing where necessary, analysis of test results, and the costs for expert witnesses in a paternity determination proceeding, when the expert witness costs are included as part of the genetic testing contract. The same costs may be excluded in determining a State's incentive payments, pursuant to section 458(c) of the Act and the implementing regulation at 45 CFR 303.52(b)(4)(iv), which is redesignated as 45 CFR 304.12(b)(4)(iv) effective October 1, 1990 (54 FR 32284).

The final regulation on standards for program operations, published on August 4, 1989, requires that paternity testing laboratories be selected competitively. Consistent with current Federal requirements, Federal financial participation will be available only for reasonable and necessary costs; costs significantly above market rate are not reasonable. This requirement for competitive selection will also reduce costs to individuals in States that choose to charge fees to the requesting party.

Response to Comments

We received 84 comments on the proposed rule published September 13, 1989, in the **Federal Register** (54 FR 37866). The comments and our responses appear below.

I. Pass-Through of Support Payments

Section 302.51—Distribution of Support Collections

1. *Comment:* One commenter asked if the proposed requirement in the first sentence of § 302.51(a) under which any amount collected must be treated first as payment on the current support obligation, would apply in all circumstances and to all collections. The commenter asked if States would be required to distribute collections derived from certain administrative enforcement remedies such as consumer credit reporting, tax refund offset, and imposition of liens first as current support before applying any of the collection to arrearages. The commenter argued that these measures are by definition undertaken to recoup arrears; however, as written, the proposed regulation would seem to include these types of collections. The commenter also asked, if an obligor making payments represents that a sum paid is to be applied for past-due support, may the agency proceed to classify the collection as current support despite the obligor's directions to the contrary? The commenter indicated that this issue may arise in cases where obligors seek to forestall impending administrative enforcement measures by making payments on arrears, at the expense of ongoing current support payments.

Response: With certain exceptions, any support collected must be applied first to satisfy the current support obligation. To remove ambiguity in the proposed regulation, we have revised the first sentence of § 302.51(a) (redesignated as § 302.51(a)(1)) to exclude collections as a result of Federal or State income tax refund offset. By Federal statute at section 464 of the Act and regulation at § 303.72(h), collections made through the intercept of Federal income tax refund offset must be distributed as past-due support, and "date of collection" is irrelevant. Also by Federal statute at section 466(a)(3) of the Act and regulation at § 303.102(g), collections made through the intercept of State income tax refund offset must similarly be distributed as overdue support.

In response to the commenter's last concern, even if an obligor specifies that a payment is intended to satisfy arrearages, the collections must still be distributed, for purposes of title IV–D, in accordance with Federal statute and regulations.

2. *Comment:* A commenter asked if conversion to a monthly amount in AFDC cases, as referenced in the second sentence of § 302.51(a), is mandatory, and if so, whether a IV–D agency may convert a child support obligation into a monthly amount by using an "actual conversion methodology" (e.g., The absent parent has a weekly support obligation of $20. The monthly support obligation is $80 in a four-week month, and $100 in a five-week month.) Other commenters asked that the final regulation require IV–D agencies to round off dollar amounts below $.50 downward and amounts above $.50 upward, or, alternatively, to leave the requirement as stated in current regulations.

Response: For purposes of distribution and redetermining eligibility in AFDC cases, States are required in OCSE–AT–76–5 dated March 11, 1976, to convert to a monthly amount support that is ordered to be paid more frequently than monthly. Conversion is necessary in AFDC cases to allow the IV–D agency to distribute support collections in accordance with § 302.51(b) (1) through (3), and the IV–A agency to redetermine the family's eligibility for AFDC in accordance with 45 CFR 232.20(b). Conversion is also necessary in title IV–E foster care cases to allow the IV–D agency to distribute support collections in accordance with § 302.52(b) (1) and (2). Conversion is not required, but allowable, in other IV–D cases.

In order to accomplish the above purposes, the IV–D agency has flexibility regarding the method it uses to convert child support ordered to be paid more frequently than monthly into a monthly amount as required by 45 CFR 302.51(a) and OCSE–AT–76–5. Therefore, the State may use the "actual conversion methodology" suggested above, or any one of the conversion methods set forth on pages 1 and 2 of OCSE–AT–76–5.

We have revised the proposed second sentence of § 302.51(a), which is redesignated as paragraph (a)(4) in this final regulation, to allow the IV–D agency, in AFDC and title IV–E foster care cases in which conversion to a monthly amount is necessary because support is ordered to be paid other than monthly, to round off the converted amount to whole dollar amounts for purposes of distribution under §§ 302.51 and 302.52. This is consistent with longstanding Federal policy in previously-existing regulatory language.

3. *Comment:* A number of commenters stated that the regulation should require that, in cases in which obligors make payments directly to the IV–D agency or its representative, the date of postmark or mailing must be used to determine the month in which the payment was made. They believe Congress clearly intended mailing and not receipt to be the operative date for timely payments.

Response: Current regulations in effect since June 9, 1988 (53 FR 21642) provide that the date of collection for purposes of distribution is the date on which payment is received by the State IV–D agency or by the legal entity of any State or political subdivision actually making the collection, whichever is earliest. This final rule establishes a separate rule with respect to payments in withholding cases, as discussed in more detail in the following comment and response. While we were not convinced by commenters that Congress intended that we should mandate at the Federal level that the date a payment is mailed should be used to determine the month in which the payment is made, we believe that States should be given the option, effective January 1, 1989, to use, on a statewide basis, either: (1) The date a payment is mailed, as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier; or (2) the date of initial receipt by the State IV–D agency or by the legal entity of any State or political subdivision actually making the collection, whichever is earliest. Therefore, we have included that option under § 302.51(a)(5)(ii).

4. *Comment:* We received many comments expressing concern that the additional burden placed on employers of having to report the date of withholding will further erode States' relationships with employers and that, in any case, it will be impossible to ensure employers compliance with the requirement unless State statutes are enacted to do so. Commenters believe that State and local agencies are being placed in a no-win situation because they must rely on the hope that the employers provide the date of withholding. These commenters believe that, if the employer does not adhere to the rule, the local and State agency should not be determined to be out of compliance and subject to possible penalties. They urged that, for purposes of uniformity, the date of collection in cases of withholding remain the same as the date of collection for other payments.

Alternatively, other commenters agreed that for support payments made through wage or income withholding, the date of collection for distribution purposes should be the date the wages are irrevocably withheld. One commenter indicated that this requirement is straightforward and in the best interest of the custodial parent. Another commenter recommended that the date of the employer's check or bank draft for the withheld amounts be used to determine the $50 pass-through.

Commenters also requested that there must be some provision for situations where the date is not reported and that the regulation should state "If the date of withholding is unknown, the date of collection shall be the date of receipt by the IV–D agency." Alternatively, a commenter recommended that there be a presumption in the regulation that when the employer fails to specify the date of withholding, withheld amounts forwarded by employers represent timely payment of amounts due since the previous date the employer forwarded withheld amounts.

Other commenters recommended that the regulation be revised to include more specificity with respect to States' responsibility to monitor employer compliance and to obtain relevant employer information. Commenters asked how the date of withholding should be identified and forwarded; whether the IV–D agencies should presume that the payment was made for the previous month; and how this information will be conveyed to clerks or court/depositories so that it can be transferred in an automated fashion with the payments.

Response: Section 102 of Public Law 100–485 amended sections 402(a)(8)(A)(vi) and 457 (b)(1) of the Act, effective January 1, 1989, to clarify that the first $50 of support payments received in a month which was due for a prior month must be paid to the family if paid by the absent parent in the month when due. Under the new law, the AFDC family may not be denied the $50 payment when the absent parent pays support on time but there is a delay in transmitting the payment from the point of collection to the agency responsible for distribution.

Public Law 100–485 also made significant changes to the Act affecting requirements for income withholding. Immediate income withholding is required in child support orders issued or modified on or after November 1, 1990, and other changes were made which will ensure that income withholding applies in the future on a larger scale than heretofore. From the inclusion in Public Law 100–485 of the amendments concerning the $50 pass-through, and the amendments which will result in payment of support through income withholding in a greater proportion of cases, we conclude that the Congress' intent was to apply the $50 pass-through, after January 1, 1989, to any case in which an absent parent's support payment is irrevocably withheld from his or her wages in the month in which the payment was due. In other words, if an employer withholds child support in the month the support was due and subsequently pays that support to the IV–D agency in a later month, the $50 disregard must be credited for the period during which the withholding actually occurred. Use of the date of the employer's check or the date of receipt by the initial point of receipt in the State does not necessarily ensure distribution of the amount withheld as having been paid in the month it was due and withheld.

Section 302.51(a)(4) requires that, with respect to payments made through wage or other income withholding and received by the IV–D agency on or after January 1, 1989, the date of collection for distribution purposes in all IV–D cases must be the date of the withholding. If the employer fails to report the date of withholding, it will be necessary to reconstruct that date by contacting the employer or comparing actual amounts collected with the pay schedule specified in the court or administrative order. This will give States some flexibility in establishing the date of payment when employers fail or neglect

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to report that information. If the State's withholding law includes withholding of other income such as unemployment compensation or pension benefits and such income is withheld to meet a support obligation, the IV–D agency must use the date of collection as defined in § 302.51(a)(4) to determine accurate distribution of the amount withheld.

States may not simply presume that, when the employer fails to specify the date of withholding, withheld amounts forwarded by employers represent timely payment of amounts due since the previous date the employer forwarded withheld amounts. This would not take into consideration the possibility that wages are withheld irregularly because of lay-offs, employee absences, or sporadic work patterns, for example. The wage withholding order will often include provision for payment of arrears accumulated because of such work interruptions and Congress clearly did not intend pass-through payments to issue when back support is finally paid.

States must ensure that they receive data which allows them to distribute amounts withheld accurately. If the employer fails to supply the date of the withholding, States will have to contact the employer for the date or use other verifying information, such as the underlying order, that ensures distribution of the amount paid for the actual month in which withholding occurred. We do not believe this should present a problem in most withholding cases but encourage States to work with employers to impress upon them the need to report the date of withholding and to assist them in developing the least burdensome means of doing so.

5. *Comment:* Several commenters objected to the January 1, 1989 effective date of the requirement that, in withholding cases, the date of collection is the date of withholding. One commenter urged that the effective date for this requirement be delayed for 18 months to allow necessary statutory changes, computer changes and proper notice to employers. Another requested a delayed effective date until 1991. Still another commenter indicated that, if there is evidence of Congressional intent to link "pass-through" payments to the date of withholding, it appears there is sufficient evidence of intent to delay its implementation to November 1, 1990. The commenter also stated that the January 1, 1989 date could be interpreted to be the collection date covered by 53 FR 21642 dated June 9, 1988. Another commenter urged that if recomputation of distribution for purposes other than the $50 pass-through will be required, the effective date should be delayed until 1991. Another commenter recommended that audit criteria established for monitoring this provision take into consideration these implementing issues.

Response: States have been on notice since enactment of Public Law 100–485 of the effective dates of its various provisions; the Congress could have made the effective date for the clarification on the $50 pass-through provision the same as for the immediate withholding provision, but it did not choose to do so. In addition, OCSE–AT–88–17, dated November 18, 1988, notified States of the provisions regarding the $50 pass-through payment, establishment of paternity until the child's 18th birthday, and 90 percent Federal funding for laboratory costs in establishing paternity. That Action Transmittal addressed payment of the $50 pass-through in cases in which an absent parent's child support payment is irrevocably withheld from his or her wages in the month in which the payment was due. Specifically, it read "if an employer withholds child support in the month the support was due and subsequently pays that support to the IV–D agency in a later month, the $50 disregard must be credited for the period during which the withholding actually occurred."

We disagree that the January 1, 1989 statutory effective date of section 102 of Public Law 100–485 should be construed to apply to the date of collection policy established in the final regulation governing the $50 pass-through published on June 9, 1988 (53 FR 21642). That final regulation provided that the date of collection of a child support payment for purposes of distribution and redetermination of AFDC eligibility is the date on which payment is received by the State IV–D agency or by the legal entity of any State or political subdivision actually making the collection, whichever is earliest. Public Law 100–485 did not make any change inconsistent with that administrative rule, nor did Congress indicate the implementation of the existing rule should be delayed. States have been on notice of that regulatory requirement, and its effective date, for over two years and should already be distributing collections based on it.

6. *Comment:* A commenter urged that the explanation of the final regulation clarify that recomputation of distribution is required only for purposes of the $50 pass-through payment. Another commenter argued that, if distribution must be recomputed, adjustments must be made to accounting records. The commenter made all of the following comments: Since it is the norm rather than the exception that a collection is received in a month later than the month in which the support was paid, child support agencies will be forced to make adjustments on a significant number of cases. If the child support program has an automated system, that system will have to be reprogrammed to handle these adjustments. If the State does not yet have an automated system, additional resources will be required to design and program this capability. Collections and statistical reports would have to be adjusted to reflect the adjustments made when the month in which support was paid differs from the month the collection was received. Applying collections to the month in which they are paid rather than the month in which they are received may significantly complicate the process of redetermining AFDC eligibility when child support collections exceed the grant.

Response: In response to the comment that the recomputation of distribution should only be required for purposes of the $50 pass-through, we are reiterating that accurate distribution of support collections in IV–D cases depends on whether the collection is treated as payment on current or past-due support. Distribution of amounts collected in excess of the first $50 of support collected depends on distribution of that first $50. Under section 457 of the Act, governing distribution of support collections, there is an interrelationship among paragraphs (b) (1) through (4) which does not leave room for separating out paragraph (b)(1) payments, relating to the $50 pass-through, for special distribution. Therefore, when payments which were made in the month when due are received in a later month by the IV–D agency responsible for final distribution, that agency must recompute distribution of all collections for the month in which the payments were made on-time, not just the $50 payment.

Some of the statements made by the second commenter may currently be accurate in some States. However, if States forward collections expeditiously after they are received, delays in receiving those collections by entities responsible for final distribution will be limited. In addition, States with automated systems will not necessarily have to reprogram their systems if the system captures two dates with respect to a collection. The first date is the date of collection or payment for the purpose of determining whether a payment is for current support. The second date is the date of initial receipt in the State for the purpose of starting the timeframes for paying amounts collected to families.

We would also point out that accounting records for previous months need not necessarily be adjusted. While amounts received in a month subsequent to the month the payment was made must be distributed accurately based on the date of collection defined in § 302.51(a), States need not adjust accounting records of distribution of collections in a previous month. Distribution in previous months is completed. The State would merely have to indicate in the current month's accounting record how collections received in the current month were distributed, including applying collections as current support for a previous month if appropriate based on the date of collection as defined in 302.51(a). In addition, statistical reports are based on when collections are received by a State and need not be adjusted to reflect when wages were withheld or the date of initial receipt by the responding State in an interstate case.

It is true that adjustments to AFDC eligibility may be necessary when support payments which exceed the AFDC grant amount are paid but not received timely. However, this has always been the case; it is not a consequence of these regulations, although somewhat more frequent retroactive accounting may be required. In most cases, the amount of the payment will not render the family ineligible for AFDC. These rules will, however, ensure that AFDC families, who are entitled to pass-through payments of up to $50 when support is paid on time, receive such payments. Congress ensured this would be the case through enactment of the clarifications in Public Law 100–485. Consistent with clear congressional intent, efforts have to be made to expedite and improve the collection and distribution of support payments to ensure accurate distribution.

7. *Comment:* One commenter indicated that the proposed change to the date of collection definition retains the "date of collection" as the sole trigger for distribution of the $50 pass-through payments and argues that section 102 of Public Law 100–485 clearly distinguishes between amounts collected in the month of receipt and amounts collected in excess of the amount owed for the month of receipt. The commenter suggested alternative language for both §§ 302.51 (a) and (b)(1). The proposed language for § 302.51(a) would require that the month of payment for distribution purposes be the date of withholding, the date of receipt by another IV–D agency or the legal entity of any State or political subdivision, or the postmark date if paid directly through the United States Postal Service, whichever is earliest. The proposed language for § 302.51(b)(1) would include, for purposes of the $50 pass-through payment, reference to amounts received in one month which were paid timely in a previous month.

Response: As indicated earlier, we are allowing, but not requiring, States to use evidence of the date a payment is mailed to determine the date of collection for distribution purposes in cases in which payments are made through the mail. Therefore, while we did not revise § 302.51(a) to include the language suggested by the commenter, use of the date of collection as defined in § 302.51(a) will help ensure that collections are distributed accurately.

We did revise § 302.51(b)(1) to refer to payments made in the month when due but received in a later month for consistency with sections 402(a)(8)(A)(vi) and 457(b)(1) of the Act. The first sentence of § 302.51(b)(1) is revised to read as follows: "Of such amounts as are collected periodically which represent monthly support payments, the first $50 of any payments for a month received in that month, and the first $50 of payments for each prior month received in that month which were made by the absent parent in the month when due, shall be paid to the family."

8. *Comment:* Two commenters asked whether the State must distribute monies collected within 15 days of the date the money was withheld from the obligor's pay or within 15 days from the date the clerk received the money from the obligor's employer.

Response: The date of initial receipt of a collection in the States under § 302.32(f), effective October 1, 1990, is used to determine the starting date of the timeframe within which all or part of the collection must be sent to the family. The timeframes for sending support payments to families under § 302.32(f) begin with the date of initial receipt in the State, with certain possible exceptions for collections through Federal and State income tax refund offset.

9. *Comment:* A comment from a national association representing child support enforcement professionals and agencies stressed that State agencies can only logically distribute payments at the end of each month. The representative argued that it is neither effective nor efficient to distribute several small payments, when the State receive several small payments within any one month for an individual case.

Response: The commenter is referring to a requirement under §§ 232.20(d) and 302.32(f) which were published as part of the program standards regulation published in final on August 4, 1989 (54 FR 32284). Although those sections of the regulation were not addressed in the proposed regulation being finalized in this document, we believe there is a need to respond to the commenter's concerns because they are representative of many similar concerns raised with respect to §§ 232.20(d) and 302.32(f) since publication of the program standards regulation. We will consider the need for changes to those sections as part of the document currently under development to conform audit regulations to the requirements of the Family Support Act of 1988, including the program standards requirements published in August of 1989.

Effective October 1, 1990, §§ 232.20(d) and 302.32(f) establish timeframes within which States must send child support collections to families. The proposed 302.32(f)(2)(i), published April 19, 1989 (54 FR 15876), would have required States to send any payment under § 302.51(b)(1), i.e., the $50 pass-through payment, to the family within 15 working days of the date of initial receipt in the State. Commenters were quick to point out that this could require as many as four incremental payments during a month if the support was ordered to be paid weekly. In response to the April 19 proposed regulation, most commenters urged that we require States to send payments to AFDC families within 15 days of the end of the month of collection, thereby maintaining consistency with the normal monthly AFDC payment and accounting cycle. To quote the preamble to the final regulation published on August 4, 1989, at 54 FR 32292:

> "Almost every comment we received from a State or local IV–D agency objected to the proposal that payments to the AFDC family under § 302.51(b)(1) be made within 15 working days of the date of initial receipt in the State. Commenters strongly urged that IV–D agencies not be required to pay multiple pass-through payments until $50 is collected in cases in which payments are made weekly. Commenters suggested the timeframe for sending the $50 pass-through to families be tied to the end of the month of collection or the date at least $50 is collected. In addition, commenters indicated that, if finalized, the proposal would require daily distribution of collections which has proven in at least one State to be confusing to AFDC recipients and difficult to administer."

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In response to those comments, the final rule at § 302.32(f)(2)(i), published August 4, 1989, requires, effective October 1, 1990:

"When the IV–D agency sends payments to the family under § 302.51(b)(1) of this part, payments to the family must be sent to the family within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected. When the IV–A agency sends payments to the family under § 302.51(b)(1) of this part, the IV–D agency must forward any amount due the family under § 302.51(b)(1) to the IV–A agency within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected."

To account for States in which the IV–A agency sends the $50 pass-through payment to the family, §§ 232.20(d) was amended to require the pass-through payment to be send to the family within 20 calendar days of initial receipt in the State of the first $50 of support collected, or if less than $50 is collected in a month, within 20 calendar days of the end of the month in which the support was collected. This would allow the IV–A agency an additional 5 days to sent the payment to the family.

Since publication of this requirement, States have expressed their strong belief, and have presented data gathered through a national survey conducted by the American Public Welfare Association, that the requirement in the final regulation would, certainly for the next several years, place an unreasonable administrative burden on IV–A agencies with no compelling benefit to families to warrant varying the longstanding practice which ties assistance payments, accounting and distribution of collections in AFDC cases to a monthly cycle. In response to this overwhelming reaction to the requirement in the program standards final rule, buttressed by the survey information, we believe the concerns warrant further consideration.

Therefore, we intend to consider changes to §§ 232.20(d) and 302.32(f) as part of the document under development to revise audit requirements for consistency with the Family Support Act of 1988 and program standards requirements. In so doing, we intend that any necessary changes will be made before States are audited for compliance with the program standards requirements.

10. *Comment:* A commenter indicated that immediate approval of Advanced Planning Documents (APDs) or waiver from prior approval of APDs is necessary to allow States to automate and implement the requirements related to the disregard contained in the proposed rule.

Response: Federal matching funds are available for modifications to automated systems necessary to ensure compliance with these requirements. In addition, a proposed rule is under development which will address the automated systems requirements contained in Public Law 100–485, as well as the entire process for review and approval of APDs.

Section 303.7—Provision of Services in Interstate IV–D Cases

1. *Comment:* One commenter asked that the requirement that collections in interstate cases be forwarded to the initiating State within 15 calendar days of initial receipt in the responding State be expanded to address legitimate reasons for not forwarding payments timely, i.e., inability to identify parties or match payments with cases, no good address, disputes over the amount.

Response: We believe that most if not all unidentified payments can be identified within the required timeframes for distribution. However, if a payment is made without information which links it to a specific IV–D case and the State after diligent efforts is unable to determine to whom the payment is owed, the State would not be penalized for failing to meet the timeframe for distribution in that case. As soon as the payment is identified, however, the timeframe for transmittal of the payment would apply. We see no reason for a responding State not to have a good address for the location specified by the initiating State IV–D agency where payments should be forwarded. Neither do we share the commenter's concern with respect to disputes over the amount of the collection. These two circumstances do not appear to be legitimate reasons for failing to transmit collections timely.

2. *Comment:* We received several comments regarding the date of collection in interstate cases. One commenter requested that we clarify that in the absence of information, the initiating State may distribute the $50 pass-through based on the date the responding State forwarded the collection. Another recommended that for purposes of distribution in interstate collection cases involving wage or income withholding, the date of collection for distribution purposes should be the date of initial receipt by the responding State. Finally, another commenter argued that the date of collection in interstate cases should be the date on which the initiating State IV–D agency receives the collection because the IV–D agency should be held accountable only after the collection is under its control.

Response: We believe that responses to previous comments apply to these comments with respect to interstate cases as well. Responding States are required to include the accurate date of collection or indicate that the collection was made through State tax refund offset when collections are forwarded to the initiating State. We did not refer to collections made through Federal income tax refund offset because, effective October 1, 1990, only the initiating State may submit cases for Federal income tax refund offset. (See 54 FR 32303, August 4, 1989.)

Initiating States must distribute the collection as appropriate based on information provided by the responding State.

Initiating States may not use, as suggested by commenters, the date of initial receipt by the responding State in withholding cases, or, in the absence of information from the responding State, the date the collection was forwarded by the responding State.

With respect to the comment that IV–D agencies should be held accountable only after they receive a collection, we reiterate that the date the initiating State receives the collection has no bearing on when the payment was made, which must be determined and used to distribute payments accurately.

State Guidelines for Child Support Award Amounts

A. Section 302.56—Guidelines for Setting Child Support Awards

Effective date of requirements.—Comment: We received many comments expressing concern that the proposed regulation was published just one month before the statutory effective date of October 13, 1989, and that some proposed requirements would cause undue burden on States which had taken steps in good faith to achieve compliance with the statutory mandate. The preponderance of commenters stated that OCSE should not impose additional requirements through regulation long after those requirements should have been known to States. Most commenters indicated that additional legislative amendments to State laws would be necessary to comply with the proposed regulatory requirements. One commenter asked that OCSE determine States with guidelines in effect as of October 13, 1989, which comply with the provisions of Public Law 100–485 to be in compliance with State plan requirements for mandatory guidelines and that States should not be found retroactively out of compliance when the final rule is published. Other commenters argued that States should be given additional time to enact laws or procedures to comply with the proposed requirements and that States should not be required to meet additional requirements until completing their first four-year review of the guidelines.

Response: We do not believe that Congress, in establishing the effective date of October 13, 1989, for these requirements, intended that State compliance be delayed. However, in response to the concerns raised by commenters, we wish to clarify the following: States are required to submit plan amendments by the end of the calendar quarter in which a State plan requirement is effective. Failure to do so could result in disapproval of the State's plan and loss of all Federal funding of the State's IV–D program. States which are determined to have had laws and procedures that were in conformance with the requirements of section 103 of Public Law 100–485 as of October 13, 1989 will be given interim approval of their State plan amendments governing mandatory guidelines pending publication of the final rule. A determination of whether a plan amendment may be given interim approval is based on whether or not the State's statutes, rules or procedures which have the force and effect of law meet the explicit provisions of the statute, i.e., any statutory requirement which is clear on its face. Therefore, States are not required to meet regulatory requirements before those regulatory requirements are published in final form. Upon publication of this rule in final form, States will be required to submit State plan amendments certifying compliance with all mandatory guidelines' requirements, both statutory and regulatory.

One Set of Guidelines Which Apply to All Orders in the State

1. *Comment:* One commenter asked if the reference to "setting child support awards" in § 302.56(a) covers modifying existing orders as well as setting initial orders.

Response: Section 467(a) of the Act requires States to establish guidelines for child support award amounts in the State. It does not limit the requirement to setting initial orders. Therefore, the guidelines must be used to establish initial support orders and to modify existing orders. In addition, section 103(c) of Public Law 100–485, effective October 13, 1990, requires States to periodically review orders "and adjust such order[s], as appropriate, in accordance with the guidelines established pursuant to section 467(a)." Section 302.56(a) requires, effective October 13, 1990, as a condition for approval of its State plan, a State must establish one set of guidelines by law or by judicial or administrative action for establishing and modifying child support award amounts within the State.

2. *Comment:* One commenter stated that the requirement that guidelines apply to all orders in the State will significantly change the way its State has previously administered guidelines under the IV–D program. This commenter declared that Public Law 100–485 requires only that States establish mandatory guidelines, not a single set of Statewide guidelines.

Response: We believe that the Congress clearly intended that there be one set of guidelines uniformly applied in the State in setting child support award amounts. The Conference Report (Report 100–998, September 28, 1988, p. 92) states, in part, that "* * * officials must use the States' guidelines, uniformly applied, as a rebuttable presumption." Multiple sets of guidelines cannot be uniformly applied to all cases in the State. In many States, the previous optional or discretionary guidelines were not required to be applied in any jurisdiction within the State, and therefore, their varying and inconsistent application, was irrelevant. The new requirement under section 467(b) of the Act that the amount of support determined under the guidelines "shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support," on the other hand, establishes a clear evidentiary standard which it would appear, as a rule of law, must be uniformly applied in all jurisdictions within the State. Therefore, § 302.56(a) and (f) require States to establish one set of guidelines for setting and modifying child support award amounts within the State.

3. *Comment:* Another commenter objected to the requirement that guidelines apply to all orders in the State, since its State guidelines provide that they apply only to cases where the parents' combined gross income is under $52,000. According to the commenter, above this level of income the incidence of complex financial trade-offs and an equitable distribution of assets is so frequent as to make guidelines inapplicable. The commenter indicated that the State's goal is to have guidelines apply to 75 percent of the State's population based on personal income, and that as income goes up, the income cap below which guidelines apply also goes up. The commenter said that the regulation should be revised to permit States to determine the target population for the guidelines' application as long as all AFDC cases and a majority of non-AFDC cases are included.

Response: As discussed previously, section 467(b) of the Act clearly requires guidelines to be used as a rebuttable presumption in any judicial or administrative proceeding for the award of child support. Therefore, while States may not simply exempt an entire category of cases with incomes above or below a specific dollar level from application of the guidelines, the application of the guidelines in those cases may be rebutted as unjust or inappropriate on a case by case basis, in accordance with State criteria and Federal requirements. However, we caution States that criteria for rebuttal may not be designed to exclude an inordinate number of cases from application of the guidelines, because to do so would clearly contravene the intent of the statute that guidelines be the norm, not the exception, for determining support awards.

We have deleted the separate requirement under proposed § 302.56(c)(4) that guidelines must apply to all orders in the State because it is duplicative of the clear language in § 302.56 (a) and (f) that guidelines be used as a rebuttable presumption in any judicial or administrative proceeding for the award of child support, i.e., in establishing and modifying all support awards in the State.

4. *Comment:* One commenter complained that OCSE, in requiring that guidelines apply to all orders in the State, has not taken into account States which have separate administrative and judicial systems for establishing support awards where different procedures may apply. This commenter felt that requiring the guidelines to apply equally to all orders would eliminate State authority to provide for differences in judicial and administrative systems. Another commenter indicated that requiring a single Statewide guideline ignores the economic realities of large States where diverse economies may dictate different standards.

Response: These requirements do not preclude States from having parallel administrative and judicial systems with procedures which are appropriate to each system. However, these parallel systems must use one common set of guidelines. To allow the guidelines to be

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applied differently depending on whether a judicial or administrative process is used, would be inequitable and inconsistent with congressional intent, which clearly requires one set of guidelines in the State.

With respect to the comment regarding economic realities of large diverse States where differing economies may dictate different standards, we believe even a large State can develop a set of guidelines which adequately addresses economic realities while ensuring equity and an adequate level of support. In fact, a number of large States already have one set of mandatory guidelines in use in setting all orders in the State.

5. *Comment:* A commenter stated that by requiring a single Statewide guideline OCSE is mandating specific components to be included in guidelines instead of providing technical assistance, as called for in section 467(c) of the Act. The commenter indicated that OCSE is impinging on State authority to set its own policy and that section 467(a) does not require a single Statewide guideline.

Response: As explained previously, section 467 does require one set of guidelines in the State. Further, we believe that the minimum requirements contained in this regulation provides States with great flexibility in establishing guidelines. In addition, OCSE has been providing, and will continue to provide, technical assistance to States in this area.

Minimum Components of Guidelines

1. *Comment:* Several commenters complained that OCSE, in proposing minimum components under § 302.56(c) for States' guidelines, is imposing requirements that are overly broad, is exceeding Federal authority, and is ignoring congressional intent to allow States flexibility in establishing guidelines.

Response: We are using our authority under section 1102 of the Act to establish these requirements, and believe that, as written, they do not limit States' flexibility to establish guidelines. As stated in the preamble to the proposed rule, we are establishing only minimum components for guidelines and did not impose more specific requirements because States are generally in a better position to determine specific considerations for families residing in their jurisdictions.

2. *Comment:* Several commenters asked that the regulation require that guidelines establish a minimum amount of support based on the level of Federal foster child guidelines, and be adjusted at each three percent increment of the Consumer Price Index (CPI). They also recommended that the level of support required by the guidelines should be that amount necessary to maintain the child(ren) at the standard of living they would have enjoyed had the marriage or relationship remained intact. These commenters also asked that the regulation prohibit States from exempting those with income above a certain level from application of the guidelines and reducing support amounts below a minimum standard when the obligor takes on the responsibility of additional children, quits a job or becomes a full-time student. Commenters recommended that the minimum standards also address the custodial parent's income in calculating awards. Other commenters asked that the guidelines address child care expenses and circumstances of second families with respect to treatment of income of a new spouse and expenses related to other dependents. Another commenter suggested that States be required to ensure that guidelines be reasonably related to economic data on costs of child rearing.

Response: We have established only minimum components for guidelines in this Federal regulation and believe it is appropriate for States to develop guidelines' specifics. However, section 467 of the Act does prohibit States from explicitly limiting application of the guidelines to those with income above or below a specific level; the guidelines must be used as a rebuttable presumption in setting all award amounts in the State. Deviation from the guidelines is allowed only if, based on a written or specific finding on the record, the application of the guidelines would be unjust or inappropriate in a particular case. Therefore, while deviation from the guidelines is allowable in cases with income above a specific level if the above condition is met, States may not categorically excuse cases with income above or below a certain level from application of the guidelines.

While we have not included the other recommendations as part of the required minimum elements of guidelines, we believe that they represent policy options which States could use in constructing guidelines, and encourage States to consider them in establishing and revising their guidelines.

3. *Comment:* One commenter suggested that we clarify that where a defendant was properly served and fails to appear or to produce financial information, nothing should be construed in the guidelines requirement to prohibit a temporary order, subject to modification based on the production of subsequent information.

Response: We agree with the commenter but do not believe it is necessary to revise the regulation because nothing in the regulation would prohibit a State from entering a temporary order in the circumstances described by the commenter.

4. *Comment:* Many commenters strongly objected to the inclusion of resources of the absent parent as one of the required components of guidelines. Several commenters complained that the word "resources" was not adequately defined and asked if courts must hire appraisers to assess the value of resources. Others pointed out that availability of resources should be used as a possible factor for rebutting the amount called for by the guidelines. One commenter pointed out that most existing State guidelines are now primarily income-based and deal with resources only insofar as they produce (or are imputed to produce) income. Another commenter stated that the income-shares model for guidelines, which does not address resources, had been adopted by his State partly because it was included as one of a number of models described in a study on guidelines funded by OCSE. One commenter applauded the inclusion of resources, particularly as it would apply to self-employed obligors or obligors who receive commissions. Another commenter supported the use of resources, but recommended that States be given additional time to comply.

Response: We agree with commenters that requiring the inclusion of resources as part of required elements of guidelines would be inconsistent with widely-accepted guidelines' models which do not consider resources and that the existence of valuable resources should more appropriately be used in rebutting guidelines amounts. Consequently, we have deleted this requirement from § 302.56(c)(1) in the final rule. However, States which currently consider resources as part of their guidelines' formula may continue to do so. Also, States, in developing or revising existing guidelines, may establish elements, including consideration of resources, in addition to the minimum Federal requirements. While supporting studies and technical assistance, OCSE has not and does not now endorse or favor any particular guidelines model, leaving that choice to State discretion.

5. *Comment:* We received many critical comments regarding the proposal that States' guidelines provide for coverage of the child or children's health care needs, including health insurance when available to either

parent at reasonable cost as defined in § 306.51(a). Several commenters felt it was inappropriate to require that the custodial parent provide health insurance coverage under the guidelines. A number of commenters pointed out that it would be necessary to seek legislation, long after the statutory effective date of mandatory guidelines, for the authority to implement this proposed requirement, which could jeopardize the entire guidelines. These commenters urged that the requirement be dropped, or that States, at the very least, not be required to meet this provision until guidelines are revised as a result of the first mandatory four-year review. Several commenters argued that this health care provision is not authorized by either the Child Support Enforcement Amendments of 1984 or Public Law 100–485. Others agreed that the medical support requirement, while a positive step forward, could not have reasonably been inferred from the statutory language governing guidelines.

Some commenters emphasized that current Federal regulation at § 306.51 requires States in AFDC or Medicaid-only cases, and with the custodial parent's consent in non-AFDC cases, to petition the court or administrative authority to include health insurance that is available to the absent parent at reasonable cost in new or modified support orders. These commenters argued that addressing health care needs in guidelines is duplicative and unnecessary and that extending this policy to all new and modified orders in the State (not just orders in IV–D cases) is a major change which should be based on a congressional mandate. One commenter, however, indicated that it is especially important to include consideration of children's health care needs, while stressing that States should have discretion in determining how to provide for such needs.

Response: Section 104 of Public Law 100–485 requires that all support orders in the State (i.e., orders in non-IV–D as well as IV–D cases) be established using guidelines as a rebuttable presumption that the amount which would result from the application of the guidelines is the correct amount of child support to be awarded. We do not believe that we have exceeded our authority under section 1102 of the Act by requiring State guidelines to take into consideration the child(ren)'s health care needs. Medical support, i.e., providing for a child's health care needs, is an integral part of any child support award, and as such, should be addressed as part of the State guidelines for setting all child support award amounts in the State.

The Federal regulation at § 303.31 does require, unless the custodial parent and child(ren) have satisfactory health insurance other than Medicaid, IV–D agencies to petition for health insurance that is available to the absent parent at reasonable cost in seeking new or modified support orders in IV–D cases. A 1984 Urban Institute study found that 10% to 15% of all children without any health coverage have absent parents who pay child support but have not included their children on their employer-subsidized health insurance.

After reviewing comments and the various ways some States have addressed medical support, we have decided not to require health insurance to be included in the guidelines at this time. Section 302.56(c)(3) now requires guidelines to provide for the child(ren)'s health care needs, through health insurance coverage or other means. Some States, for example, have health insurance in their laws that are separate from, but equal to, their guidelines. We will carefully monitor States' progress in including health insurance in child support orders. If States do not show significant progress within a year, we will issue a notice to amend the final rule incorporating health insurance into the guidelines.

Including employer subsidized health insurance at a low cost to the employee is a cost effective way to provide medical support.

Many absent parents have new families; they can often cover their non-custodial children at no added cost to themselves. Additionally, many employers provide family coverage at no or nominal cost to the employee.

Some State guidelines allocate uninsured health costs between parents, without making health insurance a presumption. Omitting health insurance increases the financial risk on both absent and custodial parents. Omitting health insurance also increases work loads for State Medicaid agencies' third party liability units. It is much easier for these agencies to collect from an insurance company than absent parents.

6. *Comment:* Several commenters asked whether the guidelines themselves need to address health insurance if the State provided a mechanism in another part of State law to accomplish this purpose.

Response: The guidelines themselves must provide for the health care needs of the child(ren) as required under § 302.56(c)(3).

7. *Comment:* A commenter asked if the proposed requirement means that health care needs and insurance premiums must be factored into the guidelines formula itself or that the judge or referee should be made aware of the need to address such needs in the order.

Response: States have flexibility to determine how their guidelines will provide for the health care needs of the child(ren) as long as the requirements of § 302.56(c)(3) are met. The health care needs and insurance premiums need not be factored into the formula itself as long as the guidelines in some way address the child's or children's health care needs.

8. *Comment:* Several commenters suggested that Federal regulations should require non-custodial parents to provide information regarding health insurance coverage, including necessary claim forms and insurance identification numbers, at the time the order is established to ensure that the child benefits from the coverage.

Response: We do not believe that Federal regulations should establish such specific requirements to be addressed in States' guidelines. Therefore, we have not included the suggestion in this regulation. However, it would be appropriate and desirable for non-custodial parents to provide such information. We recommend that States consider the practice suggested, and we will explore other options to achieve the same end.

9. *Comment:* A commenter asked how the guidelines should provide for coverage of health care needs if health insurance is not available to either parent at a reasonable cost. This commenter asked if the support order should provide for cash payment for medical needs.

Response: The regulation does not specify how health care needs should be addressed, because we want to allow States flexibility to determine policy in this area. Using this discretion, if health insurance is not available, States may choose to require cash payments for medical costs, devise a formula for determining a percentage of medical costs for which either parent is responsible, or adopt other approaches which provide for the health care needs of the child(ren).

10. *Comment:* A commenter asked if establishment and enforcement of health care obligations would be an allowable IV–D cost.

Response: Yes, Federal funding is available for costs associated with medical support activities required under Federal regulations.

11. *Comment:* One commenter requested action at the Federal level to

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remedy situations in which employers, in efforts to reduce costs, have restricted dependent coverage to situations where children reside in the obligor's home. The commenter indicated that the result is that many children are covered only by Medicaid in AFDC cases, and have no coverage at all in non-AFDC cases.

Response: We agree that such restrictions can prevent obligors from providing health insurance coverage which would otherwise be available for their children. However, this problem cannot be addressed in this regulation and would more likely require State or Federal legislation to prohibit such practices.

Four-year Review of Guidelines

1. *Comment:* A commenter asked that the regulation at § 302.56(e) clarify that the guidelines must not only be reviewed, but modified, as appropriate, every four years.

Response: We agree that the intent of four-year review of guidelines is to ensure that the guidelines remain relevant to the needs of children. Consequently, we have added a requirement that guidelines be modified, if appropriate, at least once every four years.

2. *Comment:* One commenter asked for clarification about when the first four-year review would have to be conducted: four years from October 1, 1987, the discretionary guidelines effective date, or from October 13, 1989, the effective date for mandatory guidelines.

Response: The initial four-year review and revision of guidelines must be completed by October 13, 1993.

Findings That the Guidelines Amount Would be Unjust or Inappropriate in a Particular Case

1. *Comment:* We received many comments regarding the proposed regulatory language at § 302.56(g) which required a written finding on the record to justify the rebuttal of the guidelines in a particular case. These commenters pointed out that the statutory language at section 467(b)(2) provided for "a written finding or specific finding on the record," and argued that Congress intended that not all findings of rebuttal be in written form as long as they are part of the administrative or judicial record. Other commenters pointed out that under most State rules of civil procedure, either party may request written findings.

Response: We agree with these commenters and have added the words "or specific" to § 302.56(g) to clearly reflect the statutory language.

2. *Comment:* A number of commenters felt that § 302.56(g) should not include language which would allow States to develop criteria for rebuttal. These commenters reasoned that State input should be limited to establishing guidelines which are as comprehensive as possible so that a deviation, or rebuttal, would be rarely needed. They maintained that rebuttal should be determined by the courts, since reasons for rebuttal would be so unusual that no set of criteria could adequately define such reasons. Another commenter stated that developing all-inclusive written criteria is an impossible goal and asked for clarification of the extent and meaning of the requirement that rebuttal be based on criteria established by the State. The commenter urged that the State be required to establish a broad-based set of criteria which allow for actual consideration of the facts in a particular case (i.e., that the findings themselves be specific, not the criteria for rebuttal).

Response: Section 103(a) of Public Law 100-485 requires a finding that application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria determined by the State. Therefore, we cannot delete the requirement from the regulation.

We agree that the guidelines developed by the State should be as comprehensive as possible so as to minimize the number of cases which would be subject to rebuttal. While it is up to States to determine how specific State criteria should be, rebuttal criteria should be established in consultation with the courts and administrative review authorities to ensure fairness in the rebuttal process.

3. *Comment:* We received many comments regarding our proposed requirement that any criteria for rebuttal must be based on the best interests of the child. Many commenters were critical of this provision because they felt that Congress intended States, not the Federal government, to develop criteria for rebuttal. In addition, commenters stated that the provision was in conflict with the statutory authority that application of the guidelines would be considered unjust or inappropriate in a particular case.

These commenters believe that Congress intended that there would be cases where application of the guidelines would be unjust or inappropriate for the obligor and that rebuttals would generally result in amounts below those required under the guidelines. They argued that providing a lesser amount of support would never be in the best interests of the child, while providing a higher support award would always be in the best interests of the child. Several commenters suggested that the language be changed to "State criteria to determine the appropriateness of applying the guidelines should include, but not be limited to, the child's best interests."

Response: Since support awards are established to provide for children's needs, we believe that requiring States to include consideration of the child's best interests is basic to any criteria for rebuttal and, therefore, not inconsistent with congressional intent that States establish criteria for rebuttal.

While we agree that there may be circumstances that warrant an award amount lower than that required by guidelines, we believe that such an award could be justified by the individual case circumstances and still be in the best interests of the child.

We have, however, revised the language in paragraph (g) to require State criteria for rebuttal to take into consideration the best interests of the child. Taken as a whole, the grounds for rebuttal may not be inconsistent with the best interests of the child. This will ensure that the child's best interests are a primary consideration in any decision to deviate from the guidelines amount, while allowing for other valid factors to be considered.

4. *Comment:* Other commenters were concerned that requiring the criteria for rebuttal to be based on the best interests of the child was not sufficient. They recommended that the regulation specify that States cannot tie support to visitation; that guidelines should not be used in joint custody situations; and that second families of the obligor not constitute grounds for rebuttal.

Response: Since visitation and child support are separate issues and should be considered separately, payment of support should not be conditioned on visitation rights. With respect to joint custody situations, States should consider such arrangements in developing their guidelines and rebuttal criteria. Because the Congress required that guidelines be applied to all orders in the State and directed States to establish rebuttal criteria, we have not revised this regulation to address criteria for rebuttal beyond reference to consideration of the child's best interests. Therefore, it is up to the individual States to consider obligors' second families and non-traditional custody arrangements in developing guidelines and rebuttal criteria.

5. *Comment:* Many commenters felt that courts would be required to go into too much detail to justify rebuttal, and

were concerned that the regulatory requirements for written findings would constitute an undue burden on courts and administrative review authorities. Many were also concerned that, contrary to congressional intent, these burdens would severely limit judicial discretion, create extraordinary workloads and staggering cost increases to taxpayers, and cause lengthier court hearings, findings and orders. In addition, they were concerned that the requirements may result in loss of good will by judges towards guidelines, resulting in lack of compliance. One commenter acknowledged that such strict requirements would limit the circumstances under which the courts will order any variation from the guidelines amount. Others argued that OCSE, by specifying detailed requirements for the content of findings justifying deviation from the guidelines, was usurping a decision process Congress gave to the States by requiring States to establish criteria for such findings. One commenter strongly opposed such strenuous criteria for rebutting guidelines at such a late date and urged that the requirement be delayed at least 6 to 12 months to allow development of procedures.

Many commenters were concerned that including the value of property in the findings to rebut the guidelines, proposed under § 302.56(g), would cause courts serious problems in attempting to ascertain the property value and how it related to other support. Another commenter urged that we eliminate reference in paragraph (g) to "value of any property" and "in cases where items of value are conveyed in lieu of a portion of the support presumed under the guidelines, the estimated value of items conveyed." The commenter maintained that including this language would encourage judges and attorneys to permit trade-offs between child support amounts and property settlements. The commenter stated that such trade-offs can screen evasion of the guidelines and complicate a periodic review and adjustment process, even if the value of an initial trade-off is clearly stated. Finally, the commenter indicated that this approach is a problematical legal practice since child support is under the continuing jurisdiction of the court, and is therefore theoretically modifiable at any time, whereas a property settlement cannot be modified retroactively (absent fraud or misrepresentation).

Response: As one commenter acknowledged, the requirements for findings rebutting the guidelines amount are intended to limit the circumstances under which deviations will be allowed. Deviations from the guidelines amount should occur only in a limited number of cases because Congress required guidelines to be applied as a rebuttable presumption in setting support awards. Therefore, deviations from those guidelines should only occur infrequently and then only when judges or other officials can justify them. If deviation is truly warranted, justifying the deviation should certainly be possible.

However, we agree that the regulation as proposed imposed a considerable burden on courts and administrative authorities. We have, therefore, revised paragraph (g) to delete reference to the value of property and items conveyed in lieu of support and now require findings that rebut the guidelines to state the amount of support that would have been required under the guidelines, and include a justification of why the order varies from the guidelines.

6. *Comment:* A number of commenters were concerned that the requirements for findings of rebuttal would create major problems in cases where both parties reach a stipulated agreement and currently there is no hearing or finding made on the record.

Commenters asked if the requirements in § 302.56 (f) and (g), with respect to using guidelines as a rebuttable presumption in any judicial or administrative proceeding for the award of child support and findings justifying deviation from the guidelines, apply to orders reached through stipulated agreement. These commenters maintained that requiring judges or administrative hearing officers to detail a rebuttal of the guidelines in these instances, where both parties agree beforehand, would significantly increase the amount of time spent on such cases, to the detriment of other, more complex cases. The commenters suggested that we add clarifying language that limits application of paragraphs (f) and (g) to matters in which there is a dispute.

One commenter suggested that application of the guidelines not be construed to impair the rights of parties to enter into stipulated agreements and orders reached through stipulated agreement not be subject to detailed rebuttal as long as certain conditions designed to protect the children are met. The commenter suggested conditions contained in its State law under which (1) parties acknowledge that they are fully informed of their rights and declare that the children's needs will be adequately met; and (2) rights to support have not been assigned to the State and no public assistance application is pending. The commenter also indicated that under its State law, if the support amount agreed to is below the guidelines amount, no change in circumstances is necessary to obtain a modification.

Response: Under paragraph (f), the State must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the State's guidelines is the correct amount of child support to be awarded. Paragraph (g) requires a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case. That finding must state the amount of support that would have been required under the guidelines and must include a justification of why the order varies from the guidelines. We do not believe that support orders entered as a result of stipulated agreements are, or should be, excluded from the requirements of paragraphs (f) and (g). The State's guidelines must be a rebuttable presumption in any award of child support in the State. That includes support obligations ordered by the court or administrative authority as a result of stipulated agreements reached by the parties. Once the court or administrative entity empowered to set support orders enters an enforceable support order, all requirements under § 302.56 apply, regardless of whether or not the amount ordered was reached through stipulated agreement.

We disagree, however, that this should be a burden on the courts. Since the amount indicated under the guidelines must be a rebuttable presumption in any child support order, most obligations reached through stipulated agreements should be in the amount specified under the guidelines. In those instances that they are not, States could require the parties or their representatives to indicate in the agreement the amount that would have been required under the guidelines and a justification of why the amount agreed upon varies from the guidelines. Entering the order and including the rationale for deviation provided by the parties in the record would meet the requirements under paragraphs (f) and (g). In this way, the court or administrative authority's role is limited to a decision, based on the submitted rationale, that the deviation is warranted and that the child's needs will be met.

We agree that application of the guidelines does not impair the rights of

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parties to enter into stipulated agreements. However, orders entered as a result of stipulated agreements are nevertheless child support orders in the State and subject to the guidelines requirements. In addition, a statement by the parties that they were fully informed of their rights, that they were not coerced into the agreement, or that the children's needs will be adequately met does not satisfy the statutory requirement that guidelines must apply to all orders entered in the State and that the amount indicated by the guidelines must be a rebuttable presumption in ordering support.

We agree with the commenter that modification should be allowed in these cases, regardless of whether or not there is a change in circumstances, if the support award amount agreed to by the parties is below that which is required under the guidelines. Therefore, we encourage States to adopt laws and procedures under which inconsistency with the guidelines amount is adequate grounds for modification of such orders upon request. States should also note that section 103(c) of Pub. L. 100-485 requires periodic review of support orders and modification, if appropriate, in accordance with State guidelines for support award amounts, effective October 13, 1989. While final regulations implementing this provision have not yet been published, the statute, on its face, requires modification of support orders which are inconsistent with a State's guidelines.

7. *Comment:* Several States were concerned regarding the cautionary language in the preamble to the NPRM regarding problems where some States have "more restrictive" procedures with respect to allowing deviations from the guidelines amount. One State believed that the language could be read to bring into question its clear and convincing evidentiary standard for rebuttal of its guidelines. Several other commenters felt that Congress intended to set minimum standards for rebuttal, but not to forbid stronger standards, including the absence of any grounds for rebuttal. The commenter indicated that six States have already adopted standards that do not allow deviations from the guidelines, particularly with regard to administrative orders, or that severely limit deviations.

Response: States have considerable leeway in establishing criteria for rebuttal, as long as these criteria are established by the State and take into consideration the best interests of the child. However, the absence of any grounds for rebuttal would appear to be inconsistent with the statutory language and the intent of Congress that guidelines be used as a rebuttable presumption in the establishment and modification of all orders in the State. Section 467 of the Act does not allow State guidelines which are applied in all cases with no opportunity for rebuttal of the amount indicated under the guidelines.

8. *Comment:* One commenter indicated that its State law currently requires judges to make written findings of fact when deviations from the guidelines are made. However, this commenter claimed that a review of orders showed that judicial compliance is sporadic, and asked how IV-D agencies can assure compliance by judges who are not under IV-D control.

Response: State law, not the State IV-D agency, compels compliance by judges. However, there may be a need for judicial education to foster awareness of the seriousness of the non-support problem, and IV-D agencies should appeal rulings which are not in conformance with State Law regarding application and rebuttal of guidelines. Further, a determination as a result of an audit in the future that the State's IV-D program fails to comply with Federal requirements governing mandatory guidelines could result in assessment of a financial penalty against the State of between one and five percent of Federal funding under the State's AFDC program.

Data Collection and Analysis for First Four-year Review of Guidelines

1. *Comment:* Many commenters urged us to delete the requirements for collection and analysis of data regarding the proportion of orders being issued under the guidelines that have been rebutted and the reasons for rebuttal. These commenters strongly objected to this requirement as excessive, inefficient, and an infringement on judicial powers. They argued that it would impose an unreasonable burden on the judicial and administrative systems, including a major financial impact. Many felt that it would necessitate an entirely new system of recordkeeping and that the data would have to be compiled manually for every support order, because, although the number of cases and deviations is measurable, measuring the "reason" for deviation is extremely labor intensive. Other commenters responded that the data collection and analysis would be possible only if statistical sampling techniques were allowed or if additional Federal resources are provided. Another commenter asked if the gathering of data must be from all State jurisdictions, or if States have the flexibility to select a smaller number. One commenter urged that the requirement be deleted and that the focus of the regulation be to require that deviations only be made in unusual cases. The current rule in this commenter's State defines categories for "unusual circumstances" as "clear and convincing evidence that manifest injustice would result." A commenter stated that the proposal failed to recognize that States are fully capable of reviewing and revising guidelines as appropriate to State circumstances.

Response: There is no intent in this regulation to limit judicial discretion. The purpose of establishing guidelines as a rebuttable presumption is to ensure that each State has a consistent policy which provides for adequate support of children. Congress would not have provided for rebuttal of the guidelines' amount if it intended to limit judicial discretion.

In response to the commenter's concern that the regulation focus on limiting deviations and delete data analysis of application of the guidelines, we offer the following. This regulation does limit deviations to unusual circumstances. However, we believe that any legitimate review of guidelines would include analysis of case data on the application of their guidelines, as well as analysis of current economic data on the costs of raising children, to determine if the guidelines are adequate or should be modified in any way and that deviations are limited and justified. Requiring such analysis will ensure informed decisionmaking as a result of the review process.

While we believe that data analysis is integral to any review and modification of guidelines, we agree that States should determine how to conduct their data gathering and analysis. Consequently, we have revised paragraph (h) to require States, as part of any review of guidelines, to analyze economic data on the costs of raising children and case data, gathered through statistical sampling or otherwise, on application of, and deviations from, the guidelines. Under this approach, States may sample cases within a representative sample of jurisdictions within the State. We believe that this approach would be an efficient use of State resources.

2. *Comment:* A commenter asked whether the State would be expected to lower guidelines' levels if the data indicates that judges are consistently ordering amounts less than the guidelines. This commenter stated that it is rare for rebuttals to be for higher amounts.

Response: Each State will be responsible for gathering and analyzing data. The State must determine, using its analysis, if the data supports no change, a reduction, or an increase in guidelines' amounts. Guidelines must be revised, if appropriate, based on the State's analysis and decisionmaking process.

3. *Comment:* One commenter asked if the review is limited to IV-D cases only, or all cases, and indicated that the IV-D agency lacked authority to gather data on non-IV-D cases.

Response: The gathering and analysis of data, subject to sampling techniques discussed above, must focus on all support awards in the State. How the State meets this requirement is up to the State. However, Federal funding of allowable costs of meeting the requirement will be available.

Paperwork Reduction Act

Comment: One commenter claimed that the Paperwork Reduction Act estimate of 20 hours is totally inadequate and unrealistic because of the increase in documentation necessary for findings justifying deviations from guidelines' amounts. The commenter indicated that the one-time workload does not address the four-year reviews of guidelines, much less that initial review under paragraph (h) includes non-IV-D as well as IV-D cases. Another commenter argued that development of criteria is not a one-time burden and that the data collection requirement has not been addressed.

Response: In response to these comments we have revised the one-time burden associated with establishing criteria for rebuttal to 40 hours and added a burden of 10 minutes per case for findings of rebuttal. We continue to hold that establishment of the rebuttal criteria is a one-time burden, which must be accomplished at the time the guidelines are established. As indicated at the outset of this preamble, comments on these information collection requirements may be submitted to OCSE or OMB. Compliance with these burdens is not required until they are approved by OMB at which time a notice will be published in the **Federal Register**.

With respect to the burden of written findings of rebuttal, we believe the burden is not excessive because deviations from guidelines amounts should be the exception not the rule, and findings and records of judicial or administrative proceedings are already required under State law. The Federal requirements are not specific or extraordinary enough that they would not already be included in findings developed to justify judicial or administrative determinations in awarding child support. We have estimated the burden as follows. Based on census data, 1.5 million orders were established in the United States in 1989. We estimate rebuttal of the guidelines in only 10 percent of those orders or 150,000 orders a year. Because any records of a hearing to establish a support order would contain the rationale for reaching a specified amount, the main burden placed on States by this rule is to include in the findings the amount that would have been ordered under the guidelines. If the time needed to meet this requirement is approximately 10 minutes per case, the total burden for all States as a result of the requirements for the contents of findings of rebuttal in paragraph (f) would be about 25,000 hours.

In addition, in response to the comment that the 100-hour burden to gather data for analysis of guidelines does not take into consideration the fact that both non-IV-D and IV-D cases must be included, we have retained the 100-hour burden estimate because by allowing sampling, the burden on States should be limited.

III. State Laws Providing for Paternity Establishment

Section 302.70—Required State Laws

Comment: One commenter pointed out that a State Supreme Court recently had rendered an opinion that a proposed State law reviving previously dismissed paternity cases would be unconstitutional under the State Constitution. The commenter asked if that State will be required to amend its constitution and what OCSE would do if the State legislature enacts the required law and it is struck down by the State Supreme Court.

Response: Section 466(a)(5) of the Act, as amended by section 111(b) of Public Law 100-485, and the implementing regulation at § 302.70(a)(5)(i) require the State to enact legislation and implement procedures for the establishment of paternity for any child at least to the child's 18th birthday, including any child for whom paternity has not yet been established and any child for whom a paternity action was previously dismissed under a statute of limitations of less than 18 years. This requirement is effective August 16, 1984, the enactment date of the Child Support Enforcement Amendments of 1984 (Pub. L. 98-378).

A State that does not comply with this State plan requirement, through enactment and implementation of required State laws or approval of an exemption from doing so in accordance with § 302.70, could be found not to have an approval State IV-D plan which is a prerequisite to receipt of Federal funding under title IV-D of the Act. Instructions for applying for an exemption are set forth in OCSE-AT-88-19, dated December 22, 1988. The State could also lose a portion of Federal funding under title IV-A of the Act for failure to have an approved State IV-A plan, a condition of which is having an approved State IV-D plan.

Section 303.5—Establishment of Paternity

1. *Comment:* Several commenters expressed concern over the provision in § 303.5(d) that the IV-D agency shall require all parties to submit to genetic testing upon the request of any party to the contested paternity. Several commenters requested that we revise § 303.5(d) to require the court or administrative process rather than the IV-D agency to be responsible for requiring the parties to submit to genetic testing. A commenter stated that its State does have a law in effect to meet the requirement in section 111(b) of the Family Support Act of 1988 for requiring the genetic tests upon request but the court rather that the IV-D agency has the authority to compel parties to submit to the genetic tests. Commenters argued that the IV-D agency does not have the authority to order genetic testing; only a judge can impose such an order. The commenter noted that the IV-D agency, however, can (and does) seek such an order. Finally, a commenter suggested we replace in § 303.5(d) the term "the IV-D agency" with the term "the State."

Response: Section 466(a)(5)(B), added by Public Law 100-485, requires each State to have in effect laws requiring the use of procedures under which the State is required, with certain exceptions, to require the child and all other parties to submit to genetic tests upon the request of any party, effective November 1, 1989. That requirement is implemented in § 302.70(a)(5)(ii). Therefore, State law must require the State to mandate such testing upon request, and any entity (the court or otherwise) with the authority to order such tests must do so in accordance with State law. However, in response to the commenter's concerns, we revised proposed § 303.5(d) (redesignated as paragraph (d)(1)) to require the IV-D agency, if the agency lacks the authority to require such tests, to petition the court or administrative process authority to require all parties in a contested paternity case to submit to genetic testing upon the request of any party.

2. *Comment:* One commenter requested clarification about whether

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the IV-D agency may request genetic testing of all parties in a contested paternity case or whether requests are limited to the mother, alleged father or child. Another commenter asked if the IV-D agency, when it is a party in a contested paternity case, must submit to genetic tests.

Response: The IV-D agency may be a party to a contested paternity case in IV-D cases, and may request the other parties to submit to genetic testing. The IV-D agency is not required to submit to the genetic testing itself, for obvious reasons.

3. *Comment:* One commenter recommended that the exemption from genetic testing for AFDC recipients who have been determined to have good cause for failure to cooperate under 45 CFR 232.40 through 232.49 should also include Medicaid recipients who have been determined under 42 CFR 433.147(c) to have good cause for failure to cooperate.

Response: We are using our authority under section 1102 of the Act, which requires the Secretary to make and publish such rules and regulations, not inconsistent with the Act, as may be necessary to the efficient administration of the Act, to revise §§ 302.70(a)(5)(ii) and 303.5(d). Therefore, under those paragraphs, the IV-D agency is not required to petition the court or administrative authority to require all parties to a contested paternity case to submit to genetic testing in the case of a Medicaid recipient who, under 42 CFR 433.147, is determined to have good cause for refusing to cooperate. We also clarified in those paragraphs that IV-D agencies need not petition for genetic tests in any case in which it has determined that establishing paternity would not be in the best interest of the child in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending. This is consistent with the current language in § 303.5(b).

4. *Comment:* One commenter objected to the requirement that testing should automatically proceed upon "request." The commenter argued that a mere request, without other foundation, cannot suffice as a basis for court-ordered blood testing; such an order requires a preliminary showing of probable cause. The commenter urged that, at the very least, a verified complaint or sworn affidavit signed by the moving party should be required before testing can be ordered.

Several commenters requested clarification about whether children who are born in wedlock, or who otherwise have had paternity established, would be exempt from mandatory genetic testing. One commenter requested clarification about whether a State law which presumes paternity for children conceived after the date of a valid marriage would be valid under the proposed rule. Another commenter cited case law under which, once paternity has been established (through acknowledgment, a previous contested case or by describing the child as a marital child in a divorce decree), the father cannot later challenge a child's paternity. This commenter also said that there has been an increasing number of third-party challenges, although courts have been reluctant to allow these challenges. One commenter expressed concern that the requirement for paternity testing not be used as a springboard for requests for testing in the face of contempt or modification proceedings.

An additional commenter cited the example where, to overcome the presumption of legitimacy of a child born in wedlock, proof beyond a reasonable doubt is required, so the husband must be tested to exclude the possibility of his paternity of the child before any other alleged father would be tested. The commenter also indicated that the testing may be inappropriate if the husband had been holding himself out as the father and/or if the husband has created a parent-child relationship that constitutes paternity by estoppel.

Several commenters suggested we defined "contested paternity action" in the regulation to be any action in which the issue of paternity may be validly raised under State law and explain in the preamble that a "contested paternity action" not include an action in which the issue of paternity is foreclosed by res judicata or by applicable State law regarding estoppel and presumptions of paternity. One commenter suggested we add the phrase "which is allowable under State law" in § 303.5(d) after "upon the request of any party in a contested paternity case." Another commenter suggested we define a contested paternity case to be a case in which there has been a child born out of wedlock, where the putative father refuses to admit his paternity in the context of a pending administrative or judicial proceeding to adjudicate parentage, and where State law creates neither a presumed father nor a situation giving rise to paternity by estoppel.

Response: In response to these concerns, we added § 303.5(d)(2) under which a contested paternity case is defined as any legal action in which the issue of paternity may be raised under State law and one party disputes paternity.

If paternity has already been established, it stands to reason that no party to the prior paternity action, nor any third party, can later request the IV-D agency to require all parties to submit to genetic testing because there is no contested paternity case. We believe this would preclude a request for genetic testing when a case with paternity already established is in contempt or modification proceedings.

We do not believe that a contested paternity action would include an action in which the issue of paternity is foreclosed by res judicata or by applicable State law regarding estoppel and presumptions of paternity. A State's definition of a contested paternity case as a case in which there has been a child born out of wedlock, where the putative father refuses to admit his paternity in the context of a pending administrative or judicial proceeding to adjudicate parentage, and where State law creates neither a presumed father nor a situation giving rise to paternity by estoppel would be allowable under the regulation. Given differing State laws on this issue, we believe it is best to allow States to define a contested paternity action.

5. *Comment:* Some commenters asked how the IV-D agency is to proceed with paternity establishment cases in which the AFDC agency has sanctioned the AFDC recipient for failure to cooperate.

Response: The IV-A agency is required, in § 232.45(c), to promptly report to the IV-D agency all cases in which the IV-A agency has determined that there is not good cause for refusing to cooperate. The IV-D agency must then proceed to attempt to establish paternity. If a putative father has been identified, the IV-D agency should petition the court or administrative authority to require all parties to submit to genetic testing.

6. *Comment:* Several commenters recommended that children under six months of age be excluded from mandatory genetic testing. Commenters suggested we allow deferral of testing until the child is six months of age if the custodial parent, doctor or the laboratory determines the delay is in the child's best interest. One commenter recommended that the preamble explain that genetic tests should be performed as soon as possible after a request for such tests, when consistent with scientific standards applicable to the particular test involved. Other commenters pointed out that the immediate genetic testing of infants conflicts with the case processing standards for paternity establishment in Federal regulations which allow a State to wait six months after birth to commence testing and requested we revise the provision to be in line with the program standards final rule.

Response: We realize that the genetic tests used by some States require the child to be at least six months old. At this time, we are not mandating the use of DNA testing which does not require the child to be six months old. Instead, we believe that genetic tests should be performed as soon as possible after a request for such tests, consistent with the scientific standards applicable to the particular test involved.

We would point out that the requirement for mandatory genetic testing under § 303.5(d) does not include a timeframe for performing those tests. However, § 303.5(a)(2), which was published as part of the final program standards regulation in the Federal Register on August 4, 1989 (54 FR 32284) and is effective October 1, 1990, includes the timeframe for paternity establishment, or exclusion of an alleged father as a result of genetic tests, and will permit a delay in genetic testing until the child is six months old. Therefore, we do not believe any change to § 303.5(d) is necessary.

7. *Comment:* One commenter suggested we revise the cooperation regulations in 45 CFR 232.12 and 42 CFR 433.147(a) to clarify that: (1) The custodial parent would not be held responsible for the refusal to submit to genetic testing by the alleged father or by the child; (2) the custodial parent's refusal to have genetic testing done on a child under six months of age would not be considered failure to cooperate; and (3) the genetic testing must be done at a reasonable time and place with the custodial parent provided transportation costs to the test site.

Response: Revising the AFDC and Medicaid regulations on recipient cooperation in establishing paternity and obtaining support is beyond the scope of this regulation. While it is logical that genetic testing be done at a time and place convenient for the custodial parent, it is up to the individual State to determine genetic testing procedures.

8. *Comment:* Several commenters requested we require States to enact laws mandating courts to admit genetic test results as evidence in contested paternity cases. Other commenters requested that the genetic tests be admissable in court or administrative proceedings as presumptive evidence of paternity. But another commenter pointed out that genetic test results alone are not necessarily conclusive on the question of paternity, since additional evidence could also be considered, such as evidence concerning the conception date and testimony that the mother and alleged father had a sexual relationship during the period of conception.

Another commenter recommended that the regulation direct the IV-D agency to submit the genetic tests results to the court pursuant to State laws, and that OCSE encourage States to provide for admissibility of genetic test results, since it would be counterproductive to require genetic tests and not allow the admissibility of their results.

Response: Although the House bill would have required the use of a 95 percent probability index from blood tests as a rebuttable presumption of paternity, the Congress did not adopt the provision as part of the Family Support Act of 1988. While we are not requiring States to enact legislation mandating courts to admit genetic tests as presumptive evidence of paternity, we encourage them to do so and agree that it would be counterproductive for courts to require genetic testing and not allow the admissibility of their results.

9. *Comment:* One commenter asked if an alleged father who is excluded by conventional blood testing could be required to submit to other advanced forms of genetic testing if requested by a party to the action, and if so, under what conditions would the subsequent testing be required.

Response: The State may determine whether the alleged father excluded by conventional blood testing would be required to submit to other advanced forms of genetic testing if so requested by another party to the paternity action. The State's decision would be based upon State law, case law, or the policies and procedures of the agency with authority to compel submission to the tests.

10. *Comment:* One commenter requested that a mechanism be developed where non-AFDC IV-D applicants who pay for genetic tests be reimbursed if they later go on welfare or medical assistance. Additionally, this commenter requested clarification about whether an individual who is receiving IV-D services and who is on medical assistance would be charged any fees for genetic testing

Response: In response to the latter comment, we revised the proposed first sentence in § 303.5(e), redesignated as paragraph (e)(1), to exempt Medicaid recipients from the fee for the costs of performing genetic tests, using our authority under section 1102 of the Act to do so.

The IV-D agency is required to reimburse non-FDC IV-D applicants who pay for genetic tests and then later receive AFDC or Medicaid when the costs of the tests are recovered from the party who denied paternity in accordance with §§ 303.5(e) (3) and (4).

11. *Comment:* One commenter suggested that the fee for performing genetic tests should be limited to $25, as is the practice with other parts of the statute where fees are authorized, and that the fee be based upon a sliding scale based on income. The commenter cited court cases where prohibitive fees were found to be unconstitutional if they prevented the mother or the alleged father from using the option of obtaining lab results. One commenter recommended that we encourage, in the preamble, that States which elect to charge a fee should establish a fee schedule, based on the parent's income, that does not exceed the actual costs of performing the tests. Several commenters expressed concern that States opting to charge non-AFDC IV-D clients fees for genetic testing could actually discourage paternity establishment and could force some low-income families onto AFDC. Several commenters objected to the language in the preamble that they thought implied that mothers are frivolously taking actions to establish paternity.

Response: Section 454(6) of the Act, which governs provision of IV-D services in non-AFDC cases, imposes statutory limits of $25 for the application fee and $25 for the Federal income tax refund offset process. Section 454(6) of the Act, as revised by Public Law 100-485, did not set such a limit for the fee for performing genetic tests, which are more costly than $25, but rather allowed a fee which is in accordance with regulations of the Secretary of HHS. Any individual who is not a recipient of AFDC or Medicaid may be charged the genetic testing fee. In an AFDC or Medicaid case, a State may charge an alleged father, who is not an AFDC or Medicaid recipient himself, the genetic testing fee.

States electing to charge such fees may set a flat fee or may establish a fee schedule based on income. However, we are requiring, under § 303.5(e)(2), that any fee charged must be reasonable so as not to discourage those in need of paternity establishment services and may not exceed the actual costs of the genetic tests.

Finally, we did not intend for commenters to infer that IV-D recipients make frivolous accusations of paternity. As indicated in the preamble to the proposed rule, we believe that charging a fee for genetic tests would reduce the incidence of contested cases by

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reducing frivolous denials, as well as accusations, of paternity.

12. *Comment:* One commenter suggested we address the issue of fees where genetic tests are performed on multiple parties, for example, in cases of a third party defendant.

Response: The State's procedures, which must be consistent with § 303.5(e), should address who is responsible for any fees charged in situations of multiple alleged fathers or third party defendants.

13. *Comment:* Several commenters requested that we require that States pay for genetic tests when the mother and/or alleged father is unable to do so.

Response: States have the option under section 454(6)(D) of the Act whether or not to impose a fee for the genetic tests on any individual not eligible for AFDC. Any fee charged must be applied Statewide. However, as discussed above, we added § 303.5(e)(2) under which any fee charged must be designed so as not to discourage requests by those in need of paternity establishment services and may not exceed the actual costs of the genetic tests.

14. *Comment:* Several commenters requested that we allow States to charge only 10 percent of the costs of genetic testing since the Federal government pays the other 90 percent as Federal funding.

Response: While the Congress provided for 90 percent Federal funding of laboratory costs related to paternity establishment in section 112 of Public Law 100-485, it authorized States to charge individuals not receiving AFDC a fee for genetic tests in section 111(c) of that law. In so doing, it appears that Congress acknowledged that those who are not receiving public assistance may be held responsible for genetic testing costs.

15. *Comment:* One commenter requested we revise the last sentence of § 303.5(e) to require the IV-D agency to attempt to obtain a judgment for the costs of the genetic tests from the contesting party because, in some cases if may be the mother who is denying the paternity of the father, and the mother in such a case should be the one against whom the costs should be sought.

Response: We agree that there may be instances in which a mother denies the claim of a man that he is the father of her child and insists upon genetic testing, and the genetic test results indicate that he is the father. Therefore, we have replaced "putative father" with the words "party who denied paternity" in paragraph (e)(3) to ensure that a judgment is sought against the contesting party in these instances. We also revised the regulation to give States the option to obtain a judgment from each party as long as the total requested does not exceed actual costs. For consistency, we are making a similar change to § 303.7(d)(3) which required a responding State IV-D agency to attempt to obtain a judgment for the costs of genetic testing from the putative father if paternity is established in the responding State.

16. *Comment:* Two commenters requested clarification about whether, when paternity has been established and genetic testing was used, there will be a presumption that paternity was established as a result of genetic tests or the case record will have to state that paternity was established as a result of genetic testing before the IV-D agency is required to pursue a judgment for the costs. One of the commenters recommended we revise § 303.5(e) to require the IV-D agency to attempt to obtain a judgment for the costs of the genetic tests from the putative father in any case where paternity is established and genetic testing was completed, since courts do not establish paternity on the basis of genetic tests alone.

Response: In response to comments, we are requiring under paragraph (e)(3) that the IV-D agency must attempt to obtain a judgment for the costs of the genetic tests from the party who denied paternity or, at State option, from each party in any case in which paternity is established and genetic tests were performed. This revision clarifies that the case record would not need to indicate a presumption that paternity was established as a result of genetic testing before the IV-D agency is required to attempt to obtain a judgment for the costs of the genetic testing.

17. *Comment:* Several commenters suggested we add specific regulatory language and audit criteria to prevent States from claiming Federal funding for the costs of genetic tests already collected from the mother and/or alleged father. Additionally, several commenters asked if the mother would receive any reimbursement of fees she paid to the State if the State recouped any of the costs of the genetic tests from the putative father.

Response: Section 304.50 requires the IV-D agency to exclude from its quarterly expenditure claims an amount equal to all fees which are collected during the quarter under the title IV-D State plan and all interest and other income earned during the quarter resulting from services provided under the IV-D State plan. Therefore, States are already precluded from claiming Federal funding for the costs of genetic tests that the State has already collected from the mother and/or alleged father.

In response to the concern that custodial parents be reimbursed for fees paid if genetic test costs are ultimately recouped, we added paragraph (e)(4) that requires the IV-D agency to use any amount collected under paragraphs (e)(1) and (3) that exceeds the costs for performing genetic tests to reimburse any fee paid under paragraph (e)(1).

18. *Comment:* Several commenters requested we require that the paternity establishment fees or costs be paid by the alleged father since the genetic tests are part of the defense against paternity.

Response: We are not requiring States to charge only the alleged father the fee for genetic testing. It is up to the State to establish its policy for genetic test fees. However, under § 303.5(e)(3), if paternity is established and genetic tests are performed, the IV-D agency is required to attempt to obtain a judgment for the costs of the genetic tests from the party who denied paternity or at State option, from each party.

19. *Comment:* Several commenters requested clarification about whether the IV-D agency is required to attempt to obtain a judgment for the costs of the genetic test from the putative father, even if the IV-D agency has opted, under § 302.33(d), to not recover costs. One commenter recommended we allow States the flexibility provided under § 302.33(d) to determine whether or not and from whom to collect costs in these cases. Another commenter wanted the State IV-D agency to be free to negotiate on all relevant factors to reach the best settlement on a case. This commenter also objected to the additional costs of tracking compliance, claiming that the administrative cost would likely negate a good portion of any recovery.

Response: The IV-D agency is required, under § 303.5(e)(3), to attempt to obtain a judgment for the costs of the genetic test from the party who denied paternity or, at State option, from each party if paternity is established and genetic tests were performed, even if the IV-D agency has opted, under § 302.33(d), not to recover costs. Recoupment of the costs of genetic testing under § 303.5(e) is a separate requirement from optional cost recovery in non-AFDC cases under § 302.33(d). The requirement in § 303.5(e)(3) is similar to the requirement in § 303.7(d) under which the responding State in an interstate case must attempt to obtain a judgment for the costs of genetic tests from the party who denied paternity or from each party if paternity is established.

We do not believe that requiring States to attempt to obtain a judgment for costs will negate a State's ability to negotiate for the best settlement in a case. Further, we believe that responsibility for payment of the costs of genetic testing may deter unwarranted requests for genetic tests from any party contesting paternity, whether it is the alleged father or the mother.

The administrative costs of tracking compliance need not be cumbersome. The State IV-D agency would only need to indicate in the individual case record that a judgment for the costs of genetic testing was entered. Enforcement of that judgment would be required as for any other judgment under State law.

Section 304.20—Availability and Rate of Federal Financial Participation

1. *Comment:* Several commenters requested that 90 percent Federal funding be available for expert witness costs as a reasonable program expense whether or not included as a part of the genetic testing contract.

Response: We believe that most genetic testing contracts that are negotiated will address the costs of expert witnesses. We do not believe it is reasonable to reimburse, at the 90 percent Federal matching rate, expert witness fees which are not negotiated as part of the genetic testing contract. Federal funding at the regular matching rate is available for such costs.

2. *Comment:* One commenter suggested that 90 percent Federal funding should be available for expert witness testimony from persons, not otherwise included in the genetic testing contracts, such as obstetricians, gynecologists, or any other person whose testimony would enhance the probability of obtaining a paternity determination.

Response: Ninety percent Federal funding is not available for all witnesses in a paternity case whose testimony would enhance the probability of obtaining a paternity determination. The Family Support Act of 1988 provides enhanced Federal funding for the laboratory costs of paternity establishment, not for all costs associated with paternity establishment.

3. *Comment:* One commenter recommended we revise §§ 304.20(b)(2)(i)(B) and (iii) by deleting the word "blood" and inserting the word "genetic."

Response: These suggested revisions have already been made in the final regulation for standards for program operations, published in the Federal Register on August 4, 1989 (54 FR 32284), with an effective date of October 1, 1990. However, we have replaced the word "blood" with the word "genetic" wherever it appears in § 303.7(d) in this final rule because we neglected to do so in the proposed rule.

Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), we are required to prepare a regulatory flexibility analysis for those rules which would have a significant economic impact on a substantial number of small entities. While this regulation requires States to notify employers that they must indicate the date wages are withheld when forwarding wages to the State, this would not have a significant economic impact on employers because they are already required to comply with wage withholding requests, and supplying this date when forwarding withheld wages would not significantly increase the economic burden placed on them. Because the impact of this regulation is primarily on States, this regulation would not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a "major" rule for the following reasons:

(1) The annual effect on the economy would be less than $100 million;

(2) This rule would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) This rule would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

45 CFR Parts 302 and 303

Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

45 CFR Part 304

Child support, Grant programs—social programs, Federal financial participation.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program)

Dated: August 16, 1990.

Jo Anne B. Barnhart,

Director, Office of Child Support Enforcement.

Approved: January 28, 1991.

Louis W. Sullivan,

Secretary.

For the reasons set out in the preamble, title 45 chapter III of the Code of Federal Regulations is amended to read as follows:

PART 302—STATE PLAN REQUIREMENTS [AMENDED]

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

§ 302.50 [Amended]

2. Section 302.56(b)(2) is amended by removing the words "a formula which meets the criteria prescribed in § 302.53" and adding the words "the requirements of § 302.56".

3. Section 302.51 is amended by revising paragraph (a) and the first sentence of (b)(1) to read as follows:

§ 302.51 Distribution of support collections.

* * * * *

(a)(1) For purposes of distribution in a IV-D case, amounts collected, except as provided under paragraphs (a)(3) of this section, shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represents payment on the required support obligation for previous months.

(2) In AFDC and title IV-E foster care cases in which conversion to a monthly amount is necessary because support is ordered to be paid other than monthly, the IV-D agency may round off the converted amount to whole dollar amounts for the purpose of distribution under this section and § 302.52 of this part.

(3) Amounts collected through Federal and State income tax refund offset must be distributed as arrearages in accordance with §§ 303.72(h) and 303.102(g) of this chapter, respectively.

(4) With respect to payments made through wage or other income withholding and received by the IV-D agency on or after January 1, 1989, the date of collection for distribution purposes in all IV-D cases must be the date the wages or other income are withheld to meet the support obligation. If the employer fails to report the date of withholding, the IV-D agency must reconstruct that date by contacting the employer or comparing actual amounts

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collected with the pay schedule specified in the court or administrative order.

(5) Except with respect to those collections addressed under paragraph (a) (3) and (4) of this section:

(i) Effective June 9, 1988, the date of collection for distribution purposes in all IV-D cases shall be the date on which the payment is received by the IV-D agency or the legal entity of any State or political subdivision actually making the collection, whichever is earliest; and

(ii) Effective January 1, 1989, a State may use on a statewide basis either the definition of the date of collection in paragraph (a)(5)(i) of this section or the date the payment is mailed, as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier, as the date of collection in all IV-D cases.

(b) * * *

(1) Of such amounts as are collected periodically which represent monthly support payments, the first $50 of any payments for a month received in that month, and the first $50 of payments for each prior month received in that month which were made by the absent parent in the month when due, shall be paid to the family. * * *

* * * * *

§ 302.53 [Removed]

4. Section 302.53 is removed.

5. In section 302.56, paragraphs (a) through (c) are revised and paragraphs (e) through (h) are added, to read as follows:

§ 302.56 Guidelines for setting child support awards.

(a) Effective October 13, 1989, as a condition of approval of its State plan, the State shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State.

(b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts.

(c) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into consideration all earnings and income of the absent parent;

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and

(3) Provide for the child(ren)'s health care needs, through health insurance coverage or other means.

(d) * * *

(e) The State must review, and revise, if appropriate, the guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support award amounts.

(f) Effective October 13, 1989, the State must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(g) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

(h) As part of the review of a State's guidelines required under paragraph (e) of this section, a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

6. Section 302.70(a) is amended by revising the introductory language to add after *"Required laws."* and before the word "Effective" the clause "Unless otherwise indicated," and by revising paragraph (a)(5) to read as follows:

§ 302.70 Required State laws.

(a) *Required laws.* Unless otherwise indicated, effective October 1, 1985,

* * *

(1) * * *

(5)(i) Procedures for the establishment of paternity for any child at least to the child's 18th birthday, including any child for whom paternity has not yet been established and any child for whom a paternity action was previously dismissed under a statute of limitations of less than 18 years; and

(ii) Effective November 1, 1989, procedures under which the State is required (except in cases where the individual involved has been found under §§ 232.40 through 232.49 of this title or 42 CFR 433.147 to have good cause for refusing to cooperate or if, in accordance with § 303.5(b) of this chapter the IV-D agency has determined that it would not be in the best interest of the child to establish paternity in a case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending) to require the child and all other parties in a contested paternity case to submit to genetic tests upon the request of any such party, in accordance with §§ 303.5 (d) and (e) of this chapter.

* * * * *

PART 303—STANDARDS FOR PROGRAM OPERATIONS [AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

2. Section 303.5 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 303.5 Establishment of paternity.

* * * * *

(d)(1) Upon the request of any party in a contested paternity case, the IV-D agency, if the agency lacks the authority to order such tests, shall petition the court or administrative authority to require all parties to submit to genetic tests unless, in the case of an individual receiving aid under the State's title IV-A or XIX plan, there has been a determination of good cause for refusal to cooperate under §§ 232.40 through 232.49 of this title or 42 CFR 433.147, respectively, or if, in accordance with § 303.5(b), the IV-D agency has determined that it would not be in the best interest of the child to establish paternity in a case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending.

(2) A contested paternity case is any legal action in which the issue of paternity may be raised under State law and one party denies paternity.

(e)(1) The IV-D agency may charge any individual who is not a recipient of aid under the State's title IV-A or XIX plan a reasonable fee for performing genetic tests.

(2) Any fee charged must be reasonable so as not to discourage those in need of paternity establishment services from seeking them and may not exceed the actual costs of the genetic tests.

(3) If paternity is established and genetic tests were performed, the IV-D agency must attempt to obtain a judgment for the costs of the genetic tests from the party who denied paternity or, at State option, from each party so long as the total amount requested does not exceed the actual costs of the genetic tests.

(4) The IV-D agency must use any amount collected under paragraphs (e)(1) and (3) of this section that exceeds the costs of performing genetic tests to reimburse any fee paid under paragraph (e)(1) of this chapter.

3. Section 303.7 is amended by revising paragraph (c)(7)(iv) to read as follows:

§ 303.7 Provision of services in interstate IV-D cases.

* * * * *

(c) * * *

(7) * * *

(iv) Collecting and monitoring any support payments from the absent parent and forwarding payments to the location specified by the IV-D agency in the initiating State no later than 15 calendar days from the date of initial receipt in the responding State. The IV-D agency must include sufficient information to identify the case, indicate the date of collection as defined under § 302.51(a) of this chapter or that the payments were made through State income tax refund offset, and include the responding State's identifying code as defined in the Federal Information Processing Standards Publication (FIPS) issued by the National Bureau of Standards or the Worldwide Geographic Location Codes issued by the General Services Administration.

* * * * *

4. Section 303.7(d) is amended by replacing the word "blood" with the word "genetic" and the phrase "putative father" with the phrase "party who denied paternity, or, at State option, from each party so long as the total amount requested does not exceed the actual costs of the genetic tests", wherever they appear.

5. Section 303.100(d)(1)(ii) is amended by adding the following words before the semicolon at the end:

§ 303.100 Procedures for wage or income withholding.

* * * * *

(d) * * *

(1) * * *

(ii) * * *, and must report to the State (or to such other individual or entity as the State may direct) the date on which the amount was withheld from the absent parent's wages;

PART 304—FEDERAL FINANCIAL PARTICIPATION

1. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

2. Section 304.20 is amended by adding a new paragraph (d) as follows:

§ 304.20 Availability and rate of Federal financial participation.

* * * * *

(d) Federal financial participation at the 90 percent rate is available for laboratory costs incurred in determining paternity on or after October 1, 1988, including the costs of obtaining and transporting blood and other samples of genetic material, repeated testing when necessary, analysis of test results, and the costs for expert witnesses in a paternity determination proceeding, but only if the expert witness costs are included as part of the genetic testing contract.

[FR Doc. 91-11289 Filed 5-14-91; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567

[Docket No. 91-24, Notice 1]

Certification

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical amendments; final rule.

SUMMARY: This notice makes several technical amendments to conform the language of Part 567, Certification, to new regulations, issued in September 1989, regarding the importation of motor vehicles not originally manufactured in compliance with the Federal Motor Vehicle Safety Standards. As amended, part 567 cites the new regulations, instead of the prior ones, and refers to "Registered Importers" instead of "importers."

EFFECTIVE DATE: The amendments are effective on May 15, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. George Shifflett, Office of Enforcement, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (202) 366-5307.

SUPPLEMENTARY INFORMATION: The Imported Vehicle Safety Compliance Act of 1988, (the 1988 Act), Public Law 100-562, amended the National Traffic and Motor Vehicle Safety Act (the Vehicle Safety Act) to give the Department of Transportation sole rulemaking authority regarding regulations governing the importation of vehicles not originally manufactured to comply with the Federal motor vehicle safety standards. Among the amendments made by the 1988 Act were ones revoking sections 108(b)(3) and (b)(4) of the Vehicle Safety Act, effective January 31, 1990. These sections authorized the issuance of regulations jointly by the Secretaries of Transportation and Treasury to prohibit the importation of motor vehicles and equipment not complying with the Federal motor motor vehicle safety standards, except under such terms and conditions as the two Departments may specify to ensure that a noncomplying vehicle or equipment item will be brought into conformance or will be exported or abandoned to the United States. Pursuant to this authority, the two Secretaries issued an implementing regulation, 19 CFR 12.80, which governed the importation of merchandise subject to Federal motor vehicle safety standards beginning in 1988, and continued to do so through January 31, 1990. In place of the deleted sections, the 1988 Act added new sections which include authority vested alone in the Secretary of Transportation to establish new regulations regarding importation.

In addition, the 1988 Act amended the Vehicle Safety Act to permit a motor vehicle not originally manufactured to conform to Federal motor vehicle safety standards to be imported only by a person who has registered with this agency, or by an individual who has a contract with a registered importer for making the modifications necessary for bringing the vehicle into conformance with applicable safety standards.

Pursuant to the amendments made to the Vehicle Safety Act by the 1988 Act, the agency issued final rules on September 29, 1989, establishing 49 CFR Part 591, "Importation of Vehicles and Equipment Subject to Federal Motor Vehicle Safety Standards" (54 FR 40078), and Part 592, "Registered Importers of Vehicles Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards" (54 FR 40063). Part 591 superseded the prior joint regulation of the Departments of Treasury and Transportation on importation statements and documentation at 19 CFR § 12.80 promulgated jointly by the Customs Service, Department of the Treasury, and NHTSA. In part 592, the

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agency set forth procedures and requirements regarding the registration of importers and the duties and obligations of Registered Importers.

To supplement those 1989 final rules, the agency needs to make conforming amendments to another NHTSA regulation referring to or relying on NHTSA's importation regulations. Specifically, it desires to amend 49 CFR Part 567, "Certification." Part 567 specifies requirements for certification by manufacturers, including importers, of the compliance of motor vehicles with applicable Federal Motor Vehicle Safety Standards, the Bumper Standard (Part 581) and the Theft Prevention Standard (Part 541), as required by section 114 of the Vehicle Safety Act (15 U.S.C. 1403) and by sections 165(c)(1) and 606(c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1915(c) and 2026(c)). Part 567 contains special certification requirements for importers of motor vehicles that were not originally manufactured to conform to the Federal Motor Vehicle Safety Standards and Theft Prevention Standard, but are nevertheless presented for importation into the United States. However, those special requirements currently contain references to 19 CFR 12.80 instead of part 592, and to "importers," instead of "Registered Importers."

This notice amends part 567 to reflect the supersession of 19 CFR § 12.80 by part 591 and the necessity for an importer to be a Registered Importer or to have a contract for modification with a Registered Importer.

Because the amendments are technical in nature and have no substantive impact, it is hereby found that notice and comment thereon are unnecessary. Further, because the amendments are technical in nature and have no substantive impact, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest, and the amendments are effective upon publication in the Federal Register. As the amendments make no substantive changes, they do not affect any of the impacts previously considered in the promulgation of part 567.

List of Subjects in 49 CFR Part 567

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, part 567 of 49 CFR is amended as follows:

PART 567—[Amended]

1. The authority citation for Part 567 continues to read as follows:

Authority: 15 U.S.C. 1392, 1397, 1401, 1403, and 1407; 15 U.S.C. 1912 and 1915; 15 U.S.C. 2021, 2022, and 2026; delegation of authority at 49 CFR 1.50.

§ 567.2 [Amended]

2. Section 567.2(b) is revised to read as follows:

(b) In the case of imported motor vehicles, the requirement of affixing a label or tag applies to Registered Importers of vehicles admitted to the United States under 49 CFR 591.5(f) to which the required label or tag is not affixed.

§ 567.4 [Amended]

3. The last sentence of the introductory text of § 567.4(g)(1) is revised to read as follows:

(g)(1) * * * In the case of imported vehicles, where the label required by this section is affixed by the Registered Importer, the name of the Registered Importer shall also be placed on the label in the manner described in this paragraph, directly below the name of the final assembler.

§ 567.4 [Amended]

4. The first sentence of § 567.4(l)(1) is revised to read as follows:

(l)(1) In the case of a passenger car imported into the United States under 49 CFR 591.5(f) which does not have an identification number that complies with paragraph S4.2, S4.3, and S4.7 of 49 CFR 571.115 at the time of importation, the Registered Importer shall permanently affix a label to the vehicle in such a manner that, unless the label is riveted, it cannot be removed without being destroyed or defaced. * * *

Issued on: May 10, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-11502 Filed 5-14-91; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 56, No. 94
Wednesday, May 15, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1468

Payment Program for Shorn Wool, Wool on Unshorn Lambs and Mohair (1991–1995)

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would set forth regulations at 7 CFR part 1468 for the implementation of the 1991–1995 wool and mohair payment programs as authorized by the National Wool Act of 1954, as amended (the Wool Act). Currently, the wool payment program regulations are set forth in 7 CFR part 1472. However, since the majority of the provisions for the wool and mohair programs are identical, it is proposed for efficiency that both payment program provisions be set forth in 7 CFR part 1468. This proposed rule would provide among other requirements: (1) The criteria for a producer's eligibility for price support payments for wool and mohair; (2) place a limit on the amount of payments that a producer may receive under each program; (3) require that a nonrefundable deduction of one (1) percent be made from the amount of payment due a producer of wool and mohair; and (4) provide that the producer has no more than sixty (60) days after the end of the marketing year to file for a wool or mohair price support payment.

DATES: Comments must be received on or before June 14, 1991 in order to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Written comments must be received by June 14, 1991 to be assured consideration. All written submissions made pursuant to this proposed rule will be made available for public inspection in room 4091 South Building, USDA, between the hours of 8:15 a.m., and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Harry D. Millner, Program Specialist, EOLPD, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, Telephone (202) 475–3605.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Department of Agriculture (USDA) procedures established in accordance with provisions of Departmental Regulations 1512–1 and Executive Order 12291 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more, (2) major increases in cost or prices for consumer, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this proposed rule applies are: Title—Commodity Loans and Purchases; Number—10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The Office of Management and Budget has approved the information collection requirements contained in the current regulations at 7 CFR parts 1468 and 1472 under the provisions of 44 U.S.C., chapter 35 and OMB Number 0560–0023 has been assigned.

The information collection requirements at 7 CFR part 1468 have not changed as a result of this proposed rule. The information collection required by 7 CFR part 1468 has been approved by OMB through August 31, 1993.

Public reporting burden for the information collections contained in these regulations are estimated to be 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Discussions of Proposed Changes

The regulations in 7 CFR parts 1468 and 1472 set forth the provisions of the mohair and wool programs, respectively, for the 1986–1990 marketing years. Since numerous provisions of parts 1468 and 1472 are identical, it has been determined that it would be more efficient to combine the wool and mohair program provisions in one part. This consolidation would also result in greater program uniformity and ease in administration. This action would not result in the imposition of additional regulatory provisions other than those proposed in this proposed rule. However, obsolete regulations would be deleted under the proposed rule and would not be included in this proposed regulation part 1468. This proposed action would result in reduced paperwork and recordkeeping by producers and wool and mohair entities.

Section 703(a) of the Wool Act was amended by the Food, Agriculture, Conservation and Trade Act of 1990, (Pub. L. 101–642) (the 1990 Act), to authorize the Secretary of Agriculture (the Secretary) to support the price of wool and mohair marketed through December 31, 1995. Section 703(a) of the Wool Act provides that the Secretary shall support the prices of wool and mohair to producers by means of loans, purchases, payments or other operations. Section 704 of the Wool Act provides that if payments are utilized as a means of price support, the payments shall be such as the Secretary

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determines to be sufficient, when added to the national average price received by all producers, to give producers a national average return for the commodity equal to the support level. It is proposed that the price of wool and mohair will be supported for the 1991 through 1995 marketing years by means of payments to producers.

The 1990 Act amended section 704 of the Wool Act by adding a new subsection to provide for payment limitations on the total amount of payments that a person shall be entitled to receive for wool or mohair for any marketing year beginning with the 1991 marketing year. The 1990 Act amendment requires that the payment received by a person under each of the wool and mohair programs, respectively, shall not exceed:

(1) $200,000 for the 1991 marketing year;

(2) $175,000 for the 1992 marketing year;

(3) $150,000 for the 1993 marketing year;

(4) $125,000 for the 1994 and subsequent marketing years.

This proposed rule would set forth at § 1468.4 the maximum amount of payments that a person shall be entitled to receive under this Part.

The 1990 Act amended the Wool Act to provide that in administering the wool and mohair payment limitation provisions that the Secretary shall issue regulations defining the term "person" that shall be consistent with regulations issued by the Secretary in accordance with sections 1001, 1001A, and 1001B of the Food Security Act of 1985. Currently, the wool and mohair price support programs has a broad definition of who may be eligible to receive a price support payment. The only requirement for receiving such a payment is that the producer must have owned the livestock for a minimum of 30 days in the United States. A large number of wool and mohair producers own the livestock, but not the land on which they are grazed. These include minors, Indians on reservations where tribal counsels own the land, or other producers that graze their livestock on government-owned land. Thus, this proposed rule would amend § 1468.3 to provide that the terms "person", "family member", and "producer" be defined in a manner consistent with the payment limitation regulations at 7 CFR part 1497.

The current regulation at 7 CFR § 1468.112 and 7 CFR 1472.1541 provides that an application for payment shall be filed as soon as possible after completion of the producer's sales of wool, unshorn lambs, or mohair in a specified marketing year, but in no event shall an application be filed later than three (3) years after the end of that specified marketing year. A review of wool and mohair application filings conducted by the Agricultural Stabilization and Conservation Service (ASCS) revealed that less than three (3) percent of all wool and mohair producers filing applications for payment do so after payments for the current marketing year are issued (usually by the second week in April of the subsequent year).

It is extremely difficult for ASCS prsonnel to verify producers' sales documents that are filed after the marketing year. Therefore, this proposed rule would provide at 7 CFR 1468.9 that, beginning with the 1991 wool and mohair marketing year, an application for payment shall be filed as soon as possible after completion of the producer's sales of wool and mohair in a specified marketing year. In no event shall the application be filed later than 60 days after the end of the specified marketing year.

The Omnibus Budget Reconciliation Act of 1990 (the 1990 Budget Act) amended section 704 of the Wool Act to provide that effective only for each of the 1991 through 1995 marketing years for wool and mohair, that the Secretary must deduct from the payment to be made available to producers of wool and mohair, a nonrefundable marketing assessment equal to one (1) percent of the payment due such producers. The purpose of such assessment is to provide for reductions in outlays for agricultural programs. Thus, 7 CFR 1468.15 is added to provide for the nonrefundable marketing assessment.

List of Subjects in 7 CFR Part 1468

Assistance grant programs—Agriculture, Livestock.

Accordingly, it is proposed that chapter XIV of title 7 of the Code of Federal Regulations be amended to read as follows:

1. Part 1468 is revised to read as follows:

PART 1468—WOOL AND MOHAIR

Subpart—Payment Program for Wool, Wool on Unshorn Lambs, and Mohair (1991–1995)

Sec.
1468.1 Applicability.
1468.2 Administration.
1468.3 Definitions.
1468.4 Eligibility for payments.
1468.5 Bona fide marketing within a specified marketing year.
1468.6 Contents of sales documents.
1468.7 Report of unshorn lambs.
1468.8 Computation of payment.
1468.9 Filing application for payment.
1468.10 Preparation of application.
1468.11 Joint producers.
1468.12 Successors-in-interest.
1468.13 Payment.
1468.14 Deducations for promotion.
1468.15 Assessment.
1468.16 Offsets.
1468.17 Assignment of payments.
1468.18 Maintenance and inspection of records.
1468.19 Misrepresentation, scheme or device.
1468.20 Refunds to CCC; joint and several liability.
1468.21 Appeals.
1468.22 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 7 U.S.C. 1781–1787; 15 U.S.C. 714b and 714c.

Subpart—Payment Program for Shorn Wool, Wool on Unshorn Lambs and Mohair (1991–1995)

§ 1468.1 Applicability.

This part sets forth the terms and conditons of the price support program for producers of wool and mohair. The level of price support for shorn wool, wool on unshorn lambs, and mohair shall be determined and announced annually by CCC. For each marketing year, price support will be furnished on pulled wool at such level, in relationship to the support price for shorn wool, as CCC determines will maintain normal marketing practices for pulled wool, such support shall be made by means of payments to the producer on the amount of wool and value of such wool on live unshorn lambs that are sold or moved to slaughter in a specified marketing year. Payments will not be made on the sale of the pelts or hides of sheep or lambs or wool removed from such pelts or hides.

§ 1468.2 Administration.

(a) The wool and mohair programs shall be administered by the Agricultural Stabilization and Conservation Service ("ASCSA") under the general supervision and direction of the Executive Vice President of CCC. The program shall be carried out in the field, by the State and county Agricultural Stabilization and Conservation committees ("State and county committees").

(b) State and county committees and representatives and employees thereof, do not have authority to modify or waive any of the provisions of this part.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the programs.

§ 1468.3 Definitions.

The definitions set forth in the section shall be applicable for all purposes of program administration. The terms defined in part 719 of this title shall also be applicable except where those definitions conflict with the definitions set forth in this section.

Approving Official means a representative of CCC who is authorized by the Executive Vice President, CCC, to approve an application for payment made in accodance with this part.

ASCS means the Agricultural Stabilization and Conservation Service.

CCC means the Commodity Credit Corporation.

DASCO means the Deputy or Acting Deputy Administrator, State and County Operations, ASCS, U.S. Department of Agriculture.

Family member means a family member as determined in 7 CFR part 1497.

Goat means an Angora goat or a kid of an Angora goat.

Grease mohair means mohair as it comes from the Angora goat or the kid of an Angora goat before applying any process to remove the natural oils or fats.

Grease wool means wool as it comes from the sheep or lambs before applying any process to remove the natural oils or fats.

Lamb means a young ovine animal which has not cut the second pair of permanent teeth. The term includes animals referred to in the livestock trade as lambs, yearlings, or yearling lambs.

Liveweight is the weight of live lambs which a producer purchase or sells. In the event the price for the lambs is based on weight, the weight actually used in determining the total amount payable shall be considered the liveweight.

Local shipping point means the point at which the producer delivers wool or mohair to a common carrier (including any carrier that serves the public in transporting goods for hire whether or not such carrier is requird to be licensed by some government authority to do so) for further transportation or, if the wool or mohair is not delivered to a common carrier, the point at which the producer delivers it to a marketing agency or a purchaser.

Marketing agency with reference to shorn wool or shorn mohair means a person who sells a producer's wool or mohair for the producer's account, or buys the producer's wool or mohair for the account of the marketing agency, and with reference to lambs, it means a commission firm, auction market, pool manager, or any other person who sells lambs for the account of a producer.

Marketing year means the period beginning January 1 and ending the following December 31, both dates inclusive.

Mohair means the hair of the Angora goat and also includes the hair of a kid of Angora goat.

Producer of shorn wool, wool unshorn lambs, or mohair means a *person*, as defined in part 719 of this title, who as owner or as a party to an agreement under which the party furnishes labor with regard to the production of the wool or mohair in return for the wool or mohair or in the proceeds of such wool or mohair.

Pulled wool means wool obtained from the pelts or hides of dead sheep. Pulled wool is not eligible for a price support payment. CCC has determined that to maintain normal marketing practices for pulled wool that a payment will be made on sales of wool on lambs that have never been shorn. The payment rate will be at a rate prer hundredweight of live lambs to compensate for the wool grown on such lambs while owned by the producer. This payment is subject to adjustment by CCC to avoid duplication of payments on the same wool.

Sales document means the account of sale, invoice, bill of sale, or other related document signed by the purchaser evidencing the sale by the producer of shorn wool, unshorn lambs, or shorn mohair to the purchaser.

Shorn mohair means grease mohair sheared from a live Angora goat or the kid of an Angora goat. Shorn mohair does not include pelts or hides or mohair shorn from pelts or hides, scoured, carbonized, or dyed mohair or yarn, skeins or other terms which identify the mohair as being other than in its natural greasy state.

Shorn wool means grease wool sheared from live sheep or lambs. Shorn wool does not include pelts or hides or wool sheared from pelts or hides, scoured, carbonized, or dyed wool or yarn, skeins or other terms which identify the wool as being other than in its natural greasy state.

Slaughterer means a commercial slaughterer, that is, a person who slaughters for sale as distinguished from a person who slaughters for home consumption.

§ 1468.4 Eligibility for payments.

(a) To be eligible for a payment made under this part, all requirements of this Part must be fulfilled. Payment shall be made only with respect to producers of: Shorn wool; wool on unshorn lambs; and shorn mohair.

(b) The rate of payment for wool on unshorn lambs will be 80 percent of the difference between the national average price per pound received by producers for shorn wool during a specified marketing year and a support price for pound for shorn wool multiplied by the average weight of wool per hundredweight of animals (5 pounds).

(c) The total amount of payments which a "person", as defined in part 1497 of this chapter may receive under this part for wool and mohair, respectively, may not exceed:

(1) $200,000 for the 1991 marketing year;

(2) $175,000 for the 1992 marketing year;

(3) $150,000 for the 1993 marketing year; and

(4) $125,000 for the 1994 and subsequent marketing years.

(d)(1) To be eligible for price support, shorn wool and shorn mohair must have been shorn in the United States. If wool or mohair is shorn from imported sheep or lambs, or goats while they are held in quarantine in connection with their importation into the United States, such wool or mohair shall not be considered to have been shorn in the United States.

(2) To be eligible for price support on wool on unshorn lambs, the wool must be on lambs that have never been shorn at the time of sale, or in the case of a slaughter, at the time of moving to slaughter.

(e)(1) With respect to shorn wool and shorn mohair, the producer must have owned the wool or mohair at the time of shearing and must have owned in the United States the sheep or lambs, or goats from which the wool or mohair was shorn for not less than 30 days at any time prior to the filing of the application.

(2) With respect to wool on unshorn lambs, the producer must have owned the lambs on which the wool is growing for 30 days or more in the United States and title must have passed to the buyer

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of the lambs within the specified marketing year. If a slaughterer is to qualify for a payment, the slaughterer must have owned the lambs for 30 days or more in the United States prior to their moving to slaughter and they must have moved to slaughter within the specified marketing year.

(3) Ownership does not include an interest as the result of a person having a security interest, mortgage, or lien.

(f) If sheep, lambs, or angora goats are imported into the United States, the 30-day period of required ownership shall begin after their importation and, if they were quarantined in connection with such importation, the period shall begin after their release from quarantine.

(g) Beneficial interest in the shorn wool or shorn mohair must always have been in the producer from the time the wool or mohair was shorn up to the time of its sale. A producer has beneficial interest in wool or mohair:

(1) When the producer owns it and has not authorized any other person to sell or otherwise dispose of it, or

(2) When the producer has authorized another person to sell or otherwise dispose of such wool or mohair but continues to be entitled to the proceeds from any such sale or disposition.

(h) Payments will not be made with respect to the marketing of shorn wool, shorn mohair, or wool on unshorn lambs from imported sheep, lambs, or goats if any documentation states that the importation of such sheep, lambs, or goats is for slaughter.

(i) Payments shall only be made with respect to bona fide marketings of shorn wool or shorn mohair. The sale of shorn wool or shorn mohair which has been altered in any manner through processing, other than scouring or carbonizing as provided in § 1468.6(a)(4), or any other process or act that results in a wool or mohair product, as determined by CCC, is not eligible for a payment.

§ 1468.5 Bona fide marketing within a specified marketing year.

(a) This section is applicable only to shorn wool and shorn mohair. Marketings shall be deemed to have taken place in a specified marketing year if, pursuant to a sale or contract to sell in the process of marketing the last of the following four events was completed in that marketing year:

(1) Title passed to the buyer;

(2) The wool or mohair was delivered to the buyer physically or through documents that transfer control to the buyer;

(3) The information needed to determine the total purchase price payable by the buyer is known to the producer, the producer's marketing agency; and

(4) The full amount due the producer in connection with the marketing of the wool or mohair has been paid to the producer. A promissory note or other promise to pay, as well as a check not honored for any reason, shall not be considered as a payment to the producer unless CCC makes a determination that:

(i) The producer acted in good faith in marketing the wool or mohair;

(ii) A bona fide marketing occurred;

(iii) The wool or mohair was not returned to the producer;

(iv) At the time of acceptance of the document, the producer was not aware and had no reason to suspect that the document tendered in payment for the wool or mohair was not valid; and

(v) The producer made a diligent effort to obtain payment for the wool or mohair from the purchaser.

(b) The price utilized for the purpose of computing the net sales proceeds under the provisions of § 1468.8 shall not exceed the fair market value of the wool or mohair as determined by CCC.

(c) A bona fide marketing shall be deemed to occur when a producer relinquishes title to the shorn wool or shorn mohair in exchange for a specific amount of money per pound of wool or mohair tendered, or for services or merchandise of a specific monetary value as provided in paragraph (d) of this section. A sale of wool or mohair by a producer shall constitute a bona fide marketing if:

(1) The wool or mohair is sold to a person or business which is in the business of purchasing grease basis wool or mohair; and

(2) The producer selling the wool or mohair does not sell the wool or mohair to a family member or to any business in which the producer and/or family member has more than a 20 percent interest.

(d) The exchange of wool or mohair for merchandise or services of a nature other than wool or mohair or wool or mohair products will be considered as a bona fide marketing if a definite price for the wool or mohair is established by the parties prior to the exchange. Such price, or whatever other price CCC determines is the fair market value for such wool or mohair, whichever is lower, shall be used for the purpose of computing the net sales proceeds under the provisions of § 1468.8.

(e) The delivery of wool or mohair on consignment to a marketing agency to be sold for the producer's account does not constitute a marketing whether or not a minimum sales price is guaranteed or an advance against the prospective sales price is given by the consignee except wool or mohair delivered to a marketing agency on consignment is deemed to have been marketed if the marketing agency:

(1) Has guaranteed a minimum sales price;

(2) Is unable to sell the wool or mohair for more than the minimum sales price; and

(3) Takes possession of the wool or mohair at the minimum sales price with the producer's consent. The producer shall be deemed to have consigned the wool or mohair when the wool or mohair has been transferred to a marketing agency and the producer provides that such agency shall market the wool or mohair and that the producer shall be entitled to the proceeds of such marketing.

§ 1468.6 Contents of sales documents.

(a) The sales documents issued with respect to a producer's shorn wool, shorn mohair, or unshorn lambs which is attached to each application for payment must contain a final accounting and meet the requirements of this section. Contracts to sell and tentative settlements are not acceptable sales documents.

(b) Each sales document must include:

(1) The name, address and zip code of the seller;

(2) The name, address and zip code of the purchaser or marketing agency which issues the sales document;

(3) The date of sale. If the sale of shorn wool or shorn mohair is by a marketing agency in parts within a marketing year, the date when final settlement is make within that marketing year for such wool or mohair that was sold within that marketing year may be shown on the sales document as the date of sale instead of the various dates on which the sales actually took place. Such document shall contain a statement that the wool or mohair was marketed during that marketing year.

(4) For shorn wool and shorn mohair, the net weight of wool or mohair sold on a grease basis. If the wool or mohair was sold as scoured or carbonized, the original grease weight must be shown as well as the scoured or carbonized weight.

(5) For shorn wool and shorn mohair sold at a farm, ranch or shipping point, the net amount received by the seller;

(6) For shorn wool and shorn mohair sold at other points:

(i) The gross amount paid to the seller on a grease basis. In addition, the net amount paid to the seller after the deduction of marketing deductions must be shown on the sales document.

(ii) Such marketing deductions may be itemized or as a composite amount for all marketing charges with an explanation of what services are included in that amount. If it is the practice of a marketing agency to show, on the sales document, only the net proceeds after marketing deductions, the gross sales proceeds and the amount of the marketing deductions need not be shown, provided the sales document contains a statement reading substantially as follows:

> The net sales proceeds after marketing deductions shown herein were computed by deducting from the gross sales proceeds charges for the following marketing services: _____. Details of these charges will be furnished on request.

All the services for which deductions are made shall be enumerated in the blank space indicated. If a sales document shows charges without specifying their nature, they will be considered marketing charges. Association dues are marketing deductions if they include compensation for marketing services.

(iii) If a sales document contains a figure for net proceeds after marketing deductions, computed for a location other than the producer's farm, ranch, or local shipping point, the person preparing the sales document shall show thereon the name of the location for which the net proceeds have been computed. If a marketing agency has guaranteed a minimum sales price for the wool or mohair, is unable to sell the wool or mohair for a higher price, and therefore settles with the producers on the basis of such guaranteed minimum price, regardless of a lower price at which the agency may sell the wool or mohair. In such a case, the marketing agency shall indicate on the sales document that the price is the guaranteed minimum sales price.

(7) For shorn wool and shorn mohair, any nonmarketing deductions, such as charges for bags, storage, interest, association dues which do not include compensation for marketing services, or other charges not directly related to the marketing of shorn wool or mohair.

(8) If issued with respect to a sale in which the sale proceeds are other than in cash, a clear statement that the transaction is on the basis of the exchange of merchandise or services rather than cash.

(9) The original handwritten signature of the entity, or entity's agent, purchasing the shorn wool, shorn mohair, or unshorn lambs. Carbon or other facsimile copies of such signature are not acceptable except as approved by CCC.

(10) For wool on unshorn lambs:

(i) The number of unshorn lambs sold which are the source of such wool. If the sales document does not clearly identify the lambs as having never been shorn at the time of sale, the person issuing the sales document shall add a statement to that effect. If the sales document refers to the animals as "unshorn lambs", this will indicate that the lambs were never shorn. If the document issued in connection with the sale of unshorn lambs also covers the sale of other animals, the person preparing the sales document shall clearly indicate therein the number and the liveweight of unshorn lambs included in the sale.

(ii) The liveweight of unshorn lambs sold. If the weight is not determined by scales, this weight may be an estimated weight agreed to by the purchaser and the producer.

(iii) The scale ticket which was issued with respect to such sales. Such scale ticket must contain the date of issuance, the number of lambs weighed, the classification and weight by classification of the lambs, the place of weighing, the name of the weigher and scale ticket number if any is normally made by the weigher.

§ 1468.7 Report of unshorn lambs.

(a) Producers who submit an application for payment on shorn wool or wool on unshorn lamb payment shall provide the information required by this section with respect to the purchase of unshorn lambs.

(b) For shorn wool payments:

(1) If the application includes wool removed in the first shearing of lambs purchased unshorn, and the producer is able to identify the lambs from which such wool was shorn, the producer shall report the number and liveweight of such lambs at time of purchase, including those from which wool was removed after death.

(2) If the producer knows that the application does not include any wool which was removed in the first shearing of lambs purchased unshorn, the producer shall state that there are no purchases of unshorn lamb related to the sale of such wool.

(3)(i) If a producer does not know whether the application includes wool removed in the first shearing from lambs purchased unshorn, or a producer knows that such wool is included but is unable to identify the lambs from which such wool was shorn, the producer shall report in chronological order (i.e., on a "first in, first out" basis) the number and liveweight at the time of purchase of a quantity of lambs purchased unshorn equal to the number of sheep and lambs from which wool was shorn and included in the application. This reporting of purchased lambs shall be continued in applications for the current and subsequent marketing years for payments on shorn wool and for payments on unshorn lambs until the producer has accounted for all lambs purchased unshorn not reported in previous applications. However, the producer need not report those lambs with respect to which the producer can establish that no price support application for either shorn wool or pulled wool has been made in the current or a subsequent marketing year.

(ii) If the application for payment on the sale of shorn wool is made after a producer has accounted for the total purchases of unshorn lambs, the producer shall state that there are no purchases of unshorn lambs rated to such sale.

(c) For wool on unshorn lamb payments:

(1) If the application is based on the sale or slaughter of lambs purchased unshorn and the producer is able to identify such lambs, the producer shall report the number of lambs purchased and their liveweight at the time of purchase.

(2) If the producer knows that the application is not based on the sale or slaughter of such lambs purchased unshorn, the producer shall state that there are no purchases of unshorn lambs related to the sale or slaughter of such lambs.

(3)(i) If a producer does not know whether the application is based on the sale or slaughter of lambs purchased unshorn, or knows that such lambs are included but is unable to identify such lambs, the producer shall report in chronological order (i.e., on a "first in, first out" basis) the number and liveweight at the time of purchase of a quantity of lambs purchased unshorn equal to the number of lambs on which the application is based. This reporting of purchased lambs shall be continued in applications for the current and subsequent marketing years for payments on shorn wool on unshorn lambs and shorn wool until the producer has accounted for all lambs purchased unshorn that were not reported in previous applications. However, the producer need not report those lambs with respect to which the producer can establish that no price support application for either shorn wool or wool on unshorn lambs has been made in the current or a subsequent marketing year.

(ii) If the application for payment on wool on unshorn lambs is based on the sale or slaughter of unshorn lambs after

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a producer has accounted for the total purchases of unshorn lambs, the producer shall state that there are no purchases of unshorn lambs related to such sale or slaughter.

(d) If purchased lambs which the producer is required to report were imported, the liveweight required to be reported shall be the liveweight of the lambs at the time of import, or, if they were quarantined in connection with the importation, at the time of release from quarantine. For the purpose of reporting imported lambs, whether they were purchased or raised by the producer, they shall be treated as if they had been purchased. Any report in an application of purchased lambs and their liveweight as required by this paragraph shall be deemed to include lambs both purchased and raised by the producer.

(e) Additional information. The producer shall furnish any additional details requested by CCC concerning any report made pursuant to this section.

§ 1468.8 Computation of payment.

(a)(1) The amount of the shorn wool or shorn mohair price support payment shall be computed by applying the rate of payment to the net sales proceeds for the wool or mohair marketed during the specified marketing year, less the assessment due as specified in § 1468.15. For shorn wool payments, if there is a purchase by the producer of unshorn lambs, the result amount shall be reduced, by an amount resulting from multiplying the liveweight of such lambs reported in the application for payment by the calculated wool on shorn lambs price support for such marketing year. If the amount of the reduction exceeds the payment computed on the shorn wool marketed, the liveweight of lambs which corresponds to the excess amount shall be carried forward and used to reduce payments on unshorn lambs marketed or slaughtered or shorn wool marketed in the current or subsequent years.

(2) Except as provided in § 1468.6(b)(6) with respect to a guaranteed minimum sales price, the net sales proceeds for shorn wool and shorn mohair shall be determined by deduction from the gross sales proceeds of the wool or mohair all marketing expenses, such as any charges paid by or for the account of the producer for transportation, handling (including commissions), grading, scouring, or carbonizing. The figures so arrived at will express the net proceeds received by the producer at the farm, ranch, or local shipping point.

(b) The amount of the wool price support payment due to a producer for wool on unshorn lambs shall be computed by applying the rate of payment to the liveweight of the lambs sold or moved to slaughter during the specified marketing year, reduced, on account of the purchase or importation by the producer of unshorn lambs, by the liveweight of such lambs reported in the application for payments, less the assessment due as specified in § 1468.15. If the amount of the reduction exceeds the liveweight of the unshorn lambs sold or moved to slaughter during said marketing year, such excess liveweight shall be carried forward and used to reduce payments on the wool on unshorn lambs marketed or slaughtered or shorn wool marketed in the current or subsequent years.

(c) All applications filed by a producer in the same county office during the specified marketing year, shall be considered together for the purpose of determining the amount of payments due. At CCC's discretion, all such applications filed in different county offices may be considered together in determining such total payment.

§ 1468.9 Filing application for payment.

(a) Applications for payment shall be filed by the producer with the county office serving the county where the headquarters of the producer's farm, ranch, or feed lot, as the case may be, is located. If the producer has more than one farm, ranch, or feed lot, with headquarters in more than one county, separate applications for payment shall be filed with the county office serving each such headquarters covering only the wool and lambs produced at each such farm, ranch, or feed lot, except that:

(1) If the producer sells the entire clip of wool or mohair in a single sale or if the entire clip is sold for the producer's account by one marketing agency, the producer may file the application for payment on shorn wool or shorn mohair in any one of those country offices; or

(2) If the producer includes in one sale unshorn lambs that were ranged, pastured, or fed in more than one county, the producer may file the application for payment on the wool on such unshorn lambs in any one of those county offices. In the event all business transations are conducted from the producer's residence or office, and the farm or ranch has no other headquarters, the office or residence may be considered the farm or ranch headquarters.

(b) An application for payment shall be filed as soon as possible after completion of the producer's sales of shorn wool, or unshorn lambs, or mohair in a specified marketing year, or in the case of slaughter, as soon as possible after the last of the lambs moved to slaughter in the specified marketing year, but in no event shall an application be filed later than 60 days after the end of the respective marketing year.

(c)(1) A producer may request permission from CCC to withdraw an application for payment of shorn wool which constitutes the full first shearing of purchased wool, or for wool on unshorn lambs when, as a result of such application containing the necessary report of purchases of unshorn lambs, there is excess liveweight carried forward which would be used to reduce payment in the current or future marketing years. A producer may also request permission to amend the application by omitting sales of those lots of wool constituting the full first shearing of unshorn lambs reported. These requests must be accompanied by such supporting evidence as may be required by CCC. If the application was signed jointly by two or more producers, the request for withdrawal or amendment must be signed by each producer. To be considered a full shearing, the wool must constitute the complete fleece, and not merely tags, clippings, trimmings around the eyes, or other off-wools.

(2) If CCC determines that such conditions described in paragraph (c)(1) of this section exist, CCC may grant the request. If the producer has filed additional shorn wool or shorn mohair applications in other county offices, the requests may be granted only if it is determined that such additional applications do not include any wool or mohair removed in the full first searing of the lambs or goats which will not be reported as a result of the withdrawal or amendment.

§ 1468.10 Preparation of application.

(a) Application for price support for shorn wool, shorn mohair, and wool on unshorn lambs must be submitted by completion of Form CCC—1155, "Application for Payment (National Wool Act)." Marketing agencies may assist producers in filling out applications by inserting the information on sales of wool and mohair and sending sales documents to the appropriate county office, but the producer must sign the application and is responsible for the requirements as to the time and manner of filing the application. If the producer paid marketing charges not shown on the sales document, such charges shall be considered with the marketing charges shown on the sales document in arriving at the net proceeds.

(b) The application shall be supported by the original sales document evidencing the sale of wool, unshorn lambs, and mohair. The processing of shorn wool or shorn mohair by a process or act which, as determined by CCC, produces a wool or mohair product, shall make the wool or mohair ineligible for a price support payment. Payment shall not be made on marketings of wool or mohair products, including, but not limited to, items identified as yarn, wool or mohair yarn, skeins, or novelty items. Trimming, skirting, and cleaning by scouring or carbonizing, procided the grease basis weight is established, does not disqualify the wool or mohair for a price support payment.

(c) If the producer does not wish the original sales document to remain with the county office, a carbon, photocopy, or other copy of the original document may be submitted. However, the producer must submit the original document to the county office where the statements on the copy will be confirmed by comparison with the original. The original sales document shall be appropriately stamped or marketed to indicate that it had been used in support of an application for payment under this program and shall be returned to the producer.

(d) If it is the practice of the person or firm preparing the sales document to furnish a carbon, photocopy, or other copy to the seller in the place of the original, the producer may submit that copy in support of the application, provided the copy bears a signature of the person or of the representative of the firm preparing the original sales document. Such copy shall be treated as an original for the purposes of this section.

(e) If the original sales document has been lost or destroyed, the producer may submit a copy, certified by the buyer or the producer's marketing agency, and such certified copy shall be treated as an original for the purposes of this section.

§ 1468.11 Joint producers.

In the case of a joint application for payment, each applicant must be an eligible producer of shorn wool, pulled wool, or shorn mohair. Each applicant must be signed by the producer or a person approved by CCC to sign on behalf of the producer. All of the joint producers must sign any application based on the sale of shorn wool or shorn mohair regardless of whether the wool or mohair was divided among such producers prior to sale or was sold without division. All of the joint producers must sign any application based on the sale of unshorn lambs regardless of whether the lambs were divided among such producers prior to sale or were sold without division. When the application shows such joint production and one or more of the joint producers refuse to join in the application, if each such joint producer signs a form approved by CCC releasing CCC from any obligation to make a payment to such a joint producer, CCC shall make payment of the amount due the remaining joint producers who sign the application. Such release shall be attached to the application. Then any joint producer is entitled to sign an application but fails to do so, and the application does not show this interest as a joint producer, the producer shall have no claim against CCC for any portion of the payment made pursuant to the application.

§ 1468.12 Successors-in-interest.

(a) In the case of death, incompetency, or disappearance of any producer eligible to receive payment under this part, before marketing the shorn wool, unshorn lambs, or shorn mohair or before filing an application, the successors or representatives authorized to receive payment as set forth in part 707 of this title may make application for such payment by complying with the provisions of part 707 of this title.

(b) If a producer who earned a payment under this part and filed an application therefore dies, disappears, or is declared incompetent, either before CCC has issued a check in payment or after CCC has issued a check in payment but before the draft is negotiated, the provisions of part 707 of this title shall be applicable.

(c) If an Indian who is incompetent earned a payment under this part, an application for payment may be filed on the Indian's behalf by the Superintendent of the Indian Field Service of the reservation on which the Indian resides or by the authorized representative of such Superintendent. Such application for payment will be filed in the county office where the headquarters of the Indian's farm or ranch is located.

§ 1468.13 Payment.

(a) Payments under this part shall be made only on the basis of the net sales proceeds received for wool or mohair or the calculated amount of wool grown on unshorn lambs sold or moved to slaughter. No payment shall be made on that part of any sale which has been canceled or on the basis of prices or weights which have been fraudulently increased for the purpose of obtaining higher payments. No payment shall be made on sales to a wool or mohair growers association, which is not a cooperative marketing association, by its producer-members on the basis of net sales proceeds in excess of the fair market value of the wool or mohair (grease basis), as determined by CCC.

(b) Notwithstanding any other provision of this part, price support payments shall not be made with respect to that portion of the sales proceeds received by a producer for eligible wool or mohair which is based on sales prices in excess of the maximum sales price per pound for wool or mohair as determined by CCC. CCC shall determine the maximum sales price per pound for wool or mohair marketed in each marketing year on the basis of the national average market price for wool or mohair computed for each marketing year. The maximum sales price shall be an amount which CCC determines will encourage the continued domestic production of wool or mohair at prices fair to both producers and consumers in a manner which would assure a viable domestic wool or mohair industry. The maximum sales price shall be publicly announced by CCC at the end of each marketing year for wool or mohair.

(c) If it is determined by CCC that a produoer knowingly made a false statement in the application, including failure to report accurately purchases of unshorn lambs, no payment shall be made with respect to such application.

(d) If CCC subsequently determines that available evidence does not establish the producer's right to all or any part of the payment made, the amount of such payment shall immediately become due and repayable to CCC.

(e) If CCC rejects in whole or in part an application for payment or, after a payment has been made, determines that the available evidence does not establish the producer's right to the payment or any part thereof, the county office shall mail a notice specifying the reason for such determination to the producer.

§ 1468.14 Deductions for promotion.

Deductions for advertising and sales promotion programs may be made from payments made under this part pursuant to promotion agreements executed by a designee of the Secretary. Such deductions are assignments by the producer to the person or agency designated in such agreements. The rate of such deductions for the specified marketing year will be announced and

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the appropriate deduction will be made from each payment due under this part for such specified marketing year.

§ 1468.15 Assessment.

Effective for each of the marketing years beginning January 1, 1991, and ending December 31, 1995, a nonrefundable deduction of one (1) percent will be made from the amount of payment made under this part.

§ 1468.16 Offsets.

Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the wool, the sheep or unshorn lambs, the mohair or the angora goats thereof, or proceeds thereof, in favor of the producer or any other creditors except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to this part.

§ 1468.17 Assignment of payments.

Payments which are earned by a producer under the payment program for wool, unshorn lambs, and mohair may be assigned in accordance with the provisions of 7 CFR part 1404.

§ 1468.18 Maintenance and inspection of records.

(a) The producer filing an application for a payment under this part and the marketing agency who furnishes evidence to such producer for use in connection with the application, shall maintain books, records, and accounts pertaining to the marketing of the commodity on which the application is based, for 3 years following the end of the specified marketing year during which the marketing took place. The producer shall maintain books, records, and accounts pertaining to the production of wool, sheep, lambs, mohair and goats, and the shearing thereof, with respect to which the producer applies for payment, for 3 years following the end of the specified marketing year during which the marketing took place. The producer shall also maintain books, records, and accounts showing the purchases of lambs for 3 years following the end of the specified marketing year during which any such lambs have been marketed. If the producer is required to report purchases of unshorn lambs on a "first in, first out" basis, the producer shall maintain such books, records, and accounts of such lambs for 3 years following the end of the specified marketing year for which such lambs are to be reported.

(b) If an application is based on the sale of wool shorn from imported sheep or lambs, or on the sale of imported unshorn lambs, or if lambs required to be reported as purchased unshorn were imported, the books, records, and accounts required by paragraph (a) of this section to be maintained by the producer shall show the details of such importation, including the date of arrival of the lambs in the United States and the liveweight on such date, and if the lambs were quarantined, the date when they were released from quarantine and their liveweight on such date.

(c) With respect to any application for payment filed after the end of the specified marketing year, instead of maintaining the books, records, and accounts for the time specified in paragraph (a) of this section, such books, records, and accounts shall be maintained for 3 years following the date on which the application is filed.

§ 1468.19 Misrepresentation, scheme or device.

(a) Whoever issues a false sales document or otherwise acts in violation of the provisions of this program so as to enable a producer to obtain a payment to which such producer is not entitled, shall become liable to CCC for any payment which CCC may have made in reliance on such sales document or as a result of such other action.

(b) The issuance of a false sales document or the making of a false statement in an application for payment or other document, for the purpose of enabling the producer to obtain a payment to which such producer is not entitled, will subject the person issuing such document or making such statement to liability under applicable Federal civil and criminal statutes.

§ 1468.20 Refunds to CCC; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made under this part to any producer shall be refunded to CCC, together with interest as provided for in part 1403 of this chapter.

(b) All producers shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under the terms and conditions of this part.

(c) Producers who receive a shorn wool, shorn mohair, or wool on unshorn lambs price support payment must refund to CCC any excess payment made by CCC with respect to such payment.

(d) In the event that a shorn wool, shorn mohair, or wool on unshorn lambs price support payment was made as a result of erroneous information provided by any producer to the county office or was erroneously computed by such office, the payment due the producer shall be recomputed and any payments made or due shall be corrected as necessary. Any refund of payments which are determined to be required as a result of such recomputations shall be remitted to CCC with any applicable interest.

§ 1468.21 Appeals.

Any producer who is dissatisfied with a determination made with respect to this part, may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at part 780 of this chapter.

§ 1468.22 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR part 1468) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB Number 0560-0023.

PART 1472—[REMOVED]

2. Part 1472 is removed.

Signed this 8th day of May 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-11818 Filed 5-14-91; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Parts 907 and 908

[Docket No. FV-91-249]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Amendment to Referenda Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amended Referenda Order.

SUMMARY: This action amends the Referenda Order for the California-Arizona navel and Valencia orange marketing orders which was published in the Federal Register on April 1, 1991 (56 FR 13290), by revising the dates during which the referenda will be conducted from May 1–31 to June 1–29. This action further revises the Referenda Order published on April 1 by clarifying the criteria for determining whether an order should continue or be terminated. The referenda will be conducted among eligible growers of navel and Valencia oranges grown in Arizona and designated parts of California to determine whether they favor continuance of the marketing orders regulating the handling of navel and Valencia oranges grown in the respective production areas.

DATES: The representative production periods are from November 1, 1989, through October 31, 1990, for navel oranges. The referenda will be conducted from June 1 through June 29, 1991.

ADDRESSES: Copies of the text of the aforesaid marketing orders may be examined in the office of the referendum agents at 2202 Monterey Street, suite 102B, Fresno, California, 93721, or in the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, MOAB, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-6139.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order Nos. 907 and 908 (7 CFR parts 907 and 908), hereinafter referred to as the "orders," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," it is hereby directed that referenda be conducted within the period June 1 through June 29, 1991, among growers in the respective production areas who, during the periods November 1, 1989, through October 31, 1990, for navel oranges, and February 1, 1990, through January 31, 2991, for Valencia oranges (which periods are hereby determined to be representative periods for purposes of such referenda), were engaged in the production of navel or Valencia oranges covered by the said marketing orders to ascertain whether continuance of each order is favored by the respective growers.

This action amends the Referenda Order for the California-Arizona navel and Valencia orange marketing orders that was published in the Federal Register on April 1, 1991, (56 FR 13290), by revising the dates when the referenda will be conducted from May 1-31 to June 1-29. Postponing the referenda by one month will give interested persons additional time to utilize the U.S. Department of Agriculture's (USDA) mailing service. The USDA is providing a mailing service prior to the referenda to assist interested persons in disseminating information on the orders to growers. The interest generated by the mailing service warrants postponing the referenda until June.

This action further revises the Referenda Order published on April 1 by clarifying the criteria for determining whether an order should continue or be terminated. The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. The percentages for determining whether either California-Arizona orange marketing order continues are prescribed by the orders and are identical to the required percentages set forth in the Act with respect to producer approval of a marketing agreement and order regulating the handling of citrus fruits grown in California. As provided in §§ 907.83 and 908.83 of the marketing orders, for either order to continue, the respective program would have to be approved by three-fourths of the navel or Valencia orange growers voting in that referendum, or by growers who account for at least two-thirds of the volume of navel or Valencia oranges represented in that referendum. If the referendum results for an order are below the requisite percentages for both criteria, the Secretary would terminate that order.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot materials that will be used in the referenda herein ordered have been submitted to an approved by the Office of Management and Budget (OMB) and have been assigned OMB Nos. 0581-0116 and 0581-0121, respectively, for navel and Valencia oranges. It has been estimated that it will take an average of 20 minutes for each of the approximately 4,070 growers of navel oranges and 3,500 growers of Valencia oranges to participate in the voluntary refernda balloting.

Mr. Robert J. Curry and Mr. Kurt J. Kimmel, California Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, will hereby remain as referendum agents of the Secretary of Agriculture to conduct such referenda. The procedure applicable to the referenda shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400 *et seq.*) (Rules of Practice). The definitions for all voting entities as provided in the Rules of Practice will be applied in the referenda.

Ballots will be mailed to all eligible producers of record on or about May 31, 1991. Producers not receiving ballots may obtain them from the referendum agents, their appointees, and local county farm advisors. All valid ballots received by June 29, 1991, or postmarked no later than June 29, 1991, and received by July 8, 1991, will be counted in the referenda. Agents of the Secretary will review all ballots cast to determine their validity. A representative from the Regional Inspector General for Audit of the Office of Inspector General will observe the ballot counting process to ensure compliance with the Rules of Practice and will check for errors in the tabulation process.

The Act provides authority for a cooperative association of producers to vote in such referenda on behalf of its producers who are members of, stockholders in, or under contract with that association. If a cooperative chooses to bloc vote on behalf of its members, it must do so for all of its members. Any cooperative intending to vote on behalf of its producer-members should notify the USDA of its intention to do so by May 20, 1991. Such early notification will assist in the administrative efficiency of the referenda and reduce confusion in the industries. For the purposes of these referenda, a cooperative marketing association may bloc vote for its producers who are eligible producers now, and who, during the representative period, were members of, stockholders in, or under contract with, such cooperative association, and who marketed more than 50 percent of their production through that cooperative during that period. A cooperative marketing association may also bloc vote for its producers who are eligible producers now, but who, during the representative period, were not members of, stockholders in, or under contract with, such cooperative association, but have made contractual commitments to market more than 50 percent of their current season's production through that cooperative. A Ballot Handling Procedure manual is available from the referendum agents which describes in greater detail how the ballots will be handled.

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements, Reporting and recordkeeping requirements.

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Authority: Agricultural Marketing Agreement Act of 1937, as amended, Secs. 1-19, 49 Stat. 31, as amended; 7 U.S.C. 601-674.

Dated: May 10, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-11361 Filed 5-13-91; 2:50 pm]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-61-AD]

Airworthiness Directives; British Aerospace Viscount Model 744, 745D, and 810 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all British Aerospace Viscount Model 744, 745D, and 810 series airplanes, which would require repetitive non-destructive testing (NDT) inspections to detect cracks on wing flap guide rails, and to detect corrosion on wing flap guide rails and flap end ribs, and repair, if necessary. This proposal is prompted by reports of cracking on an inboard flap guide rail, and of corrosion at the abutment face of a guide rail and a flap end rib. This condition, if not corrected, could result in reduced structural integrity of the landing flaps.

DATES: Comments must be received no later than July 8, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-61-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-61-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all British Aerospace Viscount Model 744, 745D, and 810 series airplanes. There have been recent reports of cracking on an inboard flap guide rail, and of corrosion at the abutment face of a guide rail and a flap end rib. This condition, if not corrected, could result in reduced structural integrity of the landing flaps.

British Aerospace has issued Preliminary Technical Leaflet (PTL) No. 301, Issue 2, dated November 2, 1989, applicable to all Viscount Model 700 series airplanes, and PTL No. 170, Issue 2, dated November 2, 1989, applicable to all Viscount Model 810 series airplanes. These service bulletins describe procedures for repetitive non-destructive testing (NDT) inspections to detect cracks on the wing flap guide rails and corrosion at the abutment face of flap guide rails and flap end ribs; and repair, if necessary. The United Kingdom CAA has classified these service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive NDT inspections to detect cracks on guide rails and to detect corrosion at the abutment face of flap guide rails and flap end ribs, and repair, if necessary, in accordance with the PTL's previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 29 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total impact of the AD on U.S. operators is estimated to be $12,760.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 91-NM-61-AD.

Applicability: All Viscount Model 744, 745D, and 810 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the landing flaps, accomplish the following:

(a) Within 180 days after the effective date of this AD, or prior to the accumulation of 500 landings after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 360 days, perform non-destructive testing (NDT) inspections to detect cracks in the wing flap guide rails, and to detect corrosion at the abutment face of flap guide rails and flap end ribs on all landing flaps on the left and right wings, in accordance with Preliminary Technical Leaflet (PTL) No. 301, Issue 2, dated November 2, 1989, or PTL No. 170, Issue 2, dated November 2, 1989, as applicable.

(b) If cracks are found, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(c) If corrosion is found, prior to further flight, remove the guide rail from the landing flap end rib for visual confirmation, rectification rework, and reprotection of both the guide rail and flap end rib abutment surfaces in accordance with paragraph 2.3.1 of PTL No. 301, Issue 2, dated November 2, 1989, or PTL No. 170, Issue 2, dated November 2, 1989, as applicable.

(1) Local corroded areas must be blended out to a maximum depth of 0.06 inch. The blended areas should extend beyond the corroded area by a minimum of 0.2 inch where the depth of corrosion is less than 0.03 inch, and a minimum of 0.3 inch where the depth of corrosion is greater than 0.03 inch, but must not exceed 70 percent of the local abutment face width.

(2) Following blending, perform a dye penetrant inspection of the abutment surfaces to ensure that all traces of corrosion have been removed.

(3) Following repair, and prior to reinstallation of the guide rail, apply protective treatment in accordance with paragraph 2.5 of the appropriate PTL.

(4) If corrosion found is in excess of the limitations specified in the appropriate PTL, prior to further flight repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on May 7, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11499 Filed 5-14-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-33-AD]

Airworthiness Directives; Mitsubishi Heavy Industries MU-2B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to Mitsubishi Heavy Industries MU-2B series airplanes. This proposed action would require a modification to the rudder trim tab leading edge. A field report revealed that the rudder trim tab could interfere with the rudder trailing edge when full right rudder and full left rudder trim tab are applied simultaneously during single-engine operation. The actions specified in this proposed AD are intended to prevent interference between the rudder and the rudder trim tab that could result in aerodynamic vibration and possible loss of control of the airplane.

DATES: Comments must be received on or before July 15, 1991.

ADDRESSES: Mitsubishi Heavy Industries Service Bulletin No. 211, dated November 20, 1980, that is discussed in this AD may be obtained from Mitsubishi Heavy Industries, Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-33-AD, Room 1558, 601 E 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. William Roberts, Aerospace Engineer, Airframe Branch, Transport Airplane Directorate, 3229 E. Spring Street, Long Beach, California 90808-2425; Telephone (213) 988-5228.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-33-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Japanese Civil Aviation Bureau (JCAB), which is the airworthiness authority for Japan, recently notified the FAA that an unsafe condition may exist on Mitsubishi Heavy Industries MU-2B series airplanes. The JCAB advises that the rubber trim tab could interfere with the rudder trailing edge when full right

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rudder and full left rudder trim tab are applied simultaneously during single-engine operation. This could result in aerodynamic vibration and possible loss of control of the airplane. Mitsubishi Heavy Industries has issued Service Bulletin No. 211, dated November 20, 1990, which specifies a modification to the rudder trim tab on Mitsubishi Heavy Industries MU-2B series airplanes. The JCAB approved this service bulletin and issued JCAB AD No. TCD-3378-90 in order to assure the airworthiness of these airplanes in Japan. The airplanes are manufactured in Japan and are type certified for operation in the United States. Pursuant to a bilateral airworthiness agreement, the JCAB has kept the FAA totally informed of the above situation.

The FAA has examined the findings of the JCAB, reviewed all available information and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Since this condition could exist or develop in other Mitsubishi Heavy Industries MU-2 series airplanes of the same type design, the proposed AD would require a one-time modification to the rudder trim tab in accordance with the instructions in Mitsubishi Heavy Industries Service Bulletin No. 211, dated November 20, 1990.

It is estimated that 122 airplanes in the U.S. registry would be affected by the proposed AD, that it will take approximately 8 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $53,680.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Mitsubishi Heavy Industries: Docket No. 91-CE-33-AD.

Applicability: Models MU-2B-10, MU-2B-15, and MU-2B-20 airplanes (serial numbers (S/N) 008 through 211), Model MU-2B-30 airplanes (S/N 502 through 542), and Model MU-2B-36 airplanes (S/N 501), certificated in any category.

Compliance: Required within the next 200 hours time in service after the effective date of this AD, unless already accomplished.

To prevent interference between the rudder and rudder trim tab that could result in aerodynamic vibration and possible loss of control of the airplane, accomplish the following:

(a) Modify the rudder trim tab in accordance with the instructions in Mitsubishi Heavy Industries Service Bulletin No. 211, dated November 20, 1990.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 E. Spring Street, Long Beach, California 90806-2425. The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Mitsubishi Heavy Industries, Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 7, 1991.

J. Robert Ball,
Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11408 Filed 5-14-91; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-41-AD]

Airworthiness Directives; Piper Model PA-24-260 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to Piper Model PA-24-260 airplanes equipped with nonturbocharged fuel-injected engines. This action would supersede AD 91-02-06, which currently requires the installation of a manually controlled heated alternate air induction system on all Piper Model-24-260 airplanes to prevent inadvertent engine stoppage while flying in weather conditions that are conducive to induction system icing. This proposed action should only apply to those airplanes that are equipped with nonturbocharged fuel-injected engines because of design differences between these airplanes and those that are turbocharged and are not fuel-injected.

DATES: Comments must be received on or before July 15, 1991.

ADDRESSES: Piper Service Bulletin No. 861, dated May 5, 1987, that is discussed in this AD may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567-4361. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-41-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Will H. Trammell, Aerospace Engineer, FAA, Propulsion Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date of comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-48-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Airworthiness Directive (AD) 91-02-26, Amendment 39-6849 (56 FR 634, January 8, 1991) currently requires the installation of a manually controlled heated alternate air induction system on all Piper Model PA-24-260 airplanes to prevent inadvertent engine stoppage while flying in weather conditions that are conducive to induction system icing. The FAA has determined that this action should only be applicable to airplanes that are equipped with nonturbocharged fuel-injected engines because of design differences between these airplanes and those that are turbocharged and nonfuel-injected, i.e., carbureted.

Since this condition is likely to exist or develop in other products of the same type design, the proposed AD would supersede AD 91-02-06 by limiting its applicability to those Piper Model PA-24-260 airplanes that are equipped with nonturbocarged fuel-injected engines. The proposed modification to the air induction system would be required in accordance with the instructions in Piper Service Bulletin No. 861, dated May 4, 1987.

It is estimated that 732 airplanes in the U.S. registry would be affected by this AD, that it would tax approximately 7.5 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $554 per airplane. Based on these figures, the total cost impact of the Ad on U.S. operators is estimated to be $707,478.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reason discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91-02-06, Amendment 39-6849 (56 FR 634, January 8, 1991) and adding the following new AD:

Piper Aircraft Corporation: Docket No. 91-CE-41-AD. Applicability Model PA-24-260 airplanes (serial number (S/N) 24-3642, S/N 24-4009 through 24-4255, S/N 24-4257 through 24-4782, and S/N 24-4784 through 24-4803) that are equipped with nonturbocharged fuel-injected engines, certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent inadvertent engine stoppage while flying in weather conditions conducive to induction system icing, accomplish the following:

(a) Modify the airplane by the installation of a manually controlled heated alternate air door in the engine air induction system in accordance with the instructions in Piper Service Bulletin No. 861, dated May 4, 1987.

(b) The installation of the heated alternate air door does not constitute approval for flight in icing conditions.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567-4361; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 3, 1991.

Henry A. Armstrong,
Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11407 Filed 5-14-91; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Proposed Customs Regulations Amendment To Relocate the North Carolina Customs District Headquarters at Charlotte

AGENCY: U.S. Customs Service.

ACTION: Proposed rule.

SUMMARY: This document proposes to change the field organization of the Customs Service by relocating the North

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Carolina Customs District headquarters from Wilmington, North Carolina, to Charlotte, North Carolina. This proposed relocation is prompted by the dramatic shift in the volume of Customs activity which has occurred within this district in recent years. Customs operational services in Wilmington, which would remain a Customs port of entry, would not be impaired, should the proposed relocation become effective. The proposed change is part of Customs continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better overall service to carriers, importers, and the general public.

DATES: Comments must be received on or before July 15, 1991.

ADDRESSES: Comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Jackie Motley, Office of Inspection and Control, (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs proposes to relocate the North Carolina Customs District headquarters from Wilmington to Charlotte, North Carolina. The proposed relocation is based on the fact that there has been a dramatic shift in the volume of Customs activity within North Carolina in recent years.

Specifically, over the past five years, Charlotte has experienced very significant commercial growth which, in turn, has stimulated large increases in Customs activities there. For example, since 1985, the number of Customs entries in Charlotte has increased from over 23,000 to nearly 40,000. During the corresponding period in Wilmington, the number of Customs entries decreased from over 13,000 to below 11,000. Duty collections in 1989 in Charlotte amounted to over $70 million, while duty collections in Wilmington amounted to $51 million. All Customs projections in various activity categories (including duty collections) strongly point to a continuation of increased Customs volume in Charlotte.

Given this workload growth, Customs believes that relocation of the North Carolina Customs District headquarters to Charlotte, North Carolina, will result in more economical and efficient use of its personnel and resources in carrying out the Customs mission.

The planned relocation, however, if implemented, will affect only district management and support personnel. Wilmington, North Carolina, will remain a Customs port of entry, with existing levels and hours of commercial operations continuing to meet the needs of the Wilmington trade community. In this connection, Customs operational services in Wilmington would not be impaired, should the proposed relocation become effective.

The Secretary of the Treasury is advised by the Commissioner of Customs in matters affecting the field organization of the Customs Service. The change currently under consideration is proposed under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department order No. 101-5, dated February 17, 1987 (52 FR 6282).

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Customs Service. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, Room 2119, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC.

Executive Order 12291 and Regulatory Flexibility Act

Because this document is related to agency organization and management, it is not subject to E.O. 12291. Also, for the same reason, although Customs is soliciting public comments, no notice of proposed rulemaking is required under 5 U.S.C. 553(a)(2). Accordingly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Proposed Amendment

It is proposed to amend part 101, Customs Regulations (19 CFR part 101), as set forth below.

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedules of the United States), 1623, 1624.

2. It is proposed to amend the list of Customs regions, districts and ports of entry in § 101.3(b) by removing "Wilmington, N.C.", directly below "Norfolk, Va." under the column titled "Name and headquarters", and inserting in its place, "Charlotte, N.C." and by repositioning "Charlotte (T.D. 56079)", at the head of the column titled "Ports of entry", in the Charlotte, North Carolina, District, and, in appropriate alphabetical order thereunder, "Wilmington, including townships of Northwest, Wilmington, and Cape Fear (E.O. 7761, Dec. 3, 1937, 2 FR 2679, and territory described in E.O. 10042, Mar. 10, 1949, 14 FR 1155)".

Carol Hallett,
Commissioner of Customs.

Approved: March 29, 1991.

John P. Simpson,
Acting Assistant Secretary of the Treasury.

[FR Doc. 91-11464 Filed 5-14-91; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 206, 207, and 314

[Docket Nos. 88P-0380 and 89P-0163]

Imprinting of Oral Solid Dosage Form Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require that human drugs in solid oral dosage form (e.g., tablets and capsules) be imprinted with a product specific code. Drug imprinting helps poison control and other health professionals identify drugs in drug overdose emergencies. Drug imprinting also assists patients having prescriptions refilled recognize whether a different manufacturer's product has been dispensed, or if their prescription has been incorrectly filled. This proposed action responds to citizen petitions from the National Association of Pharmaceutical Manufacturers (NAPM) and the Nonprescription Drug Manufacturers Association (NDMA) and to congressional concerns.

DATES: Written comments by August 13, 1991. FDA proposes that any final rule based on this proposal become effective 1 year after its date of publication in the Federal Register.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steven H. Unger, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: FDA is proposing to require that human drug products in solid oral dosage form be imprinted. Under the proposal, each covered drug product would be required to bear a code imprint that identifies the drug product and the holder of its approved application for marketing. If the product is not subject to premarket approval, the proposal would require the identification of the manufacturer or distributor. The code imprint consists of a combination of letters, numbers, or symbols assigned by the manufacturer or distributor to identify the drug product. The proposal would apply to both nonprescription (over-the-counter (OTC)) and prescription drugs.

Drug identification by imprinting serves a number of public health purposes related to FDA's responsibilities under the Federal Food, Drug, and Cosmetic Act (the Act). Imprinted drug codes are used by poison control centers and others to identify drug products in drug overdose emergencies. Drug identification by imprinting also assists patients and health professionals in determining when different manufacturers' products are dispensed, helps patients identify prescriptions that are incorrectly filled, aids in the battle against drug abuse, helps drug regulatory officials trace counterfeit and defective drug products, and helps hospitals, nursing homes, and community pharmacies operate their drug distribution accounting systems.

I. Background

Imprinting is already in wide use. Between 90 and 95 percent of solid oral dosage form prescription drug products and approximately 70 percent of solid oral dosage form OTC drug products are now being imprinted. A number of drug manufacturers have adopted imprinting in response to State statutory requirements. At this time, 23 States require imprinting of prescription drugs. However, only one, the State of Washington, now requires imprinting of OTC drugs.

The typical State law requires solid dosage form prescription drug products to be clearly marked or imprinted with an individual symbol, number, company name, words, letters, marking, or national drug code number identifying the drug and its manufacturer or distributor.

A. Previous Consideration of the Need for Federal Action

Congress and FDA have periodically considered adopting a Federal imprinting requirement. A number of drug imprinting bills have died in Congress. Although in the past, FDA has acknowledged the value of drug imprinting, it has previously concluded that a Federal regulatory requirement was not needed.

B. 1988 Citizen Petition

In a citizen petition (88P-0244) dated May 28, 1988, a generic drug industry trade association, the National Association of Pharmaceutical Manufacturers (NAPM), requested that FDA issue a regulation requiring imprinting of solid dosage form prescription drugs. NAPM asked that imprints identify products by active ingredient using an alphanumeric code as the identification system. NAPM urged Federal action, arguing that there were conflicting requirements among the States.

In a response dated October 13, 1987, FDA denied the petition, stating that voluntary drug imprinting was preferable to Federally-imposed drug imprinting. The agency did not find conflicting requirements among the States, and considered the specific imprinting code recommended by NAPM to be infeasible because it would not accommodate the number of products then on the market. In addition, FDA found NAPM's recommended identification system inadequate because it was not product specific, i.e., it would not require identification of the specific product or its manufacturer and thus would not meet State imprinting laws.

C. Congressional Inquiries

In 1988, FDA received a letter from several members of Congress, urging FDA to require that all drug products be marked to disclose the manufacturer and active ingredient. According to the members of Congress, some patients may have received one brand of an anticonvulsive drug in place of another without the knowledge of either the patient or physician. The members suggested that a switch in anticonvulsive drug products may have been responsible for reported breakthrough seizures in epilepsy patients. They urged that FDA require imprinting to increase the likelihood that patients will be alerted to generic substitutions.

D. Resubmission and Update of the NAPM Petition

On October 31, 1988, NAPM resubmitted its petition (88P-0380/CP) to FDA. On December 1, 1988, NAPM supplemented the petition. The petition noted that the Defense Logistics Agency requires as part of its drug procurement contracts that "each solid oral dosage form (tablet or capsule as specified) shall be marked/embossed with a product identification code to identify the active ingredient(s), strength, and manufacturer." The supplement urged that FDA require that drug products bear a product-specific identification code, i.e., a code that identifies both a product's active ingredient and its manufacturer.

E. Submission of the NDMA Petition

On May 5, 1989, the Nonprescription Drug Manufacturers Association (NDMA) (at that time called the Proprietary Association) submitted a petition (89P-0163/CP) to FDA. NDMA represents the interests of many manufacturers of OTC drug products. The petition made reference to a March 17, 1989, Washington State law that requires imprinting on OTC products marketed after January 1, 1993. Although 23 States have laws requiring code imprinting on prescription drug products, the Washington State law is the first to require imprinting on OTC drug products. The petition asked that FDS require identification of solid dosage drug products, and urged adoption of a system sufficiently flexible to permit manufacturers to continue to use current imprints.

F. Continuing Interest and Demand

At its 1987 and 1989 annual meetings, the American Medical Association House of Delegates adopted resolutions urging "that a coding system be

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developed for the identification of all solid medication forms." This resolution applies to both OTC and prescription drug products. In a letter to FDA dated July 12, 1989, the American Medical Association urged that FDA mandate such a requirement.

G. Additional Data and Information

Based on continuing expressions of interest in a Federally-mandated drug imprinting program, FDA has concluded that it should reconsider its earlier decision to undertake Federal rulemaking. To provide a factual basis for its reconsideration, FDA requested data and information, in letters dated June 6, 1989, on imprinting from poison control centers, health officials, trade associations, and consumer groups. FDA specifically sought data and information on three principal matters: data and information that would justify the need for a Federal imprinting requirement; the information to be revealed by an imprinting code; and the advantages and disadvantages of a uniform imprinting code.

All respondents strongly supported Federal action to require imprinting of tablets and capsules. Respondents acknowledged the value of drug imprinting in facilitating rapid identification of drugs by poison control centers. Several respondents also observed that imprinting is important for identification of generic substitutions. Every responde that addressed the issue also supported requiring imprinting of OTC drugs.

The respondents generally agreed that the imprint should permit identification of the product and the manufacturer or distributor. In addition, most groups urged that the code imprint permit identification of the dosage strength. Poison control centers argued that identification of the dosage strength can be crucially important in emergency care.

Most groups discussed both the advantages and disadvantages of adopting a Federally-prescribed uniform imprinting code. Several strongly favored a uniform code, arguing that it would be the easiest way for poison control centers to identify ingredients and that it would allow the code imprints to be published in the smallest volume. About twice as many groups strongly opposed a mandated uniform code imprint, arguing that there is no need for such a system and that the cost to manufacturers, which would be passed on to consumers, would be prohibitive.

The United States Pharmacopeial Convention (USAN, the USP Dictionary of Drug Names, the United States Pharmacopeia, and the National Formulary), the Medial Economic Company (Physicians' Desk Reference), and Micromedex, Inc., were suggested along with FDA as possible sources for collection and publication of code imprint data.

The responses have been placed on file at the Dockets Management Branch under docket numbers 89P-0389/CP and 89P-0163/CP. The data and information in these responses have been reviewed and considered along with the two citizen petitions and the Congressional letter in developing this proposed rule.

II. Discussion of the need for imprinting

The agency believes that imprinting serves a number of important public health function; six principal functions have been identified.

(1) *Drug overdose.* It is widely accepted that imprinting plays an important role in identifying drugs in many suspected drug overdosing situations, especially where drug products have been separated from their original container. In such circumstances, it is vital drugs be easily and rapidly identifiable. Imprinting facilitates the rapid identification of a drug, thereby permitting the health professional to quickly choose the best therapy. A number of reports in the scientific literature have stressed the value of drug imprinting in emergency situations (Refs. 1 through 7). In one instance, the Seattle Poison Center in 1986 documented and analyzed 5,535 calls it received in 1 month (Ref. 6). The authors observed that, in 104 (1.9 percent) cases, the staff needed to turn to drug imprints for identification and concluded that the use of imprints "really counts" more than 200 times annually. Poison control centers today commonly use a computerized identification system that is keyed to drug imprints.

(2) *Drug substitution.* FDA believes that drug imprinting will play a role in alerting patients to drug substitutions. FDA is aware that patients are sometimes given substituted drug products without the patient's knowledge, and that sometimes patients are accidentally given incorrect drug products. Substitutions may be of clinical significance because some patients are allergic to certain color additives or other inactive ingredients that might be included in one product, but not another, even though the products are bioequivalent. Although an imprint may not itself disclose the name of the substituted product to a patient without a key to break the code, an imprint can serve as a signal to alert patients to product substitutions, and help patients identify prescriptions that are incorrectly filled.

(3) *Drug abuse.* Drug imprints may play a role in the battle against drug abuse. The scientific literature suggests that one factor hampering efforts to fight drug abuse is the difficulty in identifying illicit products (Refs. 9 through 13). This problem has been seen in attempts to control the sale of "OTC look-alikes." OTC look-alike drugs are drugs manufactured to mimic the appearance of controlled substances, including amphetamines and sleep aids. Imprinting should aid law enforcement official in distinguishing between prescription and OTC look-alike drugs. Identification by drug imprinting should also assist parents and school officials in identifying drugs carried by students.

(4) *Counterfeit and defective drug products.* Drug imprints can aid FDA and other drug regulatory authorities in tracking counterfeit and defective drug products. Imprints have played an important role in helping identify counterfeit drug products. In 1984, the agency recovered one million counterfeit oral contraceptive tablets that were detected because they were improperly imprinted. Imprinting may also help in the recall of misbranded or adulterated drugs, especially when the recall is down to the consumer level. Imprints have also been of value in identifying products fraudulently substituted during the bioequivalence testing procedures required for approval of a new generic drug, e.g., where an illegally substituted product had a partially removed imprint.

(5) *Quality assurance.* A number of respondents to the June 6, 1989, letter reported that imprints aid hospitals and nursing homes in developing drug distribution accounting systems within institutions. In particular, comments suggested that imprinting should help quality assurance efforts, including screening efforts to confirm the identity of dispensed drugs.

(6) *Other uses.* Drug identification is also important in other situations when products have been removed from the dispensed container or are otherwise not identifiable. For example, imprints may be of help when patients have comingled multiple prescriptions, or removed a prescription product from its original dispensed container to put it into a daily "reminder" container; when patients on vacation need refills of drugs no longer in their original dispensed containers; or when patients are transferred to or from hospitals or nursing homes with unlabeled, unidentified drugs. Imprints may also be of help when the dispensing package label does not identify the package

contents. Although these are not immediately life-threatening situations, they are common situations where drug identification is important for health care reasons.

III. Elements of the Program

A. Scope

FDA proposes to require imprinting of both prescription and OTC solid oral dosage form drug and biological products. The requirement would apply to "new drugs" for which new drug applications (NDA's), product license applications (PLA's), or abbreviated new drug applicatinos (ANDA's) are required, drugs first marketed before 1938 for which NDA's and ANDA's are not currently required, and drugs subject to the OTC drug review. This proposed rule is intended to apply to biological drug products that are licensed under section 351 of the Public Health Service Act.

Although most States with imprinting requirements do not require imprinting of OTC products, FDA believes that inclusion of OTC drug products in this rule will serve a number of the purpose outlined above. Most important, FDA believes that requiring OTC imprinting should materially assist poison control centers and others in identifying products in drug overdose emergencies. The agency notes that many overdose reports are attributed to OTC products. In the 1987 American Association of Poison Control Centers national data base, there were twice as many reports of exposures to OTC ibuprofen as to prescription ibuprofen. Moreover, the three most commonly used OTC analgesics—ibuprofen, aspirin, and acetaminophen—accounted for 67,248 out of 1,168,940 overdose emergencies (5.8 percent of the total). The State of Washington, NDMA, poison control centers, health professionals, and consumer groups have all urged that any Federal imprinting regulation include OTC drug products.

The agency has considered exempting homeopathic drug products from this regulation because of the unlikelihood that such products would cause overdoses of poisonings. However, FDA believes that even if a drug has a low potential for harm, it is important to be able to identify such a drug in order to determine that treatment for overdose is not required. In addition, many of the other reasons for wanting to identify drugs extend to homeopathic drug products. Therefore, homeopathic drug products are included in this proposed rule.

B. Exemptions

The agency recognizes that in a few cases a product's size or other physical characteristics may make it impossible or infeasible to imprint. Under this proposed rule, FDA would be authorized to exempt certain drug products from the code imprint requirements of proposed § 206.10. Exemptions would be granted on a case-by-case basis, upon a showing that the product's size, texture, or other physical characteristics make imprinting infeasible or impossible. FDA understands that very few exemptions have been granted under state imprinting statutory schemes. FDA believes, based on this limited number of exemptions, that most solid oral dosage form drug products may be imprinted.

In additiona, FDA is proposing to exempt two other classes of drugs from these requirements: drugs intended for use in clinical investigations under section 505(i) of the act (21 U.S.C. 355(i)), and drugs that are compounded by or upon the order of a pratitioner licensed by law to prescribe or administer drugs and that are to be used solely by the patient for whom prescribed. FDA solicits comments on whether the exemption for investigational drugs should apply to drugs that are distributed under treatment IND's. The agency is also interested in receiving comments on whether other classes of products should be granted categorical exemptions.

C. Information to be Imprinted

The proposed rule would require that each solid oral dosage form drug product bear a code imprint. FDA is proposing that the code imprint identify the drug product and the product's manufacturer or distributor, or, for products subject to premarket approval, the holder of the product's approval. By identify, FDA means that the imprint would be required to consist of sufficient numbers and letters to allow the agency and health professionals to retrieve information about the drug product from a manual or computerized identification key. Although patients may need assistance in identifying products, because no code imprint is capable of conveying much information about the product to a patient, the existence of a code imprint would enable patients to convey sufficeint information about the drug to allow for identification by health professionals.

By drug product, FDA means the finished dosage form; for example, the tablet or capsule. Identification of the drug product would allow determination of the product's active ingredient(s), and should, in many cases, also assist in the identification of the product's inactive ingredients. For products subject to premarket approval, the proposal would also require that the code imprint identify the holder of the approval (the holder of the approved new drug application, product license application, etc.). In othr cases, the drug product manufacturer or distributor would be identified. Identification of the holder of the approved marketing application, manufacturer or distributor should help consumers recognize drug product substitutions, and also aid the agency and health professionals in tracking adverse reactions and defective drug products. FDA is specifically soliciting comments on whether identifying the holder of the approval or, if the drug is not subject to premarket approval, the manufacturer or distributor is the most appropriate procedure for identifying the entity involved in marketing the drug product.

When a product is marketed in more than one strength, the proposal would require that each strength be identifiable either by code imprint or by the product's distinctive size, shape, or color. The importance of disclosing product strength has been stressed by health professionals and poison control centers, who have argued that even a twofold increase in dosage can mean a significant difference in treatment of a drug overdose.

The proposed rule would allow a drug firm to select its own code imprints, and the agency believes that most current imprints would meet the requirements of this proposal. However, some imprints might need to be augmented. As noted, the code imprint may consist of both graphical and alphanumeric elements. Because data bases that recognizes numbers and letters, rather than symbols and logos, would ordinarily be used to identify code imprints, code imprints would be required to contain at least one number or letter to allow retrieval of product information from the data base. Code imprints that have unique alphanumeric components are also preferable to code imprints that rely on a patient's ability to describe a logo or symbol.

D. Uniform Imprinting Code

The agency considered prescribing a uniform imprinting code to meet the requirements of this proposal. In its consideration of this issue, FDA studied several drug imprinting schemes for their acceptability, including the National Drug Code (NDC) and codes previously recommended by NAPM and the U.S. Pharmacopoeia. FDA also

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considered the opinions expressed by the respondents to FDA's survey of June 6, 1988. FDA has tentatively concluded that it should not now propose to require adoption of a uniform code. The agency acknowledges that a uniform code might be "user-friendly" and ease the task of assembling a drug identification directory for distribution to hospitals, poison control centers, and others. However, FDA believes that these advantages do not at this time outweigh the costs associated with a requirement that all solid oral dosage form products, including the many thousands of prescription and OTC products that are already imprinted, conform to a Federally-mandated standard. FDA solicits comment on the advisability of adopting a uniform Federal imprinting code.

E. Submitting Imprints to FDA

For each drug product listed that is subject to the imprinting requirements of 21 CFR part 206, including products that are exempted under § 206.7(b), the proposed rule would require § 207.25(b) that drug listing information include a description of the color, shape, and size of each drug product, code imprint (if any), active ingredient(s), dosage strength, and the holder of the approved marketing application, manufacturer or distributor. This information would be updated as described in the procedures at § 207.30. The proposal would also require that the listing include information about each drug that is exempted from imprinting requirements under § 206.7.

Information about imprinting submitted under proposed § 207.25(b) would be available for public disclosure under new § 207.37(a)(1)(xi).

F. Implementation

In general, for drug products subject to premarket approval that were not previously imprinted, approval of a supplemental drug application will be required under § 314.70(b). However, until any final rule based on this proposal becomes effective, FDA will permit submission of supplements under § 314.70(c), provided that: (1) Any colors used in the imprint meet applicable color additive requirements; (2) the substances used in printing do not interfere with the approved analytical procedures; (3) the "Description" and "How supplied" sections of the package insert are updated to include the appropriate information; (4) the drug product meets all the approved specifications in the drug application (including dissolution specifications and tests); and (5) the applicant makes a commitment to place the marketed drug product on appropriate stability studies and withdraw from the market any lots found to fall outside the approved specifications. Manufacturers of biological drug products which were not previously imprinted should submit a product license amendment as required in § 601.12(b).

Should the proposed rule become effective, when a product imprint is embossed or engraved, the applicant would report the addition of the imprint in the applicant's next annual report under § 314.70(d). In such cases, a supplementary application would not be required provided that: (1) The product meets all current specifications; (2) the dissolution specifications and test procedures have been approved by FDA; (3) the comparative dissolution profiles of the embossed/engraved and nonembossed/nonengraved drug products are similar; (4) the newly marketed drug products are placed in appropriate stability studies and the applicant withdraws from the market any lots found to fall outside the approved specifications; and (5) the "Description" and "How supplied" sections of the package insert are updated to include the appropriate information.

For minor changes to an existing code imprint, e.g., changing the alphanumeric identifiers, or substituting a number for a symbol, the supplementary information would be included in the next annual report under § 314.70(d) provided that the "Description" and "How supplied" sections of the package insert are updated to include the appropriate information.

IV. Legal Authority

FDA has concluded that it has sufficient authority to issue regulations under section 701(a) of the act imposing of a drug imprinting requirement for the efficient enforcement of various sections of the act, including sections 201(p), 501, 502, and 505.

A drug imprinting requirement permits the efficient enforcement of the safety and effectiveness provisions of sections 201(p) and 505, and the misbranding provisions in sections 502 (a) and (f) of the act, in that imprinting: (1) Permits the safe, nonmisleading use of prescription drugs that have been substituted, by informing patients of the person responsible for marketing the substituted drug; (2) helps to provide adequate directions for use in the event of overdose or drug interaction, and reduces or prevents harm from these adverse events, by permitting easier identification of drugs that have been removed from their original packaging and labeling; and (3) may permit detection of certain fraudulent testing procedures.

An imprinting requirement also permits the efficient enforcement of other adulteration and misbranding provisions of the act. A regulation requiring that a code be imprinted on each final dosage form during its manufacture may avert unintentional mix-up and mislabeling of drugs during labeling and packaging. An imprinting requirement thus may be justified to prevent adulteration under section 501(a)(1)(B) as a manufacturing method or control necessary to ensure that a drug has the identity and strength its labeling represents it to have.

Requiring that solid oral dosage forms be imprinted to identify the drug product and holder of the approved marketing application, manufacturer, or distributor also furthers the efficient enforcement of section 502(i), under which a drug is misbranded if it is an imitation of another drug. Imprinting would impede attempts to pass off imprinted drugs as other drugs, by identifying to potential customers the drug being sold, and would permit investigators to instantly identify drugs found during investigations rather than having to rely on laboratory analysis. Finally, an imprinting requirement may assist in the identification and recall of adulterated and misbranded drug products.

Once an imprinting requirement became effective, a product that was not properly imprinted could be considered adulterated and misbranded. A drug product whose approval under section 505 of the act was based in part on the fact that it was imprinted could be subject to withdrawal of approval or considered an unapproved new drug. Thus, where FDA determines that a drug is safe and effective when it is imprinted, a subsequent failure to properly imprint the product could result in a finding that the product is no longer shown to be safe or that the improperly imprinted product is not the subject of the approved application. An oral solid dosage form drug product subject to an OTC monograph could be considered an unapproved new drug, on the ground that it was not generally recognized as safe and effective unless properly imprinted. If a drug product marketed without an approved new drug application is not properly imprinted, FDA may take that fact into account in exercising its enforcement discretion under section 505 of the act. Those engaged in the sale of imitation drugs who imprinted their drugs with codes copied from other drugs could be subject to criminal prosecution for violating the prohibition against counterfeiting in section 301(i)(3) of the act.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Impact

The agency has carefully considered the economic impact of this proposed rule and has determined that it requires neither a regulatory impact analysis as specified by Executive Order 12291 nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96-354). The agency has calculated, based on information received, that a regulation requiring drug imprinting will have a minimal economic impact on most manufacturers. Between 90 and 95 percent of prescription drug products and approximately 70 percent of OTC drug products are already imprinted, and the agency believes that most of these imprints provide drug identification consistent with the requirements that would be imposed under this rule. Therefore, this requirement would have no economic impact on the majority of solid oral dosage form drug products. For products that are not now imprinted, it is estimated that the total annual costs of imprinting would be $1.7 million including costs of $1.1 million for prescription drug products and $0.6 million for OTC drug products. This cost estimate is based on the costs of imprinting and embossing equipment. Manufacturing associations have stated that this cost is a minor one.

In addition, the agency recognizes that repeat stability testing of some soft or small tablets might have to be performed as the result of imprinting by embossing or debossing. Also, packages with pictures of the drug products may have to be redesigned, resulting in art and design costs. The agency also recognizes that some products, because of their size or consistency, will not be imprintable, and exemptions will be reviewed for such products. FDA currently estimates $8.3 million in one-time product testing costs. However, FDA solicits additional information on imprinting and stability testing costs that this rule would impose on manufacturers. A copy of the agency's assessment of the economic impact is on file with the Dockets Management Branch (address above).

VII. Executive Order 12612: Federalism

Executive Order 12612 requires that Federal agencies carefully examine regulatory actions to determine if they would have significant Federalism implications. As noted above, the proposed rule would require the imprinting of both prescription and OTC human drugs. Currently, 23 States require imprinting of prescription drugs and/or OTC drugs. FDA does not believe that the proposed rule is incompatible with the requirements of any of the State laws or that the State laws stand as an obstacle to the accomplishment and execution of the full purposes and objectives of the agency, should the proposed regulation be adopted. For that reason, FDA does not believe that preemption of State laws is necessary. For the reasons stated, FDA believe that these effects are not significant and do not require an assessment under Executive Order 12612. The input of States, as well as consumers, businesses, and other concerned parties is essential in evaluating this matter. FDA therefore requests comment on the effect of this proposal on Federalism issues.

VIII. Effective Date

FDA proposes that a final rule based on this proposal be effective 1 year after its date of publication in the Federal Register. Any drug product subject to the requirements of this rule that is introduced or delivered for introduction into interstate commerce after the effective date would be deemed to be adulterated, misbranded, or an unapproved new drugs, unless imprinted in compliance with the requirements of 21 CFR part 206. Comment is sought on the ability of manufacturers to comply within this timeframe.

IX. Paperwork Reduction Act of 1980

This proposed rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Imprinting of Oral Solid Dosage Form Drug Products: Proposed Rule.

Description: The information requirements contained in the proposed rule would require drug firms to submit to FDA a listing for all solid oral dosage form drug products, of each products' code imprint, and a description of the physical characteristics of each drug product.

Description of Respondents: Businesses.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
207.25	15,200	2	0	0

It is anticipated that the information required under § 207.25, once finalized, would be submitted on Form FDA 2657, Drug Product Listing. The information collection burden resulting from the submission of this form is on the current inventory of OMB-approved information collection 0910-0045. The OMB-approved estimated burden on drug firms for completion and submission of Form FDA 2657 is approximately ½ hour, and the information requirements under § 207.25 would not measurably add to this burden estimate.

As required by the Paperwork Reduction Act, FDA is submitting to OMB a request that it approve these information collection requirements. Organizations or individuals desiring to submit comments for consideration by OMB on these information collection requirements should address them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3003, New Executive Office Bldg., Washington, DC 20503, Attn: Angela Antonelli.

X. Request for Comments

Interested persons may, on or before August 13, 1991, submit written comments on this proposal to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be indentified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

XI. References

The following information has been placed on display in the Dockets Management Branch where it can be

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seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Caldwell, J.G. et al., "Identification of Drugs: Use of the JAMA Drug Identification Guide," *Journal of the American Medical Association*, 187:961–963, 1964.

2. Robertson, W.O., and D.H. Williams, "Drug Imprinting: 1984 Update," *Journal of the American Medical Association*, 254:1984, 1985.

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4. Robertson, K.A., and W.O. Robertson, "Drug Identification by Imprint," *Clinical Toxicology*, 7:83–88, 1974.

5. Collier, W.A.L., "Indexable Imprinting of Solid Dosage Forms," *Drug Intelligence and Clinical Pharmacy*, 11:170–175, 1977.

6. Thomas, S., "Tablident: A New Method of Solid Dose Form Identification," *The Pharmaceutical Journal*, 231:261–263, 1983.

7. "Drug Code Imprinting Urged for Prescription Pharmaceuticals," *American Pharmacy*, NS26:16, 1980.

8. Bobbink, S., D. Williams, and W.O. Robertson, "Use of Drug Imprints," *Veterinary and Human Toxicology*, 28(2):160, 1986.

9. Allen, L.V., " 'Turkey Drugs'—What You See Is Not What You Get," *U.S. Pharmacist*, 7:33–39, 1982.

10. "States legislate against drugs resembling controlled substances," *American Druggist*, 2:96–97, 1982.

11. Sharpiro, L.J., R.A. Angorn, and W.C. McCormick, " 'Palming off' Look-alike Drugs," *American Pharmacy*, NS22:26–30, 1982.

12. "Look-Alikes: A Continuing Dilemma," *American Pharmacy*, NS23:10, 1983.

13. Shapiro, L.J., and F.H. Fern, "Look-alike Prescription Drugs," *U.S. Pharmacist*, 13:72–77, 1988.

List of Subjects

21 CFR Part 206

Drugs.

21 CFR Part 207

Drugs, Reporting and recordkeeping requirements.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, Title 21 of the Code of Federal Regulations is amended as follows:

1. Part 206 is added to read as follows:

PART 206—IMPRINTING OF SOLID ORAL DOSAGE FORM DRUG PRODUCTS FOR HUMAN USE

Sec.
206.1 Scope.
206.3 Definitions.
206.7 Exemptions.
206.10 Code imprint required.

Authority: Secs. 201, 301, 501, 502, 505, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 355, 357, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

§ 206.1 Scope

This part applies to all solid oral dosage form human drug products, including prescription, over-the-counter drug products, biological drug products, and homeopathic drug products, unless otherwise exempted under § 206.7 of this part.

§ 206.3 Definitions.

The following definitions apply to this part:

Act means the Federal Food, Drug, and Cosmetic Act (sections 201–901 (21 U.S.C. 301–392)).

Code imprint means any combination of letters or numbers, including, e.g., words, company name, and National Drug Code, assigned by the drug firm to a specific drug product, or marks, symbols, or monograms unique to the firm, in combination with at least one letter or number.

Drug product means a finished dosage form, e.g., a tablet or capsule that contains a drug substance, generally, but not necessarily, in association with one or more other ingredients.

Manufacturer means the manufacturer as described in §§ 201.1 and 600.3(t) of this chapter.

Solid oral dosage form means capsules, tablets, or similar drug products intended for oral use.

§ 206.7 Exemptions.

(a) The following classes of drug products are exempt from requirements of this part:

(1) Drugs intended for use in a clinical investigation under section 505(i) of the act.

(2) Drugs that are compounded by or upon the order of a practitioner licensed by law to prescribe or administer drugs that are to be used solely by the patient for whom prescribed.

(b) Exemption of drugs because of size or unique characteristics. FDA may exempt a drug product from the requirements of § 206.10 of this part upon a showing that the product's size, shape, texture, or other physical characteristics make it impossible or impracticable to bear an imprint. For a drug product, a request for exemption from the requirement of this part should be submitted in writing to the Center for Drug Evaluation and Research, Division of Regulatory Affairs (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; for a biological drug product, the request for exemption should be submitted to the Center for Biologics Evaluation and Research, Division of Product Certification (HFB-240), 8800 Rockville Pike, Bethesda, MD 20892.

§ 206.10 Code imprint required.

(a) Unless exempted under § 206.7, no drug product in solid oral dosage form may be distributed in interstate commerce unless it is clearly marked or imprinted with a code imprint that permits the identification of the drug product and the holder of the approved marketing application for the drug. If the drug product is not subject to premarket approval, the code imprint is required to identify the manufacturer or distributor of the product. In addition, for products manufactured in more than one dosage strength, the dosage strength of the drug product is required to be identifiable by code imprint or by clearly recognizable physical characteristics of the drug product, such as color, shape, or size. The code imprint is required to contain at least one number or letter to permit retrieval from an alphanumeric data base.

(b) A solid oral dosage form drug product that does not meet the requirement for imprinting in paragraph (a) of this section is adulterated and misbranded and may be an unapproved new drug.

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

2. The authority citation for 21 CFR part 207 continues to read as follows:

Authority: Secs. 301, 501, 502, 505, 506, 507, 510, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 355, 356, 357, 360, 360b, 371, 374); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

3. Section 207.25 is amended by adding new paragraph (b)(9) to read as follows:

§ 207.25 Information required in registration and drug listing.

* * * * *

(b) * * *

(9) For each drug listed that is subject to the imprinting requirements of part 206 of this chapter, including products that are exempted under § 206.7(b), a description of the size, shape, and color of the drug product, code imprint (if any), active ingredient(s), dosage strength, and the holder of the approved marketing application. For drugs not subject to premarketing approval, the manufacturer or distributor.

4. Section 207.37 is amended by adding paragraph (a)(1)(xi) to read as follows:

§ 207.37 Inspection of registrations and drug listings.

(a) * * *

(1) * * *

(xi) A list of all code imprints.

* * * * *

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

5. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 505, 506, 507, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 376).

6. Section 314.70 is amended by adding new paragraphs (b)(2)(xi) and (d)(9) to read as follows:

§ 314.70 Supplements and other changes to an approved application.

* * * * *

(b) * * *

(2) * * *

(xi) To print on an oral solid dosage form drug product.

* * * * *

(d) * * *

(9) The addition by embossing or engraving of a code imprint to an oral solid dosage form drug product, or a minor change in an existing code imprint.

* * * * *

Dated: January 22, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-11481 Filed 5-14-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

Foreign Service Grievance Board

22 CFR Parts 901, 902, 903, 904, 905, 906, 907, 908, 910, and 911

[Public Notice 1361]

Foreign Service Grievance Board Regulations

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule will revise the regulations of the Foreign Service Grievance Board to accommodate new legislation. Previous revisions were published as final rule under 50 FR 31353, August 2, 1985. The Foreign Service Grievance Board revises its regulations to conform to the provisions concerning grievances as described in chapter 11 of the Foreign Service Act of 1980 (Pub. L. 96-465; 94 Stat. 2071) of October 17, 1980, as amended, and to implement agency regulations adopted by the foreign affairs agencies and the exclusive employee representatives pursuant to that Act. Parts 904, 905, 906, and 910 have been revised to address: Agency action against grievants who may have committed job-related crimes; grievances concerning suspension without pay; grievance cases which request agency payment of attorney fees; head of agency responses to Board recommendations; and Board procedures in grievance cases concerning supervisor misconduct. Minor editorial changes also have been made throughout the parts cited in the heading.

DATES: Comments must be received on or before July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Judith A. Schmidt, Executive Secretary, Foreign Service Grievance Board, (703) 235-3173 List of Subjects in 22 CFR Parts 901–908, 910 and 911. Administrative practice and procedure, Foreign Service. For the reasons set out in the preamble, 22 CFR parts 901–908, 910, and 911 are amended as set forth below:

PART 901—GENERAL

1. The authority citation for part 901 is revised to read as follows:

Authority: Secs. 610, 1101, 1102, 1105; and 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465: 22 U.S.C. 4131, 4132, 4135, and 4136), as amended.

2. Section 901.10 is revised to read as follows:

§ 901.10 Act.

"Act" means the Foreign Service Act of 1980 (Pub. L. 96-465, October 17, 1980), as amended.

§ 901.20 [Amended]

3. In § 901.20, paragraph (c) is amended by removing the phrase "achieved Party status under 903.5(a)" and adding in its place "achieved Party status under 903.4".

PART 902—ORGANIZATION

4. The authority citation for part 902 is revised to read as follows:

Authority: Secs. 1105 and 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465: 22 U.S.C. 4135 and 4136), as amended.

§ 902.2 [Amended]

5. In § 902.2, paragraph (c) is amended by removing the reference to "§ 906.3" and adding in its place "§ 906.4".

PART 903—INITIATION AND DOCUMENTATION OF CASES

6. The authority citation for part 903 is revised to read as follows:

Authority: Secs. 610, 1104, and 1106–1109 of the Foreign Service Act of 1980 (Pub. L. 96-465: 22 U.S.C. 4010, 4134, and 4135–4139), as amended.

PART 904—JURISDICTION AND PRELIMINARY DETERMINATION

7. The part heading for part 904 is revised to read as set forth above.

8. The authority citation for part 904 is revised to read as follows:

Authority: Secs. 1101, 1104, 1108, and 1109 of the Foreign Service Act of 1980 (Pub. L. 96-465: 22 U.S.C. 4131, 4134, 4138, and 4139), as amended.

9. In section 904.2, paragraphs (b) and (d) are revised to read as follows:

§ 904.2 Preliminary determinations.

* * * * *

(b) The Board may also make a preliminary determination on any question raised by a Party concerning the timeliness of a grievance, the election of other remedies under § 904.3, or any other issue whose resolution might avoid the necessity of further proceedings.

* * * * *

(d) Where an issue presented for preliminary determination under this section is contested by a Party or would result in the termination of a case, a panel of three members of the Board shall decide the issue.

10. Section 904.4 is added to read as follows:

§ 904.4 Suspension of Agency actions.

(a) If the Board determines that the Agency is considering involuntary separation of the Grievant, disciplinary action against the Grievant, or recovery from the Grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the Board, and that such action should be suspended, the agency shall suspend such action until the Board has ruled on the grievance. Notwithstanding such suspension of action, the head of the Agency concerned or a chief of mission or principal officer may exclude the Grievant from official premises or from the performance of specified functions when such exclusion is determined in writing to be essential to the functioning

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of the post or office to which the Grievant is assigned.

(b) Notwithstanding paragraph (a) of this section, the Board shall not determine that action against a Grievant shall be suspended if the head of an Agency or his designee has determined that there is reasonable cause to believe that a Grievant has committed a job-related crime for which a sentence of imprisonment may be imposed and has taken action to suspend the Grievant without pay pending a final resolution of the underlying matter. For this purpose, reasonable cause to believe that a member has committed a crime for which a sentence of imprisonment may be imposed shall be defined as a member of the Service having been convicted of, and sentence of imprisonment having been imposed for a job-related crime.

(c) The Board shall expedite its decisions on requested suspensions of proposed Agency actions. The Board may permit or require argument with respect to such requests by the Parties and Exclusive Representative, if any.

PART 905—BURDEN OF PROOF

11. The authority citation for part 905 is revised to read as follows:

Authority: Secs. 610 and 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465: 22 U.S.C. 4010 and 4136), as amended.

12. Section 905.2 is revised to read as follows:

§ 905.2 Disciplinary grievances.

In grievances over disciplinary actions, the Agency has the burden of establishing by a preponderance of the evidence that the disciplinary action was justified, provided, however, that in a grievance concerning suspension without pay pursuant to section 610(a)(3) of the Act, the Board's determination of the grievance shall be limited to

(a) Whether the required procedures have been followed; and

(b) Whether there exists reasonable cause to believe a crime has been committed for which a sentence of imprisonment may be imposed and there is a nexus between the conduct and the efficiency of the Service.

For this purpose, reasonable cause to believe that a member has committed a crime for which a sentence of imprisonment may be imposed shall be defined as a member of the Service having been convicted of, and sentence of imprisonment having been imposed for, a job-related crime.

PART 906—HEARINGS

13. The authority citation for part 906 is revised to read as follows:

Authority: Secs. 610 and 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465: 22 U.S.C. 4010 and 4136), as amended.

PART 907—PROCEDURE WHEN HEARING IS NOT HELD

14. The authority citation for part 907 is revised to read as follows:

Authority: Sec. 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465: 22 U.S.C. 4136), as amended.

PART 908—REMEDIES

15. The authority citation for part 908 is revised to read as follows:

Authority: Secs. 1106 and 1107 of the Foreign Service Act of 1980 (Pub. 96-465: 22 U.S.C. 610, 4010, 4136, and 4137).

§ 908.1 [Amended]

16. In section 908.1, paragraph (e) is removed and paragraph (f) is redesignated as paragraph (e).

17. Section 908.2 is redesignated as section 908.3.

18. Section 908.2 is added and reads as follows:

§ 908.2 Attorney fees.

(a) If the Board finds that a grievance is meritorious or that an Agency has not established the cause for separation of a charged employee in a hearing before the Board pursuant to section 610 of the Act, the Board shall have the authority to direct the Agency to pay reasonable attorney fees to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under 5 U.S.C. 7701(g).

(b) Requests for attorney fees, accompanied by supporting documentation, must be filed with the Board within thirty (30) days of the date of the Board's decision.

§ 908.3 Board recommendations.

19. In newly redesignated section 908.3, paragraph (a) is revised and paragraphs (c), (d), (e), and (f) are added and read as follows:

(a) If the Board finds that the grievance is meritorious and that remedial action should be taken that relates directly to promotion, tenure, or assignment of the Grievant or to other remedial action not otherwise provided for in this section, or if the Board finds that the evidence in a grievance proceeding warrants disciplinary action against any employee of an Agency, it shall make an appropriate recommendation to the head of the concerned Agency.

* * * * *

(c) A recommendation under this section shall, for the purposes of section 1110 of the Act, be considered a final action upon the expiration of a 30-day period referred to in paragraph (b) of this section, except to the extent that it is rejected by the head of the Agency by an appropriate written decision.

(d)(1) If the head of the Agency makes a written decision under paragraph (b) of this section rejecting a recommendation in whole or in part on the basis of a determination that implementing such recommendation would be contrary to law, the head of the Agency shall, within the 30-day period referred to in paragraph (b):

(i) Submit a copy of such decision to the Board; and

(ii) Request that the Board reconsider its recommendation or, if less than the entirety is rejected, that the Board reconsider the portion rejected.

(2) Within 30 days after receiving such a request, the Board shall, after reviewing the head of the Agency's decision, make a recommendation to the head of the Agency confirming, modifying, or vacating its original recommendation or, if less than the entirety as rejected, the portion involved. Reconsideration shall be limited to the question of whether implementing the Board's original recommendation, either in whole or in part, as applicable, would be contrary to law.

(e) A Board recommendation made under the preceding paragraph (d)(2) shall be considered a final action for the purposes of section 1110 of the Act, and shall be implemented by the head of the Agency.

(f) The provisions of paragraphs (c), (d), and (e) of this section shall not apply with respect to any grievance in which the board has issued a final decision pursuant to section 1107 of the Act before December 22, 1987.

PART 910—MISCELLANEOUS

1. The authority citation for part 910 continues to read as follows:

Authority: Secs. 1108, 1107, 1110 and 2401 of the Foreign Service Act of 1980 (Pub. L. 96-465: 22 U.S.C. 4136, 4137, 4140 and 4172).

20. In part 910, § 910.1 is removed and § 910.2 through 910.7 are redesignated as § 910.1 through 910.6.

21. In newly designated § 910.4, the section heading and paragraph (b) are revised to read as follows:

§ 910.4 Confidentiality; Record of grievances awarded.

* * * * *

(b) The records of the Board shall be maintained by the Board under appropriate safeguards to preserve confidentiality and shall be separate from all records of the Agencies; provided, however, that records of all grievances awarded in favor of the Grievant in which the grievance concerns gross misconduct by a supervisor shall be separately maintained by the Board and the procedures regarding confidentiality and disclosure of such records shall be as provided in section 1107(e) of the Foreign Service Act of 1980, as amended; and provided further, that the Board shall not make a finding of gross misconduct without first providing the supervisor whose conduct is at issue notice and an opportunity to respond.

PART 911—IMPLEMENTATION DISPUTES

22. The authority citation for part 911 is revised to read as follows:

Authority: Sec. 1014 of the Foreign Service Act of 1980 (Pub. L. 96-465: 22 U.S.C. 4114), as amended.

Dated: March 28, 1991.

Arthur Stark,

Chairman.

[FR Doc. 91-11476 Filed 5-14-91; 8:45 am]

BILLING CODE 4710-19-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-117-90]

RIN 1545-AP54

Returns Relating to Cash in Excess of $10,000 Received in a Trade or Business; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations that would treat certain monetary instruments as cash for purposes of the requirement to report cash in excess of $10,000 received in a trade or business. Changes to the applicable law were made by the Revenue Reconciliation Act of 1990. The regulations would affect any person that, in the course of a trade or business in which the person is engaged, receives certain monetary instruments that, together with any currency received, total more than $10,000 in any one transaction (or two or more related transactions).

DATES: The public hearing will be held on Friday, June 28, 1991, beginning at 1:30 p.m. Requests to speak and outlines of oral comments must be received by Friday, June 14, 1991.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [IA-117-90], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is a notice of proposed rulemaking that contains a proposed amendment to the Income Tax Regulations under section 6050I of the Internal Revenue Code of 1986 to conform the regulations to the amendment made to section 11318(a) of the Revenue Reconciliation Act of 1990, (Pub. L. 101-508, 104 Stat. 1388). These proposed regulations appear in the proposed rules section of this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, June 14, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 12 p.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-11445 Filed 5-13-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 602

[IA-117-90]

RIN 1545-AP54

Returns Relating to Cash in Excess of $10,000 Received in a Trade or Business

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that, under certain circumstances, would treat specified monetary instruments as cash for purposes of the requirement under section 6050I of the Internal Revenue Code of 1986 to report cash in excess of $10,000 received in a trade or business. The regulations are needed to implement changes to the applicable law made by the Revenue Reconciliation Act of 1990. The regulations would affect persons that, under certain circumstances, receive, in the course of a trade or business in which they are engaged, specified monetary instruments that, together with any currency received, total more than $10,000 in any one transaction (or two or more related transactions).

DATES: Comments must be received by June 14, 1991. A public hearing has been scheduled for June 28, 1991. Requests to speak at the hearing and outlines of oral comments must be received by June 14, 1991. See the notice of hearing published in this issue of the **Federal Register**.

ADDRESSES: Send written comments and requests to speak at the hearing (with outlines of oral comments) to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (IA-117-90), room 5228, Washington, DC 20044. In the alternative, comments and requests to speak (with outlines) may be hand delivered to: Internal Revenue Service, Attn: CC:CORP:T:R (IA-117-90), room 5228, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Philip Scott, 202-566-3626 (not a toll-free number).

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SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.6050I–1. This information is required by the Internal Revenue Service to implement section 11318(a) of the Revenue Reconciliation Act of 1990. This information will be used by law enforcement authorities with respect to the enforcement of Federal laws. The likely respondents are business or other for-profit institutions and nonprofit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 7,469 hours. The estimated average annual burden per respondent is 18 minutes.

Estimated number of respondents: 8,300.

Estimated annual frequency of responses: 3.

Background

This document contains proposed Income Tax Regulations under section 6050I of the Internal Revenue Code of 1986. Section 6050I was amended by section 11318(a) of the Revenue Reconciliation Act of 1990, Public Law 101–508, 104 Stat. 1388 (the "1990 Act").

Explanation of Provisions

Under section 6050I, any person engaged in a trade or business who receives, in the course of that trade or business, cash in excess of $10,000 in one transaction (or two or more related transactions) must make an information return relating to the transaction. Any person required to make an information return under section 6050I must also furnish a statement to any person identified on the return showing the aggregate amount of reportable cash received from that person. Financial institutions are generally excepted from the reporting requirements of section 6050I because, pursuant to regulations prescribed under section 5313 of title 31 of the United States Code (relating to reports on domestic coins and currency transactions), they are required to file similar reports on the receipt of more than $10,000 in currency from a customer in one or more transactions in a business day.

Section 11318(a) of the 1990 Act amended section 6050I to provide that, to the extent provided in regulations, the term "cash" includes any monetary instrument, whether or not in bearer form, with a face amount of not more than $10,000 (other than certain checks). The amendment reflects concern that, by using currency to purchase monetary instruments, such as cashier's checks or money orders, having a face amount of not more than $10,000, and using these instruments in lieu of, or in addition to, currency to purchase goods or services that, if purchased with currency alone, would require reporting under section 6050I, persons are able to transfer large amounts of currency without being subject to a reporting requirement under either section 6050I or section 5313 of title 31.[1] There is evidence that some merchants have advised customers that purchases would not have to be reported if customers paid for goods or services with monetary instruments rather than with currency.

Implicit in the amendment to section 6050I, however, is a recognition that monetary instruments also serve an important function in ordinary commercial transactions. Thus, instead of imposing a statutory requirement that all monetary instruments be treated as cash for purposes of section 6050I, the 1990 Act amendment permits the Secretary of the Treasury to prescribe, through regulations, the extent to which monetary instruments with a face amount of not more than $10,000 (other than certain checks) should be treated as cash.

The Service has weighed various alternatives, with a view to developing rules that address transactions in which experience has shown monetary instruments are being used to avoid currency reporting requirements. Accordingly, the proposed regulations, with limited exceptions, treat specified monetary instruments as cash when they are received in connection with designated reporting transactions, i.e., retail sales of certain items of tangible personal property or retail sales of a travel or entertainment activity. In all other cases, specified monetary instruments are treated as cash only if the recipient of the instrument knows that the instrument is being used in an attempt to avoid the reporting of the transaction.

The Service believes the approach adopted in the proposed regulations best implements the policies underlying the 1990 Act amendment to section 6050I because it attempts to discourage the use of monetary instruments to avoid the currency reporting requirements without policy placing an undue reporting and recordkeeping burden on businesses with respect to ordinary commercial transactions. However, the Service will continue to monitor information reporting to determine trends in noncompliance and abuse. If experience warrants, expanded reporting requirements may be proposed on a prospective basis.

Specified Monetary Instruments. The proposed regulations specify that the following monetary instruments are to be treated as cash in the circumstances described above: Cashier's checks, bank drafts, traveler's checks, and money orders, provided they have a face amount of not more than $10,000. The proposed regulations apply to these monetary instruments whether the instruments are made payable to bearer or to a named payee or whether the name of the payee is left blank.

Checks other than cashier's checks are not included within the definition of "cash." Thus, the term does not include checks drawn on the personal account of an individual or checks drawn on the account of a business concern, whether or not such checks are certified.

Designated Reporting Transactions. Under the proposed regulations, specified monetary instruments generally are treated as cash if they are received in a designated reporting transaction. A designated reporting transaction is a retail sale of a consumer durable, a collectible, or a travel or entertainment activity. A consumer durable is an item of tangible personal property of a type normally sold for personal consumption or use that can reasonably be expected to be useful for at least one year under ordinary usage and that has a sales price of more than $10,000. Thus, for example, a $20,000 automobile is a consumer durable, but a $20,000 factory machine is not.

A collectible is an item described in paragraphs (A) through (D) of section 408(m)(2) (determined without regard to section 408(m)(3)). That is, the term "collectible" means a work of art, a rug, an antique object, a precious metal, a gem, a postage stamp, or a coin (including any coin enumerated in section 408(m)(3)), irrespective of the sales price of the item.

A travel or entertainment activity is one or more items of travel or entertainment pertaining to a single trip or event, but only if the aggregate sales price of all items pertaining to the trip or event exceeds $10,000. Items of travel or entertainment pertaining to a single trip or event include, for example, the chartering of an airliner to transport persons to and from a sporting event, hotel accommodations in connection with the event, and admission to the event itself. For the purpose of determining whether the aggregate sales price is more than $10,000, related sales by a single merchant-recipient of items of travel and entertainment pertaining to the same trip or event are aggregated. However, retail sales of items pertaining to a trip or event are not aggregated with retail sales of items pertaining to another trip or event for this purpose.

A sale is a retail sale if it is made in the course of a trade or business that principally consists of making sales to ultimate consumers. Thus, a sale made in the course of a trade or business that principally consists of making sales at wholesale to retailers for resale to ultimate consumers would not be a retail sale.

Under the proposed regulations, a designated reporting transaction includes the receipt of funds by a broker or other intermediary in connection with the retail sale of a consumer durable, a collectible, or a travel or entertainment activity.

Exceptions for Loans and Periodic Payment Plans. A specified monetary instrument received in a designated reporting transaction is not treated as cash if one of the exceptions discussed below applies and the recipient does not know that the instrument is being used in an attempt to avoid the reporting of the transaction under section 6050I and the regulations. These exceptions are designed to relieve merchants/recipients from the burden of having to report transactions where the use of more than one monetary instrument or a combination of a monetary instrument and currency is customary.

The first exception applies if the monetary instrument constitutes the proceeds of a loan from a bank (including a thrift institution or a credit union). The merchant/recipient may rely on a copy of the loan document, a written statement from the bank, or similar documentation to substantiate that the instrument constitues loan proceeds.

The second exception applies if (1) the instrument is received in payment on a promissory note or an installment sales contract, (2) the recipient uses promissory notes or installment sales contracts with the same or substantially similar terms in the ordinary course of its trade or business in connection with sales to ultimate consumers, and (3) the total amount of payments received with respect to the sale on or before the 60th day after the date of the sale of does not exceed 50 percent of the purchase price of the retail sale.

The third exception applies if (1) the instrument is received pursuant to a payment plan requiring one or more down payments and the payment of the balance the purchase price by the time of the sale, (2) the recipient uses plans with the same or substantially similar terms in the ordinary course of its trade or business in connection with sales to ultimate consumers, and (3) the instrument is received more than 60 days prior to the date of the sale.

Recipient's Knowledge of Structuring. Whether or not a specified monetary instrument is received in connection with a designated reporting transaction, the instrument is treated as cash if the recipient knows that the instrument is being used in an attempt to avoid the reporting of the transaction under section 6050I and the regulations thereunder.

Effective Date. The rules regarding the treatment of certain monetary instruments as cash are proposed to be effective for amounts received on or after the date of that is 60 days after the date on which final regulations are issued. The Internal Revenue Service intends to issue final regulations as soon as possible after consideration of written and oral comments received in accordance with this notice and the notice of hearing also published in this issue of the Federal Register.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held on June 28, 1991. See the notice of hearing also published in this issue of the Federal Register.

Drafting Information

The principal author of these proposed regulations is Philip Scott of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.6031–1 through 1.6060–1

Income taxes, Reporting and recordkeeping requirements

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, title 26, chapter 1, parts 1 and 602 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.6050I–1 also issued under 26 U.S.C. 6050I.

Par. 2. Section 1.6050I–1 is amended by revising paragraphs (c)(1) and (g), by redesignating paragraphs (c)(2), (c)(3), and (c)(4) as paragraphs (c)(6), (c)(7), and (c)(8) respectively, and by adding new paragraphs (c)(2) through (c)(5) to read as follows:

§ 1.6050I–1 Returns relating to cash in excess of $10,000 received in a trade or business.

* * * * *

(c) *Meaning of terms.* The following definitions apply for purposes of this section—

(1) *Cash*—(i) *Amounts received prior to [Insert date 60 days after date on which final regulations are published].*

[1] If a monetary instrument is purchased from a financial institution in exchange for more than $10,000 in currency, the financial institution must file a currency transaction report pursuant to section 5313 of title 31.

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For amounts received prior to [*Insert date 60 days after date on which final regulations are published*], the term "cash" means the coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued.

(ii) *Amounts received on or after* [*Insert date 60 days after date on which final regulations are published*]. For amounts received on or after [*Insert date 60 days after date on which final regulations are published*], the term "cash" means—

(A) The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued; and

(B) A cashier's check, bank draft, traveler's check, or money order having a face amount of not more than $10,000—

(*1*) Received in a designated reporting transaction as defined in paragraph (c)(1) (iii)) of this section (except as provided in paragraphs (c)(1)(iv), (v), and (vi) of this section), or

(*2*) Received in any transaction in which the recipient knows that such instrument is being used in an attempt to avoid the reporting of the transaction under section 6050I and this section.

(iii) *Designated reporting transaction.* A designated reporting transaction is a retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of—

(A) A consumer durable,

(B) A collectible, or

(C) A travel or entertainment activity.

(iv) *Exception for certain loans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as cash pursuant to paragraph (c)(1)(ii)(B)(*1*) of this section if the instrument constitutes the proceeds of a loan from a bank (as that term is defined in 31 CFR part 103). The recipient may rely on a copy of the loan document, a written statement from the bank, or similar documentation to substantiate that the instrument constitutes loan proceeds.

(v) *Exception for certain installment sales.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as cash pursuant to paragraph (c)(1)(ii)(B)*(1) of this section if the instrument is received in payment on a promissory note or an installment sales contract. However, the preceding sentence applies only if*—

(A) Promissory notes or installment sales contracts with the same or substantially similar terms are used in the ordinary course of the recipient's trade or business in connection with retail sales; and

(B) The total amount of payments with respect to the sale that are received on or before the 60th day after the date of the sale does not exceed 50 percent of the purchase price of the retail sale.

(vi) *Exception for certain down payment plans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as cash pursuant to paragraph (c)(1)(ii)(B)(*1*) of this section if the instrument is received pursuant to a payment plan requiring one or more down payments and the payment of the balance of the purchase price by the time of the sale. However, the preceding sentence applies only if—

(A) The recipient uses plans with the same or substantially similar terms in the ordinary course of its trade or business in connection with retail sales to ultimate consumers; and

(B) The instrument is received more than 60 days prior to the date of the sale.

(vii) *Examples.*—The following examples illustrate the definition of "cash" set forth in paragraphs (c)(1)(ii) through (vi) of this section.

Example 1. D, an individual, purchases gold coins from M, a coin dealer, for $13,202. D tenders to M in payment United States currency in the amount of $6,200 and a cashier's check in the face amount of $7,000 which D had purchased. Because the sale is a designated reporting transaction, the cashier's check is treated as cash for purposes of section 6050I and this section. Therefore, because M has received more than $10,000 in cash with respect to the transaction, M must make the report required by section 6050I and this section.

Example 2. E, an individual, purchases an automobile from Q, an automobile dealer, for $11,500. E tenders to Q in payment United States currency in the amount of $2,000 and a cashier's check payable to E and Q in the amount of $9,500. The cashier's check constitutes the proceeds of a loan from the bank issuing the check. The origin of the proceeds is evident from provisions inserted by the bank on the check. The sale of the automobile is a designated reporting transaction. However, under paragraph (c)(1)(v) of this section, because E has furnished Q documentary information establishing that the cashier's check constitutes the proceeds of a loan from the the bank issuing the check, the cashier's check is not treated as cash pursuant to paragraph (c)(1)(ii)(B)(*1*) of this section.

Example 3. F, an individual, purchases an item of jewelry from S, a retail jeweler, for $12,000. F gives S a personal check payable to S in the amount of $2,400 and pays the balance with a cashier's check payable to S in the amount of $9,600. Because the sale is a designated reporting transaction, the cashier's check is treated as cash for purposes of section 6050I and this section. However, because the personal check is not treated as cash for purposes of section 6050I and this section, S has not received more than $10,000 in cash in the transaction and no report is required to be filed under section 6050I and this section.

Example 4. G, an individual, purchases a boat from T, a boat dealer, for $18,500. G pays T with a cashier's check payable to T in the amount of $16,500. The cashier's check is not treated as cash because the face amount of the check is more than $10,000. Thus, no report is required to be made by T under section 6050I and this section.

Example 5. H, an individual, arranges with W, a travel agent, for the chartering of a passenger aircraft to transport a group of individuals to a sports event in another city. H also arranges with W for hotel accommodations for the group, and for admission tickets to the sports event. In payment, H tenders to W money orders which H had previously purchased. The total amount of the money orders, none of which individually exceeds $10,000 in face amount, exceeds $10,000. Because the transaction is a designated reporting transaction, the money orders are treated as cash for purposes of section 6050I and this section. Therefore, because W has received more than $10,000 in cash with respect to the transaction, W must make the report required by section 6050I and this section.

(2) The term *consumer durable* means an item of tangible personal property of a type normally sold for personal consumption or use that can reasonably be expected to be useful for at least 1 year under ordinary usage and that has a sales price of more than $10,000. Thus, for example, a $20,000 automobile is a consumer durable, but a $20,000 factory machine is not.

(3) The term *collectible* means an item described in paragraphs (A) through (D) of section 408(m)(2) (determined without regard to section 408(m)(3)).

(4) The term *travel or entertainment activity* means an item of travel or entertainment (within the meaning of § 1.274–2(b)(1)) pertaining to a single trip or event where the aggregate sales price of the item and all other items pertaining to the same trip or event that are sold in the same transaction (or related transactions) exceeds $10,000.

(5) For purposes of paragraph (c)(1)(iii) of this section, the term *retail sale* means any sale made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers.

* * * * *

(g) *Cross-reference to penalty provisions*—(1) *Failure to file correct information return.* See section 6721 for civil penalties relating to the failure to file a correct return under section 6050I(a) and paragraph (a) of this section.

(2) *Failure to furnish correct statement.* See section 6722 for civil penalties relating to the failure to furnish a correct statement to identified persons under section 6050I(e) and paragraph (f) of this section.

(3) *Criminal penalities.* Any person who willfully fails to make a return or makes a false return under section 6050I and this section may be subject to criminal prosecution.

Par. 3. In paragraph (c)(7), as redesignated, of § 1.6050I–1, all references to paragraphs" (c)(3)(i)" and "(c)(3)(ii)" of § 6050I–1 are revised to read "(c)(7)(i)" and "(c)(7)(ii)" respectively.

Par. 4. In paragraph (c)(8), as redesignated, of § 1.6050I–1, all references to paragraphs "(c)(4)(i)" and "(c)(4)(ii)" of § 6050I–1 are revised to read "(c)(8)(i)" and "(c)(8)(ii)" respectively.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority for part 604 continues to read:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. In the table in § 602.101(c), the control number for § 1.6050I–1 continues to read: "1.6050–1 . . . 1545–0892."

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 91–11444 Filed 5–13–91; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300230; FRL–3885–3]

RIN 2070–AC18

Poly(Vinylpyrrolidone/1-Eicosene) and Poly(Vinylpyrrolidone/1-Hexadecene); Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that exemptions from the requirement of a tolerance be established for residues of the pesticide chemicals poly(vinylpyrrolidone/1-eicosene) (CAS Reg. No. 28211-18-9) when used as an inert ingredient (dispersing agent) and poly(vinylpyrrolidone/1-hexadecene) (CAS Reg. No. 63231-81-2) when used as an inert ingredient (dispersing agent) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest. These proposed regulations were requested by the GAF Chemicals Corp. (GAF).

DATES: Comments, identified by the document control number [OPP-300230], must be received on or before June 14, 1991.

ADDRESSES: By mail, submit comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed as confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry Leifer, Registration Support Branch, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 726, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-5180.

SUPPLEMENTARY INFORMATION: At the request of GAF Chemicals Corp., 1361 Alps Rd., Wayne, NJ 07470, the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, proposes to amend 40 CFR part 180 by establishing exemptions from the requirement of a tolerance for poly(vinylpyrrolidone/eicosene) (CAS Reg. No. 28211-18-9) when used as an inert ingredient (encapsulation resin) and poly(vinylpyrrolidone/1-hexadecene) (CAS Reg. No. 63231-81-2) when used as an inert ingredient (dispersing agent) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petitions and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the Federal Register of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of these data requirements may be granted if it can be determined that the inert ingredient will not present an unreasonable risk of injury to health or the environment. The Agency has decided that the data normally required to support the proposed tolerance exemptions for poly(vinylpyrrolidone/1-eicosene) and poly(vinylpyrrolidone/1-hexadecene) will not need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances which are defined as "polymers" the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) limit potential risks by identifying polymers that are relatively unreactive and stable compared to other chemical substances. In addition, these criteria identify polymers that typically are not readily adsorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will not present unreasonable risks to human health or the environment.

Poly(vinylpyrrolidone/1-eicosene) and poly(vinylpyrrolidone/1-hexadecene) conform to the definition of a polymer given in 40 CFR 723.250(b)(11) and meet the following criteria which are used to determine low-risk polymers:

1. The average molecular weight of poly(vinylpyrrolidone/1-eicosene) is 3,000. The average molecular weight of poly(vinylpyrrolidone/1-hexadecene) is 4,700. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular

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weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. Poly(vinylpyrrolidone/1-eicosene) and poly(vinylpyrrolidone/1-hexadecene) are not cationic polymers, nor are they reasonably anticipated to become cationic polymers in a natural aquatic environment.

3. Poly(vinylpyrrolidone/1-eicosene) and poly(vinylpyrrolidone/1-hexadecene) do not contain less than 32.0 percent by weight of the atomic element carbon.

4. Poly(vinylpyrrolidone/1-eicosene) and poly(vinylpyrrolidone/1-hexadecene) contain as an integral part of their composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. Poly(vinylpyrrolidone/1-eicosene) and poly(vinylpyrrolidone/1-hexadecene) do not contain as an integral part of their composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Poly(vinylpyrrolidone/1-eicosene) and poly(vinylpyrrolidone/1-hexadecene) are not biopolymers, synthetic equivalents of biopolymers, or derivatives or modifications of biopolymers that are substantially intact.

7. Poly(vinylpyrrolidone/1-eicosene) and poly(vinylpyrrolidone/1-hexadecene) are not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. Poly(vinylpyrrolidone/1-eicosene) and poly(vinylpyrrolidone/1-hexadecene) do not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction.

9. Poly(vinylpyrrolidone/1-eicosene) and poly(vinylpyrrolidone/1-hexadecene) are not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based upon the above information and a review of these chemical substances' uses, EPA has found that, when used in accordance with good agricultural practice, these ingredients are useful and do not pose a risk to human health or the environment. Therefore, it is proposed that the exemptions from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating the document control number, [OPP-300230]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: May 6, 1991.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, new § 180.1104 is added, to read as follows:

§ 180.1104 Poly(vinylpyrrolidone/1-eicosene); exemption from the requirement of a tolerance.

Poly(vinylpyrrolidone/1-eicosene) (CAS Reg No. 28211-18-9), minimum average molecular weight 3,000, is exempted from the requirement of a tolerance when used as an inert ingredient (dispersing agent) for pesticides applied to growing crops or to raw agricultural commodities after harvest. The inert shall not constitute more than 10 percent by weight of any pesticide formulation. Registration of each new pesticide formulation incorporating this dispersing agent must be supported by residue data for the active ingredient(s).

3. In subpart D, new § 180.1105 is added, to read as follows:

§ 180.1105 Poly(vinylpyrrolidone/1-hexadecene); exemption from the requirement of a tolerance.

Poly(vinylpyrrolidone/1-hexadecene) (CAS Reg. No. 63231-81-2), minimum average molecular weight 4,700, is exempted from the requirement of a tolerance when used as an inert ingredient (dispersing agent) for pesticides applied to growing crops or to raw agricultural commodities after harvest. The inert shall not consititute more than 5 percent by weight of any pesticide formulation. Registration of each new pesticide formulation incorporating this dispersing agent must be supported by residue data for the active ingredient(s).

[FR Doc. 91-11170 Filed 5-14-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

46 CFR Parts 515, 525, 530, 560 and 572

[Docket Nos. 90-6 and 91-20]

Notice of Inquiry—Marine Terminal Operator Regulations and Exemption of Certain Marine Terminal Services Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission discontinues Docket No. 90-6, Notice of Inquiry—Marine Terminal Regulations, and proposes to amend 46 CFR parts 515, 560 and 572 to conditionally exempt, pursuant to section 35 of the Shipping Act, 1916, and section 16 of the Shipping Act of 1984, certain marine terminal services arrangements from certain agreement filing requirements of the Shipping Act, 1916, the Shipping Act of 1984 and the Commission's implementing regulations thereunder, and to conditionally discontinue the Commission's tariff filing requirements for such matters.

DATES: Comments on or before July 15, 1991. Replies on or before August 13, 1991.

ADDRESSES: Send an original and fifteen copies of comments and replies to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Deputy Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION:

Background

The Shipping Act of 1984, 46 U.S.C. app. 1701-1720, ("1984 Act") and the Shipping Act, 1916, 46 U.S.C. app. 801, *et seq.*, ("1916 Act") (collectively, "Shipping Acts") govern the utilization of the marine terminal facilities and services that are provided in connection with oceanborne common carriage in U.S. foreign commerce (1984 Act) and certain oceanborne common carriage in the U.S. domestic offshore trades (1916 Act). The marine terminal operator ("MTO") is the entity which furnishes the marine terminal facilities and services which are subject to the Shipping Acts.[1] The Shipping Acts set forth standards governing activities among MTOs, between MTOs and common carriers, and between MTOs and shippers/consignees.[2] The Shipping Acts require certain classes of agreements involving MTOs to be filed with the Federal Maritime Commission ("Commission" or "FMC"),[3] and the Commission's regulations require MTOs to publish their rates, charges, rules and regulations in tarriffs filed with the Commission.[4]

In 1986, the Commission learned that through-put rates assessed by MTOs for combined terminal services/stevedoring services arrangements generally were not being filed with the Commission.[5] The emergence of this practice, and the uncertainty in certain sectors of the industry as to the filing requirements applicable to this practice, prompted the Commission to issue a limited Waiver of Penalties ("Waiver") in 1986, which continues in effect today.[6]

Following the publication of the Waiver, the Commission instituted Fact Finding Investigation No. 17, Rates, Charges and Services Provided at Marine Terminal Facilities ("FF-17") to examine practices in the MTO industry. Former Commissioner Moakley's August 31, 1988 Report of Fact Finding Officer ("Report") in FF-17 concluded that the Commission should either expand or contract its current MTO regulations to accommodate the practice of combining terminal services and stevedoring services under a single transaction.[7]

The Report proposed a restructuring of the Commission's regulations to base filing requirements upon the involved terminal's ownership/control/location characteristics (Recommendation No. 1 of the Report).[8] The Report envisioned an expansion of filing requirements for facility-owning/controlling MTOs ("FOMTOs") to include the stevedoring component of a combined services transaction; and discontinuing filing requirements for (1) non-facility-owning/controlling MTOs ("Non-FOMTOs") and (2) 'Off-pier", non-waterfront MTOs, irrespective of either the functions they perform or their ownership/control of the involved facilities.

The Inquiry

In order to narrow—to the extent practicable—the wide range of issues involved in implementing the Report's recommended restructuring of the Commission's MTO regulations, the Commission discontinued FF-17 and instituted Docket No. 90-6, Notice of Inquiry—Marine Terminal Regulations ("Inquiry").[9] The Inquiry solicited comment on:

(A) The restructurings evisioned under:

(1) The Report's recommendation;

(2) A "full filing exemption" alternative; [10]

(3) A "full disclosure" alternative; [11] and

(4) Any other alternatives that may be viable approaches.

(B) Filing requirements for tariffs reflecting Non-FOMTO conference activity;

(C) The treatment of Off-pier MTOs;

(D) Suggestions for updating the Commission's definitions of marine terminal facilities under 46 CFR part 515;

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[1] Sec. 3(15) of the 1984 Act, 46 U.S.C. app. 1702(15), defines an MTO as:

"* * * a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier."

MTOs are included in the definition of "other person" in sec. 1 of the 1916 Act, 45 U.S.C. app. 801. The term "other person" is defined in pertinent part as:

"* * * any person not included in the term common carrier by water, in interstate commerce, carrying on the business of * * * furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water in interstate commerce."

[2] See generally sections 6 and 10 of the 1984 Act, 46 U.S.C. app. 1705, 1709; sections 15, 16 First and 17 of the 1916 Act, 46 U.S.C. app. 814-816.

[3] See sections 4, 5 and 6 of the 1984 Act, 46 U.S.C. app. 1703-1705; section 15 of the 1916 Act, 46 U.S.C. app. 814. The Commission's implementing regulations are set forth in 46 CFR parts 572 (1984 Act) and 560 (1916 Act).

[4] See 46 CFR parts 515, 525 and 530.

[5] "Stevedoring" traditionally has been considered to be the business of hiring and furnishing longshore labor and related facilities and equipment for the transfer of cargo between a vessel and a "point of rest" on a marine terminal facility (the "point of rest" is the place at which inbound cargo is tendered for delivery to the consignee and outbound cargo is received from shippers for loading on a vessel). The status of stevedores is not specifically addressed under the Shipping Acts. Stevedores have not been held to be subject to the Commission's MTO filing requirements, provided that their services are limited to stevedoring and do not include either furnishing the terminal facilities upon which the stevedoring is performed, or furnishing terminal services involving the handling of cargo elsewhere than between the vessel and the "point of rest".

[6] June 25, 1986 Notice of Waiver of Penalties (51 FR 23154); October 15, 1986 Supplemental Notice of Waiver of Penalties (51 FR 36755); May 19, 1987 Second Supplemental Notice of Waiver of Penalties (52 FR 18744). The Waiver provides that the Commission will not assess penalties against those that fail to file agreements or tariffs setting forth rates and charges for terminal services performed for common carriers by water. The Commission intends to discontinue the Waiver if a final rule is issued in this proceeding.

[7] This was based on the finding that regulating only the "terminal" portion of combined services would not be a viable approach because regulation of one portion of the combined services would be meaningless if the other were to remain unregulated.

[8] The Report also recommended that the Commission reinforce its regulation of marine terminal conference/interconference and discussion agreements (Recommendation No. 2); authorize the staff to utilize FF-17's record for purposes of the Commission's 1989 Section 18 Report (Recommendation No. 3); and continue the Waiver until final disposition of the Report's recommendations (Recommendation No. 4). These latter three recommendations were adopted by the Commission at the time it instituted the Inquiry.

[9] The Inquiry was served February 12, 1990 (55 FR 5626 (February 16, 1990)); by order served March 13, 1990, the comment period was extended to May 17, 1990 (55 FR 10259 (March 20, 1990)); by order served May 11, 1990, the comment period was again extended to May 31, 1990 (55 FR 20462 (May 17, 1990)).

[10] This alternative would exempt *all* MTOs (FOMTOs as well as Non-FOMTOs/Off-pier MTOs) from *all* filing requirements for marine terminal facilities and marine terminal services, including the stevedoring services provided by MTOs under combined terminal services/stevedoring services arrangements.

[11] *I.e.*, complete disclosure of *all* MTO activities and practices subject to the Shipping Acts, including the stevedoring component of combined terminal services/stevedoring services arrangements. This alternative is the one most similar to current requirements. The Commission requested that comments on this alternative also address: (1) Handling such transactions on a simplified basis whereby disclosure could be accomplished through the tariff filing process, instead of the current agreement filing Federal Register notice process; and (2) permitting tariff deviations to accommodate particular single-event or short-term requirements of individual shippers/consignees, on condition that such deviations be referenced in the MTO's tariff (within 7-15 days of occurrence, for example) for the benefit of similarly-situated shippers/consignees.

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(E) The desirability of recodifying the Commission's MTO tariff and agreement rules under the same CFR part; and

(F) Suggestions and comment on any additional proposals or considerations which may aid the Commission in restructuring its MTO agreement and tariff rules.

Comments

The Inquiry elicited twenty-eight comments from a broad variety of port, private-sector MTO/stevedore and carrier interests.[12] Other than for general concurrence that (1) The Commission should update and recodify its MTO regulations; and (2) tariffs reflecting Non-FOMTO conference activity should continue to be filed as a necessary *quid pro quo* for antitrust immunity, no industry-wide consensus emerged on the Inquiry's issues. Positions within major sectors of the industry were often diametrically opposed on particular issues.

The exemption of terminal/stevedoring activity on the basis of facility ownership/control/location characteristics envisioned under the Report was supported by some private-sector MTO interests, but was opposed by most (but not all) ports. On the one hand, many private-sector MTOs support either this approach, or a total exemption of terminal services and stevedoring services arrangements from filing requirements (*i.e.*, the "full filing exemption").

On the other hand, many ports oppose the exemption of terminal/stevedoring activity on the basis of facility ownership/control/location characteristics. Several assert that an approach that would subject them to continued filing requirements, while relieving their private-sector competitors from filing, would place ports at a significant competitive disadvantage.

The "full filing exemption" alternative enjoyed even stronger private-sector MTO support, but was opposed by most (but not all) ports.

There was little support for the "full disclosure" alternative; however, the American Association of Port Authorities suggested a parallel approach. Private-sector MTOs argued adamantly against any approach that would result in the disclosure of their stevedoring activities and tended to favor a filing exemption for terminal services furnished to carriers.

Discussion

The Commission has carefully considered all of the comments received in response to the Inquiry. The wide divergence of views on the Inquiry's issues indicates that none of the alternatives represented would be fully responsive to all of the commenters' concerns. Nonetheless, the comments generally agree with the Report's conclusion that the Commission's rules should be restructured to address combined terminal services/stevedoring services arrangements, and the Commission has determined to proceed to that end.

1. The Proposed Rule

The rule proposed in this proceeding establishes a filing exemption modeled after the Waiver of Penalties. It also modifies Part 515 to remove the tariff filing requirement for terminal services provided directly to and paid for by common carriers.

A restructuring along the lines of the current Waiver was not proffered for comment in the Inquiry. However, the Commission considers it noteworthy that no substantive complaints of activity in violation of the Shipping Acts occurring under the cover of the Waiver have been filed during the period the Waiver has been in effect. Moreover, there have been no complaints that the Waiver has been operating in a manner unduly denying access to the regulatory process administered by the Commission.

Indeed, substantial competition appears to exist in the marine terminal industry. Because we have no indication that this competition is disruptive or destructive, we believe that it should not be discouraged. It appears that a restructuring of the Commission's filing requirements along the lines of the Waiver would accomplish that objective in a manner which both accommodates contemporary practices in the industry and represents a proper, equitable and workable balance between the concerns expressed by the commenters and the Commission's administration of its Shipping Act responsibilities.

This approach should impact all classes of MTOs uniformly. Additionally, it avoids an approach that could either be unduly burdensome in accommodating short-term operational requirements, or unnecessarily compromise *bona fide* commercially-sensitive trade information which may be included in the involved rates, charges and conditions of service. Finally, the conditions attached to the filing exemption should provide adequate assurance that activity occurring under the cover of the exemption will comply with substantive Shipping Act standards. In short, the Commission believes that this Proposed Rule represents an approach in keeping with the balance suggested by section 2(1) of the 1984 Act.[13]

Accordingly, this proposed rule essentially codifies the current Waiver in the form of a conditional exemption with respect to the agreement filing requirements of the Shipping Acts. It also eliminates the tariff filing requirements of part 515 with respect to MTO/carrier relationships. Both proposals are limited to transactions between MTOs and common carriers by water relating to marine terminal services (and the terminal facilities which may be furnished incidentally in connection with such services) which are provided directly to and are paid for by the involved carrier. Unlike the approach recommended in the Report, the involved terminal's ownership/control/location characteristics would have no bearing on determining filing requirements.

The proposed rule's exemption from filing does not apply to rates, charges, rules and regulations determined through marine terminal conference agreements as defined in 46 CFR 560.307(b) and 572.307(b) (this class of agreements has binding rate authority). However, the Commission also solicits comment on the following alternatives with regard to the exemption's treatment of rates, charges, rules and regulations collectively determined through conference, discussion or interconference agreements:

(a) Further limiting the exemption to also exclude rates, charges, rules and regulations determined through marine terminal discussion and interconference agreements as defined in 46 CFR 560.307 (c) and (d) and 572.307 (c) and (d), respectively. (these classes of agreements do not have binding rate authority); or

(b) Removing all limitations with regard to the exemption of collectively-determined rates, charges, rules and regulations.

The exemption is also limited by several conditions, which the Commission has determined to be necessary in order to meet the criteria set forth in its exemption authority under section 35 of the 1916 Act, 46 U.S.C. app. 833a, and section 16 of the 1984 Act, 46 U.S.C. app. 1715.[14] Thus, the exemption does not confer Shipping Act antitrust immunity to an exempted arrangement or activity.[15] Also, there are a number of agreements currently on file with the Commission that would be eligible for exemption under the proposed rule. In order to ensure that agreements which are on file with the Commission pursuant to the Shipping Acts accurately reflect the parties' present understanding, the exemption provided under the proposed rule does not extend to modifications of agreements which are on file with the Commission. Parties wishing to avail themselves of the exemption under the proposed rule with regard to modifications to agreements previously filed with the Commission could do so after formally withdrawing such agreements and any prior modifications.

With regard to the exemption from the Shipping Acts' agreement filing requirements, 46 CFR 560.301 and 572.301 already require exempted agreements to be retained by the parties and made available to the Commission's staff for inspection during the term of the agreement and for a period of three years after its termination. The proposed rule establishes a parallel requirement with regard to activity removed from the Commission's marine terminal tariff filing requirements under part 515.

It should be emphasized that the proposed rule only provides for relief from filing requirements. It does not grant an exemption from the substantive Prohibited Acts standards set forth under section 10 of the 1984 Act, 46 U.S.C. app. 1709; or from the so-called "general standard" under section 6(g) of the 1984 Act, 46 U.S.C. app. 1705; or from the counterparts to these standards under sections 15, 16 First and 17 of the 1916 Act, 46 U.S.C. app. 814–816.[16] Thus, the Commission will retain its authority to adjudicate formal complaints of Shipping Act violations with regard to activity occurring under an unfiled agreement or tariff.

It is also important to note that the exemption in this proposed rule does not extend to leases, licenses, assignments, permits or other arrangements of a similar nature between an MTO and a common carrier by water for the use of the marine terminal facilities upon which the exempted terminal services are conducted. Nor does the proposed rule extend to tariffs setting forth the rates, charges, rules and regulations governing the marine terminal facilities and services provided to shippers and consignees. MTOs must continue to file such tariffs with the Commission, as presently set forth in 46 CFR part 515.

2. An Alternative

The Commission is also inviting comments on an alternative to the proposal contained in the rule set forth in this proceeding ("Alternative Proposal"). The Alternative Proposal would provide an exemption from agreement filing on the condition that (1) the tariff of the involved MTO list (a) the cargo-handling services and related terminal facilities provided under the exempted arrangements and (b) the minimum/maximum range of rates and charges actually assessed for such services and facilities;[17] and (2) any changes in either of these elements be published in the MTOs' tariff and filed with the Commission no later than one week after the change's occurrence.

The proposed rule would not change current tariff filing requirements with regard to marine terminal facilities and services provided to shippers and consignees. However, the Alternative Proposal would authorize tariff deviations for terminal facilities and services that are provided directly to and are paid for directly by shippers and consignees, on condition that such deviations be published in the involved MTOs' tariff and filed with the Commission within one week of occurrence and made available to similarly-situated shippers/consignees.

The Commission invites comment on the Alternative Proposal and hereby gives notice that it may incorporate or substitute parts or all of its requirements in any final rule. However, if meritorious suggestions for an approach other than that reflected in the proposed rule or the Alternative Proposal are received, the Commission will afford an opportunity for comment thereon prior to adoption of such an approach.

3. Jurisdictional Basis for MTO Tariff Filing Requirements under the 1984 Act

In its comments on the Inquiry, the National Association of Stevedores ("NAS") asserts that the Commission may not have the same specific authorities under the 1984 Act that it held under the 1916 Act to require the filing of MTO tariffs. It states that the two statutory bases in the 1916 Act for the Commission's MTO tariff filing requirements, *i.e.*, sections 17 and 21, are not the same as their counterparts under the 1984 Act. Specifically, NAS notes that, unlike section 17 of the 1916 Act,[18] section 10(d)(1) of the 1984 Act[19] does not authorize the Commission to "determine, prescribe and order enforced" just and reasonable cargo-handling regulations and practices; and,

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[12] Comments were filed by the American Association of Port Authorities; the California Association of Port Authorities; the Foreign Shipowners Association of the Pacific Coast; International Transportation Service, Inc.; the Master Contracting Stevedore Association of the Pacific Coast, Inc.; the National Association of Stevedores; the Stevedore/Marine Terminal Operator Members of the New Orleans Steamship Association Marine Terminal Discussion Agreement; the Northwest Marine Terminal Association; Stevedoring Services of America; the Terminal Operators Conference of Hampton Roads; the West Gulf Maritime Association; the Alabama State Docks Department; the Port of Port Angeles; the Port of Beaumont; the Port of Bellingham; the Massachusetts Port Authority; the Port Authority of New York and New Jersey; the Port of Olympia; the Port of Palm Beach District; the Port of Portland, Oregon; the Port of Sacramento; the Port of Seattle; the Port of Stockton; the Port of Tacoma; the Tampa Port Authority; the Virginia Port Authority; American President Lines, Ltd. and Eagle Marine Services, Ltd.; and Sea-Land Service, Inc.

[13] Section 2(1) in pertinent part provides that the Act's purposes include establishing "* * * a nondiscriminatory regulatory process * * * with a minimum of government intervention and regulatory costs * * *."

[14] The Shipping Acts' exemption standards require the Commission to find that an exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition (1984 Act only), or be detrimental to commerce.

[15] Given the fact that the activity addressed by this proposed rule occurs exclusively within the United States, and in the absence of any compelling arguments to the contrary, the Commission believes that the removal of antitrust immunity appears to be appropriate under these circumstances. The legislative history of the 1984 Act indicates that a removal of antitrust immunity is among the conditions the Commission may impose on a section 16 exemption:

"* * * the Commission (may) impose conditions upon such an exemption, including the partial or total removal of antitrust immunity for agreements or conduct that might be exempted from filing requirements."

See *Cong. Rec.* H 6125 (October 6, 1983); H. Rept. 98–600, p. 42.

The Commission solicits comments on whether it should allow those desiring 1984 Act antitrust immunity for activity otherwise eligible for the filing exemption under the proposed rule to file under the waiting period exemption currently set forth at 46 CFR 572.307.

[16] In particular, it should be noted that the change made with regard to terminal tariff filing requirements under 46 CFR part 515 does not authorize the unilateral imposition by MTOs of exculpatory clauses of a nature prohibited by 46 CFR 515.7.

[17] The range of such rates and charges could be expressed as a lump-sum, throughput rate which includes all cargo-handling services, or the cargo-handling services could be individually broken out, at the option of the involved MTO. As noted at page 28 of the Report, a requirement to separate the terminal portion of a throughput charge from the stevedoring portion would likely produce "arbitrary, meaningless figures." The Alternative Proposal would not require the MTO's tariff to identify, on a carrier-by-carrier basis, the individual carrier being assessed a particular rate or charge.

[18] Section 17 of the 1916 Act, 46 U.S.C. app. 816, provides:

"Every person subject to this act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice."

[19] Section 10(d)(1) of the 1984 Act, 46 U.S.C. app. 1709, provides, in pertinent part:

"No * * * marine terminal operator may fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property."

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unlike section 21 of the 1916 Act,[20] section 15 of the 1984 Act does not authorize the Commission to require MTOs to "file with it * * * any periodical or special report or any account, rate, or charge, or any memorandum of any facts appertaining to" its business.[21]

Differences do exist between the provisions of the 1916 and 1984 Acts in the areas noted by NAS. The Commission does not believe, however, that these differences between the 1916 and 1984 Acts legally preclude the Commission from requiring the filing of MTO tariffs.

Although it would appear that the reporting requirements of section 15 of the 1984 Act may not directly apply to MTOs,[22] when the Commission adopted its tariff filing rules for MTOs in 1985, it relied upon both sections 17 and 21 of the 1916 Act. The 1916 Act section 17 requirement has been carried forward under section 10(d)(1) of the 1984 Act.[23] Moreover, section 17 of the 1984 Act authorizes the Commission to prescribe the rules and regulations necessary to carry out the 1984 Act.

Finally, a statement in the 1984 Act's Conference Report, House Report 98-600 (February 23, 1984), page 39, indicates that Congress believes that the 1984 Act authorizes the Commission to require MTOs to file tariffs:

> Pursuant to its responsibilities under the Shipping Act of 1916, the Federal Maritime Commission has, by regulation, required the filing of terminal tariffs by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities. (citation deleted) If the Commission continues this requirement, the conferees intend that forest products, bulk cargo, and recyclable metal scrap, waste paper, and paper waste not be included within the ambit of any such requirement. (Emphasis supplied)

Given the MTO standards entrusted to the Commission's administration, together with the Commission's general rulemaking authority, the Commission is of the opinion that it has authority under the 1984 Act to continue the MTO tariff-filing requirements established under the 1916 Act.

4. Updating the Commission's Definition of Marine Terminal Facilities under 46 CFR part 515

Several commenters recommend retention of the Commission's current definitions of terminal facilities. Others urge revising or updating these definitions.

"[P]ort terminal facilities" are defined under 46 CFR 515.6(b). The definitions under this heading have not been changed since the MTO tariff rules first became effective over twenty-five years ago. The industry has evolved considerably over this period with the advent of intermodalism. This evolution has resulted in an expansion of the facilities that can be conceptually considered to be "marine terminal facilities" for the purposes of the Shipping Acts, *e.g.*, off-pier marine terminals. This, together with the apparent industry support for such a clarification, indicates that these definitions could be updated to reflect contemporary operations to the extent practicable.[24]

The proposed rule does not set forth updated definitions for marine terminal facilities. However, in the interest of focusing comments on the merits of the exemption being proposed in this proceeding, the Commission intends to address the definitions in part 515 as necessary in a separate proceeding once the comments on the exemption proposed herein have been evaluated.

5. Recodification of MTO Tariff and Agreement Rules

There was general support in the comments filed in the *Inquiry* for updating and recodifying the Commission's MTO rules. Commission rules applicable to MTOs, which generally have been developed independently over the past twenty-five years, are distributed through five parts (parts 515, 525, 530, 560 and 572) located under three subchapters (subchapters B, C and D) of chapter IV of title 46 of the Code of Federal Regulations. Although the subject matter and requirements of many of these rules are often interdependent, their utility and comprehensibility may be impaired somewhat by the fact that cross-referencing is minimal.[25]

Therefore, recodification of MTO rules under the same CFR subchapter,[26] with clear statements of filing obligations and content requirements with regard to tariffs, practices and agreements, could significantly enhance the utility and effectiveness of the Commission's rules in this area. The Commission intends to proceed with such a recodification once the comments on the exemption in this proposed rule have been evaluated.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980, as amended. Public reporting burden for this collection of information is estimated to vary from one to three hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the colleciton of information. Send comments regarding the burden estimate to any other aspect of this collection of information, including suggestions for reducing this burden, to John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, Washington, DC 20503.

Interested parties are urged to take advantage of the opportunity to reply in the second round of comments. This will provide the Commission some industry input regarding suggestions made in the initial round, particularly on any comments addressing the alternative proposals set forth in the above Supplementary Information. Submissions for the second round shall be limited to replies to initial comments.

To facilitate the filing of reply comments, parties filing reply comments are required to serve a copy of their replies on all other commenters. The Secretary of the Commission will provide a service list for this purpose shortly after completion of the initial round of comments.

List of Subjects in 46 CFR Parts 515, 525, 530, 560 and 572

Antitrust, Contracts, Maritime carriers, Administrative practice and procedure, Rates and fares, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; sections 5, 16, and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1704, 1715 and 1716; and sections 15, 16, 17, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 814–816, 833a and 841a, the Commission proposes to amend parts 515, 560 and 572 of the Code of Federal Regulations as follows:

PART 515—[AMENDED]

1. The authority citation to part 515 is revised to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 816, 820, 833a, 841a, 1709, 1714, 1715 and 1716.

§ 515.3 [Amended]

2. Section 515.3 is amended to remove the phrase in the last sentence which reads "* * * for terminal services performed for water carriers pursuant to negotiated contracts, and * * *." and to redesignate the section as § 515.3(a).

3. Section 515.3 is amended by adding paragraphs (b) and (c) to read as follows:

* * * * *

(b) Rates, charges, rules and regulations governing terminal services provided directly to and paid for directly by common carriers by water need not be filed for the purposes of this part, provided that:

(1) Such rates, charges, rules and regulations are not determined through a marine terminal conference agreement, as defined in 46 CFR 560.307(b) and 572.307(b); and

(2) A certified true accounting of the rates, charges, rules and regulations (and any modification thereto) shall be furnished to the Director of the Commission Bureau responsible for terminal operations within 30 days of any written request by the Director.

(c) Rates, charges, rules and/or regulations which but for § 515.3(b) would be subject to the tariff-filing requirements of this part may not unilaterally impose exculpatory provisions of a nature prohibited by § 515.7.

PART 560—[AMENDED]

1. The authority citation to part 560 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841a.

2. A new § 560.308 is added to read as follows:

§ 560.308 Marine terminal services agreements—exemption.

(a) *Marine terminal services agreement* means an agreement, understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) between a marine terminal operator and a common carrier by water in interstate commerce that applies solely to marine terminal services as defined in 46 CFR 515.6 (including any marine terminal facilities which may be provided incidentally to such marine terminal services) that are provided directly to and paid for directly by a common carrier by water in interstate commerce. The term "marine terminal services agreement" does not include any agreement (or any modification to any agreement) previously filed with the Commission pursuant to the Shipping Act, 1916, unless said agreement, together with all previously-filed modifications, have been formally withdrawn.

(b) All marine terminal services agreements as defined in § 560.308(a) are exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, and part 560 of this chapter on condition that they do not include rates, charges, rules and regulations which are determined through a marine terminal conference agreement, as defined in 46 CFR 560.307(b).

PART 572—[AMENDED]

1. The authority citation to part 572 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

2. A new § 572.310 is added to read as follows:

§ 572.310 Marine terminal services agreements—exemption.

(a) *Marine terminal services agreement* means an agreement, understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) between a marine terminal operator and an ocean carrier that applies solely to marine terminal services as defined in 46 CFR 515.6 (including any marine terminal facilities which may be provided incidentally to such marine terminal services) that are provided directly to and paid for directly by an ocean common carrier. The term "marine terminal services agreement" does not include any agreement (or any modification to any agreement) previously filed with the Commission pursuant to the Shipping Act of 1984, unless said agreement, together with all previously-filed modifications, have been formally withdrawn.

(b) All marine terminal services agreements as defined in § 572.310(a) are exempt from the filing and waiting period requirements of sections 5 and 6 of the Shipping Actof 1984 and part 572 of this chapter, on condition that:

(1) They do not include rates, charges, rules and regulations which are determined through a marine terminal conference agreement, as defined in 46 CFR 572.307(b); and

(2) No antitrust immunity is conferred pursuant to section 7 of the Shipping Act

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[20] Section 21 of the 1916 Act, 46 U.S.C. app. 820, provides in pertinent part:

"* * * the Federal Maritime Commission * * * may require any * * * other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it * * * any periodical or special report or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such * * * other person subject to this Act."

[21] Section 15 of the 1984 Act, 46 U.S.C. app. 1714, provides, in pertinent part:

"The Commission may require any common carrier, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report or any account, record, rate, or charge, or memorandum of any facts and transactions appertaining to the business of that common carrier."

[22] However, section 15(a) of the 1984 Act could be interpreted to extend indirectly to MTOs to the extent that they can be considered to be "agents" of a common carrier in enabling the carrier to fulfill its common carriage obligations with regard to receiving cargo from shippers and tendering cargo for delivery to consignees.

[23] Therefore we do not necessarily concede NAS' assertion regarding the legal limits to the Commission's authority of section 10(d)(1) of the 1984 Act.

[24] The Port of Portland, Oregon, suggests that the Commission form a committee representing various ports and other MTOs from all port ranges to suggest definitions more in keeping with current common usage (Portland Comments, page 6). The American Association of Port Authorities ("AAPA") suggests that the Commission may want to consider a separate effort, through a task force or study group (involving the industry to whatever extent appropriate), to examine and revise the definitions contained in its regulations (AAPA Comments, page 9). Any Commission-sponsored group might involve the procedural requirements of the Federal Advisory Committee Act. The Commission does not, at least at the present time, intend to establish such a group.

[25] For example, the uncertainty which led to the Waiver, FF-17, the Report and the Inquiry may be at least partially attributable to the statement in 46 CFR 515.3 that rates and charges for terminal services performed for water carriers pursuant to negotiated contracts need not be filed in MTO tariffs. Although the Commission has interpreted 46 CFR 560.301 (1916 Act) and 572.306(b) (1984 Act) to require such negotiated contracts to be filed with the Commission as agreements if they are not set forth in a tariff, the language of the existing MTO rules is not as clear as it might be on this point.

[26] Further analysis of the recodification issue indicates that it may be preferable, for the purposes of CFR indexing, organization and overall utility to the industry, to recodify under a single CFR subchapter rather than under a single CFR part, as originally suggested.

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of 1984, 46 U.S.C. app. 1708, with regard to terminal services provided to a common carrier by water under a marine terminal services agreement which is not filed with the Commission pursuant to the exemption provided by § 572.316(b).

It is Ordered, That Docket No. 90-6, *Notice of Inquiry—Marine Terminal Regulations*, is hereby discontinued.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-11300 Filed 5-14-91; 8:45 am]

BILLING CODE 6730-01-M

Notices

Federal Register

Vol. 56, No. 94

Wednesday, May 15, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-030]

Pseudorabies in Swine; Approved Testing Laboratories

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are listing laboratories approved to perform the OmniMark PRV-Pseudorabies Virus gpIII test, an approved differential pseudorabies test.

FOR FURTHER INFORMATION CONTACT: Dr. W.C. Stewart, Chief Staff Veterinarian, Swine Diseases Staff, VS, APHIS, USDA, room 735, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7767.

SUPPLEMENTARY INFORMATION: The regulations governing the interstate movement of swine because of pseudorabies (9 CFR part 85) were revised by a final rule published in the **Federal Register** on May 9, 1990 (55 FR 19245-19253, Docket No. 89-211). The final rule provided provisions for using approved differential pseudorabies tests for determining the disease status of herds of swine. The revised regulations state that approved differential pseudorabies tests may be conducted only in laboratories approved by the Administrator. The revised regulations further state that laboratories approved to conduct these tests will be listed in a notice published in the **Federal Register**.

Accordingly, we are listing laboratories approved to perform the OmniMark PRV-Pseudorabies Virus gpIII test, an approved differential pseudorabies test. The following laboratories were approved, as of January 22, 1991, to perform this test:

Veterinary Diagnostic and Investigational Laboratory; Tifton, Georgia.

Animal Disease Laboratory; Galesburg, Illinois.

Animal Disease Diagnostic Laboratory; West Lafayette, Indiana.

Veterinary Diagnostic Laboratory; Ames, Iowa.

Veterinary Diagnostic Center; Lincoln, Nebraska.

Texas A&M Veterinary Diagnostic Laboratory; Amarillo, Texas.

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123-126, 134b, 134f, 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 9th day of May 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-11514 Filed 5-14-91; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Eastern Region; Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York, West Virginia, and Wisconsin; Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Eastern region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 217.5, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for purposes of publishing legal notices of decision subject to appeal under 36 CFR part 217 shall begin May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Joni Sue Hanson, Regional Appeals Coordinator, Eastern Region, Reuss Federal Plaza, 310 West Wisconsin, Avenue, Milwaukee, Wisconsin 53203, Area Code 414-297-3661.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Eastern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. As provided in 36 CFR 217.5(d), the timeframe for appeal shall be based on the date of publication of a notice of decision in the primary newspaper.

Decisions by the Regional Forest

Milwaukee Journal, published daily in Milwaukee, Milwaukee County, Wisconsin, for decisions affecting National Forest System lands in the States of Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York, West Virginia, Wisconsin and for any decision of Region-wide impact.

Allegheny National Forest, Pennsylvania

Forest Supervisor Decisions

Warren Times Observer, Warren, Warren County, Pennsylvania.

District Rangers Decisions

Sheffield District: Warren Times Observer, Warren, Warren County, Pennsylvania.

Bradford District: Bradford Era, Bradford, McKean County, Pennsylvania.

Marienville District: Warren Times Observer, Warren, Warren County, Pennsylvania.

Oil City Derrick, Oil City, Venango County, Pennsylvania.

Ridgway District: Ridgway Record, Ridgway, Elk County, Pennsylvania.

Chequamegon National Forest, Wisconsin

Forest Supervisor Decisions

Milwaukee Sentinel, published daily in Milwaukee, Milwaukee County, Wisconsin.

District Rangers Decisions

Park Falls District: Park Falls Herald, published weekly in Park Falls, Price County, Wisconsin.

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Glidden District: Glidden Enterprise, published weekly in Glidden, Ashland County, Wisconsin.

Washburn District: The Daily Press, published daily in Ashland, Ashland County, Wisconsin.

Hayward District: Sawyer County Record, published weekly in Hayward, Sawyer, County, Wisconsin.

Medford District: The Star News, published weekly in Medford, Taylor County, Wisconsin.

Chippewa National Forest, Minnesota

Forest Supervisor Decisions

Bemidji Pioneer, published daily in Bemidji, Beltrami County, Minnesota.

District Ranger Decisions

Blackduck District: Blackduck American, published weekly in Blackduck, Beltrami County, Minnesota.

Cass Lake District: Cass Lake Times, published weekly in Cass Lake, Cass County, Minnesota.

Deer River District: Western Itasca Review, published weekly in Deer River, Itasca County, Minnesota.

Marcell District: Western Itasca Review, published weekly in Deer River, Itasca County, Minnesota.

Walker District: Walker Pilot Independent, published weekly in Walker, Cass County, Minnesota.

Green Mountain National Forest, Vermont

Forest Supervisor Decisions

Rutland Herald, published daily in Rutland, Rutland County, Vermont.

District Rangers Decisions

Manchester District: Rutland Herald, published daily in Rutland, Rutland County, Vermont.

Bennington Banner, published daily in Bennington, Bennington County, Vermont.

Brattleboro Reformer, published daily in Brattleboro, Windham County, Vermont.

Rochester District: Rutland Herald, published daily in Rutland, Rutland County, Vermont.

Burlington Free Press, published daily in Burlington, Chittenden County, Vermont.

Middlebury District: Rutland Herald, published daily in Rutland, Rutland County Vermont.

Addison County Independent, published twice a week in Middlebury, Addison County, Vermont.

Finger Lakes National Forest, New York

Forest Supervisors & District Rangers (Hector District) Decisions

Ithaca Journal, published daily in Ithaca, Tempkins County, New York.

Hiawatha National Forest, Michigan

Forest Supervisor Decisions

Daily Press, published daily in Escanaba, Delta County, Michigan.

Mining Journal, published daily in Munising, Alger County, Michigan.

Munising News, published weekly in Munising, Alger County, Michigan.

Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan.

St. Ignace News, published weekly in St. Ignace, Mackinac County, Michigan.

District Rangers Decisions

Rapid River: Daily Press, published daily in Escanaba, Delta County, Michigan.

Manistique: Daily Press, published daily in Escanaba, Delta County, Michigan.

Munising: Mining Journal, published daily in Munising, Alger County, Michigan.

Munising News, published weekly in Munising, Alger County, Michigan.

Sault Ste. Marie: Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan.

St. Ignace: Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan.

St. Ignace News, published weekly in St. Ignace, Mackinac County, Michigan.

Huron-Manistee National Forests, Michigan

Forest Supervisor Decisions

Cadillac Evening News, published daily in Cadillac, Wexford County, Michigan.

District Rangers Decisions

Baldwin District: Lake County Star, published weekly in Baldwin, Lake County, Michigan.

Ludington Daily News, published daily in Ludington, Mason County, Michigan.

Cadillac District: Cadillac Evening News, published daily in Cadillac, Wexford County, Michigan.

Manistee News Advocate, published daily in Manistee, Manistee County, Michigan.

Lake County Star, published weekly in Baldwin, Lake County, Michigan.

Harrisville District: Alcona County Review, published weekly in Harrisville, Alcona County, Michigan.

Manistee District: Manistee News Advocate, published daily in Manistee, Manistee County, Michigan.

Mio District: Oscoda County Herald, published weekly in Mio, Oscoda County, Michigan.

Crawford County Avalanche, published weekly in Grayling, Crawford County, Michigan.

Tawas District: Iosco County News Herald, published weekly in East Tawas, Iosco County, Michigan.

White Cloud District: Fremont Times-Indicator, published weekly in Fremont, Newaygo County, Michigan.

Muskegon Chronicle, published daily in Muskegon, Muskegon County, Michigan.

Grand Rapids Press, published daily in Grand Rapids, Kent County, Michigan.

Big Rapids Pioneer, published daily in Big Rapids, Mecosta County, Michigan.

Mark Twain National Forest, Missouri

Forest Supervisor Decisions

Rolla Daily News, published in Rolla, Phelps County, Missouri.

District Ranger Decisions

Ava/Cassville District: Springfield News Leader, published daily in Springfield, Greene County, Missouri.

Cedar Creek District: Fulton Sun, published daily in Fulton, Callaway County, Missouri.

Doniphan District: Prospect News, published weekly in Doniphan, Ripley County, Missouri.

Eleven Point District: Current Wave, published weekly in Eminence, Shannon County, Missouri.

Rolla District: Rolla Daily News, published daily in Rolla, Phelps County, Missouri.

Houston District: Houston Herald, published weekly (Thursdays) in Houston, Texas County, Missouri.

Poplar Bluff District: Daily American Republic, published daily in Poplar Bluff, Butler County, Missouri.

Potosi District: The Independent-Journal, published Thursday in Potosi, Washington County, Missouri.

Fredericktown Ranger District: The Democrat-News Published Thursdays in Fredericktown, Madison County, Missouri.

Salem District: The Salem News, published Tuesday and Thursday in Salem, Dent County, Missouri.

Willow Springs District: West Plains Daily Quill, published daily in West Plains, Howell County, Missouri.

Monongahela National Forest, West Virginia

Forest Supervisor Decisions

The Intermountain, published daily in Elkins, Randolph County, West Virginia.

District Ranger Decisions

Cheat District: The Parsons Advocate, published weekly in Parsons, Tucker County, West Virginia.

Gauley District: The News Leader, published weekly in Richwood, Nicholas County, West Virginia.

Greenbrier District: The Pocahontas Times, published weekly in Marlinton, Pocahontas County, West Virginia.

Marlinton District: The Pocahontas Times, published weekly in Marlinton, Pocahontas County, West Virginia.

Potomac District: The Grant County Press, published weekly in Petersburg, Grant County, West Virginia.

White Sulphur Springs District: The Register/Herald, published daily in Beckley, Raleigh County, West Virginia.

Nicolet National Feeest, Wisconsin

Forest Supervisor Decisions

Rhinelander Daily News published daily Sunday through Friday in Rhinelander, Onieda County, Wisconsin.

District Ranger Decisions

Eagle River District, Florence District, Lakewood District, and Laona District: Rhinelander Daily News published daily Sunday through Friday in Rhinelander, Onieda County, Wisconsin.

Ottawa National Forest, Michigan

Forest Supervisor Decisions

Ironwood Daily Globe, published in Ironwood, Gogebic County, Michigan.

District Ranger Decisions

Bergland District, Bessemer District, Iron River District, Kenton District, Ontonagon District, and Watersmeet District.

Ironwood Daily Globe, published in Ironwood, Gogebic County, Michigan.

Shawnee National Forest, Illinois

Forest Supervisor Decisions

Southern Illinoisian, published daily in Carbondale, Jackson County, Illinois.

District Ranger Decisions

Elizabethtown District, Jonesboro District, Murphysboro District, and Vienna District: Southern Illinoisian, published daily in Carbondale, Jackson County, Illinois.

Superior National Forest, Minnesota

Forest Supervisor Decisions

Duluth News-Tribune, published daily in Duluth, St. Louis County, Minnesota.

District Rangers Decisions

Gunflint Ranger District: Cook County News-Herald, published weekly in Grand Marias, Cook County, Minnesota.

Kawishiwi Ranger District: Ely Echo, published weekly in Ely, St. Louis County, Minnesota.

LaCroix Ranger District: Mesabi Daily News, published daily in Virginia, St. Louis County, Minnesota.

Laurentian Ranger District: Mesabi Daily News, published daily in Virginia, St. Louis County, Minnesota; and Lake County News-Chronicle, published weekly in Two Harbors, Lake County, Minnesota.

Tofte Ranger District: Duluth News-Tribune published daily in Duluth, St. Louis County, Minnesota.

Hoosier National Forest, Indiana

Forest Supervisor Decisions

Sunday Herald Times, published in Bloomington, Monroe County, Indiana.

District Ranger Decisions

Brownstown District: Sunday Herald Times, published in Bloomington, Monroe County, Indiana.

Tell City District: The News, published in Tell City, Perry County, Indiana.

Wayne National Forest, Ohio

Forest Supervisor Decisions

The Athens Messenger, published in Athens, Athens County, Ohio.

District Ranger Decisions

Athens District: The Athens Messenger, published in Athens, Athens County, Ohio.

Ironton District: The Ironton Tribute, published in Ironton, Lawrence County, Ohio.

White Mountain National Forest, New Hampshire and Maine

Forest Supervisor Decisions.

The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

District Ranger Decisions

Ammonoosuc Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Androscoggin Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Evans Notch Ranger District: The Lewiston Sun, published daily in Lewiston, County of Androscoggin, Maine.

Pemigewasset Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Saco Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Dated: May 9, 1991.

Floyd J. Marita,

Regional Forester.

[FR Doc. 91-11468 Filed 5-14-91; 8:45 am]

BILLING CODE 3410-11-M

Transfer of Administrative Jurisdiction; Lake Isabella and Pine Flat Lake Projects, California

AGENCY: Forest Service, USDA.

ACTION: Notice of joint interchange of lands.

SUMMARY: On March 29, 1991, and March 8, 1991, the Secretary of the Army and the Acting Secretary of Agriculture respectively signed a joint interchange order agreeing to the transfer of administrative jurisdiction of 2,353 acres, more or less, from the Department of Agriculture to the Department of the Army lying within the Sierra and Sequoia National Forests in Fresno County, California, and 14,313 acres, more or less, from the Department of the Army to the Department of Agriculture adjacent to the exterior boundaries of the Sequoia National Forest, Kern County, California. The 45-day Congressional oversight requirement of the Act of July 26, 1956 (70 Stat. 656, 16 U.S.C. 505a, 505b) has been met. A copy of the Joint Order, as signed, appears at the end of this notice.

EFFECTIVE DATE: The order is effective May 15, 1991.

FOR FURTHER INFORMATION CONTACT: David M. Sherman, Lands Staff, 4 South, Forest Service, USDA, P.O. Box. 96090, Washington, DC 20250, Telephone: (202) 453-9262.

Dated: May 8, 1991.

James C. Overbay,

Deputy Chief.

Isabella Lake, California; Joint Order Interchanging Administrative Jurisdiction of Department of the Army, Lands and National Forest Lands

By virtue of the authority vested in the Secretary of the Army and in the Secretary of Agriculture by Public Law 804 dated July 26, 1956 (70 Stat. 656; 16

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U.S.C. 505a, 505b), it is ordered as follows:

(1) The lands under the jurisdiction of the Department of the Army described in Exhibit A-1 attached hereto and made a part hereof, which lands are adjacent to the exterior boundaries of the Sequoia National Forest, California, are hereby transferred from the Secretary of the Army to the Secretary of Agriculture, subject to outstanding rights or interests of record as to such continued use by the Corps of Engineers as is necessary for the construction, protection, and unrestricted operation, maintenance, and administration of the water storage and flood control facilities and functions of Isabella Lake.

(2) The jurisdiction now held by the Secretary of Agriculture over the National Forest lands described in Exhibit B-1, attached hereto and made a part hereof, which are a part of the Sequoia and Sierra National Forests, California, is hereby transferred from the Secretary of Agriculture to the Secretary of the Army.

(3) Pursuant to section 2 of the aforesaid Act of July 26, 1956, the National Forest lands transferred to the Secretary of the Army by this order are hereafter subject only to the laws applicable to the Department of the Army lands comprising the Pine Flat Lake Project, California. The Department of the Army lands transferred to the Secretary of Agriculture by this order are hereby subject to the laws applicable to lands acquired under the Act of March 1, 1911 (36 Stat. 961), as amended. Pursuant to authority contained in section 11 of the Act of March 1, 1911, the Secretary of Agriculture hereby orders that those lands transferred to the Secretary of Agriculture shall be administered as a part and within an extended boundary of the Sequoia National Forest, California.

This order will be effective as of date of publication in the **Federal Register**.

Dated: March 28, 1991.

M.P.W. Stone,

Secretary of the Army.

Dated: March 8, 1991.

Jack C. Parnell,

Acting Secretary.

Exhibit A-1—Lands Under Control of U.S. Army Corps of Engineers to be Transferred to the U.S. Forest Service to Become National Forest System Lands; Lake Isabella

Withdrawn Public Domain Lands under COE control Mount Diablo Meridian, Kern County, California

T. 25, S., R. 33 E.
Section 29—Lot 21;
Section 33—SE¼SW¼, Lot 5, Excepting Therefrom all lands north of the southerly right-of-way of Burlando Road;
Section 34—E½SE¼.

T. 26, S., R. 32 E.
Section 24—Lot 4, Lot 5, Lot 10, Excepting Therefrom the SE¼ of said Lot 10.

T. 26, S., R. 33 E.
Section 3—Lot 1, S½NE¼, SW¼NW¼ NE¼, SW¼, Excepting Therefrom all lands east of the westerly right-of-way of Sierra Road, SE¼NW¼;
Section 4—Lot 2, Lot 3, NE¼SW¼NE¼, W½SW¼NE¼, S½NE¼SE¼, S½SE¼, SE¼NW¼SE¼, W½NE¼SW¼;
Section 5—NE¼SE¼, Lot 3;
Section 7—SE¼SE¼, Excepting Therefrom all lands north of the southerly right-of-way of Burlando Road;
Section 8—E½SW¼, SW¼SW¼;
Section 9—NE¼, W½SE¼, NW¼NW¼;
Section 10—NE¼SE¼, N½NW¼SE¼, N½NW¼, N½SE¼NW¼, SW¼NW¼, Excepting Therefrom all lands north and east of the southerly and westerly right-of-way of Sierra road;
Section 11—N½S½, Excepting Therefrom all lands north of the southerly right-of-way of Sierra Road;
Section 17—SE¼, W½SW¼, NW¼;
Section 18—E½E½, W½SE¼, SW¼NE¼, Lot 12;
Section 19—E½NW¼, Lot 1, Lot 2;
Section 20—Lot 1, Lot 2, Lot 5, Lot 6;
Section 21—Lot 1, Lot 2, Lot 3;
Section 25—NE¼NW¼;
Section 29—Portion of E½NW¼ Subject to COE Land Survey;
Section 30—Portion of Lot 1 & 2 Subject to COE Land Survey;

T. 26, S., R. 34 E.
Section 20—SE¼NE¼, Excepting Therefrom all lands south of the northerly right-of-way of Highway #178.

Withdrawn public domain lands transferred to the FS: 2,675 acres more or less.

Lands acquired in the name of the United States of America by the U.S. Army Corps of Engineers and identified in the Isabella Lake Project Tract Register by Tract Number and Landowners' Name (Grantors). These tracts, described in acquisition documents recorded in the official records of the County of Kern, State of California and the land title records of the COE, are located in the following described sections:

Mouth Diablo Meridian, Kern County, California

T. 25, S., R. 33 E.
Sections 22, 27, 28, and 32 thru 34;

T. 26 S., R. 33 E.
Sections 3 thru 5, 8 thru 17, 19 thru 27, and 30;

T. 26 S., R. 34 E.
Sections 7, 10, and 15 thru 22.

All fee lands or interest in fee lands as described above are to be transferred to the U.S. Forest Service to become National Forest System lands except those portions of Tracts underlying the Isabella Main Dam and Auxiliary Dam located in sections 19, 29 & 30, T. 26 S., R. 33 E., MDM. These excepted lands to be delineated and describe by COE land survey subsequent to this interchange order.

Acquired fee lands transferred to the FS: 11,638 acres more or less.

Total Lake Isabella lands transferred to the FS: 14,313 acres more or less.

Exhibit B-1—National Forest Lands to be Transferred to U.S. Army Corps of Engineers (COE); Pine Flat Lake

T. 12 S., R. 24 E., Mount Diablo Meridian, Fresno County, California
Section 12—SE¼SE¼;
Section 13—E½NE¼, NE¼SE¼;
Section 24—NW¼SE¼, NE¼SW¼, SW¼ SW¼, NW¼SW¼;
Section 25—SW¼NE¼, SE¼NE¼.

T. 12 S., R25 E., Mount Diablo Meridian, Fresno County, California
Section 4—SE¼NE¼, E½SE¼, SW¼ SW¼;
Section 5—S½SE¼NE¼, NE¼SE¼, N½ SE¼SE¼, SE¼SE¼SE¼, NE¼SW¼ SE¼, NE¼NE¼SW¼, SE¼SE¼SW¼, W½SE¼SW¼, SW¼SW¼, NW¼ SW¼, N½SE¼NW¼, SE¼SE¼NW¼, SW¼SW¼NW¼, N½ of Lot 4, SE¼ of Lot 4;
Section 6—NE¼ of Lot 1, SE¼NE¼, NE¼ SE¼;
Section 7—SE¼NE¼, NW¼NE¼, NE¼ SE¼;
Section 8—E½NE¼NE¼, W½NW¼NE¼, E½SE¼, NW¼SW¼, E½NW¼, SW¼ NW¼;
Section 9—E½NE¼, SW¼SE¼, SE¼ SW¼, W½SW¼, W½NW¼;
Section 16—SW¼SW¼;
Section 19—SE¼E½SW¼, Lots 1 thru 4 inclusive;
Section 20—W½NE¼SW¼, SE¼SW¼, W½SW¼;
Section 29—NW¼NW¼;
Section 30—NE¼NE¼, Lot 3.

Acreage transferred to the COE: 2,353.47 acres more or less.

[FR Doc. 91-11441 Filed 5-14-91; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below were stockyards as defined by section 302(a). Notice was given to the stockyard owners and to the public as required by section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards were subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C 181 *et seq.*).

	Facility No., name, and location of stockyard	Date of Posting
AR-165	Beebe Livestock Exchange, Beebe, Arkansas.	April 1, 1991.
AR-166	Benton County Sale Barn, Siloam Springs, Arkansas.	April 1, 1991.
TN-187	Brownsville Feeder Sale Association, Inc., Brownsville, Tennessee.	April 12, 1991.

Done at Washington, DC, this 9th day of May, 1991.

Harold W. Davis,

Director, Livestock Marketing Division Packers and Stockyards Administration.

[FR Doc. 91-11516 Filed 5-14-91; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 25-91]

Foreign-Trade Zone 125, South Bend, IN; Request for Manufacturing Vehicle Concepts Recreational Vehicle Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the St. Joseph County Airport Authority, grantee of FTZ 125, on behalf of Vehicle Concepts (a Division of Monaco Coach Corporation), requesting authority to manufacture recreational vehicles and ambulances under zone procedures within FTZ 125, South Bend, Indiana. It was filed on April 26, 1991.

The new Vehicle Concepts plant (10,000 sq. ft.) is located at 4477 Terminal Drive, within FTZ 125 at the St. Joseph County Airport Complex in South Bend. The facility would be used to assemble micro-mini RVs (<6,000-lb. GVW) and ambulances. The vehicle would be built on a foreign-sourced light pick-up truck cab/chassis. All other components and materials would involve domestic or duty-paid merchandise.

Zone procedures would exempt Vehicle Concepts from Customs duty payments on the foreign pick-up truck cab/chassis used in vehicles produced for export. On its domestic sales, the company would be able to choose the lower finished vehicle duty rate (2.5 percent) rather than the pick-up truck cab/chassis rate (25 percent). The applicant indicates that authority to use zone procedures would help Vehicle Concepts improve its international competitiveness and increase export sales. Two other domestic RV plants currently operate under zone procedures: The Forest City, Iowa, facility of Winnebago, Industries, Inc. (FTZ Subzone 107A, Board Order 273, 49 Fr 35971, 9/13/84); and, the Perris, California, facility of National RV (FTZ Subzone 50C, Board Order 484, 55 FR 35159, 8/28/90).

Comments concerning the application are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before June 28, 1991.

A copy of the application is available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, Mid-Continental Plaza Bldg., Rm. 1406, 55 E. Monore St., Chicago, Illinois 60603.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Room 3716, Washington, DC 20230.

Dated: May 9, 1991.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91-11551 Filed 5-14-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-549-401]

Certain Apparel From Thailand; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on certain apparel from Thailand.

EFFECTIVE DATE: May 15, 1991.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On March 1, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 8743) its intent to revoke the countervailing duty order on certain apparel from Thailand (48 FR 9818; March 12, 1983).

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for the last four consecutive annual anniversary months.

On March 7, 1991, the petitioner, the Amalgamated Clothing and Textile Workers Union, objected to our intent to revoke the order. Therefore, we no longer intend to revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: May 8, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-11552 Filed 5-14-91; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 90-183. *Applicant:* National Institute of Standards and Technology, Gaithersburg, MD 20899. *Instrument:* Electron Probe X-ray Microanalyzer, Model JXA-8600/3. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 55 FR 42821, October 22, 1990. *Reasons:* The foreign instrument provides: (1) EDS/WDS line or area capability, (2) a probe current range from 1.0pA to 10.0pA and 5nm secondary electron spot size. *Advice Submitted by:* National Institutes of Health, February 21, 1991.

Docket Number: 91-005. *Applicant:* Oregon State University, Corvallis, OR 97331-2302. *Instrument:* Asphalt Concrete Pavement Tester with Accessories. *Manufacturer:* MAP, France. *Intended Use:* See notice at 56

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FR 4072, February 7, 1991. Reason: The foreign instrument closely simulates the phenomenon of rutting (permanent deformation due to traffic loading and other environmental factors) in asphaltic concrete materials used in highway research. *Advice Received from:* Federal Highway Administration, March 19, 1991.

The National Institutes of Health and the Federal Highway Administration advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,
Director, Statutory Import Programs Staff.

[FR Doc. 91-11548 Filed 5-14-91; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 910508-1108]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice: New Accreditation Program for Electric Lighting Products.

SUMMARY: (1) The Director of the National Institute of Standards and Technology (NIST) has approved development of the program "Accreditation for Testing Energy Efficient Electric Lighting Products Performance" (but not safety) requested in a letter dated November 27, 1990, from the National Electrical Manufacturers Association (NEMA), Washington, DC. The decision of the Director was based upon the comments submitted in response to the Federal Register (FR) announcement of the NEMA request, dated January 25, 1991, issued in accordance with procedures of the National Voluntary Accreditation Program (NVLAP) (15 CFR part 7.11(d)). All interested persons (including those who submitted comments) are hereby notified by copy of this FR notice of the NIST decision.

(2) A listing of standard test methods and related performance standards to be considered in the accreditation program is provided for information and comment. The standards are organized into categories representing various industries in the lighting products field. These categories, which define the scope of accreditation, can be expanded to meet additional accreditation requirements.

ADDRESSES: Persons desiring to submit comments regarding the test methods and standards listed for inclusion in the accreditation program, or to add additional protocols for the program, are invited to provide their information in writing to Nancy M. Trahey, Chief, Laboratory Accreditation Program, National Institute of Standards and Technology, Building 411 A124, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Lawrence Galowin, Senior Program Manager, NVLAP, National Institute of Standards and Technology, Building 411 A124, Gaithersburg, MD 20899; phone (301) 975-4010.

SUPPLEMENTARY INFORMATION:

Scope of Laboratory Accreditation

The standard test methods and related performance standards listed below are based upon the information submitted by NEMA. Organized by categories, this listing is subject to revision. Input on all technical aspects of the program are solicited from technical experts and other interested parties.

Ballast Industry

1. Electrical Performance (per ANSI)
2. Harmonics
3. Life Testing
4. Lamp Compatibility

Standards

Notation: ANSI designates the American National Standards Institute.

ANSI–C82.1–85 Specifications for fluorescent lamp ballasts
ANSI–C82.2–69 Methods of measurement of fluorescent lamps ballasts
ANSI–C82.3–69 Standard for reference ballasts for fluorescent lamps
ANSI–C82.4–85 Ballasts for high-intensity discharge and low-pressure sodium lamps (multiple supply type)
ANSI–C82.4a–88 Supplement
ANSI–C82.5–83 Standard for reference ballasts for HID lamps
ANSI–C82.5a–84 Standard for reference ballasts for low pressure sodium lamps
ANSI–C82.6–85 Methods of measurement of high intensity discharge lamp ballasts
ANSI–C82.6a–86 Supplement
ANSI–C82.7–88 Mercury lamp transformers-constant current (series) supply type
ANSI–C82.8–88 Incandescent filament lamp transformers-constant current (series) supply type
ANSI–C82.9–88 Definitions for high-intensity-discharge and low-pressure sodium lamps, ballasts, and transformers

Fixture Industry

1. Relative photometry (indoor/outdoor) for all sources
2. Electrical measurements (system)
3. Harmonics
4. Thermal performance
5. Selection for tests
6. Ballast factor and BEF
7. Optical properties (reflectivity, transmission, etc.)
8. Photoelectric controls

Standards

Notation, LM identifies the Illumination Engineering Society.

LM–10–87 Photometric testing of outdoor Fluorescent luminaire
LM–15–87 IES guide for reporting general lighting equipment engineering data for indoor luminaire
LM–28–89 Selection, care and use of electrical instruments in the photometric laboratories
LM–31–88 IES approved method for photometric testing of roadway luminaire
LM–35–89 IES approved method for photometric testing of floodlights using incandescent filament of discharge lamps
LM–41–85 Photometric testing of indoor fluorescent luminaire
LM–46–85 Photometric testing of indoor luminaire using HID lamps
LM–48–84 IES guide for calibration of photoelectric control devices
LM–61–88 IES approved guide for identifying operating factors for installed HID luminaire
LM–62–85 IES approved guide for laboratory and field thermal measurements of fluorescent lamps and ballasts in luminaire
LM–15–87 IES guide for reporting general lighting equipment engineering data for indoor luminaire
LM–36 IES practical guide to photometry

Lamp Industry

1. Lumen output
2. Spectral power distribution (color, CRI, chromaticity)
3. Candela distribution of reflector lamps
4. Electrical characteristics of lamps
5. Thermal effects
6. Life testing

Standards

LM–9–88 IES approved method for Electrical and Photometric measurements of fluorescent lamps
LM–16–84 Practical guide to colorimetry of light sources
LM–20–83 Photometric testing of reflector type lamps
LM–28–89 Selection, care and use of electrical instruments in the photometric lab
LM–40–87 IES approved method for life performance testing of fluorescent lamps
LM–47–87 IES approved method for life testing of HID lamps
LM–49–88 IES approved method for life testing of general lighting incandescent filament lamps
LM–51–84 Photometric testing of HID lamps
LM–54–84 IES guide to lamp seasoning
LM–59–83 Electrical and photometric measurements of LPS lamps
ANSI–C39.6–83 Electrical instrumentation-digital measuring instruments
ANSI–C78.1–84 Dimensional and electrical characteristics of fluorescent lamps rapid start types
ANSI–C78.1a–84 Dimensional and electrical characteristics of fluorescent lamps rapid start types
ANSI–C78.1b–86 Dimensional and electrical characteristics of fluorescent lamps rapid start types
ANSI–C78.1c–85 Dimensional and electrical characteristics of fluorescent lamps rapid start types
ANSI–C78.1d–86 Dimensional and electrical characteristics of fluorescent lamps rapid start types
ANSI–C78.2–84 Dimensional and electrical characteristics of fluorescent lamps preheat start types
ANSI–C78.2a–88 Dimensional and electrical characteristics of fluorescent lamps preheat start types
ANSI–C78.2b–89 Dimensional and electrical characteristics of fluorescent lamps preheat start types
ANSI–C78.3–84 Dimensional and electrical characteristics of fluorescent lamps instant start and cold cathode types
ANSI–C78.3a–85 Dimensional and electrical characteristics of fluorescent lamps instant start and cold cathode types
ANSI–C78.40–85 Specifications for mercury lamps
ANSI–C78.41–87 Low pressure sodium lamps
ANSI–C78.250–85 Specifications for tubular tungsten-halogen lamps
ANSI–C78.375–84 Guide for electrical measurements of fluorescent lamps
ANSI–C78.379–83 Incandescent and HID reflector lamps-classification of beam patterns
ANSI–C78.386–89 Mercury lamps-methods of measuring characteristics
ANSI–C78.387–87 Methods of measurement of metal-halide-lamp characteristics
ANSI–C78.388–84 High pressure sodium lamps-methods of measuring characteristics
ANSI–C78.1350–90 400-watt s51 high pressure sodium lamps
ANSI–C78.1351–89 250-watt 100 volt self ballasted mercury lamps
ANSI–C78.1352–90 1000-watt s52 high pressure sodium lamps
ANSI–C78.1353–90 70-watt s62 high pressure sodium lamps
ANSI–C78.1354–90 100-watt s54 high pressure sodium lamps
ANSI–C78.1355–89 150-watt 55-volt s55 high pressure sodium lamps
ANSI–C78.1356–88 150-watt 100-volt s56 high pressure sodium lamps
ANSI–C78.1358–88 35-watt s76 single-ended high pressure sodium lamps
ANSI–C78.1359–88 50-watt s68 single-ended high pressure sodium lamps
ANSI–C78.1375–90 400-watt m59 metal halide lamps
ANSI–C78.1376–84 1000-watt M47 metal halide lamps
ANSI–C78.1377–87 Draft-175w m57 metal halide lamps
ANSI–C78.1378–90 Draft 250W m58 single-ended metal-halide lamps
ANSI–C78.1379–87 Draft-150W m48 metal halide lamps
ANSI–C78.1381–89 70 watt m85 metal halide lamps

Dated: May 10, 1991.

John W. Lyons,
Director.

[FR Doc. 91-11548 Filed 5-14-91; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

[Docket No. 90776-0329]

Marine Recreational Fisheries Action Plan

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final Marine Recreational Fisheries (MRF) Action Plan.

SUMMARY: The final MRF Action Plan updates the implementation of the NMF Policy and is published to inform the public of its content. The Action Plan restates and updates the NMFS MRF Policy and provides for improved implementation of the MRF Policy.

EFFECTIVE DATE: October 19, 1990.

ADDRESSES: Copies of the NMFS MRF Action Plan are available from Richard B. Stone, NMFS, Fishery Management Specialist, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone or Alan Dean Parsons, 301 247-2347.

SUPPLEMENTARY INFORMATION: In 1981, NMFS adopted a MRF Policy. Although national in scope, the Policy was not implemented consistently throughout the Nation. Each Region, as well as Headquarters, implemented the Policy at its discretion, based on differing perspectives, needs, and priorities. NMFS reformatted the strategy for implementing the Policy in the form of a draft Action Plan published in the Federal Register (54 FR 47379; November 14, 1989) to obtain public comment. There were 21 responses, all of which fully supported the draft Action Plan, although several suggested minor changes to various specific parts. Many of these suggested changes were incorporated into the final Action Plan.

The Action Plan addresses the conservation of marine fishery resources as the primary concern. The tremendous growth in the number of recreational fishermen in recent years has placed additional demands on already limited fishery resources. Successful management of these fish stocks requires an in-depth understanding of the impacts recreational fisheries have on these stocks, and adequate data and information on the recreational fisheries. Thus, the Action Plan focuses on increasing understanding of recreational fisheries by improving data gathering capabilities. Additionally, the Action Plan encourages constitutent participation in conservation of fishery resources through programs such as angler ethics.

Dr. William W. Fox, Jr., Assistant Administrator for Fisheries, approved the draft Action Plan on October 19, 1990. The Action Plan restates and updates the NMFS MRF Policy, establishes program goals and objectives, and identifies specific actions to be taken, to the extent that support and funds are available, to improve the implementation of the 1981 Policy. The Action Plan will allow more attention to national MRF priorities while maintaining sufficient flexibility to tailor regional programs to local MRF needs.

The Action plan has been developed in accordance with the NMFS' Strategic Plan. It is especially supportive of the first three goals of the Strategic Plan. The final MRF Action, Plan, as approved, is as follows:

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National Marine Fisheries Service Marine Recreational Fisheries Action Plan

I. Introduction

Marine recreational fishing (MRF) continues to grow in popularity, not only as a highly regarded form of recreation but also as a means of obtaining high protein food. According to a 1985 Gallup Poll, recreational fishing is the second most popular outdoor recreational activity in America, and as such, contributes nearly $30 billion to the Nation's economy. Since 1960, the value of marine recreational fishing has grown from $7.5 billion to $33.5 billion (including multiplier effects) in 1985. The number of saltwater fishermen has increased from about 5 million in 1955 to 17 million in 1985, but has not increased substantially since then.

In recognition of the growing importance of MRF, National Marine Fisheries Service (NMFS) adopted a marine recreational fisheries policy and implementation strategy in 1981. Each Region, as well as headquarters, proceeded to implement the policy at its own discretion based on the differing perspectives, needs, and priorities of the various geographic areas. Thus, the policy was not implemented consistently or with the same degree of intensity throughout the Nation.

Recently, the NMFS, in partnership with other Federal agencies, state, and tribal governments, and representatives from private constituency groups and industry, participated in the development of a National Recreational Fisheries Policy. Actions to implement the goals and objectives of the NMFS Action Plan are consistent with those set forth by the National Policy.

The MRF industry and constituency have matured over the last several years, becoming better organized nationally, more involved in fishery issues, and increasingly committed to making fisheries conservation their primary concern. As a result, it is timely for NMFS to reformulate its implementation strategy to achieve more consistent attention to national priorities while maintaining sufficient flexibility to tailor regional programs to local needs. This approach is essential for effective interaction with MRF interests and for consistent treatment of priority MRF issues and problems.

Perhaps of greatest concern is the need for healthy fisheries resources. The primary role of Federal and state fishery managers and the Regional Fishery Management Councils is to provide stewardship of the Nation's fisheries resources. NMFS and the constituency have mutually stressed that a stronger conservation ethic, endorsed by the public as well as the government, is necessary to protect fishery resources and the habitats upon which they are dependent. Fisheries and their habitats must be recognized as national assets that, if effectively conserved and managed, can generate enormous economic, social, and aesthetic benefits indefinitely.

The purpose of this document is to identify ways for NMFS to help improve stewardship of marine fisheries resources overall, and to serve better MRF constituencies. However, it is recognized that development of an MRF Action Plan will not by itself necessarily result in progress. A strong commitment to pursue plan implementation aggressively for the long-term as well as the short-term is essential. There must be identifiable and measurable activities to provide accountability and to allow constituent and program partners (states, commissions, councils, etc.) to monitor and participate in program activities.

Accordingly, this Action Plan restates NMFS' MRF policy, provides guiding principles for policy implementation, establishes NMFS' MRF program goals and objectives, and identifies specific actions to update and improve implementation of the MRF policy.

II. Restatement of Policy and Guiding Principles

A. *Policy Statement.* The following policy was adopted by NMFS in 1981 after an extensive review of NMFS MRF activities by a marine recreational fisheries task group.

NMFS, through its various programs, will protect, conserve, enhance, manage and develop fishery resources of importance to the nation in order to increase the nation's food supply; promote increased opportunities for both commercial and marine recreational fishermen consistent with the concept of optimum yield; and promote activities which will assist the commercial and marine recreational fishing industries to thrive and expand.

B. *Guiding Principles.* The following guiding principles advance fundamental beliefs and strategies that further clarify NMFS' marine recreational fisheries policy and that guide policy implementation efforts.

1. Marine Recreational Fisheries Program Must Address All Three Components of Recreational Fisheries: the Resource, Users, and Industry

First, with respect to the resources, MRF refers to one or more stocks of fish that can be treated as a unit for purposes of conservation, management, utilization, or development and that can be identified on the basis of geographical, scientific, technical, economic, or method-of-harvest characteristics. The term "fish" includes finfish, mollusks, crustaceans, and all forms of living marine animals which form the resource base for recreational fishing. Enhancing and maintaining these stocks requires the enhancement and maintenance of water quality and the habitats on which the stocks depend and control of the harvest/catch.

Second, with respect to the users, MRF refers to individuals engaging in marine recreational fishing activity. Fishing is considered recreational when pleasure, amusement, relaxation, or home consumption are the principal motivators. The program must result in an improved understanding of fishermen's needs and the impact of management decisions upon them.

Third, MRF refers to the MRF industry. Interest and participation in marine recreational fishing creates a demand for a wide variety of goods and services that enable fishermen to participate in recreational fishing activities. The private businesses that provide these goods and services are collectively referred to as the MRF indusry. These businesses employ thousands of Americans, account for sizeable capital expenditures, and contribute substantially to the Nation's gross national product and overall economic well being. The program should consider how management decisions affect the industry.

2. Marine Recreational Fisheries Contribute Significant Social and Economic Benefits to the Nation

Marine recreational fishing is an increasingly popular outdoor recreational activity that contributes substantially to the social and economic well being of the Nation. Millions of individuals and families participate annually in marine recreational fishing as a relaxing, healthful, wholesome source of recreation and as a way of obtaining high quality protein food. Collectively, the MRF industry translates this recreation activity into a multi-billion dollar contribution to the Nation's economy.

3. Robust Marine Fishery Resources are Requisites for Viable Marine Recreational Fisheries

Marine fisheries are dependent on the maintenance, restoration, and enhancement of marine fish populations and their habitats. NMFS' principal function is to serve as steward of those resources and habitats. Conservation and enhancement of marine fishery resources shall be accomplished through scientific management intended to achieve optimum yield from each fishery.

4. Accurate and Timely Information is Crucial to the Conservation, Management, and Development of Marine Recreational Fisheries

NMFS has an important role in conducting, sponsoring, and otherwise encouraging scientific, statistical, and socioeconomic research and related investigations that provide the basis for conservation and management of marine resources.

5. Marine Fishery Resources are a National Asset, Which, Through Wise Management, Can be Enhanced and Improved for Future Generations

NMFS is committed to the mission of rebuilding and conserving marine fishery resources while allowing equitable sharing of those resources among recreational, commercial, and non-consumptive users, such as SCUBA divers, observation boats, etc. NMFS recognizes the biological necessity of regulating total catch within the limits of optimum yield. Accomplishing this management mission requires effective, cooperative partnerships with other Federal agencies, the states, Regional Fishery Management Councils, interstate commissions, and public and private sector interests. NMFS also recognizes the need to pursue aggressively international agreements for the conservation of highly migratory species of fish.

6. Multiple Uses of Marine Fishery Resources are Recognized and Encouraged

NMFS recognizes the national benefits resulting from multiple use of marine fishery resources by recreational, commercial, and subsistence fishermen as well as by non-consumptive users. NMFS also supports existing jurisdictional relationships between state and Federal Government resource stewarts and the public as appropriate forums for rendering fishery allocation decisions affecting competing resource users.

7. Authorities, Roles, and Responsibilities of Government and Private Entities in the Conservation and Development of Marine Recreational Fisheries are Recognized

NMFS will engage in those activities that are the responsibility of Federal Government and will encourage and assist other Federal, state, and local government agencies, the academic community, private interests, and the public to cooperate and participate in its programs. NMFS will encourage other entities to assume responsibility for MRF programs and services more appropriately theirs, recognizing unified and cooperative partnerships as a goal.

8. Conserving and Developing Marine Recreational Fisheries is a Shared Responsibility

As major users and beneficiaries of marine fishery resources, fishermen and the industry must accept their stewardship roles and responsibilities and do their part in funding, promoting and supporting essential marine fisheries research, data collection, management, development, and law enforcement efforts. Angling ethics, resource conservation, and aquatic education should be promoted and practiced through effective government/private partnerships.

III. Action Plan

The Action Plan consists of five major sections, each with goals, objectives, and action steps. Consistent and aggressive implementation should enhance NMFS' resource stewardship capabilities. The primary thrust of the Action Plan is best expressed by the first goal. NMFS will focus its major effort on the conservation of fisheries and their habitat, in recognition of the significant benefits the marine resources provide to the nation. Only with the resource on a sound footing can the recreational program be fully successful.

A. Conservation of Resources

Goal: Conserve, restore, and enhance fishery resources and the habitat on which they depend, recognizing that, if properly conserved and managed, fishery resources can provide substantial economic, social, and aesthetic benefits to the Nation.

A conservation approach needs to be emphasized in resource management as a means to restore and maintain healthy fisheries. NMFS must assert a leadership role in accomplishing this goal, and must secure participation, cooperation, and support of the MRF constituency.

A.1 Objective: Develop a stronger linkage between information on the status and condition of stocks and management decisions affecting recreational fisheries.

A.1a—Each Research Center should review, evaluate, and, if needed, upgrade its stock assessment capabilities to ensure that assessments are provided for species of recreational importance or potential importance, and for forage species upon which these fish depend.

A.1b—Distribute stock assessments, expressed in layman's terms, for key species of recreational importance, or potential importance, to increase general understanding of the status of various stocks.

A.2 Objective: Improve fishery management procedures for MRF.

When management of recreational fisheries is necessary, stress the use of fishery management techniques. Traditionally, these techniques have been bag limits, size limits, gear limitations, and other measures to control fishing mortality, that are easily monitored, while permitting continued access to the fishery. Improve MRF input and participation in the fishery management planning process.

A.3 Objective: Promote conservation practices among fishermen.

Implement a national angling ethics program, in cooperation with the tackle industry, state fishery management agencies, and the MRF community, emphasizing tag and release, catch and release, expanded use of non-traditional species, regulatory compliance, and other related issues.

A.4 Objective: Expand MRF information and education (I&E) programs.

A.4a—Establish and maintain Information and Education programs on NMFS research and management activities.

A.4b—Develop closer working ties with outdoor writer associations and media to improve flow of information to fishermen.

A.4c—Establish working relationships with tournament directors and fishing clubs, to increase their awareness of NMFS resource and management programs, and to promote resource conservation and angling ethics.

A.4d—Develop or distribute primers and educational materials on seafood quality, safety issues, conservation, the proper care and handling of catch, use of non-traditional species, and other topics of interest.

A.5 Objective: To achieve more effective public adherence to fishery regulations.

A.5a—Expand I&E efforts, including brochures on regulations, creation of a "Fishery Conservation Hotline," and greater interaction with conservation editors.

A.5b—Increase State/Federal cooperative enforcement seeking cross-deputization and other appropriate means.

A.5c—Encourage and assist the states and Federal Government to resolve incompatible or conflicting regulations on species of recreational interest.

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A.6 Objective: Review current conservation engineering efforts, and expand where appropriate.

A.6a—Accelerate commercial and recreational gear research, development, and modification efforts to reduce bycatch and habitat destruction.

A.6b—Document applications of artificial reef technology for enhancement of recreational fisheries.

A.6c—Increase involvement in artificial reef research planning, management, and development.

B. Conservation of Habitat

Goal: Conserve and restore habitats critical to the well-being of recreationally important species and supporting ecosystems.

B.1 Objective: Identify critical habitat problems that adversely affect species of importance to MRF.

B.1a—Review actions affecting species of importance to MRF and with EPA, the states, and local governments, work to establish priorities, and recommend corrective actions for habitat protection and restoration in each Region.

B.1b—Work with other government agencies (Federal, state and local) to implement the National Estuarine Program, and other coastal initiatives.

B.2 Objective: Increase public awareness of the impacts on fishery resources created by habitat alteration.

B.2a—Prepare regional documentaries describing fishery and habitat relationships, unique aspects on habitat, and status and trends on the protection of critical habitats.

B.2b—Evaluate plans and provide guidance to other agencies, under authority of the Fish and Wildlife Coordination Act and other statutes, on policies significantly affecting fishery habitats of importance to MRF.

C. Research, Data Collection, Data Management, and Information Analysis

Goal: To improve NMFS' research, data acquisition, data management, analysis, and dissemination capabilities needed to provide the scientific and management basis for conservation of marine recreational fishery resources.

Social, economic and biological data important to the management of MRF are often missing or sparse, and some existing data do not receive adequate consideration in management decisions. To address this, several steps must be taken.

First, NMFS must work with fishery managers to identify data needs and implement research and statistical programs to fill these needs.

Second, NMFS must make available to fishery managers all existing biological, social and economic data and ensure its appropriate use.

Third, NMFS must educate and inform marine recreational fishermen and the MRF industry about the objectives of data collection efforts and how this information is being used by resource managers.

Current research and data collection programs should be monitored and reviewed as to their ability to support fishery management and development decisions, including stock assessments, user allocations, quota monitoring, fishery evaluation, and regulatory impact analyses. Timeliness, accuracy, precision, and comparability of data must be carefully assessed and improved when possible.

C.1 Objective: Improve planning and coordination of NMFS' research, data collection, and analysis components.

C.1a—Consult with National MRF interests (e.g., fishery managers from the state, councils, commissions, Federal, and private sectors) to identify management issues requiring data or information. Work with Federal and state data collectors and recommend actions needed to provide more comprehensive, precise, and timely MRF data for use by state and Federal resource managers.

C.1b—Conduct annual research program reviews within each Fishery Center to evaluate ongoing research and recommend program adjustments (e.g., shifts in research emphasis, enhancements, initiatives).

C.1c—Conduct regular NMFS/Sea Grant retreats at regional/national level to identify and evaluate cooperative research projects.

C.1d—Cooperate with Sea Grant to develop specific strategies for working with Marine Advisory Services in MRF communication/education efforts.

C.1e—Establish program coordination with state Wallop-Breaux (W-B) coordinators providing technical assistance, as outlined in the NMFS/USFWS Memorandum of Understanding.

C.1f—Enhance an ongoing communication effort to advise managers and MRF constituents of research findings.

C.1g—Develop a socioeconomic research plan in each Region to support fishery management programs making sure to address MRF issues.

C.1h—Coordinate inclusion of the Marine Recreational Fisheries Statistics Survey (MRFSS) data base into fishery management plans.

C.1i—Coordinate with other Federal, state, private, and academic institutions involved with MRF research, data collection, and analysis.

C.2 Objective: Improve the effectiveness of MRF data collection, data management, analysis, and dissemination.

C.2a—Establish and convene a permanent NMFS MRF data steering committee (made up of Region, Center, and Washington Office representatives) to share information, clarify objectives and recommend actions that will promote the achievement of an efficient and integrated MRF data collection/data management program at Regional and National levels.

C.2b—Use state/Federal Cooperative Agreements or contracts to integrate, whenever feasible, state and Federal MRF sampling programs under agreed upon standards to create a consistent nationwide data collection program and to eliminate duplication.

C.2c—Determine the appropriate MRFSS sample size nationwide and conduct rate event (e.g., billfish) species surveys as appropriate to improve data used in Federal fishery management decisions.

C.2d—Improve the application of social and economic information to support regional research plans developed under *C.1g.*

C.2e—Publish and distribute validations of MRF data collection methodologies and data bases to ensure applicability, accessibility, and familiarity.

C.2f—Conduct regular seminars and use other forums to inform fishery managers, constituents, the general public, industry, and others of the results, proper use, and limitations of economic and statistical data collection and analysis programs.

C.2g—Improve NMFS' analytical capability to interpret and evaluate MRF statistical data and ensure appropriate and timely use of data.

C.2h—Regionally, produce and distribute annual summaries, trends, and forecasts of species important to MRF in a timely fashion.

D. Industry Services

Goal: Expand NMFS' ability to interact effectively and appropriately with and enhance the MRF industry.

The MRF industry is an integral and significant part of the total U.S. fishing industry. It encompasses a broad range of individual businesses that provide a variety of goods and services to marine recreational fishermen both domestic and foreign. NMFS needs to assist the industry within the scope and authority of NMFS' programs.

D.1 Objective: Increase understanding of the nature and operation of the MRF industry.

D.1a—Development industry profiles including information on various business sectors, size, composition, and operation of charter/headboat fleets, cost and return analysis, entry and exit of businesses/vessels, and other aspects.

D.1b—Coordinate with state and other governmental agencies and industries to encourage recreational fisheries tourism.

D.1c—Develop capability to interpret and evaluate MRF industry information, including monitoring industry response to management decisions.

D.2 *Objective:* Assist the industry to undertake appropriate research and development activities.

D.2a—Help the MRF industry develop a better ability to utilize funding sources (e.g., S-K, MARFIN, Sea Grant, etc.) for research and development projects.

D.2b—Establish outreach activities to ensure industry access to vital fisheries research and statistical information.

E. Administrative Program Direction

Goal: Provide positive support for marine recreational fisheries through effective implementation of the MRF Action Plan.

Previous sections followed program lines, providing goals, objectives, and actions needed to implement more fully the MRF policy. However, achievement of these goals and objectives will require a strong, long-term commitment by NMFS. This commitment must be reflected in planning and budget documents and performance plans. This section provides for these internal actions needed to ensure successful MRF policy and program implementation.

E.1 Objective: Establish effective program planning and coordination mechanisms.

E.1a—The Washington Office and each Region will develop a detailed strategy document identifying activities, resources, and time tables needed to implement the Action Plan.

E.1b—Each Region will utilize a MRF Steering Committee to involve MRF interests in program planning.

E.1c—Use forums within interstate commissions, and other state, regional, and national organizations to communicate and coordinate MRF program matters.

E.2 Objective: Provide sufficient staffing and support to carry out the Action Plan.

E.2a—Provide staff support commensurate in size with the importance (catch, effort, social and economic impact) of MRF in the Regions, growth potential, and the extent of problems.

E.2b—Launch and maintain an aggressive public outreach program that includes frequent field meetings with MRF clubs, charter/headboat associations, state and interstate coordination bodies (e.g., Marine Fisheries Commissions, W-B coordinators, outdoor writers associations, etc.) and attendance at regional and national symposia.

E.3 Objective: Establish effective mechanisms to monitor and evaluate MRF program accomplishments.

E.3a—Washington Office and Regions will use tracking or control systems to monitor and report program progress and make program adjustments.

E.3b—The Recreational and Interjurisdictional Fisheries Division will monitor the Action Plan implementation progress and report periodically to an appropriate management level.

E.3c—Conduct national and regional MRF program reviews annually.

Dated: March 8, 1991.

Michael F. Tillman

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-11525 Filed 5-14-91; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council and its Committees will hold public meetings on May 28-31, 1991, at the Airport Hilton Hotel, 10th & Packer Avenue, Philadelphia, PA., (telephone: 215-755-9500).

On May 28, the Summer Flounder Advisors will meet from 1 p.m., until 3 p.m. The Shark Subcommittee will also meet from 1 p.m., until 3 p.m. The Demersal Species Committee will meet from 3 p.m., until 4 p.m.

The Council will begin its meeting on May 29 at 9:30 a.m., and adjourn on May 30 at 12 noon. The Council will consider possible management measures for Amendment #2 to the Summer Flounder Fishery Management Plan, and may adopt Amendment #4 to the Atlantic Mackerel, Squid, Butterfish Fishery Management Plan for public hearings. Also, on May 29 the Squid, Mackerel, Butterfish Committee and Habitat Committee will meet in the afternoon after Council session. The Council also may hold a closed session (not open to the public), to discuss personnel and/or national security matters.

On May 30 at 1 p.m., the Coastal Migratory Committee and Atlantic States Marine Fisheries Commission's Weakfish Board will meet to discuss concerns of the Weakfish Fishery Management Plan. This meeting will resume on May 31.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: May 9, 1991.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-11523 Filed 5-14-91; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will hold its 73rd public meeting on May 14-16, 1991, at the Dole Ballrooms, 735 Iwilei Road, Honolulu, HI. Except as noted below, the meetings are open to the public. The Council's Standing Committees will meet on May 14 at 8 a.m.

On May 15 from 8 a.m., until 9 a.m., the Council will hold a closed session (not open to the public) to discuss litigation matters. On May 15 and 16 the Council will meet beginning at 9 a.m. The Council will hear reports from islanders and government fisheries representatives from American Samoa, Guam, Hawaii and the Northern Mariana Islands. The status of Fishery Management Plans (FPMs) covering crustaceans, bottomfish/seamount groundfish, precious corals and pelagics will be discussed. The Council will also discuss and take action, as appropriate, on the following: (1) Status of emergency closure of the lobster fishery; (2) Crustaceans amendment #7 (limited entry and effort reduction); (3) management measures for Main Hawaiian Islands bottomfish; (4) proposed changes in the Northwest Hawaiian Island (NWHI) bottomfish limited entry program; (5) report on enforcement of regulations and the test of a vessel safety system; (6) report on bottomfish observer program; (7) recommendations for black coral management in Hawaii; (8) report on longline permits and logbook data; (9) NWHI longline/monk seal interactions (Amendment #5); (10) longline area closure emergency action in Main Hawaiian Islands (status of emergency action request and refinements

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concerning exemption for small vessels, seasonal openings, different size, closures, native rights, etc.); (11) moratorium on new entry into the Hawaii longline fishery (status of emergency action request, report on limited entry permits and actions, discussion of permit ownership, consideration of applying refitting exemption or some variation during the current emergency, extension of emergency action (90 days), reconsideration of exempting vessels that fish outside U.S. waters from landing their fish in Hawaii during the moratorium; (12) experimental fishing permit request for sharks; and (13) other Council business.

The Council will take comments from the public during the Council meeting. The public may also respond in writing to the address listed below.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: May 9, 1991.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-11447 Filed 5-14-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Dr. James T. Harvey (P368B)

On March 6, 1991, Notice was published in the Federal Register (56 FR 9346) that an application had been filed by Dr. James T. Harvey, Assistant Professor, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039-0450, for a scientific research permit to conduct activities on harbor seals (*Phoca vitulina*).

Notice is hereby given that on May 8, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review by appointment in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, Maryland 20910; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731 (213/514-6196).

Dated: May 8, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-11449 Filed 5-14-91; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Spectrum Planning Advisory Committee; Recharter

AGENCY: National Telecommunications and Information Administration, DOC.

ACTION: Notice of recharter for the Spectrum Planning Advisory Committee.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. 2 and General Services Administration (GSA) interim rule on Federal Advisory Committee Management, 41 CFR part 101-6, as amended, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Frequency Management Advisory Council, renamed the Spectrum Planning Advisory Committee, is in the public interest in connection with the performance of duties imposed on the Department by law. Effective April 24, 1991, the Spectrum Planning Advisory Committee has been rechartered.

The Committee was first established on July 19, 1965 as the Frequency Management Advisory Council. It provided advice to the Director of the Office of Telecommunications Policy (OTP), Executive Office of the President, until the functions of that office were transferred to the Department of Commerce, National Telecommunications and Information Administration (NTIA), by Executive Order 12046 of March 27, 1978. Its current charter terminates on April 28, 1991.

In reviewing the need for the Committee, the Secretary has reaffirmed its original purpose of providing advice on radio frequency spectrum allocation and assignment matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Secretary has further affirmed the need for the Committee to advise on strategic spectrum planning issues and increased commercial access to Federal Government spectrum. Research indicates that the Committee's function cannot be accomplished by any organizational element or other committee of the Department.

The Committee has expanded its membership to 19 members, including a balanced representation of 15 non-Federal members, and 4 Federal members, chaired by the Secretary of Commerce or an individual appointed by the Secretary. The Committee will operate in compliance with the provisions of the Federal Advisory Committee Act.

Copies of the Committee's current Charter have been filed with appropriate committees of Congress and with the Library of Congress.

FOR FURTHER INFORMATION CONTACT: Inquiries or comments may be addressed to the Acting Executive Secretary, Spectrum Planning Advisory Committee, Mr. W. Russell Slye, National Telecommunications and Information Administration, U.S. Department of Commerce, room 4099, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 377-1850; or Ms. Jan Jivatode, the Department Committee Management Analyst, U.S. Department of Commerce, room 6020, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 377-4115.

Dated: May 9, 1991.

W. Russell Slye,

Executive Secretary, Spectrum Planning Advisory Committee.

[FR Doc. 91-11539 Filed 5-14-91; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

May 9, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: June 1, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton and Man-Made Fiber Textile Agreement of January 20, 1989, as amended, and the Memorandum of Understanding (MOU) dated March 11, 1989, between the Governments of the United States and the Dominican Republic establish limits and guaranteed access levels for certain cotton and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the period June 1, 1991 through May 31, 1992. The limit for Categories 347/348/647/648 and the sublimit for Categories 347/348 have been reduced for carryforward applied during the previous agreement period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 55 FR 50756, published on December 10, 1990).

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 6505, published on March 14, 1987; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 55 FR 7523, published on March 2, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the March 11, 1989 MOU, but are designed to assist only in the implementation of certain of their provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 9, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement of January 20, 1989, as amended, and the Memorandum of Understanding (MOU) dated March 11, 1989, between the Governments of the United States and the Dominican Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on June 1, 1991 and extending through May 31, 1992, in excess of the following restraint limits:

Category	Twelve-month restraint limit
338/638	535,957 dozen.
339/639	535,957 dozen.
340/640	506,182 dozen.
342/642	357,305 dozen.
347/348/647/648	1,112,364 dozen of which not more than 778,655 dozen shall be in Categories 347/348 and not more than 714,810 dozen shall be in Categories 647/648.
351/651	636,000 dozen.
633	73,596 dozen.
644	744,160 numbers.

Imports charged to these category limits for the period beginning on June 1, 1990 and extending through May 31, 1991 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustments in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Dominican Republic.

Additionally, pursuant to the current bilateral agreement and the MOU dated March 11, 1989; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on June 1, 1991, guaranteed access levels have been established for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States in cotton and man-made fiber textile products in the following categories which are exported from the Dominican Republic during the period June 1, 1991 through May 31, 1992:

Category	Guaranteed access levels
338/638	1,000,000 dozen.
339/639	1,000,000 dozen.
340/640	1,000,000 dozen.
342/642	1,000,000 dozen.
347/348/647/648	3,500,000 dozen.
351/651	1,000,000 dozen.
633	40,000 dozen.
644	2,400,000 numbers.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 25, 1987, as amended, shall be denied entry unless the Government of the Dominican Republic authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-11549 Filed 5-14-91; 8:45 am]

BILLING CODE 3510-DR-F-

Continuation of Rectangular Visa Requirement for Shipments of Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

May 9, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending a previous directive.

EFFECTIVE DATE: May 9, 1991.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice was published in the Federal Register on April 23, 1991 (56 FR 18564) which announced the consolidation of existing export visa and exempt certification requirements for certain textiles and textile products from Korea. In accordance with exchange of letters dated April 8 and 10, 1991, between the Governments of the United States and the Republic of Korea, the directive stated that a circular visa would be required to accompany shipments of these products. However, the circular

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visa will not be required at this time. Merchandise exported from Korea will continue to require the rectangular visa. Advance notification of the circular visa requirement will be published in the Federal Register at a later date.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 9, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 17, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive consolidates the existing export visa and exempt certification requirements for certain textiles and textile products, produced or manufactured in Korea.

Effective on May 9, 1991, you are directed to continue to require the rectangular visa for shipments of textiles and textile products, produced or manufactured in Korea. A circular visa will not be required at this time.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-11550 Filed 5-14-91; 8:45 am]

BILLING CODE 3510-DR-F-

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 91-C0006]

Russ Berrie and Company, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 CFR part 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Russ Berrie and Company, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 30, 1991.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 91-C0006, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Eric L. Stone, Trial Attorney, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION: (attached).

Dated: May 10, 1991.

Sheldon D. Butts,

Deputy Secretary.

Settlement Agreement and Order

In the Matter of Russ Berrie and Company, Inc., a corporation.

1. This Settlement Agreement and Order, entered into between Russ Berrie and Company, Inc. a corporation (hereinafter, "Russ Berrie"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

2. The provisions of the Settlement Agreement and Order shall apply to Russ Berrie and to each of its successors and assigns.

I. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States of America (hereinafter, "Commission") created by Congress pursuant to section 4 of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2053.

4. Russ Berrie is a corporation organized and existing under the laws of the State of New Jersey, with its principal corporate offices located at 111 Bauer Dr., Oakland, New Jersey 07436.

5. Russ Berrie imported certain stuffed toys known as the Baby Bibi Bear, #844 ("Bears"), for sale to, or use by, consumers in or around a permanent or temporary household or residence. These Bears are "consumer products" within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

6. Since it imported these Bears and sold them throughout the United States, Russ Berrie, is a "manufacturer" of a "consumer product" for "distribution in commerce," as those terms are defined in sections 3(a) (1), (4) and (11) of the CPSA, 15 U.S.C. 2052(a) (1), (4) and (11).

II. The Product

7. Between 1986 and October 1988, Russ Berrie manufactured and distributed in commerce approximately 470,000 Bears. The firm contends that only 120,720 were potentially affected and of these, 28,612 were in possession of the manufacturer.

III. Staff Allegations

8. From July to October 1988, Russ Berrie received at least 18 complaints from retailers about loose, missing or damaged eyes on Baby Bibi bears. In October 1988, the firm conducted tests on its inventory and learned that the eyes on Bears from three lots imported since the end of 1987 came off easily. The staff alleges that the poor attachment for the eyes created a defect as that term is used in section 15(b) of the CPSA.

9. By letter dated October 21, 1988, the firm recalled the Bears from the distribution chain. The firm destroyed Bears returned by its customers, and shipped those in its inventory back to the South Korean manufacturer. The firm did not notify the Commission or report these activities.

10. The staff alleges that the eyes on the Bears are approximately ½ inch in size and are in a shape that can cause obstruction of the airway in a small child who places the eye in its mouth. This could cause serious injury or death. The staff further alleges that Russ Berrie knew or should reasonably have known that these eyes could cause serious injury or death in this manner.

11. The staff contends that by October 1988, Russ Berrie had received sufficient information to reasonably support the conclusion that its Bears contained a defect which could create a substantial product hazard but the company failed to report such information to the Commission in a timely manner as required by section 15(b) of the CPSA.

IV. Response By Russ Berrie

12. Russ Berrie states that no consumer complaints have been received. The firm believes that its distribution chain recall action was effective and responsible and prevented a "significant risk of injury to the public."

13. Russ Berrie denies each and all of the staff allegations with respect to its products. It further, and specifically, denies that its bears contain a defect which creates or which could create a substantial product hazard and further specifically denies any obligation to report information to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b), with respect to these Bears.

V. Agreement of the Parties

14. The Consumer Product Safety Commission has jurisdiction over Russ Berrie and the subject matter of this Settlement Agreement and Order pursuant to 15 U.S.C. 2064(b), 2066, and 2069.

15. Russ Berrie agrees to settle the Commission's claim in accordance with the attached Order, by paying a civil penalty in the amount of $30,000 within 20 days of the final acceptance of this Settlement Agreement by the Commission and service upon Russ Berrie of the Commission's Final Order. This Settlement Agreement constitutes a settlement of any violations of the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), or export notification requirements of Sections 4(i) and 14(d) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1263(i) and 1273(d), that may be alleged on the basis of the information that the Commission staff currently possesses concerning the subject Bears.

16. Upon final acceptance of this Settlement Agreement by the Commission, Russ Berrie knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challange or contest of the validity of the Commission's actions, (3) to a determination by the Commission whether a violation has occurred, and (4) to a statement of findings of fact and conclusions of law. By making this waiver, Russ Berrie does not concede that its Bears contain a defect which creates or could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a), or that it violated the export notification provisions of section 4(i) and 14(d) of the FHSA, 15 U.S.C. 1263(i) and 1273(d).

17. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued and the Commission may publicize the terms of the Settlement Agreement and Order.

18. The Commission does not make any determination that the Bears contain a defect which could create a substantial product hazard, or that a violation of the CPSA or Federal Hazardous Substances Act (FHSA) has occurred. This Agreement shall not constitute evidence or an admission with respect to any allegation of the staff, or of any wrongdoing, misconduct, or violation of any statute or rule on the part of Russ Berrie. The Commission and Russ Berrie agree that this Agreement is entered into for the purposes of settlement only.

19. Upon provisional acceptance of this Settlement Agreement and Order by the Commisison, this Settlement Agreement and Order shall be placed on the public record and the provisional acceptance of the Agreement shall be announced in the Federal Register in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission receives no written requests not to accept the Agreement within 15 days after publication in the Federal Register, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the Federal Register, in accordance with 16 CFR 1118.20(f).

20. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2061 *et seq.*, and that a violation of the Order will subject Russ Berrie to appropriate legal action.

21. No agreement, understanding, representation, or interpretation not contained in Settlement Agreement and Order may be used to vary or to contradict its terms.

22. Nothing in this Agreement should be construed as limiting Russ Berrie's obligation to report pursuant to section 15(b) of the CPSA, or to comply with the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.* and regulations issued thereunder.

By agreement of the parties.

Russ Berrie and Company, Inc.

Dated: February 8, 1991.

A. Curtis Cooke,

President.

The Consumer Product Safety Commission

David Schmeltzer,

Associate Executive Director; Directorate for Compliance and Administrative Litigation.

Alan H. Schoem,

Director, Division of Administrative Litigation.

Dated: March 5, 1991.

Eric L. Stone,

Trial Attorney, Directorate for Compliance and Administrative Litigation.

Order

Upon consideration of the Settlement Agreement of the parties, it is hereby

Ordered, that within 20 days of final acceptance of this Settlement Agreement and issuance of this Order, Russ Berrie and Company, Inc. shall pay a civil penalty in the sum of $30,000 to the Consumer Product Safety Commission for transference to the U.S. Treasury.

Provisonally accepted on the 10th day of May, 1991.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91-11541 Filed 5-14-91; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirements Submitted to OMB for Review.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, applicable form, and applicable OMB control number: Application for DoD Armed Forces Community Relations Support; DD Forms 2535 and 2536; OMB No. 0704-0290

Type of Request: Extension.

Average Burden Hours/Minutes per Response: 30 minutes.

Responses per Respondent: 1.

Number of Respondents: 8,000.

Annual Burden Hours: 4,000.

Annual Responses: 8,000.

Needs and Uses: The Armed Services are frequently asked to support community events with aerial demonstrations, musical support, speakers, etc. To evaluate these requests, certain information is required which is summarized on the DD Forms 2535 and 2536. Information is requested about the event, the sponsor, the exact nature of the desired support, and safety considerations.

Affected Public: Individuals or households, State or local governments, and Non-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Jonas Neihardt.

Written comments and recommendations on the proposed information collection should be sent to Mr. Neihardt at the Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

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Dated: May 10, 1991.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-11509 Filed 5-14-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Platform Panel of the Ad Hoc Committee Study of Off-Board Sensors—Summer Study 1991 will meet on 30-31 May 91 from 8 a.m. to 5 p.m. at McDonnell Douglas, St. Louis, MO, Headquarters Military Airlift Command, Scott AFB, IL, Dyess AFB, TX, and General Dynamics Corp, Dallas, TX.

The purpose of these meetings is to receive presentations of Air Force projects and programs relevant to the concept using off-board sensors data to support air combat operations. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-11503 Filed 5-14-91; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS), Carolina Beach and Vicinity, NC, Area South Project, New Hanover County, NC

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The project under consideration includes measures to reduce hurricane damages along a stretch of beach approximately 3½ miles long in New Hanover County, North Carolina, which includes an unincorporated area south of the town of Carolina Beach and most of the beach within the corporate limits of the town of Kure Beach. It is referred to as the Area South project and is one of the two separable elements of the authorized Carolina Beach and Vicinity project. The other separable element, the Carolina Beach portion, has already been constructed.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft Environmental Impact Statement can be answered by: Mr. Daniel Small; Environmental Resources Branch; U.S. Army Engineer District, Wilmington; Post Office Box 1890; Wilmington, North Carolina 28402-1890; commercial phone, (919) 251-4730 or FTS 222-4730.

SUPPLEMENTARY INFORMATION: The Carolina Beach and Vicinity, NC, project, which included the Area South, was authorized under the authority of the Flood Control Act of 1962.

The Area South project refers to a stretch of beach approximately 3½ miles long in New Hanover County, North Carolina, which includes an unincorporated area south of the town of Carolina Beach and most of the beach within the corporate limits of the town of Kure Beach.

The Carolina Beach and Vicinity, NC, project, which included the Area South, was authorized under the authority of the Flood Control Act of 1962. The Wilmington District prepared a Design Memorandum on measures to reduce storm damages to Carolina Beach and Vicinity in 1967. Environmental impacts associated with construction and maintenance of the project were investigated and documented in the 1967 Design Memorandum. The Area South portion of the project was declared inactive in 1974 due to local interests being unable to provide the required local share of project costs. The project was reclassified as active in 1988 when local interests expressed an interest in sponsoring the project. An economic reevaluation conducted in 1989 of the measures recommended in the 1967 Design Memorandum determined that a project to protect the study area from hurricane and storm damages would be economically feasible. A Design Memorandum supplement and a DEIS are now being prepared on the Area South project.

1. The proposed project would consist of a beach berm and dune restoration with a southern terminal groin along a section of shoreline approximately 19,030 feet. An alternate project plan would not include the southern terminal groin and would terminate into the existing dune system at or near the project's southern limit. The northern end of the project will transition directly into the existing portion of the Federal project at Carolina Beach. Current estimates are that approximately 3.7 million cubic yards of dredged material would be needed for initial construction and 635,000 cubic yards of material will be needed for each periodic renourishment which would be performed at 5-year intervals. Material needed for initial construction and periodic renourishment would be obtained from a single source, if acceptable, or combination of sources. Potential borrow areas under evaluation include an upland site on Pleasure Island; an estuarine site in the Cape Fear River west of Pleasure Island; Jaybird Shoals in the Atlantic Ocean near the mouth of the Cape Fear River, west of the Cape Fear River ship channel; and potential offshore sand sources in the Atlantic Ocean.

2. All private interests and Federal, State, and local agencies known to have an interest in the study area have been notified of the study start and have been provided an opportunity for input into the study process. All additional agencies, organizations, and interested parties which have not been previously notified are invited to comment at this time.

3. Preparation of the DEIS will require assessment of those impacts associated with beach nourishment and maintenance for areas south of Carolina Beach. Significant issues identified at this time center primarily around finding an environmentally acceptable borrow area(s) for the project.

4. The U.S. Fish and Wildlife Service is furnishing input into the planning process in accordance with the provisions of the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*). Other environmental laws and directives which will be considered in plan formulation and reporting include the Clean Water Act (Pub. L. 95-217); the National Historic Preservation Act of 1966, as amended; the Abandoned Shipwreck Act of 1987; the Endangered Species Act, as amended (16 U.S.C. 470 et seq.); and Executive Order 11990, Protection of Wetlands, dated May 24, 1977. A Coastal Zone Management Act consistency determination will be furnished to the State of North Carolina and a section 401 Water Quality Certificate will be obtained from the State prior to project construction.

5. A scoping letter requesting input to the study is being sent to all known interested parties. No formal scoping meetings are currently planned; however, the identification by others of any significant issues relating to the project will result in coordination with appropriate interests as needed.

6. It is estimated that the draft design memorandum supplement and DEIS will be available in July 1992.

Dated: April 30, 1991.

Thomas C. Suermann,

Lieutenant Colonel, Corps of Engineers, District Engineer.

[FR Doc. 91-11509 Filed 5-14-91; 8:45 am]

BILLING CODE 3710-GN-M

Environmental Statements; Availability, etc.: Dallas Floodway Extension Project, Dallas County, TX

ACTION: Notice of intent.

SUMMARY: The Fort Worth District is preparing a Supplemental Environmental Impact Statement (SEIS) for the proposed Dallas Floodway Extension Project, Dallas County, Dallas, Texas. The proposed project consists of a combination of floodway levees and a flood control channel which would provide Standard Project Flood level protection. This plan would consist of a 22-mile levee and floodway system with a 9.1 mile residual channel along the Trinity River, 4.1 miles of channel improvements along White Rock Creek, and 3.4 miles of channel improvements to divert Five Mile Creek. The proposed project purpose is to provide flood protection for industrial and residential areas adjacent to the Trinity River, and White Rock and Five Mile Creeks.

FOR FURTHER INFORMATION CONTACT: Ms. Choyce R. Morrow, ATTN: CESWF-PL-MS, U.S. Army Engineer District, Fort Worth, P.O. Box 17300, Fort Worth, Texas 76102-0300, (817) 334-3676.

SUPPLEMENTARY INFORMATION: The proposed project area is located in south Dallas, Texas. In 1960, the Corps of Engineers constructed the Dallas Floodway, which is located near the confluence of the Elm Fork and West Fork of the Trinity River. The Dallas Floodway Extension would extend the Dallas Floodway downstream to Five Mile Creek, distance of 6 miles. The study was authorized by Public Law 89-298, enacted on October 27, 1965. The Dallas Floodway Extension was originally a part of the Trinity River Navigation Project Environmental Impact Statement (EIS) which was published on August 1980. Due to changes in design and scope of the project, it is necessary to prepare an SEIS which may include the following topics:

1. Proposed Action: The proposed action consists of a combination of floodway levees and flood control channels which will provide Standard Project Flood Control protection.

2. Alternatives: Other alternatives may include both structural and non-structural measures as well as the "No Action" alternative.

3. The Corps' scoping and public involvement program is described as follows:

a. The public involvement program for this study consists of one public scoping meeting, four workshops, and one public information meeting. The public information meeting is scheduled at the conclusion of the study to present the results of the study to the local residents.

b. Some of the significant issues to be analyzed in depth will include environmental impacts of flooding, biological resources (bottomland hardwoods, wetlands, etc.), water quality, socio-economics, a newly authorized State Park by the Texas Parks and Wildlife Department, mitigation, and environmental enhancement.

c. The local sponsor and other State and Federal agencies will be responsible for furnishing existing and impact information concerning the study data.

d. The U.S. Fish and Wildlife Service will furnish information on endangered and threatened species in accordance with the Endangered Species Act. Consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation will furnish information in accordance with Section 106 of the Historic Preservation Act.

4. A public meeting is scheduled for May 21, 1991 at 7:30 p.m. in the Auditorium of the Franklin D. Roosevelt High School, 535 Bonnie View Road, Dallas, Texas, 75215.

5. The SEIS is scheduled for public review on May 15, 1992.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 91-11451 Filed 5-14-91; 8:45 am]

BILLING CODE 3710-GN-M

Office of the Secretary

Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provision of Subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATES: Thursday, May 23, 1991 (9 a.m. to 5 p.m.).

ADDRESSES: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay, USAF, Chief, DIA Advisory Board Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

Dated: May 10, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-11509 Filed 5-14-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Patent Licenses; Cardolite Corp.

AGENCY: Department of the Navy, DOD.

ACTION: Intent of Grant Exclusive Patent Licenses; Cardolite Corporation.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Cardolite Corporation a revocable, nonassignable, exclusive license to practice the Government-owned inventions described in U.S. Patent No. 4,223,123, "Aliphatic Phenoxy Polyphthalocyanine" issued September 16, 1980, U.S. Patent No. 4,238,601, "Perfluorinated Aliphatic Phenoxy Bisorthodinitriles and Polyphthalocyanines Therefrom," issued December 9, 1980, U.S. Patent No. 4, 259,471, "Polyphenylether-Bridged Polyphthalocyanine" issued March 31, 1981, U.S. Patent No. 4,304,898, "Polyphthalocyanine Resins" issued December 8, 1981, U.S. Patent No. 4,408,035, "Phthalonitrile Resin from Diphthalonitrile Monomer and Amino" issued October 4, 1983 and U.S. Patent No. 5,003,038, "Amino Phenyl Containing Covering Agent for High Performance Phthalonitrile Resin" issued March 26, 1991 for use in the field of high-temperature structural resins.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with

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the Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000.

DATES: May 15, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington, Virginia 22217-5000, telephone (703) 696-4001.

Dated: May 6, 1991.

Wayne T. Baucino,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 91-11455 Filed 5-14-91; 8:45 am]

BILLING CODE 3810-AE-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, May 22, 1991 beginning at 1 p.m. in the Goddard Conference Room of its offices at 25 State Police Drive, West Trenton, New Jersey.

An information conference among the Commissioners and staff will be open for public observation at 9:30 a.m. at the same location and will include discussions of water conservation performance standards for plumbing fixtures and fittings; water conserving pricing policy; upper Delaware ice jam project; amendment of Compact Section 15.1(b) to fund the F. E. Walter Reservoir project; and middle and upper Delaware Scenic Rivers protection proposals.

The subjects of the hearing will be as follows:

Proposed amendments to Comprehensive Plan, Water Code of the Delaware River Basin and Administrative Manual—Rules of Practice and Procedure Relating to the Transfer of Water and Wastewater to and from the Delaware River Basin. Notice was given in the April 16, 1991 issue of the **Federal Register** that the Commission would hold a public hearing on May 22, 1991 to receive comments on proposed amendments to its Comprehensive Plan, Water Code and Rules of Practice and Procedure relating to the interbasin transfer of water and wastewater. The purposes of the Delaware River Basin Compact include the planning, conservation, utilization, development, management and control of the water resources of the Basin to provide for cooperative action by the parties signatory to the Compact with respect to such resources. Since the Compact's enactment, demands upon the waters and related resources of the Basin have steadily increased and are projected to continue to increase, even with the implementation of significant conservation measures. At the same time, the potential for construction of additional water supply storage is limited and costly. The waste assimilative capacity of Basin water is limited, and reductions in streamflow or any additions of wastewater would increase the burden placed on Basin water users. With this in mind, the Commission is proposing policy and implementing regulations relating to importations and exportations of water.

Current Expense and Capital Budgets. A proposed current expense budget for the fiscal year beginning July 1, 1991, in the aggregate amount of $2,629,100 and a capital budget for the same period in the amount of $1,567,500 in revenue and $1,228,100 in expenditures. Copies of the current expense and capital budget are available from the Commission on request.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or section 3.8 of the Compact:

1. *Palmer Water Company D-81-24 CP RENEWAL-2.* An application for the renewal of a ground water withdrawal project to supply up to 10.5 million gallons (mg)/30 days of water to the applicant's distribution system from Well A. Commission approval on March 26, 1986 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 35 mg/30 days. The project is located in Palmerton Borough, Carbon County, Pennsylvania.

2. *Mantua Township Municipal Utilities Authority D-85-16 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 37 mg/30 days of water to the applicant's distribution system from Well Nos. 1-5. Commission approval on January 22, 1986 was limited to five years. The applicant requests that the total withdrawal from all wells be increased from 33.4 mg/30 days to 37 mg/30 days. The project is located in Mantua Township, Gloucester County, New Jersey.

3. *Upper Saucon Township D-85-57 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 30 mg/30 days of water to the applicant's distribution system from the abandoned New Jersey Zinc Company mine shaft. Commission approval on April 29, 1986 was limited to five years. The applicant requests that the total withdrawal remain limited to 30 mg/30 days. The project is located in Upper Saucon Township, Lehigh County, Pennsylvania.

4. *Garden State Water Company (Blackwood District) D-88-38 CP.* An application for approval of a ground water withdrawal project to supply up to 64.8 mg/30 days of water to the applicant's distribution system from new Well Nos. 13, 14 and 15 (Cohansey Aquifer), and to increase the existing withdrawal limit from Well Nos. 3, 6 and 7 (PRM Aquifer) from 75 mg/30 days to 121 mg/30 days. The project is located in Gloucester Township, Camden County, New Jersey.

5. *Delaware Valley Utilities, Inc. D-90-15.* A project to modify and expand the currently approved .095 mgd sewage treatment plant (STP) to treat an initial wastewater flow of 0.30 mgd to serve portions of Westfall Township. This is the first of three anticipated phases, with projections to ultimately treat 0.62 mgd. The treated effluent will be discharged to the Delaware River via the existing plant's outfall structure. The STP is located adjacent to the Delaware River just south of the Route 209 and I-84 Interchange in Westfall Township, Pike County, Pennsylvania.

6. *Willistown Township Board of Supervisors D-90-61 CP.* A sewage treatment plant (STP) and spray irrigation project to serve the proposed residential and commercial development of Penn's Preserve. A new STP will be constructed to provide secondary treatment for a design flow of 0.06 mgd, with the treated effluent to be applied to an 18-acre spray field in the Ridley Creek watershed. No direct discharge to surface water is proposed. The project is located in Willistown Township adjacent to State Route 3 between Delchester and Garrett Mill Roads, Chester County, Pennsylvania.

7. *Milford Township Water Authority D-90-85 CP.* An application for approval of a ground water withdrawal project to supply up to 4.32 mg/30 days of water to the applicant's distribution system from new Well No. 4, and to increase the existing withdrawal limit from all wells from 1.28 mg/30 days to 5.58 mg/30 days. The project is located in Milford Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

8. *Crompton & Knowles Corp. D-90-100.* A project to upgrade an existing 0.18 mgd industrial wastewater treatment plant (IWTP) by addition of a final clarifier to operate in conjunction with the existing powdered activated carbon treatment process at the applicant's dye manufacturing plant. The project IWTP will continue to discharge via an exiting outfall to the Schuylkill River, and is located approximately one mile east of the Town of Gibralter in Robeson Township, Berks County, Pennsylvania.

9. *TRANSCO Gas Pipe Line Corp. D-90-101.* A temporary diversion project to hydrostatically test 17.5 miles of the applicant's existing natural gas pipe line system (Mainline "A") using 3.5 mgd of water to be withdrawn from the Neshaminy Creek. The water will be used to pressure test the pipe line, then discharged back to the withdrawal point. After the pressure test, the water is sampled and filtered or purified, if necessary, prior to discharge. The project intake will be located on the Neshaminy Creek between Newtown and Northampton Townships, Bucks County, Pennsylvania, just east of where Twining Ford Road runs closest to the Creek.

10. *TRANSCO Gas Pipe Line Corp. D-90-102.* A temporary diversion project to hydrostatically test 16.5 miles of the applicant's natural gas pipe line system (Mainline "A") using 3.3 mg of water to be withdrawn from the Schuylkill River. The water will be used to pressure test the pipe line, then discharged back to the withdrawal point. After the pressure test, the water is sampled and filtered or purified, if necessary, prior to discharge. The project intake will be located on the Schuylkill River between Schuylkill Township, Chester County and Lower Providence Township, Montgomery County, Pennsylvania, about 2,000 feet downstream of the Pawling Road Bridge.

11. *TRANSCO Gas Pipe Line Corp. D-90-103.* A temporary diversion project to hydrostatically test 13.3 miles of the applicant's existing gas pipe line system (Mainline "A") and Mainline "B") using 6.5 mg of water to be withdrawn from the West Branch Brandywine Creek. The water will be used to pressure test the pipe line, then discharged back to the withdrawal point. After the pressure test, the water will be sampled and filtered or purified, if necessary, prior to discharge. The project intake will be located on the West Branch Brandywine Creek in Valley Township, Chester County, Pennsylvania, approximately 600 feet downstream of the Route 30 bridge.

12. *Fallsburg Consolidated Water District D-90-105 CP.* An application for approval of a ground water withdrawal project to supply up to 1.75 mg/30 days of water to the applicant's distribution system from new Club at the Brae Well No. 1, and to increase the existing withdrawal limit from all wells of 74.5 mg/30 days to 90 mg/30 days. The project is located in the Town of Fallsburg, Sullivan County, New York.

13. *City of Newark, DE D-90-110 CP (G).* An application for approval of a ground water withdrawal project to supply up to 54 mg/30 days of water to the applicant's distribution system from Well Nos. 20, 21, 23 and 25; up to 42 mg/30 days from Well Nos. 12, 14, 18, and 19; up to 48 mg/30 days from Well Nos. 8, 10, 11, 13, 15 and 17; and to limit the withdrawal from all wells to 144 mg/30 days. The total withdrawal from all wells and surface water sources is limited to 150 mg/30 days. The project is located in the City of Newark, New Castle County, Delaware.

14. *City of Newark, DE D-90-110 CP (S).* An application for approval of a proposed surface water withdrawal of up to 150 mg/30 days (5.0 mgd) from the White Clay Creek to serve the applicant's distribution system. The applicant also proposes two new wells, Nos. 20 and 21 [Docket D-90-110 CP (G)] which, together with its existing wells and the proposed new surface water withdrawal, will be limited to a combined total withdrawal of 150 mg/30 days. Water will be diverted via an existing millrace on White Clay Creek located just west of Route 72 and approximately 1,200 feet upstream of the City of Newark's corporate boundary, in New Castle County, Delaware.

15. *Brushy Mountain Company LTD D-91-14.* An application for approval of a proposed sewage treatment plant (STP) project to serve the planned residential development of Blue Mountain Lake in Stroud Township. The applicant proposes to construct the facility in phases to meet increased demand as development progresses. The initial phase will handle 0.075 mgd and the ultimate capacity of the STP is projected to be 0.275 mgd. The plant will provide chemical addition for phosphorus removal, tertiary filtration, ultraviolet disinfection, and post aeration. The STP will be located approximately 2000 feet east of Blue Mountain Lake and approximately 500 feet west of the Smithfield Township line. The STP will discharge to Sambo Creek, a tributary of Broadhead Creek, in Stroud Township, Monroe County, Pennsylvania.

16. *Mount Pocono Municipal Authority D-91-27 CP.* A sewage treatment plant (STP) upgrade project to provide an improved secondary treatment system and install tertiary filtration facilities for the applicant's 0.40 mgd municipal plant serving the Borough of Mt. Pocono and a small section of Coolbaugh Township. The treated effluent will continue to discharge to Forest Hills Run in the Borough of Mt. Pocono, Monroe County, Pennsylvania, at a point approximately 1,000 feet upstream of the State Route 611 bridge over Forest Hills Run.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: May 7, 1991.

Susan M. Weisman,

Secretary.

[FR Doc. 91-11456 Filed 5-14-91; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 14, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or

Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: May 9, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Extension.

Title: Application for Grants under the Foreign Language Materials Acquisition Program, LSCA Title V.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden:

Responses: 200.

Burden Hours: 3200.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This form will be used by State Educational agencies to apply for funding under the Foreign Language Materials Acquisition Program. The Department uses the information to make grant awards.

[FR Doc. 91-11477 Filed 5-14-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ91-8-63-001]

Carnegie Natural Gas Company; Proposed Changes in FERC Gas Tariff

May 8, 1991.

Take notice that on May 3, 1991, as supplemented on May 3, 1991, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following Primary and Alternate tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective June 1, 1991:

Primary Tariff Sheets:

Sub Fourteenth Revised Sheet No. 8

Sub Fourteenth Revised Sheet No. 9

Alternate Tariff Sheets:

Sub Alt Fourteenth Revised Sheet No. 8

Sub Alt Fourteenth Revised Sheet No. 9

Carnegie states that pursuant to the PGA clause in its FERC Gas Tariff and § 154.308 of the Commission's regulations, it is proposing to adjust its sales rates effective June 1, 1991, as part of its scheduled Quarterly PGA filing. Carnegie states that it is filing two sets of tariff sheets to correspond with the Primary and Alternate tariff sheets which are pending Commission action in Carnegie's current section 4 rate proceeding in Docket No. RP91-37-000. Carnegie states that consistent with Carnegie's request pending before the Commission in Docket No. RP91-37-000, the referenced Primary tariff sheets reflect the continuation by Carnegie of its standby charge tracker, whereas the referenced Alternate tariff sheets reflect the elimination of Carnegie's standby charge tracker and the inclusion of the associated Account No. 858 costs in Carnegie's base sales rates.

Carnegie proposes in this filing that the Commission accept the referenced Primary tariff sheets, to become effective June 1, 1991, if the Commission grants Carnegie's request for interim authorization in Docket No. RP91-37-000 to continue to track Texas Eastern standby charges through its PGA Clause. Carnegie alternatively proposes that, if Carnegie's request for interim tracking authorization is denied by the Commission, the Commission accept the referenced Alternate tariff sheets to become effective June 1, 1991.

The revised rates reflect the following changes from Carnegie's last fully-supported Out-of-Cycle PGA filing in Docket No. TQ91-8-63-000: a $0.0537 per Dth increase in the demand components of its LVWS and CDS rate schedules; a $0.4061 per Dth increase in the commodity components of its LVWS and CDS rate schedules; a $0.4078 per Dth increase in the commodity component of its LVIS rate schedule; and a $0.0018 per Dth increase in the DCA component of its LVWS and CDS rate schedules. The referenced Primary tariff sheets also reflect a decrease in the Standby Charge Adjustment of $0.1093 per Dth, from $0.3204 per Dth to $0.2111 per Dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before May 15, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11473 Filed 5-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST91-6204-000 Through ST91-7145-000]

Enogex, Inc.; Self-Implementing Transactions

May 8, 1991.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sales by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

A "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

Docket No. [1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-6204	Enogex Inc	Panhandle Eastern Pipeline Company	01-02-91	C	30,000
ST91-6205	ANR Pipeline Company	Northern Indiana Public Service Company	01-02-91	G-S	6,000
ST91-6206	United Gas Pipe Line Company	Midcon Marketing Corporation	01-02-91	G-S	721,000
ST91-6207	United Gas Pipe Line Company	Victoria Gas Corporation	01-02-91	G-S	29,565
ST91-6208	United Gas Pipe Line Company	NGC Transportation, Inc	01-02-91	G-S	154,500
ST91-6209	United Gas Pipe Line Company	Victoria Gas Corporation	01-02-91	G-S	103,000
ST91-6210	Phillips Gas Pipeline Company	Phillips Natural Gas Company	01-02-91	B	20,000
ST91-6211	Valero Transmission, L.P	Natural Gas Pipeline Company	01-02-91	C	15,000
ST91-6212	Mississippi River Transmission Corp	Consolidated Fuel Corporation	01-02-91	G-S	1,030
ST91-6213	Mississippi River Transmission Corp	PPG Industries, Inc	01-02-91	G-S	2,700
ST91-6214	Mississippi River Transmission Corp	National Steel Corporation	01-02-91	G-S	7,700
ST91-6215	Florida Gas Transmission Corporation	United Gas Pipe Line Company	01-02-91	G-S	10,000
ST91-6216	Florida Gas Transmission Corporation	Phibro Distributors Corporation	01-02-91	G-S	200,000
ST91-6218	Transcontinental Gas Pipe Line Corp	Enron Gas Marketing, Inc	01-02-91	G-S	1,100,000
ST91-6219	Transcontinental Gas Pipe Line Corp	Tejas Power Corp	01-02-91	G-S	2,718,000
ST91-6220	Transcontinental Gas Pipe Line Corp	Consolidated Edison Co. of N. Y. Inc	01-03-91	B	8,960,000
ST91-6221	Tennessee Gas Pipeline Co	Graham Energy Marketing Corp	01-03-91	G-S	100,000
ST91-6222	Questar Pipeline Co	Colorado Interstate Gas Co	01-03-91	G	5,000
ST91-6223	El Paso Natural Gas Co	NGC Transporter, Inc	01-03-91	G-S	154,500
ST91-6224	Natural Gas Pipeline Co. of America	Chevron U.S.A., Inc	01-03-91	G-S	35,000
ST91-6225	Columbia Gulf Transmission Co	Monterey Pipeline Co	01-03-91	B	25,000
ST91-6226	Columbia Gulf Transmission Co	Enserch Gas Co	01-03-91	G-S	100,000
ST91-6227	Columbia Gulf Transmission Co	Virginia Natural Gas, Inc	01-03-91	B	100,000
ST91-6228	ANR Pipeline Co	Hadson Gas Systems, Inc	01-03-91	G-S	75,000
ST91-6229	ANR Pipeline Co	Unicorp Energy Inc	01-03-91	G-S	100,000
ST91-6230	ANR Pipeline Co	Midcon Marketing Corp	01-03-91	G-S	230,000
ST91-6231	Valero Transmission, L.P	Natural Gas Pipeline Co. of Amer	01-04-91	C	4,000
ST91-6233	CNG Transmission Corp	New York Power Authority	01-04-91	G-S	150,000
ST91-6234	Colorado Interstate Gas Co	Northern Indiana Public Service Co	01-04-91	B	40,000
ST91-6235	Colorado Interstate Gas Co	PSI Gas Marketing	01-04-91	G-S	20,604
ST91-6236	Trunkline Gas Co	Cenran Corp	01-04-91	G-S	5,000
ST91-6237	Trunkline Gas Co	Equitable Resources Marketing Co	01-04-91	G-S	75,000
ST91-6238	Channel Industries Gas Co	Transcontinental Gas Pipeline Corp	01-04-91	C	10,000
ST91-6240	Sabine Pipe Line Co	City of Orlando	01-04-91	B	10,000
ST91-6241	Sabine Pipe Line Co	Florida Gas Utility	01-04-91	B	621
ST91-6242	Gulf Energy Pipeline Co	Tennessee Gas Pipeline Co	01-04-91	C	10,000
ST91-6243	United Gas Pipe Line Co	Equitable Resources Marketing Co	01-04-91	G-S	257,500
ST91-6244	United Gas Pipe Line Co	Endevco Oil & Gas Co	01-04-91	G-S	36,050
ST91-6245	United Gas Pipe Line Co	Louisiana States Gas Corp	01-04-91	G-S	39,055
ST91-6246	United Gas Pipe Line Co	Arkla Energy Marketing Co	01-04-91	G-S	209,000
ST91-6247	United Gas Pipe Line Co	Coastal States Gas Transmission Co	01-04-91	G-S	1,030
ST91-6248	Transtexas Pipeline Co	El Paso Natural Gas Co	01-07-91	C	8,000
ST91-6249	Valero Transmission, L.P	El Paso Natural Gas Co	01-07-91	C	8,000
ST91-6250	Red River Pipeline	Natural Gas Pipeline Co. of America	01-07-91	C	175,000
ST91-6251	Columbia Gulf Transmission Co	American Central Gas Companies, Inc	01-07-91	G-S	20,000
ST91-6252	Columbia Gulf Transmission Co	Diamond Shamrock Offshore Partners	01-07-91	G-S	23,000
ST91-6253	Columbia Gulf Transmission Co	East Ohio Gas Co. (The)	01-07-91	B	25,000
ST91-6254	Columbia Gas Transmission Co	Fuel Services Group	01-07-91	G-S	15,000
ST91-6255	Northern Natural Gas Co	Eastex Hydrocarbons, Inc	01-07-91	G-S	100,000
ST91-6256	Northern Natural Gas Co	Northern States Power Co.—Wisconsin	01-07-91	B	20,000
ST91-6257	Trunkline Gas Co	Phibro Distributors Corp	01-07-91	G-S	100,000
ST91-6258	Trunkline Gas Co	Rochester Gas & Electric Corp	01-07-91	B	100,000
ST91-6259	Trunkline Gas Co	Panhandle Training Co	01-07-91	G-S	100,000
ST91-6260	Columbia Gulf Transmission Co	Louis Dreyfus Energy Corp	01-07-91	G-S	100,000
ST91-6262	Superior Offshore Pipeline Co	Goodrich Oil CO	01-09-91	G-S	2,198
ST91-6263	Corpus Christi Transmission Co	Trunkline Gas Co	01-09-91	C	30,000
ST91-6264	Texas Gas Transmission Corp	K N Gas Marketing Inc	01-09-91	G-S	150,000

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

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Docket No. [1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-6265	Texas Gas Transmission Corp	Louisiana Intrastate Gas Corp	01-08-91	B	30,000
ST91-6266	Texas Gas Transmission Corp	The Dayton Power and Light Co	01-08-91	B	51,428
ST91-6267	Texas Gas Transmission Corp	The Dayton Power and Light Co	01-08-91	B	10,000
ST91-6268	Arkla Energy Resources	Arkla Energy Marketing Co	01-08-91	G-S	2,077
ST91-6269	Arkla Energy Resources	Arkla Energy Marketing Co	01-08-91	G-S	5,092
ST91-6270	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	01-08-91	G-S	13,647
ST91-6271	United Gas Pipe Line Co	Stellar Gas Co	01-08-91	G-S	515,000
ST91-6272	United Gas Pipe Line Co	Midcon Marketing Corp	01-08-91	G-S	51,500
ST91-6273	Tennessee Gas Pipeline Co	Channel Industries Gas Co	01-08-91	B	360,000
ST91-6274	Valero Transmission	Natural Gas Pipeline Co	01-09-91	C	10,000
ST91-6275	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	01-09-91	B	30,000
ST91-6276	Natural Gas Pipeline Co. of America	Arcadian Corp	01-09-91	G-S	50,000
ST91-6277	Natural Gas Pipeline Co. of America	Woodline Municipal Natural Gas Sys	01-09-91	B	300
ST91-6278	Transwestern Pipeline Co	Williams Gas Marketing Co	01-09-91	G-S	80,000
ST91-6279	Channel Industries Gas Co	Natural Gas Pipeline Co. of Amer	01-09-91	C	60,000
ST91-6280	Tennessee Gas Pipeline Co	The Procter & Gamble Paper Products Co	01-09-91	G-S	4,444
ST91-6281	Tennessee Gas Pipeline Co	National Fuel Gas Supply Corp	01-09-91	G	12,000
ST91-6282	Arkla Energy Resources	Enogex Services, Inc	01-09-91	G-S	1,300
ST91-6284	Arkla Energy Resources	Enogex Services, Inc	01-09-91	B	20,000
ST91-6285	Transamaze Pipeline	Texas Eastern Transmission Corp	01-10-91	C	12,500
ST91-6286	Sea Robin Pipeline Co	Neches Gas Distribution Co	01-10-91	B	30,900
ST91-6287	United Gas Pipe Line Co	Union Texas Petroleum Corp	01-10-91	G-S	14,265
ST91-6288	Texas Gas Transmission Corp	Mobil Natural Gas Inc	01-10-91	G-S	14,200
ST91-6289	Texas Gas Transmission Corp	Mobil Natural Gas Inc	01-10-91	G-S	10,100
ST91-6290	Texas Gas Transmission Corp	Louisiana Intrastate Gas Corp	01-10-91	B	30,000
ST91-6291	Arkla Energy Resources	Amoco Energy Trading Corp	01-10-91	G-S	50,000
ST91-6292	Trunkline Gas Co	American Central Gas Marketing Co	01-10-91	G-S	50,000
ST91-6293	Trunkline Gas Co	Enron Gas Marketing, Inc	01-10-91	G-S	100,000
ST91-6294	Trunkline Gas Co	Texaco Gas Marketing, Inc	01-10-91	G-S	200,000
ST91-6295	Panhandle Eastern Pipe Line Co	PSI, Inc	01-10-91	G-S	50,000
ST91-6296	Panhandle Eastern Pipe Line co	AMGAS, Inc	01-10-91	G-S	200
ST91-6297	Southern Natural Gas Co	Kentucky-Tennessee Clay Co	01-10-91	G-S	500
ST91-6298	Southern Natural Gas Co	City of Wrens	01-10-91	G-S	676
ST91-6299	Southern Natural Gas Co	Gulf States Paper Corp	01-10-91	G-S	1,300
ST91-6300	Southern Natural Gas Co	Texican Natural Gas Co	01-10-91	G-S	50,000
ST91-6301	Southern Natural Gas Co	Howell Gas Management Co	01-10-91	G-S	100,000
ST91-6302	Southern Natural Gas Co	SNG Intrastate Pipeline Inc	01-10-91	B	10,000
ST91-6303	Southern Natural Gas Co	Endevco Oil & Gas CO	01-10-91	G-S	30,000
ST91-6304	Southern Natural Gas Co	National Gas & Oil Corp	01-10-91	G-S	2,551
ST91-6305	Orange and Rockland Utilities, Inc	Commonwealth Gas Co	01-10-91	G-LT	15,000
ST91-6306	El Paso Natural Gas Co	Gasmark, Inc	01-10-91	G-S	8,034
ST91-6307	Tefi Pipeline Co	Northern Natural Gas Co	01-10-91	C	25,000
ST91-6308	Columbia Gulf Transmission Co	Union Texas Petroleum Corp	01-10-91	G-S	50,000
ST91-6309	Columbia Gulf Transmission Co	Louisiana Intrastate Gas Corp	01-10-91	B	18,000
ST91-6310	Columbia Gulf Transmission Co	Stellar Gas Co	01-10-91	G-S	10,000
ST91-6311	Columbia Gas Transmission Co	North Carolina Natural Gas Corp	01-10-91	B	1,000
ST91-6312	Columbia Gas Transmission Co	Delta Natural Gas Co	01-10-91	B	1,000
ST91-6313	Columbia Gas Transmission Co	Catamount Natural Gas, Inc	01-10-91	G-S	50,000
ST91-6314	Westar Transmission Co	El Paso Natural Gas Co	01-11-91	C	55,000
ST91-6315	Questar Pipeline Co	Grand Valley Gas Co	01-11-91	G-S	75,000
ST91-6316	Natural Gas Pipeline Co of America	Interstate Power Co	01-11-91	B	6,533
ST91-6317	Natural Gas Pipeline Co of America	Interstate Power Co	01-11-91	B	10,050
ST91-6318	Natural Gas Pipeline Co of America	Interstate Power Co	01-11-91	B	8,543
ST91-6319 [3]	Colorado Interstate Gas Co	Coastal Gas Marketing Company	01-11-91	G-S	100,000
ST91-6320 [3]	Colorado Interstate Gas Co	Coastal Gas Marketing Company	01-11-91	G-S	100,000
ST91-6321 [3]	Colorado Interstate Gas Co	Coastal Gas Marketing Company	01-11-91	G-S	100,000
ST91-6322 [3]	Colorado Interstate Gas Co	Coastal Gas Marketing Company	01-11-91	G-S	100,000
ST91-6323 [3]	Colorado Interstate Gas Co	Coastal Gas Marketing Company	01-11-91	G-S	100,000
ST91-6324	Columbia Gas Transmission Corp	Mountaineer Gas Company	01-11-91	B	10,069
ST91-6325	Columbia Gas Transmission Corp	Columbia Gas of Ohio, Inc	01-11-91	B	78,657
ST91-6326	Columbia Gas Transmission Corp	City of Richmond	01-11-91	B	8,000
ST91-6327	Trunkline Gas Co	NGC Transportation, Inc	01-11-91	G-S	100,000
ST91-6328	Trunkline Gas Co	NGC Transportation, Inc	01-11-91	G-S	50,000
ST91-6329	Trunkline Gas Co	Louisex Energy, Inc	01-11-91	G-S	40,000
ST91-6330	Trunkline Gas Co	Louis Dreyfus Energy Corporation	01-11-91	G-S	100,000
ST91-6331	Trunkline Gas Co	Arcadian Corporation	01-11-91	G-S	100,000
ST91-6332	Trunkline Gas Co	PSI, Inc	01-11-91	G-S	100,000
ST91-6333	Trunkline Gas Co	PSI Gas Marketing	01-11-91	G-S	100,000
ST91-6334	ANR Pipeline Com	Hadson Gas Systems, Inc	01-11-91	G	100,000
ST91-6335	Williston Basin Interstate P/L Co	North Canadian Resources, Inc	01-11-91	G-S	120,000
ST91-6336	Transcontinental Gas Pipe Line Corp	Union Pacific Fuels, Inc	01-11-91	G-S	450,000
ST91-6337	Transcontinental Gas Pipe Line Corp	Amerada Hess Corporation	01-11-91	G-S	500,000
ST91-6338	Tennessee Gas Pipeline Co	O&R Energy, Inc	01-11-91	G-S	2,073
ST91-6339	Tennessee Gas Pipeline Co	United Gas Pipe Line Company	01-11-91	G	100,000
ST91-6340	Tennessee Gas Pipeline Co	Midwestern Gas Transmission Company	01-11-91	G	100,000
ST91-6341	Tennessee Gas Pipeline Co	East Tennessee Natural Gas Company	01-11-91	G	100,000
ST91-6342	Tennessee Gas Pipeline Co	CNG Transmission Corporation	01-11-91	G	100,000
ST91-6343	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corporation	01-14-91	C	10,000
ST91-6344	Valero Transmission, LP	El Paso Natural Gas Company	01-14-91	C	50,000
ST91-6345	Valero Transmission, LP	VLDC, LP	01-14-91	C	9,000

Docket No. [1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-6346	Southern Natural Gas Co	City of Fitzgerald, Georgia	01-14-91	G-S	977
ST91-6347	Southern Natural Gas Co	Marshall County Gas District	01-14-91	G-S	4,067
ST91-6348	Southern Natural Gas Co	United Cities Gas Company	01-14-91	B	21,000
ST91-6349	Southern Natural Gas Co	City of Ashburn, Georgia	01-14-91	G-S	251
ST91-6350	Southern Natural Gas Co	City of Cuthbert, Georgia	01-14-91	G-S	609
ST91-6351	Southern Natural Gas Co	City of Moultrie, Georgia	01-14-91	G-S	1,407
ST91-6352	Southern Natural Gas Co	City of Bainbridge, Georgia	01-14-91	G-S	629
ST91-6353	Southern Natural Gas Co	City of Camilla, Georgia	01-14-91	G-S	472
ST91-6354	Southern Natural Gas Co	Fort Valley Utility Commission	01-14-91	G-S	1,876
ST91-6355	Southern Natural Gas Co	City of Trion, Georgia	01-14-91	G-S	239
ST91-6356	Southern Natural Gas Co	City of Fultondale, Alabama	01-14-91	G-S	3,198
ST91-6357	Southern Natural Gas Co	City of Trussville, Alabama	01-14-91	G-S	3,000
ST91-6358	Southern Natural Gas Co	City of Louisville, Georgia	01-14-91	G-S	178
ST91-6359	Southern Natural Gas Co	City of Perry, Georgia	01-14-91	G-S	1,400
ST91-6360	Southern Natural Gas Co	City of Statesboro, Georgia	01-14-91	G-S	2,379
ST91-6361	Southern Natural Gas Co	City of Summerville, Georgia	01-14-91	G-S	3,213
ST91-6362	Southern Natural Gas Co	City of Americus, Georgia	01-14-91	G-S	1,508
ST91-6363	Southern Natural Gas Co	City of Adel, Georgia	01-14-91	G-S	319
ST91-6364	Southern Natural Gas Co	City of Thomasville, Georgia	01-14-91	G-S	1,508
ST91-6365	Southern Natural Gas Co	City of Cordele, Georgia	01-14-91	G-S	704
ST91-6366	Southern Natural Gas Co	City of Cairo, Georgia	01-14-91	G-S	754
ST91-6367	Southern Natural Gas Co	City of Waynesboro, Georgia	01-14-91	G-S	288
ST91-6368	Southern Natural Gas Co	City of Vienna, Georgia	01-14-91	G-S	306
ST91-6369	Southern Natural Gas Co	City of Hogansville, Georgia	01-14-91	G-S	210
ST91-6370	Southern Natural Gas Co	City of Sylvania, Georgia	01-14-91	G-S	160
ST91-6371	Southern Natural Gas Co	City of Sparta, Georgia	01-14-91	G-S	123
ST91-6372	Southern Natural Gas Co	Town of Haven, Florida	01-14-91	G-S	302
ST91-6373	Southern Natural Gas Co	City of Cochran, Georgia	01-14-91	G-S	308
ST91-6374	Southern Natural Gas Co	City of Thomson, Georgia	01-14-91	G-S	930
ST91-6375	Southern Natural Gas Co	City of Blakely, Georgia	01-14-91	G-S	352
ST91-6376	Southern Natural Gas Co	City of LaFayette, Georgia	01-14-91	G-S	1,435
ST91-6377	Southern Natural Gas Co	City of Monticello, Georgia	01-14-91	G-S	216
ST91-6378	Southern Natural Gas Co	City of Quincy, Florida	01-14-91	G-S	1,055
ST91-6379	Southern Natural Gas Co	DeKalb-Cherokee Counties Gas Dist	01-14-91	G-S	1,907
ST91-6380	Southern Natural Gas Co	Alabama Gas Corporation	01-14-91	G-S	70,000
ST91-6381	Southern Natural Gas Co	City of Millen, Georgia	01-14-91	G-S	194
ST91-6382	Southern Natural Gas Co	City of Sylacauga, Alabama	01-14-91	G-S	4,250
ST91-6383	Southern Natural Gas Co	City of Dublin, Georgia	01-14-91	B	1,236
ST91-6384	Viking Gas Transmission Co	Koch Hydrocarbon Co	01-14-91	G-S	100,000
ST91-6385	Tennessee Gas Pipeline Co	Mississippi Fuel Co	01-14-91	B	280,000
ST91-6386	Transok, Inc	Black Marlin Pipeline Co	01-14-91	C	60,000
ST91-6387	Williston Basin Interstate P/L Co	Chevron U.S.A., Inc	01-14-91	G-S	7,700
ST91-6388	Columbia Gulf Transmission Co	Union Texas Petroleum Corp	01-14-91	G-S	35,000
ST91-6389	Northern Natural Gas Co	Energy Development Corp	01-14-91	G-S	15,000
ST91-6390	Florida Gas Transmission Co	Chesapeake Utilities Corp	01-14-91	G-S	20,000
ST91-6391	Texas Gas Gathering Co	Natural Gas Pipeline Co. of Amer	01-14-91	C	1,200
ST91-6392	Blue Dolphin Pipe Line Co	Dow Pipeline System	01-14-91	B	8,000
ST91-6393	Enogex, Inc	Williams Natural Gas Co	01-14-91	C	50,000
ST91-6394	Enogex, Inc	Williams Natural Gas Co	01-14-91	C	15,000
ST91-6395	Enogex, Inc	Arkla Energy Resources	01-14-91	C	20,000
ST91-6396	Enogex, Inc	Arkla Energy Resources	01-14-91	C	50,000
ST91-6397	Tennessee Gas Pipeline Co	Berkshire Gas Co	01-14-91	B	31,500
ST91-6398	ONG Transmission Co	Natural Gas Pipeline Co. of Amer	01-14-91	C	75,000
ST91-6399	ONG Transmission Co	Northern Natural Gas Co	01-14-91	C	50,000
ST91-6401	Transcontinental Gas Pipeline Corp	Enmark Gas Corp	01-14-91	G-S	90,000
ST91-6402	Transcontinental Gas Pipeline Corp	Ultramar Oil & Gas Limited	01-14-91	G-S	6,000
ST91-6403	Transcontinental Gas Pipeline Corp	Southern Natural Gas Co	01-14-91	G	100,000
ST91-6404	Florida Gas Transmission Co	Citrus World, Inc	01-14-91	G-S	967
ST91-6405	Florida Gas Transmission Co	City of Stark	01-14-91	G-S	60
ST91-6406	Florida Gas Transmission Co	Kissimmee Utility Authority	01-14-91	G-S	471
ST91-6407	Florida Gas Transmission Co	Kissimmee Utility Authority	01-14-91	G-S	362
ST91-6408	Florida Gas Transmission Co	Florida Gas Utility	01-14-91	G-S	924,974
ST91-6409	Northern Natural Gas Co	Gestrak Corp	01-14-91	G-S	100,000
ST91-6410	Valero Transmission, LP	El Paso Natural Gas Pipeline Company	01-15-91	C	11,000
ST91-6411 [3]	Natural Gas Pipeline Co. of America	Willowtex Pipeline Company	01-15-91	G-S	18,000
ST91-6412 [3]	Natural Gas Pipeline Co. of America	Montana Power Company	01-16-91	G-S	20,000
ST91-6413	Tennessee Gas Pipeline Co	SIPCO Gas Transmission Corporation	01-15-91	B	50,000
ST91-6414	Tennessee Gas Pipeline Co	Philadelphia Electric Company	01-15-91	B	50,000
ST91-6415	Tennessee Gas Pipeline Co	Nycotex Gas Transport	01-15-91	B	10,000
ST91-6416	Pelican Interstate Gas System	Natural Gas Pipeline Company of America	01-15-91	K	40,440
ST91-6417	Northern Natural Gas Co	Peoples Natural Gas Company	01-15-91	B	100,000
ST91-6418	Florida Gas Transmission Co	Chevron U.S.A., Inc	01-15-91	G-S	10,000
ST91-6419	Florida Gas Transmission Co	LL&E Gas Marketing, Inc	01-15-91	G-S	10,000
ST91-6420	Delhi Gas Pipeline Corp	Transwestern Pipeline Company	01-15-91	C	3,000
ST91-6421	Delhi Gas Pipeline Corp	Northern Natural Gas Company	01-15-91	C	10,000
ST91-6422	Delhi Gas Pipeline Corp	Northern Natural Gas Company	01-15-91	C	10,000
ST91-6423	Colorado Interstate Gas Co	Coastal Gas Marketing Company	01-15-91	G-S	10,000
ST91-6424	ANR Pipeline Co	U.S. Gas Marketing, Inc	01-15-91	G-S	5,000
ST91-6425	ANR Pipeline Co	Direct Gas Supply Corporation	01-15-91	G-S	25,000
ST91-6426	ANR Pipeline Co	PSI Gas Marketing, Inc	01-15-91	G-S	100,000

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Docket No. [1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-6427	Mississippi River Transmission Corp	Arkla Energy Marketing Company	01-15-91	G-S	140,000
ST91-6428	Mississippi River Transmission Corp	KN Gas Marketing, Inc	01-15-91	G-S	160,000
ST91-6429	Mississippi River Transmission Corp	Bishop Pipeline Corporation	01-15-91	G-S	20,000
ST91-6430	Texas Gas Transmission Corp	Excel Gas Marketing, Inc	01-16-91	G-S	100,000
ST91-6433	Valero Transmission, L.P	Natural Gas Pipeline Company of America	01-16-91	C	5,000
ST91-6436	Northern Border Pipeline Co	Texaco Gas Marketing, Inc	01-16-91	G-S	125,000
ST91-6437	Florida Gas Transmission Co	Coastal Gas Marketing Company	01-16-91	G-S	400,000
ST91-6438	Florida Gas Transmission Co	Arco Natural Gas Marketing, Inc	01-16-91	G-S	800,000
ST91-6439	Northern Natural Gas Co	Lone Star Gas Company	01-16-91	B	100,000
ST91-6440	Northern Natural Gas Co	Texaco Gas Marketing, Inc	01-16-91	G-S	100,000
ST91-6441	Northern Natural Gas Co	Manilla Gas Department	01-16-91	B	250
ST91-6442	Panhandle Eastern Pipe Line Co	Columbia Gas of Ohio	01-16-91	B	70,000
ST91-6443	Columbia Gulf Transmission Co	Graham Energy Marketing Corporation	01-16-91	G-S	200,000
ST91-6444	Tennessee Gas Pipeline Co	NGC Transportation Inc	01-16-91	G-S	9,250
ST91-6445	Tennessee Gas Pipeline Co	CNG Transmission Corporation	01-16-91	G	12,000
ST91-6446	Colorado Interstate Gas Co	Iowa Southern Utilities Company, et al	01-17-91	B	60,000
ST91-6447	Colorado Interstate Gas Co	Public Service Company of Colorado	01-17-91	B	100,000
ST91-6449	Florida Gas Transmission Co	Cryx Gas Marketing, Limited Partnership	01-17-91	G-S	80,000
ST91-6450	Tennessee Gas Pipeline Co	Homeport Pipeline Company	01-17-91	B	2,000
ST91-6451	Tennessee Gas Pipeline Co	Berkshire Gas Company	01-17-91	B	31,250
ST91-6452	Valero Transmission, L.P	El Paso Natural Gas Company	01-17-91	C	3,250
ST91-6453	Valero Transmission, L.P	United Gas Pipeline Company	01-17-91	C	5,000
ST91-6454	Transok, Inc	Arkla Energy Resources	01-17-91	C	80,000
ST91-6455	Transtexas Pipeline Co	El Paso Natural Gas Company	01-17-91	C	3,250
ST91-6456	Valero Transmission, L.P	Florida Gas Transmission Company	01-17-91	C	1,500
ST91-6457 [3]	Texas Eastern Transmission Corp	Delhi Gas Pipeline Corporation	01-17-91	G-S	237,000
ST91-6458 [3]	Texas Eastern Transmission Corp	Delhi Gas Pipeline Corporation	01-17-91	G-S	237,000
ST91-6459 [3]	Panhandle Eastern Pipe Line Co	Access Energy Corp	01-17-91	G-S	1,000
ST91-6460 [3]	Panhandle Eastern Pipe Line Co	APX Corp	01-17-91	G-S	80,000
ST91-6461	Columbia Gulf Transmission Co	Hadson Gas Systems	01-17-91	G-S	121,500
ST91-6462	Trunkline Gas Co	Central Hudson Gas & Elect. Co., et al	01-17-91	B	80,000
ST91-6463	Panhandle Eastern Pipe Line Co	Commonwealth Gas Company, et al	01-17-91	B	160,000
ST91-6464	Panhandle Eastern Pipe Line Co	Tex/Con Gas Pipeline Company	01-17-91	B	80,000
ST91-6465	Panhandle Eastern Pipe Line Co	Bishop Pipeline Company	01-17-91	B	80,000
ST91-6466	United Gas Pipe Line Co	Rally Pipeline Corporation	01-17-91	G-S	88,710
ST91-6467	United Gas Pipe Line Co	Transamerican Gas Transmission Corp	01-17-91	G-S	164,500
ST91-6468	United Gas Pipe Line Co	Rally Pipeline Corporation	01-17-91	G-S	88,710
ST91-6469	United Gas Pipe Line Co	Seagull Marketing Services, Inc	01-17-91	G-S	515,000
ST91-6470	United Gas Pipe Line Co	NGC Transportation, Inc	01-17-91	G-S	164,500
ST91-6471	Red River Pipeline	El Paso Natural Gas Company	01-18-91	C	75,000
ST91-6472	Northern Natural Gas Co	Northern States Power Company	01-18-91	B	2,000
ST91-6473	Northern Natural Gas Co	Hawarden Municipal Utility	01-18-91	B	775
ST91-6474	Northern Natural Gas Co	Rolfe Municipal Utility	01-18-91	B	240
ST91-6475	Florida Gas Transmission Co	Houston Pipe Line Company	01-18-91	G-S	80,000
ST91-6476	Natural Gas Pipeline Co. of America	Arcadian Corporation	01-18-91	G-S	16,000
ST91-6477	Natural Gas Pipeline Co. of America	Arcadian Corporation	01-18-91	G-S	1,000
ST91-6478	Natural Gas Pipeline Co. of America	Centran Corporation	01-18-91	G-S	30,000
ST91-6479	Williston Basin Interstate P/L Co	Koch Hydrocarbon Company	01-18-91	G-S	141
ST91-6480	Columbia Gulf Transmission Co	Texaco Gas Marketing, Inc	01-18-91	G-S	25,000
ST91-6481	Columbia Gul Transmission Co	Exxon Corporation	01-18-91	G-S	175,000
ST91-6482	Trunkline Gas Co	Panhandle Trading Company	01-18-91	G-S	75,000
ST91-6483	Trunkline Gas Co	American Central Gas Marketing Company	01-18-91	G-S	25,000
ST91-6484	Northern Natural Gas Co	Union Texas Products Corporation	01-18-91	G-S	30,000
ST91-6485	Northern Natural Gas Co	Sanborn Municipal Gas Utility	01-18-91	B	600
ST91-6486	Northern Natural Gas Co	Grettinger Municipal Gas	01-18-91	B	275
ST91-6487	Northern Natural Gas Co	Eastex Hydrocarbon, Inc	01-18-91	G-S	100,000
ST91-6488	Northern Natural Gas Co	Minnegasco, Inc	01-18-91	B	50,000
ST91-6489	Northern Natural Gas Co	City of Two Harbors	01-18-91	B	1,111
ST91-6490	Lone Star Gas Company	El Paso Natural Gas Company	01-22-91	C	12,000
ST91-6492	Enserch Gas Transmission Company	United Gas Pipeline Company	01-22-91	C	100,000
ST91-6493	Valero Transmission, L.P	Natural Gas Pipeline Company of America	01-22-91	C	10,000
ST91-6494	Delhi Gas Pipeline Corp	Northern Natural Gas Co	01-22-91	C	10,000
ST91-6495	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	01-22-91	C	10,000
ST91-6496	KN Energy, Inc	DYCO Gas Marketing, Inc	01-22-91	G-S	10,000
ST91-6497	KN Energy, Inc	Reliance Gas Marketing Co	01-22-91	G-S	10,000
ST91-6498	Natural Gas Pipeline Co. of America	V.H.C. Gas Systems, LP	01-22-91	G-S	10,000
ST91-6499	Natural Gas Pipeline Co. of America	Chevron U.S.A., Inc	01-22-91	G-S	10,000
ST91-6500	Natural Gas Pipeline Co. of America	PSI Gas Marketing	01-22-91	G-S	10,000
ST91-6501	Seagull Shoreline System	VLDC, LP	01-22-91	C	20,000
ST91-6502	Kentucky West Virginia Gas Company	Paintsville Utilities Commission	01-22-91	B	480
ST91-6503	Colorado Interstate Gas Company	Cheyenne Light, Fuel and Power Company	01-22-91	B	10,000
ST91-6504	Florida Gas Transmission Company	Amoco Energy Trading Company	01-22-91	G-S	150,000
ST91-6505	Florida Gas Transmission Company	Sebring Utilities Commission	01-22-91	G-S	514
ST91-6506	Transwestern Pipeline Company	Caspen Gas Company	01-22-91	G-S	60,000
ST91-6507	Transwestern Pipeline Company	OXY USA, Inc	01-22-91	G-S	5,000
ST91-6508	CNG Transmission Corporation	GTE Products Corporation	01-22-91	G-S	2,500
ST91-6509	CNG Transmission Corporation	New York State Electic & Gas Corp	01-22-91	B	37
ST91-6510	CNG Transmission Corporation	Niagara Mohawk Power Corporation	01-22-91	B	500
ST91-6511	CNG Transmission Corporation	Masonite Corporation	01-22-91	G-S	4,400
ST91-6512	CNG Transmission Corporation	Hope Gas, Inc	01-22-91	B	2,904

Docket No. [1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-6513	CNG Transmission Corporation	Niagara Mohawk Power Corporation	01-22-91	B	[illegible]
ST91-6514	CNG Transmission Corporation	Corning Natural Gas Corporation	01-22-91	B	[illegible]
ST91-6515	Southern Natural Gas Co	City of Jasper	01-22-91	G-S	[illegible]
ST91-6516	Equitrans, Inc	Panhandle Trading Co	01-22-91	G-S	50,[illegible]
ST91-6517	Equitrans, Inc	O & R Energy, Inc	01-22-91	G-S	600,000
ST91-6518	Enogex, Inc	Natural Gas Pipeline Co. of Amer	01-22-91	C	50,000
ST91-6519	Enogex, Inc	Arkla Energy Resources	01-22-91	C	50,000
ST91-6520	Enogex, Inc	Phillips Gas Pipeline Co	01-22-91	C	50,000
ST91-6521	Tennessee Gas Pipeline Co	National Fuel Gas Supply Corp	01-22-91	G	20,000
ST91-6522	Tennessee Gas Pipeline Co	Lone Star Gas Co. of Texas	01-22-91	B	40,000
ST91-6523	Tennessee Gas Pipeline Co	Distigas of Massachusetts Corp	01-22-91	G	100,000
ST91-6524	Trunkline Gas Co	Eastex Hydrocarbons, Inc	01-22-91	G-S	50,000
ST91-6525	Trunkline Gas Co	Amoco Production Co	01-22-91	G-S	50,000
ST91-6526	Trunkline Gas Co	Calumount Natural Gas, Inc	01-22-91	G-S	50,000
ST91-6527	Texas Eastern Transmission Corp	Amerada Hess Corp	01-22-91	G-S	350,000
ST91-6528	Texas Eastern Transmission Corp	Brooklyn Interstate Natural	01-22-91	G-S	100,000
ST91-6529	Texas Eastern Transmission Corp	Elizabethtown Gas Co	01-22-91	B	15,000
ST91-6530	Texas Eastern Transmission Corp	Texas-Ohio	01-22-91	G-S	120,000
ST91-6531	Great Lakes Gas Transmission, L.P	Northern States Power Co	01-22-91	G-S	35,000
ST91-6535	Delhi Gas Pipeline Corp	Northern Natural Gas Co	01-23-91	C	80,000
ST91-6536	Natural Gas Pipeline Co. of America	Delhi Gas Pipeline Corp	01-23-91	B	150,000
ST91-6537	Natural Gas Pipeline Co. of America	Claim Gas Co. L.P	01-23-91	B	100,000
ST91-6538	Louisiana Intrastate Gas Corp	Tennessee Gas Pipeline Co	01-23-91	C	40,000
ST91-6539	Seagull Shoreline System	Bayou Industial Gas Corp	01-23-91	C	10,000
ST91-6540	Transcontinental Gas P/L Corp	United Texas Transmission Co	01-23-91	B	100,000
ST91-6541	Midwestern Gas Transmission Co	Howell Gas Management Co	01-23-91	G-S	50,000
ST91-6542	Tomcat	Texas Eastern Transmission Corp	01-23-91	C	25,000
ST91-6543	Northern Natural Gas Co	Iowa-Illinois Gas and Electric	01-23-91	B	15,000
ST91-6544	Florida Gas Transmission Co	City of Starke	01-23-91	G-S	178
ST91-6545	Florida Gas Transmission Co	Coastal Gas Marketing Co	01-23-91	G-S	90,000
ST91-6546	Texas Gas Transmission Corp	Ohio Valley Gas Corp	01-23-91	B	1,000
ST91-6547	Texas Gas Transmission Corp	Ohio Valley Gas Corp	01-23-91	B	500
ST91-6548	Texas Gas Transmission Corp	United Cities Gas Co	01-23-91	B	10,000
ST91-6549	Texas Gas Transmission Corp	Midwest Natural Gas Corp	01-23-91	B	4,129
ST91-6550	Texas Gas Transmission Corp	City of Henderson	01-23-91	B	8,878
ST91-6551	Texas Gas Transmission Corp	Ohio River Pipeline Corp	01-23-91	B	10,000
ST91-6552	Texas Gas Transmission Corp	Western Kentucky Gas Co	01-23-91	B	255
ST91-6553	Trunkline Gas Co	Columbia Gas Transmission Corp	01-23-91	G	150,000
ST91-6554	Columbia Gas Transmission Corp	Allied Corp	01-23-91	G-S	115,875
ST91-6555	Arkla Energy Resources	Mississippi Power & Light Co	01-23-91	G-S	55,000
ST91-6556	Louisiana Resources Co	Stingray Pipeline Co	01-23-91	C	30,000
ST91-6557	Mississippi River Transmission Corp	Midwest Gas	01-23-91	B	30,000
ST91-6558	Mississippi River Transmission Corp	City of Livermore	01-23-91	B	30,000
ST91-6559	Mississippi River Transmission Corp	Maury City Utilities	01-23-91	B	30,000
ST91-6560	Mississippi River Transmission Corp	Cincinnati Gas & Electric Co	01-23-91	B	30,000
ST91-6561	Mississippi River Transmission Corp	United Cities Gas Co	01-23-91	B	30,000
ST91-6562	Mississippi River Transmission Corp	South East Indian Natural Gas Co	01-23-91	B	30,000
ST91-6563	Mississippi River Transmission Corp	Citizens Gas & Coke Utility	01-23-91	B	30,000
ST91-6564	Mississippi River Transmission Corp	Cincinnati Gas & Electric Co	01-23-91	B	45,000
ST91-6565	Mississippi River Transmission Corp	Memphis Light, Gas & Water Division	01-23-91	B	11,000
ST91-6566	Mississippi River Transmission Corp	The City of Sturgis Kentucky	01-23-91	B	50,000
ST91-6567	Mississippi River Transmission Corp	Crockett Public Utility	01-23-91	B	50,000
ST91-6568	Mississippi River Transmission Corp	The City of Martin, Tennessee	01-23-91	B	50,000
ST91-6569	Mississippi River Transmission Corp	Leitchfield Utilities	01-23-91	B	50,000
ST91-6570	Mississippi River Transmission Corp	Northern Illinois Gas Co	01-23-91	B	30,000
ST91-6571	K N Energy, Inc	American Exploration Gas System	01-24-91	G-S	12,000
ST91-6572	K N Energy, Inc	K N Gas Marketing, Inc	01-24-91	G-S	798
ST91-6573	K N Energy, Inc	K N Gas Marketing, Inc	01-24-91	G-S	2,946
ST91-6574	Northern Natural Gas Co	Lake Park Municipal Utilities	01-24-91	B	190
ST91-6575	Panhandle Eastern Pipe Line Co	Phillips 66 Natural Gas Co	01-24-91	G-S	500
ST91-6576	Panhandle Eastern Pipel Line Co	Semco Energy Services, Inc	01-24-91	G-S	50,000
ST91-6577	Panhandle Eastern Pipe Line Co	Amgas, Inc	01-24-91	G-S	200
ST91-6578	Panhandle Eastern Pipe Line Co	Amgas, Inc	01-24-91	G-S	180
ST91-6579	Panhandle Eastern Pipe Line Co	Amgas, Inc	01-24-91	G-S	60
ST91-6580	Panhandle Eastern Pipe Line Co	Amgas, Inc	01-24-91	G-S	200
ST91-6581	United Gas Pipe Line Co	Fina Natural Gas Co	01-24-91	G-S	61,800
ST91-6582	Gulf Energy Pipeline Co	Trunkline Gas Co	01-24-91	C	1,500
ST91-6583	Williston Basin Interstate P/L Co	Amerada Hess Corp	01-24-91	G-S	559
ST91-6584	Trailblazer Pipeline Co	Northern Illinois Gas Co	01-25-91	B	363,000
ST91-6585	Black Marlin Pipeline Co	Philtro Energy, Inc	01-25-91	G-S	50,000
ST91-6586	Texas Gas Transmission Corp	O & R Energy, Inc	01-25-91	G-S	40,000
ST91-6587	Texas Gas Transmission Corp	Centran Corp	01-25-91	G-S	30,000
ST91-6588	United Gas Pipe Line Co	Transamerican Gas Transmission Corp	01-25-91	G-S	164,500
ST91-6589	United Gas Pipe Line Co	Oryx Gas Marketing Limited Partnership	01-25-91	G-S	61,800
ST91-6590	United Gas Pipe Line Co	Chevron U.S.A., Inc	01-25-91	G-S	103,000
ST91-6591	United Gas Pipe Line Co	Eagle Natural Gas Co	01-25-91	G-S	25,750
ST91-6592	United Gas Pipe Line Co	Exxon Gas Marketing, Inc	01-25-91	G-S	51,500
ST91-6593	United Gas Pipe Line Co	Arkla Energy Marketing Co	01-25-91	G-S	288,800
ST91-6594	United Gas Pipe Line Co	Mobil Natural Gas Inc	01-25-91	G-S	51,500
ST91-6595	United Gas Pipe Line Co	Midcon Marketing Corp	01-25-91	G-S	721,000

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Docket No. [1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-6596	Columbia Gulf Transmission Co	Chevron U.S.A., Inc	01-25-91	G-S	50,000
ST91-6597	Southern Natural Gas Co	Union Camp Corp	01-25-91	G-S	4,000
ST91-6598	Southern Natural Gas Co	Hassie Hunt Exploration	01-25-91	G-S	200
ST91-6599	Southern Natural Gas Co	Proctor and Gamble Paper Products Co	01-25-91	G-S	3,439
ST91-6600	Southern Natural Gas Co	Pennzoil Exploration Corp	01-25-91	G-S	5,000
ST91-6601	Seagull Shoreline System	VLDC, L.P	01-25-91	C	600,000
ST91-6602	ANR Pipeline Co	Wisconsin Gas Co	01-25-91	B	75,000
ST91-6603	ANR Pipeline Co	Enron Gas Marketing, Inc	01-25-91	G-S	100,000
ST91-6604	ANR Pipeline Co	Associated Natural Gas Co	01-25-91	B	8,000
ST91-6605	ANR Pipeline Co	Washington Gas Light Co	01-25-91	B	20,540
ST91-6606	ANR Pipeline Co	Kaztex Energy Management, Inc	01-25-91	G-S	1,000
ST91-6607	ANR Pipeline Co	Amoco Gas Co	01-25-91	G-S	50,000
ST91-6608	ANR Pipeline Co	Indiana Gas Co	01-25-91	B	6,770
ST91-6609	ANR Pipeline Co	Union Texas Petroleum Corp	01-25-91	G-S	15,000
ST91-6610	ANR Pipeline Co	Scott Forge	01-25-91	G-S	600
ST91-6611	ANR Pipeline Co	NGC Transportation, Inc	01-25-91	G-S	3,000
ST91-6612	ANR Pipeline Co	Arco Natural Gas Marketing, Inc	01-25-91	G-S	200,000
ST91-6613	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp	01-28-91	C	125,000
ST91-6614	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	01-28-91	C	550,000
ST91-6615	Channel Industries Gas Co	Northern Natural Gas Co	01-28-91	C	10,000
ST91-6616	Channel Industries Gas Co	Northern Natural Gas Co	01-28-91	C	10,000
ST91-6617	Tennessee Gas Pipeline Co	Eagle Natural Gas Co	01-28-91	G-S	10,000
ST91-6618	Stingray Pipeline Co	Amerada Hess Corp	01-28-91	K-S	40,000
ST91-6619	Stingray Pipeline Co	Stellar Gas Co	01-28-91	K-S	30,000
ST91-6620	Stingray Pipeline Co	Reliance Gas Marketing Co	01-28-91	K-S	30,000
ST91-6621	Natural Gas Pipeline Co. of America	Indiana Public Service Co	01-28-91	B	261,630
ST91-6622	Natural Gas Pipeline Co. of America	Tejas Power Corp	01-28-91	G-S	100,000
ST91-6623	Natural Gas Pipeline Co. of America	NGC Transportation, Inc	01-28-91	G-S	200,000
ST91-6624	Natural Gas Pipeline Co. of America	Veeta Energy Co	01-28-91	G-S	30,000
ST91-6625	Northwest Pipeline Corp	BC Gas Inc	01-28-91	G-S	10,000
ST91-6626	Louisiana Intrastate Gas Corp	Tennessee Gas Pipeline Co	01-28-91	C	5,000
ST91-6627	United Gas Pipe Line Co	Lone Star Gas Co. of Texas, Inc	01-28-91	B	51,500
ST91-6628	ANR Pipeline Co	Baltimore Gas and Electric	01-28-91	B	100,000
ST91-6629	Colorado Interstate Gas Co	Rangeline Corp	01-28-91	G-S	10,000
ST91-6630	Colorado Interstate Gas Co	Questar Energy Co	01-28-91	G-S	20,000
ST91-6631	Colorado Interstate Gas Co	Veagas Co	01-28-91	G-S	10,000
ST91-6632	Colorado Interstate Gas Co	Associated Intrastate Pipeline Co	01-28-91	G-S	10,000
ST91-6633	Tennessee Gas Pipeline Co	Cincinnati Gas and Elect. Co	01-29-91	B	30,000
ST91-6634	Winnie Pipeline Co	Sabine Pipe Line Co	01-29-91	C	30,000
ST91-6635	Florida Gas Transmission Co	Aristech Chemical Co	01-29-91	G-S	43
ST91-6636	Columbia Gas Transmission Corp	Stone Resource and Energy Corp	01-29-91	G-S	5,000
ST91-6637	Columbia Gas Transmission Corp	Transco Energy Marketing Co	01-29-91	G-S	80,000
ST91-6638	Columbia Gas Transmission Corp	Southern Gas Co., Inc	01-29-91	G-S	1,110
ST91-6639	Columbia Gas Transmission Corp	Southern Gas Co., Inc	01-29-91	G-S	10,000
ST91-6640	Columbia Gas Transmission Corp	Sheldon Gas Co	01-29-91	G-S	500
ST91-6641	Columbia Gas Transmission Corp	Pike Natural Gas Co	01-29-91	B	5,000
ST91-6642	Delhi Gas Pipeline Corp	Northern Indiana Public Service Co	01-30-91	C	75,000
ST91-6643	Delhi Gas Pipeline Corp	Northern Natural Gas Co	01-30-91	C	370,000
ST91-6644	Delhi Gas Pipeline Corp	Arkla Energy Resources	01-30-91	C	5,000
ST91-6645	El Paso Natural Gas Co	Southwestern Public Service Co	01-30-91	G-S	103,000
ST91-6646	Texas Gas Transmission Corp	Mississippi Valley Gas Co	01-30-91	B	10,000
ST91-6647	Texas Gas Transmission Corp	Phibro Energy, Inc	01-30-91	G-S	1,000
ST91-6648	Texas Gas Transmission Corp	Bishop Pipeline Corp	01-30-91	G-S	50,000
ST91-6649	Texas Gas Transmission Corp	Enron Gas Marketing, Inc	01-30-91	G-S	150,000
ST91-6650	Stingray Pipeline Co	Enron Gas Marketing, Inc	01-30-91	K-S	25,000
ST91-6651	Natural Gas Pipeline Co. of America	USS, Div. of USX Corp	01-30-91	G-S	60,000
ST91-6652	Tennessee Gas Pipeline Co	Valley Resources, Inc	01-30-91	B	10,000
ST91-6653	Northern Natural Gas Co	St. Croix Valley Natural Gas Co., Inc	01-30-91	B	500
ST91-6654	Northern Natural Gas Co	Lower Colorado River Authority	01-30-91	G-S	4,500
ST91-6655	Northern Natural Gas Co	Arco Natural Gas Marketing, Inc	01-30-91	G-S	15,000
ST91-6656	Channel Industries Gas Co	Amoco Gas Co	01-30-91	C	70,000
ST91-6658	Transcontinental Gas Pipeline Corp	Philadelphia Electric Co	01-30-91	B	600,000
ST91-6659	Arkla Energy Resources	East Ohio Gas Co., Et Al	01-30-91	B	30,000
ST91-6660	United Gas Pipe Line Co	Mobil Natural Gas Inc	01-30-91	G-S	51,500
ST91-6661	United Gas Pipe Line Co	Enermark Gas Gathering Corp	01-30-91	G-S	103,000
ST91-6662	United Gas Pipe Line Co	Bishop Pipeline Corp	01-30-91	G-S	41,200
ST91-6663	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	01-30-91	G-S	206,000
ST91-6664	Trunkline Gas Co	Equitable Resources Marketing Co	01-30-91	G-S	75,000
ST91-6665	Trunkline Gas Co	Brooklyn Union Gas Co., Et Al	01-30-91	B	100,000
ST91-6666	Trunkline Gas Co	Phibro Distributors Corp	01-30-91	G-S	100,000
ST91-6667	Trunkline Gas Co	Mississippi River Transmission Corp	01-30-91	G	100,000
ST91-6668	Trunkline Gas Co	Polaris Pipeline Corp	01-30-91	G-S	30,000
ST91-6669	Trunkline Gas Co	Conoco, Inc	01-30-91	G-S	5,000
ST91-6670	Natural Gas Pipeline Co. of America	Amoco Energy Trading Co	01-31-91	G-S	50,000
ST91-6671	Natural Gas Pipeline Co. of America	Midcon Marketing Corp	01-31-91	G-S	75,000
ST91-6672	Natural Gas Pipeline Co. of America	Tejas Power Corp	01-31-91	G-S	50,000
ST91-6673	Natural Gas Pipeline Co. of America	Clinton Gas Transmission, Inc	01-31-91	G-S	300
ST91-6674	Questar Pipeline Co	Chevron, U.S.A., Inc	01-31-91	G-S	88,400
ST91-6675	Questar Pipeline Co	Amoco Production Co	01-31-91	G-S	80,000
ST91-6676	Questar Pipeline Co	Mountain Fuel Supply Co	01-31-91	B	30,000

Docket No. [1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-6677	Questar Pipeline Co	Barrett Energy Co	01-31-91	G-S	14,000
ST91-6678	Questar Pipeline Co	Timberline Energy, Inc	01-31-91	G-S	1,500
ST91-6679	Questar Pipeline Co	Union Pacific Fuels, Inc	01-31-91	G-S	75,000
ST91-6680	Tennessee Gas Pipeline Co	Cincinnati Gas and Electric Co	01-31-91	B	100,000
ST91-6681	Channel Industries Gas Co	Houston Lighting & Power Co	01-31-91	C	90,000
ST91-6682	Northern Natural Gas Co	City of Waukee	01-31-91	B	160
ST91-6683	Northern Natural Gas Co	Virginia Public Utilities	01-31-91	B	800
ST91-6684	Northern Natural Gas Co	City of Williamsburg	01-31-91	B	375
ST91-6685	Northern Natural Gas Co	City of Waukee	01-31-91	B	400
ST91-6686	Northern Natural Gas Co	City of Gilmore City	01-31-91	B	175
ST91-6687	Northern Natural Gas Co	City of Brooklyn	01-31-91	B	250
ST91-6688	Transcontinental Gas Pipeline Corp	Monterey Pipeline Co	01-31-91	B	100,000
ST91-6689	Kentucky West Virginia Gas Co	Southeastern Gas Co	01-31-91	G-S	1,000
ST91-6690	Columbia Gulf Transmission Co	Elf Exploration, Inc	01-31-91	G-S	15,000
ST91-6691	Panhandle Eastern Pipe Line Co	Martin Exploration Management Co	01-31-91	G-S	30,000
ST91-6692	United Gas Pipe Line Co	Delhi Gas Pipeline Corp	01-31-91	G-S	103,000
ST91-6693	United Gas Pipe Line Co	Enmark Gas Corp	01-31-91	G-S	46,350
ST91-6694	Mississippi River Transmission Corp	River Trading Co	01-31-91	G-S	14,000
ST91-6695	Mississippi River Transmission Corp	Arkla Energy Marketing Co	01-31-91	G-S	8,000
ST91-6696	Trunkline Gas Co	Kerr-McGee Corp	01-31-91	G-S	15,000
ST91-6697	Trunkline Gas Co	Howell Gas Management Co	01-31-91	G-S	80,000
ST91-6698	Trunkline Gas Co	Valero Transmission, L.P	01-31-91	B	200,000
ST91-6699	Texas Eastern Transmission Corp	Louisiana Gas Marketing Co	01-31-91	B	100,000
ST91-6700	Texas Eastern Transmission Corp	Bay State Gas Co	01-31-91	B	100,000
ST91-6701	Texas Eastern Transmission Corp	Algonquin Gas Transmission Co	01-31-91	G	214,529
ST91-6702	Texas Eastern Transmission Corp	Providence Gas Co. (The)	01-31-91	B	100,000
ST91-6703	Williston Basin Interstate P/L Co	Koch Hydrocarbon Co	01-31-91	G-S	130
ST91-6704	Williston Basin Interstate P/L Co	Amerada Hess Corp	01-31-91	G-S	41,000
ST91-6705	Williston Basin Interstate P/L Co	Koch Hydrocarbon Co	01-31-91	G-S	1,000
ST91-6706	Williston Basin Interstate P/L Co	Conoco	01-31-91	G-S	2,326
ST91-6707	National Fuel Gas Supply Corp	Citizens Gas Supply Corp	01-31-91	G-S	38,500
ST91-6708	National Fuel Gas Supply Corp	Citizens Gas Supply Corp	01-31-91	G-S	40,000
ST91-6709	National Fuel Gas Supply Corp	CNG Transmission Corp	01-31-91	G	100,000
ST91-6712	South Georgia Natural Gas Co	City of Jasper	01-31-91	G-S	200
ST91-6713	South Georgia Natural Gas Co	City of Tifton	01-31-91	B	373
ST91-6714	South Georgia Natural Gas Co	City of Tifton	01-31-91	B	3,000
ST91-6715	South Georgia Natural Gas Co	Bishop Pipeline Corp	01-31-91	B	25,000
ST91-6716	South Georgia Natural Gas Co	City of Camilla	01-31-91	G-S	470
ST91-6717	South Georgia Natural Gas Co	City of Moultrie	01-31-91	G-S	1,400
ST91-6718	South Georgia Natural Gas Co	City of Ashburn	01-31-91	G-S	250
ST91-6719	South Georgia Natural Gas Co	City of Americus	01-31-91	G-S	1,500
ST91-6720	South Georgia Natural Gas Co	Proctor and Gamble Paper Products Co	01-31-91	G-S	3,422
ST91-6721	South Georgia Natural Gas Co	Fitzgerald Water, Light and Bond	01-31-91	G-S	672
ST91-6722	South Georgia Natural Gas Co	City of Havana	01-31-91	G-S	300
ST91-6723	South Georgia Natural Gas Co	City of Quincy	01-31-91	G-S	1,950
ST91-6724	South Georgia Natural Gas Co	City of Cuthbert	01-31-91	G-S	600
ST91-6725	South Georgia Natural Gas Co	City of Vienna	01-31-91	G-S	304
ST91-6726	South Georgia Natural Gas Co	City of Cordele	01-31-91	G-S	700
ST91-6727	South Georgia Natural Gas Co	City of Adel	01-31-91	G-S	317
ST91-6728	South Georgia Natural Gas Co	City of Cairo	01-31-91	G-S	750
ST91-6729	South Georgia Natural Gas Co	City of Bainbridge	01-31-91	G-S	625
ST91-6730	South Georgia Natural Gas Co	City of Blakely	01-31-91	G-S	350
ST91-6731	South Georgia Natural Gas Co	City of Americus	01-31-91	G-S	100,350
ST91-6732	South Georgia Natural Gas Co	City of Thomasville	01-31-91	G-S	100,000
ST91-6733	Tennessee Gas Pipeline Company	Southern Natural Gas Company	02-01-91	G	325,000
ST91-6734	Exxon Gas Systems, Inc	El Paso Natural Gas Company	02-01-91	C	100,000
ST91-6735	Williams Natural Gas Company	Gastrak Corporation	02-01-91	G-S	1,000
ST91-6736	Williams Natural Gas Company	Veeta Energy Company	02-01-91	G-S	1,250
ST91-6737	Northern Natural Gas Company	PSI Gas Marketing, Inc	02-01-91	G-S	80,000
ST91-6738	Northern Natural Gas Company	City of Tipton	02-01-91	B	850
ST91-6739	Northern Natural Gas Company	City of Sac City	02-01-91	B	500
ST91-6740	Northern Natural Gas Company	PSI Gas Marketing, Inc	02-01-91	G-S	20,657
ST91-6741	Northern Natural Gas Company	City of Ponca	02-01-91	B	100
ST91-6742	Northern Natural Gas Company	Peninsular Gas Company	02-01-91	B	800
ST91-6743	Northern Natural Gas Company	Natural Gas, Inc	02-01-91	B	900
ST91-6744	Northern Natural Gas Company	Fremont Department of Utilities	02-01-91	B	1,625
ST91-6745	Panhandle Eastern Pipe Line Company	Amgas, Inc	02-01-91	G-S	150
ST91-6746	Panhandle Eastern Pipe Line Company	Amgas, Inc	02-01-91	G-S	100
ST91-6747	Panhandle Eastern Pipe Line Company	Manville Sales Corporation	02-01-91	G-S	12,000
ST91-6748	Panhandle Eastern Pipe Line Company	Intrastate Natural Gas, Inc	02-01-91	G-S	12,000
ST91-6749	ANR Pipeline Co	Northern Indiana Public Service Co	02-01-91	B	150,000
ST91-6750	ANR Pipeline Co	Amerada Hess Corp	02-01-91	G-S	150,000
ST91-6751	ANR Pipeline Co	Chevron U.S.A., Inc	02-01-91	G-S	50,000
ST91-6752	ANR Pipeline Co	Mobil Natural Gas Inc	02-01-91	G-S	50,000
ST91-6753	ANR Pipeline Co	Rochester Gas and Electric Corp	02-01-91	B	50,000
ST91-6754	ANR Pipeline Co	Hadson Gas Systems, Inc	02-01-91	G-S	50,000
ST91-6755	Transwestern Pipeline Co	Oryx Gas Marketing Limited Partnership	02-04-91	G-S	50,000
ST91-6756	Northern Natural Gas Co	Northern States Power Co	02-04-91	B	25,000
ST91-6757	Northern Natural Gas Co	Oxy USA, Inc	02-04-91	G-S	50,000
ST91-6758	Natural Gas Pipeline Co. of America	Seagull Marketing Services, Inc	02-04-91	G-S	50,000

Docket No. [1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-6759	Natural Gas Pipeline Co. of America	ARCO Oil & Gas Co	02-04-91	G-S	80,000
ST91-6760	Tennessee Gas Pipeline Co	Equitable Gas Co	02-04-91	B	200,000
ST91-6761	Midwestern Gas Transmission Co	Polaris Pipeline Corp (The)	02-04-91	G-S	25,000
ST91-6762	Williams Natural Gas Co	Reliance Gas Marketing Co	02-04-91	G-S	1,610
ST91-6763	Mississippi River Transmission Corp	Cincinnati Gas and Electric Company	02-04-91	B	15,000
ST91-6764	Mississippi River Transmission Corp	Niagara Mohawk Power Corporation	02-04-91	B	30,000
ST91-6765	Trunkline Gas Company	Equitable Resources Marketing Company	02-04-91	G-S	75,000
ST91-6766	Trunkline Gas Company	Bishop Pipeline Corporation	02-04-91	G-S	10,000
ST91-6767	Tennessee Gas Pipeline Company	Mississippi Fuel Company	02-04-91	B	50,000
ST91-6768	Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Company	02-04-91	B	1,375,000
ST91-6769	Transcontinental Gas Pipe Line Corp	Columbia Gas Transmission Corporation	02-04-91	G	2,549,730
ST91-6770	Transcontinental Gas Pipe Line Corp	Access Energy Corporation	02-04-91	G-S	40,000
ST91-6771	Transcontinental Gas Pipe Line Corp	THC Pipeline, Inc	02-04-91	B	450,000
ST91-6772	Transcontinental Gas Pipe Line Corp	Peoples Natural Gas Corporation	02-04-91	B	300,000
ST91-6773	Transcontinental Gas Pipe Line Corp	City of Bessemer, North Carolina	02-04-91	B	24,800
ST91-6774	Transcontinental Gas Pipe Line Corp	Olympic Pipeline Company	02-04-91	B	50,000
ST91-6775	Kentucky West Virginia Gas Company	Interstate Natural Gas Company	02-01-91	G-S	1,000
ST91-6776	Seagull Shoreline System	Texas Eastern Transmission Company	02-01-91	C	10,000
ST91-6777	Trunkline Gas Company	Enron Gas Marketing, Inc	02-01-91	G-S	50,000
ST91-6778	ONG Transmission Company	Natural Gas Pipeline Company of America	02-04-91	C	50,000
ST91-6779	ANR Pipeline Company	Louis Dreyfus Energy Corporation	02-04-91	G-S	100,000
ST91-6780	Sonat Intrastate-Alabama Inc	Tennessee Gas Pipeline Company	02-04-91	C	1,000
ST91-6781	Trunkline Gas Company	TXG Gas Marketing Company	02-04-91	G-S	30,000
ST91-6782	Trunkline Gas Company	Panhandle Trading Company	02-04-91	G-S	100,000
ST91-6783	Trunkline Gas Company	Central Illinois Public Service Company	02-04-91	B	25,000
ST91-6784	Trunkline Gas Company	Eastex Hydrocarbons, Inc	02-04-91	G-S	50,000
ST91-6785	Trunkline Gas Company	Panhandle Trading Company	02-04-91	G-S	50,000
ST91-6786	Natural Gas Pipeline Co. of America	TXO Gas Marketing Corp	02-05-91	G-S	50,000
ST91-6787	Trailblazer Pipeline Company	Midwest Gas, A Div. of IA Pub. Serv. Co	02-05-91	B	353,000
ST91-6788	Northern Natural Gas Company	Enron Gas Marketing, Inc	02-05-91	G-S	500,000
ST91-6789	Northern Natural Gas Company	Minnegasco, Inc	02-05-91	B	100,000
ST91-6790	Northern Natural Gas Company	Coastal Gas Marketing Company	02-05-91	G-S	50,000
ST91-6791	Trailblazer Pipeline Company	Northwestern Public Service Company	02-05-91	B	9,000
ST91-6792	Texas Eastern Transmission Corporation	Monterey Pipeline Company	02-05-91	B	100,000
ST91-6793	Texas Eastern Transmission Corporation	Niagara Mohawk Power Corporation	02-05-91	B	606,600
ST91-6794	Texas Eastern Transmission Corporation	Bridgeline Gas Distribution Company	02-05-91	B	167,100
ST91-6795	Texas Eastern Transmission Corporation	Mississippi Fuel Company	02-05-91	B	60,000
ST91-6796	Algonquin Gas Transmission Company	NGC Transportation, Inc	02-05-91	G-S	200,000
ST91-6797	Algonquin Gas Transmission Co	Bristol and Warren Gas Co	02-05-91	B	36,565
ST91-6798	Algonquin Gas Transmission Company	Bristol and Warren Gas Company	02-05-91	G-S	500,000
ST91-6799	Valero Transmission, L.P	El Paso Natural Gas Company	02-06-91	C	10,000
ST91-6800	Enogex, Inc	Riverside Pipeline Company, LP	02-06-91	C	150,000
ST91-6801 [3]	Panhandle Eastern Pipeline Company	BP Gas, Inc	02-06-91	G-S	50,000
ST91-6802	United Gas Pipe Line Company	Cimarron Gas Transmission, Inc	02-06-91	G-S	82,400
ST91-6803	United Gas Pipe Line Co	Midcon Marketing Corporation	02-06-91	G-S	150,174
ST91-6804	United Gas Pipe Line Co	Goodrich Oil Company	02-06-91	G-S	77,250
ST91-6805	Kentucky West Virginia Gas Company	East Kentucky Gas Company	02-06-91	G-S	50
ST91-6806	Kentucky West Virginia Gas Company	Maximum Oil and Gas, Inc	02-06-91	G-S	300
ST91-6807	Kentucky West Virginia Gas Company	JML Oil and Gas	02-06-91	G-S	100
ST91-6808	Kentucky West Virginia Gas Company	Angela Oil and Gas Company	02-06-91	G-S	500
ST91-6809	Kentucky West Virginia Gas Company	Monerco Investments	02-06-91	G-S	200
ST91-6810	Kentucky West Virginia Gas Company	Basin Energy Company	02-06-91	G-S	1,500
ST91-6811	Kentucky West Virginia Gas Company	Interstate Natural Gas Company	02-06-91	G-S	1,000
ST91-6812	Kentucky West Virginia Gas Company	National Energy Resources Corporation	02-06-91	G-S	100
ST91-6813	Kentucky West Virginia Gas Company	CDG Development Company	02-06-91	G-S	4,500
ST91-6814	Kentucky West Virginia Gas Company	Newport Oil Corporation	02-06-91	G-S	100
ST91-6815	Columbia Gulf Transmission Corporation	Tejas Power Corporation	02-06-91	G-S	150,000
ST91-6816	Columbia Gulf Transmission Corporation	Mobil Natural Gas Inc	02-06-91	G-S	30,000
ST91-6817	Columbia Gulf Transmission Corporation	Marathon Oil Company	02-06-91	G-S	979
ST91-6818	Columbia Gulf Transmission Corporation	Columbia Gas of Ohio, Inc	02-06-91	B	6,260
ST91-6819	Williston Basin Interstate Pipeline Co	Koch Hydrocarbon Company	02-06-91	G-S	1,900
ST91-6820	Williston Basin Interstate Pipeline Co	Amerada Hess Corporation	02-06-91	G-S	28,000
ST91-6821	Trailblazer Pipeline Company	Minnegasco, A Division of Arida, Inc	02-07-91	B	353,000
ST91-6822	Natural Gas Pipeline Company of America	Arkansas Western Gas Company	02-07-91	B	2,000
ST91-6823 [3]	Natural Gas Pipeline Company of America	Delhi Gas Pipeline Corporation	02-07-91	G-S	150,000
ST91-6824	Delhi Gas Pipeline Corporation	Texas Eastern Transmission Corporation	02-07-91	C	50,000
ST91-6825	ONG Transmission Company	Williams Natural Gas Company	02-07-91	C	50,000
ST91-6826	Colorado Interstate Gas Company	PSI Gas Marketing, Inc	02-07-91	G-S	25,000
ST91-6827	Colorado Interstate Gas Company	Public Service Company of Colorado	02-07-91	B	10,000
ST91-6828	Colorado Interstate Gas Company	Amoco Gas Company	02-07-91	B	50,000
ST91-6829	Colorado Interstate Gas Company	PSI Gas Marketing, Inc	02-07-91	G-S	15,000
ST91-6830	Colorado Interstate Gas Company	PSI Gas Marketing, Inc	02-07-91	G-S	25,000
ST91-6831	Nycotex Gas Transport	Columbia Gas Transmission	02-07-91	C	5,000
ST91-6832	ANR Pipeline Co	Northern Illinois Gas Co	02-07-91	B	100,000
ST91-6833	ANR Pipeline Company	PSI Gas Marketing, Inc	02-07-91	G-S	150,000
ST91-6834	ANR Pipeline Company	J I Case Co	02-07-91	G-S	250
ST91-6835	ANR Pipeline Company	Northern Illinois Gas Company	02-07-91	B	50,000
ST91-6836	ANR Pipeline Company	Bridgeline Gas Distribution Company	02-07-91	B	250,000
ST91-6837	ANR Pipeline Company	Amoco Energy Trading Corporation	02-07-91	G-S	20,000
ST91-6838	ANR Pipeline Company	Northern Illinois Gas Company	02-07-91	B	50,000

Docket No. [1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-6839	Equitrans, Inc	O&R Energy, Inc	02-07-91	G-S	20,242
ST91-6840	Carnegie Natural Gas Company	Peoples Natural Gas Company (The)	02-08-91	B	1,000
ST91-6841	Columbia Gas Transmission Corporation	Pennzoil Gas Marketing Company	02-07-91	G-S	5,000
ST91-6842	Natural Gas Pipeline Company of America	PSI Gas Marketing, Inc	02-08-91	G-S	115,000
ST91-6843	Natural Gas Pipeline Company of America	Centran Corporation	02-08-91	G-S	10,000
ST91-6844	Transcontinental Gas Pipe Line Corp	Coastal States Gas Transmission Company	02-08-91	B	50,000
ST91-6845	Channel Industries Gas Company	Moss Bluff Gas Storage Systems	02-08-91	C	75,000
ST91-6846	Acadian Gas Pipeline System	Sabine Pipe Line Company	02-08-91	C	3,000
ST91-6848	Texas Eastern Transmission Corporation	Equitable Resources Marketing Company	02-08-91	G-S	200,000
ST91-6849	Texas Eastern Transmission Corporation	BHP Gas Marketing Company	02-08-91	G-S	49,700
ST91-6850	Texas Eastern Transmission Corporation	Endevco Oil & Gas Company	02-08-91	G-S	400,000
ST91-6851	Colorado Interstate Gas Company	Northern Utilities	02-08-91	B	50,000
ST91-6852	Delhi Gas Pipeline Corporation	Panhandle Eastern Pipe Line Company	02-11-91	C	49,000
ST91-6853	Valero Transmission, L.P	Texas Eastern Transmission Corporation	02-11-91	C	5,000
ST91-6854	Michigan Gas Storage Company	Southeastern Michigan Gas Co., et al	02-11-91	B	45,000
ST91-6856	Michigan Gas Storage Co	Consumers Power Co	02-11-91	G-S	150,000
ST91-6857	Tennessee Gas Pipeline Co	KN Gas Marketing, Inc	02-11-91	G-S	150,000
ST91-6858	Tennessee Gas Pipeline Co	Texas Eastern Transmission Corp	02-11-91	G	5,000
ST91-6859	Tennessee Gas Pipeline Co	Piedmont Natural Gas Co	02-11-91	B	40,000
ST91-6860	El Paso Natural Gas Co	Southern Union Gas Co	02-11-91	B	567
ST91-6863	Natural Gas Pipeline Co of America	Corn Products	02-11-91	G-S	2,000
ST91-6864	Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co, et al	02-11-91	B	823,000
ST91-6865	Trunkline Gas Co	Elf Aquitaine, Inc	02-11-91	G-S	5,600
ST91-6866	Williams Natural Gas Co	Philips "66" Natural Gas Co	02-11-91	G-S	2,550
ST91-6867	Williams Natural Gas Co	Reliance Gas Marketing Co	02-11-91	G-S	2,115
ST91-6868	Mississippi River Transmission Corp	Vesta Energy Co	02-11-91	G-S	100,000
ST91-6869	Tejas Gas Corp	Mississippi River Transmission Corp	02-11-91	C	5,845
ST91-6870	Delhi Gas Pipeline Corp	Williams Natural Gas Co	02-12-91	C	250,000
ST91-6871	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp	02-12-91	C	125,000
ST91-6872	Red River Pipeline	Arida Energy Resources Co	02-12-91	C	30,000
ST91-6873	United Gas Pipe Line Co	Lone Star Gas Co	02-12-91	B	51,500
ST91-6874	Transcontinental Gas Pipe Line Corp	Bay State Gas Co	02-12-91	B	440,000
ST91-6875	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	02-12-91	B	83,500
ST91-6876	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	02-12-91	B	350,000
ST91-6877	Transcontinental Gas Pipe Line Corp	City of Winder	02-12-91	B	120,000
ST91-6878	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	02-12-91	B	571,000
ST91-6879	Texas Gas Transmission Corp	Olin Corp	02-12-91	G-S	2,500
ST91-6880	Texas Gas Transmission Corp	Tennessee Valley Authority	02-12-91	G-S	250,000
ST91-6881	Texas Gas Transmission Corp	Riverside Energy Resources, Inc	02-12-91	G-S	80,000
ST91-6882	Texas Gas Transmission Corp	Indiana Gas Co., Inc	02-12-91	B	5,000
ST91-6883	Texas Gas Transmission Corp	Ohio River Pipeline Corp	02-12-91	B	300
ST91-6884	Texas Gas Transmission Corp	Bishop Pipeline Corp	02-12-91	G-S	20,000
ST91-6885	Natural Gas Pipeline Co. of America	Entrade Corp	02-12-91	G-S	150,000
ST91-6886	Enogex Inc	Williams Natural Gas Co	02-12-91	C	100,000
ST91-6887	Enogex Inc	Panhandle Eastern Pipeline Co	02-12-91	C	5,000
ST91-6888	Enogex Inc	Arida Energy Resources	02-12-91	C	100,000
ST91-6889	Florida Gas Transmission Co	City Gas Co. of Florida	02-12-91	G-S	4,200
ST91-6890	Florida Gas Transmission Co	Citizens Gas Supply Corp	02-12-91	G-S	600,000
ST91-6891	Florida Gas Transmission Co	Tropicana Products, Inc	02-12-91	G-S	50,000
ST91-6892	Florida Gas Transmission Co	Consolidated Fuel Corp	02-12-91	G-S	20,000
ST91-6893	Florida Gas Transmission Co	Heath Petro Resources	02-12-91	G-S	100,000
ST91-6894	Florida Gas Transmission Co	Lake Apoka Natural Gas District	02-12-91	G-S	10,500
ST91-6895	Northern Natural Gas Co	AMOCO Energy Trading Corp	02-12-91	G-S	25,000
ST91-6896 [3]	Superior Offshore Pipeline Co	Mobil Natural Gas Inc	02-12-91	G-S	50,000
ST91-6897 [3]	Superior Offshore Pipeline Co	Mobil Natural Gas Inc	02-12-91	G-S	50,000
ST91-6898 [3]	Superior Offshore Pipeline Co	Mobil Expl. & Prod. North America Inc	02-12-91	G-S	70,000
ST91-6899 [3]	Superior Offshore Pipeline Co	Mobil Natural Gas Inc	02-12-91	G-S	5,000
ST91-6900 [3]	Superior Offshore Pipeline Co	Llog Exploration Co	02-12-91	G-S	14,000
ST91-6901 [3]	Superior Offshore Pipeline Co	Northern Michigan Exploration Co	02-12-91	G-S	29,075
ST91-6902 [3]	Superior Offshore Pipeline Co	LGC Intrastate	02-12-91	G-S	20,000
ST91-6903 [3]	Superior Offshore Pipeline Co	Dynamic Exploration Inc	02-12-91	G-S	3,300
ST91-6904	Arida Energy Resources	Vesta Energy Co	02-12-91	G-S	10,000
ST91-6905	Colorado Interstate Gas Co	Public Service Co. of Colorado	02-12-91	B	50,000
ST91-6906	Colorado Interstate Gas Co	AMOCO Gas Co	02-12-91	B	50,000
ST91-6907	Midwestern Gas Transmission Co	Central Illinois Public Service Co	02-12-91	B	150,000
ST91-6908	Trunkline Gas Co	Enserch Gas Co	02-12-91	G-S	50,000
ST91-6909	Trunkline Gas Co	Panhandle Trading Co	02-12-91	G-S	80,000
ST91-6910	Trunkline Gas Co	Bishop Pipeline Corp	02-12-91	G-S	40,000
ST91-6911	Trunkline Gas Co	Boyd Rosene and Associates, Inc	02-12-91	G-S	5,000
ST91-6912	Trunkline Gas Co	Entrade Corp	02-12-91	G-S	100,000
ST91-6913	Trunkline Gas Co	Tejas Power Corp	02-12-91	G-S	100,000
ST91-6914	Trunkline Gas Co	Brooklyn Union Gas Co., et al	02-12-91	B	100,000
ST91-6915	Trunkline Gas Co	Enserch Gas Co	02-12-91	G-S	50,000
ST91-6916	Western Transmission Corp	Sagebrush Services, Inc	02-13-91	G-S	1,000
ST91-6917	United Texas Transmission Co	Transcontinental Gas Pipe Line Corp	02-13-91	C	50,000
ST91-6919	Natural Gas Pipeline Co. of America	Entrade Corp	02-13-91	G-S	200,000
ST91-6920	Valero Transmission, L.P	El Paso Natural Gas Co	02-13-91	C	40,000
ST91-6921	Northern Natural Gas Co	Northern State Power Co	02-14-91	B	15,937
ST91-6922	Viking Gas Transmission Co	Kaztex Energy Management, Inc	02-14-91	G-S	25,000
ST91-6923	Natural Gas Pipeline Co. of America	AMOCO Gas Co	02-14-91	G-S	25,000

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Docket No. [1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-6924	Trailblazer Pipeline Co	Iowa Electric Light and Power Co	02-14-91	B	353,000
ST91-6925	Florida Gas Transmission Co	Florida Power & Light Co	02-14-91	G-S	862,000
ST91-6926	Florida Gas Transmission Co	Georgia Pacific Corp	02-14-91	G-S	25,323
ST91-6927	Florida Gas Transmission Co	Consolidated Minerals Inc	02-14-91	G-S	7,340
ST91-6928	Florida Gas Transmission Co	City of Vero Beach	02-14-91	G-S	25,000
ST91-6929	Florida Gas Transmission Co	Ft. Pierce Utilities Authority	02-14-91	G-S	14,000
ST91-6930	Florida Gas Transmission Co	Ft. Pierce Utilities Authority	02-14-91	G-S	25,000
ST91-6931	Florida Gas Transmission Co	City of Sunrise	02-14-91	G-S	15,000
ST91-6932	Florida Gas Transmission Co	Citizens Gas Supply Corp	02-14-91	G-S	800,000
ST91-6933	Florida Gas Transmission Co	Orlando Utilities Commission	02-14-91	G-S	157,947
ST91-6934	Florida Gas Transmission Co	City of Leesburg	02-14-91	G-S	7,200
ST91-6935	Florida Gas Transmission Co	Enron Gas Processing Co	02-14-91	G-S	160,000
ST91-6936	Williston Basin Interstate P/L Co	Meridian Oil & Gas Corp	02-14-91	G-S	100
ST91-6937	Williston Basin Interstate P/L Co	Western Gas Processors, Ltd	02-14-91	G-S	52,464
ST91-6938	Louisiana Resources Company	Sabine Pipe Line Company	02-14-91	C	20,000
ST91-6939	Transcontinental Gas Pipe Line Corp	Public Service Company of North Carolina	02-14-91	B	134,318
ST91-6940	Columbia Gas Transmission Corporation	Newport Steel Corporation	02-14-91	G-S	12,000
ST91-6941	Columbia Gas Transmission Corporation	Columbia Gas of Ohio, Inc	02-14-91	B	150
ST91-6942	Columbia Gas Transmission Corporation	National Fuel Distribution Co., et al	02-14-91	B	500
ST91-6943	Columbia Gas Transmission Corporation	Columbia Gas of Ohio, Inc	02-14-91	B	8,000
ST91-6944	Columbia Gas Transmission Corporation	Total Minatome Corporation	02-14-91	G-S	100,000
ST91-6945	Columbia Gas Transmission Corporation	The Peoples Pipeline Corporation	02-14-91	G-S	45,000
ST91-6946	Equitrans, Inc	Virginia Electric & Power Company	02-14-91	G-S	42,033
ST91-6947	Southern Natural Gas Company	Louisiana Municipal Nat. Gas Authority	02-14-91	G-S	25,000
ST91-6948	Southern Natural Gas Company	Dravo Lime Company	02-14-91	G-S	5,000
ST91-6949	Southern Natural Gas Company	Lehigh Portland Cement Company	02-14-91	G-S	6,000
ST91-6950	Southern Natural Gas Company	Consolidated Fuel Corporation	02-14-91	G-S	12,000
ST91-6951	Southern Natural Gas Company	Shell Gas Trading Company	02-14-91	G-S	40,000
ST91-6952	Southern Natural Gas Company	Borden Packaging & Industrial Products	02-14-91	G-S	900
ST91-6953	Southern Natural Gas Company	Amerada Hess Corporation	02-14-91	G-S	100,000
ST91-6954	Southern Natural Gas Company	City of Winona, Georgia	02-14-91	G-S	324
ST91-6955	Southern Natural Gas Company	Graniteville Company	02-14-91	G-S	10,000
ST91-6956	Southern Natural Gas Company	Vulcan Materials Company	02-14-91	G-S	500
ST91-6957	Southern Natural Gas Company	Lafarge Corporation	02-14-91	G-S	10,000
ST91-6958	Southern Natural Gas Company	Stellar Gas Company	02-14-91	G-S	50,000
ST91-6959	Superior Offshore Pipeline Company	MNGI	02-14-91	G-S	50,000
ST91-6960	Superior Offshore Pipeline Company	Nipsco, et al	02-14-91	B	42,000
ST91-6961	Superior Offshore Pipeline Company	City of Richmond Dept. of Pub. Utilities	02-14-91	B	29,166
ST91-6962	Superior Offshore Pipeline Company	Kerr-McGee Corporation	02-14-91	G-S	42,000
ST91-6963	Superior Offshore Pipeline Company	Onyx Gas Marketing Limited Partnership	02-14-91	G-S	5,000
ST91-6964	Superior Offshore Pipeline Company	Nipsco, Et Al	02-14-91	B	42,000
ST91-6965	Superior Offshore Pipeline Company	Onyx Gas Marketing Limited Partnership	02-14-91	G-S	5,000
ST91-6966	Superior Offshore Pipeline Company	Samedan Oil Corporation	02-14-91	G-S	28,000
ST91-6967	Superior Offshore Pipeline Company	Samedan Oil Corporation	02-14-91	G-S	29,166
ST91-6968	Trunkline Gas Company	Equitable Resources Marketing Company	02-15-91	G-S	10,000
ST91-6969	Trunkline Gas Company	Baltimore Gas & Electric Company	02-15-91	B	100,000
ST91-6970	Trunkline Gas Company	Panhandle Trading Company	02-15-91	G-S	10,000
ST91-6971	Colorado Interstate Gas Company	North Central Oil Corporation	02-15-91	G-S	25,000
ST91-6972	Colorado Interstate Gas Company	Northern Gas of Wyoming	02-15-91	B	400
ST91-6973	Colorado Interstate Gas Company	Associated Intrastate Pipeline Company	02-15-91	G-S	58,000
ST91-6974	Transcontinental Gas Pipe Line Corp	Bay State Gas Company	02-15-91	B	100,000
ST91-6975	Mississippi River Transmission Corp	The Dee Run Company	02-15-91	G-S	1,125
ST91-6976	Equitrans, Inc	Hanison Energy Corporation	02-15-91	G-S	5,000
ST91-6977	Tennessee Gas Pipeline Company	Equitrans, Inc	02-15-91	G	15,000
ST91-6978	Mississippi River Transmission Corp	Rochester Gas and Electric Corporation	02-15-91	B	45,000
ST91-6979	Florida Gas Transmission Company	Peoples Gas System, Inc	02-15-91	B	645
ST91-6980	Florida Gas Transmission Company	Reedy Creek Improvement District	02-15-91	G-S	2,580
ST91-6981	United Gas Pipe Line Company	Tejas Hydrocarbons Company	02-15-91	G-S	154,500
ST91-6982	Williams Natural Gas Company	Delhi Gas Pipeline Corporation	02-15-91	B	50,000
ST91-6983	El Paso Natural Gas Company	Sinclair Oil Corporation	02-15-91	G-S	204
ST91-6984	Pacific Gas Transmission Company	Pacific Gas and Electric Company	02-19-91	B	103,529
ST91-6985	Pacific Gas Transmission Company	Willam Gas Company	02-19-91	B	228,375
ST91-6986	Pacific Gas Transmission Company	Pacific Gas and Electric Company	02-19-91	B	104,799
ST91-6987	Viking Gas Transmission Company	Hadson Gas System, Inc	02-19-91	G-S	300,000
ST91-6988	Viking Gas Transmission Company	Unigas Energy, Inc	02-19-91	G-S	75,000
ST91-6989	Tennessee Gas Pipeline Company	National Fuel Gas Supply Corporation	02-19-91	G	18,594
ST91-6990	Northern Natural Gas Company	Muny Natural Gas	02-19-91	B	500
ST91-6991	Northern Natural Gas Company	Pennsylvania Gas Company	02-19-91	B	450
ST91-6992	Northern Natural Gas Company	Wisconsin Southern Gas Company, Inc	02-19-91	B	1,500
ST91-6993	Northern Natural Gas Company	Natural Gas Pipeline Company of America	02-19-91	G-S	75,000
ST91-6994	Northern Natural Gas Company	Natural Gas Pipeline Company of America	02-19-91	G-S	27,500
ST91-6995	Northern Natural Gas Company	Shoshani's Gas Company	02-19-91	B	200
ST91-6996	Northern Natural Gas Company	Midwest Natural Gas, Inc	02-19-91	B	1,000
ST91-6997	Northern Natural Gas Company	City of Westbend	02-19-91	B	500
ST91-6998	Northern Natural Gas Company	Enron Gas Marketing, Inc	02-19-91	G-S	32,000
ST91-6999	Northern Natural Gas Company	K N Energy, Inc	02-19-91	G-S	32,000
ST91-7000	Northern Natural Gas Company	Western Gas Utilities	02-19-91	B	20,000
ST91-7001	Northern Natural Gas Company	Enron Gas Marketing, Inc	02-19-91	G-S	9,000
ST91-7002	Northern Natural Gas Company	City of New Ulm	02-19-91	B	1,650
ST91-7003	Great Lakes Gas Transmission L.P	Renaissance Energy Ltd	02-19-91	G-S	50,000

Docket No. [1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-7004	Northern Natural Gas Company	ANR Pipeline Company	02-19-91	G	77,708
ST91-7005	Transok, Inc	Northern Natural Gas Company	02-19-91	C	50,000
ST91-7006	Transok, Inc	Arida Energy Resources	02-19-91	C	20,000
ST91-7007	United Gas Pipe Line Company	Bishop Pipeline Corporation	02-19-91	G-S	41,200
ST91-7008	United Gas Pipe Line Company	Citizens Gas Supply Corporation	02-19-91	G-S	20,600
ST91-7009	United Gas Pipe Line Company	Graham Energy Marketing Corporation	02-19-91	G-S	123,600
ST91-7010	Enogex, Inc	Arida Energy Resources	02-19-91	C	100,000
ST91-7012	Equitrans, Inc	Columbia Gas of Pennsylvania	02-19-91	G-S	30,362
ST91-7013	Transcontinental Gas Pipe Line Corp	Enserch Gas Transmission Company	02-19-91	B	1,000
ST91-7014	Transcontinental Gas Pipe Line Corp	Dow Pipeline Company	02-19-91	B	5,000
ST91-7015	Transcontinental Gas Pipe Line Corp	Tennessee Gas Pipeline Company	02-19-91	G	15,000
ST91-7016	Transcontinental Gas Pipe Line Corp	Northern Illinois Gas Company	02-19-91	B	80,000
ST91-7017	Transcontinental Gas Pipe Line Corp	Public Service Electric & Gas Company	02-19-91	B	200,000
ST91-7018	Transcontinental Gas Pipe Line Corp	Municipal Gas Authority	02-19-91	B	120,000
ST91-7019	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Company	02-19-91	B	300,000
ST91-7020	Natural Gas Pipeline Company of America	Reliance Pipeline Company	02-19-91	B	20,000
ST91-7021	Natural Gas Pipeline Company of America	American Central Gas Company	02-19-91	G-S	100,000
ST91-7022	Natural Gas Pipeline Company of America	Williams Gas Marketing Company	02-19-91	G-S	75,000
ST91-7023	Natural Gas Pipeline Company of America	NGC Transportation, Inc	02-19-91	G-S	100,000
ST91-7024	Columbia Gas Transmission Corporation	Columbia Gas of Ohio, Inc	02-19-91	B	30,292
ST91-7025	Florida Gas Transmission Company	Transco Energy Marketing Company	02-20-91	G-S	40,000
ST91-7026	Northern Natural Gas Company	Entrade Corporation	02-20-91	G-S	20,000
ST91-7027	K N Energy, Inc	Northern Natural Gas Company	02-20-91	G	35,000
ST91-7028	Transcontinental Gas Pipe Line Corp	Alabama Gas Corporation, Et Al	02-20-91	B	600,000
ST91-7029	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Company	02-20-91	B	158,000
ST91-7030	United Gas Pipe Line Company	NGC Transportation, Inc	02-20-91	G-S	154,500
ST91-7031	United Gas Pipe Line Company	Laser Marketing Co	02-20-91	G-S	618,000
ST91-7032	ANR Pipeline Co	NGC Transportation, Inc	02-20-91	G-S	10,000
ST91-7033	ANR Pipeline Co	Wisconsin Public Service Corp	02-20-91	B	146,000
ST91-7034	ANR Pipeline Co	Clinton Gas Marketing, Inc	02-20-91	B	10,000
ST91-7035	ANR Pipeline Co	CMS Gas Marketing	02-20-91	G-S	25,000
ST91-7036	ANR Pipeline Co	Wisconsin Fuel and Light Co	02-20-91	B	2,500
ST91-7037	ANR Pipeline Co	PSI Gas Marketing, Inc	02-20-91	G-S	150,000
ST91-7038	ANR Pipeline Co	Coast Energy Group, Inc	02-20-91	G-S	75,000
ST91-7039	Texas Eastern Transmission Corp	FMI Hydrocarbon Co	02-20-91	G-S	100,000
ST91-7040	Columbia Gulf Transmission Corp	Superior Natural Gas Corp	02-20-91	G-S	30,000
ST91-7041	Columbia Gulf Transmission Corp	Seagull Marketing Services, Inc	02-20-91	G-S	75,000
ST91-7042	Columbia Gulf Transmission Corp	NGC Transportation, Inc	02-20-91	G-S	200,000
ST91-7043	Tennessee Gas Pipeline Co	Mississippi Valley Gas Co	02-20-91	B	20,000
ST91-7044	Natural Gas Pipeline Company of America	Seagull Marketing Services, Inc	2-20-91	G-S	100,000
ST91-7045	Natural Gas Pipeline Company of America	Seagull Marketing Services, Inc	2-20-91	G-S	50,000
ST91-7046	Natural Gas Pipeline Company of America	Enserch Gas Co	2-20-91	G-S	100,000
ST91-7047	United Gas Pipe Line Co	Transamerican Gas Transmission Corp	2-20-91	G-S	154,500
ST91-7048	Transcontinental Gas Pipe Line Corp	City of Monroe	2-20-91	B	35,000
ST91-7049	Delhi Gas Pipeline Corp	El Paso Natural Gas Co	2-20-91	C	10,000
ST91-7050	Delhi Gas Pipeline Corp	Transwestern Pipe Line Co	2-20-91	C	1,500
ST91-7051	Williams Natural Gas Co	Onyx Gas Marketing Limited Partnership	2-20-91	G-S	80,000
ST91-7052	ANR Pipeline Company	Battle Creek Gas Company	2-21-91	B	100,000
ST91-7053	ANR Pipeline Company	NGC Transportation Inc	2-21-91	G-S	250,000
ST91-7054	ANR Pipeline Company	Baltimore Gas and Electric Company	2-21-91	B	30,000
ST91-7055	ANR Pipeline Company	Pold Energy Corporation	2-21-91	G-S	1,000
ST91-7056	ANR Pipeline Company	CMS Gas Marketing	02-21-91	G-S	25,000
ST91-7057	ANR Pipeline Company	Coast Energy Group, Inc	02-21-91	G-S	75,000
ST91-7058	Panhandle Eastern Pipe Line Company	City of Morton	02-21-91	B	20,000
ST91-7059	Panhandle Eastern Pipe Line Company	Premier Gas Company	02-21-91	G-S	30,000
ST91-7060	Panhandle Eastern Pipe Line Company	Citizens Gas Supply Corporation	02-21-91	G-S	75,000
ST91-7061	Panhandle Eastern Pipe Line Company	Indiana Gas Company	02-21-91	B	2,000
ST91-7062	Alabama-Tennessee Natural Gas Company	Union Camp Corporation	02-21-91	G-S	400
ST91-7063	Alabama-Tennessee Natural Gas Company	EFP South Corporation	02-21-91	G-S	600
ST91-7064	Columbia Gas Transmission Corporation	Meridian Marketing & Transmission Corp	02-21-91	G-S	600
ST91-7065	Columbia Gulf Transmission Corporation	Brooklyn Interstate Natural Gas Corp	02-21-91	G-S	30,000
ST91-7066	Columbia Gulf Transmission Corporation	Hadson Gas Systems	02-21-91	G-S	121,500
ST91-7067	Columbia Gulf Transmission Corporation	Superiod Natural Gas Corporation	02-21-91	G-S	30,000
ST91-7068	Columbia Gulf Transmission Corporation	Coastal Gas Marketing Company	02-21-91	G-S	100,000
ST91-7069	Columbia Gulf Transmission Corporation	Hunt Oil Corporation	02-21-91	G-S	80,000
ST91-7070	Columbia Gulf Transmission Corporation	Chevron U.S.A., Inc	02-21-91	G-S	200,000
ST91-7071	Columbia Gulf Transmission Corporation	Centran Corporation	02-21-91	G-S	30,000
ST91-7072	Valero Transmission, LP	Valero Interstate Transmission Company	02-22-91	C	2,000
ST91-7073	Valley Gas Transmission, Inc	Citizens Gas Supply Corporation	02-22-91	G-S	4,000
ST91-7074	Natural Gas Pipeline Company of America	Village of Bethany, Illinois	02-22-91	B	300
ST91-7075	El Paso Natural Gas Company	Meridian Oil Trading, Inc	02-22-91	G-S	10,300
ST91-7076	Northern Natural Gas Company	Santanna Natural Gas Corporation	02-22-91	G-S	250,000
ST91-7077	Northern Natural Gas Company	Conoco, Inc	02-22-91	G-S	0,000
ST91-7078	Northern Natural Gas Company	Enron Gas Marketing, Inc	02-22-91	G-S	500,000
ST91-7079	Northern Natural Gas Company	Tenngasco Corporation	02-22-91	G-S	150,000
ST91-7080	Williston Basin Interstate Pipeline Co	Wyoming Gas Company	02-22-91	B	1,920
ST91-7081	Colorado Interstate Gas Company	The Kansas Power and Light Company	02-22-91	B	10,000
ST91-7082	Green Canyon Pipe Line Company	OXY, USA, Inc	02-22-91	G-S	20,000
ST91-7083	Valero Transmission, LP	Texas Gas Transmission	02-25-91	C	800,000
ST91-7084	Valero Transmission, LP	El Paso Natural Gas Company	02-25-91	C	5,000

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Docket No. [1]	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-7085	U-T Offshore System	El Paso Natural Gas Company	02-25-91	K	10,000
ST91-7086	U-T Offshore System	Panhandle Trading Company	02-25-91	K-S	50,000
ST91-7087	Transcontinental Gas Pipe Line Corp	Nechas Gas Distribution Company	02-25-91	B	6,175,000
ST91-7088	Tennessee Gas Pipeline Company	Sunoco, Inc	02-25-91	G-S	100,000
ST91-7089	Tennessee Gas Pipeline Company	New York State Electric and Gas Company	02-25-91	B	50,000
ST91-7090	Williston Basin Interstate Pipeline Co	Amoco Production Company	02-25-91	G-S	88,100
ST91-7091	Tex/Con Gas Pipeline Company	ANR Pipeline Company	02-25-91	C	5,000
ST91-7092	Tejas Gas Corporation	Mississippi River Transmission Corp	02-25-91	C	9,000
ST91-7093	Arkla Energy Resources	Arkansas Louisiana Gas Company	02-25-91	B	1,000
ST91-7094	Valero Transmission, LP	Arkla Energy Resources	02-26-91	C	800,000
ST91-7095	Texas Gas Transmission Corporation	Bishop Pipeline Corporation	02-26-91	G-S	2,595
ST91-7096	Texas Gas Transmission Corporation	Stellar Gas Company	02-26-91	G-S	40,000
ST91-7097	Tennessee Gas Pipeline Company	Sipco Gas Transmission Corporation	02-26-91	B	50,000
ST91-7098	Transcontinental Gas Pipe Line Corp	Public Service Company of North Carolina	02-26-91	B	350,000
ST91-7099	United Gas Pipe Line Co	Rangeline Corp	02-26-91	G-S	2,000
ST91-7100	United Gas Pipe Line Co	Transamerican Gas Transmission Corp	02-26-91	G-S	100,000
ST91-7101 [3]	United Gas Pipe Line Co	Wellhead Ventures Corp	02-26-91	G-S	57,600
ST91-7102 [3]	United Gas Pipe Line Co	Tex-La Gas Co	02-26-91	G-S	10,300
ST91-7103 [3]	United Gas Pipe Line Co	Wellhead Ventures Corp	02-26-91	G-S	7,210
ST91-7104 [3]	United Gas Pipe Line Co	Wellhead Ventures Corp	02-26-91	G-S	2,000
ST91-7105 [3]	United Gas Pipe Line Co	Tex-La Gas Co	02-26-91	G-S	15,450
ST91-7106	Trunkline Gas Co	Tennessee River Intrastate Gas Co	02-26-91	B	100,000
ST91-7107	U-T Offshore System	Pennzoil Gas Marketing Co	02-26-91	K-S	2,250,000
ST91-7108	Trunkline Gas Co	Seagull Marketing Services, Inc	02-26-91	G-S	150,000
ST91-7109	U-T Offshore System	Meridian Oil Trading, Inc	02-26-91	K-S	30,000
ST91-7110	U-T Offshore System	Entrade Corp	02-26-91	K-S	20,000
ST91-7111	U-T Offshore System	Inland Steel Co	02-26-91	K-S	20,000
ST91-7112	U-T Offshore System	Eagle Natural Gas Co	02-26-91	K-S	40,000
ST91-7113	Transcontinental Gas Pipe Line Corp	Appalachian Gas Sales	02-26-91	G-S	10,000
ST91-7114	Tennessee Gas Pipeline Co	Inland Gas Co	02-26-91	B	8,500
ST91-7115	Natural Gas Pipeline Co. of America	NGC Transportation, Inc	02-27-91	G-S	250,000
ST91-7116	Natural Gas Pipeline Co. of America	Enron Gas Marketing, Inc	02-27-91	G-S	200,000
ST91-7117	Natural Gas Pipeline Co. of America	Tejas Power Corp	02-27-91	G-S	150,000
ST91-7118	Natural Gas Pipeline Co. of America	Centran Corp	02-27-91	G-S	30,000
ST91-7119	Panhandle Eastern Pipe Line Co	Enserch Gas Co	02-27-91	G-S	50,000
ST91-7120	Panhandle Eastern Pipe Line Co	Baltimore Gas and Electric Co	02-27-91	B	100,000
ST91-7121	Panhandle Eastern Pipe Line Co	Fuel Services Group, Inc	02-27-91	G-S	3,333
ST91-7122	Panhandle Eastern Pipe Line Co	Associated Natural Gas, Inc	02-27-91	G-S	25,000
ST91-7123	Columbia Gulf Transmission Co	Shell Offshore, Inc	02-27-91	G-S	50,000
ST91-7124	Columbia Gulf Transmission Co	Catamount Natural Gas, Inc	02-27-91	G-S	100,000
ST91-7125	Columbia Gulf Transmission Co	Louisa Energy, Inc	02-27-91	G-S	80,000
ST91-7126	Tennessee Gas Pipeline Co	Columbia Gulf Transmission Co	02-27-91	G	20,000
ST91-7127	United Gas Pipe Line Co	Bishop Pipeline Corp	02-27-91	G-S	41,260
ST91-7128	United Gas Pipe Line Co	Bishop Pipeline Corp	02-27-91	G-S	41,260
ST91-7129	United Gas Pipe Line Co	Delhi Gas Pipeline Corp	02-27-91	G-S	103,900
ST91-7130	United Gas Pipe Line Co	Arkla Energy Resources	02-27-91	G-S	103,900
ST91-7131	United Gas Pipe Line Co	Bishop Pipeline Corp	02-27-91	G-S	41,260
ST91-7132	United Gas Pipe Line Co	NGC Transportation, Inc	02-27-91	G-S	154,980
ST91-7133	Natural Gas Pipeline Co. of America	Midcon Marketing Corp	02-28-91	G-S	75,000
ST91-7134	Natural Gas Pipeline Co. of America	Transamerican Gas Transmission Corp	02-28-91	B	250,000
ST91-7135	Natural Gas Pipeline Co. of America	PSI Gas Marketing, Inc	02-28-91	G-S	100,000
ST91-7136	Natural Gas Pipeline Co. of America	North American Resources Co	02-28-91	G-S	30,000
ST91-7137	Natural Gas Pipeline Co. of America	Peoples Natural Gas Co	02-28-91	B	100,000
ST91-7138	Natural Gas Pipeline Co. of America	Midcon Marketing Corp	02-28-91	G-S	150,000
ST91-7139	Natural Gas Pipeline Co. of America	City of Lenox	02-28-91	B	935
ST91-7140	Natural Gas Pipeline Co. of America	Tejas Hydrocarbons Co	02-28-91	G-S	100,000
ST91-7141	Valero Transmission, LP	Arkla Energy Resources	02-28-91	C	70,000
ST91-7142	United Gas Pipe Line Co	Rally Pipeline Corp	02-28-91	G-S	58,710
ST91-7143	United Gas Pipe Line Co	Louisiana Gas System, Inc	02-28-91	G-S	25,750
ST91-7144	United Gas Pipe Line Co	Rangeline Corp	02-28-91	G-S	1,545
ST91-7145	Mississippi River Transmission Corp	Cerro Copper Products Co	02-28-91	G-S	1,545
Below are twelve St-Docketed initial reports which are noticed out of sequence. These initial reports were not noted previously because they required additional Commission staff review.					
ST91-5324 [3]	Mississippi River Transmission Corp	Cerro Copper Products Co	02-28-91	G-S	1,545
ST91-5811	Northern Natural Gas Co	Manving Municipal Utilities	12-11-90	B	500
ST91-5913	Northern Natural Gas Co	Peoples Natural Gas Co., Div. Utilicorp	12-11-90	B	4,000
ST91-5725	Green Canyon Pipe Line Co	Seagull Marketing Services, Inc	12-12-90	G-S	25,000
ST91-5751	Colorado Interstate Gas Co	Coastal Chem., Inc	12-13-90	G-S	5,000
ST91-5753	ANR Pipeline Co	Coastal Gas Marketing Co	12-13-90	G-S	169,706
ST91-5895	Exxon Gas System, Inc	Sabine Pipe Line Co	12-19-90	C	70,000
ST91-5901	Northern Natural Gas Co	Pandis Resources, Inc	12-19-90	B	25,000
ST91-6023	Equitrans, Inc	Columbia Gas of Pennsylvania, Inc	12-21-90	G-S	18,026
ST91-6061	Columbia Gulf Transmission	Columbia Gas Development Corp	12-27-90	G-S	315,900
ST91-6063	Arkla Energy Resources	USA Gas Pipeline	12-27-90	B	200,000
ST91-6068 [3]	ANR Pipeline Co	ADA Cogeneration	12-28-90	G-S	7,500

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with Order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372,10/10/85).

[2] Estimated maximum daily volumes includes volumes reported by the filing company, in MMBTU, MCF and DT.

[3] Transportation service converted from authority under 18 CFR section 284.10B, subpart B, to authority under 18 CFR section 284.223(F)(1), subpart G-S.

[FR Doc. 91-11474 Filed 5-14-91; 8:45 a.m.]

BILLING CODE 6717-01-M

[Docket No. RP91-140-000]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

May 8, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on May 6, 1991, pursuant to § 154.63(a)(1) of the Regulations of the Federal Energy Regulatory Commission ("Commission") tendered for filing the following tariff sheets to its FERC Gas Tariff proposed to be effective June 1, 1991:

First Revised Volume No. 1

First Revised Twenty-Third Revised Sheet No. 4
Fourteenth Revised Sheet No. 52
Eleventh Revised Sheet No. 54
Ninth Revised Sheet No. 54-A
Third Revised Sheet No. 54-A1
Third Revised Sheet No. 56-C
Second Revised Thirty-Ninth Sheet No. 57(i)

Original Volume No. 2

Third Revised Sheet No. 3-A
First Revised Thirteenth Revised Sheet No. 151
First Revised Tenth Revised Sheet No. 223
Third Revised Sheet No. 224
First Revised Tenth Revised Sheet No. 245
Fourth Revised Sheet No. 246
First Revised Fourth Revised Sheet No. 269
First Revised Fourth Revised Sheet No. 270

Great Lakes advises that the primary purpose of this filing is to enable a Great Lakes customer, ANR Pipeline Company ("ANR"), to provide the company use gas needed by Great Lakes to transport such customer's gas volumes. The tariff sheets referenced above reflect the changes necessary to implement this change in Rate Schedule CQ-2 of First Revised Volume No. 1 and Rate Schedules T-6, T-8, T-9 and T-10 of Original Volume No. 2 of Great Lakes FERC Gas Tariff.

Great Lakes further states that ANR has agreed that, effective June 1, 1991, it will provide that company use gas to Great Lakes which is needed to transport volumes. Concurrent with the effectiveness of this change, ANR would no longer be subject to Great Lakes' PGA tariff provisions as it relates to company use gas.

Great lakes indicates that there are two major reasons for the proposed change. First, since customers in Great Lakes' open access program (implemented on November 1, 1990, pursuant to the Commission Order issued on September 13, 1990, in Docket No. CP89-2196-000), directly provide their company use gas, conversion of Great Lakes' traditional customers to a similar arrangement provides administrative convenience and uniformity. Second, it is critical to Great Lakes' planning to timely determine if it will need to purchase company use gas in the future. Gas purchase contracts, under which Great Lakes purchases most of its company use gas requirements from TransCanada, terminate on November 1, 1991.

Great Lakes requested waiver of the 30-day notice requirements of § 154.51 of the Commission's Regulations so as to permit the June 1, 1991 effective date.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before May 15, 1991.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceeding. Copies of this filing are on file with the commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 91-11470 Filed 5-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8875-001]

James River-Groveton, Inc.; Dismissing Petition

May 8, 1991.

On February 13, 1984, James River-Groveton, Inc., now James River Corporation (James River), filed with the Commission an application for an exemption from licensing to develop a hydroelectric project on the Connecticut River in Guildhall, Vermont, and Northumberland, New Hampshire. On October 3, 1986, James River filed a petition for declaratory order regarding a state agency's jurisdiction to impose mandatory conditions with respect to the proposed hydroelectric project.

On April 17, 1991, James River withdrew its application for exemption from licensing. No one filed a motion in opposition to the notice of withdrawal, and the Commission took no action to disallow the withdrawal. Pursuant to § 385.216 of the Commission's Rules of Practice and Procedure, 18 CFR 385.216 (1990), the withdrawal became effective on May 2, 1991.

Because the exemption application which was the subject of the petition for declaratory order has been withdrawn, the petition is dismissed as moot.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 91-11475 Filed 5-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-121-001]

Mississippi River Transmission Corporation; Proposed Change in FERC Gas Tariff

May 8, 1991.

Take notice that on May 6, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1-A:

Sub. Second Revised Sheet No. 34
Sub. Second Revised Sheet No. 35
Sub. Third Revised Sheet No. 56

The subject tariff sheets bear an issue date of May 6, 1991 and a proposed effective date of April 20, 1991.

MRT states that this tariff filing is being made in compliance with an order issued by the Commission on April 19, 1991, in which the Commission directed MRT to add tariff language which would permit discounted shippers to retain priority by paying up to the maximum rate, and to add tariff language delineating under what circumstances imbalance penalties may be assessed.

MRT states that a copy of this filing has been mailed to each of MRT's jurisdictional customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before May 15, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 91-11471 Filed 5-14-91; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP91-160-000]

Northwest Pipeline Corporation; Change in FERC Gas Tariff

May 8, 1991.

Take notice of that on May 2, 1991 Northwest Pipeline Corporation ("Northwest") tendered the following for filing and acceptance to be a part of its FERC Gas Tariff:

Second Revised Volume No. 1

First Revised Sheet No. 8
Second Revised Sheet No. 26
First Revised Sheet No. 94
First Revised Sheet No. 101
First Revised Sheet No. 105
First Revised Sheet No. 109
Second Revised Sheet No. 150
First Revised Sheet No. 154
First Revised Sheet No. 223

First Revised Volume No. 1-A

First Revised Sheet No. 401
First Revised Sheet No. 402
First Revised Sheet No. 408
First Revised Sheet No. 409
First Revised Sheet No. 410
First Revised Sheet No. 415
First Revised Sheet No. 416
First Revised Sheet No. 417
Original Sheet No. 417-A
First Revised Sheet No. 431
First Revised Sheet No. 442
Sheet Nos. 508 and 509
Sheet Nos. 517 through 600

Northwest states that the purpose of this filing is to make minor revisions to Northwest's tariff to reflect the actual operating conditions of the pipeline. Northwest further states that the requirement necessary to maintain a priority date for interruptible transportation customers have been clarified. Several actions of the tariff have also been revised to remove any reference to take-or-pay credits, in compliance with Order No. 500-H.

Northwest has requested an effective date of June 2, 1991 for the tendered sheets. Northwest states that a copy of the filing has been served on Northwest's jurisdictional customer list and affected state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 15, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.
Acting Secretary.

[FR Doc. 91-11472 Filed 5-14-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of April 12 Through April 19, 1991

During the Week of April 12 through April 19, 1991, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: May 8, 1991.

Richard W. Dugan,
Acting Director, Office of Hearings and Appeals.

List of Cases Received By the Office of Hearings and Appeals

[Week of April 12 through April 19, 1991]

Date	Name and location of applicant	Case No.	Type of submission
April 15, 1991	Texaco/Forrest Ave. Texaco, Gadsden, AL	RR321-58	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The 3/29/91 Decision and Order (Case No. RF321-9103 & RF321-13651) issued to Forrest Ave. Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
April 17, 1991	Inel Research Bureau, Moscow, ID	LFA-0113	Appeal of an Information Request Denial. If Granted: The 3/15/91 Freedom of Information Request Denial issued by the Idaho Operations Office would be rescinded, and Inel Research Bureau would receive access to DOE information.
April 18, 1991	David DeKok, Harrisburg, PA	LFA-0114	Appeal of an Information Request Denial. If Granted: The failure to act on a 2/12/90 Freedom of Information Request by the Office of Administrative Services would be treated as a constructive denial, and David DeKok would receive access to DOE information.
April 18, 1991	Metropolitan Petroleum Co., Inc. & Metropolitan Fuel Oil Co., Washington, D.C.	LEF-0032	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with March 30, 1990 Final Judgment entered into with the Metropolitan Petroleum Co., Inc., and Metropolitan Fuel Oil Co.
April 18, 1991	Stanco Petroleum, Inc. Washington, D.C.	LEF-0031	Implementation of Subpart V. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V in connection with March 24, 1986 Consent Order entered into with Stanco Petroleum, Inc.

List of Cases Received By the Office of Hearings and Appeals—Continued

[Week of April 12 through April 19, 1991]

Date	Name and location of applicant	Case No.	Type of submission
April 19, 1991	Texaco/Ridge Service Station, Memphis, TN	RR321-59	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The 3/18/90 Decision and Order (Case No. RF321-11270 & RF321-13462) issued to Ridge Service Station would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

Refund Applications Received

Date received	Name of refund proceeding/name of refund application	Case No.
4/12/91 thru 4/19/91	Crude Oil Refund, applications received.	RF272-99280 thru RF272-99284.
4/12/91 thru 4/19/91	Gulf Oil Refund, applications received.	RF300-16370 thru RF300-16446.
4/12/91 thru 4/19/91	Texaco refund, applications received.	RF321/14782 thru RF321-14821.
4/15/91	Enterprise Products Company.	RF326-256.
4/16/91	Hollow Gas Company, Inc.	RF326-258.
4/16/91	Marion B. Wachel, Sr.	RF307-10183.
4/16/91	Ray Wachel	RF307-10184.
4/16/91	Frank T. Wasniewski.	RF304-12208.
4/16/91	Gerald W. Ehrhart.	RF304-12209.
4/16/91	Haberer Shell	RF315-10142.
4/16/91	J.H. Rudolph & Co., Inc.	RA272-37.
4/16/91	Gateway Transportation Co., Inc.	RF304-12211.
4/16/91	Quinn Freight Lines, Inc.	RF304-12212.
4/16/91	Malolin Transport	RF304-12213
4/16/91	Malolin Trans. of Delaware.	RF304-12214.
4/16/91	Lee Way Motor Freight, Inc.	RF304-12215.
4/16/91	Motor Freight Express.	RF304-12216.
4/16/91	Associated Transport.	RF304-12217.
4/16/91	B & P Motor Express, Inc.	RF304-12218.
4/16/91	Koch Refining Company.	RF225-260.
4/16/91	Schroeder Fuel Co.	RF334-7.

[FR Doc. 91-11546 Filed 5-14-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders

Week of March 25 Through March 29, 1991

During the week of March 25 through March 29, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Chem-Nuclear Environmental Service, 3/25/91 LFA-0106

Chem-Nuclear Environmental Services (CNES) filed an Appeal from a determination issued by the DOE's Oak Ridge Operations Office (ORO) of a request for information under the Freedom of Information Act (FOIA). CNES had sought a copy of the successful proposal of Ecotek, Inc. for a subcontract awarded by Westinghouse Materials Co. of Ohio, the DOE's prime contractor at the Feed Materials Production Center. In denying the Appeal, the DOE found that the agency did not create or own the document, and had never had possession of it. Therefore, the requested subcontract proposal did not qualify as an agency record which was subject to the FOIA. The Appeal was accordingly denied.

Glen Milner, 3/25/91 LFA-0103

On February 25, 1991, Glen Milner filed an Appeal from a denial by the Department of Energy's Albuquerque Operations Office of three requests for waivers of fees which he had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that: (i) release of the information requested by Milner would not significantly contribute to the public's understanding of the operations and activities of the government; and (ii) milner is not a "representative of the news media" and therefore could properly be charged both search and duplication fees for processing of his FOIA requests. The Appeal was accordingly denied.

James L. Schwab, 3/25/91 LFA-0098

James L. Schwab filed an Appeal from a denial by the DOE's Office of the Inspector General (OIG) of a Request for Information which Schwab had submitted under the Freedom of Information Act (FOIA). Schwab sought information pertaining to an OIG investigation of his claim that a DOE subcontractor had wrongfully discharged him from his job as a result of his complaint about an allegedly work-related injury. OIG released two documents—an OIG memorandum and an investigation report prepared in response to Schwab's complaint. In releasing the documents, however OIG deleted names of individuals, as well as various other items which OIG claimed might identify individuals, pursuant to Exemption 7(C). Schwab sought the release of the deleted information in his Appeal. With respect to dates, occupations, and items which did not identify specific individuals, OHA granted Schwab's Appeal and remanded the case to OIG either for release of the information or issuance of a detailed explanation why the information should be withheld. With respect to individual's names and titles, and pronouns referring to specific individuals, OHA denies the Appeal on the grounds that release of that information could reasonably be expected to cause an unwarranted invasion of personal privacy.

U.S. Rentals, 3/27/91 LFA-0104

U.S. Rentals filed an Appeal from a partial denial by the Albuquerque Operations Office of a Request for Information submitted under the Freedom of Information Act [the FOIA]. In considering the Appeal, the DOE found that the withheld information consisted of confidential unit pricing data that was protected by Exemption 4 of the FOIA because its release would result in substantial competitive harm to the submitter. The Appeal was therefore denied.

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Refund Applications

Babler Bros., Inc., Gallagher Asphalt Corp., 3/29/91 RF272-61124, RD272-61124, RF272-63552, RD272-63522

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharges to two paving companies. The DOE rejected objections filed by a consortium of States and Territories in regards to these Applications, finding them insufficient to rebut the presumption of injury. Therefore, the Applications for refund of these two firms were granted and Motions for Discovery filed by the States in regard to these Applications were denied. Babler Bros., Inc. was granted a refund of $40,181. Gallagher Asphalt Corp., was granted a refund of $35,722.

Brostroms Rederi AB, et al., 3/28/91 RF272-61368, et al., RD272-61368, et al.

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharges to six foreign flag ocean carriers. The DOE rejected identical objections filed by a consortium of States and territories (the States) finding them insufficient to rebut the presumptions of injury. Therefore, the Applications for refund of these six firms were granted and Motions for Discovery filed by the States in regard to these Applications were denied. The refund amount granted to these seven applicants was $741,611.

Charles E. Smith Companies, Milford Management Corporation, Riverwood Management Corporation, 3/27/91 RF272-0219, RD272-0219, RF272-8337, RD272-8337, RF272-8338

Three real estate management companies, Charles E. Smith Companies (Smith), Milford Management Corporation (Milford) and Riverwood Management Corporation (Riverwood), filed Applications for Refund from the subpart V crude oil overcharge monies based upon their purchases of fuel oil that was consumed for purposes of space and water heating. A group of thirty States and two Territories of the United States ("the States") filed objections opposing the receipt of refunds by Smith and Milford. With regard to Smith, the States argued that Smith suffered no injury from crude oil overcharges since: (i) the firm had passthrough clauses in its leases which enabled it pass on fuel increases to its tenants, and (ii) the firm was profitable during the price control period. With regard to Milford, the States argued that the firm suffered no injury since it was able to pass through fuel cost increases by virtue of rent surcharges authorized by the New York City Rent Guidelines Board (RGB). In connection with these objections, the States also filed a Motion for Discovery in these two proceedings. In considering the States' objections, the DOE determined that Smith's commercial property leases, as opposed to residential leases, did contain passthrough clauses and therefore reduced Smith's refund gallonage by the amount attributable to its commercial properties; the DOE rejected, however, the States' alternative contention that Smith's refund application should be denied on the basis of the profitability of the firm. The DOE rejected the States' objection regarding Milford based upon its finding that the RGB surcharges did not constitute a means to fully compensate Milford for fuel cost increases as incurred. The DOE further determined that the States had failed to justify discovery with regard to either Smith or Milford. Accordingly, the refund applications of Milford and Riverwood were approved while Smith's Application for Refund was granted in part. The total of the refunds granted in this decision is $30,297.

DC Energy Office, 3/29/91, RF272-23229

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to the Idaho Transportation Department based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant is an agency of the government of the District of Columbia that applied for a refund based solely on its purchases of refined petroleum products for end-use. Philip P. Kalodner, counsel for utilities, transporters and manufacturers, filed conditional objections to this application. Mr. Kalodner argued that governmental entities are ineligible to receive subpart V crude oil refunds and that non-governmental claimants should have priority in receiving refunds. Moreover, Mr. Kalodner attempted to rebut DC's reliance on the end-user presumption. The DOE found Mr. Kalodner's objections to the applicant's eligibility unconvincing and granted DC a refund of $147,975.

Empire Construction Company, 3/25/91, RF272-45521, RD272-45521

The DOE issued a Decision and Order concerning an application for refund filed on behalf of Empire Construction Company in the subpart V crude oil refund proceeding. The DOE determined that the refund claim was meritorious and granted a refund of $16,725. The DOE found that the industry-wide econometric data submitted by a consortium of 28 states and 2 territories did not rebut the presumption that the applicant was injured by crude oil overcharges. The States also filed a Motion for Discovery in connection with the application, which was denied for reasons discussed in earlier Subpart V crude oil Decisions. See, e.g., Christian Haaland A/S, 17 DOE ¶ 85,439 (1988).

Gulf Oil Corporation/T.L. Jake Ferguson's-Gulf, et al., 3/29/91, RF300-12148, et al.

The Department of Energy (DOE) issued a Decision and Order granting refund monies from consent order funds obtained by the DOE through a settlement with the Gulf Oil Corporation to five applicants based upon their purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant based their gallonage claim upon a customer listing supplied by Chevron USA, Inc. In some instances, this customer listing reports the total volume of refined petroleum products purchased at a station during the consent order period. Each applicant basing their volume total on such a listing was required either to accept a fraction of their original gallonage claim based on the percentage of the consent order period that they owned the station, or to prove that they purchased the entire volume total. The total refund granted to the five applicants was $4,224.

Idaho Transportation Department, 3/26/91, RF272-22860

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to the Idaho Transportation Department based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant is an agency of a state government that applied for a refund based solely on its purchases of refined petroleum products for end-use in its motor vehicle fleet. Philip P. Kalodner, counsel for utilities, transporters and manufacturers filed conditional objections to this application. Mr. Kalodner argued that governmental entities are ineligible to receive subpart V crude oil refunds and that non-governmental claimants should have priority in receiving refunds. Moreover, Mr. Kalodner attempted to rebut Idaho's reliance on the end-user presumption. The DOE found Mr. Kalodner's objections to the applicant's eligibility unconvincing and granted Idaho a refund of $15,535.

Marshall School District, 3/27/91, RF272-78705

The Department of Energy issued a Decision and Order granting a refund from the crude oil overcharge funds to Marshall School District (Marshall). Based on the additional information submitted by Marshall, the DOE determined that the estimation method used by Marshall's filing service, Petroleum Funds, Inc., was reasonable. The total refund granted to Marshall in this Decision is $913.

Pathfinder Mines Corporation, 3/28/91, RF272-8802, RF272-8805, RF272-9084

The Department of Energy (DOE) issued a Decision and Order granting refund monies from the crude oil overcharge funds to Pathfinder Mines Corporation based on its purchases of refined petroleum products between August 19, 1973 and January 27, 1981. The applicant was an end-user of the refined petroleum products and based its claim on a presumption of injury for end-users. A group of 28 States and two territories (the States) filed statements of objection with respect to two of Pathfinder's three applications. The DOE found that the States' filings were insufficient to rebut the presumption of injury. Therefore, Pathfinder's Applications for Refund were granted. The refund granted to Pathfinder was $43,426.

W.J. Runyon and Son, Inc., et al., 3/28/91, RF272-61189, et al., RD272-61189, et al.

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to five firms based on their purchases of refined petroleum products during the price control period (August 19, 1973 through January 27, 1981). A group of states and territories (the States) had filed Objections in opposition to four of the five firms. The DOE found that the evidence presented by the State was insufficient to rebut the presumption of end-user injury. In addition, the DOE denied four Motions for Discovery filed by the States. The total of refunds granted in this decision is $250,813.

Washington School District #6, 3/29/91, RF272-78874

The Department of Energy issued a Decision and Order granting a refund from the crude oil overcharge funds to Washington School District #6 (Washington). Based on additional information submitted by Washington, the DOE determined that the estimation method used by Washington, and not its filing service, Petroleum Funds, Inc., was a reasonable approximation of Washington's purchases. The total refund granted to Washington in this Decision is $815.

West Coast Oil Company/Corn Construction Co., 3/27/91, RF328-1

The DOE issued a Decision and Order denying the refund application of Corn Construction Company in the West Coast Oil Company special refund proceeding. Corn Construction had not purchased any petroleum products that were eligible for refund in the West Coast proceeding.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

B & N Hot Shot Service.	RF272-71282.	03/28/91
NBC Escort Service.	RF272-71282.	.....
Exxon Corporation/ Ron & Ron's Exxon.	RF307-10177.	03/29/91
Gulf Oil Corporation/ Bats Service Center et al.	RF300-11237.	03/28/91
Gulf Oil Corporation/ Don White Oil Service, Inc. et al.	RF300-11561.	03/28/91
Michelin Tire Corporation et al.	RF272-60301.	03/29/91
Texaco Inc./ Bedwell Oil Co. et al.	RF321-2475	03/29/91
Texaco Inc./E.B. Kingman Company et al.	RF321-6500	03/29/91
Texaco Inc./ Gene's Texaco.	RF321-9103	03/29/91
Forrest Avenue Texaco.	RF321-13651.	.....
Texaco Inc./ Gonzalez Texaco.	RF321-14599.	03/29/91
Texaco Inc./Grant Fought Auto et al.	RF321-306	03/25/91
Texaco Inc./Seals Texaco et al.	RF321-33	03/27/91
Texaco Inc./The University of Texas at San Antonio.	RF321-4772	03/29/91
State of Texas	RF321-6368	.....
Texas Dept of Mental Health & Retardation.	RF321-6605	.....
State Dept of Hgwys & Public Transportation.	RF321-6650	.....
Texas Department of Public Safety.	RF321-7670	.....

DISMISSALS

The following submissions were dismissed:

Name	Case No.
Buick Motor Division	RF321-4561.
Curtis Beard Service, Inc.	RF321-68.
Dubosesky's Texaco	RF321-996.
Franks Gulf Service	RF300-12265.
General Motors Corp.	RF321-6026.
Green's Gulf	RF300-12117.
Harry Courts Texaco	RF321-348.
Kenneth Paulsen	RF321-12817.
Linden Fox Gulf	RF300-11050.
Mark Matchett Gulf	RF300-11103.
Mark Scott's Gulf	RF300-11107.
Michael Petrielle Gulf	RF300-12089.
North Trimble Car Wash	RF300-11053.
Pik Record Company	RF272-75655.
Ralph Gonzales Trucking	RF300-11087.
Rotolo's Gulf	RF300-11106.
Sam's Texaco	RF321-6336.
Scobey Elem #1	RF272-80756.
Scobey HS #1	RF272-80772.
Springs Valley Texaco	RF321-11340.
Verne's Automotive	RF300-11081.
Virginia Shell	RF315-913.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: May 8, 1991.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 91-11547 Filed 5-14-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3956-5]

Stratospheric Ozone Advisory Committee

ACTION: Announcement of Advisory Committee Meeting.

SUMMARY: The next meeting of the U.S. Environmental Protection Agency (EPA) Federal Advisory Council on Stratospheric Ozone Protection (STOPAC) will be held on Thursday,

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May 23, 1991. The meeting will take place from 9 to 11 a.m., at the Washington-Sheraton Hotel, 2660 Woodley Road, at Connecticut Ave., NW., Washington, DC. The public is invited to attend the meeting. Seating will be on a first come, first serve basis.

The purpose of the meeting will be to provide information on the new scientific findings on stratospheric ozone depletion and to discuss the next meeting of the Parties to the Montreal Protocol. The status of the regulatory implementation process under Title VI of the 1990 Clean Air Act Amendments will be addressed by the U.S. EPA.

FOR FURTHER INFORMATION CONTACT: David Lee, Chief, Stratospheric Ozone Protection Branch, (202) 475-7467, or write to the Division of Global Change, Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Dated: May 9, 1991.

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs.

[FR Doc. 91-11819 Filed 5-14-91; 8:45 am]

BILLING CODE 6560-50-M

[PF-548; FRL-3991-6]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces an initial filing, a withdrawal, and two amendments of pesticide petitions (PP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product Manager	Office location/telephone number	Address
Susan Lewis (PM 21).	Rm. 227, CM #2, 703-557-1900.	1921 Jefferson Davis Hwy., Arlington, VA.
Joanne Miller (PM 23).	Rm. 237, CM #2, 703-557-1830.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows regarding the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filing

1. *PP 1F3974.* Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, proposes to amend 40 CFR 180.434 by establishing a regulation to permit the residues of the fungicide propiconazole {1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole} and its metabolite determined as 2,4-dichlorobenzoic acid expressed as parent in or on grass seed screenings at 70 parts per million (ppm), grass straw at 40 ppm, and grass forage at 2.0 ppm. The analytical method used is capillary gas chromatography. (PM-21)

Amended Petitions

2. *PP 4F3122.* Sandoz Crop Protection Corp., 1300 East Touhy Ave., Des Plaines, IL 60018, has submitted a revised Section F proposing to amend 40 CFR 180.368 by establishing tolerances for the combined residues of the herbicide norflurazone {4-chloro-(5-methyl-amino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone} and its desmethyl metabolite {4-chloro-5-(amino-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone} in or on the raw agricultural commodities small fruits and berries (except strawberries) at 0.2 ppm and tree nuts (except pistachio nuts) at 0.1 ppm. The proposed method for determining residues is gas chromatography using an electron-capture detector. Previously announced proposed tolerances under this petition were announced in notices appearing in the **Federal Register** of October 17, 1984 (49 FR 40658) and March 13, 1985 (50 FR 10106). (PM-23)

3. *PP 9F3702.* Sandoz Crop Protection Corp., 1300 East Touhy Ave., Des Plaines, IL 60018, has submitted a revised Section F proposing to amend 40 CFR 180.368 by establishing tolerances for the combined residues of the herbicide norflurazone {4-chloro-5(methylamino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone} and its desmethyl metabolite {4-chloro-5-(amino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3-(2*H*)-pyridazinone} in or on the following raw agricultural commodities: peanuts at 0.05 ppm; peanuts, hulls at 1.5 ppm; peanuts, vines at 1.5 ppm; and peanuts, hay at 5.5 ppm. The proposed analytical method for determining residues is gas chromatography using an electron-capture detector. The notice of the initial filing of PP 9F3702 was published in the **Federal Register** of February 8, 1989 (54 FR 6170). (PM-23)

Withdrawal of Petition

4. *PP 3F2951.* Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, has withdrawn without prejudice to future filing PP 3F2951, which proposed amending 40 CFR 180.368 by establishing tolerances for the combined residues of the herbicide metolachlor {2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide} and its metabolites determined as 2-[[(2-ethyl-6-methylphenyl)-amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as parent
metholachlor, in or on the raw commodities sorghum forage and fodder at 10.0 ppm. Notice of the filing of this petition appeared in the **Federal Register** of September 30, 1983 (48 FR 44903). (PM-23)

Authority: 7 U.S.C. 136a.

Dated: May 1, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-11107; Filed 5-14-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-42065A; FRL-3879-5]

Cheyenne River Sioux Tribe; Notice of Approval of the Tribal Plan for the Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of Cheyenne River Sioux Tribal Plan.

SUMMARY: In the **Federal Register** of November 30, 1990, EPA announced its intent to approve the Cheyenne River Sioux Tribe's Plan for Certification of Applicators of Pesticides Classified for Restricted Use. EPA hereby announces final approval of this Tribal Plan.

ADDRESSES: Copies of the Cheyenne River Sioux Tribal Plan are available for review at the following locations during normal business hours:

1. Cheyenne River Sioux Tribe, Pesticide Enforcement Office, P.O. Box 590, Eagle Butte, SD 57625, Telephone: (605-964-6558).
2. Toxic Substances Branch, Air and Toxics Division, Region VIII, Environmental Protection Agency, 999 18th St., suite 500, Denver, CO 80202, Telephone: (303-293-1730).
3. Field Operations Division (H7506C), Office of Pesticide Programs, rm. 1101, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone: (703-557-7371).

FOR FURTHER INFORMATION CONTACT: Dallas Miller, Air and Toxics Division (8AT-TS), Region VIII, Environmental Protection Agency, 999 18th St., suite 500, Denver, CO 80202-2405, Telephone: (303-293-1743).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 30, 1990 (55 FR 49701), EPA announced its intent to approve the Cheyenne River Sioux Tribe's Plan for Certification of Applicators of Pesticides Classified for Restricted Use. Interested persons were given 30 days to comment; no comments were received.

EPA therefore grants final approval of the Cheyenne River Sioux Tribal Plan for Certification of Applicators of Pesticides Classified for Restricted Use.

Dated: April 30, 1991.

James J. Scherer,

Regional Administrator, Region VIII.

[FR Doc. 91-11109 Filed 5-14-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-42065A; FRL-3879-6]

Rosebud Sioux Tribe; Notice of Approval of the Tribal Plan for the Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of Rosebud Sioux Tribal Plan.

SUMMARY: In the **Federal Register** of November 30, 1990, EPA announced its intent to approve the Rosebud Sioux Tribe's Plan for Certification of Applicators of Pesticides Classified for Restricted Use. EPA hereby announces final approval of this Tribal Plan.

ADDRESSES: Copies of the Rosebud Sioux Tribal Plan are available for review at the following locations during normal business hours:

1. Rosebud Sioux Tribe, Department of Natural Resources, Rosebud, SD 57570, Telephone: (605-747-2559).
2. Toxic Substances Branch, Air and Toxics Division, Region VIII, Environmental Protection Agency, 999 18th St., suite 500, Denver, CO 80202, Telephone: (303-293-1730).
3. Field Operations Division (H7506C), Office of Pesticide Programs, rm. 1101, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone: (703-557-7371).

FOR FURTHER INFORMATION CONTACT: Dallas Miller, Air and Toxics Division (8AT-TS), Region VIII, Environmental Protection Agency, 999 18th St., suite 500, Denver, CO 80202-2405, (303-293-1743).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 30, 1990 (55 FR 49702), EPA announced its intent to approve the Rosebud Sioux Tribe's Plan for Certification of Applicators of Pesticides Classified for Restricted Use. Interested persons were given 30 days to comment; no comments were received.

EPA therefore grants final approval of the Rosebud Sioux Tribal Plan for Certification of Applicators of Pesticides Classified for Restricted Use.

Dated: April 30, 1991.

James J. Scherer,

Regional Administrator, Region VIII.

[FR Doc. 91-11108 Filed 5-14-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Benns et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for four new FM stations:

Applicant, city and state	File No.	MM docket No.
I		
A. Michael J. Benns; Signal Mountain, TN.	BPH-891031M	91-87
B. Broadcast Company of America; Signal Mountain, TN.	BPH-891031MF	
C. Group 90, Inc; Signal Mountain, TN.	BPH-891101MF	
D. ARB Communications, Inc.; Signal Mountain, TN.	BPH-891101MH	
E. Ladies of the 80's Broadcasting, Inc.; Signal Mountain, TN.	BPH-891101MI	
F. Rainmaker Broadcasting Group, Inc.; Signal Mountain, TN.	BPH-891102MF	
G. Sage Broadcasting Corporation of Chattanooga, Tennessee; Signal Mountain, TN.	BPH-891102MG	
H. (Peter B. Fulton d/b/a) 96 Rocks; Signal Mountain, TN.	BPH-891102MH	
I. Signal Mountain Broadcasting, LP; Signal Mountain, TN.	BPH-891102MI	
J. Special T Communications, Inc.; Signal Mountain, TN.	BPH-891102ML	
K. Tri-State Communications, L.P.; Signal Mountain, TN.	BPH-891102MN	
L. Signal Mountain Radio Partners; Signal Mountain, TN.	BPH-891102MM (dismissed herein)	
Issue heading and applicants 1. Cross Interest, C 2. Air Hazard, G, J 3. Comparative, A-K 4. Ultimate, A-K		
II		
A. Gary Lou and Michael L. Swaringim, d/b/a Lee Brother Partnership; Troy, MO.	BPH-891006MT	91-88
B. James C. Magee; Troy, MO.	BPH-891006ND	
Issue heading and applicants 1. Comparative, A, B 2. Ultimate, A, B		
III		
A. John W. Berger; Amarillo, TX.	BPH-891010ME	91-89
B. John A Gay, Jr.; Amarillo, TX.	BPH-891011MI	

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Applicant, city and state	File No.	MM docket No.
C. American Indian Broadcast Group, Inc; Amarillo, TX.	BPH-891012MR	

Issue heading and applicants
1. Air Hazard, C
2. Comparative, A through C
3. Ultimate, A through C

W		
A. Mamu, Inc.; Millersburg, PA.	BPH-890624MF	91-90
B. Hapco Communications, Inc.; Millersburg, PA.	BPH-890525MF	
C. Douglas W. George; Millersburg, PA.	BPH-890629MR	

Issue heading and applicants
1. Comparative, A, B, C
2. Ultimate, A, B, C

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone 202-452-1422).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-11467 Filed 5-14-91; 8:45 am]

BILLING CODE 6712-01-M

William F. Peel, Jr. et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM docket
A. William F. Peel, Jr.; White City, FL.	BPH-890906MM	91-96
B. Sage Broadcasting Corporation of Ft. Pierce, Florida; White City, FL.	BPH-890912ME	
C. Capestancy Broadcasting, Limited Partnership; White City, FL.	BPH-890913ME	
D. Sam Ides; White City, FL.	BPH-890913MM	
E. Mystic Radio Corporation; White City, FL.	BPH-890914MH	
F. Minority Broadcasting Group Limited; White City, FL.	BPH-890914MT	
G. Karen M. Lowery; White City, FL.	BPH-890914MU	
H. Sea Oats Broadcasting; White City, FL.	BPH-890914ND	
I. Crystal Communications, Inc.; White City, FL.	BPH-890914NF	
J. Coastal Broadcasting Corporation; White City, FL.	BPH-890914NH	
K. White City Radio Partners; White City, FL.	BPH-890914NJ	
L. White City Broadcasting, Inc.; White City, FL.	BPH-890914NP	
M. Q Prime Inc.; White City, FL.	BPH-890914NV	
N. Hester Willson Case; White City, FL.	BPH-890914NW	
O. James H. Hummel; White City, FL.	BPH-890914NY	
P. Midway Broadcasting Company; White City, FL.	BPH-890914OD	
Q. Lucille Ann Lacy; White City, FL.	BPH-890914OG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants
1. Air Hazard—A, B, C, D, E, G, H, I, J, K, J, N, O
2. Environmental—A, B, C, D, H, J, K, O
3. Comparative—All
4. Ultimate—All

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036 (Telephone 202-452-1422).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-11469 Filed 5-14-91; 8:45 am]

BILLING CODE 6712-01-M

White Stone Broadcasting Co. et al. Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM docket No.
A. White Stone Broadcasting Company, White Stone, VA.	BPH-891016MJ	91-89
B. Windmill Communications, A General Partnership, White Stone, VA.	BPH-891016MK	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19,347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants
1. Comparative—A, B
2. Ultimate—A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone (202) 452-1422).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-11468 Filed 5-14-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

North Carolina State Ports Authority/Safbank Line, Ltd. et al; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200512.

Title: North Carolina State Ports Authority/Safbank Line, Ltd. Terminal Agreement.

Parties:

North Carolina State Ports Authority
Safbank Line, Ltd.

Synopsis: The Agreement, filed May 8, 1991, provides for reduced tariff rates for terminal services based on the number of vessel calls (at the Port of Wilmington, North Carolina) counted from January 1, 1991. The Agreement's term is one year, subject to renewal.

Agreement No.: 224-200511.

Title: The Board of Trustees of the Galveston Wharves/H. E. Schurig & Company, Inc. Terminal Agreement.

Parties:

The Board of Trustees of the Galveston Wharves (Galveston)
H. E. Schurig & Company, Inc. (Schurig).

Synopsis: The Agreement, filed May 7, 1991, provides for: (1) Schurig to lease certain property from Galveston for 30 months; (2) Schurig to pay Galveston a rent of $15,000 per month, beginning August 1, 1991 to October 31, 1991, $30,000 per month, beginning November 1, 1991 to October 31, 1992; and $35,000 per month, beginning November 1, 1992; (3) certain port charges related to project cargo collected by Galveston to be credited against the minimum monthly rentals on a cumulative yearly basis; and (4) Schurig to have preferential first call on a Pier 37 berth.

Dated: May 10, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 91-11524 Filed 5-14-91; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed; Kawasaki Kisen Kaisha, Ltd., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-011331.

Title: KL, MOL and HMM Space Charter Agreement in the Far East-U.S. Pacific Northwest Trades.

Parties:

Kawasaki Kisen Kaisha, Ltd. ("KL")
Mitsui O.S.K. Lines, Ltd. ("MOL")
Hyundai Merchant Marine Co., Ltd. ("HMM")

Synopsis: The proposed Agreement would authorize KL and MOL to charter space to HMM in the trade between the Far East and the States of Oregon and Washington. KL and MOL would be authorized to charter up to 500 TEU's to HMM on any of their vessels operated in the trade.

Dated: May 9, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 91-11467 Filed 5-14-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Leslie John Boudreaux, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 3, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Leslie John Boudreaux, Marrero, Louisiana; Claude Joseph Autin, Gretna, Louisiana; and Benjamin Seale, New Orleans, Louisiana; to acquire an additional 22.65 percent of the voting shares of IBT Bancshares, Inc., Gretna, Louisiana, for a total of 41.42 percent, and thereby indirectly acquire Investors Bank and Trust Company, Gretna, Louisiana.

Board of Governors of the Federal Reserve System, June 3, 1991.

William W. Wiles,
Secretary of the Board.

[FR Doc. 91-11491 Filed 5-14-91; 8:45 am]

BILLING CODE 6210-01-F

Gulf West Coast Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for

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inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 3, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Gulf West Coast Bancorp, St. Petersburg, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Mercantile Bank, St. Petersburg, Florida.

Board of Governors of the Federal Reserve System, May 9, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11490 Filed 5-14-91; 8:45 am]

BILLING CODE 6210-01-F

Middle Georgia Bankshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Middle Georgia Bankshares, Inc., Unadilla, Georgia; to engage *de novo* through its subsidiary, MGB Collections, Vienna, Georgia, in the operation of a collection agency pursuant to § 225.25(b)(23) of the Board's Regulation Y. This activity will be conducted throughout the middle and southern portions of the State of Georgia, from Bibb County to the Georgia-Florida border.

Board of Governors of the Federal Reserve System, May 9, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11492 Filed 5-14-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File Nos. 892 3231; and 892 3229]

Audio Communications, Incorporated; and Teleline, Inc.; Proposed Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations Federal law prohibiting unfair acts and practices and unfair methods of competition, the two consent agreements, accepted subject to final Commission approval, would prohibit, among other things, two separate companies, that market "900" number information services to children, from making misrepresentations regarding free gifts; would require a clear statement, or preamble, at the beginning of each children's message giving the child a chance to hang up without charge; and would require the companies to provide a means for parents to prevent, or not be charged for, unauthorized calls by their children.

DATES: Comments must be received on or before July 15, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St., and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, FTC/S-4002, Washington, DC 20580. (202) 326-3153.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following two consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

In the Matter of Audio Communications, Incorporated, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Audio Communications Incorporated, a corporation, hereinafter sometimes referred to as proposed respondent, and it now appears that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed that by and between Audio Communications Incorporated, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Audio Communications Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada with its office and principal place of business located at 3140 Polaris Avenue, suite 27, Las Vegas, Nevada 89102.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

(a) Any procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusion of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access To Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint here attached.

6. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without futher notice to proposed respondent: (1) Issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this order, the term "children" or "child" shall mean a person of age twelve or under.

For purposes of this order, the term "information service for children" shall mean a telephone message accessed through a numbered exchange (*e.g.*, "900") for which a fee is charged, consisting of recorded statements promoted or sold primarily to children in any of the following ways: (a) In advertisements appearing in publications primarily directed to children including, but not limited to, children's magazines and comic books; (b) in advertisements during or adjacent to television or radio programs primarily directed to children including, but not limited to, children's animated programs, children's game shows, and children's after-school specials; (c) in advertisements appearing on product packaging primarily directed to children including, but not limited to, children's cereals, toys and beverages; or (d) in any advertisement, regardless of when or where it appears, that is primarily directed to children in light of its subject matter, visual content, language, characters, tone, message, or the like.

For purposes of this order, the term "premium" shall mean any item respondent offers to send to those who call its information service for children.

For purposes of this order, the term "information service message" shall mean any live or recorded story, program or other communication transmitted to callers of respondent's information service for children.

For purposes of this order, the term "video advertisement" shall mean any advertisement intended for dissemination on television broadcast, cablecast, home video, or theatrical release.

This order shall not apply to respondent's service bureau functions with regard to information service messages for children that are limited to either or both of the following:

(1) Distribution or dissemination of any information service for children; or

(2) Creation or production of the non-promotional story content of such information service messages.

I.

It is ordered that respondent Audio Communications Incorporated, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or transmission of any information service for children in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication:

A. The number of calls required to receive a premium; and

B. The ease with which a premium is obtainable.

II.

It is further ordered that Audio Communications Incorporated, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or transmission of any information service for children in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose, clearly and prominently, whenever an offer of any premium is made, all the material terms, conditions and obligations upon which receipt and retention of the premium is contingent. Such terms, conditions, and obligations shall include, but not be limited to, the number of calls necessary to receive the premium, if more than one, and the need to have a writing implement and paper available to record the necessary information given during the information service message.

The disclosure shall be made in a manner understandable to children, and shall be made in the same medium in which the offer of the premium is made and, in addition, in any information service message. The material terms, conditions and obligations to be disclosed in media other than the information service message shall include the number of calls necessary to receive the premium, if greater than one, and the need to have a writing implement and paper available to record the necessary information, and any other information material to: (1) The decision to attempt to obtain the premium, or (2) the ability to take advantage of the premium offer by calling the information service. The

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name and address to which the premium request must be sent need not be disclosed in any medium other than the information service message.

In a video advertisement, the premium disclosure shall be displayed as a legible superscript with a simultaneous voice-over recitation of the disclosure in a manner designed to ensure clarity and prominence.

In a print advertisement, the premium disclosure shall be printed in a typeface and color that are clear and prominent. In multipage documents, the premium disclosure shall appear on the cover or first page.

In a radio advertisement, the premium disclosure shall be included in a manner designed to ensure clarity and prominence.

In an information service message, the premium disclosure shall be included in a manner designed to ensure clarity and prominence with sufficient time for the child to record all information needed to obtain the premium upon the first hearing of the message, including, but not limited to, the address where a request must be sent.

III.

It is further ordered that respondent do forthwith cease and desist from disseminating or causing to be disseminated any advertisement in any medium for an information service for children that does not include the following statement:

Kids, You Must Ask your mon or dad and get their permission before you call. This call costs money.

The above-required disclosure shall be presented in a manner designed to ensure clarity and prominence, as follows:

A. In any video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The disclosure shall appear immediately following the first video presentation of the "900" telephone number, but in any event shall begin within the first fifteen (15) seconds of the advertisement. The audio portion shall be presented in a slow and deliberate manner. Each line of the video portion shall be at least as large as one-half of the size of the largest presentation of the "900" number that appears on the screen during the advertisement, shall be of a color or shade that readily contrasts with the background, and shall appear on the screen for the duration of the audio disclosure.

B. In any print advertisement, the disclosure shall be parallel with the base of the advertisement and shall be placed in close proximity to the 900 number. All lines of the disclosure when taken together shall be at least as large as one-half the size of the largest presentation of the 900 number, but in any event the type size of each line of the disclosure shall be no less than 12 point, bold-face type.

C. In any radio advertisement, the disclosure shall be presented in a slow and deliberate manner and shall appear immmediately following the first presentation of the "900" telephone number, but in any event it shall begin within the first fifteen (15) seconds of the advertisement.

Nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertisement in any medium.

IV.

It is further ordered that respondent do forthwith cease and desist from disseminating or causing to be disseminated any advertisement in any medium for any information service for children that does not include a disclosure of the cost of a call to the information service. This disclosure shall be presented in a manner designed to ensure clarity and prominence. In any video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement.

V.

It is further ordered that respondent do forthwith cease and desist from disseminating or causing to be disseminated any information service message for children that does not include, at the beginning of the message, an introductory preamble that states in a slow, deliberate and clear manner the following:

This telephone call costs money. If you do not have your mom or dad's permission, hang up now and there will be no charge for this call.

VI.

It is further ordered that respondent do forthwith cease and desist from billing or causing to be billed, or collecting any funds or causing any funds to be collected, for any call to any information service for children terminated within no less than five (5) seconds of the end of the introductory preamble, as required by paragraph V of this Order.

VII.

It is further ordered that respondent do forthwith cease and desist from inducing children to call its information service for children and thereby incur charges, without providing any reasonable means for the person responsible for payment of such charges to exercise control over the transaction. For purposes of this paragraph, if the respondent does not provide, prior to placement of any call by a child, a reasonable means for the person responsible for payment to avoid unauthorized calls, the provision of a reasonable means to exercise control over the transaction shall be the use of the respondent's best efforts to ensure that one-time refunds or credits are provided upon request for unauthorized calls made by children, as specified below. Best efforts shall include at least the following:

A. Contracting with the appropriate interstate common carrier or local exchange carrier to:

(1) Identify in all telephone bills containing charges for calls to respondent's information service for children each telephone call to such service by the characters "child call;"

(2) Place in all telephone bills containing charges for calls to respondent's information service for children, clearly and prominently in close proximity to the itemization of those charges, a toll-free or local telephone number specified to be used for consumer inquiries concerning charges on the telephone bill; provided, that a general billing inquiry telephone number for customer inquiries concerning charges on the telephone bill shall satisfy this requirement;

(3) Refer all customers who call the toll-free number inquiring about the charges for respondent's information service for children to their local exchange carrier for information regarding the availability of blocking in their jurisdiction; and

(4) Provide a one-time prompt and full credit or refund at the customer's request for all such calls, whether such request is made to the toll-free or local telephone number specified herein or in any other manner: *provided,* that respondent must contract with the carrier to provide a second prompt and full credit or refund to any customer who requests the first credit or refund during a period of the billing cycle where unauthorized calls have been made, but do not yet appear on the customer's bill, and subsequently requests a second credit or refund for any additional unauthorized calls made before the date of the first request for a credit or refund;

provided, that if the interstate common carrier utilized by respondent employs local exchange carriers to provide billing inquiry services, respondent shall be in compliance with subparagraphs A (3) and (4) of this Paragraph if its contract with the interstate common carrier provides that the interstate common carrier notify each local exchange carrier of the interstate common carrier's policies to:

(i) Provide the customer with information regarding the availability of blocking of 900 number calls; and

(ii) Provide upon request one-time refunds or credits for unauthorized calls by children, as provided in subparagraph A(4) of this paragraph.

B. In the event that respondent receives any information that the interstate common carrier has failed to fulfill its obligations under the contract required by subparagraph A of this paragraph, immediately notifying the interstate common carriers:

(1) Of the existence of the alleged failure(s);

(2) Of the interstate common carrier's responsibility to fulfill its obligations under the contract;

(3) Of the need to investigate and correct all past failures; and

(4) That if a pattern or practice of failures continues, respondent will terminate the use of said interstate common carrier for any information service for children; and

C. Terminating the use of said interstate common carrier for any information service for children, in the event that the interstate common carrier does not correct all past failures of which it is aware or continues to fail to fulfill its obligations under said contract.

D. Compliance with the requirements set forth in subparagraphs A–C of this paragraph is deemed to be satisfactory compliance with this paragraph.

Provided, that for purposes of this paragraph, the mere inclusion of any audio or video disclosure relating to parental authorization in advertisements or information service messages is expressly deemed not be a reasonable means, prior to placement of any call by a child, for the person responsible for payment to avoid unauthorized calls.

VIII.

It is further ordered that for three (3) years from the date of service of this Order, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying: (1) All advertisements for information services for children and all corresponding information service messages: (2) a record of all credit or refund requests made for charges billed for respondent's information services for children; (3) all documents relating to compliance with paragraph VII of this Order; and (4) all consumer complaints and dispositions thereof relating to respondent's information services for children.

IX.

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

It is further ordered that respondent shall forthwith distribute a copy of this Order to each of its operating divisions and any carrier(s) or other entities providing billing and/or collection service for its information services for children.

XI.

It is further ordered that respondent shall, within sixty (60) days after service of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Audio Communications, Inc. ("respondent" or "ACI").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns ACI's advertisements for its telephone information services for children. These are services accessed by calling a 900 number in which callers hear recorded stories or games featuring animated or fictional characters (such as Santa Claus and the Easter Bunny).

The Commission's complaint in this matter charges respondent with engaging in unfair and deceptive practices in connection with the advertising and sale of its information services for children. According to the complaint, respondent's ads represented that children who complete a call to respondent's information service for children will readily and easily obtain the "free" gift (or "premium") specified in the advertisement and that callers will receive the premium by making a single call. These representations are alleged to be false and misleading. First, callers must follow several steps to obtain the premium, which are explained in a rapid and difficult to follow manner during the recorded message. Second, in many cases, more than one call is necessary to obtain the premium.

The complaint also alleges that respondent's advertisements deceptively failed to disclose that there are material terms and conditions for obtaining the premium, including the need for a writing implement to transcribe the ordering information. While the phone message recited the terms and conditions, it did not provide sufficient notice or time for the caller to obtain a writing implement and transcribe the information.

Finally, the complaint alleges that respondent has induced children to call its information services without providing any reasonable means for the person responsible for paying the charges to exercise control over the transaction. The admonition in ACI's advertisements that children should seek parental permission before calling did not provide such reasonable means, according to the complaint. These practices are alleged to cause substantial consumer injury and constitute unfair practices.

The consent order contains provisions designed to remedy the violations charged and to prevent respondent from engaging in similar deceptive and unfair acts and practices in the future.

The order does not apply when ACI is acting as a service bureau and it merely distributes information services for children or creates non-promotional story content for recorded phone messages.

Part I of the order prohibits respondent from misrepresenting in the advertising or sale of its information services for children the number of calls required to receive a premium and the ease with which a premium is obtainable. The order defines information services for children as fee-charged phone services promoted or sold primarily to children aged twelve or under.

Part II of the order requires respondent to disclose, clearly and prominently, in both the advertisements for their information services for children and in the telephone messages themselves, the material terms, conditions and obligations upon which

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receipt and retention of any premium is contingent. These terms must include, at minimum, the number of calls needed to receive the premium, if more than one, and the need for a writing implement to transcribe the ordering information.

Part III of the order requires respondent to include the following disclosure, presented in a manner designed to ensure clarity and prominence, in its advertisements for its information services for children: "Kids, must ask your mom or dad and get their permission before you call. This call costs money." The order sets forth detailed requirements on where and how the disclosures required by parts II and III must appear in different media.

Part IV of the order requires respondent to disclose in a manner designed to ensure clarity and prominence, in all of their advertisements for information services for children, the cost of the telephone call.

Part V of the order requires respondent to include in its recorded phone messages for children the following introductory message in a slow, deliberate and clear manner: "This telephone call costs money. If you do not have your mom or dad's permission, hang up now and there will be no charge for this call."

Part VI of the order prohibits respondent from collecting any funds for any call terminated within five seconds of the end of the introductory preamble by part V.

Part VII of the order requires that respondent not induce children to call its information services for children unless it provides a reasonable means for persons responsible for payment to exercise control over the transaction. If respondent does not provide a reasonable means for such persons to avoid unauthorized calls before they are made, the provision of a reasonable means to exercise control over the transaction shall be the use of respondent's best efforts to ensure that one-time credits or refunds are provided upon request for unauthorized calls made by children. According to part VII, best efforts is defined to include, at minimum, contracting with the appropriate carrier to: (1) Identify in all telephone bills containing charges for calls to respondent's information service for children each telephone call to such service by the characters "Child call;" (2) place in all bills containing charges for respondent's information service for children, a toll-free number for customer inquiries; (3) refer all customers who call such toll-free number to their local phone company for information on blocking of 900 calls; and (4) provide a one-time prompt and full refund or credit, upon request, for unauthorized calls made by children. Best efforts also requires respondent to monitor the phone company's compliance with the order requirements and take certain action, including termination of its contract with the phone company, if the phone company does not fulfill its obligations under its contract with respondent.

Part VIII of the order requires respondent to maintain all advertisements for information services for children and all corresponding information service messages, records of all credits or refund requests and their dispositions, all consumer complaints, and all documents relating to the implementation of part VII.

Part IX of the order requires respondent to notify the Commission prior to any change in the corporation that may affect compliance obligations arising out of this order.

Part X of the order requires respondent to distribute a copy of the order to each of its operating divisions and to any entity providing billing and/or collection services for its information services for children.

Part XI of the order requires respondent to file a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Agreement Containing Consent Order to Cease and Desist

In the Matter of Teleline, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Teleline, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed that by and between Teleline, Inc. by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Teleline, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 9777 Wilshire Boulevard, suite 916, Beverly Hills, California 90212.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

(a) Any procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access To Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint here attached.

6. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) Issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and disist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this order, the term "children" or "child" shall mean a person of age twelve or under.

For purposes of this order, the term "information service for children" shall mean a telephone message accessed through a numbered exchange (*e.g.*, "900") for which a fee is charged, consisting of recorded statements promoted or sold primarily to children in any of the following ways: (a) In advertisements appearing in publications primarily directed to children including, but not limited to, children's magazines and comic books; (b) in adverstisements during or adjacent to television or radio programs primarily directed to children including, but not limited to, children's animated programs, children's game shows, and children's after-school specials; (c) in advertisements appearing on product packaging primarily directed to children including, but not limited to, children's cereals, toys and beverages; or (d) in any advertisement, regardless of when or where it appears, that is primarily directed to children in light of its subject matter, visual content, language, characters, tone, message, or the like.

For purposes of this order, the term "premium" shall mean any item respondent offers to send to those who call its information service for children.

For purposes of this order, the term "information service message" shall mean any live or recorded story, program or other communication transmitted to callers of respondent's information service for children.

For purposes of this order, the term "video advertisement" shall mean any advertisement intended for dissemination of television broadcast, cablecast, home video, or theatrical release.

This order shall not apply to respondent's service bureau functions with regard to information service messages for children that are limited to either or both of the following:

(1) Distribution or dissemination of any information service for children; or

(2) Creation or production of the non-promotional story content of such information service messages.

I.

It is ordered that respondent Teleline, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or transmission of any information service for children in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication:

A. The total cost for hearing one complete information service message;

B. The number of calls required to receive a premium; and

C. The ease with which a premium is obtainable.

II.

It is further ordered that respondent Teleline, Inc., its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or transmission of any information service for children in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose, clearly and prominently, whenever and offer of any premium is made, all the material terms, conditions and obligations upon which receipt and retention of the premium is contingent. Such terms, conditions, and obligations shall include, but not be limited to, the number of calls necessary to receive the premium, if more than one, and the need to have a writing implement and paper available to record the necessary information given during the information service message.

The disclosure shall be made in a manner understandable to children, and shall be made in the same medium in which the offer of the premium is made and, in addition, in any information service message. The material terms, conditions and obligations to be disclosed in media other than the information service message shall include the number of calls necessary to receive the premium, if greater than one, and the need to have a writing implement and paper available to record the necessary information, and any other information material to (1) the decision to attempt to obtain the premium, or (2) the ability to take advantage of the premium offer by calling the information service. The name and address to which the premium request must be sent need not be disclosed in any medium other than the information service message.

In a video advertisement, the premium disclosure shall be displayed as a legible superscript with a simultaneous voice-over recitation of the disclosure in a manner designed to ensure clarity and prominence.

In a print advertisement, the premium disclosure shall be printed in a typeface and color that are clear and prominent. In multipage documents, the premium disclosure shall appear on the cover or first page.

In a radio advertisement, the premium disclosure shall be included in a manner designed to ensure clarity and prominence.

In an information service message, the premium disclosure shall be included in a manner designed to ensure clarity and prominence with sufficient time for the child to record all information needed to obtain the premium upon the first hearing of the message, including, but not limited to, the address where a request must be sent.

III.

It is further ordered that respondent do forthwith cease and desist from disseminating or causing to be disseminated any advertisement in any medium for an information service for children that does not include the following statement:

"Kids, you must ask your mom or dad and get their permission before you call. This call costs money."

The above-required disclosure shall be presented in a manner designed to ensure clarity and prominence, as follows:

A. In any video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The disclosure shall appear immediately following the first video presentation of the "900" telephone number, but in any event shall begin within the first fifteen (15) seconds of the advertisement. The audio portion shall be presented in a slow and deliberate manner. Each line of the video portion shall be at least as large as one-half of the size of the

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largest presentation of the "900" number that appears on the screen during the advertisement, shall be of a color or shade that readily contrasts with the background, and shall appear on the screen for the duration of the audio disclosure.

B. In any print advertisement, the disclosure shall be parallel with the base of the advertisement and shall be placed in close proximity to the 900 number. All lines of the disclosure when taken together shall be at least as large as one-half the size of the largest presentation of the 900 number, but in any event the type of each line of the disclosure shall be no less than 12 point, bold-face type.

C. In any radio advertisement, the disclosure shall be presented in a slow and deliberate manner and shall appear immediately following the first presentation of the "900" telephone number, but in any event it shall begin within the first fifteen (15) seconds of the advertisement.

Nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertisement in any medium.

IV.

It is further ordered that respondent do forthwith cease and desist from disseminating or causing to be disseminated any advertisement in any medium for any information service for children that does not include a disclosure of the cost of a call to the information service. This disclosure shall be presented in a manner designed to ensure clarity and prominence. In any video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement.

V.

It is further ordered that respondent do forthwith cease and desist from disseminating or causing to be disseminated any information service message for children that does not include, at the beginning of the message, an introductory preamble that states in a slow, deliberate and clear manner the following:

"This telephone call costs money. If you do not have your mom or dad's permission, hang up now and there will be no charge for this call."

VI.

It is further ordered that respondent do forthwith cease and desist from billing or causing to be billed, or collecting any funds or causing any funds to be collected, for any call to any information service for children terminated within no less than five (5) seconds of the end of the introductory preamble, as required by paragraph V of this Order.

VII.

It is further ordered that respondent do forthwith cease and desist from inducing children to call its information service for children and thereby incur charges, without providing any reasonable means for the person responsible for payment of such charges to exercise control over the transaction. For purposes of this Paragraph, if the respondent does not provide, prior to placement of any call by a child, a reasonable means for the person responsible for payment to avoid unauthorized calls, the provision of a reasonable means to exercise control over the transaction shall be the use of the respondent's best efforts to ensure that one-time refunds or credits are provided upon request for unauthorized calls made by children, as specified below. Best efforts shall include at least the following:

A. Contracting with the appropriate interstate common carrier or local exchange carrier to:

(1) Identify in all telephone bills containing charges for calls to respondent's information service for children each telephone call to such service by the characters "Child call,"

(2) Place in all telephone bills containing charges for calls to respondent's information service for children, clearly and prominently in close proximity to the itemization of these charges, a toll-free or local telephone number specified to be used for consumer inquiries concerning charges on the telephone bill; provided, that a general billing inquiry telephone number for customer inquiries concerning charges on the telephone bill shall satisfy this requirement;

(3) Refer all customers who call the toll-free number inquiring about the charges for respondent's information service for children to their local exchange carrier for information regarding the availability of blocking in their jurisdiction; and

(4) Provide a one-time prompt and full credit or refund at the customer's request for all such calls, whether such request is made to the toll-free or local telephone number specified herein or in any other manner; provided, that respondent must contract with the carrier to provide a second prompt and full credit or refund to any customer who requests the first credit or refund during a period of the billing cycle where unauthorized calls have been made, but do not yet appear on the customer's bill, and subsequently requests a second credit or refund for any additional unauthorized calls made before the date of the first request for a credit or refund;

provided, that if the interstate common carrier utilized by respondent employs local exchange carriers to provide billing inquiry services, respondent shall be in compliance with subparagraphs A (3) and (4) of this Paragraph if its contract with the interstate common carrier provides that the interstate common carrier notify each local exchange carrier of the interstate common carrier's policies to:

(i) Provide the customer with information regarding the availability of blocking of 900 number calls; and

(ii) Provide upon request one-time refunds or credits for unauthorized calls by children, as provided in subparagraph A(4) of this Paragraph.

B. In the event that respondent receives any information that the interstate common carrier has failed to fulfill its obligations under the contract required by subparagraph A of this paragraph, immediately notifying the interstate common carrier:

(1) Of the existence of the alleged failure(s);

(2) Of the interstate common carrier's responsibility to fulfill its obligations under the contract;

(3) Of the need to investigate and correct all past failures; and

(4) That if a pattern or practice of failures continues, respondent will terminate the use of said interstate common carrier for any information service for children; and

C. Terminating the use of said interstate common carrier for any information service for children, in the event that the interstate common carriers does not correct all past failures of which it is aware or continues to fail to fulfill its obligations under said contract.

D. Compliance with the requirements set forth in subparagraphs A-C of this paragraph is deemed to be satisfactory compliance with this paragraph.

Provided, that for purposes of this paragraph, the mere inclusion of any audio or video disclosure relating to parental authorization in advertisements or information service messages is expressly deemed not to be a reasonable means, prior to placement of any call by a child, for the person responsible for payment to avoid unauthorized calls.

VIII.

It is further ordered that for three (3) years from the date of service of this Order, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying: (1) All advertisements for information services for children and all corresponding information service messages; (2) a record of all credit or refund requests made for charges billed for respondent's information services for children; (3) all documents relating to compliance with paragraph VII of this Order; and (4) all consumer complaints and dispositions thereof relating to respondent's information services for children.

IX.

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

X.

It is further ordered that respondent shall forthwith distribute a copy of this Order to each of its operating divisions and any carrier(s) or other entities providing billing and/or collection service for its information services for children.

XI.

It is further ordered that respondent shall, within sixty (60) days after service of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Teleline, Inc. ("respondent" or "Teleline").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns Teleline's advertisements for its telephone information services for children. These are services accessed by calling a 900 number in which callers hear recorded stories or games featuring animated or fictional characters (such as Freddy Pumpkin and the Easter Bunny).

The Commission's complaint in this matter charges respondent with engaging in unfair and deceptive practices in connection with the advertising and sale of its information services for children. According to the complaint, respondent's ads represented that children who complete a call to respondent's information service for children will readily and easily obtain the "free" gift (or "premium") specified in the advertisement and that callers will receive the premium by making a single call. These representations are alleged to be false and misleading. First, callers must follow several steps to obtain the premium, which are explained in a rapid and difficult to follow manner during the recorded message. Second, in many cases, more than one call is necessary to obtain the premium.

The complaint also alleges that respondent represented in its ads that the total cost for hearing one complete information service message is two dollars and forty-five cents. This representation is alleged to be false and misleading because in many cases the total cost for hearing one complete message exceeds that amount. This is because respondent's entire phone message often exceeds two minutes in duration and, in addition, the point at which the caller enters the message does not always coincide with the beginning of the story. For these reasons, consumers who listen to the entire recorded message will be charged a minimum amount of two dollars and ninety cents.

The complaint also alleges that respondent's advertisements deceptively failed to disclose that there are material terms and conditions for obtaining the premium, including the need for a writing implement to transcribe the ordering information. While the phone message recited the terms and conditions, it did not provide sufficient notice or time for the caller to obtain a writing implement and transcribe the information.

Finally, the complaint alleges that respondent has induced children to call its information services without providing any reasonable means for the person responsible for paying the charges to exercise control over the transaction. The admonition in Teleline's advertisements that children should seek parental permission before calling did not provide such reasonable means, according to the complaint. These practices are alleged to cause substantial consumer injury and constitute unfair practices.

The consent order contains provisions designed to remedy the violations charged and to prevent respondent from engaging in similar deceptive and unfair acts and practices in the future.

The order does not apply when Teleline is acting as a service bureau and it merely distributes information services for children or creates non-promotional story content for recorded phone messages.

Part I of the order prohibits respondent from misrepresenting in the advertising or sale of its information services for children the number of calls required to receive a premium and the ease with which a premium is obtainable. Part I of the order also prohibits respondent from misrepresenting the total cost for hearing one complete information service message. The order defines information services for children as fee-charged phone services promoted or sold primarily to children aged twelve or under.

Part II of the order requires respondent to disclose, clearly and prominently, in both the advertisements for their information services for children and in the telephone messages themselves, the material terms, conditions and obligations upon which receipt and retention of any premium is contingent. These terms must include, at minimum, the number of calls needed to receive the premium, if more than one, and the need for a writing implement to transcribe the ordering information.

Part III of the order requires respondent to include the following disclosure, presented in a manner designed to ensure clarity and prominence, in its advertisements for its information services for children:

"Kids, you must ask your mom or dad and get their permission before you call. This call costs money."

The order sets forth detailed requirements on where and how the disclosures required by parts II and III must appear in different media.

Part IV of the order requires respondent to disclose in a manner designed to ensure clarity and prominence, in all of their advertisements for information services for children, the cost of the telephone call.

Part V of the order requires respondent to include in its recorded

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phone messages for children the following introductory message in a slow, deliberate and clear manner: "This telephone call costs money. If you do not have your mom or dad's permission, hang up now and there will be no charge for this call."

Part VI of the order prohibits respondent from collecting any funds for any call terminated within five seconds of the end of the introductory preamble required by part V.

Part VII of the order requires that respondent not induce children to call its information services for children unless it provides a reasonable means for persons responsible for payment to exercise control over the transaction. If respondent does not provide a reasonable means for such persons to avoid unauthorized calls before they are made, the provision of a reasonable means to exercise control over the transaction shall be the use of respondent's best efforts to ensure that one-time credits or refunds are provided upon request for unauthorized calls made by children. According to part VII, best efforts is defined to include, at minimum, contracting with the appropriate carrier to: (1) Identify in all telephone bills containing charges for calls to respondent's information service for children each telephone call to such service by the characters "child call;" (2) place in all bills containing charges for respondent's information service for children, a toll-free number for customer inquiries; (3) refer all customers who call such toll-free number to their local phone company for information on blocking of 900 calls; and (4) provide a one-time prompt and full refund or credit, upon request, for unauthorized calls made by children. Best efforts also requires respondent to monitor the phone company's compliance with the order requirements and take certain action, including termination of its contract with the phone company, if the phone company does not fulfill its obligations under its contract with respondent.

Part VIII of the order requires respondent to maintain all advertisements for information services for children and all corresponding information service messages, records of all credits or refund requests and their dispositions, all consumer complaints, and all documents relating to the implementation of part VII.

Part IX of the order requires respondent to notify the Commission prior to any change in corporation that may affect compliance obligations arising out of this order.

Part X of the order requires respondent to distribute a copy of the order to each of its operating divisions and to any entity providing billing and/or collection services for its information services for children.

Part XI of the order requires respondent to file a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-11526 Filed 5-14-91; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Announcement of the Final Definitions and Funding Priority for Grants for Centers of Excellence in Minority Health Professions Education

The Health Resources and Services Administration (HRSA) announces the final definitions and funding priority for fiscal year (FY) 1991 for Grants for Centers of Excellence (COE) in Minority Health Professions Education under the authority of section 782 of the Public Health Service Act (the Act), as amended by the "Disadvantaged Minority Health Improvement Act of 1990", Public Law 101-527. Regulations at 42 CFR part 57, subpart V (54 FR 28067) govern this program. The FY 1991 grant cycle for Centers of Excellence at certain Historically Black Colleges and Universities was in process prior to enactment of Public Law 101-527 and, therefore, is not a part of this notice.

Institutions may not apply for more than one Center of Excellence or for more than one discipline.

Eligibility

Section 782, as amended by Public Law 101-527, authorizes the Secretary to make grants to schools of medicine, dentistry and pharmacy for the purpose of assisting the schools in supporting programs of excellence in health professions education for Black, Hispanic and Native American individuals. To qualify as a COE, a school is required to:

1. Have a significant number of minority individuals enrolled in the school, including individuals accepted for enrollment in the school;

2. Demonstrate that it has been effective in assisting minority students of the school to complete the program of education and receive the degree involved;

3. Show that it has been effective in recruiting minority individuals to attend the school, including providing scholarships and other financial assistance to such individuals, and encouraging minority students of secondary educational institutions to attend the health professions schools; and

4. Demonstrate that it has made significant recruitment efforts to increase the number of minority individuals serving in faculty or administrative positions at the school.

Also, for Hispanic Centers of Excellence, the health professions schools must agree go give priority to carrying out the duties with respect to Hispanic individuals.

For Native American Centers of Excellence, the health professions schools must agree to:

1. Give priority to carrying out duties with respect to native Americans.

2. Establish a linkage with one or more public or nonprofit private institutions of higher education whose enrollment of students has traditionally included a significant number of Native Americans for purposes of identifying potential Native American health professions students of the institution who are interested in a health professions career and facilitating their entry into health professions schools; and

3. Make efforts to recruit Native American students, including those who have participated in the undergraduate program of the linkage school, and will assist them in completing the degree requirements of the health professions school.

To qualify as an "Other Minority Health Professions Education Center of Excellence" a health professions school (i.e., a school of medicine, dentistry, or pharmacy) must have an enrollment of underrepresented minorities above the national average for student enrollments in that health professions discipline.

Purposes

Grants for Hispanic, Native American and other Centers of Excellence may be used by the school for the following purposes:

1. To establish, strengthen, or expand programs to enhance the academic performance of minority students attending the school;

2. To establish, strengthen, or expand programs to increase the number and

quality of minority applicants to the school;

3. To improve the capacity of such school to train, recruit, and retain minority faculty;

4. To carry out activities to improve the information resources and curricula of the school and clinical education at the school with respect to minority health issues; and

5. To facilitate faculty and student research on health issues particularly affecting minority groups.

Applicants must address at least three of the five legislative purposes.

Healthy People 2000 Objectives

The PHS is encouraging applicants to submit proposals that address achievement of Healthy People 2000 (a recent Departmental report) objectives, as applicable. In developing your application for this program, please consider the 22 priority areas set forth in the report.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9324 (Telephone 202-783-3238).

Training and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between its training programs and Public Health Service programs which provide comprehensive primary care services to the underserved.

Statutory Requirements

Duration of Grants

Payments under grants for Centers of Excellence may not exceed 3 years, subject to annual approval by the Secretary and to the availability of appropriations for the fiscal year involved.

Maintenance of Effort

A health professions school which is a public school receiving a grant will be required to maintain expenditures of non-Federal amounts for the specified activities at a level not less than the level maintained by the school for the fiscal year preceding the first fiscal year for which the school applies after fiscal year 1990 to receive a grant. Nonprofit private health professions schools that are grant recipients will be required to maintain non-Federal expenditures only to the extent of the level of non-Federal amounts available to the school for the purpose. With respect to any other Federal amounts received by a health professions school and available for carrying out activities of the type supported under the Centers of Excellence authority, a school receiving a Centers of Excellence grant will be required to expend those other Federal funds before expending the Centers of Excellence grant.

Statutory Definitions

Health professions schools mean schools of medicine, dentistry and pharmacy, as defined in section 701(4) and as accredited in section 701(5) of the Act. For purposes of the Historically Black Colleges and Universities' COEs, this definition means those schools described in section 701(4) of the Act and which have received a contract under section 736B of the Act (Advanced Financial Distress Assistance) for fiscal year 1987.

Native Americans mean American Indians, Alaskan Natives, Aleuts and Native Hawaiians.

Programs of Excellence means any programs carried out by a health professions school with funding under section 782 Grants for Centers of Excellence in Minority Health Professions Education.

Proposed definitions and a proposed funding priority were published in the Federal Register on March 7, 1991 (56 FR 9705) for public comment. During the 30-day comment period, the Department did not receive any comments relating to the proposals. The definitions and funding priority will be retained as proposed.

Final Definitions for Fiscal Year 1991

A significant number of minority individuals enrolled in the school means that to be eligible to apply for an Hispanic COE, a medical or dental school must have at least 25 enrolled Hispanic students, and a school of pharmacy must have at least 20 enrolled Hispanic students. To apply as a Native American COE, an eligible medical or dental school must have at least 8 enrolled Native American students and a school of pharmacy must have at least 5 enrolled Native American students. To be eligible to apply for an Other Minority Health Professions Education COE, an eligible school must have above the national average of underrepresented minorities (allopathic medicine 13%, dentistry 15%, pharmacy 11%) enrolled in the school. These numbers represent the critical mass necessary for a viable program. A viable program is one in which there is a sufficient number of students to warrant a Center of Excellence level educational program. Data from relevant professional associations indicate sharp differentiation in target group numbers among schools. Stated numerical levels are just above the median for schools reporting a critical mass necessary for a viable program. The requirement that schools applying for Other Minority Health Professions Education Centers have an enrollment of underrepresented students that is above the national average for that discipline is statutory.

Effectiveness in Providing Financial Assistance will be evaluated by examining the data on scholarships and other financial aid provided to the targeted group in relation to the scholarships and financial aid provided to the total school population.

Effectiveness in Recruitment will be evaluated by examining the first-year and total enrollments of targeted students in relation to the first-year and total enrollments for the entire school.

Effectiveness in Retaining Students will be determined by retention rates for targeted group (e.g., 90 percent retention in the discipline realizing graduation from medical or dental school in 5 years and pharmacy in 4 years); and academic and non-academic support systems operative for the target group of students at the school.

Hispanic means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish origin.

Minority means an indivdual whose race/ethnicity is classified as American Indian or Alaskan Native, Asian or Pacific Islander, Black or Hispanic.

Underrepresented Minority means, for any given health profession, a racial or ethnic group whose percentage among the total supply of practitioners in that health profession is below that group's percentage in the total population. This definition has consistently encompassed Blacks, Hispanics, and Native Americans.

Final Funding Priority for Fiscal Year 1991

A priority for designating Hispanic Centers of Excellence will go to health professions schools located in the Continental United States.

Other Consideration

HRSA hopes to achieve geographic dispersion of awards. Contingent on the outcome of the grant review process, HRSA plans to make awards in as many sections of the country as possible.

Review criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project meets the legislative intent;

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2. The administrative and managerial ability of the applicant to carry out the project in a cost effective manner;

3. The adequacy of the staff and faculty to carry out the program;

4. The soundness of the budget for assuring effective utilization of grant funds, and the proportion of total program funds which come from non-Federal sources and the degree to which they are projected to increase over the grant period;

5. The technical merit of the project as determined by the following elements:

a. Delineation of specific objectives which are consistent with the legislative purposes, measurable, and outcome oriented.

b. Description of a methodology which corresponds to the objectives and provides specific details on the activities, projects, or services which will be implemented to achieve the objectives, time frames for implementing the activities, projects or services, target population, responsible staff, and facilities which will be used to accomplish the objectives.

c. Description of a comprehensive evaluation plan inclusive of all objectives and activities and program performance indicators.

6. The number of individuals who can be expected to benefit from the project;

7. The overall impact the project will have on strengthening the school's capacity to train the targeted minority health professionals and increase the supply of such minority health professionals available to serve minority populations in underserved areas; and

8. The degree to which the applicant can arrange to continue the proposed project beyond the federally-funded project period.

Questions regarding programmatic information should be directed to: Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8A-09, Rockville, Maryland 20857, Telephone: (301) 443-2100.

The Program, Grants for Centers of Excellence in Minority Health Professions Education is listed at 93.157 in the Catalog of Federal Domestic Assistance. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: May 9, 1991.

John H. Kelso,

Deputy Administrator.

[FR Doc. 91-11479 Filed 5-14-91; 8:45 am]

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Health Resources and Service Administration

Statement of Organization, Functions and Delegations of Authority

Part H, chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended most recently at 55 FR 48295, November 20, 1990) is amended to reflect the current functions assigned to the AIDS Program Office within the Office of the Administrator, Health Resources and Services Administration (HRSA).

Under HB-10, Organization and Functions, insert the following functional statement after the Office of Rural Health Policy (HBA13) functional statement:

AIDS Program Office (HBA14). Serves as the Agency's focal point for AIDS Programs and activities. Specifically: (1) Coordinates all AIDS-related activities within the Agency; (2) administers and coordinates AIDS-related grants programs of National significance; (3) advises the Administrator on policy, clinical, and educational issues pertaining to the administration of HRSA's AIDS programs; (4) keeps the Administrator informed of any difficulties arising either within or outside of HRSA, that might adversely affect the Agency's ability to carry out its AIDS responsibilities; (5) coordinates the formulation of an overall strategy and policy for the HRSA AIDS programs; (6) working with the Office of Planning, Evaluation and Legislation, coordinates the preparation of HRSA's AIDS-related programmatic, budgetary, and legislative proposals, including the preparation of testimony and budgetary information to be presented to the Congress; (7) monitors and analyzes AIDS-related policy and legislative developments, both within and outside the Department, for their potential impact on HRSA's AIDS activities, and advises the Administrator on alternative courses of action for responding to such developments; (8) serving as the point of contact for the Agency, develops and coordinates working relationships and conducts specific joint activities among HRSA's Bureaus and with outside organizations, including other Public Health Service (PHS) and Departmental components and including the PHS Regional Offices to assure optimum interaction on related AIDS activities and to minimize duplication and overlap; (9) reviews AIDS-related program activities to determine their consistency with established policy, delegated authority, and assigned responsibilities; (10) coordinates HRSA's comments on AIDS-related reports, position papers, legislative proposals, etc., prepared outside the Agency; (11) coordinates responses to requests for information received from other OPDIVs of the Department and from outside the Department; (12) coordinates responses to incoming correspondence that concern AIDS-related issues involving more than one HRSA Bureau; (13) represents the Agency and the Department at AIDS-related meetings, conferences, task forces, or other gatherings for the purpose of dispensing or gathering information relevant to the conduct of HRSA's AIDS programs; and (14) plans and carries out special AIDS-related assignments for the Administrator.

This reorganization is effective upon date of signature.

Dated: May 7, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-11480 Filed 5-14-91; 8:45 am]

BILLING CODE 4160-15-M

Social Security Administration

Social Security and Supplemental Security Income Disability Program Demonstration Project

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Commissioner of Social Security (the Commissioner) announces the following 18 demonstration projects to be conducted under the authority of section 505(a) of Public Law 96-265, as amended, and, as appropriate, section 1110(b) of the Social Security Act (the Act). These projects, which will focus on vocational assessment, rehabilitation and placement into competitive employment for disabled beneficiaries, will be funded under these laws.

Section 505(a) of Public Law 96-265, as amended by section 12101 of Public Law 99-272 and by section 10103 of Public Law 101-239, authorizes the Secretary of Health and Human Services (the Secretary) to develop and carry out demonstration projects designed to test various methods of encouraging Social Security Disability Insurance (SSDI) beneficiaries to return to work. Section 505(a) of Public Law 96-265, as amended, also authorizes the Secretary to waive certain provisions of titles II and XVIII of the Act in carrying out demonstration projects under section 505(a).

Sixteen of the 18 demonstration projects pertain to the SSDI program under title II of the Act. Ten of these 16 demonstration projects require that section 222(a) of the Act be waived (vocational rehabilitation (VR) referral waiver), permitting direct referral of SSDI beneficiaries from the Social Security Administration (SSA) or the State agencies that make disability determinations for SSA, to the organizations named in this notice. Four of the demonstration projects, including three of the 10 projects referred to previously, require that section 222(c)(4)(A) of the Act be waived, permitting deferral of the trial work period (TWP) for up to 6 consecutive months of employment. Additionally, two of the three demonstrations needing multiple waivers of provisions of title II of the Act will require waiver of current section 25(b)(1) of the Act insofar as may be necessary to permit beneficiaries participating in approved non-State VR programs through these projects to have the same benefit continuation rights as those who medically recover while participating in approved State VR programs. Five of the 16 demonstrations relating to the SSDI program do not require any waiver of statutory provisions. We are publishing this notice to comply with 20 CFR 404.1599(e), which requires publication of a notice in the **Federal Register** before starting certain demonstration projects.

Several of the 16 demonstration projects discussed above will involve individuals who are receiving concurrent SSDI and Supplemental Security Income (SSI) payments. Section 1110(b) of the Act auhorizes the Secretary to waive requirements of title XVI of the Act to carry out demonstration projects designed to promote the objectives or facilitate the administration of the SSI program. Therefore, for several of the projects discussed above, section 1615(a) of the Act will be waived, in appropriate cases, to permit referral of SSI recipients to an organization other than the State VR agency for employment services. For the two projects requiring waiver of section 225(b)(1) of the Act, current section 1631(a)(6)(A) will also be waived insofar as may be necessary, to permit continuation of payments in appropriate cases to SSI recipients participating in approved non-State VR plans who medically recover.

Two of the 18 disability demonstration projects will involve only SSI recipients and will be conducted under the authority of section 1110(b) of the Act. These two projects do not require a waiver of statutory provisions. However, for one of these projects a waiver of section 1615(a) of the Act has been requested and a decision on that request is pending. For these two projects, and for the several projects that will involve individuals receiving concurrent SSDI and SSI payments, we are publishing this notice to comply with 20 CFR 416.250(e), which requires such notification.

FOR FURTHER INFORMATION CONTACT: W. David Bedingfield, Social Security Administration, Office of Disability, 2223 Annex, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-0096.

SUPPLEMENTARY INFORMATION:

Background

The Social Security Disability Amendments of 1980, Public Law 96-265, section 505(a), as amended by Public Law 99-272, section 12101, and by Public Law 101-239, section 10103, direct the Secretary to develop and carry out experiments and demonstration projects designed to:

(1) Encourage disabled beneficiaries to return to work, and (2) Accure trust fund savings or otherwise promote the objectives or facilitate the administration of title II of the Act. Section 505 of Public Law 96-265, as amended, also authorizes the Secretary to waive certain provisions of the Act as is necessary to conduct these experiments and demonstration projects. This includes the authority to waive section 222(a) of the Act which requires SSA to refer disability beneficiaries to State VR agencies. This also includes authority to waive section 222(c)(4)(A) which provides that any month an individual renders services must be counted in determining the TWP and to waive, to the extent necessary, the requirement of section 225(b)(1) which currently permits eligibility for benefit continuation under section 225(b) only if the individual's VR program is one carried out under an approved State VR plan.

In general, section 1110(b) of the Act authorizes the Secretary to waive requirements of title XVI of the Act to carry out demonstration projects which are likely to assist in promoting the objectives or facilitate the administration of the title XVI program. This includes: (1) Authority to waive section 1615(a) of the Act which requires SSA to refer disabled or blind SSI recipients to State VR agencies and (2) authority to waive, to the extent necessary, the requirement of section 1631(a)(6)(A) which currently permits eligibility for benefit continuation under section 1631(a)(6) only if the individual is participating in an approved State VR program.

Sections 225(b) and 1631(a)(6) currently provide for continuation of SSDI benefits or SSI payments based on disability or blindness, respectively, for an individual who medically recovers while participating in an approved VR program under an approved State plan for VR services if the Commissioner determines that completion or continuation of the program will increase the likelihood that the individual may be permanently removed from the rolls. The waiver of section 225(b)(1) and, as appropriate, section 1631(a)(6)(A) of the Act will permit the Commissioner to continue benefits for individuals enrolled in non-State rehabilitation programs. However, a recent amendment to sections 225(b)(1) and (2) and 1631(a)(6) (A) and (B) of the Act may make the waiver of these provisions unnecessary for certain project participants. Section 5113 of Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, enacted November 5, 1990, amends sections 225(b) (1) and (2) and 1631(a)(6) (A) and (B) of the Act to extend eligibility for benefit continuation under sections 225(b) and 1631(a)(6) to SSDI beneficiaries and disabled or blind SSI recipients who medically recover while participating in a non-State VR program that has been approved by the Secretary. The amendments made by section 5113 of Public Law 101-508 are effective for benefits payable for months beginning after October 1991 and apply only to individuals who medically recover after October 1991.

Overall Objectives

SSA wishes to assist its disabled beneficiaries in returning to competitive employment. SSA's focus is on significantly improved integration and use of VR and other employment program resources providing for more employment opportunities, better mechanisms for indentifying and referring candidates for rehabilitation and other employment services, more effective incentives for rehabilitation and employment, increased access to employment service systems and networks, and more effective and efficient employment intervention for beneficiaries.

Description of Demonstration Projects

(1) *American Horticultural Therapy Association:* Gaithersburg, Maryland; "Project Access" (VR referral waiver required). This project will focus on employing disabled individuals in

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horticultural jobs. It will demonstrate an innovative, industry-based matching and screening model using private sector rehabilitation services including an employer national referral network.

(2) *C.A.R.E., Incorporated:* Orange County, California; "Re-employment Assistance Program at Continuing Disability Review Stage" (VR referral waiver, waiver deferring the TWP for up to 6 consecutive months, and waiver relating to continuation of benefits while participating in an approved non-State VR plan are required). This project will test the effects of an intensive private rehabilitation program on beneficiaries for whom medical improvement is possible or expected. It will assess the effects of an increased TWP and various intervention techniques by comparing results of test and control groups.

(3) *Goodwill Industries of America, Incorporated:* Bethesda, Maryland; "Marketing Supported Employment Opportunities Through National Employer Agreements for SSA Recipients" (VR referral waiver required). This project will develop and evaluate an employer-based model for SSA beneficiaries. It will link beneficiaries with national employers using elements of supported employment. It will guarantee productive employment for beneficiaries by obtaining agreements from at least four national employers.

(4) *Hocking Technical College:* Nelsonville, Ohio; "Individual Technical Training and Placement" (VR referral waiver required). This project will design and test an individualized technical training model for rural area disabled individuals. The model will provide for regional employment opportunities, a disability support team, training, individualized job placement, and special employment incentives. It will use the expertise of existing technical colleges to expand the service provider market for the disabled.

(5) *Independence Center:* St. Louis, Missouri; "Increasing Employability for the Chronically Mentally Ill" (VR referral waiver and waiver deferring the TWP for up to 6 months out of a 9 to 12-month study period are required). This project will demonstrate that the removal of certain disincentives to employment and specific enhancements to the transitional employment technique for returning disabled individuals to work can lead to improvement in the vocational performance of chronically mentally ill adults. The projects will target a segment of the mentally ill population which historically has not fared well at retaining substantial gainful employment.

(6) *Multi Resource Centers, Incorporated:* Minneapolis, Minnesota;"Multi Resource Centers/Vinland National Centers Cooperative Employment Program" (VR referral waiver, waiver deferring the TWP for up to 6 consecutive months, and waiver relating to continuation of benefits while participating in an approved non-State VR plan are required). This project will seek to improve the employability of disabled individuals through counseling, rehabilitation, case management, and placement services. It will provide rehabilitation and teach job placement skills to beneficiaries undergoing continuing disability review. The project will draw individuals from anywhere in the State of Minnesota.

(7) *National Alliance of Business:* Washington, DC; "Hiring the Disabled: Business Initiatives for Permanent Employment of SSA Beneficiaries" (VR referral waiver required). This project will demonstrate and test replicable employment programs for disabled individuals in targeted areas where hospitality, service, and retail industries are experiencing labor shortages. It will disseminate the results of the project through a national campaign to promote the disabled population as an important labor source for business. The project will draw individuals from three major cities (Chicago, Boston and Los Angeles) and the State of Florida.

(8) *National Association of Rehabilitation Facilities:* Washington, DC; "Incentive Based Vocational Rehabilitation Program" (VR referral waiver required). This project seeks to demonstrate the cost-effectiveness of the direct purchase of VR services from a private, community-based VR facility, using an incentive payment system for placement of disabled individuals with employment potential into substantial gainful employment. It will test a reimbursement-for-successful-placements-only formula.

(9) *New Jersey Department of Labor:* Trenton, New Jersey; "New Jersey Vocational Rehabilitation Counselor Incentive Bonus Project" (no waiver required). This project will test the impact of a monetary incentive bonus paid to State VR counselors for each successfully rehabilitated beneficiary. Using a computerized system, the project will track the work of all State VR counselors and other staff who have received project orientation. The tracking period will extend for a potential 6-year period but will include only cases initiated during one fiscal year.

(10) *New York State Education Department:* Albany, New York; "NYS/OVR Workers Compensation Model Project for SSDI Recipients" (no waiver required). This project will demonstrate the effectiveness of applying the New York State/Office of Vocational Rehabilitation (NYS/OVR) workers' compensation model for early intervention and placement of our beneficiaries. If effective, the model will provide a more rapid referral, comprehensive assessment and evaluation of beneficiaries, which will lead to their rapid job placement.

(11) *Oklahoma State Department of Human Services:* Oklahoma City, Oklahoma; "RSD Professional Growth Seminar Incentive" (no wavier required). This project will test an incentive program designed to increase the number of applications for State rehabilitation services, the number accepted for services, and the number placed in substantial gainful employment. It will offer incremental rewards to the top 10 producing VR counselors in Oklahoma to be applied to approved professional growth seminars anywhere in the nation.

(12) *Rochester Tooling and Machining Institute, Incorporated:* Rochester, New York; "Employment/Training for Chemically Dependent" (waiver deferring the TWP for up to 6 consecutive months required). This project will identify, train, and provide employment in the tooling and machining industry for chemically dependent beneficiaries, who are outpatients in the Park Ridge Chemical Dependency Program, while providing these beneficiaries with clinical and ongoing counseling services. The NYS/OVR will make determinations of eligibility for participation in the project, develop individualized rehabilitation plans, and sponsor the training activity.

(13) *Set Industries, Incorporated:* Hardwick, Vermont; "Investigate Impact of Comprehensive Case Management and Selected Work Incentives" (VR referral waiver required). This project will directly link beneficiaries with employers, resulting in permanent employment for these beneficiaries. Set Industries and Boston University's Department of Rehabilitation Counseling will coordinate and implement the project in collaboration with two State offices of VR in order to promote maximum use of resources for developing comprehensive VR employment plans for participants and to optimize evaluation of the project. The project will operate in Vermont and Massachusetts.

(14) *Southwest Business, Industry and Rehabilitation Association:* Scottsdale, Arizona; "Franchise" (VR referral waiver required). This project will demonstrate the replicability of a successful coordinated job placement model by franchising this product to existing organizations at established delivery sites. It will also demonstrate the effectiveness of a performance based incentive fee payment plan, per beneficiary, to be distributed to the grantee and the franchised organization. The project will be tested throughout the western United States.

(15) *Southwest Business, Industry and Rehabilitation Association:* Scottsdale, Arizona; "Project Succeed" (no waiver required). This project will test placement techniques targeting Social Security disability beneficiaries with "organ disorders." A self-assessment tool designed for the project will be used to measure the impact of the participants' self concept and how it effects their return to work. Data will be collected and compared to results from a prior grant which did not target only the organ disorder beneficiaries. This will be used to determine the effects of the specialized self-assessment tool.

(16) *University of Oregon:* Eugene, Oregon; "The Employer Development Project" (waiver not required). The project will create a more effective community and business system for employing persons with developmental disabilities in integrated jobs. It is designed to establish and document the effects and impact of integrated employment across the entire community, specifically on the benefits and costs to the service system and to Social Security.

(17) *Resource Center for the Handicapped:* Seattle, Washington; "Project Communicate—Business-to-Business Telemarketing." (VR referral waiver requested, decision pending). This 24-month project will target and train disabled adults who do not have the reading, writing, math, communication, and work skills necessary to succeed in business-to-business telemarketing. Concepts of self-help, self-improvement, and pride be taught. Participants will [then be taught reading, writing, math, and communication skills in a simulated work related setting. It is expected that 30 Supplemental Security Income recipients will be trained and placed in substantial gainful activity and subsequently removed from SSA's rolls.

(18) *Matrix Research Institute:* Philadelphia, Pennsylvania; "Improving the Effective Use of SSA Work Incentives by the Mentally Ill" (no waiver required). This 24-month project will implement and assess the effectiveness of a program using work incentive advocates to increase knowledge about attitudes towards and use of work incentives by SSI recipients with long-term metal illness. The project will employ former or current mental health patients as work incentive advocates.

Authority: Section 505(a) of Pub. L. 96-265 (the Social Security Disability Amendments of 1980), as amended by section 12101 of Pub. L. 99-272 and by section 10103 of Pub. L. 101-239; and section 1110(b) of the Social Security Act, 42 U.S.C. 1310(b).

Dated: April 30, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 91-11448 Filed 5-14-91; 8:45 am]

BILLING CODE 4191-29-M

DEPARTMENT OF THE INTERIOR

Southern Alaska Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of a meeting of the Southern Alaska Advisory Council.

DATES: June 12, 1991, 8 a.m. until 5 p.m.

ADDRESSES: Bureau of Land Management, Anchorage District Office, 6881 Abbott Loop, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Danielle Allen, Public Affairs Specialist, Anchorage District, Bureau of Land Management, 6881 Abbott Loop Road, Anchorage, Alaska 99507 (907) 267-1258.

SUPPLEMENTARY INFORMATION: The agenda for the meeting is as follows:

1. Introductions and opening remarks.
2. Election of Chairperson and vice chair.
3. Review previous meetings' minutes.
4. Lands Program update.
5. Resources Program update.
6. A-J Mine Project.
7. Field Season.
8. Glennallen District update.

The meeting is open to the public, interested persons may make oral statements to the Council between 3-3:30 p.m. or file written statements for the Council's consideration.

Richard J. Vernimen,

Anchorage District Manager.

[FR Doc. 91-11489 Filed 5-14-91; 8:45 am]

BILLING CODE 4310-JA-M

National Park Service

Chesapeake and Ohio Canal National Historical Park Commission Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting will be held Saturday, June 15, 1991, at Allegany Community College, Cumberland, Maryland.

The Commission was established by Public Law 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC
Mrs. Dorothy Tappe Grotos, Delaplane, Virginia
Mr. Samuel S.D. Marsh, Bethesda, Maryland
Mr. James F. Scarpelli, Sr., Cumberland, Maryland
Ms. Elise B. Heinz, Arlington, Virginia
Captain Thomas F. Hahn, Shepherdstown, West Virginia
Mr. Rockwood H. Foster, Washington, DC
Mr. Barry A. Passett, Washington, DC
Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mr. Terry W. Hepburn, Hancock, Maryland
Mr. Robert L. Ebert, Cumberland, Maryland

Matters to be discussed at this meeting include:

1. Old and new business
2. Superintendent's report
3. Committee reports
4. Public comments

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Thomas O. Hobbs, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland

Dated: May 6, 1991.

Ronald N. Wrye,

Acting Regional Director, National Capital Region.

[FR Doc. 91-11555 Filed 5-14-91; 8:45 am]

BILLING CODE 4310-70-M

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Golden Gate National Recreation Area Advisory Commission; Meeting Agenda Correction

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission previously noticed in the Federal Register to be held at 10:30 a.m. (PDT) on Saturday, May 18, 1991 at West Marin School in Point Reyes Station, California will have a corrected agenda.

The main agenda items at the May 18 public meeting should be corrected to be: update reports on issues relating to management of Point Reyes National Seashore, including minor expansion and rehabilitation plans of Point Reyes Bird Observatory; an overview of historic ranches at Point Reyes and in the Olema Valley; a resource management report; a presentation on the Drakes Visitor Center exhibit plans; a presentation on demonstration dairies; and a report on the Statement for Management for the Golden Gate National Recreation Area.

Dated: May 6, 1991.

W.H. Patten,

Acting Regional Director, Western Region.

[FR Doc. 91-11556 Filed 5-14-91; 8:45 am]

BILLING CODE 4310-70-M

Minerals Management Service

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting Jeane Kalas at (303) 231-3046. Comments and suggestions on the requirement should be made directly to the bureau clearance officer at the telephone number listed below and to the Office of Management and Budget, Paperwork Reduction Project, (1010-0033), Washington, DC 20503, telephone (202) 395-7340.

Title: Payor Information Form (PIF) Oil and Gas.

OMB Approval Number: 1010-0033.

Abstract: Data collected on PIF's are used to establish payor accounts for all mineral leases on Federal and Indian lands using accounting identification numbers assigned by the Minerals Management Service (MMS). Changes in the paying responsibilities on the lease are also reported on PIF. The MMS is then able to maintain, reconcile, and audit lease accounts through the use of its computerized Auditing and Financial System. This information will enable MMS to determine payors responsible for paying rentals and royalties to MMS and the percentage of sales or production on which royalties are to be paid.

Bureau Form Number: MMS-4025.

Frequency: On occasion.

Description of Respondents: Oil and gas lessees, onshore and offshore.

Annual Responses: 37,000.

Annual Burden Hours: 20,700.

Bureau Clearance Officer: Dorothy Christopher (703) 787-1239.

Dated: March 20, 1991.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 91-11449 Filed 5-14-91; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-485 (Final)]

Certain Gene Amplification Thermal Cyclers and Subassemblies Thereof From the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-485 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the United Kingdom of certain gene amplification thermal cyclers and subassemblies thereof,[1] provided for in subheadings 8419.89.50 and 8419.90.90, respectively, of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Janine Wedel (202-252-1178), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain gene amplification thermal cyclers and subassemblies thereof from the United Kingdom are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 26, 1991, by MJ Research, Inc., Watertown, MA.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on June 18, 1991, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on July 3, 1991, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 24, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 27, 1991, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by § 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is June 28, 1991. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is July 17, 1991; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 17, 1991. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of § 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with § 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: May 3, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-11512 Filed 5-14-91; 8:45 am]

BILLING CODE 7020-02-M

[1] For purposes of this investigation, certain gene amplification thermal cyclers consist of Peltier-effect *in vitro* gene amplification thermal cyclers, whether assembled or unassembled, and the subassemblies thereof specified below. Gene amplification thermal cyclers are microprocessor-based reaction controllers that regulate temperatures of biologic reagents through a programmed and highly controlled thermal regime. They are used in biotechnology applications, including a biological protocol called *in vitro* gene amplification, as well as in several related sequencing and radionucleotide labeling reactions. Peltier-effect machines use one or more thermoelectric modules for cooling of the biological sample, and the thermoelectric modules and/or electric resistive heaters for heating the biologic samples.

Gene amplification thermal cyclers incorporate a metal sample block, one or more thermoelectric modules, one or more electronic thermal sensors, a heat exchanger, power supply circuitry, microprocessor-based logic circuitry, software, and a housing or enclosure. The following subassemblies are included in the scope of the investigation when they are manufactured according to specifications and operational requirements to dedicate them for use only in a gene amplification thermal cycler as defined in the preceding paragraph: (1) The sample block/thermoelectric/sensor/heat exchanger subassembly, which consists of the sample block, one or more thermoelectric modules, one or more electronic thermal sensors, and a heat exchanger, and which can include an electric resistive heater; (2) the housing or enclosure, whether finished or unfinished; (3) the membrane keypad used to program and control the machine; and (4) the software needed for operation.

[Investigation No. 337-TA-303]

Certain Polymer Geogrid Products and Processes Thereto; Designation of Additional Commission Investigative Attorney

Notice is hereby given that, as of this date, John R. Kroeger, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation in addition to T. Spence Chubb, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: May 8, 1991.

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

Respectfully submitted,

[FR Doc. 91-11510 Filed 5-14-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-512 and 513 (Preliminary)]

Tart Cherry Juice and Tart Cherry Juice Concentrate From Germany and Yugoslavia

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Germany and Yugoslavia of tart cherry juice and tart cherry juice concentrate, provided for in subheading 2009.80.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On March 19, 1991, a petition was filed with the Commission and the Department of Commerce by the Cherry Marketing Institute, Inc., Okemos, MI, alleging that an industry in the United States is materially injured by reason of LTFV imports of tart cherry juice and tart cherry juice concentrate from Germany and Yugoslavia. Accordingly, effective March 19, 1991, the Commission instituted preliminary antidumping investigations Nos. 731-TA-512 and 513 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 27, 1991 (56 FR 12743). The conference was held in Washington, DC, on April 9, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on April 3, 1991. The views of the Commission are contained in USITC Publication 2376 (May 1991), entitled "Tart Cherry Juice and Tart Cherry Juice Concentrate from Germany and Yugoslavia:

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Acting Chairman Brunsdale dissenting with respect to Yugoslavia.

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Determination of the Commission in Investigation No. 731-TA-512 and 513 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: May 8, 1991.

By order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 91-11511 Filed 5-14-91; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on April 16, 1991, a proposed consent degree in *United States of America* versus *City of Bangor*, Civ. No. 88-0048-B, was lodged with the United States District Court for the District of Maine. The proposed consent decree settles the United States' claims against Bangor under the Clean Water Act, set forth in a complaint that sought injunctive relief and civil penalities for: (1) Bangor's continuing failure to provide secondary sewage treatment in violation of conditions in three successive NPDES permits and an EPA administrative order issued in 1985; (2) violations of interim effluent limitations contained in two 1985 administrative orders; (3) violations of pretreatment program requirements contained in Bangor's last two NPDES permits and in another administrative order issued by EPA in 1984; and (4) discharges from combined sewer overflows in violation of a condition in Bangor's current NPDES permit.

The proposed consent decree requires Bangor to upgrade its sewage treatment plant to achieve secondary treatment by June 30, 1993, and to comply with interim effluent limits until that time. The decree also requires Bangor to implement a comprehensive combined sewer overflow abatement program to bring Bangor into compliance with the terms and conditions of Bangor's NPDES permit and the Act. Finally, the decree requires a payment of $20,000 to the United States in settlement of the civil penalty claims, which payment is in addition to a $40,000 civil penalty payment previously made by Bangor to the State of Maine for many of the same alleged violations.

The Department of Justice will receive comments relating to the proposed consent degree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *City of Bangor*, D.J. Ref. 90-5-1-1-2863.

The proposed consent degree may be examined at the offices of the United States Attorney, 100 Middle Street Plaza, Portland, Maine; at the Region I office of the Environmental Protection Agency, 1 Congress Street, Boston, Massachusetts; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $10.75 (25 cents per page reproduction cost) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-11452 Filed 5-14-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Departmental policy as set forth in 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Barker, et al. (Liquid Waste Management Site)*, Civil Action No. C-1-90-345, has been lodged with the United States District Court for the Southern District of Ohio on April 26, 1991. The proposed consent decree resolves a civil action brought by the United States alleging that the settling defendants are liable to the United States for reimbursement of response costs incurred by the United States performing an emergency removal action at the Liquid Waste Management Site.

The United States Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC, 20044, and should refer to *United States* v. *Barker, et al. (Liquid Waste Management Site)*, DOJ #90-11-3-625.

The proposed consent decree may be examined at the Office of the United States Attorney, Southern District of Ohio, U.S. Post Office and Courthouse, 100 E. Fifth Street, Cincinnati, Ohio, 45202, and at the Region V office of the Environmental Protection Agency, 230 S. Dearborn, Chicago, Illinois, 60604. A copy of the proposed consent decree and attachments can be obtained in person or by mail at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC, 20004. In requesting a copy, please enclose a check in the amount of $6.50 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-11454 Filed 5-14-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy as set forth in 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States and the State of New York* versus *City of Dunkirk, New York* (Civil Action No. 89-1302(A)) has been lodged with the United States District Court for the Western District of New York on May 1, 1991. The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.* by the City of Dunkirk in the operation of a publicly owned treatment works facility. The proposed consent decree would require the City of Dunkirk to pay a civil penalty in the amount of $100,000, and to make very substantial capital improvements in upgrading the facility to maintain compliance with the Clean Water Act and the terms and conditions of its National Pollutant Discharge Elimination System permit.

The United States Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States and the State of New York* versus *City of Dunkirk, New York* DJ 90-5-1-1-3347.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of New York, 68 Court Street, Buffalo, New York 14202, and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. A copy of the proposed consent decree and attachments can be obtained in person or by mail at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $7.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-11453 Filed 5-14-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration.

Income and Eligibility Verification: Final Rule

1205-0238.

Form No.	Affected public	Respondents	Frequency	Average time per response
Claimant notification	SESAs	23.0 Million	On occasion	2 seconds.
Eligibility verifications	SESAs	269,000	On occasion	10 min.

57,444 total hours.

Final rules implementing the income and eligibility verification provisions in the Deficit Reduction Act. Rules apply to State Employment Security Agencies and require them to disclose and obtain certain information for verifying eligibility and benefit amounts.

Extension

Employment Standards Administration.

Request for Earnings Information.

1215-0112; LS-426.

On occasion.

Individuals or households.

1,900 respondents; 475 total hours; ¼ hr. per response; 1 form. Report gathers information regarding an employee's average weekly wages. This information is required for determination of compensation benefits in accordance with section 10 of the Longshore and Harbor Worker's Compensation Act.

Extension

Bureau of Labor Statistics.

Labor Force Questionnaire—CPS-1.

OMB No. *1220-0100*—CPS-1.

Monthly.

Individuals and households.

57,000 responses; 79,055 hours; 1155 hours (7 minutes) per response. Respondent burden is estimated at approximately 79,055 hours. The labor force questionnaire (CPS-1) contains all the questions used to obtain the monthly information on the labor force status of the population. The most important use of the information is to determine the month-to-month changes in total employment and in the jobless rate and to see how these affect the various components of the population. These data are widely used, both inside and outside the government, as indicators of the economic health of the nation.

OSHA

Ionizing Radiation.

1218-0103.

On Occasion.

Business or other for-profit; small business or organizations.

Respondents *81; 20* total hours; *.25* hrs. per response; *0* form

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Ionizing Radiation. The standard requires that employers notify OSHA of Ionizing Radiation overexposure.

Signed at Washington, DC this 9th day of May, 1991.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 91-11496 Filed 5-14-91; 8:45 am]

BILLING CODE 4510-04-M

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Occupational Safety and Health Administration

Kentucky Standards; Approval

1. *Background.* Part 1953 of title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 31, 1973, notice was published in the Federal Register (38 FR 20322) of the approval of the Kentucky plan and the adoption of subpart O to part 1952 containing the decision.

The Kentucky plan provides for the adoption of Federal standards as State standards after public hearing. Section 1953.20 of 29 CFR provides that "When * * * any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required."

By letters dated February 13, 1986 and October 8, 1986, from John C. Wells, Secretary, Commonwealth of Kentucky Labor Cabinet to Alan C. McMillan, Regional Administrator; by letters dated March 9, 1987, March 7, 1988 and May 16, 1988, from Carol M. Palmore, Secretary, Commonwealth of Kentucky Labor Cabinet, to Karen L. Mann, Acting Regional Administrator; and by letters dated November 4, 1988, May 15, 1989 and November 1, 1989, from Carol M. Palmore, Secretary, Commonwealth of Kentucky Labor Cabinet, to R. Davis Layne, Regional Administrator, and incorporated as part of the plan, the State submitted the following amended State standards comparable to Federal standards:

(1) Adoption of 29 CFR part 1910 and revised as of July 1, 1984.

(2) Adoption of 29 CFR 1910.1047, Ethylene Oxide (49 FR 25798, dated 3/22/84), and Amendments of Effective Date and Approval of Information Collection Requirements (50 FR 9800, dated 3/12/85).

(3) Amendments to 29 CFR 1910.243(e), Guarding of Portable Powered Tools; Power Lawnmowers (50 FR 4848, dated 2/1/85).

(4) Adoption of 29 CFR 1926.903(o) Underground Transportation of Explosives, and 1926.910(b) Inspection after Blasting (36 FR 7400, dated 4/17/71).

(5) Adoption of 29 CFR 1926.600, .601, and .602, Off-Highway Equipment, Motor Vehicles and Material Handling Equipment; then revoked in their entirety and adopted only specifically applicable language therefrom for general industry.

(6) Amendments to 29 CFR 1910.1043, Cotton Dust; 1910.119(f), Air Contaminants, and 1910.1000, Air Contaminants, table Z-1 (50 FR 51120, dated 12/13/85).

(7) Interim Final Rule and Corrections to 29 CFR 1910.1200, Hazard Communication and appendix D (50 FR 48750, dated 11/27/85).

(8) Adoption of 29 CFR 1910 revised as of July 1, 1986.

(9) Adoption of 29 CFR 1926 revised as of July 1, 1986.

(10) Amendments to 29 CFR 1910.68, .106, .157, .179, .180, .181, .217, .218, .252, and .440, and amendments to 19 CFR 1915.113 and 1915.172, Recordkeeping Requirements for Tests, Inspections and Maintenance Checks (51 FR 34560, dated 9/29/86).

(11) Amendments to 29 CFR 1910.145, Accident Prevention Tags (51 FR 33251, dated 9/18/86).

(12) Amendments to 29 CFR 1910.430, Commercial Diving (51 FR 34597, dated 9/18/86).

(13) Amendments to 29 CFR 1910.1001, 1926.58 and appendixes A through D, Asbestos, Tremolite, Anthophyllite, and Actinolite (51 FR 22612, dated 6/20/86).

(14) Corrections to 29 CFR 1910.1043, Cotton Dust (51 FR 24324, dated 7/3/86).

(15) Amendments to 29 CFR 1910.1047, Ethylene Oxide (51 FR 25053, dated 7/10/86).

(16) Amendments to 29 CFR 1910.1200, Hazard Communication, Definition of Trade Secret and Disclosure of Trade Secrets to Employees, Designated Representatives, and Nurses (51 FR 34590, dated 9/30/86).

(17) Amendments to 29 CFR 1915.113 and 1915.172, Recordkeeping Requirements for Tests, Inspections and Maintenance Checks (51 FR 34552, dated 9/29/86).

(18) Amendments to 29 CFR 1926, subpart K, Construction Electrical Standards (51 FR 25294, dated 7/11/86).

(19) New section to 29 CFR 1910.1028, Benzene; Amendment to 1910.19, Special Provisions for Air Contaminants; and Amendment to 1910.1000, Air Contaminants (52 FR 34460, dated 9/11/87).

(20) New sections to 29 CFR 1910.1200, 1915.19, 1917.28, 1918.90, 1926.59, and 1928.21, including appendices A through D, Hazard Communication (52 FR 31857, dated 8/24/87).

(21) Amendments to 29 CFR 1910.16, 1910.177(a)(2), 1917.1, and 1917.44, Servicing of Single Piece and Multi-Piece Rim Wheels at Marine Terminals (52 FR 36023, dated 9/25/87).

(22) Amendment to 29 CFR 1910.268(c), Telecommunications Training Records (52 FR 36384, dated 9/28/87).

(23) Amendments and new sections to three construction industry recordkeeping requirements: 29 CFR 1926.550(b)(2), Cranes and Derricks; 1926.552(c)(15), Material Hoist, Personnel Hoist and Elevators; and 1926.903(e), Underground Transportation of Explosives (52 FR 36378, dated 9/28/87).

(24) New section and amendments to 29 CFR 1910.272, including appendices A, B, and C, Grain Handling Facilities; 1917.1(a)(2)(x), Grain Handling Facilities; and 1917.72, Grain Elevator Terminals (52 FR 49592, dated 12/31/87).

(25) New paragraphs and amendments to Occupational Exposure to Formaldehyde in 29 CFR 1910.19(j), Special Provisions for Air Contaminants; 1926.55(d), Gases, Vapors, Fumes, Dusts, and Mists; 1910.1000, table Z-2; 1910.1048(p)(1)(i) and (ii), Formaldehyde, effective dates; and new section 1910.1048 (p)(2)(vi), Formaldehyde, training (52 FR 46168, dated 12/4/87).

(26) New section to 29 CFR 1928.110, Field Sanitation (52 FR 16050, dated 5/1/87).

(27) Amendments to 29 CFR 1910 regarding Safety Testing or Certification of Certain Workplace Equipment and Materials (53 FR 12102, dated 4/12/88).

(28) Amendments to 29 CFR 1910.217, subpart O, Mechanical Power Presses: Presence Sensing Device Initiation, with new appendices A through D; and 1910.211, Definitions (53 FR 8322, dated 3/14/88).

(29) Amendments to 29 CFR 1910.272, Grain Handling Facilities and appendices A and C (53 FR 17695, dated 5/18/88).

(30) Amendments to 29 CFR 1910.1047, Occupational Exposure to Ethylene Oxide (53 FR 11414, dated 4/6/88).

(31) Adoption of 29 CFR 1910 revised as of July 1, 1987.

(32) Adoption of 29 CFR 1926 revised as of July 1, 1987.

(33) Amendment to 29 CFR 1910.20, Access to Employee Exposure and Medical Records (53 FR 38162, dated 9/8/88).

(34) Interim Final Rule and Corrections to 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response (52 FR 16241, dated May 4, 1987).

(35) Amendment to 29 CFR 1910.177, Servicing of Multi-Piece and Single-Piece Rim Wheels (53 FR 34736, dated 9/8/88).

(36) Amendments to 29 CFR 1910.1001 and 1926.58, Asbestos, Tremolite, Anthophyllite, and Actinolite (53 FR 35625, dated 9/14/88).

(37) Addition to new paragraph (g) to 29 CFR 1926.550, Cranes and Derricks, suspended personnel platforms (53 FR 29116, dated 8/2/88).

(38) Addition to 29 CFR 1926, Concrete and Masonry Construction Safety Standards, subpart Q with appendix A, (53 FR 22612, dated 6/16/88).

(39) Amendment to 29 CFR 1910.120 with appendices A through D, Hazardous Waste Operations and Emergency Response (54 FR 9254, dated 3/6/89).

(40) Amendment to 29 CFR 1910.1000 with Tables Z-1, Z-2, and Z-3, Air Contaminants (54 FR 2332, 1/19/89).

These standards were promulgated after public hearings held on December 18, 1984, June 12, 1985, June 4, 1986, December 4, 1986, December 1, 1987, March 8, 1988, June 1, 1988, March 1, 1989, and May 31, 1989.

2. *Decision.* Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards. The State standards are hereby approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement along with the approved plan may be inspected and copied during normal business hours at the following locations: Office of the Secretary of Labor, Kentucky Labor Cabinet 1049 U.S. Highway, 127 South, Frankfort, Kentucky 40601; Office of the Regional Administrator, suite 587, 1375 Peachtree Street, NE., Atlanta, Georgia 30367; and Director of Federal State Operations, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. *Public participation.* Under 29 CFR part 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds good cause exists for not publishing the supplement to the Kentucky State Plan as a proposed change and in making the Regional Administrator's approval effective upon publication for the following reasons:

1. The Standard are essentially identical to the Federal Standards and are deemed to be at least as effective.

2. The Standards were adopted in accordance with procedural requirements of State Law and further participation would be unnecessary.

The decison is effective May 15, 1991. (Sec. 18, Pub. L. 91-596; 84 Stat. 1608 (29 U.S.C. 667)) signed at Atlanta, Georgia this 24th day of December 1990.

R. Davis Layne,

Regional Administrator.

[FR Doc. 91-11487 Filed 5-14-91; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 91-27; Exemption Application No. D-6372, et al.]

Grant of Individual Exemptions; Citicorp Real Estate, Inc. (Citicorp) and Bankers Trust Co. (BT), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Citicorp Real Estate, Inc. (Citicorp) and Bankers Trust Company (BT), Located in New York, New York

[Prohibited Transaction Exemption 91-27; Exemption Application No. D-6372]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to (1) the granting to Citicorp and BT, as representatives of lenders participating in a credit facility (the Lenders), of security interests in limited partnership interests in Trammel Crow Equity Partners II, Ltd. (the Partnership) owned by certain employee benefit plans (the Plans) with respect to which some of the Lenders are parties in interest, and (2) the agreements by the Plans to honor capital calls made by Citicorp in lieu of the Partnership's general partner; provided that (a) the grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; and (b) the decisions on behalf of each Plan to invest in the Partnership and to execute such grants and agreements in favor of Citicorp are made by a fiduciary which is not included among and is independent of the Lenders, BT and Citicorp.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 15, 1991 at 56 FR 11290.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

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Boilermakers' and Blacksmiths' Lodge No. 169 Joint Training Fund (the Plan), Located in Dearborn, Michigan

[Prohibited Transaction Exemption 91-28; Exemption Application No. D-8439]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the cash sale by the Plan of certain improved real property located in Dearborn, Michigan (the Property) to the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Lodge No. 169, a party in interest with respect to the Plan; provided that the purchase price paid for the Property is no less than the greater of $70,000 or the Property's fair market value as of the date of such sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 26, 1991 at 56 FR 12559.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

LaBranche & Company Retirement Plan (the Plan), Located in New York, New York

[Prohibited Transaction Exemption 91-29; Exemption Application No. D-8449]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to loans by the Plan (the Loans) to LaBranche & Company, the sponsor of the Plan; provided that all terms and conditions of the Loans are no less favorable to the Plan that those which the Plan could obtain in arm's-length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 26, 1991 at 56 FR 12560.

EFFECTIVE DATE: This exemption is effective for a ten-year period commencing with the date on which the first Loan is executed.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Manufacturers Hanover Company (MHC), Located in New York, New York

[Prohibited Transaction Exemption 91-30; Application No. D-8536]

Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issurance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested in acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority of renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraph B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided, to, investing plans before they purchase certificates issued by the trust.[3]

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to and Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the

Continued

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H), or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's) Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust:

with respect to certificates defined in (1) and (2) above for which MHC or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3-101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any

Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

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obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interest in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) MHC;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with MHC; or

(3) Any member of an underwriting syndicate or selling group of which MHC or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The Trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial insurance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management of policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following critiera:

(1) the fee is triggered by an act or failure to act by the obligator other than the normal timely payments of amounts owing in respect to the obligations;

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, an an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reducted by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust hold a security interest in the leased motor vehicle; and

(c) The trust security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of facts and representatives supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 15, 1991, at FR 11282.

FOR FURTHER INFORMATION CONTACT: Kay Madsen of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified persons from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington DC, this 9th day of May, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–11465 Filed 5–14–91; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D-8535, et al.]

Proposed Exemptions; Equitable Life Assurance Society of the United States (Equitable), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Equitable Life Assurance Society of the United States (Equitable) Located in New York, NY

[Application No. D-8535]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of 50% equity interests (the Interests) in twelve regional shopping centers (the Properties) from Equitable's general account (the General Account) to Equitable's Separate Account No. 141 (the Separate Account), a single customer separate account maintained by Equitable under a group annuity

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contract on behalf of the International Business Machines Corporation (IBM) Retirement Plan (the Plan), which held the other 50% equity interests in the Properties, provided that the terms and conditions of the transaction were at least as favorable to the Separate Account as those between unrelated parties would have been.

EFFECTIVE DATE: The effective date of the exemption, if granted, will be April 30, 1989.

Summary of Facts and Representations

(1) Equitable is a mutual life insurance company organized under the laws of the State of New York and subject to supervision and examination by the Superintendent of Insurance of the State of New York. It is the third largest life insurance company in the United States. Among the wide variety of insurance products and services it offers, Equitable provides funding, asset management and other services for several thousand employee benefit plans subject to the provisions of title I of the Act.

Equitable maintains several pooled separate accounts in which pension, profit-sharing, and thrift plans participate. Equitable also has several single customer separate accounts and investment management accounts pursuant to which Equitable manages all or a portion of the assets of a number of large plans. Equitable's real estate investment management subsidiary, Equitable Real Estate Investment Management, Inc. (EREIM), provides real estate investment advisory services to Equitable and property management services with respect to certain properties held by Equitable accounts. EREIM provides real estate investment advisory services with respect to the real property assets of the Separate Account.

Equitable has substantial experience in managing real estate investments. Of the more than $58 billion in total assets held by Equitable at year-end 1988, Equitable's general account held $11.7 billion in real estate mortgage loans and approximately $4.5 billion in equity investments in real property and interests in real estate joint ventures. Additionally, more than $5.4 billion of real property investments were held in Equitable's real estate separate accounts.

(2) IBM and its subsidiaries and affiliates are the largest manufacturers of data processing equipment machines and systems in the world. As of December 31, 1988, the company had total assets of $73 billion.

The named fiduciary of the Plan is the IBM Retirement Plan Committee. The Retirement Plan Committee is comprised of three to five directors of IBM, a majority of whom are outside directors. As named fiduciary of the Plan, the Retirement Plan Committee, pursuant to the terms of the Plan, delegated to the Treasurer of IBM, Mr. David Finley, authority to authorize the reallocation of the Interests to the Separate Account.

The total assets of the Plan were approximately $19.5 billion as of December 31, 1988. Of this amount, $194 million (10 percent of total assets) were held in real estate investments, with the interest in the Separate Account representing 2 percent of total Plan assets.

(3) The Separate Account is a single-customer real estate separate account maintained by Equitable on behalf of the Plan. As of December 31, 1988, the total assets of the Separate Account equalled $547,295,361. The assets of the Separate Account included 50% interests in the Properties.

Equitable also maintains three other single customer real estate separate accounts on behalf of the Plan, Separate Account Nos. 136, 143, and 149, amounting to 3.6 percent of the assets of the Plan. As of December 31, 1988, the value of the assets of Separate Account No. 136, which invests in industrial research and development properties, was $212,966,000 (including mortgages). As of December 31, 1988, the value (including mortgages) of the assets of Separate Account Nos. 143 and 149, which invest in commercial office buildings, equalled $418,470,874 and $76,409,636, respectively.

(4) IBM appointed the Jackson-Cross Company (Jackson-Cross) as the independent acquisition advisor to act on behalf of the Plan in the reallocation transaction.

The process of selecting an independent acquisition advisor included a review of the potential candidates for the assignment by Mr. James Peterson, the Plan's Director of Real Estate Investment and Mr. R.D. Borgeson, Counsel to the Plan. The candidates specifically considered were Landauer Associates, Dreyfus Management, Inc., Goldman Sachs & Co., and Jackson-Cross.

Messrs. Peterson and Borgeson determined that Jackson-Cross was the appropriate choice to serve as independent acquisition advisor. The applicant represents that the two main reasons for their decision were Jackson-Cross' experience with the specific Properties potentially involved in the reallocation transactions and IBM's experience with Jackson-Cross.

Since 1984, Jackson-Cross has acted as independent fiduciary with respect to the Separate Account, which holds the Plan's interests in the Properties. Thus, Jackson-Cross had become familiar with the Properties by virtue of its actions as independent fiduciary regarding the initial review of properties and approval of any joint allocations, as well as its semi-annual review of the performance of the Separate Account's investments. IBM concluded that no other firm could match the knowledge and sophistication regarding the Properties that was possessed by the Jackson-Cross committee members for the Separate Account: Messrs. Charles F. Seymour, Arnold S. Tesh, and Dwight E. Wagner.

With respect to IBM's experience with Jackson-Cross, Messrs. Peterson and Borgeson had frequent contact with Jackson-Cross during this period and concluded that in its role as independent fiduciary, Jackson-Cross had performed its duties in a consistently thorough and business-like manner, had shown excellent judgement in its decisions and the utmost scrupulousness in the review of each matter presented to it, and had at all times worked solely in the interest of the participants and beneficiaries of the Plan and with the highest degree of integrity.

The applicant further represents that Jackson-Cross is independent of Equitable. Specifically, Jackson-Cross receives less than 5 percent of its total yearly fees from Equitable and Equitable separate accounts. In addition, neither Equitable nor its subsidiaries or affiliates have any ownership interest in Jackson-Cross. Similarly, Jackson-Cross nor any of its principals have any ownership interest in Equitable or any of its subsidiaries or affiliates. Although Jackson-Cross does from time to time provide leasing services in buildings owned in part by Equitable, and has occasionally provided appraisal services to Equitable, Jackson-Cross provides no property management services to Equitable. Rather, Jackson-Cross' primary contact with Equitable is through the provision of independent fiduciary services.

(5) Jackson-Cross is a Pennsylvania corporation engaged, directly and through its affiliates, in the business of commercial real estate consulting, brokerage, management, appraisal and related activities. Jackson-Cross' principal offices are located in Philadelphia, Pennsylvania. It also has offices in Wilmington, Delaware, and Princeton, New Jersey. It has been involved in the commercial real estate business since 1876. The company has

substantial experience in commercial real estate matters including consulting, real estate brokerage, property management, property appraising and the review and approval of construction budgets. The company currently manages approximately 10 million square feet of diverse industrial and commercial properties and office building space.

(6) The applicant further represents that Equitable was not responsible for the choice of Jackson-Cross. Rather, IBM made its decision independently of Equitable. There is no business relationship between any of the officials of IMB who had any authority with respect to making the decision to invest Plan funds in the Properties and Equitable or any of its affiliates. There are no common directors of IMB and Equitable. The only relationship of any kind which exists between anyone at IBM who is a part of the pension plan investment process and a person at Equitable is the following: William Hoyt, who formerly directed the pension plans' investments in real estate and who is currently a member of the informational committee which meets with the IBM Treasurer to make real estate and other investment decisions for the plans, has a brother, David Hoyt, who is a Vice President of Equitable in New York in the Treasurer's Department. Both William Hoyt and Equitable have provided assurances that David Hoyt has no responsibility or influence whatsoever in the real estate investment management business of Equitable or its subsidiaries, and has not duties regarding investment management of IBM pension plan assets. William Hoyt provides assurances that he has never discussed with his brother any business matter concerning Equitable and the IBM plans.

(7) The Properties were acquired by the General Account and the Separate Account on November 30, 1984 from General Growth Properties, an Iowa-based real estate investment trust unrelated to Equitable. Each Account acquired a 50 percent equity interest in each Property.[1] Early in 1988, Equitable and IMB began discussing the possible reallocation of the General Account's interests in the Properties to the Separate Account. Jackson-Cross was retained to act as the independent acquisition advisor to the Plan.

(8) Pursuant to the terms of its retention by IBM, Jackson-Cross was assigned primary responsibility for the development, analysis and negotiation of the reallocation. Specifically, Jackson-Cross was authorized to: (1) Review Equitable's initial offer; (2) collect, analyze and verify pertinent information regarding each of the shopping centers contained in Equitable's offer; (3) recommend maximum prices (and related terms) for each property; (4) develop with IBM negotiating objectives and instructions designed to assure that any acquisition was consistent with the investment objectives of the Plan; (5) exercise sole authority on behalf of the Plan to determine which (if any) of the offered properties were suitable for reallocation, and to negotiate the terms of such reallocation with Equitable; and (6) provide IBM with a recommended agreement for reallocation.

In conducting its analysis, Jackson-Cross engaged in four different phases of activity: (1) Document review; (2) property inspections; (3) market analysis; and (4) negotiation.

Jackson-Cross reviewed all of the materials supplied by Equitable and in most cases requested additional information. During visits to each property, Jackson-Cross verified the physical descriptions and tax assessments of each property, and reviewed title, environmental, occupancy and other legal requirements. Jackson-Cross also reviewed the actual leases of shopping center tenants, compared these leases to the rent rolls provided by Equitable and verified rental amounts, lease terms, etc. Jackson-Cross also reviewed existing maintenance and management contracts. Jackson-Cross indicated that it was "generally pleased" with the conditions of documentation for the properties.

Using this and other information, Jackson-Cross also performed various financial analyses of each of the Properties. These analyses took into account and expense histories, maintenance and management contracts, leases and leasing plans, etc. From these analyses, Jackson-Cross developed financial and economic projections regarding the Properties.

Jackson-Cross made at least two on-site inspections of each of the Properties and its principal competition. Separate reports were prepared for each Property, and then summarized for presentation to IBM. The report analyzed location, physical condition, distance from competitors, and access, and suggested possible changes, e.g., improving maintenance, upgrading facilities, remerchandising, (attracting new tenants), addition of new anchor stores, expansion possibilities, etc. The report concluded that, as a whole, the Properties are in a generally favorable position, with considerable opportunity for good returns.

The purpose of the market analysis was to identify and analyze local, regional and national factors influencing the individual markets of each individual Property, and thereby to predict the future revenue prospects and marketing strategies for each mall. In order to accomplish this, Jackson-Cross relied on information obtained from Equitable, data obtained directly from management of each Property, and materials generated and collected by Jackson-Cross itself. This information concerned matters such as current maintenace and tax costs, sales figures and projections, anticipated cost of capital improvements, expansion plans, etc.

Jackson-Cross concluded that the Properties, which are dispersed in various geographic and economic regions, are subject to both positive and negative economic trends. However, the

[1] The Department has previously stated that the mere investment of the assets of a plan on identical terms with a fiduciary's investment for his or her own account in the equity interests of a shared real estate investment would not, in itself, cause the fiduciary to have an interest in the transaction that may affect his or her best judgment as a fiduciary. Therefore, such an investment would not, in itself, violate section 406(b)(1) which prohibits a fiduciary from dealing with the assets of a plan in his or her own interest or for his or her account. In addition, such shared investment, pursuant to reasonable procedures established by the fiduciary, would not cause the fiduciary to act on behalf of (or represent) a party whose interests are adverse to those of the plan. Therefore, such an investment would not, in itself, violate section 406(b)(2) which states that a fiduciary may not act in any capacity in a transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan.

With respect to section 406(a)(1)(D) of the Act, which prohibits the transfer to, or use or for the benefit of, a party in interest (including a fiduciary) or the assets of a plan, the Department opined that a party in interest does not violate that section merely because he or she derived some incidental benefit from a transaction involving plan assets. The Department assumed, for this analysis, that the fiduciary does not rely upon, and is not otherwise dependent upon, the participation of the plan in order to undertake its share of the investment.

Thus, with respect to the investment of plan assets in shared equity investments which are made simultaneously with investments by a fiduciary for its own account on identical terms, the Department was of the view that any benefit that the fiduciary might derive from such investment under these circumstances was incidental and would not violate section 406(a)(1)(D) of the Act. (See Proposed Exemption for Equitable Life Assurance Society of the United States, 55 FR 38574, 38577, September 21, 1990.)

Thus, with respect to the investment of plan assets in shared equity investments which are made simultaneously with investments by a fiduciary for its own account on identical terms, the Department was of the view that any benefit that the fiduciary might derive from such investment under these circumstances was incidental and would not violate section 406(a)(1)(D) of the Act. (See Proposed Exemption for Equitable Life Assurance Society of the United States, 55 FR 38574, 38577, September 21, 1990.)

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report noted that most of the Properties dominate their respective markets and provide the best retail centers in their areas. This superiority, in Jackson-Cross' view, would enable the portfolio to continue to perform well.

Jackson-Cross had full negotiating authority on behalf of the Plan subject to certain negotiating objectives and strategies developed in concert with IBM to assure that the investment objectives of the Plan were met.

Equitable and Jackson-Cross agreed to an aggregate adjusted price for the Properties of $684 million. The Properties and the individual adjusted prices are:

(1) Chapel Hills, Colorado Springs, CO $88,000,000
(2) Lake Square, Leesburg, FL 27,000,000
(3) Southpark, Moline, IL 68,000,000
(4) Northpark, Davenport, IA 72,000,000
(5) Eastland, Evansville, IN 63,000,000
(6) Southridge, Des Moines, IA 62,500,000
(7) Southern Hills, Sioux City, IA 80,000,000
(8) Greenwood, Bowling Green, KY 47,200,000
(9) Rushmore, Rapid City, SD 50,500,000
(10) Empire, Sioux Falls, SD 95,000,000
(11) Newtown, Sioux Falls, SD 8,300,000
(12) Valley, Harrisonburg, VA 38,500,000

When adjusted for existing mortgage balances, capital improvements, and the interests already held by the Separate Account, the amount of cash that the Plan was required to pay at closing for the reallocation of the interests was $249,213,320. According to Jackson-Cross, this investment will provide an overall capitalization rate of 8.01% and an internal rate of return of 12.6%.

(9) Upon Jackson-Cross' completion of the negotiations, IBM's role was to review the negotiated terms to assure that they met the investment objectives and cash-flow restraints of the Plan. This review authority was the responsibility of the Retirement Plan Committee, which pursuant to the terms of the Plan, delegated to the Treasurer of IBM and his staff the authority to make specific investment decisions. The Treasurer, David Finley, made the decisions regarding the terms of the negotiating instructions to Jackson-Cross and made the final decision regarding approval of the negotiated agreement on the Interests. In making these decisions, the Treasurer consulted with an informal IBM pension investment committee, which is composed of high-level IBM staff in the investment area. Based on the advice and recommendations of Jackson-Cross as well as IBM's in-house advisors, Mr. Finley approved the reallocation of the Interests on behalf of the Plan based upon the terms and conditions negotiated by Jackson-Cross.

(10) The applicant represents that Equitable exercised no discretionary authority, reponsibility or control on behalf of the Separate Account with respect to the reallocation of the Interests to the Separate Account, nor did it have any role in selecting Jackson-Cross as the independent acquisition advisor. Equitable also did not provide any investment advice to the Plan concerning the transaction.

(11) In summary, the applicant represents that the proposed exemption satisfies the statutory criteria of section 408(a) of the Act because: (a) Jackson-Cross performed an extensive review and analysis of the Properties and relevant documentary information concerning the Properties, performed an economic market analysis for each of the Properties, prepared a financial analysis of each of the Properties, and prepared a financial projection for each Property; (b) Jackson-Cross, as the independent acquisition advisor for the Plan, negotiated the terms and conditions of the transfer of the Interests from the General Account to the Separate Account on an arms-length basis on behalf of the Plan; and (c) IBM approved the transfer of the Interests to the Separate Account.

FOR FURTHER INFORMATION CONTACT: David Lurie of the Department, telephone (202) 523-7901. (This is not a toll-free number.)

NCNB Real Estate Fund (the Fund) Located in Charlotte, North Carolina

[Application Nos. D-8496 and D-8503]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash of a certain parcel of real property (the Parcel) from the Fund to NCNB National Bank of North Carolina (the Bank), a party in interest with respect to employee benefit plans participating in the Fund, provided the Fund receives no less than the greater of $16,200 or the fair market value for the Parcel at the time of sale.

Summary of Facts and Representations

1. The Bank is the seventh largest commercial bank in the United States. The Fund is a common trust fund established by the Bank for the collective investment of funds contributed thereto on behalf of employee benefit pension plans for which the Bank or an affiliate is a trustee. The Bank is the trustee of the Fund and has sole investment discretion with respect to the assets of the Fund. The number of pension plans with assets invested in the Fund currently equals around 606. The assets of the Fund totaled $597,159,648 as of June 30, 1990. Of that amount, approximately 11.5 percent consisted of cash equivalents and the remaining 88.5 percent consisted of real estate and real estate related investments.

2. As trustee of the Fund, the Bank is developing a tract of land of approximately 120 acres known as Ridgefield Business Center (the Business Center) as a commercial, office and light industrial real estate development in Asheville, North Carolina. The Business Center is partially completed and at present contains two single-story office/flex space facilities totaling 120,000 square feet. The Fund acquired the Parcel in December 1988 as part of a purchase of about 116 acres from parties unrelated to the Bank and the Fund. In connection with the Fund's development of the Business Center, the Fund constructed Ridgefield Boulevard. The Parcel was created when Ridgefield Boulevard was built and since that time has not been utilized by any person or entity. The Parcel is a small piece of land of approximately .09 acre which is a portion of the Business Center.

3. The Bank acquired by purchase and long-term lease in June 1990 a tract of land consisting of approximately 1.1 acres which is contiguous to the Business Center. The Bank desires to construct a branch bank facility on this site. However, in order for the bank site to be suitable for a branch bank location, driveway access is necessary to Ridgefield Boulevard, which is the entry road into the Business Center. The Bank desires to obtain the Parcel to achieve such driveway access.

4. The Fund obtained an appraisal on the Parcel from Richard J. Jacobs, MAI and J. Douglas Thrash of the real estate appraisal firm of Duckworth, Jacobs, Naeger, Swicegood and Thrash (the Appraisers) located in Asheville. The applicant represents that the Appraisers are independent of the Bank and its affiliates. The Appraisers estimated that the fair market value of the Parcel was $16,200 as of March 21, 1991. According to the Appraisers, this value takes into account the fact that the purchaser is enhancing his property with both additional area and an additional point of ingress and egress, which can be of great value to a property. The seller is, in turn, being appropriately compensated for property located in a growing commercial area while providing adequate incentive for the sale of the property to the only available market.

5. The Fund proposes to sell the Parcel to the Bank in order to provide driveway access to Ridgefield Boulevard and the Business Center from the bank site. Under the terms of the proposed sale, the Fund will reserve easements across the Parcel for utilities and right of way expansion of Ridgefield Boulevard so as to provide the Business Center with the capacity to meet future development. The Bank will pay no less than fair market value for the Parcel at the time of sale, based on an updated independent appraisal. The sale will be entirely for cash, and the Bank will pay all fees and expenses, including the cost of the appraisal, in regard to the transaction.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The fair market value of the Parcel will be established by real estate appraisers who are independent of the Bank and its affiliates; (2) the Bank will pay no less than fair market value for the Parcel at the time of sale; (3) the transaction will be entirely for cash; and (4) the Fund will pay no fees or expenses in connection with the sale.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 9th day of May, 1991.

Ivan Strasfeld,
Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-11466 Filed 5-14-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-41]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration (NASA) announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATES: June 6, 1991, 8:30 a.m. to 5 p.m.; and June 7, 1991, 8:30 a.m. to Noon.

ADDRESSES: National Aeronautics and Space Administration, George C. Marshall Space Flight Center, Building 4200, room P-110, Marshall Space Flight Center, AL 35812.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code ADA-2, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8766.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Caleb B. Hurtt and is composed of 26 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, aerospace medicine, space science and applications, space systems and technology, space station, commercial programs, and history, as they relate to NASA's activities.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 110 persons including Council members and other participants. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Agenda:

June 6, 1991

8:30 a.m.—Opening Remarks.
9 a.m.—Background: Marshall Space Flight Center (MSFC) Technology Research.
9:45 a.m.—Tour of MSFC Research Facilities.
1 p.m.—Council Discussion: NASA Technology.
3 p.m.—Status of NASA Response to Recommendations of the Advisory Committee on the Future of the United States Space Program.
5 p.m.—Adjourn.

June 7, 1991

8:30 a.m.—Briefing: Report of the Exploration Outreach Synthesis Group.
10:30 a.m.—Council Summation and Recommendations.
Noon—Adjourn.

Dated: May 9, 1991.

John W. Gaff,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-11538 Filed 5-14-91; 8:45 am]

BILLING CODE 7510-01-M

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NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

National Commission on Acquired Immune Deficiency Syndrome; Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

DATE AND TIME:

June 5, 1991—8:00 a.m. to 5:00 p.m.
June 6, 1991—8:00 a.m. to 5:00 p.m.
June 7, 1991—8:00 a.m. to 5:00 p.m.

PLACE: Stapleton Plaza Hotel and Fitness Center, 3333 Quebec Street, Denver, CO 80207.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: The June 5th meeting will focus on HIV disease in women, June 6th will be Commission business and June 7th will focus on issues surrounding the civil rights of People Living with AIDS.

Interpreting services are available for deaf people. Please call our TDD number (202) 254-3816 to request services no later than May 30, 1991.

Maureen Byrnes,
Executive Director.

[FR Doc. 91-11485 Filed 5-14-91; 8:45 am]

BILLING CODE 6820-CN-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities".

3. The form number if applicable: Not applicable.

4. How often the collection is required: As necessary in order for NRC to meet its responsibilities to conduct a detailed review of applications for licenses and amendments thereto to construct and operate nuclear power plants, preliminary or final design approvals, design certifications, research and test facilities, reprocessing plants and other utilization and production facilities, licensed pursuant to the Atomic Energy Act of 1954, as amended (the Act).

5. Who will required or asked to report: Licensees (111) and appliants (8) for nuclear power plants, and research and test reactors (48).

6. An estimate of the number of annual responses: 4.5 K.

7. An estimate of the average burden hours per response: 41 K (This is based primarily on 119 licensees because most of the requirements affect only nuclear power plants).

8. An estimate of the total number of hours needed annually to complete the requirements: 5.0 M.

9. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.

10. Abstract: Section 10 CFR part 50 of the NRC's regulations, "Domestic licensing of Production and Utilization Facilities," specifies technical information and data to be provided by applicants and licensees so that the NRC may make determinations necessary to promote the health and safety of the public, in accordance with the Act.

Copies of the submittal may be inspected or obtained for a free from the NRC Public Document Room, 2120 L Street, NW., (lower level), Washington, DC 20555.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150-0011), NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 8th day of May, 1991.

For the Nuclear Regulatory Commission.

Patricia G. Norry,
Designated Senior Official for Information Resources Management.

[FR Doc. 91-11387 Filed 5-14-91; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 22, 1991 through May 3, 1991. The last biweekly notice was published on May 1, 1991 (56 FR 20025). /

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination And Opportunity For Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 14, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing

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Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: November 30, 1990 as supplemented on May 30, 1990 and on April 19, 1991.

Description of amendments request: The proposed amendment would revise Technical Specification (TS) 3.0.4, 4.0.3 and 4.0.4 and those TSs that are affected by these sections. The amendments are based on the recommendations provided by the staff in Generic Letter (GL) 87-09, issued May 4, 1987, to solve three problems that have been encountered with the general requirements on the applicability of Limiting Conditions for Operation and Surveillance Requirements in Sections 3.0 and 4.0 of the TSs. The April 19 supplement was provided to reformat the original amendment application to clarify the request and to provide additional information to more adequately justify each change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes involve Technical Specifications 3.0.4, 4.0.3 and 4.0.4, plus those technical specifications that are affected by these sections. These changes are being made and requested in accordance with NRC Generic Letter 87-09, issued on May 4, 1987.

The first change involves Specification 3.0.4, its bases, and associated Technical Specifications that reference it. Inconsistent application of exceptions to Specification 3.0.4 impacts the operation of the facility in two ways. First, it delays startup under conditions in which conformance to the Action Requirements establishes an acceptable level of safety for unlimited continued operation of the facility. Second, it delays a return to power operation when the facility is required to be in a lower mode of operation as a consequence of other Action Requirements. In this case, the Limiting Condition for Operation must be met without reliance on the Action Requirements, before returning the facility to that operational mode or other specified condition for which unlimited continued operation was previously permitted, in accordance with the Action Requirements. As a consequence of the change to Specification 3.0.4, Specifications with Action Requirements that permit continued operations no longer need to reference "3.0.4 is not applicable".

The second and third changes involved Specifications 4.0.3 and 4.0.4. Some Action Requirements have allowable outage time limits that do not allow sufficient time for the completion of a missed surveillance, before the Action Requirements would necessitate a plant shutdown. If a plant shutdown is required before a missed surveillance is completed, it is likely that the surveillance would be conducted during the shutdown in an effort to terminate the shutdown requirement. This circumstance is undesirable for two reasons:

(a) increased pressures on plant staff to complete the surveillance could lead to errors that may result in plant upset, and

(b) the plant would be in a transient state involving potential upsets to the plant that could require a demand for the system when the system is removed from service for testing.

The proposed changes will also help clarify the potential conflicts between Specifications 4.0.3 and 4.0.4. The first conflict could arise when a plant shutdown is required as a consequence of an Action Requirement. This will require surveillances to become due prior to entry into a lower mode. This could result in delays reaching lower modes as a result of a Technical Specification Action Requirement.

The second conflict could arise when Surveillance Requirements can only be completed after entry into a mode or specified condition for which the Surveillance Requirements apply, and an exception to the requirements of Specification 4.0.4 is allowed. However, upon entry into this mode or condition, the requirements of Specification 4.0.3 may not be met because the Surveillance Requirements may not have been performed within the allowed surveillance interval. Allowing for a delay in the applicability of Action Requirements for Specification 4.0.3 will provide an appropriate time limit for the completion of Surveillance Requirements that are allowed an exception to Specification 4.0.4. It has been noted that some surveillances that state "4.0.4 not applicable", do involve performance times in excess of the 24 hours allowed by this change and Generic Letter 87-09. These specific surveillances have been identified, and changes are proposed to bound the conditions required to perform the surveillance, as well as limits for completion of the surveillance. This should provide an acceptable means to establish required conditions, as well as set a reasonable completion requirement.

The fourth change involves a revision to the incore-excore surveillance frequency. Currently, the single point comparison of incore to excore axial flux difference and the incore excore calibrations are being performed every 31 and 92 days respectively. These checks and calibrations are core exposure related parameters. In the case of an extended period of low power operations or outages, re-performance of these surveillances would not be warranted. The proposed revision will change the frequency of these surveillances from a fixed frequency to an exposure related frequency. This change has been previously reviewed and approved for Vogtle Unit 1.

The proposed changes do not increase the probability or consequences of a accident previously evaluated. In regards to the first change, systems and equipment that have indefinite allowable outage times have been shown not to have a direct impact on accidents. In regards to the second and third change, surveillance requirements are defined in 10 CFR 50.36 as those requirements that assure the necessary quality of systems and components are maintained such that safety limits are maintained and limiting conditions for operation are met under these changes. The appropriate surveillances will still be performed. The proposed changes will only allow flexibility in performing these surveillance requirements prior to a plant shutdown being necessitated in the case of a surveillance being inadvertently missed.

The conditions and bounding limits proposed on several surveillances are necessary due to the fact that these surveillances cannot be completed within 24 hours of entry into the required mode. These surveillances in some cases require specific power levels and stability to perform. The limitations chosen do not differ from the present method in which these surveillances are performed. Limitations are specified to ensure surveillance completion.

In regards to the fourth change, the required surveillances will still be performed. The bases for these surveillances is to calibrate and check the calibration of the excore instruments using the incore instruments. These checks and calibration are required due to shifting flux profiles due to flux redistribution. Flux redistribution is primarily a function of core depletion and not time. The proposed change will tie the performance of these surveillances to a direct measurement of core depletion.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. No new equipment is being introduced as a result of the changes. These changes do not result in equipment being operated in a manner different from present requirements. No change is being made which alters the function of any plant equipment.

The proposed changes do not involve a significant reduction in a margin of safety. In regards to the first change, conformance to Action Requirements that permit continued operation of the facility have been shown to provide an acceptable level of safety for indefinite operation. In regards to the second and third changes, allowing an appropriate time period for performance of a missed surveillance, a surveillance required by entry into an action statement or performance of one precluded by plant conditions, would in effect reduce the possibility for a potential plant upset. In regards to the fourth change, the surveillance frequencies involved are changes due to the parameters being core depletion dependent. The best measure for this is in effective full power days. Hence, the proposed change will not reduce the margin of safety, based on its performance being tied to a depletion based frequency.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Require; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: March 6, 1991

Description of amendment request: The proposed TS amendment increases the minimum volume of fuel oil for the emergency diesel generators from 28,000 gallons to 39,500 gallons for Modes 1 through 4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment would increase the minimum required volume of fuel oil in the diesel generator fuel oil storage tanks from 28,000 gallons to 39,500 gallons for Modes 1 through 4. This change does not involve a significant increase in the probability or consequences of any accident previously evaluated. The diesel generators serve to mitigate accidents involving or coincident with a loss of offsite power. Increasing the required fuel oil volume in the fuel oil storage tanks will not increase the probability or consequences of any accident and may reduce the consequences of an extended loss of offsite power event, since it will allow the diesels to operate for a longer period of time before fuel oil must be added to the tanks. The amount of fuel oil in storage is not considered to be an initiator or contribute to the initiation of any design basis accident; therefore, the probability of a design basis accident occurring is not affected.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. Increasing the required fuel oil volume is conservative from the standpoint of mitigating a loss of offsite power event and does not create any new accident scenarios that have not been previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety. The proposed change will enhance both the design margin and the overall safety margin by ensuring that the station can better respond to an extended loss of offsite power event.

Finally, the proposed amendment is a change that constitutes an additional limitation not presently included in the Technical Specifications, and as such, increases the overall plant margin of safety. The NRC has previously determined that an amendment constituting such an additional limitation is not likely to involve a Significant Hazards Consideration.

Based upon the preceding analysis, Duke Power Company concludes that the proposed amendment does not involve a Significant Hazards Consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: April 11, 1991

Description of amendment request: The amendments revise the carbon adsorber test method and methyl iodide penetration criteria along with other administrative changes to the Annulus Ventilation and Control Area Ventilation Systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed TS amendment will not increase the probability or consequences of an accident which has been previously evaluated. No physical changes will be made to the plant, therefore, there is no increased probability of an accident. As discussed in the Technical Justification, the decontamination efficiencies of the filters remain unchanged. Because of this, the offsite dose and Control Room dose calculation results are unaffected. The dose calculations remain conservative due to the conservative assumptions in the source term dose conversion factors and release times. In addition to requiring the carbon adsorber to meet Design Basis decontamination efficiencies at 95% relative humidity, additional margin, for which no credit is taken, will be provided by the heaters. For the reasons stated above, there will be no increase in the consequences of an accident previously evaluated.

This proposed amendment to the TS does not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed TS change will not cause any physical changes to the plant or changes to operating procedures. Because the plant will continue to operate the same way it does now, this proposed amendment does not create the possibility of any new or different accident from any previously evaluated.

This proposed TS change will not cause a significant reduction in the margin of safety. The new test method is more restrictive than the previous test methods, and based on limited testing, Duke Power expects to have to change out carbon more frequently. The change in the allowed methyl iodide penetration was made to support the change in test method, does not represent a significant decrease in the margin of safety. It represents the requirement of the test standard to pre-saturate the carbon adsorber. This pre-saturation causes a higher penetration during testing, and is conservative with respect to Design Basis Events. The test method D3803-89 is expected to provide a penetration value during testing which is higher than what would be expected during a Design Basis Event. These conservative results reflect the fact that the new test conditions are more harsh than expected plant conditions. An added conservatism is that even though no credit is taken for the heaters, they will be tested and maintained, so the expected relative humidity of air entering the carbon adsorber would never be expected to reach 95%.

The addition of "at a nominal voltage of 600 VAC" to the heater SR is administrative; and clarifies that the purpose of the requirement is to detect heater degradation. This change involves no significant hazards consideration.

Footnotes and statements related to the footnotes which expire on July 16, 1991, have been removed. This change is administrative, and involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: April 16, 1991

Description of amendment request: The amendments are a one-time only change to enable replacement of the existing 125 volt DC battery cells with new cells.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The 125 Volt DC Vital Instrumentation and Control Power System is not an accident initiator; however, it serves as an accident mitigation system. The replacement batteries are being purchased to meet QA Condition 1 requirements with 10CFR 21 dedication provided by the manufacturer. The new batteries and racks will be seismically mounted. There is no change in cabling required for the new batteries. A fire protection review was performed and no concerns identified. There is no change in the physical and electrical separation provisions for the batteries. The performance of plant safety functions will not be degraded by the new batteries.

Implementation of each battery bank replacement will require three weeks. During the replacement period, a safety-grade battery bank will be connected in place as a temporary replacement. The temporary battery will be installed in the Service Building, because no space is available to locate it in the Battery Room in the Auxiliary Building. The Service Building is not a Seismic Category I structure; nevertheless, Duke Power Company feels that the temporary battery would likely continue to function following a seismic event. The 125 Volt DC Vital Instrumentation and Control Power System will be restored to the fully qualified configuration following each three-week battery replacement period.

During each battery replacement period, the other three batteries and associated distribution equipment will remain in their normal configuration. The performance of their safety functions will not be degraded.

The ability to cross-tie the electrical buses for the batteries by manual action remains available as backup in the event that the temporary battery is rendered unavailable during the replacement periods. Each battery is sized to carry the continuous emergency loads and anticipated momentary loads of its own vital buses, and assume the loads of another battery in a backup capacity for one hour. Technical Specification Limiting Condition for Operation 3.8.2.1 discusses the limitations for this configuration during normal operation.

The ambient temperature surrounding the temporary battery will be periodically monitored to ensure it remains within battery specifications. Available ventilation is sufficient to prevent accumulation of excess hydrogen.

For the above reasons, neither the new replacement batteries nor the temporary battery installation involves a significant increase in the probability or consequences of an accident previously evaluated.

The amendment would not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

There are no new or common failure modes created by the new batteries. The new batteries perform the same function as the existing batteries. The existing batteries are approaching the end of their useful life; therefore, the new batteries are expected to be more reliable than the existing ones.

The temporary backup battery will be a new battery for the first replacement operation, and for each subsequent replacement, it will be a replaced battery. In either case, the temporary battery and rack will be the same qualified equipment as normally used. There are no new failure modes created for the batteries and associated distribution equipment not involved in the particular changeout operation. With the temporary battery connected, there are no new failure modes for the distribution equipment associated with the battery being replaced. The new failure mode for the temporary battery installation as a result of it not being fully seismically qualified is considered insignificant, due to the short duration for which the temporary configuration will be used. Duke Power Company has evaluated the temporary battery configuration from a probabilistic risk standpoint and has found that the temporary battery has no significant impact on the overall core melt frequency at McGuire.

For these reasons, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created.

The amendment would not involve a significant reduction in a margin of safety.

The vital batteries are required to power the emergency diesel generator load sequencers during certain accident conditions. Ultimately, safety-related equipment required to maintain the integrity of fission product barriers can depend upon proper performance of the sequencers, and therefore, the batteries. For the replacement batteries, no fission product barriers are affected by the battery changeout. Also, the temporary battery installation does not affect any fission product barriers. All required procedures and training governing operation with the temporary battery in place will be developed and implemented prior to conducting battery replacement. During the periods of battery replacement, if the temporary battery should become unavailable, then the affected 125 volt channel will be declared inoperable and the normal limiting conditions for operation will apply.

For these reasons, the amendment does not involve a significant reduction in any safety margin.

Based on the above and the supporting technical justification, Duke Power Company has concluded that there is no significant hazard consideration in this amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: April 18, 1991

Description of amendment request: The proposed change revises the list of radioactive material sources in Surveillance Section 4.14 subject to the 18 month periodic leak test by deleting the four area radiation monitor sources located inside the reactor building from paragraph 4 of the Specification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The change provides Surveillance Requirements consistent with the Limiting Condition for Operation Specification for leak testing of the sealed sources based on activity level, thus allowing reduced testing and reduction in radiation exposure to personnel. The reduction in activity level of the reactor building area monitors is due to the replacement of the installed test sources. As such, this change is effectively administrative in nature and therefore does not involve an increase in the probability or consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previous Evaluated.

This change is administrative in nature in that the Surveillance Requirements are being changed for consistency with the requirements for the Limiting Condition for Operation and, therefore, does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does not Involve a Significant Reduction in the Margin of Safety.

As this proposed change is administrative in nature to provide for consistency in the Surveillance requirements with the Limiting Condition for Operation, the margin of safety will not be reduced from this change to the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: April 18, 1991

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to replace the title "Director, Operations" in each unit's Section 6.0, "Administrative Controls" with the title "General Manager, Plant Operations". The proposed amendments would also revise TS Sections 6.8.2 and 6.8.3 to replace "General Manager" with "Major Department Head".

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated because the change is administrative in nature. The technical qualifications of the organization remains the same.

These changes do not alter the configuration or operation of the facility. All Limiting Conditions of Operations, Limiting Safety Systems Settings and Safety Limits specified in the current Technical Specifications remain unchanged.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility associated with these title changes and as such the plant conditions for which the design basis accidents have been performed are still valid. The plant operating and emergency procedures are unaffected with the possible exception of administrative changes to reflect the title changes. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

(3) Involve a significant reduction in the margin of safety.

The margins of safety are established through the Limiting Conditions of Operations, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications. Since there are no changes to the physical design or operation of the facility, these margins will not be changed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theordore R. Quay

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 19, 1987 as revised August 22, 1990

Description of amendment request: The amendment would replace Operating License Condition (OLC) 2.C.(23) "Fire Protection Program" with proposed OLC 2.C.(41) and relocate Technical Specifications (TS) 3/4.3.7.9 "Fire Detection Instrumentation", 3/4.7.6 "Fire Suppression Systems", 3/4.7.7 "Fire Rated Assemblies", and 6.2.2.e "Site Fire Brigade" from the TS to the Updated Final Safety Analysis Report (UFSAR) in accordance with NRC Generic Letter 88-12. Proposed OLC 2.C.(41) would reference the NRC approved fire protection program in the UFSAR and allow changes to this program provided the changes would not adversely affect fire protection effectiveness. A new requirement would be added to TS 6.0 "Administrative Controls" requiring the Plant Safety Review Committee (PSRC) to review changes to the approved fire protection program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. The proposed relocation of the TS requirements to the UFSAR is considered to be administrative in nature because no changes to existing requirements will be made. The Fire Protection Program as approved by the Commission will continue to be enforced through commitments contained in the UFSAR.

b. The proposed addition of a new requirement to the Administrative Controls section of the GGNS TS will require that the PSRC review changes to the approved Fire Protection Program allowed by OLC 2.C.(41). This review will be in lieu of formal NRC Staff review of those changes to the Fire Protection Program.

c. The proposed OLC 2.C.(41) will assure that the Commission approved Fire Protection Program is maintained and that proposed changes are evaluated in accordance with the Code of Federal Regulations 10 CFR 50.59.

d. Therefore, the probability and consequences of previously analyzed accidents are not increased.

2. This change would not create the possibility of a new or different kind of accident from any previously analyzed.

a. The proposed changes to the TS and OL do not affect the operation or function of any safety related equipment. The Fire Protection Program will continue to be maintained. No new modes of operation are being introduced. The Fire Protection Program will still have adequate control under the proposed operating license condition.

b. Therefore this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. This change would not involve a significant reduction in the margin of safety.

a. The Fire Protection Program as described in the UFSAR will not be reduced as a result of the relocation of TS requirements or the proposed OL condition. For any future changes to the program, the requirements of the operating license condition and 10 CFR 50.59 will assure that the margin of safety is maintained.

b. Therefore, this change will not involve a significant reduction in the margin of safety.

Entergy Operations - GGNS has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and therefore, involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

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standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: April 10, 1991

Description of amendment request: The amendment would alter Technical Specification 4.7.4 Surveillance Requirements to incorporate snubber population size as a factor in determining the time interval between visual inspections of snubbers. In addition, references to snubbers connected to a common hydraulic fluid reservoir would be deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. No significant increase in the probability or the consequences of an accident previously evaluated results from this proposed change because:

The changes incorporate the guidance and recommendations of Generic Letter 90-09 into the GGNS snubber inspection program. Entergy Operations concurs with the NRC Staff evaluation in the Generic Letter that changes consistent with the Generic Letter recommendations maintain the same confidence level in the operability of snubbers. Therefore, since this confidence level is unchanged, there is no significant increase in the probability or the consequences of an accident previously evaluated.

Deleting reference to a snubber feature (common hydraulic reservoirs) which is not present on any GGNS snubber, is an administrative change which will result in no significant increase in the probability or consequences of an accident previously evaluated.

2. This proposed change will not create the possibility of a new or different kind of accident than any previously evaluated because:

No physical changes or new modes of operation in any plant equipment are to be made by this proposed change; only the snubber inspection program will be changed and reference to a snubber feature not used at GGNS (common hydraulic reservoirs) is deleted. Therefore, the possibility of a new or different kind of accident than any previously evaluated is not created.

3. This proposed change does not involve a significant reduction in the margin of safety because:

The level of confidence in the operability (i.e., reliability) of GGNS snubbers is not affected by this proposed change, as evaluated by the NRC Staff in Generic Letter 90-09. No other impact on the margin of safety is possible due to the nature of this change. Therefore, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: April 17, 1991

Description of amendment request: This request would delete the St. Lucie Unit 1 Technical Specification 3/4.2.2, "Total Planar Radial Peaking Factor - F^T_{xy}" and all of its references. Advanced Nuclear Fuels Corporation (ANF) has performed the setpoint analysis for St. Lucie Unit 1 reloads ANF-1 through 4 using Axial Power Distributions (APDs) generated by using a one-dimensional (1-D) core model which required the presence of an F^T_{xy} limit. For the ANF-5 reload (current cycle) and future reloads, the ADPs were and will be generated using a three-dimensional (3-D) core model. The use of the APDs from the 3-D core model obviates the need for the F^T_{xy} parameter because a synthesis of the 1-D axial power distribution is no longer performed. The Nuclear Regulatory Commission (NRC) has determined that the use of the 3-D core model does not constitute a methodology change. Thus, the deletion of the F^T_{xy} Technical Specification limit is possible because ANF's 3-D power distribution methodology does not require it.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The [local power density (LPD) limiting safety systems settings (LSSS)] and LPD [limiting condition for operation] setpoints ensure that the core thermal limits are not exceeded. The setpoint analysis utilizes the total core peaking factor, F_q, and radial peaking factor, F_r, to established the operational limitations. The planar power peaking factor, F_{xy}, limitation was utilized in the synthesis of the total core peaking factor F_q. Improved physics methodology for core modeling to generate three-dimensional axial power distributions (APDs) obviates the need for the F_{xy} factor since it permits the direct calculations of F_q using the peak assembly Axial Power Distribution (APD).

The dependence of the LPD setpoint methodology on the Technical Specification F_{xy} limit is replaced with an equivalent dependence on the F_r Technical Specification limit.

Therefore, adherence to the FTechnical Specification effectively limits core F_q, and assures that the LPD setpoint methodology results will bound reactor operation.

With the exception of the replacement of F_r for F^T_{xy} there has been no change to the input or acceptance criteria used in the safety analysis. No [Final Safety Analysis Report (FSAR)] safety limits have been exceeded based on the proposed Technical Specification change. The FSAR conclusion that the design basis acceptance criteria are met for the Condition II events remain valid. Therefore, it can be concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect any active hardware involving plant operation nor does it alter the mode of operation of the plant. The limitation of the Planar Radial Peaking Factor - F^T_{xy}, is replaced with the equivalent limitation of the Total Integrated Radial Peaking Factor - F_r, as a result of the improved core modeling in the setpoint methodology. The proposed change creates no new accident initiators. Therefore, it can be concluded that the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve significant reduction in a margin of safety.

The deletion of the F^T_{xy} limit has been reviewed for the impact upon the current licensed safety analyses. Assumptions in the accident consequences remain valid. The changes caused by the proposed Technical Specification change are bounded by the assumptions in the accident analyses. Therefore, it can be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above, it has been determined that the proposed amendment does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: April 3, 1991

Description of amendment request: The proposed amendments would provide additional operational margin associated with the DNB parameters by changing the indicated values of the operating parameters as follows: (1) Reactor Coolant System (RCS) flow from greater than or equal to 277,900 gpm to greater than or equal to 275,000 gpm, (2) RCS average temperature from less than or equal to 576.6° F to less than or equal to 577.5° F, and (3) pressurizer pressure from greater than or equal to 2209 psig to greater than or equal to 2205 psig.

The proposed amendments would also revise the Bases Section 3/4.2.5, Power Distribution Limits, DNB Parameters, to reflect the changes listed above.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

RCS Flow

1. Operation of the facility in accordance with the proposed amendment[s] would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The current indication limit for RCS flow measurement uncertainty is based on the NRC mandated value of 3.5% based on Turkey Point Units 3 and 4 not providing a justification for a smaller value. This is the standard approach used by the [s]taff for such circumstances and has been determined to be acceptable by the [s]taff. With the removal of the RTD bypass manifolds, Westinghouse has performed an uncertainty calculation to determine the RCS flow measurement uncertainty based on revised plant procedures, techniques and the modified plant configuration. This calculation is specific to Turkey Point Units 3 and 4 and reflects the instrumentation and techniques utilized at these plants. The RCS flow measurement uncertainty calculated is 2.6% flow (without venturi fouling). Use of this calculated measurement uncertainty maintains the assumption of the safety analyses with regards to RCS flow, i.e., verification that RCS flow is greater than or equal to the thermal design flow. Since the RCS flow analysis assumption is not changed, the conclusions of the various affected safety analyses remain valid. Therefore, revision of the indication limit to reflect the modified procedures, techniques and plant configuration does not increase the probability or consequences of the affected accidents previously analyzed.

In summary, the revised indication limit continues to preserve the initial conditions of the plant safety analyses. Therefore, the results and conclusions of the analyses are consistent with those performed previously. Therefore, the proposed change does not affect the probability or consequences of accidents previously analyzed.

2. Operation of the facility in accordance with the proposed amendment[s] would not create the possibility of a new or different kind of accident previously evaluated.

The revised RCS flow value (275,000 gpm) reflects the removal of the RTD bypass manifolds.....and measurement of [h]ot [l]eg and [c]old [l]eg temperatures in a precise manner. Since the value noted preserves the verification of the measured RCS flow greater than or equal to thermal design flow, no new or different kind of accidents from that previously evaluated are created.

In summary, the revision reflects changes in plant design....and previously approved calculational methods. No new or different accidents from those previously evaluated have been created as a result of these revisions.

3. Use of the modified specification would not involve a significant reduction in the margin of safety.

The indication limit for measured RCS flow (275,000 gpm) maintains the initial condition for flow assumed in the safety analyses, i.e., RCS flow in the plant is verified to be greater than or equal to thermal design flow (268,500 gpm). The measurement uncertainty is calculated consistent with other plants using Westinghouse Setpoint Methodology. Therefore, the margin [of] safety is not reduced for this parameter.

In summary, the proposed revision to the Turkey Point Units 3 and 4 Technical Specifications explicitly reflects plant modifications...(e.g., RTD Bypass Elimination...license amendment) and previously approved Westinghouse uncertainty calculational methodology. The revision maintains the margin of safety previously defined in the current Technical Specifications by use of the same calculational approach and by maintaining the safety analyses assumptions and conclusions. The revised value provides increased operational margin through improved accuracy in instrumentation and measurement techniques without reduction in the previously defined margin [of] safety.

Tavg

1. Operation of the facility in accordance with the proposed amendment[s] would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The current indication limit for Tavg (576.6° F) is based on the accuracy of the Rod Control System utilizing analog process equipment throughout the control channel instrumentation. With the removal of the RTD bypass manifolds, digital process equipment has been installed for temperature[-]related protection functions. This digital equipment converts the RTD output to a digital signal which is processed for protection functions. The digital signal is then converted back to an analog signal for processing by the analog control system. The utilization of both analog and digital process equipment, along with increasing the number of [h]ot [l]eg RTDs utilized, results in a change in the uncertainty (+/- 1.0° F) of the Tavg Rod Control System. The increase in the control system uncertainty has been previously factored into the safety analyses as a revised initial condition. The Median Signal Selector has been utilized for the determination of the appropriate loop indicated Tavg for control system use. The Median Signal Selector satisfies the requirements of IEEE 279 with regards to control/protection system interaction. Thus, the conclusions of the various affected safety analyses are maintained. Therefore, revision of the indication limit to reflect the modified plant configuration and process instrumentation does not increase the probability or consequences of the affected accidents previously analyzed.

In summary, the revised indication limit (577.5° F) continues to preserve the initial conditions of the plant safety analyses. Thus, the results and conclusions of the analyses are consistent with those performed previously. Therefore, the proposed change does not affect the probability or consequences of accidents previously analyzed.

2. Operation of the facility in accordance with the proposed amendment[s] would not create the possibility of a new or different kind of accident previously evaluated.

The proposed revision maintains the assumptions made in the safety analyses performed to reflect the installation of the upgraded equipment and thus does not create the possibility of a new or different kind of accident.

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The revised indicated Tavg value (577.5° F) reflects the inclusion of a digital-to-analog process instrumentation interface. The additional instrument uncertainties present as a result of this interface have been determined and incorporated into the safety analyses assumptions. The conclusions of these analyses remain unchanged. Control/protection interaction has been addressed by the utilization of the Median Signal Selector for selection of the appropriate Tavg channel for control. Use of the Median Signal Selector assures selection of the appropriate Tavg channel even after a single Tavg channel failure and precludes the need for action by the protection system. This satisfies the requirements of IEEE 279. Based on this design feature and the continued validation of the safety analyses conclusions, no new or different kind of accidents from those previously evaluated are created.

In summary, the revision reflects changes in plant design currently under NRC review and previously approved calculational methodology. No new or different kind of accidents from those previously evaluated have been created as a result of these revisions.

3. Use of the modified specification would not involve a significant reduction in the margin of safety.

The indication limit for Tavg is based on the accuracy of the Rod Control System and the indication uncertainty in the control room. This limit maintains the initial condition for Tavg assumed in the safety analyses (579.5° F). The revised Rod Control System accuracy and the revised indication uncertainty have been evaluated and the conclusions of the affected safety analyses remain unchanged. Therefore, the margin [of] safety is not reduced for this parameter.

In summary, the proposed revision to the Turkey Point Units 3 and 4 Technical Specifications explicitly reflects plant modifications.... (i.e., RTD Bypass Elimination.....license amendment), and previously approved uncertainty calculational methodology. The revision maintains the margin to safety previously defined in the current Technical Specifications by use of the same calculational approach and by maintaining the safety [a]nalyses assumptions and conclusions. The revised value provides increased operational margin through improved accuracy in instrumentation and measurement techniques without reduction in the previously defined margin [of] safety.

Pressurizer Pressure

1. Operation of the facility in accordance with the proposed amendment[s] would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The current indication limit for pressurizer pressure (2280 psig) is based on the accuracy of the Pressurizer Pressure Control System and use of protection channel transmitters for indication in the control room. The input signal is currently generated by a Rosemount 1153GD9 transmitter with an instrument span of 600 psig. Turkey Point Units 3 and 4 are upgrading the protection channel transmitters to Rosemount 1154SH transmitters with an instrument span of 1000 psig. The control channel transmitters will remain as Rosemount 1153GD9 transmitters with a respanning of the instrument channel to 1000 psig. Both of these modifications result in a change to the indication limit. Uncertainty calculations have been performed for the modifications: the increased instrument span for the control channel results in an increased control system uncertainty. This increased uncertainty has been previously factored into the safety analyses as a revised initial condition. The conclusions of the various affected safety analyses are maintained. Utilization of the revised indication uncertainty, reflecting the use of the Rosemount 1154SH transmitters, preserves this initial condition assumption. The Rosemount 1154SH transmitters are similar in design to the 1153GD9, thus no significant increase in the probability of an accident previously evaluated has been determined. Since the conclusions of the safety analyses are maintained, no increase in the consequences of an accident previously evaluated has been determined.

In summary, the revised indication limit (2205 psig) continues to preserve the initial conditions of the plant safety analyses. Therefore, the results and conclusions of the analyses are consistent with those performed previously. Thus, the proposed change does not affect the probability or consequences of accidents previously analyzed.

2. Operation of the facility in accordance with the proposed amendment[s] would not create the possibility of a new or different kind of accident previously evaluated.

The proposed revision maintains the assumptions made in the safety and transient analyses performed to reflect the installation of the upgraded equipment and thus does not create the possibility of a new or different kind of accident. The revised indicated pressurizer (p)ressure value (2205 psig) reflects the transmitter replacement and respanning of the protection channels, used for control room indication, and the respanning of the control channel. The additional instrument uncertainties presented as a result of the channel respanning have been determined and previously incorporated into the initial condition assumptions of the safety analyses. The conclusions for these analyses remain unchanged. Control/protection interaction has been addressed by separation of the control and protection channels, i.e., no shared components, which addresses the requirements of IEEE 279. The design of the protection system replacement transmitters is similar to the present transmitters, thus no new or different kind of accidents from that previously evaluated are created.

In summary, the revision reflects changes in plant design currently under NRC review and previously approved calculational methods. No new or different accidents from those previously evaluated have been created as a result of these revisions.

3. Use of the modified specification would not involve a significant reduction in the margin of safety.

The proposed changes maintain a margin of safety consistent with that used to determine the original indicated values for the parameters noted, i.e., the same calculational methodology was used for both limits.

The indication limit for pressurizer pressure (2205 psig) is based on the accuracy of the Pressurizer Pressure Control System and the indication uncertainty in the control room. This limit maintains the initial condition for pressure assumed in the safety analyses (2185 psig). The revised control system accuracy and the revised indication uncertainty have been previously evaluated and the conclusions of the affected safety analyses remain unchanged. Therefore, the margin to safety is not reduced for this parameter.

In summary, the proposed revision to the Turkey Point Units 3 and 4 Technical Specifications explicitly reflects previously approved uncertainty calculational methodology. The revision maintains the margin of safety previously defined in the current Technical Specifications by using the same calculational approach and maintaining the safety analyses assumptions and conclusions. The revised value provides increased operational margin through improved accuracy in instrumentation and measurement techniques without reduction in the previously defined margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: April 22, 1991

Description of amendment request: The proposed amendments would change Technical Specification (TS) Table 4.8-1, "Diesel Generator Test Schedule," by deleting criteria for changing frequency of diesel generato (DG) tests based upon the number of failures in the last 100 valid tests. The amendments would not change corresponding criteria based upon the number of failures in the last 20 valid tests.

Basis for proposed no significant hazards consideration determination: TS Table 4.8-1 provides criteria for determining whether a DG should be tested at the normal frequency of every 31 days or at an accelerated frequency of every 7 days. The criteria for accelerated testing are either two or more failures in the last 20 tests or five or more failures in the last 100 tests. The table contains a footnote stating "The associated test frequency shall be maintained until seven consecutive failure free demands have been performed and the number of failures in the last 20 valid demands has been reduced to one." The footnote is invoked by the condition of two or more failures in the last 20 valid DG tests. By eliminating the five of 100 criterion from the table, the proposed change would leave this footnote as the only criterion for returning to the normal test frequency.

The existing TS Table 4.8-1 can result in excessive testing beyond that needed to demonstrate continued DG reliability. If the frequency of testing has increased to once per seven days as a result of exceeding the five of 100 criterion, there is no provision for returning to the normal test schedule until the number of failures is less than five out of the last 100 tests. On July 2, 1984, the NRC staff issued Generic Letter (GL) 84-15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," to address reliability goals for DGs and to provide typical TSs for testing DGs. The GL noted that excessive testing can result in degradation of diesel engines. The typical TS provided by the GL omitted the five of 100 criterion. The proposed change to Vogtle TS Table 4.8-1 is, therefore, consistent with GL 84-15.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

This change will not increase the probability or consequences of an accident previously evaluated because it only affects the criteria for entering and leaving the accelerated testing schedule. The operability requirements and limiting conditions for operation remain unchanged. The return to a normal testing frequency following a series of diesel failures that exceeded 2 out of the last 20 tests would be made only after 7 successful tests without a failure and at least 20 tests without more than 1 failure. Continued testing on a weekly rather than a monthly schedule will not significantly improve the ability to determine whether the most recent failure indicated a sudden change in diesel reliability. Therefore, such additional testing is considered unnecessary.

This change will not create the possibility of a new or different kind of accident from those previously evaluated in the FSAR because it does not involve any change in plant design or in the manner of any other plant operation. The criteria for initiating and suspending accelerated diesel testing are being slightly changed. This change does not result in a significant difference in the monitoring of diesel generator reliability.

The diesel generators will continue to provide a redundant source of acceptably reliable onsite power. The revised criteria for initiating and suspending accelerated diesel testing have an insignificant effect on diesel generator reliability and are acceptable according to GL 84-15. Therefore, the revision to the test frequency requirements does not involve a significant reduction in the margin of safety because it does not result in a reduction in diesel generator reliability or redundancy.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of amendments request: February 15, 1991.

Description of amendments request: The proposed amendment would change the minimum boration volume required by Technical Specification (TS) 3.1.2.8 from 7715 gallon to 5650 gallons and would reduce the maximum expected boration capability usable volume requirement for the RWST from 160,122 gallons to 69,215 gallons in the bases on TS page B 3/4 1-3; however, no change to the limiting condition for operation for the RWST is being requested here.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated? The minimum boration volume required to cooldown from Mode 1 to Mode 4 was recalculated using revised final boron concentration assumptions. These calculations were performed using boron concentration data which resulted from more detailed core models and which were more accurate than those employed in the original calculation of the boric acid storage tank (BAST) minimum volume requirement for Unit 2 Cycle 8 operation. The results of this calculation justified a minimum boration volume of 4905 gallons. Therefore, the above changes represent the application of a refinement to a previously used calculation model or design method, and do not result in a significant increase in the probability or consequences of an accident previously analyzed.

(2) Does the change create the possibility of a new or different kind of accident from any accident previously evaluated? It is expected that the boron concentration ranges assumed for the determination of the minimum boration volume requirements for Modes 1 through 4 can bound future cycles of operation of the D. C. Cook Nuclear Plant Unit 2. Other than the reduction in the minimum BAST boration volume alarm setpoint, no physical modifications to the plant are involved with this TS change request. Therefore, the changes do not create the possibility of a new or different kind of accident from any previously analyzed or evaluated.

(3) Does the change involve a significant reduction in the margin of safety? The computer code used in this analysis performs calculations to determine whether or not boron requirements dictated by fuel reload design are within existing limits specified in the Technical Specifications and the FSAR. This calculation was performed using boron concentration data that is more accurate than that employed in the previous Unit 2 Cycle 8 calculation and, therefore, does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: L. B. Marsh.

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Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: February 25, 1991

Description of amendments request: The proposed amendment would modify Technical Specification (TS) 4.0.3 such that the action requirements of the TS may be delayed for up to 24 hours to permit the completion of a missed surveillance when the allowable outage time limits of the action requirements are less than 24 hours. Guidance on this proposed change to the Technical Specifications was provided to all reactor licensees and applicants by Generic Letter 87-09, dated June 4, 1987.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

It is overly conservative to assume that systems or components are inoperable when a surveillance requirement has not been performed. A 24-hour time limit balances the risks associated with an allowance for completing the surveillance within this period against the risks associated with the potential for a plant upset and challenge to safety systems when the alternative is a shutdown to comply with action requirements before the surveillance can be completed. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves no physical modifications to the plant, introduces no new operating configurations, nor results in changes to the design basis. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

3. Does the change involve a significant reduction in the margin of safety?

The 24-hour time limit balances the risks associated with an allowance for completing the surveillance within this period against the risks associated with the potential for plant upset and challenge to safety systems when the alternative is a shutdown to comply with action requirements before the surveillance can be completed. Therefore, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: L. B. Marsh.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: February 27, 1991

Description of amendments request: The proposed amendment would change the Donald C. Cook Nuclear Plant Technical Specifications (TS) Section 3.6.3.1, "Containment Isolation Valves," to provide an exemption to the requirements of TS Section 3.0.4 to allow mode change with inoperable containment isolation valves provided the action requirements of the TS are met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed,

(2) Create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated, or

(3) Involve a significant reduction in a margin of safety.

Criterion 1

Adequate isolation of affected containment penetrations is ensured by following the requirements of the action statement in TS 3.6.3.1. This requires the penetration be isolated by at least one deactivated automatic valve secured in the isolation position or by use of at least one closed manual valve or blind flange. Continued power operation is permitted in Mode 1 with an inoperable containment isolation valve provided the requirements of the action statement are followed. The TS requirements are inconsistent, however, in that mode change is prohibited even though continuous power operation is permitted. Since the TS action requirements specify an adequate level of protection, we believe the change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: L. B. Marsh.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: February 28, 1991

Description of amendment request: The proposed amendment would change Millstone Unit 1 Technical Specification 3/4.14, "Plant Systems," to add limiting conditions for operation and surveillance requirements for the Reactor High Water Level Feedwater Trip Instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below. The proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The additions to the technical specifications are being proposed in response to Generic Letter 89-19. Specifications for the operation and surveillance of reactor high water level feedwater pump trip instrumentation are being added. The additional requirements for operability and surveillance of this instrumentation are presently contained in plant procedures, and thus adding the requirements to the technical specifications will not increase the probability or consequences of any transients or accidents.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

No new failure modes are introduced by the addition of the reactor pressure vessel (RPV) operation and surveillance specifications to the technical specifications. Modifying technical specifications to formally add surveillance requirements already in place with plant procedures and adding a note concerning test frequency will not modify plant response to any operational or transient event. Neither will this addition create a new or cause a different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The formal surveillance requirements being added in this change are consistent with what is currently performed for similar instrumentation with requirements already in technical specifications, and the added requirements are consistent with what is currently done for this instrumentation via plant procedures. Application of the note concerning test frequency is consistent with its application to instruments performing similar safety functions. Therefore, there is no impact on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: March 18, 1991 (Reference LAR 91-02)

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to implement snubber visual inspection intervals and corrective actions in accordance with NRC Generic Letter 90-09. The specific change to the TS involves revision of TS 4.7.7.1 and associated Bases by replacing the current requirements for snubber visual inspection intervals with the alternative requirements provided in NRC Generic Letter 90-09. Minor administrative modifications were made to the Generic Letter line item improvements to provide clarity and consistency upon incorporation into DCPP TS.

Implementing the proposed change will reduce future occupational radiation exposure by providing an alternative inspection schedule based on snubber category size. The alternate inspection schedule is based on the number of unacceptable snubbers found during the previous inspection, the total snubber category size, and the previous inspection interval.

In addition, the implementation of the alternative inspection schedule per Generic Letter 90-09 will allow for less frequent snubber inspections provided the results of ongoing inspections are favorable. The alternate schedule for visual inspections maintains the same confidence level for identifying defective snubbers as the existing schedule and is consistent with the NRC policy statement on TS improvements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The alternative visual inspection schedule was determined in Generic Letter 90-09 to have the same confidence level as the existing visual inspection schedule. In addition, the Actions required by current TS as a result of finding snubbers inoperable remain the same.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Replacing the current visual inspection schedule with the alternative visual inspection schedule provided in Generic Letter 90-09 will not affect the capability of DCPP snubbers to perform their intended function during normal or accident conditions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

As stated in Generic Letter 90-09, the alternative schedule for visual inspections maintains the same confidence level as the existing schedule. In addition, the proposed changes do not affect any of the Actions specified in TS which result from identification of inoperable snubbers.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: April 18, 1991

Description of amendment request: These amendments propose changes to the technical specifications to revise the isolation setpoint for the leak detection temperature function in the Turbine Building main steam tunnel. The technical specifications involved are Item 3i of Table 3.3.2-2, which specifies the temperature requirements, and Section 3/4.3.2 of the bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or

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consequence of an accident previously evaluated.

The FSAR does not analyze small leaks on which the temperature setpoints are based. This type of leak falls into the "Decrease in Reactor Coolant Inventory" (FSAR Section 15.6) accident category. Similar type accidents which result in coolant leakage outside containment are analyzed in FSAR Sections 15.6.2 (Instrument Line Break) and 15.6.4 (Steam System Piping Break Outside Containment). Both of these are postulated accidents with no causes identified and are categorized as limiting faults.

According to FSAR Subsection 7.3.1.1a.2.4.1.3, the leak detection high temperature trips "provide early indication of a steam line break." The system detects a precursor condition, i.e. through-wall pipe crack, which can potentially result in a steam line break accident. The impact of the proposed change is, therefore, evaluated compared to the steam piping break accident.

The radiological consequences of a 65 gpm leak fall well below the SRP acceptance criteria and below the dose for the steam line break accident analysis in the FSAR and SER (Table 15.6-9). A 65 gpm leak does not, therefore, increase the consequences of an accident as previously evaluated.

Increasing the temperature switch setpoints allow for higher leakage without automatically isolating the main steam line. The setpoints are low enough to isolate the leak prior to development of a catastrophic pipe break. The temperature switches thereby continue to form their safety function by preventing a main steam line break accident. The higher setpoints also reduce the risk of an inadvertent MSIV isolation accident (FSAR Section 15.2.4). The setpoint change, therefore, produces a net improvement in the safety performance of the system.

II. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Although small leaks of up to 65 gpm are not specifically analyzed in the FSAR, they are not a new type of accident. Leakage is a symptom of a precursor condition (through-wall crack) for a steam line break accident, analyzed in Section 15.6.4. The proposed change does not, therefore, create the possibility of an accident or malfunction of a different type than any evaluated previously in the FSAR.

III. The proposed change does not involve a significant reduction in a margin of safety.

The temperature switches and setpoints are listed in Technical Specification Section 3.3.2, "Isolation Actuation Instrumentation." The existing system does not satisfy the Technical Specification basis statement that "the setpoints ... are established at a level away from the normal operating range to prevent inadvertent actuation of the system involved." The proposed change reduces the risk of inadvertent isolation and, therefore, supports the Technical Specification basis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, D.C. 20037

NRC Project Director: Walter R. Butler

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: April 18, 1991

Description of amendment request: These amendments would make changes to the Susquehanna Steam Electric Station (SSES), Unit 1 and Unit 2 Technical Specifications to revise the pressure-temperature curves for compliance with 10 CFR Part 50, Appendix G, as requested in Generic Letter 88-11, and to delete the specimen withdrawal schedule as allowed by Generic Letter 91-01. The proposed changes affect Technical Specification Section 3.4.4.6, "Pressure/Temperature Limits" and Bases Section 3/4.4.6, "Pressure/ Temperature Limits."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. The proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed changes are administrative in nature. The analysis and revisions to the pressure-temperature curves were reviewed and accepted previously. This change incorporates into the Technical Specifications the previously approved curves.

The removal of the specimen withdrawal schedule from the Technical Specifications is administrative in nature since changes to this schedule are controlled by the requirements of 10CFR50, Appendix H and the specimen withdrawal schedule table in the Technical Specifications is a duplicate of the Appendix H requirements.

II. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

See Item I above.

III. The proposed change does not involve a significant reduction in a margin of safety.

See Item I above.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, D.C. 20037

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: April 30, 1991

Description of amendment request: The amendments would revise Section 4.7.4 and the associated Bases in the Technical Specifications (TS) regarding visual inspection of snubbers as suggested in NRC Generic Letter 90-09.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Implementing the recommendations as specified in GL 90-09 will not introduce any new failure mode and will not alter any assumptions previously made in evaluating the consequences of an accident since the same confidence level exists for ensuring snubber operability. The proposed changes do not affect limiting safety system setting or operating parameters, and do not modify or add any accident initiating events or parameters. Therefore, the proposed change does not cause an increase in the probability or consequences of an accident previously evaluated.

2) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the LGS Unit 1 and 2 TS for implementing the recommendations specified in GL 90-09 do not involve any physical alterations to plant equipment, changes to setpoints or operating parameters, nor does it involve any potential accident initiating event. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3) The proposed change does not involve a significant reduction in the margin of safety.

The proposed changes maintain(s) the same confidence level so that currently provided by the TS for determining snubber operability. Accordingly, the existing margin of safety will be maintained. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: November 22, 1989

Description of amendment request: The amendments would revise the Technical Specifications (TS) to incorporate a surveillance requirement for the safety-grade pneumatic supply to the containment purge/vent valve inflatable seals. In a letter to Philadelphia Electric Company dated May 8, 1989, the NRC staff had requested the licensee to submit a TS which addresses the proposed surveillance requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes to the Peach Bottom operating licenses do not constitute a significant hazards consideration in that they do not:

i) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes provide additional means of ensuring operability of the new safety grade pneumatic supply system and correct an administrative error. These changes serve to enhance plant safety and would not involve a significant increase in the probability or consequences of an accident as previously evaluated in Chapter 14 of the PBAPS Updated Final Safety Analysis Report.

ii) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The implementation of the new safety grade pneumatic supply system was reviewed and accepted by the NRC. Implementation of a surveillance requirement to demonstrate an adequate supply of liquid nitrogen and operability of the system will not create the possibility of a new or different kind of accident from any previously evaluated. The correction of an administrative error will not create the possibility of a new or different kind of accident from any previously evaluated.

iii) Involve a significant reduction in a margin of safety.

The proposed surveillance provides additional assurance that the new safety grade pneumatic supply system will function as designed; thus, there is no reduction in a margin of safety. The correction of an administrative error does not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 28, 1990

Description of amendment request: The amendments would revise the Administrative Controls Section (Sections 6.3.1 and 6.3.2) of the Technical Specifications (TS) to require that members of the facility staff shall meet or exceed the minimum qualifications of ANSI/ANS-3.1-1981 standard "Selection, Qualification and Training of Personnel for Nuclear Power Plants".

In 1989, the Philadelphia Electric Company (PECo) and the Commonwealth of Pennsylvania (Commonwealth) negotiated a settlement for "resolving several Peach Bottom-related restart issues raised by the Commonwealth as well as Peach Bottom-related litigation which has been initiated by the Commonwealth". By letter dated June 27, 1989, the NRC advised PECo that we did not object to the said agreement. As part of the agreement, PECo agreed to submit an application to the NRC requesting an amendment to the Peach Bottom Atomic Power Station (PBAPS) Units 2 and 3 TS such that PECo would commit to standards set forth in ANSI/ANS-3.1-1981 entitled, "Selection, Qualification and Training of Personnel for Nuclear Power Plants" for PBAPS. Additionally, the agreements stated that the TS Amendment may specify, however, that to the extent that the standards set forth in ANSI/ANS-3.1-1981 apply to individual job positions at Peach Bottom, those standards shall not apply to PECo employees holding those positions as of February 27, 1989, so long as those individuals continue to hold those positions. The subject application satisfies this commitment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes to the Peach Bottom operating licenses do not constitute a significant hazards consideration in that they do not:

i) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The upgrade in personnel selection, qualification and training standards to ANSI/ANS-3.1-1981 will ensure equivalent or higher levels of education, experience and training of plant personnel. These equivalent or higher standards in personnel selection, qualification and training will serve to reduce the probability of an accident as previously evaluated from occurring, and reduce the consequences of an accident as previously evaluated.

Wording has been included in the Technical Specifications change which ensures that all qualification and training requirements for the INPO accreditation programs are included as part of the facility staff qualifications and the PBAPS training program. At Peach Bottom, 11 training programs are INPO accredited. This is an administrative change to the Technical Specifications which will not involve a significant increase in the probability or consequences of an accident as previously evaluated.

ii) Create the possibility of a new or different kind of accident from any accident previously evaluated.

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The change of the Technical Specifications from the current requirements of ANSI N18.1-1971 to ANSI/ANS-3.1-1981 and the INPO accreditation requirements are administrative changes which will increase the level of standards for selection, training and qualifications of plant personnel and will not create a new or different kind of accident than previously evaluated.

iii) Involve a significant reduction in a margin of safety.

The change of the Technical Specifications from the current requirements of ANSI N18.1-1971 to ANSI/ANS-3.1-1981 and the INPO accreditation requirements are administrative changes which will result in an increase in personnel selection, qualification and training standards and serve to increase margins of safety as defined in the PBAPS Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: July 13, 1990

Description of amendment request: The amendments would revise the Administrative Controls Section (Section 6.0) of the Technical Specifications (TS) to establish provisions for a Station Qualified Reviewer (SQR) Program. In a nuclear power facility almost everything is covered by a procedure, from operations and maintenance to emergency operations, security and document control. There are in the order of 10,000 procedures. At present, all new procedures and procedure changes have to be reviewed by the Plant Operations Review Committee (PORC), which represents senior management in most disciplines. The proposed amendments will permit some procedures and changes thereto to be reviewed by a qualified reviewer and approved by a senior manager who is knowledgeable in the functional area involved. There will be controls to ensure there are multilevels of review, that the reviewers are trained and qualified, that procedure changes are subjected to cross-disciplinary review when appropriate and that some procedures (or changes thereto) are still reviewed by PORC and approved by the Plant Manager.

The SQR Program has been approved for Limerick, Units 1 and 2 which are also owned and operated by Philadelphia Electric Company. The Program has also been approved for Salem, Units 1 and 2, and Hope Creek, which are operated by Public Service Electric and Gas Company, a co-owner of Peach Bottom, Units 2 and 3. The NRC staff has inspected the functioning of the SQR Program at these facilities and will factor this into our evaluation.

The licensee is also proposing some reformatting of Sections 6.8.1 and 6.8.4 without changing the meaning and adding some additional records to the list in Section 6.10 that must be retained. These are minor administrative changes with no safety significance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

i) The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated because (1) PORC will still review procedures and procedure changes that require a 10 CFR 50.59 Safety Evaluation, (2) the review/approval process will be controlled by Administrative procedures, which will continue to be reviewed by PORC and approved by the Plant Manager, (3) qualified personnel knowledgeable in the affected functional area will review each procedure and procedure change, and (4) the SQRs will be required to consider and document whether cross disciplinary review is necessary, and such reviews, if necessary, shall be performed prior to approval. This Technical Specification change will add more detailed requirements regarding procedure review and approval to the Technical Specifications which will strengthen the controls over the process. The SQR program will provide a safety review process for procedures commensurate to that of the existing process.

The miscellaneous administrative changes cannot affect the probability or consequences of an accident because they do not affect operations, equipment, or any safety-related activity.

ii) The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated. No physical changes to the plant or changes in operating procedures are being proposed. The changes are purely administrative and will not have any direct affect on equipment important to safety. Changing the process by which procedures are reviewed and approved cannot in itself create the possibility of a new or different kind of accident. Furthermore, since the controls for review and approval of procedures and procedure changes will be commensurate with the existing process, the likelihood of implementing a procedure that could create the possibility of an accident is not affected. A 10 CFR 50.59 review of each new procedure and permanent procedure change will be performed.

The miscellaneous administrative changes cannot create the possibility of an accident because they do not affect operations, equipment or any safety-related activity.

iii) The proposed revisions do not involve a significant reduction in a margin of safety because a process controlled by Administrative Procedures using qualified personnel approved by the PORC Chairman will be in place to review new procedures and procedure changes. A 10 CFR 50.59 review of each new procedure and permanent procedure change will be performed and PORC will continue to review those that require a 10 CFR 50.59 Safety Evaluation. Cross disciplinary reviews will be conducted as appropriate, and the independent Quality Assurance organization will monitor the effectiveness of implementation of the 10 CFR 50.59 review process through audits, surveillances and/or assessments. Thus, margins of safety will be maintained once the SQR program is implemented.

The miscellaneous administrative changes cannot reduce any margin of safety because they do not affect any safety related activity or equipment. These changes increase the probability that the Technical Specifications are correctly interpreted by clarifying information, and will require that additional records be retained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: December 31, 1990

Description of amendment request: The amendments would revise the Surveillance Requirements (SR) (4.6.G) and the associated Bases for the Structural Integrity portion of the Technical Specifications (TS). The principal change is to add a sentence as requested in NRC Generic Letter (GL) 88-01, "NRC Position on IGSCC in BWR Austenitic Stainless Steel Piping" to read:

The Augmented Inservice Inspection (ISI) Program for piping shall be performed in accordance with the staff positions on schedule, methods, personnel and sample expansion as provided by NRC Generic Letter 88-01 or in accordance with alternate measures approved by the NRC staff.

There are some other minor changes being made to SR 4.6.G to delete obsolete provisions or to enhance clarity and consistency. These changes are:

(1) Delete existing Surveillance Requirement 4.6.G on page 149b.

(2) Delete existing Table 4.6.1 entitled "Inservice Inspection Program for Peach Bottom Units 2 and 3" on page 150.

(3) Insert proposed Surveillance Requirement 4.6.G.1 on page 149b which states:

Inservice inspection of ASME Code Class 1, 2 and 3 components shall be performed in accordance with Section XI of the ASME Boiler and Pressure Vessel Code and applicable Addenda as required by 10 CFR Part 50, Section 50.55a(g), except where relief has been granted by the Commission pursuant to 10 CFR Part 50, Section 50.55a(g)(6)(i) and (a)(3).

(4) Insert proposed Surveillance Requirement 4.6.G.3 on page 149b which states:

Nothing in the ASME Boiler and Pressure Vessel Code shall be construed to supercede the requirements of any Technical Specification.

(5) Delete the existing Bases for 3.6.G and 4.6.G on pages 161, 162 and 163 and replace them with a discussion which reflects the proposed specifications.

(6) Revise Table of Contents page vi to reflect deletion of Table 4.6.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

i) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

These proposed changes delete obsolete provisions in the Technical Specifications and replace them with provisions of the Standard Technical Specifications (STS) for General Electric Boiling Water Reactors, NUREG-0123, Revision 3. This will enhance safety by eliminating any potential confusion associated with the obsolete provisions.

These proposed changes also incorporate requirements to adhere to the NRC staff positions on schedule, methods, personnel, and sample expansion as provided by NRC Generic Letter 88-01, "NRC Position on IGSCC in BWR Austenitic Stainless Steel Piping." Implementation of this requirement will increase the inspection frequency of various welds susceptible to intergranular stress corrosion cracking (IGSCC). This increased inspection frequency will allow early identification of any potential structural integrity hazards, thereby reducing the probability of any accidents previously evaluated, specifically, accidents associated with pipe breaks.

These proposed changes do not affect the initial conditions or precursors assumed in any Updated Final Safety Analysis Report Section 14 accident analyses. Further, these proposed changes do not decrease the effectiveness of equipment relied upon to mitigate the previously evaluated accidents.

ii) The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

These proposed changes will enhance the reliability of components contributing to the structural integrity of the plant. Implementation of these proposed changes will not affect the design function or configuration of any component or introduce any new operating scenarios or failure modes. Therefore, these proposed changes do not create the possibility of a new or different kind of accident.

iii) The proposed changes do not involve a significant reduction in a margin of safety.

These proposed changes impose additional restrictions which have already been approved by the NRC through issuance of the Standard Technical Specifications and Generic Letter 88-01. These proposed changes do not adversely affect the assumptions or sequence of events used in any accident analysis and consequently do not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: February 20, 1991

Description of amendment request: The proposed changes described in this request are in accordance with the guidance provided in NRC Generic Letter 87-09. The proposed changes revise the general requirements on the applicability of limiting conditions for operation and surveillance requirements in Sections 3.0.4, 4.0.3 and 4.0.4 and update the corresponding Bases sections to reflect these modifications. The proposed changes also incorporate NRC proposed improvements to the Bases for unchanged portions of Sections 3.0 and 4.0. The proposed changes are described in further detail below.

1. Changes to Specification 3.0.4 Specification 3.0.4 would be modified in accordance with the guidance in Generic Letter 87-09 by allowing mode changes in accordance with the action requirements when conformance to them permits continued operation for an unlimited period of time. In addition, because the present Technical Specifications (TS) omit the phrase "or to" from the sentence stating that this provision shall not prevent passage through or to operational modes as required to comply with action requirements, Public Service Electric and Gas Company (PSE&G) has proposed an appropriate correction. Finally, the section of this specification would be labeled to avoid confusion and provide additional clarification.

2. Changes to Specification 4.0.3 Specification 4.0.3 would be modified in accordance with the guidance of Generic Letter 87-09 by incorporating the 24 hour allowance and making the suggested editorial changes.

3. Changes to Specification 4.0.4 Specification 4.0.4 would be modified in accordance with the guidance of Generic Letter 87-09 by incorporating the sentence which clarifies that this specification shall not prevent passage through or to operational modes to comply with action requirements.

4. Bases Changes The Bases for Specifications 3.0.4, 4.0.3, and 4.0.4 would be updated to reflect the changes incorporated into the specifications. The Bases for unchanged portions of Sections 3.0 and 4.0 would also be modified in accordance with the

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guidance in Generic Letter 87-09. Included would be additional clarifications (1) in the Bases for Specification 3.0.4 regarding the word "shutdown" and regarding exemptions to the specification, and (2) in the Bases for Specification 4.0.3 regarding the NRC position on when the time interval begins for surveillances which cannot be performed until certain conditions are attained.

An editorial change to the Bases for Specification 3.0.5 is also proposed. The present Bases, which is based on a Standard plant design with two Emergency Diesel Generators (EDGs), is being revised to reflect the fact that Salem Nuclear Generating Station uses three EDGs. The change does not affect any Technical Specification requirements.

5. Changes to Individual Specifications The 3.0.4 exemptions would be removed from those specifications which meet the modified removal criteria agreed to by the NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes to the SGS Technical Specifications:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

A. Changes to Specification 3.0.4 The existing requirements of Specification 3.0.4 prohibit entry into an operational mode or other specified condition unless the LCO is met without reliance on the action requirements. In general, specifications that have action requirements that allow unlimited continued operation contain exemptions to Specification 3.0.4; however, the 3.0.4 exemptions have not been consistently applied and some specifications which have action statements which provide an acceptable level of safety to permit continued operation for an unlimited amount of time do not contain exemptions to the requirements of Specification 3.0.4. Entry into an operational mode or other specified condition in accordance with the action requirements is consistent with the NRC's regulatory requirements for an LCO that has an action requirement permitting unlimited continued operation. The NRC staff has stated in Generic Letter 87-09 that Specification 3.0.4, as it currently exists, unduly restricts facility operation when conformance to the action requirements provides an acceptable level of safety for continued operation. The changes being proposed to Specification 3.0.4 therefore allow entry into an operational mode or other specified condition in accordance with the action requirements for all LCOs having action requirements which permit continued operation for an unlimited amount of time, and thereby provide for consistent application of the provisions of this specification. Each LCO affected by the proposed changes to Specification 3.0.4 has been evaluated. The evaluation has verified that the remedial measures contained in the action requirements for each affected LCO provide an acceptable level of safety to permit the use of the proposed Specification 3.0.4. Since conformance to the action requirements for the affected specifications establishes an acceptable level of safety for unlimited continued operation, the proposed changes to Specification 3.0.4 will not significantly increase the probability or consequences of a previously analyzed accident or malfunction of equipment important to safety.

B. Changes to Specification 4.0.3 Since the vast majority of surveillance tests demonstrate that systems or components are operable, it is overly conservative to assume that a system or component is inoperable solely because a surveillance test has not been performed. When a surveillance is missed, the question is primarily one of unverified operability which can be demonstrated by performing the specified surveillance test. Specification 4.0.3, as it currently exists, assumes immediate equipment inoperability. Since the allowable outage time limits of some action requirements do not provide an appropriate time period for performing a missed surveillance before shutdown requirements apply, a time limit of 24 hours is being proposed as an acceptable period in which to complete a missed surveillance test. As stated in the generic letter, the proposed 24 hour period balances the risks associated with allowing continued operation during completion of the missed surveillance against the risks associated with the potential for a plant upset or challenge to safety systems when the alternative is a plant shutdown to comply with the action requirements before the surveillance can be completed. The proposed changes to Specification 3.0.4 will therefore not significantly increase the probability or consequences of any previously analyzed accident or malfunction of equipment important to safety.

C. Changes to Specification 4.0.4 As stated in the Generic Letter, it is not the intent of Specification 4.0.4 to prevent passage to or through operational modes to comply with action requirements and it should not apply when mode changes are imposed by action requirements. The potential for a plant upset and challenge to safety systems is heightened if surveillances are performed during shutdown to comply with action requirements.

Therefore, the proposed change will not significantly increase the probability or consequences of a previously analyzed accident or malfunction of equipment important to safety.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

A. Changes to Specification 3.0.4 Implementation of the proposed change to TS 3.0.4 has been evaluated and determined to be consistent with the present accident analyses. The proposed relaxation in mode change restrictions for these TS which presently allow unlimited continued operation upon successful completion of remedial measures will not introduce any new accident scenarios for the Salem Generating Station. The proposed changes will therefore not create the possibility of a new or different kind of accident from any accident previously evaluated.

B. Changes to Specifications 4.0.3 and 4.0.4 The proposed changes to Specifications 4.0.3 and 4.0.4 do not involve any modifications to existing plant equipment, do not alter the function of any plant systems, and do not introduce any new operating configurations or new modes of plant operation. The proposed changes will therefore not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in any margin of safety. Conversely, the proposed changes provide numerous benefits as described below.

A. Changes to Specification 3.0.4 The changes to Specification 3.0.4 provide for consistent application of 3.0.4 exceptions. Each TS affected by the proposed changes to Specifications 3.0.4 have been evaluated. The evaluation has verified that the remedial measures contained in the action requirements for each affected LCO provide an acceptable level of safety to permit the use of the proposed Specification 3.0.4.

B. Changes to Specification 4.0.3 The changes to Specification 4.0.3 provide a time limit for performing missed surveillances which balances the risks associated with allowing continued operation during completion of the missed surveillance against the risks associated with the potential for a plant upset and challenge to safety systems when the alternative is a plant shutdown to comply with the action requirements before the surveillance can be completed.

C. Changes to Specification 4.0.4 The proposed changes to Specification 4.0.4 eliminate potential conflict between individual TSs, Specification 4.0.3, and Specification 4.0.4.

As a result, the potential for unnecessary shutdowns, delayed start-ups, plant upsets, and challenges to safety systems will be reduced by implementing the proposed changes, and the proposed changes will not result in a reduction of any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhan, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, D.C., 20005-3502

NRC Project Director: Walter R. Butler

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: December 7, 1990

Description of amendment request: The proposed change would revise Technical Specification Section 6.4, Training, by replacing references to Sections 5.1 and 5.2 of the 1981 American National Standard Institute (ANSI) Standard 3.1 with references to 10 CFR 55.13(a)(4) and 10 CFR 55.19(c). The referenced ANSI Standard was superseded by the issuance of 10 CFR Part 55.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The proposed amendment to Section 6.4 is consistent with example (i) which states, "A purely administrative change to TS: for example, a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature." SCE&G has determined that a no significant hazards evaluation is justified and that should this request be implemented it will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated because no plant equipment has been changed. This amendment is an administrative change involving the deletion of superseded requirements and incorporation of the revised regulation in 10 CFR 55.

2. Create the possibility of a new or different kind of accident from any previously evaluated because the proposed amendment is an administrative change involving the deletion of superseded documents and incorporation of revised regulation. No physical plant configuration, setpoint or operation changes are proposed.

3. Involve a significant reduction in a margin of safety because this amendment is an administrative change involving the deletion of superseded requirements and the incorporation of revised regulation in 10CFR55.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: May 2, 1991

Description of amendment requests: The licensee proposes to revise Technical Specifications (TS) 3/4.7.6 and associated Bases, "Snubbers," in accordance with Generic Letter 90-09, "Alternative Requirements For Snubber Visual Inspection Intervals and Corrective Actions," dated December 11, 1990. Specifically, TS 4.7.6.b, "Visual Inspections," and TS 4.7.6.c, "Visual Inspection Acceptance Criteria," would be revised to remove the existing snubber visual examination schedule and replace it with a refueling outage based visual examination schedule as delineated in Generic Letter 90-09 (TS line item improvement).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

Snubbers are installed to maintain the structural integrity of systems and components which either mitigate the consequences or failure of which may initiate a previously analyzed accident. The proposed change revises the visual inspection schedule based on the number of INOPERABLE snubbers for various snubber populations found during the previous inspection interval and the length of the previous inspection interval and generally increases the length of the surveillance interval. Considering the large population of snubbers at San Onofre Units 2 and 3, consistent with Generic Letter 90-09, use of the proposed visual examination schedule will not significantly reduce the confidence level for snubber operability provided by the existing visual examination schedule. Visual inspections and functional testing will continue to provide a 95 percent confidence level that 90 to 100 percent of the snubbers operate within the specified acceptance limits. Changes to the visual inspection acceptance criteria are clarifications only and do not change the intended meaning of the criteria. Therefore, the proposed change will not significantly increase the probability or consequences of previously evaluated accidents.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed Technical Specification change does not change the number, type, design, function, or remaining service life of snubbers in either Unit 2 or 3. The proposed change does not alter the configuration of the facility, plant operation, or accident analysis assumptions. The increase in the length of snubber visual inspection intervals and clarifications of existing visual inspection acceptance criteria have no effect on accidents. Changes to the visual inspection criteria are clarifications only and do not change the intended meaning of the criteria. The proposed TS change will maintain the snubber operability confidence level within Generic Letter 90-09 specified limits. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed change does not alter the configuration of the facility, plant operation, or accident analysis assumptions. Taking credit for the large number of snubbers at San Onofre Units 2 and 3, the proposed change will generally increase the snubber visual inspection intervals. However, the margin of safety will not be significantly reduced because the confidence level for snubber operability provided by the existing visual examination schedule will not be reduced significantly, and the confidence level will remain within Generic Letter 90-09 specified limits for snubber operability. Even though the intended meaning of the visual inspection criteria is not changed, the clarifications may decrease the likelihood of a misinterpretation of the criteria which would increase margins of safety. Therefore, operation of the facility in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests

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involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer

TU Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas

Date of amendment request: March 27, 1991

Description of amendment request: The current Comanche Peak Steam Electric Station (CPSES) Technical Specifications do not address the safety-related Safety Chilled Water System. This system is relied on to provide both normal and post-accident engineered safety feature room cooling. The proposed amendment introduces Technical Specification (TS) 3/4.7.12 to the Technical Specifications for the Safety Chilled Water System.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed [limiting condition for operation] LCO does not alter any of the assumptions used in the safety analyses for CPSES Unit 1 because the capability of the Safety Chilled Water System to transfer heat from its supported safety systems to the [Component Cooling Water] CCW system under normal and accident conditions is maintained. The LCO ensures suitable redundancy to assure that for onsite electric power system operation (assuming offsite power is not available) the system safety function can be accomplished assuming a single failure.

The proposed surveillance requirements will enhance the reliability of the chillers because they will enforce a periodic inspection of the chiller that is in a standby mode. This surveillance will assure all valves, pumps and components will perform as required and the chiller will perform its safety function.

These surveillance requirements are commensurate with the CCW and [Station Service Water] SSW system surveillance requirements.

Therefore, the proposed Technical Specification change has no effect on the probability or consequences of any accident previously evaluated for CPSES Unit 1.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed LCO, surveillance requirements and BASES do not involve any hardware changes or any revisions in how the system functions. Therefore, no new failure modes are created and no possibility for new or different kinds of accidents is created.

3. Involve a significant reduction in the margin of safety.

The margin of safety for the Safety Chilled Water System relative to Technical Specifications is preservation of the single failure criterion. The proposed LCO with respect to Safety Chilled Water System satisfies the single failure criteria provided [in] General Design Criterion 44, Cooling Water.

Standard Technical Specifications issued for use on CPSES Unit 1 provide the bases for the limitations placed on cooling water systems with redundant cooling capacity and which, assuming a single failure, are consistent with the assumptions used in the safety analyses. The standard time allowed to restore an inoperable train of such cooling water systems is 72 hours. Because the proposed Technical Specification invokes this time limit, there is no reduction in the margin of safety which forms the basis for CPSES Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036

NRC Project Director: George F. Dick, Jr., Acting Director

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: April 12, 1991

Description of amendment request: The proposed amendment would incorporate the balance of Regulatory Guide (RG) 1.97, Revision 2, Category 1 parameters into the Technical Specifications for the Sequoyah Nuclear Plant, Units 1 and 2. This issue was addressed previously by NRC letter dated December 7, 1990, which also forwarded Amendment No. 149 for Unit 1 and Amendment Number 135 for Unit 2. This letter also requested that certain other specified changes be submitted.

In response, the licensee has proposed the following changes to the Technical Specifications (TSs): (1) add the Essential Raw Cooling Water (ERCW) to Auxiliary Feedwater (AFW) valve position instrumentation and Containment Isolation Valve (CIV) position instrumentation to TS Table 3.3-10, "Accident Monitoring Instrumentation;" (2) specify the minimum number of channels required for reactor coolant T-hot and T-cold indication instrumentation in Table 3.3-10; (3) specify the total number of channels and the minimum number of channels required for the steam generator wide range level indication, the reactor vessel level indication, and the incore thermocouple instruments in Table 3.3-10; (4) modify the action statement for the reactor coolant system subcooled margin monitor in Table 3.3-10; (5) modify incore thermocouple Action Statement 1 in Table 3.3-10; (6) delete Action Statement 6 in Table 3.3-10; (7) revise the reference in the Notes for Action Statements 1 and 5 from Table 3.3-6 to Limiting Condition for Operation (LCO) 3.3.3.5 in Table 3.3-10; (8) modify the allowable outage times (AOTs) and add the requirement that the plant be in HOT STANDBY (Mode 3) within 6 hours and then in HOT SHUTDOWN (Mode 4) within 12 hours in Action Statements 1, 2, and 5 for Table 3.3-10; (9) change the AOT in Action Statement 4 for Table 3.3-10 from 7 to 30 days and clarify the required timeframe for completion of the special report; (10) delete four of the steam generator blowdown valves from CIV Table 3.6-2; (11) update the corresponding Basis Sections and correct a typographical error; and (12) delete Administrative Section 6.8.5, Item d.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes proposed do not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes proposed cannot increase the probability of an accident since the proposed changes cannot affect components that can cause an accident. The addition of the ERCW to AFW valve and CIV position indication can decrease the consequences of an accident previously evaluated in that the TSs provide for a limited out-of-service time and their availability can help in mitigating the consequences of an accident. The change for the action requirements for the loss of subcooling margin monitoring does not increase the consequences of any event since plant shutdown will be required in lieu of adding an additional crew member. The consequences of an event are not significantly increased by the change to the AOT for Action Statements 1, 2, or 5 since channel redundancy and/or the relatively short AOT ensures that sufficient information exists to mitigate the consequences of an accident and that there is a relatively low probability of an event requiring PAM instrumentation during the AOT.

The deletion of the four inboard steam generator blowdown valves does not increase the consequences of an accident since adequate isolation capability remains with the outboard isolation valves and the closed inboard system.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The changes proposed cannot increase the possibility of a new or different kind of accident from any previously analyzed. The PAM indicators and CIVs themselves cannot create an accident. In a postaccident condition, the PAM indicators serve to help the operator mitigate the event. The CIVs that were deleted are redundant and not required by 10 CFR 50. Loss of function of these valves would not increase the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in any margin of safety. The proposed changes to the PAM instrumentation do not affect the design of the safety-related components relied upon to automatically mitigate the consequences of any design basis event occurring while in Modes 1, 2, or 3. Since there is not a significant increase in the consequences of any accident previously evaluated, a significant reduction in any margin of safety cannot exist.

The margin of safety is not significantly reduced for the proposed change to delete the four inboard steam generator blowdown valves since adequate containment isolation exists with the presence of the outboard isolation valves and the inboard closed system.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: September 18, 1990

Description of amendment request: The proposed changes would revise the ACTION statement to Technical Specification (TS) 3/4.6.1.3, to specify actions to be taken in the event of an inoperable interlock mechanism in one or both primary containment airlocks. The current TSs address inoperable airlocks or airlock doors, but do not explicitly address the specific case of an inoperable interlock mechanism. The proposed changes would further revise TS 3/4.6.1.3 to allow use of an operable airlock door for a cumulative time not to exceed 1 hour per year, when the second door in that airlock is inoperable. Current TSs allow such use only for repair of an inoperable inner airlock door.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

This change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence of a previously evaluated accident is not increased because the containment airlocks do not affect the initiation of any accident. Therefore, this change to add action requirements for an inoperable airlock interlock mechanism and to revise the wording of the footnote addressing use of the operable airlock door can not increase the probability of an accident previously evaluated.

The consequences of an accident remain bounded by conditions which exist prior to this change, since operation under the provisions of the proposed changes to the airlock Actions does not produce potential containment leakage paths beyond the currently approved Technical Specifications. For the inoperable airlock interlock mechanism, at least one OPERABLE airlock door will be maintained closed at all times thus meeting the requirements for the airlock doors. In the case of having one airlock door inoperable, the OPERABLE door on that airlock cannot be used for more than 1 hour per year which is the same restriction in place under the existing Technical Specification. In approving the current restriction, the NRC previously evaluated the potential for an event requiring primary containment integrity occurring during the limited time when an airlock door is inoperable and its associated operable door is open, and determined that it is sufficiently remote to justify limited access when required. This change maintains the same cumulative time limit for these entries but revises the restrictions on the circumstances required to exist to allow entry. Therefore, the changes addressing the interlock mechanism and the current footnote cannot increase the consequences of any accident previously evaluated by the NRC.

This proposed changes does not create the possibility of a new or different kind of accident from any previously evaluated.

Containment airlocks are designed and assumed to be used for entry and exit. Their operation does not interfere with the reactor coolant pressure boundary or any other mechanical or electrical controls which could impact the operations of the reactor or its direct support systems. Therefore, a new or different accident cannot be created. As discussed above, the integrity of the containment is maintained as long as at least one OPERABLE airlock door is closed. The proposed change to the airlock door interlock mechanism does not change the requirement to have at least one OPERABLE door closed at all times. Instead, it assures that this is, in fact, still occurring by locking one door closed, or by stationing an individual dedicated to assuring that one OPERABLE door is always closed. As such this proposed change does not create the possibility of a new of different type of accident. Likewise, the proposed change to the * footnote does not create the possibility of a new of different kind of accident, since the conditions of the containment and its airlocks remains unchanged and the actual operating mode and procedures for the airlock are unaffected by these Technical Specification changes.

The proposed change does not involve a significant reduction in the margin of safety.

The applicable margin of safety consists of maintaining the primary containment leak rates within the assumptions of the design basis accident analysis. With regard to the containment airlocks, these leak rates are maintained provided at least one operable airlock door remains closed during the event. The period of time that an airlock could have no operable door closed was previously limited to "a cumulative time not to exceed 1 hour per year." This time remains unchanged, therefore, the margin of safety is not reduced.

With an inoperable interlock, the proposed action will still maintain at least one operable airlock door closed at all times. Therefore, the assumed margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

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NRC Project Director: John N. Hannon.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: March 19, 1991

Description of amendment request: The proposed amendment would make three changes to Technical Specification Table 3.3.3-1, "Emergency Core Cooling System Actuation Instrumentation." The first change would revise ACTION 33 of the Table by changing the word "valve" to "trip system," to address the situation in the event that a manual initiation switch for the Automatic Depressurization System (ADS) becomes inoperable. The second change would revise the action statement that applies to the ADS inhibit switches. The third change is an editorial clarification to provide consistency with the other proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

This changed does not involve a significant increase in the probability of [sic] consequences of an accident previously evaluated.

All three of the proposed changes either create a more conservative and/or more appropriate ACTION to be taken in the event one or more of the instrument channels involved become inoperable. The Technical Specifications have always permitted these instrument channels to be inoperable for periods of time provided the remedial steps are taken as required by the ACTION statements.

In the first proposed change the existing required ACTION was not appropriate for inoperable ADS Manual Initiation channels, since all ADS valves are uniformly affected, and declaring all the ADS valves inoperable after eight hours is not consistent with the required actions for channels in the more important automatic ADS logic. The existing ACTION forces an almost immediate, unnecessary plant shutdown, with all the attendant cycling of plant systems, despite the fact that the manual initiation function is capable of being completed by the other Divisions logic, and the automatic initiation logic, for which credit is taken in the safety analyses, is completely unaffected. The proposed change instead requires that the associated ADS Trip System be declared inoperable, which is consistent with the other ADS instrument channels, and it places a time limit on how long this condition can exist.

The second proposed change not only makes the required action for the ADS Inhibit function consistent with the other instrument channels in the automatic initiation portion of the ADS logic, but requires that the action be taken immediately when the ADS inhibit channel is found inoperable, further limiting the time permitted for the channel to be inoperable as compared to the manual initiation logic. Again, the other Divisions logic can complete the automatic safety function during this period of inoperability, and the manual initiation logic is completely unaffected. The Technical Specifications are approved by the NRC to permit inoperable equipment to exist for limited amounts of time, so that licensees can have some time frame to restore the equipment to an operable status, and not put the plant through unnecessary plant shutdown cycles for inoperable equipment that can normally be restored within a short time. These proposed changes do not create any new or different approach to dealing with these instrument channels. As described above, both changes are to make the required ACTIONS more conservative and/or consistent with other instrument channels within the ADS system logic, and make them consistent with the purpose and logic of the instruments involved. As such the proposed change does not increase the probability or consequences of any previously evaluated accident.

The final change to the wording of ACTION 30 is merely a clarification of the existing requirements, to make the wording of ACTION 30 consistent with ACTION 31 and 33. Since this is merely an editorial clarification of existing requirements, the revision involves no change or increase in the probability or consequences of an accident previously evaluated.

This proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

As discussed above no new or different types of ACTIONS are being proposed by this change request. This change request is attempting to remove some inconsistencies in the required ACTIONS for inoperable ECCS Actuation Instrumentation. No changes are proposed to the design or operation of any plant systems or components. The proposed change has not created the possibility of a new or different type of accident from those previously evaluated in the USAR. Therefore, no new type of accident has been created by this change request.

This proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes do not reduce the margin of safety as defined in the bases for the Technical Specifications. These changes do not modify any of the instrument setpoints or functions. All ECCS systems will still be capable of performing their intended safety functions. These proposed changes will either maintain the present margin of safety or increase it, by reducing the need for unnecessary plant shutdowns, while still maintaining the capability to complete the safety function. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: March 28, 1991

Description of amendment request: The proposed amendment would make several changes to the Technical Specifications (TSs) related to neutron monitoring: TS 3/4.3.1, "Reactor Protection System Instrumentation"; TS 3/4.3.6, "Control Rod Block Instrumentation"; and 3/4.3.7.6, "Source Range Monitors." The changes would incorporate statements of exception to TS 4.0.4, clarify startup surveillance requirements for neutron monitoring instrumentation and revise the control rod block channel calibration frequency for the Source Range Monitors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of a [sic] accident previously evaluated. The proposed changes do not involve a physical change or addition to any plant component or system which could cause the probability of an accident to increase. The proposed changes do not result in any change to the plant design or its operating modes. Therefore, these proposed changes cannot increase the probability of any accident previously evaluated.

The proposed addition of Surveillance Requirements 4.3.1.4. and 4.3.6.2, together with the incorporation of the proposed additional text for Surveillance Requirements 4.3.7.6.a and 4.3.7.6.b, provide for performance of the associated IRM and SRM surveillances during plant shutdowns following extended operation in Operational Condition 1. These surveillances cannot be performed with the unit in Operational Condition 1. The proposed changes merely provide the formal means to avoid violation of Technical Specification 4.0.4 and provide adequate time to perform these surveillances without causing the possibility of unnecessary plant scrams, challenges to safety systems, and unnecessary procedural complications/stress on plant personnel while completing these surveillances under the provisions of Action Statements. The 12-hour time allowance for performance of the IRM Channel Functional Test and Channel Calibration Surveillances after entering lower modes of operation from Operational Condition 1 will help avoid unnecessary scrams during controlled plant shutdowns and/or mode changes by significantly reducing (and in most cases eliminating) the time that the half scram signal is inserted into the RPS logic after entry into lower modes of operation and would eliminate unnecessary manipulations of plant equipment in order to perform the IRM Surveillances at the same time that a portion of the RPS system is in the tripped position. Adequate scram protection and neutron monitoring capability are provided by the APRMs during the short time period needed to perform these surveillances. Upon entry into Operational Conditions 2 or 4, the control rod block provided by the mode switch provides adequate protection pending surveillance completion.

The proposed change to provide a formal Specification 4.0.4 exception to allow entry into Operational Condition 1 before the APRM gain surveillance has been performed provides adequate time for plant conditions to be achieved that will result in an accurate heat balance calculation. The APRM Flow-Biased Simulated Thermal Power-High function still provides adequate scram protection during the short time period needed to achieve 25% of RATED THERMAL POWER and perform these APRM gain adjustments after entering Operational Condition 1.

The proposed deletion of the 24-hour clause and the "S/U" notation from the Channel Functional Test requirement for the neutron monitors eliminates the possible confusion caused by the current wording without reducing the effectiveness of these surveillances. The Technical Specifications, when revised as proposed, will continue to require, as they currently do, that these Channel Functional Tests be performed within seven days prior to entering the conditions for which these instruments are required.

The proposed change to the Channel Calibration frequency for the SRM control rod block functions will not result in any significant change in the availability of this rod block function, and it is consistent with the current channel calibration frequency requirement for ensuring that source range neutron monitoring capability is available to the operators during control rod movements at low power conditions, and/or post-accident conditions. No credit is taken for the SRM control rod block function in PNPP's USAR Chapter 15 safety analyses, and since the setpoint is checked during each shutdown in which an applicable Operational Condition for SRMs is entered, they will be fully functional for any subsequent startup.

Based upon the above, these proposed changes cannot increase the probability or the consequences of any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not involve a change in the design of any plant system or component nor does it involve a change in the operation of any plant system or component. As a result, no new failure modes are introduced.

The proposed changes do not result in a significant reduction in the margin of safety, because as discussed above, the proposed changes still provide adequate assurance that each of the applicable safety functions are capable of being effected when required, including reactor scram protection, control rod block, and neutron monitoring.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: April 16, 1991

Description of amendment request: The proposed changes would revise the NA-1&2 Technical Specifications (TS) regarding electric power systems during shutdown. The applicability sections of these TS would be expanded to include handling spent fuel when the reactor is defueled. In addition, the TS would be clarified and made consistent with Standard TS. The changes would also delete the requirement to establish containment integrity if a required bus is lost. This requirement is not necessary and can divert operator attention.

The existing TS are applicable during cold shutdown and refueling. However, the definition of the refueling mode excludes the case when the reactor is defueled. The revised TS would apply when moving irradiated fuel or any loads over irradiated fuel even if there is no fuel in the reactor. The licensee would therefore be better equipped to cope with a fuel handling accident.

The existing TS also allow buses from different trains to be used to satisfy the requirements. The revised TS would list the equipment on each train and would require one complete train. This would reduce the probability and consequences of an accident.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change[s] [do] not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes have no adverse impact upon potential accident probability or consequence. No new or unique accident precursors are introduced by these changes to the [TS] requirements. The need for containment closure is adequately addressed by other specifications. ...[The] change[s] will enhance the ability to cope with an accident during shutdown.

2. The proposed change[s] [do] not create the possibility of a new or different kind of accident from any previously evaluated. The change[s] only [affect] electrical systems during shutdown and all credible accidents have been evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety. The margin of safety for shutdown or fuel handling accidents is not affected by [these changes].

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Notice of Issuance of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination

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and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application of amendment: February 6, 1991

Brief description of amendment: This amendment will change the Technical Specifications (TS) to (1) delete the reference to a specific date for 10 CFR Part 50, Appendix J, Section 4.7.A.2.a, (2) delete Table 3.7-1, "Primary Containment and Reactor Vessel Isolation Valves" and the references thereto, and (3) clarify sections 4.7.A.2.b.1.a and 4.7.A.2.b.1.b by adding the words "primary containment."

Date of issuance: April 22, 1991

Effective date: April 22, 1991

Amendment No.: 136

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 6, 1991 (56 FR 9374) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 21, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: February 20, 1991

Brief description of amendments: The amendment revised Table 6.2-1 of the Administrative Sections of ANO-1&2 Technical Specifications to increase the number of licensed and non-licensed operators required when either unit is in a mode above cold shutdown.

Date of issuance: April 26, 1991

Effective date: April 26, 1991

Amendment Nos.: 146 and 118

Facility Operating License Nos. DPR-51 and NPF-6. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 20, 1991 (56 FR 11779) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 26, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: August 16, 1990

Brief description of amendment: This amendment revises the Independent Safety Engineering Group (ISEG) reporting and administrative requirements needed as a result of organizational changes within the Nuclear Energy Department.

Date of Issuance: May 2, 1991

Effective Date: May 2, 1991

Amendment No.: 49

Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 3, 1990 (55 FR 40466) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 2, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: September 13, 1990, as supplemented November 15, 1990, December 13, 1990, January 4, 1991 and January 28, 1991.

Brief description of amendments: These amendments provide for replacement of the resistance thermal detector (RTD) bypass manifold system with fast-response thermowell-mounted RTDs. The amendments also provide for use of EAGLE-21 digital electronics in the reactor protection and control systems, and change the surveillance interval and allowed testing "Bypass" time for the new electronic system. Finally, the amendments include modifications to the axial power imbalance term in the overtemperature/delta-temperature andoverpower/delta-temperature reactor trip functions.

Date of issuance: April 23, 1991

Effective date: April 23, 1991

Amendment Nos. 140, 135

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 9, 1991 (56 FR 891) The January 4 and 28, 1991 letters provided additional information which did not alter the staff's initial determination of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 23, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: January 25, 1991

Brief description of amendments: These amendments modify TS Table 4.4-5, "Reactor Vessel Material Surveillance Program - Withdrawal Schedule," to place surveillance capsule X in a higher flux position.

Date of issuance: April 30, 1991

Effective date: April 30, 1991

Amendment Nos. 141, 136

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 20, 1991 (56 FR 6875) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 30, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: October 4, 1990

Brief description of amendment: The amendment revises the Technical Specifications to delete radiation monitor RM-G8 and adds a reporting requirement when the iodine sampling system is inoperative.

Date of Issuance: April 22, 1991

Effective date: April 22, 1991

Amendment No.: 161

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 20, 1991 (56 FR 11780) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 22, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: November 22, 1988

Brief description of amendment: First, the amendment modifies Technical Specification 4.6, "Periodic Testing" by extending the specified surveillance testing interval for main steam excess flow check valves from once every six weeks to once every three months. Second, the amendment modifies Technical Specification 4.2, "Equipment and Sampling Tests," by extending the surveillance requirements for turbine stop, governor, reheater and intercept valves, from once every month to once every three months, consistent with the proposed interval for the EFCVs.

Date of issuance: April 22, 1991

Effective date: April 22, 1991

Amendment No.: 120

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 1, 1989 (54 FR 5164). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P. O. Box 367, Wiscasset, Maine 04578.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: February 28, 1991, as supplemented by letter dated March 27, 1991.

Brief description of amendment: The amendment changes the Technical Specifications (TS) to: (1) delete the shutdown margin demonstration requirement of TS 3/4.3.A.1 from several Limiting Conditions for Operations, (2) limit the number of control rods that can be withdrawn/decoupled in TS 3.3, to one control rod, (3) change the system description "liquid poison system" in TS 3.4, to "standby liquid control system," (4) allow testing of safety/relief valves (SRVs) and automatic pressure relief (APR) valves at higher pressures in TS 4.6.E.3 and 4.5.D.1.b, respectively, and (5) delete the "valve position indication" option from the SRV operability test of TS 4.6.E.3.

Date of issuance: April 24, 1991

Effective date: April 24, 1991

Amendment No.: 52

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 20, 1991 (56 FR 11782) The March 27, 1991 letter provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: January 11, 1991

Brief description of amendment: The amendment changes Technical Specifications (TS) Table 4.2.1, "Minimum Test and Calibration Frequency for Core Cooling Instrumentation, Rod Blocks and Isolations" as follows: (1) several previously omitted instruments are added and (2) the previously omitted "instrument functional test" frequency for the Reactor High Pressure instrumentation is provided.

Date of issuance: April 29, 1991

Effective date: April 29, 1991, to be implemented within 60 days.

Amendment No.: 53

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 20, 1991 (56 FR 6877) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: January 31, 1991

Brief description of amendment: The amendment revises the Technical Specifications (TS) to reflect the effect of SAFER/GESTR-LOCA reanalysis on the minimum emergency core cooling system (ECCS) injection flow requirements. The amendment also reformats the ECCS TS to more closely conform to the format of the Standard Technical Specifications.

Date of issuance: April 9, 1991

Effective date: April 9, 1991

Amendment No.: 79

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 20, 1991 (56 FR 6878) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 9, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

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Northern States Power Company, Dockets Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: December 20, 1990

Brief description of amendments: Specifications Tables TS.3.5-4 and TS.4.1-1 to incorporate the feedwater isolation specifications requested by Generic Letter 89-19 and correct Table TS.4.1-1 to remove surveillances related to the low steam generator water level coincident with steam/feedwater mismatch reactor trip which was removed from the Technical Specifications by License Amendment Nos. 57 and 60, respectively.

Date of issuance: April 30, 1991

Effective date: April 30, 1991

Amendment Nos.: 95 and 88

Facility Operating License Nos. DPR-42 and DPR-60. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 6, 1991 (56 FR 4868) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 30, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pennsylvania Power and Light Company, Docket No. 50-388 Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of Application for Amendment: March 7, 1991

Brief description of amendment: The amendment changed the Technical Specifications in support of the ensuing Cycle 5 reload with ANF fuel and replacement of control rod blades.

Date of issuance: April 22, 1991

Effective date: Effective upon startup after Unit 2 Cycle 5 Refueling Outage

Amendment No.: 76

Facility Operating License No. NPF-22. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 22, 1991 (56 FR 12285) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: January 31, 1991

Brief description of amendments: The amendments changed the Technical Specifications to expand the testing tolerance of the 480 volt molded case circuit breakers.

Date of issuance: April 23, 1991

Effective date: April 23, 1991

Amendment Nos. 50 and 13

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 20, 1991 (56 FR 6879) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 23, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 4, 1990; superseded January 22, 1991.

Brief description of amendment: The amendment revises Table 4.2-2, Minimum Test and Calibration Frequency for Core and Containment Cooling Systems, to eliminate the requirement for functional testing of the time delay relays and timers associated with the High Pressure Coolant Injection (HPCI) System and the Reactor Core Isolation Cooling (RCIC) System high steamline temperature isolation signals.

Date of issuance: April 18, 1991

Effective date: April 18, 1991

Amendment No.: 169

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in Federal Register: July 25, 1990 (55 FR 30306) and renoticed March 6, 1991 (56 FR 9383). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: December 28, 1990

Brief description of amendment: This amendment revised Administrative Controls, UNIT STAFF, Section 6.2.2 of the Technical Specifications (TS) to reflect the current Hope Creek Generating Station (HCGS) operating shift schedules, which consist of 12 hour shifts but average 40 hours per week. Additionally, this amendment revised Administrative Controls, TECHNICAL REVIEW AND CONTROL, Section 6.5.3.2.c to indicate that Station Qualified Reviewers meet or exceed the qualifications described in Sections 4.1 and 4.7 of ANS 3.1, 1981.

Date of issuance: April 22, 1991.

Effective date: As of the date of issuance and shall be implemented within sixty days of date of issuance.

Amendment No. 41

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 6, 1991 (56 FR 4871) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: December 28, 1990

Brief description of amendment: This amendment revised Technical Specifications (TS), DEFINITION 1.10, CRITICAL POWER RATIO (CPR). This amendment made the TS definition for CPR more generic by permitting the use of NRC-approved critical power correlations. Additionally, the bases for THERMAL POWER and MINIMUM CRITICAL POWER RATIO were modified to reference the latest approved version of the GE Standard Application for Reactor Fuel (GESTAR II) and to more clearly define how certain MCPR factors are determined.

Date of issuance: April 24, 1991

Effective date: As of its date of issuance and shall be implemented within 60 days of its date of issuance.

Amendment No. 42

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 6, 1991 (56 FR 4870) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: November 26, 1990

Brief description of amendment: The amendment changes to the Technical Specifications to delete surveillance requirement 4.8.1.1.1.b. The surveillance requirement, which is to demonstrate the operability of the offsite, preferred power sources, is not applicable to Summer Station. In addition, it made editorial changes to TS 3.8.1.1.1 to reflect the deletion of the Surveillance Requirement.

Date of issuance: April 29, 1991

Effective date: April 29, 1991

Amendment No.: 96

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: January 9, 1991 (56 FR 897). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendment: March 1, 1991

Brief description of amendment: The proposed amendment would update Section 6.0, "Administrative Controls" to align the Plant Operations Review Committee (PORC) membership with the current Browns Ferry Nuclear Plant Organizational titles.

Date of issuance: April 22, 1991

Effective date: April 22, 1991

Amendment Nos.: 162 - Unit 1, 195 - Unit 2, 154 - Unit 3

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Units 1, 2, and 3 Technical Specifications.

Date of initial notice in Federal Register: March 20, 1991 (FR 56 11786) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1991.

No significant hazards consideration comments received:

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendment: April 11, 1990 (TS 278)

Brief description of amendment: This Amendment deletes Appendix B, "Environmental Technical Specifications."

Date of issuance: April 29, 1991

Effective date: April 29, 1991

Amendment Nos.: 163-Unit 1, 196-Unit 2, 155-Unit 3

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendment revises the Technical Specification.

Date of initial notice in Federal Register: May 6, 1990 (55 FR 18414) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: June 4, 1990

Brief description of amendments: This amendment revises Section 3.7.F/4.7.F and associated bases of the Technical Specifications to more accurately prescribe the allowed operations for purging and venting the primary containment.

Date of issuance: April 29, 1991

Effective date: April 29, 1991

Amendment Nos.: 164-Unit 1, 197-Unit 2, 156-Unit 3

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 5, 1990 (55 FR 36355) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 29, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: February 14, 1991 (TS 91-01)

Brief description of amendment: The amendment modifies Section 3/4.5.1.1, Cold Leg Injection Accumulators, of the Sequoyah Nuclear Plant, Unit 2, Technical Specifications. The change reduces the required boron concentration for one of the four cold leg injection accumulators from between 2,400 and 2,700 parts per million (ppm) boron to between 1,900 and 2,700 ppm boron. This reduces the frequency at which the Unit 2 cold leg injection accumulator No. 3 is being removed from service for periodic draindowns and refills. This periodic evolution has been necessary as a result of a continuing small reactor coolant inleakage into the accumulator on the order of 0.1 of 0.2 gallon per minute during the Unit 2 Cycle 5 operation.

The licensee requested an expedited review so that this relief may be implemented as soon as possible. The change would be only for the remainder of the current Unit 2 Cycle 5 operation.

Date of issuance: April 24, 1991

Effective date: April 24, 1991

Amendment No.: 141

Facility Operating License No. DPR-79: Amendment revised the Unit 2 Technical Specifications.

Date of initial notice in Federal Register: March 11, 1991 (56 FR 10287) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1991.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402

Toledo Edison Company, Centerior Service Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: August 1, 1988

Brief description of amendment: The amendment clarified the testing requirements and updated the regulatory and industry guidance reference for High Efficiency Particulate Air (HEPA) filters and charcoal adsorber units in

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Engineered Safety Feature (ESF) cleanup systems.

Date of issuance: April 22, 1991

Effective date: April 23, 1991

Amendment No. 155

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 22, 1990 (56 FRN 34283) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 23, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: January 31, 1991

Brief description of amendments: These amendments provide a visual snubber inspection program consistent with the guidance of Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Date of issuance: May 1, 1991

Effective date: May 1, 1991

Amendment Nos. 158, 156

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 20, 1991 (56 FR 6863) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 1, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: March 19, 1991, as supplemented by letter dated April 26, 1991. This supplement makes the proposed changes more conservative, and hence does not change the staff's preliminary determination of no significant hazards.

Brief description of amendment: The amendment provided clarification on how motorized rotating pancake coil (MRPC) eddy current indications in the steam generator (SG) hot leg tubesheet crevice area was dispositioned during spring 1991 refueling outage. The method of dispositioning crevice area indications described in the Technical Specification (TS) change was an interim measure to be utilized for the upcoming 1991-1992 operating cycle only.

Date of issuance: May 3, 1991

Effective date: May 3, 1991

Amendment No.: 93

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 1, 1991 (56 FR 13341) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 3, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Notice of Issuance of Amendment To Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity For Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at

the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By June 14, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: January 18, 1991, as supplemented April 5, and April 8, 1991.

Brief description of amendment: The amendment changes Technical Specification (TS) 4.6.4.2.b.4, "Electric Hydrogen Recombiners," and adds the following note to the pressure - dependent flow requirements for the hydrogen recombiners in TS Figure 3.6-2:

Until September 30, 1991, a flow rate of 72.4 scfm or greater at a pressure of 14.5 to 14.8 psia is acceptable in lieu of the values indicated by Figure 3.6-2.

Date of Issuance: April 22, 1991

Effective date: April 22, 1991

Amendment No.: 61

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. April 3, 1991 (56 FR 13666) on the January 8, 1991 application. No comments were received. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 22, 1991.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

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Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Dated at Rockville, Maryland, this 8th day of May 1991.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 91-11427 Filed 5-14-91; 8:45 am]

BILLING CODE 7590-01-D

OFFICE OF PERSONNEL MANAGEMENT

Pay-for-Performance Labor-Management Committee; Meetings

The Office of Personnel Management announces the following meetings:

Name: Pay-for-Performance Labor-Management Committee.

Dates and Times: May 29, 1991, 9 a.m. to 5 p.m., June 20, 1991, 9 a.m. to 5 p.m., July 8, 1991, 9 a.m. to 5 p.m., July 30, 1991, 9 a.m. to 5 p.m.

Place: Office of Personnel Management, 1900 E Street NW., Washington, DC 20415-0001. Meetings will be held in room 1350, except for May 29, when the Committee will meet in suite 5H09, room 5A08A.

Type of Meeting: Open.

Point of Contact: Ms. Doris Hausser, Chief of the Performance Management Division, room 7454, Office of Personnel Management, 1900 E Street NW., Washington DC 20415-0001.

Purpose of Meetings: To consider ways to strengthen the linkage between the performance of General Schedule employees and their pay.

Agenda: Committee goals and objectives; scope of inquiry; research and resources regarding performance-based pay; basic issues and challenges facing the committee; committee administration; comments and observations; public input; closing.

SUPPLEMENTARY INFORMATION: The Committee welcomes written data, views, or comments concerning pay-for-performance for General Schedule employees. All such submissions received by close of business (COB) on the dates indicated below will be provided to the committee members and included in the record of the respective meeting:

If received by COB	Input wil be considered at the meeting
May 21, 1991	May 29, 1991.
June 13, 1991	June 20, 1991.
June 28, 1991	July 8, 1991.
July 23, 1991	July 30, 1991.

If time permits, the committee will consider oral presentations relating to agenda items. Persons wishing to address the committee orally at a meeting should submit a written request to be heard by the deadline listed above for that particular meeting. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and an estimated of the amount of time needed.

All communications regarding this committee should be addressed to the Point of Contact named above.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-11535 Filed 5-14-91; 8:45 am]

BILLING CODE 6325-01-M

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

Annual Meeting of Commissioners

AGENCY: President's Commission on White House Fellowships.

ACTION: Notice of Annual Selection Meeting of the President's Commission on White House Fellowships * * Closed to the Public.

SUMMARY: Notice is hereby gviven that the annual Selection Meeting of the President's Commission on White House Fellowships will be held at Mt. Washington Conference Center, Baltimore, Maryland, May 30 through June 2, 1991, beginning at 5 p.m.

The Annual Selection Meeting is part of the screening process of the White House Fellowships program. During this three-day meeting, the applicants will be interviewed by members of the Presidential Commission. At the conclusion of this meeting, the Commissioners will recommend to the President those they propose be selected to serve as White House Fellows.

It has been determined by the Director of the Office of Personnel Management that because of the nature of the screening process, wherein personnel records and confidential character references must be used, which, if revealed to the public would constitute a clear invasion of the individual's privacy, the content of this meeting falls within the provisions of section 552b(c) of title 5 of the United States Code. Accordingly, this meeting is closed to the public.

DATES: The dates of the Annual Selection meeting of the President's Commission on White House Fellowships, which is closed to the public, are May 30–June 2, 1991.

FOR FURTHER INFORMATION CONTACT: Phyllis Byrne, Associate Director, President's Commission on White House Fellowships, 712 Jackson Place, NW., Washington, DC 2503, (202) 395-4522.

Dated: April 29, 1991

Marcy L. Head,

Director, President's Commission on White House Fellowships.

[FR Doc. 91-11460 Filed 5-14-91; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29186; File No. SR-Amex-91-09]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change by American Stock Exchange, Inc. Relating to a Pilot Program for Execution of Odd-lot Market Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 6, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been provided by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for six months its existing pilot program under Amex Rule 205 requiring execution of odd-lot market orders at the prevailing Amex quote with no differential charged.[1] The Amex received approval, on a pilot basis expiring on May 10, 1991, of amendments to Amex Rule 205.[2]

[1] The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program, which will expire on May 10, 1991, to continue without interruption.

[2] *See*, Securities Exchange Act Release No. 28758 (January 10, 1991), 56 FR 1656 (January 16, 1991) (approving File No. SR-Amex-90-39) ("1991 Approval Order"). *See also* Securities Exchange Act Release No. 27590 (January 5, 1990), 55 FR 1123 (January 11, 1990) (approving File No. SR-Amex-89-31) ("1990 Approval Order"). The Commission previously approved this pilot program and granted permanent approval of procedures which provide that the odd-lot portion of a Part of Round Lot ("PRL") order will be executed at the same price as the round lot portion, with no differential charged. *See* Securities Exchange Act Release No. 26445 (January 10, 1989), 54 FR 2248 (approving File No. SR-Amex-88-23) ("1989 Approval Order").

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Purpose

The Commission has approved, on a pilot basis extending to May 10, 1991, amendments to Exchange Rule 205 to require the execution of odd-lot market orders at the prevailing Amex quote with no odd-lot differential.[3] Under the pilot procedures, market orders with no qualifying notations are executed at the Amex quotation at the time the order is represented in the market either by being received at the trading post or through the Exchange's Post Execution Reporting system ("PER"). Enhancements to the PER system have been implemented to provide for the automatic execution of odd-lot market orders entered through PER. For purposes of the pilot program, limit orders that are immediately executable based on the Amex quote at the time the order is received at the trading post or through PER are executed in the same manner as market orders.

The Exchange proposes that the pilot program applicable to odd-lot execution procedures be extended for six months. This will provide the Commission with an additional period of time to assess procedures under the pilot program and will permit the Exchange to provide additional data and information regarding its experience under the pilot program as well as the operation of the PER system enhancements.

Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Sections 6(b)(5) and 11A(a)(1) in particular in that it facilitates the economically efficient execution of odd-lot transactions, and is intended to result in improved execution of customer orders.

[3] *See supra* note 2.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-91-09 and should be submitted by June 5, 1991.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of sections 6[4] and 11A(a)(1)[5] of the Act and the rules and regulations thereunder. In particular, the Commission believes that the revised procedures which provide for pricing of odd-lot market orders at the prevailing market quote rather than a subsequent transaction should provide investors with more timely executions of these orders. Moreover, these orders will receive execution prices that more accurately reflect market conditions than would otherwise be the case under former procedures. In addition, the Exchange has implemented enhancements to its PER system to provide for the automatic execution of odd-lot market orders, as set forth in the Commission's 1989 Approval Order.[6]

[4] 15 U.S.C. 78f (1988).

[5] 15 U.S.C. 78k-1(a)(1) (1988).

In its 1989, 1990 and 1991 Approval Orders, the Commission asked the Amex to analyze the difference in executions between using the Intermarket trading System ("ITS") best bid or offer and the Amex quote without the differential. Specifically, the Commission was interested in whether customers are receiving a better execution, both in terms of price and time, using the new Amex system. The Commission also was interested in the feasibility of implementing an odd-lot pricing system using the ITS best bid or offer and no differential.

The Amex submitted the requested information with respect to the difference in executions between the ITS best bid or offer and the Amex quote to the Commission on January 9, 1991 and April 22, 1991.[7] The Amex data submitted in January indicated that for 97.4% of the odd-lot executions, the Amex quote was the ITS best bid or offer. The Amex data submitted in April indicated that for 93.1% of the odd-lot executions, the Amex quote was the ITS best bid or offer. Based upon data submitted in both January and April, the Amex concluded that odd-lots were executed at a price equal to or better than the inside quote 97.0% of the time. The Amex also concluded that the prices at which odd-lot market orders are executed under the pilot program have been, on balance, superior to those available under the Exchange's previous procedures. The Amex states that, based upon its data submitted in January, it is expected that 87% of Amex odd-lot executions would receive a better price under the pilot procedures than under the prior procedures.

The Commission believes that it is reasonable to extend the pilot program for six months to enable the Commission to fully review the Amex report and to enable the pilot to

[6] *See* 1989 Approval Order, *supra* note 2 for a description of the Exchange's odd-lot procedures and the Commission's rationale for approving these procedures on a pilot basis. The discussion in that Order is incorporated by reference into this Order.

[7] *See* letters from Jules L. Winters, Executive Vice President, Operations, Amex, to Howard L. Kramer, Assistant Director, Commission, dated January 8, 1991 and April 18, 1991.

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continue without interruption during the Commission's review. The Amex data indicates that the pilot procedures provide a superior price for a substantial majority of odd-lot executions. The Commission, however, remains concerned that odd-lot orders could receive executions at less than the best available price since the Exchange's pricing formula does not include quotations from other markets.[8] Due to the low number of odd-lot market orders,[9] the small percentage of Amex quotes that are worse than the ITS best bid and offer, and the benefits to customers under the pilot program procedures, however, the Commission believes that it is acceptable to continue the pilot's current pricing procedures for an additional six months. The Commission requests that the Amex provide data for additional trade dates that will analyze the difference in executions between using the ITS best bid or offer and the Amex quote without the differential during the extension of the pilot program. The Commission also is interested in the feasibility of implementing an odd-lot pricing system using the ITS best bid or offer and no differential. The Commission requests that the Amex provide a report on these questions by September 1, 1991.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[10]

[8] The Commission has approved amendments to the New York Stock Exchange's ("NYSE") rules which incorporate the ITS quote into the NYSE's odd-lot pricing procedures through the use of the "Best Pricing Quote." *See* Securities Exchange Act Release No. 27981 (May 2, 1990), 55 FR 19409 (May 9, 1990).

[9] The Amex states that during the period of January 1 to November 30, 1990, odd-lots accounted for 0.24% of total Exchange volume (7,529,926 shares). *See* letter from Jules L. Winters, Executive Vice President, Operations, Amex, to Howard L. Kramer, Assistant Director, Commission, dated January 8, 1991. During the period of January 1 to April 12, 1991, the Exchange states that odd-lots accounted for 0.26% of total Exchange volume (3,182,228 shares). *See* letter from Jules L. Winters, Executive Vice President, Operations, Amex, to Howard L. Kramer, Assistant Director, dated April 29, 1991.

[10] No comments were received in connection with the proposed rule change which implemented these procedures. *See* 1989 Approval Order, *supra* note 2.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change is approved for a six month period ending on November 10, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: May 9, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11534 Filed 5-14-91; 8:45 am]

BILLING CODE 8010-01-M

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30-3(a)(12) (1990).

[Release No. 34-29185; File No. S7-12-91]

Automated Systems of Self-Regulatory Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Policy statement.

SUMMARY: The Securities and Exchange Commission today announces the publication of a second Automation Review Policy statement in which the Commission sets forth its views concerning: (1) The nature of the independent reviews that the self-regulatory organizations ("SROs") are encouraged to obtain with respect to their automated trading and information dissemination systems; (2) the contents of SROs' annual reports on major systems changes and a process for provision of notifications of material systems changes; and (3) notifications of significant systems problems. In addition, the Policy Statement requests comment on establishing a process to explore the development of generally accepted standards for automated systems of regulated entities with respect to computer audits, security and capacity.

DATES: Comments must be received on or before June 14, 1991.

ADDRESSES: Persons wishing to submit comments should file ten copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission Mail Stop 6-9, 450 Fifth Street, NW., Washington, DC 20549 All comments should refer to File No. S7-12-91 and will be available at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Alden S. Adkins, Chief, 202/272-2782, or Eugene A. Lopez, Special Counsel, 202/272-2828, Office of Automation and International Markets, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 5-1, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

On November 16, 1989, the Securities and Exchange Commission ("SEC") or "Commision") issued its first Automation Review Policy ("ARP I")[1] in which it stated its view that the self-regulatory organizations ("SROs"), on a voluntary basis, should establish comprehensive planning and assessment programs to determine systems capacity and vulnerability. At that time, the Commission noted the impact that systems problems and failures could have on public investors, broker-dealer risk exposure and market efficiency, and as a result, urged that the SROs take appropriate measures to ensure that, initially, their automated trading systems "have the capacity to accommodate current and reasonably anticipated future trading volume levels adequately and to respond to localized emergency conditions." (ARP I at 12).

Accordingly, the Commission recommended that the SROs establish comprehensive planning and assessment programs to test systems capacity and vulnerability. ARP I stated that the SRO programs should have three objectives: (1) each SRO should establish current and future capacity estimates; (2) each SRO should conduct capacity stress tests periodically; and (3) each SRO should obtain an annual independent assessment of whether the affected sytems can perform adequately in light of estimated capacity levels and possible threats to the systems.

Since the issuance of the first Policy Statement, the Commission's staff has met on a regular basis with Senior technology staff of all of the exchanges[2] and the National Association of Securities Dealers, Inc. ("NASD") with regard to the issues raised by ARP I,[3]

[1] Securities Exchange Act Release No. 27445 (November 16, 1989), 54 FR 48703, November 24, 1989.

[2] Staff met on a regular basis with representatives from the American Stock Exchange (Amex), Boston Stock Exchange (BSE), Chicago Board Options Exchange (CBOE) (CBOE is the facilities manager for the computer operations of the Cincinnati Stock Exchange as well as its own computer systems), Midwest Stock exchange (MSE), New York Stock Exchange (NYSE), the Pacific Stock Exchange (PSE) and the Philadelphia Stock Exchange (Phlx), as well as the NASD. In addition, participants from the Securities Industry Automation Corporation (SIAC), the facilities manager for the computer operations of the NYSE and Amex, attended these meetings. Generally the persons in attendance were the senior officials from the technology divisions of the SROs.

[3] Since issuing ARP I, the Commission has created within the Division of Market Regulation

Continued

These discussions to date have focused directly on the independent review suggestion contained in ARP I. Specifically, the Commission staff and the SROs have discussed an approach to the independent review process that fairly, effectively and efficiently permits the SROs to obtain reviews of their automated trading and market information dissemination systems, taking into account that the SROs already engage in testing and quality assurance reviews of new or modified systems, and that there are other significant controls in place to prevent, detect or correct problems, in such areas as capacity planning, testing, systems development, vulnerability and contingency planning.

To this end, based, in part, upon these discussions, the Commission is setting forth in this Automation Review Policy ("ARP II") guidance concerning the nature of the independent reviews it believes should be conducted, on a voluntary basis, by the SROs and solicits comment on the approach it has suggested.

In addition to discussing the independent review process, the SROs and Commission staffs have discussed various means by which the SROs could provide Commission staff with advance notification of significant changes to and problems occurring in, the automated systems of the SROs. This Policy Statement also reflects the Commission's views on a voluntary approach to a uniform and consistent standardized methodolgy for advising the staff of new systems developments and outages. The Commission also solicits comment from all interested persons on the approaches regarding notifications contained in the Policy Statement. Finally, the Commission calls for comments on the need for establishing standards regarding computer security, capacity and audits, including the need for the formation of an advisory committee on the issue of standards in these areas.

II. Policy Statement

In consideration of the importance of the automated trading and information dissemination systems of the SROs to investors, intermediaries, and other market participants, and after engaging in extensive discussions with the exchanges and the NASD about the nature and scope of review necessary to maintain the integrity of the systems, the Commission believes that it is appropriate for the exchanges and the NASD to obtain independent reviews of the general controls in place in the SRO's automated trading and information dissemination systems[4] and risk analyses of those controls to determine the need for further reviews of or enhancements to those controls and applications controls. The Commission continues to believe that, as stated in ARP I, periodic, independent reviews of each SRO's systems should help to "identify potential weak points, and reduce the risk of serious failure."[5] We believe that the independent reviews and risk analyses should: (1) Cover significant elements of the operations of the automation process, including the capacity planning and testing process, contingency planning, systems development methodology and vulnerability assessment; (2) be performed on a cyclical basis by competent and independent audit personnel following established audit procedures and standards; and (3) result in the presentation of a report to senior SRO management on the recommendations and conclusions of the independent reviewer, which report should be made available to Commission staff for its review and comment.

Apart from the need for independent reviews, the Commission also believes that the SROs should provide notice of significant additions, deletions, or other changes to their automated systems on an annual and an as-needed basis. In addition, we believe that the SROs should provide Commission staff with real-time notification of unusual events such as significant outages involving automated systems.

Finally, the Commission believes that its staff, the SROs and other interested parties should continue the dialogue on automation issues and begin the process of exploring the establishment of (1) standards for determining capacity levels for the SROs' automated trading systems; (2) generally accepted computer security standards that would be effective for SRO automated systems; and (3) additional standards regarding audits of computer systems.

III. Discussion

A. Independent Reviews

Since the issuance of ARP I, significant efforts have been made on the part of the SROs to address the concerns raised in that Policy Statement. As a result, all of the SROs, have begun to develop processes for measuring and forecasting capacity levels related to trading activity conducted through their automated systems. Additionally, the SROs have commenced a market-wide review of contingency issues that affect the national market system, as well as continuing their own security and contingency reviews and disaster recovery planning processes.

Nonetheless, although these steps are important to the safe operation of SRO automated systems, the Commission believes that a critical element to the success of the capacity planning and testing, security assessment and contingency planning processes for those systems is obtaining an objective review of those planning processes by persons independent of the planning process to ensure that adequate controls and procedures have been developed and implemented. Among other things, the Commission believes that an independent review process could include use of a checklist for the review of the general controls in place at the SROs and a format for issuing a report with recommendations and conclusions. Finally, the process could include a means for determining the need for additional procedures, including controls or controls reviews after completion of the initial general controls review cycle.

Using either a review questionnaire[6] developed by the Commission and SRO

the Office of Automation and International Markets ("OAIM"). An important role of this Office is to work with the SROs to design the review process, review and react to the results of the independent reviews, and to develop, generally, the Commission's automation oversight program. Because the Commission does not rely primarily upon direct examinations, the independent reviews obtained by the SROs are the "first line of defense" in ensuring the integrity of the SROs' EDP operations.

[4] As noted in the first ARP, the Commission's emphasis in its automation review policies thus far has been and continues, to refer collectively to computer systems operated by the exchanges and the NASD, or facilities managers for those entities, for listed and over-the-counter ("OTC") equities, as well as options. The covered systems include those that electronically route orders to applicable market centers and those that electronically route and execute orders, as well as the market data systems that feed those systems. It is intended, also, that the Commission's policies encompass SRO systems that disseminate transaction and quotation information, and those that are used to conduct trade comparisons prior to settlement. Perforce, the policies also include the communications networks associated with these systems and markets.

[5] *See* ARP I, *supra* note 1, at 17.

[6] Copies of this questionnaire are available from the Office of Automation and International Markets within the Division of Market Regulation. Some questions or areas of questions may not be relevant in the context of the systems under review. Conversely, additional questions may be appropriate for some systems. The Commission expects that the reviewer would exercise its professional judgment as to the precise questions that need to be addressed, keeping in mind the ultimate purpose of the review is to provide a report on the SRO's capacity planning and testing, contingency

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staffs or a similar review questionnaire that can be used to measure whether an SRO is meeting the guidelines of the ARP, the independent reviewer is to assess the SRO's general controls in the following areas of the SROs EDP operations: (1) Computer operations and facilities; (2) telecommunications; (3) systems development; (4) capacity planning and testing; and (5) contingency planning. Under the Commission's approach as set forth in this Policy Statement, the purpose of the independent review is to have the reviewer evaluate, and report on, the degree to which:

1. The SRO has in place a capacity requirements, evaluation, monitoring, and reporting process that allows the SRO to formulate current and anticipated estimated capacity requirements. The independent reviewer would be expected to verify that the process is technically, organizationally, and procedurally appropriate for the trading and reporting systems in place and under development and that the process is actually in place, that the SRO uses it for the above purposes, and that it is maintained for systems being brought into production and for changing market conditions.

2. The SRO has formal contingency protocols for back-up purposes, that the SRO has followed a formal, organized process of reviewing the likelihood of contingency occurrences, and that the contingency protocols are documented and maintained on a regular basis.

3. The SRO has implemented a standardized and documented systems development methodology, that the development documentation is maintained and available for review, that the methodology generally is followed, that systems development life cycle responsibilities are clearly identified, that quality assurance and operations testing and review is in place, and that periodic stress tests of each system are performed.

4. The SRO has in place a process for preventing, detecting and controlling threats, both internal and external, to automated systems that are vulnerable to systems integrity failures, and that procedures designed to protect against security breaches are followed.

To assure that the review accomplishes its intended objectives,[7] we believe that any independent review should be performed by competent, independent audit personnel following established audit procedures and standards. Generally, the Commission believes that if internal auditors are used to complete the review, they should comply with the standards of the Institute of Internal Auditors ("IIA") and the Electronic Data Processing Auditors Association ("EDPAA"), and if external auditors are used, they should comply with the standards of the American Institute of Certified Public Accountants ("AICPA") and the EDPAA.[8] The decision on which type of reviewer, an internal EDP auditor or an external firm, should perform the review is a decision for the SRO to make. The Commission believes that, as long as the independent reviewer has the competence, knowledge, consistency, and independence sufficient to perform the role, the independent review can be performed by either recognized EDP audit firms or it can be performed, in whole or in part, by a qualified internal audit department knowledgeable of EDP system.[9]

Nevertheless, if an SRO chooses to use an internal audit department to perform the review, the Commission believes that an independent, external firm should assess the internal audit department's independence, competency, and work performance with respect to the particular review performed by the internal auditor.[10] The external firm would be expected, in conjunction with the issuance of the internal auditor's report, to issue a letter available to the Commission regarding the competency, independence and work performance of the internal auditor. If the external firm is used by the SRO to perform the independent review, it is expected that the firm would issue a report similar to that issued under SAS 30, Reporting on Internal Accounting Control, and other related standards.

Further, to assist the Commission staff in its oversight role, the reviewer is expected to make such questionnaire, as well as supporting client material and client-prepared schedules, part of the reviewer's work papers, and such work papers should be made available for review by the Commission staff.[11]

As a result of the independent review, the Commission believes that the reviewer should issue a report to management, in letter form, that: (1) Sets out the scope and objectives of the review; (2) refers to the professional standards, such as AICPA, IIA, or EDPAA, governing the reviewer's work and the specific procedures followed in reviewing and assessing the SROs compliance with the questionnaire items; (3) provides overall conclusions regarding the capacity process, contingency protocols, systems development methodology, vulnerability; and (4) details the specific recommendations and supporting discussion in each of the preceding areas.

The reviewer should discuss its recommendations and conclusions as set out in the management letter with management of the SRO with the SRO

planning, security review and systems development methodology processes as noted below.

[7] The Commission notes that such reviews, at the least, should have two objectives. A primary objective is to provide regulators and market participants an independent assurance that the control processes for capacity planning and testing, contingency planning, systems development and vulnerability assessments at the exchanges and the NASD are in place and being used. From an SRO's business perspective, an equally important objective is to provide the SRO with an additional tool to ensure the effectiveness and efficiency of existing control processes in carrying out its regulatory and business objectives.

[8] The Commission believes that internal auditors have an important role to play in the sound development of SRO systems. For example, in addition to these reviews and other periodic after-the-fact reviews the internal auditor may decide to conduct, internal auditor review of the development of new systems is often a prudent measure in the implementation of adequate audit controls and can assist management in management's operation of an internal control structure. *See, e.g.*, Kay and Searfoss, Ed., Handbook of Accounting and Auditing, Chapter 8 at 8–7 (2d ed., 1989).

[9] The Commission notes that, as used in the context of independent EDP reviews performed by internal auditors as described in this policy statement, the term "independence" is used differently from its ordinary use in the context of financial audits. In the EDP review context, we believe that independence means that the internal auditors are independent of the activities that they are auditing, *i.e.*, they have the organizational status and objectivity such that they operate separately from and are not controlled by the technology staff. The internal audit department that performs the EDP reviews should be structured to enable it to perform its work freely, objectively and without control by the entity being audited so that the auditor may render impartial and unbiased judgments. The Commission believes that the internal audit department's independence should be measured against and evaluated under the IIA's Standards For the Professional Practice of Internal Auditing.

[10] The Commission believes that the external audit firm should use criteria similar to that found in AICPA's Statement on Auditing Standards ("SAS") No. 65, The Auditor's Consideration of the Internal Audit Function In An Audit of Financial Statements, and the previously mentioned IIA standards to evaluate the work of the internal audit department. SAS No. 65 guides an audit firm in its review of an internal audit department's objectivity, competence and work performance in the context of a financial audit. (It should be noted that the effective date for SAS No. 65 is December 15, 1991, although early application of the Statement is permissible, and its predecessor statement, SAS No. 9, contains similar guidelines). We believe that those guidelines can be useful in the EDP review context suggested in the ARP.

[11] It is expected that Commission staff would review the auditor's workpapers at the auditor's offices, during business hours and with reasonable notice. Staff would not be expected to remove the workpapers from the auditor's possession.

expected to forward a final copy of the letter to the Commission.[12]

In addition to obtaining independent assessments of the general controls for the SRO's trading and market information EDP systems, as a part of the independent assessment of those systems the SROs should begin the process of determining whether any additional systems controls or reviews of controls may be necessary. Consequently, as a part of the above general controls review, the Commission believes that the independent reviewer should undertake to perform a risk analysis of the covered systems to determine whether, and in what priority, any particular elements of the system should be reviewed. Factors to be considered in performing the risk analysis are magnitude of exposure, age, risk of failure, degree of recent modifications, complexity of application, criticality of application, and sufficiency of general and compensating controls. It is the Commission's view that the management report on the risk analysis should contain the conclusions regarding the costs and benefits of the additional controls review. Based upon the results of the risk analysis and any other relevant considerations, the SRO will discuss with the SEC staff the need for additional controls or additional control reviews.[13]

The Commission believes that this cooperative and voluntary effort to provide for periodic, comprehensive and independent reviews of SRO automated systems should provide a reasonable and cost-effective level of assurance to the Commission and investors alike that the SROs' automated systems are being adequately developed and managed with respect to capacity, security, development and contingency planning concerns. Although the Commission at this time has no reason to believe otherwise, nonetheless, if during the initial cycles of the independent reviews flaws are demonstrated, or if for any reason the Commission believes that this approach does not adequately address the concerns it is intended to address,[14] we will either continue the discussions with the SROs to refine, rework, or replace this review process outlined above or may determine to commence rulemaking to impose a more satisfactory method of independent review. In this regard, then, the Commission will monitor carefully the review process to determine the need for additional steps.[15]

B. SRO EDP Systems Reporting

In keeping with its oversight role, especially as that role relates to SRO implementation of the comprehensive planning and assessment programs suggested under the Commission's first automation policy statement, the Commission believes that it would be useful for the SROs to inform the Commission staff of significant system changes. One approach would be through a two-tiered reporting process. The two tiers consist of: (1) an annual planning and status report; and (2) a system change notification with respect to significant systems changes.[16] Previously, the only means by which staff were notified of significant systems developments was through the rule change process pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[17] and Rule 19b–4 thereunder. Because the statute imposes shortened timeframes for action on proposed rule changes and because not all systems changes trigger the need for changes to rules of the SROs, staff was unable to obtain timely and complete detail on various significant systems changes occurring at the SROs. Recognizing the need for providing timely and accurate information on these matters, the SROs and the staff of the Commission have identified a multi-level approach to providing this information.

1. *Annual Report.*[18] The Commission believes that the reporting process would consist of Commission staff meeting with senior technical staff of each SRO. The Commission believes that the meeting should cover the SRO's trading, post-trade, and information dissemination systems and should include information on the configuration of current systems; current capacity estimates and testing; a summary of previous period's changes; systems development plans for the next period, including systems development methodology used; capacity planning for next period, including stress test plans; contingency planning; vulnerability planning; and planned significant systems changes not falling within the above categories.[19]

2. System Change Notifications

Although the annual report process by itself should provide the Commission with a firm understanding of the general developments at an SRO, it also would assist the Commission if the SROs provided specific information on particular automated systems changes. Accordingly, the Commission believes that the SROs should provide the Commission with notifications of significant changes to automated systems. Specifically, the Commission believes that an SRO should provide notification of a significant or material system change that: (1) Affects existing capacity or security; (2) in itself raises capacity or security issues, even if it does not affect other existing systems, (3) relies upon substantially new or different technology; (4) is designed to

[12] The Commission expects that the initial general controls review would be completed by the end of 1992. At the end of 1991, however, the independent reviewer should issue a report on the review completed to date and discuss its conclusions and recommendations with management and provide a copy of its report to the Commission. Similarly, if an internal auditor is performing the review, the external reviewer's assessment of the internal auditor should be issued within the same timeframes. During the second year of the initial cycle of the general controls review, *i.e.*, 1992, Commission staff, the SROs and the independent reviewers should plan to meet to discuss implementation of the general controls reviews in years beyond the initial cycle.

[13] The Commission understands that many SROs already conduct additional controls reviews as a part of their internal audit process. The Commission expects that these ongoing reviews will continue, will not be deferred pending the results of the formal risk analysis, and will be taken into account in considering the need for additional reviews.

[14] For example, in its oversight of this review process, the Commission plans to examine carefully the independence and competence of any internal audit departments at the SROs that assume major responsibilities regarding the performance of these reviews.

[15] While neither this Policy Statement nor the previous ARP deal directly with the automation obligations of proprietary trading systems, the Commission informally has been applying ARP I to proprietary trading systems and to the Wunsch Auction Systems, Inc. (operating under an exemption from exchange registration pursuant to a limited volume exemption under Section 5 of the Act) (Securities Exchange Act Release No. 28899, February 20, 1991) and intends to discuss, where appropriate, use of the principles set forth in this ARP by these systems. In addition, the Commission continues to believe that the approach outlined herein merits consideration by broker-dealers, service bureaus, vendors and clearing agencies, as well. *See* ARP I, *supra* note 1, at 12, n. 17.

[16] Even if an SRO chooses to adopt the suggested approach, the Commission would continue to expect summary capacity and vulnerability representations as part of filings under Rule 19b–4. (17 CFR 240.19b–4 (1990)).

[17] 15 U.S.C. 78s(b) (1990).

[18] The original ARP requested the SROs include in the annual reports filed with the Commission, submitted on Form 1A, a section describing the SROs capacity, vulnerability, and contingency plans and stress tests. *See* ARP I, *supra* note 1, at n. 28. This format, however, did not permit provision of sufficient information concerning the specific systems development plans of the SROs, their capacity planning methodology and results, or their security and contingency programs. Thus, rather than continuing the Form 1A approach, the Commission believes that a more efficient approach is a reporting process that would permit each SRO to present an annual EDP systems planning and status report.

[19] The Commission believes that, to the extent possible for efficiency and cost purposes, the annual report should coincide with the SROs' current planning cycles. If possible, it also may be beneficial to have the report coincide with the meetings related to the EDP audit cycle.

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provide a new service or function for SRO members or their customers; or (5) otherwise significantly affects the operations of the SRO.[20]

In general, the notification should describe briefly: the system's functionality and configuration; capacity estimates; test plans and schedules; contingency protocols, *i.e.*, plans for disaster recovery; vulnerability assessments, *e.g.*, security measures; and production schedules. Specifically, as the Commission sees the process working, the presentation contained in the notification should be sufficiently detailed to explain the new system development process, including the systems development methodology employed, the new configuration of the system, its relationship to other systems, the timeframes or schedule for installation, any testing performed or planned, and an explanation of the impact of the change on the SRO's capacity estimates, contingency protocols, and vulnerability assessments. Because the typical filing would be made prior to testing, the Commission believes that updates to the filing describing the test results would be necessary.[21]

Consistent with its purpose of advising the Commission of changes to systems especially regarding the implications that such changes may have for SRO rules, a notification should be made sufficiently in advance of the planned production date so that the staff can evaluate the adequacy of the capacity estimates and tests, take security measures and consider the need for a Rule 19b-4 filing. Generally speaking, the determination for when a rule filing is necessary must be made on a case-by-case basis depending in large part on what the staff learns about the system change in the systems notification. Given the generally lengthy lead time required for the planning and development of significant systems changes, most notifications could be submitted as a part of the annual EDP planning report. This process for advising the staff of systems changes, of course, does not eliminate the need for filing under section 19(b) of the Act when the system change also entails a need for changing an SRO rule.[22]

C. Outage Notification Procedures

To facilitate the Commission's understanding of SRO systems problems and to enhance the ability of the staff to respond to events that cause disruptions in the automated trading on the securities markets, the Commission requests that the SROs provide staff with real-time notification of significant system outages at the SROs. Under this request for notification, the Commission staff in OAIM and the staff at the SROs will designate particular persons to contact in the event that the SRO develops a significant problem with an automated system. The Commission believes that when a problem with an automated trading or market information dissemination system occurs and the problem appears as if it will extend for 30 minutes or more, the SROs should contact the appropriate person on the staff immediately upon realizing that the problem will continue beyond the allotted period. Additionally, even if a problem does not extend beyond that time frame, it is the Commission's view that the SRO should inform Commission staff of a significant outage or problem occurred in a system after the outage has been resolved, within a reasonable period on the same day of the outage. In both circumstances, the Commission believes that, if the staff requests it, the SROs also should provide the staff with a written description of the outage within a reasonable period after resolution of the problem. Such description would be expected to provide details concerning the nature and extent of the problem, including the systems affected and the effect on the trading community, and the nature of the corrective action.[23]

D. Development of Standards

In its first ARP, the Commission specifically requested comment on standards for stress tests that are used to determine capacity levels and standards for audit processes. Since then, the Commission has evaluated additional materials regarding the development of generally accepted standards for computer capacity, security and audit and control standards. For example, in December, 1990, the National Research Council ("NRC")[24] issued a report[25] calling for, among other things, the promulgation of a comprehensive set of generally accepted system security principles that would provide a clear articulation of essential security features, assurances, and practices. Similarly, a recent book[26] on information systems controls called for the development of generally accepted information systems control and audit standards, analogous to the control and audit standards that have been established by financial accountants and auditors for financial reporting purposes.

The Commission believes that, with respect to SRO automation developments, the time is rapidly approaching where the need for development of generally accepted standards and procedures for automation issues becomes crucial. We believe that uniform and consistent approaches to the monitoring and regulation of certain aspects of automation, particularly with regard to capacity levels and security, are necessary to ensure fair and orderly markets, economic efficiency in the execution of securities transactions and fair competition among markets.[27]

[20] Even for less significant changes to systems, *i.e.*, changes that do not rise to the level of materiality found in systems notices, the SROs nonetheless may determine to inform the Commission staff of developments at the SRO. For example, a decision to change a surveillance data base from one hardware environment to another environment does not appear to be the type to involve a system notification, and, in most circumstances, would not require a proposed rule change, but may be helpful in providing the staff a fuller view of systems development at an SRO. Thus, if the SRO believes that a particular change does not necessitate a systems notification or a Rule 19b-4 rule change, the SRO nonetheless may choose to advise of the change to elicit the staff's view.

[21] Several SROs have raised questions concerning the status of information disclosed in these notifications under the Freedom of Information Act ("FOIA") (5 U.S.C. 552), and Commission rules thereunder (17 CFR 200.80) (1990). While the Commission reviews all FOIA requests on a case-by-case basis, we expect most, if not all of the contents of these notifications to qualify for exemptions under the FOIA due to the highly sensitive, commercial nature of the information. The Commission cannot, however, assure the outcome of any litigation that might result should the Commission deny a FOIA request for access to this information.

[22] *See* Rule 19b-4 under the Act. 17 CFR 240.19b-4.

[23] As with system notifications, the Commission believes that it is likely that all outage notifications would fall within exemptions from disclosure under FOIA. *See supra*, note 20.

[24] The NRC is an organization created by the National Academy of Sciences ("Academy") in 1916 to assist the Academy in its goals of furthering knowledge and advising the federal government. The NRC functions in accordance with general policies determined by the Academy and is comprised of persons drawn from science and technology communities.

[25] System Security Study Committee, Computer Science and Telecommunications Board, Commission on Physical Sciences, Mathematics, and Applications, National Research Council, Computers At Risk: Safe Computing in the Information Age, National Academy Press, 1991.

[26] Gewirdzen and Picard, Manifesto on Information Systems Control and Management: A New World Order (1990).

[27] *See* Sections 2 and 11A of the Act. 15 U.S.C. 78b and 78k-1. *See also* Senate Comm. on Banking, Housing and Urban Affairs, Report to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Sess. 7, reprinted in 1975 U.S. Code Cong. & Ad. News 179. (One of the paramount objectives of a national market system is the "maintenance of stable and orderly markets with maximum capacity for absorbing trading imbalances without undue price movements.")

Several means for developing the process appear to be available, including the continuation of the informal meetings that Commission staff has held with automation personnel of the SROs over the last year. Although the Commission believes that staff of the Commission and the SROs should continue to meet on an informal basis, we believe that a more structured mechanism also should be explored. An additional approach might entail the formation of an advisory committee of industry, academic, and government participants to assist the Commission's development of such standards. Accordingly, the Commission requests comment from interested entities on the process by which the Commission should begin to explore the development of standards regarding computer security, capacity and auditing of systems.

IV. Conclusion

The Commission is committed to the sound and efficient oversight of the automated systems used in the securities industry today. The Commission believes that, through the voluntary implementation of the independent review process guidelines and the notification processes regarding system changes and outages enunciated in this Policy Statement, the SROs will be acting consistently with one of the paramount objectives of the securities laws of the United States, the maintenance of fair, stable, and orderly markets. Moreover, through the commencement of a process to explore the need for standards for securities industry automated trading systems, the Commission, the SROs, and other interested parties will be able to ensure that an effective process for monitoring the rapid developments in this field is established.

By the Commission.

Dated: May 9, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11532 Filed 5-14-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29181; File No. SR-NASD-91-17]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Small Order Execution System and Day Trading

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 15, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, and amendments thereto on May 6, 1991[1] and May 8, 1991,[2] as described in items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing amendments to the Rules of Practice and Procedure of the Small Order Execution System ("SOES") regarding day trading and to specify certain review and appeal procedures for accounts prohibited from using SOES.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SOES is designed to improve the efficiency of executing small-sized customer orders in NASDAQ securities by offering an alternative to traditional telephone contact and negotiation with market makers. SOES provides automated execution of small customer orders with NASDAQ market makers at the best available market price. Since the exclusive purpose of the system is to facilitate the execution of small customer orders, the Association has taken steps in the past the ensure market maker presence in the system[4] and to prohibit misuse of the system by professional traders.[5] The term "professional trading account" is currently defined as an account in which five or more day trades have been executed through SOES during any trading day or an account in which there has been a professional trading pattern in SOES as demonstrated by a pattern or practice of day trading, executing high volume of day trades in relation to the total transactions in the account or executing a high volume of day trading in relation to the amount and volume of securities held in the account.

The NASD is proposing to define professional trading accounts to include accounts with day trades that have one or both sides executed through SOES. This rule change would prevent professional traders from using SOES to automatically execute one side of a day trade against a market maker, while executing the other side of the day trade outside of SOES in order to elude the "five day trade" criteria in the SOES rules.

The NASD believes that linking "professional trading accounts" to "day trading through SOES" severely limits the NASD's ability to preserve the function of SOES' as a facility for strictly public customer use. It is necessary, therefore, to provide a constructive and responsible modification to the rule to clarify that both a purchase and sale need not be executed through SOES to be considered a "day" trade. The designation of an account as a professional trading account by the NASD will be accomplished after review and consideration of the pattern and practice of trading using SOES execution capability for either purchases or sales in offsetting transactions.

The NASD is also adding a cross reference to the specific section in the Code of Procedure that governs review and appeal procedures for grievances concerning automated systems. Order

[1] See Memorandum from Beth Mastro to Kathy England dated May 1, 1991, re: clarification of language in SR-NASD-91-17. Two amendments were received by the Commission. Although not labeled Amendment No. 1, the memorandum from Beth Mastro to Kathy England, dated May 1, 1991 is considered an amendment.

[2] See amendment No. 1 filed on May 8, 1991 which clarified that individuals aggrieved by a designation of their account as a professional trading account have a right to review by adding to the text of the proposed rule change "and other persons."

[3] The Commission also is publishing notice at this time of proposed rule change SR-NASD-91-19 which would establish a 15 second delay between SOES executions to provide the market maker that was subject to a SOES execution a period of time in which to update his quote. See Securities Exchange Act Release No. 29182 (May 9, 1991).

[4] See, SR-NASD-89-1, Securities Exchange Act Release No. 28791 (June 9, 1989), 53 FR 22504 (June 15, 1988), mandating participation in SOES by NASDQ market makers in National Market System ("NMS") securities.

[5] See, SR-NASD-89-48, Securities Exchange Act Release No. 28081 (December 15, 1989), 53 FR 51695 (December 22, 1988).

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entry firms and other persons prohibited from using SOES because of a professional trading account designation, may seek review of the determination pursuant to article IX of the NASD Code of Procedure, "Procedures on Grievances Concerning the Automated Systems."

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." SOES is operated to facilitate automated executions of small customer orders and the proposed amendments are intended to benefit public customers by curbing misuses of the system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 5, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 9, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11527 Filed 5-14-91; 8:45 a.m.]

BILLING CODE 8010-01-M

[Release No. 34-29182; File No. SR-NASD-91-16]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Quotation Updates in the Small Order Execution System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 18, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association" filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing amendments to the Rules of Practice and Procedure for the Small Order Execution System to permit market makers a period of time in which to update quotations following an execution before being required to execute another transaction on the same side in the same security.[1]

[1] The Commission is also publishing notice at this time of proposed rule change SR-NASD-91-17 which would amend the SOES rules to expand the meaning of "day" trading in relation to the definition of "professional trading account" and which would specify certain review and appeal procedures for accounts prohibited from using SOES. See Securities Exchange Act Release No. 29181 (May 9, 1991).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD's Small Order Execution System ("SOES") is designed to improve the efficiency of executing small-sized customer orders in NASDAQ securities by offering an alternative to traditional telephone contact and negotiation with market makers. SOES provides automatic execution of small customer orders with NASDAQ market makers at the best available market price. Since the exclusive purpose of the system is to facilitate the execution of small customer orders, the Association has taken steps in the past to prohibit misuse of the system by professional traders [2] and to ensure market marker presence in the system.[3]

The NASD is proposing a period of time (i.e., 15 seconds) [4] following an execution to allow a market maker to update a quotation before being obliged to execute a second transaction in the same security on the same side through SOES.[5] Currently, the SOES system can almost instantaneously execute multiple orders against a market maker until the market maker's exposure limit in the security is exhausted. SOES market makers are permitted to establish exposure limits anywhere from five times the SOES tier size (e.g., 1,000,

[2] See, SR-NASD-88-43, Release No. 34-26361 (December 15, 1988); 53 FR 51605 (December 22, 1988).

[3] See, SR-NASD-89-1, Release 34-27791 (June 9, 1989); 53 FR 22594 (June 15, 1988), mandating participation in SOES by NASDAQ market makers in National Market System securities.

[4] The NASD is establishing the time period at 15 seconds and has stated that it may modify the period with appropriate notice to SOES participants. Any change in the time period must be submitted to the Commission for review pursuant to section 19(b) of the Act.

[5] The NASD states that it may take between six and nine months to complete the reconfiguration of SOES in order to allow for a 15 second delay between executions.

2,500, or 5,000 shares for securities trading at the 200, 500, and 1,000 share tier levels, respectively) up to an unlimited exposure limit of 999,999 shares. This feature assures liquidity in the NASDAQ issues traded through SOES, but currently does not allow time for market makers to update their quotations in response to executions occurring through the system.

The NASD has taken various steps in the past to assure continuous liquidity in NASDAQ issues traded through SOES, especially in NASDAQ/National Market System ("NMS") issues: mandatory exposure limits of five times the SOES tier size; the requirement for market makers to participate in SOES in NMS securities; and the requirement to display size in quotations at least as great as the SOES tier size. The instant proposal for a quotation update period will not diminish market makers' responsibilities to participate in SOES or to post mandatory size in quotations; the update period will give market makers time to react to an execution and adjust their markets, if appropriate, to reflect the execution or altered market conditions.

SEC rule 11Ac1-1, the "Firm Quote Rule," requires brokers and dealers to execute orders to buy and sell securities at their published quotations unless the broker/dealer is communicating a revised bid or offer to the NASD or has effected a transaction in the security and is updating its quotation.[6] NASDAQ market makers are required to maintain firm quotes and be willing to execute trades at their quotations. Allowing time in between these automated executions of SOES, while still retaining the automated features of the SOES system, strikes an appropriate balance between the small customer's desire for efficiency and immediacy in executions, and the NASD's responsibilities to operate a system that provides a fair, responsive trading environment for the parties extending the capital commitment to the NASDAQ market. The NASD believes that proposing a period of time in which a market maker may update its quotation following an automatic execution essentially beyond its control is well within the dictates of the SEC's Firm Quote Rule.

Following receipt of an execution report of a purchase or sale through SOES, a market maker will have a period of time (15 seconds) to update its quote prior to executing any subsequent purchase or sale at the same quote. If a market maker has executed a sale, and subsequently receives a purchase order, SOES will execute that order. If a customer order is executed against the market maker's bid and the market maker subsequently updates its offer or its size in the security, the quotation update period will expire immediately because any update to the market maker's quotation terminates the update period. If an update is accomplished before the period expires, executions will resume immediately after the update; executions will also resume against the market maker after the update period has elapsed, regardless of whether the quote has been changed.

Orders would continue to be executed against other market makers in the security during the window and executions will continue to occur against all market makers once the inside quotation (best published bid and offer) is changed. To summarize:

- The quotation update period will commence after an execution report has been received, at the specific price quoted, on the same side of the quotation that has been executed against, either bid or offer;
- Any subsequent quotation change (to bid, offer, or size) will end the quotation update window; and
- Formulation of a new inside quotation will terminate the window.

The period to update a quotation will not apply to a market maker that is locking or crossing the market in a security, as the SOES system has been reconfigured to automatically execute against the locking or crossing market maker in order to correct the erroneous quotations.

In addition, the language of the SOES rules has been clarified to indicate that preferencing is voluntary—market makers may decline preferencing overall or by individual security, and the orders preferenced to market makers that have declined preferencing are executed as if they were unpreferenced, that is, against any market maker at the best bid or offer quotation in rotation. Execution reports will be generated and transmitted to the order entry firms immediately after the execution has taken place.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act and SEC rule 11Ac1-1. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." SOES operates to facilitate automated customer executions and the proposed amendments will benefit public customers by curbing misuse of the system. SEC rule 11Ac1-1, the "Firm Quote Rule," grants broker/dealers an opportunity to update their quotations following an execution before being required to execute another transaction in the same security. The NASD believes that a fixed period for quotation updates through the SOES system is fully in compliance with the requirements of the Firm Quote Rule.

[6] 17 CFR 240.11Ac1-1(c) (3) (ii) (1987).

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the

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Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 5, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 9, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11529 Filed 5-14-91; 8:45 am]

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[Release No. 34-29180; File No. SR-NYSE-91-14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Extension of Rule 103A—Specialist Stock Reallocation—Until May 9, 1992

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 30, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by the self-regulatory organization. The Exchange has requested accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the effectiveness of rule 103A (Specialist Stock Reallocation) for an additional year until May 9, 1992.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The intent of rule 103A is to encourage a high level of market quality and performance in Exchange listed securities. Rule 103A grants authority to the Exchange's Market Performance Committee ("MPC") to develop and administer systems and procedures, including the determination of appropriate standards and measurements of performance, designed to measure specialist performance and market quality on a periodic basis to determine whether or not particular specialist units need to take actions to improve their performance. Based on such determinations, the MPC is authorized to conduct a formal Performance Improvement Action in an appropriate case.

On July 17, 1990, the Commission approved various revisions to rule 103A and extended the effectiveness of the rule until May 9, 1991.[2] In the July 17 Order, the Commission stated its belief that the Exchange should develop objective performance standards to measure specialist performance.[3] The Exchange currently is studying the issue of objective performance standards and is seeking to extend the effectiveness of rule 103A for an additional year while the Exchange considers adopting such objective standards.

(2) Basis

The statutory basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general, to protect investors and the public interest. The proposed extension of rule 103A is consistent with these objectives in that it will allow the Exchange to continue to administer the Rule on an uninterrupted basis ensuring quality specialist performance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-91-14 and should be submitted by June 5, 1991.

IV. Discussion and Conclusion

The Commission believes that specialist units play a crucial role in providing stability, liquidity and continuity to the trading of stocks on the Exchange. Among the obligations imposed upon specialists by the Exchange, and by the Act and rules thereunder, is the maintenance of fair and orderly markets in their designated securities.[4] To ensure the fulfillment of these obligations, it is important that the Exchange conduct effective oversight of specialist performance. Critical to this oversight is the specialist performance evaluation process embodied in rule 103A.

In the July 17 Order the Commission stated its expectation that the Exchange amend rule 103A.10, by filing a proposed rule change with the Commission pursuant to rule 19b-4 under the Act, to implement relative performance standards for specialist performance evaluations based on Specialist Performance Evaluation Questionnarie ("SPEQ") scores.[5] The Exchange complied with this request and the proposal to adopt relative performance standards into the rule 103A program subequently was approved by the Commission on February 27, 1991.[6] In addition, in the July 17 Order, the Commission emphasized its desire for the NYSE to develop objective measures of market making performance and incorporate such measures into the proposed rule change to extend the rule 103A pilot. As indicated previously, however, the proposal herein to extend rule 103A until May 9, 1992, does not include objective measures of market making performance. In the proposed rule change, the Exchange states that it currently is studying the issue of objective performance standards and is seeking to extend rule 103A for an additional year while it considers adopting objective standards. Prior to the July 17 Order, the Exchange informed the Commission that it had employed the services of an outside expert to study the feasibility of adopting such objective measures of specialist performance. The Exchange has informed the Commission that the consultants hired by the NYSE are still reviewing the use of objective standards.

Even though the proposal lacks the inclusion of objective market making performance standards, standards which the Commission believes are important to a truly effective specialist performance program, the Commission has determined to approve the proposal to extend the effectiveness of rule 103A for an additional year in light of the significant enhancements the NYSE has made to the rule 103A program thus far and the substantial commitment the Exchange has made to developing objective criteria. The revisions to rule 103A, adopted in the July 17 Order, and the subsequent adoption of relative performance standards have augmented the Exchange's ability to evaluate specialist performance, resulting in higher performance levels and market quality.

The Commission continues to believe, however, that the Exchange should develop objective performance standards that would measure accurately the traditional indicia of specialist performance, namely, market depth, price continuity and dealer participation and stabilization. Similarly, as noted in the July 17 Order, the Commission believes that the mature status of the Intermarket Trading System ("ITS") as a market structure facility warrants the incorporation of ITS turnaround and "trade-through" concerns into the NYSE's rule 103A performance standards. The Commission, therefore, encourages the NYSE to incorporate objective standards into the rule 103A program prior to or simultaneous with the NYSE's future proposal to extend the effectiveness of Rule 103A or adopt the Rule on a permanent basis.[7]

In conclusion, the Commission has reviewed carefully the NYSE's proposed rule change and believes that the proposed rule change is consistent with the requirements of sections 6 and 11 of the Act [8] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of the Exchange be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest. Further, the Commission finds that the proposal is consistent with section 11(b) of the Act,[9] and rule 11b-1 thereunder,[10] which allow securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and protect the mechanism of a national market system. The extension of rule 103A's effectiveness until May 9, 1992 will provide the Exchange with the ability to continue evaluating specialist performance, which should result in a continued high level of market quality and performance in Exchange listed securities. The Exchange also will be able to continue developing objective measures of market making performance.

Moreover, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can continue to administer, on an uninterrupted basis, its rule 103A evaluation process. During the one year extension of the rule, the Commission and the NYSE will plan to examine the efficacy of its current specialist evaluation procedures, as well as determine whether to extend the pilot for a further period or, in the alternative, approve rule 103A on a permanent basis. Finally, a substantial portion of current rule 103A was noticed for the full statutory period in 1987, and the Commission did not receive any adverse commentary on the revised rule 103A program.[11] Further, interested persons were invited to comment on the past proposals to extend the effectiveness of rule 103A, the most recent of such proposals being the extension of rule 103A until May 9, 1991. The Commission received no comments on these proposals. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.[12]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act [13] that the

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[1] 15 U.S.C. 78s(b)(2) (1988).

[2] The revisions to rule 103A which the Commission approved on July 7, 1990 included, among other things, enhancing the performance criteria for administrative messages received through the SuperDOT system. See Securities Exchange Act Release No. 28215 (July 17, 1990), 55 FR 30080 ("July 17 Order") (order approving File No. SR-NYSE-90-24).

[3] The Commission notes that the Exchange's current evaluation criteria under rule 103A.10 include objective standards that measure specialist performance at the opening (both regular and delayed), systematized order turnaround, and the timeliness of a unit's response to status requests. Objective market making measures, however, currently are not included in the rule 103A program.

[4] Rule 11b-1 under the Act, 17 CFR 240.11b-1 (1990); NYSE Rule 104.

[5] The SPEQ is a quarterly survey on specialist performance completed by eligible floor brokers (*i.e.*, any floor broker with at least one year of experience). The SPEQ requires floor brokers to rate, and provide written comments on, the performance of specialist units with whom they deal frequently.

[6] See Securities Exchange Act Release No. 28923 (February 27, 1991), 56 FR 9993 (order approving File No. SR-NYSE-90-44).

[7] In this regard, the Commission expects the NYSE to submit to the Division of Market Regulation, prior to the quarter ending March 1992, a proposed rule change pursuant to rule 19b-4 under the Act, 17 CFR 240.19b-4, to extend the rule 103A pilot or make the Rule permanent. As emphasized above, this proposed rule change should include objective measures of marekt making performance that have been developed by the outside experts retained by the Exchange. The Commission also expects the Exchange to submit to the Division, by the quarter ending March 1992, a status report on the implementation of rule 103A. The report should contain data, for each quarter of 1991, on (1) the number of specialists that fell below acceptance levels of performance for each category; (2) the number of performance improvement actions commenced; (3) the number of units subjected to informal counseling to improve performance; and (4) a list of stocks reallocated due to substantard performance under the Rule and the particular unit involved.

[8] 15 U.S.C. 78f and 78k (1988).

[9] 15 U.S.C. 78k(b) (1988).

[10] 17 CFR 240.11b-1 (1990).

[11] See Securities Exchange Act Release Nos. 24919 (September 15, 1987), 52 FR 35621 (notice of filing of File NO. SR-NYSE-87-25); and 25661 (May 9, 1988), 53 FR 17287 (order approving File No. SR-NYSE-87-25).

[12] 15 U.S.C. 78f (1988).

[13] 15 U.S.C. 78s(b)(2) (1988).

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proposed rule change be, and hereby is, approved for the period ending May 9, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Dated: May 6, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11529 Filed 5-14-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29177; International Series No. 268; File No. SR-NYSE-91-12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing of Index Warrants Based on the Financial Times-Stock Exchange Eurotrack 200 Index.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 26, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to approve for listing and trading under section 703.17 of its Listed Company Manual index warrants based on the Financial Times-Stock Exchange Eurotrack 200 Index ("Eurotrack 200 Index" or "Index"), an index that represents 100 of the most highly capitalized and actively traded British stocks, and 100 of the most highly capitalized and actively traded stocks of non-British European issuers, traded on the International Stock Exchange of the United Kingdom and the Republic of Ireland ("ISE").

The text of the proposed rule change is available at the Office of the Secretary of the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under section 703.17 (Index Warrants) of the Exchange's Listed Company Manual, the Exchange may list index warrants based on established foreign and domestic indices.

The NYSE is now proposing to list index warrants based on the Eurotrack 200 Index, an internationally recognized, capitalization-weighted stock index representing 100 of the most highly capitalized and actively traded British stocks, and 100 of the most highly capitalized and actively traded stocks of non-British European issuers traded on the ISE.[1] The Eurotrack 200 combines two other internationally recognized indices: The FT-SE 100 Index,[2] and the FT-SE Eurotrack 100 Index ("Eurotrack 100").[3] The Eurotrack 200 Index currently is calculated and published in Deutschemarks each minute from 9:45 a.m. to 3:30 p.m. (London time) and is currently disseminated in the United States by the ISE and by market data vendors.

The ISE owns the Eurotrack 200 Index, as well as the FT-SE 100 Index and the Eurotrack 100 Index, and is responsible for calculating and maintaining the Index. The Financial Times monitors corporate developments relating to the component stocks of the Index and licenses the use of its name to the ISE for the purposes of the Index. In addition to the ISE and the Financial Times, an "index working committee" was formed to assist with the design and development of the Index.

The NYSE represents that such Index warrant issues will conform to the listing guidelines under section 703.17, which provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in Section 102.01 of the Listed Company Manual; (2) the term of the warrants shall be for a period of at least one year from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,100,000 warrants together with a minimum of 400 public holders, and the warrants shall have an aggregate market value of $4,000,000.

Eurotrack 200 warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Eurotrack 200 has declined below a prestated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Eurotrack 200 has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The NYSE has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Specifically, Exchange Rule 405, Supplementary Material .30 applies the options suitability standard in Exchange Rule 723 to recommendations regarding Index warrants. The Exchange also recommends that Index warrants be sold only to options-approved accounts. In addition, Exchange Rule 408, Supplementary Material .10 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in Index warrants on the day the order is entered. Finally, the NYSE prior to the commencement of trading in Eurotrack 200 Index warrants, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Eurotrack 200 Index.

The Exchange has entered into an agreement with The Securities Association, Ltd. ("TSA") that provides for the sharing of necessary information between the Exchange and TSA to fulfill their respective regulatory responsibilities. In addition, the Exchange is about to enter into an agreement with the ISE that, among other things, provides for the sharing of surveillance information specifically in relation to trading warrants on the Eurotrack 200 Index.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), as the rules governing warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 5, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 6, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11530 Filed 5-14-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29177; International Series Release No. 267; File No. SR-NYSE-91-12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing of Index Warrants Based on the Financial Times-Stock Exchange Eurotrack 100 Index.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 26, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to approve for listing and trading under section 703.17 of its Listed Company Manual index warrants based on the Financial Times-Stock Exchange Eurotrack 100 Index ("Eurotrack 100 Index" or "Index"), an index that represents 100 of the most highly capitalized and actively traded stocks of non-British European issuers traded on the International Stock Exchange of the United Kingdom and the Republic of Ireland ("ISE").

The text of the proposed rule change is available at the Office of the Secretary of the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under section 703.7 (Index Warrants) of the Exchange's Listed Company Manual, the Exchange may list index warrants based on established foreign and domestic indices.

The NYSE is now proposing to list index warrants based on the Eurotrack 100 Index, an internationally recognized, capitalization-weighted stock index representing 100 of the most highly capitalized and actively traded stocks of non-British European issuers traded on the ISE. The Eurotrack 100 Index currently is calculated and published in Deutschemarks each minute from 9:45 a.m. to 3:30 p.m. (London Time) and is currently disseminated in the United States by the ISE and by market data vendors.[1]

The ISE owns the Eurotrack 100 Index and is responsible for calculating and maintaining the Index. The Financial Times monitors corporate developments relating to the component stocks of the Index and licenses the use of its name to the ISE for the purposes of the Index. In addition to the ISE and the Financial Times, an "index working committee" was formed to assist with the design and development of the Index.

The NYSE represents that such Index warrant issues will conform to the listing guidelines under section 703.17, which provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in section 102.01 of the Listed Company Manual; (2) the term of the warrants

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[14] 17 CFR 200.30-3(a)(12) (1989).

[1] For a more complete description of the Eurotrack 200, the Chicago Board Options Exchange, Inc. submitted a proposal to trade options on the Eurotrack 200. See Securities Exchange Act Release No. 29045 (April 4, 1991), 56 FR 14581.

[2] The Commission has approved the Exchange's proposal to trade warrants based on the FT-SE 100 Index. *See* Securities Exchange Act Release No. 28509 (August 30, 1990), 55 FR 37360.

[3] The Exchange has submitted a proposal to trade warrants based on the Eurotrack 100. *See* File No. SR-NYSE-90-12.

[1] For a more complete description of the Eurotrack 100, see the proposal by the Chicago Board Options Exchange to trade options on the Eurotrack 100, Securities Exchange Act Release No. 29045 (April 4, 1991), 56 FR 14583.

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shall be for a period of at least one year from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,100,000 warrants together with a minimum of 400 public holders, and the warrants shall have an aggregate market value of $4,000,000.

FT-SE Eurotrack 100 warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Eurotrack 100 has declined below a prestated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Eurotrack 100 has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The NYSE has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Specifically, Exchange Rule 405, Supplementary Material .20 applies the options suitability standard in Exchange Rule 723 to recommendations regarding index warrants. The Exchange also recommends that index warrants be sold only to options-approved accounts. In addition, Exchange Rule 408, Supplementary Material .10 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day the order is entered. Finally, the NYSE, prior to the commencement of trading in Eurotrack 100 Index warrants, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Eurotrack 100 Index.

The Exchange has entered into an agreement with The Securities Association, Ltd. ("TSA") that provides for the sharing of necessary information between the Exchange and TSA to fulfill their respective regulatory responsibilities. In addition, the Exchange is about to enter into an agreement with the ISE that, among other things, provides for the sharing of surveillance information specifically in relation to trading warrants on the FT-SE Eurotrack 100 Index.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), as the rules governing warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washingotn, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submission should refer to the file number in the caption above and should be submitted by June 5, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 8, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11531 Filed 5-14-91; 8:45am]

BILLING CODE 8010-01-M

[Release No. 34-29179; File No. SR-PHLX-91-13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Exercise of Discretion By a Floor Broker Over a Registered Options Trader's Order

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 25, 1991, the Philadelphia Stock Exchange ("PHLX") or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend Options Floor Procedure Advice C-3, promulgated under PHLX Rule 1065, and Commentary .02 to PHLX Rule 1065 to prohibit a floor broker from exercising any discretion over a Registered Options Trader's ("ROT") order. Currently, floor brokers are prohibited from exercising any discretion as to the class, quantity, or nature (*i.e.*, buy or sell) of an ROT's order.

The text of the proposed rule change is available at the Office of the Secretary, PHLX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed change to existing Exchange Options Floor Procedure Advice ("OFPA") C-3 relates to how a floor broker handles orders from a PHLX ROT. Proposed part (c) to OFPA C-3 would prohibit a floor broker from exercising any discretion with respect to an ROT's order. The proposal also adds Commentary .02 to Exchange Rule 1065 which also prohibits a floor broker from exercising such discretion. Further, the proposal also makes changes to the OFPA's fine schedule.

Currently, PHLX Rule 1065 provides that it is a violation of Exchange rules for a floor broker to exercise discretion with respect to any option's class, quantity or nature (*i.e.*, whether the order is to buy or sell). The proposed additions extend this prohibition to include the floor broker's exercising discretion as to price with respect to ROT orders. Specifically, new Commentary .02 is added to Rule 1065 governing discretionary transactions. The new text will expressly limit the ability of a broker to accept any discretion with respect to any aspect of an ROT's order. The proposed rule change does not affect floor broker discretion as to the price of customer orders, which is still permitted.

The proposed makes conforming amendments to OFPA C-3 to provide for specific fines to be imposed on floor brokers when they exercise any discretion over an ROT's order. OFPA B-A currently prohibits an ROT from giving discretion to a floor broker. Reading PHLX Rule 1065 with OFPA B-4, however, indicates that discretion as to price results in a citation for the ROT, but no comparable automatic penalty for the floor broker since the granting of discretion as to price is not specifically prohibited in Rule 1065. Therefore under current PHLX rules, an ROT's violation of OFPA B-4 results in a penalty as to himself, but the floor broker's exercise of price discretion is permitted. The proposal would close this loophole in regulation, as amended OFPA C-3 would prohibit the exercise of any discretion by a broker with respect to the order of a PHLX ROT and provide for penalties to be assessed against floor brokers in the event that any discretion is granted by a ROT to a floor broker.

The Exchange believes that the proposed rule change is consistent with the provisions of the Act, and the rules and regulations thereunder, and, in particular, with Section 6(b)(5), in that it is designed to a maintain consistency in the application of procedural guidelines, promoting just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement of Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competion.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450, Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 5, 1991.

For the Commission, by the Divisions of Market Regulation, pursuant to delegated authority.[1]

Dated: May 8, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11533 Filed 5-14-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18139; File No. 811-5524]

Variable Annuity Account One (C)

May 8, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANT: Variable Annuity Account One (C) of Anchor National Life Insurance Company.

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 8, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by 5:30 p.m., on June 3, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send a copy to the Secretary of the SEC along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, c/o Lorin M. Fife, Esq., Anchor National Life Insurance Company, 11601 Wilshire Boulevard, Los Angeles, California 90025.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney (202) 272-3046 or Nancy M. Rappa, Senior Attorney (202) 272-2822, Office of Insurance Products and Legal Compliance (Division of Investment Management).

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[1] 17 CFR 200.30-3(a)(12) (1990).

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SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants Representations

1. On October 15, 1986, the Applicant filed a notification of registration as an investment company on form N-8A pursuant to section 8(a) of the Act and a registration statement on form N-4 (File No. 33-9468) pursuant to section 8(b) of the Act and the Securities Act of 1933 (the "1933 Act"). The securities registered under the registration statement were certain variable annuity contracts. The registration statement was declared effective on June 1, 1987.

2. The Applicant (formerly, Capitol Variable Annuity Account One (C)) was established by The Capitol Life Insurance Company pursuant to Colorado insurance law on September 23, 1986. Variable Annuity Account One (C) was assumed intact by Anchor National Life Insurance Company on January 18, 1990 and reestablished under California insurance law. Thus, as of that date, Variable Annuity Account One (C) ceased to exist under Colorado law.

3. During the last 18 months, the Applicant has not transferred any of its assets to a separate trust.

4. On January 17, 1990, the Executive Committee of the Board of Directors of Anchor National Life Insurance Company ("Anchor National") on behalf of the Applicant unanimously approved the merger of the Applicant into Variable Annuity Account One of Anchor National. On January 24, 1990, an application was filed on behalf of the Applicant and certain other parties, requesting an exemptive order under the Act to permit the proposed merger. The order was granted by the SEC on July 26, 1990 (Investment Company Act Release No. 17620) and on September 24, 1990, the proposed merger was consummated. As a result of the merger, the variable annuity contracts that were funded through the Applicant are now funded through Variable Annuity Account One (File No. 811-4296), and the contract owners of the Applicant became contract owners of Variable Annuity Account One. The merger did not affect the rights or contract values of contract owners of either separate account.

5. Expenses incurred in connection with the merger of the Applicant into Variable Annuity Account One have been borne by Anchor National Life Insurance Company. There were no brokerage fees incurred in connection with the merger since both separate accounts were invested in shares of Anchor Series Trust, an open end, management investment company.

6. All filings and other actions required by state insurance law have been completed and the merger has been approved by the California Insurance Commissioner.

7. No assets have been retained by the Applicant. The Applicant has no debts or other liabilities outstanding and it is not party to any litigation or administrative proceedings.

8. The Applicant has no security holders and is not now engaged, nor does it propose to engage, in any business activity other than that necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under the delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11466 Filed 5-14-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Solicitation for Airway Science Grant Proposals

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of solicitation for Airway Science Grant Proposals.

SUMMARY: This solicitation represents a continuation of the Federal Aviation Administration's AWS Grant Program. The Federal Aviation Administration (FAA) is authorized by Public Law 101-516 to solicit competitive proposals for Airway Science (AWS) grants from accredited 4-year public or nonprofit private colleges and universities with recognized FAA AWS Curriculum programs. The FAA expects to award most, if not all, of an available $9,700,000 in the form of grants, to a select number of these recognized institutions. A portion of the available funds will be awarded to eligible minority institutions with recognized AWS curricula. Awards typically will range from $100,000 to $750,000 maximum. In no event shall the total Federal share of any AWS project exceed 50% of the cost of the project.

The grant funds may be used for the purchase, lease with intent to purchase, or construction of academic buildings and associated facilities to be used in support of an FAA recognized AWS curriculum. In addition, grant funds may be used for nonexpendable instructional materials or instructional equipment to be used in the actual teaching of the AWS curriculum. No federal grant funds shall be used for salaries, operating expenses, research and development, travel, consultant fees, indirect costs, office supplies automobiles, aircraft, maintenance agreements, printing costs, promotional and marketing materials or equipment, general purpose parking lots, land commercial airport facilities, taxiways, runways, or any project in support of a commercial activity.

FOR FURTHER INFORMATION CONTACT: Virginia Hancock Krohn, Airway Science Grant Manager, Federal Aviation Administration, Office of Training and Higher Education, AHT-30, room PL-100, 400 7th St. SW., Washington, DC 20590, Telephone: (202) 366-7003.

Closing Date

Six identical copies of the Proposal must be received by the FAA no later than July 31, 1991 (4 p.m. EST). One copy of the proposal must contain an original cover sheet. Applications received after the closing date will not be accepted.

Proposals Submitted by Mail: A mailed proposal must be sent to the address listed above. Applicants are strongly encouraged to use registered or first class mail. Any grant application received after the closing date will be treated as a late application and will not be considered for a grant award.

Proposals Submitted by Messengers: A hand delivered proposal must be taken to the FAA at the address listed above. The office of the AWS Grant Program Manager will accept hand delivered proposals between the hours of 8 a.m. and 4 p.m. EST, except weekends and Federal Holidays. A hand delivered proposal will not be accepted after 4 p.m. on the closing date.

Each institution will be notified when its application is received. No supplemental materials received after the application deadline date will be considered unless such material is solicited by the AWS Grant Program Manager.

Background

The FAA is engaged in a comprehensive program to modernize the Nation's airway system to meet the challenge of aviation growth in the coming decades. The modernization program is reflected in the FAA's National Airspace System plan which takes advantage of current technological advances to increase the capacity of the Nation's airspace system while reducing relative costs to the Nation's taxpayers.

The FAA recognizes the increasing complexity of technical and managerial skills that will be needed to accommodate the technological advances in equipment, systems, and configurations being planned and implemented throughout the aviation industry. The FAA sponsors an AWS curriculum as a direct result of an FAA assessment of the human resources needed to realize the full potential of the forthcoming airspace and airway system modernization.

In 1982, the FAA, in collaboration with the University Aviation Association, developed and recommended a specific college-level AWS curriculum. The AWS curriculum was designed to satisfy academic and accreditation requirements, be easily adaptable to existing aviation related programs, and yet allow individual educational institutions the option of offering any number of five areas of concentration.

The five areas of concentration are: (1) Airway science management, (2) airway computer science, (3) aircraft systems management, (4) airway electronics systems, and (5) aviation maintenance management.

The FAA currently recognizes 44 institutions which offer approved AWS curricula. The curricula directly support the human resource needs of both the FAA and the aviation industry by producing graduates with the necessary knowledge and skills to pursue aviation-related technical careers in the public and private sectors. Interested institutions which do not already have recognized AWS curricula, may contact the FAA for further information.

References

For further background information, refer to the following Federal Register Notices: 48 FR 116872, March 18, 1983, (FAA proposed AWS curriculum demonstration project plan); 48 FR 32490, July 15, 1983, (Office of Personnel Management approval of the FAA demonstration final plan); 49 FR 22903, June 1, 1984; 50 FR 37612, September 16, 1985; 52 FR 3195, February 2, 1987; and 54 FR 8617, March 1, 1989, (notices announcing the competitive criteria employed by the FAA in selecting the AWS grant recipients under the previous 4 solicitations).

The Airway Science Grant

Authority

This solicitation represents a continuation of the FAA's AWS Grant Program. This program funds projects at selected institutions of higher education which have evidenced a commitment to the agency's AWS curriculum program. The grants are authorized by Public Law 101-516 with an amount of $9.7M available for competitive grant awards. The funds may be used for allowable direct costs in the following categories, to the extent that such items are in direct support of a recognized AWS curriculum: (a) The purchase, lease with intent to purchase, or construction of academic buildings and associated facilities, and (b) nonexpendable instructional materials and equipment to be used in the actual teaching of the AWS curriculum. Monies are not available for salaries, operating costs, research and development, travel, consultant fees, indirect costs, office supplies, automobiles, aircraft, maintenance agreements, printing and marketing materials or equipment, general purpose parking lots, land, commercial airport facilities, taxiways, runways, or any project in support of commercial activities.

Eligibility

Eligible institutions must be accredited 4-year public and non-profit colleges and universities in the United States and its possessions. To be eligible an applicant institution must have an established FAA-recognized AWS curriculum in place and available to students. The curriculum must have been recognized by the FAA Administrator no later than December 31, 1990.

Proposal Format and Content

Each FAA-sponsored, AWS grant project is subject to the provisions of applicable FAA regulations and OMB Circulars A-21, A-73, A-88, A-110, and A-133. Proposals must contain the following information in the order listed.

Cover Sheet

Type the title "Airway Science Grant Proposal" near the top of the Cover Sheet. Type the legal name of the grantee institution, its mailing address, and IRS Employer Identification Number in the center of the Cover Sheet. Type the names, titles, and telephone numbers of the proposed Project Director and of an official authorized to sign for the proposed grantee institution in the lower left and right corners, respectively, of the Cover Sheet. The Cover Sheet of one copy of the proposal must bear the original signatures and dates of the above individuals. The signatures of the authorized individuals signify institutional endosement of the proposal, cognizance of the eligibility and limitation requirements, and a commitment to provide the specific support for the proposed activities in the event the grant is made.

Standard Form 424

Submit Standard Form 424 (Rev. 4-88), Application for Federal Assistance, with the grant proposal. This form may be obtained by writing to the AWS Grant Program Manager at the address listed above. Applications without this form will be disqualified.

Table of Contents

Include a table of contents with page numbers.

Project Summary

Include a concise summary of the proposed project. State the goals and objectives and the long-range benefits of the project and the associated costs including cost sharing figures. The reader should be able to quickly identify the nature of the project and the requested funding level. The summary should not exceed two (2) double-spaced typewritten pages.

Narrative

The Narrative should be clearly written and not exceed forty (40) double-spaced typewritten pages in length. The Narrative must contain the following:

(a) Introduction

Present a brief description of the institution, including: Historical background, full time graduate and undergraduate student enrollment, student body profile, location (rural, urban, etc.), fields of emphasis and degrees awarded.

(b) AWS Background

Describe the evolution of the institution's involvement in the AWS Program. Provide a detailed discussion of the institution's current recognized AWS program. Provide information and statistics on the occupational areas AWS graduates and current AWS students have entered or will be entering within aviation industry and the FAA. Provide the following information in an "easy to read" chart format (a) recognized AWS options, (b) recognition dates by option, (c) declared majors by AWS option for current academic year in categories of minority, female, others, and total, (d) expected enrollment figures for next five years, (e) number of degrees awarded by AWS option, (f) number of degrees expected to be awarded by AWS option for the next five years.

Describe the institution's aviation degree options other than AWS and discuss how they interface with the AWS program. Provide in chart format

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the same information requested for AWS Program as explained above.

Include an institutional organization chart to show how the AWS Program and other aviation programs fit into the institutional structure.

Provide information on full and part time faculty, including average teaching load, dedication to AWS Program options vs. other aviation program degree options. Prorated figures must total current dedicated aviation faculty.

Describe institutional activities to recruit AWS and other aviation students, including minority and female recruitment activities. Describe annual recruitment expenditures for both AWS and other aviation majors.

Submit one copy of an official course catalog and/or other brochure(s) showing the AWS course offerings to students during the 1990–1991 academic year. Institutions which do not submit the above information will be disqualified.

(c) Strategic Plan

Present a 5-year Strategic Plan for the institution's AWS Program. Discuss the components of the plan and discuss how the institution anticipates achieving the goals and objectives of the Strategic Plan. Justify the feasibility of the plan in relation to the projected workforce needs of the aviation industry and FAA, over-all direction of the institution, fiscal concerns, and interaction or partnership with aviation community, etc.

(d) Project Plan

Discuss in detail the proposed Project Plan with stated goals and objectives. Relate the project to the Strategic Plan.

Explain how the project will directly support the aviation and/or computer courses in the required core and the areas of concentration of an institution's recognized AWS curriculum options. Explain whether the project will enhance current recognized AWS courses or, rather, provide for the development of new AWS courses to be included in the institution's recognized AWS option(s) within the curriculum guidelines. Provide a similar discussion for other aviation programs.

Explain how AWS students and other aviation majors, respectively, will directly or indirectly benefit from the project. Provide a chart indicating the number of students who will benefit from the grant project by AWS option and other aviation degree options over the next five years.

Present a detailed discussion from project design to conclusion on the components of the Project Plan and the activities and tasks necessary to bring the project to a successful conclusion. The project is completed when the measurements discussed under the Evaluation Plan have been applied and analyzed. This should occur within 12 months of the time the facility and/or equipment is available to students. Provide a milestone chart for the project.

Provide a detailed discussion of the facilities and equipment requested for Federal funding and how they support the proposed project. Federal funds may not exceed 50% of the total project costs. Include a description of the items and an explanation of the need for the items. Applicants may submit photographs, architectural drawings, site plans, or other visual representation that would aid the reviewing panel in assessing the relative merits of the proposed items. Provide the same type of information for costs to be funded with other than Federal funds. Identify the sources of non-Federal funding and show evidence that the funds will be available such as a letter of commitment for funds which will be given to the institution by an outside source. Institutions will be held accountable for all cost sharing funds. Described and explain the mechanism that will be used to manage and monitor the progress of the project in terms of the milestones. Anticipated internal progress reports, advisory councils, and other similar mechanisms should be described.

(e) Project Personnel

Identify and describe the relevant skills of those individuals who will have major responsibilities for the proposed project. Include a discussion on their relevant skills in terms of the project and the amount of time each person will be required to devote to the project. The role of the Project Director is particularly important. Provide information indicating the director has appropriate qualifications, well defined responsibilities, sufficient time, and adequate academic and institutional authority and support to effectively manage the project.

Discuss the number of faculty and qualifications to adequately utilize the funded facility/equipment in teaching of AWS courses after conclusion of project. Demonstrate institutional commitment to provide necessary faculty positions.

(f) Budget Plan

The proposal must contain a Budget Plan that includes a detailed itemization of proposed expenditures for direct costs associated with the project according to the following catagories:

Item	Fed	Percent	Non-Fed	Percent	Total
(a) Facilities					
(b) Equipment					
(1) Flight					
(2) Air Traffic Control Simulation					
(3) Electronics					
(4) Maintenance					
(5) Computers					
(6) Meteorology					
(7) Office equipment					
(8) General classroom equipment					
(9) Resource Materials					
(c) Travel [1]					
(d) Consultant services [1]					
(e) Salaries [1]					
(f) Other direct costs [1]					
Total					

[1] Costs directly related to grant project, though not qualified for Federal funding.

Each category must contain line item entries of allowable costs and be subtotalled. (See OMB Circular A-21 for discussion of allowable costs). The line item entries must be allocated appropriately between Federal and non-Federal funding. FAA grant funds may only be dedicated to categories "a" and "b". Cost sharing funds include allowable project costs (categories "a" thru "f") which are incurred by the institution or the value of in-kind contributions. All costs, both Federal and non-Federal, may not occur prior to the official award of the grant. In no event shall the total Federal grant funds provided for an AWS project exceed 50% of the total allowable costs of the project. A sample itemized budget is available from the AWS Grant Program Manager upon request. Budget which do not include an itemization of expenditures will be disqualified. Budgets which include construction activities with a general cost per square foot will be disqualified.

(g) Institutional Need

Provide a detailed justification for the requested grant funding in terms of financial need. Discuss the consequences of not funding the proposed project. Explain and identify the funding sources and levels which support the institution's current AWS Program. Illustrate the amount of incoming funds over the past three years which have been dedicated to the institution's AWS Program. Provide the same information for funds dedicated to the institution's other aviation programs. Include a discussion of FAA sponsored AWS grants awarded to the institution including funding level, project, date of award, and status.

(h) Evaluation/Assessment Plan

Provide a project Evaluation/Assessment Plan. The reason for requesting submission of the plan, at the close of the project is to assess whether the goals and objectives of the project have been achieved and the impact of the project upon the AWS program at the institution. The completed Evaluation/Assessment Plan must include a strategy and measurement component for each goal and objective. The Evaluation/Assessment Plan may be prepared by the institution's staff or in collaboration with outside consultants. The results of the completed evaluation shall be submitted to the FAA as part of the final project report.

Local Review Statement

Attach a statement, signed by an appropriate official of the institution that contains: (a) An endorsement of the proposed project; (b) a description of how the proposed project supports the institution's long range goals and objectives in AWS; and (c) a commitment to provide the institutional resources necessary to meet cost sharing obligations, compete the proposed project, maintain the facilities and equipment to an acceptable standard, and continue financial support for the AWS Curriculum Program after the grant funds have been expended.

Reporting Requirements

Until the proposed project is completed, the FAA requires that each award institution prepare an Annual Project Report, not to exceed twenty (20) double-spaced typewritten pages in length. The Annual Project Report shall be submitted to the FAA within 90 days of the close of each institution's fiscal year. The report should include a summary of project progress, highlights and accomplishments, personnel changes and a status report on expenditures and account balances for each of the line items presented in the proposed Budget Plan.

In addition, a Final Project Report must be submitted to the FAA within 90 days of the project completion. The Final Project shall include summaries of project activities, accomplishments, outcomes of the implemented Evaluation Plan, and Budget Plan expenditures. The FAA anticipates that FAA representatives will make site visits to each grant institution during the lifetime of the project.

Proposal Review

Proposals will be reviewed, evaluated, and ranked against the evaluation criteria by a panel of educational and aviation specialists from the public and private sectors, including: Academia, private industry and/or the Federal Government. This review will be used by the FAA in the selection of applicants for grant awards.

For purposes of review, all proposals received by the FAA will be placed into one of two competitive classes: (1) Minority institutions (see June 1, 1984, 49 FR 22903) and (2) majority institutions. Grant awards will be made on a competitive basis within each competitive class. The awards within a given competitive class typically will range from $100,000 to $750,000 maximum. Each proposal will be reviewed, evaluated and ranked, within the competitive class to which it is assigned by the FAA.

The FAA does not intend to fund all proposed projects or necessarily all components of a proposed project. FAA expects to award at least 20 grants.

Evaluation Criteria

The evaluation criteria are designed to enable the reviewing panel and FAA officials to effectively evaluate the relative merit of submitted proposals. The proposals will be scored on a 100-point scale and will be evaluated based on the following factors:

1. *Institutional Commitment* (15 points maximum).

Each proposal will be evaluated as to the extent of the institution's commitment to the AWS Program, in relation to the date of curriculum recognition and overall size of program, as follows:

(a) Number of recognized AWS curriculum options.

(b) Number of students pursuing AWS degrees.

(c) Number of AWS degrees awarded since curriculum recognition.

(d) Recruitment activities including outreach programs for minority and female students.

(e) Number of faculty allocated to AWS.

(f) Projected growth over next 5 years. Realistic in comparison to current enrollment figures and strategic plan.

(g) Amount of institutional cost sharing funds provided toward the project.

(h) Demonstrated continued support and growth of the institution's AWS Program.

(i) Local Review Statement and level of signature.

2. *Strategic Plan* (15 points maximum).

The feasibility of the Strategic Plan will be evaluated in terms of the following:

(a) Institution's current AWS Program.

(b) Institution's planned approach to meet future aviation workforce needs.

(c) Potential resources, including fiscal, instructional, and administrative elements necessary for achievement.

3. *Project Plan* (20 points maximum).

The Project Plan will be evaluated as follows:

(a) Appropriateness of the project in terms of institution's current AWS Program.

(b) Relationship between the project and the strategic plan.

(c) Project adequately supports recognized curriculum.

(d) Number of AWS students to benefit in relation to size of institution's AWS Program.

(e) Benefits to students.

(f) Evidence institution has good understanding of activities and tasks required to bring project to conclusion.

(g) Appropriateness of facilities and/or equipment in terms of project goals and objectives.

(h) Realistic and attainable milestones.

(i) Demonstration that non-Federal funds required for the project are identified and available.

(j) Adequate management mechanisms are provided for the effective administration and technical direction of the project.

4. *Project Personnel* (10 points maximum).

The professional qualifications and experience of the institution's present AWS personnel, especially the AWS Project Director, and other key officials who will be involved in the proposed AWS grant project, will be evaluated as follows:

(a) Qualifications and experience of the Project Director.

(b) Qualifications and experience of project personnel in relation to the goals and objectives of the project.

(c) How well the institution scheduled and allocated project personnel time to perform duties associated with project.

(d) How well AWS personnel responsibilites are defined.

(e) Adequate faculty on board to utilize facilities and/or equipment *or* adequate institutional commitment to provide necessary faculty positions.

5. *Budget Plan* (10 points maximum).

The Budget Plan will be evaluated as follows:

(a) Proposed expenditures itemized by budget category and mathematical calculations correct.

(b) Entries detailed and consistent with project narrative.

(c) Budget figures appropriate for goods and services being procured.

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6. *Institutional Need* (15 points maximum).

Each proposal will be evaluated to determine the extent to which the applicant institution has demonstrated the following:

(a) An overall financial need for funding.

(b) Consequences to the institution's AWS Program if Federal funding not obtained.

7. *Evaluation/Assessment Plan* (15 points maximum).

The Evaluation Plan will be evaluated as follows:

(a) Adequately tied to goals and objectives of the project.

(b) Strategy and measurement components are appropriate for stated project goals and objectives.

(c) Evaluation will produce information which would be useful to other institutions in implementing similar projects.

Issued in Washington, DC, on May 1, 1991.

Joseph P. Kleicki,

Director, Office of Training and Higher Education.

[FR Doc. 91-11861 Filed 5-14-91; 8:45 am]

BILLING CODE 4910-10-M

Research, Engineering, and Development Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92-462; 5 U.S.C. app. I), notice is hereby given of a meeting of the Scientific Advisory Panel of the Security R&D Subcommittee of the Federal Aviation Administration (FAA) Research, Engineering, and Development (R,E&D) Advisory Committee to be held Tuesday, June 4, 1991, at 9 a.m. The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, in the MacCracken Room on the tenth floor.

The agenda for this first meeting will be focused on a review of the charter of this group, addressing proposed tasks in the areas of new technology for explosives detection and minimizing airframe damage.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statments, obtain information, or plan to access the building to attend the meeting should contact Ms. Jan Peters, Special Assistant to the Executive Director of the R,E&D Advisory Committee ASD-6, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3008.

Any member of the public may present a written statement to the Committee at any time.

Issue in Washington, DC, on May 9, 1991.

Martin T. Pozsky,

Executive Director, Research, Engineering, and Development Advisory Committee.

[FR Doc. 91-11860 Filed 5-14-91; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Petition of Maserati Automobiles Incorporated To Compromise Civil Penalty Liability for MY's 1982, 1983, 1986, 1987, and 1989; Order Granting in Part Petition To Remit Civil Penalties, Pursuant to 15 U.S.C. 2008(b)(3)

This order grants in part and denies in part the petition of Maserati Automobiles Incorporated ("MAI") to remit civil penalties for which MAI is liable due to its failure to meet passenger car corporate average fuel economy ("CAFE") standards for model years ("MY's") 1982, 1983, 1986, 1987, 1989, and 1990.

On November 5, 1990, MAI, the importer of Maserati automobiles, submitted a petition requesting NHTSA to remit the entire amount of $1,225,410 in civil penalties for which MAI was liable pursuant to section 508(b)(1)(A) of the Motor Vehicle and Cost Savings Act ("the Act"), 15 U.S.C. 2008(b)(1)(A), due to its failure to meet passenger car CAFE standards for MY's 1982, 1983, 1986, 1987, and 1989. The petition was submitted pursuant to section 508(b)(3)(A) of the Act, 15 U.S.C. 2008(b)(3)(A). The petition was later supplemented with further information and a request for similar relief for MY 1990. For the reasons set forth herein, this order grants in part the petition, by reducing the penalty to $120,000, payment of which may be made in quarterly payments of $7,500 spread out over a four-year period.

Satutory Background

Pursuant to section 507 of the Act, 15 U.S.C. 2007, it is "unlawful conduct" for a motor vehicle manufacturer to fail to comply with an applicable CAFE standard, after taking into consideration credits earned in other years. Section 508 of the Act, 15 U.S.C. 2008, provides that NHTSA shall assess penalties for violations of section 507 by multiplying five dollars by the number of tenths of a mile per gallon by which the average fuel economy of the manufacturer's fleet is exceeded by the applicable standard, multiplied by the number of automobiles manufactured during the model year in question, reduced by any available credits.

Pursuant to section 508(b)(3) of the Act, these civil penalties may be compromised only under very limited circumstances. As applicable here, that section provides:

> The Secretary shall have the discretion to compromise, modify, or remit, with or without conditions, any civil penalty assessed under this subsection against any person, except that any penalty assessed for a violation of section 507(a)(1) or (2) may be compromised, modified, or remitted only to the extent—
>
> (A) necessary to prevent the insolvency or bankruptcy of such manufacturer * * *.

The Act provides no definition of "insolvency" or "bankruptcy." Using the common meanings of those words, I view "insolvency" as the condition of being unable to satisfy creditors or discharge liabilities, and "bankruptcy" as the state of being declared legally insolvent in a court proceeding.

Although there is no discussion of section 508(b)(3)(A) in the legislative history of the Act, it appears that it was intended to operate as a relief mechanism in circumstances in which a manufacturer with civil penalty liability under the CAFE program is in considerable financial difficulty. However, the fact that a company is in financial difficulty does not itself authorize or compel NHTSA to remit or compromise a civil penalty. Penalties may be reduced "only to the extent necessary to prevent the insolvency or bankruptcy of the manufacturer [emphasis added]." Thus, it is not sufficient that payment of the penalty might contribute to a potential insolvency or bankruptcy at some indefinite time in the future. Rather, NHTSA must conclude that the payment would directly cause insolvency or bankruptcy. Conversely, if a manfacturer has such large debts in relation to its assets that a reduction of the penalty would not prevent insolvency or bankruptcy, or if the company is already bankrupt, a compromise would not be allowed. (If a company were insolvent but not bankrupt, a compromise would be allowable if it would prevent a formal bankruptcy.)

Even if the agency concludes that payment of the full penalty would trigger insolvency or bankruptcy, the agency retains full discretion to decide whether to modify the amount of the penalty. The legislative history of the Act does not provide specific guidance on what criteria the agency should apply in exercising its discretion.

MAI's Petition to Remit Civil Penalties

MAI was the principal U.S. importer of Maserati automobiles throughout the years at issue here, and it has been the sole importer since mid-1983. As of November 1, 1990, MAI had 18 employees, down from approximately 60 employees several years ago. It has working arrangements with a network of dealerships and is conducting a limited amount of ongoing business.

Pursuant to section 501(9) of the Act, 15 U.S.C. 2001(9), the importer of vehicles produced in a foreign country is the "manufacturer" of those vehicles for civil penalty purposes; *i.e.*, NHTSA cannot assess civil penalties against the entity that actually produces the vehicles. However, the statute does not preclude the agency from considering the financial status of the producer of the vehicles in exercising its discretion to decide whether, and by how much, to compromise a penalty.

MAI is a wholly-owned subsidiary of DeTomaso Industries Inc. ("DTI"), a Maryland corporation. DTI is also the parent company of American Finance SpA ("AF"), an Italian firm, which in turn controls Officine Alfieri Maserati ("OAM"), an Italian holding company. OAM has a 51% controlling interest in Maserati S.r.L. ("MSRL"), which is the actual manufacturer of Maserati automobiles, *i.e.*, "the factory." FIAT Auto SpA ("Fiat") recently purchased a 49% minority interest in MSRL from OAM.

During the 1980's, MAI applied for "low volume" exemptions from the industry-wide CAFE standards for the years in question here, pursuant to section 502(c) of the Act, 15 U.S.C. 2002(c). However, each of these petitions was rejected as untimely, pursuant to 49 CFR 525.6(b), which requires such petitions to be filed no later than 24 months prior to the beginning of the model year for which the exemption is sought, except where good cause is shown for the late filing. MAI did receive low volume exemptions for MYs 1978-1980 and 1984-1985, and it is not liable for any civil penalties for those years. (MAI did not import any vehicles in MYs 1981 and 1988).

Following the agency's rejection of MAI's exemption petitions, NHTSA's Associate Administrator for Enforcement notified MAI, by letter dated August 20, 1990, that it had a total CAFE shortfall for MY's 1982, 1983, 1986, 1987, and 1989 of $1,284,385. This total was offset by a credit of $8975 from MY 1980, resulting in a liability of $1,255,410.

Some MY 1982 and 1983 Maseratis were imported to the West Coast by a separate firm, British Motor Cars Distributors, Ltd. ("BMCD"). MAI asserts, with apparent justification, that it is not liable for any penalties attributable to the vehicles imported by BMCD. MAI also argues that it should not have to pay a CAFE penalty for vehicles that it reexported to Taiwan and Canada. For the above reasons, it claims that its civil penalty liability for MY's 1982, 1983, 1986, 1987, and 1989 is only $1,035,875.

The exact amount of MIA's civil penalty liability for MY 1990 is not yet known, but based upon its mid-model year report, the MY 1990 liability is estimated to be approximately $19,000.

Shortly after MAI's receipt of NHTSA's August 20 letter, counsel for MAI told NHTSA counsel that the company would request NHTSA to remit or compromise the civil penalty, and asked NHTSA to identify the financial information it required to consider such a request. NHTSA staff responded, and also agreed to MAI's request to hear an oral presentation from MAI on November 1, 1990. MAI's formal petition was submitted on November 5 and supplemented on November 13. MAI was cooperative in supplying all financial records that NHTSA staff had requested.

Under American financial accounting standards, parent companies must consolidate the financial statements of all companies in which their ownership interest exceeds 50%. Thus, in an accounting sense, DTI is the owner of MAI (and is also the owner of AF, OAM, and MSRL). Accordingly, NHTSA staff asked MAI, and MAI agreed, to furnish DTI's financial records and reports as well as its own. These financial data were reviewed by NHTSA staff, including a Certified Public Accountant.

In its oral presentation on November 1, MAI's principal executive officer indicated that MAI would likely close down if it were required to pay the entire penalty, since it could not afford to pay that amount. He opined that if the civil penalty were entirely remitted, or if only a "nominal" amount were assessed, MAI would have a 90-95 percent chance of surviving at least until 1993, when it intends to import new Maserati models equipped with air bags, which MAI hopes will be profitable. He also asserted that the proceeds received by DTI from Fiat in 1990 from the sale of 49 percent of MSRL were largely used to satisfy creditors, and that MAI expects no further infusion of cash from FIAT. Finally, he argued that by staying in business (*i.e.*, servicing warranty claims and assuring the availability of parts), MAI was providing a service to American consumers which would otherwise be unavailable.

Evaluation of MAI's Financial Condition

MAI is already insolvent in the sense that its debts exceed its assets, and it is surviving only because its creditors, principally MSRL, have not insisted on payment. Although it is appropriate to view with a skeptical eye the claims of any manufacturer seeking to avoid civil penalty liability, in this instance NHTSA has no basis for doubting the representation that MSRL is unwilling, or unable, to subsidize MAI to the extent needed to pay the full civil penalty.

There is some doubt as to whether MAI would be able to survive even if substantially all of the civil penalty were remitted. MAI's current ratio (*i.e.*, its current assets divided by its current liabilities) is declining, its negative net worth is increasing, and its parent's financial condition is also disturbing. However, NHTSA cannot conclude that remission of the penalty would not prevent the company from going bankrupt.

Policy Considerations

If a rejection of MAI's petition caused the company to go out of business, there would be a small adverse effect on employment, since approximately 18 MAI employees would lose their jobs. The approximately 60 Maserati dealerships sell or service other products, so there may be no immediate unemployment in those firms. However, the owners of the few thousand Maserati automobiles in this country would have difficulty obtaining parts and service for their vehicles.

The main argument against remitting or compromising the penalty is that firms who fail to comply with applicable CAFE standards should not be able easily to escape the consequences of that failure. In this regard, it might be argued that by remitting the penalty, NHTSA would be excusing firms that were not maximizing fuel economy and foregoing an opportunity to obtain revenue for the Government.

With respect to fuel economy considerations, there is no basis to believe that Maserati could have made significant improvements in its CAFE performance for the years in question, considering the type of vehicles it manufactures. In any event, U.S. sales of Maserati automobiles were so small for the model years in question (less than 2700 cars in total) that any fuel economy improvements the company realistically could have made would not have had a

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significant effect on energy consumption.

With respect to revenue considerations, given the apparent likelihood that MAI would declare bankruptcy if I did not compromise the penalty, a compromise should not have a meaningful impact on the U.S Treasury, and could even produce a positive revenue gain. In a bankruptcy proceeding, the Government would likely receive far less than the full penalty amount due from MAI, and could well receive even less than the amount of a compromise penalty.

Those policy considerations suggest that the public interest would be served by remitting at least a portion of MAI's civil penalty liability. If a shutdown of MAI is prevented, its labor force would remain employed; consumers would avoid great difficulty in obtaining parts and service for Maserati automobiles; and the U.S. Treasury would obtain at least a partial amount of the entire civil penalty, *i.e.*, the portion of the penalty not remitted.

Conclusion

The evidence conclusively shows that MAI (as well as its parent DTI) is in very serious financial difficulty. MAI's financial problems are considerably greater than the civil penalty liability at issue, and the company would be in poor financial condition even in the absence of such liability. However, MAI asserts that the CAFE penalty, if not remitted or compromised, will be the straw that breaks the camel's back; *i.e.*, it contends that while it hopes to survive without liability for the full penalty, it cannot survive with it.

Under these circumstances, I believe that MAI is eligible for a modification of its civil penalty liability under section 506(b)(3)(A), because such a modification is "necessary to prevent the insolvency or bankruptcy of the manufacturer." I also believe that it is appropriate for the agency to exercise its discretion by significantly reducing the amount due.

I do not believe, however, that it would serve the public interest to forgive the entire penalty. If the agency were to do so, there would be no incentive for MAI or other firms in similar circumstances to attempt to improve their fuel economy or even to file petitions for low volume exemptions in a timely manner. Therefore, I believe it is appropriate to fashion a compromise penalty that would allow MAI to avoid bankruptcy while imposing some significant burden on the company.

Upon consideration of all the facts in the record and the policy matters noted above, I have decided to modify and compromise MAI's civil penalty liability to a total of $120,000 for all of the model years at issue. To ease the financial burden on the company, MAI may spread the payment out over four years. MAI has informed NHTSA staff that it concurs in this resolution of its petition.

Wherefore, it is hereby ordered that MAI's cumulative civil penalty liability for MY's 1982, 1983, 1986, 1987, 1989, and 1990 is hereby modified, compromised, and reduced to $120,000, and that MAI may pay the total over four years, without interest, provided that $7,500 is paid quarterly, i.e., every three months.

Issued on: April 30, 1991.

Jerry Ralph Curry,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 91-11508 Filed 5-14-91; 8:45 am]

BILLING CODE 4910-59-M

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:00 a.m., June 10, 1991.

PLACE: RFE/RL, Inc. Oettingenstrasse 67, Am Englischen Garten, 8000 Munich 22.

STATUS: Closed, pursuant to 5 U.S.C. 552b(c)(1) and (9)(B) and 22 CFR 1302.4 (a) and (b).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government as they relate to international shortwave radio broadcasting into Eastern Europe and the Soviet Union.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mark G. Pomar, Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, N.W., Washington, DC 20036.

Mark G. Pomar,

Executive Director.

[FR Doc. 91-11609 Filed 5-13-91; 11:24 am]

BILLING CODE 6105-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, May 20, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of check processing and computer equipment within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 10, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11578 Filed 5-10-91; 4:17 p.m.]

BILLING CODE 6210-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 2-91

Notice of Meetings

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thurs., May 23, 1991 at 10 a.m..

SUBJECT MATTER: Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208-7727.

Dated at Washington, DC on May 13, 1991.

Judith H. Lock,

Administrative Officer.

[FR Doc. 91-11711 Filed 5-13-91; 3:44 pm]

BILLING CODE 4410-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-91-15]

TIME AND DATE: Wednesday, May 29, 1991 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and complaints
   Certain Bathtubs and other Bathing Vessels and Materials Used Therein. (Docket No. 1622).
5. Inv. 731-TA-515 (Preliminary) (Portable Electric Typewriters from Singapore)—briefing and vote.
   Inv. 731—TA-464 (Final) (Sparklers from the People's Republic of China)—briefing and vote.
6. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Edward G. Carroll, Jr., Acting Secretary, (202) 252-1000.

Dated: May 13, 1991.

Edward G. Carroll Jr.,

Acting Secretary.

[FR Doc. 91-11715 Filed 5-13-91; 3:55 pm]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

USITC SE-91-14

TIME AND DATE: Wednesday, May 22, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and complaints
5. Inv. 731-TA-52 (Final) (Sheet Piling from Canada)—briefing and vote.
   Inv. 731-TA-448-450 (Final) (Polyethylene Terephthalate Film Sheet, and Strip from Japan and the Republic of Korea)—briefing and vote.
   Inv. 731-TA-472 (Final) (Silicon Metal from the People's Republic of China)—briefing and vote.
6. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Edward G. Carroll Jr., Acting Secretary, (202) 252-1000.

Dated: May 13, 1991.

Edward G. Carroll, Jr.,

Acting Secretary.

[FR Doc. 91-11716 Filed 5-13-91; 3:58 pm]

BILLING CODE 7020-02-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [56 FR 22052 May 13, 1991].

STATUS: Closed meeting.

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PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, May 8, 1991.

CHANGE IN THE MEETING: Additional meeting.

The following items will be considered at a closed meeting on Thursday, May 16, 1991, at 2:00 p.m.

Institution of injunctive action.
Formal order of investigation.
Institution of administrative proceeding of an enforcement nature.
Settlement of injunctive action.
Settlement of administrative proceedings of an enforcement nature.

Commissioner Roberts, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Gray at (202) 272-2000.

Dated: May 13, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11717 Filed 5-13-91; 4:02 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

AGENCY MEETINGS

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 20, 1991.

Open meetings will be held on Monday, May 20, 1991, at 3:00 p.m. and Thursday, May 23, 1991, at 10:00 a.m., in Room 1C30.

Closed meetings will be held on Tuesday, May 21, 1991, at 2:30 p.m., and Thursday, May 23, 1991, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the open meeting scheduled for Monday, May 20, 1991, at 3:00 p.m., will be:

Consideration of whether to approve two proposed rule changes submitted by the NYSE that would extend the NYSE's trading hours beyond the close of the 9:30 a.m. to 4:00 p.m. trading session and would establish an "Off-Hours Trading" ("OHT") facility. The OHT facility would consist of two trading sessions: "Crossing Session I," which would permit the execution at the NYSE closing price of single-stock single-sided orders and crosses of single-stock buy and sell orders; and "Crossing Session II," which would allow the execution of crosses of multiple-stock portfolio buy and sell orders. For further information, please contact Liz Pucciarelli at (202) 272-7363.

The subject matter of the closed meeting scheduled for Tuesday, May 21, 1991, at 2:30 p.m., will be:

Consideration of whether to approve two proposed rule changes submitted by the NYSE that would extend the NYSE's trading hours beyond the close of the 9:30 a.m. to 4:00 p.m. trading session and would establish an "Off-Hours Trading" ("OHT") facility. The OHT facility would consist of two trading sessions: "Crossing Session I," which would permit the execution at the NYSE closing price of single-stock single-sided orders and crosses of single-stock buy and sell orders; and "Crossing Session II," which would allow the execution of crosses of multiple-stock portfolio buy and sell orders. For further information, please contact Liz Pucciarelli at (202) 272-7363.

The subject matter of the closed meeting scheduled for Tuesday, May 21, 1991, at 2:30 p.m., will be:

Institution of injunctive action.
Institution of administrative proceeding of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Settlement of injunctive action.
Opinion.

The subject matter of the open meeting scheduled for Thursday, May 23, 1991, at 10:00 a.m., will be:

The Commission will hear oral argument on an appeal by Bacardi Corporation, an issuer of stock registered under Section 12(g) of the Securities Exchange Act, from an administrative law judge's initial decision. Bacardi Corporation is seeking to terminate its registration pursuant to Section 12(g)(4). For further information, please contact George J. Zornada at (202) 272-2435.

The subject matter of the closed meeting scheduled for Thursday, May 23, 1991, following the 10:00 a.m. open meeting, will be:

Post oral argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ronald Mueller at (202) 272-2200.

Dated: May 13, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11718 Filed 5-13-91; 4:02 pm]

BILLING CODE 8010-01-M

federal register

Wednesday
May 15, 1991

Part II

Department of Agriculture

Commodity Credit Corporation

Presentation of Milk Inventory Management Program Study Results and Solicitation of Comments; Notice

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Presentation of Milk Inventory Management Program Study Results and Solicitation of comments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Solicitation of comments.

SUMMARY: This notice solicits comments concerning the milk inventory management study prepared by a U.S. Department of Agriculture task force chaired by the Agricultural Stabilization and Conservation Service (ASCS) on behalf of the Secretary of Agriculture pursuant to provisions of Section 101 of the Food, Agriculture, Conservation, and Trade Act of 1990 ("1990 Act"). Section 101 requires that the Secretary, by August 1, 1991, prepare and submit a report and recommendations on various milk inventory management programs to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. In addition to two inventory management proposals specified for study in the 1990 Act, the 1990 Act provided for the study of other programs suggested by the public. A notice requesting such proposals was published on January 7, 1991 (56 F.R. 510).

A copy of the study is appended to this notice for public comment prior to submitting the mandated report and recommendations to Congress. The study evaluates the two inventory management proposals specified in the 1990 Act. In addition, the study reviews two additional types of programs suggested by the public—two-tier pricing programs and milk diversion programs.

DUE DATE FOR COMMENTS: In order to assure consideration, comments submitted in response to this notice must be received by May 30, 1991.

ADDRESSES: Comments should be mailed to Dr. Charles Shaw, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Shaw, Group Leader, Dairy and Sweeteners Group, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, Room 3756 South Agriculture Building; telephone (202) 447-7601.

FORM OF COMMENTS: There is no specific format for the submission of comments.

SUPPLEMENTARY INFORMATION: Section 101(a) of the 1990 Act amended the Agriculture Act of 1949 by adding section 204(e) which directs the Secretary of Agriculture, by August 1, 1991, to prepare and submit a report and recommendations on various milk inventory management programs to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

The Secretary was directed to study: (a) A program which would establish an alternative classification of milk for federal milk marketing orders operated under section 8c(5) of the Agricultural Marketing Agreement Act of 1937; and (b) a program which would support the income of milk producers through a system of established prices and deficiency payments.

The Secretary was also directed to study such other programs, submitted to the Secretary in response to the solicitation of public proposals published on January 7, 1991, as the Secretary determined appropriate after consultation with the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate. Section 101 also provides, however, that for purposes of the Section 101 study, the Secretary shall not consider any milk inventory management program that: (a) Includes any milk production termination program that is similar to the program established under section 201(d)(3) of the Agricultural Act of 1949, as amended, or (b) reduces the support price below the levels established by the Agriculture Act of 1949, as amended.

After review of the submissions made by the public and after consultation with Congress the Secretary deemed it appropriate to study, in addition to the two programs specifically provided for study in Section 101, two-tier pricing programs and milk diversion programs. More than 75 submissions were received during the solicitation period. The appended study describes the programs proposed by the public, why the selected programs were chosen for study, and study methodology.

Section 101 provides that the Secretary evaluate the alternative proposals based on the following criteria:

(a) The ability of the program to limit Government purchases of milk products to 6,000,000,000 pounds (milk equivalent, total milk solids basis) in a calendar year;

(b) The speed and effectiveness of reducing excess milk production;

(c) The effectiveness in sustaining reduced milk production for at least a 5-year period with and without the continuation of the program;

(d) The regional impact on milk prices, producer revenue, and milk supplies;

(e) The impact on national producer income and Government expenditures;

(f) The impact on the rural economy and maintaining family farms;

(g) The impact on the availability of wholesome dairy products for domestic and foreign nutrition and food assistance programs;

(h) Technological innovations;

(i) The effectiveness in reducing butter fat production and increasing protein content in milk;

(j) The impact of temporary increases and decreases of milk production;

(k) The impact on the United States livestock industry.

Section 101 also provides that the programs studied shall be evaluated on the basis of all other issues the Secretary considers appropriate. In making the evaluations in the appended study, the study also takes into account with respect to the programs studied:

(1) The consistency of the program with international obligations and the impacts on international trade.

(2) The impact of the program on consumers and the consumption of milk and milk products, including consumer costs.

(3) The effect of the program on long term economic efficiency of the U.S. dairy industry, as well as competitiveness with non-dairy products.

Because of intensified interest of Congress and the public, the Secretary announced on April 10, 1991, a study target completion date of June 15, 1991. In order that the final report and recommendations may be submitted to Congress by that date, the period for public comment on the appended study has been limited to 15 days.

Signed at Washington, DC this 7th day of May 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

Report of the United States Department of Agriculture on Milk Inventory Management Programs prepared for public comment in preparation for submission to The Committee on Agriculture, U.S. House of Representatives and The Committee on Agriculture, Nutrition, and Forestry, U.S. Senate.

May 9, 1991.

Report of the United States Department of Agriculture on Milk Inventory Management Programs

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I. Introduction

This report analyzes four alternative types of milk inventory management programs. Title I, section 101 of the Food, Agriculture, Conservation, and Trade Act of 1990 (the FACT ACT) amends the Agricultural Act of 1949 (the 1949 Act) by adding a new section, "Section 204. Milk Price Support and Milk Inventory Management Program For Calendar Years 1991 Through 1995." Section 204(e) sets out the requirements for this study.

The programs analyzed in this report are composites of numerous proposals submitted by the general public for study. Legislation requires that two types of programs be studied,

(1) "an alternative classification of milk contained in section 8c(5) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)), as amended by the Agricultural Marketing Agreement Act of 1937; and

(2) "a program to support the income of milk producers through a system of established prices and deficiency payments"

After review of public submissions, it was determined appropriate to study two additional types of programs: Two-tier pricing programs and milk marketing diversion programs.

The analyses of these four types of milk inventory management programs were made using the level of support as the primary independent variable. Each program was analyzed at two levels of support—the current level and a higher level. In addition, for some programs, variations designed to either generate additional farm cash receipts or contain government spending were analyzed.

The criteria for evaluation were set out in the legislation. In addition, to the 11 criteria explicitly designated, the Secretary of Agriculture added three criteria considered important. The impacts of these programs, including the long- and short-term consequences for dairy farmers, consumers, rural areas and geographical regions, and government costs, are presented in this report beginning with Chapter VI. Study continues on the impacts on rural areas and by regions, and additional information will be presented in the final report.

The short time frame for completion of the study prevented independent consideration of the large number of program variations received as a result of public solicitation. Although legislation calls for submission of this report to the Committees by August 1, 1991, changing conditions in the industry raised the urgency for this report among members of Congress. As a result, the Department agreed to publish the analyses for public comment as near to May 15, 1991, as possible. As such, work will continue on several fronts for possible inclusion in the final report.

The Department was prohibited by the FACT ACT from studying several other types of programs, and from fully analyzing all options within the four types of inventory management programs selected. Therefore, this report should not be considered to be a comprehensive study of the full range of government-assistance programs available to affect the supply of and demand for milk and dairy products.

II. Solicitation and Selection of Programs Studied

Solicitation of Programs for Study

The FACT ACT required the Secretary to solicit from the public proposals for milk inventory management programs for study. On January 7, 1991, a "Notice of Solicitation" was published in the Federal Register.

The public was provided a thirty-day period, ending February 6, 1991, to submit proposals for study. By the deadline, 77 submissions were received. Some submissions suggested more than one program for study. Other submissions supported programs submitted by others. A few submissions either presented general views on the value of supply management programs or made suggestions concerning the conduct of the study. Subsequent to the submission deadline, another 14 submissions were received.

The 77 submissions received by the deadline were summarized and categorized. Sixty of the submissions offered or supported one or more programs for study. These programs generally fell into one of five program-types:

- Target price / deficiency payment programs,
- Re-classification (Class IV) programs,
- Two-tier pricing programs,
- Milk marketing diversion programs, and
- Demand enhancement programs.

Nine of the 60 submissions submitted unusual or multi-faceted proposals that when summarized did not fit into one of the five program-types above. For example, two offered programs to reduce milk marketings through the use of culling programs. Others would have placed some type of absolute restrictions on Commodity Credit Corporation (CCC) purchases of surplus dairy products. One proposed using Class I and Class II prices as the primary support mechanism with Class III prices allowed to fluctuate with market conditions.

Five of the submissions included programs to encourage greater consumption of dairy products. For example, several proposed providing for direct monetary incentives to consumers to purchase milk. Others would enhance consumption by mandating a higher minimum nonfat solids content in all types of fluid milk products. Still others proposed expanding outlets for dairy products by strengthening domestic food assistance and nutrition programs and by use of the Dairy Export Incentive Program (DEIP) and other export assistance and international food aid programs.

Eight of the 77 submissions did not offer detailed programs. Review of the 14 late submissions revealed no major ideas not already presented in the 77 submissions received by the deadline.

Selection of Programs for Study

The FACT ACT established certain parameters concerning the types of programs that could be studied. The Secretary was directed to study:

"(A) an alternative classification of milk contained in section 8c(5) of the Agricultural adjustment Act (7 U.S.C. 608(5)), as amended by the Agricultural Marketing Act of 1937;"

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(commonly referred to as Class IV programs during debate on the 1990 Farm Bill), and

"(B) a program to support the income of milk producers through a system of established prices and deficiency payments" (commonly referred to as target price/deficiency payment programs).

In addition, the Secretary had the discretion to select from among the public submissions, programs considered appropriate for study. Prior to such selection, however, legislation required consultation with the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. As part of these consultations, the 77 submissions received by the submission deadline and their summaries, along with the submissions received after the deadline, were provided to the Committees.

The Secretary, by law, was prohibited from including in the study "any milk inventory management program that includes any milk production termination program that is similar to the program established under section 201(d)(3)," or any program that would call for support price reductions below the minimum levels established in the 1949 Act, as amended.

It was determined that two additional types of programs were appropriate for study—(1) two-tier pricing programs and (2) milk marketing diversion programs. To facilitate analysis and comparison of the four programs studied, composite programs were developed based on the public submissions.

In virtually all cases, demand incentive programs offered for study by the public were not intended to stand alone, but rather they were submitted as complementary aspects of a comprehensive inventory management program. While demand incentive programs may or may not have merit, they were seen as peripheral both to the proposals within which they were submitted and to milk inventory management programs, in general. At this point, demand enhancement programs have not been included in the study.

III. Background and Baseline

Production

Milk production in the United States has expanded steadily since the late 1970's. Since the 1977/78 marketing year, milk production has increased in every year but three. Milk output dropped in 1983/84 because of the milk diversion program, in 1986/87 because of the dairy termination program, and in 1988/89 because of the 1988 drought that drove up feed costs to dairy farmers. However, in all of these cases, milk production rebounded substantially in the following year. Over this 13-year period, milk production has increased by 28.4 billion pounds, more than 23 percent, even with the three years of decline, or an average annual increase of 2.2 billion pounds.

These production increases were accomplished with fewer dairy cows, but with substantially higher milk output per cow, and with fewer dairy farms, but with sharply larger average herd size.

The long downtrend in milk cow numbers was reversed temporarily in the late 1970's and early 1980's, but cow numbers have again resumed their downtrend. In 1990/91, the number of milk cows may total around 10.1 million head, down around 1 million head since 1982/83. At the same time, milk production per cow has trended upward for decades because of heavier concentrate feeding, improved genetic potential and better management. During the past two decades, milk per cow has increased at a rate of about 2 percent per year. Milk output per cow slowed considerably in 1983/84 when the milk diversion program encouraged participating dairy farmers to reduce grain feeding to meet their production-cutback commitments. Again, production per cow rebounded in the years following the diversion program. By 1990/91, average milk per cow had reached almost 15,000 pounds.

The number of dairy farms continued to decline during the 1970's and 1980's, while the average number of cows per farm has more than doubled since the mid-1970's.

Prices

Milk prices received by farmers increased during the 1970's and early 1980's partly in response to increased dairy support prices. The 1977 Farm Bill increased the minimum support price for milk from 75 to 80 percent of parity and mandated semiannual price support adjustments. Farm milk prices peaked in the early 1980's, then trended downward in response to increased milk production and reduced support prices. Milk prices rose sharply in the 1988 to 1990 period as milk production dipped because of high feed prices caused by the 1988 drought, and a window of opportunity opened for the commercial export of nonfat dry milk. The average all-milk price reached a record high of $14.48 per hundredweight in the 1989/90 marketing year. With milk production expanding and foreign demand for U.S. produced nonfat dry milk demand ending, farm milk prices dropped sharply in late 1990, and for the 1990/91 marketing year are expected to average about $11.60, the lowest since 1978/79. In addition, while milk prices to farmers had been fairly stable on a seasonal basis through most of the 1980's, the dairy industry began experiencing widely fluctuating farm milk prices as the 1980's ended.

Producer Financial Conditions

Dairy farms finished 1990 in a generally strong financial position. Between 1986 and 1990 dairy farms' asset values increased and debts were slightly reduced, so net worth increased. USDA's Cost and Return Survey estimated an average net worth of U.S. dairy farms of $457,000 at the beginning of 1990, up from $285,000 in 1986. Still, we estimate that 11 percent of dairy farms were financially vulnerable in 1989. The concept of financial vulnerability cannot be measured precisely; the USDA bases its estimate on an operation having a debt/asset ratio of more than 0.40 and having insufficient cash income to cover debt-repayment and family living expenses. By this criterion 20 percent of U.S. dairy farms were estimated to be financially vulnerable in 1985 compared to 11 percent in 1989.

Underlying the financial improvements in the dairy sector are improved net cash incomes during the last half of the 1980s.

Use

Commercial disappearance of milk in all dairy products on a milk equivalent, (M.E.) milkfat solids basis, expanded around 2 percent a year during the 1983–91 period, about double the rate of the 1970's and early 1980's. Lower real retail dairy prices, increasing consumer incomes, and increased dairy product promotion helped boost commercial use of dairy products.

CCC Activity

Dairy product purchases by the CCC were relatively small during the 1970's averaging around 3.6 billion pounds, M.E., milkfat basis annually during that period. Milk supply and demand were in relatively good balance in most years of the 1970's with CCC price support removals totaling over 6 billion pounds in only 2 years. With milk production expanding rapidly in the 1980's as farmers responded to higher support prices, dairy product removals under the price support program increased substantially reaching a record of 16.6 billion pounds, M.E., milkfat basis in 1982/83 when the support price was $13.10 per hundredweight. During the 1980's, removals averaged around 11.0 billion pounds, M.E., milkfat basis. Removals would have been even greater during this period if it had not been for

two major programs to reduce milk production. Removals dropped in 1983/84 and 1984/85 because of the Milk Diversion Program and in 1986/87 as a result of the Dairy Termination Program, although the declines under both programs were temporary. Removals dropped in 1989/90 because of impacts of the drought and the unusual export and domestic demand for nonfat milk solids, but are expected to rebound in 1990/91 to almost to 10 billion pounds, M.E. milkfat and 8.5 billion pounds, M.E. nonfat solids.

Baseline Forecast

Baseline projections for milk supply, use and prices were made for the period from 1991/92 through 1996/97 and are presented in Table 1. The baseline developed for this study updates the projections used in the President's Budget presented in February 1991 to incorporate more recent information and data on supply and demand conditions. It also extends the time horizon.

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Table 1: Supply and utilization, baseline, current programs

Item	Unit	1990/91	1991/92 1/	1992/93	1993/94	1994/95	1995/96 1/	1996/97
Support Level	$ Per Cwt.	10.10	10.10	10.10	10.10	10.10	10.10	10.10
Assessments:								
Budget	$ Per Cwt.	0.0375	0.0969	0.1125	0.1125	0.1125	0.0281	
Excess Production	$ Per Cwt.			0.0370	0.0540	0.0130		
Milk Production	Bil. Lb.	150.0	151.4	153.9	156.9	158.5	159.9	161.0
Farm Use	Bil. Lb.	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Marketings	Bil. Lb.	147.9	149.3	151.8	154.8	156.4	157.8	158.9
Beginning Commercial Stocks	Bil. Lb.	5.1	5.3	5.3	5.3	5.3	5.3	5.3
Imports	Bil. Lb.	2.6	2.6	2.6	2.6	2.6	2.6	2.6
Commercial Supply	Bil. Lb.	155.6	157.2	159.7	162.7	164.3	165.7	166.8
Commercial Use	Bil. Lb.	140.5	144.9	146.8	149.5	152.0	154.9	156.5
Ending Commercial Stocks	Bil. Lb.	5.3	5.3	5.3	5.3	5.3	5.3	5.3
Total Utilization	Bil. Lb.	145.8	150.2	152.1	154.8	157.3	160.2	161.8
CCC Net Removals:								
Milkfat Basis	Bil. Lb.	9.8	7.0	7.6	7.9	7.0	5.5	5.0
Skim-Solids Basis	Bil. Lb.	8.5	6.3	7.6	7.9	7.0	5.5	5.1
Butter	Mil. Lb.	355	235	245	245	225	175	160
Cheese	Mil. Lb.	210	195	230	270	220	175	160
Nonfat Dry Milk	Mil. Lb.	550	375	455	450	410	325	300
Net CCC Purchase Costs	$ Mil.	1049	766	883	923	814	642	590
Net CCC Outlays	$ Mil.	916	626	727	779	685	548	491
Deductions 2/	$ Mil.	55	145	227	258	196	44	0
Diversion Payments	$ Mil.	0	0	0	0	0	0	0
Buyout Payments	$ Mil.	100	11	0	0	0	0	0
Net Government Costs	$ Mil.	960	492	500	521	489	504	491
Number of Cows	Thousands	10,080	10000	9905	9795	9700	9600	9540
Milk Per Cow	Lb.	14,880	15140	15540	16020	16340	16655	16880
Prices Received by Farmers:								
Manufacturing Grade	$ Per Cwt.	10.30	10.45	10.40	10.35	10.45	10.55	10.60
All Milk Sold to Plants	$ Per Cwt.	11.60	11.55	11.50	11.45	11.55	11.65	11.70
Effective Price	$ Per Cwt.	11.56	11.45	11.35	11.28	11.42	11.62	11.70
Farm Cash Receipts 3/	$ Mil.	17,250	17,250	17380	17620	18020	18500	18750
Margin	$ Per Cwt.	22.50	22.00	22.00	23.00	24.10	25.30	26.50
Retail Value	$ Per Cwt.	34.10	33.55	33.50	34.45	35.65	36.95	38.20
Retail Cost	$ Mil.	47,920	48,610	49,190	51,490	54,180	57,230	59,770

1/ Leap year. 2/ Does not include promotion deductions. 3/ Receipts adjusted to reflect deductions. Buyout payments are not reflected in dairy cash receipts since the recipients are no longer dairy farmers.

** NOTE: Some numbers may not add due to rounding.

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In making these baseline projections, the following basic assumptions were used:

1. The FACT ACT set the support price for milk at a minimum of $10.10 per hundredweight with provision for increases of at least 35-cents if surplus is estimated to be less than 3.5 billion pounds. It also provides for an assessment to cover the cost of surplus purchases in excess of 7 billion pounds, M.E., milkfat basis per year. These requirements were extended through the end of the baseline.

2. Following the current economic slowdown, longer run projections indicate a moderate rate of economic growth during the rest of the baseline period. This is expected to provide a favorable demand for dairy products.

3. Bovine Somatotropin (bST) will be approved and become available for general use by dairy farmers by the fall of 1992.

4. There will be no consumer response to bST in terms of reduced milk and dairy product consumption.

5. There will be no impact of the California drought on milk production.

6. The producer assessments provided under the 1990 Omnibus Budget Reconciliation Act will be in place through calendar 1995 as specified in the Act.

7. No assumption is made with respect to the conclusions of the Uruguay Round of negotiations in the General Agreement on Tariffs and Trade (GATT).

Productivity gains and structural changes that lowered costs and caused milk production increases: in the 1980's are expected to continue in the 1990's. The assumed adoption of bST in 1992 will help maintain milk production increases in the 1990's. Milk production is expected to increase throughout the 1991/92–1996/97 period reaching 161 billion pounds by 1996/97. Gains are expected to be the largest in 1992/93 and 1993/94 immediately following adoption of bST.

Use of bST will produce increases in milk production per cow in the early 1990's. However, milk-feed price ratios may be less favorable, which will be a limiting factor in the growth in milk production per cow. Milk production per cow is expected to reach almost 17,000 pounds in 1996/97. This would represent about a 2-percent annual growth rate from 1990/91, with the largest increases in 1992/93 and 1993/94, the two years immediately following the introduction of bST.

Milk cow numbers are estimated to decline slowly during the baseline period. Cow numbers are estimated at around 9.5 million head by 1996/97, around a 1-percent per year decline from 1990/91.

After declining sharply in 1990/91, farm milk prices are estimated to hold relatively stable during the baseline period with the all milk price holding in the $11.45 to $11.70 range. Real milk prices will decline slowly throughout the period to bring rising production and use into balance.

Commercial use of milk in all dairy products will likely increase during the baseline period. A growth rate of around 2-percent per year is projected. Declining real consumer prices, income growth and population increases probably will boost commercial use.

CCC removals of dairy products under the price support program are expected to gradually decline during the baseline period. Purchases on a M.E., milkfat basis may rise during the 1991/92 to 1993/94 period to around 8 billion pounds, before declining to some 5 billion pounds by 1996/97.

Criteria for Evaluation of Programs

Evaluation Criteria Required

The FACT ACT requires the Secretary to evaluate potential milk inventory programs based on the following:

(A) The ability of the program to limit Government purchases of milk products to 6,000,000,000 pounds (milk equivalent, total milk solids basis) in a calendar year;

(B) The speed and effectiveness of reducing excess milk production;

(C) The effectiveness in sustaining reduced milk production for at least a 5-year period with and without the continuation of the program;

(D) The regional impact on milk prices, producer revenue, and milk supplies;

(E) The impact on national producer income and Government expenditures;

(F) The impact on the rural economy and maintaining family farms;

(G) The impact on the availability of wholesome dairy products for domestic and foreign nutrition and food assistance programs;

(H) Technological innovations;

(I) The effectiveness in reducing butter fat production and increasing protein content in milk;

(J) The impact of temporary increases and decreases of milk production;

(K) The impact on the United States livestock industry; and

(L) All other issues the Secretary considers appropriate.

Additional Evaluation Criteria

Attention to the following additional criteria also is considered essential to a comprehensive and balanced evaluation of the alternative programs.

(L)(1) The consistency of the program with international obligations and the impacts on international trade.

(L)(2) The impact on consumers and the consumption of milk and milk products, including consumer costs.

(L)(3) The effect on long-term economic efficiency of the U.S. dairy industry, as well as competitiveness with non-dairy products.

Although not a criteria considered in this study, administrative/operational feasibility is an additional appropriate and potentially important factor for evaluating the alternatives.

The evaluations of impacts on the above criteria are presented in the order in which they were presented in the FACT ACT. The criteria, when taken as a whole, largely cover the broad spectrum of concerns which should be considered in formulating national program policy for dairy. In practice, many of the criteria are closely related or interdependent.

V. Study Methodology and Assumptions

Analytical Procedures

The impacts of the four general types of inventory management programs were analyzed using farm-level supply and demand models. The models adjusted milk production, commercial use, and the all milk price from the current program baseline based upon supply and demand elasticities and the assumptions of the individual program.

Supply elasticities differed between models based upon the assumed level of price support of the program. For inventory management programs which called for nearly the same support price level as in the baseline, supply elasticities remained constant at .15.

If a program alternative called for a support price significantly higher than in the baseline, the models were modified to reflect the dynamics (annual adjustments) of the milk industry by increasing the supply elasticities in consecutive years. The elasticities used were .15, .30, .40, .50, .50, and .50, from FY 1992 through FY 1997, respectively.

By changing the elasticities from very inelastic to more elastic, a more dynamic impact of higher prices on production was shown. For example, if producer prices were supported above the current $10.10 per hundredweight price, the assumption was that producers would attempt to expand production. In the shorter term, because it takes time to bring more heifers into the dairy herd, the potential for expansion was assumed limited. But

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over time. If continued higher prices are anticipated, producers have time to enter the industry, build more facilities, save more heifers, and expand production at a greater pace. Thus, an expected sustained higher price would bring a stronger production reaction in the 4th year than it would in the first year.

Farm level demand elasticities for all milk were assumed unchanged across the six year period at –0.15. For example, a 10 percent increase in price, would result in decreased commercial use of 1.5 percent. Thus, consumers' tastes for milk were assumed unchanging and a large change in price would not affect the quantity of milk consumed by much.

Estimated impacts also are dependent on baseline assumptions and projections described on the previous pages. Modification of the assumptions would alter estimates of the impacts. Estimates are subject to some uncertainty given the unpredictability of natural events and economic conditions which influence the supply and demand for milk. In addition, the absence of historical experience with some of the new program types makes it difficult to estimate producer and market responses with confidence.

Purchases of Dairy Products for Use in Domestic Assistance Programs

The quantities of dairy products demanded by the Food and Nutrition Service (FNS) for donation through various domestic assistance programs are functions of several variables. These purchasing decisions are fundamentally different for schools and for the Temporary Emergency Food Assistance Programs (TEFAP). For TEFAP, purchasing decisions are based on price of products, recipient preferences and good nutrition principles.

For schools, States and local districts play a large role in deciding how to spend the commodity entitlement dollars available to them. They consider the desirability of the product and its price, and weigh that against the commercial price and the price of competing items. For example, cheese generally competes against other protein items like red meat, poultry and peanut butter. In addition, pressure from other producer groups builds if States increase the percent of their entitlement funding that goes to any one product.

Given these considerations, and more important, assuming no increased FNS appropriations to purchase dairy products, this analysis assumed the following purchases for FNS direct distribution.

$10.10 milk price	1.0 billion pounds, M.E., composed primarily of cheese and 15.0 million pounds of nonfat dry milk.
$13.10 milk price	At this price range, FNS would not spend any of its funds on cheese. This parallels history when FNS has withdrawn from the market at this price. 11.0 million pounds of nonfat dry milk would be purchased. Since some additional dairy products likely would be purchased at the State level if not available from FNS, 0.5 billion pounds was added to commercial use in programs having this price level.
$8.60 milk price	3.0 billion pounds, M.E., composed primarily of cheese and 15.0 million pounds of nonfat dry milk. Since purchases of dairy products at the State level would be reduced because they would be more cheaply available through FNS, 0.5 billion pounds was subtracted from commercial use in those programs having this price level.

Bovine Somatotropin Introduction

The current baseline assumes that bovine Somatotropin (bST) is given Food and Drug Administration (FDA) approval for commercial use and is introduced in FY 1993. This gives an added boost: to milk production in that and following years. This assumption carries on, unchanged, into the analysis of the different inventory management programs.

Milk Per Cow

Milk per cow was left unchanged. Some inventory management programs which would imply cow culling might increase productivity in the short-run but slow its improvement in the long-run. Dairy producers would most likely cull their least productive cows, leading to a short-run increase in milk per cow. But, if the inventory management programs were left in place for a sustained period of time, a lack of incentive to remain competitive might slow the trend towards increasing milk per cow.

Farm-Retail Margins

Farm-retail margins were left unchanged from the baseline regardless of the option under study. Arguments may be made for either an increasing margin or a decreasing margin in each of these options. The important factor in such argument is the market power of processors and retailers which was beyond the scope of this study.

Government (CCC plus FNS) Expenditures

The cost estimates in the study are subject to possible modifications for Congressional budget scorekeeping purposes in the event a program option is proposed in legislation. For example, legislative proposals which do not specifically provide for dairy product purchases may not be assigned a cost for FNS or other food assistance program purchases. Baseline assumptions used for official budget scorekeeping would differ somewhat from those used in the study as well.

Government cost estimates presented in the analyses include the costs of assumed Federal food assistance program purchases for direct distribution and the cost of CCC purchases of surplus dairy products. (Historical and projected baseline government costs include costs of surplus dairy products purchased by CCC and donated to food assistance programs and FNS appropriated funds used to reimburse CCC for dairy products.)

For this analysis, Government purchases are valued at the support price of milk plus $1.30 per hundredweight for those options having a surplus purchase program, or at the manufacturing milk price plus $1.30 per hundredweight for those options where FNS buys directly from the market.

International Dairy Market Assumptions

The price estimates shown in Table 2 were based on current and anticipated dairy product supply and demand conditions in the significant producing and consuming regions of the world. Trade and price forecasts were made from a 1990 base, when international prices for both butter and nonfat dry milk powder were estimated to have been approximately $1,425 per metric ton. During the analysis period, no significant net changes are anticipated in butter supplies on international markets. However, an increase of approximately 20 percent in international availabilities of nonfat dry milk powder from the reduced level of

1990 will result in the price levels indicated to absorb the larger supply. Finally, no assumptions were made as to the outcome of the current Uruguay Round of negotiations in the General Agreement on Tariffs and Trade (GATT).

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Table 2: Projected international dairy product prices

Fiscal Year	Butter		Nonfat Dry Milk		Equivalent Manufacturing Grade Milk
	Mt. Ton	Pound	Mt. Ton	Pound	Cwt.
	(dollars)				
1990-91	1,410	.6396	1,350	.6124	6.60
1991-92	1,420	.6441	1,340	.6078	6.60
1992-93	1,425	.6464	1,325	.6010	6.60
1993-94	1,425	.6464	1,310	.5942	6.50
1994-95	1,425	.6464	1,300	.5897	6.50
1995-96	1,425	.6464	1,300	.5897	6.50
1996-97	1,425	.6464	1,300	.5897	6.50

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Administrative Policy Assumptions—Milk Price Support Program Operation

There are a number of administrative policy assumptions that can have a bearing on the operation, and therefore, the effectiveness and cost of a milk price support program. For the most part, such policies relate to the operation of the commodity purchase program. Current policy positions are considered continued for the purposes of this study. Of most importance are:

CCC purchase prices for surplus butter and nonfat dry milk. It is the policy of CCC to establish the purchase prices for butter and nonfat dry milk at levels that are in relative alignment with the market demands for these products. The goal is to purchase these products in approximately the same proportion as their yields from cows milk. Achieving this goal eliminates program caused inequities that affect the competitive situation between plants manufacturing butter-nonfat dry milk and plants manufacturing cheese. Also, additional farm milk and product price stability can be expected when CCC purchase prices are in alignment with market demands.

CCC purchase prices are currently: $0.9825 per pound for butter, $0.8500 per pound for nonfat dry milk, $1.1100 per pound for cheese packaged in 40-pound blocks, and $1.0700 per pound for cheese packaged in 500-pound barrels.

The baseline assumes that current purchase price levels will allow CCC to achieve its goal throughout the period studied. Program options providing higher milk support levels by means of a purchase program will assume that purchase prices are adjusted to achieve the CCC goal. Therefore, the M.E. of surplus whether measured on a milkfat, nonfat solids, or total milk solids basis will be identical.

CCC prices for dairy products sold to the trade for unrestricted use. The current practice is to sell CCC-owned butter, cheese, or nonfat dry milk back to the trade for unrestricted use at the higher of 110 percent of the CCC purchase price, or the market price. This practice limits the seasonal variation in milk prices when a surplus purchase program exists and CCC has product to sell back to the trade.

Definitions For Marketing Histories, Bases and Quotas

Marketing History. All milk produced and marketed in the U.S. by a producer during the base forming period.

Marketing Base. The quantity of milk assigned to each producer on the basis of his/her marketing history from which the producers marketing quota is derived. In general, a producer's marketing base is equal to his/her marketing history. In some instances, a producer may be allowed to transfer or sell base. Rules may be provided to adjust a producer's base for hardship, to account for new producer status, or account for other occurrences.

For those options studied which require individual producer marketing bases, it was assumed that the marketing history period was FY 1989-90. No additional assumptions were made with respect to base transfers, hardship claims, or new producer base status. Production responses, however, assume that base acquires no value which would increase production cost.

Marketing Quota. The amount of milk that a producer can market during a given time period, generally one year, to receive program benefits and/or avoid program penalties. Often determined as a percentage of the producer's base.

Considerations in Evaluation of Impacts

This section discusses other analytical considerations used for evaluating program and program option impacts.

Temporary milk production changes. To help quantify the impact on potential milk inventory management programs of criterion (j): the impact of temporary increases and decreases of milk production, each option was tested for reaction to a 2 percent increase and decrease in milk production in FY 1992. Resulting impacts on prices, farm cash receipts and Government expenditures were observed.

Livestock Impact Analysis. The reported impacts are based on changes from the USDA dairy and livestock baseline projections from 1991 to 1997. Programs which increase the level of dairy cow slaughter in the beginning years will increase nominal returns to the sector over the total length of the analysis due to both the dynamics of the livestock sector and inflation. The opposite will be true of programs that decrease slaughter in the initial periods.

International Impacts Analysis. Unlike many other sectors of U.S. agriculture, exports traditionally have not provided a significant market outlet for the U.S. dairy industry. U.S. dairy product exports in most recent years have amounted to approximately 2 percent of production on a milk equivalent basis. Much of what is exported is sold either by CCC direct sales, through such subsidy programs as the current DEIP, or through various concessional and food aid programs. At the same time, imports of dairy products into the United States, limited by quotas originally authorized under Section 22 of the Agricultural Adjustment Act of 1933 (subsequently amended), have similarly amounted to the equivalent of about 2 percent of domestic milk production. Consequently, on a net volume basis, international trade has had a limited influence on U.S. dairy production and marketing industries.

Uruguay Round. Successful negotiations in the current Uruguay Round of the General Agreement on Tariffs and Trade (GATT) would change the world dairy trade situation. For most other countries as well as the United States, international trade in dairy products is relatively limited. Only about 5 percent of world dairy production is traded internationally. In part this is due to the perishable nature of fluid milk, but it is also because of numerous national production and export subsidies and import barriers that distort and limit dairy product trade around the world.

A major objective of the United States in the Uruguay Round agriculture negotiations is to substantially reduce the use of trade distorting measures with the goal of a much more market-oriented international trade in all agricultural products. Because a conclusion to Uruguay Round discussions could come as early as the end of 1991, it is important that any milk inventory management program adopted be compatible with prospective international obligations under the GATT. The long-term ability of the U.S. dairy sector to effectively compete in a liberalized international marketplace should be one of the factors weighed when considering the various proposals presented in this study. The highly efficient U.S. dairy sector could be in an excellent position to take advantage of the significant new export opportunities that would be opened by a liberalized international trade environment. Prospects are particularly bright for increased U.S. exports of ice cream mixes, frozen yogurt, whey concentrates and other higher value dairy products. Under the criteria for each model is a broad evaluation of the international competitiveness aspects of the proposals considered by the Milk Inventory Management Study and the impact a GATT agreement would have on the various options studied.

All participants in the GATT Uruguay Round have agreed to negotiate separate commitments in each of the areas of internal support, market access and export competition. The U.S. proposal contains the following elements: (1) The internal support commitment would be based on a commodity-specific Aggregate Measure of Support (AMS). Basically this is the

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quantity of a product supported multiplied by the price gap between the support price and a world reference price plus direct transfers. (2) Under market access commitments, all non-tariff barriers would be converted to tariffs (tariffication) and reduced. A minimum market access commitment would be included. Safeguards would be available to protect against import surges or significant import price drops. (3) Export subsidy commitments would be on the basis of quantities exported and expenditures. Each of the options of this study has been analyzed for consistency with the key elements of the U.S. Uruguay Round proposal.

Under the current program and under the options considered below, some adjustments would be needed to meet internal support commitments. The average duty-paid import price after tariffication would generally be sufficient to protect against imports beyond the minimum access level at expected post-liberalization world price levels. Additionally, there would be safeguards to protect against import surges in years when the difference between U.S. and world prices are unusually large. Export subsidy commitments would affect our limited export subsidy programs: Direct sales and DEIP initiatives.

Analysis of the current dairy program given a Uruguay Round outcome of increases in market access and decreases in export subsidies and internal supports of about 6 to 8 percent per year produced the general results found in the international trade criteria section of each option.

Food Assistance Program Effect Assumptions. Benefits in several of the largest food assistance programs—the Food Stamp Program and Child Nutrition Programs (School Lunch and Breakfast, Child and Adult Care Feeding Program, Summer and Special Milk Programs)—are indexed to changing food prices. The Supplemental Food Program for Women, Infants, and Children (WIC) is a grant program that is not indexed. Price changes affect this program by altering the number of participants that can be served within a fixed annual grant. As a consequence, price changes can create two distinct impacts for Food Assistance Programs.

First, any increase in food prices between annual cost-of-living adjustments can have different effects depending on the program. Price increases can (1) erode the purchasing power of low-income consumers, (2) force school districts and States to absorb higher costs of preparing meals, or (3) reduce the number of clients served in some grant programs.

Second, increases in food prices beyond those expected in the baseline will increase program costs in following years. There will be no changes to the costs of food assistance programs during Fiscal Year 1992 because none of the options would be effective in time to affect any program's cost-of-living adjustment for the upcoming Fiscal Year.

The effects of changed milk prices brought about by the options presented in this report on food assistance program costs should be treated as indicative of the magnitude of potential impacts rather than as precise estimates. There are several reasons for this.

First, the estimates capture some but not all of the effects of changed milk prices. The analysis accounted for the changed price of fluid milk in each of the major food assistance programs. In addition, the analysis accounted for secondary changes in the price of (1) cheese on the Food Stamp and WIC programs and (2) infant formula in WIC. The latter analyses assume that the changes in fluid milk prices are passed directly through to the price of cheese and infant formula in proportion to their fluid milk content. The omission of cheese in the Child Nutrition Programs should not seriously understate total effects, since fluid milk represents the largest proportion of dairy products in the index used to adjust reimbursements. On the other hand, the Child Nutrition analysis presents the upper bound estimate of milk consumption for the child nutrition programs by assuming that all lunches and breakfasts contain a half-pint of milk. This is not necessarily the case since current rules for secondary schools allow students to select three of the five meal components and schools still receive reimbursement for a meal. Data are unavailable to indicate the frequency with which milk is selected for these meals.

Second, the timing of the price changes during the course of a year is unknown. Consequently the analysis reflects the changes in average price over the course of a year from the average price projected in the baseline. This difference was then applied proportionately to the fluid milk portion of the relevant program index. Since the cost-of-living indices are linked to either a specific market basket in a specific month or to rates of change in food prices across two specific months, reliance on the average is not likely to capture, precisely, the true effects on program costs.

VI. Target Price-Deficiency Payment Programs

General Structure

• Target price-deficiency payment programs would provide for payments to producers with payment rates determined by the difference between an announced target price and the actual price received by farmers.

• The target price could be specific to a particular class or grade of milk or on all milk.

• The deficiency payment rate would be the same for all farmers or independent of the grade of milk actually marketed or the class utilization of an individual farmer's milk.

• Deficiency payments would increase with a farmer's marketings or quota unless restricted by a payment limit.

• To be eligible for payments, a farmer may be required to limit marketings to the individual farmer's quota.

• The quota for individual farmers would be determined by their marketing history and set so as to balance supply and demand at the national level.

• Individual farmer's payments could be determined by the farmer's actual marketings, quota, or as a percentage of the farmer's marketings or quota.

Elements of Submitted Proposals

Target Price

• The target price could be established on all milk, manufacturing milk, or some other class or grade of milk.

• One proposal would have set the target price for all milk at $12.00 per hundredweight. Another proposal would have established a target price for manufacturing milk that would provide a reasonable return to producers. The remaining proposals did not specify the target price level or on which class or grade of milk it would apply.

Mandatory or Voluntary Participation

• Each year, the government would announce the percentage of base (quota milk) each farmer would be permitted to market and be eligible to receive deficiency payments. The Federal government could either require all farmers to market within their individual quotas or participation could be voluntary with each farmer electing whether or not to market within his or her quota.

• None of the proposals received would have required participation.

Voluntary Reduction in Marketings

• The percentage of a farmer's base that a farmer would be allowed to market (quota milk) and be eligible for deficiency payments would be determined on the basis of projected market needs defined as that quantity of milk needed to balance supply and demand at the national level.

• Under two proposals, the national quota would have been set to balance supply and demand or to reduce production to levels consistent with USDA's estimates of commercial use. The two remaining proposals did not specify how the national quota would be determined.

Marketings Eligible for Payment

• Deficiency payments could be based upon a farmer's marketings or the farmer's quota or by a percentage of the farmer's marketings or quota. If tied directly to the farmer's marketings or percentage of the farmer's marketings, there is an incentive for farmers to produce up to their quota or increase marketings, if there is no quota. In this way, they maximize the amount of payments they receive. If payments are determined by the farmer's historic base, and independent of current or future marketings, there is no incentive for farmers to market up to their quota or increase marketings for the purpose of increasing payments.

• None of the proposals received addressed this issue.

Advance Payments.

• A portion of the projected deficiency payment could be paid in advance or prior to the beginning of the marketing year. All or a portion of these payments could be refundable if the actual deficiency payment rate turned out to be below the advance payment rate.

• One proposal would have set the advance at 33 percent and another at 40 percent of the projected rate. Under both proposals, there would have been no repayment of the advance under any circumstances. The two remaining proposals did not specify advance payments.

Payment Limitation

• Deficiency payments could be subject to a separate payment limitation or subject to a combined payment limitation that includes payments from other government programs.

• One proposal would have set the payment limit at $50,000 per producer (husband and wife each eligible for $50,000), including all benefits received under other CCC programs less any assessments. The remaining proposals would set the limit on dairy deficiency payments at $50,000 per farm.

Purchase Program

• The purchase program could be continued or terminated.

• Two proposals would have continued the purchase program as is. One proposal would have replaced the purchase program with a 9-month nonrecourse loan program and another would have ultimately converted the purchase program to a 9-month recourse loan program.

Bases-Marketing History

• A farmer's marketing history would be used in determining the farmer's marketing base. The farmer's marketing quota or the maximum amount of milk a farmer may market in any year and remain eligible for deficiency payments would generally be set as a percentage of the farmer's marketing base.

• One proposal would have fixed the marketing history at the most recent 3 year average. Another proposal would have established the marketing history as marketings in the immediately preceding year.

• Rules could be established governing the sale and lease of production bases. Special regulations might be provided to "new" entrants or those wishing to establish a base or marketing history. One-half of proposals received would have not allowed the sale and lease of production bases or provided for special rules for "new" entrants.

Assessments

• Assessments could be used to reduce the cost of the program. Assessments might apply to all producers or only producers whose marketings exceed their quota.

• All proposals would have permitted assessments, but proposals were evenly split as to whether assessments should apply to all producers or only those whose marketings exceed their quota.

Cost Objectives

• Two proposals specify that program costs should be consistent with federal budget requirements. The two remaining proposals did not specify a program cost objective.

Program Implementation/Termination

• This program could be triggered annually based on the level of projected purchases or continued indefinitely.

• Three proposals would have terminated the program if projected purchases do not exceed a designated trigger level. The remaining proposal would have established this program permanently.

Target Price-Deficiency Payment Program Analyses

This study reports the impacts of four target price-deficiency payment program options. Target prices under all of these options were based on the "all milk price".

The first program option, TP1120–NQ, determined the impacts at the equivalent, current level of price support, $10.10 per hundredweight of manufacturing grade milk, with no milk marketing reductions required by individual producers.

The second program option, TP1220–Q–PP1010 raised the support price by $1.00 to enhance farm cash receipts and added a surplus purchase program to moderate market price declines. Minimum reduction percentages also were varied to contain Government costs.

The third program option, TP1320–Q raised the support price $2.00 above the baseline level to further enhance farm cash receipts. Minimum reduction percentages were varied to contain Government costs. The surplus purchase program was continued at $10.10 per hundredweight as a safety net.

The fourth program option, TP1420–Q raised the support price $3.00 above the baseline level to further enhance farm cash receipts. Minimum reduction percentages were varied to contain Government costs. The surplus purchase program was continued at $10.10 per hundredweight as a safety net.

Selection of a participation rate was made difficult by the absence of any prior target price-deficiency payment program in dairy. In program options which required a quota, returns for participants were compared with returns for nonparticipants. In all cases, the net returns for participants were greater than the returns for nonparticipants. Target price-deficiency payment programs for other commodities have participation rates ranging from 14 percent in oats during 1984/85 to 96 percent in rice during 1987/88. It was assumed for this analysis that most producers will enter programs with high returns options. However, once some producers see high market prices, they will opt out of the program to expand production and take advantage of the higher market prices. Participation drops over time, eventually reaching equilibrium. However, without any evidence from previous dairy target price-deficiency payment programs, a high level of confidence can not be place in the assumed participation rates.

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See Table 3 at the end of this chapter for a summary of results.

TP1120–NQ

Target price	$11.20 per hundredweight for all milk marketings.
Deficiency payment	Difference between the target price and the all milk price. Paid on all milk marketings.
Quota	No reduction in marketings required.
Surplus purchase program.	None. FNS purchases needs from the market.

Estimation of Impacts

(A) The ability of the program to limit Government purchases of milk products to 6,000,000,000 pounds (milk equivalent, total milk solids basis) in a calendar year.

The Government purchases milk products only to the extent needed to service existing USDA food programs. USDA would no longer purchase products to support milk prices. Given these assumptions, Government purchases would be below 6 billion pounds in all years.

(B) The speed and effectiveness of reducing excess milk production.

Farmers would alter marketings to the extent that producer returns, including Government payments reflect production costs. The target price stabilizes producer returns if the all milk price falls below $11.20 per hundredweight. So, milk production would not be further reduced as the price drops. Producer returns decline slightly under this option compared to the baseline. It is expected that producers would reduce marketings over time in the face of reduced profitability.

The absence of a quota means that producer are under no obligation to reduce production to participate in the program.

(C) The effectiveness in sustaining reduced milk production for at least a 5-year period with and without the continuation of the program.

The program continued in place for the entire 5-year analysis period. Farmers would alter marketings to the extent that producer returns including Government payments reflect production costs. It is expected that producers would reduce marketings somewhat over time in the face of reduced profitability compared to the baseline. Substantial reductions are unlikely since the target price of $11.20 effectively limits the drop in producer returns.

(D) The regional impact on milk prices, producer revenue, and milk supplies.

See chapter X for a discussion of the regional impacts of target price-deficiency payment programs.

(E) The impact on national producer income and Government expenditures.

Farm cash receipts averaged $17.3 billion per year for the analysis period, more than $650 million lower than under the baseline. A target price of $11.20 on all milk marketed (equivalent of $10.10 for manufacturing grade milk) results in less revenue per hundred than provided under the baseline. The effective farm milk price averaged only $9.04 per hundredweight. Lower per unit revenues also resulted in a reduction in milk marketings, further depressing farm cash receipts.

Government expenditures, CCC costs and FNS direct purchase costs, averaged $3.2 billion for the analysis period. This was well above the baseline average of $622 million. The cost of the program cost primarily arose from large deficiency payments which occurred because of large drops in market prices due to the absence of a CCC surplus purchase program.

The substantial price reduction in retail milk could significantly reduce food assistance program costs. During the five year period, Fiscal Year 1993–97, Food Stamp Program costs would average about $230 million less per year. Child Nutrition Programs would cost an average of $95 million less in the period. The WIC program would cost $40 million less, or it would serve an additional 75,000 at-risk participants in an average month.

(F) The impact on the rural economy and maintaining family farms.

See chapter XI for a discussion of inventory management programs and the implications for the rural economy and maintaining the family farm.

(G) The impact on the availability of wholesome dairy products for domestic and foreign nutrition and food assistance programs.

Without a CCC purchase program, dairy products for food assistance and nutrition programs would have to be purchased from the commercial market. Market prices for milk would over the next 5 years average nearly $2.50 per hundredweight below the levels with the current program. While this would significantly reduce the cost of acquiring dairy products for food assistance programs, total dairy product use in these programs may be limited unless additional appropriations were provided. Since CCC supplies would no longer be available, expenditures for purchase of dairy products for program use would be dependent on food assistance program budgets, the prices of dairy products relative to other commodities, nutritional and other program factors.

Lower prices would also favorably affect the food assistance and nutrition programs which do not directly depend on purchase and distribution of dairy products. Costs of entitlement programs with benefit levels tied to food price indices influenced by dairy product prices would be reduced. Non-entitlement programs utilizing dairy products would face lower costs permitting increased utilization of dairy products, expansion of the number of participants served by the programs or current benefits could be maintained with a budget savings.

(H) Technological innovations.

See chapter XII for discussion of inventory management programs and the implications for the technology.

(I) The effectiveness in reducing butterfat production and increasing protein content in milk.

This program contains no element, other than reflecting market demands, to encourage adjustments in the composition of milk.

(J) The impact of temporary increases and decreases of milk production.

An unforeseen increase (decrease) in milk production would result in an increase (decrease) in deficiency payments. For example, an additional 2 percent increase in milk production in FY 1992 would result in about a 16 percent decrease in the average price to farmers and a corresponding decrease of about 5 percent in the average retail value. Farm cash receipts would increase about 2 percent as a result of greater marketings. Such a decrease in the farm milk price would widen the difference between it and the target price. Government expenditures would increase about $2.2 billion. (See chapter XVI, Tables 11 and 12 for summary information.)

(K) The impact on the United States livestock industry.

The target price-deficiency payment program at $11.20 with no quota requirements does not affect the livestock industry much. However, year-to-year changes are important. See Appendix C for more details.

(L)(1) The consistency of the program with international obligations and the impacts on international trade.

With more flexible market prices, domestic commercial use under a target price program could be quite closely aligned to supply, leaving a relatively small quantity available for export. At the same time, U.S. dairy products could be priced much more competitively on world markets than at present. At more competitive prices and with enhanced export market opportunities, U.S. commercial dairy product exports could increase substantially under this proposal. In addition, without a mandatory surplus dairy product purchase program, there would no longer be the occasional need to export a burdensome accumulation from CCC inventories, which has from time to time caused friction among competing dairy exporting countries.

Uruguay Round: Under a Uruguay Round agreement as proposed by the United States, support levels as measured by the Aggregate Measure of Support (AMS) must be reduced from the 1986–88 level. With the target price/deficiency payment option, the AMS would be calculated by multiplying the gap between the equivalent administered manufactured milk price and a world reference price (1986–88 base) by the quantity supported. The administered manufactured price is $10.10 per hundredweight in this option and the baseline, and supported quantities are similar. This would yield an AMS that is about the same as the AMS for the current dairy program. With respect to market access commitments, since domestic prices are projected to be lower under this option than under the baseline, the level of import protection needed with this option is less than with the current program. Therefore, we should be able to convert existing import restrictions to tariffs and reduce the resulting tariffs in accordance with our proposed Uruguay Round commitments without allowing an increase in imports that undermine the support program. Our proposed export subsidy reduction commitments should also be easily met under this option. The United States should be in a strong competitive position on world markets with the rising world prices that are expected to result from a Uruguay Round agreement. We would not have to use export subsidies to dispose of surpluses.

(L)(2) The impact on consumers and the consumption of milk and milk products, including consumer costs.

Consumers would realize significant benefits from reduced dairy product prices relative to the current program. Market price reductions over the 1992–97 period averaging nearly $2.50 per hundredweight of milk sold to plants would benefit all consumers, and especially low income consumers. Commercial use of dairy products would be about 3.3 percent higher than projected under the current program. However, total consumer expenditures for dairy products would be over $2 billion less per year than with the current program.

(L)(3) The effect on long term economic efficiency of the U.S. dairy industry, as well as competitiveness with non-dairy products.

See chapter XV for a discussion of the long-run implications of inventory management programs.

TP1220–Q–PP1010

Target price	$12.20 per hundredweight for all milk marketings.
Deficiency payment	Difference between the target price and the all milk price. Paid on all milk marketings of participants.
Quota	Participation voluntary. Necessary reduction announced yearly.
Surplus purchase program.	Surplus dairy products purchased at the equivalent of $10.10 per hundredweight.

Estimation of Impacts

(A) The ability of the program to limit Government purchases of milk products to 6,000,000,000 pounds (milk equivalent, total milk solids basis) in a calendar year.

In order to control dairy program costs, producers would have to reduce marketings by an announced percentage below their base to be eligible for deficiency payments. The required reduction in marketings is expected to be large enough so that Government purchases would be below 6 billion pounds, M.E. Government purchases are expected to average less than 4.0 billion pounds under this option.

(B) The speed and effectiveness of reducing excess milk production.

Farmers would be required to reduce marketings below their base to be eligible for deficiency payments. Marketings decline by 2.6 percent in 1991/92 and average 2.3 percent lower over the period compared to the baseline.

(C) The effectiveness in sustaining reduced milk production for at least a 5-year period with and without the continuation of the program.

The program continued for the full 5-year analysis period. Farmers would be required to reduce marketings below their base to be eligible for deficiency payments. Reductions in marketings by participants raises market prices and encourages expansion by non-participants. Increased marketings by non-participants would require participants to voluntarily reduce marketings by about 5 percent.

(D) The regional impact on milk prices, producer revenue, and milk supplies.

See chapter X for a discussion of the regional impacts of target price-deficiency payment programs.

(E) The impact on national producer income and Government expenditures.

Farm cash receipts averaged $18.2 billion per year for the analysis period, $230 million higher than under the baseline. A target price of $12.20 on all milk marketed (equivalent of $11.10 on manufacturing grade milk) by participating producers results in greater revenue per hundredweight than provided under the baseline. Non-participating producers face an effective milk price of $11.77 per hundredweight under this option, $0.30 higher than the baseline. The greater per unit revenues more than offset the lower marketings due to quotas resulting in a slight increase in farm cash receipts.

Government expenditures, CCC costs and FNS costs, averaged near $500 million for the analysis period, about the same as the baseline. Costs were split between deficiency payments and payments for purchased surplus dairy products.

This option would result in relatively modest increases to food assistance program costs. Food Stamp Program costs would rise an average of $20 million annually, while Child Nutrition Program costs would increase an average of $10 million. The WIC program would require $5 million more annually in its grant to maintain service to the same number of clients.

(F) The impact on the rural economy and maintaining family farms.

See Chapter XI for a discussion of inventory management programs and the implications for the rural economy and maintaining the family farm.

(G) The impact on the availability of wholesome dairy products for domestic and foreign nutrition and food assistance programs.

This option would have less significant implications for food assistance programs (compared to the current program) than would the target price programs with no quotas or those with no CCC purchase program.

The purchase program under this option (depending on the quota level) could acquire 3 to 4 billion pounds, M.E., of surplus dairy products per year which could be sold or made available to the food programs.

Since milk prices would average about 30 cents per hundredweight higher than baseline levels, this option would

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increase acquisition costs for dairy products for any program needs not met by the price support purchases.

(H) Technological innovations.

See chapter XII for discussion of inventory management programs and the implications for the technology.

(I) The effectiveness in reducing butter fat production and increasing protein content in milk.

This program relies upon CCC in establishing purchase prices for butter and nonfat dry milk to send price signals to dairy farmers concerning the value of milkfat and nonfat solids (protein). CCC policy is to continuously monitor purchases of surplus butter and nonfat dry milk. As necessary, with consideration of CCC costs, market impact and prices stability, CCC will make purchase price adjustments to move its purchases of butter and nonfat dry milk in the direction of alignment with their yields from whole milk.

(J) The impact of temporary increases and decreases of milk production.

An unforeseen increase (decrease) in milk production would lead to an increase (decrease) in purchases under the price support program. For example, an additional 2 percent increase in milk production in FY 1992 would result in most of the increase being purchased by the Government. The average price to farmers would drop about 2 percent and a corresponding decrease of about 1 percent in the average retail value. Farm cash receipts would increase about 1 percent, and Government expenditures would increase about $0.4 billion. (See chapter XVI, Tables 11 and 12 for summary information.)

(K) The impact on the United States livestock industry.

The target price-deficiency payment program at $12.20 with quota requirements and a $10.10 purchase program does not affect the livestock industry much. However, year-to-year changes are important. See appendix C for more details.

(L)(1) The consistency of the program with international obligations and the impacts on international trade.

With a quota, production/marketings and consumption would be lower and prices higher than the baseline. U.S. price competitiveness of world dairy product markets would be reduced under this proposal. Import protection would continue to be needed to prevent the floor price from being undercut by imports.

Uruguay Round. Of all the options studied, this one would require the least further adjustment to meet internal support commitments under a Uruguay Round outcome similar to the U.S. proposal. Although the administered support price is higher than under the current dairy program, the quantity supported at the target price is reduced because of the assumed participation rate. However, since domestic prices are projected to rise under this option as compared to the baseline, we would be somewhat less able to meet our proposed Uruguay Round commitments to convert existing import restrictions to tariffs and to reduce them because imports would undercut the domestic price. Meeting our proposed export subsidy reduction commitments would be no different than with the current dairy program. With higher domestic prices and lower production, the United States would be less competitive on world markets than under a baseline scenario and would have fewer surpluses available for export.

(L)(2) The impact on consumers and the consumption of milk and milk products, including consumer costs.

This option would have moderate implications for consumers. With a quota, milk marketings and consumption would be lower and prices higher than the baseline. Average milk prices are about 30 cents per hundredweight higher at the farm level for the 6-year analysis period. Total consumption would decline less than 1 percent and consumer expenditures for dairy products would be about $0.2 billion above the baseline.

(L)(3) The effect on long term economic efficiency of the U.S. dairy industry, as well as competitiveness with non-dairy products.

See chapter XV for a discussion of the long-run implications of inventory management programs.

TP1320–O

Target price	$13.20 per hundredweight for all milk marketings.
Deficiency payment	Difference between the target price and the all milk price. Paid on all milk marketings of participants.
Quota	Participation voluntary. Necessary reduction announced yearly.
Surplus purchase program.	Surplus dairy products purchased at the equivalent of $10.10 per hundredweight.

Estimation of Impacts

(A) The ability of the program to limit Government purchases of milk products to 6,000,000,000 pounds (milk equivalent, total milk solids basis) in a calendar year.

In order to control dairy program costs, producers would have to reduce marketings by an announced percentage below their base to be eligible for deficiency payments. The required reduction in marketings is expected to be large enough so that Government purchases in most years would be below 6 billion pounds. However, uncertainty regarding program participation, marketings by nonparticipants, growth in commercial use and the extent to which participant's bases reflect potential marketings could result in purchases exceeding 6 billion pounds in any year.

(B) The speed and effectiveness of reducing excess milk production.

Farmers would be required to reduce marketings below their quota to be eligible for target price deficiency payments. The extent to which marketings will be reduced depends on the announced reduction percentage, the level of program participation, the response of nonparticipants to higher market prices and the extent to which participant's quotas reflect potential marketings.

Despite a required 10 percent reduction in marketings below the baseline level, the target price is high enough to attract the majority of production to participate in the program.

(C) The effectiveness in sustaining reduced milk production for at least a 5-year period with and without the continuation of the program.

The program continued for the entire 6-year analysis period. Milk production is expected to average 5.1 percent below baseline under this option. However, not all producers reduce marketings. Reduced marketings by participants raises market prices and encourages non-participants to expand production. Increased production by non-participants would require participants to voluntarily reduce marketings by about 10 percent.

(D) The regional impact on milk prices, producer revenue, and milk supplies.

See Chapter X for a discussion of the regional impacts of target price-deficiency payment programs.

(E) The impact on national producer income and Government expenditures.

Farm cash receipts averaged $18.9 billion per year for the analysis period, $1.0 billion higher than under the baseline. A target price of $13.20 on all milk marketed (equivalent of $12.10 for manufacturing grade milk) by participating producers results in greater revenue per hundred than provided under the baseline. Non-participating producers faced an effective milk price of $12.43 per hundredweight under this option. Higher per unit revenues more than offset lower marketings (a result of a high participation rate) to raise farm cash receipts.

Government expenditures, CCC costs and FNS costs, averaged $518 million for the analysis period, about the same as the baseline. Deficiency payments made up the greatest part of government cost. FNS purchases of dairy products were greatly reduced under this option.

This option could significantly increase food assistance program costs. The cost of the Food Stamp Program would rise an average of $90 million annually over the FY 1993–97 period. Child Nutrition Program costs could increase $35 million annually. The WIC program would require $15 million in increased funding annually to maintain service to the same number of participants as in FY 1991. Without this increase in funding, approximately 30,000 fewer at-risk participants would be served each month.

(F) The impact on the rural economy and maintaining family farms.

See Chapter XI for a discussion of inventory management programs and the implications for the rural economy and maintaining the family farm.

(G) The impact on the availability of wholesome dairy products for domestic and foreign nutrition and food assistance programs.

Quota levels to achieve milk marketings reductions to support market prices (and, thereby limit deficiency payment costs) would reduce dairy product supplies on the market, as well as eliminating CCC stocks available to food assistance programs. Milk prices averaging about $1 per hundredweight above the current program baseline would increase costs of acquiring dairy products for food assistance programs. Utilization of dairy products by food assistance programs would be constrained significantly without additional funding for purchase of dairy products.

(H) Technological innovations.

See Chapter XII for discussion of inventory management programs and the implications for the technology.

(I) The effectiveness in reducing butter fat production and increasing protein content in milk.

This program relies upon CCC in establishing purchase prices for butter and nonfat dry milk to send price signals to dairy farmers concerning the value of milkfat and nonfat solids (protein). CCC policy is to continuously monitor purchases of surplus butter and nonfat dry milk. As necessary, with consideration of CCC costs, market impact and prices stability, CCC will make purchase price adjustments to move its purchases of butter and nonfat dry milk in the direction of alignment with their yields from whole milk.

(J) The impact of temporary increases and decreases of milk production.

A higher target price magnified some of the impacts of an unforeseen increase (decrease) in milk production. For example, an additional 2 percent increase in milk production in FY 1992 with a target price of $13.20 per hundredweight would result in about a 10-percent decrease in the average price to farmers and a corresponding decrease of about 4 percent in the average retail value. Farm cash receipts would decrease about 1.5 percent. Government expenditures would increase $1.1 billion. (See chapter XVI, Tables 11 and 12 for summary information.)

(K) The impact on the United States livestock industry.

The target price-deficiency payment program at $13.20 with quota requirements has a large impact on the livestock industry. Year-to-year changes are important. See appendix C for more details.

(L)(i) The consistency of the program with international obligations and the impacts on international trade.

With production quotas further raising the effective all milk price, U.S. dairy products would be increasingly disadvantaged on world markets under this proposal. Import protection would be needed to prevent the domestic price from being undercut by imports.

Uruguay Round. Under a Uruguay Round agreement similar to the U.S. proposal, this option would yield an AMS that is somewhat lower than the AMS for the current dairy program. Although the equivalent administered manufactured milk price is higher, the program participation rate and the reduction requirement reduce the supported quantity. Nevertheless, some adjustment would still be required to meet our proposed Uruguay Round internal support commitment. With respect to market access commitments, since domestic prices are projected to rise significantly above the baseline, the level of import protection needed with this option is higher than with the current program. Therefore, the support program would occasionally be undermined if we meet our proposed Uruguay Round commitment to convert existing import restrictions to tariffs and to reduce them. Meeting our proposed export subsidy reduction commitments would be no different than with the current dairy program. With high domestic prices and lower production, the United States would be very non-competitive on world markets. Exportable surpluses would also be lower.

(L)(2) The impact on consumers and the consumption of milk and milk products, including consumer costs.

A target price of $13.20 would lead to higher production and much lower milk prices unless restrictive quotas were utilized. With a quota to moderate potential deficiency payment levels, expected market prices for milk could exceed current program baseline levels by an average of roughly $1 per hundredweight depending on the quota quantity. Consumption of dairy products would be reduced significantly. With quotas at levels resulting in milk price increases of $1 per hundredweight consumption of dairy products would be about 1 percent below current baseline levels. However, consumer expenditures for dairy products would be about $1.0 billion per year higher than with the current program.

(L)(3) The effect on long term economic efficiency of the U.S. dairy industry, as well as competitiveness with non-dairy products.

See chapter XV for a discussion of the long-run implications of inventory management programs.

TP1420–Q

Target price	$14.20 per hundredweight for all milk marketings.
Deficiency payment	Difference between the target price and the all-milk price. Paid on all milk marketings of participants.
Quota	Participation voluntary Necessary reduction announced yearly.
Purchase program	Surplus dairy products purchased at the equivalent of $10.10 per hundredweight.

Estimation of Impacts

(A) The ability of the program to limit Government purchases of milk products to 6,000,000,000 pounds (milk equivalent, total milk solids basis) in a calendar year.

Food assistance purchases are made at the State and local, rather than at the national level. No purchases are expected under the support program.

(B) The speed and effectiveness of reducing excess milk production.

Farmers would be required to reduce marketings below their quota to be eligible for target price deficiency payments. A substantial reduction in marketings is expected under this option because the target price is considered attractive compared to market price expectations.

(C) The effectiveness in sustaining reduced milk production for at least a 5-

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year period with and without the continuation of the program.

The program continues in place for the entire analysis period. Milk production is expected to average 0.4 percent below baseline under this option. However, not all producers reduce marketings. Reduced marketings by participants raises market prices and encourages non-participants to expand production. Increased production by non-participants would require voluntary participants to reduce marketings from 4.4 percent to 7.9 percent below their base during the analysis period.

(D) The regional impact on milk prices, producer revenue, and milk supplies.

See chapter X for a discussion of the regional impacts of target price-deficiency payment programs.

(E) The impact on national producer income and Government expenditures.

Farm cash receipts averaged $20.2 billion per year for the analysis period, $2.3 billion higher than under the baseline. A target price of $14.20 on all milk marketed (equivalent of $13.10 for manufacturing grade milk) by participating producers results in greater revenue per hundred than provided under the baseline. Non-participating producers faced an effective milk price of $13.46 per hundredweight under this option, $2.00 higher than under the baseline. Higher per unit revenues more than offset lower marketings (a result of a high participation rate) to raise farm cash receipts.

Government expenditures, CCC costs and FNS costs, averaged $521 million for the analysis period, about the same as the baseline. Deficiency payments were the only government cost since there was no program to purchase surplus dairy products, and no assumed purchases of dairy products at the national level for food assistance.

This option could significantly increase food assistance program costs. The cost of the Food Stamp Program would rise an average of $180 million annually over the FY 1993–97 period. Child Nutrition Program costs could increase $70 million annually. The WIC program would require $30 million in increased funding annually to maintain service to the same number of participants as in FY 1991. Without this increase in funding, approximately 55,000 fewer at-risk participants would be served each month.

(F) The impact on the rural economy and maintaining family farms.

See chapter XI for a discussion of inventory management programs and the implications for the rural economy and maintaining the family farm.

(G) The impact on the availability of wholesome dairy products for domestic and foreign nutrition and food assistance programs.

Quota levels to achieve milk marketings reductions to support market prices (and, thereby limit deficiency payment costs) would reduce dairy product supplies on the market, as well as eliminating CCC stocks available to food assistance programs. Retail milk prices averaging about $2 per hundredweight above the current program baseline would increase State and local costs of acquiring dairy products for food assistance programs. Utilization of dairy products by food assistance programs would be constrained significantly without additional funding for purchase of dairy products.

(H) Technological innovations.

See chapter XII for discussion of inventory management programs and the implications for the technology.

(I) The effectiveness in reducing butter fat production and increasing protein content in milk.

This program relies upon CCC in establishing purchase prices for butter and nonfat dry milk to send price signals to dairy farmers concerning the value of milkfat and nonfat solids (protein). CCC policy is to continuously monitor purchases of surplus butter and nonfat dry milk. As necessary, with consideration of CCC costs, market impact and prices stability, CCC will make purchase price adjustments to move its purchases of butter and nonfat dry milk in the direction of alignment with their yields from whole milk.

(J) The impact of temporary increases and decreases of milk production.

An unforeseen additional 2 percent increase in milk production in FY 1992 with a target price of $14.20 per hundredweight would result in about a 10 percent decrease in the average price to farmers and a corresponding decrease of about 4 percent in the average retail value. Government expenditures would increase $1.5 billion. (See chapter XVI, Tables 11 and 12 for summary information.)

(K) The impact on the United States livestock industry.

The target price-deficiency payment program at $14.20 with quota requirements has the largest impact on the livestock industry of any of the target price-deficiency payment options. Year-to-year changes are important. See appendix C for more details.

(L)(1) The consistency of the program with international obligations and the impacts on international trade.

With production quotas further raising the effective all milk price, U.S. dairy products would be increasingly disadvantaged on world markets under this proposal. Import protection would be needed to prevent the domestic price from being undercut by imports.

Uruguay Round. Under an Uruguay Round agreement similar to the U.S. proposal, this option would yield an AMS that is somewhat higher than the AMS for the current dairy program. The higher administered support price more than offsets the reduction in the quantity supported resulting from the assumed program participation level and the reduction requirement. With respect to market access commitments, since domestic prices are projected to rise substantially above the baseline, the level of import protection needed with this option is much higher than with the current program. Therefore, the support program would be undermined if we meet our proposed Uruguay Round commitment to convert existing import restrictions to tariffs and to reduce them. Meeting our proposed export subsidy reduction commitments would be no different than with the current dairy program. With high domestic prices and lower production, the United States would be extremely non-competitive on world markets. Exportable surpluses would also be lower.

(L)(2) The impact on consumers and the consumption of milk and milk products, including consumer costs.

With a quota to moderate potential deficiency payment levels by restricting supplies, expected market prices for milk could exceed current program baseline levels by an average close to $2 per hundredweight. Consumption of dairy products would be reduced about 2.2 percent below current baseline levels. However, consumer expenditures for dairy products would be about $1.7 billion per year higher than with the current program.

(L)(3) The effect on long term economic efficiency of the U.S. dairy industry, as well as competitiveness with non-dairy products.

See chapter XV for a discussion of the long-run implications of inventory management programs.

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Table 3: Comparison of $11.20, $12.20, $13.20 and $14.20 target price/deficiency payment programs with baseline

Item	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1992-97 Cum.	FY 1992-97 Avg.
Support price (average) or Target price			(dol. / cwt)						
Baseline	10.10	10.10	10.10	10.10	10.10	10.10	10.10	NA	10.10
TP1120-NA (target price)	10.10	11.20	11.20	11.20	11.20	11.20	11.20	NA	11.20
TP1220-G-PP1010 (support)	10.10	10.10	10.10	10.10	10.10	10.10	10.10	NA	10.10
TP1320-G (target price)	10.10	13.20	13.20	13.20	13.20	13.20	13.20	NA	13.20
TP1420-G (target price)	10.10	14.20	14.20	14.20	14.20	14.20	14.20	NA	14.20
All Milk Price			(dol. / cwt)						
Baseline	11.60	11.55	11.50	11.45	11.55	11.65	11.70	NA	11.57
TP1120-NA (target price)	11.60	8.81	8.46	8.29	8.93	9.92	10.29	NA	9.12
TP1220-G-PP1010 (support)	11.60	11.84	11.81	11.81	11.83	11.88	11.90	NA	11.85
TP1320-G (target price)	11.60	12.56	12.48	12.39	12.43	12.56	12.64	NA	12.51
TP1420-G (target price)	11.60	13.65	13.53	13.44	13.40	13.59	13.64	NA	13.54
Effective Milk Price			(dol. / cwt)						
Baseline	11.56	11.45	11.35	11.28	11.42	11.62	11.70	NA	11.47
TP1120-NA (target price)	11.56	8.72	8.35	8.18	8.82	9.89	10.29	NA	9.04
TP1220-G-PP1010 (support)	11.56	11.74	11.70	11.70	11.72	11.85	11.90	NA	11.77
TP1320-G (target price)	11.56	12.46	12.37	12.28	12.32	12.53	12.64	NA	12.43
TP1420-G (target price)	11.56	13.55	13.41	13.33	13.29	13.56	13.64	NA	13.46
Assessment on Marketings 1/			(dol. / cwt)						
Baseline	0.0375	0.0969	0.1125	0.1125	0.1125	0.0281	0	NA	0.08
			0.037	0.054	0.013			NA	0.02
ALL TP/DP PROGRAMS @ $10.10	0.0375	0.0969	0.1125	0.1125	0.1125	0.0281	0	NA	0.08
Deficiency Payment			(dol. / cwt)						
TP1120-NA (target price)	N/A	2.39	2.74	2.91	2.27	1.28	0.91	NA	2.08
TP1220-G-PP1010 (support)	N/A	0.36	0.39	0.39	0.37	0.32	0.30	NA	0.36
TP1320-G (target price)	N/A	0.64	0.72	0.81	0.77	0.64	0.56	NA	0.69
TP1420-G (target price)	N/A	0.55	0.67	0.76	0.80	0.61	0.56	NA	0.66
Participation Rate			(%)						
TP1220-G-PP1010 (support)	N/A	55.0	50.0	50.0	50.0	50.0	50.0	NA	50.0
TP1320-G (target price)	N/A	70.0	65.0	60.0	60.0	60.0	60.0	NA	62.5
TP1420-G (target price)	N/A	85.0	75.0	70.0	65.0	65.0	65.0	NA	70.0
Base Reduction Required			(%)						
TP1220-G-PP1010 (support)	N/A	2.2	1.7	0.5	(1.9)	(4.5)	(5.8)	NA	(1.3)
TP1320-G (target price)	N/A	5.9	6.4	6.3	4.5	1.9	0.7	NA	4.3
TP1420-G (target price)	N/A	6.0	7.4	7.8	7.9	5.6	4.4	NA	6.5

Table 3 (cont.): Comparison of $11.20, $12.20, $13.20 and $14.20 target price/deficiency payment programs with baseline

Item	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1992-97 Cum.	FY 1992-97 Avg.
Retail Value			(dol. / cwt)						
Baseline	34.10	33.55	33.50	34.45	35.65	36.95	38.20	NA	35.38
TP1120-NQ (target price)	34.10	30.81	30.46	31.29	33.03	33.22	36.79	NA	32.95
TP1220-Q-PP1010 (support)	34.10	33.84	33.81	34.81	35.93	37.18	38.48	NA	35.86
TP1320-Q (target price)	34.10	34.56	34.48	35.39	36.53	37.86	39.14	NA	36.33
TP1420-Q (target price)	34.10	35.65	35.53	36.44	37.50	38.89	40.14	NA	37.36
Milk Production			(billion pounds)						
Baseline	150.0	151.4	153.9	156.9	158.5	159.9	161.0	941.6	156.9
TP1120-NQ (target price)	150.0	150.9	153.5	156.6	158.0	159.0	160.0	938.0	156.3
TP1220-Q-PP1010 (support)	150.0	147.5	149.7	152.4	154.7	157.0	158.3	919.6	153.3
TP1320-Q (target price)	150.0	143.0	144.9	147.6	150.3	153.1	154.6	893.5	148.9
TP1420-Q (target price)	150.0	140.9	142.9	145.6	148.3	151.0	152.6	881.3	146.9
Commercial Use			(billion pounds)						
Baseline	140.5	144.9	146.8	149.5	152.0	154.9	156.5	904.6	150.8
TP1120-NQ (target price)	140.5	150.4	153.0	156.1	157.5	158.5	159.5	935.0	155.8
TP1220-Q-PP1010 (support)	140.5	144.4	146.2	148.8	151.4	154.4	156.1	901.3	150.2
TP1320-Q (target price)	140.5	143.2	145.1	147.9	150.5	153.3	154.9	894.9	149.2
TP1420-Q (target price)	140.5	141.4	143.4	146.1	148.9	151.5	153.1	884.4	147.4
Govt. Purchases N.E. Milkfat			(billion pounds)						
Baseline	9.8	7.0	7.6	7.9	7.8	5.5	5.0	40.0	6.7
TP1120-NQ (target price)	9.8	1.0	1.0	1.0	1.0	1.0	1.0	6.0	1.0
TP1220-Q-PP1010 (support)	9.8	3.6	4.0	4.1	3.8	3.0	2.8	21.3	3.6
TP1320-Q (target price)	9.8	0.3	0.3	0.3	0.3	0.3	0.3	1.8	0.3
TP1420-Q (target price)	9.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
CCC plus FNS Expenditures			(million dollars)						
Baseline	982.2	514.2	522.2	543.2	511.2	536.2	513.2	3130.2	521.7
TP1120-NQ (target price)	982.2	3492.5	4046.9	4395.2	3439.1	2046.6	1528.9	18948.2	3158.2
TP1220-Q-PP1010 (support)	982.2	490.9	496.3	507.7	471.8	481.7	484.0	2932.4	488.7
TP1320-Q (target price)	982.2	519.5	507.1	525.7	503.5	536.3	515.4	3107.5	517.9
TP1420-Q (target price)	982.2	515.9	520.1	547.2	530.0	583.7	586.3	3123.2	520.5

Table 3 (cont.): Comparison of $11.20, $12.20, $13.20 and $14.20 target price/deficiency payment programs with baseline

Item	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1992-97 Cum.	FY 1992-97 Avg.
CCC Receipts from Assessments			(million dollars)						
Baseline	55.0	144.7	226.9	257.7	196.3	44.0	0.0	869.6	144.9
TP1120-NQ (target price)	55.0	144.2	170.3	173.8	173.4	44.1	0.0	707.8	118.0
TP1220-Q-PP1010 (support)	55.0	140.9	166.1	169.1	171.7	43.5	0.0	691.3	115.2
TP1320-Q (target price)	55.0	136.5	160.7	163.7	166.7	42.4	0.0	670.0	111.7
TP1420-Q (target price)	55.0	134.5	158.4	161.4	164.5	41.8	0.0	660.6	110.1
Deficiency Payment			(million dollars)						
TP1120-NQ (target price)	N/A	3551.4	4144.1	4497.6	3536.5	2006.5	1443.2	19179.3	3196.6
TP1220-Q-PP1010 (support)	N/A	280.0	275.6	283.2	274.0	238.9	227.4	1579.1	263.2
TP1320-Q (target price)	N/A	613.7	636.4	658.1	638.9	547.6	484.0	3578.5	596.4
TP1420-Q (target price)	N/A	639.5	678.5	708.6	694.5	545.5	506.3	3772.9	628.8
Farm Cash Receipts 2/			(million dollars)						
Baseline	17,250	17,250	17,380	17,620	18,020	18,500	18,750	107,520	17,920
TP1120-NQ (target price)	17,250	16,614	16,883	17,228	17,384	17,630	17,780	103,519	17,253
TP1220-Q-PP1010 (support)	17,250	17,444	17,640	17,954	18,254	18,695	18,924	108,911	18,152
TP1320-Q (target price)	17,250	18,258	18,386	18,622	18,981	19,560	19,855	113,662	18,944
TP1420-Q (target price)	17,250	19,540	19,654	19,924	20,217	20,830	21,125	121,290	20,215
Retail Cost			(million dollars)						
Baseline	47,920	48,610	49,190	51,490	54,180	57,230	59,770	320,470	53,412
TP1120-NQ (target price)	47,920	46,343	46,615	48,847	52,027	55,836	58,662	308,330	51,388
TP1220-Q-PP1010 (support)	47,920	48,850	49,435	51,793	54,414	57,425	59,945	321,862	53,644
TP1320-Q (target price)	47,920	49,503	50,052	52,344	54,980	58,049	60,611	325,539	54,257
TP1420-Q (target price)	47,920	50,420	50,947	53,237	55,813	58,923	61,451	330,791	55,132

KEY: TP, Target price/deficiency payment program, 1120, 1220, 1320 and 1420 are equal to target prices of $11.20, $12.20, $13.20 and $14.20 per cwt. PP1010 signifies a milk purchase price level of $10.10 per cwt. NQ signifies no quota required; Q signifies quota required.

1/ First assessment: $.05 per cwt. for CY91, $.1125 per cwt., Jan. 92-Dec. 1995.

2/ Farm cash receipts plus deficiency payments net of assessments.

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VII. Re-Classification (Class IV) Programs

General Structure

• A separate class, designated Class IV, would be established in Federal and State milk orders for manufactured dairy products surplus to domestic commercial needs.

• Markets available for Class IV products would be limited to the international market and/or CCC which would purchase surplus product at a price equivalent to the international price.

• Class IV prices for blend price calculations would be established at a level equal to the Class III price adjusted for the cost of disposing of Class IV products. Class IV prices would essentially be equal to an equivalent international price for milk going into butter and nonfat dry milk.

• Minimum prices for Class III milk would be established by USDA.

• Dairy farmers in Federal and State milk marketing orders would receive a lower blend price reflecting the cost of disposing of Class IV products. Dairy farmers not in a Federal or State order would be individually assessed an amount equivalent to the reduction in blend prices to producers shipping to a Federal or State order.

• A national Class IV pool would be established to equalize the cost of disposing of Class IV products over all milk marketed in the country. Handlers disposing of Class IV products could apply to the national pool for compensation for the difference between the Class III price and revenue from sales of these products. Money would move from those areas which would have little or no Class IV products to those markets that would have relatively large volumes of Class IV products.

Elements of Submitted Proposals

Only one detailed Class IV proposal, which closely resembled the program structure above, was submitted as a result of the public solicitation.

Re-Classification (Class IV) Programs Analyzed

This study reports the impacts of three re-classification (Class IV) program options. The first option, RECLASS-1050, determined the impacts at the current level of price support, adjusted slightly to bring farm cash receipts near baseline. Government purchases were limited to FNS needs purchased at market prices.

The second re-classification program option, RECLASS-1050-PPWP, provided a CCC purchase program alternative to selling in the international market. The CCC purchase price level equated to $6.60 per hundredweight.

The third re-classification program option, RECLASS-1310-PPWP, enhanced farm cash receipts by raising the minimum domestic Class III price to $13.10 per hundredweight. A CCC purchase program alternative to selling in the international market was provided at a price level equated to $6.60 per hundredweight.

See Table 4 at the end of this chapter for a summary of results.

RECLASS 1050

Minimum domestic Class III price.	$10.50 per hundredweight.
Government Purchase Program.	No CCC purchases of surplus. Food assistance programs purchase needs from the market.
Class IV price	Equal to the Class III price minus average per hundredweight loss on disposal of Class IV products. (Price ranged from $5.02 to $5.44)

Estimation of Impacts

(A) The ability of the program to limit Government purchases of milk products to 6,000,000,000 pounds (milk equivalent, total milk solids basis) in a calendar year.

USDA purchases milk products only to the extent needed to service existing food assistance programs. Given this assumption, Government purchases are expected to be well below 6 billion pounds in all years.

(B) The speed and effectiveness of reducing excess milk production.

Farmers would alter marketings to the extent that producer returns including assessments on Class IV milk reflect production costs. The average effective farm milk price is $0.07 per hundredweight higher than the baseline. This is expected to lead to an average annual increase of 0.2 billion pounds of milk marketings and excess milk products for export ranging from 5.2 billion pounds M.E. to 7.4 billion pounds M.E. per year.

(C) The effectiveness in sustaining reduced milk production for at least a 5-year period with and without the continuation of the program.

Farmers would alter marketings to reflect their new blend price which includes Class IV milk, and their production costs. There would be no authority to limit marketings under this option.

(D) The regional impact on milk prices, producer revenue, and milk supplies.

See Chapter X for a discussion of the implication of inventory management programs on regional milk prices, producer revenue and milk supplies.

(E) The impact on national producer income and Government expenditures.

Farm cash receipts averaged $18.0 billion per year for the analysis period, slightly above the baseline. The $0.32 higher domestic all milk price offset effects of the lower Class IV price, raising effective farm milk prices $0.07 per hundredweight. Marketings also were slightly higher for the period.

Government expenditures which were limited to FNS purchases at market prices were more than offset by the budgetary assessment that continues through 1996. Thus for FY 1992 through FY 1995, receipts for these assessments more than offset FNS expenditures for program needs. With the termination of the budgetary assessments, government expenditures rose to an average of $100 million in the last two years. For the analysis period, government expenditures totaled only $50 million.

This option can result in relatively modest increases in the Food Assistance Programs. The cost of the Food Stamp Program would increase an average of $25 million annually during the FY 1993–97 period. Child Nutrition Programs would cost an average $10 million more each year and the WIC Program account would need to be increased $5 million annually to maintain service at its FY 1991 levels.

(F) The impact on the rural economy and maintaining family farms.

See Chapter XI for a discussion of the implications of inventory management for the rural economy and maintaining family farms.

(G) The impact on the availability of wholesome dairy products for domestic and foreign nutrition and food assistance programs.

The re-classification program does not require CCC purchases of surplus dairy products for price support purposes. CCC would no longer have excess inventories for donation through food assistance programs. Therefore, dairy products for nutrition and food assistance programs would have to be purchased from the commercial market. Utilization of dairy products by food assistance programs would depend on program requirements, such as nutritional needs of participants, program funding and market prices and supplies of dairy products.

The Class IV program with a minimum price of $10.50 for Class III milk would provide for continued milk and dairy product market supplies near projected levels under the current program. Retail prices would exceed baseline levels by about 30 cents per hundredweight, therefore, the volume of dairy products utilized by food assistance programs would be limited unless funding for dairy product acquisition by these programs was increased.

(H) Technological innovations.

See chapter XII for discussion of the impact of inventory management programs on the adoption of technology.

(I) The effectiveness in reducing butter fat production and increasing protein content in milk.

This program relies upon CCC in establishing minimum domestic prices for butter and nonfat dry milk to send price signals to dairy farmers concerning the value of milkfat and nonfat solids (protein). CCC would monitor exports of surplus butter and nonfat dry milk. As necessary, with consideration of market impact and prices stability, CCC would make adjustments to minimum domestic product prices to move exports of butter and nonfat dry milk in the direction of alignment with their yields from whole milk.

(J) The impact of temporary increases and decreases of milk production.

An unforeseen increase (decrease) in milk production would lead to a decrease (increase) in the Class IV price and an increase (decrease) in the milk assigned to Class IV. To accommodate more milk, for example, demand would have to expand, which would require in the shortrun a price decline in the international market. A lower Class IV price would, in turn, result in a lower blend or average producer price. An additional 2 percent increase in milk production in FY 1992 would result in about a 1.5 percent decrease in the average price to farmers, but no corresponding decrease in the average (domestic) retail value. Farm cash receipts would increase about 1 percent as a result of greater marketings. Government expenditures would decrease slightly because of additional revenues from more milk being assessed under existing law. (See chapter XVI, Tables 11 and 12 for summary information.)

(K) The impact on the United States livestock industry.

The re-classification program with minimum domestic prices at $10.50 has little impact on the livestock industry. However, year-to-year changes are important. See appendix C for more details.

(L)(1) The consistency of the program with international obligations and the impacts on international trade.

Reclassification proposals establishing a Class IV for U.S. fluid milk based on projected world dairy product prices are the most explicitly export oriented of any of the programs studied. Class IV milk would be used for the manufacture of dairy products exclusively for export (although proposals including product purchase features also use world prices for CCC and Food and Nutrition Service domestic nutrition and food aid purposes) at prices that would be free to fluctuate according to international market requirements.

The U.S. domestic Class III minimum price for milk is an important determinant of the supply of dairy products available for export. Higher Class III prices stimulate production, discourage domestic consumption and shift U.S. dairy products away from domestic markets and, potentially, toward export in amounts above levels that would otherwise be attained.

With a Class III price of $10.50, the supply of U.S. dairy products available for export under the lower Class IV world price would average 6.4 billion pounds. Because the CCC would no longer be required to purchase surplus dairy products and occasionally dispose of them on international markets, all non-food aid exports under this option would be carried out on a commercial basis by private exporters. At the lower Class IV price, U.S. exporters can be more aggressive on world markets, and overall U.S. dairy product exports may be expected to rise moderately from current levels. In the relatively thin and highly competitive world market for dairy products, competing dairy exporting nations may respond with offsetting price reduction, also including a greater use of export subsidies. World dairy product prices could decline markedly, although the blend price for milk in the United States would remain fairly stable if continued import protection prevents imports from undermining the U.S. price.

Uruguay Round. Under a Uruguay Round agreement similar to the U.S. proposal, this option would yield an AMS that is somewhat higher than the AMS for the current dairy program because the administered support price is higher and the quantity receiving support is slightly larger. With respect to market access commitments, since domestic prices are projected to rise significantly above the baseline, the level of import protection needed with this option is higher than with the current program. Therefore, the support program would occasionally be undermined if we meet our proposed Uruguay Round commitment to convert existing import restrictions to tariffs and to reduce them. Depending on how the program is administered, the exports that could result from this option likely would be considered government-sponsored export subsidies and, thus, subject to our proposed Uruguay Round export subsidy reduction commitments. Any restrictions on exports would severely limit the ability to effectively operate a program under this option.

(L)(2) The impact on consumers and the consumption of milk and milk products, including consumer costs.

Consumption levels would be less than 1 percent below the baseline. Milk prices would be about 30 cents per hundredweight higher than with the current program. Total consumer expenditures for dairy products would increase about $250 million per year.

(L)(3) The effect on long term economic efficiency of the U.S. dairy industry, as well as competitiveness with non-dairy products.

See chapter XV for a discussion of the long-run implications of milk inventory management programs.

RECLASS1050–PPWP

Minimum domestic Class III price.	$10.50 per hundredweight.
Government Purchase Program.	Yes. CCC stands ready to purchase surplus at equivalent of $6.60 per hundredweight as an alternative to the international market.
Class IV price	A minimum of $6.60 as a result of the purchase program.

Estimation of Impacts

(A) The ability of the program to limit Government purchases of milk products to 6,000,000,000 pounds (milk equivalent, total milk solids basis) in a calendar year.

The CCC price support purchase program is continued but at a reduced level of $6.60 per hundredweight. Processors of surplus dairy products may choose to sell to the government rather than in the international market. Purchases therefore, are expected to exceed the baseline and 6 billion pounds in all years since the minimum established domestic price (which was set $0.40 higher to bring farm cash receipts up to baseline) has a negative impact on consumption.

(B) The speed and effectiveness of reducing excess milk production.

Farmers are not expected to reduce marketings below baseline levels since

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the average effective milk price is $0.07 above the baseline.

(C) The effectiveness in sustaining reduced milk production for at least a 5-year period with and without the continuation of the program.

Farmers would alter marketings to reflect their new blend price which includes Class IV milk, and their production costs. There would be no authority to limit marketings under this option.

(D) The regional impact on milk prices, producer revenue, and milk supplies.

See chapter X for a discussion of the implication of inventory management programs on regional milk prices, producer revenue and milk supplies.

(E) The impact on national producer income and Government expenditures.

Farm cash receipts averaged $18.0 billion per year for the analysis period, $0.1 billion higher than under the baseline. The effects of the $0.32 higher minimum domestic price just offset effects of the lower Class IV price raising effective farm milk price an average of $0.07 per hundredweight for the analysis period. Marketings were unchanged.

Government expenditures, CCC costs and FNS costs, averaged $400 million for the analysis period, $100 million less than the baseline. CCC costs were held in check by the budgetary assessment and by purchasing products at the equivalent price of only $6.60 per hundredweight of milk. For the analysis period, government costs totaled $2.4 billion, $700 less than the baseline.

This option can result in relatively modest increases in the Food Assistance Programs. The cost of the Food Stamp Program would increase an average of $25 million annually during the FY 1993–97 period. Child Nutrition Programs would cost an average $10 million more each year and the WIC Program account would need to be increased $5 million annually to maintain service at its FY 1991 levels.

(F) The impact on the rural economy and maintaining family farms.

See chapter XI for a discussion of the implications of inventory management for the rural economy and maintaining family farms.

(G) The impact on the availability of wholesome dairy products for domestic and foreign nutrition and food assistance programs.

As noted previously re-classification programs do not require CCC price support purchases. However, this option provides for a CCC purchase program for Class IV milk priced at international price levels (about $6.60 per hundredweight). These purchases could be made available to food assistance programs. This option would result in CCC purchases (approximately 8 billion pounds M.E. per year) greatly in excess of normal food assistance program needs.

Retail milk prices under this option are about $.30 per hundredweight higher than projected prices under current programs. Therefore, food assistance programs would face higher prices for dairy products not acquired through the CCC Class IV purchase program.

(H) Technological innovations.

See chapter XII for discussion of the impact of inventory management programs on the adoption of technology.

(I) The effectiveness in reducing butter fat production and increasing protein content in milk.

This program relies upon CCC in establishing minimum domestic prices for butter and nonfat dry milk to send price signals to dairy farmers concerning the value of milkfat and nonfat solids (protein). CCC policy is to continuously monitor purchases of surplus butter and nonfat dry milk. As necessary, with consideration of CCC purchase costs, market impact and prices stability, CCC will make purchase price adjustments to move its purchases of butter and nonfat dry milk in the direction of alignment with their yields from whole milk.

(J) The impact of temporary increases and decreases of milk production.

With a CCC purchase program, the additional Class IV products resulting from an unforeseen increase in milk production likely would be sold to the Government. For example, a 2-percent increase in milk production in FY 1992 would result in about a 1 percent decrease in the average price to farmers, but no corresponding decrease in the average retail value. Farm cash receipts would increase about 1 percent as a result of greater marketings. Government expenditures would increase about $0.2 billion.

If milk marketings declined an unforeseen 2 percent in FY 1992, Government purchases would be reduced by about 40 percent. (See chapter XVI, Tables 11 and 12 for summary information.)

(K) The impact on the United States livestock industry.

The reclassification program with minimum domestic prices at $10.50 and a purchase program at the international price has little impact on the livestock industry. However, year-to-year changes are important. See appendix C for more details.

(L)(1) The consistency of the program with international obligations and the impacts on international trade.

The addition of a world price-based CCC domestic surplus purchase program effectively reduces the export orientation from the reclassification option. Although Class IV pricing would allow U.S. dairy product exporters to be competitive on world markets, forecasts indicate that most dairy processors will sell to CCC rather than pursue export opportunities at the equivalent world dairy product price. (Note—this option assumes that CCC is not selling its stocks on world markets.) Although U.S. exports of higher value dairy products such as ice cream, frozen yogurt and so forth will be enhanced through this reclassification program, export sales of the major bulk dairy commodities such as butter and nonfat dry milk powder will show little growth with CCC standing by as a ready alternative market. Import protection would be needed to prevent the domestic price from being undercut by imports.

Uruguay Round. Under a Uruguay Round agreement similar to the U.S. proposal, this option would yield an AMS that is somewhat higher than the AMS for the current dairy program because the administered support price is higher and the quantity receiving support is larger. With respect to market access commitments, since domestic prices are projected to rise significantly above the baseline and since the United States would have a large surplus potentially available for world markets, potentially depressing world prices, the level of import protection needed with this option is higher than with the current program. Therefore, the support program would occasionally be undermined if we meet our proposed Uruguay Round commitment to convert existing import restrictions to tariffs and to reduce them. As long as the CCC does not dump its surplus on the world market (as assumed in this option), meeting our proposed export subsidy reduction commitments would be no different than with the current dairy program.

(L)(2) The impact on consumers and the consumption of milk and milk products, including consumer costs.

Since milk prices average about $.30 per hundredweight higher than current baseline slightly higher retail prices would affect consumers. Domestic (commercial) use of dairy products would decline less than 1 percent under this option relative to consumption under the current program (in part this reflects FNS withdrawal of 0.5 billion pounds, M.E., from the commercial hundredweight basis, retail prices would increase less than 1 percent.

(L)(3) The effect on long term economic efficiency of the U.S. dairy industry, as well as competitiveness with non-dairy products.

See chapter XV for a discussion of the long-run implications of milk inventory management programs.

RECLASS 1310–PPWP

Minimum domestic Class III price.	$13.10 per hundredweight.
Government Purchase Program.	Yes. CCC stands ready to purchase surplus at equivalent of $6.60 per hundredweight as an alternative to the international market.
Class IV price	A minimum of $6.60 as a result of the purchase program.

Estimation of Impacts

(A) The ability of the program to limit Government purchases of milk products to 6,000,000,000 pounds (milk equivalent, total milk solids basis) in a calendar year.

The CCC price support purchase program is continued, but at a reduced level of $6.60 per hundredweight. Purchases are expected to exceed the baseline and 6 billion pounds in all years since the minimum established domestic price is $13.10 per hundredweight, $3.00 higher than under the baseline. Government purchases are expected to average 21 billion pounds annually, 14.4 billion pounds above the baseline.

(B) The speed and effectiveness of reducing excess milk production.

Producer returns increase under this option compared to the baseline, and therefore, producers increase marketings by an average of 8.8 billion pounds even though the value of Class IV is expected to be well below production costs. This occurs because producers receive a blend price for all milk including milk sold as Class IV.

(C) The effectiveness in sustaining reduced milk production for at least a 5-year period with and without the continuation of the program.

This option is ineffective in sustaining reduced surplus milk production. Farmers would alter marketings to reflect their new blend price which includes Class IV milk, and their production costs. There would be no authority to limit marketings under this option.

(D) The regional impact on milk prices, producer revenue, and milk supplies.

See chapter X for a discussion of the implication of inventory management programs on regional milk prices, producer revenue and milk supplies.

(E) The impact on national producer income and Government expenditures.

Farm cash receipts averaged $21.7 billion per year for the analysis period, $3.7 billion higher than under the baseline. The effects minimum domestic price $3.00 higher than under the baseline more than offset reduced domestic consumption and the effects of the lower Class IV price. Resulting effective milk prices were $1.67 above the baseline and milk marketings averaged 8.8 billion pounds higher per year.

Government expenditures, CCC costs and FNS costs, averaged $1.3 billion for the analysis period, $736 million higher than the baseline. The impact of Class IV prices on producer blend prices did not check milk marketings which exceed commercial use by more than 20 billion pounds in 5 of the 6 years in the analysis period. For the analysis period, government costs totaled $7.5 billion, more than double the baseline.

This option can result in significant increases in Food Assistance Program costs. Food Stamp Program costs increase an average of $240 million during Fiscal Years 1993–97. Child Nutrition Program costs could rise by about $100 million. The WIC program would require an additional $40 million annually to maintain participation. Without this increase in funding, approximately 75,000 fewer at-risk participants would be served each month.

(F) The impact on the rural economy and maintaining family farms.

See chapter XI for a discussion of the implications of inventory management for the rural economy and maintaining family farms.

(G) The impact on the availability of wholesome dairy products for domestic and foreign nutrition and food assistance programs.

This option provides for a CCC purchase program for Class IV products priced at international price levels (about $6.60 per hundredweight). These purchases could be made available to food assistance programs. This option would result in CCC purchases (21 billion pounds of ME per year) greatly in excess of normal food assistance program needs. Even if food program needs were met with available food program funds, utilization of dairy products would be significant due to the favorable acquisition price.

Retail milk prices under this option are about $2.60 per hundredweight higher than projected prices under current programs. Therefore, food assistance programs would face substantially higher prices for dairy products not acquired through the CCC Class IV purchase program.

(H) Technological innovations.

See chapter XII for discussion of the impact of inventory management programs on the adoption of technology.

(I) The effectiveness in reducing butter fat production and increasing protein content in milk.

This program relies upon CCC in establishing minimum domestic prices for butter and nonfat dry milk to send price signals to dairy farmers concerning the value of milkfat and nonfat solids (protein). CCC policy is to continuously monitor purchases of surplus butter and nonfat dry milk. As necessary, with consideration of CCC purchase costs, market impact and prices stability, CCC will make purchase price adjustments to move its purchases of butter and nonfat dry milk in the direction of alignment with their yields from whole milk.

(J) The impact of temporary increases and decreases of milk production.

A higher Class III price would not greatly affect the impact of an unforeseen increase (decrease) in milk production. For example, for this option, an additional 2 percent increase in milk production in FY 1992 would result in about a 1 percent decrease in the average price to farmers, but no corresponding decrease in the average retail value. Farm cash receipts would increase about 1 percent as a result of the increase in marketings. Government expenditures would increase about $0.2 billion. (See chapter XVI, Tables 11 and 12 for summary information.)

(K) The impact on the United States livestock industry.

The re-classification program with minimum domestic prices at $13.10 with a purchase program at the international price has little impact on the livestock industry. However, year-to-year changes are important. See appendix C for more details.

(L)(1) The consistency of the program with international obligations and the impacts on international trade.

The much higher production and lower domestic use anticipated with the $13.10 Class III price indicate that U.S. dairy products, rather than being exported, will flow into CCC storage, albeit at the reduced world price, in volumes far in excess of their level under the existing surplus purchase program or under other Class IV reclassification-type proposals. Import protection would be needed to prevent the domestic price from being undercut by imports.

The large available exportable surplus and competitive Class IV prices would allow the United States to be a

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formidable factor on world dairy product markets if a means can be developed to encourage export sales instead of having the CCC continue as the alternative buyer of surplus dairy products. However, for this to occur, both the world market for dairy products and the U.S. share of that market will have to substantially increase, and world prices will probably decline precipitously. Serious questions exist on whether the world market could absorb such surpluses.

Uruguay Round. Under a Uruguay Round agreement similar to the U.S. proposal, this option would yield an AMS that is much higher than the AMS for the current dairy program because the administered support price is higher and the quantity receiving support is larger. With respect to market access commitments, since domestic prices are projected to rise substantially above the baseline and since the United States would have a large surplus potentially available for world markets, potentially depressing world prices, the level of import protection needed with this option is much higher than with the current program. Therefore, the support program would be undermined if we meet our proposed Uruguay Round commitment to convert existing import restrictions to tariffs and to reduce them. As long as the CCC does not dump its surplus on the world market (as assumed in this option), meeting our proposed export subsidy reduction commitments would be no different than with the current dairy program.

Since all milk prices average about $2.60 per hundredweight higher than current baseline for the analysis period, substantially higher retail prices would significantly affect consumers. Domestic (commercial) use of dairy products would decline nearly 4 percent under this option relative to the current program. A larger portion of U.S. dairy marketings would be sold to foreign users or to food assistance programs at, in effect, highly subsidized prices while domestic consumers paid more. Low-income consumers would be disadvantaged particularly to the extent that food program assistance is not expanded to compensate for higher milk costs. However, large surplus stocks potentially available to food assistance programs will be generated by this program.

(L)(3) The effect on long term economic efficiency of the U.S. dairy industry, as well as competitiveness with non-dairy products.

See chapter XV for a discussion of the long-run implications of milk inventory management programs.

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Table 4: Comparison of reclassification (class IV) programs with baseline

Item	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1992-97 Cum.	FY 1992-97 Avg.
Support price (average)			(dol. /	cwt)					
Baseline	10.10	10.10	10.10	10.10	10.10	10.10	10.10	NA	10.10
RECLASS-1050	10.50	10.50	10.50	10.50	10.50	10.50	10.50	NA	10.50
RECLASS-1050-PPMP	10.50	10.50	10.50	10.50	10.50	10.50	10.50	NA	10.50
RECLASS-1310-PPMP	13.10	13.10	13.10	13.10	13.10	13.10	13.10	NA	13.10
All Milk Price			(dol. /	cwt)					
Baseline	11.60	11.55	11.50	11.45	11.55	11.65	11.70	NA	11.57
RECLASS-1050	11.60	11.80	11.75	11.75	11.90	12.05	12.10	NA	11.89
RECLASS-1050-PPMP	11.60	11.80	11.75	11.75	11.90	12.05	12.10	NA	11.89
RECLASS-1310-PPMP	11.60	14.20	14.20	14.20	14.20	14.20	14.20	NA	14.20
Effective All Milk Price			(dol. /	cwt)					
Baseline	11.56	11.45	11.35	11.28	11.42	11.62	11.70	NA	11.47
RECLASS-1050	11.56	11.42	11.33	11.31	11.49	11.79	11.88	NA	11.54
RECLASS-1050-PPMP	11.56	11.43	11.35	11.33	11.50	11.77	11.87	NA	11.54
RECLASS-1310-PPMP	11.56	13.30	13.11	13.00	13.00	13.18	13.24	NA	13.14
Assessment on Marketings 1/			(dol. /	cwt)					
Baseline	0.0375	0.0969	0.1125	0.1125	0.1125	0.0281	0.0000	NA	0.0771
			0.037	0.054	0.013			NA	0.0173
RECLASS-1050, blend reduction	0.04	0.38	0.42	0.44	0.41	0.26	0.22	NA	0.36
RECLASS-1050-PPMP, blnd. redn.	0.04	0.37	0.40	0.42	0.40	0.28	0.23	NA	0.35
RECLASS-1310-PPMP. blnd. redn.	0.04	0.90	1.09	1.20	1.20	1.02	0.96	NA	1.06
Retail Value			(dol. /	cwt)					
Baseline	34.10	33.55	33.50	34.45	35.65	36.95	38.20	NA	35.38
RECLASS-1050	34.10	33.80	33.75	34.75	36.00	37.35	38.60	NA	35.71
RECLASS-1050-PPMP	34.10	33.80	33.75	34.75	36.00	37.35	38.60	NA	35.71
RECLASS-1310-PPMP	34.10	36.20	36.20	37.20	38.30	39.50	40.70	NA	38.02
Milk Production			(billion pounds)						
Baseline	150.0	151.4	153.9	156.9	158.5	159.9	161.0	941.6	156.9
RECLASS-1050	150.0	151.3	153.9	157.0	158.6	160.2	161.4	942.4	157.1
RECLASS-1050-PPMP	150.0	151.3	153.9	157.0	158.7	160.2	161.3	942.4	157.1
RECLASS-1310-PPMP	150.0	155.1	161.1	166.4	169.4	170.6	171.6	994.2	165.7
Commercial Use			(billion pounds)						
Baseline	140.5	144.9	146.8	149.5	152.0	154.9	156.5	904.6	150.8
RECLASS-1050	140.5	144.4	146.3	148.9	151.3	154.1	155.7	900.7	150.1
RECLASS-1050-PPMP	140.5	143.9	145.8	148.4	150.8	153.6	155.2	897.7	149.6
RECLASS-1310-PPMP	140.5	139.4	141.1	143.6	146.3	149.3	151.0	870.7	145.1

Table 4 (cont.): Comparison of reclassification (class IV) programs with baseline

Item	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1992-97 Cum.	FY 1992-97 Avg.
Class IV Price			(dol. / cwt)						
RECLASS-1050	6.60	5.32	5.19	5.02	5.16	5.40	5.48	NA	5.26
RECLASS-1050-PPUP	6.60	6.60	6.60	6.50	6.50	6.50	6.50	NA	6.53
RECLASS-1310-PPUP	6.60	6.60	6.60	6.50	6.50	6.50	6.50	NA	6.53
Exportable Surplus			(billion pounds)						
RECLASS-1050	8.0	6.4	7.0	7.4	6.8	5.6	5.2	38.4	6.4
Govt. Purchases N.E. Milkfat			(billion pounds)						
Baseline	9.8	7.0	7.6	7.9	7.0	5.5	5.0	40.0	6.7
RECLASS-1050	9.8	1.0	1.0	1.0	1.0	1.0	1.0	6.0	1.0
RECLASS-1050-PPUP	9.8	7.9	8.6	9.1	8.3	7.1	6.6	47.6	7.9
RECLASS-1310-PPUP	9.8	16.2	20.4	23.3	23.7	21.8	21.1	126.5	21.1
CCC plus FNS Expenditures			(million dollars)						
Baseline	982.2	514.2	522.2	543.2	511.2	526.2	513.2	3,130.2	521.7
RECLASS-1050	982.2	(8.2)	(45.3)	(48.8)	(50.7)	81.0	125.4	53.4	8.9
RECLASS-1050-PPUP	982.2	381.5	408.8	422.0	379.6	417.0	423.6	2,424.5	404.1
RECLASS-1310-PPUP	982.2	913.2	1,183.5	1,345.0	1,366.6	1,366.5	1,346.1	7,540.9	1,256.8
CCC Receipts from Assessments			(million dollars)						
Baseline	55.0	144.7	226.9	257.7	196.3	44.0	0.0	869.6	144.9
RECLASS-1050	55.0	144.6	170.7	174.2	176.1	44.4	0.0	710.0	118.3
RECLASS-1050-PPUP	55.0	144.6	170.8	174.3	176.1	44.4	0.0	710.2	118.4
RECLASS-1310-PPUP	55.0	148.2	178.8	184.9	188.2	47.3	0.0	747.4	124.6
Farm Cash Receipts 2/			(million dollars)						
Baseline	17,250	17,250	17,380	17,620	18,020	18,500	18,750	107,520	17,928
RECLASS-1050	17,250	17,200	17,352	17,668	18,148	18,792	19,089	108,249	18,042
RECLASS-1050-PPUP	17,250	17,204	17,375	17,704	18,160	18,771	19,056	108,270	18,045
RECLASS-1310-PPUP	17,250	20,498	21,800	21,518	21,918	22,370	22,613	129,917	21,653
Retail Cost			(million dollars)						
Baseline	47,920	48,610	49,190	51,490	54,180	57,230	59,770	320,470	53,412
RECLASS-1050	47,920	48,817	49,383	51,747	54,471	57,557	60,099	322,074	53,679
RECLASS-1050-PPUP	47,920	48,648	49,215	51,573	54,291	57,370	59,906	321,003	53,501
RECLASS-1310-PPUP	47,920	50,468	51,889	53,424	56,821	58,979	61,450	331,431	55,239

KEY: RECLASS, Reclassification (Class IV) program; PPUP, Purchase Program at international price of $6.60 per cwt.; 1050 and 1310, minimum domestic prices of $10.50 or $13.10 per cwt.

1/ First assessment: $.05 per cwt. for CY91, $.1125 per cwt., Jan. 92-Dec. 1995.
Second assessment: Amount necessary to reduce purchase cost below cost of purchasing 7 billion pounds.

2/ Farm cash receipts net of assessments.

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VIII. Two-Tier Pricing Programs

General Structure

• Two-tier pricing programs provide for a separate reduced price received by each producer for milk marketed in excess of that producer's quota which is supported at a higher price.

• Unlike Re-classification (Class IV) programs, market prices are not reduced for excess milk.

• Individual producers do not receive a blend price.

Elements of Submitted Proposals

Support Price for Quota Marketings

• Proposed support prices ranged from near the current $10.10 per cwt. of 3.67% milkfat manufacturing milk up to 75 percent of parity (about $18.50 per cwt. as of December 1990). Most proposed levels range from $10.60 to $15.00 per cwt.

• Some proposals would adjust support prices annually for inflation or cost of production changes or by a schedule of fixed increments. One would adjust support prices based on changes in prior year market prices for all milk. Many proposals would not adjust support levels over the life of the Farm Bill.

Effective Price for Excess Milk

• *Assessments* would be made on excess milk to reduce the effective price received in nearly all proposals. Specified rates ranged from $4 or less up to $10 per cwt. Alternatives proposed include determination of assessments as needed to set excess milk price at international market price levels or at levels to cover CCC purchase costs for removals in excess of a designated level such as 5 billion lbs. M.E. One proposal would set the assessment so as to reduce effective price for excess milk below the variable cost of production for the most efficient regions. Another provides a graduated scale of assessments up to 100 percent of the support price depending on the extent to which a producer's marketing exceeded his/her base.

• Other proposals not reliant on assessments include export market based prices for excess milk either through provisions similar to a base—excess program under a marketing order or through long term contracts with CCC.

Additional Assessments

• Additional across the board assessments on all milk marketed at rates up to $.50 per cwt. are proposed by some to defray administrative or other excess costs.

• Some propose refunds of excess assessments collected under various conditions.

Marketing Histories-Bases-Quotas

• All but one proposal require individual producer bases (and/or quotas) tied to individual marketing (or production) history.

• Proposals regarding determination of marketing histories, transfer of bases, etc. vary widely.

• Quota levels are determined by adjusting base amounts derived from marketing histories for anticipated commercial use levels and specified targets for CCC removals for market stabilization and/or other purposes (4.0 billion lbs. to 6.0 billion lbs. M.E.).

• One proposal would assess a portion of each individual producer's marketings using a uniform national percentage excess rate. This omits individual base setting using marketing history but precludes producers from avoiding price reductions by cutting marketings. And producer returns per cwt. become in effect much like a blend price received under a Re-classification (Class IV) program.

Purchase Program

• Nearly all proposals would continue the purchase program. Some would preclude use of producer assessments remitted to CCC for purchase of dairy products for food assistance programs.

• Elimination of CCC purchases with provisions to export surplus dairy products was suggested by, at least, one proposal.

Cost Objectives

• Several proposals would attempt to limit taxpayer costs to levels such as $300 to $700 million per year or to the cost of CCC purchases up to specified levels such as 4 to 7 billion lbs. M.E.

Program Implementation/Termination

• Alternatives range from permanent two-tier pricing programs conducted each year to programs triggered on and off on an annual or semi-annual basis by projected levels of CCC removals in relation to specified trigger levels, such as 4 to 7 billion lbs. M.E.

• Variations include use of relationships between market prices and support prices for mid-year determinations to implement or terminate two-tier pricing. Also producer referenda were suggested as another vehicle to deciding whether to conduct the program.

Program Administration

• Some proposals suggest use of a dairy farmer elected board or commission to oversee administration of the program including determination of support prices and assessment rates and management of surplus dairy product stocks acquired with funds from producer assessments.

Two-Tier Programs Analyzed

This study reports the impacts of three two-tier pricing program options. The first option, TT1010-Q+1+4-ASSMT1000, determined the impacts at the current level of price support, with an assessment of $10.00 per hundredweight on over-quota marketings. Quota marketing levels were determined by commercial use, minus imports, plus Government purchases.

The second option, TT1310-Q+0+4-ASSMT1000, raised the support level to $13.10 per hundredweight to enhance farm cash receipts. A severe assessment was maintained to contain government costs. FNS purchased no product for distribution. CCC planned purchases of 4.0 billion pounds.

The third option, TT1310-Q+0-LGAP, raised the support price to $13.10 per hundredweight to enhance farm cash receipts. No planned Government purchases were assumed in quota calculations. A variable assessment was applied to over-quota marketings to contain government costs.

See Table 5 at the end of this chapter for a summary of results.

TT1010-Q+1+4-ASSMT1000

Market Support Price Milk.	$10.10 per hundredweight for manufacturing grade milk.
National Quota	Estimated commercial use—imports + 5.0 billion pounds of government purchases (1.0 for FNS, 4.0 surplus).
Assessment on Excess Milk.	$10.00 per cwt. of milk marketed in excess of an individual's quota.

Estimation of Impacts

(A) The ability of the program to limit Government purchases of milk products to 6,000,000,000 pounds (milk equivalent, total milk solids basis) in a calendar year.

It is assumed that the national milk quota would be set so that the projected level of Government purchases of milk products would be below 6 billion pounds. The $10.00 assessment on over-quota milk is expected to be large enough to virtually prevent marketings of over-quota milk. Under these assumptions, it is very likely

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Government purchases would not exceed 6 billion pounds in any year unless the Government overestimates the consumption of milk products or marketings in excess of quota for the forthcoming year.

(B) The speed and effectiveness of reducing excess milk production.

The assessment on over-quota milk is expected to be large enough to almost immediately prevent substantial marketings of over-quota milk. A high assessment on over-quota would be the most effective way of reducing excess milk production among the options considered. Milk marketings are expected to average 1.9 billion pounds lower under this optiem compared to the baseline.

(C) The effectiveness in sustaining reduced milk production for at least a 5-year period with and without the continuation of the program.

This program continued in effect for the entire analysis period.

(D) The regional impact on milk prices, producer revenue, and milk supplies.

See chapter X for a discussion of the implications of two-tier pricing for regional milk prices, producer revenue, and milk supplies.

(E) The impact on national producer income and Government expenditures.

Farm cash receipts averaged $17.9 billion per year for the analysis period, virtually the same as under the baseline. Although marketings of milk were reduced by the high second-tier assessment, the higher first-tier price on quota milk offset the reduced marketings. The quota milk price averaged $11.82 per hundredweight, about 1 percent higher than the baseline effective price for all milk.

Government expenditures, CCC costs and FNS costs, averaged $360 million for the analysis period. This compares with average government expenditures of $522 million under the baseline. Government expenditures under the option were lower in every year under this option as a result of virtually eliminating any surplus marketings above the predesignated level of 4.0 billion pounds, M.E.

This option would result in minor increases in Food Assistance Program costs. Food Stamp Program costs would increase about $10 million on average annually. Child Nutrition Program costs could rise by $5 million and the WIC Program would need an additional $2 million, on average, to maintain services to the same number of participants.

(F) The impact on the rural economy and maintaining family farms.

See chapter XI for a discussion of the implications of inventory management for the rural economy and maintaining the family farm.

(G) The impact on the availability of wholesome dairy products for domestic and foreign nutrition and food assistance programs.

The two-tier pricing program would include a CCC price support purchase program to help ensure maintenance of the support for quota milk. Purchase levels likely could be maintatnod at levels sufficient to support normal food assistance program needs. The level at which the quota is set and the effective price for over-quota milk would affect the level of CCC purchases which could be made available.

A support price for quota milk at the current level of $10.10 with a very low effective price for excess milk market price could still result in CCC purchases adequate to meet food program needs. However, little over-quota milk would be produced and CCC net removals would likely remain near target levels (5 billion lbs. M.E. in this case) incorporated in the quota determination. Therefore, little or no excess inventories of dairy products would be available for additional donations beyond the 5 billion pounds, M.E. Actual availability of stocks through CCC purchases could vary if market demand deviates from levels estimated at the time quota levels are determined.

The volume of dairy products utilized by food assistance programs need not change significantly from baseline levels.

Dairy product prices would be increased about 10 to 20 cents from baseline levels as the lower effective price for excess milk induces slightly reduced production. This could result in a higher cost for food assistance and nutrition programs which do not involve direct government purchase and distribution of commodities.

(H) Technological innovations.

See chapter XII for discussion on implications of inventory management on the adoption of technology.

(I) The effectiveness in reducing butter fat production and increasing protein content in milk.

This program relies upon CCC in establishing purchase prices for butter and nonfat dry milk to send price signals to dairy farmers concerning the value of milkfat and nonfat solids (protein). CCC policy is to continuously monitor purchases of surplus butter and nonfat dry milk. As necessary, with consideration of CCC costs, market impact and prices stability, CCC will make purchase price adjustments to move its purchases of butter and nonfat dry milk in the direction of alignment with their yields from whole milk.

(J) The impact of temporary increases and decreases of milk production.

An unforeseen increase (decrease) in milk production would result in an increase (decrease) in over-quota (quota) marketings. For example, an additional 2 percent increase in milk production in FY 1992 would result in about a 2 percent decrease in the average price to farmers and a corresponding decrease of about 0.3 percent in the average retail value. Farm cash receipts would increase about 1.3 percent as a result of the increased marketings. Government expenditures would decrease slightly due to additional revenue from more milk being assessed under current law. (See chapter XVI, Tables 11 and 12 for summary information.)

(K) The impact on the United States livestock industry.

The Two-Tier program with a purchase program at $10.10 per cwt and assessment of $10.00 per cwt on over-quota milk has little impact on the livestock industry. However, year-to-year changes are important. See appendix C for more details.

(L)(1) The consistency of the program with international obligations and the impacts on international trade.

With milk production quotas established on the basis of expected domestic commercial use, two-tier pricing is one of the least export-oriented of any of the types of proposals presented for study. Import protection would be needed to prevent the domestic price from being undercut by imports. With all-milk prices no more competitive than under the current program and supply availabilities limited, two-tier pricing would limit the ability of the United States to take greater advantage of current or future dairy product export opportunities.

A first-tier milk price of $10.10 and severe assessment on over-quota milk results in an average $11.70 all-milk price and little incentive to produce a supply of dairy products for export markets. CCC surplus purchases that might potentially be available for export are similarly limited. Consequently, whether by commercial interests or by government, the United States will be only minimally competitive on world dairy product markets under this proposal.

Uruguay Round. Under a Uruguay Round agreement similar to the U.S. proposal, this option would yield an AMS that is about the same as the AMS for the current dairy program because the administered support level would be the same and the quantity supported about the same. However, since domestic prices are projected to rise under this option as compared to the baseline, we would be somewhat less able to meet our proposed Uruguay Round commitments to convert existing import restrictions to tariffs and to reduce them because imports could undercut the domestic price. Meeting our proposed export subsidy reduction commitments would be no different than with the current dairy program. With modestly higher domestic prices, the United States would be slightly less competitive on world markets than under the baseline scenario.

(L)(2) The impact on consumers and the consumption of milk and milk products, including consumer costs.

Retail prices averaged 10 to 20 cents above baseline and reduced commercial use an average of 0.3 billion pounds, annually. In total, consumer expenditures for dairy products would rise about $100 million or slightly more per year.

(L)(3) The effect on long term economic efficiency of the U.S. dairy industry, as well as competitiveness with non-dairy products.

See chapter XV for a discussion of the long-run implication of milk inventory management programs.

TT1310-Q+0+4-ASSMT1000

Market support price milk	$13.10 per hundredweight for manufacturing grade milk.
National quota	Estimated commercial use—imports + 4.0 billion lbs. government surplus purchases only. FNS purchases no product.
Assessment on excess milk.	$10.00 per cwt. of milk marketed in excess of an individual's quota.

Estimation of Impacts

(A) The ability of the program to limit Government purchases of milk products to 6,000,000,000 pounds (milk equivalent, total milk solids basis) in a calendar year.

It is assumed that the national milk quota would be set so that the projected level of Government purchases of milk products would be below 6 billion pounds. The assessment on over-quota milk is expected to be large enough to prevent substantial marketings of over-quota milk. Under these assumptions, it is very unlikely Government purchases would exceed 6 billion pounds in any year unless the Government overestimates the consumption of milk products for the forthcoming year.

(B) The speed and effectiveness of reducing excess milk production.

The assessment on over-quota milk is expected to be large enough to almost immediately prevent substantial marketings of over-quota milk. A high assessment on over-quota would be the most effective way of reducing excess milk production among the option considered. Milk marketings are expected to average over 9 billion pounds below the baseline under this option.

(C) The effectiveness in sustaining reduced milk production for at least a 5-year period with and without the continuation of the program.

This program continued in effect during the entire analysis period.

(D) The regional impact on milk prices, producer revenue, and milk supplies.

See chapter X for a discussion of the implications of two-tier pricing for regional milk prices, producer revenue, and milk supplies.

(E) The impact on national producer income and Government expenditures.

Farm cash receipts averaged $21.9 billion per year for the analysis period, nearly $4 billion above the baseline average. Although milk marketings average 9 billion pounds less under this option than under the baseline, the average farm price per hundredweight was nearly $3.50 higher. Higher prices were the result of the restricted marketings and the CCC purchase program removing surplus from the market at the equivalent of $13.10 per hundredweight.

Government expenditures averaged $365 million for the analysis period. This compares with average government expenditures of $522 million under the baseline. The lower volume of government removals of surplus dairy products more than offset the higher cost per hundredweight.

This option can result in significant increases in Food Assistance Program costs. Annual Food Stamp Program costs increase an average of $310 million during fiscal years 1993–97. Child Nutrition Program costs could rise by about $125 million annually. The WIC program would require an additional $55 million annually to maintain participation. Without this increase in funding, approximately 100,000 fewer at-risk participants would be served each month.

(F) The impact on the rural economy and maintaining family farms.

See chapter XI for a discussion of the implications of inventory management for the rural economy and maintaining the family farm.

(G) The impact on the availability of wholesome dairy products for domestic and foreign nutrition and food assistance programs.

No CCC purchases in excess of planned levels of 4 billion lbs. incorporated in the quota would be expected.

(H) Technological innovations.

See chapter XII for discussion on implications of inventory management on the adoption of technology.

(I) The effectiveness in reducing butter fat production and increasing protein content in milk.

This program relies upon CCC in establishing purchase prices for butter and nonfat dry milk to send price signals to dairy farmers concerning the value of milkfat and nonfat solids (protein). CCC policy is to continuously monitor purchases of surplus butter and nonfat dry milk. As necessary, with consideration of CCC costs, market impact and price stability, CCC will make purchase price adjustments to move its purchases of butter and nonfat dry milk in the direction of alignment with their yields from whole milk.

(J) The impact of temporary increases and decreases of milk production.

For this option, an unforeseen additional increase in milk production of 2 percent in fiscal year 1992 would result in about a 1.5 percent decrease in the average price to farmers and a corresponding decrease of about 0.5 percent in the average retail value. Farm cash receipts would increase about 1 percent. Government expenditures would decrease slightly due to additional revenue from more milk being assessed under current law.

An unforeseen 2 percent decrease in marketings in fiscal year 1992 would result in a 70 percent decrease in CCC purchases. (See chapter XVI, Tables 11 and 12 for summary information.)

(K) The impact on the United States livestock industry.

The two-tier program with a purchase program at $13.10 per cwt and assessment of $10.00 per cwt on over-quota milk has little impact on the livestock industry. However, year-to-year changes are important. See appendix C for more details.

(L)(1) The consistency of the program with international obligations and the impacts on international trade.

With milk production quotas established on the basis of expected domestic commercial use, two-tier pricing is one of the least export-oriented of any of the types of proposals studied. Import protection would be needed to prevent the domestic price from being undercut by imports.

Uruguay Round. Under a Uruguay Round agreement similar to the U.S.

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proposal, this option would yield an AMS that is much higher than the AMS for the current dairy program because the administered support level would be substantially higher even though the quantity supported is somewhat lower. With respect to market access commitments, since domestic prices are projected to rise substantially above the baseline, the level of import protection needed with this option is much higher than with the current program. Therefore, the support program would be undermined if we meet our proposed Uruguay Round commitment to convert existing import restrictions to tariffs and to reduce them. Meeting our proposed export subsidy reduction commitments would be no different than with the current dairy program. With high domestic prices, the United States would be extremely noncompetitive in world markets.

(L)(2) The impact on consumers and the consumption of milk and milk products, including consumer costs.

Prices under this option averaged about $3.45 per cwt. above current program levels. Consumption would be reduced by over 4 percent. Total consumer expenditures would be about $2.6 billion per year higher than with the current baseline. Low income consumers would be especially disadvantaged, particularly to the extent that food program assistance is not expanded to compensate for higher milk prices.

(L)(3) The effect on long-term economic efficiency of the U.S. dairy industry, as well as competitiveness with non-dairy products.

See chapter XV for a discussion of the long-run implication of milk inventory management programs.

TT1310-Q-0-LGAP

Market Support Price Milk.	$13.10 per hundredweight for manufacturing grade milk.
National Quota	Estimated commercial use − imports + 0 Government purchase of dairy products.
Assessment on Excess Milk.	Assessment rate varied on over quota marketings to keep program costs equal to current program baseline.

Estimation of Impacts

(A) The ability of the program to limit Government purchases of milk products to 6,000,000,000 pounds (milk equivalent, total milk solids basis) in a calendar year.

The assessment on over-quota milk is expected to result in substantial marketings of over-quota milk. CCC purchases are expected to average 9.0 billion pounds per year and total 13.9 billion pounds above the baseline.

(B) The speed and effectiveness of reducing excess milk production.

The assessment is not considered large enough to prevent substantial marketings of over-quota milk. In areas, and for producers with low costs of production, it is possible that expansion of production could continue, although at a slower pace.

(C) The effectiveness in sustaining reduced milk production for at least a 5-year period with and without the continuation of the program.

The program continued in effect for the entire analysis period. Assessments on over-quota milk that are low enough for some producers in some areas to continue to expand. The assessments, if not increased over time, would allow the production of additional surplus as efficiencies in production increases. An increasing assessment, over time, should be able to limit surplus marketings of milk and government costs.

(D) The regional impact on milk prices, producer revenue, and milk supplies.

See chapter X for a discussion of the implications of two-tier pricing for regional milk prices, producer revenue, and milk supplies.

(E) The impact on national producer income and Government expenditures.

Farm cash receipts averaged $22.2 billion per year for the analysis period, more than $4 billion above the baseline average. Although milk marketings average 3.1 billion pounds less than under the baseline, the higher quota milk price resulted in a strong increase in cash receipts.

Government expenditures averaged $500 million for the analysis period, about equal to the baseline. Government expenditures under the option were held in check by the receipt of assessments averaging $580 million per year from dairy farmers who could continue to market milk at the second-tier price.

This option can result in significant increases in Food Assistance Program costs. Food Stamp Program costs increase an average of $270 million annually during Fiscal Years 1993–97. Child Nutrition Program costs could rise by about $110 million annually. The WIC program would require an additional $50 million annually to maintain participation. Without this increase in funding, approximately 90,000 fewer at-risk participants would be served each month.

(F) The impact on the rural economy and maintaining family farms.

See chapter XI for a discussion of the implications of inventory management for the rural economy and maintaining the family farm.

(G) The impact on the availability of wholesome dairy products for domestic and foreign nutrition and food assistance programs.

With quota milk supported at $13.10 and an effective price of excess milk near $9.40 for all milk, the two-tier program would result in adequate CCC stocks to meet food program needs.

Moderate to substantial amounts of over quota milk would be produced and CCC net removals would likely remain at significant levels. Average CCC net removals were estimated at about 9.0 billion lbs. per year. Therefore, excess inventories of dairy products may be available for additional donations beyond planned levels. FNS would eliminate purchases at this price level.

Market prices for all milk sold to plants over the 1992–97 period would average nearly $3.00 per cwt. above current baseline levels and retail prices would be higher by similar magnitudes. This would substantially increase acquisition costs of food assistance programs which utilize dairy products as well as those with benefit levels determined by food price indexes influenced by dairy product prices. Programs utilizing dairy products would need to reduce utilization of dairy products or reduce the number of participants served unless increased funding is provided or CCC acquired stocks are donated.

(H) Technological innovations.

See chapter XII for discussion on implications of inventory management on the adoption of technology.

(I) The effectiveness in reducing butter fat production and increasing protein content in milk.

This program relies upon CCC in establishing purchase prices for butter and nonfat dry milk to send price signals to dairy farmers concerning the value of milkfat and nonfat solids (protein). CCC policy is to continuously monitor purchases of surplus butter and nonfat dry milk. As necessary, with consideration of CCC costs, market impact and prices stability, CCC will make purchase price adjustments to move its purchases of butter and nonfat dry milk in the direction of alignment with their yields from whole milk.

(J) The impact of temporary increases and decreases of milk production.

With a decrease in the assessment on the second tier price, an unforeseen increase (decrease) in milk production

results in an increase (decrease) in Government expenditures. For example, an additional 2 percent increase in milk production in FY 1992 would result in about a 1.5 percent decrease in the average price to farmers and a corresponding decrease of about 0.5 percent in the average retail value. Farm cash receipts would increase about 0.5 percent. Government expenditures would increase about $0.2 billion. (See chapter XVI, Tables 11 and 12 for summary information.)

(K) The impact on the United States livestock industry.

The Two-Tier program with a purchase program at $13.10 per cwt and a variable assessment to equate program expenditures with the baseline has little impact on the livestock industry. However, year-to-year changes are important. See appendix C for more details.

(L)(1) The consistency of the program with international obligations and the impacts on international trade.

The reduced penalty on over-quota milk is expected to result in higher production and CCC purchases under this proposal. Although the CCC may be more important as a dairy product exporter, the high all milk price anticipated under this proposal will probably make it much more difficult for private sector exporters to compete on world dairy product markets. Import protection would be needed to prevent the domestic price from being undercut by imports.

Uruguay Round. Under a Uruguay Round agreement similar to the U.S. proposal, this option would yield an AMS that is much higher than the AMS for the current dairy program because the administered support level would be substantially higher even though the quantity supported is somewhat lower. With respect to market access commitments, since domestic prices are projected to rise substantially above the baseline, the level of import protection needed with this option is much higher than with the current program. Therefore, the support program would be undermined if we meet our proposed Uruguay Round commitment to convert existing import restrictions to tariffs and to reduce them. Meeting our proposed export subsidy reduction commitments would be no different than with the current dairy program. With high domestic prices, the United States would be extremely non-competitive on world markets.

(L)(2) The impact on consumers and the consumption of milk and milk products, including consumer costs.

Milk prices averaging about $3.00 per cwt. above current projections for the next 6 years would represent an increase in retail prices of nearly 8.6 percent. Domestic consumption would be reduced by more than 3 percent from projected levels under the current program. However, consumers would spend about $2.5 billion a year more for dairy products. Low income consumers would be especially disadvantaged, particularly to the extent that food program assistance is not expanded to compensate for higher milk prices.

(L)(3) The effect on long term economic efficiency of the U.S. dairy industry, as well as competitiveness with non-dairy products.

See chapter XV for a discussion of the long-run implication of milk inventory management programs.

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Table 5: Comparison of two-tier pricing programs with baseline

Item	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1992-97 Cum.	FY 1992-97 Avg.
Support price (average)			(dol. /	cwt)					
Baseline	10.10	10.10	10.10	10.10	10.10	10.10	10.10	NA	10.10
TT1010-G+1+4-ASSNT1000	10.10	10.10	10.10	10.10	10.10	10.10	10.10	NA	10.10
TT1310-G+0+4-ASSNT1000	10.10	13.10	13.10	13.10	13.10	13.10	13.10	NA	13.10
TT1310-G+0-LGAP	10.10	13.10	13.10	13.10	13.10	13.10	13.10	NA	13.10
All Milk Price			(dol. /	cwt)					
Baseline	11.60	11.55	11.50	11.45	11.55	11.65	11.70	NA	11.57
TT1010-G+1+4-ASSNT1000	11.60	11.70	11.70	11.70	11.70	11.70	11.70	NA	11.70
TT1310-G+0+4-ASSNT1000	11.60	15.00	15.00	15.00	15.00	15.00	15.00	NA	15.00
TT1310-G+0-LGAP	11.60	14.60	14.60	14.60	14.60	14.60	14.60	NA	14.60
Effective All Milk Price on quota milk			(dol. /	cwt)					
Baseline	11.56	11.45	11.35	11.28	11.42	11.62	11.70	NA	11.47
TT1010-G+1+4-ASSNT1000	11.56	11.60	11.59	11.59	11.59	11.67	11.70	NA	11.62
TT1310-G+0+4-ASSNT1000	11.56	14.90	14.89	14.89	14.89	14.97	15.00	NA	14.92
TT1310-G+0-LGAP	11.56	14.50	14.49	14.49	14.49	14.57	14.60	NA	14.52
Effective All Milk Price on over-quota milk									
TT1010-G+1+4-ASSNT1000	NA	1.70	1.70	1.70	1.70	1.70	1.70	NA	1.70
TT1310-G+0+4-ASSNT1000	NA	5.00	5.00	5.00	5.00	5.00	5.00	NA	5.00
TT1310-G+0-LGAP	NA	9.87	9.47	9.34	9.35	9.15	9.17	NA	9.39
Assessment on Marketings 1/			(dol. /	cwt)					
Baseline	0.0375	0.0969	0.1125	0.1125	0.1125	0.0281	0.0000	NA	0.0771
			0.0370	0.0540	0.0130			NA	
Second Tier Assessment									
TT1010-G+1+4-ASSNT1000	NA	10.00	10.00	10.00	10.00	10.00	10.00	NA	10.00
TT1310-G+0+4-ASSNT1000	NA	10.00	10.00	10.00	10.00	10.00	10.00	NA	10.00
TT1310-G+0-LGAP	NA	4.73	5.13	5.26	5.25	5.45	5.43	NA	5.21
Retail Value			(dol. /	cwt)					
Baseline	34.10	33.55	33.50	34.45	35.65	36.95	38.20	NA	35.38
TT1010-G+1+4-ASSNT1000	34.10	33.70	33.70	34.70	35.80	37.00	38.20	NA	35.52
TT1310-G+0+4-ASSNT1000	34.10	37.00	37.00	38.00	39.10	40.30	41.50	NA	38.82
TT1310-G+0-LGAP	34.10	36.60	36.60	37.60	38.70	39.90	41.10	NA	38.62
Milk Production			(billion pounds)						
Baseline	150.0	151.4	153.9	156.9	158.5	159.9	161.0	941.6	156.9
TT1010-G+1+4-ASSNT1000	150.0	149.1	150.9	153.5	156.2	159.3	161.0	930.0	155.0
TT1310-G+0+4-ASSNT1000	150.0	141.9	143.6	146.0	148.7	151.7	153.4	885.3	147.6
TT1310-G+0-LGAP	150.0	147.8	151.2	152.7	156.1	156.8	158.2	922.8	153.8

Table 5 (cont.): Comparison of two-tier pricing programs with baseline

Item	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1992-97 Cum.	FY 1992-97 Avg.
Commercial Use			(billion pounds)						
Baseline	140.5	144.9	146.8	149.5	152.0	154.9	156.5	904.6	150.8
TT1010-G+1+4-ASSNT1000	140.5	144.6	146.4	149.0	151.7	154.8	156.5	903.0	150.5
TT1310-G+0+4-ASSNT1000	140.5	138.4	140.1	142.5	145.2	148.2	149.9	864.3	144.1
TT1310-G+0-LGAP	140.5	139.7	141.4	143.8	146.5	149.5	151.2	872.1	145.4
Govt. Purchases N.E. Milkfat			(billion pounds)						
Baseline	9.8	7.0	7.6	7.9	7.0	5.5	5.0	40.0	6.7
TT1010-G+1+4-ASSNT1000	9.8	5.0	5.0	5.0	5.0	5.0	5.0	30.0	5.0
TT1310-G+0+4-ASSNT1000	9.8	4.0	4.0	4.0	4.0	4.0	4.0	24.0	4.0
TT1310-G+0-LGAP	9.8	8.7	10.3	9.4	10.1	7.8	7.6	53.9	9.0
CCC plus FMS Expenditures			(million dollars)						
Baseline	982.2	514.2	522.2	543.2	511.2	526.2	513.2	3,130.2	521.7
TT1010-G+1+4-ASSNT1000	982.2	334.4	301.9	310.7	306.3	442.4	474.4	2,170.1	361.7
TT1310-G+0+4-ASSNT1000	982.2	346.3	315.1	312.3	309.3	432.2	474.2	2,189.4	364.9
TT1310-G+0-LGAP	982.2	481.4	526.1	479.5	522.3	489.9	495.9	2,995.1	499.2
CCC Receipts from Assessments			(million dollars)						
Baseline	55.5	144.7	226.9	257.7	196.3	44.0	0.0	869.6	144.9
TT1010-G+1+4-ASSNT1000	55.5	142.5	167.4	170.3	173.4	44.2	0.0	697.8	116.3
TT1310-G+0+4-ASSNT1000	55.5	135.5	159.2	161.9	164.9	42.0	0.0	663.5	110.6
TT1310-G+0-LGAP	55.5	551.8	697.4	665.0	705.4	468.2	411.1	3,498.9	583.2
Farm Cash Receipts 2/			(million dollars)						
Baseline	17,250	17,250	17,380	17,620	18,020	18,500	18,750	107,520	17,920
TT1010-G+1+4-ASSNT1000	17,250	17,206	17,393	17,696	18,011	18,505	18,750	107,561	17,927
TT1310-G+0+4-ASSNT1000	17,250	20,975	21,207	21,574	21,970	22,550	22,843	131,119	21,853
TT1310-G+0-LGAP	17,250	21,284	21,748	21,976	22,466	22,699	22,954	133,127	22,188
Retail Cost			(million dollars)						
Baseline	47,920	48,610	49,190	51,490	54,180	57,230	59,770	320,470	53,612
TT1010-G+1+4-ASSNT1000	47,920	48,736	49,343	51,707	54,310	57,276	59,783	321,155	53,526
TT1310-G+0+4-ASSNT1000	47,920	51,211	51,836	54,168	56,769	59,732	62,200	335,916	55,986
TT1310-G+0-LGAP	47,920	51,116	51,739	54,080	56,687	59,657	62,136	335,415	55,903

KEY: TT, Two-tier pricing program; G+x+x, Quota equals commercial use, plus FMS,plus CCC surplus.
ASSNT1000, Second tier assessment of $10.00 per cwt.
GAP, Second tier assessment equal to the support price minus the international price.
LGAP, Second tier assessment set at level to equalize Gov't cost with baseline.
1010 and 1310 equals first tier support levels of $10.10 and $13.10 per cwt.

1/ First assessment: $.05 per cwt. for CY91, $.1125 per cwt., Jan. 92-Dec. 1995.
Second assessment: Amount necessary to reduce purchase cost below cost of purchasing 7 billion pounds.

2/ Farm cash receipts plus diversion or deficiency payments net of assessments.

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IX. Milk Marketing Diversion Programs

General Structure

• A milk diversion program provides payments to dairy producers in return for voluntary reductions in production.

• The payments are not necessarily dependent on market prices; they may be administratively determined. The receipt of payments does depend on reductions in production.

• The reductions would be determined by establishing producer bases from which the reductions would be taken. The base is most often defined as producer marketings during some specified period of time. In this study, the base was FY 1990. Provisions for new entrants and reinstatement of base for producers who may have dropped out of the program, but wish to enter again would be established, as would rules regarding the transfer of base.

• The voluntary nature of the diversion program implies that reductions would be made on a bid basis. All producers reducing production by the same amount would receive the same per unit diversion payment.

• The program would be triggered if projected purchases by the CCC were above a predetermined level (in this study 6 billion pounds, M.E. total solids).

• The program is to be operated concurrently with continued purchases of manufactured dairy products by the Government through CCC to support the milk price, although such a linkage is not absolutely necessary. The support price could be the current $10.10 per hundredweight level of the FACT ACT such as is in Option MD–1010, but other support prices were considered; a $13.10 support price program alternative is included in this report (MD–1310–ASSMT).

• The cost of the diversion program could be funded by producer assessments made on all producers or only on nonparticipants. The assessment could be adjustable to obtain the dollars needed to pay the support while reducing production to levels consistent with desired CCC purchase levels. If control of Government outlays is a goal of the program, assessments would be necessary.

Elements of Submitted Proposals

Support Price

The support price in half of the submitted proposals was the current $10.10 per hundredweight. Other proposals offered were: unspecified, but above $10.10 (in 2 proposals), and $13.10 (1 proposal).

Payment to Participants

• Payments depend on the percentage reductions of a base marketing level taken by producers. Reductions in base of between 5 and 10 percent were proposed. The base reductions were generally to be on a bid basis. To limit the production lost in any one area, reduction limits could be imposed on an area by area basis. Alternatively, no area by area quota would need to be introduced, but certain communities could be adversely affected.

• Proposed payments to producers ranged from $0.50 to $3.90 per hundredweight on marketings, depending on the percentage reduction of milk marketing base taken.

• One proposal called for payments based on the difference between a target price and the support price. The same proposal suggested yearly adjustment of the target price by the same indices used to adjust Federal salaries.

• Payments were based on an even payment schedule per unit of reduction and a declining payment schedule per unit of production. Payment schemes could be developed to include increasing payment schedules or schemes with payment schedules increasing to a certain percent reduction in milk production and then decreasing.

• One proposal suggested a combination of assessment and refunds, where applicable, plus a lump sum payment of $10,000 to participant producers. This proposal required participants to hold production to 101 percent or less of the previous year's production.

Assessments

• All but one proposal included producer assessments. Some required assessments of everyone with program participants receiving a refund for meeting program requirements. Others required assessments to be paid only by nonparticipants. Proposed assessment levels, where specified, ranged up to $0.55 per hundredweight.

• Several proposals assumed the assessment would be adjustable to obtain the dollars needed to pay the support or target price and reduce production to levels consistent with desired CCC purchase levels.

• One proposal called for handlers and/or government to pay the assessment to a superpool from which diversion program participants would receive payments. If the handlers pay the assessment to the superpool, then consumers pay higher milk prices. If the government pays the assessment, then taxpayers ultimately fund the program. The proponents of this proposal suggested that the program begin with the government paying most of the assessment in the first year, and by the end of 5 years, the handler paying all of the assessment so consumers would not as readily notice the rising price of milk.

Bases-Marketing History

• Four options were proposed: the most recent 12-month period (1990); the most recent 12-month period or the average of the last two years; the average of 1986–90 or of the most recent years, if not in operation in 1986; and selection of one year: 1985, 1986, or 1987.

• One proposal defined rules for new entrants and reinstitution of base for past participants: i. Two years marketings for new participants, and ii. Either original base or last two years for past participants.

• Of those proposals mentioning transfers of base, only one would permit transferability of base under some conditions.

• One proposal permitting base transfer suggested that base should remain within the region in which it has been established, unless no one in the region is willing to acquire it.

Purchase Program

• All proposals called for continuing the purchase program. One proposal called for limiting purchases to 4–6 billion pounds M.E., milkfat basis; another set the limit at 1 billion pounds M.E., milkfat basis. Others left program purchase decisions as stated in the FACT ACT.

Cost Objectives

• Unspecified in most proposals, although one proposal did suggest limiting government outlays to $725 million. One proposal stated that assessments should cover the cost of the diversion payments.

Milk Marketing Diversion Program Analyzed

Two milk marketing diversion program options were studied. The first option, MD1010, determined the impacts at the current level of price support, $10.10 per hundredweight of milk. MD1010 assumed a 5 percent reduction was required for $0.55 per hundredweight diversion payment. No assessment was required in MD1010.

The second milk diversion program option, MD1310–ASSMT, provided income enhancement with a support price of $13.10 per hundredweight. MD1310–ASSMT assumed a 10 percent reduction for a $1.10 diversion payment. A variable assessment was incorporated to maintain baseline government costs.

See table 6 at the end of this chapter for a summary of results.

MD1010

Support price	$10.10 per hundredweight for manufacturing grade milk.
Purchase program	CCC and FNS purchase program continued at baseline rates.
Diversion payment	$0.55 per hundredweight of milk marketings.
Minimum marketing reduction.	5% reduction from base required.
Additional assessments	None.

Estimation of Impacts

(A) The ability of the program to limit Government purchases of milk products to 6,000,000,000 pounds (milk equivalent, total milk solids basis) in a calendar year.

Government purchases are projected to be below 6.0 billion pounds in all years averaging 4.9 billion over the analysis period, or 1.8 billion pounds below the baseline. However, the ability of the program to limit government purchases depends on many highly uncertain factors, such as the level of program participation, projections of milk marketings and commercial use in the absence of the program, and the extent to which participating farmers base reflect marketings that would have occurred had they not been in the program.

(B) The speed and effectiveness of reducing excess milk production.

About 20 percent of producers are expected to reduce marketings by 5 percent below their 1989/90 base marketings for the 1991/92 through 1994/95 marketing years. No diversion program is assumed for the 1995/96 and 1996/97 marketing years, since CCC removals are projected to be below 6.0 billion pounds for those marketing years. Milk production is expected to average 2.0 billion pounds lower compared to the baseline over the six year period and 3.1 billion pounds lower for the four years that the diversion program is triggered.

(C) The effectiveness in sustaining reduced milk production for at least a 5-year period with and without the continuation of the program.

The program continues in operation for the first 4 years of the analysis period. Although not reflected in the analysis, those farmers that have reduced production or are planning to do so are the most likely to participate in a milk diversion program. Thus, some farmers will receive diversion payments for making little, if any, adjustment in their actual marketing plans. If milk prices rise, the incentive to participate in the program is reduced moderately.

(D) The regional impact on milk prices, producer revenue, and milk supplies.

See chapter X for a discussion of the implications of milk inventory management programs on the regional milk prices, producer revenue, and milk supplies.

(E) The impact on national producer income and Government expenditures.

Farm cash receipts averaged $18.0 billion per year for the analysis period, slightly higher than under the baseline. A diversion payment of $0.55 per hundredweight on all milk marketings of producers who reduced marketings by five percent added $151 million per year to cash receipts in four of the six years in the analysis period. During FY 1996 and FY 1997 there was no diversion program in effect and therefore no payments. Diversion payments offset loses in cash receipts due to lower marketings in four years.

Government expenditures, CCC costs and FNS costs, averaged $470 million for the analysis period, slightly below baseline. Savings came from reduced CCC purchase costs which more than offset the cost of the diversion payments.

This option would result in minor increases in Food Assistance Program costs. Food Stamp Program costs would increase about $15 million on average annually. Child Nutrition Program costs could rise by $10 million and the WIC program would need an additional $5 million on average to maintain services to the same number of participants.

(F) The impact on the rural economy and maintaining family farms.

See chapter XI for a discussion of the implications of inventory management programs on the rural economy and maintaining family farms.

(G) The impact on the availability of wholesome dairy products for domestic and foreign nutrition and food assistance programs.

With support prices at $10.10 per hundredweight, the diversion program with moderate payments and reduction requirements would result in market prices only 10 to 20 cents per hundredweight above current program levels.

(H) Technological innovations.

See chapter XII for additional discussion of the impact of inventory management programs on the adoption of technology.

(I) The effectiveness in reducing butter fat production and increasing protein content in milk.

This program relies upon CCC establishing purchase prices for butter and nonfat dry milk to send price signals to dairy farmers concerning the value of milkfat and nonfat solids (protein). CCC policy is to continuously monitor purchases of surplus butter and nonfat dry milk. As necessary, with consideration of CCC purchase costs, market impact and prices stability, CCC will make purchase price adjustments to move its purchases of butter and nonfat dry milk in the direction of alignment with their yields from whole milk.

(J) The impact of temporary increases and decreases of milk production.

An unforeseen increase (decrease) in milk production by nonparticipating producers which raised milk production an additional 2 percent in FY 1992 would result in about a 2 percent decline in the average price to farmers and a corresponding decrease of about 0.6 percent in the average retail value. Total farm cash receipts would increase about 0.2 percent, but would benefit only nonparticipants. Government expenditures would increase about $0.2 billion. (See chapter XVI, Tables 11 and 12 for summary information.)

(K) The impact on the United States livestock industry.

The Milk Diversion program with a purchase program at $10.10 per hundredweight and no additional assessment has little impact on the livestock industry over the period of the study. However, year-to-year changes are important. See appendix C for more details.

(L)(1) The consistency of the program with international obligations and the impacts on international trade.

By either controlling production to more nearly meet domestic market needs (at the $10.10 support price) or, alternatively, raising the effective all milk price to relatively high levels (at the $13.10 support price), the milk diversion programs studied are not export market oriented. Import protection would be needed to prevent the domestic price from being undercut by imports. Continuation of the CCC surplus dairy product purchase program would possibly leave CCC with the occasional need to dispose of its accumulation of excess dairy products through overseas sales.

A $10.10 support price restrains the all milk price level, and the excess available for export will be minimal. Conversely, at the $13.10 support price, a large excess is potentially available for export. However, the much higher effective all milk price will largely preclude private sector export sales opportunities for the increased milk output. An export program of accumulated dairy product inventories

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by CCC may be necessary under this proposal.

Uruguay Round. Under a Uruguay Round agreement similar to the U.S. proposal, this option would yield an AMS that is about the same as the AMS for the current dairy program because the administered support level would be the same and the quantity supported about the same. However, since domestic prices are projected to rise under this option as compared to the baseline, we would be somewhat less able to meet our proposed Uruguay Round commitments to convert existing import restrictions to tariffs and to reduce them because imports would undercut the domestic price. Meeting our proposed export subsidy reduction commitments would be no different than with the current dairy program. With modestly higher domestic prices, the United States would be slightly less competitive on world markets than under the baseline scenario.

(L)(2) The impact on consumers and the consumption of milk and milk products, including consumer costs.

Consumers would not be significantly affected by a diversion program with $10.10 support prices and modest diversion payments/requirements. Dairy product prices would remain about 10 to 20 cents per hundredweight above current program baseline levels. Consumption of dairy products would be lower than with the current program. Total consumer expenditures for dairy products would be roughly $100 to $150 million per year higher than projected levels for the current program.

(L)(3) The effect on long term economic efficiency of the U.S. dairy industry, as well as competitiveness with non-dairy products.

See chapter XV for a discussion of the long-run implications of milk inventory management programs.

MD1310–ASSMT

Support price	$13.10 per hundredweight for manufacturing grade milk.
Purchase program	CCC purchase program continued at baseline rates. FNS buys no product.
Diversion payment	$1.10 per hundredweight of milk marketings.
Minimum marketing reduction.	10% reduction required from base.
Additional assessments	Variable on all milk marketings to maintain program cost at current baseline.

Estimation of Impacts

(A) The ability of the program to limit Government purchases of milk products to 6,000,000,000 pounds (milk equivalent, total milk solids basis) in a calendar year.

Government purchases averaged more than 13 billion pounds a year for the study period.

(B) The speed and effectiveness of reducing excess milk production.

This program option did not cause a reduction in excess milk marketings. Compared to the baseline, Government purchases averaged more than 7 billion pounds higher each year.

(C) The effectiveness in sustaining reduced milk production for at least a 5-year period with and without the continuation of the program.

This program was in effect for the full 6-year study period.

(D) The regional impact on milk prices, producer revenue, and milk supplies.

See chapter X for a discussion of the impacts of milk inventory management programs on the regional milk prices, producer revenue, and milk supplies.

(E) The impact on national producer income and Government expenditures.

Farm cash receipts averaged $20.8 billion per year for the analysis period, $2.9 billion higher than under the baseline. A diversion payment of $1.10 per hundredweight on all milk marketings of producers who reduced marketings by 10 percent added $215 million per year to cash receipts each year. The larger contributor to cash receipts, however, was the higher market price resulting from the $13.10 support level which also resulted in milk marketings that averaged 3.3 billion pounds per year higher. These additions more than offset the cost of the assessment on dairy farmers which averaged $1.4 billion per year.

Government expenditures averaged $500.2 million, after assessment, for the analysis period, about the same as the baseline.

This option can result in significant increases in Food Assistance Program costs. Food Stamp Program costs increase an average of $200 million annually during Fiscal Years 1993–97. Child Nutrition Program costs could rise by about $80 million. The WIC program would require an additional $35 million annually to maintain participation. Without this increase in funding, approximately 65,000 fewer at-risk participants would be served each month.

(F) The impact on the rural economy and maintaining family farms.

See chapter XI for a discussion of the implications of milk inventory management programs on the rural economy and maintaining family farms.

(G) The impact on the availability of wholesome dairy products for domestic and foreign nutrition and food assistance programs.

With a continued CCC Purchase program at $13.10 per hundredweight anticipated diversion reductions would be insufficient to prevent large CCC surplus removals averaging nearly 14 billion lbs. M.E. per year. Dairy products would be available for possible donation to food assistance programs in quantities significantly in excess of normal program needs. FNS would expend no funds at this support price level.

Market prices averaging about $2.25 per hundredweight above current program baseline levels would substantially increase costs for food assistance programs affected by retail dairy product prices. Programs utilizing dairy products would need to reduce utilization of dairy products or reduce the number of participants served unless increased funding is provided or excess CCC stocks were donated.

(H) Technological innovations.

See chapter XII for discussion of the impact of milk inventory management programs on the adoption of technology.

(I) The effectiveness in reducing butter fat production and increasing protein content in milk.

This program relies upon CCC in establishing purchase prices for butter and nonfat dry milk to send price signals to dairy farmers concerning the value of milkfat and nonfat solids (protein). CCC policy is to continuously monitor purchases of surplus butter and nonfat dry milk. As necessary, with consideration of CCC purchase costs, market impact and prices stability, CCC will make purchase price adjustments to move its purchases of butter and nonfat dry milk in the direction of alignment with their yields from whole milk.

(J) The impact of temporary increases and decreases of milk production.

An unforeseen increase (decrease) in milk production results in a 1.5 percent decrease in the effective farm price, but raises farm receipts by $0.2 billion and Government expenditures by $0.3 billion. The average retail value falls about 0.3 percent. (See chapter XVI, tables 11 and 12 for summary information.)

(K) The impact on the United States livestock industry.

The Milk Diversion program with a purchase program at $13.10 per hundredweight and a variable

assessment has little impact on the livestock industry. However, year-to-year changes are important. See appendix C for more details.

(L)(1) The consistency of the program with international obligations and the impacts on international trade.

See previous comments on the international competitiveness aspects of milk diversion programs.

Uruguay Round. Under a Uruguay Round agreement similar to the U.S. proposal, this option would yield an AMS that is much higher than the AMS for the current dairy program because the administered support level would be significantly higher even though the quantity supported is somewhat lower. With respect to market access commitments, since domestic prices are projected to rise significantly above the baseline, the level of import protection needed with this option is higher than with the current program. Therefore, the support program would occasionally be undermined if we meet our proposed Uruguay Round commitment to convert existing import restrictions to tariffs and to reduce them. If CCC increases sales on world markets, our proposed export subsidy reduction commitments would be problematic. With the high U.S. prices, the United States would be less competitive on world markets than under the baseline scenario.

(L)(2) The impact on consumers and the consumption of milk and milk products, including consumer costs.

Substantially higher retail prices would adversely affect consumers. Milk prices averaging about $2.20 per hundredweight above current projections for the next several years would represent an increase in retail prices of over 6 percent. Domestic consumption would be 2 to 3 percent below baseline levels. However, consumer expenditures for dairy products would be about $1.9 billion per year greater than with the current program. Low income consumers would be especially disadvantaged, particularly if food program assistance is not expanded to compensate for the higher prices.

(L)(3) The effect on long term economic efficiency of the U.S. dairy industry, as well as competitiveness with non-dairy products.

See chapter XV for a discussion of the long-run implications of milk inventory management programs.

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Table 6: Comparison of milk marketing diversion programs with baseline

Item	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1992-97 Cum.	FY 1992-97 Avg.
			(dol. / cwt)						
Support price (average)									
Baseline	10.10	10.10	10.10	10.10	10.10	10.10	NA	10.10	
MD1010	10.10	10.10	10.10	10.10	10.10	10.10	NA	10.10	
MD1310-ASSMT	10.10	13.10	13.10	13.10	13.10	13.10	NA	13.10	
			(dol. / cwt)						
All Milk Price									
Baseline	11.60	11.55	11.50	11.45	11.55	11.65	11.70	NA	11.57
MD1010	11.60	11.70	11.70	11.70	11.90	11.65	11.70	NA	11.73
MD1310-ASSMT	11.60	13.80	13.80	13.80	13.80	13.80	13.80	NA	13.80
			(dol. / cwt)						
Effective All Milk Price									
Baseline	11.56	11.45	11.35	11.28	11.42	11.62	11.70	NA	11.47
MD1010	11.56	11.60	11.59	11.59	11.79	11.62	11.70	NA	11.65
MD1310-ASSMT	11.56	13.10	12.89	12.79	12.79	12.97	13.05	NA	12.95
			(dol. / cwt)						
Assessment on Marketings 1/									
Baseline	0.0375	0.0969	0.1125	0.1125	0.1125	0.0281	0.0000	NA	0.0771
			0.0370	0.0540	0.0130			NA	0.0173
MD1010	0.0375	0.0969	0.1125	0.1125	0.1125	0.0281	0.0000	NA	0.0771
MD1310-ASSMT	0.0400	0.7000	0.9100	1.0100	1.0100	0.8300	0.7500	NA	0.8683
			(dol. / cwt)						
Retail Value									
Baseline	34.10	33.55	33.50	34.45	35.65	36.95	38.20	NA	35.38
MD1010	34.10	33.70	33.70	34.70	36.00	36.95	38.20	NA	35.54
MD1310-ASSMT	34.10	35.80	35.80	36.80	37.90	39.10	40.30	NA	37.62
			(billion pounds)						
Milk Production									
Baseline	150.0	151.4	153.9	156.9	158.5	159.9	161.0	941.6	156.9
MD1010	150.0	149.1	151.1	153.5	154.8	159.9	161.0	929.4	154.9
MD1310-ASSMT	150.0	151.5	156.4	160.9	163.1	164.1	165.0	961.0	160.2
			(billion pounds)						
Commercial Use									
Baseline	140.5	144.9	146.8	149.5	152.0	154.9	156.5	904.6	150.8
MD1010	140.5	144.6	146.4	149.0	151.3	154.9	156.5	902.7	150.5
MD1310-ASSMT	140.5	141.2	142.9	145.4	148.1	151.1	152.8	881.5	146.9

Table 6 (con't): Comparison of milk marketing diversion programs with baseline

Item	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1992-97 Cum.	FY 1992-97 Avg.
			(billion pounds)						
Govt. Purchases N.E. Milkfat									
Baseline	9.8	7.0	7.6	7.9	7.0	5.5	5.0	40.0	6.7
MD1010	9.8	4.9	5.2	5.0	3.9	5.5	5.0	29.5	4.9
MD1310-ASSMT	9.8	10.9	14.0	16.0	15.6	13.5	12.7	82.7	13.8
			(million dollars)						
CCC plus FAS Expenditures									
Baseline	982.2	514.2	522.2	543.2	511.2	526.2	513.2	3,130.2	521.7
MD1010	982.2	482.9	483.4	463.5	363.2	526.2	513.2	2,832.4	472.1
MD1310-ASSMT	982.2	473.5	507.8	541.1	498.5	490.0	490.1	3,001.0	500.2
			(million dollars)						
CCC Receipts from Assessments									
Baseline	55.0	144.7	226.9	257.7	196.3	44.0	0.0	869.6	144.9
MD1010	55.0	142.4	167.5	170.2	171.7	44.3	0.0	696.1	116.0
MD1310-ASSMT	55.0	1,041.4	1,407.9	1,607.4	1,630.4	1,341.5	1,221.8	8,250.4	1,375.1
			(million dollars)						
Diversion payments 2/									
Baseline	NA	NA	NA	NA	NA	NA	NA	NA	NA
MD1010	NA	151	151	151	151	0	0	604.0	100.7
MD1310-ASSMT	NA	215	215	215	215	215	215	1,290.0	215.0
			(million dollars)						
Farm Cash Receipts 2/									
Baseline	17,250	17,250	17,380	17,620	18,020	18,500	18,750	107,520	17,920
MD1010	17,250	17,349	17,416	17,780	18,146	18,500	18,750	107,861	17,977
MD1310-ASSMT	17,250	19,945	20,253	20,674	20,968	21,392	21,637	124,869	20,812
			(million dollars)						
Retail Cost									
Baseline	47,920	48,610	49,190	51,490	54,180	57,230	59,770	320,470	53,412
MD1010	47,920	48,736	49,343	51,707	54,471	57,236	59,783	321,276	53,546
MD1310-ASSMT	47,920	50,537	51,157	53,506	56,114	59,085	61,573	331,972	55,329

KEY: MD, Milk marketing diversion program; ASSMT, Assessment on all milk marketings.
1010 and 1310 equals support levels of $10.10 and $13.10 per cwt.

1/ First assessment: $.05 per cwt. for CY91, $.1125 per cwt., Jan. 92-Dec. 1995.
Second assessment: Amount necessary to reduce purchase cost below cost of purchasing 7 billion pounds.

2/ Farm cash receipts plus diversion or deficiency payments net of assessments.

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X. Regional Impacts of Milk Inventory Management Programs

Study continues on the regional impacts of milk inventory management programs and program options. Additional information will be included in the final report. A preliminary analysis follows.

Overview

A shift in milk production from the traditional dairy areas of the Upper Midwest and Northeast to the West and Southwest began about three decades ago and has accelerated in the last 20 years (Table 7). Given the shift in the location of the U.S. dairy industry, any program requiring the establishment of producer bases could have substantial regional effects. In general, establishing base favors milk producers in regions with stable or declining milk production and adversely affects producers in regions growing in milk production relative to the U.S. average. The magnitude of the overall and regional effects would depend on:

- Whether bases are fixed or periodically adjusted;
- Whether or not the bases are transferable;
- Whether bases are owned by the producer or the government;
- Criteria used in transferring bases if owned by either the government or the producer;
- Numerous other considerations and problems associated with bases.

Experiences with adjustable bases (Class I base plans) in some Federal milk marketing orders in the late 1960's and early 1970's showed that because of the "race for base phenomenon" milk production in markets having these programs tended to expand more rapidly than in the absence of bases. Experience with base programs such as those existing in California, Canada, and the European Community (EC) shows that bases tend to take on substantial value. Once capitalization of base in farm assets becomes a fact, it is very difficult to abandon or modify the program. The tobacco and peanut programs are prime U.S. examples.

Regional Effects

Target Price/Deficiency Payment

Eligibility for payments may require producers to reduce marketings, in which case, individual milk marketing bases would be required. Deficiency payment rates would not be known until the end of the year, but would be the same for all producers. Regional participation may vary greatly since the program is voluntary and all producers receive the same payment rate for given cuts in marketings, regardless of location. This could have an adverse effect on both the fluid and the manufactured dairy processing industries.

The participation in and the effects of target price/deficiency programs would be expected to be greatest in areas of large numbers of farmers or greatest production. Current (1990) regional production shares are shown in Table 8. Participation might be expected to be greatest in the Lake States and the Northeast, followed by the Southwest. A review of the milk diversion program of 1984 (MDP) may provide some insight into participation in a target price/deficiency program. On the basis of farmer sign-up, the Lake States and Prairie were the regions with the largest participation in the MDP; the Western and Southeast regions had the lowest rate. On the basis of milk production diverted, the Lake States and the Prairie also led the rankings but states in the Western regions, the Pacific Northwest and the Southwest moved to third place (California, Washington, and Oregon).

Regional effects of the program will also hinge on the issues related to bases noted in the overview and perceptions of producers (and others) as to "where the surplus problem" exists. The surplus issue can be examined by a study of data on regional percentages of production expansion (or contraction). That data suggests that the Western regions will be under pressure to participate. However, percentage data can be misleading—the data on volume changes is more telling. Many of the states exhibiting large percentage gains produce relatively small quantities of milk.

The regional effects of the base issues can make or break the program. If base is not transferable or is only transferable within regions, a system is established that could prevent movement of milk production to areas of comparative advantage. Production patterns are relatively locked into those in place when the program is implemented. Regions experiencing growth are not likely to favor this type of program.

Re-classification (Class IV)

Regional blend prices follow a general pattern of low to high moving from the Northern and Western regions toward the Southeast (Table 9). The addition of a Class IV category for milk used in manufactured dairy products for export will result in lower blend prices in all regions. Equalizing export costs through a national pool results in regions with small or no export sales subsidizing the sale of exports from regions with large export sales. If there was not a national pool for equalizing export costs, then regions with high blend prices would face greater reductions than those with low blend prices.

Regions expected to benefit are those which have large pools of milk for manufacturing, i.e., those with low fluid utilization rates. As Table 9 indicates, the two North Central regions and the Pacific Northwest have the lowest fluid use, followed by the Mountain and Northeastern regions. The benefits in these regions are tempered somewhat by the fact that some have large groups of Grade B producers who do not gain direct benefits from classified pricing in the first place, notably the Lake States (Table 7). Regions with higher fluid use will likely oppose such a plan.

A major difference between this and the current dairy programs is the addition of the international market to the pricing of U.S. milk production. International buyers of dairy products become the residual market for U.S. producers, not the CCC. Thus, U.S. producers will likely be faced with more price volatility given that international markets are affected by many more "players" and other factors than CCC purchasing policy. States like California and Washington with expanding milk production and substantial capacity for manufacturing butter and nonfat dry milk may be favored by this alternative.

The regional effects of the reclassification program are not dependent on base issues. In effect, this is a mandatory program—producers cannot decide whether to accept or reject the blend price they face, a price which includes an international component.

Two-Tier Pricing

In general, two-tier pricing programs require the establishment of individual producer milk marketing bases and quotas. The quotas vary depending upon estimates of market needs. Producers receive the market price for marketings covered by quota and a separate reduced price for milk marketed in excess of quota. The lower, over-quota price is determined by subtracting an assessment, which may or may not be linked to the international price, from the market price. Since the assessment is the same on all over-quota milk, the effective price received for over-quota marketings will vary by region and by producer.

The base issues are important considerations for the regional implications of the two-tier pricing plan. If the assessment is linked to the international price, the variability of

international prices becomes a factor, although not as directly as in the case of reclassification programs. Farmers in all regions may prefer assessments that determine the second tier price not be linked to the international price.

Milk Marketing Diversion

Eligibility for diversion payments would be similar to the target price/deficiency payment programs, except the payment rate and required reduction are known at the beginning of the year. Thus program costs can be determined with some accuracy. Regional participation rates may vary substantially, which could have an adverse effect on both the fluid and the manufactured dairy processing industries.

The participation in and the effects of diversion programs would be expected to be greatest in areas of large numbers of farmers or greatest production. A review of the milk diversion program of 1984 (MDP) offers a test of that hypothesis. On the basis of farmer sign-up, the Lake States and the Prairie were the regions with the largest participation in the MDP; the Western and Southern regions had the lowest participation rates. The Lake States and the Prairie also led the rankings on the basis of milk diverted but Western regions moved to third place.

The regional effects will also hinge on the issues related to bases noted in the overview and perceptions of producers (and others) as to "where the surplus problem" exists, as in the case of the target price/deficiency program. As with the target price/deficiency program, the Western regions will be under pressure to participate. The regional effects of the base issues can make or break the program, again as with the target price/deficiency program.

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Table 7: New Regional Groupings for the Milk Inventory Management program evaluation

Selected Years	1965	1970	1975	1980	1985	1990	1990 Grade B 1/	Regional Grade B 2/
State and region	Million pounds							percent
Maine	680	619	629	665	673	614	0	
New Hampshire	384	356	336	347	364	303	0	
Vermont	2055	1970	2009	2289	2410	2368	0	
Massachusetts	790	658	601	570	596	461	0	
Rhode Island	108	75	63	47	44	34	0	
Connecticut	713	661	608	612	628	515	0	
New York	11858	10341	9964	10974	11732	11102	0	
New Jersey	1034	730	528	494	487	353	0	
Pennsylvania	7206	7126	7140	8496	9983	9933	99	
Delaware	156	130	127	125	147	122	0	
Maryland	1599	1540	1558	1520	1625	1366	0	
Northeast	25783	24224	23555	26139	28681	27171	99	0.4
Michigan	5328	4602	4411	4970	5568	5233	105	
Wisconsin	18848	18435	18900	22380	24700	24400	4148	
Minnesota	10731	9636	8946	9535	10835	10006	2602	
Iowa	5945	4670	3893	3994	4058	4330	1082	
Lake States	41052	37343	36150	40879	45161	43969	7937	18.1
Ohio	5200	4420	4259	4310	4870	4495	360	
Indiana	2954	2382	2210	2210	2358	2276	228	
Illinois	3844	2850	2446	2540	2721	2820	367	
Prairie	11998	9652	8915	9060	9949	9591	955	10.0
Colorado	832	856	845	858	1105	1323	0	
Montana	378	326	278	314	349	338	7	
Nebraska	1821	1566	1431	1315	1340	1345	350	
North Dakota	1467	1065	917	939	1120	1103	485	
South Dakota	1580	1578	1556	1669	1744	1716	807	
Wyoming	175	140	110	132	134	123	38	
Northern Plains	6253	5531	5137	5227	5792	5948	1687	28.4
Arkansas	722	685	707	740	848	817	25	
Kansas	1749	1740	1392	1330	1285	1245	124	
Missouri	3243	3012	2840	2826	2870	3040	334	
Oklahoma	1314	1250	1060	1110	1183	1245	50	
Ozarks	7028	6687	5999	6006	6186	6347	533	8.4
Virginia	1829	1749	1755	1974	2102	2004	60	
West Virginia	500	374	350	350	382	270	5	
North Carolina	1502	1485	1498	1631	1748	1522	46	
Kentucky	2568	2471	2319	2219	2222	2255	180	
Tennessee	2171	2123	2031	2241	2235	2197	154	
South Carolina	518	512	512	541	576	446	0	
Georgia	991	1182	1221	1367	1300	1440	0	
Florida	1390	1641	1956	2028	2038	2528	0	
Alabama	838	816	686	610	547	526	0	
Mississippi	1136	1049	876	817	876	749	15	
South	13443	13402	13204	13778	14026	13957	460	3.3
Louisiana	1002	1089	1054	1012	911	940	0	
New Mexico	292	304	366	602	1078	1524	0	
Texas	2973	3065	3206	3625	3968	5539	0	
South Central	4267	4458	4626	5239	5957	8003	0	0.0
Arizona	529	585	840	1031	1348	1640	0	
California	8480	9457	10853	13577	16762	20953	419	
Utah	736	819	919	1028	1135	1267	228	
Nevada	134	142	168	219	242	332	0	
Southwest	9879	11003	12780	15855	19487	24192	647	2.7
Washington	1952	2091	2322	2942	3750	4398	0	
Oregon	980	970	990	1169	1438	1611	32	
Idaho	1475	1490	1555	1947	2421	2949	826	
Pacific Northwest	4387	4551	4867	6058	7609	8958	858	9.6
Alaska	21	19	17	13	22	17	0	
Hawaii	149	137	146	152	142	151	0	
Far Away	170	156	163	165	164	168	0	0.0
UNITED STATES	124180	117007	115396	128406	143012	148284	13176	8.9

1/ Grade B milk production.
2/ Grade B production as percent of total regional production.

Table 8: Regional shares of U.S. production 1/

Selected Years	1965	1970	1975	1980	1985	1990	1990 Grade B 2/
Region	Percent of U.S. total						
Northeast	20.7	20.7	20.4	20.4	20.1	18.3	0.8
Lake States	33.1	31.9	31.3	31.8	31.6	29.7	60.2
Prairie	9.7	8.2	7.7	7.1	7.0	6.5	7.2
Northern Plains	5.0	4.7	4.5	4.1	4.1	4.0	12.8
Ozarks	5.7	5.7	5.2	4.7	4.3	4.3	4.0
South	10.8	11.5	11.4	10.7	9.8	9.4	3.5
South Central	3.4	3.8	4.0	4.1	4.2	5.4	0.0
Southwest	8.0	9.4	11.1	12.3	13.6	16.3	4.9
Pacific Northwest	3.5	3.9	4.2	4.7	5.3	6.0	6.5
"Far Away" 3/	0.1	0.1	0.1	0.1	0.1	0.1	0.0
U.S. 4/							8.9

1/ See Table 1 for states included in the regions.
2/ Regional Grade B production as percent of total U.S. Grade B production.
3/ Alaska and Hawaii
4/ 1990 Grade B production as percent of 1990 U.S. total production.

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Table 9: Class I Price, Blend Price, and Class I Utilization by Federal Market Order Regions, 1989 and 1990.

Region	Class I Price 1989 $/cwt	Class I Price 1990 $/cwt	Blend Price 1989 $/cwt	Blend Price 1990 $/cwt	Class I Util. 1989 pct	Class I Util. 1990 pct
North Atlantic	15.09	16.11	13.76	14.22	47.8	47.1
South Atlantic	15.63	16.66	15.17	16.05	85.4	84.7
East North Central	13.76	14.79	12.82	13.26	39.4	33.9
West North Central	13.44	14.45	12.37	12.91	25.9	25.1
East South Central	14.48	15.49	13.99	14.83	77.4	79.5
West South Central	15.12	16.14	14.01	14.49	56.5	53.7
Mountain	14.28	15.31	13.31	13.71	47.4	44.1
Pacific Northwest	13.84	14.87	12.95	13.31	37.5	35.8
All-Market Average	14.51	15.54	13.30	13.78	45.2	42.7

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XI. Rural Impacts of Milk Inventory Management Programs

Study continues on the impacts of milk inventory management programs and program options on the rural economy. Results will be provided in the final report.

XII. Milk Inventory Management Programs and Technological Innovations

Technological advances (broadly defined to include management) likely to affect the dairy industry are not exhausted. Improvements of traditional "physical" technologies, e.g. milking machines and bulk tanks, are likely to generate only marginal output increases or input cost reductions in the future. However, biotechnology and improved management could lead to significant input cost reductions and milk production increases.

Implementing of any one type of inventory management program will not necessarily slow technology development. Lower farm-level production input costs and increased output per cow are results of technological developments that producers generally desire. However, dairy farmers may alter technology adoption plans if it is not possible to realize the full benefits of the technology.

Incentives to adopt new technology or make better use of current technology are reduced under systems which constrain individual producer's supply of milk at a given price. The producer can adopt output-increasing technology only by reducing cow numbers. Fewer cows may imply lower costs, but fixed costs per unit of output do not change unless the physical plant is also reduced. Within the context of a fixed physical plant, fewer cows implies excess capacity, and its efficiency effects, which affect the financial position of the producer.

If the marketing base is transferrable, individual producers are in a position to take advantage of technological advances by obtaining base necessary to cover marketing increases due to technology. However, the capitalized cost of the acquired base needs to be considered by the producer in those cases where base is allowed to take on value. The redistribution of base among producers and or regions is a sensitive issue which would be exacerbated by technology considerations.

Processors gain from technologies that reduce the cost of their input, milk, but face a problem similar to producers. Full realization of cost savings associated with technology tends to foster expanded capacity which cannot be fully utilized since supplies of milk are steady or fixed under supply management type programs with individual producer bases. If milk inventory management programs do slow the shift of milk production from traditional dairy regions to the West and Southwest, then the expansion of the processing industry in those areas would be slowed as well. Capacity in declining milk production areas would be more fully utilized than under more market-oriented systems that allows the shift of milk production to areas of comparative advantage. However, total capacity utilization would be greater under a more market-oriented system because milk production and use would be higher.

XIII. Issues and Problems Associated With Bases and Quotas

Overview

Target price/deficiency programs, the diversion programs, and the two-tier pricing plans generally make reference to establishing producer bases. Base/quota plans are not new to the U.S. dairy industry. Class I base plans and quota systems were considered in some U.S. markets in the 1960's and early 1970's. However, base plans in U.S. markets generally have not been intended as supply control measures, unlike such plans in Canada and the European Community.

A base/quota plan gives producers who supplied a market during some designated period a "right" or "franchise" to continue supplying that market. Two primary uses of base plans are: (1) to affect the distribution of market revenues and (2) to control milk supplies. In order to control supplies, specific provisions must be included for limiting entry of new producers, limiting base revisions, and transferring bases.

Base or quota plans can range from relatively open supply adjustment plans, where producers can earn additional base by producing more than their base, to tightly closed plans where the total base is fixed. In tightly closed plans where base is owned by the producers, producers wishing to expand can obtain additional base only by purchasing it from its current owners or by receiving the base of exiting producers through a reassignment procedure. Such bases immediately have a monetary value.

A fairly closed base or quota system is necessary to an effective supply control plan. The supply control plan must also price milk produced over base or outside of quota low enough to make such production economically infeasible. A closed base plan might have a much different result in a high-cost, deficit region than in a low-cost, surplus region—even though the fundamental operation of the plans is the same.

A shift in milk production from the traditional dairy areas of the Upper Midwest and Northeast to the West and Southwest began about three decades ago and has accelerated in the last 20 years. Given the shift in the location of the U.S. dairy industry and the increasing size of the average dairy farm, any program requiring the establishment of producer bases could have substantial regional, state, and individual farm effects.

In general, establishing base favors milk producers with stable or declining milk production and adversely affects producers increasing milk production relative to the U.S. average. The magnitude of the overall effects on individual producers and on regional effects would depend on:

- Whether bases are fixed or periodically adjusted.

Fixed bases would be more restrictive on milk production expansion by individual producers.

- Whether or not the bases are transferable.

Depending on transfer rules, there is the question of whether bases could be transferred across states and regions to allow for regional adjustment.

- Who "owns" the base, the individual producer or the government.

If the government owns the base, it could limit availability of base to new producers and decide who is eligible to receive base by farm and region. Also if the government owns the base, there would be little likelihood that its value would be capitalized into production costs.

- The criteria used in transferring bases, if owned by either the government or the producer.

Transfer of base could be market-oriented as in Canada where base could likely gravitate to expanding regions and to large efficient producers. Government owned base could be shifted under more restrictive transfer rules.

- The period selected for calculations of bases.

The period would affect individual producers and regions depending on whether they were expanding, stable or contracting milk production.

- Monitoring and enforcement for noncompliance.

Base/quota programs would require substantial resources to enforce complaints.

- Numerous other considerations.

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An example would be addressing the numerous "hardship" cases that are likely to be filed.

Experiences with adjustable bases (Class I base plans) in some Federal milk marketing orders in the late 1960's and early 1970's showed that the "race for base" phenomenon tended to lead to more rapidly expanding milk production in markets having these programs than in markets without the base plan. Analysis of base programs existing in California, Canada, and the European Community shows that bases tend to take on substantial value. Once capitalization of base in farm assets becomes a fact, it is very difficult to abandon or modify the program.

Strict supply management programs that do not allow milk production to shift to areas of comparative advantage raise the overall cost of milk production and will make the U.S. dairy industry less competitive in international markets than a more market-oriented pricing system. This phenomenon has been clearly demonstrated in both Canada and the European Community. Likewise, supply management programs that raise milk and dairy product prices to consumers also make milk and dairy products less competitive with other foods domestically.

Summary

Base or quota plans that allocate a given market among producers can range between the relatively open supply adjustment plans and tightly restricted supply control plans. To control supplies effectively if prices are maintained above market-clearing levels, there must be specific provisions for limiting entry of new producers, limiting base and quota revisions, and transferring bases and quotas.

The California quota plan was designed more as a way of preserving the Class I market for existing producers than as a supply control mechanism. In fact, milk supplies have grown faster in California in recent years than in most areas of the country even though the marginal value of milk is the Class IV (manufacturing milk or overbase) price. The overall impact on the system of California milk supplies is unclear.

In Canada, quotas on fluid and industrial milk deliveries have been reasonably successful in balancing milk supplies and demand, but large direct and indirect costs in the form of capitalized quota values, increased milk production costs, restricted resource adjustments, and income transfers from consumers to producers have been generated. The quota system which has been in effect in the European Community since 1984 has had the same general overall effects.

An important tradeoff occurs between use of supply control provisions that are effective at curtailing market supplies and capitalization of base or quota values. The amount of capitalization is directly related to the extent to which milk prices are supported above levels warranted by supply-demand conditions.

XIV. Self-Help Programs

There are two dimensions to the concept of self-help programs. The first is program administration and the second is program financing.

In terms of program administration, the question of autonomy is significant. Proponents of the self-help approach often note that since producer money pays for the program that producers also should have the authority to manage the program. Such an arrangement would be entirely possible in the setting of (1) no government involvement in the market place (with the exception of purchasing dairy products actually needed for assistance programs) and (2) producers contributing voluntarily to fund programs to enhance their positions.

The Capper-Volstead Act enables producers of agricultural commodities to voluntarily join together to market their products for the purpose of enhancing their income. Under this authority, and without any other government intervention, dairy farmers could join together and manage, without oversight, any of the programs considered in this report.

However, if the industry requires additional government intervention, either in the form of market intercession or legislative authority to enforce the collection of funds from dairy farmers to fund programs, then any industry administration of programs would have to be subject to government oversight.

Any government intercession which increases prices to consumers, by way of establishing minimum prices paid for milk, by enforcing product price discrimination, by purchasing surplus products, or by any other means, is a transfer of money from consumers to dairy farmers. This negates the argument that the industry should manage the program since it is funded with "dairy farmer" money.

Legislative authority compelling dairy farmers to contribute to the funding of programs requires government oversight even if such programs are designed for the sole benefit of dairy farmers. Whether specified of not, such legislation places a fiduciary responsibility upon the government.

Realizing the constraints noted above, the administration of any of the programs considered in this study likely would change little whether administered by the industry, with government oversight, or solely by the government.

The second dimension, program funding, does not clearly define the concept of "self-help," either. The current program requires assessment of producers to fund all costs over those associated with the purchases of 7.0 billion pounds, M.E. (total solids) of surplus dairy products during any year. This program, then, actually fits into the "self-help" concept, however, few of those espousing the self-help concept would advance the current program as a means of self-help. In actuality, each of the assessments on dairy farmers since the first 50-cent assessment of 1983, has been "self-help" in some degree. Without the periodic implementations of such assessments since that time, the dairy program likely would have taken a form that would have provided less benefits to dairy farmers.

XV. Long-Run Implications of Milk Inventory Management Programs

Earlier sections of the report contain discussions that are pertinent to the discussion of long-run effects of the various programs examined. In these cases, the long-run effects are magnified by fuller adjustment as the new policy environment affects investment decisions for land, technology development and adoption, and buildings. The effects would potentially be felt in trade relations, the structure of dairy farms and the dairy processing industry, and the location of milk production and the dairy processing industry.

If the United States adopts a program that leads to artificially higher producer and consumer prices, there would be long-term disadvantages for both producers and consumers. In the case of high consumer prices, there would be an incentive to develop high-quality substitute products to replace dairy products. Higher dairy products prices would lead to further searching for other beverages than milk, other spreads than butter, and so on. An analogous case is the U.S. sugar program, under which the high consumer prices led to development of high fructose corn syrup and low-calorie sweeteners that have severely eroded sugar's share of the U.S. sweetener market.

Programs that raise producer prices artificially ultimately lead to either higher production or supply controls. If production increases when markets are

already oversupplied at existing prices, the transfer to farmers must be paid by either consumers or the federal treasury. If consumers pay, demand will contract, adding further to surplus disposal costs. With prospects for further federal budget tightening in the future, the latter might be unsustainable.

Moreover, supply control (quota or base) arrangements can be problematical on at least two grounds: (1) They usually limit natural developments in regional comparative advantage nationally and internationally (see also the discussion of regional effects), and (2) quota rents become capitalized, leaving younger producers or future owners of quotas no better off and new entrants to the industry much worse off than under current policy. For the first generation, there is a windfall profit when the quotas are allocated. The key is what legal provisions are involved in the transfer of the quotas to future owners. Quotas have effects on farm structure. Small farms would be further disadvantaged by the increased capital requirements needed to grow. The westward and southwestward regional shifts that have been underway for decades would likely slow or stop depending on base and quota transfer rules. Generally high cost dairy operations would be maintained in business at the expense of low cost operations.

XVI. Summary of Analytical Results

Table 10 summarizes the analytical results of the supply and utilization analyses of the four types of milk inventory management programs (12 options) studied in this report. From left to right, this table presents impacts on the milk production industry, consumers and government.

Tables 11 and 12 present summaries of the impacts that might occur if the forecast of supply and demand conditions should be in error under each program option. Table 11 shows the impacts on producers, consumers and Government should an unforeseen event lead to milk marketings in FY 1992 being 2 percent greater than predicted. Table 13 shows similar impacts for milk marketings 2 percent less than predicted.

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Table 10: Summary of 6-year average impacts for programs studied

Program	Production	Effective All Milk Price	Farm Receipts 1/	Commercial use	Retail Value	Retail Cost	CCC Purchases	Government Expenditures
	Billion Pounds	$/Cwt.	Mil. $	Billion Pounds	$/Cwt.	Mil. $	Billion Pounds	Mil. $
Baseline	156.9	11.47	17,920	150.8	35.38	53,412	6.7	522
TP1120-NQ	156.3	9.04	17,253	155.8	32.93	51,388	1.0	3,158
TP1220-Q-PP1010	153.3	11.77	18,152	150.2	35.66	53,644	3.6	489
TP1320-Q	148.9	12.43	18,944	149.2	36.33	54,257	0.3	518
TP1420-Q	146.9	13.46	20,215	147.4	37.36	55,132	0.0	521
RECLASS-1050	157.1	11.54	18,042	150.1	35.71	53,679	1.0	8.9
RECLASS-1050-PPUP	157.1	11.54	18,045	149.6	35.71	53,501	7.9	404.1
RECLASS-1310-PPUP	165.7	13.14	21,653	145.1	38.02	55,239	21.1	1,256.8
TT1010-Q+1+4-ASSMT1000	155.0	11.62	17,927	150.5	35.52	53,526	5.0	361.7
TT1310-Q+0+4-ASSMT1000	147.6	14.92	21,853	144.1	38.82	55,986	4.0	364.9
TT1310-Q+0-LGAP	153.8	14.52	22,188	145.4	38.42	55,903	9.0	499.2
MD1010	154.9	11.65	17,977	150.5	35.54	53,546	4.9	472.1
MD1310-ASSMT	160.2	12.93	20,812	146.9	37.62	55,329	13.8	500.2

KEY: TP, Target price/deficiency payment program, 1120, 1220, 1320, and 1420 are equal to target prices of $11.20, $12.20, $13.20, and $14.20 per cwt. PP1010 signifies a milk purchase price level of $10.10 per cwt. NQ signifies no quota required, Q signifies quota required.

RECLASS, Reclassification (Class IV) program; PPUP, Purchase Program at international price of $6.60 per cwt.; 1050 and 1310, minimum domestic prices of $10.50, or $13.30 per cwt.

TT, Two-tier pricing program; Q+x+x, Quota equals commercial use, plus FMS,plus CCC surplus.
ASSMT1000, Second tier assessment of $10.00 per cwt.
GAP, Second tier assessment equal to the support price minus the international price.
LGAP, Second tier assessment set at level to equalize Gov't cost with baseline.
1010 and 1310 equals first tier support levels of $10.10 and $13.10 per cwt.

MD, Milk marketing diversion program; ASSMT, Assessment on all milk marketings.
1010 and 1310 equals support levels of $10.10 and $13.10 per cwt.

1/ Farm cash receipts plus diversion or deficiency payments net of assessments.

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Table 11: Summary table of the impacts of an unforeseen, additional (2-percent) increase in milk production in FY 1992 on programs in the study

Program 1/	Milk Production	Effective All Milk Price	Farm Receipts 2/	Commercial Use	Retail Value	Retail Cost	CCC Purchases	Government Expenditures
	(Bil. lb.)	(Dol./cwt.)	(Mil. dol.)	(Bil. lbs.)	(Dol./cwt.)	(Mil. dol.)	(Bil. lbs.)	(Mil. dol.)
TP1120-NQ	3.0	-1.42	337	3.0	-1.41	-1,238	0	2,202.1
TP1220-Q-PP1010	2.8	- .21	179	0.4	- .21	- 365	2.4	383.9
TP1320-Q	2.2	-1.18	-283	2.2	-1.17	- 931	0	1,123.6
TP1420-Q	2.5	-1.31	2	2.5	-1.32	-1,007	0	1,520.6
RECLASS-1050	3.2	- .16	107	0	0	0	0	-3.1
RECLASS-1050-PPWP	3.0	- .10	197	0	0	0	3.0	191.1
RECLASS-1310-PPWP	3.1	- .14	207	0	0	0	3.1	200.9
TT1010-Q+1+4-ASSMT1000	3.2	- .10	221	0.2	- .10	- 81	3.0	-3.1
TT1310-Q+0+4-ASSMT1000	3.2	- .20	198	0.4	- .20	- 138	2.8	-3.2
TT1310-Q+0-LGAP	3.0	- .21	121	0.4	- .21	- 150	2.6	178.2
MD1010	2.9	- .21	34	0.4	- .21	- 171	2.6	239.8
MD1310-ASSMT	2.9	- .21	207	0.2	- .21	- 81	2.6	291.9

1/ TP = target price/deficiency payment program. 1120, 1220, and 1420 = target price. PP1010 = milk purchase price level of $10.10 per cwt. NQ = no quota required. Q = quota required.

RECLASS = reclassification (Class IV) program. PPWP = purchase program at international price of $6.60 per cwt. 1050 and 1310 = minimum domestic price of $10.50 or $13.10 per cwt.

TT = two-tier pricing program. Q+x+x = quota equal to commercial use plus FNS plus CCC surplus. ASSMT1000 = second tier assessment of $10.00 per cwt. GAP = second tier assessment equal to support price minus the international price. LGAP = second tier assessment set at a level to equalize Government cost with baseline. 1010 and 1310 = first tier support levels of $10.10 and $13.10 per cwt.

MD = milk marketing diversion program. ASSMT = Assessment on milk marketings. 1010 and 1310 = support levels of $10.10 and $13.10 per cwt.

2/ Farm cash + diversion payments net of assessments.

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Table 12: Summary table of the impacts of an unforeseen, additional (2-percent) decrease in milk production in FY 1992 on programs in the study

Program 1/	Milk Production	Effective All Milk Price	Farm Receipts 2/	Commercial Use	Retail Value	Retail Cost	CCC Purchases	Government Expenditures
	(Bil. lb.)	(Dol./cwt.)	(Mil. dol.)	(Bil. lbs.)	(Dol./cwt.)	(Mil. dol.)	(Bil. lbs.)	(Mil. dol.)
TP1120-NQ	-3.0	1.47	- 337	-3.0	1.47	1,236	0	-2,200.2
TP1220-Q-PP1010	-3.0	.21	- 212	-0.5	.21	304	-2.5	- 400.9
TP1320-Q	-2.9	1.51	1,119	-2.9	1.51	1,137	0	- 610.9
TP1420-Q	-2.8	1.49	1,007	-2.8	1.49	1,064	0	- 636.7
RECLASS-1050	-3.0	.15	- 142	-3.0	0	0	0	2.9
RECLASS-1050-PPWP	-2.9	.10	- 197	0	0	0	-3.0	- 191.2
RECLASS-1310-PPWP	-3.2	.14	- 207	0	0	0	-3.2	- 200.9
TT1010-Q+1+4-ASSMT1000	-3.1	.10	- 227	-0.2	.10	81	-3.0	- 274.5
TT1310-Q+0+4-ASSMT1000	-3.2	.20	- 207	-0.4	.20	137	-2.8	- 330.1
TT1310-Q+0-LGAP	-2.9	.20	- 148	-0.4	.20	141	-2.6	- 179.5
MD1010	-3.0	.20	- 61	-0.4	.20	162	-2.6	- 241.6
MD1310-ASSMT	-2.7	.20	- 61	-0.4	.20	147	-2.3	- 255.5

1/ TP = target price/deficiency payment program. 1120, 1220, and 1420 = target price. PP1010 = milk purchase price level of $10.10 per cwt. NQ = no quota required. Q = quota required.

RECLASS = reclassification (Class IV) program. PPWP = purchase program at international price of $6.60 per cwt. 1050 and 1310 = minimum domestic price of $10.50 or $13.10 per cwt.

TT = two-tier pricing program. Q+x+x = quota equal to commercial use plus FNS plus CCC surplus. ASSMT1000 = second tier assessment of $10.00 per cwt. GAP = second tier assessment equal to support price minus the international price. LGAP = second tier assessment set at a level to equalize Government cost with baseline. 1010 and 1310 = first tier support levels of $10.10 and $13.10 per cwt.

MD = milk marketing diversion program. ASSMT = Assessment on milk marketings. 1010 and 1310 = support levels of $10.10 and $13.10 per cwt.

2/ Farm cash + diversion payments net of assessments.

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Appendix A—Analyses of Additional Target Price-Deficiency Payment Options

Several additional target price-deficiency payment options were analyzed beyond those presented in this study. The following table summarizes some of the information from these options. The table indicates target price-deficiency options that yield the same budgetary cost (average of $0.5 billion for FY1992–97) as the baseline used in this study.

Given a particular target price and purchase program the table indicates the assessment level, portion of marketings receiving payments, or voluntary reduction below baseline marketings by program participants that is required for the program to be budget neutral relative to the baseline. The assessment is assumed to apply to all marketings and all producers. The portion of marketings eligible for payments also applies to all producers, while the voluntary reduction would apply only to those participating and eligible for deficiency payments.

Let's assume the target price is set at $13.00 per hundredweight and the support price is $9.60 per hundredweight. There are at least three ways in which this program can be made to be budget neutral relative to the baseline. First, all producers could pay on average an annual $1.71 per hundredweight assessment. Second, they could receive payments on 23 percent of marketings and pay the budget reduction assessment which averages $0.08 per hundredweight per year. Third, participants would be required to reduce marketings below baseline levels by 7–10 percent each year and all producers would pay the budget reduction assessment averaging $0.08 per hundredweight per year.

Target price-deficiency payment programs that would require participants to voluntarily reduce marketings raise market prices. By raising market prices, budget exposure is reduced. Higher market prices would raise farm income, but leave consumers worse off. The extent to which market prices are increased depends on many highly uncertain factors since such a program is new to dairy. Therefore, a range for the reduction requirement is presented in the table.

Target price-deficiency payment programs that solely rely on assessments or payments on a portion of marketings cannot raise farm income while at the same time being budget neutral relative to the baseline. For example, one could moderately reduce the support price and use the savings for deficiency payments. However, the reduction in the support price would lower market prices to the extent that any budgetary savings would be less than the loss in farm income. Thus, because of the drop in market prices, farmers would be worse off even though dairy program outlays would be unchanged.

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Budget neutral target price options for milk, FY 1992-97 1/

Target Price $/Cwt.	Assessment $/Cwt.	Reduction Requirement Percent	Marketings Eligible for Payment Percent	Total Outlays Bil. $	Gross Income Bil. $
Purchases of 1.0 billion pounds					
11.20	.47	0	100	.5	16.4
11.60	.87	0	100	.5	16.4
13.00	2.27	0	100	.5	16.4
14.20	3.47	0	100	.5	16.4
11.20	.08	0	77	.5	16.8
11.60	.08	0	44	.5	16.8
13.00	.08	0	27	.5	16.8
14.20	.08	0	12	.5	16.8
11.20	.08	1	100	.5	16.8
11.60	.08	2	100	.5	17.2
13.00	.08	7-10	100	.5	18.9
14.20	.08	15-20	100	.5	19.9
$9.10 CCC Purchase Price					
11.20	.08	0	100	.5	17.1
11.60	.49	0	100	.5	17.1
13.00	1.89	0	100	.5	17.1
14.20	3.09	0	100	.5	17.1
11.20	.08	0	100	.5	17.1
11.60	.08	0	50	.5	17.2
13.00	.08	0	25	.5	17.2
14.20	.08	0	9	.5	17.2
11.20	.08	0	100	.5	17.1
11.60	.08	1	100	.5	17.4
13.00	.08	7-10	100	.5	18.9
14.20	.08	15-20	100	.5	19.9
$9.60 CCC Purchase Price					
11.35	.08	0	100	.5	17.5
11.60	.31	0	100	.5	17.5
13.00	1.71	0	100	.5	17.5
14.20	2.91	0	100	.5	17.5
11.20	.08	0	103	.5	17.5
11.60	.08	0	45	.5	17.6
13.00	.08	0	23	.5	17.6
14.20	.08	0	5	.5	17.6
11.20	.08	0	103	.5	17.5
11.60	.08	1	100	.5	17.7

13.00	.08	7-10	100	.5	18.9
14.20	.08	15-20	100	.5	19.9

Budget neutral target price options for milk, FY 1992-97 1/

Target Price $/Cwt.	Assessment $/Cwt.	Reduction Requirement Percent	Marketings Eligible for Payment Percent	Total Outlays Bil. $	Gross Income Bil. $
$10.10 CCC Purchase Price					
11.45	.09	0	100	.5	17.9
11.60	.15	0	100	.5	17.9
13.00	1.53	0	100	.5	17.9
14.20	2.73	0	100	.5	17.9
11.45	.09	0	0	.5	17.9
11.60	.09	0	0	.5	17.9
13.00	.09	0	0	.5	17.9
14.20	.09	0	0	.5	17.9
11.45	.09	0	100	.5	17.9
11.60	.08	1	100	.5	18.1
13.00	.08	7-10	100	.5	18.9
14.20	.08	15-20	100	.5	19.9

1/Numbers in table denote averages for FY 1992-97.

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APPENDIX B—INDIVIDUAL SUPPLY AND UTILIZATION TABLES FOR OPTIONS STUDIED

Table B.1: Target price/deficiency, no quota required, target price at $11.20 per cwt. TP1120-NQ

	Units	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97
Milk Cows	Thous.	10,081	9,967	9,879	9,776	9,670	9,548	9,477
Milk Per Cow	Pounds	14,880	15,140	15,540	16,020	16,340	16,655	16,880
Milk production	Bil.lb.	150.0	150.9	153.5	156.6	158.0	159.0	160.0
Farm use	Bil.lb.	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Marketings	Bil.lb.	147.9	148.8	151.4	154.5	155.9	156.9	157.9
Beginning commercial stocks	Bil.lb.	5.1	5.3	5.3	5.3	5.3	5.3	5.3
Imports	Bil.lb.	2.6	2.6	2.6	2.6	2.6	2.6	2.6
Commercial supply	Bil.lb.	155.6	156.7	159.3	162.4	163.8	164.8	165.8
Commercial Use	Bil.lb.	140.5	145.6	147.4	150.0	152.7	155.8	157.5
Surplus purchased by consumers	Bil.lb.	N/A	4.8	5.6	6.1	4.8	2.7	2.0
Ending commercial stocks	Bil.lb.	5.3	5.3	5.3	5.3	5.3	5.3	5.3
Total utilization	Bil.lb.	145.8	155.7	158.3	161.4	162.8	163.8	164.8
Net Removals	Bil.lb.	9.8	1.0	1.0	1.0	1.0	1.0	1.0
Government purchases	Mil.$	1049.0	90.1	86.6	84.9	91.3	101.2	104.9
Outlays	Mil.$	916.0	74.2	73.1	71.4	77.9	84.2	85.7
Deductions	Mil.$	55.5	144.2	170.3	173.8	175.4	44.1	0.0
Deficiency payments	Mil.$	0.0	3551.4	4144.1	4497.6	3536.5	2006.5	1443.2
Buyout payments	Mil.$	100.0	11.0	0.0	0.0	0.0	0.0	0.0
Net government costs	Mil.$	960.5	3492.5	4046.9	4395.2	3439.1	2046.6	1528.9
Prices								
Target Price	$US/cwt	11.60	11.20	11.20	11.20	11.20	11.20	11.20
All milk price to plants	$US/cwt	11.60	8.81	8.46	8.29	8.93	9.92	10.29
All milk price to producers	$US/cwt	11.56	8.72	8.35	8.18	8.82	9.89	10.29
Deficiency payment	$US/cwt	N/A	2.39	2.74	2.91	2.27	1.28	0.91
Net Milk Receipts	Mil.$	17,190	13,063	12,739	12,731	13,847	15,624	16,337
Total deficiency payment	Mil.$	N/A	3,551	4,144	4,498	3,537	2,007	1,443
Farm Cash Receipts *	Mil.$	17,190	16,614	16,883	17,228	17,384	17,630	17,780
Margin	$/cwt	22.50	22.00	22.00	23.00	24.10	25.30	26.50
Retail Value	$/cwt	34.10	30.81	30.46	31.29	33.03	35.22	36.79
Retail Cost	Mil.$	47,911	46,343	46,615	48,847	52,027	55,836	58,662

* Farm cash receipts plus deficiency payments net of assessments.

Table B.2: Target price/deficiency, required reductions by participants, target price at $12.20 per cwt, purchase program at $10.10 per cwt. TP1220-0-PP1010

	Units	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97
Milk Cows	Thous.	10,081	9,741	9,635	9,513	9,470	9,426	9,381
Milk Per Cow	Pounds	14,880	15,140	15,540	16,020	16,340	16,655	16,880
Milk production	Bil.lb.	150.0	147.5	149.7	152.4	154.7	157.0	158.3
Farm use	Bil.lb.	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Marketings	Bil.lb.	147.9	145.4	147.6	150.3	152.6	154.9	156.2
Beginning commercial stocks	Bil.lb.	5.1	5.3	5.3	5.3	5.3	5.3	5.3
Imports	Bil.lb.	2.6	2.6	2.6	2.6	2.6	2.6	2.6
Commercial supply	Bil.lb.	155.6	153.3	155.5	158.2	160.5	162.8	164.1
Commercial Use	Bil.lb.	140.5	143.7	145.5	148.0	150.7	153.8	155.5
Surplus purchased by consumers	Bil.lb.	N/A	0.7	0.7	0.8	0.7	0.6	0.6
Ending commercial stocks	Bil.lb.	5.3	5.3	5.3	5.3	5.3	5.3	5.3
Total utilization	Bil.lb.	145.8	149.7	151.5	154.1	156.7	159.7	161.4
Net Removals	Bil.lb.	9.8	3.6	4.0	4.1	3.8	3.0	2.8
Government Purchases	Mil.$	1049.0	413.9	458.3	467.8	432.9	344.0	313.9
Outlays	Mil.$	916.0	340.8	386.8	393.6	369.5	286.3	256.5
Deductions	Mil.$	55.5	140.9	166.1	169.1	171.7	43.5	0.0
Deficiency payments	Mil.$	0.0	280.0	275.6	283.2	274.0	238.9	227.3
Buyout payments	Mil.$	100.0	11.0	0.0	0.0	0.0	0.0	0.0
Net government costs	Mil.$	960.0	490.9	496.3	507.7	471.8	481.7	483.8
Prices								
Target Price	$US/cwt	11.60	12.20	12.20	12.20	12.20	12.20	12.20
All milk price to plants	$US/cwt	11.60	11.84	11.81	11.81	11.83	11.88	11.90
All milk price to producers	$US/cwt	11.56	11.74	11.70	11.69	11.72	11.86	11.90
Deficiency payment	$US/cwt	N/A	0.36	0.39	0.39	0.37	0.32	0.30
Net Milk Receipts	Mil.$	17,190	17,165	17,365	17,671	17,980	18,456	18,696
Total deficiency payment	Mil.$	N/A	280	276	283	274	239	227
Farm Cash Receipts *	Mil.$	17,190	17,444	17,640	17,954	18,254	18,695	18,924
Margin	$/cwt	22.50	22.00	22.00	23.00	24.10	25.30	26.50
Retail Value	$/cwt	34.10	33.84	33.81	34.81	35.93	37.18	38.40
Retail Cost	Mil.$	47,911	48,850	49,435	51,793	54,414	57,425	59,945
Assumed percentage participating			55	50	50	50	50	50
Percent reduction in base required for payment			2.2	1.7	0.5	-1.9	-4.5	-5.8

* Farm cash receipts plus deficiency payment net of assessment.

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Table 8.3: Target price/deficiency, required reductions by participants, target price at $13.20 per cwt. TP1320-8

	Units	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97
Milk Cows	Thous.	10,081	9,445	9,326	9,217	9,196	9,191	9,159
Milk Per Cow	Pounds	14,880	15,140	15,540	16,020	16,340	16,655	16,880
Milk production	Bil.lb.	150.0	143.0	144.9	147.6	150.3	153.1	154.6
Farm use	Bil.lb.	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Marketings	Bil.lb.	147.9	140.9	142.8	145.5	148.2	151.0	152.5
Beginning commercial stocks	Bil.lb.	5.1	5.3	5.3	5.3	5.3	5.3	5.3
Imports	Bil.lb.	2.6	2.6	2.6	2.6	2.6	2.6	2.6
Commercial supply	Bil.lb.	155.6	148.8	150.7	153.4	156.1	158.9	160.4
Commercial Use	Bil.lb.	140.5	142.0	143.5	146.1	148.7	151.8	153.5
Surplus purchased by consumers	Bil.lb.	N/A	1.2	1.6	1.8	1.8	1.5	1.4
Ending commercial stocks	Bil.lb.	5.3	5.3	5.3	5.3	5.3	5.3	5.3
Total utilization	Bil.lb.	145.8	148.5	150.5	153.2	155.8	158.6	160.2
Net Removals	Bil.lb.	9.8	0.3	0.3	0.3	0.3	0.3	0.3
Government Purchases	Mil.$	1049.0	28.5	28.5	28.5	28.5	28.5	28.5
Outlays	Mil.$	916.0	31.4	31.4	31.4	31.4	31.4	31.4
Deductions	Mil.$	55.5	136.5	160.7	163.7	166.7	42.4	0.0
Deficiency payments	Mil.$	0.0	613.7	636.4	658.1	638.9	547.4	484.0
Buyout payments	Mil.$	100.0	11.0	0.0	0.0	0.0	0.0	0.0
Net government costs	Mil.$	960.0	519.5	507.1	525.7	503.5	536.3	515.4
Prices								
Target Price	$US/cwt	11.60	13.20	13.20	13.20	13.20	13.20	13.20
All milk price to plants	$US/cwt	11.60	12.56	12.48	12.39	12.43	12.56	12.64
All milk price to producers	$US/cwt	11.56	12.46	12.37	12.28	12.32	12.53	12.64
Deficiency payment	$US/cwt	N/A	0.64	0.72	0.81	0.77	0.64	0.56
Net Milk Receipts	Mil.$	17,190	17,644	17,750	17,964	18,342	19,012	19,371
Total deficiency payment	Mil.$	N/A	614	636	658	639	547	484
Farm Cash Receipts *	Mil.$	17,190	18,258	18,386	18,622	18,981	19,560	19,855
Margin **	$/cwt	22.50	22.00	22.00	23.00	24.10	25.30	26.50
Retail Value	$/cwt	34.10	34.56	34.48	35.39	36.53	37.86	39.14
Retail Cost	Mil.$	47,911	49,503	50,052	52,344	54,980	58,049	60,611
Assumed percentage participating			70	65	60	60	60	60
Percent reduction in base required for payment			5.9	6.4	6.3	4.5	1.9	0.7

* Farm cash receipts plus deficiency payment net of assessments.
** The margin with large changes in consumer prices underestimates the total cost to the processing sector.

Table 8.4: Target price/deficiency, required reductions by participants, target price at $14.20 per cwt. TP1420-8

	Units	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97
Milk Cows	Thous.	10,081	9,309	9,196	9,088	9,078	9,068	9,040
Milk Per Cow	Pounds	14,880	15,140	15,540	16,020	16,340	16,655	16,880
Milk production	Bil.lb.	150.0	140.9	142.9	145.6	148.3	151.0	152.6
Farm use	Bil.lb.	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Marketings	Bil.lb.	147.9	138.8	140.8	143.5	146.2	148.9	150.5
Beginning commercial stocks	Bil.lb.	5.1	5.3	5.3	5.3	5.3	5.3	5.3
Imports	Bil.lb.	2.6	2.6	2.6	2.6	2.6	2.6	2.6
Commercial supply	Bil.lb.	155.6	146.7	148.7	151.4	154.1	156.8	158.4
Commercial Use	Bil.lb.	140.5	140.4	142.1	144.6	147.3	150.3	152.0
Surplus purchased by consumers	Bil.lb.	N/A	1.0	1.3	1.5	1.6	1.2	1.1
Ending commercial stocks	Bil.lb.	5.3	5.3	5.3	5.3	5.3	5.3	5.3
Total utilization	Bil.lb.	145.8	146.7	148.7	151.4	154.1	156.8	158.4
Net Removals	Bil.lb.	9.8	0.0	0.0	0.0	0.0	0.0	0.0
Government Purchases	Mil.$	1049.0	0.0	0.0	0.0	0.0	0.0	0.0
Outlays	Mil.$	916.0	0.0	0.0	0.0	0.0	0.0	0.0
Deductions	Mil.$	55.5	134.5	158.4	161.4	164.5	41.8	0.0
Deficiency payments	Mil.$	0.0	639.5	678.5	708.6	694.5	545.5	506.3
Buyout payments	Mil.$	100.0	11.0	0.0	0.0	0.0	0.0	0.0
Net government costs	Mil.$	960.0	515.9	520.1	547.2	530.0	503.7	506.3
Prices								
Target Price	$US/cwt	11.60	14.20	14.20	14.20	14.20	14.20	14.20
All milk price to plants	$US/cwt	11.60	13.65	13.53	13.46	13.40	13.59	13.64
All milk price to producers	$US/cwt	11.56	13.55	13.41	13.33	13.29	13.56	13.64
Deficiency payment	$US/cwt	N/A	0.55	0.67	0.76	0.80	0.61	0.56
Net Milk Receipts	Mil.$	17,190	18,901	18,975	19,216	19,322	20,285	20,619
Total deficiency payment	Mil.$	N/A	639	678	709	695	546	506
Farm Cash Receipts *	Mil.$	17,190	19,540	19,654	19,924	20,217	20,830	21,125
Margin **	$/cwt	22.50	22.00	22.00	23.00	24.10	25.30	26.50
Retail Value	$/cwt	34.10	35.65	35.53	36.44	37.50	38.89	40.14
Retail Cost	Mil.$	47,911	50,420	50,947	53,237	55,813	58,923	61,451
Assumed percentage participating			85	75	70	65	65	65
Percent reduction in base required for payment			6.0	7.4	7.8	7.9	5.6	4.4

* Farm cash receipts plus deficiency payment net of assessments.
** The margin with large changes in consumer prices underestimates the total cost to the processing sector.

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Table 8.5: Reclassification (Class IV), $10.50 Class III minimum price — RECLASS-1050

	Units	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97
Milk cows	Thous.	10,081	9,996	9,901	9,797	9,709	9,621	9,560
Milk per cow	Pounds	14,880	15,140	15,540	16,020	16,340	16,655	16,880
Milk production	Bil.lb.	150.0	151.3	153.9	157.0	158.6	160.2	161.4
Farm use	Bil.lb.	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Marketings	Bil.lb.	147.9	149.2	151.8	154.9	156.5	158.1	159.3
Beginning commercial stocks	Bil.lb.	5.1	5.3	5.3	5.3	5.3	5.3	5.3
Imports	Bil.lb.	2.6	2.6	2.6	2.6	2.6	2.6	2.6
Commercial supply	Bil.lb.	155.6	157.1	159.7	162.8	164.4	166.0	167.2
Commercial use	Bil.lb.	140.5	144.4	146.3	148.9	151.3	154.1	155.7
Exportable surplus	Bil.lb.		6.4	7.0	7.5	6.8	5.6	5.2
Ending commercial stocks	Bil.lb.	5.3	5.3	5.3	5.3	5.3	5.3	5.3
Total utilization	Bil.lb.	145.8	156.1	158.7	161.8	163.4	165.0	166.2
Net removals	Bil.lb.	9.8	1.0	1.0	1.0	1.0	1.0	1.0
Government purchases	Mil.$	1049.0	114.0	114.0	114.0	114.0	114.0	114.0
Outlays	Mil.$	916.0	125.4	125.4	125.4	125.4	125.4	125.4
Deductions	Mil.$	55.5	144.6	170.7	174.2	176.1	44.4	0.0
Diversion payments	Mil.$	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Buyout payments	Mil.$	100.0	11.0	0.0	0.0	0.0	0.0	0.0
Net government costs	Mil.$	960.0	-8.2	-45.3	-48.8	-50.7	81.0	125.4
Prices								
All milk price to plants	$US/cwt	11.60	11.80	11.75	11.75	11.90	12.05	12.10
Effective all milk price	$US/cwt	11.56	11.42	11.33	11.31	11.49	11.79	11.88
International price	$US/cwt	6.60	5.32	5.19	5.02	5.16	5.40	5.48
Farm cash receipts *	Mil.$	17,250	17,200	17,352	17,668	18,148	18,792	19,089
Margin	$/cwt	22.50	22.00	22.00	23.00	24.10	25.30	26.50
Retail value	$/cwt	34.10	33.80	33.75	34.75	36.00	37.35	38.60
Retail cost	Mil.$	47,920	48,817	49,383	51,747	54,471	57,557	60,099

* Farm cash receipts equal milk receipts net of assessments.

Table 8.6: Reclassification (Class IV), $10.50 Class III minimum price, purchase program at world price — RECLASS-1050-PPWP

	Units	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97
Milk cows	Thous.	10,081	9,997	9,903	9,800	9,710	9,619	9,558
Milk per cow	Pounds	14,880	15,140	15,540	16,020	16,340	16,655	16,880
Milk production	Bil.lb.	150.0	151.3	153.9	157.0	158.7	160.2	161.3
Farm use	Bil.lb.	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Marketings	Bil.lb.	147.9	149.2	151.8	154.9	156.6	158.1	159.2
Beginning commercial stocks	Bil.lb.	5.1	5.3	5.3	5.3	5.3	5.3	5.3
Imports	Bil.lb.	2.6	2.6	2.6	2.6	2.6	2.6	2.6
Commercial supply	Bil.lb.	155.6	157.1	159.7	162.8	164.5	166.0	167.1
Commercial use	Bil.lb.	140.5	143.9	145.8	148.4	150.8	153.6	155.2
Ending commercial stocks	Bil.lb.	5.3	5.3	5.3	5.3	5.3	5.3	5.3
Total utilization	Bil.lb.	145.8	149.2	151.1	153.7	156.1	158.9	160.5
Net removals	Bil.lb.	9.8	7.9	8.6	9.1	8.3	7.1	6.6
Government purchases	Mil.$	1,049.0	625.6	677.2	708.5	651.1	554.4	518.4
Outlays	Mil.$	916.0	515.1	571.5	596.2	555.7	461.4	423.6
Deductions	Mil.$	55.5	144.6	170.8	174.3	176.1	44.4	0.0
Diversion payments	Mil.$	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Buyout payments	Mil.$	100.0	11.0	0.0	0.0	0.0	0.0	0.0
Net government costs	Mil.$	960.0	381.5	400.8	422.0	379.6	417.0	423.6
Prices								
All milk price to plants	$US/cwt	11.60	11.80	11.75	11.75	11.90	12.05	12.10
Effective all milk price	$US/cwt	11.56	11.43	11.35	11.33	11.50	11.77	11.87
International price	$US/cwt	6.60	6.60	6.60	6.50	6.50	6.50	6.50
Farm cash receipts	Mil.$	17,250	17,204	17,375	17,704	18,160	18,771	19,056
Margin	$/cwt	22.50	22.00	22.00	23.00	24.10	25.30	26.50
Retail value	$/cwt	34.10	33.80	33.75	34.75	36.00	37.35	38.60
Retail cost	Mil.$	47,920	48,648	49,215	51,573	54,291	57,370	59,906

* Farm cash receipts equal milk receipts net of assessments.

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Table 8.7: Reclassification (Class IV), $13.10 Class III minimum price, purchase program at world price — RECLASS-1310-PPWP

	Units	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97
Milk cows	Thous.	10,081	10,242	10,364	10,388	10,369	10,243	10,166
Milk per cow	Pounds	14,880	15,140	15,540	16,020	16,340	16,655	16,880
Milk production	Bil.lb.	150.0	155.1	161.1	166.4	169.4	170.6	171.6
Farm use	Bil.lb.	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Marketings	Bil.lb.	147.9	153.0	159.0	164.3	167.3	168.5	169.5
Beginning commercial stocks	Bil.lb.	5.1	5.3	5.3	5.3	5.3	5.3	5.3
Imports	Bil.lb.	2.6	2.6	2.6	2.6	2.6	2.6	2.6
Commercial supply	Bil.lb.	155.6	160.9	166.9	172.2	175.2	176.4	177.4
Commercial use	Bil.lb.	140.5	139.4	141.1	143.6	146.3	149.3	151.0
Ending commercial stocks	Bil.lb.	5.3	5.3	5.3	5.3	5.3	5.3	5.3
Total utilization	Bil.lb.	145.8	144.7	146.4	148.9	151.6	154.6	156.3
Net removals	Bil.lb.	9.8	16.2	20.4	23.3	23.7	21.8	21.1
Government purchases	Mil.$	1,049.0	1,275.9	1,614.1	1,818.0	1,845.0	1,698.9	1,647.1
Outlays	Mil.$	916.0	1,050.5	1,362.3	1,529.9	1,574.8	1,413.8	1,346.1
Deductions	Mil.$	55.5	148.2	178.8	184.9	188.2	47.3	0.0
Diversion payments	Mil.$	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Buyout payments	Mil.$	100.0	11.0	0.0	0.0	0.0	0.0	0.0
Net government costs	Mil.$	960.0	913.2	1,183.5	1,345.0	1,386.6	1,366.5	1,346.1
Prices								
All milk price to plants	$US/cwt	11.60	14.20	14.20	14.20	14.20	14.20	14.20
Effective all milk price	$US/cwt	11.56	13.30	13.11	13.00	13.00	13.18	13.24
International price	$US/cwt	6.60	6.60	6.60	6.50	6.50	6.50	6.50
Farm cash receipts *	Mil.$	17,250	20,498	21,000	21,518	21,918	22,370	22,613
Margin **	$/cwt	22.50	22.00	22.00	23.00	24.10	25.30	26.50
Retail value	$/cwt	34.10	36.20	36.20	37.20	38.30	39.50	40.70
Retail cost	Mil.$	47,920	50,468	51,089	53,424	56,021	58,979	61,458

* Farm cash receipts equal milk receipts net of assessments.
** The margin with large changes in consumer prices underestimates the cost to the processing sector.

Table 8.8: Two-tier pricing program, $10.10 per cwt support program, $10.00 per cwt assessment on over-quota milk, net removals at 5 billion pounds, N.E. — TT1010-0-144-ASSM:1000

	Units	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97
Milk cows	Thous.	10,081	9,849	9,712	9,582	9,560	9,565	9,538
Milk per cow	Pounds	14,880	15,140	15,540	16,020	16,340	16,655	16,880
Milk production	Bil.lb.	150.0	149.1	150.9	153.5	156.2	159.3	161.0
Farm use	Bil.lb.	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Marketings	Bil.lb.	147.9	147.0	148.8	151.4	154.1	157.2	158.9
Beginning commercial stocks	Bil.lb.	5.1	5.3	5.3	5.3	5.3	5.3	5.3
Imports	Bil.lb.	2.6	2.6	2.6	2.6	2.6	2.6	2.6
Commercial supply	Bil.lb.	155.6	154.9	156.7	159.3	162.0	165.1	166.8
Commercial use	Bil.lb.	140.5	144.6	146.4	149.0	151.7	154.8	156.5
Ending commercial stocks	Bil.lb.	5.3	5.3	5.3	5.3	5.3	5.3	5.3
Total utilization	Bil.lb.	145.8	149.9	151.7	154.3	157.0	160.1	161.8
Milk marketing quota	Bil.lb.	NA	147.0	148.8	151.4	154.1	157.2	158.9
Over-quota marketings	Bil.lb.	NA	0.0	0.0	0.0	0.0	0.0	0.0
Net removals	Bil.lb.	9.8	5.0	5.0	5.0	5.0	5.0	5.0
Government purchases	Mil.$	1,049.0	570.0	570.0	570.0	570.0	570.0	570.0
Outlays	Mil.$	916.0	465.8	469.3	481.1	479.7	486.5	474.4
Deductions	Mil.$	55.5	142.5	167.4	170.3	173.4	44.2	0.0
Over-quota milk assessments	Mil.$	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Buyout payments	Mil.$	100.0	11.0	0.0	0.0	0.0	0.0	0.0
Net government costs	Mil.$	960.0	334.4	301.9	310.7	306.3	442.4	474.4
Prices								
All milk price to plants	$US/cwt	11.60	11.70	11.70	11.70	11.70	11.70	11.70
Effective all milk price	$US/cwt	11.54	11.60	11.59	11.59	11.59	11.67	11.70
Farm cash receipts *	Mil.$	17,249	17,206	17,393	17,696	18,011	18,505	18,750
Margin	$/cwt	22.50	22.00	22.00	23.00	24.10	25.30	26.50
Retail value	$/cwt	34.10	33.70	33.70	34.70	35.80	37.00	38.20
Retail cost	Mil.$	47,911	48,736	49,343	51,707	54,310	57,276	59,783

* Farm cash receipts equal milk receipts net of assessments.

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Table 8.9: Two-tier pricing program, $13.10 per cwt support program, $10.00 per cwt assessment on over-quota milk, net removals at 4 billion pounds, N.E. TT1310-0-0-4-A00NT1000

	Units	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97
Milk cows	Thous.	10,081	9,373	9,241	9,117	9,100	9,109	9,086
Milk per cow	Pounds	14,880	15,140	15,540	16,020	16,340	16,655	16,880
Milk production	Bil.lb.	150.0	141.9	143.6	146.0	148.7	151.7	153.4
Farm use	Bil.lb.	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Marketings	Bil.lb.	147.9	139.8	141.5	143.9	146.6	149.6	151.3
Beginning commercial stocks	Bil.lb.	5.1	5.3	5.3	5.3	5.3	5.3	5.3
Imports	Bil.lb.	2.6	2.6	2.6	2.6	2.6	2.6	2.6
Commercial supply	Bil.lb.	155.6	147.7	149.4	151.8	154.5	157.5	159.2
Commercial use	Bil.lb.	140.5	138.4	140.1	142.5	145.2	148.2	149.9
Ending commercial stocks	Bil.lb.	5.3	5.3	5.3	5.3	5.3	5.3	5.3
Total utilization	Bil.lb.	145.8	143.7	145.4	147.8	150.5	153.5	155.2
Milk marketing quote	Bil.lb.	NA	139.8	141.5	143.9	146.6	149.6	151.3
Over-quota marketings	Bil.lb.	NA	0.0	0.0	0.0	0.0	0.0	0.0
Net removals	Bil.lb.	9.8	4.0	4.0	4.0	4.0	4.0	4.0
Government purchases	Mil.$	1,049.0	576.0	576.0	576.0	576.0	576.0	576.0
Outlays	Mil.$	916.0	470.7	474.2	474.2	474.2	474.2	474.2
Deductions	Mil.$	55.5	135.5	159.2	161.9	164.9	42.0	0.0
Over-quota milk assessments	Mil.$	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Buyout payments	Mil.$	100.0	11.0	0.0	0.0	0.0	0.0	0.0
Net government costs	Mil.$	960.0	346.3	315.1	312.3	309.3	432.2	474.2
Prices								
All milk price to plants	$US/cwt	11.60	15.00	15.00	15.00	15.00	15.00	15.00
Effective all milk price	$US/cwt	11.56	14.90	14.89	14.89	14.89	14.97	15.00
Farm cash receipts *	Mil.$	17,249	20,975	21,207	21,574	21,970	22,530	22,843
Margin **	$/cwt	22.50	22.00	22.00	23.00	26.10	25.30	26.50
Retail value	$/cwt	34.10	37.00	37.00	38.00	39.10	40.30	41.50
Retail cost	Mil.$	47,911	51,211	51,836	54,168	56,769	59,732	62,209

* Farm cash receipts equal milk receipts net of assessments.
** The margin with large changes in consumer prices underestimates the cost to the processing sector.

Table 8.10: Two-tier pricing program, $13.10 per cwt support, Assessment on over-quota milk necessary to achieve budget neutrality TT1310-0-0-LBFP

	Units	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97
Milk cows	Thous.	10,081	9,765	9,729	9,535	9,554	9,415	9,375
Milk per cow	Pounds	14,880	15,140	15,540	16,020	16,340	16,655	16,880
Milk production	Bil.lb.	150.0	147.8	151.2	152.7	156.1	156.8	158.2
Farm use	Bil.lb.	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Marketings	Bil.lb.	147.9	145.7	149.1	150.6	154.0	154.7	156.1
Beginning commercial stocks	Bil.lb.	5.1	5.3	5.3	5.3	5.3	5.3	5.3
Imports	Bil.lb.	2.6	2.6	2.6	2.6	2.6	2.6	2.6
Commercial supply	Bil.lb.	155.6	153.6	157.0	158.5	161.9	162.6	164.0
Commercial use	Bil.lb.	140.5	139.7	141.6	143.8	146.5	149.5	151.2
Ending commercial stocks	Bil.lb.	5.3	5.3	5.3	5.3	5.3	5.3	5.3
Total utilization	Bil.lb.	145.8	145.0	146.7	149.1	151.8	154.8	156.5
Milk marketing quote	Bil.lb.	NA	137.1	138.8	141.2	143.9	146.9	148.6
Over-quota marketings	Bil.lb.	NA	8.7	10.3	9.4	10.1	7.8	7.6
Net removals	Bil.lb.	9.8	8.7	10.3	9.4	10.1	7.8	7.6
Government purchases	Mil.$	1,049.0	1,250.9	1,686.0	1,356.1	1,458.8	1,122.6	1,089.8
Outlays	Mil.$	916.0	1,022.2	1,223.5	1,144.5	1,227.6	958.0	906.9
Deductions	Mil.$	55.5	141.2	167.7	169.5	173.3	43.5	0.0
Over-quota milk assessments	Mil.$	0.0	410.6	529.7	495.5	532.1	426.7	411.1
Buyout payments	Mil.$	100.0	11.0	0.0	0.0	0.0	0.0	0.0
Net government costs	Mil.$	960.0	481.4	526.1	479.5	522.3	480.9	495.9
Prices								
All milk price to plants	$US/cwt	11.60	14.60	14.60	14.60	14.60	14.60	14.60
Effective all milk price	$US/cwt	11.56	14.50	14.49	14.49	14.49	14.57	14.60
Over-quota milk price	$US/cwt	NA	9.87	9.47	9.34	9.35	9.15	9.17
Farm cash receipts *	Mil.$	17,190	21,284	21,748	21,976	22,466	22,899	22,954
Margin **	$/cwt	22.50	22.00	22.00	23.00	24.10	25.30	26.50
Retail Value	$/cwt	34.10	36.60	36.60	37.60	38.70	39.90	41.10
Retail Cost	Mil.$	47,911	51,116	51,739	54,080	56,687	59,657	62,136

* Farm cash receipts equal milk receipts net of assessments.
** The margin with large changes in consumer prices underestimates the cost to the processing sector.

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Table B.11: Diversion program, $10.10 support price, no assessment, 20 percent of production participating, $0.35 per cwt. diversion payment, MD-1010

	Units	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97
Milk Cows	Thous.	10,081	9,845	9,726	9,854	9,471	9,601	9,538
Milk Per Cow	Pounds	14,880	15,140	15,540	16,020	16,340	16,655	16,880
Milk production	Bil.lb.	150.0	149.1	151.1	153.5	154.8	159.9	161.0
Farm use	Bil.lb.	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Marketings	Bil.lb.	147.9	147.0	149.0	151.4	152.7	157.8	158.9
Beginning commercial stocks	Bil.lb.	5.1	5.3	5.3	5.3	5.3	5.3	5.3
Imports	Bil.lb.	2.6	2.6	2.6	2.6	2.6	2.6	2.6
Commercial supply	Bil.lb.	155.6	154.9	156.9	159.3	160.6	165.7	166.8
Commercial Use	Bil.lb.	140.5	144.6	146.4	149.0	151.3	154.9	156.5
Ending commercial stocks	Bil.lb.	5.3	5.3	5.3	5.3	5.3	5.3	5.3
Total utilization	Bil.lb.	145.8	149.9	151.7	154.3	156.6	160.2	161.8
Net Removals	Bil.lb.	9.8	4.9	5.2	5.0	3.9	5.5	5.0
Government Purchases	Mil.$	1049.0	562.3	592.1	573.4	449.5	642.0	590.0
Outlays	Mil.$	916.0	462.9	499.7	482.5	383.6	548.0	491.0
Deductions	Mil.$	55.5	142.4	167.6	170.4	171.7	44.3	0.0
Diversion payments	Mil.$	0.0	151.3	151.3	151.3	151.3	0.0	0.0
Buyout payments	Mil.$	100.0	11.0	0.0	0.0	0.0	0.0	0.0
Net Government Costs	Mil.$	960.5	482.9	483.4	463.5	363.2	503.7	491.0
Prices								
All milk price to plants	$US/cwt	11.60	11.70	11.70	11.70	11.90	11.65	11.70
Effective all milk price	$US/cwt	11.56	11.60	11.59	11.59	11.79	11.62	11.70
Diversion Payments	Mil.$	0	151	151	151	151	0	0
Net Milk Receipts	Mil.$	17,249	17,198	17,416	17,700	18,146	18,497	18,750
Farm Cash Receipts *	Mil.$	17,249	17,349	17,567	17,851	18,298	18,497	18,750
Margin	$/cwt	22.50	22.00	22.00	23.00	24.10	25.30	26.50
Retail Value	$/cwt	34.10	33.70	33.70	34.70	36.00	36.95	38.20
Retail Cost	Mil.$	47,911	48,736	49,343	51,707	54,471	57,236	59,783
Percent of Marketings Participating			20.0	20.0	20.0	20.0	0.0	0.0
Percent reduction from base required			5.0	5.0	5.0	5.0	0.0	0.0

* Farm cash receipts plus diversion payment net of assessments.

Table B.12: Diversion program, $13.10 support price, 15 percent of production participating, 10 percent reduction required, $1.10 per cwt. diversion payment, variable assessment MD1310-ASSMT

	Units	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97
Milk Cows	Thous.	10,081	10,009	10,064	10,041	9,986	9,853	9,775
Milk Per Cow	Pounds	14,880	15,140	15,540	16,020	16,340	16,655	16,880
Milk production	Bil.lb.	150.0	151.5	156.4	160.9	163.1	164.1	165.0
Farm use	Bil.lb.	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Marketings	Bil.lb.	147.9	149.4	154.3	158.8	161.0	162.0	162.9
Beginning commercial stocks	Bil.lb.	5.1	5.3	5.3	5.3	5.3	5.3	5.3
Imports	Bil.lb.	2.6	2.6	2.6	2.6	2.6	2.6	2.6
Commercial supply	Bil.lb.	155.6	157.3	162.2	166.7	168.9	169.9	170.8
Commercial Use	Bil.lb.	140.5	141.2	142.9	145.4	148.1	151.1	152.8
Ending commercial stocks	Bil.lb.	5.3	5.3	5.3	5.3	5.3	5.3	5.3
Total utilization	Bil.lb.	145.8	146.5	148.2	150.7	153.4	156.4	158.1
Net Removals (TSR)	Bil.lb.	9.8	10.9	14.0	16.0	15.6	13.5	12.7
Government Purchases	Mil.$	1049.0	1565.8	2015.3	2297.8	2242.4	1962.7	1831.8
Outlays	Mil.$	916.0	1289.2	1700.9	1933.7	1914.1	1616.8	1497.0
Deductions	Mil.$	55.5	1041.4	1407.9	1607.4	1630.4	1341.5	1221.8
Diversion payments	Mil.$	0.0	214.8	214.8	214.8	214.8	214.8	214.8
Buyout payments	Mil.$	100.0	11.0	0.0	0.0	0.0	0.0	0.0
Net Government Costs	Mil.$	960.5	473.5	507.8	541.1	498.5	490.0	490.1
Prices								
All milk price to plants	$US/cwt	11.60	13.80	13.80	13.80	13.80	13.80	13.80
Effective all milk price	$US/cwt	11.56	13.10	12.89	12.79	12.79	12.97	13.05
Diversion Payment	Mil.$	0	215	215	215	215	215	215
Net Milk Receipts	Mil.$	17,250	19,731	20,039	20,459	20,753	21,177	21,422
Farm Cash Receipts *	Mil.$	17,250	19,945	20,253	20,674	20,968	21,392	21,637
Margin **	$/cwt	22.50	22.00	22.00	23.00	24.10	25.30	26.50
Retail Value	$/cwt	34.10	35.80	35.80	36.80	37.90	39.10	40.30
Retail Cost	Mil.$	47,911	50,537	51,157	53,506	56,114	59,085	61,573
Percent of Marketings Participating			15.0	15.0	15.0	15.0	15.0	15.0
Percent Reduction required from base			10	10	10	10	10	10
Additional Assessment ($/cwt)			0.60	0.80	0.90	0.90	0.80	0.75

* Farm cash receipts plus diversion payments net of assessment.
** The margin with large changes in consumer prices underestimates the total cost to the processing sector.

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APPENDIX C—IMPACTS ON THE LIVESTOCK INDUSTRY

Table C-1. Impacts on the livestock sector from dairy policy options, reported as changes from USDA baseline. 1/

Option	Year	1991	1992	1993	1994	1995	1996	1997	Average
OPTION TP1120-MB									
Beef Production	million pounds	13.4	71.9	-10.8	-54.3	-31.5	-13.5	-15.7	-5.8
Other Meat Production	million pounds	-0.2	-4.2	-16.4	-6.7	11.4	12.6	4.6	0.2
Beef Cow Inventory	thousand head	0.0	0.0	0.5	-54.1	-43.3	-10.4	-1.1	-15.5
Dairy Cow Inventory	thousand head	0.0	-46.0	-41.0	-33.0	-44.0	-55.0	-63.0	-40.3
Dairy Cow Slaughter	thousand head	46.0	-17.9	-19.1	1.4	-1.3	-7.4	-17.4	-2.3
Beef Cow Slaughter	thousand head	0.0	-0.2	17.0	-9.7	-15.3	-3.5	1.3	-1.5
Other Meat Receipts	million $	-11.1	-52.1	40.9	60.2	-2.1	-23.1	-2.8	1.4
Cattle Receipts	million $	-15.2	-89.2	4.2	37.1	-8.3	-19.6	-25.6	-16.7
Total Meat Expenditures	million $	-34.0	-153.2	23.7	100.8	16.0	-31.2	-13.3	-13.0
OPTION TP1220-B-PP1010									
Beef Production	million pounds	75.5	417.2	18.3	-249.0	-444.5	-405.7	-196.6	-112.1
Other Meat Production	million pounds	-1.4	-23.5	-96.3	-57.6	45.1	121.6	124.6	16.1
Beef Cow Inventory	thousand head	0.0	0.0	0.7	-312.3	-296.5	-180.4	37.8	-107.2
Dairy Cow Inventory	thousand head	0.0	-259.0	-270.0	-282.0	-230.0	-176.0	-159.0	-196.6
Dairy Cow Slaughter	thousand head	259.0	-61.5	-63.2	-131.4	-118.4	-66.3	-44.3	-32.3
Beef Cow Slaughter	thousand head	0.0	-0.2	94.8	-40.3	-69.7	-82.9	-39.1	-19.6
Other Meat Receipts	million $	-62.7	-302.1	163.0	323.6	284.8	60.0	-150.2	45.2
Cattle Receipts	million $	-83.2	-484.0	-19.2	-20.2	86.9	91.5	-44.2	-67.5
Total Meat Expenditures	million $	-192.1	-898.7	-67.7	420.8	709.5	471.7	-18.1	61.9
OPTION TP1320-B									
Beef Production	million pounds	153.0	848.1	29.7	-532.5	-850.4	-830.4	-417.4	-228.6
Other Meat Production	million pounds	-2.7	-47.7	-195.4	-119.2	90.6	232.6	240.9	28.4
Beef Cow Inventory	thousand head	0.0	0.0	-3.2	-655.3	-639.2	-398.8	-17.3	-244.8
Dairy Cow Inventory	thousand head	0.0	-525.0	-549.0	-548.0	-476.0	-379.0	-352.0	-404.1
Dairy Cow Slaughter	thousand head	525.0	-123.0	-154.3	-225.8	-230.3	-233.1	-98.4	-77.1
Beef Cow Slaughter	thousand head	0.0	1.0	191.3	-78.8	-148.9	-155.0	-78.0	-38.3
Other Meat Receipts	million $	-127.1	-611.0	318.2	666.8	511.7	143.1	-287.4	87.7
Cattle Receipts	million $	-169.2	-1006.8	-96.5	-10.5	56.3	-8.9	-138.7	-196.3
Total Meat Expenditures	million $	-391.2	-1850.7	-236.3	772.9	1168.6	849.3	-143.6	24.2
OPTION TP1420-B									
Beef Production	million pounds	201.3	1113.7	15.5	-696.1	-1082.0	-985.6	-568.5	-285.9
Other Meat Production	million pounds	-3.6	-62.7	-256.2	-155.2	115.2	290.6	284.6	30.4
Beef Cow Inventory	thousand head	0.0	0.0	-7.8	-881.4	-857.7	-560.7	-84.5	-341.7
Dairy Cow Inventory	thousand head	0.0	-691.0	-709.0	-707.0	-622.0	-532.0	-500.0	-537.3
Dairy Cow Slaughter	thousand head	691.0	-175.5	-200.1	-283.4	-261.2	-181.0	-139.8	-78.6
Beef Cow Slaughter	thousand head	0.0	2.5	251.3	-106.6	-192.0	-201.6	-96.6	-49.0
Other Meat Receipts	million $	-167.3	-799.6	420.8	854.1	632.7	99.6	-304.8	105.1
Cattle Receipts	million $	-231.0	-1359.6	-134.6	-46.0	72.1	47.5	-205.8	-265.3
Total Meat Expenditures	million $	-516.2	-2449.3	-360.4	894.6	1344.8	751.9	-235.4	-81.4

See footnotes at end of table

Table C-1. Impacts on the livestock sector from dairy policy options, reported as changes from USDA baseline. (continued) 1/

Option	Year	1991	1992	1993	1994	1995	1996	1997	Average
OPTION RECLASS-1050									
Beef Production	million pounds	-0.9	-2.7	11.7	2.7	-17.6	-36.6	-4.3	-6.8
Other Meat Production	million pounds	0.0	0.2	0.5	-2.0	-1.6	3.8	9.7	1.5
Beef Cow Inventory	thousand head	0.0	0.0	0.0	3.7	-4.1	-5.7	1.6	-0.7
Dairy Cow Inventory	thousand head	0.0	3.0	-4.0	-5.0	0.0	18.0	20.0	4.6
Dairy Cow Slaughter	thousand head	-3.0	7.8	0.3	-6.8	-18.0	3.0	5.8	-1.5
Beef Cow Slaughter	thousand head	0.0	0.0	-1.2	3.0	0.1	-2.7	-7.1	-1.1
Other Meat Receipts	million $	0.7	1.8	-10.9	2.2	20.5	26.6	-17.7	3.3
Cattle Receipts	million $	1.3	10.6	-11.4	-6.6	-9.9	42.3	2.2	4.1
Total Meat Expenditures	million $	2.2	5.8	-23.6	-1.9	44.9	83.2	1.9	16.1
OPTION RECLASS-1050-PPWP									
Beef Production	million pounds	-0.9	-3.3	8.5	3.0	-12.7	74.1	-106.8	-5.6
Other Meat Production	million pounds	0.0	0.2	0.7	-1.3	-1.4	0.9	-11.1	-1.7
Beef Cow Inventory	thousand head	0.0	0.0	0.8	3.7	-2.0	-4.0	1.1	-0.2
Dairy Cow Inventory	thousand head	0.0	3.0	-2.0	-3.0	1.0	-42.0	20.0	-3.3
Dairy Cow Slaughter	thousand head	-3.0	5.8	0.8	-5.2	-14.7	2.5	5.2	-1.2
Beef Cow Slaughter	thousand head	0.0	0.0	-1.2	2.3	0.4	-1.9	15.5	2.2
Other Meat Receipts	million $	0.7	2.3	-8.5	0.3	15.5	-74.6	126.3	8.9
Cattle Receipts	million $	1.3	9.2	-7.9	-6.0	-8.9	-87.2	154.4	7.8
Total Meat Expenditures	million $	2.2	7.0	-17.2	-3.5	34.0	-185.7	239.2	10.8
OPTION RECLASS-1310-PPWP									
Beef Production	million pounds	-23.6	-415.1	-380.3	-0.7	409.3	706.0	647.5	134.7
Other Meat Production	million pounds	0.4	12.2	94.4	130.1	43.6	-95.8	-200.3	-2.2
Beef Cow Inventory	thousand head	0.0	0.0	-1.3	271.6	459.7	414.9	162.9	186.8
Dairy Cow Inventory	thousand head	0.0	242.0	459.0	594.0	670.0	644.0	626.0	462.1
Dairy Cow Slaughter	thousand head	-81.0	-27.2	18.9	89.9	213.6	198.3	175.5	84.0
Beef Cow Slaughter	thousand head	0.0	0.4	-87.6	-33.3	63.7	113.6	123.0	25.7
Other Meat Receipts	million $	19.6	323.0	136.7	-280.7	-482.6	-437.0	-158.3	-125.6
Cattle Receipts	million $	33.4	363.2	277.0	51.0	-17.8	-282.6	-190.2	33.4
Total Meat Expenditures	million $	59.7	855.7	702.2	-155.7	-999.8	-1483.9	-1250.3	-324.6

See footnotes at end of table

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Table C-1. Impacts on the livestock sector from dairy policy options, reported as changes from USDA baseline. (continued) 1/

Option	Year	1991	1992	1993	1994	1995	1996	1997	Average
OPTION TT1010-0+1+4-ASSNT1000									
Beef Production	million pounds	44.0	254.6	71.6	-140.4	-386.4	-418.5	-157.1	-104.3
Other Meat Production	million pounds	-0.8	-13.9	-59.5	-46.8	20.8	99.5	126.7	18.0
Beef Cow Inventory	thousand head	0.0	0.0	1.0	-178.0	-203.8	-142.1	55.6	-66.8
Dairy Cow Inventory	thousand head	0.0	-151.0	-193.0	-212.0	-140.0	-35.0	-2.0	-104.7
Dairy Cow Slaughter	thousand head	151.0	2.7	-34.6	-131.8	-139.2	-42.8	-0.4	-27.9
Beef Cow Slaughter	thousand head	0.0	-0.3	54.9	-11.3	-42.0	-73.2	-51.4	-17.6
Other Meat Receipts	million $	-36.6	-185.6	52.5	215.2	301.0	145.7	-171.1	45.9
Cattle Receipts	million $	-50.8	-249.8	-59.4	-63.9	75.2	211.1	9.6	-18.3
Total Meat Expenditures	million $	-111.8	-545.5	-144.1	267.2	728.0	674.0	29.8	128.2
OPTION TT1310-0+0+4-ASSNT1000									
Beef Production	million pounds	182.7	1016.2	52.5	-607.9	-1008.3	-976.0	-560.2	-271.6
Other Meat Production	million pounds	-3.3	-57.0	-234.2	-148.3	97.6	270.0	282.1	29.6
Beef Cow Inventory	thousand head	0.0	0.0	-5.9	-792.2	-786.6	-522.9	-72.3	-311.4
Dairy Cow Inventory	thousand head	0.0	-627.0	-664.0	-678.0	-600.0	-491.0	-454.0	-502.0
Dairy Cow Slaughter	thousand head	627.0	-138.6	-171.5	-268.2	-268.0	-174.5	-126.9	-74.4
Beef Cow Slaughter	thousand head	0.0	1.8	227.9	-90.5	-172.7	-189.7	-105.0	-46.9
Other Meat Receipts	million $	-151.8	-731.0	359.5	775.3	622.8	166.1	-278.2	109.0
Cattle Receipts	million $	-201.4	-1207.4	-133.6	-54.8	59.7	127.0	-153.8	-223.5
Total Meat Expenditures	million $	-467.9	-2228.7	-362.3	814.4	1340.3	927.9	-81.3	-8.2
OPTION TT1310-0+0-LOAP									
Beef Production	million pounds	68.5	357.7	-70.9	-120.7	-416.2	-221.2	-137.5	-77.2
Other Meat Production	million pounds	-1.2	-21.0	-81.8	-33.8	30.7	98.7	83.7	10.7
Beef Cow Inventory	thousand head	0.0	0.0	0.9	-285.6	-198.7	-186.8	79.3	-84.6
Dairy Cow Inventory	thousand head	0.0	-235.0	-176.0	-260.0	-146.0	-185.0	-165.0	-166.7
Dairy Cow Slaughter	thousand head	235.0	-124.8	35.1	-168.2	-1.9	-71.8	-45.8	-20.3
Beef Cow Slaughter	thousand head	0.0	-0.3	87.0	-61.2	-23.5	-99.4	3.2	-13.5
Other Meat Receipts	million $	-56.9	-257.6	211.0	158.4	299.9	-60.9	-107.4	26.6
Cattle Receipts	million $	-74.2	-493.3	150.7	-222.0	359.4	-143.0	-20.7	-63.3
Total Meat Expenditures	million $	-174.3	-769.4	109.5	142.9	722.3	101.2	-64.2	9.7

See footnotes at end of table

Table C-1. Impacts on the livestock sector from dairy policy options, reported as changes from USDA baseline. (continued) 1/

Option	Year	1991	1992	1993	1994	1995	1996	1997	Average
OPTION MD1010									
Beef Production	million pounds	45.2	257.7	63.1	-95.0	-248.0	-628.7	-198.2	-114.9
Other Meat Production	million pounds	-0.8	-14.2	-60.2	-46.3	10.3	70.1	152.5	15.9
Beef Cow Inventory	thousand head	0.0	0.0	1.0	-183.2	-199.9	-147.7	-30.7	-82.9
Dairy Cow Inventory	thousand head	0.0	-155.0	-189.0	-222.0	-232.0	1.0	-2.0	-114.1
Dairy Cow Slaughter	thousand head	155.0	-9.4	-19.5	-52.6	-165.0	3.3	-0.4	-12.6
Beef Cow Slaughter	thousand head	0.0	-0.3	56.5	-15.0	-38.3	-43.2	-120.4	-23.0
Other Meat Receipts	million $	-37.5	-187.5	60.8	173.0	195.0	429.4	-185.1	64.0
Cattle Receipts	million $	-46.5	-265.7	-35.6	-11.7	-119.6	591.1	-67.9	6.3
Total Meat Expenditures	million $	-114.7	-552.3	-128.2	171.5	435.2	1263.6	117.2	170.3
OPTION MD1310-ASSNT									
Beef Production	million pounds	-2.6	-43.0	-267.8	-141.3	110.5	340.8	331.3	46.8
Other Meat Production	million pounds	0.0	1.3	13.5	61.7	59.1	-11.2	-90.7	4.8
Beef Cow Inventory	thousand head	0.0	0.0	-0.1	7.2	160.4	217.1	132.9	73.9
Dairy Cow Inventory	thousand head	0.0	9.0	159.0	246.0	284.0	253.0	235.0	169.4
Dairy Cow Slaughter	thousand head	-9.0	-92.5	-42.1	30.5	110.5	88.8	66.3	21.8
Beef Cow Slaughter	thousand head	0.0	0.0	-2.3	-51.0	-1.2	46.9	74.2	9.5
Other Meat Receipts	million $	2.2	33.3	201.9	-8.7	-247.8	-306.9	-124.2	-44.3
Cattle Receipts	million $	2.8	-54.1	197.4	99.7	26.9	-188.5	-138.8	-7.8
Total Meat Expenditures	million $	6.6	90.1	529.0	206.6	-395.9	-845.1	-728.6	-162.5

1/ Results are reported on a calendar year basis from adjusted fiscal year dairy cow inventories.

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Part III

Department of Health and Human Services

Office of Family Assistance

Economic Empowerment Demonstration Program; Request for Applications; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Family Assistance

[Program Announcement No. 91-1]

Request for Applications Under the Office of Family Assistance Economic Empowerment Demonstration Program

AGENCY: Office of Family Assistance (OFA), Administration for Children and Families (ACF), HHS

ACTION: Request for applications under the Economic Empowerment Demonstration Program.

SUMMARY: Announcement of the availability of funds from the Community Development Block Grant (CDBG) Technical Assistance Program, waivers, and exemptions and a request for demonstration project applications under the HUD/HHS Economic Empowerment Initiative for Public and Indian Housing Residents. The initiative was established through a Memorandum of Understanding (MOU) signed on January 24, 1990, by Secretaries Kemp and Sullivan. In the MOU, the Secretaries pledged to develop and implement joint initiatives with the goal of more effectively helping low-income families and individuals move toward independent living and economic self-sufficiency.

In addition to applying for participation, the public is invited to submit comments. Section 470 of the Housing and Urban Housing and Urban Development provide a 30 day comment period for a demonstration of this type. Comments are due by Jun 14, 1991. HUD will review comments received and, if necessary, will publish a Notice announcing any revisions to the program as a result of the public comments.

Interested persons are invited to submit comments regarding this notice to the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above Progam Announcement Number. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address. As a convenience to persons interested in providing comments, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708–4337. (This is not a toll free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will *not* be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk (202) 708–2084 or, for the hearing and speech-impaired, (202) 708–4337.

OPIH/ORI/OCPD/HUD and OFA/ACF/HHS announce jointly that competing applications will be accepted for three-year demonstrations to test strategies for implementing comprehensive and coordinated programs to assist public and Indian housing residents in moving into the social and economic mainstream of employment, business, and homeownership. HUD CDBG Technical Assistance funds will be provided to eligible communities to increase the effective use of CDBG funded activities undertaken at the demonstration sites. This announcement has nine parts:

Part I describes briefly the background and goals of the proposed demonstrations.

Part II specifies who may apply for grants, waivers, and exemptions to undertake projects.

Part III spells out the minimum requirements for project design and operation.

Part IV discusses Federal, State, and local funding and third-party in-kind contributions, as well as waivers and exemptions, to support the projects.

Part V describes the plan to evaluate the demonstrations and grantee reporting requirements.

Part VI specifies the procedures HUD and HHS will follow in accepting, reviewing, and selecting applications for approval.

Part VII lists the criteria against which all eligible applications will be evaluated and scored.

Part VIII is meant to facilitate preparation of the application and provide instructions for its timely submission.

Part IX is meant to provide guidance in preparation of the application narrative.

CLOSING DATE: The closing date for submission of the applications under this demonstration is August 13, 1991. HUD will accept comments on this announcement for a thirty (30) day period after its publication in the **Federal Register**.

Applications will be accepted beginning 45 days after publication of this announcement in the **Federal Register** to allow HUD time to review comments.

The closing date for submission of applications under the Office of Community Services HUD/HHS Demonstration Grantee Set-Aside (see Part IV: Resources available to the project *Complementary Funding*, below) is August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Gary D. Ashcraft, Director, Division of Program Evaluation, Administration for Children and Families, Family Support Administration, Attention: Economic Empowerment Demonstration Program, 370 L'Enfant Promenade, SW., Fifth Floor, Washington, DC, Telephone (202) 401–9315 (FTS 8–441–9315). Hearing and speech-impaired persons may use the HHS/TDD number, (202) 401–4657.

Part I: Background and Goals

The Secretaries' MOU specified community-level projects as one strategy for integrating the resources of housing and welfare programs. Pursuant to the MOU, HUD Assistant Secretary for Public and Indian Housing, Joseph Schiff and HHS Assistant Secretary for Family Support (now for Children and Families), Jo Ann B. Barnhart, issued an Information Memorandum (IM) on plans to achieve increased cooperation and coordination of HUD and HHS programs. The IM declared that the Departments "* * * are proceeding to develop actions and strategies that, among other things, encourage communities to integrate assistance programs for families receiving welfare in public and Indian housing. The Family Support Act of 1988, particularly the multifaceted Job Opportunities and Basic Skills Training (JOBS) program, offers new opportunities for interagency cooperation to promote self-sufficiency."

Accordingly, HUD and HHS propose to approve projects in up to 15 demonstration sites. Each project must develop and test strategies responsive to all of the following goals:

1. Empowering residents of public and Indian housing to take control over their living environment through resident management and/or other self-sufficiency initiatives.

2. Providing comprehensive and integrated programs of work experience, education, job training, economic development and supportive services to families in public and Indian housing.

3. Helping families receiving welfare who live in public and Indian housing to move off Aid to Families with Dependent Children (AFDC) and other assistance programs and to become economically self-sufficient through mandatory participation in the JOBS program, including a required work component.

4. Assisting families to successfully participate in homeownership initiatives.

ATTACHMENT A describes HHS and HUD programs referred to in this announcement.

Part II: Eligible Applicants

Applicants for these demonstrations may be any of the following: A Public Housing Authority (PHA) and/or Indian Housing Authority (IHA); a Resident Management Corporation (RMC), an incorporated Resident Council (RC) resident-supported non-profits, or other incorporated resident entity; and/or a local government, applying jointly with the State IV–A Agency responsible for administering the Aid to Families with Dependent Children (AFDC) and the Job Opportunities and Basic Skills Training (JOBS) programs. The applicants will form a partnership to develop, implement, and operate each project.

For applicants for HUD Technical Assistance funds (see Optional Project Requirements for Technical Assistance to Support CBDG-Funded Activities in the Demonstration, below) eligibility is restricted to applications proposing to provide assistance in accordance with the Community Development Block Grant (CBDG) related requirements in PART III in one of the United States communities eligible to receive a CBDG entitlement grant or an Indian Tribe currently receiving assistance under the Indian CBDG program.

Part III: Site and Project Requirements

Site Requirements

Applications should propose to integrate demonstration activities with sites where work is planned or underway in HUD's Comprehensive Improvement Assistance Program (CIAP), new developments, homeownership conversion programs, and CDBG programs. Preference for approval will be given where work activities are identified for the following three types of sites:

1. Public and Indian housing developments planned for or recently modernized under CIAP.

2. Newly developed public or Indian housing units.

3. Homeownership conversion projects under HUD's section 21 of the Housing and Community Development Act of 1987, section 5(h) of the U.S. Housing Act of 1937, Turnkey III, and Indian Mutual Help authorities.

Applications also will be considered that propose to integrate demonstration activities with existing housing sites. However, the applicant must provide evidence of support from a significant majority of residents at the proposed site agreeing to participate in the Economic Empowerment Demonstration.

Sites proposed for demonstrations must have a majority of AFDC recipients among the residents.

Because of our desire to focus on communities, we do not anticipate funding scattered site projects or sites otherwise artificially enlarged to include a majority of welfare recipients to meet evaluation requirements. However, an applicant may choose, for example, as its demonstration site two buildings of a four-building public or Indian housing development.

Project Requirements

To achieve empowerment of public and Indian housing residents toward economic self-sufficiency, residents at the demonstration site must commit to assist in project activities in full partnership with the local housing authority and key agencies.

Proposed projects must incorporate all of the following program requirements:

1. All residents of the project who are 16 years old or over who are receiving AFDC and are not exempt from participation in the State JOBS program must be scheduled for, and participate in, JOBS approved activities between a minimum of 20 and a maximum of 40 hours per week (participation for more than 40 hours may be scheduled on a case-by-case basis). As an additional requirement, a minimum of 10 of the weekly hours of participation must be in work activities. Work is defined as unsubsidized employment, community work experience (CWEP), work supplementation, or on-the-job training. (See ATTACHMENT A for general JOBS information, including descriptions of CWEP, work supplementation and OJT.)

2. Evidence of coordination with the residents of the proposed demonstration site through a letter of support from the elected Resident Management Corporation (RMC), or Resident Council (RC), or other documentation such as a signed petition of support from residents if no organization exists. This process will help to achieve the goal of ensuring a resident empowerment approach. Supportive documentation must be representative of the site's total population, including non-JOBS eligible residents.

3. Formation or use of an existing coordinating council with residents, State and local social services and housing agencies (public and private), and businesses and educational facilities. It is expected that council members will make available resources, programs, or jobs to assist welfare and non-welfare families living in public and Indian housing to become self-sufficient.

4. A plan for on-site delivery of an integrated array of diverse services to assist target families and individuals to achieve economic independence. The plan should demonstrate how it would contribute to community capacity building, such as: the ability to formulate, manage and operate an organization under the governance of a board of directors; the development of linkages with local public and private organizations to provide access to resources; the ability to participate in the decision making process with institutions that effect community agencies' laws and policies; etc.

In addition, applicants must describe in the application and include in project operations all of the following:

1. A description of proposed project operation which will (a) reduce dependency through intensive participation in JOBS and coordinated activities by residents who receive AFDC, and (b) propose criteria through which the success of the project at achieving resident self-sufficiency can be measured.

2. A sound organizational scheme for a cooperative endeavor which assures: (a) Adequate involvement and representation of coordinating council members and (b) a plan for targeting public and private resources.

3. A needs assessment and self-sufficiency plan for residents of the demonstration site. (Guidance for preparing the needs assessment can be found in the PART IX "CHECKLIST FOR PREPARING THE APPLICATION NARRATIVE.) For JOBS-eligible residents, the plan must meet the JOBS regulatory requirements for an initial assessment and employability plan at 45 CFR 250.41. For those who are not JOBS-eligible, the plan should be based on similar requirements.

4. Individual resident performance standards that can reasonably be expected to predict successful completion of self-sufficiency plans.

5. Evidence that the demonstration plan, if approved, is likely to operate for a period of at least 3 years and has a reasonable likelihood of success, defined in terms of resident self-sufficiency.

Proposed projects may incorporate the following desirable provisions:

1. The self-sufficiency plan may serve as a contract with each family and the demonstration sponsors and can be made part of the public or Indian

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housing lease executed between the family and the PHA, IHA or RMC.

2. The right to reside at the demonstration site and/or receive on-site services may be made contingent upon compliance with participation criteria established by the joint applicants.

Applicants are strongly encouraged to include components that will reinforce the above provisions in support of participants' efforts towards economic self-sufficiency and homeownership. These might include, for example, a linkage with the Child Support Enforcement program to increase paternity determinations, support orders, and child support payments. Another potential component would be a community safety program, possibly in cooperation with the municipal police, to reduce street crime, gang violence, and drug trafficking.

The description of project components and operations should be supported by a rationale for selection of those elements and a discussion of why they show promise for meeting the demonstration goals and project objectives.

Optional Project Requirements for Technical Assistance to Support CDBG-Funded Activities in the Demonstration

Technical assistance grant support for the demonstration is available in those communities which have committed or plan to commit CDBG entitlement funds to aid residents of public housing in becoming self-sufficient through participation in homeownership activities, resident management initiatives, and comprehensive and integrated programs of work experience, education, job training, economic development and other supportive services. The use of technical assistance is limited to facilitating skills and knowledge in planning, developing and administering the activities being funded by the local CDBG entitlement funds. It could include such activities as:

• Needs assessments and development, monitoring and revisions to CDBG-funded self-sufficiency plans for residents.

• Development and evaluation of performance standards to predict successful completion of residents' self-sufficiency plans.

• Design and training in implementation of administrative systems to coordinate all activities related to the CDBG-funded activities.

• Assessment of services provided to public housing residents by existing systems of job training, education, supportive services, etc.

• Design of alternative methods for integrating CDBG-funded services/activities with other services to provide a comprehensive support program for residents.

• Design and conduct training programs for program staff, supportive services staff, education and economic development personnel involved in the implementation of CDBG-funded activities.

• Assistance to residents and future homeowners at individual public housing sites in developing CDBG-funded homeownership conversion programs.

• Provision of linkages to organizations and/or individuals participating in the demonstration to help achieve demonstration goals and improve the delivery of CDBG-funded services to the demonstration site.

Part IV: Resources Available to the Project

Funding under the HUD/HHS Economic Empowerment Demonstration Program:

It is anticipated that grants totalling up to $2 million will be made available from HUD's CDBG Technical Assistance Program the first year of a three-year project period. It is also anticipated that HHS will make available, to an independent third-party, a contract totalling up to $530,000 under Section 1115 of the Social Security Act for the purpose of conducting evaluations.

Initial approval of projects will include, if approved, funds, waivers of certain State plan requirements and matching of certain unallowable costs pursuant to section 1115 of the Social Security Act as discussed below, for the first (one-year) budget period. Grantees must submit non-competing continuation applications for each of the remaining two years of the project period. Approval will be granted subject to the availability of funds and the grantee's progress toward meeting project objectives.

Complementary Funding

In addition, non-profit organizations who receive funding under this project as well as other non-profit organizations who enter into agreements with organizations who receive funding under this project, will be eligible for funds under the Job Opportunities for Low-Income Individuals Program administered by the Office of Community Services, Administration for Children and Families, Department of Health and Human Services. Up to two grants will be made under that program to successful grantees to create jobs for individuals in the public and Indian housing projects which the HUD/HHS Economic Empowerment Demonstration Program grantees represent. The maximum amount of each grant will be $500,000 and the project period will be three years.

The purpose and eligibility requirements of the complementary funding will be found in the OCS Program Announcement.

The closing date for applications under the Job Opportunities for Low-Income Individuals Program is indicated under Closing Date at the beginning of this document.

For further information on the complementary funding, contact: Gary D. Ashcraft, Director, Division of Program Evaluation, Office of Family Assistance, Administration for Children and Families, Attention: Economic Empowerment Demonstration Program, 370 L'Enfant Promenade, SW., Fifth Floor, Washington, DC, Telephone (202) 401-9315 (FTS 8-441-9315) or, for the hearing and speech-impaired, (202) 401-4657.

Waivers and Exemption

As part of the empowerment demonstration, applicants may request waivers from existing HHS and HUD requirements which, in the judgement of the applicants, will further the objectives of family self-sufficiency and resident empowerment. A brief description of HHS and HUD waiver processes, including some examples is offered below:

HHS

The Secretary of HHS has existing authority under section 1115 of the Social Security Act to waive many requirements of the AFDC and JOBS programs for the purpose of demonstration projects which the Secretary judges are likely to lead to family self-sufficiency through employment. In addition, under this authority, States may receive federal matching for costs not normally eligible for federal match. Within the Economic Empowerment Demonstrations, the single State agency responsible under title IV-A of the Act for the AFDC and JOBS programs must be the applicant and recipient of the waivers and must pay the costs for which federal matching is requested.

One successful demonstration which was evaluated is the Saturation Work Initiative Model (SWIM) in San Diego, California. The demonstration tested the feasibility and effectiveness of requiring high levels of participation (saturation) of welfare recipients in work and training programs designed to move them into employment. Project components included job search, work experience in conjunction with on-going job search and for those still unable to obtain employment through these components, skills training and education. SWIM showed that a required, structured work and training program could be effective, especially for the most economically dependent of its participants. In addition, the program was regarded by participants as fair and worthwhile.

For additional information on SWIM contact: Gary D. Ashcraft, Director, Division of Program Evaluation, Office of Family Assistance, Administration for Children and Families, Attention: Economic Empowerment Demonstration Program, 370 L'Enfant Promenade, Fifth Floor, Washington, DC, Telephone (202) 401-9315 (FTS 8-441-9315) or, for the hearing and speech-impaired, (202) 401-4657.

The following are examples of ways in which applicants might vary their AFDC and JOBS programs through a demonstration. The examples, which should be seen as illustrations rather than suggestions, include these provisions:

Increases in Scope of JOBS Participation: AFDC recipients normally exempt from participation in JOBS may be included. Applicants wishing to extend the benefits of intensive participation in self-sufficiency activities under JOBS may wish to consider expanding the population at the demonstration site of those covered by the JOBS participation requirements.

Pay after Performance: Participation in JOBS activities can be more closely related to circumstances of employment by making payment of AFDC or the provision of other benefits contingent upon successful completion of hours of JOBS activities.

Applicants for Economic Empowerment Demonstrations are encouraged to design projects that involve the maximum number of participants in a program tailored to the local community. In applying for a demonstration, State IV-A agencies must describe in their applications proposed variations from AFDC and JOBS program requirements, in addition to those within the work requirement for this demonstration, and explain how the proposed variations would enhance efforts to increase the self-sufficiency of participants. Each application will be reviewed by HHS to determine whether these are appropriate for approval under the waiver and matching provisions of section 1115 of the Social Security Act. Project approval will include use of the appropriate section 1115 provisions.

HUD

Within HUD, innovative programs are operated under regulatory authority consistent with the statutory requirements for the public and Indian housing program. Some of these are subject to exemption, such as the following:

Ceiling Rents: Currently HUD regulations (24 CFR, part 913) require that residents of public and indian housing pay rent based on their income. As residents' incomes increase, they may incur rent levels higher than private market rents creating a disincentive for many residents to seek employment and preventing significant economic change for those who do work. Under a programmatic waiver, PHAs and IHAs can limit the amount paid in rent by establishing a maximum rent per type of unit related to the cost for the unit rather than resident income. By retaining residents with incomes above the poverty level, the development more closely reflects the larger community. In addition, working residents generally represent positive role models for their neighbors and children while deriving the economic benefits of employment.

Non-dwelling Use of Housing: Normally, when PHAs and IHAs remove a unit from dwelling status, a reduction in the operating subsidy occurs. A procedure for granting waivers to allow continued subsidy for a non-dwelling unit used in anti-drug, resident management, economic and social enterprises for tenant, day care, or tenant council activities is now available. [See HUD Notice PIH 90-39 (PHA)].

Income Exemptions: Regulations require an annual review of resident income which serves as a basis for computing the following year's rent. To encourage economic self-sufficiency, HUD's income policies disregard certain items from rent calculations:

• Scholarships for tuition;

• Stipends from JTPA and HUD sponsored training programs;

• Reimbursement of out-of-pocket expenses incurred to allow participation in such publicly-funded programs as JOBS.

Technical Assistance

HHS

JOBS Technical Assistance: It is anticipated that demonstration sites will receive technical assistance if the applicant requests it. The Administration for Children and Families, through an interagency agreement with the Departments of Labor and Education, has contracted with the National Alliance of Business and MAXIMUS, Inc., to provide technical assistance with the goal of helping States and localities operate effective and efficient JOBS programs. The contractors will help States implement JOBS programs which maximize participation and provide effective program interventions that have the possibility of changing the life prospects of welfare recipients.

In addition, ACKCO, Inc., also through an interagency agreement with HHS, Labor and Education, will provide technical assistance to Indian Tribes and Alaska Native Organizations implementing and operating JOBS programs.

HUD

Technical Assistance for Community Development Block Grant-Funded Activities: The principal purpose of the Community Development Block Grant (CDBG) Technical Assistance Program is to increase the effectiveness which units of general local government plan, develop and administer programs funded by CDBG entitlement grants. Activities eligible for technical assistance funding include the provision of technical or advisory services; the design and operation of training projects, such as workshops, seminars, or conferences; the development and distribution of technical materials and information; and other methods of demonstrating making available skills, information and knowledge to assist units of general local government in planning, developing or administering programs funded by CDBG entitlement grants. Technical assistance funds also may be used to assess programs and activities funded with CDBG funds.

Resident Management Technical Assistance: Training and technical assistance grants are available from HUD through annual grant competitions to provide direct funding of up to $100,000 to public and Indian housing resident groups "for the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public and Indian housing projects, and the securing of such support." In many areas of the country, resident management groups, in partnership with local housing authorities, have begun to play a significant role in helping to shape JOBS, JTPA, and other federal assistance programs.

In addition, HUD also offers technical assistance through the Office of Drug Free Neighborhoods (ODFN). For more

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information on these and other HUD programs, call the toll-free number on 1-800-245-2691.

State and Local Resources

Applicants are expected to provide no less than 25 percent of the total cost of these demonstrations from State and/or other non-Federal funds. Matching rates as set forth in Title IV-A of the Social Security Act applicable to AFDC and JOBS may not be waived. Because the demonstrations are viewed as an effort beyond that for implementing and operating JOBS, JOBS funds cannot be used to satisfy the 25 percent matching requirement. A commitment of local CDBG funds designated to the site to support demonstration activities is expected and can be counted as non-Federal matching funds.

Part V: Evaluation and Assessment

HHS will evaluate the demonstrations under contract with an independent third party evaluator, such as a research institute or consulting firm. Grantees must provide data, conduct interviews, and provide other information, as needed, to the evaluator. The HHS evaluator will investigate, among other things, the effectiveness of the enhanced participation requirements on the achievement of self-sufficiency.

In addition, each site must conduct its own assessment of the effects of the demonstration on participants' increase in self-sufficiency and movement toward homeownership. One component in the assessment will be an appraisal of the feasibility of the enhanced JOBS participation requirements. Applicants located near a Historically Black College or University (HBCU) are encouraged to engage the expertise available through that institution in undertaking their assessments.

The purpose of the grantee assessments is to amplify future findings from the independent third-party evaluation and to help explain demonstration outcomes. HUD and HHS do not expect the assessment to be based on a large-scale statistical analysis of extensive data. The Departments envision the assessments as process studies that combine quantitative data, including those from existing sources, with intimate staff knowledge of the demonstration's operation. It is anticipated that most grantees, especially those working with HBCUs, will not hire new full-time staff specifically to work on the process studies.

HUD and HHS anticipate that many data items will serve the purposes of both the independent third-party evaluation and the assessments. Specific information and guidance on working with the contractor will be provided to grantees as third-party evaluation plans are implemented. It is expected that the evaluation contractor will meet with each grantee to identify data items and to establish procedures for collecting and sharing data. Data should be available for AFDC recipients' level of work effort so that progress toward economic self-sufficiency can be assessed.

Grantee Reporting Requirements

Interim program reports will be due to ACF on a quarterly basis. Project directors shall submit the original copy of each report to the Division of Grants Management and one copy each to the assigned Project Officer and the appropriate ACF Regional Administrator.

A financial status report (SF 269) will be due semiannually.

Part VI: Application and Selection Process

Applicants for the Economic Empowerment Demonstrations who respond to this announcement must submit an application on Standard Form 424 "Application for Federal Assistance" (SF-424), with supporting narrative information, and certifications according to the instructions in Part VIII: Preparing and Submitting the Application, below. All applications for these projects will be reviewed against the criteria in Part VII: Criteria for Selection, below. They will be scored by a panel whose members are knowledgeable about the programs in the project plan. The ranking of applications based upon scores will be the criteria used to recommend projects for approval. The HHS Assistant Secretary for Children and Families, in consultation with appropriate HUD authorities, will act for the Secretary of HHS in approving and disapproving projects.

Applicants will be notified of approval or disapproval [sixty (60) days after the closing date as described in section entitled "Closing Date"] but no later than September 30, 1991. Approved projects will begin on October 1, 1991.

Applicants applying for funds under the Job Opportunities for Low Income Individuals program, whether for general consideration or for Set-Aside funds should submit an application following the instructions in the OCS Program Announcement and applications will be reviewed and scored against the criteria in that announcement.

Part VII: Criteria for Selection

All applications will be reviewed, scored and selected for participation in the demonstration, except for the award of HUD funds, according to the degree to which each meets Criteria 1, 2, and 3, below.

Applications which request HUD Community Development Technical Assistance Funds will be scored, ranked and recommended for funding from HUD funds in two steps. They first will be selected for participation in the demonstration according to the degree to which they meet Criteria 1, 2, and 3, below. Once selected for participation in the demonstration for all benefits except the award of HUD funds, they then will be scored and ranked again in a separate group on the factors in Criterion 4.

1. *Responsiveness to the HUD/HHS goals and requirements for the Economic Empowerment Demonstrations of the proposed project objectives and project plan. Maximum points: 45.*

• The extent to which project objectives are consistent with the HUD/HHS goals stated in PART I and the program and operational requirements of PART III of the announcement. The extent to which the project design reflects an understanding of the goals and requirements.

• The extent to which the maximum number of individuals will be active participants in JOBS and resident empowerment programs, including work, designed to result in self-sufficiency. The level of required commitment from residents in such activities, measured in part by weekly hours of planned activity, and the likelihood that such activities will lead to self-sufficiency.

• The extent to which work activities are identified using HUD's Comprehensive Improvement Assistance Program (CIAP), new development programs, and homeownership programs.

• The extent to which the applicant offers evidence of resident support and participation in development and implementation of the project and the coordinating council represents a broad spectrum of community leadership.

• The extent to which the applicant proposes to make innovative use of technical assistance in forming linkages to organizations and individuals that can assist the applicant in meeting project objectives and improving the delivery of block grant funded services to the project site.

2. *The completeness and feasibility of a plan to assess the effects of the demonstration in moving residents toward economic self-sufficiency and homeownership. Maximum points: 20.*

• The appropriateness to project objectives and the feasibility of the "in-house" assessment plan proposed by the applicant in the application narrative.

• The extent to which the applicant discusses the types of information and data likely to be used in the assessment, gives examples of available data and its sources, and identifies data gaps.

• The extent to which the plan for implementing the assessment is feasible.

• Written assurance of the applicant's willingness to work with the HUD/HHS third-party evaluator.

3. *The adequacy of the plan for project management and staffing. Maximum points: 35.*

• The appropriateness of the organizational structure and the feasibility of the management plan for carrying out the plan to meet project objectives. The specificity with which the applicant spells out each member organization's responsibilities within the demonstration. The feasibility of a plan for coordination of those responsibilities and for ensuring that each organization's representative carries out his/her responsibilities.

• The appropriateness of the qualifications and experience of applicant organization managers to provide administrative and fiscal management of the grant and to support the third-party evaluation and in-house assessment. The proposed plan to fill any gaps in organizational experience that may exist.

• The adequacy of personal qualifications and of time allocations for both paid and volunteer key staff for carrying out the project plan. The adequacy of qualifications and time allocations for other project personnel.

4. *Adequacy of the application for HUD technical assistance funds.*

Each application which proposes to use HUD technical assistance funds in support of CDBG-funded activities in the demonstration and which already has been selected for participation in the demonstration based on its score and ranking against Criteria 1, 2, and 3, above, will be scored and ranked again in a separate group against the following:

• Probable effectiveness of the proposal in meeting needs of localities and accomplishing overall project objectives. Maximum points: 25.

• Soundness of approach based on the extent to which the application identifies techniques or systems that can significantly impact on the key problem(s) identified. Maximum points: 25.

• Methodology for transfer of successful technical assistance techniques to other potential assistance providers. Maximum points: 10.

• Organizational and management plan reflecting a rational project management system. Maximum points: 15.

• Applicants qualifications based on present and past relevant experience and the competence of key personnel assigned to the project. Maximum points: 15.

• Potential for assistance activities being sustained beyond the period of the grant. Maximum points: 10.

Applications will be selected for HUD technical assistance funding according to the rank order of their scores on these criteria, but no application scoring below 50 will be funded. All activities in each application selected for funding must be technical assistance activities which facilitate skills and knowledge in planning, developing and administering activities being funded by local CDBG entitlement funds or Indian CBDG funds, and must include all letters required under Section II—G in Part IX: Checklist for Preparing the Application Narrative.

Part VIII—Preparing and Submitting the Application

1. Availability of Forms

Attachments B, C, and D contain all of the standard forms necessary for the application for awards under this demonstration announcement. These forms may be photocopied for the application.

For purposes of this announcement, all applicants will use the SF 424, SF-424A, and SF-424B and include the required narrative information. Instructions for completing the SF 424, SF-424A, and SF-424B are found in Attachments B, C, D, and PART IX.

Part IX contains a checklist to facilitate preparation of the narrative. Applicants should follow the numbered topical sequence of the checklist in writing the narrative.

In preparing the application, applicants are urged to consider fully the information in this announcement on demonstration goals, project and site requirements, resources, and evaluation/assessment plans. It is recommended also that applicants become familiar with the panel review criteria (Part VII: Criteria for Selection, above) and address as completely as possible in the narrative the concerns expressed in each criterion.

The application will consist of:

(a) Standard Form 424, "Application for Federal Assistance" (SF-424);

(b) "Budget Information—Non-Construction—Construction Programs" (SF-424A);

(c) "Assurances —Non-Construction Programs" (SF-424B);

(d) Restrictions on Lobbying, Certification for Contracts, Grants, Loans, and Cooperative Agreements: fill out, sign and date form found at ATTACHMENT H;

(e) Disclosure of Lobbying Activities, SF-LLL: fill out, sign and date form found at ATTACHMENT H, if appropriate; and

(f) the Project Narrative.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with Federal requirements concerning the drug-free work place and debarment regulations forth in Attachments E and F.

2. Application Submission

Applications must be submitted to ACF by the closing date. Refer to "Closing Date" at the beginning of this document for the specific date.

Applications may be mailed to: Administration for Children and Families, Division of Grants Management, 370 L'Enfant Promenade, SW., 6th Floor—OFM/DGM, Washington, DC 20447.

Hand-delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Grants Management, 6th Floor, 901 D Street, SW., Washington, DC 20447.

An application will be considered to be received on time under either of the following circumstances:

—The application is sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered acceptable only if physically received at the address below.

—The application is hand-delivered on or before August 13, 1991 to the Office of Financial Management, Division of Grants Management, HHS/ACF, at the address below. Hand-delivered applications will be accepted between 8 a.m. and 4:30 p.m., Monday through Friday (excluding legal holidays).

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through the closing date. The official date of receipt of hand-delivered applications will be that recorded by ACF at the time of delivery.

Late applications will be returned to the sender without consideration by the review panel.

Applications once submitted are considered final and no additional materials will be accepted.

One application with an original Authorized Representative signature and two copies are required.

3. Intergovernmental Review

All applicants must comply with the intergovernmental review requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Through this process, States (in consultation with local governments) are provided the opportunity to review and comment on applications for Federal financial assistance.

All States and Territories except Alaska, Idaho, Kansas, Minnesota, Nebraska, Virginia, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Point of Contact (SPOCs). Applicants from these seven jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants should contact the State's Single Point of Contact (SPOC) as early as possible to determine the applicable procedure. The SPOC comment period has been reduced from sixty (60) days to thirty (30) days from the application deadline date to submit comments to allow ACF time to review, consider and attempt to accommodate SPOC input, in order to make grant awards before the end of the fiscal year.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Grants Management, 6th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G.

4. Catalog of Federal Domestic Assistance (CFDA) Reference

These demonstrations have no CFDA number.

Part IX—Checklist for Preparing the Application Narrative

In preparing applications for the above projects, applicants are asked to work from this list of items to be included in the narrative and to organize their material into the four (4) segments below under Roman numerals: I. Project Purpose, II. Project Plan, III. Evaluation and Assessment, and IV. Project Operation.

Within each segment, please use the underlined topics (but not their letters and numbers within the checklist) as section headings.

I. *Project Purpose* (Corresponds to "I. Project Title and Objectives" and "II. Background and Importance of Project" in the standard printed grant application instructions):

A. Statement of overall project purpose related to the goals listed in Part I: Background and Goals in the announcement.

B. Statement of specific objectives based on the demonstration goals and project purpose.

C. Identification of all agencies/organizations coordinating with the State AFDC/JOBS agency to develop, implement, and operate the project.

D. Identification of HUD programs at the proposed project site (CIAP, new development, homeownership conversion existing sites with residential support, Community Development Block Grant).

E. Specification of the number of site residents and the proportion who are AFDC recipients.

F. Identification of agencies and organizations in addition to those in the applicant's unit (L–C., above) that will participate in the project and the role of each.

G. Rationale for the mix of agencies/organizations to be included in the demonstration.

II. *Project Plan* (Corresponds to "V. Work Plan" and "VII. Implementation Potential" in the standard printed grant application instructions):

A. Specific and detailed discussion of each required program element listed in the announcement:

1. The mandatory work requirement.

2. Evidence of coordination with demonstration site residents. (Documentation such as a letter of support or resident petition may be appended.)

3. A plan for forming, if one does not exist, a coordinating council. The coordinating council must include representatives from the applicant agencies as well as (if not an applicant agency) from State and local social service and housing agencies (public and private), businesses, and educational facilities that have resources, programs, or jobs to assist welfare and non-welfare families living in public and Indian housing become self-sufficient. Communities are encouraged to involve the local Private Industry Council, if one exists, and to include members of the medical, religious, and financial communities in the coordinating body. The coordinating council should strive for equal representation from the private and public sectors.

Note: The coordinating council must work with the applicant, PHA and other public and private agencies that have resources or programs available to assist welfare and non-welfare families. The coordinating council must secure commitments of local public and private resources and must oversee the administration of the program.

A list of coordination objectives the current or proposed coordinating council will address.

4. A plan for on-site delivery and integration of services to assist targeted families. A description of how the plan will contribute to community capacity building through training, planning, and involvement of residents in management and other activities.

B. Specific and detailed discussion of each required operational element:

1. A project operations plan to reduce depedency through JOBS and coordinated activities. Criteria by which project success toward achieving resident self-sufficiency can be measured.

2. Description of an organizational scheme for assuring cooperation among participating agencies/organizations, to include:

a. A plan for adequate representation and involvement of coordinating council members, and

b. A plan for targeting public and private resources.

3. *Needs assessment and self-sufficiency plan.* The needs assessment should identify both specific needs of the target population and the availability of resources within the community to meet these needs. In particular, the assessment should identify areas of potential employment in the community, and resources and activities needed to help participants obtain jobs in these areas. In addition to employment opportunities and job training the assessment should address housing, child care, education, personal development and employment counseling, transportation, and medical care.

Note: Many local universities or colleges may be of assistance with the assessment. The following are suggestions for preparing the needs assessment:

—Talk with potential program participants to uncover their perceptions of the obstacles to self-sufficiency. Ask representatives of the PHA and various social service agencies for their views on the same problems and what assistance programs are available to solve them.

—Review the target population's need for housing, job training/placement, and support services. Identify educational levels of potential participants, average number of ages of children who will require child care, types of counseling required, transportation needs, etc.

—Identify job training and placement opportunities existing in the area both through the JTPA and private sector groups.

—Determine which training programs are most likely to lead to long-term employment possibilities with career-ladder possibilities.

—Contact employment bureaus, Chambers of Commerce, and similar organizations in neighboring communities to determine their potential employment opportunities. If these neighboring groups are willing to help, elicit their participation on the coordinating council.

—Identify, by agency or group, potential sources of support. Determine exactly what services each group is willing to provide; to how many participants, how often, at what time, and whether or not a fee will be charged. Secure written commitments from these groups stating the services they agree to offer.

4. List of performance standards to show successful progress toward completion of the self-sufficiency plan. Rationale for the standards.

5. Likelihood of continuation within the community beyond the experimental stage. Evidence that the demonstration plan, if approved, is likely to operate for a period of at least 5 years and has a reasonable likelihood of success, defined in terms of resident self-sufficiency.

C. Specific and detailed discussion of additional project provisions, for example:

1. A provision to use the required self-sufficiency plan as a contract between each participating family and the demonstration sponsors. A plan to make the contract part of the family's lease with the PHA, IHA, or RMC.

2. A plan to make residence at the demonstration site and/or to receive on-site services contingent upon residents meeting project participation criteria.

3. A plan for linkage with the Child Support Enforcement program to enhance economic self-sufficiency through increasing paternity determinations, support orders, and child support payments.

4. A plan to establish and operate a community safety program to reduce street crime, gang violence, and drug trafficking.

D. Identification of project provisions (regarding, for example, participant exemptions or benefits to be contingent upon successful completion of specified hours of JOB activities) that may require waivers under section 1115 of the Social Security Act because they depart from AFDC or JOBS program requirements. (Provide a rationale for each alternative provision).

E. Identification of project provisions (for example, those regarding ceiling rents, non-dwelling use of housing, and computations for determining a resident's prospective rent) that may require HUD exemptions because they depart from regulatory authority consistent with statutory requirements.

F. A discussion of project activities that require technical assistance with identification of the types of assistance desired. (To the extent possible, specify the types needed, for example, HHS JOBS or HUD Resident Management technical assistance.)

G. Each applicant which proposes to use HUD technical assistance funds in support of CDBG-funded activities in the demonstration must submit the following:

1. A letter signed by the government official responsible for administering the CDBG program in the community in which the technical assistance activities will occur identifying the amount of CDBG entitlement funds committed or planned to be committed, the dates of commitment or planned commitment, the specific activities undertaken or planned to be undertaken, and the relationship between the CDBG entitlement activities and the proposed technical assistance activities.

2. Where the applicant, applying jointly with the State IV–A agency, is a non-profit organization or for-profit organization, public housing authority or public body other than the CDBG entitlement community itself, the application must include a letter signed by the Chief Executive Officer of the CDBG community in which the technical assistance will occur designating the applicant as a technical assistance provider to its CDBG entitlement program.

3. Description of the proposed uses of HUD technical assistance funds in accordance with project requirements in Part III: Site and Project Requirements.

III. *Evaluation and Assessment* (Corresponds to "III. Research and Demonstration Methodology" and "IV. Evaluation Plan" in the standard printed grant application instructions):

A. A discussion of the applicant's anticipated cooperation with the outside evaluator of all the demonstrations. To include:

1. Written assurance of willingness to cooperate.

2. Discussion of possible barriers to cooperation and measures to overcome them.

3. Identification of resources (data, personnel) that the grantee can bring to the evaluation partnership.

B. A general description of the applicant's evaluative assessment plan (process study) to describe and discuss problems of implementing and operating the demonstration and assessing the extent to which its interventions helped move participants toward economic self-sufficiency and homeownership. To include:

1. Description of a plan to carry out the assessment. To include:

a. Identification of resources (expertise, estimate of person-hours, etc.) to be provided by the institution.

b. Identification of, and resume for, the person in the applicant unit responsible for coordinating the assessment with the college or university, if applicable.

c. Status of the proposed partnership.

d. A schedule for implementing and conducting the assessment.

2. A discussion of the information and data to be used in the assessment, including:

a. Lists (or at least examples) of the data to be included, with their sources.

b. Designation of the data item(s) for participants' level of work effort.

c. Identification of gaps in data desired for the assessment.

IV. *Project Operation* (Corresponds to "V. Work Plan" and "VI. Project Plan and Facilities" in the standard printed grant application instructions):

A. Gantt Charts or other schedules, one for the project's first year and a second for the two remaining years. (Include in the first-year schedule phase-in dates for each project component, dates for measuring progress against participation criteria, etc.)

B. An organizational plan that describes the working relationship of the resident and coordinating councils with project management and staff. (Include organizational charts, with the number of each type of staff position and time allocations for each position.)

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C. An operational plan that describes the responsibilities of each key individual and unit within the organizational plan. Identification of specific individuals for key individuals, referenced to IV.–D, below. Identification of gaps in organizational experience and a plan to fill those gaps.

D. Resumes for each person in a key position. Position descriptions for jobs for which there are no incumbents.

Dated: May 6, 1991.

Robert M. Wilson,

Deputy Assistant Secretary for Children and Families.

Attachment A—Program Descriptions and Regional Office Contacts

U.S. Department of Health and Human Services

Aid to Families with Dependent Children (AFDC)

States make payments directly to eligible needy families with dependent children to cover costs for food, shelter, clothing, and other items of daily living. The program requirements and benefits vary by State. In general, the program benefits single parent families with children under the age of 18 whose father or mother has died or is continuously absent from the home, or two-parent families in which one of the parents is incapacitated. In addition, all States include two-parent families in which the principal earner is unemployed. The Federal government pays half of the State's administrative costs and from 50–83% of benefits.

Jobs Opportunities and Basic Skills Training Program (JOBS)

The Family Support Act of 1988 established the JOBS program. The purpose of JOBS is to provide AFDC families with the opportunity to take part in education, job training, and work experience programs that will help them avoid long term dependency. All States were required to implement a JOBS program by October 1, 1990. JOBS will also provide these individuals with support services, such as child care, tailored to their needs, which they require to become self-supporting. JOBS programs will be designed by the States themselves to meet each of their specific needs.

The JOBS program is designed to:

• Target resources to those hardest to serve, particularly women with young children.

• Emphasize education, particularly literacy and remedial education.

• Provide training and work experience for jobs that exist.

• Maximize use of existing resources by encouraging extensive coordination at all levels.

• Reach as many recipients as possible.

• Provide states flexibility in program design.

• Encourage targeting of program resources or services, not administration.

• Provide women with choices of child care providers, within state fiscal constraints.

• Focus on women and their children.

The major features of the JOBS program are:

—The State IV-A agency is required to coordinate JOBS program services, including child care and supportive services with other Federal, state and local educational, training, employment, and service programs and with Indian Tribes and Alaska Native organizations that are eligible to conduct separate JOBS programs.

—States must provide all AFDC applicants and recipients with information on the JOBS program, including: education, training, and employment opportunities; available supportive services including child care and transition child care; the State IV–A agency's obligations; and the participant's responsibilities.

—States are required to conduct an initial assessment of each participant's employability including the work experience, employment skills, and service needs of each participant. The State must develop an employability plan in consultation with the JOBS participant based on the initial assessment.

—Mandatory activities consist of the following components:

• Basic Education Activities—Education below the post-secondary level must include, but is not limited to: (1) high school education or its equivalent; (2) basic and remedial education to achieve a basic literacy level; and (3) education in English as a second language.

• Job Readiness Activities—preparation for work by assuring that participants are familar with general work place expectations and exhibit work behavior and attitudes necessary to compete successfully in the labor market.

• Jobs Skills Training—includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area.

• Job Development and Job Placement—agency activity on behalf of participants to solicit a public or private employer's unsubsidized job opening, to market participants or to secure job interviews for them.

—State JOBS program must also offer two of the following four optional components: (a) Group and individual job search skills; (b) on-the-job-training of participants; (c) work-supplementation by developing and subsidizing jobs for recipients as an alternative to financial assistance; and (d) community work experience programs to improve the employability of individuals not able to obtain employment by providing work experience in projects which serve a useful public purpose.

—All recipients of AFDC must participate in JOBS program activities unless they are exempt. Exemptions include recipients who are: under age 16, age 60 or older, ill or incapacitated, working 30 or more hours per week, in the third or subsequent month of pregnancy, youngest child is under 3 (or 1, at state option), or is a VISTA volunteer.

—States may require a parent caring for a child under age 6 to participate no more than 20 hours per week, although participation of more than 20 hours may be encouraged when deemed appropriate in light of the recipients's employment goals.

—To the extent that resources permit, the State must require the custodial parent under 20 who has not finished high school (or its equivalent) to participant in an appropriate educational activity even if the youngest child is under 3. However, the State may require the custodial parent who is 18 or 19 and is required to participate in JOBS to participate in training or work activities (subject to the 20-hour limit) instead of in educational activities if one of certain conditions is met.

Child Care

—States must guarantee child care necessary for AFDC recipients to: (1) Accept or maintain employment, or (2) participate in an approved educational or training activity under JOBS, or in non-JOBS areas according to guidelines for approval of activities in non-JOBS areas.

—The guarantee of child care is limited to dependent children under 13, or older children who are physically or mentally incapable of caring for themselves or who are under court supervision. States must also guarantee care for a child who would be in the assistance unit except for the receipt of supplemental Security Income under title XVI of foster care under title IV–E.

—Regulations allow for the caretaker relative to choose the type of child care (center, group family day care, family day care or in-home care), if more than one type is available.

—States may provide for child care in a variety of ways: by providing care directly, contracting with providers, issuing vouchers to the custodial parent, reimbursing the custodial parent for out-of-pocket expenses, or allowing for a dependent care disregard when calculating the welfare grant.

—FFP is available for payments for the actual cost of child care up to the statewide limit established by the State IV–A agency, but not for more than the applicable local market rate. In setting the statewide limit the state may choose the amount of the dependent care disregard or some higher amount.

—States must establish local market rates which are based on a representative sample of providers or slots. Local market rates must be determined by type of care, such as center care, group family day care. Rates must be differentiated by care type for children with special needs, infants, toddlers, preschool and school children and whether there are different rates for full and part-time care. Local market rates must be established at the 75th percentile of the cost of such care.

—The amount of the dependent care disregard is $175 per month, per child over two and $200 for a child under two.

—FFP is available for child care benefits at the Federal medical assistance percentage and is not subject to a funding cap. Child care administrative costs will be matched at the administrative matching rate for AFDC.

Other Supportive Services

—States must define work-related supportive services and work-related expenses in the State Supportive Services Plan. They may include one-time, work-related expenses which would enable individuals to accept or maintain employment.

Transitional Child Care

—States must guarantee child care for up to 12 months when a family becomes ineligible for AFDC assistance because of increased earnings, loss of the income disregard due to time limitations, or for AFDC–UP cases only, an increase in the number of hours worked to over 100 hours per month.

—To be eligible, the former recipient must have received AFDC in 3 of the prior 6 months.

—Eligibility for benefits continues for 12 consecutive months. Families may begin to receive child care in any month during the 12 month eligibility period.

—States must establish a sliding fee scale for the purpose of calculating a family's contribution for transitional child care. The State IV–A agency must require each family receiving transitional child care to contribute toward the payment for such care based on the family's ability to pay.

Child Support Enforcement Program

It 1975, the Child Support Enforcement program was established as a Federal/State/local effort to locate absent parents, establish paternity when necessary, and establish and enforce legal orders for support. The Federal and State governments jointly (66–34) percent fund child support enforcement services. This program is unique among government programs in that States can make net dollar savings through child support enforcement efforts. There are over 9.8 million mothers rearing children without a father in the household who could potentially benefit from child support services.

Continuing concern for the well-being of children who live with only one of their parents and a desire to further promote family self-sufficiency promoted Congress to enact the Child Support Enforcement Amendments of 1984 and the Family Support Act of 1988. Under these laws, States are required to use strong proven practices for collecting child support payments, to upgrade efforts to establish paternity and to respond with equal vigor on behalf of children living in other States and to provide services for welfare and non-welfare families alike. Enforcement remedies which States must use include: mandatory immediate wage withholdings, expedited legal processes, and offsetting of both Federal and State income tax refunds. States must also establish mandatory presumptive guidelines for setting child support awards. Also under the Family Support Act of 1988, States must be able to renew and modify support orders when requested to comply with their guidelines. By the end of 1993, States must establish a periodic review and modification of child support orders at least every 36 months.

ADMINISTRATION FOR CHILDREN AND FAMILIES REGIONAL OFFICES

States	Acting regional administrators
Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.	Mr. Hugh Galligan, DHHS/ACF, John F. Kennedy Federal, Building, 6th Floor, Room 600, Boston, Massachusetts 02203, (FTS) 835–2463, Commercial (617) 565–2463, FAX: (FTS) 835–2499.
Region II: New York, New Jersey, Puerto Rico, Virgin Islands.	Ms. Ann Schreiber, DHHS/ACF, 26 Federal Plaza, Room 4048, New York, New York 10278, (FTS) 264–2890, Commercial (212) 264–2890, FAX: (FTS) 264–4881.
Region III: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.	Mr. Rick Spitzborg, DHHS/ACF, Mail Stop #15, 3535 Market Street, Room 6220, Philadelphia, Pennsylvania 19101, (FTS) 596–4395, Commercial (215) 596–1320, FAX: (FTS) 596–4497.
Region IV: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.	Ms. Suanne Brooks, DHHS/ACF, 101 Marietta Tower, Suite 821, Atlanta, Georgia 30323, (FTS) 841–5733, Commercial (404) 331–5733, FAX: (FTS) 841–1778.
Region V: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.	Ms. Marion Steffy, DHHS/ACF, 105 W. Adams Street, 20th Floor, Chicago, Illinois 60603, (FTS) 353–4237, Commercial (312) 353–4237, FAX: (FTS) 353–2204.
Region VI: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.	Mr. Marvin Layne, DHHS/ACF, 1200 Main Tower Building, Suite 1700, Dallas, Texas 75202, (FTS) 729–5946, Commercial (214) 767–9646, FAX: (FTS) 729–3743.
Region VII: Iowa, Kansas, Missouri, Nebraska.	Mr. Dwight High, DHHS/ACF, 601 East 12th Street, Federal Building, Room 515, Kansas City, Missouri 64106, (FTS) 867–2806, Commercial (816) 426–2806, FAX: (FTS) 867–3010.
Region VIII: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.	Mr. David Chapo, DHHS/ACF, Federal Office Building, Room 1185, 1961 Stout Street, Denver, Colorado 80294–3538, (FTS) 564–5646, Commercial (303) 844–5646, FAX: (FTS) 564–2213.
Region IX: Arizona, California, Hawaii, Nevada, Guam, Trust Territory of Pacific Island, American Samoa.	Sharon Fujii, Ph.D., DHHS/ACF, 50 United Nations Plaza, Mail Stop 351, San Francisco, California 94102, (FTS) 556–4415, Commercial (415) 556–4415, FAX: (FTS) 556–1544.

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ADMINISTRATION FOR CHILDREN AND FAMILIES REGIONAL OFFICES—Continued

States	Acting regional administrators
Region X: Alaska, Idaho, Oregon, Washington.	Mr. Edward Ziegler, DHHS/ACF, 2201 Sixth Avenue, M/S RX-70, Seattle, Washington 98121, (FTS) 399-5775, Commercial (206) 553-5775, FAX: (FTS) 399-0421.

U.S. Department of Housing and Urban Development

Public Housing

The Federal low income public housing program provides Federal aid to local public housing agencies to provide decent, safe and sanitary housing for low income residents at rents they can afford. The program is administered under the authority of the U.S. Housing Act of 1937, as amended, and currently supports 1,300,00 units of housing.

There are 3,100 public housing agencies (PHAs) established by local governments in accordance with State law. These local public agencies develop, own, and operate low income public housing projects, which used to be financed through the sale of local tax exempt obligations, guaranteed by the U.S. Government, and now are funded by direct Federal grants. HUD furnishes technical and professional assistance in planning, developing, and managing the projects and gives three kinds of financial assistance: funds for development costs, annual contributions for operating subsidy, and modernization (capital improvement) funds.

Rents are based on the resident's ability to contribute to the costs of managing and operating the housing. To gain admission to public housing, the family must be a lower income family; its income may not be more than 80% of the median income for the area. Actual average tenant incomes are about 30% of the median.

Indian Housing

This HUD program makes grants and pays operating subsidies to 182 local Indian housing authorities (IHAs) to assist in developing and managing low income housing projects. The program is administered under the authority of the U.S. Housing Act of 1937, as amended, with almost 70,000 units of housing built in Indian country since the inception of the program in 1961.

Three basic types of Indian housing programs are in use on Indian reservations: (1) conventional rental; (2) homeownership; and (3) Section 8 or vouchers. In all of these programs, the IHA and HUD enter into a financial agreement which provides Federal assistance for the development and/or operation of housing and outlines the responsibility of the IHA in order to maintain this arrangement.

Resident Management Grant Program

This program provides financial assistance to resident councils and resident management corporations to fund certain activities related to resident management of public and Indian housing. There are currently over 100 resident management entities under development generating positive social and management benefits including job creation, reduction of crime and welfare dependency, development of new social services, enhancement of community services and overall improvement in the quality of life for residents of public and Indian housing. In addition to improving their housing, RMCs start businesses that hire residents, operate day care centers, and provide job training for residents. The FY '91 funding level for this program is at $5 million with per-site grants up to $100,000.

Comprehensive Improvement Assistance Program (CIAP)

This program provides financial assistance to Public Housing Agencies (PHAs), and Indian Housing Authorities (IHAs), to improve the physical condition and upgrade the management and operation of existing public and Indian housing to assure that such developments continue to serve lower-income families. Up to 10% of CIAP may be used for management improvement funding which can support resident training activities consistent with JOBS self-sufficiency efforts.

Homeownership Programs

The Department administers several programs which offer the residents the opportunity to become homeowners. These programs include a lease-purchase program under Turnkey III, the Indian Mutual Help Program, sales of public housing properties by PHAs to residents under the statutory authority of section 5(h) of the U.S. Housing Act of 1937, and sales of multifamily buildings from local PHAs to RMCs under section 21.

Community Development Block Grant (CDBG) Program

This program provides annual grants to states, cities and counties to develop viable urban communities by providing decent housing and a suitable living environment, and by expanding economic opportunities, principally for low- and moderate-income persons. One way that a CDBG-assisted economic development activity can meet the national objective of benefiting low- and moderate-income persons is if the activity involves the employment of persons, the majority of whom are of low and moderate income. JOBS participants would automatically meet the CDBG low- to moderate-income national objective.

One of Secretary Kemp's priorities is to empower the poor by providing public and assisted housing residents an opportunity to manage and own the housing units in which they live. HUD is developing guidance for using CDBG funds to assist residents of public and assisted housing with housing resident management, ownership conversion, and economic development opportunities. Activities may include, but are not limited to, acquisition and rehabilitation assistance, public services and public facilities and improvements, and economic development activities.

The Public Housing Drug Elimination Program

This program provides direct financial assistance to PHAs and IHAs to reduce and eliminate drug-related crime in and around their communities. Through a competitive grants process, applications are awarded based upon the severity of the drug problem and the quality and comprehensiveness of the plan to solve the problem, and the extent to which residents and community leaders are involved in implementing the program. Grant funds may be used for enforcement and prevention activities for up to two years per award.

U.S. Department of Housing and Urban Development

Regional Resident Initiatives Coordinators (RICS)

States	Regional RICS
Region I: (Boston) Connecticut, Maine, Massachusetts, Rhode Island, Vermont.	Bill Hast (Acting), HUD/OPH, Thomas P. O'Neill, Jr., Federal Building, 10 Causeway St., Boston, Massachusetts 02222-1092, (FTS) 835-5298, Commercial 617-565-5298, FAX: (FTS) 835-5267.
Region II: (New York) New York, New Jersey, Puerto Rico, Virgin Islands.	Frank Malerba, HUD/OPH, 26 Federal Plaza, New York, New York 10278-0068, (FTS) 264-6955, Commercial (212) 264-6955, FAX: (FTS) 264-0345.
Region III: (Philadelphia) Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia.	Cynthia Jeter, HUD/OPH, Liberty Square Building, 105 S 7th St., Philadelphia, PA 19106-3392, (FTS) 597-6046, Commercial (215) 597-6046, FAX: (FTS) 597-9627.
Region IV: (Atlanta) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.	Dan Abel, HUD/OPH, Richard B. Russell Federal Building, 75 Spring St. S.W., Atlanta, Georgia 30303-3388, (FTS) 841-0701, Commercial (404) 331-5141, FAX: (FTS) 841-0646.
Region V: (Chicago) Illinois, Indiana, Michigan, Ohio, Wisconsin.	Pat Alberts, HUD/OPH, 626 West Jackson Blvd., Chicago, Illinois 60606-6601, (FTS) 886-0603, Commercial (312) 353-0603, FAX: (FTS) 353-0157.
Region VI: (Fort Worth) Arkansas, Louisiana, New Mexico, Oklahoma, Texas.	Cheryl Renteria, HUD/OPH, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113-2905, (FTS) 729-5501, Commercial 817-885-5501, FAX: (FTS) 729-5529.
Region VII: (Kansas City) Iowa, Kansas, Missouri, Nebraska.	T.C. Warren, HUD/OPH Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64106-2496, (FTS) 757-3920, Commercial (816) 236-3920, FAX: (FTS) 758-6590.
Region VIII: (Denver) Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.	Evelyn Meininger, HUD/OPH, Executive Tower Building, 1405 Curtis St., Denver, Colorado 80202-2349, (FTS) 564-4771, Commercial (303) 844-4771, FAX: (FTS) 564-9475.
Region IX: (San Francisco) Arizona, California, Hawaii, Nevada, Guam, Trust Territory of Pacific Island, American Samoa.	Donald Feist, HUD/OPH, Phillip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102-3448, (FTS) 556-1747, Commercial (415) 556-1747.
Region X: (Seattle) Alaska, Idaho, Oregon, Washington (Seattle).	Barbara Jenkins, HUD/OPH, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 8101-2068, (FTS) 399-0276, Commercial (206) 442-0276, FAX: (FTS) 399-4405.

U.S. Department of Housing and Urban Development

Regional Indian Resident Initiatives Coordinators (RICS)

Region	Indian RICS
Region V: Chicago	Kevin Fitzgibbons, Office of Indian Programs, 626 West Jackson Blvd., Chicago, Illinois 60606-6601, (FTS) 886-6484, Commercial (312) 353-6484, FAX: (FTS) 353-0157.
Region VI: Oklahoma	Caren Cook, Indian Programs Division, Murrah Federal Building, 200 N.W. 5th St., Oklahoma City, OK 73102-3202, (FTS) 736-5068, Commercial (405) 231-4181, FAX: (FTS) 736-4646.
Region VIII: Denver	David Bohl, Office of Indian Programs, Executive Tower Building, 1405 Curtis St., Denver, Colorado 80202-2349, (FTS) 564-2963, Commercial (303) 844-2963, FAX: (FTS) 564-9475.
Region IX: Phoenix/San Francisco	Vacant.
Region X: Anchorage	Deb Alston, Office of Indian Programs, 222 W. 8th Ave. #64, Anchorage, Alaska 99513-7537, (FTS) 868-4170, Commercial (907) 271-4170, FAX: (FTS) (907) 271-3667.
Seattle	Lillian Kaufman, Office of Indian Programs, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 8101-2068, (FTS) 399-0762, Commercial (206) 442-0762, FAX: (FTS) 399-4405.

BILLING CODE 4199-01-M

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ATTACHMENT B—SF 424, APPLICATION FOR FEDERAL ASSISTANCE AND INSTRUCTIONS FOR THE SF-424

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction
2. DATE SUBMITTED — Applicant Identifier
3. DATE RECEIVED BY STATE — State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY — Federal Identifier

5. APPLICANT INFORMATION
Legal Name — Organizational Unit
Address (give city, county, state, and zip code) — Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A State — H Independent School Dist
B County — I State Controlled Institution of Higher Learning
C Municipal — J Private University
D Township — K Indian Tribe
E Interstate — L Individual
F Intermunicipal — M Profit Organization
G Special District — N Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify)

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ – ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.)

13. PROPOSED PROJECT: Start Date — Ending Date
14. CONGRESSIONAL DISTRICTS OF: a. Applicant — b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative — b. Title — c. Telephone number
d. Signature of Authorized Representative — e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1	Self-explanatory.
2	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: —"New" means a new assistance award. —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities)
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project
15.	Amount requested or to be contributed during the first funding/budget period by each contributor Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

ATTACHMENT C—SF 424A, BUDGET INFORMATION—NON-CONSTRUCTION PROGRAMS AND INSTRUCTIONS FOR THE SF-424A

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown Additional sheets should be used when one form does not provide adequate space for all breakdown of data required However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year)

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary

Line 20 - Enter the total for each of the Columns (b)-(e) When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense

Line 23 - Provide any other explanations or comments deemed necessary.

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ATTACHMENT D—SF 424B, ASSURANCES—NON-CONSTRUCTION PROGRAMS

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988, (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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Attachment E—U.S. Department of Health and Human Services Certificate Regarding Drug-Free Workplace Requirements (Grantee Other Than Individual)

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the U.S. Department of Health and Human Services determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of the grant, or governmentwide suspension or debarment.

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Make it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such convictions;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee shall insert in the space provided below, the site(s) for the performance of work done in connection with the specific grant (Street address, city, county, State, Zip Code).

Attachment F—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Telephone (205) 269-5666

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280-1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371-1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323-7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866-2156

Connecticut

Under Secretary, Attn: Intergovernmental Review coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Telephone (203) 566-3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736-3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue NW., Washington, D.C. 20004, Telephone (202) 727-6111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Telephone (904) 488-8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656-3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548-3016 or 548-3085

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782-6336

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232-5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281-3725

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capitol Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564-2382

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289-3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2305, Telephone (301) 225-4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 2303, Boston, Massachusetts 02202, Telephone (617) 727-7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373-7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960-4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444-5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, NV. 89710, ATTN: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-6225.

New Mexico

Dorothy E. (Duffy) Rodriquez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843-9770

Oregon

Attn: Dolores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street NE., Salem, Oregon 97310, Telephone (503) 373-1998

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783-3700

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Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0494

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212.

Tennessee

Charles Brown, State Single Point of Contact State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778

Utah

Utah State Clearinghouse, Attn: Carolyn Wright, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 538-1547

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51, Olympia, Washington 98504-41514 Telephone (206) 753-4078

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010.

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin, 53707-7864, Telephone (608) 266-1741

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, (608)-266-0267.

Wyoming

Ann Redmen, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574.

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750.

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ATTACHMENT H—RESTRICTIONS ON LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3 The undersigned shall require that the language of this certification be included in the award documents for subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or grantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Signature

Title

Organization

Date

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
   - ☐ a. contract
   - b. grant
   - c. cooperative agreement
   - d. loan
   - e. loan guarantee
   - f. loan insurance

2. Status of Federal Action:
   - ☐ a. bid/offer/application
   - b. initial award
   - c. post-award

3. Report Type:
   - ☐ a. initial filing
   - b. material change

   For Material Change Only:
   year _____ quarter ____
   date of last report _____

4. Name and Address of Reporting Entity:
   - ☐ Prime
   - ☐ Subawardee
     Tier ____, *if known:*

   Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

   Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

   CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
   $

10. a. Name and Address of Lobbying Entity
    (if individual, last name, first name, MI):

    b. Individuals Performing Services *(including address if different from No. 10a)*
    (last name, first name, MI):

    (attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
    $ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
    - ☐ a. cash
    - ☐ b. in-kind; specify: nature _____
      value _____

13. Type of Payment *(check all that apply):*
    - ☐ a. retainer
    - ☐ b. one-time fee
    - ☐ c. commission
    - ☐ d. contingent fee
    - ☐ e. deferred
    - ☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

    (attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

    Signature: _____
    Print Name: _____
    Title: _____
    Telephone No.: _____ Date: _____

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

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CONTINUATION SHEET

Approved by OMB 0348-0046

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Wednesday
May 15, 1991

Part IV

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1413

Food, Agriculture, Conservation, and Trade Act; Implementation; Final Rule

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

Feed, Agriculture, Conservation, and Trade Act; Implementation

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to set forth a provision which was inadvertently omitted in the final rule published on April 19, 1991 (56 FR 16156). Generally, that final rule provided a list of crops which could be planted on acreage designated as "flex acreage" under the annual wheat, feed grains, upland cotton and rice programs.

EFFECTIVE DATE: May 15, 1991.

FOR FURTHER INFORMATION CONTACT: H.R. Maynard, Director, Cotton, Grain, and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, 202-447-7641.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified "non major". It has been determined that this final rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Final Regulatory Impact Analyses are being prepared with respect to the programs for the 1991 crops of wheat, feed grains, cotton, and rice. Copies of the analyses will be available to the public from Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, USDA, room 3741, South Agriculture Building, 14th and Independence, P.O. Box 2415, Washington, DC 20013.

The titles and numbers of the Federal assistance programs to which this final rule applies are: Cotton Production Stabilization-10.052; Feed Grain Production Stabilization-10.055; Wheat Production Stabilization-10.058; Rice Production Program-10.065; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither the Agricultural Stabilization and Conservation Service ("ASCS") nor the Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, and assigned OMB No. 0560-0004 and 0560-0092. OMB approval for the information collections contained in these rules expires May 31, 1991; however, a request for a 3-year extension from OMB will be submitted.

Public reporting burden for these collections is estimated to vary from 15 minutes to 45 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560-0004 and 0560-0092), Washington, DC 20503.

Background

In response to a proposed rule published on February 26, 1991 (56 FR 8044) and a notice of proposed determination published on February 15, 1991 (56 FR 6366) CCC received numerous comments with respect to various crops which could be planted on a farm which is enrolled in CCC production adjustment programs. As a result of these comments, the final rule published on April 19, 1991 (56 FR 16156) provided that certain crops which had been proposed as approved crops were not approved for 1991 through 1995. However, some producers had received advice from employees of the Department of Agriculture that the proposed list of crops could be planted and had taken actions regarding the planting of such crops in response to this advice. Accordingly, CCC has determined that such producers should, for 1991 only, be allowed to designate the acreage planted to such crops as "flex acreage" if such plantings were the result of advice provided by employees of the Department of Agriculture. However, the April 19, 1991 final rule inadvertently omitted this provision. Accordingly, this final rule amends 7 CFR 1413.11 to provide that producers who planted a crop which was included in the proposed list and which was not included in the final list will not be considered to be out of compliance with program requirements as a result of such planting if the planting was the result of the advice provided by employees of the Department of Agriculture.

List of Subjects in 7 CFR Part 1413

Cotton, Feed grains, Price support programs, Wheat, Rice.

Final Rule

Accordingly the regulations at 7 CFR part 1413 are amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441-2, 1444-2, 1444f, 1445b-3a, 1461-1469; 15 U.S.C. 714b and 714c.

2. Section 1413.11 is amended by adding paragraph (j) to read as follows:

§ 1413.11 Planting flexibility.

* * * * *

(j) Notwithstanding any other provision of this section, for the 1991 crop year only, producers who planted the following crops or acreage designated as flex acreage shall be considered in compliance with this section if such plantings were the result of a good faith reliance upon information provided by employees of the Department of Agriculture: wild rice, tree crops, nuts, peanuts, and tobacco.

* * * * *

Signed at Washington, DC On May 10, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-11571 Filed 5-10-91; 4:31 pm]

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May 15, 1991

Part V

Office of Management and Budget

Cost Principles for Educational Institutions; Proposed Revisions to Circular A-21; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Proposed Revisions to Circular A-21

AGENCY: Office of Management and Budget.

ACTION: Proposed revisions to Circular A-21.

SUMMARY: This Notice offers interested parties an opportunity to comment on proposed revisions to Office of Management and Budget (OMB) Circular A-21, "Cost Principles for Educational Institutions."

This revision implements the previously stated intent of OMB to revise Circular A-21. On April 22, 1991, Director Richard Darman announced that OMB would move to exclude certain specified costs from indirect cost reimbursements paid to colleges and universities receiving Federal research grants.

Mr. Darman said: "Recent information shows abuses in reimbursements claimed by universities for indirect costs supporting Government funded research. These require additional guidelines to clarify policy and stop the abuse."

This proposed revision represents the initial step in a broader Administration effort to develop more comprehensive reforms. This effort is examining additional changes in reimbursement policies for administration, facilities and equipment.

The proposed revision implements provisions of 10 U.S.C. 2324(e), (f), and (h)(1) as well as other changes.

10 U.S.C. 2324(e) and (f) were enacted by the Congress to remove ambiguities in cost principles that were being interpreted differently by defense contractors, contracting officers, and contract auditors. These sections specify certain costs as unallowable charges to Federal Government contracts and require clarification on the allowability of other items of cost. Recent revelations concerning university charges to Federal Government research indicate the need to clarify further which charges are allowable.

10 U.S.C. 2324(h)(1) requires a certification by the contractor that all indirect costs submitted for settlement in a proposal are allowable. This revision also contains additional items that are unallowable.

Although the above cited laws pertain only to contracts, these revisions propose that the changes be effective for grants and contracts awarded under Circular A-21. This approach will ensure that ambiguities ordered removed by the Congress for contracts will also be removed for grants. This approach will ensure a consistent approach to the problem of determining allowable costs for all Federal awards.

DATES: Interested parties are invited to comment on these proposed changes. Comments should be submitted to the Office of Management and Budget, Financial Management Division, room 10235, New Executive Office Building, Washington, DC 20503. All comments should be received on or before June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Jack Sheehan, Financial Management Division, Office of Management and Budget (telephone: 202-395-3050).

SUPPLEMENTARY INFORMATION: The following explains the major changes proposed to Circular A-21.

Circular A-21 contains a list of allowable and unallowable costs. The list is not all inclusive and failure to mention a particular item of cost does not imply the cost is allowable or unallowable. Many of the proposed revisions are intended to specifically identify costs which are currently considered unallowable but are not specifically mentioned in the Circular.

1. A new section is added providing for the immediate recovery with interest of all unallowable costs charged to the Federal Government.

2. New subsections are added to the Circular to define public relations and describe allowable public relations costs. Also, a new subsection is added to describe unallowable advertising and public relations costs. Perviously the Circular defined these costs in different sections dealing with advertising and public information costs. The revisions are made to provide for consistent treatment of these costs as provided for in 10 U.S.C. 2324(e) and (f).

3. A new section, Alcoholic beverages, which provides that such costs are unallowable, is added to the Circular. 10 U.S.C. 2324(e) specifically identifies these costs as unallowable.

4. A new subsection, Salary limits, which provides that salary amounts in excess of $120,000 are unallowable charges whether as direct or indirect costs, is added. Public Law 101-517 currently limits salary amounts in excess of $120,000 as direct charges.

5. A technical amendment is made to the Circular to clarify the unallowability of increases to pension costs caused by a delay in funding the actuarial liability more than 30 days after the end of each quarter of the fiscal year. This change conforms the Circular wording on pension costs to that contained in Circular A-122, "Cost Principles for Nonprofit Organizations." Currently such charges (penalties) are considered unallowable even though Circular A-21 does not address this specific situation.

6. A new subsection, Organization-furnished automobiles, is added to the Circular. Currently, business use of an organization-furnished automobile is considered an allowable travel charge to the Federal Government. This revision clarifies that personal use of such vehicles, including transportation to and from work, is compensation for personal services and is unallowable. 10 U.S.C. 2324(f) requires that this cost principle be clarified.

7. A new section, Defense and prosecution of criminal and civil proceedings, claims and patent infringement, is added to the Circular. This new section clarifies the types of and the extent to which litigation costs incurred by an institution will be considered allowable. The criminal and civil proceeding cost limitations are predicated on Section 8 of Pub. L. 100-700, Major Fraud Act of 1988. Litigation costs associated with claims and patent infringement actions remain unallowable.

8. A new subsection is added to the Circular providing that donations and contributions by the institution are unallowable. Currently, the Circular does not specifically address them. 10 U.S.C. 2324(e) identifies them as unallowable.

9. The employee morale, health, and welfare section of the Circular is amended to add food services to the types of allowable activities included under this section and to clarify the allowability of losses arising from such operations. This revision clarifies that such losses are allowable when the food service is operated on a break-even basis or when unusual circumstances exist. 10 U.S.C. 2324(f) requires that this cost principle be clarified.

10. The existing language of the Circular prohibiting Entertainment costs is revised to conform to 10 U.S.C. 2324(e).

11. The Circular is revised to clearly prohibit charging the Federal Government for the costs of goods or services for personal use of employees and the housing and personal living expenses of the institution's officers.

12. The Insurance and indemnification section of the Circular is amended to prohibit charges for commercial insurance against defects in the institution's materials or workmanship.

13. A few section, Lobbying, is added to the Circular. Public comment is specifically requested on expanding new paragraph #23, Lobbying, to include either the current language in the Federal Acquisition Regulation (FAR) on executive lobbying costs or the current language in the FAR and OMB Circular A-122 on legislative lobbying costs, or both, or any revision of either. These provisions define certain lobbying activities as unallowable charges. Interested parties may wish to review the extensive analysis that accompanied the FAR and Circular A-122 legislative lobbying costs provisions at 49 FR 18260-18277.

14. The Circular is revised to make it clear that the cost of membership in any social, dining, or country club is unallowable, as provided for in 10 U.S.C. 2324(e). 10 U.S.C. 2324(f) also requires the cost principle on memberships in civic and community and professional organizations be clarified. The Circular currently allows the costs of membership in civic, business, technical and professional organizations and is silent on membership in community organizations. This revision makes the membership costs in civic and community organizations unallowable because they do not benefit federally-sponsored work. Allowable membership costs are not restricted to business, professional and technical organizations.

15. A new section is added to the Circular prohibiting charges for the cost of selling and marketing any products or services of the institution.

16. A new subsection is added to the section on severance pay to prohibit charges in excess of the institution's normal practices.

17. Travel cost policies in the Circular are revised. The proposed lodging and subsistence cost principle provision is patterned on section 24 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 420) and is intended to clarify that reimbursable employee travel costs may be determined based on the use of an institutional travel policy when such policy results in reasonable charges to sponsored agreements. The proposed commercial air travel cost revisions provide, consistent with prudent travel cost management, that reimbursements for airfare costs incurred shall be limited to the lowest available discount airfares. Also, reimbursements for travel performed by use of institution-owned, -leased or -chartered aircraft shall be limited to the cost of allowable commercial airfare.

18. A new section is added to the Circular prohibiting charges for the travel costs of the institution's trustees.

19. A new section is added providing for certification of the institution's indirect cost proposal.

Executive Order No. 12291

OMB has determined that the proposed revisions to Circular No. A-21 do not qualify as a "major rule" under the criteria in Executive Order No. 12291, "Federal Regulation."

The principal effect of the proposed revisions will be to require that Federal agencies ensure that Federal grant and contract funds are not used for purposes that are contrary to specific legislative prohibitions or that have been determined to be not necessary to carry out the program's objectives. The costs to implement the new revisions are primarily accounting costs for grantees, contractors, and Federal agencies. These new costs, however, are minimal in both absolute and relative amounts, and, in many instances, the revisions should reduce audit and compliance costs. Furthermore, much of the accounting work that the revision requires is already mandated by other sections of Circular No. A-21.

Susan Gaffney,

Acting Assistant Director, Financial Management Division.

The following are proposed revisions to sections C, J and K of Circular A-21:

1. The following new section 8 is added to section C:

8. *Collection of unallowable costs.* Cost specifically identified as unallowable in Section J and charged to the government, either directly or indirectly, will be refunded with interest. Interest will be computed in accordance with applicable Federal agency regulations.

2. Section J, *General provisions for selected items of cost,* is revised by modifying the first sentence, "Sections 1 through 44 below. . ." to read, "Sections 1 through 49 below."

3. Section 1, *Advertising costs,* is retitled *Advertising and public relations costs* and revised to read as follows:

1. Advertising and Public Relations Costs

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the institution or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only advertising costs allowable are those which are solely for:

(1) The recruitment of personnel required for the performance by the institution of obligations arising under the sponsored agreement, when considered in conjunction with all other recruitment costs, as set forth in section J. 30;

(2) The procurement of goods and services for the performance of the sponsored agreement;

(3) The disposal of scrap or surplus materials acquired in the performance of the sponsored agreement except when institutions are reimbursed for disposal costs at a predetermined amount in accordance with Attachment N, OMB Circular No. A-110; or

(4) Other specific purposes necessary to meet the requirements of the sponsored agreement.

d. The only allowable public relations costs are:

(1) Costs specifically required by sponsored agreements;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of sponsored agreements; or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notices of contract/grant awards, financial matters, etc.

e. Costs identified in a through d, if incurred for more than one sponsored agreement or for both sponsored work and other work of the institution, are allowable to the extent that the principles in section D and E are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections c, d, and e above;

(2) Costs of special events, such as conventions and trade shows, including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the institution.

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4. The following new section 2 is added to section J:

2. Alcoholic Beverages

Costs of alcoholic beverages are unallowable.

5. The following new section 3 is added to section J:

3. Alumni Activities

Costs incurred for, or in support of, alumni activities and similar services are unallowable.

6. Former sections 2, 3, 4, and 5 are renumbered 4, 5, 6 and 7, respectively.

7. Former section 6, *Compensation for personal services*, is renumbered 8 and revised as follows:

a. Subsection a is renumbered a(1) and the reference to J.15 is deleted. A new subsection a(2), *Salary limits* is added and reads as follows:

(2) *Salary limits.* Salary amounts (however classified, e.g., salary, wage, bonus, other designation) in excess of the limit established by Public Law 101-517 (currently rates of pay equivalent to $120,600 per annum) are unallowable as charges to sponsored agreements whether as direct or indirect costs. Fringe benefits and indirect costs associated with unallowable salary expenses are also unallowable.

b. Former section J.15, *Fringe benefits*, is deleted and moved in its entirety to a new subsection f in this section and renumbered accordingly. A sentence is added at the end of the first subsection on rules for pension costs and now reads as follows:

f. Fringe benefits.

(3) Rules for pension plan costs are as follows:

(a) Costs of the institution's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided: (i) Such policies meet the test of reasonableness, (ii) the methods of cost allocation are equitable for all activities, (iii) the amount of pension cost assigned to each fiscal year is determined in accordance with (b) below, and (iv) the cost assigned to a given fiscal year is paid or funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

c. A new subsection g is added to this section and reads as follows:

g. Institution-furnished automobiles. That portion of the cost of institution-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees.

8. Former section 7 is renumbered 9 and its reference, to section J.10.C is changed to section J.20.C.

9. Former sections 8 and 9 are renumbered 10 and 12, respectively.

10. The following new section 11 is added to section J:

11. *Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.*

a. Definitions.

Conviction, as used herein, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

Costs include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the institution to assist it; all elements of compensation related costs and expenses of employees, officers and trustees, and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding that bears a direct relationship to the proceedings.

Fraud, as used herein, means (i) acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents, (ii) acts that constitute a cause for debarment or suspension (as specified in agency regulations) and (iii) acts which violate the False Claims Act, 31 U.S.C., sections 3729–3731, or the Anti-kickback Act, 41 U.S.C., sections 51 and 54.

Penalty does not include restitution, reimbursement, or compensatory damages.

Proceeding includes an investigation.

b. Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding: (1) Relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation by the institution, and (2) results in any of the following dispositions:

(1) In a criminal proceeding, conviction.

(2) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of institutional liability.

(3) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(4) A final decision by an appropriate Federal official to debar or suspend the institution, to rescind or void an award, or to terminate an award for default by reason of a violation or failure to comply with a law or regulation.

(5) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in (1), (2), (3) or (4) of this paragraph.

(6) Not covered by subparagraphs b(1) through (5) of this subsection, but where the underlying alleged awardee misconduct by the institution was the same as that which led to a different proceeding whose costs are unallowable by reason of subparagraphs b(1) through (5) of this subsection.

c. If a proceeding referred to in paragraph b is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the institution and the Federal Government, then the costs incurred by the institution in connection with such proceedings that are otherwise unallowable under paragraph b may be allowed to the extent specifically provided in such agreement.

d. If a proceeding referred to in paragraph b is commenced by a State, local or foreign government, the authorized official of the sponsoring agency may allow the costs incurred for such proceedings, in accordance with agency procedures, provided that the costs were incurred as a result of compliance with: (1) The scope of work, specific terms and conditions, or other terms of the sponsored agreement, or (2) specific written direction of an authorized official of the sponsoring agency.

e. Costs incurred in connection with proceedings described in paragraph b, but which are not made unallowable by that paragraph, may be allowed by the sponsoring agency only to the extent that:

(1) The total costs incurred are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable costs, is not prohibited by any other provision(s) of the sponsored agreement;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and

(4) The amount of costs allowed does not exceed 80 percent of the total costs incurred and otherwise allowable under the sponsored agreement but for this limitation. Such percentage amount that may be allowed (up to the 80 percent limit) shall not exceed the percentage amount determined by an authorized official of the sponsoring agency to be appropriate, on a case-by-case basis, considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. However, where an agreement reached under paragraph c explicitly considered this 80 percent limitation, then an amount up to the full amount of costs specifically provided in such agreement may be allowed.

f. Costs incurred by the institution in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100-700), including the cost of all relief necessary to make such employee whole, where the institution was found liable or settled, are unallowable.

g. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with defense against Federal Government claims or appeals, or the prosecution of claims or appeals against the Federal Government, are unallowable.

h. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored agreements.

i. Costs that may be unallowable under this section, including directly-related costs, shall be differentiated and accounted for by the institution so as to be separately identifiable. During the pendency of any proceeding or investigation covered by paragraphs b and f of this section, the sponsoring agency shall generally withhold payment and not authorize the use of funds advanced under the award for the payment of such costs. However, the sponsoring agency may, in appropriate circumstances, provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the awardee to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

11. Former section 10, *Donated services and property*, is renumbered 13 and retitled *Donations and contributions*. The existing text is numbered subsection a and the following new subsection b is added.

b. Donations or contributions made by the institution, regardless of the recipient, are unallowable.

12. Former section 11, *Employee morale, health, and welfare costs and credits*, is renumbered 14 and revised to read as follows:

14. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid clinics and/or infirmaries, recreational activities, food services, employees' counseling services, and other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Such costs will be equitably apportioned to all activities of the institution. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to the employee welfare organizations. Losses resulting from operating food services are allowable only if the institution's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only (a) where the institution can demonstrate unusual circumstances, and (b) with the approval of the cognizant Federal agency.

13. Former section 12, *Entertainment costs*, is renumbered 15 and revised to read as follows:

15. *Entertainment costs.* Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals lodging, rentals, transportation, and gratuities) are unallowable.

14. Former section 13 is renumbered 16. The references to sections J.9 and J.33 in subparagraph b(4) are changed to J.12 and J.37, respectively.

15. Former section 16, *Insurance and indemnification*, is renumbered 20 and a new subsection f is added as follows:

f. Insurance against defects. Costs of commercial insurance with respect to any costs incurred to correct defects in the institution's materials or workmanship are unallowable.

16. Former section 14, *Fines and penalties*, is renumbered 17 and revised to read as follows:

17. *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with, Federal, State, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the sponsored agreement, or instructions in writing from the authorized official of the sponsoring agency.

17. Former section 15, *Fringe benefits*, is deleted and replacement coverage is incorporated in renumbered section J.8, *Compensation for personal services.*

18. A new section 18 is added to read as follows:

18. *Goods or services for personal use.* Costs of goods or services for personal use of the institution's employees are unallowable.

19. A new section 19 is added to read as follows:

19. *Housing and personal living expenses.*

(a) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent, etc.), housing allowances and personal living expenses for/of the institution's officers are unallowable.

(b) The term officers includes current and past officers.

20. Former sections 16, 17, and 18 are renumbered 20, 21, and 22, respectively.

21. The following new section 23 is added to section J:

23. *Lobbying.* Reference is made to the Office of Management and Budget's Governmentwide Guidance for New Restrictions on Lobbying published at 54 FR 52306 (12/20/89), the 29-agency common rule published at 55 FR 6736 (2/26/90), and the Office of Management and Budget's Notice published at 55 FR 24540 (6/15/90). These provisions implement section 319 of Public Law 101-121 (31 U.S.C. 1352), popularly known as the "Byrd Amendment."

22. Former sections 19, 20, and 21 are renumbered 24, 25, and 26, respectively.

23. Former section 22, *Memberships, subscriptions, and professional activity costs*, is renumbered 27 and revised as follows:

(a) In subsections a and b, delete the word "civic."

(b) Add the following new subsections d and e.

d. Costs of membership in any civic or community organization are unallowable.

e. Costs of membership in any country club or social or dining club or organization are unallowable.

24. Former section 23 is renumbered as 28 and its reference to section J.34 is changed to section J.38.

25. Former sections 24 and 25 are renumbered 29 and 30, respectively.

26. Section 26, *Professional services costs*, is renumbered 31 and revised to read as follows:

a. Subsection a is changed to read:

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a. Costs of professional and consulting services, including legal services rendered by the members of a particular profession who are not employees of the institution are allowable, subject to J.31.b and section J.11, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

b. Subsection c is deleted.

27. Former section 27 is renumbered 32 and its reference to section J.15.C, is changed to section J.8.F.

28. Former section 28 is renumbered 33.

29. Former section 29, *Public information services costs*, is deleted but its coverage is incorporated under revised section J.1., *Advertising and public relations costs*.

30. Former sections 30 and 31 are renumbered 34 and 35, respectively.

31. Former section 32, *Recruiting costs*, is renumbered 36 and revised by inserting the following parenthetical comment after the first sentence in subsection a: "(see section J.1 above)."

32. Former sections 33, 34, 35 are renumbered 37, 38, and 39, respectively.

33. Former section 36 is renumbered 40 and its reference to section J.8 is changed to section J.8.

34. The following new section 41 is added to section J:

41. *Selling and marketing.* Costs of selling and marketing any products or services of the institution (unless allowed under J.1.c or section J.33) are unallowable.

35. Former section 37, *Severance pay*, is renumbered 42 and subsection d is added to read as follows:

d. Costs incurred in excess of the institution's normal severance pay policy applicable to all persons employed by the institution upon termination of employment are unallowable.

36. Former section 38 is renumbered 43.

37. Former section 39, *Special services costs*, is deleted but its coverage is incorporated under revised sections J.1, *Advertising and public relations costs*, and J.2, *Alumni activities*.

38. Former sections 40, 41, and 42 are renumbered 44, 45, and 46, respectively.

39. Former section 43, *Travel costs*, is renumbered 47 and revised to read as follows:

47. *Travel costs.*

a. *General.* Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, results in reasonable charges, and is in accordance with the institution's travel policy and practices consistently applied to all institutional travel activities.

b. *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the institution in its regular operations as a result of an institutional policy and the amounts claimed under sponsored agreements represent reasonable and allocable costs. In the absence of an acceptable institutional policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57 of Title 5, United States Code, or by the Administrator of General Services, or the President (or his designee) pursuant to any provisions of such subchapter shall apply to sponsored agreements (Section 24 of 41 USC 420).

c. *Commercial air travel.* Institutions shall use the lowest commercial airfare accommodations for all necessary travel, except when such accommodations are not reasonably available. Airfare costs in excess of the lesser of the lowest available commercial discount airfare, Federal Government contract airfare (where authorized), or customary standard (coach or equivalent) airfare, shall not be allowed except where the use of such accommodations would: require circuitous routing; require travel during unreasonable hours; greatly increase the duration of the flight; result in additional costs which would offset the transportation savings; or offer accommodations which are not reasonably adequate for the medical needs of the traveler. The institution shall establish appropriate airfare travel policies and procedures requiring the use of the lowest available commercial airfare consistent with the foregoing and prudent travel management. Where an institution can reasonably demonstrate to the sponsoring agency, the nonavailability of discount airfare or Federal Government contract airfare for a particular trip or, on an overall basis, that it is the institution's practice to make routine use of such airfare, specific determinations of nonavailability will generally not be questioned by the sponsoring agency, unless a pattern of avoidance is detected. However, in order for airfare costs in excess of the customary standard commercial airfare to be allowable, e.g., use of first-class airfare, the institution must justify and document on a case-by-case basis, the applicable condition(s) set forth above.

d. *Air travel by other than commercial carrier.* "Cost of travel by institution-owned, -leased, or -chartered aircraft," as used in this paragraph, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. Costs of travel via institution-owned, -leased, or -chartered aircraft shall not exceed the cost of allowable commercial air travel, as provided for in section c above.

40. Former section 44 is renumbered 48.

41. The following new section 49 is added to section J:

49. *Trustees.* Travel and subsistence costs of trustees, regardless of the purpose of the trip, are unallowable.

42. Section K is amended by renumbering the existing text as 1 and adding a new subsection 2 as follows:

2. Certification of indirect costs.

a. *Policy.* No proposal to establish indirect cost rates shall be acceptable unless such costs have been certified by the educational institution using the Certificate of Indirect Costs set forth in paragraph b below. The certificate must be signed on behalf of the institution by an individual at a level no lower than vice president or chief financial officer of the institution that submits the proposal.

No indirect cost rate shall be binding upon the Federal Government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish indirect cost rates, and the institution has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Federal Government shall unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When indirect cost rates are unilaterally established by the Federal Government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

b. *Certificate.* The certificate required by this section shall be in the following form:

Certificate of Indirect Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.

(3) This proposal does not include any costs which are unallowable under applicable cost principles such as (without limitation): advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

I declare under penalty of perjury that the foregoing is true and correct.

Institution: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

[FR Doc. 91-11084 Filed 5-15-91; 8:45 am]

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VOL
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Wednesday
May 15, 1991

Part VI

The President

Proclamation 6291—
World Trade Week, 1991

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Federal Register
Vol. 56, No. 94
Wednesday, May 15, 1991

Presidential Documents

Title 3—

The President

Proclamation 6291 of May 13, 1991

World Trade Week, 1991

By the President of the United States of America

A Proclamation

International trade benefits all who participate. An expansion in trade promotes worldwide prosperity by increasing production and creating jobs.

Open markets and the free movement of goods, services, and capital across international borders are vital to economic growth. Free trade fosters more efficient use of the world's resources, higher real wages for both American and foreign workers, and the production of a wider variety of more affordable, high quality goods for our consumers.

Although the United States, working in concert with other nations, has made progress in dismantling trade barriers, we are still trying to achieve the ideal of free and fair trade. Toward that end, we are striving to bring the Uruguay Round of trade negotiations to a successful conclusion. We are also working to forge a North American Free Trade Agreement, which would establish the largest integrated market on earth—a market of 360 million consumers and an estimated $6 trillion in annual output. Vital to these efforts—and to the success of the Enterprise for the Americas Initiative—is the extension of fast track procedures.

Here at home we see convincing evidence that expanded trade strengthens the economy, thereby creating opportunities for individuals. During the past 5 years, exports have accounted for more than 40 percent of all growth in the U.S. economy. Last year exports supported more than 7 million jobs. Thus, it is fitting that the theme of this year's World Trade Week be "Exports: Generating Jobs for Americans." Indeed, export expansion is perhaps the most effective jobs program that our Nation can establish today.

The triumph of democratic ideals and free market principles in more and more nations around the world has created unprecedented opportunities for American businesspeople and farmers to expand sales overseas. To take advantage of these new export opportunities, Americans must do what we do best: apply our manufacturing ingenuity, our commitment to service and to the customer, and our expert salesmanship to the challenge of opening new markets abroad. To meet foreign competition, we must redouble our commitment to quality, so that the phrase "Made in America" is automatically associated with "Best in the World."

The United States Government stands ready to help. We are committed to eliminating foreign trade barriers and to opening new markets for American goods, services, investment, and ideas. We have placed a high priority on programs that are designed to provide American business exporters with information and counseling that will assist them in selling overseas. By expanding exports, members of American business and industry will not only increase their profits and their employment rolls but also contribute to improved standards of living for millions of people around the world.

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The message of World Trade Week, 1991, is that exports and open markets are vital to future U.S. economic growth. It is a message not just for this week but for every week of the year.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of May 19 through May 25, 1991, as World Trade Week. I urge all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-11768
Filed 5-14-91; 11:46 am]
Billing code 3195-01-M

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Administration of George Bush

Weekly Compilation of
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Monday, January 28, 1991
Volume 26—Number 4

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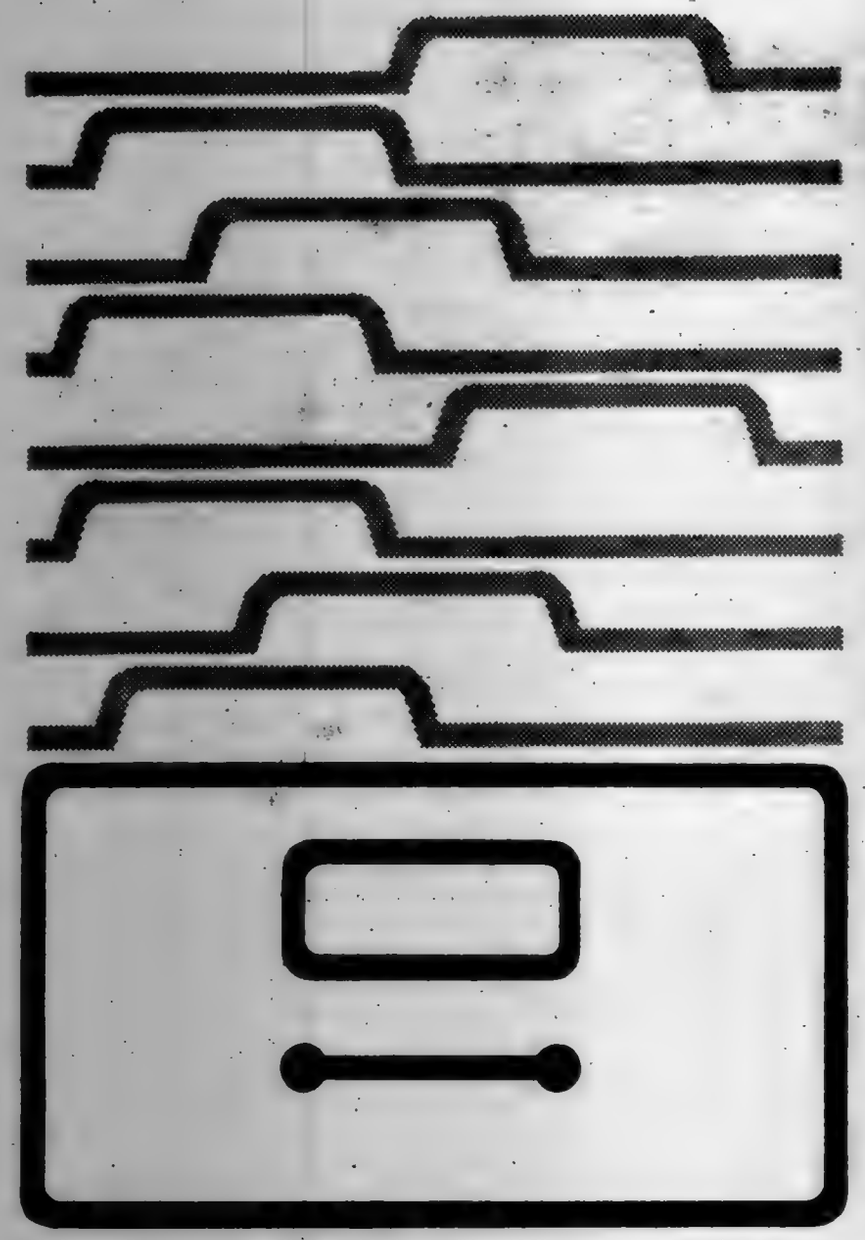

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1990
SUPPLEMENT: Revised January 1, 1991

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102d Congress, 1st Session, 1991

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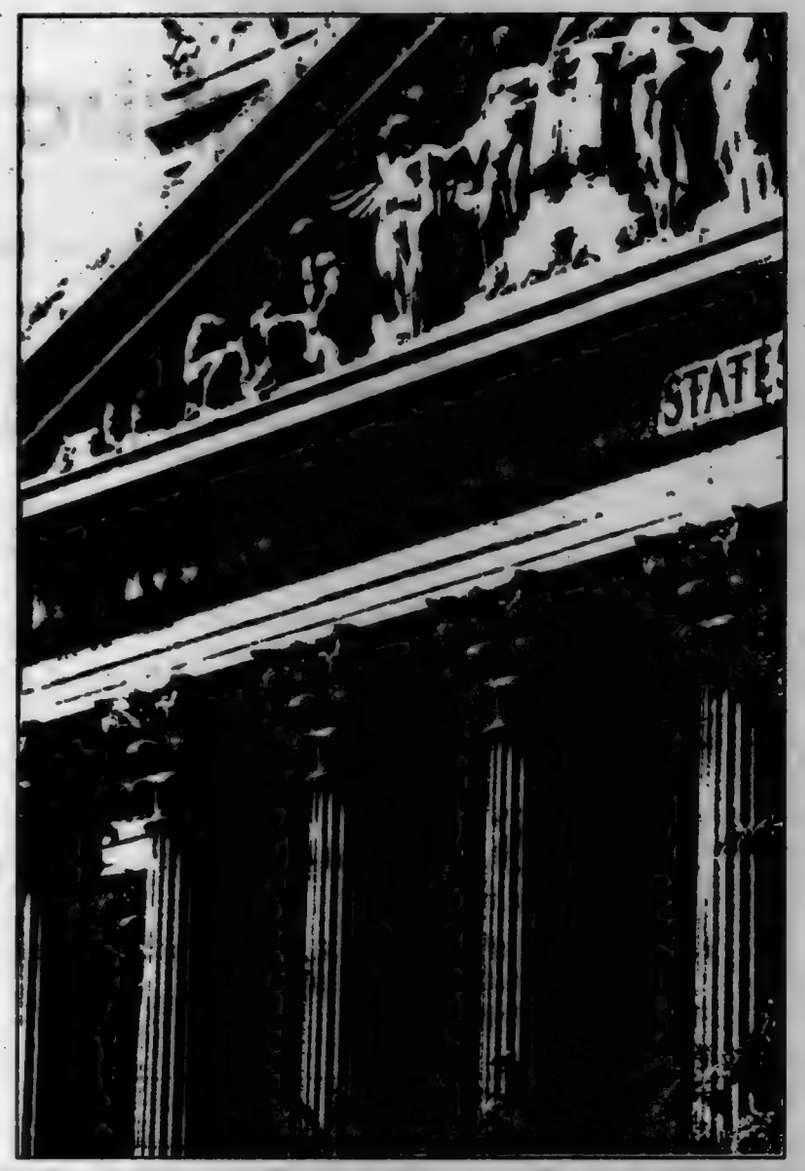

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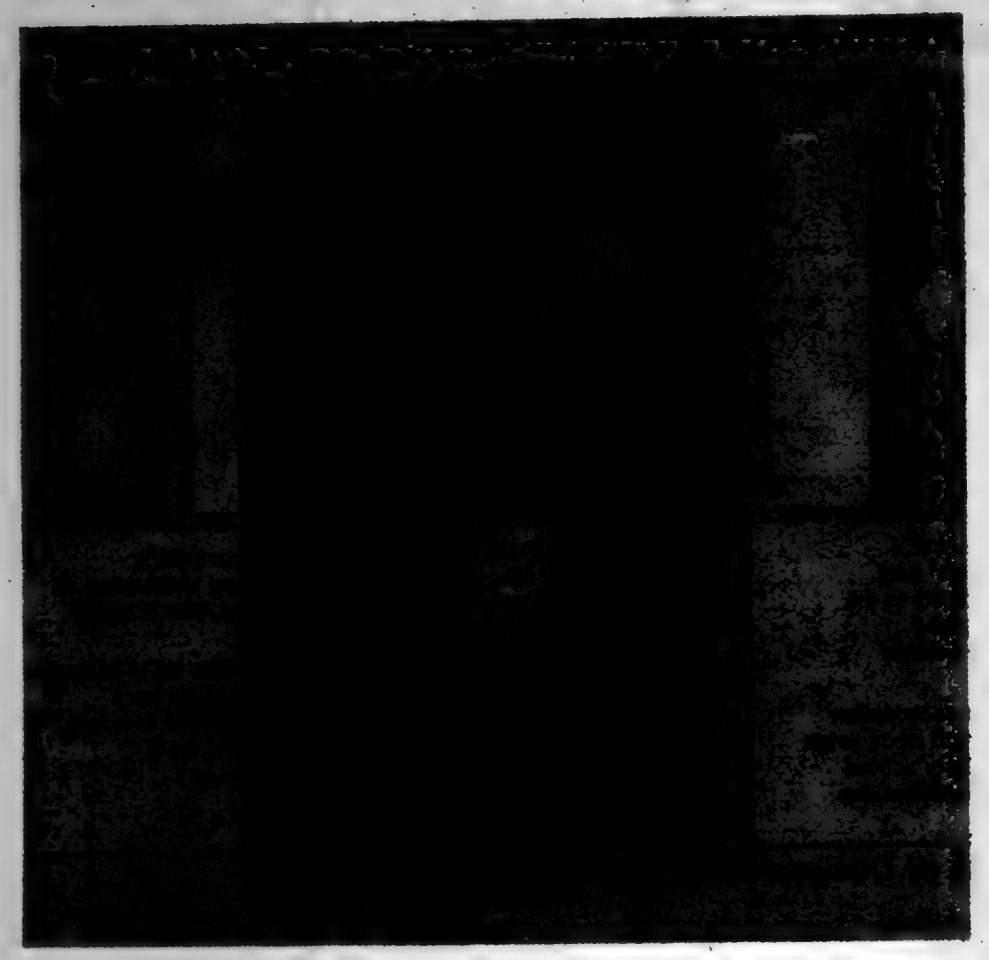

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

Department of Agriculture

Farmers Home Administration

7 CFR Part 2003

Functional Organization of the Farmers Home Administration

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to show that the functions under the Deputy Administrator for Management have been reorganized to more closely align organizational responsibilities under appropriate Assistant Administrators along with elevating specific functions within the Agency. The effect of this reorganization will create an administrative structure which will better enable FmHA to perform its mission in service to Rural America.

EFFECTIVE DATE: May 16, 1991.

FOR FURTHER INFORMATION CONTACT: Glorious Leatherwood, Personnel Management Specialist, Human Resources Program Staff, Farmers Home Administration, USDA, 14th and Independence Ave., SW., Washington, DC 20250, telephone (202) 245-5578.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in Departmental regulation 1512-1 which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this department to publish for comment rules relating to the public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rule making since it involves only internal agency management, making publication for comment unnecessary.

The Assistant Administrator for Administration, the Administrative Services Division, and the Personnel Division have been abolished. The Deputy Assistant Administrator for Management Information Systems and the Deputy Assistant Administrator for Financial Systems under the Assistant Administrator for Information Systems Management have been established to assure improved control and management of the Agency's automation program; to reallocate resources to maximize responsiveness to the FmHA user community nationwide; and to establish an organizational focus for improved management of software testing, technology, and systems life cycle planning.

The new Assistant Administrator for Human Resources position centralizes control over all training and personnel programs and staff resources by shifting reporting lines for personnel management programs from the Personnel Office (St. Louis) to the National Office. The three new staffs created will result in a more logical and functional alignment of personnel management policies, operations, and training activities. The new Assistant Administrator for Procurement and Administrative Support increases productivity and accountability by centralizing control over all FmHA contracting, procurement, property management, and administrative services functions by shifting reporting lines from the FmHA Finance Office (St. Louis) to the National Office. The Agency will have the ability to provide increased organizational attention to key procurement activities, including ADP acquisition, field program management, and operation responsiveness. The new Assistant Administrator for Budget, Finance and Management establishes a central point of authority for all FmHA budget and financial management policy, planning, and activities. FmHA also corrects an error in the previous publication, i.e., the omission of "07 02 00 0002 Executive Secretariat Staff" mission and functions statement.

Environmental Impact Statement

This document has been reviewed according to 7 CFR part 1940, subpart G, Environmental Program. It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 2003

Organizations and functions (government agencies).

Accordingly, part 2003, title 7, Code of Federal Regulations, is amended as follows:

PART 2003—ORGANIZATION

1. The authority citation for part 2003 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Functional Organization of Farmers Home Administration

2. Exhibit A to subpart A of part 2003 is amended by adding immediately preceding "07 02 01 Assistant Administrator—Housing" Item "07 02 00 0002 Executive Secretariat Staff" to read as follows:

Exhibit A to Subpart A—U.S. Department of Agriculture Farmers Home Administration

* * * * *

07 02 00 0002 Executive Secretariat Staff

Assignment of Functions

1. Serves as advisor to the Deputy Administrator Program Operations on all controversial and sensitive communications from the White House, the Congress, State and local governments, other Federal agencies, USDA departmental officials, public interest groups, and the general public.

2. Has primary responsibility for ensuring effective and efficient correspondence management and coordination of Agency response within the Farmers Home Administration, the Program Operations areas, and the immediate Office of the Administrator.

3. Maintains effective coordination of written responses within the agency's program areas, assists in monitoring correspondence flow, tracks receipt of incoming correspondence, and follows up on official responses to meet agency deadlines.

4. Develops agency correspondence handling procedures, resolves problem issues pertaining to official responses, and develops

improvements for handling the Executive Secretariat Staff.

5. Maintains standards of consistent high quality for written material prepared for the approval of the Deputy Administrator Program Operations, the Administrator and the Secretary of Agriculture.

3. Exhibit A to subpart A of part 2003 is amended by revising the part of the exhibit from "07 08 01 Assistant Administrator—Finance Office" to the and to read as follows:

Exhibit A to Subpart A—U.S. Department of Agriculture Farmers Home Administration

* * * * *

07 08 01 Assistant Administrator—Finance Office

Assignment of Functions

Responsible to the Administrator and the Deputy Administrator for Management for the development of policies that affect the operation of the accounting system, and for other activities the Deputy Administrator may prescribe from time to time.

1. Supports the National Office, State Offices and FmHA field offices nationwide in areas related to loan making and servicing, finance, collection accounting, and financial reporting. Establishes policies and standards for the Agency accounting program.

2. Manages the day-to-day operation of the fiscal and accounting system. Oversees the preparation of special and recurring financial reports to aid Agency management or to meet regulatory requirements (e.g., Office of Management and Budget, Treasury, etc. required reports). Also oversees the preparation of reports based on data in the accounting system which relates to the FmHA budget.

3. Carries out the provisions of the Federal Manager's Financial Integrity Act to assure that adequate internal controls exist to prevent fraud, waste, or abuse of government resources and to assure that the FmHA accounting system meets accounting principles and standards established by the Comptroller General.

4. Responsible for verifying and reconciling accounting data reflecting loan payments deposited by field offices nationwide through wholesale lock box and concentration banking processes. Performs detailed audits of loans and accounts receivable on a continuing basis, and for special purposes such as litigation, refunds, repayments and reconciliation of accounts between the Finance Office and field offices.

5. Participates in the design, evaluation, and implementation of new or revised financial and loan accounting, cash and credit management systems, methods and procedures to improve operations and meet changing legislation or program requirements.

6. Maintains liaison and working relationship with the Deputy Assistant Administrator for Financial Systems, which provides oversight for the Automated Data Processing operations which support the FmHA accounting operation. Also maintains liaison with the General Accounting Office on audit and financial matters relating to the accounting system and with the U.S. Department of the Treasury on matters relating to the deposit of collections from borrowers.

7. Serves as Deputy Equal Employment Opportunity Officer for the entire FmHA work force located in St. Louis, Missouri.

07 08 04 Assistant Administrator for Information Systems Management

Assignment of Functions

1. Responsible for developing, implementing, and evaluating Agency-wide plans, policies, regulations, standards, and guidelines for information processing activities in support of FmHA's missions consistent with Federal and Departmental requirements.

2. Responsible for identifying, evaluating, and applying emerging information management technology in support of FmHA program needs.

3. Assures the operation, maintenance, and support of existing financial and management information systems, and Agency hardware used to support FmHA's missions.

4. Responsible for the administration of Agency-wide information resources maintained in ADP systems.

5. Responsible for policy and planning for all ADP security functions.

6. Assures the development of new or enhanced financial and management information systems necessary to support FmHA's new or continuing missions.

7. Assures the development and implementation of systems in accordance with the Applications Portability Profile sponsored by the National Institute for Standards and Technology and assurance of FmHA compliance with all Federal Information Processing Standards.

8. Serves as FmHA's senior IRM Official (SIRMO) in accordance with USDA procedures, policies, and delegated authorities.

9. Assures a regular liaison and productive working relationship with officials of the Agency, Department, and other Federal and professional organizations concerning information processing activities.

07 08 04 0001 ADP Security Staff

Assignment of Functions

1. Responsible for development, coordination, implementation, and oversight of ADP Security policy and procedures.

2. Responsible for security coordination of the database, applications development, software and systems software development.

3. Responsible for telecommunications security.

07 08 04 0002 Management Support Staff

Assignment of Functions

1. Responsible for providing direction and oversight for all technical contract management activities.

2. Responsible for all ISM budget planning, development, support and execution, and oversight.

3. Responsible for personnel resource tracking.

4. Responsible for project tracking and reporting.

5. Responsible for administrative support for system prioritization process.

6. Consolidates and prepares the annual Information Resources Management (IRM) Budget package.

07 08 04 0003 Deputy Assistant Administrator for Management Information Systems

Assignment of Functions

1. Responsible for all Management Information Systems planning.

2. Responsible for ISM policy development and administration.

3. Responsible for operation of the ISM Information Center.

4. Responsible for direction and guidance of the Telecommunications Staff.

5. Responsible for development and maintenance of National Office support systems.

6. Responsible for development of Field Office Support Systems.

7. Responsible for serving as liaison with field users.

8. Responsbile for servicing all field needs.

9. Responsible for coordination of data administration function on all distributed systems.

07 08 04 0003 01 Telecommunications Staff Assignment of Functions

1. Responsible for identifying, evaluating, and applying emerging telecommunications technology to support FmHA program needs.

2. Responsible for assuring maintenance and implementation of state-of-the-art knowledge on telecommunications developments.

3. Responsible for providing technical leadership in the telecommunications discipline.

4. Responsible for developing, implementing, and maintaining voice communications policy.

5. Responsible for coordination with the National Computer Center at Fort Collins (NCC–FC) on the Departmental Protocols.

6. Responsible for providing technical support to assure user availability of the FmHA nationwide network of terminals and microprocessors.

7. Responsible for providing performance monitoring, maintenance, and enhancements to the on-line teleprocessing systems to assure optimal system efficiency and effectiveness.

8. Responsible for coordinating the Agency's telecommunications requirements, monitoring network performance, preparing cost/budget estimates and monitoring actual usage compared to budget to assure optimal system efficiency and effectiveness.

9. Responsible for coordinating with other ISM Divisions for the development of Agency long-range ADP planning on automated systems.

10. Responsible for coordinating with other ISM Divisions recommendations/justifications for major ADP expenditures.

11. Assures a regular liaison with officials of the Agency, Department, and other Federal and professional organizations on ADP matters affecting assigned programs.

12. Responsible for testing, evaluation, implementation, and administration of Local Area Network's (LAN's).

07 08 04 0003 02 Information Resources Management Division

Assignment of Functions

1. Responsible for developing FmHA policies, regulations, standards, and guidelines for ISM initiatives and assuring they are in accordance with Federal IRM policies and procedures, including OMB Circulars, GSA regulations, Departmental Standards, Congressional mandates, and other IRM-related requirements.

2. Coordinates development of Agency's short- and long-range ADP planning support of the Agency's mission and in conformance with USDA IRM planning guidance and directives.

3. Responsible for managing and coordinating Agency participation in support of Departmental cooperative processing initiatives and information-sharing initiatives.

4. Responsible for developing and maintaining FmHA reports, management policy and procedures, and for the design, production, and maintenance of regular and ad-hoc reports developed from management information systems in support of Agency and Departmental requirements.

5. Responsible for developing/administering the Agency productivity system in support of Agency requirements.

6. Responsible for developing policies and procedures which ensure the active participation by Agency Program Staff in ISM decision processes, e.g., technical IRM Review Boards and carrying out such policies.

7. Responsible for FmHA information economic activities, including providing technical assistance for the preparation of cost benefit analyses in accordance with internal and external requirements for Agency-wide initiatives.

8. Coordinates the ISM response to outside audits (Office of Inspector General (OIG) and General Accounting Office (GAO)) to assure timely and accurate responses.

9. Responsible for conducting analyses and preparing ad-hoc reports from management information systems and accounting systems in support of Agency internal and external requirements.

10. Establishes and maintains an Agency information center which supports Agency users of information. Assists users in analyzing data for the purpose of creating useful management information. Responsible for supporting management information needs to accommodate all internal and external reporting requirements.

11. Assures a regular liaison and productive working relationship with officials of the Agency, Department, and other Federal and professional organizations concerning information processing activities.

07 08 04 0003 03 Applications Management Division

Assignment of Functions

1. Responsible for planning, organizing, directing, and coordinating all activities related to the design, enhancement and testing of non-financial administrative, program, and management information systems (MIS) on multiple platforms ranging from microcomputers to mainframe computers in compliance with Agency, Federal and Departmental requirements.

2. Responsible for developing policies, methods, procedures, and strategies for ADP support systems for non-financial administrative and program systems and for office automation in support of the standard Agency multi-function workstation (MFWS).

3. Provides technical service and support to Agency managers relating to requirements analysis, systems design, software and documentation development, systems testing, implementation, monitoring, and control.

4. Responsible for coordinating with other ISM Divisions for the development of Agency long-range ADP planning on office automation and management systems.

5. Responsible for coordinating with other ISM Divisions recommendations/justifications for major ADP expenditures.

6. Applies systems life cycle management functions including systems analysis, systems design, systems construction and acquisition, acceptance, implementation, and maintenance for Agency computer systems which operate on multiple platforms ranging from microcomputers to mainframe computer.

7. Provides ADP support, as it relates to mainframe and micro management applications for Agency personnel. Support is in the form of vendor product review, problem resolution, task force participation, and requests from Agency users.

8. Responsible for participation with representatives from FmHA organizations to evaluate the impact on Agency non-financial computer systems of legislative initiatives, instructional or regulatory changes, adopted employee suggestions, and Departmental/Agency initiatives.

9. Maintains a Quality Assurance (QA) program to support "cradle to grave" development of non-financial systems.

10. Responsible for coordination of mainframe and micro data dictionaries. Assists in the development of Agency-wide data dictionary, listing data elements, sources, standards and data definitions of information contained in Agency ADP systems to assure consistency of data.

11. Assists in the development of data administration policies and procedures for non-financial systems.

12. Responsible for managing testing process, which includes verifying/documenting test findings, monitoring corrections of discrepancies/deviations, and facilitating additional development and retesting.

13. Responsible for the development and implementation of an Agency-wide configuration management process and change control procedure for distributed systems.

14. Assures a regular liaison and productive working relationship with managers from the Agency, Department, and other Federal and professional organizations on information processing activities affecting assigned program areas.

07 08 04 0004 Deputy Assistant Administrator for Financial Systems St. Louis

Assignment of Functions

1. Responsible for development, maintenance, and support of all financial systems which operate on multiple platforms ranging from mainframe to microcomputers.

2. Responsible for technology support (hardware, software) for all of ISM on all platforms.

3. Responsible for Agency data administration function.

4. Responsible for coordinating with ISM staff on ISM policy, and standards development and administration.

5. Responsible for coordinating time-sharing service needs with the Department support centers.

07 08 04 0004 01 Systems Requirements and Design Division

Assignment of Functions

1. Responsible for applications systems life cycle management including planning, organizing, directing, and coordinating all activities related to the functional and conceptual design of new or enhanced financial management information systems consistent with Federal and Departmental requirements to support program, financial, and management functions in carrying out FmHA's mission.

2. Participates in the development of the Agency's short- and long-range ADP plan, including ISM budgetary function, in support of the Agency mission and in the establishment of Agency-wide priorities on projects requiring automated systems.

3. Responsible for assuring that the practical application of accounting principles and standards and other requirements set forth by the central guidance agencies are adhered to in designing or enhancing systems. Participates in the formulation of automation and accounting policies, methods, and procedures to secure comprehensive, integrated, efficient, and cost effective operations in support of the Agency's mission.

4. Responsible for establishing and maintaining a quality assurance program for financial information systems to ensure conformance with the Agency's life cycle software standard and for providing management information and recommendations to assure improved project management practices and productivity.

5. Responsible for maintaining the configuration management process to assure control of application software releases to production for new or modified software.

6. Responsible for validating and certifying financial information system software to assure software functionality and system compatibility prior to implementation.

7. Responsible for coordinating with Systems Development Division and accounting, program, and management staffs on the final functional design for all new systems and proposed additions to the financial information systems.

8. Responsible for developing general and detailed functional system design specifications for projects resulting from such

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actions as legislative and regulatory changes, new hardware or software technology, and employee suggestions.

9. Responsible for supporting the development/modification of appropriate instructions, administrative notices, and forms in support of Agency system changes.

10. Responsible for finalizing and coordinating user approval of documentation for financial information systems.

11. Responsible for supporting new system development, which includes providing functional expertise, recommending related instructions and forms, supporting related training, and maintaining a liaison between developers and users.

12. Assures user involvement from the accounting, program, and management staffs, and external agencies throughout the life-cycle process for new and enhanced financial, management information systems, and field office automation systems.

13. Responsible for preparing detailed user acceptance test criteria as part of system test plans for use in testing applications software to assure it meets user requirements and for drafting user manuals supporting the applications software.

14. Responsible for supporting Financial Systems Subboard activities in the prioritization of requests for system alteration in accordance with the Agency's cost-benefit and priority-setting mechanisms.

15. Responsible for providing all required functional support to the Agency's fiscal and calendar year-end processes which result in producing closing financial reports to OMB and Treasury, payments and statements to private sector investors, and annual financial statements to all borrowers of record.

16. Responsible for coordinating overall accounting needs and management information requirements with Agency contractors, which includes technical liaison, end-user coordination, and product review and approval.

17. Assures a regular liaison and productive working relationship with officials of the Agency, Department, and other Federal and professional organizations concerning information processing activities.

18. Responsible for developing and maintaining financial system user documentation. Documentation includes data input requirements, system edit criteria, processing methodologies, and discrepancy correction for each accounting process.

07 06 04 0004 02 Systems Development Division

Assignment of Functions

1. Assures the planning, development, testing and implementation of financial information systems to support policy implementation for loan making, servicing, cash and debt management, information management, and program accounting activities which operate on multiple platforms ranging from mainframe to microcomputers for the Agency in accordance with Federal and Departmental requirements.

2. Assures automated modifications are consistent with regulatory requirements, changes in law, and changes in technology, and are structured to provide maximum efficiency and effectiveness of Agency operations.

3. Responsible for planning, organizing, directing, and coordinating all activities related to the design or enhancement of financial information systems in compliance with Agency, Federal and Departmental requirements.

4. Responsible for coordinating with other ISM Divisions the development of Agency long-range ADP planning on automated systems.

5. Responsible for task level management of tasks issued to existing Agency development contractors; this includes task resource estimate reviews, technical liaison, end-user coordination, and product review and approval.

6. Responsible for coordinating with other ISM Divisions recommendations/justifications for major ADP expenditures.

7. Applies life cycle management functions, including systems analysis, systems design, systems construction and acquisition, acceptance, implementation, and maintenance for Agency computer systems which operate on multiple equipment platforms ranging from microcomputers to mainframe computers.

8. Participate in the development of the Agency's short- and long-range ADP plan, including ISM budgetary function, in support of the Agency's mission and in recommending Agencywide priorities on projects requiring automated systems.

9. Participates in the formulation of automation policies, methods, and procedures to secure comprehensive, integrated, efficient, and cost effective operations in support of the Agency's mission.

10. Assures the operation, maintenance, and support of existing financial information systems.

11. Responsible for coordinating requirements with the Systems Requirements and Design Division Staff on the final functional design for all proposed additions and modifications to the accounting and financial information systems.

12. Responsible for providing all required technical support to the Agency's fiscal and calendar year-end processes which result in producing closing financial reports to OMB and Treasury, payments and statements to private sector investors, and annual financial statements to all borrowers of record.

13. Responsible for providing technical support to National Office, Finance Office, State Office, and field office users for the ad hoc reporting system.

14. Assures a regular liaison and productive working relationship with officials of the Agency, Department, and other Federal and professional organizations concerning information processing activities.

07 06 04 004 03 Information Technology Division

Assignment of Functions

1. Responsible for assuring the coordination of purchases, establishment and maintenance of inventories, and for the initiation of maintenance contract orders for the Agency's computer and communications equipment in support of Agency requirements.

2. Responsible for assuring maintenance and implementation of state-of-the-art knowledge of microcomputer and mainframe hardware developments.

3. Responsible for assuring operational hardware and software liaisons with the National Computer Centers as Kansas City (NCC–KC) and Fort Collins (NCC–FCC).

4. Responsible for assuring the development/maintenance of special purpose software in support of Agency requirements for management and operation of equipment inventory.

5. Responsible for technical support to FmHA and contractor personnel.

6. Responsible for coordinating with other ISM Divisions for the development of Agency long-range ADP planning on automated systems.

7. Responsible for coordinating with other ISM Divisions recommendations/justifications for major ADP expenditures.

8. Responsible for analyzing, recommending, and implementing application development productivity tools to assure optimal developmental efforts.

9. Responsible for providing specialized systems development support to users and developers of the Agency's financial and program information database management systems.

10. Responsible for data dictionary administration listing sources and data definitions of information contained in Agency financial systems to assure standard systems development.

11. Assures a regular liaison with officials of the Agency, Department, and other Federal and professional organizations on ADP matters affecting assigned programs.

07 06 05 Assistant Administrator for Budget, Finance & Management

Assignment of Functions

This position reports directly to the Deputy Administrator for Management (DAM), providing executive leadership to the Budget Division and the Financial and Management Analysis Division.

1. Directs the coordination, development and implementation of plans and procedures for a variety of FmHA budgetary and financial programs, such as: travel, borrowing, interest rate management, debt management, cash and credit management initiatives, and management analysis.

2. Plans, controls, and directs all policy associated with budgetary, financial and credit management, ensuring that all Office of Management and Budget (OMB) Circulars are implemented.

3. Establishes systems and maintains control over program and administrative funds to assure compliance with overall policy, and applicable laws and regulations.

4. Directs the forecasting of budgets in all major programs involving revolving funds and the annual appropriations for various programs.

5. Provides leadership in the sale of Agency assets through secured trusts or discount repurchase programs with emphasis on modern cash management techniques such as concentration banking and implementation of sound credit management techniques.

6. Serves as the representative for the DAM in all dealings with USDA Financial Council, Office of Finance and Management, OMB, Department of the Treasury, Congressional Committees, Department of Housing and Urban Development, and other agencies as needed.

07 06 05 0001 Budget Division

Assignment of Functions

Responsible to the Assistant Administrator for Budget, Finance and Management. Provides directives and guidance for FmHA's budget, travel, borrowing, and interest rate management, and provides other activities as the Assistant Administrator may prescribe from time to time.

1. Develops plans and procedures for the formulation, presentation, and execution of the total FmHA budget. On the basis of financial and budgetary planning, assists the Assistant Administrator for Budget, Finance and Management and program officials in support of decision-making activities and establishment of policy necessary for efficient and effective management of FmHA programs. Recommends reprogramming and policy changes to meet FmHA goals and objectives; recommends budgetary levels, budget strategy and program implementation.

2. Provides leadership and direction for planning, formulation, justification, presentation, execution, control and review of the total FmHA budget effort. Prepares FmHA budget estimates in order to develop the FmHA budget submission to the Secretary's Office, OMB, and Congress. Establishes and maintains control over program and administrative funds to assure compliance with Agency policy, approved apportionments, Congressional intent and applicable laws and regulations.

3. Maintains liaison and working relationship with program and administrative officials, FmHA State Directors, and other field personnel. Participates in State meetings, conferences and other sessions and gives advice and counsel on budget operations and operating levels. Serves as FmHA liaison for budget programs with Congressional Committees and staff, OMB, GAO, the Secretary's office, OGC, OIG, and other USDA agencies, Department of Treasury, Department of Housing and Urban Development, and other agencies, news reporters, public and private interest groups and the general public.

4. Responsible for travel procedures in FmHA. Develops and recommends travel policies, prepares travel regulations, and reviews and evaluates travel programs of FmHA. Administers the Diners Club travel card program, use of travel agencies, and the employee relocation service.

5. Responsible for revolving fund analysis related to cash forecasting, timing of sale of notes inventory, treasury borrowings, outlay planning and analysis, and establishment of management of FmHA interest rates and interest projections.

07 06 05 0002 Financial and Management Analysis Division

Assignment of Functions

Responsible to the Assistant Administrator for Budget, Finance, and Management. Provides guidance in developing debt management initiatives, cash management initiatives, and management analysis, and provides management, financial and productivity improvement as needed, and such other activities as the Assistant Administrator may prescribe.

1. Develops and manages FmHA debt collection efforts, including compliance with the Debt Collection Act. Monitors FmHA debt management systems to assess effectiveness and impact. Develops and manages FmHA's offset account collection programs (e.g., IRS offset, salary offset, program benefit offsets, and joint cooperative action with the Department of Justice using private sector attorneys on foreclosure litigation). Initiates pilots or tests of new or innovative methods, techniques, and processes in debt management.

2. Develops and manages FmHA cash management initiatives. Monitors FmHA cash management systems to assess effectiveness and impact. Initiates pilots or tests of new and innovative methods, techniques, and processes in cash management.

3. Responsible for FmHA's management analysis function. Initiates and performs all types of management improvement, productivity improvement, efficiency, and effectiveness studies. Serves as an in-house consultant and troubleshooter for management problems and concerns.

4. Responsible for FmHA's implementation of OMB Circulars A–76, A–70, and A–129, and for other management, financial, and productivity improvement programs, including Presidential management initiatives.

5. Maintains liaison and working relationship with the USDA Financial Council, Office of Finance and Management (OFM), OMB, Department of Treasury, GAO, and other appropriate Federal Agencies and private sector establishments that impact on or have an interest in the assigned program areas.

6. Manages the accounting system and oversees the development and submission of required financial reports.

07 06 06 Assistant Administrator for Human Resources

Assignment of Functions

This position reports to the Deputy Administrator for Management and provides executive guidance to the Human Resources Programs Staff, the Human Resources Development and Training Staff, and the Personnel and Employee Relations Staff. Serves as member of the management team participating in the Employment Review Board (ERB) and the Training Review Board (TRB) meetings.

1. Directs the development of human resources personnel programs and monitors the evaluation of field personnel programs through the Personnel Management Evaluation Review Team, and by providing oversight in the conduct of staff studies on human resources, personnel management and training issues.

2. Provides overall management for all human resources programs, such as the Suggestion Program, retirement, the Employee Benefit and Incentive Awards Program, the Health and Wellness Program, etc.

3. Develops and manages the implementation of Human Resources Development and Training programs, which includes developing and conducting training courses for specific needs. (Examples of the special needs include, but are not limited to, loan program training, ADP and accounting procedures, and administrative and supervisory functions.)

4. Provides leadership and oversight in operating services involving personnel management for the National Office, the Finance Office, and the State Offices.

5. Provides direction and oversight regarding employee/labor management relations, adverse actions, conduct, discipline, grievances, and appeals.

6. Maintains liaison and working relationship with key officials of the Agency, the Department of Agriculture, the Office of Personnel Management, and officials of other Federal agencies.

07 06 06 0001 Personnel and Employee Relations Staff

Assignment of Functions

1. Provides direct operating services involving personnel management for employees of the National Office, Finance Office, and field offices for all operating services not specifically delegated below National Office level.

2. Provides advisory and staff services to field Administrative Staffs for the full range of operating personnel services and employee relations functions.

3. Maintains a Special Examining Unit which provides recruitment for a variety of entry level and worker-trainee positions utilized in the field.

4. Plans, develops and implements programs and activities relating to employee and labor management relations, adverse action, conduct, discipline, grievances, and appeals. Represents the Agency before the Merit System Protection Board.

5. Maintains liaison and a working relationship with employee organizations and with supervisors and managers through intra-management communication and consultation.

6. Ensures fair and equitable handling of negotiations and arbitrations with various unions.

7. Maintains liaison and working relationship with key officials of the agency, the Department of Agriculture, the Office of Personnel Management, officials of other Federal agencies, and others, and collaborates on matters of mutual concern. Represents the Agency on departmental, interdepartmental, and interagency task forces on matters affecting assigned programs.

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07 06 06 0002 Human Resources Development & Training Staff

Assignment of Functions

1. Plans, develops, and implements general and technical employee development and training programs and activities relating to FmHA loan programs, automated systems and processes, and general administrative and supervisory functions.

2. Responsible for long-range planning to assure effective training and career development of FmHA employees. Develops overall policy options for FmHA program and administrative training activities.

3. Develops and maintains independent training modules related to the FmHA loan and grant accounting system processes.

4. Schedules and conducts training seminars on FmHA accounting processes for FmHA Finance Office and field office personnel. The training includes computer-based, audio training techniques and on-line system training data bases.

5. Provides back-up training support for computer applications utilized by field ADP Coordinators.

6. Analyzes system alterations to FmHA accounting processes, modifying training modules as required. Reviews and evaluates training modules, ensuring compliance with FmHA loan program and related accounting guidelines.

7. Maintains liaison and working relationship with key officials of the agency, the Department of Agriculture, the Office of Personnel Management, officials of other Federal agencies, and others, and collaborates on matters of mutual concern. Represents the Agency on departmental, interdepartmental, and interagency task forces on matters affecting assigned programs.

07 06 07 Assistant Administrator for Procurement and Administrative Support

Assignment of Functions

Responsible to the Deputy Administrator for Management for the overall management of FmHA procurement, contracting, real and personal property, supply management, directives and administrative services activities.

1. Provides executive leadership, formulates and coordinates policies, and provides direction to three subordinate organizations in carrying out assigned programs.

2. Develops, implements and evaluates policies and procedures for the orderly management of the FmHA procurement and administrative services support activities and for the provision of procurement and administrative services to FmHA offices nationwide. These services include contracting, small purchases, mail management, leasehold acquisition, communications system operations, telephone operations, printing and reproduction requirements, and forms/records/directives management.

3. Provides a centralized point of control for all FmHA procurement policies, standards, plans and procedures. Directs all Agency ADP procurement activities. Federal Acquisition Regulation (FAR) contracting, and small purchasing acquisition. Provides guidance on program services contracting and utilization and management of office space.

4. Establishes and maintains systems for the review and clearance of Agency directives, issuances, and public participation functions, including publication of regulations and legal notices in the Federal Register.

5. Oversees and implements the Freedom of Information, Privacy Act and Tort Claims programs for the Agency.

6. Directs the Agency's supply, space management, and real and personal property management programs, formulating and evaluating necessary policy, standards and procedures.

7. Maintains liaison and working relationship with key officials of the Agency, the Department of Agriculture staff offices, officials of other Federal agencies, and others to collaborate on matters of mutual concern. Represents the Agency on departmental, interdepartmental and interagency task forces on matters affecting assigned programs.

8. Develops budget plans for procurement and administrative services support activities. Provides major input to FmHA's overall administrative budget, and coordinates that budget with the Assistant Administrator for Budget, Finance and Management.

9. Coordinates the Department Excess Personal Property Program which disposes of or affects utilization of the Property Management Information System.

10. Provides executive leadership for conducting reviews, formal training, and oversight of delegated authorities to State Directors to ensure conformance to Agency policies and Government regulations.

07 06 07 0001 Procurement Management Staff

Assignment of Functions

1. Formulates, evaluates, and recommends policy, standards, plans, and procedures for agency-wide procurement programs.

2. Provides procurement training for FmHA procurement and program personnel.

3. Provides direction and oversight on all procurement activities.

4. Performs procurement reviews, analyzes audit reports, advises of corrective action and oversees compliance.

5. Responsible for contracting and contract administration for services and supply items on the open market or through established Government sources. Works with the Small Business Administration on 8A contracts with minority enterprises and the Department of Labor in handling wage rate matters.

6. Solicits and administers complex technical contracts for the acquisition of automated data processing services, equipment and maintenance.

7. Performs studies and analysis of procurement procedures and policies and recommends new and/or revised policies, systems technology, and procedures.

8. Provides technical guidance to the National Office, Finance Office, and State Directors, and their staffs in the interpretation of laws, rule and regulations, and policy related to procurement programs.

9. Acts as a liaison with Federal and State agencies in coordinating procurement actions.

10. Interacts with the Department, GSA, Small Business Administration and Department of Labor on procurement issues.

07 06 07 0002 General Services Staff

Assignment of Functions

1. Formulates, evaluates, and recommends policy, standards, plans, and procedures for the management of records, forms and directives; mail; processing of computer data for mailing; review and processing of Freedom of Information/Privacy Act and Tort Claims; printing, duplication and telephone operations.

2. Responsible for developing and assuring that FmHA policies, regulations, standards, and guidelines established for Agency directives are in accordance with Federal policies and procedures including OMB circulars, GSA regulations, and Congressional policies; maintenance of formal regulations, administrative notices, and procedural announcements, including the publication of regulations and legal notices in the Federal Register.

3. Responsible for control of written communications by letters, memorandums, telegraph, and mailgrams.

4. Responsible for developing and administering systems and procedures for the creation, maintenance, and use of paper records. Identifies and preserves records to provide adequate documentation of functions and activities. Responsible for the security and disposition of records.

5. Maintains liaison and working relationship with other USDA agency administrative support service divisions. Works closely with the General Services Administration and the Office of Management and Budget. Provides policy direction and serves as liaison with the Finance Office for printing, telephone operations, records, files and mail services.

6. Prepares substantial input to administrative budget plans as required and administers administrative budgets for the National Office.

7. Responsible for developing and coordinating systems and procedures for the effective delivery, distribution, or dispatch of all types of written communication and other material, including the use of automated mailing lists, mechanical sorting devices, and metered mailing devices. Provides special messenger service and mail pickup and delivery.

8. Responsible for the distribution of mail nationwide. Provides printing and duplication liaison with the General Services Administration. Responsible for the maintenance, operation, and utilization of a mini-computer with CRT and line printer to maintain all mailing addresses and cross-reference lists nationwide.

9. Responsible for the printing, storage, assembling, and distribution of Agency procedures to field offices nationwide.

10. Reviews Freedom of Information/Privacy Act and Tort Claim requests from the private sector and prepares and coordinates Agency responses.

11. Plans and coordinates Agency records, mail and communication operations; develops and recommends new or revised policies, systems, technology, and procedures relating to Agency operation in the area of records and communication management.

12. Prepares and monitors the National Office budget for all non-personal service components. Performs analyses and reconciles all billing problems.

13. Provides assistance to the Finance Office and State Directors in the interpretation of laws, rules, regulations, and policies pertinent to records, forms, and communication management.

07 06 07 0003 Property and Supply Management Staff

Assignment of Functions

1. Formulates, evaluates, and recommends policy standards, plans, and procedures concerning personal and real property management, warehouse functions, furniture rehabilitation and repair, and inventory control.

2. Responsible for the acquisition and utilization of real and utilization of personal property. Prepares detailed technical analysis of need and cost benefit studies and develops new or revised policies, systems technology, and procedures to improve Agency operations.

3. Responsible for the storage and distribution of over 1200 forms and supply items to the National Office and field offices. Maintains an automated forms and supply inventory systems for proper monitoring and control of stock levels. Provides management information on stock levels, costs, and order status to interested parties.

4. Determines need for furniture rehabilitation and repair of office machines. Performs feasibility analysis of maintenance contracts as opposed to repair on an as needed basis.

5. Responsbile for property management, accountability, utilization, disposition, and inventory control of equipment/furniture, and the input interface, and utilization of the Property Management Information System.

6. Coordinates the Department Excess Personal Property Program which disposes of or affects utilization of all excess property within USDA.

7. Responsible for the acquisition, utilization, and management of office and other types of space in buildings acquired by leasehold, agreement, or inter-government assignments; providing for space requirements in proposed long-range federal construction; developing arrangements for consolidated housing of USDA agencies; and reviewing field office space reports and surveys.

8. Responsible for the planning, execution, and management of space assignment and layout of office space for State Offices and the Finance Office. Based on projected workload, equipment, and personnel acquisitions, makes long-range projections of space needs, assignments, and related costs. Recommends policies regarding space allowances and criteria. Provides information to GSA and USDA activities on the Agency's space inventory.

9. Responsible for the overall administration of an employee safety program in the FmHA St. Louis office. Provides leadership for investigating and reporting accidents involving personal injury or property damage. Conducts safety inspections to identify and remove hazards in the work place.

10. Assists the National Office, State Directors, and their staffs in the interpretation of laws, rules and regulations, and policies pertinent to supply management, personal and real property, and develops procedural issurances and correspondence.

11. Provides executive leadership for conducting review, formal training, and oversight of delegated authorities to State Directors to ensure conformance to Agency policies and Government regulations.

12. Responsible for providing staff leadership in coordinating execution of agreements and memoranda of understanding for copy service, printing and duplication, and employee health services.

13. Responsible for quality control methods and procedures to ensure forms and supply items stocked in the warehouse comply with specifications and are free from defects. Initiates claims against vendors supplying defective items and resolves claims in the interest of the Government.

14. Prepares budgetary and supporting information for such needs of the Finance Office and field offices as equipment, supplies, space, communications, etc., for the efficient use of resources of the Agency.

15. Responsible for directing, coordinating, and monitoring of the office services operating budget totaling over $40 million for field offices nationwide and a separate budget for the Finance Office. Recommends and adjusts allocations for State Offices and provides liaison with Finance Office, field, NFC, and National Office personnel on all budget matters. Develops, coordinates, and distributes reporting information for use by interested parties in budgetary control and forecasting.

16. Maintains liaison and working relationship with key officials of the Agency, the Department of Agriculture staff offices, officials of other Federal agencies, and others to collaborate on matters of mutual concern. Represents the Agency on departmental, interdepartmental and interagency task forces on matters affecting assigned programs.

Dated: April 16, 1991.

LaVerne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-11517 Filed 5-14-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 216

[INS Number: 1423-91]

Conditional Basis of Lawful Permanent Residence for Certain Alien Spouses and Sons and Daughters; Battered and Abused Conditional Residents

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 701 of the Immigration Act of 1990 (IMMACT 90), Public Law 101-649, November 29, 1990, by amending the existing waiver provisions and providing a third basis for exempting a conditional resident from meeting the joint filing requirement of section 216 of the Act. This rule is necessary to establish procedures to allow a conditional resident alien who married in good faith but whose marriage was terminated by the United States citizen or permanent resident spouse, to seek a waiver of the joint filing requirement. This rule is also necessary to provide a method by which a battered conditional resident, or a conditional resident parent of an abused conditional resident child, may apply for removal of the conditional basis of resident status without filing a joint petition.

DATES: This interim rule is effective May 16, 1991. Written comments must be submitted on or before June 17, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference INS number 1423-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Rita A. Boie, Senior Immigration Examiner, Adjudications Branch, Immigration and Naturalization Service, 425 I Street NW., room 7223, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION: The Immigration Marriage Fraud Amendments of 1986 (IMFA) were enacted to combat fraud perpetrated by aliens who marry only for the purpose of obtaining immigration benefits. IMFA established a conditional resident status for aliens who obtained lawful permanent residence based upon a

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marriage of less than two years' duration. Conditional status is granted for two years. A conditional resident is required to file a petition to remove the conditions during the 90-day period immediately preceding the second anniversary of the initial grant of conditional resident status. This petition must be filed jointly with the citizen or permanent resident spouse. A conditional resident who fails to file the joint petition has his or her status terminated and is subject to deportation.

The IMFA provided two waivers of the joint petitioning requirement. A conditional resident who establishes that his or her deportation would cause extreme hardship may be excused from fulfilling the joint petitioning requirement. The joint petitioning requirement may also be waived if the conditional resident establishes that he or she had entered into the marriage in good faith and terminated the marriage for good cause.

In order to comply with the terms of the IMFA, some conditional residents were forced to prematurely file for termination of the marriage, rather than attempting reconciliation. These conditional residents sought termination of the marriage because they could not qualify for the good faith/good cause waiver if the citizen or permanent resident spouses obtained the divorce. The increasing trend toward no-fault divorces also made it difficult for conditional residents to prove that they had terminated the marriage for good cause.

Concerns were raised that IMFA was also forcing aliens to remain in abusive relationships due to fear that they could not qualify for a waiver of the joint petition requirement. Further concerns were raised that conditional residents would be reluctant to reveal abuse due to fear of further harm if the abusers were informed of information contained in the applications.

Section 701 of IMMACT 90 was enacted to remedy these situations. The waiver available to a conditional resident whose bona fide marriage was terminated was amended to remove the requirement that the conditional resident obtain the divorce. An additional waiver of the joint filing requirement was established specifically for a conditional resident spouse or child who has been battered or abused. A confidentiality provision was included to ensure that the abuser would not become aware of the information contained in the waiver application.

Under these amendments to the IMFA, a conditional resident may file for a waiver of the joint filing requirement if the marriage was entered into in good faith, the marriage was terminated by either spouse, and the conditional resident was not at fault in failing to meet the joint petition filing requirements.

A conditional resident may also be granted a waiver of the joint filing requirement if the conditional resident or his or her child, was battered or subject to extreme abuse by the citizen or permanent resident spouse or parent during the marriage. This waiver is available to conditional residents regardless of the current legal status of the marriage.

Section 701 of IMMACT 90 also directs the Service to establish measures to protect the confidentiality of information concerning the abused alien spouse or child, including information regarding the whereabouts of such spouse or child.

During the preparation of this rule, the Service consulted with organizations and individuals involved with counselling and assisting victims of family violence. The Service also consulted organizations and publications concerning training, experience and licensing requirements for professionals in the field of mental health.

The Service also received unsolicited communications expressing concern about the regulations implementing the battered spouse and child waiver. Several expressed concern regarding the ability of Service officers to determine whether an applicant had been subject to extreme cruelty. These commenters encouraged the Service to provide specialized training to officers who adjudicate these applications. Others expressed concern that rigorous evidentiary requirements would prevent abused conditional residents from qualifying for the waiver. Several also suggested that the Service take very stringent measures to safeguard the confidentiality of the information provided by the battered conditional resident. Concerns regarding the potential for abuse of the waiver provision by conditional residents seeking to circumvent the provisions of the Act were also expressed.

This rule allows the waiver of the joint petition requirement to be granted to all conditional residents who establish that they and/or their children were battered by the citizen or lawful permanent resident spouse during the marriage. The Service has balanced the need to make compliance with the evidentiary requirements for the waiver as simple as possible against the need to ensure that unscrupulous aliens do not take advantage of the waiver to obtain immigration benefits to which they are not entitled. This rule allows battered conditional residents to establish eligibility, yet is stringent enough to prevent misuse of the benefit.

It further allows the applicant to present a wide range of documentary evidence to establish that the conditional resident or his or her child was battered. The applicant may submit any evidence which will establish that physical abuse took place.

While the aftermath of physical abuse is often visible and can be documented, the effects of mental and emotional abuse are difficult to observe and identify. The Service agrees with those commenters who have stated that most Service officers have not received training in this area and are not qualified to make reliable evaluations of an abused applicant's mental or emotional state. Therefore, it is necessary for the Service to rely upon the judgment of professionals trained in the area of evaluating an individual's emotional and mental condition. This rule requires that applicants for a waiver based upon extreme mental or emotional cruelty support the application with a professional evaluation of the claimed psychological abuse. The evaluation must have been completed by a professional recognized by the Service as an expert in the field of mental health.

The Service has consulted various sources to determine which professionals should be recognized as experts in the field. In order to avoid possible confusion by conditional resident applicants, it was necessary to eliminate those professions in which only some members might be qualified to make this determination. Therefore, the experts recognized by the Service are restricted to three groups of licensed professionals in the mental health field. These professionals are psychologists, psychiatrists and clinical social workers. Since not all states provide licensure for clinical social workers, this rule allows clinical social workers to submit evidence of certification or registration with certain national organizations in lieu of evidence of licensure.

The applicant is not required to enter into treatment with the mental health professional.

The confidentiality provision contained in this rule is designed to ensure that an abused alien need not fear that applying for the waiver could subject the applicant to further abuse. It effectively prevents disclosure of the information to the abuser without the applicant's written consent or a court order.

A conditional resident parent may be granted a waiver based upon the abuse of his or her child by the citizen or permanent resident parent, regardless of the child's citizenship or immigration status. This is necessary to prevent separation of the abused child and conditional resident parent.

Both conditional residents and former conditional residents who have not yet departed the United States after termination of conditional resident status or under an order of deportation, may seek the benefits of the new waiver provisions. Since it is not possible to determine in advance which aliens will be eligible for these waivers, the Service cannot take affirmative action to reopen all prior terminations of conditional resident status. However, an alien may choose to file either an additional Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752) or a motion to reopen a prior denial of that application and request consideration for the new benefits.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reasons and the necessity for immediate implementation of this interim rule are as follows:

Immediate implementation of this interim rule is necessary because the changes have been mandated by the passage of Public Law 101-649, (IMMACT 90), which amends the Immigration Marriage Fraud Amendments of 1986. Early implementation will allow qualified conditional residents to immediately apply for waivers of the joint petition requirement and avoid possible termination of conditional resident status and deportation.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget (OMB), under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 216

Administrative practice and procedure, Aliens.

Accordingly, part 216 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

1. The authority citation for part 216 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186, 1186a and 8 CFR part 2.

2. Section 216.5 is amended by revising paragraphs (a)(1), (a)(2), (a)(2)(ii) and (a)(2)(iii), and by adding new paragraphs (a)(3) and (a)(3) to read as follows:

§ 216.5 Waiver of requirement to file petition to remove conditions.

(a) * * *

(1) Deportation from the United States would result in extreme hardship;

(2) The marriage upon which his or her status was based was entered into in good faith by the conditional resident alien, but the marriage was terminated other than by death, and the conditional resident was not at fault in failing to file a timely petition; or

(3) The qualifying marriage was entered into in good faith by the conditional resident but during the marriage the alien spouse or child was battered by or subjected to extreme cruelty committed by the citizen or permanent resident spouse or parent.

* * * * *

(e) * * *

(2) * * *

(ii) Documentation concerning the length of time during which the parties cohabited after the marriage and after the alien obtained permanent residence;

(iii) Birth certificates of children born to the marriage; and

* * * * *

(3) *Application for waiver based on alien's claim of having been battered or subjected to extreme mental cruelty.* A conditional resident who entered into the qualifying marriage in good faith, and who was battered or was the subject of extreme cruelty or whose child was battered by or was the subject of extreme cruelty perpetrated by the United States citizen or permanent resident spouse during the marriage, may request a waiver of the joint filing requirement. The conditional resident parent of a battered or abused child may apply for the waiver regardless of the child's citizenship or immigration status.

(i) For the purpose of this chapter the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forcible detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution shall be considered acts of violence.

(ii) A conditional resident or former conditional resident who has not departed the United States after termination of resident status or under an order of deportation may apply for the waiver. The conditional resident may apply for the waiver regardless of his or her present marital status. The conditional resident may still be residing with the citizen or permanent resident spouse, or may be divorced or separated.

(iii) Evidence of physical abuse may include, but is not limited to, expert testimony in the form of reports and affidavits from police, judges, medical personnel, school officials and social service agency personnel. The Service must be satisfied with the credibility of the sources of documentation submitted in support of the application.

(iv) The Service is not in a position to evaluate testimony regarding a claim of extreme mental cruelty provided by unlicensed or untrained individuals. Therefore, all waiver applications based upon claims of extreme mental cruelty must be supported by the evaluation of a professional recognized by the Service as an expert in the field. An evaluation which was obtained in the course of the divorce proceedings may be submitted if it was provided by a professional recognized by the Service as an expert in the field.

(v) The evaluation must contain the professional's full name, professional address and license number. It must also identify the licensing, certifying, or registering authority. The Service retains the right to verify the professional's license.

(vi) The Service's decision on extreme mental cruelty waivers will be based upon the evaluation of the recognized professional. The Service reserves the right to request additional evaluations from expert witnesses chosen by the Service. Requests for additional evaluations must be authorized by the Assistant Regional Commissioner for Adjudications.

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(vii) Licensed clinical social workers, psychologists, and psychiatrists are professionals recognized by the Service for the purpose of this section. A clinical social worker who is not licensed only because the state in which he or she practices does not provide for licensing will be considered a licensed professional recognized by the Service if he or she is included in the Register of Clinical Social Workers published by the National Association of Social Workers or is certified by the American Board of Examiners in Clinical Social Work.

(viii) As directed by the statute, the information contained in the application and supporting documents shall not be released without a court order or the written consent of the applicant; or, in the case of a child, the written consent of the parent or legal guardian who filed the waiver application on the child's behalf. Information may be released only to the applicant, his or her authorized representative, an officer of the Department of Justice, or any federal or State law enforcement agency. Any information provided under this part may be used for the purposes of enforcement of the Act or in any criminal proceeding.

* * * * *

Dated: March 18, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-11601 Filed 5-15-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 87-025F]

RIN 0583-AA89

Net Weight Labeling of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; delay of effective date.

SUMMARY: The Food Safety and Inspection Service (FSIS) has been requested to extend, and is extending, the effective date of the final rule published on November 30, 1990, titled "Net Weight Labeling of Meat and Poultry Products."

DATES: The original effective date was May 29, 1991. The new effective date is January 2, 1992. The new incorporation by reference approved date is also January 2, 1992.

FOR FURTHER INFORMATION CONTACT: William Smith, Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3640.

SUPPLEMENTARY INFORMATION: On November 30, 1990, FSIS published a rule titled "Net Weight Labeling of Meat and Poultry Products" (55 FR 49626, and corrected at 55 FR 50081, sec. 4, 1990). The effective date of the rule was May 29, 1991.

The final rule amends the Federal meat and poultry products inspection regulations to provide uniform net weight labeling requirements, including reasonable variations for label statements of net weight contents of containers of meat and poultry products. The rule incorporates by reference the National Bureau of Standards (NBS) Handbook 133, "Checking the Net Contents of Packaged Goods," Third Edition, September 1988, for compliance testing of net weight contents statements on packaged meat and poultry products. The rule also incorporates by reference the National Institute of Science and Technology (NIST) Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Measuring Devices," 1990 Edition, September 1989. The rule establishes objective, numerical variations from the labeled net weight which are to be determined by prescribed procedures adopted by way of incorporation by reference of the Third Edition of NBS Handbook 133. The rule is designed to enhance the ability of Federal, State, and local agencies to enforce the industry-wide use of strict net weight standards at the packing, warehouse, and retail level, and will establish greater uniformity with regulations for net weight compliance used by the Food and Drug Administration for other types of foods.

Since the publication of this final rule, FSIS received a request from the American Meat Institute (AMI) to extend the effective date of the rule to January 1992. They believe that additional time is needed to resolve concerns that the National Conference on Weights and Measures has regarding adjustments to the NIST Handbook 133 procedures for checking weights for zero gray area on bacon and luncheon meats. Also, they believe time is needed to allow for the necessary training programs for industry and FSIS personnel, and to update and develop new net weight quality control programs.

FSIS has reviewed this matter and determined that in fact, more time is needed to allow for the necessary training programs for industry and FSIS personnel. Therefore, FSIS has decided that the effective date should be changed to allow more lead time for industry and the Agency. The new effective date for the final rule titled "Net Weight Labeling of Meat and Poultry Products" will be January 2, 1992.

Done at Washington, DC on May 9, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91-11520 Filed 5-15-91; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 4 and 19

[Docket No. 91-2]

Rules of Practice and Procedure

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim rule with request for comment.

SUMMARY: In response to recently enacted legislation, the Office of the Comptroller of the Currency ("OCC") is revising its rules of practice and procedure to provide that formal administrative hearings are open to the public unless the Comptroller determines that an open hearing would be contrary to the public interest. The interim rule reverses the presumption embodied in prior law that an administrative hearing is to be conducted in private unless the Comptroller determines that a public hearing is necessary to protect the public interest. Under the interim rule, the OCC's interested division may file documents under seal if disclosure of such documents would be contrary to the public interest. The interim rule also states that, as a general rule, any documents filed during a proceeding shall be available to the public and amends 12 CFR part 4 to provide that transcripts of public hearings shall be available to the public.

DATES: This interim rule is effective May 16, 1991. Comments should be received on or before July 15, 1991.

ADDRESSES: Comments should be sent to Docket No. 91-2, Communications Division, Office of the Comptroller of the Currency, Washington, DC 20219. Attention: Jackie England. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Lee Walzer, Attorney, Legislative and Regulatory Analysis Division, Telephone (202) 447-1882.

SUPPLEMENTARY INFORMATION: Section 2547 of the Crime Control Act of 1990, Public Law No. 101-647, amended section 8(u) of the Federal Deposit Insurance Act, 12 U.S.C. 1818(u), to provide that all hearings on the record with respect to any notice of charges issued by a Federal banking agency shall be open to the public, unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

Section 2547 also repealed that portion of section 8(h)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1818(h)(1), which had provided that such a hearing be private unless the appropriate Federal banking agency, in its discretion, after fully considering the views of the party afforded the hearing, determined that a public hearing was necessary to protect the public interest.

Additionally, section 2547 permits a Federal banking agency to file any document or part thereof under seal if disclosure of the document would be contrary to the public interest.

To conform the OCC's rules of practice and procedure in 12 CFR part 19 to the mandate of section 2547, the OCC is issuing this interim rule with request for comment. The interim rule revises § 19.43 to state that formal administrative hearings conducted pursuant to subpart E of part 19 will be public unless the Comptroller determines that a public hearing would be contrary to the public interest. By motion filed with the Comptroller, a party to the proceeding may request a private hearing. The interim rule amends certain portions of § 19.43 conform that section to the new procedures being established. Furthermore, the revised § 19.43 authorizes the OCC's interested division to file documents under seal if disclosure of the documents would be contrary to the public interest. The interim rule also makes conforming changes to § 19.40(b) which governs attendance at a private hearing.

Finally, the interim rule revises § 19.44 to state that any documents filed in proceedings under § 19.43 shall be available to the public, unless the documents in question were filed under seal or the Comptroller orders a private hearing. Revised § 19.44 also entrusts the presiding officer with responsibility for preserving the confidentiality of documents during a private hearing or when documents are filed under seal.

In addition, the interim rule amends 12 CFR 4.15 to list transcripts of public hearings among the documents available to the public.

Other technical changes have been made in subpart E to conform the OCC's rules of practice and procedure to section 2547's mandates.

The OCC invites comment on any aspect of this interim rule. Any comments received will be considered in the preparation of the uniform rules of practice and procedure currently being developed by the Federal financial institutions regulators.

Regulatory Flexibility Act

Because the OCC has found that notice and public procedure concerning this rulemaking are not required under the Administrative Procedure Act, 5 U.S.C. 553, or any other law, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(a), do not apply. This interim rule, issued pursuant to section 2547 of the Crime Control Act of 1990, merely conforms relevant portions of part 19 to the mandates of section 2547, and has no economic impact on small or large entities.

Executive Order 12291

The OCC has determined that this interim rule is not a "major rule" and therefore does not require a Regulatory Impact Analysis. This action, pursuant to section 2547 of the Crime Control Act of 1990, merely conforms relevant portions of part 19 to the mandates of section 2547, and has no economic impact.

Adoption Without Notice and Comment and Immediate Effective Date

This interim rule regarding agency practice and procedure implements section 2547 of the Crime Control Act which became effective upon the President's signature on November 29, 1990. This rule is effective immediately. This interim rule merely conforms the OCC's rules of practice and procedure to the mandates of the law. Therefore, notice and public comment and 30-day delayed effective date are not required under the Administrative Procedure Act, 5 U.S.C. 553 (b)(A) and (d)(3). All national banks were notified in Banking Bulletin 90-48 (December 21, 1990) that formal enforcement hearings that begin after January 1, 1991, will be public unless the Comptroller determines otherwise.

List of Subjects in 12 CFR Part 4

Freedom of information, Organization and sanctions (Government agencies), Public hearings, Reporting and recordkeeping requirements, Transcripts.

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Hearings, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set forth in the preamble, parts 4 and 19 of chapter I of title 12 of the Code of Federal Regulations are amended as set forth below:

PART 4—[REVISED]

1. The authority citation for part 4 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 5 U.S.C. 552.

2. In § 4.15 a new paragraph (a)(11) is added to read as follows:

§ 4.15 Orders, opinions, etc. available to the public.

(a) * * *

(11) Transcripts of public hearings, as set forth in 12 CFR part 19.

* * * * *

PART 19—[AMENDED]

3. The authority citation for part 19 is revised to read as follows:

Authority: 12 U.S.C. 1817(j), 1818, 1820 (secs. 7(j), 8 and 10 of the Federal Deposit Insurance Act); 15 U.S.C. 78l (h) and (i), 78o-4(c), 78o-5, 78q-1, 78u, 78w (secs. 12 (h) and (i), 15B(c), 15C, 17A, 21 and 23 of the Securities Exchange Act of 1934); 5 U.S.C. 554-557; 12 U.S.C. 504, 93b, 1818(b), 1972 (secs. 101, 408, 107 and 601 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978); 12 U.S.C. 3102, 3105(a) (secs. 4 and 13(a) of the International Banking Act of 1978); 15 U.S.C. 78o-6 (sec. 101 of the Government Securities Act of 1986); 31 U.S.C. 330; 12 U.S.C. 1818(u) (sec. 2547 of the Crime Control Act of 1990, Pub. L. No. 101-647).

4. Paragraph (b) of § 19.40 is revised to read as follows:

§ 19.40 Conduct of formal hearing.

* * * * *

(b) *Attendance at private hearing.* If, pursuant to § 19.43, the Comptroller determines that a private hearing should be held, the hearing shall be attended only by the presiding officer, the parties, parties' representatives or counsel, limited participants and witnesses while testifying, and other persons determined by the presiding officer or the

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Comptroller to have an official interest in the proceeding.

* * * * *

5. Section 19.43 is revised to read as follows:

§ 19.43 Public and private hearings.

(a) *General rule.* Any hearing conducted pursuant to this subpart shall be public, unless the Comptroller, in his or her discretion, determines that a public hearing would be contrary to the public interest.

(b) *Institution of private hearing through the issuance of a notice of charges.* The Comptroller, in his or her discretion, and after determining it to be in the public interest, may institute a private proceeding through or contemporaneously with the issuance of a notice of charges. Private proceedings instituted under this paragraph shall not be conducted pursuant to the procedures established under paragraphs (c) through (e) of this section.

(c) *Motion for private hearings.* Pursuant to the provisions of this section, a motion for a private hearing may be filed with the Comptroller in writing within 20 days of service of the notice. An opposing party may file an answer within 10 days of service of the motion. A party who does not file a motion or an answer to a motion for a private hearing shall be deemed to have waived any objections regarding whether the hearing shall be public or private.

(d) *Briefs, oral arguments.* Motions and answers filed pursuant to paragraph (c) of this section shall state the reasons therefor and may be supported by a brief, a written memorandum, or any other relevant documents. No oral arguments shall be allowed unless the Comptroller so directs.

(e) *Comptroller's decision.* After considering the views of the parties and such other pertinent information as the Comptroller deems necessary, the Comptroller shall issue an order granting or denying the motion for a private hearing, based on the criteria in paragraph (a) of this section. If a private hearing is granted, the Comptroller reserves the right to authorize at any time the release of the decision, transcript, or other documents contained in the record, or a summary or parts thereof.

(f) *Documents filed under seal in public hearings.* The OCC's interested division may file any document or part of a document under seal in any public formal administrative proceeding if disclosure of the document would be contrary to the public interest.

6. Section 19.44 is revised to read as follows:

§ 19.44 Confidentiality of proceeding.

(a) Except as otherwise provided in § 19.43(e)–(f), any documents filed during any proceeding described in § 19.43 will be available to the public.

(b) In the event of a private hearing or the filing of documents under seal pursuant to § 19.43, the presiding officer shall take all appropriate steps to preserve the confidentiality of such documents, including closing portions of the hearing to the public.

Dated: May 13, 1991.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 91-11680 Filed 5-15-91; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A—Extensions of Credit by Federal Reserve Banks to reflect its recent approval of a reduction in discount rates at each Federal Reserve Bank. The discount rate is the interest rate that is charged depository institutions when they borrow from their district Federal Reserve Banks. The Board took this action in light of continued weakness in economic activity. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The amendments to Regulation A were effective April 30, 1991.

EFFECTIVE DATE: The discount rate changes were effective on the dates specified in § § 201.51 and 201.52.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary of the Board (202/452-3257); for the hearing impaired *only*, Telecommunications Device for the Deaf (TTD) (202/452-3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, *et al.*, of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Reserve Bank extensions of credit. The discount rate is the interest rate that is charged depository institutions when they borrow from their district Federal Reserve Banks.

The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks effective on the dates specified below. The Board took this action in light of continued weakness in economic activity, especially in the industrial and capital goods areas, and evidence of abating inflationary pressures. The reduction, in part, realigns the discount rate with market interest rates.

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of these amendments because the Board for the "good cause" stated above finds that delaying the changes in the discount rates listed in Regulation A to allow notice and public comment on the changes is impracticable, unnecessary, and contrary to the public interest.[1]

The provisions of 5 U.S.C. 553(d) generally prescribing 30 days' prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the discount rates listed in Regulation A is contrary to the public interest.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the changes will not have a significant adverse economic impact on a substantial number of small entities. The changes reduce rates of interest charged to borrowers from Reserve Banks, and the amendments will have no general effect on regulatory burdens for all depository institutions, no specific effect on such burdens for small depository institutions, and have no particular adverse effect on other small entities.

List of Subjects in 12 CFR Part 201

Banks, Banking, Credit, Federal Reserve System.

For the reasons outlined above, the Board of Governors amends 12 CFR part 201 as set forth below:

[1] The Board's Rules of Procedure provide that advance notice and deferred effective date will ordinarily be omitted in the public interest for changes in discount rates. 12 CFR 262.2(e).

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: Secs. 10(a), 10(b), 13, 13a, 14(d) and 19 of the Federal Reserve Act (12 U.S.C. 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.*, 357, 374, 374a and 461); and sec. 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d).

2. Section 201.51 is revised to read as follows:

§ 201.51 Short-term adjustment credit for depository institutions.

The rates for short-term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	5.5	Apr. 30, 1991
New York	5.5	Apr. 30, 1991
Philadelphia	5.5	Apr. 30, 1991
Cleveland	5.5	May 1, 1991
Richmond	5.5	Apr. 30, 1991
Atlanta	5.5	Apr. 30, 1991
Chicago	5.5	Apr. 30, 1991
St. Louis	5.5	May 2, 1991
Minneapolis	5.5	Apr. 30, 1991
Kansas City	5.5	Apr. 30, 1991
Dallas	5.5	Apr. 30, 1991
San Francisco	5.5	Apr. 30, 1991

3. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit for depository institutions.

(a) *Seasonal credit.* The rates for seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	5.5	Apr. 30, 1991
New York	5.5	Apr. 30, 1991
Philadelphia	5.5	Apr. 30, 1991
Cleveland	5.5	May 1, 1991
Richmond	5.5	Apr. 30, 1991
Atlanta	5.5	Apr. 30, 1991
Chicago	5.5	Apr. 30, 1991
St. Louis	5.5	May 2, 1991
Minneapolis	5.5	Apr. 30, 1991
Kansas City	5.5	Apr. 30, 1991
Dallas	5.5	Apr. 30, 1991
San Francisco	5.5	Apr. 30, 1991

(b) *Other extended credit.* The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	5.5	Apr. 30, 1991
New York	5.5	Apr. 30, 1991
Philadelphia	5.5	Apr. 30, 1991
Cleveland	5.5	May 1, 1991
Richmond	5.5	Apr. 30, 1991
Atlanta	5.5	Apr. 30, 1991
Chicago	5.5	Apr. 30, 1991
St. Louis	5.5	May 2, 1991
Minneapolis	5.5	Apr. 30, 1991
Kansas City	5.5	Apr. 30, 1991
Dallas	5.5	Apr. 30, 1991
San Francisco	5.5	Apr. 30, 1991

These rates apply for the first 30 days of borrowing. For credit outstanding for more than 30 days, a flexible rate will be charged which takes into account rates on market sources of funds, but in no case will the rate charged be less than the basic discount rate plus one-half percentage point. Where extended credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period and in relatively large amounts, the 30-day time period may be shortened.

By order of the Board of Governors of the Federal Reserve System, May 7, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11284 Filed 5-15-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 91-47]

Changes in the Customs Service Field Organization; Apalachicola, Carrabelle, and Port St. Joe, FL

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by removing the ports of entry of Apalachicola and Carrabelle and redesignating Port St. Joe a Customs station. Even though these ports have been inactive for many years, Customs has had to provide full service there because of their designation. A review of requirements and available resources indicates that closing Apalachicola and Carrabelle as ports of entry and converting Port St. Joe to a Customs station is warranted.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph O'Gorman, Office of Inspection and Control, 202-566-9425.

SUPPLEMENTARY INFORMATION:

Background

The Customs organizational structure consists of regions, districts, ports of entry within districts, and stations supervised by ports. The list of designated Customs ports of entry is set forth in § 101.3(b), Customs Regulations (19 CFR 101.3(b)). Customs stations are listed in § 101.4(c), Customs Regulations (19 CFR 101.4(c)).

Customs ports of entry and stations are locations where Customs officers or employees are assigned to accept entries of merchandise, clear passengers, collect duties, and enforce the various provisions of Customs and related laws. The significant difference between ports of entry and stations is their operational cost to the government. At ports of entry, the government incurs the costs associated with the operation. At stations, the government is reimbursed for:

(1) The salaries and expenses of its officers or employees for services rendered in connection with the entry or clearance of vessels; and

(2) Except as otherwise provided by the Customs Regulations, the expenses (including any per diem allowed in lieu of subsistence), but not the salaries of its officers or employees, for service rendered in connection with the entry or delivery of merchandise.

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to continue to provide better service to carriers, importers, and the public, Customs is closing the Apalachicola and Carrabelle ports of entry located in the Florida panhandle area, and, at the same time, redesignating Port St. Joe a Customs station. These ports of entry have been inactive and not manned for a number of years. Only six vessels were entered at Port St. Joe during a recent three-year period. This low level of activity does not warrant designation as ports of entry.

Adequate Customs service will continue to be provided to the Panhandle region of Florida through the ports of Panama City and Pensacola, as well as the Port St. Joe station. Pensacola, Panama City, and Port St. Joe are located along the coast in a linear pattern, and are thus able to provide convenient service to importers in that area. In addition, the port of Mobile is located in close proximity to Pensacola. Importers and brokers had indicated

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their preference for using this larger port of entry to enter and clear merchandise. Since there appears to be no imminent increase in international activity in the Panhandle area closing these ports of entry will have little, if any, economic impact in this area.

Notice of this action was contained in a Notice of Proposed Rulemaking published in the Federal Register on October 24, 1990 (55 FR 42980), and interested parties were invited to comment on the action. No comments were received.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Executive Order 12291 and Regulatory Flexibility Act

Because this rule relates to agency organization and management, it is not subject to either Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, organization and functions (Government agencies).

Amendment to the Regulations

Part 101, Customs Regulations (19 CFR part 101) is amended as set forth below:

PART 101—GENERAL PROVISIONS

1. The authority for part 101 continues to read as follows:

Authority: 5 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States) 1623, 1624.

§ 101.3 [Amended]

2. Section 101.3(b) is amended by removing the entries "Apalachicola, Fla.", "Carrabelle, Fla. (E.O. 7508, Dec. 11, 1936; 1 FR 2149)", and "Port St. Joe, Fla. (E.O. 7618, Feb. 17, 1963; 3 FR 503)", in the column headed "Ports of entry," in the Tampa, Florida District of the Southeast Region.

§ 101.4 [Amended]

3. Section 101.4(c) is amended by adding, in appropriate alphabetical order, in the listing for "Tampa, Fla." under the "District" column, "Port St. Joe" in the column headed "Customs stations" and "Panama City" in the column headed "Port of entry having supervision".

John B. O'Loughlin,
Acting Commissioner of Customs.

Approved: May 10, 1991.

Peter K. Nunez,
Assistant Secretary of the Treasury.

[FR Doc. 91-11634 Filed 5-15-91; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary of Fair Housing and Equal Opportunity

24 CFR Part 111

[Docket No. R-91-1530; FR-2326-F-01]

Conforming Amendment to the Final Rule of the Fair Housing Assistance Program

AGENCY: Office of the Assistant Secretary for Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This final rule clarifies the eligibility criteria for participation in the Fair Housing Assistance Program (FHAP) at 24 CFR part 111 to make clear that agencies that entered into interim agreements or became contributions agencies prior to September 13, 1988, the date of enactment of the Fair Housing Amendments Act of 1988 (FHAA), maintain their pre-FHAA funding status.

EFFECTIVE DATE: This rule is effective June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Marcella Brown, Director, Programs Division, or Lauretta Dixon, Branch Chief, FHAP Branch, Office of Fair Housing Enforcement and Section 3 Compliance, Room 5216, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-0455. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This final rule is a technical amendment to 24 CFR 111.107(a) to clarify a provision that may appear to limit all agencies seeking to participate in the Fair Housing Assistance Program (FHAP) to capacity building funds only.

Title VIII of the Civil Rights Act of 1968 (hereinafter, the Act) prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex, or national origin. The Fair Housing Amendments Act of 1988 (hereinafter, the 1988 Amendments), enacted September 13, 1988, amended the Act by also prohibiting discriminatory housing practices based on handicap and familial status.

FHAP was established to further these fair housing goals by providing assistance to State and local fair housing enforcement agencies. However, before FHAP assistance can be provided, the State or local fair housing law administered by the agency must be recognized as providing rights and remedies that are substantially equivalent to those provided by the Act. If a State or local fair housing law on its face provides rights and remedies that are substantially equivalent to those provided in the Act, but the law has not been in effect, or the State or local agency in operation, for a sufficient time to demonstrate substantial equivalence to the Act, the agency may enter into an interim agreement with HUD. The interim agreement permits HUD to refer complaints to the agency and monitor the agency's administration and enforcement of its State or local fair housing law. Based on the agency's performance with interim referrals, HUD makes a determination of substantial equivalence to the Act.

During its first two years of participation in FHAP, an agency is eligible to receive only capacity building funds regardless of whether it administers a program recognized as substantially equivalent to the Act or receives funding under an interim agreement. After two years of satisfactory participation in FHAP, an agency is considered to be a contributions agency, rather than a capacity building agency, and is eligible to receive training funds, complaint processing funds and incentive funds.

Because of the 1988 Amendments to the Act, it became necessary for agencies to enter into interim agreements with respect to the amended law. The Department had determined that despite this reexamination, the funding status of agencies was to be "grandfathered," or maintained in the same status as existed before the 1988 Amendments, so that agencies would not revert to two years of capacity building funding even though they enter into new interim agreements for the 1988 amendments.

The rule makes it clear that FHAP funding received by an agency under any present or past agreement for the interim referral of complaints to the agency or other use of the services of the agency as described under 24 CFR 115.11, and FHAP funding received by a grandfathered agency prior to its certification for referrals under § 115.6(d) will be considered in determining whether the agency has received its two years of capacity funding.

The Department has determined that the conforming change covered by this rule should be adopted without the delay occasioned by requiring prior notice and comment. This change merely serves to clarify a possible ambiguity in an existing rule and is exempt, as an interpretive rule, under 24 CFR part 10 from notice and comment requirements. However, the effective date will be delayed for a period of 30 days following publication, in accordance with section 7(o)(3) of the Department of Housing and Urban Development Act.

Findings and Certifications

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action is categorically excluded from the NEPA requirements at 24 CFR part 50 in accordance with 24 CFR 50.20(k) because it is an internal administrative procedure whose content does not constitute a development decision nor affect the physical condition of project areas or building sites.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule only revises a single section of title 24 of the Code of Federal Regulations to clarify its meaning and make it conform to other related sections.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications, and, thus, are not subject to review under the Order. This rule merely effects a conforming change and will not have substantial, direct effects on States, on their political subdivisions, or on their relationships with the Federal government, or on the distribution of power and responsibilities between them and other levels of government.

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have a potentially significant impact on family formation, maintenance, and general well-being, and thus, is not subject to review under the Order.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 111

Fair housing, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 111 is amended as follows:

PART 111—FAIR HOUSING ASSISTANCE PROGRAM

1. The authority citation for 24 CFR part 111 continues to read as follows:

Authority: Fair Housing Act (42 U.S.C. 3601-20); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 111.107(a) is revised and the introductory text is republished to read as follows:

§ 111.107 Agency threshold eligibility criteria.

To be eligible to participate in the FHAP, an agency first must meet the following criteria:

(a) The agency must administer a State or local fair housing law certified under 24 CFR 115.6 (including grandfathered agencies certified under 24 CFR 115.6(d)) and such certification must continue to be outstanding; or the agency must be a party to an agreement for interim referral of complaints to the agency or other use of the services of the agency, as described under 24 CFR 115.11. Agencies are eligible for capacity building funding during the first two years of FHAP funding, and for contributions funding during other years of FHAP funding. FHAP funding received by a agency under an agreement for the interim referral of complaints to the agency or other use of the services of the agency as described under 24 CFR 115.11, and FHAP funding received by a grandfathered agency prior to its certification for referrals under § 115.6(d), will be considered in determining whether the agency qualifies as a contributions agency.

* * * * *

Dated: May 9, 1991.

Gordon Mansfield,
Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 91-11603 Filed 5-15-91; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD1 90-125]

Anchorage Grounds; Coast Guard COTP Providence, RI, Zone; Buzzards Bay

AGENCY: Coast Guard, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Coast Guard is adding to the existing anchorage ground regulations in 33 CFR 110.140 for Buzzards Bay near the entrance to the Cleveland Ledge Channel approach to the Cape Cod Canal. The added regulations will allow the U.S. Coast Guard and the U.S. Army Corps of Engineers to provide additional safety measures for vessel movement within this immediate area, especially during times of limited visibility and/or temporary Cape Cod Canal closure.

EFFECTIVE DATE: This regulation is effective June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant Scot S. Graham, c/o U.S. Coast Guard Marine Safety Office (MSO) Providence, John O. Pastore Fed. Bldg, Providence, RI 02903-1790, telephone at (401) 528-5335. The comments and other materials referenced in this rule will be available for inspection and copying at the above address. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: On Wednesday, January 9, 1991, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the Federal Register (Volume 56, No. 6). One comment letter was received. Other comments were reviewed at a meeting of concerned parties on March 11, 1991.

Drafting Information

The drafters of this regulation are Lieutenant S.S. Graham, Port Operations Officer for the Coast Guard Captain of the Port Providence, and Lieutenant R.R. Korroch, project attorney, First Coast Guard District Legal Office.

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Discussion of Regulations

The Coast Guard Captain of the Port Providence, in coordination with the U.S. Army Corps of Engineers, is adding requirements to the existing anchorage ground regulations in 33 CFR 110.149. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of part 110. This action will mitigate the safety hazards associated with large vessels waiting for clearance to enter into the Cape Cod Canal, including Cleveland Ledge Channel, especially during closure of the canal due to limited visibility. Based upon the danger associated with vessel movement through these pilot waters and the fact that many vessels must anchor during limited visibility prior to entering Cleveland Ledge Channel a potential safety and environmental hazard to the Bay and vessels is created. These hazards include groundings and/or collision and resulting injury to persons, sinking of vessels and possible oil and chemical spills. The below listed regulations will better assist the U.S. Coast Guard and the U.S. Army Corps of Engineers in providing alternatives to vessels delayed by poor visibility from entering the channel.

Discussion of Comments and Amendments to the NPRM

Consultation with, and comments from, vessel agents, masters and the general public were sought. During this comment period, 3 comments in response to the NPRM were received: One from an environmental group, one from the U.S. Army Corps of Engineers, and one from Internal Coast Guard staff review. These comments were addressed at a meeting of concerned parties on March 11, 1991. The comments received reflected the support for this new addition to the existing anchorage regulations. The three comments, addressing a total of four elements of the proposed rules, are summarized as follows:

1. A local environmental group endorsed the NPRM in spirit and in context.

2. The U.S. Army Corps of Engineers requested clarification of the procedures to utilize the existing anchorages "C" and "D" so that possible confusion regarding draft requirements for vessels to use those anchorages could be controlled by the U.S. Army Corps of Engineers Cape Cod Canal traffic controller.

3. Internal Coast Guard staff review determined that it was not necessary to include the following section of the NPRM: "* * * (iv) When risk of collision exists, both vessels must communicate with each other and the traffic controller of the Cape Cod Canal." All parties agreed adherence to the Rules of the Road mandates this action on the part of the vessel operators.

4. Internal Coast Guard staff review determined that it was not necessary to include the following section of the NPRM: "* * * (vii) Each vessel in a 'dead ship' status must engage an adequate number of tugs alongside during tide changes. A tug alongside may assume the Channel 16 FM radio guard for the vessel after it notifies Coast Guard Group Woods Hole or the traffic controller for the Cape Cod Canal." All parties agreed that this type of requirement can be handled on a case-by-case basis when the Coast Guard Captain of the Port reviews a vessel's request to go into a "deadship" status.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The added requirements are for notification purposes and therefore add a minimal cost, if any, to the shipping industry or other persons involved. Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulations

In consideration of the foregoing, the Coast Guard amends part 110 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46; and 33 CFR 1.05(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.149 is amended by adding a sentence to the endings of paragraphs (b)(1) and (b)(2) and adding (b)(3) through (b)(10).

§ 110.149 Buzzards Bay, Nantucket Sound, and adjacent waters, MA.

* * * * *

(b) * * *

(1) * * *

Each vessel must obtain permission to proceed to Anchorage C from the U.S. Army Corps of Engineers Cape Cod Canal Control traffic controller.

(2) * * *

Each vessel must obtain permission to proceed to Anchorage D from the U.S. Army Corps of Engineers Cape Cod Canal Control traffic controller.

(3) Anchorage L—(East side is preferred). The waters bounded by a line connecting the following points: 41-34-46N/70-73-42W to 41-35-16N/70-42-23W to 41-33-22N/70-40-05W to 41-32-50N/70-45-32W and thence to the beginning.

(4) Anchorage M—(west side). The waters bounded by a line connecting the following points: 41-35-35N/70-44-47W to 41-36-24N/70-45-55W to 41-35-06N/70-47-55W to 41-34-12N/70-46-47W and thence to the beginning

(5) Each vessel that anchors in these anchorages must notify the U.S. Army Corps of Engineers Cape Cod Canal Control traffic controller when it anchors, and provide the vessel's name, length, draft, cargo, and its position.

(6) Each vessel anchored in these anchorages must notify U.S. Army Corps of Engineers Cape Cod Canal Control traffic controller when it weighs anchor.

(7) No vessel may anchor unless it maintains a bridge watch, guards and answers Channel 16 FM, and maintains an accurate position plot.

(8) No vessel may anchor unless it maintains the capability to get underway within 30 minutes; except with prior approval of the Coast Guard Captain of the Port Providence.

(9) No vessel may anchor in a "dead ship" status (propulsion or control unavailable for normal operations) without the prior approval of the Coast Guard Captain of the Port Providence.

(10) No vessel may conduct lightering operations within these anchorages.

* * * * *

Dated: April 30, 1991.

R.I. Rybacki,

Commander, First Coast Guard District.

[FR Doc. 91-11544 Filed 5-15-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 9

Alaska Mineral Resource Assessment Program

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is adopting regulations at 36 CFR part 9, subpart D to govern mineral resource assessment activities in Alaska units of the National Park System pursuant to section 1010 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), 16 U.S.C. 3150. These regulations ensure that such assessments are conducted in an environmentally sound manner that protects the natural systems of the units and are compatible with the purposes for which the units are established. The mineral resource assessments in parks are exclusively data collection in nature and may be conducted only by authorized Department of the Interior bureaus and their contractors.

The NPS published proposed rules for 36 CFR part 9, subpart D in Federal Register on March 8, 1991 [56 FR 9917]. The public comment period for those rules ended on April 8, 1991. The NPS received 9 letters commenting on the proposed rules containing a total of 31 individual comments.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon Kliwinski, National Park Service, Mining and Minerals Branch, P.O. Box 37127, Washington, DC 20013-7127, telephone (202) or (FTS) 343-4084; or Judy Alderson, National Park Service, Alaska Regional Office, 2525 Gambell St., Anchorage, Alaska 99503, telephone (907) 257-2835.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule and Response to Comments
III. Procedural Matters

I. Background

A. Overview of Alaska Mineral Resource Assessment Program

The Alaska Mineral Resource Assessment Program (AMRAP) is a Congressionally mandated program authorized by section 1010 of the Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 3150). Section 1010(a) requires that "the Secretary of the Interior shall, to the full extent of his authority, assess the oil, gas, and other mineral potential on all public lands in the State of Alaska in order to expand the mineral resource data base of such lands." Public lands, as defined by section 102(3) of ANILCA (16 U.S.C. 3102), include all Federal lands in Alaska including those in units of the National Park System. The Secretary must consult with the State of Alaska, the Secretary of Energy and any other Federal agency on this and other mineral assessment programs and is authorized to contract with public or private entities to carry out the program. The Secretary is required to allow for access by air for mineral resource assessment activities. Section 1010(a) explicitly prohibits the use of core and test drilling as a mineral resource assessment technique that could be used on lands in units of the National Park System. This prohibition includes exploratory drilling of oil and gas test wells. AMRAP is an ongoing program and mineral resource assessment activities have been conducted on public lands in Alaska under AMRAP for 10 years.

Pursuant to section 1010(b) of ANILCA, mineral resource assessment activities carried out in conservation system units, which includes units of the National Park System, shall be subject to regulations promulgated by the Secretary. The regulations must ensure that such activities are carried out in an environmentally sound manner that (1) does not result in lasting environmental impacts that appreciably alter the natural character of the units or biological or ecological systems in the units; and (2) is compatible with the purposes for which the units are established.

While ANILCA section 1010(a) provides a Congressional mandate to the Secretary to conduct mineral resource assessment work and pursuant to section 1011 report the results to Congress, section 1010(b) is designed to ensure that the work is carried out in an environmentally sensitive manner. The intent of these regulations is to provide a process and guidelines for permitting access to National Park System lands for the conduct of mineral resource assessment work per section 1010 while at the same time ensuring that such work does not result in lasting impacts and is compatible with park purposes and values.

B. Objectives of AMRAP

AMRAP is a Federal program mandated by Congress for the collection of geologic, geochemical, geophysical, and mineral deposit data in order to assess the oil, gas, and other fuel and nonfuel mineral potential on public lands in Alaska. The program includes the prediction and/or determination of the location, type, amount, and extent of the mineral resources on these lands. The objective of the program is to provide Congress with baseline data about the occurrence of minerals in conservation system units to aid in future legislative land status decisions. Several Department of the Interior agencies are involved in carrying out the program.

The United States Geological Survey (USGS) is the primary agency responsible for AMRAP research. The goal of the USGS AMRAP is a systematic investigation of Alaska's mineral resources through four progressively more detailed levels of study. Level I studies are very broad State-wide studies; Level II studies address large parts of the State with resultant maps generally at a scale of 1:1,000,000; Level III studies generally produce mineral resource assessment maps at a scale of 1:250,000 (1 inch=4 miles) and 1:125,000 (1 inch=2 miles); and Level IV studies detail specific mining districts, mineral deposits or topics related to the genesis of mineral deposits. Currently, the USGS's major effort is at the Level III stage with studies in progress in 28 quadrangles. Out of a total of 193 quadrangles to be studied, 36 have been completed to date.

Mineral resource assessment work conducted by the Bureau of Mines (BOM) typically involves the collection of mineral data to determine the location, type, amount and physical extent of known mineral resources. Most of the work involves mapping and sampling to document the configuration and location of mines, prospects, claims and mineralized areas.

The Minerals Management Service (MMS) has no mandate to assess public lands under ANILCA, however, the agency has in the past and will probably continue to request access to park lands to conduct investigations involving sampling and taking measurements of the physical properties of rock. The results of this research are used in assessing the mineral potential and geologic characteristics of rock units underlying the Outer Continental Shelf.

Other Interior agencies, such as the Bureau of Land Management (BLM), may from time to time request access to NPS lands to conduct mineral resource assessment work necessary to meet the goals of their AMRAP responsibilities.

AMRAP encompasses the study of all public lands in Alaska, including those managed by the U.S. Fish and Wildlife Service, the U.S. Forest Service, the BLM and the NPS. Public lands, as defined in § 102(3) of ANILCA, means lands situated in Alaska which are Federal lands (including those lands in conservation system units), with exceptions provided for State and Native corporation selected or conveyed lands and lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

The various Federal agencies coordinate their AMRAP studies so that contiguous parcels of land under management by different agencies may be studied in an efficient and cost effective manner. The agencies convey

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mineral resource and work plan information to the State of Alaska, and commonly promote cooperative projects with the State.

C. Technical Aspects of Mineral Resource Assessments Under AMRAP

Most mineral resource assessments conducted under AMRAP include first time studies of areas that may contain up to several million acres. Much of the work now, and for the foreseeable future, is reconnaissance in nature involving the systematic study of the mining districts and 1:250,000-scale quadrangle maps. AMRAP field work consists principally of: (1) Geologic mapping and hand sampling on foot traverses in combination with helicopter landings to fill in the gaps in data between traverses; (2) geochemical sampling requiring access by foot, boat, light trucks where roads exist, and fixed-wing or supplemental helicopter landings to complete the systematic collection of stream sediments, water, soils, rocks, and occasionally small samples of vegetation; and (3) systematic geophysical surveys.

Geophysical surveys typically include instrumental measurements made on the ground simultaneously with geologic and geochemical sampling, and occasionally require the excavation with hand tools of holes a few inches deep in order to implant temporary electrodes. Geophysical sampling also may include collection of paleomagnetic specimens by use of a hand-held drill to remove small cylindrical samples.

Geologic sample collection usually is restricted to fistsized samples although larger samples of several pounds occasionally are taken for certain analytical techniques such as radiometric dating, assaying, and mineral characterization and benefication studies. In park units, agencies conducting AMRAP activities do not use drilling, trenching, or other techniques that may result in lasting environmental impacts. Core and test drilling, including exploratory oil and gas test wells, are explicitly prohibited in park units pursuant to § 1010(a) of ANILCA.

The agencies must make overflights by helicopter and small fixed-wing aircraft to collect instrumental remote-sensing and other geophysical data. Minimum flight elevations above the ground range from 400 to 1,000 feet, and flight-line spacings are from one-fourth to 20 miles or may consist of a single line only.

In a typical quadrangle, the density of stations for gathering data, including sample sites, is about 1 station per 1–10 square miles. Although most of the work performed is of a general nature, the agencies often perform detailed field work to study critical geologic localities or critical and strategic mineral deposits. Completion of data collection for a quadrangle or a specific site can require 3 to 4 field seasons of 30–45 days duration each. Field work generally requires teams of 5 to 10 scientists and support staff.

The agencies typically conduct their field work from one or two fixed camps and utilize helicopters for movement within the study area. The field camps are relatively small, temporary, and unobtrusive. Field teams often work out of existing lodges or commercial facilities when practical and efficient.

In passing ANILCA, Congress recognized the logistic difficulties of working in Alaska and directed the Secretary to allow access by air for the accomplishment of AMRAP activities on public lands. AMRAP field work depends heavily on the use of helicopters. Most Alaska study areas are so large and remote that it is often inefficient and sometimes unsafe to access the areas otherwise.

D. AMRAP Studies in Units of the National Park System

Over the past several years, the NPS received numerous requests from the USGS, MMS, and BOM to allow entry onto park lands to conduct mineral resource assessment work. These requests included permission to conduct geologic mapping and reconnaissance, collection of mineral and rock samples, geochemical studies of streams, geophysical studies, and helicopter access and field camp support operation. In the absence of the regulations required by § 1010(b) of ANILCA to implement AMRAP in Alaska parks, the NPS permitted the mineral resource assessment work under the provisions of 36 CFR 1.6 (Permits) and 36 CFR 2.5 (Research specimens). The NPS used the general provisions of § 1.6 to permit AMRAP activities when requests for those activities could not meet the requirements of § 2.5. The requirements of § 2.5, and the NPS Management Policies, are very specific and limited in scope to the collection of research specimens. Under § 2.5, the NPS may allow reputable scientific or educational institutions or State or Federal agencies to collect rocks and minerals under a specimen collection permit for the purpose of research, baseline inventories, monitoring, impact analysis, group study or museum display. Such research must meet the management goals of the requesting agency, but it must also further park objectives as articulated in existing legislation and NPS planning documents.

Sections 1.6 and 2.5 were never intended to accommodate the long term program needs of the AMRAP agencies. In addition, § 1010(b) of ANILCA mandates that the Secretary promulgate regulations to ensure that mineral resource assessment activities conducted in conservation system units in Alaska are carried out in an environmentally sound manner. This mandate and the narrow scope of the Service's current regulations necessitate the current rulemaking.

E. AMRAP in Wilderness Areas

The NPS wilderness management policies are based on statutory provisions of the 1916 NPS Organic Act (16 U.S.C. 1 *et seq.*), the 1964 Wilderness Act (16 U.S.C. 1131 *et seq.*) and legislation establishing individual units of the national park system.

AMRAP activities conducted in NPS wilderness areas will be carried out in accordance with the applicable NPS wilderness management plan, and the applicable provisions of the Wilderness Act so as to preserve wilderness resources and character. The Wilderness Act generally prohibits motorized equipment or mechanized transport in designated wilderness areas. Assessment activities conducted by foot or in some instances by hand-propelled watercraft may be allowed. The use of aircraft in a park will be in accordance with the applicable wilderness management plan.

Since passage of the Wilderness Act of 1964 and the Federal Land Policy and Management Act of 1976, the USGS, the BOM, and the BLM have conducted mineral resource assessments and evaluations on U.S. Forest Service and BLM wilderness study areas.

F. Contracting of AMRAP Activities

Under section 1010, the Secretary is authorized to enter into contracts with public and private entities to carry out all or any portion of the mineral resource assessment program. Agencies conducting AMRAP studies periodically contract with other Federal or State agencies or private entities to perform work. The USGS rarely contracts geologic and geochemical work, but does contract some geophysical surveys and certain support functions including helicopter services and installation of camps and fuel caches. The BOM contracts some support functions including transportation, helicopter services, camp installation and operation, and fuel caches. Nearly all of MMS research projects have been

cooperative efforts, mostly with private industry and the State of Alaska. If MMS intends to use third party assistance in carrying out AMRAP activities in the parks in the future that assistance must be governed by a legally binding contract. All information or data of an AMRAP study recovered under contract is the property and under the control of the AMRAP agency.

II. Discussion of Final Rule and Response to Comments

The final rule establishes a new subpart D governing the conduct of mineral resource assessments in Alaska units of the National Park System.

The NPS received nine letters commenting on the proposed rule: five letters from Federal agencies, one from the State of Alaska, two from public interest groups, and one from an individual. The nine letters contained a total of 31 specific comments.

The State of Alaska and the National Parks and Conservation Association (NPCA) commented that the 30-day public review period was too short to provide for meaningful public involvement. In addition, NPCA specifically requested an extension of the public comment period. They noted that such an extension was further warranted because the timing of the proposed rule precludes AMRAP activities for this field season.

The proposed rule erroneously indicated that the final rule had to be published by April 15 to allow for AMRAP work in parks this season. Ongoing coordination between the NPS and the AMRAP agencies on planned and budgeted AMRAP work will allow that work to be conducted this field season pursuant to the permitting mechanism established in these regulations. The NPS recognizes the benefit of extensive public involvement in the rulemaking process. However, given the dual public policy objectives of providing for meaningful public involvement and allowing assessment field work this season, the Service believes that the 30-day review period was adequate given the nature of the rulemaking.

The State of Alaska commented that it presumes that subsistence analyses under ANILCA 810 will be conducted. The NPS will meet the subsistence analyses requirements during the permitting process.

Authority

The Alaska National Interest Lands Conservation Act of 1980 (ANILCA), 16 U.S.C. 3150, is the primary statutory authority for the promulgation of these regulations. The Organic Act of 1916 (16 U.S.C. 1 *et seq.*, as amended) that established the NPS provides additional authority. It mandates the Service to conserve the scenery, natural and historic objects, and wildlife of park units, and to provide for public enjoyment of the units in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. Section 3 of the Act authorizes the Secretary of the Interior to promulgate rules and regulations necessary for the management of the National Park System. The Organic Act further provides that authorization of activities in units of the National Park System shall be construed in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of park values and purposes unless specifically and directly provided for by Congress. Legislation and proclamations establishing individual parks provide more specific direction about park purposes, resources, and appropriate use. The Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*) generally reinforces the resource protection mandate of the NPS Organic Act under which the NPS already operates.

The Service evaluates proposals for park uses in terms of their consistency with applicable legislation, executive orders, and regulations, as well as their actual and potential effects on park values, purposes, and resources.

Section 9.30 Purpose

The purpose of these regulations is to govern mineral resource assessment activities conducted pursuant to section 1010 of ANILCA in Alaska units of the National Park System. The regulations do not address the conduct of AMRAP activities on lands managed by the U.S. Fish and Wildlife Service, the Bureau of Land Management, or the U.S. Forest Service. The regulations ensure, consistent with section 1010(b) of ANILCA, that the agencies carry out AMRAP activities in an environmentally sound manner that does not result in lasting environmental impacts that appreciably alter the natural character of the units or biological or ecological systems in the units. Also consistent with section 1010(b), the regulations ensure that the activities are conducted in a manner that is compatible with the purposes for which the units are established. Consistent with the NPS Organic Act, the regulations ensure that AMRAP activities are conducted in a manner that leaves park resources and values unimpaired for the enjoyment of present and future generations.

Section 9.31 Scope and Applicability

All activities conducted under AMRAP authorized by section 1010 of ANILCA in Alaska units of the National Park System will be subject to the regulations of this Subpart.

This section requires that all AMRAP activities conducted in parks meet the requirements of ANILCA, these regulations, the terms and conditions of any permit approved under this Subpart, and any other applicable statutes and regulations and any amendments.

The State of Alaska commented that it finds the proposed regulations acceptable as long as they apply only to lands under NPS management. These regulations apply only to AMRAP activities conducted on public lands in units of the National Park System in Alaska.

Section 9.32 Definitions

This section defines certain terms and establishes particular meanings for those terms as used in this subpart.

The term AMRAP Activities defines the types of mineral resource assessment techniques, methods, and related activities that may be conducted in park units under the AMRAP program. Such activities may be conducted only by authorized AMRAP agencies and their contractors and are subject to the conditions and stipulations of a permit issued by the NPS.

The final rule differs from the proposal in that it states that AMRAP activities include access into, across, through or over a unit of the National Park System when such access is incidental to mineral resource assessments conducted under AMRAP. This change is made to clarify that all activities being conducted inside parks, including aerial observation, are regulated.

Only mineral resource assessment methods or techniques that do not result in appreciable lasting environmental impacts on park resources and values may be permitted by the NPS as AMRAP activities. These techniques may include hand sampling of geologic materials, and instrumental remote-sensing measurement. Certain geophysical techniques also may be allowed. Paleomagnetic specimens may be collected by using a hand held drill to remove small cylindrical samples.

Mineral resource assessment techniques and geophysical methods will be permitted only when (1) No explosives are used, (2) they are consistent with the standards set out in § 9.36 of this Subpart, and (3) they are

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consistent with the applicable provisions of the Wilderness Act and NPS policies for wilderness management. The use of motorized equipment or mechanical transport, including motorboats and aircraft, in wilderness areas may be restricted by the NPS and will be authorized only in accordance with each park's wilderness management plan. Pursuant to section 1010(a) of ANILCA, core and test drilling are explicitly prohibited in park units. This prohibition includes exploratory drilling of oil and gas wells. Under these regulations, the use of explosives is specifically prohibited as an AMRAP activity because of the nature of impacts associated with that technique.

The NPCA stated that, under this section, the NPS will have the burden of assessing whether a particular technology will or will not result in an appreciable lasting impact. The NPCA also questioned whether AMRAP is meant to allow the testing of new mineral assessment methods and technologies and if new technologies are used, additional time must be allowed in the processing of such proposals.

The NPS believes it appropriate that it makes AMRAP permitting decisions based on the information submitted by the AMRAP agency in the permit application and other information available to the NPS, such as general management plans, wilderness management plans, and other published or unpublished environmental documents or information.

The NPS agrees with the comment that the evaluation of new or untested technologies may require more extensive information then existing technologies, and in some cases site specific studies may be needed to evaluate the effects of such technologies prior to their use in parks. The NPS will not permit any AMRAP activities that do not meet the criteria of § 9.86(c).

An individual questioned being able to ascertain the economic value of a placer deposit associated with a mining claim for claim validation or condemnation purposes without a core drilling sample. The purpose of AMRAP is not to provide claim validation or specific mineral appraisal information, but rather to provide data to Congress on the mineral potential of public, not private, lands in Alaska. Additionally, core and test drilling in units of the National Park System for the purposes of AMRAP is specifically prohibited by Congress in section 1010(a) of ANILCA.

AMRAP Agencies are defined as those agencies in the Department of the Interior that are authorized by the Secretary to perform mineral resource assessment work under § 1010 of ANILCA on Federal lands in Alaska. This work is primarily conducted by the USGS, BOM, and MMS. Other Interior agencies may in the future request access to park lands to conduct mineral resource assessments. Mineral resource assessment work is subject to the conditions and stipulations of permits issued by the NPS. An AMRAP agency may enter into a legally-binding contract with a third party for conducting work under AMRAP. Any State or Federal agency, university, or private entity under a contract with an AMRAP agency must conduct the contracted AMRAP work in accord with the NPS permit issued to the AMRAP agency. The AMRAP agency will be responsible for all contractor activities on park lands.

The NPCA commented that while the USGS is the primary agency responsible for AMRAP research, it should also be the only agency authorized to conduct AMRAP activities in parks. They commented that an agency with science as its mission ought to be the primary investigator and collector of geologic, geochemical, geophysical and mineral deposit data. They suggested that the definition of AMRAP agency be changed to read "as only those agencies in the Department of the Interior whose primary mission is scientific investigation that are authorized * * *"

The NPS agrees that park units contain valuable scientific baseline information that may warrant investigation by science-oriented agencies. However, it may be necessary for those agencies whose primary mission is not solely scientific to evaluate geologic or other information inside parks to extrapolate data on the mineral resource potential of lands under their jurisdiction for AMRAP purposes. For example, exposed geologic formations inside parks may yield data which reveals characteristics similar to unexposed formations on adjacent lands.

A definition of the term Superintendent has been added at § 9.82(e) to provide clarity of the NPS permitting process for AMRAP activities.

The USGS suggested that a definition of the term "minerals" that mentions both fuel and nonfuel mineral resources be added to § 9.82. The NPS believes that defining "minerals" in this regulatory program is not appropriate. ANILCA, and specifically § 1010, does not define what constitutes a mineral resource assessment. Section 1010 authorizes the Secretary to assess oil, gas and "other" mineral potential on public lands in Alaska. The broad programmatic goals of AMRAP as identified by the Secretary is a more appropriate vehicle for defining the extent of this mineral resource assessment program.

Section 9.83 Coordination of AMRAP Activities in National Park System Units

This section establishes the basic process for coordinating AMRAP activities among AMRAP agencies and the NPS. The final rule contains minor editorial changes from the proposal.

Section 9.83(a). This subsection requires each AMRAP agency to designate a lead official who will be responsible for working and coordinating with the NPS thereby ensuring compliance with these regulations. This individual is intended to act as a focal point for that agency, assimilating all AMRAP activities for a particular year rather than each investigator submitting separate proposals to the NPS.

Section 9.83(b). Under this subsection, by January 1 of each year, AMRAP agencies will coordinate and, in consultation with the NPS Regional Director, set a date for an interagency coordination meeting. The coordination meeting, consisting of representatives from the AMRAP agencies and the NPS, will be held by January 31. The purpose of the meeting is to review annual and long-term work plans of all AMRAP agencies. The NPS and the AMRAP agencies will seek to eliminate duplication of overlapping mineral resource assessment activities and to encourage coordination of access and logistics where agency operations occur in close proximity to each other. This coordinated review process will help ensure that impacts to park resources and values from AMRAP activities are minimized.

The BLM commented that this section would be more precise by requiring that the date for setting the coordination meeting be no later than the last working day of the previous year. The NPS does not believe there is a substantive difference between the BLM recommendation and the language of the proposed rule; therefore, this section of the final rule is unchanged.

Section 9.84 Application Requirements

This section establishes the minimum application requirements and timeframes for the AMRAP agencies to provide the NPS with mineral resource assessment information. Such information is necessary for the NPS to ensure that AMRAP activities are carried out in an environmentally sound manner. Processing of permit applications by the NPS within established timeframes is essential to enable the AMRAP agencies to timely and efficiently complete logistical, contracting, and staffing arrangements. Normally helicopter and other support contracts must be negotiated, advertised, or obligated well in advance of the field season to assure availability.

Section 9.84(a). The proposed rule required that prior to each field season, but no later than March 1 of each year, each AMRAP agency submit to the NPS a complete application for proposed AMRAP activities to be conducted in Alaska park units. Proposed § 9.86(a) required that, by April 15, the Regional Director take action on applications submitted pursuant to § 9.84. This established a 1½ month review period for the NPS. The preamble to the proposed rule was in error by stating that AMRAP agencies must have their applications submitted to the NPS no later than January 31, thereby establishing a 2½ month review period for the NPS.

The EPA commented that the 1½ month review time established in the proposed rule may not be adequate for the NPS to complete analyses necessary for compliance with NEPA and other environmental laws. The NPCA also suggested that the NPS review time be extended to 2½ months.

Upon additional consideration by the NPS, the NPS agrees that a longer review period is necessary to ensure adequate compliance with pertinent environmental laws during the permitting process. Therefore, final § 9.84(a) requires that AMRAP agencies submit permit applications to the NPS no later than February 15 of each year. This establishes a 2-month review period for the NPS with final action on the applications to be taken by April 15. This change should not present a burden to the AMRAP agencies because most project proposals should be well established and identified for discussion at the annual coordination meeting to be held by January 31. AMRAP agencies will prepare specific program information and may prepare permit applications for discussion at that meeting. Following the coordination meeting, AMRAP agencies will have a minimum of 2 weeks to revise, update or develop additional permit applications based on agreements reached at the meeting.

Applications may cover proposed activities to be conducted only in the current field season or may include activities for subsequent field seasons if adequate information is available about future field work. Applications that do not meet the requirements of § 9.84(b) will be returned to the AMRAP agency for revision or additional information.

Section 9.84(b). This subsection establishes the minimum requirements for information to be submitted to the NPS for issuance of a permit for proposed AMRAP activities. The information required includes the names of the AMRAP agency organizational office(s) that will actually conduct AMRAP activities and the names of any contractual representative that may be involved in the activities.

The application must include the overall project objectives, maps showing the areas where the activities are proposed to be conducted, and the estimated dates on which the activities are proposed to begin and end. A description of the mineral resource assessment techniques or methods and equipment to be used on each project is also required.

The BLM requested clarification of § 9.84(b)(4) regarding the overall project objectives. Although Congress set forth the broad purpose for AMRAP in § 1010, each AMRAP agency has a specific role and defines the purpose of its AMRAP role with greater specificity. Overall project objectives is intended to describe how the proposed data collection activities fit into the broad project goals and the agency AMRAP program. Due to the multiyear nature of many AMRAP projects, the NPS needs an overall understanding of the agency's program and project goals. It also needs to have annual activity descriptions to issue AMRAP permits with appropriate resource protection stipulations and to conduct environmental compliance. In addition, the NPS receives many requests for other types of research permits, including requests from other departments of these AMRAP agencies. The NPS needs a way to separate AMRAP requests from other research requests.

Agencies must provide NPS with a description of the method to be used to access each area of proposed activity. This subsection requires a description of support requirements necessary for each project, including a description of base camps, fuel storage, or any other equipment.

The application must include a discussion which demonstrates that the methods used to conduct the activities can be carried out in an environmentally sound manner using the best available and least impacting technology. The AMRAP agency must also describe the environmental and physical effects of AMRAP activities to allow for adequate environmental analysis. The Regional Director may require additional information on the proposed activities if such information is necessary to fully assess the nature, extent, location, or effects of the activities.

The NPCA suggested that the phrase "in an environmentally sound manner" as used in § 9.84(b)(10) and elsewhere in the final rule be changed to "in a manner that leaves units unimpaired and does not provide for derogation of park values and purposes" to be consistent with the NPS Organic Act. The NPCA also commented that the least impacting technology could impair park values. The purpose of this section is for the NPS to obtain adequate information from the AMRAP agency on its proposed activities to allow the NPS to achieve appropriate environmental compliance. In considering the approval of AMRAP activities, the NPS will apply the standards set forth in § 9.87(c). The NPS will consider the effects of the proposed activities on wilderness areas, visitor use, endangered species and other wildlife, cultural resources, and other park resources and values.

Section 9.85 Environmental Compliance

This section establishes a firm responsibility for each AMRAP agency to provide the NPS with sufficient information on proposed projects to allow the NPS to meet its responsibilities under all applicable environmental compliance requirements. This section also affirms the responsibility of each AMRAP agency to independently research and secure all appropriate Federal, State and local permits for their activities.

All NEPA compliance will be conducted by the NPS in accordance with applicable regulations, standards, and guidance, including NPS 12: NEPA Compliance Guideline. The National Historic Preservation Act of 1966, 16 U.S.C. 470–470w–6, is specifically identified in the final rule for clarification of the NPS responsibility for compliance with this statute.

The Sierra Club Legal Defense Fund questioned whether a two-stage environmental assessment process would be necessary to examine the long range effects of the program as well as the park specific effects of each individual project. As discussed above, NPS environmental compliance will be conducted in accordance with applicable environmental laws and regulations.

Section 9.86 Application Review Process and Approval Standards

This section establishes the NPS Regional Director as the approving authority for AMRAP activities and

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provides timeframes consistent with assuring compliance with applicable laws and regulations. It also codifies approval standards to be applied by the NPS in evaluating proposed AMRAP activities.

Section 9.86(a). The language of this subsection is slightly changed from the proposal to reflect that the Regional Director will make a decision on permit applications so that final action can be taken by April 15. This change is necessary because under final § 9.87(a), the appropriate park superintendents will issue the specific AMRAP permits.

Section 9.86(b). The Regional Director is responsible for approving permit applications for AMRAP activities assuring coordination and consistency among requested AMRAP activities in various parks. Park superintendents will review and make recommendations to the Regional Director on projects proposed in their parks. Under final § 9.87(a), park superintendents will issue permits for AMRAP activities approved by the Regional Director.

Section 9.86(c). This subsection sets out the specific standards by which the Regional Director may approve AMRAP activities. Consistent with section 1010(b) of ANILCA, the proposed activities may not be approved if they will not be carried out in an environmentally sound manner, or will result in lasting impacts to the environment. Additionally, AMRAP activities may not be approved if they are incompatible with the purposes and values for which the unit was established, or if the activities would adversely affect the resources of the area. There may be some proposed activities where the standards for approval do not allow the Regional Director to approve the activities. Denial of a permit for AMRAP activities means the project design or other features of the proposal has not met the standards set forth in this subsection.

The NPCA suggested the addition of language to this section that allows the Regional Director to not approve activities when the absence of data does not allow for an adequate assessment of whether or not the proposed activity will impair park values and resources. Final § 9.84 sets the minimum information requirements for AMRAP permit applications. The Regional Director may request additional information on a specific project as is needed for compliance with these regulations or for compliance with other applicable laws or regulations. The Regional Director's decision to approve, disapprove or require modification of a permit application will be made in accordance with the standards set forth in § 9.86(c) as supported by appropriate environmental compliance documentation.

The BLM commented that the phrase "adversely affect" in § 9.86(c)(3) should be changed to "significantly impair" or some other wording that would "indicate a degree of impact." The NPS does not agree. Both phrases indicate a degree of impact with the former more reflective of the NPS mission and Congressional intent. Adverse effects to visitors, wildlife, cultural resources and wilderness values, among others, must be considered by the NPS when permitting AMRAP activities in parks. This is more in keeping with the intent of § 1010(b) which restricts activities to those which don't result in lasting environmental impacts that appreciably alter the character or resources of the units. The NPS does not believe that Congress intended to allow AMRAP activities to occur in parks right up to the threshold of "significance" before they are curtailed or modified. The NPS further believes that a measure of impact based on significant impairment could result in resource impacts beyond that which is environmentally sound, and therefore goes beyond the intent of § 1010(b).

Section 9.87 Permitting Requirements and Standards

This section sets forth specific permit standards and requirements to be applied to all approved permits.

Section 9.87(a). No AMRAP activities may be conducted in park units without a permit approved by the NPS. Final § 9.87(a) differs from the proposal in that it specifically gives park superintendents, instead of the Regional Director, the authority to issue permits for approved AMRAP activities. This will ensure that park specific concerns are incorporated into the permits and that AMRAP agencies work with park staff who will actually monitor the projects. All permits will be issued in accordance with this Subpart, 36 CFR 1.6 (NPS regulatory authority to issue Special Use Permits), and other applicable regulations, guidelines, and policies, including NPS-53: Special Park Uses Guideline. Permit issuance by the Superintendents will be in accordance with the timeframes established under § 9.86(a).

Section 9.87(b). The Sierra Club Legal Defense Fund suggested that the regulations explicitly require that, whenever possible, base camps be located outside of park boundaries and fixed wing aircraft be used instead of helicopters. The NPS agrees that base camps should be located outside of parks when possible. During permit review, NPS will evaluate and approve base camp locations on a case-by-case basis. Base camps will be required to be located outside of park boundaries where it is necessary to minimize resource impacts and where such suitable alternatives exist. Access to park areas will be evaluated for each permit. If helicopter use is necessary, it will be required to comply with existing policies, directives and wilderness management plans. Certain types or times of access may be restricted.

The BLM suggested that the language in proposed § 9.87(b) be changed by deleting the word "and" from the phrase "certain areas and during sensitive periods." The BLM believes that § 1010 requires all Federal lands be available for AMRAP, at least to aerial observation, at some time when the mineralization is visible and assessments are possible, while still allowing NPS ultimate control over all of the park resources. The NPS must retain the option to control AMRAP activities, including aerial observation, in areas during periods when those areas are restricted or closed to use by the NPS. Such areas may include wildlife breeding areas, areas of cultural or historic significance, or other types of highly sensitive areas. Helicopter or other types of aircraft access must be in accordance with existing NPS policies and restrictions. Other types of access will be evaluated based on the areas to be accessed, seasonal conditions, and any applicable restrictions or closures. The NPS does not intend to permanently close areas to AMRAP activities. The regulatory language in final § 9.87(b) is therefore unchanged.

Section 9.87(c). The BLM suggested that this subsection be expanded to (1) explain how and by whom the determination will be made that an area needs to be further cleaned or restored, (2) give examples of why the NPS would consider an AMRAP agency's reclamation work inadequate, and (3) provide for AMRAP agency input or an appeals process.

Section 9.87(c) requires that the AMRAP agency or its contractors leave an area in an unimpaired state. The determination of whether an area has been left in an unimpaired condition will be made by the NPS and based on a review of the AMRAP agency's compliance with approved permit stipulations. For example, any holes resulting from hand tool sampling will be required to be backfilled to eliminate all signs of disturbance. Where samples are taken under a thick vegetative cover, all attempts will be made to salvage and replace the vegetation after the sample is taken and the hole backfilled. Support camp sites or other land disturbing activities associated with the mineral resource assessments will be restored and abandoned so as to leave the area in its natural condition. If it becomes necessary for the NPS to restore an area affected by AMRAP activities, the costs for such restoration will be recoverable from the AMRAP agency. Any appeal by an AMRAP agency of a final decision concerning reclamation or abandonment of a site is permissible under § 9.89.

Section 9.87(d). The Bureau of Mines commented that the preamble discussion on § 9.87(d) be clarified to state that non-proprietary data obtained from private lands is not available to the public. Section I.B. of the preamble for the proposed rule was confusing in that it discussed the collection of data from private lands pursuant to AMRAP. It is important to clarify that AMRAP authorized by § 1010 of ANILCA applies only to the collection of mineral resource data from public lands in Alaska. The regulations adopted here today by the NPS apply only to the collection of information from public lands in park units in Alaska.

The BLM commented that any unpublished information would not be "public information", and should therefore be available to the public only under guidelines of the Freedom of Information Act. The NPS believes that AMRAP information gathered on public lands in parks, including unpublished information, should be made available to the public. Therefore, all AMRAP information will be available to the public through the normal procedures for disseminating information used by the various agencies, including procedures implementing the Freedom of Information Act.

The BLM also suggested that § 9.87(d) be changed to read "Copies of all pertinent public information provided to Congress resulting from AMRAP activities conducted in units of the National Park System shall be provided to the Regional Director by the AMRAP agency conducting the inventory." The BLM believes that since no mineral extraction can occur on park lands, proposed § 9.87(d) would result in the production of written reports that are of no use to NPS and would be a waste of time, materials, storage space and funds.

The NPS disagrees that the section 1011 ANILCA report to Congress contains adequate information for NPS management purposes. That document consists of a summary of the mineral resource assessment work conducted under AMRAP and other programs and contains a bibliography of completed studies but not a complete discussion of final results and findings of specific studies in parks. Published scientific documents and written reports are important for NPS managers for their use in interpretation, resource management, and in determining future research needs. Final § 9.87(d) continues to require that the NPS receive copies of all published or written reports resulting from AMRAP activities conducted in parks.

Section 9.87(e). This subsection acknowledges the authority of the NPS to monitor ongoing AMRAP activities to ensure that they are conducted pursuant to these regulations and the terms and conditions of the approved permit.

Section 9.88 Permit Modification, Suspension, and Cancellation

This section sets forth the procedures and requirements for modifying, suspending, or canceling an approved permit. This section differs from the proposal in that it gives park superintendents the authority to suspend or cancel, and in certain cases modify, approved permits. This change allows for a more efficient permitting process.

Section 9.88(a). Under this subsection, an AMRAP agency may submit a written proposal to the Regional Director to modify an approved permit. Modifications may be necessary in order to allow for changes in sampling methods or techniques or to make adjustments due to changes in weather, staffing, transportation or budget. The Regional Director must review and act upon the modification within a reasonable timeframe so scheduling of that field season's activities can proceed. The appropriate park superintendent will amend the approved permit based on the Regional Director's approval of the AMRAP agency's requested modification.

Section 9.88(b). This subsection establishes the conditions under which a Superintendent may modify, suspend or cancel an agency's permit to conduct AMRAP activities. A permit may be modified, suspended or canceled when the Superintendent finds that there is an imminent threat to public health and safety or natural and cultural resources of the unit; or the AMRAP agency or its contractors are in violation of applicable laws or the approved permit.

Section 9.88(c). This subsection sets the procedural requirements for dealing with modifications, suspensions and cancellations of approved permits. The final rule clarifies that this subsection applies to modifications, suspensions and cancellations pursuant to § 9.88(b).

Section 9.88(d). This subsection establishes that permit suspension or cancellation does not relieve the AMRAP agency or its contractors of the obligation to restore any location in accordance with these regulations and to meet all other requirements of the approved permit.

Section 9.89 Appeals

Any final action taken by the Regional Director pursuant to these regulations may be appealed by an AMRAP agency to the Director of the National Park Service. If resolution of the issue cannot be reached, the issue will be elevated to the Department for resolution.

The BLM suggested that this section be changed to state that the 30 day appeals process begin with the AMRAP agency's receipt of the Regional Director's final decision, not the actual date of the final decision. The NPS acknowledges that there may be some delays in notification and therefore has made the requested change in the final rule. However, the time period between the Regional Director's final decision and notification to the AMRAP agency should be minimal especially with current day reliance on FAX machines and telephones.

III. Procedural Matters

Federal Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The subject rules apply only to Federal agencies and their contractors.

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331 *et seq.*) the NPS has prepared an environmental assessment (EA) of these regulations. The analysis in the EA shows that implementation of the regulations will not be a major Federal action that would have a significant effect on the quality of the human environment requiring the preparation of an environmental impact statement. The EA is on file in the following NPS offices: Mining and Minerals Branch, Land Resources Division, room 3223, 1100 L Street NW., Washington, DC (P.O. Box 37127, Washington, DC 20013-7127); and the NPS Alaska Regional Office, room 206, 2525 Gambell Street, Anchorage, Alaska 99503.

Regulatory Flexibility Act and Executive Orders 12291 and 12630

The NPS has determined and the Department of the Interior has certified that this action will not have a

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significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule has been reviewed in conformity with Executive Order 12291 and has been classified as not major. This action does not constitute a major rule since its implementation will not result in: (i) An annual effect on the economy of $100 million or more; (ii) major increases in costs or prices for consumers, individual industries, Federal, State or local governments, or a geographic region; or (iii) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

These regulations do not require the preparation of a Takings Implication Assessment pursuant to Executive Order 12630 because the rules will not affect the use or value of private property.

Author

The principal author of this regulation is Sharon P. Kliwinski, Mining and Minerals Branch, National Park Service.

List of Subjects in 36 CFR Part 9

Environmental protection, Mines, National parks, Oil and gas exploration, Public lands—mineral resources, Public lands—rights-of-way.

For the reasons discussed in the preamble, Chapter I of title 36 of the Code of Federal Regulations is amended by adding subpart D to part 9 to read as follows:

PART 9—MINERALS MANAGEMENT

Subpart D—Alaska Mineral Resource Assessment Program

Sec.
9.80 Purpose.
9.81 Scope and applicability.
9.82 Definitions.
9.83 Coordination of AMRAP activities in National Park System units.
9.84 Application requirements.
9.85 Environmental compliance.
9.86 Application review and approval standards.
9.87 Permitting requirements and standards.
9.88 Permit modification, suspension, and cancellation.
9.89 Appeals.

Subpart D—Alaska Mineral Resource Assessment Program

Authority: 16 U.S.C. 410hh; 16 U.S.C. 3101, *et seq.*; 16 U.S.C. 1, *et seq.*; 16 U.S.C. 347; 16 U.S.C. 668dd; 16 U.S.C. 432; 16 U.S.C. 1131 *et seq.*

§ 9.80 Purpose.

These regulations govern the conduct of the mineral resource assessment activities authorized under § 1010 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3101, *et seq.*, in units of the National Park System in Alaska. The regulations are designed to ensure that authorized Federal agencies and their contractors carry out mineral resource assessment activities in an environmentally sound manner that does not result in lasting environmental impacts that appreciably alter the natural character of the units, or biological or ecological systems in the units; is compatible with the purposes for which the units are established; and ensures that all units are left unimpaired and preserved for the enjoyment of present and future generations.

§ 9.81 Scope and applicability.

These regulations apply to all activities conducted by authorized agencies and their contractors on public lands in units of the National Park System in Alaska under the Alaska Mineral Resource Assessment program (AMRAP) as authorized by section 1010 of ANILCA. AMRAP activities conducted under this subpart shall be performed in accordance with ANILCA, the regulations in this subpart, the terms and conditions of an approved permit, and other applicable statutes and regulations, and amendments thereto.

§ 9.82 Definitions.

The terms used in this subpart shall have the following meaning:

(a) *AMRAP* means the Alaska Mineral Resource Assessment Program authorized by section 1010 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), 16 U.S.C. 3150.

(b) *AMRAP Activities* means any project, method, technique or other activity incidental to mineral resource assessments conducted by authorized AMRAP agencies or their contractors in units of the National Park System in Alaska pursuant to section 1010 of ANILCA under an approved permit. AMRAP activities include access into, across, through, or over a unit of the National Park System for the conduct of those activities. Only mineral resource assessment methods or techniques that do not result in lasting impacts on park resources and values may be permitted as AMRAP activities. Mineral resource assessment techniques may include aerial photography; remote sensing; hand-sampling of geologic materials; hand-sampling or hand-augering methods for geochemical analyses; and geophysical techniques such as magnetic, electrical, electromagnetic, chemical, radioactive, and gravitational methods. Mineral resource assessment activities may be permitted as long as:

(1) No explosives are used,

(2) They are consistent with § 9.85 of this subpart, and

(3) They are consistent with the provisions of the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*) and National Park Service policies concerning wilderness management and the use of motorized equipment in wilderness areas.

Core and test drilling, including exploratory drilling of oil and gas test wells, are explicitly prohibited as AMRAP activities in units of the National Park System.

(c) *AMRAP agencies* means those agencies of the U.S. Department of the Interior that are authorized by the Secretary to perform mineral resource assessment activities pursuant to section 1010 of ANILCA.

(d) *Regional Director* means the Regional Director of the Alaska Regional Office of the National Park Service (NPS), or the Regional Director's designee.

(e) *Superintendent* means the Superintendent, or his/her designee, of the unit of the National Park System in Alaska where AMRAP activities are conducted or proposed to be conducted.

§ 9.83 Coordination of AMRAP activities in National Park System units.

(a) To facilitate compliance with this Subpart, each AMRAP agency will designate a coordinator for AMRAP activities in Alaska who will be the central point of communications with the NPS. The AMRAP agency is responsible for notifying the Regional Director of such designation.

(b) By January 1 of each year, the designated coordinators for the AMRAP agencies will, in consultation with the Regional Director, schedule an interagency meeting to be held by January 31 of each year. Representatives of the AMRAP agencies and the NPS will meet to develop a mutually agreeable schedule of AMRAP projects and activities in Alaska units of the National Park System. Where practicable, AMRAP agencies will consolidate their field activities, including access and field camps, to minimize disturbance to park resources and values.

§ 9.84 Application requirements.

(a) By February 15 of each year, the designated coordinator of each AMRAP agency will forward to the Regional Director an application pursuant to § 9.84(b) for proposed AMRAP projects and activities discussed and reviewed at the annual coordination meeting held under § 9.83(b). Applications requiring additional information will be promptly returned to, or discussed with, the coordinator of the involved AMRAP agency to resolve any deficiencies.

(b) Applications will be submitted in a form and manner prescribed by the Regional Director and will contain at a minimum:

(1) The name of the AMRAP agency and responsible office and, where applicable, its designated contractual representative that will conduct the proposed activities;

(2) The name, office address and telephone numbers of the AMRAP agency persons or contractor persons who will supervise the proposed activities, and a list of all individual's names, addresses and telephone numbers who will be present at field activities;

(3) A list of any previous AMRAP activities or prior geologic and mineral resource assessments that have occurred in the proposed study area;

(4) A discussion of overall project objectives, schedules and products, and how the proposed activities for the current application relate to those objectives;

(5) A description of the activities proposed for approval, including a detailed description of the collection techniques, sampling methods and equipment to be used in each area;

(6) Topographic maps identifying the specific areas in units of the National Park System where the agency proposes to conduct each AMRAP activity;

(7) The approximate dates on which the AMRAP activities for each area are proposed to be commenced and completed;

(8) A description of access means and routes for each area in which work is proposed including an estimate of the number of flights or number of vehicle trips;

(9) A description of the field support requirements proposed for locations on lands within units of the National Park System, including camp sites, fuel storage areas, and any other requirements;

(10) A discussion which documents that proposed activities will be carried out in an environmentally sound manner utilizing the least impacting technology suitable for the purposes of the project; and

(11) A description of how any disturbed areas, such as camp sites, will be reclaimed.

§ 9.85 Environmental compliance.

Each AMRAP agency is responsible for obtaining all required Federal, State, and local permits and must provide sufficient information to the NPS to ensure appropriate compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), and other applicable statutes.

§ 9.86 Application review process and approval standards.

(a) The Regional Director will review applications submitted pursuant to § 9.84 and will ensure that final action is taken on such applications by April 15 of each year. If additional review time is necessary to ensure compliance with this Subpart or with other applicable laws, Executive Orders and regulations, the Regional Director will promptly notify the AMRAP agency coordinator of the anticipated date of a final decision.

(b) The Regional Director is responsible for approving AMRAP activities in units of the National Park System in Alaska.

(c) To be approved, proposed AMRAP activities must be designed to be carried out in an environmentally sound manner, as determined in appropriate environmental documentation, that:

(1) Does not result in lasting environmental impacts that appreciably alter the natural character of the units or the integrity of the biological or ecological systems in the units; and

(2) Is compatible with the purposes and values for which the units are established; and

(3) Does not adversely affect the natural and cultural resources, visitor use, or administration of the area.

§ 9.87 Permitting requirements and standards.

(a) AMRAP activities approved by the Regional Director may be conducted in units of the National Park System pursuant to a permit issued by the Superintendent in accordance with this subpart, 36 CFR 1.6, and other applicable regulations, guidelines and policies.

(b) The NPS may restrict the conduct of AMRAP activities in certain areas and during sensitive periods, such as nesting, calving and spawning seasons, to minimize impacts to fish and wildlife or to comply with existing policies or directives.

(c) All project areas affected by AMRAP activities shall be left in an unimpaired state by the AMRAP agency and its contractors. All costs borne by the NPS in cleaning or restoring an area affected by AMRAP activities will be recoverable from the AMRAP agency.

(d) Copies of all published information or written reports resulting from AMRAP activities conducted in units of the National Park System shall be provided to the Regional Director.

(e) The NPS reserves the right, without prior notice to the AMRAP agency or its contractors, to observe or inspect AMRAP activities to determine whether such activities are being conducted pursuant to this subpart and the terms and conditions of the approved permit.

§ 9.88 Permit modification, suspension, and cancellation.

(a) A proposal to modify, supplement, or otherwise amend an approved permit shall be made by an AMRAP agency by written request to the Regional Director. The Regional Director shall review and promptly act on the proposed modification pursuant to the standards set forth in § 9.86. An AMRAP agency may not undertake any of the activities proposed in the modification until the Regional Director approves the modification and the Superintendent amends the approved permit.

(b) The Superintendent may modify, suspend or cancel an AMRAP agency's permit by notifying the agency in writing, or orally in an emergency situation, when the Superintendent determines that:

(1) Changes to the permit are necessary to address conditions not previously anticipated; or

(2) There is imminent threat of serious, irreparable, or immediate harm or danger to public health and safety, or the natural and cultural resources and values of the unit; or

(3) The AMRAP agency or its contractors fails to comply with the provisions of ANILCA or of any other applicable law or regulation, the provisions and conditions of the approved permit and any modification thereto, or any written or field orders issued by the Superintendent.

(c) Modification, suspension, or cancellation of an approved permit pursuant to paragraph (b) of this section shall be effective immediately upon receipt of oral or written notice from the Regional Director or the Superintendent. Notices issued orally shall be followed by written notice sent by certified mail within three (3) working days confirming and explaining the action. Suspensions shall remain in effect until the basis for the suspension has been corrected to the satisfaction of the Superintendent. Cancellation notices shall state the reason for cancellation and shall be sent

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by the Superintendent to the AMRAP agency at least fourteen (14) days in advance of the date the cancellation will become effective.

(d) Suspension or cancellation of a permit to conduct AMRAP activities shall not relieve the AMRAP agency or its contractors of the obligation to restore any location in accordance with the requirements of this subpart and to comply with all other obligations specified in this subpart and in the permit.

§ 9.89 Appeals.

Written appeals made within 30 days of notification of a final decision by the Regional Director pursuant to this subpart shall be reviewed by the Director of the National Park Service. Resolution of any outstanding issues shall follow current Department of the Interior procedures for resolving interagency disputes.

Dated: April 24, 1991.

J.F. Spagnola,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 91-11554 Filed 5-15-91; 8:45 am]

BILLING CODE 4310-70-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Alabama: Jefferson (Docket No. FEMA-7014).	City of Adamsville	Jan. 18, 1991, Jan. 25, 1991, *The Birmingham News.*	The Honorable Leland C. Adams, Jr., Mayor, City of Adamsville, 4828 Main Street, P.O. Box 309, Adamsville, Alabama 35005-0309.	Jan. 8, 1991	010267
Arizona: Coconino	City of Flagstaff (Docket No. 7011).	Jan. 11, 1991, Jan. 18, 1991, *The Arizona Daily Sun.*	The Honorable Christopher Bavasi, Mayor, City of Flagstaff, City Hall, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	Dec. 26, 1990	040020
Colorado: Adams and Arapahoe.	City of Aurora (FEMA Docket No. 7014).	Jan. 23, 1991, Jan. 30, 1991, *Aurora Sentinel.*	The Honorable Paul E. Tauer, Mayor, City of Aurora, 1470 South Havana Street, Aurora, Colorado 80012.	Jan. 10, 1991	080002
Colorado: El Paso	City of Colorado Springs (Docket No. 7011).	Jan. 4, 1990, Jan. 11, 1990, *Gazette Telegraph.*	The Honorable Robert M. Isaac, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.	Dec. 28, 1990	080060
Colorado: El Paso	Unincorporated areas (FEMA Docket No. 7014).	Jan. 23, 1991, Jan. 30, 1991, *Fountain Valley News.*	The Honorable Gary Shupp, Chairman, El Paso County, Board of Commissioners, 27 East Vermijo Street, Colorado Springs, Colorado 80903.	Jan. 16, 1991	080059
Kentucky: Jefferson (Docket No. FEMA-7011).	Unincorporated areas	Jan. 17, 1991, Jan. 24, 1991, *The Courier Journal.*	The Honorable David L. Armstrong, County Judge/Executive, Jefferson County, 527 West Jefferson, Louisville, Kentucky 40202.	Jan. 4, 1991	210120
Nebraska: Dakota	City of South Sioux City (FEMA Docket No. 7011).	Dec. 13, 1990, and Dec. 20, 1990, *South Sioux City Star.*	The Honorable Vernie A. Larson, Mayor, City of South Sioux City, 1615 First Avenue, South Sioux City, Nebraska 68776.	Nov. 28, 1990	310064
Washington: Clallam	City of Port Angeles (FEMA Docket No. 7009).	Nov. 16, 1990, Nov. 23, 1990, *Peninsula Daily News.*	The Honorable Joan Sargent, Mayor, City of Port Angeles, City Hall, 321 East Fifth Street, Port Angeles, Washington 98362.	Nov. 9, 1990	530023
Wisconsin: Waukesha (Docket No. FEMA-7011.	City of Muskego	Jan. 3, 1991, Jan. 10, 1991, *Muskego Sun.*	The Honorable Wayne Salesina, Mayor, City of Muskego, W182 S. 8200 Racine Avenue, Box 903, Muskego, Wisconsin 53150-0903.	Dec. 20, 1990	550465

Issued: May 1, 1991.

C.M. "Bud" Schneeris,

Administrator, Federal Insurance Administration.

[FR Doc. 91-11556 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 65

[Docket No. FEMA-7021]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: These modified base flood elevations are currently in effect and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 65.4.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Colorado: Adams and Arapahoe.	City of Aurora (FEMA Docket No. 7014).	Jan. 23, 1991, Jan. 30, 1991, *Aurora Sentinel.*	The Honorable Paul E. Tauer, Mayor, City of Aurora, 1470 South Havana Street, Aurora, Colorado 80012.	Jan. 10, 1991	080002
Colorado: El Paso	City of Colorado Springs (Docket No. 7011).	Jan. 4, 1990, Jan. 11, 1990, *Gazette Telegraph.*	The Honorable Robert M. Isaac, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.	Dec. 28, 1990	080060
Colorado: El Paso	Unincorporated areas (FEMA Docket No. 7014).	Jan. 23, 1991, Jan. 30, 1991, *Fountain Valley News.*	The Honorable Gary Shupp, Chairman, El Paso County, Board of Commissioners, 27 East Vermijo Street, Colorado Springs, Colorado 80903.	Jan. 16, 1991	080059
Kentucky: Jefferson (Docket No. FEMA-7011).	Unincorporated areas	Jan. 17, 1991, Jan. 24, 1991, *The Courier Journal.*	The Honorable David L. Armstrong, County Judge/Executive, Jefferson County, 527 West Jefferson, Louisville, Kentucky 40202.	Jan. 4, 1991	210120
Nebraska: Dakota	City of South Sioux City (FEMA Docket No. 7011).	Dec. 13, 1990, and Dec. 20, 1990, *South Sioux City Star.*	The Honorable Vernie A. Larson, Mayor, City of South Sioux City, 1615 First Avenue, South Sioux City, Nebraska 68776.	Nov. 28, 1990	310064
Washington: Clallam	City of Port Angeles (FEMA Docket No. 7009).	Nov. 16, 1990, Nov. 23, 1990, *Peninsula Daily News.*	The Honorable Joan Sargent, Mayor, City of Port Angeles, City Hall, 321 East Fifth Street, Port Angeles, Washington 98362.	Nov. 9, 1990	530023
Wisconsin: Waukesha (Docket No. FEMA-7011.	City of Muskego	Jan. 3, 1991, Jan. 10, 1991, *Muskego Sun.*	The Honorable Wayne Salesina, Mayor, City of Muskego, W182 S. 8200 Racine Avenue, Box 903, Muskego, Wisconsin 53150-0903.	Dec. 20, 1990	550465

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The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
California: Alameda	City of Fremont	Apr. 12, 1991, Apr. 19, 1991, *The Argus.*	The Honorable William Ball, Mayor, City of Fremont, City Government Building, 39700 Civic Center Drive, Fremont, California 94538.	Mar. 1, 1991	065028
California: Sacramento	Unincorporated Areas	Apr. 19, 1991, Apr. 26, 1991, *Sacramento Bee.*	Mr. Douglas M. Fraleigh, Director, Sacramento County, Department of Public Works, 827 Seventh Street, Room 301, Sacramento, California 95814.	Apr. 5, 1991	060262
California: Santa Clara	City of Gilroy	May 1, 1991, May 8, 1991, *The Dispatch.*	The Honorable Roberta Hughan, Mayor, City of Gilroy, 7351 Rosanna Street, Gilroy, California 95020.	Apr. 16, 1991	060340
California: Santa Clara	Unincorporated Areas	May 1, 1991, May 8, 1991, *San Jose Mercury News.*	The Honorable Dianne McKenna, Chairperson, Santa Clara County, Board of Supervisors, 70 West Hedding Street, San Jose, California 95110.	Apr. 16, 1991	060337
Colorado: Pueblo	City of Pueblo	May 10, 1991, May 17, 1991, *The Pueblo Chieftain and Star Journal.*	The Honorable Michael A. Cochiato, President of the Council, City of Pueblo, P.O. Box 1427, Pueblo, Colorado 81002.	Apr. 25, 1991	085077
Connecticut: Fairfield	Town of Darien	Apr. 18, 1991, Apr. 25, 1991, *The Darien News Review.*	Mr. Fred Sammis, First Elected man of the Town of Darien, Fairfield County, 2 Renshaw Road, Darien, Connecticut 06820.	Mar. 29, 1991	090005 D
Connecticut: Fairfield	City of Norwalk	May 10, 1991, May 17, 1991, *The Norwalk News.*	The Honorable Frank Esposito, Mayor of the City of Norwalk, Fairfield County, 125 East Avenue, Norwalk, Connecticut 06851.	May 2, 1991	090012 C
Illinois: Lake	Village of Vernon Hills	Apr. 18, 1991, Apr. 25, 1991, *The Vernon Review.*	The Honorable Larry Laschen, Village Manager, Village of Vernon Hills, 290 Evergreen Drive, Vernon Hills, Illinois 60061.	Apr. 5, 1991	170394
Nebraska: Unincorporated Areas.	Dakota County (FEMA Docket No. 7009).	Dec. 6, 1990, Dec. 13, 1990, *South Sioux City Star.*	The Honorable James Huggenberger, Chairman, Dakota County Board of Commissioners, P.O. Box 38, Dakota City, Nebraska 68731.	Nov. 21, 1990	310429
Nevada: Elko Co.	City of Elko	Feb. 7, 1991, Feb. 14, 1991, *Elko Daily Free Press.*	The Honorable D. George Corner, Mayor, City of Elko, 1751 College Avenue, Elko, Nevada 89801.	Jan. 31, 1991	320010
New York: Dutchess	Town of LaGrange	Apr. 25, 1991, May 2, 1991, *The LaGrange Ledger.*	Mr. Arthur McCluskey, Town Supervisor, 120 Stringham Road, LaGrangeville, New York 12540-9412.	Apr. 11, 1991	361011 B&C
North Carolina: Alamance	Unincorporated Areas	Apr. 29, 1991, May 6, 1991, *The Daily Times News.*	The Honorable Robert C. Smith, Alamance County Manager, Alamance County Office Building, 124 West Elm Street, Graham, North Carolina 27253.	Apr. 19, 1991	370001
Virginia: Arlington	Unincorporated areas	May 1, 1991, May 8, 1991, *The Arlington Journal.*	Mr. Albert C. Eisenberg, Chairman of the Arlington County Board of Supervisors, 2100 Clarendon Boulevard, Suite 300, Arlington, Virginia 22201.	Apr. 24, 1991	515520 B

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Virginia: Independent City	City of Falls Church	May 1, 1991, May 8, 1991, *The Fairfax Journal.*	The Honorable Elizabeth Blystone, Mayor of the City of Falls Church, Harry E. Wells Building, 300 Park Avenue, Falls Church, Virginia 22046.	Apr. 23, 1991	510054 B
Wisconsin: Calumet	City of Chilton	Apr. 18, 1991, Apr. 25, 1991, *Chilton Times Journal.*	The Honorable John Ronk, Mayor, City of Chilton, 42 School Street, P.O. Box 183, Chilton, Wisconsin 53014.	Apr. 5, 1991	550037
Wisconsin: Calumet	Unincorporated Areas	Apr. 18, 1991, Apr. 25, 1991, *Chilton Times Journal.*	The Honorable John Keuler, Administrative Coordinator, Calumet County, 206 Court Street, Chilton, Wisconsin 53014.	Apr. 5, 1991	550035

Issued: May 1, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-11857 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

DATES: The date of issuance of the revised Flood Insurance Rate Map (FIRM) showing modified based flood elevations for the community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified based flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and an opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided. The proposed modified elevations were also published in the **Federal Register**. The Administrator has resolved any appeals resulting from these notifications.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67.

Pusuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies, for reasons set out in the proposed rule, that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited for each community.

State, city/town/county, source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD) modified
ARKANSAS	
Clinton (city), Van Buren County (FEMA Docket No. 7012)	
Archey Creek Fork:	
Approximately 1.35 river miles upstream of confluence with South Fork Little Red River	*518
Approximately 1.79 river miles upstream of confluence with South Fork Little Red River	*527
Airport Branch:	
Approximately 0.8 river mile upstream of confluence with South Fork Little Red River	*510
Approximately .99 river mile upstream of confluence with South Fork Little Red River	*517
Town Branch:	
Approximately .34 river mile upstream of confluence with Archey Creek Fork	*511
Approximately .54 river mile upstream of confluence with Archey Creek Fork	*512
Maps available for inspection at the City Hall, 404 E. Main Street, Clinton, Arkansas.	
CALIFORNIA	
Corning (city), Tehama County (Docket No. 7015)	
Jewett Creek:	
At Woodson Avenue	*279
Approximately 300 feet downstream of Toomes Avenue	*276
Approximately 200 feet downstream of Interstate Highway 5 northbound lane	*283
Maps available for review at Department of Public Works, City Hall, 794 Third Street, Corning, California.	
MISSOURI	
Springfield (city), Greene County (FEMA Docket No. 7012)	
South Creek:	
About 1050 feet downstream of Campbell Avenue	*1285
Just downstream of National Avenue	*1295
Just downstream of Kickapoo Avenue	*1305
James River:	
About 0.4 mile downstream of Burlington Northern railroad	*1151
About 0.6 mile upstream of U.S. Highway 60	*1160
Maps available for inspection at the Department of Public Works, 830 Boonville Avenue, Springfield, Missouri.	
NEW JERSEY	
Cinnaminson (township), Burlington County (FEMA Docket No. 7011)	
Pompeston Creek:	
At the confluence with the Delaware River	*10
At upstream corporate limits	*34

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State, city/town/county, source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD) modified
Maps available for inspection at the Municipal Building, 1621 Riverton Road, Cinnaminson, New Jersey.	
Shamong (township) Burlington County (FEMA Docket No. 7016)	
Clear Brook:	
Approximately 250 feet upstream of Union Valley-Hall Acre Road	*127
Approximately 900 feet upstream of Union Valley-Hall Acre Road	*127
Maps available for inspection at the Township Municipal Complex, Pemberville Road, Jamesburg, New Jersey.	
NEW YORK	
Easton (town), Washington County (FEMA Docket No. 7016)	
Batten Kill:	
Approximately 1,300 feet downstream of Batten Kill Railroad	*157
Approximately 150 feet upstream of Ray Road	*376
Maps available for inspection at the Town Hall, Route 40, North Easton, New York.	
OKLAHOMA	
Anadarko (city), Caddo County (FEMA Docket No. 7016)	
Washita River:	
Approximately 3 miles downstream of U.S. Route 281	*1,169
Approximately 0.3 mile upstream of Central Boulevard	*1,189
Tributary 1:	
Approximately 1.0 mile upstream of confluence with Tonkawa Creek	*1,176
Approximately 2.4 miles upstream of confluence with Tonkawa Creek	*1,176
Tonkawa Creek:	
Approximately 0.3 mile downstream of State Route 8	*1,176
Approximately 0.4 mile upstream of Section Line Road	*1,194
Maps available for inspection at the City Hall, 501 West Virginia, Anadarko, Oklahoma.	
Durant (city), Bryan County (FEMA Docket No. 7016)	
Mineral Bayou:	
Approximately 140 feet upstream of Chuckwa Creek	*596
Approximately 120 feet upstream of confluence of Mineral Bayou Tributary 6	*694
Mineral Bayou Tributary 2:	
At the confluence with Mineral Bayou	*622
At U.S. Routes 69 and 75	*671
Mineral Bayou Tributary 5 South Branch:	
At the confluence with Mineral Bayou	*621
Approximately 100 feet northwest of Missouri-Kansas-Texas Railroad	*639
Mineral Bayou Tributary 6:	
At the confluence with Mineral Bayou	*654
Approximately 120 feet upstream of confluence with Mineral Bayou	*654
Chuckwa Creek:	
Approximately 125 feet upstream of confluence with Mineral Bayou	*596
Approximately 25 feet upstream of Missouri-Kansas-Texas Railroad	*597
Chuckwa Creek Tributary 2:	
At the confluence with Chuckwa Creek	*625
Approximately 0.4 mile upstream of confluence	*641
Maps available for inspection at the City Hall, Durant, Oklahoma.	
Tulsa (city), Tulsa, Osage, and Rogers Counties (FEMA Docket No. 7016)	
Brookhollow Creek:	
Approximately 100 feet downstream of South 121st East Avenue	*674
Approximately 270 feet downstream of South 129th East Avenue	*702
Maps available for inspection at the City Hall, 200 Civic Center, Tulsa, Oklahoma.	
PENNSYLVANIA	
Somerset (township) Bucks County (FEMA Docket No. 7016)	
Poquessing Creek:	
Approximately 100 feet upstream of State Road	*11
Approximately 0.8 mile upstream of CONRAIL	*135
Maps available for inspection at the Municipal Building, 3600 Hulmeville Road, Bensalem, Pennsylvania.	
Coolbaugh (township), Monroe County (FEMA Docket No. 7016)	
Deasey Lake: For entire shoreline within community	*2,089
Lake Caroline: For entire shoreline within community	*1,899
Maps available for inspection at the Coolbaugh Municipal Center, 2550 Memorial Boulevard, Tobyhanna, Pennsylvania.	
Somerset, Borough, Somerset County	
East Branch Coxes Creek:	
Approximately 0.7 mile downstream of Musselman Avenue	*2,087
	*2,096
At confluence with Unnamed Tributary to East Branch Coxes Creek	*2,094
	*2,106
Unnamed Tributary to East Coxes Creek (formerly East Branch Coxes Creek):	
At confluence with East Branch Coxes Creek	*2,104
	*2,105
At upstream corporate limits	*2,109
	*2,109
Maps available for inspection at the Borough Hall, 340 West Union Street, Somerset, Pennsylvania.	
Send comments to Mr. Benedict G. Vinzani, Jr., Somerset Borough Manager, Somerset County, P.O. Box 71, Somerset, Pennsylvania 15501.	
TEXAS	
Conroe (city), Montgomery County (FEMA Docket No. 7016)	
North Fork of Stewarts Creek:	
Approximately 600 feet upstream of confluence with Stewarts Creek	*188
Approximately 340 feet upstream of Hilbig Road	*219
Maps available at the Community Development Office, 505 West Davis, Conroe, Texas.	
Coppell (city), Dallas County (FEMA Docket No. 6946)	
Grapevine Creek:	
Confluence with Elm Fork of the Trinity River	*439
Approximately 750 feet downstream of Belline Road	*455
Denton Creek:	
Confluence with Elm Fork of the Trinity River	*446
Approximately 2,800 feet upstream of Denton Tap Road	*462
Elm Fork of the Trinity River:	
At the confluence of Grapevine Creek	*439
At Interstate Highway 35E	*452
Cottonwood Branch:	
Confluence with Denton Creek	*459
Upstream side of Denton Tap Road	*461
Maps available for inspection at the City Hall Engineering Division, 255 Parkway Boulevard, Coppell, Texas.	
Jefferson County (unincorporated areas) (FEMA Docket No. 7016)	
Walker Branch Tributary:	
Approximately 150 feet upstream of Tram Road	*23
Approximately 0.8 mile upstream of Tram Road	*34
Maps available for inspection at the County Courthouse, 1149 Pearl Street, Beaumont, Texas.	
Mission (city), Hidalgo County (FEMA Docket No. 7016)	
Shallow Flooding Area:	
At intersection of Mellie Carter Street and State Route 1016	*108
West of Mission Main Canal and south of 1 Mile Road	*118
Maps available for inspection at the City Hall, 900 Doherty, Mission, Texas.	
West Virginia	
Kanawha County (unincorporated areas) (FEMA Docket No. 7016)	
Big Coal River:	
Approximately 1.4 miles downstream of confluence of Dry Branch	*844
Approximately 1,800 feet upstream of confluence of Dry Branch	*848
Maps available for inspection at the Kanawha County Courthouse, 409 Virginia Street East, Charleston, West Virginia.	
Raleigh County (unincorporated area) (FEMA Docket No. 7016)	
Soak Creek:	
Town of Sophia upstream corporate limits	*2,231
Approximately 200 feet upstream of corporate limits	*2,282
Maps available for inspection at the Office of Planning and Zoning, 108½ N. Heber, Beckley, West Virginia.	

Issued: May 1, 1991.

C.M. "Bud" Schauerte,

Administrator Federal Insurance Administration.

[FR Doc. 91-11656 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 326

RIN 3067-AB70

Policy Guidance for a National Emergency Blood Program (DHO-7)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule amends subchapter E, chapter I, Title 44, Code of Federal Regulations (CFR) by removing part 326. Although, the Director of FEMA, under sections 104 and 1701 of Executive Order (E.O.) 12656 of November 18, 1988, assists the National Security Council in the implementation of national security emergency preparedness policy and has the lead responsibility for coordinating and supporting the initiation, development, and implementation of national security emergency preparedness programs and plans among the Federal departments and agencies, the Department of Health and Human Services under the provisions of section 601 of E.O. 12656 is responsible for the development of national plans and programs to mobilize the health industry and health resources for the provision of health services in national security emergencies. This responsibility includes a National Emergency Blood Program. Consequently, this Part is being removed from Title 44 of the CFR so that the Department of Health and Human Services may fulfill its responsibilities by publishing a rule on the Blood Program under its own Title to the CFR.

EFFECTIVE DATE: May 16, 1991.

FOR FURTHER INFORMATION CONTACT: Richard F. Marilley, Senior Planning Officer (Policy), Mobilization Policy and Plans Division, Office of Mobilization Preparedness, Federal Emergency Management Agency, room 509, 500 C Street, SW., Washington, DC 20472, Telephone (202) 646-3003.

SUPPLEMENTARY INFORMATION:

List of Subjects in 44 CFR 326

Blood program, Civil defense.

Accordingly, under 5 U.S.C. 551-553, subchapter E, chapter I, Title 44, Code of Federal Regulations is amended by removing part 326.

Dated: April 6, 1991.

Antonio Lopez,

Associate Director, National Preparedness Directorate, Federal Emergency Management Agency.

[FR Doc. 91-11643 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 550

[Petition No. P4-90, Docket No. 91-21]

Application of Tropical Shipping & Construction Co., Ltd. Under Section 35 of the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce pursuant to the Shipping Act, 1916. This amendment of part 550 adds a new exemption for carriers providing port-to-port service in the U.S. Virgin Islands domestic offshore trade. Such carriers now are permitted to publish on one day's notice reductions in existing individual commodity rates, and rates on new tariff items.

DATES: This action is effective May 16, 1991.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

Bryant L. VanBrakle, Deputy Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: On October 29, 1990, Tropical Shipping & Construction Co., Ltd. ("Tropical") filed an Application for Exemption ("Application") under section 35 of the Shipping Act, 1916 ("1916 Act"),[1] that sought relief from the thirty-day tariff-filing requirement of section 2 of the Intercoastal Shipping Act, 1933 ("1933 Act"), 46 U.S.C. app. 844. The exemption would permit carriers in the trade between the U.S. (including Puerto Rico) and the U.S. Virgin Islands ("U.S. Virgin Islands Trade" or "Trade") that are regulated by the Federal Maritime Commission ("FMC" or "Commission") to publish new individual commodity rates, or a reduction in existing individual rates, on one day's notice.

A notice of the filing of the Application was published in the **Federal Register** (55 FR 46720) and a comment supporting the Application was submitted by Trailer Marine Transport Corporation ("TMT"). A comment opposing the Application was filed by the Caribbean Shippers Association, Inc. ("CSA").[2] On March 1, 1991, the Commission issued an Order Denying Application ("March Order").

The March Order emphasized that Tropical had yet to file a tariff in the FMC-regulated Florida-U.S. Virgin Islands Trade and further noted it was unclear whether Tropical was going to file such a tariff. The Commission observed that if Tropical did enter the FMC-regulated Florida-U.S. Virgin Islands Trade, the question remained whether Tropical would be competing with carriers regulated by the Interstate Commerce Commission ("ICC") for the sort of cargo that lends itself to port-to-port carriage. The March Order further stated that even if Tropical competed with ICC-regulated carriers for such cargo it was not apparent that it would be disadvantaged by the thirty-day notice requirement of the 1933 Act. The Commission refused to grant the Application on the mere supposition that it met the requirements of section 35. The March Order also noted that it would have been particularly inappropriate to grant the application given CSA's allegation that a similar exemption in the U.S.-Puerto Rico Trade had created difficulties for shippers.

Tropical has now filed a Petition for Reconsideration ("Petition"). TMT and CSA each filed a Reply thereto.

The Petition for Reconsideration

Tropical's Petition states that on February 28, 1991, one day before the March Order was served, Tropical filed a tariff with the FMC covering port-to-port transportation in the Florida-U.S. Virgin Islands Trade. The filing of a tariff, Tropical argues, removes one of the Commission's major objections to the granting of its original Application. Petition at 2.

Tropical's FMC tariff has specific commodity rates for boats, machinery, motor vehicles-passenger, and trailers. Petition at 2. The Petition for Reconsideration, which is dated March 29, 1991, states that effective March 31, 1991, the corresponding rate items would be deleted from Tropical's ICC tariff. *Id.* As of that date, Tropical allegedly would be in direct competition with TMT, which is said to have lower rates for the same four commodities in its ICC tariff. *Id.* Tropical asserts that its ability to compete for these commodities is hampered because any rate reductions on these commodities must be filed on thirty days' notice while TMT can file rate reduction on one day's notice. *Id.*

Addressing CSA's earlier comments regarding Tropical's Application, Tropical points out that the focus of CSA's comments is on the U.S.-Puerto Rico Trade. Petition at 4. Tropical contends that the Florida-U.S. Virgin Islands Trade, which is open to foreign flag competition, cannot be equated to the U.S.-Puerto Rico Trade that is subject to the Jones Act restrictions. *Id.* Tropical observes that in the absence of the full play of market competition, the 1916 Act substitutes other restrictions, such as rate notices, to control the market. *Id.* However, Tropical believes that such regulatory restrictions have no place in the trades to and from the U.S. Virgin Islands where vessels of any flag may operate, just as they do in the

[1] Section 35 of the 1916 Act provides in pertinent part: The Federal Maritime Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of such persons from any requirement of the Shipping Act, 1916, or Intercoastal Shipping Act, 1933, where it finds that such exemption will not substantially impair effective regulation by the Federal Maritime Commission, be unjustly discriminatory, or be detrimental to commerce. 46 U.S.C. app. 833a.

[2] CSA claims to represent a number of shippers and receivers involved in the Caribbean trades, both to Puerto Rico and to the U.S. Virgin Islands.

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foreign trades. *Id.* Tropical submits that CSA's comments regarding the U.S.-Puerto Rico Trade should therefore play no role in the Commission's decision. *Id.*

Tropical also addresses the contention in CSA's previous comments that a carrier may abuse the exemption in the Puerto Rico Trade by maintaining a high "Cargo N.O.S." rate in its FMC tariff so that any commodity rate may be filed on one day's notice as a reduction from the "Cargo N.O.S." rate, even though the commodity rate may represent an increase over the corresponding ICC rate. Tropical points out that its FMC tariff has no "Cargo N.O.S." rate. Petition at 5.

Finally, Tropical attacks CSA's failure to identify its membership. Tropical believes that CSA may only represent one shipper in the U.S. Virgin Islands. Under the circumstances, Tropical believes that CSA's comments are entitled to little or no weight. Petition at 6.

Replies to the Petition for Reconsideration

A. TMT

In support of Tropical's Petition for Reconsideration, TMT points out that it has filed an extensive FMC-regulated tariff in the U.S.—U.S. Virgin Islands Trade which will become effective May 1, 1991. TMT Reply at 2. This, it is alleged, is a change in material fact which further supports the need for the exemption. *Id.* TMT urges the Commission to grant the exemption and confirm that it embraces the trade between Puerto Rico and the U.S. Virgin Islands. *Id.* It is also requested that the Commission extend the exemption to cover any reduction in accessorial charges as well as rates.[3] *Id.* TMT points out that the exemption in the U.S.-Puerto Rico Trade did not specifically mention accessorial charges, and the FMC staff has refused to construe the exemption broadly to cover them. *Id.* at 3.

Finally, TMT urges the Commission not to lose sight of the fact that the principal beneficiaries of one-day notice rate reductions are shippers. TMT Reply at 4. The requested exemption allegedly will not result in shippers losing their rights to protest a rate which they believe is unjust or unreasonable.

B. CSA

CSA claims that Tropical's comparison of its rates with those of TMT is invalid because Tropical's rates apply southbound while TMT's rates apply northbound. CSA Reply at 4. The northbound rates of Tropical and TMT are alleged to be identical. *Id.* CSA has attached the relevant tariff pages in support of its contention. CSA also alleges that Tropical has not submitted a notice to the ICC that it is cancelling its ICC-regulated northbound rates. *Id.* at 6. This, it is claimed, will result in Tropical having FMC-regulated rates southbound and ICC-regulated rates northbound. *Id.* This is the sort of bifurcation of activities which CSA finds objectionable. *Id.* CSA also believes that it is not clear whether Tropical has, in fact, cancelled its ICC-regulated southbound rates on the commodities in question. *Id.*

CSA also believes that the rates in Tropical's new FMC-regulated tariff represent a *de facto* rate increase. CSA Reply at 6–7. The rates are alleged to be the same as those previously filed with the ICC. *Id.* at 7. However, the FMC-regulated rates, unlike the ICC-regulated rates, do not include any inland transportation. *Id.* Thus, it is argued, the shipper is paying the same rate but is receiving less service. *Id.*

In sum, CSA argues that the Petition should be denied because it is "seriously flawed and misleading". CSA Reply at 7. CSA submits that Tropical cannot be harmed by denial of the Petition because it can control "when, where and under what circumstances it chooses to offer what type of rates/services". *Id.* Any problems which Tropical envisions are said to be hypothetical.

Discussion

Rule 261 of the Commission's Rules of Practice and Procedure, 46 CFR 502.261, governing petitions for reconsideration, limits the grounds for such petitions. That Rule provides in relevant part that:

> A petition will be subject to summary rejection unless it:
>
> (1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order;
>
> (2) Identifies a substantive error in material fact contained in the decision or order;
>
> (3) Addresses a finding, conclusion or other matter upon which the party has not previously had the opportunity to comment or which was not addressed in the briefs or arguments of any party. Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received.

Tropical's Petition complies with Rule 261. At the time the Commission decided Tropical's Application for Exemption, Tropical had not filed a tariff in the Florida—U.S. Virgin Islands Trade. In denying the Application, the Commission attached considerable importance to the fact that Tropical had not yet filed such a tariff. Thus, the filing of a tariff by Tropical is a "change in material fact", as that phrase is used in Rule 261.

The Petition for Reconsideration also addresses the arguments of CSA regarding the effect of one day's notice for rate reductions in the Puerto Rico Trade. Due to the procedural schedule followed, Tropical had no opportunity to rebut CSA's arguments prior to the Commission's decision. Thus, the Petition "[a]ddresses a finding, conclusion or other matter upon which the party has not previously had the opportunity to comment * * *."

CSA appears to be correct in its contention that the comparison of rates shown in Tropical's Petition is in error. The tariff pages attached to CSA's Reply show that the rates of TMT and Tropical for the commodities in question are identical. Nevertheless, there is no question that TMT and Tropical are competing for the same commodities. Thus, Tropical is in much the same position as the carriers that have been granted similar exemptions in other trades. *Matson Navigation Co., Inc.—Application for Section 35 Exemption,* ____ F.M.C. ____, 24 S.R.R. 1518 (1989) ("*Matson Exemption*") and *Application of Sea-Land Service, Inc. for Exemption Under Section 35 of the Shipping Act, 1916,* ____ F.M.C. ____, 25 S.R.R. 660 (1990) ("*Sea-Land Exemption*").

CSA also may be correct in arguing that the rates in Tropical's new FMC-regulated tariff represent a *de facto* increase over the rates previously filed in its ICC-regulated tariff. The level of rates is the same in both tariffs but the FMC-regulated rates, unlike the ICC-regulated joint through rates, do not include inland transportation. Thus, the shipper may be receiving less service for the same price. However, even if CSA's argument is correct, it does not necessarily require the denial of the Application. The rates were filed on thirty days' notice and were not protested by CSA or any other shipper. More importantly, CSA has not shown how the requested one day's notice would prevent shippers from protesting such rates.

As Tropical correctly points out, the U.S.-U.S. Virgin Islands Trade is open to foreign flag competition. Clearly, the Trade represents a contestable market. Carriers can enter and exit the Trade with relative ease, free from governmental interference. Thus, competition, both actual and potential, may be expected to curtail the sort of problems CSA envisions.

We are now satisfied that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory or detrimental to commerce. Indeed, Tropical is now in much the same position as the carriers that have been granted similar exemptions in other trades. *See Matson Exemption* and *Sea-Land Exemption.* Accordingly, the Commission will reconsider its March Order and grant Tropical's Application for Exemption.

Although the Commission, as an independent regulatory agency is not subject to Executive order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this Order and has determined that this rule is not a major rule as defined in Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

List of Subjects in 46 CFR Part 550

Maritime carriers; Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 18, 35, and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817, 833a, and 841a, and section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, part 550 of title 46, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

2. In § 550.1, a new paragraph (d) is added reading as follows:

§ 550.1 Exemptions.

* * * * *

(d) Carriers providing port-to-port transportation between the United States, including Puerto Rico, and the U.S. Virgin Islands may publish new individual commodity rates, or reductions in existing individual rates, on one day's notice, and to that extent are exempted from the notice requirements of the *Act* and the rules of this part.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-11582 Filed 5-15-91; 8:45 am]

BILLING CODE 6730-01-M

[3] This request is beyond the scope of Tropical's original Application and, accordingly, will not be further considered here.

UNITED STATES INFORMATION AGENCY

48 CFR Chapter 18

Foreign Acquisitions; Waiver of CBD Notices

AGENCY: U.S. Information Agency.

ACTION: Temporary waiver of requirement; request for comments.

SUMMARY: The U.S. Information Agency (USIA) has issued a policy to waive the requirement to publish a notice in the Commerce Business Daily (CBD) when soliciting bids or proposals for the acquisition of property or services by USIA overseas establishments and the acquisition actions are to be made and performed outside the United States, its possessions, or Puerto Rico.

DATES: Effective date of waiver April 18, 1991. Comments on this document will be accepted until June 1, 1991. All written communications received on or before the closing date will be considered by the Agency before taking final action.

ADDRESSES: Comments should be addressed to Mr. Darwin Roberts, U.S. Information Agency, Office of Contracts, 330 C Street SW., room 1611, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain a copy of this waiver by contacting Ms. Gloria Sweetney, U.S. Information Agency, Office of Contracts, 330 C Street SW., room 1611, Washington, DC 20547, (202) 485–6404.

Subject: Foreign Acquisitions—Waiver of requirement to publish a notice in the Commerce Business Daily (CBD) soliciting bids or proposals for acquisition of property or services expected to exceed $25,000; but less than $500,000; or a noncompetitive acquisition over $10,000; or before placing an order, expected to exceed $25,000, under a basic agreement, basic ordering agreement or similar arrangement.

Purpose: This document sets forth the procedures necessary to determine the reasonableness or appropriateness of all United States Information Service (USIS) overseas posts and Voice of America (VOA) relay stations of applying a waiver to publishing notices for acquisition actions to be made and performed outside the United States, its possessions, or Puerto Rico when only local sources will be solicited, as authorized by section 18(c)(3) of the Office of Federal Procurement Policy Act (41 USC 401 to. seq.) and section 8(g)(3) of the Small Business Act (15 USC 637 to. seq.). Consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration has obtained their concurrence that USIS posts and overseas VOA relay stations may use the FAR exception found in FAR 5.202(a)(12).

Effective Date. April 18, 1991.

Background: The U.S. Information Agency maintains approximately 205 overseas posts and 14 VOA relay stations, (hereinafter called establishments), in 126 countries. The purchasing function for local requirements is managed individually by each establishment utilizing resources; competitively selected, where possible; that are available and in proximity to the establishment. The majority of USIA contracts are executed by Department of State (DOS) contracting officers. Although the DOS has a similar waiver included in its acquisition regulations, which it has been using for the overseas procurement it performed on behalf of USIA, DOS has recently decided that its waiver is limited to DOS acquisitions. The purpose of this policy is to maintain the status quo for local overseas procurement by the establishments. For all USIA acquisitions, the USIA establishment utilizes and adheres to the U.S. Information Agency Acquisition Regulation (IAAR) which is in conformance with the Federal Acquisition Regulation (FAR).

Rationale. Because of the diverse geographic locations of the overseas establishments, the urgency of carrying out the Agency's foreign public diplomacy mission, the nature of the procurements and vastly different market conditions; the practicality of applying the U.S. procedural requirements to all foreign purchases is determined to be unreasonable and in most cases inappropriate. The reasons for this determination are as follows:

(1) The constant changing circumstances of public diplomacy make unreasonable any delays due to posting of notices, the issuance of solicitations

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within the U.S. and the response time for receipt of bids or proposals.

(2) The need to have the supplier within reasonable proximity to the overseas establishment to assure complete understanding of the requirement and subsequently to monitor quality performance. Most contracts are for services which must be performed locally.

(3) The difficulty of communication and coordination outside of the country of post or relay station residence.

(4) The cost in both time and money of the conduct of negotiations between the U.S. and a foreign location, which, except in unusual circumstances, would be prohibitive.

(5) The ability of an overseas establishment to amend or clarify solicitations on a timely basis to reflect changes is threatened by the circumstances of distance and time zone differences, even with advanced communication technology.

(6) Consistency with DOS acquisition regulations.

Policy and Procedures. a. In many cases it is inconsistent with the Agency's foreign public diplomacy mission to comply with the notice requirements in FAR subparts 5.2 and 5.3 concerning synopsis and response time requirements. The Agency hereby determines, after consultation with OFPP and SBA, that the exception to the synopsis requirement given in FAR 5.202 (a)(12) shall apply to acquisition actions made and performed outside the United States, its possessions, or Puerto Rico, when only local sources will be solicited. The synopsis and response time requirements shall be waived, unless the Contracting Officer can make an affirmative determination that compliance with the requirements will not have an adverse impact on the establishment's mission.

b. When an overseas establishment develops a purchase request for supplies or services, the request shall be furnished to an authorized Contracting Officer accompanied by a memorandum identifying all established sources of supply known to the requirements office, including all local suppliers of U.S. end products; critical dates for delivery; installation and operational dates; estimated cost; an estimate of the total time lapse between date of order and final contractor performance; the urgency of the requirement; and, any other factors that may be unique, but nonetheless mandatory.

c. The Contracting Officer shall review the information submitted by the program office and take the action required under FAR subparts 5.2 and 5.3 to publish a synopsis, only if appropriate, based on the following criteria:

(1) It can be determined that publication of a notice in the CBD will not delay or otherwise adversely impact on the post's ability to satisfy its overseas requirement in a timely and cost effective manner.

(2) The determination is to be made in writing, taking into account overseas delivery, installation, operation, maintenance or replacement requirements, in addition to special product or performance specifications; and, where necessary, security clearance requirements for suppliers. Unless it can be determined that an overseas requirement will not be delayed, or otherwise adversely affected by publication of a notice in the CBD, the Contracting Officer may waive the requirement and shall conduct a competitive (to the extent feasible, given the market conditions in-country) negotiated procurement with locally known and qualified sources of supply. If there are known to be U.S. firms, local firms with U.S. affiliations or firms that furnish U.S. produced items, the Contracting Officer shall ensure that these firms are included in the source list to receive the solicitation. Competition is a policy goal in all such procurements.

d. This policy does not affect decisions concerning compliance with the Balance of Payments Program (FAR subpart 25.3) or the Trade Agreements Act (FAR subpart 25.4).

Documentation. a. In accordance with FAR 1.404, this waiver is a class deviation and may be used without separate written documentation for local overseas procurements up to $500,000 per transaction.

b. For procurement actions in excess of $500,000, the approval of the Agency Procurement Executive or his/her designee is necessary.

Dated: May 8, 1991.

Philip R. Rogers,

Procurement Executive.

[FR Doc. 91-11339 Filed 5-15-91; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 90349-0096]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Texas closure adjustment.

SUMMARY: NOAA announces an adjustment of the dates of the annual closure of the shrimp fishery in the exclusive economic zone (EEZ) off Texas. The closure, normally between June 1 and July 15 each year, will commence at 12:01 a.m., May 17, 1991, and will terminate 30 minutes after sunset on July 6, 1991. The adjustment is a response to biological data that indicate early migration of brown shrimp from Texas estuaries and is intended to protect small shrimp from capture by trawls.

EFFECTIVE DATES: The EEZ off Texas is closed to trawl fishing from 12:01 a.m., May 17, 1991, to 30 minutes after sunset on July 6, 1991.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico shrimp fishery is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, as provided by the Magnuson Fishery Conservation and Management Act. The implementing regulations at 50 CFR 658.25 describe the Texas closure and provide for adjustments to the closing and opening dates by the Director, Southeast Region, NMFS, under specified criteria.

Available information meeting the criteria specified in 50 CFR 658.25(b)(1) indicates that an early closure is warranted and desirable. Biological data collected by the Texas Parks and Wildlife Department indicate an early migration of small brown shrimp from the Texas bay systems. An average predicted total length of brown shrimp of 80 to 90 millimeters in the central and northern bays of Texas and the predicted strength of the outgoing tides on and after May 15, 1991, indicate that the closure should commence on May 15, 1991, and terminate on July 6, 1991. However, NOAA is limited by 50 CFR 658.25(b) to an adjustment to the normal closing date of June 1 of no more than 15 days. Therefore, the earliest the EEZ off Texas can be closed to trawl fishing is May 17.

From 12:01 a.m., May 17, 1991, to 30 minutes after sunset on July 6, 1991, the area described at 50 CFR 658.25(a) is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100-fathom depth contour. The waters of Texas will also be closed during this period.

Other Matters

This action is authorized by 50 CFR 658.25 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 10, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-11380 Filed 5-15-91; 8:45 am]

BILLING CODE 3510-22-M

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Proposed Rules

Federal Register
Vol. 56, No. 95
Thursday, May 16, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-91-007]

RIN 0581-AA19

Tobacco Fees and Charges for Mandatory Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Tobacco Inspection Act requires the Secretary to fix and collect fees and charges for inspection and certification, the establishment of standards, and other services, including administrative and supervisory costs, at designated tobacco auction markets in all tobacco producing areas. The fees collected must, as nearly as possible, cover the Department's costs of performing these services. The proposed rule would increase the fee from $.0067 per pound to $.0070 to reflect the increased cost of operating the tobacco inspection program.

DATES: Comments are due on or before June 17, 1991.

ADDRESSES: Send comments to the Director, Tobacco Division, Agricultural marketing Service (AMS), United States Department of Agriculture (USDA), room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, AMS, USDA, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Telephone (202) 447-2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to amend the regulations governing the mandatory inspection and certification of producer tobacco sold at designated auction markets throughout tobacco producing areas. The proposed amendment would increase the fees and charges assessed by the Department for providing inspection and certification of quota tobacco, the establishment of standards, and other services. The fee would cover the increased cost of operating the program, including administrative and supervisory costs. Authority for these regulations is contained in the Tobacco Inspection Act (7 U.S.C. 511-511q).

The current fee of $.0067 per pound has been in effect since July 1, 1989, as published in the **Federal Register** (54 FR 27855).

The Department conducts a yearly review of the financial status of this program to determine whether the fee is sufficient. Receipts for the 1990-91 marketing season were approximately $11,302,000. Anticipated expenses for the period are approximately $11,526,000. At the current fee level insufficient revenue is generated to meet the costs of the inspection program and to replenish funds that had to be used from the program's reserve account. The major factors causing the need for additional funding are increases in Federal salaries, benefits, travel allowances and overall administrative costs since 1989. An analysis of data available to the Department indicates that a fee of $.0070 per pound would cover expenses and maintain a reserve that would meet any reasonable contingency. Information on program income and expenses was presented to the National Advisory Committee for Tobacco inspection Services at its meeting on March 26, 1991, in Raleigh, North Carolina. The National Advisory Committee, which is made up of 14 representatives from tobacco producer interest groups, was established under the Tobacco Inspection Act to advise the Secretary of Agriculture on the fees to be assessed, level of inspection service, and other related matters. By a majority vote, the Committee adopted a motion to recommend to the Secretary an increase in the fee to $.0070 per pound.

The marketing season for tobacco does not coincide with the Federal fiscal year. Therefore, it is contemplated that the increased rate would be made effective on July 1, 1991, so as to treat all types of tobacco on an equal basis.

This rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor rule" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Public Law 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most of the firms which would be affected by this rule are small businesses. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. this proposed rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this proposed rule would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way effect normal competition in the marketplace. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

In addition, one technical change of a non-substantive nature is being made in § 29.75a, (b), to correct a typographical error. The second sentence is being amended to state that if the inspector determines that requirements have not been followed, the inspector shall return to the noncomplying warehouse on the next regularly scheduled sale day. The text incorrectly read that the inspector would return to the noncomplying warehouse "or" the next sales day.

All persons who desire to submit written data, views, or arguments for consideration in connection with this proposal may file them with the Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, not later than June 17, 1991.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committee, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

Accordingly, the Department proposes to amend the regulations under the Tobacco Inspection Act contained in 7 CFR part 29 as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

§ 29.75a [Amended]

2. The second sentence of § 29.75a, (b) Display of burley tobacco on auction warehouse floors in designated markets is revised to read:

If he determines that the prescribed requirements have not been followed, the inspector shall proceed to the next sale or sales as originally scheduled for that day and grade the number of lots of tobacco scheduled for such sale or sales, and shall return to the noncomplying warehouse on the next regularly scheduled sales day for such warehouse, at which time the Set Work Leader or Circuit Supervisor shall again determine if the prescribed system has been followed before starting the inspection.

§ 29.123 [Amended]

3. In § 29.123(a) Mandatory inspection, change $.0067 per pound to $.0070 per pound.

Dated: May 13, 1991.

Daniel Haley,
Administrator.

[FR Doc. 91-11667 Filed 5-15-91; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 29

[TB-91-006]

RIN 0581-AA19

Tobacco Fees and Charges for Permissive Inspection and Certification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Tobacco Inspection Act requires the Secretary to fix and collect fees and charges for the voluntary inspection and certification of tobacco upon request. This proposed rule would increase the fees and charges currently in force for permissive grading of quota and nonquota tobacco to reflect increased costs of operating the program. Under the Act, fees collected must cover, as nearly as practicable, the Department's costs for performing the inspection service, including administrative and supervisory costs. This increase does not affect the fee for the mandatory inspection of tobacco sold at designated auction markets or permissive export certification.

DATES: Comments are due on or before June 17, 1991.

ADDRESSES: Send comments to the Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), room 502 Annex Building, PO Box 96456, Washington, DC 20090-6456. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, AMS, USDA, room 502 Annex Building, PO Box 96456, Washington, DC 20090-6456. Telephone (202) 447-2567.

SUPPLEMENTARY INFORMATION: This proposed rule would increase the fees and charges under which permissive tobacco inspection and grading services are provided to those requesting the services. The Tobacco Inspection Act requires that permissive inspection be made available to interested parties on a fee basis sufficient to cover the costs incurred by the Department for the inspection and certification, the establishment of standards, and other services, including administrative and supervisory costs. Authority for these regulations is contained in the Tobacco Inspection Act (7 U.S.C. 511-511q).

The current hourly fee schedule for domestic permissive inspection has been in effect since December 18, 1989, as published in the **Federal Register** (54 FR 47755) on November 17, 1989.

The Department conducts an annual review of the financial status of this program to determine whether the fee is sufficient. As a result of this review, it has been determined that at the current fees insufficient revenue is generated to meet the costs of the program and to maintain an adequate reserve fund. The major factors causing the need for additional funds are increases in Government salaries and benefits, travel allowances and overall administrative costs since 1989. Therefore, the Department is proposing that the base hourly rate of $29.45 be revised to read hourly rate of $32.40, the overtime rate of $35.15 shall be $38.70, and the Sunday and holiday rate of $44.05 be $48.45. These fees would cover expenses and maintain a reserve that would meet any reasonable contingency.

This rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor rule" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Public Law 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small businesses. Few of the entities which would be affected by this rule are small business. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last 3 years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significiant economic impact on a substantial number of small entities. This proposed rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this proposed rule would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way affect normal competition in the marketplace. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

All persons who desire to submit written data, views, or arguments for consideration in connection with this proposal may file them with the Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, room 502 Annex Building, PO Box 96456, Washington, DC 20090-6456, not later than June 17, 1991.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committee,

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Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

Accordingly, the Department proposes to amend the regulations under the Tobacco Inspection Act contained in 7 CFR part 29 as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

2. Section 29.129(b) is revised to read as follows:

§ 29.129 Fees and charges.

* * * * *

(b) *Domestic permissive inspection and certification.* Fees and charges for inspection at redrying plants and receiving points shall comprise the cost of salaries, travel, per diem, and related expenses to cover the cost of performing the service. Fees shall be for actual time required to render the service calculated to the nearest 30-minute period. The hourly rate shall be $32.40. The overtime rate for service performed outside the inspector's regularly scheduled tour of duty shall be $38.70. The rate of $48.45 shall be charged for work performed on Sundays and holidays. These same fees or charges shall be applicable for hogshead, bale, cases, or sample inspections.

* * * * *

3. Section 29.9251 is revised to read as follows:

§ 29.9251 Fees and charges.

Fees and charges for inspection and certification services shall comprise the cost of salaries, travel, per diem, and related expenses to cover the costs of performing the service. Fees shall be for actual time required to render the service calculated to the nearest 30-minute period. The hourly rate shall be $32.40. The overtime rate for service performed outside the inspector's regularly scheduled tour of duty shall be $38.70. The rate of $48.45 shall be charged for work performed on Sundays and holidays.

Dated: May 13, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-11668 Filed 5-15-91; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1943, 1951, 1955, and 1980

Requirement of a 10 Percent Downpayment From any Applicant in Conjunction With Insured and Guaranteed Farm Ownership Loans, Including Credit Sales, to Purchase Farm Real Estate

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to require a 10 percent downpayment, based on the option/sales contract price, in conjunction with insured and guaranteed farm ownership loans, including credit sales, to purchase farm real estate. This action is necessary to improve the applicant's/borrower's chance for success by providing credit only to those applicants/borrowers who are in a position to meet the 10 percent downpayment requirement. Such a requirement will result in the applicant/borrower having a vested interest in the farm property, and will provide additional incentive to become a successful farm operator. In addition, the applicant's/borrower's equity position will increase their chance for success. The intended effect is to reduce losses to farmers and FmHA and strengthen the farmer programs loan portfolio.

DATES: Written comments must be submitted on or before June 17, 1991.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: David R. Smith, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Agriculture Building, room 5420, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 382-1945.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Ownership Loans are excluded with the exeption of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.407—Farm Ownership Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Discussion of the Proposed Rule

Farm loans made to FmHA applicants are governed by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921 et seq.). FmHA, unlike commercial lenders, has historically loaned up to 100 percent of the appraised market value of farm real estate, leaving the Agency in a precarious security position and the borrower with no equity cushion to withstand any unforeseen emergency. Present FmHA farm ownership loan and inventory property regulations do not require any downpayment from the applicant when purchasing farm real estate or suitable inventory farm property. Only sales of surplus inventory farm property are subject to a downpayment requirement.

The House Committee on Appropriations (H.R. Report 101-598) expressed concern that inventory farm property was being sold and financed under the farm ownership program with no required downpayment by the purchaser. The committee did not concur in this approach and stated that it expected an amount equal to at least one year's rent be required as a downpayment on such property. The Agency feels that the value of one year's rent could be difficult to calculate. Therefore, FmHA is proposing a 10 percent downpayment be required from any applicant in conjunction with insured and guaranteed farm ownership (FO) loans, including credit sales, for the purchase of farm real estate. The Agency believes the requirement is in the best interest of the borrower from the standpoint of borrower success and graduation to commercial credit sources. In the case of guaranteed loans, this requirement would also be in the lender's best interest because the lender's security position would be strengthened. From the Government's viewpoint the requirement would strengthen its insured loan portfolio and hopefully reduce the amount of loss claims it would pay on its guaranteed loans.

FmHA is proposing to amend the FO insured and guaranteed loan regulations by requiring a 10 percent downpayment, based on the purchase price, from any applicant in conjunction with insured and guaranteed loans to purchase farm real estate. A downpayment is based on 10 percent of the purchase price of the real estate, unless the purchase price is greater than the appraised value. If the purchase price is greater than the appraised value, the downpayment will be 10 percent of the appraised value plus the difference between the appraised value and the purchase price. A downpayment based on the purchase/option price takes into consideration both the sale from parent to child, in which the option price is less than the market value, and the situation in which the buyer is willing and able to pay more than the appraised value for property that is being sold in excess of the insured or guaranteed FO loan limits.

FmHA is proposing to amend the farmer program account servicing, property management and disposal of inventory property regulations by requiring that the sales contract will reflect a 10 percent downpayment, based on the sales contract price, from any applicant in conjunction with a credit sale of farm real estate.

The 30-day comment period is established to enable the Agency to comply with the legislative requirement to publish final rules within 150 days.

List of Subjects

7 CFR Part 1943

Credit Loan Program—Agriculture, Recreation, Water resources.

7 CFR Part 1951

Account servicing, Credit, Loan programs,—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Debt restructuring.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

7 CFR Part 1980

Agriculture Loan programs—Business and industry—Rural development assistance, Loan programs—Housing and community development.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

1. The authority citation for part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

2. Section 1943.17 is amended by adding a new paragraph (c) to read as follows:

§ 1943.17 Loan limitations.

* * * * *

(c) When loan funds will be used to purchase real estate, a loan may not be approved unless there will be a 10 percent downpayment. The downpayment will be 10 percent of the purchase price of the real estate, unless the purchase price is greater than the appraised value. If the purchase price is greater than the appraised value, the downpayment will be 10 percent of the appraised value PLUS the difference between the appraised value and the purchase price.

PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23 and 7 CFR 2.70.

Subpart S—Farmer Programs Account Servicing Policies

4. Section 1951.911 is amended by revising paragraph (a)(5)(i)(B), the introductory text of paragraph (a)(5)(ii), and paragraphs (a)(7)(iii) and (a)(7)(iv) to read as follows:

§ 1951.911 Preservation loan service programs.

(a) * * *

(5) * * *

(i) * * *

(B) If the owner has requested buyback of the property as a credit sale on eligible rates and terms, the County Committee will determine the owner's eligibility in accordance with subpart A of part 1943 of this chapter, and the County Supervisor will determine the feasibility of the proposed operation before entering into the leaseback/buyback agreement. If the County Committee determines that the owner is not eligible or the County Supervisor determines that the owner's proposed operation and purchase is not feasible, and/or the owner fails to submit the information requested on Exhibit K of this subpart within 15 days of the date which appears on Exhibit K, appeal rights will be given in accordance with subpart B of part 1900 of this chapter. If the County Committee determines the owner is eligible for a credit sale on eligible rates and terms and the County Supervisor determines that the owner's proposed operation and purchase is feasible, the County Supervisor will enter into a conditional credit sale with the owner. The following conditions will be inserted on Form FmHA 1955-45, "Standard Sales Contract—Sale of Real Property by the United States."

FmHA's obligation to close the sale is contingent on its acquiring title to the security within 2 years from the date of the agreement. FmHA's obligations are contingent on the owner meeting FmHA's credit sale criteria for eligible rates and terms, creditworthiness and repayment ability at the time the credit sale is ready to close. A 10 percent downpayment, based on the sales contract price, is required from any eligible applicant at the time of closing the credit sale.

* * * * *

(ii) If the owner has requested leaseback/buyback of the real property, FmHA may, as a part of an agreement, permit the owner to voluntarily convey the real property and chattels to FmHA and immediately lease, or approve a credit sale of, the real property back to the former owner. A 10 percent downpayment, based on the sales contract price, is required when a credit sale is involved. FmHA may approve a credit sale of all the chattel property back to the former owner. These agreements are subject to the following

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items being included before completing the transaction.

* * * * *

(7) * * *

(iii) The property will be offered either on eligible terms (if the purchaser is eligible in accordance with subpart A of part 1943 of this chapter) and a credit sale, less the required 10 percent downpayment, processed in accordance with subpart C of part 1955 of this chapter, or on ineligible terms of not less than a 10 percent downpayment with the remaining balance amortized over a period not to exceed 25 years. The interest rate will be the current rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(iv) If the purchaser is an eligible applicant [in accordance with subpart A of part 1943 of this chapter] and the value of the property is greater than $200,000, the property may be financed with a $200,000 credit sale on eligible terms and the remainder with the applicant's own resources and/or with participating credit set forth in subpart A of part 1943 of this chapter. A 10 percent cash downpayment, based on the lesser of the appraised value or the contract sales price, is required from the eligible applicant. If the value of the property is greater than $200,000 and the eligible applicant is NOT able to arrange the necessary financing for the balance over $200,000, FmHA may finance the purchase of the property with a credit sale on ineligible terms of not less than a 10 percent downpayment with the remaining balance amortized over a period not to exceed 25 years. A credit sale on eligible terms and the remaining balance on ineligible terms will NOT be made to the same applicant to purchase farm property.

* * * * *

PART 1956—PROPERTY MANAGEMENT

5. The authority citation for Part 1956 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—Management of Property

6. Section 1956.60(b) is amended to add a new sentence after the second sentence as follows:

§ 1956.60 Lease of real property.

* * * * *

(b) *Lease of farm property with option to purchase.* * * * A 10 percent downpayment, based on the option/sales contract price, is required from any applicant when FmHA is financing the credit sale. * * *

* * * * *

Subpart C—Disposal of Inventory Property

7. Section 1955.107 is amended by revising the introductory text and paragraph (d)(4) to read as follows:

§ 1955.107 Sale of suitable property (CONACT).

Except as provided in § 1955.105(c) of this subpart for farm property, CONACT real property which has been declared suitable for sale to eligible applicants will be offered for regular sale to program applicants in accordance with FmHA regulations that apply to the appropriate loan program. A 10 percent downpayment is required from any eligible or ineligible applicant. Real property will be managed in accordance with the provisions of subpart B of this part until sold under this section or reclassified as surplus and sold under § 1955.108 of this subpart.

* * * * *

(d) * * *

(1) Form FmHA 1955-45, "Standard Sales Contract—Sale of Real Property by the United States," will be used to document the offer and acceptance for regular FmHA sales. The sales contract will reflect the 10 percent downpayment that is required from any applicant.

* * * * *

PART 1980—GENERAL

8. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart B—Farmer Programs Loans

9. Section 1980.180 is amended by adding a new paragraph (d)(4) to read as follows:

§ 1980.180 Farm ownership loans.

* * * * *

(d) * * *

(4) The applicant does not have the required 10 percent downpayment when loan funds will be used to purchase real estate. The downpayment will be 10 percent of the purchase price of the real estate, unless the purchase price is greater than the appraised value. If the purchase price is greater than the appraised value, the downpayment will be 10 percent of the appraised value PLUS the difference between the appraised value and the purchase price.

* * * * *

Dated: April 26, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-11897 Filed 5-15-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 718 Re; Notice Nos. 693 and 702]

Revision of the Boundary of the Chalk Hill Viticultural Area (86F268P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Petition for rulemaking: withdrawal.

SUMMARY: ATF is withdrawing from further consideration the notice of proposed rulemaking regarding the revision of the Chalk Hill viticultural area, as proposed in Notice No. 693, published in the Federal Register on December 12, 1989 (54 FR 51039). After considering the comments received in response to the notice, ATF has concluded that the petitioner failed to meet the burden of showing that the present boundaries of the Chalk Hill viticultural area should be amended. The boundaries of the Chalk Hill viticultural area will therefore remain unchanged.

DATES: This withdrawal is effective May 16, 1991.

FOR FURTHER INFORMATION CONTACT: David W. Beskaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave. NW., Washington, DC 20226, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1989, ATF published Notice No. 693 in response to a petition submitted by E. Clifford Melin, Jr., of Chalk Hill Vineyards. Mr. Melin requested that the northern boundary of Chalk Hill viticultural area be revised to include the portion of Chalk Hill Road north of Chalk Hill. The proposed amendment to the boundaries of the Chalk Hill viticultural area would have created a new area of overlap with the Alexander Valley viticultural area. The comment period for Notice No. 693 closed on January 26, 1990. No comments were received during the 45-day comment period. After the close of the comment period, ATF received a

written request from Frederick P. Furth of the Chalk Hill Winery to reopen the comment period. Mr. Furth stated that he intended to submit a comment in opposition to the proposed revision of the boundary of the Chalk Hill viticultural area, and he requested additional time to gather data and formulate his comments. Since the Chalk Hill Winery was located within the viticultural area which would be affected by the proposed boundary change, ATF considered Mr. Furth's request to be a valid reason for reopening the comment period. Therefore, ATF published Notice No. 702 (55 FR 20168) on May 15, 1990, and reopened the comment period until June 29, 1990.

Comments Received in Response to Notice No. 702

During the reopening of the comment period, ATF received ten comments, including a comment from Mr. Furth. Eight of the ten comments were opposed to the proposed boundary revision. The two comments received in favor of the proposed revision generally supported the petitioner's claim that the proposed overlap area was an area of transition between the Alexander Valley viticultural area and the Chalk Hill viticultural area, with characteristics common to both areas.

Evaluation of Evidence

Section 4.25a(e)(1), title 27, CFR defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey [U.S.G.S.] Maps of the largest applicable scale; and

(e) A copy or copies of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Evidence of Name

The petitioner submitted evidence that the area in question was known among local residents as the "Chalk Hill area of Alexander Valley." As an example, he referred to a residential subdivision located within the Alexander Valley viticultural area which is known as "Chalk Hill Estates." The petitioner submitted an affidavit from Mr. Byrd of Balverne winery, who stated that the original Chalk Hill appellation committee believed that the natural boundaries of the Chalk Hill viticultural area extended the entire length of Chalk Hill Road, but excluded the portion north of Chalk Hill from their original proposal because of doubts as to whether it would be acceptable to ATF. The petitioner submitted a copy of a map entitled "Franz Valley Study Planning Units," prepared in September 1978 by a study team of the Sonoma County Community and Environmental Services, which shows a "Chalk Hill" planning area that extends along Chalk Hill Road all the way to Highway 128. Finally, the petitioner submitted a real estate brochure which lists the first notable feature of a ranch adjacent to an Alexander Valley vineyard as "95 acres of premiere property located in Sonoma County's most prestigious wine country—the Chalk Hill region of Alexander Valley."

Mr. Furth disputed the petitioner's contention that the proposed area of overlap with Alexander Valley is known locally or nationally as the Chalk Hill area of Alexander Valley. Mr. Furth conceded that the residential real estate market may use that descriptive phrase, but he argued that the phrase had no meaning in a viticultural sense. He argued that while Chalk Hill Road is a major connecting road between Santa Rosa and Highway 128, that does not mean that the entire length of the road is viticulturally similar. Mr. Furth stated that the proposed area of overlap had never been known within the wine industry as the Chalk Hill area of Alexander Valley. Instead, Mr. Furth pointed to the U.S. Geological Survey Map known as the Healdsburg quadrangle, which clearly identifies this area as Alexander Valley.

Mr. Furth also disputed Mr. Byrd's declaration, in which it is stated that the original Chalk Hill appellation committee believed that the boundaries of the area should extend the entire length of Chalk Hill Road. Mr. Furth stated that there was fierce opposition on the part of a majority of the growers in that part of Alexander Valley to their vineyards being included in the Chalk Hill viticultural area, and that such opposition still exists today.

Evidence of Geographical Characteristics

The petitioner stated that the climate of the proposed overlap area was transitional between the climate of Chalk Hill viticultural area and the increasingly warmer climate of the rest of Alexander Valley. The petitioner also contended that the geology of the proposed overlap area represented a transitional area between the two viticultural areas, with the Huichica formation, which is the most dominant geological feature of the Chalk Hill viticultural area, also being present in the proposed overlap area, but not elsewhere in Alexander Valley.

The petitioner also described the topography of the proposed overlap area as being transitional to both areas, with the terrain of the area characterized by steep to gentle hills of low elevation, similar to several places along Chalk Hill Road, south of Chalk Hill, where the terrain levels out. Finally, the petitioner claimed that in the area of the proposed overlap, the most prevalent soils are Haire gravelly loam, Laniger loam, and Arbuckle gravelly sandy loam. In Chalk Hill, the most common soil types are the Arbuckle gravelly sandy loam, Haire gravelly loam, Huichica loam, Spreckels loam, Felta very gravelly loam, Laniger loam and Dibble clay loam. However, in Alexander Valley the most widespread soils are Cole clay loam, Cortina very gravelly loam, Pleasanton gravelly loam, Yolo sandy loam, Manzanita gravelly silt loam, and Zamora silty clay loam.

Mr. Furth disputed much of the petitioner's geographical evidence as well. With regard to climate, he stated that the climate of the Chalk Hill viticultural area was significantly cooler than the southern portion of the Alexander Valley, including the proposed area of overlap. Mr. Furth contended that the range of hills northeast of Brooks Creek formed a natural barrier to the ocean breezes which influenced the Chalk Hill viticultural area, cutting the proposed overlap area off from the cooling influence which gives Chalk Hill part of its distinctive character. Mr. Furth argued that the thermographic studies included in the petition were inconclusive at best, because of their limited scope.

Mr. Furth contended that much of the topography of the proposed overlap differed dramatically from the adjacent lands within the current Chalk Hill

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viticultural area. In contrast to the predominantly steep and hilly Chalk Hill area, the proposed overlap area includes large areas of relatively flat land and expanses of alluvium along Franz and Maacama Creeks. Over, Mr. Furth contended that this area has significant similarities with the Alexander viticultural area and significant differences from the Chalk Hill area.

Mr. Furth also contended that much of the planted or plantable acreage within the proposed overlap consists of soils of the Yolo-Cortina-Pleasanton association, specifically Clough gravelly loam or Arbuckle gravelly loam. Mr. Furth stated that Clough gravelly loam is the most prevalent vineyard soil of the southern end of Alexander Valley, but does not occur anywhere within the current Chalk Hill viticultural area. Mr. Furth stated that while the proposed overlap area contains some Spreckles-Felta soils, which are the most predominant soil association in Chalk Hill, most of this area is unplanted or unplantable.

T.D. ATF-272 (53 FR 17022, dated May 13, 1988). In T.D. ATF-272, ATF realigned the boundary common to the Alexander Valley and Chalk Hill viticultural areas. This realignment extended the southern leg of the boundary for the Alexander Valley viticultural area and curtailed the north-central leg of the boundary for the Chalk Hill viticultural area.

In realigning this boundary, ATF accepted evidence that the land area within the realignment enjoyed name recognition and shared similar geological history, topographical features, soils and climatic conditions as adjoining land within the boundary of the Alexander Valley viticultural area. Mr. Melim's petition, requesting the realignment of the northern boundary of the Chalk Hill viticultural area, would place land back into the Chalk Hill viticultural area.

Decision

After carefully studying the issues and analyzing the comments, ATF has found no basis for amending the current boundaries of the Chalk Hill viticultural area. The petitioner has failed to show that the proposed area of overlap is known locally or nationally as part of the Chalk Hill area. ATF finds that while there is evidence in support of both positions, the weight of the evidence supports the finding that the current boundaries of the Chalk Hill viticultural area reflect geographical characteristics which distinguish the viticultural features of the Chalk Hill viticultural area from the viticultural features of the Alexander Valley viticultural area. For these reasons, ATF is withdrawing Notice No. 693.

Drafting Information

The author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance. This document is issued under the authority in 27 U.S.C. 205.

Signed: April 26, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91-11575 Filed 5-15-91; 8:45 am]

BILLING CODE 4810-31-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067-AD68

National Flood Insurance Program; Assistance to Private Sector Property Insurers

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National Flood Insurance Program (NFIP) regulations for the "Write Your Own" (WYO) Program under which private sector insurers may issue and service policies of flood insurance backed by the Government. The proposed amendments involve addition of a paragraph on the new Mortgage Portfolio Protection Program (MPPP), revision of the commission allowance provisions, revision to the loss adjustment fee schedule, revision to the membership of the WYO Standards Committee, and other technical and/or editorial changes to the Financial Assistance/Subsidy Arrangement and the Financial Control Plan. This proposed rule is necessary to (1) clarify that abiding by the MPPP guidelines and requirements is part of a WYO company's responsibility under the Financial Assistance/Subsidy Arrangement if it elects to utilize the MPPP, (2) eliminate the administrative burden experienced by WYO companies due to the paperwork and record-keeping required by use of the current variable commission allowance provision, (3) make permanent the loss adjustment fee schedule which most WYO companies elected as an option for Arrangement Year 1990–1991, and (4) increase the size and change the composition of the WYO Standards Committee to meet changing demands. The intended effect of this proposed rule is to achieve a greater administrative and fiscal effectiveness in the operation of the NFIP and lessen the burdens on those private sector companies who participate in the WYO Program.

DATES: All comments must be received on or before June 17, 1991.

ADDRESSES: Comments should be sent to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472; telephone (202) 646-3419.

SUPPLEMENTARY INFORMATION: This proposed rule would amend the National Flood Insurance Program (NFIP) regulations dealing with the "Write Your Own" (WYO) Program (44 CFR 62, subpart C) which are authorized pursuant to section 1345 of the National Flood Insurance Act of 1968, as amended (Pub. L. 90-448, 42 U.S.C. 4001, *et seq.*). The proposed rule would add a paragraph on the Mortgage Portfolio Protection Program (MPPP) under which WYO companies electing to do so can provide flood insurance coverage for properties which are part of a lending institution's mortgage portfolio without obtaining the full underwriting information normally required, would revise the commission allowance provisions and the loss adjustment fee schedule established by the Federal Insurance Administrator (the Administrator) in the Financial Assistance/Subsidy Arrangement, and would revise the WYO Financial Control Plan by updating the information on the number of—and the composition of—members of the WYO Standards Committee.

The Mortgage Portfolio Protection Program (MPPP) was developed by the Federal Insurance Administration (FIA) for use by lending institutions, mortgage servicing companies, and others servicing mortgage loan portfolios in bringing those mortgage loan portfolios into compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. The MPPP has been in operation since January 1, 1991, and may be utilized by WYO Companies which, by signing a special agreement to abide by the MPPP guidelines and requirements, can write flood insurance policies at special high rates sufficient to recover the full costs of this program, in recognition of the risk

a given building presents due to the lack of complete underwriting information, for those properties which (1) are part of a lending institution's mortgage portfolio, (2) are located within a special flood hazard area of a community participating in the NFIP, and (3) are not covered by a flood insurance policy even after required notices have been given to the property owner (mortgagor) by the lending institution of the requirement for obtaining and maintaining such coverage. Notices to property owners (mortgagors) will inform them that the special high rates charged in the MPPP may be considerably higher than the rates charged for policies that can be obtained from a local insurance agent, which would be based on full underwriting information. This will operate as an incentive for the purchase of a fully underwritten policy, and it is expected that the vast majority of property owners (mortgagors) will in fact switch to such fully underwritten policies obtained from their local insurance agents.

A task force consisting of lenders, WYO companies, and insurance agents worked with the FIA for approximately two and a half years on the development of the MPPP, and the MPPP, as described above, reflects the input of a number of interested parties from both the lending industry and the WYO companies.

To clarify that, for those WYO companies electing to utilize the MPPP, abiding by the guidelines and requirements is part of the WYO companies' responsibility under the Arrangement, we are proposing to add a new paragraph on the Mortgage Portfolio Protection Program to part 62. A detailed discussion of the MPPP was published in the **Federal Register** (Vol. 56, pages 8863) on March 1, 1991, and a copy of the **Federal Register** Notice has been provided to all of the WYO companies which signed an agreement for participation in the MPPP. As spelled out in that agreement, the WYO companies must provide any lending institution for which they are writing MPPP policies with an MPPP Implementation Package which includes the criteria and requirements that must be adhered to when participating in the MPPP.

FIA will be making refinements to the MPPP as experience is gained from its use. In this regard, FIA would welcome comments, and these will be considered along with the experiences FIA gains regarding ways to improve the program.

Under the WYO Program, the Standard Flood Insurance Policy (the form and substance of which is approved by the Administrator) may be issued in their own names by insurers signatory to the Arrangement. Insurers then are responsible for all aspects of service, including policy issuance; endorsement and renewal of policies; and the adjustment of claims brought under the policies. The insurers retain a specified amount of the premium for their operating expenses, including the commissions of agents. Under the Arrangement (appendix A to part 62 of 44 CFR), the Government provides such additional funds as may be required for the settlement of claims and for the payment of claims.

The proposed revision to Article III.B. of the Arrangement would return to the previous flat commission allowance of 15% of the company's written premiums in place of the base commission allowance of 14% and additional percentage increases based on a company's growth in policies in force. The commission allowance provision to be replaced was originally put in place on October 1, 1988, in the hope that it would provide an added incentive for the production of new business. (Effective on that same date, FIA also revised the commission allowance for agents writing business directly with the Government through its servicing agent contractor, essentially to provide a commission of 17% for new business and 14% for renewal business.)

These changes were established with the expressed intent of reviewing their impact after a two-year period. That period has now passed and FIA has completed an evaluation of the changes.

There is general agreement that the commission paid to agents for "NFIP direct" business and that in the expense allowance for WYO companies should be the same, with individual WYO companies retaining the latitude to establish their own remuneration rates and methods. Moreover, analysis of the system now in effect revealed that the planning, tracking, accounting, and annual adjustment required to determine the additional commission percentage earned by a WYO company is a major administrative burden to the company and to the NFIP servicing agent contractor. While the increase in the policy base over the last seven to eight months has been at a greater rate than the months prior to that, this appears to be due in large measure to other factors such as the introduction of new products (e.g., the Condominium Master and the Preferred Risk Policies), increased enforcement of the mandatory purchase requirement by the lending community, and the public's increased awareness of flooding as a result of the devastation caused by Hurricane Hugo and other flooding events. Further, implicit in the ability to go from 14% to 15% of written premium for the commission allowance is a 10% growth in the company's policy in force base. This is a sustained annual growth rate that is regarded as unrealistic by many companies.

For Arrangement Year 1989, a total of $241,000 had to be repaid by WYO companies because the percentage of written premium that they withheld during the Arrangement Year was greater than they were entitled to retain, based on their growth in policies in force for the Arrangement Year. The paperwork and recordkeeping which the companies had to contend with in order to ensure the return of these monies was an administrative burden which will be eliminated by the return to the flat commission allowance.

With respect to the NFIP Direct business, the analysis also revealed: (1) That the accounting system for dual rates was an administrative burden for individual agents and the NFIP servicing agent contractor and (2) that the 17% new business commission rate for the past two years did not result in an influx of new business. Hence, in a separate rulemaking, FEMA will also be proposing a revision to the commission allowance paid to property insurance agents and brokers for policies issued by the NFIP through its servicing agent to return to the flat 15% on the first $2,000 of premium and 5% on the amount of premium in excess of $2,000, subject to a minimum commission of $10.00.

Regarding the loss adjustment fee schedule, in an interim rule published in the **Federal Register** on August 10, 1990 (55 FR 32827), FIA set forth the reasons why an upward adjustment in the fee schedule had been determined to be necessary. FIA offered that adjustment to WYO companies as an option package also containing an option relating to the commission allowance for Arrangement Year 1990–1991. Virtually all WYO companies elected that option, in effect making it the operational fee schedule. That fee schedule was also applied to the claims paid on the "Direct" side. Therefore, this proposed rule will remove the current Fee Schedule included as Exhibit A of appendix A and incorporate in its place the Fee Schedule which was included as Optional Exhibit A in the interim rule. With this proposed change and the proposed change in the commission allowance provisions already described, there will no longer be a need for the optional addendum containing Optional Exhibit A and the option relating to the commission allowance, so this proposed

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rule would remove that addendum from appendix A.

The proposed revision to the introductory section of the Financial Control Plan would increase the membership from 10 to 12 members and change the composition of the membership. The increase in membership is being proposed in recognition of the increase in the number of companies writing policies under the WYO Program (over 85 companies today compared with 13 companies in the first year of the program) and in recognition of the increase in the number of WYO policies in force (over 2 million today compared with approximately 100,000 at the end of the first year of the WYO Progam). It is also felt that a greater array of functional area expertise will be achieved by increasing the membership. Regarding the change in the composition of the membership, the member from the FEMA Inspector General's staff is being removed at the request of the Inspector General, who became statutory in 1988 and whose responsibilities require him to be an independent entity within FEMA. Instead, the Inspector General or his staff attends committee meetings and participates on an *ex officio* basis. The proposed rule adds a committee member to be designated by the Administrator. The intent is to bring in an individual who has expertise in the field of insurance but who is not an employee of FEMA or any WYO Company and who can therefore bring an outside perspective by an individual not directly involved with the WYO Programs.

A few other changes of a technical or editorial nature are contained in this proposed rule such as updating references to existing procedural documents to conform to name changes (e.g., the Statistical Plan to the Transaction Record Reporting and Processing Plan), adding a category to the monthly reconciliation report to cover the new policy service fee required by the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), etc.

A 30-day comment period is provided for this proposed rule rather than a 60-day period because of the need to finalize the rule before publishing the terms for the re-subscription of the Arrangement for the next Arrangement Year which, in accordance with Article V—Commencement and Termination, must be published in the Federal Register by June 1, 1991. This shortened period for comment should not present a problem, however, because the affected companies have already been advised of these proposed changes and have had an opportunity for input prior to the preparation of this proposed rule.

FEMA has determined that this proposed rule will have no effect on environmental quality and therefore, in accordance with 44 CFR 10.8(c)(2)(i), is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

This proposed rule will not have a significant economic impact on a substantial number of small entities and has not undergone a regulatory flexibility analysis.

This proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

The information collection requirement contained in section 4i of this proposed rule has been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501 et seq. This collection is in addition to the currently approved collections under OMB control number 3067-0169.

Public reporting and recordkeeping burden for the new collection, Monthly Reconciliation—Net Policy Service Fees, is estimated to average three minutes per response. Burden for the currently approved reporting and recordkeeping requirements, under the WYO Financial Control Plan and the WYO Accounting Procedures, averages 30 minutes per WYO Company per monthly report. The burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing, reviewing, and submitting the reports.

FEMA estimates the recordkeeping and reporting burden under the MPPP as follows: A one-time burden estimated to be in a range of 120 man hours to 640 man hours for WYO Companies to set up an initial operation under the MPPP; 30 minutes per lender to sign an agreement with a WYO Company to participate in the program; 30 minutes per WYO Company to send notices to each mortgagor (10 minutes per notice); and 30 minutes for each mortgagor to respond to the notices and ask any questions. A small number of insurance companies were contacted to get estimates of the burden imposed by the MPPP guidelines. Because of the absence of experience by the WYO Companies, lenders, and mortgagors in working with the MPPP guidelines, these estimates for such recordkeeping and reporting may be inaccurate; therefore, public comment is requested to assist FEMA under the Paperwork Reduction Act in accurately estimating the burden of this information collection. Specifically, comments are requested on (1) predictions from the insurance industry, in particular the WYO Companies, of the estimated number of companies that will be participating in the MPPP, (2) an estimate of the number of policies lenders have in their portfolios that would be affected by the MPPP, and (3) an estimate of the amount of time required of mortgagors to respond to the notices they receive.

FEMA requests that commenters address these estimates as part of their comments submitted to the rulemaking record at the address indicated at the beginning of this notice. Comments on the paperwork issues including the burden estimates and any aspects of the information collection requirements may also be addressed to the Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472 and to the Office of Management and Budget, Paperwork Reduction Project (3067-0169), 3235 New Executive Office Building, Washington, DC 20503. The final rule will respond to any OMB or public comments on these information collection requirements.

List of Subjects in 44 CFR Part 62

Flood insurance.

Accordingly, it is proposed to amend 44 CFR chapter 1, subchapter B, as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for part 62 will continue to read as follows:

Authority: 42 U.S.C. 4001; *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 62.23 [Amended]

2. Section 62.23 is proposed to be amended as follows:

a. By removing in paragraph (a) the phrase "section 1310" and adding in place thereof, the phrase "section 1345".

b. By removing in paragraph (h)(4) (both times that it appears) the phrase "Statistical Plan" and adding in place thereof the phrase "Transaction Record Reporting and Processing Plan".

c. By removing in paragraph (i)(1) the word "its" and adding in its place the word "is".

d. By removing in paragraph (j)(5) (both times that it appears) the phrase "Statistical Plan" and adding in place thereof the phrase "Transaction Record Reporting and Processing Plan."

e. By adding a new paragraph (l) as follows:

* * * * *

(l)(1) WYO Companies may, on a voluntary basis, elect to participate in the Mortgage Portfolio Protection Program (MPPP), under which they can offer, as a last resort, flood insurance at special high rates, sufficient to recover the full cost of this program in recognition of the uncertainty as to the degree of risk a given building presents due to the limited underwriting data required, to properties in a lending institution's mortgage portfolio to achieve compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. Flood insurance policies under the MPPP may only be issued for those properties which:

(i) Are determined to be located within special flood hazard areas of communities that are participating in the NFIP, and

(ii) Are not covered by a flood insurance policy even after a required series of notices has been given to the property owner (mortgagor) by the lending institution of the requirement for obtaining and maintaining such coverage, but the mortgagor has failed to respond.

(2) WYO Companies participating in the MPPP must provide a detailed implementation package to any lending institution which, on a voluntary basis, chooses to participate in the MPPP to ensure the lending institution has full knowledge of the criteria in that program and must obtain a signed receipt for that package from the lending institution. Participating WYO Companies must also maintain evidence of compliance with (3) below for review during the audits and reviews required by the WYO Financial Control Plan contained in Appendix B of this part.

(3) The mortgagor must be protected against the lending institution's arbitrary placing of flood insurance for which the mortgagor will be billed by being sent three notification letters as described in (4) through (6) below.

(4) The initial notification letter must:

(i) State the requirements of the Flood Disaster Protection Act of 1973,

(ii) Announce the determination that the mortgagor's property is in a special flood hazard area as delineated on the appropriate FEMA map, necessitating flood insurance coverage for the duration of the loan,

(iii) Describe the procedure to follow should the mortgagor wish to challenge the determination,

(iv) Request evidence of a valid flood insurance policy or, if there is none, encourage the mortgagor to promptly obtain a Standard Flood Insurance Policy (SFIP), from a local insurance agent (or WYO Company),

(v) Advise that the premium for an MPPP policy is significantly higher than a conventional SFIP policy and advise as to the option for obtaining less costly flood insurance, and

(vi) Advise that an MPPP policy will be purchased by the lender if evidence of flood insurance coverage is not receive by a date certain.

(5) The second notification letter must remind the mortgagor of the previous notice and provide essentially the same information.

(6) The final notification letter must:

(i) Enclose a copy of the flood insurance policy purchased under the MPPP on the mortgagor's (insured's) behalf, together with the Declarations Page,

(ii) Advise that the policy was purchased because of the failure to respond to the previous notices, and

(iii) Remind the insured that similar coverage may be available at significantly lower cost and advise that the policy can be cancelled at any time during the policy year and a pro rata refund provided for the unearned portion of the premium in the event the insured purchases another policy that is acceptable to satisfy the requirements of the 1973 Act.

Appendix A to Part 62—[Amended]

3. Appendix A to part 62, Financial Assistance/Subsidy Arrangement, is proposed to be amended as follows:

a. In the second introductory paragraph, which discusses the Accounting Data, delete the phrase "under Treasury Department Circular No. 1075, Revised,".

b. Article II—Undertakings of the company, section A., paragraph 2.0, is proposed to be revised to read as follows:

* * * * *

2.0 Claims processing in accordance with general Company standards and the Financial Control Plan. The Write Your Own Claims Manual, the Federal Emergency Management Agency Adjuster Manual, the FIA National Flood Insurance Program Policy Issuance Handbook, the Write Your Own Operational Overview, and other instructional material also provide guidance to the Company.

* * * * *

c. Article II—Undertakings of the Company, section A., paragraph 3.1, is proposed to be amended by removing the phrase "Statistical Plan" and adding in place thereof the phrase "Transaction Record Reporting and Processing Plan"

d. Article II—Undertakings of the Company, section B., paragraph 1.9, the last paragraph is proposed to be amended by adding after the word "Program" and before the period the following: "or other action, e.g., limiting the Company's authority to write new business".

e. Article II—Undertakings of the Company, section G. is proposed to be amended by adding after the word "operation" and before the period the following: ", provided that there is adherence to Program statutes, regulations and explicit guidelines, e.g., for the Mortgage Portfolio Protection Program".

f. Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds, section B. is proposed to be amended by removing in the second paragraph the figure "14.0 percent" and adding in its place the figure "15%", by deleting in the second paragraph the word "basic," by deleting all of the second paragraph after the first sentence, and by deleting the third and fourth paragraphs.

g. Article IV—Undertakings of the Government, the first paragraph of section A is proposed to be amended in the first sentence by deleting the phrases "Treasury Financial Communication System", and "Federal Reserve Letter of Credit" and by removing in the last sentence the word "costs" and adding in its place the word "expenses".

h. Article IV—Undertakings of the Government, the second paragraph of section A is proposed to be amended by removing the word "against" and adding in its place the word "by".

i. Article V—Commencement and Termination, section E. is proposed to be amended by deleting the word "their" the second time it appears.

j. Article XI—Offset, the first paragraph is proposed to be amended in the last sentence by deleting the word "or" the second time it appears and adding in its place the word "of".

k. Article XI—Offset, the second paragraph is proposed to be amended in the first sentence by deleting the word "of" the first time it appears and adding in its place the word "or".

l. Exhibit A is proposed to be revised as follows:

EXHIBIT A.—FEE SCHEDULE

Range (by covered loss)	Fee
Erroneous Assignment	$40.00
Closed Without Payment	125.00

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EXHIBIT A.—FEE SCHEDULE—Continued

Range (by covered loss)	Fee
Minimum for Upton-Jones Claims	$50.00
$0.01 to $500.00	150.00
$500.01 to $1,000.00	175.00
$1,000.01 to $2,000.00	225.00
$2,000.01 to $3,500.00	275.00
$3,500.01 to $5,000.00	350.00
$5,000.01 to $7,000.00	425.00
$7,000.01 to $10,000.00	500.00
$10,000.01 to $15,000.00	550.00
$15,000.01 to $25,000.00	600.00
$25,000.01 to $35,000.00	675.00
$35,000.01 to $50,000.00	750.00
$50,000.01 to $100,000.00	1,000.00
$100,000.01 to $150,000.00	1,300.00
$150,000.01 to $200,000.00	1,600.00
$200,000.01 to limits	2,000.00

Allocated fee schedule entry value is the covered loss under the policy based on the standard deductibles ($500 and $500) and limited to the amount of insurance purchased.

m. Appendix A is proposed to be amended by deleting in its entirety the Optional Addendum Amending the Commission Allowance and Adjuster Fee Schedule Provisions of the Financial Assistance/Subsidy Arrangement.

Appendix B to Part 62—[Amended]

4. Appendix B to part 62, A Plan to Maintain Financial Control for Business Written Under the Write Your Own Program, is proposed to be amended as follows:

a. The introductory section at the beginning of appendix B is proposed to be amended in the first paragraph by removing the phrase "§§ 61.13 and 62.23" and adding in place thereof the phrase "§§ 61.13 and 62.63".

b. The introductory section at the beginning of appendix B is proposed to be amended in the fourth paragraph by removing the second sentence and adding in place thereof the following: "The Standards Committee consists of four (4) members from FIA, one (1) member from the Federal Emergency Management Agency's (FEMA's) Office of the Comptroller, one (1) member designated by the Administrator who is not directly involved in the WYO Program, and one (1) member from each of six (6) designated WYO Companies, pools or other entities."

c. The introductory section at the beginning of appendix B is proposed to be amended in the fifth paragraph by removing, in subparagraphs numbered 4 and 6 (each time it appears), the phrase "Statistical Plan" and adding in place thereof the phrase "Transaction Record Reporting and Processing Plan".

d. In the introductory paragraph to part 62, appendix B, in the listing of parts 1 through 10, the entry for Part 2 is revised to read "Transaction Record Reporting and Processing Plan Reconciliation Procedures" and the entry for part 9 is revised to read "Transaction Record Reporting and Processing Plan (Incorporated by Reference)".

e. Part 1—Model Self-Audit Program's Minimum Standards is proposed to be amended in numbered paragraph 3 of the Self-Audit Program Objectives by deleting the misspelled word "goverment" and adding in its place the word "government".

f. Part 1—Model Self-Audit Program's Minimum Standards is proposed to be amended in numbered paragraph 4 of the Underwriting Audit Outline by deleting the word "Through" and adding in its place the word "Thorough".

g. Part 1—Model Self-Audit Program's Minimum Standards is proposed to be amended by removing the title "Statistical Plan Audit Outline" and adding in place thereof the title "Transaction Record Reporting and Processing Plan Audit Outline".

h. Part 2—Statistical Plan Reconciliation Procedures is proposed to be amended by removing, in the title, the phrase "Statistical Plan" and adding in place thereof the phrase "Transaction Record Reporting and Processing Plan" and by removing the title "Statistical Plan Reconciliation Objectives" and adding in place thereof the title "Transaction Record Reporting and Processing Plan Reconciliation Objectives".

i. Part 2—Statistical Plan Reconciliation Procedures is proposed to be amended by adding, at the end of Exhibit "A" and before the beginning of part 3, the following report:

Monthly Reconciliation—Net Policy Service Fees

Company Name _____
Co. NAIC Number _____
Month/Year Ending _____
Date Submitted _____

Monthly financial report	Monthly statistical transaction report	
	Record count	Fee amount
Net Policy Service Fees $_____ (Income Statement—Line 170)		
Unprocessed statistical:		
(+) Prior Month's		
(−) Current Month's		
Other—Explain:		
(1)		
(2)		
Total:	Total:	
Comments:		

(Approved by the Office of Management and Budget under OMB control number 3067-0168.)

j. Part 3—Underwriting/Policy Administration Operation Review Procedures is proposed to be amended by removing in the first paragraph of the Notice section the misspelled word "profide" and adding in its place the word "provide", and by removing in subparagraph numbered 2 of the Notice section the phrase "Statistical Plan" and adding in place thereof the phrase "Transaction Record Reporting and Processing Plan".

k. Part 4—Claims Operation Review Procedures is proposed to be amended by removing in subparagraph numbered 2 of the Claims Operation Review Objectives section the phrase "Statistical Plan" and adding in place thereof the phrase "Transaction Record Reporting and Processing Plan".

l. Part 4—Claims Operation Review Procedures is proposed to be amended in the first paragraph of the Notice section by deleting the word "and" and adding in its place the word "an".

m. Part 4—Claims Operation Review Procedures is proposed to be amended in numbered paragraph 2 of the WYO-FIA Claims Operation Review Outline by deleting the word "inquiries" and adding in its place the word "inquires".

n. Part 4—Claims Operation Review Procedures is proposed to be amended in the first section of exhibit D by deleting the title, "Analysis of Losses by Size of Loss", and adding in place thereof, the title "Analysis of Claims by Size of Claim", and in the contents coverage column of both "Analysis" sections of exhibit D by deleting, in the heading of the last column, the word "losses" and adding in place thereof the word "claims".

o. Part 5—Claims Reinspection Program is proposed to be amended in numbered paragraph 2 by adding after the word "loss," and before the word "class" and word "or".

p. Part 7—Reports Certifications is proposed to be amended at A. Certification Statement for Monthly Financial and Statistical Reconciliation Reports by deleting in the first paragraph the misspelled word "accompaning" and adding in place thereof the word "accompanying".

Dated: May 8, 1991.

C.M. "Bud" Schauerte,

Federal Insurance Administrator.

[FR Doc. 91-11642 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-05-M

44 CFR Part 67

[Docket Number FEMA-7022]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state of regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance coverage on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with minimum Federal standards, the elevations prescribe how high to build in the floodplain and do not prescribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirements; of itself has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Flooding source	Location	# Depth in feet above ground * Elevation in feet (NGVD) Existing	Modified
Connecticut	Bloomfield, Town, Hartford County.	Tumbledown Brook Channel	Approximately 50 feet upstream of confluence with Tumbledown Brook.	*134	*133
			Approximately 500 feet upstream of the upstream corporate limits.	*158	*157
Maps available for inspection at the Bloomfield Town Engineering Department, 12 Southwind Road, Bloomfield, Connecticut.					
Send comments to Mr. R. Gary Stenhouse, Bloomfield Town Manager, Hartford County, P.O. Box 337, Bloomfield, Connecticut 06002."					
Delaware	New Castle, City, Wilmington County.	Delaware River	For its entire shoreline within the community	*11	*10
Maps available for inspection at the City/County Building, 800 French Street, Wilmington, Delaware.					
Send comments to The Honorable Daniel S. Frawley, Mayor of the City of Wilmington, New Castle County, City/County Building, 800 French Street, Wilmington, Delaware 19801-3537.					
Kentucky	Clay City, City, Powell County.	Red River	At the downstream corporate limits	None	*824
			Approximately 1.8 river miles upstream of 9th Street.	*830	*833
			Brush Creek At confluence with Red River	*828	*828
			Approximately 60 feet downstream of 9th Avenue.	*829	*828
Maps available for inspection at the Municipal Building, 4651 Main Street, Clay City, Kentucky.					
Send comments to The Honorable Pat Ashley, Mayor of the City of Clay City, Powell County, P.O. Box 147, Clay City, Kentucky 40312.					
Minnesota	Elk River, City, Sherburne County.	Trott Brook	Downstream corporate limits	None	*898
			Approximately .5 mile upstream of 221st Avenue.	None	*943

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Flooding source	Location	# Depth in feet above ground * Elevation in feet (NGVD) Existing	Modified
Maps available for inspection at the City Hall, 730 Dodge Avenue N.W., Elk River, Minnesota.					
Send comments to The Honorable Jim Thalle, Mayor of the City of Elk River, Sherburne, County, 730 Dodge Avenue, N.W., Elk River, Minnesota 55330.					
Mississippi	Pearl River, Unincorporated Areas.	Mill Creek	Approximately 3,550 feet upstream of the confluence with the Pearl River.	None	*28
			At the City of Picayune corporate limits	*51	*49
Maps available for inspection at the County Courthouse, 250 Main Street, Courthouse Square, Poplarville, Mississippi.					
Send comments to Mr. Gary Beech, Pearl River County Administrator, County Courthouse, P.O. Box 598, Poplarville, Mississippi 39470					
Mississippi	Picayune, City, Pearl River County.	Mill Creek	At the downstream corporate limits	*51	*49
			Approximately 100 feet upstream of Ross Street.	None	*59
Maps available for inspection at the City Hall, 203 Goodyear Boulevard, Picayune, Mississippi.					
Send comments to The Honorable Woody Spiers, Mayor of the City of Picayune, Pearl River County, 203 Goodyear Boulevard, Picayune, Mississippi 39466.					
Nevada	City of Carlin, Elko County.	Maggie Creek	At confluence with Humboldt River	None	*4,895
			Between Southern Pacific Railroad and U.S. Highway 10.	None	*4,910
			Just above Interstate 80	None	*4,917
Maps are available for review at City Hall, 101 South Eighth Street, Carlin, Nevada.					
Send comments to The Honorable Lee Griswold, Mayor, City of Carlin, P.O. Box 787, Carlin, Nevada 89822.					
New Jersey	Carteret, Borough, Middlesex County.	Arthur Kill	At Noe Street extended near CONRAIL	None	*8
			At Salem Avenue extended	None	*10
			At intersection of Beverly Street and Lefferts Street.	*12	*9
			At the downstream corporate limits	*12	*10
Maps available for inspection at the Borough Hall, 61 Cooke Avenue, Carteret, New Jersey.					
Send comments to The Honorable Peter Sica, Mayor of the Borough of Carteret, Middlesex County, 61 Cooke Avenue, Carteret, New Jersey 07008.					
New Jersey	Clinton, Town, Hunterdon County.	Beaver Brook	Approximately 170 feet upstream of Leigh Street.	*194	*195
			Approximately 900 feet upstream of Leigh Street.	*197	*198
Maps available for inspection at the Municipal Building, 43 Leigh Street, Clinton, New Jersey.					
Send comments to The Honorable Robert A. Hulman, Mayor of the Town of Clinton, Hunterdon Country, P.O. Box 5194, 43 Leigh Street, Clinton, New Jersey 08809.					
New York	Avoca, Town, Steuben County.	Cohocton River	At upstream side of State Route 415	*1,172	*1,173
			Approximately 1,700 feet upstream of confluence of Goff Creek.	*1,174	*1,175
		Goff Creek	At confluence with the Cohocton River	*1,173	*1,174
			Approximately 1,050 feet upstream of the confluence with the Cohocton River.	*1,173	*1,174
Maps available for inspection at the Town Hall, 3 Chase Street, Avoca, New York.					
Send comments to Mr. Nelson Eaton, Avoca Town Supervisor, Steuben County, 3 Chase Street, Avoca, New York, 14809.					
New York	Livonia, Town, Livingston County.	Conesus Lake	Shoreline in the vicinity of Conesus Lake outlet	*823	*821
			Shoreline approximately 640 feet north of intersection of East Lake Road and Densmore Road.	*826	*821
		Conesus Creek	At State Route 256	*814	*817
			At confluence of Conesus Lake	*823	*821
Maps available for inspection at the Town Hall, 35 Commercial Street, Livonia, New York.					
Send comments to Mr. Francis E. Koeskowski, Livonia Town Supervisor, Livingston County, P.O. Box 43, 35 Commercial Street, Livonia, New York 14487.					
New York	Lockport, Town, Niagara County.	Tonawanda Creek	At upstream corporate limits	None	*580
			At downstream corporate limits	None	*584

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/country	Flooding source	Location	# Depth in feet above ground * Elevation in feet (NGVD) Existing	Modified
Maps available for inspection at the Town Supervisor's Office and Building Inspector's Office, Harrington Road, Lockport, New York.					
Send comments to Mr. Floyd D. Snyder, Supervisor of the Town of Lockport, Niagara County, Harrington Road, Lockport, New York 14094.					
Ohio	City of Reynoldsburg, Fairfield, Franklin, and Licking Counties.	Blacklick Creek	Just upstream of Main Street	*860	*860
			About 1.17 miles upstream of confluence of Lateral F.	*882	*880
Maps available for inspection at the Building and Zoning Office, 7392 East Main Street, Reynoldsburg, Ohio.					
Send comments to The Honorable Robert L. McPherson, Mayor, City of Reynoldsburg, 7392 East Main Street, Reynoldsburg, Ohio 43068.					
Pennsylvania	Abington, Township Montgomery County.	Sandy Run	At downstream corporate limits	*220	*223
			Approximately 1,400 feet upstream of Easton Road.	*258	*260
		Tributary No. 1	At confluence with Sandy Run	*232	*237
			Approximately 450 feet upstream of Johnston Avenue.	*237	*238
Maps available for inspection at the Engineering Office, 1176 Old York Road, Abington, Pennsylvania.					
Send comments to Mr. Richard E. Fluge, President of the Township of Abington Board of Supervisors, Montgomery County, 1176 Old York Road, Abington, Pennsylvania 19001.					
Pennsylvania	Green, Township Pike County.	Wallenpaupack Creek	Approximately 50 feet upstream of the confluence of East Branch Wallenpaupack Creek.	*1,302	*1,301
			Approximately 550 feet downstream of Pinii Grove Road.	*1,458	*1,457
Maps available for inspection at the Township Building, Brinkhill Road, Greentown, Pennsylvania.					
Send comments to Ms. MaryAnn Hubbard, Chairman of the Township of Green Board of Supervisors, Pike County, P.O. Box 243, Greentown, Pennsylvania 18426.					
Pennsylvania	Philadelphia, City Philadelphia County.	Poquessing Creek	Approximately 300 feet upstream of State Road.	*13	*14
			Approximately 0.6 mile upstream of CONRAIL	*132	*135
Maps available for inspection at the Philadelphia City Planning Commission, 1515 Market Street, 17th Floor, Philadelphia, Pennsylvania.					
Send comments to The Honorable W. Wilson Goode, Mayor of the City of Philadelphia, Philadelphia County, City Hall, Room 215, Philadelphia, Pennsylvania 19107.					
Texas	Abilene, City Taylor and Jones Counties.	Elm Creek	Approximately 1,700 feet upstream of U.S. Route 83.	*1,684	*1,685
			At U.S. Route 83	*1,705	*1,706
		Elm Creek Overflow Path 1	Approximately 500 feet upstream of the confluence with Elm Creek.	*1,689	*1,694
			At divergence from Elm Creek	*1,698	*1,703
		Elm Creek Overflow Path 2	Approximately 1,500 feet upstream of confluence with Elm Creek.	*1,682	*1,689
			Approximately 1,500 downstream of divergence from Elm Creek Overflow Path 1.	*1,693	*1,692
		Little Elm Creek	At confluence with Elm Creek	*1,698	*1,702
			Approximately .85 mile upstream of confluence with Elm Creek.	*1,704	*1,705
		Swale A	Upstream side of Interstate Route 20	*1,689	*1,691
			Approximately 120 feet downstream of Mogel Avenue.	*1,690	*1,689
Maps available for inspection at theCity Hall, 555 Walnut, Abilene, Texas.					
Send comments to The Honorable Gary McCaleb, Mayor of the City of Abilene, Taylor and Jones Counties, P.O. Box 60, Abilene, Texas 79604.					
Texas	Tyler, City Smith County	West Mud Creek	Approximately 1.3 miles downstream of U.S. Route 69.	*436	*438
			Approximately 1,325 feet upstream of Easy Street.	None	*496
		West Mud Creek Diversion Channel	At divergence from West Mud Creek	None	*439
			At divergence from West Mud Creek Tributary A.	None	*444
		West Mud Creek Tributary A	Approximately 200 feet upstream of confluence with West Mud Creek.	*444	*445
			Approximately 1,500 feet upstream of Loop 323.	None	*510
		West Mud Creek Tributary A-1.	At the confluence with West Mud Creek Tributary A.	None	*472

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PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/country	Flooding source	Location	# Depth in feet above ground * Elevation in feet (NGVD) Existing	Modified
			Approximately 1,500 feet upstream of Rice Road.	None	*467
		West Mud Creek Tributary B	At the confluence with West Mud Creek Downstream side of Paluxy Drive.	None	*467
			Downstream side of Paluxy Drive	*503	*504
		West Mud Creek Tributary C	Approximately 500 feet upstream of confluence with West Mud Creek.	*479	*478
			At the Jacksonville Drive	*530	*525
		West Mud Creek Tributary C-1.	At the confluence with West Mud Creek Tributary C.	None	*468
			Approximately 650 feet upstream of New Copeland Road.	None	*491
		West Mud Creek Tributary M-1.	At the confluence with West Mud Creek Diversion Channel.	None	*442
			At the Jacksonville Road	None	*487
		West Mud Creek Tributary M-2.	At the confluence with West Mud Creek	None	*463
			Approximately .4 mile upstream of Barbee Drive.	None	*481
		West Mud Creek Tributary M-3.	At the confluence with West Mud Creek	None	*465
			Approximately 1,000 feet upstream of Rieck Road.	None	*481
		Black Fork Creek	Approximately 500 feet upstream of U.S. Route 271.	*466	*467
			Approximately .7 mile upstream of East Fifth Street.	None	*531
		Black Fork Creek Tributary D	At the confluence with Black Fork Creek	*467	*468
			Approximately 100 feet upstream of Douglas Boulevard.	None	*509
		Black Fork Creek Tributary D-3.	At the confluence with Black Fork Creek Tributary D.	None	*492
			At the East Elm Street	None	*494
		Black Fork Creek Tributary M-1.	At the confluence with Black Fork Creek	None	*495
			Approximately 1,300 feet upstream of Devine Street.	None	*524
		Willow Creek	Approximately 200 feet downstream of downstream corporate limits.	*452	*451
			Approximately 400 feet downstream of Parkdale Drive.	*460	*461

Maps available for inspection at the City Hall, 212 North Bonner, Tyler, Texas.

Send comments to The Honorable James R. Montgomery, Mayor of the City of Tyler, Smith County, P.O. Box 2039, Tyler, Texas 75710.

State	City/town/country	Flooding source	Location	# Depth in feet above ground * Elevation in feet (NGVD) Existing	Modified
Virginia	Alleghany County, Unincorporated Areas.	Wilson Creek	At confluence with Jackson River	None	*1,034
			Approximately 2.3 miles upstream of Interstate Route 64.	None	*1,162

Maps available for inspection at the County Administrative Offices, 110 Rosedale Avenue, Covington, Virginia.

Send comments to Mr. Macon C. Semmons, Jr., Alleghany County Administrator, P.O. Box 917, Covington, Virginia 24426.

State	City/town/country	Flooding source	Location	# Depth in feet above ground * Elevation in feet (NGVD) Existing	Modified
Virginia	Stafford County Unincorporated Areas.	Austin Run	Approximately 620 feet downstream of northbound U.S. Route 1.	None	*22
			Approximately 130 feet upstream of northbound Interstate Route 95.	None	*40
		Tributary 3 to Austin Run	At confluence with Austin Run	None	*30
			Approximately .4 mile upstream of its confluence with Austin Run.	None	*38

Maps available for inspection at the County Administration Center, 1739 Jefferson Davis Highway, Stafford, Virginia.

Send comments to Mr. C. M. Williams, Jr., Stafford County Administrator, P.O. Box 339, Stafford, Virginia 22554-0339.

State	City/town/country	Flooding source	Location	# Depth in feet above ground * Elevation in feet (NGVD) Existing	Modified
West Virginia	Marshall County, Unincorporated Areas.	Middle Grave Creek	At confluence with Grave Creek	None	*651
			Approximately 2,000 feet upstream of confluence of Wetzel Run.	None	*958
		Toms Run	At confluence with Middle Grave Creek	None	*692
			Approximately 1 mile upstream of confluence with Middle Grave Creek.	None	*752

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/country	Flooding source	Location	# Depth in feet above ground * Elevation in feet (NGVD) Existing	Modified
		Wheeling Creek	At downstream corporate limits	*689	*691
			At Burch Road (County Route 5)	*771	*763

Maps available for inspection at the County Courthouse, 7th Street and Tomlinson Avenue, Moundsville, West Virginia.

Send comments to Mr. Howard Byard, President of the Marshall County Commission, P.O. Box 459, Moundsville, West Virginia 26041.

Issued: May 1, 1991.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-11650 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-7020]

Michigan et al.; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevation are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MICHIGAN	
Clare (city), Clare County	
Tobacco River:	
At confluence with Lake Shamrock	*635
About 1,950 feet upstream of Woodlawn Avenue	*694
Little Tobacco Drain:	
About 2,850 feet downstream of Sixth Street	*680
Just downstream of Dunlap Road	*683
Maps available for inspection at the Clerk's Office, City Hall, 202 W. 5th Street, Clare, Michigan.	
Send comments to The Honorable Donald Zinser, Mayor, City of Clare, 202 W. 5th Street, Clare, Michigan 48617.	
NEW JERSEY	
Beverly (city), Burlington County	
Delaware River:	
At downstream corporate limits	*11
At upstream corporate limits	*11
Maps available for inspection at the Code Official's Office, 446 Broad Street, Beverly, New Jersey.	
Send comments to The Honorable Frank Costello, Mayor of the City of Beverly, Burlington County, 75 Church Street, Beverly, New Jersey 08048.	
NEW YORK	
Barker (town), Broome County	
Tioughnioga River:	
At downstream corporate limits	*888
Approximately 2.2 miles upstream of State Route 12	*913
Chenango River:	
At downstream corporate limits	*888
At upstream corporate limits	*900
Maps available for inspection at the Town Hall, Route 79 Nineva, Chenango, New York.	
Send comments to Mr. Thomas Greene, Supervisor of the Town of Barker, Broome County, P.O. Box 5, Chenango Forks, New York 13795.	
Lafargeville (town), Jefferson County	
Black River:	
At downstream corporate limits	*510
At upstream corporate limits (approximately 0.5 mile upstream of State Route 3)	*540
Pleasant Creek:	
At downstream corporate limits	*433
At upstream side of Simonet Road	*476

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MICHIGAN	
Clare (city), Clare County	
Tobacco River:	
At confluence with Lake Shamrock	*826
About 1,800 feet upstream of Woodlawn Avenue	*834
Little Tobacco Drain:	
About 2,650 feet downstream of Sixth Street	*820
Just downstream of Dunlop Road	*833
Maps available for inspection at the Clerk's Office, City Hall, 202 W. 5th Street, Clare, Michigan.	
Send comments to The Honorable Donald Zinser, Mayor, City of Clare, 202 W. 5th Street, Clare, Michigan 48617.	
NEW JERSEY	
Beverly (city), Burlington County	
Delaware River:	
At downstream corporate limits	*11
At upstream corporate limits	*11
Maps available for inspection at the Code Official's Office, 446 Broad Street, Beverly, New Jersey.	
Send comments to The Honorable Frank Costello, Mayor of the City of Beverly, Burlington County, 75 Church Street, Beverly, New Jersey 08046.	
NEW YORK	
Barker (town), Broome County	
Tioughnioga River:	
At downstream corporate limits	*898
Approximately 2.2 miles upstream of State Route 12	*913
Chenango River:	
At downstream corporate limits	*898
At upstream corporate limits	*900
Maps available for inspection at the Town Hall, Route 79 Itasca, Chenango, New York.	
Send comments to Mr. Thomas Greene, Supervisor of the Town of Barker, Broome County, P.O. Box 5, Chenango Forks, New York 13785.	
LeRay (town), Jefferson County	
Black River:	
At downstream corporate limits	*510
At upstream corporate limits (approximately 0.5 mile upstream of State Route 3)	*549
Pleasant Creek:	
At downstream corporate limits	*433
At upstream side of Simonet Road	*476
Maps available for inspection at the LeRay Town Hall, Willow Street, Evans Mills, New York.	
Send comments to Mr. Ronald Taylor, Acting Chairman of the Town of LeRay Board of Directors, Jefferson County, R.D. 1, Box 98, Evans Mills, New York 13637.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maine (town), Broome County	
Handcock Creek:	
At downstream corporate limits	*870
At State Route 26	*917
Maps available for inspection at the Town Hall, Lewis Street, Maine, New York.	
Send comments to Mr. Ted Woodward, Supervisor of the Town of Maine, Broome County, P.O. Box 336, Lewis Street, Maine, New York 13802.	
OKLAHOMA	
Delaware Tribe of Western Oklahoma, Caddo County	
Cobb Creek:	
At confluence with Washita River	*1,249
Approximately 1.8 miles upstream of East Konner Avenue	*1,256
Sugar Creek:	
Approximately 6 miles upstream of confluence with Washita River	*1,212
Approximately .5 mile downstream of Wichita Avenue	*1,337
Washita River:	
Approximately 3 miles downstream of U.S. Route 281	*1,186
Approximately 1.87 miles upstream of Central Boulevard	*1,193
At the confluence of Two Hatchet Creek	*1,240
Approximately 0.8 mile upstream of Oklahoma-Kansas-Texas Railroad	*1,256
Maps available for inspection at the Delaware Tribal Complex, Anadarko, Oklahoma.	
Send comments to Mr. Charles Keechi, President of the Delaware Tribe of Western Oklahoma, P.O. Box 825, Anadarko, Oklahoma 73005.	
Payne County (unincorporated areas)	
Stillwater Creek:	
Approximately 2.0 miles downstream of Fairgrounds Road	*841
At Lake Carl Blackwell	*906
Harrington Creek:	
At the confluence with Stillwater Creek	*895
Approximately 0.9 mile upstream of State Route 51	*913
Dry Creek:	
At the confluence with Stillwater Creek	*899
Approximately 3.1 miles upstream of confluence with Stillwater Creek	*916
North Stillwater Creek:	
At the confluence with Stillwater Creek	*893
Approximately 3.25 miles upstream of confluence with Stillwater Creek	*906
Cow Creek:	
Approximately 0.5 mile downstream of West McElroy Road	*862
At Lake McMurtry Road	*862

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Stream B:	
Approximately 1,840 feet downstream of confluence of Stream B-1	*991
Approximately 80 feet upstream of Country Club Road	*905
Stream B-1:	
At the confluence with Stream B	*907
Approximately 0.4 mile upstream of confluence with Stream B	*909
Boomer Creek:	
At the confluence with Stillwater Creek	*857
At East 19th Avenue	*859
Brush Creek:	
At the confluence with Stillwater Creek	*853
At the confluence with East and West Brush Creeks	*863
East Brush Creek:	
At the confluence with Brush Creek	*863
Approximately 300 feet upstream of East Airport Road	*902
West Branch Creek:	
At the confluence with Brush Creek	*863
Approximately 0.5 mile upstream of Airport Road	*905
Little Stillwater Creek:	
Approximately 5 miles downstream of State Route 51	*835
Approximately 4.9 miles upstream of State Route 51	*921
Council Creek:	
Approximately 370 feet downstream of confluence of Unnamed Tributary	*851
Approximately 0.5 mile upstream of Old State Route 51	*859
Feather Creek:	
At the confluence with Council Creek	*867
Approximately 1,400 feet upstream of Old State Route 51	*872
Cottonwood Creek:	
Approximately 0.8 mile downstream of confluence of Jones Creek	*835
Approximately 0.4 mile upstream of confluence of Jones Creek	*850
Jones Creek:	
At the confluence with Cottonwood Creek	*842
Approximately 0.4 mile upstream of confluence with Cottonwood Creek	*854
Skull Creek:	
Approximately 1.0 mile downstream of City of Cushing corporate limits	*830
At City of Cushing corporate limits	*855
Maps available for inspection at the Payne Conservation District, 800 E. Sixth, Stillwater, Oklahoma.	
Send comments to Mr. Jimmy B. Cook, Chairman of the Payne County Board of Commissioners, 606 S. Husband, Room 101, Stillwater, Oklahoma 74074.	

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
California	City of San Clemente, Orange County.	Cascadita Creek	Approximately 200 feet downstream of Via Cascadita.	None	*29
			Just upstream of Via Cascadita	None	*40
			Approximately 1,700 feet upstream of Via Cascadita.	None	*63
			Approximately 250 feet downstream of the San Diego Freeway.	None	*77
Maps are available for review at the Department of Community Development, 910 Nagocio, San Clemente, California.					
Send comments to The Honorable Scott Diehl, Mayor, City of San Clemente, 100 Avenida Presidio, San Clemente, California 92672.					
Florida	City of Clearwater, Pinellas County.	Alligator Creek Channel A	At mouth	*10	*10
			Just downstream of Sunset Point	None	*54
		Alligator Creek Channel B	At mouth	None	*20
			Just downstream of State Road 590	None	*41
			Just upstream of State Road 590	None	*51
			Just downstream of 4th Avenue South	None	*69
		Alligator Creek Channel C	About 100 feet upstream of mouth	None	*38
			Just downstream of Sunset Point Road	None	*60
			Just upstream of Sunset Point Road	None	*65
		Alligator Creek Channel E	Within community	None	*21
		Alligator Creek Channel G	At mouth	None	*20
			Just downstream of Drew Street	None	*21
		Alligator Creek Channel H	At mouth	None	*26
			Just downstream of weir structure	None	30
			Just upstream of weir structure	None	*35
			Just downstream of Drew Street	None	*40
		Stevenson Creek	Just upstream of Palmetto Street	*11	*12
			Just downstream of Belcoir Road	None	*40
Maps available for inspection at the Planning and Development Department, City Hall Annex, 10 South Missouri Avenue, Clearwater, Florida.					
Send comments to The Honorable Ron Rabun, City Manager, City of Clearwater, P.O. Box 4748, Clearwater, Florida 34618–4748.					
Florida	Unincorporated Areas of Sarasota County.	Phillippi Creek	At mouth	*11	*11
			Just downstream of Proctor Road	None	None
		Matheny Creek	About 500 feet upstream of mouth	*11	*11
			About 700 feet upstream of weir structure	None	*17
		Hatchett Creek	At mouth	*11	*11
			Just downstream of Jacaranda Boulevard	None	*14
		Woodmere Creek	At mouth	*11	*11
			Just downstream of State Road 775	None	*17
Maps available for inspection at the Zoning Department, 1301 Cattleman Road, Sarasota, Florida.					
Send comments to The Honorable John Wesley White, County Administrator, Sarasota County, P.O. Box 8, Sarasota, Florida 34230.					
Georgia	Unincorporated Areas of Cobb County.	Rottenwood Creek	About 1400 feet upstream of Franklin Road	*946	*946
			About 2200 feet upstream of Barclay Circle	*1012	*1015
			About 2300 feet upstream of second dirt road upstream of Barclay Circle.	None	*1051
		Olley Creek	About 2500 feet upstream of mouth	*891	*891
			Just downstream of Hurt Road	*917	*918
		Just upstream of Hurt Road	*919	*920	
			Just downstream of Sandtown Road	*1002	*1006
			Just upstream of Sandtown Road	*1006	*1011
			Just downstream of parking lot	*1045	*1043
			Just upstream of parking lot	*1048	*1056
			Just downstream of Hill Street	*1066	*1072
		Noonday Creek	At county boundary	*894	*897
			Just downstream of Shallowford Road	*899	*902
			Just upstream of Shallowford Road	*900	*907
			Just downstream of New Chastain Road	*911	*914
			Just upstream of New Chastain Road	*912	*920
			Just downstream of Roberts Road	*961	*966
			Just upstream of Roberts Road	*962	*971
			Just downstream of CSX Railroad	*996	*1001
			Just upstream of CSX Railroad	None	*1017
			Just downstream of New Salem Road	None	*1018
		Little Noonday Creek	At mouth	*901	*908
			Just downstream of Blackwell Road	*927	*929
			Just upstream of Blackwell Road	*928	*934
			About 2000 feet upstream of Liberty Hill Road	None	*1008
		Noonday Creek Tributary No. 1.	At mouth	*900	*907
		Noonday Creek Tributary No. 3.	At mouth	*919	*924

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PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
			Just downstream of Piedmont Road	*942	*949
			Just upstream of Piedmont Road	*943	*949
			Just downstream of Interstate 75	*1032	*1035
			Just upstream of Interstate 75	*1033	*1056
			Just downstream of Dickson Park Lane	*1043	*1056
		Noonday Creek Tributary No. 4.	At mouth	*922	*930
			Just downstream of Laurel Lake Dam	*951	*966
			Just upstream of Laurel Lake Dam	None	*977
			Just downstream of Interstate 75	None	*979
			Just upstream of Interstate 75	None	*1002
			Just downstream of U.S. Route 41	None	*1077
		Noonday Creek Tributary No. 6.	At mouth	*937	*943
		Noonday Creek Tributary No. 7.	At mouth	*946	*955
			Just downstream of Big Shanty Road	*971	*973
			Just upstream of Big Shanty Road	*974	*980
			Just downstream of dam	*995	*997
			Just upstream of dam	*1016	*1018
		Rubes Creek	At county boundary	*901	*898
			Just downstream of Jameson Road	*905	*910
			Just upstream of Jameson Road	*909	*916
			Just downstream of Downing Street	*995	*997
			Just upstream of Downing Street	*996	*1007
			Just downstream of Trickum Road	*1028	*1030
			Just upstream of Trickum Road	*1037	*1038
			Just downstream of Access Drive	*1037	*1038
			Just upstream of Access Drive	*1038	*1046
			About 2100 feet upstream of Access Drive	None	*1070
		Trickum Creek	At mouth	*905	*911
			Just downstream of Willow Creek Drive	*908	*911
			Just upstream of Willow Creek Drive	*909	*917
			Just downstream of Steinhauer Road	*984	*984
			Just upstream of Steinhauer Road	*988	*993
			Just downstream of Pete Shaw Road	*1050	*1050
		Tributary to Trickum Creek	At mouth	None	*934
			Just downstream of Steinhauer Road	None	*934
			Just upstream of Steinhauer Road	None	*939
			Just downstream of unnamed road	None	*940
			Just upstream of unnamed road	None	*951
			Just downstream of Netherstock Drive	None	*964
			Just upstream of Netherstock Drive	None	*971
			About 1.1 miles upstream of Netherstock Drive	None	*1116
		Tate Creek	At confluence with Noonday Creek	*895	*897
			Just downstream of SCS No. 17 Dam	*910	*909
			Just upstream of SCS No. 17 Dam	*940	*943
			Just downstream of Bells Ferry Road	*951	*947
			Just upstream of Bells Ferry Road	*952	*963
			Just downstream of first dam upstream of Bells Ferry Road.	*967	*965
			Just upstream of first dam upstream of Bells Ferry Road.	*967	*964
			Just upstream of second dam upstream of Bells Ferry Road.	*974	*993
			Just downstream of Parkwood Chase Road	*1011	*1006
			Just upstream of Parkwood Chase Road	*1012	*1022
			Just downstream of Wooten Lake Road	*1031	*1031
		Morgan Lake Tributary	At mouth	None	*943
			Just downstream of Morgan Lake Road	None	*975
			Just upstream of Morgan Lake Road	None	*984
			About 1100 feet upstream of Morgan Lake Road.	None	*988
		Tributary to Rubes Creek	At mouth	None	*921
			Just downstream of Keheley Drive	None	*935
			Just upstream of Keheley Drive	None	*947
			About 750 feet downstream of Keheley Road	None	*967
			About 700 feet downstream of Keheley Road	None	*980
			About 800 feet upstream of Keheley Road	None	*990

Maps available for inspection at the Development and Inspection Department, 100 Cherokee Street, Marietta, Georgia.

Send comments to The Honorable Philip Secrist, Chairman, Board of Commissioners, Cobb County, 10 East Park Square, suite 510, Marietta, Georgia 30090-9602.

Georgia	City of Kennesaw, Cobb County.	Noonday Creek	About 1100 feet upstream of Roberts Road	*964	*972
			About 1000 feet upstream of U.S. Route 41	*967	*976

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
			Just upstream of Interstate 75	*944	*942
			Just downstream of Rock Dam	*981	*989
			Just upstream of Rock Dam	*1000	*997
			Just downstream of Barclay Circle	*1004	*1006
			Just upstream of Barclay Circle	*1009	*1014
			About 2300 feet upstream of second dirt road upstream of Barclay Circle.	None	*1051
		Olley Creek	About 2000 feet downstream of Bellmeade Drive.	*979	*979
			About 500 feet downstream of Sandtown Road	*1001	*1003
		Noonday Creek Tributary No. 3.	About 350 feet upstream of Mark Avenue	*1000	*1005
			About 700 feet upstream of Interstate 75	None	*1056
		Noonday Creek Tributary No. 4.	About 1000 feet downstream of White Circle Road.	None	*1022
			Just upstream of White Circle Road	None	*1045

Maps available for inspection at the Public Works Department, City Hall, 205 Lawrence Street, Marietta, Georgia.

Send comments to The Honorable Ken Vanderslice, City Manager, City of Marietta, 205 Lawrence Street, Marietta, Georgia 30061.

Kentucky	City of Cumberland, Harlan County.	Poor Fork Cumberland River	About 1.31 miles downstream of crossing of U.S. Route 19.	None	*1363
			About 950 feet upstream of upstream crossing of U.S. Route 119.	None	*1460
		Cloverlick Creek	At mouth	*1427	*1427
			About .82 miles upstream of mouth	*1458	*1458
		Looney Creek	At mouth	*1441	*1437
			About 650 feet upstream of Blair Street	*1444	*1444
			About 3800 feet upstream of Blair Street	*1473	*1473

Maps available for inspection at the City Hall, 402 West Main Street, Cumberland, Kentucky.

Send comments to The Honorable Darrell Roberts, Mayor, City of Cumberland, 402 West Main Street, Cumberland, Kentucky 40823.

Massachusetts	Chatham, Town, Barnstable County.	Muddy Creek	At Countryside Drive extended	*8	*12
		Pleasant Bay	At Salt Marsh Way extended	*10	*14
			South side of Strong Island	*11	*13
			At confluence with Muddy Creek	*11	*16
			At Strong Island Road extended	*12	*14
		Chatham Harbor	At eastern edge of Tern Island	*9	*13
			At Allen Point	*10	*13
			At Wilde Way extended	*11	*13
			At Andrew Hardings Landing	*12	*15
		Atlantic Ocean	Western shoreline of Nauset Beach	*7	*13
		Crowe Pond	Entire shoreline within community	*8	*11
		Ryder Cove	Entire shoreline within community	*8	*11
		Stillwater Pond	Entire shoreline within community	*8	*11

Maps available for inspection at the Town Office, 549 Main Street, Chatham, Massachusetts.

Send comments to Mr. Andrew Young, Chairman of the Town of Chatham Board of Selectmen, Barnstable County, Town Office, 549 Main Street, Chatham, Massachusetts 02633.

Michigan	Charter Township of Georgetown, Ottawa County.	Lowing-Comstock Drain	At mouth	603	603
			About 800 feet upstream of 28th Avenue	None	*636
		Lowing-Comstock Drain Tributary.	626	*629	
			At mouth	None	*648
			About 1800 feet upstream of 28th Avenue		
		Hulzenga Drain	At mouth	*605	*605
			Just downstream of Ravenswood Drive	*608	*608
		Bliss Drain	At mouth	*607	*607
			Just downstream of Jackson Street	None	*648
		Bliss Drain Diversion Channel	At mouth	None	*628
			At divergence from Bliss Drain	None	*632
		Cedar Lake	Along entire shoreline	None	*606

Maps available for inspection at the Township Office, 263 Church Street, Jenison, Michigan.

Send comments to The Honorable Larry Bruursema, Supervisor, Georgetown Charter Township, 263 Church Street, Jenison, Michigan 49428.

Michigan	City of Wyoming, Kent County.	Buck Creek	About 4500 feet downstream of abandoned railroad.	*629	*629
			Just upstream of Byron Center Avenue	*641	*642

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			About 3800 feet upstream of Conrail railroad	*867	*867
Maps available for inspection at the Community Development Department, City Hall, 1155 28th Street, SW., Wyoming, Michigan.					
Send comments to The Honorable Harold Voorhees, Mayor, City of Wyoming, 1155 28th Street, SW., Wyoming, Michigan 49509.					
New Hampshire	Charlestown, town, Sullivan County.	Ox Brook	Approximately 1,150 feet upstream of confluence with the Connecticut River.	*307	*308
			Just upstream of State Routes 11 and 12	*430	*431
		Beaver Brook	At confluence with the Connecticut River	None	*304
			At David Street	None	*475
Maps available for inspection at the Town Offices, Charlestown, New Hampshire.					
Send comments to Mr. Robert Metcalf, Chairman of the Town of Charlestown Board of Selectmen, Sullivan County, P.O. Box 365, Charlestown, New Hampshire 03603.					
New York	Henrietta, town, Monroe County.	East Branch Tributary Red Creek.	At its confluence with East Branch Red Creek	None	*530
			Approximately 200 feet upstream of State Route 15A.	None	*571
		South Stem East Branch Tributary Red Creek.	From its confluence with East Branch Tributary Red Creek.	None	*551
			At the State Route 15A	None	*573
		Main Stem Allen Creek	At downstream corporate limits	None	*499
			At the State Route 252	None	*511
		West Branch Allen Creek	At its confluence with Main Stem Allen Creek	None	*500
			At the State Route 252	None	*500
		West Stem Middle Branch Red Creek.	At the Interstate Route 90 upstream side of State Route 253 (Lehigh Station Road).	*532	*533
			Approximately 25 feet upstream of Erie	None	*560
		East Stem Middle Branch Red Creek.	At State Route 253 (Lehigh Station Road)	None	*537
			At Erie Station Road	None	*575
Maps available for inspection at the Town Hall, 475 Calkins Road, Henrietta, New York.					
Send comments to Mr. James R. Breese, Supervisor of the Town of Henrietta, Monroe County, 475 Calkins Road, Henrietta, New York 14467.					
Pennsylvania	Clarksburg, city, Harrison County.	West Fork River	At downstream corporate limits	*940	*941
			At upstream corporate limits	None	*950
		Elk Creek	At confluence with West Fork River	*944	*945
Maps available for inspection at the City Hall, 227 W. Pike Street, Clarksburg, West Virginia.					
Send comments to The Honorable E. James Olsen, Mayor of the City of Clarksburg, Harrison County, 227 W. Pike Street, Clarksburg, West Virginia 26301.					
Tennessee	Town of Spring, city, Rhea County.	Piney River	At mouth	*745	*746
			About 850 feet upstream of Piccadilly Avenue	*806	*807
		Town Creek	At mouth	*745	*746
			Just downstream of County Road	None	*771
		Tennessee River	Upstream of Watts Bar Dam (Watts Bar Lake—along shoreline).	None	746
Maps available for inspection at the Town Hall, Spring City, Tennessee.					
Send comments to The Honorable John Landseth, Mayor, Town of Spring City, P.O. Box 369, Spring City, Tennessee 37381.					
West Virginia	Shinnston (city), Harrison County.	West Fork River	Approximately 1.2 miles downstream of Bridge Street.	*908	*909
			Approximately .9 mile upstream of Bridge Street.	*913	*915
		Shinns Run	At confluence with West Fork River	*911	*914
			At upstream corporate limits	*911	*914
Maps available for inspection at the City Building, 43 Bridge Street, Shinnston, West Virginia.					
Send comments to Mr. James Jackson, Mayor of the City of Shinnston, Harrison County, P.O. Box 1865, 43 Bridge Street, Shinnston, West Virginia 26431.					

Dated: May 7, 1991.

C. M. "Bud" Schneeris,

Administrator, Federal Insurance Administration.

[FR Doc. 91-11660 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Petition No. P5-90; Docket No. 91-22]

Petition of Total Ocean Marine Services, Inc. and Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed rulemaking.

SUMMARY: The Federal Maritime Commission, in response to a petition alleging the existence of conditions unfavorable to shipping in the foreign oceanborne trade between the United States and Venezuela, hereby initiates a proceeding pursuant to section 19 of the Merchant Marine Act, 1920. It appears from the petition, and comments on the petition, that the laws, policies and practices of the Government of Venezuela reserve a substantial portion of general export and import cargo to carriage by national-flag lines to the exclusion of third-flag operators. In addition, it appears that agencies of the Government of Venezuela have withheld from the petitioner authorization to undertake operation as a common carrier by chartering third-flag vessels. The proposed rule would adjust or meet the apparent unfavorable conditions by imposing a per voyage fee in the amount of $100,000 upon certain named Venezuelan-flag carriers. Failure to pay the fee will result in suspension of that carrier's tariffs, or denial of access to or clearance from U.S. ports. The effect of the Proposed Rule would be to meet unfavorable shipping conditions by imposing burdens upon Venezuelan carriers which approximately those imposed upon the petitioner, a potential operator of third-flag vessels, by Venezuelan law, regulation, policy and practice.

DATES: Comments (original and 15 copies) due on or before July 1, 1991.

ADDRESSES: Send comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 876, as amended by Public Law No. 101-595, 104 Stat. 2979 ("section 19"), authorizes the Federal Maritime Commission ("Commission" or "FMC") to take regulatory action to correct unfavorable shipping conditions in U.S foreign oceanborne commerce. Specifically, paragraph (1)(b) of section 19 directs the Commission—

> [t]o make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, * * * and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

46 U.S.C. app. 876(1)(b).

Section 19 further provides that the Commission may initiate a rule on its own motion or pursuant to a petition for section 19 relief. Paragraph (5) states:

> (5) The Commission may initiate a rule or regulation under paragraph (1)(b) of this section either on its own motion or pursuant to a petition. Any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, marine terminal operator, or any component of the Government of the United States, may file a petition for relief under paragraph (1)(b) of this section.

46 U.S.C. app. 876(5).

The Commission's rules governing section 19 proceedings are set forth at 46 CFR Part 585—Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Commerce of the United States ("Section 19 Regulations"). The section 19 Regulations describe who may file petitions, 46 CFR 585.4, how such petitions are filed, 46 CFR 585.5, the contents of petitions, 46 CFR 585.6, and how petitions may be amended or dismissed, 46 CFR 585.7.

The Section 19 Regulations also set forth the types of conditions which the Commission generally presumes to be unfavorable to shipping. These include those which: Impose upon vessels in the foreign trade of the United States fees, charges, requirements or restrictions different from those imposed on other vessels competing in the trade; preclude or tend to preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel; reserve substantial cargoes to the national-flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in U.S. foreign trades; are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors; and are otherwise unfavorable to shipping in the foreign trade of the United States. 46 CFR 585.3(a), (b), (c), (d).

Paragraph (9) of Section 19 provides for specific remedial actions which the Commission may take upon a finding that unreasonable shipping conditions exist. These include: Limitations upon sailings to and from United States ports or of the amount or type of cargo carried; suspension, in whole or in part, of any or all tariffs filed with the Commission for carriage to or from United States ports; suspension in whole or in part of an ocean common carrier's right to operate under an agreement filed with the Commission; imposition of fees up to $1,000,000 per voyage; or any other action the Commission finds necessary and appropriate to correct unfavorable shipping conditions in the U.S. foreign trade. 46 U.S.C. app. 876(9)(a)-(e). See also 46 CFR 585.9.

Paragraph (10)(a) of section 19 provides that upon request by the Commission the collector of customs at the port or place of destination in the United States shall refuse to clear a vessel of a country that is named in a section 19 regulation and shall collect any per voyage fees imposed by the Commission. Paragraph (10)(b) of section 19 provides that upon request by the Commission the Secretary of the Department in which the Coast Guard is operating shall deny entry to or detain at a U.S. port the vessel of a country that is named in a Section 19 regulation.

II. Background

Total Ocean Marine Services, Inc. ("Total Ocean" or "Petitioner") has filed Petition No. P5-90—*Petition of Total Ocean Marine Services, Inc, for Relief From Conditions Unfavorable to Shipping in the United States/Venezuela Trade* ("Petition") requesting relief under section 19 from alleged unfavorable shipping conditions in the United States/Venezuela trade ("Trade") created by the Government of Venezuela ("GOV"). The Commission published a notice of the filing of the Petition in the Federal Register, 55 FR 50588 (December 7, 1990), and invited interested persons to comment on the Petition by January 7, 1991. Pursuant to a

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request for any extension of time, the Commission, by a subsequent notice, 56 FR 1015 (January 10, 1991), extended the time for comment to January 22 1991.

Replies supporting the Petition were received for the Council of European and Japanese National Shipowners Associations ("CENSA"); Shippers for Competitive Ocean Transportation ("SCOT)"; Continental Materials, Inc. ("Continental"); Valls Shipping Company ("Valls"); and Alan L. Grant Rubber Division of Imperial Commodities Corp. ("Grant"). The Commission also received a letter from the U.S. Department of State ("DOS") which supports the effort of Total Ocean to enter the Trade.

Replies opposing the Petition were received from Venezuelan Container Line, C.A. ("VCL"); Naviera Pacifico C.A. ("Naviera Pacifico"); Compania Anonima Venezolana de Navigacion ("CAVN"); Maritima Aragua, S.A. ("Maragua Line"); King Ocean Service de Venezuela, S.A. ("King Ocean"); and American Transport Lines, Inc. ("Am Trans"), a subsidiary of Crowley Maritime Corporation.

Total Ocean made an additional submission date January 19, 1991, and received by the Commission on January 22, 1991, which it requested the commission to accept and consider. Total Ocean submitted further additional information in a letter to the FMC Secretary dated January 29, 1991 which it also requested the commission to accept.

Separate motions to strike the submissions of Total Ocean dated January 19, 1991 and January 29, 1991 were submitted by King Ocean of February 11, 1991, CAVN on February 13, 1991 and Maragua Line on February 20, 1991.

A. The Petition

Total Ocean indentifies itself as a Florida corporation organized for the purpose of operating a common carrier service in the trade between the United States and Venezuela. Petitioner states that it has a tariff on file with the Commission but acknowledges that it is not currently engaged in common carrier operations in any U.S. trade. Total Ocean seeks to enter the Trade by operating chartered vessels of third-flag registry.

Petitioner indicates that on April 25, 1990, it applied to the Venezuelan Ministry of Transport & Communications ("MTC") for authorization to operate a common carrier service in the Trade. By letter dated July 8, 1990, the MTC informed Total Ocean that the matter of its application was being referred to the MTC's Judiciary Bureau and to the Venezuelan Chamber of Ship Owners for consideration of certain legal issues arising under Venezuelan law. MTC apparently has not formally denied Petitioner's application. Total Ocean reports that it received a letter from MTC dated January 4, 1991 indicating that Total ocean had not exhausted the administrative procedures available to it under Venezuelan law. However, Total Ocean further reports that on January 17, 1991 it was advised by its Venezuelan counsel that it was "unnecessary to exercise any recourse" under Venezuelan law.

Total Ocean alleges that it has suffered continuing loss of operation revenus, as well as continuing legal, communications and administrative expenses as a result of MTC's delay in making a final determination on its application. Petitioner speculates that shippers may be able to provide evidence showing increased costs, inferior service or other harm resulting from the exclusion of Total Ocean from the Trade.

Total Ocean cites chapter II, Article 14 (requiring prior authorization to operate) and chapter IV, Article 20, section (E) (imposing fines for violations of chapter II) of the Venezuelan "Law For the Protection and Development of the National Merchant Marine" ("Cargo Reservation Law"), enacted on July 18, 1973, as the operative law applicable to its application.

Total Ocean requests Commission action under section 19. Total Ocean suggests that sanctions similar to those recently invoked by the Commission in the U.S./Peru trade the applied against the following Venezuelan carriers: CAVN, King Ocean, Naviera Pacifico, Maragua Line, VCL, C.A. Maritima Oceanica Granelera ("Camogra"), and Inagua Line-Naviprobo ("Inagua"), as well as any other Venezuelan carriers operating in the Trade.

B. Replies Supporting the Petition

CENSA states that the Petitioner has shown that it has been excluded from operating third-flag vessels in the Trade. CENSA notes that the commission has used Section 19 to protect operators of third-flag vessels in U.S. trades, most recently in Ecuador and Peru. Censa calls attention to a statement in a Memorandum of Consultations dated September 9, 1983 in which the Venezuelan authorities invoke the United National Code of Conduct for Liner Conferences ("U.N. Liner Code"). CENSA contends that the U.N. Liner Code is inapplicable in the Trade and that any reliance on U.N. Liner Code guidelines is inappropriate. CENSA urges the Commission to protect all carriers from GOV restrictions.

SCOT asserts that the Trade is not competitive and that consequently rates are high and service is not satisfactory. SCOT contends that there is a lack of effective third-flag competition. SCOT provides various data on the Trade and concludes that the exclusion of Total Ocean does constitute a condition unfavorable to shipping.

Further support for Petitioner was received from several individual shippers. Continental claims that the lack of competition in the Trade has lead to a 40 percent increase in freight costs over the past year. Valls asserts that there is not enough service in the Trade. Grant alleges that the Trade is becoming increasingly uncompetitive.

The Department of State commented on the Petition in a letter to the Commission secretary. Dos advises that embassy officials have raised the issue of Total Ocean's application with GOV authorities on numerous occasions. DOS further indicates that while Total Ocean's application has not been rejected, Total Ocean nevertheless has not been granted access to the Trade. DOS concludes tht GOV authorities have in effect denied Total Ocean an opportunity to serve the Trade. DOS views approval of Total Ocean's application as consistent with certain governmental understandings reached in 1983, and notes that in these documents "both sides acknowledged as desirable the continued active presence of third-flag carriers in the U.S.-Venezuelan trade". DOS states that it will continue to seek a diplomatic solution.

C. Replies Opposing the Petition

VCL contends that the treatment of Total Ocean's application by MTC reflects the Ministry's legitimate regulatory concerns and does not constitute a condition unfavorable to shipping. VCL argues that Total Ocean has not presented any evidence of harm to shipping. Moreover, VCL contends that under Venezuelan law, U.S.-flag, as well as third-flag carriers are permitted to compete for authorization to trade reserved cargo. VCL contends it would be inappropriate for the Commission to use section 19 to "pressure" the administrative process of GOV's maritime agencies.

CAVN argues that Total Ocean is not a U.S.-flag carrier and therefore is not entitled to participate in cargo reserved to U.S.-flag carriers whether the cargo originates in the United States or Venezuela. CAVN claims that as a potential third-flag carrier, Total Ocean may enter the Trade without any governmental approvals and compete for the 50 percent of Venezuela's cargo that is not reserved for national-flag carriers. The reply filed by Maragua Line is substantially the same as that filed by CAVN.

King Ocean contends that the Petition is premature because the GOV is still considering Total Ocean's application and there has been no denial. It also argues that this is an isolated case that does not rise to the level of a trade condition unfavorable to shipping. Finally, King Ocean contends that the Petition is defective under the FMC's regulations.

Naviera Pacifico claims that Total Ocean has made "only the sketchiest allegations of harm to oceanborne commerce." It states that the facts would show that the Trade is adequately served, that no shippers are being harmed and that the Trade would be disrupted by the action which Total Ocean is seeking.

Am Trans asserts that the Trade is open to third-flag carriers to compete for non-reserved cargo without having to obtain government approval. Am Trans contends that certain government agreements concluded in 1983 are working well and these executive agreements "* * * should be looked to guide the trade today, rather than a section 19 proceeding."

III. Discussion

Opponents of the Petition raise a number of procedural and substantive objections. These include arguments that certain filings by Total Ocean should be stricken, that the Petition is premature and technically deficient, that Total Ocean lacks the wherewithal to provide a service, that third-flag carriers are not excluded from the Trade, that the Petition fails to show the existence of any condition unfavorable to shipping, and that certain government agreements should not be disturbed. The Commission has considered the Petition and the comments thereon, including the arguments in opposition to the Petition, and has determined to grant Total Ocean's Petition and initiate a proceeding.

A. Motions to Strike

King Ocean, CAVN and Maragua Line have filed motions to strike the submissions by Total Ocean dated January 19, 1991 and January 29, 1991. They filed their motions pursuant to Rule 73 of the Commission's rules of practice and procedure, 46 CFR 502.73, arguing that these submissions are not permitted under the Commission's rules.

They also argue that the January 19 submission is not authorized under the Commission's Section 19 Regulations, and that the January 29 submission constitutes a reply to a reply which is prohibited under Rule 74, 46 CFR 502.74. They argue that these submissions are prejudicial in that they have not had an opportunity to respond. King Ocean requests alternatively that if the January submissions are not stricken that interested parties be given the opportunity to reply to these submisions.

Total Ocean has not submitted a response to the motions to strike.

Initially, it should be noted that the Commission's Rules of Practice and Procedure contained in part 502 are not applicable to petitions filed pursuant to section 19 unless the Commission expressly determines that all or some part of those rules shall govern in a particular matter or proceeding. That determination has not been made here. Therefore, Rule 73, 46 CFR 502.73, which concerns motions in other formal proceedings cannot technically be invoked in connection with this Petition. Nor can Rule 74 which concerns replies to pleadings and motions. However, the fact that these rules of practice and procedure cannot be utilized in this instance is not necessarily dispositive of the merits of the relief requested in these motions inasmuch as they also contend that under the section 19 Regulations there is no express authorization for a petitioner to supplement its petition and that the Commission has not solicited such a submission.

The Commission's section 19 Regulations allow a petitioner to amend its petition. Section 585.7 states:

> Upon failure of a petitioner to comply with the provisions of this part, the petitioner will be notified by the Secretary and afforded reasonable opportunity to amend its petition. Failure to timely amend the petition will result in its dismissal. For good cause shown additional time for amendment may be granted.
>
> 46 CFR 585.7.

The point of the motions to strike appears to be that the Commission has not notified Total Ocean of any deficiency in its Petition and that the January submissions are therefore not authorized. It should be noted, however, that § 585.7 does not expressly prohibit supplemental submissions to a Petition. Moreover, the section 19 Regulations clearly contemplate that a petitioner will be notified of any deficiency and given an opportunity to amend a petition prior to its dismissal. Thus, even if the Commission were to refuse to consider the January submissions it would nevertheless allow an opportunity to amend the Petition pursuant to its rules.

The Commission therefore has determined to accept the January submissions of Total Ocean and to treat them as amendments to its Petition. While the Commission certainly does not favor piecemeal submissions of section 19 petitions, there would appear to be no purpose served in requiring Total Ocean to resubmit these filings. Contrary to the assertions of King Ocean, CAVN, and Maragua Line, acceptance of these filings would not deprive these carriers of an opportunity to be heard. They will certainly have the opportunity to respond fully to these submissions in this rulemaking proceeding. Accordingly, the motions to strike are denied and Total Ocean's January filings are accepted.

B. Sufficiency of the Petition

King Ocean asserts that the Petition fails to fulfill the requirements of the Commission's Section 19 Regulations in several respects: (1) The Petition does not provide a copy of the relevant law which is a "certified" copy, the English translation is not "certified," and the translation is of poor quality; (2) the Petition fails to give a clear description of harm inasmuch as the alleged cargo loss is not supported by evidence that Total Ocean could have carried cargo; (3) the statistics provided by Total Ocean are not representative, are not adequately explained and there is no explanation as to why more recent statistics are not provided; and (4) the Petition fails to submit a recommended regulation that will meet the alleged unfavorable condition. King Ocean concludes that the Petition must therefore be amended or dismissed.

The section 19 Regulations state that a certified copy of any law and translation should be provided. Section 585.6(b) states that a petition shall set forth:

> (b) A certified copy of any law, rule, regulation or other document involved and, if not English, a certified English translation thereof.
>
> 46 CFR 585.6(b). Total Ocean states in its original Petition that:
>
> Exhibit "G" is a telecopier transmitted copy of the original Spanish version of the Venezuelan *Law For the Protection and Development of the National Merchant Marine* together with a certified English translation thereof.

Petition at 2. No certification appears at the conclusion of the Spanish text. In addition, the date of enactment shown at the conclusion of the English translation appears to be incomplete. See Petition at Exhibit G. However, there is a signature of a translator and the signature of a public notary in Florida with the date November 15, 1990

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following the text of the English translation.

When the Commission issued its original section 19 Regulations, it stated the purpose of the certification requirement as follows:

> Because of possible disputes concerning the accuracy of translations, certified copies in the original language are required in addition to a certified English translation.

See Docket No. 72-62, *Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States*, 14 S.R.R. 1138, 1141 (1974). King Ocean objects to the quality of the translation and the lack of certification but does not point out any specific issues that would call into question the basic text of the law. Rather, any differences in the comments are those of interpretation of the law or its application.

King Ocean also objects that Total Ocean has not provided a clear description of the loss it has, or expects to suffer, and that the statistics which are furnished are deficient. Section 585.8(d) of section 19 Regulations states that petitions shall set forth:

> (d) A clear description, in detail, of the harm already caused or which may reasonably be expected to be caused petitioner, including:
>
> (1) Statistics for the representative period showing a present or prospective cargo loss if harm is alleged on that basis. Such statistics shall include figures for the total cargo carried or projected in the Trade for the period;
>
> (2) Statistics or other evidence for the representative period showing increased costs, inferior services or other harm to cargo interest if injury is claimed on that basis; and
>
> (3) A statement as to why the period is representative.
>
> 46 CFR 585.8(d).

Total Ocean does address the above-referenced requirements. Petition at 2-3. Total Ocean provides Journal of Commerce PIERS data for cargo in the Trade shipped between February 1988 and January 1989. See Petition at Exhibit I. Moreover, it is not clear what more Total Ocean could present in the way of injury since Total Ocean's claim is that of a potential competitor in the Trade. In this regard, Total Ocean in its January 29 submission, represented that it has the "wherewithal" to operate in the Trade.

Finally, there is the issue of the Petition's alleged failure to submit a recommended regulation. Section 585.8(e) states that a petition shall set forth:

> (e) A recommended regulation, the promulgation of which will, in the view of the petitioner, adjust or meet the alleged conditions unfavorable to shipping in the foreign trade of the United States.
>
> 46 CFR 585.8(e).

In its Petition, Total Ocean requests the Commission's assistance in obtaining

> prompt confirmation from the MTC of their (Total Ocean's) authorization to operate third flag vessels in a common carrier service in the Trade * * *.
>
> Petition at 3.

However, in its January 19 submission, Total Ocean supplements its requests for relief as follows:

> * * * Petitioner recommends consideration be given to the imposition of actions in form and scope similar to those detailed (in the case of Peru), affecting the following named Venezuelan carriers participating in the Trade: (CAVN, Camogra, King Ocean, Maragua, Inagua, Naviera, VCL and any other Venezuelan carriers operating in the Trade).

Total Ocean's January 19 submission cures any deficiency in this regard and brings the Petition into conformity with the Commission's rules.

Thus while there may be some technical imperfections in the Petition, it does substantively comply with the requirements for relief under the section 19 Regulations.

C. Ripeness of the Petition

Opponents of the Petition object that Total Ocean's application to serve the Trade has not been denied and that it is therefore premature to consider Total Ocean's request for relief. In short, they contend that Total Ocean's claim is not "ripe." They claim that Total Ocean's application to serve the Trade through chartered third-flag vessels raises novel legal questions and that the regulatory process in Venezuela should not be interfered with.

Total Ocean states in its Petition that if filed its application with the Ministry of Transport and Communications on April 25, 1990, and has retained local counsel in Venezuela to assist in and expedite its application. Total Ocean also advises that it subsequently had frequent contact with GOV authorities and has sought the assistance of the U.S. Department of State.

In its January 19, 1991 submission, Total Ocean addresses the question of whether its Petition is premature. It includes an MTC letter to the U.S. Embassy dated January 4, 1991, stating that not all procedures under Venezuelan law had been exhausted. However, a letter from Total Ocean's Venezuelan counsel dated January 17, 1991 states that it is unnecessary to exercise recourse under the Venezuelan administrative procedures act.

DOS' letter dated January 22, 1991 outlines diplomatic efforts made on behalf of Total Ocean. The letter states that

> While the Government of Venezuela has not to date rejected TOMS' application, neither has it permitted TOMS' (sic) to operate in the trade
>
> DOS Letter at 1.

The letter further states that:

> Based upon these meetings, the Departments of State and Transportation believe that the Government of Venezuela is interpreting its Law for the Protection of National Merchant Marine Shipping as well as a Memorandum of Understanding between the United States Government and the Government of Venezuela in a manner that denies TOMS the Opportunity to participate in the bilateral trades using third-country flag chartered vessels.
>
> DOS Letter at 2.

Total Ocean's application has been pending for one year. Moreover, Total Ocean has pressed its request with GOV authorities and the Department of State. Given this background, the treatment of Total Ocean's application appears to amount to a de facto denial. This view is supported by the evaluation in the DOS letter. The Commission need not wait for a formal rejection of Total Ocean's application by GOV authorities before taking action under Section 19.

D. Ability to Provide Service

Opponents of the Petition object that Total Ocean has not demonstrated any ability to provide a common carrier service in the Trade. They point out that Total Ocean currently provides no service in any trade and questions whether Total Ocean has the experience and "wherewithal" to enter the Trade. From this, they conclude that there is no unfavorable condition to shipping resulting from the exclusion of Total Ocean from the Trade.

Total Ocean addresses the "wherewithal" issue in its January 29, 1991 submission to the Commission. Total Ocean asserts that no other carriers are required to demonstrate wherewithal in order to enter the Trade. Total Ocean represents that it is prepared to demonstrate that it has the financial resources, experience and expertise, access to vessels, and shipper commitments of potential future business.

This objection of the opponents of the Petition does not disqualify the Petition. While it is true that Total Ocean does not presently operate as an ocean common carrier, having in place an existing service is not a prerequisite to section 19 relief. Moreover, Total Ocean does seem to have demonstrated a serious commitment to enter the Trade by filing a tariff with the Commission and expending financial resources in pursuing its application. Certainly section 19 relief is available to protect enterprising companies or individuals who might seek to start up new services and bring greater competition to U.S. trades.

E. Conditions Unfavorable to Shipping

The Venezuelan carriers objecting to the Petition argue that there is no unfavorable shipping condition because third-flag carriers are permitted to, and in fact do, serve the Trade. They contend that Total Ocean would be free to enter the Trade without prior approval by Venezuelan authorities and is not excluded for competing from those cargoes which are not reserved to national-flag carriers.

Access to Venezuelan cargo is subject to Venezuela's Cargo Reservation Law. Article 9 of that law sets aside 50 percent of import and export general cargo for carriage by Venezuelan-flag carriers. Status as a Venezuelan-flag carrier is determined under the criteria set forth in Article 7, the chief requirement being that vessels must be 80 percent owned by Venezuelan nationals. Under Article 8, Venezuelan carriers may operate non-Venezuelan-flag vessels up to 50 percent of their Venezuelan-flag tonnage. Under Article 14, a national-flag carrier of a trading partner may be allowed to participate in the transport of this reserved cargo on the basis of reciprocity. Article 20 provides for the assessment of a fine equivalent to the value of the cargo lost by the national-flag vessel for violations of the cargo reserve system.

Even under a liberal interpretation of the Cargo Reservation Law, third-flag carriers appear to be excluded from competing for at least 50 percent of the general cargoes. This in itself would appear to constitute a condition unfavorable to shipping. Section 585.3(b) states that an unfavorable shipping condition exists where government actions

> Reserve *substantial* cargoes to the national flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States. (Emphasis added).
>
> 46 CFR 585.3(b).

There is no indication in the record of any mechanism by which third-flag operators may gain access to the reserved 50 percent.

In Docket No. 87-11, *Actions to adjust or Meet Conditions Unfavorable to Shipping in the Untied States/Colombia Trade*, the Commission indicated that a law which reserved 50 percent of the liquid bulk trade to national-flag carriers would constitute a condition unfavorable to shipping. Moreover, in Docket No. 87-8, *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade*, one of the matters in issue was a Peruvian decree which reserved 50 percent of the cargo to national-flag lines. Although not addressed directly, the Peru case suggests that a 50 percent reservation of cargo could be seen as a condition unfavorable to shipping.

Nevertheless, opponents of the Petition argue that even if Total Ocean were to have a valid complaint, this is an isolated case that does not rise to the level of a claim for relief under section 19. King Ocean cites as analogous cases two instances in which section 19 petitions were dismissed, *Petition of ACE Lines, Ltd.*, 19 S.R.R. 481 (FMC 1979) ("*ACE Lines*") and *Petition of Refrigerated Express Lines (A/Asia) Pty. Ltd.*, 19 S.R.R. 1403 (FMC 1980) ("*Refrigerated Express*"). The situations in those cases are, however, distinguisheable from that exisitng here.

In *ACE Lines*, the petitioner sought relief from an action of the New Zealand Wool Board which required that only members of rate agreements be permitted to carry wool from New Zealand to the United States, thereby excluding ACE Lines, an independent operator. The Commission denied the petition because the action affected only the wool trade and had not resulted in inadequate service to American exporters or importers. 19 S.R.R. 482.

The Commission subsequently described the narrow basis for its ruling in *ACE Lines:*

> Ace Lines involved foreign-imposed restrictions on a *single carrier* affecting a *particular commodity*—wool—in the New Zealand-United States *import* trade.
>
> (Emphasis in original). *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/ Venezuela Trade*, 21 S.R.R. 1621, 1926 (FMC 1983).

In *Refrigerated Express*, the petitioner sought relief from an action of the Australian Meat and Livestock Corporation's failure to reauthorize Refrigerated Express to transport refrigerated meat from Australia to the United States. The Commission denied the petition because the meat board's action was based on sound transportation factors.

Again the Commission subsequently explained the limited scope of its denial in *Refrigerated Express* as follows:

> REL involved the failure of a single carrier to obtain foreign authorization to engage in the transportation of a single commodity—refrigerated meat—in the Australia-United States import trade. The Commission concluded that the foreign entity met its burden of establishing acceptable transportation factors to justify its decision not to authorize the complaining carrier. It had acted on the basis of "sound economic and trade considerations," including the advantages of containerization over breakbulk carriage and the preference of Australian exporters and U.S. importers.
>
> 21 S.R.R. at 1629.

The circumstances of Total Ocean's Petition are different from those of the *ACE Lines* and *Refrigerated Express* cases. Total Ocean would be excluded from carriage of at least 50 percent of all general cargo in both import and export trade, not just a single commodity in a single trade. Moreover, denial of Total Ocean's application would not appear to be based on transportation factors as in *Refrigerated Express*. In short, there is nothing in *Ace Lines* or *Refrigerated Express* which would favor dismissal of the Petition in this case.

Opponents of the Petition also contend that service in the Trade is adequate and that there is therefore no unfavorable shipping condition. The Commission, however, has clearly indicated that adequacy of service is not a defense to allegations of unfavorable shipping conditions. Thus, in its earlier section 19 case dealing with Venezuela, the Commission stated:

> Adequacy of service was relevant in Ace Lines and REL because of the nature of the activity in issue in those proceedings. There was no intention in those cases to establish adequacy of service as the primary criterion in all section 19 proceedings. The issue is not critical here because of the breadth of the Venezuelan cargo restrictions. Nevertheless, the Venezuelan carriers apply far too narrow an interpretation of what factors affect "adequacy of service". As discussed herein, the documented concerns of shippers that they may be denied their carrrier of choice and that competition in the trade would be severely restricted are also relevant to the issue.
>
> 21 S.R.R. 1626-1627.

Moreover, most recently in its proceeding involving the United States trade with Peru the Commission addressed the defense of adequacy of service as follows:

> Nor do the allegations made regarding adequacy of service dispose of the matter before us. Adequacy of service is not necessarily the primary consideration in section 19 proceedings. The issue, while important, is not determinative here, given the scope of the Peruvian cargo reservation decrees. Nevertheless, the fact that the Peruvian cargo reservation decrees impose burdens and restrictions on non-Peruvian-flag carrier participation in the Trade and may, as a result, deny shippers their preferred choice

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of carrier, tends to call into question the adequacy of service in the Trade.

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade, Notice of Proposed Rulemaking, 52 FR 11832, 11835 (April 13, 1987). Here there is an indication that at least 50 percent of general cargo is reserved to national-flag carriers. Moreover, the Petition is supported by shippper submissions which claim inadequate service in the Trade.

F. Government Agreements

Finally, the opponents of the Petition argue that the present situation should not be disturbed because of certain government agreements between the United States and Venezuela. They argue that the Trade has functioned smoothly under these agreements and should not be disrupted by section 19 action. The agreements referred to are three documents issued by the two governments following a series of consultations in 1983. These documents are: (1) A Memorandum of Understanding of January 14, 1983; (2) an Agreed Minute of June 3, 1983; and (3) a Memorandum of Consultations of September 9, 1983.

In its letter, the Department of State notes that "* * * in each of these documents, both sides acknowledged as desirable the continued active presence of third-flag carriers in the U.S.-Venezuela trade." Moreover, DOS does not regard the 1983 staements "* * * as freezing third-flag entrants to some historical point, but rather intending to encourage their participation in the trade." DOS concludes that approval of Total Ocean's application "* * * would be consonant with the 1983 statements, including the Memorandum of Understanding, and not necessarily inconsistent with Venezuelan law." [1] The Commission concurs that these 1983 agreements and understandings may not be invoked in order to exclude Total Ocean from equal competitive access to the Trade.

[1] DOS further states that the provisions of Venezuela's law do not correspond to modern shipping practices and that Trade conditions have changed significantly since the Cargo Reservation Law was enacted in 1973. DOS advises:

Conditions in the trade have changed significantly since the 1973 passage of this law, and the law does not address the issue of third-flag vessels engaged by shipping services of a trading partner or the other charter arrangements common today. Moreover, denial of access to competitive shipping through cargo reserve practices typically results in imposition of higher rates on shippers than would otherwise be the case—in apparent violation of the Law's own requirement in Article 16 that the reserve policy not "mean the charging of freight charges in excess of those prevailing in the international market for the traffic concerned."

IV. Conclusion

The Venezuelan Cargo Reservation Law as it is currently interpreted and enforced is clear, at least in broad outline. At a minimum, it reserves 50 percent of general import and export cargo ot national-flag carriers. A U.S. company which proposes to utilize vessels of third-flag registry appears to be excluded from access to the reserved portion of the Trade. Moreover, it appears that Venezuelan authorities have withheld from the Petitioner authorization to undertake operation as a common carrier by chartering third-flag vessels. While there is some question as to whether a U.S. company which proposes to use third-flag vessels may have access to the unreserved portion of general import and export cargoes without obtaining government approval, it appears that as a practical, commercial matter shippers would be discouraged from utilizing the services of a non-Venezuelan-flag carrier that has not obtained express government authorization to serve the Trade. The Cargo Reservation Law thus appears to restrict shippers in their selection of a carrier.

As set forth in total Ocean's Petition, it would appear that unfavorable shipping conditions may exist in the foreign oceanborne trades between the United States and Venezuela, under § 585.3(a), (b), (c) and (d) of the section 19 Regulations and section 19 of the Merchant Marine Act, 1920. As a direct result of Venezuelan laws, regulations, policies and practices, indications are that conditions exist which: (1) Impose restrictions upon third-flag vessels different from those imposed on Venezuelan-flag vessels competing in the Trade or preclude or tend to preclude third-flag carriers from competing in the Trade on the same basis as Venezuelan-flag carriers; (2) reserve substantial cargoes to the national-flag or other vessels and fail to provide for effective and equal access to cargo by third-flag vessels; (3) discriminate between third-flag carriers and shippers and their competitors; and (4) are otherwise unfavorable to shipping in the foreign trade of the United States.

Therefore, pursuant to section 19 the of the Merchant Marine Act, 1920, as amended, and the Commission's regulations at 46 CFR part 585, the Commission hereby grants the Petition of Total Ocean Marine Services, Inc. and issues a proposed rule to address the apparent existence of unfavorable shipping conditions in the foreign oceanborne trade between the United States and Venezuela, and prescribes an appropriate remedy or remedies to adjust or meet those conditions. The proposed rule states a primary remedy of a $100,000 per voyage fee. In the event that such fees are not paid, the rule provides for suspension of tariffs and denial of clearance from or access to U.S. ports.

The remedies of the proposed rule would be imposed upon the seven named carriers in Total Ocean's Petition. In addition, a review of current tariffs on file at the Commission indicates that the following may also be Venezuelan carriers serving the Trade: Consorcio Naviero de Occidente C.A.; Naviera Lavinel C.A.; Naviera Transpapel, C.A.; Vencaribe C.A.; Naviera Caribana C.A.; Zade, C.A.; and Naviera Naviprobo C.A.[2] These carriers are also included in the list of carriers subject to the sanctions in the proposed rule.

The Commission notes that recent reports in the trade press indicate that a number of South American countries, including Venezuela, may be considering a liberalization of their cargo reservation policies. The Commission invites comment on any such developments in the U.S.-Venezuela Trade. The Commission also seeks updated information concerning the impact of the Cargo Reservation Law as well as any additional information concerning its implementation which would be useful to the Commission in assessing current conditions in the Trade. In particular, the Commission invites interested persons to provide additional information and comment concerning the following.

1. Whether there is any procedure by which a U.S. company which utilizes exclusively vessels of third-flag registry may have access to the reserved portion of general import and export cargoes;

2. Whether a U.S. company which utilizes exclusively vessels of third-flag registry may have access to the unreserved portion of general import and export cargoes without obtaining government approval;

3. Whether waivers or other administrative procedures are involved for both Venezuelan importers and non-Venezuelan-carriers in obtaining access to reserved or unreserved portions of cargo;

[2] The tariff of Naviera Naviprobo C.A. indicates that it was issued by Inagua Lines, Inc. The Commission is unable to determine whether the company identified in the Petition as "Inagua-Naviprobo" is the same or distinct from Naviera Naviprobo C.A. Accordingly Naviera Naviprobo C.A. ad Inagua-Naviprobo are listed as separate and distinct carriers in the proposed rule.

4. Whether there are methods or procedures for differentiating between reserved and non-reserved cargoes, for crediting and accounting for such cargoes, and for providing notice of carrier eligibility to shippers;

5. Whether importers may be discouraged from utilizing the services of a non-Venezuelan-flag carrier that has not obtained express government authorization to serve the Trade; and

6. Whether there are other implementing regulations or policies which may apply to access to unreserved cargoes.

Interested persons also are invited to comment generally on the proposed rule including the remedies, and to provide any other updated, additional, or clarifying information including information on any changes in GOV policy with respect to cargo reservation as noted above. Factual submissions relating to conditions in the United States/Venezuela trade, where relevant, should include evidence or statistics showing commercial loss. To the extent possible, factual submissions should be supported by sworn documents and affidavits.

Finally, the Commission has determined that the Petition and supplementary submissions of Total Ocean as well as the comments and other filings concerning the Petition are hereby made a part of the record in this proceeding.

List of Subjects in 46 CFR Part 586

Cargo vessels; Exports; Foreign relations; Imports; Maritime carriers; Penalties; Rates and fares; Tarriffs.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), as amended, Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR part 565, it is proposed to amend part 586 of title 46 of the Code of Federal Regulations as follows:

PART 586—[AMENDED]

1. The authority citation is revised to read as follows:

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876(5) through (12); 46 U.S.C. app. 1710a; 46 CFR part 565; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

2. A new § 586.4 is added reading as follows:

§ 586.4 Conditions unfavorable to shipping in the United States/Venezuela trade ("Trade").

(a) *Conditions unfavorable to shipping in the trade.* (1) The Federal Maritime Commission has determined that the Government of Venezuela ("GOV") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably restrict non-Venezuelan-flag carriers from competing for general import and export cargoes, in the trade between the United States and Venezuela on the same basis as Venezuelan-flag carriers.

(2) Venezuelan law unilaterally reserves 50 percent of import and export general cargoes, between the United States and Venezuela for carriage by Venezuelan-flag carriers who utilize Venezuelan-flag vessels or charter third-flag vessels, or U.S.-flag carriers who utilize U.S.-flag vessels or charter third-flag vessels. The enforcement of this system discriminates against U.S. maritime companies desirous of participating in the Trade through the exclusive charter of third-flag vessels and denies to these carriers effective and equal access to import and export general cargoes in the Trade. It also discriminates against shippers whose opportunities to select a carrier of their choice are restricted and whose ability to compete in international markets is hampered.

(b) *Venezuelan-flag carries—assessment of fees.* (1) Voyage means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States trade. Each inbound or outbound movement constitutes a separate voyage. For purposes of this section, the transportation of cargo by water aboard a single vessel inbound or outbound between ports in Venezuela and ports in the United States under one or more bills of lading issued by or on behalf of the Venezuelan-flag carriers named in paragraph (b)(2) of this section, whether on board vessels owned or operated by the named carriers or in space chartered by the named carriers or in space chartered by the named carriers on vessels owned or operated by others, or carried for the account of the named carriers pursuant to agreements on file with the Federal Maritime Commission, under any of the tariffs enumerated in paragraph (b)(4) of this section, shall be deemed to constitute a voyage.

(2) For each voyage completed after the effective date of this section, the following carriers shall pay to the Federal Maritime Commission a fee in the amount of $100,000: Venezuelan Container Line, C.A. ("VCL"); Naviera Pacifico C.A. ("Naviera Pacifico"); Compania Anonima Venezolana de Navigacion ("CAVN"); Maritima Aragua, S.A. ("Maragua Line"); King Ocean Service de Venezuela, S.A. ("King Ocean"); C.A. Maritime Oceanica Granelera ("Camogra"); Inagua Line-Naviprobo ("Inagua"); Consorcio Naviero de Occidente C.A.; Naviera Lavinel C.A.; Naviera Transpapel, C.A.; Vencaribe C.A: Naviera Caribana C.A.; Zade, C.A.; and Naviera Naviprobo, C.A. The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 7 calendar days of the completion of the voyage for which it is assessed.

(3) Each Venezuelan-flag carrier named in paragraph (b)(2) of this section shall file with the Federal Maritime Commission a report setting forth the date of each voyage completed, amount of cargo carried, and amount of fees assessed pursuant to paragraph (b)(2) of this section during the preceding calendar quarter. Each such report shall include a certification that all applicable fees assessed pursuant to paragraph (b)(2) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Such reports shall be filed within 15 days of the end of each calendar quarter.

(4) If any Venezuelan-flag carrier shall fail to pay any fee assessed by paragraph (b)(2) of this section within the prescribed time for payment, or fail to file any quarterly report required by paragraph (b)(3) of this section within the prescribed period for filing, the tariffs identified below, as applicable to such carrier, shall be suspended effective 30 calendar days after the expiration of the calendar quarter in which such fees or report were due:

(i)(A) *Naviera Pacifico C.A. (Naviera Pacifico).*

FMC No. 1—Applicable Between Ports in Washington, Oregon, Idaho & California and Inland Points and Ports in Venezuela, Panama, Mexico, El Salvador, Costa Rica, Nicaragua and the Caribbean.

(B) *Compania Anonima Venezolana de Navigacion (Venezuelan Line).*

FMC No. 9—Applicable Between Ports in the United States and Puerto Rico and Ports Worldwide.

(C) *Maritima Aragua, S.A. (Maragua Line).*

FMC No. 8—Applicable From United States Gulf Ports to Ports in Curacao.

FMC No. 7—Equipment Interchange Tariff Naming Rules, Regulations and Charges Covering the Use of Carriers Provided Equipment.

(D) *C.A. Maritima Oceanica Granelera (Camogra).*

FMC No. 1—Applicable Between United States Atlantic and Gulf Coast Ports and Ports in the Caribbean, Central and South America.

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(E) *Naviera Naviprobo C.A. Inc. (Naviera Naviprobo).*

FMC No. 3—Applicable Between Florida East Coast Ports and Ports in Venezuela.

(F) *Naviera Lavinel C.A.*

FMC No. 1—Applicable Between Ports in Mexico, Central America and South America and United States Pacific Coast Ports.

(G) *Naviera Transpapel, C.A.*

FMC No. 1—Applicable Between U.S. East Coast, Gulf, West Coast and Great Lakes Ports and Ports in the Caribbean Sea, Central America and South America.

(H) *Vencaribe C.A.*

FMC No. 1—Applicable Between U.S. Atlantic and Gulf Coast Ports and Ports in South America.

(I) *Naviera Caribana C.A.*

FMC No. 1—Applicable Between United States Ports and Points and Worldwide Ports and Points.

(J) *Zode, C.A.*

FMC No. 3—Applicable Between Ports in Puerto Rico and Ports in Venezuela.

(ii) The following conference tariffs, or any other conference tariff covering the Trade, including intermodal tariffs covering service from interior U.S. points:

United States Atlantic and Gulf/Venezuela Steamship Conference.

FMC No. 14—Applicable Between Atlantic and Gulf Coast Ports of the United States (Except Florida Ports South of Jacksonville to and including Miami) and Inland or Coastal Points and Ports in Venezuela.

(iii) Any other tariff which may be filed by or on behalf of the carriers listed in paragraph (b) of this section.

(iv) In the event of suspension of tariffs pursuant to this paragraph, all affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operation by any carrier under suspended, cancelled or rejected tariffs shall subject said carrier to all applicable remedies and penalties provided by law.

(c) *Source of fees.* Any fees assessed by paragraph (b)(2) of this section against Venezuelan-flag carriers operating pursuant to any agreement filed with the Federal Maritime Commission providing for revenue pooling, joint service, space-chartering or other joint operations shall be paid by such Venezuelan-flag carriers without affecting the revenue shares or amount of revenue earned by non-Venezuelan carriers operating pursuant to such agreements.

(d) *Refusal of Clearance by the Collector of Customs.* If a named Venezuelan-flag carrier shall fail to pay any fee assessed by paragraph (b)(2) of this section, or fail to file any quarterly report required by paragraph (b)(3) of this section within the prescribed period for filing, the Secretary of the Commission shall request the Chief, Carrier Rulings Branch of the U.S. Customs Service to direct the collectors of customs at the affected U.S. port or ports, to refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. app. 91) to any vessel owned or operated by such Venezuelan-flag carrier.

(e) Denial of Entry to or Detention at United States Ports by the Secretary of Transportation. If a named Venezuelan-flag carrier shall fail to pay any fee assessed by paragraph (b)(2) of this section, or fail to file any quarterly report required by paragraph (b)(3) of this section within the prescribed period for filing, the Secretary of the Commission shall request the Secretary, U.S. Department of Transportation, to direct the Coast Guard to: (1) Deny entry for purpose of coeanborne trade, of a vessel of that carrier to any port or place in the United States or the navigable waters of the United States; or (2) detain a vessel of that carrier at the port or place in the United States from which it is about to depart for another port or place in the United States.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-11670 Filed 5-15-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter VI

Shark Fishery of the Atlantic Ocean (Including the Gulf of Mexico and the Caribbean Sea)

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a change of date and location for a public hearing.

SUMMARY: A notice of availability of a revised draft Fishery Management Plan for the Shark Fishery of the Atlantic Ocean (FMP), and a notice of eight scheduled public hearings on the revised draft FMP was published May 3, 1991 (56 FR 20410). This notice is being issued to change the date and the location of one hearing. All other information, as published, remains the same.

ADDRESSES: Oral and written statements will be taken at the hearings. Additional comments should be sent to Paul J. Leach, Southeast Region, NMFS, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Mark envelope "Shark Plan." Copies of the revised draft FMP may be obtained from NMFS at this address.

FOR FURTHER INFORMATION CONTACT: Paul J. Leach (813) 893-3141.

SUPPLEMENTARY INFORMATION: In FR Doc. 91-10464, appearing in the issue of May 3, 1991 (56 FR 20410), make the following change:

On page 20411, in the third column, the hearing scheduled for May 29, 1991, at 7 p.m., in New Bern, North Carolina, is changed to May 30, 1991, 7 p.m., Carteret Community College, Joslyn Hall, 3500 Arendell Street, Morehead City, North Carolina.

Dated: May 10, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-11563 Filed 5-15-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 95
Thursday, May 16, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication; Public Hearing

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a hearing before the Committee on Adjudication of the Administrative Conference of the United States. The hearing will be from 9:15 a.m. to 1 p.m. on Wednesday, June 19, 1991, in Courtroom 2, National Courts Building, 717 Madison Place, Washington, DC.

The Administrative Conference of the United States, at the request of Congress, is sponsoring a study of the administrative adjudicatory procedures of the Federal Aviation Administration and the National Transportation Safety Board in cases involving enforcement of air safety regulations. Following the study, which is being done by Professor Henry Perritt of the Villanova University Law School, the Conference will make recommendations on where authority to adjudicate administrative complaints under the Federal Aviation Act should reside. The hearing is intended to provide interested parties with the opportunity to present their views on the issues raised, which include whether the FAA and Department of Transportation or the NTSB are the better forum adjudicating air safety enforcement cases, and whether responsibility for both certification cases and civil penalty cases should be at the same agency.

Copies of Professor Perritt's outline for his study, which will be the focus of the hearing, are available from Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC (202) 254-7020. People who are interested in speaking at this hearing must contact Ms. Miller by May 31, 1991. Speakers will be asked to limit their remarks to 10 minutes. Written statements will also be accepted. Please submit 10 copies, or at least 2 copies plus accompanying diskette (5¼" or 3½"), by Wednesday, June 12, 1991. The hearing will be transcribed. The hearing will be open to the interested public, but limited to the space available.

For further information concerning this hearing, contact Nancy G. Miller.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 91-11630 Filed 5-15-91; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 10, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

• Food and Nutrition Service.

7 CFR part 220—School Breakfast Program (Reporting and Recordkeeping Burdens).

Recordkeeping; Monthly; Quarterly; Semi-annually; Annually.

State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 720,258 responses; 5,800,404 hours.

Marian Stroud (703) 756-3607.

• Agricultural Marketing Service.

Almonds Grown in California, Marketing Order No. 981.

Recordkeeping; On occasion; Monthly; Semi-monthly

Businesses or other for-profit; 13,291 responses; 6,254 hours.

Richard Shultz (202) 245-5172.

Extension

• Agricultural Stabilization and Conservation Service.

26 CFR part 35a, Payer's Request for Identifying Number CCC-343.

On occasion.

Individuals or households; Farms; 3,000 responses; 1,500 hours.

Karl Choice (202) 447-8782.

Extension

• Agricultural Stabilization and Conservation Service.

7 CFR part 1430, Monthly Report and Remittance of Amount Due for All Milk Marketed Commercially By Producers.

CC-310.

Monthly.

Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 18,000 responses; 4,500 hours

Joe Chervenic (202) 447-3679

New Collection

• Food and Nutrition Service.

Update to the Characteristics of State Food Stamp Program Operations.

Once per respondent.

State or local governments; 477 responses; 477 hours.

Sharron Cristofar (703) 756-3155.

• Agricultural Cooperative Service.

Livestock, Poultry, and Wool Marketing Cooperatives: Marketing Methods and Service for Members.

On occasion.

Businesses or other for-profit; Small businesses or organizations; 337 responses; 146 hours.

T. Fred White, Jr. (202) 245-5390.

New Collection-Emergency

• Agricultural Stabilization and Conservation Service.

7 CFR part 1446, Peanut Warehouse Contracts, Application for Approval, Examination Reports, Bond, Warehouse

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Receipts and Drafts, Contracts for Additional Peanuts—Addendum 1.

CCC-1005.

On occasion.

Farms; Small businesses or organizations; 25,800 responses; 6,450 hours.

Solomon Whitfield (202) 447-7128.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 91-11589 Filed 5-15-91; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

[TB-91-009]

Burley Tobacco Advisory Committee; First Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. app.) announcement is made of the following committee meeting:

Name: Burley Tobacco Advisory Committee.

Date: June 4, 1991.

Time: 10:30 a.m.

Place: Campbell House Inn, 1375 Harrodsburg Road, Lexington, Kentucky 40504.

Purpose: To explain responsibilities of individual members, provide informational materials to the newly established membership, review various regulations pursuant to the Tobacco Inspection Act (49 Stat. 731; 7 U.S.C., 511 *et seq.*), discuss new policies and procedures for the 1991 burley marketing season, and other related issues.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: May 10, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-11590 Filed 5-15-91; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

Proposed Felipito Timber Sale, Carson National Forest, Rio Arriba County, NM

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an environmental impact statement on the proposed Felipito Timber Sale.

The decisions to be made are as follows. Should there be a timber sale at this time? If so, what would be the harvest method and resulting volume of products? Would there be any clearcutting, thinning or reforestation? How much and what areas would be allocated to old growth? How would the fuels (fire potential) be handled? Would there be any wildlife or watershed improvements? What roads would be obliterated, closed, constructed or reconstructed?

DATES: Comments concerning the scope of the analysis should be received in writing by June 15, 1991.

ADDRESSES: Send written comments to El Rito Ranger District, Carson National Forest, P.O. Box 56, El Rito, NM 87530.

FOR FURTHER INFORMATION CONTACT: Ron Ellis, Interdisciplinary Team Leader, (505) 581-4554.

SUPPLEMENTARY INFORMATION: The Felipito Timber Sale was listed in the Carson Forest Plan and public notification of the intent to begin planning for such a sale was mailed in September of 1986. Planning meetings were held intermittently in 1989 and more frequently in 1990. A Decision Notice with an accompanying Environmental Assessment was signed in October 1990, but was withdrawn a few weeks later to allow the interdisciplinary team (ID) an opportunity to reconsider certain concerns and to take into account an October 1990 amendment to the Carson Forest Plan that modified the old growth criteria.

Comments were gathered on the proposal by contacting potentially affected and interested people. Open houses, meetings, press coverage, and letters to a large list of interested publics have afforded many people opportunity to comment.

The following issues have been identified for analysis: (1) Possible conflicts with wildlife and wildlife habitat; (2) potential soil movement, sedimentation of the Rio Vallecitos, soil productivity, water yield, and timing of water yield; (3) potential effects on habitat for Mexican spotted owls and other threatened and endangered species; (4) old growth within the diversity unit; and (5) economic stability of the local timber-dependent communities.

Seven alternatives have been developed. The alternatives include a no action alternative and six others that respond to the key issues.

Due to the analysis done to date, we have concluded that an EIS would be appropriate. A draft of the EIS is scheduled to be published in September, 1991.

The Carson National Forest Supervisor is the responsible official who will decide on the management strategy to be implemented on the Felipito area. (Carson National Forest, P.O. Box 558, Taos, NM 87571)

We invite any suggestions or comments in writing.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental stage, but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D.Wis 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages of chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: May 9, 1991.

Leonard A. Lindquist,

Forest Supervisor.

[FR Doc. 91-11629 Filed 5-15-91; 8:45 am]

BILLING CODE 3410-11-M

Plum Creek Checkerboard Land Exchange; Kootenai National Forest; Lincoln, Flathead and Sanders Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of correction to notice of intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service (FS), Kootenai National Forest (KNF), in conjunction with Plum Creek Timber Company, Limited Partnership, (PCTC), issued a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for a proposal to exchange National Forest land for PCTC land. The NOI as published 4/25/91, in Vol. 56, No. 80, P. 19061 of the **Federal Register** should be corrected to read as follows:

Under Federal Lands:

Meadow Peak; T. 27 N., R. 27 W., P.M.M., Lincoln County

Sec. 4; All 640

should be:

Meadow Peak; T. 27 N., R. 27 W., P.M.M., Lincoln County

Sec. 14; All 640

and

Meadow Peak; T. 27 N., R. 26 W., P.M.M., Flathead County

Sec. 28; N½, W½SW¼, S½SE¼ 400

should be:

Meadow Peak; T. 27 N., R. 26 W., P.M.M., Flathead County

Sec. 26; N½, W½SW¼ 400

Dated: May 8, 1991.

Robert L. Schrenk,

Forest Supervisor.

[FR Doc. 91-11626 Filed 5-15-91; 8:45 am]

BILLING CODE 3410-11-M

Grouse Creek Timber Sale, Rogue River National Forest, Jackson County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a proposal to harvest timber and construct roads in a portion of the Kinney Roadless Area. The proposed Grouse Creek Timber Sale EIS will tier to the July 1990 final EIS for the Land and Resource Management Plan (Forest Plan) for the Rogue River National Forest. The Forest Service proposal will be in compliance with the direction in the Forest Plan which provide overall guidance for management of the area and the proposed projects. The proposed projects are planned for implementation in Fiscal Year 1993 on the Applegate Ranger District. The Grouse Creek Planning Area consists of approximately 3000 acres of National Forest and US Army Corps of Engineers Land located directly west of the Applegate Lake, 23 miles southwest of Medford, Oregon.

The Applegate Ranger District invites written comments and suggestions on the scope of the analysis in addition to comments already received as a result of local public participation activities. The district also gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may particpate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by June 7, 1991.

ADDRESSES: Send written comments to Susan E. Rolle, District Ranger, Applegate Ranger District, 6941 Upper Applegate Road, Jacksonville, Oregon 97530.

FOR FURTHER INFORMATION CONTACT: Thomas W. Lavagnino, Resource Planner, Applegate Ranger District, 6941 Upper Applegate Road, Jacksonville, Oregon 97530. (503) 899-1812.

SUPPLEMENTARY INFORMATION:

The proposed timber sale is listed on page A-23 under appendix A (10-year Activity Schedules) of the Rogue River National Forest Plan.

The proposed timber sale with associated activities is in an inventoried Kinney Roadless Area. This area was recommended as non-Wilderness in the 1979 final EIS for the Roadless Area Review and Evaluation II (RARE II). The final EIS for the Forest Plan analyzed the area for its roadless characteristic and allocated the land as shown in the table below.

The following table lists the approximate percentages and acres allocated to the specific Management Area (MA) by the Forest Plan:

Management area No.	Management strategy	Acres	Percent of PA
1	Minimum Management.	423	14
4	Developed Recreation.	284	10
6	Foreground Retention.	499	17
7	Foreground Partial Retention.	124	04
9	Middleground Partial Retention.	15	.5
14	Big Game Winter Range.	827	28
15	Old Growth	219	07
17	Primary Range	22	.5
20	Timber Suitable 1	523	18
26	Restricted Riparian.	31	01

The entire Rogue River National Forest (and more specifically the Grouse Creek Planning Area, as shown above) has been divided into Management Areas, each with an accompanying Management Strategy. Each area has different resource goals, opportunities, standards and guidelines. In essence, it is a unit of land to be managed to achieve a desired future condition. A complete description of each Management Strategy can be found in Chapter Four of the Forest Plan.

The analysis will consider a range of alternatives. Along with the proposed action, the analysis will consider a no-action alternative. Action alternatives will analyze high priority silvicultural stands that can be accessed with or without roads in areas determined suitable for timber management that are consistent with the Forest Plan and other management directions. The legal description for the Grouse Creek Planning Area is: portions of Section 22, 23, 25-27, & 34-36, T. 40 S., R. 4 W., Willamette Meridian and portions of section 2, 3, & 10, T. 41 S., R. 4 W., Willamette Meridian in Jackson County, Oregon. Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, tribes, local agencies and other individuals or organizations who may be interested in or affected by the proposed project. Letters will also be sent to all adjacent landowners within ¼ mile of the Planning Area encouraging their participation. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying major issues to be analyzed in depth;

2. Exploring additional alternatives (that are consistent with the Forest Plan)

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derived from issues recognized during scoping activities;

3. Identification of potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

4. Notifying interested publics of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (i.e., newsletters, correspondence, letters and maps posted on local bulletin boards, etc.).

The following issues have been identified during scoping meeting: changing the character of the Kinney Roadless Area; reduction of Northern Spotted Owl (*Strix occidentalis caurina*) and/or Old Growth habitat; management of Pacific Yew (*Taxus brevifolia*) in the Planning Area; and compliance with the implementation of the Applegate Reservoir Bald Eagle Management Area (BEMA) Plan and the Applegate Lake Management Plan.

The Forest Service is the Lead Agency for this project. Cooperators may include the US Army Corps of Engineers and the Boise Cascade Corporation (through a share/cost agreement for road construction in the area).

The draft EIS is scheduled to be filed with Environmental Protection Agency (EPA) and to be available for public review June, 1991. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the Federal Register. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the Federal Register. It is important that those interested in the management of the Rogue River National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by October, 1991. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS, and applicable laws, regulations, and policies considered in making the decision regarding the Grouse Creek Timber Sale proposal. The Forest Supervisor is the responsible official. As the responsible official he will document the decision and rationale for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: May 3, 1991.

Steven W. Deimeyer,

Forest Supervisor.

[FR Doc. 91-11598 Filed 5-15-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Questions on IRS Tax Forms for the 1992 Economic Censuses.

Form Number(s): IRS Forms 1120S; 1065; and 1040, Schedule C.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 350,000 hours.

Number of Respondents: 21,000,000.

Avg Hours Per Response: 1 minute.

Needs and Uses: The Bureau of the Census sponsors certain questions on Internal Revenue Service (IRS) forms every five years in conjunction with the economic censuses. Responses to these questions provide the Bureau with establishment counts and other information for small businesses. Additionally, we use responses to eliminate businesses too small for inclusion in the censuses, to classify businesses as full year/part year, to identify duplication in the Form 1040 Schedule C non-employer universe, and to edit related census data items. This submission requests OMB clearance for these questions on IRS Forms 1120S, 1065, and 1040 Schedule C for tax year 1992.

Affected Public: Businesses or other for-profit organizations, Small businesses or organizations.

Frequency: Every five years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 13, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-11681 Filed 5-15-91; 8:45 am]

BILLING CODE 3510-07-F

International Trade Administration

[A-570-808]

Postponement of Final Antidumping Duty Determination and Rescheduling of Public Hearing: Chrome-Plated Lug Nuts From the People's Republic of China (PRC)

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the China National Machinery & Equipment Import & Export Corporation, Jiangsu Co., Ltd. (CMEC Jiangsu), respondent in the antidumping duty investigation, to postpone the final determination as permitted in section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)). Based on this request, we are postponing our final determination as to whether sales of chrome-plated lug nuts from the PRC have been made at less than fair value until not later than September 3, 1991.

EFFECTIVE DATE: May 16, 1991.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Julie Anne Osgood, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at (202) 377-2239 or 377-0167, respectively.

SUPPLEMENTARY INFORMATION: On April 26, 1991, CMEC Jiangsu, the respondent accounting for all exports of the subject merchandise, requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2) of the Act. Accordingly, we are postponing the date of the final determination until not later than September 3, 1991.

Public Comment

We are rescheduling the public hearing announced in the Preliminary Determination of Sales at Less Than Fair Value: Chrome-Plated Lug Nuts from the People's Republic of China (56 FR 15857). Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than June 7, 1991, and rebuttal briefs no later than June 14, 1991. The public hearing will be held on June 16, 1991, at 10 a.m. at the U.S. Department of Commerce, room 1411, 14th Street and Constitution Avenue, NW., Washington, DC 20230. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: May 10, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-11682 Filed 5-15-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination: Certain Hot-Rolled D6A Alloy Steel Strip

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain hot-rolled D6A alloy steel strip.

SHORT-SUPPLY REVIEW NUMBER: 49.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a short-supply allowance for 1,985 net tons of certain hot-rolled D6A alloy steel strip under Article 8 of the U.S.-EC steel arrangement for the remainder of 1991.

EFFECTIVE DATE: May 9, 1991.

FOR FURTHER INFORMATION CONTACT: Sally A. Craig or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0165 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On April 24, 1991, the Secretary received an adequate short-supply petition from Theis Precision Steel Corporation ("Theis") requesting a short-supply allowance for 1,985 net tons of certain hot-rolled D6A alloy steel strip, which is processed into cold-rolled D6A alloy strip for use in the production of bi-metal band saws, for the remainder of 1991. This request was made under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products ("U.S.-EC steel arrangement"). Theis requested short supply for this product because no domestic mill is currently able to produce sufficient quantities of material meeting Theis' specifications and because Theis' foreign suppliers are unable to meet Theis' total need through regular export licenses. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Supply Procedures").

The requested product is a certain grade of D6A steel hot-rolled strip (black or descaled as specified by purchase order) that is suitable for electron beam welding and meets the following specifications:

Thickness range: 0.080-0.125 inch;

Width range: 10-16 inches;

Chemical Composition (Ladle Analysis): Carbon (0.45-0.50); Manganese (0.60-0.90); Phosphorus (0.015 max.); Sulfur (0.010 max., aim as low as possible); Silicon (0.10-0.25); Nickel (0.50-0.70); Chromium (0.90-1.10); Molybdenum (0.90-1.10; Vanadium (0.08-0.15); Copper (0.20 max.); Aluminum (0.05-0.10, acid soluble); Hydrogen (15 ppm max.); Nitrogen (300 ppm max.); and Oxygen (150 ppm max.);

Condition: High quality steel made by the best steelmaking practice necessary to produce an extremely clean sound steel required for good electron beam welds;

Quality Requirements of Hot-Rolled Strip:

a. *Non-Metallic Inclusion Rating*: Utilize a sampling plan as outlined under Article 6 of ASTM E45-81.

b. *Surface Quality*: Inspection of the hot acid descaled surface shall reveal no detrimental surface defects such as silvers, shingle seams, labs, cold shuts, etc. which would affect the finished cold-rolled product;

Internal Soundness: A transverse section deep etched in hot acid and examined shall show no primary or secondary pipe, excessive segregation porosity or other injurious internal defects;

Microstructure:

a. *Grain size*: The McQuaid Ehn grain size shall be fine 6-8 as determined in accordance with ASTM E112-81 Annex A-3.

b. *Decarburization*: Shall be determined on transverse specimens taken one inch from the edges and the center of the strip properly polished and etched and microscopically measured for partial and complete decarburization.

c. *General Microstructure*: Shall be typical hot band fine pearlitic structure with minimum martensite;

Edge: Shall be the natural #2 mill edge or #3 slit edge and does not have to conform to any definite contour;

Size Variation Limits:

a. *Width*: The tolerance for mill edge width shall not exceed ±0.062 inch for a width of 10 inches and ±0.094 inch for widths over 10 inches.

b. *Camber*: Shall be measured by placing an 8 foot straight edge on the concave side edge and measuring the greatest distance between the straight

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edge and the steep strip. The camber shall not exceed ¼ inch in 8 feet;

Size of Coils: The inside diameter shall be 16–24 inches. The outside diameter shall be 54 inches max. with 16 inches I.D.; however, 58 inches max. O.D. shall be allowed with 20–24 inches I.D. if the band is pickled and annealed. There shall be no fish tail ends.

Action

On April 24, 1991, the Secretary established an official record on this short-supply request (Case Number 49) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce at the above address. Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) Commerce's Short-Supply Procedures require the Secretary to apply a rebuttable presumption that a product is in short supply and to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that short-supply allowances for this product were granted in each of the two immediately preceding years; therefore, the Secretary has applied a rebuttable presumption that this product is presently in short supply in accordance with section 4(b)(4)(B)(i)(II) of the Act and § 357.106(b)(1)(ii) of Commerce's Short-Supply Procedures.

Unless domestic steel producers provided proof that they could and would produce the requested quantity of this product within the desired period of time, provided it represented a normal order-to-delivery period, the Secretary would issue a short-supply allowance not later than May 9, 1991. On April 30, 1991, the Secretary published a notice in the **Federal Register** announcing a review of this request and providing domestic steel producers an opportunity to rebut the presumption of short supply. All comments were required to be received no later than May 7, 1991. No comments were received.

Conclusion

Since the Secretary received no comments to the **Federal Register** notice by potential suppliers to rebut the Secretary's presumption of short supply for the requested product, the Secretary hereby grants, pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Procedures, a short-supply allowance for 1,985 net tons of the requested hot-rolled D6A alloy steel strip for the remainder of 1991 under Article 8 of the U.S.-EC steel arrangement.

Dated: May 9, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-11683 Filed 5-15-91; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Augusta, Georgia

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with the provisions of Executive Order 11625, the Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of 10/1/91 to 09/30/92. The MBDC will operate in the Augusta, Georgia, Metropolitan Statistical Area (MSA). The first year cost for MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations (50 points); the resources available to the firm in providing management and technical assistance (10 points); the firm's proposed approach to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). It is advisable that applicants have an existing office in the geographic region for which they are applying.

An applicant must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Federal Government are made to pay the debt.

Applicants are subject to Governmentalwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on an application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Section 319 of Public Law 101–121 generally prohibits recipients of appropriated funds from lobbying the Executive or Legislative Branches of Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required. Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs", is not applicable to this program.

CLOSING DATE: The closing date for applications is June 21, 1991.

Applications must be postmarked on or before June 21, 1991.

ADDRESSES: Proposals will be reviewed by the Dallas Regional Office. The mailing address for submission is: Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, 214/767–8001.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of the Atlanta Regional Office, 404/730–3300. In order to request an RFA and to receive additional information, contact U.S. Department of Commerce, MBDA, 401 West Peachtree Street, Room 1930, Atlanta, GA 30308.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree St., NW., room 1930, Atlanta, Georgia, June 5, 1991, at 9 a.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: May 10, 1991.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 91–11594 Filed 5–15–91; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications; Columbus GA

May 10, 1991.

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with the provisions of Executive Order 11625, the Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of 10/1/91 to 09/30/92. The MBDC will operate in the Columbus, Georgia, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations (50 points); the resources available to the firm in providing management and technical assistance (10 points); the firm's proposed approach to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). It is advisable that applicants have an existing office in the geographic region for which they are applying.

An applicant must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Federal Government are made to pay the debt.

Applicants are subject to Governmentalwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on an application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Section 319 of Public Law 101–121 generally prohibits recipients of appropriated funds from lobbying the Executive or Legislative Branches of Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required. Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs", is not applicable to this program.

CLOSING DATE: The closing date for applications is June 21, 1991.

Applications must be postmarked on or before June 21, 1991.

ADDRESSES: Proposals will be reviewed by the Dallas Regional Office. The mailing address for submission is: Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, 214/767–8001.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of the Atlanta Regional Office, 404/730–3300. In order to request an RFA and to receive additional information, contact U.S. Department of Commerce, MBDA, 401 West Peachtree Street, Room 1930, Atlanta, GA 30308.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Dated: May 10, 1991.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street NW., room 1930, Atlanta, Georgia, June 5, 1991, at 9 a.m.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 91–11595 Filed 5–15–91; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications: Indianapolis, Indiana

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period,

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subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period September 1, 1991 to August 31, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Indianapolis, Indiana geographic service area. The award number of this MBDC will be 05-10-01009-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by Regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Federal Government are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on an application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Section 319 of Public Law 101-121 generally prohibits recipients of appropriated funds from lobbying the Executive or Legislative Branches of Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

CLOSING DATE: The closing date for applications is June 17, 1991. Applications must be postmarked on or before June 17, 1991.

MAILING ADDRESS FOR SUBMISSION: Proposals will be reviewed by the New York Regional Office. The mailing address for submission is: New York Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 26 Federal Plaza, room 3720 New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, suite 1440, Chicago, Illinois, 60603, 312/353-0182.

Statutory Authority: 15 U.S.C. 1512.

Funding Authority: Executive Order 11625, October 13, 1971.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

David Vega,

Regional Director, Chicago Regional Office.

Date: May 10, 1991.

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 55 East Monroe, suite 1440, Chicago, Illinois, June 3, 1991 at 10:00 a.m.

[FR Doc. 91-11507 Filed 5-15-91; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications: Nashville, Tennessee

May 10, 1991.

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with the provisions of Executive Order 11625, the Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estmiated at $194,118 for the project performance of 10/1/91 to 09/30/92. The MBDC will operate in the Nashville, Tennessee Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations (50 points); the resources available to the firm in providing management and technical assistance (10 points); the firm's proposed approach to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). It is advisable that applicants have an existing office in the geographic region for which they are applying.

An applicant must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Federal Government are made to pay the debt.

Applicants are subject to Governmentalwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on an application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Section 319 of Public Law 101-121 generally prohibits recipients of appropriated funds from lobbying the Executive or Legislative Branches of Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contractors, Grants, Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required. Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs", is not applicable to this program.

CLOSING DATES: The closing date for applications is June 21, 1991. Applications must be postmarked on or before June 21, 1991.

ADDRESSES: Proposals will be reviewed by the Dallas Regional Office. The mailing address for submission is: Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, 214/767-8001.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of the Atlanta Regional Office, 404/730-3300. In order to request an RFA and to receive additional information, contact U.S. Department of Commerce, MBDA, 401 West Peachtree Street, Room 1930, Atlanta, GA 30308.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree St., NW., room 1930, Atlanta, Georgia, June 5, 1991, at 9 a.m.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

Dated: May 10, 1991.

[FR Doc. 91-11508 Filed 5-15-91; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Dr. Randall W. Davis, Dr. Patrick J. Butler (P477)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. Applicants:

Dr. Randall W. Davis, Department of Marine Biology, Texas A & M University, P.O. Box 1675, Galveston, TX 77553.

Dr. Patrick J. Butler, Comparative Physiology, School of Biological Sci., University of Birmingham, Birmingham, U.K. B15 2TT.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Eight (8) California sea lions (*Zalophus californianus*).

4. Type of Take: The applicant proposes to conduct scientific studies on rehabilitated beached or stranded California sea lions deemed suitable for release. The sea lions are currently held at Sea World, San Diego. The activities will occur at Scripps Institute of Oceanography and the animals will be released upon completion of the studies. The study will estimate metabolic rate using the doubly labelled water method; animals will be weighed and blood sampled for determination of background levels of oxygen-18 and deuterium. To monitor heart rate, the animals will be fitted with a recorder and electrode patches. The relationship of heart rate to metabolic rate will be determined from direct respirometry while the animals swim in a flume at various speeds and water temperatures. The purpose of the study is to test a new data-storage system, which will be used in the field, with the objective of accurately determining detailed energy budgets for fur seals at the BAS laboratories on Bird Island, South Georgia.

5. Location and Duration of Activity: This application pertains only to the validation studies using sea lions at Scripps Institute of Oceanography over a 2-year period.

The arrangements and facilities for transporting and maintaining the marine mammals requested in this application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7234, Silver Spring, Maryland 20910, within 30 days of the

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publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427-2289);

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 (213/514-6196); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702 (813/893-3141).

Dated: May 10, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-11581 Filed 5-15-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Modification; NMFS Southeast Fisheries Science Center (P77#51)

Notice is hereby given that the National Marine Fisheries Service, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, Florida 33149 has requested a modification of Permit No. 738 issued under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 738 authorized the Holder to collect biopsy samples from all non-endangered species encountered during the Gulf of Mexico marine mammal survey cruises sponsored by the Southeast Fisheries Science Center. Additionally, the Permit authorized sampling and monitoring of Atlantic bottlenose dolphins throughout the NMFS Southeast Region.

The modification to the Permit would allow a take by harassment of up to 10,000 Atlantic bottlenose dolphin (*Tursiops truncatus*) annually throughout the NMFS Southeast Region as needed to conduct low-level monitoring of bottlenose dolphin stocks. Monitoring will include repeated approach during photo-identification activities.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427-2289); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Dated: May 10, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-11582 Filed 5-15-91; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Request for Comments for the Advisory Commission on Patent Law Reform

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice; request for public comments.

SUMMARY: The Advisory Commission on Patent Law Reform Commission will be submitting a report to the Secretary of Commerce by August 1992 on the state of, and the need for, any reform in the United States patent system. To ensure that the Commission recommendations represent a true consensus of the American public and the patent user community, public comments are invited on the issues to be considered by the Commission.

DATES: Written Comments must be submitted by July 15, 1991.

ADDRESSES: Submit written comments to E.R. Kazenske, Executive Assistant to the Commissioner, U.S. Patent and Trademark Office, Box 15, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Jeff Kushan, Commission Specialist, or Paul Salmon, Commission Specialist; U.S. Patent and Trademark Office, Box 15, Washington, DC 20231. Phone: (703) 557-3271.

SUPPLEMENTARY INFORMATION: The Commission requests public comments on the issues set forth below. Each issue should be individually addressed. Submissions should be concise statements of position, including supporting material where relevant, and should be limited to the questions framing each issue. All submissions must include the name and/or professional affiliation of the contributor. To ensure full consideration by the Commission, the submissions should be received by July 15, 1991.

I. Protection of Computer Related Inventions

The principal issue to be examined is whether the current U.S. patent laws provide adequate and appropriate protection of novel computer program-related inventions. The relationship of patent protection for computer program-related inventions to other forms of intellectual property protection will also be considered.

(a) What problems, if any, exist in the current framework of laws which protect computer-related inventions?

(b) What changes, if any, should be made in the domestic and international systems for protection of computer-related inventions?

(c) The Supreme Court has found that new and useful computer program-related inventions are eligible for patent protection. What rationale, if any, exists in law or policy for Congress to now remove patent protection for this field of science and technology?

(d) What evidence exists, if any, that patents issued on new and useful computer program-related inventions do or do not provide an incentive to conduct research and development on new products, and that such patents do or do not promote the development of new technology?

(e) What conflict or overlap is created by the existence of a patent for a new and useful computer program-related invention and either (1) a copyright for original expression embodied in the computer program fixed therein, or (2) a mask work in the invention; and if any exists, is it harmful or helpful?

(f) Should Congress legislate the boundary for patents in the computer program area, or is it preferable to permit the courts to continue to define the outer boundary?

(g) Are the tests of patentability for computer program-related inventions implemented by the USPTO in the notice published in the *Official Gazette* on August 9, 1989, consistent with the patent statute and/or court decisions? If there are inconsistencies, what are they?

(h) What concrete steps should be taken, if necessary, to revise the PTO examination procedure for computer program-related inventions in order to achieve high-quality issued patents, particularly with respect to:

1. Providing patent examiners with complete, up-to-date prior art;

2. Providing patent examiners with training in this field to raise/maintain their expertise;

3. Recognizing computer science as a "science" for the purpose of qualification to take the PTO registration examination and recruiting computer scientists as patent examiners;

4. Providing an optimum system of classification to maximize the searchability of inventions in this field; and

5. Taking steps to reduce the PTO pendency time for patent applications in this field?

(i) What procedures, not currently available, should be considered to correct problems caused by improperly granted patents (i.e., post grant oppositions, court nullification), and how would these procedures particularly relate to computer program-related inventions?

II. Federal Protection for Trade Secrets

Trade Secret statutes now exist only at the state level, and are not uniform in the states wherein they exist.

The principal issue to be examined is whether Federal Statutory protection should be enacted and if so, how it should relate to state statutes

(a) Is there a need for a Federal law on trade secrets? What problems have been caused by the absence of such a law? What problems would such a law create?

(b) If there is need for a Federal trade secrets law, on what legal theories (i.e., tort, contract, etc.) should it be based? How should it relate to state laws and to what extent, if any, should it preempt state laws?

(c) If there are specific areas of trade secrets that are inadequately protected by present state laws or by their nature cannot be adequately protected by state laws, would it be possible to enact Federal laws in those areas only, leaving to state law what is currently adequately protected? Would such a bifurcated system create more problems that it would solve?

III. Cost and Complexity of Patent Enforcement

Although many patents are enforced through negotiation, resort is frequently made to either litigation in the Federal district courts or to arbitration or one of several other forms of alternative dispute resolution (ADR).

Patent litigation is said to be complex, expensive, unpredictable and heavily dependent on the ability of the judge to exert fair and effective control. Arbitration and other forms of ADR would seem to offer significant advantages in many types of dispute, but are not frequently used.

(a) Is the cost of patent enforcement too high? If so, what can be done within the existing Federal Rules to achieve determinations of validity, infringement and damages more efficiently and economically? Which, if any, of the Federal Rules should be changed to improve patent litigation, and how? Would provisions in the Civil Justice Reform Act of 1990 improve patent litigation?

(b) Is there a need for a "small claims" type of patent proceeding in the Federal courts, with simplified procedures and limited recovery? If so, describe the characteristics such a proceeding should have, e.g., how procedures would be simplified, what the limits on recovery should be, etc.

(c) Should the use of arbitration and other forms of ADR be increased? How? What, if any, deterrents are there to using ADR and how can they be overcome? What additional forms of ADR should be considered for patent disputes?

IV. Grounds for Holding Patents Unenforceable

In the United States, a party charged with infringement of a patent can raise an equitable defense of unenforceability which, if sustained, may preclude exercise of the patent rights even though the patent is valid and infringed. Historically, the defense has usually been based on alleged misconduct occurring after the patent is granted, e.g., restrictive conditions in patent licensing agreements.

In more recent years, conduct before the Patent and Trademark Office has frequently been claimed to give rise to the defense, e.g., misrepresentations or alleged failure to comply with the standard for disclosing to the Office information in the patent applicant's possession. Such claims, some argue, are often frivolous and unsupported.

(a) What are the benefits and drawbacks of permitting an unenforceability defense in patent litigation, based on alleged misconduct either before or after patent grant?

(b) Should any change be made in the present Patent and Trademark Office standard relating to the submission of prior art information, recognizing the need of the Office to consider information bearing on patentability before the patent issues?

(c) Are existing judicial procedures and standards for resolving unenforceability defenses adequate? If not, is legislation desirable and, if so, what kind? Discuss any other changes believed desirable.

(d) Once inequitable conduct has been found, whether based on conduct before or after grant, is unenforceability the appropriate remedy? If not, what other types of remedies might be applied and in what types of situations?

V. Licensee Challenges to Patent Validity

Since 1969, when the U.S. Supreme Court in *Lear* v. *Adkins*, 395 U.S. 653, abrogated the doctrine of licensee estoppel, the courts have been dealing *ad hoc* with a variety of issues flowing from that decision. These include the right of the patent owner to terminate the license agreement and sue for patent infringement, the right of the licensee to recover royalties should the patent be declared invalid, the extent to which the parties should be permitted to contract in advance for the various eventualities, etc.

It is asserted by some that this has created considerable uncertainty. Some would provide for all post-*Lear* eventualities by statute. Others would permit a licensor and licensee to bargain for provisions necessary to protect their respective interests.

(a) Is legislation desirable to clarify the results of the *Lear* decision? If so, what should it provide?

(b) Should any restraints, beyond the normal law of contracts, be imposed on the rights of licensee and licensor to bargain for the results of a potential challenge by the licensee of the licensed patent's validity?

IV. First-to-File System

In the United States patent system, when more than one patent application

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is filed claiming the same invention, the patent is awarded to the applicant who establishes the earliest acts of invention in the United States and who has not thereafter suppressed, abandoned or concealed his invention ("first-to-invent" system). In international treaty negotiations aimed at more uniform patent laws throughout the world, particularly the World Intellectual Property Organization (WIPO) patent harmonization proceedings, the United States is being urged to adopt a different procedure, almost universally used in other countries, under which we would award the patent to the first applicant to file a patent application for the invention ("first-to-file" system). The principal issue presented is whether the United States should change from a first-to-invent procedure to a first-to-file procedure (1) only as part of a comprehensive treaty to harmonize all of the world's patent systems, (2) without regard to a harmonization treaty, or (3) not at all. The following questions are designed to help frame this issue:

(a) What benefits do United States patent holders and the public realize from the first-to-invent procedure? What detriments are there, particularly those that might not be addressed by further simplification of the procedure to determine priority of inventorship?

(b) What benefits are United States patent holders and the public expected to realize from a first-to-file procedure? What deteriments should be expected?

(c) What benefits are United States patent holders and the public expected to realize from a harmonization treaty? What detriments should be expected?

(d) If the United States retains the first-to-invent procedure, a partial step toward harmonization could be a change permitting applicants to establish dates of invention by reference to knowledge, or sue, or other activity in foreign countries in addition to such activities in the United States. Should such an expansion of admissible evidence of inventorship be adopted (1) only as part of a comprehensive treaty to harmonize all of the world's patent systems, (2) without regard to a harmonization treaty, or (3) not at all? Should such an expansion of admissible evidence of inventorship be adopted (1) only in respect to foreign countries that provide for practicable and effective judicial discovery of foreign inventorship activity, (2) only on a limited basis reflecting credibility of the foreign evidence, or (3) without regard to the legal procedures available in foreign countries?

(e) If the United States adopts a first-to-file procedure, should it condition this adoption on a grace period during which activities of the inventor or derived through the inventor will not be a bar to patentability by the inventor? Should the oath and its attendant sanctions be strengthened in respect to the requirement of originality?

(f) If the United States adopts a first-to-file procedure, would it be desirable to codify the rights, if any, of a prior user of the invention? If so, should such a user have (1) no defense or rights in respect to the subsequent patent, (2) a personal exemption to continue existing commercial use, or (3) some other right? Should the prior user rights, if any, extend to one not an actual user, but who has made effective and serious preparations for such use? Should it matter if the prior user had elected to practice the invention as a trade secret? Should any prior user right be transferrable to someone else? Should any such right extend only to use in the United States (a feature in other patent systems)? Should any prior user right extend to such users who were not originators of the invention?

(g) Would a first-to-file patent procedure run afoul of the reference to "inventors" in Article I, Section 8, Clause 8 of the Constitution?

VII. Automatic Publication of Applications

In the United States patent system, patent applications are held in confidence by the Patent and Trademark Office and not published until a patent is granted. Patent rights begin on the date of grant. In international treaty negotiations aimed at more uniform patent laws throughout the world, it has been proposed that patent applications be published and confer provisional protection commencing on the date of publication. The Japanese and European patent systems provide for publication of patent applications 18 months after their effective filing dates and feature provisional protection, generally a right to compensation from infringers with actual notice. The principal issue is whether United States patent applications should be published before grant of a patent (1) only as part of a comprehensive system to harmonize all of the world's patent system, (2) without regard to a harmonization treaty, or (3) not at all. The following questions are designed to help frame this issue:

(a) What benefit do United States patent holders and the public realize from keeping patent applications confidential until a patent is granted? What are the detriments?

(b) What benefits are United States patent holders and the public expected to realize from a procedure requiring automatic publication of patent applications? What are the detriments?

(c) Should U.S. patent applications be published by some fixed time measured from their U.S. or foreign priority filing dates? Does the need for a pre-grant publication differ depending upon whether patent terms are measured from filing date or issue date?

(d) If pre-grant publication becomes part of the U.S. patent system, is there a need for provisional protection starting from the date of publication? Does the need for provisional protection depend upon how the term of the patent is measured?

(e) If provisional protection is appropriate, what should it include?

VIII. Patent Term

In the United States patent system the term of a patent is 17 years from the date when the patent is granted. Many other countries provide a 20-year term for their patents from the date when the application for the patent was filed. The appropriate term for a patent is under consideration in negotiations aimed at more uniform patent laws throughout the world, as well as in the negotiations on the Trade-Related Aspects of Intellectual Property (TRIPs) in the current General Agreement on Tariffs and Trade (GATT) Round. The principal issue is whether the United States should measure the life of a patent from the date when the application for it was filed (1) only as part of comprehensive treaties to harmonize all of the world's patent systems, (2) without regard to harmonization treaties, or (3) not at all. The following questions are designed to help frame this issue.

(a) What benefits do United States patent holders and the public realize from measuring the life of a patent from its date of grant? What detriments are there?

(b) What benefits are United States patent holders and the public expected to realize from a procedure that would measure the life of a patent from its filing date? What would the detriments be?

(c) If the term of a United States patent is to be measured from the filing date, should the term be extended to compensate for delays due to (1) secrecy orders, (2) marketing delays due to FDA or EPA regulatory procedures, (3) NASA or DOE ownership proceedings, (4) appeals, or (5) any other delays outside of the control of the patent applicant?

(d) Should a United States patent application be permitted to rely upon the date of more than one foreign-filed application for priority, and, if so, should the term of the United States patent be measured from the earliest priority date (recognizing that a modification of the Paris Convention probably would be necessary for adoption of any procedure to measure the life of a patent from any foreign priority date)?

(e) If the term of a United States patent is to be measured from a filing date, should that date be (1) the earliest United States filing upon which priority is based, (2) the earliest filing upon which priority is based, be it foreign or United States filing date, or (3) the filing date of the application on which the patent is granted?

(f) If the United States adopts a patent term based upon a filing date, should that term be 20 years? If not, how long should the term be?

IX. Deferred Examination

United States patent laws permit an applicant to petition for a deferral of the examination process only for a short period, and then only for "good and sufficient cause." Deferred examination at the option of the applicant is a feature of several foreign patent systems.

(a) What would be the benefits of a procedure whereby a patent application is not examined in due course, but instead, the applicant is given the option, for a period of years, to request that the application be examined? What would be the detriments?

(b) If optional deferred examination were adopted, what necessary or desirable companion changes (such as mandatory publication of applications) should be made, if any, in the United States patent law or procedures? Should a third party have the right to request examination?

(c) If optional deferred examination were adopted, should a patent application be deemed abandoned if the applicant fails to request examination within a fixed time after filing? Should the applicant be permitted thereafter to re-file an application for the same invention?

(d) Should the applicant have the option, in lieu of requesting formal examination, to obtain a lower-cost patent of shortened term and reduced enforcement rights?

X. In re Hilmer

Under the interpretation of United States patent law in the case of *In re Hilmer* (and other cases), a United States patent has a patent-defeating effect (becomes a "reference") as of the earliest filing date in the United States to which it is entitled, but not the earliest foreign filing date to which it is entitled. In other patent systems, patents or applications are effective as references as of their earliest filing date, be it domestic or foreign.

(a) If the effective date of a United States patent as a reference should be based on a foreign application filing date, should that foreign priority date be the effective date for anticipation purposes only and not for obviousness purposes so that the *Hilmer* rule is partially retained in that the United States patents with a foreign priority date are effective only as a reference for obviousness purposes as of the filing date in the United States?

(b) Is there rationale for abolishing the *Hilmer* rule totally so that foreign-origin United States patents will be effective as references for all purposes as of their foreign priority filing dates?

(c) What changes in procedure, if any, should the Patent and Trademark Office adopt to ensure adequate consideration of the disclosures in foreign-origin United States patents in the examination of United States patent applications?

(d) Should bilateral reciprocity be applied when deciding whether or not a United States patent is entitled to an earlier foreign filing priority date in a particular country for reference purposes?

XI. Reexamination

The reexamination statute permits any person to file, with the requisite fee, a request for the reexamination of a patent in view of prior art limited to prior patents and printed publications. Issues of inequitable conduct, public use and sale, and the like, may not be addressed in reexamination. If the USPTO determines that the request raises "a substantial new question of patentability," the patent is reexamined under the same procedures applicable to the examination of new applications and concludes with the issuance of a reexamination certificate. The reexamination process is basically *ex parte* in nature, with very limited participation by a third party requestor. Since the present system of reexamination was established by Congress in 1980, there have been numerous proposals to modify reexamination to increase the degree of participation of the requestor and/or to enlarge the scope of reexamination.

(a) Do you believe the present reexamination system is working effectively? If not, identify each deficiency that you believe exists in the system.

(b) Do you believe that the present reexamination system should be modified to permit complete *inter partes* participation by a protestor at all phases of the reexamination proceeding? If so, explain why. If not, explain why.

(c) If your answer to question (b) is "no," to what extent, if any, should third parties be allowed greater participation than at present in reexamination proceedings?

(d) Would you be in favor of modifying the present reexamination system to permit or require one or more of the following:

(1) Permitting a reexamination petitioner other than the patentee to comment on any claims in their finally allowed form, so as to provide the examiner with the petitioner's views prior to a final decision as to whether to issue a reexamination certificate?

(2) Permitting a reexamination petitioner to appeal both to the PTO Board of Patent Appeals and Interferences and to the Federal Circuit from any final decision favorable to a patentee in a reexamination proceeding?

(3) Conditioning the appeal noted in subparagraph (2) on the petitioner's agreement to forego litigating in any other forum any issue raised or which could have been raised on appeal?

(4) Precluding an accused infringer from relying as a defense on any prior art of printed publication unless that prior art or printed publication has been previously considered by the PTO either during the original prosecution of a patent or in a reissue or reexamination proceeding involving that patent?

(5) Precluding a party or its privies, against whom a judgment of invalidity of a patent claim or claims has been entered, from seeking or maintaining reexamination of that claim or claims?

(6) Requiring that claims of a reexamined application be construed under the same standards as those claims would be construed in a district court infringement proceeding?

(e) Should the scope of issues considered by the examiner during reexamination be broadened? If so, how (e.g., by permitting consideration of public use or on sale bars, section 112 issues, inequitable conduct, etc.)?

(f) In what other ways, if any, should reexamination proceedings be changed?

XII. Assignee Filing of Applications

The United States currently requires the actual inventor or inventors to file patent applications, subject to a few limited exceptions such as death, unavailability, or insanity. Each application must be accompanied by an oath from the actual inventor which states that the applicant believes he was the first to invent the claimed invention. Nearly all foreign patent systems permit the owner of an invention (whether the

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actual inventor or the assignee) to file the patent application without an oath signed by the inventor.

(a) Should the United States allow filing of patent applications by assignees?

(b) What benefits and drawbacks would occur by allowing filing of patent applications by assignees?

(c) What contours should an assignee filing proposal have, including possible safeguards for inventors and the public?

XIII. PTO Funding and Fee Structure

The Patent and Trademark Office historically recovered its costs through a combination of fees and funding from general tax revenues. The major patent fees are filing fees, and issue and maintenance fees in a two-tier system with lower rates for small entities. These fees have undergone substantial increases recently as Congress and the Administration have changed from a policy under which applicants and patent owners paid only a portion of these costs to one under which they pay full costs.

(a) What impact, if any, will a system in which PTO costs are almost entirely user-fee funded have on (1) U.S. inventors generally, (2) on small entities, including independent inventors, and (3) the public?

(b) What realistic and practical alternatives can you suggest, other than user-fee funding, for funding PTO operations?

(c) Congress historically has provided fiscal oversight for the PTO. Will this attention by Congress continue at the same level in the absence of a significant allocation of taxpayer funds and, if not, what other fiscal oversight is appropriate?

(d) Should the more public-oriented functions of the PTO, e.g., public search room operations, be funded by user fees, or should such operations be supported by appropriated funds?

(e) Would it be desirable to increase the average application pendency time in the PTO to a level above 18 months if such increase permitted a significant reduction in PTO fees?

(f) What are the advantages and disadvantages of retaining a two-tier fee structure?

(g) Should large entities subsidize small entities in a two-tier structure, or should public funds be used to supplement small entity fees?

(h) As part of a two-tier fee structure, what would the pros and cons be of (1) redefining a small entity to include fewer than 500 employees, (2) providing a tax credit (e.g., 50%) in lieu of part or all of the 50% subsidy for small entities, (3) denying 50% subsidy benefits, on a need basis, to small entities who receive a defined minimum (e.g., $200,000) in technology transfer fees during the preceding year, and (4) imposing a flat (e.g., 10%) across-the-board fee increase if this permitted the continuance of the current small entity reduced fee structure?

(i) A major current cost of the PTO is that of automating the search files and system. How should this cost be recovered, if not through fees?

(j) Is there a mechanism in the Government for long-term investments, such as computer equipment, to be capitalized and paid off over their useful life? Would it be possible and desirable to have such investments paid for by a bond over a period of years (e.g., 20 years) instead of by user fees?) Should the current relation among filing, issue and maintenance fees be changed and, if so, how? Are there other fee strategies which will better balance the need to recover costs and the need to keep the patent system accessible to inventors?

(k) Should the current relation among filing, issue and maintenance fees be changed and, if so, how? Are there other fee strategies which will better balance the need to recover costs and the need to keep the patent system accessible to inventors?

(l) In discussions of patent harmonization, the question of pre-issuance publication of U.S. patents has been raised. Given the possible reluctance of Congress to fund the costs of such publication from general revenues, would you support such publication if its cost were totally user-funded?

Dated: May 8, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 91-11569 Filed 5-15-91; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Acquisition Streamlining; Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Acquisition Streamlining as published in the **Federal Register** (vol. 56, No. 76, page 16075, Friday, April 19, 1991, FR Doc. 91-9235) has been canceled.

Dated: May 10, 1991.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-11587 Filed 5-15-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Sensors Panel of the Ad Hoc Committee Study of Off-Board Sensors—Summer Study 1991 will meet on 4–6 June 1991 from 8 a.m. to 5 p.m. at the Pentagon, Washington, DC, 20330-5430.

The purpose of these meetings is to receive presentations of Air Force projects and programs relevant to the concept using off-board sensors data to support air combat operations. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Connor,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-11564 Filed 5-15-91; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Fusion Panel of the Ad Hoc Committee Study of Off-Board Sensors—Summer Study 1991 will meet on 4–7 June 1991 from 8 a.m. to 5 p.m. at the Pentagon, Washington, DC, 20330-5430.

The purpose of these meetings is to receive presentations of Air Force projects and programs relevant to the concept using off-board sensors data to support air combat operations. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Connor,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-11565 Filed 5-15-91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Availability of a Final Environmental Impact Statement for the Presidio of San Francisco, California, Base Closure

AGENCY: U.S. Army, DOD.

SUMMARY: The Presidio of San Francisco, including Letterman Army Medical Center, was recommended for closure by the Defense Secretary's Commission on Base Realignment and Closure. The Commission specifically recommended: the relocation of Headquarters, Sixth Army to Fort Carson, CO; the Letterman Army Institute of Research to Fort Detrick, MD; and redistribution of the medical assets of Letterman Army Medical Center throughout the Army medical force structure. This document focuses upon the environmental and socioeconomic impacts and mitigations associated with the planned closure of the Presidio of San Francisco and realignment activities at Fort Bragg, NC; Fort Carson, CO; Fort Detrick, MD; Fort Gordon, GA; Fort Lewis, WA; Fort Ord, CA; Fort Shafter, HI; Letterkenny Army Depot, PA; Oakland Army Base, CA; Walter Reed Army Medical Center, Washington, DC; Fitzsimons Army Medical Center, CO; Fort Benning, GA; Travis Air Force Base, CA; Fort Campbell, KY; Fort Sam Houston, TX; Fort Irwin, CA; Fort Jackson, SC; Fort Knox, KY; and Fort Leonard Wood, MO.

There is one significant socioeconomic impact associated with the closure of the Presidio that cannot be fully mitigated. Letterman Army Medical Center supports a large patient population capacity for space available military health care will be reduced in the Bay area for these eligible beneficiaries. While CHAMPUS and MEDICARE will partially offset health care costs, the closure of Letterman Army Medical Center will result in increased health care costs to military retirees and their dependents. All other potentially significant impacts can be mitigated to less than significant.

No long-term adverse environmental impact is expected at the Presidio as a result of realignment and closure implementation. A continuing concern for future use of the Presidio is the protection of the historic properties, designated a National Historic Landmark. The excessed Presidio property will be restored, to include remediation of toxic and hazardous contaminants, to protect public health and the environment.

The Final EIS will be available for comment for 30 days, after which the Assistant Secretary of the Army for Installations, Logistics and Environment will consider all comments before making a final decision. The public can obtain a copy of the Final EIS by writing to: Commander; U.S. Army Corps of Engineers, Sacramento District; attn: Installation Support Section (Mr. Bob Verkade); 650 Capitol Mall; Sacramento, California 95814-4794, or by calling Mr. Bob Verkade at (916) 551-2254. Written comments should be submitted to the same address.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 91-11541 Filed 5-15-91; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 20-21 June 1991.

Time: 0800-1630 hours each day.

Place: Fort Knox, Kentucky.

Agenda: The Army Science Board (ASB) 1991 Summer Study on Army Simulation Strategy will hold a two-day meeting. The meeting will include technical programmatic briefings and site visits of simulations and simulators in the area of modeling and simulation. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-11618 Filed 5-15-91; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meetng:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 11 June 1991.

Time: 0800-1630 hours.

Place: Sikorsky Aircraft, Stratford, CN.

AGENDA: The Army Science Board (ASB) 1991 Summer Study on Army Simulation Strategy will hold a one-day meeting. The meeting will include technical programmatic briefings and site visits of PM Commanche Simulations/Simulators in the area of modeling and simulation. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-11621 Filed 5-15-91; 8:45 am]

BILLING CODE 3710-8-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates/Time of Meeting: 5-6 June 1991.

Time: 0900-1600 Hours, 5 June, 0900-1400 Hours, 6 June.

Place: Picatinny Arsenal, New Jersey.

Agenda: The Army Science Board Systems Issue Group is conducting a study on Liquid Propellant Advanced Field Artillery Systems. This group will meet for discussions focused on liquid propellant technical and developmental maturity, critical test analyses, propellant properties and composition, production, and operational challenges. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-11622 Filed 5-15-91; 8:45 am]

BILLING CODE 3710-8-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 13 June 1991.

Time: 0800-1630 hours.

Place: McDonnell Douglas Helicopter, Mesa, Arizona.

Agenda: The Army Science Board (ASB) 1991 Summer Study on Army Simulation Strategy will hold a one-day meeting. The meeting will include technical programmatic briefings and site visits of Apache and Longbow Apache Simulations/Simulators in the area of modeling and simulation. The meeting will be open to the public. Any interested person may attend, appear before,

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or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-11623 Filed 5-15-91; 8:45 am]

BILLING CODE 3710-8-M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center Grant; Financial Assistance Award to North Slope Borough

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of a noncompetitive financial assistance application for a grant award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(D) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 12-month grant to the North Slope Borough, Barrow Gas Field Development Project, P.O. Box 1120, Barrow, AK 99723, with an associated budget of approximately $84,000.

FOR FURTHER INFORMATION CONTACT: Beverly J. Harness, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4089, Procurement Request No. 21-91MC28136.000.

SUPPLEMENTARY INFORMATION: The pending award is based on an application for a research project to assess the Walakpa Field for potential production of gas from hydrate deposits or from the gas trapped by the hydrate deposits. The study will evaluate future opportunities in reservoir production engineering. This research effort will be important in aiding the United States in achieving its goals of reducing its dependence on foreign oil and will aid in the increase of the U.S. energy reserves. In view of the expertise of the personnel, ownership of the land, and the extensive background data available at the North Slope Borough to be dedicated to this effort and the enhanced benefits to be received by the public because of DOE's financial support, it has been determined that it is appropriate to award this grant to North Slope Borough on a noncompetitive basis.

Issued: May 7, 1991.

Louis L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 91-11661 Filed 5-15-91; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center Cooperative Agreement; Financial Assistance Award to University of Utah

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of a noncompetitive financial assistance renewal application for a cooperative agreement award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2), the DOE, Morgantown Energy Technology Center gives notice of its plans to award a Cooperative Agreement to University of Utah, Office of Sponsored Projects, 309 Park Building, Salt Lake City, Utah 84112. The Cooperative Agreement will cover a twelve (12) month research project with an associated budget of approximately 1.1 million, including the total cost sharing by the Participant and other parties of approximately 14 percent.

FOR FURTHER INFORMATION CONTACT: Beverly J. Harness, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4089, Procurement Request No. 21-91MC20288.501.

SUPPLEMENTARY INFORMATION: The pending award is based on an unsolicited renewal application for continuing work necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on the continuity or completion of the activity. The primary objective is to advance the technologies of the water-assisted and modified water-assisted, fluidized bed, fluidized-bed coupled heat-pipe combustor, sub and super critical solvent and rotary kiln bitumen extraction processes to the levels where evaluations of their respective commercial potentials are possible. In view of the previous federally sponsored research completed in this area, technical expertise of personnel, and ownership of patents on numerous recovery processes at the University of Utah, it has been determined that it is appropriate to award this Cooperative Agreement to the University of Utah on a noncompetitive basis.

Issued: May 7, 1991.

Louis L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 91-11662 Filed 5-15-91; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Consent Order With Eason Drilling Co. and ITT Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE), Eason Drilling Company (formerly Eason Oil Company) (Eason) and ITT Corporation (ITT). The agreement proposes to resolve matters relating to Eason's compliance with the federal petroleum price and allocation regulations for the period November 1, 1973 through December 31, 1979 (the period covered by the Consent Order). If this Consent Order is approved, ITT shall pay to the DOE on behalf of Eason the sum of $7,000,000 within 30 days from the effective date of the Consent Order. The DOE's Office of Hearings and Appeals will be petitioned to implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges would have the opportunity to submit claims for payment.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this notice. ERA will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, seek to renegotiate the agreement, or reject the settlement. DOE's final decision will be published in the Federal Register, along with an analysis of the written comments, as well as a discussion of any other considerations that were relevant to the final decision.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-1688.

SUPPLEMENTARY INFORMATION: During the period covered by the Consent Order, Eason owned all or part of several natural gas processing plants. Eason also owned a substantial minority interest in a plant which, in addition to producing natural gas liquids and natural gas liquid products (NGLs/NGLPs), refined crude oil condensate into motor gasoline, kerosene and gas oil. Eason sold these products at prices governed by the federal petroleum price and allocation regulations. Accordingly, Eason was subject to the jurisdiction of DOE.

DOE conducted an audit to determine Eason's compliance with the federal petroleum price and allocation statutes and regulations. As a result of this audit, disputes arose between ERA and Eason concerning Eason's compliance with applicable regulations.

ERA issued a Proposed Remedial Order (PRO) to Eason on September 14, 1984. The PRO alleged that during the period covered by the Consent Order, Eason failed to calculate correctly its increased costs, prices, and recoveries of NGLs/NGLPs and refined petroleum products under the applicable regulations. The PRO also alleged that as a holder of a substantial minority interest in a plant which produced refined products from crude oil condensate, Eason was subject to the refiner pricing regulations of subpart E. Eason vigorously contested the PRO before the Office of Hearings and Appeals (OHA) in Case No. HRO-0254. Eason raised a number of objections to the manner in which ERA applied the regulations in determining that violations occurred, as well as other defenses to the charges. The principal matter in dispute is the relationship of the regulations of subpart K, governing gas processors, to Subpart E, governing refiners of petroleum products.

On December 6, 1990, OHA modified the PRO and issued it as a Remedial Order. OHA held that Eason was properly classified as a refiner and was required to calculate its maximum allowable prices for NGLs/NGLPs pursuant to subpart E. OHA modified the PRO to allow Eason to use the imputed price provision for the residue natural gas from new gas streams in calculating shrinkage costs and directed ERA to revise the overcharges in accordance with that modification. As recalculated, Eason's overcharges totaled $3,093,100 in principal amount, for a total potential liability of $12,546,615.36 including interest.

On January 4, 1991, Eason appealed the Remedial Order to the Federal Energy Regulatory Commission where that matter is pending in Docket No. RO91-2-000.

ERA has preliminarily agreed to the proposed settlement amount after assessing the litigation risks associated with the asserted legal and factual issues underlying the Remedial Order's findings and conclusions and Eason's defenses, and appropriate settlement compromises related to those issues. In addition, ERA took into account such factors as the number and complexity of the legal and factual issues, the time and expense required to litigate fully every issue in order to obtain any recovery, and the benefit to the public from a significant settlement of the issues which would have otherwise taken years of continued litigation to resolve. Based on all of these considerations, ERA has tentatively concluded that the resolution of these matters for $7,000,000 is an appropriate settlement and in the public interest.

Under the terms of the proposed settlement, ITT, which has assumed responsibility for any and all liability for violations of the federal petroleum price and allocation regulations resulting from Eason's pricing of petroleum products, shall pay to DOE $7,000,000 within 30 days from the effective date of the Consent Order. If not paid within 30 days, interest will accrue at the rate of 9.52% per annum, compounded quarterly, as specified in the proposed Consent Order, the text of which is published herewith.

To distribute the monies received by DOE under the settlement with Eason and ITT, the ERA will petition OHA to implement Special Refund Procedures under the provisions of subpart V. To ensure that OHA has sufficient information to evaluate refund claims, the proposed Consent Order requires that ITT provide customer identification and purchase volume information to OHA upon request.

Eason, ITT and DOE mutually release each other from the claims arising under the subject matter covered by the proposed Consent Order. The proposed Order does not affect the rights of any other party to take action against Eason and ITT, or Eason, ITT or DOE to take action against any other party.

If the settlement is not made final by the one hundred fiftieth (150th) day following execution, Eason and ITT may withdraw from the proposed agreement.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Eason Consent Order Comments, RG-90, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

All comments received by the thirtieth day following publication of this notice in the Federal Register will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comments. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a notice in the Federal Register.

Issued in Washington, DC, on May 9, 1991.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

Consent Order With Eason Drilling Company and ITT Corporation

I. Introduction

101. This Consent Order is entered into between Eason Drilling Company (formerly Eason Oil Company) ("Eason"), ITT Corporation ("ITT") and the Department of Energy ("DOE"). Except as otherwise provided herein, this Consent Order settles and finally resolves all civil and administrative disputes, claims and causes of action, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Eason, as hereinafter defined, relating to Eason's compliance with the Federal petroleum price and allocation regulations (as defined herein) during the period November 1, 1973, through December 31, 1979 ("the period covered by this Consent Order"). (All the matters settled and resolved by this Consent Order are referred to as "the matters covered by this Consent Order.")

II. Jurisdiction and regulatory authority

201. This Consent Order is entered into by DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act (DOE Act), 42 U.S.C. §§ 7151 and 7193; Executive Order 12009, 42 FR 46267 (1977); and Executive Order No. 12009, 43 FR 4957 (1978); and 10 CFR 205.199J.

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202. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Economic Regulatory Administration and all agencies succeeding to the DOE's authority to enforce the federal petroleum price and allocation regulations. Reference herein to "Eason" refers to Eason Drilling Company, formerly known as Eason Oil Company, a corporation organized and existing under the laws of the State of Delaware. Reference herein to "ITT" refers to Eason Oil Company's former parent corporation, ITT Corporation, a corporation organized and existing under the laws of the State of Delaware. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all pricing, allocation, reporting and recordkeeping requirements imposed by or under the Economic Stabilization Act (ESA) of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, the DOE Act, any and all amendments to said Acts, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR parts 130 and 150, and 10 CFR parts 205, 210, 211, 212 and 213 including all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, forms, and reporting and certification requirements regarding such regulations. The provisions of 10 CFR 205.199J and the definitions under the fedral petroleum price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith.

III. Facts and Determinations

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Eason owned all or part of several natural gas processing plants. Eason also owned a substantial minority interest in a plant which, in addition to producing natural gas liquids, refined crude oil condensate into motor gasoline, kerosene and gas oil. Eason sold those products at prices governed by the federal petroleum price and allocation regulations. Accordingly, Eason was subject to the jurisdiction of DOE.

302. DOE conducted an audit to determine Eason's compliance during the period covered by this Consent Order with the Federal petroleum price and allocation statutes, regulations and requirements referred to in paragraph 202, *supra*. DOE and Eason disagree in several respects concerning the proper application of such federal petroleum price and allocation regulations to Eason's activities during the period covered by this Consent Order. ERA issued a Proposed Remedial Order ("PRO") to Eason on September 14, 1984, which Eason vigorously contested before the Office of Hearings and Appeals ("OHA") in Case No. HRO-0254. On December 6, 1990, OHA modified the PRO and issued it as a Remedial Order, and directed ERA to revise the overcharges in accordance with those modifications. On January 4, 1991, Eason appealed the Remedial Order to the Federal Energy Regulatory Commission ("FERC"), where that matter is now pending in Docket No. RO91-1-000. Eason and DOE each believe that their respective positions on the matters resolved by this Consent Order are meritorious. Neither DOE nor Eason disavows any position taken with respect to such matters.

303. In a pleading dated July 22, 1985, submitted in OHA Case No. HRO-0254, Eason stipulated that ITT has assumed responsibility for any and all liability for violations of the mandatory petroleum price regulations resulting from Eason's pricing of petroleum products.

304. Notwithstanding DOE's view as to the proper application of the Federal petroleum price and allocation regulations to Eason's activities during the period covered by this Consent Order, Eason maintains that it has calculated all costs, determined all prices, and operated in all other respects in accordance with the Federal petroleum price and allocation regulations. However, and without admitting any violation whatsoever, Eason and ITT have agreed to enter into this Consent Order in order to avoid the expense of protracted litigation.

The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might be sought by the DOE against Eason for such matters under 10 CFR 205.1991 or otherwise, ITT shall pay to DOE seven million dollars ($7,000,000) in the manner specified in paragraph 402.

402. The payment pursuant to paragraph 401 shall be made within thirty (30) days from the effective date of this Consent Order. In the event that such payment date is not a business day, payment shall be due on the first business day following such date. If the payment is not received by 2 p.m. on the due date, interest shall be assessed on any monies remaining unpaid from the due date, which interest shall be computed at the rate of 9.52% per annum, compounded quarterly.

403. The payment pursuant to paragraph 401 of this Consent Order shall be made by wire transfer in accordance with instructions furnished to ITT by the Department of Energy in a timely manner. The payment made pursuant to this Consent Order shall be distributed by the DOE pursuant to the special refund procedures prescribed by 10 CFR part 205, subpart V.

V. Issues Resolved

501. All pending and potential civil and administrative claims, demands, liabilities, causes of action or other proceedings by DOE against Eason regarding Eason's compliance with and obligations under the Federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Proposed Remedial Order, Remedial Order, actions in court or otherwise, are resolved, extinguished and released as to Eason by this Consent Order.

502. Eason warrants that there is no litigation pending against the DOE initiated or participated in by Eason which in any way relates to or arises out of the matters covered by this Consent Order, or related claims arising under the Freedom of Information Act (5 U.S.C. 552). Eason hereby agrees to release any and all claims, demands, liabilities, or causes of action that Eason has asserted or might be able to assert against DOE, and/or any employee of DOE, in any matter related to the matters covered by this Consent Order.

503. (a) Compliance with this Consent Order by ITT on behalf of Eason shall be deemed by DOE to constitute full compliance for civil purposes with regard to the matters covered by this Consent Order. Except as explicitly excluded herein, in consideration for performance as required under this Consent Order by Eason and ITT, DOE hereby releases Eason and ITT completely and for all purposes from all administrative and civil judicial claims, demands, liabilities, or causes of action, including, without limitation, claims for civil penalties that the DOE has asserted or might otherwise be able to assert against Eason before or after the date of this Consent Order for alleged violations of the Federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. DOE will not initiate or prosecute any such administrative or civil judicial matter against Eason or cause or refer any such matter to be initiated or prosecuted, nor will DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil judicial matter against Eason or participate voluntarily in the prosecution of such actions. DOE will not assert voluntarily in any administrative or civil judicial proceeding that Eason has violated the Federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order, or otherwise take actions with respect to Eason in derogation of this Consent Order. However, nothing contained herein shall preclude DOE from defending the validity of the Federal petroleum price and allocation regulations.

(b) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence currently in its possession for the matters covered by this Consent Order; provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence currently known to DOE, that a criminal violation may have occurred, or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations to appropriate authorities. Nothing contained herein may be construed as a bar, an estoppel, or a defense against any criminal action or against any civil action brought by an instrumentality or agency of the United States other than DOE under: (i) Section 210 of the ESA or (ii) any statute or regulation other than the Federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party, Eason or ITT in any private action, including an action for contribution by or against Eason or ITT.

(c) Eason and ITT release the DOE completely and for all purposes from all administrative and civil judicial claims, or causes of action that Eason and/or ITT have asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the Federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. This release, however, does not preclude Eason and/or ITT from asserting any factual or legal position or argument as a defense to any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Nor does it preclude Eason and/or ITT from asserting a defense, counterclaim or offset to any action, claim or proceeding brought by any other person.

504. Execution of this Consent Order constitutes neither an admission by Eason or ITT nor a finding by DOE of any violation by Eason of any statute or of any regulation. DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and DOE will not seek any such civil penalties. The payment by ITT on behalf of Eason pursuant to this Consent Order is not to be considered for any purpose as a penalty, fine, forfeiture, or as settlement of any potential liability for penalties, fines or forfeitures.

505. Notwithstanding any other provision herein, and in addition to the matters excluded herein, DOE reserves the right to initiate an enforcement proceeding, including, without limitation, an action for penalties, for any newly discovered regulatory violations committed by Eason during the period covered by this Consent Order, but only if Eason concealed facts relating to such violations. DOE also reserves the right to seek appropriate judicial remedies other than full rescission of this Consent Order, or to rescind this Consent Order, for any misrepresentation of fact material to this Consent Order made by Eason or ITT during the course of the audit, during the litigation relating to Eason's alleged liability for the violations asserted in OHA Case No. HRO-0254 and FERC Docket No. RO91-1-000, or during the course of the negotiations that preceded this Consent Order.

506. Within ten (10) days after the effective date of this Consent Order, Eason and the DOE will file or cause to be filed appropriate pleadings to withdraw all claims and dismiss with prejudice all proceedings relating to the matters covered by this Consent Order pending before the DOE's Office of Hearings and Appeals and the Federal Energy Regulatory Commission.

VI. Reporting and Recordkeeping Requirements

601. ITT shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 401, ITT shall also maintain any records in its possession for the time period covered by this Consent Order evidencing sales volume data for each product subject to controls and customers' names and addresses, until thirty (30) days after final distribution by DOE of the funds paid pursuant to paragraph 401, *supra* or December 31, 1999, whichever occurs earlier. If requested, ITT shall make such information available to DOE. Except as otherwise provided in this paragraph, upon timely payment to DOE of the amount required to be paid under paragraph 401 of this Consent Order, ITT is relieved of its obligation to comply with the recordkeeping requirements of the Federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

602. Except for formal requests for information regarding compliance by other firms with the Federal petroleum price and allocation regulations, Eason will not be subject hereafter to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Eason's activities subject to such regulations regarding the matters covered by this Consent Order.

603. This Consent Order is subject to disclosure by the DOE pursuant to the requirements of the Freedom of Information Act, as amended, 5 U.S.C. 552 (FOIA). Eason and ITT waive all claims that either may have that some or all of the information contained in this Consent Order is exempt from the mandatory public disclosure requirements of the FOIA, as amended, is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure.

VII. Contractual Undertaking

701. It is the understanding and express intention of Eason, ITT and DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Eason, ITT and DOE each reserves the right to institute a civil action in an appropriate United States District Court, if necessary, to secure enforcement of the terms of this Consent Order, and DOE also reserves the right to seek appropriate penalties for any failure to comply with the terms of this Consent Order. Consistent with Departmental policy, DOE will undertake the defense of the Consent Order in response to any litigation challenging the Consent Order's validity in which the DOE is named as a party. Eason and ITT agree to cooperate with the DOE in the defense of any such challenge.

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VIII. Final Order

801. Subject to paragraphs 901 and 902, this Consent Order is a final order of DOE having the same force and effect as a Remedial Order issued pursuant to section 309 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Eason and ITT hereby waive their right to administrative or judicial appeal from this Order, but Eason and ITT reserve the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the Federal Register. Prior to that date, the DOE will publish notice in the Federal Register that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Eason and ITT, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred fiftieth (150) day following execution by Eason and ITT, Eason and ITT may at any time thereafter until the effective date, withdraw their agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Eason Drilling Company, hereby agree to and accept on behalf of Eason Drilling Company, the foregoing Consent Order.

Signed: H. John Rogers.

Name: H. John Rogers.

Title: President.

Date: May 3, 1991.

I, the undersigned, a duly authorized representative of ITT Corporation, hereby agree to and accept on behalf of ITT Corporation the foregoing Consent Order.

Signed: R.S. Ward.

Name: R.S. Ward.

Title: Vice President.

Date: May 2, 1991.

I, the undersigned, a duly authorized representative of the Department of Energy, Economic Regulatory Administration, hereby agree to and accept on behalf of said Administration, the foregoing Consent Order.

Signed: M.C. Lorenz.

Name: M.C. Lorenz.

Title: Chief Counsel.

Date: April 19, 1991.

[FR Doc. 91-11665 Filed 5-15-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 10934-000]

William B. Ruger; Availability of Environmental Assessment

May 9, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for license for the Sugar River II Project, located on the Sugar River in Sullivan County, New Hampshire, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the environmental impacts of the project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11576 Filed 5-15-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-28-002]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

May 9, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on April 29, 1991, tendered for filing revised tariff sheets listed on appendix A attached to the filing, to its FERC Gas Tariff, Original Volume No. 1, to be effective December 1, 1990, January 1, 1991, March 1, 1991 and April 1, 1991, respectively.

Panhandle states that the tariff sheets are being submitted to revise the tariff sheets previously submitted on April 1, 1991, in compliance with the Commission's February 28, 1991 order in Docket Nos. TA91-1-28-000.

Panhandle states that Ordering Paragraph (B) of the Commission's February 28, 1991 order required Panhandle to submit revised tariff sheets "reflecting FERC authorized billing determinant levels in effect as of March 1, 1991". Panhandle also states that Ordering Paragraph (C) required Panhandle to file reduced rates, effective December 1, 1990, to "reflect FERC authorized changes in billing determinants in effect as of the effective date of the PGA filing."

Panhandle states that copies of the filing are being served on all jurisdictional sales customers and applicable rate regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 16, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11579 Filed 5-15-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-52-000, RP91-53-000, and RP90-252-000]

Panhandle Eastern Pipe Line Conference to Discuss Settlement

May 9, 1991.

A conference will be held on Tuesday, May 14, 1991, at 9 a.m., in the above dockets to explore the possibility of settlement of the take-or-pay related issues raised in the above-captioned proceedings. The conference will focus primarily on Panhandle Docket Nos. RP91-52-000 and RP91-53-000 proceedings but may raise issues relating to RP90-252-000.

The conference on May 14, 1991, will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All parties should be represented by principals who have the authority to commit to a settlement or have arrangements made by which principals can be readily contacted during the conference.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11580 Filed 5-15-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-14-NG]

B.C. Gas Inc.; Application to Amend Authorization to Import and Export Natural Gas

AGENCY: Office Of Fossil Energy, Department of Energy.

ACTION: Notice of application to amend authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on February 15, 1991, of an application filed by BC Gas Inc. (BC Gas) requesting amendment of its authorization to import and export Canadian natural gas. Pursuant to the application, BC Gas would increase the annual volumes it imports for injection into the Jackson Prairie Storage Facility (Jackson Storage) in Lewis County, Washington, and the sequential export of equivalent annual volumes back to Canada, from 2,164,122 Mcf to 3,045,777 Mcf. In addition, BC Gas seeks elimination of both the daily gas volume limit of 60,115 Mcf/d, and the seasonal delivery date restrictions (May thru September for import/storage and October thru April for export/withdrawal), contained in its current authorization.

BC Gas plans to continue using the existing facilities of Northwest Pipeline Corporation (Northwest) for the importation and exportation of gas supplies at Sumas, Washington, and states that it will continue to submit quarterly reports detailing all import/export transactions.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., June 17, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590.

Lot Cooke, Office of the Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: BC Gas, a Canadian corporation located in Vancouver, British Columbia, Canada, is a local distribution company engaged in the transmission, storage and sale of gas wholly within the Province of British Columbia. Under DOE/ERA Opinion and Order No. 285, (1 ERA Para. 70,827), BC Gas was granted emergency authorization to import and export up to 2,164,000 Mcf of gas per year held in storage by the Washington Water Power Company (Water Power) and interim authority to export up to 60,115 Mcf per day during the 1988/1989 winter heating season through April 30, 1996. Final authorization was granted on March 31, 1989, in DOE/FE Opinion and Order No. 285-A (1 FE Para. 70,296). It is that authorization that BC Gas is seeking to amend.

In support of its application, BC Gas states that the DOE should find the amendments that BC Gas proposes to its authorization are not inconsistent with the public interest, as the net effect of the proposed amendments will be no different from the previously authorized arrangements under DOE/FE Opinion and Order No. 285-A. No Canadian Gas is proposed to be sold into United States markets or vice versa. BC Gas only wishes to continue using existing storage facilities in the United States to store additional gas which it purchases in Canada during off-peak periods for subsequent sale and use in Canada during peak periods. Lastly, BC Gas asserts that, because no new facilities are required to deliver the additional volumes sought, no adverse environmental impacts will result from approval of its proposed amendments.

The decision on the application to amend BC Gas' import/export authority will be made consistent with the DOE's gas import policy guidelines, (49 FR 6684, February 22, 1984). The applicant asserts that DOE's policy criteria relating to the competitiveness, need and security of supply are not applicable to its import/export arrangement since the use of U.S. facilities are solely for transportation and storage and none of the import/export storage volumes are sold in the U.S. marketplace. The DOE would agree that the only relevant issue in this case is the potential impact, if any, BC Gas' transportation and storage arrangements would have on either Northwest's or Water Power's systems. Parties, especially those that may oppose this application, should comment in their responses on those issues.

NEPA Compliance

The National Environmental Policy Act (NEPA) 42 U.S.C. 4321 *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any

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request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of BC Gas' application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 10, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-11663 Filed 5-15-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-09-NG]

Consolidated Edison Company of New York, Inc.; Order Granting Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Consolidated Edison Company of New York, Inc., authorization to import up to 146 Bcf of Canadian natural gas over a two-year period commencing with the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 10, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-11664 Filed 5-15-91; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Change of Location for Informational/Scoping Meeting Scheduled for Sioux Falls, SD, to Brookings, SD, for Proposed Energy Planning and Management Program

AGENCY: Western Area Power Administration, DOE.

ACTION: The Western Area Power Administration (Western) has relocated one of seven scheduled informational/scoping meetings as identified within its Notice of Intent to Prepare an Environmental Impact Statement (56 FR 19995) for a proposed Energy Planning and Management Program.

SUMMARY: Western has changed the location of one informational/scoping meeting previously planned for June 26, 1991, at the Townhouse, 400 South Main, in Sioux Falls, South Dakota, to a new location. The new location is the Holiday Inn, 2500 East 6th Street, Brookings, South Dakota. The meeting will address Western's proposed Energy Planning and Management Program designed to replace its Guidelines and Acceptance Criteria (G&AC) for the Conservation and Renewable Energy (C&RE) Program. The goal of the Energy Planning and Management Program is to develop a link between Western's power resource allocations and efficient electric energy use by Western customers.

BACKGROUND: On May 1, 1991 (56 FR 19995), Western published a Notice of Intent to prepare an Environmental Impact Statement (EIS) for its proposed Energy Planning and Management Program. Within this notice Western identified seven informational/scoping meetings to initiate the EIS process. Due to some complications in scheduling, Western has relocated the June 26, 1991, meeting from Sioux Falls, South Dakota, to Brookings, South Dakota.

PROPOSED ACTION: The informational/scoping meetings previously planned for June 26, 1991, at the Townhouse, 400 South Main, in Sioux Falls, South Dakota, has been moved to a new location. The new location is the Holiday Inn, 2500 East 6th Street, Brookings, South Dakota. The informational meeting is scheduled from 1 p.m. to 4:30 p.m., and the scoping meeting from 6 p.m. to 9 p.m. Dependent upon participation, these times may be extended or shortened at Western's discretion. Additional written comments will be accepted through July 31, 1991.

FOR FURTHER INFORMATION CONTACT: To receive information regarding this change, to submit written comments, or for additional meeting information please call or write:

Marlene A. Moody, Assistant Administrator for Power Management, Operations, and Maintenance, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401-3398, (303) 231-1518.

Warren L. Jamison, Assistant to the Administrator for Conservation, Environment, and Safety, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401-3398, (303) 231-7945.

James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107-5800, (406) 657-6532.

Issued at Golden, Colorado, May 8, 1991.

William H. Clagett,

Administrator.

[FR Doc. 91-11669 Filed 5-15-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36181; FRL 3927-3]

Notification to Secretary of Agriculture of a Proposed Regulation On Reporting Requirements for Risk/benefit Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a proposed regulation under section 25 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The proposed rule would codify EPA's interpretation regarding which failures to report information, or delays in reporting, will be regarded as violations of FIFRA Section 6(a)(2), actionable under FIFRA 12(a)(2)(B)(ii) and 12(a)(2)(N). This action is required by section 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: David Alexander, Attorney Advisor, Office of Pesticide Programs (H7506W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2805 Jefferson Davis Highway, Arlington, VA, (703-308-8003).

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the Federal Register. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall issue for publication in the Federal Register, with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the Federal Register anytime after the 30-day period. As required by FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. As required by FIFRA section 25(d), a copy of this proposed regulation has also been forwarded to the Scientific Advisory Panel.

Authority: 7 U.S.C. 136 et seq.

Dated: May 8, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-11675 Filed 5-15-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3966-3]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Liability Act (CERCLA), as amended by Superfund Amendments and Reauthorization Act (SARA) notice is hereby given that a proposed administrative (CERCLA) cost recovery settlement concerning the Delmar Drum Site in St. Louis, Missouri was signed and filed by the Agency on April 24, 1991. The settlement resolves an EPA claim under section 107 of CERCLA for a section 122(h)(1) agreement against Sinclair & Rush, Inc. The settlement requires the settling party to pay $219,020.39 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at 726 Minnesota Avenue, Kansas City, Kansas 66101.

DATES: Comments must be submitted on or before June 17, 1991.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed settlement may be obtained from Vanessa Cobbs, Regional Hearing Clerk, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 551-7630. Comments should reference the Delmar Drum Site, St. Louis, Missouri, EPA Docket No. VII-91-F-0015, and should be addressed to Vanessa Cobbs, Regional Hearing Clerk, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Joseph E. Sheehy, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 551-7642.

Dated: April 26, 1991.

Alan Wehmeyer,

Acting Director, Waste management Division, U.S. Environmental Protection Agency, Region VII.

[FR Doc. 91-11633 5-15-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44569; FRL 3966-6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on methylethylketoxime (MEKO) (CAS No.96-29-7), metaphenylenediamines (*m*-pda) (CAS No. 108-45-2), and commercial hexane (CAS Nos. 96-37-7 and 110-54-3) submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for MEKO were submitted by the Industrial Health Foundation, Inc., pursuant to a test rule at 40 CFR 799.2700. They were received by EPA on April 16, 1991. The submissions describe:

(1) A supplementary probe 8-week inhalation toxicity study of MEKO in the rat and mouse.

(2) A *Drosophila melanogaster* sex-linked recessive lethal test.

(3) An acute motor activity time course study in rats with MEKO.

(4) An acute neurotoxicity study in rats with MEKO.

Health effects testing is required by this test rule. This chemical is sold primarily as a nonreactive antiskinning agent in alkyd surface coating and paints. It is also used as a blocking agent for isocyanates and silicones.

Test data for *m*-pda were submitted by E. I. du Pont de Nemours and Company pursuant to a test rule at 40 CFR 799.2600. They were received by EPA on April 11, 1991. The submission describes the results of a sex-linked recessive lethal assay with *Drosophila melanogaster*. Health effects testing is required by this test rule. This chemical is used in aramid fibers, rubber and plastic antioxidants, photographic chemicals, dye intermediates, corrosion inhibitors and pesticides.

Test data for commercial hexane were submitted by the American Petroleum Institute on behalf of the major U. S. commercial hexane manufacturers and pursuant to a test rule at 40 CFR 799.2155. They were received by EPA on April 22, 1991. The submission describes a two-generation reproduction study of inhaled commercial hexane in rats. Reproduction and fertility effects testing is required by this test rule. This chemical is used as a solvent to extract seed oils.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is

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unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44509). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: May 8, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91-11670 Filed 5-15-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-[illegible]; FRL 3929-1]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 5 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 91-128, April 23, 1991.
Y 91-138, 91-139, May 12, 1991.
Y 91-140, May 21, 1991.
Y 91-141, May 22, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submissions provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 91-128

Manufacturer. Moore Business Forms, Inc.

Chemical. (G) Poly(isodecyl acrylate).

Use/Production. (S) Adhesive for paper products. Prod. range: 5,072-46,880 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

Y 91-138

Manufacturer. Confidential.

Chemical. (G) Modified polyester.

Use/Production. (G) Coating. Prod. range: Confidential.

Y 91-139

Manufacturer. Eastman Chemical Company.

Chemical. (S) Dimethyl glutarate; 1,4-butanediol.

Use/Production. (G) Barrier films. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 1,000 mg/kg species (guinea pig). Eye irritation: moderate species (rabbit).

Y 91-140

Manufacturer. Confidential.

Chemical. (G) Vinyl ester.

Use/Production. (G) Coating. Prod. range: Confidential.

Y 91-141

Importer. Uniglobe Kisco, Inc.

Chemical. (G) Polyester based polyurethane.

Use/Import. (G) Binder resin for inorganic particles. Import range: 10,000-30,000 kg/yr.

Dated: May 9, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-11677 Filed 5-15-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-51763; FRL 3929-2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of 42 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 91-579, May 14, 1991.
P 91-717, July 20, 1991.
P 91-769, 91-770, July 7, 1991.
P 91-806, July 14, 1991.
P 91-807, 91-808, 91-809, July 15, 1991.
P 91-810, 91-811, 91-812, 91-813, 91-814, 91-815, 91-816, July 16, 1991.
P 91-817, July 17, 1991.
P 91-818, 91-819, 91-820, 91-821, 91-822, 91-823, 91-824, 91-825, 91-826, 91-827, 91-828, July 20, 1991.
P 91-831, 91-832, 91-833, 91-834, July 21, 1991.
P 91-836, 91-837, July 27, 1991.
P 91-838, August 3, 1991.
P 91-839, 91-840, 91-841, 91-842, July 28, 1991.
P 91-843, July 29, 1991.
P 91-844, 91-845, 91-846, July 30, 1991.

Written comments by:

P 91-579, April 14, 1991.
P 91-717, June 20, 1991.
P 91-769, 91-770, June 7, 1991.
P 91-806, June 14, 1991.
P 91-807, 91-808, 91-809, June 15, 1991.
P 91-810, 91-811, 91-812, 91-813, 91-814, 91-815, 91-816, June 16, 1991.
P 91-817, June 17, 1991.
P 91-818, 91-819, 91-820, 91-821, 91-822, 91-823, 91-824, 91-825, 91-826, 91-827, 91-828, June 20, 1991.
P 91-831, 91-832, 91-833, 91-834, June 21, 1991.
P 91-836, 91-837, June 27, 1991.
P 91-838, July 4, 1991.
P 91-839, 91-840, 91-841, 91-842, June 28, 1991.
P 91-843, June 29, 1991.

P 91-844, 91-845, 91-846, June 30, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS-51763)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., rm L-100, Washington, DC, 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm EB-44, 401 M St., SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 91-579

Importer. Ajinomoto USA., Inc.

Chemical. (S) L-lysine, N6-(1-oxododecyl)-.

Use/Import. (S) Color enchances for carbon black used in copier toners. Import range: 3,000-9,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative. Skin sensitization: negative species (guinea pig). Phototoxicity: negative species (guinea pig).

P 91-717

Importer. Brigestone Sporting Goods Manufacturing Co.

Chemical. (S) 4-(Perfluord (1,3-dimehyl-2-isoprpryl-1-butenyloxybenzyl phosphonic acid.

Use/Import. (G) Component in a mold release. Import range: Confidential.

P 91-769

Importer. Borden - Toagosei Company.

Chemical. (S) 2-Methylpropyl-2-cycanoacrylate.

Use/Import. (G) Instant glue. Import range: Confidential.

P 91-770

Importer. Borden - Toagosei Company.

Chemical. (S) 2-Ethoxyethyl-2-cyanoacrylate.

Use/Import. (G) Instant glue. Import range: Confidential.

P 91-806

Importer. Confidential.

Chemical. (G) Poloxyalkylene glycol ether.

Use/Import. (G) Lubricant. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Skin irritation: negligible species (rabbit). Skin sensitization: negative species (guinea pig).

P 91-807

Manufacturer. Confidential.

Chemical. (G) Carbomonocyclic carboxylic acid reaction product with polyalkylene polyamine polyalkyl sulfate salt.

Use/Production. (G) Aid for paper processing. Prod. range: Confidential.

P 91-808

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Modified alkyd resin.

Use/Production. (S) Aluminium coating. Prod. range: Confidential.

P 91-809

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Recovered metal hydride.

Use/Production. (G) Metal recycling. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 670 g/kg species (rat). Eye irritation: strong species (rabbit). Skin irritation: negligible species (rabbit).

P 91-810

Manufacturer. Confidential.

Chemical. (G) Polyester isocyanate prepolymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 91-811

Manufacturer. Confidential.

Chemical. (G) Hybrid polyurethane.

Use/Production. (G) Reactive component of molded components. Prod. range: Confidential.

P 91-812

Manufacturer. Confidential.

Chemical. (G) Hybrid polyurethane.

Use/Production. (G) Reactive component of molded components. Prod. range: Confidential.

P 91-813

Manufacturer. Confidential.

Chemical. (G) Polyamide copolymer.

Use/Production. (G) Nonplasticized flexible polyamide. Prod. range: Confidential.

P 91-814

Manufacturer. Confidential.

Chemical. (G) Polyamide copolymer.

Use/Production. (G) Nonplasticized flexible polyamide. Prod. range: Confidential.

P 91-815

Manufacturer. Confidential.

Chemical. (G) Polyamide copolymer.

Use/Production. (G) Nonplasticized flexible polyamide. Prod. range: Confidential.

P 91-816

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Homopolymer of 4-ethenylphenol plus initiator end groups/fragments.

Use/Production. (S) Photorist for microelectronic chip manufacture. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 5 g/kg species (rabbit). Eye irritation: moderate species (rabbit). Skin irritation: negligible species (rabbit).

P 91-817

Manufacturer. Confidential.

Chemical. (G) Ethylbenzene-2-propenenitrile copolymer.

Use/Production. (S) Dispersive/carrier for worker ink applied to paper. Prod. range: Confidential.

P 91-818

Importer. Berol Nobel Inc.

Chemical. (G) Alkyl-di(alkyloxyhydroxypropyl)derivatice, phosphoric acid esters, potassium salts.

Use/Import. (G) Mining chemial. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Static acute toxicity: time EC50 96H6.1 mg/l species (algae). Eye irritation: strong species (rabbit). Mutagenicity: negative. Skin irritation: moderate species (rabbit).

P 91-819

Importer. Tosohaas.

Chemical. (G) Polymethacrylate derivative with reactive blue 2.

Use/Import. (G) For use with aqueous solutions in a contained use. Import range: Confidential.

P 91-820

Importer. Tosohaas.

Chemical. (G) Polymethacrylate derivative with reactive red 120.

Use/Import. (G) For use with aqueous solutions in a contained use. Import range: Confidential.

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P 91-621

Importer. Hoechst Celanese Corporation.
Chemical. (G) Cresol novolak resin.
Use/Import. (S) Binder resin photoresist formulation. Import range: Confidnetial.

P 91-622

Manufacturer. Confidential.
Chemical. (G) Starch, bis(dialkylamino)-propyl ether.
Use/Production. (G) Papermaking wet end additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Acute dermal toxicity: LD50 > 2.0 g/kg species (rabbit). Eye irritation: none species (rabbit). Static acute toxicity: time LC50 > 1,000 mg/l species (fathead minnow).

P 91-623

Manufacturer. Confidential.
Chemical. (G) Amylopectin, bis(diphenylamino)-propyl ether.
Use/Production. (G) Papermaking wet end additive. Prod. range: Confidential.

P 91-624

Manufacturer. Confidential.
Chemical. (G) 2-(Hydroxypropyl)-trimethylammonium chloride ether, 3-(hydroxypropoxy)trimethoxyl derivative starch ether.
Use/Production. (G) Papermaking wet end additive. Prod. range: Confidential.
Toxicity Data. Acute dermal toxicity: LD50 > 2.0 g/kg species (rabbit). Static acute toxicity: time LC50 > 1,000 mg/k species (fathead minnow). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91-625

Manufacturer. Confidential.
Chemical. (G) 2-(Hydroxypropyl)-trimethylammonium chloride ether, 3-(hydroxyproxypropoxy)trimethoxyl dreivative amylopectin ether.
Use/Production. (G) Papermaking wet end additive. Prod. range: Confidential.
Toxicity Data. Acute dermal toxicity: LD50 > 2.0 g/kg species (rabbit). Static acute toxicity: time LC50 > 1,000 mg/k species (fathead minnow). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91-626

Manufacturer. Confidential.
Chemical. (G) Carboxylic acid, alkenyl ester.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5.47 ml/kg species (rat). Acute dermal toxicity: LD50 > 16 ml/kg species (rabbit).

P 91-627

Importer. Confidential.
Chemical. (G) Modified alcohol alkoxylate.
Use/Import. (G) Processing and finishing aid. Import range: Confidential.

P 91-628

Importer. Quest International Fragrances, Company.
Chemical. (G) Unsaturated(poly)cyclic methyl ketone.
Use/Import. (G) Fragrance raw material. Import range: Confidential.

P 91-631

Manufacturer. Confidential.
Chemical. (G) Halogenated alkane.
Use/Production. (G) Fire extinquishant and refrigerant. Prod. range: Confidential.
Toxicity Data. Inhalation toxicity: LC50 > 241,188 ppm time 4:23 species (rat).

P 91-632

Manufacturer. Confidential.
Chemical. (G) Carbomonocyclic carboxylic acid reaction product with polyalkylene polyamine.
Use/Production. (G) Aid for paper processing. Prod. range: Confidential.

P 91-633

Manufacturer. Confidential.
Chemical. (G) Carbomonocyclic carboxylic acid reaction product with polyalkylene polyamine polyalkyl sulfate salt.
Use/Production. (G) Aid for paper processing. Prod. range: Confidential.

P 91-634

Manufacturer. Confidential.
Chemical. (G) Carbomonocyclic carboxylic acid reaction product with polyalkylene polyamine.
Use/Production. (G) Aid for paper processing. Prod. range: Confidential.

P 91-636

Importer. Confidential.
Chemical. (G) Alkyd.
Use/Import. (G) Paint. Import range: Confidential.

P 91-637

Manufacturer. Confidential.
Chemical. (G) Aromatic poyether polyurethane.
Use/Production. (S) Coatings/adhesive. Prod. range: 10,000 kg/yr.

P 91-638

Importer. Huls America Inc.
Chemical. (G) Salt of cyclodiamine and mineral acid.
Use/Import. (S) Hardener for epoxy. Import range: 20,000–60,000 kg/yr.

P 91-639

Manufacturer. American Cyanamid Company.
Chemical. (G) Substituted alkyl amide.
Use/Production. (G) Process aid for open, nondispersive use. Prod. range: Confidential.

P 91-640

Manufacturer. American Cyanamid Company.
Chemical. (G) Substituted alkyl amide.
Use/Production. (G) Process aid for open, nondispersive use. Prod. range: Confidential.

P 91-641

Manufacturer. American Cyanamid Company.
Chemical. (G) Substituted alkyl amide.
Use/Production. (G) Process aid for open, nondispersive use. Prod. range: Confidential.

P 91-642

Manufacturer. American Cyanamid Company.
Chemical. (G) Substituted alkyl amide.
Use/Production. (G) Process aid for open, nondispersive use. Prod. range: Confidential.

P 91-643

Importer. Ciba-Geigy.
Chemical. (G) Substituted anthraquinone.
Use/Import. (S) Site-limited intermediate, used in dye production. Import range: Confidential.

P 91-644

Manufacturer. E.I Du Pont De Nemours & Co. Inc.
Chemical. (G) Reaction product of socyanate and 2-butanone oxime.
Use/Production. (G) Coating. Prod. range: Confidential.

P 91-645

Manufacturer. Confidential.
Chemical. (S) Lithium diisobutylamide.
Use/Production. (S) Preparation of commerical intermediate chemical. Prod. range: Confidential.

P 91-646

Manufacturer. Confidential.
Chemical. (G) Lithium dialkylamide.
Use/Production. (S) Preparation of commerical intermediate chemicals. Prod. range: Confidential.

Dated: May 9, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-11678, Filed 5-15-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507. Persons wishing to comment on this information collection request should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, telephone (202) 395-4814. For further information contact Judy Boley, Federal Communications Commission, telephone (202) 632-7513.

Please note: The Commission has requested emergency review of this item by May 13, 1991, under the provisions of 5 CFR 1320.18.

Title: Automated Reporting and Management Information Systems (ARMIS).
FCC Report No: FCC 43-05.
Action: Revision.
Respondents: Businesses or other for-profit.
Frequency of Response: Quarterly reporting.
Estimated Annual Burden: 1,645 responses; 11 hours average burden per response; 366,650 hours total annual burden.
Needs and Uses: Mandatory price cap local exchange carriers (LEC's) and carriers electing price cap regulation are required to file quarterly service quality monitoring reports. The information will be used by the FCC and other interested parties to monitor the LEC performance under price cap regulation.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-11669 Filed 5-15-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

[Notice 1991-6]

Filing Dates for the Pennsylvania Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Pennsylvania has scheduled a Special General Election on November 5, 1991, to fill the seat of the late Senator John Heinz. The Republican and Democratic State committees will select their nominees for the November Special General Election in state party conventions held for that purpose.

Committees required to file a report in connection with the Special General Election on November 5, 1991, must file a 12-day Pre-General Report by October 24, 1991, and a Post-General Report by December 5, 1991.

Committees are not required to file reports for the Republican Convention scheduled for May 11 or the Democratic Convention scheduled for June 1. These reports are not required because the short time periods between the dates when the conventions were scheduled, and when they will be held does not allow sufficient time to prepare and file a report. In addition to this short time frame, no formal primary election ballot will be prepared and all candidates participating in the conventions have not been officially identified.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E. Street, NW., Washington, DC 20463, Telephone: (202) 376-3120; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates participating in the Special Democratic and Republican Conventions, and all other political committees not filing monthly which support candidates in these elections shall file the Mid-Year Report due July 31, 1991, with coverage dates from the close of books of the last report filed, through June 30, 1991. If no previous reports have been filed, the reporting period begins with the date of the committee's first activity.

All principal campaign committees of candidates in the Special General Election and all other political committees not filing monthly which support candidates in this election shall file a 12-day Pre-General Report, due on October 24, 1991, with coverage dates from July 1, 1991, or the last report filed, through October 16, 1991, and a Post-General Report on December 5, 1991, with coverage dates from October 17, 1991, through November 25, 1991.

CALENDAR OF REPORTING DATES FOR PENNSYLVANIA SPECIAL ELECTIONS

[All Committees Involved in the Special General Election (11/5)]

Report	Period Covered [1]	Reg./Cert. Mailing Date [2]	Filing Date
Mid-Year	01/01/91–06/30/91	07/31/91	07/31/91
Pre-General	07/01/91–10/16/91	10/21/91	10/24/91
Post-General	10/17/91–11/25/91	12/05/91	12/05/91

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

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Dated: May 9, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91-11688 Filed 5-15-91; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: New collection.

Title: Survey of Flood Victims Regarding the Usefulness of the Flood Recovery Handbook "Following a Flood: Steps to Recovery".

Abstract: A major aspect of reducing flood losses is to make the general public aware of the steps that they can take to make their homes less vulnerable to flood damage. A handbook has been drafted that will provide homeowners with information on how to clean up and repair a flooded house. Other topics covered include the usefulness of flood insurance; preparing for an imminent flood and for evacuation; financial assistance available; and ways that future flood damage can be reduced by individuals and the community.

During the spring and summer of 1991, copies of the draft flood recovery handbook "Following a Flood: Steps to Recovery" will be distributed to randomly selected flood victims in flood damaged communities. Distribution of the handbooks will take place in coordination with Red Cross field units. Five hundred copies of the handbook will be distributed at each flooded location, depending on the number of flooded households. A telephone survey will follow. The telephone survey will determine the usefulness of the handbook to flood victims. The information will be used to determine (a) if the information in the handbook is presented well, and (b) what additional needs flood victims have that the handbook could meet. The survey is designed to glean flood recovery information from readers as well as nonreaders of the handbook. The results of the survey will be used to revise and publish the handbook, and prepare other publications for use by flood victims.

Type of Respondents: Individuals or households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 1,625 Hours.

Number of Respondents: Hear Instructions—1,500; Read Handbook—1,500; Complete Telephone Survey—1,200.

Estimated Average Burden Hours Per Response: Hear Instructions—5 minutes; Read Handbook—1 Hour; Complete Telephone Survey—10 minutes.

Frequency of Response: One-time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: May 6, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91-11644 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-903-DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Fedreal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA-903-DR), dated April 29, 1991, and related determinations.

DATES: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Kansas, dated April 29, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 29, 1991:

Jefferson County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-11646 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-903-DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA-903-DR), dated April 29, 1991, and related determinations.

DATES: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Kansas, dated April 29, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 29, 1991:

The counties of Wabaunsee and Washington.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 91-11649 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-902-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-902-DR), dated April 23, 1991, and related determinations.

DATES: May 9, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated April 23, 1991, is hereby amended to include the following areas among those areas determined to have been adversely afected by the catastrophe declared a major disaster by the President in his declaration of April 23, 1991:

Natchitoches Parish for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-11647 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-904-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-904-DR), dated May 3, 1991, and related determinations.

DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 1991:

Caldwell Parish for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-11652 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-904-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-904-DR), dated May 3, 1991, and related determinations.

DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 1991:

Madison and west Carroll Parishes for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-11653 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-904-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-904-DR), dated May 3, 1991, and related determinations.

DATED: May 9, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 1991:

Winn Parish for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 91-11654 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-904-DR]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA-904-DR), dated May 3, 1991, and related determinations.

DATES: May 3, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated May 3, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from severe storms, tornadoes, and flooding beginning on April 27, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be provided at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Graham L. Nance of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have

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been affected adversely by this declared major disaster:

The parishes of Ouachita and Union for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91-11660 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-604-DR]

Louisiana; Amendments to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-604-DR), dated May 3, 1991, and related determinations.

DATES: May 4, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 1991:

The parishes of Claiborne, East Carroll, Morehouse, and Richland for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert G. Cheppell,

Assistant Associate Director, Disaster Assistance Programs, Federal Emergency Management Agency.

[FR Doc. 91-11661 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-905-DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA-905-DR), dated May 8, 1991, and related determinations.

DATES: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated May 8, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Oklahoma, resulting from severe storms and tornadoes on April 26-27, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alton S. Ray, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

The counties of Noble, Pawnee, and Rogers for Individual Assistance and Public Assistance; and Osage County for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91-11655 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-900-DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-900-DR), dated April 12, 1991, and related determinations.

DATES: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the incident period for this disaster was closed effective April 6, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-11648 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-02-M

U.S. Fire Administration; Board of Visitors for the National Fire Academy; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Date of Meeting: July 21-22, 1991.

Place: National Emergency Training Center, National Fire Academy, H Building, Third Floor Conference Room, Emmitsburg, Maryland.

Time: July 21 9 a.m.-5 p.m. (Quarterly Meeting). July 22 9 a.m.-Agenda Completion.

Proposed Agenda: Old Business, New Business, Joint Meeting with Emergency Management Institute Board of Visitors.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301-447-1362) on or before July 11, 1991.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Administrator's Office, U.S. Fire Administration, Federal Emergency Management Agency, 16825 South Seton Avenue, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: May 2, 1991.

Olin L. Greene,

Administrator, U.S. Fire Administrator.

[FR Doc. 91-11645 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Alaska Sightseeing Tours, Inc.,
West Leasing, Inc.,
West Travel, Inc., and
Alaska Pacific Boat Company
4th and Battery Bldg., suite 700
Seattle, WA 98121
Vessel: SPIRIT OF ALASKA.

Dated: May 13, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-11671 Filed 5-15-91; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transporation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Chandris Incorporated, Chandris S.A., and
Zenith Shipping Corporation
900 Third Avenue
New York, NY 10022-4750
Vessel: ZENITH.

Dated: May 13, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-11672 Filed 5-15-91; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Seven Seas Cruise Line, Ltd. and
Seven Seas Nassau Limited
c/o K Line America, Inc.
535 Mountain Avenue
Murray Hill, New Jersey 07974
Vessel: SONG OF FLOWER.

Dated: May 13, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-11673 Filed 5-15-91; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR 540, as amended: Seven Seas Cruise Line, Ltd. and K Line America, Inc., 535 Mountain Avenue, Murray Hill, New Jersey 07974.

Vessel: SONG OF FLOWER.

Dated: May 10, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-11668 Filed 5-15-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Community and Migrant Health Center Activities, for the Provision of Technical and Non-Financial Assistance to Community and Migrant Health Centers, and for Cooperative Agreements to Support Community and Migrant Health Centers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the due date previously published in the Federal Register on April 16, 1991 (56 FR 15374-15377) for applications to provide for cooperative agreements to develop migrant health environmental projects addressing migrant farmworker housing, pesticide exposure, field sanitation, health and social services, and water and sanitation services. The new due date is June 17, 1991. All other information remains unchanged.

Dated: May 10, 1991.

John H. Kelso,

Acting Administrator.

[FR Doc. 91-11599 Filed 5-15-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health,

National Cancer Institute; Meeting of the Board of Scientific Counselors, Division of Cancer Etiology

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on June 27-28, 1991. The meeting will be held in Building 31, C Wing, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on June 27 and from 9 a.m. to adjournment on June 28 for discussion and review of the division budget and review of concepts of grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public from 9 a.m. to approximately 12 noon on June 27 for the review, discussion and evaluation of individual programs and projects conducted by the Division of

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Cancer Etiology. These programs, projects, and discussions could reveal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-6927) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.395, Cancer Detection and Diagnosis Research; 93.396, Cancer Treatment Research; 93.399, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: May 3, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-11560 Filed 5-15-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting; National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on June 13 and 14, 1991, Wilson Hall, Shannon Building, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public June 13 from 8:30 a.m. to 12 noon to discuss administrative details relating to council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on June 13 from 1 p.m. to recess and again on June 14 from 8:30 a.m. to adjournment at approximately 12 noon in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Further information concerning the Council meeting may be obtained from Dr. Michael Lockshin, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Building 31, room 4C32, Bethesda, Maryland 20892, (301) 496-0602.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, room 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-0603.

(Catalog of Federal Domestic Assistance Program No. 13.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: May 3, 1991.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 91-11564 Filed 5-15-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National Institute of Arthritis and Musculoskeletal and Skin Diseases on June 23 and 24, 1991, Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland.

The meeting will be open to the public on June 23 from 6 p.m. to 6:30 p.m. to discuss administrative details or other issues relating to the committee activities. Attendance by the public will be limited to space available.

The meeting will be closed to the public on June 23 from 6:30 p.m. to recess and again on June 24 to adjournment in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning this meeting may be obtained from Dr. Melvin H. Gottlieb, Executive Secretary, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, room 5A07, Bethesda, Maryland 20892, (301) 496-0754.

Ms. Suzanne Sangalan, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, room 4C27, Bethesda, Maryland 20892, 301-496-0603, will provide summaries of the meeting and roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health)

Dated: May 3, 1991.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 91-11565 Filed 5-15-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Meeting of the Board of Scientific Counselors, NICHD

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, June 7, 1991, in Building 31, room 2A52.

This meeting will be open to the public from 9 a.m. to 12 noon on June 7 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on June 7 from 1 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

Ms. Mary Plummer, Committee Management Officer, NICHD, Executive Plaza North, room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of Board members, and substantive program information upon request.

Dated: May 3, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-11566 Filed 5-15-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of Subcommittees B, C, and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Public Law 92-463, notice is hereby given of meetings of Subcommittees B, C, and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public to discuss administrative details at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winnie Martinez, Committee Management Officer, National Institute of Diabetes and Digestive and kidney Diseases, National Institutes of Health, Building 31, room 9A19, Bethesda, Maryland 20892, 301-496-6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B.

Executive Secretary: Francisco O. Calvo, Westwood Building, room 418, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-7987.

Dated of Meeting: June 6-7, 1991.

Place of Meeting: Residence Inn Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: June 6, 7:30 p.m.-8 p.m.

Closed: June 6, 8 p.m.-recess. June 7, 8 a.m.-adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee C.

Executive Secretary: Daniel Matsumoto, Westwood Building, room 404B, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-8830.

Dates of Meeting: June 3-4, 1991.

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Open: June 3, 8 a.m.-8:30 a.m.

Closed: June 3, 8:30 a.m.-recess. June 4, 8 a.m.-adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D.

Executive Secretary: Ann A. Hagan, Westwood Building, room 417A, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-7841.

Date of Meeting: June 14, 1991.

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Open: June 14, 8:30 a.m.-8:40 a.m.

Closed: June 14, 8:40 a.m. to adjournment.

Dated: May 3, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-11567 Filed 5-15-91; 8:45 am]

BILLING CODE 4140-01-M

Office of Human Development Services

Administration for Children and Families

Revised Fiscal Year 1992 Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

ACTION: Correction Notice: Revised Fiscal Year 1992 Federal Allotments for States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs.

SUMMARY: This notice sets forth the revised individual allotment for each state for fiscal year (FY) 1992 pursuant to section 125 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). This revision is required because the estimated FY 1992 allotments published in the Federal Register on April 2, 1991 (56 FR 13452), were based on an erroneous formula computation. The allotments for the states published herein supersede those published on April 2, 1991, and are based upon fiscal year 1991 appropriation levels. These allotments reflect the appropriated funds allocated to the states based on the most recent data available for population, extent of need for services for persons with developmental disabilities, and the financial need of the states.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Bettye Mobley, Chief, Formula Grants Management Branch, Division of Grants and Contracts Management, Administration for Children and Families, Department of Health and Human Services, 200 Independence Avenue SW., room 341-F, Washington, DC 20201, telephone (202) 245-7220.

SUPPLEMENTARY INFORMATION: Section 125(a)(2) of the Act requires that adjustments in the amounts of state allotments may be made not more often than annually and that states are to be notified not less than six (6) months before the beginning of any fiscal year of any adjustments to take effect in that fiscal year.

The Administration on Developmental Disabilities updated the data for issuance of fiscal year 1991 formula grants and states were notified by Federal Register announcement of April 2, 1990. The data elements used are the same as provided in that issuance, which are:

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program, December 1988, are from table 5.J10 of the "Social Security Bulletin: Annual Statistical Supplement 1990" issued by the Social Security Administration, U.S. Department of Health and Human Services. The numbers for the Northern Mariana Islands and the Trust Territories of the Pacific Islands, included under "Abroad" in the table, were obtained from the Social Security Administration.

B. State data on Average Per Capita Income, 1988-88, are from table 1, page 328 of the "Survey of Current Business", August 1990, issued by the Bureau of Economic Analysis, U.S. Department of Commerce; comparable data for the

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Territories also were obtained from that Bureau.

C. State data on total population as of July 1, 1989, are from table 1 of "Current Population Reports: Population Estimates and Projections," Series P-25, Number 1059, issued March 1989 by the Bureau of the Census, U.S. Department of Commerce. The working population (ages 16-64) were from table 6 of Series P-25, Number 1059. The Territories data on population are from Current Population Report P-25, No. 1049 issued October 1988. The Territories working populations were obtained from Bureau of Census.

FY 1992 ALLOTMENT—ADMINISTRATION ON DEVELOPMENT DISABILITIES

	Basic support	Protection & advocacy
Total	$64,459,000	$28,992,000
Alabama	1,277,052	383,492
Alaska	350,001	200,000
Arizona	894,276	246,946
Arkansas	759,735	225,674
California	5,586,111	1,514,914
Colorado	703,845	210,468
Connecticut	649,369	205,055
Delaware	350,001	200,000
District of Columbia	350,001	200,000
Florida	2,740,211	616,512
Georgia	1,571,776	452,365
Hawaii	350,001	200,000
Idaho	350,001	200,000
Illinois	2,519,742	773,401
Indiana	1,367,776	428,536
Iowa	759,308	231,787
Kansas	578,574	200,000
Kentucky	1,192,557	354,347
Louisiana	1,235,044	411,882
Maine	350,001	200,000
Maryland	950,998	300,000
Massachusetts	1,267,464	340,848
Michigan	2,300,465	696,771
Minnesota	959,995	289,290
Mississippi	919,687	273,946
Missouri	1,251,885	388,655
Montana	350,001	200,000
Nebraska	397,133	208,808
Nevada	350,001	200,000
New Hampshire	350,001	200,000
New Jersey	1,492,782	484,448
New Mexico	442,885	208,800
New York	4,068,509	1,165,430
North Carolina	1,740,521	525,906
North Dakota	350,001	200,000
Ohio	2,749,275	835,706
Oklahoma	677,836	254,377
Oregon	575,716	210,409
Pennsylvania	3,044,669	935,985
Rhode Island	350,001	200,000
South Carolina	1,011,044	308,290
South Dakota	350,001	200,000
Tennessee	1,320,879	420,348
Texas	4,122,665	1,184,191
Utah	591,468	200,000
Vermont	350,001	200,000
Virginia	1,257,836	400,192
Washington	1,024,371	300,141
West Virginia	749,065	222,409
Wisconsin	1,228,948	374,125
Wyoming	350,001	200,000
American Samoa	200,001	197,000
Guam	200,001	197,000
Puerto Rico	2,377,884	684,152

FY 1992 ALLOTMENT—ADMINISTRATION ON DEVELOPMENT DISABILITIES—Continued

	Basic support	Protection & advocacy
Trust Territories	297,002	107,000
Virgin Islands	200,001	107,000
Northern Marianas Islands	200,001	107,000

(Catalog of Federal Domestic Assistance Program Number 93.630 Developmental Disabilities—Basic Support and Advocacy Grants.)

Dated: May 3, 1991.

Deborah L. McFadden,

Commissioner, Administration on Developmental Disabilities.

Approved: May 10, 1991.

Donna N. Givens,

Deputy Assistant Secretary for Children and Families.

[FR Doc. 91-11840 Filed 5-15-91; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Diseases Transmitted Through the Food Supply

AGENCY: Centers for Disease Control, Public Health Service, Department of Health and Human Services.

ACTION: Notice of interim list and request for comments regarding infectious and communicable diseases that are transmitted through handling the food supply and the methods by which such diseases are transmitted.

SUMMARY: Section 103(d) of the Americans with Disabilities Act of 1990 requires the Secretary to publish a list of infectious and communicable diseases that are transmitted through handling the food supply. After consultation with the Food and Drug Administration, National Institutes of Health, State and local health officers, and national public health organizations, the interim list set forth below was developed. Comments are requested regarding this interim list.

EFFECTIVE DATE: May 16, 1991. Comments regarding this interim list should be made in writing by July 1, 1991, to the address specified below.

ADDRESSES: Comments should be addressed to Dr. Morris E. Potter, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop C09, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Dr. Morris E. Potter (see address above), telephone (404) 639-2121.

SUPPLEMENTARY INFORMATION: Section 103(d) of the Americans with Disabilities Act of 1990, 42 U.S.C. 12113(d), requires the Secretary of Health and Human Services to:

1. Review all infectious and communicable diseases which may be transmitted through handling the food supply;

2. Publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

3. Publish the methods by which such diseases are transmitted; and

4. Widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Such list shall be updated annually.

The purpose of this document is to publish an interim list and request for comments regarding infectious and communicable diseases that are transmitted through handling the food supply and the methods by which such diseases are transmitted.

I. Pathogens often Transmitted by Food Contaminated by Infected Persons Who Handle Food, and the Modes of Transmission of Such Pathogens

The contamination of raw ingredients from infected food-producing animals and contamination during processing are more important causes of foodborne disease than is contamination of foods by persons with infectious or contagious diseases. However, some pathogens are frequently transmitted by food contaminated by infected persons. The presence of any one of the following signs or symptoms in persons who handle food may indicate infection by one of these pathogens: Diarrhea, vomiting, open skin sores, fever, dark urine, or jaundice. The failure of food employees to wash hands (in situations such as after using the toilet, handling raw chicken, cleaning spills, or carrying garbage, for example), wear clean gloves, or use clean utensils is responsible for the foodborne transmission of these pathogens. Non-foodborne routes of transmission, such as from one person to another, are also important in the spread of these pathogens. Pathogens that can cause diseases after an infected person handles food are the following: Hepatitis A virus, Norwalk and Norwalk-like viruses, *Salmonella typhi*, *Shigella* species, *Staphylococcus aureus*, *Streptococcus pyogenes*.

II. Pathogens Occasionally Transmitted by Food Contaminated by Infected Persons Who Handle Food, but Usually Transmitted by Contamination at the Source or in Food Processing or by Non-Foodborne Routes

Other pathogens are occasionally transmitted by infected persons who handle food, but usually cause disease when food is intrinsically contaminated or cross-contaminated during processing or preparation. Bacterial pathogens in this category often require a period of temperature abuse to permit their multiplication to an infectious dose before they will cause disease in consumers. Preventing food contact by persons who have an acute diarrheal illness will decrease the risk of transmitting the following pathogens: *Campylobacter jejuni*, *Entamoeba histolytica*, Enterohemorrhagic *Escherichia coli*, Enterotoxigenic *Escherichia coli*, *Giardia lamblia*, Nontyphoidal *Salmonella*, Rotavirus, *Vibrio cholerae* 01, *Yersinia enterocolitica*.

References

1. World Health Organization. *Health surveillance and management procedures for food-handling personnel: Report of a WHO consultation.* World Health Organization technical report series; 785. Geneva: World Health Organization, 1989.
2. Frank JF, Barnhart HM. Food and dairy sanitation. In: Last JM, ed *Maxcy-Rosenau public health and preventive medicine*, 12th edition. New York: Appleton-Century-Crofts, 1986:795–806.
3. Bennett JV, Holmberg SD, Rogers MF, Solomon SL. Infectious and parasitic diseases. In: Amler RW, Dull HB, eds. *Closing the gap: The burden of unnecessary illness.* New York: Oxford University Press, 1987:102–114.

Dated: January 4, 1991.

James O. Mason,

Assistant Secretary for Health.

Dated: May 9, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-11838 Filed 5-15-91; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Policy Development and Research

[Docket No. N-91-3369]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject survey.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708-0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the survey of single family mortgage escrow practices to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C., chapter 35). It is also requested that OMB complete its review within ten (10) days.

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, or reinstatement, and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 9, 1991.

John C. Weicher,

Assistant Secretary, Policy Development and Research.

Proposal: Survey of Single Family Mortgage Escrow Practices.

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use

The survey is a component of a larger study examining escrow management for single family mortgages and is destined to document existing escrow practices, assess compliance with the Real Estate Settlement Procedures Act of 1974, and determine the impact of current escrow methods on borrowers' accounts.

The study is being completed by the Department in response to Congressional concern over consumer complaints and the April 1990 report by seven State Attorneys General entitled "Overcharging on Mortgages: Violations of Escrow Account Limits by the Mortgage Lending Industry." HUD's intention to conduct an independent analysis of escrow policies was completed within 90 days. The initial analysis—based on a series of interviews with industry representatives and other interested parties, as well as the results of simulating escrow account balances under alternative policies—has now been completed. Phase II of the study will collect data from a representative sample of mortgage servicers to quantify the impacts of existing practices for actual borrowers.

Respondents: 285.

Frequency of Submission: One time.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden:	285		1		8		2,280

Total Estimated Burden Hours: 2,280

Status: New.

Contact: Susan E. Woodward, HUD (202) 708-3060, Wendy Sherwin, OMB 395-6880.

Dated: May 9, 1991.

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REQUEST FOR OMB APPROVAL AND SUPPORTING STATEMENT

SURVEY OF SINGLE FAMILY MORTGAGE ESCROW PRACTICES, APRIL 15, 1991

Introduction

This request pertains to survey of approximately 285 mortgage servicers to be conducted for the Department of Housing and Urban Development. The survey is a component of a larger study examining escrow management for single family mortgages and is designed to document existing escrow practices, assess compliance with the Real Estate Settlement Procedures Act of 1974, and determine the impact of current escrow methods on borrowers' accounts.

The study is being completed by the Department in response to Congressional concern over consumer complaints and the April 1990 report by seven State Attorneys General entitled "Overcharging on Mortgages: Violations of Escrow Account Limits by the Mortgage Lending Industry." HUD's intention to conduct an independent analysis of escrow policies was communicated to Congress in December, 1990, with the initial component of the analysis to be completed within 90 days. That initial analysis—based on a series of interviews with industry representatives and other interested parties, as well as the results of simulating escrow account balances under alternative policies—has now been completed. Phase II of the study will collect data from a representative sample of mortgage servicers to quantify the impacts of existing practices for actual borrowers.

The survey and analysis will be conducted for HUD by an independent contractor, with results to be provided by August 9, 1991. As shown in Appendix A, the survey will consist of two parts: the first part will collect information on servicing practices from a sample of approximately 285 servicing institutions; the second part will request summary data for a sample of between 25 and 50 mortgage loans serviced by each institution. The remainder of this document addresses the specific elements requested by SF83.

Section A.—Justification for the Collection of Information

A1. Circumstances That Make the Collection of Information Necessary

When HUD General Counsel Keating testified before Congress in September, 1990,[1] the Committee expressed concern over possible "overescrowing" of mortgage accounts as described in an April 1990 report prepared by the Attorneys General of seven states. Key issues include the extent of servicers' conformance with acceptable methods of escrow calculation under the Real Estate Settlement Procedures Act of 1974 (RESPA), as well as compliance with underlying loan documents which may contain controlling language on escrow management.

Under RESPA, HUD is responsible for prescribing rules and regulations pursuant to the Act. According to Section 19(c)(1):

"The Secretary may investigate any facts, conditions, practices or matters that may be deemed necessary or proper to aid in the enforcement of the provisions of this Act, in prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning real estate settlement practices."

Under this authority, the Department has commissioned an independent study of mortgage escrow practices which includes the survey of mortgage servicers for which OMB clearance is requested.

A2. Use and Users of the Information

The information to be collected includes data on mortgage escrow practices to be collected from a sample of 285 mortgage servicers, and data on 8,650 individual mortgages serviced by the respondent firms. Appendix A includes a copy of the survey instrument. Note that the instrument is divided into two parts:

- Part A consists of 22 questions requesting basic information on servicing volume, loan characteristics, and escrow procedures, including a series of detailed questions designed to capture servicer practices in various aspects of escrow management.
- Part B requests information on individual loan accounts served by the respondent. The cover sheet will provide detailed instructions on how servicers are to randomly select sample loans for inclusion in the study. The Mortgage Account Data Sheet requests approximately 30 data items related to individual accounts. These are intended to provide a summary picture of account activity which will permit quantitative analysis of key escrow issues.

In addition to providing summary data on each loan, servicers are requested to attach two documents to the summary sheet. These include an escrow history (typically a computer generated report that will be used as the basis for providing summary data) and a copy of the loan document. The former will be used to verify the information provided. The latter will be used to assess the extent to which servicing procedures are in conformance with the underlying loan documents.

Survey data will be collected by mail. To ensure high response rates, servicers who do not respond during the alloted time period will be contacted by telephone to answer any questions and to encourage them to respond. The survey will be conducted by an independent contractor who will also perform the survey analysis and prepare a report of the findings to be submitted to HUD.

The Department will be the principal user of the information collected through the survey. HUD will use the results to assess the impact of current escrow practices and to develop new rules and regulations as appropriate. Congress will also be a user of the information in its consideration of escrow issues. Failure to conduct the survey would leave the Department without a means of obtaining statistically reliable data on this topic and without a means to determine whether further regulatory or statutory response is warranted.

A3. Use of Information Technology To Reduce Burden

Information for this study will include written survey responses as provided by escrow managers and summary data abstracted from account records for individual loans. All respondents should be able to select sample loans and generate the needed account data using in house computer systems. However, systems and reporting formats are not standardized; thus, some additional manipulation will be required to provide the data in usable form. Discussions with managers contacted as a part of Phase I of this study suggest that the proposed approach is workable and that the needed data can be generated quickly and easily.

A4. Efforts To Identify Duplication

Previous information on escrow accounts is available from the work of the seven State Attorneys General noted above. However, these data are incomplete for the purposes of this study. In addition they do not reflect a statistically reliable sample from which conclusions can be drawn.

As a part of Phase I of this study, discussions were held with individuals who worked on the report of the Attorneys General and with a wide variety of industry representatives. A conclusion of this investigation was that there is no existing source of information on escrow practices or accounts that could be used for this study.

[1] Committee on Banking, Finance, and Urban Affairs. Subcommittee on Housing and Community Development.

A5. Why Similar Information Cannot Be Used

As described above, there is no source of data on escrow practices other than that which can be obtained by surveying individual mortage servicers. The only similar data which exits is that obtained (by identical means) by the State Attorneys General. However, these detailed loan data cover only 79 loans serviced by two of the nation's largest servicers. The methods used by the Attorneys General were not intended to provide a statistically sound basis for determining industry wide practice. By contrast, the current study will employ statistically valid samples of servicing entities and escrow accounts.

A6. Efforts To Minimize the Burden on Small Businesses

It is unlikely that the servicers included in the survey will be small businesses. Every effort will be made in this study to minimize the burden on all respondents. No special procedures are envisioned for small business respondents.

A7. Consequences of Less Frequent Data Collection

The Survey of Single Family Mortage Escrow Practices is a one-time activity.

A8. Circumstances That Require Data Collection Procedures Inconsistent With 5 CFR 1320.6

No data collection procedures that are inconsistent with 5 CFR 1320.6 are proposed.

A9. Efforts To Consult With Persons Outside the Agency on Data Collection

In Phase I of this study, the contractor and HUD personnel met with representatives of the mortgage servicing industry, the Mortage Bankers Association, investment bankers, and servicing software vendors, as well as with staff of the New York Attorney General's Office. A list of key contacts is provided in Exhibit 1. As part of these interviews the proposed survey approach was discussed in order to examine potsible alternatives and to refine the survey methods. In selected cases, the content of the survey questions was reviewed in order to ensure that terms were correctly used and that questions would indeed elicit the desired information.

A10. Assurances of Confidentiality

Respondents to this survey will be assured that any data they provide will be considered confidential and will not be shared with HUD or any other party. They study contractor will maintain all such data in secure storage. No individual respondents or firms will be identified. The contractor will report only aggregate data. Consistent with HUD policy on research data, if HUD requests data tapes at the conclusion of the study for its own analysis, these will only be made available after all identifying data has been deleted from the survey files.

Exhibit 1.—Consulation With Persons Outside the Agency on Data Collection

Ms. Dorothy H. Autrey, Senior Vice President, Lomas Information Systems, 1750 Regal Row, Dallas, TX 75235 (214) 879-4168

Ms. Donna M. Krell, Senior Vice President, Independence One Mortgage Corporation, 300 Galleria Officentre, Southfield, MI 48034, P.O. Box 5076, Southfield, MI 48086-5076, (313) 350-6175

Mr. Terry J. Deyoe, Executive Vice President, Lomas Mortgage USA, 1600 Viceroy Drive, Dallas, TX 75235, (214) 879-4400

Ms. Linda Whiteman, Vice President, Fireman's Fund Mortgage Corporation, 27555 Farmington Road, Farmington Hills, MI 48334-3357

Mr. Robert W. Shively, Vice President, CitFed Mortgage Corporation of America, One Citizens Federal Centre, Dayton, OH 45402

Mr. Dennis J. Davis, Vice President—Sales, Lomas Information Systems, 1750 Viceroy Drive, Dallas, Texas 75235, (214) 879-5952

Mr. William T. Hartt, Senior Vice President, Southeast Mortgage Company, 2500 Northwest 79th Avenue, Miami, Florida 33122, (305) 594-2448

Mr. Steven F. Eckstein, Senior Vice President, Fireman's Fund Mortgage Corporation, 27555 Farmington Road, Farmington Hills, MI 48018, (313) 661-7428

A11. Justification for Questions of a Sensitive Nature

The information requested through this survey is ordinarily not considered to be sensitive in nature. Questions are related to business practices and the maintenance of escrow accounts in conformance with HUD requirements. There are no questions of a personal nature or questions on matters that are commonly considered private.

A12. Estimate of the Annual Cost of the Data Collection

The survey data will be collected as part of a Task Order under HC-5813, an Indefinite Quantity Contract between the Department and ICF Incorporated. Costs for the survey are estimated at $265,193 as follows:

Direct Labor (112 hours), Fringe Benefits, and Overhead	8,514
Other Direct Costs	151
Total Labor and Expenses	8,665
General and Administrative	1,031
Subcontractor Cost	225,000
Subcontractor General and Administrative	9,720
Total Estimated Cost	244,417
Estimated Cost with Fees	265,193

Estimated subcontractor costs are based on approximately 2,000 labor hours plus expenses.

A13. Estimates of the Burden of Information Collection

Estimated respondent burden for this data collection is 2,352 hours as shown below:

	Number of respondents	Burden per respondent (hours)	Total burden (hours)
Survey part A: Escrow practices	285	0.75	214
Survey part B: Accounts data	285	7.5	2,138
Total data collection	285	8.25	2,352

*Assumes that, on average, each servicer will provide data on 30 accounts. The estimated time needed to generate account records, copy mortgage documents, and complete the summary data form is 15 minutes per account.

A14. Changes in Burden

This is a new data collection and is a one-time activity. There is no change in burden.

A15. Plans for Statistical Analysis and Publication

The data to be collected through this survey will be used to conduct an analysis of escrow practices and their impacts on borrower accounts.

- Data collected in Part A will support a descriptive analysis of current escrow practices, including the extent to which single item versus composit analysis is used. Information on other policies/factors that affect escrow balances (e.g., reserve amounts, the frequency with which escrow accounts are reviewed, disbursement policy, procedures for handling shortages and averages, and estimation procedures)

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will be presented. Differences in policies and practices will be related to outcomes observed for the sample accounts.

• Data collected in Part B will support an analysis of the impact of escrow practices on borrower accounts. This will include a determination of the extent of overescrowing if any (by comparing target reserves with actual minimum and average balances) and an analysis of the potential costs to borrowers. In addition to analyzing servicer compliance with RESPA requirements, data will be presented on the extent to which accounts are maintained in conformance with underlying loan documents.

The data will also support analyses of variances between servicers, and other factors that may affect the amount of escrow (e.g., property tax payment policy at the state level, disbursement relationships, and aspects of servicer policies).

Regression analysis will be used to estimate the relative importance of different independent factors that predict the likelihood and the level of overescrow. (See Question B2 for additional information on statistical tests and methods.)

The data and analysis outlined above will be presented in a final research report to be submitted to the Department of Housing and Urban Development. This report will form a basis for the Department's response to Congress and for any regulatory or statutory steps that may be warranted.

The schedule for the project is provided below. The Phase II schedule assumes that OMB clearance can be obtained in fewer than the standard 60 days.

Phase I: Assessment of Issues

Management Plan—February 8, 1991
Industry Meetings—February 22, 1991
Modeling and Analysis—February 22, 1991
Survey Design—February 22, 1991
Phase I Report—February 28, 1991

Phase II: Survey and Analysis

Receipt of OMB Clearance—May 3, 1991 (Target)
Select Survey Sample—May 17, 1991 (Week 2)
Data Base Programming—May 17, 1991 (Week 2)
Distribution of Survey—May 24, 1991 (Week 3)
Follow-up and Data Entry—June 12, 1991 (Week 10)
Analysis and Report—August 9, 1991 (Week 14)

Section B.—Collections of Information Employing Statistical Methods

B1. Respondent Universe/Sample Plan

Sampling Approach/Description of the Population: A stratified two-stage sampling plan is proposed as follows:

1. *Primary Sampling Unit Stratification.* The primary sampling units are mortgage servicers. Mortgage servicers will be stratified into three strata or tiers as follows:

• First tier servicers consisting of the largest 25 servicers in terms of number of mortgages serviced.

• Second tier servicers consisting of the next largest 475 servicers in terms of number of mortgages serviced.[2]

• Third tier servicers consisting of the remaining primary sampling units, i.e., servicers.

All servicers in the first tier will be selected. However, only a sample of servicers from the second tier and a sample of servicers from the third tier will be selected.

2. *Secondary Sampling Unit.* The secondary sampling units are mortgages. For each servicer selected in the previous stage, a sample of mortgages serviced by that servicer will be selected.

Sample Size: Sample size determination requires that certain predictions about the expected parameters of the population distribution be made. When data about these parameters are not available, predictions are usually based on a pilot sample. In this case, the necessary data are not available, nor is a pilot sample proposed. However, the first phase of this study provides some insights that allow assumptions to be made for the purpose of estimating the sample size. Among other assumptions, the following are important to the proposed sample size.

First, we expect more variability between servicers that within servicers. Further, we expect variability between servicers to be low among first tier servicers and successively higher in the next two tiers. In addition, we expect variability within servicers to be consistently low in all tiers. Finally, we expect that approximately 35% to 40% of the mortgages selected will not be usable because of no escrow or recent origination.

Another consideration in the proposed sample is HUD's desire to know more about servicers in the first tier than in the other two tiers. Accordingly, al' servicers in the first tier are included in the sample.

Based on these assumptions and considerations, the following sample sizes are proposed:

Tier	Servicers	Mortgages per servicer	Total mortgages
First	25	50	1,250
Second	60	40	2,400
Third	200	25	5,000
Total	285	30.4	8,650

B2. Sample Selection Procedures and Statistical Methods

Sample Selection: Procedures for selecting the samples in each stage are as follows:

Stage 1. It is proposed that:

1. All servicers in the first tier will be selected.

2. Second tier sample selection will be based on either equal probability selection or selection based on probability proportionate to size, depending on the definition of the tier.

3. Third tier sample selection will be based on equal probability selection.

Stage 2. A systematic selection of mortgages with a random start is proposed. The result will be for servicers selected in the third tier (and possibly the second tier) that the number of mortgages selected will be proportional to the number of mortgages serviced by that servicer.

Statistical methods

1. *Estimation of Population parameters (Descriptive Statistics).* Many of the questions of interest address the population as a whole. For example, the following questions could be answered at a proposed level of confidence of 95% and within different precision limits ranging from 5% to 10% from the sample:

• What is the total number of mortgages in the U.S. that had average escrow balances in excess of escrow requirements by, say, $25 or more?

• What is the average escrow balance or overescrow amount per mortgage?

[2] To determine the primary units within this stratum, total mortgage dollars serviced by the servicer may have to be used in some cases as a surrogate of size. However, to minimize errors resulting from the use of this surrogate, an average dollar amount per mortgage in this stratum will be used to verify the faithfulness of total dollars served as a measure of servicer size. Alternatively, this stratum may need to be limited to those servicers in this group for which we have an actual number of mortgages serviced. Under this alternative, this stratum would be defined as the top 100 banks in mortgage servicing, the top 300 mortgage companies and the top 80 thrifts that are not included in the first tier of 25 servicers.

Estimation of population parameters could be done for the population as a whole, for any tier, for any collection of tiers, or any individual servicer which is selected.

Any such estimate would be derived by calculating a point estimate from the sample, and then a confidence interval that would depend on the variance of the sample, the sample size, and the weights of the population tiers.

2. *Tests for Differences/Analysis of Variance (ANOVA).* For many of the issues in the study, a test of differences of analysis of variance (ANOVA) will be utilized. Between any two tiers, or between any two individual servicers the standard t-test (for means) could be used to test if any differences found are significant.

For comparison of more than two groups (i.e., differences between the top 25 individual servicers), a one-way ANOVA can be used.

In addition to measuring differences by servicer (or servicer size), other variables will be of interest. For example, we will need to consider the impact of state policies such as the number of tax payments per year.

We have the option of performing a one-way ANOVA on the variable of interest, or a two-way ANOVA (say between size of servicer and a second variable). Since the sampling plan does not consider these variables (i.e., we cannot control for the number of mortgages selected by state), we almost certainly will be in a situation where a weighted ANOVA calculations will be required. Also, to keep the calculations feasible, and the number of degrees of freedom reasonable, we may make certain assumptions about the lack of interaction between the variables being analyzed, and only look for the linear impacts of the variables selected.

For all of the ANOVA tests, the F-Statistic can be used to determine if the differences found are significant.

3. *Regression Analysis (Model Building).* Since so many of the parameters are based on numeric scales (size of servicer, size of mortgage, number of tax payments/year), and many of the others can be adapted to a numeric scale, multiple linear regression can be utilized to determine the relative importance of different independent variables in predicting dependent variables, such as the likelihood of overescrow or an estimate of the amount of overescrow.

B3. Methods for Maximizing Response Rates

Respondents selected for the survey will be advised of HUD's authority to collect data under RESPA section 19(c)(1). This section states:

"The Secretary may investigate any facts, conditions, practices or matters that may be deemed necessary or proper to aid in the enforcement of the provisions of this Act, in prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning real estate settlement practices."

In addition, all firms who have not responded within 4 weeks of the initial request will be contacted by telephone by the survey contractor. The contacts will be used to encourage a timely response and to provide any assistance that may be necessary. These steps should ensure a relatively high response rate for this survey effort.

B4. Tests of Procedures

As noted previously, various aspects of the intended survey have been informally reviewed with industry representatives. This has included discussion of appropriate data collection approaches, the level of effort (burden) required to assemble the needed data, and review of the content and wording of specific questions. Prior to implementing the survey, the survey contractor will conduct an additional pretest with several mortgage servicers to confirm that the full instrument and its instructions are clear and understood by potential respondents.

B5. Statistical Consultation

The study is being conducted for HUD by an independent contractor. The prime contractor is ICF Incorporated (contact Kathleen Heintz, 703–934–3726). The survey subcontractor is McGaldrey & Pullen (contact Mark Jones, 202–382–0024). The sampling plan was developed by Dr. Sabry Heakal (612–332–4300). HUD's representative for this project is Susan Woodward, Deputy Assistant Secretary, Office of Economic Affairs (202–708–3060).

APPENDIX A

SURVEY INSTRUMENTS AND INSTRUCTIONS

Escrow Management For Single-Family Residential Property

Part A: Servicer Policies and Procedures—Instructions

This part of the survey consists of twenty-two questions relating to escrow policies and procedures for 1–4 single family mortgages. We are interested only in escrow practices for 1–4 single family mortgages. If you service other types of mortgages, please exclude these activities from your survey response.

These questions have been reviewed with representatives from the mortgage servicing industry in an attempt to standardize terminology, and refine and target our questions.

Questions 1–10 are intended to provide us an overview of your servicing business. We are asking for statistical and portfolio balance information. Estimates and approximations are acceptable if you do not have these figures available.

Questions 11–22 are presented in a multiple choice format and ask about specific policies and practices. We appreciate the complexities of the mortgage servicing business and understand that exceptions to policies and procedures are made. In answering these questions, please indicate what the "typical" or "routine" action is. If there are common and significant exceptions we should know about, please describe these in an attachment.

Escrow Management for Single-Family Residential Property

Escrow Survey of Mortgage Servicers

(Draft: 3/11/91)

Business Overview:

1. Approximate number of single-family mortgages serviced during past two years.

(a) Number of loans serviced: 1990_____

(b) Number of loans serviced: 1989_____

(c) Average $ amount (year-end total) of loans serviced: 1990_____

(d) Average $ amount (year-end total) of loans serviced: 1989_____

2. Approximate number of states and local tax jurisdictions represented in your servicing portfolio.

(a) States_____

(b) Total tax jurisdictions. (Approximate)_____

3. In how many states do you use an outside tax service vendor?

(a) None_____

(b) Number:_____

4. Percentage of number of loans for which you maintain some type of escrow account.

(a)_____%

5. Approximate average $ balance of the escrow accounts you maintain (based on month-end totals).

(a) Average throughout 1990_____

(b) Average throughout 1989_____

6. Approximate average $ balance of outstanding escrow advances you made on performing single-family mortgages (based on month-end totals).

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(a) Average throughout 1990_____
(b) Average throughout 1989_____

7. On what fraction of the performing, non-delinquent loans you service did you have funds advanced? (Month-end number of loans, averaged over the year).
(a) Average throughout 1990_____
(b) Average throughout 1989_____

8. Have you purchased or sold servicing to an unaffiliated entity within the past two years?
(a) Yes—both purchased and sold.
(b) Yes—purchases only.
(c) Yes—sales only.
(d) No

9. If "yes", approximately how much servicing did you purchase or sell during the past two years?
(a) Purchased servicing (# of loans): 1990_____
(b) Purchased servicing (# of loans): 1989_____
(c) Sold servicing (# of loans): 1990_____
(d) Sold servicing (# of loans): 1989_____

10. What was the first year in which you purchased or sold servicing?
(a) Year servicing first sold:_____
(b) Year servicing first purchased:_____.

Escrow Policies and Procedures

11. Would you describe your basic method of escrow accounting as:
(a) Individual-item or single-item analysis.
(b) Composite, aggregate or cash analysis.
(c) Other (please describe).

12. How many years have you used the method indicated above?
(a) 2 years or less.
(b) 2–10 years.
(c) 10–16 years.
(d) Prior to the enactment of RESPA in 1974.

13. (FOR COMPOSITE ANALYSIS USERS ONLY): What is your escrow reserve target?
(a) No reserve.
(b) One month reserve.
(c) Two month reserve.
(d) Other (please describe).

14. (FOR SINGLE-ITEM USERS ONLY): Which of the following choices best describes your escrow reserve policy?
(a) No reserve accrued for or retained if it arises.
(b) No reserve accrued for, but we will retain a balance of up to 1 month or 2 months (circle correct answer) if it arises.
(c) We accrue for a 1 month or 2 month reserve (circle correct answer).
(d) Other (please describe).

15. How often do you perform escrow analysis?
(a) Annually.
(b) Semi-annually.
(c) Other (please describe).

16. Assume the following situation: A tax payment of $900 is due May 1st. The delinquent date is May 15. On what date would you normally disburse the funds.
(a) May 15.
(b) May 5.
(c) April 25.
(d) Other (please describe).

17. Assume the facts of the previous question, and that your policy is to disburse on May 5. In establishing the monthly escrow amount, at what point would you expect to have accrued.
(a) May Payment.
(b) April Payment.
(c) March Payment.
(d) Other (please describe).

18. If escrow analysis disclosed a deficiency (escrow balance under target), what best describes your policy for eliminating the deficiency.
(a) Request single payment to cover deficiency.
(b) Adjust monthly payment so as to eliminate deficiency over the next twelve months.
(c) Other (please describe).

19. If escrow analysis disclosed a shortage (negative balance in the escrow account) thus requiring you to make an advance, what best describes your policy for collecting the advance from the borrower?
(a) Request single payment to cover amount advanced.
(b) Collect amount advanced over six months.
(c) Collect amount advanced over twelve months.
(d) Depends on $ amount of shortage (please describe $ limits and action taken).

20. The presence of a shortage will typically result in a deficiency as well. What best describes your policy for dealing with a deficiency when it is accompanied by an advance?
(a) Request a single payment to recover both the advance and the full amount of the deficiency.
(b) Collect the advance in a single payment and adjust the monthly payment to eliminate the deficiency over a twelve month period.
(c) Collect both the advance and the deficiency over a twelve month period.
(d) Other (please describe).

21. If escrow analysis disclosed an overage, what best describes your policy for handling the overage?
(a) Apply excess to the mortgage balance.
(b) Remit overage to the borrower.
(c) Reduce future escrow payment amount to eliminate overage.
(d) Depends on $ amount of overage (please describe $ limits and action taken).

22. In performing escrow analysis for the coming year, it is necessary to estimate the future payment for escrow items. Assume that the following facts about a particular mortgage:
—Last year's property taxes were $1,200, paid in April and October.
—The April payment was $550; the October payment was $650.
—Property taxes have tended to increase during the past few years.
Which of the following choices most closely describes how you would typically estimate the amount to be collected for property taxes?
(a) Use last year's actual payment ie, $1,200.
(b) Take the last actual payment and annualize the amount, ie., $1,300.
(c) Apply a percentage increase factor, taking into account your best information.
(d) Other (please describe).

Escrow Management for Single-Family Residential Property

Part B: Individual Escrow Account Data-Instructions

This part of the survey requests information on specific borrower escrow accounts. A Mortgage Account Data Sheet is to be completed for each borrower account. A completed form has been included as an example. Attach the completed Mortgage Account Data Sheet to the supporting Escrow History Statement for 1989 and 1990.

Selection of Borrower Accounts

Escrow Management for Single-Family Residential Property Survey of Mortgage Servicers

Part B: Individual Escrow Account Data

Mortgage Account Data Sheet

Servicer ID code:_____
Date:_____
Prepared by:_____
Mortgage Account Number:_____
Date of Origination:_____
Original Balance:_____
Current Balance:_____

HISTORY OF SERVICING

Servicer	Date	
	From	To
(1)		
(2)		
(3)		
(4)		
(5)		

List Payments for Which Escrow is Maintained

(1) _____
(2) _____
(3) _____
(4) _____
(5) _____
(6) _____

Jurisdiction in Which Taxes are Paid

County _____
State _____

Were any Corporate Advances Made on This Account During 1989 or 1990?

(A) Yes
(B) No

If Yes, Provide the Following Information About Each Advance

(1) Number of Days Account in Advance (Deficient) Status
(2) High Balance of Advance
(3) Average Balance of Advance

Is Interest Paid on This Account?

(A) Yes, at _____%
(B) No

History of Escrow Balances

	1989	1990
Low Balance		
High Balance		
Average Balance (Based on Month End Balances)		

Attach a Copy of the Mortgage Documentation That Discusses Allowable Escrow Practices

Monthly Escrow Amount? Total Payments by Escrow Type Each Year

[FR Doc. 91-11666 Filed 5-15-91; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

White House Conference on Indian Education Advisory Committee; Meeting

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed schedule of the forthcoming meeting of the White House Conference on Indian Education Advisory Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. The White House Conference on Indian Education Advisory Committee is established by Public Law 100-297, part E. The Committee is established to assist and advise the Task Force in the planning and conducting the conference.

DATE, TIME AND PLACE: June 3, 1991, at 10:30 a.m. to 5 p.m. and June 4, 1991, at 9 a.m. to 4 p.m. at the U.S. Department of Education, 400 Maryland Avenue, SW., room 3000, FOB 6, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Benjamin Atencio, Deputy Director, White House Conference on Indian Education, U.S. Department of Interior, 1849 C St., NW., MS 7028-MIB, Washington, DC 20240; telephone 202-208-7167; fax 208-4868.

AGENDA: The Advisory Committee for the White House Conference on Indian Education will discuss and advise the Task Force on all aspects of the Conference and actions which are necessary for the conduct of the Conference. Summary minutes of the meeting will be made available upon request. The meeting of the Advisory Committee will be open to the public.

Items to be discussed: Pre-Conference activities and grants; telecommunications; conference site; selection process for participants; budget and administrative matters; election of Advisory Committee Chairperson and Conference Chairperson; Commission Paper topics and writers and other matters related to the Conference.

Dated: May 9, 1991.

Selma Sierra,

Assistant to the Secretary and Director of External Affairs.

[FR Doc. 91-11677 Filed 5-15-91; 8:45 am]

BILLING CODE 4310-RG-M

Bureau of Land Management

[MT-070-4333-13]

Rescission of Emergency Area Closure, Limestone Hills, Headwaters Resource Area, MT

AGENCY: Bureau of Land Management, Butte District Office; Interior.

ACTION: Nullification of emergency area closure on public lands.

SUMMARY: Notice is hereby given to rescind the emergency area closure order for all described public lands of the Limestone Hills area as previously published on page 37509 of the Federal Register on September 11, 1989. This action is effective as of the date of this publication. Authority for revoking this closure is 43 CFR 8341.2. Rationale for the emergency closure is no longer applicable in that the area burned by the Indian Creek Fire has now been successfully rehabilitated.

FOR FURTHER INFORMATION CONTACT: Bradley Rixford, Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702, at commercial phone 406-494-5059 or FTS 585-5059.

Dated: May 7, 1991.

James R. Owings,

District Manager.

[FR Doc. 91-11657 Filed 5-15-91; 8:45 am]

BILLING CODE 4310-DN-M

[ID-010-93-4120-93-ADVB]

Boise District Grazing Advisory Board; Tour and Meeting

AGENCY: Boise District, Bureau of Land Management, Idaho; Interior.

ACTION: Notice of tour and meeting.

SUMMARY: The Boise District Grazing Advisory Board will tour the Jarbridge Resource Area on June 12th to look at various wildlife projects that have been funded in part with Range Improvement (8100) monies. The tour will leave the BLM Boise District Office at 8 a.m. on June 12th and conclude at Jackpot, Nevada that evening. A Grazing Advisory Board meeting will be held June 13th at Three Creek School. The following items will be discussed: implementation of a District Project Schedule, District Exclosure Policy,

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Owyhee RMP update, Cliff's and Reynolds Creek CRMP update, drought update, and water quality update. The meeting is open to the public and a comment period will be held at 2 p.m.

DATES: The tour will leave at 8 a.m. Wednesday, June 12, 1991, from the BLM Boise District Office. The meeting will begin at 9:00 a.m. on Thursday, June 13, 1991.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho, 83705. The Grazing Advisory Board meeting will be held at Three Creek School which is approximately 35 miles east of Rogerson on the Rogerson-Three Creek highway.

FOR FURTHER INFORMATION CONTACT: Fred Schley, Boise District, BLM (208)384-3457.

Dated: May 3, 1991.

J. David Brunner,

District Manager.

[FR Doc. 91-11606 Filed 5-15-91; 8:45 am]

BILLING CODE 4310-GG-M

[G-010-5101-09-YGKJ/G1-011; NMNM80900]

Albuquerque District Office; Right-of-Way Application; New Mexico

AGENCY: Bureau of Land Management, Albuquerque District, Interior.

SUMMARY: An application, serialized as NM80900, was received for a seven mile right-of-way for a 30 inch diameter pipeline.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 USC 185), as amended by the Act of November 16, 1973 (37 Stat. 576), Transwestern Pipeline Company has applied for a right-of-way serialized as NM80900 to construct seven miles of 30 inch diameter natural gas pipeline across public land in San Juan County, New Mexico. This is part of a project that will transport natural gas to California markets. The proposed line crosses the following public lands in San Juan County:

New Mexico Principal Meridian

T. 29 N., R. 11 W.,
Sec. 9: SE¼SE¼;
Sec. 10: Lots 2, 3, 4, S½SW¼.

The purpose of this notice is to inform the public that the Bureau will be deciding whether the right-of-way should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 435 Montano Road, NE., Albuquerque, NM 87107.

Dated: May 9, 1991.

Patricia E. McLean,

Associate District Manager.

[FR Doc. 91-11604 Filed 5-15-91; 8:45 am]

BILLING CODE 4310-FB-M

[OR-030-01-4212-13; GP1-207]

Exchange of Public Lands in Malheur County, OR

May 7, 1991

ACTION: Notice of Realty Action OR 44787.

The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 17S., R. 44E.:
Sec. 14: NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, N½SE¼.
T. 17S., R. 45E.:
Sec. 17: W½;
Sec. 18: lot 1, 2, 3, 4, E½W½, E½.

The area described above aggregates 1353.01 acres in Malheur County, Oregon.

In exchange for these lands, the Federal Government will acquire the following described private lands from OT Farms.

Willamette Meridian

T. 17S., R. 45E.:
Sec. 8: E½W½.
T. 18S., R. 45E.:
Sec. 3: lot 1, 2, 3, 4, S½N½, S½.

The area described above aggregates 802.64 acres in Malheur County, Oregon.

This proposed land exchange was published in the **Federal Register** Vol. 54 FR, page 27436 on Thursday, June 29, 1989. The purpose of this Notice is to extend the segregative effect on the public lands described above from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Nancy Getchell, Bureau of Land Management, Vale District, 100 E. Oregon Street, Vale, OR 97918. (Telephone 503 473-3144).

Geoffrey B. Middaugh,

Acting District Manager.

[FR Doc. 91-11572 Filed 5-15-91; 8:45 am]

BILLING CODE 4310-33-M

[OR-030-01-4212-13; GP1-208]

Vale District Office; Exchange of Public Lands in Malheur County, OR

May 7, 1991.

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of realty action OR 39525.

The following described lands have been determined to suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 23s., R. 36E.:
Sec. 31: lot 1, 2, 3, 4, NE¼, E½NW¼, NE¼SW¼, NW¼SE¼, E½SE¼;
Sec. 32: all;
Sec. 33: W½SW¼.
T. 24S., R. 36E.:
Sec. 4: lot 4.

The area described above aggregates 1332.51 acres in Malheur County, Oregon.

In exchange for these lands, the Federal Government will acquire the following described private lands from Walter T. McEwen:

Willamette Meridian

T. 24S., R. 36E.:
Sec. 11: S½SW¼.
T. 25S., R. 36E.:
Sec. 13: SW¼SW¼;
Sec. 14: S½SE¼;
Sec. 15: SW¼NE¼;
Sec. 24: N½.
T. 24S., R. 39E.
Sec. 19: SW¼SE¼;
Sec. 30: SE¼NE¼, W½E½, E½SW¼.
T. 25S., R. 39E.:
Sec. 3: NW¼SW¼;
Sec. 4: NE¼SE¼;
Sec. 19: lot 2.
T. 26S., R. 39E.:
Sec. 7: E/½SE¼;
Sec. 8: S½SW¼, SW¼SE¼;
Sec. 17: N½NW¼, NW¼NE¼.

The area described above aggregates 1319.61 acres in Malheur County, Oregon.

This proposed land exchange was published in the **Federal Register** 54 FR 27435 on Thursday, June 29, 1989, and corrected in the **Federal Register** 54 FR 30633 on Friday July 21, 1989.

The purpose of this Notice is to extend the segregative effect on the public lands described above from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Nancy Getchell, Bureau of Land Management, Vale District, 100 E. Oregon Street, Vale, OR 97918. (Telephone 503 473-3144).

Geoffrey B. Middaugh,

Acting District Manager.

[FR Doc. 91-11573 Filed 5-15-91; 8:45 am]

BILLING CODE 4310-33-M

[ID-943-4214-11;ID-05262]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawal for a 15 acre portion of the Lola Creek Forest Camp within the Challis National Forest continue for an additional 30 years. The lands are still being used for recreational site purposes, as designated in the original withdrawal. The lands would remain closed to surface entry and mining under the proposal, but have been and would remain open to mineral leasing.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706 (208) 327-3162.

The Forest Service proposes that the existing land withdrawal made by public land order No. 1228 be continued for a period of 30 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land is described as follows:

Boise Meridian

Challis National Forest

T. 12 N., R. 11 E.,
Sec. 3, SW¼NW¼lot 4 and NW¼SW¼lot 4.
Sec. 4, that portion of S½N½NE¼lot 1 lying outside the Frank Church River of No Return Wilderness, S½NE¼lot 1, E½S¼NW¼lot 1 and N½NE¼SE¼lot 1.

The area described contains 15 acres in Custer County.

The withdrawal is essential for protection of recreational values on the site. The withdrawal closed the land to all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: May 7, 1991.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 91-11605 Filed 5-15-91; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service

Outer Continental Shelf (OCS) Operations, Current List of Notices to Lessees and Operators (NTL) Issued by Each OCS Region

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: This notice informs the public, industry, and other Government agencies of NTL's that were current and effective as of January 1, 1991, in each OCS Region. If an NTL issued before January 1, 1991, is not included in this listing, it is hereby canceled and no longer in effect.

ADDRESSES: Requests to obtain a copy of an NTL should be directed in writing or by telephone to the Regional Director at the following appropriate address.

Alaska OCS Region, 949 East 36th Avenue, room 110, Anchorage, AK 99508-4302, (907) 261-4010.

Atlantic OCS Region, suite 1109, 381 Elden Street, Herndon, VA 22070-4817, (703) 787-1110.

Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, LA 70123-2394, (504) 736-2589.

Pacific OCS Region, 770 Paseo Camarillo, Camarillo, CA 93010, (805) 389-7502.

FOR FURTHER INFORMATION CONTACT: Chief, Engineering and Technology Division; Minerals Management Service; telephone (703) 787-1598 or FTS 393-1598.

SUPPLEMENTARY INFORMATION: The current NTL's for each OCS Region are as follows:

Alaska OCS region		
80-1	Feb. 5, 1980	Furnishing Food, Quarters, and Transportation to USGS Personnel.
80-2	June 13, 1980	Guidelines for Preparing Outer Continental Shelf Environmental Reports. Note: See additional guidelines prepared March 30, 1982, entitled "Guidelines for Outer Continental Shelf Exploration Plans, Environmental Reports and Application for Permit to Drill Exploratory Wells."
84-4	Aug. 1, 1984	Preliminary Activities Conducted on Leased Areas; Gulf of Alaska/Cook Inlet.
85-2	Aug. 9, 1985	Preliminary Activities Conducted on Leased Areas; Bering Sea (Supersedes NTL Nos. 83-2, 83-4, and 84-1).
86-2	Jan. 15, 1987	Preliminary Activities Conducted on Leased Areas; Beaufort Sea (Supersedes NTL Nos. 83-1 and 84-3).
86-3	Oct. 6, 1986	New Form for Designation of Operator (Form 1123).
87-1	Nov. 30, 1987	Preliminary and Other Activities Conducted on Leased Areas; Chukchi Sea.

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89-1	Dec. 1, 1989	Minimizing Potential for Incidental Taking of Polar Bear and Walrus During Preliminary and Other Activities Conducted on Leased Areas in the Beaufort and Chukchi Seas.
89-2	Dec. 1, 1989	Preliminary Activities, Shallow Hazards, Geophysical Surveys, and Geotechnical Evaluations (Supersedes NTL 83-5, 9/07/83).
90-1	Apr. 2, 1990	Submission of Digitized Well Log Data on Magnetic Tape (Supersedes NTL 86-1, February 20, 1986).
90-2	Apr. 3, 1990	District Office Hours and Contact Procedures (Supersedes NTL 87-02, 12/10/87).
Atlantic OCS Region		
78-9	May 4, 1979	Requirements for Submission of Digitized Well Log Data on Magnetic Tape.
NA80-10.	May 6, 1980	Minimum Criteria for Training Programs in Fishing Industry Operations.
83-2	Sept. 7, 1983	Minimum Requirements for Site Surveys for Exploration Activities (Supersedes NTL 78-2 South Atlantic Supplement 1; and NTL 80-2).
Gulf of Mexico OCS Region		
72-9	Sept. 22, 1972	OCS Operations Safety Alert Notice No. 1, Flash Fire From Liquid Phase Heat Transfer Unit.
73-3	Feb. 16, 1973	The Use of Polychlorinated Biphenyls (PCB's).
74-1	Jan. 4, 1974	Applicability of OCS Orders Nos. 2 and 4 to OCS Leases Issued off the Coasts of Mississippi, Alabama, and Florida. (Note: NTL will be updated to include reference to regulations rather than OCS Orders. The intent of the NTL remains in effect.)
82-7	Aug. 13, 1982	Clarification of Requirements of subparagraph 5.7, Safety Device Training of OCS Order No. 5, "Production Safety Systems." (Note: NTL will be updated to include reference to subpart O of 30 CFR part 250 when it is issued. The intent of the NTL remains in effect.)
75-3	Oct. 1, 1982	OCS Cultural Resource Revision No. 1 Requirements for the Gulf of Mexico OCS Region (See NTL 75-3, January 20, 1975, for copy of Revision No. 1).
83-3	Sept. 7, 1983	OCS Shallow Hazards Requirements for the Gulf of Mexico OCS Region (Cancels NTL Nos. 75-8 and 80-5).
85-2	Feb. 4, 1985	Effect of Drilling "Window" Approvals.
85-6	Sept. 30, 1985	Submittal of Electric, Radioactive, and Other Wellbore Surveys.
85-8	Nov. 26, 1985	Minimizing Oil and Gas Structures in the Gulf of Mexico.
86-5	June 18, 1986	New Forms for Designation of Operator.
86-9	Oct. 13, 1986	Outer Continental Shelf Environmental Report/Information Guidelines for Plans Submitted in the Gulf of Mexico OCS Region (Supersedes NTL 80-6).
86-11	Nov. 17, 1986	Guidelines for Reducing or Eliminating Trash and Debris in the Gulf of Mexico.
88-2	June 10, 1988	Submission of List of Safety and Pollution-Prevention Equipment.
88-3	June 29, 1988	Information to Be Made Available on the Reports Required in subpart K of 30 CFR part 250.
88-7	Sept. 15, 1988	Reorganization of Office of Field Operations and Realignment of New District Boundaries.
88-11	Feb. 1, 1989	Implementation of Measures to Detect and Protect Deepwater Chemosynthetic Communities.
.....	.....	Outer Continental Shelf Functional Responsibility of New Regulations.
89-01	Aug. 1, 1989	Implementation of Consistent Biological Stipulation Measures in the Central and Western Gulf of Mexico.

89-2	Mar. 30, 1989	Special Security Handling of Well Logs and Data Generated from Oil and Gas Leases.
89-05	Sept. 29, 1989	Timelapse in Exploratory Drilling Operations Not to Exceed 180 days for Deepwater (400 meters or deeper) Leases.
89-06	Nov. 30, 1989	Requirements for Submittal of Documents Under 30 CFR part 250, subpart I, Platforms and Structures.
89-07	Dec. 15, 1989	Supplemental Bonds.
.....	May 8, 1990	NMFS Letter as Addendum to 90-01.
.....	June 27, 1990	Memorandum on Removal of All Abandoned Casing Stubs.
90-03	Aug. 27, 1990	Minimum Interim Requirements for Site Clearance and Verification of Abandoned Oil and Gas Structures in the Gulf of Mexico.
90-04	Oct. 1, 1990	New Orleans District Office Hours and Phone Call Procedures (Supersedes NTL 88-8, October 6, 1988).
90-05	Oct. 1, 1990	Houma District Office Hours and Phone Call Procedures (Supersedes NTL 89-03, June 9, 1989).
90-06	Oct. 1, 1990	Lafayette District Office Hours and Phone Call Procedures (Supersedes HTL 89-04, September 26, 1989).
90-07	Oct. 1, 1990	Rate Control Section Address, Office Hours, and Phone Call Procedures.
90-08	Oct. 31, 1990	Lake Jackson District Address, Office Hours and Phone Call Procedures.
90-09	Nov. 8, 1990	Temporary Abandonment of Wells and Maintenance, Protection and Removal of Underwater Casing Stubs.
90-10	Nov. 16, 1990	Reporting of Leases Off Production.
Pacific OCS Region		
77-3	Mar. 1, 1977	Minimum Cultural Survey Requirements, OCS Exploratory Drilling.
78-1	Oct. 23, 1978	Minimum Requirements for Biological Surveys (Supersedes NTL 77-4).
80-2	Mar. 20, 1980	Minimum Requirements for Environmental Reports.
86-4	Aug. 18, 1986	New Form for Designation of Operator
88-1	June 27, 1988	Submission of List of Safety and Pollution-Prevention Equipment.
88-2	Sept. 28, 1988	NTL's Cancellation.
88-5	May 5, 1989	Requirements for Exploratory Operations OCS California (Supersedes NTL 82-3).
88-6	May 5, 1989	Guidelines for Shallow Hazards Survey for OCS Exploratory Drilling (Supersedes NTL 85-01).
88-7	May 5, 1989	Guidelines for Shallow Hazards Survey for OCS Development Platforms (Supersedes NTL 85-02).
88-8	May 5, 1989	Guidelines for Shallow Hazards Survey for OCS Pipeline Routes (Supersedes NTL 85-03).
88-9	May 5, 1989	Submission of Digitized Well Log Data on Magnetic Tape (Supersedes NTL 86-01).
89-01	Apr. 12, 1989	Santa Maria District Office Hours and Phone Call Procedures.
90-01	May 25, 1990	Notice to Lessees and Operators of Federal Oil and Gas Leases in the Outer Continental Shelf, Pacific OCS Region; Supplemental Bonds.
90-02	July 5, 1990	Santa Maria District Office Hours and Phone Call Procedures (Supersedes NTL 89-02).
90-03	Nov. 29, 1990	Change of Title for the Ventura District Office to the Camarillo District Office, Phone Call Procedures and the New Office Hours (Supersedes NTL 88-03).

An updated list of NTL's will be published periodically in the Federal Register.

Dated: May 3, 1991.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 91-11574 Filed 5-15-91; 8:45 am]

BILLING CODE 4310-MR-M

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INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31663]

Arizona & California Railroad Co. Limited Partnership—Acquisition and Operation Exemption—the Atchison, Topeka and Santa Fe Railway Co.

Arizona & California Railroad Company Limited Partnership (A&C), a non-carrier, has filed a notice of exemption to acquire and operate approximately 240 miles of rail line owned by The Atchison, Topeka and Santa Fe Railway Company (ATSF). A&C will become a class III rail carrier.

The track to be purchased is in San Bernadino and Riverside Counties, CA, and in Maricopa, Yavapai, and La Paz Counties, AZ, and consists of three segments: (1) Between ATSF milepost 190+0975.5 feet, at or near Cadiz, CA, and ATSF milepost 105+4224 feet, at or near Parker, AZ; (2) connecting rail line between the western connection to the Cadiz Subdivision at milepost 105+4224 feet, at or near Parker, AZ, and milepost 0+448.7 feet, at or near Matthie, AZ, including the connecting "Y" Track Number 1, at and near Matthie, AZ, west of milepost 134+4875 feet; and (3) between the connection to the Cadiz Subdivision at milepost 0+0 feet, at Rice, CA, and the end of the Ripley Subdivision at milepost 49+2112 feet, at or near Ripley, CA.

A&C will also acquire from ATSF incidental limited overhead trackage rights over connecting interchange tracks as follows: (1) Tracks connecting at or near Cadiz, CA, between ATSF's Cadiz Subdivision milepost 190+075.5 feet and ATSF's Needles Subdivision milepost 647+5234.7 feet, on Tracks Nos. 2 and 36 at Cadiz; and (2) connecting rail line between ATSF's Parker Subdivision milepost 0+448.7 feet (also Phoenix Subdivision milepost 135+144 feet) and ATSF's Phoenix Subdivision milepost 191+4789.8 feet, including all yard track in the Mobest Yard in Phoenix, AZ (the "Connecting Rail Lines"). Consummation was to occur on or after May 1, 1991.[1]

Any comments must be filed with the Commission and served on Jill M. Hawken, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797.

A&C shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: May 9, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–11666 Filed 5–15–91 8:45 am]

BILLING CODE 7035–01–M

[1] The notice of exemption in this proceeding was filed April 24, 1991. Under the Commission's rules, the exemption is effective seven days after the notice is filed. 49 CFR 1150.32(b).

[Finance Docket No. 31656 (Sub-No. 1)]

Joppa and Eastern Railroad Co.—Petition for Exemption—Lease—Missouri Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the lease by Joppa and Eastern Railroad Co. of a portion of Union Pacific Railroad Company's and Missouri Pacific Railroad Company's rail and rail-related property from milepost 359.5 to the end of the track at approximately milepost 362 in Massac County, IL, subject to standard employee protective conditions.

DATES: This exemption is effective on May 10, 1991. Petitions to reopen must be filed by June 5, 1991.

ADDRESSES: Send pleadings referring to Finance Docket No. 31656 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission; Washington, DC 20423

(2) Petitioners' representatives:
Joppa and Eastern Railroad Company
John R. Molm
Troutman, Sanders, Lockerman and Ashmore, 1400 Chandler Building, 127 Peachtree Street, NE., Atlanta, GA 30303–1810
Union Pacific Railroad Company, Missouri Pacific Railroad Company
Beverly S. Greer, Esq., 1416 Dodge Street, Omaha, NE 68179

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: May 9, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–11669 Filed 5–15–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Designation of Director (Frauds), Commercial Litigation Branch, Civil Division as Agent of the Attorney General to Receive Declarations Pursuant to the Financial Institutions Anti-Fraud Enforcement Act

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: The Financial Institutions Anti-Fraud Enforcement Act of 1990, Public Law 101–647, title XXV, subtitle H, 2560–94 (1990), authorizes any person to file with the Attorney General, or an agent designated by the Attorney General, a declaration identifying acts giving rise to an action for civil penalties under section 951 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") or a declaration identifying specific assets which might be recovered by the Government in satisfaction of a judgment or settlement obtained pursuant to section 951 of FIRREA. The Attorney General has designated the Director (Frauds) of the Commercial Litigation Branch, Civil Division as his agent to receive all declarations filed pursuant to the Financial Institutions Anti-Fraud Enforcement Act.

EFFECTIVE DATE: May 16, 1991.

ADDRESSES: Declarations may be mailed to: Director, Frauds, U.S. Department of Justice, P.O. Box 261, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Michael F. Hertz, Director, Commercial Litigation Branch, Civil Division. Telephone (202) 514–7179.

Dated: May 10, 1991.

Stuart E. Schiffer,

Deputy Assistant Attorney General, Civil Division.

[FR Doc. 91–11611 Filed 5–15–91; 8:45 am]

BILLING CODE 4410–01–M

Chromalloy American Corp. et al.; Lodging of Consent Decree

In accordance section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States* v. *Chromalloy American Corporation (formerly doing business as Woolley Took & Manufacturing Division) and Sequa Corporation*, Civil Action No. MO–91CA57, was filed in the United States District Court for the Western District of Texas on May 6, 1991. On the same day, a consent decree between the United States as plaintiff, and Chromalloy American Corporation and Sequa Corporation as defendants was lodged with the court in settlement of the allegations in the complaint. This consent decree settles the government's claims in the complaint against Chromalloy American Corporation and Sequa Corporation, pursuant to sections 104, 106, and 107 of CERCLA, 42 U.S.C. 9604, 9606, 9607, for injunctive relief to abate an imminent and substantial endangerment to the public health, welfare or the environment because of actual or threatened releases of hazardous substances from a facility, and for the recovery of response costs incurred by the United States with respect to a facility located in Odessa, Ector County, Texas, known as the "North Site at the Odessa Chromium II Site" (hereafter "the Site"). The complaint alleged, among other things, that the defendants are persons who at the time of disposal of any hazardous substance owned and operated any facility at which such hazardous substances were disposed of, or are successors-in-interest to such an owner or operator. The complaint further alleged that the United States has incurred and will continue to incur response costs in response to the release or threat of release of hazardous substances.

Under the terms of the proposed consent decree, the defendants agree to implement the remedy selected by EPA in its Record of Decision, which the EPA estimates will cost in excess of $3.5 million, and to pay to the United States the sum of $695,265.00 for the United States' costs related to the Site through February 1989, as well as costs through entry of the Decree not to exceed $61,000, and all future oversight costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530. All comments should refer to *United States* v. *Chromalloy American Corporation, et al.*, D.J. Ref. 90–11–2–571. The proposed consent decree may be examined at the following offices of the United States Attorney and the Enviromental Protection Agency ("EPA"):

United States Attorney's Office

Office of the United States Attorney, U.S. Courthouse, 200 East Wall Street, room 304, Midland, Texas 79701, (915) 684–4120.

EPA Region VI

Contact: Bruce Jones, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 655–2120.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, Box 1097, Washington, DC 20004, (202) 347–7829. A copy of the proposed consent decree may be obtained by mail from the Document Center. When requesting a copy of the decree, please enclose a check for copying costs in the amount of $13.75 payable to "Consent Decree Library."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–11616 Filed 5–15–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that two complaints were filed in 1989 in the United States District Courts for the Eastern and Western Districts of Arkansas: *United States* v. *Custom Insulation, Inc. and Worley Plumbing Co., Inc.*, Civil Action No. 89–6027 (W.D. Ark., Hot Springs Division) filed February 21, 1989, and *United States* v. *Custom Insulation, Inc.*, Civil Action No. J–C–89–200 (E.D. Ark., Jonesboro Division) filed September 28, 1989. The cases were consolidated before the court in the Eastern District of Arkansas, Little Rock Division. On May 3, 1991, a Consent Decree between the United States and defendants Custom Insulation, Inc. and Worely Plumbing Co., Inc. was lodged with the court. This Consent Decree settles the government's claims in the complaint against both defendants pursuant to sections 112(c) and (e) of the Clean Air Act ("the Act"), 42 U.S.C. 7412(c) and (e) and the work practice standards set forth in the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations for asbestos, 40 CFR 61.146, 61.147(e) and 61.152 for (1) injunctive relief to protect public health and the environment in the future, and (2) for payment of twenty-five thousand dollars ($25,000.00) in penalty. The February 21, 1989 complaint alleged, in part, that defendant Worley was a person who contracted with codefendant Custom for the removal and disposal of asbestos from the Garland Towers, Hot Springs, Arkansas, both of which were liable for dropping friable asbestos approximately eight feet to the ground, failing to adequately wet asbestos-containing material to insure that it remained wet until collected for disposal, and failing to seal the asbestos-containing material in leak-tight containers while wet in violation of the Act and the asbestos NESHAP. The September 28, 1989 complaint alleged that defendant Custom, while removing asbestos from the Luxora Elementary School, Luxora, Arkansas, failed to adequately wet friable asbestos-containing material to insure that it remained wet until collected for disposal, failed to seal the asbestos-containing material in leak-tight containers while wet, and failed to notify the Arkansas Department of Pollution Control and Ecology or the U.S. Environmental Protection Agency with written notification of an intent to renovate the school before commencing the renovation operation in violation of the Act and the asbestos NESHAP.

Under the terms of the proposed Partial Consent Decree, the defendants agree to (1) obey the provisions of the Act and the NESHAP at any future renovation/demolition sites owned or operated by them, (2) provide a copy of the Decree to all contractors and subcontractors retained to perform work contemplated in the Decree, and (3) allow entry of any authorized representative of the EPA for monitoring compliance with the Decree into any defendant-owned or operated facility being demolished or renovated. The Consent Decree also calls for the defendant Custom to pay the United States twenty-five thousand dollars

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($5,000.00) in penalty over the next eighteen months in three separate payments: $2,400 within six months of entry of the decree, $2,300 within twelve months, and $2,300 within eighteen months.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Custom Insulation, Inc., et al.*, D.J. Ref. 90-5-2-1-1369.

The proposed Consent Decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Cheryl Boyd, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 144 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-2125.

United States Attorney's Office

Assistant United States Attorney, Civil Division, Eastern District of Arkansas, 331 U.S. Post Office and Courthouse Building, 600 W. Capitol, Little Rock, Arkansas 72201, (501) 378-5342.

Copies of the proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347-7829. A copy of the proposed Consent Decree may be obtained by mail from the Document Center. When requesting a copy of the Decree, please enclose a check for copying costs in the amount of $3.25 payable to "Consent Decree Library."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-11613 Filed 5-15-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree United States v. Goodyear Tire and Rubber Co.

In accordance with Departmental Policy, 28 CFR 50.7, and pursuant to section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(2)(B), notice is hereby given that a Consent Decree in *United States* v. *Goodyear Tire & Rubber Company, et al.*, Civil Action No. 89-1443 PHX (D. Ariz.), was lodged with the United States District Court for the District of Arizona on May 7, 1991. This action was brought under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The Consent Decree provides that defendants Goodyear Tire and Rubber Company and Loral Defense Systems-Arizona, a Division of Loral Corporation, will clean up the Phoenix-Goodyear Airport Superfund Site as required by the Record of Decision issued by the U.S. Environmental Protection Agency on September 26, 1989, pay $1.5 million of the past response costs incurred by the U.S. Environmental Protection Agency, pay past response costs of $75,333 to the State of Arizona, and pay all future response and oversight costs incurred by the U.S. Environmental Protection Agency and the State of Arizona.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Goodyear Tire & Rubber Company, et al.*, D.O.J. Ref. No. 90-11-2-248.

The Consent Decree may be examined at the Office of the United States Attorney, District of Arizona, 4000 U.S. Courthouse, 230 North First Street, Phoenix, Arizona 85025 and at the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105.

A copy of the Consent Decree also may be examined at the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington, DC 20004, telephone number (202) 347-7829. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center. The proposed Consent Decree package consists of a 90 page Consent Decree and 304 pages of Appendices. You may request a copy of the Consent Decree with or without appendices. Please specify in the request whether or not appendices are requested. A request for a copy of the proposed Consent Decree with appendices should be accompanied by a check in the amount of $98.50 (25 cents per page reproduction charge) payable to "Consent Decree Library." A request for a copy of the proposed Consent Decree without appendices should be accompanied by a check in the amount of $22.50 payable to "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 91-11614 Filed 5-15-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Cooperative Research Notification; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center For Manufacturing Sciences, Inc. ("NCMS"), on March 18, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The formation of a technology-specific venture within the NCMS general membership, (2) the identities of the parties to the venture, and (3) the nature and objective of the venture. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The parties to the venture are:

AT&T, 2 Oak Way, Barkeley Heights, New Jersey 07922

Digital Equipment Corporation, 146 Main Street, Maynard, Massachusetts 01754

Hamilton Standard Interconnect Systems, Inc., 300 Park East Drive, Woonsocket, Rhode Island 02895

National Center for Manufacturing Sciences, Inc., 900 Victors Way, Ann Arbor, Michigan 48106

Texas Instruments Incorporated, 13500 N. Central Expressway, Dallas, Texas 75243

United Technologies Corporation, One Hamilton Road, Windsor Locks, Connecticut 06096-1010

The nature and objective of the venture is to undertake research and development activities focusing on generic enabling technologies for improving printed wiring board products and manufacturing processes.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act, notice of which the Department of Justice published in the Federal Register pursuant to section 6(b) of the Act of March 17, 1987 (52 FR

6375). NCMS filed additional notifications on April 13, 1988, and May 5, 1988, notice of which the Department published in the Federal Register on June 2, 1988 (53 FR 20196). NCMS also filed additional notifications on July 11, 1988, September 12, 1988, December 8, 1988, March 9, 1989, August 10, 1989, November 3, 1989, January 29, 1990, April 27, 1990, July 31, 1990, November 7, 1990, and February 5, 1991, notices of which the Department published on August 19, 1988 (53 FR 31771), November 4, 1988 (53 FR 44680), January 18, 1989 (54 FR 2006), April 13, 1989 (54 FR 14878), September 18, 1989 (54 FR 38461), November 29, 1989 (54 FR 49122), February 28, 1990 (55 FR 7045), June 5, 1990 (55 FR 22904), August 28, 1990 (55 FR 35194), December 10, 1990 (55 FR 50786), and March 12, 1991 (56 FR 10444), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-11612 Filed 5-15-91; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL SCIENCE FOUNDATION

Interagency Arctic Research Policy Committee; Meeting

The National Science Foundation announces the following meeting:

Name: Interagency Arctic Research Policy Committee.

Date and Time: Wednesday, June 5, 1991, 3:30 p.m.-5 p.m.

Place: National Science Foundation, room 540, 18th and G Street, NW., Washington, DC.

Type of Meeting: Open.

Contact Persons: Jerry Brown or Charles E. Myers, Division of Polar Programs, room 627, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7617.

Purpose of Committee: The Interagency Arctic Research Policy Committee was established by Public Law 98-373, the Arctic Research and Policy Act, to survey arctic research, help set priorities for future arctic research, assist in the development of a national arctic research policy, prepare an integrated multi-agency budget request for arctic research, develop a plan to implement national arctic research policy, and simplify cooperation in and coordination of arctic research.

Proposed Agenda Items:

1. Review and Approval of U.S. Arctic Research Plan and Implementation Plans.
2. Status of International Activities.
3. Status of Data and Social Sciences Activities.
4. Arctic Research Commission Activities.

Public Participation: Committee meetings are not public hearings and will not normally receive verbal comments from observers unless specifically invited by the Committee. Observers invited to address the Committee will be limited to 5 minutes each. To address the Committee, submit a proposed statement. If the statement is relevant and appropriate to the agenda at that particular meeting, the Committee will invite you to present your statement. The texts of statements shall not exceed 5 double spaced typed pages each.

Charles E. Myers,

Division of Polar Programs.

[FR Doc. 91-11679 Filed 5-15-91; 8:45 am]

BILLING CODE 7555-01-M

OFFICE OF PERSONNEL MANAGEMENT

Reservist Leave Bank Program

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is establishing an open season for contributions of annual leave under the reservist leave bank program established under Public Law 102-25, April 6, 1991, for Federal employee reservists returning from duty in the Persian Gulf War. In addition, this notice advises Federal agencies of the date by which the total number of potential leave recipients must be reported to OPM and the date by which the total amount of annual leave contributions must be reported to OPM.

ADDRESSES: Send or deliver written reports to Barbara L. Fiss, Assistant Director for Pay Policy and Programs, room 7H30, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. Supplementary written reports may be sent to OPM by FAX at the following number: (202) 606-1349 or (FTS) 286-1349.

FOR FURTHER INFORMATION CONTACT: Joe Cerio, (202) 606-2858 or (FTS) 266-2858.

SUPPLEMENTARY INFORMATION: On May 6, 1991 (56 FR 20517), OPM issued interim regulations and requested comments on rules establishing a leave bank authorized by Public Law 102-25 for returning Federal employees who were called to active duty in the U.S. Armed Forces during Operations Desert Shield and/or Desert Storm (56 FR 20517). Those rules define the procedures and conditions that agencies must follow to (1) identify eligible returnees, (2) identify qualified leave contributors, (3) accept contributed annual leave, (4) report to OPM, and (5) credit the annual leave accounts of recipients. OPM has determined that the open season for all Executive agencies to accept contributions of annual leave from qualified leave contributors under the reservist leave bank program will be June 2 to July 12, 1991.

In addition, as required by the interim regulations, OPM has determined that each agency must report to OPM by June 24, 1991, the total number of all known potential leave recipients under the reservist leave bank program. For this purpose, agencies must identify all potential leave recipients who have already returned to civilian positions, as well as those still on active duty who are or would be eligible to receive contributions of annual leave under this program, as of April 30, 1991. Agencies are reminded that an "eligible returnee" is defined by regulation as an employee serving or having served under orders issued under 10 U.S.C. 672(a), 672(g), 673, 673b, 674, 675, or 688, beginning on or after August 2, 1990. (See 5 CFR 630.1102.) Supplementary reports may be necessary depending upon the ending date established for the Persian Gulf War.

Finally, as required by the interim regulations, OPM also has determined that each agency must report to OPM by August 10, 1991 (4 weeks after the close of the open season), the total number of hours of annual leave contributed during the open season established above. This report must be made in writing to the address indicated above. Official written reports may be supplemented by telephone or FAX reports. However, all supplementary reports also must be received by August 10, 1991.

Following the receipt of these reports, OPM will divide the total amount of annual leave contributed under the reservist leave bank program equally among all "eligible returnees" and notify each agency of the amount of leave each such "eligible returnee" is to receive.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-11536 Filed 5-15-91; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29163; File No. SR-Amex-91-07]

Self-Regulatory Organizations; Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Amendments to Rule 127—Minimum Fractional Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 24, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities

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and Exchange Commission ("Commission") the proposed rule change described in items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 127 to increase, from $1 to $5, the price level at which equity securities are traded in sixteenths, and at or above which equity securities are traded in eighths.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Exchange Rule 127 currently provides that securities selling under $1 but above $0.25 trade in sixteenths, while securities selling at $1 and above trade in eighths. Exchange Rule 127 further provides that the Exchange has the discretion to fix different minimum fractional changes for securities traded on its floor. Pursuant to this authority, the Exchange has established sixteenths trading in foreign issues selling at less than $5 and in foreign currency warrants selling at less than $3. The Exchange also has used this exemptive authority, from time to time, generally at the request of a specialist seeking to improve market quality, to establish sixteenths trading in certain stocks selling above $1.

The Exchange now proposes to increase the price level below which securities are traded in sixteenths, and at or above which securities are traded in eighths, from $1 to $5. Under the proposal, Exchange Rule 127 will be amended so that securities (including foreign issues) selling above $0.25 but under $5 will trade in sixteenths; securities selling at $5 and above will trade in eighths; and securities selling under $0.25 will continue to trade in thirty-seconds. The proposed amendments to rule 127 do not pertain to bond issues which will continue to be dealt in at ⅛ of 1%. In addition, the Exchange will retain its authority to fix different minimum fractional changes where appropriate.

The Exchange believes that trading in sixteenths promotes greater liquidity in lower priced stocks by allowing a quotation between the current eighths bids and offers, which will better the market for those stocks.

It should be noted that trading in sixteenths currently cannot be accommodated by the Intermarket Trading System ("ITS"), which is designed only to accommodate stocks trading in eighths.[1] The Exchange plans to work with the other ITS participants [2] to develop appropriate enhancements to the ITS system to accommodate sixteenths trading. Until those enhancements are made, the Exchange does not intend to allow stocks currently in eighths and on the ITS system to be switched to sixteenths.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is intended to promote just and equitable principles of trade, to facilitate transactions in securities, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will remove or lessen existing burdens on competition in that it will permit greater liquidity in lower priced stocks.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-91-07 and should be submitted by June 6, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 9, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11561 Filed 5-15-91; 8:45 am]

BILLING CODE 8010-01-M

[1] ITS is a communications and order routing system designed to facilitate trading of certain securities designated as eligible for ITS trading between competing market centers.

[2] In addition to the Amex, the Boston, Cincinnati, Midwest, New York, Pacific, and Philadelphia Stock Exchanges and the National Association of Securities Dealers are all participants in the ITS.

[Release No. 34-29168; File No. SR-DTC-91-04]

Self-Regulatory Organizations; Depository Trust Company; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change Relating to Automated Tender Offer Program

May 7, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), notice is hereby given that on February 25, 1991, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in items I, II, and III below, which items have been prepared by the self-regulatory organization. On April 23, 1991, DTC amended the proposed rule change to provide for Commission review pursuant to section 19(b)(2) of the Act rather than section 19(b)(3)(A) of the Act.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Commission also is granting temporary approval, on an accelerated basis, for the reasons discussed below, until May 7, 1992.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC filed the proposed rule change to modify its Automated Tender Offer Program ("ATOP"). The proposed rule change will: (1) Enable participants to withdraw, through ATOP, securities previously tendered; (2) permit agents of tender offers ("agents") to receive messages from DTC by computer to computer transmission; and (3) implement a new program, ATOP II, which will enable agents, which do not handle a large volume of offers and which do not have a Participants Terminal System ("PTS") terminal and printer, to participate in ATOP.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ATOP enables DTC participants to submit acceptances in tender and exchange offers ("offers") by means of electronic instructions through DTC's PTS.[2] Currently, participants wishing to withdraw acceptances of an offer, pursuant to withdrawal rights in the offer, have had to submit withdrawal instructions by means of hardcopy (*i.e.*, paper) instruction forms. Participants have experienced difficulty in coordinating the automated submission of acceptances in ATOP with the manual withdraw of acceptances. To alleviate that difficulty, DTC proposes to modify ATOP to include an automated withdrawal capability. By means of PTS instructions, a participant which has previously accepted an offer will be able to request DTC or the agent to permit withdrawal of all or part of the tendered securities, and the agent can accept or reject the withdrawal request.

DTC also proposes to modify ATOP to permit an agent to receive "agent's messages" (which indicate acceptance of an offer) by computer-to-computer transmission in addition to or in place of having the agent's messages generated on the Agent's PTS printer.

DTC also proposes to modify ATOP by making ATOP available to agents which do not handle a large volume of offers and which do not have a PTS terminal and printer available for ATOP. DTC proposes to implement a new service, ATOP II, which will allow such agents to participate in ATOP without incurring the ongoing costs of a PTS terminal and printer currently required for ATOP participation. Under the proposed ATOP II service, participants will utilize PTS to submit acceptances of offers and instructions to fulfill notices of guaranteed deliveries as they do in the existing version of ATOP. For the proposed ATOP II, DTC will generate the agent's messages to the agent at the end of the day. During the day the agent will be able, through a personal computer, to access information about the offer, such as which participants have tendered securities. The electronic withdrawal capability, which DTC proposes to be added to the ATOP service, will not be available under ATOP II. Therefore, under ATOP II, participants must make withdrawals by hardcopy instructions.

DTC believes the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will further automate the processing of offers involving securities on deposit at DTC. DTC also believes the proposed rule change is consistent with the safeguarding of securities and funds in DTC's custody or control or for which is responsible since the proposed rule change enhances DTC's existing ATOP service.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was developed through discussions with participants and agents. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

DTC requested the Commission to find good cause for approving the proposed rule change on an accelerated basis. For the reasons discussed below, the Commission finds that "good cause" exists under section 19(b)(2) of the Act for approving the proposal prior to the thirtieth day after publication of notice in the Federal Register.

The Commission believes that DTC's proposed rule change is consistent with section 17A of the Act and, specifically, with sections 17A(b)(3) (A) and (F).[3] Sections 17A(b)(3) (A) and (F) of the Act require a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

The proposed rule change will enable participants to withdraw acceptances through PTS instructions to DTC or the agent. Currently, participants are required to submit withdrawal instructions by means of hardcopy instruction forms. Thus, the Commission believes the proposed rule change provides participants a more efficient means of submitting withdrawals of acceptances of tender offers and will further enhance the prompt and accurate clearance and settlement of tender offer transactions.

The proposed rule change also will permit an agent to receive agent's messages through computer-to-computer transmissions in addition to or in place of having the agent's messages generated on the Agent's PTS printer.

[1] Letter from Carl Urist, Deputy General Counsel, DTC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission, dated April 23, 1991.

[2] For a more complete description of ATOP, see Securities Exchange Act Release No. 28538 (February 13, 1990), 54 FR 7318.

[3] 15 U.S.C. 78q-1(b)(3) (A) and (F).

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The Commission notes that in adopting section 17A of the Act, Congress found that new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. The Commission believes that DTC's proposed computer-to-computer transmission of agent's messages is consistent with these goals and should promote the prompt and accurate clearance and settlement of tender offers.

The proposed rule change also will implement a new service, ATOP II, that will enable agents, which do not handle a large volume of offers, to participate in ATOP. Under ATOP II, agents will be able to participate in ATOP without incurring the cost of a dedicated PTS terminal and printer. This proposed service will further automate tender offers that might not otherwise be eligible for ATOP. This should reduce the inefficiencies and risks associated with processing tender offers which are not book-entry eligible.[4]

DTC has requested that the proposed rule change be approved on an accelerated basis since ATOP II will provide an important service for its participants. As noted in the ATOP approval order,[5] the Commission believes that automation of tender and exchange offer processing significantly benefits a process that was handled through inefficient physical settlement. DTC has operated the ATOP program for the past two years and has encouraged tender and exchange offer processing to be brought within the automated, centralized environment of securities depositories. DTC will operate ATOP II as a pilot program for the next several months in which time it will gain experience in processing low volume tender offers. Thus, the Commission believes "good cause" exists under Section 19(b)(2) of the Act for approving DTC's proposed rule change prior to the thirtieth day after publication of notice.[6]

[4] Because of the inefficiencies and risks associated with the processing of tender offers that are tendered in physical form, the Commission adopted rule 17Ad-14 of the Act. Rule 17Ad-14 requires transfer agents acting on behalf of bidders as tender agents to establish and maintain special accounts with all qualified securities depositories holding the subject company's securities. Securities Exchange Act Release No. 20681 (March 1, 1984) 49 FR 3084.

[5] Securities Exchange Act Release No. 27130 (August 14, 1989), 54 FR 34041.

[6] As required by section 19(b)(4)(A) of the Act, 15 U.S.C. 78s(b)(4)(A), the Commission has consulted with and received the concurrence of the Board of Governors of the Federal Reserve System in granting accelerated approval. Telephone conversation between Dan R. Vinnedge, Manager, Trust Activities Program, Federal Reserve Board, and Anthony Bosch, Staff Attorney, Division of Market Regulation, Commission (May 2, 1991).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of DTC. All submissions should refer to File No. SR-DTC-91-04 and should be submitted by June 6, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR-DTC-91-04) be, and hereby is, approved until May 7, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11502 Filed 5-15-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29167; File No. SR-OCC-91-03]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Proposed Rule Change Relating to the Formula Used To Replenish Itself From Clearing Funds

May 7, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 12, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to amend the formula by which OCC replenishes itself from its clearing funds for losses incurred as a result of a default by a clearing member and for losses resulting from the failure of any bank or securities or commodities clearing organization.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to revise the formula by which OCC replenishes itself from its clearing funds for losses incurred as a result of a default by a Clearing Member and for losses resulting from the failure of any bank or securities or commodities clearing organization.

OCC maintains a Stock Clearing Fund to which OCC's Stock Clearing Members are required to contribute and a Non-Equity Security Clearing Fund to which Non-Equity Security Clearing Members are required to contribute. Among other things, the purpose of the clearing funds is to make good any losses sustained by OCC as a result of the failure of a Clearing Member to meet its obligations to OCC or the failure of a clearing bank or another clearing organization to settle with OCC. In the event of a Clearing Member default, once the contributions of the defaulting Clearing Member are exhausted, OCC may then replenish itself for any remaining losses by charging, on a pro rata basis, the clearing fund contributions of non-defaulting Clearing Members. In the event of a clearing bank or clearing organization default, the resulting loss is to be charged against all Clearing Members' contributions to the Clearing Funds on a pro rata basis.

Unless a Clearing Member has been recently admitted, a Member's contribution to the clearing funds is determined pursuant to the formula set forth in rule 1001. A Clearing Member's contribution to the clearing funds is related to the Member's use of the options markets, provided, however, that no Member can contribute less than the required minimum. Pursuant to rule 1001, each Stock Clearing Member or Non-Equity Securities Clearing Member must contribute to the Stock Clearing Fund or the Non-Equity Securities Clearing Fund, respectively, the greater of: (i) Such Clearing Member's proportionate share ("computed contribution") of seven percent of the average daily aggregate margin requirement in respect of equity or non-equity securities option contracts (as the case may be) outstanding during the previous calendar month or (ii) the required minimum contribution amount of $75,000. Because this contribution formula is based on a Clearing Member's open interests and margin requirements, it provides a reasonable approximation of a Clearing Member's participation in the options markets. Therefore, it is highly probable that a Clearing Member which deposits the required minimum to the clearing funds is less active in the marketplace than a Clearing Member which contributes its computed contribution.

Pursuant to the current replenishment formula, non-defaulting Clearing Members are charged on a pro rata basis. Thus, those Clearing Members who contribute the minimum required amount are charged against that amount rather than against their computed contributions to the clearing funds. OCC believes that it is more equitable to base its replenishment formula on a Clearing Member's participation in the options markets rather than on a minimum contribution requirement. OCC therefore is proposing that charges to clearing fund contributions be made on a proportionate basis against non-defaulting Clearing Members' computed contributions.

Accordingly, OCC would amend section 5 of article VIII of its By-Laws to provide that remaining losses would be charged on a proportionate basis against non-defaulting Clearing Members' computed contributions. Section 5 would be further amended to add three Interpretations and Policies. Those Interpretations and Policies propose to set forth the manner by which a Clearing Member's proportionate share of a remaining loss would be determined and, additionally, propose that the contribution formula of rule 1001 be used to determine a Clearing Member's computed contribution. This replenishment formula is based upon a Clearing Member's use of the options markets and will be more equitable to those Clearing Members which use the options markets with less frequency.

The proposed amendments will not affect the total size of the clearing funds. Nonetheless, it is possible that the proposed formula could result in more than one round of charges to the clearing fund contributions of Clearing Members because the full amount of the clearing funds would not be available to satisfy a charge for replenishment made by OCC. The portion of the clearing funds that would be unavailable for the first charge would equal the difference between the sum of the minimum contributions of those Members required to contribute that amount and the sum of such Members' computed contributions. That difference, however, would be available for a second assessment. Moreover, the historical difference between actual contributions to the clearing funds and computed contributions has been *de minimis* (averaging about six percent over the last six months). Should more than a second round of assessments be required, the losses would have to exceed twice the dollar size of the affected clearing fund. Since a loss of such magnitude could threaten the continued viability of the options markets in their entireties, OCC does not believe that its ability to be replenished for losses will be materially or adversely affected by its proposed formula for determining charges to Clearing Members' clearing fund contributions.

Conforming changes are made to sections 5 (a), (b), (c), (d), (e), and (h), 6, 7, and 8 of article VIII of OCC's By-Laws and to rule 1106(e) (protective action provision). A technical amendment to section 5(h) also is made to correctly identify paragraph (b), in the place of paragraph (d), as a paragraph pertaining to certain applications of Clearing Fund contributions. Lastly, another technical amendment is made to section 1 of article VIII to identify correctly chapter XI, in the place of chapter VI, as the chapter of OCC's Rules where the protective action provisions may be found.

The proposed rule change is consistent with section 17A of the Act, as amended, in that it provides for a more equitable formula by which OCC may replenish itself from the clearing fund contributions of Clearing Members.

B. Self-Regulatory Organizations's Statement on Burden on Competition

The proposed rule change will have no adverse impact upon competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File Number SR-OCC-91-03 and should be submitted by June 6, 1991.

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For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-11636 Filed 5-15-91; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 35-25516]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 10, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 3, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

General Public Utilities Corporation, et al. (70-7525)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and General Portfolios Corporation ("GPC"), Mellon Bank Center, Tenth and Market Streets, Wilmington, Delaware 19001, a wholly-owned subsidiary company of GPU, have filed a post-effective amendment to their application-declaration under sections 9(c)(3) and 12(b) of the Act and rule 45 thereunder.

By order dated November 2, 1988 (HCAR No. 24736), the Commission authorized, among other things, the acquisition by GPU of all the authorized capital stock of GPC for $100,000 and a cash capital contribution by GPU of up to $25 million to GPC, which GPC would in turn contribute to its subsidiary company, Energy Initiatives, Incorporated, to fund activities in connection with the development of and investment in certain cogeneration and small power production facilities. The Commission reserved jurisdiction over GPU's request to contribute an additional $25 million to GPC to make other non-rate-regulated equity investments.

GPU now proposes to make a cash capital contribution of $10 million to GPC on or before December 31, 1991 for the proposed purchase by GPC of $10 million aggregate principal amount of 9.9% Convertible Subordinated Debentures due 2005 ("Debentures") to be issued by California Energy Company, Inc. ("CE"), a nonassociate company. CE is a California corporation incorporated to explore and develop geothermal resources in California for electric power production. CE currently operates three qualifying facilities, within the meaning of the Public Utility Regulatory Policies Act of 1978, with approximately 240 MW of capacity.

The Debentures which GPC proposes to purchase will (1) bear interest, payable semi-annually, at the rate of 9.9%, (2) be convertible into shares of CE common stock at a price equal to the lesser of 120% of the closing price of CE's common stock on the closing date or $10.00 per share, subject to adjustment for certain dilution events, provided, however, that the conversion price shall not be less than the average of the closing prices of CE's common stock for the period August 15, 1990 through November 15, 1990, and (3) be redeemable by CE beginning October 1, 1995 at 107% of their face value and at declining premiums thereafter until September 30, 2000 and at face value after September 30, 2000 until maturity.

Ownership of the Debentures would not provide GPC with voting rights. Such rights would be obtained only upon conversion of the Debentures into CE common stock. Based upon the reported closing price of CE common stock on September 28, 1990, conversion in full of the Debentures would result in the acquisition of less than 5% of CE's common stock outstanding after giving effect to the conversion on a fully diluted basis.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-11635 Filed 5-15-91; 8:45 am]
BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms, to be used only in the event that inductions into the armed services are resumed, have been submitted to the Office of Management and Budget (OMB) for the extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35):

SSS-9

Title: Registrant Claim Form.
Purpose: Is used to submit a claim for postponement of induction or a different classification.
Respondents: Registrants filing claims for either postponement or reclassification.
Frequency: One-time.
Burden: The reporting burden is five minutes or less per individual.

SSS-21

Title: Claim Documentation Form—Administrative.
Purpose: Is used to document those claims for reclassification which can be approved by an Area Office upon the presentation of documentary proof.
Respondents: Registrants whose past or present status is reason for reclassification.
Frequency: One-time.
Burden: The reporting burden is ten minutes or less per individual.

SSS-23

Title: Claim Documentation Form—Divinity Student.
Purpose: Is used to document a claim for classification as a divinity student.
Respondents: Registrants who are divinity students.
Frequency: One-time.
Burden: The reporting burden is 20 minutes or less per individual.

SSS-24

Title: Claim Documentation Form—Hardship to Dependents.
Purpose: Is used to document a claim for classification on the basis of the hardship induction will cause a registrant's dependent(s).

Respondents: Registrants whose induction will cause hardship on their dependent(s).
Frequency: This form is normally used one-time.
Burden: The reporting burden is 30 minutes or less per individual.

SSS-25

Title: Claim Documentation Form—Minister of Religion.
Purpose: Is used to document claims for classification as a regular or duly ordained minister.
Respondents: Registrants who are regular or duly ordained ministers.
Frequency: One-time.
Burden: The reporting burden is 20 minutes or less per individual.

SSS-26

Title: Claim Documentation Form—Alien or Dual National.
Purpose: Is used to document a registrant's claim for classification as an Alien, Dual National or Treaty Alien.
Respondents: Registrants who wish to be classified as an Alien, Dual National or Treaty Alien.
Frequency: One-time.
Burden: The reporting burden is 20 minutes or less per individual.

SSS-27

Title: Claim Documentation Form—Postponement of Induction.
Purpose: Is used to document a claim for the postponement of induction.
Respondents: Registrants whose present status warrants postponement of induction.
Frequency: This form is normally used one-time.
Burden: The reporting burden is ten minutes or less per individual.

SSS-109

Title: Student Certificate.
Purpose: Is used to substantiate a claim for postponement of induction because the subject registrant is a student.
Respondents: Registrants who are attending school but have not graduated.
Frequency: This certificate is normally used one-time.
Burden: The reporting burden is six minutes or less per individual.

SSS-130

Title: Application by Alien for Relief from Training and Service in the Armed Forces of the United States.
Purpose: Is used to request relief from training and service based on being a national of a country with which an applicable treaty is in effect, i.e. "Treaty Alien."
Respondents: Those registrants who are "Treaty Aliens" and desire not to serve in the Armed Forces of the United States.
Frequency: One-time.
Burden: The reporting burden is five minutes or less per individual.

SSS-354

Title: Application for Voluntary Induction.
Purpose: Is used to apply for voluntary induction into the Armed Services.
Respondents: Registrants or nonregistrants who are seventeen years of age.
Frequency: One-time.
Burden: The reporting burden is twelve minutes or less per individual.

SSS-350

Title: Registrant Travel Reimbursement Request.
Purpose: Is used to request reimbursement for expenses incurred when traveling to or from a Military Entrance Processing Station in compliance with an official order issued by the Selective Service System.
Respondents: All registrants required to travel to or from a Military Entrance Processing Station at their own expense.
Frequency: One-time.
Burden: The reporting burden is ten minutes or less per request.

SSS-452

Title: Uncompensated Registrar Appointment.
Purpose: Is used to verify the official status of applicants for the position of Uncompensated Registrars and to establish authority for those appointed to perform as Selective Service System Registrars.
Respondents: United States citizens over the age of 18.
Frequency: One-time.
Burden: The reporting burden is three minutes or less.

Copies of the above identified forms can be obtained upon written request to Selective Service System, Reports Clearance Officer, Washington, DC 20435.

Written comments and recommendations for the proposed extension of clearance of the form(s) should be sent within 60 days of publication of this notice to Selective Service System, Reports Clearance Officer, Washington, DC 20435.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, room 3235, Washington, DC 20503.

Dated: May 10, 1991.

Robert W. Gambino,
Director.

[FR Doc. 91-11586 Filed 5-15-91; 8:45 am]
BILLING CODE 6016-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice # 1396]

Bulgaria, Foreign Assistance Determinations

Pursuant to section 620(f)(2) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2370(f)(2)), and section 1-201(a)(12) of Executive Order No. 12163, as amended, I hereby determine that the removal of the Republic of Bulgaria from the application of section 620(f) of the Foreign Assistance Act is important to the national interest of the United States. I therefore direct that the Republic of Bulgaria be henceforth removed, for an indefinite period, from the application of section 620(f) of the Foreign Assistance Act, as amended.

This determination shall be reported to the Congress immediately and published in the Federal Register.

Dated: May 3, 1991.

Lawrence S. Eagleburger,
Deputy Secretary of State.

[FR Doc. 91-11631 Filed 5-15-91; 8:45 am]
BILLING CODE 4710-01-M

Bureau of Intelligence and Research

[Public Notice 1398]

Discretionary Grant Programs: Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1992 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training concerning the USSR and Eastern Europe to serve as intermediaries administering national competitive programs under the Soviet-Eastern European Research and Training Act. The grants will be based on an open, national competition among applying organizations.

Authority for this program is contained in the Soviet-Eastern European Research and Training Act of 1983.

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SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 1992 under a program administered by the Department of State.

Organization of Notice: This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by September 20, 1991.

Applications Delivered by Mail

An application sent by mail must be addressed to Kenneth E. Roberts, Executive Director, Soviet-Eastern European Studies Advisory Committee, suite 233, 1730 K Street, NW., Washington, DC 20006.

An applicant must show proof of mailing consisting of *one* of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Department of State.

If an application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a date postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand-delivered must be taken to Kenneth E. Roberts, Executive Director, Soviet-Eastern European Studies Advisory Committee, Suite 233, 1730 K Street, NW., Washington, DC.

The Soviet-Eastern European Studies Advisory Committee will accept hand-delivered applications between 9 a.m. and 4 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983 the Congress declared that independently verified factual knowledge about the countries of that area is "of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs." Congress also declared that the development and maintenance of such knowledge and expertise "depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government." The Act authorizes the Secretary of State to provide financial support for advanced research, training and other related functions.

The full purpose of the Act and the eligibility requirements are set forth in Public Law 98-164, title VIII, 97 Stat. 1047-50. Under title VIII, the countries include Albania, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, USSR, and Yugoslavia.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes final determination on awards.

Applications for funding under the Act are invited from organizations prepared to conduct competitive programs in the fields of Soviet and Eastern European and related studies. Applying organizations or institutions should have the capability to conduct competitive award programs that are national in scope. Programs of this nature are those that make awards which are based upon an open, nationwide competition, incorporating peer group review mechanisms. Applications sought are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the Soviet Union and countries of Eastern Europe by proposing:

(1) *National programs* which award contracts or grants to American institutions of higher education or not-for-profit corporations in support of postdoctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) *National programs* which offer graduate, postdoctoral and teaching fellowships for advanced training in Soviet and Eastern European and related studies, including training in the languages of the Soviet Union and Eastern Europe, such training to be conducted, on a shared-cost basis, at American institutions of higher education;

(3) *National programs* which provide fellowships and other support for American specialists enabling them to conduct advanced research in the field of Soviet, Eastern European and related studies; and those which facilitate research collaboration between Government and private specialists in these fields;

(4) *National programs* which provide advanced training and research on a reciprocal basis in the Soviet Union and in the countries of Eastern Europe by facilitating access for American specialists to research facilities and resources in those countries;

(5) *National programs* which facilitate public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the Soviet Union and Eastern Europe in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Support for specific activities will be guided by the following policies:

—*Publications.* Title VIII funds should not be used to subsidize journals, newsletters and other periodical publications except in unique or special circumstances, in which cases the funds should be supplied by peer-review organizations with national competitive programs.

—*Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, title VIII grants generally should not be made solely to support a particular conference or series of conferences. Rather conference funding should come from one or more of the national peer-review organizations receiving title VIII funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

—*Library Activities.* Title VIII funds may be used for certain library activities which clearly strengthen research and training in Soviet and East European studies and benefit the field as a whole. Such programs must make awards based upon open, nationwide competition, incorporating peer group review mechanisms. Title VIII funds may not be used for activities such as modernization or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging backlogs or otherwise improving access to research materials, will be considered for funding.

—*Language Support.* The Advisory Committee encourages attention to the non-Russian languages of the Soviet Union and the less commonly taught languages of the East European countries. Support provided to Russian language instruction normally will be only at the advanced level.

—*German Democratic Republic.* Support for research on the former German Democratic Republic is limited to the study of historical issues related to its communist experience.

—*Soviet Republics.* The Advisory Committee will consider applications for national programs which advance knowledge and understanding of the Soviet republics, as well as those which focus on the broader aspects of Soviet and East European research and training.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability in Soviet and Eastern European studies. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort which, over the life of the Act, will ensure attention to all the countries of the area. While title VIII legislation requires that in certain cases grantee organizations include shared-cost provisions in their arrangements with end-users, cost-sharing in all forms is encouraged whenever feasible in all programs.

Part III

Available Funds

The President has requested for Fiscal Year 1992 $4.784 million for the title VIII program. However, the amount available for awards (if any) will not be known until legislative action is complete on the Department of State Appropriations Bill. In Fiscal Year 1991, the Congress increased funding for the title VIII program from the requested level, $4.6 million, to $10 million.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Generally, grant agreements will permit the expenditure from a particular year's grant to be made up to three years from the grant's effective date.

Applications

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which should not exceed 20 double-spaced pages. This must be accompanied by a one page executive summary, a budget, and vitae of professional staff. Proposers may append other information they consider essential, though bulky submissions are discouraged.

Applicants who have received a title VIII grant in the previous fiscal year competition should provide detailed information on the peer evaluation and review procedures followed, and awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. If an applicant also received title VIII support prior to last year, a summary of those awards would be helpful.

Descriptions of competitive fellowships and other award programs should specify the applicant-to-award ratios.

Procedures for evaluating and selecting applicants to receive awards should be described in detail. For proposals including language instruction programs, criteria for evaluation should address levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre- and post-testing), instructors' qualifications, and budget information showing estimated costs per student.

A description of affirmative action policies and practices should be included in the application.

Applicants should include certifications of compliance with the provisions of: (1) The Drug-Free Workplace Act (Pub. L. 100-690), in accordance with appendix C of 22 CFR 137, subpart F; and (2) Section 319 of the Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101-121), in accordance with appendix A of 22 CFR 138, New Restrictions on Lobbying Activities.

Budget

Applicants should familiarize themselves with OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education . . . Uniform administrative Requirements," and OMB Circular A-133, "Audits of Institutions of Higher Learning and Other Non-Profit Institutions" and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A-21, "Cost Principles for Educational Institutions," or OMB Circular No. A-122, "Cost Principles for Nonprofit Organizations;"

(2) A budget request containing total amount, a detailed program budget indicating direct expenses by program element, and indirect costs. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants who are requesting title VIII funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested title VIII grant funds. Other funding sources, when known, should be identified;

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) Whether payment is requested on a reimbursable basis or by advance methods; for grants above $120,000, payments will be made through the Department of State by wire transfers, but if less than $120,000, payments will be made by Treasury checks;

(5) The organization's most recent audit report (the most recent U.S. Government audit report if available) and the name, address and point of contact of the audit agency.

Technical Review

The Soviet-Eastern European Studies Advisory Committee will evaluate applications on the basis of the following criteria:

(1) Responsiveness to the substantive provisions set forth above in *part II, Program Information* (40 points);

(2) The professional qualifications of the applicant's key personnel and their experience conducting national competitive award programs of the type the applicant proposes in the Soviet and East European fields (40 points); and

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(3) Budget and cost effectiveness (20 points).

Further Information

For further information, contact Kenneth E. Roberts, Executive Director, Soviet-Eastern European Studies Advisory Committee, INR/RES, Department of State, suite 233, 1730 K Street NW., Washington, DC 20006. Telephone (202) 632-2025 or 632-6060.

Kenneth E. Roberts,

Executive Director, Soviet-Eastern European Studies Advisory Committee.

[FR Doc. 91-11825 Filed 5-15-91; 8:45 am]

BILLING CODE 4710-32-M

TENNESSEE VALLEY AUTHORITY

Tennessee Valley Authority Act of 1933 and Public Utility Regulatory Policies Act of 1978; Modifications in Guidelines on Dispersed Power Production

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of proposed modifications in TVA's Dispersed Power Production Guidelines.

SUMMARY: On April 20, 1981, TVA initially adopted a policy to encourage dispersed power production in the Tennessee Valley region and an interim program and guidelines to assist TVA and the distributors of TVA power in implementation of the policy. Subsequently, from time-to-time revisions in the guidelines have been made. The guidelines encompass cogeneration and small power production facilities included under sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (Pub. L. 95-617). In light of TVA's experience with the guidelines over the years, additional modifications in the guidelines are being considered. The proposed guidelines should provide greater flexibility for power purchase arrangements. Other changes include the elimination of provisions allowing contract demand reductions for industrial customers installing facilities that meet certain efficiency standards. With the shorter contract terms available to such customers, these provisions no longer appear to be needed. Additionally, the format and wording have been revised to make the guidelines shorter. Written comments are invited from interested persons and the comments will be considered in the development of the guideline changes.

DATES: Comments in writing must be received by 5 p.m., June 30, 1991, to be assured of being considered.

ADDRESSES: Written comments should be sent to Mary Sharpe Hayes, President, Customer Group, Tennessee Valley Authority, 6B Missionary Ridge, 1101 Market Street, Chattanooga, Tennessee 37402-2801.

FOR FURTHER INFORMATION CONTACT: Sam H. Powell, Tennessee Valley Authority, 5D Signal Place, 1101 Market Street, Chattanooga, Tennessee 37402-2801, (615) 751-6273.

The proposed modified guidelines for dispersed power production are printed below.

Dated: May 9, 1991.

Mary Sharpe Hayes,

President, Customer Group.

Dispersed Power Production Guidelines

These guidelines are intended to assist TVA and the distributors of TVA power in developing arrangements for the effective utilization of dispersed power production in the Tennessee Valley. TVA develops and administers these guidelines which are applicable for purchases by TVA and by distributors of TVA power from dispersed power production facilities and for utilization of dispersed power production on the region's power system. The guidelines may be modified by TVA from time-to-time as it deems appropriate.

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A. Definitions

For purposes of these guidelines, the following terms (whether in the singular or plural) shall have the following meanings:

1. *Qualified Facility* shall be either a cogeneration or small power production facility which meets the qualifications set out in Federal Energy Regulatory Commission (FERC) Rules (18 CFR part 292).

2. *Qualified Producer* shall be any entity, other than a Distributor as hereinbelow defined, who owns and operates a Qualified Facility and meets the qualifications set out in FERC Rules (18 CFR part 292).

3. *Distributor* shall be an electric cooperative or municipal electric system or department that purchases and distributes electric power and energy to consumers pursuant to a wholesale power contract with TVA.

4. *Authorized Facility* shall be either a cogeneration or small power production facility which (a) is owned by a Distributor and (b) meets the qualifications set out in FERC Rules (18 CFR part 292), with the exception of criteria set out in such rules limiting electric system participation in facility ownership.

5. *TVA Area* shall be the area within which TVA or the Distributors are a source of power supply under the provisions of the TVA Act.

6. *Standard Purchase Price Schedule* shall be the attached Dispersed Power Price—Schedule CSPP (Attachment A), as it may be adjusted, modified, changed, or replaced by TVA from time to time.

7. *Alternative Purchase Prices* shall be any purchase prices agreed upon by TVA for purchases by TVA (and as agreed upon by TVA and a Distributor for Distributor's purchase) as alternative prices to those set forth in the Standard Purchase Price Schedule. In developing Alternative Purchase Prices, consideration will be given to such factors as TVA's current and projected avoided energy costs and any projected capacity costs, dispatchability, maintenance scheduling, administrative and billing requirements, variations in line losses, curtailment rights during periods when deliveries would increase operating costs on the TVA system, and reliability of output from the power production facility during TVA onpeak load periods. Alternative Purchase Prices may include prices (or components of prices) that are fixed for all or some portion of the contract term.

B. Generation From Qualified Facilities

1. Disposition of Power From Qualified Facilities

A Qualified Producer may either (a) use all of the output of it its Qualified Facility to supply its own requirements, (b) use a portion of said output to supply its own requirements and sell the surplus to the local Distributor or TVA, or (c) sell the entire output of the Qualified Facility to the local Distributor or TVA.

2. Purchase Price for Power From Qualified Facilities

a. Qualified Producers with Qualified Facilities located within the TVA Area and those Qualified Producers with Qualified Facilities located outside the TVA Area that make arrangements with connecting utility systems (or are otherwise able to deliver their output to the power system of TVA or a Distributor) may make arrangements to sell their output to TVA or a Distributor (i) under the then-available Standard Purchase Price Schedule, or (ii) for those Qualified Producers with Qualified Facilities who contract to provide 500 kW or more of capacity from a production facility, under Alternative Purchase Prices.

b. The amounts payable under the Standard Purchase Price Schedule or under Alternative Purchase Prices may be modified, as appropriate, to reflect costs incurred by TVA or the Distributor in connection with the purchase, which costs may include, but are not limited to, administrative costs, metering costs, and the costs of transmission line losses.

3. Security Requirements Qualified Facilities

In recognition that TVA systemwide avoided costs are utilized to determine the purchase price for the output from Qualified Facilities and that there is a risk of loss to the TVA power system if the Qualified Producer fails to deliver the power and energy provided for under contract, contractual arrangements with the Qualified Producer shall include appropriate provisions to minimize such risks. Such provisions may include payment of damages, return by the Qualified Producer of a portion of the payment amounts it has received from TVA or Distributor, setoffs against amounts to be paid to the Qualified Producer, and the establishment of security to be provided by the Qualified Producer. Such security may be a performance bond, a bank letter of credit, or other measures of security in such form, or combination of forms, and amount as deemed sufficient by TVA (and the local Distributor in situations where it is to purchase the output). In such situations, the contractual arrangements will also provide that the security will be for the benefit of TVA and that amounts to be repaid which reflect the electric system loss due to a Qualified Producer's deficiencies in delivering its output, as compared with contract terms and requirements, will be paid to TVA.

4. Purchase of Power by TVA

a. Arrangements for sale to TVA of any of the output of a Qualified Facility will be subject to the provisions of a purchase contract between the Qualified Producer and TVA and shall be subject to all applicable provisions of these guidelines.

b. If a Qualified Facility is to be connected to a Distributor's system but the Qualified Producer has elected to sell the output to TVA, it shall be the Qualified Producer's responsibility to make appropriate arrangements with the Distributor for use of the Distributor's system for transmitting such output to TVA. Under such an arrangement, the Qualified Producer will reimburse the Distributor for any additional transmission, distribution, and administrative costs that the Distributor incurs as a result of such purchases by TVA from the Qualified Producer. The amount of any such payments by the Qualified Producer will be determined by the Distributor in consultation with TVA taking into consideration such factors as operation and maintenance of the Distributor's facilities, changes in the Distributor's transmission and distribution losses, and meter reading and billing costs.

5. Purchase of Power by Distributor

a. If the Qualified Producer elects to sell all or a portion of the output of its Qualified Facility to a Distributor, arrangements for the sale will be subject to the provisions of a purchase contract between the Qualified Producer and the Distributor and shall be subject to all applicable provisions of these guidelines. The purchase contract plus all supplements and amendments thereto shall be subject to the approval of TVA before becoming effective.

b. For purchases made by a Distributor from a Qualified Producer, appropriate adjustments will be made by TVA (unless it is not economically and administratively feasible) in the Distributor's wholesale power bill so that the Distributor pays to TVA for power and energy taken from TVA and the Qualified Producer, as if all such power and energy had been supplied by TVA under the wholesale power contract. The Distributor will receive a credit on such wholesale power bill equal to the actual payments made by the Distributor to the Qualified Producer for power and energy.

c. In the event that a Distributor's contract with a Qualified Producer includes provisions for the availability of standby power to the Qualified Producer, the contractual arrangements between TVA and the Distributor making such power available will include provisions for appropriate adjustments in the Distributor's wholesale power bill reflecting the additional costs imposed on the TVA power system resulting from the provision of standby power.

6. Availability of Power to Qualified Facility Within the TVA Area.

a. If requested by the Qualified Producer, contractual arrangements involving a Qualified Facility within the TVA Area shall include the availability to the Qualified Producer of maintenance and emergency standby power at the applicable standby power charges, which power is currently provided under the provisions of the Standby Power Rate—Schedule SP (Attachment B), as adjusted, modified, changed, or replaced from time to time by TVA as it deems appropriate to reflect changes in the costs of providing such power. The Qualified Producer will be required to bear the costs of any additional facilities necessary to provide such standby power.

b. Contractual arrangements involving a Qualified Facility within the TVA Area may also include the supply to the Qualified Producer of such of its power requirements as it may request under applicable terms and conditions, including power rates, as power is supplied to electric power customers in the area for the same customer classification as the Qualified Facility.

c. It shall be clearly understood (i) that it shall be the responsibility of the Qualified Producer to contract for its maximum expected power requirements, (ii) that neither TVA nor any of the Distributors will be obligated to supply power in greater amounts than the amount contracted, and (iii) that neither TVA nor any of the Distributors will contract or otherwise become obligated to sell power to any Qualified Producer not located within the TVA Area.

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7. Additional Requirements

All Qualified Producers with Qualified Facilities must comply with the additional applicable requirements set out in Section D.

C. Generation From Authorized Facilities.

1. Development of Authorized Facilities and Related Activities

a. Distributors will be permitted to develop, own, and operate facilities that meet the criteria for an Authorized Facility except that, without prior approval from TVA, Distributors will not undertake the construction or acquisition of a production facility that either

i. Has a design production capacity exceeding 80 MW for any individual facility or any amount of capacity that would cause the aggregate production capacity of all production facilities owned by the Distributor to exceed 10 percent of the Distributor's peak capacity requirements projected for the year in which the proposed facility is to become operational; or

ii. Has ongoing annual revenue requirements which, in the event of facility failure, will cause the projected ongoing annual revenue requirements for all Authorized Facilities of the Distributor to exceed 10 percent of the Distributor's projected annual net revenues from its electric operations (resale electric revenue less total power supply cost) during any year after the proposed facility is to become operational.

b. Distributors are permitted to use up to 2 percent of their annual net revenues (resale electric revenue less wholesale power cost) for research and demonstration activities, including the evaluation of proposed production facilities. Activities requiring aggregate expenditures above this amount are subject to prior review and approval by TVA.

c. In seeking TVA's prior approval of any proposed project or research and demonstration activity that exceeds the limitations in subsections C.1.a. and C.1.b. above, it will be the responsibility of the Distributor to notify TVA in writing of the proposed undertaking and to provide TVA with such data and information as TVA might reasonably request for the purpose of evaluating the technical and financial feasibility of the proposed project or activity. TVA will endeavor to respond within 90 days from the date that the Distributor submits such notice and information to TVA.

d. Distributors will provide TVA with reasonable advance notice of all power production facilities that either the Distributors or their customers plan to acquire and operate and will coordinate with TVA the development of any necessary power supply and operating arrangements. Additionally, after such facilities commence operations, the Distributors will be responsible for notifying TVA promptly of any anticipated change in the capability of such production facilities to continue to supply power.

2. Disposition of Power from Authorized Facilities

A distributor owning and operating an Authorized Facility may either (a) use all of the output thereof to supply a portion of its power system requirements, (b) use a portion of said output to supply a portion of its power system requirements and sell the surplus to TVA, or (c) sell the entire output of the Authorized Facility to TVA.

3. Purchase Price for Power from Authorized Facilities

a. A Distributor may elect either to sell TVA the output of the Authorized Facility (i) under the then-available Standard Purchase Price Schedule, or (ii) if the Authorized Facility will be used to supply at least 500 kilowatts of capacity to TVA, under Alternative Purchase Prices.

b. The amounts payable to a Distributor under the Standard Purchase Price Schedule or under Alternative Purchase Prices may be modified, as appropriate, to reflect costs incurred by TVA in connection with the purchase, which costs may include, but are not limited to, administrative costs, metering costs, and the costs of transmission line losses.

4. Security Requirements for Authorized Facilities

In recognition that there is a risk of loss to the TVA power system if the Distributor fails to deliver power and energy provided for under contract, the contractual arrangements with the Distributor shall include appropriate provisions to minimize such risks. Such provisions may include payment of damages, return by the Distributor of a portion of the payment amounts it has received from TVA, setoffs against amounts to be paid to the Distributor, and the establishment of security to be provided by the Distributor. Such security may be a performance bond, a bank letter of credit, or other measures of security in such form, or combination of forms, and amount as deemed sufficient by TVA.

5. Contract Requirements for Distributors

Arrangements for the sale to TVA of any of the output of an Authorized Facility will be subject to the provisions of a purchase contract between the Distributor and TVA and shall be subject to all applicable provisions of these guidelines.

6. Purchases of Power from TVA

a. A Distributor providing a portion of its power system requirements from an Authorized Facility, or through purchases from one or more Qualified Producers pursuant to these guidelines, shall obtain the remainder of its power system requirements from TVA in accordance with the provisions of its wholesale power contract with TVA, including the wholesale rates provided for therein.

b. A Distributor owning an Authorized Facility and using the output thereof to provide a portion of its power system requirements shall purchase standby power from TVA at the applicable standby power charges, which power is currently provided under the provisions of Wholesale Standby Power Rate—Schedule WSP (Attachment C), as adjusted, modified, changed, or replaced from time to time by TVA as it deems appropriate to reflect changes in the costs of providing such power. The Distributor will also be required to bear the costs of any additional facilities necessary to provide such standby power.

7. Additional Requirements

All Distributors with Authorized Facilities must comply with the additional applicable requirements set out in Section D.

D. General Provisions Applicable for Arrangements Involving Any Qualified or Authorized Facility.

1. Temporary Curtailments

The Qualified Producer's right to sell power to the Distributor or TVA, or in the case of an Authorized Facility, the Distributor's right to sell power to TVA, may be subject to temporary curtailments during system emergencies and when, as a result of operational circumstances, the delivery of such power will interfere with the safe operation of TVA's and/or Distributor's respective power systems.

2. Responsibility for Interconnection, Transmission, and Metering Costs

a. A Qualified Producer with a Qualified Facility will be required to pay TVA and the local Distributor for any additional transmission or distribution costs (including the costs of metering, system protection, safety equipment, administrative costs, and transmission line losses) to the extent that any such costs are in excess of those that TVA and the local Distributor would have incurred if the Qualified Facility had not been installed. In the case of an Authorized Facility, the owning Distributor will be responsible for any such costs to TVA. If a Qualified or Authorized Facility is capable of producing in excess of 15,000 kW, the Qualified Producer or Distributor owner, as the case may be, may be required to provide telemetering facilities to supply information on the power output of its facility to the purchasing electric system (and to TVA when a Distributor is the purchasing electric system).

b. Existing customers of a Distributor or TVA that subsequently install Qualified Facilities may also be required to compensate the Distributor and TVA for the unamortized costs less salvage value of any existing transmission or distribution facilities that are rendered surplus by changes in the customer's supply requirements. When such surplus facilities are severable from the electric systems, the Qualified Producer will have the option of taking possession of the severable facilities in lieu of receiving any credit for salvage value.

c. A Distributor that operates an Authorized Facility may be required to compensate TVA for the unamortized costs less salvage value of any existing transmission or distribution facilities owned by TVA that are rendered surplus by any reduction in the Distributor's supply requirements from TVA. When such surplus facilities are severable from TVA's system, the Distributor will have the option of taking possession of the severable facilities in lieu of receiving any credit for salvage value.

d. The Qualified Producer or Distributor owner, as the case may be, at its expense, shall be reaponsible for installing, owning, operating, and maintaining all electrical equipment associated with its facility and necessary for the protection of such equipment up to the point of connection with the connecting electric system to which the proposed facility's output will be delivered, including furnishing the equipment necessary to connect the facility to the electric system lines. The connecting electric system shall make the connection and the reimbursement for this cost shall be made by the Qualified Producer or Distributor owner of the facility.

3. Parallel Operation

All Qualified Producers and Distributors (that operate Authorized Facilities) that desire to operate their production facilities in parallel with the connecting electric system of TVA or a Distributor, as the case may be, will be required to execute contractual agreements with the connecting electric system.

4. Compliance with Safety, System Protection, and System Operation Guidelines

All Qualified Producers and Distributors with Authorized Facilities will be required to comply with the applicable safety, system protection, and system operating guidelines set out in Attachment D, as they may be modified or revised by TVA from time to time.

Attachment A—Dispersed Power Price—Schedule CSPP

(_____, 19____)

Availability

This schedule shall apply to purchases by TVA, or by distributors of TVA power, from cogeneration and small power production facilities which are qualified, operated, and maintained in accordance with the guidelines for TVA's Dispersed Power Production Program.

Character of Purchased Power

Alternating current, single or three-phase, 60 hertz. Power will be purchased at the highest voltage available in the vicinity or other voltage agreed to by the purchasing electric system.

Standard Prices

Part A

Price for power and energy when no time-differentiated metering is utilized.

All kilowatthours per month at 1.960 cents per kWh.

Part B

Price for power and energy when time-differentiated metering is utilized.

All onpeak kilowatthours per month at 2.350 cents per kWh.

All offpeak kilowatthours per month at 1.730 cents per kWh.

Part C

Price for power and energy when time-differentiated metering is utilized. (Only available for purchases under contracts having terms of 10 years or longer.)

All onpeak kilowatthours per month at 2.940 cents per kWh.

All offpeak kilowatthours per month at 1.730 cents per kWh.

Revisions

All of the above prices are subject to revision by TVA annually to reflect, as TVA deems appropriate, TVA's then-current projections of avoided energy costs and avoided capacity costs, if any, for the next annual period in which the power and energy is to be supplied.

The onpeak price in Part C above contains a capacity component based on capacity cost projections for an extended period. This portion of the price will be revised annually to reflect changes in such capacity cost projections.

Determination of Onpeak and Offpeak Hours

Except for Saturdays and Sundays and the weekdays that are observed as Federal holidays for New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, onpeak hours for each day shall be 10 a.m. to 10 p.m. during calendar months of May through September and from 6 a.m. to 12 noon and from 4 p.m. to 10 p.m. during all other calendar months. All other hours of each day and all hours of such excepted days shall be offpeak hours. Such times shall be Central Standard Time or Central Daylight Time, whichever is then in effect. The onpeak and offpeak hours under this price schedule are subject to change by TVA. In the event TVA determines that such changed onpeak and offpeak hours are appropriate, it shall so notify producers supplying power to TVA hereunder and distributors at least 12 months prior to the effective date of such changed hours, and the distributors shall promptly notify producers supplying power to them hereunder.

Contract Requirement

Contracts are required for purchases hereunder. For purchases under Part A and Part B above, contracts shall extend for a term of not less than one year; provided, however, that they may be cancelled by the producer upon not less than 90 days' advance written notice to the purchasing electric system. For purchases under Part C above contracts shall extend for a term of not less than 10 years.

Payment

Representatives of TVA or distributor shall on a monthly basis read the meters at the point of delivery and provide the owner of the production facility with a detailed accounting of the amount of power and energy supplied (including, as appropriate, metered amounts during onpeak and offpeak periods) as determined by TVA or distributor. From these readings, calculations will be made to determine the amount to be paid for power and energy supplied by the production facility, and payment will be rendered promptly to the owner of the production facility in accordance with the terms of the contract.

Attachment B—Standby Power Rate—Schedule SP

(_____, 19____)

Availability

Available for small power producers and cogenerators within the TVA Area that qualify under TVA's Dispersed Power Production Program and that elect to purchase standby service for scheduled maintenance and emergency standby power supply. Service is subject to notice and

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scheduling requirements set out in the contract.

Character of Standby Service

Alternating current, single or three-phase, 60 hertz. Power supplied shall be delivered at the highest voltage available in the vicinity, unless at the customer's request a lower standard voltage is agreed upon.

Standby Power Charges

Reservation Charges:

$1.20 per month per kilowatt of customer's standby contract demand, plus

$0.48 per month per kilowatt of aggregate production capacity of customer's facilities.

Demand Use Charges:

$2.41 per week per kilowatt of maintenance standby power prescheduled by customer, plus

$4.82 per week per kilowatt of emergency standby power used by customer.

Standby demand use charges will be prorated on a daily basis for periods of less than one week. All energy deemed to be taken with standby power will be billed as firm energy at the charges applicable under the standard general power rate schedule available for service to the customer. (For customers for whom firm power is also being made available, the amounts of standby power scheduled or taken will be subtracted from the customer's measured demand during such periods for purposes of determining the customer's billing demand for firm power.)

The above reservation and demand use charges may be increased or decreased by TVA, effective with the effective date of any Adjustment Addendum published by TVA or any rate change, to reflect changes in the cost of standby service.

Facilities Rental

There shall be no facilities rental charge under this rate schedule for delivery at bulk transmission voltage levels of 161 kV or higher. For delivery at less than 161 kV, there shall be added to the customer's bill a facilities rental charge. This charge shall be 36 cents per kW per month except for delivery at voltages below 46 kV, in which case the charge shall be 93 cents per kW per month for the first 10,000 kW and 73 cents per kW per month for the excess over 10,000 kW. Such charge shall be applied to the customer's then-effective standby contract demand except that, for a customer for whom firm power is also being made available, and whose firm power takings are also subject to facilities rental charges under the provisions of the standard general power rate schedule, calculations for determining the facilities rental charges for firm power and for standby power shall be made as follows. The standby contract demand will be added to the higher of (1) the highest billing demand for firm power established during the latest 12-consecutive-month period or (2) the customer's then-effective firm contract demand, and the amounts in cents per kW set out above shall be applied to the total. The facilities rental charge shall be in addition to all other charges under this rate schedule. Such amounts in cents per kW may be increased or decreased by TVA, effective with the effective date of any Adjustment Addendum published by TVA or any rate change, to reflect changes in the costs of providing for delivery at voltage levels below 161 kV.

Contract Requirement

Customers to whom this rate schedule is applicable shall be required to execute contracts, and such contracts shall be for a term not to exceed 10 years.

Payment

Bills under this rate schedule will be rendered monthly. Any amount of bill unpaid after due date specified on bill may be subject to additional charges under Distributor's standard policy.

Single Point Delivery

The charges under this rate schedule are based upon the supply of standby service through a single delivery and metering point, and at a single voltage. If service is supplied to the same customer through more than one point of delivery or at different voltages, the supply of service at each delivery and metering point and at each different voltage shall be separately metered and billed under this rate schedule.

Service is subject to Rules and Regulations of the Distributor and to guidelines applicable under TVA's Dispersed Power Production Program.

Attachment C—Wholesale Standby Power Rate—Schedule WSP

(_____, 19____)

This schedule is applicable to distributors of TVA power which elect, in accordance with TVA's Dispersed Power Production Guidelines, to use the output of their own authorized production facilities (hereinafter called "Units") to reduce their power supply requirements from TVA. All charges under this schedule are in addition to the charges provided for under the wholesale power rate schedule, and the provisions of said wholesale power rate schedule are in no way affected by this schedule.

Standby Power Reservation Charge

For each month, whether or not standby power is taken, Distributor shall pay a monthly standby power reservation charge calculated as provided below.

$6.86 (100 percent—CF) (Capacity—Standby Power Use) per month, where

CF=Capacity factor (expressed as a percentage) for all Units which is determined by TVA by dividing the expected annual energy generation for all Units by the maximum annual energy generation (equal to 8,760 hours times the Capacity) for all Units; and

Capacity=The aggregate production capacity in kW of all Units; and

Standby Power Use=The kW amount by which Distributor's billing demand (as determined under the wholesale power rate schedule) exceeds its firm demand. Distributor's firm demand shall be the kW amount by which its maximum system requirement in a month exceeds the aggregate production capacity of all Units. Distributor's system requirement shall be determined on a simultaneous basis. For any 60-consecutive-minute period of the month, the system requirements shall be the sum of (a) the average demands measured in kW in such period for all delivery points to Distributor and (b) the average generation measured in kW in such period for all Units, and the highest such system requirement for any month shall be the maximum system requirement for the month.

Adjustments and Charges

The above standby reservation charge may be increased or decreased by TVA, effective with the effective date of any Adjustment Addendum published by TVA or any rate change, to reflect changes in the cost of providing standby power.

Attachment D—Supplemental Safety, System Protection, and System Operating Guidelines Applicable to Owners of Qualified or Authorized Facilities

These requirements shall be applicable to assure system safety and reliability of interconnected operations. The adequacy of safety and system protection facilities for interconnection with producers as provided herein will be determined by TVA and, as appropriate, by the Distributors but only insofar as necessary to determine the compatibility of such facilities with the connecting electric system. TVA and the Distributors will apply such other safety and system protection requirements as may be determined to be appropriate.

It is recommended that the connecting electric system, TVA or the Distributor, emphasize to prospective producers the importance of discussing plans with the connecting electric system before purchasing or installing equipment.

1. Fault Protection

a. Adequate protection facilities shall be provided by the owner to protect the connecting electric system from fault currents originating from the production facility. The owner will provide adequate fault current interruption capability with secondary relaying and control circuits.

b. It shall be the responsibility of the owner to provide adequate protection for its production facility from fault currents originating on the connecting electric system because of a fault in the production facility.

2. Overvoltage and Undervoltage

a. It shall be the responsibility of the owner to provide adequate protection or safeguards to prevent damage to the connecting electric system caused by overvoltage originating from the operation of the production facility.

b. It shall be the responsibility of the owner to provide adequate protection of its production facility from overvoltages originating on the connecting electric system.

c. It shall be the responsibility of the owner to provide facilities adequate to prevent the production facility from being damaged by undervoltage conditions on the connecting electric system.

3. Synchronization and Isolation

a. The owner shall provide adequate facilities for the proper synchronization of its production facility with the connecting electric system such that synchronism is accomplished, either manually or by automatic means, without causing undesirable currents or voltages (including current surges and voltage fluctuations) on the connecting electric system.

b. The owner shall provide means for properly disconnecting the production facility from the connecting electric system for system line interruptions, for occasions when the connecting electric system becomes isolated from its source of generation, and for the proper resynchronization of the production facility after such interruptions or isolation. Rapid restoration of service following a temporary interruption using automatic circuit breaker reclosing is a standard utility practice.

c. To provide assurance that the connecting electric system cannot be energized from the production facility during outages on the connecting electric system, the owner of the production facility must provide equipment for manually disconnecting and isolating the production facility. This will help provide safety for the connecting electric system's employees performing emergency repairs or routine maintenance to its lines. Such equipment must be capable of preventing the production facility from energizing the system's lines and must include a device (or devices) which can be locked so as to visually show isolation of the production facility to prevent all means of backfeed into the connecting electric system.

d. The owner may install generating facilities to supply a portion of its load without operating its generating facilities in parallel with the electric system. In these instances, the owner must verify to the electric system that the switches used for transferring the load from the electric system lines to the onsite generation facilities will meet the electric system's requirements for nonparallel operation. Also, the owner must verify there is no possibility of backfeed to the electric system's lines. If it is found that the generating facilities can backfeed, the facilities must meet the requirements for parallel operation.

4. Grounding

The facilities (generator, connecting transformer, etc.) that connect to the electric system must be grounded in such a way that coordination is maintained with the relay protection system in use by the connecting electric system, and the connected facilities will be protected from deleterious voltages during fault conditions.

5. Harmonics

a. Adequate design precautions must be taken by the owner to prevent excessive and deleterious harmonic voltages or currents caused by the production facility from occurring on the connecting electric system.

b. The production facility must be designed to operate with normal harmonic voltages and currents that originate from the connecting electric system.

6. Reactive Power

The production facility shall be operated to supply appropriate amounts (as hereinafter described) of reactive power during onpeak hours and to supply no reactive power, or to consume appropriate amounts (as hereinafter described) of reactive power during offpeak hours. The specific reactive power requirements to be met by the production facility will be determined by the connecting electric system, taking into consideration such factors as production facility size and equipment design limitations, electric system voltage levels, and other conditions on the electric system. If the production facility is unable to meet such requirements due to equipment design or other such limitations for which reasonable corrective measures cannot be taken by the producer, the connecting electric system, as it deems necessary, may provide the required reactive power at the expense of the owner of the production facility.

The connecting electric system reserves the right to install metering equipment or to make periodic tests to determine the reactive power flows to or from the owner's production facility and to mutually agree with the owner of the production facility to requirements differing from those described in the above paragraph. The onpeak hours and offpeak hours referred to above are the same as those provided in the then-effective standard price schedule.

7. Voltage Regulation

The owner shall provide necessary voltage regulation equipment to prevent the production facility from causing excessive voltage variation on the connecting electric system. The voltage variation caused by the production facility must be within ranges capable of being handled by the voltage regulation facilities used by the connecting electric system.

8. Voltage Flicker

The voltage surges caused by the operation, synchronization, or isolation of the production facility shall be within the standards of frequency of occurrence and magnitude established by the connecting electric system to prevent undue voltage flicker on the connecting electric system.

9. Voltage Balance

a. The voltage produced by the production facility must be balanced if it is a 3-phase installation. The waveform must be sinusoidal and compatible with the operation of the connecting electric system.

b. The owner will be responsible for protecting its production facility from inadvertent phase unbalance or single phasing in the connecting electric system's voltage.

10. Operational Oversight

a. The owner will be responsible for operating its production facility in a manner that will not cause undesirable or harmful effects to the connecting electric system or its other customers.

b. The owner will not begin initial operation of the production facility until it has received written approval from the connecting electric system. This approval shall not be construed as confirming or endorsing the design or as any warranty of safety, durability, or reliability of the production facility equipment.

c. The owner shall supply the connecting electric system with diagrams and specifications describing the production facility and related interconnection, operation, and protective equipment and any proposed changes to the aforesaid facilities. These diagrams and specifications shall be consistent with good engineering practice and shall specify the equipment to be used (relays, breakers, transformers, generators, etc.) by manufacturer, model, type, size, impedance, and other pertinent information.

For any production facility with output greater than 1,000 kW, the control and protective equipment used by the owner shall be utility class and shall conform to the latest revision of ANSI/IEEE C37.90, IEEE Standard Relays and Relay Systems Associated with Electric Power Apparatus. Specifications and/or instruction manuals for such control and protective equipment shall be made available by the owner upon request by the connecting electric system.

d. The connecting electric system shall have the right at any time to inspect and test the operation of any control and protective equipment owned and maintained by the owner.

e. If, subsequent to initial operation, a production facility is unable to comply with the provisions for safety, system protection, and production facility operation contained in this Attachment D, or is otherwise operated in an unsafe manner, the production facility may be disconnected from the connecting electric system until the problem has been corrected.

11. Metering

The type of metering and associated equipment shall be determined by the connecting electric system (and purchasing electric system, if different). Selection of metering arrangements will be based upon the lowest cost for equipment and arrangements that will also meet the electric systems' reasonable data requirements. Operation, maintenance, and testing of the metering equipment may be required from time to time by the electric systems. When tests are requested by the owner of a production facility, such tests shall be at the owner's expense.

12. Dc Current Injection

Adequate design precautions must be taken by the owner of the production facility to prevent injecting direct current into the connecting electric system. Where dc current injection is a possibility, methods such as isolation transformers, monitoring devices, or other decoupling devices should be utilized by the owner of the production facility to prevent dc current injection.

13. Single-phase Generators

Single-phase generators larger than 100 kW will be permitted to be connected to distribution facilities (26 kV and below) only after a determination by the connecting electric system that such connection will not interfere with the operation of the distribution circuit. Single-phase generators will not normally be permitted to be connected to subtransmission and transmission (46 kV and above) facilities.

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14. Indemnification

The owner of the production facility will release, indemnify, and save harmless the connecting electric system, and the purchasing electric system if different, and their respective agents and employees from all liability, claims, demands, causes of action, costs, or losses for personal injuries, property damage, or loss of life or property, sustained by the owner, its agents and employees, or third parties rising out of or in any way connected with the installation, operation, maintenance, repair, defect, or failure of the production facility and associated equipment and facilities.

15. Insurance

The owner of the production facility will carry general liability insurance (in such minimum amounts as may be determined appropriate by the connecting and purchasing electric systems) to provide protection against liability, claims, demands, causes of action, costs, or losses as described in section 14 above (including losses sustained by the connecting electric system and the purchasing electric system and their respective agents and employees). The owner of the production facility, at the request of the electric systems, will provide the electric systems with evidence of the continuing effectiveness of such insurance during the production facility's construction and operation. The owner of the production facility, at the request of the electric systems, will name the electric systems, and their respective agents and employees, as additional insureds.

[FR Doc. 91-11617 Filed 5-15-91; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF TRANSPORTATION

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS-108, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 90-11-29, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the six-month period beginning April 1, 1991, we have projected non-fuel costs based on the year ended December 31, 1990 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

These projections reflect the intense fluctuations in fuel prices and costs induced by the recent Mid East crisis.

By Order 91-5-3 cargo rates may be adjusted by the following adjustment factors over the October 1979 level:

Atlantic	1.5698
Western Hemisphere	1.3174
Pacific	1.6111

For further information contact: Keith A. Shangrew (202) 366-9439.

Dated: May 8, 1991.

By the Department of Transportation:

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-11558 Filed 5-15-91; 8:45 am]

BILLING CODE [illegible]

Coast Guard

[CGD 91-033]

Towing Safety Advisory Committee; Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC) and Subcommittees. The full Committee meeting will be held on Thursday, July 18, 1991, in room 2415 of U.S. Coast Guard Headquarters. The meeting is scheduled to run from 9 a.m. to 4 p.m. Attendance is open to the public. The agenda follows:

1. Subcommittee Reports.
   a. Personnel Manning and Licensing.
   b. Tug-Barge Construction, Certification and Operations.
   c. Personnel Safety and Workplace Standards.
   d. Oil Pollution Act of 1990 Implementation.
2. Other Topics of Discussion.

A preliminary meeting of the aforementioned subcommittees will be held on Wednesday, July 17, 1991, in room 2415 of U.S. Coast Guard Headquarters. This meeting is scheduled to run from 1 p.m. to 4 p.m. Attendance is open to the public.

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the TSAC Executive Director no later than the day before the meeting.

Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each committee member, 20 copies of the written material should be submitted to the Executive Director by July 17, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Pensivy, Executive Director, Towing Safety Advisory Committee, room 2412, U.S. Coast Guard Headquarters (G-MP-4), 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-1409.

Dated: May 10, 1991.

J. D. Sipes,

Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91-11597 Filed 5-15-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement: Riverside and San Bernardino Counties, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this Notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Riverside and San Bernardino Counties, California.

FOR FURTHER INFORMATION CONTACT: Leonard E. Brown, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915, telephone: (916) 551-1307, or Mahmoud Sadeghi, California Department of Transportation, 3660 University Avenue, suite 300, Riverside, California 92501, telephone: (714) 787-7976.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve Interstate 215 (I-215) between the east junction of State Route 60 (SR-60) near Moreno Valley and Orange Show Road in San Bernardino. This proposed project is a collaborative effort with the Riverside County Transportation Commission (RCTC) and the San Bernardino County Associated Governments (SANBAG).

The approximately 12-mile portion of I-215 to be studied links traffic flows to and from the Counties of Riverside, San Bernardino, Los Angeles, and Orange. This heavily traveled segment of I-215 is currently experiencing traffic congestion. As the surrounding areas continue to increase in population, it is projected that traffic volumes will

increase, resulting in greater delays to the motoring public.

The EIS will address the purpose and need for the proposed project, evaluate solutions and alternatives to satisfy the needs, describe the affected environment, and identify environmental consequences and mitigation measures.

Improvements to be studied include the upgrading of the Routes 60/215 interchange, Routes 60/91/215 interchange, and the I-10/215 interchange. Improvements in pedestrian and bicycle access to the University of California at Riverside campus will be studied. High occupancy vehicles (HOV) lanes and truck climbing lanes will be considered and structures will be examined for seismic adequacy. Various modifications to existing interchanges to improve operations will be studied.

The alternatives proposed to be considered are (a) No-Build; (b) Transportation System Management (TSM) measures including access ramp improvements, such as widening and signalized ramp metering, the addition of high occupancy vehicle (HOV) lanes, and fringe parking facilities; and (c) widening existing Interstate Route 215 by four lanes for the entire length of the project. Both mixed-flow lanes and high occupancy vehicle (HOV) lanes will be considered. For the portion between the I-215/60/91 and Routes 60/215 interchange the addition of two auxiliary truck climbing lanes will also be considered. Staged construction may be considered for this alternative including the initial design for two additional lanes on the right-of-way necessary for four additional lanes. Subsequent staged construction would provide two additional lanes, thereby realizing the ultimate addition of four additional lanes.

The appropriate Federal, State, and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal will each receive a letter describing the proposed action and soliciting their comments. A scoping meeting will be held in the near future and a series of public meetings are proposed prior to the public hearing. Public notice will be given of the time and place of the meetings and hearing. Scoping meetings will occur with one meeting scheduled for San Bernardino County, and another meeting for Riverside County. The scoping meetings are expected to occur in early 1991. Public meetings will be held throughout the planning process and prior to the circulation of the draft EIS. The public hearing will be held after the draft EIS is available for reviews, and is scheduled for the beginning of 1993.

To ensure that the full range of issues related to this proposed action are addressed and any significant impacts are identified, comments and suggestions are invited from all interested parties. The views of agencies which may have knowledge about historic and archaeological resources potentially affected by the proposal or interest in the effects of the proposal on historic properties are specifically solicited. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the California Department of Transportation at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 8, 1991.

Leonard E. Brown,

District Engineer, Sacramento, California.

[FR Doc. 91-11624 Filed 5-15-91; 8:45 am]

BILLING CODE 4910-22-M

UNITED STATES INFORMATION AGENCY

American Studies Summer Institutes

AGENCY: United States Information Agency.

ACTION: Announcement.

SUMMARY: Subject to the availability of funds, the United States Information Agency (USIA) invites applications from U.S. universities to conduct a graduate level, interdisciplinary, American Studies Summer Institute for secondary school educators. USIA is asking for detailed proposals from universities which have an acknowledged reputation in American studies and related fields with expertise in handling cross-cultural programs.

DATES: Deadline for proposals: Must be received at USIA by 5 p.m. e.d.t. on August 2, 1991. Faxed documents will not be accepted, nor will documents post-marked August 2d but received at a later date.

Approximate project dates: July 2 to August 15, 1992.

Duration: The duration of the award should begin two to two and-a-half months prior to the beginning of the project date, July 2, for which period only minimal administrative assistance costs will be allowed. The termination date should be 60 to 90 days after the end of the project date of August 15, to cover the required end-of-project report. Approximate time period for the activity on the USIA cover sheet should be from approximately May 1 to October 15, 1992. No funds may be expended until the agreement is signed.

ADDRESSES: Fifteen copies of the completed application, including USIA cover sheet and required forms, should be submitted to the Office below: U.S. Information Agency, Office of the Executive Director, Attn: Summer Institutes, E/X, room 336, 301 4th Street, SW., Washington, D.C. 20547.

Required forms: USIA cover sheet, Assurance of Compliance form; Certification Regarding Drug-Free Workplace Requirements; Certification Regarding Debarment, Suspension, and Other Responsibility Matters; and Certification for Contracts, Grants and Cooperative Agreements with appropriate Disclosure of Lobbying Activities forms.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call Dr. Katherine Passias, at: USIA 301 4th Street, SW., Washington, DC. 20547, Study of the U.S. Branch, (E/AAS), room 256, Tel. (202) 619-4568.

SUPPLEMENTARY INFORMATION: Two and possibly three institutes may be funded in the summer of 1992. The authority for this exchange program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). The Fulbright Program seeks to increase mutual understanding between the people of the United States and people of other countries. Programs and projects must conform with all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

Eligibility

Accredited colleges and universities with graduate programs in fields related to the study of the U.S., including consortia of universities, are eligible to apply. Proposals from a consortium may be submitted by a member institution with authority to represent the consortium. The project director, or one of the key program staff responsible for the academic program must have an advanced degree in a field related to the study of the U.S. University escorts traveling under USIA grant support must be U.S. citizens.

Proposals that do not comply with the eligibility factors and with the budget ceiling for administrative and program costs, which should not exceed $60,000, will be technically ineligible.

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Notification

All applicants will be notified of the results of the review process on or about October 10, 1991. Funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: May 6, 1991.

Warren J. Ohlbeck,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-11620 Filed 5-15-91; 8:45 am]

BILLING CODE 6210-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 95
Thursday, May 16, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on May 10, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, May 20, 1991.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposed purchase of currency processing equipment within the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: May 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-11807 Filed 5-14-91; 3:33 pm]

BILLING CODE 6210-01-M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: 1:00 p.m., May 17, 1991.

PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

1:00 p.m. Meeting—Board of Regents

(1) Approval of Minutes—February 11, 1991; (2) Approval of Graduates; (3) Report—Admissions; (4) Financial Report; (5) Report—Deputy Dean, USUHS; (6) Comments—Members, Board of Regents; (7) Comments—Chairman, Board of Regents; (8) Reports of Subcommittees on Planning and Oversight

New Business

CONTACT PERSON FOR MORE INFORMATION: Charles R. Mannix, Executive Secretary of the Board of Regents, 301/295-3028.

Dated: May 13, 1991.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-11723 Filed 5-13-91; 4:46 pm]

BILLING CODE 3810-01-M

U.S RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on May 21, 1991, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Board Letters to Agency Heads

(2) On-site Representative at Travelers

(3) Training: Discussion of RRB Policy, Budget Priorities

(4) Automation Review: Policy, Budget

(5) Backlog Review Task Force Report: Briefing and Discussion

(6) Atlanta Regional Director Position

(7) Hiring a Senior Actuary

(8) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act

(9) Regulations—Part 203, Employees Under the Act

(10) Regulations—Part 225, Recovery of Overpayments

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: May 13, 1991.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-11810 Filed 5-15-91; 3:37 pm]

BILLING CODE 7905-01-M

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Corrections

Federal Register
Vol. 56, No. 95
Thursday, May 16, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3924-1]

Agency Information Collection Activities Under OMB Review

Correction

In notice document 91-9363 appearing on page 16331 in the issue of Monday, April 22, 1991, in the third column, under *Title*, in the third line, "1530.01" should read "1503.01".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice That the Secretary of Health and Human Services Is Declining To Determine Supplemental Security Income Benefit Amounts by Alternate Method

Correction

In notice document 91-8138 beginning on page 14268 in the issue of Monday, April 8, 1991, under DATES, "March 8, 1901" should read "April 8, 1991".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 18118; International Series Rel. No.263; 812-7715]

Baillie Gifford International Fund, Inc.; Application

Correction

In notice document 91-10631 beginning on page 20635 in the issue of Monday, May 6, 1991, in the heading, the release number should read as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-25306]

Filings Under the Public Utility Holding Company Act of 1935("Act")

Correction

In notice document 91-10568 beginning on page 20638 in the issue of Monday, May 6, 1991, make the following correction:

In the third column, in the first line of the document, the release number was incorrect and should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8337]

1545-AM06

Allocation and Apportionment of Deduction for State Income Taxes

Correction

In rule document 91-5585 beginning on page 10365 in the issue of Tuesday, March 12, 1991, make the following corrections:

On page 10366, in the second column, in the second paragraph, in the third line, "May 19, 1989" should read "May 18, 1989".

§ 1.861-8 [Corrected]

1. On page 10372, in § 1.861-8(g), *Example 25*(i), in the eighth line from the end of the paragraph, "$200,00" should read "$200, 000".

2. On page 10373, in the first column, in the same section, in *Example* 27(ii)(C)(2), in the second line, "estimate" was misspelled.

3. On page 10376, in the third column, in the same section, in *Example* 33, in the first line "(1)" should read "(i)".

BILLING CODE 1505-01-D

federal register

Thursday
May 16, 1991

Part II

United States Sentencing Commission

Amendments to the Sentencing Guidelines for United States Courts; Notice

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UNITED STATES SENTENCING COMMISSION

Amendments to the Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission of amendments to the sentencing guidelines to Congress.

SUMMARY: Pursuant to its authority under section 994(p) of Title 28, United States Code, the Commission on May 1, 1991, submitted to the Congress for review a report containing a number of amendments to the sentencing guidelines, policy statements, and official commentary, together with reasons for the amendments.

DATES: Pursuant to 28 U.S.C. 994(p), as amended by section 7109 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, Nov. 18, 1988), the Commission has specified an effective date of November 1, 1991, for these amendments.

ADDRESSES: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, Attn: Public Information Office.

FOR FURTHER INFORMATION CONTACT: Mike Courlander, Public Information Specialist, Telephone: (202) 626-8500.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(o), (p). Absent action of Congress to the contrary, the amendments become effective on the date specified by the Commission (i.e., November 1, 1991) by operation of law.

Notice of the amendments submitted to the Congress on May 1, 1991, was published in the Federal Register of January 17, 1991 (56 FR 1846) and a public hearing on the proposed amendments was held in Washington, DC on March 5, 1991. After review of the hearing testimony and additional public comment, the Commission promulgated the amendments, each amendment having been approved by at least four voting Commissioners. In connection with its ongoing process of guideline review, the Commission continues to welcome comment on any aspect of the sentencing guidelines, policy statements, and official commentary. Specifically, the Commission solicits comment on which, if any, of the amendments submitted to the Congress that may result in a lower guideline range should be made retroactive to previously sentenced defendants under Policy Statement 1B1.10.

Authority: 28 U.S.C. 994(a), (o), (p); sec. 7109 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690).

William W. Wilkins, Jr.,
Chairman.

Amendments to the Sentencing Guidelines

Pursuant to section 994(p) of title 28, United States Code, as amended by section 7109 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, Nov. 18, 1988), the United States Sentencing Commission reports to the Congress the following amendments to the sentencing guidelines, and the reasons therefor. As authorized by this section, the Commission specifies an effective date of November 1, 1991, for these amendments.

Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary

Chapter Two, Part A (Offenses Against the Person)

1. Amendment: Section 2A4.1 is amended by deleting subsection (b)(5) and inserting in lieu thereof:

"(5) If the victim was sexually exploited, increase by 3 levels.

(6) If the victim is a minor and, in exchange for money or other consideration, was placed in the care or custody of another person who had no legal right to such care or custody of the victim, increase by 3 levels.

(7) If the victim was kidnapped, abducted, or unlawfully restrained during the commission of, or in connection with, another offense or escape therefrom; or if another offense was committed during the kidnapping, abduction, or unlawful restraint, increase to—

(A) The offense level from the Chapter Two offense guideline applicable to that other offense if such offense guideline includes an adjustment for kidnapping, abduction, or unlawful restraint, or otherwise takes such conduct into account; or

(B) 4 plus the offense level from the offense guideline applicable to that other offense, but in no event greater than level 43, in any other case,

If the resulting offense level is greater than that determined above.

(c) Cross Reference

(1) If the victim was killed under circumstances that would constitute murder under 18 U.S.C. 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply § 2A1.1 (First Degree Murder).".

The Commentary to § 2A4.1 captioned "Application Notes" is amended by inserting the following additional note:

"4. 'Sexually exploited' includes offenses set forth in 18 U.S.C. 2241-2244, 2251, and 2421-2423.".

The Commentary to § 2A4.1 captioned "Background" is amended by inserting the following additional paragraph at the end:

"Section 401 of Public Law 101-647 amended 18 U.S.C. 1201 to require that courts take into account certain specific offense characteristics in cases involving a victim under eighteen years of age and directed the Commission to include those specific offense characteristics within the guidelines. Where the guidelines did not already take into account the conduct identified by the Act, additional specific offense characteristics have been provided.".

The Commentary to § 1B1.1 captioned "Application Notes is amended in Note 1(h) by inserting the following additional sentence at the end:

"In the case of a kidnapping, for example, maltreatment to a life-threatening degree (e.g., by denial of food or medical care) would constitute life-threatening bodily injury.".

Reason for Amendment: Section 401 of the Crime Control Act of 1990 (Public Law 101-647) contains instructions to the Commission concerning kidnapping involving minor victims. This amendment implements these instructions, in some cases with a broader scope, by revising § 2A4.1 and the Commentary to § 1B1.1. With respect to the portion of the Congressional instruction pertaining to aiders or abettors, no amendment was required because § 1B1.3 (Relevant Conduct) provides an offense level greater than that required by the Congressional instruction. In addition, this amendment replaces the current subsection (b)(5) with a revised subsection (b)(7) that addresses other offenses connected with kidnapping, abduction, or unlawful restraint in a manner that more appropriately reflects the combined seriousness of such offenses, and inserts a cross reference to address the case in which the victim was murdered.

Chapter Two, Part B (Offenses Involving Property); Chapter Two, Part F (Fraud or Deceit)

2. Amendment: Section 2B1.1(b)(7) is amended by inserting "—(A)" immediately before "substantially", and by deleting the comma immediately following "institution" and inserting in lieu thereof "; or (B) affected a financial institution and the defendant derived more than $1,000,000 in gross receipts from the offense,".

The Commentary to § 2B1.1 captioned "Statutory Provisions" is amended by inserting "225," immediately before "641".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 9 by deleting "215" and inserting in lieu thereof "20", and by deleting "1008, 1014, and 1344" and inserting in lieu thereof "1007, and 1014".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 10 by deleting:

"As a consequence of the offense the institution became insolvent, substantially reduced benefits to pensioners or insureds, was unable on demand to refund fully any deposit, payment or investment, or was so depleted of its assets as to be forced to merge with another institution in order to continue active operations",

and inserting in lieu thereof:

", as a consequence of the offense, the institution became insolvent; substantially reduced benefits to pensioners or insureds; was unable on demand to refund fully any deposit, payment, or investment; was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or was placed in substantial jeopardy of any of the above".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by inserting the following additional notes:

"11. 'Derived more than $1,000,000 in gross receipts from the offense,' as used in subsection (b)(7)(B), generally means that the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000. 'Gross receipts from the offense' includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. See 18 U.S.C. 982(a)(4).

12. If the defendant is convicted under 18 U.S.C. 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the 'continuing financial crimes enterprise.'

13. If subsection (b)(7)(A) or (B) applies, there shall be a rebuttable presumption that the offense involved 'more than minimal planning.' ".

The Commentary to § 2B1.1 captioned "Background" is amended in the seventh paragraph by deleting "(b)(7)" and inserting in lieu thereof "(b)(7)(A)", and by deleting "statutory directive" and inserting in lieu thereof "instruction".

The Commentary to § 2B1.1 captioned "Background" is amended by inserting the following additional paragraph at the end:

"Subsection (b)(7)(B) implements the instruction to the Commission in section 2507 of Public Law 101-647.".

Section 2B4.1(b)(2) is amended by inserting "—(A)" immediately before "substantially", and by deleting the comma immediately following "institution" and inserting in lieu thereof "; or (B) affected a financial institution and the defendant derived more than $1,000,000 in gross receipts from the offense,".

The Commentary to § 2B4.1 captioned "Statutory Provisions" is amended by inserting "–225" immediately following "224".

The Commentary to § 2B4.1 is amended in Note 2 by deleting "Bribery" and inserting in lieu thereof "Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right".

The Commentary to § 2B4.1 captioned "Application Notes" is amended in Note 3 by deleting "215" and inserting in lieu thereof "20", and by deleting "1008, 1014, and 1344" and inserting in lieu thereof "1007, and 1014".

The Commentary to § 2B4.1 captioned "Application Notes" is amended in Note 4 by deleting:

"As a consequence of the offense the institution became insolvent, substantially reduced benefits to pensioners or insureds, was unable on demand to refund fully any deposit, payment or investment, or was so depleted of its assets as to be forced to merge with another institution in order to continue active operations",

and inserting in lieu thereof:

", as a consequence of the offense, the institution became insolvent; substantially reduced benefits to pensioners or insureds; was unable on demand to refund fully any deposit, payment, or investment; was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or was placed in substantial jeopardy of any of the above".

The Commentary to § 2B4.1 captioned "Application Notes" is amended by inserting the following additional notes:

"5. 'Derived more than $1,000,000 in gross receipts from the offense,' as used in subsection (b)(2)(B), generally means that the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000. 'Gross receipts from the offense' includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. See 18 U.S.C. 982(a)(4).

6. If the defendant is convicted under 18 U.S.C. 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the 'continuing financial crimes enterprise.'

7. If subsection (b)(2)(A) or (B) applies, there shall be a rebuttable presumption that the offense involved 'more than minimal planning.' ".

The Commentary to § 2B4.1 captioned "Background" is amended in the second paragraph by deleting the second sentence; in the seventh paragraph by deleting "(b)(2)" and inserting in lieu thereof "(b)(2)(A)", and by deleting "statutory directive" and inserting in lieu thereof "instruction"; and by inserting the following additional paragraph at the end:

"Subsection (b)(2)(B) implements the instruction to the Commission in Section 2207 of Public Law 101-647.".

Section 2F1.1(b)(6) is amended by inserting "—(A)" immediately before "substantially", and by deleting the comma immediately following "institution" and inserting in lieu thereof "; or (B) affected a financial institution and the defendant derived more than $1,000,000 in gross receipts from the offense,".

The Commentary to § 2F1.1 captioned "Statutory Provisions" is amended by inserting "225," immediately before "285".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 14 by deleting "215" and inserting in lieu thereof "20", and by deleting "1008, 1014, and 1344" and inserting in lieu thereof "1007, and 1014".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 15 by deleting:

"As a consequence of the offense the institution became insolvent, substantially reduced benefits to pensioners or insureds, was unable on demand to refund fully any deposit, payment or investment, or was so depleted of its assets as to be forced to merge with another institution in order to continue active operations",

and inserting in lieu thereof:

", as a consequence of the offense, the institution became insolvent; substantially reduced benefits to pensioners or insureds; was unable on demand to refund fully any deposit, payment, or investment; was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or was placed in substantial jeopardy of any of the above".

The Commentary to § 2F1.1 captioned "Application Notes" is amended by inserting the following additional notes:

"16. 'Derived more than $1,000,000 in gross receipts from the offense,' as used in subsection (b)(6)(B), generally means that the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000. 'Gross receipts from the offense' includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. See 18 U.S.C. 982(a)(4).

17. If the defendant is convicted under 18 U.S.C. 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the 'continuing financial crimes enterprise.'

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18. If subsection (b)(6)(A) or (B) applies, there shall be a rebuttable presumption that the offense involved 'more than minimal planning.' ".

The Commentary to § 2F1.1 captioned "Background" is amended in the sixth paragraph by deleting "(b)(6)" and inserting in lieu thereof "(b)(6)(A)", and by deleting "statutory directive" and inserting in lieu thereof "instruction".

The Commentary to § 2F1.1 captioned "Background" is amended by inserting the following additional paragraph at the end:

"Subsection (b)(6)(B) implements the instruction to the Commission in Section 2507 of Public Law 101-647.".

Reason for Amendment: This amendment implements the instruction to the Commission in section 2507 of the Crime Control Act of 1990 (Public Law 101-647). It also reflects the new offense relating to a continuing financial crimes enterprise created by section 2510 of the Crime Control Act of 1990. In addition, it revises the Commentary to §§ 2B1.1, 2B4.1, and 2F1.1 with respect to the definition of "substantially jeopardized the safety and soundness of a financial institution" so that the commentary is read to include cases in which the offense created a substantial risk of any of the harms described in addition to cases in which such harm actually occurred.

* * * * *

3. Amendment: Section 2B3.1(b)(2) is deleted and the following inserted in lieu thereof:

"(2) (A) If a firearm was discharged, increase by 7 levels; (B) if a firearm was otherwise used, increase by 6 levels; (C) if a firearm was brandished, displayed, or possessed, increase by 5 levels; (D) if a dangerous weapon was otherwise used, increase by 4 levels; (E) if a dangerous weapon was brandished, displayed, or possessed, increase by 3 levels; or (F) if an express threat of death was made, increase by 2 levels.".

Section 2B3.1(b)(3) is amended by deleting "9" and inserting in lieu thereof "11".

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 1 by inserting " 'bodily injury,' 'serious bodily injury,' 'permanent or life-threatening bodily injury,' " immediately before " 'brandished' ".

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 2 by deleting "(b)(2)(C)" and inserting in lieu thereof "(b)(2)(E)".

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 4 by deleting "9" and inserting in lieu thereof "11".

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 7 by deleting "(b)(2)(D)" and inserting in lieu thereof "(b)(2)(F)".

Reason for Amendment: This amendment increases the offense levels for use or possession of a firearm by 2 levels to better reflect the seriousness of such offenses and to reduce the disparity resulting from the exercise of prosecutorial discretion in the charging of an offense under 18 U.S.C. 924(c) or 929(a). In addition, this amendment revises the commentary to make the reference to the terms defined in § 1B1.1 more comprehensive.

* * * * *

4. Amendment: Section 2B3.2 is amended by deleting subsections (b)(1) and (b)(2), by renumbering subsections (b)(3) and (b)(4) as (b)(4) and (b)(5) respectively, by inserting the following as subsections (b)(1)-(b)(3):

"(1) If the offense involved an express or implied threat of death, bodily injury, or kidnapping, increase by 2 levels.

(2) If the greater of the amount demanded or the loss to the victim exceeded $10,000, increase by the corresponding number of levels from the table in § 2B3.1(b)(6).

(3) (A)(i) If a firearm was discharged, increase by 7 levels; (ii) if a firearm was otherwise used, increase by 6 levels; (iii) if a firearm was brandished, displayed, or possessed, increase by 5 levels; (iv) if a dangerous weapon was otherwise used, increase by 4 levels; or (v) if a dangerous weapon was brandished, displayed, or possessed, increase by 3 levels; or

(B) If the offense involved preparation to carry out a threat of death, serious bodily injury, kidnapping, or product tampering; or if the participant(s) otherwise demonstrated the ability to carry out such threat, increase by 3 levels.",

and in the last sentence of the renumbered subsection (b)(4) (formerly (b)(3)) by deleting "(2)", "(3)" and "9", and inserting in lieu thereof "(3)", "(4)", and "11", respectively.

Section 2B3.2 is amended by inserting the following additional subsection:

"(c) Cross Reference

(1) If the offense was tantamount to attempted murder, apply § 2A2.1 (Assault With Intent to Commit Murder; Attempted Murder) if the resulting offense level is greater than that determined above.".

The Commentary to § 2B3.2 captioned "Application Notes" is amended in Note 1 by inserting " 'bodily injury,' 'serious bodily injury,' 'permanent or life-threatening bodily injury,' " immediately before "abducted"; and in Note 4 by deleting "9" and inserting in lieu thereof "11".

The Commentary to § 2B3.2 captioned "Application Notes" is amended by deleting Note 5 and inserting in lieu thereof:

"5. 'Loss to the victim,' as used in subsection (b)(2), means any demand paid plus any additional consequential loss from the offense (e.g., the cost of defensive measures taken in direct response to the offense).

6. In certain cases, an extortionate demand may be accompanied by conduct that does not qualify as a display of a dangerous weapon under subsection (b)(3)(A)(v) but is nonetheless similar in seriousness, demonstrating the defendant's preparation or ability to carry out the threatened harm (e.g., an extortionate demand containing a threat to tamper with a consumer product accompanied by a workable plan showing how the product's tamper-resistent seals could be defeated, or a threat to kidnap a person accompanied by information showing study of that person's daily routine). Subsection (b)(3)(B) addresses such cases.

7. If the offense involved the threat of death or serious bodily injury to numerous victims (e.g., in the case of a plan to derail a passenger train or poison consumer products), an upward departure may be warranted.

8. If the offense involved organized criminal activity, or a threat to a family member of the victim, an upward departure may be warranted.".

Reason for Amendment: This amendment provides a specific offense characteristic to distinguish the greater seriousness of offenses that involve an express or implied threat of death, bodily injury, or kidnapping; conforms the loss table to that used in the robbery guideline to reflect that the typical case under the amended guideline will have an offense level that is more closely comparable to robbery; increases the offense levels for use or possession of a firearm to conform to an amendment being made to the robbery guideline; adds a subdivision to the specific offense characteristic dealing with use or possession of a dangerous weapon to address cases in which the conduct is tantamount in seriousness to the brandishing, display, or possession of a dangerous weapon, but does not qualify under the current specific offense characteristic for weapon enhancement; adds a factor to the specific offense characteristic dealing with loss to address consequential damages; adds a cross reference to the attempted murder guideline (§ 2A2.1) to address cases in which the conduct was tantamount to attempted murder; and sets forth commentary describing certain aggravating factors that may warrant an upward departure.

Chapter Two, Part C (Offenses Involving Public Officials)

5. Amendment: Section 2C1.1(b)(1) is amended by inserting "or extortion" immediately following "bribe".

Section 2C1.1(b)(2)(A) is amended by deleting "bribe or the benefit received, or to be received, in return for the bribe" and inserting in lieu thereof "payment, the benefit received or to be received in return for the payment, or the loss to the government from the offense, whichever is greatest,".

Section 2C1.1(b)(2)(B) is amended by deleting "bribe" and inserting in lieu thereof "payment".

Section 2C1.1 is amended by deleting subsection (c)(1), by renumbering subsection (c)(2) as (c)(3), and by inserting the following as subsections (c)(1) and (2):

"(1) If the offense was committed for the purpose of facilitating the commission of another criminal offense, apply the offense guideline applicable to a conspiracy to commit that other offense if the resulting offense level is greater than that determined above.

(2) If the offense was committed for the purpose of concealing, or obstructing justice in respect to, another criminal offense, apply § 2X3.1 (Accessory After the Fact) or § 2J1.2 (Obstruction of Justice), as appropriate, in respect to that other offense if the resulting offense level is greater than that determined above.".

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 2 by deleting the first sentence and inserting in lieu thereof " 'Loss' is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) and includes both actual and intended loss."; and by deleting " 'value of the" and inserting in lieu thereof "value of 'the".

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 3 by deleting "§ 2C1.1(c) (1) or (2)." and inserting in lieu thereof "§ 2C1.1(c) (1), (2), or (3). In such cases, an adjustment from § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) may apply.".

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 4 by deleting "bribe" and inserting in lieu thereof "unlawful payment"; and by deleting "and (2)" and inserting in lieu thereof ", (2), and (3)".

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 6 by inserting the following as the first sentence: "Subsection (b)(1) provides an adjustment for offenses involving more than one incident of either bribery or extortion.", by deleting "bribe" the first time it occurs and inserting in lieu thereof "incident of bribery or extortion", and by inserting "or extortion" immediately before ", even if charged".

The Commentary to § 2C1.1 captioned "Background" is amended in the third paragraph by deleting "bribe" wherever it appears and inserting in lieu thereof in each instance "payment".

The Commentary to § 2C1.1 captioned "Background" is amended in the fourth paragraph by deleting "bribe is" and inserting in lieu thereof "payment was".

The Commentary to § 2C1.1 captioned "Background" is amended by inserting the following additional paragraph as the fifth paragraph:

"Under § 2C1.1(c)(1), if the payment was to facilitate the commission of another criminal offense, the guideline applicable to a conspiracy to commit that other offense will apply if the result is greater than that determined above. For example, if a bribe was given to a law enforcement officer to allow the smuggling of a quantity of cocaine, the guideline for conspiracy to import cocaine would be applied if it resulted in a greater offense level.".

The Commentary to § 2C1.1 captioned "Background" is amended by deleting the sixth (formerly fifth) paragraph and inserting in lieu thereof:

"Under § 2C1.1(c)(2), if the payment was to facilitate the concealment of another criminal offense or the obstruction of justice in respect to another criminal offense, the guideline from § 2X3.1 (Accessory After the Fact) or § 2J1.2 (Obstruction of Justice), as appropriate, will apply if the result is greater than that determined above. For example, if a bribe was given for the purpose of concealing the offense of espionage, the guideline for accessory after the fact to espionage would be applied.".

The Commentary to § 2C1.1 captioned "Background" is amended in the seventh (formerly sixth) paragraph by deleting "§ 2C1.1(c)(2)" and inserting in lieu thereof "§ 2C1.1(c)(3)".

The Commentary to § 2C1.1 captioned "Background" is amended in the eighth (formerly seventh) paragraph by deleting:

"Note that, when applying 2C1.1(c) (1) or (2), an adjustment from Chapter Three, Part B (Role in the Offense) will also apply. This normally will result in an increase of at least 2 levels.",

and inserting in lieu thereof:

"When the offense level is determined under § 2C1.1(c) (1), (2), or (3), an adjustment from § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) may apply.".

Reason for Amendment: This amendment adds an additional factor in subsection (b)(2)(A) to take into account loss to the government from the offense; substitutes "payment" for "bribe" and adds "or extortion", where necessary, to reflect that this guideline covers both bribery and extortion under color of official right; and amends subsection (c) to distinguish an offense committed for the purpose of facilitating the commission of another offense from an offense committed to cover up or obstruct justice in respect to another offense.

6. Amendment: Chapter Two, Part C, is amended by inserting the following additional guideline and accompanying commentary:

"§ 2C1.7. Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference With Governmental Functions

(a) Base Offense Level: 10

(b) Specific Offense Characteristic

(1) (If more than one applies, use the greater):

(A) If the loss to the government, or the value of anything obtained or to be obtained by a public official or others acting with a public official, whichever is greater, exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit); or

(B) If the offense involved an elected official or any official holding a high level decision-making or sensitive position, increase by 8 levels.

(c) Cross References

(1) If the offense was committed for the purpose of facilitating the commission of another criminal offense, apply the offense guideline applicable to a conspiracy to commit that other offense if the resulting offense level is greater than that determined above.

(2) If the offense was committed for the purpose of concealing, or obstructing justice in respect to, another criminal offense, apply § 2X3.1 (Accessory After the Fact) or § 2J1.2 (Obstruction of Justice), as appropriate, in respect to that other offense if the resulting offense level is greater than that determined above.

(3) If the offense involved a threat of physical injury or property destruction, apply § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) if the resulting offense level is greater than that determined above.

(4) If the offense is covered more specifically under § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right), § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), or § 2C1.3 (Conflict of Interest), apply the offense guideline that most specifically covers the offense.

Commentary

Statutory Provisions: 18 U.S.C. 371, 1341-1343, 1346.

Application Notes

1. This guideline applies only to offenses committed by public officials or others acting with them that involve depriving others of the intangible right to honest services (such offenses may be prosecuted under 18 U.S.C. 1341-1343, 1346), or conspiracy to defraud the United States by interfering with

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governmental functions (such offenses may be prosecuted under 18 U.S.C. 371). 'Public official,' as used in this guideline, includes officers and employees of federal, state, or local government.

2. 'Official holding a high level decision-making or sensitive position' includes, for example, prosecuting attorneys, judges, agency administrators, supervisory law enforcement officers, and other governmental officials with similar levels of responsibility.

3. 'Loss' is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) and includes both actual and intended loss.

4. Do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) except where the offense level is determined under § 2C1.7(c) (1), (2), or (3). In such cases, an adjustment from § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) may apply.

5. Where the court finds that the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted. See Chapter Five, Part K (Departures).

Background: The maximum term of imprisonment authorized by statute under 18 U.S.C. 371, 1341–1343, and 1346 is five years.".

Section 3D1.2(d) is amended in the second paragraph by inserting ", 2C1.7" immediately following "2C1.2".

Reason for Amendment: This amendment provides an additional guideline to cover certain fraud offenses that involve public corruption but do not fall within the guidelines of Chapter Two, Part C (Official Corruption) as currently written. In some cases, the statutes covered are used to prosecute offenses more appropriately covered under § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right), § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), or § 2C1.3 (Conflict of Interest). A cross reference is provided to address such cases.

Chapter Two, Part D (Offenses Involving Drugs)

7. Amendment: Section 2D1.1(c)(12) is amended by deleting the period immediately after "Schedule III substances" and inserting in lieu thereof "(except anabolic steroids);", and by inserting the following additional subdivision at the end:

"40,000 or more units of anabolic steroids.".

Section 2D1.1(c)(13) is amended by deleting the period immediately after "Schedule III substances" and inserting in lieu thereof "(except anabolic steroids);", and by inserting the following additional subdivision at the end:

"At least 20,000 but less than 40,000 units of anabolic steroids.".

Section 2D1.1(c)(14) is amended by deleting the period immediately after "Schedule III substances" and inserting in lieu thereof "(except anabolic steroids);", and by inserting the following additional subdivision at the end:

"At least 10,000 but less than 20,000 units of anabolic steroids.".

Section 2D1.1(c)(15) is amended by deleting the period immediately after "Schedule III substances" and inserting in lieu thereof "(except anabolic steroids);", and by inserting the following additional subdivision at the end:

"At least 5,000 but less than 10,000 units of anabolic steroids.".

Section 2D1.1(c)(16) is amended by inserting "(except anabolic steroids)" immediately after "Schedule III substances", and by inserting the following additional subdivision after the next to last subdivision:

"At least 2,500 but less than 5,000 units of anabolic steroids;".

Section 2D1.1(c)(17) is amended by inserting "(except anabolic steroids)" immediately after "Schedule III substances", and by inserting the following additional subdivision after the next to last subdivision:

"At least 1,000 but less than 2,500 units of anabolic steroids;".

Section 2D1.1(c)(18) is amended by inserting "(except anabolic steroids)" immediately after "Schedule III substances", and by inserting the following additional subdivision after the fourth subdivision:

"At least 250 but less than 1,000 units of anabolic steroids;".

Section 2D1.1(c)(19) is amended by inserting "(except anabolic steroids)" immediately after "Schedule III substances", and by inserting the following additional subdivision after the fourth subdivision:

"Less than 250 units of anabolic steroids;".

Section 2D1.1(c) is amended in the note following subdivision (19) by inserting the following additional paragraph at the end:

"In the case of anabolic steroids, one 'unit' means a 10 cc vial of an injectable steroid or fifty tablets. All vials of injectable steroids are to be converted on the basis of their volume to the equivalent number of 10 cc vials (e.g., one 50 cc vial is to be counted as five 10 cc vials).".

The Commentary to § 2N2.1 captioned "Application Notes" is amended in note 4 by deleting "anabolic steroids" and inserting in lieu thereof "human growth hormones", and by inserting at the end:

"Offenses involving anabolic steroids are covered by Chapter Two, Part D (Offenses Involving Drugs). In the case of an offense involving a substance purported to be an anabolic steroid, but not containing any active ingredient, apply § 2F1.1 (Fraud and Deceit) with 'loss' measured by the amount paid, or to be paid, by the victim for such substance.".

Reason for Amendment: Title XIX of the Crime Control Act of 1990 (Public Law 101–647) reclassifies anabolic steroids as Schedule III controlled substances under 21 U.S.C. 812(c). This amendment adds offenses involving anabolic steroids to § 2D1.1, the guideline addressing controlled substances. Because of the variety of substances involved, the Commission has determined that a measure based on quantity unit, rather than weight, provides the most appropriate measure of the scale of the offense.

8. Amendment: Section 2D1.1(c)(1) is amended by inserting ", or 30 KG or more of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(2) is amended by inserting ", or at least 10 KG but less than 30 KG of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(3) is amended by inserting ", or at least 3 KG but less than 10 KG of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(4) is amended by inserting ", or at least 1 KG but less than 3 KG of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(5) is amended by inserting ", or at least 300 G but less than 1 KG or 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(6) is amended by inserting ", or at least 100 G but less than 300 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(7) is amended by inserting ", or at least 70 G but less than 100 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(8) is amended by inserting ", or at least 40 G but less than 70 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(9) is amended by inserting ", or at least 10 G but less than 40 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(10) is amended by inserting ", or at least 8 G but less than 10 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(11) is amended by inserting ", or at least 6 G but less than 8 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(12) is amended by inserting ", or at least 4 G but less than 6 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(13) is amended by inserting ", or at least 2 G but less than 4 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(14) is amended by inserting ", or at least 1 G but less than 2 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(15) is amended by inserting ", or at least 500 MG but less than 1 G of 'Ice,' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(16) is amended by inserting ", or less than 500 MG of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c) is amended in the note following subdivision (19) by inserting the following as the second paragraph:

" 'Ice,' for the purposes of this guideline, means a mixture or substance containing d-methamphetamine hydrochloride of at least 80% purity.".

Reason for Amendment: This amendment implements the instruction to the Commission in section 2601 of the Crime Control Act of 1990 (Pub. L. 101–647) in a form compatible with the structure of the guidelines.

* * * * *

9. Amendment: Chapter Two, Part D, Subpart 1, is amended by inserting the following additional guidelines and accompanying commentary:

"§ 2D1.11. Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical

(a) Base Offense Level: The offense level from the Chemical Quantity Table set forth in subsection (d) below.

(b) Specific Offense Characteristics.

(1) If a dangerous weapon (including a firearm) was possessed, increase by 2 levels.

(2) If the defendant is convicted of violating 21 U.S.C. 841(d)(2), (g)(1), or 960(d)(2), decrease by 3 levels, unless the defendant knew or believed that the listed chemical was to be used to manufacture a controlled substance unlawfully.

(c) Cross Reference.

(1) If the offense involved unlawfully manufacturing a controlled substance, or attempting to manufacture a controlled substance unlawfully, apply § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, Trafficking), or § 2D1.4 (Attempts and Conspiracies), as appropriate, if the resulting offense level is greater than that determined above.

(d) Chemical Quantity Table".

(1) Level 28.

Listed Precursor Chemicals
20 KG or more of Benzyl Cyanide;
200 G or more of D-Lysergic Acid;
20 KG or more of Ephedrine;
200 G or more of Ergonovine;
400 G or more of Ergotamine;
20 KG or more of Ethylamine;
44 KG or more of Hydriodic Acid;
320 KG or more of Isosafrole;
4 KG or more of Methylamine;
500 KG or more of N-Methylephedrine;
500 KG or more of N-Methylpseudoephedrine;
200 KG or more of Norpseudoephedrine;
20 KG or more of Phenylacetic Acid;
200 KG or more of Phenylpropanolamine;
10 KG or more of Piperidine;
320 KG or more of Piperonal;
1.6 KG or more of Propionic Anhydride;
20 KG or more of Pseudoephedrine;
320 KG or more of Safrole;
400 KG or more of 3, 4-Methylenedioxyphenyl-2-propanone;

Listed Essential Chemicals
11 KG or more of Acetic Anhydride;
1175 KG or more of Acetone;
20 KG or more of Benzyl Chloride;
1075 KG or more of Ethyl Ether;
1200 KG or more of Methyl Ethyl Ketone;
10 KG or more of Potassium Permanganate;
1300 KG or more of Toluene.

(2) Level 26.

Listed Precursor Chemicals
At least 6 KG but less than 20 KG of Benzyl Cyanide;
At least 60 G but less than 200 G of D-Lysergic Acid;
At least 6 KG but less than 20 KG of Ephedrine;
At least 60 G but less than 200 G of Ergonovine;
At least 120 G but less than 400 G of Ergotamine;
At least 6 KG but less than 20 KG of Ethylamine;
At least 13.2 KG but less than 44 KG of Hydriodic Acid;
At least 96 KG but less than 320 KG of Isosafrole;
At least 1.2 KG but less than 4 KG of Methylamine;
At least 150 KG but less than 500 KG of N-Methylephedrine;
At least 150 KG but less than 500 KG of N-Methylpseudoephedrine;
At least 60 KG but less than 200 KG of Norpseudoephedrine;
At least 6 KG but less than 20 KG of Phenylacetic Acid;
At least 60 KG but less than 200 KG of Phenylpropanolamine;
At least 3 KG but less than 10 KG of Piperidine;
At least 96 KG but less than 320 KG of Piperonal;
At least 480 G but less than 1.6 KG of Propionic Anhydride;
At least 6 KG but less than 20 KG of Pseudoephedrine;
At least 96 KG but less than 320 KG of Safrole;
At least 120 KG but less than 400 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

Listed Essential Chemicals
At least 3.3 KG but less than 11 KG of Acetic Anhydride;
At least 352.5 KG but less than 1175 KG of Acetone;
At least 6 KG but less than 20 KG of Benzyl Chloride;
At least 322.5 KG but less than 1075 KG of Ethyl Ether;
At least 360 KG but less than 1200 KG of Methyl Ethyl Ketone;
At least 3 KG but less than 10 KG of Potassium Permanganate;
At least 390 KG but less than 1300 KG of Toluene.

(3) Level 24.

Listed Precursor Chemicals
At least 2 KG but less than 6 KG of Benzyl Cyanide;
At least 20 G but less than 60 G of D-Lysergic Acid;
At least 2 KG but less than 6 KG of Ephedrine;
At least 20 G but less than 60 G of Ergonovine;
At least 40 G but less than 120 G of Ergotamine;
At least 2 KG but less than 6 KG of Ethylamine;
At least 4.4 KG but less than 13.2 KG of Hydriodic Acid;
At least 32 KG but less than 96 KG of Isosafrole;
At least 400 G but less than 1.2 KG of Methylamine;
At least 50 KG but less than 150 KG of N-Methylephedrine;
At least 50 KG but less than 150 KG of N-Methylpseudoephedrine;
At least 20 KG but less than 60 KG of Norpseudoephedrine;
At least 2 KG but less than 6 KG of Phenylacetic Acid;
At least 20 KG but less than 60 KG of Phenylpropanolamine;
At least 1 KG but less than 3 KG of Piperidine;
At least 32 KG but less than 96 KG of Piperonal;
At least 160 G but less than 480 G of Propionic Anhydride;
At least 2 KG but less than 6 KG of Pseudoephedrine;
At least 32 KG but less than 96 KG of Safrole;
At least 40 KG but less than 120 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

Listed Essential Chemicals
At least 1.1 KG but less 3.3 KG of Acetic Anhydride;
At least 117.5 KG but less than 352.5 KG of Acetone;
At least 2 KG but less than 6 KG of Benzyl Chloride;
At least 107.5 KG but less than 322.5 KG of Ethyl Ether;
At least 120 KG but less than 360 KG of Methyl Ethyl Ketone;
At least 1 KG but less than 3 KG of Potassium Permanganate;
At least 130 KG but less than 390 KG of Toluene.

(4) Level 22.

Listed Precursor Chemicals
At least 1.4 KG but less than 2 KG of Benzyl Cyanide;
At least 14 G but less than 20 G of D-Lysergic Acid;
At least 1.4 KG but less than 2 KG of Ephedrine;
At least 14 G but less than 20 G of Ergonovine;

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At least 28 G but less than 40 G of Ergotamine;
At least 1.4 KG but less than 2 KG of Ethylamine;
At least 3.08 KG but less than 4.4 KG of Hydriodic Acid;
At least 22.4 KG but less than 32 KG of Isosafrole;
At least 280 G but less than 400 G of Methylamine;
At least 35 KG but less than 50 KG of N-Methylephedrine;
At least 35 KG but less than 50 KG of N-Methylpseudoephedrine;
At least 14 KG but less than 20 KG of Norpseudoephedrine;
At least 1.4 KG but less than 2 KG of Phenylacetic Acid;
At least 14 KG but less than 20 KG of Phenylpropanolamine;
At least 700 G but less than 1 KG of Piperidine;
At least 22.4 KG but less than 32 KG of Piperonal;
At least 112 G but less than 160 G of Propionic Anhydride;
At least 1.4 KG but less than 2 KG of Pseudoephedrine;
At least 22.4 KG but less than 32 KG of Safrole;
At least 28 KG but less than 40 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

Listed Essential Chemicals
At least 728 G but less than 1.1 KG of Acetic Anhydride;
At least 82.25 KG but less than 117.5 KG of Acetone;
At least 1.4 KG but less than 2 KG of Benzyl Chloride;
At least 75.25 KG but less than 107.5 KG of Ethyl Ether;
At least 84 KG but less than 120 KG of Methyl Ethyl Ketone;
At least 700 G but less than 1 KG of Potassium Permanganate;
At least 91 KG but less than 130 KG of Toluene.

(3) Level 20.

Listed Precursor Chemicals
At least 800 G but less than 1.4 KG of Benzyl Cyanide;
At least 8 G but less than 14 G of D-Lysergic Acid;
At least 800 G but less than 1.4 KG of Ephedrine;
At least 8 G but less than 14 G of Ergonovine;
At least 16 G but less than 28 G of Ergotamine;
At least 800 G but less than 1.4 KG of Ethylamine;
At least 1.76 KG but less than 3.08 KG of Hydriodic Acid;
At least 12.8 KG but less than 22.4 KG of Isosafrole;
At least 160 G but less than 280 G of Methylamine;
At least 20 KG but less than 35 KG of N-Methylephedrine;
At least 20 KG but less than 35 KG of N-Methylpseudoephedrine;
At least 8 KG but less than 14 KG of Norpseudoephedrine;
At least 800 G but less than 1.4 KG of Phenylacetic Acid;
At least 8 KG but less than 14 KG of Phenylpropanolamine;
At least 400 G but less than 700 G of Piperidine;
At least 12.8 KG but less than 22.4 KG of Piperonal;
At least 64 G but less than 112 G of Propionic Anhydride;
At least 800 G but less than 1.4 KG of Pseudoephedrine;
At least 12.8 KG but less than 22.4 KG of Safrole;
At least 16 KG but less than 28 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

Listed Essential Chemicals
At least 440 G but less than 726 G of Acetic Anhydride;
At least 47 KG but less than 82.25 KG of Acetone;
At least 800 G but less than 1.4 KG of Benzyl Chloride;
At least 43 KG but less than 75.25 KG of Ethyl Ether;
At least 48 KG but less than 84 KG of Methyl Ethyl Ketone;
At least 400 G but less than 700 G of Potassium Permanganate;
At least 52 KG but less than 91 KG of Toluene.

(6) Level 18.

Listed Precursor Chemicals
At least 200 G but less than 800 G of Benzyl Cyanide;
At least 2 G but less than 8 G of D-Lysergic Acid;
At least 200 G but less than 800 G of Ephedrine;
At least 2 G but less than 8 G of Ergonovine;
At least 4 G but less than 16 G of Ergotamine;
At least 200 G but less than 800 G of Ethylamine;
At least 440 G but less than 1.76 KG of Hydriodic Acid;
At least 3.2 KG but less than 12.8 KG of Isosafrole;
At least 40 G but less than 160 G of Methylamine;
At least 5 KG but less than 20 KG of N-Methylephedrine;
At least 5 KG but less than 20 KG of N-Methylpseudoephedrine;
At least 2 KG but less than 8 KG of Norpseudoephedrine;
At least 200 G but less than 800 G of Phenylacetic Acid;
At least 2 KG but less than 8 KG of Phenylpropanolamine;
At least 100 G but less than 400 G of Piperidine;
At least 3.2 KG but less than 12.8 KG of Piperonal;
At least 16 G but less than 64 G of Propionic Anhydride;
At least 200 G but less than 800 G of Pseudoephedrine;
At least 3.2 KG but less than 12.8 KG of Safrole;
At least 4 KG but less than 16 KG of 3, 4-Methylenedioxyphenyl-2-propanone.

Listed Essential Chemicals
At least 110 G but less than 440 G of Acetic Anhydride;
At least 11.75 KG but less than 47 KG of Acetone;
At least 200 G but less than 800 G of Benzyl Chloride;
At least 10.75 KG but less than 43 KG of Ethyl Ether;
At least 12 KG but less than 48 KG of Methyl Ethyl Ketone;
At least 100 G but less than 400 G of Potassium Permanganate;
At least 13 KG but less than 52 KG of Toluene.

(7) Level 16

Listed Precursor Chemicals
At least 160 G but less than 200 G of Benzyl Cyanide;
At least 1.6 G but less than 2 G of D-Lysergic Acid;
At least 160 G but less than 200 G of Ephedrine;
At least 1.6 G but less than 2 G of Ergonovine;
At least 3.2 G but less than 4 G of Ergotamine;
At least 160 G but less than 200 G of Ethylamine;
At least 352 G but less than 440 G of Hydriodic Acid;
At least 2.56 KG but less than 3.2 KG of Isosafrole;
At least 32 G but less than 40 G of Methylamine;
At least 4 KG but less than 5 KG of N-Methylephedrine;
At least 4 KG but less than 5 KG of N-Methylpseudoephedrine;
At least 1.6 KG but less than 2 KG of Norpseudoephedrine;
At least 160 G but less than 200 G of Phenylacetic Acid;
At least 1.6 KG but less than 2 KG of Phenylpropanolamine;
At least 80 G but less than 100 G of Piperidine;
At least 2.56 KG but less than 3.2 KG of Piperonal;
At least 12.8 G but less than 16 G of Propionic Anhydride;
At least 160 G but less than 200 G of Pseudoephedrine;
At least 2.56 KG but less than 3.2 KG of Safrole;
At least 3.2 KG but less than 4 KG of 3, 4-Methylenedioxyphenyl-2-propanone.

Listed Essential Chemicals
At least 88 G but less than 110 G of Acetic Anhydride;
At least 9.4 KG but less than 11.75 KG of Acetone;
At least 160 G but less than 200 G of Benzyl Chloride;
At least 8.6 KG but less than 10.75 KG of Ethyl Ether;
At least 9.6 KG but less than 12 KG of Methyl Ethyl Ketone;
At least 80 G but less than 100 G of Potassium Permanganate;
At least 10.4 KG but less than 13 KG of Toluene.

(8) Level 14.

Listed Precursor Chemicals
2.8 KG or more of Anthranilic Acid;
At least 120 G but less than 160 G of Benzyl Cyanide;
At least 1.2 G but less than 1.6 G of D-Lysergic Acid;
At least 120 G but less than 160 G of Ephedrine;
At least 1.2 G but less than 1.6 G of Ergonovine;
At least 2.4 G but less than 3.2 G of Ergotamine;
At least 120 G but less than 160 G of Ethylamine;
At least 264 G but less than 352 G of Hydriodic Acid;
At least 1.92 KG but less than 2.56 KG of Isosafrole;
At least 24 G but less than 32 G of Methylamine;
4.8 KG or more of N-Acetylanthranilic Acid;
At least 3 KG but less than 4 KG of N-Methylephedrine;
At least 3 KG but less than 4 KG of N-Methylpseudoephedrine;
At least 1.2 KG but less than 1.6 KG of Norpseudoephedrine;
At least 120 G but less than 160 G of Phenylacetic Acid;
At least 1.2 KG but less than 1.6 KG of Phenylpropanolamine;
At least 60 G but less than 80 G of Piperidine;
At least 1.92 KG but less than 2.56 KG of Piperonal;
At least 9.6 G but less than 12.8 G of Propionic Anhydride;
At least 120 G but less than 160 G of Pseudoephedrine;
At least 1.92 KG but less than 2.56 KG of Safrole;
At least 2.4 KG but less than 3.2 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

Listed Essential Chemicals
At least 66 G but less than 88 G of Acetic Anhydride;
At least 7.05 KG but less than 9.4 KG of Acetone;
At least 120 G but less than 160 G of Benzyl Chloride;
At least 6.45 KG but less than 8.6 KG of Ethyl Ether;
At least 7.2 KG but less than 9.6 KG of Methyl Ethyl Ketone;
At least 60 G but less than 80 G of Potassium Permanganate;
At least 7.8 KG but less than 10.4 KG of Toluene.

(9) Level 12.

Listed Precursor Chemicals
Less than 3.6 KG of Anthranilic Acid;
Less than 120 G of Benzyl Cyanide;
Less than 1.2 G of D-Lysergic Acid;
Less than 120 G of Ephedrine;
Less than 1.2 G of Ergonovine;
Less than 2.4 G of Ergotamine;
Less than 120 G of Ethylamine;
Less than 264 G of Hydriodic Acid;
Less than 1.92 KG of Isosafrole;
Less than 24 G of Methylamine;
Less than 4.8 KG of N-Acetylanthranilic Acid;
Less than 3 KG of N-Methylephedrine;
Less than 3 KG of N-Methylpseudoephedrine;
Less than 1.2 KG of Norpseudoephedrine;
Less than 120 G of Phenylacetic Acid;
Less than 1.2 KG of Phenylpropanolamine;
Less than 60 G of Piperidine;
Less than 1.92 KG of Piperonal;
Less than 9.6 G of Propionic Anhydride;
Less than 120 G of Pseudoephedrine;
Less than 1.92 KG of Safrole;
Less than 2.4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

Listed Essential Chemicals
Less than 66 G of Acetic Anhydride;
Less than 7.05 KG of Acetone;
Less than 120 G of Benzyl Chloride;
Less than 6.45 KG of Ethyl Ether;
Less than 7.2 KG of Methyl Ethyl Ketone;
Less than 60 G of Potassium Permanganate;
Less than 7.8 KG of Toluene.

*Notes

(A) If more than one listed precursor chemical is involved, use the Precursor Chemical Equivalency Table to determine the offense level.

(B) If more than one listed essential chemical is involved, use the single listed essential chemical resulting in the greatest offense level.

(C) If both listed precursor and listed essential chemicals are involved, use the offense level determined under (A) or (B) above, whichever is greater.

(D) The Precursor Chemical Equivalency Table provides a means for combining different listed precursor chemicals to obtain a single offense level. In cases involving multiple precursor chemicals, convert each to its ephedrine equivalency from the table below, add the quantities, and apply the Chemical Quantity Table to obtain the applicable offense level.

Precursor Chemical Equivalency Table

1 gm of Anthranilic Acid* = .033 gm of Ephedrine
1 gm of Benzyl Cyanide = 1 gm of Ephedrine
1 gm of D-Lysergic Acid = 10 gm of Ephedrine
1 gm of Ergonovine = 100 gm of Ephedrine
1 gm of Ergotamine = 50 gm of Ephedrine
1 gm of Ethylamine* = 1 gm of Ephedrine
1 gm of Hydriodic Acid** = .4545 gm of Ephedrine
1 gm of Isosafrole = .0625 gm of Ephedrine
1 gm of Methylamine = 5 gm of Ephedrine
1 gm of N-Acetylanthranilic Acid = .025 gm of Ephedrine
1 gm of N-Methylephedrine = .04 gm of Ephedrine
1 gm of N-Methylpseudoephedrine = .04 gm of Ephedrine
1 gm of Norpseudoephedrine = .1 gm of Ephedrine
1 gm of Phenylacetic Acid = 1 gm of Ephedrine
1 gm of Phenylpropanolamine = .1 gm of Ephedrine
1 gm of Piperidine = 2 gm of Ephedrine
1 gm of Piperonal = .0625 gm of Ephedrine
1 gm of Propionic Anhydride = 12.5 gm of Ephedrine
1 gm of Pseudoephedrine = 1 gm of Ephedrine
1 gm of Safrole = .0625 gm of Ephedrine
1 gm of 3,4-Methylenedioxyphenyl-2-propanone = .05 gm of Ephedrine

Commentary

Statutory Provisions: 21 U.S.C. 841(d) (1), (2), (g)(1), 960(d) (1), (2)

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* The ephedrine equivalency for anthranilic acid or N-acetylanthranilic acid, or both, shall not exceed 159.99 grams of ephedrine.

** In cases involving both hydriodic acid and ephedrine, calculate the offense level for each separately and use the quantity that results in the greater offense level.

Application Notes

1. 'Firearm' and 'dangerous weapon' are defined in the Commentary to § 1B1.1 (Application Instructions). The adjustment in subsection (b)(1) should be applied if the weapon was present, unless it is improbable that the weapon was connected with the offense.

2. 'Offense involved unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully,' as used in subsection (c)(1), means that the defendant, or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct), completed the actions sufficient to constitute the offense of unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully.

3. In certain cases, the defendant will be convicted of an offense involving a listed chemical covered under this guideline, and a related offense involving an immediate precursor or other controlled substance covered under § 2D1.1 (Unlawfully Manufacturing, Importing, Exporting, or Trafficking). For example, P2P (an immediate precursor) and 3,4-methylenedioxyphenyl-2-propanone (a listed chemical) are used together to produce methamphetamine. Determine the offense level under each guideline separately. The offense level for 3,4-methylenedioxyphenyl-2-propanone is determined by using § 2D1.11. The offense level for P2P is determined by using § 2D1.1. (P2P is listed in the Drug Equivalency Table under LSD, PCP, and Other Schedule I and II Hallucinogens (and their immediate precursors)). Under the grouping rules of § 3D1.2(b), the counts will be grouped together. Note that in determining the scale of the offense under § 2D1.1, the quantity of both the controlled substance and listed chemical should be considered (see Application Note 12 in the Commentary to § 2D1.1).

4. Where there are multiple listed precursor chemicals, the quantities of all listed precursors are added together for purposes of determining the base offense level, except as expressly noted (see Note A to the Chemical Quantity Table). This reflects that only one listed precursor typically is used in a given manufacturing process. For example, in the case of an offense involving 300 grams of piperidine and 800 grams of benzyl cyanide, the piperidine is converted to 600 grams of ephedrine and the benzyl cyanide is converted to 800 grams of ephedrine, using the Precursor Chemical Equivalency Table, for a total of 1400 grams of ephedrine. Applying the Chemical Quantity Table to 1400 grams (1.4 kilograms) of ephedrine results in a base offense level of 22.

5. Where there are multiple listed essential chemicals, all quantities of the same listed essential chemical are added together for purposes of determining the base offense level. However, quantities of different listed essential chemicals are not aggregated (see Note B to the Chemical Quantity Table). Thus, where multiple listed essential chemicals are involved in the offense, the base offense level is determined by using the

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base offense level for the single listed essential chemical resulting in the greatest base offense level. For example, in the case of an offense involving seven kilograms of methyl ethyl ketone and eight kilograms of acetone, the base offense level for the methyl ethyl ketone is 12 and the base offense level for the acetone is 14; therefore, the base offense level is 14.

6. Where both listed precursor chemicals and listed essential chemicals are involved, use the greater of the base offense level for the listed precursor chemicals or the listed essential chemicals (see Note C to the Chemical Quantity Table).

7. Convictions under 21 U.S.C. 841 (d)(2), (g)(1), and 960(d)(2) do not require that the defendant have knowledge or an actual belief that the listed chemical was to be used to manufacture a controlled substance unlawfully. Where the defendant possessed or distributed the listed chemical without such knowledge or belief, a 3-level reduction is provided to reflect that the defendant is less culpable than one who possessed or distributed listed chemicals knowing or believing that they would be used to manufacture a controlled substance unlawfully.

Background: Offenses covered by this guideline involve listed precursor chemicals and listed essential chemicals. Listed precursor chemicals are critical to the formation of a controlled substance and become part of the final product. For example, ephedrine reacts with other chemicals to form methamphetamine. The amount of ephedrine directly affects the amount of methamphetamine produced. Listed essential chemicals are generally solvents, catalysts, and reagents, and do not become part of the finished product.

§ 2D1.12. Unlawful Possession, Manufacture, Distribution, or Importation of Prohibited Flask or Equipment

(a) Base Offense Level: 12.

(b) Cross Reference.

(1) If the offense involved unlawfully manufacturing a controlled substance, or attempting to manufacture a controlled substance unlawfully, apply § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, Trafficking), or § 2D1.4 (Attempts and Conspiracies), as appropriate, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 21 U.S.C. 843(a)(6), (7).

Application Notes

1. If the offense involved the large-scale manufacture, distribution, or importation of prohibited flasks or equipment, an upward departure may be warranted.

2. 'Offense involved unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully,' as used in subsection (b)(1), means that the defendant, or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct), completed the actions sufficient to constitute the offense of unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully.

§ 2D1.13. Structuring Chemical Transactions or Creating a Chemical Mixture to Evade Reporting or Recordkeeping Requirements; Presenting False or Fraudulent Identification to Obtain a Listed Chemical

(a) Base Offense Level (Apply the greatest):

(1) The offense level from § 2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possessing a Listed Chemical) if the defendant knew or believed that the chemical was to be used to manufacture a controlled substance unlawfully; or

(2) The offense level from § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical) reduced by 3 levels if the defendant had reason to believe that the chemical was to be used to manufacture a controlled substance unlawfully; or

(3) 6, otherwise.

Commentary

Statutory Provisions: 21 U.S.C. 841(d)(3), (g)(1), 843(a)(4)(B), (a)(6).

Application Note

1. 'The offense level from § 2D1.11' includes the base offense level and any applicable specific offense characteristic or cross reference; see § 1B1.5 (Interpretation of References to Other Offense Guidelines).".

Chapter Two, part D, subpart 3 is amended by inserting the following additional guideline and accompanying commentary:

"§ 2D3.5. Violation of Recordkeeping or Reporting Requirements for Listed Chemicals and Certain Machines

(a) Base Offense Level: 4.

Commentary

Statutory Provisions: 21 U.S.C. 842(a)(9), (10).".

The Commentary to § 2D1.1 captioned "Application Notes" is amended by inserting the following additional note:

"14. D-lysergic acid, which is generally used to make LSD, is classified as a Schedule III controlled substance (to which § 2D1.1 applies) and as a listed precursor (to which § 2D1.11 applies). Where the defendant is convicted under 21 U.S.C. 841(b)(1)(D) or 960(b)(4) of an offense involving d-lysergic acid, apply § 2D1.1 or § 2D1.11, whichever results in the greater offense level. See Application Note 5 in the Commentary to § 1B1.1 (Application Instructions). Where the defendant is accountable for an offense involving the manufacture of LSD, see Application Note 12 above pertaining to the determination of the scale of the offense.".

Section 3D1.2(d) is amended in the second paragraph by inserting ", 2D1.11, 2D1.13" immediately following "2D1.5".

Reason for Amendment: This amendment makes Chapter Two, Part D more comprehensive by providing additional guidelines to address violations involving listed chemicals, flasks, and certain machines that are used in the manufacture of controlled substances, and by inserting a conforming instruction as Application Note 14 of the Commentary to § 2D1.1.

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Chapter Two, Part G (Offenses Involving Prostitution, Sexual Exploitation of Minors, and Obscenity)

10. Amendment: Chapter Two, Part G, Subpart 2 is amended by inserting the following additional guidelines and accompanying commentary:

"§ 2G2.4. Receipt or Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct

(a) Base Offense Level: 10.

(b) Specific Offense Characteristic.

(1) If the material involved a prepubescent minor or a minor under the age of twelve years, increase by 2 levels.

(c) Cross References.

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).

(2) If the offense involved trafficking in material involving the sexual exploitation of a minor (including receiving, transporting, advertising, or possessing material involving the sexual exploitation of a minor with intent to traffic), apply § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Advertising, or Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic).

Commentary

Statutory Provision: 18 U.S.C. 2252.

Application Note:

This guideline assumes that the offense involved a small number of prohibited items. If the defendant possessed 50 or more books, magazines, periodicals, films, video tapes, or other items containing a visual depiction involving the sexual exploitation of a minor, and subsection (c)(1) or (c)(2) does not apply, an upward departure may be warranted.

§ 2G2.5. Recordkeeping Offenses Involving the Production of Sexually Explicit Materials

(a) Base Offense Level: 6.

(b) Cross References.

(1) If the offense reflected an effort to conceal a substantive offense that involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).

(2) If the offense reflected an effort to conceal a substantive offense that involved trafficking in material involving the sexual exploitation of a minor (including receiving, transporting, advertising, or possessing material involving the sexual exploitation of a minor with intent to traffic), apply § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Advertising, or Possessing Material Involving the Sexual Exploitation of a Minor With Intent to Traffic).

Commentary

Statutory Provision: 18 U.S.C. 2257.".

Section 2G2.2 is amended in the title by deleting "Transporting, Receiving or"; and by inserting at the end "; Receiving, Transporting, Advertising, or Possessing Material Involving the Sexual Exploitation of a Minor With Intent to Traffic".

The Commentary to § 2G2.2 captioned "Statutory Provisions" is amended by deleting "1460,".

Section 2G3.1(c)(1) is amended by deleting "Transporting, Receiving, or", and by inserting immediately before the period at the end of the sentence "; Receiving, Transporting, Advertising, or Possessing Material Involving the Sexual Exploitation of a Minor With Intent to Traffic) or § 2G2.4 (Receipt or Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct), as appropriate".

Reason for Amendment: This amendment inserts an additional guideline at § 2G2.4 to address offenses involving receipt or possession of materials depicting a minor engaged in sexually explicit conduct, as distinguished from offenses involving trafficking in such material, which continue to be covered under § 2G2.2. Offenses involving receipt or transportation of such material for the purpose of trafficking are referenced to § 2G2.2 on the basis of the underlying conduct (subsection (c)(2)). Similarly, offenses in which the underlying conduct is more appropriately addressed as sexual exploitation of a minor are referenced to that guideline (subsection (c)(1)). Among the offenses covered by this guideline is a new offense created by section 323 of the Crime Control Act of 1990 (Pub. L. 101–647).

In addition, this amendment inserts an additional guideline at § 2G2.5 to address a recordkeeping offense created by Section 311 of the Crime Control Act of 1990 (Pub. L. 101–647).

Chapter Two, Part K (Offenses Involving Public Safety)

11. Amendment: Sections 2K1.3 and 2K1.5 are deleted in their entirety and the following inserted in lieu thereof:

"§ 2K1.3. Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials

(a) Base Offense Level (Apply the Greatest):

(1) 24, if the defendant had at least two prior felony convictions of either a crime of violence or a controlled substance offense; or

(2) 20, if the defendant had one prior felony conviction of either a crime of violence or a controlled substance offense; or

(3) 18, if the defendant is a prohibited person; or knowingly distributed explosive materials to a prohibited person; or

(4) 12, otherwise.

(b) Specific Offense Characteristics.

(1) If the offense involved twenty-five pounds or more of explosive materials, increase as follows: Weight of Explosive Material, Increase in Level.

(A) At least 25 but less than 100 lbs. add 2.

(B) At least 100 but less than 250 lbs. add 3.

(C) At least 250 but less than 500 lbs. add 3.

(D) At least 500 but less than 1,000 lbs. add 4.

(E) 1,000 lbs. or more add 5.

(2) If the offense involved any explosive material that the defendant knew or had reason to believe was stolen, increase by 2 levels.

Provided, That the cumulative offense level determined above shall not exceed level 29.

(3) If the defendant used or possessed any explosive material in connection with another felony offense; or possessed or transferred any explosive material with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense, increase by 4 levels. If the resulting offense level is less than level 18, increase to level 18.

(c) Cross Reference.

(1) If the defendant used or possessed any explosive material in connection with the commission or attempted commission of another offense, or possessed or transferred any explosive material with knowledge or intent that it would be used or possessed in connection with another offense, apply—

(A) § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense if the resulting offense level is greater than that determined above; or

(B) If death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 842, 844(d), (g); 26 U.S.C. 5685.

Application Notes

1. 'Explosive material(s)' include explosives, blasting agents, and detonators. See 18 U.S.C. 841(c). 'Explosives' is defined at 18 U.S.C. 844(j). A destructive device, defined in the Commentary to § 1B1.1 (Application Instructions), may contain explosive materials. Where the conduct charged in the count of which the defendant was convicted establishes that the offense involved a destructive device, apply § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) if the resulting offense level is greater.

2. 'Crime of violence,' 'controlled substance offense,' and 'prior felony conviction(s),' as used in subsections (a)(1) and (a)(2), are defined at § 4B1.2 (Definitions of Terms Used in Section 4B1.1), subsections (1) and (2), and Application Note 3 of the Commentary, respectively. For purposes of determining the number of such convictions under subsections (a)(1) and (a)(2), count any such prior conviction that receives any points under § 4A1.1 (Criminal History Category).

3. 'Prohibited person,' as used in subsection (a)(3), means anyone who: (i) is under indictment for, or has been convicted of, a 'crime punishable by imprisonment for a term exceeding one year,' as defined at 18 U.S.C. 841(1); (ii) is a fugitive from justice; (iii) is an unlawful user of, or is addicted to, any controlled substance; or (iv) has been adjudicated as a mental defective or involuntarily committed to a mental institution.

4. 'Felony offense,' as used in subsection (b)(3), means any offense punishable by imprisonment for a term exceeding one year, whether or not a criminal charge was brought, or conviction obtained.

5. For purposes of calculating the weight of explosive materials under subsection (b)(1), include only the weight of the actual explosive material and the weight of packaging material that is necessary for the use or detonation of the explosives. Exclude the weight of any other shipping or packaging materials. For example, the paper and fuse on a stick of dynamite would be included; the box that the dynamite was shipped in would not be included.

6. For purposes of calculating the weight of explosive materials under subsection (b)(1), count only those explosive materials that were unlawfully sought to be obtained, unlawfully possessed, or unlawfully distributed, including any explosive material that a defendant attempted to obtain by making a false statement.

7. If the defendant is convicted under 18 U.S.C. 842(h) (offense involving stolen explosive materials), and is convicted of no other offenses subject to this guideline, do not apply the adjustment in subsection (b)(2) because the base offense level itself takes such conduct into account.

8. Under subsection (c)(1), the offense level for the underlying offense is to be determined under § 2X1.1 (Attempt, Solicitation, or Conspiracy) or, if death results, under the most analogous guideline from Chapter Two, Part A, Subpart 1 (Homicide).

9. Prior felony conviction(s) resulting in an increased base offense level under subsections (a)(1), (a)(2), or (a)(3) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

10. An upward departure may be warranted in any of the following circumstances: (1) The quantity of explosive materials significantly exceeded 1000 pounds; (2) the explosive materials were of a nature more volatile or dangerous than dynamite or conventional powder explosives (e.g., plastic

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explosives); (3) the defendant knowingly distributed explosive materials to a person under twenty-one years of age; or (4) the offense posed a substantial risk of death or bodily injury to multiple individuals.".

Section 2K1.1 is amended in the title by deleting "Explosives" and inserting in lieu thereof "Explosive Materials".

Section 2K1.2 is amended in the title by deleting "Explosives" and inserting in lieu thereof "Explosive Materials".

Chapter Two, Part K, Subpart 1 is amended by inserting the following additional guideline and accompanying commentary:

"§ 2K1.3. Licensee Recordkeeping Violations Involving Explosive Materials

(a) Base Offense Level: 6.

(b) Cross Reference.

(1) If a recordkeeping offense reflected an effort to conceal a substantive explosive materials offense, apply § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosives Materials; Prohibited Transactions Involving Explosive Materials).

Commentary

Statutory Provisions: 18 U.S.C. 842(f), (g).

Background: The above-referenced provisions are recordkeeping offenses applicable only to 'licensees,' who are defined at 18 U.S.C. 841(m).".

The Commentary to § 2K1.4 captioned "Application Notes" is amended by inserting the following additional note:

"3. 'Explosives,' as used in the title of this guideline, includes any explosive, explosive material, or destructive device.".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 2 by inserting "(including any explosive material or destructive device)" immediately following "explosives".

Appendix A is amended by deleting:

"18 U.S.C. 842(a)–(i)—2K1.3",

and inserting in lieu thereof:

"18 U.S.C. 842(a)–(c)—2K1.3
18 U.S.C. 842(f)—2K1.6
18 U.S.C. 842(g)—2K1.6
18 U.S.C. 842(h)–(i)—2K1.3";

in the line beginning "18 U.S.C. 844(d)" by deleting "§ 2K1.6" and inserting in lieu thereof "§ 2K1.3";

in the line beginning "18 U.S.C. 1716" by inserting "2K1.3," immediately before "2K3.2";

and in the line beginning 26 U.S.C. 5685 by deleting "2K1.6,".

Reason for Amendment: This amendment consolidates two guidelines, and revises the offense levels and characteristics to more adequately reflect the seriousness of such offenses, including enhancements for defendants previously convicted of felony crimes of violence or controlled substance offenses. In addition, the amendment inserts an additional guideline to cover certain recordkeeping offenses. The amendment also revises the titles of §§ 2K1.1 and 2K1.2, and the Commentary to § 2K1.4 and § 4B1.2, to clarify that the term explosives, as used in those guidelines, includes explosive materials.

* * * * *

12. Amendment: Sections 2K2.1, 2K2.2, and 2K2.3 are deleted in their entirety and the following inserted in lieu thereof:

"§ 2K2.1 Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition

(a) Base Offense Level (Apply the Greatest):

(1) 26, if the defendant had at least two prior felony convictions of either a crime of violence or a controlled substance offense, and the instant offense involved a firearm listed in 26 U.S.C. 5845(a); or

(2) 24, if the defendant had at least two prior felony convictions of either a crime of violence or a controlled substance offense; or

(3) 22, if the defendant had one prior felony conviction of either a crime of violence or a controlled substance offense, and the instant offense involved a firearm listed in 26 U.S.C. 5845(a); or

(4) 20, if the defendant—

(A) had one prior felony conviction of either a crime of violence or a controlled substance offense; or

(B) is a prohibited person, and the offense involved a firearm listed in 26 U.S.C. 5845(a); or

(5) 18, if the offense involved a firearm listed in 26 U.S.C. 5845(a); or

(6) 14, if the defendant is a prohibited person; or

(7) 12, except as provided below; or

(8) 6, if the defendant is convicted under 18 U.S.C. 922 (c), (e), (f), or (m).

(b) Specific Offense Characteristics.

(1) If the offense involved three or more firearms, increase as follows:

Number of firearms	Increase in level
(A) 3–4	add 1.
(B) 5–7	add 2.
(C) 8–12	add 3.
(D) 13–24	add 4.
(E) 25–49	add 5.
(F) 50 or more	add 6.

(2) If the defendant, other than a defendant subject to subsections (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), possessed all ammunition and firearms solely for lawful sporting purposes or collection, and did not unlawfully discharge or otherwise unlawfully use such firearms or ammunition, decrease the offense level determined above to level 6.

(3) If the offense involved a destructive device, increase by 2 levels.

(4) If any firearm was stolen, or had an altered or obliterated serial number, increase by 2 levels.

Provided, that the cumulative offense level determined above shall not exceed level 29.

(5) If the defendant used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense, increase by 4 levels. If the resulting offense level is less than level 18, increase to level 18.

(6) If a recordkeeping offense reflected an effort to conceal a substantive offense involving firearms or ammunition, increase to the offense level for the substantive offense.

(c) Cross Reference.

(1) If the defendant used or possessed any firearm or ammunition in connection with the commission or attempted commission of another offense, or possessed or transferred a firearm or ammunition with knowledge or intent that it would be used or possessed in connection with another offense, apply—

(A) § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense, if the resulting offense level is greater than that determined above; or

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 922, 924 (a), (b), (f), (g); 26 U.S.C. 5861. For additional statutory provisions, see Appendix A (Statutory Index).

Application Notes:

1. 'Firearm' includes (i) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or silencer; or (iv) any destructive device. See 18 U.S.C. 921(a)(3).

2. 'Ammunition' includes ammunition or cartridge cases, primer, bullets, or propellent powder designed for use in any firearm. See 18 U.S.C. 921(a)(17)(A).

3. 'Firearm listed in 26 U.S.C. 5845(a), includes: (i) any short-barreled rifle or shotgun or any weapon made therefrom; (ii) a machinegun; (iii) a silencer; (iv) a destructive device; or (v) any 'other weapon,' as that term is defined by 26 U.S.C. 5845(e). A firearm listed in 26 U.S.C. 5845(a) does not include unaltered handguns or regulation-length rifles or shotguns. For a more detailed definition, refer to 26 U.S.C. 5845.

4. 'Destructive device' is a type of firearm listed in 26 U.S.C. 5845(a), and includes any explosive, incendiary, or poison gas—(i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) device similar to any of the devices described in the preceding clauses); any type of weapon which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; or any combination of parts either designed or intended for use in converting any device into any destructive device listed above. For a more detailed definition, refer to 26 U.S.C. 5845(f).

5. 'Crime of violence,' 'controlled substance offense,' and 'prior felony conviction(s),' are defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1), subsections (1) and (2), and Application Note 3 of the Commentary, respectively. For purposes of determining the number of such convictions under subsections (a)(1), (a)(2), (a)(3), and (a)(4)(A), count any such prior conviction that receives any points under § 4A1.1 (Criminal History Category).

6. 'Prohibited person,' as used in subsections (a)(4)(B) and (a)(6), means anyone who: (i) is under indictment for, or has been convicted of, a 'crime punishable by imprisonment for more than one year,' as defined by 18 U.S.C. 921(a)(20); (ii) is a fugitive from justice; (iii) is an unlawful user of, or is addicted to, any controlled substance; (iv) has been adjudicated as a mental defective or involuntarily committed to a mental institution; or (v) being an alien, is illegally or unlawfully in the United States.

7. 'Felony offense,' as used in subsection (b)(5), means any offense punishable by imprisonment for a term exceeding one year, whether or not a criminal charge was brought, or conviction obtained.

8. Subsection (a)(7) includes the interstate transportation or interstate distribution of firearms, which is frequently committed in violation of state, local, or other federal law restricting the possession of firearms, or for some other underlying unlawful purpose. In the unusual case in which it is established that neither avoidance of state, local or other federal firearms law, nor any other underlying unlawful purpose was involved, a reduction in the base offense level to no lower than level 6 may be warranted to reflect the less serious nature of the violation.

9. For purposes of calculating the number of firearms under subsection (b)(1), count only those firearms that were unlawfully sought to be obtained, unlawfully possessed, or unlawfully distributed, including any firearm that a defendant obtained or attempted to obtain by making a false statement to a licensed dealer.

10. Under subsection (b)(2), 'lawful sporting purposes or collection' as determined by the surrounding circumstances, provides for a reduction to an offense level of 6. Relevant surrounding circumstances include the number and type of firearms, the amount and type of ammunition, the location and circumstances of possession and actual use, the nature of the defendant's criminal history (e.g., prior convictions for offenses involving firearms), and the extent to which possession was restricted by local law. Note that where the base offense level is determined under subsections (a)(1)–(a)(5), subsection (b)(2) is not applicable.

11. A defendant whose offense involves a destructive device receives both the base offense level from the subsection applicable to a firearm listed in 26 U.S.C. 5845(a) (e.g., subsection (a)(1), (a)(3), (a)(4)(B), or (a)(5)), and a two-level enhancement under subsection (b)(3). Such devices pose a considerably greater risk to the public welfare than other National Firearms Act weapons.

12. If the defendant is convicted under 18 U.S.C. 922 (i), (j), or (k), or 26 U.S.C. 5861 (g) or (h) (offenses involving stolen firearms or ammunition), and is convicted of no other offense subject to this guideline, do not apply the adjustment in subsection (b)(4) because the base offense level itself takes such conduct into account.

13. Subsection (b)(6) applies in situations where the defendant is convicted of a recordkeeping offense subject to subsection (a)(6) (e.g., failure to maintain records, maintaining false records), that reflected an effort to conceal a substantive firearms or ammunition violation subject to subsection (a)(7) (e.g., sale to a prohibited person).

14. Under subsection (c)(1), the offense level for the underlying offense is to be determined under § 2X1.1 (Attempt, Solicitation, or Conspiracy) or, if death results, under the most analogous guideline from Chapter Two, Part A, Subpart 1 (Homicide).

15. Prior felony conviction(s) resulting in an increased base offense level under subsections (a)(1), (a)(2), (a)(3), (a)(4)(A), or (a)(5) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

16. An upward departure may be warranted in any of the following circumstances: (1) The number of firearms significantly exceeded fifty; (2) the offense involved multiple National Firearms Act weapons [e.g., machineguns, destructive devices), military type assault rifles, non-detectable ('plastic') firearms (defined at 18 U.S.C. 922(p)); (3) the offense involved large quantities of armor-piercing ammunition (defined at 18 U.S.C. 921(a)(17)(B)); or (4) the offense posed a substantial risk of death or bodily injury to multiple individuals.

17. A defendant who is subject to an enhanced sentence under the provisions of 18 U.S.C. 924(e) is an Armed Career Criminal. See § 4B1.4.".

Section 2K2.5 is deleted in its entirety and the following inserted in lieu thereof:

"§ 2K2.5. Possession of Firearm or Dangerous Weapon in Federal Facility; Possession or Discharge of Firearm in School Zone

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If—

(A) The defendant unlawfully possessed or caused any firearm or dangerous weapon to be present in a federal court facility, or

(B) The defendant unlawfully possessed or caused any firearm to be present in a school zone, increase by 2 levels.

(c) Cross Reference.

(1) If the defendant used or possessed any firearm or dangerous weapon in connection with the commission or attempted commission of another offense, or possessed or transferred a firearm or dangerous weapon with knowledge or intent that it would be used or possessed in connection with another offense, apply—

(A) § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense if the resulting offense level is greater than that determined above; or

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 922(q), 930.

Application Notes:

1. 'Dangerous weapon' and 'firearm' are defined in the Commentary to § 1B1.1 (Application Instructions).

2. 'Federal court facility' includes the courtroom; judges' chambers; witness rooms; jury deliberation rooms; attorney conference rooms; prisoner holding cells; offices and parking facilities of the court clerks, the United States attorney, and the United States marshal; probation and parole offices; and adjoining corridors and parking facilities of any court of the United States. See 18 U.S.C. 930(f)(3).

3. 'School zone' is defined at 18 U.S.C. 922(q). A sentence of imprisonment under 18 U.S.C. 922(q) must run consecutively to any sentence of imprisonment imposed for any other offense. In order to comply with the statute, when the guideline range is based on the underlying offense, and the defendant is convicted both of the underlying offense and 18 U.S.C. 922(q), the court should apportion the sentence between the count for the underlying offense and the count under 18 U.S.C. 922(q). For example, if the guideline range is 30–37 months and the court determines 'total punishment' of 36 months is appropriate, a sentence of 30 months for the underlying offense, plus 6 months under 18 U.S.C. 922(q) would satisfy this requirement.

4. Where the firearm was brandished, discharged, or otherwise used, in a federal facility, federal court facility, or school zone, and the cross reference from subsection (c)(1) does not apply, an upward departure may be warranted.".

Section 3D1.2(d) is amended in the second paragraph by deleting "2K2.2" and inserting in lieu thereof "2K2.1".

Appendix A is amended by deleting:

"18 U.S.C. 922(a)(1) 2K2.1, 2K2.2
18 U.S.C. 922(a)(2) 2K2.2
18 U.S.C. 922(a)(3) 2K2.1
18 U.S.C. 922(a)(4) 2K2.1
18 U.S.C. 922(a)(5) 2K2.2
18 U.S.C. 922(a)(6) 2K2.1
18 U.S.C. 922(b)–(d) 2K2.2
18 U.S.C. 922(e) 2K2.1, 2K2.2
18 U.S.C. 922(f) 2K2.1, 2K2.2
18 U.S.C. 922(g) 2K2.1
18 U.S.C. 922(h) 2K2.1
18 U.S.C. 922(i)–(l) 2K2.1, 2K2.2
18 U.S.C. 922(m) 2K2.2
18 U.S.C. 922(n) 2K2.1
18 U.S.C. 922(o) 2K2.1, 2K2.2
18 U.S.C. 922(s) 2K2.2
18 U.S.C. 924(a) 2K2.2
18 U.S.C. 924(a)(1)(A) 2K2.2
18 U.S.C. 924(a)(1)(C) 2K2.1, 2K2.2
18 U.S.C. 924(a)(3)(A) 2K2.2
18 U.S.C. 924(b) 2K2.2",

and inserting in lieu thereof:

"18 U.S.C. 922(a)–(p) 2K2.1
18 U.S.C. 922(q) 2K2.5
18 U.S.C. 922(r) 2K2.1
18 U.S.C. 923 2K2.1
18 U.S.C. 924(a) 2K2.1

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18 U.S.C. 924(b) 2K2.1";

by deleting:

"18 U.S.C. 924(e) 2K2.1 (see also 4B1.4)
18 U.S.C. 924(f) 2K2.3
18 U.S.C. 924(g) 2K2.3",

and inserting in lieu thereof:

"18 U.S.C. 924(f) 2K2.1
18 U.S.C. 924(g) 2K2.1";

In the line beginning "26 U.S.C. § 5685" by deleting "2K2.2" and inserting in lieu thereof "2K2.1";

and by deleting:

"26 U.S.C. 5861(a) 2K2.2
26 U.S.C. 5861(b) 2K2.1
26 U.S.C. 5861(c) 2K2.1
26 U.S.C. 5861(d) 2K2.1
26 U.S.C. 5861(e) 2K2.2
26 U.S.C. 5861(f) 2K2.2
26 U.S.C. 5861(g) 2K2.2
26 U.S.C. 5861(h) 2K2.1
26 U.S.C. 5861(i) 2K2.1
26 U.S.C. 5861(j) 2K2.1, 2K2.2
26 U.S.C. 5861(k) 2K2.1
26 U.S.C. 5861(l) 2K2.2
26 U.S.C. 5871 2K2.1, 2K2.2",

and inserting in lieu thereof:

"26 U.S.C. 5861(a)–(l) 2K2.1
26 U.S.C. 5871 2K2.1".

Reason for Amendment: This amendment consolidates three firearms guidelines (§§ 2K2.1, 2K2.2, and 2K2.3) and revises the adjustments and offense levels to more adequately reflect the seriousness of such conduct, including enhancements for defendants previously convicted of felony crimes of violence or controlled substance offenses. In addition, § 2K1.5 is amended to address offenses committed within a school zone or federal court facility. The amendment also makes conforming and editorial changes.

Chapter Two, Part L (Offenses Involving Immigration, Naturalization, and Passports)

13. Amendment: Section 2L1.1(a) is amended by deleting "9" and inserting in lieu thereof:

"(1) 20, if the defendant was convicted under 8 U.S.C. 1327 of a violation involving an alien who previously was deported after a conviction for an aggravated felony; or
(2) 9, otherwise.".

Section 2L1.1(b)(1) is amended by inserting "and the base offense level is determined under subsection (a)(2)," immediately before "decrease".

The Commentary to § 2L1.1 captioned "Application Notes" is amended by inserting the following additional note:

"9. 'Aggravated felony' is defined in the Commentary to § 2L1.2 (Unlawfully Entering or Remaining in the United States).".

Section 2L1.2(b) is amended by deleting "Specific Offense Characteristic" and inserting in lieu thereof:

"Specific Offense Characteristics
If more than one applies, use the greater:".

Section 2L1.2(b)(1) is amended by deleting "sustaining" immediately before "a conviction", and by inserting the following additional subdivision:

"(2) If the defendant previously was deported after a conviction for an aggravated felony, increase by 16 levels.".

The Commentary to § 2L1.2 captioned "Statutory Provisions" is amended by deleting "1325" and inserting in lieu thereof "1325(a)".

The Commentary to § 2L1.2 captioned "Application Notes" is amended in Note 1 by deleting "First offenses under 8 U.S.C. 1325 are petty offenses" and inserting in lieu thereof "A first offense under 8 U.S.C. 1325(a) is a Class B misdemeanor".

The Commentary to § 2L1.2 captioned "Application Notes" is amended in Note 3 by deleting "sustaining" immediately before "a conviction", and by deleting "In the case of a defendant previously deported after sustaining a conviction for an aggravated felony as defined in 8 U.S.C. 1101(a), or for any other violent felony, an upward departure may be warranted.".

The Commentary to § 2L1.2 captioned "Application Notes" is amended by deleting Note 4 and inserting in lieu thereof:

"4. A 16-level increase is provided under subsection (b)(2) in the case of a defendant who was previously deported after a conviction for an aggravated felony.

5. An adjustment under subsection (b)(1) or (b)(2) for a prior felony conviction applies in addition to any criminal history points added for such conviction in Chapter Four, Part A (Criminal History).

6. 'Deported after a conviction,' as used in subsections (b)(1) and (b)(2), means that the deportation was subsequent to the conviction, whether or not the deportation was in response to such conviction.

7. 'Aggravated felony,' as used in subsection (b)(2), means murder; any illicit trafficking in any controlled substance (as defined in 21 U.S.C. 802), including any drug trafficking crime as defined in 18 U.S.C. 924(c)(2); any illicit trafficking in any firearms or destructive devices as defined in 18 U.S.C. 921; any offense described in 18 U.S.C. 1956 (relating to laundering of monetary instruments); any crime of violence (as defined in 18 U.S.C. 16, not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least five years; or any attempt or conspiracy to commit any such act. The term 'aggravated felony' applies to offenses described in the previous sentence whether in violation of federal or state law and also applies to offenses described in the previous sentence in violation of foreign law for which the term of imprisonment was completed within the previous 15 years. See 8 U.S.C. 1101(a)(43).".

Reason for Amendment: This amendment provides an increase of 16 levels above the base offense level under § 2L1.2 for defendants who reenter the United States after having been deported subsequent to a conviction for an aggravated felony Previously, such cases were addressed by a recommendation for consideration of an upward departure. In addition, § 2L1.1 is amended to provide a base offense level of 20 for a defendant who is convicted under 8 U.S.C. 1327 for an offense involving the smuggling, transporting, or harboring of an alien who was deported after a conviction for an aggravated felony. The Commission has determined that these increased offense levels are appropriate to reflect the serious nature of these offenses.

Chapter Two, Part N (Offenses Involving Food, Drugs, Agricultural Products, and Odometer Laws)

14. Amendment: Section 2N1.1 is amended in the title by deleting "Serious" and inserting "Bodily" in lieu thereof.

Section 2N1.1 is amended by deleting subsection (b) and inserting in lieu thereof:

"(b) Specific Offense Characteristic.
(1)(A) If any victim sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) if any victim sustained serious bodily injury, increase by 2 levels; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels.
(c) Cross References.
(1) If the offense resulted in death, apply § 2A1.1 (First Degree Murder) if the death was caused intentionally or knowingly, or § 2A1.2 (Second Degree Murder) in any other case.
(2) If the offense was tantamount to attempted murder, apply § 2A2.1 (Assault With Intent to Commit Murder; Attempted Murder) if the resulting offense level is greater than that determined above.
(3) If the offense involved extortion, apply § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) if the resulting offense level is greater than that determined above.
(d) Special Instruction.
(1) If the defendant is convicted of a single count involving (A) the death or permanent, life-threatening, or serious bodily injury of more than one victim, or (B) conduct tantamount to the attempted murder of more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the defendant had been convicted of a separate count for each such victim.".

The Commentary to § 2N1.1 captioned "Application Notes" is amended by deleting Note 1 and inserting in lieu thereof:

"1. The base offense level reflects that this offense typically poses a risk of death or serious bodily injury to one or more victims; or causes, or is intended to cause, bodily injury. Where the offense posed a substantial risk of death or serious bodily injury to numerous victims, or caused extreme psychological injury or substantial property damage or monetary loss, an upward departure may be warranted. In the unusual case in which the offense did not cause a risk of death or serious bodily injury, and neither caused nor was intended to cause bodily injury, a downward departure may be warranted.

2. The special instruction in subsection (d)(1) applies whether the offense level is determined under subsection (b)(1) or by use of a cross reference in subsection (c).",

and in the caption by deleting "Note" and inserting in lieu thereof "Notes".

The Commentary to § 2N1.1 captioned "Background" is deleted in its entirety.

Reason for Amendment: This amendment adds a specific offense characteristic for permanent, life-threatening, or serious bodily injury; and adds cross references for cases in which the offense resulted in death or was tantamount to attempted murder. In addition, a special instruction is added to address certain conduct involving multiple victims. Finally, the title of this guideline is revised to reflect more accurately the coverage of the guideline, and the background commentary is revised to clarify the "heartland" conduct to which the guideline applies.

Chapter Two, Part R (Antitrust Offenses)

15. Amendment: Section 2R1.1(a) is amended by deleting "9" and inserting in lieu thereof "10".

Section 2R1.1 is amended in subsection (b)(2) by deleting "less than $1,000,000 or more than $4,000,000" and inserting in lieu thereof "more than $400,000", and by deleting

"(A) Less than $1,000,000—subtract 1
(B) $1,000,000–$4,000,000—no adjustment
(C) More than $4,000,000—add 1
(D) More than $15,000,000—add 2
(E) More than $30,000,000—add 3",

and inserting in lieu thereof:

"(A) More than $400,000—add 1
(B) More than $1,000,000—add 2
(C) More than $2,500,000—add 3
(D) More than $6,250,000—add 4
(E) More than $15,000,000—add 5
(F) More than $37,500,000—add 6
(G) More than $100,000,000—add 7".

Section 2R1.1 is amended by deleting subsection (c) and inserting in lieu thereof the following:

"(c) Special Instructions for Fines
(1) For an individual, the guideline fine range shall be from one to five percent of the volume of commerce, but not less than $20,000.".

The Commentary to § 2R1.1 captioned "Application Notes" is amended by deleting Note 1 and inserting in lieu thereof:

"1. The provisions of § 3B1.1 (Aggravating Role) and § 3B1.2 (Mitigating Role) should be applied to an individual defendant as appropriate to reflect the individual's role in committing the offense. For example, if a sales manager organizes or leads the price-fixing activity of five or more participants, a 4-level increase is called for under § 3B1.1. An individual defendant should be considered for a downward adjustment under § 3B1.2 for a mitigating role in the offense only if he was responsible in some minor way for his firm's participation in the conspiracy.".

The Commentary to § 2R1.1 captioned "Background" is amended in the third paragraph by deleting "four" and inserting in lieu thereof "six".

The Commentary to § 2R1.1 captioned "Background" is amended by deleting the fourth paragraph.

The Commentary to § 2R1.1 captioned "Background" is amended in the seventh sentence of the last paragraph by deleting "$250,000" and inserting in lieu thereof "$350,000", and by deleting "$1,000,000" and inserting in lieu thereof "$10,000,000".

Reason for the Amendment: This amendment increases the offense levels for antitrust violations to make them more comparable to the offense levels for fraud with similar amounts of loss. The base offense level for antitrust violations starts higher than the base offense level for fraud violations to reflect the serious nature of and the difficulty of detecting such violations, but the offense levels for antitrust offenses based on volume of commerce increase less rapidly than the offense levels for fraud, in part, because, on the average, the level of mark-up from an antitrust violation may tend to decline with the volume of commerce involved. The amendment also reduces the minimum guideline fine level based on the volume of commerce to reflect a marginal shift from fines to imprisonment as the more effective means to deter antitrust offenses. The provision addressing fines for organizational defendants in the current guideline is deleted. Such fines are addressed by the provisions pertaining to the sentencing of organizational defendants that are added by another amendment.

Chapter Two, Part S (Money Laundering and Monetary Transaction Reporting)

16. Amendment: Section 2S1.1(a)(1) is amended by deleting "or (a)(2)(A)" and inserting in lieu thereof ", (a)(2)(A), or (a)(3)(A)".

Section 2S1.1(b)(1) is amended by inserting "or believed" immediately following "knew".

The Commentary to § 2S1.1 captioned "Background" is amended in the third paragraph by deleting "or (a)(2)(A)" and inserting in lieu thereof ", (a)(2)(A), or (a)(3)(A)", and by deleting "did not merely conceal a serious crime that had already taken place, but".

Reason for Amendment: In the Anti-Drug Abuse Act of 1988, Congress enacted a new subsection (a)(3) of 18 U.S.C. 1956 that authorizes undercover "sting" operations in money laundering cases. Such cases differ from those prosecuted under subsection (a)(1) in that the money being laundered is not actually criminal proceeds, but is government "sting" money that an undercover officer represents to be criminal proceeds. In all other respects, subsections (a)(1) and (a)(3) are the same. In the Crime Control Act of 1990, Congress extended this "sting" provision to offenses committed under subsection (a)(2). Section 2S1.1(a) currently provides for a base offense level of 23 for offenses committed in violation of subsections (a)(1)(A) and (a)(2)(A). These offenses carry a higher offense level because they involve an intent to promote another criminal offense. This amendment applies the same offense level to subsection (a)(3)(A) because it also involves an intent to promote another criminal offense. In addition, this amendment takes both the 1986 and 1990 statutory amendments into account by expanding the 3-level increase under subsection (b)(1) to cover cases in which the defendant believed that the funds were drug proceeds.

* * * * *

17. Amendment: Section 2S1.3 is amended in subsection (a)(1)(B) by deleting "made false statements to conceal or disguise the evasion of reporting requirements; or" and inserting in lieu thereof "knowingly filed, or caused another to file, a report containing materially false statements; or"; by deleting subsection (a)(1)(C); and in subsection (b)(1) by deleting "5" and inserting in lieu thereof "4", and by inserting "If the resulting offense level is less than level 13, increase to level 13." immediately following "levels.".

The Commentary to § 2S1.3 captioned "Application Notes" is amended by deleting "Notes" and inserting in lieu thereof "Note" and by deleting note 2.

The Commentary to § 2S1.3 captioned "Background" is amended in the second paragraph by deleting ", made false

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statements to conceal or disguise the activity, or reasonably should have believed that the funds were criminally derived property" and inserting in lieu thereof "or knowingly filed, or caused another to file, a report containing materially false statements", and by deleting the last sentence; and in the third paragraph by deleting "a 5-level increase in the offense level" and inserting in lieu thereof "the greater of a 4-level increase or an increase to level 13".

The Commentary to § 2S1.3 captioned "Statutory Provisions" is amended by deleting "18 U.S.C. 1005;" and "5316,".

Chapter Two, part S is amended by inserting the following additional guideline and accompanying commentary:

"§ 2S1.4. Failure to File Currency and Monetary Instrument Report

(a) Base Offense Level: 9

(b) Specific Offense Characteristics

(1) If the defendant knew or believed that the funds were criminally derived property, increase by 4 levels.

(2) If the defendant knew or believed that the funds were intended to be used to promote criminal activity, increase by 4 levels.

(3) If the value of the funds exceeded $100,000, increase the offense level as specified in § 2S1.1(b)(2).

Commentary

Statutory Provision: 31 U.S.C. 5316.

Application Note:

1. 'Criminally derived property' means any property constituting, or derived from, proceeds obtained from a criminal offense. See 18 U.S.C. 1957(f)(2).".

Reason for Amendment: This amendment clarifies the intended scope of the specific offense characteristics in § 2S1.3 and modifies subsection (b)(1) so that it does not produce a result that exceeds the comparable offense level under § 2S1.2. In addition, this amendment creates a new guideline for offenses involving Currency and Monetary Instrument Reports (CMIR). Currently, such offenses are covered by § 2S1.3, which deals with all currency transaction reporting requirements. CMIR violations are committed by individuals who, when entering or leaving the country, knowingly conceal $10,000 or more in cash or bearer instruments on their persons or in their personal effects and knowingly fail to file the report required by the U.S. Customs Service. Such criminal conduct is sufficiently different from the other offenses covered by § 2S1.3 (namely, regulatory and structuring offenses) to merit treatment in a separate guideline.

Chapter Two, Part X (Other Offenses)

18. Amendment: Section 2X3.1(a) is amended by inserting the following additional sentence at the end:

"Provided, that where the conduct is limited to harboring a fugitive, the offense level shall not be more than level 20.".

Reason for Amendment: This amendment distinguishes harboring a fugitive from other forms of accessory after the fact by providing a lower maximum offense level for such cases, reflective in part of the lower statutory maximum provided for such offenses.

Chapter Four, Part A (Criminal History)

19. Amendment: The Commentary to § 4A1.1 captioned "Application Notes" is amended in the second sentence of Note 4 by inserting the following immediately before the period at the end of the sentence:

Having a custodial or supervisory component, although active supervision is not required for this item to apply. For example, a term of unsupervised probation would be included; but a sentence to pay a fine, by itself, would not be included.

The Commentary to § 4A1.1 captioned "Application Notes" is amended by inserting the following as the second sentence of Note 4 and the third sentence of Note 5:

Failure to report for service of a sentence of imprisonment is to be treated as an escape from such sentence. See § 4A1.2(n).

The Commentary to § 4A1.1 captioned "Application Notes" is amended in Note 4 by inserting the following additional sentence at the end:

A defendant who commits the instant offense while a violation warrant from a prior sentence is outstanding (e.g., a probation, parole, or supervised release violation warrant) shall be deemed to be under a criminal justice sentence for the purposes of this provision if that sentence is otherwise countable, even if that sentence would have expired absent such warrant. See § 4A1.2(m).

Section 4A1.2(a) is amended by inserting the following additional subdivision:

(4) Where a defendant has been convicted of an offense, but not yet sentenced, such conviction shall be counted as if it constituted a prior sentence under § 4A1.1(c) if a sentence resulting from that conviction otherwise would be countable. In the case of a conviction for an offense set forth in § 4A1.2(c)(1), apply this provision only where the sentence for such offense would be countable regardless of type or length.

'Convicted of an offense,' for the purposes of this provision, means that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere.

Section 4A1.2(k)(2) is amended by deleting the last sentence; by inserting "(A)" immediately after "(2)"; and by inserting the following additional subdivision:

(B) Revocation of probation, parole, supervised release, special parole, or mandatory release may affect the time period under which certain sentences are counted as provided in § 4A1.2 (d)(2) and (e). For the purposes of determining the applicable time period, use the following: (i) in the case of an adult term of imprisonment totaling more than one year and one month, the date of last release from incarceration on such sentence (see § 4A1.2(e)(1)); (ii) in the case of any other confinement sentence for an offense committed prior to the defendant's eighteenth birthday, the date of the defendant's last release from confinement on such sentence (see § 4A1.2(d)(2)(A)); and (iii) in any other case, the date of the original sentence (see § 4A1.2 (d)(2)(B) and (e)(2)).

Section 4A1.2 is amended by inserting the following additional subsections:

(l) Sentences on Appeal.

Prior sentences under appeal are counted except as expressly provided below. In the case of a prior sentence, the execution of which has been stayed pending appeal, § 4A1.1 (a), (b), (c), (d), and (f) shall apply as if the execution of such sentence had not been stayed; § 4A1.1(e) shall not apply.

(m) Effect of a Violation Warrant.

For the purposes of § 4A1.1(d), a defendant who commits the instant offense while a violation warrant from a prior sentence is outstanding (e.g., a probation, parole, or supervised release violation warrant) shall be deemed to be under a criminal justice sentence if that sentence is otherwise countable, even if that sentence would have expired absent such warrant.

(n) Failure to Report for Service of Sentence of Imprisonment.

For the purposes of § 4A1.1 (d) and (e), failure to report for service of a sentence of imprisonment shall be treated as an escape from such sentence.

(o) Felony Offense.

For the purposes of § 4A1.2(c), a 'felony offense' means any federal, state, or local offense punishable by death or a term of imprisonment exceeding one year, regardless of the actual sentence imposed.".

The Commentary to § 4A1.2 captioned "Application Notes" is amended in Note 2 by inserting, immediately after "stated maximum", the following:

(e.g., in the case of a determinate sentence of five years, the stated maximum is five years; in the case of an indeterminate sentence of one to five years, the stated maximum is five years; in the case of an indeterminate sentence for a term not to exceed five years, the stated maximum is five years; in the case of an indeterminate sentence for a term not to exceed the defendant's twenty-first birthday, the stated maximum is the amount of time in pre-trial detention plus the amount of time between the date of sentence and the defendant's twenty-first birthday).

The Commentary to § 4A1.2 is amended in Note 11 by inserting the following additional paragraph at the end:

Where a revocation applies to multiple sentences, and such sentences are counted separately under § 4A1.2(a)(2), add the term of imprisonment imposed upon revocation to the sentence that will result in the greatest increase in criminal history points. Example: A defendant was serving two probationary sentences, each counted separately under § 4A1.2(a)(2); probation was revoked on both sentences as a result of the same violation conduct; and the defendant was sentenced to a total of 45 days of imprisonment. If one sentence had been a 'straight' probationary sentence and the other had been a probationary sentence that had required service of 15 days of imprisonment, the revocation term of imprisonment (45 days) would be added to the probationary sentence that had the 15-day term of imprisonment. This would result in a total of 2 criminal history points under § 4A1.1(b) (for the combined 60-day term of imprisonment) and 1 criminal history point under § 4A1.1(c) (for the other probationary sentence).

Section 4A1.3(d) is amended by deleting ", sentencing, or appeal" and inserting in lieu thereof "or sentencing".

Section 4B1.2(2) is amended by deleting "or distribution" and inserting in lieu thereof "distribution, or dispensing", and by deleting "or distribute" and inserting in lieu thereof "distribute, or dispense".

Reason for Amendment: This amendment clarifies the meaning of the term "under a criminal justice sentence" as used in § 4A1.1; inserts a new subdivision in § 4A1.2(a) to address the case in which the defendant has been convicted of a prior offense, but has not yet been sentenced for that offense; inserts an additional subdivision in § 4A1.2(k) to clarify the determination of the applicable time periods in revocation cases; inserts additional subsections in § 4A1.2 to address the counting of sentences stayed pending appeal, the effect of a violation warrant on the counting of points under § 4A1.1(d), the counting of a failure to report for service of sentence under § 4A1.1 (d) and (e), and the definition of a felony offense as used in § 4A1.2(c); adds an example to Application Note 2 in the Commentary to § 4A1.2 to illustrate the meaning of "stated maximum" sentence; adds an additional application note in the Commentary to § 4A1.2 addressing the counting of points in complex revocation cases; makes the definition in § 4B1.2(2) more comprehensive; and conforms the Commentary of § 4A1.3 to the addition of § 4A1.2(l).

20. Amendment: Section 4A1.1 is amended by inserting the following additional subsection:

(f) Add 1 point for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was considered related to another sentence resulting from a conviction of a crime of violence, up to a total of 3 points for this item. Provided, that this item does not apply where the sentences are considered related because the offenses occurred on the same occasion.

Section 4A1.1 is amended in the first sentence by deleting "(e)" and inserting in lieu thereof "(f)".

Section 4A1.1(c) is amended by deleting "included" and inserting in lieu thereof "counted".

Section 4A1.2(a)(2) is amended by deleting "the criminal history" and inserting in lieu thereof "§ 4A1.1 (a), (b), and (c)".

Section 4A1.2 is amended by inserting the following additional subsection:

(p) Crime of Violence Defined

For the purposes of § 4A1.1(f), the definition of 'crime of violence' is that set forth in § 4B1.2(1).

The Commentary to § 4A1.2 captioned "Application Notes" is amended in Note 3 by deleting "Cases" and inserting in lieu thereof:

Prior sentences are not considered related if they were for offenses that were separated by an intervening arrest (i.e., the defendant is arrested for the first offense prior to committing the second offense). Otherwise, prior sentences,

By inserting "resulted from offenses that" immediately following "related if they", by deleting "a single" and inserting in lieu thereof "the same", and by deleting:

For example, if the defendant commits a number of offenses on independent occasions separated by arrests, and the resulting criminal cases are consolidated and result in a combined sentence of eight years, counting merely three points for this factor will not adequately reflect either the seriousness of the defendant's criminal history or the frequency with which he commits crimes. In such circumstances, the court should consider whether departure is warranted. See § 4A1.3.,

and inserting in lieu thereof:

For example, if a defendant was convicted of a number of serious non-violent offenses committed on different occasions, and the resulting sentences were treated as related because the cases were consolidated for sentencing, the assignment of a single set of points may not adequately reflect the seriousness of the defendant's criminal history or the frequency with which he has committed crimes. In such circumstances, an upward departure may be warranted. Note that the above example refers to serious non-violent offenses. Where prior related sentences result from convictions of crimes of violence, § 4A1.1(f) will apply.

Section 4B1.2(3) is amended by deleting "Part A of this Chapter" and inserting in lieu thereof "§ 4A1.1 (a), (b), or (c)".

Reason for Amendment: This amendment provides for a specific enhancement under § 4A1.2(f) in a case having prior convictions of crimes of violence not arising from the same incident that otherwise would be treated as related under § 4A1.2. In addition, the definition of related cases in Application Note 3 in the Commentary to § 4A1.2 is amended to provide that cases separated by an intervening arrest for one of the offenses are not treated as related cases.

Chapter Five, Part E (Restitution, Fines, Assessments, Forfeitures)

21. Amendment: Section 5E1.1 is amended by deleting subsection (a), by redesignating subsections (b) and (c) as (c) and (d) respectively, and by inserting the following as subsections (a) and (b):

(a) The court shall—

(1) enter a restitution order if such order is authorized under 18 U.S.C. 3663–3664; or

(2) if a restitution order would be authorized under 18 U.S.C. 3663–3664, except for the fact that the offense of conviction is not an offense set forth in title 18, United States Code, or 49 U.S.C. 1472 (h), (i), (j), or (n), impose a term of probation or supervised release with a condition requiring restitution.

(b) Provided, that the provisions of subsection (a) do not apply when full restitution has been made, or to the extent the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of a restitution requirement outweighs the need to provide restitution to any victims through the criminal process.

The Commentary to § 5E1.1 captioned "Background" is amended in the first paragraph by deleting "An order of restitution may be appropriate in offenses not specifically referenced in 18 U.S.C. 3663 where victims require relief more promptly than the civil justice system provides.".

The Commentary to § 5E1.1 captioned "Background" is amended in the second paragraph by deleting "5E1.1" and inserting in lieu thereof "(a)(1) of this guideline", by inserting ", United States Code," immediately following "Title 18" and by inserting "full restitution has already been made or" immediately after "unless".

The Commentary to § 5E1.1 captioned "Background" is amended in the last paragraph by deleting "how and to whom" and by inserting "the manner in which, and the persons to whom,".

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The Commentary to § 5E1.1. captioned "Background" is amended by inserting the following additional paragraph at the end:

Subsection (a)(2) provides for restitution as a condition of probation or supervised release for offenses not set forth in title 18, United States Code, or 49 U.S.C. 1472(h), (i), (j), or (n)).

Reason for Amendment: Currently, § 5E1.1 permits, but does not require, restitution to be ordered as a condition of probation or supervised release for offenses not set forth in Title 18, United States Code, or 49 U.S.C. 1472(h) (i), (j), and (n). This amendment expands § 5E1.1 to require restitution as a condition of probation or supervised release for convictions not set forth in Title 18 and 49 U.S.C. 1472(h), (i), (j), and (n).

22. Amendment: Section 5E1.2 is amended by deleting subsections (c)(1) and (c)(2) and inserting in lieu thereof:

(1) The minimum of the fine range is the amount shown in column A of the table below.

(2) Except as specified in (4) below, the maximum of the fine range is the amount shown in column B of the table below.

The Commentary to § 5E1.2 captioned "Application Notes" is amended in Note 3 by deleting the first two paragraphs.

The Commentary to § 5E1.2 captioned "Application Notes" is amended by deleting Note 4 and inserting in lieu thereof:

The Commission envisions that for most defendants, the maximum of the guideline fine range from subsection (c) will be at least twice the amount of gain or loss resulting from the offense. Where, however, two times either the amount of gain to the defendant or the amount of loss caused by the offense exceeds the maximum of the fine guideline, an upward departure from the fine guideline may be warranted.

Moreover, where a sentence within the applicable fine guideline range would not be sufficient to ensure both the disgorgement of any gain from the offense that otherwise would not be disgorged (e.g., by restitution or forfeiture) and an adequate punitive fine, an upward departure from the fine guideline range may be warranted.

The Commentary to § 5E1.2 captioned "Background" is deleted in its entirety.

Reason for Amendment: This amendment is designed to simplify the operation of this guideline and conserve probation and court resources by eliminating the need for the determination of loss and gain under this section in most cases. Experience has shown that for the vast majority of defendants, the amount from the fine table in subsection (c)(3) or (c)(4), as applicable, is more than twice the gain or loss from the offense. This amendment provides that the guideline fine range is to be determined only under the fine table in subsection (c)(3) or (c)(4), as applicable. In the unusual case in which twice the defendant's gain from the offense or twice the loss caused by the offense exceeds the maximum of the guideline range determined under the amended procedure, an upward departure may be considered.

Chapter Five, Part G (Implementing the Total Sentence of Imprisonment)

23. Amendment: Section 5G1.3 and accompanying commentary is deleted in its entirety and the following inserted in lieu thereof:

"§ 5G1.3. Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment

(a) If the instant offense was committed while the defendant was serving a term of imprisonment (including work release, furlough, or escape status) or after sentencing for, but before commencing service of, such term of imprisonment, the sentence for the instant offense shall be imposed to run consecutively to the undischarged term of imprisonment.

(b) If subsection (a) does not apply, and the undischarged term of imprisonment resulted from offense(s) that constituted part of the same course of conduct as the instant offense and have been fully taken into account in the determination of the offense level for the instant offense, or if the prior undischarged term of imprisonment resulted from a federal offense and was imposed pursuant to the Sentencing Reform Act, the sentence for the instant offense shall be imposed to result in a combined sentence equal to the total punishment that would have been imposed under § 5G1.2 (Sentencing on Multiple Counts of Conviction) had all the sentences been imposed at the same time.

(c) In any other case, the sentence for the instant offense shall be imposed to run consecutively to the prior unexpired term of imprisonment to the extent necessary to achieve a reasonable incremental punishment for the instant offense.

Commentary

Application Notes

1. Under subsection (a), the court shall impose a consecutive sentence where the instant offense (or any part thereof) was committed while the defendant was serving an undischarged term of imprisonment or after sentencing for, but before commencing service of, such term of imprisonment.

2. Subsection (b) (which applies only if subsection (a) does not apply), applies in two situations. First, it applies if the sentence resulting in the undischarged term of imprisonment was a federal sentence imposed pursuant to the Sentencing Reform Act. In such cases, the court shall fashion a sentence equal to the total punishment that would have been imposed had both sentences been imposed at the same time. Second, it applies if the conduct resulting in the undischarged term of imprisonment was part of the same course of conduct as the instant offense and has been fully taken into account in determining the offense level for the instant offense (e.g., where a defendant is prosecuted in both federal and state court for the same criminal conduct; or where a defendant is prosecuted in federal and state court for different criminal transactions that are part of the same course of conduct, such as two drug sales, but the conduct underlying both transactions is fully taken into account under § 1B1.3 (Relevant Conduct) in determining the offense level for the instant offense).

3. When a sentence is imposed pursuant to subsection (b), the court should adjust for any term of imprisonment already served as a result of the conduct taken into account in determining the instant sentence (e.g., if the appropriate total punishment determined under this subsection for all offenses is 30 months and the defendant has already served 10 months of the prior undischarged term of imprisonment, the court should impose a sentence of 20 months concurrent with the prior undischarged term).

4. Where the defendant is serving an unexpired term of imprisonment in circumstances other than those set forth in subsections (a) or (b), the court shall impose a consecutive sentence to the extent necessary to fashion a sentence resulting in incremental punishment for the multiple offenses. To the extent practicable, the court shall impose a sentence for the instant offense that results in a combined sentence that approximates the total punishment that would have been imposed under § 5G1.2 (Sentencing on Multiple Counts of Conviction) had all of the offenses been federal offenses for which sentences were being imposed at the same time. Where the defendant is serving a term of imprisonment for a state offense, the information available may permit only a rough estimate of the total punishment that would have been imposed under the guidelines. It is not intended that the above methodology be applied in a manner that unduly complicates or prolongs the sentencing process. In fashioning an appropriate incremental punishment, the court should consider whether the offense was committed while the defendant was on bail or other release status from another offense. In such cases, a reasonable incremental penalty appropriately would include an additional enhancement equivalent to that provided in § 2J1.7 (Commission of Offense While on Release).

Background: This guideline provides direction to the court when a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment. See 18 U.S.C. 3584. Except in the cases in which subsection (a) applies, this guideline is intended to result in an appropriate incremental punishment for the instant offense that most nearly approximates the sentence that would have been imposed had all the sentences been imposed at the same time.

Reason for Amendment: The decision to impose a consecutive or concurrent sentence upon a defendant subject to an undischarged term of imprisonment can have a substantial effect on the total term of imprisonment served by the defendant. Section 5G1.3, as currently drafted, addresses only a small portion of the cases in which the defendant is subject to an undischarged term of imprisonment, leaving the potential for unwarranted disparity in such determinations. This amendment provides additional structure and guidance for these determinations.

Chapter Five, Part H (Specific Offender Characteristics)

24. Amendment: The Introductory Commentary to Chapter Five, Part H is amended in the first paragraph by deleting "Congress has directed the Commission" and inserting in lieu thereof:

The following policy statements address the relevance of certain offender characteristics to the determination of whether a sentence should be outside the applicable guideline range and, in certain cases, to the determination of a sentence within the applicable guideline range. Under 28 U.S.C. 994(d), the Commission is directed,

and by deleting "relevant by the Commission. 28 U.S.C. 994(d)" and inserting in lieu thereof "to be relevant by the Commission".

The Introductory Commentary to Chapter Five, Part H is amended by inserting the following additional paragraph as the second paragraph:

The Commission has determined that certain factors are not ordinarily relevant to the determination of whether a sentence should be outside the applicable guideline range. Unless expressly stated, this does not mean that the Commission views such factors as necessarily inappropriate to the determination of the sentence within the applicable guideline range or to the determination of various other incidents of an appropriate sentence (e.g., the appropriate conditions of probation or supervised release).

Section 5H1.1 is amended by inserting "(including youth)" immediately following "Age" in the first sentence, by deleting "guidelines. Neither is it ordinarily relevant in determining the type of sentence to be imposed when the guidelines provide sentence options" and inserting in lieu thereof "applicable guideline range", by deleting "go below the guidelines" and inserting in lieu thereof "impose a sentence below the applicable guideline range", by deleting "(e.g.,home confinement)" and inserting in lieu thereof "such as home confinement", and by deleting:

If, independent of consideration of age, a defendant is sentenced to probation or supervised release, age may be relevant in the determination of the length and conditions of supervision,

and inserting in lieu thereof:

Physical condition, which may be related to age, is addressed at § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse).

The guidelines are not applicable to a person sentenced as a juvenile delinquent under the provisions of 18 U.S.C. 5037.

Section 5H1.2 is amended by deleting "guidelines" in the first sentence and inserting in lieu thereof "applicable guideline range", by deleting "Neither are education and vocational skills" and all that follows through the end of the section, and by inserting the following additional paragraph:

Education and vocational skills may be relevant in determining the conditions of probation or supervised release for rehabilitative purposes, for public protection by restricting activities that allow for the utilization of a certain skill, or in determining the appropriate type of community service.

Section 5H1.3 is amended by deleting "guidelines" in the first sentence and inserting in lieu thereof "applicable guideline range", by deleting "the general provisions in Chapter Five." and all that follows through the end of the section and inserting in lieu thereof "Chapter Five, Part K, Subpart 2 (Other Grounds for Departure).", and by inserting the following additional paragraph:

Mental and emotional conditions may be relevant in determining the conditions of probation or supervised release; e.g., participation in a mental health program (see recommended condition (24) at § 5B1.4 (Recommended Conditions of Probation and Supervised Release)).

Section 5H1.4 is amended in the first sentence by inserting "or appearance, including physique," immediately after "condition".

Section 5H1.4 is amended by deleting "guidelines or where within the guidelines a sentence should fall" and inserting in lieu thereof "applicable guideline range", by deleting "other than imprisonment" and inserting in lieu thereof:

Below the applicable guideline range; e.g., in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment;

by inserting, immediately after "appropriate substance abuse program", the following:

(See recommended condition (23) at § 5B1.4 (Recommended Conditions of Probation and Supervised Release)),.

and by deleting the last paragraph and inserting in lieu thereof:

Similarly, where a defendant who is a substance abuser is sentenced to probation, it is strongly recommended that the conditions of probation contain a requirement that the defendant participate in an appropriate substance abuse program (see recommended condition (23) at § 5B1.4 (Recommended Conditions of Probation and Supervised Release)).

Section 5H1.4 is amended in the title by deleting "Dependence and" immediately following "Drug" and inserting in lieu thereof "or", and by inserting "Dependence or" immediately following "Alcohol".

Section 5H1.4 is amended in the first sentence of the second paragraph by deleting "dependence or alcohol abuse" and inserting in lieu thereof "or alcohol dependence or abuse".

Section 5H1.5 is amended in the title by deleting "Previous".

Section 5H1.5 is amended by deleting "guidelines or where within the guidelines" and all that follows through the end of the section and inserting in lieu thereof "applicable guideline range.", and by inserting the following additional paragraph:

Employment record may be relevant in determining the conditions of probation or supervised release (e.g., the appropriate hours of home detention).

Section 5H1.6 is amended by deleting "guidelines. Family responsibilities that are" and all that follows through the end of the section and inserting in lieu thereof "applicable guideline range.", and by inserting the following additional paragraph:

Family responsibilities that are complied with may be relevant to the determination of the amount of restitution or fine.

Chapter Five, Part H is amended by inserting the following additional policy statement at the end:

"§ 5H1.11. Military, Civic, Charitable, or Public Service; Employment-Related Contributions; Record of Prior Good Works (Policy Statement)

Military, civic, charitable, or public service; employment-related contributions; and similar prior good works are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range.

Reason for Amendment: This amendment expresses the Commission's intent that the factors set forth in §§ 5H1.1–5H1.6 are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range, but that unless expressly stated, these policy statements do not mean that the Commission views such factors as necessarily inappropriate to the determination of the sentence within the applicable guideline range. The language within these sections is revised for clarity and consistency. In addition, this amendment adds language that expressly states that the

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guidelines do not apply to defendants sentenced as juvenile delinquents; sets forth the Commission's position that physical appearance, including physique, is not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range; and sets forth the Commission's position that military, civic, charitable, or public service, employment-related contributions, and record of prior good works are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range.

Chapter Six, Part A (Sentencing Procedures)

25. Amendment: The Commentary to § 6A1.3 is amended by inserting the following additional paragraph at the end:

"The Commission believes that use of a preponderance of the evidence standard is appropriate to meet due process requirements and policy concerns in resolving disputes regarding application of the guidelines to the facts of a case.".

Reason for Amendment: This amendment expresses the Commission's approval of the use of a preponderance of the evidence standard in resolving disputes regarding application of the guidelines to the facts of a case.

Miscellaneous Substantive, Clarifying, and Conforming Amendments

26. Amendment: The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(e) by deleting:

" 'Firearm' means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive.",

and inserting in lieu thereof:

" 'Firearm' means (i) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or silencer; or (iv) any destructive device.",

and by inserting "a" immediately before " 'BB' or pellet gun".

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(k) by deleting "proceeding" and inserting in lieu thereof "preceding".

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1 by inserting the following additional subdivision:

"(1) 'Offense' means the offense of conviction and all relevant conduct under § 1B1.3 (Relevant Conduct) unless a different meaning is specified or is otherwise clear from the context."

Reason for Amendment: This amendment modifies the definition of firearm in Note 1(e) to track more closely the definition of firearm in 18 U.S.C. 921, corrects clerical errors, and inserts an additional subdivision in Note 1 (subdivision (1)) that describes how the term "offense" is used in the guidelines.

27. Amendment: The Commentary to § 1B1.3 captioned "Application Notes" is amended by inserting the following additional note:

"6. In the case of a partially completed offense (e.g., an offense involving an attempted theft of $800,000 and a completed theft of $30,000), the offense level is to be determined in accordance with § 2X1.1 (Attempt, Solicitation, or Conspiracy) whether the conviction is for the substantive offense, the inchoate offense (attempt, solicitation, or conspiracy), or both. See Application Note 4 in the Commentary to § 2X1.1. Note, however, that Application Note 4 is not applicable where the offense level is determined under § 2X1.1(c)(1).".

The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 4 by inserting "; Property Damage by Use of Explosives" immediately following "Arson"; and in Note 5 by deleting "E.g., in § 2K2.2, a base offense level of 16 is used 'if the defendant is convicted under 18 U.S.C. 922(o) or 26 U.S.C. 5861.'" and inserting in lieu thereof "For example, in § 2K1.5, subsection (b)(1) applies 'If the defendant is convicted under 49 U.S.C. 1472(i)(2).'", and by deleting "Examples of this usage are found in § 2K1.3(b)(4) ('If the defendant was a person prohibited from receiving explosives under 18 U.S.C. 842(i) or if the defendant knowingly distributed explosives to a person prohibited from receiving explosives under 18 U.S.C. 842(i), increase by 10 levels'); and" and inserting in lieu thereof "An example of this usage is found in".

Reason for Amendment: This amendment inserts an additional application note that highlights the provision in § 2X1.1 dealing with cases of partially completed conduct, conforms examples to amended guidelines, and conforms a reference to a guideline title.

28. Amendment: The Commentary to § 1B1.8 captioned "Application Notes" is amended by inserting the following additional notes:

"5. This guideline limits the use of certain incriminating information furnished by a defendant in the context of a defendant-government agreement for the defendant to provide information concerning the unlawful activities of other persons. The guideline operates as a limitation on the use of such incriminating information in guideline application, and not merely as a restriction of the government's presentation of such information (e.g., where the defendant, subsequent to having entered into a cooperation agreement, repeats such information to the probation officer preparing the presentence report, the use of such information remains protected by this section).

6. Unless the cooperation agreement relates to the provision of information concerning the unlawful activities of others, this guideline does not apply (i.e., an agreement by the defendant simply to detail the extent of his own unlawful activities, not involving an agreement to provide information concerning the unlawful activity of another person, is not covered by this guideline).".

Reason for Amendment: This amendment clarifies the operation of this guideline.

29. Amendment: The Commentary to § 2A2.1 captioned "Application Notes" is amended by inserting the following additional note:

"3. If the offense created a substantial risk of death or serious bodily injury to more than one person, an upward departure may be warranted.".

Reason for Amendment: This amendment adds commentary to address the case in which an attempted murder results in a substantial risk of death or serious bodily injury to more than one person.

30. Amendment: Section 2A3.2(b)(1) is amended by deleting "1 level" and inserting in lieu thereof "2 levels".

The Commentary to § 2A3.2 captioned "Application Notes" is amended by inserting the following additional note:

"2. If the adjustment in subsection (b)(1) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

and in the caption by deleting "Note" and inserting in lieu thereof "Notes".

Section 2A3.4(b) is amended by inserting the following additional subdivision:

"(3) If the victim was in the custody, care, or supervisory control of the defendant, increase by 2 levels.".

The Commentary to § 2A3.4 captioned "Application Notes" is amended by inserting the following additional note:

"3. If the adjustment in subsection (b)(3) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

The Commentary to § 2A3.1 captioned "Application Notes" is amended by inserting the following additional note:

"3. If the adjustment in subsection (b)(3) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

Reason for Amendment: This amendment provides for consistency among §§ 2A3.1, 2A3.2, and 2A3.4 with respect to an adjustment for a victim in the custody, care, or supervisory control of the defendant. In addition, the amendment adds an application note clarifying that when this adjustment applies, an adjustment from § 3B1.3 will not apply.

31. Amendment: The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 2 by beginning a new paragraph with the fifth sentence; in the fifth sentence by deleting "cases of partially completed conduct, the loss" and inserting in lieu thereof "the case of a partially completed offense, the offense level", and by inserting immediately before the period at the end of the sentence "; see Application Note 4 in the Commentary to § 2X1.1"; by deleting the sixth and seventh sentences; and by inserting the following at the end of the first paragraph:

"*Examples:* (1) In the case of a theft of a check or money order, the loss is the loss that would have occurred if the check or money order had been cashed. (2) In the case of a defendant apprehended taking a vehicle, the loss is the value of the vehicle even if the vehicle is recovered immediately.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 4 by deleting "Attempts" and inserting in lieu thereof "Attempt, Solicitation, or Conspiracy", and by inserting "and Deceit" immediately following "Fraud".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 7 by inserting "If the offense consisted of selling or attempting to sell fraudulently overvalued stock, the loss would be the amount by which the stock was overvalued." at the end of the first paragraph, and by inserting the following as an additional paragraph:

"In the case of a partially completed offense, the offense level is to be determined in accordance with the provisions of § 2X1.1 (Attempt, Solicitation, or Conspiracy); see Application Note 4 in the Commentary to § 2X1.1.".

Reason for Amendment: This amendment provides a more precise reference in the commentary of these guidelines to the discussion in § 2X1.1 that applies in the case of a partially completed offense. In addition, the amendment reorders the material in these notes, and divides them into separate paragraphs for greater clarity. The amendment also conforms the wording of Application Note 7 of the Commentary to § 2F1.1 to Application Note 2 of the Commentary to § 2B1.1 to make clear that the treatment of attempts in cases of fraud and theft is identical. The language of the Application Note in § 2B1.1 is the more precise instruction. In addition, this amendment inserts additional examples to illustrate the determination of loss, and makes editorial improvements.

32. Amendment: Section 2D1.1(b)(1) is amended by deleting "during commission of the offense".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 3 by deleting "The adjustment is to be applied even if several counts are involved and the weapon was present in any one of them.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 3 by inserting ", 2D1.6, 2D1.7(b)(1)" immediately following "2D1.5".

Section 2D1.8(b)(1) is amended by deleting "during commission of the offense".

Reason for Amendment: This amendment clarifies that the provisions of § 1B1.3(a)(2) apply to this adjustment, and conforms the list of referenced offense guidelines in Application Note 3 of the Commentary to § 2D1.1.

33. Amendment: Section 2D1.1(c) is amended in the Drug Quantity Table by deleting "Pure PCP" wherever it appears and inserting in lieu thereof "PCP (actual)", and by deleting "Pure Methamphetamine" wherever it appears and inserting in lieu thereof "Methamphetamine (actual)".

Section 2D1.1(c) is amended in the note designated by a single asterisk by inserting the following additional sentence as the third sentence "The terms 'PCP (actual)' and 'Methamphetamine (actual)' refer to the weight of the controlled substance, itself, contained in the mixture or substance. For example, a mixture weighing 10 grams containing PCP at 50% purity contains 5 grams of PCP (actual).."; and in the last sentence by deleting "pure PCP or methamphetamine" and inserting in lieu thereof "PCP (actual) or methamphetamine (actual)".

Section 2D1.1 is amended by deleting "Schedule I or II Depressants" wherever it appears and inserting in lieu thereof "Secobarbital (or the equivalent amount of other Schedule I or II Depressants)".

Reason for Amendment: This amendment clarifies the operation of the guideline in cases involving methamphetamine or PCP by amending the terms "Pure PCP" and "pure methamphetamine" to read "PCP (actual)" and "methamphetamine (actual)," and by providing an example of their application. This amendment also clarifies the interaction of the guideline and drug equivalency tables with respect to Schedule I and II Depressants by using Secobarbital as the referenced substance.

34. Amendment: The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the first paragraph by deleting "grams of a substance containing heroin" and inserting in lieu thereof "kilograms of marihuana"; in the second paragraph by deleting "If all the drugs are 'equivalents' of the same drug, e.g., stimulants that are grouped with cocaine, convert them to that drug. In other cases," and inserting in lieu thereof "In each case,", by deleting "either the heroin or marihuana equivalents" and inserting in lieu thereof "its marihuana equivalent", and by deleting the last two sentences; in the fourth paragraph by deleting "Both PCP and LSD are grouped together in the Drug Equivalency Tables under the heading 'LSD, PCP, and Other Schedule I and II Hallucinogens,' which provide PCP equivalencies. The 250 milligrams of LSD is equivalent to 25 grams of PCP." and inserting in lieu thereof "The PCP converts to 70 kg of marihuana; the LSD converts to 25 kg of marihuana.", by inserting "equivalent to" immediately before "ninety-five", by deleting "grams of PCP" and inserting in lieu thereof "kilograms of marihuana", by deleting "grams" immediately following "sixteen" and inserting in lieu thereof "kilograms", by deleting "heroin; the marihuana, to five grams of heroin" and inserting in lieu thereof "marihuana", and by deleting "grams of heroin" and inserting in lieu thereof "kilograms of marihuana".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 by deleting the subsection titled "Drug Equivalency Tables" and inserting in lieu thereof:

"Drug Equivalency Tables

Schedule I or II Opiates

1 gm of Heroin = 1 kg of marihuana
1 gm of Alpha-Methylfentanyl = 10 kg of marihuana
1 gm of Dextromoramide = 670 gm of marihuana
1 gm of Dipipanone = 250 gm of marihuana
1 gm of 3-Methylfentanyl = 10 kg of marihuana
1 gm of 1-Methyl-4-phenyl-4-propionoxypiperidine/MPPP = 700 gm of marihuana
1 gm of 1-(2-Phenylethyl)-4-phenyl-4-acetyloxypiperidine/PEPAP = 700 gm of marihuana
1 gm of Alphaprodine = 100 gm of marihuana
1 gm of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide) = 2.5 kg of marihuana
1 gm of Hydromorphone/Dihydromorphinone = 2.5 kg of marihuana
1 gm of Levorphanol = 2.5 kg of marihuana
1 gm of Meperidine/Pethidine = 50 gm of marihuana
1 gm of Methadone = 500 gm of marihuana
1 gm of 6-Monoacetylmorphine = 1 kg of marihuana
1 gm of Morphine = 500 gm of marihuana

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1 gm of Oxycodone=500 gm of marihuana
1 gm of Oxymorphone=5 kg of marihuana
1 gm of Racemorphan=800 gm of marihuana
1 gm of Codeine=80 gm of marihuana
1 gm of Dextropropoxyphene/Propoxyphene-Bulk=50 gm of marihuana
1 gm of Ethylmorphine=166 gm of marihuana
1 gm of Hydrocodone/Dihydrocodeinone=500 gm of marihuana
1 gm of Mixed Alkaloids of Opium/Papaveretum=250 gm of marihuana
1 gm of Opium=50 gm of marihuana

Cocaine and Other Schedule I and II Stimulants (and their immediate precursors).
1 gm of Cocaine=200 gm of marihuana
1 gm of N-Ethylamphetamine=80 gm of marihuana
1 gm of Fenethylline=40 gm of marihuana
1 gm of Amphetamine=200 gm of marihuana
1 gm of Dextroamphetamine=200 gm of marihuana
1 gm of Methamphetamine=1 kg of marihuana
1 gm of Methamphetamine (Actual)=10 kg of marihuana
1 gm of "Ice"=10 kg of marihuana
1 gm of L-Methamphetamine/Levo-methamphetamine/L-Desoxyephedrine=40 gm of marihuana
1 gm of 4-Methylaminorex ("Euphoria")=100 gm of marihuana
1 gm of Methylphenidate (Ritalin)=100 gm of marihuana
1 gm of Phenmetrazine=80 gm of marihuana
1 gm Phenylacetone/PaP (when possessed for the purpose of manufacturing methamphetamine)=416 gm of marihuana
1 gm Phenylacetone/PaP (in any other case)=75 gm of marihuana
1 gm of Cocaine Base ("Crack")=20 kg of marihuana

LSD, PCP, and Other Schedule I and II Hallucinogens (and their immediate precursors).
1 gm of Bufotenine=70 gm of marihuana
1 gm of D-Lysergic Acid Diethylamide/Lysergide/LSD=100 kg of marihuana
1 gm of Diethyltryptamine/DET=80 gm of marihuana
1 gm of Dimethyltryptamine/DMT=100 gm of marihuana
1 gm of Mescaline=10 gm of marihuana
1 gm of Mushrooms containing Psilocin and/or Psilocybin (Dry)=1 gm of marihuana
1 gm of Mushrooms containing Psilocin and/or Psilocybin (Wet)=0.1 gm of marihuana
1 gm of Peyote (Dry)=0.5 gm of marihuana
1 gm of Peyote (Wet)=0.05 gm of marihuana
1 gm of Phencyclidine/PCP=1 kg of marihuana
1 gm of Phencyclidine (actual) /PCP (actual)=10 kg of marihuana
1 gm of Psilocin=500 gm of marihuana
1 gm of Psilocybin=500 gm of marihuana
1 gm of Pyrrolidine Analog of Phencyclidine/PHP=1 kg of marihuana
1 gm of Thiophene Analog of Phencyclidine/TCP=1 kg of marihuana
1 gm of 4-Bromo-2,5-Dimethoxyamphetamine/DOB=2.5 kg of marihuana
1 gm of 2,5-Dimethoxy-4-methylamphetamine/DOM=1.67 kg of marihuana
1 gm of 3,4-Methylenedioxyamphetamine/MDA=50 gm of marihuana
1 gm of 3,4-Methylenedioxymethamphetamine/MDMA=35 gm of marihuana
1 gm of 3,4-Methylenedioxy-N-ethylamphetamine/MDEA=30 gm of marihuana
1 gm of 1-Piperidinocyclohexanecarbonitrile/PCC=660 gm of marihuana

Schedule I Marihuana
1 gm of Marihuana/Cannabis, granulated, powdered, etc.=1 gm of marihuana
1 gm of Hashish Oil=50 gm of marihuana
1 gm of Cannabis Resin or Hashish=5 gm of marihuana
1 gm of Tetrahydrocannabinol, Organic=167 gm of marihuana
1 gm of Tetrahydrocannabinol, Synthetic=167 gm of marihuana

Secobarbital and Other Schedule I or II Depressants*
1 gm of Methaqualone=0.7 gm of marihuana
1 gm of Amobarbital=2 gm of marihuana
1 gm of Pentobarbital=2 gm of marihuana
1 gm of Secobarbital=2 gm of marihuana

Schedule III Substances**
1 gm of a Schedule III Substance=2 gm of marihuana

Schedule IV Substances***
1 gm of a Schedule IV Substance=0.125 gm of marihuana

Schedule V Substances****
1 gm of a Schedule V Substance=0.0125 gm of marihuana

Reason for Amendment: This amendment substitutes a single conversion for all Schedule III substances (1 gm of a Schedule III substance=2 gms of marihuana) that will simplify application of the guidelines as well as address currently unlisted Schedule III substances. Because the equivalencies for Schedule III substances are not statutorily based, nor are the pharmacological equivalencies as clear as with Schedule I or II Substances, a generic listing was deemed appropriate. Similarly, this amendment provides a single conversion for all Schedule IV substances (1 gm of a Schedule IV substance=0.125 gm of marihuana) and all Schedule V substances (1 gm of a Schedule V substance=0.0125 gm of marihuana).

In addition, this amendment adds footnotes to the Drug Equivalency Tables for Schedule I or II depressants and Schedule III, IV, and V substances to remove an ambiguity in guideline application by expressly limiting the combined equivalent weight of such substances to the marihuana amount consistent with the highest offense level for such substances provided in the Drug Quantity Table. See *United States v. Gurgliolo*, 894 F.2d 56 (3d Cir. 1990).

Finally, this amendment simplifies the application of the Drug Equivalency Table by referencing the conversions to one substance (marihuana) rather than to four substances; this results in no substantive change but will make the required computations easier and reduce the likelihood of computational error.

35. Amendment: Section 2D1.7 is amended in the title by deleting "Interstate Sale and Transporting" and inserting in lieu thereof "Sale or Transportation".

Section 2D1.7 is amended by inserting the following additional subsection:

"(b) Cross Reference.

If the offense involved a controlled substance, apply § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) or § 2D2.1 (Unlawful Possession), as appropriate, if the resulting offense level is greater than that determined above.".

The Commentary to § 2D1.7 is amended by inserting the following at the end:

"Application Note:

1. The typical case addressed by this guideline involves small-scale trafficking in drug paraphernalia (generally from a retail establishment that also sells items that are not unlawful). In a case involving a large-scale dealer, distributor, or manufacturer, an upward departure may be warranted. Conversely, where the offense was not committed for pecuniary gain (e.g., transportation for the defendant's personal use), a downward departure may be warranted.".

Reason for Amendment: This amendment revises the title of the guideline to address the expanded coverage of the underlying statute, as amended by Section 2401 of the Crime Control Act of 1990 (Public Law 101-647); adds a cross reference to address cases in which the underlying conduct involves a controlled substance offense; and adds an application note to specify the "heartland" types of cases addressed by the offense level set forth in the guideline.

36. Amendment: Section 2E2.1 is amended in the title by deleting ", Financing, or Collecting an Extortionate Extension of Credit" and inserting in lieu thereof "or Financing an Extortionate Extension of Credit; Collecting an Extension of Credit by Extortionate Means".

*Provided, that the combined equivalent weight of all Schedule I or II depressants, Schedule III substances, Schedule IV substances, and Schedule V substances shall not exceed 99.99 kilograms of marihuana.

**Provided, that the combined equivalent weight of all Schedule III substances, Schedule I or II depressants, Schedule IV substances, and Schedule V substances shall not exceed 99.99 kilograms of marihuana.

***Provided, that the combined equivalent weight of all Schedule IV and V substances shall not exceed 4.99 kilograms of marihuana.

****Provided, that the combined equivalent weight of Schedule V substances shall not exceed 999 grams of marihuana.".

Section 2E2.1(b)(3)(A) is amended by deleting "the commission of the offense or an escape from the scene of the crime" and inserting in lieu thereof "commission of the offense or to facilitate escape".

Reason for Amendment: This amendment corrects an error in the title of this section, and conforms the wording in subsection (b)(3)(A) with the wording used in subsection (b)(3)(B) and other guidelines.

37. Amendment: The Commentary to § 2E5.2 captioned "Application Notes" is amended in Note 1 by deleting "had a fiduciary obligation under the Employee Retirement Income Security Act" and inserting in lieu thereof "was a fiduciary of the benefit plan", and by deleting "would" and inserting in lieu thereof "will".

The Commentary to § 2E5.2 captioned "Application Notes" is amended in Note 2 by deleting "2.", and by inserting the text of this note at the end of Note 1; and, in the caption, by deleting "Notes" and inserting in lieu thereof "Note".

Reason for Amendment: This amendment makes an editorial improvement in the language of this commentary.

38. Amendment: Section 2G1.2(b) is amended by inserting the following additional subsection:

"(4) If the defendant was a parent, relative, or legal guardian of the minor involved in the offense, or if the minor was otherwise in the custody, care, or supervisory control of the defendant, increase by 2 levels.".

Sections 2G1.2 (c) and (d) are transposed and redesignated accordingly.

Section 2G1.2(c) (formerly § 2G1.2(d)) is amended in the caption by deleting "Reference" and inserting in lieu thereof "References", and by inserting the following additional subsections:

"(2) If the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse, apply § 2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse).

(3) If neither subsection (c)(1) nor (c)(2) is applicable, and the offense did not involve transportation for the purpose of prostitution, apply § 2A3.2 (Criminal Sexual Abuse of a Minor or Attempt to Commit Such Acts) or § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact), as appropriate.".

Section 2G1.2(d)(1) is amended by deleting "the defendant".

The Commentary to § 2G1.2 captioned "Application Notes" is amended in Note 1 by deleting "(c)(1)" and inserting in lieu thereof "(d)(1)", and in Note 5 by deleting "(d)(1)" and inserting in lieu thereof "(c)(1)".

The Commentary to § 2G1.2 captioned "Application Notes" is amended by renumbering Note 5 as Note 7, and by inserting the following additional notes:

"5. Subsection (b)(4) is intended to have broad application and includes offenses involving a minor entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this adjustment, the court should look to the actual relationship that existed between the defendant and the child and not simply to the legal status of the defendant-child relationship.

6. If the adjustment in subsection (b)(4) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

The Commentary to § 2G2.1 captioned "Application Notes" is amended in Note 2 by deleting "Specific Offense Characteristic" and inserting in lieu thereof "Subsection".

The Commentary to § 2G2.1 captioned "Application Notes" is amended by deleting Note 3 and inserting in lieu thereof:

"3. If the adjustment in subsection (b)(2) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

Reason for Amendment: This amendment provides consistent treatment for similar conduct among the guidelines in this part. The specific offense characteristic relating to abuse of a position of trust found at § 2G2.1(b)(2) is inserted in § 2G1.2. In addition, consistent with other guidelines, the amendment adds an application note in §§ 2G2.1 and 2G2.2 stating that where this subsection applies, § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) is not applied. This amendment also conforms the language used in § 2G1.2(d)(1) with the language used elsewhere in the guidelines.

In addition, statutes referenced to § 2G1.2 may be used as "jurisdictional" statutes in some cases to prosecute conduct that is more appropriately covered under other guidelines (§§ 2A3.1, 2A3.2, and 2A3.4). This amendment inserts a cross reference to provide consistent offense levels in such cases.

39. Amendment: The Commentary to § 2J1.2 captioned "Application Notes" is amended by inserting the following additional note:

"5. The inclusion of 'property damage' under subsection (b)(1) is designed to address cases in which property damage is caused or threatened as a means of intimidation or retaliation (e.g., to intimidate a witness from, or retaliate against a witness for, testifying). Subsection (b)(1) is not intended to apply, for example, where the offense consisted of destroying a ledger containing an incriminating entry.".

The Commentary to § 2J1.2 captioned "Background" is amended in the second paragraph by inserting "avoid punishment for an offense that the defendant has committed or to" immediately after "effort to", and by deleting "a crime he has committed, an alternative reference to the guideline for accessory after the fact is made" and inserting in lieu thereof "an offense, a cross reference to § 2X3.1 (Accessory After the Fact) is provided. Use of this cross reference will provide an enhanced offense level when the obstruction is in respect to a particularly serious offense, whether such offense was committed by the defendant or another person".

The Commentary to § 2J1.2 captioned "Application Notes" is amended in Note 1 by deleting the first and last commas and inserting in lieu thereof semicolons and by deleting "or verdict" and inserting in lieu thereof ", verdict, or any judicial determination".

The Commentary to § 2J1.3 captioned "Application Notes" is amended in Note 1 by deleting the first and last commas and inserting in lieu thereof semicolons and by deleting "or verdict" and inserting in lieu thereof ", verdict, or any judicial determination".

The Commentary to § 2J1.5 captioned "Application Notes" is amended in Note 1 by deleting the first and last commas and inserting in lieu thereof semicolons and by deleting "or verdict" and inserting in lieu thereof ", verdict, or any judicial determination".

The Commentary to § 2J1.6 captioned "Application Notes" is amended in Note 1 by deleting the first and last commas and inserting in lieu thereof semicolons and by deleting "or verdict" and inserting in lieu thereof ", verdict, or any judicial determination".

Reason for Amendment: This amendment clarifies the type of circumstances to which the enhancement in § 2J1.2(b)(1) applies. This amendment also corrects a clerical error, and clarifies the intended scope of the enhancement for "substantial interference with the administration of justice."

40. Amendment: Section 2J1.3 is amended by inserting the following additional subsection:

"(d) Special Instruction.

(1) In the case of counts of perjury or subornation of perjury arising from testimony given, or to be given, in separate proceedings, do not group the counts together under § 3D1.2 (Groups of Closely-Related Counts).".

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The Commentary to § 2J1.3 captioned "Application Notes" is amended by inserting the following additional note:

"3. 'Separate proceedings,' as used in subsection (d)(1), includes different proceedings in the same case or matter (e.g., a grand jury proceeding and a trial, or a trial and retrial), and proceedings in separate cases or matters (e.g., separate trials of codefendants), but does not include multiple grand jury proceedings in the same case.".

Reason for Amendment: This amendment provides a special instruction addressing the appropriate treatment of multiple instances of perjury under Chapter Three, Part D (Multiple Counts).

41. Amendment: The Commentary to § 2J1.6 captioned "Application Notes" is amended by deleting Note 2, by renumbering Note 3 as Note 2, and by inserting the following additional notes:

"3. Any term of imprisonment for a failure to appear by a defendant (18 U.S.C. 3146(b)(1)) must be imposed consecutively to any other sentence of imprisonment (18 U.S.C. 3146(b)(2)). Therefore, the provisions of §§ 3D1.2–3D1.5 do not apply in respect to such counts (see § 3D1.1(b)), and the guideline range for the failure to appear count is to be determined independently of the guideline range for the underlying offense (the offense in respect to which the defendant failed to appear).

4. In some cases, the defendant may be sentenced on the underlying offense (the offense in respect to which the defendant failed to appear) before being sentenced on the failure to appear offense. In such cases, criminal history points for the sentence imposed on the underlying offense are to be counted in determining the guideline range on the failure to appear offense only where the offense level is determined under subsection (a)(1) (i.e., where the offense constituted a failure to report for service of sentence).".

Reason for Amendment: This amendment addresses a complex issue of the interaction of two guideline provisions (§§ 2J1.6 and 4A1.1). The question has arisen as to whether, in a sentencing proceeding for failure to appear by a defendant, criminal history points for any sentence imposed on the underlying offense (the offense in respect to which the defendant failed to appear) should be applied in the determination of this guideline. By statute, any term of imprisonment imposed under 18 U.S.C. 3146(b)(1) must run consecutively to any other term of imprisonment imposed. Consequently, the multiple count rules do not apply in such cases and two separate guideline ranges are calculated. The answer consistent with the overall structure of the guidelines, and the least subject to the extraneous factors of whether the sentence for the failure to appear precedes, follows, or is imposed at the same time as the sentence for underlying offense, is that criminal history points for any sentence imposed on the underlying offense should not be counted with respect to the failure to appear, except where the failure to appear is based upon a failure to report for the service of sentence on the underlying offense.

42. Amendment: Section 2K1.5(c)(1) is amended by inserting "or possessed" immediately following "used"; and by inserting ", as appropriate," immediately before "if the".

Reason for Amendment: This amendment is an editorial amendment to clarify application of the cross reference in subsection (c)(1).

43. The Commentary to § 2K2.4 captioned "Application Notes" is amended in Note 2 by inserting "(A)–(F)" immediately before "(Robbery)", and by inserting the following additional paragraphs:

"Provided, that where the maximum of the guideline range from Chapter Five, Part A (Sentencing Table) determined by an offense level adjusted under the procedure described in the preceding paragraph, plus the term of imprisonment required under 18 U.S.C. 924(c) or 929(a), is less than the maximum of the guideline range that would apply to the underlying offense absent such adjustment, the procedure described in the preceding paragraph does not apply. Instead, the guideline range applicable to the underlying offense absent such adjustment is to be used after subtracting the term of imprisonment imposed under 18 U.S.C. 924(c) or 929(a) from both the minimum and maximum of such range.

Example: A defendant, is to be sentenced under the robbery guideline; his unadjusted offense level from § 2B3.1 is 30, including a 7-level enhancement for discharging a firearm; no Chapter Three adjustments are applicable; and his criminal history category is Category IV. His unadjusted guideline range from Chapter Five, Part A (Sentencing Table) is 135–168 months. This defendant has also been convicted under 18 U.S.C. 924(c) arising from the possession of a weapon during the robbery, and therefore must be sentenced to an additional consecutive five-year term of imprisonment. The defendant's adjusted guideline range, which takes into account the conviction under 18 U.S.C. 924(c) by eliminating the 7-level weapon enhancement, is 70–87 months. Because the maximum of the defendant's adjusted guideline range plus the five year consecutive sentence (87 months + 60 months = 147 months) is less than the maximum of the defendant's unadjusted guideline range (168 months), the defendant is to be sentenced using the unadjusted guideline range after subtracting the 60 month sentence to be imposed under 18 U.S.C. 924(c) from both the minimum and maximum of the unadjusted range (e.g., 135 months − 60 months = 75 months; 168 months − 60 months = 108 months). A sentence imposed for the underlying offense using the guideline range determined in this manner (75–108 months) when combined with the consecutive sentence imposed under 18 U.S.C. 924(c) or 929(a), will produce the appropriate total term of imprisonment.".

Reason for Amendment: This amendment provides an additional instruction for the determination of the offense level in cases in which the defendant is convicted under 18 U.S.C. 924(c) or 929(a) in addition to a count for the offense in respect to which the firearm was used or possessed. The amendment is designed to prevent the anomalous result of the total punishment being less when there are convictions on both such counts than if the defendant was convicted only of the offense in respect to which the weapon was used or possessed.

44. Amendment: The Commentary to § 2P1.1 captioned "Application Notes" is amended by inserting the following additional note:

"6. If the adjustment is subsection (b)(1) applies as a result of conduct that involves an official victim, do not apply § 3A1.2 (Official Victim).".

Reason for Amendment: This amendment addresses the issue raised in *United States* v. *Dugan*, 912 F.2d 942 (8th Cir. 1990) concerning the interaction between § 2P1.1(b)(1) and § 3A1.2 by expressly providing that where an enhancement from subsection (b)(1) applies, § 3A1.2 does not apply.

45. Amendment: Section 2Q2.1(b)(3)(A) is amended by deleting "specially protected".

Reason for Amendment: This amendment removes language inadvertently retained when this guideline was consolidated with the former § 2Q2.2.

46. Amendment: The Commentary to § 2T1.2 captioned "Background" is amended in the third paragraph by deleting "difficulty of computing" and all that follows through the end of the paragraph, and inserting in lieu thereof "potential difficulty of determining the amount of tax the taxpayer owed. It is expected that this alternative measure generally will understate the amount of tax owed.".

Reason for Amendment: This amendment clarifies the meaning of the commentary and deletes surplus material.

47. Amendment: Section 2T1.6 is amended by inserting the following additional subsection:

"(b) Cross reference.

(1) Where the offense involved embezzlement by withholding tax from an employee's earnings and willfully failing to account to the employee for it, apply § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) if the resulting offense level is greater than that determined above.".

The Commentary to § 2T1.6 captioned "Application Notes" is amended in Note 1 by deleting "In such instances, an upward departure may be warranted" and inserting in lieu thereof "Subsection (b)(1) addresses such cases".

Reason for Amendment: The Commentary to § 2T1.6 currently recommends consideration of an upward departure where the court finds that this offense involved embezzlement of an employee's funds. This amendment inserts a cross reference that provides for the application of § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) in such cases where that guideline results in the greater offense level.

48. Amendment: Sections 2T3.1 is amended by deleting "Level from § 2T4.1 (Tax Table) corresponding to the tax loss." and inserting in lieu thereof:

"(1) The level from § 2T4.1 (Tax Table) corresponding to the tax loss, if the tax loss exceeded $1,000; or

(2) 5, if the tax loss exceeded $100 but did not exceed $1,000; or

(3) 4, if the tax loss did not exceed $100.",

and by inserting the following additional subsection:

"(b) Specific offense characteristic.

(1) If sophisticated means were used to impede discovery of the nature or existence of the offense, increase by 2 levels.".

Sections 2T3.2 is amended by deleting "Level from § 2T4.1 (Tax Table) corresponding to the tax loss." and inserting in lieu thereof:

"(1) The level from § 2T4.1 (Tax Table) corresponding to the tax loss, if the tax loss exceeded $1,000; or

(2) 5, if the tax loss exceeded $100 but did not exceed $1,000; or

(3) 4, if the tax loss did not exceed $100.",

and by inserting the following additional subsection:

"(b) Specific Offense Characteristic

(1) If sophisticated means were used to impede discovery of the nature or existence of the offense, increase by 2 levels.".

Reason for Amendment: This amendment adds an adjustment for "sophisticated means" to conform with other tax evasion guidelines (e.g., § 2T1.1). In addition, it lowers the offense level for the least serious offenses (evasion of import duty of $1,000 or less without use of sophisticated means) to provide an offense level equal to the offense level for theft without more than minimal planning of the same amount.

49. Amendment: Section 2X1.1 and accompanying Commentary are amended by deleting "object" wherever it appears and inserting in lieu thereof in each instance "substantive"

Section 2X1.1(b)(1) is amended by inserting "substantive" immediately before "offense".

Section 2X1.1(b)(2) is amended by inserting "substantive" immediately before "offense".

Section 2X1.1(b)(3) is amended by deleting "the offense" the first two times it appears and inserting in lieu thereof in each instance "the substantive offense".

The Commentary to § 2X1.1 captioned "Application Notes" is amended in Note 2 by deleting the first sentence and inserting in lieu thereof: "Substantive offense, as used in this guideline, means the offense that the defendant was convicted of soliciting, attempting, or conspiring to commit. Under § 2X1.1(a), the base offense level will be the same as that for the substantive offense.".

The Commentary to § 2X1.1 captioned "Application Notes" is amended in Note 4 by deleting "or (2)" and inserting in lieu thereof ", (2), or (3)(A)".

The Commentary to § 2X1.1 captioned "Background" is amended by deleting "necessary acts of" and inserting in lieu thereof "acts necessary for".

Reason for Amendment: This is a technical amendment to enhance clarity by replacing the term "object offense" with the more commonly used term "substantive offense" and to conform the language used in the various subsections of this guideline. Greater clarity in the guideline language should reduce the likelihood of litigation over the meaning of this language. See e.g., *United States* v. *Rothman*, 914 F.2d 708 (5th Cir. 1990).

50. Amendment: Section 2X5.1 is amended by inserting immediately before the period at the end of the second sentence:

", except that any guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline shall remain applicable".

The Commentary to § 2X5.1 is amended by inserting immediately after "Commentary" the following:

"*Application Note:*

1. Guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline include: § 5B1.3 (Conditions of Probation); § 5B1.4 (Recommended Conditions of Probation and Supervised Release); § 5D1.1 (Imposition of a Term of Supervised Release); § 5D1.2 (Term of Supervised Release); § 5D1.3 (Conditions of Supervised Release); § 5E1.1 (Restitution); subsection (c)(1)(B) of § 5E1.2 (Fines for Individual Defendants) as a lower limit; § 5E1.3 (Special Assessments); § 5E1.4 (Forfeiture); Chapter Five, Part F (Sentencing Options); § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment); Chapter Five, Part H (Specific Offender Characteristics); Chapter Five, Part J (Relief from Disability); Chapter Five, Part K (Departures); Chapter Six, Part A (Sentencing Procedures); Chapter Six, Part B (Plea Agreements).".

The Commentary to § 2X5.1 captioned "Background" is amended by inserting the following additional paragraph:

"The sentencing guidelines apply to convictions under 18 U.S.C. 13 (Assimilative Crimes Act) and 18 U.S.C. 1153 (Indian Major Crimes Act); see 18 U.S.C. 3551(a), as amended by section 1602 of Public Law 101–647.".

Reason for Amendment: This amendment inserts an application note to clarify that, in the case of an offense for which there is no sufficiently analogous offense guideline, any guidelines and policy statements that can be meaningfully applied in the absence of a Chapter Two offense guideline remain applicable. This amendment also clarifies the applicability of the sentencing guidelines to convictions under 18 U.S.C. 13 (Assimilative Crimes Act) and 1153 (Indian Major Crimes Act). Section 1602 of the Crime Control Act of 1990 (Public Law 101–647) definitively resolved this question by amending 18 U.S.C. 3551(a) to provide expressly that Chapter 227 of Title 18, United States Code (including the sentencing guidelines) applies to convictions under these statutes.

51. Amendment: The Commentary to § 3A1.3 captioned "Application Notes" is amended by deleting Note 2 and inserting in lieu thereof:

"2. Do not apply this adjustment where the offense guideline specifically incorporates this factor, or where the unlawful restraint of a victim is an element of the offense itself (e.g., this adjustment does not apply to offenses covered by § 2A4.1 (Kidnapping, Abduction, Unlawful Restraint)).".

Reason for Amendment: This amendment clarifies the application of this guideline.

52. Amendment: The Commentary to § 3B1.1 captioned "Application Notes" is amended in Note 1 by inserting the following additional sentence at the end:

"A person who is not criminally responsible for the commission of the offense (e.g., an undercover law enforcement officer) is not a participant.".

Reason for Amendment: This amendment clarifies the operation of this guideline in accord with the holding in *United States* v. *Carroll*, 893 F.2d 1502 (6th Cir. 1990).

53. Amendment: The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 1 in the last sentence by deleting ", the defendant's" and inserting in lieu thereof "in respect to alleged false testimony or statements

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by the defendant, such"; and by deleting "and" and inserting in lieu thereof "or".

Reason for Amendment: This amendment more precisely states the meaning of this commentary.

54. The Commentary to § 3C1.2 captioned "Application Notes" is amended by redesignating note 3 as note 4 and by inserting the following additional note:

"3. 'During flight' is to be construed broadly and includes preparation for flight. Therefore, this adjustment also is applicable where the conduct occurs in the course of resisting arrest.".

Reason for Amendment: This amendment clarifies that reckless endangerment in the course of resisting arrest that does not receive a 3-level enhancement under § 3A1.2 (Official Victim) may be considered under this section.

55. Amendment: The Commentary to § 3D1.2 captioned "Application Notes" is amended in the second paragraph of Note 5 by deleting "accessory after the fact for" and inserting in lieu thereof "a conspiracy to commit".

The Commentary following § 3D1.5 captioned "Illustrations of the Operation of the Multiple-Count Rules" is amended in example 1 by deleting "discharged" and inserting in lieu thereof "displayed".

The Commentary following § 3D1.5 captioned "Illustrations of the Operation of the Multiple-Count Rules" is amended in example 2 by deleting the last three sentences and inserting in lieu thereof:

"The base offense level is 6; 1 level is added because of the value of the property (§ 2F1.1(b)(1)); and 2 levels are added because the conduct involved repeated acts with some planning (§ 2F1.1(b)(2)(A)). The resulting offense level is 9.".

Reason for Amendment: This amendment conforms two illustrations of the operation of the guidelines to the guidelines, as amended, and corrects an inaccurate illustration.

56. Amendment: The Commentary to Chapter Five, Part A (Sentencing Table) captioned "Application Notes" is amended in Note 3 by inserting ", except as provided in §§ 4B1.1 (Career Offender) and 4B1.4 (Armed Career Criminal)" immediately before the period at the end of the first sentence.

Reason for Amendment: This amendment is a technical amendment to conform the commentary of this section to the provisions concerning the determination of the criminal history category set forth in §§ 4B1.1 and 4B1.4. No substantive change results.

57. Amendment: Section 6F1.3 is amended by deleting:

"If the defendant was convicted of a felony and sentenced to probation, the court must order one or more of the following sanctions: a fine, restitution, or community service. 18 U.S.C. 3563(a)(2).".

Reason for Amendment: This amendment deletes a sentence in this guideline that is unnecessary and no longer accurate because of a change in the statute. The correct reference is found at § 5B1.3(a).

58. Amendment: Chapter Five, part K, subpart 2 is amended by inserting the following additional section:

"§ 5K2.16. Voluntary Disclosure of Offense (Policy Statement)

If the defendant voluntarily discloses to authorities the existence of, and accepts responsibility for, the offense prior to the discovery of such offense, and if such offense was unlikely to have been discovered otherwise, a departure below the applicable guideline range for that offense may be warranted. For example, a downward departure under this section might be considered where a defendant, motivated by remorse, discloses an offense that otherwise would have remained undiscovered. This provision does not apply where the motivating factor is the defendant's knowledge that discovery of the offense is likely or imminent, or where the defendant's disclosure occurs in connection with the investigation or prosecution of the defendant for related conduct.".

Reason for Amendment: This amendment sets forth an additional policy statement regarding a mitigating factor that may warrant a downward departure.

59. Amendment: Appendix A (Statutory Index) is amended by inserting, in the appropriate place by title and section, the following:

"5 U.S.C. 1160(b)(7)(A), 2L2.1, 2L2.2";
"18 U.S.C. 225, 2B1.1, 2B4.1, 2F1.1";
"18 U.S.C. 408, 2J1.1";
"18 U.S.C. 1032, 2B4.1, 2F1.1";
"18 U.S.C. 1346, 2C1.7";
"18 U.S.C. 1517, 2J1.2";
"18 U.S.C. 2237, 2G2.5";
"21 U.S.C. 841(g)(1), 2D1.11, 2D1.13";
"21 U.S.C. 843(a)(4)(B), 2D1.13";
"21 U.S.C. 843(a) (5), (7), 2D1.12";
"21 U.S.C. 843(a)(6), 2D1.13";
"42 U.S.C. 1320(a)-7(b), 2B1.1, 2B4.1, 2F1.1".

Appendix A (Statutory Index) is amended:

In the line beginning "18 U.S.C. 371" by inserting "2C1.7," immediately before "2D1.4";

In the line beginning "18 U.S.C. 1005" by deleting ", 2S1.3";

In the line beginning "18 U.S.C. 1341" by inserting "2C1.7," immediately before "2F1.1";

In the line beginning "18 U.S.C. 1342" by inserting "2C1.7," immediately before "2F1.1";

In the line beginning "18 U.S.C. 1343" by inserting "2C1.7," immediately before "2F1.1";

In the line beginning "18 U.S.C. 1460" by deleting "2G2.2,";

In the line beginning "18 U.S.C. 1543" by inserting "2L2.1," immediately before "2L2.4";

In the line beginning "18 U.S.C. 2252" by inserting ", 2G2.4" immediately following "2G2.2";

By deleting:

"21 U.S.C. 841(d), 2D1.1",

And inserting in lieu thereof:

"21 U.S.C. 841(d) (1), (2), 2D1.11
21 U.S.C. 841(d)(3), 2D1.13";

By deleting:

"21 U.S.C. 842(a), 2D3.1, 2D3.2, 2D3.5",

And inserting in lieu thereof:

"21 U.S.C. 842(a)(1), 2D3.1
21 U.S.C. 842(a)(2), 2D3.8
21 U.S.C. 842(a) (9), (10), 2D3.5";

In the line beginning "21 U.S.C. 843(a)(1)" by deleting ", (4)";

By deleting:

"21 U.S.C. 960, 2D1.1",

And inserting in lieu thereof:

"21 U.S.C. 960 (a), (b), 2D1.1
21 U.S.C. (d) (1), (2), 2D1.11";

In the line beginning "31 U.S.C. 5316(a)" by deleting "2S1.3" and inserting in lieu thereof "2S1.4";

By deleting:

"46 U.S.C. App. 1903, 2D1.1",

And inserting in lieu thereof:

"46 U.S.C. App. 1903(a), 2D1.1
46 U.S.C. App. 1903(g), 2D1.1
46 U.S.C. App. 1903(j), 2D1.4"; and

In the line beginning "47 U.S.C. 605" by inserting "2B5.3," immediately before "2F3.1".

Reason for Amendment: This amendment makes the statutory index more comprehensive, and conforms it to the guidelines, as amended.

Addition of Chapter Eight—Sentencing of Organizations

60. Amendment. The guidelines are amended by adding the following additional chapter:

"CHAPTER EIGHT—SENTENCING OF ORGANIZATIONS

Introductory Commentary

The guidelines and policy statements in this chapter apply when the convicted defendant is an organization. Organizations can act only through agents and, under federal criminal law, generally are vicariously liable for offenses committed by their agents. At the same time, individual agents are responsible for their own criminal conduct. Federal prosecutions of organizations therefore frequently involve individual and organizational co-defendants. Convicted individual agents of organizations are sentenced in accordance with the guidelines and policy statements in the preceding chapters. This chapter is designed so that the sanctions imposed upon organizations and their agents, taken together, will provide just punishment, adequate deterrence, and incentives for organizations to maintain internal mechanisms for preventing, detecting, and reporting criminal conduct.

This chapter reflects the following general principles: First, the court must, whenever practicable, order the organization to remedy any harm caused by the offense. The resources expended to remedy the harm should not be viewed as punishment, but rather as a means of making victims whole for the harm caused. Second, if the organization operated primarily for a criminal purpose or primarily by criminal means, the fine should be set sufficiently high to divest the organization of all its assets. Third, the fine range for any other organization should be based on the seriousness of the offense and the culpability of the organization. The seriousness of the offense generally will be reflected by the highest of the pecuniary gain, the pecuniary loss, or the amount in a guideline offense level fine table. Culpability generally will be determined by the steps taken by the organization prior to the offense to prevent and detect criminal conduct, the level and extent of involvement in or tolerance of the offense by certain personnel, and the organization's actions after an offense has been committed. Fourth, probation is an appropriate sentence for an organizational defendant when needed to ensure that another sanction will be fully implemented, or to ensure that steps will be taken within the organization to reduce the likelihood of future criminal conduct.

Part A—General Application Principles

§ 8A1.1. Applicability of Chapter Eight

This chapter applies to the sentencing of all organizations for felony and Class A misdemeanor offenses.

Commentary

Application Notes

1. "Organization" means "a person other than an individual." 18 U.S.C. 18. The term includes corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions thereof, and nonprofit organizations.

2. The fine guidelines in §§ 8C2.2 through 8C2.9 apply only to specified types of offenses. The other provisions of this chapter apply to the sentencing of all organizations for all felony and Class A misdemeanor offenses. For example, the restitution and probation provisions in parts B and D of this chapter apply to the sentencing of an organization, even if the fine guidelines in §§ 8C2.2 through 8C2.9 do not apply.

§ 8A1.2. Application Instructions—Organizations

(a) Determine from Part B (Remedying Harm from Criminal Conduct) the sentencing requirements and options relating to restitution, remedial orders, community service, and notice to victims.

(b) Determine from Part C (Fines) the sentencing requirements and options relating to fines:

(1) If the organization operated primarily for a criminal purpose or primarily by criminal means, apply § 8C1.1 (Determining the Fine—Criminal Purpose Organizations).

(2) Otherwise, apply § 8C2.1 (Applicability of Fine Guidelines) to identify the counts for which the provisions of §§ 8C2.2 through 8C2.9 apply. For such counts:

(A) Refer to § 8C2.2 (Preliminary Determination of Inability to Pay Fine) to determine whether an abbreviated determination of the guideline fine range may be warranted.

(B) Apply § 8C2.3 (Offense Level) to determine the offense level from Chapter Two (Offense Conduct) and Chapter Three, Part D (Multiple Counts).

(C) Apply § 8C2.4 (Base Fine) to determine the base fine.

(D) Apply § 8C2.5 (Culpability Score) to determine the culpability score.

(E) Apply § 8C2.6 (Minimum and Maximum Multipliers) to determine the minimum and maximum multipliers corresponding to the culpability score.

(F) Apply § 8C2.7 (Guideline Fine Range—Organizations) to determine the minimum and maximum of the guideline fine range.

(G) Refer to § 8C2.8 (Determining the Fine Within the Range) to determine the amount of the fine within the applicable guideline range.

(H) Apply § 8C2.9 (Disgorgement) to determine whether an increase to the fine is required.

For any count or counts not covered under § 8C2.1 (Applicability of Fine Guidelines), apply § 8C2.10 (Determining the Fine for Other Counts).

(3) Apply the provisions relating to the implementation of the sentence of a fine in part C, subpart 3 (Implementing the Sentence of a Fine).

(4) For grounds for departure from the applicable guideline fine range, refer to part C, subpart 4 (Departures from the Guideline Fine Range).

(c) Determine from part D (Organizational Probation) the sentencing requirements and options relating to probation.

(d) Determine from Part E (Special Assessments, Forfeitures, and Costs) the sentencing requirements relating to special assessments, forfeitures, and costs.

Commentary

Application Notes

1. Determinations under this chapter are to be based upon the facts and information specified in the applicable guideline. Determinations that reference other chapters are to be made under the standards applicable to determinations under those chapters.

2. The definitions in the Commentary to § 1B1.1 (Application Instructions) and the guidelines and commentary in §§ 1B1.2 through 1B1.8 apply to determinations under this chapter unless otherwise specified. The adjustments in chapter Three, Parts A (Victim-Related Adjustments), B (Role in the Offense), C (Obstruction), and E (Acceptance of Responsibility) do not apply. The provisions of Chapter Six (Sentencing Procedures and Plea Agreements) apply to proceedings in which the defendant is an organization.

Guidelines and policy statements not referenced in this chapter, directly or indirectly, do not apply when the defendant is an organization; e.g., the policy statements in Chapter Seven (Violations of Probation and Supervised Release) do not apply to organizations.

3. The following are definitions of terms used frequently in this chapter:

(a) 'Offense' means the offense of conviction and all relevant conduct under § 1B1.3 (Relevant Conduct) unless a different meaning is specified or is otherwise clear from the context.

(b) 'High-level personnel of the organization' means individuals who have substantial control over the organization or who have a substantial role in the making of policy within the organization. The term includes: A director; an executive officer; an individual in charge of a major business or functional unit of the organization, such as sales, administration, or finance; and an individual with a substantial ownership interest. 'High-level personnel of a unit of the organization' is defined in the Commentary to § 8C2.5 (Culpability Score).

(c) 'Substantial authority personnel' means individuals who within the scope of their authority exercise a substantial measure of discretion in acting on behalf of an organization. The term includes high-level personnel, individuals who exercise substantial supervisory authority (e.g., a plant manager, a sales manager), and any other individuals who, although not a part of an organization's management, nevertheless exercise substantial discretion when acting within the scope of their authority (e.g., an individual with authority in an organization to negotiate or set price levels or an individual authorized to negotiate or approve significant contracts). Whether an individual falls within this category must be determined on a case-by-case basis.

(d) 'Agent' means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

(e) An individual 'condoned' an offense if the individual knew of the offense and did not take reasonable steps to prevent or terminate the offense.

(f) 'Similar misconduct' means prior conduct that is similar in nature to the conduct underlying the instant offense, without regard to whether or not such conduct violated the same statutory provision. For example, prior Medicare fraud would be misconduct similar to an instant offense involving another type of fraud.

(g) 'Prior criminal adjudication' means conviction by trial, plea of guilty (including an Alford plea), or plea of nolo contendere.

(h) 'Pecuniary gain' is derived from 18 U.S.C. 3571(d) and means the additional before-tax profit to the defendant resulting from the relevant conduct of the offense. Gain can result from either additional revenue or cost savings. For example, an offense involving odometer tampering can produce additional revenue. In such a case,

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the pecuniary gain is the additional revenue received because the automobiles appeared to have less mileage, i.e., the difference between the price received or expected for the automobiles with the apparent mileage and the fair market value of the automobiles with the actual mileage. An offense involving defense procurement fraud related to defective product testing can produce pecuniary gain resulting from cost savings. In such a case, the pecuniary gain is the amount saved because the product was not tested in the required manner.

(i) 'Pecuniary loss' is derived from 18 U.S.C. 3571(d) and is equivalent to the term 'loss' as used in Chapter Two (Offense Conduct), except that pecuniary loss includes, for purposes of Chapter Eight, all damages from the offense that were caused intentionally, knowingly, or recklessly. See Commentary to §§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft), 2F1.1 (Fraud and Deceit), and definitions of 'tax loss' in Chapter Two, Part T (Offenses Involving Taxation). For example, in a case of fraud upon the government involving product substitution or defective testing, loss may include (1) the government's costs of making substitute transactions and handling or disposing of the product delivered, or retrofitting the product so that it can be used for its intended purpose, and (2) the government's cost of rectifying the actual or potential disruption to government operations caused by the product substitution.

(j) An individual was 'willfully ignorant of the offense' if the individual did not investigate the possible occurrence of unlawful conduct despite knowledge of circumstances that would lead a reasonable person to investigate whether unlawful conduct had occurred.

(k) An 'effective program to prevent and detect violations of law' means a program that has been reasonably designed, implemented, and enforced so that it generally will be effective in preventing and detecting criminal conduct. Failure to prevent or detect the instant offense, by itself, does not mean that the program was not effective. The hallmark of an effective program to prevent and detect violations of law is that the organization exercised due diligence in seeking to prevent and detect criminal conduct by its employees and other agents. Due diligence requires at a minimum that the organization must have taken the following types of steps:

(1) The organization must have established compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal conduct.

(2) Specific individual(s) within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance with such standards and procedures.

(3) The organization must have used due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through the exercise of due diligence, had a propensity to engage in illegal activities.

(4) The organization must have taken steps to communicate effectively its standards and procedures to all employees and other agents, e.g., by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.

(5) The organization must have taken reasonable steps to achieve compliance with its standards, e.g., by utilizing monitoring and auditing systems reasonably designed to detect criminal conduct by its employees and other agents and by having in place and publicizing a reporting system whereby employees and other agents could report criminal conduct by others within the organization without fear of retribution.

(6) The standards must have been consistently enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect an offense. Adequate discipline of individuals responsible for an offense is a necessary component of enforcement; however, the form of discipline that will be appropriate will be case specific.

(7) After an offense has been detected, the organization must have taken all reasonable steps to respond appropriately to the offense and to prevent further similar offenses—including any necessary modifications to its program to prevent and detect violations of law.

The precise actions necessary for an effective program to prevent and detect violations of law will depend upon a number of factors. Among the relevant factors are:

(i) Size of the organization—The requisite degree of formality of a program to prevent and detect violations of law will vary with the size of the organization: The larger the organization, the more formal the program typically should be. A larger organization generally should have established written policies defining the standards and procedures to be followed by its employees and other agents.

(ii) Likelihood that certain offenses may occur because of the nature of its business—If because of the nature of an organization's business there is a substantial risk that certain types of offenses may occur, management must have taken steps to prevent and detect those types of offenses. For example, if an organization handles toxic substances, it must have established standards and procedures designed to ensure that those substances are properly handled at all times. If an organization employs sales personnel who have flexibility in setting prices, it must have established standards and procedures designed to prevent and detect price-fixing. If an organization employs sales personnel who have flexibility to represent the material characteristics of a product, it must have established standards and procedures designed to prevent fraud.

(iii) Prior history of the organization—An organization's prior history may indicate types of offenses that it should have taken actions to prevent. Recurrence of misconduct similar to that which an organization has previously committed casts doubt on whether it took all reasonable steps to prevent such misconduct.

An organization's failure to incorporate and follow applicable industry practice or the standards called for by any applicable governmental regulation weighs against a finding of an effective program to prevent and detect violations of law.

Part B—Remedying Harm from Criminal Conduct

Introductory Commentary

As a general principle, the court should require that the organization take all appropriate steps to provide compensation to victims and otherwise remedy the harm caused or threatened by the offense. A restitution order or an order of probation requiring restitution can be used to compensate identifiable victims of the offense. A remedial order or an order of probation requiring community service can be used to reduce or eliminate the harm threatened, or to repair the harm caused by the offense, when that harm or threatened harm would otherwise not be remedied. An order of notice to victims can be used to notify unidentified victims of the offense.

§ 8B1.1. Restitution—Organizations

(a) The court shall—(1) Enter a restitution order if such order is authorized under 18 U.S.C. 3663–3664; or

(2) if a restitution order would be authorized under 18 U.S.C. 3663–3664, except for the fact that the offense of conviction is not an offense set forth in title 18, United States Code, or 49 U.S.C. 1472 (h), (i), (j), or (n), sentence the organization to probation with a condition requiring restitution.

(b) *Provided*, That the provisions of subsection (a) do not apply when the organization has made full restitution, or to the extent the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of a restitution requirement outweighs the need to provide restitution to any victims through the criminal process.

Commentary

Background: This guideline provides for restitution either as a sentence under 18 U.S.C. 3663–3664 or as a condition of probation.

§ 8B1.2. Remedial Orders—Organizations (Policy Statement)

(a) To the extent not addressed under § 8B1.1 (Restitution—Organizations), a remedial order imposed as a condition of probation may require the organization to remedy the harm caused by the offense and to eliminate or reduce the risk that the instant offense will cause future harm.

(b) If the magnitude of expected future harm can be reasonably estimated, the court may require the organization to create a trust fund sufficient to address that expected harm.

Commentary

Background: The purpose of a remedial order are to remedy harm that has already occurred and to prevent future harm. A remedial order requiring corrective action by the organization may be necessary to prevent future injury from the instant offense, e.g., a product recall for a food and drug violation or a clean-up order for an environmental violation. In some cases in which a remedial order potentially may be appropriate, a governmental regulatory agency, e.g., the Environmental Protection Agency or the Food and Drug Administration, may have authority to order remedial measures. In such cases, a remedial order by the court may not be necessary. If a remedial order is entered, it should be coordinated with any administrative or civil actions taken by the appropriate governmental regulatory agency.

§ 8B1.3. Community Service—Organizations (Policy Statement)

Community service may be ordered as a condition of probation where such community service is reasonably designed to repair the harm caused by the offense.

Commentary

Background: An organization can perform community service only by employing its resources or paying its employees or others to do so. Consequently, an order that an organization perform community service is essentially an indirect monetary sanction, and therefore generally less desirable than a direct monetary sanction. However, where the convicted organization possesses knowledge, facilities, or skills that uniquely qualify it to repair damage caused by the offense, community service directed at repairing damage may provide an efficient means of remedying harm caused.

In the past, some forms of community service imposed on organizations have not been related to the purposes of sentencing. Requiring a defendant to endow a chair at a university or to contribute to a local charity would not be consistent with this section unless such community service provided a means for preventive or corrective action directly related to the offense and therefore served one of the purposes of sentencing set forth in 18 U.S.C. 3553(a).

§ 8B1.4. Order of Notice to Victims—Organizations

Apply § 5F1.4 (Order of Notice to Victims).

Part C—Fines

1. Determining the Fine—Criminal Purpose Organizations

§ 8C1.1. Determining the Fine—Criminal Purpose Organizations

If, upon consideration of the nature and circumstances of the offense and the history and characteristics of the organization, the court determines that the organization operated primarily for a criminal purpose or primarily by criminal means, the fine shall be set at an amount (subject to the statutory maximum) sufficient to divest the organization of all its net assets. When this section applies, Subpart 2 (Determining the Fine—Other Organizations) and § 8C3.4 (Fines Paid by Owners of Closely-Held Organizations) do not apply.

Commentary

Application Note

1. *Net assets*, as used in this section, means the assets remaining after payment of all legitimate claims against assets by known innocent bona fide creditors.

Background: This guideline addresses the case in which the court, based upon an examination of the nature and circumstances of the offense and the history and characteristics of the organization, determines that the organization was operated primarily for a criminal purpose (e.g., a front for a scheme that was designed to commit fraud; an organization established to participate in the illegal manufacture, importation, or distribution of a controlled substance) or operated primarily by criminal means (e.g., a hazardous waste disposal business that had no legitimate means of disposing of hazardous waste). In such a case, the fine shall be set at an amount sufficient to remove all of the organization's net assets. If the extent of the assets of the organization is unknown, the maximum fine authorized by statute should be imposed, absent innocent bona fide creditors.

2. Determining the Fine—Other Organizations

§ 8C2.1. Applicability of Fine Guidelines

The provisions of §§ 8C2.2 through 8C2.9 apply to each count for which the applicable guideline offense level is determined under:

(a) §§ 2B1.1, 2B1.2, 2B1.3, 2B2.3, 2B4.1, 2B5.3, 2B5.4, 2B6.1;
§§ 2C1.1, 2C1.2, 2C1.4, 2C1.6, 2C1.7;
§§ 2D1.7, 2D3.1, 2D3.2, 2D3.4;
§§ 2E3.1, 2E3.2, 2E3.3, 2E4.1, 2E5.1, 2E5.2, 2E5.3, 2E5.4, 2E5.5, 2E5.6;
§§ 2F1.1, 2F1.2;
§ 2G3.1;
§§ 2K1.1, 2K1.2, 2K2.1;
§ 2L1.1;
§ 2N3.1;
§ 2R1.1;
§§ 2S1.1, 2S1.2, 2S1.3, 2S1.4;
§§ 2T1.1, 2T1.2, 2T1.3, 2T1.4, 2T1.5, 2T1.6, 2T1.7, 2T1.8, 2T1.9, 2T2.1, 2T2.2, 2T3.1, 2T3.2; or

(b) §§ 2E1.1, 2X1.1, 2X2.1, 2X3.1, 2X4.1, with respect to cases in which the offense level for the underlying offense is determined under one of the guideline sections listed in subsection (a) above.

Commentary

Application Notes

1. If the chapter Two offense guideline for a count is listed in subsection (a) or (b) above, and the applicable guideline results in the determination of the offense level by use of one of the listed guidelines, apply the provisions of §§ 8C2.2 through 8C2.9 to that count. For example, §§ 8C2.2 through 8C2.9 apply to an offense under § 2K2.1 (an offense guideline listed in subsection (a)), unless the cross reference in that guideline requires the offense level to be determined under an offense guideline section not listed in subsection (a).

2. If the chapter Two offense guideline for a count is not listed in subsection (a) or (b) above, but the applicable guideline results in the determination of the offense level by use of a listed guideline, apply the provisions of §§ 8C2.2 through 8C2.9 to that count. For example, where the conduct set forth in a count of conviction ordinarily referenced to § 2N2.1 (an offense guideline not listed in subsection (a)) establishes § 2F1.1 (Fraud and Deceit) as the applicable offense guideline (an offense guideline listed in subsection (a)), §§ 8C2.2 through 8C2.9 would apply because the actual offense level is determined under § 2F1.1 (Fraud and Deceit).

Background: The fine guidelines of this subpart apply only to offenses covered by the guideline sections set forth in subsection (a) above. For example, the provisions of §§ 8C2.2 through 8C2.9 do not apply to counts for which the applicable guideline offense level is determined under Chapter Two, Part Q (Offenses Involving the Environment). For such cases, § 8C2.10 (Determining the Fine for Other Counts) is applicable.

§ 8C2.2. Preliminary Determination of Inability to Pay Fine

(a) Where it is readily ascertainable that the organization cannot and is not likely to become able (even on an installment schedule) to pay restitution required under § 8B1.1 (Restitution—Organizations), a determination of the guideline fine range is unnecessary because, pursuant to § 8C3.3(a), no fine would be imposed.

(b) Where it is readily ascertainable through a preliminary determination of the minimum of the guideline fine range (see §§ 8C2.3 through 8C2.7) that the organization cannot and is not likely to become able (even on an installment schedule) to pay such minimum guideline fine, a further determination of the guideline fine range is unnecessary. Instead, the court may use the preliminary determination and impose the fine that would result from the application of § 8C3.3 (Reduction of Fine Based on Inability to Pay).

Commentary

Application Notes

1. In a case of a determination under subsection (a), a statement that 'the guideline fine range was not determined because it is readily ascertainable that the defendant cannot and is not likely to become able to pay restitution' is recommended.

2. In a case of a determination under subsection (b), a statement that 'no precise determination of the guideline fine range is required because it is readily ascertainable that the defendant cannot and is not likely to become able to pay the minimum of the guideline fine range' is recommended.

Background: Many organizational defendants lack the ability to pay restitution. In addition, many organizational defendants who may be able to pay restitution lack the ability to pay the minimum fine called for by § 8C2.7(a). In such cases, a complete determination of the guideline fine range may be a needless exercise. This section provides for an abbreviated determination of the guideline fine range that can be applied where it is readily ascertainable that the fine within the guideline fine range determined under § 8C2.7 (Guideline Fine Range—Organizations) would be reduced under § 8C3.3 (Reduction of Fine Based on Inability to Pay).

§ 8C2.3. Offense Level

(a) For each count covered by § 8C2.1 (Applicability of Fine Guidelines), use the

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applicable chapter Two guideline to determine the base offense level and apply, in the order listed, any appropriate adjustments contained in that guideline.

(b) Where there is more than one such count, apply chapter Three, part D (Multiple Counts) to determine the combined offense level.

Commentary

Application Notes

1. In determining the offense level under this section, 'defendant,' as used in chapter Two, includes any agent of the organization for whose conduct the organization is criminally responsible.

2. In determining the offense level under this section, apply the provisions of §§ 1B1.2 through 1B1.8. Do not apply the adjustments in chapter Three, parts A (Victim-Related Adjustments), B (Role in the Offense), C (Obstruction), and E (Acceptance of Responsibility).

§ 8C2.4. Base Fine

(a) The base fine is the greatest of:

(1) The amount from the table in subsection (d) below corresponding to the offense level determined under § 8C2.3 (Offense Level); or

(2) The pecuniary gain to the organization from the offense; or

(3) The pecuniary loss from the offense caused by the organization, to the extent the loss was caused intentionally, knowingly, or recklessly.

(b) *Provided*, That if the applicable offense guideline in chapter Two includes a special instruction for organizational fines, that special instruction shall be applied, as appropriate.

(c) *Provided, further*, That to the extent the calculation of either pecuniary gain or pecuniary loss would unduly complicate or prolong the sentencing process, that amount, i.e., gain or loss as appropriate, shall not be used for the determination of the base fine.

(d) Offense level fine Table

Offense level	Amount
6 or less	$5,000
7	7,500
8	10,000
9	15,000
10	20,000
11	30,000
12	40,000
13	60,000
14	85,000
15	125,000
16	175,000
17	250,000
18	350,000
19	500,000
20	650,000
21	910,000
22	1,200,000
23	1,600,000
24	2,100,000
25	2,800,000
26	3,700,000
27	4,800,000
28	6,300,000
29	8,100,000
30	10,500,000
31	13,500,000
32	17,500,000
33	22,000,000
34	28,500,000
35	36,000,000
36	46,500,000
37	57,500,000
38 or more	72,500,000

Commentary

Application Notes

1. *Pecuniary gain* and *pecuniary loss* are defined in the Commentary to § 8A1.2 (Application Instructions—Organizations).

2. Under 18 U.S.C. 3571(d), the court is not required to calculate pecuniary loss or pecuniary gain to the extent that determination of loss or gain would unduly complicate or prolong the sentencing process. Nevertheless, the court may need to approximate loss in order to calculate offense levels under chapter Two. See Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft). If loss is approximated for purposes of determining the applicable offense level, the court should use that approximation as the measure of pecuniary loss under this section.

3. In a case of an attempted offense or a conspiracy to commit an offense, pecuniary loss and pecuniary gain are to be determined in accordance with the principles stated in § 2X1.1 (Attempt, Solicitation, or Conspiracy).

4. In a case involving multiple participants (i.e., multiple organizations, or the organization and individual(s) unassociated with the organization), the applicable offense level is to be determined without regard to apportionment of the gain from or loss caused by the offense. See § 1B1.3 (Relevant Conduct). However, if the base fine is determined under subsections (a)(2) or (a)(3), the court may, as appropriate, apportion gain or loss considering the defendant's relative culpability and other pertinent factors.

5. Special instructions regarding the determination of the base fine are contained in: § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery); § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right); § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity); § 2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan); § 2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors); § 2S1.1 (Laundering of Monetary Instruments); § 2S1.2 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity); § 2S1.3 (Failure to Report Monetary Transactions; Structuring Transactions to Evade Reporting Requirements); and § 2S1.4 (Failure to File Currency and Monetary Instrument Report).

Background: Under this section, the base fine is determined in one of three ways: (1) The pecuniary gain to the organization from the offense; (2) the pecuniary loss caused by the organization; and (3) the amount, based on the offense level, from the table in subsection (d). In certain cases, special instructions for determining the loss, gain, or offense level amount apply. As a general rule, the base fine measures the seriousness of the offense. The determinants of the base fine are selected so that, in conjunction with the multipliers derived from the culpability score in § 8C2.5 (Culpability Score), they will result in guideline fine ranges appropriate to deter organizational criminal conduct and to provide incentives for organizations to maintain internal mechanisms for deterring, detecting, and reporting criminal conduct. In order to deter organizations from seeking to obtain financial reward through criminal conduct, this section provides that, when greatest, pecuniary gain to the organization is used to determine the base fine. In order to ensure that organizations will seek to prevent losses intentionally, knowingly, or recklessly caused by their agents, this section provides that, when greatest, pecuniary loss is used to determine the base fine in such circumstances.

Chapter Two provides special instructions for fines that include specific rules for determining the base fine in connection with certain types of offenses in which the calculation of loss or gain is difficult, e.g., price-fixing and money laundering. For these offenses, the special instructions tailor the base fine to circumstances that occur in connection with such offenses and that generally relate to the magnitude of loss or gain resulting from such offenses. The offense level fine table in subsection (d) provides a residual or 'fall-back' method for setting the base fine.

§ 8C2.5. Culpability Score

(a) Start with 5 points and apply subsections (b) through (g) below.

(b) Involvement in or Tolerance of Criminal Activity

If more than one applies, use the greatest:

(1) If—

(A) The organization had 5,000 or more employees and

(i) An individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense; or

(ii) Tolerance of the offense by substantial authority personnel was pervasive throughout the organization; or

(B) The unit of the organization within which the offense was committed had 5,000 or more employees and

(i) An individual within high-level personnel of the unit participated in, condoned, or was willfully ignorant of the offense; or

(ii) Tolerance of the offense by substantial authority personnel was pervasive throughout such unit, add 5 points; or

(2) If—

(A) the organization had 1,000 or more employees and

(i) An individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense; or

(ii) Tolerance of the offense by substantial authority personnel was pervasive throughout the organization; or

(B) The unit of the organization within which the offense was committed had 1,000 or more employees and

(i) An individual within high-level personnel of the unit participated in, condoned, or was willfully ignorant of the offense; or

(ii) Tolerance of the offense by substantial authority personnel was pervasive throughout such unit,

Add 4 points; or

(3) If—

(A) The organization had 200 or more employees and

(i) An individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense; or

(ii) Tolerance of the offense by substantial authority personnel was pervasive throughout the organization; or

(B) The unit of the organization within which the offense was committed had 200 or more employees and

(i) An individual within high-level personnel of the unit participated in, condoned, or was willfully ignorant of the offense; or

(ii) Tolerance of the offense by substantial authority personnel was pervasive throughout such unit,

Add 3 points; or

(4) If the organization had 50 or more employees and an individual within substantial authority personnel participated in, condoned, or was willfully ignorant of the offense, add 2 points; or

(5) If the organization had 10 or more employees and an individual within substantial authority personnel participated in, condoned, or was willfully ignorant of the offense, add 1 point.

(c) Prior History

If more than one applies, use the greater:

(1) If the organization (or separately-managed line of business) committed any part of the instant offense less than 10 years after (A) a criminal adjudication based on similar misconduct; or (B) civil or administrative adjudication(s) based on two or more separate instances of similar misconduct, add 1 point; or

(2) If the organization (or separately-managed line of business) committed any part of the instant offense less than 5 years after (A) a criminal adjudication based on similar misconduct; or (B) civil or administrative adjudication(s) based on two or more separate instances of similar misconduct, add 2 points.

(d) Violation of an Order

If more than one applies, use the greater:

(1) (A) If the commission of the instant offense violated a judicial order or injunction, other than a violation of a condition of probation; or (B) if the organization (or separately-managed line of business) violated a condition of probation by engaging in similar misconduct, i.e., misconduct similar to that for which it was placed on probation, add 2 points; or

(2) If the commission of the instant offense violated a condition of probation, add 1 point.

(e) Obstruction of Justice

If the organization willfully obstructed or impeded, attempted to obstruct or impede, or aided, abetted, or encouraged obstruction of justice during the investigation, prosecution, or sentencing of the instant offense, or, with knowledge thereof, failed to take reasonable steps to prevent such obstruction or impedance or attempted obstruction or impedance, add 3 points.

(f) Effective Program to Prevent and Detect Violations of Law

If the offense occurred despite an effective program to prevent and detect violations of law, subtract 3 points.

Provided, that this subsection does not apply if an individual within high-level personnel of the organization, a person within high-level personnel of the unit of the organization within which the offense was committed where the unit had 200 or more employees, or an individual responsible for the administration or enforcement of a program to prevent and detect violations of law participated in, condoned, or was willfully ignorant of the offense. Participation of an individual within substantial authority personnel in an offense results in a rebuttable presumption that the organization did not have an effective program to prevent and detect violations of law.

Provided, further, That this subsection does not apply if, after becoming aware of an offense, the organization unreasonably delayed reporting the offense to appropriate governmental authorities.

(g) Self-Reporting, Cooperation, and Acceptance of Responsibility

If more than one applies, use the greatest:

(1) If the organization (A) prior to an imminent threat of disclosure or government investigation; and (B) within a reasonably prompt time after becoming aware of the offense, reported the offense to appropriate governmental authorities, fully cooperated in the investigation, and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct, subtract 5 points; or

(2) If the organization fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct, subtract 2 points; or

(3) If the organization clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct, subtract 1 point.

Commentary

Application Notes

1. 'Substantial authority personnel,' 'condoned,' 'willfully ignorant of the offense,' 'similar misconduct,' 'prior criminal adjudication,' and 'effective program to prevent and detect violations of law,' are defined in the Commentary to § 8A1.2 (Application Instructions—Organizations).

2. For purposes of subsection (b), 'unit of the organization' means any reasonably distinct operational component of the organization. For example, a large organization may have several large units such as divisions or subsidiaries, as well as many smaller units such as specialized manufacturing, marketing, or accounting operations within these larger units. For purposes of this definition, all of these types of units are encompassed within the term 'unit of the organization.'

3. 'High-level personnel of the organization' is defined in the Commentary to § 8A1.2 (Application Instructions—Organizations). With respect to a unit with 200 or more employees, 'high-level personnel of a unit of the organization' means agents within the unit who set the policy for or control that unit. For example, if the managing agent of a unit with 200 employees participated in an offense, three points would be added under subsection (b)(3); if that organization had 1,000 employees and the managing agent of the unit with 200 employees were also within high-level personnel of the entire organization, four points (rather than three) would be added under subsection (b)(2).

4. Pervasiveness under subsection (b) will be case specific and depend on the number, and degree of responsibility, of individuals within substantial authority personnel who participated in, condoned, or were willfully ignorant of the offense. Fewer individuals need to be involved for a finding of pervasiveness if those individuals exercised a relatively high degree of authority. Pervasiveness can occur either within an organization as a whole or within a unit of an organization. For example, if an offense were committed in an organization with 1,000 employees but the tolerance of the offense was pervasive only within a unit of the organization with 200 employees (and no high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense), three points would be added under subsection (b)(3). If, in the same organization, tolerance of the offense was pervasive throughout the organization as a whole, or an individual within high-level personnel of the organization participated in the offense, four points (rather than three) would be added under subsection (b)(2).

5. A 'separately-managed line of business,' as used in subsections (c) and (d), is a subpart of a for-profit organization that has its own management, has a high degree of autonomy from higher managerial authority, and maintains its own separate books of account. Corporate subsidiaries and divisions frequently are separately-managed lines of business. Under subsection (c), in determining the prior history of an organization with separately-managed lines of business, only the prior conduct or criminal record of the separately-managed line of business involved in the instant offense is to be used. Under subsection (d), in the context of an organization with separately-managed lines of business, in making the determination whether a violation of a condition of probation involved engaging in similar misconduct, only the prior misconduct of the separately-managed line of business involved in the instant offense is to be considered.

6. Under subsection (c), in determining the prior history of an organization or separately-managed line of business, the conduct of the underlying economic entity shall be considered without regard to its legal structure or ownership. For example, if two companies merged and became separate divisions and separately managed lines of

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business within the merged company, each division would retain the prior history of its predecessor company. If a company reorganized and became a new legal entity, the new company would retain the prior history of the predecessor company. In contrast, if one company purchased the physical assets but not the ongoing business of another company, the prior history of the company selling the physical assets would not be transferred to the company purchasing the assets. However, if an organization is acquired by another organization in response to solicitations by appropriate federal government officials, the prior history of the acquired organization shall not be attributed to the acquiring organization.

7. Under subsections (c)(1)(B) and (c)(2)(B), the civil or administrative adjudication(s) must have occurred within the specified period (ten or five years) of the instant offense.

8. Adjust the culpability score for the factors listed in subsection (e) whether or not the offense guideline incorporates that factor, or that factor is inherent in the offense.

9. Subsection (e) applies where the obstruction is committed on behalf of the organization; it does not apply where an individual or individuals have attempted to conceal their misconduct from the organization.

10. The second proviso in subsection (f) contemplates that the organization will be allowed a reasonable period of time to conduct an internal investigation. In addition, no reporting is required by this proviso if the organization reasonably concluded, based on the information then available, that no offense had been committed.

11. 'Appropriate governmental authorities,' as used in subsections (f) and (g)(1), means the federal or state law enforcement, regulatory, or program officials having jurisdiction over such matter. To qualify for a reduction under subsection (g)(1), the report to appropriate governmental authorities must be made under the direction of the organization.

12. To qualify for a reduction under subsection (g)(1) or (g)(2), cooperation must be both timely and thorough. To be timely, the cooperation must begin essentially at the same time as the organization is officially notified of a criminal investigation. To be thorough, the cooperation should include the disclosure of all pertinent information known by the organization. A prime test of whether the organization has disclosed all pertinent information is whether the information is sufficient for law enforcement personnel to identify the nature and extent of the offense and the individual(s) responsible for the criminal conduct. However, the cooperation to be measured is the cooperation of the organization itself, not the cooperation of individuals within the organization. If, because of the lack of cooperation of particular individual(s), neither the organization nor law enforcement personnel are able to identify the culpable individual(s) within the organization despite the organization's efforts to cooperate fully, the organization may still be given credit for full cooperation.

13. Entry of a plea of guilty prior to the commencement of trial combined with truthful admission of involvement in the offense and related conduct ordinarily will constitute significant evidence of affirmative acceptance of responsibility under subsection (g), unless outweighed by conduct of the organization that is inconsistent with such acceptance of responsibility. This adjustment is not intended to apply to an organization that puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse. Conviction by trial, however, does not automatically preclude an organization from consideration for such a reduction. In rare situations, an organization may clearly demonstrate an acceptance of responsibility for its criminal conduct even though it exercises its constitutional right to a trial. This may occur, for example, where an organization goes to trial to assert and preserve issues that do not relate to factual guilt (e.g., to make a constitutional challenge to a statute or a challenge to the applicability of a statute to its conduct). In each such instance, however, a determination that an organization has accepted responsibility will be based primarily upon pretrial statements and conduct.

14. In making a determination with respect to subsection (g), the court may determine that the chief executive officer or highest ranking employee of an organization should appear at sentencing in order to signify that the organization has clearly demonstrated recognition and affirmative acceptance of responsibility.

Background: The increased culpability scores under subsection (b) are based on three interrelated principles. First, an organization is more culpable when individuals who manage the organization or who have substantial discretion in acting for the organization participate in, condone, or are willfully ignorant of criminal conduct. Second, as organizations become larger and their managements become more professional, participation in, condonation of, or willful ignorance of criminal conduct by such management is increasingly a breach of trust or abuse of position. Third, as organizations increase in size, the risk of criminal conduct beyond that reflected in the instant offense also increases whenever management's tolerance of that offense is pervasive. Because of the continuum of sizes of organizations and professionalization of management, subsection (b) gradually increases the culpability score based upon the size of the organization and the level and extent of the substantial authority personnel involvement.

§ 8C2.6 Minimum and Maximum Multipliers

Using the culpability score from § 8C2.5 (Culpability Score) and applying any applicable special instruction for fines in chapter Two, determine the applicable minimum and maximum fine multipliers from the table below.

Culpability score	Minimum multiplier	Maximum multiplier
10 or more	2.00	4.00
9	1.80	3.60
8	1.60	3.20
7	1.40	2.80
6	1.20	2.40
5	1.00	2.00
4	0.80	1.60
3	0.60	1.20
2	0.40	0.80
1	0.20	0.40
0 or less	0.05	0.20

Commentary

Application Note

1. A special instruction for fines in § 2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors) sets a floor for minimum and maximum multipliers in cases covered by that guideline.

§ 8C2.7 Guideline Fine Range—Organizations

(a) The minimum of the guideline fine range is determined by multiplying the base fine determined under § 8C2.4 (Base Fine) by the applicable minimum multiplier determined under § 8C2.6 (Minimum and Maximum Multipliers).

(b) The maximum of the guideline fine range is determined by multiplying the base fine determined under § 8C2.4 (Base fine) by the applicable maximum multiplier determined under § 8C2.6 (Minimum and Maximum Multipliers).

§ 8C2.8. Determining the Fine Within the Range (Policy Statement)

(a) In determining the amount of the fine within the applicable guideline range, the court should consider:

(1) The need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, and protect the public from further crimes of the organization;

(2) The organization's role in the offense;

(3) Any collateral consequences of conviction, including civil obligations arising from the organization's conduct;

(4) Any nonpecuniary loss caused or threatened by the offense;

(5) Whether the offense involved a vulnerable victim;

(6) Any prior criminal record of an individual within high-level personnel of the organization or high-level personnel of a unit of the organization who participated in, condoned, or was willfully ignorant of the criminal conduct;

(7) Any prior civil or criminal misconduct by the organization other than that counted under § 8C2.5(c);

(8) Any culpability score under § 8C2.5 (Culpability Score) higher than 10 or lower than 0;

(9) Partial but incomplete satisfaction of the conditions for one or more of the mitigating or aggravating factors set forth in § 8C2.5 (Culpability Score); and

(10) Any factor listed in 18 U.S.C. 3572(a).

(b) In addition, the court may consider the relative importance of any factor used to determine the range, including the pecuniary loss caused by the offense, the pecuniary gain from the offense, any specific offense characteristic used to determine the offense level, and any aggravating or mitigating factor used to determine the culpability score.

Commentary

Application Notes

1. Subsection (a)(2) provides that the court, in setting the fine within the guideline fine range, should consider the organization's role in the offense. This consideration is particularly appropriate if the guideline fine range does not take the organization's role in the offense into account. For example, the guideline fine range in an antitrust case does not take into consideration whether the organization was an organizer or leader of the conspiracy. A higher fine within the guideline fine range ordinarily will be appropriate for an organization that takes a leading role in such an offense.

2. Subsection (a)(3) provides that the court, in setting the fine within the guideline fine range, should consider any collateral consequences of conviction, including civil obligations arising from the organizations' conduct. As a general rule, collateral consequences that merely make victims whole provide no basis for reducing the fine within the guideline range. If criminal and civil sanctions are unlikely to make victims whole, this may provide a basis for a higher fine within the guideline fine range. If punitive collateral sanctions have been or will be imposed on the organization, this may provide a basis for a lower fine within the guideline fine range.

3. Subsection (a)(4) provides that the court, in setting the fine within the guideline fine range, should consider any nonpecuniary loss caused or threatened by the offense. To the extent that nonpecuniary loss caused or threatened (e.g., loss of or threat to human life; psychological injury; threat to national security) by the offense is not adequately considered in setting the guideline fine range, this factor provides a basis for a higher fine within the range. This factor is more likely to be applicable where the guideline fine range is determined by pecuniary loss or gain, rather than by offense level, because the Chapter Two offense levels frequently take actual or threatened nonpecuniary loss into account.

4. Subsection (a)(6) provides that the court, in setting the fine within the guideline fine range, should consider any prior criminal record of an individual within high-level personnel of the organization or a unit of the organization. Since an individual within high-level personnel either exercises substantial control over the organization or a unit of the organization or has a substantial role in the making of policy within the organization or a unit of the organization, any prior criminal misconduct of such an individual may be relevant to the determination of the appropriate fine for the organization.

5. Subsection (a)(7) provides that the court, in setting the fine within the guideline fine range, should consider any prior civil or criminal misconduct by the organization other than that counted under § 8C2.5(c). The civil and criminal misconduct counted under § 8C2.5(c) increases the guideline fine range. Civil or criminal misconduct other than that counted under § 8C2.5(c) may provide a basis for a higher fine within the range. In a case involving a pattern of illegality, an upward departure may be warranted.

6. Subsection (a)(8) provides that the court, in setting the fine within the guideline fine range, should consider any culpability score higher than ten or lower than zero. As the culpability score increases above ten, this may provide a basis for a higher fine within the range. Similarly, as the culpability score decreases below zero, this may provide a basis for a lower fine within the range.

7. Under subsection (b), the court, in determining the fine within the range, may consider any factor that it considered in determining the range. This allows for courts to differentiate between cases that have the same offense level but differ in seriousness (e.g., two fraud cases at offense level 12, one resulting in a loss of $21,000, the other $40,000). Similarly, this allows for courts to differentiate between two cases that have the same aggravating factors, but in which those factors vary in their intensity (e.g., two cases with upward adjustments to the culpability score under § 8C2.5(c)(2) (prior criminal adjudications within 5 years of the commencement of the instant offense, one involving a single conviction, the other involving two or more convictions).

Background: Subsection (a) includes factors that the court is required to consider under 18 U.S.C. 3553(a) and 3572(a) as well as additional factors that the Commission has determined may be relevant in a particular case. A number of factors required for consideration under 18 U.S.C. 3572(a) (e.g., pecuniary loss, the size of the organization) are used under the fine guidelines in this subpart to determine the fine range, and therefore are not specifically set out again in subsection (a) of this guideline. In unusual cases, factors listed in this section may provide a basis for departure.

§ 8C2.9. Disgorgement

The court shall add to the fine determined under § 8C2.8 (Determining the Fine Within the Range) any gain to the organization from the offense that has not and will not be paid as restitution or by way of other remedial measures.

Commentary

Application Note

1. This section is designed to ensure that the amount of any gain that has not and will not be taken from the organization for remedial purposes will be added to the fine. This section typically will apply in cases in which the organization has received gain from an offense but restitution or remedial efforts will not be required because the offense did not result in harm to identifiable victims, e.g., money laundering, obscenity, and regulatory reporting offenses. Money spent or to be spent to remedy the adverse effects of the offense, e.g., the cost to retrofit defective products, should be considered as disgorged gain. If the cost of remedial efforts made or to be made by the organization equals or exceeds the gain from the offense, this section will not apply.

§ 8C2.10. Determining the Fine for Other Counts

For any count or counts not covered under § 8C2.1 (Applicability of Fine Guidelines), the court should determine an appropriate fine by applying the provisions of 18 U.S.C. 3553 and 3572. The court should determine the appropriate fine amount, if any, to be imposed in addition to any fine determined under § 8C2.8 (Determining the Fine Within the Range) and § 8C2.9 (Disgorgement).

Commentary

Background: The Commission has not promulgated guidelines governing the setting of fines for counts not covered by § 8C2.1 (Applicability of Fine Guidelines). For such counts, the court should determine the appropriate fine based on the general statutory provisions governing sentencing. In cases that have a count or counts not covered by the guidelines in addition to a count or counts covered by the guidelines, the court shall apply the fine guidelines for the count(s) covered by the guidelines, and add any additional amount to the fine, as appropriate, for the count(s) not covered by the guidelines.

3. Implementing the Sentence of a Fine

§ 8C3.1. Imposing a Fine

(a) Except to the extent restricted by the maximum fine authorized by statute or any minimum fine required by statute, the fine or fine range shall be that determined under § 8C1.1 (Determining the Fine—Criminal Purpose Organizations); § 8C2.7 (Guideline Fine Range—Organizations) and § 8C2.9 (Disgorgement); or § 8C2.10 (Determining the Fine for Other Counts), as appropriate.

(b) Where the minimum guideline fine is greater than the maximum fine authorized by statute, the maximum fine authorized by statute shall be the guideline fine.

(c) Where the maximum guideline fine is less than a minimum fine required by statute, the minimum fine required by statute shall be the guideline fine.

Commentary

Background: This section sets forth the interaction of the fines or fine ranges determined under this chapter with the maximum fine authorized by statute and any minimum fine required by statute for the count or counts of conviction. The general statutory provisions governing a sentence of a fine are set forth in 18 U.S.C. 3571(c).

When the organization is convicted of multiple counts, the maximum fine authorized by statute may increase. For example, in the case of an organization convicted of three felony counts related to a $200,000 fraud, the maximum fine authorized by statute will be $500,000 on each count, for an aggregate maximum authorized fine of $1,500,000.

§ 8C3.2. Payment of the Fine—Organizations

(a) If the defendant operated primarily for a criminal purpose or primarily by criminal means, immediate payment of the fine shall be required.

(b) In any other case, immediate payment of the fine shall be required unless the court finds that the organization is financially unable to make immediate payment or that

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such payment would pose an undue burden on the organization. If the court permits other than immediate payment, it shall require full payment at the earliest possible date, either by requiring payment on a date certain or by establishing an installment schedule.

Commentary

Application Note

1. When the court permits other than immediate payment, the period provided for payment shall in no event exceed five years. 18 U.S.C. 3572(d).

§ 8C3.9. Reduction of Fine Based on Inability to Pay

(a) The court shall reduce the fine below that otherwise required by § 8C1.1 (Determining the Fine—Criminal Purpose Organizations), or § 8C2.7 (Guideline Fine Range—Organizations) and § 8C2.9 (Disgorgement), to the extent that imposition of such fine would impair its ability to make restitution to victims.

(b) The court may impose a fine below that otherwise required by § 8C2.7 (Guideline Fine Range—Organizations) and § 8C2.9 (Disgorgement) if the court finds that the organization is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay the minimum fine required by § 8C2.7 (Guideline Fine Range—Organizations) and § 8C2.9 (Disgorgement).

Provided, that the reduction under this subsection shall not be more than necessary to avoid substantially jeopardizing the continued viability of the organization.

Commentary

Application Note

1. For purposes of this section, an organization is not able to pay the minimum fine if, even with an installment schedule under § 8C3.2 (Payment of the Fine—Organizations), the payment of that fine would substantially jeopardize the continued existence of the organization.

Background: Subsection (a) carries out the requirement in 18 U.S.C. 3572(b) that the court impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the organization to make restitution for the offense; however, this section does not authorize a criminal purpose organization to remain in business in order to pay restitution.

§ 8C3.4. Fines Paid by Owners of Closely-Held Organizations

The court may offset the fine imposed upon a closely-held organization when one or more individuals, each of whom owns at least a 5 percent interest in the organization, has been fined in a federal criminal proceeding for the same offense conduct for which the organization is being sentenced. The amount of such offset shall not exceed the amount resulting from multiplying the total fines imposed on these individuals by these individuals' total percentage interest in the organization.

Commentary

Application Notes

1. For purposes of this section, an organization is closely held, regardless of its size, when relatively few individuals own it. In order for an organization to be closely held, ownership and management need not completely overlap.

2. This section does not apply to a fine imposed upon an individual that arises out of offense conduct different from that for which the organization is being sentenced.

Background: For practical purposes, most closely-held organizations are the alter ego of their owner-managers. In the case of criminal conduct by a closely-held corporation, the organization and the culpable individual(s) both may be convicted. As a general rule in such cases, appropriate punishment may be achieved by offsetting the fine imposed upon the organization by an amount that reflects the percentage ownership interest of the sentenced individuals and the magnitude of the fines imposed upon those individuals. For example, an organization is owned by five individuals, each of whom has a twenty percent interest; three of the individuals are convicted; and the combined fines imposed on these three equals $100,000. In this example, the fine imposed upon the organization may be offset by up to 60 percent of their combined fine amounts, i.e., by $60,000.

4. Departures From the Guideline Fine Range

Introductory Commentary

The statutory provisions governing departures are set forth in 18 U.S.C. 3553(b). Departure may be warranted if the court finds "that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described." This subpart sets forth certain factors that, in connection with certain offenses, may not have been adequately taken into consideration by the guidelines. In deciding whether departure is warranted, the court should consider the extent to which that factor is adequately taken into consideration by the guidelines and the relative importance or substantiality of that factor in the particular case.

To the extent that any policy statement from chapter Five, part K (Departures) is relevant to the organization, a departure from the applicable guideline fine range may be warranted. Some factors listed in chapter Five, part K that are particularly applicable to organizations are listed in this subpart. Other factors listed in chapter Five, part K may be applicable in particular cases. While this subpart lists factors that the Commission believes may constitute grounds for departure, the list is not exhaustive.

§ 8C4.1. Substantial Assistance to Authorities—Organizations (Policy Statement)

(a) Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another organization that has committed an offense, or in the investigation or prosecution of an individual not directly affiliated with the defendant who has committed an offense, the court may depart from the guidelines.

(b) The appropriate reduction shall be determined by the court for reasons stated on the record that may include, but are not limited to, consideration of the following:

(1) The court's evaluation of the significance and usefulness of the organization's assistance, taking into consideration the government's evaluation of the assistance rendered;

(2) The nature and extent of the organization's assistance; and

(3) the timeliness of the organization's assistance.

Commentary

Application Note

1. Departure under this section is intended for cases in which substantial assistance is provided in the investigation or prosecution of crimes committed by individuals not directly affiliated with the organization or by other organizations. It is not intended for assistance in the investigation or prosecution of the agents of the organization responsible for the offense for which the organization is being sentenced.

§ 8C4.2. Risk of Death or Bodily Injury (Policy Statement)

If the offense resulted in death or bodily injury, or involved a foreseeable risk of death or bodily injury, an upward departure may be warranted. The extent of any such departure should depend, among other factors, on the nature of the harm and the extent to which the harm was intended or knowingly risked, and the extent to which such harm or risk is taken into account within the applicable guideline fine range.

§ 8C4.3. Threat to National Security (Policy Statement)

If the offense constituted a threat to national security, an upward departure may be warranted.

§ 8C4.4. Threat to the Environment (Policy Statement)

If the offense presented a threat to the environment, an upward departure may be warranted.

§ 8C4.5. Threat to a Market (Policy Statement)

If the offense presented a risk to the integrity or continued existence of a market, an upward departure may be warranted. This section is applicable to both private markets (e.g., a financial market, a commodities market, or a market for consumer goods) and public markets (e.g., government contracting).

§ 8C4.6. Official Corruption (Policy Statement)

If the organization, in connection with the offense, bribed or unlawfully gave a gratuity to a public official, or attempted or conspired to bribe or unlawfully give a gratuity to a public official, an upward departure may be warranted.

§ 8C4.7. Public Entity (Policy Statement)

If the organization is a public entity, a downward departure may be warranted.

§ 8C4.8. Members or Beneficiaries of the Organization as Victims (Policy Statement)

If the members or beneficiaries, other than shareholders, of the organization are direct victims of the offense, a downward departure may be warranted. If the members or beneficiaries of an organization are direct victims of the offense, imposing a fine upon the organization may increase the burden upon the victims of the offense without achieving a deterrent effect. In such cases, a fine may not be appropriate. For example, departure may be appropriate if a labor union is convicted of embezzlement of pension funds.

§ 8C4.9. Remedial Costs that Greatly Exceed Gain (Policy Statement)

If the organization has paid or has agreed to pay remedial costs arising from the offense that greatly exceed the gain that the organization received from the offense, a downward departure may be warranted. In such a case, a substantial fine may not be necessary in order to achieve adequate punishment and deterrence. In deciding whether departure is appropriate, the court should consider the level and extent of substantial authority personnel involvement in the offense and the degree to which the loss exceeds the gain. If an individual within high-level personnel was involved in the offense, a departure would not be appropriate under this section. The lower the level and the more limited the extent of substantial authority personnel involvement in the offense, and the greater the degree to which remedial costs exceeded or will exceed gain, the less will be the need for a substantial fine to achieve adequate punishment and deterrence.

§ 8C4.10. Mandatory Programs to Prevent and Detect Violations of Law (Policy Statement)

If the organization's culpability score is reduced under § 8C2.5(f) (Effective Program to Prevent and Detect Violations of Law) and the organization had implemented its program in response to a court order or administrative order specifically directed at the organization, an upward departure may be warranted to offset, in part or in whole, such reduction.

§ 8C4.11. Exceptional Organizational Culpability (Policy Statement)

If the organization's culpability score is greater than 10, an upward departure may be appropriate.

If no individual within substantial authority personnel participated in, condoned, or was willfully ignorant of the offense; the organization at the time of the offense had an effective program to prevent and detect violations of law; and the base fine is determined under § 8C2.4(a)(1), § 8C2.4(a)(3), or a special instruction for fines in Chapter Two (Offense Conduct), a downward departure may be warranted. In a case meeting these criteria, the court may find that the organization had exceptionally low culpability and therefore a fine based on loss, offense level, or a special Chapter Two instruction results in a guideline fine range higher than necessary to achieve the purposes of sentencing. Nevertheless, such fine should not be lower than if determined under § 8C2.4(a)(3).

Part D—Organizational Probation

Introductory Commentary

Section 8D1.1 sets forth the circumstances under which a sentence to a term of probation is required. Sections 8D1.2 through 8D1.5 address the length of the probation term, conditions of probation, and violations of probation conditions.

§ 8D1.1. Imposition of Probation—Organizations

(a) The court shall order a term of probation:

(1) If such sentence is necessary to secure payment of restitution (§ 8B1.1), enforce a remedial order (§ 8B1.2), or ensure completion of community service (§ 8B1.3);

(2) If the organization is sentenced to pay a monetary penalty (e.g., restitution, fine, or special assessment), the penalty is not paid in full at the time of sentencing, and restrictions are necessary to safeguard the organization's ability to make payments;

(3) If, at the time of sentencing, an organization having 50 or more employees does not have an effective program to prevent and detect violations of law;

(4) If the organization within five years prior to sentencing engaged in similar misconduct, as determined by a prior criminal adjudication, and any part of the misconduct underlying the instant offense occurred after that adjudication;

(5) If an individual within high-level personnel of the organization or the unit of the organization within which the instant offense was committed participated in the misconduct underlying the instant offense and that individual within five years prior to sentencing engaged in similar misconduct, as determined by a prior criminal adjudication, and any part of the misconduct underlying the instant offense occurred after that adjudication;

(6) If such sentence is necessary to ensure that changes are made within the organization to reduce the likelihood of future criminal conduct;

(7) If the sentence imposed upon the organization does not include a fine; or

(8) If necessary to accomplish one or more of the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2).

Commentary

Background: Under 18 U.S.C. 3561(a), an organization may be sentenced to a term of probation. Under 18 U.S.C. 3561(c), imposition of a term of probation is required if the sentence imposed upon the organization does not include a fine.

§ 8D1.2. Term of Probation—Organizations

(a) When a sentence of probation is imposed—

(1) In the case of a felony, the term of probation shall be at least one year but not more than five years.

(2) In any other case, the term of probation shall be not more than five years.

Commentary

Application Note

1. Within the limits set by the guidelines, the term of probation should be sufficient, but not more than necessary, to accomplish the court's specific objectives in imposing the term of probation. The terms of probation set forth in this section are those provided in 18 U.S.C. 3561(b).

§ 8D1.3. Conditions of Probation—Organizations

(a) Pursuant to 18 U.S.C. 3563(a)(1), any sentence of probation shall include the condition that the organization shall not commit another federal, state, or local crime during the term of probation.

(b) Pursuant to 18 U.S.C. 3563(a)(2), if a sentence of probation is imposed for a felony, the court shall impose as a condition of probation at least one of the following: A fine, restitution, or community service, unless the court finds on the record that extraordinary circumstances exist that would make such condition plainly unreasonable, in which event the court shall impose one or more other conditions set forth in 18 U.S.C. 3563(b).

(c) The court may impose other conditions that (1) are reasonably related to the nature and circumstances of the offense or the history and characteristics of the organization; and (2) involve only such deprivations of liberty or property as are necessary to effect the purposes of sentencing.

§ 8D1.4. Recommended Conditions of Probation—Organizations (Policy Statement)

(a) The court may order the organization, at its expense and in the format and media specified by the court, to publicize the nature of the offense committed, the fact of conviction, the nature of the punishment imposed, and the steps that will be taken to prevent the recurrence of similar offenses.

(b) If probation is imposed under § 8D1.1(a)(2), the following conditions may be appropriate to the extent they appear necessary to safeguard the organization's ability to pay any deferred portion of an order of restitution, fine, or assessment:

(1) The organization shall make periodic submissions to the court or probation officer, at intervals specified by the court, reporting on the organization's financial condition and results of business operations, and accounting for the disposition of all funds received.

(2) The organization shall submit to: (A) A reasonable number of regular or unannounced examinations of its books and records at appropriate business premises by the probation officer or experts engaged by the court; and (B) interrogation of knowledgeable individuals within the organization. Compensation to and costs of any experts engaged by the court shall be paid by the organization.

(3) The organization shall be required to notify the court or probation officer immediately upon learning of (A) any material adverse change in its business or financial condition or prospects, or (B) the commencement of any bankruptcy

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proceeding, major civil litigation, criminal prosecution, or administrative proceeding against the organization, or any investigation or formal inquiry by governmental authorities regarding the organization.

(4) The organization shall be required to make periodic payments, as specified by the court, in the following priority: (1) Restitution; (2) fine; and (3) any other monetary sanction.

(c) If probation is ordered under § 8D1.1(a)(3), (4), (5), or (6), the following conditions may be appropriate:

(1) The organization shall develop and submit to the court a program to prevent and detect violations of law, including a schedule for implementation.

(2) Upon approval by the court of a program to prevent and detect violations of law, the organization shall notify its employees and shareholders of its criminal behavior and its program to prevent and detect violations of law. Such notice shall be in a form prescribed by the court

(3) The organization shall make periodic reports to the court or probation officer, at intervals and in a form specified by the court, regarding the organization's progress in implementing the program to prevent and detect violations of law. Among other things, such reports shall disclose any criminal prosecution, civil litigation, or administrative proceeding commenced against the organization, or any investigation or formal inquiry by governmental authorities of which the organization learned since its last report.

(4) In order to monitor whether the organization is following the program to prevent and detect violations of law, the organization shall submit to: (A) A reasonable number of regular or unannounced examinations of its books and records at appropriate business premises by the probation officer or experts engaged by the court; and (B) interrogation of knowledgeable individuals within the organization. Compensation to and costs of any experts engaged by the court shall be paid by the organization.

Commentary

Application Notes

1. In determining the conditions to be imposed when probation is ordered under § 8D1.1(a) (3) through (6), the court should consider the views of any governmental regulatory body that oversees conduct of the organization relating to the instant offense. To assess the efficacy of a program submitted by the organization, the court may employ appropriate experts who shall be afforded access to all material possessed by the organization that is necessary for a comprehensive assessment of the proposed program. The court should approve any program that appears reasonably calculated to prevent and detect violations of law, provided it is consistent with any applicable statutory or regulatory requirement.

2. Periodic reports submitted in accordance with subsection (c)(3) should be provided to any governmental regulatory body that oversees conduct of the organization relating to the instant offense.

§ 8D1.5. Violations of Conditions of Probation—Organizations (Policy Statement)

Upon a finding of a violation of a condition of probation, the court may extend the term of probation, impose more restrictive conditions of probation, or revoke probation and resentence the organization.

Commentary

Application Note

1. In the event of repeated, serious violations of conditions of probation, the appointment of a master or trustee may be appropriate to ensure compliance with court orders.

Part E—Special Assessments, Forfeitures, and Costs

§ 8E1.1 Special Assessments—Organizations

A special assessment must be imposed on an organization in the amount prescribed by statute.

Commentary

Background: Pursuant to 18 U.S.C. 3013(a), the court is required to impose assessments in the following amounts:

$50, if the organization is convicted of a Class B misdemeanor;

$125, if the organization is convicted of a Class A misdemeanor; and

$200, if the organization is convicted of a felony. 18 U.S.C. 3013.

The Act does not authorize the court to waive imposition of the assessment.

§ 8E1.2. Forfeiture—Organizations

Apply § 5E1.4 (Forfeiture).

§ 8E1.3. Assessment of Costs—Organizations

As provided in 28 U.S.C. § 1918, the court may order the organization to pay the costs of prosecution. In addition, specific statutory provisions mandate assessment of costs.".

Section 2B4.1 is amended by inserting the following additional subsection:

"(c) Special Instruction for Fines—Organizations.

In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use the greatest of: (1) the value of the unlawful payment; (2) the value of the benefit received or to be received in return for the unlawful payment; or (3) the consequential damages resulting from the unlawful payment.".

Section 2C1.1 is amended by inserting the following additional subsection:

"(d) Special Instruction for Fines—Organizations.

In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use the greatest of: (1) the value of the unlawful payment; (2) the value of the benefit received or to be received in return for the unlawful payment; or (3) the consequential damages resulting from the unlawful payment.".

Section 2C1.2 is amended by inserting the following additional subsection:

"(c) Special Instruction for Fines—Organizations.

In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use the value of the unlawful payment.".

Section 2E5.1 is amended by inserting the following additional subsection:

"(c) Special Instruction for Fines—Organizations.

In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use the greatest of: (1) The value of the unlawful payment; (2) if a bribe, the value of the benefit received or to be received in return for the unlawful payment; or (3) if a bribe, the consequential damages resulting from the unlawful payment.".

Section 2E5.8 is amended by inserting the following additional subsection:

"(c) Special Instruction for Fines—Organizations

In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use the greatest of: (1) The value of the unlawful payment; (2) if a bribe, the value of the benefit received or to be received in return for the unlawful payment; or (3) if a bribe, the consequential damages resulting from the unlawful payment."

The Commentary to section 2F1.1 captioned "Application Notes" is amended at Application Note 7 by inserting the following penultimate paragraph:

"For offenses involving diversion of government program payments, loss is the value of the monetary benefits diverted from intended recipients or uses.".

Section 2R1.1 is amended by inserting the following additional subsection:

"(d) Special Instructions for Fines—Organizations.

(1) In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use 20 percent of the volume of affected commerce.

(2) When applying § 8C2.6 (Minimum and Maximum Multipliers), neither the minimum nor maximum multiplier shall be less than 0.75.

(3) In a bid-rigging case in which the organization submitted one or more complementary bids, use as the organization's volume of commerce the greater of (A) the volume of commerce done by the organization in the goods or services that were affected by the violation, or (B) the largest contract on which the organization submitted a complementary bid in connection with the bid-rigging conspiracy.".

The Commentary to § 2R1.1 captioned "Application Notes" is amended by deleting Application Note 3 and inserting in lieu thereof:

"3. The fine for an organization is determined by applying Chapter Eight (Sentencing of Organizations). In selecting a fine for an organization within the guideline fine range, the court should consider both the gain to the organization from the offense and the loss caused by the organization. It is estimated that the average gain from price-fixing is 10 percent of the selling price. The loss from price-fixing exceeds the gain because, inter alia, injury is inflicted upon consumers who are unable or for other reasons do not buy the product at the higher prices. Because the loss from price-fixing exceeds the gain, subsection (d)(1) provides that 20 percent of the volume of affected commerce is to be used in lieu of the pecuniary loss under § 8C2.4(a)(3). The purpose for specifying a percent of the volume of commerce is to avoid the time and expense that would be required for the court to determine the actual gain or loss. In cases in which the actual monopoly overcharge appears to be either substantially more or substantially less than 10 percent, this factor should be considered in setting the fine within the guideline fine range.".

The Commentary to § 2R.1 is amended by deleting the final paragraph of Background and inserting in lieu thereof:

"Substantial fines are an essential part of the sentence. For an individual, the guideline fine range is from one to five percent of the volume of commerce, but not less than $20,000. For an organization, the guideline fine range is determined under Chapter Eight (Sentencing of Organizations), but pursuant to subsection (d)(2), the minimum multiplier is 0.75. This multiplier allows a minimum fine of 15 percent of the volume of commerce for the least serious case. The minimum multiplier of 0.75 was selected to provide an effective deterrent to antitrust offenses. At the same time, this minimum multiplier maintains incentives for desired organizational behavior. Because the Department of Justice has a well-established amnesty program for organizations that self-report antitrust offenses, no lower minimum multiplier is needed as an incentive for self-reporting. A minimum multiplier of 0.75 ensures that fines imposed in antitrust cases will exceed the average monopoly overcharge.

The Commission believes that most antitrust defendants have the resources and earning capacity to pay the fines called for by this guideline, at least over time on an installment basis. The statutory maximum fine is $350,000 for individuals and $1,000,000 for organizations, but is increased when there are convictions on multiple counts.".

Section 2S1.1 is amended by inserting the following additional subsection:

"(c) Special Instructions for Fines—Organizations.

In lieu of the applicable amount from the table in subsection (d) of § 8C2.4 (Base Fine), use:

(1) The greater of $250,000 or 100 percent of the value of the funds if subsections (a)(1) and (b)(1) are used to determine the offense level; or

(2) The greater of $200,000 or 70 percent of the value of the funds if subsections (a)(2) and (b)(1) are used to determine the offense level; or

(3) The greater of $200,000 or 70 percent of the value of the funds if subsection (a)(1) but not (b)(1) is used to determine the offense level; or

(4) The greater of $150,000 or 50 percent of the value of the funds if subsection (a)(2) but not (b)(1) is used to determine the offense level.".

Section 2S1.2 is amended by inserting the following additional subsection:

"(c) Special Instructions for Fines—Organizations.

In lieu of the applicable amount from the table in subsection (d) of § 8C2.4 (Base Fine), use:

(1) The greater of $175,000 or 60 percent of the value of the funds if subsection (b)(1)(A) is used to determine the offense level; or

(2) The greater of $150,000 or 50 percent of the value of the funds if subsection (b)(1)(B) is used to determine the offense level.".

Section 2S1.3 is amended by inserting the following additional subsection:

"(c) Special Instructions for Fines—Organizations.

In lieu of the applicable amount from the table in subsection (d) of § 8C2.4 (Base Fine), use:

(1) The greater of $125,000 or 30 percent of the value of the funds if subsections (a)(1) and (b)(1) are used to determine the offense level; or

(2) The greater of $50,000 or 20 percent of the value of the funds if subsection (a)(1) but not (b)(1) is used to determine the offense level.".

Section 2S1.4 is amended by inserting the following additional subsection:

"(c) Special Instructions for Fines—Organizations.

In lieu of the applicable amount from the table in subsection (d) of § 8C2.4 (Base Fine), use:

(1) The greater of $30,000 or 20 percent of the value of the funds if subsection (b)(1) or (b)(2) is used to determine the offense level; or

(2) The greater of $15,000 or 10 percent of the value of the funds, otherwise.".

Reason for the Amendment: Pursuant to its authority and in accord with its responsibilities under 28 U.S.C. 994(a), the Commission has promulgated guidelines and policy statements for the sentencing of organizational defendants. The Commentary contained within chapter Eight, particularly the Introductory and Background Commentary, provides a basic statement of the reasons for the Commission's recommendations.

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Part III

Department of Labor

Employment and Training Administration

20 CFR Part 625

Disaster Unemployment Assistance Program; Amendments to Regulations; Final Rule

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 625

RIN 1205-AA89

Disaster Unemployment Assistance Program; Amendments to Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration of the Department of Labor is issuing this notice of final rulemaking implementing the statutory amendments affecting the Disaster Unemployment Assistance Program. These amendments made significant changes in the statute governing the program of unemployment assistance to people unemployed because of a major disaster. The major amendments reduce the maximum duration of disaster unemployment assistance from one year to 26 weeks, disqualify an individual who is entitled to any unemployment insurance or waiting period credit, and provide a statutory right of appeal and fair hearing from decisions on eligibility for disaster unemployment assistance.

DATES: *Effective date:* The effective date of this final rule is May 16, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara Ann Farmer, Director, Office of Program Management in the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210: Telephone (202) 535-0610 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 407 of the Disaster Relief Act of 1974 (hereafter the DRA) set forth the amended outlines of the Disaster Unemployment Assistance Program (hereafter the "DUA Program"). The President was authorized by section 407 to provide to any individual unemployed as a result of a major disaster declared by the President under the Act "such benefit assistance as he deems appropriate while such individual is unemployed." Other terms of section 407 provided that disaster unemployment assistance (hereafter "DUA") was to be furnished to individuals for no longer than one year after the major disaster was declared; and for any week of unemployment a DUA payment was not to exceed the maximum weekly benefit amount authorized under the unemployment compensation law of the State in which the disaster occurred; and any DUA payment was to be reduced by the amount of any unemployment compensation or private income protection insurance compensation available to the individual for the same week of unemployment. The President was directed by section 407 to provide DUA through agreements with States which, in his judgment, had an adequate system for administering the DUA Program through existing State agencies.

Pursuant to a delegation of authority to the Secretary of Labor, United States Department of Labor, initially from the Secretary of Housing and Urban Development, and subsequently from the Director of the Federal Emergency Management Agency (hereafter FEMA), the DUA Program authorized by section 407 of the DRA was implemented in regulations promulgated by the Department of Labor and published at part 625 of title 20 of the Code of Federal Regulations (20 CFR part 625).

Title I of Public Law 100-707, approved on November 23, 1988, is cited as The Disaster Relief and Emergency Assistance Amendments of 1988 (hereafter the "DREA"). In title I, extensive amendments were made to the Disaster Relief Act of 1974. The short title of the Act was changed to The Robert T. Stafford Disaster Relief and Emergency Assistance Act (hereafter the "Stafford Act"); section 407 was redesignated as section 410; significant changes were made in redesignated section 410; and other changes and provisions were made affecting the DUA Program.

Section 113 of Public Law 100-707 directs that regulations implementing the amended Stafford Act shall be issued no later than the 180th day after the date of enactment (that is, November 23, 1988). Section 112 of Public Law 100-707 provides that the amendments in title I "shall not affect the administration of any assistance for a major disaster * * * declared by the President before the date of the enactment of this Act."

In view of the application of the amended Stafford Act to major disasters declared on and after November 23, 1988, and the statutory direction to issue regulations not later than the 180th day after November 23, 1988, the Department determined it was necessary to issue an interim final rule amending 20 CFR part 625, which became effective upon publication in the **Federal Register** (55 FR 550, January 5, 1990) and provided a 30-day comment period following such publication (ending February 5, 1990).

Since the amendments to section 410 took effect on November 23, 1988, and major disaster declarations were issued by the President soon after enactment, and it was necessary to apply the amendments in the DREA to such disasters, the Department determined, pursuant to 5 U.S.C. 553(b)(3)(B), that good cause existed for publishing the amendments to 20 CFR part 625 as an interim final rule, with a post-publication comment period, because a pre-publication comment period was impracticable and contrary to the public interest. For the same reasons the Department determined, pursuant to 5 U.S.C. 553(d), that good cause existed for making the amendments to 20 CFR part 625 effective upon publication in the **Federal Register**.

Further, in order to effectuate the amendments to the DUA Program in a timely fashion, pending the publication of the interim final rule, the Department issued Unemployment Insurance Program Letter No. (hereafter "UIPL") 16-89 to the States, and entered into modified agreements with the States to implement the amendments. UIPL 16-89 sets forth operating instructions to the States for implementing the amended DUA Program, and was published in the **Federal Register** on March 24, 1989, at 54 FR 12295. Change 1 to UIPL 16-89, containing further operating instructions, was published in the **Federal Register** on June 23, 1989, at 54 FR 26448.

The provisions of section 410 of the Stafford Act supersede the prior statute and regulations for the DUA Program, to the extent that the provisions of the Stafford Act are inconsistent with the prior statute and regulations. Therefore, the provisions of the Stafford Act are given effect as of their effective date, as is required by section 112 of the Stafford Act. In no case may any determination of entitlement to DUA Program benefits that are affected by the Stafford Act be based upon the prior statute or the regulations implementing the prior statute. The UIPLs discussed above govern decisions and agency actions from November 23, 1988, through January 4, 1990, with respect to major disasters declared on and after November 23, 1988. The interim final rule governs decisions and agency actions from January 5, 1990, to the day before the effective date of this final rule, with respect to major disasters declared on and after November 23, 1988, and this final rule governs decisions and agency actions on and after the date of publication of this document, with respect to major disasters declared on and after November 23, 1988. Although different documents govern different time periods with respect to major disasters declared on and after November 23, 1988, substantively these documents are the same. There were no substantive changes in the rules from the UIPLs to the interim final rule, or in this final rule. This final rule is changed only to the extent of adding details to the definition of "State", making conforming amendments to other sections of part 625, and for clarification of §§ 625.5 (a)(1) and (b)(1). However, the administration of the DUA Program with respect to any major disaster declared by the President prior to November 23, 1988, continues to be controlled by the regulations at 20 CFR part 625 (42 FR 46712, September 16, 1977) that were in effect prior to the publication of the interim final rule.

The significant DREA amendments to the Stafford Act affecting the DUA Program are:

Section 106(f)(1) of the DREA amends section 410(a) of the Stafford Act to provide that DUA is payable to an individual for a week of unemployment only if "the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of the Internal Revenue Code of 1986) or waiting period credit."

Section 106(f)(2) of the DREA amends section 410(a) of the Stafford Act to provide that DUA cannot be paid for any period longer than "26 weeks after the major disaster is declared."

Section 106(f)(3) of the DREA amends section 410(a) of the Stafford Act by repealing the provision that the DUA amount calculated and payable to an individual for a week of unemployment "shall be reduced by any amount of unemployment compensation or of private income protection insurance compensation available to such individual for such week of unemployment."

Section 106(f)(4) of the DREA amends section 410(b) of the Stafford Act to provide under subsection (b)(1) that "(a) State shall provide, without reimbursement from any funds provided under this Act, reemployment assistance services under any other law administered by the State to individuals receiving benefits under this section." Subsection (b)(2) provides that "(t)he President may provide (Federal) reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster and who reside in a State which does not provide such services."

Section 106(1) of the DREA amends title IV of the Stafford Act by adding a new section, section 423. This section provides a right of appeal from any decision regarding "eligibility for, from, or amount of assistance" under title IV, within 60 days after the date on which the applicant is notified of the award or denial of such assistance. Subsection (b) of this new section requires that a decision regarding such an appeal will be rendered within 90 days after the date on which the Federal official designated to administer such appeals receives notice of the appeal. Subsection (c) of this new section requires the President to issue rules which provide for the fair and impartial consideration of these appeals.

Section 103(d) of the DREA amends paragraphs (3) and (4) of section 102 of the Stafford Act to delete "the Canal Zone" from the definitions of "United States" and "State".

In addition, since publication of 20 CFR part 625 in 1977, several amendments were made to title III of the Social Security Act (hereafter "SSA") (42 U.S.C. 501 *et seq.*) and the Federal Unemployment Tax Act (hereafter "FUTA") (26 U.S.C. 3301 *et seq.*). These amendments relate to requirements that each State unemployment compensation law must contain in order for covered employers within the State to receive credits against the Federal unemployment tax imposed under section 3301, FUTA, and for the certification of payment of granted funds to the State under, title III of the SSA. This necessitated amending part 625 to reflect the current statutes as discussed in the preamble of the interim final rule published on January 5, 1990 (55 FR 550).

Amendments Made by the Interim Final Rule

The DRA was renamed "The Robert T. Stafford Disaster Relief and Emergency Assistance Act" by section 102(a) of the DREA. Conforming changes were made, where required, throughout the regulations.

Section 106(e) of the DREA redesignated section 407 of the Stafford Act, which established the DUA Program, as section 410. Conforming changes were made, where required, throughout the regulations.

The definition of "Disaster Assistance Period" under § 625.2(f) was revised to reflect the amendment to section 410(a) of the Stafford Act by section 106(f)(2) of the DREA. Under the amended section 410(a) DUA may not be paid for any period longer than "26 weeks after the major disaster is declared." This was a change from the previous 1-year period. In addition, the definition was revised to remove authority to prescribe a shorter DUA period. The Department has given additional consideration to removal of the authority to prescribe a shorter DUA period and believes that because the period was shortened to 26 weeks by the DREA, when taken in conjunction with the amendment to section 410(a) of the Stafford Act by section 106(f)(1), that DUA is payable to an individual for a week of unemployment only if "the individual is not entitled to any other unemployment compensation * * * or waiting period credit", there is no need to prescribe a shortened "Disaster Assistance Period." Under the previous provisions in section 407 (now 410) there may have been a need to shorten the period from one year because, not only was the payment period lengthy when compared to the payment period for weeks of total unemployment under State unemployment compensation laws, DUA was paid for the unemployment compensation waiting week, and also supplemented any unemployment compensation payable if the weekly DUA calculated amount was higher than the weekly unemployment compensation amount. A shortened period meant that all individuals receiving DUA ceased to be eligible for DUA as of the determined cut-off date. Now, inequities could be created by shortening the period to less than 26 weeks, in that some individuals could still be unemployed due to the disaster, but would no longer be eligible for DUA, whereas, individuals eligible for unemployment compensation and still unemployed due to the disaster would continue to receive benefits because, under the majority of State laws, the maximum period that an individual could claim weeks for being totally unemployed is generally 26 weeks of regular benefits, plus any additional or extended benefits. The Department believes deletion of the provision makes the DUA Program more closely akin to provisions of the unemployment compensation program; hence, the removal of the provision is appropriate.

Sections 625.2 (p), (q), and (r), 625.6 and 625.12 were modified by deleting the Canal Zone for treatment as a "State" for purposes of the DUA Program as required by amended section 102 of the Stafford Act. These sections are amended, and other conforming changes are made, to specifically identify all of the "States" that are included in the DUA Program, as discussed below.

In accordance with section 410(b) of the Stafford Act, § 625.3 was expanded to provide that a State shall provide, without reimbursement from any funds provided under the Act, reemployment assistance services under any other law administered by the State to individuals receiving DUA. For "States" that do not offer any reemployment assistance

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services, the Department of Labor, in consultation with the Federal Emergency Management Agency, will determine what services or programs are needed, and if any available Federal programs of reemployment services can be implemented in that jurisdiction.

Section 625.4 was modified by adding a paragraph (i) to provide that an individual shall not be eligible for DUA for any week the individual is eligible to receive any other unemployment compensation or is eligible for a waiting period credit for such week under any other unemployment compensation program. Also, § 625.13(a) was modified to delete the provision that unemployment compensation is deductible from weekly DUA payable. The term "unemployment compensation" is as it is defined in section 85(b) of the Internal Revenue Code of 1986 and further defined in § 625.2(d) of this part.

These changes mean that DUA is not payable for any week the individual is eligible for unemployment compensation or waiting period credit under any State law or any Federal law other than the Stafford Act. As set out in § 625.4(i), an individual is considered eligible for compensation (and thus ineligible for DUA) if payment (or credit) was denied because of the receipt of disqualifying income. An individual shall be considered ineligible for compensation (and thus potentially eligible for DUA) if the individual is under a disqualification for compensation for a cause (other than receipt of disqualifying income) that occurred before the individual's disaster related unemployment. An individual shall be considered eligible for DUA if the individual is ineligible for compensation for any other reason that is a direct result of the major disaster, including cases such as ineligibility for compensation because of an injury resulting from the disaster, or because of inability to reach the place of employment due to damage caused by the disaster.

Section 625.10 was changed significantly. The period for filing an appeal from a determination or redetermination is changed from the amount of time permitted by the applicable State unemployment compensation law to 60 days. The fair and impartial hearing and decision will continue to be administered by State unemployment compensation hearing officers except in Guam, American Samoa, and the Trust Territory of the Pacific Islands. However, it will be necessary for all DUA appeals to be decided by State hearing officers within 30 days of receipt of the appeal. The applicant will be allowed to appeal the State hearing officer's decision to the appropriate Regional Administrator within 15 days after the hearing officer's decision is delivered or mailed to the individual. The Regional Administrator will have 45 days to obtain the record from the State and to issue a decision on the appeal, but the decision by the Regional Administrator must in every case be issued within 90 days after the day on which the applicant's original appeal was received by the State agency, as is required by section 423(b) of the Stafford Act.

The definition of "compensation" contained in § 625.2(d) was revised to delete references to types of "compensation" no longer in existence because the authorizing statute expired or was repealed by the State. These references are "Emergency Compensation," "Special Unemployment Assistance," and the "Hawaii Agricultural Unemployment Compensation Law." The definition was also revised to incorporate the definition of "unemployment compensation" as that term is defined in section 85(b) of the Internal Revenue Code of 1986. As defined in section 85(b), the term "* * * means any amount received under a law of the United States or of a State which is in the nature of unemployment compensation." Under the cited provision of the Internal Revenue Code, the Internal Revenue Service (IRS) has the responsibility for implementing the provision, which they have defined in their regulations at 26 CFR 1.85–1. The Department followed the provisions of the IRS regulations in this definition as directed by Section 410(a) of the Stafford Act.

Sections 625.5 (a)(1) and (b)(1), relative to the reasons for unemployment being caused by the disaster, were clarified to conform with the definition of the term "week of unemployment," and to affirm that individuals who become partially unemployed as a result of the disaster are eligible for DUA benefits for the reasons discussed below.

A new § 625.30 was added to provide appeal procedures for Guam, American Samoa, and the Trust Territory of the Pacific Islands. This section and § 625.10 are amended in this final rule to conform to the amended definition of "State" as discussed below.

A discussion of the above and other changes that were required was presented in the **SUPPLEMENTARY INFORMATION** section in the interim final rule published January 5, 1990 (55 FR 550).

Other changes and technical corrections were made throughout Part 625 in the interim final rule to update the regulations and to conform the words and phrases to changes made in the Stafford Act. In addition, Appendices were added to include the Secretary of Labor's standards on claim filing, claim determinations, and fraud and overpayment detection, which were and are referred to in part 625.

Additionally, the Department provides, for the purpose of clarification of the eligibility of aliens for DUA, the following discussion of the requirement at § 625.4(g). This section, which was not changed by the interim final rule, provides that an individual, in order to be considered eligible for DUA for a week, must be able and available for work within the meaning of the applicable State law.

Section 625.4, in relevant part, provides:

> An individual shall be eligible to receive a payment of DUA with respect to a week of unemployment, in accordance with the provisions of the Act and this part if:
>
> * * * * *
>
> (g) The individual is able to work and available for work within the meaning of the applicable State law: *Provided,* That an individual shall be deemed to meet this requirement if any injury caused by the major disaster is the reason for inability to work or engage in self-employment * * *.

This provision derives from section 410(a) of the Stafford Act, authorizing the President to—

> provide to any individual *unemployed as a result of a major disaster such benefit assistance* as he deems appropriate while such individual is *unemployed* for the weeks of such *unemployment* with respect to which the individual is not entitled to any other *unemployment compensation* (as that term is defined in section 85(b) of the Internal Revenue Code of 1986) or waiting period credit. [Emphasis added.]

Thus, the DUA Program provides for a type of unemployment compensation in which cash benefits are payable to individuals with respect to their unemployment resulting from a major disaster. This is analogous to the basis under which compensation is awarded under the Federal-State unemployment compensation program. Under section 3304(a)(4), FUTA, and, section 303(a)(5), SSA, a conforming State law must provide that all money withdrawn from the unemployment fund of the State shall be used solely "in the payment of unemployment compensation", with certain exceptions not relevant here. FUTA section 3306(h) defines "compensation" as "cash benefits payable to individuals with respect to their unemployment." Taken together, these provisions of Federal law limit the payment of compensation to individuals who are unemployed and able and available for work. As stated in Unemployment Compensation Program Letter No. 103, issued by the Social Security Board on December 10, 1945:

> Unemployment compensation is intended to provide an income to those persons who would ordinarily earn an income, but who lack the opportunity to do so because they cannot obtain suitable work. If a claimant, for whatever reason, is *unable to work, or is not available for employment,* he is not entitled to unemployment benefits since he would not be earning an income even if suitable work were obtainable. [Emphasis added.]

The requirement is equally applicable to the DUA Program because, for the same reasons, an individual is not "unemployed as a result of a major disaster" if the individual is "unable to work, or is not available for employment * * *."

Accordingly, in implementing section 410(a) of the Stafford Act, § 625.4(g) adapted the able and available requirement from the Federal-State unemployment compensation program by requiring the individual to be able and available "within the meaning of the applicable State law * * *" and by further providing that the requirement is met "if any injury caused by the major disaster is the reason for inability to work or engage in self employment * * *."

This able and available requirement pertains to all applicants for DUA, including aliens. The Department addressed the availability requirement for unemployment compensation as it pertains to aliens in UIPL 1–86 (51 FR 29713, August 20, 1986) and UIPLs 12–87 (54 FR 10102), and 12–87, Change 1 (54 FR 10113) and 6–89 (54 FR 10116) all published on March 9, 1989. The Department stated in these documents that an alien must be authorized to work by the Immigration and Naturalization Service (INS) to be available for work.

Congress' concern with the payment of benefits to certain aliens is expressed in two other provisions of Federal unemployment compensation law. Section 303(f), SSA, requires States to administer an income and eligibility verification system which meets the requirements of section 1137 of the SSA. Section 1137(d) provides that, as a condition of eligibility for unemployment compensation, a State shall require each individual to sign a declaration, under penalty of perjury, whether the individual is a citizen or national of the United States, and, if not, whether he/she is in "satisfactory immigration status." In the latter case, an individual must present proof of satisfactory immigration status and States are required to verify the status with the INS.

As discussed above, the able and available provisions of State law apply to the DUA Program; hence, an alien must be authorized by the INS to work for those weeks for which DUA is claimed in order to be eligible for DUA payments. If an alien is unable to work because of an injury due to the disaster, which would meet the exception condition of § 625.4(g), such individual must still be authorized by INS to work for those weeks for which DUA is claimed in order to be eligible for DUA. An alien who is not in "satisfactory immigration status" has no eligibility status for the payment of DUA. An injury due to the disaster does not confer "satisfactory immigration status" on such alien. The exception provision of § 625.4(g) only waives the State law able to work and availability requirement during the period the individual is unable to work.

Further, section 3304(a)(14)(A), FUTA, provides that unemployment compensation may not be paid on the basis of services performed by an alien unless such alien was lawfully admitted for permanent residence in the United States at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed. This provision is equally applicable to the DUA Program because § 625.6(a)(1) provides, in computing the DUA weekly amount, that wages used in the computation "shall not include employment or self employment, or wages earned or paid for employment or self–employment, which is contrary to or prohibited by any Federal law." Since FUTA prohibits the use of wages earned by an alien unless such alien is in one of the three eligible categories under section 3304(a)(14)(A), wages earned by an alien who is not at the time in a "satisfactory immigration status" cannot be used in computing the DUA weekly amount because such wages are "contrary to or prohibited by any Federal law."

Comments Received

The interim final rule amending the DUA regulations at part 625 was published in the **Federal Register** on January 5, 1990 (55 FR 550), and comments were solicited through February 5, 1990. Three timely comments were received from State Employment Security Agencies. The interim final rule was further reviewed by the Department in light of the comments received. A summary of the comments received and the Department's responses are set out below.

The first comment received was from the Department for Human Resources, Cabinet for Human Resources, Commonwealth of Kentucky, stating that, after review by the Director, Division of Unemployment Insurance, and program staff, that "as a concensus, we have no comments."

The second comment received was from the Employment Development Department, Health and Welfare Agency, State of California. The agency proposed that § 625.2(w)(2), defining a "week of unemployment" for a self-employed individual be amended. It suggested language to clarify that a self-employed individual performing full-time services in a week is not totally unemployed during that week, even in the absence of earnings. Specifically, the agency suggested adding the phrase "without respect to earnings received or not received", to the second sentence of the definition after the words, "(a) week of total unemployment is a week during which the individual performs no services in self-employment * * *."

The agency believed the addition of the phrase would clarify that employment and earnings are two separate issues and that a self-employed individual can be fully employed in a given week without receiving any earnings, and conversely, that an individual can be in receipt of earnings from previous work while being totally unemployed.

Section 625.2(w)(2) was not amended by the interim final rule published on January 5, 1990. To amend the provision in this final rule is not appropriate as the public and other interested parties would have no opportunity to comment on the change.

Further, the Department does not believe the amendatory language suggested by the California agency is necessary. The current wording of § 625.2(w)(2) is sufficient to deny DUA benefits to any self-employed individual for any week the individual performs full-time services, irrespective of earnings. A "(w)eek of unemployment" is defined at § 625.2(w)(2) for an unemployed self-employed individual as "any week during which the individual is totally, part-totally, or partially unemployed." An individual will not satisfy the definition within § 625.2(w)(2) of "totally, part-totally, or partially unemployed" during any week the individual performs full time services. In particular, a "week of total

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unemployment" is defined as "a week during which the individual performs no services in self-employment or in an employer-employee relationship, or performs services less than full-time and earns wages not exceeding the minimum earnings allowance prescribed in the applicable State law." (Emphasis added.) Thus, an individual cannot experience a "week of total unemployment" during any week he or she performs full-time service. Neither will such individual satisfy the definitions of "part-totally" or "partially unemployed". Accordingly, no change will be made to the regulations.

The third comment received was from the Georgia Department of Labor. Generally the agency felt the changes set out in the regulations appear to simplify management of the program, with one exception. The agency commented that the 60-day appeal period in which to appeal a determination or redetermination by a State agency "is not in line with the 'usual' appeal rights period and would not appear necessary." The agency stated that a 30-day appeal period would be adequate.

This 60-day appeal period at § 625.10(a) is required by section 423 of the Stafford Act. Section 106(1) of the DREA amended title IV of the Stafford Act by adding new section 423. Section 423(a) explicitly mandates that, "(a)ny decision regarding eligibility for, from, or amount of assistance under this title may be appealed within 60 days after the applicant for assistance is notified of the award or denial of award of such assistance." Therefore, the Department was required to provide a 60-day appeal period and cannot accept the Georgia agency's suggestion for a 30-day appeal period.

Therefore, no change will be made in the regulations based on the comments for the reasons explained above.

Reasons for Amendments to the Final Rule

After Departmental consideration, however, the definition of "State" and related sections of part 625 are being amended to coincide with the definition of "State" utilized by the FEMA as discussed below. All of these changes are consistent with the interim final rule, and merely add details to the applicability of the DUA Program to certain South Pacific "States".

The FEMA published a final rule on January 23, 1990 (55 FR 2284) amending certain subparts of their regulations at 44 CFR part 206. Specifically at 44 CFR 206.2(a)(22) the definition of "State" reads "Any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, or the Republic of the Marshall Islands."

The definition of "State", as set forth in the interim final rule at § 625.2(p), does not specifically list the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia or the Republic of the Marshall Islands as "States". The reason was that these jurisdictions were formerly part of the Trust Territory of the Pacific Islands and the Department followed the definition of "State" provided in section 102(3) of the Stafford Act (42 U.S.C. 5122), pending a determination whether the three independent "States" were included in the DUA Program. The FEMA's change in their final regulations caused the Department to investigate the status of the jurisdictions and determine whether the definition of "State" in part 625 should be amended. The Department's conclusion is that the following Public Laws and discussion are the basis for amending § 625.2(p) and conforming amendments to other sections of part 625.

Public Law 94-241 established the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America". Section 502(a)(1) of the Public Law provides that the following laws of the United States in existence that apply to the Commonwealth of the Northern Mariana Islands, shall include "those laws which provide federal services and financial assistance programs * * * as they apply to Guam * * *." This includes all programs under the Stafford Act, including DUA.

Public Law 99-239 created a "Compact of Free Association" for the Federated States of Micronesia and the Republic of the Marshall Islands. Section 221(a)(2) of the Compact, as set forth in the Public Law, provides:

(a) The Government of the United States shall make available to the Marshall Islands and the Federated States of Micronesia, in accordance with and to the extent provided in the separate agreements referred to in section 232, without compensation and at the levels equivalent to those available to the Trust Territory of the Pacific Islands during the year prior to the effective date of this Compact, the services and related programs:

* * * * *

(2) of the United States Federal Emergency Management Agency * * *.

The separate agreement, entitled "Article X", "Federal Emergency Management Agency Services and Related Programs", provides:

1. The Federal Emergency Management Agency of the United States (FEMA) shall make available disaster assistance in the Marshall Islands or the Federated States of Micronesia at the levels equivalent to those available to the Trust Territory of the Pacific Islands during the year prior to the effective date of the Compact.

2. These disaster assistance services and related programs shall be provided pursuant to:

(a) The provisions of the Disaster Relief Act of 1974, 42 U.S.C. 5121, *et seq.*;

(b) Applicable Executive Orders of the President of the United States; and

(c) Implementing FEMA regulations.

3. Assistance under the Disaster Relief Act of 1974 shall be made available to the Marshall Islands or the Federated States of Micronesia in the same manner as assistance is made available to a "State". Solely for the purpose of applying the Disaster Relief Act of 1974 pursuant to this Article, the Marshall Islands or the Federated States of Micronesia shall be considered included within the definitions of "United States" and "State" as those terms are defined in 42 U.S.C. 5122 * * *.

The above Agreement was implemented in 1987 prior to the enactment of the DREA in 1988. Therefore, any reference to the DRA is now to the Stafford Act, and this includes the DUA Program.

Accordingly, the Department includes in the final regulations the definition of "State" as used in the FEMA regulations at 44 CFR 206.2(a)(22) and as stipulated in paragraph 3. of Article X of the "Compact" Agreement defining "State", and the "Covenant", that requires application of DUA as applied to Guam. Conforming amendments are made to other sections of part 625 as discussed below.

In addition, the Department is clarifying §§ 625.5 (a)(1) and (b)(1), which provide reasons for unemployment caused by a major disaster, to remove any doubt that an individual who becomes unemployed in any week after the "date the disaster began" directly due to the disaster is unemployed due to the disaster. These sections were amended by the interim final rule to conform with the definition of the term "week of unemployment", so that individuals who became partially unemployed as a result of the disaster will be eligible for DUA benefits. However, in amending the sections in the interim final rule, the wording that an individual has unemployment caused by the major disaster if such individual has a "week of unemployment" during the week immediately following the "date the major disaster began" was inserted. This could be interpreted to mean that only if an individual became unemployed during the first week after the "date the major disaster began" would such individual be eligible for DUA. Unemployment beginning in subsequent weeks could not be considered as unemployment due to the disaster.

This interpretation is contrary to the Department's operating instructions implementing the DUA Program and the Department's intent in amending these sections. Therefore, to remove this unintended restriction, the Department is amending §§ 625.5 (a)(1) and (b)(1) as indicated below.

Amendments to the Final Rule

The phrase "Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands," is inserted after the term "American Samoa," in the following sections of part 625:

—In the table of contents heading for § 625.30.

—In the definition of "State", "State agency" and "State law" at §§ 625.2(p), (q)(1), (q)(2) and (r)(1)(ii) respectively.

—In § 625.3(b) providing for Federal reemployment assistance.

Section 625.6(a)(1) is appropriately amended to provide that in all States except Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, and the Trust Territory of the Pacific Islands, the computation of the weekly DUA amount shall be in accordance with the provisions of the applicable State law for regular compensation, with certain exceptions.

Section 625.6(b), computation of the DUA weekly amount for Guam, is amended to include the Commonwealth of the Northern Mariana Islands since the "Covenant" provides that programs be administered as they apply to Guam.

Section 625.6(c) is amended in order that the Federated States of Micronesia and the Republic of the Marshall Islands be included in the method for determining the weekly DUA amount payable for the Trust Territory of the Pacific Islands as provided in section 221(a)(2) of the "Compact" and "Article X" of the separate agreements.

Conforming changes are made to §§ 625.10 (a)(1) and (b)(1) in order to provide DUA appeal and review rights for these newly defined "States". Sections 625.30 (heading), 625.30 (a) and (b)(1), appeal procedures to be followed, are also revised accordingly.

Sections 625.5 (a)(1) and (b)(1) are amended by removing the phrase "during the week immediately" following the appropriate citation of § 625.2(w) defining a "week of unemployment".

Effective Date

For purposes of the above amendments, the Department has determined, pursuant to 5 U.S.C. 553(b)(3)(B), that good cause exists for publishing the amendments to 20 CFR part 625 as a final rule because publication for comment is impracticable, unnecessary, and contrary to the public interest. For the same reasons, and because the amendments remove restrictive conditions, the Department has determined, pursuant to 5 U.S.C. 553(d), that good cause exists for making the amendments effective on publication.

Drafting Information

This document was prepared under the direction and control of the Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210: Telephone (202) 523-7831 (this is not a toll-free number).

Classification—Executive Order 12291

The final rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. Ch 35, these regulations do not increase paperwork burden. Previous approval has been obtained from the Office of Management and Budget (OMB) for the recordkeeping and reporting requirements required by nonamended sections of 20 CFR part 625 under OMB control numbers 1205-0234 and 1205-0051.

Regulatory Flexibility Act

No regulatory flexibility analysis is required where the rule "will not * * * have a significant economic impact on a substantial number of small entities" (5 U.S.C. 605(b)). The definition of the term "small entity" under 5 U.S.C. 601(6) does not include States. Since these regulations involve an entitlement program administered by the States, and are directed to the States, no regulatory flexibility analysis is required. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

Catalog of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance at No. 17.225, "Disaster Unemployment Assistance (DUA)."

Lists of Subjects in 20 CFR Part 625

Disaster Unemployment Assistance, Labor, reemployment services, unemployment compensation.

Words of Issuance

Accordingly, for the reasons set out in the preamble, chapter V of title 20, Code of Federal Regulations, the interim final rule amending 20 CFR part 625, which was published at 55 FR 550-563 on January 5, 1990, is adopted as a final rule with the following changes:

PART 625—DISASTER UNEMPLOYMENT ASSISTANCE

1. The authority citation for part 625 continues to read as follows:

Authority: 42 U.S.C. 1302; 42 U.S.C. 5164; 42 U.S.C. 5189a(c); 42 U.S.C. 5201(a); Executive Order 12673 of March 23, 1989 (54 FR 12571); delegation of authority from the Director of the Federal Emergency Management Agency to the Secretary of Labor, effective December 1, 1985 (51 FR 4986); Secretary's Order No. 4-75 (40 FR 18515).

2. In the following sections of 20 CFR part 625 following the comma after the phrase "American Samoa," within the phrase "Guam, American Samoa, and the Trust Territory of the Pacific Islands" add the phrase "Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands,":

§§ 625.2, 625.6, 625.10, 625.30 [Amended]

Table of Contents at § 625.30;

(b) Section 625.2(p);

(c) Section 625.2 (q)(1) and (q)(2);

(d) Section 625.2(r)(1)(ii);

(e) Section 625.6(a)(1);

(f) Section 625.10(a)(1);

(g) Section 625.10(b)(1);

(h) Section 625.30 heading;

(j) Section 625.30(a);

(j) Section 625.30(b)(1).

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§ 625.2 [Amended]

3. In the following section add the phrase ", Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands," after the term "American Samoa":

(a) Section 625.2(b).

§ 625.6 [Amended]

4. In the following section add the phrase "and Commonwealth of the Northern Mariana Islands" after the term "Guam":

(a) Section 625.6(b) heading and first sentence.

§ 625.6 [Amended]

5. In the following section add the phrase ", Federated States of Micronesia, Republic of the Marshall Islands" after the term "American Samoa":

(a) Section 625.6(c) heading and first sentence.

§ 625.5 [Amended]

6. In the following section remove the phrase "during the week immediately" after the citation "§ 625.2(w)(1)" and before the word "following":

(a) Section 625.5(a)(1).

§ 625.5 [Amended]

7. In the following section remove the phrase "during the week immediately" after the citation "§ 625.2(w)(2)" and before the word "following":

(a) Section 625.5(b)(1).

Signed at Washington, DC, on May 8, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-11612 Filed 5-15-91; 8:45 am]

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federal register

Thursday
May 16, 1991

Part IV

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 11

Law and Order on Indian Reservations; Proposed Rules

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

Law and Order on Indian Reservations

RIN 1076-AC98

April 17, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) proposes amending the regulations contained in 25 CFR part 11 to add the Muskogee Area Tribes (Eastern Oklahoma) to the list of "Indian reservations" in § 11.1(a) where Courts of Indian Offenses are established to render law and order over "Indian Country", within the meaning of 18 U.S.C. 1151, outside the jurisdiction of state courts insofar as offenses committed by Indians are concerned. It is necessary to establish a Court of Indian Offenses for the Muskogee area in order to protect lives and property until the question of state jurisdiction is resolved.

DATES: Comments from all interested parties must be received on or before July 15, 1991.

ADDRESSES: Mail or hand-deliver comments and materials concerning this proposal to the Area Director, Muskogee Area Office, Bureau of Indian Affairs, Old Federal Building and Courthouse, Muskogee, OK 74401. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dennis Springwater, Assistant Area Director, Muskogee Area Office, Bureau of Indian Affairs (see **ADDRESSES**) at (918) 687-2296, or FTS 736-2296; or Hilda Manuel, Chief, Branch of Judicial Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C St. NW., MS 2614-MIB, Washington, DC 20240, at (202) 208-4400, or FTS 268-4400.

SUPPLEMENTARY INFORMATION: The authority to issue these rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." See *Tillett* v. *Hodel*, 730 F.Supp. 361 (W.D.Okla. 1990). This proposed rule is published in exercise of the rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

Recent decisions by both federal and state courts have raised serious questions whether the State of Oklahoma possesses criminal jurisdiction over offenses committed by Indians on certain Indian lands in the former Indian Territory, the historic realm of the five Civilized Tribes, and what now constitutes 40 counties in eastern Oklahoma, within the jurisdiction of the Muskogee Area Office of the Bureau of Indian Affairs (BIA). For example, a recent decision of the U.S. Court of Appeals for the 10th Circuit, *Ross* v. *Neff*, 905 F.2d 1349 (June 4, 1990), held that state law enforcement officers had no authority to arrest an Indian for an offense committed on Indian tribal lands in Adair County, Oklahoma. Consequently, some state officials have been reluctant or unwilling to prosecute Indian crimes committed on Indian lands. Furthermore, none of the Indian tribes in the Muskogee Area has a tribal court currently exercising criminal jurisdiction over misdemeanors committed by Indians on Indian lands. In addition to the 40 counties of the former Indian Territory, Osage County is also under the jurisdiction of the Muskogee Area, and the State of Oklahoma has been held to lack criminal jurisdiction over Indians committing crimes in Indian Country in that county as well. [*State* v. *Burnett*, 671 P.2d 1165 (Ok. Crim. app. 1983)].

Thus, it is immediately necessary for the BIA to establish a Court of Indian Offenses for the Muskogee Area to protect the lives, persons, and property of people residing on Indian country lands, until the question of state jurisdiction is finally resolved or until the local Indian tribes establish tribal courts to exercise criminal jurisdiction over their own members. Judges of the Court of Indian Offenses shall be authorized to exercise all the authority provided under 25 CFR part 11, including issuance of arrest and search warrants pursuant to 25 CFR 11.14 and 11.16 and section 4(2)(A) of the Indian Law Enforcement Reform Act of 1990, Public Law 101-379, 104 Stat. 473 (August 18, 1990). Officials of the BIA had already begun to set up a provisional Court of Indian Offenses pursuant to 25 CFR 11.3(f) for the Muskogee Area to address this law enforcement need. This proposed rule is intended to solicit comments on the permanent establishment of such a Court of Indian Offenses.

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the location identified in the addresses section of this preamble.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

The Department of the Interior has determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

This rule does not contain information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The primary author of this document is Tim Vollmann, Regional Solicitor, Southwest Region, U.S. Department of the Interior, 333 W. 4th Street, room 3068, Tulsa, OK 74103; Telephone (918) 581-7502; FTS 745-7502.

List of Subjects in 25 CFR Part 11

Courts, Indians—law, Law enforcement, Penalties.

For the reasons set out in the preamble, part 11 of title 25, chapter I of the Code of the Federal Regulations is proposed to be amended as set forth below.

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

1. The authority citation for 25 CFR part 11 continues to read as follows:

Authority: R.S. 463; 25 U.S.C. 2. Interpret or apply sec. 1, 36 Stat. 558; 25 U.S.C. 200, unless otherwise noted.

2. Section 11.1(a) is amended by adding paragraph (a)(23) to read as follows:

§ 11.1 Application of regulations and information collection.

(a) * * *

(23) Muskogee Area Tribes (Oklahoma).

* * * * *

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-11558 Filed 5-15-91; 8:45 am]

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Thursday
May 16, 1991

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 91

Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

RIN 1018-AB54

Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

SUMMARY: The Service is revising the regulations governing the conduct of the annual Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest. The amendments include the following changes: (1) Revising the Display Agreement; (2) listing the eligible species; (3) changing the scoring system; (4) establishing criteria for the selection of judges; and (5) listing the display locations.

DATES: These amendments are effective June 17, 1991. This year's contest will be held on November 5 and 6, 1991, beginning at 11 a.m. on Tuesday, and 9 a.m. on Wednesday. Persons wishing to enter this year's contest may submit entries anytime after July 1, but all must be postmarked no later than midnight September 15.

ADDRESSES: Requests for contest entry information should be addressed to: Federal Duck Stamp Office, Department of the Interior, U.S. Fish and Wildlife Service, Suite 2058, Washington, DC 20240. The contest will be conducted in the following location: Department of the Interior Building Auditorium, 1849 C Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Norma E. Opgrand, Chief, Federal Duck Stamp Program, U.S. Fish and Wildlife Service, Suite 2058, Washington, DC 20240. Telephone: (202) 208-4354 or 208-5508.

SUPPLEMENTARY INFORMATION: Proposed revisions to the regulations governing the conduct of the Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest were published in the Federal Register on February 5, 1991 (56 FR 4591). Eleven hundred copies of the proposed revisions for the Federal Duck Stamp Contest were sent to artists, former Duck Stamp Contest judges, wildlife art publishers and dealers, stamp dealers, editors and publishers of wildlife art magazines, editors and publishers of outdoor magazines, as well as the general public.

Seventy-one responses were received, sixty-four through the mail, six by telephone and one by fax. These comments are located in the Federal Duck Stamp Office, 1849 C Street NW., Suite 2058, Washington, DC 20240 and are available for review by the public at that location between 8 am and 4:30 pm, Monday through Friday.

The majority of comments agreed with the proposed changes. Numerous commenters indicated appreciation for providing the opportunity to participate in this decision-making process, and praised changes made in recent years.

Following are the proposed revisions that were published in the February 5 Federal Register, an analysis of the comments received on each issue, and the final decision and explanation for that decision on each issue:

1. Revising the Display Agreement

The name of The Display Agreement will be changed to The Display and Participation Agreement.

The winning artist must agree to promote the Federal Duck Stamp Program at the following events at the artist's expense. (1) The Waterfowl Festival, Easton, Maryland—immediately following the contest. The festival will pay for lodging; (2) The Wildlife West Festival—the weekend before Thanksgiving. The festival will pay for transportation and lodging expenses; (3) Signing of the Duck Stamp Ceremony at the Bureau of Engraving and Printing, Washington, DC—April; (4) First Day Ceremony, Smithsonian Institution—June 30; (5) First Day of Sale Ceremony—in the home town area of the artist—July 1; (6) Two days at the American Philatelic Society—mid August; (7) Two days at the BALPEX Show, Baltimore, Maryland—over Labor Day weekend; (8) Two days at the J.N. Ding Darling National Wildlife Refuge—mid October. The J.N. Ding Darling Society will pay for transportation and lodging; (9) Two days at the National Postage Show, New York, New York—first week in November; (10) Three days at the Federal Duck Stamp Contest, Washington, DC—first part of November; (11) Two days at INTERPEX, New York, New York—middle of March; (12) Two days at WESTPEX, San Francisco, California—first of May; and (13) Two days at COMPEX, Chicago, Illinois—over Memorial Day weekend.

The artist must agree to make brief remarks at all events where the artist is promoting the Federal Duck Stamp Program, as well as provide autographs without charge to the public or the Federal Government.

The artist must agree to sketch two designs to be used for the First Day of Sale postal cancellations.

The artist must agree to design the Australian Duck Stamp if requested to do so.

Comments: Fifty-seven commenters addressed issues relating to The Display and Participation Agreement.

No comments were received on the name change from "The Display Agreement" to "The Display and Participation Agreement."

Fifty of the fifty-seven comments addressing The Display and Participation agreement related to promotion of the Duck Stamp Program. Ten commenters supported the promotion, with statements such as "I do feel that it is not only important, but also imperative for the winning artist to promote the Federal Duck Stamp Program. The artist promotion effort is simply a must for keeping the program alive and successful." Six of the comments were neutral or asked for clarification concerning the promotion. Thirty-four commenters opposed the proposed requirement because of too much time away from the artist's main job, the expense involved which might preclude the average individual from participating, and those living in remote areas of the country could not easily meet the time commitment or absorb the personal expense involved.

Four commenters addressed the public speaking requirement. One had no problem, the other three opposed it, with one individual stating that artists are not articulate speakers.

Of the eight comments directed to the postal cancellation, four favored the requirement and four opposed it.

Twenty-three people commented on designing the Australian Duck Stamp. Six favored designing the stamp, while seventeen opposed participating in the Australian program.

Decision: The final agreement will be revised to read: "The Display and Participation Agreement."

"The winning artist must agree to promote the Federal Duck Stamp Program at the following events with expenses paid by the organizations indicated:

"(1) *Waterfowl Festival,* Easton, Maryland—immediately following the contest. The festival will pay for lodging; the Federal Duck Stamp Program will pay for transportation. Three days.

(2) *The Wildlife West Festival,* Redlands, California—the weekend before Thanksgiving. The festival will pay for transportation and lodging. Three days.

(3) *Signing of the Duck Stamp Ceremony*—Bureau of Engraving and Printing, Washington, DC—April or May. The Federal Duck Stamp Program will pay for transportation and lodging according to current Federal Government Per Diem rates. Two days.

(4) *J.N. "Ding" Darling Birthday Event,* J.N. "Ding" Darling National Wildlife Refuge—Weekend nearest the 20th of October. The J.N. "Ding" Darling Society will pay for transportation and lodging. Three days.

(5) *First Day Ceremony,* Smithsonian Institution, Washington, DC—June 30. The Federal Duck Stamp Program will pay for transportation and lodging according to current Federal Government Per Diem rates. One day.

(6) *First Day of Sale Ceremony,* Home town area of the artist—July 1. Event in the home town area of the artist—no travel costs involved. One day.

(7) *Federal Duck Stamp Contest*—Department of the Interior, Washington, DC—first part of November. The Federal Duck Stamp Program will pay for transportation and lodging according to current Federal Government Per Diem rates. Three days.

"The winning artist will be invited and encouraged to promote the Federal Duck Stamp Program at at least three of the following five events at the artist's expense:

(1) *American Philatelic Society,* located in a different city each year—mid August. Two days.

(2) *Balpex Stamp Show,* Baltimore, Maryland—Labor Day weekend. Two days.

(3) *INTERPEX Stamp Show,* New York City, New York—mid March. Two days.

(4) *WESTPEX Stamp Show,* San Francisco, California—end of April. Two days.

(5) *COMPEX Stamp Show,* Chicago, Illinois—Memorial Day weekend. Two days.

"The winning artist will be asked to make brief remarks at seven events while promoting the Federal Duck Stamp Program.

"The artist will assist in promoting the Federal Duck Stamp Program by providing autographs without charge to the public or the Federal Government.

"The artist will be invited to provide line drawings for the postal cancellations for the first two days of sale of the Duck Stamp.

"All requirements cited in this section will be subject to negotiation when extenuating circumstances exist for the artist. Although all examples of extenuating circumstances are not listed in this document, some examples of such circumstances are as follows: (1) The health of the artist does not permit the artist to travel to some or any of the events identified; (2) the home of the artist is located in such a remote area that the schedule identified could not be met as stipulated; (3) emergencies prohibit the artist from participating."

Explanation: All requirements cited in this section have been carried out on a volunteer basis by the five most recent Federal Duck Stamp Artists. It is at their suggestion that these events be stipulated in the regulations. Without exception, these artists have willingly participated in the events and stated that they are important for promotion of wetlands and waterfowl conservation and the Federal Duck Stamp Program; and that the events have benefited them personally. Some artists have said that seeing their Duck Stamp design come off the press at the Bureau of Engraving and Printing is one of the highlights of their career. These same artists have individually expressed the desire to contribute to the program because it enabled them to enjoy a lucrative financial return. Beyond these requirements, the current Duck Stamp artist, along with her publisher, are contributing a significant financial donation to wetlands conservation. Those funds will be matched 2 or 3 times by other individuals and/or organizations.

Although there was concern raised in some of the comments about the expense involved to the artist in attending the events, it is estimated that these costs represent no more than one to two percent (and perhaps less) of the revenue that the artist receives as a result of winning the Duck Stamp Contest. With the changes indicated, this percentage will be even less.

The number of required public appearances has decreased and other events are now identified as optional. Funding for the artist will be covered for seven events.

The public looks forward to meeting the Federal Duck Stamp artist and hearing him or her speak. The winning artist becomes an overnight celebrity. The remarks made, whether brief or extensive are valued by the public. Each artist brings a different perspective to the program which is reflected in these public appearances. Extensive guidance and assistance is provided to the artist by the Federal Duck Stamp Office staff and, to date, public speaking has not proven to be a burden to the artist. The artists who have participated in the past have grown through this experience; however, if the speaking is a problem for any particular artist, the necessary accommodations will be made.

The two line drawings are simple sketches that are reproduced in the form of a postal cancellation. In past years they have often been a replication of the bird or birds from the winning design. These line drawings neither represent a large investment of time nor are they comparable to the Duck Stamp design. The postal cancellations are each used by the U.S. Postal Service for the official cancellation for the two days and are prized by the collecting world. Many past artists enjoyed having the opportunity to design the postal cancellations; however, if the winning artist does not want to participate, another designer will be secured.

Although several individuals favored the idea of designing the Australian Duck Stamp, a number of commenters strongly opposed it. Duck Stamp artists who are invited by the Australian Wildlife Fund to design the stamp have the option to participate. To date, three former Federal Duck Stamp artists have designed the first three Australian Duck Stamps. During the last three years, the Australian Wildlife Fund and the Federal Duck Stamp Program have worked closely together in an effort to strengthen international relations in the conservation world and to promote public awareness of wetlands and waterfowl conservation. It was in that spirit of cooperation that the regulation was proposed, with the understanding that the artist would be compensated. The Australian Wildlife Fund, as a licensee of the Federal Duck Stamp Program, has generously provided a 30% royalty—26% more than the normal fee received for the Migratory Bird Conservation Fund—on all sales of a licensed product that contains the Australian Duck Stamp and the U.S. Duck Stamp. However, due to the number of comments in opposition to a requirement to design the Australian Duck Stamp, the proposal is not included in the final regulations.

2. Listing the Eligible Species

The species for the ten forthcoming Duck Stamp Contests will be listed in the supplementary portion of the Duck Stamp Contest regulations:

1991: (1) Black Scoter (2) Spectacled Eider (3) Barrow's Golden Eye (4) Red-Breasted Merganser (5) Surf Scoter.

1992: (1) Canada Goose (2) Mallard (3) Canvasback (4) Greater Scaup (5) Northern pintail.

1993: The four remaining species from 1991 plus the Mottled Duck.

1994: The four remaining species from 1992 plus the Greenwinged Teal.

1995: The four remaining species from 1993.

1996: The four remaining species from 1994 plus the Black Duck.

1997: The three remaining species from 1995.

1998: The four remaining species from 1996 plus the Ruddy Duck.

1999: The two remaining species from 1997.

2000: The four remaining species from 1998 plus the American Widgeon.

Comments: Twenty-one individuals commented on Listing the Eligible Species. Of those, thirteen favored the proposed change, three suggested that only one species be eligible each year, and five requested a return to the old method of allowing 37 to be eligible each year. Several stated that they were pleased that the more familiar species will be eligible every other year.

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Decision: The final eligible species will be the same as those listed in the proposed rule.

Explanation: Part of the mission of the Federal Duck Stamp Program involves educating the public about the 42 eligible species for the contest. Exposing the public to the lesser-known species has allowed many people to become familiar with birds they have never seen. Many individuals commented that they were pleased to learn of these species. Many artists said they have grown by being forced to do research on species that they would not have explored if they could select one with which they were familiar. Six species have not appeared on a Duck Stamp, and until all have been selected to be on the stamp, an elimination process will take place every other year to achieve that goal. In the year 2001, there will be only one species eligible for the contest. At that time, the contest will be closely evaluated to determine the merits of continuing with only one species, as many of the State contests do. Numerous artists have suggested that the contest would be more fair if only one species were eligible because the judges would be comparing "apples to apples". Others have stated that the contest would be very dull if all entries were of the same species and that the judges would get bored and perhaps not be as careful with the judging if they reviewed 600–1200 entries of the same species. The elimination process will be closely monitored to determine whether there should be a change to one species on a permanent basis. At present, there will be five species eligible and the winning species will be an ineligible entry for 37 years.

3. Changing the Scoring System

The scores used will be one to five for all rounds except that the first round will remain as in the past, judged in or out. In addition, the score of each judge will be tallied to give the score for each entry. The previous method of dropping the high and low score will be eliminated.

Comments: Thirty commenters addressed the scoring system. Thirteen people stated that they favored the change. Four stated that they favored keeping the old method of judging. The other comments recommended additional changes such as: Separate the scoring for habitat and the species; have each judge vote for the area of expertise that he or she represents; adopt the scoring system used by the Leigh Yawkey Woodson Museum; drop the "birds in action" criteria; concerns were also expressed that too many ties would occur in the last round if the scoring was changed to one to five. Several comments were general in nature.

Decision: The proposed scoring system will be adopted.

Explanation: The new scoring system will be closely monitored and if there is an indication that further changes need to be made, they will be addressed in 1992. Judges currently spend several hours studying the paintings the day before the judging begins. The two technical advisors are the head designer from the Bureau of Engraving and Printing and a waterfowl biologist from the U.S. Fish and Wildlife Service.

4. Establishing Criteria for the Selection of Judges

The criteria will include some art credentials for a minimum of two judges, with the remaining judges representing the conservation community, the philatelic arena, and the sporting world.

Comments: Twenty-two commenters addressed the selection and qualifications of the contest judges. These comments reflected diverse opinions, some feeling strongly for judges with art credentials, others expressing a strong desire for biologists who could identify anatomical accuracy. Many comments were positive about establishing some criteria for the judges. Some individuals apparently did not understand that the reason for the art contest is to provide a design for the stamp. Several individuals suggested that the previous contest winner should be one of the judges. Suggestions were made to prohibit publishers or persons affiliated with publishers from being selected as judges. A suggestion was made to establish a pool of about 12 outstanding judges and 5 would judge the contest each year. Some stated that the proposed qualifications were too restrictive.

Decision: Based on the concerns raised, the proposed Selection and Qualification of Contest Judges will be changed to read:

"*Qualifications:* The panel of five judges will be made up of individuals, all of whom have one or more of the following prerequisites: Recognized art credentials, knowledge of the anatomical makeup and the natural habitat of the eligible waterfowl species, an understanding of the wildlife sporting world in which the Duck Stamp is used, an awareness of philately and the role the Duck Stamp plays in stamp collecting, and demonstrated support for the conservation of waterfowl and wetlands through active involvement in the conservation community."

Explanation: The final regulations address the substantive issues raised. Several previous winners of the contest were not in favor of the winning artist participating as a judge at the following contest. They indicated that it was too difficult to be objective and that they could recognize the designers of too many entries. The suggestion of a pool of judges will be further evaluated; however, it may be that such a system would place too much control over the winning designs in the hands of too few people. The tradition of the Duck Stamp Contest is important, and the honor of participating as a judge has become a special part of that tradition.

5. Listing the Display Locations

Approximately 100 entries that receive the highest scores by the judges will be displayed at the Wildlife West Festival, San Bernardino, CA—the last two weeks in November. Approximately 20 of the highest ranked entries from the Federal Duck Stamp Contest will appear on display at the following locations as well as the Wildlife West Festival: (1) Waterfowl Festival, Easton, MD—immediately after the Duck Stamp Contest; (2) American Museum of Wildlife Art, Red Wing, MN—month of December; (3) National Firearms Museum, Washington, DC—January and the first half of February; (4) Southeastern Wildlife Exposition, Charleston, SC—middle of February; and (5) World Wildlife Exposition, Gatlinburg, TN—middle of May.

Comments: Ten commented on the Display Locations. All were in favor of displaying the entries. Some suggested that more sites throughout the country should be identified where the entries could be displayed and that 100 entries be considered for display.

Decision: Display locations will remain as proposed.

Explanation: The Federal Duck Stamp Office will look for additional locations where the finalists can be displayed with the goal of a tour lasting until September 30 of each year. The office will also investigate the possibility of a tour consisting of a total of 100 entries, as suggested.

Subpart A

6. Section 91.1 is revised to read as follows:

Section 91.1 Purpose of Regulations

(a) The purpose of these regulations is to establish procedures for selecting a design that will be used for the annual Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp).

(b) All individuals entering the contest must comply with these regulations. A copy of the regulations along with the Reproduction Rights and Display and Participation Agreements may be requested from the Federal Duck Stamp Office, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

(c) All contestants from the most recent contest will be sent a copy of the regulations, the Display and Participation Agreement, and the Reproduction Rights Agreement.

Comments: No comments were received.

Decision: Section 91.1 remains as proposed.

7. Section 91.2 is amended by removing the definition for display agreement and adding a definition for display and participation agreement in alphabetical order to read as follows:

Section 91.2 Definitions

* * * * *

Display and Participation Agreement—a document that each contestant must complete, sign and submit with the entry. The signed agreement permits the Service to display the entry at various locations for promotional purposes, and requires the artist to participate in events in behalf of the Federal Duck Stamp Program.

* * * * *

Comments: No comments were received.

Decision: Section 91.2 remains as proposed.

8. In Section 91.4, the introductory text is revised to read as follows:

Section 91.4 Eligible Species

Five or fewer of the species listed below will be identified as eligible each year; those eligible species will be provided to each contestant with the information provided in section 91.1.

* * * * *

Comments: No comments were received.

Decision: Section 91.4 remains as proposed.

Subpart B—Procedures for Entering the Contest

9. In Section 91.12, the last sentence is revised to read as follows:

Section 91.12 Contest Eligibility

* * * All entrants must submit signed Reproduction Rights and Display and Participation Agreements.

Comments: No comments were received.

Decision: Section 91.12 remains as proposed.

10. In Section 91.14, the first sentence is revised to read as follows:

Section 91.14 Restrictions on Subject Matter of Entry

A live portrayal of any bird(s) of the five or fewer identified eligible species must be the dominant feature of the design.

* * * * *

Comments: No comments were received.

Decision: Section 91.14 remains as proposed.

10a. Section 91.13 Technical Requirements.

Comments: One commented on the technical requirements, requesting more clarification of the section.

Decision: The technical requirements were not proposed to be changed and no revisions will occur at this time.

Explanation: The regulation reads that the design must be 7 inches high and 10 inches wide—this refers to the portion of the design exposed to the viewer's eye and inside the confines of the mat. The actual design may be larger; in fact the design could cover the entire 9 inches by 12 inches maximum outside dimensions of the entry. The one-inch mat, however, will cover that area of the design outside the 7 inch by 10-inch dimension. This clarification addresses the concern raised in the comment.

11. Section 91.15 is revised to read as follows:

Section 91.15 Suitability of Entry for Engraving

All entries should be drawn with fullest attention to clarity of detail and the relationship of tonal values. These prerequisites are important to interpret pictorial elements to hand engraving for printing, as they determine the engrave line techniques and direction. The engraver relies on the accuracy of the artist's work for successful interpretation. The bird or birds shown in the entry will be the only portion of the design that will be engraved. The remaining portion of the design will be done in offset printing. The other engraved portion of the stamp will be the letters and the numerals. The engraver is primarily responsible for line interpretation and discipline, creating the miniature image of bird(s) appearing on the stamp.

Comments: Five comments were received concerning Suitability of the Entry for Engraving. The comment from the Bureau of Engraving and Printing indicated that the engraving on the stamp could include more than the bird, the letters and numerals. Three commenters suggested that the engraving aspect of the stamp be eliminated to allow more artist freedom in the design. One requested clarification on what makes a design suitable for the engraving process.

Decision: The proposal will be changed to read: "All entries should be drawn with fullest attention to clarity of detail and the relationship of tonal values. These prerequisites are important to interpret pictorial elements to hand engraving for printing, as they determine the engraved line techniques and direction. The engraver relies on the accuracy of the artist's work for successful interpretation. The engraver is primarily responsible for the line interpretation and discipline, creating the miniature image of the bird(s) appearing on the stamp."

Explanation: Since it is possible that the Bureau of Engraving and Printing may engrave more than the birds, numerals and letters—even though that has not been done in recent years—the proposal is revised as indicated above. The engraving aspect of the stamp is one of the reasons it has become a popular collector's item. Sales of Duck Stamps to collectors have increased substantially during recent years and for that reason, elimination of the engraving aspect will not be considered at this time.

12. Section 91.16 is revised to read as follows:

Section 91.16 Submission Procedures for Entry

(a) Each contestant may submit only one entry. Each entry must be accompanied by a non-refundable entrance fee and a completed and signed Reproduction Rights Agreement and a completed and signed Display and Participation Agreement. The bottom portion of the Reproduction Rights Agreement must be attached to the back of the entry.

(b) Each entry should be appropriately wrapped to protect the art work and sent by registered mail, certified mail, express mail, overnight delivery service or hand delivered to: Federal Duck Stamp Office, U.S. Fish and Wildlife Service, Suite 2058, Department of the Interior, Washington, DC 20240.

Comments: No comments were received.

Decision: Section 91.16 remains as proposed.

Subpart C—Procedures for Administering the Contest

13. Section 91.21 is revised to read as follows:

Section 91.21 Selection and Qualification of Contest Judges

(a) *Selection:* Five voting judges and one alternate judge will be selected annually by the Secretary of the Interior

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Current employees of the Fish and Wildlife Service and their relatives are ineligible to serve as judges for the contest. The judges will be reimbursed for reasonable travel expenses. The judges will be announced on the first day of the contest.

(b) *Qualifications:* At least one of the five judges will have recognized art credentials such as: (1) An academic degree in art, art history or equivalent from an accredited college or university; (2) Practicing as an artist on a professional basis or as an artist as a hobby; (3) Connected with the editing or publishing of a major art publication; and (4) Teaching art. Other judges may represent the conservation community, the philatelic arena, and/or the wildlife sporting community.

Comments: Twenty-two commenters addressed the selection and qualifications of the contest judges. These comments reflected diverse opinions, some feeling strongly for judges with art credentials, others expressing a strong desire for biologists who could identify anatomical accuracy. Many comments were positive about establishing some criteria for the judges. Some individuals apparently did not understand that the reason for the art contest is to provide a design for the stamp. Several individuals suggested that the previous contest winner should be one of the judges. Suggestions were made to prohibit publishers or persons affiliated with publishers from being selected as judges. A suggestion was made to establish a pool of about 12 outstanding judges and 5 would judge the contest each year. Some stated that the proposed qualifications were too restrictive.

Decision: Section 91.21 is revised to read as follows:

Section 91.21 Selection and Qualification of Contest Judges

(a) *Selection:* Five voting judges and one alternate judge will be selected annually by the Secretary of the Interior. Current employees of the Fish and Wildlife Service and their relatives are ineligible to serve as judges for the contest. The judges will be reimbursed for reasonable travel expenses. The judges will be announced on the first day of the contest.

(b) *Qualifications:* The panel of five judges will be made up of individuals, all of whom have one or more of the following prerequisites: recognized art credentials, knowledge of the anatomical makeup and the natural habitat of the eligible waterfowl species, an understanding of the wildlife sporting world in which the Duck Stamp is used, an awareness of philately and the role the Duck Stamp plays in stamp collecting, and demonstrated support for the conservation of waterfowl and wetlands through active involvement in the conservation community.

Explanation: Refer to Item #4—Establishing Criteria for the Selection of Judges.

14. Section 91.24 is amended by revising paragraphs (b), (c), and (f) through (i); and adding new paragraph (j) to read as follows:

Section 91.24 Contest Procedures

* * * * *

(b) Prior to the first round of judging, and prior to the opening of the contest to the public, the judges will spend an additional two hours reviewing the entries.

(c) In the first round of judging, all qualified entries will be shown one at a time to the judges by the Contest Coordinator or a contest staff member. The judges will vote "in" or "out" on each entry; those entries receiving a majority of votes "in" will be eligible for the second round of judging. The remaining entries will be placed on display as a group for public viewing.

* * * * *

(f) The technical advisors from the Department of the Interior and the Bureau of Engraving and Printing will do a critical analysis of the entries that will be judged in the second round and advise the judges of any serious anatomical problems and/or any serious design problems for the engraver.

(g) In the second round of judging, each entry selected in the first round, plus the additional entries selected by judges, will be shown one at a time to the judges by the Contest Coordinator or by a contest staff member. The judges will vote by indicating a numerical score from one to five for each entry. The scores will be totaled to provide the entry score. The entries receiving the five highest scores will be advanced to the third round of judging.

(h) In the third round of judging, the judges will vote on the remaining entries using the same method as in round two. The Contest Coordinator will tabulate the final votes and present them to the Director, U.S. Fish and Wildlife Service, who will announce the winning entry as well as the entries that placed second and third.

(i) In case of a tie vote for first, second, or third place in the third round, the judges will vote again on the entries that are tied. The judges will vote using the same method as in rounds two and three.

(j) The selection of the winning entry by the judges will be final. Each contestant will be notified of the winning artist and the design. The winning artist will receive a pane of Duck Stamps signed by the Secretary of the Interior at the Federal Duck Stamp Contest the following year. The artists placing first, second and third will receive a framed commendation from the Director of the U.S. Fish and Wildlife Service.

Comments: The scoring system was the only subsection addressed by the public in § 91.24. Thirty commenters addressed the scoring system. Thirteen people stated that they favored the change. Four stated that they favored keeping the old method of judging. The other comments recommended additional changes such as: separate the scoring for habitat and the species; have each judge vote for the area of expertise that he or she represents; adopt the scoring system used by the Leigh Yawkey Woodson Museum; drop the "birds in action" criteria; concerns were also expressed that too many ties would occur in the last round if the scoring was changed to one to five. Several comments were general in nature.

Decision: Section 91.24 remains as proposed.

Subpart D—Post-Contest Procedures

15. Section 91.31 is revised to read as follows:

Section 91.31 Return of entries after contest.

All entries will be returned by certified mail to the participating artists within 120 days after the contest, unless the artwork is selected to appear at one or more wildlife art expositions. If artwork is returned to the Service because it is undelivered or unclaimed (this may happen if an artist changes address), the Service will not be obligated to trace the location of the artist to return the artwork. Any artist who changes his or her address is responsible for notifying the Service of the change. All unclaimed entries will be destroyed one year from the date of the contest.

Comments: No comments were received.

Decision: Section 91.31 remains as proposed.

Miscellaneous

Thirty-seven comments were miscellaneous in nature. Several individuals expressed thanks for the opportunity to participate in the decision-making; many provided complimentary remarks concerning the program changes made over the past few years; a number applauded the proposed changes; two people disapproved of the male/female designation on the entry form; some suggested that the entries be allowed to be 5/16 inch in thickness; there was a suggestion to provide a flat fee for winning the contest with the remaining money from the sale of the prints going to water conservation; one artist offered to do the design for free, with the government picking up the expenses.

Decision: (1) The male/female designation will continue.

(2) The ¼ inch thickness will remain.

(3) The contest will continue, no monetary compensation will be made to the artist, and the artist will retain the publishing rights.

Explanation: Many writers reporting on the Duck Stamp Contest request information about the number of women and men entering the contest because the public enjoys reading this information. Providing accurate information strengthens public knowledge of the program. Prior to establishing the male/female section on the application form, the Federal Duck Stamp Office was guessing as to the gender of the entrant based on the individual's name. Since all names do not allow one to determine gender, it is necessary to request the information on the form. This information is not used in the judging process. The judges are not given any information concerning the artists—they see only the renderings, and have no information about who has drawn the entry until after the winner is selected.

The ¼ inch thickness is an approximate thickness and the 5/16 thickness is acceptable. The display boards have a groove into which the entries must fit. This groove accommodates an entry approximately ¼ inch thick. The groove cannot accommodate a stretched canvas which is ½ inch or more in thickness.

The tradition of the Duck Stamp Contest is something that both the public and the artists support. To change this to commission one artist or provide a flat fee for the winner will not be considered at this time.

The dates and location of this year's contest are also announced above in the dates and addresses sections, and the public is invited to attend.

Analysis of these revisions to 50 CFR part 91 has resulted in the Department's determining that they are not major actions under the provisions of Executive Order 12291. The revisions will not significantly affect a substantial number of small entities under the provisions of the Regulatory Flexibility Act, since entrants are individuals and not small entities as defined in 5 U.S.C. 601, *et seq.* The revisions do not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* No compliance with the National Environmental Policy Act is required because this rule constitutes minor changes or revisions to an approved action (the Duck Stamp Contest), that have no potential for causing substantial environmental impact.

The primary author of this document is: Norma E. Opgrand, Department of the Interior, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 91

Hunting, Wildlife.

In light of the foregoing, title 50, part 91 of the Code of Federal Regulations is amended as follows:

PART 91—MIGRATORY BIRD HUNTING AND CONSERVATION STAMP CONTEST

1. The authority citation for part 91 is revised to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701.

Subpart A—Introduction

2. Section 91.1 is revised to read as follows:

§ 91.1 Purpose of regulations.

(a) The purpose of these regulations is to establish procedures for selecting a design that will be used for the annual Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp).

(b) All individuals entering the contest must comply with these regulations. A copy of the regulations along with the Reproduction Rights and Display and Participation Agreements may be requested from the Federal Duck Stamp Office, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

(c) All contestants from the most recent contest will be sent a copy of the regulations, the Display and Participation Agreement, and the Reproduction Rights Agreement.

3. Section 91.2 is amended by removing the definition for "Display Agreement" and adding a definition for "Display and Participation Agreement" in alphabetical order to read as follows:

§ 91.2 Definitions.

* * * * *

Display and participation agreement—a document that each contestant must complete, sign and submit with the entry. The signed agreement permits the Service to display the entry at various locations for promotional purposes, and requires the artist to participate in events in behalf of the Federal Duck Stamp Program.

* * * * *

4. In § 91.4, the introductory text is revised to read as follows:

§ 91.4 Eligible species.

Five or fewer of the species listed below will be identified as eligible each year; those eligible species will be provided to each contestant with the information provided in § 91.1.

* * * * *

Subpart B—Procedures for Entering the Contest

5. In § 91.12, the last sentence is revised to read as follows:

§ 91.12 Contest eligibility.

* * * All entrants must submit signed Reproduction Rights and Display and Participation Agreements.

6. In § 91.14, the first sentence is revised to read as follows:

§ 91.14 Restrictions on subject matter of entry.

A live portrayal of any bird(s) of the five or fewer identified eligible species must be the dominant feature of the design. * * *

7. Section 91.15 is revised to read as follows:

§ 91.15 Suitability of entry for engraving.

All entries should be drawn with fullest attention to clarity of detail and the relationship of tonal values. These prerequisites are important to interpret pictorial elements to hand engraving for printing, as they determine the engraved line techniques and direction. The engraver relies on the accuracy of the artist's work for successful interpretation. The engraver is primarily responsible for line interpretation and discipline, creating the miniature image of bird(s) appearing on the stamp.

8. Section 91.16 is revised to read as follows:

§ 91.16 Submission procedures for entry.

(a) Each contestant may submit only one entry. Each entry must be accompanied by a non-refundable entrance fee and a completed and signed Reproduction Rights Agreement and a completed and signed Display and Participation Agreement. The bottom portion of the Reproduction Rights Agreement must be attached to the back of the entry.

(b) Each entry should be appropriately wrapped to protect the art work and sent by registered mail, certified mail,

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express mail, overnight delivery service or hand delivered to: Federal Duck Stamp Office, U.S. Fish and Wildlife Service, Suite 2058, Department of the Interior, Washington, DC 20240.

Subpart C—Procedures for Administering the Contest

9. Section 91.21 is revised to read as follows:

§ 91.21 Selection and qualification of contest judges.

(a) *Selection.* Five voting judges and one alternate judge will be selected annually by the Secretary of the Interior. Current employees of the Fish and Wildlife Service and their relatives are ineligible to serve as judges for the contest. The judges will be reimbursed for reasonable travel expenses. The judges will be announced on the first day of the contest.

(b) *Qualifications.* The panel of five judges will be made up of individuals, all of whom have one or more of the following prerequisites: recognized art credentials, knowledge of the anatomical makeup and the natural habitat of the eligible waterfowl species, an understanding of the wildlife sporting world in which the Duck Stamp is used, an awareness of philately and the role the Duck Stamp plays in stamp collecting, and demonstrated support for the conservation of waterfowl and wetlands through active involvement in the conservation community.

10. Section 91.24 is amended by revising paragraphs (b), (c), and (f) through (i); and adding new paragraph (j) to read as follows:

§ 91.24 Contest procedures.

* * * * *

(b) Prior to the first round of judging, and prior to the opening of the contest to the public, the judges will spend an additional two hours reviewing the entries.

(c) In the first round of judging, all qualified entries will be shown one at a time to the judges by the Contest Coordinator or a contest staff member. The judges will vote "in" or "out" on each entry; those entries receiving a majority of votes "in" will be eligible for the second round of judging. The remaining entries will be placed on display as a group for public viewing.

* * * * *

(f) The technical advisors from the Department of the Interior and the Bureau of Engraving and Printing will do a critical analysis of the entries that will be judged in the second round and advise the judges of any serious anatomical problems and/or any serious design problems for the engraver.

(g) In the second round of judging, each entry selected in the first round, plus the additional entries selected by judges, will be shown one at a time to the judges by the Contest Coordinator or by a contest staff member. The judges will vote by indicating a numerical score from one to five for each entry. The scores will be totaled to provide the entry score. The entries receiving the five highest scores will be advanced to the third round of judging.

(h) In the third round of judging, the judges will vote on the remaining entries using the same method as in round two. The Contest Coordinator will tabulate the final votes and present them to the Director, U.S. Fish and Wildlife Service, who will announce the winning entry as well as the entries that placed second and third.

(i) In case of a tie vote for first, second, or third place in the third round, the judges will vote again on the entries that are tied. The judges will vote using the same method as in rounds two and three.

(j) The selection of the winning entry by the judges will be final. Each contestant will be notified of the winning artist and the design. The winning artist will receive a pane of Duck Stamps signed by the Secretary of the Interior at the Federal Duck Stamp Contest the following year. The artists placing first, second, and third will receive a framed commendation from the Director of the U.S. Fish and Wildlife Service.

Subpart D—Post-Contest Procedures

11. Section 91.31 is revised to read as follows:

§ 91.31 Return of entries after contest.

All entries will be returned by certified mail to the participating artists within 120 days after the contest, unless the artwork is selected to appear at one or more wildlife art expositions. If artwork is returned to the Service because it is undelivered or unclaimed (this may happen if an artist changes address), the Service will not be obligated to trace the location of the artist to return the artwork. Any artist who changes his or her address is responsible for notifying the Service of the change. All unclaimed entries will be destroyed one year from the date of the contest.

Dated: April 25, 1991.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 91-11665 Filed 5-15-91; 8:45 am]

BILLING CODE 4310-55-M

federal register

Thursday
May 16, 1991

Part VI

The President

Proclamation 6292—Prayer for Peace, Memorial Day, 1991

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Presidential Documents

Title 3—

The President

Proclamation 6232 of May 14, 1991

Prayer For Peace, Memorial Day, 1991

By the President of the United States of America

A Proclamation

"What we obtain too cheap, we esteem too lightly," Thomas Paine wrote in 1776, "it is dearness only that gives everything its value. Heaven knows how to put a proper price upon its goods, and it would be strange indeed if so celestial an article as freedom should not be highly rated." The war in the Persian Gulf has reminded all Americans of the value of freedom and the price that many brave men and women have been willing to bear for its sake. Neither "summer soldiers" nor "sunshine patriots," the members of Operation Desert Storm did not shrink from service to their country when the dark clouds of armed conflict gathered in the Persian Gulf, and, like the early patriots of whom Thomas Paine wrote, they deserve our respect and thanks. Those who made the ultimate sacrifice in the effort to liberate Kuwait joined a long line of heroes who have given their lives for our country, and on Memorial Day we remember all of them with solemn pride and heartfelt appreciation.

Whether we engage in quiet prayer or in public ceremony, whether we remember loved ones and neighbors or heroes known only to God, all Americans are united on this day in thanksgiving for the blessings of liberty and for the brave and selfless individuals who have helped to secure them. The sacrifices of those who fell in the Persian Gulf are a fresh and vivid memory, but on this occasion we also remember those who died while serving in places such as Panama, Grenada, Beirut, Korea, and Vietnam. We also honor with undiminished prid and gratitude those who served decades ago, during World Wars I and II.

On Memorial Day, we echo in prayer the fervent hope that these Americans expressed with their very lives: the hope for lasting peace among nations. Knowing that any peace purchased by the surrender of principle can be neither genuine nor enduring, we pray for wisdom and resolve in our efforts to avert future conflicts and to establish a new world order based on respect for human rights and the rule of law. Knowing too that our freedom has been obtained at a very high cost, we also pray that we might remain a people worthy of so precious a gift. Declaring that "the times that try men's souls are over," Thomas Paine wrote: "The world has seen [America] great in adversity . . . and rising in resolve as the storm increased . . . . Let the world then see that she can bear prosperity and that her honest virtue in time of peace is equal to the bravest virtue in time of war."

In recognition of those Americans to whom we pay tribute today, the Congress, by a joint resolution approved on May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby designate Memorial Day, May 27, 1991, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11 o'clock in the morning of that day as a time to unite in prayer. I urge the members of the media to cooperate in this observance.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon during this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-11869
Filed 5-15-91; 10:42 am]
Billing code 3195-01-M

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1973-1985

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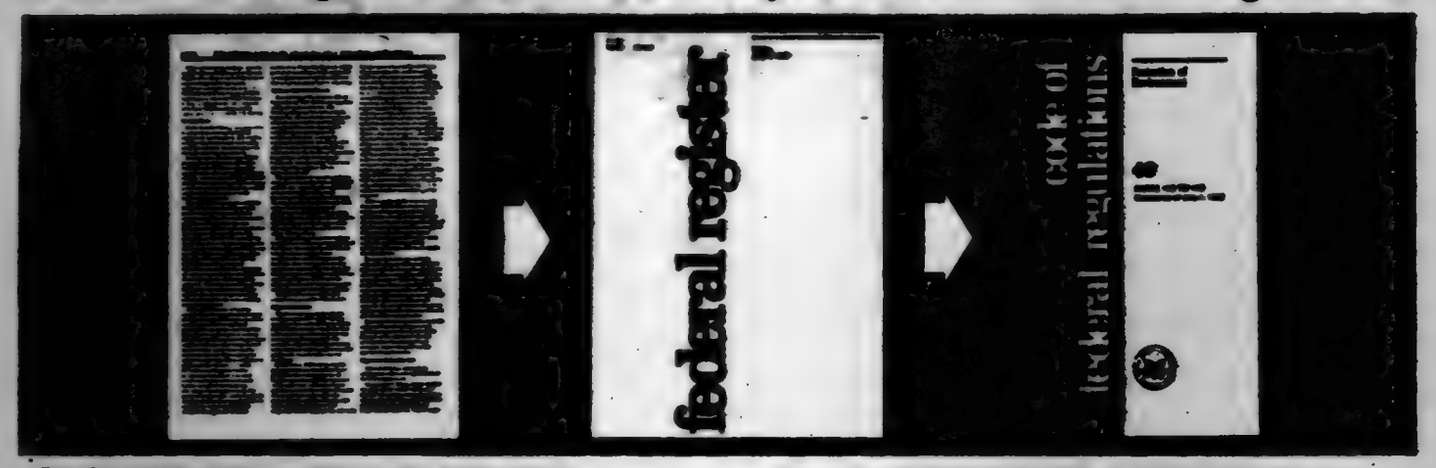

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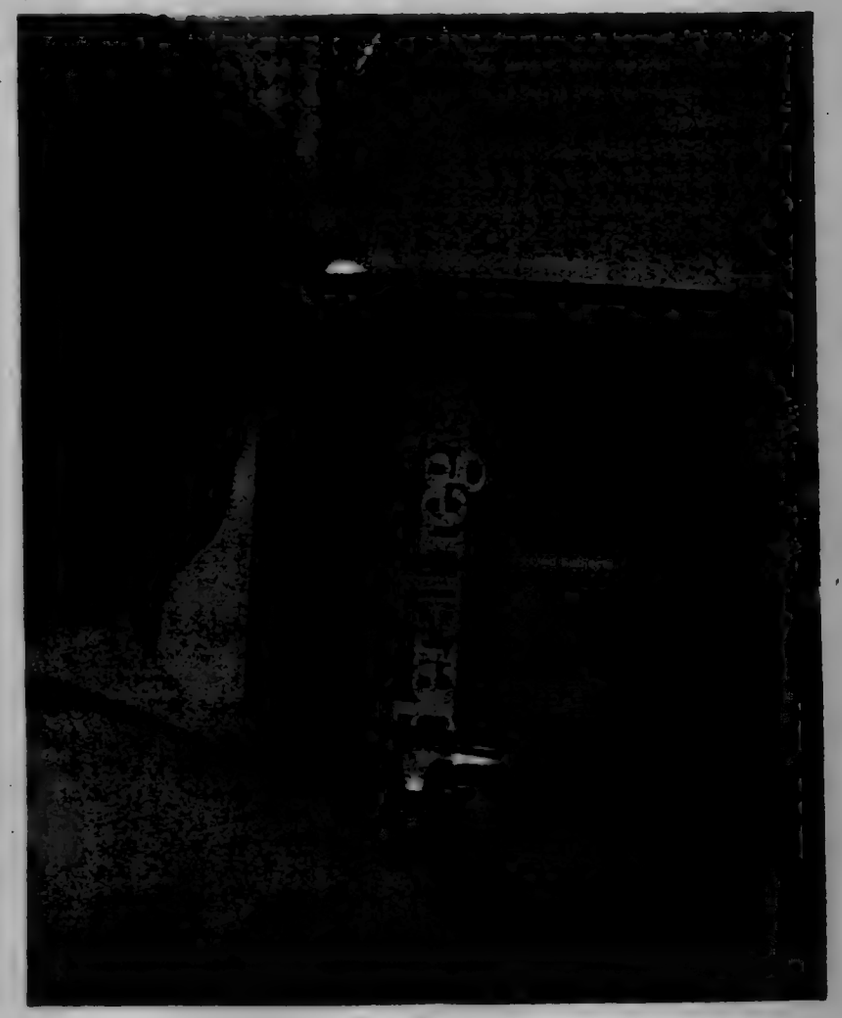

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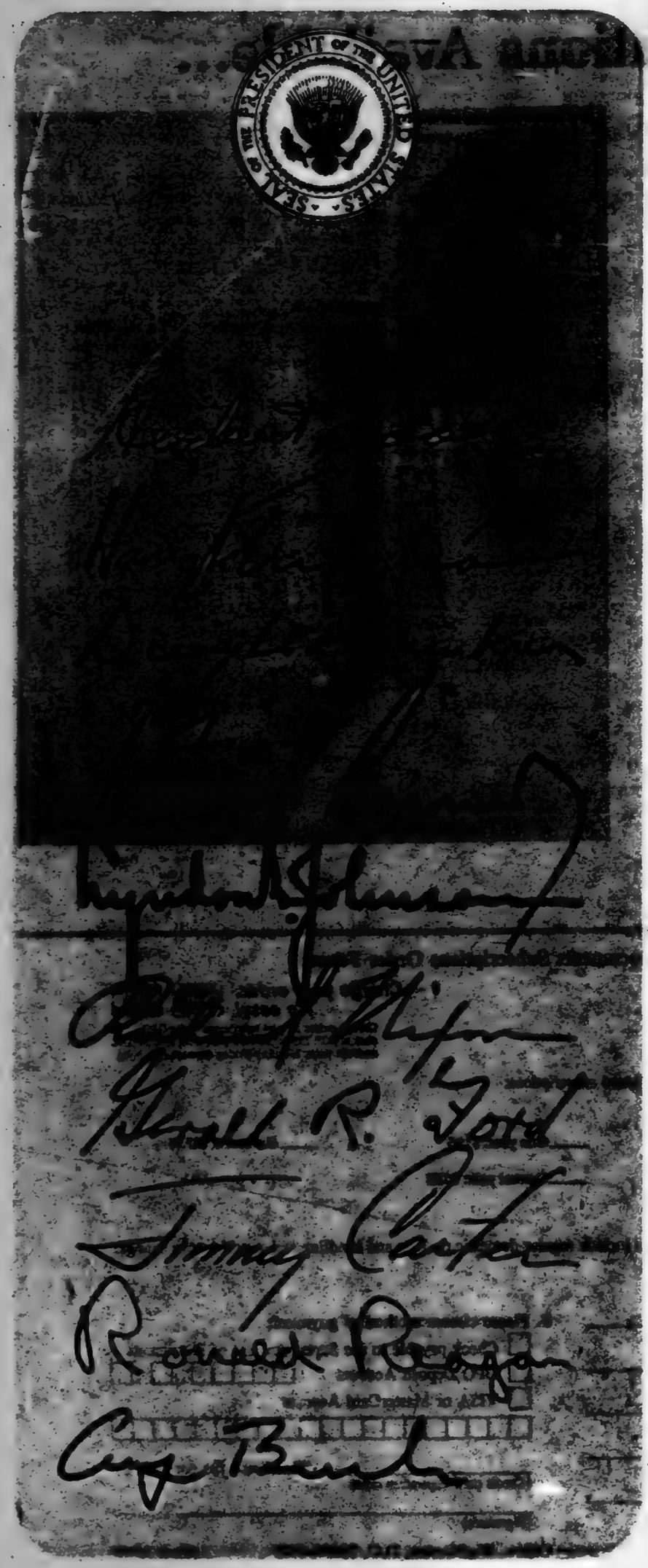

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Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and New York City see announcement on the inside cover of this issue.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WASHINGTON, DC

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1100 L Street, NW, Washington, DC
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NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 299, 392, and 499

[INS No. 1292-91]

RIN No. 1115-AC06

Posthumous United States Citizenship for Certain Aliens; Immigration and Nationality Forms; Display of Control Numbers; Fees

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements the Posthumous Citizenship for Active Duty Service Act of 1990, Public Law 101-249, March 6, 1990, establishing the criteria and procedures for granting posthumous citizenship to an alien or noncitizen national of the United States, who dies as a result of injury or disease incurred in, or aggravated by service, in the United States Armed Forces during a specified period of military hostilities. This rule also identifies who may request posthumous citizenship on the alien or noncitizen national's behalf. In addition, this rule updates the listings of forms contained in 8 CFR 299.5 and 499.1, and adds a filing fee for an application for posthumous citizenship. This is not a benefit program; rather, it is an honorific action intended to recognize the valor and sacrifices of aliens and noncitizen nationals who give or have given their lives in defense of the United States.

DATES: This interim rule is effective May 17, 1991. Comments must be submitted no later than June 17, 1991.

ADDRESSES: Please submit written comments in triplicate to Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 5304, 425 I Street, NW., Washington, DC 20536. Please include INS Number 1292-91 on the mailing envelope to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Stella Jarina, Senior Immigration Examiner, Immigration and Naturalization Service, Room 7228, 425 I Street NW., Washington, DC 20536, Telephone: (202) 514-3946.

SUPPLEMENTARY INFORMATION: Section 329A of the Immigration and Nationality Act, as added by the Posthumous Citizenship for Active Duty Service Act of 1990, Public Law 101-249, provides for the granting of posthumous citizenship to an alien or noncitizen national of the United States who dies as a result of injury or disease incurred in or aggravated by service in an active-duty status in the United States Armed Forces during World War I, World War II, the Korean Hostilities, the Vietnam Hostilities, or in other periods of military hostilities. In addition, to be eligible for a grant of posthumous citizenship, the person's induction, enlistment, or reenlistment in the Armed Forces must qualify under the provisions of section 329 (a)(1) or (a)(2) of the Act.

This interim rule sets forth the eligibility criteria, identifies who may request posthumous citizenship on the person's behalf, and outlines the procedures the Immigration and Naturalization Service (Service) will use to grant posthumous citizenship. This rule also establishes and provides for the issuance of the Service document, in granted cases, that declares the person to be a citizen of the United States as of the time of death.

Congress has long recognized the patriotism and valor of aliens and noncitizen nationals who serve honorably on active duty with the United States Armed Forces by providing special naturalization benefits based upon such military service. However, for the first time in the history of our Nation's nationality laws, legislation has been enacted to administratively confer United States citizenship upon a deceased servicemember.

Public Law 101-249, enacted on March 6, 1990, duly recognizes the bravery and sacrifices of persons who, although not citizens of the United States, nevertheless served honorably on active duty with the United States Armed Forces and gave their lives in the protection and defense of this Nation. By virtue of their military service, and consequent loss of life, these persons have clearly demonstrated a commitment to support and defend the Constitution and laws of the United States. This new law acknowledges their commitment and helps ensure that their sacrifices were not made in vain. As this is a symbolic measure, the granting of posthumous citizenship does not confer any benefit nor make applicable any provision of the Immigration and Nationality Act, as amended, to the surviving spouse, parent, son, daughter, or other relative of the decedent.

The Service's definition of the term "next-of-kin" for purposes of seeking a deceased person's posthumous naturalization includes the immediate family members listed under sections 201(b)(2)(A)(i) and 203(a) of the Act. These family members are the surviving spouse, son or daughter, parent, and brother or sister of the decedent. The definition clearly provides that it is the decedent's nearest relative who will be permitted to seek this benefit, to the exclusion of more remote relatives.

The term "another representative" is limited to the properly appointed representative of the decedent's estate, or the guardian, conservator or committee of the decedent's next-of-kin. A Service Organization recognized by the Department of Veterans Affairs will be permitted to act as representative and apply for posthumous naturalization on a person's behalf in such case where there is no surviving next-of-kin and where there is no other appointed representative as noted at the beginning of this paragraph.

Although the statutory language provides an alternate situation regarding who may file a request for posthumous citizenship, it is clear from the legislative history that the intended applicants are the family members of the decedent. In his testimony before the Subcommittee on Immigration, Refugees, and International Law on September 21, 1989, the Honorable Brian J. Donnelly, the Congressman from the State of Massachusetts who introduced this legislation, expressly stated that "the request for such a declaration would be made by the decedent's family." Therefore, where the decedent has a

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next-of-kin as defined by the Service, an application for posthumous citizenship will be accepted from another representative only when authorization has been obtained from all surviving persons included in that definition. The only exception to this rule will be where the executor, clearly authorized to act on behalf of the decedent's estate, makes an application during execution of the estate. This objective standard will free the Service from the difficult, inherently subjective and somewhat emotional task of determining whether a person or entity who is not actually related to the decedent "represents" the decedent's interest.

While the Service is the agency responsible for establishing the procedure to grant posthumous citizenship, defining who may make a request for posthumous citizenship, and issuing a document declaring citizenship status, Congress has delegated the responsibility to certify the required military service and relating death to the executive department under which the person served. The Service will not make certifications with regard to these two elements under any circumstances.

The statute requires that a request for posthumous citizenship be accompanied by a duly authenticated certificate from the appropriate executive branch attesting to the decedent's military service and service-connected death. To facilitate the certification process, the Service is utilizing a processing approach that features the direct mail of requests on Form N-644, Application for Posthumous Citizenship, to the INS Service Center having jurisdiction over the applicant's state of residence. Persons residing outside the United States must submit the application to any one of the four Service Centers. After preliminary processing at the Service Center, the application is forwarded to Service Headquarters, and is then relayed to the Department of Defense for certification. An application submitted on behalf of a person who served in the United States Coast Guard during a designated period of military hostilities will be forwarded to the Department of Transportation. Since the Service determines who may apply for posthumous citizenship on behalf of a decedent, this processing method will avoid placing an administrative burden upon the executive departments in responding to requests for certification from persons who are not the decedent's next-of-kin or representative, as defined by Service, or in responding to duplicate requests for certification. Also, it will minimize confusion to the public concerning where to send a request for military certification.

As no benefit derives from a grant of posthumous citizenship, the Service is not requiring the applicant to submit to an interview before an immigration officer. Upon the grant of posthumous citizenship, the applicant will be issued a Certificate of Citizenship in the name of the decedent. Delivery of the Certificate will be made by registered mail to the address in the United States or to the Service office or American Embassy or Consulate abroad, as appropriate, that is designated by the applicant.

This rule also amends the listing of forms contained in 8 CFR 299.5 and 499.1, and adds a fee to 8 CFR 103.7(b) for filing an application for posthumous citizenship.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date are impractical and unnecessary as the changes have been mandated by the passage of the Posthumous Citizenship for Active Duty Service Act of 1990, Public Law 101-249. Immediate implementation will be advantageous to the family members or representative of the intended beneficiary as there is a limited time during which an application may be submitted on behalf of a person who died before enactment of Public Law 101-249.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of EO 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirement contained in this regulation has been submitted to OMB for review/approval under the provisions of the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

Administrative practice and procedures, Archives and records, Fees, Forms.

8 CFR Part 299

Forms, Reporting and recordkeeping requirements.

8 CFR Part 392

Aliens, Citizenship, Reporting and recordkeeping requirements.

8 CFR Part 499

Citizenship and Nationality forms.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 522a; 8 U.S.C. 1101, 1103, 1201, 1304; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by adding in proper numerical sequence, the Form N-644 to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form N-644. For filing application for posthumous citizenship—$80.00.

* * * * *

PART 299—IMMIGRATION FORMS

3. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 8 CFR part 2.

4. Section 299.5 is amended by adding, in proper numerical sequence, the Service form, N-644, to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
*	*	*
N-644	Application for Posthumous Citizenship.	1115-0173
*	*	*

5. A new part 392 is added to read as follows:

PART 392—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WHO DIE WHILE SERVING ON ACTIVE DUTY WITH THE UNITED STATES ARMED FORCES DURING CERTAIN PERIODS OF HOSTILITIES

Sec.
392.1 Definitions.
392.2 Eligibility for posthumous citizenship.
392.3 Application for posthumous citizenship.
392.4 Issuance of a certificate of citizenship.

Authority: 8 U.S.C. 1103, 1440 and note, and 1440-1; 8 CFR part 2.

§ 392.1 Definitions.

As used in this part:

Active-duty status means full-time duty in the active military service of the United States, and includes full-time training duty, which constitutes qualifying service under section 329(a) of the Act. Active service in the United States Coast Guard during one of the periods of hostilities specified herein shall constitute service in the military, air, or naval forces of the United States. Active-duty status also includes annual training duty and attendance, while in the active military service, at a service school designated by the military authorities under 10 U.S.C. 101(22). The order of a national guardsman into active duty for training under 10 U.S.C. 672 constitutes service in active-duty status in the military forces of the United States. Active duty in a noncombatant capacity is qualifying service.

Decedent means the person on whose behalf an application for a certificate of posthumous citizenship is made.

Induction, enlistment, and *reenlistment,* refer to the decedent's place of entry into active duty military service.

Korean Hostilities relates to the period from June 25, 1950, to July 1, 1955, inclusive.

Lodge Act means the Act of June 30, 1950, which qualified for naturalization nonresident aliens who served honorably for 5 years in the United States Army during specified periods, notwithstanding that they never formally became lawful permanent residents of the United States.

Next-of-kin means the closest surviving blood or legal relative of the decedent in the following order of succession:

(1) The surviving spouse;

(2) The decedent's surviving son or daughter, if the decedent has no surviving spouse;

(3) The decedent's surviving parent, if the decedent has no surviving spouse or sons or daughters; or,

(4) The decedent's surviving brother or sister, if none of the persons described in paragraphs (1) through (3) of this definition survive the decedent.

Other periods of military hostilities means any period designated by the President under Executive Order as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force.

Representative means:

(1) The duly appointed executor or administrator of the decedent's estate, including a special administrator appointed for the purpose of seeking the decedent's naturalization; or,

(2) The duly appointed guardian, conservator, or committee of the decedent's next-of-kin; or,

(3) A service organization listed in 36 U.S.C. 3402, or chartered by Congress, or State, or other service organization recognized by the Department of Veterans Affairs.

Vietnam Hostilities relates to the period from February 28, 1961, to October 15, 1978, inclusive.

World War I relates to the period from April 6, 1917, to November 11, 1918, inclusive.

World War II relates to the period from September 1, 1939, to December 31, 1946, inclusive.

§ 392.2 Eligibility for posthumous citizenship.

(a) *General.* Any alien or noncitizen national of the United States is eligible for posthumous United States citizenship who:

(1) Served honorably in an active-duty status with the military, air, or naval forces of the United States during World War I, World War II, the Korean Hostilities, the Vietnam Hostilities, or in other periods of military hostilities designated by the President under Executive Order; and,

(2) Died as a result of injury or disease incurred in or aggravated by service in the United States Armed Forces during a period of military hostilities listed in paragraph (a)(1) of this section. Where the person died subsequent to separation from military service, the death must have resulted from an injury or disease that was sustained, acquired, or exacerbated during active-duty service in a qualifying period of military hostilities as specified in this part.

(b) *Qualifying enlistment.* In conjunction with the qualifying service as described in paragraph (a)(1) of this section, the decedent must have:

(1) Enlisted, reenlisted, or been inducted in the United States, the Canal Zone, American Samoa, or Swains Island;

(2) Been lawfully admitted to the United States for permanent residence, at any time; or,

(3) Enlisted or reenlisted in the United States Army pursuant to the provisions of the Lodge Act. In such case, the decedent shall be considered to have been lawfully admitted to the United States as a permanent resident for purposes of this section, provided he or she:

(i) Entered the United States, its outlying possessions, or the Canal Zone, at some time during the period of army service, pursuant to military orders; and

(ii) Was honorably discharged following completion of at least 5 full years of active duty service, even though the active-duty service may not have occurred during a qualifying period of hostilities specified in section 329(a) of the Act.

(c) *Character of military service.* Where the character of military service is not certified as honorable by the executive department under which the person served, or where the person was dishonorably discharged or discharged under conditions other than honorable, such service shall not satisfy the requirement of paragraph (a)(1) of this section.

(d) *Certification of eligibility.* (1) The executive department under which the decedent served shall determine whether:

(i) The decedent served honorably in an active-duty status;

(ii) The separation from such service was under honorable conditions; and,

(iii) The decedent died as a result of injury or disease incurred in, or aggravated by active duty service during a qualifying period of military hostilities.

(2) The certification required by section 329A(c)(2) of the Act to prove military service and service-connected death shall be requested by the applicant on Form N-644, Application for Posthumous Citizenship. Form N-644 shall also be used to verify the decedent's place of induction, enlistment or reenlistment.

§ 392.3 Application for posthumous citizenship.

(a) *Persons who may apply.* (1) Only one person who is either the next-of-kin or another representative of the decedent shall be permitted to apply for posthumous citizenship on the decedent's behalf. A person who is a next-of-kin who wishes to apply for posthumous citizenship on behalf of the decedent, shall, if there is a surviving next-of-kin in the line of succession above him or her, be required to obtain authorization to make the application from all surviving next-of-kin in the line of succession above him or her. The authorization shall be in the form of an affidavit stating that the affiant authorizes the requester to apply for posthumous citizenship on behalf of the decedent. The affidavit must include the name and address of the affiant, and the relationship of the affiant to the decedent.

(2) When there is a surviving next-of-kin, an application for posthumous citizenship shall only be accepted from a representative provided authorization has been obtained from all surviving

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next-of-kin. However, this requirement shall not apply to the executor or administrator of the decedent's estate. In the case of a service organization acting as a representative, authorization must also have been obtained from any appointed representative. A veterans service organization must submit evidence of recognition by the Department of Veterans Affairs.

Once the Service has granted posthumous citizenship to a person, no subsequent applications on his or her behalf shall be approved, nor shall any additional original certificates be issued, except in the case of an application for issuance of a replacement certificate for one lost, mutilated, or destroyed.

(b) *Filing of application.* (1) An application for posthumous citizenship shall be submitted by mail on Form N-644, according to the instructions on the form, to the INS Service Center having jurisdiction over the applicant's state of residence. Persons residing outside the United States must mail their applications to any one of the four Service Centers.

(2) Form N-644 must be accompanied by the appropriate fee specified by and remitted in accordance with the provisions of § 103.7 (a) and (b) of this chapter. The fee may not be waived or refunded. To facilitate the certification process, a legible copy of each of the following documents, if available, should be submitted with Form N-644:

(i) DD Form 214, Certificate of Release or Discharge from Active Duty;

(ii) DD Form 1300, Report of Casualty/Military Death Certificate; or,

(iii) Other military or State-issued death certificate.

(c) *Application period for requesting posthumous citizenship.* Form N-644 shall be filed with the appropriate INS Service Center not later than March 5, 1992, or 2 years after the date of the person's death, whichever date is later.

(d) *Denial of application.* When the application is denied, the applicant shall be notified of the decision and the reason(s) for denial. There is no appeal from the denial of an application under this part.

§ 392.4 Issuance of a certificate of citizenship.

(a) *Approval of application.* If the application (Form N-644) is approved, the director of the Service Center shall issue a Certificate of Citizenship, Form N-645, to the applicant, in the name of the decedent.

(b) *Delivery of certificate.* Delivery of the Certificate of Citizenship shall be made by registered mail to the address designated by the applicant. If the applicant resides outside the United States, the certificate shall be sent by registered mail to the Service office abroad, if one is located where delivery is to be made; otherwise, it shall be forwarded to the nearest American Embassy or Consulate.

(c) *Effective date of citizenship.* Where the Service has approved an Application for Posthumous Citizenship (Form N-644), the decedent shall be considered a United States citizen as of the date of his or her death.

(d) *Ineligibility for immigration benefits.* The granting of posthumous citizenship under section 329A of the Immigration and Naturalization Act, as amended, and issuance of a certificate under paragraph (a) of this section, shall not entitle the surviving spouse, parent, son, daughter, or other relative of the decedent to any benefit under any provision of the Act. Nor shall such grant make applicable the provisions of section 319(d) of the Act to the surviving spouse.

(e) *Replacement certificate.* An application for a replacement Certificate of Citizenship (Form N-645) shall be made on Form N-565, Application for a New Naturalization or Citizenship Paper, for a lost, mutilated, or destroyed certificate. Form N-565 shall be completed according to the instructions on the form and submitted by mail with the appropriate fee to the INS Service Center having jurisdiction over the applicant's state of residence. Persons residing outside the United States must mail their application to the Service Center that issued the original certificate.

PART 499—NATIONALITY FORMS

6. The authority citation for part 499 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

7. Section 499.1 is amended by adding in proper numerical sequence, two Service forms, N-644 and N-645 to read as follows:

§ 499.1 Prescribed forms.

* * * * *

Form No.	Title and description
* * *	* * *
N-644 ( )	—Application for Posthumous Citizenship.
N-645 ( )	—Certificate of Citizenship.

Dated: March 11, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-11602 Filed 5-16-91; 8:45 am]

BILLING CODE 4410-10-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-29187]

Acceptance of Reimbursement for Travel Expenses

AGENCY: Securities and Exchange Commission.

ACTION: Notice of implementation of interim rule.

SUMMARY: The Commission will implement the interim government-wide rule concerning host paid travel by retaining the more specific and stricter standards set forth in rule 4-5 of the Commission's Conduct Regulation, 17 CFR 200.735-4(b)(6), to the extent the latter is not inconsistent with the interim government-wide rule.

DATES: Issued on May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Lyn Blatch, Ethics Counsel, Office of the General Counsel, (202) 272-2437.

SUPPLEMENTARY INFORMATION: On March 8, 1991, the General Services Administration published a government-wide interim rule which provides authorization for host paid travel, "Acceptance of Payment From a Non-Federal Source For Travel Expenses." [1] That rule contains general criteria for acceptance of reimbursement from non-federal sources. The Commission has determined that it will implement the interim government-wide rule by retaining the more specific and stricter provisions contained in rule 4-5a-h of the Commission's Conduct Regulation, 17 CFR 200.735-4(b)(6) (i)-(v), to the extent the latter is not inconsistent with the government-wide rule. Adherence to the more specific provisions of rule 4-5a-h is expected to expedite administrative determinations and ensure consistency throughout the agency.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11719 Filed 5-16-91; 8:45 am]

BILLING CODE 8010-01-M

[1] Revisions to 41 CFR parts 301-1, 304-1, and 304-2, at 56 FR 9676-9681 (March 8, 1991), as amended at 56 FR 11105-11108, and 11204 (March 15, 1991).

DEPARTMENT OF JUSTICE

28 CFR Part 16

[Order No. 1484-91]

Fee for Production of Federal Bureau of Investigation Identification Record

AGENCY: Federal Bureau of Investigation, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends 28 CFR 16.33 to increase from $14 to $17 the fee charged by the Federal Bureau of Investigation (FBI) Identification Division for the production of identification records to the subjects of those records.

EFFECTIVE DATE: May 17, 1991.

FOR FURTHER INFORMATION CONTACT: Melvin D. Mercer, Jr., Chief of the Correspondence and Special Services Section, Identification Division, FBI, Washington, DC 20537-9700, telephone number (202) 324-5454.

SUPPLEMENTARY INFORMATION: A proposed rule to increase the fee for the production of identification records to the subjects of such records was published for notice and comment in the Federal Register on January 31, 1991 (56 FR 3812). Interested persons were allowed 30 days to submit comments on the proposal. No comments were received.

Departmental Order 556-73 (38 FR 32806, November 28, 1973) directed that the FBI publish rules for the dissemination of arrest and conviction records upon request. This order resulted from a determination that 28 U.S.C. 534 does not prohibit the subjects of arrest and conviction records from accessing those records. In accordance with the Attorney General's order, the FBI will release to the subjects of identification records copies of such records upon submission of a written request, a set of rolled-inked fingerprint impressions, and the appropriate processing fee. Based on current cost analysis, the cost for production of an FBI identification record has increased from $14 to $17.

This is not a major rule within the meaning of Executive Order No. 12291, and it will not have a substantial impact on a significant number of small businesses.

This final rule change necessitates changes to 28 CFR 16.33.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, and Sunshine Act.

PART 16—[AMENDED]

By virtue of the authority vested in me as Attorney General, including 28 U.S.C. 509 and 510, and 5 U.S.C. 301, part 16, subpart C of title 28 of the CFR is amended as follows:

The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.33 is revised to read as follows:

§ 16.33 Fee for production of identification record.

Each written request for production of an identification record must be accompanied by a fee of $17.00 in the form of a certified check or money order, payable to the Treasury of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 9701 and is based upon the clerical time beyond the first quarter hour to be spent in searching for, identifying, and reproducing each identification record requested as specified in § 16.10 of this part. Any request for waiver of the fee shall accompany the original request for the identification record and shall include a claim and proof of indigence.

Dated: May 7, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-11632 Filed 5-16-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219-AA17

Safety Standards for Explosives at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Stay of final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is staying the effective date of the final rule revising its safety standards for explosives at metal and nonmetal mines until July 16, 1991.

EFFECTIVE DATE: The final rule, published on January 18, 1991 (56 FR 2070), is stayed effective May 17, 1991 until July 16, 1991 except for the provisions in 30 CFR 56.6000, 56.6306, 56.6130, 56.6131, 56.6501, 57.6000, 57.6306, 57.6130, 57.6131, and 57.6501 stayed indefinitely on April 10, 1991 (56 FR 14470).

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On January 18, 1991, MSHA published a final rule in the Federal Register (56 FR 2070) revising its safety standards for explosives at metal and nonmetal mines. These standards were scheduled to take effect on May 20, 1991. On May 10, 1991 the Institute of Makers of Explosives (IME) requested that MSHA reconsider the entire rule.

The Agency is staying for sixty days the effective date of the final rule. During the 60 day stay, MSHA will reassess the rulemaking record and consider IME's request for reconsideration of the rule. This notice does not affect the indefinite stay of four provisions of the rule made by MSHA on April 10, 1991 (56 FR 14470). MSHA will publish a further notice concerning this rulemaking prior to July 16, 1991.

This limited duration stay of the entire rule resulted from concerns expressed by the IME, explosives manufacturers, and mine operators. The existing regulations in subpart E of parts 56 and 57 of 30 CFR continue in effect.

This document is issued under 30 U.S.C. 811.

Dated: May 14, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 91-11623 Filed 5-16-91; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD7 91-33]

Safety Zone Regulations; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the safety zone described in 33 CFR 165.728 to include Gate Terminal Berth #1 and all waters within the Back River at Blount Island. This action is being taken as this area is to become the main Maritime Prepositioned Ship loading and unloading arena.

DATES: This regulation becomes effective on May 1, 1991. Comments on

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this regulation must be received on or before July 1, 1991.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 2831 Talleyrand Avenue, Jacksonville, Florida, 32206-3497. The comments will be available for inspection and copying at MSO Jacksonville, room 222. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mike Mass, Telephone: (904) 791-2048.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to the potential hazards which may occur within the water and shore areas involved.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "address" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade Michael J. Bosley, project officer for the Captain of the Port, and Lieutenant G.G. Tanos, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

Gate Terminal Berth #1, Blount Island, Jacksonville, Florida, having been designated to handle hazardous materials which includes the movement of Class A Explosive for the Maritime Prepositioned Ship Program, requires the amending of Regulation 33 CFR 165.728, to encompass this area. No persons or vessels will be allowed within the area without the permission of the Captain of the Port.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.728 is amended by adding paragraph (a)(3), and revising paragraphs (b) and (d) to read as follows:

§ 165.728 Jacksonville, Florida—Safety Zones.

(a) * * *

(3) Zone C: 100 yards in all directions on land from Gate berth #1 and all waters within the Back River (locally known as the Gate Slip) on Blount Island, Jacksonville, Florida, commencing from a line drawn between the southwesterly most shore point latitude 30°23'34", longitude 81°30'52" and the southeasterly most shore point latitude 30°23'36", longitude 81°30'36".

(b) The areas described in paragraph (a) of this section may be closed to all vessels and persons, except those vessels and persons authorized by the Commander, Seventh Coast Guard District or the Captain of the Port, Jacksonville, Florida, whenever specified Maritime Prepositioned Ships are transiting the St. Johns River (Zone A), moored at Blount Island (Zone B), or moored at Gate Terminal (Zone C).

* * * * *

(d) The Captain of the Port Jacksonville, Florida will activate the safety zones or specific portions of them by issuing a local broadcast notice to mariners. The closing of the area at Blount Island, described above, will be signified by the display of a rotating yellow light located on the waterfront at Blount Island Marine Terminal or at the Gate Terminal Berth #1.

Dated: April 18, 1991.

R.J. O'Toole,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, FL.

[FR Doc. 91-11781 Filed 5-16-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD7 91-34]

Security Zone Regulations; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the security zone described in 33 CFR 165.729 to include Gate Terminal Berth #1 and all waters within the Back River at Blount Island. This action is being taken as this area is to become the main Maritime Prepositioned Ship loading and unloading arena.

DATES: This regulation becomes effective on May 1, 1991. Comments on this regulation must be received on or before July 1, 1991.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 2831 Talleyrand Avenue, Jacksonville, Florida, 32206-3497. The comments will be available for inspection and copying at MSO Jacksonville, room 222. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mike Mass, Telephone: (904) 791-2048.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to the potential hazards which may occur within the water and shore areas involved.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "address" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give

reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade Michael J. Bosley, project officer for the Captain of the Port, and Lieutenant G.G. Tanos, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

Gate Terminal Berth #1, Blount Island, Jacksonville, Florida, having been designated to handle hazardous materials which includes the movement of Class A Explosives for the Maritime Prepositioned Ship Program, requires the amending of Regulation 33 CFR 165.729, to encompass this area. No persons or vessels will be allowed within the area without the permission of the Captain of the Port.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.729 is amended by adding paragraph (a)(3), and revising paragraphs (b) and (d) to read as follows:

§ 165.729 Jacksonville Harbor, Florida—Security Zones.

(a) * * *

(3) Zone C: 100 yards in all directions on land from Gate berth #1 and all waters within the Back River (locally known as the Gate Slip) on Blount Island, Jacksonville, Florida, commencing from a line drawn between the southwesterly most shore point latitude 30°23'34", longitude 81°30'52" and the southeasterly most shore point latitude 30°23'36", longitude 81°30'36".

(b) The areas described in paragraph (a) of this section shall be closed to all vessels and persons, except those vessels and persons authorized by the Commander, Seventh Coast Guard District or the Captain of the Port, Jacksonville, Florida, whenever specified Maritime Prepositioned Ships are transiting the St. Johns River (Zone A), moored at Blount Island (Zone B), or moored at Gate Terminal (Zone C).

* * * * *

(d) The Captain of the Port Jacksonville, Florida will activate the security zones or specific portions of them by issuing a local broadcast notice to mariners. The closing of the area at Blount Island, described above, will be signified by the display of a rotating yellow light located on the waterfront at Blount Island Marine Terminal or at the Gate Terminal Berth #1.

Dated: April 18, 1991.

R.J. O'Toole,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, FL.

[FR Doc. 91-11752 Filed 5-16-91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-608; RM-7542]

Radio Broadcasting Services; Nephi, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Charles D. Hall, permittee of Station KCDH(FM), substitutes Channel 280C for Channel 224A at Nephi, Utah, and modifies his authorization to specify operation on the non-adjacent, higher powered channel. See 55 FR 52185, December 20 1990. Channel 280C can be allotted to Nephi, Utah, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 280C are North Latitude 39-42-36 and West Longitude 111-50-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 24, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-608, adopted April 29, 1991, and released May 10, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC. 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended].

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 224A and adding Channel 280C at Nephi.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11695 Filed 5-16-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 910656-1106]

RIN 0648-AD24

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement Amendment 5 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). This final rule (1) changes from June 1 to May 15 the commencement date of the closure to trawl fishing in the exclusive economic zone (EEZ) off Texas (Texas closure) and extends the maximum allowable Texas closure to 90 days; and (2) removes seabobs and rock shrimp from management under the FMP, except for the recordkeeping and catch reporting requirements. The intended effects of this rule are to allow

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flexibility in the dates of the Texas closure so that juvenile brown shrimp may be adequately protected and to remove from the management unit those species of shrimp not in need of Federal management.

EFFECTIVE DATE: May 17, 1991.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3161.

SUPPLEMENTARY INFORMATION: The shrimp fishery of the Gulf of Mexico is managed under the FMP, prepared and amended by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 658, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 5 to the FMP revises the commencement date and allows for a longer period for the annual Texas closure and deletes seabobs and rock shrimp from management under the FMP, except for the recordkeeping and reporting requirements. Amendment 5 also contains definitions of overfishing for brown, pink, and royal red shrimp, as required by 50 CFR 602.11(c), and specifies actions to be taken if recruitment overfishing of brown or pink shrimp occurs.

The rationales for the changes in the Texas closure and for the deletion from the management unit of seabobs and rock shrimp are contained in the proposed rule (56 FR 8727, March 1, 1991) and are not repeated here. Additional information on the definitions of overfishing and actions to be taken if recruitment overfishing of brown or pink shrimp occurs is contained in Amendment 5, the availability of which was announced in the Federal Register on February 13, 1991 (56 FR 5792).

Comments and Responses

Written comments on Amendment 5 and the proposed rule were received from three commercial shrimp fishing organizations, a shrimp processor, and a member of Congress. All commenters supported the proposed basic Texas closure from May 15 to July 6.

Comment: One of the commercial shrimp fishing organizations, the shrimp processor, and the member of Congress expressed concern about the potential for unilateral action by NOAA to impose a 90-day closure of the EEZ off Texas.

Response: This concern is unfounded. NOAA is precluded from changing the dates and length of the Texas closure unilaterally. Amendment 5 states that, "the U.S. Department of Commerce will close the EEZ, and the time of closing shall correspond to the closure by Texas of its Gulf waters." Section 658.25(b)(1) of the implementing regulations, which is not changed by this final rule, requires the Regional Director, Southeast Region, NMFS, to base any adjustments of the closing or opening dates on the biological data that are collected by the Texas Parks and Wildlife Department and used to predict when brown shrimp will reach a total length of 80 to 90 millimeters, and on tidal and other ecological data relevant to the timing and duration of the closure. The regulations also require the Regional Director to consult with the Texas Parks and Wildlife Department before adjusting the closing or opening date.

Comment: Two commercial shrimp fishing organizations wanted the length of the Texas closure to range from a minimum of 45 days to a maximum of 60 days rather than from a minimum of 45 days to a maximum of 90 days.

Response: NOAA disagrees. The longer maximum range provides additional flexibility to the management regime so that NOAA and the Texas Parks and Wildlife Department may respond better to the effects of climatic variation on shrimp growth and emigration from the estuaries.

Comment: One commercial shrimp fishing organization opposed closure of the EEZ off Texas out to 200 miles due to its adverse financial effects on the owners and operators of shrimp vessels and on shrimp processors. This organization proposed that closure of the EEZ should extend to 15 miles.

Response: NOAA disagrees. The first objective of the FMP is to "optimize the yield from the shrimp recruited to the fishery." This means maximizing the value of shrimp landed while minimizing waste (discards) of small shrimp. After reviewing the financial status of the shrimp fleet and information on the relative impacts of the 15-mile and 200-mile closures of the EEZ on the owners of the shrimp vessels, fishermen, support industries, and enforcement activities of the Coast Guard, and on the biology of the shrimp resources, the Council voted to retain the 200-mile closure. The Council and NOAA believe that a 200-mile closure achieves the first objective of the FMP better than a 15-mile closure.

Comment: One commercial shrimp fishing organization recommended that NOAA implement a no-cost license for shrimp vessels as a means of identifying the number of vessels and amount of gear in the fishery.

Response: NOAA agrees in part and will consider licensing if submitted in an amendment to the FMP. NOAA does not agree that licenses or permits should be free. As authorized by the Magnuson Act, a permitting fee should be charged to cover the administrative costs of issuing the permit.

Classification

The Secretary of Commerce determined that Amendment 5 is necessary for the conservation and management of the shrimp fishery of the Gulf of Mexico and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this final rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291.

The Council prepared a regulatory impact review (RIR) that analyzes the economic impacts of this rule and describes its effects on small business entities. The RIR concludes that Amendment 5 will have minimal economic effects and will not have a significant economic impact on a substantial number of small entities. Accordingly, the General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities; and a regulatory flexibility analysis was not prepared.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this final rule. Based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule.

The Council determined that this final rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not participate in the coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Florida agreed with the determination. Alabama, Louisiana, and Mississippi did not comment within the statutory time period; therefore, state agency agreement with the consistency determination is presumed.

A consultation conducted in accordance with section 7 of the Endangered Species Act concluded that neither the fishery nor this action would adversely affect populations of endangered/threatened species such as sea turtles, as long as the current turtle excluder device regulations remain in effect.

This final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator, pursuant to the Administrative Procedure Act (5 U.S.C. 553(d)(3)), finds for good cause, namely, as regards changes to the Texas closure, to ensure that flexibility in setting the dates of the Texas closure is available in 1991 and, thus, the full benefits of the Texas closure may be attained in 1991, that it is impracticable to delay for 30 days the effective date of this rule. Accordingly, the closure changes are effective upon publication. The other regulatory provisions relieve a restriction, and are being made effective upon publication.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 14, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 658 is amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 658.1 paragraph (b) is revised to read as follows:

§ 658.1 Purpose and scope.

* * * * *

(b) The regulations in this part govern fishing for brown shrimp, white shrimp, pink shrimp, and royal red shrimp by vessels of the United States in the EEZ of the Gulf of Mexico. In addition, the regulations in this part govern recordkeeping and reporting for the above-mentioned shrimp, and for seabobs and rock shrimp, that are caught or landed in or from the EEZ of the Gulf of Mexico or in or from adjoining state waters.

* * * * *

3. In § 658.8, paragraph (a) introductory text is revised to read as follows:

§ 658.8 Vessel identification.

(a) *Official number.* Each vessel of the United States that takes brown shrimp, white shrimp, pink shrimp, or royal red shrimp in the Gulf of Mexico EEZ must:

* * * * *

4. Section 658.20 is revised to read as follows:

§ 658.20 Fishing year.

The fishing year for brown shrimp, white shrimp, and pink shrimp begins on May 1. The fishing year for royal red shrimp begins on January 1.

5. In § 658.21, paragraphs (a) and (b) are revised to read as follows:

§ 658.21 Allowable levels of harvest.

(a) *Catch quotas.* The domestic quota for royal red shrimp harvested from the EEZ is 111.8 metric tons. There are no domestic quotas for brown shrimp, white shrimp, or pink shrimp harvested from the EEZ.

(b) *State waters.* These regulations do not limit the harvest of brown shrimp, white shrimp, pink shrimp, or royal red shrimp in waters landward of the EEZ. However, harvests from waters landward of the EEZ are taken into account in the calculations of maximum sustainable yield and optimum yield for those shrimp species.

* * * * *

6. In § 658.25, paragraph (a) and paragraph (b) introductory text are revised to read as follows:

§ 658.25 Texas closure.

(a) *Area and season restrictions.* From 30 minutes after sunset on May 15 to 30 minutes after sunset on July 6 the area described in this paragraph is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100-fathom depth contour. The area is that part of the EEZ off Texas west of a line connecting point A at 29°32.1'N. latitude, 93°47.7'W. longitude, to point B at 26°11.4'N. latitude, 92°33.0'W. longitude (see Figure 4).

(b) *Adjustment of dates.* The Regional Director may adjust the closing and/or opening date to provide an earlier, later, shorter, or longer closure, but the duration of the closure may not exceed 90 days or be less than 45 days.

* * * * *

7. Section 658.26 is revised to read as follows:

§ 658.26 Size restrictions.

There are no minimum size restrictions for brown shrimp, pink shrimp, or royal red shrimp harvested in the EEZ. White shrimp harvested in the EEZ are subject to the minimum-size landing and possession limits of Louisiana when possessed within the jurisdiction of that State.

[FR Doc. 91-11774 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 910117-1017]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of change in reporting requirements.

SUMMARY: The Regional Director, Alaska Region, NMFS (Regional Director) announces a requirement for submission of daily production reports from processors fishing for or receiving sablefish harvested with hook-and-line gear in the Central and Eastern Regulatory Areas and associated reporting areas of the Gulf of Alaska.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), May 15, 1991, until the end of the fishing year or until further notice.

ADDRESSES: Copies of the "Alaska Groundfish Processor Daily Production Report" forms may be obtained by writing to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, Fisheries Management Division, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the Exclusive Economic Zone within the Gulf of Alaska (GOA) management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations codified at 50 CFR part 611.92 and 50 CFR part 672.

Section 672.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) for all groundfish species in the GOA management area. Total allowable catch (TAC) amounts for target species and the "other species" category are specified annually within the OY range and are apportioned by subarea under § 675.20(a)(2)(i).

The initial 1991 TAC specified for

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sablefish in the GOA was 22,500 mt, all of which was apportioned to domestic annual processing (DAP) (56 FR 6723; March 1, 1991). Sablefish TACs were assigned for each of the regulatory areas and districts to hook-and-line gear (19,350 mt) and trawl gear (3,150 mt) as follows:

Area/district	TAC (mt)	Hook-and-line share	Trawl share
Western	2,925	2,340	585
Central	10,575	8,460	2,115
Eastern:			
West Yakutat	4,050	3,850	200
Southeast Outside/East Yakutat	4,950	4,700	250
Total	22,500	19,350	3,150

Under § 672.23(a), directed fishing for sablefish with hook-and-line gear in the Gulf of Alaska is authorized beginning at noon, local time, on May 15, 1991. Ordinarily, NMFS would monitor sablefish harvests in this fishery through weekly domestic observer reports and weekly production reports submitted by groundfish processors under § 672.5(c)(2). These regulations require submission of the weekly production reports within 7 days of the end of the applicable weekly reporting period. Data entry, verification, and correction usually take another week, resulting in a delay of up to 2 weeks between the time of processing and the time the production information becomes available for TAC monitoring.

This procedure usually is adequate for monitoring groundfish TACs; however, this procedure is inadequate for the sablefish hook-and-line fishery in the Eastern and Central Regulatory Areas of the Gulf of Alaska. This fishery is fast-paced, has variable fishing effort, and has small TACs relative to the level of fishing effort. Sablefish harvests and production can outstrip the managers' capacity to monitor the fishery, resulting in inadvertent overharvests. Conversely, if fishing effort decreases unexpectedly, a fishery closure projected on production information from the weekly production reports may result in a premature closure, with unnecessary loss of revenue and increased costs to the groundfish fishing industry.

Recent changes to regulations for reporting and recordkeeping requirements (56 FR 9636; March 7, 1991) address this problem. Section 672.5(c)(3) now authorizes the Regional Director to require daily production reports from processor vessels and shoreside processing facilities that conduct fishing activity in, or receive groundfish from, any Gulf of Alaska reporting area. In order to obtain timely production information from the sablefish hook-and-line fishery, as of noon, Alaska local time, May 15, 1991, the Regional Director is requiring daily production reports from processor vessels and shoreside processing facilities that process sablefish harvested with hook-and-line gear from all Gulf of Alaska Reporting Areas of the Central and Eastern Regulatory Areas (62, 621, 63, 64, 65, and 68). This requirement for daily production reports is an additional requirement effective until further notice, and does not suspend other applicable recordkeeping and reporting requirements.

Daily production reports must include all information required by § 672.5(c)(3)(ii) for sablefish harvested with hook-and-line gear from the applicable reporting areas. Processors must submit the required information on the "Alaska Groundfish Processor Daily Production Report" form available in the processors' recordkeeping reference manual or from the Regional Director at the address listed above. Processors must transmit their completed daily production reports to the Regional Director by facsimile transmission to number (907) 586-7131, or by telex (U.S. code) at 622-9600, no later than 12 hours after the end of the day that the sablefish was processed.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay the effective date of this notice.

This action is taken under § 672.5(c)(3) and is in compliance with Executive Order 12291.

The collection-of-information requirement contained in this notice was approved by the Office of Management and Budget (OMB) as a revision to OMB No. 0648-213 (56 FR 9636; March 7, 1991).

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 13, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-11713 Filed 5-13-91; 4:41 pm]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 901190-1021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of prohibition of retention of groundfish.

SUMMARY: The Secretary of Commerce (Secretary) announces that Greenland turbot is required to be treated in the same manner as prohibited species by vessels fishing in the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to prevent the total allowable catch (TAC) for Greenland turbot in the BSAI area from being exceeded before the end of the fishing year. The intent of this action is to ensure optimum use of groundfish while conserving Greenland turbot stocks.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), May 13, 1991, through midnight, A.l.t., December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) governs the groundfish fishery in the exclusive economic zone within the BSAI management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and part 675.

Section 675.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 1.4 to 2.0 million metric tons (MT) for all groundfish species in the BSAI management area. The TACs for target species and the "other species" category are specified annually within the OY range and apportioned by subarea under § 675.20(a)(2).

Under § 675.20(a)(9), when the Regional Director determines that the TAC of any target species or of the "other species" category has been achieved prior to the end of a fishing year, the Secretary will publish a notice in the **Federal Register** requiring that species or the "other species" category be treated in the same manner as prohibited species, as described in § 675.20(c), for the remainder of the fishing year. The 1991 TAC specified for

Greenland turbot in the BSAI is 5,950 mt, all of which was apportioned to domestic annual processing (DAP) (56 FR 6290, February 15, 1991).

The Regional Director has determined that the TAC for Greenland turbot for vessels in the BSAI will be reached on May 13, 1991. Therefore, under §§ 675.20(a)(6) and 675.20(c), the Secretary is prohibiting further retention of Greenland turbot by vessels in the BSAI and is requiring that Greenland turbot be treated in the same manner as prohibited species by vessels in the BSAI and discarded from noon, A.l.t., May 13, 1991, through the remainder of this fishing year.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay the effective date of this notice. The TAC for Greenland turbot in the BSAI will be exceeded unless this notice takes effect immediately.

This action is taken under § 675.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*.

Dated: May 13, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-11714 Filed 5-13-91; 4:41 pm]

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Proposed Rules

Federal Register
Vol. 56, No. 96
Friday, May 17, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-91-233PR]

Proposed Expenses and Assessment Rate for the Marketing Order Covering Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate for the 1991–92 fiscal year (August 1–July 31) under Marketing Order No. 905. These actions are needed so the Citrus Administrative Committee (committee) established under the marketing order can pay its expenses and collect assessments from handlers to pay those expenses. This proposed action would enable the committee to perform its duties and the marketing order to operate.

DATES: Comments must be received by June 17, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The agreement and order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 90 citrus handlers subject to regulation under the marketing order covering fresh oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 12,000 producers of these fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of these producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable citrus fruit handled from the beginning of such year. An annual budget of expenses and assessment rate is prepared by the committee and submitted to the Department for approval. The committee members are handlers and producers of Florida citrus. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected cartons (⅘ bushels) of fruit shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The annual budget and assessment rate are usually recommended by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee recommended a budget with expenditures of $210,000, for the 1991–92 fiscal year. The major expenditure items in the budget are for employee salaries and benefits, office operations, and the purchase of shipping information. These costs are generally slightly higher than those in the $180,000 budget for 1990–91, reflecting inflationary pressures. A new $20,000 item is included in the 1991–92 budget to fund committee travel expenses relating to member attendance at the Texas-Mexico Citrus Conference in 1992.

The committee also recommended a 1991–92 assessment rate of $0.0025 per ⅘ bushel carton of fresh fruit shipped. Assessment income for 1991–92 is expected to total $150,000, based on estimated shipments of 60,000,000 cartons of assessable fruit. Interest income for 1991–92 is estimated at $8,000. A deficit of $52,000 is budgeted for 1991–92 and is intended to reduce the committee's reserve to more modest levels. The 1991–92 assessment rate is $0.0009 lower than that established for 1990–91, reflecting an estimate that 1991–92 assessable shipments will be 10,000,000 cartons over the 1990–91 estimate.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers.

Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 905 be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 905.230 is added to read as follows:

§ 905.230 Expenses and assessment rate.

Expenses of $210,000 by the Citrus Administrative Committee are authorized, and an assessment rate of $0.0025 per ⅘ bushel carton of assessable fruit is established for the fiscal year ending July 31, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

Dated: May 14, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–11754 Filed 5–16–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 19, 113 and 114

RIN–1515–AA22

Proposed Customs Regulations Amendments Relating to Duty-Free Stores

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to designate duty-free stores as a new class of Customs bonded warehouse, establish procedures for the administration of these facilities, and incorporate duty-free store operating procedures into the regulations. These changes are necessary to implement section 1906 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418).

DATES: Comments must be received on or before July 16, 1991.

ADDRESSES: Comments (preferably in triplicate) must be submitted to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Pat Duffy or Mike Brengle, Office of Cargo Enforcement and Facilitation (202–566–8151).

SUPPLEMENTARY INFORMATION:

Background

Duty-free stores are Customs bonded warehouses operating under special procedures whereby merchandise is offered for sale to departing travelers without payment of Customs duties and taxes, on condition that the merchandise will be exported by and with them from the United States. These stores were first established in the late 1950's at airports in the United States and on land borders with Mexico and Canada. At present, there are approximately 125 duty-free stores operating throughout the United States, 43 of which are on the Canadian border, 33 at the Mexican border and 49 at U.S. international airports.

Duty-free stores have been administered since their inception through U.S. Customs administrative directives, rather than through any specific law or regulation. The Customs Service drafted regulations for the administration of duty-free stores in 1984. However, the draft regulations were never published as a Notice of Proposed Rulemaking, because Congress inserted a provision in Public Law 98–473 (Continuing Appropriations for Fiscal Year 1985) prohibiting the use of Customs funds made available by that Act or any other Act to propose or promulgate any rules or regulations relating to duty-free stores until Congress legislated in this matter. This provision was deemed by Customs to constitute a continuing prohibition in subsequent Customs appropriations unless it was specifically terminated. See 51 FR 24535 of July 7, 1986.

Congress did not legislate concerning duty-free stores until enactment of section 1906 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; August 23, 1988). Section 1906 amended section 555(b) of the Tariff Act of 1930 (19 U.S.C. 1555(b)) to authorize the establishment and operation of duty-free stores in accordance with the provisions of the law and such regulations as the Secretary of the Treasury may prescribe.

In a recent development, a private firm has sought approval of a duty-free store for sales to passengers boarding cruise vessels at seaports. Unlike airport and land border locations, the Customs Service has never established any nationwide procedures for seaport duty-free stores. However, such stores are included within the meaning of the "border stores" under section 555(b)(8)(B), as recently amended.

To carry out the provisions of 19 U.S.C. 1555(b) and to regulate seaport duty-free stores, this rulemaking has been initiated. Some of the procedures in the proposal are carried over from the Customs administrative directives (Manual Supplement 3285–02 and Customs Directive 3280–04). Also, the regulations which apply to all bonded warehouses generally would, of course, continue to apply to duty-free stores unless specifically preempted by the proposed regulations. Duty-free stores approved by Customs as of August 23, 1988, shall be brought into compliance with the proposed regulations within 60 days after their approval in final form.

The principal features of section 1555(b) with respect to which implementing regulations are proposed are as follows:

1. Duty-free stores are authorized to be established anywhere within the port of entry from which a purchaser will depart or within 25 miles of the exit point of the purchaser from the United States.

2. Duty-free store operators will establish procedures to assure exportation of the merchandise. Sales by airport stores are restricted to personal-use quantities. There are no quantity restrictions on border sites.

3. Goods purchased in duty-free stores are not eligible for the personal exemption from duty if reimported. Customs may impose marking requirements to identify duty-free store merchandise upon reimportation, if there has been a pattern of undeclared reimportations.

4. Airport duty-free stores will deliver merchandise (1) to the purchaser in a sterile airport area, (2) to the purchaser at the exit point (gate holding area) of a departing flight, (3) to the aircraft, or (4) if any of the foregoing methods have failed ("no-show" passengers), by any other reasonable method to effect delivery for exportation.

5. Border duty-free store operators will deliver merchandise (1) to the purchaser beyond the exit point, or (2) to

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the purchaser at any location approved by Customs before August 23, 1988 (date of enactment of the Trade Act).

6. Domestic or duty-paid goods may be brought into duty-free store bonded sales or crib areas for sale, but may not be placed in bonded storage areas. However, they must be marked to distinguish them from the duty-free merchandise.

In addition, regulations are proposed under the authority of section 1555(b) in the following areas:

1. Procedures for the operation of seaport duty-free stores are established.

2. The blanket permit procedures to withdraw merchandise from duty-free stores, as well as vessel and aircraft supply stores and diplomatic stores, currently allowed under Customs administrative directives, will not be authorized by regulation.

3. Sign, sales ticket, and recordkeeping requirements are established for duty-free stores.

4. The warehouse fee suspension authorized in section 9501 of the Omnibus Budget Reconciliation Act of 1987 (19 U.S.C. 58c) is acknowledged by deleting the regulatory section on warehouse fees.

5. Certain provisions applicable not only to duty-free stores, but also to other bonded warehouses are specifically referenced as being generally applicable to all bonded warehouses.

Proposal

In order to better administer the duty-free store program, Customs proposes to amend parts 19, 113, and 144, Customs Regulations (19 CFR parts 19, 113, and 144), in the following manner:

1. Establish duty-free stores as Class 9 Customs warehouses in section 19.1(a);

2. Revise § 19.2(a) to include documentation needed to support applications for new duty-free stores;

3. Merge § 19.2 (c) and (d) to specify the bond requirements of all new bonded warehouses, including Class 9 warehouses, upon approval of the warehouse application;

4. Revise § 19.3(e) to include a new ground for warehouse suspension or revocation specific to Class 9 warehouses;

5. Delete and reserve § 19.5;

6. Revise § 19.6(d) to allow for blanket permits upon entry acceptance for withdrawals of merchandise from duty-free stores, vessel and aircraft supply stores, and diplomatic stores, without further approval by Customs;

7. Amend § 19.11 by revising paragraph (c) and by adding a new paragraph (h) thereto to allow duty-free stores to unpack goods into saleable units without the need for an application to and permit by Customs;

8. Revise § 19.12(a)(3) to allow the consolidation of duty payments owed on thefts and shortages from bonded warehouses;

9. Revise § 19.12(a)(4) to allow a proprietor of a bonded warehouse, including a duty-free store, to file the permit file folder with Customs within 30 days from the final withdrawal of the merchandise covered by the entry;

10. Add a new paragraph (a)(8) to § 19.12 to authorize the implementation of automated data processing systems by warehouse proprietors;

11. Add new §§ 19.35, 19.36, 19.37, 19.38 and 19.39 to set forth requirements for, limitations upon, and operating procedures for, duty-free stores;

12. Revise § 113.63 by adding a new paragraph (c)(5) to the custodial bond agreement wherein the proprietor agrees to provide reasonable assurance of exportation of duty-free store merchandise; and

13. Add a new paragraph (h) to § 144.37, setting forth the procedures governing withdrawals of merchandise from duty-free stores for exportation under a sales ticket procedure.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that the proposed amendments set forth in this document, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been approved by the Office of Management and Budget (OMB) under 1515-0121, Establishment of Bonded Warehouses. Duty-free stores have long existed in this regard under established administrative practice. This notice of proposed rulemaking is intended to specifically include duty-free stores in the Customs Regulations as a separate class of bonded warehouse, and does not change the information collection burden with respect thereto.

The collection of information in this proposed revision is in §§ 19.2, 19.6, 19.11, 19.12, 19.36, 19.37, 19.38, 19.39 and 144.37. This information is necessary to assure the exportation of merchandise from duty-free stores, and to otherwise implement the requirements of law and protect the revenue. Comments concerning the accuracy of the existing burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 19

Customs duties and inspection, Imports, Exports, Warehouses.

19 CFR Part 113

Customs bonds.

19 CFR Part 144

Customs duties and inspections, Imports, warehouse.

Proposed Amendment

It is proposed to amend parts 19, 113 and 144, Customs Regulations (19 CFR Parts 19, 113 and 144), as set forth below.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The authority citation for part 19 would be revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States, 1624;

§ 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562;

§ 19.6 also issued under 19 U.S.C. 1555;

§ 19.7 also issued under 19 U.S.C. 1555, 1556;

§ 19.11 also issued under 19 U.S.C. 1556, 1562;

§ 19.15 also issued under 19 U.S.C. 1311;

§§ 19.17–19.25 also issued under 19 U.S.C. 1312;

§§ 19.35–19.39 also issued under 19 U.S.C. 1555;

§ 19.40(a) also issued under 19 U.S.C. 1450, 1499, 1623;

§§ 19.41–19.43 also issued under 19 U.S.C. 1499;

§ 19.44 also issued under 19 U.S.C. 1448;

§ 19.45 also issued under 19 U.S.C. 1551, 1565;

§ 19.48 also issued under 19 U.S.C. 1499, 1623;

§ 19.49 also issued under 19 U.S.C. 1484.

2. It is proposed to amend § 19.1 by adding a new paragraph (a)(9) to read as follows:

§ 19.1 Classes of customs warehouses.

(a) * * *

(9) *Class 9.* Bonded warehouse known as "duty-free stores," used for selling, for use outside the Customs territory, conditionally duty-free merchandise owned or sold by the proprietor and delivered from the Class 9 warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the Customs territory for destinations other than foreign trade zones. Pursuant to 19 U.S.C. 1555(b)(8)(C), "Customs territory", for purposes of duty-free stores, means the Customs territory of the U.S. as defined in § 101.1(e) of this chapter, and foreign trade zones (see Part 146 of this chapter).

* * * * *

3. It is proposed to amend § 19.2 by removing the paragraph designations for paragraphs (b)(1), (2), and (3); by adding a phrase at the end of the introductory text of paragraph (b) and adding new paragraphs (1), (2), (3), and (4); by revising paragraph (c), and by removing and reserving paragraph (d) as follows:

§ 19.2 Applications to bond; annual fee.

* * * * *

(b) * * * If the application is for a Class 9 warehouse (duty-free store), the applicant shall furnish the following documents:

(1) A map showing the location of the facilities to be bonded in respect to the port of entry and distances to all exit points of purchasers of conditionally duty-free merchandise;

(2) A description of the store's procedures to provide reasonable assurance that conditionally duty-free merchandise sold therein will be exported;

(3) If an airport duty-free store, a description of the store's procedures for restricting sales of conditionally duty-free merchandise to personal-use quantities; and

(4) A statement by an authorized official of the appropriate state, local, or other governmental authority administering the exit point facility that the applicant duty-free store is authorized to deliver conditionally duty-free merchandise to purchasers at or through that exit point facility. A separate statement shall be required for each governmental authority having jurisdiction over exit point facilities through which the duty-free store intends to deliver merchandise to purchasers. If the merchandise will be delivered through an exit point which is not under the jurisdiction of a governmental authority, the applicant will provide a statement to that effect.

(c) On approval of the application to bond a warehouse of any class, except Class 1, a bond shall be executed on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter.

(d) [Reserved].

* * * * *

4. It is proposed to amend § 19.3 by adding a new paragraph (e)(9) as follows:

§ 19.3 Bonded warehouse; alterations; relocations; suspensions; discontinuance.

* * * * *

(e) * * *

(9) The proprietor of a Class 9 warehouse is or has been unable to provide reasonable assurance that conditionally duty-free merchandise is or was exported in compliance with the regulations in this part.

* * * * *

§ 19.5 [Removed]

5. It is proposed to delete and reserve § 19.5.

6. It is proposed to amend § 19.6 by revising the section heading and paragraph (d) to read as follows:

§ 19.6 Deposits, withdrawals, blanket permits to withdraw and sealing requirements.

* * * * *

(d) *Blanket permits to withdraw.* (1) *General.* Blanket permits may be used to withdraw merchandise in small quantities from bonded warehouses for:

(i) delivery to individuals departing directly from the Customs territory for exportation under the sales ticket procedure of § 144.37(h) of this chapter (Class 9 warehouses only);

(ii) aircraft or vessel supplies under sections 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317); or

(iii) the personal or official use of personnel of foreign governments and international organizations set forth in subpart I, part 148 of this chapter; or

(iv) a combination of the foregoing.

Blanket permits to withdraw may be used only for delivery at the port where withdrawn and not for transportation in bond to another port. Blanket permits to withdraw may not be used for delivery to a location for retention or splitting of shipments under the provisions of § 18.24 of this chapter. A withdrawer who desires a blanket permit shall state in capital letters on the warehouse entry, or on the warehouse entry/entry summary when used as an entry, that "Some or all of the merchandise will be withdrawn under blanket permit per section 19.6(d) C.R." Customs acceptance of the entry will constitute approval of the blanket permit. A copy of the entry will be delivered to the proprietor, whereupon merchandise may be withdrawn under the terms of the blanket permit. The permit may be revoked by the district director in favor of individual applications and permits if the permit is found to be used for other purposes, or if necessary to protect the revenue or properly enforce any law or regulation Customs is charged with administering. Merchandise covered by an entry for which a blanket permit was issued may be withdrawn for purposes other than those specified in this paragraph if a withdrawal is properly filed as required in subpart D, part 144 of this chapter.

(2) *Withdrawals under blanket permit.* Withdrawals may be made under blanket permit without any further Customs approval, and shall be documented by placing a copy of the withdrawal document in the proprietor's permit file folder. Each withdrawal shall be filed on Customs Form 7506 or 7505, as appropriate, and shall be consecutively numbered, prefixed with the letter "B". The withdrawal shall specify the quantity and value of each type of merchandise to be withdrawn. Each copy shall bear the summary statement described in § 144.32(a) of this chapter, reflecting the balance of merchandise covered by the warehouse entry. Any joint discrepancy report of the proprietor and the bonded carrier, licensed cartman or lighterman, or weigher, gauger, or measurer for a supplementary withdrawal shall be made on the copy and reported to the district director as provided in

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paragraph (b)(1) of this section. A copy of the withdrawal shall be retained in the records of the proprietor as provided in § 19.12(a)(2) of this part. Merchandise shall not be removed from the warehouse prior to the preparation of the supplementary withdrawal. If merchandise is so removed, the proprietor shall be subject to liquidated damages as if it were removed without Customs permit.

(3) *Withdrawals under blanket permit from duty-free stores.* Withdrawals under blanket permit from duty-free stores shall be made on the sales ticket described in § 144.37(h) of this chapter. The sales ticket need not contain the summary statement described in § 144.32(a) of this chapter, since the information required is included in the sales ticket register. The sales ticket shall be serially numbered as provided in § 144.37(h)(2) of this chapter.

(4) *Blanket permit summary.* When all of the merchandise covered by an entry on which a blanket permit to withdraw was issued has been withdrawn, including withdrawals made for purposes other than duty-free store delivery, vessel or aircraft supply, or diplomatic use, the proprietor shall prepare a report on a copy of Customs Form 7506, or a form on the letterhead of the proprietor, which provides an account of the disposition of the merchandise covered by the blanket permit. The form shall bear the words "BLANKET PERMIT SUMMARY" in capital letters conspicuously printed or stamped in the top margin. On the form, the proprietor shall certify that the merchandise listed thereunder was withdrawn in compliance with § 19.6(d), and shall account for all of the merchandise withdrawn under blanket permit by HTSUS (Harmonized Tariff Schedule of the United States) number, HTSUS quantity (where applicable) and value. If applicable, the account shall separately list and identify merchandise withdrawn for

(1) Duty-free store exportation,

(2) Vessel or aircraft supply use, and

(3) Personal or official use of persons and organizations set forth in subpart I, part 148, of this chapter.

If all of the merchandise was withdrawn under the sales ticket procedure of § 144.37(h) of this chapter, the sales ticket register may be substituted for the blanket permit summary. The form will be placed in the permit file folder and treated as provided in § 19.12(a) of this part.

* * * * *

7. It is proposed to amend § 19.11 by revising the first sentence of paragraph (c), removing the fourth sentence of paragraph (d), and revising paragraph (d), and by adding a new paragraph (h), to read as follows:

§ 19.11 Manipulation in bonded warehouses and elsewhere.

* * * * *

(c) Warehouse proprietors shall not allow manipulation of any merchandise without a prior permit issued by the district director, except as provided in paragraph (h) of this section. * * *

(d) The application to manipulate, which shall be filed on Customs Form 3499 with the district director having jurisdiction of the warehouse or other designated place of manipulation, shall describe the contemplated manipulation in sufficient detail to enable the district director to determine whether the imported merchandise is to be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, within the meaning of section 562, Tariff Act of 1930, as amended. If the district director is satisfied that the merchandise is to be so manipulated, he may issue a permit on Customs Form 3499, making any necessary modification in such form. The district director may approve a blanket application to manipulate on Customs Form 3499, for a period of up to one year, for a continuous or a repetitive manipulation. The warehouse proprietor must maintain a running record of manipulations performed under a blanket application, indicating the quantities before and after each manipulation. The record must show what took place at each manipulation describing marks and numbers of packages, location within the facility, quantities, and description of goods before and after manipulation. The district director is authorized to revoke a blanket approval to manipulate and require the proprietor to file individual applications if necessary to protect the revenue, administer any law or regulation, or both. Manipulation resulting in a change in condition of the merchandise, which will make it subject to a lower rate of duty or free of duty upon withdrawal for consumption, is not precluded by the provisions of such section 562.

* * * * *

(h) Merchandise which has been entered for warehouse and placed in a Class 9 warehouse (duty-free store) may be unpacked into saleable units without a prior permit issued by the district director. The district director may issue a blanket permit to a duty-free store for up to one year permitting the destruction of merchandise covered by any entry and found upon receipt to be nonsaleable, if the merchandise to be destroyed is valued at less than $100 per entry, in its undamaged condition. Such permit may be revoked in favor of a permit for each entry whenever necessary to assure proper destruction and protection of the revenue. The proprietor shall maintain a record of unpacking merchandise into saleable units and destruction of nonsaleable merchandise in its inventory and accounting records.

8. It is proposed to amend § 19.12 by revising paragraph (a)(2), adding two sentences to the end of paragraph (a)(3), by revising paragraph (a)(4), and by adding a new paragraph (a)(6), to read as follows:

§ 19.12 Warehouse recordkeeping, storage and security requirements.

(a) * * *

(2) *Maintain permit file folders.* Permit file folders shall be maintained and kept up to date by filing all receipts, damage or shortage reports, manipulation requests, withdrawals, removals, and blanket permit summaries within two business days after the event occurs.

(3) *Theft, shortage, overage or damage.* * * * The applicable duties and taxes on thefts and shortages so reported shall be paid by the responsible party to Customs within 10 working days after discovery. The district director may allow the consolidation of duties and taxes applicable to multiple shortages into one payment.

(4) *Review of permit file folder.* When the final withdrawal of merchandise relating to a specific warehouse entry, general order or seizure occurs, the warehouse proprietor shall:

(i) Review the permit file folder to insure that all necessary documentation is in the file folder accounting for the merchandise covered by the entry,

(ii) Notify Customs of any merchandise covered by the warehouse entry, general order or seizure which has not been withdrawn or removed, and

(iii) File the permit file folder with Customs within 30 business days after final withdrawal.

* * * * *

(6) *Automated operating and inventory control systems.* The district director may authorize the implementation by a proprietor of automated data processing systems for operating and inventory control purposes if they are in support of Customs procedural requirements and do not adversely affect Customs supervision and control of warehouse activities and transactions.

* * * * *

9. It is proposed to amend part 19, Customs Regulations, by adding after § 19.34, a new center heading entitled "Duty-Free Stores" and new §§ 19.35, 19.36, 19.37, 19.38, and 19.39, to read as follows:

Duty-Free Stores

§ 19.35 Establishment of duty-free stores (Class 9 warehouses).
§ 19.36 Requirements for duty-free store operations.
§ 19.37 Crib operations.
§ 19.38 Supervision of exportation.
§ 19.39 Delivery to persons for exportation.

Duty-Free Stores

§ 19.35 Establishment of duty-free stores (Class 9 warehouses).

(a) *General.* A Class 9 warehouse (duty-free store) may be established for exportation of conditionally duty-free merchandise by individuals departing the customs territory, inclusive of foreign trade zones, by aircraft, vessel, or departing directly by vehicle or on foot to a contiguous country. Such articles must accompany the individual on his person or in the same aircraft, vessel, or vehicle in which the individual departs. "Conditionally duty-free merchandise" means merchandise sold by a duty-free store on which duties and/or internal revenue taxes (where applicable) have not been paid. Except insofar as the provisions of this section and §§ 19.36–19.39 are more specific, the procedures for bonded warehouses apply to duty-free stores (Class 9 warehouses).

(b) *Location.* A Class 9 warehouse may be established or located only (1) within the same port of entry from which a purchaser of duty-free store merchandise departs the customs territory, or (2) within 25 statute miles from the exit point through which the purchaser of duty-free store merchandise departs the customs territory.

(c) *Integrated locations.* A Class 9 warehouse with multiple noncontiguous sales and crib locations (see § 19.37(a) of this part) containing conditionally duty-free merchandise will be treated by Customs as one location if (1) the proprietor can provide Customs upon demand with the proper on-hand balance of each inventory item in each storage location, sales room, crib, mobile crib, delivery cart, or other conveyance or noncontiguous location, and (2) the recordkeeping system is centralized up to the point where a sale is made so as to automatically reduce the sale quantity by location from the centralized inventory.

(d) *Exit point.* The exit point referred to in paragraph (b) of this section means the area in close proximity to an actual exit for departing from the Customs territory, including the gate holding area in the case of an airport, but only if there is reasonable assurance that conditionally duty-free merchandise delivered in the gate holding area will be exported from the Customs territory. The exit point in the case of a land border or seaport duty-free store is the point at which a departing individual has no practical alternative to continuing on to a foreign country or to returning to Customs territory without passing through a U.S. Customs inspection facility. The district director's decision as to what constitutes the exit point or reasonable assurance of exportation in a given situation is final.

(e) *Notice to customers.* Class 9 warehouse proprietors shall display in prominent places where they will be noticed and read by customers signs which state clearly that any conditionally duty-free merchandise purchased from the store:

(1) Has not been subjected to any U.S. Federal duty or tax;

(2) If brought back to the United States must be declared and is subject to U.S. Federal duty and tax without personal exemption; and

(3) Is subject to the Customs laws and regulations, including possible duties and taxes, of any foreign country to which it is taken.

(f) *Security of sales rooms and cribs.* The physical and procedural security requirements of § 19.12(b)(3) of this part shall be applied by the district director so as to accommodate the movement of purchasers and prospective purchasers of conditionally duty-free merchandise contained in duty-free sales rooms and cribs.

(g) *Approval of governmental authority.* If a state or local or other governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free store under which merchandise is delivered to or through such facility for exportation, merchandise incident to such operation may not be withdrawn for exportation and transferred to or through such facility unless the operator of the duty-free store demonstrates to the district director that the concession or approval required for the enterprise has been obtained.

§ 19.36 Requirements for duty-free store operations.

(a) *Withdrawals.* Merchandise withdrawn under the sales ticket procedure in § 144.37(h) of this chapter may be delivered only to individuals departing from the Customs territory for exportation or to persons and organizations for use as specified in subpart I, part 148, of this chapter. Withdrawals of other kinds may be made from Class 9 warehouses, but only through separate withdrawals (or withdrawals under blanket permit for vessel or aircraft supplies) under an approved permit of the district director as provided in § 144.39 of this chapter.

(b) *Procedures required.* Each duty-free store shall establish, maintain, and follow written procedures to provide reasonable assurance to the district director that conditionally duty-free merchandise purchased therein will be exported from the Customs territory. A copy of any change in the procedure will be provided to the district director before it is implemented. However, receipt by Customs of the procedures or of any change thereto shall not be construed as approval by Customs of the procedures. The district director is responsible for insuring that each enterprise has established guidelines with Customs and is complying with those guidelines, giving assurance that proper supervision exists when delivery is made to the purchaser at or before the exit point. The district director may at any time require any change in the procedures deemed necessary for assurance of exportation.

(c) *Personal-use restricitons.* Any duty-free store which delivers conditionally duty-free merchandise to purchasers at an airport exit point shall establish, maintain, and enforce written restrictions on the sale of conditionally duty-free merchandise to any one individual to personal-use quantities. Personal-use quantities means quantities that are only suitable for uses other than resale, and includes reasonable quantities for household or family consumption as well as for gifts to others. Proprietors will not knowingly sell or deliver conditionally duty-free merchandise in any quantity to any individual for the purpose of resale. A copy of the restrictions and of any change thereto shall be provided to the district director prior to implementation. However, receipt of the written restrictions by Customs shall not be construed as approval by Customs of the restrictions. The district director may require any change in the restrictions deemed necessary to

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conform to the personal-use quantity restriction of this section.

(d) *Reimported merchandise.* Merchandise purchased in a duty-free store is not eligible for exemption from duty, or tax where applicable, under chapter 98, subchapter IV, Harmonized Tariff Schedule, if it is brought back to the United States after exportation. To enforce this restriction, the district director may require the proprietor to mark or otherwise place a distinguishing identifier on individual items of merchandise to indicate the items were sold in a U.S. duty-free store, if a pattern is disclosed in which such items are being brought back to the United States without declaration. A pattern of undeclared reimportations means a number of instances over a period of time and not isolated instances of unrelated violations. Any such marking required by the district director will be inconspicuous to the purchaser and will not detract from the value of the merchandise. The marking requirement will be limited to the items or types of merchandise noted in the pattern, and will not be extended to all merchandise of the store unless all or most items are part of the pattern.

(e) *Merchandise eligible for warehousing.* Only conditionally duty-free merchandise may be placed in a bonded storage area of a Class 9 warehouse. However, domestic merchandise and merchandise which was previously entered or withdrawn for consumption, and which are not fungible with conditionally duty-free merchandise, may be brought into the bonded sales or crib area of a Class 9 warehouse for display and sale, and in the case of a crib, for delivery to purchasers. However, such merchandise must be marked "DUTY-PAID" or "U.S. ORIGIN", or with similar markings, as applicable, for easy distinction by Customs officers and purchasers of conditionally duty-free merchandise form other merchandise in the sales or crib area.

(f) *Sale of merchandise.* Conditionally duty-free merchandise for exportation at airport or seaport exit points may be sold and delivered only to purchasers who display valid tickets for departure from the Customs territory, and crewmembers who have been engaged for a flight or voyage departing directly from the Customs territory.

(g) *Inventory procedure.* Duty-free store proprietors shall maintain a current inventory separately for each storage area, crib, and sales area containing conditionally duty-free merchandise by warehouse entry, or by unique identifier where permitted by the district director. The inventory shall be reconcilable with the accounting and inventory records and the permit file folder requirements of § 19.12(a) (1) and (2), of this part. Proprietors are subject also to the recordkeeping requirements of other paragraphs of § 19.12, as well as those of §§ 19.6(d), 19.37(d), 19.39(d) of this part, and 144.37(h)(3) of this chapter.

§ 19.37 Crib operations.

(a) *Crib.* A "crib" means a bonded area, separate from the storage area of a Class 9 warehouse, for the retention of a small supply of articles for delivery to persons departing from the United States. It shall be located beyond the exit point, unless exception has been made under § 19.39(b) of this part. The crib may be a permanent location or a mobile facility which is periodically moved to a location beyond the exit point. The quantity of goods in the crib shall be limited to two weeks' supply. However, the district director may raise or lower the quantity as he deems necessary for the protection of the revenue and proper administration of U.S. laws and regulations, or he may order the return to the storage area of goods remaining unsold.

(b) *Delivery and removal of merchandise.* Conditionally duty-free merchandise shall be delivered to the crib, or removed from the crib for return to the storage area, under the procedures in subpart D, part 125, and § 144.34(a), of this chapter, or under a local control system approved by the district director wherein any discrepancy found in the merchandise will be treated as if it occurred in the bonded warehouse. If delivery is made by licensed cartman, cartage vehicles shall be conspicuously marked as provided in § 112.27 of this chapter.

(c) *Delivery vehicles.* Vehicles, including mobile cribs, containing conditionally duty-free merchandise for delivery to or from a crib shall carry a listing of the articles contained therein. The proprietor shall provide, upon request by Customs, a transfer document sufficient to account for each movement of inventory among its locations. The merchandise in the vehicles shall be subject to inspection by Customs.

(d) *Retention of records.* Class 9 warehouse proprietors shall maintain records at the duty-free store of conditionally duty-free merchandise transported beyond the exit point and returned therefrom, and Customs permits for such movements, for not less than 5 years after exportation of the articles. Such records need not be placed in permit file folders but must be filed by date of movement and destination site.

§ 19.38 Supervision of exportation.

(a) *Sales ticket withdrawals.* Conditionally duty-free merchandise withdrawn under the sales ticket procedure for exportation shall be exported only under Customs supervision as provided in this section and § 19.39 of this part. General Customs supervision shall be exercised as provided in §§ 19.4 of this part and 161.1 of this chapter, and may consist of spot checks of exportation transactions, examination of articles being exported, and audits of the proprietor's records.

(b) *Supervision of ATF bonded exports.* Customs officers may conduct general supervision of exportations of cigarettes and cigars from ATF export bonded warehouses (see 27 CFR part 290) in conjunction with exportation from duty-free stores.

§ 19.39 Delivery to persons for exportation.

(a) *Delivery to land border locations.* (1) *Land border locations.* "Land border location" means an exit point from which individuals depart to a contiguous country by vehicle or on foot by bridge, tunnel, highway, walkway, or by ferry across a boundary lake or river, but not including departure to a contiguous country by air or sea. Deliveries from a duty-free store for exportation from such locations shall be made to the purchaser only beyond the exit point, except as specified in paragraph (a)(2) of this section.

(2) *Delivery at or before exit point.* Delivery of such merchandise may be made at or before the exit point of any location approved by Customs as of August 23, 1988. In such cases, delivery shall be done under the physical supervision of a Customs officer, or in accordance with established guidelines as outlined in § 19.36(b) of this part. The officer, or an authorized representative of the supervising independent party, shall sign the sales ticket certifying exportation and return it to the proprietor for retention in the files. The district director may also require that the warehouse proprietor have the person receiving the article sign the same copy to certify receipt.

(b) *Delivery to seaport locations.* (1) *Seaport location.* "Seaport location" means an exit point from which conditionally duty-free merchandise is delivered to departing individuals for exportation by vessel of more than 5 net tons which is departing directly from the Customs territory to touch and trade in a foreign country. Deliveries for exportation from such locations may be made only beyond the exit point, except as specified in paragraph (b)(2) of this section.

(2) *Delivery at or before exit point.* Delivery of such merchandise may be made at or before the exit point in the case of any locations approved by Customs as of August 23, 1988. In such cases, delivery shall be done under the physical supervision of a Customs officer, or in accordance with established guidelines as outlined in § 19.36(b) of this part. The officer, or an authorized official of the supervising independent party, shall sign the sales ticket certifying exportation and return it to the proprietor for retention in the files. The district director may also require that the warehouse proprietor have the person receiving the article sign the same copy to certify receipt.

(c) *Delivery to airport locations.* "Airport locations" means an exit point from which conditionally duty-free merchandise is delivered to departing individuals for exportation on a scheduled, chartered, or "for hire" airline. Delivery of conditionally duty-free merchandise to be exported from such locations may be made by one of the following five procedures:

(1) *Delivery in sterile area.* A sterile area is an area that is within the airport and to which access is restricted to those passengers departing from Customs territory. In such cases, delivery will be made directly to the purchaser (or a family member or companion travelling with the purchaser) for carrying aboard the aircraft. This method of delivery is not authorized if there is any mixture in the sterile area of individuals arriving from a foreign country, or individuals arriving or departing on a domestic flight, with individuals departing for foreign.

(2) *Passenger delivery.* Merchandise may be delivered by the cartman or duty-free store operator to the purchaser (or a family member or companion travelling with the purchaser) at or beyond the exit point for the flight. The district director may require the exit point to be delimited by marking of its boundaries, or require proper supervision as outlined in the guidelines established in accordance with § 19.36(b) of this part, if needed for reasonable assurance that conditionally duty-free merchandise will be exported with the purchaser or a family member or companion. A certificate of lading shall be prepared by the proprietor for each shipment of conditionally duty-free merchandise and executed by an authorized airline official, certifying that the merchandise has been laden on a particular aircraft for exportation. After execution, the certificate will be returned to the duty-free store proprietor for filing. The certificate shall include the following information: Warehouse entry number (or unique identifier, if permitted by the district director); aircraft departure date; airline flight number; and total quantity delivered to the flight.

(3) *Aircraft delivery.* The merchandise will be delivered by a licensed cartman for lading directly on the aircraft. An authorized representative of the airline will sign for receipt of the merchandise on a lading manifest (see paragraph (c)(4)(iii) of this section). The airline will release the merchandise to the purchaser when the aircraft has departed for its foreign destination, and return the receipt copy to the proprietor.

(4) *Unit-load delivery.* Merchandise may be sold to passengers departing from the United States at a prior port of boarding on flights proceeding to a foreign destination which are required to clear with intermediate stops in the United States, provided that all the following conditions are met:

(i) Sales may be made only to passengers holding a through ticket on the same flight, with not stopover privileges, to a foreign destination;

(ii) Merchandise shall be placed in a container sealed with Customs seals. The sealed container(s) may be placed in the baggage compartment or on the passenger deck of the aircraft. Containers stowed in baggage compartments may, with Customs permission, be transferred to the passenger deck at an intermediate or final stop in the United States. The seal numbers shall be placed on the face of the aircraft general declaration;

(iii) A lading manifest list, in duplicate, of conditionally duty-free merchandise sold to passengers aboard the particular flight will be prepared by the proprietor. An authorized airline representative will sign for receipt, with one copy to be retained by the airline for presentation to Customs as requested at the intermediate or final port, and the duplicate copy to be returned to and retained by the proprietor for record purposes;

(iv) The seals shall not be broken nor shall any of the purchases be delivered until the aircraft is secured for departure to its foreign destination at the last port. In the event that the seals are broken before that time, or the merchandise is not exported for any reason and not returned to Customs custody, demand shall be made against the importation and entry bond of the importer of record.

(5) *Cancelled or aborted flights or "no show" purchasers.* If the proprietor has made a good faith effort to effect delivery for exportation through one of the methods specified in paragraph (c) (1) through (4) of this section, but is unable to do so for reasons beyond the proprietor's control, the proprietor may deliver the conditionally duty-free merchandise by any other method deemed reasonable by the district director. Written procedures for delivery for exportation, specifying responsibilities for any discrepancies which might occur, shall be established by the proprietor and provided to the district director. The district director may require any change in procedure deemed necessary to assure exportation under specific circumstances.

(6) *Sales to crewmembers.* The sale or delivery of conditionally duty-free merchandise to crewmembers is allowed only on flights proceeding directly to a foreign destination with no intermediate stops in the United States.

(d) *Lading manifest lists; certificate of exportation.*

The proprietor shall retain copies of lading manifest lists and certificates of lading for exportation in its files at the duty-free store for not less than 5 years after exportation.

(e) *Delivery method.* Delivery of conditionally duty-free merchandise to persons for exportation will be made by licensed cartmen under the procedures in subpart D, part 125, and § 144.34(e), of this chapter, or under a local control system approved by the district director wherein any discrepancy found in the merchandise will be treated as if it occurred in the bonded warehouse.

(f) *Return of merchandise to stock.* Whenever merchandise is withdrawn under the sales ticket procedure of § 144.37(h) of this chapter, but is undeliverable or is rejected by the purchaser, the merchandise may be returned to the duty-free store and the records, including the sales ticket and sales ticket register, amended to reflect the quantity returned to stock. Written procedures for the return of merchandise to stock, specifying responsibilities for any discrepancies which might occur, shall be established by the proprietor and provided to the district director. The district director may require any change in procedure deemed necessary to assure that the merchandise is not diverted into commerce.

PART 113—BONDS

1. The authority citation for part 113 would continue to read as follows:

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Authority: 19 U.S.C. 66, 1623, 1624. Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

2. It is proposed to amend § 113.63 by adding a new paragraph (c)(5) thereto as follows:

§ 113.63 Basic custodial bond conditions.

* * * * *

(c) *Disposition of merchandise.* * * *

(5) In the case of Class 9 warehouses, the proprietor will provide reasonable assurance of exportation of merchandise withdrawn under the sales ticket procedure of § 144.37(h) of this chapter.

* * * * *

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The authority citation for part 144 would be revised to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624. Section 144.3 also issued under 19 U.S.C. 1563; Section 144.33 also issued under 19 U.S.C.1562; Section 144.37 also issued under 19 U.S.C. 1555, 1562.

2. It is proposed to amend § 144.37 by adding a new paragraph (h) to read as follows:

§ 144.37 Withdrawal for exportation.

* * * * *

(h) *Class 9 warehouse withdrawals for exportation.*

(1) *Applicability of sales ticket procedure.* Merchandise in a Class 9 warehouse (duty-free store) may be withdrawn for any of the purposes set forth in this subpart. However, only conditionally duty-free merchandise in a Class 9 warehouse intended for exportation or for delivery to persons and organizations as set forth in subpart I, part 148, of this chapter, will be eligible for withdrawal under the sales ticket procedure specified in this paragraph.

(2) *Sales ticket content and handling.* Sales ticket withdrawals shall be made only under a blanket permit to withdraw (see § 19.6(d) of this chapter) and the sales ticket shall serve as the equivalent of the supplementary withdrawal. A sales ticket is an invoice of the proprietor's design which will include:

(i) Serial number and date of preparation of each ticket;

(ii) Warehouse entry number or specific identifier, if approved by the district director;

(iii) Quantity of goods sold;

(iv) Brief description of the articles including the size of bottles;

(v) The full name, address and signature of the purchaser. However, the district director may waive the address and signature requirement (but not the name requirement) for alcoholic beverages in quantities of 4 liters or less and cigarettes in quantities of 3 cartons or less; and

(vi) A statement on the original copy (purchaser's copy) to the effect that goods purchased in a duty-free store will be subject to duty and/or tax without personal exemption if returned to the United States.

At the time of purchase, the sales ticket, in triplicate, shall be made out in the name of the purchaser. One copy shall be retained by the proprietor. A permit file copy will be attached to the parcel containing the purchaser. Additional copies may be retained by the proprietor.

(3) *Sales ticket register.* In addition to the records required in § 19.12(a) of this chapter, Class 9 warehouse proprietors shall maintain a sales ticket register or similar accounting record for each warehouse entry. This sales ticket register of the proprietor shall include the following information:

(i) Warehouse entry number;

(ii) Specific identifier, if applicable;

(iii) Sales ticket date and number;

(iv) Description;

(v) Quantity; and

(vi) Current balance.

As each warehouse entry is closed out, the warehouse proprietor shall verify the sales ticket register total with the amount withdrawn so as to account for all merchandise so withdrawn and certify on the register that all the goods have been exported or sold to qualifying persons and organizations under part 148 of this chapter. The sales ticket register shall be included in the permit file folder with or in lieu of the blanket permit summary, as provided in § 19.6(d)(4) of this chapter. A copy of all sales tickets shall be retained by the proprietor for not less than 5 years after the last date of the last sales ticket in the entry. In lieu of placing a copy of sales tickets in each permit file folder, the warehouse proprietor may keep all sales tickets in a separate file in numerical sequence by warehouse entry number.

Carol Hallett,

Commissioner of Customs.

Approved: May 9, 1991.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 91-11747 Filed 5-16-91; 8:45 am]

BILLING CODE 4820-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-133, RM-7710]

Radio Broadcasting Services; Wickenburg, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Circle S Broadcasting Co., Inc., seeking the allotment of Channel 229A to Wickenburg, Arizona, as that community's second local FM service. Coordinates for this proposal are 33-55-53 and 112-48-12. Mexican concurrence will be requested for this allotment.

DATES: Comments must be filed on or before July 1, 1991, and reply comments on or before July 16, 1991.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Circle S Broadcasting Co., Inc., Attn.: Harold R. Shumway, President, P.O. Drawer Y, Wickenburg, AZ 85358.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-133, adopted April 29, 1991, and released May 10, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st St., NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11697 Filed 5-16-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-135, RM-7697]

Radio Broadcasting Services; Boonville and Columbia, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Big Country of Missouri, Inc., requesting the allotment of FM Channel 230A to Boonville, Missouri, as that community's second FM broadcast service. The coordinates for Channel 230A are 38-58-56 and 92-36-09. There is a site restriction 11.5 kilometers (7.2 miles) east of the community. To accommodate the allotment at Boonville, we shall propose to substitute Channel 272A for vacant but applied for Channel 230A at Columbia, Missouri, without a site restriction, at coordinates 38-57-24 and 92-19-48. The three applications on file for Channel 230A at Columbia have been designated for hearing. The applicants will be served with a copy of the Notice.

DATES: Comments must be filed on or before July 1, 1991, and reply comments on or before July 16, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Frederick A. Polner, Richard K. Olson, Jr., Rothman Gordon Foreman & Groudine, P.C., Third Floor, Grant Building, Pittsburgh, Pennsylvania 15219, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-135, adopted April 29, 1991, and released May 10, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11698 Filed 5-16-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-134, RM-7708]

Television Broadcasting Services; Wailuku, Hawaii

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KFVE Joint Venture proposing the allotment of Television Channel 39 to Wailuku, Hawaii, as that community's sixth local television service. The allotment can be made in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for this proposed allotment are North Latitude 20-53-24 and West Longitude 156-30-24. This proposal is not affected by the freeze on television allotments or applications.

DATES: Comments must be filed on or before July 1, 1991, and reply comments on or before July 16, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robyn G. Nietert, Eric S. Kravetz, Brown, Finn & Nietert, Chartered, 1920 N Street NW., Suite 660, Washington, DC 20036 (Attorneys for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-134 adopted April 29, 1991, and released May 10, 1991.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television Broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11696 Filed 5-16-91; 8:45 am]

BILLING CODE 6712-01-M

VOL 56 ISS 96 MY 17 1991 UMI

Notices

Federal Register
Vol. 56, No. 96
Friday, May 17, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Pennsylvania Advisory Committee and the Delaware Advisory Committee

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania and Delaware Advisory Committees to the Commission will be convened at 9:30 a.m. on Friday, June 14, 1991, in the Public Information Meeting Room of the Federal Reserve Bank of Philadelphia Building, 100 North 7th Street, Philadelphia, and adjourn at noon.

The purposes of the meeting are to review and act upon the draft of a report on a joint project examining Recent Decisions of the Supreme Court and the Proposed Civil Rights Act and to adopt Fiscal Year 1992 projects for Pennsylvania and Delaware

Persons desiring additional information, or planning a presentation to the Advisory Committees, should contact Pennsylvania Chairperson Susan M. Wachter (215/647-1042), Delaware Chairman Henry A. Heimen (302/656-1990), or Eastern Regional Division Director John I. Binkley at (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, DC, May 8, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-11741 Filed 5-16-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Procedure for Voluntary Self-Disclosure of Violations of the Export Administration Regulations.

Form Number: Agency—EAR § 787.15, OMB Control No. 0694-0058.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 75 respondents; 750 reporting hours.

Needs and Uses: This information is needed to detect violations of the Export Administration Act and Regulations, to determine if an investigation or prosecution is necessary and to reach settlements with violators. The respondents are likely to be export-related businesses.

Affected Public: Businesses or other for-profit institutions; small business or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 13, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-11740 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket 26-91]

Foreign-Trade Zone 159—St. Paul, Alaska Request to Remove Time Limit

The City of St. Paul, Alaska, Grantee of FTZ 159, has submitted a request to the Foreign-Trade Zones Board (the Board) to remove the 1-year time limit in the original grant of authority (Board Order 436, 54 FR 31356, 7/28/89) for its foreign-trade zone at the City of St. Paul, Alaska, a Customs user fee airport. The time limit was imposed because of the issue of reimbursability at airports with Customs user fee status. The grantee bases its request on Public Law 101-207 (signed on December 7, 1989), which it indicates resolves the reimbursability issue.

The request was formally filed on April 22, 1991. Comments concerning the request are invited in writing from interested parties until May 31, 1991. A copy of the request is available at the Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., room 3716, Washington, DC 20230

Dated: May 10, 1991.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91-11760 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 27-91]

Foreign-Trade Zone 56—Oakland, California Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Oakland, California, grantee of Foreign-Trade Zone 56, requesting authority to relocate and expand its general-purpose zone in Oakland. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 9, 1991.

FTZ 56 was approved on April 18, 1980 (Board Order 155, 45 FR 27602, 4/24/80). It currently involves 8 acres at 633 Hegenberger Road, Oakland, and 185,000 square feet of general-purpose zone warehousing space at the Oakland

Commerce Center (OCC), 9401 San Leandro Street, Oakland.

The grantee is now requesting authority to relocate the entire zone project to the OCC complex, which covers 20 acres and has 500,000 square feet of warehousing space. OCC is owned and operated by Pacific American Warehousing and Trucking Company. No manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul R. Andrews, District Director, U.S. Customs Service, Pacific Region, 555 Battery Street, San Francisco, California 94126; and Colonel Stanley G. Phernambucq, U.S. Army Engineer District San Francisco, 211 Main Street, San Francisco, California 94105-1905.

Comments concerning the proposed zone expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July, 1, 1991.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, Federal Building, room 15205, Box 6013, 450 Golden Gate Avenue, San Francisco, California 94102.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 10, 1991.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91-11761 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-703]

Granular Polytetrafluoroethylene Resin from Italy; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy for the period August 1, 1989 through July 31, 1990. The review covers one manufacturer/exporter of this merchandise to the United States, Montefluos, S.p.A. We preliminary determine the weighted-average dumping margin to be 24.02 percent *ad valorem*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: May 17, 1991.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Anne D'Alauro, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 32279) of the antidumping order on granular polytetrafluoroethylene resin (PTFE) from Italy (53 FR 33163; August 30, 1988). On August 23, 1990, Montefluos, S.p.A., a manufacturer/exporter, requested an administrative review of the order for the period August 1, 1989 through July 31, 1990. On August 24, 1990, the petitioner, E.I. Du Pont de Nemours & Company, Inc., also requested an administrative review of Montefluos, S.p.A. for the same period. We initiated the review on September 24, 1990 (55 FR 39032). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The final results of the last administrative review of this order were published in the **Federal Register** on December 11, 1990 (55 FR 50654).

Imports covered by this review are shipments of granular polytetrafluoroethylene resin, filled and unfilled. Such merchandise is classifiable under Harmonized Tariff Schedule (HTS) item number 3904.61.00. Polytetrafluoroethylene dispersions in water and fine powders are not covered by this order. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of Italian PTFE to the United States, Montefluos, S.p.A., and the period August 1, 1989 through July 31, 1990.

United States Price

The Department based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Tariff Act. We calculated ESP based on the packed, delivered prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, ocean freight, brokerage and handling charges, U.S. duty, U.S. inland freight, credit expenses, and other U.S. selling expenses pursuant to 19 U.S.C. 772(e) (1) and (2).

Foreign Market Value

In calculating foreign market value, the Department used home market prices, as defined in section 773(a) of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. Where possible, we compared sales of identical merchandise in the two markets. When identical merchandise was not sold in the home market, we based our comparison on the most similar merchandise and, where applicable, we made an adjustment for differences in merchandise. Foreign market value was based on the packed, delivered prices to unrelated purchasers in Italy, with appropriate deductions for inland freight and insurance, discounts, rebates and credit. We also made adjustments, where applicable, for differences in packing. We deducted indirect selling expenses incurred on home market sales up to the amount of U.S. indirect selling expenses, in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of the Review

As a result of our comparison of United States price with foreign market value, we preliminary determine that the following weighted-average dumping margin exists:

Manufacturer/Exporter	Period	Margin (Percent)
Montefluos S.p.A.	08/01/89-07/31/90	24.02

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit

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of estimated antidumping duties based on the above margin will be required for Montefluos S.p.A.

For all other manufacturers/exporters of this merchandise not covered in this or prior administrative reviews, the cash deposit rate shall be 24.82 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 353.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in a accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 10, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-11782 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 91-00004." A summary of the application follows.

Summary of the Application

Applicant: Oregon ETC Inc. (ETC), 1211 SW. 5th Avenue, suite 1800, Portland, Oregon 97204.

Contact: Kirk Johansen or Carmen Calzacorta, Schwabe, Williamson & Wyatt, ETC Counsel, Telephone: (503) 222-9981.

Application No.: 91-00004.

Date deemed submitted: May 2, 1991.

Members (in addition to applicant): Avison Lumber Co., Molalla, OR; Douglas County, Inc., Winchester, OR; and Vanport Manufacturing, Inc., Boring, OR.

Export Trade

Products: Forest products, including all sizes and grades of timbers and lumber, rough or surfaced, of all softwood species.

Export trade facilitation services (as they relate to the export of products: Consulting; international market research; advertising and sales promotion; trade show participation; marketing; selling; brokering; insurance; product research and design; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of sales leads and export orders; warehousing; foreign exchange; financing; taking title to goods; services related to compliance with customs requirements; and liaison with foreign governmental agencies, trade associations, and bank institutions.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. ETC may bid for the sale of, and contract to sell, Products to buyers in the Export Markets;

2. ETC may obtain quotes and purchase Products from its Members, and from other domestic Suppliers individually, for the sole purpose of exporting to buyers in the Export Markets;

3. Upon receiving or anticipating a request from a buyer in the Export Markets for the price of Products, ETC may ask one or more of its Members or other domestic Suppliers individually to supply a price quotation to ETC for the Products, aggregate the price and supply data received, add its own markup or percentage commission to the price, and transmit a price quotation based on such price and markup or commission to the foreign buyer;

4. Upon placement of an order by a buyer in the Export Markets, ETC may purchase and ship Products to the buyer;

5. ETC may provide Export Trade Facilitation Services to its Members and individually to other domestic Suppliers;

6. ETC may prohibit its Members from selling, assigning, or placing any other encumbrance or lien upon their shares in ETC;

7. ETC and its Members may enter into agreements, and ETC may enter into agreements with the Suppliers, to provide Products or Export Trade Facilitation Services wherein ETC may agree not to represent any competitor of the Members or Suppliers in the Export Markets; and the Members remain free to sell the Products, directly or through other channels, in the Export Markets. These agreements may also give ETC the exclusive right to choose, on behalf of the Members, whether to respond to bids, invitations, or requests for bids or other sales opportunities in the Export Markets;

8. ETC may enter into agreements with customers in the Export Markets whereby each customer agrees not to purchase Products from ETC's competitors;

9. ETC may enter into exclusive or nonexclusive agreements with any Export Intermediary whereby the Export Intermediary agrees not to represent any other competitor in the sale of Products in any Export Market and not to buy Products from competitors for resale in any Export Market;

10. For each Product bid, invitation or request for bid, or other sales opportunity in any Export Market, ETC or the ETC with one or more Members may negotiate and agree with one or more Members on the terms of the respective Member's participation in the bid or sale, including, but not limited to, the quantity of Products such Member will commit to the sale or bid opportunity and the price at which a Member will sell its Product for export. In order to negotiate these terms, the following information may be exchanged with each Member individually or with the Members collectively:

a. Information relating solely to the Export Trade in Export Markets (such as present and projected capacity, production, inventories, costs, prices, sales, orders, terms of marketing or sale, and strategies or methods of operation) of ETC or its Members;

b. Information (such as selling strategies, marketing efforts, activities and opportunities for sale, types of products available from competitors, prices, projected demand, and customary terms of sales) solely about the Export Markets, including reports and forecasts of sales, prices, terms, needs, and product specifications by customer or geographic area in the Export Markets;

c. Information on expenses specific to exporting to Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agent's commissions, export sales documentation and service, and export sales financing);

d. Information that is generally available to the trade or public;

e. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export;

f. Information about terms and conditions of contracts or sales in Export Markets to be considered and/or bid on by ETC and its Members;

g. Information about joint bidding, selling, or servicing arrangements for Export Markets, and allocation of sales resulting from such arrangements among the Members;

h. Information about ETC's or its Members' export operations, including, without limitation, sales and distribution networks established by ETC or its Members in Export Markets, and other export sales by Members (including export price information);

i. Information on U.S. and foreign legislation and regulations affecting sales to a particular Export Market; and

j. Information on ETC's activities in the Export Markets, including customer complaints and quality problems, visits by customers located in the Export Markets, and reports by foreign sales representatives;

11. ETC may enter into agreements with Suppliers to supply and process logs or lumber into Products. These arrangements may provide for these Suppliers to "custom cut" or remanufacture logs or lumber owned by ETC or its Members;

12. ETC may enter into agreements with third parties to provide Export Trade Facilitation Services and/or act as an exclusive Export Intermediary;

13. ETC and/or its Members may discuss supply and demand for the Products in Export Trade, including, but not limited to, the quantities of Products desired by export customers, the supply of Products (based on domestic supply and demand) available for Export Trade, anticipated export prices, quality standards, packaging standards, and primary production schedules. ETC and its Members may not discuss specific price or quantities in specific domestic transactions involving the Products by any Member; provided, however, that each Member may, individually and on a confidential basis, furnish such domestic information to an independent entity not affiliated with any Member to compute averages and trends regarding domestic prices and quantities for disclosure to the Members in aggregated form. This independent entity shall not disclose to any Member the specific information furnished by any other Member.

14. ETC and/or its Members may discuss and/or agree upon the terms of export sales and upon the export price to be charged by ETC and/or its Members for the sale of Products or Export Trade Facilitation Services directed to an Export Market or to a domestic or foreign exporter for ultimate sale in the Export Market;

15. ETC and/or its Members may limit membership in ETC;

16. ETC and/or its Members may allocate orders for export sales among its Members as agreed; and

17. ETC and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including price and/or cost), and, if such member elects to respond, it shall respond directly to the requesting party with respect to such information.

Abbreviated Amendment Procedure

New ETC members may be incorporated in the Certificate pursuant to the abbreviated amendment procedure described below. An abbreviated amendment shall consist of a written notification to the Secretary of Commerce and the Attorney General identifying the ETC members that desire to be incorporated under the Certificate pursuant to the abbreviated amendment procedure and certifying for each such new member so identified its sales of Products in the prior fiscal year. Notice of new members so identified shall be published in the Federal Register. If 30 days or more following publication in the Federal Register, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of the new members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate of Review to incorporate such new members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the Federal Register so amend the Certificate of Review, such amendment must be sought through the nonabbreviated amendment procedure.

Definitions

1. *Supplier* means a person who produces, provides, or sells a Product or Export Trade Facilitation Service, whether a Member or nonmember.

2. *Export Intermediary* means a person who acts as a distributor, sales representative, sales and marketing agent or broker, or who performs the similar functions, including responding to bids, invitations, or requests for bids, or other sales opportunities in the Export Markets, and/or provides or

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arranges for the provision of Export Trade Facilitation Services.

Dated: May 13, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-11690 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-DR-F-

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on June 13, 1991. The meeting will be from 2 p.m. to 4 p.m. in room 3407, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

The Committee advises Department of Commerce officials on textile and apparel export issues.

Agenda: Conditions in the export market, Office of Textiles and Apparel export expansion activities, Kuwait reconstruction activities, free trade agreement negotiations with Mexico and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/377-4324).

Dated: May 13, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-11730 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-DR-F-

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet Tuesday, June 11, 1991, from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The discussion on NIST budget scheduled to begin at 3 p.m. and ending at 5 p.m. on June 11, 1991, will be closed.

DATES: The meeting will convene June 11, 1991, at 8:30 a.m. and will adjourn on June 11, 1991, at 5 p.m. A closed session is scheduled on June 11, 1991, beginning at 3 p.m. and adjourning at 5 p.m.

ADDRESSES: The meeting will be held in Conference Room 1103, Radio Building, National Institute of Standards and Technology, Boulder, Colorado.

FOR FURTHER INFORMATION CONTACT: Dale E. Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 30, 1990, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: May 14, 1991.

John W. Lyons,

Director.

[FR Doc. 91-11778 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-13-M

Malcolm Baldrige National Quality Award's Panel of Judges

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that there will be a closed meeting of the Panel of Judges of the Malcolm Baldrige National Quality Award from Thursday, June 13, 1991, through Friday, June 14, 1991. The Panel of Judges is composed of nine members prominent in the field of quality management and appointed by the Director of the National Institute of Standards and Technology. The purpose of this meeting is to review the 1991 Award applications and to select applications to be recommended as Award winners. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 13, 1991, at 8:30 a.m. and adjourn at 3 p.m. on June 14, 1991. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Associate Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 11, 1990, that the meeting of the Panel of Judges will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94-409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: May 14, 1991.

John Lyons,

Director.

[FR Doc. 91-11779 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

[Docket No. 910497-1097]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the Northeast Multispecies Fishery.

SUMMARY: NOAA issues this notice to announce that anyone entering the Northeast multispecies fishery after February 21, 1991 (control date), will not be assured of future access to the multispecies resource in Federal waters if a management regime is developed and implemented that limits the number of participants in the fishery. This announcement is necessary for public awareness of a potential eligibility criterion for access to the Northeast multispecies resource. This announcement does not prevent any other date for eligibility in the fishery or another method of controlling fishing effort from being proposed and implemented. Although this announcement is purely advisory and does not prevent entry into the fishery, the intended effect is to discourage new entry to the fishery, while discussions continue on whether and how access to the multispecies resource should be controlled.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall (Executive Director, New England Fishery Management Council), 617-231-0422 or Jack Terrill (Resource Policy Analyst, Northeast Region, NMFS), 508-281-9252.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) prepared the Fishery Management Plan for the Northeast Multispecies Fishery (FMP), which was conditionally approved by the Director, Northeast Region (Regional Director), NMFS, on July 17, 1986. Regulations implementing the FMP became effective on September 19, 1986 (51 FR 29642, August 20, 1986). Amendment 1 to the FMP, which became effective on October 1, 1987 (52 FR 35093, September 17, 1987), responded to deficiencies that were identified by the Regional Director in his conditional approval of the plan. Amendment 2, which became effective on February 27, 1989 (54 FR 4798, January 31, 1989), improved the effectiveness of several of the existing FMP measures in relation to two major factors: (1) The promotion of regulatory compliance, and (2) the long-term achievement of management objectives.

Amendment 3 implemented the Flexible Area Action System (FAAS), effective on December 19, 1989 (54 FR 52803, December 22, 1989). This amendment enabled the management system, including the Council, its Multispecies Committee, NMFS, and other management agencies to respond in a more timely manner to protect large concentrations of juvenile, sub-legal (smaller than the minimum legal size), and spawning fish.

A control date for the multispecies fishery had been considered by the Multispecies Committee of the Council (Committee) in November 1990. At its December 17, 1990, meeting, the Committee approved a motion to be presented to the Council for formal adoption that would establish a control date of December 17, 1990. At the next meeting of the Committee, it was determined that further discussion and refinement of the motion was needed before the control date and accompanying language should be considered by the Council.

The Council, at its February meeting, voted to establish a control date of February 21, 1991, in the Northeast multispecies fishery. The adoption of a later date was to match more closely the actual date of the vote to provide greater fairness to potential participants in the fishery. In taking this action, the Council is giving notice that there is the potential, at a future date, of capping the number of existing permits in order to allow the rebuilding goals to be more easily achieved. Additional vessels entering the fishery during this rebuilding process would allow for an increase in fishing effort, which could prevent rebuilding.

The Council's intent in publishing this notice is to discourage entry into the fishery while potential management regimes to control access into the fishery are discussed and possibly developed by the Council. Although harvesters who did not hold a permit prior to the control date are not legally prevented from entering the fishery, they are hereby notified that entering the fishery after the control date will not assure them of future access to the fishery on the grounds of previous participation; other qualifying criteria also may be applied for entry.

To provide further guidance on how the control date and a possible management regime could be implemented, the Council also adopted language that may be incorporated into an upcoming amendment to the FMP. This included:

(A) To be issued a Federal Fisheries Permit for the Northeast multispecies fishery (permit) for 1992, a vessel must meet one of the following criteria:

(1) Hold a valid permit as of February 21, 1991, and show proof of landings of said fish during the time period from January 1, 1990, through February 21, 1991.

(2) For a charter and party boat, as defined in the FMP, hold a permit as of February 21, 1991, and show proof that it carried recreational fishing parties for a fee during the time period from January 1, 1990, through February 21, 1991.

(3) Show written proof that a vessel was under construction, reconstruction, or was under written contract for purchase as of February 21, 1991, and landed the identified fish by February 21, 1992, or if a charter or party boat, show proof that it carried recreational fishing parties as of February 21, 1992.

(B) To be issued a permit for 1993 and beyond, eligibility requirements described above will be based on the preceding calendar year.

(C) Any permit held by a vessel that is lost or destroyed will become invalid. However, the owner may (within one year) apply for a replacement permit for a vessel, not to exceed a 10 percent increase in horsepower or fish hold capacity, as listed on the permit application. In the case of charter or party boats, the replacement vessel may not exceed a 10 percent increase in passenger carrying capacity, as described on the United States Coast Guard (USCG) certificate.

(D) Transfer:

(1) A permit issued under this proposal is not transferable or assignable except to a new owner. Any transfer or assignment to a new owner must be in writing and must be sent to NMFS in order that a permit may be issued in the name of the new owner.

(2) The owner of a permitted vessel may replace that vessel with another vessel not to exceed a 10 percent increase in horsepower or fish hold capacity as listed on the vessel permit application. In the case of charter or party boats, the replacement vessel may not exceed a 10 percent increase in passenger carrying capacity as described on the USCG certificate.

(E) Appeal of Permit Denial:

(1) Any applicant denied a permit may appeal such denial. Any such appeal must be in writing. Any of the following grounds may form the basis for review:

(a) The denial was based on mistaken or incorrect information or data;

(b) The applicant was prevented by circumstances beyond his or her control from meeting relevant criteria; or

(c) The applicant has new or additional information that might change the intital decision.

(2) The applicant will have the right to an oral hearing.

(F) A vessel may change gear types within the multispecies fishery. The Council should encourage vessels to shift effort to more selective types of fishing gear.

(G) At the end of the rebuilding period, if the Council deems the fisheries can sustain additional effort, then permits may be issued based on some type of historical participation, possibly including work experience aboard a vessel during the rebuilding process.

(H) Any vessel with a valid permit would not be allowed to increase horsepower or fish hold capacity. In the

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case of party/charter boats, an increase in passenger carrying capacity would not be allowed.

This notice hereby announces that February 21, 1991, may potentially be used to determine historical or traditional participation in the Northeast multispecies fishery. This action does not commit the Council to develop any particular management regime or any specific criteria for determining entry to the Northeast multispecies fishery. Harvesters are not guaranteed future participation in the Northeast multispecies fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date.

The Council may choose a different control date, or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to harvesters in the fishery before and after the control date. The Council may choose also to take no further action to control entry or access to the fishery. Any action by the Council will be taken pursuant to the requirements for FMP development established under the Magnuson Fishery Conservation and Management Act.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 13, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-11775 Filed 5-16-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 17, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3500.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Bracket, Duct, 2840-00-798-0697.
Bracket, Angle, 5340-01-180-5984.
Retainer, 5340-00-400-8491.

Services

Janitorial/Custodial, Naval Air Station, ARCOM Buildings 176 & 177, Willow Grove, Pennsylvania.

Janitorial/Grounds Maintenance, West Hill Dam, Uxbridge, Massachusetts.

Deletions

It is proposed to delete the following commodities and service from the Procurement List:

Commodities

Bag, Urine Collection, 6530-00-057-0953.

Urinary Drainage Bag, 6530-01-056-3659.

Robe, Dressing, Man's, 6532-01-215-7963, 6532-01-215-7964.

Robe, Dressing, Woman's, 6532-01-215-7965, 6532-01-215-7966.

Skirt, Woman's, 8410-01-187-1415 thru 8410-01-187-1441.

Service

Janitorial/Custodial, Army and Air Force Exchange, 5315 Summit Parkway, San Antonio, Texas.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-11786 Filed 5-16-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: June 17, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3500.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 15, March 22 and 29, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 6374, 12193 and 13129) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51.2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procurred by the Government.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Case, Ear Plug, 6515-01-212-0452 (Remaining 20% of Government's Requirement).

Services

Janitorial/Custodial, Armed Force Reserve Center, Bellefonte, Pennsylvania.

Janitorial/Custodial, Building 1287, Hill Air Force Base, Utah.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-11787 Filed 5-16-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: June 17, 1991.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3500.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 22, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 7346) of proposed additions to the Procurement List. Comments were received from one of two current contractors for this paper towel, both directly and through a member of Congress. The commenter provided data indicating that addition of this paper towel to the Procurement List would have a sizeable impact on the company, which would cause loss of jobs for some of its largely minority and female workforce. The commenter also stated that Committee decisions to place only a part of the Government's requirements for an item on the Procurement List at a time would eventually result in all the requirements for the item being removed from competitive bidding.

The proposed addition to the Procurement List has been revised to delete that part of the Government's requirements for which the commenter is the current contractor. If the Committee considers adding the remaining part of the Government's requirements for the paper towel to the Procurement List in the future, it will take into account the impact of earlier additions on the firm which is the current contractor at the time in deciding whether the proposed addition would have a serious adverse impact on that contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any addition reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to the Procurement List: Towel, Paper, 7920-00-965-1709, (GSA Regions W,1,2,5,6,7,8,9 & 10).

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-11788 Filed 5-16-91; 8:45 am]

BILLING CODE 6820-33-M

CONSUMER PRODUCT SAFETY COMMISSION

Technical Advisory Group for Cigarette Fire Safety; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Technical Advisory Group for Cigarette Fire Safety will meet on June 3, 1991, in Washington, DC. The purpose of the meeting is to discuss recent research on cigarette ignition propensity and plans for a cigarett fire incident study.

DATES: The meeting will be from 10 a.m. to 5 p.m. on June 3, 1991.

ADDRESSES: The meeting will be in Courtroom B, International Trade Commission, 500 E Street SW., Washington, DC.

FOR A RECORDED MESSAGE CONTAINING THE LATEST INFORMATION ABOUT THE TIME AND LOCATION OF THE MEETING CALL: (301) 492-5709.

FOR FURTHER INFORMATION CONTACT: Colin B. Church, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492-6554.

SUPPLEMENTARY INFORMATION: The Fire Safe Cigarette Act of 1990 (FSCA) (Pub. L. 101-352, 104 Stat. 405) directs the Commission, with assistance from the National Institute for Standards and Technology (NIST) and the Department of Health and Human Services to conduct research concerning the feasibility of a performance standard to address the propensity of cigarettes to act as an ignition source. The FSCA also establishes an advisory committee, the Technical Advisory Group for Cigarette Fire Safety, to advise and work with the Commission and NIST in the implementation of that act.

The Technical Advisory Group for Cigarette Fire Safety will meet on June 3, 1991, to discuss recent research on cigarette ignition propensity and plans for a cigarette fire incident study.

The meeting will be open to observation by members of the public, but only members of the Technical Advisory Group for Cigarette Fire Safety may participate in the discussion. Persons who desire to submit written statements or questions for consideration by the Technical Advisory Group, before or after the meeting, should address them to the Technical Advisory Group for Cigarette Fire Safety, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Dated: May 13, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91-11768 Filed 5-16-91; 8:45 am]

BILLING Code 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Approval of the Proposed Permanent Gaviota Marine Terminal, Santa Barbara County, California, for a Department of the Army Permit

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent To Prepare a Draft Environmental Impact Statement.

SUMMARY: The proposed action is to issue a permit pursuant to section 10 of the River and Harbor Act of 1899 to establish Gaviota Terminal Company (GTC) as the consolidated terminal and to increase crude oil throughput limits

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from 100,000 barrels of oil per day (BOD) to 125,000 (BOD), and to increase the number of marine tankers calling at the facility from 136 to 196 per year. These actions are proposed by GTC to make its existing interim marine terminal at Gaviota, the permanent and County's consolidated marine terminal in Santa Barbara County, California.

Because the proposed mooring configuration for the permanent Gaviota Marine Terminal was not addressed in previous environmental review, the Corps of Engineers has determined that an Environmental Impact Statement shall be required pursuant to the National Environmental Policy Act. A Joint Review Panel (JRP) consisting of the primary permitting agencies for this project has been formed to coordinate multi-agency review of the project. The JRP includes representatives of the U.S. Army Corps of Engineers, California State Lands Commission, California Coastal Commission, California Office of Environmental Protection, and Santa Barbara County. Santa Barbara County will serve as lead agency under the California Environmental Quality Act (CEQA). The environmental document will be a joint Environmental Impact Statement/Supplemental Environmental Impact Report (EIS/SEIR). The purpose of the EIS/SEIR is to assess the potential environmental impacts associated with long-term use of the interim marine terminal, including increased crude oil throughput limits and increased tanker visits at Gaviota.

Questions about the proposed action and DEIS can be answered by: Ms. Diane Noda, (213) 894-5606, Regulatory Branch, U.S. Army Corps of Engineers, P.O. Box 2711, Los Angeles, California 90053-2325.

SUPPLEMENTARY INFORMATION: 1. Proposed Action. Facility status would change from interim to permanent. Crude oil throughput limits would be increased from 100,000 barrels to 125,000 barrels per day maximum. The maximum number of tanker trips would increase from 136 trips per year to 196 trips per year with the same tanker fleet. Gaviota Terminal Company is proposing no physical changes to the existing facility. In order for GTC's facility to function as a consolidated marine terminal, however, an onshore feeder pipeline must be constructed between the marine terminal storage tanks and the All-American Pipeline to allow crude oil to flow from Las Flores Canyon into the marine terminal. The feeder line would be constructed in a pipeline corridor which extends from the northeast corner of GTC's facility to All American's coastal segment extending from Las Flores Canyon to Gaviota. The timing of the feeder line construction is uncertain.

2. Alternatives. The following alternatives will be considered: (1) No-action alternative, abandonment of existing marine terminal at Gaviota Interim Marine Terminal (GIMT); (2) use of Interim Marine Terminal at Gaviota until Single Anchor Leg Mooring (SALM) construction at Las Flores Canyon (LFC); (3) Gaviota existing six-point mooring moved further offshore; (4) construction of a SALM at Gaviota; (5) construction of a SALM at Gaviota and Las Flores Canyon, two marine terminals; (6) alternative marine terminal locations; and (7) no marine terminals, pipeline transport only.

3. Scoping Process. Federal, state, and local agencies and other interested private organizations are encouraged to send their written comments to Ms. Diane Noda at the address provided above. Significant issues to be analyzed in depth in the DEIS include:

a. Air Quality. Increased durations of hydrocarbon, NO_X, SO_X, CO_2, reactive organic compounds and fine particulates.

b. Marine Water Quality. Changes in water column heavy metals or toxic substances as a result of bilge discharges, ballast, or deck drainage.

c. Marine Biology. The Draft EIS will assess loss of or disturbance to rare or endangered species due to increased tanker traffic and potential oil spills; changes to kelp canopy due to increased vessel traffic.

d. Fisheries. Preclusion of commercial/sport fishing areas and anchorages; increased cost/decreased revenue to commercial fisheries; and potential for hazards to commercial/sport fisheries.

e. System Safety and Reliability. The DEIS will assess marine vessel accidents, reliability of existing and alternative mooring facilities; adequacy of marine emergency response; adequacy of existing terminal operating procedures and spill prevention measures; increased risk of minor and major onshore and offshore oil spills due to increased throughput and long-term operations; and adequacy of existing navigational control and monitoring systems.

f. Land Use. Incompatibility with Federal, state, and local plans; incompatibility with surrounding or nearby land uses; preclusion of other future uses due to long term operation.

g. Transportation. Offshore boat traffic congestion.

h. Cultural Resources. Feeder pipeline construction impacts.

i. Terrestrial Biology. Feeder pipeline construction impacts.

j. Public Recreation and Access. Temporary interference during tanker calls with, and hazards to, recreational boaters and fishing; delay in completion of bike path across terminal property; long-term preclusion of public recreation uses and access.

k. Aesthetics. Change in visual resources and scenic quality due to increased tanker traffic and long-term operation of onshore facilities.

l. Noise. Increased duration of noise associated with tanker operations.

m. Socioeconomic. Impacts on public services in the Tri-county area (San Luis Obispo, Santa Barbara, and Ventura counties).

Formal coordination will be undertaken with the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, California Department of Fish and Game, State Historic Preservation Office, California Regional Water Quality Control Board, California Coastal Commission, and the County of Santa Barbara.

4. Scoping Meeting. A scoping meeting will be held on Thursday evening, May 30, 1991 to assess preliminary issues relative to modification of Gaviota Marine Terminal from Interim to Permanent status. The scoping meeting will be held in Santa Barbara, California. Participation in the scoping meeting by Federal, State, and local agencies, and other interested private organizations and parties is encouraged.

5. DEIS Schedule. The current schedule estimates that the DEIS will be available for public review and comment in February 1992.

Dated: May 10, 1991.

Charles S. Thomas,

Corps of Engineers, District Engineer.

[FR Doc. 91-11700 Filed 5-16-91; 8:45 am]

BILLING CODE 3710-KF-M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent to Award Grant to Letco International

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Letco International, under Grant Number DE-FG01-91CE15512. The proposed grant will provide funding in the amount of $92,841 for Letco International to design, develop and test an improved, more reliable and more marketable version of their Automatic Metering System (AMS). The AMS is a new, energy-efficient approach to providing freeze protection to externally housed piping while using the least amount of energy. The proposed project will support DOE's mission which is to further develop the patented AMS to make it more acceptable in the marketplace. The AMS will make the product more reliable by developing some "fail-safe" features to prevent freezing, add monitoring features to let the user know if the AMS is operating properly, and develop technical materials to permit potential users to quickly determine energy savings potential.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Letco International, is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The Energy-Related Inventions Program (ERIP) has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The proposed technology has a strong possibility of allowing for future reductions in the nation's energy consumption.

The anticipated term of the proposed grant is eighteen months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Phyllis P. Morgan, PR-322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-11790 Filed 5-16-91; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 et seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of reponses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below).

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information submitted to OMB for review was:

1. Office of Policy, Planning, and Analysis.
2. PE-872.
3. N.A.
4. Flue Gas Desulfurization Survey.
5. New.
6. Quarterly.
7. Voluntary.
8. State or local governments, Businesses or other for profit, and Federal agencies or employees.
9. 226 respondents.
10. 4 responses.
11. 3.25 hours per response.
12. 2,938 hours.
13. PE-872 will be used to collect data on the materials, design, and performance for utility flue gas desulfurization installations. The data will supplement and support other DOE data bases on FGD systems. Data will be issued annually. Respondents are operator utilities, technology suppliers, or designers involved in either the operation or planning of an FGD system.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, May 14, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91-11792 Filed 5-16-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TQ91-5-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 10, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on May 8, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective June 1, 1991
- Sub Third Revised Sheet No. 21
- Sub Third Revised Sheet No. 22
- Sub Third Revised Sheet No. 26
- Sub Third Revised Sheet No. 27
- Sub Third Revised Sheet No. 28
- Sub Third Revised Sheet No. 29

Algonquin states that on May 1, 1991 in Docket No. TQ91-4-20-000, Algonquin filed tariff sheets comprising its quarterly purchased gas adjustment (PGA) to become effective June 1, 1991. Subsequently, on May 3, 1991 the

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Commission rejected filing under § 385.2001(b) of the regulations, without prejudice to Algonquin's resubmitting the filing with a corrected electronic medium. Algonquin states that it is refiling its Quarterly PGA to comply fully with the Commission's electronic medium standards and is not making any changes in the rates submitted under Docket No. TQ91-4-20-000. Furthermore, Algonquin requests that the filing fee associated with Docket No. TQ91-4-20-000 be applied to the instant filing.

Algonquin states that the proposed effective date for the revised tariff sheets listed above is June 1, 1991.

Algonquin states that the rate effect embodied in Docket No. TQ91-4-20-000 and carried forth in the instant filing is to increase the demand charges by $.0860 per MMBtu and to increase the commodity charges by 20.40¢ per MMBtu under all of Algonquin's firm sales rate schedules from those rates contained in Algonquin's Revision to the Surcharge Adjustment of April 18, 1991 in Docket No. TA91-1-20-001.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before May 17, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11720 Filed 5-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-111-000, RP88-190-002, TM89-2-27-003, TA89-1-27-004, RP88-57-002, and RP88-110-002]

North Penn Gas Co.; Amended Notice of Conference to Discuss Settlement

May 10, 1991.

Pursuant to the Commission's order issued on March 29, 1991, an informal settlement conference is to be held in North Penn Gas Company, Docket No. RP91-111-000. In addition to the issues raised in this docket the conference will also address the issues raised in North Penn Gas Company, Docket Nos. RP88-190-002, TM89-2-27-003, TA89-1-27-004, RP88-57-002, and RP88-110-002. The proceedings in Tennessee Gas Pipeline Company, Docket Nos. RP85-178-000 and RP88-191-000; Transcontinental Gas Pipe Line Corporation, Docket Nos. RP88-68-000, RP88-68-001, and RP87-7-012; and CNG Transmission Corporation, Docket No. RP88-217-000, referred to in the previous notice will not be discussed at the conference. All parties should come prepared to discuss settlement, and the parties should be represented by principals who have the authority to commit to a settlement. The conference will be held on Tuesday, May 14, 1991 at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11721 Filed 5-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-152-0000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 10, 1991.

Take notice that on May 8, 1991, Williams Natural Gas Company (WNG) tendered for filing certain revised tariff sheets to Original Volumes Nos. 1 and 2 of its FERC Gas Tariff. The proposed effective date of the tariff sheets is June 7, 1991.

WNG states that the filing proposes a change in its currently effective sales, transportation and other rates which would result in an increase in annual revenues of approximately $71.2 million, based on the test period (the twelve months ended February 28, 1991, adjusted for known changes through November 30, 1991). WNG states that the increased rates are required to reflect increases in expenses, a decline in sales throughput due to reductions and conversions and a decline in total throughput. WNG proposes (1) a decrease in the depreciation rate to be applied to gathering facilities; (2) seasonalization of ITS rates; and (3) a tariff revision providing minor adjustments in the delineation of certain gathering areas.

WNG states that a copy of the filing were served on each of WNG's customers and affected state commissions pursuant to §154.16(b) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 17, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11722 Filed 5-16-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of April 5 Through April 12, 1991

During the Week of April 5 through April 12, 1991, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: May, 13, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date	Name and location of applicant	Case No.	Type of submission
Apr. 8, 1991	Daniel P. Smith, Ames, Iowa	LFA-0110	Appeal of an information request denial. If Granted: The March 8, 1991 Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded, and Daniel P. Smith would receive access to the entire technical proposal submitted by Engineering Resources, Inc. for a process for the biological conversion of waste gases to acetic acid.
Do	Glenn T. Edwards, Albuquerque, New Mexico	LFA-0111E	Appeal of an information request denial. If Granted: The March 26, 1991 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Glenn T. Edwards would receive access to DOE information.
Do	IGR Enterprises, Inc., Cleveland, Ohio	LFA-0109	Appeal of an information request denial. If Granted: The March 1, 1991 Freedom of Information Request Denial issued by the Pittsburgh Energy Technology Center would be rescinded, and IGR Enterprises, Inc. would receive access to copies withheld of the technical proposal submitted by Heliopump Corporation in response to PRDA DE-RA22-90PC8902.
Do	The Oak Ridger, Oak Ridge, Tennessee	LFA-0111	Appeal of an information request denial. If Granted: The February 19, 1991 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and The Oak Ridger would receive access to DOE information.

Date received	Name of refund proceeding/name of refund application	Case No.
4/8/91	Wallace & Wallace Fuel Oil.	RF321-14733.
4/5/91	Ron & Al's Texaco.	RF321-14734.
4/8/91	Swann Oil Co., Inc.	RF304-12204.
4/9/91	Western Motors Service, Inc.	RF315-10136.
4/9/91	Cesare's Shell	RF315-10137.
4/10/91	Paul's ARCO	RF304-12205.
4/10/91	N.N. Maclelll	RF304-12206.
4/4/91	City of Bryan et al.	RF326-00252.
4/8/91	Sooner Petroleum Company.	RF326-00253.
4/8/91	BP North America Petroleum.	RF326-00254.
4/8/91	Ashland Oil, Inc.	RF326-00255.
4/9/91	City of Bryan et al.	RF326-00256.
4/11/91	Barold Corporation.	RF326-257.
4/11/91	Mel's Car Case Center.	RF307-10162.
4/5/91 thru 4/12/91.	Crude Oil Refund Applications Received.	RF272-88228 thru RF272-88259.
4/5/91 thru 4/12/91.	Gulf Oil Refund Applications Received.	RF300-16329 thru RF300-16369.
4/5/91 thru 4/12/91.	Texaco Refund Applications Received.	RF321-14733 thru RF321-14781.

[FR Doc. 91-11784 Filed 5-16-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of April 8 Through April 12, 1991

During the week of April 8 through April 12, 1991, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

T.E. Reserve Corporation, James G. Allison, Jr. 4/8/91 KRO-0400

T.E. Reserve Corporation (TERC) and James G. Allison, Jr., objected to a Proposed Remedial Order that was issued to them on February 28, 1988. In the PRO, the Economic Regulatory Administration alleged that the firm violated the layering rule, 10 CFR 212.186, by reselling crude oil at a markup without performing any historical and traditional crude oil reselling service. The PRO also found that Allison, TERC's sole owner, should be held jointly and severally liable for TERC's violations.

In considering the objections, the DOE found that TERC's crude oil resales, except those in which the firm transported or stored crude oil, violated the layering rule. The DOE rejected the argument that it did not have jurisdication over TERC's transactions because they were alleged to be crude oil futures contracts rather than crude oil resales. The DOE also found no merit to the argument that transactions in which the firm alleged to have purchased crude oil from producers or sold it to refiners were not layered, because there was no evidence that the alleged producers and refiners produced or refined the crude oil in question. The ERA based the refund liability upon the firm's gross profits. For each month, the amount of the firm's gross profits were adjusted to allow the firm a markup on transactions in which it transported or stored crude oil and to compensate for the difference in that month's purchase and sales volumes. In computing the overcharge amount, the ERA did not offset the respondents' refund liability in months in which TERC had a profit by the amount of the firm's losses in other months. The DOE found that the method used by the ERA to calculate the refund obligation was generally reasonable. It rejected the firm's argument that the layering rule required the ERA to match each purchase with its corresponding sales transactions. The DOE found, however, that under the circumstances of the present case where there were large numbers of inter-month transactions, the overcharge computation should permit TERC to offset its refund obligation in months in which it had a gross profit by the amount of its undercharges in months in which it had a gross loss. The DOE also found that the PRO improperly included the portion of TERC's January 1981 transactions that occurred after decontrol and were therefore not subject to DOE jurisdiction.

Finally, the DOE found that Allison should be held personally liable for TERC's refund liability, because he was the person primarily responsible for the violations and because he reaped substantial benefits from the overcharges. The DOE found no merit to Allison's contentions that Congress did not delegate to DOE the authority to adjudicate claims of personal liability and that the Constitution required such claims be decided by an Article III court. Accordingly, the DOE issued the PRO, as modified, as a final Remedial Order.

Request for Exception

Teesdale Oil Co., 4/10/91, LEE-0021

Teesdale Oil Co. filed an Application for Exception from the requirement that it file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum

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Product Sales Report." The DOE determined that Teesdale Oil did not meet the standards for exception relief because it was not experiencing a serious hardship or gross inequity as a result of the EIA reporting requirements. Accordingly, exception relief was denied.

Berle S. Bonner, 4/10/91, RF272-51263

The DOE issued a Decision and Order granting the subpart V crude oil refund application of Berle S. Bonner, filed on behalf of 4475 Hudson Corp. The firm was found to have been an end-user of the petroleum products it purchased during the period August 19, 1973 through January 27, 1981. Berle S. Bonner was therefore granted a $10,740 refund under the end-user presumption of injury. Since 4475 Hudson Corp. is now defunct, the refund check was sent to the firm's attorney, Elliot Gross, who was ordered to disburse the refund to the firm's stockholders according to their respective ownership interests in the corporation at the time of its dissolution.

Refund Applications

Benjamin Moore & Co., 4/12/91, RF272-23366, RD272-23366

The DOE issued a Decision and Order granting an Application for Refund filed in the crude oil special refund proceeding. The Applicant, Benjamin Moore & Co. (Benjamin Moore), is a company involved in the manufacturing and selling of paint and related coatings. A group of state governments and two territories of the United States (the States) objected to the application filed by Benjamin Moore, provided evidence concerning the paint industry as a whole and filed a Motion for Discovery. The DOE determined that the States had failed to produce any convincing evidence to show that Benjamin Moore had been able to pass on the crude oil overcharges to its customers. The DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Benjamin Moore were injured by crude oil overcharges. Benjamin Moore was unable to pass through its alleged overcharges. Benjamin Moore purchased 28,860,023 gallons of xylene, naphtha, mineral spirits and ethyl during the period of crude oil price controls. Xylene, mineral spirits, and naphtha are products refined from crude oil and are covered products and are thus eligible for a crude oil refund. Ethyl benzene, however, is the result of the further chemical manipulation of an explicitly covered product, benzene. The firm that substantially changed the benzene to create ethyl benzene is afforded an end-user presumption of injury with respect to its purchases of benzene. The DOE determined that Benjamin Moore was ineligible for a refund based on its purchases of this changed derivative of a covered product. The applicant was therefore granted a refund of $22,666 based on 28,332,508 gallons of refined petroleum products. The DOE denied the Motion for Discovery filed by the States.

Cook Paint and Varnish Company, 4/9/91, RF272-23366, RD272-23366

The DOE issued a Decision and Order granting an Application for Refund filed in the crude oil special refund proceeding. The Applicant, Cook Paint and Varnish Company (Cook), is a company involved in the manufacturing and selling of paint and related coatings. A group of state governments and two territories of the United States (the States) objected to the application filed by Cook, provided evidence concerning the paint industry as a whole and filed a Motion for Discovery. The DOE determined that the States had failed to produce any convincing evidence to show that Cook had been able to pass on the crude oil overcharges to its customers. The DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Cook were injured by crude oil overcharges. Cook was unable to pass through its alleged overcharges. Cook purchased 52,344,573 gallons of gasoline, fuel oil, benzene, toluene, grease, xylene, various hydrocarbon solvents, naphtha, mineral spirits, ethyl benzene, heptene, and hexane during the period of crude oil price controls. Diesel fuel, gasoline, toluene, fuel oil, benzene, grease, xylene, naphtha and hexane are refined petroleum products that were regulated during the settlement period and have been accepted by the OHA as eligible for crude oil refunds. Similarly, mineral spirits, hydrocarbon solvents, and aliphatic hydrocarbon solvents are refined from crude oil and are covered products and are thus eligible for a crude oil refund. Heptene, a product similar to heptane, is also a refined petroleum product that was regulated during the settlement period and thus accepted by the OHA as eligible for a crude oil refund. Ethyl benzene, however, is the result of the further chemical manipulation of an explicitly covered product, benzene. The firm that substantially changed the benzene to create ethyl benzene is afforded an end-user presumption of injury with respect to its purchases of benzene. The DOE determined that Cook was ineligible for a refund based on its purchases of this changed derivative of a covered product. The applicant was therefore granted a refund of $41,875 based on 52,343,668 gallons of refined petroleum products. The DOE denied the Motion for Discovery filed by the States.

Frisco Manufacturing Co., Inc., 4/9/91, RF272-48572

The DOE issued a Decision and Order granting an Application for Refund filed in the crude oil special refund proceeding. The Applicant was a manufacturer of finished furniture and purchased 962,467 gallons of diesel fuel, gasoline, toluene, propane, heating oil, lacquer varnish, furniture stain, furniture paint, retarder, sealer, reducer and thinner. Diesel fuel, gasoline, toluene, propane and heating oil are refined petroleum products that were regulated during the settlement period and have been accepted by the OHA as eligible for crude oil refunds. In investigating the remaining products, we have determined that reducer, which is made of 100% xylene, is similarly a product that is derived from crude oil and eligible for a refund. The thinner, however, is a blend consisting of toluene and other components so that the toluene of the thinner is substantially changed. It would therefore be the firm that substantially changed the toluene to create the thinner that should be afforded an end-user presumption of injury with respect to its purchases of toluene. The DOE determined that Frisco was ineligible for a refund based on its purchases of this changed derivative of a covered product. It was also determined that varnish, furniture stain, furniture paint and sealer are not eligible for crude oil refunds. The applicant was therefore granted a refund of $433 based on 541,867 gallons of refined petroleum products.

Johnson Controls, Inc., 4/8/91, RF272-75215

The DOE issued a Decision and Order denying an Application for Refund filed by Johnson Controls, Inc. (Johnson), in the subpart V crude oil special refund proceeding. The denial was based on the fact that Johnson had applied for and had been granted a refund from the Surface Transporters Escrow and had thereby waived its right to a refund in the crude oil proceeding.

Pacific N.W. Bell, Northwestern Bell Telephone Co., 4/11/91, RF272-61859, RF272-62527

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to Pacific N.W. Bell (PNW) and Northwestern Bell Telephone Co. (NWB) based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Both companies are involved in the communications industry and are owned by US West, Inc. Both companies purchased lubricating oils, but neither had the price information necessary to covert the total dollar amount it spent on lubricating oils into a gallonage claim. Using available information from the Energy Information Administration, the DOE made this conversion from dollars to gallons. The DOE granted PNW a refund of $27,133 and NWB a refund of $45,651.

Portland Public Schools, 4/11/91, RF272-70574

The DOE issued a Decision and Order granting an Application for Refund filed by Portland Public Schools, in the subpart V crude oil refund proceeding. The applicant is a public school district that purchased No. 2 diesel fuel and No. 1 fuel oil to roof, pave, fuel its school buses and maintenance vehicles, and heat its schools. By using the pricing information available from two sources, the *EIA Annual Energy Review* and *Platt's Oil Price Handbook and Oil-manac*, the DOE estimated the price, including taxes, of No. 1 fuel oil. These prices were used to convert the dollars expended for No. 1 fuel oil into gallons purchased. The overall refund granted to the applicant was $45,425.

Shell Oil Company/Consolidated Edison Company of New York, Inc., 4/10/91, RF315-9941

The DOE issued a Decision and Order granting an Application for Refund filed by Shell Oil Company special refund proceeding by Consolidated Edison Company of New York, Inc. (Con Edison). Con Edison is a public utility which was a purchaser of refined petroleum products from Asiatic Petroleum Corporation (Asiatic). Asiatic was wholly owned by Shell Petroleum N.V., a Royal Dutch/Shell Group Holding Company (Royal Dutch). Shell Oil Company is also owned by Royal Dutch. While the Shell Consent Order does not expressly indicate whether Asiatic's sales are meant to be covered by the settlement, our examination of the definitions of the terms "the company" used in the Shell Consent Order, and "affiliate" as it has been generally used by the DOE led us to conclude that (i) Asiatic is an affiliate of Shell, and (ii) sales of covered products by Asiatic should be considered as having been made by Shell for the purposes of this refund proceeding. Con Edison, as an Asiatic purchaser, is eligible for a refund from the Shell Consent Order funds. The DOE granted Con Edison a refund of $143,016 ($106,103 principal plus $36,913 interest) based on its approved purchases of 469,483,093 gallons.

State of Montana 4/10/91, RF272-53604

The DOE issued a Decision and Order concerning an Application for Refund that the State of Montana (Montana) filed in the crude oil subpart V refund proceeding.One aspect of the Montana claim involved liquid asphalt that the State had purchased under contracts which contained price escalator clauses. Through these contractual clauses, Montana had reimbursed the manufacturers of paving asphalt for the all cost increases, including the liquid asphalt portion of the paving asphalt. On this basis, the DOE found that Montana presented a reasoned argument that it was injured by the crude oil overcharges, and was therefore the proper recipient of the refund for the liquid asphalt portion on the paving asphalt it had purchased under the escalator clause contracts. The DOE determined that the refund claim was meritorious and granted a refund of $211,827. Philip P. Kalodner (Kalodner), counsel for Utilities, Transporters, and Manufacturers, filed Comments and Conditional Objections to Montana's Application for Refund. The DOE determined that Kalodner's arguments were insufficient to rebut the presumption of end-user injury. Montana will be eligible for additional refunds as additional crude oil overcharge funds become available.

Texaco Inc./Cochran's Texaco, 4/10/91, RF321-2849

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding by Richard E. Cochran, the owner of Cochran's Texaco. Mr. Cochran disagreed with the motor gasoline gallonage figures recorded on his Texaco printouts and submitted his own estimates for his direct purchases from Texaco. Mr. Cochran was unable to convince the DOE that his estimates based on memory were more accurate than the figures that were shown in Texaco's records. Consequently, the DOE approved his claim using the figures listed on his Texaco volume schedules.

Texaco Inc./Ossining Service Station, Lou DiLoreto, Inc., 4/8/91, RF321-5702, RF321-6779

The DOE issued a Decision and Order concerning two applications for Refund filed in the Texaco Inc. special refund proceeding. Both Applications were based on the purchases of Texaco products by Lou DiLoreto, Inc. for Ossining Service Station. One application, filed by Louis DiLoreto, the owner of the corporation during the consent order period, was denied because the right to a refund was transferred upon the sale of the stock of the corporation. The other application, filed by Edward Retta, the current owner of the corporation, was approved. The refund granted was $632 ($477 principal plus $155 interest).

Texaco Inc./Petro-Wash, Inc., 4/11/91, RF321-5460

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning an Application for Refund filed by Petro-Wash Inc. Petro-Wash stated that it was a Texaco jobber during the refund period. The applicant did not submit printouts of its Texaco purchase volumes of the type normally provided by Texaco to jobbers that purchased directly from Texaco, but instead submitted Texaco printouts for each retail outlet that it supplied during the refund period. These printouts were of the type that Texaco normally provides to retail outlets that were direct purchasers of Texaco products. Copies of Petro-Wash contracts with Texaco and with its retail franchises, however, confirm that Petro-Wash purchased motor gasoline from Texaco and resold it to its retail franchises. Consequently, the DOE found that Petro-Wash was a reseller of products that it purchased directly from Texaco and was entitled to receive a refund in the Texaco proceeding. The applicant, which purchased 101,532,610 gallons of Texaco products, stated that it accepted the medium-range presumption of injury. Accordingly, Petro-Wash was granted the maximum presumption refund of $61,745 ($50,000 principal plus $11,745).

Refund applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

American Hoist & Derrick Company	RF272-259	04/09/91
American Hoist & Derrick Company	RD272-259	

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Archdiocese of New York	RF272-67711	04/10/91
Arcone Oil Company	RF272-75419	04/12/91
Atlantic Coast Paperboard	RF272-27791	04/09/91
Atlantic Coast Paperboard	RD272-27791	
Gulf States Paper Corporation	RF272-50692	
Gulf States Paper Corporation	RD272-50692	
Atlantic Richfield Co./A.M. Gutdin, Inc. *et al*	RF304-3439	04/10/91
Atlantic Richfield Co./Downing Oil Co	RF304-11587	04/11/91
Nakayama Coal & Oil Co	RF304-11620	
Snyder Oil Company	RF304-11669	
Atlantic Richfield Co./J & J Auto Service *et al*	RF304-10913	04/10/91
Atlantic Richfield Co./Smith's Grocery & Service	RF304-12199	04/09/91
Atlantic Richfield Co./Swann Oil, Inc	RF304-12204	04/09/91
Bob's Gulf Service *et al*	RF272-84105	04/12/91
Buffalo Municipal Housing Authority *et al*	RF272-84005	04/10/91
Carnation Company	RF272-27518	04/08/91
Carnation Company	RD272-27518	
Chicago Transit Authority	RF272-29799	04/10/91
Dover Equipment & Machine Co. *et al*	RF272-17734	04/09/91
Dover Equipment & Machine Co	RD272-17734	
E.L.M.A	RF272-25979	04/11/91
E.L.M.A	DF272-25979	
Exxon Corporation/Clarence J. Pulon	RF307-10181	04/12/91
Farmers Union Oil Co. *et al*	RF272-65275	04/10/91
Farmers Union Oil Company	RF272-75630	04/12/91
Farmers Exchange # 58173	RF272-75631	
Farmers Union Oil Co. of Climax	RF272-75632	
General Tire, Inc	RF272-32278	04/11/91
General Tire, Inc	RD272-32278	
Gulf Oil Corp./Francis L. Ferris *et al*	RF300-11908	04/12/91
Gulf Oil Corp./Rhea Oil Co., Inc. *et al*	RF300-5894	04/08/91
Gulf Oil Corp./Tri-State Petroleum Corp	RF300-8412	04/11/91
J.W. Jones Construction Co	RF272-16349	04/08/91
Brown & Lambrecht Earthmovers, Inc	RF272-16654	
A. Teichert & Son, Inc	RF272-16736	
A. Teichert & Son, Inc	RD272-16736	
N-C Paving	RF272-16819	
N-C Paving	RD272-16819	
Jefferson County Public Schools *et al*	RF272-52549	04/08/91
Jersey Central Power & Light Company	RF272-21239	04/10/91
Murphy Oil Corp./Eastern Spur Go Shop *et al*	RF309-559	04/12/91
Northern Illinois Gas Company	RF272-19930	04/08/91
Parkchester Management Corporation	RF272-64604	04/10/91
Parkchester Management Corporation	RD272-64604	
Point Landing, Inc./International Trading and Transport, Ltd	RR122-1	04/08/91
Riceland Foods, Inc	RF272-2325	04/10/91
Riceland Foods, Inc	RD272-2325	
Satterfield Construction Company, Inc. *et al*	RF272-18695	04/09/91
Satterfield Construction Company, Inc	RD272-18695	
Shell Oil Company/Coe Oil Service, Inc	RF315-6	04/09/91
Shell Oil Company/Don Rose Oil Company, Inc. *et al*	RF315-69	04/11/91
State of Missouri	RF272-19364	04/08/91
State of North Carolina	RF272-59933	04/11/91
Texaco Inc./Bob's Lynnwood Texaco *et al*	RF321-2201	04/11/91
Texaco Inc./Leo Anger, Inc	RF321-3515	04/12/91
Leo Anger, Inc	RF321-3516	
Leo Anger, Inc	RF321-10065	
Texaco Inc./St. Louis County Police Department *et al*	R321-3800	04/11/91
Texaco Inc./Wallace and Wallace Fuel Oil	RF321-14733	04/09/91
USX Corporation—USS Division	RF272-75693	04/08/91
V.R. Dennis Construction Co. *et al*	RF272-18619	04/09/91
V.R. Dennis Construction Co.	RD272-18619	
Wilson Tisdale Company	RF272-8345	04/10/91

Dismissals

The following submissions were dismissed:

Name	Case No.
Appalachian Flying Service, Inc.	LEF-0029
B/J Delivery Service, Inc	RF272-71321
Bryan Station Texaco	RF321-14273
Central Service, Inc	RF321-6696
Circle 4 Texaco	RF321-14281
Circle 4 Texaco	RF321-14280
City of Fort Worth	RF300-15196
Dandoness Country Store	RF321-10540
Gene's Texaco on Olive	RF321-4068
Hilltop Exxon	RF301-10154
Hudson & Whitaker Texaco	RF321-14272
Immaculate Conception Parish	RF272-77637
Jerry Carter	RF300-12561
McCoy Oil Company	RF307-10166
McHenry County, ND	RF272-86623
McHenry County, ND	RF272-86552
Sacred Heart Parish	RF272-77770
St. Andrew the Apostle Parish	RF272-77759
St. Ann R.C. Church	RF272-77644
St. Augustine Church	RF272-77762
St. Casimir	RF272-77752
St. Joseph's Church	RF272-77736
St. Mark Parish	RF272-77649
St. Mary of the Assumption	RF272-76312
St. Mary Star of the Sea	RF272-77749
St. Roch's Church and School	RF272-77604
Syd's Hill Top Texaco	RF321-11366
The Church of St. Joseph	RF272-77753
University of New Mexico	RF321-6442
Warren Brothers' Texaco	RF321-14278

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: May 13, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-11796 Filed 5-16-91; 8:45 am]

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Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of February 25 Through March 1, 1991

During the week of February 25 through March 1, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Glen Milner, 02/25/91, KFA-0294

Glen Milner filed an Appeal from a partial denial by the DOE's Albuquerque Operations Office of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the withheld material, pages II-2 and II-3 of the "The DOE Transportation Safeguards System," was exempt from mandatory disclosure pursuant to Exemption 3 of the FOIA as Unclassified Controlled Nuclear Information (UCNI) under section 148 of the Atomic Energy Act of 1954, 10 CFR part 1017, and DOE Order No. 5650.3. The DOE also determined that a limited amount of material was not UCNI, and could be released to Mr. Milner. Accordingly, the Appeal was granted in part.

Refund Applications

Archer Daniels Midland, 02/27/91, RF272-43109, RD272-43109

The DOE issued a Decision and Order granting an Application for Refund filed by Archer Daniels Midland (ADM) in the subpart V crude oil refund proceeding. ADM, a firm in the food processing industry, requested a refund as an end-user of refined petroleum products. A group of state governments and two territories of the United States (the States) objected to the application, and attempted to rebut the end-user presumption of injury. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as ADM were injured by crude oil overcharges. The DOE granted ADM a refund of $349,692, based on approved purchases of 437,114,494 gallons of petroleum products. A Motion for Discovery filed by the States was denied.

C.A. Rasmussen, Inc., 02/25/91, RF272-72077, RD272-72077

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to C.A. Rasmussen, Inc. (Rasmussen) based on the firm's purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Rasmussen is a general engineering contractor that purchased refined petroleum products to both fuel and repair heavy construction equipment and for use in street paving operations. Rasmussen requested a refund based, in part, upon its purchases of 106,869,000 gallons of bituminous concrete. Because bituminous concrete is not considered to be an eligible product in the crude oil refund proceeding, the applicant's claim was reduced by this amount. Because Rasmussen was an end-user of the products claimed, the firm was presumed injured. A group of state governments and two territories of the United States (the States) filed a Statement of Objections and Motion for Discovery. The DOE found that the States' filings were both insufficient to rebut the presumption of injury in this case and not relevant in light of the applicant's reduced claim. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted to Rasmussen was $2,068.

Delois Garner, 02/28/91, RF272-64522

The DOE issued a Decision and Order denying Delois Garner's Application for Refund in the subpart V crude oil refund proceeding. Mrs. Garner applied for a refund based on her purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. However, Mrs. Garner was unable to document her purchase volume or provide a reasonable explanation of her estimation technique. Accordingly, the application was denied.

East River Corporation, 02/27/91, RF272-45581, RD272-45581

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to East River Corporation, based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant, a New York realty management company, was an end-user of the products it claimed and was therefore presumed injured by the DOE. A group of state governments and territories of the United States (the States) filed a Statement of Objections to the application, contending that the firm was not injured as the result of regulations by the NY Rent Guidelines Board which allowed landlords to place surcharges on rent. The DOE found that the States failed to establish that the surcharges compensated landlords in general, or East River in particular, for increased fuel costs. Accordingly, the DOE granted East River a refund of $18,172. The States also filed a Motion for Discovery in connection with the application, which was denied for reasons discussed in earlier subpart V crude oil Decisions. See, *e.g., Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988).

F.W. Woolworth Company, 02/28/91, RF272-43997, RD272-43997

The DOE issued a Decision and Order granting a refund to F.W. Woolworth Company (Woolworth), a general merchandise retailer. Woolworth filed an Application for refund as an end-user of refined petroleum products in the subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Woolworth were injured by crude oil overcharges. The DOE granted Woolworth a refund of $30,445, based on its approved purchases of 38,055,913 gallons of petroleum products.

First Chemical Corporation, 02/25/91, RF272-28627, RD272-28627

The DOE issued a Decision and Order granting the subpart V crude oil refund application of First Chemical Corporation, based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant, a chemical manufacturer, demonstrated the volume of its claim by using contemporaneous records and reasonable estimates. The applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. A group of state governments and territories of the United States (the States) objected

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to the application, contending that the firm was not injured because it was able to pass through to customers any overcharges it suffered due to the elasticities of supply and demand that exist in any industry. The DOE found the States failed to submit any direct evidence to indicate that the applicant passed on increased fuel costs to its customers. Accordingly, the DOE granted First Chemical a refund of $24,850. The DOE also denied the Motion for Discovery filed by the States in this case, for reasons discussed in earlier subpart V crude oil Decisions. See, *e.g., Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988).

Liberty Mutual, 02/28/91, *RF272-63380, RD272-63380*

The DOE issued a Decision and Order granting refund monies from crude oil overcharges funds to Liberty Mutual based upon its purchases of refined petroleum products between August 19, 1973 and January 27, 1981. The applicant was an end-user of the refined petroleum products and was therefore presumed injured. A consortium of 28 states and two territories (the States) filed a Statement of Objections and a Motion for Discovery with respect to Liberty Mutual's application. The DOE found that the States' filing was insufficient to rebut the presumption of injury. Therefore the application was granted and the Motion for Discovery was denied. The refund granted to Liberty Mutual was $17,008.

National Spinning Company, Inc., 03/01/91, *RF272-10777, RD272-10777*

The DOE issued a Decision and Order granting an Application for Refund filed by National Spinning Company, Inc. (National), a firm involved in the production of yarns. National filed an Application for Refund as an end-user of refined petroleum products in the subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application and filed a Motion for Discovery. The DOE determined that the States had failed to produce any convincing evidence that National had been able to pass on the crude oil overcharges to it customers. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as National were injured by crude oil overcharges. The DOE granted National Spinning Company, Inc. a refund of $4,780 based on its approved purchases of 5,975,354 gallons of petroleum products and denied the Motion for Discovery filed by the States.

National Steel Corp., 03/01/91, *RF272-1168, RD272-1168, RF272-75497, RF272-75555, RF727-75568*

The DOE issued a Decision and Order denying a refund from crude oil overcharge funds to four divisions of National Steel Corporation (National), because of an earlier waiver by an affiliate of National, The Permian Corporation, in the Stripper Well refund proceedings. A group of state governments and two territories of the United States (the States) filed a Statement of Objections and a Motion for Discovery with respect to one of the applicant's claims. The DOE held that because the States had not raised the waiver issue in their submissions, their submissions would not be addressed.

RTE Corporation, 02/28/91, *RF272-58992, RD272-58992*

RTE Corporation (RTE), a manufacturer of single and three phase pole and padmount distribution transformers and distribution substations for the electric utility market, filed an Application for Refund in the subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application on the basis of inferences from RTE's Annual Reports and letters from RTE's marketing managers, and filed a Motion for Discovery. The DOE concluded that the material submitted by the States was insufficient to rebut the end-user presumption of injury and that no convincing evidence had been produced to show that RTE had been able to pass on any crude oil overcharges. In view of that determination, the States' Objections to the application were rejected and the related Motion for Discovery denied. The DOE granted a refund of $30,203, based on purchases of 37,753,946 gallons of refined petroleum products.

Shepherd Construction Co., Inc., 02/25/91, *RF272-45502, RD272-45502*

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Shepherd Construction Co., Inc. in the subpart V crude oil refund proceeding. The DOE determined that the refund claim was meritorious and granted a refund of $97,906. The DOE found that the industry-wide econometric data submitted by a group of 28 states and 2 territories of the United States (the States) did not rebut the presumption that the applicant was injured by crude oil overcharges. The States also filed a Motion for Discovery in connection with the application, which was denied for reasons discussed in earlier subpart V crude oil Decisions. See, *e.g., Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988).

Swift Eckrich, Inc., 03/01/91, *RF272-60956, RD272-60956*

The DOE issued a Decision and Order granting a refund in the subpart V refund proceeding to Swift Eckrich, Inc. (Swift) based upon its purchases of refined petroleum products from August 19, 1973 through January 27, 1981. The applicant was an end-user of the refined petroleum products and was, therefore, presumed injured. A group of state governments and two territories of the United States (the States) filed a Statement of Objections and a Motion for Discovery with respect to Swift's Application. The DOE found that the State's filing was insufficient to rebut the presumption of injury. Therefore the Application for Refund of Swift was granted and the Motion for Discovery was denied. The refund granted to Swift was $28,962.

Team Tankers A/S Atlantic Cargo Services, 02/28/91, *RF272-22390, RD272-22390, RF272-23534, RD272-23534*

The DOE granted two Applications for Refund filed by foreign flagship carriers operating ocean-going vessels in the foreign commerce of the United States in the subpart V crude oil refund proceeding. Rejecting arguments raised by a group of state governments and territories of the United States (the States), the DOE concluded that (i) the applicants were eligible to receive a crude oil refund even though they were under foreign ownership and (ii) foreign ocean carriers were not automatically able to pass through increased bunker fuel costs to their customers. As end-users of the petroleum products involved, the applicants were presumed injured by the crude oil overcharges, and the States failed to rebut that presumption. The total of the refunds granted in this Decision was $44,391. The DOE also denied the two Motions for Discovery filed by the States for reasons discussed in previous Decisions.

Texaco Inc./Industrial Towel & Uniform, 02/28/91, *RF321-5369*

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning an Application for Refund filed by Industrial Towel & Uniform, a consumer of Texaco products. The application was filed by Cintas Corporation, which acquired Industrial Towel in March 1980. Cintas sought a refund with respect to purchases by Industrial Towel throughout the August 1973 to January 1981 refund period. The DOE noted that, generally, the owner of the firm that purchased the Texaco products is entitled to the refund, and that this right is not normally transferred to a successor firm, unless the sales contract specified potential refunds as one of the assets being transferred. The DOE found that Cintas had not rebutted the presumption that the right to a refund with respect to purchases made prior to its acquisition of Industrial Towel remained with its prior owner. Accordingly, the applicant was granted a refund based upon purchases by Industrial Towel after March 1980, the date it was acquired by Cintas. The total refund granted was $164.

Texaco Inc., Smith Bro. Oil Co., Inc./Fred P. Smith, Smith Bros. Texaco, 02/27/91, *RF321-4557, RF321-4558, RF321-4560, RF321-4561, RF321-4562, RF321-0029*

The DOE issued a Decision and Order concerning the Applications for Refund that Fred P. Smith, a Texaco consignee and jobber, filed in the Texaco Inc. special refund proceeding. In determining the appropriate volume upon which to calculate the refund, the DOE reduced Mr. Smith's claim by volumes involved in "Delivery For Our Account" transactions since these volumes did not constitute purchases. Instead of making an injury showing to receive his full allocable share, Mr. Smith elected to limit his claim to the larger of $10,000 or 50 percent of his allocable share. Mr. Smith was granted a total refund of $25,744 ($21,081 principal plus $4,663 interest). In addition, the OHA dismissed a Motion for Reconsideration that Mr. Smith filed on behalf of his retail outlet since those volumes were already included in his consignee volumes and the applicant was entitled to only one refund for the same product.

Texaco Inc./Tenbarge Oil Company, 02/25/91, *RF321-5343*

The DOE issued a Decision and Order in the Texaco Inc. special refund proceeding concerning an Application for Refund filed by Tenbarge Oil Company, a corporation, that was a consignee and reseller of Texaco products. Prior to December 1975, Tenbarge was a sole proprietorship. The owner incorporated the firm in December 1975 and sold his interest in the corporation several years ago. In its application, the present owners of the corporation sought a refund based upon purchases by both the corporation and the predecessor sole proprietorship. The DOE noted that, generally, the owner of the firm that purchased the Texaco products is entitled to the refund, and that this right is not normally transferred to a successor firm. However, where the purchaser is a corporation, the right to the refund remains with the corporation even though the stock of the corporation may be sold. The DOE found that the applicant had not rebutted the presumption that the right to a refund with respect to purchases by the sole proprietorship remained with its owner. The DOE found, however, that the current owners of the corporation were entitled to a refund based upon the corporation's purchases. Accordingly, Tenbarge was granted a refund based upon purchases by the firm after December 1975, the date of incorporation.

Texaco Inc./University Texaco, 02/26/91, *RF321-1823, RF321-0710*

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. special refund proceeding by the owners of a retail outlet that was a direct purchaser of Texaco refined products. One application, filed by Charles L. Green, the current owner of the outlet, was denied on the grounds that the applicant did not own the station during the consent order period and had failed to establish that the right to the refund was assigned to him by the owners of the station during the refund period. The other application, filed by Judith V. Zimmermann, the wife of the owner of the outlet during the refund period, was approved. Mrs. Zimmermann did not seek a refund greater than the $10,000 small claims threshold established in the Texaco proceeding; accordingly she was not required to demonstrate injury. The total refund amount granted in this Decision was $3,964, representing $3,246 in principal and $718 in interest.

The Walt Disney Company, 02/25/91, *RF272-22537, RD272-22537*

The DOE issued a Decision and Order granting the subpart V crude oil refund application of the Walt Disney Company, based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant, an operator of theme parks, demonstrated the volume of its claim by using contemporaneous records and reasonable estimates. The applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. A group of state governments and territories of the United States (the States) objected to the application, contending that the firm was not injured because it was able to pass through to customers any overcharges it suffered due to the elasticities of supply and demand that exist in any industry. The DOE found that the States failed to submit any direct evidence to indicate that the applicant passed on increased fuel costs to its customers. Accordingly, the DOE granted Walt Disney a refund of $35,166. The DOE also denied the Motion for Discovery filed by the States in this case, for reasons discussed in earlier subpart V crude oil Decisions. See, *e.g., Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988).

Union de Transports Aeriens, et al., 02/26/91, *RF272-1147 et al.*

Four foreign airlines, Union de Transports Aeriens, Royal Air Maroc, Scandinavian Airlines Systems, and Aeronaves de Mexico, S.A. (collectively "the Airlines"), filed Applications for Refund in the subpart V crude oil refund proceeding based upon their purchases of non-bonded aviation fuel which their planes consumed as fuel. A group of thirty state governments and two territories of the United States (the States) filed objections opposing the receipt of the refunds by the Airlines, on the basis that: (i) Sales of non-bonded aviation fuel to the Airlines were price-exempt "export sales" under 10 CFR 212.53 and, as a matter of law, foreign firms cannot claim refunds since they never were intended to benefit under DOE's price control program, and (ii) as a factual matter, the Airlines were able to pass through a substantial part of increased fuel costs by virtue of regulations administered by the Civil Aeronautics Board (CAB) and therefore were not injured by crude oil overcharges. In connection with these objections, the States also filed a Motion for Discovery in each proceeding. In considering the States' objections, the DOE determined that: (i) Sales of non-bonded aviation fuel were specifically excluded from the "export sales" exemption under 10 CFR 212.53(c), and the Airlines were not disqualified from receiving refunds simply because of their foreign status, and (ii) the CAB regulations cited by the States did not constitute a means to automatically pass through increased fuel costs; nor had the States established that the Airlines systematically passed through increased fuel costs as a matter of industry practice. On the basis of these determinations, the DOE further determined that the States had failed to justify discovery with respect to the Airlines' refund claims. Accordingly, the Airlines' Applications for Refund were approved and the States' Motions for Discovery were denied. The total of the refunds granted in the decision was $332,544.

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Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Atlantic Richfield Co./ Penn Central Transportation Company Koppers Industries.	RF304-4170 RF304-10439	02/26/91
Atlantic Richfield Co./ Stump's Camping & Auto Outlet et al.	RF304-11062	02/27/91
Atlantic Richfield Co./ Walters Service Center.	RF304-12163	02/28/91
City of Petersburg	RF272-72232	02/26/91
Clark Community Oil Company et al.	RF272-81899	02/25/91
Exxon Corporation/ City of Clifton Citadel Corporation.	RF307-4186 RF307-10170	02/25/91
Gulf Oil Corp./Al Rocco Service Station et al.	RF300-11531	02/26/91
Gulf Oil Corp./ Beckert's Gulf Service et al.	RF300-9077	03/01/91
Gulf Oil Corp./Jimmy Mathews Gulf et al.	RF300-11789	03/01/91
Gulf Oil Corp./Nimtzer Petroleum Corporation.	RF300-15046	02/28/91
Gulf Oil Corp./Pauline Anderson Grocery et al.	RF300-11179	03/01/91
Livingston County Central Services et al.	RF272-64011	02/26/91
Saline County Highway Dept. et al	RF272-65329	02/26/91
Texaco Inc./By-Pass Texaco et al.	RF321-2209	02/27/91
Texaco Inc./Palings Oil Co., Inc et al.	RF321-6200	02/27/91
Texaco Inc./Primerica Corporation et al.	RF321-3601	02/27/91

Dismissals

The following submissions were dismissed:

Name	Case No.
B.E. & H. Oil	RF313-325
C.W. & P.J. Brown Oil Co.	RF313-323
Colonial Oil Industries, Inc.	RF313-329
Des Moines Asphalt	RD272-42154
E.J. Argenbright	RF321-3660
Ed Nourse Oil Company	RF300-6157
Fuller's Texaco	RF321-286
Government Accountability Project	LFA-0100
Hill Top Texaco	RF321-2702
Johnson's Quinard Gulf	RF300-15211
Kalinse Texaco	RF321-12015
Larry's Exxon	RF307-7184
Larry's Exxon	RF307-662
Lawley Oil Company	RF313-326
Lewser Centerville Service	RF321-11003
Lopez Oil Corp.	RF300-5990
Mel's Texaco	RF321-6617
New Dixie Oil Corporation	RF300-6779
New York Telephone	RF272-11832
Northridge Texaco	RF321-2937
Northwest Texaco Truck Center	RF321-6337
Olive Drive Texaco	RF321-12831
Perimeter Petroleum	RF313-324
Pryor's Texaco	RF321-3179
Ron & Al's Texaco	RF321-3724
Ron & Ed's Service, Inc.	RF321-1374
State of Texas	LEG-0002
Summers-Taylor, Inc.	RD272-43741
Summers-Taylor, Inc.	RF272-43741
Transcontinental Shell	RF315-10002
Walz Texaco	RF321-3986

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. The are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: May 13, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

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Strengthening the Nuclear Safety Standards Program for DOE's Defense Nuclear Facilities; Response to Recommendation of the Defense Nuclear Facilities Safety Board

AGENCY: Office of Nuclear Energy; Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(d), the Department of Energy hereby publishes notice of the response of the Secretary of Energy (Secretary) to Recommendation 91-1 of the Defense nuclear Facilities Safety Board, 56 FR 10546 (March 13, 1991), concerning strengthening the nuclear safety standards program for DOE's defense nuclear facilities. The Department hereby requests public comment on the response of the Secretary to Recommendation 91-1.

FOR FURTHER INFORMATION CONTACT: William H. Young, Assistant Secretary for Nuclear Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before June 17, 1991.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

William H. Young,

Assistant Secretary for Nuclear Energy.

Dear Mr. Conway: Your letter of March 7, 1991, forwarded the Defense Nuclear Facilities Safety Board (DNFSB) Recommendation 91-1 expressing the Board's concern for the rate of progress at which nuclear safety standards are being issued within the Department. The DOE response to each of the issues raised by that Recommendation is enclosed.

The Department has concluded that assessment of penalties under the Price-Anderson Amendments Act of 1988 can best be accomplished using standards that have been subject to the notice-and-comment rulemaking procedures of the Administrative Procedure Act. However, as you know, rulemaking is a lengthy process. Therefore, in order to ensure DOE contractors have up-to-date guidance concerning the operation of DOE facilities in the interim, I have directed that updated DOE Orders be issued without delay. In previous correspondence, I provided a plan for developing nuclear safety rules, safety guides, and DOE Orders. An implementation plan will be forwarded to the Board describing the application of standards throughout the Department.

In accordance with section 315(d) of the Atomic Energy Act of 1954, as amended, this response will be published in the Federal Register.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

Enclosure.

Response to DNFSB Letter of March 7, 1991, Recommendations of DNFSB Regarding Standards Development

On March 7, 1991, the Defense Nuclear Facilities Safety Board (DNFSB) issued Recommendation 91-1. The DNFSB recommendations and DOE's response are as follows:

1. That the Department expeditiously issue a formal statement of its overall Nuclear Safety Policy.

The Department accepts this recommendation. A formal statement of the Department's overall Nuclear Safety Policy was prepared and submitted for internal review on April 15, 1991, and is expected to be issued by July 15, 1991.

2. That increased attention be given to the qualifications and background of managers and technical staff assigned to the development and implementation of standards and that the numbers of personnel suited to this activity be increased commensurate with its importance.

The Department accepts this recommendation. On January 31, 1990, the responsibility for the development and coordination of Departmental policy for nuclear facility safety, including standards development, was centralized under the Assistant Secretary for Nuclear Energy (ASNE). An Office of Nuclear Safety Policy and Standards (ONSPS) was established, reporting directly to the ASNE, with the primary mission to develop, coordinate, and maintain DOE standards on nuclear facility safety. Starting at 10 professionals, the ONSPS staff increased to its FY 90 ceiling of 20. The FY 91 ceiling is 25 professionals, and recruiting has resulted in filling 4 of the 5 new positions to date. The FY 92 ceiling is 36. Almost half of the professional staff have NRC experience, with the remainder having backgrounds divided between industry and the Department. The Department will continue to review the staffing status and needs of the organizations at Headquarters that are developing standards and will revise them as necessary. The Department recognizes the Board's concern with respect to implementing an effective standards program through the entire Department complex of field and contractor operations. The Department will submit an implementation plan to the Board describing its overall approach to develop and implement standards throughout the DOE complex.

3. That standards program officials be given direct access to the highest levels of DOE management.

The Headquarters standards program officials have direct access to the highest levels of DOE management. The Secretary has assigned responsibility for the development of nuclear safety and radiological protection standards to the Assistant Secretaries for Nuclear Energy and for Environment, Safety and Health, respectively. The Department's standards program officials for nuclear safety and radiological protection report directly to these senior officials. Furthermore, the Secretary has established the Senior Nuclear Managers group consisting of the Department's highest level of managers responsible for nuclear activities. The Senior Nuclear Managers have been charged with coordinating and overseeing the upgrading of the Department's nuclear safety directives. In this and in other matters, the Senior Nuclear Managers Group has been particularly effective in resolving differences in the Department and reaching a uniform consensus. The Department believes that this recommendation has been fulfilled.

4. That the Department critically reexamine its existing infrastructure for standards development and implementation at Headquarters to determine if organizational or managerial changes are needed to (1) emphasize the priority and importance of standards to assuring public health and safety; (2) expand the program to facilitate the rapid development and implementation of standards; and (3) streamline the DOE approval process for standards.

The Department accepts this recommendation. The Department has been critically examining its infrastructure for standards development and implementation at Headquarters. The Department has emphasized the priority and importance of standards for assuring public health and safety by assigning to the Senior Nuclear Managers group the responsibility to oversee and coordinate the upgrading of the Department's nuclear safety directives.

Secretary of Energy Notice (SEN-6-series) assigns to line management full responsibility for environmental protection, radiation and reactor safety, and worker and public health and safety. The Secretary also established nuclear safety self-assessment offices for the line managers involved in nuclear safety matters and a separate Office of Nuclear Safety which advises the Secretary on whether line management and its self-assessment functions are adequately assuring nuclear safety.

The DOE process for approval of standards has been streamlined as discussed in 3. above.

The implementation plan will provide additional information relative to this recommendation.

5. That the Department reexamine the corresponding organizational units at DOE's principal Operations and Field Offices and DOE contractor organizations to determine if those organizations' standards infrastructure, responsibilities and resources would also benefit from changes to reflect improvements at Headquarters which strengthen and expedite standards development and implementation.

The Department accepts this recommendation. The implementation plan will specify the Department's actions for assessing the Operations Offices, Field Offices, and contractor organizations to determine if changes should be made to reflect improvements at Headquarters.

6. That DOE review all the findings and conclusions of both the Executive Summary and Volume 2 of the MITRE report, identify which findings and conclusions it considers valid and appropriate in DOE's Response to this set of Recommendations, and subsequently address those findings and conclusions in the Implementation Plan.

The Department accepts the findings and conclusions of the MITRE Executive Summary. These conclusions reemphasize the deficiencies identified in earlier reviews. The MITRE report notes that it considered active DOE Orders as of February 1990, and that DOE had taken various initiatives to upgrade and revise its safety requirements, but that the revised requirements were brought to its attention after MITRE had essentially completed its review. Nevertheless, although the Department believes that the new safety directives prepared and issued subsequent to the MITRE review rectify the concerns identified by MITRE, the conclusions reached by MITRE in the Executive Summary are still valid for those safety directives remaining to be revised or implemented.

The approach and scope of Volume 2 of the MITRE report focused on characterizing the differences between DOE and NRC requirements and summarizing insights gained from those comparisons. Thus, the findings and conclusions of Volume 2 are not as clearly defined as those in the Executive Summary. Attachment A, presents the findings and conclusions by MITRE and provides comments on these to identify to the Board the Department's understanding of these MITRE insights.

The implementation plan will describe the program to revise the safety directives.

7. That DOE expedite the issuance of revised safety orders, directives, or other requirements as a means of addressing the need for substantive guidance on the wide variety of safety requirements, while DOE is promulgating rules.

The recommendation is accepted. The Department has concluded that the implementation of the Price-Anderson Amendments Act of 1988 can best be accomplished using the rulemaking procedures of the Administrative Procedure Act. However, rulemaking is a lengthy process. In order to ensure DOE contractors have up-to-date guidance concerning the operation of DOE facilities, the Secretary has directed that updated DOE Orders be issued without delay.

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In May 1990, the Secretary's Task Force on Nuclear Safety Directives identified ten subjects that should receive priority attention with respect to upgrading the safety directives. These ten subjects were subsequently chosen for rule development. Six of these ten subjects are now covered by DOE Orders, and the remaining four Orders are, or will be, in the last stage of formal DOE review by May 15, 1991. The status of the corresponding Nuclear Safety Orders is shown on the following page.

NUCLEAR SAFETY ORDERS BEING DEVELOPED IN PARALLEL WITH RULES

Title	December schedule	Current status	Final issuance
Radiation Protection	Issued	Issued	Issued.
Accreditation of Performance-Based Training	Issued	Issued	Issued.
Conduct of Operations	Issued	Issued	Issued.
Occurrence Reporting and Processing of Operations Information	Issued	Issued	Issued.
Personnel Training	February 1991	Issued	Issued.
Maintenance Management	February 1991	Issued	Issued.
Quality Assurance for DOE Nuclear Activities	June 1991	March 21, 1991*	September 1991
Unreviewed Safety Questions	June 1991	April 5, 1991*	September 1991
Technical Safety Requirements	June 1991	May 15, 1991*	October 1991.
Safety Analysis Reports	September 1991	May 15, 1991*	October 1991

*Issued for Formal Coordination.

Attachment A

DOE Response to the General Conclusions of the MITRE Report

General Conclusions

1. The DOE Orders, which are the principal means for establishing safety requirements for defense nuclear facilities, lack the systematic approach and coherence necessary for understanding DOE's safety management philosophy.

A methodology for establishing a coherent and systematic approach to assuring safe operation of DOE facilities was described to the Board on December 10, 1990, subsequent to the MITRE report. Upper-tier requirements establish broad objectives which are then incorporated with increasing detail in lower-level documents. A Nuclear Safety Policy, DOE Nuclear Safety Orders, and consensus and DOE standards provide an appropriate progression in the level of detail. The above methodology is also being used for the Nuclear Safety Rules and accompanying Safety Guides which are being prepared in parallel with DOE Nuclear Safety Orders.

2.A. In many areas pertinent to safety, the DOE Orders do not provide specific requirements and supporting guidelines for implementing DOE's safety objectives. SR Orders specifically applicable to defense nuclear facilities at the Savannah River Plant do not add significantly to the substance or specificity of DOE safety requirements; a great deal is left to be defined and interpreted by the DOE contractor operating the facilities.

The Department has undertaken the task of preparing new DOE Orders and revising existing Orders to improve the specificity of its safety directives. Since January 1990, four new DOE Orders were issued, one existing Order was significantly revised, and two new Orders were issued for formal coordination. In addition, four new Orders will be issued for Department coordination before the end of May 1991.

The priority for determining the Orders that have to be prepared or revised is based on the need for new or improved requirements as recommended by external reviews such as those undertaken by the National Academies of Science and Engineering (NAS/NAE) and the MITRE report prepared for the DNFSB. The priorities established by DOE for the Rules and Orders have been provided to the DNFSB in meetings with NE staff and in separate correspondence.

In regard to the issuance of Operations Office Order Supplements, the Department agrees with the DNFSB that the supplements do not add significantly to the substance or specificity of the DOE Orders. In his memo to the Operations Office Managers dated February 25, 1991, the Under Secretary directed them not to issue supplementary DOE Orders and indicated that DOE Orders should be the only documents specifying requirements on the contractor. The wide diversity of DOE facilities limits the detail that is practical for insertion into DOE rules and/or Orders. However, where necessary, detailed implementation plans will be developed by contractors based on direction from DOE, and these implementation plans will be reviewed and approved by DOE line management.

2.B. Organizational responsibilities assigned in the DOE Orders have not been revised to reflect significant recent changes.

The revised responsibilities of Departmental elements are, however, being included in the DOE Orders as they are being prepared or modified.

The Department has recognized that internal DOE organizational responsibilities should not be provided in rules. As part of the rulemaking effort, the Department is preparing a DOE Manual of Responsibilities in which the responsibilities of all Departmental elements for a given technical topic are defined. This is similar to the NRC practice of providing such information in the NRC Manual.

3. Certain DOE Orders that address topics important to facility safety do not focus on safety. This may be evidence of improperly defined objectives and lack of due attention to the safety functions of the facilities.

The specific DNFSB concerns highlighted in their discussion of this conclusion are with two technical areas, Fire Protection and Quality Assurance. To avoid duplication, the DOE response to these concerns are provided later under each specific technical topic.

4.A. The DOE Orders do not provide criteria and guidelines for accomplishing their stated objective to apply "uniform standards, guides, and codes which are consistent with those applied to comparable licensed nuclear facilities."

In the discussion of this conclusion, MITRE points out that the basic requirement to apply applicable NRC design and siting criteria is limited to new construction, during major modifications to an existing facility, or when it is determined that safety can be significantly improved. In the past these basic requirements were generally implemented for new facilities such as the Fast Flux Test Facility, the upgrade to the Annular Core Research Reactor and similar new or modified facilities. This was primarily accomplished through preparation of Safety Analysis Reports that followed the NRC Regulatory Guide for Standard Format and Content of Safety Analysis Reports. By following the standard format and content, Regulatory criteria and standards were addressed in the Safety Analysis Reports, and the review of these reports provided a means to judge the adequacy of application of NRC criteria.

This general approach, however, has not worked with older DOE facilities that were designed and built prior to the existence of Standard Format and Content guidelines. In addition, the application of new standards to existing facilities during modifications has not always been successfully accomplished.

To provide a logical and systematic method for applying new standards and criteria to existing facilities, the recently developed Backfit Policy establishes a process for arriving at backfit decisions. In addition, both a new rule and a new DOE Order on Safety Analysis Reports are being prepared. The new rule and Order will require Updated Safety Analysis Reports to be prepared for existing facilities which will permit judging the application of current criteria and standards to existing as well as new facilities.

4.B. There is no DOE guidance to suggest that its requirements overcome the deficiencies or inconsistencies that may be present in the requirements for licensed nuclear facilities, especially when referencing those requirements.

The discussion of this conclusion in the MITRE report expresses concern that the application of NRC requirements would result in application of standards that apply only to "safety-related and other important-to-safety" systems and thereby neglect non-safety-related equipment such as balance of plant equipment. The report also concludes that NRC's requirements for nonreactor nuclear facilities are not as comprehensive as those for the power reactors. The report suggests that DOE adopt "a total systems approach that would recognize and overcome any weaknesses in NRC's requirements."

In the Department's development of new rules and Orders it is the intent that safety analyses for new and existing facilities take a balanced approach to the application of standards and requirements to all plant systems and equipment. Recognizing the importance of formal conduct of operations and maintenance to the safe and efficient operation of DOE's nuclear facilities, both rules and DOE Orders have been developed to address the operation and maintenance of all plant systems and equipment. In addition, DOE has recognized the importance of standards and the fact that NRC's requirements for nonreactor nuclear facilities are not as comprehensive as those for power reactors. Accordingly, the Department is reestablishing a standards program to address the need for additional guidance in areas beyond those traditionally applied to only safety-related equipment.

5. The DOE Orders require compliance with very few mandatory nuclear safety standards for existing reactors or nonreactor facilities.

DOE has prepared draft DOE Order 1300.2A, Department of Energy Standards Program, which was transmitted to Departmental elements on March 28, 1991, for informal coordination. This draft Order emphasizes the Department's proposed policy in regard to the use of national and international consensus standards in the design, construction, and operation of all its facilities, projects, and programs. The draft Order requires that line management ensure and document the use of standards in the design, construction, and operation of all DOE facilities.

In addition, in an effort to improve the use of national and international consensus standards throughout the Department, DOE will issue in June 1991, a document which lists the codes, regulations, and consensus standards applied to commercially licensed reactors which have potential applicability to the Department's reactors. It is DOE's intent that this document be used as a resource by DOE line program management in evaluating and determining specific standards applicable to the design and/or modification of facilities under their cognizance. DOE is also in the process of preparing a similar document for nonreactor nuclear facilities which should be available in September 1991. The standards selected will be identified in the design or safety documentation such as System Design Descriptions or Safety Analysis Reports that will be approved by DOE.

The efforts discussed above, in conjunction with the development of the DOE Backfit Policy will significantly improve the use of standards throughout the Department's operations.

DOE Response to the Specific Conclusions of the MITRE Report

Specific Conclusions

Design Standards

1. The DOE Orders do not require existing reactors to meet any mandatory design standards, and existing nonreactor facilities are required to comply with only a very small set of design standards. The Orders require that new construction of reactors and nonreactor facilities conform with a much larger body of standards, but these standards are applied at existing facilities only when modifications are made or when DOE determines that safety can be significantly improved. Moreover, the Orders do not provide procedures or criteria for making the determination that safety can be significantly improved.

See response to General Conclusion #5.

2. The DOE Orders are not clear about the criteria for selecting the structures, systems, and components that must satisfy mandatory standards. One Order introduces the term "safety or safety-related" equipment, but does not include a definition of safety-related, and the other Orders do not provide additional guidance for identifying this type of equipment in reactors. For nonreactor facilities, the term "safety class items" is defined, but the relationship between safety class items and safety-related items is unclear. This is of particular concern because of potential confusion about how consensus standards are to be applied.

As part of the Department's decision to improve the DOE Order system and the requirements therein, one of the major objectives will be to assure consistent use of terminology. DOE Orders 5480.5, 5480.6, and 6430.1A will be revised as improvements are made to the technical areas highlighted in the MITRE report to ensure that the specific terminology, in question here, will be consistent.

See also response to General Conclusion #4.B.

3. In some DOE Orders, mandatory design standards are applied only to a subset of all plant equipment, and there are no requirements for the remaining plant equipment. For modifications to existing facilities, one DOE Order requires compliance with mandatory standards only when "safety or safety-related structures, systems, or components" are involved. Another DOE Order that applies exclusively to new construction and modifications of nonreactor facilities restricts the scope of the equipment covered by its

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requirements to those identified as "safety class items."

See response to the MITRE Specific Conclusions #1 and #2 above.

4. The DOE Orders do not provide specific requirements or review criteria to implement general guidelines relating to the design of structures, systems, and components for either reactors or nonreactor facilities.

The recent effort undertaken by the Department to prepare Rules and new DOE Orders as well as to revise existing DOE Orders in the technical areas discussed in the MITRE report will provide specific requirements and review criteria for the Department to use in the implementation of improved guidelines relating to the design, construction, and operation of the Department's facilities. Many of the new Rules and Orders, in addition, require the contractors to prepare implementation plans based on a required format which are then approved by the Department's line program organizations. These approved plans then provide the bases for compliance enforcement.

5. Several specific DOE references to mandatory and reference standards need to be revised to reflect the current versions of those standards. For civilian nuclear facilities, the NRC regulations and regulatory guidance documents provide extensive references to consensus standards, and the regulations provide the mechanism for maintaining the currency of endorsements of principal consensus standards.

As part of the Department's continuing effort to imporve the DOE Order system and the requirements therein, the existing DOE Orders will be revised to reflect the current version of consensus standards, as appropriate. It should be recognized, however, that some older standards, e.g., in the training area, are referenced because they contain more appropriate or more stringent requirements than newer versions of the standards.

Quality Assurance

6. While both the DOE and NRC refer to the same principal consensus standard on quality assurance, DOE's quality assurance program requirements lack the systematic organization and strength of language evident in NRC's requirements. For example, NRC's detailed regulations on this subject are supplemented by Regulatory Guides that address additions or modifications to the consensus standards. Also, NRC has specified formal procedures for reviewing and approving changes to the licensee's quality assurance program.

DOE's Quality Assurance (QA) requirements established in DOE Order 5700.6B are being revised. The revised Draft Order 5700.6C was sent to all Departmental elements for formal coordination in March 1991. The revision is consistent with the latest version of NRC's Standard Review Plan, chapter 17.3, on QA. This revised Order parallels a proposed QA Rule (10 CFR 830.120), which is expected to be published for comment in the Summer of 1991, and its accompanying Safety Guide. The International Atomic Energy Agency (IAEA) is also making revisions to its QA standards similar to the revised Draft Order 5700.6C.

7. DOE's safety objective is not well integrated into the stated purpose of its quality assurance program. While the principal DOE objective is operational success, the principal objective of NRC's mandated requirements is integrity of safety-related equipment, although as discussed earlier, the focus of NRC's requirements on safety-related functions of licensed facilities is also a limitation.

DOE's safety objective will be integrated into the stated purpose of its QA program in the revised DOE Order 5700.6C, the proposed Rule 830.120, and the Rule's companion Safety Guide.

8. The DOE General Design Criteria, that apply to new construction or modification of nonreactor facilities provide guidance on safety classification for equipment; however, they do not specify the gradation in quality assurance standards that is applied.

As noted in the resolution to MITRE conclusion #6, the Department's revised Order 5700.6C, the proposed Rule 830.120, and the Rule's companion Safety Guide are consistent with the latest version of NRC's Standard Review Plan. In addition, the proposed rule will require a graded approach to items and processes depending upon the risk associated with those items and processes.

Safety Analysis and Review

9. DOE requirements on this subject are scattered among and within the applicable Orders. The SR Orders introduce new terms and definitions. For example, although DOE Orders define the terms "significant modification" and "unreviewed safety question," SR Orders introduce different definitions and language to describe the use of these concepts. This adds confusion to the interpretation of the DOE Orders.

In his memo to the Operations Office Managers dated February 25, 1991, the Under Secretary directed them to discontinue the practice of writing supplements and indicated that DOE Orders should be the only documents specifying requirements to the contractor.

10. Both DOE and NRC require that plant changes involving unreviewed safety questions be accompanied by safety analyses; however, DOE's definition of an unreviewed safety question differs from the NRC definition and would result in fewer safety analyses.

The Department is issuing rules for many of the technical topics discussed in the MITRE report, including Unreviewed Safety Questions. In addition, a DOE Order on Unreviewed Safety Questions has been transmitted for formal coordination Departmentwide. The definition of Unreviewed Safety Question in both the Rule and the Order has been revised to reflect the NRC definition.

11. The most significant difference between the DOE and NRC requirements for existing facilities is that DOE Orders provide virtually no guidance concerning the content, evaluation methodologies, and review criteria for Safety Analysis Reports. NRC has very extensive and substantive guidance on the subject. Furthermore, DOE does not require periodic updates to keep the Safety Analysis Report current with facility configuration and operation; NRC requires updates on an annual basis.

DOE has drafted a proposed rule; 10 CFR 830.110, which relates to DOE contractor requirements for preparing Safety Analysis Reports for nuclear facilities (reactors and nonreactor nuclear facilities). Because the rulemaking process is lengthy in nature, DOE will also issue an Order which parallels the proposed rule.

The draft Rule and its guidance document will provide substantive guidance on Safety Analysis Report content. DOE does not intend to provide a "Standard Review Plan" for the evaluation and review of Safety Analysis Reports which would be similar to that utilized by the NRC for evaluating and reviewing components or systems of nuclear powerplants, since the Safety Guides that will be issued with the new rules will provide sufficient information to serve the purpose of the NRC Standard Review Plan.

With regard to Safety Analysis Report updating, the proposed Rule and Order will require that contractors annually review the changes or modifications made to nuclear facilities to determine if the Safety Analysis Reports need to be updated rather than requiring annual updates. The Department considers this requirement to review and update as necessary to be prudent from both a safety and resource standpoint.

12. The draft DOE Order on this subject would specify the methodologies for safety evaluation much more precisely than do the existing Orders; however, it would not significantly supplement the safety review and acceptance criteria.

See response to MITRE conclusion #11.

Operations

13. A major weakness in the existing Orders is the absence of detailed guidelines on the scope, content, and format of the technical specifications for reactor facilities and operational safety requirements for nonreactor nuclear facilities. Operational safety requirements are required to be concise and commensurate with the potential risks involved. While DOE Order 5480.6 states that the NRC Technical Specifications requirements given in 10 CFR 50.36 shall apply for DOE-owned reactors, it does not provide guidelines on how these requirements are to be met. Furthermore, DOE has no Order or generic document similar to NRC's Standard Technical Specifications that licensees use for formulating and documenting plant-specific technical specifications as required in 10 CFR 50.36. It is also significant that technical specifications on effluents to the environment are not explicitly covered in DOE's general requirements, NRC, on the other hand, provides detailed format and other guidance on the standard technical specifications for each major reactor type. Its regulations provide numerical guidelines for design objectives and limiting conditions for operation with respect to reactor effluents. Also, violations of technical specifications at civilian nuclear facilities can result in civil penalties, depending on the safety significance involved.

The draft DOE Rule, 10 CFR 830.320, covers the requirements for the development of Technical Safety Requirements (terminology which replaces Technical Specifications and Operational Safety Requirements) for DOE nuclear facilities.

The proposed Rule is similar to 10 CFR 50.36 and builds on NRC's experience with its implementation as well as the NRC's Technical Specification Improvement Program (TSIP). The Department's proposed Rule and Order are modeled after the NRC TSIP.

The Safety Guide which accompanies the draft rule provides extensive guidance on the format and content of Technical Safety Requirements documents and, similar to the NRC philosophy, emphasizes keeping the content of the Technical Safety Requirements to a minimum to make the document user-friendly.

A draft rule, 10 CFR part 820, has also been prepared by DOE to articulate the Department's enforcement process which could result in civil penalties for contractor violations of Technical Safety Requirements depending on the safety significance involved. Violations of Technical Safety Requirements will subject contractors to potential civil penalties.

14. DOE requirements for operator selection, qualification, and training as stated in the Orders are not as detailed as those of NRC. For production reactors, the applicable Order selectively applies consensus standards. DOE recognizes the use of partial or full-scope simulators for training; however, the latter are not mandatory for production reactors. Also, there is nothing in the existing Orders that parallels the detailed NRC criteria for examining the competency of reactor operators. Operators are certified by DOE's contractors, whereas operators of civilian reactors are licensed by NRC. Furthermore, DOE staffing requirements for reactor control rooms are different from those for civilian power reactors. For nonreactor facilities, qualification requirements are not explicit; verification, rather than certification, of personnel qualification and training is required.

The Department has recently issued DOE Order 5480.20, "Personnel Selection, Qualification, Training, and Staffing Requirements at DOE Reactor and Non-Reactor Nuclear Facilities." This Order contains detailed requirements for Category A and B reactors and nonreactor nuclear facilities that are more detailed than the NRC requirements contained in 10 CFR part 55. In addition, the requirements for DOE's production, test and research reactors are equivalent to the guidance contained in NRC Regulatory Guide 1.8. The Department's requirements for nonreactor nuclear facilities are also more specific and detailed than NRC rules or Regulatory Guides.

The Department has also established a formal training accreditation program that is modeled after the commercial nuclear power industry's program. Although the industry program is only applicable to power reactors, the Department has implemented this program at our larger nonreactor nuclear facilities as well. The accreditation program is required through DOE Order 5480.18, "Accreditation of Performance-Based Training for Category A Reactors and Nuclear Facilities."

These two DOE Orders on training provide a basis in policy and requirements that will provide assurance of the content and quality of training programs as well as the competency of operators, maintenance, and technical support personnel. The Department has also developed a DOE rule and associated Safety Guide that incorporate the basic requirements for performance-based training contained in DOE 5480.18 and the prescriptive requirements contained in DOE 5480.20.

The MITRE report indicates that the DOE Orders do not contain a requirement for a simulator for the production reactors. It should be noted by the DNFSB that the NRC rules also do not require a simulator for commercial power reactors. DOE 5480.20 continues to require a facility specific evaluation for the need for a full-scope simulator. Based on such evaluations conducted in 1981, the DOE production reactors have installed full-scope simulators. In addition, the DOE rule currently incorporates an explicit requirement for a full-scope simulator for production reactors and continues the requirement for a facility-specific evaluation for other Category A test and research reactors.

The MITRE report also indicates that the Department's requirements for control room staffing are different from those for civilian power reactors. DOE's control room staffing requirements for Category A and B reactors are the same as those for commercial power reactors and research reactors, respectively. In addition, the MITRE report states that verification rather than certification of operators is required at nonreactor nuclear facilities. It should be noted that verification was in fact defined in a manner identical to certification in previous Orders. The current DOE Orders have been revised to use the same terminology (i.e., certification). Finally, the MITRE report notes that DOE contractors, rather than DOE personnel certify operators. DOE Order 5480.20 provides for a much more direct role of oversight by DOE including coevaluation of operators in a manner similar to NRC's current requalification program practices. Through the Department's training accreditation program, individual training programs for maintenance personnel, radiation protection technicians, and technical staff, as well as operator programs will be individually accredited. This program will provide the necessary assurance of the content and quality of training

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programs and the competency of personnel completing the programs.

Fire Protection

15. DOE and NRC differ in their fundamental approaches to fire protection. The DOE emphasis is on minimizing risk to the public and workers, on preventing the disruption of vital DOE programs, and on keeping the monetary cost of a fire to manageable proportions. NRC's fire protection program requirements are directed at protecting safety systems and preventing radioactive releases to the environment. Thus, DOE Orders do not explicitly address nuclear safety systems and safe shutdown.

Fire protection is the sum of all activities to provide for the control and/or extinguishment of all aspects of fire. Fire prevention, referring primarily to measures directed towards avoiding the inception of fire, is a subset of fire protection. Fire protection engineering establishes the appropriate mix of construction, protection, and occupancy requirements which sets adequate suppression mechanisms in place, mitigates the consequences of fire and minimizes the need for detection.

There are basic differences between the approach to fire protection taken by DOE and NRC because there is a fundamental difference between the role of DOE and NRC. DOE is the Owner/Operator/Regiator of facilities and NRC is only the Regulator of facilities. The NRC licensee employs an insurance company, usually the nuclear fire insurance arm of either the Factory Mutuals (FM) or the Improved Risk Insurers (IRI), the major Highly Protected Risk (HPR) insurers in the world, to protect its investors' interests by securing the best fire protection engineering, loss prevention advice and insurance coverage available against catastrophic fire loss. DOE must also do this as owner of the facilities.

NRC is primarily concerned with the safe operation/shutdown of reactors. DOE also shares this concern. However, in addition to this responsibility, DOE also has broader regulatory concerns that parallel those of other Government regulatory agencies, e.g., EPA, DOL/OSHA, etc. Consequently, DOE fire protection includes and emphasizes other codes/standards such as the Life Safety Code. Thus, the Department's actions for assuring full scope responsibility for fire protection is supportive of MITRE's implied recommendation that DOE not follow the limitations of NRC requirements that focus only on safety-related functions (MITRE conclusion #7 above).

16. DOE Orders are written in a general manner, reflecting the fact that they apply to all types of facilities. Orders applying to existing facilities make limited reference to consensus standards. NRC requirements include detailed consideration of such aspects as electrical cable tray design, remote safety-related shutdown control panels, and fire barriers. Also, fire prevention plays a prominent role in NRC's defense-in-depth principle for safety.

The DOE fire protection program is based upon the Highly Protected Risk (HPR) concept. The essential elements of the program are given in section 10, "Essential Elements of an Improved Risk (the terms HPR and Improved Risk are synonymous) Facility," in DOE Order 5480.7. DOE Order 5480.7 was intended to provide direction to a professional fire protection engineer with HPR experience. This provides too much latitude for use as a regulatory document since stringent requirements are implicit rather than explicit.

The DOE fire protection program requires qualified professional fire protection engineers to review, for fire protection content and adequacy, all plans prior to construction to require regular self-inspections, periodic audits by independent HPR authorities, physically adequate enclosures, separations and protection of special hazard operations among other concerns.

DOE Order 5480.7 under the section "Compliance With Improved Risk Objectives" states: "To ensure—no threats to the public—will result from fire." DOE fire protection personnel have interpreted this to mean that a fire will not be the cause of harm to the public either through the flames of a fire or through release of toxic or hazardous materials through a breach of the structural integrity of the process under fire attack. The other three objectives are equally broad. More specific language will be incorporated in future revisions to this Order.

Maintenance

17. The existing maintenance requirements for operating DOE facilities are extremely limited in their scope and structure, and weak in their level of detail. In fact, they are virtually nonexistent for production reactor facilities. Explicit evaluations of maintainability are based on optimizing life-cycle cost analyses. On the NRC side, the existing maintenance requirements are scattered through some 30 Regulatory Guides and chapters of the Inspection Manual. Appropriate sections of consensus standards on quality assurance that deal with maintenance also apply. Maintenance requirements are a concern for the non-safety-related or "balance-of-plant" equipment, which is not as strictly regulated as the safety-related portion of the licensed facilities. Thus, NRC's maintenance requirements are not well integrated into its regulations.

DOE issued DOE Order 4330.4A, "Maintenance Management Program," for use by all Department elements in April 1991. The Order consolidates DOE's maintenance program requirements and requires the contractor program to be documented in Maintenance Implementation Plans which will be approved by the Department. The Order covers maintenance requirements, modeled after the Institute of Nuclear Power Operations guidelines for all equipment and systems in both nuclear and nonnuclear facilities.

The DOE's maintenance requirements are also provided in the first set of proposed DOE Rules that is scheduled to be published in the Federal Register in July 1991. The rule for maintenance contains the same basic requirements that are provided in DOE Order 4330.4A and is supplemented by a Safety Guide to provide additional information to DOE contractors relating to implementation. DOE's inspection and enforcement will be based on the new Order and proposed rule.

18. As a result of the need for improved maintenance, both DOE and NRC have drafted and proposed additional requirements. DOE's planned adoption of Institute of Nuclear Power Operation's (INPO's) maintenance requirements reflects DOE's current philosophy of incorporating accepted industry programs into its key maintenance activities. Finalization of DOE's proposed maintenance program would result in a more comprehensive and detailed approach to maintenance. NRC has published its policy on maintenance and intends to proceed with the issuance of a proposed rule. It already has implemented an inspection and enforcement measure that will increase civil penalties for licensee violations that involve a maintenance-related failure.

See response to MITRE conclusion #17 above.

Radiation Protection

19. There are several differences between DOE and NRC with respect to their radiation protection programs, related, for example, to the implementation of the as-low-as-is-reasonably-achievable (ALARA) process, and requirements for personnel monitoring and training. However, the radiation standards adopted by the two organizations are generally consistent.

Occupational radiation protection standards and limits within the DOE have typically been proactive and conservative. As an example, DOE modified their existing occupational radiation protection standards in 1988 to reflect the 1987 Environmental Protection Agency (EPA) Radiation Protection Guidance to Federal Agencies for Occupational Exposure. DOE was the first Federal agency to adopt these recommendations, which basically incorporated the recommendations contained in the International Commission on Radiological Protection (ICRP) Report 26. Current NRC regulations do not reflect the 1987 EPA guidance, and consequently generally allow higher radiation exposures to the occupational worker. DOE has been advised that NRC is planning to issue revised regulations in 1991, to be effective in 1993, that will bring them into consistency with current DOE and EPA requirements.

Current DOE occupational radiation protection regulations require monitoring of worker external and internal exposures at thresholds more conservative then current and proposed NRC regulations. The DOE Laboratory Accreditation Program (LAP) for accrediting external dosimetry programs contains more stringent requirements than the corresponding LAP required by NRC. The DOE Order describing radiation protection requirements for occupational workers (DOE Order 5480.11) provides more detailed requirements in the areas of training, instrumentation, area posting and access control, and ALARA design requirements than the corresponding NRC regulation (10 CFR part 20).

In 1990, DOE formed the Office of Health, with authority to develop policy and guidance in the occupational radiation protection and industrial hygiene areas. The Office of Health is continually reviewing the adequacy of current DOE radiation protection policy and is currently developing additional guidance in a number of radiation protection program areas to ensure a high level of performance within the DOE complex.

20. NRC has provided more structured and detailed guidelines than DOE on meeting its regulatory requirements. Guidelines on effluent monitoring and estimation of potential radiation doses are examples.

The requirements for effluent monitoring and radiation dose estimation are more specific in DOE Orders 5400.1 and 5400.5 than those provided by NRC in 10 CFR part 20. The DOE Orders not only require the collection of data but also the submittal of the data to a central database. Since DOE's guidance for monitoring was in draft at the time of publication of the MITRE report, it is easy to understand the basis for the conclusion that NRC's guidance was more detailed. However, since that time the DOE guidance has been published and is now being distributed under the title "DOE Environmental Regulatory Guide for Radiological Effluent Monitoring and Environmental Surveillance." It should also be noted that the reporting requirements in the DOE Orders are more specific and comprehensive than the environmentally related requirements in the NRC Rules. Based on this current guidance, the Department does not believe that the NRC guidance in this area is any more comprehensive or detailed.

With regard to dose estimation, DOE guidance to the field for conducting dose estimates using the ICRP-26/30 recommended methodology has existed since 1985. These requirements were formalized for environment and public protection in DOE Order 5400.5 in February 1990. NRC is just now issuing similar requirements in a revision to 10 CFR part 20. NRC has prepared some Regulatory Guides for estimating dose; however, this material is necessary because many of its licensees do not have specific models, staff, or programs for conducting such estimates. All DOE facilities have programs and staff assigned to these functions and issue annual reports containing the results of these efforts. DOE continues to conduct audits/internal reviews and provide additional guidance to ensure the quality, accuracy, and consistency of these procedures. The Department believes this oversight to be equal to or exceeding that of NRC, and that, on average, DOE has more monitoring data on its contractor sites and releases than NRC has on its licensees.

In summary, considering the DOE Orders and guidance that have been issued since MITRE performed their review, the Department believes that the concerns raised in the report have been resolved.

Radioactive Waste Management

21. The DOE Order on this subject is detailed and often more specific than the NRC regulations on certain topics. The Order references pertinent requirements of NRC and other agencies.

No response needed.

22. DOE does not provide a time restriction on liquid high-level waste before it is converted to solid form. The NRC regulations provide a time limit of five years, However, DOE provides requirements for the management of liquid high-level waste, while NRC does not.

It is true that DOE does not provide a time requirement for converting liquid high-level waste to solid form. However, the Department does require provisions for the control of chemistry of liquid high-level waste to minimize corrosion of the storage vessel and requirements for monitoring, surveillance, and leak detection (DOE Order 5820.2A, Radioactive Waste Management, 9-26-88, Chapter I). NRC does provide some requirements for the management of high-level waste in Title 10 CFR part 60, 2-25-81, Disposal of High-Level Wastes in Geologic Repositories and in Title 10 CFR part 72, 6-19-88, Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste.

23. DOE's disposal of high-level waste is subject to NRC regulations.

No response needed.

24. DOE requirements for the diposal of low-level waste are similar to NRC's regulations. However, the NRC regulations are more specific in terms of waste classification.

Both NRC and DOE requirements for low-level waste disposed provide for similar protection from the disposal waste. The performance objectives for the two organizations are similar. For NRC regulated disposal facilities, the annual dose must not exceed an equivalent of 25 mrem to the whole body, 75 mrem to the thyroid, and 25 mrem to any other organ for any member of the public. DOE limits the annual effective dose equivalent to 25 mrem to any member of the public.

Both organizations require the preparation of an all pathways analysis (performance assessment) to provide reasonable assurance that the above performance objectives are met.

NRC has developed a waste classification system which imposes additional requirements, such as waste form stability and depth of disposal, which are dependent on the level of radioactivity in the waste. The waste classification system was developed based on the types of wastes regulated by NRC and for an intruder scenario only. Additional restrictions may be put on certain waste types or classes if the performance assessment indicates that they are necessary. DOE decided against developing or adopting a waste classification system. Instead, the

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criteria for waste form, depth of disposal, types of waste allowed, etc., are determined on a site-specific basis and must be justified by the performance assessment.

Emergency Planning and Preparedness

25. DOE Orders call for developing, with the Federal Emergency Management Agency (FEMA), scenarios for use by DOE facility operators and state and local governments in exercising radiological emergency plans. NRC requires formal concurrence with FEMA that emergency plans are adequate and capable of being implemented. NRC also requires an independent periodic review of the emergency plans; a similar requirement is not provided in the DOE Orders.

The DOE requirement cited was excerpted from a July 1990 draft DOE Order which has since been changed to have the Heads of Field Elements assist state, tribal, and local governments in the development of emergency plans when the Emergency Planning Zone extends beyond DOE site boundaries. This assistance is to be provided in coordination with appropriate Federal agencies, such as FEMA. The need to ensure coordinated planning and response activities is recognized explicitly in the current drafts of DOE Order 5500.1B, 5500.2B, 5500.3A, and 5500.10, which all contain provisions for coordination of emergency plans with Federal, state, tribal, and local emergency response organizations. These Orders also contain provisions for requesting and accommodating participation by other organizations in emergency exercises. The current drafts of the DOE Orders, cited above, also require annual updates of emergency plans, with corresponding coordination and approval, and the preparation of 5-year emergency readiness assurance plans, which describe activities, accomplishments, plans, schedules, and budgets.

DOE emergency plans are comprehensive relative to radiological and non-radiological hazards expected at each facility. Emergency plans within the Department are subject to approval by each level of line management, culminating in approval by the Program Secretarial Officer. In addition, independent oversight of emergency plans is provided by the Office of Nuclear Safety and the Office of the Assistant Secretary for Environment, Safety, and Health. These two offices were established by the Secretary to independently overview the nuclear and nonnuclear aspects of all DOE operations. They report directly to the Secretary and have no programmatic responsibility.

With the implementation of the requirements contained in the new and revised DOE 5500 series Orders identified above, and the continued involvement of the independent oversight organizations within the Department in the review of emergency plans and other emergency management activities, the Department has no need for entering into a special arrangement with FEMA to provide concurrence on emergency plans.

26. The DOE Orders do not contain an integrated, full-scale exercise requirement describing the scope and frequency of emergency drills and exercises at DOE facilities. The NRC requirements are as follows: One full-participation exercise prior to full-power license issuance; and annual onsite exercises, in which state and local authorities must fully participate biennially, and local authorities from all states within the potentially affected area must participate every seven years.

Draft DOE Order 5500.3A, "Planning and Preparedness for Operational Emergencies," which is currently being finalized, contains specific requirements for a coordinated drill and exercise program as an integral part of the Department's overall emergency management program. One of the requirements in this Order calls for each DOE facility to conduct a full-participation exercise annually. Federal, state, tribal, and local regulatory and/or emergency response organizations must be offered the opportunity to participate in these exercises, and participation must be accommodated when requested.

Safety Issue Identification, Notification, and Resolution

27. DOE requirements in this area are generally comparable to NRC.

No response needed.

28. The DOE program for identifying, prioritizing, and resolving generic safety issues does not appear to be as structured and formal as that of NRC.

The response to this conclusion will be in two parts, the first dealing with the Department's Safety Concern Management System and the second dealing with occurrence reporting. The diversity of the Department's facilities normally mitigates against the development of a large number of generic safety issues. In regard to the Department's Safety Concern Management System, the Department prepared a draft DOE Order in CY 1989 which has undergone extensive review. In addition the Department has prepared a Notice for Proposed Rulemaking on "whistle-blower" protection which was published in the Federal Register on March 13, 1990. The Department expects to issue a DOE Order on the Safety Concern Management System in CY 1991. This Order details the Department's process in identifying, prioritizing, and resolving safety issues which are discovered anywhere in the DOE complex. As noted in the MITRE report, this program is extensive. Improvements in more recent drafts of the Order provide a more structured and formal approach to how the Department processes and resolves these safety concerns.

In terms of occurrence reporting, the Department issued DOE Order 5000.3A, "Occurrence Reporting and Processing of Operations Information," on May 30, 1990. This Order documents the Department's requirements for occurrence categorization, notification, reporting, and follow-up (root cause identification and corrective actions). The process requires line program management involvement in the follow-up of the occurrences in terms of root cause identification and in assuring that corrective actions are appropriately identified, resources applied, and actions completed. Monthly status reports of outstanding corrective actions are required to help assure tracking of all actions to completion.

29. DOE does not explicitly define an unusual occurrence of major significance that requires "prompt reporting" to the appropriate Program Secretarial Officer.

DOE Order 5000.3A and the proposed Rule and Safety Guide on occurrence reporting now indicate that Program Secretarial Officers or their designees (program managers) must be notified of all unusual occurrences verbally within 2 hours of categorization of an event/condition and formally notified, in writing, within 24 hours.

30. DOE does not provide a mechanism, such as NRC's process for "Differing Professional Opinion," for the consideration of dissenting views on decisions or responses to safety issues.

In regard to safety issues identified through the occurrence reporting system, both the DOE Order and proposed Rule/Safety Guide on occurrence reporting explicitly provide for input by Department personnel which may differ from the action/direction that the Department/contractor proposes for a particular event/condition.

The Department is developing a Safety Concern Management System program that will consider the need for a separate "Differing Professional Opinion" process.

[FR Doc. 91-11791 Filed 5-16-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3966-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 29, 1991 Through May 3, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-COE-K34009-CA Rating EO2

North Delta Multipurposes Water Program, Sacramento, Cosumnes and Mokelumne Rivers, section 10 and 404 Permit, Sacramento County, CA.

Summary: EPA believes the project has potential adverse impacts to the endangered fall-run Chinook salmon and existing wetlands habitat and may be inconsistent with ongoing planning efforts to provide for increased protection of water quality and beneficial uses in the San Francisco Bay/Delta. It is essential that the environmental impacts of this project be assessed cumulatively with other major existing and planned projects affecting the Bay/Delta, and that this project not move forward until the State of California has completed its Bay/Delta water supply hearing process.

ERP No. D-FHW-J40123-MT Rating LO

I-15/North Helena Valley Interchange Improvements, I-15 to Montana Avenue, Construction, Funding, Lewis and Clark County, MT.

Summary: EPA has no objections to this project.

ERP No. D-IBR-K28015-CA Rating EC2

Salinas Valley Seawater Intrusion Program, Long-Term Water Supply, Funding, COE Section 10 and 404 Permits, Salinas River, Castroville, Marina and Fort Ord Areas, Salinas Valley, Monterey County, CA.

Summary: EPA believes the proposed project has potential adverse impacts to existing wetlands and riparian areas in the vicinity of the proposed diversion structure, adverse impacts to Salinas River fisheries, and effects on fish and wildlife resources at two reservoirs. Proposed mitigation may not adequately offset losses; other alternatives to reduce seawater intrusion should be more closely examined. EPA supports the wastewater reclamation component of the proposed project.

Final EISs

ERP No. F-BLM-K36197-NV

Clark County Regional Flood Control Master Plan, Facilities Construction and Operation, Right-of-Way Approval and Section 404 Permit, Clark County, NV.

Summary: Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F-CDB-C82029-NY

Marina Redevelopment Project Area, Development and Construction, Urban Development Action Grant (UDAG) and COE Nationwide Permit, Village of Port Chester, Westchester County, NY.

Summary: EPA's concerns were adequately addressed in this document.

ERP No. F-FHW-K40166-HI

Honoapiilani Highway/FAP route 30 Improvements, Puamana to Honokowai, Funding, Maui County, HI.

Summary: Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

Dated: May 14, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-11790 Filed 5-16-91; 8:45 am]

BILLING CODE 6560-50-M

Workshops on Ecological Risk Assessment Case Studies

[FRL-3966-7]

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meetings.

SUMMARY: This notice announces four workshops sponsored by the Environmental Protection Agency's (EPA) Risk Assessment Forum to obtain scientific peer-review for approximately 20 ecological risk assessment case studies.

DATES: The dates and locations for the workshops are listed below. Members of the public may attend as observers.

- *Part 1* The workshop will be held at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD. It will begin on Wednesday, May 29, 1991 at 8:30 a.m. and end on Thursday, May 30, at 5 p.m.
- *Part 2* The workshop will be held at the Southland Center Hotel, 400 N. Olive Street, Dallas, TX. It will begin on Tuesday, June 4, 1991 at 8:30 a.m. and end on Wednesday, June 5 at 5:45 p.m.
- *Part 3* The workshop will be held at the U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA. It will begin on Tuesday, June 11, 1991 at 11 a.m. and end on Wednesday, June 12 at 5:30 p.m.
- *Part 4* The workshop will be held at the Cherry Hill Inn, Route 38 and Haddonfield Road, Cherry Hill, NJ. It will begin on Tuesday, June 18, 1991 at 8:30 a.m. and end on Thursday, June 20 at 12:45 p.m.

ADDRESSES: Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshops. To attend a workshop as an observer, call Eastern Research Group at (617) 641-5373 or contact Susan Brager, Eastern Research Group, 6 Whittemore Street, Arlington, Massachusetts, 02174, telephone (617) 641-5347. Space is limited.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Thomas, U.S. Environmental Protection Agency, (RD-689), 401 M Street, SW., Washington, DC, 20460, Telephone (202) 475-6743 (FTS: 475-6743).

SUPPLEMENTARY INFORMATION: EPA work groups have prepared approximately 20 case studies that represent a wide range of ecological risk (ecorisk) assessments. To obtain scientific peer review for these case studies, a series of four workshops will be held. Each of the workshops will review between four and seven case studies from both a scientific and risk assessment point of view.

After the workshops, the individual case studies will be compiled into an overall report that will include a description of each case study, a discussion section that will review ecological risk assessment issues and research needs identified in the case studies, and a "tools" section that will contain a cross-referenced listing of ecorisk methods, models, and assessment schemes used in the case studies. The case studies report will report interim guidance in performing ecorisk assessments until additional specific ecorisk guidelines can be developed. This report will be made available to the public in a future issue of the Federal Register.

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Dated: April 18, 1991.

Erich Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 91-11756 Filed 5-16-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59206A; FRL-3930-8]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-91-11. The test marketing conditions are described below.

EFFECTIVE DATE: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 382-2279.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-91-11. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-91-11. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-91-11

Date of Receipt: March 12, 1991.

Notice of Receipt: March 26, 1991 (56 FR 12531).

Applicant: Confidential.

Chemical: (G) Polyester Polymer.

Use: Electrical insulating varnish.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc 91-11756 5-16-91; 8:45am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

WCCR Broadcasting Limited Partnership et al.; Applications for Consolidated Proceeding

1. The Commission has before it the following mutually exclusive applications for two new FM stations:

Applicant	City and State File No.	MM Docket No.
I		
A. WCCR Broadcasting Limited Partnership; Leland, NC.	BPH-890316MB	91-101
B. Hare Broadcasting, Inc.; Leland, NC.	BPH-890316MD	
C. Sharon M. Meres; Leland, NC.	BPH-890316MF	
D. Cape Broadcasting Corporation; Leland, NC.	BPH-890316ME	
E. Leland Broadcasting Group, Inc.; Leland, NC.	BPH-890313MP [Dismissed Previously]	

Issue heading and applicants
1. Financial, A
2. Environmental Impact, B, C
3. Comparative, All
4. Ultimate, All

II		
A. Pruitt, Inc.; Campbellsville, KY.	BPH-891011MK	91-96
B. Johnson Radio Company, Inc.; Campbellsville, KY.	BPH-891012MH	
C. David H. Greenlee; Campbellsville, KY.	BPH-891012MJ	
D. Michael T. Harding; Campbellsville, KY.	BPH-891012MM	
E. Patricia Rodgers; Campbellsville, KY.	BPH-891012NC	
F. The Eagle Shelby Group; Campbellsville, KY.	BPH-891012NG	

Issue Heading and Applicants
1. Cross-Interest, D
2. Air Hazard, D
3. Comparative, A-F
4. Ultimate, A-F

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036. (Telephone (202) 452-1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-11869 Filed 5-16-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Maryland Port Administration, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200513.

Title: Maryland Port Administration/Ceres Corporation, Inc. Terminal Agreement.

Parties:

Maryland Port Administration,
Cere Corporation, Inc.

Synopsis: The Agreement, filed May 9, 1991, provides for the lease of premises in area 503 at the Dundalk Marine Terminal at rental based on certain tonnage level discounts. The Agreement's term expires December 31, 1991.

Agreement No.: 224-200402-003.

Title: Maryland Port Administration/Puerto Rico Maritime Shipping Authority Terminal Agreement.

Parties:

Maryland Port Administration (MPA),
Puerto Rico Maritime Shipping Authority (PRMSA).

Synopsis: The Agreement provides for a 30-day extension of the Agreement and Lease between MPA and PRMSA, effective May 9, 1991.

Agreement No.: 224-003158-007.

Title: The Port Authority of New York and New Jersey/Ecuadorian Line Terminal Agreement.

Parties:

The Port Authority of New York and New Jersey (Authority),
Ecuadorian Line (EL).

Synopsis: The Agreement amends the parties' basic agreement to provide for: the addition of approximately three acres of open area as additional premises for the storage of containers, chassis, trailers, tractors and other equipment, subject to the Authority's 30-day expiration right; EL to pay rental for the additional premises at an annual rate of $75,000.

Dated: May 14, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-11776 Filed 5-16-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 91-14]

Inquiry Concerning Use and Effect of Surcharges by Common Carriers and Conferences; Extension of Time for Replying to Comments

By notice served April 29, 1991, the Commission extended the time for filing comments to June 21, 1991. Accordingly, the time for filing replies to comments is also extended, to August 5, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-11777 Filed 5-16-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banc One Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 5, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio; to acquire 100 percent of the voting shares of The Central Trust Company, Newark, Ohio; The Central Trust Company of Northern Ohio, N.A., Lorain, Ohio; The Central Trust Company of Northeastern Ohio, N.A., Canton, Ohio; and The Central Trust Company of Southeastern Ohio, N.A., Marietta, Ohio.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bank Management Group, Ltd., Manchester, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of First Winthrop Bancorporation, Inc., Winthrop, Iowa, and thereby indirectly acquire Peoples State Bank, Winthrop, Iowa.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Central Arkansas Bancshares, Inc., Malvern, Arkansas; to acquire at least 98.83 percent of the voting shares of One National Bank of Hot Springs, Hot Springs, Arkansas.

2. First Bentonville Bancshares, Inc., Bentonville, Arkansas; to become a bank holding company by acquiring at least 94.5 percent of the voting shares of First National Bank, Bentonville, Arkansas.

Board of Governors of the Federal Reserve System, May 13, 1991.

Jeannifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-11731 Filed 5-16-91; 8:45 am]

BILLING CODE 6210-01-F

Bluestem Financial Services, Inc.; Notice of Application to Engage de Novo in Permissible Nonbanking Activities

CORRECTION

This notice corrects a previous *Federal Register* notice (FR Doc. 91-

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16726) published at page 21161 of the issue for Tuesday, May 7, 1991.

Under the Federal Reserve Bank of Chicago, the entry for Bluestem Financial Services, Inc. is amended to read as follows:

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bluestem Financial Corp., Fairbury, Illinois, to engage *de novo* through its subsidiary, Bluestem Financial Services, Inc., Fairbury, Illinois, in insurance agency activities pursuant to § 225.25(b)(8)(iii); tax planning activities pursuant to § 225.25(b)(21); and providing securities brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in Fairbury, Illinois.

Comments on this application must be received by May 28, 1991.

Board of Governors of the Federal Reserve System, May 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR DOC. 91-11734 Filed 5-16-91; 8:45 am]

BILLING CODE 6210-01-F

Fleet/Norstar Financial Group, Inc. and Fleet/Norstar Holding Company, Inc.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. § 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on the applications that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding these applications must be received no later than May 28, 1991.

A. Federal Reserve Bank of Boston (William Spring, Vice President), 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Fleet/Norstar Financial Group, Inc. and Fleet/Norstar Holding Company, Inc., a bank holding company in formation, both of Providence, Rhode Island, to acquire New Bank of New England, National Association, Boston, Massachusetts; and New Connecticut Bank & Trust Company, National Association, Hartford, Connecticut. As part of these acquisitions, Fleet/Norstar Holding Company also intends to acquire the bank to result from the conversion of Fleet Bank of Connecticut, Hartford, Connecticut, to a national charter. In a related transaction, Fleet Norstar Financial Group, Inc. intends to acquire the operations of New Maine National Bank, Portland, Maine.

Board of Governors of the Federal Reserve System, May 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-11732 Filed 5-16-91; 8:45 am]

BILLING CODE 6210-01-F

C.N. Bancorp; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 1991.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105.

1. C.N. Bancorp, Taipei, Taiwan; to engage *de novo* through its subsidiary, CNB Bancorp, San Francisco, California, in participating in loans of banking subsidiaries or other banks pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-11733 Filed 5-16-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0125]

Revisions of the Pectins Food Chemicals Codex, 3d Ed., Monograph; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on pending changes to the Food Chemicals Codex, 3d Ed., monograph for pectins. The additions, changes, and corrections in this monograph have been prepared by the National Adacemy of Sciences/Institute of Medicine (NAS/IOM) Committee on Food Chemicals Codex. This revised monograph will be published in the Third Supplement to the Food Chemicals Codex, 3d Ed.

DATES: Written comments by June 17, 1991. (The NAS/IOM Committee on Food Chemicals Codex advises that comments received after this date cannot be considered for the third supplement but will be considered for later supplements.)

ADDRESSES: Written comments to the NAS/IOM Committee on Food Chemicals Codex, National Academy of Sciences, 2101 Constitution Avenue NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT: Sanford W. Bigelow, Committee on Food Chemicals Codex, National Academy of Sciences, 2101 Constitution Avenue, NW., Washington, DC 20418, 202-334-2560;

or

Paul Kuznesof, Center for Food Safety and Applied Nutrition (HFF-415), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5680.

SUPPLEMENTARY INFORMATION: FDA provides research contracts to the NAS/IOM to support preparation of the Food Chemicals Codex, a compilation of specifications for substances used as food ingredients. In the Federal Register of January 11, 1991 (56 FR 1198), FDA announced that the NAS/IOM Committee on Food Chemicals Codex was considering new monographs and monograph revisions for inclusion in the Third Supplement to the Food Chemicals Codex, 3d Ed. In the Federal Register of January 26, 1984 (49 FR 3271), FDA announced that the NAS/National Research Council Committee on Food Chemicals Codex was considering new monographs and monograph revisions for inclusion in the Second Supplement to the Food Chemicals Codex, 3d Ed., which has since been published. The public was invited to comment and make suggestions for consideration and inclusion in that publication.

FDA now gives notice that the NAS/IOM Committee on Food Chemicals Codex is soliciting comments and information on proposed changes to the monograph for pectins. Information received in response to this notice will be used to determine whether the proposed changes to the current pectins monograph are necessary. Copies of the proposed revision of the Pectins monograph may be obtained from NAS (address above). Once comments are considered, the revised monograph will be published in the Third Supplement to the Food Chemicals Codex, 3d Ed.

FDA emphasizes, however, that it will not consider adopting new monographs and monograph revisions until the public has had ample opportunity to comment on the proposed new monographs and the proposed changes to existing monographs. The opportunity for public comment will be announced in a notice published in the Federal Register.

The NAS/IOM Committee on Food Chemicals Codex invites comments and suggestions by all interested parties on the proposed revisions of the Pectins monograph.

Two copies of written comments regarding the monograph listed in this notice are to be submitted to NAS (address above). Each submission should state that it is in response to this Federal Register notice. NAS will forward a copy of each comment to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, to be placed under Docket No. 91N-0125 for public review.

Dated: May 10, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-11736 Filed 5-16-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88A-0005]

Response to a Request for an Advisory Opinion Concerning the Definition of "Manufactured" with Regard to Device Labeling Requirements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food Drug Administration (FDA) is announcing the availability of a response to a requests for an advisory opinion concerning the definition of "manufactured" with regard to device labeling requirements.

ADDRESSES: Submit written requests for single copies of the response concerning the definition of "manufactured" with regard to device labeling requirements to Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addresed adhesive labels to assist that office in processing your requests. Submit written comments on the response to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the response and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: On December 22, 1988, Richard J. Larkin submitted a request for an advisory opinion concerning when a firm is considered to be a medical device manufacturer under the Federal Food, Drug, and Cosmetic Act and title 21 of the Code of Federal Regualtions (21 CFR parts 801 and 820).

The following questions were asked:

(1) When is a firm considered a "manufacturer" with regard to the labeling requirements included under 21 CFR 801.1(c)?

(2) Who is the manufacturer if "outside contract manufacturing firms" are used to produce the device, but they supply the devices in bulk form to the marketing company, who in turn, packages, labels, sterilizes, and quality control tests the final product? Must the marketing company display a qualifying phrase, such as: "Manufactured for," "Distributed by," or some other statement on the label of their device?

(3) Is a nonsterile device that is manufactured by an outside-contractor and packaged in bulk considered a "finished device," even though it will be further processed and marketed as a sterile device?

FDA's response states that § 801.1 requries that the label of a device contain the name and place of business of the manufacturer, packer or distributor. Section 801.1(c) requires that, where the person whose name appears on the label is not the manufacturer of the device, the name must be qualified by terms such as, "Manufactured for _____", "Distributed by _____", "or any other wording that expresses the facts."

The purpose of § 801.1 is to assure that a responsible person is identified in the event it is necessary to contact someone regarding the device.

It is the responsibility of the marketing party to ensure that the label statement expresses the facts and is not false or misleading. While more than one party may be a manufacturer of a device, if a party plays a minor role, its name alone on the label, as manufacturer, would be misleading. Instead, and solely to acheive the purpose of § 801.1, in the situation identified by Mr. Larkin, it would be appropriate to use such terms as "manufactured for _____" or "distributed by _____" or "manufactured by _____ in conjunction with _____". It would not be appropriate to represent or suggest that any one firm was the sole manufacturer,

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With respect to the third question asked by Mr. Larkin "finished device" is defined in 21 CFR 820.3(j) as "a device, or any accessory to a device, which is suitable for use, whether or not packaged or labeled for commercial distribution." If the device described is suitable for a use, even if not as a sterile device, then it is a "finished device" as defined in 21 CFR 820.3(j).

The agency is now in the process of considering whether to revise § 10.85 Advisory Opinions (21 CFR 10.85). Although the decisionmaking process is not yet complete, the agency has decided to publish this opinion. However, this notice and the opinion are not being issued under the authority of 21 CFR 10.85, and the opinion, although called an advisory opinion, does not operate to bind the FDA or any other person in any way.

The agency advises that this advisory opinion represents its current position on this issue. A person may follow the opinion or may choose to follow an alternate course of action. If a person chooses an alternate course of action, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable by FDA. This opinion does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person.

Dated: May 10, 1991

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-11737 Filed 5-16-91; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Circulatory System Devices Panel of the Medical Advisory Committee

Date, time, and place. June 3 and 4, 1991, 8:30 a.m., rm. 503–529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, June 3, 1991, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; open public hearing, June 4, 1991, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 4:30 p.m.; Wolf Sapirstein, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1018.

General function of the committee. The committee reviews and evaluates data on of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 24, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for an implantable cardiac pacemaker, peripheral vascular prosthesis, and coronary interventional devices.

Closed presentation of data. The committee will discuss trade secret and/or confidential commercial information regarding the devices listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding the devices listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C 552b(c)(4)).

Biological Response Modifiers Advisory Committee

Date, time, and place. June 10, 1991, 8:30 a.m., Holiday Inn Crowne Plaza, Plazas II and III, 1750 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3:30 p.m.; closed committee deliberations, 3:30 p.m. to 5:30 p.m.; Anna J. Baldwin, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 3, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the use of XomaZyme CD5 Plus monoclonal antibody (Xoma Corp.) for the treatment of steriod-resistant graft-versus-host disease in bone marrow transplantation patients.

Closed committee deliberation. The committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Arthritis Advisory Committee

Date, time, and place. June 20, 1991, 9 a.m., Bethesda Ramada Inn, 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 11 a.m.; closed committee diliberations, 11 a.m. to 5 p.m.; Khairy W. Malek, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6335 or 443–3741.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 5, 1991, and submit a brief statement of the general

nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss guidelines for the clinical evaluation of analgesic drugs.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Immunology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. June 24, 1991, 9 a.m., First Floor Conference Rm., Piccard Bldg., 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m., to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Srikrishna Vadlamudi, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1034.

General function of the committee. The committee reviews and evaluates data on marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make the formal presentations should notify the contact person before June 1, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses or proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for the quantitative measurement of prostate specific antigen in human serum for use as an adjunctive test in predicting prognosis and as an aid in the management of prostate cancer patients.

Closed presentation of data. The committee will discuss trade secret and/or confidential commercial information regarding the device listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion.

Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 231 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statues.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall

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not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs and devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 14, 1991.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 91-11797 Filed 5-14-91; 2:18 p.m.]

BILLING CODE 4160-01-M

The Prescription Drug Marketing Act of 1987; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is holding six meetings on the Prescription Drug Market Act of 1987 (PDMA). The meetings are intended to inform regulated industry, State officials, health professionals, and other interested persons of PDMA's history and requirements, and the agency's enforcement policies relating to the act. This notice announces the first three meetings and their respective locations. The Agency will announce the other three meetings in a future issue of the Federal Register.

DATES: The meetings will be held between 9 a.m. and 5 p.m. on Monday, June 3, 1991; Tuesday, June 25, 1991; and Tuesday, July 9, 1991. Registration will be held between 8 a.m. and 9 a.m. of each meeting day.

ADDRESSES: On June 3, 1991, the meeting will be held at the Hyatt Regency Hotel, Two Albany St., New Brunswick, NJ; on June 25, 1991, at the Hyatt Regency Hotel, 350 North High St., Columbus, OH; and on July 9, 1991, at the Colony Park Hotel, 6060 North Central Expressway, Dallas, TX.

FOR FURTHER INFORMATION CONTACT: Jeanne White, Office of Small Business, Scientific, and Trade Affairs (HF-56), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6770.

SUPPLEMENTARY INFORMATION: FDA has organized six educational meetings, to be held across the country in six separate locations, to discuss the history and requirements of PDMA. This notice announces the first three meetings. The meeting were organized by FDA's Office of Small Business, Scientific, and Trade Affairs, Center for Drug Evaluation and Research's Office of Compliance, and the Office of Regulatory Affairs, encompassing the Regional offices.

PDMA (Pub. L. 100-293) was signed into law by the President on April 22, 1988. This act amended the Federal Food, Drug, and Cosmetic Act to: (1) Require State licensing of wholesale drug distributors under Federal guidelines that include minimum standards for storage, handling, and recordkeeping; (2) ban the reimportation of prescription drugs for human use produced in the United States, except when reimported by the manufacturer or for emergency use; (3) ban the sale, trade, or puchase of drug samples; (4) ban trafficking in or counterfeiting of drug coupons; (5) mandate storage, handling, and recordkeeping requirements for drug samples; (6) require practitioners to request drug samples in writing; (7) prohibit with certain exceptions the resale of prescription drugs purchased by hospitals or health care entities, or donated to or acquired at reduced cost by charitable institutions; and (8) set forth criminal and civil penalties for violations of these provisions.

In the Federal Register of September 14, 1990 (55 FR 38012), FDA issued guidelines for State licensing of wholesale prescription drug distributors as a final rule. The guidelines prescribe minimum standards, terms, and conditions for the storage and handling of prescription drugs for human use and for the establishment and maintenance of records of their distribution. These guidelines were effective September 14, 1990.

The topics for discussion at the meetings are the history of PDMA and its requirements, and the agency's enforcement policies relating to the act. There will be two question and answer sessions at each meeting, one in the morning and one in the afternoon.

Dated: May 13, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-11798 Filed 5-16-91; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, May 10, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Interview of Mothers in a Case-Control Study of Nasopharyngeal Carcinoma (NPC)—New—As part of a case-control study of NPC in Taiwan, mothers of NPC cases and community controls will be asked to respond to a questionnaire which assesses information on dietary exposures of subjects at young ages. This information will be used to relate early dietary patterns to risk of NPC. *Respondents:* Individuals or households; *Number of Respondents:* 97; *Number of Responses Per Respondent:* 1; *Average Burden per Response:* 0.67 hour; *Estimated Annual Burden:* 65 hours.

2. Tea Chop List and Appellant's Application for Review of Examiner's Return—0910-0259—Importers of tea or merchandise described as tea are required by the Board of Tea Examiners to submit samples for examination to determine compliance with prescribed standards of purity, quality, and fitness for consumption, before being allowed entry into the U.S. Tea Samples which have been rejected are reviewed upon request by appellant. *Respondent:* Businesses or other for-profit; *Respondents:* 150; *Number of Responses per Respondent:* 30; *Average Burden per Response:* .025 hours; *Estimated Annual Burden:* 1,125.

3. Oral Health Outcomes in San Antonio, Texas—Oral health surveys will be conducted in San Antonio, Texas. Respondents will be consumers, dentists, students, and school officials. Data will be collected on personal oral health services, lifestyle behaviors, community-based activities and environmental agents as they contribute to resultant oral health. *Respondents:* Individuals or households, businesses or other for-profit, small businesses or organizations; *Number of Respondents:* 16,430; *Number of Responses Per Respondent:* 1; *Average Burden Per Response:* .185 hours; *Estimated Annual Burden:* 3,420.

4. Importation and Shipment of Etiologic Agents—0920-0199—This data collection is the application for a permit to import or transfer agents or vectors of human diseases. The importer provides information on methods of transportation and proposed uses of materials imported. In the interstate shipment of these vectors, carriers must report the discovery of damaged packages and the sender must report any lost shipments. *Respondents:* State or local governments, businesses or other for-profit; *Number of Respondents:* 563; *Number of Responses Per Respondent:* 1; *Average Burden Per Response:* .304 hours; *Estimated Annual Burden:* 171 hours.

5. Transmittal of Periodic Reports and Promotional Material for New Animal Drugs—0910-0012—To facilitate a determination as to whether there may be grounds for suspending or withdrawing approval of the application or whether any applicable regulation should be amended or repealed. The respondents are the sponsors of approved New Animal Drug Applications whose numbers have increased over the years. *Respondents:* Businesses or other for-profit.

	Number of respondents	Number of hours per response	Number of responses per respondent
Reporting:			
Vehicles—71.21, 71.33(c) 71.35	233	.02	8.6
Dogs & Cats—71.51(b)(3) & 71.51(d)	2,855	.25	1
Turtles—71.52(d)	10	.50	1
Nonhuman primates—71.53(d)	40	.167	1
Recordkeeping:			
Nonhuman primates	50	[1] 25	

[1] Total burden hours.

Estimated Annual Burden . . . 744 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

James M. Friedman,

Director, Office of Health Planning and Evaluation, OASH.

[FR Doc. 91-11639 Filed 5-16-91; 8:45 am]

BILLING CODE 4160-17-M

	Number of respondents	Number of hours per response	Number of responses per respondent
Reporting:			
21 CFR 510.302a	1,500	.5	2.5
Recordkeeping:			
21 CFR 510.300a and 21 CFR 510.301a	1,500	10.35	1

Estimated Annual Burden . . . 17,025 hours.

6. Foreign Quarantine (42 CFR part 71)—0920-0134—Foreign quarantine regulations implement the provisions of the PHS Act in preventing the induction, transmission, or spread of communicable diseases from foreign countries into the United States. Inspections and control measures are undertaken with respect to conveyances, persons, and shipments of animals and etiologic agents. *Respondents:* Individuals or households, businesses or other for-profit.

The Department of the Interior and Related Agencies Appropriations, Fiscal Year 1990; Delegation of Authority

Notice is hereby given that I have delegated to the the Assistant Secretary for Health, with authority to redelegate, all the authority vested in the Secretary of Health and Human Services under Public Law 100-446, "The Department of the Interior and Related Agencies Appropriations, Fiscal Year 1990," as amended hereafter, to accept ownership of the buildings offered at no cost by the Gila River Indian Tribe for use solely as the Phoenix Area Regional Youth Treatment Center for Alcohol and Substance Abuse. This delegation excludes the authority to promulgate regulations, to submit reports to the Congress, to establish advisory committees or national commissions, and to appoint members to such committees or commissions.

This delegation became effective upon the date of signature. In addition, I hereby affirm and ratify any actions taken by the Assistant Secretary for Health or subordinates which, in effect, involved the exercise of the delegated authority prior to the effective date of the delegation.

Dated: May 9, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-11748 Filed 5-16-91; 8:45 am]

BILLING CODE 4160-09-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on May 3, 1991.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Application For Benefits Under A U.S. International Social Security Agreement—0960-044800—The information collected on the form SSA-2490 is used by the Social Security Administration to determine a claimant's eligibility for retirement, survivors, or disability benefits from the United States (U.S.) or from a country which has entered into a Social Security agreement with the U.S. The affected public consists of claimants who have filed for these benefits.

Number of Respondents: 10,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 3,333 hours.

2. Direct Deposit Questionnaire—0960-0000—The information collected on the form SSA-1975 is used by the Social Security Administration to determine what additional measures should be taken to advise Supplemental Security Income (SSI) recipients of the availability and advantages of the direct deposit of payments into a recipient's private banking account. Without this collection of information SSa would not be able to determine why a large number of recipients have failed to utilize the features of direct deposit. The affected public consists of recipients already receiving benefits.

Number of Respondents: 1,500.

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Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 375.
3. Application For Search of Census Records For Proof of Age—0960–0097—The information collected on the form SSA–1535 is sued by the Social Security Administration to establish sufficient identifying information to allow an accurate search of census records to establish proof of age for an individual applying for benefits under the Social Security Act. Without this information individuals applying for benefits would not be able to establish their age which is a factor in determining eligibility. The affected pubic consists of individuals who need to obtain a census record in order to establish their age.
Number of Respondents: 18,000.
Frequency of Response: 1.
Average Burden Per Response: 12 minutes.
Estimated Annual Burden: 3,600 hours.
OMB Desk Officer: Laura Oliven.
Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC. 20503.

Dated: May 13, 1991.

Ron Compston,
Social Security Administration, Reports Clearance Officer.

[FR Doc. 91–11758 Filed 5–16–91; 8:45 am]
BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–91–1817; FR–2334–N–28]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: May 17, 1991.

ADDRESS: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified as suitable in this notice have been reviewed by the landholding agencies, and each agency has transmitted to HUD; (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable and available in this notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 60 days from the date of this notice. For complete details concerning the processing of applications, the reader is encouraged to refer to HUD's **Federal Register** notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

This notice also contains a list of properties determined by HUD to be unsuitable for use as facilities to assist the homeless. These properties will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (202) 325–0474. U.S. Air Force: Bob Menke, USAF, Bolling AFB, HQ–USAF/LEER, Washington, DC 20332–6000; (202) 767–4191. Veterans Administration: Linda Tribby, Management Analyst, Dept. of Veterans Affairs, room 717, 810 Vermont Ave. NW., Washington, DC 20420; (202) 233–5028. (These are not toll-free numbers.)

Dated: May 9, 1991.

Paul Roitman Bardack,
Deputy Assistant Secretary for Economic Development.

Suitable/Available Properties

California

Suitable Buildings (by Agency)

VA

Bldg. 116.
VA Medical Center.
Wilshire and Sawtelle Blvds.
Los Angeles, CA Co: Los Angeles 90073–.
Federal Register Notice Date: 05/17/91.
Property Number: 979110008.
Status: Underutilized.
Base Closure: No.
Comment: 60309 sq. ft., 3 story brick frame, seismic reinforcement defics., underutil. port. of bldg. used intermittently., needs rehab, poss. asbestos on pipes/floor tiles, site access lim.

Bldg. 283.
VA Medical Center.
Wilshire and Sawtelle Blvds.
Los Angeles, CA Co: Los Angeles 90073–.
Federal Register Notice Date: 05/17/91.
Property Number: 979110010.
Status: Underutilized.
Base Closure: No.
Comment: 1600 sq. ft., 1 story wood frame w/ stucco exterior, needs rehab. poss. asbestos on pipes/floor tiles, site access limitations, no operating utilities.

Navy

Bldg. 102.
Naval Facilities Point Sur.
CVB Detachment.
Monterey, CA Co: Monterey 93940–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010260.
Status: Unutilized.
Base Closure: No.
Comment: 560 sq. ft., 1 story permanent bldg.; possible asbestos; secure facility with alternate access; most recent use—office.

Bldg. 103.
Naval Facilities Point Sur.
CVB Detachment.
Monterey, CA Co: Monterey 93940–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010261.
Status: Unutilized.
Base Closure: No.
Comment: 3675 sq. ft., 1 story permanent bldg.; possible asbestos; secure facility with alternate access; most recent use—dinning hall.

Bldg. 109.
Naval Facilities Point Sur.
CVB Detachment.
Monterey, CA Co: Monterey 93940–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010262.
Status: Unutilized.
Base Closure: No.
Comment: 1045 sq. ft., 2 story permanent bldg.; possible asbestos; secure facility with alternate access; most recent use—barracks.

Bldg. 110.
Naval Facilities Point Sur.
CVB Detachment.
Monterey, CA Co: Monterey 93940–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010263.
Status: Unutilized.
Base Closure: No.
Comment: 4439 sq. ft., 1 story permanent bldg.; possible asbestos; secure facility with alternate access; most recent use—shop.

Bldg. 113.
Naval Facilities Point Sur.
CVB Detachment.
Monterey, CA Co: Monterey 93940–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010264.
Status: Unutilized.
Base Closure: No.
Comment: 100 sq. ft., 1 story permanent bldg.; secure facilities with alternate access; most recent use—storage.

Bldg. 136.
Naval Facilities Point Sur.
CVB Detachment.
Monterey, CA Co: Monterey 93940–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010265.
Status: Unutilized.
Base Closure: No.
Comment: 110 sq. ft., 1 story permanent bldg.; possible asbestos; secure facility with alternate access; most recent use—filling station.

Bldg. 144.
Naval Facilities Point Sur.
CVB Detachment.
Monterey, CA Co: Monterey 93940–.
Federal Register Notice Date: 5/17/91.
Property Number: 779010266.
Status: Unutilized.
Base Closure: No.
Comment: 4320 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—bowling alley.

Bldg. 145.
Naval Facilities Point Sur.
CVB Detachment
Monterey, CA Co: Monterey 93940–.
Federal Register Notice Date: 5/17/91.
Property Number: 779010267.
Status: Unutilized.
Base Closure: No.
Comment: 4000 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—recreation building.

Suitable Land (by Agency)

Naval Ocean Systems Center.
271 Catalina Blvd.
San Diego, CA Co: San Diego 92108–.
Federal Register Notice Date: 5/17/91.
Property Number: 779010094.
Status: Excess.
Base Closure: No.
Comment: 16 acres, possible antenna radiation, secured facility with alternative access.

Georgia

Suitable Land (by Agency)

Navy

Naval Submarine Base.
Grid R–2 to R–3 to V–4 to V–1.
Kings Bay, GA Co: Camden 31547–.
Federal Register Notice Date: 5/17/91.
Property Number: 779010239.
Status: Underutilized.
Base Closure: No.
Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Illinois

Suitable Land (by Agency)

Navy

Libertyville Training Site.
Libertyville, IL Co: Lake 60048–.
Federal Register Notice Date: 5/17/91.
Property Number: 779010073.
Status: Excess.
Base Closure: No.
Comment: 114 acres; possible radiation hazard; existing FAA use license.

Maryland

Suitable Land (by Agency)

Navy

White Oak Lab.
Navy Surface Warfare Center.
10901 New Hampshire Avenue.
Silver Spring, MD Co: Prince Georges 20903–.
Federal Register Notice Date: 5/17/91.
Property Number: 779010086.
Status: Excess.
Base Closure: No.
Comment: 16.5 acres; most recent use—buffer; secure area—access can be provided by relocation of fences.

Suitable Land (by Agency)

Bldgs. 736–737.
Naval Air Test Center.
Patuxent River, MD Co: St. Mary's 20607–.
Federal Register Notice Date: 5/17/91.
Property Numbers: 779010090–779010090, 779010092, 779010093, 779010095, 779010096, 779010098, 779010100, 779010102–779010106, 779010108, 779010113, 779010115–779010116, 779010118–779010119, 779010121–779010122, 779010124–779010125, 779010127, 779010129–779010155.
Status: Unutilized.
Base Closure: No.
Comment: One story residential buildings; utilities disconnected; needs rehab; requires alternate access off state highway, friable asbestos present.

Maine

Suitable Land (by Agency)

Navy

Naval Air Station.
Transmitter Site.
Old Bath Road.
Brunswick, ME Co: Cumberland 04053–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010111.
Status: Underutilized.
Base Closure: No.
Comment: 66.13 acres, most recent use—transmitter station.

Suitable Buildings (by Agency)

Naval Air Station.

Transmitter Site.
Old Bath Road.
Brunswick, ME Co: Cumberland 04053–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010110.
Status: Underutilized.
Base Closure: No.
Comment: 7,270 sq. ft.; 1 story bldg; most recent use—storage, structural deficiencies.

New Mexico

Suitable Buildings (by Agency)

Navy

Bldg. 1 and 4.
U.S. Navy Reserve Center.
512 N 12th Street.
Carlsbad, NM Co: Eddy 88220–5049.
Federal Register Notice Date: 05/17/91.
Property Number: 779040001.
Status: Excess.
Base Closure: No.
Comment: 2460 sq. ft.; one story; frame/concrete block bldg; most recent use—office; presence of asbestos; and 152 sq. ft. metal storage shed on 1.03 acres.

Texas

Suitable Land (by Agency)

Navy

Peary Point #2.
Naval Air Station.
Corpus Christi, TX Co: Nueces 78419–5000.
Federal Register Notice Date: 05/17/91.
Property Number: 779030001.
Status: Excess.
Base Closure: No.
Comment: 43.48 acres, 80% of land under lease until 8/93. GSA NO. 7–N–TX–402–V.

Virginia

Suitable Buildings (by Agency)

Navy

Naval Medical Clinic.
6600 Hampton Blvd.
Norfolk, VA Co: Norfolk 23508–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010109.
Status: Unutilized.
Base Closure: No.
Comment: 3666 sq. ft., 1 story, possible asbestos, most recent use—andry.

SUITABLE/UNAVAILABLE PROPERTIES

California

Suitable Buildings (by Agency)

Navy

Bldg. 100.
Naval Facilities Point Sur.
CVB Detachment.
Monterey, CA Co: Monterey 93940–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010259.
Status: Unutilized.
Base Closure: No.
Comment: 2626 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—office space.

Florida

Suitable Land (by Agency)

Navy

Naval Public Works Center.
Naval Air Station.
Pensacola, FL Co: Escambia 32508–.
Location: Southeast corner of Corey station—next to family housing.
Federal Register Notice Date: 05/17/91.
Property Number: 779010157.
Status: Unutilized.
Base Closure: No.
Comment: 22 acres.

Georgia

Suitable Land (by Agency)

Navy

Naval Submarine Base.
Grid AA–1 to AA–4 to EE–7 to F–2.
Kings Bay, GA Co: Camden 31547–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010255.
Status: Underutilized.
Base Closure: No.
Comment: 495 acres; 86 acre portion located in floodway; secured area with alternate access.

New York

Suitable Buildings (by Agency)

Navy

Naval Reserve Center.
112 Hanse Avenue.
Freeport, NY Co: Nassau 11550–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010041.
Status: Excess.
Base Closure: No.
Comment: 40000 sq. ft.; 1 floor; most recent use—offices; needs rehab.

Ohio

Suitable Buildings (by Agency)

Navy

Naval & Marine Corps Res. Ctr.
170 Ashland Road.
Mansfield, OH Co: Richland 44902–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010075.
Status: Excess.
Base Closure: No.
Comment: 2900 sq. ft.; 1 floor; most recent use—offices; needs rehab.; Navy owns bldg.—land leased from city; expires September 1990.

Pennsylvania

Suitable Buildings (by Agency)

Navy

Marine Corp. Reserve Center.
RR 2, Box 569B.
Newcastle, PA Co: Lawrence 16101–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010024.
Status: Unutilized.
Base Closure: No.
Comment: 17000 sq. ft.; 1 floor; most recent use—offices; needs rehab.

Texas

Suitable Buildings (by Agency)

Navy

Bldg. 2435.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register Notice Date: 05/17/91
Property Number: 779010161.
Status: Underutilized.
Base Closure: No.
Comment: 1730 sq. ft.; 1 story residence.

Bldgs. 2436, 2424, 2433, 2428.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register Notice Date: 05/17/91.
Property Numbers: 779010162, 779010181–779010183.
Status: Underutilized.
Base Closure: No.
Comment: 3352 sq. ft. each; 1 story residences.

Bldgs. 2460, 2462, 2464, 2466, 2472, 2476, 2451, 2458, 2461, 2473, 2478, 2480, 2484, 2486–2488, 2494, 2500, 2502, 2506, 2508, 2525.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register Notice Date: 05/17/91.
Property Numbers: 779010163–779010164, 779010165, 779010168–779010170, 779010193–779010202, 779010203–779010208.
Status: Underutilized.
Base Closure: No.
Comment: 1756 sq. ft. each; 1 story residences.

Bldg. 2468.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010166.
Status: Underutilized.
Base Closure: No.
Comment: 1576 sq. ft.; 1 story residence.

Bldgs. 2467, 2423, 2427, 2431.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register Notice Date: 05/17/91.
Property Numbers: 779010167, 779010178–779010180.
Status: Underutilized.
Base Closure: No.
Comment: 3532 sq. ft. each; 1 story residences.

Bldg. 2482.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010171.
Status: Underutilized.
Base Closure: No.
Comment: 1760 sq. ft.; 1 story residence.

Bldg. 2496.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010172.
Status: Underutilized.

Base Closure: No.
Comment: 1760 sq. ft.; 1 story residence.

Bldg. 2514.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010173.
Status: Underutilized.
Base Closure: No.
Comment: 1730 sq. ft.; 1 story residence.

Bldgs. 2518, 2520, 2522, 2526, 2509, 2511–2512, 2527.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register Notice Date: 05/17/91.
Property Numbers: 779010174–779010177, 779010224–779010227.
Status: Underutilized.
Base Closure: No.
Comment: 1676 sq. ft.; 1 story residence.

Bldgs. 2429, 2454, 2477, 2485, 2499, 2503, 2507, 2513, 2521.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register Notice Date: 05/17/91.
Property Numbers: 779010184–779010192
Status: Underutilized.
Base Closure: No.
Comment: 3152 sq. ft. each; 1 story residences.

Bldgs. 2452, 2475, 2479, 2497, 2301, 2505, 2515, 2517, 2519, 2523.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register Notice Date: 05/17/91.
Property Numbers: 779010209–779010216.
Status: Underutilized.
Base Closure: No.
Comment: 3356 sq. ft. each; 1 story residences.

Bldg. 2465.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010219.
Status: Underutilized.
Base Closure: No.
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2493.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010220.
Status: Underutilized.
Base Closure: No.
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2510.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010221.
Status: Underutilized.
Base Closure: No.
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2474.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010222
Status: Underutilized.
Base Closure: No.
Comment: 3528 sq. ft.; 1 story residence.

Bldg. 2481.
Laguna Housing Area.
NAS Corpus Christi.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010223.
Status: Underutilized.
Base Closure: No.
Comment: 3528 sq. ft.; 1 story residence.

Virginia

Suitable Land (by Agency)

Navy

Naval Base.
Norfolk, VA Co: Norfolk 23508–
Location: Northeast corner of base, near Willoughby housing area.
Federal Register Notice Date: 05/17/91.
Property Number: 779010156.
Status: Unutilized.
Base Closure: No.
Comment: 69 acres; most recent use—sandpit; secured area with alternate access.

West Virginia

Suitable Buildings (by Agency)

Navy

Naval & Marine Corps Res. Ctr.
N. 13th St. & Ohio River.
Wheeling, WV Co: Ohio 26003–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010077.
Status: Excess.
Base Closure: No.
Comment: 32000 sq. ft.; 1 floor; most recent use—offices; 15% of total space occupied; needs rehab; land leased from city—expires September 1990.

Unsuitable Properties

Alabama

Unsuitable Buildings (by Agency)

Air Force

HQ Specified Bldg.
Maxwell AFB.
677 Third Street.
Montgomery, AL Co: Montgomery 36112–.
Federal Register Notice Date: 05/17/91.
Property Number: 189120231.
Status: Unutilized.
Base Closure: No.
Reason: Secured Area.

Base Personnel Office.
Maxwell AFB.
853 Second Street.
Montgomery, AL Co: Montgomery 36112–.
Federal Register Notice Date: 05/17/91.
Property Number: 189120232.
Status: Unutilized.
Base Closure: No.
Reason: Secured Area.

California

Unsuitable Land (by Agency)

Navy

Salton Sea Test Range.
ElCentro, CA Co: Imperial 92555–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010068.
Status: Excess.
Base Closure: No.
Reason: Secured Area.

Unsuitable Buildings (by Agency)

Bldg. 105, 165.
Naval FPS, CVB Detachment.
Monterey, CA Co: Monterey 93940–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010159–779010160.
Status: Unutilized.
Base Closure: No.
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 146.
Naval Facilities Point Sur.
CVB Detachment.
Monterey, CA Co: Monterey 93940–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010258.
Status: Unutilized.
Base Closure: No.
Reason: Other.
Comment: Sewer treatment facility.

Delaware

Unsuitable Buildings (by Agency)

Air Force

Bldg. 1900.
436 CSG Dover AFB.
Dover, DE Co: Kent 19902–5516.
Federal Register Notice Date: 05/17/91.
Property Number: 189120230.
Status: Unutilized.
Base Closure: No.
Reason: Within airport runway clear zone Secured Area.

Florida

Unsuitable Land (by Agency)

Navy

Boca Chica Field.
Naval Air Station.
Key West, FL Co: Monroe 33040–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010097.
Status: Unutilized.
Base Closure: No.
Reason: Floodway.

East Martello Battery #2.
Naval Air Station.
Key West, FL Co: Monroe 33040–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010099.
Status: Excess.
Base Closure: No.
Reason: Within airport runway clear zone.

East Martello Battery #2.
Naval Air Station.
Key West, FL Co: Monroe 33040–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010275.
Status: Excess.
Base Closure: No.
Reason: Within airport runway clear zone.

Unsuitable Buildings (by Agency)

East Martello Bunker #1.
Naval Air Station.

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Key West, FL Co: Monroe 33040–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010101.
Status: Excess.
Base Closure: No.
Reason: Within airport runway clear zone.

Georgia

Unsuitable Land (by Agency)

Navy

Naval Submarine Base.
Grid G–6 to G–19 to Q–6 to P–2.
Kings Bay, GA Co: Camden 31547–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010225.
Status: Underutilized.
Base Closure: No.
Reason: Secured Area.

Unsuitable Buildings (by Agency)

Naval Submarine Base—Kings Bay.
1011 USS Daniel Boone Avenue.
Kings Bay, GA Co: Camden 31547–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010107.
Status: Unutilized.
Base Closure: No.
Reason: Secured Area.

Illinois

Unsuitable Buildings (by Agency)

Navy

Bldg. 928, 26, 25, 2.
Naval Training Center.
Great Lakes.
Great Lakes, IL Co: Lake 60088–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010120, 779010123, 779010126, 779010128.
Status: Unutilized.
Base Closure: No.
Reason: Secured Area.

South Wing—Building No. 62.
Great Lakes, IL Co: Lake 60088–5000.
Federal Register Notice Date: 05/17/91.
Property Number: 779110001.
Status: Underutilized.
Base Closure: No.
Reason: Secured Area.

North Carolina

Unsuitable Buildings (by Agency)

Air Force

Bldg. 4230—Youth Center.
Cannon Ave.
Goldsboro, NC Co: Wayne 27531–5005.
Federal Register Notice Date: 05/17/91.
Property Number: 189120233.
Status: Underutilized.
Base Closure: No.
Reason: Secured Area.

New York

Unsuitable Buildings (by Agency)

Navy

Bldg. 204, 255, T–370.
Naval Underwater Systems Center.
Fisher's Island Annex Detachment.
Fisher's Island, NY Co: Suffolk 06390–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010270–779010272.
Status: Excess.
Base Closure: No.
Reason: Secured Area.

Pennsylvania

Unsuitable Buildings (by Agency)

Navy

Bldg. 62.
Philadelphia Naval Shipyard.
Philadelphia, PA Co: Philadelphia 19112–.
Federal Register Notice Date: 05/17/91.
Property Number: 779010112.
Status: Unutilized.
Base Closure: No.
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Rhode Island

Unsuitable Buildings (by Agency)

Navy

Bldg. C104.
Naval Construction Battalion Center.
Davisville, RI 02854–.
Federal Register notice date: 05/17/91.
Property Number: 779010020.
Status: Unutilized.
Base Closure: No.
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 32.
Naval Underwater Systems Center.
Gould Island Annex.
Middletown, RI Co: Newport 02840–.
Federal Register notice date: 05/17/91.
Property Number: 779010273.
Status: Excess.
Base Closure: No.
Reason: Secured Area.

Bldg. S–85, 337, 58, 363, S–121, C101, W319, 366, C102, 43, 44, C103, 102, S–16, 101, S–6, T13–B, 45.
Naval Construction Battalion Center.
Davisville, RI Co: Washington 02854–.
Federal Register notice date: 05/17/91.
Property Number: 779010001–779010019.
Status: Excess.
Base Closure: No.
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 295, 279.
Naval Construction Battalion Center.
Davisville, RI Co: Washington 02854–.
Federal Register notice date: 05/17/91.
Property Number: 779010021–779010022.
Status: Excess.
Base Closure: No.
Reason: Within 2000 ft. of flammable or explosive material, Floodway, Secured Area.

72 Buildings.
Naval Construction Battalion Center.
Davisville, RI Co: Washington 02854–.
Federal Register notice date: 05/17/91.
Property Number: 779010023, 779010025, 779010027–779010035, 779010037–779010040, 779010042–779010061, 779010063–779010065, 779010067, 779010069–779010072, 779010074, 779010076, 779010078–779010079, 779010232–779010253, 779010276, 779010016, 779010036.
Status: Unutilized.
Base Closure: No.
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. A–63.
Naval Construction Battalion Center.
Davisville, RI Co: Washington 02854–.
Federal Register notice date: 05/17/91.
Property Number: 779010277.
Status: Excess.
Base Closure: No.
Reason: Secured Area.
Comment: Record duplicated by #779010070.

Bldg. A–64.
Naval Construction Battalion Center.
Davisville, RI Co: Washington 02854–.
Federal Register notice date: 05/17/91.
Property Number: 779010278.
Status: Excess.
Base Closure: No.
Reason: Secured Area.

South Dakota

Unsuitable Buildings (by Agency)

Air Force

101 Buildings—Skyway.
Ellsworth Air Force Base.
Ellsworth, SD Co: Pennington 57706–.
Federal Register notice date: 05/17/91.
Property Number: 189120066–189120166.
Status: Unutilized.
Base Closure: No.
Reason: Other.
Comment: Extensive deterioration.

63 Buildings—Rexal Heights.
Ellsworth Air Force Base.
Ellsworth, SD Co: Pennington 57706–.
Federal Register notice date: 05/17/91.
Property Number: 189120167–189120229.
Status: Unutilized.
Base Closure: No.
Reason: Other.
Comment: Extensive deterioration.

Texas

Unsuitable Buildings (by Agency)

Navy

20 Buildings.
Laguna Shores Housing Area.
Corpus Christi, TX Co: Nueces 78419–.
Federal Register notice date: 05/17/91.
Property Number: 779010279–779010298.
Status: Underutilized.
Base Closure: No.
Reason: Floodway.

Washington

Unsuitable Land (by Agency)

Navy

Land (Report 2), 236 acres.
Naval Supply Center, Puget Sound.
Manchester, WA Co: Kitsap 98353–.
Federal Register notice date: 05/17/91.
Property Number: 779010231.
Status: Unutilized.
Base Closure: No.
Reason: Secured Area.

Unsuitable Buildings (by Agency)

Bldg. 57.
Naval Supply Center, Puget Sound.
Manchester, WA Co: Kitsap 98353–.
Federal Register notice date: 05/17/91.
Property Number: 779010091.
Status: Unutilized.
Base Closure: No.
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 47 (Report 1).
Naval Supply Center, Puget Sound.
Manchester, WA Co: Kitsap 98353–.
Federal Register notice date: 05/17/91.
Property Number: 779010230.
Status: Unutilized.
Base Closure: No.
Reason: Secured Area.

[FR Doc. 91–11557 Filed 5–16–91; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–01–4320–08]

Management Framework Plan Amendment and Environmental Assessment; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of draft Management Framework Plan Amendment and Environmental Assessment; and Proposed Area of Critical Environmental Concern Designations.

SUMMARY: Pursuant to the BLM Planning Regulations (43 CFR part 1600) and the National Environmental Policy Act (NEPA, section 102(2)(C)) the Boise District, BLM has prepared a draft amendment to the Bruneau Management Framework Plan and an environmental assessment (EA) on a proposal to designate three sites as areas of critical environmental concern (ACECs). This notice is also issued pursuant to § 1610.7–2(b) of the BLM Planning Regulation. The draft plan amendment and EA are now available for public review and comment.

DATES: The public comment period for the draft plan amendment and EA will close on August 12, 1991. Written comments should be mailed to the address listed below. Public meetings have not been scheduled.

ADDRESSES: Written Comments should be mailed to: Bruneau Area Manager, Bureau of Land Management, 3948 Development Avenue, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Bruneau Area Manager or Fred Minckler, Team Leader at the Bureau of Land Management, 3964 Development Avenue, Boise, ID 83705. Telephone (208) 384–3300.

SUPPLEMENTARY INFORMATION: The Bruneau Management Framework Plan (MFP) is a land use plan for public lands within the Bruneau Resource Area administered by BLM in southwest Idaho. The Boise District has prepared an amendment which addresses special management actions and designation of three sites ranging in size from five to 346 acres as ACECs to protect rare and undisturbed plant populations and other resource values. The three sites are: Mud Flat Oolite, five acres; Triplet Butte, 322 acres; and Cottonwood Creek, 346 acres. Resource use limitations proposed for these areas address: Livestock grazing; motorized vehicle use; rights-of-way; mineral leasing, location and disposal; water developments and fire suppression and rehabilitation. An environmental assessment (EA) has been prepared on the amendment. Public review and comments on the amendment and the environmental assessment prepared on the amendment will be accepted for 90 days.

Dated: May 9, 1991.

Rodger E. Schmitt,

Associate District Manager.

[FR Doc. 91–11702 Filed 5–16–91; 8:45 am]

BILLING CODE 4310–GG–M

[CA–010–01–3110–10–B002; CA 28092]

Realty Action Exchange of Public and Private Lands in San Luis Obispo County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—CA 28092.

SUMMARY: The following described public land has been determined to be suitable for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Mt. Diablo Meridian, California

T.28S., R.13E.,
Sec. 19, #E½SE¼.
Containing 80 acres.

All mineral rights on the subject public land will be exchanged, along with the surface rights. In exchange for this public land, the Bureau of Land Management (BLM) will acquire an equal value of lands from the Nature Conservancy (TNC) in the Carrizo Plain Natural Area. These lands will be purchased by TNC from willing sellers, will be somewhere within the following sections, and will include surface rights only:

Mt. Diablo Meridian California

T.30S., R.20E., Sec. 19 to 22, 25 to 31, and 34 to 36
T.30S., R.21E., Sec. 23 to 36
T.30S., R.22E., Sec. 31
T.31S., R.20E., Sec. 1 to 3, 10 to 13, 15, 17, and 20 to 25
T.31S., R.21E., Sec. 1 to 4, 6, 7, 10 to 25, 27 to 29, and 32 to 36
T.31S., R.22E., Sec. 3, 6, 7, and 17 to 21
T.32S., R.20E., Sec. 19, 26, and 27
T.32S., R.21E., Sec. 1 to 5, and 10 to 13
T.32S., R.22E., Sec. 6, 7, 16, 19 to 22, 27 to 33, 35, and 36

San Bernardino Meridian, California

T.12N., R.27W., Sec. 35
T.12N., R.26W., Sec. 31, and 33 to 36
T.12N., R.25W., Sec. 31 to 33, and 36
T.11N., R.27W., Sec. 1 to 4, and 10 to 14
T.11N., R.26W., Sec. 1 to 18, 20 to 25, and 36
T.11N., R.25W., Sec. 3, 6, and 7 to 35
T.11N., R.24W., Sec. 18 to 20 and 29 to 32
T.10N., R.26W., Sec. 11 and 12
T.10N., R.25W., Sec. 3, 7, 8, 12, and 16.

SUPPLEMENTARY INFORMATION: A notice was originally published in the Federal Register for the subject public land on December 3, 1987 in Vol. 52, No. 232 and corrected on October 4, 1988 in vol. 53, No. 192. At that time, the subject public land was included in land exchange number CA 20050. This notice changes the land exchange number to CA 28092, and adds to the exchange the oil and gas rights on the subject public lands.

The purpose of the exchange is to acquire a portion of the private lands in the Carrizo Plain Natural Area. This Area will promote the conservation of threatened and endangered species and preserve a representative sample of the historic southern San Joaquin Valley flora and fauna. The ultimate goal for the Natural Area is to acquire approximately 155,000 acres of private land. A secondary purpose of the exchange is to consolidate the BLM lands and reduce the number of scattered, isolated BLM parcels that are difficult to manage. The public interest will be well served by completing the exchange. The exchange will operate under the Cooperative Land Exchange Agreement between BLM and TNC within California, dated August 16, 1990. Under that agreement, BLM and TNC will "pool" offered private land and selected public land throughout California and convey said lands through exchanges between the two parties. Values of lands conveyed from the pool will be balanced on a statewide basis at least every two years.

Lands transferred from the United States will reserve a right-of-way for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945). Publication of this notice in the Federal Register segregates the subject public land from the operation of the public land laws and the mining laws, except for mineral leasing. The segregative

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effect will end upon issuance of patent or two years from the date of publication in the Federal Register, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Caliente Resource Area, Attn: Dan Vaughn, 4301 Rosedale Highway, Bakersfield, CA 93308; (805) 861-4236.

DATES: No comments were received on the exchange of the subject public land based on the original notice of December 3, 1987. That notice did not include the exchange of the oil and gas rights on the subject public land, since it was expected that the subject public land would have some potential for oil and gas deposits. Further studies have shown no potential for oil and gas deposits on the subject public land, and the oil and gas rights will now be exchanged. Interested parties may submit comments to the Area Manager at the above address until July 1, 1991 only on the exchange of the oil and gas rights on the subject public land, since a full comment period was allowed after the publication of the original notice.

Dated: April 30, 1991.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 91-11882 Filed 5-15-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-060-00-4212-13; CA-28048]

Realty Action; Exchanges of Public and Private Lands, Riverside County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchanges of public and private lands, CA-28048.

SUMMARY: The following described public lands, located in Riverside County, California are being considered for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

NOTE: Not all of the lands identified below will be involved in land exchanges. Some may be deleted to eliminate possible conflicts that could arise during processing. The final selection of properties will be made to achieve equal fair market value between the selected public and the offered private lands.

Selected Public Land

San Bernardino Meridian, California

T. 3 S., R. 3 E.,
Sec. 6: W½SE¼NW¼SE¼.
Containing 5.00 acres, more or less.

T. 2 S., R. 4 E.,
Sec. 8: NW¼NE¼, S½NE¼, NW¼.
Containing 320 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No. LA-047358.

T. 3 S., R. 4 E.,
Sec. 4: E½NW¼SW¼SE¼.
Containing 5.00 acres, more or less Disposal of this parcel would be subject to R/W grants, Serial No.(s) CA-15550 & CA-19953.
Sec. 4: W½SE¼SE¼.
Containing 5.00 acres, more or less Disposal of this parcel would be subject to R/W grants, Serial No.(s) R-07807, LA-054902 & LA-063162.
Sec. 18: Lots 6 & 7.
Containing 12.38 acres, more or less.
Sec. 18: S½S½NE¼NW¼.
Containing 10.00 acres, more or less Disposal of this parcel would be subject to R/W grants, Serial No.(s) R-395, R-01736, LA-0169708 & LA-054917.
Sec. 18: NE¼SE¼NE¼NW¼.
Containing 2.5 acres, more or less.
Sec. 18: E½NW¼SE¼NW¼.
Containing 5.0 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No. LA-0169703.
Sec. 18: N½SE¼SW¼.
Containing 20.00 acres, more or less.
Sec. 18: SE¼NE¼SW¼.
Containing 10.00 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No. R-1091.
Sec. 18: W½SW¼NE¼SW¼.
Containing 5.00 acres, more or less.
Sec. 18: E½SW¼SE¼SW¼.
Containing 5.00 acres, more or less.

T. 3 S., R. 5 E.,
Sec. 12: Lots 29 through 31 (S½ portions).
Containing 6.12 acres, more or less.
Sec. 12: Lots 33 through 35.
Containing 15.00 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No. CA-3752.
Sec. 12: N½SE¼NE¼NW¼.
Containing 5.00 acres, more or less.
Sec. 12: W½SW¼NE¼SE¼.
Containing 5.00 acres, more or less Disposal of this parcel would be subject to R/W grants, Serial No.(s) R-06804 & LA-051061.

T. 3 S., R. 5 E.,
Sec. 28: Lots 44, 47, 48 & 58.
Containing 20 Acres, more or less.
Sec. 34: Lots 60, 63 & 65.
Containing 15.00 acres, more or less Disposal of this parcel would be subject to R/W grants, Serial No.(s) R-07807, LA-063162, CA-3650, CA-4160 & CA-17905.

T. 5 S., R. 5 E.,
Sec. 36: N½NE¼SE¼NE¼.
Containing 5.00 acres, more or less Disposal of this parcel would be subject to R/W grants, Serial No.(s) R-06215 & R-257.
Sec. 36: W½NW¼NW¼NW¼.
Containing 5.00 acres, more or less.
Sec. 36: S½NW¼SW¼NW¼.
Containing 5.00 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No. R-06488.
Sec. 36: N¾NW¼SW¼SW¼.
Containing 5.00 acres, more or less.
Sec. 36: E½SE¼SE¼SW¼.
Containing 5.00 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No. R-06483.

T. 3 S., R. 6 E.,
Sec. 6: S½SE¼SW¼SW¼.
Containing 5.00 acres, more or less.

T. 3 S., R. 6 E.,
Sec. 8: E½NW¼NE¼NW¼.
Containing 5.00 acres, more or less.

T. 3 S., R. 6 E.,
Sec. 8: NE¼, E½SE¼, N½NW¼SE¼, SW¼SE¼.
Containing 2.00 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No. R-06215.

T. 3 S., R. 6 E.,
Sec. 22: SE¼SE¼SE¼.
Containing 10.00 acres, more or less Disposal of this parcel would be subject to R/W grants, Serial No.(s) LA-051061, LA-051290, R-06804, CA-16365 & CA-16366.
Sec. 22: S½NW¼SE¼SE¼.
Containing 5.00 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No.(s) R-06804, CA-16365 & CA-16366.

T. 3 S., R. 6 E.,
Sec. 26: N¼SE¼NW¼SW¼.
Containing 5.00 acres, more or less.
Sec. 26: SE¼SW¼NE¼SW¼.
Containing 2.50 acres, more or less.
Sec. 26: S½SW¼SE¼SW¼.
Containing 5.00 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No. R-06804.

T. 3 S, R. 6 E.,
Sec. 28: N½NE¼SE¼NE¼.
Containing 5.00 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No. R-06804.
Sec. 28: S½NW¼SW¼SW¼.
Containing 5.00 acres, more or less.

T 5 S., R. 6 E.,
Sec. 30: Lot 60.
Containing 5.11 acres, more or less.

T. 4 S., R. 7 E.,
Sec. 4: Lots 5 (5.60 acres), 7 (5.68 acres), 8 (5.00 acres), 11 (5.67 acres), 13 (5.00 acres), 15 (5.68 acres), 17 (5.00 acres), 21 (5.60 acres), 22 (5.60 acres), 27 (5.69 acres), 29 (5.00 acres), 39 (5.00 acres), 31 (5.61 acres), 35 (5.00 acres), 42 (5.00 acres), 43 (5.00 acres), 45 (5.00 acres), 56 (5.00 acres), 57 (5.00 acres), 60 (5.00 acres), 61 (5.00 acres), 62 (5.00 acres).
Disposal of Lots 5, 13, 21, 22, 29, 30, 35, 42, 56 & 57 would be subject to R/W grant, Serial No. CA-4061; disposal of Lot 48 would also be subject to R/W grants No.(s) CA-16365 & CA-16366.
Sec. 4: N½SW¼NE¼SW¼.
Containing 5.00 acres, more or less.

Sec. 4: SE¼NW¼SW¼.
Containing 10.00 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No. CA-4061.
Sec. 4: S½NE¼SW¼SW¼.
Containing 5.00 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No. CA-4061.
Sec. 4: S½SW¼SW¼SW¼.
Containing 5.00 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No.(s) LA-051327 & LA-0156361.
Sec. 4: SE¼SW¼SW¼.
Containing 10.00 acres, more or less. Disposal of this parcel would be subject to R/W grant, Serial No. CA-4061.
Sec. 4: S½NW¼SE¼SW¼.
Containing 5.00 acres, more or less.
Sec. 4: SW¼SE¼SW¼.
Containing 10.00 acres, more or less.
Sec. 4: N½NW¼NE¼SE¼.
Containing 5.00 acres, more or less.
Sec. 4: S½SW¼NW¼SE¼.
Containing 5.00 acres, more or less Disposal of this parcel would be subject to R/W grants, Serial No.(s) CA-16385 & CA-16386.
Sec. 4: N½SE¼NW¼SE¼.
Containing 5.00 acres, more or less Disposal of this parcel would be subject to R/W grant, Serial No. CA-4061.
Sec. 4: NW¼SW¼SE¼.
Containing 10.00 acres, more or less.
Sec. 4: N½NE¼SW¼SE¼.
Containing 5.00 acres, more or less. Disposal of this parcel would be subject to R/W grants, Serial No.(s) CA-4061, CA-16385 & CA-16386.
Sec. 4: SW¼SW¼SE¼.
Containing 10.00 acres, more or less.
Sec. 4: N½NE¼SE¼SE¼.
Containing 5.00 acres, more or less. Disposal of this parcel would be subject to R/W grants, Serial No. CA-4061 & LA-051061.

T. 4 S., R. 7 E.,
Sec. 10: S½NE¼NE¼NE¼.
Containing 5.00 acres, more or less. Disposal of this parcel would be subject to R/W grant, Serial No. CA-4061.
Sec. 10: S½SE¼NE¼NE¼.
Containing 5.00 acres, more or less. Disposal of this parcel would be subject to R/W grant, Serial No. CA-4061.
Sec. 10: SW¼SW¼NW¼.
Containing 10.00 acres, more or less. Disposal of this parcel would be subject to R/W grant, Serial No. CA-4061.
Sec. 10: N½NW¼NW¼SW¼.
Containing 5.00 acres, more or less. Disposal of this parcel would be subject to R/W grants, Serial No.(s) CA-4061 & LA-0156361.
Sec. 10: N½SE¼NW¼SW¼.
Containing 5.00 acres, more or less. Disposal of this parcel would be subject to R/W grant, Serial No. LA-0156361.

T. 4 S., R. 7 E.,
Sec. 14: N½S½SE¼SW¼.
Containing 10.00 acres, more or less. Disposal of this parcel would be subject to R/W grant, Serial No. CA-4061.
Sec. 14: S½SE¼SE¼SW¼.
Containing 5.00 acres, more or less. Disposal of this parcel would be subject to R/W grant, Serial No. CA-4061.
Sec. 14: N½SW¼SE¼SE¼.
Containing 5.00 acres, more or less.

T. 5 S., R. 7 E.,
Sec. 12: NW¼SE¼.
Containing 40.00 acres, more or less.

T. 5 S., R. 7 E.,
Sec. 30: NW¼SW¼.
Containing 41.61 acres, more or less.

T. 4 S., R. 8 E.,
Sec. 32: NE¼SW¼.
Containing 40.00 acres, more or less.

T. 5 S., R. 8 E.,
Sec. 6: Lots 1 through 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼.
Containing 649.70 acres, more or less.

T. 7 S., R. 8 E.,
Sec. 30: Lots 1 & 2 of the NW¼, Lots 1 & 2 of the SW¼, E½.
Containing 627.10 acres, more or less.
Total public lands amounts to 2,465.45 acres, more or less.

In exchange for these lands the United States will acquire from The Nature Conservancy (TNC) 1,371 acres, more or less, of private lands within the Salt Creek Area of Critical Environmental Concern (ACEC) as described in the Notice of Realty Action (NORA) published in Volume 55, Number 144, Page 30527 of the **Federal Register**, dated July 26, 1990 and 3,207.24 acres, more or less, of private lands within the Santa Rosa Mountains National Scenic Area (SRMNSA) as described in the NORA published in Volume 56, Number 17, Page 2942 of the **Federal Register**, dated January 25, 1991.

In exchange for the selected public lands, the United States would acquire from TNC the following additional offered private land within the Santa Rosa Mountains National Scenic Area:

San Bernardino Meridian

T 6 S., R. 6 E.,
Sect. 25: All.
Containing 640 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of these land exchanges is to acquire non-federal lands within the Santa Rosa Mountains National Scenic Area (SRMNSA) and the Salt Creek ACEC. The exchanges would create a more logical and efficient land management pattern and enhance the Bureau of Land Management's goal to dispose of isolated unclassified public lands in exchange for private lands within the above described special management areas. The proposed exchanges would be processed in stri conformance with the Land-Tenure Adjustment Element of the California Desert Conservation Area (CDCA) Plan. Acquisition of private lands within the SRMNSA and Salt Creek ACEC is needed to protect wildlife, recreation, cultural and aesthetic values in the Santa Rosa Mountains and the Salt Creek ACEC, as described in the previous NORA publications cited above.

The public lands proposed for disposal in the pooled land exchanges are unclassified in the CDCA Plan and are generally isolated parcels surrounded by private lands with limited or no public access. The exchanges are being pursued with the view that disposal of isolated public lands and acquisition of offered private lands within the Salt Creek ACEC and the Santa Rosa Mountains National Scenic Area would serve the public interest.

The selected public lands will be used to equalize land values for offered private lands within the Salt Creek ACEC and the SRMNSA pursuant to the exchange pooling agreement between TNC and BLM. The Bureau of Land Management has entered into a land exchange pooling agreement with TNC to acquire the above-listed offered private lands and additional private lands within these special management areas through a series of land exchanges to occur within the next two years until the values of the offered and selected lands reach equal fair market value as described by regulation.

The exchanges will be completed on an equal value basis. Full equalization of values will be achieved through either acreage adjustment or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of federal ownership at the conclusion of the pooled land exchange process.

The exchanges will not be completed until all necessary field inventories, environmental assessments, and mineral reports are completed.

The land to be transferred from the United States will be subject to the following reservations:

1. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States; Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals will be conveyed unless following the completion of mineral reports, the authorized officer will determine what, if any, mineral interests will need to be reserved for the United States based upon the presence and value of mineral deposits.

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Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws, except for mineral leasing. This segregative effect will expire upon issuance of patent or two (2) years from the date of publication, whichever occurs first.

For detailed information concerning this action contact Russell L. Kaldenberg, BLM Palm Springs-South Coast Resource Area, at (619)-323-4421.

For a period of 45 days after publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 6221 Box Springs Boulevard, Riverside, CA 92507-0714. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination.

Dated: April 19, 1991.

Jean Rivers-Council,

Acting District Manager.

[FR Doc. 91-11742 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-010-4212-13; CACA 28162]

Realty Action; Exchange of Public Land, CA

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Exchange of Public Land in El Dorado County, CA.

SUMMARY: The following described public lands are being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Selected Public Land

El Dorado County, California

T. 9N., R10E., M.D.M.

Sec. 12: lot 16, M.S. 6303, and public land within both the SE¼SW¼ and W½W½SE¼.

Sec. 13: lots 7, 8 exclusive of M.S.6420, and public land within N½NW¼NW¼.

Aggregating Approximately 115 acres.

SUPPLEMENTARY INFORMATION: The Federal land identified above consists of several fragmented irregularly shaped lots that are difficult and uneconomic to manage as part of the public lands. In addition it is not suitable for management by another Federal Agency and is of limited value to the public. This land would be used by the BLM in its exchange program to acquire private land that has significant multiple use values, particularly for recreation. The exchange would be facilitated through the American River Land Trust. The proposal is in conformance with the Bureau's land use plans and is considered to be in the public interest.

The Federal lands would be transferred subject to certain reservations, terms and conditions. There would be reserved to the United States a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945); also rights-of-way of record would be identified as prior existing rights. All necessary clearances including clearances for archeology, rare plants and animals would be completed prior to any conveyance of title by the U.S. This action would involve a transfer of the surface and mineral estate.

The selected public land described above is hereby segregated from settlement, location and entry under the public land laws and from the mining laws for a period of two years from the date of publication of this notice in the **Federal Register**.

(This notice deals exclusively with the selected Federal land listed above. The offered private land was previously published as required by 43 CFR 2201.1(a), and the comment period relative to the private land has been completed.)

ADDRESSES: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments concerning the Federal land to the District Manager, C/O Folsom Area Manager, Folsom Resource Area, 63 Natoma St., Folsom, CA. 95630.

FOR ADDITIONAL INFORMATION: Contact Mike Kelley at (916) 985-4474 or at the address above.

D.K. Swickard,

Area Manager.

[FR Doc. 91-11745 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-40-M

[ID-060-010-4212-14]

Gooding County, Idaho; Realty Action

AGENCY: Bureau of Land Management, Idaho.

ACTION: Amend Notice of Realty Action (NORA) 51 FR 34151, dated September 25, 1986, to update values and establish a new sale date for a competitive sale of public lands in Gooding County, Idaho.

SUMMARY: The two parcels of public land remaining to be sold, will be reoffered for sale in July, 1991. Reappraisal procedures have established land values as follows:

Parcel	Fair market value
ID-20413 T.6 S., R.13 E. B.M. Sec.11: E½NW¼ (80 acres)	$14,000
ID-20414 T.6 S., R.13 E. B.M. Sec.11: S½SW¼ (80 acres)	14,000

DATES: July 19, 1991.

ADDRESSES: BLM District Office, Bennett Hills Resource Area, 400 West F Street, Shoshone, Idaho 83352.

SUPPLEMENTARY INFORMATION: The procedures identified in the NORA issued September 25, 1986, remain in effect except for value, date and time changes. Sale reoffering will be on Friday, July 19, 1991 at 1 p.m. All sealed bids must be submitted prior to that date and time. If no qualified bids are received at this offering, the parcels will be reoffered on the third Friday of each succeeding month at 1 p.m. until sold or the sale is suspended or canceled. For more information contact the Bennett Hills Area Manager, or Realty Specialist at the Shoshone District Office or phone (208) 886-2206. For more information contact the Bennett Hills Area Manager, or Realty Specialist at the Shoshone District Office or phone (208) 886-2206. For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager regarding the amended NORA. Comments will be evaluated and the amended NORA may be vacated, modified, or affirmed. In the absence of any objections, this amended NORA will become the final decision of the Department.

Dated: May 8, 1991.

Janis VanWyhe,

Acting District Manager.

[FR Doc. 91-11743 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-GG-M

[ID-942-01-4730-12]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., May 10, 1991.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 24 and 25, T. 8 S., R. 15 E., Boise Meridian, Idaho, Group No. 797, was accepted, May 7, 1991.

The plat representing the depending resurvey of a portion of the west boundary and subdivisional lines, and the subdivision of sections 19 and 30, T. 8 S., R. 16 E., Boise Meridian, Idaho, Group No. 797, was accepted May 7, 1991.

The plat representing the dependent resurvey of portions of the First Standard Parallel South (south boundary) and the subdivisional lines, and the subdivision of sections 21, 22, and 33, T. 6 S., R. 19 E., Boise Meridian, Idaho, Group No. 797, was accepted May 7, 1991.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 3, T. 7 S., R. 19 E., Boise Meridian, Idaho, Group No. 797, was accepted May 7, 1991.

The plat representing the dependent resurvey of a portion of the east boundary and subdivisional lines, and the subdivision of sections 1 and 12, T. 18 N., R. 20 E., Boise Meridian, Idaho, Group No. 805, was accepted May 3, 1991.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the surveys of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: May 10, 1991.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 91-11701 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-GG-M

Bureau of Reclamation

California; Realty Action

AGENCY: Bureau of Reclamation (Interior).

ACTION: Notice of realty action.

SUMMARY: The following described tract of land has been identified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), at no less than the appraised fair market value. The Bureau of Reclamation will accept bids on the land described below and will reject any bids for less than $11,000, the appraised value.

DATES: July 17, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Buddy Smith, Bureau of Reclamation, Route 1, Box 35, Byron, California, 94514-9614 (10 miles west of Tracy at Mountain House and Kelso Roads), telephone: (209) 836-6201.

SUPPLEMENTARY INFORMATION: The property is described as a tract of land in the City of Concord, County of Contra Costa, State of California, said tract of land being a portion of the 6.86-acre parcel of land described in the Grant Deed to the United States recorded March 21, 1939, in Book 404 at page 351 of the Official Records of said county, containing an area of 0.09 acre, more or less.

The land will be offered for sale through the competitive bidding process. A sealed bid sale will be held at the Bureau of Reclamation at the above address July 17, 1991, at which time the sealed bids will be opened. Sealed bids will be accepted at the Tracy Office until close of business on June 28, 1991. The Bureau of Reclamation may accept or reject any and all offers, or withdraw any land or interest in land for sale if, in the opinion of the Regional Director, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), or other applicable laws. Should the land remain unsold, it may be reoffered for sale at a later date as determined by the Regional Director. In order to promote full and free competition, the bid forms required for this sale contain a statement that the purchase price has been determined independently by the bidder; this statement must accompany each sealed bid.

The sale of the land is consistent with the Bureau of Reclamation land use planning, and it was determined that the public interest would best be served by offering this land for sale.

Resource clearances consistent with the National Environmental Policy Act requirements have been completed and approved. A Categorical Exclusion Checklist is available for public review at the Tracy Office.

The quitclaim deed issued for the land sold will be subject to easements or rights-of-way existing or of record in favor of the public or third parties.

For a period of 60 days from the date of this notice, interested parties may submit comments to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California, 95825. Any adverse comments will be evaluated by the Regional Director who may vacate or modify the Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Realty Action will become the final determination of the Department of the Interior.

Dated: April 26, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 91-11738 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-09-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029-0033), Washington, DC 20503, telephone 202-395-7340.

Title: Part 772—Requirements for Coal Exploration.

OMB Number: 1029-0033.

Abstract: The requirements in section 512 of Public Law 95-87 provide that persons conducting coal exploration shall comply with exploration regulations issued by the regulatory authority. Information collection is needed to determine whether there will be substantial disturbance during exploration which is subject to the reclamation and environmental protection provisions of the Act.

Bureau Form Number: None.

Frequency: On Occasion.

Description of Respondents: Coal Mining Companies.

Annual Responses: 2,211.

Annual Burden Hours: 14,558.

Estimated Completion Time: 6.58 hours.

Bureau clearance officer: Richard L. Wolfe (202) 343-5143.

Dated: February 12, 1991.

John P. Mazzone,

Chief, Division of Technical Services.

[FR Doc. 91-11744 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, the Consent Decree, and 28 CFR 50.7, notice is hereby given on that on May 1, 1991 a proposed Consent Decree in *United States* v. *J. M. Huber Corporation*, Civil No. 90-0160-B, was

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lodged with the United States District Court for the District of Maine. The complaint in this action was filed pursuant to the Clean Air Act, 42 U.S.C. 7413(b), for civil penalties and injunctive relief to abate violations caused by emissions of particulate matter which exceeded the particulate emission standard under the State Implementation Plan (SIP) enforceable by the Environmental Protection Agency ("EPA") at J. M. Huber Corporation's ("Huber") waferboard manufacturing facility in Easton, Maine.

Under the proposed Consent Decree Huber agrees to pay the United States and the State of Maine a total of civil penalty of $328,000, or $164,000 to the United States pursuant to this Consent Decree and $164,000 to the State of Maine pursuant to a partial Consent Judgment in a comparison case, *State of Maine* v. *J. M. Huber Corporation*, Civil Action No. CV-90-329 (Kennebec County Superior Court). This payment covers Huber's liability for past emissions of particulate matter from two waferboard dryers. In addition, the Consent Decree provides for submission of reports by Huber and additional testing requirements on the dryers to EPA as well as stipulated penalties if Huber fails to provide this information. Huber has already installed and is currently operating pollution control equipment enabling the dryers to operate in compliance with the emission limit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *J. M. Huber Corporation*, DOJ #90-3-1-1470. The proposed Consent Decree may be examined at Region I, Office of the Environmental Protection Agency, J. F. Kennedy Federal Building, Boston, Massachusetts 02203-2211, and at the office of the United States Attorney, at 100 Middle Street Plaza, Portland, Maine or 202 Harlow Street, Bangor, Maine 04401.

A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.50 ($.25 per page reproduction cost), for the Consent Decree.

Dated: May 8, 1991.

Richard B. Stewart,

Assistant Attorney General, U.S. Environment and Natural Resources Division.

[FR Doc. 91-11610 Filed 5-16-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, and 33 U.S.C. 1251 *et seq.*, notice is hereby given that on May 1, 1991, a proposed Consent Decree in *United States, et al.* v. *Pfizer Pigments, Inc., et al.*, Civil Action No. 89-7144, and *CORCO, et al.* v. *Pfizer Pigments, Inc., et al.*, No. 88-1359 were lodged with the United States District Court for the Eastern District of Pennsylvania. The Consent Decrees require defendants Pfizer, Inc. and Pfizer Pigments, Inc. to pay a civil penalty of $3,100,000 for violations to the Clean Water Act at an industrial facility formerly owned by Pfizer Pigments in Easton, Pennsylvania. Claims against other defendants in both cases remain pending.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Pfizer Pigments, Inc., et al.* DOJ Ref. No. 90-5-1-1-3273.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 3310 U.S. Courthouse, 601 Market Street, Independence Mall West, Philadelphia, Pennsylvania 19106. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy please enclose a check in the amount of $3.25 (25 cents per page reproduction costs) payable to "Consent Decree Library".

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-11615 Filed 5-16-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Additions to Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATES: These additions to the annual list of labor surplus areas are effective May 1, 1991.

SUMMARY: The purpose of this notice is to announce additions to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., room N-4470, Attention: TEESS, Washington, DC 20210. Telephone: 202-535-0169.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to

publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 19, 1990, (55 FR 42509).

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b)(48 FR 15615 April 12, 1983) and are effective May 1, 1991.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on May 2, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

ADDITIONS TO THE ANNUAL LIST OF LABOR SURPLUS AREAS—MAY 1, 1991

Labor surplus area	Civil jurisdiction included
Maine:	
Balance of Androscoggin County	Androscoggin County Less Lewiston City
Lewiston City	Lewiston City in Androscoggin County.
Oxford County	Oxford County.
Somerset County	Somerset County.

[FR Doc. 91-11784 Filed 5-16-91; 8:45 am]

BILLING CODE 4410-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Additions to Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATES: These additions to the annual list of labor surplus areas are effective April 1, 1991.

SUMMARY: The purpose of this notice is to announce additions to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., room N-4470, Attention: TEESS, Washington, DC 20210. Telephone: 202-535-0169.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agenices should refer to Federal Acquisition Regulation part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 19, 1990, (55 FR 42509).

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b)(48 FR 15615 April 12, 1983) and are effective April 1, 1991.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on May 2, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

Additions to the Annual List of Labor Surplus Areas—April 1, 1991

Labor surplus area	Civil jurisdiction included
Rhode Island:	
Warren Town	Warren Town
Bristol Town	Bristol Town

[FR Doc. 91-11783 Filed 5-16-91; 8:45 am]

BILLING CODE 4410-30-M

Mine Safety and Health Administration

Gordon Coal Co. et al.; Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Gordon Coal Company

[Docket No. M-91-34-C]

Gordon Coal Company, HC 66 Box 494, Artemus, Kentucky 40903 has filed a petition to modify the application of 30 CFR 75.313 to its No. 7 Mine (I.D. No. 15-16992) located in Knox County, Kentucky. The petitioner proposes to use a hand-held methane and oxygen detector in lieu of machine-mounted methane monitors on three-wheel battery-powered tractors.

2. Consolidation Coal Company

[Docket No. M-91-35-C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 to its Arkwright No. 1 Mine (I.D. No. 46-01452) located in Monongalia County, West Virginia. Due to deteriorating roof and rib conditions, the petitioner proposes to monitor methane and oxygen from the surface.

3. Consolidation Coal Company

[Docket No. M-91-36-C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 to its No. 1 Mine (I.D. No. 46-01867) located in Monongalia County, West Virginia. The petitioner proposes to enclose electrical equipment in a monitored fireproof structure in lieu of ventilating the equipment to the return.

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4. Deep Star Mining, Inc.

[Docket No. M-91-37-C]

Deep Star Mining, Inc., P.O. Box 436, Northfork, West Virginia 24868 has filed a petition to modify the application of 30 CFR 75.305 to its No. 14 Mine (I.D. No. 46-01967) located in McDowell County, West Virginia. The petitioner proposes to evaluate the ventilation through a 300-foot area of a return entry in lieu of traveling.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 17, 1991.

Copies of the petitions are available for inspection at that address.

Dated: May 10, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-11785 Filed 5-16-91; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-42]

Earth Observing System (EOS) Engineering Review Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration (NASA) announces a forthcoming meeting of the Earth Observing System (EOS) Engineering Review Advisory Committee.

DATES: May 30, 1991, 8 a.m. to 5 p.m.; and May 31, 1991, 8 a.m. to Noon.

ADDRESSES: National Aeronautics and Space Administration, room 226, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Mark A. Pina, Code SPS, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1930).

SUPPLEMENTARY INFORMATION: The Earth Observing System (EOS) Engineering Review Advisory Committee advises the NASA Administrator on possible alternatives for the implementation of the EOS Program, including the size of spacecraft, instrument configuration, and launch requirements and sequencing. The Committee will meet to discuss various perspectives on EOS, science uncertainties and issues, EOS instruments and spacecraft, and future Committee planning. The Committee is chaired by Dr. Edward Frieman and is composed of 8 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the Committee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

Thursday, May 30

8 a.m.—Introductory Remarks.
9 a.m.—Overview and Historical Perspective on EOS.
10 a.m.—Global Change Research Uncertainties.
11 a.m.—Pre-EOS Activities and Science.
1 p.m.—EOS Science Overview.
2:30 p.m.—Discussion of EOS Instruments.
3:30 p.m.—Discussion of Spacecraft and Launch Options.
5 p.m.—Adjourn.

Friday, May 31

8 a.m.—Perspectives on Committee Work and EOS Implementation.
10:30 a.m.—Discussion of Future Meeting Planning.
Noon—Adjourn.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-11730 Filed 5-16-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Arts Education Collaboration Initiative Prescreening #1 Section) to the National Council on the Arts will be held on June 3, 1991 from 10 a.m.-9 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this session will be closed to the public pursuant to subsections (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-11784 Filed 5-16-91; 8:45 am]

BILLING CODE 7537-01-M

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Arts Education Collaboration Initiative Prescreening #2 Section) to the National Council on the Arts will be held on June 4, 1991 from 9 a.m.-4 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this session will be closed to the public pursuant to subsections (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-11786 Filed 5-16-91; 8:45 am]

BILLING CODE 7537-01-M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on June 4, 1991 from 9 a.m.-2:30 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m.-9:30 a.m. The topics will be opening remarks and general program overview.

The remaining portion of this meeting from 9:30 a.m.-2:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this session will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-11788 Filed 5-16-91; 8:45 am]

BILLING CODE 7537-01-M

Public Partnership Office Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership (States: Arts Projects in Underserved Communities Section) to the National Council on the Arts will be held on June 3, 1991, from 9 a.m.-6:30 p.m, June 4 from 8:30 a.m.-6:30 p.m. and June 5 from 8:30 a.m.-3:30 p.m. in Room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be introductory remarks and orientation, application review, review of rankings and recommendation of awards, critique of guidelines and application review process for Arts Projects in Underserved Communities.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-11787 Filed 5-16-91; 8:45 am]

BILLING CODE 7537-01-M

Public Partnership Office Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership (Locals Panel A Section) to the National Council on the Arts will be held on June 3, 1991, from 9 a.m.-7:30 p.m. in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be opening remarks, application review, and ranking and recommendations.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management. Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-11789 Filed 5-16-91; 8:45 am]

BILLING CODE 7537-01-M

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Public Partnership Office Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership (Locals Panel B Section) to the National Council on the Arts will be held on June 4, 1991, from 9 a.m.–7:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be opening remarks, application review, and ranking and recommendations.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-11769 Filed 5-16-91; 8:45 am]

BILLING CODE 7537-01-M

Public Partnership Office Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership (Locals Panel C Section) to the National Council on the Arts will be held on June 5, 1991, from 9 a.m.–10 a.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be application review, and funding recommendations.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-11770 Filed 5-16-91; 8:45 am]

BILLING CODE 7537-01-M

Public Partnership Office Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership (Locals Overview Section) to the National Council on the Arts will be held on June 5, 1991, from 10 a.m.–5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be opening remarks, review of 1993 guidelines, and policy discussion.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-11771 Filed 5-16-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design and Manufacturing Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Design and Manufacturing Systems.

Date/Time: June 11-12, 1991–8:30 a.m. to 5 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate engineering design unsolicited proposals.

Contact: Dr. Louis A. Martin-Vega, Program Director, Division of Design and Manufacturing Systems, National Science Foundation, room 1122, Washington, DC 20550 (202) 357-9107.

Dated: May 13, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-11709 Filed 5-16-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Education and Human Resources; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee to the Directorate for Education and Human Resources.

Date and Time: Monday, June 10, 1991, 8 a.m.–5 p.m., Tuesday, June 11, 1991, 9 a.m.–5 p.m.

Place: National Science Foundation; room 540; Washington DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Peter E. Yankwich, Executive Secretary, Directorate for Education and Human Resources, National Science Foundation, Washington, DC 20550, (202) 357-9522.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Review of FY 1992 Programs and Initiatives, Review of FY 1993 Programs and Initiatives, Strategic Planning for FY 1994 and Beyond.

Dated: May 13, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-11710 Filed 5-16-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Education and Human Resources; Committee of Visitors; Meeting

The National Science Foundation announces the following meeting.

Name: Committee of Visitors Review of the Instructional Materials Development Program.

Date & Time: June 6 and 7, 1991; 8:30 to 5 on 6/6 and 9 to noon on 6/7.

Place: Room 540, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Alice Moses, Program Director, Rm. 635, National Science Foundation, Washington, DC 20550 telephone 202-357-7098.

Purpose of Meeting: To provide oversight review of the Instructional Materials Development Program within the Division of Materials Development and Informal Science Education Division.

Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: May 13, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-11706 Filed 5-16-91; 8:45 am]

BILLING CODE 7555-01-M

Committee on Equal Opportunities in Science and Engineering; Meeting

Name: Committee on Equal Opportunities in Science and Engineering.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Dates: June 6 & 7, 1991.

Times/Room: June 6: 8:30 a.m.–5 p.m., room 540, June 7: 8:30 a.m.–3 p.m., room 540.

Type of Meeting: Open.

Contact: Mary M. Kohlerman, Executive Secretary of the CEOSE, National Science Foundation, room 1225, Telephone Number: 202-357-7461.

Purpose of Meeting: To familiarize new members with the NSF human resource development activities in the Research Directorates as well as in the Directorate for Education and Human Resources; to meet with the new Director of the NSF; to learn about effective programs for encouraging girls in mathematics, for motivating minority youth through use of the computer, and new initiatives proposed by the American Council on Education; to provide advice to the Foundation on policies and activities to encourage full participation of groups currently underrepresented in scientific, engineering, professional and technical fields.

Agenda: June 6—Presentations/Discussions: 8:30 a.m.–12 p.m., Lunch: 12 noon, Presentations/Small Group Sessions: 1:30 p.m.–4:15 p.m., Full Committee Meeting: 4:15 p.m.; June 7—Full Committee Meeting: 8:30 a.m.–9 a.m., Presentations: 9:00–12 noon, Lunch: 12 noon, Presentations: 1:30 p.m.–2:30 p.m.; Adjournment: 3:00 p.m.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Dated: May 13, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-11707 Filed 5-6-91; 8:45 am]

BILLING CODE 7555-01-M

Human Resource Development Special Emphasis Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Human Resource Development.

Date and Time: June 3 and 4, 1991, 9 to 5 each day.

Place: Diplomat Room, State Plaza Hotel, 2117 E Street, NW., Washington, DC 20037.

Type of Meeting: Open.

Contact Person: Margrete S. Klein, Head, Women's Programs Section, National Science Foundation, 1800 G Street, NW., room 1225, Washington, DC 20550 (202) 357-7734.

Purpose of Meeting: A meeting of qualified scientists and engineers is necessary to establish a programmatic framework for women in science and engineering essential for the continued growth and retaining of women in the science and engineering fields.

Agenda: Opening remarks on the statistics of participation of women in science and engineering, followed by presentations and discussions concerning the identification of issues, problems and solutions at the K-12, undergraduate and graduate, and professional levels.

Dated: May 13, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-11708 Filed 5-16-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panels; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G Street, NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), the Government in the Sunshine Act.

CONTACT PERSON: M. Rebecca Winkler, Committee Management Officer, room 208, 357-7363.

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Committee name	St. address and room	Times	Date(s)
Proposal Review Panel for Undergraduate Science, Engineering, & Mathematics Education.	Holiday Inn—The Governor's Govern Hotel, House Hotel, Washington, DC.	7:30 p.m.–9 p.m. 8 a.m.–5 p.m. 8 a.m.–4 p.m.	06/09/91 06/10/91 06/11/91

Agenda: Leadership Laboratory Development Review Prop.

Dated: May 13, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-11706 Filed 5-16-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on May 29, 1991, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Wednesday, May 29, 1991—8:30 a.m. until the conclusion of business.

The Subcommittee will review the Draft Safety Evaluation Reports (DSERs) corresponding to chapters 7, 11, 12, and 13 of the Electric Power Research Institute's (EPRI's) Requirements document for evolutionary designs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of EPRI, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 8, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-11693 Filed 5-16-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Boiling Water Reactors; Meeting

The Subcommittee on Advanced Boiling Water Reactors will hold a meeting on May 30, 1991, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Thursday, May 30, 1991—8:30 a.m. until the conclusion of business.

The Subcommittee will review the GE/ABWR design detail and layout.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of General Electric, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated May 8, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-11694 Filed 5-16-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-10748, License No. 48-16298-01; EA 90-152]

Midwest Inspection Services, Ltd., Green Bay, WI; Order Imposing Civil Monetary Penalty

I

Midwest Inspection Services, Ltd. is the holder of Byproduct Materials License No. 48-16298-01 initially issued by the Nuclear Regulatory Commission (NRC or Commission) on May 23, 1975. The license was most recently amended in its entirety on March 16, 1988, and is due to expire on October 31, 1992. The license authorizes the Licensee to use iridium-192 in the conduct of industrial radiography and cesium-137 for survey instrument calibration in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on July 24 through August 8, 1990. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated October 11, 1990. The Notice stated the nature of the

violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by letter dated December 21, 1990. In its response, the Licensee admitted Violations A., B., D., and G., denied Violations C. and E., denied one example given in Violation F., and neither admitted or denied the other example in Violation F. The Licensee protested the civil penalty in whole and requested remission of the penalty.

III

After consideration of the Licensee's response and the statement of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that five of the seven violations occurred as stated, that one violation (Violation E.) should be withdrawn, that one example of another violation (Violation F.) should be withdrawn, and that the $10,000 penalty proposed for the violations in the Notice of Violation and Proposed Imposition of Civil Penalty should be reduced by $1,428.57 to $8,571.43.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (ACT), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $8,571.43 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violation C. of the Notice referenced in section II above, and in Violation F. of the Notice as amended in the appendix to this Order, and

(b) whether, on the basis of these violations and the additional violations set forth in the Notice of Violation that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland this 9th day of May 1991.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix

Evaluations and Conclusions

On October 11, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection on July 24 through August 8, 1990. Midwest Inspection Servic , Ltd. (Licensee) responded to the Notice in letters dated December 21, 1990 and March 27, 1991. In its responses, the Licensee admitted Violations A., B., D., and G., denied Violations C. and E., denied one example given in Violation F., and neither admitted nor denied the other example in Violation F.

In addition, the Licensee protested the civil penalty in whole and requested remission of the civil penalty. The NRC's evaluation and conclusions regarding the Licensee's requests are as follows:

I. Restatement of Violation C

License Condition No. 20 requires that the Licensee conduct its program in accordance with statements, representations, and procedures contained in the application dated April 30, 1980 and a letter dated May 1, 1981. Attachment 6(g) of the referenced letter requires that the Licensee conduct quarterly field inspections of radiographic personnel.

Contrary to the above, a quarterly field inspection of a radiographer's assistant was not conducted in the second quarter of 1990, although the radiographer's assistant performed radiographic work on at least five days during that quarter.

This is a repeat violation.

Summary of Licensee's Response to Violation C.

The Licensee denies the violation and states that although the referenced individual was provided with personnel monitoring devices and trained in accordance with the Licensee's requirements for certification as a radiographer's assistant, he was actually a "helper," and was improperly listed on Licensee documents as a radiographer's assistant. The Licensee states that the individual's duties as a "helper" included: (1) Helping with driving, (2) developing film, (3) carrying and moving equipment, and (4) providing surveillance and making surveys under the direction of the radiographer.

The Licensee claims that when the Licensee's field inspection was conducted on the radiographer, the "helper" was not available for interview and the radiographer provided assurance that the "helper" did not perform the functions of a radiographer or a radiographer's assistant.

NRC's Evaluation of Licensee's Response to Violation C.

10 CFR part 34.2 defines a radiographer's assistant as any individual who, under the personal supervision of a radiographer, uses, among other things, radiation survey instruments in radiography. The Licensee's response (Item C.2D, letter dated December 21, 1990), indicates that one of the functions of the individual, whom the Licensee referred to as a "helper", is to make a radiation survey if directed to do so by a radiographer. Accordingly, the individual referred to by the Licensee as a "helper" meets the definition of a "radiographer's assistant" in 10 CFR part 34.2. Furthermore, during the NRC inspection, the Licensee's President and Radiation Safety Officer (RSO) confirmed that this individual performed radiography under the supervision of a radiographer on five occasions during the second quarter of 1990. The Licensee's President and RSO also confirmed that the required quarterly audit of this individual was not performed for the second quarter of 1990 because he was not at work while the auditor was on site. These confirmations were made in response to direct questions asked by the inspectors on August 8, 1990. Additional confirmation of the latter is also documented in the Licensee's December 21, 1990 response.

Based on the information collected by the inspectors during the inspection and the Licensee's December 21, 1990 response, it appears that: (1) The individual noted in Violation C. does

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meet the definition of a "radiographer's assistant" in 10 CFR part 34.2, (2) this individual did not perform radiographic work on at least five occasions during the second quarter of 1990, and (3) this individual was not audited by the Licensee's RSO during the second quarter of 1990. Therefore, the NRC concludes that the Licensee's argument that the individual did not perform as a radiographer's assistant and, therefore, was not required to be audited by the Licensee, is without merit and does not provide a basis for withdrawing the violation.

II. Restatement of Violation E

10 CFR part 34.24 requires, in part, that each survey instrument used to conduct physical radiation surveys be calibrated at intervals not to exceed three months and after each instrument servicing.

Contrary to the above, on nine occasions from April 9 through April 20, 1990, physical radiation surveys were conducted with a survey instrument which was last calibrated on November 30, 1989.

Summary of Licensee's Response to Violation E.

The Licensee denies the violation and states that the information documented in the licensee's records, which indicates the use of a particular survey meter (Serial No. 0099) that had not been calibrated in accordance with 10 CFR part 34.24, is in error. The Licensee further submitted a signed, sworn statement from the employee involved in the error, stating that he did not use an uncalibrated survey instrument and that the information in the log documenting his use of the Serial No. 0099 survey meter was, in fact, a memory recording error.

NRC's Evaluation of Licensee's Response to Violation E.

Based on the additional information provided by the Licensee, including the sworn statements of its employee, NRC is withdrawing the violation.

III. Restatement of Violation F

10 CFR part 34.33(c) requires, in part, that pocket dosimeters by checked, at periods not to exceed one year, for correct response to radiation.

Contrary to the above, a pocket dosimeter Serial No. 9062095 was not checked for proper radiation response from January 25, 1988 to January 17, 1990, and it was used on September 29, 1989. Similarly, pocket dosimeter Serial No. 7080642 was not checked for proper response to radiation from August 1988 to August 8, 1990 and this dosimeter was used on December 18, 1989.

This is a repeat violation.

Summary of Licensee's Response to Violation F.

The Licensee denies the example given in this violation concerning dosimeter Serial No. 7080642. The Licensee indicates that this pocket dosimeter was checked for proper radiation response but the information was not transferred to the dosimeter record book. To support its claim, the Licensee submitted the results of the dosimeter response check, which apparently was conducted on November 7, 1989. The Licensee provided no information to refute the other example given in this violation concerning pocket dosimeter Serial No. 9062095.

NRC's Evaluation of Licensee's Response to Violation F.

Based on the additional information and the record submitted by the licensee, NRC is withdrawing the example given in Violation F. concerning dosimeter Serial No. 7080642. Violation F. remains a violation, however, since the licensee provided no information to refute the example in Violation F. concerning dosimeter Serial No. 9062095.

IV. Summary of Licensee's Request for Remission of Civil Penalty

The Licensee has protested the $10,000 civil penalty in whole and requested remission of the civil penalty. While the Licensee did not state its specific basis for requesting that remission, the licensee denies Violations C. and E., and one example of Violation F. In addition, the Licensee notes that Violation G. occurred because an employee directly disregarded the instructions of a supervisor and that the radiation overexposure in Violation A. may be a falsification. [Here, the Licensee apparently is expressing a theory that the involved employee may have deliberately exposed his personnel monitoring device, possible in order to receive time off from work.]

NRC Evaluation of Licensee's Request for Remission.

NRC's evaluation concerning the Licensee's denial of Violations C. and E. and one example of Violation F. is given above. While NRC is withdrawing Violation E. and one example of Violation F., the remaining violations continue to be indicative of a programmatic lack of control of licensed activities. Further, in responding to NRC's concern regarding the need for improved attention to detail and management oversight of licensed activities, the Licensee admits to a lack of management attention and involvement as the root cause of the violations.

The Licensee provided no evidence in support of its speculation that the radiation overexposure in Violation A may have been a falsification. Concerning the Licensee's explanation that Violation G. occurred because a Licensee employee directly disregarded the instructions of a supervisor, NRC holds every licensee fully accountable for the acts of the licensee's employees and expects that licensees will provide sufficient management oversight of its employees to ensure that licensed activities are performed in accordance with regulatory requirements.

NRC Conclusion

Based on its evaluation of the licensee's response, the NRC staff concludes that six of the seven violations did occur, that one violation should be withdrawn, and that one example of one violation should be withdrawn. Reducing the amount of the proposed $10,000 civil penalty by 1/7 due to the withdrawal of one violation results in an adjusted civil penalty of $8571.43. The Licensee has provided no basis for any further remission. Accordingly, NRC concludes that a civil monetary penalty of $8571.43 should be imposed by order.

[FR Doc. 91-11092 Filed 5-16-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-05865, License No. 37-00276-25; EA 90-112]

Professional Service Industries, Inc., Pittsburgh Testing Laboratories; Lombard, Illinois; Order Imposing a Civil Monetary Penalty

I

Professional Service Industries, Inc., (the "Licensee") is the holder of License No. 37-00276-25 (the "license") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC"). The license authorizes the Licensee to possess and use byproduct material for the conduct of industrial radiography and related activities.

II

An NRC safety inspeciotn of the Licensee's activities under the license was conducted at the Licensee's facility in Sharon Hill, Pennsylvania and at a temporary jobsite in Phoenixville, Pennsylvania on October 4, 1988. Subsequently, the NRC Office of Investigations performed an investigation of licensed activities. The results of the inspection and investigation indicated that the Licensee had not conducted its activities in full

compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated October 30, 1990. The Notice states the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations in Seciotn I of the Notice. The Licensee responded to the Notice in two letters, both dated November 30, 1990, and in a supplemental letter dated February 6, 1991. In its responses, the Licensee acknowledges that the violations occurred but requests mitigation of the penalty based on its prompt and comprehensive corrective actions.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that the violations occurred as stated but that the Licensee provided a sufficient basis for partial mitigation in the civil penalty amount for the violations designated in Section I of the Notice, and that a penalty in the amount of $14,000 should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR part 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $14,000 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days from the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event that the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 9th day of May 1991.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix

Evaluation and Conclusion

On October 30, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to Professional Service Industries, Inc., (Licensee) for violations identified during an NRC inspection and investigation. The Licensee responded to the Notice in two letters both dated November 30, 1990, and in a supplemental letter dated February 6, 1991. In its responses, the Licensee admitted that the violations occurred, but requested mitigation of the civil penalty. The NRC's evaluation and conclusion regarding the Licensee's request are as follows:

1. *Restatement of Violations Assessed a Civil Penalty*

A. Condition 18 of License No. 37-00276-25 requires, in part, that the licensee shall conduct its program in accordance with statements, representations and procedures contained in a letter dated May 8, 1987. Item No. 4.2.2 of the enclosure to this letter requires that the Radiation Safety Officer or Assistant Radiation Safety Officer perform unannounced field audit inspections of each radiographer and radiographer's assistant at a minimum of once each calendar quarter, and document each inspection on the radiation safety inspection form (RR-19).

Contrary to the above,

1. Although eight "Internal Radiation Safety Performance Audit" (RR-19's) records existed for February 5, 1988, April 15, 1988, April 29, 1988, July 14, 1988 (2), January 13, 1989 and September 12, 1989 (2), documenting quarterly field audits of various radiographers, these field audits were never performed in that the Assistant Radiation Safety Officer (ARSO) either was not present at the radiography site at all, or was not present when radiography was being performed such that he could have performed the audits.

2. Although an "Internal Radiation Safety Performance Audit" (RR-19) record existed for May 3, 1989 which documented that a complete audit of a radiographer was performed by the ARSO, the ARSO admitted he did not actually enter the licensee's radiography cell where the radiography was being performed and thus, did not observe the radiographer perform the required surveys or lock the source. Therefore, a complete audit was not done.

B. 10 CFR part 34.31(a)(1) requires, in part, that the licensee shall not permit any individual to act as a radiographer until such individual has been instructed in the subjects outlined in appendix A of part 34. 10 CFR 34.31(c) requires, in part, that records of this training be maintained for three years.

Contrary to the above, although a Radiation Safety Training Record documented that a radiographer was instructed by the ARSO in the licensee's maintenance procedures on Sunday, October 2, 1988, no such training was given to the radiographer.

C. 10 CFR part 30.9(a) requires, in part, that information provided to the Commission by a licensee, or information required to be maintained by the Commission's regulations, orders, or license conditions be complete and accurate in all material respects.

1. Contrary to the above, information provided by the ARSO during an interview with an NRC investigator on January 3, 1990 was not accurate in certain material respects in that:

a. The ARSO, in response to questions concerning the conduct of the field audits of radiographer activities identified in Violation I.A. stated that he performed all of the questioned audits. This statement by the ARSO was not accurate in that the ARSO was either not present at the radiography site at all, or was not present when radiography was being performed such that he could have performed the audits on the documented dates; and

b. The ARSO, in response to questions regarding the conduct of training of a radiographer on October 2, 1988, stated that he had performed the training documented on the radiographer's training record. This statement was not accurate in that the radiographer did not work on October 2, 1988 and did not

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receive the training as documented in his training file.

2. Contrary to the above, "Internal Radiation Safety Performance Audit" (RR-19's) records which were required to be maintained by License Condition 18 were not accurate in certain material respects in that:

a. Eight RR-19's dated February 5, 1988, April 15, 1988, April 23, 1988, July 14, 1988 (2), January 13, 1989 and September 12, 1989 (2), documenting quarterly field audits of various radiographers, were not accurate in that the field audits were never performed. The ARSO either was not present at the radiography site at all, or was not present when radiography was being performed such that he could have performed the audits.

b. A RR-19 dated May 3, 1989, which documented that a complete audit of a radiographer was performed by the ARSO, was not accurate in that the ARSO did not actually enter the licensee's radiography cell where the radiography was being performed and, thus, did not observe the radiographer perform the required surveys or lock the source. Therefore, a complete audit was not done.

These statements and representations were material because they directly related to compliance with NRC requirements and had the potential to affect the course of the NRC inspection and investigation of this matter.

These violations have been categorized in the aggregate as a Severity Level II problem. (Supplements VI and VII).

Cumulative Civil Penalty—$18,000 (assessed equally among the four violations).

2. Summary of Licensee's Request for Mitigation

The Licensee, in its response, acknowledges the violations. However, the Licensee requests that the Civil penalty be mitigated because its corrective actions were prompt and comprehensive. Specifically, the Licensee asserts that, prior to the NRC investigation, its corporate oversight program identified that the Radiation Safety Officer (RSO) had authorized the Assistant Radiation Safety Officer (ARSO) to sign the RSO's name on the field audit forms, and recognized that this practice may have been construed as records falsification. In response to this determination, the Licensee asserts that it immediately instructed the ARSO to use his own signature on the audit forms.

The Licensee also asserts that, upon learning of the alleged violations, an investigation was immediately conducted and the ARSO's authorization for all assigned responsibilities was suspended. Further, the Licensee states that the Sharon Hill office was instructed to continue radiographic operations for only current contractual obligations and not to pursue any new radiography jobs. The Licensee argues that this voluntary suspension of radiographic operations caused substantial monetary losses which should be considered in mitigating the civil penalty.

The Licensee also states, in its February 6, 1991 response, that it did not know what allegations were being investigated by the NRC until about December 1989 or January 1990. According to the Licensee, as soon as it knew the allegations, it initiated a review of procedures to determine whether deficiencies in procedures encouraged or permitted falsification of records. The Licensee notes that its review was not restricted to the records being questioned, but included all procedures applicable to radiation workers or Licensee management personnel. Further, the Licensee also revised its field audit and radiography corporate audit forms to require the signature of the radiographic personnel on the form to provide confirming evidence that the audit was performed, and to ensure and document a more thorough review of licensed operations by corporate auditors. The Licensee asserts that these changes were immediate and the new forms were implemented at all Licensee branch offices. The Licensee also states that all RSOs will be instructed regarding these issues of compliance, and that it will ensure that 10 CFR parts 30 and 34 and all license conditions will be complied with prior to reactivating radiographic operations at the Sharon Hill facility.

The Licensee concludes that these corrective actions were both prompt and comprehensive in that they were initiated immediately based upon NRC inquiries and the possibility of noncompliance, rather than on final NRC determinations or conclusions. Therefore, the Licensee requests that the civil penalty be mitigated.

NRC Evaluation of Licensee Response

The NRC has reconsidered the Licensee's corrective actions, as described in the Licensee's responses, including the suspension of the ARSO's authorization for assigned responsibilities; voluntary suspension of radiographic operations at the Sharon Hill office; review of all applicable procedures; revision and implementation of the radiographic corporate audit form; and planned instruction to all RSOs concerning these issues of compliance. After reconsideration and further evaluation of these actions, the NRC agrees that the actions (as described in the Licensee's responses) that had been taken or planned at the time of the enforcement conference in August 1990 were extensive. Therefore, the NRC has determined that 25% mitigation of the civil penalty is warranted based on this factor. However, the NRC maintains that the corrective actions were not sufficiently prompt to warrant full 50% mitigation based on this factor.

The Licensee argues that it did not know what allegations were being investigated by NRC until December 1989 or January 1990 and that it did promptly initiate a review of its procedures as soon as the allegations became known. The Licensee concludes that its actions were prompt in that they were based on the possibility of noncompliance rather than final NRC conclusions. Notwithstanding the Licensee's contentions, the NRC had notified the Licensee's Corporate Radiation Safety Director on October 11, 1988 (one week after the conclusion of the inspection) that a discrepancy existed between a Licensee audit record and information furnished by the Philadelphia Naval Yard where radiography was allegedly performed on April 29, 1988. However, at the time, the Licensee did not promptly evaluate this issue in detail, and did not determine the extent of the corrective actions that were needed until after the Licensee became aware that an NRC investigation had been initiated.

In addition, the NRC recognizes that the Licensee's corporate oversight program identified that the ARSO at the Sharon Hill facility was improperly signing the RSO's signature on the audit forms. However, this was only identified after the ARSO raised the question to the corporate staff, and after the NRC inspection in October 1988 raised questions with respect to the performance of the radiography field audits. The Licensee's instruction to the ARSO at that time to cease this practice was appropriate; however, this action did not result in prompt evaluation, identification, and correction of the more significant issue, namely, that the reports were being created even though the audits were not being performed. These actions were not taken until 1990, after the majority of the OI investigation had been completed.

Furthermore, one of the stated actions in the Licensee's November 20 response was that all RSOs would be instructed regarding the issue of compliance with regulatory requirements and license requirements. However, given the significance of this issue, the failure to instruct the RSOs sooner, particularly before the enforcement conference, cannot be viewed as a sufficiently prompt action that would warrant full mitigation of the civil penalty.

Based on the above, 25% mitigation of the base civil penalty amount is warranted because of the Licensee's corrective actions, and therefore, the base civil penalty amount of $8,000 should be increased by 75%, rather than by 100% as originally proposed in the NRC's October 30, 1990 Notice.

NRC Conclusion

The NRC has concluded that the Licensee has provided a sufficient basis for partial mitigation of the civil penalty amount. Consequently, a civil penalty in the amount of $14,000 should be imposed.

[FR Doc. 91-11691 Filed 5-16-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29189; International Series Release No. 279; File No. SR-NASD-91-22]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Change Extending the Informational Linkage With the Stock Exchange of Singapore Ltd. for a 6 Month Period

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has filed, pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder, for Commission authorization to extend for a 6 month period the operation of its Pilot Program with the Stock Exchange of Singapore, Limited ("SES"). The Pilot Program currently consists of an interchange of closing price and volume data on 25 NASDAQ securities that are also traded through the SES's facilities. With the thirteen hour time difference (twelve hours during EDT), the trading hours of the SES and NASD markets do not overlap. Hence, the end-of-day information being exchanged under the Pilot Program primarily assists the establishment of opening prices for the following business day. The Pilot Program currently involves no automated order routing or execution capabilities, and no such capability will be established during the proposed extension.

The Commission originally authorized operation of the NASD-SES Pilot Program for a two-year term [1] that was recently extended through may 12, 1991.[2] Commission approval of the instant filing would permit continuation of this Pilot Program through November 12, 1991. During this interval, 10 NASDAQ securities will be added, bringing the total included in the Pilot Program to 35.[3] This figure equals the number of originally authorized at the inception of this program in 1988. Additionally, the SES will modify the information being transmitted to the NASD to reflect the SES's use of an order-driven trading system (known as the "CLOB").

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD-SES Pilot Program commenced operations with the Commission's approval of File No. SR-NASD-87-40 on March 14, 1988. The principal features of this program were fully described in section 1 of that form 19b-4, which description is hereby incorporated by reference.[4]

The current authorization of the NASD-SES Pilot Program will expire on May 12, 1991. The NASD, on its own as well as the SES's behalf, hereby requests that the Commission approve a further extension of the Pilot Program for 6 months, the inclusion of 10 more NASDAQ stocks, and a technical modification in the data being transmitted by the SES to the NASD.

During the proposed extension, each market will continue to transmit to the other static price/volume information compiled at the end of each trading day on 35 NASDAQ securities. The NASD will transmit for each Pilot security the closing inside quotes, cumulative volume, last sale price (for NASDAQ/NMS issues only) and the closing quote of every NASDAQ market maker in each of the 35 Pilot securities (collectively referred to as "NASD information"). In recognition of the SES's adoption of an order-driven system, the SES will transmit the following data elements for each Pilot security: closing price (*i.e.*, the price of the final transaction in the CLOB on that business day), the highest and lowest prices at which transactions were effected and the aggregate volume (collectively referred to as "SES information").[5] The SES will no longer transmit quotation information because the CLOB has replaced the SES's original trading system that had been based upon competing market makers displaying continuous, two-sided quotations in Pilot securities.

The exchange of static, end-of-day information will remain the principal function of the Pilot Program for the duration of the proposed extension. SES information will continue to be provided only to subscribers of NASDAQ Level ¾ services. Similarly, NASD information transmitted to Singapore will be available only on the terminals used by SES members to access the exchange's CLOB system. Finally, the original agreement between the NASD and the SES will remain in effect for the term of the extended Pilot Program. This agreement, which provides for the sharing of regulatory information as

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[1] *See* Release No. 34-25487 (March 14, 1988), 53 FR 9156 (March 21, 1988).

[2] *See* Release No. 34-28609 (November 9, 1990), 55 FR 46194 (November 19, 1990), approving File No. SR-NASD-90-55 that authorized the Pilot Program's operation through May 12, 1991.

[3] The NASDDAQ issues being added are the following: Aldus Corp., Cetus Corp., Collagen Corp., Mentor Graphics, Miller (Herman), RPM, Inc., SEI Corp., United Artists Entertainment (Class A and B), and Washington Energy.

[4] *See also* Release No. 34-28088 (October 28, 1987), 52 FR 42167 (November 3, 1987).

[5] If no trades are effected in a Pilot security on a given day, the SES will transmit no data on that issue even if bids or offers had been entered into the CLOB for possible execution.

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needed, is believed by the NASD to be adequate given the limited nature and limited scope of the Pilot Program.

Finally, the NASD acknowledges that any further enhancement to the Pilot Program, including the introduction of automated order routing and execution facilities would require concurrent authorizations from the Commission and the Monetary Authority of Singapore. No such enhancement is planned for implementation during the 6 month extension.

Regarding the statutory basis for the extended Pilot Program, the NASD relies on sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) of the Act. Subsections (B) and (C), of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the executions of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the NASD be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *" Finally, section 17A(a)(1) reflects the Congressional goals of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD submits that extension of the Pilot Program will further these ends by providing the cooperative regulatory environment and operating experience needed for advancement of these goals in the context of internationalization of securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The extend Pilot Program will permit the continued exchange of static market data on a limited group of NASDAQ securities between the NASD and SES on a non-exclusive basis. The costs of supporting the Pilot Program are nominal, and the sponsoring markets absorb their respective costs. The market information being exchanged by the NASD and SES under the Pilot Program is deemed to constitute an exchange of equivalent value. Hence, no additional fee is paid by NASD and SES member firms for receipt of the static data being provided on Pilot securities.

The NASD submits that neither the structure nor operation of the present Pilot Program poses any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find, pursuant to section 19(a)(2) of the Act, good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing and, in any event, by May 13, 1991. The NASD believes that accelerated approval is appropriate for the following reasons: (1) The experimental character of the Pilot Program and the need to maintain continuity in its operation; (2) the commitment not to make any significant operational changes during the requested extension absent Commission approval; (3) the limited nature of the Pilot Program, both in terms of the number of Pilot securities and the amount of market information being exchanged; and (4) the limited utility of end-of-day, static information to the NASD and SES member firms capable of accessing, respectively SES and NASD information. Moreover, during the period of the proposed extension, the sponsoring markets remain committed to exchange regulatory information whenever the need arises. Finally, if accelerated approval is not granted, the sponsors will be obliged to terminate this experimental program before its potential benefits can be realized in relation to globalization of securities markets. Accordingly, the NASD believes ample basis exist for granting accelerated approval pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1)(B) and (C), 15A(b)(6), 17A(a)(1) and the rules and regulations thereunder. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the executions of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the NASD be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *." Section 17A(a)(1) reflects the Congressional goals of linking all clearance and settlement facilities.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing of notice of filing thereof. The Commission believes that accelerated approval is appropriate to maintain continuity in the Pilot Program and to allow the sponsors to assess the impact of the modification to SES information and the addition of 10 NASDAQ issues to the group of Pilot securities. The brief extension being approved should allow sufficient time for the NASD to prepare another rule 19b-4 filing regarding this program, which filing will incorporate certain additional information germane to the Commission's deliberations on permanent approval of the linkage.[6] Further, the Commission acknowledges the limited nature of the Pilot Program and that no substantive changes will be implemented during the proposed extension. Accordingly, the Commission believes that the Pilot Program should not be terminated under these circumstances.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer File Number SR-NASD-91-22 and should be submitted by June 7, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that SR-NASD-91-22 be, and hereby is approved for a period of 6 months, allowing the NASD-SES Pilot Program to continue through November 12, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 10, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11772 Filed 5-16-91; 8:45 am]

BILLING CODE 8010-01-M

[6] Earlier this year the NASD submitted a response to a request from the Commission staff regarding regulatory procedures covering the Pilot Program, including the sharing of information for regulatory purposes. *See* letter dated February 12, 1991 from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to Kathryn V. Natale, Assistant Director, Esq., Division of Market Regulation, Securities and Exchange Commission. That letter is hereby incorporated by reference.

[Release No. IC-18143; File No. 811-2761]

SBL Variable Annuity Account II

May 13, 1991

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: SBL Variable Annuity Account II.

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 4, 1990 and amended on April 19, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by 5:30 p.m. on June 7, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the Commission along with proof of service by affidavit, or for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secertary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Security Benefit Life Insurance Company, 700 Harrison, Topeka, Kansas 66636.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272-3046 or Barry D. Miller, Senior Attorney, at (202) 272-3012, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Applicant was established as a separate account of Security Benefit Life Insurance Company on August 2, 1977 and it continues to exist under the laws of Kansas. Applicant is registered under the 1940 Act as a unit investment trust. On August 25, 1977, the Applicant filed a registration statement under the Investment Company Act of 1940 and under the Securities Act of 1933 registering certain variable annuity contracts. The registration statement was declared effective on February 6, 1979 and the public offering of Applicant's contracts commenced on the same date.

2. Applicant made no distribution to securityholders in connection with the winding-up of its affairs because all contracts issued by Applicant were liquidated in the ordinary course of business. Applicant issued a very limited number of contracts during its existence. Applicant had only 11 contracts outstanding at the end of 1981 and 2 contracts at the end of 1986. The last contract was liquidated in June 1987.

3. The Applicant has no securityholders. Applicant has retained no assets and has no debts or liabilities which remain outstanding.

4. The Applicant is not a party to any litigation or administrative proceeding.

5. The Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11773 Filed 5-16-91; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as amended by Public Law 99-591; Information Collection Under Review by the Office of Management and Budget (OMB).

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be made within 30 days directly to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4B, Chattanooga, TN 37402; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: 1991 New Homes Survey.

Frequency of Use: On Occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 1000.

Estimated Total Annual Burden Hours: 250.

Estimated Average Burden Hours Per Response: .25.

Need For and Use of Information: The New Homes Survey will obtain information on space heating, appliance saturations, and living quarter characteristics for single-family dwellings and condominiums constructed in 1990 and 1991. This information is required by several different organizations within TVA for

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program design and evaluation and for power system load forecasting.

Louis S. Grande,

Vice President, Information Services Senior Agency Official.

[FR Doc. 91-11704 Filed 5-16-91; 8:45 am]

BILLING CODE 8120-08-M

Privacy Act of 1974; Proposed New Routine Use

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Proposed new routine use for TVA-2, "Personnel Files—TVA" and TVA-11, "Payroll Records—TVA."

SUMMARY: As required by the Privacy Act, TVA gave notice (56 FR 11299-300, March 15, 1991) of its intention to establish new routine uses for the systems of records entitled TVA-2 "Personnel Files—TVA" and TVA-11 "Payroll Records—TVA." No comments from the public were received. The new routine uses as published on March 15, 1991, and as described below will therefore become a part of TVA-2 and TVA-11. The full text of TVA-2 appears at 55 FR 34817-18, August 24, 1990, and 56 FR 19137, April 25, 1991. The full text of TVA-11 appears at 55 FR 34824-26, August 24, 1990.

EFFECTIVE DATE: May 17, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, Privacy Act Officer, TVA, 615-751-2520.

TVA-2

SYSTEM NAME:

Personnel Files—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to education; qualifications; work history; interests and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit information; service dates, including other Federal and military service; replies to congressional inquiries; medical data; and security investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd; Executive Order 10577; Executive Order 10450; Executive Order 11478; Executive Order 11222; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103; various sections of title 5 of the United States Code related to employment by TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide information to multi-employer health and welfare and pension funds as reasonably necessary and appropriate for proper administration of the plan of benefits.

TVA-11

SYSTEM NAME:

Payroll Records—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, pay, leave, and debt claim information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd; Internal Revenue Code; Fair Labor Standards Act, 29 U.S.C. Chapter 8; 5 U.S.C. Chapter 63.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide information to multi-employer health and welfare and pension funds as reasonably necessary and appropriate for proper administration of the plan of benefits.

Louis S. Grande,

Vice President, Information Services.

[FR Doc. 91-11703 Filed 5-16-91; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on May 10, 1991

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on May 10, 1991, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503 (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on May 10, 1991.

DOT No.: 3493.
OMB No.: New.
Administration: Federal Railroad Administration.
Title: Railroad User Fees.
Need for Information: To determine a railroad's equitable share of the total industry user fee.
Proposed Use of Information: To assure that each railroad is assessed their fair share of the industry-wide user fee.
Frequency: Annually and recordkeeping.
Burden Estimate: 2,204 hours.
Respondents: 586 Railroads.
Form(s): FRA-F-6180.89.
Average Burden Hours Per Response: 3.76 hours.

DOT No.: 3494.
OMB No.: 2130-0004.

Administration: Federal Railroad Administration.
Title: Railroad Locomotive Safety Standards.
Need for Information: To provide a written record that a locomotive has been inspected and is in proper condition for service.
Proposed Use of Information: This information is utilized to assure and promote safe and suitable locomotives and as the written record in post-accident investigations.
Frequency: Recordkeeping and On Occasion.
Burden Estimate: 1,114,188 hours.
Respondents: 500 Railroads.
Form(s): FRA-F-6180.449A.
Average Burden Hours Per Response: 2.228.34 hours.

DOT No: 3495.
OMB No: 2133-0517.
Administration: Maritime Administration.
Title: Approval of Underwriters for Marine Hull Insurance.
Need for Information: Required to obtain or retain a benefit.
Proposed Use of Information: To assure applicant qualifies for requested benefit under the statute.
Frequency: Annually.
Burden Estimate: 66 hours.
Respondents: 1 hour.
Form(s): None.
Average Burden Hours Per Respondent: 1.

DOT No: 3496.
OMB No: 2133-0511.
Administration: Maritime Administration.
Title: Vusclparent Company.
Need for Information: To verify information on vessels that could be vital in a national or international emergency.
Proposed Use of Information: To perform contingency planning for sealift mobilization requirements.
Frequency: Annually.
Burden Estimate: 43.
Respondents: 100.
Form(s): None.
Average Burden Hours Per Response: 25½ minutes.

DOT No: 3497.
OMB No: 2105-0510.
Administration: Office of the Secretary.
Title: Report of DBE Awards and Commitments.
Need for Information: To determine extent to which DOT recipients are meeting their approved goals.
Proposed Use of Information: To report to Congress on DOT's success in meeting its statutory DBE program requirements.
Frequency: Annually/semi-annually/quarterly.
Burden Estimate: 21,276 hours.
Respondents: Recipients of DOT financial assistance funds.
Form(s): 1.
Average Burden Hours Per Respondent: 11 hours and 36 minutes.

DOT No: 3498.
OMB No: 2130-0509.
Administration: Federal Railroad Administration.
Title: State Safety Participation Regulations.
Need for Information: To assure compliance with Federal safety laws and regulations and to aid in claims collection proceedings against violating carriers.
Proposed Use of Information: To administer and monitor State participation in investigative and surveillance activities under Federal safety laws and regulations.
Frequency: Annually, Monthly, Semi-Annually, On Occasion.
Burden Estimate: 12,045 hours.
Respondents: 33 States.
Form(s): FRA-F-6180.5; 5A; 10; 29; 29A; 33; 58; 58A; 59; 59A; 65; 65A; 67; 68; 68A; 69; and, FRA-F-74.
Average Burden Hours Per Response: 365 hours.

DOT No: 3499.
OMB No: New.
Administration: Federal Aviation Administration.
Title: Proposed part 161—Notice and Approval of Airport Noise and Access Restrictions.
Need for Information: The information, e.g., notice requirement and analysis of the proposed restriction, is required by the Act.
Proposed Use of Information: This information is necessary to comprehend and evaluate the restriction and, in the case of restrictions on Stage 3 aircraft operations, will be useful to the FAA in determining whether the restriction should be approved or disapproved in accordance with the conditions of approval defined in the Act.
Frequency: On Occasion.
Burden Estimate: 37,400 hours.
Respondents: Airport operators and air carriers.
Form(s): None.
Average Burden Hours Per Respondent: 3,400 hours.

DOT No.: 3500.
OMB No.: New.
Administration: U.S. Coast Guard.
Title: U.S. Recreational Vessel Fee (RVF)—Decal Request.
Need for Information: This reporting and information collection requirement is needed to require recreational boaters to share in the cost of Coast Guard programs from which they benefit. This requirement is consistent with the Omnibus Budget Reconciliation Act of 1990, 46 U.S.C. 2110.
Proposed Use of Information: A Federally-contracted financial institution will receive the fee payment and information at a post office box and notify a Federally-contracted decal distributor to issue the appropriate number and type of decals.
Frequency: Annually through 1995.
Burden Estimate: 4,100,000 hours.
Respondents: Owners of recreational vessels greater than 16 feet in length.
Form(s): None.
Average Burden Hours Per Respondent: 6 minutes.

DOT No.: 3501.
OMB No.: New.
Administration: Federal Aviation Administration.
Title: Passenger Facility Charge Program.
Need for Information: The information is needed by public agencies and air carriers to determine additional funding for the expansion of airport capacity.
Proposed Use of Information: The FAA will use any information submitted in response to this program to carry out the intent of section 9110 of the Aviation Safety and Capacity Expansion Act of 1990.
Frequency: Quarterly and Annually.
Burden Estimate: 50,942 hours.
Respondents: Air carriers and public agencies.
Form(s): None.
Average Burden Hours Per Respondent: 16 hours for air carriers' reporting burden, 35.5 hours for public agencies' reporting burden, 20 hours for air carriers' recordkeeping burden, and 20 hours for public agencies' recordkeeping burden.

The Procedures and Evidence Rules for Air Carrier Authority Applications (DOT No. 3492/OMB No. 2106-0023) published April 25, 1991, on page 19141 of the Federal Register has been withdrawn. It will be resubmitted at a later date.

Issued in Washington, DC on May 10, 1991.

Richard B. Chapman,

Acting Director of Information Resource Management.

[FR Doc. 91-11728 Filed 5-16-91; 8:45 am]

BILLING CODE 4910-62-M

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Advisory Commission on Conferences in Ocean Shipping; Open Meeting

AGENCY: Department of Transportation (DOT) Office of the Secretary.

ACTION: Notice of open meeting of the Advisory Commission on Conferences in Ocean Shipping.

SUMMARY: The Commission will be holding its first field hearing in New Orleans, LA on June 3, 1991; the hearing will be open to the public. In the morning, The Commission plans to focus on issues related to antitrust immunity for activities of conferences and others in the ocean shipping industry. In the afternoon, the Commission plans to hear testimony on all issues relating to the Shipping Act of 1984 and conferences in the ocean shipping industry.

DATES: Public hearing: Monday, June 3, 1991, 9:30 a.m. to 4:30 p.m. CDT. Deadline for requests to speak at the public hearing: Thursday, May 27, 1991.

ADDRESSES: The address for the public hearing is Board Room, suite 2900, World Trade Center, No. 2 Canal Street, New Orleans, LA.

FOR FURTHER INFORMATION CONTACT: Ruth Dicker, Counsel, or Sandra Kusumoto, Senior Economist, Advisory Commission on Conferences in Ocean Shipping, Department of Transportation, 400 Seventh Street, SW., room 5102, Washington, DC 20590; telephone (202) 366-9781; FAX (202) 366-7870.

SUPPLEMENTARY INFORMATION: The Commission was created by the Shipping Act of 1984 to conduct an independent and comprehensive study of conferences in ocean shipping, particularly whether the Nation would be best served by prohibiting conferences, or by closed or open conferences. The Commission is to provide its report, including recommendations, to the President and the Congress by April 10, 1992. The Commission began formal operations on April 10, 1991, at a day-long open meeting in Washington, DC, at which the Commission heard reports from Federal agencies on the impact of the 1984 Act and discussed issues to be studied by the Commission.

As part of its study, the Commission will be holding a series of public hearings around the United States. Places tentatively selected for hearings, in addition to New Orleans, are San Francisco, CA; Charleston, SC; Portland, OR; and New York, NY. At each hearing, a part of the day will be dedicated to issues generally raised by the 1984 Act, and part of each hearing will focus on a specific predesignated issue.

The Commission will be holding its first field hearing on June 13, 1991. Attendance is open to the public but limited to space available. The morning session will be devoted to testimony on issues related to antitrust immunity for activities of conferences and others in the ocean shipping industry. (At a subsequent public hearing, the Commission will devote another session to this topic.) The afternoon session will be open to receive testimony on any aspect of the Shipping Act of 1984. Portions of this meeting may be used to discuss other matters of interest to the Commission.

Interested members of the public are invited to address the Commission at the June 3, 1991 hearing. In order to be assured of an opportunity to do so, each person wishing to speak should notify either Ruth Dicker or Sandra Kusumoto, at the address set out above, by May 27, 1991. Each such person is also requested to provide by May 27, 1991 a brief summary of the matters he/she expects to address at the Commission hearing. Should such person wish to submit a copy of his/her complete statement to be delivered at the Commission hearing, he/she may do so as well. Persons appearing before the Commission are encouraged to support all opinions with factual information and evidence. To the extent that time permits and that it does not disrupt the orderly process of the meeting and will not be unfair to any person, persons who do not make prior written requests to speak will be given opportunity to do so as part of the afternoon session.

Persons who wish to provide written comments for the Commission's consideration may do so at any time by forwarding them to the address set out above.

Issued in Washington, DC on May 13, 1991.

Florizelle B. Liser,
Executive Director.

[FR Doc. 91-11729 Filed 5-16-91; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ended May 10, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47532

Date filed: May 8, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 467 (Japan-Korea Fares) R-1—R-8.
Proposed Effective Date: May 27, 1991.

Docket Number: 47536

Date filed: May 10, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC31 Reso/C 0216 dated April 19, 1991.
Expedited Japan-USA/US Territories R-1.
TC31 Reso/C 0217 dated April 19, 1991.
Expedited South Pacific (To/From USA/US Territories) R-2.
Proposed Effective Date: June 1, 1991.

Docket Number: 47537

Date filed: May 10, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/C 0885 dated April 29, 1991.
Mid Atlantic Expedited Resolutions R-1 to R-4.
Proposed Effective Date: August 1, 1991.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 91-11725 Filed 5-16-91; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended May 10, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tenative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47530

Date filed: May 8, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 5, 1991.
Description: Application of Jes Air Ltd. pursuant to section 402 of the Act and subpart Q of the Regulations, requests a Foreign Air Carrier Permit to operate scheduled services between the Republic of Bulgaria and The United States of America.

Docket Number: 45723

Date filed: May 7, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 4, 1991.
Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to section 402 of the Act and subpart Q of the Regulations applies for amendment of its Foreign Air Carrier Permit to the extent necessary to permit TAESA to engage in the scheduled air transportation of persons, property and mail between Saltillo (Ramos Arizpe), Mexico, on the one hand, and San Antonio, Texas, on the other hand.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 91-11726 Filed 5-16-91; 8:45 am]

BILLING CODE 4910-62-M

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS-108, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 90-11-29, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the six-month period beginning April 1, 1991, we have projected non-fuel costs based on the year ended December 31, 1990 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

These projections reflect the intense fluctuations in fuel prices and costs induced by the recent Mid East crisis.

By Order 91-5-9 cargo rates may be adjusted by the following adjustment factors over the October 1979 level:

Atlantic—1.5638
Western Hemisphere—1.3174
Pacific—1.8111

FOR FURTHER INFORMATION CONTACT: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation.

Jeffrey N. Shane,
Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-11727 Filed 5-16-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

[Docket No. RSAD-91-3]

Proposed Test Program to Evaluate Random Drug Testing Rate

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed test program.

SUMMARY: FRA proposes to implement an experimental program designed to evaluate the extent to which the rate of random drug testing affects general deterrence. FRA proposes to grant conditional waivers to three Class I freight railroads and one commuter railroad. The railroads selected would be allowed to test at a 25 percent rate for a period of one year, rather than 50 percent. FRA proposes to select three additional Class I freight railroads and one additional commuter railroad as a control group; these railroads would continue their testing rates at the 50 percent rate required by FRA's alcohol and drug regulation. FRA expects that this test program will provide data to help it determine whether the drug testing rate (the number of specimens collected as a percentage of the covered population) significantly influences the percentage of employees testing positive for prohibited use of one or more controlled substances. This information may support future rulemaking activity.

DATES: (1) Any request to make oral presentations should be received by June 6, 1991.

(2) Written comments should be received by June 17, 1991. Late filed comments will be considered to the extent practicable.

(3) FRA proposes to make the final order effective on July 1, 1991.

ADDRESSES: Comments shall be sent to Docket Clerk, Docket No. RSAD-91-3, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, SW., room 8201, Washington, DC 20590. Persons wishing the FRA to acknowledge receipt of their comments should submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. RSAD-91-3." The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons, between 8:30 a.m. and 6 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: James T. Schultz, Railroad Safety Specialist—Operating Practices (RRS-12), Office of Safety, FRA, Washington, DC 20590 (Telephone: (202) 366-0508) or Patricia V. Sun, Trial Attorney (RCC-30), Office of Chief Counsel, FRA, Washington, DC 20590 (Telephone: (202) 366-4002).

SUPPLEMENTARY INFORMATION:

Background

In February of 1991, the Association of American Railroads (AAR) filed a petition in accordance with 49 CFR 211.51, requesting that FRA implement a test program that would temporarily suspend compliance with 49 CFR 219.601(b)(2)(ii). This section, first published on November 21, 1988 (53 FR 47103), requires each railroad, in the second year of that railroad's random testing program, to conduct a sufficient number of random tests during the year to equal at least 50 percent of the number of its covered service employees. (Subsequent amendments to the alcohol and drug regulations, which did not affect § 219.601(b)(2)(ii), were published on December 27, 1989 (54 FR 53238) and June 4, 1990 (55 FR 22791)). The proposed test program would permit an experimental group of railroads to test at a 25 percent rate for one year, for comparison against a group of control railroads that would continue to test at a 50 percent rate. Data from the two groups of railroads would then be analyzed to determine the effect of different testing rates on deterrence.

FRA agrees with the AAR that an experimental program would be useful at this time. FRA included the possibility of adjusting the random testing level when it promulgated the random program in 1988 (53 FR 47113). A test program would allow FRA to study whether the 50 percent testing rate is necessary, when the overall positive rates for random, post-accident and reasonable cause testing show a low or rapidly declining rate of positive test results.

Random testing, conducted at the 25 percent rate in its first year of implementation (for most railroads), yielded an overall positive rate of 1.04 percent based on 35,000 tests reported by the railroads in their annual reports on testing activity. Post-accident and reasonable cause testing had their lowest positive rates in five years, with post-accident positives declining from 6.0 percent in 1981 to 3.2 percent in 1990, and with reasonable cause positives declining from 5.4 percent in 1987 to 2.2 percent in 1990.

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The Proposed Order

FRA proposes to select three major Class I freight railroads and one commuter railroad for this experimental program. Railroads will be chosen to provide both a large sample size and significant geographic coverage. A railroad that tested at 50 percent in 1990 will be included to allow FRA to measure the effect of reducing a railroad's testing rate from 50 percent to 25 percent.

A control group, also comprised of three major Class I railroads and one metropolitan area commuter railroad, will continue to test at 50 percent. The experiment's design would attempt to balance such factors as active peer intervention programs, extent of for-cause testing programs, and extent of testing in medical programs.

Before the program begins, FRA would require the participating railroads to subscribe to a protocol stating conditions for participation. FRA would inspect pertinent records in advance of program start-up, to ensure that criteria for test result review are uniform for all participants. Care would be taken to identify and if possible control intervening variables.

Railroads would be required to submit quarterly test data reports, retroactive to January 1, 1991, and continuing through the period of the experiment, to permit trend line analysis and enable FRA to respond quickly, if necessary, to any unexpectedly significant changes in drug use during the program. FRA would reserve the right to terminate or modify the test program on 10 days notice if any party fails to comply with the conditions mentioned or any others specified in the protocol, or if quarterly reports indicate a particularly serious degrading of performance by one or more of the experimental railroads (as reflected by the random testing positive rate and/or other information available to FRA). FRA would also reserve the right to terminate if FRA review of railroad alcohol/drug program administration indicates material deficiencies.

FRA anticipates that this experiment would commence on July 1, 1991, and continue for at least four calendar quarters. At the conclusion of the program, FRA will review pertinent records for the test year and interview program managers and selected labor representatives.

Authority: 45 U.S.C. 431(c), 437; 49 CFR 1.49(m), 211.43, 211.51.

Issued in Washington, DC on May 13, 1991.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 91-11724 Filed 5-16-91; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 10, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0108.

Form Number: 1096.

Type of Review: Extension.

Title: Annual Summary and Transmittal of U.S. Information Returns.

Description: Form 1096 is used to transmit information returns (Forms 1099, 5498, and W-2G) to the IRS Service Center. Under Internal Revenue Code section 6041 and related sections, a separate Form 1096 is used for each type of return sent to the service center by the payer. It is used by IRS to summarize and categorize the transmittal forms.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 4,290,895.

Estimated Burden Hours Per Response: 11 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,026,240 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-11712 Filed 5-16-91; 8:45 am]

BILLING CODE 4830-01-M

Office of Thrift Supervision

Sentry Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Sentry Federal Savings Association, Norfolk, Virginia, on May 3, 1991.

By the Office of Thrift Supervision.

Dated: May 10, 1991.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-11761 Filed 5-16-91; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Bank of Annapolis; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings Bank of Annapolis, Annapolis, Maryland ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 3, 1991.

Dated: May 10, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-11762 Filed 5-16-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-20; OTS No. 3188]

Cragin Federal Bank For Savings, Chicago, Illinois 60639; Final Action; Approval of Conversion Application

Notice is hereby given that on April 22, 1991, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of Cragin Federal Bank For Savings, Chicago, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Regional Director, Office of Thrift Supervision of Chicago, 11 East Wacker Drive, Chicago, Illinois 60601.

Dated: May 10, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-11759 Filed 5-16-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-19; OTS No. 2983]

First Kentucky Federal Savings Bank, Central City, Kentucky; Final Action; Approval of Conversion Application

Notice is hereby given that on April 12, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of First Kentucky Savings Bank, Central City, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Cincinnati, 525 Vine Street, suite 700, Cincinnati, Ohio 45202.

By the Office of Thrift Supervision.

Dated: May 10, 1991.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-11760 Filed 5-16-91; 8:45 am]

BILLING CODE 6720-01-M

VOL 56 ISS 96 MY 17 1991 UMI

Sunshine Act Meetings

Federal Register
Vol. 56, No. 96
Friday, May 17, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, May 21, 1991, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Rulemaking Petition for Policy Regarding State and Local Property Taxes.

Memorandum and resolution re: Joint Notice of Proposed Rulemaking pursuant to section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which requires that the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration develop a set of uniform rules and procedures for administrative hearings.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: May 14, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-11867 Filed 5-15-91; 1:11 p.m.]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, May 21, 1991, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda:

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Application for Federal deposit insurance:

American Federal Savings Bank of Henry County, a proposed new Federal savings bank to be located at 1090 Hudson Bridge Road, Stockbridge, Georgia.

Application for Consent to Merge and Establish Twenty Branches:

Equibank, Pittsburgh, Pennsylvania, an insured State nonmember bank, for the Corporation's consent to merge, under its charter and title, with Liberty Savings Bank, Philadelphia, Pennsylvania, and for consent to establish the twenty branches of Liberty Savings Bank as branches of Equibank.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: May 14,1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-11868 Filed 5-15-91; 1:11 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION:

"FEDERAL REGISTER" NUMBER: 91-10545.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 9, 1990, 10:00 a.m.

The following item was continued to the meeting of May 16, 1991:

Presidential primary and general election regulations: Final rules and explanation and justification.

DATE AND TIME: Tuesday, May 21, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, May 23, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes

Advisory Opinion 1991-12: Perkins Coie on behalf of Schroeder Fund for the Future

1988 Presidential Audits—Status Report

Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-11861 Filed 5-15-91; 11:22 am]

BILLING CODE 6715-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91-11651

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 23, 1991, 10:00 a.m.

This meeting will be open to the public.

The following item was added to the agenda pursuant to 11 CFR § 2.7(d).

Gephardt for President Committee, Inc.—Final Audit Report.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-11914 Filed 5-15-91; 2:35 pm]

BILLING CODE 6715-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, June 5, 1991.

PLACE: Board Room 9th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of May, 1991.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. William A. Gill, Jr., Executive Director, Tel: (202) 523-5920.

Date of Notice: May 14, 1991.

William A. Gill, Jr.,

Executive Director, National Mediation Board.

[FR Doc. 91-11906 Filed 5-15-91; 2:25 pm]

BILLING CODE 7550-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:37 p.m. on Tuesday, May 14, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to: (1) Preemption of state law, (2) the resolution of failed thrift institutions, (3) sale of assets, and (4) contracting activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the board room of the Federal Deposit Insurance Corporation building located at 550-17th Street, NW., Washington, DC.

Dated: May 15, 1991.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91-11921 Filed 5-15-91; 3:25 pm]

BILLING CODE 6714-01-M

VOL 56 ISS 96 MY 17 1991 UMI

Corrections

Federal Register
Vol. 56, No. 96
Friday, May 17, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 87F-0361]

Indirect Food Additives: Polymers

Correction

In rule document 91-8919 beginning on page 15275, in the issue of Tuesday, April 16, 1991, make the following correction:

On page 15276, in the first column, in the first full paragraph, in the seventh line, "either" should read "ether".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. R-91-1538; FR-2942-I-02]

24 CFR Part 3500

Real Estate Settlement Procedures Act, Section 6 Transfer of Servicing of Mortgage Loans, (Regulation X)

Correction

In rule document 91-10005 beginning on page 19506 in the issue of Friday, April 26, 1991, make the following corrections:

§ 3500.21 [Corrected]

1. On page 19506, in the third column, in § 3500.21(b)(2), in the third line from the bottom, "normal" should read "nominal".

2. On page 19509, in the second column, in § 3500.21(e)(1)(i), in the third line from the bottom, "of" should read "if".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Number 90-ACE-18]

Designation of Transition Area; Monett, MO

Correction

In rule document 91-9919 beginning on page 19256, in the issue of Friday, April 26, 1991, make the following correction:

§ 71.181 [Corrected]

On page 19257, in the second column, in § 71.181, under Monett, Missouri [Revised], in the fourth line, "long 90°" should read "long 94°".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AGL-2]

Proposed Transition Area Establishment; Sault Ste Marie Marie Municipal/Sanderson Field Airport

Correction

In the issue of Wednesday, March 27, 1991, on page 12816, appearing in the third column, in the correction to proposed rule document 91-3829, a portion of the text is inaccurate and is corrected as follows:

In the same column, in § 71.181, in the fourth line "lat. 46°'46> N.," should read "46° 28' 46> N.,"

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF04

Death Pension Eligibility—Wartime Service

Correction

In rule document 91-10036 beginning on page 19578, in the issue of Monday, April 29, 1991, make the following correction:

§ 3.3 [Corrected]

On page 19579, in the second column, in § 3.3(b)(3)(ii), in the second line, "receiver" should read "receive".

BILLING CODE 1505-01-D

federal register

Friday
May 17, 1991

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 86

Requirements Governing the Lobbying of HUD Personnel; Section 112 of the Reform Act; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 86

[Docket No. R-91-1461; FR-2733-F-02]

RIN No. 2501-AA03

Requirements Governing the Lobbying of HUD Personnel; Section 112 of the Reform Act

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule establishes the standards under which:

—Persons that make expenditures to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must keep records, and report to HUD, on the expenditures; and

—Persons that are retained to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must register with HUD, and report to HUD on their lobbying activities.

It also places limitations on the fees that may be paid to consultants who are engaged to influence the award or allocation of the Department's financial assistance.

The rule is designed to improve the Department's ability to ensure that the process by which the Department awards financial assistance and takes management actions is conducted in a manner that is fair and open, and free from improper influence.

EFFECTIVE DATE: June 17, 1991. However, no sanctions or penalties, under this rule or otherwise, may be imposed by the Department for any failure to meet the requirements of this rule during the period ending August 14, 1991. This rule applies to:

—All *agreements to make an expenditure* that are entered into on or after the effective date of this rule;

—All *expenditures made pursuant to an agreement to make an expenditure* that is entered into on or after the effective date of this rule; and

—All *expenditures* made on or after the effective date of this rule, *where the expenditure is not made pursuant to an agreement.*

FOR FURTHER INFORMATION CONTACT: Arnold J. Haiman, Acting Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708-3815; TDD: (202) 708-1112. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. §§ 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**.

I. Statutory Background

This rule implements section 112 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101-235, approved December 15, 1989, (the "Reform Act"). Section 112 added a new section 13 to the Department of Housing and Urban Development Act, 42 U.S.C. 3531, *et seq.* (the "HUD Act").

The new provision contains two principal features. The first establishes the standards under which:

—Persons that make expenditures to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must keep records, and report to HUD, on the expenditures; and

—Persons that are engaged to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must register with HUD, and report to HUD on their lobbying activities.

The second feature imposes limitations on the fees that may be paid to consultants who are engaged to influence the award or allocation of the Department's financial assistance.

It should be noted that section 13 contains procedural requirements only. It neither expands nor limits the circumstances in which communications designed to influence the Department's decisions may be made.

1. *Influencing the Award of Financial Assistance and Management Actions.* Section 13 deals with the two players that are typically involved in efforts to influence the Department with respect to the award of financial assistance or the taking of management actions: those who *obtain the services of another* for this purpose and those who *provide the services.* Specific features include the following:

a. *Those who make the expenditures.* Section 13 requires those who make an expenditure to influence a departmental decision to keep records on the expenditure, and to report it to HUD. Two exceptions to the reporting requirements are provided: expenditures for reasonable compensation paid to regularly employed personnel, and expenditures that total less than $10,000 for a reporting year. The provision also contains an exception for expenditures incurred in complying with conditions, requirements, or procedures imposed by the Department.

b. *Those who provide the influence.* Section 13 requires each person retained to influence the Department with regard to any financial assistance or management action to register with the Department and to report to HUD on the activities involved. Reporting is not required if the total of the expenditures received by a person from all sources for HUD lobbying services in the reporting year is less than $10,000.

c. *Civil money penalties.* Section 13 authorizes the imposition of civil money penalties on any person who knowingly fails to comply with the provision's reporting and registration requirements. The penalty is the greater of $10,000 or the total amount received by a person for any lobbying service to which the failure to report or register relates.

2. *Limitations on Consulting Fees.* Section 13 contains two limitations on the fees that may be paid to consultants engaged to influence the award or allocation of the Department's financial assistance. It prohibits any fee that is tied to the amount of assistance, or to the number of housing units involved in the request for assistance. It also prohibits any fee that is contingent on an award of assistance, except where:

—The lobbying services are provided to a nonprofit applicant, and

—All or part of the professional service provided with respect to the project are donated to the nonprofit if the assistance is not received.

II. Summary of Public Comments and HUD Responses

A proposed rule to implement section 13 of the HUD Act was published on June 1, 1990, at 55 FR 22722. The rule gave the public 60 days in which to submit comments. Thirty-nine comments were received, and many of the comments were extensive. The following types and numbers of commenters were represented: 17 law firms, 11 national associations, six consulting firms, three State associations, and two municipal associations. Below is a listing of the comments. A response from the Department follows each comment.

A. General Comments

1. *Comment.* The proposed rule is unduly burdensome in its record-keeping requirements. The rule imposes retention requirements that go beyond the requirements of the statute. For example, there is no intention on the part of the Congress to require the retention of records if no report is required.

(one consultant and three law firms)

Response. The requirement to *retain records* is independent of the requirement to report, and both requirements are clearly statutory. Section 13(a)(3) of the HUD Act states—

> each person making an expenditure shall obtain a bill, stating the particulars, for every such expenditure, and shall retain all records required * * * for not less than the 2-year period beginning on the date of the filing of the report required * * *.

The *reporting* requirement comes from section 13(b)(1), which states—

> each person making an expenditure * * * shall file with the Secretary, between the 1st and 10th day of each calendar year, a report specifying the total expenditures made by or on behalf of such person during the year * * *.

The Department believes that the section 13(a)(3) language requires the retention of the records for two years, irrespective of whether the person is required to file a report on the underlying agreements and expenditures.

2. *Comment.* The record-keeping requirement requires each person subject to it to keep a detailed record of the name and address of every person with whom a covered agreement is made. This requirement is onerous and represents overkill.

For example, if a person engages a law firm to provide general representation under a flat fee arrangement, and the firm engages others to represent it in influencing HUD decisions, the firm's client is covered, and the client may not even be aware that its counsel has engaged others to influence HUD on its behalf. The law firm might not want to reveal to its client that it felt it necessary to go beyond its own resources to accomplish the client's mission. Furthermore, requiring the client to keep records and report requires the law firm to reveal internal operating procedures that it might well want to keep confidential.

(one consultant and three law firms)

Response. The general rule is that only parties to the agreement regarding influencing activities are required to keep records and report on expenditures made and received as a result of the agreement. Therefore, the commenters appear to be unduly apprehensive about the reach of this requirement.

In the example presented, the rule imposes the following responsibilities:

—The *client* engaging the law firm must keep records, and may have to report,[1] on those amounts of monies or other things of value paid to the law firm for influencing activities.

—The *law firm* must register with HUD within 14 days of being retained, and may have to report [2] on monies or other things of value received and expended for influencing activities.

—If the law firm *"subcontracts"* influencing responsibilities to others, a new expenditure/retainer relationship is created. The law firm moves to the "expenditure" side of the new relationship, and must keep records, and report (if appropriate), on its expenditures to the "subcontractor."

—The *"subcontractor"* must register with HUD within 14 days of being retained by the law firm, and may have to report on monies or other things of value received and expended for influencing activities on the firm's behalf.[3]

The commenters are concerned that the client may discover that the firm has hired someone else to carry out the influencing activities. Neither the statute nor the rule requires the firm to report to the client the details of carrying out the client's mission, but the rule's "sunshine" provisions may lead to such a discovery.

Among other things, the firm—as the "expenditure maker"—must (if required) report on all expenditures and agreements made, and provide the name and address of each person to whom an agreement or an expenditure is made. In turn, the registration of the "subcontractor" must identify the name and address of the registrant's employer and "of any person in whose interest the registrant appears or works."

The statute specifies that this report must constitute part of the public records of the Department, must be open to public inspection, and must be published in the **Federal Register** annually. In addition, registration information is also subject to **Federal Register** publication. Therefore, while not required by the statute, it is possible that the original client will learn of the law firm's "subcontract."

On a related point, the final rule expands the registration information that is subject to **Federal Register** publication. Section 13(c)(3) states:

> The Secretary shall compile all registration information as soon as practicable after the close of the calendar year with respect to which the information is filed and shall publish it annually as a notice in the **Federal Register**.

The proposed rule limited the coverage of this provision to information required on the *registration form;* it did not reach information contained in the registrant's *report.*

The Department believes that the proposed rule's approach is incorrect. Section 13(c)(3) calls for publication of "all registration information." The caption of section 13(c)(3) is "PUBLICATION OF INFORMATION." The caption of section 13(c)(1)—the substantive registration provision—is "REQUIREMENT AND INFORMATION." The provision contains *both* information required on the registration form *and* report information. In light of this language, the Department believes that the statute's reference to "all registration information" clearly means information from *both* sources.

In addition, section 13(b)(5) uses almost identical language in requiring **Federal Register** publication of reports on *expenditures.* This lends further support to the Department's position that registrant reports were also intended to be covered.

Also, in order to effectuate the overall purpose of the statute to bring into the "sunshine" all significant activities associated with influencing departmental decisions, the Department believes that it is necessary to publish the report of the registrant.

Section 86.30(b) of the final rule has been amended to require the annual **Federal Register** publication of both information submitted in connection with registration and the reports submitted by registrants.

3. *Comment.* The rule requires the client to comply with record keeping and reporting requirements whenever a change is made in a covered agreement. This requires that the initial agreement be specific and that it be amended for record keeping purposes each time the consultant has a conversation with a HUD official. This imposes a significant and unconscionable record-keeping burden on the consultant and the client.

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[1] As discussed later, the reporting requirement is subject to a $10,000 annual threshold.

[2] Same as the preceding footnote.

[3] Same as the preceding footnote.

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(one consultant and three law firms)

Response. The commenters have misunderstood the rule. The event that triggers the rule's applicability is the agreement to make an expenditure. Entering into the agreement invokes the rule's record keeping and reporting requirements for the client, as well as the registration and reporting requirements for the person retained to provide the influence. If the agreement calls for communication with the Department, each phone call does not require separate record keeping, reporting, and registration: the agreement is the triggering event, and the call is within the agreement's terms.

Of course, situations that effectively change an agreement, or create a new agreement, are subject to all section 13's requirements. For example, if the actual expenditure differs from the consideration specified in the agreement, the difference must be reported to the extent its value is greater. (If the expenditure is less than the consideration set out in the agreement, no change may be made in the amount in the agreement.)

To provide clarification on this point, the following example is offered:

—A pays B $15,000 to make contacts at HUD to push along A's application for an award. B makes a number of calls to HUD officials on A's behalf.

Between 1/1 and 1/10 of the next calendar year, A must report the $15,000 expenditure. A need not treat the phone calls as a new "expenditure," since the calls were part of the original overall agreement. Similarly, B need only register once and need not submit a new registration with each call, although he will be required to report on the calls in his registrant's report.

If A and B later renegotiate the amount of the agreement from $15,000 to $10,000, neither A nor B can reduce the reported $15,000 amount. For all purposes, the original agreement of $15,000 stands.

On the other hand, if A agreed within the same reporting year as the original agreement to pay B an additional $3,000 for some additional contacts at HUD, still in furtherance of influencing HUD's actions on A's application, then A's and B's reports must reflect the higher amount. If the initial agreement and the increase occurred in different years, and the payment was not contemplated by the original agreement, the increase is reportable by both A and B in the year in which the expenditure was made. In either case, B must update his registration.

4. *Comment.* The scope of this rule is too broad. The statute was passed in part to curb what Congress perceived as the *favoritism* involved in allocating scarce resources to new developments. To extend its applicability to cover allocation of common resources to property the Department already monitors would be unjust, unreasonable, and almost impossible to adjudicate fairly.

(three law firms, two national associations, and one consulting firm)

To the extent that the statute's requirements are not needed to ensure integrity, they should not be imposed (to the extent statutory interpretation permits).

(one law firm)

Response. The statute requires (1) record keeping and reporting of expenditures made to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department and (2) registration and reporting by persons retained to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department. These requirements are not limited merely to "favoritism involved in allocating scarce resources to new developments." The statutory definition of "financial assistance" extends beyond this to include "any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages." If the actions fall within that definition, the statute requires coverage.

5. *Comment.* It is the role of Congress, not HUD, to establish the Act's requirements; HUD must not legislate beyond the Congressional intent. Section 13(a)(1) subjects "each person who makes an expenditure * * *" to the Act's record keeping requirements, by requiring the person to keep a detailed account of "all such expenditures made by or on behalf of such person." "On behalf of" is an informational requirement; it alone does not subject a "person on whose behalf expenditures are made" to the rule's requirements.

(one national association and one State organization)

Response. Section 86.20(a)(1) of the proposed rule covered three classes of persons:

—Those who *themselves* make a covered expenditure;
—Those who make a covered expenditure *on behalf of* another person; and
—Those *on whose behalf* a covered expenditure is made.

The commenter would exempt the third category of persons from the rule's coverage. The effect of this approach would be to shield from the rule's disclosure requirements those who would be subject to the rule in all respects, except that someone else made the expenditure for them. The Department believes that this result is inconsistent with both the provisions of section 13 and congressional intent.

Section 13(a)(1) reaches "each person that makes" a covered expenditure. The Department does not believe that this language limits the rule's coverage to persons who make an expenditure *on their own behalf.* Those who are principals in a lobbying effort, and who enlist another to make the expenditure for them, equally "make" the expenditure.

To find otherwise would create a loophole that would threaten the statute's very functioning. The commenter's approach would permit those who are at the center of a lobbying enterprise to avoid detection entirely by collaborating with other "financiers" and hiding their identity from possible reporting by their lobbyists. Even if their identity were known, the commenter's idea would permit them to evade the statutory reporting requirements by ensuring that their *own* payments did not meet the $10,000 reporting threshold.

The Department does not believe that Congress intended such a destructive result. In the Department's view, when the Congress referred to expenditures "by or on behalf of" a person, it intended to identify the players subject to section 13's requirements, not as a mere "informational" matter.

6. *Comment.* The commenter is concerned that the rule has extended the scope of the statute to persons who never communicate with the Department. Every time a project owner, a nonprofit organization, or a State or local government hires an attorney, architect, accountant, or project manager to prepare a document for submission to the agency, it is intended to be persuasive, but that in and of itself should not bring that person under coverage.

The rule should be revised to clarify that persons hired to provide advice or professional assistance in dealing with the Department are subject to the requirements of the statute when they communicate verbally or in writing with the employees or officers of the Department.

(two consulting firms)

Response. Persons hired to provide professional or technical advice or assistance in dealing with the Department are not subject to the requirements of the rule when their communications to the Department are in compliance with HUD requirements, as set forth in § 86.25(d). In addition, professional and technical experts providing persuasive documents not in compliance with HUD requirements, are not covered by the rule where there is no direct communication with the Department. For example, where the hired professional assists the client by preparing documents for the client's signature and returns the documents to the client for further submission, the hired professional is not covered. However, where the hired professional makes the submission on behalf of the client or submits the documents under a cover letter signed by the hired professional, that professional is covered and is required to register with the Department. The critical factor in this situation is who is making the contact.

7. *Comment.* The rule should be changed to limit its application to independent lobbyists and consultants and the organizations who hire them.

(one consulting firm)

Response. The statute has determined to whom this rule should be applied. The statutory definition of "person" is "an individual (including a consultant, lobbyist, or lawyer), corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people."

8. *Comment.* The statute casts the shadow of impropriety over the everyday conduct of business for existing properties. The retention of an attorney who is an expert in the HUD practice is not unusual nor suspect.

The rule must be clarified to ensure that such categorization does not result. It fails to appreciate that for any existing property, there is a continuing dialogue between HUD as regulator and the owner, its agents, and associated professionals. All such contacts necessarily involve attempts by one group to influence the other for benefit of the property.

(two law firms and one consulting firm)

Response. The commenters believe that the statute and the rule have the effect of questioning the propriety of efforts to influence the Department, and of casting a shadow of suspicion over those who make those efforts. The Department does not believe that this concern is justified. The statute and rule do not pass judgment on, nor affect in any way, the substance of attempts to influence the Department. The requirements are procedural only: they provide for the disclosure of attempts at influence that do not meet specified exceptions. Through this "sunshine" mechanism, the requirements are designed to help improve the Department's ability to ensure that the process by which the Department awards financial assistance and takes management actions is conducted in a manner that is fair and open, and free from improper influence. Indeed, in the Department's view, full and diligent compliance with the statute and rule will go far toward dispelling any lingering suspicion among the public regarding the fairness of the Department's assistance processes and the motives of those who use them.

With specific regard to the above comment, the statute and the rule do appreciate the need for dialogue between HUD and the owner and its agents and other associated professionals. These requirements do nothing to affect the dialogue. They simply require that certain procedural steps be taken if the dialogue includes attempts to influence and the dialogue is not otherwise excepted.

9. *Comment.* The examples in appendix A should be reviewed. It is most unlikely that an attorney would believe that "chatting" with a secretary would result in "influencing" a HUD official's decision on any matter. Congress did not intend that such activities as leaving an urgent telephone message be a covered communication.

(two law firms and one consulting firm)

Response. The examples in appendix A, that was appended to the proposed rule, have been reviewed and, in some instances, have been refined further to clarify the position of the Department on certain aspects of the rule. However, the scenario referred to in the comment above is representative of many situations where influence may successfully be made by contacts with persons other than the ultimate decision-maker. Secretaries to decision-makers may be in a unique position to influence their superiors, such as by mentioning the lobbyist favorably or by putting before the decision-maker those proposals the secretary has been urged to push or by prioritizing the order in which the decision-maker should review proposals. The critical issue is whether there is an intent to influence.

10. *Comment.* The penalties imposed for violation of the registration and disclosure provisions are severe and could be devastating for small nonprofit organizations.

(one consulting firm)

Response. Based on the statutory provisions, the rule lists at § 86.35(b)(3) the factors in determining the amount of penalty for violation of the requirements of the rule. Most notable of the factors are the "ability to pay the penalty, injury to the public, benefits received, and deterrence of future violations."

11. *Comment.* In some sections, the requirements are so ambiguous that reasonable efforts to comply with, or to persuade the agency that the applicant is appropriately complying with, the conditions, requirements, and procedures of HUD programs could inadvertently subject an applicant to the burdensome reporting requirement or costly penalties. The rule should specify in greater detail the kinds of communications with the Department that are not considered influence peddling. Neither the rule nor its Preamble or Appendix A offers clear guidance on how to distinguish between contacts for "compliance" as opposed to "influence."

(two national associations and one consulting firm)

Response. In response to this comment, we have added examples of the kinds of communication with the Department that are not considered influence peddling. Also, the definition of "influence" in § 86.15 has been revised to add a cross-reference to the exceptions for compliance with HUD requirements (§ 86.20(d) and 86.25(d)), litigation (§ 86.20(e) and 86.25(e), and the activities of State and local officials (§§ 86.20(f) and 86.25(f)).

12. *Comment.* The rule does not make it clear that all efforts to comply with conditions, requirements, or procedures imposed by the Secretary will not trigger the registration and disclosure requirements. Information or legal analysis provided to convince the HUD employee that the applicant's interpretation is correct should be considered part of the process of complying with such conditions, requirements, or procedures. The normal course of give and take, interpretation, and negotiation which of necessity includes the intent to influence an agency decision should not be subject to the registration and disclosure requirements.

(one consulting firm)

Response. The general rule is that the requirements of this rule do not apply to any efforts involving compliance with conditions, requirements, or procedures imposed by HUD. Therefore, anything done in support of those efforts, such as providing information or legal analysis, will be considered part of the process of complying with HUD conditions, requirements, or procedures, provided the efforts are directed toward

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compliance with the HUD requirements and are within the established channels for receiving such communications. For example, the exception could not be claimed if the invitation from HUD to submit the supporting documents is no longer open, or if the communication is made to a HUD officer or employee other than those appropriate to receive the documents.

The reader is reminded that where the communication is in response to a written HUD requirement, it may be initiated by the applicant or his hired consultant or professional. However, where the communication does not emanate from a written requirement, in order to qualify for the exception, such contacts may only be as a result of solicitations by the Department.

13. *Comment.* Clarification should be provided for situations where applicants do not apply directly to HUD for financial assistance, but need HUD's assistance in assuring program requirements are properly followed. The appeal should not trigger the registration and disclosure requirements. It should be clear that letters written in support of an application, where the writer is not being paid or will not automatically benefit from the award, should not trigger the registration and disclosure requirements.

(one consulting firm)

Response. Appeals and letters of support will not trigger the registration and disclosure requirements as long as they fit one of the exceptions provided for by the rule, most notably as discussed in the previous comment. Similarly, an attempt to advise HUD of program problems would be within the exception, provided such notification procedures are provided for in the program regulations or handbooks or are requested by a HUD officer or employee.

14. *Comment.* In the day-to-day operations of local government, there is a continual need to make contact with Federal officials—both at the national and regional levels—in an effort to ascertain information involving grant and financial assistance.

The rule is extremely vague as to where the line is drawn between "information seeking" and "government lobbying." The commenters believe that this vagueness will limit the amount of communication between the two levels of government.

(two national associations)

Response. Contacts with HUD only seeking information are not subject to the rule. These communications lack the *sine qua non* of applicability—the intent to influence the Department. In light of the comments received, however, an example has been added to exemplify when contacts by State and local government officials would *not* be covered by the rule.

It should be noted that the final rule affords a special exception for State and local government officials, as discussed later in the *Public Comments* section of the Preamble. All elected State and local government officials, the political appointees who serve on the personal staffs of State and local elected officials, and all full-time, appointed officials of the State or local government who serve in policy-level positions are excepted. (See §§ 86.20(f) and 86.25(f).)

15. *Comment.* Implementing HUD programs the way in which HUD and Congress intend can only occur if applicants for, and recipients of, HUD funding are able to communicate openly and freely with HUD. The rule inhibits the very dialogue that should be encouraged.

(one national association)

The rule professes to be procedural, but its real effect is prohibitory. Only if HUD clears up the ambiguities and narrows it application of the requirements in such a way as to allow necessary interaction between HUD and its constituency, can the rule really be procedural.

(one national association)

The rule is likely to have the unwanted effect of discouraging many excellent firms from representing their traditional clients before HUD from time to time, making it more likely that these clients will wind up with a hard-core "influence peddler" that has learned the "ins" and "outs" of the rule. Law firms that do not have a substantial HUD legal practice are likely to abandon representing clients before HUD to avoid the complications of the rule and related penalties. The rule will discourage diversification of HUD representation, leaving the field even more in the control of full-time lobbyists.

(one law firm)

The scope of the proposed rule, when combined with the very serious penalties, will tend to drive away from the programs those who can best help the public and private sectors in developing affordable housing. These same impediments will encourage builders to leave the lower price ranges for the middle and upper income markets which do not involve HUD.

(one law firm)

The rule will have a very serious impact on the legal services of housing law firms, and it is urged that the sweeping coverage be reconsidered.

(three law firms)

The rule will adversely affect an attorney's ability to provide competent representation to clients who have business dealing with HUD. It is also cumbersome and impossible to implement.

(one law firm)

The potential for chilling entirely legitimate and desirable contacts between Federal officials and affected program participants and citizens through reporting forms is substantial and real.

(two law firms)

Response. As stated earlier in this *Public Comments* section, the Department believes that this rule will cast sunshine on the processes by which the Department awards financial assistance and takes management actions, and that applicants for, and recipients of, HUD assistance will appreciate the fair and open manner of the Department's processes. The Department also believes that law firms, builders, and others engaged in the development of affordable housing will be relieved to know that decisions made by the Department will be free from improper influence, and that their submissions will be evaluated fairly.

The "impediments" perceived by the commenter are impediments only to the extent the persons involved allow them to inhibit their actions. We have taken steps to reduce the burdens of record keeping, registration, and reporting as much as the statute will allow us. The Department believes that once the public becomes familiar with the procedures associated with this rule, the public will recognize that the burdens are not that significant and that the rule is merely a procedural mechanism to bring sunshine to the Department's processes for awarding financial assistance and making management actions.

All representation is not subject to the rule, and the rule is not designed to inhibit open and necessary representation of applicants for and recipients of HUD assistance. Those representations made in compliance with HUD requirements are totally excepted from coverage. The rule is not designed to inhibit dialogue with HUD, and nothing absolutely interferes with dialogue with HUD. The requirements do nothing to affect the dialogue. They simply require that certain procedural steps be taken if the dialogue includes attempts to influence and is not otherwise excepted from coverage.

16. *Comment.* Why have HUD and the Federal housing programs been singled out for oppressive and burdensome registration and reporting requirements for lawyers doing normal legal work? Housing and those lawyers who seek to help their clients understand and work with and within HUD housing programs, should not be discriminated against because of abuses at HUD by the prior administration.

(one law firm)

Response. The rule's coverage is set by statute. Lawyers are included in the definition of "person" and, as such, are covered by the requirements of the rule. It should be noted, however, that much of the work performed by lawyers should meet the exceptions established by the statute for litigation or compliance with HUD requirements. In any case, to the extent that representation does not qualify for an exception, then contacts made in furtherance of those lobbying efforts will be subject to the record keeping, registration, and reporting requirements of the rule.

17. *Comment.* The Reform Act requirements, coupled with the overlapping Byrd Amendment requirements, are extremely confusing. The penalties are too rigid. The commenter does not believe that any person or organization that attempts to comply with the confusing requirements should be penalized until there is greater clarity and understanding.

(one national association)

Response. The Preamble to this rule discusses the relationship between the Byrd Amendment and the HUD Reform Act. The two statutes deal with the same subject—attempts to influence HUD in the award of financial assistance and the taking of post-award actions—and they contain a number of overlapping provisions. Both statutes contain thresholds for coverage and exceptions from coverage. Therefore, the reader should consult both implementing rules to determine whether his or her activities are, in fact, subject to the requirements. In general, however, the reader should be guided by the following if his or her activities include attempts to influence HUD decisions:

—If section 112 applies, but not the Byrd Amendment, the provisions of section 112 must be met.

—If the Byrd Amendment applies, but not section 112, the provisions of the Byrd Amendment must be met.

—If both section 112 and the Byrd Amendment apply, the provisions of both must be met.

With regard to the commenter's concern for the rigidity of the penalties, the reader is reminded that at § 86.35(b)(3), there appears a listing of factors that must be considered in determining the penalty for a violation of the rule. The commenter's request for some type of delay in full implementation of this rule is discussed below.

18. *Comment.* Harsh civil and criminal penalties are connected with the rule. Therefore, HUD should allow for at least a minimum of 90 days between the issuance and the effective date of the final rule to lessen the problems with implementation.

(one national association)

A good faith exception to the penalties would be reasonable for an initial period of time. In the meantime, an exchange of information is needed with the parties subject to the two laws to identify problem areas that might need to be addressed in a revised rule.

(one national association)

Response. The commenters are suggesting that the public be afforded a "grace" period during which affected persons will not be subject to the penalties of the rule. The rule provides for an effective date 30 days after publication.

However, the Department agrees that some form of transition period is warranted, given the rule's length and complexity. Accordingly, the Department will not impose any penalty or sanction, under the rule or otherwise (including civil money penalties under § 86.35), for failure to meet the rule's requirements during the 60-day period after effectiveness. Since the rule would be in effect during this period, the public will be expected to comply with it, but the Department will not impose penalties for any failures during that period.

19. *Comment.* Section 112 is a penal statute and must be strictly construed. Penal statutes must be statutorily construed in favor of the persons sought to be subjected to their operations. The rule of strict construction simply means that ordinary words are to be given their ordinary meaning. Such a statute should not be so read as to add that which is not readily found therein or to read out what as a matter of ordinary English language is in it.

(one law firm)

Response. We agree with the commenter, and have done the best we can to interpret the statute within the rules of strict construction and still carry out its mandates. As discussed elsewhere in this Preamble, the final rule contains additional refinements that narrow the scope of the rule even further.

20. *Comment.* A chart that shows the record keeping, reporting, and registration requirements for the person making the expenditures as well as the person receiving the expenditures, and which activities in each category are exempt, would be helpful.

(one national association)

Response. In response to this comment, a chart is appended to the rule as appendix B to set out the coverage, the requirements, and exceptions to this rule. However, the reader is admonished to read the rule, its Preamble, and the standards set in appendix A carefully in order to acquire a full understanding of the requirements and exceptions, and of the interpretations necessary to understand how they relate.

21. *Comment.* It is important to understand the role of the HUD Office of Ethics. Will the office issue advisory opinions? Will its opinions be published in the Federal Register?

(one national association)

Response. As set forth in a separate Federal Register Notice to be published at a later date, the Office of Ethics will receive all of the registration and reporting documents required to be filed under this rule. These documents will be retained by the Office of Ethics for at least a two-year period, beginning on the date of filing, and will be made available for public inspection. The Department will publish a Notice in the Federal Register, informing the public of the specifics of when and how public inspection may be conducted.

The Department will also compile all the information submitted, as soon as practicable after the close of the reporting year, for publication in the Federal Register.

In addition to the Office of Ethics being the primary contact for questions regarding this rule, the Department will issue through the Office of Ethics advisory opinions on novel questions that are presented. These opinions will also be published in the Federal Register.

As stated above, the Department is publishing in the Federal Register on this date, information about the Office of Ethics, so that the public will know who to contact and where to submit information required by the rule.

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B. Comparison With Other Provisions of the Reform Act

22. *Comment.* The rule proposes the broadest possible coverage of section 112 of the statute, by focusing primarily on the "any financial assistance" portion of the statutory definition of coverage. This contrasts starkly with the Department's interpretation and proposed implementation of section 102 of the HUD Reform Act, entitled "HUD Accountability." (Proposed rule published on June 19, 1990, at 55 FR 25035.) The two statutory provisions are contained in the same subtitle of the HUD Reform Act, and the statutory terms defining their respective coverages are virtually identical.

Section 112—and the other sections of Subtitle A that contain similar language and prescribe similar regulatory frameworks with civil penalties for violations—must be construed, to the maximum extent practicable, in a consistent manner from section to section, and in a manner that restricts the application and coverage of each of the provisions with penalties to the smallest category of persons, and to the smallest category of interactions with the Department, as is clearly provided for by the plain language of each provision of the statute, with any ambiguity or uncertainty regarding the scope of coverage of the provision resolved against coverage and any ambiguity regarding the extent of an exception to coverage resolved by broad construction. Also, words, terms, and phrases used in two or more subsections or sections of Subtitle A must be interpreted consistently from usage to usage, unless there is a compelling reason to the contrary.

Section 102 is concerned with forms of assistance that involve applications, selection criteria, and decisions to grant or deny assistance. "Demand" programs, such as FHA mortgage insurance and GNMA guaranties; formula programs; and non-formula, non-demand programs and actions that do not distribute assistance on a competitive basis, are excluded. Also excluded are programs and actions that "necessarily follow competitive or 'demand' program funding decisions almost as a matter of course," such as contract renewals and extensions, Section 8 Property Disposition assistance, and the provision of assistance as an incentive in connection with a HUD-approved plan of action under Title II of the Housing and Community Development Act of 1987.

Section 112 should result in a similar narrowing of the scope of coverage to instances that truly involve a "decision to grant or deny" assistance, as strongly inferred from use of the word "award" in both section 102 and section 112. Covered funding actions should be limited to non-formula, non-demand competitive selections; and covered "management actions" should be limited to financial assistance that originally was "awarded;" *i.e.*, where the original award would have been covered if it had occurred after the effective date of the final rule implementing section 112.

The legislative history recognizes two distinct categories of assistance, and differentiates between HUD assistance allocated and awarded to "funding applicants," on the one hand, and HUD assistance under various FHA demand programs and other non-selection programs, on the other hand.

The rule totally ignores this clear and reasonable distinction. A major benefit of narrowing Section 112's coverage would be to exclude most day-to-day actions that occur in HUD field offices.

(six law firms and one national association)

Response. The Department believes that the commenter's approach is inconsistent with the plain meaning of section 112, as well as with section 112's reform objectives. The commenter's position is based on the following two arguments:

—The statutory terms defining the coverages of section 112 and section 102 of the Department of Housing and Urban Development Reform Act of 1989 are "virtually identical," and should be interpreted similarly. Since section 102 is limited to programs that distribute assistance on a competitive basis, section 112 should be similarly interpreted.

—Section 112's use of the phrase, "award" of financial assistance, "strongly infers" congressional intent to limit the provision's coverage to the competitive distribution of assistance.

In the Department's view, the commenter's reliance on the section 102 analogy is misplaced. Initially, the terms are not "virtually identical." Section 102 uses two terms to define its coverage. Section 102(a) refers to "assistance under any program or discretionary fund administered by the Secretary." This is the language that the Department interpreted to be limited to competitive assistance and that the commenter relies upon. The term is undefined.

Section 102(m)(4) defines the phrase, "assistance within the jurisdiction of the Department," for use in the remainder of section 102. That term is defined to include any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages. Section 112 applies to "financial assistance within the jurisdiction of the Department." The definition of the term (section 13(f)(3), as added by section 112) is identical to section 102(m)(4).

Thus, the terms used in section 102(a) and section 112 are not "virtually identical." The term upon which the commenter relies is different, and one term is defined and the other is not. Thus, from a purely textual standpoint, the commenter's argument fails. Indeed, the presence of two different definitions in section 102 argues strongly that the Congress did *not* intend them to be treated in identical fashion. If anything, an argument may be made that section 112 and section 102(m)(4) are to be treated the same, but section 102(a) differently.

More importantly, the respective statutory contexts compel different coverages. In establishing the coverage of section 102(a), the Department relied exclusively on an analysis of the provision's context. As stated in the Preamble to the proposed rule:

* * * * *

> The first two elements of Subpart B (Sections 102(a)(1) through (4) (B) and (E) and (5)) of the Reform Act apply to "assistance under any program or discretionary fund administered by the Secretary." The term is undefined, and requires an interpretation to establish its coverage. Based on an analysis of the relevant provisions of section 102, the Department believes that this term should be limited to *discretionary* authorities administered by the Department that provide assistance on a *competitive* basis.
>
> It is true that use of the phrase, "any program or discretionary fund," is very broad, potentially covering any HUD program that provides "assistance." In its widest interpretation, the phrase could apply to discretionary, competitive programs, as well as those authorizing formula grants, FHA mortgage insurance, and GNMA guarantees. In the Department's view, however, the context of section 102 compels a more restrictive reading.
>
> Section 102 appears to be primarily, if not exclusively, concerned with forms of assistance that involve applications, selection criteria, and decisions to grant or deny assistance. These attributes are the traditional hallmarks of discretionary programs that provide assistance on a competitive basis: programs that announce the availability of assistance, invite applications to request assistance, and make decisions competitively, based on the application and specific selection criteria. (55 FR 25038) (emphasis in original)

* * * * *

Nothing in section 112—textual or contextual—counsels limiting its coverage in this way. Indeed, the Department believes that just the opposite is true. Section 112 is designed to ensure that the process by which the Department awards financial assistance and takes management actions is fair and open, and free from improper influence. These processes are not limited to competitive assistance programs. Precisely the same abuses that gave rise to section 112 can occur in demand, formula, and the other programs referred to by the commenter. To limit section 112 as the commenter suggests would ignore both the plain language and clear congressional intent in enacting the provision.

Finally, the Department does not believe that use of the term, "award of financial assistance within the jurisdiction of the Department," in section 112 argues for restricting the coverage of the provision to competitive programs. As noted earlier, the definition of "financial assistance within the jurisdiction of the Department" specifically includes mortgage or loan insurance and guarantee. Since these are demand, not competitive, programs, Congress clearly did not intend that "award" be limited to assistance that is competitively distributed.

C. Forms

23. *Comment.* Forms would be helpful and should accompany the final rule.

(one national association)

Response. Forms are being published with this rule.

24. *Comment.* The forms should be published as proposed and should be limited to requesting the names of the parties and the amount of the expenditure, and not inquire into the substance of the agreement between the parties.

(two law firms)

Response. The forms being issued with this final rule are completely congruent with the rule, as it is modified in response to public comments. The forms do not require any more substantive information than is required by the statute, and the proposed rule clearly sets forth the content of the forms. For purposes of storing and checking data, the forms require an identification of the project or other object of the influence, such as the project number. However, no more information than that which is absolutely required by the statute, or necessary for accomplishing the record keeping, registration, and reporting requirements of the statute, is requested. For this reason, the Department feels completely justified in publishing the proposed rule without the accompanying forms.

25. *Comment.* The commenter urges that the forms not contain the requirement set forth in Standard Form LLL (used in the government-wide rule implementing the Byrd Amendment) that requires disclosure of the name of each agency official or employee contacted. Such a requirement might raise fears on the part of employees of being suspected of having been subjected to, and even submitting to, improper influence. The result could be that agency employees will close themselves off from legitimate contacts on behalf of affected program participants in order to avoid being named in a disclosure form. That will not be a positive or desirable result, and surely not one intended by Congress.

(two law firms)

Response. The forms do not require disclosure of the name of any agency official or employee contacted.

26. *Comment.* The rule should permit flexibility in the reporting format. The $10,000 threshold for reporting is not overly burdensome if it does not require any special format or record-keeping. Copies of bills to clients could be provided with little difficulty.

(one consultant)

Response. The forms reflect the statute and are fairly straightforward as to the information requested. The statute has set forth the requirements, and does not permit for the flexibility suggested by the commenter.

D. Constitutional Questions

27. *Comment.* The broad interpretation of the rule is overreaching and would have a chilling effect on the First Amendment right to petition the government.

(six law firms and one national association)

Response. The First Amendment provides—

> Congress shall make no law * * * abridging * * * the right of the people to * * * petition the Government for a redress of grievances.

In keeping with the holding of *United States* v. *Harriss*, 347 U.S. 612 (1954), as discussed below, the Department does not believe that the rule will have a chilling effect on the public's right to petition the Government.

The rule is a direct implementation of the statute, and the Department has made only those interpretations necessary to carry out the full meaning of the statute. The public still has the same access to the Government as it did before. The rule merely requires that where the purpose of a contact with HUD officials is to influence a HUD decision, simple record keeping, registration, and reporting requirements must be met.

The constitutionality of the disclosure provisions of the Federal Regulation of Lobbying Act, 2 U.S.C.A. 261–270, was the issue before the Supreme Court in the *Harriss* case, but the Department believes that the holding and supporting dicta of that case squarely support the Department's position on the issue regarding the right to petition the Government, as raised by the commenter.

In *Harriss*, the court held that the freedoms guaranteed by the First Amendment were not violated by the disclosure requirements of that Act, when they are construed to be limited to the reporting of all contributions and expenditures having the purpose of attempting to influence legislation through direct communication with Congress, and to registration of those who were covered by the statute and who, in addition, engaged themselves for pay or any other valuable consideration for the purpose of influencing legislation. Otherwise, the court pointed out, the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal; this is the evil that the court found the Lobbying Act was designed to help prevent.

Furthermore, in *Buckley* v. *Valeo*, 424 U.S. 67 (1975), which challenged the governmental interests of the laws governing campaign donations, the Court held that record keeping, reporting, and disclosure deter corruption and are essential means of gathering data necessary to detect violations.

Harriss continued that even if the Act might serve as a deterrent to a person's exercise of First Amendment rights, such restraint would be at most an indirect one resulting from self-censorship, and the hazard of such restraint is too remote to require striking down a statute which on its face is otherwise plainly within the area of congressional power and designed to safeguard a vital national interest.

28. *Comment.* The rule's reporting requirements may infringe upon the Fifth Amendment rights of an individual against self-incrimination and the attorney-client privilege. Parties should not be required to document information that later may be used by the Department or other law enforcement authorities for the purpose of investigating possible criminal acts of the parties. In addition, the forms may impact upon an attorney's ability to

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comply with the professional code of ethics, and to protect the confidential nature of the relationship between attorney and client.

(three law firms)

Response. The Fifth Amendment states that no person "shall be compelled in any criminal case to be a witness against himself." (Some recent cases have held that the privilege against self-incrimination can be asserted in civil and administrative proceedings also. (*Blau* v. *U.S.*, 340 U.S. 159 (1950); *Quinn* v. *U.S.*, 349 U.S. 155 (1955).)) However, based on the following case law, the Department believes that it is premature of the commenter to assert his or her rights under the Fifth Amendment in connection with complying with the requirements of this rule.

Where a statute requires a person to disclose information, and imposes criminal sanctions for failure to do so, the person may refuse to comply on the basis of his privilege against self-incrimination *only* if furnishing the information would create a real and appreciable hazard of incrimination. (*California* v. *Byers*, 402 U.S. 424 (1971)) There must be the presence of a "real" and not "imaginary" risk of self-incrimination. (*U.S.* v. *Wade*, 388 U.S. 218 (1967).)

However, leading cases, such as *Byers*, emphasize that where a statute is essentially regulatory, not criminal, a disclosure requirement does not create a sufficient risk of incrimination and that, even if it were viewed as incriminating, it is not "testimonial" in the Fifth Amendment sense. Furthermore, in balancing the public need on one hand, and the individual claim to constitutional protections on the other, the court stated that the statutory purpose was noncriminal, and self-reporting was indispensable to its fulfillment.

In light of the above, the Department believes that it is unwarranted for the commenter to assert the privilege. Section 13 is only a disclosure statute: the commenter has not been asked to testify in a proceeding. The risk of self-incrimination is at best imaginary at this time. The appropriate time to assert the privilege is during a legal proceeding during which the commenter is asked to testify. This would not occur until a violation of the rule was alleged and a formal proceeding begun.

Furthermore, it is not certain that all testimony would be held "privileged." It is up to the trial court to determine whether any direct answer to the question could implicate the witness. (U.R. 37.5; Ev.C. 915.) That can only be determined at the time of testimony.

The Department does not believe that the requirements of this rule infringe on the attorney-client privilege of confidentiality. In general, the purpose of the attorney-client privilege is to encourage full disclosure by a client to the attorney of all pertinent matters, so as to further the administration of justice.

However, not all communications or conversations between an attorney and his or her client are privileged. Certain essential prerequisites must be present in any case involving attorney-client privilege before the protection afforded by the privilege may be invoked. The case law discussed below sets out those prerequisites, and supports the Department's belief that the information required to be submitted under the requirements of this rule is not of a nature that would permit successful assertion of the attorney-client privilege of confidentiality.

Essentially, a client must approach an attorney in his capacity as a lawyer for the purpose of procuring legal advice or assistance, and must communicate, *in confidence*, with the attorney or his or her subordinate, under circumstances where it is reasonable to assume that the client does not intend that the communication should be relayed to third parties. (*U.S.* v. *United Shoe Machine Corp.*, 89 F.Supp. 357 (1950).)

Additionally, a communication between a client and the attorney neither inviting nor expressing any legal opinion, but involving mere soliciting or giving of business advice, is not privileged. (*United Shoe Machine*, supra.) Therefore, peripheral matters, or matters not intended to be communicated to the attorney in confidence, are not protected.

Pre-existing documents, or documents shown or intended to be disclosed to third parties, are not protected by the privilege, since they were not intended to be confidential. (*U.S.* v. *Merrell*, 303 F.Supp. 490 (1969).)

Furthermore, the authorities are substantially uniform against any privilege as applied to the fact of retainer or identity of the client. The privilege is limited to confidential communications, and a retainer is not a confidential communication. The amount of fees and facts regarding payment thereof is not privileged. (*U.S.* v. *Pape*, 144 F.2d 778 (1944); *Colton* v. *U.S.*, 306 F.2d. 633 (1962).)

To the extent that the information sought by this rule is not of a confidential nature, the attorney-client privilege does not apply. The existence of a retainer and the details regarding payment under the retainer agreement have been held not privileged. In addition, the information exchanged between the attorney and the client in preparation of the forms required under the rule would not be privileged, inasmuch as it would be information intended to be disclosed to third parties.

There may be other exchanges of information between the attorney and the client that may be considered privileged; however, the validity of the assertion of the privilege cannot be made prematurely. To invoke the privilege, the attorney must properly assert it, and must establish to a court's satisfaction that it is applicable under the particular facts involved. The party asserting the claim of attorney-client privilege has the burden of establishing its applicability. (*Colton* v. *U.S.*, supra.)

29. *Comment.* The legal profession operates under its own court-sanctioned codes of ethical conduct. To subject practicing lawyers to an additional set of standards is unnecessary and can lead to conflicts with attorney ethical codes.

A general provision should be added that states that nothing in the rule is meant to override the mandated ethical requirements for the legal profession or to require a member of a bar to compromise his or her professional representation of his or her client.

(one law firm)

Response. The Department does not have discretion to provide for special coverage for lawyers: by the statutory definition of "person," lawyers are included in the coverage of the statute and this rule. In addition, the Department does not believe that the rule is intended to question the ethics of lawyers or to challenge existing codes of ethical conduct. Rather, we believe that this rule is intended to augment basic principles of ethics and to protect the public interest.

30. *Comment.* The commenter has no conceptual argument with a requirement to report its business, although it does find it a violation of its privacy to have such information published in the **Federal Register**.

(one consulting firm)

Response. The registration and reporting information required by this rule is contained in a Privacy Act system of records. The Privacy Act of 1974, 5 U.S.C. 552a, governs the disclosure of such records, and the Act permits disclosure of information to the public, in certain circumstances, as a "routine use" established under 5 U.S.C 552a(b)(3). As defined at 5 U.S.C. 552a(a)(7), "the term 'routine use' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected." Because section 112 requires the Department to compile reporting and registration information and publish it in the **Federal Register**, the Department may properly disclose the information in accordance with an established routine use.

E. Definitions

1. Definition of "Person"

31. *Comment.* It was not the intent of the statute or the legislative history to extend the two-player scenario to internal arrangements within a single actor such as a law firm (or a trade association). The Department should not ascribe separate "agreements to make expenditures" within a single "person" such as a law firm. In the case of a law firm, a report must be filed separately for different lawyers within the firm, both as to making expenditures and receiving expenditures. This is inappropriate. The law firm should be a reporter of expenditures, only if it retains and pays another law firm or consultant. It should not have to allocate time and salary between partners and associates.

Elimination of intra-firm "agreements" and "expenditures" from the registration, reporting, and record-keeping requirements of the statute will not deprive the Department or the public of any disclosure which will promote the purposes of the statute. Instead, it will avoid the cluttering of the Department's files with information that is duplicative, confusing, and uninformative and endlessly difficult to calculate as well. It will also lessen the burden of the annual report.

The focus of the legislation is on the names and fees of consultants and lobbyists hired to influence the Department's decisions, not the internal expenditures of the consultants and lobbyists. Identification of individuals within a single firm is another matter, and can be adequately interpreted and implemented by requiring the identification of pertinent individuals within the firm's registration.

(six law firms, two national associations, and one consulting firm)

The rule represents an extremely significant administrative burden for a law firm. Accounting systems must be developed, and employees and clients must be formally briefed.

(one law firm)

Response. The Department has reexamined the statute in light of the concerns expressed on this issue, and has decided to alter its original position. The Department continues to believe that the approach adopted in the proposed rule represented an acceptable reading of the statute. The statutory requirements apply to "each person." "Person" is defined to include both an individual and an entity. In the commenter's example, both the law firm, and the firm's partners and associates, are "persons." Treating the firm and its members and associates as separate "person" under the rule, therefore, is, in the Department's view, an appropriate interpretation.

The Department, however, agrees with the commenter that the intent of the statute can be carried out by treating entities that are retained to provide lobbying services as a single "person" for purposes of the rule's registration and registrant reporting requirements.

The approach taken in the proposed rule was designed to ensure that the Department obtained all meaningful information about the entity's lobbying activities. Under the approach suggested by the commenter, the Department will be able to obtain all the important information, but without the additional burden that the proposed rule would have entailed.

Thus, the final rule has been amended to treat an entity (such as a law firm, a consulting firm, or an association) that is retained to provide lobbying services as a single "person" for purposes of registering and reporting under § 86.25. Consistent with the single "person" approach, the new procedure can only be used in the case of those who work with the entity on a full-time basis, or on a part-time basis under a program offered by the person to officers or employees of similar rank and responsibilities for specific purposes, such as to permit participation in a work-study program or to permit employees to provide child care for their children. Expenditures made to others represent a new "two-party" relationship, and are subject to the record keeping and reporting requirements specified in § 86.20. A similar approach has been taken with respect to associations that finance covered lobbying efforts with a combination of general membership income and specific contributions for a specific lobbying activity. See Appendix A for examples of this situation.

As the commenters suggested, the final rule requires the entity to include within its registration the names and business addresses of the partners, associates, or other employees of the entity who will make the actual contact with HUD. Since the identity of these individuals may change, the firm or association must update its previous registration to reflect any new individuals who will contact the Department. As with the original registration, updates must be filed with the Department within 14 days after the individual is designated in this role.

In addition, the registration must indicate whether any of the named individuals has been employed by the Federal government during the two-year period ending on the date of the registration or update, and must indicate in what capacity any such individual served.

32. *Comment.* The rule needs to clarify when associates of law firms or any party who conduct activities triggering the registration requirements must register. Once? Annually? Whenever they obtain a new client? Multiple registrations are extremely cumbersome and serve little purpose, especially when *de minimis* amounts of compensation are involved.

(one consulting firm)

Response. Registration is required whenever a person is retained to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action. This requirement is statutory. Consequently, the frequency of registration will be determined by the frequency that a person is retained.

There is no dollar threshold that must be met before registration is required; the $10,000 threshold only applies when the registrant is trying to determine whether an annual report is needed. The reader should note that updates are required whenever there is a substantive change in the information required of the registrant; *i.e.*, name and address of registrant, name and address of the registrant's employer, name and address of any person in whose interest the registrant appears or works, and other identifying information requested on the registration form.

2. Definition of "Regularly Employed"

33. *Comment.* Objection is raised to inclusion of 130 days in the definition of "regularly employed." The commenter believes this to be completely arbitrary and unreasonable.

(one consulting firm and one State organization)

Response. The statutory definition of "regularly employed" contains the requirement that the person be employed "at least 130 working days within one year immediately before the

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date of the submission that initiates departmental consideration * * *" The Department may not change the definition.

34. *Comment.* On January 1, 1991, there will be a minimum of 13 new Governors, scores of new State legislators, and thousands of new local officials. The 130-day employment rule should be modified to exempt those "expected" to serve 130 days or more.

(two national associations and one law firm)

The 130-day requirement will result in an unreasonable reporting burden for State and local governments with new employees involved in discussions with HUD. The requirement should be eliminated.

(one State organization)

Response. The statute requires the 130-day determination to be made at the time of the triggering event for each request for financial assistance or management action. A snap-shot is taken: those who have been employed for 130 days during the preceding year will be considered "regularly employed;" those who have not been, will not. The Department does not have the authority to treat officers and employees on a "rolling" or "wait and see" basis.

However, as a result of the public comments received, there is afforded, to State and local government officials, an exemption as discussed later in this *Public Comment* section of the Preamble.

35. *Comment.* The 130-day standard and the requirement that the person be considered full-time (or part-time under certain circumstance) ignore the reality of the business world as it relates to HUD. Most owners are either partnerships or corporations. The final rule should state that a general partner of a partnership will be considered *per se* "regularly employed." Furthermore, many persons or entities are general partners in several partnerships. That factor should not interfere with a person being considered "regularly employed."

(one national association)

Response. Partners are considered to be employers—not employees—and as such, the exception does not extend to them. For clarification, paragraph (b) of the definition of "officer of employee" has been revised to establish that an employee is one employed by another usually for wages or salary. Paragraph (b) of § 86.15 now states:

In the case of an individual employed by a person, the individual is considered "employed" when the person for whom services are performed has the right to control and direct the individual who performs the services.

36. *Comment.* Whether an employee is regularly employed by the person reporting should be determined by the hiring rules in place at the moment of the hiring.

(one consulting firm)

Response. The determination whether or not an employee is "regularly employed" must be based on the definition set forth in the statute. The statute does not allow for consideration of individual hiring practices.

3. Miscellaneous Issues Regarding Definitions

37. *Comment.* Clarity is needed regarding what is meant by a period beginning with a request and ending with an award. Does this mean that once a mortgage has been insured the rule does not apply?

(one consultant)

Section 86.20 states that the exception from reporting for regular employees attaches only with the submission of an application or other submission that begins the Department's consideration. This is a misreading of the statute and is inconsistent with other aspects of the rule. There is no indication that Congress intended this type of time limitation.

Moreover, under § 86.15, an agreement to make expenditures is considered to have been made when a contract is entered into, even though the recipient may not receive payment until later. Therefore, an agreement with a regular employee to expand his or her role to include lobbying would be considered an expenditure at that point, but the reporting exception would not be effective until later when an application had been submitted. Placing this time limitation on the reporting exception places persons dealing with HUD in the untenable position of submitting applications early in the process in order to be covered by the exemption or filing reports as to regular employees when that filing responsibility ends as soon as an application is actually submitted.

(one national association)

Response. The Department agrees that Congress did not intend this type of time limitation. Therefore, § 86.20(c)(3)(ii) has been removed. The phrase "requested or receives," is designed to identify the *person* that can qualify for the exception. It does not establish a *window*, within which the exception for regular employees attaches. The statute makes clear that the date of the submission that initiates the Department's consideration of the person for receipt of assistance is the point of reference necessary to counting backwards the days of employment of an employee, in order to establish whether the employee meets the definition of "regularly employed."

With regard to management actions, the statute makes clear that the date of initiation of the management action is the point of reference for counting the days of employment. When the management action is initiated by HUD, the date of initiation of the management action is the date upon which the action is communicated outside the Department.

With regard to the specific question raised by the commenter regarding an insured mortgage, once a mortgage is insured, the rule may still apply, since that mortgage is still subject to various management actions.

38. *Comment.* The rule should be revised to clarify that the record keeping, registration, and disclosure requirements do not apply to the activities of regularly employed employees, part of whose responsibilities involve persuading the Department to award Federal assistance or to undertake management actions involving a change in the terms and conditions or status of any financial assistance. There is no logic to exempting employers from the reporting requirement without also exempting the employees.

(one consulting firm)

The Preamble takes the position that employees, even those "regularly employed", must register and report. The Department's justification is that it wants to match expenditures with receipts. Those making the expenditures (the employers) would not be required to report under the regular employee exception and those expenditures could therefore not be matched with the employees' receipts.

The registration requirements were meant to parallel the requirements of the record keeping and reporting requirements imposed upon persons making expenditures. To the extent the law relieves the expenditure maker from reporting by virtue of the regular employee exception, recipients should be similarly relieved.

(one national association)

Response. The proposed rule contained the following coverage for employers that make expenditures to their employees, and for employees who receive compensation, for the purpose of influencing the Department:

Employers making expenditures to non-regularly employed persons: Employers that make expenditures to employees who do *not* qualify for the "regular employment" exception were required *both* to keep records *and* to report on the expenditures.

Employers making expenditures to regularly employed persons: Employers that make expenditures to employees who *do* qualify for the "regular employment" exception were required to keep records of the expenditures *only*. They were *not* to be required to report on the expenditures.

Employees receiving compensation (all): Employees who receive expenditures were required to *both* register *and* to report, irrespective of whether they met the "regular employment" exception.

The commenters argue that where the *employer* is excused from reporting since the employees have met the terms of the exception, the *employees* should be excused from the registrant reporting requirements (one commenter), or from all record-keeping, registration, and reporting requirements (the other commenter).

The Department has reassessed the provisions of the proposed rule in light of this comment, and agrees that there is little benefit in requiring employees to report when their employers are relieved of the burden. Therefore, § 86.25(c)(3)(i) has been revised to relieve regularly employed employees from the reporting requirement under that section.

Employers and regularly employed employees are excused from the *reporting* requirements *only*. They still have to comply with the *record-keeping and registration* requirements, respectively. In keeping with the overall goal of the statute to bring into the "sunshine" all significant activities associated with influencing departmental decisions, it is necessary that there be a record of the individuals who are contacting HUD personnel for purposes of influencing HUD decisions.

39. *Comment.* The rule does not establish a definition of lobbying as compared with consulting (packaging and processing). The commenter would like to see a rule that states that arguing the merits or the solution of the problem, or the qualification of the applicant, and doing so generally and broadly with all staff persons involved, does *not* constitute lobbying.

(one consulting firm and one national association)

Response. The statute does not provide definitions for "lobbying" or "consulting," because "influencing" is the critical term for deciding the applicability of the rule.

The reader is reminded that "packaging and processing" only is not covered by section 13. They do not involve direct communication with the Department. For matters subject to the statute, the fundamental question is whether there is an attempt to influence. Although the statute does not provide a definition of "influencing," the rule defines it in § 86.15, as follows:

to affect in any way any aspect, including (but not limited to) the outcome, of the award of any financial assistance or the taking of any management action by the Department.

Because the existence of "influence" and the availability of exceptions to the rule's coverage turns on the facts of each case, the Department cannot provide *a priori* guidance for the examples raised by the commenter.

40. *Comment.* Query: If one contacts a HUD official to request that the Department correct a mistake in its records, is this lobbying? For example, a mortgage insurance certificate issued under section 203(b) that properly should be designated under section 221 drastically changes the "status" of "financial assistance."

(one consulting firm)

Response. As noted earlier, the pivotal question in determining the rule's applicability is whether the communication is intended to "influence" a decision of the Department. In the Department's view, a predicate of "influencing" is the existence of discretion in the action to be taken. If the issue involves the correction of a technical, ministerial mistake, the lack of HUD discretion in correcting it does not involve an "influencing," and, therefore, the communication falls outside the coverage of the rule. The example cited by the commenter appears to involve the kind of ministerial change that is outside the rule's scope.

As with other aspects of the rule, however, the dividing line between the correction of "mistakes" that are subject to the rule, and those that are not, may not always be clear. For example, an assertion that the Department mistakenly applied the law in a given case may well be subject to the rule, if the Department's position involved a legal interpretation.

41. *Comment.* The rule is designed to prevent unfair influence; however, nowhere in the rule does the Department seek to define the concept of "unfairness."

(one law firm)

Response. It is true that section 13's legislative history—such as it is—emphasizes the role of section 13 in combatting "unfair" influence and abuses. The statute, however, is directed at *influence*. There is no distinction made between "fair" and "unfair" influence, and the Department does not have the authority to craft a narrower definition.

42. *Comment.* The following definitions are confusing and too broad:

a. The term, "financial assistance," needs a clear example of what the term does not include.

(one consultant)

Response. The definition of "financial assistance" covers any contract, grant, loan, cooperative agreement, or other form of assistance that is provided under a program administered by the Department. The term includes the insurance or guarantee of a loan, mortgage, or security backed by a pool of mortgages or other instruments by the Department. The term does not include contracts, such as procurement contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR Ch.1). Nor does the term include fees for services rendered

b. The definition of the term, "management action," needs an example of what the term does not include.

(one consultant)

Response. Actions of the Department that do not involve a change in the terms or conditions or status of financial assistance awarded to a person are not management actions. Therefore, amendments, extensions, and renewals are examples of changes to the status of financial assistance that may be subject to influence. However, mere inquiry into the status of a management action, without more, is not covered. The reader is reminded that in general, any action in response to a HUD requirement, as contained in a regulation, cooperative agreement, grant agreement, etc., is not covered. Also, matters such as audits and investigations are not covered, since although they may *lead* to a management action, they do not of themselves *involve* a change in the terms or conditions of the assistance involved.

c. In the definition of "officer or employee," it apparently does not matter whether the HUD employee has the authority to make a decision or not, or even to exercise direct influence on the decision.

(one consultant)

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Response. The commenter is correct. It does not matter whether the HUD employee who is the target of an attempt to influence has the authority to make a decision or exercise direct influence on the decision. The determinant is that the moving party intended to influence a HUD employee.

d. With respect to the phrase, "if the expenditure should reasonably be expected to have the effect of influencing a decision," it apparently does not matter that direct intervention with HUD is not a principal element of the original assignment.

(one consultant)

Response. There is no specific definition for this terminology. However, for clarification, the reader is reminded that the original agreement is limited by its terms, and as such, the client is able to prescribe his or her own responsibilities, as well as those of the consultant he or she has retained. If lobbying is not intended to be a part of the agreement, then it should be so specified. Otherwise, activities vaguely directed by the agreement may reasonably be expected to have the effect of influencing a decision through direct communication with a HUD officer or employee.

With regard to the commenter's specific question, the fact that direct communication with the Department is not a principal element of the agreement is not relevant. An agreement that provides—whether actually or constructively—for a covered activity is subject to the rule.

e. The definition of "agreement" does not normally specify how issues will be resolved. Since the possibility of contact with the intent of influencing HUD is almost always present, the client and the consultant would both be constrained to consider any employment even potentially involving contact with HUD, as a covered agreement for record-keeping purposes.

(one consultant)

Response. As noted above, the rule's applicability is determined by the terms of the agreement. The client can prevent issues arising over the rule's applicability by specifying in the agreement with the consultant that direct contacts with the Department with the intent to influence are not to be made.

43. *Comment.* The broad definitions of "financial assistance" and "management action" capture within their reach virtually all activities that constitute the *bona fide* practice of administrative law. It is essential that HUD narrow the definitions in order to limit the applicability of the rule only to those unfair practices that Congress intended to reach.

(one law firm and one national association)

Response. Activities which constitute the *bona fide* practice of administrative law should be exempt from coverage of this rule under the exception for complying with HUD requirements or the exception for litigation. As discussed earlier, the concept of "fair" versus "unfair" is not within the statutory provisions regarding influence. The statute is directed at *influence*. There is no distinction made between "fair" and "unfair" influence.

44. *Comment.* The commenter requests that the rule expressly exclude the following from the definition of "financial assistance:"

a. Clarifying the meaning of a statute, regulation, rule, handbook, notice, or other departmental issuance, and determining its applicability to a proposed business plan or existing business practice of a party subject to such restrictions, including challenging legal or policy determinations by HUD irrespective of the likelihood of litigation;

Response. Categorical exclusions from the definition of "financial assistance," such as those suggested by the commenter, cannot be made. Each situation must be looked at to determine the intent behind the actions. Whether clarifying meanings, determining applicabilities, and challenging legal or policy determinations are "influencing" activities, and thus are subject to the coverage of this rule, depends on the intent behind those actions.

Purely informational inquiries, or requests to make purely ministerial changes, do not involve "influence," and, thus, are not covered by this rule. Also, contacts made with HUD pursuant to HUD conditions, requirements, or procedures, as discussed earlier, are not covered.

b. Seeking general approval of a person or entity to participate in HUD's mortgage insurance programs, as an approved mortgagee, or in GNMA's mortgage-backed security program, as an issuer, without regard to obtaining insurance or guarantee on a specific loan transaction;

Response. Seeking general approval to be an approved mortgagee in HUD's mortgage insurance programs may be covered by this rule. It is the Department's view that securing HUD approval as a mortgagee is part of the process by which such mortgagees secure financial assistance in the form of insurance. Therefore, communications relating to the mortgagee approval process may involve influencing activities.

The same reasoning applies to receiving approval as an issuer in GNMA's Mortgage-Backed Security Program, which guarantees privately issued securities backed by pools of federally insured and guaranteed mortgages. The guarantee that is afforded the investor enhances the value of the securities, thus, benefits the issuer.

c. Seeking specific approval of a party to transfer its property right in assets regulated by HUD to other eligible persons;

Response. This type of action may very well not be covered by this rule when it is initiated by an application in compliance with HUD requirements, such as those established at 24 CFR part 265, regarding the transfer of physical assets. However, the party seeking to purchase the property (assuming that the property, once transferred, will still be receiving some form of HUD assistance or insurance) may still be subject to the rule, to the extent that the party makes expenditures or enters into agreements for the purpose of influencing the Department's decision on the transfer of physical assets application.

d. Challenging the Department's legal determination that a loan is ineligible for payment, even in cases where an adverse determination is not reasonably anticipated to result in litigation;

Response. As noted earlier, there cannot be a categorical exclusion for this type of action. However, if such challenges are made pursuant to established HUD procedures, then they may be excepted under the exception for compliance with HUD requirements.

e. Commenting on proposed regulations, or promulgated mortgagee letters, handbooks, agency directives, notices, bulletins, and other such issuances.

Response. This type of action is not covered, if comments are submitted in compliance with HUD procedures for submission of comments. HUD's procedures on rulemaking include definite procedures for receiving comments from the public. Among other requirements, commenters are directed to send comments to the Rules Docket Clerk. If the comments are sent to the Secretary or other principal staff or other persons in the Department, then the action of submitting those comments would be covered by the rule, provided the comments relate to a specific award of financial assistance or management action and the person submitting those comments was retained to do so. This would constitute an attempt to influence outside the established channel.

f. Seeking to encourage HUD to establish new (or modify existing) programs, procedures, rules and regulations of general applicability to the industry as a whole, including the undertaking of model programs or research and demonstration studies involving limited participants in order to test the feasibility thereof for general applicability.

Response. This action also is not covered so long as it is not aimed at a specific award or management action. Such actions are specifically provided for in the rule making process through a petition for rule making, and are not covered at all.

(one law firm and one national association)

45. *Comment.* The distinction between an award of financial assistance or taking a management action and an activity not covered by the rule is unclear. By rejecting rather than adopting such objective criteria as an application, a NOFA, or other formal "kick-off" to draw the line between covered and exempt activity, HUD inhibits any contact between itself and others. If HUD issues a notice or rule which changes a term in a contract, is the rule or notice a management action?

(one national organization)

Response. The commenter's approach of establishing an objective "kick-off" point for establishing the rule's coverage is inconsistent with the statute. The statutory "kick-off" is the intent of influence. This can occur at any time, whether or not a NOFA has been published or a management action initiated.

With regard to the commenter's question, a notice or rule may constitute a "management action." The test is whether the matter involves a change in the terms and conditions or status of the financial assistance involved. As noted earlier, rule makings provide an established procedure for accepting "influence" from the public—through the public comment process. Use of this procedure is beyond the reach of the rule. However, attempts to influence such a management action outside the established procedures are subject to the rule's requirements.

46. *Comment.* The definition of "management action" is inadequate and should specify actions that would directly influence assistance already awarded. Specifically,

a. Must the change be a direct (or indirect) result of the action?

Response. Whether the change is a direct or indirect result of the action is irrelevant. What is critical is whether there was an intent to influence the Department through direct communication with a HUD officer or employee. Amendments, extensions, and renewals are changes to the status of financial assistance that may be subject to influence. As noted above, it is not possible to make categorical exclusions, since each activity will turn on the specific facts associated with that activity; specifically, whether there was an attempt to influence a specific award or management action.

b. Must the change occur within a specified time after the action?

Response. No. The intent to influence is the essential ingredient.

c. Must the assistance already be awarded to a person? If assistance is not yet awarded, may a person attempt to influence HUD actions that could affect the assistance once awarded?

(one national organization)

Response. In most cases, in order to constitute a management action, the assistance must already be awarded. Otherwise, the influencing action would most likely be considered an action to affect a decision with respect to the award. However, it is possible that a person may attempt to influence an action to be taken by the Department in anticipation of a future award. Each fact situation would have to be examined to determine the rule's applicability.

47. *Comment.* Query: A law firm representing a client with respect to general matters involving HUD might not provide its clients with details about its dealing with HUD. The client may never know of the specifics of the law firm's activities. Would a law firm employee qualify for the exception for regularly employed personnel with respect to the law firm's requirement to maintain records and report, but not with respect to the client's requirement?

(one consultant)

Response. The responsibility of the client under this rule does not extend beyond that which he or she has at the time of an agreement with the law firm, including any later changes to the agreement. The client cannot be held accountable for undisclosed activities carried out by the law firm that were not a part of the agreement between the client and the law firm.

The exception for regularly employed personnel is afforded only to employees of the person requesting or receiving the assistance—not to the person providing the influence. If the commenter is concerned about having to keep records and make reports on the activities of staff attorneys, this requirement has been relaxed somewhat for entities, including law firms, as discussed earlier in this *Public Comment* section, under the discussion regarding the definition of "person."

48. *Comment.* There is not a clear definition of what constitutes a HUD requirement. What standards are imposed to establish that there was some sort of imposition by an officer or employee of the Department? Where lies the burden of proof?

When a lender responds to a HUD report of a review of its servicing activities, is it attempting to influence a HUD management decision, albeit that it is responding to a HUD report that invites comment complying with conditions, requirements, or procedures?

(one consultant and one law firm)

Response. A condition, requirement, or procedure that is imposed by law, regulation, directive, or other written instruction (such as a Notice of Fund Availability or an application document) constitutes a HUD requirement. A condition, requirement, or procedure imposed by an officer or employee of the Department also constitutes a HUD requirement. The Department specifically asked for comments on this exception. Based on the types of questions raised by this commenter and other commenters, the final rule contains examples regarding the appropriateness of use of this exception.

Procedural questions, such as the burden of proof and the standard of proof, are being handled in a separate rule making that implements not only section 112, but also several other sections of the HUD Reform Act that authorize the Department to impose civil money penalties. At § 86.35(b)(4), the reader is referred to paragraphs (g) and (h) of § 30.710 of the proposed rule published on September 10, 1990, at 55 FR 37290.

A lender's responses to a HUD report of a review of its servicing activities is not covered by this rule, when the HUD report invites comment. This is in compliance with HUD requirements.

49. *Comment.* The word "retained" is not defined in the rule.

(one law firm)

Response. The proposed rule did contain a definition of "retained" in § 86.15. However, that definition has been revised to accommodate the change described above to permit entities that are retained to provide lobbying services to be treated as one "person" for purposes of the rule.

50. *Comment.* The definition of "influence" is very broad. Can this mean

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that if a local official places a telephone call, writes a letter or pays a courtesy visit to a Federal official to seek information about a particular grant, this would automatically trigger coverage?

(one national organization)

Response. Not necessarily. Inquiries seeking information are not covered. However, if the informational inquiry becomes an attempt to influence, then coverage is triggered, unless the official is an excepted official of the State or municipality, as discussed later in this *Public Comment* section.

51. *Comment.* The definition of influence with the word "any" is so broad that virtually every inquiry is suspect, especially when there is no definition of an exempt inquiry. The word "any" should be changed to "a specific" and a specific list of exemptions should be identified along with a definition of inquiry.

(one national organization)

The rule should have narrower definitions of "influence" and "inquiry", with specific exemptions for government officials.

(two State organizations and one national organization)

Response. As discussed earlier in this *Public Comment* section, the definition of "influence" has been revised to cross-reference to the exception for compliance with HUD conditions, requirements, and procedures; litigation; and the activities of certain State and local officials. Also, the definition excludes status and informational inquiries, and requests for purely ministerial changes by the Department.

Use of the term "any" in connection with an award of assistance or a management action is correct in the definition, in that it follows the exact language of the statute.

There is no definition of "inquiry," nor does the Department see the need for one. There can be no general exemption for government officials, because they are "persons" as defined by the statute, and are subject to the requirements of this rule, unless they meet the exception for State and local government officials, as discussed later in this *Public Comment* section.

52. *Comment.* The definition of "reasonable compensation" is meaningless if the employee only performs HUD-related work.

(one law firm)

Response. The commenter's point is well taken. Where an employee only performs HUD-related work, it will be necessary to look at similar duties and responsibilities of others employed in similar circumstances in judging what is reasonable compensation. The definition of "reasonable compensation" at § 86.15 has been changed to add this requirement.

53. *Comment.* A "knowledge" standard should be added to § 86.20(a)(1), relating to general coverage issues.

(one law firm)

Response. The Department does not believe that the Congress intended to use a "knowledge" standard in reference to making an expenditure, or entering into an agreement to make an expenditure, to influence a HUD decision. The standard was placed in the *Penalties* section (section 13(d)(1), where it is critical whether a person knowingly failed to follow the record keeping, registration, and reporting requirements. Congress' failure to apply a "knowledge" standard to the remainder of section 13 signals, in the Department's view, an intent to limit its use to section 13's penalties.

F. Communication

54. *Comment.* Commenters urge that coverage be limited to direct communication with officers or employees having known roles in the decision-making process, or that a list of covered employees" (*e.g.*, Directors of Housing in the Field Offices, and their superiors, but not working staff) be made available. Not every HUD employee should be part of the test as to "contact with decision makers." Secretaries or staff appraisers should not be considered "decision makers." The point would have pertinence only if the communication to the secretary was the only communication with an intent to influence made by the consultant to any officer or employee of the Department. Persons retained to influence know who are persons in the decision-making process and manage to communicate directly with them.

(four law firms)

Commenters recommend that coverage be triggered by direct or indirect communication to any officer or employee of the Department who makes preliminary or final decisions or recommendations with respect to awards of financial assistance or changes in the terms of financial assistance.

Response. The proposed rule contained the following discussion of this issue:

(5) *Covered lobbying.* Section 13(a)(1) of the HUD Act covers expenditures designed to influence —the decision of any officer or employee of the Department, through communication with such officer or employee . . .

This provision could be construed to reach a number of situations, including:

—*The final "decision maker"* (generally an Assistant Secretary) for each award of assistance or management action, with section 13 triggered only when influence is applied through *direct* communication with that person.

—*The final "decision maker,"* with section 13 triggered by communication *directly* with that person, or *indirectly* with that person through other persons inside or outside the Department.

—*Any officer or employee of the Department who makes "decisions" (preliminary decisions, recommendations, etc.) with regard to the assistance or management action, as it moves through the "decision making process,"* with section 13 triggered only when influence is applied through *direct* communication with that person.

—*Any officer or employee of the Department who makes "decisions" (preliminary decisions, recommendations, etc.) with regard to the assistance or management action as it moves through the "decision making process,"* with section 13 triggered by communication *directly* with that person, or *indirectly* with that person through other persons inside or outside the Department.

—*Any officer or employee of the Department, whether or not in "the decision making process,"* with section 13 triggered only when influence is applied through *direct* communication with that person.

The Department believes that the final reading is most appropriate. The Department believes that the first two interpretations are too narrow, and ignore the fact that the decision making process can be a long one, in which a potentially large number of individuals make a host of preliminary decisions that may never reach the review of the ultimate decision maker.

The third and fourth possibilities recognize the dynamic nature of the Department's decision making process. However, they put the public at its peril. The "decision making process" and its participants change with each assistance and management action, and even with given phases of an action. Such ambiguity would put the public in the position of trying at each turn to identify those who may be in the decision making process, with potential civil money penalties awaiting a wrong judgment. This "hide and seek" situation would also prevent full compliance with, and enforcement of, section 13's requirements.

The final approach recognizes *both* the realities of the decision making process *and* provides a relatively "bright line" for both the Department and the public. The "decision" of the employee or officer need not be related to the award of assistance or the management action. It may be a more immediate decision: what is the officer or employee's judgment of the subject of the lobbying—a decision that may be transmitted to others who actually are in the decision making process? Thus, the rule provides that section 13 covers attempts to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action, through direct communication with *any* officer or employee of the Department. (All emphases in original)

* * * * *

The commenters raise options three and four, respectively, that were discussed in the Preamble to the proposed rule. The Department has reviewed this issue in light of the comments, and continues to believe that the approach reflected in the proposed rule is the most appropriate.

In addition, the Department agrees with the commenter that those retained to influence the Department's decision regarding financial assistance or management actions are likely to know the "key players" for the Department. In one sense, this addresses the commenter's concern about the potentially large number of HUD employees who might trigger the rule's requirements: the "other staff" generally will not be targets of influence. On the other hand, the Department believes that these HUD employees may well be in a position to influence a decision, and that attempts to influence a decision through them should also be within the rule's purview.

55. *Comment.* Coverage should be limited to direct communication by and in the name of the individual required to register or to be named in a firm's registration. Sources of influence on Department officers and employees who are unknown even to the officers and employees being influenced would seem to be outside the focus of Congress. This refers to two versions of an example in Appendix A to the proposed rule relating to a narrative transmittal letter for a TPA application prepared and signed by an attorney in the first version but signed by the client in the second version.

The first version of the example states that the transmittal letter does not trigger coverage because its submission is necessary to comply with HUD requirements. The second version of the example, however, states that the lawyer must comply with the rule, even though his name doesn't appear in the submission, because the rule applies to—

any person who attempts to influence the Department's decision making through direct communication with a HUD officer or employee. The inquiry is substantive—who is attempting to exert influence—rather than procedural—who signed the document.

(one law firm and one consultant)

Response. The commenter makes a good point: the rule only reaches those who attempt to influence the Department through direct communication. If the letter in the example is prepared by the lawyer, but returned to the client for the client's signature, and there is no reference made to the lawyer, then the lawyer is not covered. However, if the lawyer's association in the case is directly communicated to the Department, then there is coverage.

In other words, if the lawyer allows his name to be used in the cover letter, then the lawyer, as well as the client, is covered by this rule (provided, of course, the submission is not excepted as a HUD requirement). The examples referred to above have been revised.

56. *Comment.* Query: Why isn't the language "through direct communication with any officer or employee of the Department" contained in § 86.25, as it is in § 86.20?

(one law firm)

Response. Section 86.25 has been revised to add this phrase.

G. $10,000 Threshold

57. *Comment.* The commenter maintains that he is engaged to intercede with HUD officials when there are differences of opinion over interpretations of HUD rules, and that he receives approximately $5,000 a year total for this type of service. (Approximately 100 contacts made each year with approximately 15 minutes for each contact.) He questions the cost-effectiveness of the rule when applied to relatively insignificant matters such as this.

(one consultant)

Response. The statute is very clear on this point. The person retained to influence must register within 14 days of being retained. In the case of this commenter, registration is required for each of the engagements; however, annual reporting is not required, as long as the commenter does not reach the $10,000 threshold.

58. *Comment.* Registration should not be required unless a reasonable threshold for a single action (*e.g.*, $1,000) is paid. The rule might substitute a general registration requirement, under which someone whose fees are typically less than the $1,000 per assignment threshold would register annually with HUD, rather than at the time of each individual agreement, unless that agreement contemplated payment exceeding the $1,000 threshold.

(one consultant)

Response. The statute is also very clear on this point. There is no threshold that must be met in order to require registration. Registration is required within 14 days of being retained, regardless of the amount of the payment or consideration of the agreement.

59. *Comment.* The commenter believes that the $10,000 total per year requirement thwarts clear Congressional intent that only substantial fees (those in excess of $10,000) per issue be reported. Congress created a *de minimis* exception so that large fees would be reported, and, thus, easily identified. Section 86.25(c)(2) is unclear, but the examples in Appendix A support the Department's interpretation. Does the Department want every taxicab, tuna sandwich, and telephone call included?

(three law firms)

The $10,000 minimum exception to reporting requirements for those paid to influence is for attempting to influence *a* decision. This is different from the rule's reporting requirements for those paying to influence a decision, for whom the requirements apply if *total* expenditures are $10,000 or more.

(one national association and one state organization)

Response. Section 13(c)(2) states that the reporting requirements applicable to those receiving payment for lobbying services—

shall not apply with respect to any calendar year to any person whose total compensation for attempting to influence a decision * * * is less than $10,000 in such year.

Viewed alone, this provision could be interpreted as placing a "per case" dollar threshold on registrants. The Department does not believe, however, that the language compels such a result and that the rest of the statute and its intent counsel the opposite conclusion: That the threshold is cumulative of all cases during the reporting year.

Initially, the commenter's position requires that the word "a" in section 13(c)(2) be read to mean "each" or "a specific." The Department believes that this is too hard a reading. "A" can as easily be read in the generic sense, unrelated to specific cases, as in, "How much was received for influencing a decision of the Department during the year?" Thus, "a" can as comfortably be read as meaning "any," as "each."

In addition, section 13(b)(3) states that the reporting requirements applicable to those making *expenditures* "shall not apply to any person whose total expenditures * * * are less than $10,000 in any calendar year." This is clearly a cumulative requirement. As noted earlier, the Department believes that section 13 envisions a "two-party" expenditure/receipt approach, under which the reports of the two parties could be compared and cross-checked.

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The reading offered by the commenter would be inconsistent with this approach.

Further, to permit such a discrepancy would open the door to the kind of manipulation of receipts that would defeat the very purposes of the statute. Conceivably, agreements could be made, under which a *registrant* would receive no more than $9,999 for each agreement, which in fact could be a division of a larger agreement so that multiple agreements (at $9,999 each) would collectively amount to a great deal of money spent on a common effort.

With regard to the commenter's question about what registrants must report, section 13(c)(1) requires each registrant to file—

a detailed report of all money received and expended by the registrant during the preceding year in carrying out the work, including information as to whom money was paid and for what purposes.

The Department believes that the registrant must report on *all amounts received pursuant to the retaining agreement with respect to the lobbying activity*. On the receipt side, the statute reaches "all money received * * * in carrying out the work * * *." In the Department's view, the amounts agreed upon in the agreement define the "work" to be carried out—they are the amounts that comprise the overall lobbying effort. This includes amounts *directly* related to the lobbying activities (such as the preparation of documents), as well as amounts *indirectly* related (such as travel and accommodation expenses). Direct or indirect, the agreed-upon amounts define the lobbying job.

The statute also requires registrants to report on "all money * * * expended * * * in carrying out the work * * *." If the agreement comprises the total "work" involved, the expenditures should have the same coverage: they must cover all amounts expended in pursuit of that "work."

Thus, the Department believes that the registrant must report on all amounts provided in the retaining agreement for the lobbying activities involved. All amounts *received*, and all amounts *expended*, under the agreement during the reporting year must be reported. Each side of the ledger—receiving and expending—should total the same amounts.

The Department believes that this approach is preferable. First, it is clear. If amounts are provided in the agreement, they must be accounted for by the registrant. The other possible approach—making case-by-case decisions on whether individual receipts or expenditures are covered—would involve endless argument about the relation of the amount to the lobbying effort. The resulting confusion would burden both the public and the Department, and would hamper enforcement of the statute.

Second, the approach is consistent with the two-party scenario. The Department will be able in many cases to cross-check receipts and expenditures and will, to that extent, be better empowered to enforce the rule's requirements.

Third, it removes the temptation to put true lobbying costs into categories that would arguably not be part of the covered "work." For example, the parties to the transaction could agree to shift lobbying expenses into a "personal expense account" that would not be reported. This would encourage inappropriate reporting, and frustrate enforcement of the statute.

On a related matter, the Department wishes to clarify one point regarding the rule's reporting requirements. Sections 13(b)(1) (expenditure reporting) and section (c)(1) (registrant reporting) require reports to be filed with respect to activities carried out "during" the reporting year. The Department believes that this language can be best effectuated by treating each year separately for reporting purposes, rather than requiring the submission of updates to a previously filed report to reflect subsequent events. Therefore, the final rule contains the following guidance:

—The entire amount contained in the original agreement must be reported in the year in which the agreement is executed, even if the amounts are not paid at that time or are to be paid after the reporting period.

—Expenditures that are made during the reporting period pursuant to the agreement that are *in excess of* the amount in the agreement must be included for reporting purposes during the reporting period.

—Where amounts are paid after the close of the reporting period, but were not contemplated by the original agreement, they are reportable for the year in which they are incurred.

The Department intends to closely monitor reporting patterns under the rule, to ensure that this separate reporting year approach is not subject to abuse.

60. *Comment.* Some items do not have a value that "can be determined as of the date of expenditure." The final rule should state that items that cannot be valued need simply be listed, with a good faith determination as to whether the reporting organization has climbed over the $10,000 threshold.

(one law firm)

The final rule should allow the valuation to be determined by reference to a range of values where no objective standard is obtainable. It should make clear that, under no circumstances will an appraisal be required in order to establish value in circumstances where expenditures are simply not susceptible to precise valuation as of the date made. For example, payment for services may take the form of an ownership interest in the subject property, and the value of the property may be greatly influenced by whether the requested financial assistance or management action is granted by the Department.

(one national association)

Requiring consultants to value interests negotiated in lieu of cash payments imposes undue hardship on them, and should be done only when the ownership share is directly related solely to the delivery of some number of apartments of Federal subsidy, and in no other case. Ownership interests can seldom be quantified, but are rather thought of as a range of values depending upon the results.

(one consulting firm)

Response. Section 13(a)(2) states that "each person * * * shall keep a *detailed* and *exact* account of *all* such expenditures * * *." Section 13(a)(3) states that "each person making such an expenditure shall obtain *a bill, stating the particulars, for every* such expenditure, and shall retain all records * * * for not less than the 2-year period beginning on the date of the filing of the report required * * * which shall include * * *" *all* such expenditures. Section 13(b)(1) states that "each person making an expenditure * * * shall file * * * a report specifying the *total* expenditures made * * * during the year * * *." Section 13(b)(3) states that the reporting requirements "shall not apply to any person whose *total* expenditures * * * are less than $10,000 in any calendar year." (All above emphases are supplied.)

All of the above statutory provisions indicate that Congress intended that a value certain be placed on each and every expenditure made to influence the decision of the Department. It is clear that listing without valuation, good faith determinations, and using ranges of values will not comply with these provisions. Sections 13 (a)(2) and (a)(3) indicate that valuations should be made at the time the agreement is made. Sections 13 (b)(1) and (b)(3) indicate that a definite value is needed at the time of reporting. Anything less than definite valuations would violate these requirements.

The Department does not believe that many situations will arise in which an appraisal will be required. If, however, there are no other means reasonably designed to produce a fair and accurate valuation, an appraisal will be required.

The Preamble to the proposed rule, as well as the examples in the final rule, contain considerable guidance as to how valuation may be determined when the transaction involved does not involve cash. Generally, the valuation rules accord those involved in lobbying activities considerable freedom in the choice of methods of valuing non-cash monetary expenditures.

"Reasonableness" is the standard, and all valuations are subject to review by the Department.

With regard to the example in which payment for services may take the form of an ownership interest in the property, it is the value of the agreement that must be determined. What is the agreement worth at the time of the agreement? Increases in the valuation of the agreement are subject to reporting in the same reporting year or in a later reporting year, as appropriate.

H. Exception for Litigation and Pre-Litigation Activities

61. *Comment.* To prescribe that only a matter in which an attorney has been engaged is one that "could reasonably be expected to result in litigation" is a self-serving action on the part of the attorneys writing the rule. Many matters involving differences of opinion between HUD staff and program participants are potential subjects of litigation, but the retention of counsel is not always a necessity to resolving those differences. Non-attorneys should be included whenever there is a reasonable prospect that litigation will result. This restriction gives an unfair business advantage to law firms.

(one consultant)

The commenter questions the Department's exclusion from the pre-litigation exception of services performed pursuant to a "general retainer." Is "general retainer" intended to include any ongoing lawyer-client relationship that antedates the issue in question, or does it refer only to arrangements under which a firm is compensated on a periodic basis at a fixed amount without regard to the volume of services performed during the period?

The commenter suggests that "retaining" is equal to "paying for" and that any arrangement with any counsel, whether or not previously retained, under which the client's expense would be increased because of the additional work required for the particular issue should be sufficient to satisfy the Department's concern. The existence of fixed-amount retainers for clients directly interested in particular awards of financial assistance or particular management actions is so limited as to not warrant being the basis of a troublesome exclusion.

(two law firms and one national association)

Neither the rule nor Appendix A gives adequate guidance as to what constitutes pre-litigation matters.

(one law firm)

"Pre-litigation" is not, and cannot be, tightly defined. HUD should give the person making the expenditure the benefit of the doubt in making such a determination.

(one national association)

Response. In the Preamble to the proposed rule, the Department expressed its concern about the possible abuse of an exception for pre-litigation activities, and requested comments on ways to ensure that the pre-litigation exception would be limited to activities in furtherance of genuine issues with real litigation potential. The Preamble indicated that litigation is a virtually omnipresent option—almost every issue that a lawyer handles gives rise to some degree of litigation potential—and expressed concern that, unchecked, the pre-litigation exception could swallow up the rule as it applies to lawyers.

As evidenced by the public comments received, the commenters did not help resolve any of the Department's specific concerns. We have re-examined this issue and concluded that the merits of permitting an exception for pre-litigation activities are outweighed by the possibility of abuse. Therefore, §§ 86.20(e) and 86.25(e) have been revised to remove the proposed exception.[4] The reader is reminded, however, that in many instances, so-called pre-litigation activities may still be excepted from coverage on the basis that they are being carried out in response to HUD requirements.

I. Issues Specific to Mortgage Insurance

62. *Comment.* Specific provisions should be included in the final rule to exempt preparation of the documentation for multifamily loan closings under the mortgage insurance and 202 programs, preparation and the documentation for transfers of physical assets, and review and preparation of plans of action under the Emergency Low Income Housing Preservation Act of 1987. The reporting requirements of the rule would do nothing more than create additional paperwork under these programs.

The rule fails to recognize that the HUD mortgage insurance and direct loan programs were never designed to be self-executing. These programs have always been implemented through the use of private sector professionals, including attorneys, architects, consultants, and mortgage bankers, many of whom were previously employed by the Department at the staff level. These programs cannot continue to function without this type of professional assistance being available, and this type of professional activity should not be construed as lobbying or influencing management actions or the award of financial assistance.

(one law firm)

Any action taken by an attorney engaged to close a project loan or an insured loan commitment should not be covered by the rule, since the professional legal services would be the representation of a client in the initial closing, construction phase, final closing, and in any mortgage increase applications, subsequent TPA application, and workout request. While TPA applications and mortgage increase applications require management action by the Department, the requirements, rules, and procedures are imposed by HUD Handbooks and HUD regulations. Otherwise, because of the ambiguities in the rule, virtually every lawyer engaged in the HUD practice area would be required to register, maintain records, and submit reports to HUD when engaged to represent clients in insured loan closings, TPAs, mortgage increases, and workouts, in order to assure themselves that they are not in violation of the rule despite its contravention of the statute.

The substantial additional time required to satisfy the record keeping and reporting would result in increased fees to clients, increased costs to the project, and would add to the avalanche of paperwork HUD would have to monitor.

(two law firms)

Response. More than likely many of the types of professional assistance described above will not be subject to the rule, since they meet the requirements for the exception for compliance with HUD requirements and

[4] The pre-litigation exception contained in the proposed rule was not derived from the statute. It represented an exercise of agency discretion only. Its deletion in the final rule raises no legal issue.

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may not involve contact with HUD. To the extent the above-described activities do not meet the requirements for the exception, the statute is clear: the persons engaged in those activities will have to comply with the record keeping, registration, and reporting requirements of the rule. As noted earlier, the Department believes that the myriad factual situations in which the examples raised by the commenters can arise argue against *a priori* exclusions of classes or categories of situations from the rule's coverage.

63. *Comment.* The commenter recommends that HUD exempt from both the reporting and registration requirements all negotiations regarding the restructuring or recapitalization of mortgages in default, or reasonably believed to be in danger of default.

(one consulting firm)

FHA fully insured multifamily initial and final endorsements should be excluded from coverage, since both types of transactions involve predominantly the compliance by private parties with applicable HUD requirements.

(one law firm)

Response. It is inadvisable to make categorical exclusions from the reporting and registration requirements, because each action must be looked at individually. If the action is taken in compliance with HUD requirements, then it meets the exception.

64. *Comment.* More examples are needed in Appendix A to illustrate various scenarios involving mortgage insurance cases. More clarity is needed regarding what kinds of activities might be perceived as "management actions" with respect to insuring and servicing insured cases and in claiming related insurance benefits. Is any communication with a HUD official that effectively requests HUD to take a particular action (or non-action) on an individual case sufficient for coverage?

(one consultant firm)

Response. The reader is reminded that the rule covers expenditures and agreements, and communications are important, for purposes of this rule, only if they are made as a result of an expenditure or agreement to influence a departmental decision.

In response to this comment, examples have been added to clarify the kinds of activities that might be considered, with regard to mortgage insurance activities, management actions or activities in compliance with HUD requirements.

Also, "mortgagee letter" has been added to §§ 86.20(d)(2)(i) and 86.25(d)(2)(i) as a type of written instruction that would qualify as a HUD requirement.

J. Issues Specific to State and Local Government Employees

65. *Comment.* Subjecting mayors and other local government officials to the complicated requirements proposed in this rule was certainly not the intent of the HUD Reform Act. Mayors and other State and local officials should be exempt from the registration and the reporting requirements of the proposed rule. The administrative burden of tracking a city's expenditures, by employee, would be reason alone for exempting cities. Also, it would be ridiculous for a mayor to have to make a report every time a commonplace contact is made with HUD.

In addition, in the context of intergovernmental relations, the rule is an onerous impediment to the legitimate functions of local government, which include unfettered contact with Federal departments and agencies.

Associations should be exempt also. Rarely does an association involve itself in such sustained contact with HUD officials or employees to influence decisions on behalf of individual members on particular projects.

(six national associations, two municipal organizations, and one State organization)

Local agencies should be considered in the same category as regularly employed personnel.

(one national association)

Response. The Department recognizes the burdens associated with subjecting mayors and other State and local government officials to the requirements of the rule. Therefore, in response to the comments received on this issue, the final rule contains an exception from all Part 86' requirements for the following categories of State and local government officials:

—All elected officials of State and local government.
—The political appointees who serve on the personal staffs of State and local elected officials, such as Executive Assistants and Special Assistants.
—All full-time, appointed officials—political appointees or otherwise—of State and local government who serve in policy-level positions. These individuals include State and local cabinet officials, Community Development and Housing Directors, and Public Housing Authority Directors. To qualify for the exception, the individual must occupy a position that is responsible for setting policy for the organization, or for participating in the development of that policy with the organization head. The exception does not include positions in which the incumbents execute policy set by others. The Department expects that the number of individuals who qualify for this exception will be relatively small.

Because elected officials are elected to their positions, it is reasonable to view them as the representatives of the State or local government. They stand in the shoes of the people of the State (or local government), when they carry out their duties and functions, and in that sense, are indistinguishable from the State or local government. Their relationship with the State or local government is the physical representation of the will of the people, and their activities, as would be covered by this rule, are tantamount to "solo" lobbying. As such, actions taken by these officials *on behalf of the State or local government* will not be subject to the requirements of the rule.

The exceptions for the personal staffs of elected State and local officials, as well as for the full-time, appointed officials who serve at a policy level in State or local government are based on a similar rationale. These appointees, in their official capacities, act solely on behalf of their superiors in the public interest, and should be treated in the same fashion as the elected officials.

A new paragraph (f) has been added to § 86.20, as well as to § 86.25, to set out this exception.

This exception does not extend to other State and local officers or employees. These individuals are officers and employees of the jurisdiction, and like their private sector counterparts, are distinguishable from the entity they serve.

The commenter asserts that rarely does an association involve itself in sustained contact with HUD. The commenter is reminded that the rule applies to all efforts to influence the decision of the Department in the award of financial assistance and the taking of a management action. If a contact meets the prerequisites for coverage, it is irrelevant whether the contact is sustained.

Associations may, however, come within the rule's requirements less often than other individuals and entities doing business with the Department. As discussed earlier, the rule only applies in the case of a *specific* award of assistance or management action. This means that general membership dues and other general contributions to the association are not considered "expenditures" for purposes of the rule:

they are not provided in connection with a specific award of assistance.[5] Representation with respect to general issues—such as general funding levels for HUD programs and matters of general tax policy—would not come within part 86.

Finally, State and local agencies can qualify for the regularly employed personnel exception, if their employees meet the definition of "regularly employed," as stated in § 86.15.

66. *Comment.* Queries regarding registration requirements and city officials and employees:

—Must the registration be done annually?
—Within 14 days of each contact with HUD?
—Within 14 days of each and every contact with HUD that could be interpreted as "influencing"?

Annual registration by regular state and local employees is sufficient.

(one national association)

Response. The statute is very clear on this point. Registration is required within 14 days of being retained. Those State and local government employees who do not come within the special interpretation being provided to officials will be required to register within 14 days of their retention for influencing purposes (or within 14 days of when they are assigned the duties that entail communication with HUD officers or employees for the purpose of influencing a HUD decision).

67. *Comment.* The rule would penalize city and State governmental *representatives who wish* to support the applications of nonprofits in their communities, or conversely, nonprofits that support public agency applications. There seems to be no logical justification for differential treatment of those who lobby on behalf of others. Full-time salaried staff of public and private nonprofits should be exempted from registration and disclosure requirements if they lobby on behalf of other nonprofits, or State or local governments, so long as there is no fee-for-service or consultant fee paid by the applicant nonprofit or government.

(one national association)

Response. The rule extends coverage only where there is an expenditure or agreement made. It is probable that the situation described above would not be covered on the basis that no expenditure was made. It should be noted, however, that receipt of a fee is not a prerequisite to coverage by the rule. The receipt of anything of value—monetary or non-monetary—is adequate to trigger the rule's requirements.

K. Paperwork Burden

68. *Comment.* The information collection estimates in the Preamble appear to be substantially understated. It would seem that the quantity of applications for such programs as 202 Elderly Housing, HUD/FHA multifamily mortgage insurance, single family PUDs, Section 8 assistance, and other programs in the "award" status, not to mention subsequent management decisions, must be two or three times the estimate.

(two law firms)

Response. In light of the many comments received stressing that lobbying is not a frequent activity, the Department believes that its estimates may be very close to reality. In any case, the changes made to the rule because of the comments submitted reduce even more the burden hours associated with the record keeping, registration, and reporting requirements of this rule.

69. *Comment.* The paperwork burden will be substantial and hardly consistent with the general mandate of the Paperwork Reduction Act. The person making an expenditure on any particular award will have to determine (continually during the course of the year) how many different recipients (lawyers, consultants, mortgage lenders, architects, managing agents, or other persons) are covered or appear to be covered by the rule. This will surely be in excess of one hour. The forms will need to be prepared with a great deal of attention to accuracy, given the penalties for failure to properly file the appropriate forms.

Also, the one-hour estimate for the person being retained is unrealistic. There may be multiple "retainers" with the same people during the course of the year, necessitating the filing of a new or updated registration form in connection with each lobbying effort, albeit on the same case but with different HUD staff or on different issues. To the extent that the recipient of the expenditure, or an employee, needs to keep more extensive records than would otherwise be the case, the reporting burden is substantial. For example, it will be very time consuming and very difficult for a lawyer to allocate the service time between what are normal legal services as opposed to what HUD might determine to be lobbying activities.

(two law firms)

Response. The persons making the expenditure are only responsible for keeping records on the persons that they retain. They are not responsible for subsequent consultants retained. In addition, they need only report on the transaction that they initiated. In the case of registrants, they may have multiple retainers to report.[6] In light of the specific information required, it would be expedient (though not required) to keep up-to-date records as the year proceeds.

In keeping with the government-wide desire to contain paperwork, the forms needed to comply with this rule require only the information required to carry out the intent of the statute. Every attempt has been made to make these forms simple and relatively easy to complete. Someone having to do multiple forms should have no problems, if his or her record keeping has been kept up-to-date during the year.

70. *Comment.* The commenter estimates that he will be required to register about 100 times a year. Does the Department really want this kind of paperwork burden? Was the Office of Management and Budget informed of it under the Paperwork Reduction Act?

(one consultant)

Response. The Office of Management and Budget (OMB) is fully aware of the forms and paperwork burdens associated with this rule. In fact, the Department would not be able to issue these forms if they had not received the appropriate OMB approval. The Department is prepared to handle all of the paperwork called for by this rule.

L. Regulatory Flexibility Impact

A Final Regulatory Flexibility Analysis appears later in this Preamble. Comments 71 through 75, and their responses, are incorporated into the Analysis.

M. Federalism Impact

76. *Comment.* To say that this rule does not have federal implications under Executive Order 12612 is erroneous. The effect on State and local

[5] Of course, if the association uses general membership dues to make a covered expenditure, the record keeping, reporting, and registration requirements apply. In addition, if the payment to the association is for the purpose of obtaining lobbying services for a specific award or management action, the rule applies.

[6] The commenter's point appears premised in part on the belief that the rule's registration requirements are triggered by each contact with the Department and each issue discussed, albeit "on the same case." As noted earlier, the determinative issue with regard to registration is the scope of the agreement retaining the person. The parties to the transaction can directly affect their administrative burdens in a case by the relative narrowness or breadth of the agreement.

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governments and their employees would be substantial and direct. They can be expected to lobby strenuously to convince HUD that their positions are sound.

(one consultant)

Response. The Department agrees that the effects of the rule are *direct*: State and local governments will have additional reporting and record keeping responsibilities as a direct result of the rule's requirements. The Department continues to believe, however, that the rule will not have a *substantial* effect on State and local governments.

The rule does not intrude upon the sovereignty of State or local governments. It does not affect the *substantive* communications of State and local governments with the Department: It only provides *procedures* for handling covered communications. As noted above, the Department does not believe that the administrative—record keeping, reporting, and registration—burdens imposed by the rule are significant. This is particularly so in light of the changes made in the final rule to lessen the administrative burden of those subject to the rule's requirements. As discussed earlier, several of these changes specifically relieved burdens on State and local governments contained in the proposed rule; and one specifically excluded certain State and local government officials from the rule's coverage.

Finally, the rule involves the exercise of little discretion on the Department's part: It imposes the minimum burdens necessary to carry out the statutory mandate. Accordingly, further review under the Executive Order would not be appropriate, even if the effects on State and local governments were substantial.

N. Limitations on Fees to Consultants

77. *Comment.* The rule does not address current patterns of compensation. It ignores the simple fact that some organizations cannot afford to pay substantial fees, except on a contingent basis. It ignores certain necessary informal arrangements (*e.g.*, deferring payment until the next deal) that have nothing to do with attempting to influence HUD.

(one law firm)

Response. Section 13(a)(4) contains the statutory language on limitation of fees to consultants. The proposed rule generally followed the statutory language, with little elaboration. Several commenters have asked for guidance on the scope and meaning of the provision.

—*Relationships covered.* Section 13(a)(4) clearly covers situations in which one person hires an outside party to perform lobbying activities. The Department believes that it also reaches situations in which an entity pays a partner, associate, or other officer or employee of the entity to influence the award of HUD assistance. This could occur in two circumstances: First, where the entity wants to lobby HUD, and calls upon its people to do the work; and second, where an entity is retained to provide the services, and uses its people to carry out the activities. In either of these circumstances, section 13(a)(4)'s prohibitions on percentage and contingency arrangements apply to the consideration passing between the entity and its officers and employees.

This interpretation is not inconsistent with the special treatment (discussed earlier) for entities that are retained to provide lobbying services under section 13(c). Under this approach (as discussed earlier), the entity's people need not register and report separate and apart from the entity. They are treated as one "person" for purposes of section 13(c). As discussed earlier, this interpretation is a permissible—although not a required—reading of the statute, that was adopted specifically because it allowed the Department to obtain all the information it needs, without unduly burdening lobbying entities.

The Department does not believe that this approach is appropriate in the context of section 13(a)(4). Indeed, it would give a "green light" to the very practices—percentage and contingency arrangements—that section 13(a)(4) is designed to prevent. Given this deleterious effect, the Department will not extend the "one person" interpretation to section 13(a)(4).

It should be noted that section 13(a)(4)'s prohibition only covers situations in which the contingency or other arrangement is tied to a specific award of assistance. Partner shares and bonuses that are calculated on a general basis, not tied to a specific assistance award, do not violate section 13(a)(4).

—*Direct or indirect influence.* The other provisions of Part 86 require *direct* communication with the Department as a condition of applicability. Thus, § 86.20 (requirements of persons making expenditures) applies to expenditures to influence the decision of any HUD officer or employee, through direct communication with the officer or employee. Section 86.25 (requirements of persons receiving payment) contains the same coverage for the lobbyist retained to exert the influence. Section 13(a)(4), however, is silent on whether the communication with a HUD employee must be direct.

The Department believes justified in adopting a narrow approach, along the lines of that used in §§ 86.20 and 86.25. Accordingly, the final rule *extends coverage only to direct communication* with HUD employees or officials. Percentage and contingency arrangements for activities that do not involve direct communication with HUD—such as the preparation of documents, and technical advice and assistance—would not be subject to section 13(a)(4)'s prohibitions.

The remainder of the statute makes clear that only *direct* communication is to be regulated. The Department sees no problem of extending the same coverage here. In doing so, the Department is not unmindful (as the commenters suggested) that procuring technical advice and assistance (*indirect* communication) is an accepted, and sometimes necessary, way of participating in the Department's programs.

—*Exception.* Section 13(a)(1) contains an exception for compliance with HUD requirements and procedures. Because the Department recognizes that some organizations cannot afford to pay substantial fees except on a contingency basis and, therefore, does not wish to unduly disrupt current patterns of compensation, the final rule extends the exception to consultants under section 13(a)(4), and permits their fees to be contingent when they are incurred for activities in compliance with HUD requirements. (See § 86.50(b).)

This approach is consistent with other provisions of the rule where the exception for compliance with HUD requirements is afforded to persons making expenditures to obtain lobbying services, as well as to persons engaged to provide lobbying services (i.e., §§ 86.20 and 86.25, respectively). Because actions taken in compliance with HUD requirements are taken through prescribed channels, the Department believes that the likelihood of abuse is slim. Accordingly, the term "influence," as defined in § 86.15, does not include actions taken in compliance with HUD requirements, as stated in §§ 86.20(d), 86.25(d), and 86.50(b). Fees—whether contingent or not—received for actions taken in compliance with HUD requirements are not prohibited.

The exception for litigation activities is not applied here, since it is unlikely that efforts to influence the award or allocation of assistance will involve litigation activities.

—*Management actions not covered.* Section 13(a)(4) only applies to the award or allocation of assistance, not to management actions. Section 86.50 has been revised to reflect this clarification, and appropriate examples have been added to the Appendix A.

One additional point should be noted. For the rest of section 13, the demarcation point between an award of financial assistance and a management action was unimportant—the rest of section 13 covered each. The absence of management actions from coverage under § 86.50, however, requires that the scope of an assistance "award or allocation" be set out for purposes of that section.

The Department believes that the term, "award or allocation of financial assistance," should be given the broadest possible interpretation. This approach best effectuates the congressional concern that the fee and other arrangements involved in influencing the provision of assistance not be based on a percentage or contingent basis.

The test will be whether an award or allocation of assistance is involved. For purposes of § 86.50, an item that constitutes an award or allocation of assistance will be so counted, even if the assistance may be classified as a management action under the rest of Part 86. Accordingly, the rule provides that section 13(a)(4) reaches the provision of any financial assistance, as defined in § 86.15. This includes assisted housing contract amendments, extensions, and renewals.

Section 86.50(a) contains an exception from the general rule against contingency fees where all or part of the professional services related to a project are donated to the nonprofit entity in the event assistance for the project is not awarded. "Professional services" is defined in § 86.50(c). However, this term is not synonymous with "professional and technical services," as that term is used in Part 87, which implements the Byrd Amendment. The exception for professional services in Part 86 is much narrower than the exception for professional and technical services in Part 87.

78. *Comment.* The commenter is paid through agreements that describe the services to be provided in great detail and that require the payment of a small retainer, progress payments for the completion of preliminary tasks associated with preparation of documents, and large back-end payments conditioned upon loan closings. Fees may be a percentage of a loan or grant. For nonprofit and for-profit clients alike the work is done conditionally, forfeiting the majority of the fee should the project not be approved or go to loan closing. Does the rule require the commenter in the future to charge for-profit clients a flat lump sum fee, payable, win, lose, or draw?

(one consulting firm)

Response. The rule does not require the commenter to charge for-profit clients a flat lump-sum fee, provided that the activities described above meet the exception for compliance with HUD requirements or procedures, or that there is no direct communication by the consultant with officers or employees of the Department. In all other cases, the fees would be subject to the rule's prohibition.

79. *Comment.* In representing owners filing Plans of Action for incentives under title II of the Housing and Community Development Act of 1987 or title VI of the National Affordable Housing Act, the commenter negotiates compensation equal to a fixed fee plus a percentage of the excess of the "recapitalized value" of the project resulting from the incentives over the existing HUD mortgage debt. The commenter requests specific clarification that such arrangements are permissible.

(one consulting firm)

Response. The commenter's activities on behalf of the project owner include conducting a financial analysis of the project, drafting the plan of action and submitting it to HUD, negotiating the details of the plan of action (including the amount of subsidies and other assistance) with HUD staff, analyzing the impact of the plan of action, and informing tenants of the plan of action and its impact. Section 86.50 is applicable only to those activities that involve direct communication with HUD officials or employees. With respect to such communication, such as negotiating the details of the plan of action, HUD would regard such activities as being undertaken to comply with "conditions, requirements or procedures of the Department," if the communication by the consultant is made for the purpose of demonstrating that the proposed terms of the plan of action comply with HUD's requirements for a plan of action. If the consultant's work can be so characterized, then the consultant's fee arrangement would be exempt from the prohibitions in § 86.50(a).

80. *Comment.* The rule merely repeats the statutory language with respect to the limitations on fees to consultants. Queries:

a. Fees paid to FHA mortgagees (who may attempt to influence the Department to endorse mortgages for insurance) are by regulation (24 CFR 207.2) tied to the mortgage amount. Is HUD forcing a violation?

Response. HUD regulations do tie certain mortgagee fees—e.g., initial service charge—to the mortgage amount. (See for example, 24 CFR 207.2, 221.508, and 232.15.) Also, there are administrative handbook procedures regarding the permanent financing fee and the total of such fee and the initial service charge which may be included in the loan. Therefore, to the extent that lobbying-type fees paid to mortgagees (which must be shown in paragraph 18 of the form Mortgagee Certificate, HUD-92434) are necessary to comply with conditions, requirements, or procedures of HUD, the fees would be within the exemption for compliance with HUD conditions, requirements, or procedures, and the Department does not believe that it is forcing a violation of the rule's limitations on fees provisions contained in § 86.50. However, to the extent such lobbying-type fees are outside the exemption, they would be subject to the limitations on fees to consultants.

b. Other professionals involved in FHA matters (*e.g.*, attorneys, accountants, and architects) traditionally charge flat fees that are based, at least in part, on the amount of the mortgage and that are not collected in the event the transaction does not close. Such professionals may attempt to influence HUD. Are such arrangements now illegal? Do such professionals have to sue to recover fees when deals do not go forward to avoid the contingent fee prohibition?

Response. If the actions taken by the professionals are in compliance with HUD requirements or procedures or do not involve direct communication with the Department, they are permitted. Otherwise, such actions would be prohibited from payment under a contingency arrangement.

c. Management agents (who are often in the position of advocating on the owner's behalf with HUD on a variety of issues) are by Handbook and custom compensated by reference to the income generated by the project in question. Since the income of a project receiving HUD assistance will be partially or fully funded with HUD assistance, arguably, management agents' fees could be said to violate the statute, particularly where a management agent's responsibilities

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include attempting to convince HUD to increase Section 8 payments (*i.e.*, if the Section 8 increase, the management fee increases).

Response. If the actions taken by the management agents are in compliance with HUD conditions, requirements, or procedures, that are imposed by law, regulation, directive, or other written instruction (including a "handbook," as stated by the commenter), then those actions are permitted. Otherwise, such actions would be prohibited from payment under a contingency arrangement.

(one national organization)

81. *Comment.* Two commenters assert that the rule goes well beyond the statute in prohibiting "*any* fee or remuneration of *any* kind that * * * is contingent in *any* way on an award of assistance by the Department * * *."

It certainly was not the purpose or intent of the legislation to change completely the perfectly legitimate way in which business has been conducted for the decades many of the HUD programs have been in effect. It is customary that if an attorney or consultant has assisted an applicant with an application that is not approved, there is an understanding for payment to be made up in whole or in part from subsequent applications that may be filed and that do receive approval.

This is a traditional industry practice that inures to the benefit of HUD as well as the program participants. Also, the commenters urge that the rule set out examples of arrangements acceptable to the Department.

(one law firm and one national association)

Response. The final rule clarifies that there are parameters within which section 13(a)(4) applies. The requirement that communications intended to influence departmental decisions must physically be made to an officer or employee of the Department provides considerable leeway for standard practices to continue. Attorneys and consultants may still assist their clients, so long as they do not directly approach the Department in giving the assistance to their clients.

Of course, if the assistance is in response to HUD requirements or procedures, and the procedures permit direct contact by the attorney or consultant, their fees may be contingent upon the award of the financial assistance by the Department to their client. Examples of acceptable arrangements have been added.

O. Appendix A

82. *Comment.* The examples in Appendix A are confusing. For instance, the examples of what constitutes a communication in response to a HUD requirement are unclear.

(one consultant and one law firm)

Appendix A does not contain specific examples of the kind of activities under § 86.25(a).

(one consultant)

Response. As a result of the public comments received, the examples have been reviewed and clarified to be representative of the policy this rule promotes. The reader is reminded that the Department cannot anticipate every scenario that would be encountered and that the examples given are representative of the policy intended. Examples regarding § 86.25(a) have been more clearly set forth.

83. *Comment.* The lengthy Preamble and numerous examples in Appendix A obfuscate rather than clarify the rule. Is Appendix A meant to determine the standards? If so, it is not clear. Are they mandatory or meant to be just "guidance"?

(one national association)

Appendix A has no regulatory effect. As time goes on, the examples will become more and more irrelevant. **Federal Register** publication of material like this will create tremendous difficulties for the administration of the rule. To publish such an Appendix with the final rule would be a serious mistake, because new examples will have to wait too long to be disseminated. Instead, a paragraph should be added to the Preamble stating that from time to time HUD will make available examples to help the public interpret the rule, and giving an address for procurement for the latest such compilation.

(one law firm)

Response. Section 13(h) states—

> The regulations [to implement section 13] shall establish standards that include determinations of what types of activities constitute influence with respect to the decisions of the Department.

The Department believes that this language requires that the examples be codified. As standards, the examples constitute not just guidance, but binding, regulatory determinants.

The examples that were in the proposed rule have been reviewed in light of the public comments received, and the examples essential to establishing the standards have been clearly set forth in Appendix A. In addition, both the rule and Appendix A contain cross-references that should help the reader better navigate around the rule making.

The Department may issue Policy Statements and Interpretative Rules to add to the rule additional examples as needed to *refine* programmatic issues in furtherance of the established policy. However, changes to the examples which establish *new or different* policy will be made only through notice and comment rule making.

P. Rule Making Issues

84. *Comment.* The comment period should be extended to allow for further analysis of the issues. After consideration of the comments, a new proposed rule should be published for comment.

(five law firms)

Response. Section 13(h) requires the Secretary to issue implementing regulations after notice and public comment. Therefore, the Department published a proposed rule on June 1, 1990, and the public was allowed a 60-day comment period. As a result of this comment period, the Department received comments from 39 commenters, whose comments touch virtually every aspect of the rule. The substantive changes that have been made in this final rule came in response to the concerns raised by the commenters, and the Department does not see the necessity or desirability for soliciting additional comments.

85. *Comment.* Many substantive points are contained in the Preamble. To the extent that the words of the Preamble are meant to expand upon the words of the regulations, the Preamble is being misused, and appropriate rule making is not being employed. Any matters of substance should become part of the rule since only the rule will be codified.

(one law firm and one association)

Response. The Preamble is designed only to explain in narrative form the substance contained within the regulatory text: It is not meant to have any substantive effect. All matters of substance are contained within the regulatory text of the final rule and the material provided in Appendix A.

Q. Miscellaneous Technical Issues

86. *Comment.* Query: On some occasions, contact will be made with HUD officials because an issue arises on a specific case that has general applicability. For example, HUD establishes an unpublished schedule for reimbursement of lender attorney fees on foreclosures of single family mortgages. It is not clear whose interest is represented if an associate of a law firm engaged in foreclosure work contacts HUD to encourage an increase to the fee schedule that benefits the client on a particular case, but which potentially also benefits the law firm. It is unclear whether or not a "salaried employee" exemption applies if the interests of both the law firm and the client are involved.

(one consulting firm)

Response. As a practical matter, "fees" are generally not awards of "financial assistance" within the meaning of the rule, since they represent compensation for services rendered, not assistance. As such, they are not covered by the rule.

If, however, the client and the law firm are *each* seeking some form of covered assistance in the same transaction, *each* would meet the rule's threshold of applicability. *Each* would be subject to the rule's record keeping, reporting, and registration requirements, as appropriate.

87. *Comment.* The rule provides exceptions to the registration and reporting requirements (but not the record-keeping requirements) where the consultant's actions are in compliance with requirements imposed by HUD. However, the choice of examples of kinds of directives ("* * * other written instruction such as a Notice of Fund Availability or application document * * *") is confusing.

The rule should either make it clear that these requirements do not apply, in general, to actions not related to the insurance of mortgages (such as the payment of claims, for example), or it should clearly include such actions by using them as examples.

(one consultant and one law firm)

Response. Additional examples regarding mortgage insurance arrangements have been added to the rule. Also, "mortgagee letters" has been added to §§ 86.20(d)(2)(i) and 86.25(d)(2)(i) as a type of written instruction that may be followed in compliance with a HUD requirement. It should be noted that the compliance exception covers *all* the rule's requirements—record keeping, reporting, and registration.

88. *Comment.* The rule creates too many ambiguities about reporting. For example, how is it determined when to report for existing property? Are continuous dialogues required to be reported? Query: An owner of a HUD-assisted property has continuous contact with the Department, during which the owner is perpetually trying to influence the Department legitimately on such matters as rent increases, management performance reviews, replacement reserve withdrawal requests, insurance claims and reimbursement, and HUD reporting and compliance requirements.

This continuity of contact makes deciding when to report very difficult. Do all the above listed dialogues trigger the reporting requirement?

(one consulting firm)

Response. Dialogues are not important to determining coverage of the rule. Agreements and expenditures are the critical determinants. Section 86.20(c) requires an annual report to be filed with the Department between the first and 10th day of January of each year by the person making expenditures to obtain lobbying services, if the total amount of those expenditures is $10,000 or more. The report must contain, among other things, a detailed and exact account of all agreements and all expenditures intended to influence an award or management action.

Section 86.25(c) requires a detailed report to be filed with the Department between the first and 10th day of January of each year by each registrant (person engaged to provide lobbying services), if the sum of all the money or other things of value received is $10,000 or more. The report must contain all money or other thing of value received, and all money or other thing of value expended in carrying out activities intended to influence a decision of the Department.

Each dialogue in a series of dialogues does not give rise to a new reporting requirement.[7] Only those communications that change the terms of the original agreement need be reported, and then only if they increase the amount of the expenditure or payment or thing of value to be received.

An owner who has continuous contact with the Department does not come within the coverage of this rule, so long as he or she makes the contact, and does not make an expenditure to someone else to make the contact with the intent of influencing a HUD decision. The owner may use an employee to make the contact and may be excepted from the reporting requirements, if the employee meets the definition of "regularly employed" as set forth in § 86.15. Finally, it should be noted that any communications that are made in compliance with HUD requirements or procedures are not covered.

89. *Comment.* If the owner sends in information in anticipation of a HUD request, must that be reported, whereas waiting would not? (The commenter recommends that HUD exempt from reporting all communications which surround periodic submissions that both HUD and the owner know are required on a regular timetable.)

(one consulting firm)

Response. A categorical exception cannot be made based on this scenario, because each situation must be looked at individually to determine whether an exception exists.

It is unclear whether the "information" referred to in the comment would come within the rule's purview. Submission of information that is not intended to influence the Department is not covered by the rule. Assuming the information is covered, the question is whether it is submitted in compliance with HUD requirements and procedures. If so, submission of the information would not be subject to part 86.

If the commenter's submission "in anticipation" of a HUD request means that HUD procedures establish a time for the submission of the information, but the submission is made *in advance of* that date, the submission would be subject to the rule. To qualify for the HUD-requirements exception, the submission must stay within the parameters of the HUD requirements.

90. *Comment.* The rule requires the registrant's report to include the name and address of any person for whom the registrant appears or works. It also requires that person to keep records and, if the thresholds are crossed, to report. There is no requirement, however, that the person for whom the registrant appears to be advised of the appearance or of the cost of it.

(one consultant)

What obligations, if any, does the hirer have to make sure the lobbyist complies with the reporting and registration requirements?

(one national association)

Response. The statute requires the client to be responsible for reporting its own expenditures. It would be an excessive burden, and beyond the statutory requirements, to require the client to keep track of subsequent expenditures made by the person it retained.

There is no requirement that the person for whom the registrant appears

[7] It should be noted, however, that information on each dialogue may have to be reported under the requirement that registrants report on "all money * * * expended * * * in carrying out the work * * *."

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be advised of the subsequent retainers made by the registrant, or the details associated with them.[9] If the lobbyist goes beyond the terms of the agreement, then the client may raise that fact as a defense. The likelihood of such a defense succeeding, however, would depend on the extent to which the agreement limited covered activities to those not subject to the rule.

91. *Comment.* In many situations, the engagement to approach HUD concerning a management decision is coincidental with other activities, and total compensation would include reimbursement for transportation and subsistence expenses.

The rule should be revised to exclude direct reimbursement of personal expenses from the record-keeping or reporting requirements of either party.

(one consultant and one law firm)

Response. To allow an exclusion for the reimbursement of personal expenses would be contrary to the clear statutory requirements.

—Section 13(a)(2) states that, with regard to expenditures made to influence decisions of the Department, "each person * * * shall keep a *detailed* and *exact* account of *all* such expenditures * * *."

—Section 13(a)(3) states that "each person making such an expenditure shall obtain *a bill, stating the particulars, for every* such expenditure, and shall retain all records * * * for not less than the 2-year period beginning on the date of the filing of the report required * * * which shall include * * *" *all* such expenditures.

—section 13(b)(1) states that "each person making an expenditure * * * shall file * * * a report specifying the *total* expenditures made * * * during the year * * *"

—section 13(c)(1) of the statute requires each registrant to file "a detailed report of *all* money received and expended by the registrant during the preceding year in carrying out the work * * *"

It is clear that if the agreement entered into between the client and the lobbyist provides money to reimburse personal expenditures, the full amount of the money must be taken into account under all the statutory provisions quoted above.

In those situations where the lobbyist's activities are split between those that are covered by the rule and those that are not, the lobbyist is charged with keeping a separate itemization of the covered activities.

92. *Comment.* Legal services in connection with Office of Inspector General Program Audits and Investigations should be exempt.

While clearly these legal services by counsel are performed in order to seek to influence a decision of HUD officials, they are (a) services which are paid for by the clients "in complying with conditions, requirements or procedures imposed by the Department," (b) most often involve "the negotiation, compromise or other resolution of an issue that, without such resolution, could reasonably be expected to result in litigation," and (c) are essentially "an administrative proceeding conducted by the Department Pursuant to statute or regulation that provides for the resolution of issues of fact or law (or both), or the imposition of a sanction or penalty, by a hearing officer or by an officer or employee of the Department."

(one law firm)

Response. As stated above, there cannot be any categorical exceptions. The types of legal services described above may or may not be exempt from coverage, depending on whether or not they meet the requirements for the exception for complying with HUD requirements or the exception for litigation. Once again, the individual situation must be looked at to determine whether there was an intent to influence.

93. *Comment.* The legislation is not intended to cover legitimate legal representation. Therefore, implementation of the rule should be prospective, and not retroactive, as to projects or awards already underway or made. The registration and reporting requirements should apply only to NOFAs, or other funding notices, or to applications for loans, grants or other forms of financial assistance that commence after the effective date of the rule.

Future management actions on existing cases or projects should not be subject to this rule either. For example, the advocacy for mortgage increases on multifamily projects should not now become a matter of "lobbying" and be construed as a covered matter.

(one law firm)

Response. The Department agrees with the commenter that a "grandfather" provision is required with respect to that part of the rule dealing with the *award of financial assistance.* Section 13(h) specifies that section 13 takes effect when this final rule does. Since section 13 defines its coverage—both for those making expenditures and for registrants—in terms of agreements, the Department believes that special effective date provisions are required both for agreements to make expenditures and for expenditures made pursuant to these agreements.

The Department does not, however, share the commenter's belief that management actions involving "grandfathered" transactions are designed to prevent the imposition of new requirements on those who have made commitments at critical points before the requirements take effect.

In the case raised by the commenter, the award of financial assistance is a matter entirely different from a future management action involving the assistance. The award deals with obtaining the assistance, the management action with keeping it under the same terms and conditions as it was granted. Thus, an agreement to make expenditures involving a management action that is executed on or after the effective date of the rule is fully subject to the rule's requirements, irrespective of when the underlying assistance was originally awarded.

Consistent with this reasoning, the EFFECTIVE DATE section at the beginning of this Preamble states the rule's effectiveness as follows:

—All *agreements to make an expenditure* that are entered into on or after the effective date of this rule;

—All *expenditures made pursuant to an agreement to make an expenditure* that is entered into on or after the effective date of this rule; and

—All *expenditures* made on or after the effective date of this rule, *where the expenditure is not made pursuant an agreement.*

94. *Comment.* The rule is unclear as to the obligations of all parties when a firm represents a client "gratis." Is the exchange of services for "goodwill" or organizational "credibility" a thing of value triggering reporting or registration requirements?

(one consultant group)

Response. Truly "gratis" representation is not covered, because there is no expenditure. However, "credibility" and "goodwill" have some value and, as such, are covered, and have to be assigned a value by the reporting individual.

95. *Comment.* The commenter is concerned about the degree to which the rule will affect the use of associations to lobby HUD on issues which affect the use of CDBG funds received by the state. According to the examples in Appendix A, association activities paid for with general membership dues and other general contributions are not covered by the rule, but additional payments made to such associations to defray expenditures for influencing HUD with respect to specific awards of financial assistance or management actions are covered. This should be clearly stated in the rule itself—not buried in Appendix A.

(one State organization)

Response. As noted above, Appendix A has been reworked, and cross-references to the relevant Appendix provisions inserted into the rule text. The Department believes that these steps should make the rule more useful to the public.

96. *Comment.* The rule should make clear that both the client making the expenditure and the consultant receiving it may rely upon the good-faith allocation made by the consultant between payments received for exempted activities and payments received for related but non-exempted activities. The commenter believes that it will be unrealistic and unworkable to require that the client enter into separate agreements regarding the two kinds of activities where both may be involved.

(one law firm)

Response. The statute requires the client to keep a detailed and exact account of the expenditures made, and the consultant to file a detailed report of all money received and expended. Good faith allocations would be contrary to the provisions requiring specificity.

97. *Comment.* The rule provides only 10 days to report all the monies and items of value received or expended by the registrant for a whole year. The commenter suggests that 30 days is more reasonable because of holiday vacations and the stiff monetary penalties that may be imposed for failure or lateness in filing the annual report.

(one consulting firm)

Response. The January 1–January 10 reporting period is statutory, and cannot be changed by this rule. The Department believes that the burdens anticipated by the commenter may not be as oppressive, if the records are kept throughout the year with the specificity directed by the statute.

98. *Comment.* Queries regarding coverage:

a. Is a law firm exempt from registration and reporting when it has no preference as to which response HUD gives regarding, for example, the proper method of computing debenture interest rates for FHA insurance upon completion cases? (The client purchasing the participation was indifferent as to the method specified by HUD; the correct answer was simply desired for the seller to deliver accurate representations and warranties to the purchaser.)

Response. The answer to this question hinges on whether the inquiry made by the law firm is intended to influence the HUD decision. If the inquiry is merely to obtain information, then the answer is "No."

b. Is a law firm subject to the rule because it advocates a position on behalf of its client regarding the assignment of FHA debentures which were subject to call by HUD? (The applicable HUD handbook was outdated in failing to reflect the standard industry practice of assigning certificated government securities through PD 1832s. Through its client, a major investment banker, the law firm had significant insight to present to HUD on settlement practices in requesting a decision on the issue.)

Response. The test in determining whether the commenter's example falls within the rule's coverage is whether there is an intent to influence the decision of the Department, and the arrangement is not otherwise excepted. Although it is not entirely clear from the comment, bringing "significant insight" to bear on the Department for what may be a management action may well invoke the rule.

c. How does a law firm determine when it becomes subject to HUD registration and reporting under the rule? From the moment it writes to request a decision from HUD or picks up the telephone to ask for advice? At the commencement of the entire transaction?

Response. The critical factor here is when there is an agreement to engage in influencing activities. The agreement between the client and the law firm should specify the types of activities for which the law firm is being retained. However, in the case of a vague retaining agreement, the law firm must register at any point at which a covered communication with the Departments appears likely. At that point, the law firm must register with HUD within 14 days.

(one law firm)

99. *Comment.* The proposed rule allows on-staff employees to contact HUD in the ordinary course of business, but makes outsiders report. If an owner chooses to subcontract to an outside firm the process of tenant income verification and recertification, is that now a reportable contact?

(one consulting firm)

Response. As a general matter, any use of outside personnel to contact HUD is subject to the rule. However, in this case, if verification and recertification of tenant income are done in compliance with a HUD condition, requirement, or procedure, then the use of an outside contractor to provide this type of technical service is outside the reach of the rule.

100. *Comment.* The rule should refer to the June 15 material regarding the Byrd amendment and state that this rule will be updated to conform to changes in the Byrd rule.

(one law firm)

Response. This rule is not being promulgated as a result of the Byrd Amendment. The two authorities are entirely separate, and even the implementing agencies are different: The Department is charged with implementing of section 112 of the Reform Act; the office of Management and Budget (OMB) is responsible for the Byrd Amendment implementation. Section 88.1 of this rule contains guidance on the relationship between section 112 and the Byrd Amendment.

101. *Comment.* The requirement for obtaining a bill should be eliminated when the agreement in question contemplates payment at given times with no bills to be rendered. Also, certain noncash payments would not be appropriately reflected on a bill.

(one law firm)

Response. section 13(a)(3) of HUD Act requires that a bill be obtained for each expenditure subject to section 13. This requirement admits of no exception, and the Department does not have authority to alter it.

102. *Comment.* There is no guidance as to whether the reporting of payments is to be handled differently for cash basis and accrual basis entities.

(one law firm)

Response. The accounting basis of the person involved is irrelevant. The rule contains its own guidance on how covered transactions are to be handled. It sets the time that an expenditure is considered to have been made as the point at which a person makes it available to another person without restriction. An agreement is considered to have been made when the contract or agreement is entered into, or the promise or other arrangement is made, even though a person receiving the

[9] As noted earlier, however, the rule's requirement that all reporting and registration information be published in the Federal Register will serve to make the information available to the public, including the client.

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expenditure may not receive it at that time.

Expenditures and agreements to make expenditures must be reported, and appropriate records must be maintained. The value of any expenditure with monetary value is be determined as of the date of the expenditure. The value of the agreement is established at the time of the agreement.

103. *Comment.* Throughout the rule, there appears to be inconsistent advice as to when something has been paid. For persons engaged to perform lobbying services, consideration under § 86.25(c) is deemed received when it is actually received or the individual has the absolute right to receive it. Yet, in § 86.20(g)(2), a contingent liability becomes a liability for purposes of counting expenditures in the amount that the person would be required to pay if the contingency came to fruition. Clarification is needed.

(one law firm)

Response. There is no inconsistency between these provisions: They address opposite sides of the expenditure/receipt ledger. Section 86.30(g)(2) deals with how *expenditures* made by those engaging lobbyists are counted. Section 86.25(c) deals with reporting expenditures *received* by the lobbyist. Each provides a fair and rational way of determining when and whether an expenditure has been made or received.

104. *Comment.* The example at 55 FR 22738 regarding lobbying by a national organization on a policy issue is misleading. The implication is that if an organization carries out lobbying activities with respect to general policy matters that have the effect of helping its members, it falls under coverage of the rule. The focus of the rule should be on whether the position taken by the organization was of interest to its membership in general or to a particular member with a particular problem.

(one national association)

Response. No lobbying activities with respect to general policy matters—including activities carried out by national organizations—are covered by this rule. This rule only reaches expenditures designed to influence the Department's decision with respect to *specific* awards of financial assistance and management actions.

105. *Comment.* Very few professionals in the housing business can be truly said to be sole practitioners. The rule should allow the "sole practitioner" exception, even if the officers or employees of a corporation do the lobbying or even if a sole proprietor has employees doing the lobbying, as long as the officers or employees meet the test of being a regular employee.

(one national association)

Response. The commenter is confused about the overall exception for persons who lobby on their own behalf ("solo lobbying") and the exception for "regularly employed" personnel. Consultants retained for lobbying activities, who happen to be sole practitioners, do not qualify for the "solo lobbying" exception from the rule. This overall exception from the rule applies to the *expenditure* side of the ledger—those involved in an assistance award or a management action who lobby on their own behalf, and who do not procure the lobbying services from another.

Consultants also are unable to claim the "regularly employed" personnel exception. This exception again only applies to the *expenditure* side of the ledger: It is permitted only with regard to "regularly employed" personnel *of the person that requests or receives financial assistance, or that is involved in the management action.*

The reader is reminded, as discussed earlier, that only a single registrant need be held responsible for the registration and reporting requirements attributable to the "person" engaged to provide lobbying services, when that single registrant is a firm, association, or other entity that has been engaged to provide lobbying services. However, the members of the entity who are the individuals making the actual contact with HUD—whether it is a law firm, a consulting firm, or some other entity engaged to provide lobbying services—must be identified within the entity's registration. There will also be required an indication of whether any of the individual contact persons has been employed by the Federal Government during the two-year period before registration, and, if so, in what capacity. Important to the success of this less stringent interpretation of the statute is the timeliness and accuracy of updates that must be filed by the registrant/entity each time the person making the contact changes.

106. *Comment.* A question arises where requirements are imposed by law, regulation, or other written directive, or are "reasonably believed" by the person to be so imposed, and the examples in Appendix A are confusing. In light of the civil penalties that are potentially imposed for a violation, the burden should be for the Department to demonstrate by clear and convincing evidence that a person's belief was unreasonable. Otherwise, the public will be subjected to a vague standard of conduct that may not pass constitutional standards of due process.

There is a question of proving who asked for material, particularly in oral communications. With respect to communications which are not in response to a written requirement, rather than focusing on who initiated the request, the commenter proposes to exempt any communication that the HUD officer or employee agrees in advance to accept, provided that such communication relates to complying with conditions, requirements, or procedures imposed by HUD in connection with any financial assistance. The lobbyist would be required to request permission to communicate with the HUD officer or employee prior to the actual communication.

(one national association)

Response. Procedural questions, such as the burden of proof and the standard of proof, are being handled in a separate rule making that implements not only section 112, but also several other sections of the HUD Reform Act that authorize the Department to impose civil money penalties. The reader is referred to paragraphs (g) and (h) of § 30.710 of the proposed rule published on September 10, 1990, at 55 FR 37290.

To accept the commenter's suggestion (that an exemption be made for any communication that the HUD officer or employee agrees in advance to accept, provided that the communication relates to complying with conditions, requirements, or procedures imposed by HUD) would continue some of the very "business as usual" practices that the Reform Act intends to correct. Trying to explain to a HUD official why an issue needs to be raised, and why it may be in response to a HUD requirement, is tantamount to attempting to influence the official, and clearly comes within coverage of the statute.

107. *Comment.* The rule purports not to cover representation on policy issues, but the Preamble says "substance is determinative" and a regulatory change could be construed as a management action. Query: A PHA employee, using PHA funds for travel and expenses, comes to D.C. to testify on behalf of a national association before congress on a policy issue which also benefits the PHA, such as higher administrative fees under section 8. Is this activity covered as to reporting and record-keeping?

Can a national association, whose membership pays dues from Federal funds, represent its membership on policy matters without being subject to the rule, although some or all of its members may or subsequently do benefit from the new legislation? Further, can agency members pay dues to a national association without being subject to the rule?

(one national association)

Response. Testifying before Congress is not within the coverage of this rule. This rule covers persons that attempt to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action, *through direct communication with any officer or employee of the Department.*

Yes, a national association, whose membership pays dues from Federal funds, can represent its membership on policy matter without being subject to the rule, although some or all of its members may benefit from the new legislation. In addition, payment of general membership dues or charges to an association does not trigger the rule's applicability. The rule only reaches expenditures designed to influence the Department's decision with respect to *specific* awards of financial assistance and management actions. General policy matters, and general membership dues not designated for specific lobbying activities, are not covered.

108. *Comment.* Other ambiguities:

a. Are PHAs considered "nonprofit" in the exception to the limitation on contingency fees?

(one national association)

Response. By definition, a PHA is a State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage in or assist in the development or operation of lower income housing, and as such, qualifies for the exception for nonprofits. By definition, as stated in § 86.15, this term includes an Indian Housing Authority.

b. Does the rule cover lobbying in State legislatures? If not, would this hold true even if the State legislature was considering a matter involving an allocation of Federal funds?

(one national association)

Response. As stated earlier, this rule covers persons who attempt to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action, *through direct communication with any officer or employee of the Department.* Therefore, this rule does not cover lobbying in State legislatures, irrespective of the subject of the lobbying.

IV. Other Changes Made in the Final Rule

Section 86.30(b). The final rule expands the registration information that is subject to **Federal Register** publication. The proposed rule limited the coverage to information required on the *registration form,* and did not reach information contained in the registrant's *report.* However, the Department believes that the proposed rule's approach was incorrect and that the statute's reference to "registration information" in section 13(c)(3) includes information pertaining to the annual report submitted by registrants. This change will effectuate the overall purpose of the statute by bringing into the "sunshine" all significant activities associated with influencing departmental decisions.

V. Other Matters

1. *Environmental Review.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

2. *Regulatory Impact Analysis.* This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

3. *Regulatory Flexibility Act.* In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), below is a Final Regulatory Flexibility Analysis. An Initial Regulatory Flexibility Analysis was published with the proposed rule on June 1, 1990, at 55 FR 22722, and public comment was invited as to the possible impact of this rule on small entities. A summary of the public comments received on the initial analysis, as well as a response to each comment, is set forth below.

The final analysis is available to the public, and copies may be obtained from the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410.

Overview

The issue presented in the proposed rule was whether the Department's proposed action was "likely to have a significant economic impact upon a substantial number of small entities."

a. *What does this rule attempt? Why? Under what authority is it promulgated?*

This rule sets forth the standards under which persons who make expenditures to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must keep records, and report to HUD, on the expenditures. It also establishes standards under which persons who are retained to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must register with HUD, and report to HUD on their lobbying activities. The rule is designed to improve the Department's ability to ensure that the process by which the Department awards financial assistance and takes management actions is conducted in a manner that is fair and open, and free from improper influence. The rule also contains provisions that set limitations on the payment of fees to persons who are engaged for the purpose of attempting to influence any award or allocation of financial assistance from the Department.

The rule is being promulgated to implement section 112 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, approved December 15, 1989.

b. *Who is affected by this rule.*

The rule affects (1) persons who make expenditures to influence a HUD officer or employee in the award of financial assistance, or in the taking of a management action, and (2) persons who are retained to influence a HUD officer or employee in the award of financial assistance, or in the taking of a management action by the Department. In order to comply with the statute, persons who make expenditures to influence must, except in certain instances that are discussed earlier in this Preamble, keep records on those expenditures and report to HUD

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annually on those expenditures. In addition, also in order to comply with the statute, persons who are retained to influence must, except for certain instances discussed earlier, register with the Department within 14 days of being retained and report to HUD annually on the money and other things of value received for the lobbying activities.

Through the definition of 'person,' this rule is intended to apply to individuals (including consultants, lobbyists, or lawyers), corporations, companies, associations, authorities, firms, partnerships, societies, States, local governments, or any other organizations or groups of people involved in activities to influence or to attempt to influence HUD decisions on the award of financial assistance or the taking of management actions with regard to the assistance. This rule affects in varying degrees the full realm of recipients of HUD assistance, including grantees, contractors, PHAs, sponsors, developers, builders, mortgagees, and mortgagors.

c. *How are small entities affected by this rule?*

What is the cost or benefit of compliance?

There may be an increase in paperwork requirements in that (1) persons who make expenditures must keep records of those expenditures and file an annual report and (2) persons who receive payment must submit a registration form to the Department and file an annual report. It should be noted that the *reporting* requirements—both for persons making expenditures and providing lobbying services—are subject to a $10,000 annual threshold. Persons spending less than that amount do have to keep records, but do not have to file annual reports. Persons receiving payments have to register, but do not have to report.

In some instances, there may be the need to use lawyers and accountants, although it is unlikely that small entities will carry out lobbying activities to the extent that such specialized assistance will be needed routinely. It is unlikely that any specialized equipment or facilities will be required. It is also unlikely that this rule will significantly delay or accelerate the day-to-day business functions of those affected. However, this rule will promote the exercise of discretion relative to the conduct of business with HUD, in that it will improve the Department's ability to ensure that the process by which the Department awards financial assistance and takes management actions is conducted in a manner that is fair and open, and free from improper influence.

d. *Public Comments Received and HUD Responses*

71. *Comment.* The preliminary analysis under the Regulatory Flexibility Act significantly understates the impact of the rule on small entities. This commenter maintains that the cost of registration, maintaining the required records, and reporting would likely be greater than the income from activities that are actually covered. HUD would incur similar costs, and perhaps even greater ones, to no avail. Registration and record keeping requirements alone would double the time needed for each assignment, and this time could not be billed to the client. The result would be a 50 percent reduction in net income.

(one consultant)

Response. The regulatory requirements are consistent with the statute, and no significant additional requirements have been imposed. In fact, as a result of the public comments received, the Department has made several interpretations that trim those requirements even more. The Department perceives the remaining regulatory requirements to be burdensome only to the extent that the small entity engages in lobbying activities, and the Department does not believe that very many small entities will engage in lobbying activities to the degree to exceed the $10,000 threshold for reporting.

72. *Comment.* The majority of this commenter's work does not entail influencing, but, rather researching records and providing direct advice on how to comply with HUD requirements. To "obtain a bill, stating the particulars, for every agreement and expenditure" would require revised billing procedures to segregate bills for services that might be covered from those that are not. This is an expensive and unnecessary requirement. Also, the fact that clients will be required to keep records of these minuscule expenditures is likely to have a severe dampening effect on the commenter's business.

(one consultant)

Response. Researching records and providing direct advice on how to comply with HUD requirements without direct communication with HUD officers or employees would not be covered by the rule. Therefore, there would be no need to keep detailed records on them. However, any other activities conducted as a result of being retained to influence a HUD decision will require detailed records, as mandated by the statute. Unfortunately, this may require revised billing procedures where the person retained is regularly involved in influencing activities.

73. *Comment.* An unwritten rule in the consulting business is that client identities are not disclosed, except with the consent of the client. The reporting requirements of the proposed rule would make public the association of the consultant with the client. (In many cases, mortgage lenders don't like to admit that they needed help.) The commenter fears that clients may well decide not to engage him, simply because they do not want their relationship made public.

(one consultant)

Response. Section 13 is a disclosure statute, and may require modification of the confidentiality referred to by the commenter. The statute requires the *client* to identify itself in the annual report required, if its total covered expenditures are $10,000 or more during the reporting year. The statute also requires the *registrant* to identify in whose interest it is appearing at the time of registration, and requires the registrant to provide a detailed report of all money it received and expended during the reporting year, unless its total compensation is less than $10,000 for the year.

Therefore, all *clients* spending more than $10,000 during the reporting year for the purposes of influencing HUD decisions will be required to reveal their own identities, and all *consultants* who enter into lobbying activities, to the degree that they exceed the $10,000 threshold, will be required to submit the same types of information. This is in addition to identities made in the registration form required to be filed by the consultant within 14 days of being retained to influence a HUD decision.

Any client hoping to evade public scrutiny will not be able to do so by selecting consultants, unless the client is able to find a consultant whose total receipts for the year for HUD lobbying activities are less than $10,000 *and* the total expenditures paid by the client for all HUD lobbying are less than $10,000.

74. *Comment.* In addition, the commenter does not believe the Congress intended to impose the types of burden on small practitioners that will be imposed by this rule. The rule is unnecessarily complex and too redundant and does not consider the broad differences in types of consulting involving contact with HUD employees. It requires, in some cases, three different people to maintain records and to report on the same thing. The commenter suggests that a report from the consultant that identifies all of his or her clients in covered matters, accompanied by copies of itemized bills to those clients and copies of IRS Forms 1099 substantiating the amounts of payments should be adequate for HUD's purposes.

(one consultant)

Response. The Department does not believe that the burdens on the small practitioner will be as overwhelming as the commenter asserts. It is hard to believe that small practitioners would engage in lobbying activities with the frequency and degree of remuneration necessary to exceed the dollar threshold set by Congress to trigger coverage. The statute is clear as to the information required to be reported by those meeting the threshold, and does not permit the informality of submitting copies of bills and IRS forms used for other matters.

75. *Comment.* A lower threshold should be applied to fees from a single client necessary to trigger the reporting requirements, since payors are not required to provide Forms 1099 unless total payments exceed $600 in a year. If the $600 threshold is acceptable to IRS, it should be acceptable to HUD. Accordingly, the time for annual reporting should be moved from January 10 to some time after March 1, which is when IRS rules provide that Forms 1099 be provided to payees.

(one consultant)

Response. The Department is unable to accept any of the above suggestions, because the statute is clear regarding the thresholds and the dates for annual reporting.

e. *Alternatives.*

The Department does not have the leeway to consider other alternatives. The requirements are imposed by statute, and the Department does not have the authority to reduce or change them, either as a general matter, or for small entities.

f. *Net effect on small entities.*

Small entities will be affected by this rule only to the extent that they involve themselves with influencing activities within the rule's purview. In these cases, they will have to comply with the statutorily mandated requirements regarding record keeping, registration, and reporting, as discussed above.

4. *Executive Order 12612, Federalism.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

The statute subjects State and local governments and their employees to its record keeping, disclosure, and registration requirements. The Department does not believe, however, that the effect is substantial, since section 13 provides only *procedural* requirements: the authority does not affect their *substantive* communications with the Department. In any event, the requirement is statutory, and is not subject to discretionary implementation by the Department.

5. *Executive Order 12606, the Family.* The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being. It only imposes record keeping, disclosure, and registration requirements on those seeking to influence the Department's decision making process.

6. *Information Collection.* The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501[1]–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided below. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

Tabulation of Annual Reporting Burden

Final Rule—Requirements Governing the Lobbying of HUD Personnel

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Annual Reporting of Persons Making Expenditures for Lobbying Activities	86.20(c)	1,047	1	1,047	1	1,047
Annual Reporting of Persons Receiving Payment for Lobbying Activities	86.25(c)	1,004	1	1,004	11.25	11,295
Registration (Individual)	86.25(b)	1,114	1	1,114	1	1,114
Registration (Entity)	86.25(b)	557	1	557	1	557
Total Annual Burden						14,013

7. *Semi-Annual Agenda of Regulations.* This rule was listed as item number 1226 in the Department's Semi-annual Agenda of Regulations published on April 22, 1991 (56 FR 17372) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

8. *Catalog of Federal Domestic Assistance.* There are no Catalog of Federal Domestic Assistance Program numbers assigned to this rule.

List of Subjects in 24 CFR Part 86

Lobbying (Government agencies), Administrative practice and procedure, Reporting and record keeping requirements.

Accordingly, the Department amends title 24 of the Code of Federal Regulations to add a new part 86 to read as follows:

PART 86—REQUIREMENTS GOVERNING THE LOBBYING OF HUD PERSONNEL—SECTION 112 OF THE REFORM ACT

Subpart A—Relationship Between parts 86 and 87

Sec.
86.1 Relationship between parts 86 and 87.

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Subpart B—General

86.10 Purpose.
86.15 Definitions.

Subpart C—Record Keeping, Reporting, and Registration Requirements

86.20 Requirements for persons making expenditures to obtain lobbying services.
86.25 Requirements for persons engaged to provide lobbying services.
86.30 Public inspection and publication requirements.
86.35 Penalties.

Subpart D—Limitations on Fees to Consultants

86.50 Limitations on fees to consultants.
Appendix A to part 86—Standards with Regulatory Effect
Appendix B to part 86—Chart

Authority: Secs. 7(d) and 13(g), Department of Housing and Urban Development Act (42 U.S.C. 3535(d) and 3537b(g)).

Subpart A—Relationship Between Parts 86 and 87

§ 86.1 Relationship between parts 86 and 87.

(a) *Purpose.* This part and part 87 of this chapter set forth reporting and other requirements governing expenditures to influence the Department in connection with certain actions involving HUD contracts, grants, loans, and other forms of HUD "assistance." This section specifies the rules governing the overall relationship between this part and part 87 of this chapter. The reader should read both of these parts for a full understanding of their substantive requirements.

(b) *Statutory basis*—(1) *Part 86.* Section 112 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) added a new section 13 to the Department of Housing and Urban Development Act. Section 13 requires certain persons making an expenditure to influence HUD personnel with respect to the award of any financial assistance (contract, grant, loan, cooperative agreement, or loan insurance or guarantee), or with respect to any management action involving a change in the terms and conditions or status of financial assistance that was previously awarded, to keep records and to report to HUD on the expenditures. The provision also requires certain persons engaged to influence the Department with regard to any financial assistance or management action, to register with the Department and to report to HUD on the activities involved.

(2) *Part 87.* Part 87 of this chapter implements section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (Pub. L. 101–121, approved October 23, 1989). This provision amended subchapter III of chapter 13 of title 31, United States Code, to add a new section 1352 (the "Byrd Amendment"). It contains a general prohibition on the use of *federally appropriated funds* for influencing any Executive or Legislative Branch personnel in the award of Federal contracts, grants, loans, cooperative agreements, and certain post-award actions (such as the modification or extension of any of these forms of assistance). It also requires disclosure of certain information on payments from *non-federally-appropriated funds* that are used to influence the above Federal actions, as well as the insurance or guarantee of loans. The Byrd Amendment applies to *all* Federal agencies, and was implemented by a government-wide common rule that was published on February 26, 1990, at 55 FR 6736. HUD's adoption of the common rule is set forth at 24 CFR part 87.

(c) *Relationship between parts 86 and 87*—(1) *In general.* The reader should first determine whether his or her activities meet the applicability thresholds for either part.

(2) *One part only applies.* If part 86 applies, but not part 87, the provisions of part 86 must be met. If part 87 applies, but not part 86, the provisions of part 87 must be met.

(3) *Both parts apply.* If *both* part 86 *and* part 87 apply, the provisions of *both* parts must be met. For example, if an expenditure must be reported under each part, the reporting provisions of *both* the Byrd Amendment (reporting at request or receipt of assistance, as well as quarterly updates in certain circumstances) *and* section 13 (one-time annual reporting) apply. Similarly, if both parts apply, the greater of the civil money penalty provisions under section 13 or the Byrd Amendment takes precedence.

Subpart B—General

§ 86.10 Purpose.

(a) *Subpart C.* The purpose of subpart C of this part is to set forth the standards under which:

(1) Persons that make expenditures to influence a HUD officer or employee in the award of financial assistance, or in the taking of a management action, by the Department must keep records, and report to HUD, on the expenditures; and

(2) Persons that are engaged to influence a HUD officer or employee in the award of financial assistance, or in the taking of a management action, by the Department must register with HUD, and report to HUD on their lobbying activities.

(b) *Subpart D.* The purpose of subpart D of this part is to place limitations on the fees that may be paid to consultants that are engaged for the purpose of influencing the award or allocation of financial assistance by the Department.

§ 86.15 Definitions.

As used in subparts C and D of this part:

Agreement to make an expenditure or *agreement* includes all or part of a contract, agreement, promise, or any other arrangement, whether or not it is in writing or is legally enforceable, that involves an undertaking of any kind to make an expenditure. The term includes an arrangement under which a person has a financial involvement in the transaction, such as where contingent liability to make an expenditure is assumed by, or on behalf of, a person, or where the expenditure is provided by, or on behalf of, a person, but only if the person has an interest in the effort to influence the Department under this part. The term also includes any employment arrangement between a person and an officer or employee of the person. An agreement is considered to have been made when the contract or agreement is entered into, or the promise or other arrangement is made, even though a person receiving the expenditure may not receive it at that time. The value of any expenditure that has monetary value, other than cash, that is the subject of an agreement, must be determined as of the date that the agreement is entered into:

(1) By reference to an objective standard, such as a stock or bond quotation in the case of a stock or bond; or

(2) If no objective standard is available at reasonable cost, by any other means that are reasonably designed to produce a fair and accurate valuation.

Note: See section II.2. of appendix A to this rule for examples and standards as to what constitutes an "agreement to make an expenditure" for purposes of this part.

Communication includes written, oral, electronic, or any other means of communication.

Department or *HUD* means the United States Department of Housing and Urban Development.

Directive includes (but is not limited to) a Handbook (including a change or supplement); notice; interim notice; special directive, as defined in paragraph 2–1., HUD Handbook 000.2 REV–1., *HUD Directives System*; and any other issuance that the Department may classify as a directive.

Expenditure includes a payment, distribution, loan, advance, deposit, gift of money, or the provision of anything else of value. An expenditure may have either monetary or non-monetary value. The term includes an expenditure made by a person to an officer or employee of the person as part of an employment relationship, except that where the person is an entity (such as a firm or an association) and is retained (as defined by this section), the term does not include an expenditure made by the person to its partners, associates, or other officers and employees, where the partner, associate, or officer or employee works on a full-time basis, or on a part-time basis under a program offered by the person to officers or employees of similar rank and responsibilities for specific purposes, such as to permit participation in a work-study program or to permit employees to provide child care for their children. An expenditure is considered to have been made when the person makes it available to another person without restriction. The value of any expenditure with monetary value, other than cash, must be determined as of the date of the expenditure:

(1) By reference to an objective standard, such as a stock or bond quotation in the case of a stock or bond; or

(2) If no objective standard is available at reasonable cost, by any other means that are reasonably designed to produce a fair and accurate valuation.

Note: See section II.1. of appendix A to this part for examples and standards as to what constitutes an "expenditure" for purposes of this part.

Financial assistance includes any contract, grant, loan, cooperative agreement, or other form of assistance that is provided under a program administered by the Department. The term includes the insurance or guarantee of a loan, mortgage, or security backed by a pool of mortgages or other instruments by the Department. The term does not include contracts, such as procurement contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR ch. 1). The term also does not include an expenditure that represents compensation for services rendered or goods provided.

Indian means an individual who is recognized as being an Indian or Alaska Native by an Indian tribe, the Federal government, or any State.

Indian Housing Authority means any entity that:

(1) Is authorized to engage or assist in the development or operation of lower income housing for Indians; and

(2) Is established:

(i) By exercise of the power of self-government of an Indian tribe independent of State law; or

(ii) By operation of State law providing specifically for housing for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Indian tribe means, for purposes of this section only, any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

Influence means to affect in any way any aspect, including (but not limited to) the outcome, of the award of any financial assistance or the taking of any management action by the Department. The term does not include communications that represent purely informational inquiries or purely ministerial requests; or actions taken in compliance with HUD requirements (§§ 86.20(d), 86.25(d) or § 86.50(b)), with respect to matters of litigation (§ 86.20(e) or § 86.25(e)), or by State and local officials (§ 86.20(f) or § 86.25(f)).

Note: See section IV. of appendix A to this part for examples and standards as to what constitutes "influence" for purposes of this part.

Knowingly means having actual knowledge of, or acting with deliberate ignorance of, or reckless disregard for, the requirements of this subpart.

Litigation means:

(a) Any civil action at law, or any proceeding in equity, to which the Department is a party, including any appeal or settlement, or other negotiations, with respect to the action or proceeding;

(b) Any criminal proceeding involving a program administered by the Department, including any appeal, or negotiations with respect to the charge, sentence, or otherwise, with respect to the proceeding; and

(c) Any administrative proceeding conducted by the Department pursuant to statute or regulation that provides for the resolution of issues of fact or law (or both), or the imposition of a sanction or a penalty, by a hearing officer or by an officer or employee of the Department. An administrative proceeding includes any appeal or settlement or other negotiations with respect to the proceeding. Administrative proceedings include (but are not limited to) proceedings conducted under 24 CFR part 24 (Debarment and Suspension), 24 CFR part 25 (Mortgagee Review Board), the Fair Housing Act (24 U.S.C. 3601), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309), and the Age Discrimination Act of 1975 (42 U.S.C. 6103).

Note: See section IV. 4. of appendix A to this part for examples and standards as to what constitutes the exception for litigation for purposes of this part.

Management action means any action of the Department that involves a change in the terms and conditions or status of financial assistance awarded to a person. The term does not include audits and investigations that do not themselves involve a management action.

Office or *Office that is responsible for administering this part* means the organization within the Department that is responsible for administering the provisions of this part. To assist the public, the Department will provide information about the Office, including the official in charge and its mailing address and phone number, in a Notice published in the Federal Register, as appropriate.

Officer or employee:

(a) In the case of an individual employed by the Department, the term includes:

(1) An individual who is appointed to a position in the Department under title 5, United States Code, including a position under a temporary appointment;

(2) A special government employee, as defined in section 202, title 18, United States Code; and

(3) An individual who is a member of a Federal Advisory Committee, as defined by the Federal Advisory Committee Act, title 5, United States Code.

(b) In the case of an individual employed by a person, the individual is considered "employed" when the person for whom services are performed has the right to control and direct the individual who performs the services.

Person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority (including an Indian Housing Authority); firm; partnership; society; State, unit of general local government, or other governmental entity (including a public housing agency); and any other

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organization or group of people. The term does not include an Indian tribe.

Public housing agency means any State, county, municipality, or other governmental entity or public body, or agency or instrumentality thereof, that is authorized to engage or assist in the development or operation of lower income housing. The term includes an Indian Housing Authority.

Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for the officer or employee for work that is not furnished to, or not furnished in cooperation with, the Department. If the officer or employees only performs HUD-related work, the term means compensation that is consistent with the normal compensation for similar duties and responsibilities of others employed in similar circumstances.

Regularly employed means, with respect to an officer or employee of a person requesting or receiving financial assistance or who is involved in a management action, an officer or employee who is employed by the person for at least 130 working days within one year immediately before the date of the submission that initiates the Department's consideration of the person for receipt of such assistance, or the date of initiation of any management action. For purposes of the preceding sentence, a management action undertaken by the Department is initiated on the date on which the action is first communicated to the public. To be regularly employed, the officer or employee must:

(a) Be employed on a full-time basis, or on a part-time basis under a program offered by the person to officers or employees of similar rank and responsibilities for specific purposes, such as to permit participation in a work-study program or to permit employees to provide child care for their children;

(b) Have meaningful responsibilities; and

(c) Have duty hours not less than individuals of similar rank and responsibilities.

Note: See section IV.4. of appendix A to this part for examples and standards as to what constitutes the exception for regularly employed officers and employees for purposes of this part.

Retained means engaged pursuant to an agreement to make an expenditure. Where the person retained is an entity (such as a firm or an association), the term does not include the employment relationship between a person and its partners, associates, or other officers and employees, where the partner, associate, or officer or employee works on a full-time basis, or on a part-time basis under a program offered by the person to officers or employees of similar rank and responsibilities for specific purposes, such as to permit participation in a work-study program or to permit employees to provide child care for their children.

Subpart C—Record Keeping, Reporting, and Registration Requirements

§ 86.20 Requirements for persons making expenditures to obtain lobbying services.

(a)(1) *Coverage.* Except as otherwise provided by this section, this section applies to each person—

(i) That makes, or that enters into an agreement to make, an expenditure to a person;

(ii) That makes, or that enters into an agreement to make, an expenditure to a person on behalf of another person; or

(iii) On whose behalf an expenditure is made to a person, or an agreement to make an expenditure to a person is entered into; if the expenditure is intended to influence, or should reasonably be expected to have the effect of influencing, a decision of the Department with respect to the award of any financial assistance or the taking of any management action, through direct communication with any officer or employee of the Department.

(2) *Exceptions.* (i) This section only applies to expenditures that are made to another person: A person that makes covered expenditures on its own behalf, without retaining another person, is not subject to this section.

(ii) The person that makes, or that enters into an agreement to make, an expenditure to a person on behalf of another person, as provided by paragraph (a)(1)(ii) of this section, is subject to the requirements of this part only if the person has an interest, financial or otherwise, in the lobbying activity.

Note: See sections II. and IV. of appendix A to this part for examples and standards as to what constitutes an "expenditure" or an "agreement to make an expenditure," and "influence," for purposes of this part.

(b) *Record keeping.* Except as provided by paragraphs (d), (e), and (f) of this section, each person subject to paragraph (a) of this section must:

(1) Keep a detailed and exact account of:

(i) All agreements, and all expenditures, referred to in paragraph (a) of this section;

(ii) The name and address of every person referred to in paragraph (a) of this section to whom an expenditure is made, or is to be made pursuant to an agreement to make an expenditure; and

(iii) The date of any agreement or expenditure referred to in paragraph (a) of this section;

(2) Obtain a bill, stating the particulars, for every agreement and expenditure referred to in paragraph (a) of this section; and

(3) Keep all records required by this paragraph (b) for not less than the two-year period beginning:

(i) On the date on which the report required by paragraph (c) of this section is filed; or

(ii) If no report is required to be filed under that paragraph, on January 10 of the year after the calendar year in which the agreement was entered into or the expenditure made.

Note: See section IV.1. of appendix A to this part for examples and standards on the rule's record keeping requirements.

(c) *Reporting.* (1) *Annual report.* Except as provided by paragraphs (c) (3) and (4), and by paragraphs (d), (e), and (f) of this section, each person subject to paragraph (a) of this section must file with the Department, between the first and 10th day of January of each year, a report specifying all the information required to be retained under paragraph (b)(1) of this section with respect to the preceding calendar year.

Note: See section IV.1. of appendix A to this part for examples and standards on the rule's reporting requirements.

(2) *Filing reports.* A report referred to in paragraph (c)(1) of this section is considered properly filed when it is deposited in a post office within the prescribed time, and is sent by certified or registered mail, postage prepaid and return receipt requested, to the Office that is responsible for administering this part. If that Office does not receive a properly filed report, the person must promptly file a duplicate report upon notification by the Office that the original report has not been received.

(3) *Exception for compensation to regularly employed personnel.* (i) The reporting requirements of paragraph (c)(1) of this section do not apply to the payment of reasonable compensation to a regularly employed officer or employee of the person that requests or receives financial assistance, or that is involved in any management action.

(ii) Any person asserting the exception in this paragraph (c)(3) must demonstrate, upon the Department's request and to the Department's satisfaction, that it qualifies for the exception, including that it paid reasonable compensation to a regularly employed officer or employee, as those terms are defined in § 86.15.

Note: See section IV.4. of Appendix A to this part for examples and standards as to what constitutes the exception for regularly employed officers and employees for purposes of this part.

(4) *Minimum dollar requirement.* The reporting requirements of paragraph (c)(1) of this section do not apply if the sum of the amounts involved in all the agreements to make an expenditure entered into, and of all the expenditures made, by or on behalf of a person under paragraph (a)(1) of this section during the year covered by the report, is less than $10,000.

Note: See section IV.2. of Appendix A to this part for standards on the dollar threshold requirements for this section.

(d) *Exception for compliance with HUD requirements.* The record keeping requirements of paragraph (b) of this section, and the reporting requirements of paragraph (c) of this section, do not apply to—

(1) Any part of an agreement that is wholly and expressly limited to making an expenditure to comply with conditions, requirements, or procedures imposed by the Department in connection with any financial assistance or management actions; or

(2) Any expenditure that is limited to complying with conditions, requirements, or procedures imposed by the Department in connection with any financial assistance or management action; but only if—

(i) The conditions, requirements, or procedures are imposed, or are reasonably believed by the person to be imposed, by law, regulation, directive, or other written instruction (such as a Notice of Fund Availability, an application document, or a mortgagee letter); or

(ii) The conditions, requirements, or procedures are imposed by an officer or employee of the Department, other than as provided by paragraph (d)(2)(i) of this section.

Note: See section IV.3. of Appendix A to this part for examples and standards as to what constitutes compliance with HUD requirements for purposes of this part.

(e) *Exception for litigation.* The record keeping requirements of paragraph (b) of this section, and the reporting requirements of paragraph (c) of this section, do not apply to any agreement to make an expenditure, or any expenditure made, in connection with litigation to which the person is a party.

Note: See section IV.2. of Appendix A to this part for examples and standards as to what constitutes litigation for purposes of this part.

(f) *Exception for State and local government officials.* The record keeping requirements of paragraph (b) of this section, and the reporting requirements of paragraph (c) of this section, do not apply to—

(1) *Elected officials.* The elected officials of a State or local government.

(2) *Personal staffs of elected officials.* The political appointees who serve on the personal staffs of the elected officials of a State and local government. These individuals include (but are not limited to) Special Assistants and Executive Assistants to the elected official); and

(3) *Policy-level appointees.* Full-time, appointed officials of a State and local government who serve in policy-level positions. These individuals include cabinet officials of a State and local government, Community Development and Housing Directors, and Public Housing Authority Directors. To qualify for the exception, the individual must occupy a position that is responsible for setting policy for the organization, or for participating in the development of that policy with the organization head. The exception does not include positions in which the incumbent simply executes policy set by others.

The exception under this paragraph (f) only applies to the extent that the individual claiming it is engaged in the official business of the State or local government that the individual serves.

Note: See section VI.4. of Appendix A to this part for standards on what qualifies for this exception.

(g) *Counting expenditures*—(1) *Expenditures pursuant to agreements.* In the case of an agreement to make an expenditure, the full amount of the agreement must be taken into account in reporting under paragraph (c)(1) of this section, or in determining the dollar threshold under paragraph (c)(4) of this section, even if not all the expenditures pursuant to the agreement are made at that time or within the reporting year. Subsequent expenditures made within the reporting year pursuant to the agreement are not counted twice: They must be taken into account for those purposes only to the extent that the expenditures exceed the consideration specified in the agreement. Expenditures not contemplated by the original agreement that are made in a subsequent reporting year are taken into account in reporting under paragraph (c)(1) of this section, or in determining the dollar threshold under paragraph (c)(4) of this section, for purposes of the subsequent year.

(2) *Contingent liability.* The amount of any contingent liability assumed by a person equals the expenditure that the person would have had to make, if the contingency had been realized.

(1) *Form and manner of record keeping and reporting.* The Department may prescribe the form and manner of record keeping under paragraph (b) of this section and reporting under paragraph (c)(1) of this section. If the Department prescribes such requirements, it will publish a Notice in the **Federal Register** specifying any form to be used and where it may be obtained, as well as any other relevant information. Failure of the Department to prescribe such requirements does not relieve any person from complying with the record keeping and reporting requirements of this section.

(Approved by the Office of Management and Budget under control number 2535-0103)

§ 86.25 Requirements for persons engaged to provide lobbying services.

(a) *Coverage.* Except as otherwise provided by this section, this section applies to each person that is retained by a person to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action through direct communication with any officer or employee of the Department. It does not apply to a person that attempts to influence the Department on its own behalf, without being retained by another person.

Note: See section III. of Appendix A to this part for examples and standards on persons receiving payments under this part.

(b) *Registration.* (1) *General requirement.* Except as provided by paragraphs (d), (e), and (f) of this section, each person subject to paragraph (a) of this section must register with the Office that is responsible for administering this part. The registration must be received by the Office not later than 14 days after the date on which the person is retained, as provided by paragraph (a) of this section.

Note: See sections IV.1. and 6. of Appendix A to this part for standards on the registration requirements of the rule.

(2) *Form and content.* The registration referred to in paragraph (b)(1) of this section must be in writing, and must include:

(i) The name and business address of the registrant;

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(ii) The name and address of the registrant's employer, and of any person in whose interest the registrant appears or works; and

(iii)(A) If the registrant is an individual, a statement of whether the registrant has been employed by the Federal Government during the two-year period ending on the date of the registration and, if so, in what capacity; or

(B) If the registrant is an entity, the names and business addresses of each partner, associate, or other officer or employee of the entity who will make the actual contact with HUD, and a statement of whether any such individuals have been employed by the Federal Government during the two-year period ending on the date of the registration and, if so, in what capacity.

(c) *Annual reporting.*—(1) *In general.* (i) Except as provided by paragraphs (c)(2) and (3), and by paragraphs (d), (e), and (f) of this section, each registrant under paragraph (b) of this section must, between the first and 10th day of January of each year, file with the Office that is responsible for administering this part a detailed report of all money or other thing of value received, and of all money or other thing of value expended, by the registrant during the preceding year in carrying out activities pursuant to an agreement subject to paragraph (a) of this section. The report must include such information as the Department may prescribe pertaining to whom, and for what purposes, the money or other thing of value was provided.

(ii) The value of anything with monetary value, other than cash, must be determined as of the date of the expenditure:

(A) By reference to an objective standard, such as a stock or bond quotation in the case of a stock or bond; or

(B) If no objective standard is available at reasonable cost, by any other means that are reasonably designed to produce a fair and accurate valuation.

(iii) For purposes of this paragraph (c)(1) of this section, money or an other thing of value is:

(A) Received when the registrant actually receives, or has the unrestricted right to receive, it; and

(B) Expended when the registrant makes it available to another person without restriction.

Note: See sections IV. 1. and 8. of Appendix A to this part for standards on the registration requirements of the rule.

(2) *Minimum dollar requirement.* The reporting requirements of paragraph (c)(1) of this section do not apply if the sum of all the money or other things of value received by the person for activities under paragraph (a) of this section is less than $10,000 in that year.

Note: See section IV.2. of Appendix A to this part for standards on the registration requirements of the rule.

(3) *Exception for compensation to regularly employed personnel.* (i) The reporting requirements of paragraph (c)(1) of this section do not apply to receipt of reasonable compensation by a regularly employed officer or employee of the person that requests or receives financial assistance, or that is involved in any management action.

(ii) Any officer or employee asserting the exception under this paragraph (c)(3) must demonstrate, upon the Department's request and to the Department's satisfaction, that it qualifies for the exception, including that it received reasonable compensation and that it was a regularly employed officer or employee, as those terms are defined in § 86.15.

Note: See section IV.4. of Appendix A to this part for examples and standards as to what constitutes the exception for regularly employed officers and employees for purposes of this part.

(d) *Exception for compliance with HUD requirements.* The registration requirements of paragraph (b) of this section, and the reporting requirements of paragraph (c)(1) of this section, do not apply to—

(1) Any agreement that is wholly and expressly limited to complying with conditions, requirements, or procedures imposed by the Department in connection with any financial assistance or management action; or

(2) The receipt of any money or other thing of value that is limited to complying with conditions, requirements, or procedures in connection with any financial assistance or management action; but only if:

(i) The conditions, requirements, or procedures are imposed, or are reasonably believed by the person to be imposed, by law, regulation, directive, or other written instruction (such as a Notice of Fund Availability or application document or a mortgagee letter); or

(ii) The conditions, requirements, or procedures are imposed by an officer or employee of the Department, other than as provided by paragraph (d)(2)(i) of this section.

Note: See section IV.3. of Appendix A to this part for examples and standards as to what constitutes compliance with HUD requirements for purposes of this part.

(e) *Exception for litigation.* The registration requirements of paragraph (b) of this section, and the reporting requirements of paragraph (c)(1) of this section, do not apply to any agreement, or to the receipt or expenditure of money or any other thing of value in connection with litigation to which the person is a party.

Note: See section IV.5. of Appendix A to this part for examples and standards as to what constitutes litigation for purposes of this part.

(f) *Exception for State and local government officials.* The record keeping requirements of paragraph (b) of this section, and the reporting requirements of paragraph (c) of this section, do not apply to—

(1) *Elected officials.* The elected officials of a State or local government.

(2) *Personal staffs of elected officials.* The political appointees who serve on the personal staffs of the elected officials of a State and local government. These individuals include (but are not limited to) Special Assistants and Executive Assistants to the elected official; and

(3) *Policy-level appointees.* Full-time, appointed officials of a State and local government who serve in policy-level positions. These individuals include cabinet officials of a State and local government, Community Development and Housing Directors, and Public Housing Authority Directors. To qualify for the exception, the individual must occupy a position that is responsible for setting policy for the organization, or for participating in the development of that policy with the organization head. The exception does not include positions in which the incumbent simply executes policy set by others.

The exception under this paragraph (f) only applies to the extent that the individual claiming it is engaged in the official business of the State or local government that the individual serves.

Note: See section VI.4. of Appendix A to this part for standards on what qualifies for this exception.

(g) *Updates for changes in registration.* Each person that makes a change to the information required under paragraph (b)(2) of this section, must comply with all applicable registration requirements under this section within 14 days of any change in information previously provided. If the person is an entity, it must also submit to the Office that is responsible for administering this part the information required under paragraph (b)(2)(iii)(B) of this section within 14 days of any change in information previously provided.

(h) *Form and manner of registration and reporting.* The Department may prescribe the form and manner of registration under paragraph (b)(2) and reporting under paragraph (c)(1) of this section. If the Department prescribes such requirements, it will publish a Notice in the Federal Register specifying any form to be used and where it may be obtained, as well as any other relevant information. Failure of the Department to prescribe such requirements does not relieve any person from complying with the registration and reporting requirements of this section.

§ 86.30 Public inspection and publication requirements.

(a) *Public inspection.* Each report on an agreement or an expenditure that is filed with the Office that is responsible for administering this part under § 86.20(c)(1) will:

(1) Be kept by the Office for at least the two-year period beginning on the date of filing;

(2) Constitute part of the public records of the Department; and

(3) Be open to public inspection.

The Department will publish a Notice in the Federal Register before this part takes effect, and as needed thereafter, informing the public when and how public inspection under this paragraph (a) may be conducted.

(b) *Federal Register publication.* The Department will compile all information submitted to the Office that is responsible for administering this part in reports under §§ 86.20(c) and 86.25(c), and registrations under § 86.25(b), as soon as practicable after the close of the calendar year with respect to which the information is filed. The Department will publish this information annually in a Notice in the Federal Register.

§ 86.35 Penalties.

(a) *Penalties and sanctions.* The Department may impose whatever sanctions or penalties are available under any applicable law for any violation of the requirements of this part. In appropriate cases, the Department will refer cases to the Department of Justice for prosecution.

(b) *Civil money penalties*—(1) *Grounds for imposition of penalty.* The Department may impose a civil money penalty on any person that knowingly fails:

(i) To file a report required under § 86.20(c),

(ii) To register under § 86.25(b), or

(iii) To file a report required under § 86.25(c).

A civil money penalty under this paragraph (b)(1) is in addition to any other available civil remedy, administrative sanction or penalty, or criminal penalty, and may be imposed whether or not the Department imposes other administrative sanctions or penalties.

(2) *Amount of penalty.* The amount of the penalty that may be imposed under paragraph (b)(1) of this section will be determined on the basis of the factors listed in paragraph (b)(3) of this section, but may not exceed the greater of:

(i) $10,000 for each violation; or

(ii) In the case of a person subject to registration under § 86.25(b), the total amount that the person received for any services performed to which the violation under paragraph (b)(1) of this section relates.

(3) *Factors in determining amount of penalty.* In determining the amount of a penalty under this paragraph (b), consideration will be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before May 17, 1991), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors that the Department may deem appropriate.

(4) *Procedures for imposing penalty.* Agency procedures regarding imposition of civil money penalties under this paragraph (b), as well as procedures regarding final orders, reviewability, judicial review, actions to collect penalties, and settlements by the Department, may be found at 24 CFR part 30.

(c) *Prohibition on consulting activities*—(1) *In general.* Any person upon whom a civil money penalty is imposed under paragraph (b) of this section may be prohibited, for the three-year period beginning on the date of the imposition of the penalty, from receiving any payment or thing of value for performing any services (with respect to any application for financial assistance) for any person.

(2) *Criminal penalty.* Any person that violates the prohibition under paragraph (c)(1) of this section shall, upon conviction, be guilty of a felony, and shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) *Transition provision.* No sanctions or penalties under this part or otherwise may be imposed by the Department for any failure to meet the requirements of this part for the period ending August 14, 1991.

Subpart D—Limitations on Fees to Consultants

§ 86.50 Limitations on fees to consultants.

(a) *General rule.* Except as provided by paragraph (b) of this section, no person that is engaged for pay or any other consideration to influence a decision of the Department with respect to the award or allocation of any financial assistance, through direct communication with any officer or employee of the Department, may seek or receive any fee or remuneration of any kind that:

(1) Is based on the amount of the assistance or the number of units that may be provided by the Department; or

(2) Is contingent in any way on an award of assistance by the Department, except where:

(i) Services are provided to a public or private nonprofit entity applying for the award or allocation of assistance; and

(ii) All or part of the professional services related to a project are donated to the nonprofit entity in the event assistance for a project is not awarded.

Note: See section V. of appendix A to this part for examples and standards on the arrangements that are subject to this subpart. See section IV. of appendix A for examples and standards as to what constitutes influence for purposes of this part. The term "professional services," as used in this part 86, is not synonymous with "professional and technical services," as that term is used in part 87, which implements the "Byrd" Amendment.

(b) *Exception for compliance with HUD requirements.* The provisions of paragraph (a) of this section do not apply to—

(1) Any agreement that is wholly and expressly limited to complying with conditions, requirements, or procedures imposed by the Department in connection with any financial assistance; or

(2) The receipt of any money or other thing of value that is limited to complying with conditions, requirements, or procedures in connection with any financial assistance;

but only if:

(i) The conditions, requirements, or procedures are imposed, or are reasonably believed by the person to be imposed, by law, regulation, directive, or other written instruction (such as a Notice of Fund Availability or application document or a mortgagee letter); or

(ii) The conditions, requirements, or procedures are imposed by an officer or employee of the Department, other than

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as provided by paragraph (b)(2)(i) of this section.

Note: See section IV.3. of appendix A to this part for examples and standards as to what constitutes compliance with HUD requirements for purposes of this part.

(c) *Definitions.* For purposes of paragraph (a)(2)(ii) of this section:

(1) *Professional services* includes [but is not limited to] legal and other advice concerning the financial assistance involved, the preparation of application and other documents with respect to the financial assistance, and any professional activities subject to § 86.25 with respect to the award or allocation of the financial assistance.

(2) *Part of the professional services* means at least 33⅓ percent of the total professional services provided to the nonprofit entity.

(3) *Engaged for pay, or for any other consideration* includes, in the case of an entity, the employment relationship between the entity and its partners, associates, or other officers and employees.

(4) *Award or allocation of any financial assistance* means the provision of any financial assistance, as defined in § 86.13, including assistance involving the amendment, extension, or renewal of an assisted housing contract.

Appendix A to Part 86—Standards with Regulatory Effect

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I. *Purpose*

1. *In general.* Part 86 deals with the two players who are typically involved in efforts to influence the Department with respect to the award of financial assistance or the taking of management actions: those who *obtain the services of another* for this purpose and those who *provide the services.* In general, those who *obtain services* are required to *keep records* and to *report* their expenditures to HUD; those who *provide services* must *register* with, and *report* their activities to, the Department.

2. *Ground rules.* As required by section 13(h) of the Department of Housing and Urban Development Act (the "HUD Act"), this appendix is designed to provide standards to the public in determining the types of activities that constitute "influence" subject to part 86. *Sections II. through IV. of* this appendix address this question. Each of these sections sets forth the general rules for the topic, and provides examples to illustrate the rules.

Section V. provides similar information for subpart D of the rule—Limitations on Fees to Consultants. *Section VI.* provides examples on a range of topics of particular concern to the public in understanding part 86's requirements.

In using this appendix, several points should be noted:

—Sections I. and II. of this appendix view lobbying activities from the perspective of each of the two actors described above. This approach follows the structure of part 86, and is designed to provide the reader with the ability to refer to the preamble and the rule text for further explanation of each of the issues involved.

—The definitions contained in part 86 apply to this appendix.

—All reports required under part 86—from both the person obtaining the services and the person providing the services—must be submitted by January 10 of the year after the reportable activity occurred.

—For purposes of all the examples, unless otherwise indicated, "A" represents the person obtaining the services, and "B" represents the person providing them; the roles of other actors are described in the examples.

It should be noted that the material in this appendix is part of part 86 and, as such, has the same legal effect as regulatory text. The Department may issue Policy Statements and Interpretative Rules to add to part 86 additional examples as needed to *refine* programmatic issues in furtherance of the established policy. However, changes to the examples which establish *new or different* policy will be made only through notice and comment rule making.

Finally, it should be noted that Part 86 contains procedural requirements only. It neither expands nor limits the situations in which communications designed to influence the Department's decisions may be made.

II. *Persons Making Expenditures.*

Section 86.20 covers the following persons who make, or agree to make, expenditures to influence the Department:

Each person—

(1) That makes, or that enters into an agreement to make, an expenditure to a person;

(2) That makes, or that enters into an agreement to make, an expenditure to a person on behalf of another person; or

(3) On whose behalf an expenditure is made to a person, or an agreement to make an expenditure to a person is entered into; if the expenditure is intended to influence, or should reasonably be expected to have the effect of influencing, a decision of the Department with respect to the award of any financial assistance or the taking of any management action, through direct communication with any officer or employee of the Department.

The first step in defining what constitutes "influence" for purposes of this provision is to establish what constitutes an "expenditure" and an "agreement to make an expenditure."

1. *Expenditures*

General rule. An expenditure includes (but is not limited to) a payment, distribution, loan, advance, deposit, gift of money, or the provision of anything else of value. It is considered to have been made when the person makes it available to another person without restriction. An expenditure may be made by, or on behalf of, a person.

All expenditures made for the purpose of *obtaining* covered lobbying services are subject to part 86. This could include expenditures made by a person to an officer or employee of the person as part of an employment relationship. However, expenditures made by an individual attempting to influence a departmental decision on *his or her own behalf* are not covered.

In some cases, more than one "person"—both natural and otherwise—may be involved in the same lobbying transaction. In these cases, the Department will look to the substance of each person's role in determining part 86's applicability. Thus, in a given transaction, there may be more than one person making an expenditure, as well as more than one person retained to carry out the lobbying.

Part 86 is limited to expenditures with respect to the award of financial assistance or the taking of a management action. Representation with respect to other issues, such as policy matters, that are not related to specific cases, is generally not covered.

Consistent with the statute, an expenditure will be given the most inclusive meaning possible. It will cover anything that has any value whatsoever, even things of nominal or non-monetary value.

The value of any expenditure with monetary value, other than cash, must be determined as of the date of the expenditure:

—By reference to an objective standard; or

—If an objective standard is available at reasonable cost, by any other means that are reasonably designed to produce a fair and accurate valuation.

[Note: for the rule text, see the definition of "expenditure" in § 86.15 and § 86.20, generally.]

* * * * *

Examples.[9]

[9] The following examples address only A's responsibilities under Part 86; B's obligations are addressed in section III. of the Appendix. Each of

Continued

—A makes a cash payment to B to lobby HUD. A incurs the expenditure at the point that the payment is made.

—A deposits a payment in B's bank account as compensation for lobbying services, and has imposed no restriction on B's access to the payment. A incurs the expenditure when he makes the payment to B's account, even if B actually withdrews the payment at a later time.

—A gives B a check in payment for lobbying services, but tells B that he must wait for further instructions before cashing it. A incurs the expenditure only when he authorizes B to cash the check.

—A allows B to use his vacation home in payment for covered lobbying. Use of the home is a thing of monetary value that constitutes an expenditure. Since use of the home in this context is a non-cash expenditure, A must assign an appropriate value to it.

Assuming that no *objective* valuation standard for the house is available at a reasonable cost, A is free to use any means that are *reasonably designed to produce a fair and accurate valuation.* For example, A could refer to other, recent occasions on which the house was rented at market value. If this information is not available, A could conduct a brief survey of similar accommodations in the area. A is not required to attempt an exact valuation through costly means, such as real estate appraisals, even if they would produce a more exact valuation. An appraisal will be required, however, if there are *no* other means that are reasonably designed to provide a fair and accurate valuation of the expenditure.

In addition, the valuation of the use of the home must reflect the circumstances present when the home is used. For example, if the home is in Aspen, Colorado, and is used during the winter ski season, the valuation must reflect its use at that time.

—A helps B's son gain admission to a university as partial payment for lobbying services. A incurs an expenditure, even though it may have no monetary value to either A or B.

—A gives B common stock in payment for lobbying activities. A must value the stock as of the date that the stock was given. Valuation must be by reference to an objective standard, such as the New York Stock Exchange Index.

—A asks C, a business associate, to make a payment to B to lobby HUD for A. A incurs an expenditure, since the payment was made on his behalf. As noted later, C may also incur an expenditure if he had an interest of any kind in the lobbying venture.

—A is a national association, with a full-time governmental affairs staff that is responsible, among other things, for representing the association before HUD. A derives its operating income from membership dues and other contributions from members. A assigns B, one of its employees, to represent the association in a management action involving C, a member of the association. The total cost of representation comes from general membership dues.

The relationship between A and the source of its income—its membership—is not covered by Part 86. *General membership dues and other general contributions* made available to A are not covered by Part 86, even though amounts from these sources may ultimately be used in covered lobbying. Part 86 only reaches expenditures designed to influence the Department's decision with respect to specific awards of financial assistance and management actions.

The relationship between A and B, however, does come within Part 86. When A pays B a salary drawn from general membership amounts to influence the Department, A incurs an expenditure, and B must register, and may have to report as a registrant.[10] This is the classic employer/employee relationship under part 86. The exempt character of the dues *received* does not continue to the *use* of the funds. If the dues are *used* for a covered activity, they are subject to part 86.

—A is a national association, with a full-time governmental affairs staff that is responsible, among other things, for representing the association before HUD. A derives its operating income from membership dues and other contributions from members. A assigns B, one of its employees, to represent the association in a management action involving C, a member of the association. C makes an additional contribution to the association specifically to cover one-half of the costs of the representation. The remainder of the cost of representation comes from general membership dues.

C has incurred an expenditure for the full cost of the representation. He is required to keep records and report on the special contribution he provided, since he made the expenditure to A for a lobbying purpose. He is also required to keep records and report on the costs paid from general membership dues, since A has paid these amounts *on his behalf.*

A has not incurred an expenditure for the membership dues used to pay B's salary in furtherance of the lobbying activities. Literal application of Part 86 would result in A wearing two hats: as the entity retained by C and as the one making the expenditure to B. Such a result would be confusing and unnecessary. Therefore, in the above case, A is only required to register and report, as shown in a later example.

—A is the national association referred to above. One of A's employees is assigned to talk to HUD policy makers regarding a general provision in a tax bill pending in Congress.

A's salary to the employee with respect to the management action is not an expenditure for purposes of Part 86. The tax matter is a general one, unrelated to the award of any financial assistance or management action.

—A, a developer, engages B, a law firm, to represent him in a management action pending before HUD. B assigns the matter to two of its associates, who provide the representation throughout the action.

A has to report his expenditure, because he has engaged B for a covered undertaking. B must register under § 86.25 as the person retained to provide the lobbying services, and may have to report under § 86.25.

As discussed later, however, B's employees need neither register nor report. B, however, must include in its registration an identification of the employees who will contact HUD and an indication of whether any of them have been employed by the Federal Government during the two-year period ending on the date of the registration and, if so, in what capacity. (See § 86.25(h))

—A is a sole practitioner who has an assistance application pending with the Department. A attempts to influence HUD officials with regard to the award of the assistance. A is not subject to Part 86. Coverage under Part 86 requires the "two-player" scenario mentioned above.

—A is a sole practitioner who has an assistance application pending with the Department. A asks a paralegal in his office to contact HUD on behalf of his assistance application.

A is covered by Part 86. Although he is a "sole practitioner," his request to his paralegal establishes the "two-party" scenario required for coverage under Part 86, assuming he does not meet the definition of "regularly employed."

—A, the director of a low-income housing association, asks B to meet with HUD officials in support of a grant proposal that A has submitted to HUD. B is a FHA director, with many years experience with public housing. B has no interest in the proposal, other than as a citizen concerned about improving housing conditions for the poor. B meets with the HUD officials.

Neither B nor A is subject to the rule. No expenditure has been made, since nothing of value passed between them. B's services were provided truly "gratis."

—B volunteers to lobby for a HUD grant on behalf of A, a developer. B is not interested in the grant itself, but hopes through his efforts to establish "good will" and "organizational credibility" with A.

Both A and B are covered. "Good will" and "organizational credibility" are things of value, and, therefore, expenditures under Part 86.

* * * * *

2. *Agreements to Make an Expenditure*

General rule. Part 86 covers "agreements to make an expenditure." To qualify as an "agreement to make an expenditure" under Part 86, both elements must be present: there must be an "agreement," and the "agreement" must involve an "expenditure."

the examples assumes that the applicable dollar thresholds have been reached and that the expenditures involved are not otherwise excepted from Part 86's coverage.

[10] It should also be noted that the association cannot avail itself of the "regular employment" exception to § 86.20's reporting requirements, since that exception only runs to officers or employees who are employed *by the person* that requests or receives the financial assistance or is involved in the management action. In the example, the association's interest in the matter is as C's representative.

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as discussed in section II.1. of this Appendix, above.

The "agreement" element is to be accorded the widest possible definition. An "agreement" includes all or part of a contract, promise, agreement, or other arrangement that involves an undertaking of any kind by, or on behalf of, a person to make an expenditure. It covers any bilateral, unilateral, or other arrangement under which a person agrees to make an expenditure in the future. An arrangement is considered an "agreement" for purposes of Part 86, whether or not it is in writing or is legally enforceable.

Although State or local contract law may be helpful in determining whether the arrangement constitutes a contract or a promise, the fact that even legally unenforceable arrangements are covered, requires HUD to make the final determination of whether an "agreement" subject to Part 86 has been made. The Department will make this judgment based on all the circumstances involved, and will consult State or local law as appropriate.

Part 86 reaches a number of persons and arrangements. An agreement may include arrangements, such as an employment contract, under which a person uses its officers and employees to lobby the Department. Any party to an agreement—whether or not named in any writing—that commits to provide an expenditure is covered.

Those who have an interest in the transaction may also be subject to Part 86. These include persons who assume contingent liability in any agreement to make an expenditure, or who lend or otherwise provide the money or other thing of value that is the subject of the expenditure. For these persons, the test for coverage is whether they have any interest in the outcome of the lobbying effort.

For purposes of determining Part 86's dollar threshold for reporting expenditures, the full amount of the person's participation in the arrangement is counted. For example, the full amount of a contingent liability is counted, even though the contingency is not triggered.

An agreement is considered to have been made when the contract or agreement is entered into, or the promise or other arrangement is made, even though a person receiving the expenditure may not receive it at that time. The reporting and record keeping requirements of § 86.20 attach at that point.

The value of the expenditure involved in an agreement must be determined at the time the agreement is entered into, and must use the valuation rules discussed in section II.1. of this Appendix.

A person who enters into an agreement to make an expenditure, and later makes the expenditure, is not required to "double count" it: the agreement triggers the reporting requirement and the later expenditure is not counted, provided that it involves the same consideration. If the expenditure *differs* from the consideration specified in the agreement, the difference must be reported to the extent its value is greater. If the expenditure is less than the consideration in the agreement, no change may be made in the amount in the agreement.

[Note: for the rule text, see the definition of "agreement to make an expenditure" in § 86.15, and § 86.20 generally.]

* * * * *

Examples.[11]

—A makes a promise to pay B $1,000 to influence the Department. The expenditure is considered made at that point. It is irrelevant that the actual payment is made later: the making of the promise triggers Part 86.

If A later pays B the $1,000, the actual payment need not be reported. There is no change in the consideration of the original agreement.

If A pays B the $1,000 plus a $500 bonus, the additional $500 must be reported. The consideration has changed, and has exceeded that contained in the original agreement.

If A pays B $900, no further reporting is required: the initial reportable amount may not be reduced by later events.

—A enters into an agreement in July to allow B to use his Aspen, CO vacation home for one week in December in payment for covered lobbying. Use of the home is a thing of monetary value that constitutes an expenditure. Since use of the home in this context is a non-cash expenditure, A must assign an appropriate value to it *at the time that the agreement is entered into.*

Assuming that no objective valuation standard for the house is available at a reasonable cost, A is free to use any means that are reasonably designed to produce a fair and accurate valuation. For example, A could refer to other, recent occasions on which the house was rented at market value. If this information is not available, A could conduct a brief survey of similar accommodations in the area. A is not required to attempt an exact valuation through costly means, such as real estate appraisals, even if they would produce a more exact valuation. An appraisal will be required, however, if there are *no* other means that are reasonably designed to provide a fair and accurate valuation of the expenditure.

In addition, although the valuation must be made at the time the agreement is entered into, the valuation of the use of the home must reflect the circumstances present *when the home is to be used.* Thus, the valuation must be made in July, and must reflect use of the house in December.

Once the valuation is made, A need not revalue the expenditure, provided the expenditure is made as provided in the agreement. This is the case even if the value of the use of the home increases between July and December. The increase need not be reported, since there has been no change in the agreed upon consideration.

If, however, A moves the December use to May, or throws in one-week's worth of ski instructions and lift passes, the new expenditures must be assigned a value and reported at the time of the changed agreement.

—A enters into an arrangement under which A promises to pay for B's lobbying services on an "as-provided" basis. The triggering event is the agreement, not the payments that are made over the life of the agreement.

—A is a developer and promises to arrange for B, in return for lobbying HUD in a pending management action involving A, to get an extremely favorable loan at the local bank at an interest rate below any rate permitted by the bank's board. Part 86 is triggered, even though B has no recourse if, at some point later, the bank does not honor the promise.

—A enters into an agreement with B that a State court finds to violate the parol evidence rule. Mere unenforceability is not relevant. The Department will review all the circumstances and determine whether A and B had an agreement to influence the Department.

—A has a grant proposal pending before the Department. He asks C, a business partner, to guarantee 50 percent of a bank loan to cover the cost of retaining B to lobby the proposal with HUD. If A's proposal is funded, C stands to share in the proceeds. C agrees to make the guarantee, but is not referred to in the contract. A repays the loan on time: C has incurred no financial loss.

C's assumption of guarantor status is subject to Part 86, to the full extent of his contingent exposure. The amount is set at the time the arrangement is entered into and is not subject to change, irrespective of whether the contingency is in fact triggered. In addition, the substance of the arrangement controls: the fact that C is not mentioned in the agreement is irrelevant.

—A needs cash to finance a lobbying effort. A secures a loan from C, a bank, for the full amount needed. A indicates on the loan papers that the loan proceeds will be used to lobby HUD.

The bank has no financial interest in A's endeavor. Its only interest in obtaining repayment of the loan. It has not incurred an expenditure subject to Part 86, since it has no financial or other interest in the outcome of the lobbying activities.

* * * * *

III. Persons Receiving Payments

Section 86.25 provides that each person that is retained by a person to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action through direct communication with any officer or employee of the Department must meet certain registration and reporting requirements.

General rule. The *registration* requirements of § 86.25 apply to any person who is engaged, pursuant to an agreement to make an expenditure, to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action. As noted above, § 86.20 applies where a person makes an agreement

[11] The following examples address only A's responsibilities under Part 86; B's obligations are addressed in section III of this Appendix. Each of the examples assumes that the applicable dollar thresholds have been reached and that the agreements involved are not otherwise excepted from Part 86's coverage.

to make an expenditure to influence the Department. Under § 86.25, a person is *engaged* for that purpose when he or she enters into that agreement: the agreement to perform lobbying services in return for the expenditure.

The *reporting* requirements of § 86.25 apply when the lobbyist receives the expenditure: in the words of the statute, when the lobbyist receives "payment or other consideration." "Receipt" occurs when the person either actually receives the payment or has the unrestricted right to receive it. The valuation rules with respect to "expenditures," above, apply here as well.

These standards point up an important distinction between A and B in the examples: A's *reporting obligations* begin when an agreement to make an expenditure, or an expenditure, is made; B is required to *register* at that point, but is required to *report* only on what he or she receives under the agreement.

The types of arrangements covered by Part 86 include an employment relationship between a person and its officers and employees.

[Note: for the rule text, see § 86.25 generally.]

* * * * *

Examples.[12]

—A enters into an agreement to make an expenditure with B. Payment under the agreement is wholly conditioned upon B's future lobbying services. B *must register* with HUD. He is not required to *report* to HUD until he receives an expenditure under the agreement.

—A enters into an agreement with B under which A will compensate B after B has completed his lobbying services. B must register with HUD. A gives B a cash advance to cover B's "start-up" expenses. B must report the cash payment.

—A enters into an agreement to make an expenditure with B. B must register with HUD. A deposits a payment under the agreement in B's bank account, without restriction as to B's access to it. The payment is considered received when the account receives the payment, even if B actually withdraws the payment at a later time.

—A helps B's nephew (who lives in another State) gain admission to a university as part of a lobbying agreement. B must report A's help, since it is part of the consideration of the agreement. This is so, even though A's actions may have no direct monetary value to B.

—A agrees to let B use his vacation home in payment for covered lobbying. Use of the home is a thing of monetary value that must be reported. B must place a value on the use of the home as of the time he *actually uses it.* The same valuation rules noted in the example under section II.1. apply here as well.

As noted in the examples, above, A must also assign a value to the use of the home. B's and A's valuations come at different times: A's when the agreement is entered into; B's upon "receipt" (use) of the home. B is free to obtain his own valuation, but, to avoid paper burden, B may opt to use A's valuation.

—A is a national association, with a full-time governmental affairs staff that is responsible, among other things, for representing the association before HUD. A derives its operating income from membership dues and other contributions from members. A assigns B, one of its employees, to represent the association in a management action involving C, a member of the association. C makes an additional contribution to the association specifically to cover one-half of the costs of the representation. The remainder of the cost of representation comes from general membership dues.

As noted earlier, C has incurred an expenditure for the full cost of the representation, and A has not incurred an expenditure for the membership dues used to pay B's salary in furtherance of the lobbying activities.

A is required, however, to register and report as a registrant. Consistent with the treatment of entities retained for lobbying purposes, A's registration must identify B as the individual who will contact HUD; and provide other information about B. B has no further obligations under Part 86.

—A is the national association referred to above. B, one of A's employees is assigned to talk to HUD policy makers regarding a general provision in a tax bill pending in Congress.

B is not required to register or report the activity, since the lobbying activities must involve a specific assistance award or management action.

—A is the national association referred to above. B, one of A's government affairs employees, is assigned to talk to HUD policy makers about a proposed regulation. Although the regulation expresses general policy, A's position is designed to help C, a member of the association, in a management action pending before the Department.

A's salary to the employee with respect to the management action is an expenditure for purposes of Part 86. B must register, since, although the regulation involves a general issue, the representation is primarily intended to further A's position in a pending management action.

* * * * *

IV. *Influencing the Decision of the Department Through Direct Communication With an Officer or Employee of the Department*

Part 86 covers:

—Those who make an agreement or an expenditure that is intended to influence, or that should reasonably have been expected to have the effect of influencing, a decision of the Department with respect to the award of assistance or the taking of a management action, though direct communication with any officer or employee of the Department; and

—Those who are retained, and receive any kind of payment, for this purpose.

1. *Intent to Influence*

General rule. "Influence" is to be given the broadest possible reading. It includes (but is not limited to) any effort to affect any aspect, including (but not limited to) the outcome, of the award of any financial assistance or the taking of any management action by the Department.

An "intent to influence" may be shown in two ways: if the agreement or expenditure was *actually* intended to have the requisite influence (*actual intent*), or should *reasonably have been expected* to have the effect of having the requisite influence (*constructive intent*) in determining an intent to influence, the Department will take into account all the circumstances involved, including (but not limited to) oral and documentary evidence, and the actions of the parties involved.

The expenditure or communication must be designed (actually or constructively) to influence the officer or employee. Communications of another nature need not be reported, even if they are made during an otherwise covered lobbying venture.

[Note: for the rule text, see the definition of "influence" in § 86.15 and § § 86.20 and 86.25, generally.]

* * * * *

Examples.

—A writes a check to B pursuant to a written contract specifying that B is to lobby HUD. B endorses the check. The cancelled check and the contract are documentary evidence of an intent to lobby the Department.

—A makes an oral promise to pay B to lobby the Department. The intent to lobby may be established by all the circumstances involved, including the actions of A and B and the record of any payment actually made.

—A pays B to "look into" a HUD management action involving A. B makes a communication to influence the Department on A's behalf. A may not claim that it is not subject to Part 86, since it did not give B specific directions to lobby the Department. A reasonable person would conclude that A in fact intended B to attempt to influence the Department.

—B was a senior HUD official over 10 years ago. He is representing A, whose funding application is pending before the Department. B personally delivers A's application to C, the HUD official designated to receive applications for the assistance involved. When C asks B for his name, B also mentions his title while at HUD.

B's reference to his former position is not covered. Simple reference to B's former title does not *in and of itself* invoke Part 86.

Assume further, however, that after delivering the application, B stops by the office of D. D is a HUD employee in the decision making process for the assistance involved, and was a Special Assistant to B while he was at HUD.

B knows that D has an official role in considering A's application. Although he hasn't seen D since he left HUD, B considers

[12] The following examples address only B's responsibilities under Part 86; A's obligations are addressed in section II., above. Each of the examples assumes that the dollar threshold for registrant reporting has been met and that the agreements involved are not otherwise excepted from Part 86's coverage.

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it advantageous to A's cause to "press the flesh" with D. In the course of the conversation, B tells D that he is representing an applicant in the funding competition.

B's conduct would invoke part 86. Unlike his remarks to C, B's approach was intended to "cash in" on an old relationship—and could reasonably have been expected to have that result.

—A, a State official, contacts HUD to ask when final selections will be made on the State's application for a grant that is pending before the Department. A's communication with HUD is informational, and does not trigger the requirements of the rule: there was no intent to influence. If A's communication had included a pitch for the State's proposal, the requirements of the rule would have been triggered. (Purely informational inquiries are permitted by anyone, not just State and local government officials.)

—B, a law firm representing a mortgagee with an FHA-insured mortgage, writes to HUD to point out that HUD mistakenly endorsed an insurance document with the wrong section of the National Housing Act. This request involves a purely ministerial change occasioned by a HUD mistake, and is not covered by the rule.

If, however, the law firm alleges that the "mistake" involved an erroneous interpretation of the law, the communication would be covered. Legal interpretations involve an analysis of the facts and the law of a specific case, and do not constitute purely ministerial acts. Efforts to change the interpretation involve an intent to influence.

* * * * *

2. Decision of the Department—Covered Communications

General rule. Part 86 covers direct communications with a HUD officer or employee that are intended to influence a decision of the Department with respect to the award of financial assistance or the taking of a management action. Specifically, Part 86 covers *any* communication for the purpose of influencing *any* HUD officer or employee with regard to *any* decision of the Department concerning the award of financial assistance or the taking of a management action—whether or not the employee participates in *any* way in the decision making process for the assistance or the action. All types of communications are covered, including (but not limited to) oral, written, and electronic.

* * * * *

Examples.

—B stops by the office of C, a HUD official involved in a pending management action in which B is representing a client. C is at lunch, so B chats with D, C's secretary. B asks D about the status of C's decision on the management action. B also tells D about the proposal, and highlights what B considers to be its strong points.

On the way out, B runs into E, a paraprofessional in the official's office who used to work with him. B says in parting, "You should see the gem of a proposal I've submitted this time."

B's inquiry of D concerning the status of the action does not trigger Part 86: the communication is simply a request for information, and does not involve any attempt to influence.

The "briefing" of D, however, does trigger part 86. B's recitation of its position, and its strong points, could reasonably be expected to have the effect of influencing D. The fact that D is a secretary who is not in the decision making process in the matter is irrelevant. Part 86 reaches *any* HUD officer or employee who is targeted for influence with respect to a specific award of assistance or a management action by the Department.

B's remark to E does not trigger Part 86. The remark was a humorous "good-bye" between old co-workers, and could not reasonably be said to have been intended to influence E.

—A retains B, a law firm, to prepare documents in support of A's grant application with the Department. B prepares the material and returns it to A for submission. The documents contain no reference to B.

B is not covered by Part 86: there was no direct communication between B and the Department.

It should be noted, however, that *any* communication of an influencing nature between B and the Department would be covered. For example, the following contacts could very well be covered: B signs the letter transmitting the documents; B calls HUD to discuss the merits of the application; and B permits its name to be used in the documents.

* * * * *

3. Compliance With HUD Requirements

General rule. Part 86 does not apply to any agreement or expenditure under § 86.20, or any payment or communication under § 86.25, involving compliance with conditions, requirements, or procedures imposed by the Secretary in connection with any financial assistance or management action. The exception covers *both* the record keeping requirements of § 86.20 *and* the registration and reporting requirements of §§ 86.20 and 86.25.

In the case of *record keeping and reporting on expenditures and agreements to make expenditures under § 86.20,* the exception applies to:

—Any part of an agreement that is wholly and expressly limited to making an expenditure to comply with conditions, requirements, or procedures imposed by the Department in connection with any financial assistance or management action; or

—Any expenditure that is limited to complying with conditions, requirements, or procedures imposed by the Department in connection with any financial assistance or management action; but only if—

—The conditions, requirements, or procedures are imposed, or are reasonably believed by the person to be imposed, by law, regulation, directive, or other written instruction (such as a Notice of Fund Availability, application document, or mortgagee letter); or

—The conditions, requirements, or procedures are imposed by an officer or employee of the Department, other than by law, regulation, directive, or other written instruction.

In the case of *registration and reporting of payments for lobbying services,* the exception applies to:

—Any agreement that is wholly and expressly limited to complying with conditions, requirements, or procedures imposed by the Department in connection with any financial assistance or management action; or

—The receipt of any money or other thing of value that is limited to complying with conditions, requirements, or procedures in connection with any financial assistance or management action; but only if:

—The conditions, requirements, or procedures are imposed, or are reasonably believed by the person to be imposed, by law, regulation, directive, or other written instruction (such as a Notice of Fund Availability, application document, or mortgagee letter); or

—The conditions, requirements, or procedures are imposed by an officer or employee of the Department, other than by law, regulation, directive, or other written instruction.

Where the communication is in response to a written HUD requirement, it may be initiated by the lobbyist. Where, however, the communication does *not* emanate from a written requirement, the exception may be claimed only where it is initiated by the Department.

A single communication may have elements that both are and are not subject to Part 86.

* * * * *

Examples.

—A pays B to prepare and submit to HUD an application, using an application "kit" provided by HUD. Part 86 does not apply to either A or B. The relationship between A and B is for the purpose of meeting a HUD requirement.

—A pays B to prepare and submit to HUD an application, using an application "kit" supplied by HUD. B reviews the "kit." He also reads the applicable regulation, and concludes that he is required to send some additional information to the Department in connection with the application.

B is in fact wrong, but the regulation led him to believe, as a reasonable person, that the additional submission was required. Part 86 is not triggered: a reasonable belief that a communication is required by HUD is sufficient grounds for action without invoking Part 86.

Part 86 does not apply to A. A's only directive to B was to use the "kit" to prepare the submission. This result follows, even if B's actions had been subject to Part 86: A is not responsible for action beyond his clear instructions.

—A pays B to prepare and send to HUD an application, using an application "kit" supplied by HUD. B reviews the "kit" and also talks to C, a co-worker who sometimes dabbles in HUD work. C tells B that he's heard that HUD has an unwritten policy of requiring an additional submission for this type of application. Without further research, B makes the submission. C's information proves to be wrong.

B is subject to Part 86. C's representation would not lead a reasonable person to believe (at least without independent corroboration) that the additional submission was required.

As above, Part 86 does not apply to A. A's only directive to B was to use the "kit" to prepare the submission.

—B, an attorney, represents A, who is seeking to purchase a HUD-assisted project through a transfer of physical assets (TPA). B helps his client comply with the rules of the Department, as set forth in various Handbooks and other issuances in connection with such an acquisition. One of the required documents is a narrative description of the transaction, including a showing that certain specified criteria are being met. This narrative also normally serves as a "cover letter" conveying and explaining an application package that often contains many separate groups of documents. The narrative is clearly required, and is meant to show compliance with the HUD requirements. It is, by its nature, also an advocacy piece.

The "cover letter" is not subject to Part 86. Many forms of HUD submissions—notably applications—are advocacy in nature. Their very purpose is to persuade the Department to take an action in favor of the applicant. The critical question under the statute is whether the submission is necessary to comply with HUD requirements. If it is, the presence of persuasion does not *in and of itself* bring it within Part 86's ambit.

—B in the preceding example performs all the work in connection with the TPA, and drafts and signs the "cover letter."

B is not covered by Part 86. If the communication involves compliance with a HUD requirement, it is excepted from Part 86, even though the communication was made directly to a HUD employee.

—C, a HUD officer, contacts B regarding a pending application for financial assistance. C indicates that some necessary information is missing. B supplies the information. It turns out that C was wrong: the information was not required.

B has not triggered Part 86. C indicated that the additional material was required. This is enough to provide the exception, even though the requirement may not have been pursuant to a written HUD document.

—C, a HUD officer, contacts B regarding his pending application for financial assistance. C indicates that he'd like to hear more about B's application, "even though it's not strictly required by the application and other requirements." B meets with C.

Part 86 does not apply. Even though C's request was not a requirement, B should not be put in the position of risking unfavorable consideration of the application by denying C's request. Of course, a different result would be reached if B initiated the meeting by asking C to meet with him.

—A enters into an agreement with B to provide lobbying services. Half of the agreement deals with the submission of material that is required by HUD regulations.

A is not subject to part 86 insofar as the contract involves meeting HUD requirements. B must register, even though part of the contract would otherwise be exempt. This is because registration is an "all or nothing" proposition that is not susceptible to division.

—A engages B, a consultant, to prepare and submit a grant application on behalf of A, and to push the proposal with HUD employees. B submits an application that addresses each of the application requirements in extraordinary fashion. For each selection criterion, B has prepared lengthy analyses. He has included several letters of support, and has packaged the application in the most expensive style. The HUD requirements do not limit the quantity and the nature of the material submitted.

B later learns that the application has been rejected. In such a case, HUD procedures permit a single resubmission, and discussion with the selecting official. B resubmits the material, with even more attention to detail than the original submission. He also calls the selecting official, and several of his friends at HUD, who are not involved in the selection process, to enlist their aid.

The application is again rejected, and B tries one last shot at resubmitting it.

B's original submission and the first resubmission fall within the exception for complying with HUD requirements. Their excessive length and lavishness is not prohibited under the applicable HUD procedures. Similarly, B's communication with the selecting official is within the procedures involved.

However, B's calls to his friends and his final resubmission cannot qualify for the exception. They are outside the established channels for the grant assistance involved.

It should be noted that if B's submission went beyond specific HUD requirements, Part 86 would have been triggered. For example, if the HUD procedures limited the letters of support to one, B's submission of the first letter would have been excepted, but the subsequent letters would have triggered part 86.

* * * * *

4. Litigation

General rule. Part 86 does not apply to any agreement or expenditure under § 86.20, or any payment or communication under § 86.25, involving compliance with litigation activities. The exception covers *both* the record keeping requirements of § 86.20 *and* the reporting requirements of §§ 86.20 and 86.25. Specifically, the exception applies to litigation to which the person is a party.

The term, "litigation," means:

(a) Any civil action at law or any proceeding in equity to which the Department is a party, including any appeal or settlement or other negotiations with respect to the action or proceeding;

(b) Any criminal proceeding involving a program administered by the Department, including any appeal, or negotiations with respect to the charge, sentence, or otherwise, with respect to the proceeding; and

(c) Any administrative proceeding conducted by the Department pursuant to statute or regulation that provides for the resolution of issues of fact or law (or both), or the imposition of a sanction or a penalty, by a hearing officer or by an officer or employee of the Department. An administrative proceeding includes any appeal or settlement or other negotiations with respect to the proceeding.

The exception for litigation reaches all litigation activities for the full term of the litigation, including any appeals. The exception is independent from the exception discussed above for complying with HUD requirements, although the two exceptions may overlap in some circumstances.

* * * * *

Examples.

—A retains B, a lawyer and sole practitioner, to represent him in a HUD debarment proceeding. As part of his case, B—

—Performs legal work;

—Commissions several studies to be done by economists;

—Calls several HUD officials;

—Calls a number of witnesses, including character witnesses; and

—Submits to HUD a number of advocacy pieces that were not invited by HUD officials or required by written HUD procedures.

A pays all B's fees.

A need not keep records or report; B need not register or report. Any expenditure or representation in the course of litigation (including appeals and settlements) is excepted from Part 86.

—A retains B, a lawyer and sole practitioner, to attempt to resolve a disagreement with HUD. A and B both agree that the issue is serious enough to warrant commencing legal action if the disagreement cannot be resolved to A's satisfaction.

Both A and B are covered by Part 86. The litigation exception only applies where the client is a party to litigation; the fact that the issue may later require litigation is irrelevant.

—In the course of resolving a finding made by the HUD Inspector General, the Assistant Secretary for CPD makes a management decision to suspend further dispensing of grant funds to A, a HUD recipient, pending further resolution through the administrative process. A hires B, a lawyer, to influence the decision of the Assistant Secretary.

As in the example above, both A and B are covered by part 86. The litigation exception only applies where the client is a party to litigation; the fact that the issue may later require litigation is irrelevant.

* * * * *

V. Limitations on Fees to Consultants

Section 86.50 provides that no person that is engaged for pay or any other consideration to influence a decision of the Department with respect to the award or allocation of any financial assistance, through direct communication with any officer or employee of the Department, may seek or receive any fee or remuneration of any kind that:

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(1) Is based on the amount of the assistance or the number of units that may be provided by the Department; or

(2) Is contingent in any way on an award of assistance by the Department, except where:

(i) Services are provided to a public or private nonprofit entity applying for the award or allocation of assistance; and

(ii) All or part of the professional services related to a project are donated to the nonprofit entity in the event assistance for a project is not awarded. (NOTE: The term "professional services," as used in this part 86, is not synonymous with "professional and technical services," as that term is used in part 87, which implements the "Byrd" Amendment.)

Section 13(a)(4) covers situations in which one person hires an outside party to perform lobbying activities. It also reaches situations in which an entity pays a partner, associate, or other officer or employee of the entity to influence the award of HUD assistance. This could occur in two circumstances: first, where the entity wants to lobby HUD, and calls upon its people to do the work; and second, where an entity is retained to provide the services, and uses its people to carry out the activities. In either of these circumstances, the rule's prohibitions on percentage and contingency arrangements apply to the consideration passing between the entity and its people.

It should be noted that section 13(a)(4)'s prohibition only covers situations in which the contingency or other arrangement is tied to a specific award of assistance. Partner shares and bonuses that are calculated on a general basis, not tied to a specific assistance award, do not violate section 13(a)(4).

The rule is limited to *direct communication* with HUD employees or officials. Communications that do not involve direct contact are not covered.

The rule contains an exception for compliance with HUD requirements and procedures. It permits lobbying fees to be contingent when they are incurred for activities in compliance with HUD requirements.

The rule gives the term, "award or allocation of financial assistance," the broadest possible interpretation. It provides that section 13(a)(4) reaches *any* award of assistance, including assisted housing contract amendments, extensions, and renewals.

* * * * *

Examples.

—A, a developer, retains B, a consultant, to prepare supporting documents for A's application for a HUD grant. A agrees to pay B, if he gets the award. B prepares the documents, and returns them to A for submission to HUD.

This contingency arrangement is permissible because B does not contact HUD directly.

—A, a developer, enters into an agreement with B, an architect, regarding plans necessary to support A's application for an award of financial assistance from the Department. B submits the plans directly to HUD. A agrees to pay B, if he gets the award.

Even though B made a direct contact with HUD, the contingency arrangement is permissible, because the plans prepared by B are being done in compliance with a HUD requirement.

—A, a developer, gives B, a consulting firm, a flat fee to influence the award of a HUD grant. B asks C, a member of its staff, to make the necessary HUD contacts, and tells C that, in addition to his regular salary, he will receive a bonus, based on the size of the award, if the lobbying is successful.

The arrangement between A and B is not covered: it is a flat-fee arrangement. B's arrangement with C, however, is impermissible. It includes a prohibited percentage fee arrangement.

—A, a developer, gives B, a consulting firm, a flat fee to influence the award of a HUD grant. B asks C, a member of its staff, to make the necessary HUD contacts. C receives his usual salary while working on the award.

A receives the award. At the end of the year, C receives a bonus as part of B's annual effort to reward its employees for their performance during the year. The amount of the bonus that C and the other bonus awardees receives is based in part on the successful lobbying effort.

Receipt of the bonus does not run afoul of section 13(a)(4), since it was not tied to the specific lobbying effort. C was not led to believe that his compensation depended on a successful lobbying effort; he received only his regular salary during the consideration of the grant. C received the bonus as part of the firm's overall program for rewarding high performers. The bonus reflected C's stellar performance, not the fact that he successfully lobbied on A's behalf. In this case, the fact that C's work formed the basis for part of the award is not relevant.

—A, a developer, gives B, a consulting firm, a flat fee to influence the award of a HUD grant. B asks C, a member of its staff, to make the necessary HUD contacts. C receives his usual salary while working on the award. A receives the award. B gives C a bonus for his efforts from the fee proceeds from A.

The bonus is an impermissible. It is tied the successful lobbying effort.

—A, a developer, asks two members of his firm to lobby HUD on a pending grant. He offers to compensate them in part on a contingency basis.

This arrangement is covered. The relationship between an entity and its employees is covered by the statute.

—A, a developer, enters into an agreement with B, a consultant, under which B is to contact certain HUD officials regarding A's request for a contract amendment for a Section 202 project. B is to be paid on a percentage-fee arrangement.

This contingency arrangement is not permissible because it involves an award of financial assistance.

VI. *Additional Examples of Actions Subject to Part 86* [10]

1. *Duty to Keep Records, Report, and Register*

—A pays B (who is not regularly employed by A) to contact an officer or employee of HUD regarding obtaining a favorable decision on A's application for financial assistance.

A must keep records of this transaction and report it to HUD between January 1 and January 10 of the next year. B must register with HUD within 14 days after being retained by A and must report it to HUD between January 1 and January 10 of the next year.

—A promises to contact C (a corporate executive friend) about a job for B's wife, if B will contact D (a friend of B's at HUD) regarding a favorable decision on A's application for financial assistance.

A must keep records of this transaction and report to HUD, as stated in the above example, and B must register and report, as stated in the above example.

—A arranges for B and B's family to take a trip to Europe, if B will contact his old employer at HUD regarding a favorable decision on A's application for financial assistance.

A must keep records as stated above, and B must register and report.

2. *Dollar Threshold—Keeping Records, Reporting, and Registering*

—A pays B $9,990 to contact B's friend at HUD regarding a favorable decision on A's application to increase the award of A's financial assistance. This is A's only dealing with HUD—but B has also been retained by other applicants for HUD assistance and already has received $4,000.

A must keep a record of this transaction, but need not report it. Records must be kept on *all* covered agreements/expenditures, irrespective of the amounts involved. The $10,000 threshold only applies to § 86.20's *reporting* requirements.

B must register within 14 days after being retained by A, and should have registered for each of the other applicants for whom B was lobbying. B must also report all of these transactions between January 1 and January 10 of the next year, since the total of B's HUD business exceeds $10,000.

—A pays B and three other friends $3,000 each to use their influence and connections with HUD officers to obtain a favorable decision on A's application for financial assistance. B and the other three friends are professional lobbyists, but this is their only contact with HUD.

A must keep records and report, but B and the other three friends need only register.

—A pays B $1,000 to use his influence and connections with HUD officers and employees to obtain a favorable decision on A's application. B is a lobbyist and is also working to obtain favorable HUD decisions for two other clients, each of whom has paid him $6,000.

A must keep a record of this transaction, but need not report it. B must register within 14 days of being retained by A and must report all of his lobbying activities with HUD for that year.

—If A's total expenditures for all actions of influence or attempting to influence are less than $10,000 for the calendar year, then A is exempt from the reporting requirements of Part 86, *but A still must keep records of each transaction.*

—If B's total compensation for the calendar year is less than $10,000, then B is exempt from the reporting requirements of Part 86. *However, B must still register with the Department each time he is retained for lobbying purposes.* B's total compensation is determined by adding all of the compensations received by B during a given calendar year, for all of the work done with the Department in attempting to influence decisions of the Department.

—A pays B $15,000 to make contacts at HUD to push along A's application for an award. B makes a number of calls to HUD officials on A's behalf.

Between 1/1 and 1/10 of the next calendar year, A must report the $15,000 expenditure. A need not treat the phone calls as a new "expenditure," since the calls were part of the overall original agreement. Similarly, B need not submit a new registration, although he will be required to report on the calls in his registrant's report.

If A and B later renegotiate the amount of the agreement from $15,000 to $10,000, neither A nor B can reduce the reported $15,000 amount. For all purposes, the original agreement of $15,000 stands.

On the other hand, if A agreed within the same reporting year as the original agreement to pay B an additional $3,000 for some additional contacts at HUD, still in furtherance of influencing HUD's actions on A's application, than A's and B's reports must reflect the higher amount. If the initial agreement and the increase occurred in different years, and the payment was not contemplated by the original agreement, the increase is reportable by both A and B in the year in which the expenditure was made. In either case, B must update its registration.

3. *Mortgage Insurance*

—A, a mortgage lender, retains B to help it gain approval as an FHA lender. B is also retained by C to help it gain approval as a GNMA issuer. B communicates with several HUD employees about these issues.

A, B, and C are all subject to Part 86. Securing HUD approval as a mortgagee or a GNMA issuer is a form of "assistance" covered by Part 86. FHA approval is part of the process by which mortgagees secure financial assistance in the form of insurance. The GNMA guarantee that is afforded the investor enhances the value of the securities, thus, benefiting the issuer.

—A, a mortgagor, retains B, a lawyer, to obtain HUD's written approval to deviate from the usual terms of the Regulatory Agreement, so that A might engage in another business or activity. B communicates with several HUD employees about this issue.

A and B are subject to Part 86. Securing HUD's approval to deviate from the terms of the Regulatory Agreement is a management action covered by Part 86.

—A, a mortgagor, retains B, a lawyer, to obtain HUD's permission for secondary financing under circumstances other than those permitted by HUD regulations. B communicates with several HUD employees about this issue.

A and B are subject to Part 86. Securing HUD's approval to deviate from HUD regulations is a management action covered by Part 86.

—A, a mortgagor, retains B, a lawyer, to obtain waiver of a HUD egulation (e.g. under 24 CFR 219.130, the general waiver authority regarding the Flexible Subsidy Program for Troubled Projects, or under 24 CFR 255.4, the general waiver authority regarding the transfer from non-profit to profit motivated ownership for multifamily housing projects with HUD-insured or HUD-held mortgages).

A and B are subject to Part 86. Obtaining such a waiver is a management action covered by Part 86.

—A, a mortgagor, retains B, a lawyer, to negotiate on A's behalf for changes in the mortgage form. (Such changes might include terms regarding payment under 24 CFR 207.256b, the maturity date, partial payment of mortgage, the interest rate, or deferral of payment to reserve for replacements fund.)

A and B are subject to Part 86. Changes in the standard terms of the mortgage instrument are management actions covered by Part 86.

—A, a mortgagor, retains B, a lawyer, to negotiate on A's behalf for a change in the terms of A's mortgage regarding the prepayment restriction and the prepayment penalty charge, for example, in the prepayment of bond-financed mortgages under 24 CFR 207.14(d).

A and B are subject to Part 86. Negotiations of terms, such as prepayment restrictions and prepayment penalties, are management actions covered by Part 86.

—A, a mortgagor, retains B, a lawyer, to obtain from HUD a waiver of a prescribed HUD form and the procedures set out in the HUD handbook regarding the submission of the form. Neither the form nor the handbook procedures for submission of the form are mandated by statute or set forth the pertinent HUD regulation.

A and B are subject to Part 86. Waiver of HUD forms and handbook procedures are management actions covered by Part 86.

—A, a mortgagor, retains B, a lawyer, to assist him, by virtue of his friendships with HUD personnel, in obtaining HUD's approval for the lender to increase A's mortgage amount by re-evaluating certain factors, such as construction cost.

A and B are subject to Part 86. Approval of a mortgage increase is a management action covered by Part 86.

—Before HUD makes a determination to terminate A's insurance contract, A, a coinsuring lender, pays B, a lawyer, to contact key officials at HUD to convince them that A has not committed fraud or made a material misrepresentation with respect to the Contract of Coinsurance.

—A and B are subject to Part 86. The determination to terminate a Contract of Coinsurance is a management action covered by Part 86. A cannot take advantage of the exception for litigation, unless and until A becomes a party to a formal proceeding.

4. *Officials of State and Local Government*

—A is the mayor of a small city. He asks his special assistant and his director of community development to call HUD officials in support of a grant application that the city has pending with HUD. The mayor calls the Department as well.

The mayor, the special assistant, and the CD director are not covered by Part 86. State and local elected officials, the political appointees that make up their personal staffs, as well as full-time, appointed officials who serve in policy-level positions are not subject to the rule.

—A is the mayor of a small city. B is the elected head of a water and sewer district within the city. They both contact HUD for a specific award of assistance.

Neither A nor B is subject to the rule. The exclusion for State and local officials turns on whether the official is an elected State or local official, not on the nature or size of the jurisdiction involved.

—B is a mayor of a city. A is the county executive of a neighboring county, who pays B a small stipend to lobby HUD on behalf of A's application for a grant. B makes the appropriate contacts.

Both A and B are subject to Part 86. The exclusion for State and local officials is limited to representation of the State or local government that the officials serve.

—A is a private supplier of equipment who stands to gain if the city wins a HUD contract. A pays B, a city official not connected to the contract, to contact HUD in support of the contract.

B may not claim the exception for State and local officials. B is not contacting the Department in his official capacity with the city.

—A is the director of a community development agency. A asks B, an employee with line responsibility for administering a demonstration program, to contact HUD to influence a grant award for the program.

A may not claim the exception. If A had called HUD directly, he would have qualified, since he occupies a policy-level position. Requesting B to make the contact, however, deprives A of the exception, since B is not a policy-level official: he does not set policy, he merely executes it.

—B does not occupy a policy-level position, but his diligence has earned him a policy seat at the mayor's table. B may not claim the exception, since the individual claiming it must actually encumber a policy-level position. *Ad hoc* arrangements, without

[10] Unless otherwise indicated, the examples assume that the applicable dollar thresholds have been reached.

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that incumbency, are insufficient to invoke the exception.

5. *Regularly Employed Officers and Employees*

—A is a national association, with a full-time governmental affairs staff that is reponsible, among other things, for representing the association before HUD. A assigns B, one of its government affairs employees, to represent the association in a management action involving C, a member of the association.

A must keep records and report on the portion of B's salary that is allocable to the transaction. A cannot qualify for the "regular employment" exception to § 86.20's reporting requirements, since that exception only runs to officers or employees who are employed *by the person that requests or receives the financial assistance or is involved in the management action.* In the example, the association's interest in the matter is as C's representative.

—A, a corporation that engages in HUD development work, submitted a grant application to the Department on December 31, 1990. On January 31, 1991, A asks B, an employee, to contact HUD to push for favorable consideration of the application. As of B's assignment—January 31, 1991—B has been an employee of A's for 136 working days.

A cannot claim the "regular employment" exception. The statute specifies that the exception only runs to an officer or employee who is employed by the person for at least 130 working days *within one year immediately before* the date of the submission that initiates the Department's consideration of the person for receipt of such assistance.

The 130-day determination must be made at the time of the triggering event for each request for financial assistance or management action. A snapshot is taken: those who have been employed for 130 days during the preceding year will be considered "regularly employed;" those who have not been, will not. The fact that B meets the 130-day threshold at a later date in the award process is irrelevant.

—A asks B and C, two of his employees, to lobby HUD on behalf of a pending grant application submitted by A. Neither B nor C is a full-time employee, but C participates in a work-study program offered by A to improve his education.

A can qualify for the "regular employment" exception for C, but not B. The rule requires that regularly employed officers and employees be employed on a full-time basis, or on a part-time basis under a program offered by the person to officers or employees of similar rank and responsibilities for specific purposes, such as to permit participation in a work-study program or to permit employees to provide child care for their children. The rule also requires that the employee have meaningful responsibilities and duty hours not less than individuals of similar rank and responsibilities.

—A asks B and C, two of its employees, to lobby HUD on behalf of a pending grant application submitted by A. Both are full-time employees. B qualifies for the "regular employment" exception; C does not.

The following elements of Part 86 apply to each of the players:

—A must *keep records* on *both* B *and* C. The "regular employment" exception only runs to the rule's *expenditure reporting requirements.* It does not affect A's responsibility to *keep records.*

—A must *report* on C, but not B. The exception relieves A of the responsibility of reporting on B.

—B must *register, but need not report.* The "regular employment" exception reaches the *reporting* requirements of both A and B, but not B's duty to register.

—C must *register and report.* C does not qualify for the exception, and, therefore, must meet *all* Part 86's requirements.

—On June 15, 1991, HUD decides to undertake a management action against A, a developer. On July 1, 1991, the Secretary approves the action. On July 5, 1991, the Department informs A of the action.

The 130-day period must be counted backwards from July 5, 1991—the day on which the action was Communicated outside the Department—the point at which the management action was initiated.

6. *Registration Information and Reporting*

A retains B, a law firm, to lobby on behalf of A's grant application. B subcontracts part of the job to C, a consultant, and another part to D, another law firm. B tells C that he is working on behalf of A; B does not inform D of this.

D's registration must only identify B as the person in whose interest he is working. D had no reason to know of A's involvement in the transaction.

C must identify *both* B *and* A as persons in whose interests C is working, since B advised C of this fact.

—A retains B to lobby on A's behalf. The agreement provides for a $6,000 payment broken down as follows: $2,000 for direct communications with HUD employees, $2,000 for travel and accommodations, and $1,000 for "personal expenses."

B must report on the entire $5,000. The amount of the agreement is the determinant. B must report on all amounts received, and all amounts expended, under the agreement during the reporting year.

—A, a national association, asks B, an employee, to undertake an assignment of lobbying HUD for a specific grant award. A also hires C, an outside consultant, to work with B. A pays B and C from general membership dues.

C must register with the Department within 14 days of the agreement to work with B. B must register with HUD within 14 days of notice of the new assignment. In the case of an employee, such as B, the "expenditure" is A's salary to B for the lobbying activities, and the event that triggers the registration requirement is the assumption of the new duties.

—A retains B to "look into" a management action involving A. The agreement provides no specific activities to be undertaken by B. B believes, however, that a contact with HUD officials will be necessary.

B must register within 14 days of this belief. The duty to register attaches at the point that B believes that the contact will be likely.

* * * * *

VII. *Further Information*

Anyone who has a question, or wants additional information, regarding this Appendix, or any other aspect of part 86, should contact the Office that is responsible for administering this part located within the Department.

APPENDIX B TO PART 86—CHART

Persons covered	Requirements	Exceptions
	Persons Making Expenditures To Influence	
—A person that makes, or that enters into an agreement to make, a covered expenditure to a person..	1. *Record keeping.* Keep records on all agreements and expenditures for a two-year period. (§ 86.20(b)).	1. *Record keeping:*
—A person that makes, or that enters into an agreement to make, a covered expenditure to a person on behalf of another person..		—Compliance with HUD requirements. (§ 86.20(d)).
—A person on whose behalf a covered expenditure is made to a person, or an agreement to make a covered expenditure to a person is entered into. (§ 86.20(a)(1)).		—Litigation. (§ 86.20(e)).
		—Elected State and local government officials, personal staffs of elected officials, and policy-level appointees. (§ 86.20(f)).
		—Expenditures made by an entity, that has been retained to provide lobbying services, to certain of its partners, associates, and other officers and employees. (§ 86.15—definition of "expenditure").

APPENDIX B TO PART 86—CHART—Continued

Persons covered	Requirements	Exceptions
	2. *Reporting.* Between January 1 and 10 of each year, report on all agreements and expenditures made during the preceding calendar year. (§ 86.20(c)).	2. *Reporting:* —Payment of reasonable compensation to a regularly employed officer or employee of the person that requests or receives financial assistance. (§ 86.20(c)(3)). —Sum of the amounts of all reportable expenditures and agreements during the reporting year is less than $10,000. (§ 86.20(c)(4)). —Compliance with HUD requirements. (§ 86.20(d)). —Litigation. (§ 86.20(e)). —Elected State and local government officials, personal staffs of elected officials, and policy-level appointees. (§ 86.20(f)). —Expenditures made by an entity, that has been retained to provide lobbying services, to certain of its partners, associates, and other officers and employees. (§ 86.15—definition of "expenditure").
	Persons Engaged To Influence	
—A person engaged pursuant to an agreement to make an expenditure. (§ 86.25(a)).	1. *Registration.* Register with the Department within 14 days of being engaged. (§ 86.25(b)).	1. *Registration:* —Employees of entities retained. (§ 86.15—definition of "retained"). —Compliance with HUD requirements. (§ 86.25(d)). —Litigation. (§ 86.25(e)). —Elected State and local government officials, personal staffs of elected officials, and policy-level appointees. (§ 86.25(f)).
	2. *Reporting.* Between January 1 and 10 of each year, report on all monies and other things of value expended or received during the preceding calendar year. (§ 86.25(c)).	2. *Reporting:* —Certain partners, associates, and other officers and employees assigned to perform lobbying services by an entity that has been retained for that purpose. (§ 86.15—definition of "retained"). —Receipt of reasonable compensation by a regularly employed officer or employee of that person that requests or receives financial assistance. (§ 86.25(c)(3)). —Sum of the amounts of all reportable receipts during the reporting year is less than $10,000. (§ 86.25(c)(2)). —Compliance with HUD requirements. (§ 86.25(d)). —Litigation. (§ 86.25(e)). —Elected State and local government officials, personal staffs of elected officials, and policy-level appointees. (§ 86.25(f)).

Dated: April 2, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91-11194 Filed 5-16-91; 8:45 am]

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Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Notice of FY 1991 Competitive Discretionary Grant Programs and Availability of the Office of Juvenile Justice and Delinquency Prevention Program Announcement Application Kit, 1991

VOL 56 ISS 96 MY 17 1991 UMI

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Notice of Fiscal Year 1991 Competitive Discretionary Grant Programs and the Availability of the "Office of Juvenile Justice and Delinquency Prevention Program Announcement Application Kit, 1991"

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Department of Justice.

ACTION: Public announcement of the Fiscal Year 1991 Competitive Discretionary Grant Programs and the availability of the "Office of Juvenile Justice and Delinquency Prevention Program Announcement Application Kit, 1991."

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing this Notice of Competitive Discretionary Grant Programs and announcing the availability of the OJJDP Application Kit. Each program announcement that follows contains specific instructions on competitive program requirements, including eligibility requirements and selection criteria. Following the program announcement is a section that summarizes general application and administrative requirements.

The Application Kit contains application forms (Standard Form 424), the OJJDP Peer Review Guideline, the OJJDP Competition and Peer Review Procedures, and other supplemental information relevant to the application process.

DATES: Each program announcement specifies the due date for applications. Applications delivered after the deadline dates will not be considered.

ADDRESSES: Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Application materials and/or program inquiries are to be addressed to the attention of the OJJDP staff contact person identified in the specific program announcement.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 204(b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (hereinafter JJDP Act), 42 U.S.C. 5614(b)(5)(A), the Administrator of OJJDP published a Final Comprehensive Plan describing the funding activities which OJJDP intends to carry out during Fiscal Year 1991. The final plan includes activities specified in parts C and D of title II of the JJDP Act (42 U.S.C. 5651–5665a and 42 U.S.C. 5667–5667a). The final plan was published February 14, 1991, in the **Federal Register**.

This Notice contains additional information on OJJDP's competitive discretionary programs as well as the announcement of the OJJDP Application Kit availability. Programs are listed in accordance with the Office of Justice Programs (OJP) priorities.

Program Evaluation

Evaluation of Cities in Schools Program

Purpose

The purpose of this program is to conduct a process and impact evaluation of (1) the Cities in Schools (CIS) program replication process and the related training and technical assistance provided by the CIS national organization to States and local communities, and (2) the effectiveness of the CIS model as implemented by States and local communities.

Background

The CIS national organization provides training and technical assistance to State and local communities that wish to replicate the CIS model in their local areas. The mission of a local CIS Program is to reduce the rate of school dropouts by providing a broad range of needed services to at-risk students and their families in a personal, accountable and coordinated manner. This is accomplished either at a local public school site or an alternative school location. By addressing the factors that cause youth to drop out of school, the local CIS programs endeavor to keep youth in school. Thus the students can continue to earn academic credits and graduate from high school better equipped to make future life choices.

Started in 1977, CIS operates in over 50 cities and counties at more than 200 schools where 18,000 at-risk students and their families are receiving coordinated social services. CIS provides services to an additional 15,000 students on an as-needed basis at the same school sites. The objective is to reach, on an annual basis, 58,000 at-risk youth and their families by mid-1992.

Since 1987, CIS has been receiving joint funding from the Departments of Labor (DOL), Health and Human Services (HHS), and OJJDP. The Department of Commerce (DOC) joined this funding effort in 1990.

At this time of CIS planned expansion, it is appropriate to evaluate the CIS Program to inform government policy makers, and to identify where improvements, if any, need to be made. DOL and the Department of Education (ED) are assisting OJJDP in this evaluation project.

Goal

To conduct a process and impact evaluation of the CIS Program. Overall, the evaluation will determine:

(1) How effectively CIS has provided States, cities and communities with help, including training and technical assistance, in establishing the CIS Program;

(2) How effectively the local programs have implemented the CIS model; and

(3) How effectively the local programs have reduced the number of school dropouts at CIS project sites.

Objectives

- To identify the strengths and weaknesses of the national and local programs in carrying out the three components of the goal of this research project as stated above;
- To describe CIS sites including those that are part of the DOL's nine Service Delivery Areas (SDAs), comparing them with the CIS model and noting similarities and differences;
- To identify conditions that promote institutionalization of the CIS model at the local level as well as those that inhibit institutionalization at the local level;
- To identify approximately 10 successful programs which implemented the CIS model and to focus on the common and unique components of these programs and describe how they forged community and private sector partnerships, how they repositioned human services, how they overcame obstacles and how they developed personal, accountable, and coordinated services at the local level;
- To determine the impact of the CIS programs on the schools and on the student dropout rates in selected jurisdictions;
- To provide a cost-benefit analysis of the CIS model as implemented by the communities that have committed themselves to the CIS program in carrying out the mission of CIS and to present the costs and results of the program in a form that will facilitate decision making by those concerned; and
- To disseminate the major findings and results produced through this research project.

Program Strategy

The process and impact evaluation will assess the CIS replication process in a limited number of both mature and newly established CIS local programs, including those in the SDAs, and those considered to be successful in achieving the objectives of the CIS program. The evaluation will include three study components:

1. A study of the CIS national organization, which will evaluate the replication process and the transfer of knowledge and skills from the CIS national organization to State and local CIS programs;

2. A study of a representative sample of CIS sites, which will determine how effectively the local CIS programs have reduced the number of school dropouts at CIS project sites, and will compare costs and benefits of the CIS program as used in the communities; and

3. A study of exemplary CIS programs, which will examine the effectiveness of approximately 10 successful programs, examining what works best in the CIS program and how this can be replicated in other communities.

Implementation strategies of the CIS national office will be measured at the State and local levels. The degree to which local schools have institutionalized the program within the schools will be assessed and analyzed.

As part of the evaluation, school administrators, teachers, CIS students and their families (past and present clients), community and private sector leaders, and social service providers will be interviewed. Records and documentation will also be reviewed and analyzed.

To provide direction, guidance and oversight to the program in carrying out its functions, a project advisory board will be appointed. The advisory board, which will be co-selected by the grantee and the OJJDP, will consist of persons experienced and knowledgeable in evaluation, school administration, and other facets of the study. They will be kept informed during the project and will meet three times during the course of the project to review preliminary and final evaluation plans, strategies and products.

In developing a responsive proposal, applicants will also be required to address the following specific tasks related to the conduct of the study. Specific tasks for each of the three study components are outlined below:

Required Tasks

1. *Study the CIS National Organization.* This component will analyze the work done by the CIS national organization in disseminating and assisting in the implementation of the CIS model in new communities. This will involve the following tasks:

- Document the key elements of the CIS model to be replicated;
- Document the structure of the CIS national organization and regional offices;
- Review and describe the National Center for Partnership Development (NCPD);
- Interview and accompany CIS staff on visits to programs in the replication process and newly established programs, including any SDA sites in this stage of development;
- Interview key participants in the local CIS program, including students and parents, CIS staff, school staff, repositioned staff, CIS board members, and other private sector and government participants; and
- Recommend improvements in the CIS program, if needed.

2. *Study a Representative Sample of CIS Sites.* This component will analyze the effectiveness of the CIS program in a representative sample of mature CIS projects (schools). This will include the following tasks:

- Select a sample of CIS schools within CIS programs. To the extent possible, include programs from different geographical regions and city sizes. Both the program and the school project will have been in operation for a minimum of two years. The sample should include both middle schools and high schools. The sample should also include all CIS projects that have been operated by Job Training Partnership Act (JTPA) SDAs through the joint CIS/Private Industry Council (PIC) partnership programs in Arkansas, Michigan, and Virginia.
- Assess program outcomes for CIS students enrolled in the sample schools, including measures of attendance, discipline problems, academic achievement, and dropout rates. For middle schools, data should also measure advancement to high school; for high schools, data should also document the students' activities (further education, training, employment, etc.) after leaving/completing school.
- Document the at-risk status of CIS-enrolled students, their level of participation in the CIS program, and the degree to which the local program objectives for CIS students have been achieved, specifically including measures of attendance, discipline problems, academic achievement, and dropout rates.
- Conduct site visits to describe the CIS projects operated by JTPA SDAs in Arkansas, Michigan, and Virginia, regardless of when the program became operational. Not all JTPA SDA sites need to be visited, but data should be collected from all of them. The visits should include data gathering and interviews with school officials, teachers, CIS-enrolled students, and staff of participating community agencies, including the SDAs. The visits should include observations of the CIS school projects and incorporate interviews with school district officials and any local staff that oversee CIS programs in the school district.
- Analyze the costs and benefits of the program in each of the representative sites in relation to the total site costs of participating in program development, installation and maintenance. Consideration should be given to unintended results and to measuring secondary benefits related to the implementation of the CIS project in terms of the quality and amount of service delivery to children or other improvements related directly to the program.
- Identify conditions that promote the institutionalization of the CIS Program and those that inhibit it at the local level.

3. *Study of Exemplary CIS Programs.* This component will examine the effectiveness of the CIS model in approximately 10 exemplary programs. This will involve the following tasks:

- Identify approximately 10 exemplary programs which implemented the CIS model, focusing on the common and unique components of these programs. Describe how they forged community and private sector partnerships, how they repositioned human services, how they overcame obstacles, and how they developed personal, accountable and coordinated services at the local level;
- Identify a school within each of these exemplary programs, that is considered to be exemplary. Where possible, the procedure should guarantee a representation of both middle schools and high schools;
- Visit each of the exemplary schools. The visits should include interviews with CIS staff, school officials, teachers, students, and participating community agencies;
- Review the overall program and collect data to assess program outcomes for CIS students enrolled in the schools, including measures of attendance, discipline problems, academic achievement and dropout rates. For middle schools, data should measure advancement to high school; for high schools, data should measure school completion; and
- Identify the factors that appear to account for making these CIS sites and schools exemplary. In particular,

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examine the linkages between the schools and participating community agencies, both in terms of how the linkages were developed and how they are structured.

Required Products

The following products, which are required over the course of the program, must be submitted to OJJDP and reviewed by the project advisory board:

1. A complete Information Collection Package for submission to the Office of Management and Budget in accordance with the regulations under the Paperwork Reduction Act, including data collection instruments and protocols.

2. A detailed plan for data collection, analysis, evaluation and preparation of reports.

3. A report on the evaluation of the CIS national organization replication process.

4. A report on the effectiveness of implementation of the CIS model by the local projects.

5. A report on the DOL-sponsored CIS projects located in SDAs.

6. A report on the effectiveness of local projects in reducing the number of school dropouts at CIS project sites.

7. A report on exemplary CIS projects.

8. A comprehensive summary report of findings and conclusions.

Special Issues To Be Addressed in Application

1. Evidence that the applicant understands the goals and mission of the CIS Program.

2. How the applicant proposes to select exemplary sites for the third component of this study.

3. A description of the most similar project to this one that the applicant has conducted.

4. Evidence that the firm and staff have worked on projects directly involving public school systems and access to and analysis of school records.

Eligibility Requirements

Applications are invited from public and private agencies, organizations, educational institutions, or combinations thereof. To expand the pool of eligible candidates, applications will be accepted from for-profit organizations, provided they agree to waive any profit or fee and accept only allowable costs.

Applicants must demonstrate that they have knowledge and/or experience in the following: design and implementation of large scale, multisite research; problems of at-risk youth; the school dropout problem; issues surrounding the delivery of local, existing, social services (education, health and human services) to at-risk youth and their families; building a local coalition to support new programs; developing public/private partnerships; and delinquency prevention programs, policies and resources.

Applicants must further evidence the management and financial capability to implement effectively a project of this size and scope. Those who fail to do so will be ineligible for funding consideration.

Applicants must provide a description of the project management structure which includes a proposed staffing plan, brief position descriptions with roles and responsibilities, and descriptions of relevant staff experience and expertise. Resumes of key project staff must be included as an appendix to the application. The project director must devote a minimum of 50 percent of his or her time to this effort.

Selection Criteria

At a minimum, all applicants will be rated on the extent to which they meet the following selection criteria.

1. The problem to be addressed by the project is clearly stated. (20 Points)

• The applicant demonstrates broad knowledge of evaluation strategies and practices and is particularly aware of the at-risk youth school dropout problem. (10 Points)

• Problem to be addressed is based upon issues that have significant impact on the effectiveness and cost-benefit of the projects that have been established as CIS Programs. (10 Points)

2. The objectives of the proposed project are clearly defined. (10 Points)

• There are specific strategies described for the attainment of each objective. (5 Points)

• Objectives are specific and measurable. (5 Points)

3. The project design is sound and contains program elements directly linked to the achievement of the project objectives. (30 Points)

• Applicant explains how the attainment of the objectives will give a comprehensive view of the national and local status of the CIS Program. (10 Points)

• Applicant provides a work plan with a timeline that indicates significant milestones in the project, due dates for products, and the nature of the products to be submitted. (10 Points)

• Applicant demonstrates knowledge and experience in multisite research, at-risk youth, the school dropout problem, issues surrounding the delivery of social services at the local level, building local coalitions, establishment of public/private partnerships, and delinquency prevention. (10 Points)

4. The project management structure is adequate to successfully conduct the project. (20 Points)

• The adequacy of the general and specialized experience and competence of key project staff to design and conduct the evaluation. (15 Points)

• Adequacy of the management structure and to successfully conduct the project. (5 Points)

5. Organizational capability is demonstrated at a level sufficient to support the project successfully. Applicant provides an organizational capability statement which demonstrates that the applicant has the technical, substantive and financial capabilities to administer the project effectively. (10 Points)

6. Budgeted costs are reasonable, allowable and cost-effective for the activities proposed to be undertaken. (10 Points)

• Application must include a complete, justified budget with budget narrative for all proposed costs. (5 Points)

• Applicant demonstrates economic efficiency in program development, implementation and administration. (5 Points)

Award Period

One cooperative agreement will be awarded for a 2-year period.

Award Amount

Up to $700,000 will be available for this project from OJJDP, DOL, and ED.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the Federal Register. Those applications sent by mail should be addressed to Jeffrey Slowikowski, Research and Program Development Division, OJJDP, 7th Floor, 633 Indiana Avenue NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 782, 633 Indiana Avenue NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except

Saturdays, Sundays, or Federal holidays.

Contact

For further information contact Jeffrey Slowikowski, Research and Program Development Division (202) 307-5929.

Evaluation of the Juvenile Firesetter/Arson Program

Purpose

This program will evaluate the National Juvenile Firesetter/Arson Control and Prevention Program.

Background

Evaluation will be a primary component of the Office of Justice Programs (OJP) discretionary grant activities so programs that work can be identified, publicized and replicated and programs not proven to be effective can be discontinued.

Juvenile firesetters account for a substantial number of arson arrests. Although precise estimates of the incidence and cost of juvenile firesetting and arson prove elusive because of the lack of adequate data and the general underreporting of arson, data suggest that the magnitude of juvenile arson and firesetting is considerable. The Uniform Crime Report indicates that approximately 40 percent of arson arrestees are juveniles; other estimates place the proportion at over 50 percent. Data from the National Fire Protection Association indicate that the cost of juvenile arson approaches $1 billion per year.

OJJDP, in concert with the United States Fire Administration (USFA), began assessing the problem of juvenile arson and firesetting in 1987 to aid communities in controlling and preventing juvenile arson. A project was initiated to examine the incidence of juvenile firesetting and to develop an improved and effective prevention program.

The Juvenile Firesetter program consists of four stages: (1) An assessment of the problem of juvenile firesetters and selected programs; (2) a comprehensive description of a model firesetter program; (3) the development of training and technical assistance packages for the implementation of this model; and (4) the selection of sites for demonstration of the model. The model design has been completed and is now being prepared for testing in four to six communities. OJJDP is issuing this solicitation to evaluate the model.

Goal

OJJDP, in cooperation with USFA, is planning to assist four to six jurisdictions in a test of the Juvenile Firesetter/Arson Control and Prevention Program. Concurrently, OJJDP and USFA will sponsor an evaluation of the Juvenile Firesetter/Arson program.

Objectives

• To evaluate the effectiveness of the developed model in controlling the problem of juvenile firesetting;

• To evaluate the implementation process;

• To identify secondary or unexpected effects of the program; and

• To recommend programmatic modifications.

Program Strategy

The evaluation must examine the following aspects of the Juvenile Firesetter program:

A. *The process used to implement the program.* The model developed by the grantee consists of the following components: (1) Program management information; (2) intervention plan development; (3) training of personnel; and (4) referrals or links with the juvenile justice system and other agencies. This model must be evaluated on soundness of design and capacity for implementation. A more detailed explanation of the developed model will be available to applicants.

B. *The specific abilities of the test communities.* While the program itself may be effective, the environment in which it is implemented can have a significant impact on the ultimate success in the test community. The impact of the personnel, agency support and organizational environment into which this program is introduced must be examined and evaluated.

C. *The effectiveness of the model program.* To be successful, the model must evidence a positive change in the attitudes and behavior of the juvenile participants. As a component of this analysis, the nature of the firesetting problem in the community must be assessed. The program must then be examined to determine if it accurately and successfully addresses the specific circumstances of the community.

D. *The completeness of the program materials.* The materials developed for the program model must achieve two goals: (1) They must provide sufficient information to implement the program successfully; and (2) they must provide this information effectively.

E. *The method of referral to the program.* The success or failure of the model can be affected by the method(s) used to refer juveniles to the program and whether they produce a bias either in favor of or against participation in the program.

F. *Experiences and perceptions of local participants.* A complete evaluation must include an examination of the experiences of local officials who have implemented the model program and their assessment of the program.

Further information regarding the program description will be available to applicants. All organizations eligible to apply to conduct this evaluation should request the Application Kit and additional information on this project. (See contact below.)

Eligibility Requirements

Applications are invited from public and private agencies, organizations, educational institutions or combinations thereof. In order to expand the pool of eligible candidates, applications will be accepted from for-profit organizations provided they agree to waive any profit or fee and accept only allowable costs.

Applicants must demonstrate that they have experience in designing and conducting multisite evaluations. Consideration will also be given to the following:

(1) Demonstrated knowledge of adult or juvenile arson programs;

(2) The development of procedure manuals for training and technical assistance;

(3) The issues involved in multi-agency cooperation, particularly with regard to juvenile justice and social service agencies; and

(4) The implementation and maintenance of programs designed to intervene in particular types of juvenile behavior.

Applicants must further evidence the management and financial capability to implement effectively a project of this size and scope. Those who fail to do so will be ineligible for funding consideration.

Selection Criteria

Applicants will be rated on the extent to which they meet the following selection criteria:

1. *The problem addressed by the Juvenile Firesetter/Arson program is clearly stated.* Applicants must demonstrate a clear understanding of the issues underlying juvenile arson and the development of programs to prevent or intervene in such behavior. The applicant must also demonstrate a strong background in evaluation issues, particularly regarding programs designed for the juvenile justice system. (10 Points)

2. *The objectives of the proposed evaluation are clearly defined.* Applicants must demonstrate a clear understanding of the goals and

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objectives of this evaluation. Specific plans for achieving these goals and objectives must be clearly described. (25 Points)

3. *The evaluation design is sound and contains elements directly linked to the achievement of the specified objectives.* Applicants must present a clear design that will fully accomplish the stated goals of the evaluation. The design should outline the hypotheses to be tested, the research design appropriate for the study, the data collection plans, and other major activities to be undertaken. (30 Points)

4. *The project management structure is adequate to successfully conduct the project.* Applicants must provide an organizational description that depicts the roles and responsibilities of key personnel. The description should also include a list of key staff, indicating how the staff's qualifications are appropriate to achieving the evaluation goals. Applicants should provide resumes and biographies for the key personnel participating in the evaluation. The project director must devote a minimum of 50 percent of his/her time to this effort. (15 Points)

5. *Organizational capability is demonstrated at a level sufficient to support the project.* Applicants must demonstrate how their organizational experience and capabilities will enable them to fulfill the goals of the evaluation. (15 Points)

6. *Budgeted costs are reasonable, allowable and cost-effective for the activities proposed to be undertaken.* Applications must include a complete budget for all proposed costs. (5 Points)

Award Period

The project period will be 18 months.

Award Amount

Up to $150,000 will be available for this project.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the Federal Register. Applications sent by mail should be addressed to Joseph Moone, Research and Program Development Division, OJJDP, room 782, 633 Indiana Avenue NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 782, 633 Indiana Avenue NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays and Federal holidays.

Contact

For further information contact Joseph Moone, Research and Program Development Division, (202) 307-5929.

Improving Literacy Skills of Institutionalized Juvenile Delinquents

Purpose

The purpose of this program is to implement in-service training and technical assistance in the use of developmental reading curricula for teachers of reading and English who instruct juvenile offenders in correctional institutions.

Background

One of the most common characteristics of juveniles incarcerated in correctional facilities in the United States is their poor experience in secondary education. A large percentage of incarcerated juveniles have demonstrated serious difficulty in reading and thus poor school achievement. Many researchers have shown how this difficulty is carried over into their lives upon release from corrections and seriously hampers their ability to compete successfully in society. There is a pervasive need to raise the level of literacy among juvenile offenders during their incarceration in juvenile correctional institutions.

Most reading instruction since 1950 has ignored the use of systematic and intensive phonics. Instead, students have been taught by a sight method, or whole-word approach, combined with incidental phonics. In this method words are viewed as a sequence of letters representing meaning rather than as a sequence of speech sounds that form the spoken word. Replicated research comparing the sight method with systematic phonics approaches continues to find the phonics method superior.

With few exceptions, adults who cannot read or have difficulty reading, regardless of age, reflect the same kind of problem that illiterate children do—they cannot read words accurately and fluently. As the research reveals, the problem is not a deficiency in analytic ability, but in knowing the alphabetic code and how it functions. Research literature suggests that the solution to this problem lies in curricula that promote systematic and intensive phonics, direct instruction, and, in some cases, multisensory approaches to teaching and learning.

Such curricula have existed for some time. What is needed are teachers who are experienced in systematic and intensive phonics methods and are committed to using them.

Definitions

A. Literacy is the ability to accurately and fluently read and write what one can talk about, hear and understand. For this solicitation, the term literacy is not to be interpreted as some predetermined level of educational attainment.

B. Phonics is information about the relationships between the way we speak words and the way we spell them. English is an alphabetic language that, when written, uses letters to represent speech sounds. Instruction in phonics includes teaching a person to consciously identify the sounds and to recognize that letters are used to represent them. Such instruction enables a person to decode the names of unknown written words. Phonics is more likely to be useful when a person hears the sounds associated with most letters, both in isolation and in words, and when they are taught to blend together the sounds of letters to identify words.

C. Intensive phonics refers to teaching phonics on a regular basis—at least once a day—using the instruction time for practice and drill of the information being learned.

D. Systematic phonics refers to a process of teaching phonics that begins with the least difficult aspects of phonics, then carefully integrates successive units of phonics with what has previously been taught.

E. Direct instruction is teacher directed, with high levels of student interaction with the instructor. It is academically focused. Materials are sequenced in some logical hierarchy and structured. Goals are clearly stated. Adequate instructional time is provided. Subject matter is thoroughly covered. Student work is monitored. Practice and review are extensive. Teacher feedback is immediate and academically focused. The teacher establishes academic goals; selects materials compatible with student ability; and sets instructional tempo. Instruction, though structured, is not authoritarian; rather, the teacher creates a learning environment that encourages self-motivation through repeated task oriented success.

F. Multisensory approach to learning makes use of both the generative channels (speaking and writing) and receptive channels (seeing and hearing) in the neurological process of learning. In learning the alphabetic sound/symbol system, this approach requires the learner to write the letter (engaging tactile and kinesthetic responses) while saying the sound(s) the letter represents. The generative act (saying the sound(s) while writing the letter or letter combination) is reinforced in the receptive channels by seeing the letter produced and hearing the sound(s) of it.

Goals

- To improve the quality of reading instruction in juvenile correctional institutions; and
- To help students to become proficient in reading and writing coherently what they can talk about, and aurally comprehend.

Objectives

- To develop competencies in correctional teachers in diagnosing individual decoding deficits and in assessing differences that may exist between silent reading comprehension and aural comprehension;
- To implement unique or innovative methods and strategies using intensive, systematic phonics;
- To provide technical assistance in using the new instructional strategies;
- To develop a cadre of reading instructors and volunteers, serving in juvenile correctional institutions, in intensive, systematic phonics and direct instruction; and
- To significantly improve reading comprehension of incarcerated juvenile offenders through the development of accurate and fluent reading skills.

Program Strategy

OJJDP will select two organizations to conduct this training and technical assistance program for teachers in juvenile correctional settings. These organizations will make instruction available to teachers and support staff. Instruction will focus on how to teach fluent and accurate reading expeditiously to students who cannot read. Instruction must include, but not be limited to, systematic and intensive phonics (or phonetics) and direct instruction. Instruction in how to assess student deficiencies and measure student progress will be included. Participants will be evaluated to ensure they know the alphabetic code and how it works. Teachers will demonstrate that they can apply instructional strategies for teaching fluent and accurate reading. Literacy experts will provide on-site technical assistance, monitor instruction and conduct on-site teaching in order to allow professional and support staff to observe correct teaching procedures. Depending upon the length of instructional time, student achievement will be measured by either referenced or standardized achievement tests.

OJJDP will assume responsibility for attracting and selecting prospective teachers and institutions to participate in the training program. It is anticipated that at least 100 teachers will be trained by the two grantees in the 12 months of the first year's program.

The grantees will be responsible for handling all logistical arrangements for the conduct of the training.

Specific products to be completed during this project are:

- A plan for the delivery of the training and technical assistance.
- A curriculum for this particular target group.
- Teacher guides based upon a field tested curriculum.
- A formative assessment of the program, including recommendations for future implementation of the effort.
- A dissemination strategy for the curriculum, as it applies to the second and third year of the multiyear program.

Eligibility Requirements

Public and private institutions of higher education, as well as other literacy experts in the private sector, are eligible to apply. Private for-profit organizations must waive their fee to be eligible. Applications are invited from public agencies and private organizations which can demonstrate the capability and established expertise to provide effective in-service education and training that will significantly help teachers use systematic and intensive phonics and/or phonetics through direct instruction to advance literacy among juvenile offenders.

Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget, and budget narrative. All applications must include information germane to the following six topics:

1. *Organizational Capability.* Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to append one example of prior work projects of a similar nature to their application and a synopsis of its literacy instructional program.

Applicants must provide a list of key personnel responsible for managing and implementing the program. Applicants must present detailed position descriptions, qualifications and selection criteria for each position, whether they are salaried or staff, hired by contractor(s) of the grantee. In addition, if key functions or services are to be provided by consultants on a contractual basis, the applicant must indicate the individuals to be hired for specific tasks, or the specific skills that would be needed to perform these tasks and the means of acquiring them. Resumes must be provided and may be submitted as appendices to the application. Applicants must demonstrate that the proposed staff complement have the requisite background and experience to accomplish the major responsibilities outlined in above. Applicants should highlight significant accomplishments of the proposed staff in relation to their respective roles in the project. In addition, the percentage of each staff person's time committed to the project must be clearly indicated in the budget narrative.

2. *Program Goals and Objectives.* A succinct statement of your understanding of the goals and objectives of the program should be included. The application should include a problem statement and a discussion of the potential contribution of this program to the field.

3. *Project Strategy.* Applicants should describe their proposed approach for achieving the goals and objectives of the program. In planning and developing an in-service education and training program, applicants must address, but are not limited to, the following points.

- Rationale for the scope and sequence for teaching word recognition skills;
- Motivational techniques;
- Decoding strategy for teaching phonetically regular and irregular words;
- Learning activities that address unique or innovative instructional practices; and
- Any anticipated adjustments or alterations in the curriculum required by the specific target group.

4. *Program Implementation Plan.* Applicants should prepare a plan that outlines the major activities involved in implementing the program, describing

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how they will allocate available resources to implement the program, and how the program will be managed.

The plan must include an annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components, and a list of key personnel responsible for managing and implementing the major elements of the program. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position.

5. *Time-Task Plan.* Applicants must develop a time-task plan for the 12-month project period, clearly identifying major milestones. This must include designation of organizational responsibility, a schedule for the completion of tasks, and an anticipated cost schedule per month for the entire project period.

6. *Program Budget.* Applicants shall provide a 12-month budget with a detailed justification for all costs, including the basis for computation of these costs. Applicants should include a budget estimate to complete the balance of the program. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses.

Selection Criteria:

Those interested in responding to this solicitation should submit proposals (applications) designed in accordance with the application review criteria set forth below:

1. *Conceptualization of the problem.* The applicant must demonstrate a clear understanding of, and competence to deal with, deficiencies in reading skills and the factors that support inability to achieve skill and accuracy in reading. (15 Points)

2. *Statement of objectives.* The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem. (15 Points)

3. *Project design.* The procedures, work plan and proposed products of the project must be directly linked with the stated objectives, and with the problem addressed by this announcement. (30 Points)

4. *Project management.* The project's management structure and staffing must be adequate for the successful implementation and completion of the project. The management plan describes a system where logistical activities are handled in the most efficient and economical way. (10 Points)

5. *Organizational capability.* The applicant organization's ability to successfully conduct the project must be documented in the proposal. Organizational experience with development and implementation of programs using systematic phonics and direct instruction is highly recommended. Key project staff should have significant experience in the subject area addressed in this announcement. (15 Points)

6. *Budget.* The proposed budget must be reasonable, allowable and cost-effective vis-a-vis the activities to be undertaken. (15 Points)

Award Period:

The project will be funded for 36 months, and the initial budget period is 12 months.

Award Amount:

The award amount for the initial budget period is up to $200,000 to fund two separate projects. Based on successful completion of the first budget period, the grant recipients will be eligible for additional noncompeting awards that are anticipated over the program period. Applicants are encouraged to submit cost-competitive proposals.

Due Date:

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. E.D.T., 45 days from the date of this solicitation in the **Federal Register**. Those applications sent by mail should be addressed to F.M. Porpotage II, Training, Dissemination, and Technical Assistance Division, OJJDP, room 707, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 707, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays or Federal holidays.

Contact:

For further information contact Frank Porpotage, Training, Dissemination, and Technical Assistance Division, (202) 307-0598.

Prevention and Education

Pilot Sites for the Juvenile Firesetter/Arson Control and Prevention Program in Local Communities

Purpose

This program is designed to fund sites to test the juvenile firesetter/arson control and prevention model.

Background

Juvenile firesetting and arson is a costly, sometimes deadly, problem that requires a special response from the community. As statistics began to reveal the magnitude of the juvenile arson problem, it became apparent that new approaches to screening and counseling were needed that would apply techniques particularly suited to youth and draw on the resources of multiple disciplines in the community. Although a variety of programs have been developed across the country, careful examination of the juvenile firesetting problem or the programs designed to address the problem are virtually nonexistent.

In recognition of the seriousness of the juvenile firesetting problem, OJJDP, in conjunction with the United States Fire Administration (USFA), sponsored the National Juvenile Firesetter/Arson Control and Prevention Program. The Institute for Social Analysis (ISA) received an award to develop this program.

The two-year program, which began in early 1988, is divided into four incremental stages:

1. Assessing the incidence and dynamics of juvenile firesetting/arson and selected juvenile firesetter programs throughout the United States;

2. Developing a comprehensive approach to controlling juvenile arson, including descriptions of program development, implementation, and operation;

3. Developing training and technical assistance packages to provide local jurisdictions with the necessary information to implement appropriate programs; and

4. Testing and disseminating the training and technical assistance packages.

ISA has been assisted during the development project by the National Juvenile Arson Public/Private Partnership, a group composed of individuals from both the public and private sectors who have special expertise and interest in juvenile arson. ISA has completed stages 1 through 3, and, in the process, has developed several products: An assessment report, two manuals entitled "Guideline for Implementation" and "Resource Materials," a user's guide, and a trainer's guide.

The "Guideline for Implementation" manual includes the model design. This model has seven components: (1) Program Management; (2) Screening, Evaluating and Developing the Intervention Plan; (3) Intervention Services; (4) Referral Mechanisms; (5) Publicity and Outreach; (6) Monitoring Systems; and (7) Developing Relationships with the Justice System. The components are designed to be flexible, and their exact implementation will differ from jurisdiction to jurisdiction. This modular approach allows jurisdictions to develop or expand a juvenile firesetter program which meets their particular needs using available resources. Jurisdictions may draw on selected components (e.g., referral mechanisms, monitoring systems) to augment an existing juvenile firesetter program or use the information to assist in creating a new program. Each component presents a wide range of approaches which vary according to their impact and the resources required for implementation. Thus the materials allow maximum adaptability for virtually any jurisdiction to develop a juvenile firesetter prevention program tailored to its specific requirements.

The components provide detailed information about each of the areas noted above. Below are brief descriptions of the components:

Program Management. The Program Management component provides information on program structure, staffing, training, and funding. In addition, the component includes planning and coordination strategies, which include establishing interagency links, creating a coordinating council, and conducting a juvenile firesetter prevention workshop. As with all the components, this one discusses the jurisdictional characteristics that should be considered when the jurisdiction is deciding on the best approach to alleviate their juvenile firesetting problem.

Screening, Evaluating, and Developing the Intervention Plan. This component summarizes a wide variety of screening and evaluation procedures used by the fire service, law enforcement, probation and juvenile justice, mental health, and schools. The procedures are described in terms of their function, target population, users, content, benefits, and limitations. Decision grids are provided to help users select the most appropriate methods for their service needs.

Intervention Services. The Intervention Services component provides information on three levels of intervention strategies—primary prevention, early intervention, and core intervention. These strategies are aimed at reducing juvenile involvement in the entire range of unsupervised fireplay and firesetting activities. Each of the strategies has specific intervention objectives and is aimed at a particular target population. A variety of intervention strategies used by various agencies is discussed. For each level of intervention, a decision grid is presented to help program managers select the best intervention options to meet the needs of their target population.

Referral Mechanisms. The Referral Mechanisms component highlights the need for the juvenile firesetter program to link effectively with other agencies. The component describes how the program can identify referral sources and target referral agencies. The component also outlines strategies for establishing links between the program and these agencies.

Publicity and Outreach. This component describes how juvenile firesetter programs can develop a public information and education campaign to raise public awareness about juvenile firesetting and the juvenile firesetting program. Various strategies, including brochures, newspaper, TV, and radio exposure, public service announcements, and speaker bureaus are discussed.

Monitoring Systems. The purpose, content, format, and use of systems for monitoring juvenile firesetter programs are covered in this component. Three types of monitoring systems are summarized—management information systems, evaluation systems, and incident reporting systems. The component describes a wide range of possible monitoring systems from manual, paper-and-pencil systems to computerized systems.

Developing Relationships with the Justice System. The purpose of this component is to provide information that will help programs develop effective relationships with the justice system. The component highlights strategies the juvenile firesetter program can use to establish relationships with the probation departments, law enforcement, the legal and judicial community and correctional institutions. In addition, the component contains detailed information about three specific programs: Rochester, New York; Charlotte, North Carolina; and Portland, Oregon.

Information contained in the components are the building blocks of the Training and Technical Assistance Package which has been developed and tested as part of stage three.

Goal

To test the model program components developed in the National Juvenile Firesetter/Arson Control and Prevention Program in local communities.

Objectives

- To fund four to six sites to test the juvenile firesetter/arson control and prevention model;
- To provide training and technical assistance to the test sites; and
- To provide the four to six sites with the ability to implement the juvenile firesetter/arson model.

Program Strategy

The final phase of the National Juvenile Firesetter/Arson Control and Prevention Program calls for implementing the program model in four to six jurisdictions and evaluating program implementation. OJJDP and USFA are requesting applications from jurisdictions interested in implementing the program.

Sites must demonstrate a need for such a program by documenting the seriousness of the juvenile firesetter problem in their jurisdiction. Such documentation may include incidences of juvenile firesetting or suspected juvenile firesetting, arrest data, property loss data, and fire related injuries and deaths due to fires set by juveniles.

While applicants may have an existing juvenile firesetter prevention program, it should not be comprehensive in nature. Such jurisdictions must demonstrate a need or desire to change or augment that program using the materials and information developed as part of the National juvenile Firesetter/Arson Control and Prevention Program. Jurisdictions should describe specific areas for improvement, particularly focusing on the seven key program components noted above.

Application Requirements

1. Grantees must allow the National Juvenile Firesetter/Arson Control and Prevention Program Staff to conduct a two to three day training workshop that brings together all key agency personnel. Key agencies include the local fire service, law enforcement, juvenile justice, mental health, schools, probation, child protective service, and other agencies that handle juvenile firesetters.

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2. Grantees must demonstrate commitments from all of the key agencies listed above to work with the program as referral agencies to and from the program. An essential aspect of the program is the creation of a multi-agency juvenile firesetter task force to guide program implementation. Commitments from key local agencies are essential to this task.

3. Local grantee staff are expected to work closely with the national evaluator and be willing and able to supply program information to the evaluator.

4. Grantees will be required to provide evidence of their juvenile arson problem.

5. Grantees will most likely be local fire departments but may also be other public or private organizations with close links to the fire service.

The duration of the Pilot Juvenile Firesetter/Arson Control and Prevention Program will be one year, and sites may expect follow-up from the national evaluator as long as one year after the workshop.

Task 1: Preparation (Three Months). The grantee organization will meet with officials from key local agencies to plan for their participation in the workshop. Grantees should consider involving officials from social service agencies, the criminal justice system (including juvenile justice authorities), mental health agencies, and the school system, as well as representatives from leading local fire and casualty insurance companies. If the grantee agency is not a fire department, it should involve officials of the fire department as well.

Task 2: Training Workshop (Two-Three Days). The Training Workshop will bring together the relevant agencies (mentioned above) to develop a comprehensive local juvenile firesetter/arson control and prevention program. The Workshop will be presented by ISA staff, using the materials and procedures of the Juvenile Firesetter/Arson Control and Prevention Program, and assisted by the local grantee.

Task 3: Program Implementation (Nine Months). Following the Training Workshop, grantees will implement a comprehensive juvenile firesetter/arson control and prevention program. The implementation phase will include applying policies and procedures developed during the course of the Training Workshop, and may include additional training for selected individuals in specialized techniques (e.g., screening procedures).

The specific activities and products to be completed by the selected sites during this period are:

Activities

- Develop a plan for implementing the model in each site.
- Implement the model in each site.
- Cooperate with the training and technical assistance provider and the evaluator.
- Develop a dissemination strategy.

Products

- An implementation plan.
- A policy and procedures manual for the project.
- A dissemination plan.

Eligibility Requirements

Any agency that handles juvenile firesetters can respond to this announcement. Such agencies include, but are not limited to, fire service, law enforcement and mental health agencies.

Selection Criteria

Applicants should carefully examine the selection criteria set forth below and respond to each requirement of these criteria in developing their application.

1. The problem to be addressed by the project is clearly stated. (20 Points)

- The applicant demonstrates broad knowledge of the juvenile firesetting/arson problems and surrounding issues and is aware of present practices or programs addressing the problem. (5 Points)
- The applicant presents specific evidence of the problem in their jurisdiction and how juvenile firesetting/arson is currently being addressed. (15 Points)

2. The goal(s) and objectives are clearly defined and relate directly to the problem to be addressed. (20 Points)

- The overall goal(s) for the project are clearly related to the juvenile firesetting and arson problems or issues in that community. (10 Points)
- The objectives are measurable and directly related to the identified problems and issues. (10 points)

3. The project design is sound and contains program elements directly linked to the achievement of the project objectives. (30 points)

- The applicant explains in clear terms how model components will be selected and how they will be implemented in their community. Applicants must demonstrate commitments from all key agencies (listed in paragraph 1 of the Application Requirements section) to work with the program as referral agencies to and from the program. (15 Points)
- The applicant provides an implementation plan with a timeline that indicates significant milestones in the project, due dates for products and the nature of the products to be submitted. (15 points)

4. The project management structure is adequate to successfully conduct the project. The applicant provides a chart depicting management responsibility and lines of authority. (15 points)

5. The applicant demonstrates capability at a level sufficient to conduct the project successfully. Applicant's proposed staff have academic and/or employment credentials and adequate knowledge and experience with juvenile firesetter/arson issues to complete the project successfully. (10 Points)

6. Budgeted costs are reasonable, allowable and cost-effective for the proposed activities. (5 Points)

Award Period

The project period will be 12 months.

Award Amount

Up to $20,000 will be available to fund each of the four to six sites to participate in the program.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Materials developed by ISA for this program ("Volume I: Guidelines for Implementation," "Volume II: Resource Materials," and the "User's Guide") may be obtained by contacting OJJDP (see contact below). Applications for test sites must be mailed or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the **Federal Register**. Those applications sent by mail should be addressed to Travis A. Cain, Special Emphasis Division, OJJDP, room 756, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 756, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays, or Federal holidays.

Contact

For further information contact Travis A. Cain, Special Emphasis Division, (202) 307–5914.

Community-Based Policing

Incarceration of Minorities

Purpose

The purpose of the initiative is to assist jurisdictions in:

(1) Identifying the extent and nature of overrepresentation of minorities in the juvenile justice system;

(2) Developing program strategies and practical guidelines to respond to the problem; and

(3) Evaluating the effectiveness of these approaches.

Background

In 1988 three amendments designed to address overrepresentation of minority youth in the juvenile justice system were made to the OJJDP Act. The first of these amendments, to section 223(a)(23), requires that OJJDP Formula Grant State Plans submitted to OJJDP "address efforts" to reduce the disproportionate incarceration of minority youth.

The second and third amendments add a required activity to the Special Emphasis Program and authorization for the National Institute for Juvenile Justice and Delinquency Prevention to support research. Section 261 (a)(7) was amended to require OJJDP to establish a program to "reduce the proportion of juveniles detained or confined in secure detention and correctional facilities, jails, and lockups who are members of ethnic and minority groups if such proportion exceeds the proportion such groups represent in the general population."

Under section 223(a)(23), States participating in the OJJDP Formula Grants Program must assess the situation with regard to confinement of minority juveniles in all types of secure facilities. If overrepresentation is found, the State must address the problem in a comprehensive manner employing a variety of strategies, such as:

- Assessing the difference in arrest rates, processing, and handling (including rates and periods of incarceration) between minority and nonminority youth;
- Improving prevention and diversion programs in areas where minority youth reside;
- Providing outreach to community-based organizations serving minority youth; and
- Providing reintegration programs for youth previously removed from the community to reduce recidivism.

OJJDP recognizes the challenge the amendments pose to the States and has designed this program to assist them in meeting the requirements.

Definition. For the purpose of this initiative, "minority populations" are defined as members of the following groups: Asians (e.g., Chinese, Japanese, Vietnamese, Filipino, etc.), Pacific Islanders, Blacks, Hispanics and American Indians. For the purpose of determining overrepresentation of minority youth in secure facilities, the term "general population" refers to youth at risk for confinement in a given jurisdiction.

Review of Research and Experience. In 1987, OJJDP sponsored a study conducted by Drs. Carl Pope and William Feyerherm that included an extensive analysis of issues focusing on the relationship between minority status and involvement in the juvenile justice system. In each of its three phases (literature review, existing program identification and secondary analysis) an attempt was made to determine what factors are important with regard to processing decisions and how potential biases could be eliminated from the juvenile justice system. This research suggests that during certain periods and at certain locations minority youth are at greater risk of entering the juvenile justice system than nonminority youth. Support for this premise is found in both the literature review and secondary data analysis.

The focus of the Pope-Feyerherm study was on the official processing of minority youth and not with preconditions which may encourage behavior that leads minority youth into contact with the juvenile justice system. The project identified, located, and compiled the post 1970 research literature relating minority status to actions of the juvenile justice system. Among the more salient findings were the following:

- Studies finding evidence of selection bias were generally no less sophisticated methodologically than studies finding no such evidence, nor were the data of lesser quality.
- The preponderance of findings from the research literature suggests direct and indirect race effects are present at some stages and not at others.
- Selection bias can occur at any stage of juvenile processing.
- Small differences based on racial status may accumulate and become more pronounced as minority youth are processed further into the juvenile justice system.

Pope made an extensive effort to identify programs and policies that have attempted to deal with the question of equity in the processing of minority youth. The specific question that guided the research was: "Are there specific programs targeted toward minority youth which attempt to reduce disproportionate representation or ensure that decisions regarding such youth are reached in an equitable manner?" This effort did not reveal any programs specifically targeted at minorities focused on ensuring equity in juvenile processing. (Copies of Pope and Feyerherm's report, "Minorities in the Juvenile Justice System," are available through OJJDP.)

Program Implications. The results of Pope's assessment of research and program information led OJJDP to conclude that the lack of programs, policies and practices focusing on ensuring equitable treatment in the juvenile justice system should be addressed in a comprehensive and systematic fashion.

Pope suggested that such program initiatives would involve assisting local communities and juvenile justice agencies (including police, courts, corrections and ancillary agencies) in understanding the nature of the problem, developing a review and monitoring procedure, and conducting training designed to reduce the potential for disparate treatment.

Goals

- To help jurisdictions identify the extent and nature of overrepresentation of minorities in the juvenile justice system;
- To reduce disproportionate detention and incarceration of minority juveniles in jails, lockups, secure detention and correctional facilities in selected jurisdictions;
- To promote the development of clear, consistent, objective decision-making criteria for juvenile justice agencies;
- To provide alternatives to detention and incarceration of minorities, including prevention and diversion programs, and reintegration programs for youths previously incarcerated; and
- To identify and disseminate information on juvenile justice system policies and practices that are racially and ethnically neutral.

Objectives

- To develop a process for identifying the disproportionate representation of minority youth in the juvenile justice system;
- To develop policies and practices to eliminate processing differentials relating to race and ethnicity;
- To develop a training and technical assistance curriculum to transfer the assessment process; and

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• To implement and evaluate programmatic responses in selected sites.

Program Strategy

This program is designed to build upon the current work of the States under the new formula grant requirement that, as part of their State plans submitted to OJJDP for formula grant funds, States "address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population * * *" (sec. 223(a)(23) of the JJDP Act).

OJJDP has prepared and disseminated regulations to assist the States in meeting this requirement. States receiving OJJDP formula grant funds are required to conduct a statewide assessment of the juvenile justice system's treatment of minority youth to determine whether minority youth are disproportionately represented. States that identify problems are to employ a variety of strategies to address the problem in a comprehensive manner.

Under this initiative, four States will be selected competitively to receive training, technical and financial assistance under this Special Emphasis Minority Program. The basic criteria for selection are:

(1) The State has conducted an initial assessment and developed a preliminary report indicating that there is a significant problem with disproportionate representation of minorities in secure custody at the local level; and

(2) The State can demonstrate how discretionary funds will be used in conjunction with formula grant funds to develop a comprehensive plan of action.

The four recipient States will be responsible for:

• Identifying jurisdictions in which changes in policies, procedures and practices can be made in processing minority juvenile offenders to reduce their disproportionate incarceration;

• Guiding development and implementation of a program to reduce disproportionate incarceration of minority youth, including (1) training and technical assistance for juvenile justice staff and decision makers, in order to increase their awareness of the problem and establish uniform standards to be used in the processing of juvenile offenders, and (2) selection of programs to serve as alternatives to incarceration for minority youth;

• Developing and managing a systematic monitoring procedure for ensuring that uniform standards are adhered to; and

• Implementing an evaluation of the effort.

States participating in this initiative will be required to work with the technical assistance provider who will assist States in carrying out a more in-depth assessment of the nature of the problem and how to address it. The technical assistance provider will be responsible for establishing an advisory committee that must be approved by OJJDP, and assisting the States, through technical assistance and training, with the assessment and analysis of the problems related to the disproportionate incarceration of minorities.

Implementation of the initiative will be accomplished in two phases. During Phase I, four pilot sites and a training and technical assistance provider will plan and develop the pilot program. The technical assistance provider will assist the sites in developing model approaches to conduct crime and system flow analyses to assess overrepresentation of minority juveniles in secure facilities and to determine whether the system handles minority juveniles differently based on race. The technical assistance provider will then assist the sites in developing a systematic monitoring procedure to determine the percent of minority/nonminority youth in each stage of the juvenile justice system at regular intervals.

The model approaches to assess disproportionate representation of minority juveniles in the juvenile justice system developed during Phase I will be disseminated to other States participating in the Formula Grants program.

During Phase II, the pilot sites will develop and implement program models and strategies to eliminate disproportionate incarceration of minority youth and to evaluate these program models through evaluation. The technical assistance provider will assist States in implementing their programs as well as develop operational manuals based upon Phase II experiences of the pilot sites. This information will become part of the training and technical assistance package to be marketed and disseminated to other interested State and local agencies.

Phase I—Planning and Pilot Program Development

During Phase I, each State will undertake a two-stage process to accomplish the goals and objectives of this phase. States will be assisted by the technical assistance provider in the form of intensive training and technical assistance to enable them to meet the goals and objectives of this initiative.

Stage 1—Problem Assessment

The States' preliminary assessment should be based on a statewide comparison of juvenile justice system processing of nonminority and minority youth and will serve as justification for Federal assistance. Successful applicants will then undertake a more in-depth analysis, and where necessary, collect additional data on the treatment of minority youth to identify points in the system accounting for disproportionate incarceration. This information will provide the basis for identifying local jurisdictions that should be targeted for changes in practices, policies, and procedures, and for devising program alternatives.

(State Site Responsibilities)

Activities: Major assessment activities should include:

1. Developing and carrying out a plan to collect data regarding local juvenile justice treatment of minority and nonminority youth. Data should include those items identified in the OJJDP *Minority Confinement Instruction* issued in November 1989; and should be defined to ensure consistency across sites.

2. Developing and carrying out a plan for analyzing data, comparing juvenile justice system treatment of minority and nonminority youth at the local level with statewide and national data; and

3. Reporting on disproportionate incarceration of minority youth in the State which identifies target intervention areas.

Products: Products to be completed in this stage are:

1. A plan for collection and analysis of data on the treatment of minority and nonminority youth by the local jurisdiction; and

2. A report on disproportionate incarceration of minority youth at the local level.

(Technical Assistance Provider Responsibilities)

Activities: The major activities of this stage are:

1. Preparing a plan to develop and refine model approaches for collection and analysis of data to identify differences in juvenile justice system treatment of minority and nonminority youth; developing related data collection policies and procedures and implementing the pilot;

2. Developing model approaches and related policies and procedures to address the problem identified;

3. Establishing an advisory committee and obtaining their participation and review of program activities and products; and

4. Developing and carrying out a dissemination strategy.

Products: Products to be completed in this stage are:

1. A plan for model assessment development and pilot activity, specifying in detail the approach and activities to be undertaken for each step, and the projected monthly costs;

2. Draft and final model assessment design, and related policies manual; and

3. Dissemination strategy to inform the field of the development of the program, products, and results of this stage.

Stage 2—Development of a Response to Reduce the Disproportionate Incarceration of Minorities.

Based on the results of stage 1, States will develop a program designed to reduce disproportionate incarceration of minorities in jurisdictions where it has been documented. Successful development of such a program will require careful planning. This planning effort will be managed by the recipient agency, with advice from the State Advisory Group (SAG), and will be supported by the technical assistance provider funded separately by OJJDP and/or obtained locally. The planning process should involve key public and private sector decision makers within the targeted jurisdictions who have the authority, responsibility, and resources to implement juvenile justice related policies and programs, including redeployment of existing resources.

The program development and implementation of this process requires a coordinator familiar with the existing juvenile justice system. The coordinator must be able to:

• Interpret data and use it in formulating policies and programs;

• Identify and assist key decision makers and to define and solve problems;

• Identify public and private resources that could be redirected to address disproportionate representation of minorities in the juvenile justice system; and

• Work effectively with the State Advisory Group to accomplish the preceding tasks.

(State Site Responsibilities)

Activities: The major activities of this stage are:

1. Defining the system components. Determine the components and personnel of the juvenile justice system responsible for initiating corrective actions and who have the authority to improve the services and information systems.

2. Identifying the decision making policies, procedures, practices, programs, and resources that should be revised, and assessing the need for additional policy, procedures, practices, programs and resources.

3. Developing a program strategy. Identify modifications to existing policies, procedures, practices, and services required to reduce the potential for discriminatory decision making contributing to disproportionate representation of minorities in secure facilities. Possible program strategies for reducing disproportionate confinement may include:

• *Developing a periodic, systematic monitoring procedure* to determine rates of minority/nonminority youth in each stage of the juvenile justice system. The research literature suggests that this disproportionateness may be evident at some stage but not at another. Therefore, it is important to target those decision points at which major disparities occur and monitor accordingly;

• *Supporting training and education* for juvenile justice practitioners, elected officials, the general public and at-risk population regarding issues related to disproportionate representation of minority youth in secure facilities, as well as the need for policy changes and program resources to address this situation;

• *Increasing the availability and improving the quality of diversion programs* for minorities who come in contact with the juvenile justice system, such as police diversion programs, youth service bureaus, community intake centers, and community arbitration and mediation programs;

• *Providing support for prevention programs* in communities with a high percentage of minority residents with emphasis on support for community-based organizations serving minority youth;

• *Increasing the availability of effective and credible community-based alternatives* for minority youth involved in the juvenile justice system; and

• *Providing support for aftercare programs* to facilitate reintegration of minority youth previously confined in State and county facilities into their home communities.

4. Developing an implementation plan. Prepare an implementation plan that defines the objectives, tasks, and resources required for each component. The plan should specify responsible parties and be designed to ensure accountability.

5. Developing a program evaluation plan. OJJDP expects that selected States will fund an independent evaluation of this effort. Accordingly, each State should develop a Request for Proposals (RFP) for an independent evaluation of program implementation and impact on juvenile justice system processing of minority youth during Phase II. OJJDP funds may be used in part to support this evaluation.

Products: The major products of this stage are:

1. An implementation plan that includes the following:

• Documentation of the nature and extent of the problem and need for intervention based on the results of the in-depth analysis;

• Establishment of uniform policies, procedures, and practices in juvenile justice system processing of minority juvenile offenders that prevent discriminatory practices;

• Specification of changes to address the problem, e.g., programs that will be undertaken, such as those identified under recommended activities of Stage 2, Phase I;

• A timetable for accomplishing all aspects of the implementation plan;

• An explanation of how new or revised uniform policies, procedures, practices, and alternative programs will decrease disproportionate incarceration of minority youth; and

• Identification of specific data required to monitor implementation.

2. Documentation of how the implementation plan complements the statewide plan for addressing disproportionate incarceration of minority youth.

3. An RFP for the program evaluation.

4. A supplemental application.

When the four selected sites become operational, the technical assistance provider will provide intensive training and technical assistance to enhance their success. The technical assistance provider will continue to work with the States to develop policies, practices, and programs that respond to problems identified as a result of the statewide assessment of overrepresentation of minority youth in secure facilities; develop a marketing and dissemination strategy; and present the program and evaluation results to policy makers and practitioners at the State and local levels. Finally, the technical assistance provider will work cooperatively with an independent evaluator to ensure the integrity of data collection and feedback.

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(Technical Assistance Provider Responsibilities)

Activities: The major activities of this stage are:

1. Provision of intensive training and technical assistance to the pilot sites in developing policies, practices, and model programs;
2. Establishment of uniform data collection items for monitoring system decisions;
3. Provision of guidance and technical assistance to sites in developing evaluation designs and/or requests for proposals to conduct an evaluation; and
4. Development of a marketing and dissemination strategy.

Products: The products to be completed during this stage are:

1. A plan for providing training and technical assistance to pilot sites; and
2. A marketing and dissemination strategy to inform the field of the products and results of this stage.

Phase II—Pilot Implementation, Evaluation and Dissemination

It is anticipated that supplemental funding for the second 18-month budget period will cover implementation and, in part, an independent evaluation and activities related to facilitating and monitoring the programs in the pilot sites, including training and technical assistance. The relevant State agency is encouraged to provide monetary support to local sites for implementation and evaluation.

Stage 1—Pilot Implementation

(State Site Responsibilities)

Activities: The major activities of this stage are:

1. Implementing uniform policies, procedures and practices;
2. Implementing program alternatives;
3. Implementing program monitoring and assessment; and
4. Implementing uniform data collection protocols to monitor change in system decisions.

Products: The major products of this stage are:

1. Quarterly progress and financial reports;
2. An interim program implementation report with plan modification as needed;
3. A final evaluation design and data collection protocols; and
4. A final monitoring and assessment report.

(Technical Assistance Provider Responsibilities)

The technical assistance provider will provide technical assistance to the sites on all aspects of the implementation during the Phase I activities.

Stage 2—Development of Descriptive Program Operation Manuals

Beginning with the 30th month of this project period, the technical assistance provider will work cooperatively with the pilot sites to develop descriptive program operation manuals for use in other States. The purpose of the manuals is to provide guidance to other Formula Grant States regarding: The assessment and analysis process; and the development and implementation of policies, practices and programs affecting the disproportionate incarceration of minority youth.

The operational manuals will be completed in three incremental stages. The first section of the document will contain policies and procedures relating to the assessment and analysis process. This should be completed by the technical assistance provider by the end of Phase I, Stage 1. The second section of the document will include the planning process for developing policies, procedures and program models. This should be completed at the end of Phase I, Stage 2. Section three will include a description of the models that were implemented to address the issue of disproportionate representation of minority youth in secure facilities. It should be completed by the end of Phase II. This information will become part of the training and technical assistance packages for broad dissemination to interested State and local agencies.

Concurrent with the development of program operation manuals, the technical assistance provider will develop a plan for providing training and technical assistance to other States.

(Technical Assistance Provider Responsibilities)

Activities: The major activities of this stage for the technical assistance provider are:

1. Preparation of a plan for developing the operations manuals;
2. Development of the operations manuals;
3. Participation and review by the advisory committee; and
4. Development of a dissemination strategy.

Products: The products to be completed in this stage are:

1. Plan for operations manual development;
2. Draft and final operations manual design(s); and
3. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage 3—Training and Technical Assistance Development Activities

Upon completion of activities through the development of the operations manuals, the technical assistance provider will prepare a plan for developing the training and technical assistance packages. Based on the plan, the technical assistance provider will transfer the program operation manuals and related materials into a comprehensive training and technical assistance package.

Comprehensive training manuals detailing the program design and operation must be developed to encourage and facilitate implementation of promising programs in the final stage of the demonstration phase.

The training manual should be the focal point of the training and technical assistance package. Its major users will be State, county, and local policy-makers and practitioners involved in resource allocation and program development related to supervision of youth and the issue of minority overrepresentation. The manual should be designed for presentation in formal training sessions and for independent use by jurisdictions that do not participate in such sessions. Each manual should include a complete description of promising programs and incorporate related policies and procedures. The manual should provide instructions and supplementary materials for trainers to facilitate presentation, and to assure understanding and successful adaptation and implementation of promising programs.

The training curriculum will be tested by the technical assistance provider.

(Technical Assistance Provider Responsibilities)

Activities: The major activities of this stage are:

1. Preparation of a plan for developing the training and technical assistance package;
2. Development of the training and technical assistance materials;
3. Recruitment and preparation of training and technical assistance personnel;
4. Testing of the training curriculum package;
5. Participation and review by the advisory committee; and
6. Development of a dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Products: The products to be completed during this stage are:

1. Plan for the development of the training and technical assistance package;
2. Draft and final training and technical assistance package including the training manual and information materials; and
3. Dissemination strategy.

Eligibility Requirements for the Technical Assistance and Training Provider: Applications are invited from public and private organizations. Private for-profit organizations must waive their fee in order to be eligible. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. Applicants and co-applicants must demonstrate prior experience in the design, conduct and implementation of research and development programs; juvenile justice research and evaluation; training and technical assistance development and delivery; program and policy development; and experience with and knowledge of minority youth involvement in the juvenile justice system.

Eligibility Requirements for the State Sites: Applications are invited from State agencies having responsibility for implementing the JJDP Act and that: (1) Have conducted an initial assessment and developed a preliminary report indicating that there is a significant problem with disproportionate representation of minorities in secure custody at the local level; and

(2) Can demonstrate how discretionary funds will be used in conjunction with formula grant funds to develop a total plan of action.

General Application Requirements: Applicants must submit a completed application (Standard Form 424), including a program narrative, a detailed budget, and budget narrative. Applications must include the information outlined in this section of the solicitation in Part IV, Program Narrative, of the application form.

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and supervise and coordinate the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF 424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

Specific Application Requirements:

1. *Problem Statement.* A clear, concise, well-justified statement of the problem, and evidence of knowledge of relevant data. The applicant demonstrates a sensitivity to the need to apply data analysis to problem-solving to advance policies, practices and procedures.

• In addition, State sites must include an analysis of their State-level data on juvenile justice system handling of minority and nonminority youth, resulting in preliminary conclusions with respect to jurisdictions and decision points in the juvenile justice system accounting for the disproportionate incarceration of minority youth.

2. *Program Goals and Objectives.* A succinct statement evidencing an understanding of the goals and objectives of the program.

3. *Program Strategy.* Applicants should describe the proposed approach for achieving the goals and objectives in relation to the activities and products of this program.

• *Program Implementation Plan*—Applicants should prepare a plan that outlines the major activities involved in implementing the program, describe how they will allocate available resources to implement the program, and how the program will be managed.

• *Time-Task Plan*—Applicants must develop a time-task plan for the project period, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the tasks and products.

• *Products*—Applicants must concisely describe the interim and final products of each stage of the program, and must address the purpose, audience, and usefulness of each product to the field.

4. *Project Management Structure.* The applicant must include an annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components, and a list of key personnel responsible for managing and implementing the minority confinement program. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. Applicants should also provide recommendations for program advisory committee members. This documentation and individual resumes may be submitted as appendices to the application.

5. *Organization Capability.* Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative.

6. *Program Budget.* Applicants must provide an eighteen-month budget with a detailed justification for all costs, including the basis for computation of these costs. Applicants must also include a well-justified budget estimate to cover costs for an additional 18-month program period. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. The budget must include funds to support the activities of the project advisory committee and working group.

Selection Criteria:

In general, all applications received will be reviewed in terms of their responsiveness to this solicitation and the specific program application requirements set forth in this announcement. Specifically, applications will be rated according to the following criteria and point values (weights):

1. The problem to be addressed by the project is clearly stated. (20 Points)

• This criterion includes a clear, concise, well justified statement of the problem, and evidence of knowledge of relevant data. The applicant demonstrates a sensitivity to the need to apply data analysis to problem-solving to advance policies, practices and procedures.

• State applicants are expected to include an analysis of their State-level data on juvenile justice system handling of minority and nonminority youth, resulting in preliminary conclusions with respect to jurisdictions and decision points in the juvenile justice system accounting for the disproportionate incarceration of minority youth.

2. The objectives are clearly defined and relate directly to the problem to be studied. (20 Points)

3. The project design is sound and contains program elements directly linked to the achievement of the project objectives. (25 Points)

• This criterion includes appropriateness and technical adequacy of the approach to the activities and products of each stage of the program

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for meeting the goals and objectives; and potential utility of proposed products;

• Applicant provides a work plan with a timeline that indicates significant milestones in the project, due dates for products and the nature of the products to be submitted.

4. The project management structure is adequate to successfully conduct the project. (15 Points)

5. Applicant's capability is demonstrated at a level sufficient to conduct the project successfully. Applicant's academic and/or employment credentials provide adequate knowledge and experience of juvenile justice issues to complete the project successfully. (10 Points)

• The technical assistance provider must demonstrate the extent and quality of organizational experience in juvenile justice system research and evaluation; implementation of research and development programs; training and technical assistance development and delivery; and knowledge of minority youth involvement in the juvenile justice system.

6. Budgeted costs are reasonable, allowable and cost effective for the proposed activities. (10 Points)

• This criterion includes completeness, reasonableness, appropriateness and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished.

Award Period and Amount

The Special Emphasis Minority Program is a three-year program. Applicants are advised that the initial awards will provide support for Phase I activities. For this program, OJJDP has allocated a total of $600,000 for an initial 18-month project period. Up to $600,000 will be made available for the continuation of the project for the second 18-month period. The funding is broken down as follows:

(Funding for The Technical Assistance Provider)

Up to $200,000 will be awarded to the successful applicant to provide training and technical assistance to the pilot sites.

(Funding for the State Sites)

Up to $100,000 will be provided to each of four States to assess and implement program approaches to reduce overrepresentation in the juvenile justice system. It is anticipated that supplemental cooperative agreements will be awarded for a second 18-month budget period for both the training and technical assistance provider and individual site projects.

OJJDP funds will be used to support the following activities: Training and technical assistance; program staff time and costs related to program planning, meetings with the State-level advisory group; and national meetings convened by OJJDP focused on the overall OJJDP program. During the second funding period, funds may also be used in part to support program evaluation (not more than 20% may be used for this purpose).

States shall provide necessary funds to support: needed programs to serve as alternatives to incarceration for minority youth; monitoring of the implementation of uniform standards; and a program evaluation.

Applicants must demonstrate the management and financial capability to effectively implement a project of this size and scope.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the **Federal Register**. Those applications sent by mail should be addressed to Deborah Wysinger, State Relations and Assistance Division, OJJDP, room 742, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to room 760, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays or Federal holidays.

Contact

For further information contact Deborah Wysinger, State Relations and Assistance Division, (202) 307-5924.

Training in Cultural Differences for Law Enforcement/Juvenile Justice Officials

Purpose

The purpose of this program is to provide training in cultural and ethnic differences for law enforcement and other juvenile justice personnel.

Background

OJJDP determined that a training program is needed in the area of cultural and ethnic differences for personnel in all components of the juvenile justice system. Such training would help to prevent disparate treatment of minority youth by the juvenile justice system as well as enhance the safety of juvenile justice personnel working in minority communities. The importance of training justice agency staff regarding racial, cultural, and ethnic differences is recognized outside OJP/OJJDP. Such training has been specifically recommended by the National Council of Juvenile and Family Court Judges (*Juvenile Court Journal, 1990/Vol. 41 No. 3A*).

It should also be recognized that cultural differences, biases and sensitivity vis-a-vis justice system handling of minority populations have been addressed before. However, prior training approaches in cultural and ethnic differences have not been uniformly successful. For example, a 1972 evaluation report on race and cultural relations training for the Albuquerque Police Department suggested that the initially strong impact of the training dissipated quickly (Koehue and Wilson, 1972). Training in this area has also differed in quality, scope, format and depth. Moreover, various definitions of training have been employed to deal with cultural/ethnic differences, including, but not limited to, race relations, human relations, police-community relations, sensitivity, and encounter group training. The effectiveness or relevance of such training may depend on the nature or guiding philosophy of the particular organization in which justice system personnel operate (see Woolpert, 1980, for a comparison of the classical military model of police organizations with a more democratized "humanistic" model). Clearly, there are both psychological and sociological dimensions to the handling of cultural/ethnic differences, which must be recognized in the training content and process.

In a psychological vein, it is important for police and other agency officials to be willing to recognize cultural differences in contacts with system clients, and avoid engaging in "crossed transactions" (Berne, 1964). For example, an overly authoritarian stance interferes with the sensitivity and awareness required to perceive cultural or ethnic dissonance in communication or interaction with minority group members. Often those who need training in this area are the least likely to recognize such a need.

At a sociological level, it is important for agency staff to understand that acceptable or normal behavior in one culture may be misunderstood and viewed as deviant in another. For example, "coin rubbing" practiced in Vietnamese folk-medicine (Sue, 1981), which leaves marks on the body, may be misinterpreted as abuse. The training inventory and subsequent curriculum should capture those elements which are generic to the area of cultural/ethnic differences. Culture conflict *vis-a-vis* the majority culture is a problem requiring agency recognition among most, or all, minority group young people, regardless of specific background.

At the same time, particular cultural idiosyncracies of individual cultural/ethnic groups that may create misunderstanding or dissonance will also be addressed. Spoken language, body language, values, and conception of time are but a few of the culture related elements that vary between groups (Quintanilla, 1983). Furthermore, the training inventory must identify the cultural/ethnic populations that present the most significant interpersonal problems to juvenile justice system professionals along the dimensions of cultural/ethnic differences. While Blacks, American Indians, Hispanics, and Asians are the minorities perhaps most often recognized, there are many subgroups (subcultures) among these populations. It should also be recognized that immigration to the United States is an ongoing process, and recent, or new entrants may present different problems than current minority populations.

Further, it will be important to establish the appropriate format for training in the cultural/ethnic area. How much training, and in what settings, is appropriate? Quite extensive training is probably necessary at the entry, or pre-service level. For experienced personnel, one or two modules, added to other training in the course of workshops and conferences, may be all that is normally needed. Last, the training curriculum must be implemented, tested, and revised, if indicated, in order to assure its optimum effectiveness.

Goals

• To improve the effectiveness of law enforcement and other juvenile justice agency staff interactions with minority group suspects and offenders; and

• To improve the policies, procedures and practices regarding governing the behaviors of law enforcement officers, juvenile court and juvenile corrections personnel in the handling of minority youth suspects and offenders.

Objectives

• To determine training needs and existing training resources in the areas of cultural and ethnic differences, based upon an inventory of existing cultural/ethnic training programs and an assessment of information regarding the handling of minority group youth suspects and offenders by juvenile justice system personnel.

• To develop a training curriculum with discrete modules that responds to the unique characteristics and problems in the major components of the juvenile justice system, i.e., law enforcement, juvenile court, and juvenile corrections, for implementation in conjunction with existing OJJDP funded training programs. The development of this program will include curriculum design and testing the curriculum modules with the intended audiences; and

• To develop a range of training materials for each module of the curriculum which will be disseminated when the training program is implemented.

Program Strategy

The program will include three phases:

1. Phase I will consist of an inventory of training needs and available programs.

It is expected that a first step in the process will be the review of literature, including training materials, in the subject area. In particular, the review should cover any evaluations of prior training on cultural and ethnic issues. Contacts with a reasonably full range of juvenile justice system agencies should be made to determine current training needs. The scope of the agency survey will be dictated by resources available for this project. It will be important to select and query those officials of agencies expected to yield the maximum amount of information. Ideally, the contacted agencies should have experience with diverse minority group populations. (It will be necessary for the staff of this project to consult with OJJDP training program managers in order to identify existing curriculum materials.) The agency contacts and subsequent discussions will result in the identification of the various cultural issues and difficulties exemplified by different minority groups and subgroups. This is a key objective of the inventory. The gathered information will determine the content of training required by police and other agency personnel. Conceivably, there may be some differences between training needs of law enforcement, probation staff and correctional institution personnel. To confirm the training needs, the project staff may find it necessary to consult with minority group members involved with the juvenile justice system, or with organizations representing minority populations.

The inventory process will culminate in a report summarizing the state-of-the-art of training (including the availability of programs) dealing with cultural/ethnic differences. The report will outline current training needs on this topic in the juvenile justice system; set forth recommendations with respect to further training curriculum development; and specify an implementation plan consistent with the results of the inventory. This report must indicate the amount of training appropriate to address different culture/ethnicity related topics. For example, the report should suggest how much training is needed in such an area as cultural values, and what emphasis must be given to language training. The report must also indicate what portion of required training is readily available, and state what training curricula, if any, remain to be developed. Some assessment of the availability of qualified trainers, and of programs for the development of such trainers, must be included in the inventory as well.

2. Consistent with the results of the inventory, a training curriculum on racial, ethnic and cultural differences will be developed during Phase II of the project.

The inventory may indicate that an effective curriculum could incorporate existing training programs or materials which require little or no modification to fit juvenile justice needs. In such a case, the project will describe the training and provide information regarding accessing the program(s) for juvenile justice use.

It is equally likely that existing training materials, while in part appropriate for juvenile justice purposes, may require extensive refinements or adjustments to meet the needs identified by the inventory. The project would make the adjustments as appropriate. Furthermore, should development of new materials be required, the project will be expected to carry out this task in order to meet the juvenile justice system's training requirements.

In any event, the project funded in response to this program announcement will be expected to compile, develop, or make available, training programs in the subject area for juvenile justice use. The materials should provide both trainee and trainer guides and should be structured in a modular format, including audio-visual and other reference materials. The modules will be of appropriate length and content to be utilized in various training settings, such as juvenile justice conferences, seminars and workshops. The training package(s) must also be prefaced with appropriate

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rationale (consistent with the inventory results) for the content and process of the training. The preface to training materials should indicate the proper audiences for the content and the duration of particular training segments.

While training content needs will have been identified through the inventory, the actual compilation, structuring, or preparation of new training materials will occur during the curriculum development phase of the project. It is particularly important to match the content of training segments with the timeframe for their implementation. Since different agencies are able to make personnel available for training at different times and for different lengths of time, the curriculum package(s) should provide flexibility along the time dimension. For example, a Michigan Department of Corrections Jailer Specialist Training Program design included five different training time arrangements to accommodate the needs of jails and lockups around the State (Walters, 1973).

3. The curriculum will be tested, implemented, and disseminated during Phase III of the project.

It is envisioned that the first 12 months of the project period will be devoted to the inventory and curriculum compilation/development. The second project year will consist of curriculum testing, implementation, and dissemination. Respondents to this announcement should describe and justify their anticipated testing and implementation procedures. The extent of required testing will depend somewhat on the nature of the curriculum. Some existing training materials may have already been tested in implementation settings similar to those envisioned under this announcement; newly developed materials will not have been tested. The completed curriculum should be reviewed by experts in the subject area (outside the project). Such experts should also be engaged to observe and critique initial implementation of the training. Respondents to this announcement must provide for an Advisory Board in the project to be assigned responsibility for the above and related functions. It is also expected that the project will utilize participant evaluations of the training during the testing stage.

It is expected that the staff of this project will initially consult with OJJDP training program managers (also with training grantees or contractors) in order to incorporate, as appropriate, existing curricula employed in OJJDP supported programs. The Office funds a number of programs for police, court, corrections and related juvenile justice agency personnel. Since consultation between the project's and OJJDP staff will have taken place through the inventory and curriculum development phases of this project, the training, testing, and implementation phases should proceed smoothly.

The last project activity involves making the training curriculum available to the wider field of juvenile justice practitioners throughout the country. One obvious vehicle for accomplishing this is the Juvenile Justice Clearinghouse. Availability of the curriculum can also be made known to practitioners through the various professional juvenile justice organizations. It is envisioned that the training program will be implemented (in accordance with its modular format) during national or regional events of the professional organizations in the field. The curriculum should also be designed for in-house training by individual juvenile justice agencies. For example, police and other agencies could incorporate parts of the curriculum in academy, or other mandated training, for entry level and in-service personnel. As part of this last phase of the project, a dissemination plan must be developed. It should include cost considerations.

Products: The major products are:

1. An inventory of existing training programs on cultural/ethnic differences used with criminal and juvenile justice agencies.

2. A summary of juvenile justice system practices/policies and procedures which need to be addressed in correcting disparate and insensitive handling of minority youth.

3. A training curriculum with discrete modules suitable for use as "stand-alone" units in training programs for law enforcement officers, juvenile court personnel, and juvenile corrections personnel.

4. A dissemination strategy for expanding use of the curriculum beyond OJJDP funded training programs.

5. An implementation plan and schedule for the initial training.

6. Quarterly progress reports.

Eligibility Requirements

Applications are invited from public and private organizations. Private for-profit organizations must waive their fee to be eligible.

Selection Criteria

Those interested in responding to this solicitation should submit proposals (applications) designed in accordance with the application review criteria set forth below:

1. *Conceptualization of the problem.* The applicant must demonstrate a clear understanding of, and competence to deal with, the multilateral area of cultural and ethnic differences, and the training requirements in this field. (20 Points)

2. *Statement of objectives.* The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem. (20 Points)

3. *Project design.* The procedures, work plan and proposed products of the project must be directly linked with the stated objectives, and with the problem addressed by this announcement. (20 Points)

4. *Project management.* The project's management structure and staffing must be adequate for the successful implementation and completion of the project. Staff résumés should be attached to the application. Key project staff should have significant experience in the subject area addressed in this announcement. (15 Points)

5. *Organizational capability.* The applicant organization's ability to successfully conduct the project must be documented in the proposal. Organizational experience with development and implementation of multicultural training programs should be indicated. (15 Points)

6. *Budget.* The proposed budget must be reasonable, allowable and cost-effective *vis-a-vis* the activities to be undertaken. (10 Points)

Award Period

The project period is 24 months. The initial budget period is for 12 months.

Award Amount

The award for the initial 12-month period will be up to $125,000.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the **Federal Register**. Those applications sent by mail should be addressed to Peter Freivalds, Training, Dissemination, and Technical Assistance Division, OJJDP, room 712, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 712, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays or Federal holidays.

Contact

For further information contact Peter Freivalds, Training, Dissemination, and Technical Assistance Division, (202) 307-5940.

Crosscutting Initiatives

Summer Research Fellowship Program

Purpose

The purpose of this program is to provide an opportunity for individuals to analyze existing research data and to produce useful information on juvenile justice and delinquency prevention in current OJP program priority areas.

Background

The Summer Research Fellowship (SRF) Program has been established within the National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) at OJJDP.

OJJDP encourages and coordinates research and welcomes proposals which address the priority areas of the Office of Justice Programs for Fiscal Year 1991. These are listed and described below. Examples of specific topics of importance are included.

• *Intermediate Sanctions/User Accountability.* These sanctions fill the gap between simple probation and secure incarceration. They provide graduated levels of correctional programs which foster accountability and appropriate treatment.

—Restitution.
—Mediation.
—Intensive surveillance systems, including electronic monitoring.
—Intervention and treatment of juvenile sex offenders.
—Delay of treatment and sanctions.
—Improved classification of offenders.

• *Gangs and Violence.* Prevention, intervention and suppression of illegal gang activity and gang recruitment of juveniles is an important and challenging subject of research.

—Intervention in chronic juvenile offender activity.
—Treatment of violent offenders.

• *Evaluation.* Evaluative research in juvenile justice and delinquency prevention programs and practices of the current priority areas to learn what works best is always needed.

—Evaluation of sanctions.
—Evaluation of the impact on drug use by participants in programs which use a decision-making process.

• *Prevention and Education.* Prevention of delinquency focused on children at high risk is closely associated with education and requires innovative and different approaches.

—Drug education to prevent use and other involvement.
—Literacy training and reduction of illiteracy.
—Chronic juvenile offenders.
—Family strengthening.
—Media violence.
—Reduction of truancy and dropouts.
—Detection of child abusers.
—Peer pressure on delinquency and drug use.

• *Community Based Programs.* The agencies of juvenile justice cannot reduce juvenile delinquency alone. Residents, neighborhoods organizations, and institutions are essential. Volunteering citizens and youth must work together with concerned agencies.

—Safe and drug-free neighborhoods.
—Innovative care resources for juveniles under the supervision of the court.
—Aftercare and transitional living for juveniles under supervision.
—Creation of healthy peer relations.
—One to one adult-juvenile support.
—Prevention of gang violence.

• *Victims.* Children are abused, neglected, abandoned, and exploited to an intolerable extent. Young victims need special assistance because without help they may begin to victimize others.

—Treatment of abused and/or exploited children.
—Prevention of child exploitation.

• *Information Systems, Support and Statistics.* Juvenile justice agencies require accurate, comprehensive and timely information to develop effective policies and allocate resources to enhance juvenile justice and reduce delinquency.

—Development of innovative, effective information systems for juvenile justice agency operation.

OJJDP and other Federal agencies have funded numerous projects that have contributed significantly to our understanding of juvenile delinquency and its prevention, and of the operations of the juvenile justice system. Many of these projects have resulted in extensive data that have not been fully analyzed. OJJDP's interest in these data does not end with the achievement of the project's original objectives. Reexamination of such data can yield innovative insights. Moreover, secondary analysis can corroborate other findings. A meta-analysis of various research products can reveal new perspectives and produce new, useful information for policy guidance.

Goal

To provide useful information to guide and enhance juvenile justice and delinquency prevention through short-term studies in the areas noted above.

Objectives

• To conduct additional analysis of statistical and research data in the field of juvenile justice and delinquency prevention;

• To conduct a meta-analysis of existing research data, particularly of research data and data sets resulting from OJJDP-sponsored research;

• To promote the use of research data and data sets which can provide critically needed information on important juvenile justice issues; and

• To prepare special analyses and disseminate the results of such work.

Program Strategy

Proposals are solicited from researchers who are interested in performing further analysis or a meta-analysis of existing research data and findings in the OJP priority areas. While this program is intended primarily for senior researchers and relatively new Ph.D.'s, it is not limited to them. Although project problem identification and data selection are the choice of the applicants, proposals to examine juvenile justice and delinquency prevention research data and data sets generated under the auspices of OJJDP or other Federal agencies are of particular interest to OJJDP. These are available through the National Juvenile Court Data Archive, the Interuniversity Consortium for Political and Social Research at the University of Michigan or the National Institute of Justice Data Resource Program.

Studies based on other research data will also be considered for funding. Applicants should make a special effort to describe in detail the research data for the proposed analyses and their relevance to the goals of OJJDP.

Eligibility Requirements

Applications will be accepted from researchers who have achieved doctorates, but it is not limited to them.

Applicants should submit an application (Standard Form 424) along with the following information:

A. A proposal not to exceed 10 double-spaced pages which should include:

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(1) The policy or research question to be addressed;

(2) The problem(s) to be investigated;

(3) Any data set(s) to be employed;

(4) The procedure and analytical methodology, including a description of how planned analyses replicate or build on results obtained by others using some information;

(5) The potential policy implications; and

(6) The expected products of the research.

B. A detailed one-page budget for salaries, supplies, computing costs, and other expenses, not to exceed $10,000. Applicants should include the cost of one trip to present the results of this research at an appropriate professional society meeting, such as the annual meeting of the American Society of Criminology or at a colloquium at the OJJDP offices. This program is designed as summer support for individuals; the inclusion of general institutional and indirect costs is not acceptable.

C. The SRF applicants must submit two letters of recommendation from individuals who are familiar with work and qualifications for this fellowship (with one recommendation from the supervisor or dean indicating an evaluation of the proposed topic and the potential of the applicant).

D. Resumes, also required for key fellowship program personnel, should include background, academic work, professional experience and publications.

Selection Criteria

At a minimum, all applicants will be rated on the extent to which they meet the following selection criteria:

1. The problem to be addressed by the project is clearly stated. (30 Points)

• Problem to be addressed is based upon issues that are significantly related to juvenile justice and delinquency prevention in the OJP priority areas. (15 Points)

• The applicant demonstrates broad knowledge of the problem and surrounding issues and is aware of present practices or programs addressing the problem. (15 Points)

2. The objectives are clearly defined and relate directly to the problem to be studied. (20 Points)

3. The project design is sound and contains program elements directly linked to the achievement of the project objectives. Applicant provides a work plan with a timeline that indicates significant milestones in the project, due dates for products and the nature of the products to be submitted. (25 Points)

4. The project management structure is adequate to conduct the project successfully. (5 Points)

5. Applicant's capability is demonstrated at a level sufficient to conduct the project successfully. Applicant's academic and/or employment credentials provide adequate knowledge and experience of juvenile justice issues to complete the project successfully. (15 Points)

6. Budgeted costs are reasonable, allowable and cost-effective for the proposed activities. (5 Points)

Award Period

The project period will be up to five months. Extensions for the Summer Research Fellowships are as follows:

• Time extensions may be granted for completion and the delivery of the final report, but no further funds will be awarded.

• These time extensions must be requested before the expiration of the original grant and require a report of reasonable progress toward the objectives identified in the original application.

Award Amount

Funds for each fellowship will be subject to negotiation. Three awards will be available for up to $10,000 each.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the Federal Register. Those applications sent by mail should be addressed to Summer Research Fellowship Program, Research and Program Development Division, OJJDP, room 778, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 778, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays, or Federal holidays.

Contact

For further information contact Donni LeBoeuf, Research and Program Development Division, (202) 307-0566. Applicants who anticipate accessing the National Juvenile Court Data Archives at the National Center for Juvenile Justice (NCJJ) in Pittsburgh, Pennsylvania, should contact Howard Snyder at NCJJ (412) 227-6950, regarding the availability of appropriate data.

Graduate Research Fellowship Program

Purpose

The purpose of this program is to encourage scholars to undertake research in juvenile justice and delinquency prevention in the current OJP program priority areas.

Background

The Graduate Research Fellowship Program has been established within the National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) at OJJDP to solicit proposals from doctoral students entering the dissertation stage of their graduate program.

OJJDP encourages and coordinates research and welcomes proposals which address the priority areas of the Office of Justice Programs for Fiscal Year 1991. These are listed and described below. Examples of specific topics of importance are included.

• *Intermediate Sanctions/User Accountability.* These sanctions fill the gap between simple probation and secure incarceration. They provide graduated levels of correctional programs which foster accountability and appropriate treatment.

—Restitution.
—Mediation.
—Intensive surveillance systems, including electronic monitoring.
—Intervention and treatment of juvenile sex offenders.
—Delay of treatment and sanctions.
—Improved classification of offenders.

• *Gangs and Violence.* Prevention, intervention and suppression of illegal gang activity and gang recruitment of juveniles is an important and challenging subject of research.

—Intervention in chronic juvenile offender activity.
—Treatment of violent offenders.

• *Evaluation.* Evaluative research in juvenile justice and delinquency prevention programs and practices of the current priority areas to learn what works best is always needed.

—Evaluation of sanctions.
—Evaluation of the impact on drug use by participants in programs which use a decision-making process.

• *Prevention and Education.* Prevention of delinquency focused on children at high risk is closely associated with education and requires innovative and different approaches.

—Drug education to prevent use and other involvement.
—Literacy training and reduction of illiteracy.
—Chronic juvenile offenders.
—Family strengthening.
—Media violence.
—Reduction of truancy and dropouts.
—Detection of child abusers.
—Peer pressure on delinquency and drug use.

• *Community Based Programs.* The agencies of juvenile justice cannot reduce juvenile delinquency alone. Residents, neighborhoods organizations, and institutions are essential. Volunteering citizens and youth must work together with concerned agencies.

—Safe and drug-free neighborhoods.
—Innovative care resources for juveniles under the supervision of the court.
—Aftercare and transitional living for juveniles under supervision.
—Creation of healthy peer relations.
—One to one adult-juvenile support.
—Prevention of gang violence.

• *Victims.* Children are abused, neglected, abandoned, and exploited to an intolerable extent. Young victims need special assistance because without help they may begin to victimize others.

—Treatment of abused and/or exploited children.
—Prevention of child exploitation.

• *Information Systems, Support and Statistics.* Juvenile justice agencies require accurate, comprehensive and timely information to develop effective policies and allocate resources to enhance juvenile justice and reduce delinquency.

—Development of innovative, effective information systems for juvenile justice agency operation.

This program supports doctoral students at the dissertation stage of their academic careers. Through their sponsoring universities, doctoral students are awarded grants up to $12,000 to support the completion of their dissertations. Dissertations resulting from this program should contribute to juvenile justice policy, delinquency prevention, analyses of pertinent data, or the advancement of knowledge concerning important juvenile justice issues. (See above priorities.)

Goal

To add to the knowledge of juvenile justice and delinquency prevention pertinent to the OJP priority areas described above, and to provide the opportunity for selected individuals in doctoral programs to choose a research topic in the field of juvenile justice, delinquency prevention or a related area for their dissertation study, thereby encouraging the expansion of researchers in this field.

Objectives

• To conduct basic or policy research on a specific issue, problem, or activity within juvenile justice and delinquency prevention pertinent to current priorities; and

• To investigate policy procedures and practices important to resolving operational issues in the juvenile justice system.

Program Strategy

Research subjects are broadly defined within juvenile justice. Extensive data exists for analysis. Proposed research that appears to develop new knowledge, evaluate existing or proposed policies and practices or revise old information has the potential for improving current practice and, therefore, has merit.

Eligibility Requirements

Applicants must have completed all university requirements for the doctoral degree, except for the internship (where required) and the research, writing, and defense of the dissertation.

The proposal must be accompanied by a *vita* that includes information on the candidate's education, experience and publications, if any. The applicant should also enclose a letter of support from his/her adviser indicating an evaluation of the proposed topic and the potential of the applicant.

Graduate Research Fellowship applicants should submit a paper (no longer than 10 double-spaced pages) that addresses research objectives, hypotheses and methodology; the appropriateness of the design to the issues raised; time schedules for major events of the study; and documentation that any necessary cooperation from organizations will be forthcoming. To be eligible to administer a Graduate Research Fellowship grant on behalf of a doctoral candidate, an institution must be fully accredited by one of the regional institutional accrediting commissions recognized by the U.S. Secretary of Education and the Council on Postsecondary Accreditation. Overhead costs are not allowed for this program.

Selection Criteria

All applicants, at a minimum, will be rated on the extent to which they meet the following selection criteria:

1. The problem to be addressed by the research project is clearly stated. (30 Points)

• The problem to be addressed is based upon issues that are significantly related to juvenile justice and/or juvenile delinquency prevention and the OJP priority areas. (15 Points)

• The applicant demonstrates broad knowledge of the problem and any surrounding issues and is aware of present practices or programs addressing the problem. (15 Points)

2. The objectives of the proposed project are clearly defined and directly relate to the stated problem. (20 Points)

3. The project design is sound and contains program elements directly linked to the achievement of the project objectives. Applicant provides a work plan with a timeline that indicates significant milestones in the project, due dates for products and the nature of the products to be submitted. (20 Points)

4. The project management structure is adequate to conduct the project successfully. (5 Points)

5. Applicant's academic credentials reflect adequate knowledge of juvenile justice issues to complete the project successfully. (20 Points)

6. Budgeted costs are reasonable, allowable and cost-effective for the activities proposed. (5 Points)

Award Period

The project period shall not exceed one year.

• Time extensions may be granted for completion and the delivery of the dissertation, but no further funds will be awarded.

• These time extensions must be requested before the expiration of the original grant and require the receipt of all progress reports showing reasonable progress toward the objectives identified in the original application.

Award Amount

Funding for this program has been set at $50,000, which will support four to five Fellowships. The maximum amount for any one Fellowship is $12,000. The specific amount is subject to negotiation.

The grant may include the Fellow's stipend and other university expenses, including continuing registration, library and certain university fees. Major project costs that may be compensated include: Clerical assistance, special supplies, reproduction, necessary local and out-of-town travel (reimbursed at the university's rate), foreign travel (with prior OJJDP approval) and computer time. Costs incurred prior to the formal grant award are not reimbursable.

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Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the Federal Register. Those applications sent by mail should be addressed to Graduate Research Fellowship Program, Research and Program Development Division, OJJDP, room 778, 633 Indiana Avenue NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 778, 633 Indiana Avenue NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays or Federal holidays.

Contact

For further information contact Donni LeBoeuf, Research and Program Development Division, (202) 307-0586.

Visiting Research Fellowship Program

Purpose

The purpose of this program is to support independent research on policy-relevant issues by senior experienced researchers and operational leaders in the field of juvenile justice and delinquency prevention.

Background

The Visiting Fellowship Program has been established within the National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) at OJJDP to solicit from two groups of juvenile justice professionals proposals which emphasize the connection between research and practice. Successful candidates are invited to work in the OJJDP offices in Washington, DC. There will be opportunities to interact with the OJJDP staff, with national leaders in their field, and with other visiting fellows, as well as the opportunity to develop, carry out and present the results of their projects to interested audiences. Eighty percent of the Fellowship period must be spent at the OJJDP offices.

OJJDP encourages and coordinates research and welcomes proposals which address the priority areas of the Office of Justice Programs for Fiscal Year 1991. These are listed and described below. Examples of specific topics of importance are included.

• *Intermediate Sanctions/User Accountability.* These sanctions fill the gap between simple probation and secure incarceration. They provide graduated levels of correctional programs which foster accountability and appropriate treatment.

—Restitution.
—Mediation.
—Intensive surveillance systems, including electronic monitoring.
—Intervention and treatment of juvenile sex offenders.
—Delay of treatment and sanctions.
—Improved classification of offenders.

• *Gangs and Violence.* Prevention, intervention and suppression of illegal gang activity and gang recruitment of juveniles is an important and challenging subject of research.

—Intervention in chronic juvenile offender activity.
—Treatment of violent offenders.

• *Evaluation.* Evaluative research in juvenile justice and delinquency prevention programs and practices of the current priority areas to learn what works best is always needed.

—Evaluation of sanctions.
—Evaluation of the impact on drug use by participants in programs which use a decision-making process.

• *Prevention and Education.* Prevention of delinquency focused on children at high risk is closely associated with education and requires innovative and different approaches.

—Drug education to prevent use and other involvement.
—Literacy training and reduction of illiteracy.
—Chronic juvenile offenders.
—Family strengthening.
—Media violence.
—Reduction of truancy and dropouts.
—Detection of child abusers.
—Peer pressure on delinquency and drug use.

• *Community Based Programs.* The agencies of juvenile justice cannot reduce juvenile delinquency alone. Residents, neighborhoods organizations, and institutions are essential. Volunteering citizens and youth must work together with concerned agencies.

—Safe and drug-free neighborhoods.
—Innovative care resources for juveniles under the supervision of the court.
—Aftercare and transitional living for juveniles under supervision.
—Creation of healthy peer relations.
—One to one adult-juvenile support.
—Prevention of gang violence.

• *Victims.* Children are abused, neglected, abandoned, and exploited to an intolerable extent. Young victims need special assistance because without help they may begin to victimize others.

—Treatment of abused and/or exploited children.
—Prevention of child exploitation.

• *Information Systems, Support and Statistics.* Juvenile justice agencies require accurate, comprehensive and timely information to develop effective policies and allocate resources to enhance juvenile justice and reduce delinquency.

—Development of innovative, effective information systems for juvenile justice agency operation.

Goal

To provide juvenile justice practitioners and researchers an opportunity to undertake full-time independent research in the field of juvenile justice within the areas of the OJP priorities mentioned above.

Objectives

• To conduct independent basic or policy research important to juvenile justice and delinquency prevention problems, issues or activities; and

• To investigate policies, procedures, and practices important to resolving operational issues in juvenile justice.

Program Strategy

Selection for the program is competitive. It is based on the background and experience of the individual candidate and the quality and viability of the proposed project. Panels will review submissions to the Visiting Fellowship Program based on the applicant's status as a researcher, practitioner, or policy maker. Selection of visiting Fellows is based on a competitive review and evaluation of proposals for independent study. Recipients of the awards will be located at OJJDP for a period up to 24 months. While at OJJDP, Fellows will have the opportunity to participate in discussions of juvenile justice research programs, interact with OJJDP staff and other Fellows, and present colloquia on their own research. The program provides for full financial and logistical support with access to the abundant juvenile justice resources in and around Washington, DC.

Eligibility Requirements

Based upon their background and credentials, candidates are classified as:

1. *Researchers:* Persons with broad and extensive research experience in juvenile justice and delinquency prevention subject areas. Candidates drawn from colleges and universities may propose research that could improve juvenile justice policies, current field operations or programs for the prevention of delinquency.

2. *Practitioners:* Eligible individuals may include juvenile justice professionals, educators, judges, law enforcement officers, etc. The candidates should have knowledge of how local communities function in the juvenile justice system, of delinquency prevention, of policy development and command structures within the juvenile justice system, and of the various factors that may contribute to juvenile delinquency. They may include those who are current leaders or show a potential for future leadership.

OJJDP support will cover or include: Fellow's salary, fringe benefits, reasonable relocation costs, travel essential to the project; supplementary expenses, including some special equipment; and office costs, including telephone, computers, supplies and furniture. (Salary may be adjusted based on any difference in cost of living between the applicant's residence and the Washington, DC, area.)

Selection Criteria

At a minimum, all applicants will be rated on the extent to which they meet the following selection criteria:

1. The problem to be addressed by the Fellow is clearly stated, and is based upon issues that are significantly related to juvenile justice and/or delinquency prevention and the OJP priority areas. (25 points)

2. The objectives of the proposed research project are clearly defined and directly relate to the problem. (20 points)

3. The project design is sound and has a high probability of achieving the project objectives. Applicant provides a work plan with a timeline that indicates significant milestones in the project, due dates for products, and the nature of the products to be submitted. (25 points)

4. The project management structure is adequate to conduct the project successfully. (5 points)

5. Professional achievement is at a level sufficient to conduct the project successfully. Applicant's professional background and expertise demonstrate more than adequate knowledge and experience with juvenile justice issues in order to bring the research to a successful completion. (20 points)

6. Budgeted costs are reasonable, allowable and cost-effective for the proposed activities. (5 points)

Award Period

The project period is up to 24 months.

Award Amount

Funding for each fellowship will be subject to negotiation; tentative funding for the program has been set at $270,000, which will typically support two to three Fellowships.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the Federal Register. Those applications sent by mail should be addressed to Visiting Research Fellowship Program, Research and Program Development Division, OJJDP, room 778, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 778, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays or Federal holidays.

Contact

For further information contact Donni LeBoeuf, Research and Program Development Division, (202) 307-0586.

Field-Initiated Program

Purpose

Through the Field-Initiated Program, OJJDP encourages eligible parties to develop promising and new ideas that are relevant to the mission of OJJDP, particularly approaches that address current OJJDP and OJP priority areas, but that utilize approaches other than those called for by current and planned OJJDP projects (as outlined in OJJDP's Notice of Final Comprehensive Plan for Fiscal Year 1991, February 14, 1991, 56 FR 6232).

Background

Customarily, the research, development and training programs which OJJDP has sponsored deal with programs that are either specified by Congress or defined by the agency. In both cases, applicants have been limited to proposals which respond to specific requests by OJJDP. Thus, other imaginative and innovative approaches of researchers and practitioners are not always known to OJJDP. With the Field-Initiated Program, OJJDP welcomes proposals which address the priority areas of the Office of Justice Programs for Fiscal Year 1991. These are listed and described below. Examples of specific topics of importance are included.

• *Intermediate Sanctions/User Accountability.* These sanctions fill the gap between simple probation and secure incarceration. They provide graduated levels of correctional programs which foster accountability and appropriate treatment.

—Restitution.
—Mediation.
—Intensive surveillance systems, including electronic monitoring.
—Intervention and treatment of juvenile sex offenders.
—Delay of treatment and sanctions.
—Improved classification of offenders.

• *Gangs and Violence.* Prevention, intervention and suppression of illegal gang activity and gang recruitment of juveniles is an important and challenging subject of research.

—Intervention in chronic juvenile offender activity.
—Treatment of violent offenders.

• *Evaluation.* Evaluative research in juvenile justice and delinquency prevention programs and practices of the current priority areas to learn what works best is always needed.

—Evaluation of sanctions.
—Evaluation of the impact on drug use by participants in programs which use a decision-making process.

• *Prevention and Education.* Prevention of delinquency focused on children at high risk is closely associated with education and requires innovative and different approaches.

—Drug education to prevent use and other involvement.
—Literacy training and reduction of illiteracy.
—Chronic juvenile offenders.
—Family strengthening.
—Media violence.
—Reduction of truancy and dropouts.
—Detection of child abusers.
—Peer pressure on delinquency and drug use.

• *Community Based Programs.* The agencies of juvenile justice cannot reduce juvenile delinquency alone. Residents, neighborhoods organizations, and institutions are essential. Volunteering citizens and youth must work together with concerned agencies.

—Safe and drug-free neighborhoods.
—Innovative care resources for juveniles under the supervision of the court.

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—Aftercare and transitional living for juveniles under supervision.
—Creation of healthy peer relations.
—One to one adult-juvenile support.
—Prevention of gang violence.

• *Victims.* Children are abused, neglected, abandoned, and exploited to an intolerable extent. Young victims need special assistance because without help they may begin to victimize others.
—Treatment of abused and/or exploited children.
—Prevention of child exploitation.

• *Information Systems, Support and Statistics.* Juvenile justice agencies require accurate, comprehensive and timely information to develop effective policies and allocate resources to enhance juvenile justice and reduce delinquency.
—Development of innovative, effective information systems for juvenile justice agency operation.

Goal

To promote field-initiated applications that will advance the prevention of juvenile delinquency and the effectiveness of juvenile justice practices.

Objectives

• To promote and support innovative research, development, demonstration or training programs in the juvenile justice field that pertain to the Fiscal Year 1991 priorities and show promise of innovative application beyond particular communities or States;

• To encourage new methods for dealing with the current priority problems; and

• To develop knowledge that will lead to new techniques, approaches and methods dealing with the juvenile justice system and delinquency prevention in terms of current priorities.

Program Strategy

Through the Field-Initiated Program, OJJDP is actively soliciting innovative program proposals which may be applied to multiple communities and States. Proposed programs must address pertinent issues and problems in the areas of current priorities. Proposals should define the needs and/or problems, and describe the objectives, strategy, and methodology to be employed. A brief review of the history of the issue and current knowledge and approaches to addressing this issue should be included. Through a competitive process, all applications will be subjected to peer review. Grants will be awarded to as many projects as funding allows. Projects may last up to 18 months.

Eligibility Requirements

Applications are invited from individuals, public and private agencies, organizations, educational institutions or combinations thereof. In order to expand the pool of eligible candidates, applications will be accepted from for-profit organizations, provided they agree to waive any profit or fee and accept only allowable costs.

Applicants must demonstrate that they have experience in the design and implementation of the types of programs for which they are applying.

Selection Criteria

Applicants will be rated, at a minimum, on the extent to which they meet the following selection criteria:

1. The problem to be addressed by the project is clearly stated. (15 points)

• Problems to be addressed are based upon issues that have particular relevance to current OJJDP and OJP priorities. (7 points)

• The applicant demonstrates broad knowledge of the current situation and practices and is aware of training, research or demonstration project needs. (8 points)

2. The objectives of the proposed project are clearly defined. (20 points)

• Applicant fully explains project's objectives. (10 points)

• Objectives are clear and measurable. (10 points)

3. The project design is sound and contains program elements directly linked to the achievement of the project objectives. (25 points)

• The design contains research, training or demonstration elements directly related to the program objectives. (10 points)

• Applicant provides a detailed work plan describing the methodology of the program. (15 points)

4. The project management structure is adequate to conduct the program successfully. (15 points)

• Applicant provides specific guidelines and timelines with regard to the training, research or demonstration program activities. (10 points)

• Applicant explains how management structure is consistent with the needs of the program. (5 points)

5. Organizational capability is demonstrated at a level sufficient to conduct the project successfully. (15 points)

• Applicants demonstrate knowledge and experience with juvenile justice issues, particularly with regard to the area of study he or she is addressing. (5 points)

• Applicant identifies staff qualified to successfully support the project. (10 points)

6. Budgeted costs are reasonable, allowable and cost-effective for the activities proposed to be undertaken and budgeted costs are directly related to the achievement of the program objectives. (10 points)

Award Period

The grant period will be up to 18 months.

Award Amount

The total amount available is $500,000. Award amounts will be subject to negotiation. We anticipate funding 10 to 20 projects with available funds.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit.

Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the Federal Register. Those applications sent by mail should be addressed to Jeffrey Slowikowski, Research and Program Development Division, OJJDP, room 782, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 782, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays or Federal holidays.

Contact

For further information contact Jeffrey Slowikowski, Research and Program Development Division (202) 307-5929.

Victims

Pilot Sites for Victims and Witnesses in the Juvenile Justice System Development Program

Purpose

This program is designed to fund sites to implement model program components for victims and witnesses of juvenile crime.

Background

Victims, once forgotten figures in the criminal justice system, have received increased attention and assistance in the past decade. Programs designed to alleviate the distress suffered by victims of crime, and to ease the subsequent

ordeal of participating in the criminal justice process, have burgeoned. With advocates from these programs spurring legislative efforts, the vast majority of States have passed victims' rights statutes.

Unfortunately, victims of juvenile crime have not shared equally in these advances, even though juveniles account for more than one in four arrests for serious crimes. There is no reason to believe that victims of juveniles suffer any less or find their contacts with the justice system any easier than victims of adults. Yet, few victim assistance programs routinely provide assistance in cases referred to juvenile court. Neither have many programs tailored their materials to provide information specific to the juvenile system.

To remedy this neglect of victims and of witnesses tojuvenile crime, OJJDP sponsored the Victims and Witnesses in the Juvenile Justice System Development Program.

The materials developed under this program describe eight core components of effective programs: (1) Orientation to the juvenile justice process; (2) assistance to victims and witnesses who must testify; (3) notification of case status and outcomes; (4) assistance preparing victim impact statements; (5) crisis counseling; (6) information and referral; (7) assistance with compensation and restitution; and (8) public education and training. The materials also cover strategies for developing a program, including key decisions, program planning, implementation steps, and monitoring and evaluation.

The program model developed by the Victims and Witnesses in the Juvenile Justice System Development Program includes the following:

Program Goals. The central goals of the victim and witness model program are to help victims or witnesses negotiate the juvenile justice process; to afford victims their legal rights; and to make participation in the system less burdensome. Programs may also try to: help victims return to pre-crime levels of functioning; help victims recoup losses; increase victim and witness participation in the system; coordinate witnesses; increase the likelihood of offender rehabilitation by holding them accountable for their behavior; and increase the likelihood that dispositional orders fit the specifics of the crime.

Target Population. The target population for a model program must include victims and witnesses referred to juvenile court intake or the prosecutor's office. Programs may rank types of victims and witnesses, and reserve the most immediate, personal or comprehensive services for high priority victims and witnesses.

Initial Screening Mechanism. Model programs must specify procedures for systematically reviewing the characteristics of cases to determine whether the victim or witness is eligible for services. The program may screen court or prosecutor files to identify clients, or a juvenile justice agency may send copies of documents such as petitions to the program for review.

Core Service Components. Model programs typically provide eight core services, although not all services are offered to all types of victims. The core services are:

1. *Orientation to juvenile court and the rights of victims and witnesses.* Through either a written communication (letter, brochure, subpoena insert) or a telephone call, the program informs victims or witnesses: About the juvenile court (role and function according to state law); what can happen to the case (definitions of terminology, the process for each eventuality, the possible dispositions); about their rights in the process; and where to go for more information.

2. *Information about case status and outcome.* Using form letters or telephone calls, the program notifies victims and witnesses of: Date of the adjudicatory hearing and changes to that date, the disposition date, the outcome of the case (including decisions to drop the case, divert it, or transfer it to the adult criminal court); and the sentence (insofar as the court permits).

3. *Assistance to victims and witnesses who must testify.* The program serves as a central point for answering questions about testifying and for resolving other problems that might discourage appearance at court. At least for those victims who request it, the program provides help with logistics (e.g. where to go, transportation, employer or school intervention); preparation for court (what will happen, where to sit, how to testify effectively); victim reception upon arrival at court; court accompaniment; and intervention in victim intimidation.

4. *Facilitating victim and witness participation in the process.* The program informs victims and witnesses about their opportunities to participate in the court process, assists them in attending hearings, and assists victims in providing oral or written impact statements that include information about the physical, emotional or financial effects of the crime, facts about the victim that rendered him or her particularly vulnerable, and circumstances surrounding the crime such as a particular cruelty.

5. *Assistance with compensation and restitution.* The program informs victims about opportunities for restitution and compensation, and assists them in documenting their losses.

6. *Crisis intervention.* At a minimum, program staff have enough training in crisis counseling and listening skills to be able to assess whether the emotional state of the victim requires referral to community resources.

7. *Information and referral.* Programs develop networks of community referral agencies and refer victims who need long-term psychological treatment, legal information and services, emergency assistance, and support from other victims (e.g., MADD, Parents of Murdered Children, and Women Against Rape).

8. *Education and training.* By making presentations to community groups, disseminating printed materials, meeting with juvenile justice personnel, and participating in interagency task forces of groups, the program educates the public about the problems, needs, and rights of victims and witnesses, and stimulates community support for the program.

Goal

To stimulate the development of assistance to victims and witnesses of juvenile crime in local communities and to increase knowledge about effective strategies for assistance by implementing the model strategies developed by the Victims and Witnesses in the Juvenile Justice System Development Program.

Objectives

• To stimulate juvenile justice agencies and victim and witness programs to develop services for victims and witnesses of crime;

• To help victims and witnesses of juvenile crime negotiate the justice process, to afford them their legal rights, and to make participation in the system less burdensome; and

• To generate information on client characteristics, service delivery, and implementation experiences that will help refine future service strategies for victims and witnesses of juvenile crime.

Program Strategy

The final phase of the Victims and Witnesses in the Juvenile Justice System Development Program will involve implementing the model program components in three to four jurisdictions across the country. OJJDP is requesting applications from jurisdictions

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interested in implementing the program components.

While jurisdictions interested in responding to this request for applications may have an existing victim witness program, it should not be comprehensive in nature. Such jurisdictions must demonstrate that victims or witnesses of juvenile crime are underserved and that implementation of the model components will significantly increase the number and type of victims and/or witnesses of juvenile crime served.

Applicants will be expected to adapt and implement the model components developed by the Victims and Witnesses in the Juvenile Justice System Development Program. These components focus on assisting victims and witnesses as they interact with the juvenile justice system, often beginning at the time the case is referred to the juvenile court by the prosecutor. Although components are designed to serve a broad spectrum of victims, they may focus on certain types of victims, such as victims of serious juvenile crime. This program is not intended to fund applications that aim to serve only child victims or applicants that will have limited involvement with cases that reach the court system.

Applicants will be expected to cooperate with monitoring requirements established by the Victims and Witnesses in the Juvenile Justice System Development Program. These requirements include providing information about client characteristics, service delivery, and implementation experiences. Applicants will further be required to cooperate in a site visit to their program by staff of the Victims and Witnesses in the Juvenile Justice System Development Program. Applicants will also be expected to send a representative to a one-day training workshop in Washington, DC. Costs for travel to the workshop should be included in the proposed budget. Applicants must also provide commitments from the juvenile prosecutors, the juvenile court and other appropriate juvenile justice agencies that they will cooperate with the program and allow access to records to identify program clients.

The activities and products to be completed by the selected sites during the project are as follows:

Activities:

- Development of an implementation plan.
- Implementation of the model in each site.
- Assisting technical assistance provider with the development of a dissemination strategy.

Products:

- An implementation plan.
- A policy and procedures manual for the project.

Eligibility Requirements:

Eligible organizations and agencies include, but are not limited to, juvenile courts, juvenile probation agencies, prosecutor's offices, victim assistance organizations, human service agencies, mental health agencies, law enforcement agencies, and community-based organizations.

Application Requirements. The narrative portion of the application, which responds to the requirements set forth below, should be substituted for Section IV of the Federal application (Standard Form 424).

Abstract. Begin the application with a short (one-half page) summary of the project—identification of the applicant organization, what activities are planned, whom these will affect, what is expected to be accomplished, and why this work is important.

Background. This section should describe the characteristics of the project jurisdiction that will affect the operation of the project. Relevant information will include general demographic data and crime statistics, as well as juvenile court data. Describe what services are currently provided in the project jurisdiction to victims and/or witnesses in both the adult system and the juvenile system and identify any obvious gaps in services. Briefly summarize any statutory provisions relating to victim services or participation in the court process, and any information about what victim practices are currently permitted in the juvenile court.

Goals and Objectives. This section should state what the project intends to accomplish within the context of the goals and objectives specified in this announcement. The applicant must specify the project objectives to include:

- Whom the project will serve;
- What are the specific program strategies;
- What outcomes the program hopes to achieve; and
- How the goals and objectives relate to statutory provisions in the jurisdiction that affect victims and/or witnesses of juvenile crime.

Target Population. Describe the specific group of victims and/or witnesses the project will serve and the approximate caseload size based on available data. If the applicant intends to prioritize different types of victims for certain types of services, describe the characteristics of the priority classes of victims.

Program Strategy. This section describes what the applicant will do:

- The screening mechanism. Describe how cases will be identified.
- The service components to be implemented. Using the descriptions of core components of effective programs (described above and in more detail in "Helping Victims and Witnesses in the Juvenile Justice System Development Program"), indicate which components will be emphasized and how they relate to the goals and objectives.
- The strategies to be employed to implement the service components. For instance, a strategy for orienting victims to the juvenile court process may consist of developing a brochure and disseminating it to the target population. In this case, describe what information will be included in the brochures, steps to be taken to prepare it, for which types of victims it is intended, and how the project will ensure that those victims receive it.
- Potential obstacles to implementation of the core components and strategies for circumventing them.

Project Management Plan.

1. *Organizational Structure.* Describe where the project will be housed, physically and organizationally. Where will the project fit in the existing organizational structure? To whom will the staff report? How does the project fit within the host agency's mission and activities?

2. *Organizational Capability.* Document the experience of the agency or organization with similar or relevant activities.

3. *Staffing.* Who will conduct the project? Provide a job description with titles, responsibilities, qualifications, skills and knowledge of the proposed staff. Include resumes of proposed staff, if possible.

4. *Implementation Plan and Timeline.* List major implementation activities and specify the time to accomplish each activity. These activities should include start-up tasks (hiring staff, arranging screening procedures) and the preparation of materials, as well as service delivery tasks. Resources. Describe the facilities, equipment, staff capabilities and other resources available to the project.

Selection Criteria

At a minimum, all applicants will be rated on the extent to which they meet the following selection criteria:

1. The problem to be addressed by the project is clearly stated. (20 points)

- The applicant demonstrates a broad knowledge of the problem, surrounding issues and present practices or programs that address the problem. (10 points)
- The problem and issues related to victims and witnesses of juvenile crime in that jurisdiction are well defined and clearly stated. (10 points)

2. The goal(s) and objectives are clearly defined and relate directly to the problem to be studied. (20 points)

- A well defined overall project goal(s) is stated for the project that relates directly to implementation of the program model. (10 points)
- The objectives are stated in measurable terms and relate directly to the stated problems. (10 points)

3. The project design is sound and contains program elements directly related to the achievement of the project objectives. (30 points)

- The project addresses how it will implement all of the victim witness model program components that are consistent with their goal(s) and objectives. (15 points)
- The applicant provides an implementation plan and a timeline with significant milestones for products and future products to be developed. (15 points)

4. The project management structure is described and a chart depicting the management structure and lines of authority is provided. (10 points)

5. The applicant's capability is demonstrated at a level sufficient to conduct the project successfully. Staff capabilities are set forth and resumes for key staff are provided. Resumes of key staff demonstrate a background with juvenile justice and victim, witness issues. (15 points)

6. Budgeted costs are reasonable, allowable and cost-effective for the proposed activities. (5 points)

Award Period

The project period will be 12 months.

Award Amount

Up to $20,000 will be available for each of the three to four sites selected to participate in the program.

Due Date

Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. Application forms and supplementary information, including "Helping Victims and Witnesses in the Juvenile Justice System: A Program Handbook" and the victim witness operations manual, will be provided upon request for the Application Kit (contact below). Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit. Applications for test sites must be received by mail or delivered to OJJDP by 5 p.m. e.d.t., 45 days from the date of this solicitation in the Federal Register. Those applications sent by mail should be addressed to Travis A. Cain, Special Emphasis Division, OJJDP, room 756, 633 Indiana Avenue, NW., Washington, DC 20531. Delivered applications must be taken to OJJDP, room 756, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays, or Federal holidays.

Contact

For further information contact Travis A. Cain, Special Emphasis Division, (202) 307-5914.

General Application and Administrative Requirements

Eligible Applicants

Applications are invited from eligible agencies, institutions or individuals, public or private. Private-for-profit organizations are not eligible for special emphasis grants but are for other grants; however, they must waive their fee in order to be eligible.

Applicants must also demonstrate that they have the management and financial capability to effectively implement a project of this size and scope. Applicants must demonstrate that they have management capability in order to be eligible for funding consideration.

Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget and budget narrative. All applications must include the information required by the specific solicitation as well as the Standard Form 424.

Applications that include proposed non-competitive contracts for the provision of specific goods and services must include a sole source justification for any procurement in excess of $25,000.

Private, nonprofit applicants who have not previously received Federal funds are required to submit a copy of the Office of Justice Programs, Accounting System and Financial Capability Questionnaire (OJP Form 7120/1). This form must be prepared and submitted along with the application. Other applicants may be requested to submit this form. The CPA certification is required only of those applicants who have not previously received Federal funding.

Applicants who are receiving other funds in support of the proposed activity should list the names of the other organizations that will provide financial assistance to the program and indicate the amount of funds to be contributed during the program period. Provide the title of the project, name of the public or private grantor and amount to be contributed during this program period. Give a brief description of program.

An original and two copies of the application are required. To facilitate the review of the applications, two additional copies are requested. Applications and copies must be sent to the following address: Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.

Applications must be received by mail or delivered to OJJDP by 5 p.m. e.d.t. on the date specified in the solicitation. Delivered applications must be taken to the designated room at the above mentioned address between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays or Federal holidays.

OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding.

To comply with Executive Order 12372, applicants from State and local units of government or other organizations providing services within a State must submit a copy of their application to the State Single Point of Contact, if one exists, and if the program has been selected for review by the State.

Application Review Process

All applications will be reviewed by a panel of experts who will make recommendations to the Administrator per section 262 of the OJJDP Act and 28 CFR, part 34. The panel will assign numerical values in rating competing applications based on the point distribution in the Selection Criteria for each specific program. Peer reviewers' recommendations are advisory only and the final award decision will be made by the Administrator. OJJDP will negotiate specific terms of the awards with the selected applicants.

Evaluation

OJJDP requires that funded programs contain plans for continuous self-assessment to keep program management informed of progress and

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results. Many funded projects will be considered for participation in independent evaluations initiated by OJJDP. Project management will be expected to cooperate fully with designated evaluators.

Financial Requirements

Discretionary grants are governed by the provisions of the Office of Management and Budget (OMB) Circulars applicable to financial assistance. The circulars, along with additional information and guidance, are contained in the "Financial and Administrative Guide for Grants," Office of Justice Programs, Guideline Manual, M7100, available from the Office of Justice Programs. This guideline manual includes information on allowable costs, methods of payment, audit requirements, accounting systems and financial records.

Civil Rights Requirements

Sec. 809 (c)(1) of the Omnibus Crime Control and Safe Streets Act (OCCSSA) of 1968, as amended, applicable to OJJDP funded programs and projects under section 292(b) of the JJDP Act, provides that no person in any State shall on the grounds of race, color, religion, national origin or sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under or denied employment in connection with any program or activity funded in whole or in part with funds made available under this title. Recipients of funds under the Act are also subject to the provisions of title VI of the Civil Rights Act of 1964; sec. 504 of the Rehabilitation Act of 1974, as amended; title IX of the Education Amendments of 1972; the Age Discrimination Act of 1974; and the Department of Justice Non-Discrimination Regulations 28 CFR part 42, subparts C, D, E and G. Upon request, applicants shall maintain such records and submit to OJJDP or OJP timely, complete and accurate information regarding their compliance with the foregoing statutory and regulatory requirements.

In the event a Federal or State court or a Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights (OCR) of the Office of Justice Programs.

Drug-Free Workplace

Title V, sec. 5153 of the Anti-Drug Abuse Act of 1988 provides that all grantees of Federal funds, other than an individual, shall certify to the granting agency that it will provide a drug-free workplace by:

• Publishing a statement notifying employees that the unlawful manufacturing, distribution, dispensation, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition.

• Establishing a drug-free awareness program to inform employees about:

—The danger of drug abuse in the workplace;
—The grantee's policy of maintaining a drug-free workplace;
—Any available drug counseling, rehabilitation and employee assistance programs; and,
—The penalties that may be imposed upon employees for drug abuse violations.

• Making it a requirement that each employee to be engaged in the performance of such grant be given a copy of the statement of notification prohibiting controlled substances in the workplace.

• Notifying the employee that as a condition of employment in such grant, the employee will:

—Abide by the terms of the statement; and,
—Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

• Notifying the granting agency within 10 days after receiving notice of a conviction from an employee or otherwise receiving actual notice of such conviction.

• Imposing a sanction on or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted.

• Making a good faith effort to continue to maintain a drug-free workplace.

The U.S. Office of Management and Budget, in collaboration with other Federal executive agencies, including the Department of Justice, has developed regulations to implement the Drug-Free Workplace Act of 1988, 28 CFR part 67, subpart F.

Audit Requirement

In October 1984, Congress passed the Single Audit Act of 1984. On April 12, 1985, the Office of Management and Budget issued Circular A-128, "Audits of State and Local Governments," which establishes regulations to implement the Act. OMB Circular A-128, "Audits of State and Local Governments," outlines the requirements for organizational audits which apply to OJJDP grantees.

Institutions of higher education, hospitals and other non-profit organizations have the responsibility to provide for an audit of their activities not less than every two years. The required audits are to be on an organization-wide basis rather than on a grant-by-grant basis.

Governmentwide Debarment and Suspension (Nonprocurement)

This subpart of 28 CFR part 67, provides that executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and non-financial assistance and benefits. Debarment or suspension of a participant in a program by one Agency has governmentwide effect. It is the policy of the Federal Government to conduct business only with responsible persons, and these guidelines will assist agencies in carrying out this policy.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction (OJP Form 4061/1). All direct recipient grantees must complete an OJP Form 4061/1 prior to entering into a financial agreement with subrecipients. This requirement includes persons, corporations, etc. who have critical influence on or substantive control over the award. The direct recipient will be responsible for monitoring the submission and maintaining the official subrecipient certifications.

Certification Regarding Debarment, Suspension, Ineligibility and Other Responsibility Matters—Primary Covered Transactions (OJP Form 4061/2). Certifications must be completed and submitted by grantees of categorical awards to grantor agency program officer during the application stage.

Disclosure of Lobbying Activities

Section 319 of Public Law 101-121 prohibits recipients of Federal contracts, grants and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. Section 319 also requires each person who requests or receives a Federal contract, grant, cooperative agreement, loan or a Federal commitment to insure or guarantee a loan, to disclose lobbying. The term "recipient," as used in this context, does not apply to any

Indian tribe or to tribal or Indian organization.

A person who requests a Federal grant, cooperative agreement or contract exceeding $100,000 is required to file a written declaration with OJP. The declaration shall contain:

• A certification that addresses payment made or to be made with both Federal or non-Federal funds for influencing or attempting to influence persons in the making of Federal awards.

• "Disclosure of Lobbying Activities" must be submitted if payments were made with non-Federal funds and must contain the following information with respect to each payment and each agreement:

—Name and address of each person paid, to be paid or reasonably expected to be paid;
—Name and address of each individual performing the services for which payment is made, to be made or reasonably expected to be made; and
—The amount paid, how the person was paid and the activity for which the person was paid, is to be paid or is reasonably expected to be paid.

• Copies of certification and disclosure of lobbying activities, as outlined above, received from subgrantees, contractors or subcontractors under a grant, cooperative agreement or contract for Federal subgrants exceeding $100,000.

A subgrantee, contractor or subcontractor under a grant, cooperative agreement or contract, who requests or receives Federal funds exceeding $100,000 is required to file a written declaration, as described above, with the person making the award.

A declaration must be filed at the end of each calendar quarter in which there occurs any event that materially affects ($25,000 or more) the accuracy of the information contained in any declaration previously filed for a grant, cooperative agreement, contract, subgrant or subcontract. These declarations shall be filed as follows:

• Grant, cooperative agreement and contract recipients shall send their amended declarations and copies of amended declarations for Federal subgrants to the Office of the Comptroller not later than 30 days after the end of each calendar quarter.

• Subgrantees, contractors or subcontractors under a grant, cooperative agreement or contract shall send their amended declarations each quarter to the person who made their subgrant.

Declarations are also required for extensions, continuations, renewals, amendments and modifications exceeding $100,000 or resulting in the award exceeding $100,000.

Disclosure of Federal Participation

Section 8136 of the Department of Defense Appropriations Act (Stevens Amendment), enacted in October 1988, requires that, "when issuing statements, press releases for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program."

Suspension or Termination of Funding

OJJDP may suspend, in whole or in part, or terminate funding for a grantee for failure to conform to the requirements or statutory objectives of the Act. Prior to suspension of a grant, OJJDP will provide reasonable notice to the grantee of its intent to suspend the grant and will attempt informally to resolve the problem resulting in the intended suspension. Hearing and appeal procedures for termination actions are set forth in the Department of Justice regulation at 28 CFR part 18.

Robert W. Sweet, Jr.,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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Friday
May 17, 1991

Part IV

Small Business Administration

13 CFR Parts 121 and 125

Procurement Assistance; Small Business Regulations; Program To Plant Trees on Land Owned or Controlled by State or Local Governments; Final Rule

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 125

Procurement Assistance; Small Business Size Regulations; Program To Plant Trees on Land Owned or Controlled by State or Local Government

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The proposed regulation, published February 12, 1991 (56 FR 5734) governing the Small Business Administration's grant program for small business to plant trees on land owned or controlled by state or local government is now promulgated in final form.

The Final Rule sets forth the procedures in 13 CFR part 125 to implement section 4 of Public Law 101-515, the Natural Resources Development Program. The Final Rule also adds language to 13 CFR part 121 to establish the small business size standard for tree planting activities under this program at 100 employees.

This Final Rule will be used as a means of encouraging and developing the capacity of small business concerns to utilize this important segment of our economy, and to permit rapid increases in employment opportunities in local communities, to direct grant or contract recipients to utilize small business contractors or concerns in connection with the program to plant trees and, to the extent practicable, to divide the project to allow more than one small business concern to perform work under the project.

EFFECTIVE DATE: May 17, 1991.

FOR FURTHER INFORMATION CONTACT: William F. Berry, Director, Office of Natural Resources Sales Assistance, Office of Procurement Assistance, Small Business Administration, Washington, DC 20416, 202-205-6468.

SUPPLEMENTARY INFORMATION: SBA published a notice of proposed rulemaking on the Natural Resources Development Program in the **Federal Register** 56 FR 5734, February 12, 1991. This rule is on publication in the **Federal Register** effective due to time constraints imposed by the seasonal nature of the planting cycle. It is essential that SBA immediately begin the grant-making procedure established by this rule so that the tree planting projects which will be undertaken pursuant to this program can receive funding in time for the Fall 1991 planting season.

This final rule implements the Natural Resources Development Program by adding two new sections to title 13 CFR 125.12, Code of Federal Regulations. Section 13 CFR 125.12 sets forth the guidelines and procedures for implementing the tree planting program, while section 13 CFR 121.1013 establishes the size standard for small businesses seeking to participate in the Natural Resources Development Program at 100 employees.

Section 13 CFR 125.12(e) establishes a formula for determining grant amounts available to states for planting trees on lands owned or controlled by the state or local government. Not less than half of the total amount available shall be allocated to each state, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands and the Northern Mariana Islands, on the basis of population in each area as compared to the total population in all areas. The standard is the Bureau of the Census annual population estimate or the decennial census, whichever is most current.

To be eligible for a grant an applicant must contribute to the project a sum equal to at least 25% of the project cost from sources other than the Federal Government. Such non-Federal money may include in-kind contributions, including the cost or value of providing care and maintenance for a period of three years after the planting of the trees. Non-Federal money, or in-kind contributions, cannot include any value attributable to the land on which the trees are to be planted.

The remaining half of the available amounts will be available to applicants who agree to contribute more than the requisite 25% in non-Federal funds. Section 125.12(f) details the grant application process.

For any fiscal year, each state must consolidate requests from local governments to participate so that only one application would be submitted to SBA by each state.

Public Comment on Proposed Policy and SBA's Responses

In response to the notice published February 12, 1991 the SBA received several letters with comments. Most of the letters were from state agencies. Other letters were received from individuals, trade associations, local governments and agencies of the Federal government.

The Small Business Administration (SBA) received a comment which suggested that the four U.S. territories of Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands be added to the list of eligible recipients. This has been done.

One commenter asked that the term grant be expanded to include contract. The law only authorizes SBA to enter into grants with states therefore we cannot expand the term to include contracts. Another asked that the definition of local government be broadened. In each of these cases, the definitions in the regulation were tailored to fit with 13 CFR part 143—Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments which the SBA already has in place.

A commenter asked that the definition of tree be altered so as not to preclude any species, in a given area, which is considered to be classified as a tree. This addition has been made. The law is clear as to its intent, i.e. to plant trees, so another suggestion to include shrubs in the definition of tree was rejected.

Section 13 CFR 125.12(f) states, among other things, for any fiscal year, each state may submit only one application for a grant under this program. Several commenters objected to this because requiring specific technical information at the time of the grant application limits the implementation flexibility and puts an undue burden on pulling together qualifying projects from local communities. Section 4 of Public Law 101-515(b) states in order to accomplish objectives of this section * * * "Based on this program, a state may submit a detailed proposal for tree planting by contract." It also is clear from the conference report on Public Law 101-515 that Congress intended the process to be as written in the proposed rule. The report states, "Each state would consolidate requests from local governments to participate so that only one application would be submitted to SBA by each state." Detailed proposals are also necessary to clearly assess and rate the matching requirements. Thus the requirement that each state submit only one grant application will stand. However, the program announcement sent to each state will allow 60 days for the state to submit its application thereby allowing sufficient time to gather the requisite information.

Proposed section 13 CFR 125.12(g)(5)(ii) stated that all planting stock and supplies will be purchased from qualifying small businesses. This section has been changed to state that, if purchased, planting stock and supplies will be purchased from small business. The word change is in response to comments that the rule precludes the use of planting stock from nurseries operated by state or local governments.

There were several comments objecting to the limitations of the Society of American Foresters *Forestry Handbook* (section 13 CFR 125.12(g)(6)) as a minimum standard for evaluation of proposals. None of the commenters addressed specific shortcomings. Moreover, SBA is not aware of any serious shortcomings. However, SBA would welcome additional information on this subject and would make appropriate changes. Since this is a minimum standard, states can use methods exceeding these standards as long as they conform to standards that are reasonable and customary.

One commenter indicated that states need to be able to enter into subgrants with local governments. States have that authority as prescribed in 13 CFR part 143.37.

One commenter objected to the absence of a reference to specifying credentials for small businesses, i.e., a landscape license. SBA considers this a state responsibility since they would be the ultimate licensing authority.

Some commenters suggested additional criteria including compliance with the Clean Air Act for approving a state grant application in addition to contributing funds from non-Federal sources. Attachment 2 to the grant application package will list the Federal Requirements Policies and Standards applicable to the individual grant. SBA feels adding further qualifications requiring verification and certification would unnecessarily complicate an otherwise relatively straightforward process.

Several commenters had questions concerning the operation of the grant process. Those questions will be addressed in detail in the Program Announcement and Grant Application package. SBA plans to have the Program Announcement ready to mail each state about the same time the final rule is published in **Federal Register**.

One commenter asked that funds be made available for tree planting research and tree inventories. Public Law 101-515 is very clear as to the dedication of funds to tree planting, which includes care and maintenance for three years. Thus, SBA is not accepting this comment.

Some commenters disagreed with the use of population and ability to match funds as fixed distribution requirements. Public Law 101-515 mandates that one-half of the amounts authorized be allocated to the States based on population. The allocation of the second half of the funds, is permissive, but the law states that SBA may award these funds based on state's willingness to contribute more money to the project. Because each state can make only one application per fiscal year, must consolidate all local government requests into one application and must know up front the level of funding available, the SBA has decided to base allocation of the second half of the money in the same way as the first half, on population and contribution level. It should be noted that SBA has, in this final rule, amended the table establishing the contribution for the second one-half of the money by eliminating the one percent to four percent over the required twenty-five percent category.

Some commenters thought the fund allocation process might be clarified. An example of the fund allocation process will be included in each Program Announcement.

Some commenters observed the proposed rules did not provide funds to the states for handling funds, program administration or provision of technical assistance. The observation is correct and the action was intentional. The main thrust of Public Law 101-515 section 4, which amended the Small Business Act, is to authorize the Administrator to enter into grants with states for the purpose of contracting with small businesses to plant trees on the lands of states or local governments. There is no allowance for the expense of additional personnel or writing-off administrative costs. There is an allowance for applicants to contribute to the cost of the project. SBA feels these costs more properly belong with the non-Federal funds contributed by the applicant as part of the direct contribution or as in-kind contributions to the proposal as allowed for in the statute. It is also clear that Congress intended that Agencies of the Federal Government cooperate by providing, without charge, technical services with respect to the planting and growing of trees.

Finally, through discussions with several states, SBA understands that, generally, states plan to use the funds they will receive pursuant to this program to fund projects that would not have otherwise been funded. As a function of its annual inspection and audit authority established in § 125.12(g)(9), and in preparing the reports to the President and Congress that are required annually under section 4(h) of Public Law 101-615, the SBA will seek to collect information on the extent to which this program resulted in the planting of trees which, but for this program, would not have been planted. Thus, states should attempt to identify whether, and to what extent, the grants they receive under this program are being used to establish new tree planting activities or to expand existing ones at the state and local level.

Size Standard Responses

There were no comments received addressing the specific questions outlined in the notice of proposed rulemaking. There were comments concerning the size standard: Four commenters supported the 100 employee standard; one commenter while not objecting to the 100 employee standard, felt businesses having less than 50 and/or less than 25 employees should be given preference over larger businesses; and one commenter found the rule to be right on target. Accordingly, SBA will implement the 100 employee standard.

Compliance With Executive Order 12291 or 12612; the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities because the direct effect of the rule will be on the states and not on small businesses.

The SBA certifies that this rule does not constitute a major rule for the purposes of Executive Order 12291, since the rule is not likely to result in an annual effect on the economy of $100 million or more.

13 CFR 125.12(f) requires each state to make application for a grant to plant trees using standard forms: 424, 424A and 424B. These forms are subject to the Paperwork Reduction Act, 44 U.S.C. Ch. 35, and have been approved by the Office of Management and Budget under OMB Approval Nos. 0348-0043, 0348-004, and 0348-0040 (Standard Forms).

This rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Handicapped, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Research, Small businesses, Technical assistance.

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As set forth in the preamble, this final rule amends parts 121 and 125 of title 13, Code of Federal Regulations, as follows.

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: Sections 3(a) and 5(b)(6) of the Small Business Act, as amended (15 U.S.C. 632(a), 634(b)(6), 644(a)), and Pub. L. 100-656, 102 Stat. 3853 (1988).

2. Part 121 is amended by adding § 121.1013 to read as follows:

§ 121.1013 Natural Resources Development Program.

Any concern or contractor participating in the Natural Resources Development Program described in 13 CFR 125.12 is a small business when, together with its affiliates, it does not have over 100 employees (rules for determining "number of employees" are set forth in 13 CFR 121.407).

PART 125—PROCUREMENT ASSISTANCE

1. The authority citation for part 125 is revised to read as follows:

Authority: Section 4 of Pub. L. 101-515 (104 Stat. 2140), Section 610(a) of Pub. L. 100-202 (101 Stat. 1329-90, sections 5(b)(6), 8 and 15 of the Small Business Act, 72 Stat. 384, as amended (15 U.S.C. 631, et seq.), 31 U.S.C. 9701, 9702.

2. Part 125 is amended by adding § 125.12 to read as follows:

§ 125.12 Natural Resources Development Program.

(a) The Natural Resources Development Program is authorized under section 24 of the Small Business Act (15 U.S.C. 651). Pursuant to the statutory requirements of the Small Business Act the Small Business Administration is authorized to make grants to, or to enter into contracts with, any state for the purpose of contracting with small businesses to plant trees on land owned or controlled by such state or local government.

(b) The purposes of the program include:

(1) To plant trees on land owned or controlled by state or local government;

(2) To utilize small business contractors or concerns in connection with tree planting projects;

(3) To encourage and develop the capacity of small business concerns to utilize this important segment of the economy; and

(4) To permit rapid increases in employment opportunities in local communities.

(c) *Definitions.* (1) *Administrator* as used herein means the Administrator of the United States Small Business Administration, or any representative lawfully delegated the authority to act for such Administrator.

(2) *Fiscal Year* means the 12-month period starting October 1 and ending September 30.

(3) *Grant* means a grant as defined by 13 CFR part 143.3 and authorized under section 24 of the Small Business Act, 15 U.S.C. 632 *et seq.*

(4) *Grantee* means grantee as defined in 13 CFR part 143.3.

(5) *Grant Agreement* means the agreement contained in SBA Form 1222 and any other written conditions of the grant.

(6) *Grants Management Officer* as used herein means the SBA official responsible for the financial management and administration of a Natural Resources Development Program grant for the Federal Government.

(7) *Local Government* means a political subdivision of a state which includes, but is not limited to, such entities as counties, parishes, cities, towns and municipalities.

(8) *Non-Federal Money* means funds acquired from other than the Federal Government and may include in-kind contributions, including the cost or value of providing care and maintenance for a period of three years after the planting of the trees, but shall not include any value attributable to the land or land charges on which the trees are to be planted.

(9) *Planting* means to set trees in the ground for growth and includes watering, application of fertilizer, herbicides, pruning and shaping and other subsequent care and maintenance for a period of three years after the trees are set in the ground.

(10) *Proposal* means an application and support materials for a grant for tree-planting on lands owned or controlled by State or local governments.

(11) *SBA or Grantor* as used herein means the United States Small Business Administration.

(12) *Small Business* as used herein means a business concern that has, including its affiliates, a number of employees not exceeding 100, and meets the other regulatory requirements found in 13 CFR part 121. The term "affiliates" is defined in 13 CFR part 121.401. The term "number of employees" is defined in 13 CFR part 121.404.

(13) *State* as used herein means any state, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, U.S. Virgin Islands, Guam, and the Northern Mariana Islands or any Agency or instrumentality of a state designated by such state to apply for a grant under this program exclusive of local governments.

(14) *Tree* means a perennial plant having a permanent woody, self supporting main stem or trunk, ordinarily growing to a considerable height and usually developing branches at some distance from the ground. This definition is not intended to preclude any species which is traditionally considered to be classified as a tree.

(d) *Eligibility.* Any state is eligible to apply for a grant to plant trees on state or local government land; provided such state agrees to contribute to the tree-planting project a sum equal to at least 25 percent of the project cost from sources other than the Federal Government and agrees:

(1) To utilize small business contractors or concerns in connection with all aspects of the tree-planting project; and

(2) To the extent possible, to divide the planting project to allow more than one small business concern to perform the work under the project.

(e) *Amount of a grant.* (1) One-half the total amount available shall be allocated to each eligible state, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, U.S. Virgin Islands, and the Northern Mariana Islands on the basis of the population in each area as compared to the total population in all areas. The Bureau of the Census, of the Department of Commerce, annual population estimate or the decennial census, whichever is most current, will be the basis for that determination.

(2) SBA shall give priority in awarding the remaining one-half of the total amounts available to applicants who agree to contribute more than the requisite 25 percent of the project cost from non-Federal sources. The formula for determining how the remaining one-half of these funds will be allocated to applicants contributing more than the requisite amount will be as follows:

(i) The maximum allowable additional amount will be limited to a percentage of the amount computed based on the applicant State's population compared to the total population of all states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, U.S. Virgin Islands, and the Northern Mariana Islands; and

(ii) Of the maximum additional amounts, the total amount available will be prorated based on the amount the applicant's percentage of contributed non-Federal funds exceeds 25%:

Percent over 25 percent	Percent additional available funds allocable
Less than 5 percent	None.
Over 5 percent	30.
Over 10 percent	40.
Over 15 percent	50.
Over 20 percent	100.

For example, a state must contribute to the total project cost a sum equal to at least 45 percent of the total project cost to qualify for 100 percent of the grant monies available to that state.

(f) Application for a grant. (1) A proposal may be initiated by any state Agency designated by the state to apply for such grant as described in § 125.12(c)(4). For any fiscal year each state may submit only one application for a grant under this program.

(2) Since only one grant may be authorized per state per fiscal year, the application must designate a single state agency responsible for receiving and administering the grant.

(3) The proposal shall consist of two separate sections.

(i) Section I—*Cost Proposal*—This section is to be comprised of: The Application; The Project Approval Information; The Budget Information; and Assurances, Certifications, and Attachments.

(ii) Section II—*Technical Proposal*—This section is comprised of the Program Narrative. A complete proposal shall contain a table of contents and shall be responsive to the technical requirements of the Program Announcement.

(4) Necessary application forms will be mailed to prospective grantees as part of an official program announcement.

(5) The complete proposal shall be submitted in original and two copies to such location as designated in the program announcement.

(6) The applicant shall make its best effort to deliver the complete proposal to the designated location by the due date and time specified. Late proposals may be accepted at the discretion of the Administrator.

(g) *Method of proposal/application technical criteria.* To be technically acceptable each applicant's proposal must:

(1) Clearly state the objective of the project.

(2) Describe the location(s) where the tree-planting project will take place; how many trees will be planted; and the species, and size and age of the trees to be planted. The proposal should include vicinity maps showing location of planting sites.

(3) Certify to the state's contribution, both amount and type. The total project cost must exceed the amount of Federal funds the state applies for in the grant application.

(4) Certify that the non-Federal contribution to the project does not include:

(i) Any value attributable to the land on which the trees are to be planted, and

(ii) That no part of the grant will be used to pay for land or land charges.

(5) Meet the objectives of section 24(c) of the Small Business Act.

(i) The proposal must state that all contracts for planting services will be awarded only to contractors who would qualify as small business concerns as defined in 13 CFR part 21.1013.

(ii) The proposal must state that all planting stock and supplies will come either from state or local government nurseries or, if purchased, will be purchased from businesses which would qualify as small business as defined in 13 CFR part 121.1013.

(iii) The applicant's proposal must permit increased employment opportunity in local communities.

(iv) The proposal must, to the extent possible, divide the project to allow more than one small business concern to perform work under the project.

(6) Specify standards for site selection, site preparation, planting stock care and selection. The proposal must also certify that planting methods and overall care and maintenance conform to standards that are reasonable and customary. The minimum standard for this evaluation is hereby established as those criteria, instructions and examples contained in the *Forestry Handbook* 2nd Edition, Karl Wenger, Editor, for the Society of American Foresters. Sections 8 and 16. 1984. John Wiley and Sons, New York, New York. Copies may be obtained from the Society of American Foresters, 5400 Grosvenor Lane, Bethesda, Maryland 20814.

(7) Specify the personnel, their qualifications and experience, and who will be responsible for supervising the project.

(8) Articulate a cost-effective approach toward accomplishing the objectives of the project.

(9) Accommodate periodic inspection and post-audit by SBA.

(h) *Administration of the grant.* The grant will be awarded and administered according to the terms found in 13 CFR part 143, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, except as provided for in this part.

Dated: April 17, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-11736 Filed 5-16-91; 8:45 am]

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Part V

Department of the Interior

Bureau of Indian Affairs

Settlement Roll Preparation; Hoopa-Yurok Settlement Act; Notices

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Hoopa-Yurok Settlement Roll

May 10, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) is giving notice of the deadline for electing a settlement option under the provisions of section 6 of the Hoopa-Yurok Settlement Act (Settlement Act) of October 31, 1988, Public Law 100-580, as amended. Under section 6 of the Settlement Act, individuals 18 years of age or older who are determined finally eligible to be on the Hoopa-Yurok Settlement Roll prepared under section 5 will be given the opportunity to elect a settlement option from among three options. The three options are: (1) Membership in the Hoopa Valley Tribe if they meet the membership requirements specified in the Settlement Act; (2) membership in the Yurok Tribe; or (3) a lump sum payment in lieu of membership in either tribe. Minors finally determined eligible to be on the Settlement Roll will be deemed to have elected the Yurok membership option unless the parent or guardian of such a minor furnishes proof that the minor is an enrolled member of a tribe that prohibits members from enrolling in other tribes. In that case the parent or legal guardian of the minor may elect another settlement option.

DATES: July 19, 1991, is the deadline for electing a settlement option under section 6 of the Hoopa-Yurok Settlement Act.

FOR FURTHER INFORMATION CONTACT: Dorson Zunie, Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California 96049-4879; telephone: (916) 246-5141 (FTS 450-5141) or 1-800-BIAHYSA (1-800-242-4972).

Yurok Transition Team, 517 Third Street, suite 21, Eureka, California 95501; telephone: (707) 444-0433 or 1-800-848-8765.

Yurok Transition Team, P.O. Box 218, Klamath, California 95548; telephone: (707) 482-2921 or 1-800-334-6689.

Hoopa Valley Tribal Council, P.O. Box 1348, Hoopa, California 95546; telephone: (916) 625-4211.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Department Manual at 209 DM 8.

Section 5 of the Settlement Act directed the Secretary of the Interior to prepare a Settlement Roll to identify Yurok and other Indians of the Reservation eligible to participate in the settlement. The deadline for filing applications for inclusion on the Settlement Roll was April 10, 1989.

Under section 5(d) of the Settlement Act, once initial determinations of eligibility were made on all applicants, the Secretary was to publish the Settlement Roll in the Federal Register. All initial determinations of eligibility were made and on Thursday, March 21, 1991, the BIA published the names of persons included on the Hoopa-Yurok Settlement Roll in the Federal Register (56 FR 12062)

The Settlement Act further directed the Secretary to develop such procedures and times as may be necessary for the consideration of appeals from applicants who were initially determined ineligible for the Settlement Roll and, as a result of the amendment of the Settlement Act, of appeals by the Hoopa Valley Business Council or the Yurok Transition Team from the initial omission or inclusion of names on the Settlement Roll.

The names of applicants not initially on the Settlement Roll who are finally determined eligible on appeal will be added to the Settlement Roll and those individuals will be given the opportunity to elect a settlement option. Applicants who were initially determined eligible, but who are finally determined ineligible on appeal will not be eligible to participate in the settlement and their names will be removed from the Settlement Roll.

Section 6 of the Settlement Act directs the Secretary to give notice within sixty days of the publication in the Federal Register of the Settlement Roll by certified mail to each person 18 years or older named on the Settlement Roll of their right to elect a settlement option and the deadline for making that election. With respect to minors on the Settlement Roll the notice is to state that minors shall be deemed to have elected the Yurok membership option unless the parent or guardian furnishes satisfactory proof to the Secretary that the minor is an enrolled member of a tribe that prohibits members from enrolling in other tribes. In that case the parent or guardian may elect another settlement option on behalf of the minor. The required notices were mailed to individuals by the Superintendent, Northern California Agency, BIA, on April 12, 1991.

Under section 6 of the Settlement Act, the Secretary is directed to establish a date by which time the election of an option must be made. Section 6 further directs that the date be 120 days from date of publication of the Settlement Roll in the Federal Register.

The Settlement Roll was published in the Federal Register on March 21, 1991. Consequently, the deadline for electing a settlement option is July 19, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-11750 Filed 5-16-91; 8:45 am]

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Part VI

Department of the Interior

Bureau of Indian Affairs

Filing of Statute of Limitations; Hoopa-Yurok Settlement Act; Notices

VOL 56 ISS 96 MY 17 1991 UMI

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
Hoopa-Yurok Settlement Act
May 10, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) is publishing notice of the statute of limitation for filing certain claims under section 14 of the Hoopa-Yurok Settlement Act of October 31, 1988, Public Law 100-580, as amended. Any claim by a person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, challenging the partition of the joint reservation under section 2 of the Settlement Act or any other provision of the Act as having effected a taking under the fifth amendment of the United States Constitution or as otherwise having provided inadequate compensation shall be forever barred if not brought by the date determined in accordance with the provisions of section 14.

DATES: Claims challenging the constitutionality of the Hoopa-Yurok Settlement Act by any person or entity, other than the Hoopa Valley tribe or the Yurok Tribe, must be brought by September 16, 1991.

FOR FURTHER INFORMATION CONTACT: Dorson Zunie, Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California 96049-4879; telephone: (916) 246-5141 (FTS 450-5141).

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

Section 14 of the Settlement Act provides that any claim challenging the partition of the joint reservation under section 2 or any other provision as having effected a taking under the fifth amendment of the United States Constitution or as otherwise having provided inadequate compensation shall be brought, pursuant to 28 U.S.C. 1491 or 28 U.S.C. 1505, in the United States Claims Court. Section 14 further states that any claim by any person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, shall be forever barred if not brought within the later of 210 days from the date of the partition of the joint reservation as provided in section 2, or 120 days after the publication in the **Federal Register** of the option election date under section 6.

On Wednesday, December 7, 1988, a document was published in the **Federal Register** at 53 FR 49361 providing official notice that the Hoopa Valley Tribe had adopted a valid resolution which met the requirements of section 2 of the Settlement Act. In accordance with section 2, partitioning of the joint reservation was effective with the publication of that notice in the **Federal Register**. More than 210 days have since passed.

A notice of the deadline for electing a settlement option under section 6 is being published as a separate document in the **Federal Register** today, May 17, 1991. A date 120 days from today is later than 210 days from the effective date of the partitioning of the joint reservation under section 2. Consequently, any claim by any person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, questioning the constitutionality of the Hoopa-Yurok Settlement Act must be brought by September 16, 1991, or be forever barred.

Eddie F. Brown,
Assistant Secretary—Indian Affairs.

[FR Doc. 91-11749 Filed 5-16-91; 8:45 am]
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Part VII

Department of the Interior

Bureau of Indian Affairs

Flathead Indian Irrigation Project, Montana; Notice

VOL 56 ISS 96 MY 17 1991 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Flathead Indian Irrigation Project, Montana

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Proposed operation and maintenance rates.

SUMMARY: The purpose of this notice is to change the assessment rates for operating and maintaining the Flathead Indian Irrigation Project. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance of the irrigation project. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

DATES: Interested parties may submit written comments no later than June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE 11th Ave, Portland, Oregon 97232-4169.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce and increase in the assessment rates commensurate with actual operation and maintenance costs on the Flathead Irrigation Project. The proposed assessment increases from 1992 amount to approximately 8.5%.

This notice of proposed operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs to the Area Director in 10 BIAM 3.

This notice is given in accordance with § 171.1(e) of part 171, Chapter I, of Title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for operation and maintenance assessments and related information of the Flathead Irrigation Project for Calendar Year 1992 and subsequent years.

This notice sets forth changes to the operation and maintenance charges and related information applicable to the Flathead Irrigation Project, St. Ignatius, Montana. These charges were proposed pursuant to the authority contained in the Acts of August 1, 1913 and March 7, 1928, (38 Stat. 583, 25 U.S.C. 382; 45 Stat. 210, 25 U.S.C. 387).

Irrigation Operation and Maintenance Charges

In compliance with the above, the operation and maintenance charges for the lands under the Flathead Irrigation Project, Montana, for the season of 1992 and subsequent years until further notice, are hereby fixed as follows:

Lands included in an Irrigation District, lands held in trust for Indian and non-District lands will be assessed operation and maintenance charges at $17.80 per acre for the season of 1992 and subsequent years.

Payment

The operation and maintenance charges on the trust and non-District lands become due on April 1 each year and on the lands within an Irrigation District are biannually billed. To all assessments on lands in non-Indian ownership, remaining unpaid 60 days after the due date, there shall be added a penalty for each month, or fraction thereof, from the due date until paid. No water shall be delivered to any farm unit until all O&M charges have been paid.

Interest and Penalty Fees

Interest and penalty fees will be assessed, where required by-law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Wilford Bowker,

Acting Portland Area Director.

[FR Doc. 91-11606 Filed 5-16-91; 8:45 am]

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H.J. Res. 173/Pub. L. 102-42

To designate May 1991 and May 1992 as "Asian/Pacific American Heritage Month". (May 14, 1991; 105 Stat. 243; 1 page) Price: $1.00

H.J. Res. 194/Pub. L. 102-43

Designating May 12, 1991, as "Infant Mortality Awareness Day". (May 14, 1991; 105 Stat. 244; 1 page) Price: $1.00

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Monday
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Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and New York City see announcement on the inside cover of this issue.

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN: May 23, at 9:00 am
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1100 L Street, NW, Washington, DC
RESERVATIONS: 202-523-5240 (voice); 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 300 and 330

RIN 3206–AE50

Employment (General); Time-in-Grade Restrictions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations governing the time-in-grade restriction on advancement to positions in the General Schedule. These changes would provide additional flexibility and simplify or clarify provisions.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Leota Shelkey (202) 606–0960; FTS 266–0960.

SUPPLEMENTARY INFORMATION: Since the early 1950's, Federal employees in General Schedule positions at GS–5 and above have been required to serve at least 1 year in grade before being promoted. On October 19, 1990, OPM published proposed revisions to the time-in-grade regulations in the **Federal Register** (55 FR 42389). We received written comments from 13 Federal agencies, one employee organization, and one individual. Most commenters supported the changes. The key comments and changes are summarized below.

Section 300.602 Definitions

One commenter pointed out that our definition of "Advancement" as a position change, which includes demotion, is inconsistent with the generally accepted meaning of advancement. We agree and have revised the definition to mean a promotion (including temporary promotion) or appointment resulting in a higher grade or salary.

In addition, we revised the definition of "Inequity to an employee." The purpose is to include all situations where an employee's duties remain unchanged but the position is upgraded. For example, an air traffic control specialist position might be upgraded when the facility is upgraded as a result of increased air traffic.

Section 300.603 Coverage

Section 300.603(b) lists exceptions to the time-in-grade restriction. We have revised the introductory clause to show that these exceptions do not constitute a waiver of any other applicable requirement, such as qualification standards.

One commenter suggested we clarify that the noncompetitive appointments under exception (2) do not include transfer and reinstatement. We have done so.

Another commenter suggested we expand exception (3) on repromotion to a grade formerly held to include a grade held in the excepted service. We have made this change and also clarified that any repromotion must be consistent with the merit promotion program requirements in 5 CFR part 335.

Another commenter suggested we revise exception (4) to exempt an employee in a non-GS position from the time-in-grade restriction, even if the individual had held a GS position within the previous 52 weeks. We have not adopted this suggestion. Any individual who held a GS position within the last 52 weeks is subject to the restriction. This is the case regardless of whether the person left Federal employment or served in a non-GS Federal position.

An agency suggested that to avoid additional paperwork, in exception (7), we retain the previous language on agency redelegation of authority to approve waivers based on hardship or inequity. Our purpose in changing the language was to make clear agency heads could redelegate this authority. Inasmuch as we do not want to create additional roadblocks to redelegation, we have adopted the agency's suggestion.

Another commenter felt exception (8), allowing OPM to approve waivers, was not needed and that agencies should be given full delegation to approve waivers based on hardship or inequity. We have revised exception (8) to clarify that OPM could approve waivers in situations not strictly covered by our definitions of hardship or inequity but which are consistent with the intent of those definitions.

Section 300.604 Restrictions

This section contains the time-in-grade waiting period, which we proposed to change from 1 year to 52 weeks. This would make the time-in-grade waiting period consistent with the waiting period for within-grade increases to steps 2, 3, and 4 of General Schedule grades.

Commenters strongly supported this change. However, several pointed out there would be confusion unless we made a corresponding change in the qualification standards requiring 1 year of specialized experience. This had been our plan although we did not say so in the proposal. We will change the Qualification Standards Handbook (X–118) to define 1 year for qualification purposes as 52 weeks.

The change to 52 weeks would allow within-grade increases and promotions to occur on the same effective date. This would eliminate the need for agencies to process separate notifications of personnel action for promotion and within-grade increases. OPM will change its processing procedures to allow agencies to combine the two personnel actions.

Proposed § 300.604(b)(3) would have allowed agency heads to determine whether time in grade is satisfied by service one grade or two grades lower when positions with 1-grade interval work have mixed interval promotion patterns (e.g., GS–5, 6, 8).

One agency stated that our proposal would be more difficult for them to apply because it would require the agency head's approval. Because the intent of our proposal was to recognize unique promotion patterns and organizational arrangements of agencies rather than make it more difficult to work with these unusual situations, we have revised paragraph (b)(3) to drop agency head approval. Instead, agencies themselves would decide the appropriate approval level.

Section 300.605 Creditable Service

This section defines creditable service for meeting time in grade. In § 300.605(a), we have clarified the

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longstanding rule that service on detail is credited at the grade of the position of record rather than the position to which detailed. This means an employee detailed to a higher grade position receives time-in-grade credit at the lower grade rather than the higher grade. An employee detailed to a lower grade position receives credit at the higher grade.

One commenter objected to allowing credit for service with a nonappropriated fund (NAF) instrumentality. This commenter pointed out that NAF Service has not been creditable for purposes such as retirement, leave, and reduction in force. We allowed time-in-grade credit on the basis that NAF workers are employees of the United States. Furthermore, recent legislation has reversed earlier laws limiting credit of NAF service for many purposes.

Public Law 101-508, November 5, 1990, allows personnel interchange agreements between NAF instrumentalities and Federal agencies. In addition, an NAF employee of the Defense Department or Coast Guard who moves without a break in service to a civil service position in the same agency receives service credit for NAF time for leave and reduction-in-force purposes. The law permits use of NAF time in determining other benefits as well.

Section 300.605(b) requires agencies to use representative rates to credit Federal service in non-General Schedule (GS) positions. Two agencies pointed out it is difficult to obtain or determine representative rates for non-GS pay systems (which do not use the concept of representative rate), especially for less recent service. To eliminate these problems, we have changed the method for crediting non-GS service. Under the new method, agencies must compare an individual's rate of basic pay in a non-GS position with the representative rate of a GS position.

Section 300.605(c) addresses credit for higher grade temporary service that occurs prior to an employee's first competitive appointment. Under 5 CFR 330.502, such service is credited for time-in-grade purposes at the grade of the subsequent competitive appointment. We proposed to continue the same requirement under § 300.605(c) but apply it only until an employee had served in pay status for 52 weeks under nontemporary competitive appointment. One commenter believed our change would contribute to favoritism and merit system abuses.

The limit on crediting temporary service was adopted initially because agencies were appointing individuals from civil service registers for lower grade jobs and soon after promoting them to higher grades for which they were ineligible on appropriate registers. Thus, the purpose was to prevent use of inappropriate civil service registers in filling positions. We do not believe that our change will lead to merit system abuses since agencies have long had the authority to match an individual's salary under a prior temporary appointment. Furthermore, any subsequent promotion action must be consistent with the merit promotion program, including qualification standards.

Section 300.606 Agency Authority

We clarified that an agency has authority to expand on these restrictions consistent with the intent of this subpart.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to Federal employees and agencies.

List of Subjects

5 CFR Part 300

Government employees, Administrative practice and procedure.

5 CFR Part 330

Government employees, Intergovernmental relations.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR parts 300 and 330 as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for part 300 continues to read as follows:

Authority: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. secs. 7201, 7204, 7701; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

Sec. 300.301 also issued under 5 U.S.C. 3324.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. secs. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

2. Subpart F is revised to read as follows:

Subpart F—Time-in-Grade Restrictions

Sec.
300.601 Purpose.
300.602 Definitions.
300.603 Coverage.
300.604 Restrictions.
300.605 Creditable service.
300.606 Agency authority.

Subpart F—Time-in-Grade Restrictions

§ 300.601 Purpose.

The restrictions in this subpart are intended to prevent excessively rapid promotions in competitive service General Schedule positions and to protect competitive principles. They provide a budgetary control on promotion rates and help assure that appointments are made from appropriate registers. These restrictions are in addition to the eligibility requirements for promotion in part 335 of this chapter.

§ 300.602 Definitions.

In this subpart—

Advancement means a promotion (including a temporary promotion) or any type of appointment resulting in a higher grade or higher rate of basic pay.

Competitive appointment means an appointment based on selection from a competitive examination register of eligibles or under a direct hire authority.

Hardship to an agency involves serious difficulty in filling a position, including when:

(a) The situation to be redressed results from circumstances beyond the organization's control and otherwise would require extensive corrective action; or

(b) A position at the next lower grade in the normal line of promotion does not exist and the resulting action is not a career ladder promotion; or

(c) There is a shortage of candidates for the position to be filled.

Inequity to an employee involves situations where a position is upgraded without change in the employee's duties or responsibilities, or where discrimination or administrative error prevented an employee from reaching a higher grade.

Nontemporary appointment means any appointment other than a temporary appointment pending establishment of a register (TAPER) or a temporary or excepted appointment not to exceed 1 year or less.

§ 300.603 Coverage.

(a) *Coverage.* This subpart applies to advancement to a General Schedule position in the competitive service by any individual who within the previous 52 weeks held a General Schedule position under nontemporary appointment in the competitive or excepted service in the executive branch, unless excluded by paragraph (b) of this section.

(b) *Exclusions.* The following actions may be taken without regard to this subpart but must be consistent with all other applicable requirements, such as qualification standards:

(1) Appointment based on selection from a competitive examination register of eligibles or under a direct hire authority.

(2) Noncompetitive appointment based on a special authority in law or Executive order (but not including transfer and reinstatement) made in accordance with all requirements applicable to new appointments under that authority.

(3) Advancement in accordance with part 335 of this chapter up to any General Schedule grade the employee previously held under nontemporary appointment in the competitive or excepted service.

(4) Advancement of an employee from a non-General Schedule position to a General Schedule position unless the employee held a General Schedule position under nontemporary appointment in the executive branch within the previous 52 weeks.

(5) Advancement of an individual whose General Schedule service during the previous 52 weeks has been totally under temporary appointment.

(6) Advancement of an employee under a training agreement established in accordance with chapter 336 of the Federal Personnel Manual. However, an employee may not receive more than two promotions in any 52-week period solely on the basis of one or more training agreements. Also, only OPM may approve a training agreement that provides for consecutive promotions at rates that exceed those permitted by § 300.604 of this part.

(7) Advancement to avoid hardship to an agency or inequity to an employee in an individual meritorious case but only with the prior approval of the agency head or his or her designee. However, an employee may not be promoted more than three grades during any 52-week period on the basis of this paragraph.

(8) Advancement when OPM authorizes it to avoid hardship to an agency or inequity to an employee in individual meritorious situations not defined, but consistent with the definitions, in § 300.602 of this part.

§ 300.604 Restrictions.

The following time-in-grade restrictions must be met unless advancement is permitted by § 300.603(b) of this part:

(a) *Advancement to positions at GS-12 and above.* Candidates for advancement to a position at GS-12 and above must have completed a minimum of 52 weeks in positions no more than one grade lower (or equivalent) than the position to be filled.

(b) *Advancement to positions at GS-6 through GS-11.* Candidates for advancement to a position at GS-6 through GS-11 must have completed a minimum of 52 weeks in positions:

(1) No more than two grades lower (or equivalent) when the position to be filled is in a line of work properly classified at 2-grade intervals; or

(2) No more than one grade lower (or equivalent) when the position to be filled is in a line of work properly classified at 1-grade intervals; or

(3) No more than one or two grades lower (or equivalent), as determined by the agency, when the position to be filled is in a line of work properly classified at 1-grade intervals but has a mixed interval promotion pattern.

(c) *Advancement to positions up to GS-5.* Candidates may be advanced without time restriction to positions up to GS-5 if the position to be filled is no more than two grades above the lowest grade the employee held within the preceding 52 weeks under his or her latest nontemporary competitive appointment.

§ 300.605 Creditable service.

(a) All service at the required or higher grade (or equivalent) in positions to which appointed in the Federal civilian service is creditable towards the time periods required by § 300.604 of this part, except as provided in paragraph (c) of this section. Creditable service includes competitive and excepted service in positions under the General Schedule and other pay systems, including employment with a nonappropriated fund instrumentality. Service while on detail is credited at the grade of the employee's position of record, not the grade of the position to which detailed. Also creditable is service with the District of Columbia Government prior to January 1, 1980 (or prior to September 26, 1980, for those District employees who were converted to the District personnel system on January 1, 1980).

(b) Service in positions not subject to the General Schedule (GS) is credited at the equivalent GS grade by comparing the candidate's rate of basic pay with the representative rate (as defined in § 351.203 of this chapter) of the GS position in effect when the non-GS service was performed. The equivalent GS grade is the GS grade with a representative rate that equals the candidate's rate of basic pay. When the candidate's rate of basic pay falls between the representative rates of two GS grades, the non-GS service is credited at the higher grade.

(c) In applying the restrictions in § 300.604 of this part, prior service under temporary appointment at a level above that of a subsequent nontemporary competitive appointment is credited as if the service had been performed at the level of the nontemporary appointment. This provision applies until the employee has served in pay status for 52 weeks under nontemporary competitive appointment; thereafter, the service is credited at its actual grade level (or equivalent).

§ 300.606 Agency authority.

An agency may expand on these restrictions consistent with the intent of this subpart or may adopt similar policies to control promotion rates of employees not covered by this subpart.

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

3. The authority citation for part 330 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–58 Comp., p. 218.

Sec. 330.102 also issued under 5 U.S.C. 3327.

Subpart B also issued under 5 U.S.C. 3315 and 8151.

Sec. 330.401 also issued under 5 U.S.C. 3310.

Subpart H also issued under 5 U.S.C. 8337(h) and 8457(b).

§ 330.502 [Removed]

4. In part 330, § 330.502 is removed and reserved.

[FR Doc. 91-11804 Filed 5-17-91; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amendment No. 332]

Food Stamp Program; Resource Exemption for Public Assistance/Supplemental Security Income Households from the Mickey Leland Memorial Domestic Hunger Relief Act.

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: This rule amends the Food Stamp regulations to implement subsection 1719(2) of the Mickey Leland

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Memorial Domestic Hunger Relief Act (Pub. L. 101-624, title XVII, 104 Stat. 3785). The provision allows the exemption of resources for food stamp purposes for certain individuals receiving public assistance (PA) or supplemental security income (SSI).

DATES: The provisions of this action are effective and must be implemented on October 1, 1991. Comments must be received on or before July 19, 1991 to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. All written comments will be open for public inspections at the office of the Food and Nutrition Service during regular business hours (8:30 to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding this interim rulemaking should be addressed to Ms. Seymour at the above address or by telephone at (703) 756-3496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291/Secretary's Memorandum 1521-1

This interim rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521-1. The Department has classified this rule as nonmajor. The rule will not have an annual affect on the economy of $100 million a year or more. The rule will have little or no effect on costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Further the rule will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the interim rule and related notice(s) to 7 CFR part 3015, subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Betty Jo Nelsen, Administrator of the Food and Nutrition Service (FNS), has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This interim rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Public Participation and Effective Date

This interim rule is being published without prior notice of proposed rulemaking or an opportunity for public comment prior to implementation. As a result of a court suit, which is discussed later in the preamble, the Department has become aware that implementation of this rule as soon as possible may avoid undue hardship for a large group of food stamp recipients. For this reason, Betty Jo Nelsen, Administrator of FNS, has determined, pursuant to 7 U.S.C. 553(b)(B), that public comment on this interim rule prior to implementation is impracticable. However, because the Department believes that the administration of these provisions may be improved by public comments, the Department is soliciting comments on this rule for 60 days. All comments received will be analyzed and appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

Background

Section 5(g)(1) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2014(g)), prescribes the types and allowable amounts of financial resources that an eligible food stamp household may own. Accordingly, current regulations at 7 CFR 273.8(b) prescribe a $3,000 resource limit for households with a member age 60 or over, and a $2,000 resource limit for all other households. Households whose resources exceed their respective resource limit are ineligible for food stamp benefits. An exception to this rule is that households which are categorically eligible for food stamps do not have to meet resource limits as described in 7 CFR 273.8. As prescribed in section 5(a) of the Food Stamp Act (7 U.S.C. 2014(a)) categorically eligible households are defined in 7 CFR 273.2(j)(2)(i) as those households where all household members receive or are authorized to receive public assistance (PA) and/or Supplemental Security Income (SSI) (commonly known as "pure" PA or SSI households).

However, not all households with a household member receiving or authorized to receive PA and/or SSI benefits are "pure" PA or SSI households. In some households all members who are eligible for food stamps are counted as one household in accordance with 7 CFR 273.1(a) but only one (or more) household member may be receiving PA or SSI benefits. These households are commonly known as "mixed" households. Under 7 CFR 273.2(j)(2)(i) such households are not considered categorically eligible for food stamp benefits and must meet standard program eligibility criteria, including the prescribed resource limits.

In an effort to reduce the administrative burden and to promote conformity among the Food Stamp, PA, and SSI Programs section 1719(2) of Public Law 101-624, amended section 5(j) (7 U.S.C. 2014(j)) of the Food Stamp Act to exclude resources of a household member who receives PA or SSI benefits provided the resources are exempt for PA or SSI purposes, and the household member's income does not exceed the applicable income standard of eligibility described in section 5(c)(2) of the Food Stamp Act (7 U.S.C. 2014(c)(2)).

This interim rule will affect any situation in which current food stamp rules treats as a resource anything that is not counted as a resource by SSI or PA rules. While there are several resources in this category, the following example is particularly timely, given a recent Supreme Court decision, and will help in understanding the effect the interim rule will have on "mixed" food stamp households. A family has three children, one of whom is disabled. The family applied for SSI benefits for the disabled child in November 1989 but was denied benefits in December 1989. The family also applied for food stamps at the same time and was found eligible for food stamp benefits.

Subsequently, the Supreme Court, in the case of *Sullivan* v. *Zebley* (110 S.Ct. 885 (1990)) ruled that SSA had been applying an overly rigid standard when evaluating disability in children. The Court ruled that, as part of SSA's disability determination, each child whose impairment(s) does not medically meet or equal an impairment listed by the Social Security Administration (SSA) must have an individualized assessment of his or her ability to perform the normal activities of a child the claimant's age.

Based on this ruling the disabled child in the example will be evaluated under the new procedures sometime in June 1991 and, if found eligible for SSI benefits, will be awarded retroactive SSI benefits back to the date of the original SSI application. If the child is found eligible for SSI benefits, a lump sum payment for the months from November 1989 through June 1991 will be issued along with the regular SSI monthly benefit in July 1991. Assuming the child is found eligible for SSI benefits, the family would then be considered a "mixed" food stamp household.

Under the current regulation at 7 CFR 273.9(c)(8), the SSI lump sum payment of retroactive benefits to the disabled child is considered a non-recurring lump sum payment and therefore is not counted as income to the household for food stamp purposes. The payment is counted, however, as a resource in the month received, in accordance with 7 CFR 273.8(c)(1). If the lump sum payment exceeds $2,000, the entire household loses its eligibility for food stamps. With the implementation of this interim rule the outcome is different. The lump sum payment continues to be exempt as income for the household. However, the payment would no longer be included in the total amount of resources available to the household for the sixth month period in which it is not a resource for SSI purposes, because it meets the criteria described in section 1719 of the Leland Act, i.e., it is not counted as a resource for SSI purposes and the disabled child's income does not exceed the applicable income of eligibility for food stamps.

Accordingly, the Department is amending 7 CFR 273.9(e) by adding a new paragraph (17) to exclude, for food stamp purposes, resources of a household member who receives SSI benefits under title XVI of the Social Security Act or who receives aid to the aged, blind, or disabled under title I, X, XIV, or XVI of the Social Security Act or who receives benefits under part A of title IV of the Social Security Act provided the resource is exempt by SSI or PA rules, and such household member's income does not exceed the applicable income standard of eligibility as described in 7 CFR 273.9(a).

Implementation

Section 1761 of the Leland Act requires that the provisions of this rulemaking be effective and implemented the first day of the month beginning 120 days after publication of implementing regulations and requires that regulations be published by specified dates. The law provides that implementing regulations for changes in the food stamp resource exclusion of SSI/PA households of section 1719, subsection 2 must be published not later than October 1, 1991. This provision is effective and must be implemented on October 1, 1991. Variances resulting from implementation of the provisions of this rule shall be excluded from error analysis for 90 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii). The provision must be implemented for all households that newly apply on or after the required implementation date. The current caseload must be converted to the new provision at recertification, at household request, or when the case, is next reviewed, whichever occurs first. If for any reason a State agency fails to implement on the required implementation date, restored benefits must be provided back to the required implementation date or the date of the food stamp application, whichever is later.

List of Subjects

7 CFR Part 272

Alaska, Civil Rights, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Records, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, parts 272 and 273 are amended as follows:

1. The authority citation for parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011-2061.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(117) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation. * * *

(117) *Amendment No. 332.* The provisions of *Amendment No. 332* are effective and must be implemented October 1, 1991. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 90 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii). The provision must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first. If, for any reason, a State agency fails to implement by the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application, whichever is later.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.8, a new paragraph (e)(17) is added to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

(17) The resources of any household member who receives supplemental security income (SSI) benefits under title XVI of the Social Security Act or who receives aid to the aged, blind or disabled under title I, X, XIV, or XVI of the Social Security Act or who receives benefits under part A of title IV of the Social Security Act (PA benefits) shall be considered exempt for food stamp purposes provided his/her resources are also considered exempt under the applicable titles or parts of the Social Security Act (i.e., if PA or SSI rules exempt the resource for the program in which he/she participates) and the household member's income does not exceed the applicable income standard of eligibility as described in § 273.9(a).

* * * * *

Dated: May 13, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91-11869 Filed 5-17-91; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV-91-271IR]

Avocados Grown in South Florida; Maturity Requirement Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This rule changes maturity requirements in effect on a continuous basis for avocados grown in Florida. The rule relaxes the maturity

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requirements for the Booth 8 variety of avocados, based on recent maturity test results for this variety. In addition, the rule makes calendar date adjustments in the shipping schedules for several varieties of avocados to synchronize them with the 1991 and 1992 calendar years. This action is designed to ensure that only mature fruit is shipped to the fresh market, thereby improving grower returns and promoting orderly marketing conditions.

DATES: These changes become effective May 13, 1991. Comments which are received by June 19, 1991, will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 475-3918.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the Marketing Agreement and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 40 handlers of Florida avocados subject to regulation under Marketing Order No. 915, and about 300 avocado producers in the production area (South Florida). Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the avocado handlers and producers may be classified as small entities.

The Avocado Administrative Committee (committee), which administers the order locally, met on March 13, 1991, and unanimously recommended these maturity changes. The committee meets prior to and during each season to review the handling requirements for avocados, effective on a continuous basis. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

This rule relaxes the maturity requirements specified in Table 1 of paragraph (a)(2) of § 915.322 (7 CFR part 915) for the Booth 8 variety of Florida grown avocados, based on recent maturity test results. This action adds a new shipping period to the existing three shipping periods in the maturity shipping schedule for the Booth 8 variety. The new shipping period adds a minimum weight and diameter classification of 12 ounces and 3 9/16 inches in diameter for the period beginning the fourth Monday in September through the first Sunday in October. In addition, this rule adjusts the calendar dates in the shipping schedules for several avocado varieties specified in section 915.332 to synchronize these dates with the 1991 and 1992 years. The starting date for the earliest variety on that schedule is May 13, 1991.

The maturity requirements for Florida avocados are in effect on a continuous basis. Such requirements specify minimum weights and diameters for specific shipping periods for some 60 varieties of avocados and color specifications for those varieties which turn red or purple when mature. The maturity requirements for the various varieties of avocados are different, because each variety has different characteristics.

These maturity requirements are designed to prevent shipments of immature avocados to the fresh market, especially during the early part of the harvest season for each variety. Providing fresh markets with mature fruit is an important aspect of creating consumer satisfaction and is in the interest of both producers and consumers.

The Florida avocado shipping season usually begins about mid-May with light shipments of early varieties and it continues into the following March or April, with heaviest shipments occurring from July through December.

A minimum grade requirement of U.S. No. 2 currently in effect on a continuous basis for Florida avocados under § 915.306 (7 CFR part 915) remains in effect unchanged by this action.

Avocado import grade requirements are currently in effect on a continuous basis under § 944.28 (7 CFR part 944). Such requirements specify that all avocados imported into the United States must grade at least U.S. No. 2, as specified in § 915.306. Since this action does not change the grade requirements concerning Florida avocados, § 944.28 is not affected.

Maturity requirements are also currently in effect on a continuous basis for fresh avocados imported to the United States under § 944.31 (7 CFR part 944), effective under section 8e of the Act (7 U.S.C § 608e-1). These requirements specify that minimum weights and diameters for avocados imported into the United States from northern hemisphere countries be the same as the requirements for Florida grown avocados. These avocado maturity import requirements will be temporarily suspended by a separate rule on the same date that this rule for Florida avocados is made effective. The suspension is necessary to provide the U.S. Trade Representative adequate time to review contemplated changes in the import requirements.

According to the Florida Agricultural Statistics Service, Florida avocado shipments for the 1991-92 season are expected to total 975,000 bushels, an increase of 30 percent from the 1990-91 season but 7 percent below the previous 5-year average. Florida avocado production over the last five years (1985-89) averaged 1.1 million bushels per season. Also, competitive supplies from California are likely to exceed those in the 1990-91 season. Competitive

supplies from California during the 1990-91 season declined due to crop damage attributed to freezing temperatures in late December. Avocado imports from the Caribbean may reach record proportions.

Handlers may ship, exempt from the minimum grade, size, and maturity requirements effective under the marketing order, up to 55 pounds of avocados during any one under a minimum quantity provision, and up to 20 pounds of avocados as gifts in individually addressed containers. Also, avocados utilized in commercial processing are not subject to the grade, size, and maturity requirements under the order.

This action reflects the committee's and the Department's appraisal of the need to make the specified changes. The Department's view is that this action will have a beneficial impact on producers and handlers since it will help ensure that only mature avocados are shipped to fresh markets. The committee considers that maturity requirements for Florida grown avocados are necessary to improve grower returns and promote orderly marketing conditions. Although compliance with these maturity requirements will affect costs to handlers, these costs will be offset by the benefits of providing the trade and consumers with mature avocados.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action relaxes current maturity requirements; (2) Florida avocado handlers are aware of this action which was unanimously recommended by the committee at a public meeting; (3) these changes apply to varieties of avocados which handlers normally begin shipping in mid-May, and there is not enough time to provide a period for comments prior to implementation of the changes set forth below; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

Note: This section will appear in the annual Code of Federal Regulations.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 915.332 is amended by revising table I in paragraph (a)(2) to read as follows:

§ 915.332 Florida avocado maturity regulation.

(a) * * *

(2) * * *

TABLE I

Avocado variety	Effective period		Minimum size	
	From	Through	Weight	Diameter
			ounces	inches
Arue	2nd Mon May	4th Sun May	16	
	4th Mon May	5th Sun June	14	3 9/16
Donnie	3rd Mon May	1st Sun June	16	3 9/16
	1st Mon June	5th Sun June	14	3 9/16
Dr. Depuis #2	4th Mon May	2nd Sun June	16	3 9/16
	2nd Mon June	5th Sun June	14	3 9/16
	1st Mon July	3rd Sun July	12	3 9/16
Fuchs	1st Mon June	3rd Sun June	14	3 9/16
	3rd Mon June	5th Sun June	12	3
K-5	2nd Mon June	4th Sun June	16	3 9/16
	4th Mon June	1st Sun July	14	3 9/16
Simmonds	3rd Mon June	5th Sun June	16	3 9/16
	1st Mon July	2nd Sun July	14	3 9/16
	3rd Mon July	5th Sun July	12	3 9/16
Pollock	3rd Mon June	5th Sun June	18	3 11/16
	1st Mon July	2nd Sun July	16	3 9/16
	3rd Mon July	5th Sun July	14	3 9/16
West Indian Seedling*	3rd Mon June	2nd Sun July	18	
	3rd Mon July	3rd Sun Aug	16	
	3rd Mon Aug	3rd Sun Sept	14	
Hardee	4th Mon June	5th Sun June	16	3 9/16
	1st Mon July	1st Sun July	14	3 11/16
	2nd Mon July	4th Sun July	12	
Nadir	4th Mon June	5th Sun June	14	3 9/16
	1st Mon July	1st Sun July	12	3 9/16
	2nd Mon July	2nd Sun July	10	3 11/16
Gorham	1st Mon July	2nd Sun July	29	4 9/16
	3rd Mon July	2nd Sun Aug	27	4 9/16
Reuble	1st Mon July	1st Sun July	18	3 11/16
	2nd Mon July	2nd Sun July	16	3 9/16
	3rd Mon July	4th Sun July	14	3 9/16
	5th Mon July	1st Sun Aug	12	3 9/16
	1st Mon Aug	2nd Sun Aug	10	3 9/16
Biondo	2nd Mon July	2nd Sun Aug	13	
Peterson	2nd Mon July	2nd Sun July	14	3 9/16

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TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight	Diameter
			ounces	inches
	3rd Mon July	3rd Sun July	12	3 5/16
	4th Mon July	1st Sun Aug	10	3 5/16
Pernecker	3rd Mon July	4th Sun July	18	3 5/16
	5th Mon July	2nd Sun Aug	16	3 5/16
	2nd Mon Aug	4th Sun Aug	14	3 5/16
Miguel (P)	3rd Mon July	4th Sun July	22	3 17/16
	5th Mon July	2nd Sun Aug	20	3 11/16
	2nd Mon Aug	4th Sun Aug	18	3 11/16
Nesbitt	3rd Mon July	4th Sun July	22	3 11/16
	5th Mon July	1st Sun Aug	16	3 5/16
	1st Mon Aug	3rd Sun Aug	14	3 5/16
232	3rd Mon July	4th Sun July	14	
	5th Mon July	2nd Sun Aug	12	
Finell	3rd Mon July	4th Sun July	18	3 13/16
	5th Mon July	2nd Sun Aug	16	3 13/16
Trapp	3rd Mon July	4th Sun July	14	3 13/16
	5th Mon July	2nd Sun Aug	12	3 1/16
Tonnage	5th Mon July	2nd Sun Aug	16	3 5/16
	2nd Mon Aug	3rd Sun Aug	14	3 1/16
	3rd Mon Aug	4th Sun Aug	12	3
Waldin	5th Mon July	2nd Sun Aug	16	3 5/16
	2nd Mon Aug	4th Sun Aug	14	3 1/16
	4th Mon Aug	2nd Sun Sept	12	3 1/16
Tower 2	5th Mon July	2nd Sun Aug	14	3 5/16
	2nd Mon Aug	1st Sun Sept	12	3 1/16
K-9	5th Mon July	3rd Sun Aug	16	
Christine	5th Mon July	3rd Sun Aug	11	2 15/16
Beta	1st Mon Aug	2nd Sun Aug	18	3 5/16
	2nd Mon Aug	1st Sun Sept	16	3 5/16
Lisa (P)	1st Mon Aug	2nd Sun Aug	12	3 5/16
	2nd Mon Aug	3rd Sun Aug	11	3
Black Prince	2nd Mon Aug	4th Sun Aug	26	4 1/16
	4th Mon Aug	2nd Sun Sept	23	3 15/16
	2nd Mon Sept	5th Sun Sept	16	3 5/16
Catalina	2nd Mon Aug	4th Sun Aug	24	
	4th Mon Aug	3rd Sun Sept	22	
Loretta	4th Mon Aug	2nd Sun Sept	30	4 5/16
	2nd Mon Sept	5th Sun Sept	26	3 15/16
Booth 8	4th Mon Aug	2nd Sun Sept	16	3 5/16
	2nd Mon Sept	4th Sun Sept	14	3 5/16
	4th Mon Sept	1st Sun Oct	12	3 5/16
	1st Mon Oct	3rd Sun Oct	10	3 1/16
Booth 7	4th Mon Aug	2nd Sun Sept	18	3 15/16
	2nd Mon Sept	4th Sun Sept	16	3 15/16
	4th Mon Sept	1st Sun Oct	14	3 5/16
Blair	4th Mon Aug	2nd Sun Sept	16	3 5/16
	2nd Mon Sept	5th Sun Sept	14	3 5/16
Booth 5	1st Mon Sept	3rd Sun Sept	14	3 5/16
	3rd Mon Sept	5th Sun Sept	12	3 5/16
Guatemalan Seedling**	1st Mon Sept	5th Sun Sept	15	
	5th Mon Oct	1st Sun Dec	13	
Marcus	1st Mon Sept	3rd Sun Sept	32	4 15/16
	3rd Mon Sept	4th Sun Oct	24	3 5/16
Brooks 1976	1st Mon Sept	2nd Sun Sept	12	3 1/16
	2nd Mon Sept	3rd Sun Sept	10	3 1/16
	3rd Mon Sept	1st Sun Oct	8	2 15/16
Rue	2nd Mon Sept	3rd Sun Sept	30	4 5/16
	3rd Mon Sept	5th Sun Sept	24	3 15/16
	5th Mon Sept	2nd Sun Oct	18	3 5/16
Collinson	2nd Mon Sept	1st Sun Oct	16	3 15/16
Hickson	2nd Mon Sept	4th Sun Sept	12	3 1/16
	4th Mon Sept	1st Sun Oct	10	3
Simpson	3rd Mon Sept	1st Sun Oct	16	3 5/16
Chico	3rd Mon Sept	5th Sun Sept	12	3 1/16
	5th Mon Sept	2nd Sun Oct	10	3 1/16
Choquette	4th Mon Sept	2nd Sun Oct	28	4 5/16
	3rd Mon Oct	4th Sun Oct	24	4 1/16
	4th Mon Oct	2nd Sun Nov	20	3 15/16
Hall	4th Mon Sept	1st Sun Oct	26	3 15/16
	1st Mon Oct	3rd Sun Oct	20	3 5/16
	3rd Mon Oct	1st Sun Nov	18	3 5/16
Leona	4th Mon Sept	1st Sun Oct	18	3 15/16
Lula	5th Mon Sept	2nd Sun Oct	18	3 15/16
	3rd Mon Oct	4th Sun Oct	14	3 5/16
Herman	4th Mon Sept	2nd Sun Nov	12	3 5/16
	5th Mon Sept	2nd Sun Oct	16	3 5/16
	2nd Mon Oct	4th Sun Oct	14	3 5/16
Pinkerton (CP)	5th Mon Sept	2nd Sun Oct	13	3 5/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight	Diameter
			ounces	inches
	2nd Mon Oct	4th Sun Oct	11	3
	4th Mon Oct	2nd Sun Nov	9	
Taylor	1st Mon Oct	3rd Sun Oct	14	3 5/16
	3rd Mon Oct	1st Sun Nov	12	3 5/16
Ajax (S-7)	1st Mon Oct	4th Sun Oct	18	3 15/16
Booth 3	1st Mon Oct	2nd Sun Oct	16	3 5/16
	3rd Mon Oct	4th Sun Oct	14	3 5/16
Monroe	2nd Mon Nov	4th Sun Nov	28	4 5/16
	4th Mon Nov	2nd Sun Dec	24	4 1/16
	2nd Mon Dec	4th Sun Dec	20	3 15/16
	4th Mon Dec	1st Sun Jan	18	3 5/16
Booth 1	2nd Mon Nov	4th Sun Nov	18	3 15/16
	4th Mon Nov	2nd Sun Dec	12	3 5/16
Zio (P)	2nd Mon Nov	4th Sun Nov	12	3 1/16
	4th Mon Nov	2nd Sun Dec	10	2 15/16
Gossman	4th Mon Nov	4th Sun Dec	11	3 1/16
Brookslate	2nd Mon Dec	3rd Sun Dec	18	3 15/16
	3rd Mon Dec	4th Sun Dec	16	3 15/16
	4th Mon Dec	1st Sun Jan	14	3 5/16
	1st Mon Jan	3rd Sun Jan	12	3 5/16
	3rd Mon Jan	1st Sun Feb	10	
Moya (P)	2nd Mon Dec	4th Sun Dec	13	3 5/16
	4th Mon Dec	1st Sun Jan	11	3
Reed (CP)	2nd Mon Dec	4th Sun Dec	12	3 5/16
	4th Mon Dec	1st Sun Jan	10	3 5/16
	1st Mon Jan	3rd Sun Jan	9	3

* Avocados of the West Indian type varieties and seedlings not listed elsewhere in table I.
** Avocados of the Guatemalan type varieties and seedlings, hybrid varieties and seedlings, and unidentified seedlings not listed elsewhere in Table I.

* * * * *

Dated: May 15, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-11894 Filed 5-17-91; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 944

[Docket No. FV-91-273FR]

Fruits; Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule temporarily suspends certain maturity requirements for avocados imported into the United States. The suspension is necessary to provide the U.S. Trade Representative (USTR) adequate time to review changes in the avacado import requirements. Avacados import requirements are effective under section 8e of the Agricultural Marketing Agreement Act of 1937 (Act).

EFFECTIVE DATE: May 13, 1991.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under section 8e (7 U.S.C. Section 608e-1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, this action should also have small entity orientation, and impact on both small and large business entities in a manner comparable to rules issued under such marketing orders. There are about 20 importers of avacados. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000. A majority of these importers may be classified as small entities.

Section 8e of the Act provides that whenever specified commodities, including avacados, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

Section 944.31 (7 CFR 944.31) currently specifies that avacados imported into the United States, except for avocados grown in countries in the southern hemisphere, must meet the same minimum maturity requirements as those in § 915.332 (7 CFR 915.332) for avacados grown in Florida. Such requirements specify minimum weights and diameters for specific shipping periods and color specifications for those varieties which change color when mature. The Avocado Administrative Committee (committee) has recommended that changes be made in the maturity requirements in § 915.332

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for fresh avocados grown in Florida for the 1991–92 season. Florida avocado 1991–92 shipments are expected to begin about mid-May. Maturity requirements are designed to ensure that fresh market shipments are mature. The Department has reviewed the committee's recommendation and has determined that the changes should be made effective. This action is contained in a separate document.

In past years, such modified maturity requirements would automatically be applied to imports from the northern hemisphere. However, a provision in the Food, Agriculture, Conservation, and Trade Act of 1990 amended section 8e to require the Secretary of Agriculture to notify the USTR prior to implementing or modifying import regulations to ensure that they are consistent with trade agreements in effect. The USTR is required to provide advice to the Secretary within 60 days. Suspension of the current avocado import maturity requirements in § 944.31 is necessary to provide the USTR adequate time to review contemplated changes in those requirements. Since the maturity requirement changes for Florida advocados are to become effective May 13, 1991, the maturity requirements in § 944.31 should be temporarily suspended beginning on May 13, 1991.

A minimum grade requirement of U.S. No. 2 currently in effect for imported avocados in § 944.28 remains in effect unchanged by this action.

This final rule reflects the Department's appraisal of the need to suspend the avocados import maturity regulation, as hereinafter set forth, and is in accordance with the Act.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action temporarily relieves certain maturity requirements currently in effect for imported avocados; (2) the suspension needs to be made effective by May 13, 1991; and (3) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 944.31 [Temporarily suspended]

2. The provisions of § 944.31 (7 CFR 944.31) are hereby temporarily suspended beginning May 13, 1991.

Note: This section will not appear in the annual Code of Federal Regulations.

Dated: May 15, 1991.

Robert O. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–11895 Filed 5–17–91; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 211 and 265

[Docket No. R-0708]

Regulation K - International Banking Operations; Rules Regarding Delegation of Authority; Corrections

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Rule; Correction.

SUMMARY: This notice corrects a previous Federal Register notice (FR Doc. R-0703) that implements a final rule revising Regulation K (12 CFR part 211), which governs international banking operations, and the Board's Rules Regarding Delegation of Authority (12 CFR part 265). This notice corrects the effective date of the final rule, as well as two typographical errors in the notice.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Lynch, Attorney (202/452-3584), or Deborah K. Burand, Attorney (202/452-3427), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: This notice corrects a previous Federal Register notice (FR Doc. R-0703) published at page 19649, column 3, of the issue for Monday, April 29, 1991.

1. On page 19649, column 3, the effective date is corrected to read as follows:

EFFECTIVE DATE: Effective May 26, 1991, except in the case of § 211.5(b)(1)(iii), (c)(1) and (f)(4)(i), which were effective April 19, 1991.

2. On page 19676, column 3, the addition of paragraph (c)(38) to § 265.2 is corrected to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(c) * * *

(38) Under § 211.5(d)(14) of this chapter (Regulation K):

(i) To approve requests for authority to engage in the activities of underwriting, distributing, and dealing in shares outside the United States, provided that the Staff Director has determined that the internal procedures and operations of the organization and the effect of the proposed activities on capital adequacy are consistent with approval; and

(ii) To approve hedging methods authorized under § 211.5(d)(14)(iii)(A) of this chapter.

Board of Governors of the Federal Reserve System, May 14, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11699 Filed 5-17-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 324

RIN 3064-AA88 and 3064-AA87

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control; and Agricultural Loan Loss Amortization

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: On February 28, 1991, the FDIC's Board of Directors adopted final amendments to the FDIC's capital maintenance regulations (12 CFR part 325). Those final amendments deleted the definitions of, and references to, certain terms such as "primary capital" and "secondary capital" from the capital maintenance regulations. The final amendments also changed the capital level at which an insured institution is deemed to be in an "unsafe and unsound condition." The deleted terms and previous "unsafe and unsound condition" test are still referenced in both parts 303 and 324 of the FDIC's regulations. Accordingly, the FDIC is amending those regulations so that they do not continue to refer to terms and standards that no longer appear in our capital maintenance regulations.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Robert F. Miallovich, Assistant Director, Division of Supervision (202–898–6918), Stephen G. Pfeifer, Examination Specialist, Accounting Section, Division of Supervision (202–898–6904), or Claude A. Rollin, Counsel, Legal Division (202–898–3985).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This final rule does not create any new reporting or recordkeeping requirements, nor does it modify any existing reporting or recordkeeping requirements.

Discussion

On February 28, 1991, the FDIC's Board of Directors adopted final amendments to the FDIC's capital maintenance regulations (12 CFR part 325). Those final amendments were published in the Federal Register on March 11, 1991 (56 FR 10154) and became effective on April 10, 1991.

The final amendments deleted, *inter alia*, the definitions of, and all references to, the terms "primary capital" and "secondary capital" from the capital maintenance regulations. In place of the deleted terms, the terms "Tier 1 capital" and "Tier 2 capital" are now defined in, and utilized throughout, the capital maintenance regulations.

Since the terms that were deleted from part 325 still appear in parts 303 and 324 of the FDIC's regulations, we are amending those regulations to bring them into conformance with the revised capital regulations. This is necessary so that parts 303 and 324 do not continue to refer to terms that are no longer defined in our capital maintenance regulations.

In addition, the final amendments to the capital regulations changed the level (from 3% to 2%) at which an insured depository institution is deemed to be in an unsafe or unsound condition, pursuant to section 8(a) of the Federal Deposit Insurance Act, and the "unsafe or unsound condition" test is now based solely on Tier 1 capital. The amendments to parts 303 and 324 reflect those changes.

Moreover, under the amended regulations, insured institutions may no longer include allowances for loan and lease losses in their leverage capital calculations. Accordingly, the references to allowances for loan and lease losses in part 303 are being deleted.

At their February 28 meeting, the FDIC's Board of Directors directed the staff to prepare, and submit to the Federal Register, any amendments to other FDIC regulations that are necessary to conform such other regulations to the amendments made by the Board to our capital regulations. These amendments are being made pursuant to that authority.

Regulatory Flexibility Act Statement

The Board of Directors of the FDIC hereby certifies that these amendments to parts 303 and 324 will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In light of this certification, the Regulatory Flexibility Act requirements (at 5 U.S.C. 603, 604) to prepare initial and final regulatory flexibility analyses do not apply.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 324

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth above, the Federal Deposit Insurance Corporation hereby amends parts 303 and 324 of title 12 of the Code of Federal Regulations as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, and 1819 ("Seventh" and "Tenth"), 1828, 1831(e), and 15 U.S.C. 1607.

§ 303.0 [Amended]

2. Section 303.0(b) is amended:

a. In paragraph (b)(21), by removing the first parenthesis and inserting ", which is" in lieu thereof; by removing the second parenthesis; and by removing "plus allowance for loan and lease losses".

b. In paragraph (b)(22), by removing "primary" and inserting "Tier 1" in lieu thereof each place it appears.

c. In paragraph (b)(23), by removing "plus allowance for loan and lease losses"; and by removing "those terms are".

§ 303.9 [Amended]

3. Section 303.9(a) is amended:

a. In paragraph (a)(1), by removing "3%" and inserting "2%" in lieu thereof; and by removing "secondary" and inserting "Tier 2" in lieu thereof.

b. In paragraph (a)(2), by removing "primary" and inserting "Tier 1" in lieu thereof; and by removing "3%" and inserting "2%" in lieu thereof.

§ 303.10 [Amended]

4. Section 303.10(c)(1)(i) is amended by removing "primary" and inserting "Tier 1" in lieu thereof; and by removing "3%" and inserting "2%" in lieu thereof each place it appears.

PART 324—AGRICULTURAL LOAN LOSS AMORTIZATION

5. The authority citation for part 324 is revised to read as follows:

Authority: 12 U.S.C. 1823(j), 1818, and 12 U.S.C. 1811–1831.

§ 324.4 [Amended]

6. Section 324.4 is amended by removing "primary" and inserting "Tier 2" in lieu thereof.

By order of the Board of Directors.

Dated at Washington, DC, this 28th day of February, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–11824 Filed 5–17–91; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-291-AD; Amendment 39-7003]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F-28 series airplanes, which requires removal

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of certain rivets from the cold-bonded lap joints; visual and high frequency eddy current inspections to detect cracks and damage to the area adjacent to the rivet holes, and repair, if necessary; and installation of protruding-head rivets. This amendment is prompted by reports of disbonds of the fuselage lap joints. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

EFFECTIVE DATE: June 24, 1991.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Fokker Model F-28 series airplanes, which requires removal of certain rivets from the cold-bonded lap joints; visual and high frequency eddy current inspections to detect cracks and damage to the area adjacent to the rivet holes, and repair, if necessary; and installation of protruding-head rivets; was published in the **Federal Register** on February 20, 1991 (56 FR 6617).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator, nor significantly increase the scope of the AD.

There are currently no airplanes of U.S. registry that would be affected by this AD. However, should one be imported and placed on the U.S. Register, it would take approximately 435 manhours per airplane to accomplish the required actions, and the average labor cost would be $55 per manhour. The estimated cost for required parts is $200. Based on these figures, the total cost impact of this AD would be $24,125 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-11-07. Fokker: Amendment 39-7003. Docket No. 90-NM-291-AD.

Applicability: Model F-28 series airplanes, Serial Numbers 11003 through 11013, 11991, and 11992; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

A. Within one year after the effective date of this AD, remove the cold-bonded lap joint rivets, and perform detailed visual and high frequency eddy current inspections to detect cracks and damage to the areas adjacent to the rivet holes, in accordance with the Accomplishment Instructions of Fokker Service Bulletin F28/53-109, dated October 24, 1990.

1. If no cracks or damage are found, prior to further flight, install 5/16-inch protruding-head rivets in accordance with the Accomplishment Instructions of the service bulletin.

2. If cracks or damage are found, prior to further flight, repair and install 5/16-inch protruding-head rivets in accordance with the Accomplishment Instructions of the service bulletin.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective June 24, 1991.

Issued in Renton, Washington, on May 9, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11829 Filed 5-17-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ANM-09]

Amendment of Spokane International Airport Control Zone, Spokane, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Spokane International Airport Control Zone, Spokane, Washington, by slightly altering its boundary to coincide with the boundary of the amended Spokane Fairchild AFB Control Zone. The effect of this action is to make the boundary of the controlled airspace more discernible.

EFFECTIVE DATE: 0901 UTC, July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 91-ANM-09, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2536.

SUPPLEMENTARY INFORMATION:

History

The northern boundary of the Spokane International Airport Control Zone is defined by a 5-mile radius from the Airport; similarly, the northern boundary of the Spokane Fairchild Air Force Base (AFB) Control Zone is defined by a 5-mile radius from the AFB. The control zones are separated by a line extending from lat. 47°30'19" N., long. 117°34'45" W., to lat 47°40'57" N., long. 117°36'00" W. The Spokane International Control Zone lies east of the extended line; the Fairchild AFB Control Zone lies west of the extended line. The northern boundary of the Spokane International Control Zone intersects the extended line north of where the northern boundary of the Fairchild AFB Control Zone intersects it. Accordingly, the shape of the controlled airspace in that vicinity is irregular.

The FAA recently amended the Spokane Fairchild AFB Control Zone to alter the coordinates that define the extended line between the control zones.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the coordinates of the line extending from lat. 47°30'19" N., long. 117°34'45" W., which separates the Spokane International Airport Control Zone from the Spokane Fairchild AFB Control Zone. The amendment extends the line to lat. 47°40'47" N., long. 117°36'25" W. This alteration coincides with the amendment to the Fairchild AFB Control Zone, described above. The effect of this amendment, and the other amendment, is that the northern boundaries of the control zones intersect the extended line at the same point, eliminating the irregularity in the shape of the controlled airspace.

The alteration described above (and the alteration by virtue of the other amendment) result in a negligible change in the volume of controlled airspace. The effect of eliminating the irregularity in the shape of the airspace is to make it easier for pilots to discern between controlled and uncontrolled airspace. Accordingly, I find that prior public notice and comment are unnecessary, and that it is in the public interest, and good cause exists, to forego notice and public procedure under 5 U.S.C. 553(b).

Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows: Spokane International Airport Control Zone, Spokane, Washington (Amended).

Within a 5 mile radius of the Spokane International Airport (lat 47°37'35" N, long 117°32'05" W), within 2 miles each side of the Runway 21 centerline extended, extending from the 5 mile radius zone to 6 miles southwest of the lift-off end of Runway 21, and within 2 miles northwest and 4.5 miles southeast of the Spokane VORTAC 060 degree radial, extending from the VORTAC to 11 miles northeast of the VORTAC, excluding the portion west of a line extending from lat 47°30'19" N, long 117°34'45" W; to lat 47°40'47" N, long 117°36'25" W.

Issued in Seattle, Washington, on May 8, 1991.

Daniel A. Boyle,

Actg. Manager, Air Traffic Division.

[FR Doc. 91-11832 Filed 5-17-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ANM-16]

Amendment Coeur d'Alene Control Zone, Coeur d'Alene, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Coeur d'Alene Control Zone, Coeur d'Alene, Idaho, by changing the hours of effectiveness. Currently, the control zone is effective part-time. An Automated Weather Observation System (AWOS) was recently commissioned which provides 24-hour official weather reporting capability for the airport which makes it possible to designate a full-time control zone. This amendment extends the time in which aircraft operating under instrument flight rules can be separated by air traffic control.

EFFECTIVE DATE: 0901 UTC, July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Brown, ANM-535, Federal Aviation Administration, Docket No. 90-ANM-16, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2535.

SUPPLEMENTARY INFORMATION:

History

On February 28, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by changing the effective hours of the control zone from part-time to full-time (56 FR 8306). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Accordingly, the final rule is adopted as proposed. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

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The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the effective time of the Coeur d'Alene Control Zone, Coeur d'Alene, Idaho from part-time to full-time. Recent commissioning of an Automated Weather Observation System (AWOS) at the Coeur d'Alene Airport provides 24-hour official weather reporting capability on frequency 135.075 and via telephone. Currently, airport operations and Empire Airways personnel are taking hourly weather observation during the control zone effective hours Monday through Friday 1400–0300 UTC. This action extends the time in which aircraft operating under instrument flight conditions can be separated by air traffic control.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows: Coeur d'Alene, Idaho (amended). Within a 5 mile radius of Coeur d'Alene Air Terminal, Coeur d'Alene, Idaho, (lat. 47°46'28" N., long. 116°49'07" W.); within 4 miles each side of the Coeur d'Alene VOR/DME 231° radial extending from the 5 mile radius zone to 7 miles southwest of the airport.

Issued in Seattle, Washington, on April 22, 1991.

Temple H. Johnson, Jr.,
Manager, Air Traffic Division.

[FR Doc. 91–11831 Filed 5–17–91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ASO-7]

Revision of Transition Area, Fort Payne, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Fort Payne, AL Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve the Isbell Field Airport based on the Fort Payne non-directional radio beacon (NDB). This action will increase the size of the existing 700-ft. transition in order to provide controlled airspace for instrument flight rules (IFR) aircraft executing the SIAP. Additionally, due to rising terrain, especially east and north of the airport, the transition area has been increased in size to provide controlled airspace for protection of IFR departing aircraft. Also, a minor correction has been made in the latitude/longitude coordinates of the NDB.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On March 12, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Fort Payne, AL Transition Area (56 FR 10384). This action proposed to increase the size of the transition area to provide additional controlled airspace necessary for IFR aircraft executing a newly developed SIAP based on the Fort Payne NDB. Additionally, due to rising terrain, especially to the east and north, the transition area would be increased to provide controlled airspace for departing IFR aircraft. Also, a minor correction would be made in the latitude/longitude coordinate position of the Fort Payne NDB. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received Section 71.161 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Fort Payne, AL Transition Area. The size of the transition area is increased to accommodate a new SIAP to the Isbell Field Airport predicated on the Fort Payne NDB. Additionally, the basic radius of the transition area is increased due to rising terrain in order to provide the necessary controlled airspace for departing IFR aircraft. Also, a minor correction is made to the latitude/longitude position of the Fort Payne NDB. The proposed revised description of the transition area would have defined the arrival area extension as extending from an 8.5-mile radius of Isbell Field Airport to 18.5 miles northeast of the NDB. Due to charting difficulties, the arrival area extension has been redefined as extending from the NDB to 18.5 miles northeast of the NDB. This change has a negligible impact on the dimensions of the transition area and is made for charting purposes.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.161 [Amended]

2. Section 71.161 is amended as follows:

Fort Payne, AL [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Isbell Field Airport (lat. 34°28'20" N., long. 85°43'25" W.); within 8.5 miles northwest and 5 miles southeast of the Fort Payne NDB (lat. 34°31'16" N., long 85°40'24" W.) 040° bearing extending from the NDB to a point 18.5 miles northeast of the NDB.

Issued in East Point, Georgia, on May 7, 1991.

Don Case,
Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91–11830 Filed 5–17–91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 95

[Docket No. 26540; Amdt. No. 363]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on April 25, 1991.

Daniel C. Beaudette,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 g.m.t.:

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

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REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 363 EFFECTIVE DATE, MAY 30, 1991

FROM	TO	MEA
§95.1001 DIRECT ROUTES-U.S.		
IS ADDED TO READ		
CRAIG, FL VORTAC	LEE COUNTY, FL VORTAC	24000 MAA-45000
IS AMENDED TO DELETE		
CRAIG, FL VORTAC	FORT MYERS, FL VORTAC	24000 MAA-45000
§95.6001 VOR FEDERAL AIRWAY 1		
IS AMENDED TO READ IN PART		
PLAHN, SC FIX	GRAND STRAND, SC VORTAC	2000
§95.6007 VOR FEDERAL AIRWAY 7		
IS AMENDED TO READ IN PART		
SWAGS, FL FIX	LEE COUNTY, FL VORTAC	2200
LEE COUNTY, FL VORTAC	ROGAN, FL FIX	2500
ROGAN, FL FIX	LAKELAND, FL VORTAC	2000
§95.6023 VOR FEDERAL AIRWAY 23		
IS AMENDED TO READ IN PART		
PAINE, WA VOR/DME	EGRET, WA FIX	6000
EGRET, WA FIX	BELLINGHAM, WA VORTAC	3500
§95.6035 VOR FEDERAL AIRWAY 35		
IS AMENDED TO READ IN PART		
DEEDS, FL FIX	LEE COUNTY, FL VORTAC	2200
LEE COUNTY, FL VORTAC	ST PETERSBURG, FL VORTAC	2000
§95.6120 VOR FEDERAL AIRWAY 120		
IS AMENDED TO READ IN PART		
MULLAN PASS, ID VOR/DME *9200 - MOCA	CHARL, MT FIX	*13000
§95.6224 VOR FEDERAL AIRWAY 224		
IS AMENDED TO READ IN PART		
MARQUETTE, MI VOR/DME	SCHOOLCRAFT COUNTY, MI VOR/DME	2300
§95.6225 VOR FEDERAL AIRWAY 225		
IS AMENDED TO READ IN PART		
RIGOR, FL FIX *1200 - MOCA	MARCI, FL FIX	*4000
MARCI, FL FIX	LEE COUNTY, FL VORTAC	2000
LEE COUNTY, FL VORTAC *1400 - MOCA	LA BELLE, FL VORTAC	*2000
§95.6231 VOR FEDERAL AIRWAY 231		
IS AMENDED TO READ IN PART		
ARLEE, MT FIX	JESSY, MT FIX S BND N BND	 *11000 *13000
*9200 - MOCA		
JESSY, MT FIX *8700 - MOCA	SKOTT, MT FIX	*13000
SKOTT, MT FIX	KALISPELL, MT VOR/DME N BND S BND	 *8500 *13000
*6900 - MOCA		
§95.6521 VOR FEDERAL AIRWAY 521		
IS AMENDED TO READ IN PART		
GILBI, FL FIX	RUTHY, FL FIX	3000
RUTHY, FL FIX	LEE COUNTY, FL VORTAC	2000
LEE COUNTY, FL VORTAC *2000 - MOCA	QUINCY, FL FIX	*2500
QUINCY, FL FIX	LAKELAND, FL VORTAC	2000
§95.6539 VOR FEDERAL AIRWAY 539		
IS AMENDED TO READ IN PART		
CORGI, FL FIX *1200 - MOCA	GOODY, FL FIX	*4000
GOODY, FL FIX	LEE COUNTY, FL VORTAC	2000
§95.6579 VOR FEDERAL AIRWAY 579		
IS AMENDED TO READ IN PART		
LEE COUNTY, FL VORTAC	VIOLA, FL FIX	2000

FROM	TO	MEA	MAA
§95.7000 JET ROUTE NO. 8			
IS AMENDED TO READ IN PART			
NEEDLES, CA VORTAC	FLAGSTAFF, AZ VOR/DME	18000	45000
FLAGSTAFF, AZ VOR/DME	GALLUP, NM VORTAC	18000	45000
§95.7041 JET ROUTE NO. 41			
IS AMENDED TO READ IN PART			
KEY WEST, FL VORTAC	LEE COUNTY, FL VORTAC	18000	45000
LEE COUNTY, FL VORTAC	ST PETERSBURG, FL VORTAC	18000	45000
§95.7058 JET ROUTE NO. 58			
IS AMENDED TO READ IN PART			
SARASOTA, FL VORTAC	LEE COUNTY, FL VORTAC	18000	45000
LEE COUNTY, FL VORTAC	BISCAYNE BAY, FL VORTAC	18000	45000
§95.7075 JET ROUTE NO. 75			
IS AMENDED TO READ IN PART			
BISCAYNE BAY, FL VORTAC	LEE COUNTY, FL VORTAC	18000	45000
LEE COUNTY, FL VORTAC	TAYLOR, FL VORTAC	18000	45000

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§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	V-23		
	IS AMENDED BY ADDING		
PAINE, WA VOR/DME	BELLINGHAM, WA VORTAC	24	PAINE
	V-35		
	IS AMENDED TO DELETE		
FORT MYERS, FL VORTAC	ST PETERSBURG, FL VORTAC	40	FORT MYERS
	V-97		
	IS AMENDED TO DELETE		
LA BELLE, FL VORTAC	ST PETERSBURG, FL VORTAC	40	LA BELLE
	V-492		
	IS AMENDED TO DELETE		
ST PETERSBURG, FL VORTAC	LA BELLE, FL VORTAC	55	ST PETERSBURG

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	J-6		
	IS AMENDED TO DELETE		
NEEDLES, CA VORTAC	WINSLOW, AZ VORTAC	81	NEEDLES

[FR Doc. 91-11833 Filed 5-17-91; 8:45 am]
BILLING CODE 4910-13-C

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DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice 1307]

Bureau of Politico-Military Affairs; Amendment to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State has determined, in consultation with the Departments of Defense and Commerce, that certain Inertial Navigation Systems (and components designed for such systems) should be transferred to the jurisdiction of the Department of Commerce for export control purposes. Accordingly, the United States Munitions List has been amended to reflect this change.

DATES: This rule is effective as of June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Chief, Arms Licensing Division, Office of Defense Trade Controls, Department of State (703-875-6644).

SUPPLEMENTARY INFORMATION: This final rule amends the United States Munitions List, which is part of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130). The ITAR in turn implements section 38 of the Arms Export Control Act (22 U.S.C. 2778).

Section 17(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2416(c)) divided export control jurisdiction over inertial navigation systems and components between the Departments of State and Commerce. Pursuant to this statute and implementing regulations, the Commerce Department assumed jurisdiction over most inertial navigation systems and components that are standard equipment in civil aircraft, including spare parts, spare units and related repair technical data to be used exclusively for the maintenance of such equipment, and that are certified by the Federal Aviation Administration (FAA) as being an integral part of such aircraft. The Department of State retained jurisdiction over such systems, components, spares, and technical data only if they were destined for certain countries. In addition, the State Department retained jurisdiction over all inertial navigation systems and related equipment that did not meet the criteria set forth above, as well as all technical data related to the design, development, production or manufacture of any such equipment.

Recently, the Department of State, in consultation with the Departments of Defense and Commerce, conducted a commodity jurisdiction review of the inertial navigation systems it controlled only for export to certain countries. This review established that such systems, components and related spares are no longer appropriately considered to be inherently military in character.

Accordingly, this rule amends the U.S. Munitions List to reflect the transfer of these items to Commerce Department jurisdiction. It should be noted, however, that all other inertial navigation systems, components, spares and related repair technical data remain subject to Department of State jurisdiction, and as such may only be exported as provided in the ITAR. In addition, all technical data related to design, development, production or manufacture of any inertial navigation system remain subject to State Department jurisdiction. The Commerce Department is concurrently amending the Commodity Control List to reflect the addition of these items.

The following amendment deals with a foreign affairs function of the United States and is thus excluded from the major rule procedures of Executive Order 12291 [46 FR 13193] and the procedures of 5 U.S.C. 553 and 554. Although the Department of State believes that the public should generally have an opportunity to comment on proposed ITAR amendments before they are promulgated as a final rule, this amendment simply reflects an administrative determination made in consultation with the Departments of Commerce and Defense. Therefore, it is being promulgated as a final rule. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405-0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that Title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulation, be amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In § 121.1, paragraph (g) of Category VIII is revised to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category VIII—Aircraft, Spacecraft, and Associated Equipment

* * * * *

*(g) Inertial navigation systems and all specifically designed components, parts and accessories, except those systems or components that are standard equipment in civil aircraft, including spare parts and spare units to be used exclusively for the maintenance of inertial navigation equipment incorporated in civil aircraft, and that are certified by the Federal Aviation Administration (FAA) as being an integral part of such aircraft. All exports of technical data related to the design, development, production or manufacture of inertial navigation equipment (regardless of accuracies) or its related parts, components or subsystems are subject to the requirements of the regulations contained in this subchapter. The export of technical data related to the repair of parts, components, or subsystems of inertial navigation systems (including accelerometers and gyroscopes) that are not certified by the FAA as being an integral part of civil aircraft are subject to the requirements of this subchapter. The provisions of XI(e) and XII(c) are not applicable to such exports of technical data.

* * * * *

Dated: March 28, 1991.

Reginald Bartholomew,

Under Secretary of State for International Security Affairs.

[FR Doc. 91-11674 Filed 5-17-91; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 58a

Human Immunodeficiency Virus (HIV-1)

AGENCY: Office of the Secretary, DoD.

ACTION: Withdrawal.

SUMMARY: DoD is withdrawing a document published on Tuesday, May 7, 1991 (56 FR 21077) in the "Rules and Regulations" section of the **Federal Register**. This document should have been prepared to be published in the "**PROPOSED RULES**" section of the **Federal Register**.

EFFECTIVE DATE: May 20, 1991.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Directives Division, Washington Headquarters Services, Pentagon, Washington, DC 20301, telephone (703) 697-4111.

Dated: May 14, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-11852 Filed 5-17-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS ALEXANDRIA (SSN 757) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: April 19, 1991.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (703) 325-0744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS ALEXANDRIA (SSN 757) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: rule 21(c), pertaining to the arc of visibility of the sternlight; annex I, section 2(a)(i), pertaining to the height of the masthead light; annex 1, section 2(k), pertaining to the height and relative positions of the anchor lights; and annex 1, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS ALEXANDRIA (SSN 757) is a member of the SSN-688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS ALEXANDRIA (SSN 757).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
USS ALEXANDRIA	SSN 757	3.5

3. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side light, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(k), Annex I	Anchor lights, relationship of aft light of forward light in meters; § 2(k), Annex I
USS ALEXANDRIA	SSN-757			205°	4.2	6.2	3.5	1.7 below.

W.L. Schachte, Jr.,

Deputy Judge Advocate General.

Approved: April 19, 1991.

Dated: April 19, 1991.

[FR Doc. 91-11462 Filed 5-17-91; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 489

[BPD-484-CN]

Medicare Program; OBRA '87 Conforming Amendments; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; correction.

SUMMARY: **Federal Register** document No. 91-4415, beginning on page 8832 of the issue of Friday March 1, 1991, conformed numerous sections of the HCFA regulations with self-executing provisions of the Omnibus Budget Reconciliation Act of 1987. A one-page revision, dealing with the application of the Medicare blood deductible, was unintentionally omitted from column 2 of page 8852, where only the heading "P. Part 489" appears.

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Also omitted was a conforming change needed in § 482.12(c)(1)(iv) to reflect the amendment made by section 9336(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509). Section 9336(a) removed the provision that limited Medicare coverage of optometrist services to services related to the condition of aphakia. This means that any optometrist services permitted by State medical practice laws are now covered.

This notice corrects the omissions by publishing the amendment to part 489, which was discussed in section "D" of the preamble in the first column of page 8634, and including the revision of § 482.12(c)(1)(iv). The notice also makes numerous other minor corrections.

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (202) 245-0383.

SUPPLEMENTARY INFORMATION: Correction 11 simply makes it easier to understand the requirement by breaking down a very complex sentence and reducing the number of internal cross-references.

Corrections

1. On page 8639, column 2, in the first amendatory instruction, "below." is changed to "above.".

2. On page 8640, column 2, in § 409.19(b), "will deny" is changed to "denies".

3. On page 8640, column 3, in § 410.2, in the definition of "*Partial hospitalization services*", the designation "(a)" is removed, the first word "A" is lower-cased, and the text is run together.

4. On page 8641, column 1, in § 410.2(a)(3)(iv), "biological" is changed to "biologicals".

5. On page 8643, column 2, in § 416.1(a)(2), line 4, "and" is changed to "an".

6. On page 8643, column 2, in § 416.2, in the definition of "*Ambulatory surgical center*," the phrase "has an agreement with HCFA under Medicare to participate as an ASC" is changed to "has an agreement with HCFA to participate in Medicare as an ASC".

7. On page 8644, column 3, in § 416.120(a) "will be" is changed to "is".

8. On page 8647, column 1, in the Subpart B table of contents heading, "Requirement" is changed to "Requirements".

9. On page 8647, column 1, in § 431.50(b), "must be met:" is changed to "are met:".

10. On page 8651, column 3, in § 441.10(f), "(§§ 441.35 and 441.25)" is added at the end, before the period.

11. On page 8652, column 1, in § 482.12, the following changes are made:

a. The following revision of § 482.12(c)(1)(iv) is inserted:

(iv) A doctor of optometry who is legally authorized to practice optometry by the State in which he or she practices.

b. Paragraph (c)(4) is revised to read as follows:

(4) A doctor of medicine or osteopathy is responsible for the care of each Medicare patient with respect to any medical or psychiatric problem that—

(i) Is present on admission or develops during hospitalization; and

(ii) Is not specifically within the scope of practice of a doctor of dental surgery, dental medicine, podiatric medicine or optometry, or a chiropractor, as that scope is—

(A) Defined by the medical staff;

(B) Permitted by State law; and

(C) Limited, under paragraph (c)(1)(v) of this section, with respect to chiropractors.

12. On page 8852, column 2, under the heading "P. Part 489", the following omitted amendment is inserted:

P. PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1861, 1864(m), 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa(m), 1395cc, and 1395hh).

2. Section 489.31 is revised to read as follows:

§ 489.31 Allowable charges: Blood.

(a) *Limitations on charges.*

(1) A provider may charge the beneficiary (or other person on his or her behalf) only for the first three pints of blood or units of packed red cells furnished under Medicare Part A during a benefit period, or furnished under Medicare Part B during a calendar year.

(2) The charges may not exceed the provider's customary charges.

(3) The provider may not charge for any whole blood or packed red cells in any of the circumstances specified in § 409.87(c)(2) of this chapter.

(b) *Offset for excessive charges.* If the charge exceeds the cost to the provider, that excess will be deducted from any Medicare payments due the provider.

13. On page 8852, column 3, in amendatory instruction 7(a), "§ 410.83" is changed to "§ 410.61".

14. On page 8852, column 3, in amendatory instruction 8, "§ 410.63" is changed to "410.61".

15. On page 8854, column 1, in the bracketed statement that follows "§ 424.25", and in amendatory instruction 20, "§ 410.63" is changed to "§ 410.61".

16. On page 8854, column 1, in amendatory instruction 24, "*diseases*" is changed to "*diseases*".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance; Program No. 13.773, Medicare—Hospital Insurance; Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: May 8, 1991.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 91-11808 Filed 5-17-91; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6858

[MT-930-4214-10; MTM 066161, MTM 41231, MTM 41504]

Partial Revocation of Public Land Order No. 3606 and Opening of Land Subject to Section 24 of the Federal Power Act; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 20 acres of land withdrawn for the Bureau of Land Management's Madison River Recreation Sites. It also opens, subject to the provisions of section 24 of the Federal Power Act of 1920, 29.15 acres of land withdrawn for Powersite Reserve No. 184 and Powersite Classification No. 334. This land has been and will remain open to mineral leasing. Approximately 9.15 acres has been open to the operation of the United States mining laws and 20 acres will be opened to mining under the provisions of the Mining Claims Rights Restoration Act of 1955. The revocation and opening are needed to permit disposal of the land through exchange.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and section 24 of the Act of June 10, 1920, as amended, 41 Stat. 1075; 49 Stat. 275; 16 U.S.C. 818, and pursuant to the determinations by the Federal Energy Regulatory Commission in DVMT-236 and DVMT-236, it is ordered as follows:

1. Public Land Order No. 3606 which withdrew land for the Bureau of Land Management's Madison River Recreation Sites is hereby revoked insofar as it affects the following described land:

Principal Meridian

(MTM 066161)
T. 10 S., R. 1 E.,
Sec. 6, N½SE¼NW¼.

The area described contains 20 acres in Madison County.

2. The following described land withdrawn by the Executive Order dated April 19, 1912, creating Powersite Reserve No. 184 will be opened to disposal by land exchange subject to provisions of section 24 of the Federal Power Act:

Principal Meridian

(MTM 41231)
T. 10 S., R. 1 E.,
Sec. 6, N½SE¼NW¼.

The area described contains 20 acres in Madison County.

3. The following described land withdrawn by the Executive Order dated February 18, 1943, creating Powersite Classification No. 334 will be opened to disposal by land exchange subject to provisions of section 24 of the Federal Power Act:

Principal Meridian

(MTM 41504)
T. 7 S., R. 7 E.,
Sec. 20, lot 11, formerly described as part of E½SW¼.

The area described contains 9.15 acres in Park County.

4. At 9 a.m. on June 19, 1991, all the land described in paragraphs 1, 2, and 3 will be opened to disposal by land exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), subject to valid existing rights, the provisions of existing withdrawals, the provisions of section 24 of the Federal Power Act, as amended (16 U.S.C. 818), and the requirements of applicable law.

5. At 9 a.m. on June 19, 1991, the land described in paragraph 1 will be opened to location and entry under the United States mining laws, subject to the provisions of the Act of August 11, 1955 (30 U.S.C. 621 *et seq.*), and to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-11816 Filed 5-17-91; 8:45 am]

BILLING CODE 4310-DN-M

[AK-932-4214-10; AA-62900, AA-62914]

43 CFR Public Land Order 6860

Revocation of Powersite Classification No. 203, as Modified, and Powersite Classification No. 415, for Selection of Land by the State of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes, in their entirety, two Powersite Classifications which withdrew approximately 955 acres of public land for power purposes in the Sheep Creek area, near Juneau. The land is no longer needed for the purpose for which it was withdrawn. This action also opens the land for selection by the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State will be subject to the terms and conditions of withdrawals of record.

EFFECTIVE DATE: May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Powersite Classification No. 203, as Modified, and Powersite Classification No. 415, which withdrew public land for power purposes in the Sheep Creek area, near Juneau, are hereby revoked in their entirety:

Copper River Meridian

Tps. 41 and 42 S., R. 68 E., (unsurveyed).

Powersite Classification No. 203 (AA-62900).

All land within 1,000 feet of Sheep Creek, Alaska, from its mouth to a point about 2.3 miles upstream, said point being 1,800 feet S. 70° E. of U.S.L.M. 3A, excepting land within U.S. Survey No. 2572 and the strip of adjacent land approximately 300 feet wide comprising the area between the southeast boundary of Survey 2572 and the southeast boundary of this reservation; Sheep Creek being a stream from the mainland emptying into Gastineau Channel about 4 miles southeast of juneau.

The area described contains approximately 495 acres.

Powersite Classification No. 415 (AA-62914).

All land within 1,500 feet of Sheep Creek, Alaska, from its mouth to a point about 3.2 miles upstream, said point being approximately 6,000 feet S. 60° E. of U.S.L.M. 3A, excepting land included in Modification No. 420 of Powersite Classification No. 203, approved June 26, 1947, and the strip of land lying between Boundary Line 2-3 of U.S. Survey No. 2572 extended, and the Gastineau Channel, and extending southeasterly from Boundary Line 3-4 of U.S. Survey No. 2572 to the southeast boundary of the reserve; Sheep Creek being a stream from the mainland emptying into Gastineau Channel about four miles southeast of Juneau, Alaska.

The area described contains approximately 460 acres. The areas described aggregate a total of approximately 955 acres.

2. Subject to valid existing rights, and other withdrawals of record, the land described above is hereby opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 48 U.S.C. prec. 21 (1988), or section 906(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(b) (1988).

3. The State of Alaska selection made under section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State will be subject to the terms and conditions of withdrawals of record.

Dated: May 14, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-11890 Filed 5-17-91; 8:45 am]

BILLING CODE 4310-JA-M

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73, and 74

[MM Docket 88-140; DA 91-527]

Broadcast Service; FM Translator Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; suspension.

SUMMARY: The Commission suspends the amendments to the FM translator rules adopted in the Report and Order (Report) in MM Docket 88-140 (55 FR 50690, December 10, 1990, FR Doc. 90-28769) and stays the lifting of the freeze on the acceptability of FM translator applications. The action is taken to allow time for Office of Management and Budget (OMB) approval of the new requirements. Thus, the amended rules are suspended from March 1, 1991, to June 1, 1991, and the lifting of the freeze is suspended from May 1, 1991, to June 1, 1991, pending OMB approval of the amendments. Applications that have been deferred pending the outcome of this proceeding must be amended to conform to the new rules within 60 days after the freeze is lifted, or by August 1, 1991.

DATES: Effective upon publication, the amendments published December 10, 1990 are suspended until June 1, 1991, and the date for lifting the freeze on accepting FM translator applications is also suspended until June 1, 1991. The date for amending deferred applications is August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Alan Schneider, Mass Media Bureau, (202) 634-6307.

SUPPLEMENTARY INFORMATION:

Order

Adopted: April 23, 1991;

Released: May 3, 1991.

By the Chief, Mass Media Bureau:

1. This action suspends the rules adopted in the Report and Order (Report) in MM Docket No. 88-140 (5 FCC Rcd 7212, 1990) and for lifting the freeze on the acceptability of FM translator applications. The Report restructured the Commission's FM translator rules. The Report established a March 1 effective date for the rule amendments, and added that the freeze on acceptance of applications for FM translator stations on the commercial band would continue for 60 days after the effective date of the new rules or May 1. This information was verified in a Public Notice issued February 26, 1991. However, the full text of the Report at paragraph 150 indicated that "Implementation of any new or modified requirements will be subject to approval by the Office of Mangement and Budget * * *." Such approval is still pending. The rules are suspended until June 1, 1991, and the date for lifting the freeze is extended to June 1, 1991, to allow for approval of the amended requirements by the Office of Management and Budget (OMB). Applications that have been deferred pending the outcome of this proceeding must be amended to conform to the new rules by August 1, 1991. Whether these rules will have to be suspended again is dependent on approval by the OMB.

2. Accordingly, *it is Ordered* That the amendments to the FM Translator Station rules are suspended to June 1, 1991.

3. *It is Further Ordered* That the date for lifting the FM translator application freeze is suspended to June 1, 1991.

4. *It is Further Ordered* That applications deferred pending the outcome of this proceeding must be amended to conform to the new rules by August 1, 1991.

5. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and §§ 0.24(b) and 0.283 of the Commission's Rules (47 CFR §§ 0.24(b) and 0.283).

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 91-11802 Filed 5-17-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[DA 91-543]

Editorial Amendment of Part 97 of the Commission's Rules Regarding the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action conforms the amateur service rules with the Table of Frequency Allocations in part 2 of the Commission's rules. The rule change is necessary in order to show that the Government radiolocation service is currently secondary to other radio services in the 1.25 meter band. The effect of the rule change is to remove an obsolete restriction in the amateur service rules.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

Order

Adopted: April 25, 1991.

Released: May 3, 1991.

By the Chief, Private Radio Bureau:

1. Section 97.303(b) of the Commission's Rules, 47 CFR 97.303(b), currently provides that no amateur station transmitting in the 1.25 meter (m) band, among other amateur bands, shall cause harmful interference to, nor is protected from interference due to the operation of, stations in the Government radiolocation service. Pursuant to Footnote US243 to the Table of Frequency Allocations (Table) in § 2.106 of the Commission's rules, 47 CFR 2.106, the Government radiolocation service was primary in that band until January 1, 1990. That date having passed, the Government radiolocation service is now secondary to other radio services in the 1.25 m band. Section 97.303(b), therefore, should be amended by removing the reference to the 1.25 m band.

2. By this action, we are deleting the reference to the 1.25 m band in § 97.303(b), thereby conforming that section to the Table in § 2.106. Because the rule amendments adopted herein are nonsubstantive in nature, the notice and comment provisions of section 553 of the Administrative Procedure Act, 5 U.S.C. 553, need not be complied with. Authority for this action is contained in § 0.331(a)(1) of the Commission's Rules, 47 CFR 0.331(a)(1).

3. Accordingly, part 97 is amended, effective June 28, 1991, as set forth below.

List of Subjects in 47 CFR Part 97

Frequencies, Radio.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

Title 47 of the Code of Federal Regulations, part 97, is amended as follows:

1. The authority citation for part 97 continues to read as follows:

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. §§ 151-155, 301-609, unless otherwise noted.

2. Section 97.303(b) is revised to read as follows:

§ 97.303 Frequency sharing requirements.

* * * * *

(b) No amateur station transmitting in the 1900-2000 kHz segment, the 70 cm band, the 33 cm band, the 13 cm band, the 9 cm band, the 5 cm band, the 3 cm band, the 24.05-24.25 GHz segment, the 76-81 GH segment, the 144-149 GHz segment and the 241-248 GHz segment shall cause harmful interference to, nor is protected from interference due to the operation of, the Government radiolocation service.

* * * * *

[FR Doc. 91-11803 Filed 5-17-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 901199-1021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Director), is prohibiting directed fishing for pollock with trawls other than pelagic trawls, and for Pacific cod with any trawl gear in the entire Bering Sea and Aleutian Islands (BSAI) area due to attainment of both the primary Pacific halibut allowance, and the second quarter seasonal apportionment of the secondary Pacific halibut allowance. This action is necessary to prevent both the annual primary allowance and second quarter apportionment of the secondary allowance for Pacific halibut to the "DAP other fishery" from being exceeded. The intent of this action is to ensure optimum use of groundfish while conserving Pacific halibut stocks.

EFFECTIVE DATES: The closure of Zones 1 and 2H is effective 12 noon, Alaska local time (A.l.t.), May 14, 1991, through the remainder of the fishing year. The closure of the BSAI outside of Zones 1 and 2H is effective 12 noon, A.l.t., May 14, 1991, through 24 midnight, A.l.t., June 30, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone within the Bering Sea and Aleutian Islands Management Area (BSAI) under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and parts 620 and 675.

Amendment 16 to the FMP (56 FR 2700, January 24, 1991) established prohibited species catch (PSC) limits of red king crab and *C. bairdi* Tanner crab in specific zones of the Bering Sea subarea, and for Pacific halibut throughout the BSAI area. Under § 675.21(a), the primary PSC limit of Pacific halibut while conducting any trawl fishery for groundfish in the BSAI during any fishing year is 4,400 metric tons (mt) and the secondary limit as 5,333 mt. Furthermore, § 675.21(b) provides that the PSC limit of Pacific halibut be apportioned into bycatch allowances for several target fisheries, one of which is assigned to the "DAP other fishery." Within the "DAP other fishery," the Pacific halibut bycatch allowance is further allocated on a seasonal basis. The final notice of initial specifications of groundfish for the BSAI for 1991 (56 FR 6290; February 15, 1991) established the annual 1991 primary Pacific halibut allowance for the "DAP other fishery" in Zones 1 and 2H at 2,667 mt. Attainment of this PSC limit closes the "DAP other fishery" for the remainder of the year. The second quarter seasonal apportionment of the secondary Pacific halibut allowance for the entire BSAI was established at 1,293 mt. The cumulative amount of the secondary Pacific halibut allowance available for the "DAP other fishery" through the second quarter is 2,748 mt.

Previous closures under § 675.21(c)(2)(iii), effective on May 3, 1991, closed Zones 1 and 2H, and the remainder of the BSAI outside of Zones 1 and 2H to directed fishing for pollock and Pacific cod, in the aggregate, due to attainment of the primary Pacific halibut allowance, and the second quarter seasonal apportionment of the secondary Pacific halibut allowance respectively (56 FR 21450; May 9, 1991).

This notice modifies the closures related to the "DAP other fishery" which were made effective on May 3, 1991. A revision to FMP Amendment 16 for the BSAI changes provisions for closures of the "DAP other fishery" under § 675.21 (56 FR 21619; May 10, 1991).

Section 675.21(c)(2)(iii) now provides that if, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the primary PSC bycatch allowance of Pacific halibut in the BSAI Management Area while participating in the "DAP other fishery", the Secretary will publish a notice in the Federal Register closing Zones 1 and 2H to directed fishing for: (A) Pollock by trawl vessels using other than pelagic trawl gear for the remainder of the year, and (B) Pacific cod by vessels using trawl gear for the remainder of the fishing season. The annual primary allowance for Pacific halibut in the "DAP other fishery" has been reached. Therefore, under revised § 675.21, the Secretary is prohibiting directed fishing for pollock by DAP vessels using trawl gear other than pelagic trawl gear in Zones 1 and 2H of the Bering Sea subarea from 12 noon, A.l.t., May 13, 1991, through the remainder of the fishing year. The Secretary is prohibiting directed fishing for Pacific cod by vessels using trawl gear in Zones 1 and 2H of the Bering Sea subarea from 12 noon, A.l.t., May 14, 1991, through the remainder of the fishing year.

Section 675.21(c)(2)(iv) now provides that if the Director determines that U.S. fishing vessels using trawl gear will catch the secondary PSC allowance or seasonal apportionment of the PSC allowance of Pacific halibut in the BSAI while participating in the "DAP other fishery," the Secretary will publish a notice in the Federal Register closing the Bering Sea and Aleutian Islands Area to directed fishing for: (A) Pollock by trawl vessels using other than pelagic trawl gear for the remainder of the fishing season, and (B) Pacific cod by vessels using trawl gear for the remainder of the season. The cumulative amount of primary plus secondary apportionments of the secondary PSC allowance for Pacific halibut in the "DAP other fishery" has been reached. Therefore, under revised § 675.21, the Secretary is prohibiting directed fishing for: (A) Pollock by trawl vessels using other than pelagic trawl gear, and (B) Pacific cod by vessels using any trawl gear in the entire BSAI as of 12 noon, A.l.t., May 14, 1991. Zones 1 and 2H will remain closed for the rest of the fishing year, and the BSAI outside of Zones 1 and 2H will remain closed through 24 midnight, A.l.t., June 30, 1991, at which time the third quarter seasonal apportionment of the secondary Pacific halibut allowance becomes available.

In accordance with § 675.20(h), after these closures, the amount of Pacific cod retained by vessels using any trawl gear at any particular time during a trip in the BSAI must comprise less than 20 percent of the amount of other fish species retained at the same time on the vessel during the same trip. Additionally, the amount of pollock retained by vessels using trawls other than pelagic trawls at

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any particular time during a trip in the BSAI must comprise less than 20 percent of the amount of other fish species retained at the same time on the vessel during the same trip.

Classification

This action is taken under § 675.21 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 14, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-11811 Filed 5-14-91; 4:24 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 97
Monday, May 20, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 274

[Amdt. No. 333]

Food Stamp Program; Benefit Delivery Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes changes to Food Stamp Program regulations based upon amendments to the Food Stamp Act of 1977 contained in the Mickey Leland Memorial Domestic Hunger Relief Act (Pub. L. 101-624, title XVII, 104 Stat. 3763), regarding the issuance of benefits. These provisions relate to the staggered issuance of benefits on Indian reservations, aggregate (combined) allotments of benefits to households applying after the 15th of the month, and mail issuance in rural areas where households experience transportation difficulties in obtaining program benefits. Congress intended these changes to improve benefit delivery to recipients. In addition to the regulatory changes regarding benefit issuance required by Public Law 101-624, this rule proposes minor, and technical changes in current regulatory issuance provisions deemed appropriate by the Department to improve benefit issuance.

DATES: Comments must be received by June 19, 1991, to be assured of consideration.

ADDRESSES: Marilyn P. Carpenter, Chief, State Administration Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 904, Alexandria, Virginia 22302. All written comments received will be available for public inspection during regular business hours (8:30 am-5 pm) Monday through Friday.

FOR FURTHER INFORMATION, CONTACT: Marilyn P. Carpenter at the above address, or by telephone at (703) 756-3383.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291/Secretary's Memorandum 1512-1

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512-1. Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has classified this rule as nonmajor. The rule's effect on the economy will be less than $100 million, and it will have no substantial effect on costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant impact on a substantial number of small entities. The requirements will affect State and local agencies which administer the Food Stamp Program as well as food stamp applicants and recipients.

Paperwork Reduction Act

The provisions of this proposed rule do not contain recordkeeping or reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

The Mickey Leland Memorial Domestic Hunger Relief Act (Title XVII of Pub. L. 101-624) amended three provisions of the Food Stamp Act (the Act) relating to the timing and method of benefit delivery (issuance). These provisions relate to staggered issuance of benefits on Indian reservations, aggregate (combined) allotments to households applying after the 15th of the month, and mail issuance in rural areas where households experience transportation difficulties in obtaining benefits. In addition, unrelated to the regulatory changes required by Public Law 101-624, this proposed rule modifies three regulatory provisions requiring minor changes in order to clarify the meaning of the provisions. These changes have already been implemented on a limited basis through the approval of State agency requests for waivers from the provisions as currently stated.

The 1990 Amendments (Public Law 101-624)

1. Section 1728 of Public Law 101-624 amended section 7(h) of the Act, 7 U.S.C. 2016(h) to mandate the use of staggered issuance throughout the entire month on Indian reservations.

Currently, the only Program requirement concerning staggered issuance is 7 CFR 274.2(c)(1) which directs that project areas which issue benefits by direct mail must stagger the mailings over at least 10 days. Prior to the enactment of section 1728, section 7(h) of the Act provided for staggered issuance as a State agency option. Section 1728 reflects the findings of a General Accounting Office (GAO) audit (Recipient and Expert Views on Food Assistance at Four Indian Reservations, GAO/RCED 90-152, dated June 28, 1990) in which auditors were told by recipients that every month certain retail food stores on or near reservations which were authorized to accept food stamps were increasing the prices of eligible food during the week containing the issuance day, each month. GAO recommended that issuance to households on reservations be staggered through the entire month. The Department proposes to amend 7 CFR 274.2(c)(1) to reflect the amendment of section 7(h) of the Act made by section 1728 of Public Law 101-624.

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2. Section 1732 of Public Law 101–624 amended section 8(c)(3) of the Act, 7 U.S.C. 2017(c)(3), to change the Act's requirements concerning aggregate benefits (combined benefits for the month of application and the first full month of benefit receipt) to eligible households applying after the 15th of the month. Before the amendment, section 8(c) required that an initial allotment reflecting the aggregate of the application month's benefits and the next following month's benefits was required if the application was made after the 15th day of the month. Section 1732 makes the combined allotment a State agency option for eligible households applying under normal processing standards. Combined allotments, however, remain mandatory for eligible households that meet the requirements for expedited service. This rule proposes a change to 7 CFR 274.2(b)(2) to reflect those changes in the Act.

3. Section 1738 of Public Law 101–624 amended section 11(e) of the Act, 7 U.S.C. 2020(e), to require State agencies to use mail issuance in any rural areas where the State agency determines that recipients face substantial difficulties in obtaining transportation. Amended section 11(e) provides an exception to mandatory mail issuance for households which experience excessive mail issuance losses. In addition, mail issuance is not required in those localities where the mail loss rates exceed standards set by the Secretary. A State agency assessment of the State's need for mail issuance in rural areas is to be made a part of the State plan of operation.

This amendment was prompted by concern that some eligible households in rural areas have trouble getting to issuance sites because they lack cars or sufficient funds to hire someone to drive them. (House Report 101–569, part 1, pages 433–434.)

Any State which is not currently using mail issuance throughout the State must engage in an assessment of transportation barriers rural benefit recipients experience in getting to issuance offices and report both the assessment process and the results of that process as an attachment to its State plan of operation. Section 272.2 of the regulations would be revised to add this requirement to the requirements for the State plan of operation. Section 274.2, Providing benefits to participants, would be revised to add a new subsection describing the required content of this new attachment to the State plan of operation.

In enacting section 1738 of Public Law 101–624, Congress was clearly concerned with transportation problems that make it difficult for food stamp recipients to obtain their benefits at issuance offices. (House Report No. 569, 101st Cong., 2nd Sess., pages 433–34.) These problems, rather than transportation problems in general, should be the focus of the State agency's assessment of the need for mail issuance. For example, mail issuance would not be required where electronic benefits transfer (EBT) removed the need for transportation to an issuance office. As an alternative to mail issuance, States finding substantial transportation difficulties could reduce these difficulties by a variety of methods. For example, a State agency could help people with transportation problems obtain authorized representatives as provided for in 7 CFR 274.5.

To implement the exception to mail issuance for individual households that experience excessive mail losses, FNS proposes to use the current standard at 7 CFR 274.6(c)(3)(iii), which provides that households experiencing two losses or thefts of benefits from the mail in a six month period shall be placed on an alternative delivery system.

To implement the exception to mail issuance in amended section 11(e)(25) of the Act for localities with excessive mail losses, the Department proposes to utilize the standards set by the mail loss tolerance levels provided at 7 CFR 276.2(b)(4). State agencies would not have to use mail issuance where mail losses exceed, or could reasonably be expected to exceed, the mail loss tolerance levels for the reporting unit within which the particular rural area would fall. Section 276.2(b)(4) provides three separate mail issuance tolerance levels. The applicable mail loss tolerance level depends on the size of the reporting unit: a county or project area, an intermediate level reporting unit, or a State-wide reporting unit. In determining whether mail losses in a given rural area would be excessive, State agencies without mail issuance in that area may use the tolerance level associated with a hypothetical reporting unit. Any hypothetical reporting unit would have to be consistent with existing rules and any existing State agency reporting units. For example, a State agency currently reporting issuance losses by project areas could not exempt a rural area without mail issuance from the mail issuance requirements of amended section 11(e)(25) on the basis of its losses exceeding a State-wide tolerance. Similarly, a State agency that does not employ mail issuance, could not exempt some areas because they would exceed the State-wide tolerance level and other areas because they would exceed the project area tolerance level. States which choose not to introduce mail issuance based upon findings that losses would exceed tolerance levels would be required to provide evidence to support such findings.

Changes to Current Regulations

4. On February 15, 1989, at 54 FR 6990, the Department issued a final rule constituting the first comprehensive review and modification of food stamp issuance regulations since their adoption pursuant to the Food Stamp Act of 1977, Public Law 95–113. A primary goal of the 1989 final rule was to "make specific provisions easier to locate, Agency policies and statutory provisions more clearly stated, issuance liabilities more fully outlined, and the regulatory language, in general, easier to understand. By and Large, the Department deems its 1989 efforts to have been successful. This proposed rule makes changes to three regulations published on February 15, 1989 (54 FR 6990), in an effort to clarify interpretive problems brought to the Department's attention in the past two years.

In 7 CFR 274.2(c)(1) the Department proposes that a clarification of the terms "staggered issuance" and "40-day limit" be made so that the terms apply to all issuance systems and procedures, and not simply to mail issuance. Prior to the 1989 revision of part 274, the terms were almost exclusively associated with mail issuance, since, for reasons of security, that system had a required minimum staggering period of 10 days. However, State agencies have been permitted to stagger in any system, even though that was not specifically stated.

Whenever staggered issuance is utilized, the State agency must ensure that the interval between any two issuances after the first full month of participation is not longer than 40 days as required by section 7(h) of the Act, 7 U.S.C. 2016(h)(2). This would apply to instances in which a State agency is changing issuance systems, is starting a staggered system, is quitting a staggered system, or is fluctuating the issuance schedule within a staggered system. The only exception to the 40-day limit occurs for some households who apply after the 15th of the month and receive their first and second month's benefit as a combined allotment. Since they may receive their benefits for the first and second months of participation in the first month, more than 40 days may elapse before they are issued benefits for the third month on a normal issuance schedule.

5. The regulations at 7 CFR 274.3(e) currently provide validity periods for issuances made in authorization document, direct access, and direct delivery issuance systems. A validity period is the time-frame during which a household may obtain benefits by transacting an authorization document or receiving the benefits at an issuance point. The validity period begins the day a household is issued an authorization document, or is authorized to obtain its issuance at an issuance point. If such a day is after the 20th day of the issuance month, the State agency must extend the validity period at least 20 days into the next month and may extend the validity period until the end of the next month. FNS intends to change the issuance date that triggers an extended validity period for normal issuances so that it will correspond with the date triggering combined issuance. Validity periods would be extended for authorizations made after the 15th of the month (instead of for those after the 20th of the month.) Currently, the validity period for issuances made between the 15th and the 20th of any month vary; the validity period for normal issuances expires at the end of the month, while the validity period for combined issuances must extend until the end of the next month, since that is the period of intended use for combined issuances. This change, which applies to authorization document, direct access, and direct delivery issuance systems, would provide the same validity periods for all issuances made after the 15th of the month.

6. In 7 CFR 274.11(a) a change is proposed to clarify those issuance documents, including signature cards used by direct delivery agents, required to be retained for three years to provide an audit trail for accountability. The current regulation lists specific forms required to be retained. As issuance systems have changed, however, and newer ones have been implemented, the list has not been revised. FNS proposes to replace the listing of specific forms with a general retention requirement covering all issuance system documents which provide an audit record for accountability. An additional change makes the wording on the period of retention conform to 7 CFR 272.1(f).

Effective and Implementation Dates

Sec. 1781 of Public Law 101–624 establishes the effective and implementation date of sections 1728, 1732, and 1738 of Public Law 101–624 as the first day of the month beginning 120 days after publication of the final rule. Section 1761 also stipulates that final rules must be published no later than October 1, 1991. The Department has elected to use the same dates for the discretionary amendments discussed in the second half of the preamble. In the case of the rural mail issuance provision, an approvable amendment to the State Plan of Operation must be submitted to the Food and Nutrition Service (FNS) by the implementation date. The timetable for the actual implementation of any new mail issuance system would be set by the State agency, with FNS approval, to assure an orderly transition. In determining what factors constitute an orderly transition, FNS will consider such things as the need for contractual assistance and the State agency's need for special equipment.

List of Subjects

7 CFR Part 272

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and record-keeping requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs-social programs, Reporting and record-keeping requirements.

For the reasons set out in the Preamble, parts 272 and 274 of chapter II of title 7, Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation for parts 272 and 274 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.2, a new sentence is added to the end of paragraph (a)(2), and a new paragraph (d)(1)(xi) is added, to read as follows:

§ 272.2 Plan of operation.

(a) *General purpose and content.* * * *

(2) *Content.* * * * The Plan's attachments shall describe the State agency's review of direct mail issuance requirements in rural areas.

* * * * *

(d) *Planning Documents.* * * *

(1) * * *

(xi) The State agency's review of mail issuance requirements in rural areas. State agencies using mail issuance throughout the State with exceptions only for individual households, shall simply state this fact. States which use methods other than direct mail issuance in any part of the State shall submit an attachment to their State plan of operation which includes the State agency's procedure for reviewing mail issuance requirements in rural areas, and the results of applying that procedure for designating parts of, or entire, project areas that are subject to mail issuance because they are rural, and are areas in which low-income households face substantial difficulties in obtaining transportation. The requirements for this attachment to the State plan of operation are described in § 274.2(f) of this chapter.

* * * * *

PART 274—ISSUANCE AND USE OF COUPONS

3. In § 274.2, a sentence is added at the end of paragraph (a), paragraphs (b)(2), (c)(1), and (c)(2) are revised, and a new paragraph (f) is added, to read as follows:

§ 274.2 Providing benefits to participants.

(a) *General* * * * Requirements to assure timely and accurate issuance of benefits to eligible households in rural areas are described in § 274.2(f).

(b) * * *

(2) *Households certified under the normal processing timeframes.* Households which apply for their initial month's benefits (as described in § 273.10(a) of this chapter) after the 15th of the month and which complete the application with all required verification within 30 days of the date of the application, and which are determined eligible to receive benefits for the month of application and the succeeding month, may receive a combined allotment, at the State agency's option. The combined allotment shall consist of the prorated allotment for the month of application and a full allotment for the succeeding month. The State agency may provide both months' benefits as a single issuance or as two separate issuances provided at the same time, with the same validity period, and within the time-frame specified in § 273.2(g) of this chapter.

* * * * *

(c) *Ongoing households* * * *

(1) State agencies shall stagger the issuance of benefits to all eligible households on Indian reservations throughout an entire month, regardless of the issuance system being used. In areas other than Indian reservations, State agencies that use direct mail issuance shall stagger issuance over at least 10 days of the issuance month, and may stagger issuance over the entire issuance month. In areas other than an Indian reservation, the State agency using a method other than mail issuance

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may stagger issuance throughout the month, or for a shorter period. When staggering benefit delivery, however, State agencies shall not allow more than 40 days to elapse between the issuance of any two allotments provided to a household participating longer than two consecutive, complete months. Regardless of the issuance schedule used, the State agency shall adhere to the reporting requirements specified in § 274.4.

(2) When a participating household is transferred from one issuance system or procedure to another issuance system or procedure, the State agency shall not permit more than 40 days to elapse between the last issuance under the previous system or procedure, and the first issuance under the new system or procedure. Examples of transfer include, but are not limited to, a household being moved in or out of a staggered issuance procedure, a household being on a fluctuating schedule within a staggered system, or a household being moved from a direct mail issuance system to an authorization document system. If the State agency determines that more than 40 days may elapse between issuances, the State agency shall divide the new issuance into two parts, with one part being issued within the 40-day period, and the second part, or supplemental issuance, being issued on the household's established issuance date in the new system or procedure. The supplemental issuance cannot provide the household more benefits than the household is entitled to receive.

* * * * *

(f) *Issuance in rural areas.* State agencies shall use mail issuance in any rural areas where the State agency determines that recipients face substantial difficulties in obtaining transportation in order to obtain their food stamp benefits by methods other than direct mail issuance. Exceptions shall be made for households which have exceeded the allowable number (2) of reported losses in a six-month period and replacements set forth in § 274.6 (b) and (g), and mail issuance is not required in those localities where the direct mail loss rates exceed, or are likely to exceed, standards set by the Secretary at § 276.2(b) of this chapter. The State agency shall:

(1) Submit an attachment to the State Plan of Operation (§ 272.2(d) of this chapter) which describes the State's exemption from this requirement, because the State agency uses mail issuance throughout the State, or

(2) Submit an attachment to their State Plans of Operation (§ 272.2(d) of this chapter) which describes:

(i) The areas designated by the State agency as rural;

(ii) The rural areas where direct mail issuance will not be used because:

(A) Recipients do not face substantial difficulties in obtaining transportation to obtain their benefits, and/or;

(B) Direct mail issuance losses exceed the loss tolerance levels, or there is evidence which indicates that direct mail, if used, would produce losses which would exceed the loss tolerance levels established under § 276.2(b)(4) of this chapter.

(iii) The State agency's criteria for designating an area as rural. Such criteria may include, but are not limited to: The use of the Bureau of the Census definition; the distances that recipients may need to travel to reach an issuance office; or, other criteria described by the State agency.

(iv) The State agency's criteria for determining that recipients in an area designated as rural do not face substantial difficulties in obtaining transportation to obtain their benefits.

(v) The State agency's schedule for introducing mail issuance into any rural areas requiring mail issuance because of substantial transportation problems.

§ 274.3 [Amended]

4. In § 274.3, paragraph (e)(1) is amended by removing the number "20th" in the fourth and fifth sentences, and by adding the number "15th" in its place.

5. In § 274.11, the section heading, the introductory text of paragraph (a), and paragraph (a)(1) are revised to read as follows:

§ 274.11 Issuance and inventory record retention, and forms security.

(a) *Availability of records.* The State agency shall maintain issuance and inventory reconciliation and other accountability records for a period of three years as specified in § 272.1(f) of this chapter. This period may be extended at the written request of FNS.

(1) Issuance and inventory reconciliation and accountability records shall include all Agency, State, and local forms involved in the State agency's receipt, storage, handling, issuance, and destruction of benefits completed by contract agents or any other individuals or entities involved in issuance or inventory, as well as those completed by the State agency.

* * * * *

Dated: May 13, 1991.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

[FR Doc. 91-11789 Filed 5-17-91; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV-91-282]

Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, Except Malheur County; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 947 for the 1991–92 fiscal period. Authorization of this budget would permit the Oregon-California Potato Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

DATES: Comments must be received by June 21, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC, 20090–6456, telephone 202–447–2020.

SUPPLEMENTARY INFORMATION:

This rule is proposed under Marketing Agreement No. 113 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Oregon-California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of Oregon—California potatoes under this marketing order, and approximately 470 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Oregon-California potato producers and handlers may be classified as small entities.

The Oregon-California Potato Committee (committee) authorized its Executive Subcommittee to forward the 1991–92 budget recommendation on its behalf. In 1989, at the full committee's annual meeting, the Executive Subcommittee was unanimously given the authority to act on behalf of the committee to submit the proposed budget and assessment rate to the USDA. Final action on this proposal will be taken only after a recommendation by the full committee.

The committee, the agency responsible for local administration of the order, consists of producers and handlers of Oregon-California potatoes, as does the Executive Subcommittee. These producers and handlers are familiar with the committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget.

The recommended assessment was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses. A recommended budget and rate of assessment is usually acted upon before the season starts, and expenses are incurred on a continuous basis.

The recommended budget for the 1991–92 fiscal year of $43,250 is $3,300 more than the previous year due to increases for equipment, manager's travel, office supplies, and postage.

The 1991–92 recommended assessment rate of $0.004 per hundredweight of potatoes is the same as last year. This rate, when applied to anticipated fresh market shipments of 8,491,750 hundredweight, would yield $33,967 in assessment revenue. This, along with $9,283 from interest income and the committee's authorized reserve, would be adequate for budgeted expenses. The projected reserve for the end of the 1991–92 fiscal period is $20,000, which would be carried over into the next fiscal year. This amount is within the maximum permitted by the order of one fiscal year's expenses.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order. Therefore the Administrator of the AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

Interested persons may file comments with respect to this proposal until June 21, 1991. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 947 be amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 947.242 is added to read as follows:

§ 947.242 Expenses and assessment rate.

Expenses of $43,250 by the State of Oregon—California Potato Committee are authorized, and an assessment rate of $0.004 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1992. Unexpended funds may be carried over as a reserve.

Dated: May 15, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-11898 Filed 5-17-91; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 948, 953, and 956

[Docket No. FV-91-281]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Orders 948, 953, and 956 for the 1991–92 fiscal period. Authorization of these budgets would permit the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3), the Southeastern Potato Committee, and the Idaho-Eastern Oregon Onion Committee (committees) to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

DATES: Comments must be received by May 30, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456,room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 447–2020.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 97 and Order No. 948 [7 CFR part 948], both as amended, regulating the handling of Irish potatoes grown in Colorado, Marketing Agreement No. 104 and Order No. 953 [7 CFR part 953], both as amended, regulating the handling of Irish potatoes grown in Southeastern States (Virginia and North Carolina), and Marketing Agreement No. 130 and Order No. 956 [7 CFR part 956], both as

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amended, regulating the handling of onions grown in designated counties of Idaho and Malheur County, Oregon. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 16 handlers of Colorado Area III potatoes under Marketing Order No. 948, and approximately 95 potato producers. There are approximately 60 handlers of Southeastern potatoes under Marketing Order No. 953, and approximately 150 potato producers. Also, there are approximately 35 handlers of Idaho-Eastern Oregon onions under Marketing Order No. 958, and approximately 450 onion producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the producers and handlers may be classified as small entities.

The budgets of expenses for the 1991–92 fiscal period were prepared by the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3), the Southeastern Potato Committee, and the Idaho-Eastern Oregon Onion Committee, the agencies responsible for local administration of the orders, and submitted to the Department of Agriculture for approval. The members of these committees are handlers and producers of Colorado potatoes, Southeastern potatoes, and Idaho-Oregon onions. They are familiar with the committees' needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rates recommended by the committees were derived by dividing anticipated expenses by expected shipments of potatoes and onions. Because these rates will be applied to actual shipments, they must be established at rates that will provide sufficient income to pay the committees' expenses.

The Colorado Potato Administrative committee, Northern Colorado Office (Area 3) met on April 11, 1991, and unanimously recommended a 1991–92 budget of $4,335, about the same as last year's budget. In Colorado, both a State and Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. Administrative expenses that are shared are divided so that 85 percent is paid under the State and 15 percent under the Federal order. All promotion and advertising expenses are financed under the State order.

The 1991–92 recommended assessment of $0.0025 per hundredweight of potatoes is a decrease from last year's $0.005 rate. This rate, when applied to anticipated fresh market shipments of 626,500 hundredweight, would yield $2,066 in assessment revenue. Additional money to be received from the Federal-State Inspection Service for rent ($360) and income from interest ($450), plus $1,459 from the reserves, would result in total revenues of $4,335 which would be adequate to cover budgeted expenses. Funds at the beginning of the 1991–92 fiscal period, estimated at $7,276, would be within the maximum permitted by the order of two fiscal periods' expenses.

The Southeastern Potato Committee met on April 16, 1991, and unanimously recommended a 1991–92 budget of $11,000, the same as last year. Major expense items include committee staff salaries and travel expenses. The committee also unanimously recommended an assessment rate of $0.0025 per hundredweight, a decrease from last season's rate of $0.0075. Production for the 1991–92 season could not be estimated at this time. However, the $21,000 reserve would be adequate to cover the expenses incurred. Given the assessment rate decrease, funds remaining at the end of the 1991–92 fiscal period should be within the maximum permitted by the order of one fiscal period's expenses.

The Idaho-Eastern Onion Committee met on April 9, 1991, and unanimously recommended a 1991–92 budget of $891,565, $58,351 more than the previous year. Increases in office salaries, promotion and advertising, car rental, and capital improvements would be partially offset by decreases in contingency and research expenses. The committee also unanimously recommended an assessment rate of $0.12 per hundredweight, an increase from last season's rate of $0.11. This rate, when applied to anticipated fresh market shipments of 7,200,000 hundredweight, would yield $864,000. This, along with $25,000 in interest income and $2,565 from the committee's authorized reserve, would be adequate to cover budgeted expenses. Funds at the beginning of the 1991–92 fiscal period, estimated at $331,168, would be within the maximum permitted by the order of one fiscal period's expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1991–92 fiscal period for the Southeastern Potato Committee begins on June 1, and the 1991–92 fiscal periods for the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3) and the Idaho-Eastern Oregon Onion Committee begin on July 1, and each marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes or onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committees at public meetings. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approvals for these programs need to be expedited.

List of Subjects in 7 CFR Parts 948, 953 and 958

Marketing agreements, Onions, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR parts 948, 953, and 958 be amended as follows:

1. The authority citation for 7 CFR parts 948, 953, and 958 continues to read as follows:

Authority: Secs. 1.19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 948—IRISH POTATOES GROWN IN COLORADO

2. A new § 948.208 is added to read as follows:

§ 948.208 Expenses and assessment rate.

Expenses of $4,335 by the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3) are authorized, and an assessment rate of $0.0025 per hundredweight of potatoes is established for the fiscal period ending June 30, 1992. Unexpended funds may be carried over as a reserve.

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

3. A new § 953.248 is added to read as follows:

§ 953.248 Expenses and assessment rate.

Expenses of $11,000 by the Southeastern Potato Committee are authorized, and an assessment rate of $0.0025 per hundredweight of potatoes is established for the fiscal period ending May 31, 1992. Unexpended funds may be carried over as a reserve.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO; AND MALHEUR COUNTY, OREGON

4. A new § 958.235 is added to read as follows:

§ 958.235 Expenses and assessment rate.

Expenses of $891,565 are authorized, and an assessment rate of $0.12 per hundredweight of onions is established for the fiscal period ending June 30, 1992. Unexpended funds may be carried over as a reserve.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–11866 Filed 5–17–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 989

[FV–91–257PR]

Raisins Produced From Grapes Grown in California; Revising the Desirable Carryout Formula

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a change to the administrative rules and regulations of the California raisin marketing order. This action would change the desirable carryout figure from three months of shipments to two and one-half months of shipments. The Raisin Administrative Committee (Committee) has determined that the use of the current desirable carryout formula results in excessive supplies of marketable tonnage early in the crop year. The proposed action is intended to stabilize marketing conditions for California raisins. This change was recommended by the Committee, which is responsible for local administration of the Federal marketing order regulating the handling of raisins produced from grapes grown in California.

DATES: Comments must be received by June 19, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3920.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

This proposed rule invites comments on a change to the administrative rules and regulations of the raisin marketing order. This action was recommended by the Committee at its March 5, 1991, meeting.

The change would revise the desirable carryout level which appears in § 989.154 relating to the desirable carryout formula. The desirable carryout level is the amount of tonnage from the prior crop year that is considered necessary for the industry to have available during the first part of the succeeding crop year to meet market needs, before the crop is harvested. Currently, § 989.154 provides that the desirable carryout level shall be equal to the shipments of free tonnage to all outlets for each varietal type during the period from August through October of the prior crop year. The desirable carryout figure is used in marketing policy calculations to determine trade demand. The trade demand is 90 percent of prior year's shipments, adjusted by the carryin and desirable carryout. The trade demand is then used to help determine the volume regulation

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percentages for each crop year, if necessary.

The desirable carryout formula was established on June 9, 1989, (54 FR 24689). At that time, the Committee determined that the desirable carryout levels for certain varietal types of raisins specified in the order were too low and that higher levels were more appropriate because they would allow handlers to have adequate inventory to meet shipment needs during the early months of the crop year. The formula was used for the first time in marketing policy calculations for the 1989-90 crop year. The effect of changing this formula increased the desirable carryout from 60,000 tons to 103,090 tons for Natural (sun-dried) Seedless raisins (the major varietal type of raisin).

After using the three month desirable carryout figure for two crop seasons, the Committee has determined that the use of the formula results in excessive supplies of marketable tonnage. The majority of the Committee members believe that this causes unstable market conditions during the early part of the crop year. For the past two seasons, the desirable carryout was significantly increased causing excessive supplies and decreases in prices.

In order to correct this problem, the Committee has recommended that the formula be revised from three months of shipments to two and one-half months of shipments from the prior crop year. For example, for each varietal type the Committee would use the total shipments from the prior year for the months of August and September, and one-half of the total shipments in October, for computing free and reserve percentages for the applicable crop year. The change in the desirable carryout figure would reduce the trade demand and the free tonnage percentage, thus making less free tonnage available to handlers for immediate use. However, handlers would still be provided an opportunity to increase their inventory, if necessary, by purchasing raisins from the reserve pool under the 10 plus 10 offers in November and other releases of reserve pool raisins available under the marketing order.

In addition, the Department has received several letters from interested persons opposing the Committee's recommendation. Mainly, these persons opposed the recommendation because they believe that: (1) Demand for California raisins will not be increased by a reduction in the industry's free tonnage; (2) a tightening of supply and increased prices will reduce supply of California raisins at a time when the industry is investing funds (Market Promotion Program funds and promotion program to Japan) to increase shipments; and (3) purchases from this year's 10 plus 10 offer, a sale of reserve pool raisins to handler for free use, indicate that handlers were not overburdened with free tonnage (over 20,000 tons). Also, producers may be economically impacted by the decrease in free tonnage by the reduction in the desirable carryout figure. In view of these concerns, the Department is interested in receiving comments specifically addressing these issues. All comments would be considered before issuing a final rule, if warranted.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 989 be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.154 is revised to read as follows:

§ 989.154 Desirable carryout levels.

The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to the total shipments of free tonnage of the prior crop year during the months of August and September, and one-half of the total shipments for the month of October, for each varietal type, converted to a natural condition basis: *Provided*, That should the prior year's shipments be limited because of crop conditions, the Committee may select the total shipments during the months of August and September, and one-half of the total shipments for the month of October, during one of the three years preceding the prior crop year.

Dated: May 15, 1991.

Robert O. Keaney,

Deputy Director Fruit and Vegetable Division.

[FR Doc. 91–11899 Filed 5–17–91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-82-AD]

Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes Equipped With Air Cruisers Slides

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require repetitive inspections of the forward door escape slides' velcro girt retaining straps that were installed in accordance with an existing AD. This proposal is prompted by reports of incorrectly routed and unserviceable straps. This condition, if not corrected, could result in unusable slides or jammed doors during an emergency evacuation.

DATES: Comments must be received no later than July 9, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-82-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Terrell W. Rees, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2785. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-82-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 21, 1988, the FAA issued Airworthiness Directive (AD) 88-07-07, Amendment 39-5884 (53 FR 9864, March 28, 1988), to require modification of Air Cruisers forward door escape slide installations on Boeing Model 737 series airplanes, in accordance with Boeing Alert Service Bulletin 737-25A1221, dated December 17, 1987. This modification consisted of, in part, the addition of velcro girt retaining straps to the slide girt material, with corresponding mating velcro strips on the slide compartment, and the installation of an instructional placard on the slide compartment describing routing of the straps. The intent of this modification was to take up excess girt material to prevent it from becoming trapped under the armed girt bar. Trapped girt material had been the cause of unusably deployed slides and jammed doors, which had prompted the issuance of the AD.

Subsequent experience has shown, however, that this modification has not been successfully implemented in service. Operators have not consistently observed the placarded explicit instructions for routing of the straps as mandated by AD 88-07-07. Straps have been found in service to be misrouted and incorrectly utilized by flight attendants as auxiliary retention devices for the girt bars in the stowed position. This misuse requires the flight attendant to peel and unpeel the velcro straps twice for each flight, thus decreasing the life of the velcro more rapidly than expected. Consequently, many velcro straps have been found in service simply hanging loosely, both unmaintained and useless for the intended function. Boeing Service Letter 737-SL-25-44, released March 22, 1989, and Telex M-7272-90-3242, issued May 21, 1990, described the function and routing of the straps.

This condition, if not corrected, results in the same unsafe condition that generated the original AD. If excess girt material is trapped under the girt bar while in the armed mode, or if the straps are misrouted, the slide may not deploy in a usable manner or the door may jam partly open during an attempted emergency evacuation.

Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is proposed which would require repetitive inspections of these velcro straps, prior to each flight, to assure that the straps are in an airworthy condition and are routed in accordance with the existing placarded instructions. The proposal contains a provision for optional terminating action for the repetitive inspections as the development and installation of a terminating modification that has been approved by the FAA.

There are approximately 816 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 439 airplanes of U.S. registry would be affected by this AD, that it would take approximately 0.5 manhour per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,073 per inspection cycle.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91-NM-82-AD.

Applicability: Model 737-300, 737-400, and 737-500 series airplanes, equipped with Air Cruisers forward door escape slides, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent a jammed door or an escape slide deployed in an unusable position during an emergency evacuation, either of which may be caused by inadequately maintained or misrouted girt retaining straps, accomplish the following:

(a) Within 30 days after the effective date of this AD, establish operating procedures, approved by the FAA Principal Maintenance Inspector (PMI), for the forward doors to include the requirements specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD and thereafter comply with those procedures. The procedures required by this paragraph must be accomplished by qualified and trained mechanics or flight crew, and the training program must be approved by the FAA PMI. Methods for documentation of compliance with the following procedures must be approved by the FAA PMI.

(1) Prior to each flight, inspect the condition and the routing of the girt retaining straps at the forward doors.

(2) Replace, prior to further flight, worn or aged velcro whose grip strength will no longer hold the girt retaining straps in position.

(3) Reroute, prior to further flight, girt retaining straps that are found not to be routed in accordance with the placarded instructions on the inboard face of the slide compartment.

(b) The actions required by paragraph (a) of this AD may be terminated upon installation of a modification that has been approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time, which

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provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on May 8, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11834 Filed 5-17-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 90-AWP-13]

Proposed Amendment to Time of Designation of Restricted Area R-2301E, Ajo East, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the time of designation of Restricted Area R-2301E Ajo East, AZ, from "Intermittent" to "0630-2230 local time, Monday to Friday; other times by NOTAM." This would more accurately reflect the actual usage times for this restricted area. This action also proposes to correct Part 71 by removing R-2301 from the Continental Control Area and adding R-2301E and R-2301W.

DATES: Comments must be received on or before June 28, 1991.

ADDRESSES: Send comments on the proposal in triplicate to:

Manager, Air Traffic Division, AWP-500, Docket No. 90-AWP-13, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Linda Ullom, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7653.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AWP-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposals

The FAA is considering amendments to parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) to amend the time of designation of Restricted Area R-2301E Ajo East, AZ. The existing time is "Intermittent." FAA Order 7400.2C, Procedures for Handling Airspace Matters, states that "Intermittent" is not applicable to restricted areas without a "by NOTAM" provision. In viewing the actual utilization data, it was determined that the more appropriate time of designation should be "0630-2230 local time, Monday to Friday; other times by NOTAM." This is verified by annual utilization reports dating back to 1986. This designation would allow for more efficient real-time coordination of the airspace between Albuquerque Air Route Traffic Control Center and the scheduling agency at Luke Air Force Base. It would also display more accurate usage information to the flying public, thus creating a more operationally advantageous environment for nonparticipants wishing to transit the restricted area. The current time of designation for Restricted Area R-2301W is not affected by this action. Additionally, when R-2301 was subdivided into R-2301E and R-2301W, part 71 was not updated. This action would correct part 71 by removing R-2301 from the Continental Control Area and adding R-2301E and R-2301W. Sections 71.151 and 73.23 of parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Restricted areas, Continental control area.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R-2301 Ajo, AZ [Removed]

R-2301E Ajo East, AZ [New]

R-2301W Ajo West, AZ [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.23 [Amended]

4. Section 73.23 is amended as follows:

R-2301E Ajo East, AZ [Amended]

By removing the existing time of designation and substituting the following:

Time of designation: 0630-2230 local time, Monday to Friday; other times by NOTAM.

Issued in Washington, DC, on May 7, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-11835 Filed 5-17-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

Records and Reports of Listed Chemicals and Certain Machines

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA proposes to amend the regulations implementing the Chemical Diversion and Trafficking Act of 1988 (CDTA) by including the requirements to maintain records and file reports on the importation or exportation of any tableting machine or encapsulating machine. This requirement is specified in the CDTA and was inadvertently omitted from the Notice of Proposed Rulemaking to implement the CDTA. The inadvertent omission necessitates that this requirement be separately proposed in the Federal Register.

DATES: Written comments and objections must be received on or before July 19, 1991.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307-7297.

SUPPLEMENTARY INFORMATION: The Chemical Diversion and Trafficking Act of 1988 (Pub. L. 100-690) requires that any person who distributes, imports or exports certain machines document these transactions (to include a description of the tableting machine or encapsulating machine and a description of the method of transfer), maintain retrievable records for a specified period of time, report suspicious or unusual orders and identify each party to the transaction. The import and export requirements for any tableting machine or encapsulating machine were inadvertently omitted from the Notice of Proposed Rulemaking to implement the CDTA, published on February 8, 1989. The inadvertent omission necessitates that these requirements be separately proposed in the Federal Register. This proposed rule would incorporate this requirement into the regulations that implement the CDTA.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this proposed rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This proposed rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981.

Pursuant to sections 3(c)(3) and 3(e)(2)(c) of Executive Order 12291, this proposed rule has been submitted to the Office of Management and Budget for review, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C., et seq.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Drug Enforcement Administration, Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, it is proposed that 21 CFR part 1310 be amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

§ 1310.05 [Amended]

2. Section 1310.05(a)(4) is proposed to be amended by removing the word "domestic" from the paragraph.

3. Section 1310.06 is proposed to be amended by revising paragraph (c) and adding new paragraphs (e) and (f) as follows:

§ 1310.06 Contents of records and reports.

* * * * *

(c) Each report required by § 1310.05 shall include the information as specified by § 1310.06(a) and, where obtainable, the telephone number of the other party. A report submitted pursuant to § 1310.05 (a)(1) or (a)(3) must also include a description of the circumstances leading the regulated person to make the report, such as the reason that the method of payment was uncommon or the loss unusual. If the report is for a loss or disappearance under § 1310.05(a)(3), the circumstances of such loss must be provided (in-transit, theft from premises, etc.). A report on import/export transactions submitted pursuant to § 1310.05(a)(4) shall include the information specified by paragraphs (e) and (f) of this section.

* * * * *

(e) Each regulated person who imports a tableting machine, as defined in § 1310.01(i), or an encapsulating machine, as defined in § 1310.01(j) of this chapter, shall notify the Administration on or before the date of importation. In order to facilitate the import of any tableting machine or encapsulating machine and implement the purpose of the Act, regulated persons may wish to provide notification to the Administration as far in advance as possible.

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(1) The notification (not a DEA-486) must be received at the following address on or before the date of importation: Drug Enforcement Administration, P.O. Box 28346, Washington, DC 20038.

A copy of the notification may be transmitted directly to the Drug Enforcement Administration through electronic facsimile media.

(2) Any tableting machine or encapsulating machine as defined in § 1310.01 of this chapter may be imported if that machine is needed for medical, commercial, scientific, or other legitimate uses.

(3) The import notification must include the following information:

(i) The name, address, telephone number, telex number, and, where available, the facsimile number of the regulated person; the name, address, telephone number, telex number, and, where available, the facsimile number of the import broker or forwarding agent, if any;

(ii) The description of each machine (including make, model and serial number) and the number of machines being received;

(iii) The proposed import date, and the first U.S. Customs Port of Entry; and

(iv) The name, address, telephone number, telex number, and, where available, the facsimile number of the consignee in the foreign country of exportation.

(f) No regulated person shall export or cause to be exported from the United States a tableting machine, as defined in § 1310.01(i), or an encapsulating machine, as defined in § 1310.01(j) of this chapter, until such time as the Administration has been notified. Notification shall be made on or before the date of exportation. In order to facilitate the export of any tableting machine or encapsulating machine and implement the purpose of the Act, regulated persons may wish to provide notification to the Administration as far in advance as possible.

(1) The notification (not a DEA-486) must be received at the following address on or before the date of exportation: Drug Enforcement Administration, P.O. Box 28346, Washington, DC 20038.

A copy of the notification may be transmitted directly to the Drug Enforcement Administration through electronic facsimile media.

(2) Any tableting machine or encapsulating machine as defined in § 1310.01 of this chapter may be exported if that machine is needed for medical, commercial, scientific, or other legitimate uses.

(3) The export notification must include the following information:

(i) The name, address, telephone number, telex number, and, where available, the facsimile number of the regulated person; the name, address, telephone number, telex number, and, where available, the facsimile number of the export broker, if any;

(ii) The description of each machine (including make, model and serial number) and the number of machines being shipped;

(iii) The proposed export date, the U.S. Customs port of exportation, and the foreign port of entry; and

(iv) The name, address, telephone, telex, and where available, the facsimile number of the consignee in the country where the shipment is destined; the name(s) and address(es) of any intermediate consignee(s).

(4) Declared exports of machines which are refused, rejected, or otherwise deemed undeliverable may be returned to the regulated person. A brief written notification outlining the circumstances must be sent to the Drug Enforcement Administration, P.O. Box 28346, Washington, DC 20038, following the return within a reasonable time. This provision does not apply to shipments that have cleared foreign customs, been delivered, and accepted by the foreign consignee. Returns to third parties in the United States will be regarded as imports.

Dated: April 17, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-11866 Filed 5-17-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-43-91]

RIN 1545-AF72

Taxation of Fringe Benefits and Exclusions From Gross Income of Certain Fringe Benefits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments of two provisions of the fringe benefit regulations. These proposed amendments provide: (1) A new valuation rule for certain transportation provided by an employer to or from an employee's workplace due to unsafe conditions surrounding the employee's workplace or residence and (2) increase the dollar amount of the de minimis exclusion for public transit passes provided to employees for travel on public transit systems. The proposed regulations affect employees receiving these fringe benefits and provide guidance to employers and employees to help determine their federal tax liability for the benefits received.

DATES: Requests to appear at a public hearing scheduled for Monday, July 1, 1991, at 10 a.m. and outlines of oral comments must be received by June 17, 1991. Written comments must be received by June 24, 1991. See notice of hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE 42-91), room 5228, Washington, DC 20044. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Marianna Dyson at 202-377-9372 (not a toll-free number). Concerning the hearing, Carol Savage, Regulations Unit, at 202-377-9236 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 61 and 132 of the Internal Revenue Code of 1986 (Code)

Explanation of Provisions

1. Employer-Provided Transportation Due to Unsafe Conditions

Section 132(a)(3) of the Code provides that working condition fringes are excludable from gross income. Section 132(d) of the Code and § 1.132-5(a)(1) of the regulations provide that a "working condition fringe" is any property or service provided to an employee of an employer to the extent that, if the employee paid for the property or service, the amount paid would be allowable as a deduction under section 162 or 167.

The value of employer-provided transportation that is used for commuting purposes is generally not excludable from gross income as a working condition fringe benefit because commuting is a nondeductible personal expense under section 262 of the Code. The proposed amendment of the regulations under section 61 provides a new special valuation rule for employer-provided transportation furnished, solely because of unsafe conditions, to an employee who would otherwise walk or use public transportation. Unsafe conditions exist if a reasonable person would, under the facts and circumstances, consider it unsafe to walk to or from home, or to walk to or use public transportation at the time of day the employee must commute. The employer must establish a written policy (e.g., in the employer's personnel manual) under which the transportation is not provided to the employee for personal purposes other than commuting due to unsafe conditions. The employer's practice must correspond with the written policy.

If the requirements of the proposed regulation are satisfied, the amount includable in the employee's income is $1.50 per one-way commute (i.e., from home to work or from work to home). The special valuation rule applies on a trip-by-trip basis. Thus, if the requirements of the regulation are not met with respect to any particular trip (e.g., because the trip is for a personal purpose of the employee), the amount includable in the employee's income is determined by reference to the fair market value of the transportation for that trip.

This rule applies only to employees who do not receive compensation from the employer in excess of the amount permitted by section 414(q)(1)(C) of the Code. In addition, the employee must be paid on an hourly basis and not be claimed under section 213(a)(1) of the Fair Labor Standards Act of 1938 (as amended), 29 U.S.C. 201-219 (FLSA), to be exempt from the minimum wage and maximum hour provisions of the FLSA. Furthermore, the employee must be within a classification with respect to which the employer actually pays, or has specified in writing that it will pay, compensation at one and one-half times the regular rate as provided by section 207 of the FLSA. If questions arise concerning an employee's classification under the FLSA, the pronouncements and rulings of the Administrator of the Wage and Hour Division, Department of Labor will be determinative. The Service requests suggestions from taxpayers concerning other appropriate methods for determining which employees should be permitted to use the special valuation rule.

The special valuation rule set forth in a new § 1.61-21(k) is effective July 1, 1991. The special valuation rule may be used for reporting and withholding and for payment of employment taxes for transportation that satisfies the requirements of proposed § 1.61-21(k) and that is provided on or after that date.

2. Public Transit Passes

Section 132(a)(4) of the Code provides that de minimis fringe benefits are excluded from gross income. Section 132(e) and § 1.132-6(d)(1) of the regulations provide that a "de minimis fringe" means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable. Section 1.132-6(d)(1) provides a special rule for public transit passes and tokens or fare cards (including vouchers or similar instruments exchangeable for tokens or fare cards) that are provided to an employee to enable the employee to travel on the public transit system. If the value of the public transit pass, token, fare card, or other instrument enabling the employee to use the public transit system does not exceed $15 in any month, the benefit may be excluded from the employee's gross income as a de minimis fringe. The basis for the $15 exclusion arises out of the legislative history accompanying the Tax Reform Act of 1984, Public Law No. 98-369, section 531, 98 Stat. 494, which added section 132 to the Code. To reflect increases in the cost of living, the proposed regulations increase the dollar amount of the exclusion from $15 to $21, effective July 1, 1991. This increase in the exclusion amount may be used for reporting and withholding and for payment of employment taxes for qualifying benefits provided to employees on or after July 1, 1991.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests to Appear at a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. Because the Treasury Department expects to issue final regulations on this matter as soon as possible, a public hearing will be held beginning at 10 a.m. on July 1, 1991, in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to appear at the public hearing and outlines of oral comments must be received by June 17, 1991. Written comments must be received by June 24, 1991. See notice of hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these regulations is Marianna Dyson, Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Parts 1.61-1 Through 1.133-1T

Income taxes, reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Sec. 1.61-21(k) also issued under 26 U.S.C. 61.

Par. 2. Section 1.61-21(k) is added to read as follows:

§ 1.61-21 Taxation of fringe benefits.

* * * * *

(k) *Commuting valuation rule for certain employees*—(1) *In general.* Under the rule of this paragraph (k), the value of the commuting use of employer-provided transportation may be determined under paragraph (k)(3) of this section if the following criteria are

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met by the employer and employee with respect to the transportation:

(i) The transportation is provided, solely because of unsafe conditions, to an employee who would otherwise walk or use public transportation for commuting to or from work;

(ii) The employer has established a written policy (e.g., in the employer's personnel manual) under which the transportation is not provided for the employee's personal purposes other than for commuting due to unsafe conditions and the employer's practice in fact corresponds with the policy;

(iii) The transportation is not used for any personal purpose other than commuting due to unsafe conditions; and

(iv) The employee receiving the employer-provided transportation is a qualified employee of the employer (as defined in paragraph (k)(6) of this section).

(2) *Trip-by-trip basis.* The special valuation rule of this paragraph (k) applies on a trip-by-trip basis. If an employer and employee fail to meet the criteria of paragraph (k)(1) of this section with respect to any trip, the value of the transportation for that trip is not determined under paragraph (k)(3) of this section and the amount includible in the employee's income is determined by reference to the fair market value of the transportation.

(3) *Commuting value*—(i) *$1.50 per one-way commute.* If the requirements of this paragraph (k) are satisfied, the value of the commuting use of employer-provided transportation is $1.50 per one-way commute (i.e., from home to work or from work to home).

(ii) *Value per employee.* If transportation is provided to more than one qualified employee at the same time, the amount includible in the income of each employee is $1.50 per one-way commute.

(4) *Definition of employer-provided transportation.* For purposes of this paragraph (k), "employer-provided transportation" means transportation by vehicle (as defined in paragraph (f)(4) of this section) that is purchased by the employer from an unrelated third party for the purpose of transporting a qualified employee to or from work.

(5) *Unsafe conditions.* Unsafe conditions exist if a reasonable person would, under the facts and circumstances, consider it unsafe for the employee to walk to or from home, or to walk to or use public transportation at the time of day the employee must commute. One of the factors indicating whether it is unsafe is the history of crime in the geographic area surrounding the employee's workplace or residence at the time of day the employee must commute.

(6) *Qualified employee defined*—(i) *In general.* For purposes of this paragraph (k), a qualified employee is one who meets the following requirements with respect to the employer:

(A) The employee performs services during the current year, is paid on an hourly basis, is not claimed under section 213(a)(1) of the Fair Labor Standards Act of 1938 (as amended), 29 U.S.C. 201–219 (FLSA), to be exempt from the minimum wage and maximum hour provisions of the FLSA, and is within a classification with respect to which the employer actually pays, or has specified in writing that it will pay, compensation at one and one-half times the regular rate as provided by section 207 of the FLSA; and

(B) the employee does not receive compensation from the employer in excess of the amount permitted by section 414(q)(1)(C) of the Code.

(ii) *Compensation defined.* Compensation for purposes of this paragraph (k) means wages within the meaning of section 3401(a) of the Code and all other payments of compensation to the employee by the employer that are required to be reported under section 6041 of the Code.

(iii) *FLSA compliance required.* An employee will not be considered a qualified employee for purposes of this paragraph (k), unless the employer is in compliance with the recordkeeping requirements concerning that employee's wages, hours, and other conditions and practices of employment as provided in section 211(c) of the FLSA and 29 CFR part 516.

(iv) *Issues arising under the FLSA.* If questions arise concerning an employee's classification under the FLSA, the pronouncements and rulings of the Administrator of the Wage and Hour Division, Department of Labor are determinative.

(v) *Non-qualified employees.* If an employee is not a qualified employee within the meaning of this paragraph (k)(6), no portion of the value of the commuting use of employer-provided transportation is excluded under this paragraph (k).

(7) *Examples.* This paragraph (k) is illustrated by the following examples:

Example 1. A and B are word-processing clerks employed by Y, an accounting firm in a large metropolitan area and both are qualified employees under paragraph (k)(6) of this section. The normal working hours for A and B are from 11 p.m. until 7 a.m. and public transportation, the only means of transportation available to A or B, would be considered unsafe by a reasonable person at the time they are required to commute from home to work. In response, Y hires a car service to pick up A and B at their homes each evening for purposes of transporting them to work. The amount includible in the income of both A and B is $1.50 for the one-way commute from home to work.

Example 2. Assume the same facts as in Example 1, except that Y also hires a car service to return A and B to their homes each morning at the conclusion of their shifts and public transportation would be considered unsafe by a reasonable person at the time of day A and B commute to their homes. The value of the commute from work to home is includible in the income of both A and B by reference to fair market value since unsafe conditions do not exist for that trip.

Example 3. C is an associate for Z, a law firm in a metropolitan area. The normal working hours for C's law firm are from 9 a.m. until 6 p.m., but C's ordinary office hours are from 10 a.m. until 8 p.m. Public transportation, the only means of transportation available to C at the time C commutes from work to home during the evening, would be considered unsafe by a reasonable person. In response, Z hires a car service to take C home each evening. C does not receive annual compensation from Z in excess of the amount permitted by section 414(q)(1)(C) of the Code. However, C is not paid on an hourly basis. Therefore, C is not a qualified employee within the meaning of paragraph (k)(6) of this section. The value of the commute from work to home is includible in C's income by reference to fair market value.

(8) *Effective date.* This paragraph (k) applies to employer-provided transportation provided to a qualified employee on or after July 1, 1991.

Par 3. Section 1.132–6 is amended as follows:

1. Paragraph (d)(1) is amended by inserting "$21" in place of "$15" in the first, second, and third sentences and by adding a fifth sentence.

2. The second sentence of paragraph (d)(3) is revised.

3. The last sentence of paragraph (d)(4) is revised.

4. The addition and revisions read as follows:

§ 1.132–6 De minimis fringes.

* * * * *

(d) * * *

(1) * * * For months ending before July 1, 1991, the amount is $15 per month.

* * * * *

(3) * * * For example, the fact that $252 (i.e., $21 per month for 12 months) worth of public transit passes can be excluded from gross income as a de minimis fringe in 1992 does not mean that any fringe benefit with a value equal to or less than $252 may be excluded as a de minimis fringe. * * *

(4) * * * For example, if, in 1992, an employer provides a $50 monthly public transit pass, the entire $50 must be included in income, not just the excess value over $21.

* * * * *

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–11891 Filed 5–17–91; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[EE–42–91]

RIN 1545–AF72

Taxation of Fringe Benefits and Exclusions From Gross Income of Certain Fringe Benefits; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulation.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to taxation of fringe benefits and exclusions from gross income of certain fringe benefits.

DATES: The public hearing will be held on Monday, July 1, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, June 17, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (EE–42–91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9236, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 61 and 132 of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, June 17, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–11892 Filed 5–17–91; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 719]

RIN 1512–AA07

Realignment of the Northern Boundary of the Alexander Valley Viticultural Area (89F751P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), has received a petition for the revision of the northern boundary of the Alexander Valley viticultural area to include vineyard land that is similar to land in the currently approved Alexander Valley viticultural area. This land was not included in the original Alexander Valley viticultural area which was established on November 23, 1984, by the issuance of Treasury Decision ATF–187 [49 FR 42719].

The proposed boundary revision would add approximately 80 acres of territory to the current Alexander Valley viticultural area. Of these, eight acres are currently planted to grapes.

DATES: Written comments must be received by July 5, 1991.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Notice No. 719). Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6300, 650 Massachusetts Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1979, ATF published Treasury Decision ATF–60 [44 FR 56692] which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2), Title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF has received a petition from Mr. James W. Reed of Oak Ridge Ranch and Vineyards for the amendment of the northern boundary of the Alexander Valley viticultural area to include vineyard land that was omitted when the viticultural area was established by

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Treasury Decision ATF-167 on November 22, 1984.

Mr. Reed states that his northernmost vineyard block known as CS73 lies just outside the northern boundary of the Alexander Valley viticultural area. Vineyard block CS73 comprises approximately eight acres which was originally planted to Cabernet Sauvignon in 1973. Mr. Reed further states that this vineyard is isolated and, in fact, cannot be reached or the fruit removed without entering the present Alexander Valley viticultural area. Mr. Reed owns other vineyards within the Alexander Valley viticultural area and only recently became aware that vineyard block CS73 was not included within the established boundaries of the Alexander Valley viticultural area. However, the current boundaries do not split any of Mr. Reed's existing vineyards.

Northern Sonoma

In the preamble to Notice No. 472 (48 FR 29539, 1983) proposing the Northern Sonoma viticultural area, ATF stated its intention to have the proposed boundary coincide generally with the "outer" portions of the boundaries of the proposed Alexander Valley, Dry Creek Valley, Russian River Valley, and Knights Valley viticultural areas. In the preamble to Treasury Decision ATF-204 (50 FR 20560, 1985), which established the Northern Sonoma viticultural area, ATF stated that these four areas all fit perfectly together dividing northern Sonoma County into four large areas. The current Northern Sonoma viticultural area uses all of the outer boundaries of these four areas with the exception of a small area southwest of the Dry Creek Valley area and west of the Russian River Valley. This small area has nearly 300 acres of grapevines and possesses the same geographical features as the rest of the Northern Sonoma viticultural area.

Currently, the northern boundary of the Alexander Valley and Northern Sonoma viticultural areas follows the Sonoma County-Mendocino County line. Mr. Reed's petition proposes adding an area to Alexander Valley north of the common boundary of these two viticultural areas and located entirely in Mendocino County. Since the proposed area is located entirely in Mendocino County, ATF is not proposing changing the northern boundary of the Northern Sonoma viticultural area to coincide with the proposed revision of the northern boundary for the Alexander Valley viticultural area. ATF does not believe it is appropriate for the Northern Sonoma viticultural area to extend outside of Sonoma County since there is no evidence that the name "Northern Sonoma" ever referred to land in Mendocino County. However, the petitioner has submitted evidence that the area within the proposed extension, although located in Mendocino County, is known as part of Alexander Valley. Therefore, this notice proposes the extension of the Alexander Valley viticultural area into a small area of Mendocino County.

Evidence Of Name

The petitioner submitted several letters from owners of neighboring wineries and vineyards supporting the Petitioner's contention that the proposed extension area is locally known as being a part of the Alexander Valley viticultural area.

Geographical Evidence

Topography

The petitioner provided aerial color photographs to illustrate the topographic similarity between the currently approved Alexander Valley viticultural area and the petitioned area. These photographs show that vineyard block CS73 is the northernmost block on the petitioner's property. In addition, the petitioner cited the U.S.G.S. Topographical map (Asti Quadrangle California 7.5 Minute Series), as evidence that the terrain to the northeast, north, and northwest differs from the terrain in the petitioned area and the current Alexander Valley viticultural area.

The terrain to the northeast of the proposed boundary amendment appears from the elevation and closeness of the contour lines on the map to be very steep, mountainous and, according to the petitioner, not conducive to cultivation. This impression is reinforced by the aerial photographs. The terrain to the north and northwest drops very steeply with slopes of 40 to 50 degrees down to Ash Creek. The petitioner states that this area is north sloping and very rocky, unlike the petitioned area and the directly adjacent Alexander Valley viticultural area, which are predominantly south sloping without the degree of steepness or rocky outcropping.

The photographs also show an olive orchard within the petitioned area east of vineyard block CS73. This orchard is cited by the petitioner as evidence that the petitioned area is generally suitable for cultivation unlike the steep brushy terrain to the northeast, north, and northwest.

Climate

The present Alexander Valley viticultural area border is 100 feet south of vineyard block CS73. The close proximity of the proposed and current areas is cited by the petitioner as evidence that the present and petitioned areas share similar climatic conditions regarding precipitation, temperature and frost free periods. However, the petitioner was unable to submit any direct evidence concerning the climate of the area within the proposed extension.

Soils

Mr. Roy Bowman, a certified professional soil scientist for the Mendocino County Resource Conservation District was retained by the petitioner to compare soils in the petitioned area with the soils in the Alexander Valley viticultural area. Mr. Bowman's report details the similarity between soil samples taken in the petitioner's Sonoma County vineyards (report profile #1) inside the current Alexander Valley viticultural area, and vineyard block CS73 (report profile #2) in the petitioned area located in Mendocino County. These profiles were constructed from soil samples taken about 1,500 feet apart, close to the same elevation, with the same southern exposure. Profile #1 and profile #2 both keyed out to a fine, mixed, thermic mollic Haploxeralf. Mr. Bowman states, "these soil profiles are so similar that I could not separate them in field mapping."

According to Mr. Bowman, it is impossible to obtain a soil map with matched soil types for the petitioned area and the present Alexander Valley viticultural area because Sonoma and Mendocino Counties used different soil classification systems.

Public Participation—Written Comments

ATF requests comments from all interested persons. ATF is particularly interested in receiving comments concerning the fact that the northern boundary of the Northern Sonoma viticultural area will no longer coincide with the northern boundary of the Alexander Valley viticultural area. ATF is also interested in receiving comments concerning whether it is appropriate to extend the boundaries of the Alexander Valley viticultural area into Mendocino County. Specifically, ATF wishes to solicit comments on whether the name "Alexander Valley" is locally or nationally known as referring to the proposed area of extension.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on the proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Regulatory Flexibility Act

It is hereby certified that this document will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority And Issuance

27 CFR part 9, American Viticultural Areas, is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 9.53 is amended by redesignating existing paragraphs (c) (2) through (44) as (c) (5) through (47); revising paragraph (c)(1), and adding new paragraphs (c) (2) through (4), to read as follows:

§ 9.53 Alexander Valley

* * * * *

(c) Boundaries. The Alexander Valley viticultural area is located in northeastern Sonoma County and southeastern Mendocino County, California. From the beginning point at the S.E. corner of section 29, T. 12N., R. 10W., on the Asti Quadrangle map, the boundary runs—

(1) North along the eastern boundary of section 29, T. 12N., R. 10W., approximately 2,000 feet to the point where it meets Ash Creek;

(2) Then following Ash Creek in a general westerly direction approximately 2,600 feet until it meets a point where the 2,000 foot elevation topographic line crosses Ash Creek;

(3) Then along the 2,000 foot contour line in a general southerly direction for approximately 3,000 feet to a point where it meets the north line of section 32, T. 12N., R. 10W.;

(4) Then west along the north line of sections 32 and 31, T. 12N., R. 10W., and sections 36, 35, and 34, T. 12N., R. 11W., to the northwest corner of section 34, on the Cloverdale Quadrangle map.

* * * * *

Signed: May 9, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91-11753 Filed 5-17-91; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 58a

[DoD Directive 6485.AA]

RIN 0790-AC49

Human Immunodeficiency Virus (HIV-1)

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department of Defense published a proposed rule on December 5, 1989 (54 FR 50243) concerning Human Immunodeficiency Virus (HIV-1). A new 32 CFR part 58 was added concerning HIV-1 making this rulemaking unnecessary, therefore this proposed rule, 32 CFR part 58a, is withdrawn.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Directives Division, Washington Headquarters Services, Pentagon, Washington, DC 20301, telephone (703) 697-4111.

Dated: May 14, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-11653 Filed 5-17-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

32 CFR Part 806b

[Air Force Reg. 12-35]

Air Force Privacy Act Program

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed exemption rule.

SUMMARY: The Department of the Air Force proposes to amend two specific exemption rules for two existing systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The systems of records are identified as F035 AF MP A, Effectiveness/Performance Reporting Systems and F035 AF MP P, General Officer Personnel Data System.

DATES: Comments must be received on or before June 19, 1991, to be considered by the agency.

ADDRESSES: Send comments to Mrs. Anne Turner, Air Force Access Programs Officer, SAF/AAIA, The Pentagon, Washington, DC 20330-1000. Telephone (703) 697-3491 or Autovon 227-3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force proposes to

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amend 32 CFR part 806b by revising the subsections from which records contained in two systems of records can be exempt.

List of Subjects in 32 CFR Part 806b

Privacy.

Accordingly, the Department of the Air Force proposes to amend existing exemption rules in 32 CFR part 806b as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: 5 U.S.C. 552a, Pub. L. 93-579.

2. Section 806b.13 is proposed to be amended by revising paragraphs (b)(7) and (b)(10) as follows:

§ 806b.13 General and specific exemptions

* * * * *

(b) *Specific exemptions.*

* * * * *

(7) *System identification and name*—F035 AF MP A, Effectiveness/Performance Reporting System.

(i) *Exemptions*—Portions of this system of records may be exempt from subsections of 5 U.S.C. 552a (c)(3); (d); (e)(4)(H); and (f).

(ii) *Authority*—5 U.S.C. 552a(k)(7).

(iii) *Reasons*—Subsection (c)(3) because making the disclosure accounting available to the individual may compromise express promises of confidentiality by revealing details about the report and identify other record sources, which may result in circumvention of the access exemption.

Subsection (d) because individual disclosure compromises express promises of confidentiality conferred to protect the integrity of the promotion rating system.

Subsection (e)(4)(H) because of and to the extent that portions of this record system are exempt from the individual access provisions of subsection (d).

Subsection (f) because of and to the extent that portions of this record system are exempt from the individual access provisions of subsection (d).

* * * * *

(10) *System identification and name*—F035 AF MP P, General Officer Personnel Data System.

(i) *Exemption*—Portions of this system of records may be exempt from subsections of 5 U.S.C. 552a (c)(3); (d); (e)(4)(H); and (f).

(ii) *Authority*—5 U.S.C. 552a(k)(7).

(iii) *Reason*—Subsection (c)(3) because making the disclosure accounting available to the individual may compromise express promises of confidentiality by revealing details about the report and identify other record sources, which may result in circumvention of the access exemption.

Subsection (d) because individual disclosure compromises express promises of confidentiality conferred to protect the integrity of the promotion rating system.

Subsection (e)(4)(H) because of and to the extent that portions of this record system are exempt from the individual access provisions of subsection (d).

Subsection (f) because of and to the extent that portions of this record system are exempt from the individual access provisions of subsection (d).

* * * * *

Dated: May 10, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-11506 Filed 5-17-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 910512-1112]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce issues a preliminary notice of change in the commercial quota for red snapper in the Gulf of Mexico reef fish fishery in accordance with the framework procedure of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as amended. This notice proposes an annual red snapper commercial quota of 2.04 million pounds. The intended effect is to protect the overfished red snapper resource while still allowing catches by important recreational and commercial fisheries that are dependent on red snapper.

DATES: Written comments must be received on or before May 30, 1991.

ADDRESSES: Comments on the proposed rule should be sent to Robert A. Sadler, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702. Copies of documents supporting this action may be obtained from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3722.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP prepared and amended by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act.

In accordance with procedures approved in Amendment 1 to the FMP, the Council convened a scientific assessment panel (Panel) that reviewed the latest stock assessment and fishery evaluation report for red snapper. Based on the Panel's report and public hearings on that report, the Council recommended a total allowable catch (TAC) of red snapper for 1991 of 4.0 million pounds. The TAC of 4.0 million pounds for 1991 is one of a series of annual TACs that, within 3 years, will come within the range of acceptable biological catch established for red snapper. Within the TAC, the Council recommended reducing the commercial quota for red snapper from 3.1 million pounds to 2.04 million pounds. No change is recommended in the current 7-fish recreational daily bag limit. The 7-fish bag limit equates to a recreational catch of approximately 1.96 million pounds. The proposed 2.04-million-pound commercial quota and the expected 1.96-million-pound recreational catch represent a division of the TAC of 51 percent to the commercial fishery and 49 percent to the recreational fishery. This division of the red snapper TAC maximizes the net benefits of the fishery to the nation and is consistent with the historical percentages harvested by commercial and recreational fishermen during the base period 1979-87, as specified in the FMP's framework procedure for setting and dividing TACs.

The Council proposed this action because it reduces fishing mortality on red snapper and maintains the existing structure of the directed red snapper fishery and associated secondary industries and coastal communities. The estimated commercial catch of red snapper in 1990 was 2.4 million pounds. Thus, the proposed quota of 2.04 million pounds for 1991 represents a moderate reduction in actual harvest levels. The effects of this reduction on a fisherman would depend on the fisherman's: (1) Dependence on harvest of red snapper, and (2) ability to compensate for reduced red snapper harvests by increasing harvests of other species.

The Council intends to monitor the red snapper population by evaluating annual stock assessments and, as

provided in the FMP's framework procedure, to adjust management measures as necessary to ensure that the red snapper resource continues to rebuild at an acceptable rate toward the Council's goal of a spawning potential ratio (SPR) of 20 percent. In Amendment 1, the Council's goal was expressed in terms of a spawning stock biomass per recruit ratio (SSBR) of 20 percent. Both SPR and SSBR refer to the same index of population status. SPR is technically a more correct reference to spawning stock index and was used in the most recent stock assessment.

In addition to this action for 1991, the Council intends to achieve, commencing in 1994, a reduction of 6.2 million juvenile red snapper in the shrimp trawl bycatch of red snapper. That amount represents 50 percent of the 1984-1988 average bycatch level of juvenile red snapper. This reduction of bycatch is expected to be accomplished by: (1) Reductions that may have occurred already through reduced effort and changes in gear and fishing practices but have not yet been documented; and (2) if necessary, trawl modifications that exclude finfish, and/or further reductions in fishing effort. The Council and NMFS will work with the fishing industry, states, and universities to develop suitable means to effect the required bycatch reductions.

The Council's goal is to rebuild the red snapper resource to 20 percent SPR by 2007 at a deliberate and acceptable rate while attempting to maintain the viability of the fishery and associated industries/economies dependent on the fishery. (Amendment 3 to the FMP proposes a change in the target date for attaining the 20-percent-SPR goal from the year 2000 to 2007. The proposed rule to implement Amendment 3 was published in the Federal Register on March 27, 1991 (56 FR 12696). Final action on the revised commercial quota in this proposed rule will follow final action on Amendment 3.)

Other Matters

This action is authorized by the FMP and complies with E.O. 12291.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 14, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is proposed to be amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 641.25, paragraph (a) is revised to read as follows:

§ 641.25 Commercial quotas.

* * * * *

(a) Red snapper—2.04 million pounds.

* * * * *

[FR Doc. 91-11846 Filed 5-15-91; 12:32 pm]

BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 56, No. 97
Monday, May 20, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-093]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plants Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
91-094-01 renewal of Permit 90-032-01, issued on 05-08-90.	Monsanto Agricultural Company	04-04-91	Potato plants genetically engineered to express the potato virus X (PVX) and the potato virus Y (PVY).	Washington
91-100-02	Ciba-Geigy Biotechnology Research	04-10-91	Corn plants genetically engineered to express a hygromycin resistance gene and the beta-glucuronidase (GUS) gene.	Hawaii.
91-102-01, renewal of Permit 90-055-06, issued on 05-16-90.	University of Kentucky	04-12-91	Tobacco plants genetically engineered to express tobacco vein mottling virus (TVMV) and tobacco etch virus resistance.	Kentucky.
91-105-01	Pioneer Hi-Bred International, Incorporated.	04-15-91	Corn plants genetically engineered to express the visual marker genes phosphinothricin acetyltransferase (BAR), beta-glucuronidase (GUS), and the C1 and R transcriptional activator genes, and/or a bialaphos herbicide tolerance gene.	Iowa.
91-106-01	DNA Plant Technology	04-16-16	Chrysanthemum plants genetically engineered to suppress a chrysanthemum chalcone synthase (CHS) gene and to express a neomycin phosphotransferase (NPTII) gene.	California, Florida, and South Carolina.

Done in Washington, DC, this 14th day of May 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-11871 Filed 5-17-91; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

[Docket No. 91-015N]

National Advisory Committee on Meat and Poultry Inspection; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Meat and Poultry Inspection will be held on Tuesday and Wednesday, June 18-19, 1991, in Arlington, Virginia, from 9 a.m. to 4:30 p.m., at the George Mason University at Quincy Street Station, 4001 N. Fairfax Drive, Arlington, Virginia.

The Committee provides advice and recommendations to the Secretary of Agriculture regarding certain issues pertaining to the meat and poultry inspection program, pursuant to sections 7(c), 24, 205, 301(a)(3), and 301(c) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, 661(a)(3) and 661(c)) and sections 5(a)(3), 5(a)(4), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(3), 454(c), 457(b), and 460(e).

the meeting will include a discussion of the following topics:

1. State Designations;

2. HACCP;
3. Labeling;
4. Relationships by Objectives;
5. Appeals Procedure;
6. SIS Cattle;
7. Slaughter of Transgenic Animals;
8. Regulatory Development;
9. Retail Exemption;
10. Small Plant Handbook; and
11. User Fees.

The meeting is open to the public on a space available basis. Comments of interested persons may be filed prior to or following the meeting, and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, room 3175 South Building, 14th and Independence Avenue, SW., Washington, DC 20250. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447-9150.

Done at Washington, DC, on May 14, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91-11869 Filed 5-17-91; 8:45 am]

BILLING CODE 3410-DM-M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System—OK

The Statewide central filing system of Oklahoma has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Hannah D. Atkins, Secretary of State, for farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by John Kennedy, Secretary of State, for an additional farm product produced in that State as follows:

Radishes

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.18(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: May 15, 1991.

Virgil M. Rosendale,

Administrator, Packers and Stockyards Administration.

[FR Doc. 91-11870 Filed 5-17-91; 8:45 am]

BILLING CODE 3410-KD-M

Rural Electrification Administration

Pre-Emption of State Commission Jurisdiction Over the Rates of Wabash Valley Power Association, Inc.

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of pre-emption.

SUMMARY: This notice is published pursuant to the provisions of 7 CFR 1717.305 and gives notice of the pre-emption of the jurisdiction of the Indiana Utility Regulatory Commission (IURC) and the Michigan Public Service Commission (MPSC) over the rates charged by Wabash Valley Power Association, Inc. (WVPA) for electricity sold to its member cooperatives.

FOR FURTHER INFORMATION CONTACT: Thomas L. Eddy, Assistant Program Advisory, Rural Electrification Administration, room 4050 South Building, U.S. Department of Agriculture, Washington, DC 20250, Telephone number (202) 382-1265.

SUPPLEMENTARY INFORMATION: The Rural Electrification Administration (REA), an agency of the United States Government, makes loans and loan guarantees pursuant to the Rural Electrification Act (RE Act) of 1936, as amended, (7 U.S.C. 901 *et seq.*), for the purpose of furnishing electric service to rural areas. Wabash Valley Power Association, Inc. (WVPA), of Indianapolis, Indiana, secured REA guarantees of three loans in the aggregate principal amount of $1,166,884,000 to finance construction of facilities to provide electric power and energy in portions of Indiana and Michigan. WVPA provided REA with first lien security interests on virtually all of WVPA's assets.

After receiving approximately $671 million of these loan funds, WVPA failed to make the required repayments and filed for bankruptcy on May 23, 1985. As long as WVPA continues defaulting on these obligations, the size of the debt will continue to increase.

As a result of its bankruptcy filing, the jurisdiction of the IURC and of the MPSC over WVPA's rates were pre-empted on October 19, 1990, pursuant to 7 CFR 1717.350 *et seq.*

WVPA's present rates average 45.88 mills per kilowatt hour sold. The IURC failed to approve Wabash's filing for a rate increase. The Indiana Supreme Court affirmed this action. The Administrator of REA has determined that WVPA's present rates, as approved by the IURC and the MPSC, are, after taking into account WVPA's costs and expenses, inadequate to produce revenues sufficient to permit WVPA to make required payments on its secured loans. The Administrator further determines that WVPA has failed to make required payments on its secured loans.

Therefore, the REA has determined, pursuant to the RE Act and 7 CFR part 1717, that in addition to the pre-emption that occurred as a result of WVPA's bankruptcy filing, the conditions stated in 7 CFR part 1717.300 *et seq.*, for pre-emption of state regulatory body authority over rates exist with respect to WVPA.

Dated: May 13, 1991.

Gary C. Byrne,

Administrator.

[FR Doc. 91-11873 Filed 5-17-91; 8:45 am]

BILLING CODE 3410-15-M

ARMS CONTROL AND DISARMAMENT AGENCY

The President's General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Dates: June 27-28, 1991.

Time: 8:30 a.m.

Place: State Department Building, Washington, DC.

Type of Meeting: Closed.

Contact: Robert M. Meissner, Executive Director, General Advisory Committee on Arms Control and Disarmament, room 5927, Washington, DC, 20451. (202) 647-5178.

Purpose of Advisory Committee: To advise the President, the Secretary of State, and Director of the Arms Control and Disarmament Agency respecting matters affecting arms control, disarmament, and world peace.

Agenda: The Committee will review specific national security policy and arms control issues. Members will be briefed on the status of the current START, CFE and CW negotiations, Theatre Missile Defenses, GPALS, and the ABM Treaty. An Executive Session will be held.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the Arms Control and Disarmament Agency dated December 5, 1990, made pursuant to the

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provisions of section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 91-11867 Filed 5-17-91; 8:45 am]

BILLING CODE 6335-01-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 7:30 p.m. and adjourn at 9:30 p.m. on June 18, 1991, at the Radisson Hotel, 808 20th Street South, Birmingham, Alabama 35205. The purpose of the meeting is to plan for future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division, (816) 426-5253 (TTY 816-426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 10, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-11875 Filed 5-17-91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 7 p.m. and recess at 9 p.m. on July 24, 1991, at the Riverfront Hilton Inn, 2 Riverfront Place, North Little Rock, Arkansas 72114 and reconvene at 9 a.m. and adjourn at 5 p.m. on July 25, 1991, at the Statehouse Conference Center, P.O. Box 3232, Little Rock, Arkansas 72202. The purpose of the meeting is to plan for future SAC activities and hear presentations concerning the status of civil rights.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253, (TTY 816-426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 10, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-11818 Filed 5-17-91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 5 p.m. on July 10, 1991, at the Holiday Inn Holidome, 200 McDonald Drive, Lawrence, Kansas 66044. The purpose of the meeting is to plan a project on the administration of justice in selective sites in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253, (TTY 816-426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 10, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-11879 Filed 5-17-91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 12 p.m. on June 14, 1991, at the Holiday Inn Downtown, 200 East Amite, Jackson, Mississippi 39201. The purpose of the meeting is to discuss proposed activities on the administration of justice and desegregation in higher education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253, (TTY 816-426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 10, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit

[FR Doc. 91-11876 Filed 5-17-91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 3 p.m. on July 12, 1991, at Rothschild & Sale, 165 North Meramec, Suite 400, Clayton, Missouri 63105. The purpose of the meeting is to plan for future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253, (TTY 816-426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 10, 1991.

Carol-Lee Hurley,

Chief Regional Programs Coordination Unit.

[FR Doc. 91-11880 Filed 5-17-91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Nebraska Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 2 p.m. on July 27, 1991, at the Scottsbluff Inn, 1901 21st Avenue, Scottsbluff, Nebraska 69361. The purpose of the meeting is to plan for future SAC activities and orientation of new members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division, (816) 426-5253 (TTY 816-426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 10, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-11877 Filed 5-17-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Semiconductor Technical Advisory Committee; Partially Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held June 11, 1991, 9 a.m., Herbert C. Hoover Building, room 1617-F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors and related equipment or technology.

Agenda: General Session

1. Opening Remarks by the Chairman and Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials or comments at least one week before the meeting to the address listed below: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue, NW., room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of the meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: May 14, 1991.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 91-11883 Filed 5-17-91; 8:45 am]

BILLING CODE 3510-07-M

Patent and Trademark Office

Trademark Affairs Public Advisory Committee

AGENCY: Patent and Trademark Office; Commerce.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATES: The Public Advisory Committee for Trademark Affairs will meet from 10 a.m. until 4 p.m. on June 11, 1991. Place: U.S. Patent and Trademark Office, 2900 Crystal Drive, Arlington, Virginia, in the Conference Room on the Lobby level.

Status: The meeting will be open to public observation; seating will be available for the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

Matters To Be Considered: The agenda for the meeting is as follows:

(1) Finance.

(2) Automation.

(3) Strategic Planning.

(4) Current Trademark Office Practice Issues.

(5) International Trademark Law.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact Lynne Beresford, Office of the Assistant Commissioner for Trademarks, room CPK2-910, Patent and Trademark Office, Washington, DC 20231. Telephone (703) 557-7464.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-11808 Filed 5-17-91; 8:45 am]

BILLING CODE 3510-16-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for Thursday, 20 June 1991 at 10 a.m. in the Commission's offices in the Pension Building, suite 312, Judiciary Square, 441 F Street NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (202-504-2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC May 13, 1991.

Charles H. Atherton,

Secretary.

[FR Doc. 91-11814 Filed 5-17-91; 8:45 am]

BILLING CODE 6335-01-M

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COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Proposed Collection of Information

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposal to collect information.

SUMMARY: The Committee for Purchase from the Blind and Other Severely Handicapped proposes to survey workers with disabilities who are employed in nonprofit agencies participating in the Javits-Wagner-O'Day (JWOD) Program. The purpose of the proposed survey research is to define the demographic characteristics of the JWOD population. Information collected from the survey will be used to increase the effectiveness of the Program in meeting the needs of the target population.

EFFECTIVE DATE: Not applicable.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: The Committee for Purchase from the Blind and Other Severely Handicapped (hereinafter referred to as the "Committee") is an independent Federal agency responsible for administering the Javits-Wagner-O'Day (JWOD) Program which provides employment and training opportunities for persons who are blind or have other severe disabilities. Under the Program, the Committee oversees the Government's procurement of selected commodities and services from qualified nonprofit agencies which employ persons with severe disabilities. The Committee's organization and responsibilities are provided in the Code of Federal Regulations, title 41, chapter 51.

The JWOD Program, formerly the Wagner-O'Day Program, has been in existence since 1938, yet there has been little research undertaken relating to the nature of the population that the Program serves. The population that the Program serves has in fact changed substantially over the years, with amendments to the Program's legislation (such as the 1971 amendments to include workers with disabilities other than blindness), significant advances in medical science, fundamental changes in the national economy and general population, and altered attitudes toward individuals with disabilities. Although some background data has been collected on the blind persons who work on JWOD projects, very little is known about the persons with other disabilities, who currently comprise approximately 75 percent of the JWOD population.

The Committee proposes to conduct a survey of the JWOD population. Two survey instruments—a mail questionnaire and an on-site interview questionnaire—will be used to obtain basic demographic data (e.g., age, gender, ethnic origin, marital status, disability, etc.) and general information pertaining to employment experiences and histories, living arrangements, and financial assistance. Copies of the two survey instruments and other relevant supporting documents can be obtained by directly telephoning the Committee at (703) 557-1145, or by writing the Committee at the above address.

During Fiscal Year 1990, approximately 19,000 persons who are blind or have other severe disabilities were employed on JWOD contracts in almost 400 participating nonprofit agencies. Using random sampling procedures, 10 percent of the JWOD workers (i.e., some 1,900) will be surveyed with the mail questionnaire. Staff at the JWOD participating agencies will complete the mail questionnaire for each worker surveyed, since a substantial portion of the JWOD population is mentally retarded. An estimated 255 JWOD workers will be randomly selected from approximately 17 JWOD agencies for the interview questionnaire. A private firm retained by the Committee to conduct the survey research will administer the interview questionnaires.

The total estimated number of survey respondents is 1,806, based on a 85 percent response rate for the mail questionnaire and a 75 percent rate for the interview questionnaire. Based on pilot tests of the survey, each mail questionnaire should take an average of 35 minutes to complete, and each interview questionnaire an average of 20 minutes. The total estimated respondent burden for the two survey instruments is therefore 1,006 hours (i.e., 942 hours for the mail questionnaire and 64 hours for the interview questionnaire).

A number of actions have been taken or are planned (such as pilot testing the surveys to eliminate or simplify complex questions, using closed-ended questions, clarifying instructions, and providing self-return mailers) to minimize respondent burden. At this time, the Committee plans to conduct the survey only once, during the summer of 1991, however, a follow-up survey to track future changes in the JWOD population may be undertaken in five to six years.

Under the Paperwork Reduction Act, the Committee has submitted this proposed collection of information to the Office of Management and Budget (OMB) for review and approval. Comments regarding the Committee's proposed collection of information should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Committee for Purchase from the blind and Other Severely Handicapped.

Beverly L. Milkman,
Executive Director.

[FR Doc. 91-11903 Filed 5-17-91; 8:45 am]

BILLING CODE 6820-33-M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 91-3-SCRA]

1991 Satellite Carrier Royalty Rate Adjustment

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: The Tribunal gives notice that the period for negotiations to adjust the satellite carrier royalty rate is scheduled to begin July 1, 1991. The Tribunal requests that those parties who expect to be a part of those negotiations file notices of intent to participate with the Tribunal.

DATES: Notices of intent to participate are due June 17, 1991.

ADDRESSES: An original and five copies of the notice should be addressed to: Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 (202-673-5400).

SUPPLEMENTARY INFORMATION: In 1988, Congress created a satellite carrier compulsory copyright license. The initial royalty rate for the first few years of the license was set by Congress. Any adjustment to that rate was to be determined first by voluntary negotiations, and then by arbitration. The voluntary negotiations are scheduled to begin on July 1, 1991

The Copyright Royalty Tribunal has received a motion from some of the copyright owners interested in the satellite carrier royalty fund—Program Suppliers, Joint Sports Claimants, Broadcaster Claimants, Public Television Claimants, ASCAP, BMI and SESAC, and the Devotional Claimants.

The copyright owners ask the Tribunal to set a date by which those parties who expect to be part of the negotiations shall file notice of their intentions with the Tribunal. The purpose of such filing is to facilitate the negotiations.

The Tribunal agrees with the copyright owners that such a procedure would be useful, and requests that all those parties who expect to be a part of the negotiations to file a notice of intent to participate with the Tribunal. The notice should include a brief statement of the party's interest in the voluntary negotiations, including whether the party is a copyright owner, satellite carrier, or distributor, and should identify any agent which that party has appointed for purposes of the negotiations.

The notice is due June 17, 1991. This procedure is intended to facilitate negotiations only. Failure to file will not act to bar any party from the negotiations who otherwise has standing to participate.

Dated: May 14, 1991.

Marie F. Aguero,
Chairman.

[FR Doc. 91-11856 Filed 5-17-91; 8:45 am]

BILLING CODE 1410-09-M

[CRT Docket No. 91-1-89SCD]

Ascertainment of Whether Controversy Exists Concerning Distribution of 1989 Satellite Carrier Royalty Fund

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: The Copyright Royalty Tribunal directs all claimants to the royalty fees paid by satellite carriers for secondary transmissions to home dish owners during 1989 to submit any comments concerning whether a controversy exists with regard to the distribution of the 1989 satellite carrier royalty fees. All claimants intending to participate in the 1989 distribution proceeding shall include with their comments a Notice of Intent to Participate.

DATES: Comments are due June 24, 1991.

ADDRESSES: An original and five copies of the comments should be addressed to: Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 (202-673-5400).

Dated: May 14, 1991.

Marie F. Aguero,
Chairman.

[FR Doc. 91-11855 Filed 5-17-91; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Health Insurance Claim Form, HCFA-1500.

Type of Request: Expedited submission—approval date requested: June 15, 1991.

Average Burden Hours/Minutes per response: 30 minutes.

Responses per Respondent: One.

Number of Respondents: 6,500,000.

Annual Burden Hours: 3,250,000.

Annual Responses: 6,500,000.

Needs and Uses: The information collection requirement is used by CHAMPUS to determine reimbursement for health care services or supplies rendered by individual professional providers to CHAMPUS of CHAMPVA beneficiaries. The requested information is used to determine beneficiary eligibility, appropriateness and costs of care, other health insurance liability and whether services received are benefits. Use of this form continues CHAMPUS commitments to use the national standard claim form for reimbursement of services/supplies provided by individual professional providers.

Affected Public: Individuals or households, State or local governments, businesses or other for profit, Federal agencies or employees, Non-profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Joseph F. Lackey

Written comments and recommendations on the proposed information collection should be sent to Mr. Lackey at the Office of Management and Budget, Desk Officer, room 3002, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22203-4302.

Dated: May 14, 1991.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 3810-01-M

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DRAFT

PLEASE DO NOT STAPLE IN THIS AREA

PICA

HEALTH INSURANCE CLAIM FORM

PICA

1. MEDICARE (Medicare #) MEDICAID (Medicaid #) CHAMPUS (Sponsor's SSN) CHAMPVA (VA File No.) GROUP HEALTH PLAN (SSN or ID) FECA BLK LUNG (SSN) OTHER (ID)
2. PATIENT'S NAME (Last Name, First Name, Middle Initial)
3. PATIENT'S BIRTH DATE MM DD YY SEX M F
4. INSURED'S NAME (Last Name, First Name, Middle Initial)
5. PATIENT'S ADDRESS (No., Street)
6. PATIENT RELATIONSHIP TO INSURED Self Spouse Child Other
7. INSURED'S ADDRESS (No., Street)
CITY STATE
8. PATIENT STATUS Single Married Other Employed Full-Time Student Part-Time Student
CITY STATE
ZIP CODE TELEPHONE (Include Area Code) ( )
ZIP CODE TELEPHONE (Include Area Code) ( )
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)
10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (CURRENT OR PREVIOUS) YES NO b. AUTO ACCIDENT? PLACE (State) YES NO c. OTHER ACCIDENT? YES NO
11. INSURED'S POLICY, GROUP OR FECA NUMBER
a. OTHER INSURED'S POLICY OR GROUP NUMBER
a. INSURED'S DATE OF BIRTH MM DD YY SEX M F
b. OTHER INSURED'S DATE OF BIRTH MM DD YY SEX M F
b. EMPLOYER'S NAME OR SCHOOL NAME
c. EMPLOYER'S NAME OR SCHOOL NAME
d. INSURANCE PLAN NAME OR PROGRAM NAME
10d. RESERVED FOR LOCAL USE
e. INSURANCE PLAN NAME OR PROGRAM NAME
d. IS THERE ANOTHER HEALTH BENEFIT PLAN? YES NO If yes, return to and complete item 9 a-d.

READ BACK OF FORM BEFORE COMPLETING & SIGNING THIS FORM.

12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below.
SIGNED DATE
13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to undersigned physician or supplier for services described below.
SIGNED

14. DATE OF CURRENT: MM DD YY ILLNESS (First symptom) OR INJURY (Accident) OR PREGNANCY (LMP)
15. IF PATIENT HAS HAD SAME OR SIMILAR ILLNESS, GIVE FIRST DATE MM DD YY
16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION MM DD YY FROM TO MM DD YY
17. NAME OF REFERRING PHYSICIAN OR OTHER SOURCE
17a. I.D. NUMBER OF REFERRING PHYSICIAN
18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES MM DD YY FROM TO MM DD YY
19. RESERVED FOR LOCAL USE
20. OUTSIDE LAB? YES NO $ CHARGES
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY (RELATE ITEMS 1, 2, 3 OR 4 TO ITEM 24E BY LINE)
1. ___ . ___ 3. ___ . ___
2. ___ . ___ 4. ___ . ___
22. MEDICAID RESUBMISSION CODE ORIGINAL REF. NO.
23. PRIOR AUTHORIZATION NUMBER

24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY	B. Place of Service	C. Type of Service	D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS MODIFIER	E. DIAGNOSIS CODE	F. $ CHARGES	G. DAYS OR UNITS	H. EPSDT Family Plan	I. EMG	J. COB	K. RESERVED FOR LOCAL USE
1										
2										
3										
4										
5										
6										

25. FEDERAL TAX I.D. NUMBER SSN EIN
26. PATIENT'S ACCOUNT NO.
27. ACCEPT ASSIGNMENT? (For gov. claims, see back) YES NO
28. TOTAL CHARGE $
29. AMOUNT PAID $
30. BALANCE DUE $
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS
SIGNED DATE
32. NAME AND ADDRESS OF FACILITY WHERE SERVICES RENDERED (if other than home or office)
33. PHYSICIAN'S, SUPPLIER'S BILLING NAME, ADDRESS, ZIP CODE & PHONE #
PIN # GRP #

(I certify that the statements on the reverse apply to this bill and are made a part thereof.)

PLEASE PRINT OR TYPE

APPROVED BY AMA COUNCIL ON MEDICAL SERVICE 8/89 APPROVED OMB 0938-0008

FORM HCFA-1500 (12-90) FORM OWCP-1500 FORM RRB-1500

CARRIER

PATIENT AND INSURED INFORMATION

PHYSICIAN OR SUPPLIER INFORMATION

[FR Doc. 91-11889 Filed 5-17-91; 8:45 am]

BILLING CODE 3510-01-C

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Office of the Secretary

Defense Environmental Response Task Force; Establishment

ACTION: Establishment of the Defense Environmental Response Task Force.

SUMMARY: Under the provisions of Public Law 92-463, the "Federal Advisory Committee Act," notice is hereby given that the Defense Environmental Response Task Force has been established, pursuant to Public Law 101-510, the "National Defense Authorization Act for Fiscal Year 1991."

The Task Force will study and provide a report to the Secretary of Defense for transmittal to the Congress on the findings and recommendations concerning environmental restoration at military installations closed or realigned under title II of Public Law 100-526. The primary objectives of the Task Force will be, within existing laws and regulations, to improve interagency coordination of environmental responses at affected installations, and to consolidate and streamline the practices, policies, and administrative procedures of relevant Federal and state agencies with respect to such environmental responses.

The membership of the Task Force will be composed of designated individuals from both the public and private sectors, as set down in Public Law 101-510. The prescribed membership will be a diverse and well-balanced group in terms of the functions to be performed and the interest groups represented.

For additional information regarding the Task Force, please contact Hayden Bryan, telephone: (703) 325-2211.

Dated: May 14, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-11864 Filed 5-17-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Determination of Active Military Service: "Civilian Crewmen of United States Coast and Geodetic Survey Vessels Who Performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations with and for the United States Armed Forces Within a Time Frame of December 7, 1941, to August 15, 1945"

On April 8, 1991 the Secretary of the Air Force determined that the World War II service of a group known as "Civilian Crewmen of United States Coast and Geodetic Survey Vessels Who Performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations with and for the United States Armed Forces Within a Time Frame of December 7, 1941, to August 15, 1945" would be considered "active duty" under the provisions of Public Law 95-202 and be eligible for benefits according to all laws administered by the Department of Veterans Affairs.

To receive recognition, each applicant must meet the following eligibility criteria:

1. Must have been a civilian employee of the United States Coast and Geodetic Survey and served as a crewman aboard one or more of the following USCGS vessels: DERICKSON; EXPLORER; GILBERT; HILGARD, E. LESTER JONES; LYDONIA; PATTON; SURVEYOR; WAINWRIGHT; or WESTDAHL; during the period:

2. December 7, 1941 thru V-E Day, May 8, 1945, in all those Atlantic areas outside U.S. inland waters, to include Atlantic and Gulf of Mexico coastal waters; or

3. December 7, 1941 thru V-J Day, August 14, 1945 in all those Pacific areas outside of U.S. inland waters, to include Pacific coastal and Alaskan coastal waters.

Before an individual can receive any Veterans Administration benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to: Bureau of Naval Personnel (PERS-312), Washington, DC 20370-5312.

Individual applicants should include as much supporting documentation as possible when making application and should identify the specific vessels they served aboard. However, individuals should not attempt to obtain their government employment records for submission with their DD Form 2168 as the U.S. Navy will perform this task. Individuals should be aware that the application process will take several months due to the time required to obtain government employment records and then review these records to confirm membership in the recognized group. In addition, staff reduction due to general force reductions may also extend processing time.

DD Forms 2168 are available from any Department of Veterans Affairs Office, Veterans Organization, or the office listed above.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-11815 Filed 5-17-91; 8:45 am]

BILLING CODE 3910-01-M

Privacy Act of 1974; Amend Systems of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Amend existing systems of records.

SUMMARY: The Department of the Air Force proposes to amend two existing systems of records in its inventory of records systems notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: This action will be effective June 19, 1991, unless comments are received which result in a contrary determination.

ADDRESSES: Send any comments to Mrs. Anne Turner, SAF/AAIA, The Pentagon, Washington, DC 20330-1000. Telephone (703) 697-3491 or Autovon 227-3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C 552a), have been pulished in the **Federal Register** as follows:

50 FR 22332 May 29, 1985 (DoD Compilation, changes follow)
50 FR 24672 Jun. 12, 1985
50 FR 26737 Jun. 21, 1985
50 FR 46477 Nov. 8, 1985
50 FR 50337 Dec. 10, 1985
51 FR 4531 Feb. 5, 1986
51 FR 7317 Mar. 5, 1986
51 FR 16735 May 6, 1986
51 FR 18927 May 23, 1986
51 FR 41362 Nov. 14, 1986
51 FR 44332 Dec. 9, 1986
52 FR 11845 Apr. 13, 1987
53 FR 24354 Jun. 28, 1988
53 FR 45800 Nov. 14, 1988
53 FR 50072 Dec. 13, 1988
53 FR 51301 Dec. 21, 1988
54 FR 10034 Mar. 9, 1989
54 FR 43450 Oct. 25, 1989
54 FR 47580 Nov. 15, 1989
55 FR 21770 May 29, 1990
55 FR 21900 May 30, 1990 (Air Force Address Directory)
55 FR 27866 Jul. 6, 1990
55 FR 28427 Jul. 11, 1990
55 FR 34310 Aug 22, 1990
55 FR 36126 Sep. 17, 1990
55 FR 42625 Oct 22, 1990
55 FR 42629 Oct. 22, 1990
55 FR 52072 Dec. 19, 1990
56 FR 1990 Jan. 18, 1991
56 FR 5804 Feb. 13, 1991
56 FR 12713 Mar. 27, 1991

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a(r)), which requires the submission of altered systems reports. The specific changes to the system of records being amended are set forth below, followed by the record systems notices, as amended, in their entirety.

Dated: May 10, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F035 AF MP A

System name:

F035 AF MP A—Effectiveness/Performance Reporting System, (53 FR 45802, November 14, 1988).

Changes:

* * * * *

System location:

Delete entry and replace with "Headquarters, United States Air Force, Washington DC 20330-5060; Headquarters, Air Force Military Personnel Center, Randolph Air Force Base, TX 78150-6001; National Military Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132-2001; Air Reserve Personnel Center, Denver, CO 80280-5000; and the Human Resources Laboratory, Brooks Air Force Base, TX 78235-5000.

Headquarters of major commands and separate operating agencies; consolidated base personnel offices; each State Adjutant General Office, and Air Force Reserve and Air National Guard units. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices."

* * * * *

Categories of records in the system:

Delete entry and replace with "Officer Effectiveness Reports; Education/Training Reports; Colonels and Lieutenant Colonels Promotion Recommendation Reports; Enlisted Performance Reports Airman Basic (E-1) through Chief Master Sergeant (E-9); Description of data contained therein: Name; Social Security Number; active and permanent grades; specialty data; organization location and Personnel Accounting Symbol; period of report; number of days of supervision; performance evaluation scales; assessment of potential, and comments regarding ratings."

Authority for maintenance of the system:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force: Power and duties; delegation by: as implemented by Air Force Regulation 36-9, General Officer Promotions and Evaluations; Air Force Regulation 36-10, Officer Evaluation System; Air Force Regulation 39-62, Enlisted Evaluation System, and Executive Order 9397."

* * * * *

System manager(s) and address:

Delete entry and replace with "Deputy Chief of Staff/Personnel, Headquarters United States Air Force, Washington DC 20330-5060; Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330-1000; and Director, Air National Guard, Washington, DC 20310-2500."

* * * * *

Record source categories:

Delete entry and replace with "The basis of the ratings is observed on-the-job performance or by the education/training progression of the individual. Further, evaluation reports may have as an additional source of information Letters of Evaluation."

Exemptions claimed for the system.

Delete entry and replace with "Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553 (b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager."

F035 AF MP A

SYSTEM NAME:

F035 AF MP A—Effectiveness/Performance Reporting System.

SYSTEM LOCATION:

Headquarters, United States Air Force, Washington DC 20330-5060; Headquarters, Air Force Military Personnel Center, Randolph Air Force Base, TX 78150-6001; National Military Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132-2001; Air Reserve Personnel Center, Denver, CO 80280-5000; and the Human Resources Laboratory, Brooks Air Force Base, TX 78235-5000.

Headquarters of major commands and separate operating agencies; consolidated base personnel offices; each State Adjutant General Office, and Air Force Reserve and Air National Guard units. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel only.

Officer applies to Active Duty/Air National Guard/Air Force Reserve personnel serving in grades Warrant Officer (W-1) through Colonel (0-6).

Enlisted applies to active duty personnel in grades Airman Basic (E-1) through Chief Master Sergeant (E-9), and to Air Force Reserve personnel in grades Staff Sergeant (E-5) through Chief Master Sergeant (E-9).

CATEGORIES OF RECORDS IN THE SYSTEM:

Officer Effectiveness Reports; Education/Training Reports; Colonel Promotion Recommendation Reports; Enlisted Performance Reports for Airman Basic (E-1) through Chief Master Sergeant (E-9).

Description of data contained therein: Name; Social Security Number; active and permanent grades; specialty data; organization location and Personnel Accounting Symbol; period of report; number of days of supervision; performance evaluation scales; assessment of potential, and comments regarding ratings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Regulation 36-9, General Officer Promotions and Evaluations; Air Force Regulation 36-10, Officer Evaluation System; Air Force Regulation 39-62, Enlisted Evaluation System, and Executive Order 9397.

PURPOSE(S):

Used to document effectiveness/duty performance history; promotion selection; school selection; assignment selection; reduction-in-force; control roster; reenlistment; separation; research and statistical analyses, and other appropriate personnel actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of the Department of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) who are properly screened and cleared for

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need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Copies of effectiveness reports are retained until separation or retirement. At separation or retirement, data subject is presented with field and command record copies of his or her reports. The Headquarters Air Force (HAF) copy is a permanent record that is forwarded to the National Personnel Records Center, St. Louis, MO 63132-2001. In the event the member has a Reserve commitment, the HAF copy is sent to the Air Reserve Personnel Center, Denver, CO 80280-5000.

The following exceptions apply: Officers Field Record: Remove and give to individual when promoted to Colonel, when separated or retired, or destroy when voided by action of the Officer Personnel Records Review Board. When voided by action of the Air Force Board for Correction of Military Records, forward all copies of report to Headquarters United States Air Force (HQ USAF) when directed.

Command Record: The command custodian will destroy the reports when voided by action of Officer Personnel Records Review Board. When voided by action of the Air Force Board for Correction of Military Records, forward all copies of report to HQ USAF when directed.

HAF Record: Remove reports voided by action of the Officer Personnel Records Review Board from the selection folder and file in the board recorder's office until destruction. Remove reports voided by action of the Air Force Board for Correction of Military Records from selection folder and submit to Board's Secretariat with duplicate and triplicate copies for custody and disposition. Colonel Promotion Recommendation Reports are temporary documents maintained only at HQ Air Force level and are destroyed after their purpose has been served.

Active duty Enlisted: Grades E-3 through E-6: On separation or retirement, Enlisted Performance Reports (EPRs) are forwarded to the National Personnel Records Center, St. Louis, MO unless data subject holds a reserve obligation, in which case they are forwarded to Air Reserve Personnel Center.

Grades E-7 through E-9: On separation or retirement, original copies, those retained in Senior NCO selection folders and those in field record closing before 1 January 1967, are forwarded to the National Personnel Records Center, or to Air Reserve Personnel Center if data subject holds a reserve obligation. Duplicate copies closing January 1, 1967 or later (field record) are returned to the member at separation or retirement.

Non-Active Duty Reserve Enlisted: Air Force Reserve Forces Noncommissioned Officers Performance Report; upon separation, retirement or assignment to a non-participating reserve status, they are forwarded to Air Reserve Personnel Center for file in the master personnel record and disposed of as a part of that record. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff/Personnel, Headquarters United States Air Force, Washington, DC 20330-5060; Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330-1000; and the Director, Air National Guard, Washington, DC 20310-2500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquires to the system manager or directly to agency officials at the respective system location. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written inquiries to the system manager or directly to agency officials at the respective system location. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The basis of the ratings is observed on-the-job performance or by the education/training progression of the individual. Further, effectiveness reports may have as an additional source of information Letters of Evaluation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553 (b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

F035 AF MP P

System name:

F035 AF MP P—General Officer Personnel Data System.

Changes:

* * * * *

System location:

Delete the word "Manpower and" and replace with "Military."

Categories of individuals covered by the system:

Delete entry and replace with "Retired, Active Duty, and Active Status Reserve of the Air Force General Officers."

Categories of records in the system:

Delete "Form 11" and replace with "officer military record." Add to end of entry, "effectiveness reports, and promotion recommendations."

Authority for maintenance of the system:

Add to end of entry "and Air Force Regulation 36-9, General Officer Promotions and Evaluations."

Purpose(s):

Delete entry and replace with "To record active duty service and performance data about general officers for use in personnel management decisions and officer effectiveness, to include assignments, promotions and retirements.

To provide source data for preparing or compiling personnel management data to include career profiles, seniority and retirement lists, memorandums for record concerning actions taken on general officers and statistical analyses."

* * * * *

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Add to end of entry "on microfilm, in computers and on computer output products."

Retrievability:

Delete entry and replace with "Records are retrieved by last name and/or grade."

Safeguards:

Delete entry and replace with "Access to these records is given only to the Chief of Staff, Deputy Chief of Staff/Personnel, Assistant for General Officer Matters, Chief of Air Force Reserve, Chief National Guard, and other persons responsible for servicing or reviewing the record system in performance of their official duties, who are properly screened and cleared for need-to-know."

Retention and disposal:

Delete entry and replace with "Retired General Officer records are maintained indefinitely; retired Lieutenant General, Major General, and Brigadier General Officer records are retained for 3 years, then reviewed to determine if there are any materials of historical value which warrant indefinite retention. If not, records are destroyed by tearing into pieces, shredding, pulping or macerating. Computer records are destroyed by degaussing or overwriting.

System manager(s) and address:

Delete the words "Manpower and" and add to end of entry, "Washington, DC 20330-5060."

Notification procedures:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on them should address written inquiries to the Deputy Chief of Staff/Personnel, Headquarters, United States Air Force, Washington, DC 20330-5060.

For verification purposes, the individual should provide full name, Social Security Number, and active duty grade.

Individuals may also visit the Office of the Assistant for General Officer Matters, room 4E212, The Pentagon, Washington, DC, to obtain information. A requester should present a military identification card when appearing in person for information."

Record access procedures:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address written requests to the Deputy Chief of Staff/Personnel, Headquarters, United States Air Force, Washington, DC 20330-5060.

The individual may also visit the Office of the Assistant for General Officer Matters, room 4E212, The Pentagon, Washington, DC, to obtain information.

A requester should present a military identification card when appearing in person for information."

* * * * *

Exemptions claimed for the system:

Delete entry and replace with "Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553 (b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager."

F035 AF MP P

SYSTEM NAME:

FO35 AF MP P—General Officer Personnel Data System.

SYSTEM LOCATION:

Headquarters, United States Air Force, Washington, DC 20330-5060, and Headquarters, Air Force Military Personnel Center, Randolph Air Force Base, TX 78150-6001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Retired, Active Duty, and Active Status Reserve of the Air Force General Officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Promotion board data; "Career Brief" data/cards; officer military record; photographs; biographies; retirement letters; dependent data; education data; promotion orders; assignment orders; demotion data; frocking letters; case studies; language data; effectiveness reports, and promotion recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 805, The Air Staff, and Air Force Regulation 36-9, General Officer Promotions and Evaluations.

PURPOSE(S):

To record active duty service and performance data about general officers for use in personnel management decisions and officer effectiveness, to include assignments, promotions and retirements.

To provide source data for preparing or compiling personnel management data to include career profiles, seniority and retirement lists, memorandums for record concerning actions taken on general officers and statistical analyses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USE:

The "Blanket Routine Uses" published at the beginning of the Department of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets/card files, on microfilm, in computers and on computer output products.

RETRIEVABILITY:

Records are retrieved by last name and/or grade.

SAFEGUARDS:

Access to these records is given only to the Chief of Staff, Deputy chief of Staff/Personnel, Assistant for General Officer Matters, Chief of Air Force Reserve, Chief National Guard, and other persons responsible for servicing or reviewing the record system in performance of their official duties, who are properly screened and cleared for need-to-know.

RETENTION AND DISPOSAL:

Retired General Officer records are maintained indefinitely; retired Lieutenant General, Major General, and Brigadier General Officer records are retained for 3 years, then reviewed to determine if there are any materials of historical value which warrant indefinite retention. If not, records are destroyed by tearing into pieces, shredding, pulping or macerating. Computer records are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff/Personnel, Headquarters, United States Air Force, Washington, DC 20330-5060.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address written inquiries to the Deputy Chief of Staff/Personnel, Headquarters, United States Air Force, Washington, DC 20330-5060. For verification purposes, the individual should provide full name, Social Security Number, and active duty grade.

Individuals may also visit the Office of the Assistant for General Officer Matters, room 4E212, The Pentagon,

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Washington, DC, to obtain information. A requester should present a military identification card when appearing in person for information.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Deputy Chief of Staff/Personnel, Headquarters, United States Air Force, Washington, DC 20330-5060.

Individuals may also visit the Office of the Assistant for General Officer Matters, room 4E212, The Pentagon, Washington, DC, to obtain information. A requester should present a military identification card when appearing in person for information.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Personnel data base; member, and Inspector General's investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553 (b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 91-11288 Filed 5-17-91; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Form EIA-867, "Annual Nonutility Power Producer Report"

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of proposed revision and extension of the Form EIA-867, "Annual Nonutility Power Producer Report," and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revision and extension of the Form EIA-867, "Annual Nonutility Power Producer Report."

DATES: Written comments must be submitted within 30 days of the publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Ms. Mary Kimbrough, Energy Information Administration, Department of Energy, Mail Stop: EI-541, 1000 Independence Avenue SW., Washington, DC, 20585, Telephone (202) 254-5666.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Requests for additional information or copies of the proposed changes to the form and instructions should be directed to Ms. Kimbrough at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Current Actions.
III. Request for Comments.

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93-275) and the Department of Energy Organization Act (Pub. L. 95-91), the EIA is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources. To help meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA is tasked to conduct surveys that encompass every major electric power supply and demand activity in the United States. Nonutility power supply data in terms of generating capacity, actual generation, and fuel consumption are needed by the EIA to support its electric power data collection program.

II. Current Actions

The Form EIA-867 was initially cleared by the Office of Management and Budget (OMB) (OMB No. 1905-0177) in January 1990, to collect data for calendar year 1989, and was extended by the OMB on December 26, 1990, to collect data for calendar year 1990. The EIA will request that the OMB approval be extended through December 1992 to collect data for calendar year 1991.

The Form EIA-867 will be required of the owner/operator of existing and planned electric generating facilities with a facility generator nameplate rating of 5 megawatts or more; only facilities of 1 megawatt or more, but less than 5 megawatts, that did not report data for calendar years 1989 and 1990 will be required to submit Schedules I and II during the 1991 reporting year.

Since the beginning of the survey, EIA has made every effort to clarify the data required based upon telephone discussions with respondents. Minor editorial changes were made for 1990 reporting, and the number of calls from respondents have declined substantially since the first survey year. One question that will require revision of 1991 is item 5, Schedule IIIA, page 4, which requests the maximum capacity delivered to one or more electric utility companies. This question will be revised to request the amount of firm capacity under contract with an electric utility company, and the maximum capacity that could be provided under emergency conditions. Additional editorial changes and definitions may be necessary; however, the changes will have no effect on burden, but should reduce the response time by clarifying the data required.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed survey within 30 days of the publication of this notice. The following general guidelines are provided to assist in the preparation of responses.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average 2.27 hours per response. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the form?

E. What is the estimated cost of completing the form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, data element(s) and means of collection.

As a potential data user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purposes would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data? What are their deficiencies and/or strengths?

The EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the Annual Nonutility Power Producer Report.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the form; they also become a matter of public record.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b) and 790a.

Issued in Washington, DC May 14, 1991.

Yvonne M. Bishop,
Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91-11793 Filed 5-17-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-413-000, et al.]

Public Service Co. of New Mexico, et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Public Service Company of New Mexico

[Docket No. ER91-413-000]

May 7, 1991.

Take notice that on April 30, 1991, Public Service Company of New Mexico (PNM) submitted for filing a 1991-1994 Power Sale Agreement (Agreement) between Arizona Electric Power Cooperative, Inc. (AEPCO) and PNM. Under the terms of the 3-year power purchase provided for in the Agreement, PNM will provide AEPCO with up to 15 MW of contract demand.

PNM is requesting a waiver of the Commission's notice requirements to permit service under the Agreement to be effective as of June 1, 1991.

Copies of the filing have been served upon AEPCO and the New Mexico Public Service Commission.

Comment date: May 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Power & Light Corporation

[Docket No. ER89-401-007]

May 7, 1991.

Take notice that on April 25, 1991, Citizens Power & Light Corporation (Citizens) filed certain information as required by Ordering Paragraph (M) of the Commission's August 8, 1990 order in this proceeding. 48 FERC ¶ 61,210 (1989). Copies of Citizens' informational filing are on file with the Commission and are available for public inspection.

3. Florida Power & Light Company

[Docket No. ER91-412-000]

May 7, 1991.

Take notice that Florida Power & Light Company (FPL), on April 30, 1991, tendered for filing eight (8) revised exhibits A which provide for the contract demands for Florida Keys Electric Cooperative Association, Inc.; Fort Pierce Utilities Authority; City of Homestead; Utilities Commission, City of New Smyrna Beach; City of Starke; City of Vero Beach; City of Jacksonville Beach; and City of Green Cove Springs, and one (1) initial Exhibit A for the city of Clewiston under Rate Schedule PR-3 of FPL's FERC Electric Tariff Second Revised Volume No. 1. The proposed effective date for the contract demands for Florida Keys Electric Cooperative Association, Inc.; Fort Pierce Utilities Authority; City of Homestead; Utilities Commission, City of New Smyrna Beach; City of Starke; and City of Vero Beach is May 29, 1991. The proposed effective date for the contract demands for the City of Jacksonville Beach and the City of Green Cove Springs is June 1, 1991. The proposed effective date for the contract demand for the City of Clewiston is May 1, 1991.

Comment date: May 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Central Illinois Public Service Company

[Docket No. ER91-411-000]

May 7, 1991.

Take notice that on April 29, 1991, Central Illinois Public Service Company ("CIPS") tendered for filing a Rate Schedule for Full Requirements Service to Mt. Carmel Public Utility Company ("Mt. Carmel") and a Service Agreement between CIPS and Mt. Carmel. Under the agreement, beginning July 1, 1991, CIPS will provide full-requirements service to Mt. Carmel. The initial term of the Service Agreement is for ten years, commencing on July 1, 1991 and continuing through June 30, 2001.

CIPS requests an effective date of July 1, 1991 for both the Rate Schedule and the Service Agreement. Copies of the filing were served upon Mt. Carmel and the Illinois Commerce Commission.

Comment date: May 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Company

[Docket No. ER88-83-007]

May 7, 1991.

Take notice that on April 29, 1991, Southern California Edison Company tendered for filing its refund report in this docket in compliance with the Commission's letter order issued February 27, 1991.

Comment date: May 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Chicago Energy Exchange of Chicago, Inc.

[Docket No. ER90-223-004]

May 7, 1991.

Take notice that on April 24, 1991, Chicago Energy Exchange of Chicago, Inc. (Energy Exchange) filed certain information as required by Ordering Paragraph (L) of the Commission's April 19, 1990 order in this proceeding. 51 FERC ¶ 61,054 (1990). Copies of Energy Exchange's informational filing are on file with the Commission and are available for public inspection.

7. Pacific Gas and Electric Company

[Docket No. ER91-415-000]

May 7, 1991.

Take notice that on May 1, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing a change in rate schedule for Rate Schedule FERC

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No. 108, a contract with the City of Santa Clara, California (City) entitled "System Bulk Power Sale and Purchase Agreement Between City of Santa Clara and Pacific Gas and Electric Company" (Agreement). The Agreement and its appendices were accepted for filing by the Commission on September 23, 1987 in Docket No. ER87-408-000, and contain capacity and energy rates for firm, baseload power sold to City of PG&E.

PG&E proposes to change the energy rate, pursuant to appendix A of the Agreement, from 28.3 mills to 26.8 mills based on the new 1991 Average Thermal Cost Index. Since the increase is under $1,000,000 and City has agreed to the proposed rate, PG&E is filing in accordance with § 35.13(a)(2) of the Commission's regulations (18 CFR § 35.13(a)(2)). In addition, PG&E is requesting a waiver of the Commission's notice requirements in accordance with § 35.11 of the Commission's regulations (18 CFR 35.11) so that the energy rate change may become effective on April 1, 1991 pursuant to the Agreement.

Copies of this filing were served upon City and the California Public Utilities Commission.

Comment date: May 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Electric Power Company

[Docket No. ER91-414-000]

May 7, 1991.

Take notice that on April 30, 1991, Southwestern Electric Company ("SWEPCO") tendered for filing amendment I to the Attachment to Letter Agreement, which attachment is an integral part of a Letter Agreement, dated May 31, 1989, between SWEPCO and Cajun Electric Cooperative, Inc. ("Cajun"). Under the agreement, SWEPCO provides as-available transmission service to Cajun, from SWEPCO's point of interconnection with Gulf States Utilities Company ("GSU") across SWEPCO's system to SWEPCO's points of interconnection with Southwestern Power Administration ("SWPA") and Associated Electric Cooperative, Inc. ("Associated"). Amendment I provides for a second transmission service path from SWEPCO interconnections with SWPA to the SWEPCO interconnection with GSU.

SWEPCO requests an effective date of April 1, 1991 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served upon Cajun, GSU, SWPA, the Arkansas Public Service Commission, the Louisiana Public Service Commission, and the Public Utility Commission of Texas.

Comment date: May 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. UNITIL Power Corp.

[Docket No. ER91-418-000]

May 7, 1991.

Take notice that on May 1, 1991, UNITIL Power Corp. tendered for filing pursuant to Schedule II section H of supplement No. 1 to Rate Schedule FERC Number 1, the UNITIL System Agreement, the following material:

A. Statement of all sales and billing transactions for the period January 1, 1990 through December 31, 1990 along with the actual costs incurred by UNITIL Power Corp. by FERC account.

B. UNITIL Power Corp. rates billed from January 1, 1990 to December 31, 1990 and supporting rate development.

Comment date: May 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Robert E. Kennington, II

[Docket No. ID-2540-000]

May 7, 1991.

Take notice that on May 2, 1991, Robert E. Kennington, II (Applicant) filed an application under section 305(b) of the Federal Power Act to hold the following positions:

Director: Mississippi Power & Light Company.

Director: Sunburst Financial Group, Inc.

Chairman of the Board and CEO: Grenada Sunburst System Corp.

Comment date: May 24, 1991 in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER91-305-000]

May 7, 1991.

Take notice that on April 22, 1991, Northeast Utilities Service Company (NUSCO) tendered for filing on behalf of the Connecticut Light and Power Company and Western Massachusetts Electric Company a notice of termination of the Transmission Service Agreement dated November 1, 1986.

NUSCO states that the agreement will be terminated because it will no longer be utilized by the parties of the agreement. NUSCO requests an effective date of April 30, 1991.

Comment date: May 21, 1991, in accordance with Standard Paragraph E end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER91-410-000]

May 7, 1991.

Take notice that Niagara Mohawk Power Corporation ("Niagara Mohawk"), on April 29, 1991, tendered for filing an agreement between Niagara Mohawk and The City of Watertown ("The City") dated March 19, 1991. Niagara Mohawk states that this agreement provides for transmission and distribution service by Niagara Mohawk to certain municipal loads of the City. The services under this agreement have commenced as of January 1, 1991.

Niagara Mohawk requests waiver of the Commission's notice requirements, 18 CFR 35.3(b), 35.11.

Copies of this filing were served upon The City of the New York States Public Service Commission.

Comment date: May 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Glassboro Cogeneration, Inc

[Docket No. QF91-25-000]

May 8, 1991.

On May 7, 1991, Glassboro Cogeneration, Inc. tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain aspects of the shareholders and board of directors management prerogatives of the Applicant.

Comment date: 21 days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

14. Encogen Northwest, L.P.

[Docket No. QF91-111-000]

May 8, 1991.

On May 3, 1991, Encogen Northwest, L.P., tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain aspects of facility's operation and computation of operating and efficiency standards.

Comment date: 21 days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

15. Florida Power Corporation

[Docket No. ER91-426-000]

May 9, 1991.

Take notice that on May 2, 1991, Florida Power Corporation (Florida Power) tendered for filing amended revisions to the capacity charges, reservation fees and energy adder for various interchange services provided by Florida Power pursuant to interchange contracts with Florida Power & Light Company, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Orlando Utilities Commission, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., Tampa Electric Company, Reedy Creek Improvement District and the Cities of Gainsville, Homestead, Key West, Lakeland, Lake Worth, New Smyrna Beach, St. Cloud Starke, Tallahassee and Vero Beach, Florida, and Cajun Electric Power Cooperative, Inc. and Entergy Services, Inc. The interchange services which are affected by these revisions are Services Schedule B—Short Term Firm, Service Schedule F—Assured Capacity and Energy, Service Schedule G—Backup Service, Service Schedule H—Reserve Service, and the Contract for Assured Capacity and Energy and Florida Power & Light Company. Florida Power states that the revised capacity charges, reservation fees, and energy adder were developed using the same methodology as used in the original filings.

Florida Power requests that the amended revised capacity charges, reservation fees and energy adder be made effective on May 1, 1991 and remain effective through April 30, 1992. Florida Power therefore requests waiver of the Commission's sixty-day notice requirement. According to Florida Power the filing has been served on each of the affected utilities and the Florida Public Service Commission.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

16. Wallkill Generating Company, L.P.

[Docket No. ER91-401-000]

May 9, 1991.

Take notice that on April 25, 1991, Wallkill Generating Company, L.P. (Wallkill) tendered for filing an initial rate schedule and supporting documents.

Wallkill states that this initial rate schedule is contained in a Power Sales Agreement with Orange & Rockland Utilities, Inc. (O&R) dated June 1, 1990. Wallkill further states that this rate schedule resulted from the selection of Wallkill under a Request for Proposal issued by O&R pursuant to the competitive bidding process of the State of New York, and the subsequent arms'-length negotiations between O&R and Wallkill.

According to Wallkill the rate schedule is a negotiated contract providing for the sale of approximately two-thirds of the electric capacity and corresponding energy generated by an approximately 150 MW electric generating facility proposed to be constructed in the Town of Wallkill, New York.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

17. Municipal Resale Service Customers v. Ohio Power Company

[Docket No. EL91-30-000]

May 9, 1991.

Take notice that on April 18, 1991, Municipal Resale Service Customers (MRS) tendered for filing a complaint against Ohio Power Company (Ohio Power). MRS state that Ohio Power has charged and is charging wholesale rates that are unjust, and unreasonable and unduly discriminatory and therefore unlawful under the Federal Power Act.

Comment date: May 24, 1991 in accordance with Standard Paragraph E at the end of this notice.

18. Lakewood Cogeneration, L.P.

[Docket No. QF89-416-001]

May 9, 1991.

Lakewood Cogeneration, L.P. tendered for filing on May 2, 1991, an amendment to its filing this docket.

The amendment further clarifies the steam use profile of the proposed cogeneration facility.

Comment date: 21 days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

19. Robert S. Mars, Jr.

[Docket No. ID-2539-000]

May 9, 1991.

Take notice that on April 26, 1991, Robert S. Mars, Jr. (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director: Minnesota Power & Light Company.

Chairman: W.P.&R.S. Mars Company.

Comment date: May 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

20. Arizona Public Service Company

[Docket No. ER91-419-000]

May 9, 1991.

Take notice that on May 2, 1991, Arizona Public Service Company (Arizona) tendered for filing a notice of cancellation of the Seasonal Energy Agreement between Arizona and Nevada Power Company.

Arizona requests waiver of the Commission's notice requirements to allow for an effective date of May 15, 1991.

Comment date: May 23, 1991, in accordance with Standard Paragraph E end of this notice.

21. Orange and Rockland Utilities, Inc.

[Docket No. ER91-358-000]

May 9, 1991

Take notice that on May 2, 1991, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing an amendment to Orange and Rockland's previous filing of March 27, 1991, pursuant to the Federal Energy Docket No. ER88-112-000, of an executed Service Agreement between Orange and Rockland and Dickerson's Mill.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

22. Tampa Electric Company

[Docket No. ER91-417-000]

May 9, 1991

Take notice that on May 1, 1991, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to the City of Lakeland, Florida (Lakeland) of up to 85 megawatts of capacity and energy. Tampa Electric states that the Letter of Commitment is submitted as a supplement to Service Schedule J (negotiated interchange service) under the existing agreement for interchange service between Tampa Electric and Lakeland, designated as Tampa Electric Rate Schedule FERC No. 21.

Tampa Electric proposes an effective date of April 30, 1991 for the commitment of capacity and energy, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Lakeland and the Florida Public Service Commission.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

23. Public Service Company of New Mexico

[Docket No. ER91-421-000]

May 9, 1991

Take notice that on May 2, 1991, Public Service Company of New Mexico (PNM) tendered for filing a Letter Agreement (Agreement) providing for the sale of interruptible block energy to San Diego Gas and Electric Company (SDG&E).

PNM states that the service to be provided to SDG&E under the Agreement is the sale of approximately 275,400 megawatt hours of block energy at a maximum rate of delivery of 75

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megawatts per hour. The service commences on May 1, 1991 and terminates on September 30, 1991. The rates were negotiated based upon on-peak and off-peak hour deliveries, and taking into consideration market factors.

PNM is requesting a waiver of the Commission's notice requirements to permit service under the Agreement to be effective as of May 1, 1991.

Copies of the filing have been served upon SDG&E and the New Mexico Public Service Commission.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

24. Arizona Public Service Company

[Docket No. ER91-408-000]

May 9, 1991

Take notice that on April 22, 1991, Arizona Public Service Company (Arizona) tendered for filing a Notice of Cancellation of Arizona Public Service Company FERC Rate Schedule No. 79, the Arizona-Southern California Edison Cholla No. 4 Layoff Agreement.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

25. Montana Power Company

[Docket No. ER91-420-000]

May 9, 1991

Take notice that on May 2, 1991, the Montana Power Company (Montana Power) tendered for filing pursuant to part 35 of the Federal Energy Regulatory Commission's Regulations under the Federal Power Act its proposed Rate Schedule REC-91, applicable for sales of electricity by Montana Power for resale to Central Montana Electric Power Cooperative, Inc., (Central Montana) (Rate Schedule FPC No. 39) and Bighorn County Electric Cooperative, Inc., (Bighorn) (Rate Schedule FPC No. 40). This filing has been served upon Bighorn and Central Montana.

Montana Power states that Rate Schedule REC-91 will provide it with a decrease in revenues from sales to these customers of $1,357,800 (−8.97%) during the year starting June 30, 1991, and concludes the annual rate adjustment pursuant to a Settlement Agreement approved in Docket No. ER84-359-000, 31 FERC ¶ 61,060 (1985).

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

26. Appalachian Power Company

[Docket No. ER91-402-000]

May 9, 1991

Take notice that on April 26, 1991, Appalachian Power Company (APCo) tendered for filing a two (2) electric service agreements that were executed by APCo and Old Dominion Electric Cooperative (ODEC) on July 2, 1990, and March 6, 1991, respectfully. The agreements set forth the terms pursuant to which APCo proposes to provide electric service to ODEC at ODEC's existing Whitehouse delivery point and at its new Lynch delivery point.

To match the effective date requested by ODEC, APCo proposes an effective date of on or about June 1, 1991. In its filing, APCo requests waiver of the requirement that an initial rate schedule be tendered for filing not less than sixty (60) days prior to the date on which the electric service is to commence and become effective.

APCo states that copies of its filing were served on ODEC the Virginia Electric and Power Company, which currently provides service to ODEC's Whitehouse delivery point, and APCo's existing wholesale purchasers.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

27. Public Service Company of Oklahoma

[Docket No. ER91-409-000]

May 9, 1991

Take notice that on April 29, 1991, Public Service Company of Oklahoma (PSO), on April 29, 1991, tendered for filing its Customer Supplied Fuel Rider (CSF), which supplements and amends its Wholesale Full Requirements Rate, FERC Rate Schedule Nos. 170, 171, 189 and 198.

Under the CSF, certain municipal wholesale full requirements customers of PSO may elect to supply PSO with the gas supplies required to generate a portion of or a specified percentage of their requirements for electricity. PSO requests that the CSF be permitted to become effective as of June 29, 1991.

Copies of the filing were served upon PSO's full requirements wholesale customers and Oklahoma Corporation Commission.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

28. West Texas Utilities Company

[Docket No. ER91-406-000]

May 9, 1991

Take notice that on April 29, 1991, West Texas Utilities Company (WTU) tendered for filing an Amendment, dated February 28, 1991, to the Remote Interrogation of Metering Records Agreement (Agreement), dated August 22, 1990, between WTU and Brazos Electric Power Cooperative of Texas, Inc. (Brazos).

The Agreement, accepted for filing by Commission order of September 24, 1990, includes an "exhibit A" which lists each point of delivery to which the Agreement pertains. Due to the impracticability at the time of obtaining telephone service to the Clairemont point, the point was omitted from the initial list. Service is now available at the Clairemont Point and revised "exhibit A" amends the Agreement to include the Clairemont Point.

WTU requests waiver of the notice requirement in order that the Amendment may become effective as of August 1, 1990, the effective date of the underlying Transmission Service Agreement. Accordingly, WTU seeks waiver of the Commission's notice requirements.

Copies of the filing were served upon Brazos and the Public Utility Commission of Texas.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

29. PacifiCorp Electric Operations

[Docket No. ER91-345-000]

May 9, 1991

Take notice that on May 6, 1991, PacifiCorp Electric Operations (PacifiCorp), tendered for filing an amendment to its filing for the Long-Term Power Sales Agreement with the Department of Water Resources of the State of California (CDWR).

PacifiCorp requests waiver of the Commission's notice requirements to allow an effective date of June 1, 1991.

Copies of this filing amendment have been supplied to CDWR, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

Comment date: May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

30. Jackson Valley Energy Partners, L.P.

[Docket No. QF82-208-004]

May 9, 1991

On May 3, 1991, Jackson Valley Energy Partners, L.P. 4655 Coal Mine Road, Ione, California 95640, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Ione, Amador County, California, and will include a fluid bed combustion boiler, and an extraction steam turbine generator.

Thermal energy recovered from the facility will be used in the montan wax extraction plant.

The original certification was issued on November 16, 1982 (21 FERC ¶ 62,272 (1982)). The instant recertification is requested due to an increase in the net electric power production capacity from 14.2 MW to 15.1 MW and a change in the ownership structure. NRG Energy Jackson Valley I, and NRG Energy Jackson Valley II, Inc., both subsidiaries of Northern State Power Company, a utility will have 50% ownership in the facility.

Comment date: 15 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

31. Jackson Valley Energy Partners, L.P.

[Docket No. QF82-208-005]

May 10, 1991.

On May 3, 1991, Jackson Valley Energy Partners, L.P., 4655 Coal Mine Road, Ione, California 95640, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Ione, Amador County, California, and will include a fluid bed combustion boiler, and an extraction steam turbine generator.

The original certification was issued on October 6, 1983 (25 FERC ¶ 61,054 (1983)). The instant recertification is requested due to an increase in the net electric power production capacity from 14.2 MW to 15.1 MW and a change in the ownership structure. NRG Energy Jackson Valley I, and NRG Energy Jackson Valley II, Inc., both subsidiaries of Northern State Power Company, a utility will have 50% ownership in the facility.

Comment date: 15 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

32. General Electric Company

[Docket No. QF91-108-000]

May 13, 1991.

On May 6, 1991, General Electric Company tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain aspects of the configuration of the proposed cogeneration facility, and the thermal usage of its steam host.

Comment date: 21 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

33. Martin E. Fate, Jr.

[Docket No. ID-2807-000]

May 13, 1991.

Take notice that on May 6, 1991, Martin E. Fate, Jr. (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director: Public Service Company of Oklahoma.

President: Public Service Company of Oklahoma.

Chief Executive Officer: Public Service Company of Oklahoma.

Comment date: May 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

34. Montana Power Company

[Docket No. ER91-336-000]

May 13, 1991.

Take notice that on May 7, 1991, the Montana Power Company (Montana) tendered for filing amendment 1 to its original filing of a "Firm Energy Sales Agreement Between The Montana Power Company and The Washington Water Power Company." This amendment 1 provides additional information requested by Commission staff.

A copy of the filing was served upon The Washington Water Power Company.

Comment date: May 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

35. Cincinnati Gas & Electric Company

[Docket No. ER91-353-000]

May 13, 1991.

Take notice that on May 6, 1991, The Cincinnati Gas & Electric Company tendered for filing certain cost information related to proposed changes in its FERC Electric Tariff, Original Volume No. 1. Due to the submission of the additional information, CG&E requests waiver of the Commission's notice requirements, and an effective date of June 1, 1991, as agreed to by CG&E and its customers.

Copies of the supplemental filing were served upon the Villages of Bethel, Blanchester, Georgetown, Hamersville, Ripley and the City of Lebanon, municipalities in the State of Ohio; and the Public Utilities Commission of Ohio.

Comment date: May 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

36. PSI Energy, Inc.

[Docket No. ER91-416-000]

May 13, 1991.

Take notice that on April 30, 1991, PSI Energy, Inc. (PSI) tendered for filing the executed contracts and related information for the Economic Development incentives applicable to Indiana Packers Company (Packers) in Carroll County, Indiana.

Comment date: May 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

37. Central Vermont Public Service Corporation

[Docket No. ER91-422-000]

May 13, 1991.

Take notice that on May 1, 1991, Central Vermont Public Service Corporation (CVPS) tendered for filing a Notice of Termination of Electric Service concerning Allied's participation in Central Vermont's FERC Electric Tariff, Original Volume No. 3.

Comment date: May 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

38. South Carolina Electric & Gas Company

[Docket No. ER91-423-000]

May 13, 1991.

Take notice that South Carolina & Gas (SCE&G) on May 2, 1991, tendered for filing proposed changes in its FPC Electric Service Tariff, Volume No. 1. This amendment is being made to establish a new delivery point for sale of power to Saluda River Electric Cooperative as well as to document that two existing delivery points for sale of power to Little River Electric Cooperative are being assigned to Saluda River Electric Cooperative. In effect SCE&G is herewith cancelling the current tariff with Little River Electric Cooperative which has two delivery points and replacing that tariff with a new tariff with Saluda River Electric Cooperative which incorporates the above two referenced delivery points and adds a third.

The amendment is being made as a result of an agreement between Little River Electric Cooperative and Saluda River Electric Cooperative in which the latter assumed all the duties and obligations of the former with the respect to the supply of wholesale electric power service by SCE&G.

Copies of the filing were served upon the public utility's jurisdictional customers, including Saluda River Electric Cooperative, Inc.

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Comment date: May 28, 1991, in accordance with Standard Paragraph E end of this notice.

38. Central Vermont Public Service Corporation

[Docket No. ER91-434-000]

May 13, 1991.

Take notice that on May 1, 1991, Central Vermont Public Service Corporation (CVPS) tendered for filing a Notice of Termination of Electric Service concerning Allied Power & Light Company's participation in CVPS' FPC Electric Tariff, First Revised Volume No. 1.

Comment date: May 28, 1991, in accordance with Standard paragraph E at the end of this notice.

40. Central Vermont Public Service Corporation

[Docket No. ER91-435-000]

May 13, 1991.

Take notice that on May 1, 1991, Central Vermont Public Service Corporation (CVPS) tendered for filing a Notice of Termination of Electric Service concerning Hyde Park Electric Light Department.

Comment date: May 28, 1991, in accordance with Standard paragraph E at the end of this notice.

41. New England Power Company

[Docket No. ER91-437-000]

May 13, 1991.

Take notice that on May 7, 1991, New England Power Company (NEP) submitted a letter agreement between itself and the Massachusetts Municipal Wholesale Electric Company (MMWEC) providing the back-up transmission service for the municipals' allocation of New York Power Authority (NYPA) power. NEP states that the letter agreement, dated April 3, 1989, allows the NYPA power to be wheeled from New York over the ties of Northeast Utilities (NU), through a contract between NEP and NU, in the event NEP is unable to wheel for MMWEC under their current contract. Under the letter agreement, MMWEC has agreed to reimburse NEP for a certain level of service from NU.

NEP requests waiver of the Commission's notice requirements so that the letter agreement may be effective May 1, 1991, in accordance with its terms. According to NEP, the letter agreement will terminate April 30, 1994.

Comment date: May 28, 1991, in accordance with Standard paragraph E at the end of this notice.

42. Florida Power & Light Company

[Docket No. ER91-428-000]

May 13, 1991.

Take notice that on May 3, 1991, Florida Power & Light Company (FPL) tendered for filing a document entitled Contract For Interchange Service Between Florida Power & Light Company and Reedy Creek Improvement District.

FPL states that under the interchange contract FPL will provide Service Schedule B—Short Term Firm Interchange Service, Service Schedule C—Economy Interchange Service, and Service Schedule X—Extended Economy Interchange Service. Rates for these services are similar to rates charged by FPL to other Florida utilities.

FPL requests that waiver of the Commission's Regulations be granted and that the proposed Contract be made effective May 15, 1991. FPL states that a copy of the filing was served on Reedy Creek improvement District.

Comment date: May 28, 1991 in accordance with Standard paragraph E at the end of this notice.

Standard paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11618 Filed 5-17-91; 8:45 am]

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[Docket No. RP91-153-000]

East Tennessee Natural Gas Co.; Rate and Tariff Filing Pursuant to Stipulation and Agreement

May 13, 1991.

Take notice that on May 7, 1991, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252-2511, tendered for filing the following tariff sheets to its Original Volume No. 1A, proposed to be effective July 1, 1991:

First Revised Sheet No. 6
First Revised Sheet No. 7
First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 23
First Revised Sheet No. 40
First Revised Sheet No. 41
Original Sheet No. 41A
Second Revised Sheet No. 42
First Revised Sheet No. 43
First Revised Sheet No. 102
First Revised Sheet No. 103
First Revised Sheet No. 104
First Revised Sheet No. 105
First Revised Sheet No. 106
First Revised Sheet No. 107
First Revised Sheet No. 108
Second Revised Sheet No. 109
Original Sheet No. 109A
First Revised Sheet No. 110
Second Revised Sheet No. 111
First Revised Sheet No. 112
First Revised Sheet No. 113
First Revised Sheet No. 114
First Revised Sheet No. 115
First Revised Sheet No. 116
First Revised Sheet No. 117
First Revised Sheet No. 122
First Revised Sheet Nos. 123-129
First Revised Sheet No. 130
First Revised Sheet No. 131
First Revised Sheet No. 151
First Revised Sheet No. 152
First Revised Sheet No. 153
First Revised Sheet No. 154
First Revised Sheet No. 156
First Revised Sheet No. 161
First Revised Sheet No. 162
First Revised Sheet No. 163
First Revised Sheet No. 164
First Revised Sheet No. 167
First Revised Sheet No. 173
Original Sheet Nos. 181-199
First Revised Sheet Nos. 200-229

East Tennessee states that the filing includes tariff sheets for Rate Schedules FT and IT, including rates for such service, General Terms and Conditions for FT and IT, and Forms of Service Agreements. East Tennessee states that the filing establishes the terms and conditions under which it intends to provide open-access transportation pursuant to section 311 of the Natural Gas Policy Act, and part 284, subpart G of the Commission's regulations, effective July 1, 1991, assuming acceptance of the instant tariff filing. East Tennessee states that it will conduct an open season for interruptible transportation from May 20 through May 29, 1991. The open season will establish the interruptible transportation queue under part 284 of the Commission's regulations for both subpart B and G transportation. East Tennessee avers that it will provide transportation pursuant to subpart G after approval and acceptance of the April 4, 1991 Stipulation and Agreement filed in Docket No. RP90-111 (Stipulation and Agreement), and in accordance with the terms provided therein and in Original Volume No. 1A of the FERC Gas Tariff.

East Tennessee requests waiver of § 284.10 of the Commission's Regulations pending Commission approval of the Stipulation and Agreement, citing *Midwestern Gas Transmission Corp.*, 50 FERC 61,084 (1990). East Tennessee also seeks waiver of certain provisions of its tariff, including: (1) Section 3.1 of its IT Rate Schedule which requires that a request for service be made no earlier than 90 days prior to the proposed commencement date; (2) section 3.4 of its IT Rate Schedule to allow certain shippers not eligible for transportation under section 311 to establish and maintain a place in East Tennessee's interruptible transportation queue after East Tennessee accepts its blanket certificate pursuant to the settlement; and (3) the sole supplier provisions of the current SG Rate Schedule. East Tennessee asserts such waivers are necessary in order to ensure that potential Shippers under part 284, subparts B and G, of the Commission's regulations are treated in a non-preferential manner.

East Tennessee states that a copy of the filing has been mailed to all affected customers and the regulatory Commissions of each state in which any such customer distributes gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11620 Filed 5-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-364-000]

Nantahala Power and Light Co.; Clarification of Filing

May 13, 1991

On April 2, 1991, Nantahala Power and Light Company (Nantahala) tendered for filing the 1990 revised "PL" (COSAC) rate tariff, pursuant to the Settlement Agreement in Docket No. ER80-574 (Settlement Agreement). On April 16, 1991, the Secretary issued a notice of the filing which stated that motions to intervene or protests were to be filed on or before April 30, 1991. On May 7, 1991, the Town of Highlands, North Carolina, Haywood Electric Membership Corporation and North Carolina Electric Membership Corporation (Resale Customers) filed an uncontested motion to intervene out-of-time, uncontested request for extension of protest and comment period and an alternative, conditional protest and request for hearing. Resale Customers note that the terms of the Settlement Agreement permit Resale Customers to file a complaint by June 30 of each year pursuant to Nantahala's annual COSAC filing.

The April 16, 1991 notice of filing is hereby clarified to provide that the comment period established for the filing of motions to intervene or protests does not preclude any party to the Settlement Agreement from exercising rights under the Settlement Agreement including the right to file a complaint on or before June 30, 1991 in accordance with terms of the Settlement Agreement.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11619 Filed 5-17-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3967-5]

Agency Information Collection Activity Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that a previously-announced Information Collection Request (ICR), titled Survey of Pharmaceutical Industry (ICR no. 1460.02), has been amended and resubmitted to the Office of Management and Budget (OMB) for review and comment.

DATES: Comments must be submitted on or before June 4, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Organization of this Notice

A. Summary of Previously-Announced ICR.
B. Summary of OMB Response.
C. Amendments to Questionnaire.
D. Conclusion and Solicitation of Comment.

Office of Water

A. Summary of Previously-announced ICR

On May 23, 1990, EPA announced that ICR #1460.02 had been forwarded to OMB for review and comment (55 FR 21235). As the announcement stated, EPA's Office of Water intended to use the survey to collect information from pharmaceutical manufacturing facilities for the purpose of developing effluent limitations. The questionnaire instrument was comprised of two major parts; part A requested technical information, and part B requested financial information.

Part B requested financial information from both the facility to which the questionnaire would be sent and the company owning the facility. EPA explained its rationale for seeking both facility and company-level information in the Supporting Statement for the ICR.

During the comment period for that ICR, EPA received comments from an industry trade association and from several pharmaceutical companies. EPA also met with industry representatives to discuss their comments. All of these comments and memoranda recording the meetings will be included in EPA's rulemaking record.

B. Summary of OMB Response

In a document dated August 20, 1990, OMB responded to EPA's request with partial clearance of the survey (labelled OMB #2040-0146). The terms of clearance that accompanied OMB's Notice of Action were published on October 2, 1990 (55 FR 40229).

Briefly, OMB's response provided clearance to all of part A and to the company-level financial information in part B, but denied clearance to the facility-level financial information in part B. OMB directed EPA, among other things, to consider making the denied portion of part B "optional for those companies willing to * * * certify no financial impact * * * for selecting the best available technology economically achievable." Today's notice announces EPA's intention to rely on such a certification.

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C. Amendments to Questionnaire

As submitted to OMB for review in May 1989, section 2 of part B included questions on facility operations and finances. Section 2 of part B was comprised of questions about the company(ies) that own the facility. OMB's terms of clearance disapproved Section 1—the facility questions.

EPA has amended part B to allow respondents the option of completing section 1 or signing a certification concerning the economic impact of effluent regulations that EPA may eventually promulgate. The survey instrument will be revised to include an insert explaining the certification and the certification itself. Other editing and format revisions may also appear. The questionnaire insert and certification are drafted as follows:

Important

Section 1 of part B asks questions on the operations and finances of the manufacturing facility. Section 2 of part B asks questions on the operations and finances of the company(ies) that owns the facility. Refer to page 100 for definitions of "facility," "owner company," and "ultimate parent company."

Instead of completing all of section 1 of part B, respondents have the option of certifying certain conditions about the economic impacts that will result from costs incurred to comply with effluent limitations guidelines and standards. The certification must be signed by an official of the owner company with sufficient decision-making authority for this certification to be legally binding. It is likely that this official will be the President, Chief Executive Officer, or their designee. In addition, where the owner company has an ultimate parent company, this questionnaire requests certain financial information from both the owner company and the ultimate parent company. Hence, duly authorized officials of both companies must sign the certification.

A company that signs the certification need only respond to question 5 of seciton 1, which requests employment data. All companies, that do not sign the certification must complete all of section 1.

Read the certification carefully. The Agency's findings of economic achievability for the facilities owned by any company that signs will be based, in whole or in part, on the company's certification. A company that signs this certification is representing, under penalty of law, that the cost of compliance with the effluent guidelines will not be the cause of any adverse financial impacts at any of its facilities, so long as the per-facility cost of compliance of the effluent guideline ultimately promulgated by EPA is less than the dollar amount calculated for each facility using the equation found in Attachment X. Note that the dollar amount calculated using the equation in Attachment X represents additional costs imposed by the guideline beyond any treatment costs presently incurred by the facility.

The certifying company also forgoes the right to challenge this aspect of the guideline. A company having any doubts as to the contents of the certification should not sign it and should instead complete section 1 in full. Aside from the legal implications of the certification, EPA believes that it is in a company's best interests to have the Agency accurately project economic impacts. If a company suspects that compliance costs may result in an adverse economic impact, the Agency will be able to more accurately consider such impacts in the rulemaking process if the company responds to all questions in section 1.

Certification

The undersigned hereby certify that, if the effluent guideline which EPA promulgates pursuant to this rulemaking imposes a per-facility total annual treatment cost in 1990 dollars, as estimated by EPA, or less than the dollar amount calculated for each facility using the equation found in Attachment X, the guideline is economically achievable for the owner company and each of the owner company's facilities, and the cost of compliance will not be the cause of any adverse financial impacts at any of the facilities owned by the owner company, including without limitation, the following:

(1) Facility closures;

(2) Product line closures;

(3) Employment impacts (including the firing or laying-off of employees, or the reduction in hours, pay or benefits of employees).

This certification should not be interpreted to ensure that any of the above impacts will not occur for reasons other than the cost of compliance with the effluent guideline.

As long as EPA's estimated per-facility compliance cost is less than the dollar amount calculated for each facility using the equation found in Attachment X, the undersigned hereby agree and covenant that neither the owner company nor the ultimate parent company, not any of their representatives, will bring any legal action challenging the guideline that EPA promulgates pursuant to this rulemaking, or seek any administrative or other remedy, on the ground that the guideline is not economically achievable, or on any related ground, including without limitation the ground that EPA did not properly demonstrate or determine the economic achievability of the guideline, or that EPA did not collect sufficient information or the appropriate information to demonstrate or determine the economic achievability of the guideline. This does not limit the right of the undersigned, at promulgation, to bring a legal action based on any other analyses (e.g., technical assessments, cost-effectiveness, etc.) prepared by EPA in developing the effluent limitations and standards, except that the undersigned will not challenge the use of the certification in lieu of facility-level financial data in such analyses.

In addition, the undersigned recognize and acknowledge that EPA will use the information regarding economic impacts provided in this certification for the purposes of any regulatory analyses to which EPA may determine the certification is relevant, including without limitation, analyses in support of:

(1) The division of this industry into different regulatory categories or subcategories in the effluent guideline;

(2) Determinations made under the Regulatory Flexibility Act (e.g., no significant impact on a substantial number of small entities); and

(3) Any determinations under the Clean Water Act regarding facility costs.

The undersigned agree and covenant that neither the owner company nor the ultimate parent company will bring any legal action or seek any administrative or other remedy regarding the use of such information in these analyses or the result of these analyses to the extent they are based on such information.

Finally, the undersigned hereby agree that the fact that the owner company and the ultimate parent company agreed to sign this certification is not confidential business information and that this fact will appear in the public record of the effluent guideline promulgated pursuant to this rulemaking.

Owner company	Date
Ultimate Parent Company (if applicable)	Date.

Purpose: This attachment explains how to derive the per-facility compliance cost to be considered for the certification alternative presented in part B of the questionnaire.

The total annual plant costs calculated using the equations contained in this Attachment do not represent a projection by EPA of the actual cost to the plant of the guideline which EPA will eventually promulgate. EPA, of course, has not yet determined the technology bases for the guideline, nor has the Agency evaluated individual plants to determine what technologies are already in place and what individual plants' costs of compliance will be. The figures calculated using these equations represent upper bound annual costs for the purpose of this certification only.

Direct Dischargers: To compute the total annual plant cost that will provide the basis for your decision whether to sign the certification, substitute the average process wastewater flow in millions of gallons per day (MGD) in 1990 for X in the following equation. For example, if the average flow is 2,000,000 gallons per day, substitute 2 for X. If the average flow is 700,000 gallons per day, substitute 0.7 for X. This flow should be consistent with your responses in tables 4–1 and 4–2 in Part A of the questionnaire.

Total Annual Cost=$1,000 (9,212 X+2,341)

Underlying Assumptions:

1. The equation reflects the installation, operation, and maintenance of the following wastewater treatment technologies: Steam stripping, air stripping, biological treatment (with nitrification), dualmedia filtration, and granular activated carbon adsorption.

2. The cost equation was developed assuming no wastewater treatment technologies are currently in place.

3. Costs are presented in 1990 dollars.

4. Total annual cost is the sum of the annualized portion of capital costs (based on a capital recovery factor of 0.22, which reflects a cost of capital of 15 percent and equipment life of 8 years) plus operating and maintenance costs.

Indirect Dischargers: To compute the total annual plant cost that will provide the basis for your decision whether to sign the certification, substitute the average process wastewater flow in millions of gallons per day (MGD) in 1990 for X in the following equation. For example, if the average flow is 2,000,000 gallons per day, substitute 2 for X. If the average flow is 700,000 gallons per day, substitute 0.7 for X. This flow should be consistent with your responses in Tables 4–1 and 4–2 in part A of the questionnaire.

Total Annual Cost=$1,000 (3,636 X+1,345)

Underlying Assumptions:

1. The equation reflects the installation, operation, and maintenance of the following wastewater treatment technologies: Steam stripping, air stripping, dualmedia filtration, and granular activated carbon adsorption.

2. The cost equation was developed assuming no wastewater treatment technologies are currently in place.

3. Costs are presented in 1990 dollars.

4. Total annual cost is the sum of the annualized portion of capital costs (based on a capital recovery factor of 0.22, which reflects a cost of capital of 15 percent and equipment life of 8 years) plus operating and maintenance costs.

D. Conclusion and Solicitation of Comment

EPA believes that including this certification as an option responds to OMB's direction and to industry's comments. Further, if OMB approves section 1 with this insert and certification, EPA will remain able to make the determinations required by statute concerning the economic achievability of the regulation.

A toll-free telephone helpline will be available to all respondents who have questions concerning the certification or any other aspect of the questionnaire.

The Agency solicits comment on the revised approach to section 1 of part B. EPA specifically solicits comments on whether the certification published above is responsive to OMB and industry concerns.

Send comments regarding this amended ICF to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dated: May 16, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–12007 Filed 5–17–91; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3967–8]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed May 6, 1991 Through May 10, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910144, FINAL EIS, UMC, NC, Camp Lejeune Marine Corps Base Camp, Expansion and Realignment for Additional Training Needs, Implementation, Onslow County, NC, Due: June 17, 1991, Contact: Paula Anderson (804) 445–2334.

EIS No. 910145, DRAFT SUPPLEMENT, FRC, NJ, Mount Hope Pumped Storage Hydroelectric Project Construction, Operation and Maintenance, New and Additional Information, License, section 404 Permit, Morris County, NJ, Due: July 1, 1991, Contact: James Haimes (202) 219–2780.

EIS No. 910146, FINAL EIS, AFS, AK, North Sea Otter Sound Area Resources Management Plan, Implementation, Tongass National Forest, Ketchikan Area, AK, Due: June 17, 1991, Contact: Pete Johnson (907) 828–3304.

EIS No. 910147, DRAFT EIS, USA, MA, NJ, VA, MA, MI, Army Materials Technology Laboratory Closure and Realignments, Transfers to Detroit Arsenal, MI; Picatinny Arsenal, NJ; and fort Belvoir; VA Middlesex, Norfolk, Suffolk and Essex Counties, MA, Due: July 1, 1991, Contact: Susan Brown (617) 647–8536.

EIS No. 910148, FINAL EIS, FHW, KY, Richmond Bypass Extension, US 25/421 North to US 25/421 South, Funding, Madison County, KY, Due: June 21, 1991, Contact: Paul E. Toussaint (502) 227–7321.

EIS No. 910149, DRAFT SUPPLEMENT, AFS, IL, Shawnee National Forest Land and Resource Management Plan, Amended Forest Plan, Implementation, Several Counties, IL, Due: August 15, 1991, Contact: Rodney K. Sallee (618) 253–7114.

EIS No. 910150, DRAFT EIS, COE, OH, Cleveland Harbor Dike 14 Confined Disposal Facility (CDF) for Dredged Material Modifications, Cuyahoga County, OH, Due: July 1, 1991, Contact: Timothy Daly (716) 879–4171.

EIS No. 910151, FINAL EIS, UAF, NV, Tonopah Test Range 37th Tactical Fighter Wing Relocation and other Tactical Force Structure Actions at Holloman and Nellis AFB, Nye County, NV, Due: June 17, 1991, Contact: David Clark (804) 764–7844.

EIS No. 910152, FINAL EIS, USA, CA, GA, KY, MD, NC, CO, HI, MO, PA, SC, TX, WA, DC, Presidio of San Francisco Army Base, Closure and Relocation to other Facilities, Implementation, Alternates are in CA, CO, GA, HI, KY, MD, MO, NC, PA, SC, TX, WA and DC, Due: June 17, 1991, Contact: Bob Verkade (916) 561–2350.

EIS No. 910153, DRAFT EIS, EPA, TX, Brazos Island Harbor (BIH) Entrance Channel 42 Foot Project, Ocean Dredged Material Disposal Site (ODMDS) Designation, Brownville, TX, Due: July 8,

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1991, contact: Norm Thomas (214) 655-2260.

EIS No. 910154, FINAL EIS, EPA, FL, Martin Coal Gasification/ Combined Cycle Project, Construction and Operation, Issuance of New Source NPDES Permit, section 404 Permit, Martin County, FL, Due: June 17, 1991, Contact: Chris Hoberg (404) 347-3776.

Dated: May 14, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-11800 Filed 5-17-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

220-222 MHz Band Removed From Amateur Services, Amateur Operation Prohibited After August 27, 1991

May 13, 1991.

On March 14, 1991, the Commission adopted a *Report and Order* in PR Docket No. 89-552 to adopt service rules for land mobile use in the 220-222 MHz frequency band.[1] The rules adopted also remove the 220-222 MHz band from the amateur services. These rules become effective May 29, 1991.[2] The part 97 rules governing the amateur services, however, were waived to permit continued amateur station operation on the 220-222 MHz band in accordance with the former rules that governed operation on that band for a period of ninety (90) days from the effective date of the rules removing that band from the amateur services.

Now that the effective date of these rules changes has become certain, amateur operators are hereby placed on notice that amateur stations may not transmit in the frequency band 220.000 to 222.000 MHz after 0000 hours UTC, August 28, 1991.

Land mobile applications for this band are currently being accepted for filing. Part 90 licenses will be granted as soon as type accepted equipment is available for land mobile operation in this band. For this reason, requests for wavier of the rules to permit continued amateur station operation in this band will generally not be viewed favorably. Amateur operators were placed on notice September 6, 1988, that they should provide for an orderly transition from this band.[3] When it initiated PR Docket No. 89-552, the Commission warned amateur operators that if the rules proposed to establish private land mobile radio systems in the 220-222 MHz band were adopted, amateur stations would be required to terminate operations at the end of that proceeding. At that time the Commission again encouraged amateur operators to arrange for orderly transition from the 220-222 MHz band to avoid abrupt termination of amateur station operations.[4]

Any requests for continued amateur station operation in the 220-222 MHz frequency band, whether couched as requests for waiver, requests for special temporary authority, requests for experimental or developmental licenses, or in any other form, will be strictly scrutinized in light of the Commission's actions in General Docket No. 87-14 and PR Docket No. 89-552. Any such request must overcome the heavy burden of demonstrating that the arguments made in support thereof are substantially different from those that have been carefully considered in both rule making proceedings.[5] Any such request must include acceptable justification for failing to provide for an orderly transition from the band over the past three years, notwithstanding the Commission's repeated notifications to amateur operators that failure to provide for such a transition could result in abrupt termination of operation.

For further information about this matter, contact the Personal Radio Branch, Special Services Division, Private Radio Bureau, at (202) 632-4964, or the Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, at (202) 634-2443.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-11801 Filed 5-17-91; 8:45 am]

BILLING CODE 6712-01-M

[1] *Report and Order*, PR Docket No. 89-552 (FCC 91-74) (released April 17, 1991).

[2] Two of the rules adopted have different effective dates. 47 C.F.R. 90.711 is effective May 1, 1991. 47 CFR 90.713 is effective July 29, 1991.

[3] *Report and Order*, General Docket No. 87-14, 3 FCC Rcd 5287 (1988), *recon. denied*, 4 FCC Rcd 6487 (1989), *aff'd American Radio Relay League, Inc.* v. *FCC and United States of America*, No. 89-1602 (DC Cir. Dec. 3, 1990).

[4] *Notice of Proposed Rule Making*, PR Docket No. 89-552, 4 FCC Rcd 6593 (1989).

[5] *See, e.g., Industrial Broadcasting* v. *F.C.C.*, 437 F.2d 660, 663 (DC Cir. 1970); *WAIT Radio* v. *F.C.C.*, 418 F.2d 1153, 1155 (D.C. Cir. 1969).

FEDERAL RESERVE SYSTEM

Bancorp Employee Stock Ownership Plan; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than June 10, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Bancorp Employee Stock Ownership Plan, Benton, Kentucky; to acquire an additional 0.50 percent of the voting shares of Benton Bancorp, Inc., Benton, Kentucky, for a total of 10.44 percent, and thereby indirectly acquire Bank of Benton, Benton, Kentucky, and Calvert Bank, Calvert City, Kentucky.

Board of Governors of the Federal Reserve System, May 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-11637 Filed 5-17-91; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 10, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; Norwest Financial Services, Inc., Des Moines, Iowa; and Norwest Financial, Inc., Des Moines, Iowa; to acquire 100 percent of the voting shares of Dial National Bank of South Dakota, Sioux Falls, South Dakota.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Fremont Bank Corporation, Canon City, Colorado; to acquire 100 percent of the voting shares of The First National Bank of Arvada, Arvada, Colorado.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. A.N.B. Holding Company, Ltd., Terrell, Texas; to become a bank holding company by acquiring 30 percent of the voting shares of The American National Bank of Terrell, Terrell, Texas.

Board of Governors of the Federal Reserve System, May 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-11636 Filed 5-17-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that a meeting of the Federal Accounting Standards Advisory Board will be held on June 5, 1991, from 9 a.m. until 4 p.m. in room 7116 of the General Accounting Office, 441 G St. NW., Washington, DC.

The agenda for the meeting will consist of a review of the minutes of the May meeting, continuation of the discussion of title 2, GAO's Policy and Procedures Manual for the Guidance of Federal Agencies, a status report on the User Needs Task Force, and an update on credit reform. Other items may be added to the agenda; interested parties should contact the Staff Director for more specific information.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 401 F St. NW., room 302, Washington, DC 20548, or call (202) 504-3336.

DATES: June 5, 1991.

ADDRESSES: 441 G St. NW., room 7116, Washington, DC 20548.

Authority: Federal Advisory Committee Act, Pub. L. No. 92-463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: May 15, 1991.

Ronald S. Young,

Staff Director.

[FR Doc. 91-11858 Filed 5-17-91; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91C-0131]

Ciba Vision Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Vision Corp. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of carmine to color contact lenses.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, (202) 472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 1C0232), has been filed by Ciba Vision Corp., 2910 Amwiler Ct., Atlanta, GA 30360, proposing that 21 CFR part 73 of the color additive regulations be amended to provide for the safe use of carmine to color contact lenses.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 13, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-11843 Filed 5-17-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91C-0132]

Ciba Vision Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Vision Corp. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of mica to color contact lenses.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, (202) 472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 1C0233) has been filed by Ciba Vision Corp., 2910 Amwiler Ct., Atlanta, GA 30360, proposing that 21 CFR part 73 of the color additive regulations be amended to provide for the safe use of mica to color contact lenses.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 13, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-11844 Filed 5-17-91; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration HHS.

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ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Cardiovascular and Renal Drugs Advisory Committee

Date, time and place. June 6 and 7, 1991, 9 a.m., Jack Masur Auditorium, Clinical Center Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD. Parking in the Clinical Center visitor area is reserved for Clinical Center patients and their visitors. If you must drive, please use an outlying lot such as Lot 41B. Free shuttle bus service is provided from Lot 41B to the Clinical Center every 8 minutes during rush hour and every 15 minutes at other times.

Type of meeting and contact person. Open public hearing, June 6, 1991, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion June 7, 1991, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419-259-6211, or Linda McGahey, Advisors and Consultants Staff (HFD-9), 301-443-4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. On June 6, 1991, the committee will discuss Monocor (bisoprolol fumarate) new drug application (NDA) NDA 19-962, and (bisoprolol/hydrochlorothiazide) NDA 20-186, for use once daily for hypertension, Lederle Laboratories; and intravenous Cardizem (diltiazem), for use in supraventricular tachycardia, NDA 19-960, Marion Merrell-Dow. On June 7, 1991, the committee will discuss Norvasc (amlodipine besylate), a new drug application NDA 19-787, Pfizer, Central Research, to be indicated for hypertension and stable and vasospastic angina.

Antiviral Drugs Advisory Committee

Date, time, and place. June 12, 1991, 8:30 a.m., Holiday Inn Crowne Plaza, Plazas II and III, 1750 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5:30 p.m.; Anna J. Baldwin, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immunodeficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 5, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a new drug application for foscarnet (Astra Pharmaceuticals) for use in the treatment of cytomegalovirus retinitis infection.

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. June 13 and 14, 1991, 8:30 a.m., Ramada Inn, Embassy Ballrooms I, II, and III, 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, June 13, 1991, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, June 14, 1991, 8:30 a.m., to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-54555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 3, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 13, 1991, the committee will discuss: (1) Background of interpretation of carcinogenicity bioassays: (2) experiences with carcinogenicity studies of antihistamines (Methapyrilene, diphenhydramine, and chlorpheniramine; (3) NDA's 16-066 and 19-440 (doxylamine, Pfizer); and (4) NDA 19-658 (loratadine, Schering-Plough Corp.). On June 14, 1991, the committee will discuss NDA 19-835 (ceterizine, Pfizer).

The committee discussion and conclusions regarding the use of doxylamine succinate may be considered by the agency in its preparation of a final monograph for over-the-counter (OTC) antihistamine drug products. This monograph is being developed as part of the OTC drug review. The advance notice of proposed rulemaking for OTC antihistamine drug products was published in the **Federal Register** of September 9, 1976 (41 FR 38312). The tentative final monograph for OTC antihistamine drug products was published in the **Federal Register** of January 15, 1985 (50 FR 2200). An amended tentative final monograph was published in the **Federal Register** of August 24, 1987 (52 FR 31692). Doxylamine succinate was proposed as an active ingredient to be included in the monograph.

Ophthalmic Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. June 14, 1991, 1:30 p.m., Chesapeake Conference Rm., third floor, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open public hearing 1:30 p.m. to 1:45 p.m., unless public participation does not last that long; open committee discussion, 1:45 p.m. to 4:30 p.m. Daniel W.C. Brown, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1080.

General function of the committee. The committee reviews and evaluates data on the safety and effectivness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 30, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues relating to approvals of premarket approval applications for surgical and diagnostic devices. The committee may also discuss general issues relating to other opthalmic devices.

Peripheral and Central Nervous System Drugs Advisory Committee

Date, time, and place. June 17, 1991, 8 a.m. to 5. p.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; Michael A. Bernstein, Center for Drug Evaluation and Research (HFD-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4020.

General function of the committee. The committee reviews and evaluates data on the safety and effectivenesss of marketed and investigational human drugs for use in neurological disease.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 10, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the safety and effectiveness of Intrathecal Baclofen for spasticity in patients with multiple sclerosis or spinal cord injury who are intolerant to or unresponsive to oral Baclofen.

Fertility and Maternal Health Drugs Advisory Committee

Date, time, and place. June 20 and 21, 1991, 9 a.m., Parklawn Bldg., Conference Rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, June 20, 1991, 9 a.m. to 10 a.m., unless participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, June 21, 1991, 9 a.m. to 5 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3510.

General function of the committee. The committee reviews and evaluates data on the safety and effectivenesss of marketed and investigational human drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 6, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 20 and 21, 1991, the committee will discuss the current status of unopposed estrogen replacement therapy and combined estrogen and progestogen replacement therapy in the menopause.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public adminsitrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of comittee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and

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FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 14, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-11906 Filed 5-17-91; 8:45 am]

BILLING CODE 4160-01-M

HEALTH AND HUMAN SERVICES

[Docket No. 91N-0162]

FDA Report of Consumer Research on Alternative Nutrition Label Formats; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the public availability of a report on research on food label formats conducted by the agency. The report is entitled "A Study of Nutrition Label Formats: Performance and Preference" (the FDA Study). FDA is inviting comments on the FDA study and on additional format research the agency intends to conduct. Guided by the findings of its research and other relevant information, the agency intends to propose to require the use of the design for nutrition labels that appears to most accurately and completely inform consumers of the nutritive content of foods.

DATES: Comments by July 5, 1991.

ADDRESSES: Submit written comments and requests for single copies of "A Study of Nutrition Label Formats: Performance and Preference" and format suggestions to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Comments and requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that branch in processing your requests. A copy of the report and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Raymond E. Schucker, Center for Food Safety and Applied Nutrition (HFF-240), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-245-1457.

SUPPLEMENTARY INFORMATION:

I. Background

In response to a request by the Secretary of Health and Human Services to consider changes in the way foods are labeled, FDA published in the Federal Register of August 8, 1989 (54 FR 32610), an advance notice of proposed rulemaking (ANPRM) that solicited public comment on a wide range of food labeling issues, including among other things: (1) Whether to revise requirements for nutrition labeling, and (2) whether to change the nutrition label format. Subsequently, FDA held four public hearings on food labeling. The last hearing, held in Atlanta, Georgia, on December 13, 1989, focused on the nutrition label format. During the same time period, FDA held about 50 district consumer exchange meetings (DCEM's) to address the food labeling issues discussed in the NAPRM. The DCEM's were held in 22 states and were attended by about 1,500 individuals.

In the Federal Register of July 19, 1990 (55 FR 29487), FDA published a proposed rule entitled "Food Labeling; Mandatory Status of Nutrition Labeling and Nutrient Content Revision" (hereinafter referred to as "the mandatory labeling proposal"). FDA proposed to require mandatory labeling for most foods that are a meaningful source of nutrition and further proposed that declaration of contents be required for a minimum of 13 nutrients.

The mandatory labeling proposal also provided for the declaration of Daily Reference Values (DRV's) for up to eight food components as part of a separate voluntary section of the nutrition label under the heading "Nutrition Profile." FDA proposed the nutrition profile as a voluntary adjunct to nutrition labeling in recognition of numerous public comments expressing growing interest in the inclusion of information about how individual foods fit within general recommendations for the total daily diet. The DRV's were proposed in a companion document to the mandatory labeling proposal, entitled "Food Labeling; Reference Daily Intakes and Daily Reference Values" (55 FR 29476, July 19, 1990).

In addition, the results of a consumer research study sponsored in 1990 by the National Food Processors Association (NFPA) were submitted as a comment on the ANPRM (Ref. 1). In the NFPA study, food shoppers expressed a preference for a label design that presented tabular nutrient values in the same manner as current labeling but that added as a separate section a nutrition profile that put important food components in the context of standards of daily consumption.

On November 8, 1990, the President signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101-535). The effects of the 1990 amendments on FDA's labeling proposals of July 19, 1990, were discussed by the agency in a proposed rule published in the Federal Register of January 11, 1991 (56 FR 1151). As it pertains to the nutrition labeling format, section 2(b)(1)(A) of the 1990 amendments mandates that FDA issue regulations that require that information be conveyed in a manner "which enables the public to readily observe and comprehend such information and to understand its relative significance in the context of a total daily diet." The 1990 amendments also amended the Federal, Food, Drug, and Cosmetic Act to permit FDA to require by regulation that any nutrition information required to be placed on the label be highlighted by larger type, boldface type, or contrasting color if the Secretary determines that such highlighting will assist consumers in maintaining healthy dietary practices (21 U.S.C. 343(q)(1)).

II. Need for Consumer Research

In the mandatory labeling proposal of July 19, 1990, FDA announced the agency's intention to examine various alternatives to the current tabular format for presenting nutrition information on food labels (such as bar graphs or pie charts). The agency had received public comment cautioning against making changes without first conducting consumer research to determine the communications effectiveness of alternate formats because relatively few data are available concerning the utility of various format alternatives and because there is concern that unfounded changes to the current format, familiar to consumers, may be counterproductive. In addition, the Institute of Medicine of the National Academy of Sciences recommended in a report "Nutrition Labeling—Issues and Directions for the 1990's" (Ref. 2) that consumer ability to use information to make improved dietary choices should be an important consideration in the selection of a format, and that popularity of a format alone is not a sufficient basis to recommend its use. Formal position statements advocating consumer testing also were issued by the American Dietetic Association and jointly by the American Institute of Nutrition and the American Society of Clinical Nutrition (Refs. 3 and 4).

Consequently, FDA developed a research proposal for a consumer study, the results of which could serve at a later date as a basis for a regulatory

proposal establishing a revised nutrition format. In designing the study, FDA sought and received guidance from academia, the consumer community, and the food industry. In addition, FDA conducted a series of qualitative focus group discussions to gather information on the utility and appropriateness of selected components of nutrition label formats. The agency prepared a report entitled "Summary Report; FDA Nutrition Labeling Focus Groups" on these discussions (Ref. 5).

III. Format Alternatives

Based on FDA experience with the existing nutrition label and on the suggestions received from public hearings, consumer groups, and nutrition education researchers, FDA considers the possibilities for the nutrition label format to include: (1) Use of bar graphs; (2) use of a pie charts; (3) use of adjectival descriptors; and (4) retention of the tabular numeric format with either minor or major modifications. Additionally, the utility of incorporating label standards or dietary reference points for macronutrients and other food components associated with chronic diseases is of interest.

In preliminary data-gathering activity designed to identify alternative nutrition label formats and to provide qualitative information on their utility, FDA conducted a series of consumer focus group discussions that targeted the four format categories described above, specifically bar graphs, pie charts, adjectival descriptors, and tabular numeric formats (Ref. 5). In designing the focus group sessions, FDA included specific comparison tasks or discussion issues that targeted the participants' ability to use and interpret the format. In this way, the discussions were structured to explore issues beyond stated preference and initial visual appeal.

In the FDA focus group discussions, pie charts based on percent of calories or percent dry weight elicited strong negative reactions from participants who stated that pie charts were confusing, difficult to read, and overly technical (Ref. 5). Many participants were reluctant to try to use pie charts. The pie chart format was therefore excluded from further consideration for these and the following additional reasons: (1) Cholesterol and sodium declarations cannot be accommodated; (2) neither the dry weight nor calorie basis for declaring nutrient values per serving of individual food relate to current dietary recommendations or guidelines; and (3) the pie chart arrangement permits no fixed sequence for listing nutrients and no natural starting point for reading the information.

In addition to excluding the pie chart format, FDA also concluded that graphic devices such as stars and smiling faces were inappropriate for conveying nutrition information. This decision was based on the earlier research of the Consumer Research Institute (Ref. 6), which was conducted at FDA's request in 1972 as a basis for selecting the current nutrition label. In this study, low education/income participants rejected such devices as vague, condescending, and childish and not in keeping with nutrition as a serious subject.

IV. FDA Format Study

In January 1991 FDA completed an experimental study of five nutrition label formats based on a geographically dispersed sample of 1,400 respondents representative of the U.S. population of adult primary food shoppers. From this study, FDA prepared its report (Ref. 6).

A. Formats Tested

FDA tested five nutrition label formats in use situations that required food shoppers to identify nutrient differences between food products and to make judgments about relative nutritional quality of the foods. The five formats selected were composites derived from FDA experience with the existing label, from suggestions received from public hearings, consumer groups, nutrition educators, an agency-sponsored label development contract with a professional design firm (Ref. 7), the recent FDA focus group discussion sessions (Ref. 5), and label research by other groups (Refs. 8 and 9). A sample of each format included in the FDA Study may be found in the appendix to this notice. Table 1 provides a brief description of each format used in the study.

TABLE 1

Format	Description
CONTROL	Tabular declarations of the proposed nine mandatory nutrients and food components in grams and milligrams and four vitamins and minerals as a percent of daily value.
CONTROL/DRV	In addition to the tabular content of the CONTROL label, the DRV's for fat, saturated fat, cholesterol, sodium, carbohydrate, and fiber were included.
ADJECTIVAL	In addition to the CONTROL/DRV format information, a descriptive adjective (high, medium, or low) in boldface print was added for each nutrient.
NUMERIC	In addition to the CONTROL format information, a separate table headed "Nutrition Profile" was added which included DRV's for six nutrients and, for all nutrients, a declaration of the percent of DRV or RDI under a common heading "Percent of Daily Value."
BAR GRAPH	Presented the same numeric information as for the NUMERIC format and additionally provided a bar graph.

B. Evaluation Criteria

The FDA Study evaluated formats on nine different criteria, reflecting three functional aspects of use of nutrition label information. Four criteria (objective performance measures) were based on the ability of respondents to process label information in search tasks involving the comparison of food products differing in nutrient content. Three criteria (perceived performance measures) were based on respondents' subjective evaluations of the formats in the context of the search tasks. Two criteria (preference measures) were based on respondents' preferences for the formats, independent of and unconstrained by the search tasks. In the case of preference measures, two forced choice selections were made by the respondents. Table 2 provides a brief description of the nine criteria.

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TABLE 2

1. Objective performance measures	
a. Accuracy	Number of correct identifications of nutrient differences between pairs of foods.
b. False positives	Number of perceptions of nutrient differences where in fact none exist.
c. Task time	Amount of time as a measure of effort required to complete the product comparison task.
d. Nutritional quality judgment	Correct identification of the more nutritious product in a pair.
2. Perceived performance measures	
a. Helpfulness	Rated helpfulness of the format for making food selections.
b. Confidence	Rated self-confidence that major nutrition differences were found.
c. Confusion	Number of respondent comments indicating confusion about some aspect of the formats.
3. Preference measures	
a. Most helpful	The format considered most helpful of the five for food selection and meal planning.
b. Least helpful	The format considered least helpful of the five for food selection and meal planning.

C. Findings and Their Implications

The five formats tested in the FDA study varied in complexity. The simpler CONTROL and CONTROL/DRV formats contained the least amount of information. The more complex NUMERIC and BAR GRAPH formats carried the most information, with a number of the elements of information being fully or partially redundant. The simpler formats performed significantly better on the objective criteria during the search task but, independent of the search task, were considered less helpful because they were seen as providing less information than the more complex formats. The ADJECTIVAL format was considered most helpful and came closer to striking a balance between perceived ease of use and providing enough information. However, objective performance of the ADJECTIVAL format, although better than for NUMERIC and BAR GRAPH, was lower than for CONTROL and CONTROL/DRV.

The focus group findings provided additional insight into the relative effectiveness of the formats. A number of participants had difficulty interpreting bar graphs when using them to compare the levels of nutrients in foods. Some observed that bar graphs were unnecessary if the information on the percent of the DRV was already available in numeric form. Some participants recognized that the tabular numeric format required less effort to interpret when compared with bar graphs. Virtually all participants favored some type of label standard or DRV for macronutrients and other food components associated with chronic disease conditions.

FDA intends to conduct additional research on format alternatives. The agency interprets the research findings as suggestive that bar graphs are not acceptable alternatives, but that variations of numeric and adjectival presentations are worthy of further consideration. FDA will examine approaches to eliminating redundant information without loss of useful information. One possibility is to retain either percentage or absolute declarations for the NUMERIC format, but not both. Another possibility is to replace adjective descriptors in the ADJECTIVAL format with highlighting devices, such as boldface type, in order to facilitate ease of use while preserving accuracy of nutrient comparisons between foods. The agency has also received comments that the nutrition label should provide more diet-related guidance to consumers than was reflected in the formats tested in the first study.

In response to these suggestions, FDA is considering a third possible format arrangement which would classify nutrients according to the dietary guidelines for Americans, by grouping together those nutrients for which dietary intake should be moderated versus those components that should be consumed in adequate amounts. Rough executions of the additional formats are shown in the appendix.

The agency is requesting comments on the FDA study and on additional format research suggested by the findings. FDA encourages persons submitting format suggestions to attempt to remedy the weaknesses of the original test formats through changes that would improve performance on the aforementioned criterion measures or by suggesting other measures of objective performance based on tasks requiring demonstration of consumer ability to use nutrition information in realistic situations.

FDA resources are limited with respect to the additional formats that can be tested. Consequently, the agency will include those formats that, on the basis of judgment an guided by the results of the FDA Study and comments received, it considers to have the highest potential for effective performance on the evaluation criteria.

FDA is requesting the submission of any available consumer research in support of format suggestions. The agency particularly seeks data that measure consumer ability to process nutrition label information in realistic usage situations, such as, but not limited to, comparisons of the nutrient content of different foods.

FDA also is seeking comment on the relative weight the agency should give to consumer preferences, format objective performance characteristics, and label space requirements in reaching a decision about the format that it will propose to standardize nutrition labeling.

V. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. National Food Processors Association, "Food Labeling and Nutrition: What Americans Want," Washington, DC, 1990.

2. Institute of Medicine—National Academy of Sciences, "Nutrition Labeling: Issues and Directions for the 1990's," Washington, DC, National Academy Press, 1990.

3. The American Dietetic Association, "Nutrition and Health Information on Food Labels," Journal of the American Dietetic Association, 90:583, 1990.

4. American Institute of Nutrition and the American Society of Clinical Nutrition, "Position Statement on Food Labeling," Washington, DC, April 1990.

5. Market Facts, Inc., "Summary Report; FDA Nutrition Labeling Focus Groups," prepared under FDA Contract No. 223-89-2170, Washington, DC, Food and Drug Administration, U.S. Department of Health and Human Services, 1990.

6. Levy, A.S., S.B. Fein, and R.E. Schucker, "A Study of Nutrition Label Formats: Performance and Preference," Center for Food Safety and Applied Nutrition, Food and Drug Administration, Washington, DC, March 1991.

7. Robert P. Gersin Associates, Inc., "Food and Drug Administration Design of Food Package Information Formats: Final Report," January 1983.

8. Stokes, R.C., and R. Haddock, "Interim Report of the First Two Phases of the CRI/FDA Nutrition Labeling Research Program," Consumer Research Institute, Inc., Washington, DC, August 1972.

9. American Heart Association, unpublished presentation to FDA of developmental research on graphic labels, May 1, 1990.

Dated: May 13, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

BILLING CODE 4160-01-M

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APPENDIX

Formats Tested in FDA Study

CONTROL FORMAT

CONDENSED SOUP

NUTRITION INFORMATION PER SERVING

Serving Size: 4 ounces condensed
1 cup (250g) as prepared

Servings per Container: 2¼

Calories	170
Calories from fat	30
Fat	3 g
Saturated fat	1 g
Cholesterol	5 mg
Sodium	1,000 mg
Carbohydrate	27 g
Fiber	3 g
Protein	9 g

PERCENT OF DAILY VALUE

Vitamin A	1
Vitamin C	2
Calcium	4
Iron	8

†Contains less than 2 percent of the daily value of this nutrient

INGREDIENTS: XXXXXXXXXXXXXXXXXXXX
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XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
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CONTROL/DRV FORMAT

CONDENSED SOUP

NUTRITION INFORMATION PER SERVING

Serving Size: 4 ounces condensed
1 cup (250g) as prepared

Servings per Container: 2¼

Calories	170
Calories from fat	30

	AMOUNT	DAILY VALUE
Fat	3 g	75 g or less*
Saturated fat	1 g	25 g or less*
Cholesterol	5 mg	300 mg or less
Sodium	1,000 mg	2,400 mg or less
Carbohydrate	27 g	325 g or more*
Fiber	3 g	25 g
Protein	9 g	

PERCENT OF DAILY VALUE

Vitamin A	†
Vitamin C	2
Calcium	4
Iron	8

*As part of a 2,350 calorie diet
†Contains less than 2 percent of the daily value of this nutrient

INGREDIENTS: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
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ADJECTIVAL FORMAT

CONDENSED SOUP

NUTRITION INFORMATION PER SERVING

Serving Size 4 ounces condensed
1 cup (250g) as prepared

Servings per container 2¼

Calories 170
Calories from fat 30

		AMOUNT	DAILY VALUE
Fat	MEDIUM	(3 g)	75 g or less*
Saturated fat	LOW	(1 g)	25 g or less*
Cholesterol	LOW	(5 mg)	300 mg or less
Sodium	HIGH	(1,000 mg)	2,400 mg or less
Carbohydrate	LOW	(27 g)	325 g or more*
Fiber	MEDIUM	(3 g)	25 g
Protein	MEDIUM	(9 g)	

PERCENT OF DAILY VALUE

Vitamin A	LOW	†
Vitamin C	LOW	2
Calcium	LOW	4
Iron	LOW	6

*As part of a 2,350 calorie diet
†Contains less than 2 percent of the daily value of this nutrient

INGREDIENTS: XXXX

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BAR GRAPH FORMAT

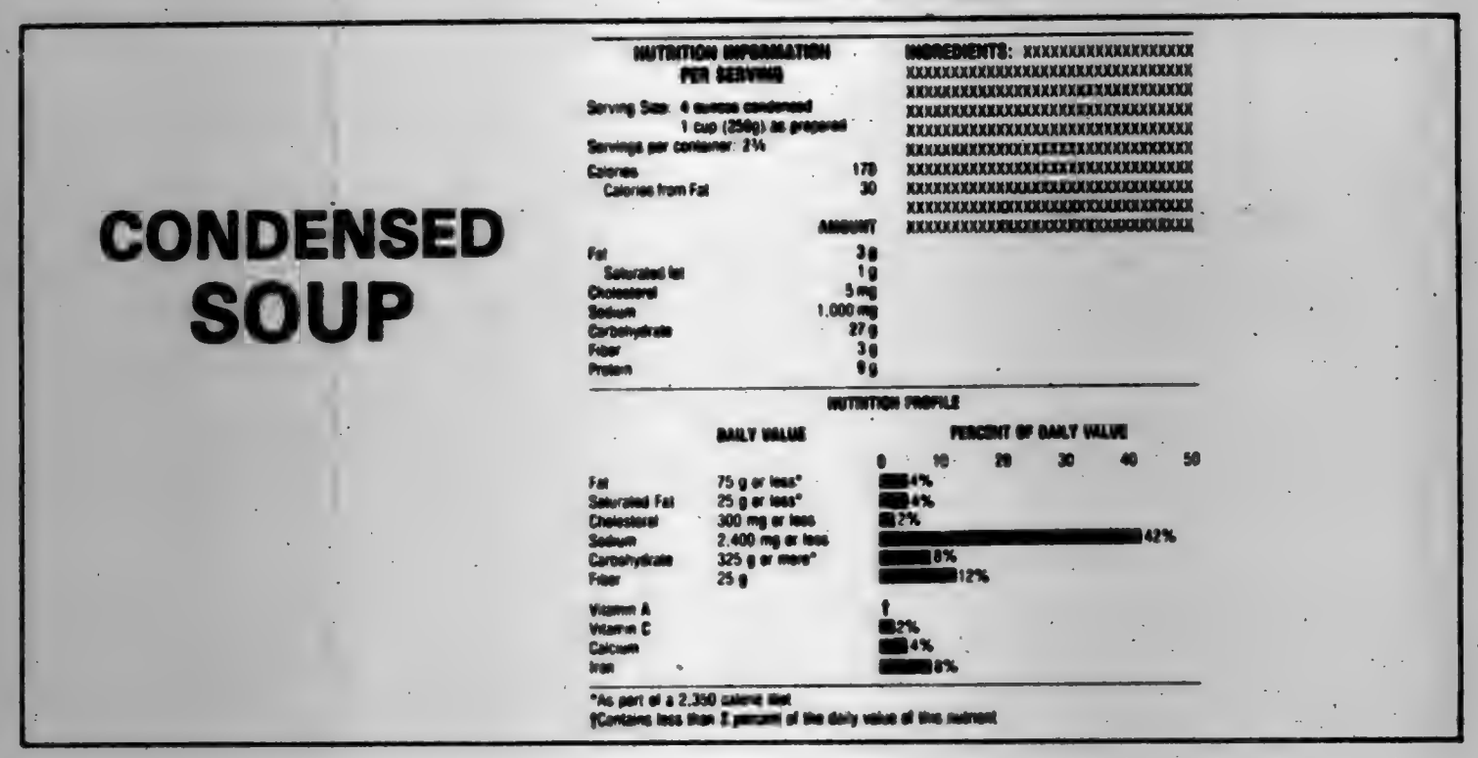

CONDENSED SOUP

NUTRITION INFORMATION PER SERVING

Serving Size: 4 ounces condensed
1 cup (256g) as prepared
Servings per container: 2½

Calories	170
Calories from Fat	30
	AMOUNT
Fat	3 g
Saturated fat	1 g
Cholesterol	5 mg
Sodium	1,000 mg
Carbohydrate	27 g
Fiber	3 g
Protein	9 g

INGREDIENTS: XXXX

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Frozen Pizza
NUTRITION INFORMATION PER SERVING

Serving Size: 6 oz (168g) 1/3 Pizza
Servings per pizza: 3

Calories	330
Calories from fat	110

CHOOSE A DIET LOW IN:		DAILY VALUE #
Fat	12g	75g or less
Saturated Fat	7g	25g or less
Cholesterol	30mg	300mg or less
Sodium	1080mg	2,400mg or less
CHOOSE A DIET WITH MORE:		
Carbohydrates	49g	325g or more
Fiber	2g	25g

#As part of a 2,350 calorie diet

Percent of Daily Value	
Protein	33
Vitamin A	4
Vitamin C	25
Calcium	15
Iron	15

Breakfast Cereal
NUTRITION INFORMATION PER SERVING

Serving Size: 1 oz. (28g) 1/2 cup
Servings per container: 17
With 1/2 cup Vit A&D Fortified Skim Milk

		Daily value#
Calories	110	
Calories from fat	10	
FAT	1g*	75g or less
SATURATED FAT	0g*	25g or less
CHOLESTEROL	0mg*	300mg or less
Sodium	250mg	2,400mg or less
Carbohydrate	30g	325g or more
FIBER	10g**	25g
Protein	6g	

As part of a 2,350 calorie diet

Percent of Daily Value	
Vitamin A	4
Vitamin C	25
Calcium	15
Iron	15

Meets dietary recommendations and FDA definitions as:
*Low or reduced in amount per serving
**High in amount per serving

[FR Doc. 91-11845 Filed 5-17-91; 8:45 am]
BILLING CODE 4160-01-C

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Program Announcement for Scholarships for the Undergraduate Education of Professional Nurses Grant Program

The Health Resources and Services Administration announces that applications will be accepted for the Fiscal Year (FY) 1991 Scholarships for the Undergraduate Education of Professional Nurses (SUEPN) Grant Program under the authority of section 843 of the Public Health Service Act, as added by Public Law 100-607.

Approximately $4,500,000 is available in FY 1991 for competing awards. An estimated 200 schools will receive grant awards averaging $22,500. In FY 1990, $2,600,000 was awarded to 665 students, for an average award of $3,795. It is estimated that 1,047 scholarships will be made in FY 1991, averaging $4,300 per award. Of the $4,500,000 available in FY 1991, approximately $1,720,000 is projected to fund 401 continuing students who were previous scholarship recipients. Approximately $2,780,000 will be available to fund 646 new students. Continuation of scholarship awards will be based on funding availability for FY 1992. The period of fund availability will be for each academic year, and a recipient must meet a statutory service obligation as indicated below.

Purpose

The SUEPN Grant Program is designed to provide financial assistance to individuals who are enrolled or accepted for enrollment as undergraduate nursing students in diploma, associate, or baccalaureate degree programs or in programs of nursing education leading to first degrees in professional nursing and who are in financial need with respect to attending these schools. A scholarship recipient must agree to serve full-time upon graduation as a registered nurse for a period of not less than two years in an Indian Health Service health center, or a Native Hawaiian health center, or a public hospital, or a migrant health center, or a community health center, or a nursing facility, or a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses.

In the Federal Register of May 23, 1990 (55 FR 21653) the following categories were designated as facilities meeting the criterion of "health facility having a critical shortage of nurses" for purposes of this program:

(a) All rural hospitals, as classified by the Medicare or Medicaid programs;

(b) All hospitals classified as "disproportionate share" hospitals. "Disproportionate share" hospitals are those that serve a significantly disproportionate number of low-income patients, as determined by the Medicare or Medicaid Programs;

(c) Home health agencies approved for Medicare and Medicaid reimbursement;

(d) State and local health departments;

(e) Indian Health Service hospitals and other Indian Health Service facilities approved for Medicare and Medicaid reimbursement;

(f) Veterans hospitals; and

(g) Military health care facilities of the Department of Defense.

These categories are in addition to the eligible service sites specified in the statute. HRSA plans to review the categories on a periodic basis to determine whether modifications for purposes of new scholarship recipients should be made to meet changing critical needs for nursing services.

Eligible Grant Applicants

To be eligible for a grant, an applicant must be a public or private nonprofit school which is accredited for the training of professional nurses and is located in a State. The grantee in turn awards scholarships to students who are obligated to serve.

National Health Objectives for the Year 2000

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Health People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238.)

Funding Preference

In FY 1989 the following funding preference was established in the award of SUEPN grants after public comments were received. This preference was also applied in FY 1990 and is being extended for FY 1991. Preference will be given to applicants whose average enrollment of underrepresented minority students (i.e., Black, Hispanic, American Indian, Alaskan Native, Native Hawaiian, Asian or Pacific Islander), for the past three years exceeds 16.4 percent, the national average enrollment of underrepresented minorities in undergraduate nursing programs for the 1989-90 school year.

As a component of the final FY 1989 and FY 1990 competing SUEPN notices, it was also announced that preference in the awarding of future scholarships would be given to grantees with previous recipients still enrolled. This is to allow recipients to continue their education. In FY 1991, preference is being given to those previous grantees whose student recipients are still enrolled and otherwise meet program requirements. No funds are proposed for this program in the President's Budget for FY 1992. However, it is proposed, should appropriations be made available, that preference in awarding future grants continue to be given to grantees with previous recipients still enrolled. These applicants would need to compete for funds for new recipients.

Eligible Students

To be eligible for a scholarship an individual must:

(1) Be enrolled or accepted for enrollment as a full-time nursing student in a program leading to a degree or diploma, which prepares individuals to qualify for licensure to practice as a registered/professional nurse in a State;

(2) Be in financial need with respect to attending such nursing school;

(3) Be a resident of the United States and either a U.S. citizen, a U.S. national, an alien lawfully admitted for permanent residence in the U.S., a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Trust Territory of the Pacific Islands, Republic of Palau, or a citizen of the Republic of the Marshall Islands or the Federated States of Micronesia; and

(4) Sign the contract prescribed by the Secretary setting forth terms and conditions of the scholarship, including an agreement to serve as a full-time registered nurse upon graduation for a period of not less than two years in an Indian Health Service health center, or a Native Hawaiian health center, or a public hospital, or a migrant health center, or a community health center, or a nursing facility, or in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses as indicated in the Purpose section of this notice.

Statutory Requirements

In accordance with the statute, the Department will require schools:

(1) To give preference in awarding scholarships to individuals from disadvantaged backgrounds as determined in accordance with criteria prescribed by the Secretary under section 827(a) of the Act (formerly section 820(a)(1)). These criteria, as set forth in regulations at 42 CFR 57.1905(b) are as follows:

(a) The individual comes from an environment that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from a school of nursing; or

(b) The individual comes from a family with an annual income below a level based on low-income thresholds by family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and which have been multiplied by a factor for adaptation to this program (These income levels are included below);

(2) To assure that a scholarship provided for full-time attendance will not, for any year of such attendance, exceed the amount of the tuition and any fees for the year involved; and

(3) To require scholarship recipients to sign a contract.

The following income figures determine what constitutes a low income family for purposes of the SUEPN Program for FY 1991.

Size of parents family [1]	Income level [2]
1	$8,600
2	11,400
3	13,500
4	17,300
5	20,400
6 or more	23,000

[1] Includes only dependents listed on Federal income tax forms.

[2] Rounded to the nearest $100. Adjusted gross income for calendar year 1990.

Application Deadline

One grant cycle will be held annually for the SUEPN Program. To receive consideration for FY 1991 funds, applications must meet the deadline of July 8, 1991.

Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date; or

(2) Postmarked on or before the deadline date and received in time for submission for review. A legible dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

The application form and instructions are being submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. Application materials will be available when OMB approval is received.

Requests for application materials and requests for technical assistance and information should be directed to:

Student and Institutional Support Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8-34, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-4776.

Completed applications should be returned to the Division of Student Assistance at the above address.

The Scholarships for the Undergraduate Education of Professional Nurses Grant program is listed at 93.182 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented by 45 CFR part 100).

Dated: April 4, 1991.

John H. Kelso,

Deputy Administrator.

[FR Doc. 91-11906 Filed 5-17-91; 8:45 am]

BILLING CODE 4160-15-M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1991.

Name: Statistical Review Committee of the Advisory Commission on Childhood Vaccines.

Date and Time: June 19, 1991, 1 a.m.-5 p.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: This Committee will review statistics from all sources (the Compensation System, Vaccine Adverse Events Reporting System (VAERS), the U.S. Claims Court, etc.) that can give any reason for any alterations (additions, subtractions, or revisions) in the Vaccine Injury Table. The Committee will consider any applications for inclusion of additional vaccines and associated events to the table and make recommendations on these to the Commission. All recommendations by the Committee will be considered by the full Commission and, if accepted, will be forwarded to the Secretary. This Committee will also be the first line of study for all outside studies and literature reports with subjects affecting the Vaccine Injury Table.

Agenda: The Committee will discuss: (1) Preliminary review of statistics, (2) new vaccine applications, (3) criteria setting for injury table, (4) analysis of types of claims receiving payouts, and (5) CMV vaccine application from the University of Pennsylvania.

Name: Accounting Review Committee of the Advisory Commission on Childhood Vaccines.

Date and Time: June 19, 1991, 1 p.m.-5 p.m.

Place: Conference Room H, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

The Council will continue their business meeting on Tuesday at 8:30 a.m. and adjourn at 2 p.m.

The meeting is open to the public, however, no transportation will be provided to the site visits.

Anyone requiring information regarding the subject Council should contact Anne Mae Voigt, National Advisory Council on the National Health Service Corps, room 7A-39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-1470.

Agenda items are subject to change as priorities dictate.

Dated: May 14, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-11841 Filed 5-17-91; 8:45 am]

BILLING CODE 4160-15-M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1991.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: June 22-25, 1991, 4 p.m.-6 p.m.

Place: Hyatt Regency Los Angeles Hotel, 711 South Hope, Los Angeles, California 90017.

The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The agenda will include a Bureau and division update, Scholarship and Loan Repayment Programs and National Health Service Corps placement activities. The meeting will begin on Saturday at 4 p.m. and adjourn at 6 p.m. On Sunday, the business meeting will begin at 8:30 a.m. and adjourn at 5 p.m. The Council will leave the hotel via bus at 8 a.m. on Monday to make site visits to the Watts Health Foundation, the White Memorial Medical Center and the Arroya Vista Family Health Center in Los Angeles.

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Purpose: The Committee reviews quarterly with the administrative staff, the financing of the Vaccine Injury Compensation Trust Fund, the output of funds resulting from each vaccine and each adverse event, and the relationship of each vaccine and each adverse event to the rate of depletion of the Trust Fund. If these studies justify any increase or any decrease of surtax for each vaccine, these recommendations can be made to the full commission and if accepted, can be forwarded to the Secretary.

Agenda: The Committee will discuss: (1) Preliminary review of Trust Fund and all finances, (2) Trust Fund countdown, (3) review of Treasury correcting adjustment of 25% of surtax and recommendation.

Name: Advisory Commission on Childhood Vaccines.

Date and Time: June 20, 1991, 9 a.m.–5 p.m.

Place: Conference Room G & H, Parklawn Building, 86 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: Agenda items for the full commission will include, but not be limited to: the routine Program reports, reports from the National Vaccine Program and the National Vaccine Advisory Committee, a report from the Actuarial Firm regarding the results of the analysis of the retrospective cases, a presentation from a representative of the Department of Treasury concerning the Trust Fund correcting adjustment, Commission vote on policy paper; and reports from the ACCV committees of the previous day.

Public comment will be permitted at the end of the second day, June 20. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation, by June 7 to Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Health Resources and Services Administration, room 7-02, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443-6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Vaccine Injury Compensation Program will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room G & H before 10 a.m., June 20. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Commission should contact Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, room 7-02, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443-6593.

Agenda items are subject to change as priorities dictate.

Dated: May 14, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-11842 Filed 5-17-91; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3163; FR-2612-N-02]

National Manufactured Home Advisory Council—Request for Nominations; Notice of Extension

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Request for nominations; notice of extension.

SUMMARY: On October 25, 1990, the Department published a notice in the **Federal Register** giving the public an opportunity to nominate persons for appointments to the National Manufactured Home Advisory Council. The published notice requested that nominations be submitted in writing to the Assistant Secretary for Housing—Federal Housing Commissioner (Attention: Office of Manufactured Housing and Regulatory Functions) on or before November 26, 1990. The purpose of this document is to extend an open invitation to interested persons to submit nominations until actual selection of the Advisory Council members.

EFFECTIVE DATE: May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Henry Omson, Coordinator, National Manufactured Home Advisory Council, Office of Manufactured Housing and Regulatory Functions, Office of Single Family Housing, Department of Housing and Urban Development, 451 7th Street, SW., room 6270, Washington, DC 20410, Telephone: (202) 708-0798. The TDD number is (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On October 25, 1990 (56 FR 43040), the Department published a notice in the **Federal Register** providing an opportunity to nominate, until November 26, 1990, persons for appointments to the National Manufactured Home Advisory Council. The twenty-four member Council was created under the National Manufactured Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.* (The Act) to provide the Department with an opportunity to obtain balanced views on manufactured home standards issues. The Council consists of representatives from consumer, government and industry organizations or agencies, and is consulted to the extent feasible before the Department establishes, amends, or revokes manufactured home construction and safety standards.

The Department has recognized that the 30 days provided for nominations in the published notice was too restrictive and has decided to reopen the nominating period until the members of the Advisory Council are actually selected. The Secretary will appoint a total of 24 new members to the Council, selecting eight members from each of the three groups that make up the Council. Nominations may be made for representatives of consumer, industry and government organizations or agencies. Interested persons may nominate themselves.

Accordingly, until selection of a new Advisory Council by the Secretary is announced by publication in the **Federal Register** notice is given that members of the public wishing to nominate persons for appointment to the National Manufactured Home Advisory Council should submit such nominations in writing to the Assistant Secretary for Housing—Federal Housing Commissioner (Attention: Officer of Manufactured Housing and Regulatory Functions), Department of Housing and Urban Development, 451 7th Street, SW., room 6270, Washington, DC 20410.

Dated: May 10, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-11866 Filed 5-17-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement (DEIS) for the Proposed Stone Lakes National Wildlife Refuge in South Sacramento County, CA

AGENCY: U.S. Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the draft Environmental Impact Statement on the feasibility of establishing a National Wildlife Refuge on or near Stone Lakes in south Sacramento County, California is available for public review. A proposed action with five alternative plans are being considered. Comments and suggestions are requested.

The Stone Lakes area represents remnants of a variety of native plant communities such as willow, cottonwood, and oak riparian forests. Seasonally flooded wetlands and vernal pools occur throughout the study area. The area provides an important component of the Pacific Flyway and provides wintering, nesting, and feeding habitat for 23 species of waterfowl. In addition, the area provides habitat for several species of flora and fauna that are candidates for the endangered species list. The location of Stone Lakes to urban populations provides opportunities for environmental education and interpretation. Key issues addressed in this DEIS are identified as the effects that implementation of the proposed action would have on (1) water quality, supply and availability, (2) wildlife habitats and populations, (3) existing and future agricultural resources and farming practices, (4) land use, and (5) economic and fiscal resources.

DATES: Written comments should be received by August 1, 1991.

ADDRESS WRITTEN COMMENTS TO: Mr. Peter J. Jerome, U.S. Fish and Wildlife Service, 2233 Watt Avenue, suite 375, Sacramento, California 95825-0509, Telephone: (916) 978-4420.

Copies of the Executive Summary of the DEIS have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies. Copies of the full DEIS are available for review at several locations within the Sacramento metropolitan area including most local public libraries.

PUBLIC WORKSHOPS AND PUBLIC HEARINGS: Public workshops and a public hearing will be scheduled during the comment period.

SUPPLEMENTARY INFORMATION: The Stone Lakes project area is a remnant of what was once a vast complex of permanently and seasonally flooded wetlands flanked by riparian forest and prairie. The native plant communities have been greatly changed by the effects of flood control and agricultural operations. Remnants of a variety of native plant communities still exist, particularly in the riparian scrub-shrub zones. The needlegrass grasslands that were native to many dryer sites may now be locally extinct.

Perennial lakes, sloughs, and streams cover approximately 1,500 acres. Additionally, there are thousands of acres of seasonally flooded wetlands and vernal pools. Emergent vegetation, primarily cattails and hardstem bulrush, is present around the edges of the larger lakes and widespread in the sloughs and seasonally flooded wetlands.

The area provides an important link in the Pacific Flyway. The proposed refuge provides nesting, migration, and wintering habitat for 23 species of waterfowl. Suitable habitat for more than 30 state and federal candidate or listed species occurs within the project area, including Valley elderberry longhorn beetles, giant garter snakes, Swainson's hawks, and Aleutian Canada geese.

In little more than a century, wetlands in California have diminished approximately four percent of their historic acreage. Wetland losses have occurred as a direct result of the agricultural, residential, commercial, and industrial development of California lands. The specific threats to the project area come from various quarters. Agricultural conversions to vineyards as well as commercial and residential development of large portions of the project area is imminent. The Sacramento metropolitan area is one of the fastest growing areas within California.

Five alternatives and a preferred action are presented in the DEIS. Each alternative description includes refuge acquisition boundaries, acquisition programs and habitat restoration objectives. Each alternative is evaluated for its ability to achieve wildlife and resource goals for the proposed Stone Lakes National Wildlife Refuge. Those goals include the protection of a diverse assemblage of Central Valley habitats and species, protecting and enhancing habitats for threatened and endangered species, protecting and enhancing wetland habitats and adjacent agricultural lands for waterfowl, creating linkages to reduce habitat fragmentation, coordinating land acquisition and management activities with other agency and private refuge managers, providing for public environmental education and wildlife oriented public use, and managing riverine wetlands and adjacent floodplains consistent with flood control objectives.

The U.S. Fish and Wildlife Preferred Alternative, C1 recommends that approximately 8,500 acres be acquired in fee title, 3,000 acres be acquired through conservation easements, primarily on farmland to benefit wildlife, and 6,500 acres through cooperative agreements with land management agencies on existing public lands. Alternative C1 would seek to preserve 5,700 acres of existing natural habitats, restore 9,000 acres to natural habitat, and enhance 4,000 acres of agricultural lands to benefit wildlife by modifying current management practices. A diversity existing natural and restored habitats will include permanent wetlands, seasonal wetlands, riparian and oak woodlands, perennial grasslands, and vernal pools.

The remaining alternatives represent various boundary configurations and programs ranging from approximately 7,500 acres to 74,000 acres. The No-Action Alternative (Alternative A) represents the areas that would remain in public ownership without a national wildlife refuge. Alternative B reflects the minimum land acquisition alternative. The original proposed action is defined by Alternative C. Alternatives D and E represent refuge configurations that reflect expanded acquisition areas which include the Cosumnes River floodplain.

The DEIS examines the environmental consequences associated with each alternative. Impacts related to the conversion of agricultural land to natural habitats include the loss of agricultural production, increased risk of drainage and seepage problems from created wetlands to existing fields, crop depredation by wildlife, increased pest management problems, and the potential for increased trespass. Fiscal impacts related to refuge establishment include changes in economic activity, changes in economic development opportunities, reductions in the property tax base, and

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increased riskiness of agricultural investments.

Dated: May 6, 1991.

William E. Martin,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 91-11324 Filed 5-17-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 4, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by June 4, 1991.

Beth L. Savage,

Acting Chief of Registration, National Register.

ARKANSAS

Carroll County

Winona Church and School, Rockhouse Rd., Winona Springs, 91000688

Chicot County

Carlton House, 434 S. Lakeshore Dr., Lake Village, 91000692

Clark County

Bank of Amity, Old, NW corner of town square, Amity, 91000690

Grant County

Oak Grove School, US 270, 6 mi. E of Sheridan, Oak Grove Community, 91000693

Hempstead County

Foster House, 420 N. Spruce St., Hope, 91000683

Jefferson County

Gibson—Burnham House, 1336 Cherry St., Pine Bluff, 91000684

Polk County

Ebenezer Monument, Jct. of 9th and Church Sts., Mena, 91000689

Mena Kansas City—Southern Depot, W of jct. of Pickering Ave. and Mena St., Mena, 91000685

National Guard Armory, Jct. of DeQueen and Maple Sts., Mena, 91000682

Old Post Office, 520 N. Mena St., Mena, 91000686

St. Agnes Catholic Church, Jct. of 8th and Walnut Sts., Mena, 91000696

Saline County

Pleasant Hill Methodist Church, Jct. of Lawson and Lake Norrell Rds., Pleasant Hill, 91000694

Stone County

Bonds House, Co. Rd. 2 E of Meadow Cr., Fox vicinity, 91000691

ILLINOIS

Will County

Upper Bluff Historic District, Roughly bounded by Taylor, Center and Campbell Sts. and Raynor Ave., Joliet, 91000687

MASSACHUSETTS

Bristol County

Hixville Village Historic District, Jct. of Old Fall River, Hixville and N. Hixville Rds., Dartmouth, 91000696

Worcester County

District Five Schoolhouse, School St. between Boyden and 1st Sts., Webster, 91000697

Hayward Mill, Jct. of North and Cook Sts., on the Munford R., Douglas, 91000695

[FR Doc. 91-11304 Filed 5-17-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent corporation and address of principal office: Scrivner, Inc., an Oklahoma corporation, Corporate Office, 5701 N. Shartel, Post Office Box 26030, Oklahoma City, Oklahoma 73126.

2. Wholly-owned subsidiaries which will participate in the operation and State(s) of incorporation:

Boogart, Inc., a Kansas corporation.
Pay Cash Grocery Company, Inc., a Tennessee corporation.
Scrivner of North Carolina, Inc., formerly Quinn Wholesale Company, a North Carolina corporation.
S.M. Flickinger Co., Inc., a New York corporation.
Scrivner of Illinois formerly Chris Hoerr & Son Co., an Illinois corporation.
Scrivner of Iowa, Inc., formerly Hakes Foods, Inc., an Iowa corporation
Groce Wearden Company, a Texas corporation.

Wholly-owned subsidiaries of S.M. Flickinger Co., Inc. which will participate in the operation and State(s) of incorporation:

Hudson-Thompson, Inc. an Alabama corporation.
Scrivner of Pennsylvania, formerly P.A. & S. Small Company, a Pennsylvania corporation.

B.1. Parent corporation and address of principal office: United Dairy Farmers, Inc, 3955 Montgomery Road, Norwood, Ohio 45212.

2. Wholly owned subsidiary which will participate in the operation and state of incorporation: Prescott Tank Lines, Inc., an Ohio corporation.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-11882 Filed 5-17-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 96X)]

Missouri Pacific Railroad Co.—Abandonment Exemption—in Phillips, Arkansas, and Desha Counties, AR; Exemption

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon a 73.53-mile portion of its Wynne Branch line of railroad between milepost 326.27, near Helena Junction, and milepost 399.8, near Cypress Bend, in Phillips, Arkansas, and Desha Counties, AR.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 16, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by May 28, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by June 6, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge Street, room 830, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 22, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 13, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-11881 Filed 5-17-91; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notifications; Phosphoric Acid Joint Venture

Notice is hereby given that, on April 26, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* (the "Act"), Diversey Corporation filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Phosphoric Acid Joint Venture ("Joint Venture") and (2) the nature and objectives of the Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Joint Venture and the general purpose of the Joint Venture are given below.

The parties to the Joint Venture are: A.B.C. Compounding Co., Inc.; A & L Laboratories; Alpha Chemical Services, Inc.; Anderson Chemical Company; Betco Corporation; Canberra Corporation; Candy & Company; Chemical Specialties Manufacturers Association; Devere Chemical Co., Inc.; Diversey Corporation; DuBois Chemical; Ecolab, Inc.; Alex C. Fergusson, Inc.; Flo-Kem, Inc.; H.B. Fuller Company, Monarch Div.; Hydrite Chemical Co.; Kay Chemical Company; Lonza, Inc.; L & F Products Group; Merit Chemical, Inc.; Morgan-Gallacher, Inc.; NCH Corporation; Nyco Products Company; Oakite Products, Inc.; Rochester Midland; Scott/Sani-Fresh International; Shepard Brothers; Spartan Chemical Company; Stearns Packaging Company; Stepan Company; Texo Corporation; Theochem Laboratories, Inc.; Turco-Purex Industrial Corporation; Van Waters & Rogers, Inc.; Wayne Chemical, Inc.; Webco Chemical; WestAgro, Inc.; and Zep Manufacturing Company.

The objective of the Joint Venture is to sponsor and conduct toxicological research on the chemical known as phosphoric acid and to submit the results of this research to the U.S. Environmental Protection Agency ("EPA") in response to the Data Call-In for List D issued by the EPA in January 1990.

The parties to the Joint Venture intend to file additional written notification disclosing all changes in membership to this Joint Venture.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-11900 Filed 5-17-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notifications; Pyrethrin Joint Research Venture

Notice is hereby given that, on April 24, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants of Pyrethrin Joint Research Venture have filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of one party to and withdrawal of one party from the Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Joint Venture advised that Commonwealth Ind. Gases, Ltd. has become a party to the Joint Venture and Penick-BIO-UCLAF Corporation (Roussel Bio Corporation) has withdrawn from the Joint Venture.

No other changes have been made in either the membership or planned activity of the Joint Venture.

On March 18, 1986, a notice was published in the **Federal Register**, Vol. 51, No. 52, page 9286, describing the Joint Venture and identifying the participants of this Joint Venture. The objective of the Pyrethrin Joint Research Venture is to sponsor and conduct toxicological research on the pesticide ingredient Pyrethrin and to submit the results to the U.S. Environmental Protection Agency ("EPA") in connection with the Pyrethrin Date Call-In.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 91-11901 Filed 5-17-91; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act

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(Pub. L. 92-463, as extended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Catherine Wolhowe, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4) and (6) of section 552b of title 5, United States Code.

1. *Date:* June 3, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Texts/Publication Subvention applications in Anthropology, Philosophy and Religion, submitted to the Division of Research Programs, for projects beginning after October 1, 1991.

2. *Date:* June 3, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 316-2.
Program: This meeting will review applications to direct Summer Seminars for School Teachers in Foreign Literature and Culture, submitted to the Division of Fellowships and Seminars, for projects beginning after May, 1992.

3. *Date:* June 3, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Biennial applications submitted by state humanities councils to the Division of State Programs, for projects beginning after November, 1991.

4. *Date:* June 4, 1991.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after December 1, 1991.

5. *Date:* June 4, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 316-2.
Program: This meeting will review applications to direct Summer Seminars for School Teachers in History, Politics and Society, submitted to the Division of Fellowships and Seminars, for projects beginning after May, 1992.

6. *Date:* June 6, 1991.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after December 1, 1991.

7. *Date:* June 7, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Biennial applications submitted by state humanities councils to the Division of State Programs, submitted to the Division of State Programs, for projects beginning after November, 1991.

8. *Date:* June 10, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Biennial applications submitted by state humanities councils to the Division of State Programs, for projects beginning after November, 1991.

9. *Date:* June 11, 1991.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after December 1, 1991.

10. *Date:* June 13, 1991.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications in Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after December 1, 1991.

Catherine Wolhowe,
Advisory Committee Management Officer.

[FR Doc. 91-11865 Filed 5-17-91; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Division of Networking and Communications Research and Infrastructure Meeting

The National Science Foundation (NSF), in cooperation with the agencies that are part of the Federal Networking Council, has scheduled an open meeting to receive comments on the proposed solicitation for a Network Information Center (NIC) to include Internet Registration Services, Directory Services, and Information Services. These services are intended to provide support for the domestic portion of the Internet and its components NIC's and are intended to continue as the Internet evolves to the Interim NREN.

Dates: June 10, 1991.
Time: Noon-4 p.m.
Place: Room 1242, National Science Foundation, 1800 G St., NW., Washington, DC 20550.
Type of Meeting: Open.
Agenda: Receive comments on proposed Network Information Center (NIC) solicitation.
Contact: Brenda Williams, The Division of Networking and Communications Research and Infrastructure Program, National Science Foundation, room 416, Washington, DC 20550 (202 357-9717).

Dated: May 14, 1991.

Stephen S. Wolff,
Division Director.

[FR Doc. 91-11832 Filed 5-17-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for the Division of Networking and Communications Research and Infrastructure; Committee of Visitors; Notice of Meeting

The National Science Foundation announces the following meeting.

Name: Committee of Visitors Review of the NSFNET Program.
Date & Time: June 4 and 5, 1991; 8:30 a.m. to 5 p.m. each day.
Place: Room 417, 1800 G Street, NW., Washington, DC.
Type of Meeting: Closed.
Contact Person: Daniel Vanbelleghem, Associate Program Director, room 416, National Science Foundation, Washington, DC 20550, (202) 357-9717.
Purpose of Meeting: To provide oversight review of the NSFNET Program within the Division of Networking and Communications Research and Infrastructure.
Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.
Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: May 14, 1991.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 91-11831 Filed 5-17-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-219]

GPU Nuclear Corp.; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The amendment would revise the Technical Specifications deleting the requirement of section 3.15.A, table 3.15.1, that a liquid effluent radiation monitor be available during liquid effluent discharges from the radwaste processing facilities.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 19, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petiton should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or facts. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 29, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Ocean County Library, Reference Department, 101

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Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 13th day of May 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-11867 Filed 5-17-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp.; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The amendment would revise Technical Specification Table 4.15.2, Items 2.a and 3.a, to modify Channel Functional Test requirements for the Main Stack Monitoring System (Stack RAGEMS) and Turbine Building Ventilation Monitoring System (Turbine RAGEMS) radioactive noble gas monitors currently existing in the Technical Specifications. These two systems are installed to comply with NUREG-0737, section III.F.1, Items 1 and 2, to address the equipment which was installed prior to Operating Cycle 12.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 19, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC. 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.174(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 25, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. 20555, and at the Local Public Document Room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 13th day of May 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-11868 Filed 5-17-91; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of Meeting

Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of Public Law 100-203 of the Nuclear Waste Policy Amendments Act of 1987, the Board's Panel on Hydrogeology and Geochemistry and the Panel on Structural Geology and Geoengineering will hold a joint meeting on June 25-27, 1991, on field testing at the proposed site for a high-level radioactive waste repository at Yucca Mountain, Nevada. This testing will play an integral part in the Department of Energy's (DOE) site characterization, a planned program aimed at determining whether this site is suitable for the development of the repository. The meeting will cover surface-based and other testing in the areas of hydrogeology, geochemistry, and rock mechanics. The meeting will run from 8:30 a.m.-5 p.m. on June 25-26, and from 8:30 a.m.-12:30 p.m. on June 27, at The Registry Hotel, 3203 Quebec Street, Denver, Colorado 80207; (303) 321-3333.

On Tuesday, June 25, panel members will hear the DOE and its consultants, the U.S. Geological Survey (USGS) and Lawrence Livermore National Laboratory discuss the conceptual framework for testing in the unsaturated zone (above the water table) and specific tests planned to characterize meteorological phenomena, infiltration, and fluid-flow in the unsaturated zone. Additional discussions will be devoted to gaseous phases, including airflow and possible releases of ^{14}C (carbon 14) and the effect of repository development upon the conduct of testing.

On Wednesday, June 26, representatives from the DOE, the USGS and Los Alamos National Laboratory will continue the briefing on testing in the unsaturated zone with an emphasis on geochemical isotope methods. The majority of the day will be devoted to testing in the saturated zone (below the water table). The conceptual framework for testing in this zone will be presented along with proposed tests of the groundwater flow system on regional and local scales, and hydrochemical tests in the saturated zone. The day will close with a general discussion of proposed hydrogeologic and geochemical testing.

On June 27, discussions will shift to proposed testing in the area of rock mechanics. Presentations will be made by the DOE's consultant in this area, Sandia National Laboratories. The overall framework of these studies will be presented along with discussions of specific planned tests of in-situ thermomechanical and mechanical properties, and design assumptions. At the close of the session, there will be a general discussion of the rock mechanics program.

Members of the public are welcome to attend the meeting as observers. Transcripts of the meeting will be available on a library-loan basis from Victoria Reich, Board librarian, beginning July 18, 1991. For further meeting information, contact Paula N. Alford, Director, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235-4473.

Dated: May 15, 1991.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91-11860 Filed 5-17-91; 8:45 am]

BILLING CODE 6820-AM-M

PRESIDENT'S EDUCATION POLICY ADVISORY COMMITTEE

Meeting

AGENCY: The President's Education Policy Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: The President's Education Policy Advisory Committee was established under Executive Order 12887 and signed by the President of the United States on August 15, 1989.

Tentative Agenda Items: The tentative agenda for the meeting will focus primarily on a discussion of issues and options related to measuring the national education goals and the September 1991 report card to the Nation.

DATES: The meeting is scheduled for Tuesday, May 28, 1991, from 1 to 4 p.m.

ADDRESSES: The meeting will be held at the Old Executive Office Building, room 180, Washington, DC.

Attendance: Please contact Rae Nelson at the White House Office of Policy Development to indicate attendance or for further information. The phone number is (202) 456-7777. For clearance purposes, please call no less than twenty-four hours in advance. Please provide over the phone, your social security number, date of birth, and name as read on your driver's license. When entering the building, you will be required to show picture identification.

Dated: May 10, 1991.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 91-12046 Filed 5-17-91; 8:45 am]

BILLING CODE 31-3761-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records and modification to an existing system of records.

SUMMARY: The purpose of this document is to publish notice of a new system of records, USPS 130.050, Philately—United States Postal Service Olympic Pen Pal Club, and to amend existing system of records, USPS 130.040, Philately—Philatelic Product Sales and Distribution. The new system is a collection of information provided by children who register to be matched with a pen pal. USPS 130.040 is expanded to include records of U.S. Postal Service Olympic product sales.

DATES: These proposals will become effective without further notice 30 days from the date of this publication, unless comments are received on or before that date which result in a contrary determination, or unless a waiver request of the 60-day period is denied by the Office of Management and Budget.

ADDRESSES: Comments may be mailed to the Records Office, US Postal Service, 475 L'Enfant Plaza SW., Room 6141, Washington, DC 20260-5010, or delivered to room 6141 at the above address between 8:15 a.m. and 4:45 p.m.

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Comments received also may be inspected during the above hours in room 6141.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office, (202) 268-5158.

SUPPLEMENTARY INFORMATION: The Postal Service will be maintaining information collected in connection with new philatelic initiatives that pertain to its official sponsorship of the Winter and Summer 1992 Olympic Games. Part 1 of this notice amends USPS 130.040, Philately—Philatelic Product Sales and Distribution to cover records relating to a merchandising program for the sale of clothing and products bearing the Postal Service and Olympic logos. Part 2 proposes a new system of records, USPS 130.050, Philately—United States Postal Service Olympic Pen Pal Club. This new system will contain identifying information about children who register to be matched with a pen pal.

Part 1—System Modification to USPS 130.040, Philately—Philatelic Product Sales and Distribution

The Postal Service is an official sponsor of the Winter and Summer Olympic Games in 1992. With sponsorship, it is entitled to use the Olympic symbols on products and advertising and is marketing a variety of merchandise bearing postal and Olympic logos. When customers submit orders for this merchandise, order information will be kept for the same purpose that the Postal Service now maintains philatelic product sales information within existing system of records USPS 130.040. Although USPS Olympic-related merchandise to be sold includes items of a philatelic nature that would be covered by the current system description, the system description is being amended to make it clear that like postal products sold under promotion programs are covered also.

Maintenance of these records is not expected to have any effect on individual privacy rights. Personal information collected within the system is limited to that necessary to fill an order for merchandise. This same type of information has been maintained within USPS 130.040 without incident since its origin. The information will be maintained by a Postal Service contractor under contract provisions that require the contractor to maintain the system in accordance with the Privacy Act. In addition to disclosure restrictions imposed by the Privacy Act, the Postal Service is prohibited from releasing lists of postal customers pursuant to the Postal Reorganization Act (39 U.S.C. 412). Under these conditions, an individual's privacy should not be compromised.

Although we do not consider the changes to USPS 130.040 to be substantial in scope, an altered system report as required by subsection (r) of the Privacy Act is being submitted pursuant to paragraph 4b of appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Part 2—Establishment of New System of Records

The Postal Service is organizing a U.S. Postal Service Olympic Pen Pal Club comprised of a membership of children who want to correspond with another child. The club will provide a means for children to exchange letters, trade postage stamps, learn about cultures outside their own, and experience the Olympic Games. Children in the United States will register by filling out forms that collect their name, gender, date of birth, and address. Under a sponsorship agreement, foreign postal administrations participating in the program will collect like information from children registering for the program in their country. The foreign postal administrations will provide that information to the United States Postal Service for use in matching a United States child and a foreign child as pen pals on the basis of like gender and age. Each United States member will receive the name and address of the child with whom he/she is matched under the program; and an official Pen Pal Club membership kit that includes club stationery, a membership card, an instructional comic book of suggested topics to write about, lapel button, and other various items. Birthdate information will also be used to send birthday cards to U.S. participants.

Maintenance of these records is not expected to have any effect on individual privacy rights. Information linked to a personal identifier will be limited to that named above for the purpose of matching pen pals. Although responses to profile questions (for example, do you collect stamps? have books in your home? speak other languages?) will be collected from United States registrants, the information will not be linked to a personal identifier, but will be used for research and market analysis purposes. Information will be kept in a secured environment, with automatic data processing (ADP) physical and administrative security and technical software applied to information on computer media. The information will be maintained by a Postal Service contractor under contract terms that require the contractor to maintain the system in accordance with the Privacy Act and to apply appropriate protections subject to the audit and inspection of the USPS Inspection Service. In addition to disclosure restrictions imposed by the Privacy Act, the Postal Service is prohibited from releasing lists of postal customers pursuant to the Postal Reorganization Act (39 U.S.C. 412). Although foreign postal administrations will be providing lists of registrants within their country, the United States Postal Service will not provide lists of U.S. registrants to foreign postal administrations. Under these conditions, an individual's privacy should not be compromised.

The Privacy Act permits agencies to disclose information without the consent of the individual for "routine uses," that is, for purposes that are compatible with the purposes for which the information is collected. The routine uses proposed for this system meet the compatibility requirement of the Privacy Act because they are necessary in the conduct of Postal Service business. Only five routine uses are applied. Disclosures of the name and address of a child to a matched pen pal and of collected information to the contractor operating the system are necessary to meet the system's purpose; disclosure to a Congressional office from the record of an individual at the record subject's request is permitted by the Act itself; and the potential need for disclosure for law enforcement and litigation purposes is present with regard to all Postal Service records.

A new system report, as required by subsection (r) of the Privacy Act is being submitted pursuant to paragraph 4b of appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985. Because the programs discussed are being implemented with various others related to Postal Service Olympic sponsorship, a waiver of the 60-day advance period, pursuant to OMB Circular A-130 has been requested. If the waiver is granted, and unless comments suggest the need for revisions, it is expected that system of records USPS 130.050 and amended USPS 130.040 will become effective as proposed below upon expiration of the 30-day comment period.

The systems notice for USPS 130.040 was most recently published in the Federal Register at 54 FR 43700 on October 26, 1989. It is proposed that USPS 130.040 be amended as shown in italics and that USPS 130.050 be established as follows:

USPS 130.040

SYSTEM NAME:

Philately—*Postal* Product Sales and Distribution, 130.040.

SYSTEM LOCATION:

Philatelic and Retail Services Department, *Headquarters; Communications Department,* Headquarters; and at a contractor site.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who have initiated correspondence by (1) responding to various philatelic *and other USPS sponsored (e.g., Olympic)* product sales promotion programs by submitting order forms, business reply cards, or cut outs from posters and promotional literature, (2) providing postal clerks with name and address information to receive future product announcements, (3) opening subscription accounts for products, or (4) requesting products in unsolicited correspondence, such as letters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customers/subscriber name and account number, address, funds on deposit, remittance type and amount order/product specifications, order history, *credit card payment information;* special lists identifying individuals who have submitted bad checks, and special service customers/subscribers, and individuals who have registered multiple service complaints; *and customer name with date and amount of claim submitted for merchandise that was defective, not received, etc.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 404.

PURPOSE(S):

(1) to operate a subscription service *or services* for customers who remit money for a particular product or products; (2) to maintain a file to send product announcements and sales literature to customers or subscribers; (3) to serve, as a source for statistical data for research and market analysis, billing and inventory data, and mailing basis for product shipment; and (4) to identify discrete groups of customers/subscribers for better order control and service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H,* and *J listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original typed or handwritten form, or microform, and on magnetic tape or disk and computer printouts.

RETRIEVABILITY:

Customer/subscriber name and number, if assigned.

SAFEGUARDS:

Paper and microform records are maintained in closed filing cabinets under general scrutiny of program personnel. *Information* on magnetic tape and disk is protected by ADP *physical security,* technical software and administrative security or by contractors providing similar protection subject to the audit and inspection of the USPS Inspection Service.

RETENTION AND DISPOSAL:

ADP and microform records are maintained for three years after the individual has failed to make a purchase or has indicated no other interest. ADP records are obliterated after their period of usefulness; microform records are incinerated. Correspondence and other paper documents are retained for 3 years and then destroyed by shredding.

SYSTEM MANAGER(S) ADDRESS:

USPS Headquarters, APMG, Philatelic and Retail Services Department, 475 L Enfant Plaza SW., Washington, DC 20260-6700.

USPS Headquarters, APMG, Communications Department, 475 L Enfant Plaza SW., Washington, DC 20260-3100.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the System Manager above. Inquiries should contain full name and address.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual as is described in *"Categories* of Individuals Covered by the System" above.

USPS 130.050

SYSTEM NAME:

Philately—United States Postal Service Olympic Pen Pal Club, 130.050.

SYSTEM LOCATION:

Office of Olympic Marketing, Communications Department, Headquarters; and at a contractor site.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Children, both United States and foreign, who register to join the United States Postal Service Olympic Pen Pal Club.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information identifying Pen Pal Club registrants that includes name, home address, gender, and date of birth; payment information (including credit card); and registrant profile data (without personal identifiers).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 404.

PURPOSE(S):

1. To make a computerized matchup of children who register to become pen pals;

2. To maintain a file to send philatelic and Olympic-related promotional and informational materials; and

3. To serve as a source for statistical data for philatelic research and market analysis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records from this system may be disclosed to another Pen Pal Club registrant with whom a record subject has been matched as a pen pal.

2. Records from this system may be disclosed to the Department of Justice or to other counsel representing the Postal Service, or may be disclosed in a proceeding before a court or adjudicative body before which the Postal Service is authorized to appear, when (a) the Postal Service; or (b) any postal employee in his or her official capacity; or (c) any postal employee in his or her individual capacity whom the Department of Justice has agreed to

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represent; or (d) the United States when it is determined that the Postal Service is likely to be affected by the litigation, is a party to litigation or has an interest in such litigation, and such records are determined by the Postal Service or its counsel to be arguably relevant to the litigation, provided, however, that in each case, the Postal Service determines that disclosure of the records is a use of the information that is compatible with the purpose for which it was collected.

This routine use specifically contemplates that information may be released in response to relevant discovery and that any manner of response allowed by the rules of the forum may be employed.

3. When the Postal Service becomes aware of an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, or in response to the appropriate agency's request upon a reasonable belief that a violation has occurred, the relevant records may be referred to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

4. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the prompting of that individual.

5. Records or information from this system may be disclosed to an expert, consultant, or other person who is under contract to the Postal Service to fulfill an agency function, but only to the extent necessary to fulfill that function. This may include disclosure to any person with whom the Postal Service contracts to reproduce, by typing, photocopy or other means, any record for use by Postal Service officials in connection with their official duties or to any person who performs clerical or stenographic functions relating to the official business of the Postal Service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer media storage and paper. Paper records consisting of registrant forms or registrant lists submitted by foreign postal administrations will be kept only until the information is entered into the database.

RETRIEVABILITY:

Club member's name.

SAFEGUARDS:

Hardcopy records are maintained in a secured environment with access limited to those persons who official duties require such access. When entered into the computer, individually identified data is kept separate from profile data used for analysis. Access to automated records is restricted by authorized user identification codes. Information on computer storage media maintained at a contractor site is protected by ADP physical security, technical software, and administrative security subject to the audit and inspection of the USPS Inspection Service.

RETENTION AND DISPOSAL:

ADP records are maintained for two years after the individual has become a member of the Pen Pal Club. After that time, the records are erased. Correspondence and other paper documents are retained for two years and then destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

USPS Headquarters, APMG, Communications Department, L 475 Enfant Plaza SW., Washington, DC 20260-3100.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the System Manager. Inquiries should contain name and address.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURE:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information is furnished by record subjects registering for membership in Pen Pal Club and by foreign postal administrations.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-11846 Filed 5-17-91; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29181; No. SR-BSE-91-2]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Amendment of Its Minor Rule Violation Plan

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 23, 1991, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Minor Rule Violation Plan to provide for the imposition of summary fines for violation of certain specified Exchange floor rules and policies and by revising the List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to section 4 of chapter XVIII ("List") for the imposition of fines by adding the following minor rule and policy violations: [1]

1. Failure to clear the specialist post.
2. Specialist quote maintenance.
3. Failure to adhere to floor security.
4. Damage or abuse of floor facilities and equipment.
5. Floor conduct.
6. Violation of the visitors policy.
7. Possession of an alcoholic beverage on the trading floor during trading hours.
8. Inappropriate attire.
9. Trading floor appearance.
10. Unauthorized disclosure of give-ups.[2]

[1] The BSE also has requested approval, under rule 19d-1(c)(2), 17 CFR 240.19-1(c)(2), to amend its rule 19d-1 minor rule violation enforcement and reporting plan to include these minor rule and policy violations. See letter from Karen A. Aluise, BSE, to Mary Revell, Branch Chief, Commission, dated April 8, 1991.

[2] On April 23, 1991, the BSE submitted to the Commission an amendment to include the unauthorized disclosure of give-ups (Chapter XV (g)) in its Minor Rule Violation Plan and to amend its rule 19d-1 Reporting Plan to include violations of that rule. The BSE proposes a fine schedule of $1,000 for the initial offense of the rule and $2,500 for subsequent offenses. See letter from Karen A. Aluise, Regulatory Review Specialist, BSE, to Mary Revell, Branch Chief, Commission, dated April 12, 1991.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange's Minor Rule Violation Plan ("Plan"), as embodied in chapter XVIII, section 4 of the BSE's Rules of the Board of Governors, provides that the Exchange may impose a fine, not to exceed $2,500, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.[3]

The purpose of the Plan is to provide for a response to a rule violation when a meaningful sanction is appropriate but when initiation of a full disciplinary proceeding is not suitable because such proceeding would be more costly and onerous than would be warranted given the minor nature of the violation. The Plan provides for an appropriate response to minor violations of certain Exchange rules while preserving the due process rights of the party accused through specified, required procedures.

In the Exchange's initial filing which set forth the provisions and procedures of the Plan, the Exchange indicated that it periodically would amend the list of rules subject to the Plan as the Exchange deemed appropriate. The Exchange now seeks to add the following rules and policies to the List:

1. Failure to clear the specialist post.
2. Specialist quote maintenance.
3. Failure to adhere to floor security.
4. Damage or abuse of floor facilities and equipment.
5. Floor conduct.
6. Violation of the visitors policy.
7. Possession of an alcoholic beverage on the trading floor during trading hours.
8. Inappropriate attire.
9. Trading floor appearance.
10. Unauthorized disclosure of give-ups.

The proposed rule change will advance the objectives of section 6(b)(6) of the Act in that its members and persons associated with its members will be appropriately disciplined for violation of rules where the Exchange has determined that such violation is minor in nature. In accordance with sections 6(b)(7) and 6(d)(1), the Minor Rule Violation Plan provides for a fair disciplinary procedure for the imposition of sanctions.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule will impose any burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-91-2 and should be submitted by June 10, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 14, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11884 Filed 5-17-91; 8:45 am]

BILLING CODE 8010-01-M

[3] The BSE's Plan for enforcing and reporting minor disciplinary rule violations was approved by the Commission in Securities Exchange Act Release No. 28737 (April 17, 1990), 54 FR 19439-1 (April 26, 1989) (File No. SR-BSE-89-2).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth Zaic, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Score Counseling Evaluation.

Form No.: SBA Form 1551.

Frequency: On occasion.

Description of Respondents: Recipients of Score Counseling.

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Annual Responses: 8,400.
Annual Burden: 1,067.
Title: Quarterly Guaranty Loan Status Report.
Form No.: 1175
Frequency: Quarterly.
Description of Respondents: SBA Guaranty Lenders.
Annual Responses: 313,959.
Annual Burden: 13,256

Cleo Verbillis,
Acting Chief, Administrative Information Branch.

[FR Doc. 91-11625 Filed 5-17-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2503]

Louisiana (With Contiguous Counties in Arkansas & Mississippi); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on May 3, 1991, and amendments thereto on May 4, 6, and 8, 1991, I find that the Parishes of Caldwell, Claiborne, East Carroll, Madison, Morehouse, Ouachita, Richland, Union, and West Carroll in the State of Louisiana constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on April 27. Applications for loans for physical damage may be filed until the close of business on July 2, 1991, and for loans for economic injury until the close of business on February 3, 1992 at the address listed below:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155,

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Parishes of Bienville, Catahoula, Franklin, Jackson, LaSalle, Lincoln, Tensas, Webster, and Winn in the State of Louisiana; Ashley, Chicot, Columbia, and Union Counties in the State of Arkansas; and Issaquena, Warren, and Washington Counties in the State of Mississippi may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	8.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 250306 and for economic injury the numbers are 731300 for Louisiana; 731400 for Arkansas; and 731500 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 8, 1991.

Alfred E. Judd,
Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-11627 Filed 5-17-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2487]

Texas; Amendment #1; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated April 23, 1991, to the President's major disaster declaration of April 12, to include the counties of Brazoria, Jackson, Victoria, and Willacy in the State of Texas as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on April 5, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Calhoun, Colorado, DeWitt, Fort Bend, Galveston, Goliad, Harris, Kenedy, Lavaca, Matagorda, Refugio, and Wharton in the State of Texas may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physcial damage is June 11, 1991, and for economic injury until the close of business on January 13, 1992.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 2, 1991.

Michael E. Deegan,
Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-11628 Filed 5-17-91; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01-0342]

Milk Street Partners, Inc.; License Surrender

Notice is hereby given that Milk Street Partners, Inc., 75 State Street, Boston, MA 02109 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Milk Street Partners, Inc., was licensed by the Small Business Administration on September 17, 1987.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 23, 1991, and, accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 6, 1991.

Bernard Kulik,
Associate Administrator for Investment.

[FR Doc. 91-11626 Filed 5-17-91; 8:45am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1294]

Shipping Coordinating Committee Council and Associated Bodies; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on June 4, 1991, in room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. The purpose of the meeting is to finalize preparations for the 66th Session of Council and associated bodies of the International Maritime Organization (IMO) which is scheduled for June 10–14, 1991, at the IMO Headquarters in London. The purpose of the meeting is to discuss the papers received and the draft U.S. positions for the Council.

Among other things, the items of particular interest are:

—Reports of the various IMO Committees.
—Report of the Ad Hoc Working Group on Financial Matters (particularly loss of voting rights and proposals for apportioning member's contributions) and the IMO biennial budget for 1992–1993.
—Report on the outcome of the Conference on International Cooperation on Oil Pollution Preparedness and Response.
—Preparations for the 17th regular session of the IMO Assembly.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Gene F. Hammel, U.S. Coast Guard (G-CI), room 2114, 2100 Second Street, SW., Washington, DC 20593 or by calling (202) 267-2548.

Dated: May 7, 1991.

Geoffrey Ogden,
Chairman, Shipping Coordinating Committee.

[FR Doc. 91-11609 Filed 5-17-91; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: Parallel Runway, New Orleans International Airport, New Orleans, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for a north-south parallel runway which would accommodate air carrier traffic at New Orleans International Airport (NOIA), New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Tim Tandy, Airport Environmental Specialist, ASW-611E, Federal Aviation Administration, Southwest Regional Office, 4400 Blue Mound Road, Fort Worth, Texas 76193-0611. Telephone (817) 624-5859 or FTS 734-5859.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the U.S. Army Corps of Engineers (USACE), U.S. Environmental Protection Agency (USEPA), U.S. Fish and Wildlife Service (USFWS), and New Orleans Aviation Board, will prepare an EIS for a proposed north-south parallel runway which would accommodate air carrier traffic at New Orleans International Airport. The FAA will be the lead agency and the USACE, USEPA, and USFWS will serve as cooperating agencies. The primary components of the proposed action would consist of the following items: (1) 8,000-foot by 150-foot north-south parallel runway; (2) high intensity runway lights; (3) medium intensity approach lighting system with runway alignment indicator lights; (4) 8,000-foot by 75-foot parallel taxiway; (5) medium intensity taxiway lights; and (6) instrument landing system for both ends of the new runway (to include localizer, glide slope, and middle and outer markers).

Since the aviation project would impact a proposed U.S. Army Corps of Engineers hurricane protection levee and rail lines belonging to the Illinois Central and Kansas City Southern Railroads, the EIS will also take into account the interaction of alternative locations and alignments for the runway, hurricane protection levee, and railroads.

The New Orleans Aviation Board intends to request Federal Airport Improvement Program funds for development of the proposed airport improvements.

Known alternatives to the proposed action include no action and various runway locations and alignments. Variables which interact to form additional alternatives are various locations and alignments for the previously mentioned hurricane protection levee and railroads. The proposed new runway was recommended by both the 1980 NOIA Airport Master Plan and the 1990 Strategic Growth Plan for NOIA.

The FAA intends to consult and coordinate with Federal, state, and local agencies which have jurisdiction by law or have special expertise with respect to any environmental impacts associated with the proposed project. Scoping for the EIS will include both an agency scoping meeting and a public scoping meeting concerning the range of actions, alternatives and impacts to be considered. The agency scoping meeting will be held at 9 a.m. on May 21, 1991, in the board room of the New Orleans Aviation Board at New Orleans International Airport. The public scoping meeting will be held at 7 p.m. on May 22, 1991, in Hall B of the Ponchartrain Center, located at 4545 Williams in Kenner, Louisiana. In addition to this notice, a notice will be placed in local newspapers of general circulation announcing the intent to prepare an EIS and the scoping meetings, and soliciting comments on the scope of the study. Those unable to attend the scoping meetings or who prefer not to make oral statements are encouraged to submit written scoping comments to the agency contact listed above.

Issued on: May 6, 1991.

Donald C. Harris,
Acting Manager, Airports System Capacity and Planning Branch.

[FR Doc. 91-11961 Filed 5-16-91; 12:08 pm]

BILLING CODE 4910-13-M

[Summary Notice No. PE-91-20]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 10, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 13, 1991.

Denise Donohue Hall,
Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26533.

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Petitioner: Parachute Laboratories, Inc. dba Jump Shack.
Sections of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought: To allow employees, representatives, and other volunteer experimental parachute test jumpers under the direct control of petitioner to make intentional parachute jumps wearing a dual harness, dual pack parachute having at least one main parachute and one approved auxiliary parachute packed in accordance with the requirements of § 105.43(a).

Dispositions of Petitions

Docket No.: 17661.
Petitioner: Kenmore Air Harbor.
Sections of the FAR Affected: 14 CFR 135.103(a)(1).
Description of Relief Sought/ Disposition: To extend Exemption No. 2528, as amended, which allows petitioner to conduct operations under visual flight rules (VFR) outside of controlled airspace, over water, at an altitude below 500 feet.
Grant, March 1, 1991, Exemption No. 2528C.

Docket No.: 20563.
Petitioner: Tenneco, Inc.
Sections of the FAR Affected: 14 CFR 61.58(c)(1).
Description of Relief Sought/ Disposition: To extend Exemption No. 3108, as amended, which allows petitioner's pilots to complete the pilot-in-command 24-month check in an FAA-approved flight simulator.
Grant, January 24, 1991, Exemption No. 3108E.

Docket No.: 20616 and 20617.
Petitioner: Zephyrhills Parachute Center.
Sections of the FAR Affected: 14 CFR 91.307(a)(2), 91.607, and 105.43(a)(2).
Description of Relief Sought/ Disposition: To extend Exemption No. 4301, as amended, which allows foreign nationals to participate in petitioner's competitive skydiving events without complying with the parachute equipment and packing requirements. Exemption No. 4301, as amended, also allows carrying of 40 parachutists in the DC-3/C47 aircraft for parachuting activity.
Grant, March 7, 1991, Exemption No. 4301C.

Docket No.: 22451.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.613, 121.619, 121.625.
Description of Relief Sought/ Disposition: To extend Exemption No. 3585F, which allows petitioner and other similarly situated part 121 certificate holders to dispatch airplanes, under instrument flight rules, where conditional language in the remarks section of the weather forecast states that the weather at the destination airport, alternate airport, or both will be below the required weather minimums when the main body of the weather forecast or weather report states that the weather conditions will be at or above the authorized weather minimums.
Grant, October 18, 1990, Exemption No. 3585G.

Docket No.: 22558.
Petitioner: Boeing Commercial Airplane Co.
Sections of the FAR Affected: 14 CFR 47.69(b).
Description of Relief Sought/ Disposition: To extend Exemption No. 3513, which allows operation of aircraft outside the United States using a Dealer's Aircraft Registration Certificate.
Grant, April 16, 1991, Exemption No. 3513H.

Docket No.: 22690.
Petitioner: Boeing Commercial Airplane Co.
Sections of the FAR Affected: 14 CFR 61.57(c)
Description of Relief Sought/ Disposition: To extend Exemption No. 4779, as amended, which permits certain pilots employed by the petitioner to satisfy the general recent flight experience requirements of § 61.57(c) by alternate means.
Grant, April 23, 1991, Exemption No. 4779B.

Docket No.: 23430
Petitioner: Douglas Aircraft Co.
Sections of the FAR Affected: 14 CFR 61.57(c).
Description of Relief Sought/ Disposition: To extend Exemption No. 3754, as amended, which allows certain pilots employed by the petitioner to meet the pilot-in-command landing recency requirements by using a Level B airplane simulator.
Grant, April 26, 1991, Exemption No. 3754D.

Docket No.: 23653.
Petitioner: University of North Dakota.
Sections of the FAR Affected: 14 CFR part 141, appendix D, paragraph 8(c).
Description of Relief Sought/ Disposition: To amend Exemption No. 3625E to allow aviation students allowable credit for more than the present 50-hour limitation.
Denial, April 8, 1991, Exemption No. 5295.

Docket No.: 25628.
Petitioner: Moody Aviation.
Sections of the FAR Affected: 14 CFR 141, appendix A.
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5032, which allows petitioner to graduate a Part 141 student with a "night flying prohibited" limitation on the private pilot certificate. The amendment would remove the stipulation against reducing total flight hours.
Grant, March 29, 1991, Exemption No. 5032A.

Docket No.: 25657.
Petitioner: General Motors Corporation.
Sections of the FAR Affected: 14 CFR 21.181.
Description of Relief Sought/ Disposition: To allow petitioner to operate its Cessna aircraft, model number 650, serial numbers 094, 095, 096, with three deviations from the master minimum equipment list. These deviations include allowing one analog function for the ITT Indicating System (Engine) to be inoperative if the corresponding digital function is operative, allowing comparable requirements for fan speed indicators, and allowing the mechanical indicating system for the main cabin door to be used when the electrical system is malfunctioning.
Denial, October 30, 1990, Exemption No. 5249.

Docket No.: 25827
Petitioner: Ameriflight, Inc.
Sections of the FAR Affected: 14 CFR 135.225 (a), (f), and (g).
Description of Relief Sought/ Disposition: To allow petitioner's pilots to begin instrument approach procedures to airports without an approved weather reporting facility and without the latest weather report indicating that weather conditions are at or above the authorized IFR landing minimums for that airport. In addition, exemption would allow petitioner's pilots to take off in IFR conditions without obtaining the latest airport weather report from an approved weather reporting facility indicating that weather conditions are at or above the authorized IFR takeoff minimums for that airport.
Denial, September 17, 1990, Exemption No. 5238.

Docket No.: 25862.
Petitioner: Cessna Aircraft Co.
Sections of the FAR Affected: 14 CFR 47.69(b).
Description of Relief Sought/ Disposition: To extend Exemption No. 5042, which allows operation of aircraft outside the United States using a Dealer's Aircraft Registration Certificate.
Grant, April 16, 1991, Exemption No. 5042A.

Docket No.: 26163
Petitioner: USAir, Inc.
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (d)(2) and (d)(3); 61.67(d)(2); 61.157 (d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part 121, appendix H.
Description of Relief Sought/ Disposition: To allow petitioner to use FAA-approved simulators to meet certain training and testing requirements.
Grant, March 8, 1990, Exemption No. 5158.

Docket No.: 26223.
Petitioner: Airbus Service Company/ Training Center, Inc.
Sections of the FAR Affected: 14 CFR 121.411; 121.413; and part 121, appendix H.
Description of Relief Sought/ Disposition: To allow petitioner to use certain highly qualified instructor pilots and, if appropriate, flight engineer instructors, trained by petitioner, to train the initial cadre of pilots and, if appropriate, flight engineers of part 121 certificate holders. In addition, the exemption, if granted, would allow the petitioner to train part 121 certificate holders' airmen in initial, transition, upgrade, differences, and recurrent training in an approved simulator and in turbojet-powered airplanes manufactured by petitioner without the instruction meeting all of the applicable training requirements of subpart N and the employment requirements of appendix H of part 121 and without petitioner holding an air carrier operating certificate.
Grant, April 25, 1991, Exemption No. 5302.

Docket No.: 26340.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.391(d) and 121.311(f).
Description of Relief Sought/ Disposition: To extend Exemption No. 4298, as amended, which allows required flight attendant(s) to be located at the midcabin flight attendant station during takeoff and landing on B-767 aircraft operated by petitioner's member airlines and other similarly situated part 121 certificate holders who my apply for approval for their Principal Operations Inspectors.
Grant, March 8, 1990, Exemption No. 4298D.

Docket No.: 26374.
Petitioner: Corsair, Inc.
Sections of the FAR Affected: 14 CFR 36.7(d)(2) and 91.805.
Description of Relief Sought/ Disposition: To allow petitioner to transport a Boeing 727 freighter from Miami International Airport to Brazil where the aircraft will be leased for 4 years to be used exclusively in foreign commerce.
Denial, March 11, 1991, Exemption No. 5285.

Docket No.: 26376
Petitioner: Bolivar Aviation
Sections of the FAR Affected: 14 CFR 61.187(b).
Description of Relief Sought/ Disposition: To allow petitioner to utilize flight instructors who have held the flight instructor certificate for less than the required 24 months preceding the date of instruction.
Grant, April 26, 1991, Exemption No. 5304.

Docket No.: 26412.
Petitioner: The Soaring Society of America, Inc.
Sections of the FAR Affected: 14 CFR 61.69.
Description of Relief Sought/ Disposition: To allow petitioner's members to provide glider tow services as private pilots meeting the requirements of § 61.69 rather than operating as commercial pilots under part 135.
Partial Grant, April 25, 1991, Exemption No. 5303.

Docket No.: 26478.
Petitioner: Department of the Air Force.
Sections of the FAR Affected: 14 CFR 91.209.
Description of Relief Sought/ Disposition: To allow petitioner to conduct counternarcotics training without external lighting in certain Air Traffic Control Assigned Airspace.
Grant, April 26, 1991, Exemption No. 5305.

Docket No.: 26503.
Petitioner: ABX Air, Inc.
Sections of the FAR Affected: 14 CFR 121.623 and 121.643.
Description of Relief Sought/ Disposition: To allow petitioner to comply with the domestic flight release and on-board fuel reserve requirements applicable to carriers that possess domestic air carrier operating certificates, in lieu of the requirements applicable to supplemental air carriers.
Partial Grant, May 2, 1991, Exemption No. 5307.

[FR Doc. 91-11836 Filed 5-17-91; 8:45 am]
BILLING CODE 4910-13-M

Maritime Administration

[Docket No. M-012]

Identification of American Market Capacity for Marine Hull Insurance

On June 2, 1988, the Maritime Administration (MARAD) published in the **Federal Register** a final rule to govern the placement of marine hull insurance on subsidized and title XI program vessels (53 FR 23112). The rule was effective July 20, 1988. Section 249.9 of the rule requires that the American market be given an opportunity to compete for the placement of marine hull insurance on each vessel. If less than 50% of the placement is made in the American market, the owner or broker must certify that 50% or 75% of the American market (measured in terms of capacity) were offered the risk.

This procedure requires MARAD to identify all qualified American underwriters and their respective capacities, and to make such information available to vessel owners and brokers. MARAD published an initial notice soliciting this information in the **Federal Register** on August 2, 1988, and the information received was compiled and published in the **Federal Register** on November 16, 1988. The purpose of this notice is to up-date such information from American underwriters and distribute it to owners and brokers.

All underwriters licensed to do business in a state, and having at least a B Security rating as published in the latest edition of A.M. Best's Insurance Reports, and who wish to be included in MARAD's list of American market capacity must advise MARAD of their per risk capacity to write marine hull insurance. They must state separately, per risk capacity for blue water and non blue water vessels. In addition, if there are any other capacity limits which only apply to certain types of vessel/rigs, such limits must also be stated separately.

For purposes of determining American market capacity, the American Hull Syndicate and its member companies are to be treated separately, provided they remain able to write independently. Therefore, MARAD expects that the Syndicate members will individually submit their capacity to write independently.

Responses to this notice must be sent to the Secretary, Maritime Administration, Department of Transportation, 400 Seventh Street SW., room 7300, Washington, DC 20590. Responses must be received by close of business on July 5, 1991.

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Dated: May 15, 1991.

James E. Saad,

Secretary, Maritime Administration.

[FR Doc. 91-11867 Filed 5-17-91; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 130, Revision 3]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This revised order will enable the Assistant Commissioner (Examination) to grant permission to taxpayers who apply to the Commissioner, in accordance with § 48.4071-2(b) of the regulations, for approval to use an alternative method for determining total weight of tires on the basis of average weight for each type, size, grade and classification.

EFFECTIVE DATE: May 2, 1991.

FOR FURTHER INFORMATION CONTACT: Ron Linden, EX:E:D, room 2008, 1111 Constitution Ave. NW., Washington, DC 20224, 202-566-6471 (not a toll-free call).

Authority to Execute and Terminate Average Weight Agreements

Pursuant to the authority vested in the Commissioner of Internal Revenue by 26 CFR 48.4071-2(b), 26 CFR 301.7701-6, and T.D. 6152, there is hereby delegated to the Assistant Commissioner (Examination), the authority to:

1. Sign all agreements granting approval to determine total weight of tires and inner tubes sold on the basis of average weight schedules published by the tire industry.

2. Sign all agreements granting approval of a taxpayer's method of determining total weight of tires on the basis of average weight for each type, size, grade or classification.

3. Terminate and issue notice of termination agreements described above.

4. This authority may not be redelegated.

5. This Order supersedes Delegation Order No. 130 (Rev. 2), issued March 21, 1982.

Dated: April 10, 1991.

David G. Blattner,

Chief Operations Officer.

[FR Doc. 91-11805 Filed 5-17-91; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 97
Monday, May 20, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 F.R. 20643.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:30 a.m., Friday, May 24, 1991.

CHANGE IN THE MEETING: The Commodity Futures Trading Commission has cancelled the closed surveillance review meeting.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-12049 Filed 5-16-91; 2:51 p.m.]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 F.R. 20643.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Thursday, May 30, 1991.

CHANGE IN THE MEETING: The Commodity Futures Trading Commission has postponed the open meeting to discuss the Registration of Broker Associations/final rules. This discussion will be rescheduled for the June calendar.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-12050 Filed 5-16-91; 2:51 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 am, Friday, June 7, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-12051 Filed 5-16-91; 2:51 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 14, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-12052 Filed 5-16-91; 2:51 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 21, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-12053 Filed 5-16-91; 2:51 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 28, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-12054 Filed 5-16-91; 2:51 pm]

BILLING CODE 6351-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Thirteenth Annual Meeting of the Board of Directors

TIME AND DATE: 10:00 a.m., Wednesday, May 22, 1991.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, N.W.-8th Floor Board Room, Washington, D.C. 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Martha A. Diaz-Ortiz, Acting Secretary (202) 376-2421.

Agenda

I. Call to Order
II. Approval of Minutes
  a. January 10, 1991, Regular Meeting
  b. February 21, 1991, Special Meeting
III. Election of Chairperson
  Election of Vice Chairperson
IV. Committee Appointments
  a. Personnel Committee
  b. Budget Committee
  c. Audit Committee
V. Election of Officers
VI. Executive Director's Quarterly Management Report
VII. Budget Financial Reports
VIII. Adjourn

Martha A. Diaz-Ortiz,

Acting Secretary.

[FR Doc. 91-12014 Filed 5-16-91; 1:27 p.m.]

BILLING CODE 7570-00-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 2:35 p.m., Tuesday, May 14, 1991.

PLACE: Chairman's Office, 6th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTER CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously to hold a closed meeting, under the exemptions listed above, to clarify an action taken at an earlier closed meeting on the same date. General Counsel Robert Fenner certified that the meeting could be closed under those exemptions.

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FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, telephone (202) 662-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91-12000 Filed 5-16-91; 12:12 pm]

BILLING CODE 7535-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session following the adjournment of the FDIC open meeting beginning at 2:00 p.m. on Tuesday, May 21, 1991 to consider the following matters:

Summary Agenda: None.

Discussion Agenda:

A. *Memorandum re:* Proposed policy regarding the sale of RTC properties through negotiated purchase offers.

B. *Memorandum re:* Proposed policy regarding the payment of real estate taxes on RTC properties.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416-7282.

Dated: May 15, 1991.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91-11952 Filed 5-16-91; 9:41 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:02 p.m. on Tuesday, May 14, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Administrative enforcement proceedings.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: May 15, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-11947 Filed 5-15-91; 8:06 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register

Vol. 56, No. 97

Monday, May 20, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN-91-004]

Amendment to the Procedure for the Conduct of Referenda in Connection With Cotton Research and Promotion Orders

Correction

In proposed rule document 91-10213 beginning on page 20378 in the issue of Friday, May 3, 1991, make the following corrections:

1. On page 20379:

a. In the first column, in the first full paragraph, in the second line, insert the following after "proposed":

"rule. A 15 day comment period is considered appropriate".

b. In the same column, in the same paragraph, in the fourth line from the bottom, insert the following after "prevent":

"unnecessary delays in implementing any order that may result".

§ 1205.200 [Corrected]

c. In the second column, in § 1205.200, in the third line, the first "of" should read "or".

§ 1205.201 [Corrected]

d. In the same column, in § 1205.201(r), in the fifth line from the bottom, insert "de" after "the".

§ 1205.202 [Corrected]

e. In the same column, in § 1205.202(a)(2), in the second line, insert "advance" after "reasonable".

§ 1205.205 [Corrected]

2. On page 20380, in the third column, in § 1205.205(c), in the third line from the bottom, the first "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Parts 735, 736, 737, 738, 739, 740, 741, 742

Liquidation and Informal Hearing Procedures Under the U.S. Warehouse Act

Correction

In proposed rule document 91-10647 beginning on page 21452 in the issue of Thursday, May 9, 1991, make the following corrections:

1. On page 21452, in the third column, in the third paragraph, in the seventh line, "warehouse" should read "warehouses".

§ § 735.89, 736.99, 737.78, 738.72, 739.80, 740.81, 741.73, 742.84 [Corrected]

2. On page 21453, in the third column, in § § 735.89, 736.99, 737.78, 738.72, 739.80, 740.81, 741.73, 742.84, in paragraph (e), in the sixth line remove the "(" before "If".

3. On the same page, in the same column, in amendatory instruction 3, in the second line, "hearing" should read "heading".

§ 736.87 [Corrected]

4. On page 21454:

a. In the first column, in § 736.87(b), in the fifth line, "gains" should read "grains".

b. In the same column, in § 736.87(d)(1), in the second line, the first "of" should read "to".

c. In the 2d column, in § 736.87(d)(8), in the 12th line, "bases" should read "basis"; and in the 21st line, "office's" should read "officer's".

BILLING CODE 1505-01-D

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions

Correction

In notice document 91-10542 appearing on page 20414, in the issue of Friday, May 3, 1991, in the second column, in the fifth line from the bottom, after "8410-01-277-3610" insert "thru".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AD-FRL-3923-5]

Preparation, Adoption, and Submittal of State Implementation Plans; PM-10, Sulfur Dioxide, and Lead Nonattainment and Unclassifiable Area Designations

Correction

In rule document 91-9369 beginning on page 16274, in the issue of Monday, April 22, 1991, make the following correction:

On page 16276, in the second column, under Table II, in the second column of the table, after "Harris Co." in the first column of the table, insert "X" in the second column.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Decoquinate

Correction

In rule document 91-9028 beginning on page 15498, in the issue of Wednesday, April 17, 1991, in the second column, under FOR FURTHER INFORMATION CONTACT, in the second line "(HFC-135)" should read "(HFV-135)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91-0143]

Optical Radiation Corp.; Premarket Approval of Orcolon®, Intraocular Fluid for Use as a Surgical Aid in Anterior Segment Procedures

Correction

In notice document 91-9615, beginning on page 19218, in the issue of Thursday, April 25, 1991, in the third column, in the

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first full paragraph, in the second line insert "data" after "effectiveness".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Rel. Nos. 33-6962; IC-18005; S7-13-90]

RIN 3235-AD91

Revisions to Rules Regulating Money Market Funds

Correction

In rule document 91-4438 beginning on page 8113 in the issue of Wednesday, February 27, 1991, make the following corrections:

§ 270.2a-7 [Corrected]

On page 8120:

1In the first column, in § 270.2a-7 (a)(20)(ii)(A), in the first line "with" should read "was".

2In the same column, in § 270.2a-7 (a)(21)(a), delete "(a)" after "(21)".

3In the third column, in § 270.2a-7 (c)(3) in the second line "NRSRO and" should read "NRSRO) *and*".

BILLING CODE 1505-01-D

federal register

Monday
May 20, 1991

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 4, 16, 375, and 380

Regulations Governing Submittal of Proposed Hydropower License Conditions and Other Matters; Final Rule

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 16, 375, and 380

[Docket No. RM90-7-000; Order No. 533]

Regulations Governing Submittal of Proposed Hydropower License Conditions and Other Matters

Issued: May 8, 1991.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting a final rule to codify many existing practices of the Commission in the hydropower area, such as procedures for conducting hearings by notice and comment. The final rule establishes deadlines for participation by resource agencies, Indian tribes and other parties. The final rule clarifies Commission practices in a number of areas, such as when the prefiling consultation applies to amendments of license, when water quality certifications are deemed waived or must be renewed, and when and how the Commission will commence its review of applications.

The final rule establishes a dispute resolution mechanism, by which the Commission may resolve disputes over necessary scientific studies that arise during the pre-filing consultation process. The final rule incorporates into the regulations procedures for the Federal Power Act section 10(j) consultation process. The final rule also provides for greater notice and opportunity for involvement by the public and by Indian tribes in the hydropower licensing process.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER LEGAL INFORMATION CONTACT: Merrill Hathaway, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0825.

FOR FURTHER TECHNICAL INFORMATION CONTACT: William Wakefield, Office of Hydropower Licensing, Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, (202) 219-2784.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in, room 3308 at the Commission's headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission's Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

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I. Introduction

On March 6, 1990, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) proposing to revise its regulations governing submittal of proposed hydropower license conditions and other matters.[1] In response to the comments received,[2] the Commission has decided to adopt a final rule in this proceeding. The regulations adopted implement, in part, provisions added to the Federal Power Act (FPA) [3] by the Electric Consumers Protection Act of 1986 (ECPA).[4]

The Commission is adopting this final rule in order to streamline the hydropower licensing process by making it more efficient, fairer and more understandable for all participants. The final rule codifies many existing practices of the Commission in the hydropower area, such as procedures for conducting hearings by notice and comment. The final rule expedites the preparation and processing of hydropower applications by establishing deadlines for participation by resource agencies, Indian tribes, and other parties. The final rule also clarifies Commission practices in a number of important areas, such as when the pre-filing consultation applies to amendments of license, when water quality certifications are deemed waived or must be renewed, and when and how the Commission will commence its review of applications.

The final rule establishes a dispute resolution mechanism, by which the Commission may assist in resolving disputes over necessary scientific studies that arise during the pre-filing consultation process. The final rule incorporates into the regulations procedures for the FPA section 10(j) consultation process, pursuant to ECPA. The final rule also provides for greater notice and opportunity for public involvement in the hydropower licensing process, by requiring applicants for an original license to maintain public files, conduct a public meeting prior to filing, and provide public notice of the filing of their applications. These requirements are similar to those already in effect for applicants for a new license.

The final rule also explains the relationship of the administrative processes under FPA section 10(j), the Fish and Wildlife Coordination Act (FWCA),[5] and the National

[1] 50 FERC ¶ 61,270, 55 FR 9694 (March 16, 1990).
[2] The commenters are listed in appendix A.
[3] 16 U.S.C. 791a *et seq.* (1988).
[4] Pub. L. No. 99-495, 100 Stat. 1243 (Oct. 16, 1986) (codified at 16 U.S.C. 791a *et seq.*).
[5] 16 U.S.C. 661 *et seq.* (1988).

Environmental Policy Act (NEPA),[6] clarifies the application of the Commission's *ex parte* rules to consultation with governmental agencies on license and exemption conditions, and clarifies the role of other governmental agencies, Indian tribes, citizens' groups and members of the public in the hydropower licensing and exemption processes.

II. Reporting Burden

The public reporting burden for this collection of information is estimated to average 832 hours per response for water power projects having more than five megawatt (MW) capacity and 176 hours per response for water power projects having five MW capacity or less, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of Information Policy and Standards, (202) 208-1415); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

III. Summary of the Final Rule

The final rule defines a number of terms used in the procedural regulations governing hydropower proceedings. Fish and wildlife agencies are those agencies, state or federal, with responsibility for managing fish and wildlife resources. There may be more than one fish and wildlife agency in a particular state. Fish and wildlife recommendations are those filed by fish and wildlife agencies pursuant to the FWCA to be considered for inclusion in licenses and to be included in exemptions, but do not include recommendations by other parties or recommendations that a proposed hydropower project not be built or for prelicensing scientific studies.

Indian tribes are defined in reference to the list published annually by the U.S. Department of the Interior. To have a right to be consulted fully in the pre-filing consultation process for a particular hydropower proposal, an indian tribe's legal rights must be affected by the proposal, as where the project would be located on Indian lands or could interfere with the tribe's statutory or treaty rights.

A fishway is defined as a structure that is part of a hydropower facility's project works that is used for the upstream passage of fish around or through a hydropower project. An application is deemed ready for environmental analysis when all of the significant additional information requested by the Commission is filed.

The pre-filing consultation process adopted in the regulations for applicants for original licenses or exemptions parallels that previously adopted for applicants for new licenses, and specifies time limits for various actions during the pre-filing process. The process requires applicants to inform the public, resource agencies and Indian tribes of their plans; to conduct necessary scientific studies on the impact of the proposed project on resources; to submit a draft application to the resource agencies and Indian tribes; and to attempt to resolve differences with these parties and to consider all significant resource impacts prior to filing an application with the Commission. The potential applicant must keep the Commission informed of its progress, and the applicant or interested resource agencies or affected Indian tribes would have a right to request that the Commission resolve any disputes between the applicant and the resource agencies or tribes concerning necessary scientific studies that the applicant must conduct or information that it must furnish as part of its application. The final stage of the pre-filing consultation process is the filing of a complete application with the Commission, with service of copies on the parties consulted.

The Commission may waive the requirements of the pre-filing consultation process when appropriate, and the regulations make clear which applications for amendment of license are subject to the pre-filing consultation requirements. These provisions are designed to encourage licensees to improve the efficiency of their hydropower facilities and to allow for expedited submission of applications when called for by emergencies or other special circumstances.

The Commission has decided not to codify in the regulations at this time any specific standards for determining when a particular scientific study must be conducted by an applicant, but the preamble discusses the standards that the Commission will consider in making these determinations, both during the pre-filing dispute resolution process and after an application is filed. The Commission's regulations also do not generally distinguish between different types of applications in terms of the procedural requirements applied during the pre-filing consultation and hearing stages, but any difference in the complexity and number of issues raised by an application may be used as a basis for the Commission's granting waivers or extensions of time to comply with the deadlines set forth in the regulations, when appropriate.

The new regulations clarify that hearings on hydropower applications are typically conducted by notice and comment, with all interested parties having an opportunity to participate in writing. Parties, resource agencies, and Indian tribes must submit their comments, recommendations, and any terms and conditions or prescriptions within specific time limits after an application is deemed ready for environmental analysis. These time limits may be extended by the Commission only for good cause shown.

The final rule addresses the Commission's responsibilities to consult with state and federal agencies. Under FPA section 4(e), the Commission may issue a license for a hydropower project located within a federal reservation only after it finds that the license will not interfere or be inconsistent with the purpose for which the reservation was created or acquired, and the license is subject to conditions set by the agency (such as the Forest Service) supervising the reservation. Under section 18, the Commission requires fishways at licensed projects as prescribed by the Secretary of the Interior or Commerce. Under section 10(j), the Commission is required to include in licenses conditions for the protection, mitigation, and enhancement of fish and wildlife, based on recommendations made by fish and wildlife agencies. If the Commission believes that such a recommendation may be inconsistent with applicable law, the Commission must attempt to resolve such inconsistency, and the Commission may reject such recommendation only if it finds that it is inconsistent with the law.

The Commission has not revised its *ex parte* or NEPA regulations, but the preamble discusses the relationship of these regulations to hydropower hearings and the FWCA and FPA 10(j) process. In specified respects the final rule grants to parties participation rights beyond those required by the *ex parte* rule. The Commission intends to consider generic revisions to its *ex parte* rule in a separate proceeding; the

[6] 42 U.S.C. 4321 *et seq* (1988).

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regulations adopted herein, therefore, are subject to modification in that proceeding. The Commission may also consider proposals for alternative NEPA procedures in a future proceeding.

The new regulations codify the Commission's section 10(j) procedures and set forth in detail the rights of parties, resource agencies, and Indian tribes to participate in the process. The Commission will consult with fish and wildlife agencies, make preliminary determinations of inconsistency of section 10(j) recommendations with applicable law, and attempt to resolve any differences with fish and wildlife agencies. Notice of all such determinations will be given to all parties and to affected resource agencies and Indian tribes, which will have an opportunity to submit comments in response to the Commission. All of these entities will have advance notice of and an opportunity to participate in any meetings held to discuss section 10(j) recommendations with fish and wildlife agencies.

The Commission has decided to limit intervention rights of all persons, resource agencies, and Indian tribes to those specified in the regulations. As at present, these entities will be able to intervene in any hydropower proceeding after the application is filed, and motions to intervene will be invited after the application is accepted for filing as well as in response to a draft environmental impact statement if one is prepared in the proceeding. Order No. 511, allowing fish and wildlife agencies to intervene after a Commission decision on a hydropower application is issued, is rescinded.

These new regulations significantly expand the rights of participation in hydropower proceedings for Indian tribes and the public. Applicants are required to consult affected tribes in the pre-filing consultation process. Applicants must hold public meetings at the beginning of this process and must maintain a public file of their application materials and make copies of these materials available to the public on request and at reasonable cost. Applicants must give public notice when they file their applications with the Commission. As under current practice, members of the public and Indian tribes may intervene as parties in any hydropower proceeding and may file protests of any hydropower application. Anyone may file recommendations and comments on the application with the Commission. All parties may request rehearing of a Commission decision on a hydropower application and thereafter seek judicial review under the FPA.

The final rule contains transition provisions that generally do not require the repetition of steps previously taken under the Commission's procedural regulations as they existed prior to this revision. All applicants, however, must conduct a public meeting prior to the filing of any application with the Commission after the effective date of the final rule. The rule changes the authority delegated to the Director of the Office of Hydropower Licensing (OHL), to clarify his authority to issue waivers of the pre-filing consultation requirements and to conduct section 10(j) consultations. The Commission rejects the suggestion made in the comments that it declare that FPA section 4(e) mandatory conditions of a federal land management agency do not apply to applications for new licenses.

In order to assist in the processing of the large number of applications for new licenses due to be filed this year, this order also changes the filing requirements for all applicants for a new license whose application is due between June 19, 1991 and January 1, 1992. All such applicants must serve copies of their applications on the Commission Regional Office, the U.S. Bureau of Land Management District Office, and U.S. Corps of Engineers District Office for the area in which the project is to be located, as well as the U.S. Department of the Interior in Washington, DC. Applicants hand-delivering their applications to the Commission must deliver five copies to the Director, Division of Project Review, Office of Hydropower Licensing. The number of copies required to be filed with the Secretary is reduced by the number of copies mailed or served under this new requirement.

IV. Discussion

A. Definitions

1. *Fish and Wildlife Agencies.* We proposed to include in the definition of "fish and wildlife agencies" the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency in charge of administrative management over fish and wildlife resources of the state in which a proposed hydropower project is located.[7]

In the NOPR, we stated that we would not include Indian tribes in the definition because they are not fish and wildlife agencies. We noted that Congress used these terms distinctly in ECPA section 3 and decided not to extend the procedural requirements of FPA section 10(j) to apply to other parties and resource agencies. Thus, the recommendations of Indian tribes would not be subjected to the specific requirements of FPA section 10(j). However, we also stated that it might be appropriate to give Indian tribes that might be affected by a particular hydropower project a role in the pre-filing consultation process that parallels the role of fish and wildlife agencies in other respects. Thus, we stated that, pursuant to FPA section 18(a)(2) and (3),[8] the Commission would solicit recommendations (including fish and wildlife recommendations) from Indian tribes and consider those recommendations in its final decision on a hydropower application. Furthermore, we included Indian tribes among the parties to be consulted in the applicant's pre-filing consultations, and proposed appropriate revisions to the regulations to make this obligation clear.

The Indian tribes [9] suggest that the Commission is limiting their role to pre-filing consultation, and therefore is relegating them to the same category as the general public and citizen's groups. They maintain that by doing this the Commission ignores the fact that the Indians' rights are significant, distinct, and often different from those of the state, which therefore cannot represent them. The Indian tribes also argue that tribes should be accorded a consultation role paralleling that of federal and state fish and wildlife agencies because pursuant to tribal law they operate their own fish and wildlife agencies, which they assert are equivalent to their state and federal counterparts and have the expertise to provide the most accurate information of fish and wildlife resources in a particular area.

The participation of Indian tribes in pre-filing consultation is not a limitation of their role but an expansion of it beyond the consideration of their recommendations which the FPA requires. Indeed, they are not treated like the public, which does not have a consultation role prior to filing, but are given treatment parallel to that of the resource agencies.[10] However, it is clear that they are not fish and wildlife agencies within the meaning of the FPA, but that they have a special status of their own under the FPA. The FPA does not refer to Indian tribes as fish and wildlife agencies, but where the Indian tribes are to be consulted, the statute refers to them in addition to and separately from the agencies.[11] There is no reference to Indian tribes in section 10(j).[12]

Some commenters [13] suggest technical corrections to the proposed regulation. They note that the proposed regulation's reference to "the state agency" implies that each state has a single agency in charge of administrative management over fish and wildlife. They suggest that the reference to states be made plural, since some states may have more than one agency with such responsibility.[14] They also suggest that the reference to "the state in which a proposed hydroelectric power project is located" be revised to read "the state or states in which * * *," since a project may be located in more than one state. These changes are unnecessary, because our regulations state that the singular includes the plural.[15]

2. *Fish and Wildlife Recommendation.* We proposed to add a definition for "fish and wildlife recommendation." [16] This term is important because under ECPA only fish and wildlife recommendations of a fish and wildlife agency are subject to the procedures set forth in FPA section 10(j). As used in the proposed rule, this term means any recommendation designed to protect, mitigate potential damages to, or enhance any wild member of the animal kingdom.[17] We stated that the term does not include a request that the proposed project not be constructed or operated, a request for additional studies that can be completed prior to licensing, or, as the term is used in those sections of the proposed rules that implement FPA section 10(j), a recommendation for facilities, programs or other measures to benefit recreation or tourism.[18]

Energy and EEI support the rule's exclusion from the definition of recommendations that projects not be constructed and recommendations for additional pre-licensing studies or for facilities, programs, or other measures to benefit recreation or tourism. However, EEI suggests additional language be added to exclude from the definition other non-fish and wildlife related recommendations from the definition. We believe that the definition is clear that only fish and wildlife recommendations are within the definition, and that no additional language is necessary.

Conversely, other commenters [19] object to the exclusion of recommendations that projects not be constructed, recommendations for additional pre-licensing studies, and recommendations for measures to benefit recreation or tourism. They state first that, if no other measures are available to adequately protect or mitigate fish and wildlife resources and/or the project is in direct conflict with state water management plans, a recommendation against licensing constitutes a recommendation designed to protect, mitigate damages to, or enhance fish and wildlife.[20] Some add that, whether or not the Commission adopts such a recommendation, it cannot by rule limit the bounds of the required section 10(j) recommendations, and that such a recommendation is consistent with the intent of NEPA that federal agencies identify and assess reasonable alternatives that will avoid or minimize adverse effects on the environment. In addition, South Carolina states that under the proposed regulation it is unclear what appropriate comments should be submitted under section 10(j) if the agency is requesting denial of the license under section 10(a) or section 4(e).

These commenters [21] also argue that, since the Commission imposes strict evidentiary burdens and time limits on the agencies, requests for additional pre-licensing studies should be permitted under section 10(j) where agencies have identified fish and wildlife information needs early and repeatedly in the consultation process, but the Commission has deferred resolution of information needs, or the applicant has refused to conduct studies in a manner that provides adequate results.

In addition, Wildlife Federation argues that providing the information on which section 10(j) recommendations are based is the responsibility of the applicant, subject to the Commission's control, that requests for additional information are a part of the process of preparing section 10(j) recommendations, and that the agency expertise to which the Commission is required to defer under section 10(j) is the expertise to assess what studies are necessary for formulating fish and wildlife recommendations. Washington Fisheries adds that fish and wildlife agencies have neither sufficient staff nor budget to do their own studies, or to be, in short, biological consultants for applicants.

These commenters argue that the fish and wildlife agencies have a duty under the FWCA to make recommendations for public uses of fish and wildlife, and that nothing in the statutory language supports the idea that some FWCA recommendations relating to fish and wildlife are to be excluded from consideration under section 10(j) because they address recreational uses of fish and wildlife. The commenters also argue that a recommendation for fish and wildlife protection, mitigation, or enhancement should not be precluded simply because it might also benefit recreation or tourism. Finally, Washington Fisheries adds that it is not always possible or desirable to provide in-place, in-kind mitigation and that the form or content of a mitigation package should be up to the discretion of the resource agency.

The commenters' objections to the regulation are inapposite. Section 10(j) of the FPA requires that licenses issued under the FPA include conditions based on the recommendations of the state and federal fish and wildlife agencies for the protection, mitigation, and enhancement of fish and wildlife. It is inherent in this requirement that the recommendations

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[7] Proposed § 4.30(b)(9)(i).

[8] 16 U.S.C. 803(a) (1988) (this section was added by ECPA).

[9] Nez Perce, Pueblo de Cochiti, Klamath, the Native American Rights Fund, and California Indian Legal Services.

[10] See the discussion of participation of Indian tribes, section IV.D.1., *infra*.

[11] See, for example, section 10(a)(2)(A), which refers to "the recommendations of Federal and State agencies * * * and the recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project." See also section 10(a)(3), which states that the Commission shall solicit recommendations "from the agencies and Indian tribes."

[12] Section 10(j) only states that section 10(j) license conditions shall be based on recommendations received from the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, and state fish and wildlife agencies.

[13] Washington Wildlife, American Rivers, and Wildlife Federation.

[14] Oklahoma Water argues that state agencies that implement water quality standards should be treated as fish and wildlife agencies for purposes of section 10(j), since such standards relate to fish and wildlife use, among other things. Clearly, many different kinds of resource agencies may administer programs that have an effect on fish and wildlife. However, we believe that section 10(j) is intended to include only those agencies exercising direct administrative management over fish and wildlife.

[15] See 18 CFR 1.102(e).

[16] Proposed § 4.30(b)(9)(ii). This definition is based on those definitions used in federal statutes cited by the legislative history of ECPA. H.R. Rep. No. 99-507, 99th Cong., 2nd Sess. 31 (1986) (citing 16 U.S.C. 1532(8) and 3371(e)).

[17] The term includes a recommendation to protect fish, birds and reptiles, whether or not hatched or born in captivity, and their eggs or offspring (including juveniles), related breeding or spawning grounds and habitat. See NOPR, IV FERC Stats. & Regs. ¶ 32,470 at 32,362 (March 6, 1990).

[18] Proposed § 4.34(e)(2) and 4.34(f)(3).

[19] Interior, Commerce, Oklahoma, Oklahoma Wildlife, Oklahoma Water, Michigan, California Fish and Game, Montana DFWP, West Virginia, South Carolina, Washington Fisheries, Washington Wildlife, American Rivers, and National Wildlife.

[20] Interior quotes, without citation, a statement of the Conference Report on ECPA that, "if nonpower values cannot be adequately protected, FERC should exercise its authority to restrict or * * * even deny a license * * *."

[21] Interior, Washington Fisheries, Washington Wildlife, and wildlife Federation.

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be for conditions that will be included in a license. A recommendation that a project not be licensed simply is not such a recommendation. Clearly, if an agency believes that a project's effects cannot be mitigated, it is free in its comments on the application [22] to recommend that a project not be licensed, but such a recommendation is not a section 10(j) recommendation and is not subject to section 10(j) procedures.

Likewise, while requests for studies that can be completed prior to licensing may be very important in forming the data base necessary to formulate fish and wildlife recommendations, such requests are not themselves recommendations as the term is used in section 10(j). Section 10(j)(1) states, in pertinent part, that "each license issued under this part shall include conditions * * * (which) shall be based on recommendations received pursuant to the Fish and Wildlife Coordination Act * * *." Thus, the plain meaning of this provision excludes from "section 10(j) recommendations" agency requests for pre-licensing studies, because such studies are not conditions imposed on "issued licenses," as specified in the section.

Furthermore, what pre-licensing studies should be conducted is not an issue that should be resolved late in the administrative process as part of the FPA section 10(j) negotiations. Those negotiations must focus, as the law requires, on the fish and wildlife recommendations on which terms and conditions for license can be based. However, as stated in the preamble to the NOPR,[23], the Commission has established a procedural system, to be enhanced by the rule, that addresses, at the outset of the Commission's review of an application tendered for filing, issues concerning necessary pre-licensing studies.[24]

Finally, we recognize that the FWCA encompasses recommendations by fish and wildlife agencies that promote recreation, which has long been a waterway use included in the hydropower program.[25] But ECPA section 3 uses the term in a narrower sense, and clearly distinguishes between recommendations dealing with fish and wildlife and those dealing with other concerns such as recreation. ECPA directs only that the former recommendations, and not the latter, be subject to the provisions in FPA section 10(j) (requiring determinations, negotiations, and findings). As stated in the preamble to the NOPR,[26] Congress mandated that the Commission go through extra procedural steps to protect, mitigate damages to, and enhance members of the wild animal kingdom, but did not require such special measures on the issues of constructing access roads or picnic areas, etc., to facilitate recreation.

3. *Indian Tribe.* In the NOPR, we proposed to add a definition for "Indian tribe" which would make clear what entities are entitled to participate in the pre-filing consultation process and to file recommendations (including fish and wildlife recommendations) with the Commission on proposed hydropower projects.[27] The proposed definition included all Indian groups that are united under one governing body, inhabit a particular and distinct territory, and are appropriately recognized as Indian tribes by the United States. A nexus test was also included in the proposed definition, so that consulted Indian tribes would also have to have tribal (as distinct from individual or social) legal rights that could be affected by the proposed project. Thus, where a proposed project could adversely affect the harvest of anadromous fish to which an Indian tribe had treaty rights, or was located within a particular reservation, that tribe would be identified by the applicant and be able to participate in the pre-filing consultation process and to file comments (including fish and wildlife recommendations) on the proposal.[28] If a group of Indians failed to qualify as an Indian tribe in the context of a particular hydropower project, the group could still participate in the administrative proceeding as a member of the public.[29]

The Indian tribes [30] argue that the definition is unnecessarily elaborate, relies upon an improper racially-based classification, and does not adequately reflect the governmental status of tribes. Most of them argue that the key, perhaps only, criterion should be federal recognition.[31] Interior and the Indian tribes note that federally recognized tribal governments are ascertainable through a list compiled annually by the Bureau of Indian Affairs of the United States Department of the Interior,[32] and suggest that since this established method of determining Indian tribes exists, the Commission should refer to it instead of trying to create its own definition. The Pueblo de Cochiti suggests that the Commission use the definition found in the Indian Self-Determination and Education Assistance Act of 1975, as amended.[33] It adds that use of the established criterion would render proposed §§ 4.30(10) (i) and (ii) superfluous.

The Indian tribes and Interior also argue that the nexus test is too restrictive. They argue that the FPA requires the Commission to consider "the recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project," [34] and that nothing in the statute or its legislative history suggests that Congress intended this provision to be limited to tribes whose "legal rights" may be affected. Interior suggests that the Commission will have difficulty in determining which rights are "tribal" as opposed to "individual" and when an interest is a "legal" right.[35] Some Indian tribes assume that "legal" rights include only treaty rights, and object to the exclusion of rights protected by statute but not by treaty. A number of Indian tribes argue that the limitation of the definition to "legal" rights is too narrow to permit their participation as a tribe when important Indian interests not protected by treaty or statute (such as effects on ancestral lands, or on cultural or religious sites) are affected.

Citing *Three Affiliated Tribes* v. *World Engineering, P.C.*, 467 U.S. 138, 148 (1984), the Pueblo de Cochiti argues that statutes that establish or reserve Indian rights are to be construed broadly, while statutes that would abrogate or narrow Indian rights are to be construed narrowly. It maintains that the statutory language of FPA section 10(a)(2) was passed for the benefit of Indians and thus should be liberally construed. It adds that the tribe should determine whether its interests are affected by a particular project, and the Commission should defer to the tribe's determination.[36]

The Pueblo de Cochiti acknowledges that the Commission may authorize a project despite tribal objections, but argues that it is improper to bar the voicing at the consultation stage of the tribes' important non-power interests. It also recognizes that a tribe which is not found to have "legal rights" under the proposed definition might still participate as a member of the public, but notes that this status does not recognize the sovereignty of the entity involved. The Indian tribes also argue that the definition's reference to situations where "the project works would be located within the tribe's reservation" unduly limits the definition. They maintain that, because the definition of reservation in FPA section 3(2) applies only to those tribal lands within Indian reservations, it appears to exclude lands on the reservation which they do not own, but in which they have reserved rights. They also maintain that the definition should include lands which are not reservation lands but which they own in fee, and lands which are no longer reservation lands but in which they have some remaining interest (such as hunting, fishing, gathering, water, sacred sites, burial grounds, etc.). They also argue that the definition appears to exclude tribes threatened with destruction of sites within a reservation from project works located off the reservation unless some treaty specifically recognizes a tribal right in those sites.[37]

After considering all these arguments, as a matter of law and policy we agree that since Interior has a well-established definition and listing of Indian tribes it is appropriate to rely on that definition, and we have revised the regulations accordingly.[38]

We recognize that Indian tribes have a special status, and that with that status come distinct interests. In promulgating the final rule, we are not attempting to confine those interests, but rather, to design a consultation process that is procedurally manageable. While the statute requires that we solicit the recommendations of Indian tribes upon receipt of an application for a license,[39] it does not suggest that tribes must be involved in consultations prior to the filing of a license application. Any tribal participation in the pre-filing consultation process is therefore an expansion of their statutorily prescribed role.

The pre-filing consultation requirement was developed by the Commission to increase the efficiency of the application process. However, in order to keep the pre-filing consultation process manageable, it is reasonable to require that those participating in it have some readily identifiable and tangible interest in the proposed project. Since it is affected Indian tribes, not Indians as individuals, to which the statute refers in section 10(a)(2), it is reasonable for the Commission to refer to affected Indian tribes when granting pre-filing consultation privileges. It is also reasonable to define qualifying Indian tribes as those with rights that may be affected by the development and operation of the hydropower project. Furthermore, for the purpose of pre-filing consultation, it is reasonable to require the rights to be legal rights, so that they are readily ascertainable. As we have stated previously, interests which are not encompassed by the definition can still be raised during the licensing proceeding, if and when a development application is filed with the Commission.

Finally, the references in the definition to interference with the management and harvest of anadromous fish, and the location of the project works within the tribe's reservation, are examples of how tribal legal rights may be affected and are not intended to be exclusive.

4. *Fishway.* The NOPR proposed the following definition of a fishway: [40]

"Fishway" means any structure, facility, or device used for the safe passage, either downstream or upstream, of migratory or nonmigratory fish (including juveniles) through, over or around a hydropower project, and includes fish ladders, fish locks, lifts and elevators, and fish bypass facilities, devices for guiding fish to an upstream or downstream fish passage facility and flow regulation necessary for proper operation of the fishway itself, but does not include screens, barriers or other devices that are not used to guide fish to a fish passage facility, minimum flow releases or other terms and conditions of license.

The comments in response to this definition may be divided between those that consider the proposed definition too broad and those that consider it too narrow.

Among the commenters in the former category,[41] NHA, EEI, and Energy urge us to limit application of the term "fishway" to migratory fish. NHA, in particular, argues that Commission reports and literature contemporary with the enactment of section 18 and its subsequent 1935 amendment indicate that fishways were considered appropriate for anadromous species of fish, and that extending the term to encompass passage of resident fish would go beyond the statute's original intent.

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[22] These comments may be made pre-filing, in response to the draft application, or post-filing, after the application is declared by the Commission to be ready for environmental analysis.

[23] *See* NOPR, IV FERC Stats. & Regs. ¶ 32,470 at 32,382, n. 267.

[24] *See* §§ 4.32 and 4.32(a)(7).

[25] Section 10(a) of the FPA referred to "recreational purposes" long before enactment of ECPA. See *Udall* v. *Federal Power Commission*, 387 F. 2d 420 (1967).

[26] NOPR, IV FERC Stats. & Regs. ¶ 32,470 at 32,382, n. 158.

[27] Proposed § 4.30(b)(10).

[28] This situation would arise where the proposed project could impede the migration of anadromous fish on a particular river, and the Indian tribe had statutory or treaty rights to manage or harvest some of the fish runs on that river. Another example would be where the proposed project works would be located within an Indian reservation. On the other hand, if a group of Indians objected to the construction of a hydropower project not located on such a river or within their reservation, and the basis of their objection rested on aesthetic, recreational, or other grounds shared by some local residents but not rooted in rights of the tribe, the Indian group (even if it were a recognized Indian tribe for other purposes) would not be treated as an Indian tribe for purposes of that project.

[29] Such participation would entitle the tribe to attend the joint meeting in the first stage of the pre-filing consultation process, to inspect and obtain copies of the complete application filed by the applicant, and to file comments (including fish and wildlife recommendations) that the Commission would consider in reaching a decision on the merits of the application.

[30] National Congress of American Indians, Pueblo de Cochiti, Pueblo Nambe, California Indian Legal Services, Klamath, Native American Rights Fund, Nez Perce, and Choctaw.

[31] The Klamath Tribe, on the other hand, argues that lack of formal federal recognition should not be used as a criterion to exclude tribes from the process, and suggests that § 4.30(b)(10) (i) and (ii) be combined into a single criterion on "and/or" conditions, in order to prevent such a result. It argues that a tribe should not be excluded because it no longer inhabits a particular territory.

[32] See 25 CFR 83.6(b). Under § 83.6(b), the Secretary of the Interior publishes annually, in the Federal Register, a list of all Indian tribes which are recognized and receive services from the Bureau of Indian Affairs.

[33] 25 U.S.C. § 450b(e) (1988). This section states:

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

[34] 16 U.S.C. 803(a)(2)(B) (1988).

[35] Citing *Creek Indian Community* v. *FERC*, 895 F.2d 187 (6th Cir. 1989), Interior suggests that a responsible consultation process can avoid years of litigation, and advises generous tribal consultation.

[36] The Pueblo de Cochiti suggests that the Commission's determination of whether a tribe may be affected should parallel the process established by regulations issued by the Council on Environmental Quality implementing the National Environmental Policy Act (NEPA). In the NEPA process, potentially affected tribes are contacted during scoping and are invited to participate in the process, with the option of becoming co-operating agencies. See 40 CFR 1501.2(d)(2), 1501.7(a)(1), and 1508.5. In addition, regardless of whether they participate in scoping, potentially affected tribes are provided with copies of draft environmental impact statements, and their comments are requested. See 40 CFR 1503.1(a)(2)(ii).

[37] Choctaw requests that § 4.30(b)(10)(ii) be revised to read: "where the project works would be located within the tribe's reservation, adjacent to the tribe's reservation, or upstream from the tribe's reservation on a waterway which flows through or adjacent to the tribe's reservation."

[38] This revision is made to § 4.30(b)(10). The conflicting definition in § 16.2(f) is deleted, as the definition in § 4.30(b)(10) applies to both parts 4 and 16 of the regulations.

[39] FPA section 10(a)(2).

[40] Proposed § 4.30(b)(xxiii).

[41] NHA, EEI, Energy, Public Generating Pool, and Wisconsin River.

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Similarly, NHA and EEI insist that application of the term should be limited to provision of upstream passage. Again referring to literature from the time of the section's passage, these commenters argue that contemporary discussions of the need for and operation of fishways focused on ensuring upstream passage of fish, and that the concept of a fishway as a structure to facilitate upstream passage was well-established at the time.

EEI cites modern authorities that continue to treat a fishway as something devised to address upstream passage problems. It argues that, both earlier in the century and today, authorities have viewed downstream passage problems as solvable by remedies other than fishways, such as screening of intakes, spills, and chutes.

Public Generating Group, conceding that the FPA does not definitively reveal whether fishways might include devices facilitating downstream passage, argues, on a policy basis, that we should not needlessly concede to the Secretaries the authority to prescribe such devices. In the absence of a clear indication that section 18 contemplated downstream passage, Public Generating Group would prefer that we retain the maximum amount of discretion to balance economic and environmental considerations in licensing proceedings by adopting a definition that does not specify upstream and downstream passage and by making determinations on a case-by-case basis. Nevertheless, it points out that downstream passage issues do not really involve providing a *means* of passage but rather involve reducing the mortality associated with that passage.

These commenters also argue that a "fishway" should embrace a more restricted concept of fish passage measures. While approving of the proposed definition's limitation of a fishway to a "structure, facility, or device," they contend that these physical aspects should not include screens and barriers. Although the proposed definition excluded screens and barriers not used to guide fish to a fish passage facility, Public Generating Group would exclude even those screens and barriers that, although having a secondary guiding function, are designed primarily to protect fish from mortality at turbines. Leaving the prescription of such dual-purpose devices to our discretion, Public Generating Group would view a fishway as including only screens and barriers having the sole purpose of guiding fish to a fish passage facility.

The commenters argue that inclusion in the definition of such non-structural elements as flows, temperature regimes, and project operation procedures and scenarios would be unsupported by the legislative history of the section and the customary usage of the term. However, only EEI clearly objects to our inclusion of "flow regulation necessary for proper operation of the fishway itself," and Public Generating Group specifically includes similar language in its own proposed definition.

EEI contends that section 18 authority does not extend to prescription of structures or devices at locations removed from a project's physical structures. It also urges us to make it clear that prescription authority does not entitle agencies to dictate design specifications. Wisconsin Power objects that the proposed definition would codify our position that fishway prescription authority applies to relicensing, contrary to its view of Congressional intent. It urges us to limit this authority to original license proceedings only.

Public Generating Pool [42] and EEI [43] submitted their own proposed definitions, illustrating the disagreements these parties have with our proposed definition, as well as with each other's position.

Conversely, a number of commenters consider the proposed definition too narrow.[44] Interior submitted a recommended definition[45] hich illustrates the concerns of these commenters generally. Interior's definition, like our proposed definition, includes measures to protect resident as well as migratory fish; neither Interior nor other commenters elaborate on a rationale for this inclusion. Similarly, although measures to facilitate or ensure downstream fish passage are included in this definition, and although downstream fish passage is implicitly assumed in several of the comments, few of them mention the issue specifically. Instead, the comments focus primarily on the need for broad inclusion of measures, both structural and non-structural, necessary for fish passage.

The commenters urge that the definition include even screens and barriers not used to guide fish to a fishway. Several point out that, even when screens and barriers are clearly part of a fishway, their purpose is to prevent entrainment and turbine mortality. Therefore the essential criterion for their inclusion in the definition should not be whether these devices are designed to protect fish from turbine mortality but whether they are required to accomplish upstream and downstream fish passage (Interior) or are components of a passage scheme (Michigan and Minnesota).

The commenters object equally to the definition's basic exclusion of non-structural measures facilitating fish passage. Commenters would include such specific non-structural elements as flows and temperature regulation, and more general measures, such as "project operation scenarios designed to promote or enhance fish passage" (Commerce and California Indian Legal Services). Several commenters note that adoption of such non-structural measures as flows can eliminate the construction and maintenance costs of structural measures. Wisconsin argues that changes in project operations are sometimes not only the most cost-effective fish passage measures but are also biologically preferred. In the view of Wisconsin and Wildlife Federation, exclusion of operational changes and other non-structural measures from the definition could cause Commerce and Interior to prescribe expensive and technically complicated systems to

[42] Public Generating Pool proposed the following definition: "Fishway" means any structure, facility, or device that facilitates the passage of fish through, over or around a hydroelectric project. The term includes such structures as fish ladders, fish locks, and elevators, and the minimum flows necessary for operation of the fishway itself. The term does not include screens, barriers or other devices unless their sole purpose is to guide fish to a fish passage facility, and does not include minimum flow releases or other terms and conditions of a license. The precise scope of the term may vary from project to project, and the Commission will make this determination on an individual basis.

[43] EEI proposed the following definition: "Fishway" means any structure, facility, or device used for the safe upstream passage of migratory fish through, over and around the project works of a hydropower project, particularly fish ladders, but does not include screens, barriers or other devices that are used to guide fish to an upstream fish passage facility, screens, barriers or other devices for downstream passage or guidance of fish (including juveniles), structures, facilities, or devices for the upstream or downstream passage of nonmigratory fish, operation and maintenance procedures, minimum flow releases or other terms and conditions of license.

[44] Interior, Commerce, American Rivers, Wildlife Federation, California Indian Legal Services, and several state agencies.

[45] Interior proposed the following definition: Any structure, facility, device, or other measures used for safe and timely passage of all life stages of migratory and non-migratory fish, either upstream or downstream, through, over, or around a hydropower project including: (1) Temperature regulation; (2) such structural measures as fish ladders, fish locks, lifts, elevators, and fish bypass facilities and devices such as screens needed for guiding fish unimpeded to an upstream or downstream passage facility, as well as flows sufficient for guiding, attracting, or transporting fish to the fishway and for operation of the fishway itself; and (3) such nonstructural measures as periodic spill flows, gate opening, breaches, notches, or other openings in the dam.

ensure that fishways are provided, even though cheaper alternatives may exist.

The proposed definition's inclusion of "flow regulation necessary for proper operation of the fishway itself" does not satisfy the commenters, who, as Interior's definition indicates, seek a broader inclusion of flows sufficient to guide, attract, or transport fish to the fishway. Various commenters suggest that these would include flow releases over spillways for downstream migrants, flows needed for passage through critical shoals below a project, and minimum flows during spawning season. Oregon points out that often physical fishway structures are not feasible and adequate flow conditions function best. Washington Wildlife argues that a device unaccompanied by a flow release sufficient to attract fish is not a fishway. In a similar vein, Wildlife Federation contends that, without operating and attraction flows, installation of physical fish passage facilities may be useless, and that section 18 would be rendered meaningless if hydroelectric project operators were required to install physical facilities but not to provide flows necessary to convey fish safely through them.

A number of commenters also stress the importance of temperature controls and regimes. Oregon believes temperature controls should be included where data indicate that temperature-related fish passage barriers exist as a result of a hydropower project. Washington Wildlife also points out that temperature can affect upstream and downstream passage.

It is probably safe to state that, taken as a whole, these commenters seek a broad definition of "fishway" that would include any structural or non-structural measures facilitating fish passage. Wildlife Federation argues that the definition should be expanded to include "all license conditions that contribute to the safe passage of fish around a dam or diversion."

Finally, Commerce, Interior, and other commenters take issue with statements in the concurring opinion of Commissioner Trabandt to the NOPR. These include his statements that Interior and Commerce, in prescribing fishways, should formulate requirements in the context of current operations of an existing project, rather than of past fishery resource conditions; should refrain from requiring fishways that do not reflect current fishery resources; should not impose requirements that would materially interrupt the operation of existing projects, disrupt the scheduling of electric power generation, or degrade the amount of electric power generation capacity; and should avoid prescribing fishway facilities not in harmony with the over-all balancing of competing power and non-power resource interests required by ECPA. The commenters argue that fishway prescription is mandatory and not subject to the Commission's balancing requirements; that there is no presumption against fishways that would interfere with power generation; and that, especially in relicensing proceedings, fishway prescription may transcend consideration of current operations and resources at a project site.[46]

Our consideration of the term "fishway" is not undertaken to develop an abstract definition but rather to reflect the meaning of the term as used in section 18. We are not at liberty to formulate a definition from the comments as if we ourselves had originated the term. That is to say, we solicited comments on our proposed definition to determine what a fishway was intended to be, not necessarily what commenters might wish it to be. It is necessary to consider Congress's understanding of the term to the extent that can be determined. Congress, however, failed to define the term at the time either section 18 or its predecessors, section 3 of the General Dam Acts of 1906 and 1910, were enacted; nor did Congress comment on or modify the term in subsequent amendments to section 18. Therefore, it is also relevant to consider what meaning the term generally conveyed during that period. At the same time, we would not want to adopt a definition that ignores present-day conditions or technological developments affecting achievement of the purposes for which section 18 was enacted.

Among the commenters, those supporting a narrow definition of "fishway," especially NHA and EEI, place the greatest reliance on historical and conventional meaning. These sources provide considerable support for the assumption that Congress understood a fishway to apply to upstream passage only. For example, NHA cites reports of the U.S. Commission on Fish and Fisheries of 1872 and 1873 that refer to fishways as facilities to permit passage of fish upstream, over or around an obstruction. EEI cites a 1908 report of the Bureau of Fisheries referring to the authority of the Secretaries of Commerce and Labor to prescribe fishways under the General Dam Act of 1906, discussing the design criteria for fishways, and defining fishways as devices for upstream passage.[47]

Moreover, EEI cites authority to indicate that the common understanding of "fishway" still restricts the term to upstream passage. C.H. Clay, an expert in the field, defined a fishway, in 1961, as a water passage around or through an obstruction "designed to enable fish to ascend without undue stress." [48] The same definition was used by the U.S. Fish and Wildlife Service in a 1982 publication.[49] Another authority, Milo C. Bell, devoted a chapter of a 1986 book to various types of fishways, all of which were structures for upstream passage of fish.[50] Finally, the Columbia River Basin Fish and Wildlife Program adopted by the Northwest Power Planning Council discusses fishways as a means for promoting upstream migration of salmonids and defines fishway, in its glossary, as a device that enables adult fish to migrate up a river past dams.[51] Reference to these authorities indicates that restricting the definition of fishways to upstream passage measures would not constitute rigid adherence to past usage of the term in disregard of contemporary meaning.

This emphasis on upstream passage does not indicate that the need for safe downstream passage has been unrecognized. However, authorities have often regarded downstream passage measures as separate from fishways. Participants in a discussion of fishways in 1982, in an annual meeting of the American Fisheries Society, treated downstream passage of juveniles as either presenting no problem or at least as not being addressed by the use of fishways.[52]

[46] Interior also suggests that we address the definition of fishway and other section 18 issues in a separate rulemaking proceeding and that regulations be drafted jointly by the Fish and Wildlife Service, the National Marine Fisheries Service, and this Commission. We consider the present proceeding sufficient for resolving the issue of defining a fishway, and we reject Interior's suggestion.

[47] Van Hayes, K., General Principles of Fishway Construction, Bulletin of the Bureau of Fisheries, vol. XXVIII (1908).

[48] Clay, C. H., Design of Fishways and Other Fish Facilities, Queen's Printer, Ottawa, Canada (1961), at p. 12.

[49] Schuich, Bernie A., *et al.*, Mitigation and Enhancement Techniques for the Upper Mississippi River System and Other Large River Systems, U.S. Fish and Wildlife Service Resource Publication 148 (1982) at p. 270.

[50] Bell, Milo C., Fisheries Handbook of Engineering Requirements and Biological Criteria (1986), chapter 34.

[51] Northwest Power Planning Council, Columbia River Basin Fish and Wildlife Program, Portland, OR (1987), at p. 192.

[52] Rogers, W. H., Fishways, in Transactions of the American Fisheries Society, Twenty-First Annual Meeting, New York (1892).

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Bell, cited above, states that adult fish at dams are protected by the requirement of construction and operation of fishways, while downstream migrants are protected from diversion from a stream by requirements for screening of intakes.

Those commenters favoring inclusion of downstream passage in the definition do not advance authority in conflict with those authorities cited above. American Rivers argues only that the term "fishway" is broad enough to encompass downstream passage facilities and that a limitation would undermine Interior's authority to protect and enhance anadromous fisheries, contrary to section 18. Most of the other commenters barely argue the point. Nevertheless, we acknowledge that a fishway has not been understood, unanimously and at all times, as solving only upstream passage problems. For example, the Department of Commerce, in 1917, referred to the function of a fishway as "to permit fish to pass over a dam from the stream below to the stream or pool above the dam, and also to permit the same or other fish to pass in the reverse direction without injury."[53] Baker and Gilroy, in 1933, refer to fish ladders as a means by which fish can pass over obstructions in traveling up and down stream. They also describe the design of a mechanical device, which they refer to as a fishway, for the handling of upstream and downstream migrating fish.[54] During House debates in 1918 on the proposed section 18, Representative Graham of Illinois, in supporting fishway prescription authority, complained that the absence of a fishway in the Keokuk Dam had been preventing fish from passing "up and down" the Mississippi River.[55]

We note that, in orders issued in the last several years, we have not limited the concept of "fishway" to only upstream passage. In *Lynchburg Hydro Associates*, 39 FERC ¶ 61,079 (1987), we found certain fish screens to be a component of the project because they were designed to be incorporated into a system for upstream and downstream fish passage. In *Eugene Water and Electric Board*, 49 FERC ¶ 61,211 (1989). We cited section 18 in requiring the licensee to construct fish facilities for downstream passage of juveniles. Our treatment of the concept of "fishway" in these orders, which treatment in retrospect we consider unduly broad, and the usage of the term by others as cited above, reflects a tendency to regard the term at times as denoting any fish passage facility, in contrast to its more restricted meaning.

We are confronted, then, with a term that convayed different meanings to different people. It would be treacherous to conclude that either the broad (bi-directional) or the narrow (upstream) interpretation has constituted the single common usage of the term. But inability to divine a definitive, universally understood meaning does not render our formulation of a "fishway" definition here either impossible or arbitrary. To the contrary, we are persuaded that adoption of the narrower interpretation is the more justifiable approach, for several reasons. First, experts in the field appear more apt to use the term in a precise, technical, and narrow sense, to describe particular devices whose purpose is to move fish up-stream past a dam or the like. Conversely, these experts are often apt to use different terms and concepts in describing the methods of protecting downstream-moving juveniles from mortality at dams. In addition, it seems uncontroverted that, especially during the time prior to passage of section 18, the inability of fish to ascend dams during their spawning migration appears to have constituted the principal incentive for the construction of fishways, which were designed particularly to overcome that problem.

Finally, a narrow interpretation comports more closely with the statutory scheme that Congress has chosen for this Commission's operation. At the heart of that scheme is section 10(a)(1) of the FPA, which requires us, in licensing hydropower projects, to balance the improvement and development of waterways for the benefit of commerce, the improvement and utilization of waterpower development, the adequate protection, mitigation, and enhancement of fish and wildlife, and other beneficial public uses. This statutory provision clearly seeks to afford us latitude in determining the conditions under which a project is to be licensed, if it is to be licensed at all. Section 18, which allows other agencies to be involved in the conditioning process, is best construed narrowly to avoid imbuing it with the potential for interfering with the exercise of our judgment in balancing the factors Congress instructed us to consider.

As a practical matter, our adoption of this restrictive interpretation of "fishway" will not result in any lessening of our efforts to ensure safe downstream passage of fish in licensing hydroelectric projects. Agencies are free to propose recommendations relating to downstream passage under their authority granted under section 10(j). We are required to adopt conditions based on these recommendations unless they are inconsistent with the requirements of the FPA or applicable law. Even if fishways were traditionally constructed for the purpose of ensuring upstream passage, we have always recognized the importance of downstream passage in the life-cycle of migratory fish and will continue to treat conditions for downstream passage as seriously as conditions for upstream passage.

Limiting the application of "fishway" to "anadromous" or "marine migratory" fish, as NHA urges, is not supportable. As with downstream passage, Congress was silent on this issue. However, there is nothing in the literature of the time or in the legislative history of previous dam acts to indicate that Congress would have contemplated such a limitation. Even before the General Dam Acts of 1906 and 1910, acts authorizing the building of individual dams reserved approval of fishways to the United States Fish Commissioner (Commission of Fish and Fisheries), even as to streams that did not have marine migratory fish.[56]

Several authorities that discuss fishways as measures to promote upstream passage also refer to migratory fish, but we cannot assume that the term "migratory" necessarily means "anadromous" in this context. The Department of Commerce, in the 1917 circular referred to above, noted that some fishes not ordinarily called anadromous, since they spend their entire lives in fresh water, still show a tendency to move toward headwaters at the time of spawning and therefore require fishways. Rogers, cited previously, refers to the fact that almost all river fish are more or less migratory at certain seasons of the year. Wildlife Federation, in its comments, points out that the limitation would fail to provide for the migratory behavior patterns of resident fish. We are convinced that no limitation should be placed on the type of fish for which fishways may be prescribed.

[53] Department of Commerce, Bureau of Fisheries, Economic Circular No. 24 (1917).

[54] Baker, S. and Gilroy, U.B., Problems of Fishway Construction, Civil Engineering (1933), at pp. 671–675.

[55] Congressional Record, Vol. 58, p. 10037 (September 5, 1918).

[56] This Commission, which in 1911 evolved into the Bureau of Fisheries in the Department of Commerce, was created to address the depletion of food fish, apparently without restriction, throughout the country's coastal waters and lakes. Thompson, Seton H., The National Marine Fisheries Service Agencies, 1871–1987: An Historical Overview.

The most strongly contested element of the proposed definition is its limitation to particular structures, facilities, and devices. But this physical limitation is well rooted in the traditional meaning of "fishway," as reflected in literature from the period of the enactment of the General Dam Acts and of section 18. For instance, von Bayer, in 1906, refers to the "construction" of fishways. He further classifies fishways in four systems by "style of construction:"

I. The inclined plane system, in which a series of baffle or deflecting plates are so arranged in an inclined flume as to cause the water to follow in its descent a long sinuous route.

II. The pool and fall or step system, in which the water is brought down to a lower level by a series of short falls with intervening pools.

III. The counter current system, in which the descending volume of water is being checked by meeting a current opposing it at certain intervals.

IV. The lock and gate system, in which a higher level is reached through one or more locks operated by gates.

The structural nature of these fishways is immediately apparent from their descriptions.[57]

This insistence on the essential physical or structural nature of a fishway persists in more modern times. Clay (1961) refers to a fishway as a "device" by which fish may swim by their own efforts past an obstruction. In addition, even modern authorities have often observed strict limits on the types of structures they would consider fishways. Both Clay and Bell (1973) treat fish locks and fish elevators differently from fishways because those devices lift fish over obstructions, rather than letting them move by their own efforts. Not all experts have observed this distinction; von Bayer, for example, states that "fishways" include both locks and ladders. Moreover, we would consider such a strict interpretation inflexible and impractical in the context of section 18 authority. Nevertheless, the exactness with which authorities define fishways illustrates the unlikelihood that Congress would have intended the term to encompass a wide variety of non-structural elements, such as minimum flow and temperature control regimes, not to mention such all-embracing concepts as "project operation scenarios designed to promote or enhance fish passage."

While practically no commenters object to the specified structures and devices included in the definition, numerous commenters object to our exclusion of some screens and barriers and emphasize the necessarily mixed purpose of some of these devices. In contrast, Public Generating Pool urges that the definition include only screens and barriers whose sole purpose is to guide fish to a fish passage facility. Imposition of such a restriction would seem capricious. While we do not necessarily exclude screens and barriers that serve more than one purpose, as a practical matter, they must clearly be designed to guide upstream-moving fish directly to the fishway and thereby past the project works.[58] Consequently, we envision geographical proximity of these devices to the other physical structures of the fishway. We reject the position of several commenters that the definition should include even screens and barriers designed only to prevent injury to fish at a hydropower facility. There is no indication that Congress contemplated the prescription of fishways to protect fish from project works in situations where no actual fish passage would occur.

Our proposed definition included "flow regulation necessary for proper operation of the fishway itself," although this is a non-structural feature. The importance of adequate flows in fishway operation was recognized early. Von Bayer refers to "an abundant discharge of water through the outlet [of the fishway] so as to attract the fish" as an important condition for a fishway's successful operation.[59] Another authority, Schoklitsch, indicates that for fish to find a fishway "the flow through the fishway must be ample; the water must leave it with a high velocity and, if possible, with some noise." [60]

We agree with Washington Wildlife and Wildlife Federation that a physical facility lacking sufficient flows to attract and pass fish through it is not a functioning fishway. We consider the provision of such flows so intimately related to the purpose and effective operation of a fishway that we will continue to include this flow regulation in the definition, but we will substitute the term "flow within the fishway necessary for its operation." This inclusion is not meant as an invitation for prescription of an elaborate minimum flow regime. By "flow within the fishway necessary for its operation," we mean, specifically, regulation of flow required for attraction water to guide fish into a fishway; for transport water to provide a medium for fish to pass through a facility, such as through a fish ladder; and for water necessary for holding fish in a facility, such as in the collection channel of a fish lift prior to operating the lift.

In all other respects, we would consider minimum flow prescriptions not to be embraced by the term "fishway," but rather to be simply a condition of fishway operation, and thus of project operation. As with other conditions of project operation, as well as with detailed design specifications of a project, we would consider such a prescription so intrusive as to be outside the scope of authority that Congress granted to Commerce and Interior. As we stated in *Lynchburg Hydro Associates*,[61] we consider section 18 to be a narrow and specific grant of authority. It does not authorize Commerce and Interior to impose far-reaching conditions or to require substantial revision with respect to the design and operation of a proposed project. These are matters which we must weigh and balance and which are entrusted to our ultimate judgment, since we have the final responsibility and authority to balance the various public uses of a waterway under FPA section 10(a)(1).

Moreover, ECPA furnished these agencies a separate mechanism for submitting recommended license conditions for the protection, mitigation of damage to, and enhancement of fish resources, and we are obligated by section 10(j) of the FPA to include conditions based on such recommendations unless the recommendations are inconsistent with the purposes and requirements of applicable law. We stated this position in *Lynchburg Hydro Associates* and subsequent orders, and the comments do not convince us to change it. Commenters urging us to adopt a broad definition of "fishway" seem to argue only that authority to prescribe wide-ranging conditions of license would be desirable in ensuring the proper operation of fishways. They do not attempt to demonstrate that Congress, in enacting and amending section 18, meant

[57] Von Bayer, *supra*, at pp. 1043–44. The only possible exception, considered superficially, might be the counter current system, which might seem to consist only of the provision of current. But von Bayer (at pp. 1050–51) includes diagrams and descriptions of two such fishway systems, one of which involves "a series of centrally located buckets inclined downstream into another series of buckets at either side of the fishway" and the other a "chute submerged in the water * * * provided with a series of slits in the bottom." The nature of these fishways as "structures, facilities, or devices" is thus clear.

[58] Our conclusion that a fishway applies only to upstream passage of fish naturally restricts the definition's inclusion of screens and barriers to those facilitating upstream passage.

[59] Von Bayer, *supra*, at p. 1043.

[60] Schoklitsch, Armin, Hydraulic Structures, Vol. II (1937), at p. 662.

[61] 39 FERC ¶ 61,079 at p. 61,218.

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to equate prescription of fishways with the exercise of such extensive authority by Commerce and Interior over project operation and design.

Our revised definition reflects the above discussion, but several other modifications to the proposed definition require explanation. We are eliminating reference to the "safe" passage of fish, because the goal that fish passage through a fishway should be safe is implicit. Since "migratory or nonmigratory fish (including juvenile)" embraces all fish, reference simply to "fish" is sufficient. "Fish bypass facility" strikes us, on reflection, as an overly inclusive term and will be eliminated; it should be adequately clear from the revised definition what physical features qualify as a fishway. Finally, we will not enumerate the various structural and non-structural features that would be excluded from the definition. We do not wish to encourage an interpretation that items not specifically excluded would be encompassed by the definition. Again, it should be reasonably clear from the revised definition's language and this discussion what kinds of features and conditions we intended to exclude.

5. *Ready for Environmental Analysis.* The rule requires that, within 14 days of filing an application, an applicant is required to publish a notice setting forth the fact that the application has been filed and requesting comment on whether additional information or studies are needed before the Commission can process the application. Once the Commission has determined that adequate studies have been completed, the Commission will accept the application for filing and normally will publish a notice inviting comment on the application and interventions in the proceeding. In some cases, where studies are still ongoing or there are requests for additional information from the applicant, we stated that the Commission will accept the application for filing but delay the request for comment until the studies have been completed and the requested information has been filed, at which point the application is ready for environmental analysis.

In setting out the proposed regulation for notice and comment hearings,[62] we stated that all comments (including mandatory and recommended terms and conditions or prescriptions) on an application for exemption or license must be filed with the Commission no later than 60 days after issuance by the Commission of notice declaring that the application "is ready for environmental analysis."

Public Generating Pool and Seattle Light suggest that, since the notice declaring that the application is ready for environmental analysis will become a critical event in the licensing process, the rule should include a definition of the status of "ready for environmental analysis." They suggest that the rule describe the form and substance of information or other material which is required of the applicant to obtain an application that is ready for environmental analysis. They add that it should also describe the relationship of this determination to the determination that the application is "accepted for filing," together with a description of the differences in the level of data which will trigger either of these determinations.[63]

Inasmuch as the regulations themselves set forth what must be submitted by applicants, we do not perceive a need to include in a definition a list of all the information which constitutes readiness for environmental analysis.

As we stated in the preamble to the NOPR,[64] the determination that an application for license or exemption is "ready for environmental analysis" may or may not coincide with the determination that the application is accepted for filing. In some cases, an application will be sufficiently informative that both determinations can be made simultaneously, in which case the public notice accepting an application for filing and inviting interventions would also call for public comment and all proposed license conditions. However, there may be cases where, although the application is not deficient and is therefore accepted for filing, for some reason additional information is needed to conduct a complete environmental analysis of the application (as when a study is requested too late in the consultation process to be undertaken before filing, or where a study reveals the need for further studies). In order to clarify that an application which is "ready for environmental analysis" means an application which has been accepted for filing and regarding which any additional information requested by the Commission has for the most part been filed and found adequate, we will add a new § 4.30(b)(28) which defines the term.

6. *Resource Agency.* The NOPR proposed to define "resource agency" as:[65]

> * * * a Federal, state, or interstate agency with responsibilities in the areas of flood control, navigation, irrigation, recreation, fish and wildlife, water resource management, or cultural or other relevant resources of the state or states in which a project is located.

EPA suggests that agencies with responsibilities in the areas of water quality management and protection be added to the definition. Public Generating Pool suggests that the regulation should define the nature of "responsibilities" that might qualify an agency as a resource agency, and that the language of FPA section 10(a)(2)(B), which refers to the recommendations of agencies "exercising administration over" the matters listed in the regulation is more appropriate than the regulation's reference to agencies "with responsibilities in the areas of" these matters.

Interior argues that Indian tribes should be included in the definition of "resource agency" because they have significant natural resource management authority both on and off reservations by virtue of their inherent sovereignty, treaty rights and federal statutes; in some circumstances they possess exclusive jurisdiction, while in other circumstances they share jurisdiction with the states. Interior contends that ECPA did not limit or define the terms "resource" or "fish and wildlife" agency, and therefore there is nothing to prevent the Commission from including Indian tribes in the definition.

The final rule incorporates the change recommended by Public Generating Pool, so that the definition of resource agency refers to any agency "exercising administration over" the specified resources.

We do not believe that any of the other proposed changes are needed. Agencies with responsibilities in the areas of water quality management and protection are included within the definition, since they are agencies exercising administration over water resource management. Indian tribes are not included in the definition because they are not resource agencies, and the Commission does not believe that trying to equate tribes with resource agencies is necessary or appropriate. However, we recognize that some Indian tribes have authority to manage resources, and have special knowledge and contributions to make to the licensing process. Therefore, although not defined as a resource agency, they have been given treatment that is parallel to the treatment given to a resource agency in part of the rule.[66]

However, we will make two further changes in the definition of resource agency in § 4.30(b)(28). In order to eliminate unnecessary language and to make it consistent with the relicensing definition of a resource agency now in § 16.2(d), we will change § 4.30(b)(28) to apply to "the state"[67] in which a project "is or will be located." The duplicative definition in § 16.2(d) is deleted.

Finally, although unrelated to the matters addressed in the NOPR, we will take this occasion to delete the definition of "initial license" in § 4.30(b)(11) because it is confusing and unnecessary.

B. Pre-hearing Procedures and Related Issues.

1. *Pre-filing Consultation.* In the NOPR the Commission proposed that § 4.38 be comprehensively revised. The revision follows the structure of § 16.8 governing applications for a new license, a nonpower license, or exemption from licensing or for surrender of a project subject to sections 14 and 15 of the FPA.[68]

The final rule clarifies exactly when each of the three stages of the consultation process begins and ends. The first stage begins with contact by the potential applicant of the resource agencies to be consulted and the delivery to the agencies of an information package describing in reasonable detail the proposed facilities the potential applicant is considering, and ends with written comment by each resource agency to the potential applicant on its project proposal.[69] The second stage begins with the conduct by the potential applicant of all reasonable and necessary studies not yet completed, and ends with the conclusion of any necessary negotiation between the potential applicant and the resource agencies on their comments on the applicant's draft application.[70] The third stage consists of the filing of the application with the Commission and its service on all resource agencies consulted.[71]

Like the previously existing § 4.38, the final rule requires a potential applicant to furnish the resource agencies with a detailed information package. Unlike the previous regulation, the final rule expressly requires the potential applicant to seek in the first stage the resource agencies' views on reasonable hydropower alternatives to the proposed hydropower facilities and on what studies it should conduct on the impact of the facilities.[72] The rule imposes a requirement that the applicant conduct a joint meeting with all consulted resource agencies between 30 and 60 days after the information package on the proposed facilities is delivered to the agencies.[73]

The final rule requires all agencies consulted to respond to the potential applicant in writing, no later than 60 days from the date of the joint meeting.[74] This response must include a description of the resource issues the agency believes the proposal presents and of what studies the potential applicant should conduct and what information it should gather to form an adequate factual basis for complete evaluation of the proposal.[75] An applicant and an agency that disagree as to what studies or additional information are reasonable and necessary must negotiate in good faith in an attempt to resolve their disagreement.[76]

The final rule clarifies that, prior to filing its application with the Commission, an applicant need not complete any study requested by a resource agency or supply any information the agency requested be obtained by the applicant if the study or information-gathering would take longer to complete than the time between the conclusion of the first stage of the pre-filing consultation and the expiration of the applicant's preliminary permit or any application filing deadline set by the Commission.[77] This additional time, after filing, for completing studies requested before filing would be allowed only if the applicant has promptly begun and diligently conducted the pre-filing consultation. Once the study is completed, the applicant must amend or supplement its application, as appropriate, before resource agency comments are requested.

The heart of the second stage of consultation is, as in the previous regulation, the potential applicant's submittal to the resource agencies of a copy of its draft application and the agencies' submittal of comments thereon. The final rule requires that this draft include a response to any comments and recommendations of the agencies made during the first stage of consultation and a discussion of potential project impacts and mitigation measures based on the results of any additional studies conducted and information obtained by the potential applicant.[78] The resource agencies then would have 90 days (instead of the 30 to 60 days under the previous regulation) to review and provide written comments on the draft application.[79] If the resource agency substantively disagrees with the potential applicant as to the proposal's "resource impacts or its proposed protection, mitigation, or enhancement measures," the rule directs that no later than 60 days from the date of that agency's written comments[80] the

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[62] Proposed § 4.32(b).

[63] Public Generating Pool also notes that some commenters inquired about the relation of this term to NEPA and suggest that the term be renamed so as to indicate that it is the notice of the start of the official 10(j) recommendations process, and to eliminate any confusion of this determination with the environmental review process under NEPA. However, there is no confusion involved, since the notice stating an application is ready for environmental analysis signals the beginning of both the section 10(j) process and the NEPA process.

[64] See NOPR, IV FERC Stats. & Regs. ¶ 32,470 at 32,378.

[65] Proposed § 4.30(b)(28) (emphasis added). As adopted in the final rule, it is now § 4.30(b)(28).

[66] See the definition of Indian tribe, in section IV.A.3., *supra*, and Participation of Indian Tribes, in section IV.D.1., *infra*.

[67] In the Commission's regulations, the singular includes the plural. See 18 CFR 1.102(a).

[68] See 54 FR 23,756 (1989), *reh'g*, 55 FR 4 (Jan. 2, 1990), FERC Stats. & Regs. ¶ 30,869 (1989).

[69] Section 4.38(b).

[70] Section 4.38(c).

[71] Section 4.38(d).

[72] Section 4.38(b)(1).

[73] Section 4.38(b)(2). The meeting must include an opportunity for a site visit, and members of the public and Indian tribes may fully participate. The previous § 4.38 did not require a meeting.

[74] Section 4.38(b)(4). This date may be extended for an additional 60 days at the option of the resource agency. This extension option does not appear in § 16.8, applying to pre-filing consultation by renewal applicants.

[75] We stress that a resource agency must, as early as possible in the pre-filing consultation process, inform a potential applicant of the specific scientific studies, criteria and methodologies the agency believes are necessary to evaluate the impact of the proposed project. Without a prompt response on these issues a potential applicant may be unable to complete the necessary studies prior to the expiration of its preliminary permit. *E.g.*, Natural Energy Resources Co., 46 FERC ¶ 61,032 (1989).

[76] Section 4.38(c)(1) directs a potential applicant to "diligently conduct all reasonable studies and obtain all reasonable information requested by resource agencies under paragraph (b) of this section that are necessary for the Commission to make an informed decision regarding the merits of the application."

[77] Section 4.38(c)(1). If holders of preliminary permits were not allowed to complete such studies after filing, their applications might be deemed unacceptable for filing, and the applicant could lose the comparative advantage of holding a preliminary permit simply because it could not complete a lengthy study requested prior to the expiration of its permit. See Natural Energy Resource Co., *supra*. The Commission might also set a specific deadline for the filing of a license application, as in the case of an unlicensed project. An operator should not be deemed to have failed to meet this deadline merely because it could not diligently have completed all required studies before this deadline. *Id.*

[78] Section 4.38(c)(4).

[79] Section 4.38(c)(5).

[80] Comments should be dated when they are mailed or delivered.

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applicant must meet with the disagreeing agency (and with any other agencies of similar or related areas of interest, expertise, or responsibility) in an attempt to reach agreement on project impacts and appropriate remedial or corrective measures.[81] Signed, comprehensive agreements with resource agencies are not expected or required, nor are they binding on the Commission, which will determine whether the terms of any such agreement are in the public interest. The filed application must reflect any areas where disagreements between an applicant and a resource agency still exist.

The third stage of consultation consists of the filing of the application with the Commission and service of a copy on each consulted agency.[82] The final rule provides that a resource agency may waive in writing its consultation rights for a stage of the pre-filing process, as, for example, by consenting to a potential applicant's completion of necessary scientific studies after it files its application.[83] A resource agency may also waive compliance with all consultation requirements, as in the previous regulation.[84] The final rule also sets forth material the applicant must submit with its application, including a summary of the consultation process, comments of resource agencies, and any disagreements between the applicant and any resource agency regarding the need for a study or information on any environmental protection, mitigation, or enhancement measures.[85]

A number of industry representatives [86] object to the new requirement in proposed § 4.38(b)(1) that the applicant describes in its information package, for resource agencies and the public, reasonable hydropower alternatives to the proposed project. These parties fear distraction from the applicant's proposal and the cost of conducting studies on alternatives. Criticism is also directed at the new requirement for a public meeting, on the ground that frequently the public had not taken advantage of the similar requirement in § 16.8, applicable to applicants for new licenses (at relicensing). Teleconferencing or other less expensive alternatives are suggested.

Public power representatives, environmental groups, and resource agencies [87] support the proposed public meeting requirement. They generally consider the proposal as expediting the licensing process by helping to identify as early as possible all significant environmental and other concerns. American Rivers and EPA want an expansion of the requirement that the applicant study hydropower alternatives to its proposal, so that the applicant would also have to explore non-hydro alternatives, such as energy conservation and energy demand management.

Wildlife Federation and American Rivers seek greater participation by Indian tribes and the public in the pre-filing consultation process. PG&E recommends a greater role for the Commission in the pre-filing consultation process, as by giving the Commission advance notice of meetings and promptly serving the transcript of the initial public meeting on the Commission.[88]

Interior raises a number of issues. It asks that the National Park Service be listed as a resource agency that the applicant must consult and that the Commission clarify an applicant's duty to consult with agencies controlling an existing dam site when it proposes to add new hydropower facilities. Interior also is concerned by a possible conflict between proposed §§ 4.38(a)(4)(ii) and 4.38(a)(6), which deals with the kinds of applications that are subject to the pre-filing consultation requirements of § 4.38. Interior is not sure which joint meeting sets the 60-day clock running under proposed § 4.38(b)(6). The agency claims that there should be a required meeting between the applicant and the resource agencies whenever there is a conflict over necessary scientific studies, project design, and similar issues, and that the Commission should participate in the meeting if there is a conflict over appropriate protection for endangered species. Finally, Interior claims that the 90 days allowed for a resource agency to respond to draft applications pursuant to proposed § 4.38(c)(5) is insufficient for complex projects. Extensions of time should be allowed, and the starting date should run from the time the agency receives the draft application.

The Commission has decided not to make any further change in the proposed regulations governing the applicant's obligation to consider reasonable hydropower alternatives in the pre-filing consultation process under § 4.38(b)(1). Since the applicant's proposal is often not fixed precisely at this point, as the applicant itself considers the alternatives available to achieve its hydropower objective, it would not be productive to limit the consultation process to the one alternative selected by the applicant at this early stage. At the same time, the Commission is sensitive to the concerns expressed by industry representatives that the consultation process not encompass alternatives that the applicant has no intention of pursuing at the Commission. For this reason, we stress that the pre-filing exploration of alternatives must be "reasonable" and have a meaningful relationship to the applicant's objectives, not the least of which is pursuit of a project that is efficient and makes economic sense.

The Commission will not expand this required consideration of alternatives in the pre-filing consultation process to the non-hydro arena. The Commission fully recognizes its obligation to consider energy conservation in deciding whether to issue licenses, pursuant to FPA section 4(e). The Commission is concerned, however, that requiring the study of issues such as energy conservation potential and energy demand management in the pre-filing consultation process would needlessly complicate and prolong it. Such issues, where relevant, are best addressed in the hearing process, where they can be examined as appropriate.

The Commission retains the public meeting requirement in § 4.38(b)(2). As discussed more fully below, it is important to apprise the public of the applicant's intentions at the earliest possible stage, before they have ripened into a concrete proposal before the Commission. In this way, the applicant can adjust its Proposal as appropriate to respond to any public criticism and address in its application the significant environmental and other issues raised by the public during the pre-filing process. We believe that the experience gained from this requirement in § 16.8, for relicensing, has been successful and will continue to serve a useful purpose, especially for controversial projects.

Consistent with the addition to § 4.38 of a mechanism for resolving disputes between applicants and resource agencies,[89] the Commission is changing § 4.38(c)(6) to more closely parallel § 16.8(c)(6) by requiring 15-day notice to the Commission of all meetings. Similarly, the Commission is changing § 4.38(b)(3) to require a copy of the transcript of the public meeting to be served on the Commission as soon as it is available.

We have revised § 4.38 to ensure that it refers to Indian tribes as well as resource agencies.[90] We have not added the National Park Service to the list of resource agencies that applicants subject to § 4.38 must consult during pre-filing. The Commission does not have authority to issue original licenses for hydropower projects in national parks.[91] The regulations adopted clearly require consultation with any federal agency (such as the Bureau of Reclamation or the Corps of Engineers) operating a federal dam at which the applicant proposes to construct a hydropower facility.

Additional meetings during the pre-filing consultation process, as between the applicant and the resource agencies, will not be required. Section 4.38 already requires two such meetings, one during the first stage and one during the second stage (if there were disagreements between the applicant and a resource agency). If additional meetings are appropriate under the circumstances of the proposal and the particular consultation process, the Commission encourages the applicant and resource agencies to schedule them, but we do not believe it would serve any useful purpose to require them in all cases.

As new § 4.38 grants to resource agencies a substantially expanded time frame in which to respond to an applicant's draft application, and since this time frame is the same as that adopted in § 16.8, there does not appear to be any reason to extend this time still further based on the comments in the record. The Commission is also concerned about the burden on the applicant of allowing for additional extensions of time in the pre-filing consultation process, since as proposed the process can take a minimum of 270 days to complete.[92]

2. *Dispute Resolution.* The Commission did not propose to include any dispute-resolution mechanism in § 4.38, unlike in § 16.8. The Commission deliberately omitted such a proposal due to the high attrition rate experienced in recent years by potential applicants for original licenses, as contrasted to the very low attrition rate by applicants for new licenses.[93] The Commission was concerned about preserving its limited staff resources for the processing of filed applications of all kinds and for dispute resolutions for potential applicants for new licenses, where the prompt resolution of the dispute would most likely expedite the filing of an acceptable and complete application with the Commission. In contrast, the Commission was concerned that adding a dispute-resolution mechanism to § 4.38 would in most cases waste the Commission's time, as such potential applicants would not likely ever file with the Commission an application for license or exemption.

Commenters of every description [94] strongly recommend that the Commission reconsider this omission and insert into § 4.38 a mechanism for resolving disputes between applicants and resource agencies, especially as the disputes relate to what scientific studies the applicant must conduct prior to filing any application for license or exemption with the Commission. These commenters point out the risk to an applicant of rejecting an agency's study request: The risk that its application will be subject to rejection by the Commission as deficient. Potential applicants must estimate the amount of time and money that will be required to perfect their applications; enabling them to request the Commission's decision on disputes over needed studies gives them guidance and certainty early in the pre-filing consultation process, so that the licensing process becomes more efficient. One commenter believes that adding such a mechanism to § 4.38 will encourage agencies to be more flexible in their demands for scientific studies and will reduce the number of irrelevant and burdensome study requests with which potential applicants have to contend.

EEI and Interior recommend a dispute-resolution mechanism based on that contained in § 16.8(b)(5), which could be substituted for proposed § 4.38(b)(5). PG&E also asks the Commission to add language to proposed § 4.38(c)(2) that would require an applicant to conduct a study only if the Commission concludes that it is proper.

The Commission is revising §§ 4.38 (b) and (c) to incorporate a dispute-resolution mechanism for applicants for original licenses and exemptions that parallels the mechanism in § 16.8 for relicensing proceedings. The Commission agrees with the commenters that this change should make the hydropower procedures more efficient and less burdensome for potential applicants and resource agencies and should help to achieve the principal objective of the pre-filing consultation regulation, the filing with the Commission of complete applications that are ready for processing. The Commission remains concerned about the potential for this dispute-resolution mechanism to divert limited staff resources from those proposals that are eventually filed with the Commission but is hopeful that this demand will be more than outweighed by the assistance provided to applicants and resource agencies that have serious disagreements about the nature or scope of scientific studies that are necessary. The Commission's experience to date under Part 16 does not reveal an extremely large number of such requests, suggesting that the existence of this option may encourage all concerned to reach agreement on the study question without contesting the issue before the Commission in the pre-filing consultation process.

As explained in the most recent rulemaking on part 16,[95] opinions expressed in response to requests for resolution of disputes concerning necessary pre-licensing studies may be reconsidered by the Commission after an application is filed, where this reconsideration is necessary to address concerns raised by intervenors or to comply with legal requirements. Such reconsideration will not, however, cause any application to be dismissed as deficient, so long as the applicant conducts any study ordered by the Commission. It should also be pointed out that Commission decisions on requests for resolution of disputes over necessary studies during the pre-filing consultation process can be no more helpful than the facts on which the requests are based, and of course

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[81] Section 4.38(c)(6).

[82] Section 4.38(d)(2). The previous regulation only required service on the consulted agencies at the time of filing of minor applications. In the case of major applications, the previous regulation required a copy to be served on each consulted agency only when (and if) the application is accepted for filing by the Commission. See § 4.38(b)(3).

[83] *E.g.*, Natural Energy Resources Co., *supra*.

[84] Compare new §§ 4.38(e) and (f)(4) with previous § 4.38(e)(1).

[85] Compare new §§ 4.38(f)(1)–(3) and (5) with previous §§ 4.38(c)(1) and (d).

[86] *E.g.*, Alabama Power and American Paper.

[87] *E.g.*, Seattle Light, American Rivers, and Energy.

[88] PG&E proposes changes to § 4.38(c)(6)(ii) to parallel § 16.8(c)(6)(ii), and proposes to make § 4.38(f)(6) part of § 4.38(b)(3)). PG&E also asks that the term "or Indian tribe" be inserted after the term "resource agency" at appropriate places.

[89] *See* section IV.B.2., below.

[90] *See* the discussion of the definition of Indian tribe in section IV.A.3., above.

[91] Certain existing hydropower projects are located in national parks. The consultation requirements for applicants for new licenses for such facilities are set forth in § 16.8, and these applicants would have to consult the National Park Service.

[92] The 60-day or 120-day period under § 4.38(b)(6) starts running from the date of the public meeting held by the potential applicant pursuant to § 4.38(b)(2)(i).

[93] The FPA refers to the first license issued for a project as the original license. The FPA refers to all subsequent licenses for the project as new licenses. These subsequent licenses are also sometimes referred to as "relicenses."

[94] *E.g.*, EEI, Alabama Power, American Paper, Wisconsin River, American Rivers, and Wildlife Federation, and various state and federal agencies.

[95] Order No. 513, 54 FR 23,758 (June 2, 1989), III FERC Stats. & Regs. ¶ 30,854 (May 17, 1989).

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changes in those facts (such as in the hydropower proposal itself) may require further environmental analysis, supplements to scientific studies, or even, in some cases, entirely new studies. The standards the Commission will use in making such determinations are discussed in section IV.B.3. below.

The Commission declines to require only those pre-licensing studies expressly approved by the Commission. As the experience under Part 16 illustrates, in most cases it is possible for applicants and resource agencies to reach agreement on necessary studies without obtaining a decision on the matter from the Commission. The Commission desires to do everything possible to encourage all concerned with a hydropower proposal to attempt to work out their differences at every stage of the process. Requiring the Commission to decide every study request, no matter how routine, would place a severe burden on the Commission's limited staff resources and could cause unnecessary delays in the hydropower licensing process.

3. *Scientific Studies.* The NOPR discussed one of the most critical questions facing the hydropower program relating to consultation with resource agencies: "What kinds of scientific studies are necessary to be conducted on the impact of the proposed project to satisfy the statutory requirements for the licensing process?" Taking measures to protect the environment is a cost of doing business of applicants for and holders of hydropower licenses and exemptions. Conducting scientific studies is often necessary in order to determine what measures should be taken at a hydropower project to protect, mitigate damages to, and enhance fish and wildlife and to achieve other resource goals. These studies are typically the responsibility of the applicant, who must coordinate with resource agencies and other involved parties in the consultation process on what studies are appropriate.

In this context it is important for the Commission to have in place consultation and hearing procedures that will enable all concerned to address, and the Commission to resolve, as logically and efficiently as possible, questions about what scientific studies should be conducted, who should conduct them, what data are needed to determine the environmental impact of a hydropower project, and the level of mitigation required to reduce those impacts. The Commission is entrusted by the FPA with the responsibility of establishing a reasonable approach to processing license applications for hydropower projects. The Commission seeks to strike an appropriate balance between the sometimes conflicting goals of complete, thorough analysis and timely license decisions.

The NOPR asked a number of questions on this issue of scientific studies. As part of the consultation process, should resource agencies be entitled to expect potential hydropower applicants to finance and conduct any requested scientific study related to the impact of the proposed project, so long as the study and its methodology are generally accepted in the scientific community as necessary or appropriate to determine the project's resource impacts? What procedures would best ensure a reasonable balance concerning required studies that satisfies legal requirements and facilitates development and maintenance of the nation's hydropower resources while protecting and enhancing the environment and achieving other resource objectives? What procedures would best ensure development of the data that is necessary and appropriate for the Commission to analyze a project on its merits without jeopardizing it through undue delay or unacceptable financial burden on the applicant or resource agencies?

The Commission welcomed comments on this issue, including what scientific studies a hydropower applicant may be expected to conduct during the consultation process, the extent of the financial resources available to developers and resource agencies to pursue such studies, and whether the regulatory revisions to §§ 4.32, 4.34 and 4.38 proposed in the NOPR adequately address this issue.

Industry representatives [96] support the requirement in proposed § 4.38(b)(4) that resource agencies specify in detail, and document the basis for, their study recommendations, on the ground that this requirement should reduce requests for studies that are irrelevant to the analysis of the impacts of the hydropower project under consideration. These commenters object to proposed § 4.32(b)(6)–(8), granting certain rights to raise, within 45 days of the filing of an application with the Commission, questions about the adequacy of the scientific studies the applicant had conducted, claiming that this new procedure will cause delay and extra costs for applicants.

Some of these commenters assert that the Commission should require resource agencies to justify each study request according to the study's economic impact on the project, comparing total costs of the project (including the costs of the study requested) and the value of the project's proposed mode of operation (*i.e.*, peaking or run-of-river) with the total costs of alternative sources of electrical energy, in order to avoid a bias in favor of the study requested. These commenters express concern about agencies requesting potential hydropower applicants to conduct unnecessary, expensive, and time-consuming studies in order to fill gaps in their databases, and a need is alleged for standards to determine what studies should be performed.

On the other hand, American Rivers argues that a potential applicant should conduct all studies requested by resource agencies unless the Commission can conclude that the study would serve no useful purpose. It claims that an applicant's duty to conduct studies extends to all reasonable mitigation and enhancement measures proposed by resource agencies or the public and a complete examination of all alternatives to the proposed project. American Rivers disagrees with the EPRI methodology for assessing the economic value of proposed resource studies and questions whether it is a workable method for resolving conflicts over study requests.

Wildlife Federation contends that there should be no limit on what studies an applicant may be required to conduct to evaluate a project's effect on the environment. It suggests that, if the costs of such studies are too great for the developer to absorb, the proposed project ought not to be approved or built.

Energy asks the Commission to approve all study requests in the first stage of pre-filing consultation and would limit the Commission's discretion subsequently to require additional studies unless there was a change in the developer's proposal or the results of the approved studies indicated a need for additional studies. Resource agencies would have to demonstrate a need for and the reasonableness of requested studies, and Energy recommends that the Commission set forth in the regulatory text the procedures it will use in deciding issues concerning requested studies, as well as criteria for the final determination.[97]

[96] *E.g.*, EEI, American Paper, Alabama Power, Wisconsin River, Grant, and PG&E.

[97] Energy specifically recommends, as a minimum, the following criteria for the Commission to use in deciding on necessary studies: (1) That the study will produce relevant information not otherwise in the record; (2) that the study objectives and methodology demonstrate an understanding of

Continued

Interior agrees with Energy that the Commission should codify in its regulations the standards it will use in deciding on appropriate studies. These standards should relate to the potential impact on fish and wildlife resources and not be based on the size, power output, or economics of the proposed project. Interior wants a rebuttable presumption that studies recommended by fish and wildlife agencies are appropriate and necessary to obtain information needed to develop the recommendations of the agencies to protect, enhance, and mitigate damage to fish and wildlife resources that may be caused by a hydropower project.[98] Applications should not be accepted for filing if an applicant has "patently refused to initiate studies requested by agencies."

Commerce also supports proposed § 4.32(b), which would create a review before the Commission of the adequacy of studies immediately after an application is filed. Commerce asks for a deadline for Commission action on any post-filing dispute about necessary studies and urges a deadline for an applicant to conduct necessary studies. If the applicant missed the deadline, its application would be dismissed without prejudice. Interior claims that the Commission "bears a great burden of proof should it choose to ignore the agencies' information needs."

EPA contends that requested studies must be conducted "unless license applicants provide substantial evidence why requested studies are not necessary and these agencies have adequate opportunity to respond to the applicants' claims."

The Commission has decided not to change the proposed regulations governing scientific studies, other than to insert a dispute-resolution mechanism, as discussed above. Because the Commission has just begun to gain significant experience under the dispute-resolution mechanism in § 16.8, applicable to applicants for relicensing, it appears premature now to attempt to create and codify additional standards beyond those proposed in the NOPR for determining what scientific studies an applicant may be required to conduct in specific cases.

The Commission remains very concerned about the potential for study requests to cause undue delay in the preparation and processing of hydropower applications. The need for any study requested by a resource agency must be adequately supported. Under revised § 4.38(b)(4), during the first stage of pre-filing consultation the agency must furnish the applicant with a clear description of the basis for a study request, an explanation of why the study methodology specified is more appropriate than alternatives, and documentation that the use of the study methodology is a generally accepted practice that will be useful to the agency in furthering the resource goals affected by the proposed project. Under revised § 4.38(c)(1), during the second stage of pre-filing consultation an applicant must conduct any reasonable study that is necessary for the Commission to make an informed decision on the merits of its application. While the applicant remains responsible for making a decision on these requests for studies in the first instance, if the applicant desires it can refer any request to the Commission for decision under the dispute-resolution mechanism adopted in this final rule.

Under revised § 4.32(b)(7), within 45 days after an application is filed anyone can recommend that an additional study be conducted by an applicant, but the request must be accompanied by a detailed showing:

> For any such additional study request, the requester must describe the recommended study and the basis for the request in detail, including who should conduct and participate in the study, its methodology and objectives, whether the recommended study methods are generally accepted in the scientific community, how the study and information sought will be useful in furthering the resource goals that are affected by the proposed facilities, and approximately how long the study will take to complete, and must explain why the study objectives cannot be achieved using the data already available. In addition, in the case of a study request by a resource agency or Indian tribe that had failed to request the study during the pre-filing consultation process under § 4.38 or § 16.8 of this chapter, the agency or Indian tribe must explain why this request was not made during the pre-filing consultation process and show good cause why its request for the study should be considered by the Commission.

In resolving disputes over necessary studies arising during pre-filing consultation under §§ 4.38 and 16.8, the Commission will use similar standards. In order to determine whether a study is necessary for an informed decision on the merits of an application, the Commission will consider all relevant facts before it. These facts include whether the study methodology is generally accepted, how the information sought relates to the impact of the proposed project on resources administered by the agency, and whether adequate information is already available. The Commission does not expect applicants to conduct experimental research projects on behalf of resource agencies, to expand the boundaries of general scientific knowledge, or to repeat experiments that have already been conducted by others. For example, information on fish mortality attributable to passage through turbines may be available and could in specific cases eliminate the need for an applicant to conduct new studies on this issue. If such studies are needed, it may be appropriate for a number of applicants or licensees to conduct them jointly, sharing the costs. Laboratory studies or the use of information developed to evaluate similar environmental questions may be appropriate in lieu of original, on-site field studies. Computer-generated simulations may also be used in appropriate cases to control study costs.

The Commission does not believe it is necessary to codify the criteria for evaluating study requests recommended by Energy, quoted above. The criteria for evaluating study requests in the final rule, at §§ 4.32(b)(7) and 4.38(c)(1), encompass Energy's recommendations. The Commission believes that these new regulatory provisions, together with the experience gained in deciding on study requests in specific cases, should be sufficient to ensure the gathering of information necessary for decision and place a reasonable burden on hydropower applicants that will not interfere with an expeditious licensing process.[99]

4. *Program workload.* This rulemaking proceeding was initiated, in part, to assist the Commission's hydropower program in efficiently handling the workload it faces in the near future and to comply with the consultation requirements of the FWCA, NEPA and the FPA. This workload will consist largely of applications to relicense hydropower projects under section 15 of

the relevant environmental issues and have a reasonable probability of successfully resolving the issues to be addressed; and (3) that the proposed study and methodology be appropriate for the site-specific conditions and issues.

[98] A number of state agencies, such as Minnesota, make similar recommendations.

[99] The Commission declines to adopt any specific method to evaluate the economic impact of a study request on a proposed project. It is true that the cost of a study alone is not sufficient reason to deny a request to conduct it, but large study costs, either in absolute terms or relative to the size of the project, raise legitimate questions as to whether the information sought to be gathered by the study cannot be obtained from other sources. No study will answer with complete finality all questions about the resource impacts of a proposed project, and in the interests of an efficient licensing process it may be necessary for the Commission to limit the fact-finding process to those facts that are already available or that can be developed and analyzed with reasonable effort and cost within a reasonable period of time, using accepted scientific methods.

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the FPA, applications for original licenses for environmentally sensitive proposed projects, and applications to license unlicensed operating projects.

The Commission invited comments on the relationship between this rulemaking proposal and the various types of applications being considered in the hydropower licensing program. The Commission asked whether the same regulations on consultation with resource agencies and related matters should apply to hydropower applications in each of these areas and whether there are any reasons to apply different regulations.

The comments on this issue [100] generally support the approach taken in the proposed regulation, establishing uniform procedural regulations for the Commission's pre-filing consultation and hearing process and providing flexibility where appropriate. No commenter suggested any workable regulatory standards for differentiating between different types of applications in the regulations governing an applicant's duty to consult, the type of hearing the Commission conducts on an application or other similar requirements.

The revisions adopted herein do not create any new distinctions for different types of applicants. The Commission is confident that these new procedures contain adequate flexibility, both pre- and post-filing, to deal with the great range of applications for hydropower license and exemption filed with the Commission.

5. *Non-capacity amendments.* In proposed § 4.38(a)(4)(iii), the Commission proposed to apply the pre-filing consultation requirements of § 4.38 to an application to amend an existing license if the amendment involved:

(A) The construction of a new dam or diversion or of a new hydroelectric facility;

(B) Any repair, modification or reconstruction of an existing dam that would result in a significant change in the normal maximum area or normal maximum surface elevation of an existing impoundment;

(C) The installation of additional waterpower turbines;

(D) The licensing or exemption of facilities not previously licensed to the applicant or not exempted from licensing; or

(E) Any new development or change in project facilities or operation that could result in a significant environmental impact.

A number of commenters [101] ask us to narrow the category of license amendment applications that require pre-filing consultation, on the ground that the time and burden are not justified by the benefit.

EEI suggests that increasing the number of turbines without substantially increasing the capacity or altering the operation of a project would not justify consultation, because the environmental ramifications are minimal. EEI also suggests that some amendments involve safety or environmental improvements such that the effect of requiring consultation would be to delay the benefits of the amendment: *e.g.*, installation of a fish ladder or fish screen, or dam stabilization devices. EEI also points out the overlap and interrelationship of § 4.38(a)(4)(iii) with §§ 4.200 and 4.201, which also pertain to applications for license amendment, and proposes revisions to all three of these sections.

Wisconsin River suggests that a license amendment to add recreational facilities could be processed more efficiently by consulting only the one or two agencies that have an interest in those facilities. Solano suggests that no useful purpose would be served by requiring pre-filing consultation on an application it intends to file, to amend its license to include therein certain existing facilities that are currently owned and operated by the federal government. Alabama Power suggests that the pre-filing consultation requirements be made applicable only if the amendment to the license could result in significant environmental impact. Pend Oreille suggests that we consider adopting the "material amendment" standard in § 4.35 as the determinant of when pre-filing consultation is required before filing an application to amend a license.

We originally developed the three-stage consultation process in § 4.38 in an effort to expedite our processing of the applications. The consultation requirements were designed to ensure that the applicant had considered a broad range of significant environmental factors in preparing its application, and had undertaken whatever studies were necessary and appropriate, so that the application could be evaluated more quickly once it was filed. (We note in passing that the phrase "three-stage consultation" is somewhat inapposite, in that the third stage consists merely of filing the application, an event that is elementary to the licensing process even absent any pre-filing consultation requirements.) We adapted the § 4.38 process into § 16.8 for relicensing proceedings to further the same objectives of expeditious processing.

We extended the pre-filing consultation requirement to applications to amend licenses because there are many situations in which the amendment could have a significant environmental impact. In those situations, pre-filing consultation could expedite the application review process by ensuring that these environmental impacts have been considered in preparing the application.

We recognize, however, that there is a significant category of amendments to licenses in which the pre-filing consultation requirement would slow the application process rather than facilitate it. We also are wary of discouraging beneficial amendments. We want to encourage amendments that increase capacity or efficiency by replacing older equipment with newer or better equipment under circumstances in which there is no operational impact on the environment. To the extent legally feasible, we want to do this by avoiding extraneous issues in such proceedings. We also want to encourage amendments that implement safety or environmental improvements without delaying such improvements by woodenly imposing all-purpose consultation prerequisites.

The problem we face is how to define a standard that requires pre-filing consultation when it is appropriate and omits it when it is unwarranted. The ultimate goal is to require pre-filing consultation when the license amendment has a potentially significant environmental impact, but that standard cannot be codified into a regulatory test because it begs the question. The whole purpose of the consultation process is to identify the environmental impacts.

Defining the standard in terms of additions to capacity is tempting but elusive. There are some amendments which could affect the environment without increasing capacity, while other amendments could increase capacity without any impact on the environment.

We agree with EEI that § 4.201 is integrally related to § 4.38(a)(4)(iii), and that both need to be reconsidered in conjunction with each other. We have done so in light of the comments received and the considerations discussed above, and have decided to revise them as follows:

Revised § 4.38(a) (4), (5) and (6):

(4) The pre-filing consultation requirements of this section apply only to an application for:

(i) Original license;

(ii) Exemption;

(iii) Amendment to an application for original license or exemption that materially amends the proposed plans of development as defined in § 4.35(f)(1);

[100] *See, e.g.*, Colorado, Minnesota, and Washington Fisheries.

[101] EEI, Wisconsin River, Alabama Power, Solano, and Pend Oreille.

(iv) Amendment to an existing license that would increase the capacity of the project as defined in § 4.201(b); or

(v) Amendment to an existing license that would not increase the capacity of the project as defined in § 4.201(b), but that would involve:

(A) The construction of a new dam or diversion in a location where there is no existing dam or diversion;

(B) Any repair, modification, or reconstruction of an existing dam that would result in a significant change in the normal maximum surface area or elevation of an existing impoundment; or

(C) the addition of new water power turbines other than to replace existing turbines.

(5) Before it files a non-capacity amendment as defined in § 4.201(c), an applicant must consult with the resource agencies and Indian tribes listed in paragraph (a)(1) of this section to the extent that the proposed amendment would affect the interests of the agencies or tribes. When consultation is necessary, the applicant must, at a minimum, provide the resource agencies and Indian tribes with copies of the draft application and allow them at least 60 days to comment on the proposed amendment. The amendment as filed with the Commission must summarize the consultation with the resource agencies and Indian tribes on the proposed amendment, propose reasonable protection, mitigation, or enhancement measures to respond to impacts identified as being caused by the proposed amendment, and respond to any objections, recommendations, or conditions submitted by the agencies or Indian tribes. Copies of all written correspondence between the applicant, the agencies, and the tribes must be attached to the application.

(6) This section does not apply to any application for a new license, a nonpower license, a subsequent license, or surrender of a license, subject to sections 14 and 15 of the Federal Power Act.

* * * * *

Revised § 4.201(b) and (c):

(b) *Required exhibits for capacity related amendments.* Any application to amend a license for a hydropower project that involves additional capacity not previously authorized, and that (1) would increase the actual or proposed total installed capacity of the project, (2) would result in an increase in the maximum hydraulic capacity of the project of 15 percent or more, and (3) would result in an increase in the installed name-plate capacity of 2 megawatts or more, must contain the following exhibits, or revisions or additions to any exhibits on file, commensurate with the scope of the licensed project:

* * * * *

(c) *Required exhibits for non-capacity related amendments.* Any application to amend a license for a water power project that would not be a capacity related amendment as described in paragraph (b), above, must contain those exhibits that require revision in light of the nature of the proposed amendments.

New § 4.201(b) defines a capacity related amendment as one that would result in both an increase in maximum hydraulic capacity of the project of 15 percent or more and an increase in installed name-plate capacity of two megawatts or more. We believe that these limits would minimize the pre-filing expense for licensees seeking most efficiency upgrades and small project upgrades having minimal expected impacts.

After consideration of this issue, and in response to the comments received, we have adopted these provisions in the final rule. We invite interested persons to comment on them by filing requests for rehearing of this order.

Section 4.35 of the Commission's regulations provides that, when a hydropower applicant amends its application for license or exemption in order "to materially amend the proposed plans of development," the date of acceptance of the application under § 4.32(f) of the regulations becomes the date on which the amendment to the application was filed. As a consequence, applicants disfavor such amendments, which may cause them to lose whatever priority the application has over competing applications by virtue of the filing dates.[102]

There are a number of exceptions to this general rule, set forth in § 4.35(e), that encourage certain types of amendments by allowing them to be filed without altering the application's filing date. Section 4.35(e)(4) allows an applicant to file an amendment to proposed plans of development "to satisfy requests of fish and wildlife agencies" with which the applicant has consulted under § 4.38. On further review of this exception in response to the comments received that seek to improve the Commission's consultation procedures, § 4.35(e)(4) appears too narrowly drawn, and should be revised to encourage appropriate amendments to proposed plans in order to respond to concerns raised by any consulted entity during the consultation process. As discussed in section IV.B.1. above, for example, an applicant must consult with a wide range of resource agencies and affected Indian tribes. An applicant may also wish to amend the plans in its application in response to concerns raised by the Commission, as by amending the application to change the project applied for to an alternative suggested by the staff that would reduce adverse environmental effects of the original proposal.

In order to encourage all such amendments and to promote the objectives for the FPA and related laws, the Commission is hereby revising § 4.35(e) to provide that any amendment to a license or exemption application "to satisfy requests of resource agencies or Indian tribes * * * or concerns of the Commission" may be filed without altering the application's filing date.[103]

Finally American Rivers notes that there are consultation requirements in both § 4.38 (for original licenses) and § 16.8 (for "new" licenses in relicensing proceedings). American Rivers inquires as to which procedures apply in the event that a substantial amendment of an original license results in acceleration of the license expiration date.

We recognize that there may be other situations in which questions or ambiguities may arise as to whether a proceeding involves original licensing or relicensing.[104] However, there is no need to sort out those issues here. Our intention in this final rule is to conform § 4.38 and § 16.8 in such a manner, as to prescribe substantially identical consultation procedures for both types of proceedings. To the extent that there are any inadvertent discrepancies, we invite interested persons to point them out by filing a request for rehearing, so that we can eliminate them. Thus, participants ought to be able to pursue the consultation process in the same manner, without need to consider whether the proceeding is best characterized as original licensing or relicensing.

C. Hearing Process

1. *Filing requirements.* Section 4.32(b)(3) requires an applicant to make certain information regarding its proposed project available to the public for inspection and reproduction.

American Rivers argues that § 4.32(b)(3) should be revised to include correspondence and comments received

[102] Under the Commission's hydropower regulations, for example, if two competing applications for license are equally well adapted to develop, conserve, and utilize in the public interest the water resources of the region, and neither permittee nor municipal preference is involved, the Commission will favor the applicant with the earliest application filing date. 18 CFR 4.37.

[103] Although not specifically proposed in the NOPR, this change is procedural only and is necessary to make more effective the Commission's consultation process and environmental review of hydropower applications under the FPA and NEPA, as discussed in the NOPR and in sections IV.B. and IV.C. Specific advance notice and comment on this rule change are therefore not required, and the Commission welcomes comments on this change in requests for rehearing of the final rule.

[104] *See, e.g.*, the Notice of Inquiry in Docket No. RM91-5-000, Preferences at Relicensing of Units of Development, 56 FR 8165 (Feb. 27, 1991), IV FERC Stats. & Regs. ¶ 35,522 (Feb. 28, 1991).

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by the applicant in connection with the project. It suggests that language of the rule be revised by adding the words "or received by the applicant from a resource agency or the public." The additional language requested by American Rivers is unnecessary to achieve the purpose of the public file requirement for applicants for original licenses or exemptions, which is to enable the public to obtain convenient access to information about the applicant's proposal to the Commission. Should a person desire the types of additional information discussed by American Rivers, he can obtain such information from the person originating the correspondence or comments or directly from the Commission's files. Applicants for new licenses must maintain a more extensive public file, in order to give the public convenient access to information about the applicant's operating and compliance record at the project for which the new license is sought.[105]

PG&E suggests that a statement be added to § 4.32(b)(3) precluding an applicant from making cultural resource information available to other persons if this could lead to a violation of any federal law. PG&E's suggested addition is aimed at protecting archeological or Native American cultural resources in a manner consistent with the protection stated in the relicensing regulations.[106] We agree that such protection is appropriate and have added parallel language to § 4.32(b)(3).

Section 4.32(b)(4)(iii) requires the applicant to provide a copy of the complete application, as amended, to a public library or other convenient public office. South Carolina argues that, if public involvement is desired throughout the pre-filing and filing process, then applicants should also be required under § 4.32(b)(4)(iii) to make copies of the first stage of consultation document and the initial consultation packet, as well as the application, available to the public at the stated libraries and public offices.[107] Inasmuch as § 4.32(b)(3) states that information is to be made available from the date on which the applicant files its application, and the information submitted at that point provides a more complete picture of the project than does the initial consultation document, we see no need to require that the first-stage consultation document be made available at a public library or other public office.

The California Water Board requests that it be listed in § 4.38(a)(1) as a resource agency that must be consulted in stage one of the three-stage consultation process. It states that this early consultation requirement is necessary because of its dual authority in water resource allocation and water quality certification.

The specific listing of the California Water Board as a resource agency in § 4.38(a)(1) is unnecessary, since, as an agency with responsibility in water resource management, it fits the definition of a resource agency in proposed § 4.30(b)(28), and, as a certifying agency under section 401 of the Clean Water Act, it meets the stated criteria in § 4.38(a)(1).[108]

Section 4.38(f) sets out what must be included in the applicant's Exhibit E of its application to document that it has met the Commission's consultation requirements. Section 4.38(f)(2) requires that Exhibit E include any letters from the public containing comments and recommendations.

Section 4.38(h) is a transition provision that applies to applicants who file their license applications on or after the effective date of the rule, but who, because they conducted consultation before the effective date of the final rule, did not hold a public meeting in accordance with the new requirement in the rule. Section 4.38(h)(4)(i) requires such applicants to hold a public meeting within 60 days from the effective date of this rule. Section 4.38(h)(4)(iv) requires the applicant to include in its filed application a description of how the applicant's proposal addresses the significant resource issues raised during the public meeting.

American Rivers suggests that the Commission make § 4.38(f)(2) consistent with § 4.38(h)(4)(iv) by revising § 4.38(f)(2) to require that Exhibit E of the application include a description of how the applicant's proposal addresses the significant resource issues raised during the public meeting. American Rivers also requests that § 4.38(h)(4)(iv) be revised to include a reference to copies of any letters from the public containing comments and recommendations.

The proposed addition to § 4.38(f)(2) is unnecessary, because such language is already contained in § 4.38(f)(8), and thus is applicable to all applicants. The proposed addition to § 4.38(h)(4)(iv) is also unnecessary, because the transitional applicant is filing its application after the effective date of the rule and thus must comply with § 4.38(f)(2) as part of its filing requirement.

In order that the agencies reviewing Exhibit E will have a comprehensive list of all agencies the applicant consulted during pre-filing consultation, we have added § 4.38(f)(9), which requires the applicant to include such a list, including addresses, in Exhibit E. A list of agency names and addresses will be useful in identifying multiple resource agencies for projects located in more than one state, and will provide the reader with a complete and quick reference guide to all the agencies that were consulted.

2. *Water quality certification.* The NOPR proposed to modify the showing previously required by an applicant concerning its compliance with section 401(a)(1) of the Federal Water Pollution Control Act (the Clean Water Act),[109] where the state certifying agency has received a request for water quality certification but has not acted on it for one year. The previous regulations required that the applicant provide the Commission a copy of its request for certification, including proof of the date that the certifying agency received the request "in accordance with applicable law governing filings with that agency." [110] Revised § 4.38(f)(7)(i)(B) and § 16.8(f)(7)(i)(B) [111] require only that the applicant provide proof of the date on which the certifying agency received the request for water quality certification. The revised regulations make clear that the certifying agency is deemed to have waived the certification requirements of the Clean Water Act if it has not denied or granted a request for certification within one year from receipt of the request.

The NOPR explained that if a certifying agency does not have, within one year, sufficient information to analyze a request for certification, the agency can deny certification and thereby require the applicant to reapply. An applicant therefore has no incentive to withhold from the certifying agency the information that the agency considers necessary for ruling on the merits of the request.

A number of commenters [112] object to the revision, contending in various ways that it seeks to circumvent or undermine the Court of Appeals' decision in *City of Fredericksburg, Va.* v. *FERC.*[113] In that case, the court held that, under the Commission's regulations, "a valid request for certification occurs only if the prospective licensee complies with the state agency's filing procedures." [114] The prior regulation, as construed in *City of Fredericksburg,* was unduly burdensome, because it put the Commission in the frequently difficult posture of trying to ascertain and construe the procedural requirements of numerous and divergent state statutes and state agency regulations.[115] The amendment proposed in the NOPR in effect implements the Commission's original intent in adopting those regulations. The commenters misconstrue the purpose and effect of the amendment. It does *not* override the procedural requirements of state agencies. To the contrary, it fully preserves those requirements, and in that sense is fully consistent with the court's decision in *City of Fredericksburg.* Under both the old and the new regulations, there is no issue of whether state agency procedural requirements apply; clearly they do, and they must be complied with. The sole issue is who has the responsibility for determining whether the applicant has complied with those procedural requirements. The amended regulation places that responsibility squarely where it belongs, and where the Commission always intended it to be: on the state agencies responsible for implementing those procedural requirements.

The amendment to the regulations does not undermine the ability of state agencies to make this decision. If an applicant fails to comply with a state agency's procedural requirements, the agency has the power to deny the request for certification, and that denial is binding on this Commission. The denial can be issued without prejudice to the applicant's refiling of an application that complies with the agency's requirements. The only burden placed on the agency is to look at the request and make a clear decision within one year. That is ample time to determine whether the agency's procedural regulations have been complied with. If the agency does not either grant or deny the water quality certification request within one year, then the requirement for certification is deemed waived.

For all of the reasons discussed above, and after careful consideration of the comments received, we have decided to adopt the revised § 4.38(f)(7)(i)(B) and § 16.8(f)(7)(i)(B) as proposed in the NOPR.[116]

Wildlife Federation suggests that we further amend the regulations so as to preclude the possibility that a license applicant might file evidence of its request for water quality certification while not disclosing that the request had been denied within the ensuing year. Clearly, the whole thrust and purpose of the regulation is to identify situations in which water quality certification requirements have been waived through state agency inaction. A denial of certification within one year would clearly not be a waiver. Any applicant that filed with us evidence of its water certification request without disclosing that the state agency had denied the request would be guilty of a serious misrepresentation and abuse of our processes; we are not aware of any such problem having occurred in the past, and Wildlife Federation does not make any such allegations. Nevertheless, in an abundance of caution, we have added the following sentence to § 4.38(f)(7)(ii) and to § 16.8(f)(7)(ii):

> If a certifying agency denies certification, the applicant must file a copy of the denial within 30 days after the applicant received it.

Wildlife Federation also suggests that the regulations be amended to provide for inclusion of the section 401 certification conditions in the license. Pursuant to section 401(d) of the Clean Water Act, these water quality certification conditions become terms and conditions of the license as a matter of law. Therefore, it is not necessary to expressly adopt them in the order issuing the license.[117]

Finally, EEI and Oklahoma Water propose revisions to § 4.38(f)(7)(iii) and its counterpart, § 16.8(f)(7)(iii), with respect to material amendments. As currently in effect, those sections require that, if an applicant amends its application for license "to materially amend the proposed plans of development," [118] it must file a new request for water quality certification.

Oklahoma Water contends that an applicant should be required to file a new request for water quality certification even if the amendment does not propose material changes to the proposed plans of development. In particular, Oklahoma Water suggests that a change in identity of the applicant might warrant requiring a new certification. EEI, on the other hand, contends that a new request for certification should not be required if the applicant has already received a water quality certification for the project, and if the material amendment to the license application does not in any way modify the project's discharge or water quality impacts. EEI, therefore, proposes a revision to the regulations that would limit the need to obtain a second water quality certification to situations in which the amendment would have some nexus to discharges or water quality.

We find some merit in both proposals. First of all, if the applicant has filed a request for water quality certification and the state agency has not yet acted upon the request at the time that the applicant files a material amendment with the Commission, we believe that the applicant has an obligation to notify the state agency of the amendment regardless of its relationship to discharges and water quality. Under those circumstances, the state agency is entitled to know all the relevant facts before it acts on the certification request, and it is the state agency's prerogative to determine which facts are relevant.

With respect to Oklahoma Water's specific example, if a state agency has issued a water quality certification to a particular applicant, and if the applicant then files an amendment with the Commission that changes the identity of

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[105] 18 CFR 16.7.

[106] 18 CFR 16.7(d)(5)(ii). PG&E proposes the following language: "A licensee shall delete from any information made available under this section [or paragraph], specific site or property locations the disclosure of which would create a risk of harm, theft or destruction of archaeological or Native American cultural resources or to the site at which such resources are located, or would violate any federal law, including the Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470ee–9, and the National Historic Preservation Act of 1966, 16 U.S.C. section 470hh."

[107] For a specified time period, a potential applicant must make the first-stage consultation package available to the public for inspection and reproduction. Sections 4.32(g)(2)(i) and (h)(4)(iii)(A).

[108] In any event, the listing of resource agencies in proposed § 4.38 was not meant to be exclusive.

[109] 33 U.S.C. 1341(a)(1).

[110] 18 CFR 4.38(c)(2)(ii) and 16.8(f)(7)(i)(B).

[111] The regulations, and the amendments thereto, are substantially identical. Part 4 pertains to applications for original licenses, while part 16 pertains to applications for new licenses in relicensing proceedings.

[112] California Water Board, Oklahoma Water, Oregon, Nevada, Wildlife Federation, and American Rivers.

[113] 879 F.2d 1109 (4th Cir. 1989).

[114] *Id.* at 1111–12.

[115] *See, e.g.,* Central Maine Power Co., 52 FERC ¶ 61,033 (1990) at pp. 61,171–72, and John N. Webster, 51 FERC ¶ 61,361 (1990) at p. 62,136 n.7. At least one state has apparently allowed requests for certification to be made orally. We are amending § 4.38(f)(7)(ii) and § 16.8(f)(7)(ii) to specify that waiver can occur only if the request for certification is submitted in writing.

[116] If a request for water quality certification was filed with a certifying agency prior to the effective date of this final rule, and if that certifying agency had not accepted the request for filing as of that date, then the one year in which the certifying agency must act on the request in order to avoid the waiver commences on the date of the effectiveness of this final rule. If the certifying agency had accepted the request for filing, then the one-year period commences running on the date of that acceptance for filing.

[117] *See* Carex Hydro, 52 FERC ¶ 61,218 (1990) at p. 61,798.

[118] The quotation is from § 4.38(b)(1). Section 4.38 deals with amendments to applications. Sections 4.38(f)(7)(iii) and 16(f)(7)(iii) refer by cross-reference to § 4.38(f), which defines "material amendment to proposed plans of development."

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the applicant without changing the project, a question may arise as to the transferability of the state certification to the reconstituted applicant. We recognize the issue that Oklahoma is raising, but prefer to deal with it on a case-by-case basis, on the particular facts and legal context presented if such a situation arises.

We agree with EEI that, if a state agency has issued water quality certification for a project, and if the applicant then files an amendment that materially changes the project but in a manner that has no material adverse impact on water quality, no useful purpose would be served by requiring the applicant to obtain a second certification. If, for instance, an amendment would add recreational facilities without having any effect on discharges of water, a new request for certification would clearly not be required. Similarly, if an amendment would replace outmoded electrical facilities with more efficient facilities without adversely affecting the quality of the water discharged, a new request would not be required. On the other hand, we recognize that situations may arise involving a fundamental alteration of the project or proposed project, such as adding or deleting a dam or comparably significant facility, or relocating the entire project to an area that had not previously been evaluated. In those situations, we expect the applicant to request new water quality certification, and will require it to obtain one, or a waiver thereof.

We believe that these principles are equally applicable in two situations: (1) Amendments to pending applications for license; and (2) applications to amend an existing license. Accordingly, we have amended § 4.38(f)(7)(iii) to read as follows:

(iii) Notwithstanding any other provision in Title 18, chapter I, subpart B, any application to amend an existing license, and any amendment to a pending application for a license, requires a new request for water quality certification pursuant to paragraph (f)(7)(i) of this section if the amendment would have a material adverse impact on the water quality in the discharge from the project or proposed project.

We have adopted a comparable revision of § 18.8(f)(7)(iii) with respect to amendments to applications for a new license (relicensing). In reviewing amendments to license applications and applications to amend existing licenses, the Commission will ascertain whether a water quality certification was issued or waived, and if not, whether certification or waiver is required under the circumstances presented.

Finally, we note that on March 8, 1991, the United States Court of Appeals for the District of Columbia Circuit issued a decision regarding water quality certification for hydropower projects. *Keating* v. *FERC*, No. 90-1080. The court held that, once a federal agency has issued a construction permit or license with respect to a facility which has obtained water quality certification under section 401(a)(1) of the CWA, such certification is presumed to be valid for purposes of a second federal license related to the operation of the same facility. A state may overcome that presumption and revoke certification for purposes of the second federal license, but only under the limited circumstances expressly defined in section 401(a)(3) of the CWA. Section 401(a)(3) requires the agency to whom application is made for the second federal license to notify the certifying state of that application. The state then has 60 days in which to notify the federal agency that specified changed circumstances are present, in which case certification can be revoked for purposes of the second federal license.

In light of section 401(a)(3), the court ruled that, if, based on a state's issuance of water quality certification, the U.S. Army Corps of Engineers has issued to a hydropower project a dredge and fill permit under section 404 of the CWA,[110] the Commission is at a minimum required to find that the state's purported revocation of its certification is timely and was assertedly taken in response to changed circumstances pursuant to section 401(a)(3).

The court recognized that, in some cases, the resolution of a disputed claim over "changed circumstances" may involve a question of state law or an application of state water quality standards. The court did not decide whether the Commission must go on to determine whether an asserted changed circumstance falls within one of section 401(a)(3)'s enumerated categories, but did require the Commission either to make the determination itself or to articulate "a satisfactory explanation for why Congress would have intended to leave the application of some or all of section 401(a)(3)'s categorical provisions to the state courts alone."

The Commission will, of course, implement the final rule consistent with the court's decision.

3. *Notice-and-comment hearing.* The NOPR proposed to slightly revise the existing text of § 4.34, which would become proposed § 4.34(a), to focus on those cases where the Commission decides to designate particular issues for a trial-type hearing. All other cases (and issues) would be handled by notice-and-comment procedures.

For applications for license or exemption, the NOPR proposed to add new §§ 4.34 (b) to (g).[120] The proposed rule directed that all comments on an application, including all mandatory and recommended terms and conditions for exemption or license, must be filed with the Commission within "60 days after issuance by the Commission of a notice declaring that the application was ready for environmental analysis."[121] Reply comments would be due within 90 days of that notice. These comment periods are longer than those provided by current practice (in the public notice accepting an application for filing and inviting interventions), in order to provide more time to prepare these comments, which typically serve as the primary opportunity to present argument and evidence on the issues raised by the application for license or exemption.[122]

The Commission could extend these comment periods if appropriate. Parties could ask for extensions of time for good cause shown in accordance with § 385.2008. The proposed rule also made clear that all filings in a proceeding on a hydropower application for license or exemption must be served on all parties and entities listed in the official service list in the proceeding, prepared in accordance with § 385.2010.[123]

The proposed rule expressly required that any agency responsible for mandatory terms and conditions or prescriptions for hydropower licenses and exemptions file any such terms and conditions or prescriptions with the Commission no later than the date specified for the submission of public comments.[124] The proposed rule recognized that in certain cases the proceedings before the agency to determine mandatory terms and conditions or prescriptions may not be completed. In such cases, the agency would be obligated to submit to the

[110] 33 U.S.C. 1344.

[120] Certain applications to amend a license by adding new project works may be applications for original licensing under the FPA as amended by ECPA. However, the ECPA amendments would not apply to the already licensed project. *See Fieldcrest Mills, Inc.*, 37 FERC ¶ 61,266 (1986).

[121] The definition of "ready for environmental analysis" is discussed above, at section IV.A.5.

[122] *See* the discussion at section IV.C.4., below.

[123] Proposed § 4.34(b) also required that, if anyone submits written material to the Commission relating to the merits of an issue that may affect the responsibilities of a resource agency, the entity submitting this material must serve a copy on the resource agency affected.

[124] Section 4.34(b)(1).

Commission by the due date for comments on the application:

(1) Preliminary terms and conditions or prescriptions, as well as a schedule showing the status of the agency proceedings and when the terms and conditions or prescriptions are expected to become final; or

(2) A statement waiving the agency's right to file the terms and conditions or prescriptions or indicating the agency does not intend to file them.

The proposed rule required that all fish and wildlife agencies submit to the Commission their recommended terms and conditions for the protection, mitigation of damages to, and enhancement of fish and wildlife, pursuant to the FWCA and the FPA 10(j), no later than the due date for public comments on the application.[125] The proposed rule also required these agencies to discuss their understanding of the resource issues presented by the application and the evidentiary basis for the recommended terms and conditions.

The proposed rule allowed an agency to modify terms and conditions or prescriptions it had previously submitted to the Commission under two circumstances:

(1) Where the information and analysis presented in a draft environmental statement indicated a need for such modification; and

(2) Where an amendment to an application would significantly change a project's proposed plans of development.[126]

The proposed rule deleted the different deadlines set by the current regulations for the submission of fish and wildlife terms and conditions on various types of applications.

The proposed rule allowed the Commission to require additional procedures, such as a pre-hearing conference or further notice and comment on specific issues, in particular cases.[127] Such procedures would be useful in particularly complex and controversial cases.

The proposed rule stated that the Commission will analyze "all timely terms and conditions recommended by fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act for the protection, mitigation of damages to and enhancement of fish and wildlife * * *."[128] This analysis would follow prior practice and be done in connection with the Commission's environmental review of an application. The analysis would be released to the public with the environmental assessment or environmental impact statement prepared on the application. In the case of an environmental impact statement, the analysis would be released in draft form as part of the draft environmental impact statement, and public comment would be invited in accordance with NEPA procedures.

The analysis of the recommended terms and conditions of license, submitted by fish and wildlife agencies for the protection of fish and wildlife, would include a preliminary determination of whether the recommended terms and conditions are inconsistent with the purposes and requirements of applicable law.[129] If a preliminary determination of inconsistency were made, the Commission's staff would consult with the fish and wildlife agency concerned in an attempt to resolve the inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of the agency.

The proposed rule specified the statutory standards under which the Commission would issue terms and conditions for licenses and exemptions. All licenses issued would include the conditions specified in FPA section 10(a)(1).[130] Fish and wildlife conditions would be based on all *timely* recommendations received pursuant to the FWCA from fish and wildlife agencies.[131] Licenses for a project located within any Federal reservation would be issued only after the required findings have been made and would be subject to such conditions as the Commission may timely receive under FPA section 4(e).[132] Fishways[133] timely prescribed by the Secretary of Commerce or the Secretary of the Interior would be required pursuant to FPA section 18. Exemptions issued for conduit facilities or for small hydropower projects would include any terms and conditions timely submitted by fish and wildlife agencies pursuant to FPA section 30(c) and PURPA section 405(d).[134]

If the Commission were not able to adopt in whole or in part the fish and wildlife recommendations of a fish and wildlife agency, the Commission would publish the findings and statements required by FPA section 10(j)(2).[135]

NHA and other industry commenters state their strong support for the proposed regulatory requirement that the resource agencies furnish the evidentiary basis for their proposed terms and conditions and prescriptions. North Carolina Electric asks that the reference to the Federal Power Act in proposed § 4.34(f)(1)(i) be broadened to include all of section 10(a). Public Generating Pool and Seattle Light want the Commission to ensure that the proposed changes in § 4.34(b)(4), allowing resource agencies to change their terms and conditions and prescriptions under certain conditions, are not used by resource agencies and tribes to delay hydropower licensing proceedings.

Environmental groups like American Rivers contend that the proposed changes in the Commission's procedural regulations are too confusing to the public, and that the proposed regulations contain too many critical stages and notices in the administrative process, *i.e.*, at the pre-filing, filing, and hearing stages. These groups want intervenors and protesters to be able to file comments on an application as soon as it is filed, prior to its acceptance for filing by the Commission. Under this view, parties should have liberal leave to intervene later in the proceeding and to revise their comments, recommendations, or terms and conditions at any time.[136] American Rivers and National Heritage argue that the proposed regulations fail to adequately address the requirement that the Commission give equal consideration to environmental and other values in the licensing process.

[125] Section 4.34(b)(2).

[126] Section 4.34(b)(4).

[127] Section 4.34(e).

[128] Section 4.34(e).

[129] Section 4.34(e)(2). The Commission's staff would make this preliminary determination, as it is also responsible for the preparation of the necessary NEPA documents. See the discussion of administrative procedures on environmental issues in section IV.C.6. and the proposed changes to the delegation of authority to the Director of OHL, in section IV.D.4., below. The preliminary determination would be made in connection with the environmental assessment or environmental impact statement.

[130] Proposed § 4.34(f)(1)(i). FPA section 10(a)(1) requires that all licenses issued under this part be based on the following standards:

That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use and benefit of interstate or foreign commerce, for the improvement and utilization of water power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 6(e) * * *.

[131] Section 4.34(f)(1)(ii).

[132] Section 4.34(f)(1)(iv).

[133] Section 4.34(f)(1)(v). See the discussion of the definition of a "fishway" in section IV.A.4., above.

[134] Section 4.34(f)(2).

[135] Section 4.34(f)(3).

[136] Wildlife Federation asks the Commission to codify in its regulations the current practice of accepting motions to intervene and granting interventions in the period after an application is filed but before it is accepted for filing.

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such as energy conservation.[137] One of these commenters urges the Commission to adopt least-cost planning in the licensing process and to incorporate energy conservation and other demand-side options into its decisionmaking process.

Interior wants proposed § 4.34(b)(4) changed to ensure that agencies can modify recommended terms and conditions whenever necessary. Interior writes that it is unfair to impose on a federal agency a requirement to show good cause in order to obtain an extension of time for a filing deadline or to show "extraordinary circumstances" to justify failure to act in a timely manner, as required by § 385.2008.[138] Interior maintains that the Commission cannot require an agency (such as a federal land management agency) to provide an evidentiary basis for FPA section 4(e) conditions; only a joint rulemaking in which all the affected agencies participate could create such a requirement. Interior also asks the Commission to undertake any service of copies required under proposed § 4.34(b); alternatively, it requests that the Commission publish the service list along with its notice declaring an application ready for environmental analysis.

Commerce contends that the proposed regulations do not contain procedures to ensure that the Commission has a sufficient record for its decision. The regulations should reflect that the applicant, not the resource agencies, has the burden of proof in hydropower proceedings.

Except for the changes discussed in other sections of this preamble, dealing with such issues as the precise time deadlines for taking certain actions in hydropower hearings, the section 10(j) process, and interventions, the Commission has decided not to make any major changes in its proposed regulations governing the hearing process for hydropower applications. These regulations accurately reflect the manner in which these proceedings have been conducted and codify many existing practices; in addition, the regulations make certain changes in the hearing process that are designed to make the process fairer to all concerned, easier to understand and administer, and more expeditious. The Commission is confident that the result should be improved decisionmaking in this important regulatory area.

Requiring agencies to set forth the evidentiary basis for their terms and conditions is elementary, and the minimum procedure required to enable the Commission (as well as the applicant and other parties) to understand those terms and conditions and to respond to them or implement them as appropriate. It is not necessary to broaden the reference in proposed § 4.34(f)(1)(i) to refer to FPA section 10(a), as requested, since the Commission is clearly obligated to comply with the entire Act in its decisions on hydropower applications. The Commission does not find that there is any reason to change proposed § 4.34(b)(4), which appears adequately to protect against the risk that agencies using their right to revise recommended terms and conditions will unreasonably delay hydropower proceedings. These agencies remain under an obligation to submit their terms and conditions to the Commission within the time frames specified.

We cannot agree that the revised procedural regulations are too confusing, given the responsibilities of the Commission to implement the FPA. The regulations clearly distinguish among the different stages through which the processes of preparing, filing, and conducting a hearing on a hydropower application must pass. As discussed more fully in section IV.D.2. below, in these revised regulations the Commission has added a number of requirements for an applicant to comply with in order to keep the public informed as fully as possible of the status of its hydropower application and the public's participation rights. Every public notice required by these regulations must clearly communicate the information specified in the regulations.

The regulations expressly recognize the many statutory and other legal requirements to which the hydropower hearing process is subject. To the extent that the law requires that the Commission give equal consideration to a specified value, such consideration will be given. The Commission will not burden its procedural regulations with additional provisions (such as an adoption of least-cost planning as a decisional criterion) not relevant to the laws governing the hydropower hearing process and clearly beyond the scope of this rulemaking.

The Commission is convinced that it is within its authority, fair, and appropriate at this time, to adopt procedural regulations that require resource agencies to submit their recommended terms and conditions and prescriptions, whatever their statutory basis, on time and in a manner that will protect the rights of all parties to the hearing process, as discussed more fully in section IV.C.4. below. Similarly, the Commission concludes that it has ample authority to set various procedural requirements for the content of these submissions, such as the requirement in these regulations that an agency explain the evidentiary basis for its recommendations, and to prevent any action (such as a revision of a previously stated position) that is untimely.

The Commission does not believe that it places an unreasonable burden on parties and participants in a proceeding (other than persons merely filing protests) to require the party or participant (such as a resource agency) to serve a copy of its submissions on all persons on the service list in the proceeding. Requirements of service are routine in judicial and administrative proceedings and are an accepted cost of participating in them. The Commission will ensure that its staff takes the necessary steps to inform all participants, after the deadline for filing interventions has passed, of the official service list in the proceeding, and to keep them informed of any changes, to help all participants comply with this service requirement. It is simply not efficient to expect the Commission to provide this service.

4. *Deadlines.* The timely submission of all resource agency recommendations, mandatory terms and conditions, and prescriptions is extremely important to avoid unnecessary delays in processing hydropower applications and to prevent the Commission from wasting its limited resources on proposals that may have to be significantly changed to address these recommendations, terms and conditions, and prescriptions. Unless the Commission is promptly informed of resource agency recommendations, mandatory terms and conditions, and prescriptions, a proper NEPA analysis may be difficult to conduct. For example, an agency's exercise of the FPA section 4(e) conditioning authority

[137] Two commenters, Commerce and California Indian Legal Services, note that the NOPR did not propose guidelines for the Commission to develop comprehensive plans for river basins, or for utilizing comprehensive plans in the licensing process. The Commission's policy on comprehensive plans has been enunciated in a series of orders. *See, e.g.*, Skykomish River Hydro, *et al.*, 42 FERC ¶ 61,283 (1988) at p. 61,880, *reh'g denied*, 43 FERC ¶ 61,123 (1988). We do not perceive a need to reopen that matter here. Section 4.38(f)(6), as proposed in the NOPR and adopted herein without change, requires the applicant to include in Exhibit E of its application an explanation of "how and why the project would, would not, or should not, comply" with any relevant comprehensive plan and a description of any relevant resource agency determination regarding the consistency of the project with any such comprehensive plan.

[138] The Commission has not proposed to change § 385.2008.

pertaining to government reservations may require a project's relocation, or a change in its design, with concomitant effects on the environmental analysis required of the Commission under NEPA. It is also important that fish and wildlife agencies timely submit their recommended fish and wildlife conditions.

In the NOPR the Commission therefore proposed to set deadlines, in the regulations, for the submission of all resource recommendations (including fish and wildlife conditions), mandatory conditions, and prescriptions. These deadlines would allow the same number of days for a response and would apply to all hydropower applications for license or exemption, regardless of application type.

Consulting agencies have a responsibility not only to submit their initial recommended or mandatory terms and conditions and prescriptions on time, but also to keep these terms and conditions and prescriptions current in light of any significant changed circumstances.[139] Under the regulations proposed in the NOPR and adopted herein, agencies may request an extension of time within which to submit their terms and conditions. Failure to submit the terms and conditions or prescriptions on a timely basis would result in the hydropower hearing process, including the NEPA process, being conducted without the input of the consulting agency and might result in a final Commission decision that does not address the needs and concerns of the agency.

If a fish and wildlife agency filed its recommended fish and wildlife terms and conditions after the due date specified by the Commission (pursuant to proposed § 4.34(b)), the recommendations would not be subject to the requirements of proposed §§ 4.34(e), 4.34(f)(1)(ii), and 4.34(f)(3). In other words, the recommendations would be considered by the Commission under FPA section 10(a) but would not be subject to the determination, consultation, and funding requirements of FPA section 10(j). Section 4.34(b). If an agency responsible for submitting mandatory terms and conditions or prescriptions to the Commission failed to do so by the deadlines specified by the Commission, the Commission would consider the terms and conditions or prescriptions under FPA section 10(a), but only if such consideration would not delay or disrupt the proceeding. Section 4.34(b). Otherwise, the terms and conditions or prescriptions may be omitted from any license or exemption issued. Extensions of time for submitting mandatory terms and conditions or prescriptions would be granted by the Commission for good cause or extraordinary circumstances shown, in accordance with § 385.2008.

The proposal to set deadlines in the regulations for participants' submissions in hydropower proceedings is supported by a large number of commenters.[140] EEI discusses in detail the Commission's authority to take this action, based on section 309 of the FPA and widely accepted concepts of administrative law.[141] Public Generating Pool calls the imposition of deadlines the cornerstone of the proposed regulations, without which the hydropower licensing process will not work. Resource agencies should not be able to disrupt or stop a hydropower hearing by delay and refusal to submit recommendations on a timely basis. All decisional bodies, judicial and administrative, use deadlines, which are necessary for them to carry out their functions. Without deadlines for comments and recommendations, parties opposing a hydropower proposal, such as resource agencies, would have a veto power over hydropower development that Congress never granted to them. Energy describes deadlines as necessary to maintain the integrity and efficiency of the licensing process.

Other commenters,[142] however, question the Commission's authority in this regard, citing a lack of any statutory provision expressly authorizing the Commission to set deadlines. Wildlife Federation argues that the Commission cannot set deadlines for agency submissions of fish and wildlife recommendations but concedes the Commission may have this authority if a fish and wildlife agency's failure to submit fish and wildlife recommendations causes undue delay in a specific case.

A large number of detailed recommendations are made to improve the deadlines set in the proposed regulations. Industry representatives[143] want to move the deadline for protests and interventions from 45 to 60 days after an application's acceptance for filing[144] to 60 days after the Commission declares an application ready for environmental analysis. These commenters want an extra 30 to 60 days (*i.e.*, 60 to 90 days after the filing of any comments on the application) for an applicant to respond to any comments filed. Criticism is levelled at proposed § 4.34(b)(4), that would allow resource agencies, in response to a draft environmental impact statement or an amendment that would significantly change the project's proposed plan of development, to revise terms and conditions and prescriptions that had been filed earlier with the Commission. EEI contends that if any revisions are permitted, they should only be made in response to a material amendment of an application (as defined in § 4.201) or on a showing of extraordinary circumstances. NHA requests a shorter deadline, 60 days rather than 90 days, for a resource agency to respond to a draft application during the pre-filing consultation process.

Wildlife Federation claims that the proposed deadlines in the regulations are "simply unworkable" and that they should be revised to allow an agency to submit revised recommendations after the NEPA analysis. Recommendations filed earlier than this stage would be tentative only, possibly expressed in the alternative, and used as a basis for the environmental analysis of the application.

Resource agencies like Interior and Commerce emphasize the need for flexibility in any deadlines, that should be set according to the size and complexity of the hydropower proposal and the difficulty of the environmental analysis. Where there is a potential impact on endangered species, it may be impossible for a resource agency to comply with the proposed deadlines for submitting recommendations. Interior

[139] Comments were invited on two situations where a resource agency may be unable to submit final mandatory terms and conditions by the deadline for comments, and on the situation where a 4(e) condition may conflict with a fish and wildlife recommendation. In the first situation a federal land management agency, such as the U.S. Forest Service, may have its own administrative procedures for determining mandatory conditions, including appeal procedures. These procedures may not have been completed by the Commission's deadline for comments. In the second situation, if a resource agency is a "cooperating agency" with the Commission under NEPA, the agency will be unable to submit to the Commission final mandatory conditions until completion of the agency's environmental analysis (issued jointly with the Commission). In these situations, the Commission stated its belief that it is appropriate to require such agencies to give preliminary terms and conditions to the Commission pending completion of their agency proceedings, at which time they would submit final terms and conditions.

[140] *E.g.*, EEI, NHA, Public Generating Pool, Grant, and Energy.

[141] EEI cites judicially recognized authority for agencies to set deadlines to deal with similar problems, such as those presented by competing applications.

[142] *E.g.* Wildlife Federation and Commerce.

[143] *E.g.*, EEI (citing §§ 4.32(d), 4.34, and 4.38), Alabama Power, PG&E, and Seattle Light.

[144] This deadline is set by the Commission in the public notice of the acceptance of an application for filing pursuant to 18 CFR 4.32(d)(2). The Commission is required to publish notice of the filing of an application by FPA section 4(e).

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contends that it places an unfair burden on fish and wildlife agencies to treat late-filed fish and wildlife recommendations as comments under FPA § 10(a) as opposed to section 10(j).

Interior contends that under the *Escondido* case,[145] the Commission is powerless to impose any penalty on a federal land management agency that does not meet a deadline for submitting FPA section 4(e) conditions. Interior also contends that any system of deadlines must also take into account the need in certain cases to reserve authority for future prescriptions of fishways, when changes in circumstances make it appropriate to prescribe a specific fishway. Commerce contends that an agency should be able to modify a recommendation previously submitted whenever indicated by new biological information or a change in the agency's policy position.

Agencies insist that the Commission must consider late-filed terms and conditions under FPA section 4(e) and that there must be liberal provision for flexibility in the deadlines and for extensions of time. Commerce contends that final FPA section 10(j) recommendations should not be due until 90 days after the issuance of an EIS or EA. One commenter suggests that the term "timely" be deleted from proposed § 4.34(f)(1)(iv), and that § 4.34(b) should allow 90 instead of 60 days for comments and recommendations in response to notice that an application is ready for environmental analysis. Agriculture contends that time limits on agency participation in Commission proceedings should only be established jointly pursuant to inter-agency agreement. Interior asks that proposed § 4.34(b) be revised to allow the submission of modified recommendations whenever new information is developed in the process of environmental analysis (including by means of an EA); that the comment period be extended on amendments to a pending application that would significantly change the project or its anticipated impact on resources; and that § 4.34(d) be applied only to license applications.

Indian tribes [146] generally agree with the agencies that additional time is needed to respond to hydropower applications, as by extending the time for a response under proposed § 4.34(b) from 60 to 90 days. The Indian tribes cite their lack of funds as a reason for their difficulty in submitting comments as promptly as called for by the proposed regulations.

The Commission expected the comments it received on this aspect of the NOPR. Some parties generally seek more time for their participation in hydropower proceedings but oppose granting additional time to parties with different points of view. In the NOPR the Commission attempted to strike a reasonable balance in setting deadlines for hydropower proceedings, to allow all parties time to prepare and submit materials to the Commission that would express their concerns and assist in the resolution of all important issues presented by a hydropower application and to move the proceeding along as quickly as practicable toward a conclusion. While it is true that many hydropower applications present unique issues that take some time to present and analyze, ultimately it is in the interest of no one to postpone the development of an adequate record that the Commission can use as a basis to issue a final decision.

The Commission is confident that it has adequate authority to impose such deadlines on participants in hydropower proceedings, pursuant to section 309 of the FPA, which provides:

> The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act. Among other things, such rules and regulations * * * may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed * * *.[147]

The Commission has used this authority repeatedly since its passage; it remains the basis for a wide range of procedural regulations of the Commission (including deadlines) that apply to electric rate and hydropower proceedings; and these same procedural regulations also apply to natural gas proceedings pursuant to the similar provision in the Natural Gas Act.[148] Many of these deadlines are administered by the Commission's Administrative Law Judges, and we are not aware of any case that even raises a question about their authority to set deadlines that are necessary for the proper conduct of trial-type hearings, even though these deadlines may affect a wide range of participants in complicated proceedings, including government agencies.

The Commission also sets deadlines under its NEPA regulations that govern the participation of interested persons in the environmental review of pending applications.[149] These NEPA regulations affect other government agencies, and no claims have been made that agencies are free to dictate to the Commission the timing of important steps in the environmental review process, such as when scoping meetings are held or when comments are due on a DEIS. Since the Commission has determined that setting deadlines is a necessary part of its regulation of hydropower development, pursuant to the authorities granted to the Commission in the FPA, and since the Act does not make any distinction in the Commission's procedural powers based on the type of proceeding being conducted (*i.e.*, trial-type or notice-and-comment), we conclude that adopting the proposed scheme of deadlines for hydropower proceedings is well within the Commission's statutory authority.

After a careful review of the comments submitted, the Commission has decided to adopt in the final rule most of the specific deadlines set forth in the NOPR, but it appears appropriate to make certain adjustments in these deadlines.[150] The regulations set deadlines that are designed to fit most cases. The Commission will grant requests for extensions of time in specific cases upon a showing of good cause; additional procedures, such as further rounds of notice and comment on specific issues, may be employed as required. Thus, for example, in an exceptionally difficult or complex case, the Commission will accommodate the need to allow more time to develop the record needed for good decisionmaking.

The Commission will revise the deadline for applicants and other parties to submit reply comments. Under § 4.34(b), comments will continue to be due as a matter of course 60 days after issuance of a notice that the application is ready for environmental analysis, but reply comments will be due 45 days later, *i.e.*, 105 days after issuance of this public notice.

The Commission will not provide in the regulations for additional opportunities to submit or revise recommendations, terms and conditions, or prescriptions. Adequate opportunity was provided in the proposed regulations, and where appropriate in particular cases, either upon the Commission's own initiative or in response to a request showing good cause, the Commission will afford additional opportunity for all parties to submit or revise their comments. For the reasons explained in the next section, it is unacceptable to postpone the deadline for agency recommendations until after the completion of the Commission's environmental review, since it is based in part on those recommendations.

5. *Ex parte restrictions.* As discussed in the NOPR, compliance with the FWCA and FPA section 10(j) requires the Commission staff to confer with fish and wildlife agencies, in order to understand and clarify their fish and wildlife recommendations and, as necessary and appropriate, to negotiate with those agencies on terms and conditions believed to be inconsistent with the law. Implementation of FPA sections 4(e), 18, and 30 and PURPA section 405(d) may involve a similar consultation process regarding the mandatory terms and conditions other government agencies may propose for inclusion in hydropower licenses and exemptions. Questions have been raised as to how the Commission's ex parte rule [151] applies to these communications.[152]

The NOPR stated that, if anyone has filed a protest or been granted intervention, either of which opposes a license application, Commission practice has been: (1) To apply the *ex parte* rule to communications with resource agencies, including fish and wildlife agencies on 10(j) matters; and (2) to follow the strictures set out below:

1. There can be no consideration of an *ex parte*, off-the-record communication between Commission staff and a resource agency on the merits of the case.

2. There can be communications regarding procedural matters.

3. Commission staff can communicate orally on the merits of a case with the resource agency or applicant if it gives all parties the opportunity to participate.

4. Copies of letters and documents sent to and received from any resource agency will be placed in the public file. If the letters or documents submitted relate to the merits of the case, they will be served on the applicant and all other parties, all of whom may file timely comments thereon.[153]

5. If an inconsistency exists between a fish and wildlife agency's fish and wildlife recommendation and applicable law, pursuant to FPA section 10(j) Commission staff will notify all agencies concerned and all parties in writing [154] and will attempt to resolve the inconsistency by appropriate means, keeping all parties informed of the communications used. If the inconsistency is not resolved, the staff may also decide to hold a meeting to resolve it and will notify and invite at least all affected resource agencies, the applicant, and all other parties. However, only the Commission and the fish and wildlife agency that submitted the recommendation in question are consulting parties, although all interested parties and resource agencies may participate.

6. The applicant or any other party may appeal the fish and wildlife conditions as they appear in the issued license order.

If no one has filed a protest or intervention opposing a license application, Commission practice has been: (1) To not apply the *ex parte* rule to communications with resource agencies or fish and Wildlife agencies and the 10(j) process; and (2) to follow the strictures set out below:

1. Commission staff can communicate with the pertinent resource agency orally or in writing.

2. Commission staff and a fish and wildlife agency can try to resolve an apparent inconsistency between a fish and wildlife recommendation and applicable law by correspondence or telephone calls until the environmental assessment (EA) or draft environmental impact statement (DEIS) has been completed.

3. In instances where the inconsistency has not been resolved by the time the EA or DEIS has been completed, Commission staff sends the EA or DEIS, with a letter summarizing staff's position, to the pertinent fish and wildlife agency, and sends copies of this package to all other interested resource agencies, the applicant, and all other parties for comment to try to resolve the apparent inconsistency.

4. Appropriate consultation, including meetings, will be held to resolve any remaining inconsistencies between fish and wildlife recommendations and applicable law.

The NOPR did not propose any specific regulatory text addressed to *ex parte* communications, but invited comments on the application of the Commission's *ex parte* rule to these consultation procedures.[155]

In general, most commenters agree with the Commission's practice with regard to application of its *ex parte* rule. However, they recommend that the Commission go further to impose similar restrictions in uncontested cases as well. Only two commenters appear to support a more limited application of the *ex parte* rule.

Interior questions why the *ex parte* prohibition should apply when fish and wildlife agencies are not intervenors in a proceeding. Interior adds that the addition of *ex parte* restrictions would promote inefficiencies in the licensing process without any significant benefits.

Similarly, Public Generating Pool comments that, in its experience, the extensive use and strict interpretation of limits on *ex parte* communications are not conducive to rapid resolution of differences. It observes that fair and constructive communications are possible if concerned entities are kept informed and the Commission staff makes its decisions with broad input. Public Generating Pool recommends that informal communications be allowed during as much of the section 10(j) process as possible and that the *ex parte* prohibitions be applied only during limited and specific circumstances. It adds that, once the *ex parte* rule has been invoked, it must be applied uniformly to all entities with an interest in the proceeding rather than just those with formal party status.

In contrast, most commenters not only agree with the Commission's practice with regard to its *ex parte* rule, but urge the Commission to go further than the rule would require. Commerce, American Rivers, and Wildlife Federation argue that the *ex parte* restrictions should be observed whenever there is an intervenor in a licensing proceeding, regardless of whether the intervenor opposes the project (making the proceeding "contested") or simply seeks the imposition of certain license conditions. They argue that an intervenor's interest in the merits of an agency's section 10(j)

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[145] *Escondido Mutual Water Co.* v. *La Jolla Band of Mission Indians*, 466 U.S. 765 (1984).

[146] California Indian Legal Services, Klamath, Native American Rights Fund, and Tulalip.

[147] 16 U.S.C. 825h (emphasis added).

[148] 18 CFR part 385; Natural Gas Act, 16 U.S.C. 717o (1988).

[149] 18 CFR part 380.

[150] Certain state agencies recommend that the Commission require service of documents on them via certified mail and that the time period within which an agency must respond begin as of the date the agency actually receives the document. We decline to make these changes. Use of first-class mail for such purposes is routine in administrative proceedings, and the agencies have not shown that the substantial extra cost of requiring service via certified mail is justified or would result in quicker delivery of the documents. The time periods in the Commission's regulations and notices have been selected in order to allow sufficient time for a response when the period is measured from the date of mailing or issuance of a notice or decision, for example, and in order to allow the Commission and other parties to be able to determine the date when a response is due.

[151] 18 CFR 385.2201. See 5 U.S.C. 554, 557; Municipal Electric Utilities Ass'n of New York, 23 FERC ¶ 61,094 (1983) (and cases cited therein).

[152] See, for example, the letter of John L. Spinks, Jr., Deputy Regional Director, U.S. Fish and Wildlife Service, to the Commission, dated August 5, 1988, concerning the relicensing of the Kingsley Dam Project No. 1417 and the North Platte/Keystone Diversion Dam Project No. 1835, located near the confluence of the North and South Platte Rivers in Nebraska.

[153] The proposed rule clarified the obligation of those submitting written material relating to the merits of a case to serve a copy of the material on any resource agency whose responsibilities may be affected. Proposed § 4.34(b). See also 18 CFR 385.2010 (obligation to serve copies of all documents submitted on all parties in a proceeding).

[154] This is now done in connection with the environmental assessment or environmental impact statement prepared on the proposal, in the same manner as for uncontested cases.

[155] The proposed rule contained a brief section summarizing the Commission's consultation procedures. See proposed § 4.34(d).

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recommendations and in any negotiations regarding those recommendations does not turn on whether the intervenor opposes licensing of the project or merely supports licensing coupled with specific conditions. These commenters therefore urge the Commission to apply the same procedural protections regarding notice and an opportunity to be heard in all cases in which an intervention has been filed.

Similarly, many commenters argue that an applicant's right to be informed of and to participate in section 10(j) negotiations should not turn on whether a case is "contested," thereby triggering application of the Commission's *ex parte* rule.[156] They argue that the distinction between "contested" and "uncontested" cases is an artificial and unreasonable basis for differing application of the *ex parte* rule.[157] These commenters therefore urge the Commission to provide the same procedural protection for applicant in both "contested" and "uncontested" cases. PG&E points out that, to ensure a fair and complete process, the Commission should keep all parties informed of all consultations with agencies regarding possible license terms and conditions to protect, mitigate, and enhance resources. PG&E adds that, without the applicant's input, the Commission will risk imposing less effective or even unworkable terms and conditions.

As discussed in section IV.C.8. below in connection with the section 10(j) process, the final rule clarifies that applicants and other parties will be provided notice of meetings involving section 10(j) negotiations, and all parties, including applicants and intervenors, will be given an opportunity to comment on the Commission's proposed resolution of fish and wildlife recommendations where there is a preliminary determination that they are inconsistent with applicable law. This is consistent with the notice-and-comment hearing procedures ordinarily used in hydroelectric licensing proceedings, and is intended to ensure that the process is both equitable and efficient.

[156] These commenters are EEI, NHA, American Paper, Alabama Power, Wisconsin River, Pend Oreille, and Vernon. American Rivers agrees with this position, as long as the Commission also recognizes the similar interests of intervenors. In its reply comments, EEI agrees with American Rivers that all parties, including applicants and intervenors, should be permitted to participate in the section 10(j) process in order to protect their interests.

[157] In that regard, American Paper points out that the applicant's right to due process is potentially at issue.

In adopting this approach, the Commission does not mean to signal agreement with comments that such procedures are required by its *ex parte* rule, the Administrative Procedure Act, or due process considerations. The Commission does not believe that the record in this rulemaking is sufficient to undertake any significant revisions to its *ex parte* rule. Accordingly, the final rule adopts the recommendations for greater involvement of applicants and intervenors in the section 10(j) process without making any changes to the existing *ex parte* rule.[158]

We note, however, that the Commission has recently begun a comprehensive review of its *ex parte* regulations. Through the use of a negotiated rulemaking process, we hope to revise the *ex parte* rule before the end of 1991. Thus, to the extent applicable, the resolution in this final rule will be subject to the outcome of the Commission's comprehensive review in the generic proceeding.

In its discussion of the *ex parte* rule in the NOPR, the Commission stated that, in contested cases, copies of letters and documents exchanged between Commission staff and resource agencies would be placed in the public file and, if related to the merits of the case, would be served on the applicant and all other parties, who could file timely comments thereon.

With regard to this aspect of the proposal, Commerce recommends that, in the interest of fairness, applicant-supplied letters and documents pertinent to fish and wildlife issues also be made a part of the public record, and that all parties be provided an opportunity to comment on these documents as well. In response, the Commission notes that its existing rule regarding service requires any participant who files a document in a proceeding to serve a copy on each person whose name appears on the official service list for the proceeding.[159] Thus, if the applicant or a resource agency files any letters or documents concerning fish and wildlife issues (or any other written communications) for the Commission's consideration in the licensing proceeding, these documents are covered by this rule and may be the subject of comments filed by other parties. If no participant files them in the proceeding, they will not be part of the public record and the rule regarding service on the parties will not apply. As a result, they will not be considered in any decision on the license application.

[158] Commerce recommended that the Commission include its application of the *ex parte* rule in the text of the final rule. Interior and Michigan recommended that the phrases "in opposition to" and "merits of the case" be clarified. For the reasons discussed above, the Commission has not followed these recommendations.

[159] 18 CFR 385.2010.

With regard to the service of documents, American Rivers observes that, under the Commission's service rule discussed above, this is an obligation of participants to the proceeding, and the Commission should not take on the burden of effecting service. American Rivers adds that the service rule applies to all written communications, not only those related to the merits. In contrast, American Paper suggests that the Commission serve on the applicant and all other parties copies of all written communications, both substantive and procedural, between Commission staff and the resource agencies. American Paper notes that resource agencies often do not serve the applicant or other parties and that there is no guarantee that the Commission's proposal to require such service will be effective.

The Commission believes that the existing rule regarding service of documents, coupled with language in § 4.34(b) of the final rule, is sufficient to alert participants to their obligation to serve documents on all persons whose names appear on the official service list. The Commission agrees that it would be inappropriate for the Commission to assume the burden of effectuating such service, which is an obligation of participants in Commission proceedings. To assist participants in meeting the requirements of the rules, the Commission will continue its existing practice of making copies of the official service list for a proceeding available to all participants on request.

Concerning the Commission's discussion of the *ex parte* rule in the NOPR, American Rivers states that a resource agency that comments on a pending application, especially when 10(j) negotiations are underway, is at least an interceder under the Commission's *ex parte* rule. American Rivers therefore concludes that the Commission staff could not meet with a resource agency to discuss the substance of the agency's 10(j) recommendations consistent with the Commission's *ex parte* rule without giving other agencies and every party an opportunity to participate. This is one of the issues the Commission expects to examine in the generic and comprehensive review of its *ex parte* regulations.

Concerning the types of communications covered, American Rivers also states that general

discussion of procedural matters should be prohibited by the *ex parte* rule. As an example, American Rivers cites the request for an evidentiary hearing on the annual licenses in the relicensing of the Platte River projects.[160] Alabama Power notes that it does not oppose communications regarding technical clarifications to agency recommendations, but that applicants should be allowed to attend and be a full participating party in substantive communications and negotiations.

The Commission disagrees with American Rivers; the *ex parte* rule expressly permits discussion of procedural matters. Once again, the Commission expects to address this issue in the comprehensive review of its *ex parte* regulations.

American Rivers comments that parties require adequate advance notice of a scheduled communication in order to have a reasonable opportunity to participate, and that if the time proposed for a telephone call or meeting is inconvenient for a party, the Commission should make some effort to accommodate that party. The Commission agrees that reasonable advance notice should be given and that an effort should be made to accommodate the parties' schedules. Obviously, the reasonableness of the measures requested and the degree of accommodation required will depend on the particular circumstances surrounding the proposed call or meeting.

With regard to timing, American Rivers argues that the *ex parte* rule should apply from the time a motion to intervene has been filed, and not only after the section 10(j) recommendations are filed. EEI comments that the combination of the Commission's late intervention policy for resource agencies and application of the *ex parte* rule encourages fish and wildlife agencies not to intervene in a timely manner so that they can discuss their recommendations with Commission staff without the applicants and other parties present.

The situations that American Rivers and EEI posit would not arise because the applicant will have a right to participate in the section 10(j) process under the final rule regardless of whether the proceeding is contested.

Finally, NHA argues that, if the Commission determines that a section 10(j) conflict exists, the Commission should treat the licensing as a contested proceeding for purposes of application of the *ex parte* rule, even if no intervention or protest opposing the license application has been filed. As noted, the final rule recognizes the interest of applicants and intervenors to participate in the section 10(j) process in the interests of fairness and efficiency, rather than as a result of any application of the *ex parte* rule.

[160] These projects are cited in the footnote at the outset of this section.

6. *NEPA process.* The Commission did not propose to make any significant changes to its NEPA regulations, but it did discuss the relationship between the hydropower licensing process, including the new pre-filing, hearing and other procedures proposed, and the NEPA process.

The Commission regards the administrative procedures to implement FPA section 10(j), the FWCA, and NEPA in hydropower proceedings as related and having similar objectives. The Commission has the responsibility to integrate compliance with these and other applicable statutes into a single administrative process extending from pre-filing consultation through the filing with the Commission of a hydropower application for license or exemption, the submission of fish and wildlife recommendations by fish and wildlife agencies, the Commission's environmental analysis (requiring an environmental assessment or an environmental impact statement), and the resolution of inconsistencies (if any) between the fish and wildlife recommendations and applicable law, to the final order in the case with its required findings. The Commission expects applicants to be fully aware of the environmental consequences of their proposals and to consider every reasonable measure to minimize adverse impacts from hydropower projects, consistent with the goal of developing hydropower potential and other public interest concerns.

The Commission also expects consulted fish and wildlife agencies to timely recommend measures to protect, mitigate damages to, and enhance the fish and wildlife that a proposed project may affect. Alternatives that could lessen or eliminate adverse impacts or improve environmental conditions, mitigation measures, and enhancements that could benefit fish and wildlife (as well as other environmental resources) will be explored in the NEPA process as appropriate.

Each of these statutes only mandates that the Commission take certain steps in its decisionmaking process but does not indicate the appropriate outcome of the case.[161] The substantive standards affecting decisions on hydropower applications remain those of FPA sections 4(e) and 10(a)(1).

[161] *See, e.g., Stryker's Bay Neighborhood Council* v. *Karlen*, 444 U.S. 223, 227 (1980) (NEPA duties are essentially procedural); *County of Bergen* v. *Dole*, 620 F. Supp. 1009 (D.C. N.J. 1985), *aff'd*, 800 F.2d 1130 (3rd Cir. 1986); and *Sierra Club* v. *Alexander*, 484 F. Supp. 455, 470 (N.D.N.Y. 1980) (the FWCA requires only that the views of fish and wildlife agencies "be given serious consideration"), *aff'd*, 633 F.2d 226 (2d Cir. 1980).

NEPA requires the Commission to evaluate whether approval of a particular hydropower proposal would constitute a major federal action significantly affecting the quality of the human environment. The steps followed in the NEPA process may include the preparation of an environmental assessment (EA) by the Commission. If approval of the proposal may significantly affect the quality of the human environment, the Commission must prepare an environmental impact statement (EIS), analyzing any adverse environmental effects of the proposal and alternatives to it. The NEPA process necessarily includes a careful evaluation of the impact of the proposed project on fish and wildlife.

Preparing an environmental impact statement involves public participation in commenting on the draft statement and may also involve public participation in scoping sessions, devoted to planning the extent and sequence of the environmental review. The Commission must consider public comment on the draft environmental impact statement (DEIS) in preparing its final environmental impact statement, which is a public document available to everyone.[162] Release of a draft environmental impact statement also allows interested persons to intervene in the proceeding as a party no later than the date on which comments on the statement are due.

While in its NEPA process the Commission does not rely solely on comments and recommendations from other government agencies, such as fish and wildlife agencies, the Commission solicits their comments in preparing an environmental impact statement. Most importantly, the Commission in its NEPA environmental document analyzes the effect of the proposal on fish and wildlife, based on the recommendations made by fish and wildlife agencies pursuant to the FWCA.[163] These FWCA

[162] Notice of the availability of environmental assessments is currently published in the Federal Register, and copies are usually sent to resource agencies and intervenors.

[163] In certain cases these recommendations may even constitute a separate alternative to the applicant's proposal.

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recommendations thus influence the entire NEPA process and must be submitted to the Commission prior to the commencement of the Commission's environmental analysis in order for it to achieve its purposes of evaluating the environmental consequences of the applicant's proposal and of necessary mitigative measures, so that the Commission can consider these factors in its final decision. The Commission recognizes that in turn a draft environmental impact statement may lead a fish and wildlife agency to modify its fish and wildlife recommendations based on information and analysis presented in the statement.

Some commenters [164] recommend that the Commission begin the NEPA process during pre-filing consultation, prior to any filing of a hydropower application with the Commission. They argue that, pursuant to NEPA, the Commission should play a more active role in the pre-filing consultation process because it is the critical phase in the Commission's decisionmaking process on hydropower applications. In this view, during the pre-filing process the Commission should: (1) Evaluate all reasonable alternatives to the developer's proposal, including nonhydropower energy sources and conservation measures; (2) gather all relevant information; and (3) grant more opportunity for public involvement, especially to review the draft application and to participate fully in any meeting between applicant and any resource agency, during the second stage of pre-filing consultation.[165] Other commenters oppose these recommendations, because they appear impractical in light of the need to conduct studies and develop information prior to filing.[166]

American Rivers claims that the Commission relies too much on the use of EAs instead of EISs to fulfill its NEPA responsibilities for hydropower proceedings, with the result that public involvement in the environmental review process is improperly excluded. Several commenters [167] recommend that the Commission set forth the actual terms and conditions of license proposed in the EA or EIS and that a draft on any controversial project be circulated for comment by all parties and resource agencies. At the least, they contend, the Commission should wait until the EIS is completed before requiring the submission of comments and recommendations. Certain state agencies ask the Commission to require the preparation of an EIS in any case where the Commission finds that a fish and wildlife recommendation under FPA section 10(j) is inconsistent with applicable law.

CEQ believes that the Commission's NEPA process is too adversarial and that the Commission should minimize the use of trial-type hearings on environmental issues. CEQ recommends that the Commission consider the use of programmatic EISs in the hydropower licensing program in order to lessen the Commission's environmental review workload.

As stated above, the NOPR did not propose any significant change in the Commission's NEPA regulations but only explained how the Commission was applying those regulations to and integrating them into the hydropower program. The procedural regulations proposed were designed to codify the Commission's current practices in hydropower proceedings. Some changes were proposed in order to make the conduct of those proceedings fairer and more efficient. The comments offered on the NEPA process appear to reflect some misunderstanding of the Commission's procedures and suggest an altogether new and different approach to implementation of the Commission's responsibilities in this area that would require significant changes in the Commission's hearing process.[168] These comments raise more questions than they answer.

It is important to understand that the Commission's prefiling consultation procedures help the Commission to implement its statutory responsibilities, including NEPA, for regulating the development of hydropower. The procedures under §§ 4.38 and 16.8, as revised, require applicants to conduct extensive consultation with resource agencies and Indian tribes on the hydropower proposal, including hydropower alternatives, impacts on resources, and mitigation measures. Reasonable and necessary scientific studies must be considered and conducted by the applicant, who must also furnish the information required to evaluate the effects of the proposal on the environment. The public also is invited to participate in this process, and provision has been made to expand Commission involvement (as through dispute resolution).

This process is conducted collegially and directly influences any application (including environmental exhibits) filed with the Commission. An important goal of the process is to focus the applicant on an environmentally acceptable proposal (if it exists) and to furnish the Commission with the basic material it needs to complete its environmental analysis of the proposal. This analysis is conducted through an administrative proceeding on the application which is typically conducted by notice and comment, with abundant opportunity for public participation and without the adversarial spirit often found in trial-type proceedings.

Would the alternative NEPA scheme suggested by some commenters, involving the Commission's starting its environmental analysis during the pre-filing consultation phase, be compatible with the realities of the hydropower program? In the recent past, a very high percentage of proposals for new hydropower facilities were changed or abandoned by developers during the pre-filing consultation phase, or were abandoned after filing but before Commission decision. It is not entirely clear why this high rate of attrition took place and whether it is likely to continue in the future. If this trend continues, however, it raises doubts about the wisdom of committing a substantial amount of the Commission's limited resources to an intrusive environmental review by staff of proposed facilities that are highly unlikely ever to be built. Indeed, by expanding the use of the dispute resolution mechanism, the Commission will be involved even further, when necessary, in the pre-filing process. We think this strikes a reasonable balance between concentrating Commission resources on those applications that have moved beyond the pre-filing consultation process and are thus much more likely to result in additions to the nation's hydropower resources and the need to resolve disputes as early as possible in the licensing process.

As stated above, the Commission does make available to all parties and agencies, at the same time as a decision on a hydropower application is issued, any EA completed on the application. Any party seeking rehearing of the decision can thus respond to any statement in the EA with which the party disagrees. In appropriate cases, the Commission may issue the EA in draft form for comment, prior to reaching any decision in the case. The EA will usually not contain the exact language for terms and conditions intended to be adopted in any license or exemption but will contain a complete discussion of the proposal's environmental impact. As discussed in section IV.C.8. below, when the Commission makes a preliminary determination of inconsistency of a fish and wildlife agency's fish and wildlife recommendation with applicable law, pursuant to FPA section 10(j), the Commission will provide a copy of this determination and the EA or DEIS to all parties and affected resource agencies and Indian tribes for comment. This procedure will occur prior to the issuance of a decision on the application.

Whether the Commission is justified in issuing an EA rather than an EIS on a particular application is a matter that can be resolved only on a case-by-case basis, according to the standards set down in the Commission's NEPA regulations, NEPA itself, and cases construing that act. The Commission will not require the preparation of an EIS in all proceedings where there has been a determination that a fish and wildlife recommendation is inconsistent with applicable law, but will follow in all such cases the procedures required by FPA section 10(j), which the final rule implements.[169] Where appropriate, the Commission consolidates one or more license applications for a single environmental review, as in the case of certain river basins.[170]

7. Endangered Species Act. The NOPR cited the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*, as an element of the Commission's environmental review and noted that license applicants must include in their applications information on threatened or endangered species.[171] Several federal and state agencies commented that further discussion of the ESA and its role in the hydropower licensing process is warranted.[172]

Section 4 of the ESA authorizes the Secretary of the Interior to list species as "threatened" or "endangered" and to designate a "critical habitat" for those species.[173] Section 7 of the ESA requires the Commission to use its authority to conserve endangered and threatened species and to ensure that actions it authorizes do not jeopardize the continued existence of those species or result in the destruction or modification of their critical habitat. In doing so, the Commission must consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.[174]

Interior comments that the rule should include procedures needed to fulfill the Commission's responsibilities under section 7 of the ESA. The Commission agrees and has added language to § 4.34(d) of the final rule to address its ESA responsibilities in general terms. However, the Commission does not believe that it should attempt to set forth in detail how the requirements of the ESA will be implemented in particular cases. In view of the many different species that may be affected, the various times at which species might be listed as threatened or endangered, and the different types of actions that may be contemplated, the issues involved are more appropriately considered in particular cases.

Interior observes that the ESA consultation requirements would affect both the need for studies and the timing of fish and wildlife recommendations, and that the information required to evaluate impacts to threatened or endangered species should be collected when other resource studies are conducted. Similarly, West Virginia comments that the need for studies of affected endangered species should be acknowledged prior to licensing. In response, the Commission notes that the final rule requires the applicant to consult with resource agencies concerning the studies needed before an application is filed. Moreover, it requires the applicant to conduct all studies necessary for the Commission to reach a determination on the merits of the application. This would include any studies necessary for the Commission to determine the impact of the project on any threatened or endangered species.

Interior points out that both the ESA and the implementing regulations in 50 CFR part 402 require the Commission, rather than the applicant, to consult with Interior's Fish and Wildlife Service (or Commerce's National Marine Fisheries Service for marine species). Interior therefore recommends that the rule acknowledge the Commission's involvement during the pre-application consultation process.

The Commission agrees that, in some cases, it may be appropriate for the Commission staff to become more involved during the pre-application consultation process. To that end, the final rule includes procedures for dispute resolution that can be used if an applicant and a resource agency disagree on the studies needed to evaluate a project. However, before an application is filed, there is no federal action being considered that could call the consultation requirement of the ESA into play. For this reason and those discussed earlier, the final rule provides for the Commission's involvement in ESA consultation after the license application has been filed. Appropriate language to reflect this has been included in final § 4.34(d).

Interior also observes that, if a project may affect an endangered or threatened species, formal consultation between the Commission and the Fish and Wildlife Service (or the National Marine Fisheries Service) will be necessary. Interior argues that, because the results of that consultation could affect its recommendations for other fish and wildlife species, the Fish and Wildlife Service will be unable to provide final fish and wildlife recommendations, mandatory terms and conditions, or prescriptions until after completion of the formal section 7 consultation. Interior adds that the time provided in the proposed rule would not be adequate in these circumstances, because formal consultation usually occurs at the draft environmental impact statement stage when the preferred alternative has been identified. Interior recommends that the Commission adopt its rule to correspond with Interior's existing section 7 consultation regulations.

In response, the Commission clarifies that consultation under the ESA may take place at any time and need not await the draft EIS. In addition, proposed § 4.34(b)(1) recognized that, in certain cases, the proceedings before an

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[164] *E.g.*, Alabama Power, American Rivers, Wildlife Federation, and CEQ.

[165] Wildlife Federation suggests that the Commission look to other agencies, such as the Army Corps of Engineers, that supposedly initiate the NEPA process at an earlier stage than the Commission and accept final recommendations under the FWCA in comments on the DEIS.

[166] *E.g.*, Public Concerning Pool. EEI asks that the Commission complete this rulemaking without trying to evaluate these proposals, which should be considered separately.

[167] American Rivers, Wildlife Federation, and Interior.

[168] These comments raise issues that are beyond the scope of this rulemaking.

[169] *See* section IV.C.8. below.

[170] The Commission will carefully consider CEQ's suggestion that it should make use of programmatic EISs in the hydropower program. It is doubtful, however, that such an approach would be useful, given the unique nature and environmental impacts of the many different potential hydropower proposals that developers may choose to pursue under the FPA.

[171] *See, e.g.*, 18 FERC Stats. & Regs. ¶ 32,479 at pp. 32,265–66.

[172] These agencies were Interior, Colorado, and West Virginia.

[173] 16 U.S.C. 1532. As "endangered species" is defined as "any species which is in danger of extinction throughout all or a significant portion of its range * * *." *Id.* at section 1532(6). A "threatened species" is "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." *Id.* at section 1532(20). "Critical habitat" means "the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection * * *." *Id.* at section 1532(5)(A)(i).

[174] 16 U.S.C. 1536.

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agency to determine mandatory terms and conditions might not be completed by the date specified. In such cases, the agency would be obligated to submit either preliminary terms and conditions or (if appropriate) a waiver of the right to file the terms and conditions. This procedure would adequately address the situation in which consultation regarding endangered or threatened species is ongoing. A similar approach would be appropriate for fish and wildlife conditions or fishway prescriptions if consultation regarding endangered or threatened species has not been completed by the date specified for filing the recommendations or prescriptions.

Colorado points out that the applicant should be aware of state lists of threatened and endangered species and species of special concern, as well as the ESA requirements. The Commission agrees, and notes that the Commission's existing rules concerning the environmental information that the applicant must provide and the environmental analysis that the Commission must undertake are sufficiently broad to require such information.

Finally, EPA states that agency determinations of a project's compliance with the ESA and subsequent recommendations that affect such compliance "should be considered as constraints not subject to FERC staff balancing or lack of evidence determinations." [175] EPA adds that staff discretion should be restricted if federal statutory requirements could be violated.

The Commission must comply with ESA and other federal law in its licensing decisions. However, it would be inappropriate to suggest that balancing is prohibited whenever endangered species are present. For example, if there are alternative means of providing adequate protection for endangered species, other public purposes may be considered in choosing among those alternatives. In addition, the balancing that may be required under section 10(a)(1) of the FPA or the implications of the need to base Commission decisions under the FPA on substantial evidence cannot be addressed in any meaningful sense apart from the particular facts presented in specific cases. Accordingly, the Commission will not adopt the specific prescription that EPA suggests.

[175] Letter from Richard E. Sanderson, Director, Office of Federal Activities, EPA, to Lois Cashell dated June 15, 1990, Enclosure (emphasis in original deleted).

8. *Section 10(j) process.* The Commission did not propose extensive language to codify its implementation of the 10(j) process, which was discussed at length in the NOPR. In its discussion, the Commission explained that the FWCA applies to consultation with fish and wildlife agencies only. The agencies may rest their recommendations on studies conducted by others, including the applicant, or by themselves. In order for their fish and wildlife recommendations to serve their intended role in hydropower proceedings, fish and wildlife agencies must file their recommendations on a timely basis, at the beginning of the administrative process, and keep these recommendations current in light of any major changes in circumstances, such as an amendment to the application that would significantly change a project's proposed plans of development or the discovery of new and significant information on the environmental impact of the proposed hydroelectric project.[176] Under the FWCA, the Commission must consider the fish and wildlife recommendations made, with the purpose of conserving fish and wildlife resources along with promoting waterpower development.

Resource agencies must therefore provide the benefit of their technical expertise to the Commission as soon as possible in the administrative process on hydropower applications. The only sequence that works to produce an efficient administrative process is to have fish and wildlife recommendations precede the Commission's environmental analysis. A resource agency's need at times to modify its recommendation in light of the information and analysis presented in a draft environmental impact statement should not be used to delay submitting its recommendations until after the Commission has completed its environmental analysis. As discussed above, FPA section 10(j) specifically requires the Commission to include in all hydropower licenses conditions for the protection, mitigation of damages to, and enhancement of fish and wildlife. These conditions must be based on recommendations made by fish and wildlife agencies pursuant to the FWCA. In cases where the Commission believes those recommendations to be inconsistent with the law, certain additional procedures (including consultation and findings) are required.

FPA section 10(j) does not authorize the submission of fish and wildlife recommendations by fish and wildlife agencies apart from the FWCA and does not require the repetition of environmental scoping, studies, and analysis undertaken pursuant to NEPA. Compliance with FPA section 10(j) builds on compliance with the FWCA and NEPA.[177] Thus the purposes of FPA section 10(j) can be achieved only if all agencies involved, including the Commission and the fish and wildlife agencies, fulfill their responsibilities in a timely manner in the context of the Commission's conduct of a single administrative process to evaluate and decide upon a specific hydropower proposal.

In general, the commenters [178] strongly support granting to all parties, including applicants, the right to participate fully in any section 10(j) consultation between the Commission and fish and wildlife agencies. While Wildlife Federation wants the Commission to withdraw the NOPR and start anew, and American Rivers opposes any more formal regulations on the section 10(j) process, many commenters recommend that the Commission codify its section 10(j) procedures, revising them where appropriate. They request that we define in the regulations how, and at what organizational level, section 10(j) negotiations will proceed. EEI maintains that applicants should be provided with a written summary of a preliminary "no inconsistency" determination by staff and be allowed to file written comments on or objections to the preliminary determination before it is incorporated into a decision on the license applied for.

Commenters like Interior ask the Commission to clarify the standards the Commission will use in making a determination of inconsistency between a fish and wildlife agency's 10(j) recommendation and applicable law. Environmental groups like American Rivers argue that the Commission may not reject a fish and wildlife recommendation because it conflicts with the balancing of competing waterway uses under section 10(a)(1) or because there is a lack of substantial evidence in the record before the

[176] *See, e.g.*, Action for Rational Transit v. Westside Highway project, 536 F. Supp. 1225 (S.D. N.Y. 1982).

[177] Courts have recognized that overlapping legal requirements to protect the environment can be satisfied by a single administrative process. *See, e.g., Environmental Defense Fund* v. *Froehlke*, 473 F.2d 346, 350 (8th Cir. 1972) (agency complying in good faith with NEPA will "automatically take into consideration all of the factors required by the Fish and Wildlife Act"). See also Monongahela Power Company, 58 F.P.C. 2702, 2706 (1977).

[178] *E.g.*, EEI, Pend Oreille, Vernon, American Rivers, and Energy.

Commission to support the recommendation. Interior claims that ECPA places on the Commission the burden of demonstrating why any recommended fish and wildlife conditions cannot be included in any license issued.

Commerce states that final section 10(j) recommendations should not be due until 90 days after receipt by the agency of the final NEPA analysis. After this time, any necessary section 10(j) negotiations may begin and be held in the region where the project is located. Commerce and Interior contend that the section 10(j) process should be subject to reopening if needed, as in the case of a license amendment or the results of post-licensing studies. Wildlife Institute, however, wants any change to fish and wildlife recommendations to be made only according to NEPA procedures. National Heritage asks that "evidentiary hearings" be conducted on section 10(j) recommendations, with full rights of public participation and cross-examination of witnesses, in any case where conflicts between the fish and wildlife recommendation and applicable law are not resolved through negotiation. At such a trial-type hearing, expert testimony and documentary evidence could be introduced. Certain state agencies also ask for a hearing prior to the Commission's rejection of any fish and wildlife recommendation.

Wildlife Federation says that the result of the section 10(j) consultation process should be a written set of license conditions on which any party in the proceeding could submit comments prior to a Commission decision. Interior asks the Commission to clarify in the regulations the relationship between its *ex parte* rule and the section 10(j) procedures, especially in reference to explaining when the Commission will consider that a filing has been made "in opposition to" a hydropower application and what relates to the "merits of the case."

In light of the comments received, the Commission has decided to codify its section 10(j) procedures in the regulations. The Commission has now accumulated sufficient experience with the section 10(j) process, since ECPA was passed in 1986, to believe that the procedures adopted herein will be practical, fair to all parties, and consistent with the language and intent of FPA section 10(j). This codification is based on the steps outlined and discussed at length in the NOPR, to which the comments received were directed.

Accordingly, the regulations will specify that the section 10(j) process, applicable to applications for licenses, will consist of the following six steps:

(1) Submittal of fish and wildlife recommendations;

(2) Clarification of fish and wildlife recommendations;

(3) Preliminary determination (in EA or draft EIS) of any inconsistency of the fish and wildlife recommendations with applicable law by Commission staff and notification to all parties, affected resource agencies, and Indian tribes of this determination;

(4) Response by fish and wildlife agency, affected resource agencies, Indian tribes, and other parties to any preliminary determination of inconsistency;

(5) Meeting to be held at the discretion of the Commission staff, as requested by the fish and wildlife agency, any party, or affected resource agency or Indian tribe; and

(6) Issuance of the order on the license application.

The submittal of fish and wildlife recommendations must be made pursuant to the FWCA and by the deadline specified in the regulations for all comments and recommendations on a license application, *i.e.*, 60 days after the Commission declares that the application is ready for environmental analysis. Recommendations filed after this date will not be considered under the FPA section 10(j) process unless an extension of time has been granted by the Commission for such a filing.

Pursuant to delegated authority, the Director of the Office of Hydropower Licensing (OHL) will seek clarification of the fish and wildlife recommendation if it is unclear in any respect, within 45 days of receipt of the recommendation, unless this deadline is extended by OHL with notice to all parties. If the Commissions's questions are communicated in writing to the fish and wildlife agency, copies of the communication will be sent to all parties [179] and affected resource agencies and Indian tribes. In such cases, the fish and wildlife agency, as well as any party or affected resource agency or Indian tribe, may respond to the Commission's questions. In uncontested cases, or if only minor technical clarifications are involved, OHL staff may seek clarification by telephone contact with the fish and wildlife agency.

The Director will make the preliminary determination of any inconsistency of the fish and wildlife recommendation with applicable law. As explained in the NOPR, this determination may for example rest on a conflict between the recommendation and the balancing of competing values, including hydropower potential, required under FPA section 10(a)(1), or it may rest on a finding that the fish and wildlife recommendation is not supported by substantial evidence, required under section 313 of the FPA.[180] Contrary to the claims of some commenters, ECPA neither limited the basis for a determination of inconsistency by the Commission (which may be based on any applicable law) nor established a presumption of validity for any fish and wildlife recommendation, regardless of its lack of evidentiary support.[181]

The Director will notify all fish and wildlife agencies, parties, and affected resource agencies or Indian tribes of his preliminary determination of any inconsistency. The notification will be made in writing and will explain the determination and its basis. Anyone notified will have a right to file written comments with the Commission within 45 days of the date of this determination.[182] Any request for a meeting or telephone or video conference to discuss the determination must be filed with the Commission at the same time.

The Director may schedule a meeting or telephone or video conference with the fish and wildlife agency to discuss any preliminary determination of inconsistency, either on the Director's own initiative or as requested by the fish and wildlife agency, or any party or interested resource agency. If such a meeting or conference is scheduled, it may be held at such time and place as the Director determines, but every reasonable effort will be made to arrange the details of the meeting to suit the convenience of the Director and the participants. At least 15 days' prior notice will be given of any section 10(j) meeting. The Director's staff will conduct the meeting or conference and will be responsible for ensuring that it proceeds in an orderly fashion. Any fish and wildlife agency, party, or affected resource agency or Indian tribe may participate in the meeting or conference, but the focus will be on the attempts of

[179] The applicant is of course a party in all hydropower licensing proceedings.

[180] The final rule requires that a fish and wildlife agency submitting a fish and wildlife recommendation specify the evidentiary support for the recommendation. Section 4.34(b)(2).

[181] It is obvious, for example, that where there are different and conflicting fish and wildlife recommendations made by different fish and wildlife agencies concerned with a single hydropower proposal, some of the recommendations must be rejected, and the only basis to do so under section 10(j) is the conflict of the rejected recommendation with applicable law.

[182] Under the regulations adopted, anyone filing such comments must serve a copy on every party on the official service list in the proceeding. See new § 4.34(b).

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OHL staff and the representatives of the fish and wildlife agency to understand each other's position and attempt to resolve their differences as required by section 10(j). After the conclusion of the meeting or conference, OHL will prepare a written summary of it, which will be circulated to everyone on the official service list in the proceeding.

The section 10(j) process concludes with the issuance by the Commission of a decision in the license proceeding, which will contain the conclusion or findings required by the FPA. Pursuant to Commission rules, any party may request rehearing of this decision to challenge the Commission's determination under section 10(j) and any relevant findings.

Interlocutory appeals of preliminary section 10(j) determinations will not be entertained, nor will trial-type hearings be conducted on section 10(j) matters. Preliminary determinations of consistency of fish and wildlife recommendations with applicable law will not be issued for comment. The rights of commenters requesting such measures are fully protected by the Commission's procedures, as they are revised in this final rule. These commenters have not shown why such measures are helpful or required by FPA section 10(j), nor have they addressed the significant potential of these measures for increasing the burden on the Commission and other participants and delaying decisions in hydropower proceedings.

9. *Intervention.* The NOPR explained that the first opportunity for persons interested in a hydropower proceeding to intervene as a party is when the Commission issues public notice of its acceptance of the application for filing, and that a second opportunity arises if comments are invited on a draft environmental impact statement. In Order No. 511, the Commission issued a policy statement allowing fish and wildlife agencies to intervene as parties "within 30 days after the issuance by staff pursuant to delegated authority of an order rejecting or materially modifying any of its fish and wildlife recommendations, for the limited purpose of permitting that agency to appeal such action to the Commission itself." [163] Order No. 511 stated that this policy would remain in effect on an interim basis pending consideration of this issue in the instant rulemaking.

The NOPR invited comment on whether the Order No. 511 policy statement should be codified in the regulations, and whether it should be expanded to allow a fish and wildlife agency to intervene if the Commission, in a contested case, rejects or materially modifies an agency's recommendation, for the limited purpose of allowing the agency to seek rehearing of the Commission's decision on this point. The NOPR indicated a tentative inclination to codify and expand this procedure, in proposed § 4.34(g), in the interest of dampening the potential for an adversarial spirit in the consultation process. The Commission's objective was to enable fish and wildlife agencies to participate in the proceeding in a less formal posture without foregoing the right to seek rehearing at a later stage, after the deadline for intervention as a party had passed.

Numerous comments were received. Many state agencies [164] request that the period for intervention be 60 days instead of 30, or that it be 30 days from the date of receipt of a notice and that such notices be sent by registered or certified mail. Washington Fisheries doubts that actively interested agencies would delay their intervention even if given a special opportunity to intervene later. California Indian Legal Services requests that the extra intervention opportunity also be extended to Indian tribes. Wildlife Federation supports the proposed regulation but suggests deleting the word "materially" in several places.

American Rivers objects to limiting the special intervention opportunity to state agencies, and advocates making the extra opportunity available to all interested persons on a non-discriminatory basis. Wisconsin River expresses hope that the proposal would reduce "adversarial posturing." NHA, on the other hand, believes that delays in intervention could increase "misunderstanding, miscommunication and hostility." NHA, EEI, and PG&E object to the proposal as unnecessary and unfair, and contend that it would discourage the full and open airing of views at the earliest stages of the proceeding. A number of commenters express doubt that the timing of opportunities to intervene would have any discernible impact on the demeanor of the participants or the adversarial spirit of the proceeding.

We are persuaded by the commenters that the policy adopted on an interim basis in Order No. 511, and the expansion of that policy in proposed § 4.34(g), are unwarranted. Accordingly, the final rule does not adopt proposed § 4.34(g). The interim policy enunciated in Order No. 511, by its terms, is not effective beyond the date of issuance of this order.

On balance, we believe that all interested persons ought to have the same opportunities to participate as formal parties in the proceeding, and that the procedural deadlines for intervening ought to be the same for everyone. We stress to fish and wildlife agencies that the filing of a timely notice or motion to intervene is not burdensome, and does not require the agency to take any position with respect to the merits of the application; a short, neutral expression of interest in the proceeding will suffice to intervene as a timely party to it. The agencies will have ample opportunity to study the applicant's proposal and express a position in later stages of the proceeding. Thus, we believe that it is reasonable to set a uniform deadline for intervention that applies equally to all participants, including fish and wildlife agencies, and we do not believe that this evenhanded approach will impart an adversarial spirit to the consultation proceedings. The Commission will continue to evaluate late requests for intervention on a case-by-case basis, pursuant to the considerations set forth in the Commission's rule governing intervention.[165]

D. Miscellaneous

1. Participation of Indian Tribes. In the NOPR, the Commission proposed to revise its consultation regulation to allow participation by affected Indian tribes.[166] The Commission observed that adoption of such a regulation should not prolong the consultation process, given the time deadlines proposed and the Commission's authority to supervise this process through its review of filed applications. The Commission noted that such a regulation may also avoid needless confrontation and delay that may result from excluding from consultation Indian tribes with important treaty rights that must be taken into account in the administrative process.

Under the proposed rule, applicants would be required to identify Indian tribes that could be affected by a proposed project.[167] The Commission

[163] Statement of Policy Permitting Limited Intervention by Fish and Wildlife Agencies at the Appeal Stage of a Licensing Proceeding, 46 FERC ¶ 61,161 (1989).

[164] Alabama, Arizona, California Fish and Game, Missouri, Montana DFWP, Montana DNRC, Wyoming, and International Ass'n.

[165] 18 CFR 385.214(d).

[166] Proposed § 4.38. The Commission noted that the definition of "Indian tribe" in § 4.30(b)(10) would be an important part of the proposed regulatory scheme, and specifically invited comment on this definition.

[167] Proposed §§ 4.38(a)(1), 4.92(a) and 4.107(a). The Commission noted that applicants could seek

Continued

would specifically seek the comments of Indian tribes on applications as part of its hearing process and would consider those comments in reaching its final decision, as directed by ECPA.[168]

Many of the comments regarding this portion of the NOPR involved the definitions of "Indian tribe" and "fish and wildlife agency" and their implications for the participation of Indian tribes in pre-filing consultation and the section 10(j) process. Comments concerning these definitions are discussed above in section IV.A. Comments concerning the participation of Indian tribes generally, apart from the definitions, are addressed below. For the most part, they concern the role of Indian tribes with respect to two major areas: (1) Pre-filing consultation, and (2) fish and wildlife recommendations.

With regard to pre-filing consultation, all commenters [169] agree as a general matter that Indian tribes should be included. Confederated Tribes state, for example, that adoption of the new regulations would avoid needless confrontation and delay by according Indian tribes, which often have important treaty rights, an opportunity to review and have a role in the planning process for a hydropower project. Similarly, Klamath points out that Native American peoples often have a large stake in the outcome of the Commission's hydropower decisions and are in a uniquely useful position to offer insights and suggestions concerning a particular application.

PG&E suggests that the term "Indian tribes" should be added to various sections of the final rule in the same manner as it appears in part 16 of the Commission's regulations concerning relicensing. Similarly, California Indian Legal Services suggests that the provisions concerning disagreements that may arise during the first stage of consultation in § 4.38(b)(5) should include Indian tribes as well as resource agencies. The Commission agrees, and has modified § 4.38 of the final rule as suggested.

California Indian Legal Services criticizes § 4.38(a)(2) of the proposed rule, which states that the Director of the Office of Hydropower Licensing or the Regional Director responsible for the area in which the project is located will provide, on request, a list of known Indian tribes that may be affected by a project. California Indian Legal Services argues that this should be required in every case, and that the Director should also provide notice of the project by letter to all tribes included on the list. Similarly, Pueblo de Cochiti argues that, as governmental entities, tribes should be entitled to receive notice of proposed projects, along with sufficient information to determine for themselves whether a proposed hydropower project might affect tribal rights or interests.

In response, the Commission notes that § 4.38 requires that, before a hydropower application may be filed with the Commission, an applicant must consult with any Indian tribe (as defined in the regulations) that may be affected by a proposed project. Section 4.38(a)(2), which permits an applicant to request a list of known resource agencies and Indian tribes, is simply a convenient starting point and does not limit the applicant's obligation to consult with any Indian tribe that may be affected. Indian tribes will therefore receive actual, advance notice of a proposed hydropower project by virtue of the requirement that applicants consult with them before an application may be filed with the Commission. Accordingly, no changes to this section of the rule are needed.

With regard to applications for exemption, California Indian Legal Services points out that, although the proposed rule in § 4.107(a) would require the applicant to identify in its application all Indian tribes that may be affected by the project, there are no corresponding provisions in §§ 4.93 and 4.105 requiring that the Indian tribes be provided notice of the application and an opportunity to comment on it.

The Commission agrees that the notices of applications for exemption that are sent to interested agencies pursuant to §§ 4.93 and 4.105 should be sent to affected Indian tribes as well, and has amended those sections as suggested. However, as discussed in section IV.B.2. above, the final rule makes clear that the pre-filing consultation process in § 4.38 applies to applications for exemption. Therefore, Indian tribes that may be affected will be consulted before the application for exemption is filed, and will also receive a copy of the draft application during the second stage of consultation. In addition, consulted Indian tribes will receive a copy of the exemption application when it is filed. Thereafter, Indian tribes will have an opportunity to file comments on the application as filed. Thus, Indian tribes will have many opportunities to comment on the applicant's proposal for exemption, and no changes to the rule are needed.

Klamath argues that the Commission's regulations should take into account the financial situation of Indian tribes and the need for protection of their interests. Klamath asserts that, as a federal agency, the Commission has a trust responsibility toward Indian tribes. Klamath therefore argues that, at a minimum, the Commission's final rule should permit an affected Indian tribe to request additional time within the consultation framework to permit the tribe to participate in a significant manner.

Similarly, Native American Rights Fund expresses concern that the short consultation, recommendation, and comment deadlines imposed by the rule may deprive Indian tribes of meaningful participation, cause severe economic loss, interfere with treaty rights, and violate the federal trust responsibility. Native American Rights Fund argues that the proposed rule does not recognize many tribes' limited resources, which may limit their ability to meet the deadlines. Native American Rights Fund adds that the rule does not allow tribes to request additional time within the consultation framework, to permit them to participate in a significant and effective manner.

The Commission believes that the final rule provides meaningful and significant participation rights to Indian tribes, both before and after an application is filed, and that the time limits established in the rule, including those governing pre-filing consultation, are reasonable, as discussed in section IV.C.4. above. Regarding the proposal to permit requests for extensions of time during pre-filing consultation, the Commission is concerned that adoption of such a proposal could significantly prolong the consultation process and burden the Commission's staff. Once the application is filed with the Commission, any participant may file a request for additional time if it can show good cause for an extension. For these reasons, the Commission does not believe that a change to the final rule is warranted.

With regard to the second major area of interest, many commenters [170] agree

the assistance of the Commission and the Department of the Interior's Bureau of Indian Affairs in making this identification.

[168] Proposed § 4.34(b)(2).

[169] Energy, Interior, Washington Fisheries, Washington Wildlife, PG&E, California Indian Legal Services, Confederated Tribes, Klamath, Native American Rights Fund, Pueblo de Cochiti, Talalip, and Nez Perce. As discussed above in section IV.A.2., however, many of these commenters criticize the proposed definition of "Indian tribe."

[170] Interior, California Indian Legal Services, Klamath, Native American Rights Fund, Pueblo de Cochiti, Talalip, and Nez Perce. As discussed above and in section IV.A., however, many of these commenters believe that Indian tribes should be treated as "fish and wildlife agencies" and that their recommendations concerning fish and wildlife should be subject to the section 10(j) process.

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as a general matter that the Commission's regulations must provide for consideration of the recommendations of Indian tribes concerning fish and wildlife. Interior notes, for example, that section 3 of ECPA requires the Commission to solicit and consider the recommendations (including fish and wildlife recommendations) of Indian tribes affected by a project. Similarly, Pueblo de Cochiti points out that the legislative history of ECPA recognizes that this provision was added in recognition of the high degree of concern and unique interests of Indian tribes, which can make important contributions in hydropower licensing proceedings. Accordingly, Pueblo de Cochiti argues that the Commission must fully include tribal governments in the consultation process for fish and wildlife recommendations. As discussed above in connection with the definition of "Indian tribe," other commenters [101] urge the Commission to go further and treat the fish and wildlife recommendations of Indian tribes in the same manner as those of the fish and wildlife agencies that are subject to the provisions of section 10(j) of the FPA.

The Commission believes that, by providing for extensive involvement of Indian tribes in the hydropower licensing process, both before and after an application is filed, the final rule establishes a role for Indian tribes that, in many respects, is parallel to that of fish and wildlife agencies. As discussed above, participation in the pre-filing consultation process includes an opportunity to comment on a proposal at the earliest possible stage as well as to request studies. In addition, the final rule permits Indian tribes to file fish and wildlife recommendations for the Commission's consideration at the same time that such recommendations are required to be proposed by fish and wildlife agencies. However, as stated in the NOPR and as discussed above in section IV.A., Indian tribes are not fish and wildlife agencies within the meaning of section 10(j) of the FPA. Therefore, the Commission will not subject the fish and wildlife recommendations of Indian tribes to the section 10(j) process.

California Indian Legal Services recommends that, because Indian tribes are subject to the same technical and evidentiary requirements as fish and wildlife agencies in § 4.36(b)(1)(i), their comments and recommendations should be accorded the same procedural treatment, and that 90 days, rather than 60, should be provided for submitting terms and conditions or prescriptions. The Commission notes that § 4.34(b)(1) does not concern Indian tribes, but is restricted to agencies responsible for mandatory terms and conditions and prescriptions. Recommended fish and wildlife conditions of fish and wildlife agencies and Indian tribes are addressed in § 4.34(b)(2). They are subject to the same general requirements, in that both agencies and tribes must discuss the resource issues presented and provide the evidentiary basis for their recommended terms and conditions. The Commission believes that the 60-day time limit is sufficient as a general matter and that, if circumstances so warrant, an agency or tribe may file a request for additional time.

California Indian Legal Services notes that, although § 4.34(f)(3) provides that the Commission will "consider" the timely recommendations of Indian tribes affected by the project, there is no specification of the particular standards for the Commission's consideration of these recommendations. The Commission notes that § 4.34(f)(3) concerns the findings that are required by section 10(j)(2) of the FPA if, after attempting to resolve inconsistencies, the Commission does not adopt a fish and wildlife recommendation of a fish and wildlife agency. The fish and wildlife recommendations of Indian tribes are addressed in § 4.34(f)(1)(iii). Although no specific standards are included, the Commission does not believe that they are necessary, as no specific statutory findings must be made. The Commission notes, however, that the licensing decision should include a discussion of any conditions recommended by the tribe and why they were or were not included in the license.

2. *Participation of the public.* In the NOPR, the Commission proposed a number of revisions to its regulations on hydropower applications to improve the flow of information to the public on proposed projects and to seek public input on studies that an applicant should conduct. The NOPR stated that the existing § 4.38 concerning applications for original licenses or exemptions did not require the applicant to consult with the public during the pre-filing consultation process and limited the public's access to information about a proposed project to the Commission's public reference room located in Washington, DC.

The NOPR explained that the proposed revisions to the consultation process in § 4.38, as adopted herein, would require a potential applicant for a license or exemption: (1) To hold a joint meeting at the first stage of the process; (2) to invite the public to participate; and (3) to make available to the public a description of the proposed hydropower facilities.[102] At the meeting, the applicant would be required to summarize the potential environmental impact of the proposed project and to discuss what scientific studies are necessary to support the application. After filing its application with the Commission, the applicant would be required: (1) To maintain a file, at its regular place of business or other more accessible location, containing its complete application for license or exemption; (2) to allow public access to this file during normal business hours; and (3) to make copies of the material available to the public on request after payment of reasonable fees.[103] The applicant would also be required to provide a copy of its complete application (as amended) to a public library or other convenient public office located in each county in which the proposed hydropower project is located.[104]

The NOPR stated that, within 14 days after filing its hydropower application with the Commission, an applicant for license or exemption would be required to publish a notice in a newspaper in each county in which the proposed hydropower project is located.[105] The notice would disclose the filing date of the application, briefly summarize the application, describe the places where a copy of the application is available to the public, and set forth the date by which any requests by the public for additional scientific studies on the proposed project are due to be filed with the Commission. The notice would also inform the public that the Commission will publish subsequent notices soliciting public participation if the application is found acceptable for filing.

As a general matter, most commenters [106] support the

[101] California Indian Legal Services, Klamath, Native American Rights Fund, and Nez Perce.

[102] Sections 4.38 (b)(2) and (g). Compare § 16.8 (applying to relicense applicants).

[103] Sections 4.32(b) (2)–(3). Compare the similar regulation recently adopted for relicensing applicants in 18 CFR 16.7.

[104] Section 4.32(b)(4)(ii). The Commission noted that, under the existing rules, only applicants for relicensing subject to part 16 must maintain a public file.

[105] Section 4.32(b)(6).

[106] Energy, Washington Fisheries, Washington Wildlife, Public Generating Pool, American Rivers, and Wildlife Federation.

Commission's proposal to permit public participation in the pre-filing consultation process. However, some commenters criticize specific aspects of the proposed rule, or urge the Commission to go further to increase the role of the public in the pre-filing consultation process.

Energy, American Rivers, and Wildlife Federation expressly agree with the provisions of the proposed rule requiring the applicant to hold a public meeting during the first stage of consultation and to maintain a file on the project accessible to the public after the application is filed. Similarly, Public Generating Pool supports involving the general public in the application process for licensing and exemptions in the early stage of consultation to a degree comparable to that provided in the Commission's relicensing regulations in 18 CFR part 16. Public Generating Pool observes that this should help to minimize unnecessary adversarial confrontation and possible litigation following submittal of license applications.

American Paper questions the need for a requirement to hold a public meeting, noting that several of its members have held joint meetings with resource agencies which no member of the public attended. American Paper suggests that, in view of the expense involved, it might be as effective for the Commission simply to require the applicant to notify the public in newspaper notices when the application is filed and to offer to meet individually with members of the public or to hold a public meeting if requested. American Paper also suggests that summaries of the meetings, rather than transcripts, could be provided.

The Commission continues to believe that the applicant should be required to hold a public meeting during the first stage of the pre-filing consultation process. In the Commission's experience, meetings of this type are generally helpful in identifying issues and information needs, and many are well attended. In addition, the rule permits either audio recordings or written transcripts; therefore, the expenses of a court reporter need not be incurred if the applicant so chooses. For these reasons, the Commission has decided to retain the public meeting requirement in the final rule.

American Rivers and Wildlife Federation argue that the public should not be excluded from the pre-filing consultation process. American Rivers asserts that the pre-filing consultation process is part of a Commission proceeding to which NEPA applies, thereby mandating early and effective public involvement. American Rivers adds that the public should be given an opportunity to comment before the applicant and resource agencies reach agreement on some of the terms and conditions of the hydropower license, arguing that, if public comments are not permitted until after consultation is complete and the application has been filed, they will either be ignored or will jeopardize the agreements made during consultation. American Rivers therefore asserts that the public should be permitted an opportunity to comment on all of the applicant's pre-filing submissions to the agencies, and to attend all meetings held during the pre-filing consultation process.

Similarly, Wildlife Federation argues that the early public meeting required in the proposed rule should be used to create a list of persons interested in participating in the pre-filing consultation process with the agencies, and that those persons should be given notice and invited to participate in each meeting and telephone call throughout the pre-filing consultation process. Wildlife Federation urges the Commission to make clear that applicants may not exclude members of the public from pre-filing consultations, even if the Commission does n require applicants to invite them. Wildlife Federation also argues that there is no basis for allowing applicants the discretion to exclude members of the public from site visits coordinated with resource agencies at the time of the public meeting.

The Commission believes that, by requiring the applicant to hold a public meeting in the vicinity of a proposed hydropower site during the first stage of consultation and to maintain a public file on the project, the final rule provides a significant new opportunity for early public involvement in the hydropower process. It bears emphasizing that this opportunity is provided before the application is filed. Additional opportunities for public involvement are provided at later stages in the process: when the application is filed, when it is accepted for filing, and when it undergoes environmental review. Additional public involvement in pre-filing consultation would delay the process without significantly improving the quality of the application that is filed with the Commission. In these circumstances, the additional public participation measures suggested are neither necessary nor appropriate.

With regard to NEPA, it should be noted that at the pre-filing stage there is no "federal action" contemplated, because the applicant's proposal has not yet been submitted for the Commission's consideration. Accordingly, NEPA does not require the expanded public involvement that American Rivers urges the Commission to adopt. Moreover, there is nothing in the final rule to prevent individuals or groups interested in the proposed project from contacting the applicant or the agencies directly to obtain information or to make their concerns known. Indeed, the requirement that the applicant hold a public meeting and maintain a project file should facilitate such efforts. In the Commission's view, the public participation measures in the final rule are substantial, and inclusion of the public in the various pre-filing meetings, site visits, and telephone calls is a matter that is appropriately left to the discretion of the applicant and the agencies involved.

PG&E recommends deletion of § 4.32(b)(6), which requires the applicant to publish a notice of its filing of the application within 14 days of the filing and specifies the information to be included in the notice. PG&E argues that this additional notice is unnecessary, inefficient, and potentially confusing. As an alternative, PG&E suggests that the Commission should be responsible for publishing the notice, because applicants do not receive timely notice from the Commission of the official filing date of their applications.

It appears that PG&E may misunderstand the purpose of this notice. It is not intended to inform the public of the official filing date of the application (*i.e.*, when the application is stamped "received" by the Secretary of the Commission). Rather, it is intended to inform the public, within a reasonable time after the actual filing, that the applicant has filed its application with the Commission. In order to comply with this provision, the applicant need only publish the required notice within 14 days of filing its application, regardless of the official filing date that is later established when the Commission actually receives the application. The Commission disagrees that this additional notice is unnecessary. It is intended to provide the public with additional information about the project and invite public input on necessary studies at an earlier stage of the licensing process.[107] It is not particularly burdensome, and may have a beneficial effect by allowing issues raised by the public to be resolved earlier rather than later. Therefore, the Commission has retained this provision in the final rule.

[107] See § 4.32(b)(7).

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American Rivers and Wildlife Federation argue that publication of a newspaper notice is inadequate to provide the public with actual notice of the application. American Rivers also criticizes the proposed rule for requiring the public to learn about and file comments by three separate deadlines: (1) For commenting on the adequacy of the record, (2) for filing a motion to intervene, and (3) for filing substantive comments on the application. American Rivers asserts that this places an extreme and needless burden on the public. As an alternative, American Rivers and Wildlife Federation both recommend that the Commission publish a public notice in the Federal Register and invite public comments and interventions immediately upon the filing of an application. Wildlife Federation adds that the Commission should codify its existing practice of accepting motions to intervene after an application has been filed but before the application has been accepted for filing.

The Commission believes that the final rules provide for adequate notice to the public. As discussed above, the applicant is required to hold a public meeting in the vicinity of the proposed project before filing the application, and to publish a notice of filing in local newspapers shortly after the application is filed. Moreover, the Commission will publish a Federal Register notice, inviting comments and interventions, when the application is accepted for filing, as required by FPA section 4(e). Thus, there is no need for a Federal Register notice at the time that the application is filed.

The Commission does not share the commenter's concern that the public will be burdened or confused by multiple notices. Different notices are appropriate at different stages of the process, and each will indicate what action is invited in response to the notice. With regard to intervention, the Commission notes that its existing practice permits the filing of a motion to intervene at any time after an application is filed, although the Commission does not formally invite such motions until after the application is accepted for filing. The Commission intends to continue this practice, but believes that its codification is not required.

Finally, American Rivers asserts that the Commission should improve the opportunity of the public to participate by requiring applicants to serve copies of their applications on all persons and entities that have been granted intervenor status. American Rivers asserts that the unreasonably high cost and administrative delays involved in obtaining copies of applications from the Commission's Public Information Office represent an unreasonable barrier to public involvement and that applicants should bear the cost of serving copies of their applications on intervenors as a cost of doing business.

The Commission disagrees with the assertion that the cost of obtaining a copy of the application represents an unreasonable barrier to public involvement in the hydropower process. Many hydropower proceedings are contested, suggesting that participants do not consider these costs prohibitive. Participation as a party necessarily involves some costs and administrative burdens, and each participant must decide whether its interests in the proceeding are such that it must intervene in order to protect them adequately, rather than merely filing a protest. In addition, the final rule requires the applicant to maintain a project file containing its complete license or exemption application at its principal place of business or more accessible location, and to provide a copy of the application, as amended, to a public library or other convenient public office located in each county in which the proposed project is located. This should alleviate the economic and administrative burdens associated with obtaining a copy of the application.

3. *Transition Provisions.* EEI suggests deleting the clause at the end of the sentence in proposed § 4.38(h)(1)[199] in order to avoid an unintended effect when that clause is read in conjunction with § 4.38(a)(4)(iii). The clause is in any event unnecessary and confusing; we have deleted it.

Interior and Michigan point out that the transition provisions in § 4.38(h) apply only to the consultation process, and request clarification as to the timing of the applicability of §§ 4.30, 4.32, and 4.34. The final rule adopted herein becomes effective 30 days after it is published in the Federal Register. The principal purpose of the transition provision in § 4.38(h) was to avoid the repetition of stages of the pre-filing consultation process that had already been completed even though the application had not yet been filed.

The final rule amends § 4.30 by adding and revising several definitions. These new definitions will become effective when the final rule itself becomes effective, and will be used by the Commission in its decisions on and after that date.

The amendments to § 4.32 generally impose requirements on applicants to file, maintain, and/or make available certain information, and authorize and/or require the participants in the license application process to make various requests, responses, and filings. These procedural requirements apply as of the effective date of the final rule. This does not, for instance, require the applicant to create a backdated public file of material that it was not previously required to retain and make available, but it does require the applicant to commence retaining such material and to make available in its public file whatever such material it has in its possession.

Revised § 4.34 establishes procedures for hearings and related filings, consultations, negotiations, conditions, and requests for rehearing, etc. These provisions apply as of the effective date of the final rule, and govern the conduct of the hearing processes that occur on and after that date.

4. *Clarification of Delegated Authority.* Washington Wildlife inquires about delegations of authority to the staff to implement section 10(j). The Commission recognizes that its staff has had the authority to implement section 10(j), subject to appeal or requests for rehearing. New § 375.314(s) of the regulations, proposed in the NOPR and adopted herein with changes to make the section conform to the new § 10(j) regulations adopted herein,[199] clarifies that the Director of the Office of Hydropower Licensing has the authority to make preliminary determinations of inconsistency between a resource agency's fish and wildlife recommendations and applicable law, and to conduct through staff whatever consultation with the agency that is appropriate to attempt to resolve such inconsistencies.[200]

In light of the comments received on the pre-filing consultation process, we are also delegating to the Director the authority to waive the pre-filing consultation requirements in §§ 4.38 and 16.8 whenever the Director, in his discretion, determines that an emergency so requires, or that the potential benefit of expeditiously considering a proposed improvement in

[199] Proposed § 4.38(h)(1) reads "(1) The provisions of this section are not applicable to applications filed before [insert the effective date of this rule] if such applications are subject to this section as it existed prior to this date." [Emphasis added.]

[199] See § 4.38(c).

[200] This clarification of delegated authority simply codifies past practice and conforms it directly to the provisions of this final rule. The Commission expressly rejects any suggestion that any prior finding of consistency or inconsistency by the Director was made without the authority to make such a finding.

safety, environmental protection, efficiency, or capacity outweighs the potential benefit of requiring completion of the consultation process prior to the filing of an application. This delegation of authority is adopted in new § 375.314(t).

As discussed elsewhere above, the purpose of the pre-filing consultation requirement is to expedite the license application process by ensuring that the applicant has considered the relevant environmental factors when it prepares the application for filing. There may, however, be situations in which the Director determines that the pre-filing consultation process is unwarranted, or would delay consideration of significant proposed benefits. We anticipate that such situations would be most likely to arise in the context of applications to amend a license, but have crafted the authority in broader terms in case it is needed.

Finally, as stated above in section IV.C.4., the Commission has routinely set deadlines for submissions regarding hydropower applications, including comments, recommendations under the FWCA and FPA section 10(j), mandatory conditions under FPA section 4(e), and prescriptions under FPA section 18. The final rule adopts deadlines for such submissions, but in the case of many pending applications certain deadlines in the new regulations may not apply because the licensing process is too advanced. In some of these cases there may be questions as to whether earlier submissions still reflect the positions of the parties and agencies concerned, while in other cases there may be questions as to whether agencies that have not done so may submit recommendations, mandatory conditions, or prescriptions. Therefore, the Commission clarifies and confirms herein that the Director of the Office of Hydropower Licensing has the authority, under 18 CFR 375.314, to deal with these and other transitional questions in pending hydropower proceedings, and, where necessary or appropriate, to set deadlines for submissions or to take other action in order to ensure the completeness of the record for decision.

5. *Application of FPA Section 4(e) to relicensing.* In setting out license conditions and required findings,[202] we stated that licenses for a project located within any federal reservation shall be issued only after the findings required by, and subject to any conditions timely received pursuant to, section 4(e) of the FPA.[203]

EEI argues that the authority to impose section 4(e) conditions does not extend to new licenses (relicenses), and requests that the section be modified to limit its applicability to original licenses. EEI notes the Commission's finding in *City of Pasadena*[204] that section 15 does not provide the exclusive authority to issue new licenses so as to exclude the applicability of section 4(e), but argues that the *Pasadena* decision and its codification in the Commission's regulations are inconsistent with the actual wording of the FPA and its underlying purposes. The Commission concludes that EEI's argument has no merit, for the reasons discussed in the *Pasadena* order.

6. *Filing requirements for certain applicants.* Section 15 of the FPA requires that applications for a new license[204] be filed at least two years before the existing license expires. The Commission's records indicate that approximately 170 applications for new hydropower licenses are due by December 31, 1991. These licenses expire on December 31, 1993. To facilitate the formidable task of processing all of these applications, the Commission is hereby changing specified filing requirements for all new license applications due between the effective date of this rule and December 31, 1991. The Commission hopes that these applications will be filed as soon as possible to enable staff to begin to process them.

Under the existing regulations, an applicant for a new hydropower license must file its application in accordance with the filing regulations set forth at 18 CFR 385.2004: An original and 14 copies of the application must be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The submission may either be hand-delivered or mailed, and the official filing date is when the application is actually received by the Secretary. The requirements of 18 CFR 16.8, requiring service of a copy of the application on all resource agencies consulted, must be met.

Under the regulations as revised herein, an applicant for a new license must comply with different filing requirements if the application is due between the effective date of this rule and December 31, 1993. Under the final rule, if such an applicant hand-delivers copies of its application to the Secretary, the applicant must certify in its transmittal letter for the application that it has complied with the following requirements. The applicant must hand-deliver at the same time five copies of the application to the Director, Division of Project Review, Office of Hydropower Licensing, room 1023, 810 First Street, NE., Washington, DC 20426. In addition, the applicant must serve one copy of the application on each of the following addresses:[206] (1) The Commission's Regional Office responsible for the area in which the project is located; (2) the U.S. Bureau of Land Management; (3) the U.S. Corps of Engineers; and (4) the U.S. Department of the Interior.

The number of copies the applicant must file with the Secretary may be reduced by the number of copies required to be served on the addressees listed in appendix B. For example, if an applicant for a new license serves four copies of its application on pertinent addressees listed in appendix B, the applicant need mail only an original and ten copies to the Secretary. Furthermore, if an applicant for a new license hand delivers[207] copies of its application to the Secretary, and at the same time hand-delivers five copies of the application to the Director, Division of Project Review, Office of Hydropower Licensing,[207] and serves four copies on pertinent addressees listed in appendix B, the applicant need hand-deliver to the Secretary only an original and five copies of its application.

V. Environmental Analysis

Commission regulations describe the circumstances where preparation of an environmental assessment or an environmental impact statement will be required.[208] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[209] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended.[210]

[201] Section 4.34(f).

[202] Section 4.34(b)(5)(iv).

[203] 49 FERC ¶ 61,086 (1989).

[204] See the definition of "new license" in 18 CFR 16.2(a).

[206] These addresses are listed in appendix B.

[207] Hand-delivery is considered the delivery by means other than the U.S. mail, and includes delivery by any messenger or package or courier service.

[208] The Office of Hydropower Licensing does not have a mail stop separate from the Secretary.

[209] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), codified at 18 CFR part 380.

[210] 18 CFR 380.4(a)(2)(ii).

[210] 18 CFR 380.4.

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This final rule is procedural in nature. It identifies certain information that must be included with an application, and consultation and hearing procedures that would be employed by the Commission in hydropower proceedings. Thus, no environmental assessment or environmental impact statement is necessary for the requirements implemented in the rule.

VI. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA) [211] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[212] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities, and that, even if the rule were to have a significant impact on a substantial number of small entities, it would be to their benefit. The Commission believes that most of the entities affected by the proposed rule do not fall within RFA's definition of "small entity." Even if the rule would have a significant effect on a substantial number of small entities, however, the application requirements implemented in this rule are appropriate or necessary for the Commission to grant a license or exemption to an application. Any applicant may benefit substantially by obtaining a license or exemption.

VII. Information Collection Requirements

The Office of Management and Budget's (OMB) regulations [213] require that OMB approve certain information collection requirements imposed by agency rules. The information collection requirements in this final rule are contained in FERC-500, Application for License for Water Power Projects With More Than 5 MW Capacity, and FERC-505, Application for License for Water Power Projects 5 MW or Less.

Part I of the FPA gives the Commission jurisdiction over the licensing of hydropower projects. Owners and operators of potential hydropower projects subject to this rule are the likely respondents. Applications for licenses for water power projects having more than a 5 MW capacity (FERC-500) are estimated to have a total annual reporting time of 40,768 hours. The estimated number of respondents is 49; the frequency of response per year is one; and the estimated average number of hours per response is 832. Applications for licenses for a water power project having a capacity of 5 MW or less (FERC-505) are estimated to have a total annual reporting time of 12,460 hours. The number of respondents per year is estimated to be 70; the frequency of response per year is estimated to be one; and the estimated average number of hours per response is 178.

VIII. Effective Date

This rule is effective June 19, 1991. If OMB has not approved the information collection provisions at that time, the Commission will issue a notice delaying the effective date until OMB approval of the final rule.

List of subjects

18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 16

Electric power.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 380

Environment, National Environmental Policy Act.

In consideration of the foregoing, the Commission amends parts 4, 16, 375, and 380 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission. Commissioner Trabandt dissented in part on the application of section 4(e) and section 18 to relicensing. Commissioner Moler dissented in part with a separate statement attached. Commissioner Langdon dissented in part with a separate statement to be issued later.

Linwood A. Watson, Jr.,

Acting Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for part 4 is amended to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In § 4.30, paragraph (b)(9) is revised, paragraph (b)(11) is removed, paragraph (b)(10) is redesignated as paragraph (b)(11), paragraphs (b)(25), (b)(26), (b)(27), and (b)(28) are redesignated as paragraphs (b)(26), (b)(28), (b)(29), and (b)(30), and new paragraphs (b)(10), (b)(25), and (b)(27) are added to read as follows:

§ 4.30 Applicability and definitions.

* * * * *

(b) * * *

(9)(i) *Fish and wildlife agencies* means the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency in charge of administrative management over fish and wildlife resources of the state in which a proposed hydropower project is located.

(ii) *Fish and wildlife recommendation* means any recommendation designed to protect, mitigate damages to, or enhance any wild member of the animal kingdom, including any migratory or nonmigratory mammal, fish, bird, amphibian, reptile, mollusk, crustacean, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any egg or offspring thereof, related breeding or spawning grounds, and habitat. A "fish and wildlife recommendation" includes a request for a study which cannot be completed prior to licensing, but does not include a request that the proposed project not be constructed or operated, a request for additional pre-licensing studies or analysis or, as the term is used in §§ 4.34(e)(2) and 4.34(f)(3), a recommendation for facilities, programs, or other measures to benefit recreation or tourism.

(iii) *Fishway* means any structure, facility, or device used for the upstream passage of fish through, over, or around the project works of a hydropower project, such as fish ladders, fish locks, fish lifts and elevators, and similar physical features; those screens, barriers, and similar devices that operate to guide fish to a fishway; and flows within the fishway necessary for its operation.

(10) *Indian tribe* means, in reference to a proposal to apply for a license or exemption for a hydropower project, an Indian tribe which is recognized by treaty with the United States, by federal statute, or by the U.S. Department of the Interior in its periodic listing of tribal governments in the Federal Register in accordance with 25 CFR 83.6(b), and whose legal rights as a tribe may be affected by the development and operation of the hydropower project proposed (as where the operation of the proposed project could interfere with the management and harvest of anadromous fish or where the project works would be located within the tribe's reservation).

* * * * *

(25) *Ready for environmental analysis* means the point in the processing of an application for an original or new license or exemption from licensing which has been accepted for filing, where substantially all additional information requested by the Commission has been filed and found adequate.

* * * * *

(27) *Resource agency* means a Federal, state, or interstate agency exercising administration over the areas of flood control, navigation, irrigation, recreation, fish and wildlife, water resource management, or cultural or other relevant resources of the state or states in which a project is or will be located.

* * * * *

3. In § 4.32, the heading is revised, paragraphs (a)(2)(iii)(B) and (a)(2)(iv) are revised, new paragraphs (a)(2)(v) and (b)(3) through (b)(27) are added, and paragraph (d)(4) is revised to read as follows:

§ 4.32 Acceptance for filing or rejection; information to be made available to the public; requests for additional studies.

(a) * * *

(2) * * *

(iii) * * *

(B) That owns, operates, maintains, or uses any project facilities or any Federal facilities that would be used by the project;

(iv) Every other political subdivision in the general area of the project that there is reason to believe would likely be interested in, or affected by, the application; and

(v) All Indian tribes that may be affected by the project.

* * * * *

(b) * * *

(3)(i) An applicant must make information regarding its proposed project reasonably available to the public for inspection and reproduction, from the date on which the applicant files its application for a license or exemption until the licensing or exemption proceeding for the project is terminated by the Commission. This information includes a copy of the complete application for license or exemption, together with all exhibits, appendices and any amendments, and any comments, pleadings, supplementary or additional information, or correspondence filed by the applicant with the Commission in connection with the application.

(ii) An applicant must delete from any information made available to the public under this section, specific site or property locations the disclosure of which would create a risk of harm, theft, or destruction of archeological or Native American cultural resources or to the site at which the sources are located, or would violate any federal law, including the Archeological Resources Protection Act of 1979, 16 U.S.C. 470w–5, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh.

(4)(i) An applicant must make available the information specified in paragraph (b)(3) of this section in a form that is readily accessible, reviewable, and reproducible, at the same time as the information is filed with the Commission or required by regulation to be made available.

(ii) An applicant must make the information specified in paragraph (b)(3) of this section available to the public for inspection:

(A) At its principal place of business or at any other location that is more accessible to the public, provided that all the information is available in at least one location;

(B) During regular business hours; and

(C) In a form that is readily accessible, reviewable and reproducible.

(iii) The applicant must provide a copy of the complete application (as amended) to a public library or other convenient public office located in each county in which the proposed project is located.

(iv) An applicant must make requested copies of the information specified in paragraph (b)(3) of this section available either:

(A) At its principal place of business or at any other location that is more accessible to the public, after obtaining reimbursement for reasonable costs of reproduction; or

(B) Through the mail, after obtaining reimbursement for postage fees and reasonable costs of reproduction.

(5) Anyone may file a petition with the Commission requesting access to the information specified in paragraph (b)(3) of this section if it believes that an applicant is not making the information reasonably available for public inspection or reproduction. The petition must describe in detail the basis for the petitioner's belief.

(6) An applicant must publish a notice of the filing of its application, no later than 14 days after the filing date, in a daily or weekly newspaper of general circulation in each county in which the project is located. The notice must disclose the filing date of the application and briefly summarize it, including the applicant's name and address, the type of facility applied for, its proposed location, the places where the information specified in paragraph (b)(3) of this section is available for inspection and reproduction, and the date by which any requests for additional scientific studies are due under paragraph (b)(7) of this section, and must state that the Commission will publish subsequent notices soliciting public participation if the application is found acceptable for filing. The applicant must promptly provide the Commission with proof of publication of this notice.

(7) If any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, Indian tribe, or person must file a request for the study with the Commission not later than 45 days after the application is filed and serve a copy of the request on the applicant. For any such additional study request, the requester must describe the recommended study and the basis for the request in detail, including who should conduct and participate in the study, its methodology and objectives, whether the recommended study methods are generally accepted in the scientific community, how the study and information sought will be useful in furthering the resource goals that are affected by the proposed facilities, and approximately how long the study will take to complete, and must explain why the study objectives cannot be achieved using the data already available. In addition, in the case of a study request by a resource agency or Indian tribe that had failed to request the study during the pre-filing consultation process under § 4.38 or § 16.8 of this chapter, the agency or Indian tribe must explain why this request was not made during the pre-filing consultation process and show good cause why its request for the study should be considered by the Commission.

(8) An applicant may file a response to any such study request within 30 days of its filing, serving a copy of the response on the requester.

(9) The requirements of paragraphs (b)(3) to (b)(8) of this section only apply to an application for license or exemption filed on or after May 20, 1991. Paragraphs (b)(3) and (b)(4) of this section do not apply to applications subject to the requirements of § 16.7 of this chapter.

(d) * * *

[211] 5 U.S.C. 601–612 (1988).

[212] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1988).

[213] 5 CFR 1320.13.

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(4) For an application for a license seeking benefits under section 210 of the Public Utility Regulatory Policies Act of 1978, as amended, for a project that would be located at a new dam or diversion, serve the public notice issued for the application under paragraph (d)(2)(i) of this section to interested agencies at the time the applicant is notified that the application is accepted for filing.

* * * * *

4. Section 4.34 is revised to read as follows:

§ 4.34 Hearings on applications; consultation on terms and conditions; motions to intervene.

(a) *Trial-type hearing.* The Commission may order a trial-type hearing on an application for a preliminary permit, a license, or an exemption from licensing upon either its own motion or the motion of any interested party of record. Any trial-type hearing will be limited to the issues prescribed by order of the Commission. In all other cases the hearings will be conducted by notice and comment procedures.

(b) *Notice and comment hearings.* All comments (including mandatory and recommended terms and conditions or prescriptions) on an application for exemption or license must be filed with the Commission no later than 60 days after issuance by the Commission of notice declaring that the application is ready for environmental analysis. All reply comments must be filed within 105 days of that notice. All comments and reply comments and all other filings described in this section must be served on all persons listed in the service list prepared by the Commission, in accordance with the requirements of § 385.2010 of this chapter. If a party or intervenor (as defined in § 385.2201 of this Chapter) submits any written material to the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, the party or intervenor must also serve a copy of the submission on this resource agency. The Commission may allow for longer comment or reply comment periods if appropriate. A commenter or reply commenter may obtain an extension of time from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with § 385.2008 of this chapter. Late-filed fish and wildlife recommendations will not be subject to the requirements of paragraphs (e), (f)(1)(ii), and (f)(3) of this section, and late-filed terms and conditions or prescriptions will not be subject to the requirements of paragraphs (f)(1)(iv), (f)(1)(v), and (f)(2) of this section. Late-filed fish and wildlife recommendations, terms and conditions, or prescriptions will be considered by the Commission under section 10(a) of the Federal Power Act if such consideration would not delay or disrupt the proceeding.

(1) *Agencies responsible for mandatory terms and conditions and presentations.* Any agency responsible for mandatory terms and conditions or prescriptions for licenses or exemptions, pursuant to sections 4(e), 18, and 30(c) of the Federal Power Act and section 405(d) of the Public Utility Regulatory Policies Act of 1978, as amended, must provide these terms and conditions or prescriptions in its initial comments filed with the Commission pursuant to paragraph (b) of this section. In those comments, the agency must specifically identify and explain the mandatory terms and conditions or prescriptions and their evidentiary and legal basis. If ongoing agency proceedings to determine the terms and conditions or prescriptions are not completed by the date specified, the agency must submit to the Commission by the due date:

(i) Preliminary terms and conditions or prescriptions and a schedule showing the status of the agency proceedings and when the terms and conditions or prescriptions are expected to become final; or

(ii) A statement waiving the agency's right to file the terms and conditions or prescriptions or indicating the agency does not intend to file terms and conditions or prescriptions.

(2) *Fish and Wildlife agencies and Indian tribes.* All fish and wildlife agencies must set forth any recommended terms and conditions for the protection, mitigation of damages to, or enhancement of fish and wildlife, pursuant to the Fish and Wildlife Coordination Act and section 10(j) of the Federal Power Act, in their initial comments filed with the Commission by the date specified in paragraph (b) of this section. All Indian tribes must submit recommendations (including fish and wildlife recommendations) by the same date. In those comments, a fish and wildlife agency or Indian tribe must discuss its understanding of the resource issues presented by the proposed facilities and the evidentiary basis for the recommended terms and conditions.

(3) *Other Government agencies and members of the public.* Resource agencies, other governmental units, and members of the public must file their recommendations in their initial comments by the date specified in paragraph (b) of this section. The comments must clearly identify all recommendations and present their evidentiary basis.

(4) *Submittal of modified recommendations, terms and conditions or prescriptions.* (i) If the information and analysis (including reasonable alternatives) presented in a draft environmental impact statement, issued for comment by the Commission, indicate a need to modify the recommendations or terms and conditions or prescriptions previously submitted to the Commission pursuant to paragraphs (b)(1), (b)(2), or (b)(3) of this section, the agency, Indian tribe, or member of the public must file with the Commission any modified recommendations or terms and conditions or prescriptions on the proposed project (and reasonable alternatives) no later than the due date for comments on the draft environmental impact statement. Modified recommendations or terms and conditions or prescriptions must be clearly distinguished from comments on the draft statement.

(ii) If an applicant files an amendment to its application that would materially change the project's proposed plans of development, as provided in § 4.35, an agency, Indian tribe or member of the public may modify the recommendations or terms and conditions or prescriptions it previously submitted to the Commission pursuant to paragraphs (b)(1), (b)(2), or (b)(3) of this section no later than the due date specified by the Commission for comments on the amendment.

(c) *Additional procedures.* If necessary or appropriate the Commission may require additional procedures (*e.g.*, a pre-hearing conference, further notice and comment on specific issues or oral argument). A party may request additional procedures in a motion that clearly and specifically sets forth the procedures requested and the basis for the request. Replies to such requests may be filed within 15 days of the request.

(d) *Consultation procedures.* Pursuant to the Federal Power Act and the Public Utility Regulatory Policies Act of 1978, as amended, the Commission will coordinate as appropriate with other government agencies responsible for mandatory terms and conditions for exemptions and licenses for hydropower projects. Pursuant to the Federal Power Act and the Fish and Wildlife Coordination Act, the Commission will consult with fish and wildlife agencies concerning the impact of a hydropower proposal on fish and wildlife and appropriate terms and conditions for

license to adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat). Pursuant to the Federal Power Act and the Endangered Species Act, the Commission will consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, concerning the impact of a hydropower proposal on endangered or threatened species and their critical habitat.

(e) *Consultation on recommended fish and wildlife conditions; section 10(j) process.* (1) In connection with its environmental review of an application for license, the Commission will analyze all terms and conditions timely recommended by fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act for the protection, mitigation of damages to, and enhancement of fish and wildlife affected by the development, operation, and management of the proposed project. Submission of such recommendations marks the beginning of the process under section 10(j) of the Federal Power Act.

(2) Within 45 days of the filing of any fish and wildlife recommendation, the Commission may seek clarification of it, unless this deadline is extended by the Commission upon notice to the fish and wildlife agency concerned. If the Commission's request for clarification is communicated in writing, copies of the request will be sent by the Commission to all parties, affected resource agencies, and Indian tribes, which may file a response to the request for clarification within the time period specified by the Commission.

(3) The Commission will make a preliminary determination of inconsistency of the fish and wildlife recommendation with the purposes and requirements of the Federal Power Act or other applicable law. This preliminary determination will be done in writing and shall include an explanation of its basis, including appropriate references to the environmental analysis conducted on the license application. A copy of the environmental analysis will be provided with the determination, and will be sent to all parties, affected resource agencies, and Indian tribes.

(4) Any party, affected resource agency, or Indian tribe may file comments in response to the preliminary determination of inconsistency within 45 days of its issuance. In this filing, the fish and wildlife agency concerned may also request a meeting, telephone or video conference or other additional procedure to attempt to resolve any preliminary determination of inconsistency.

(5) If the Commission decides to conduct any meeting, telephone or video conference or to adopt any other procedure to address issues raised by its preliminary determination of inconsistency and comments thereon, the Commission will give at least 15 days' advance notice to each party, affected resource agency, or Indian tribe, which may participate in the meeting or conference. The Commission will prepare a written summary of any meeting held under this subsection to discuss section 10(j) issues, and a copy of the summary will be sent to all parties, affected resource agencies, and Indian tribes. If the Commission believes that any fish and wildlife recommendation submitted by a fish and wildlife agency may be inconsistent with the purposes and requirements of the Federal Power Act or other applicable law, the Commission will attempt to resolve any such inconsistency by appropriate means, giving due weight to the recommendations, expertise, and statutory responsibilities of the fish and wildlife agency.

(6) The section 10(j) process ends when the Commission issues an order granting or denying the license application in question.

(f) *License and exemption conditions and required findings*—(1) *License conditions.* (i) All licenses issued shall include the conditions specified in section 10(a)(1) of the Federal Power Act and such other conditions as the Commission determines are lawful and in the public interest.

(ii) Subject to paragraph (f)(3) of this section, fish and wildlife conditions shall be based on recommendations timely received from the fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act.

(iii) The Commission will consider the timely recommendations of resource agencies, other governmental units, and members of the public, and the timely recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project.

(iv) Licenses for a project located within any Federal reservation shall be issued only after the findings required by, and subject to any conditions that may be timely received pursuant to, section 4(e) of the Federal Power Act.

(v) The Commission will require the construction, maintenance, and operation by a licensee at its own expense of such fishways as may be timely prescribed by the Secretary of Commerce or the Secretary of the Interior, as appropriate, pursuant to section 18 of the Federal Power Act.

(2) *Exemption conditions.* Any exemption from licensing issued for conduit facilities, as provided in section 30 of the Federal Power Act, or for small hydroelectric power projects having a proposed installed capacity of 5,000 kilowatts or less, as provided in section 405(d) of the Public Utility Regulatory Policies Act of 1978, as amended, shall include such terms and conditions as the fish and wildlife agencies may timely determine are appropriate to carry out the responsibilities specified in section 30(c) of the Federal Power Act.

(3) *Required findings.* If, after attempting to resolve inconsistencies between the fish and wildlife recommendations of a fish and wildlife agency and the purposes and requirements of the Federal Power Act or other applicable law, the Commission does not adopt in whole or in part a fish and wildlife recommendation of a fish and wildlife agency, the Commission will publish the findings and statements required by section 10(j)(2) of the Federal Power Act.

(g) *Application.* The provisions of paragraphs (b) through (d) and (f) of this section apply only to applications for license or exemption; paragraph (e) applies only to applications for license.

5. In § 4.35, paragraph (e)(4) is revised to read as follows:

§ 4.35 Amendment of application; date of acceptance.

* * * * *

(e) * * *

(4) Any amendments made by a licensee or an exemption applicant to its proposed plans of development to satisfy requests of resource agencies or Indian tribes submitted after an applicant has consulted under § 4.38 or concerns of the Commission; and

* * * * *

6. Section 4.38 is revised to read as follows:

§ 4.38 Consultation requirements.

(a) *Requirement to consult.* (1) Before it files any application for an original license or an exemption from licensing that is described in paragraph (a)(4) of this section, a potential applicant must consult with the relevant Federal, state, and interstate resource agencies, including the National Marine Fisheries Service, the United States Fish and Wildlife Service, the United States Environmental Protection Agency, the Federal agency administering any United States lands or facilities utilized or occupied by the project, the appropriate state fish and wildlife

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agencies, the appropriate state water resource management agencies, the certifying agency under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1341(c)(1), and any Indian tribe that may be affected by the proposed project.

(2) The Director of the Office of Hydropower Licensing or the Regional Director responsible for the area in which the project is located will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies and Indian tribes.

(3) An applicant for an exemption from licensing or an applicant for a license seeking benefits under section 210 of the Public Utility Regulatory Policies Act, as amended, for a project that would be located at a new dam or diversion must, in addition to meeting the requirements of this section, comply with the consultation requirements in § 4.301.

(4) The pre-filing consultation requirements of this section apply only to an application for:

(i) Original license;

(ii) Exemption;

(iii) Amendment to an application for original license or exemption that materially amends the proposed plans of development as defined in § 4.35(f)(1);

(iv) Amendment to an existing license that would increase the capacity of the project as defined in § 4.201(b); or

(v) Amendment to an existing license that would not increase the capacity of the project as defined in § 4.201(b), but that would involve:

(A) The construction of a new dam or diversion in a location where there is no existing dam or diversion;

(B) Any repair, modification, or reconstruction of an existing dam that would result in a significant change in the normal maximum surface area or elevation of an existing impoundment; or

(C) The addition of new water power turbines other than to replace existing turbines.

(5) Before it files a non-capacity related amendment as defined in § 4.201(c), an applicant must consult with the resource agencies and Indian tribes listed in paragraph (a)(1) of this section to the extent that the proposed amendment would affect the interests of the agencies or tribes. When consultation is necessary, the applicant must, at a minimum, provide the resource agencies and Indian tribes with copies of the draft application and allow them at least 60 days to comment on the proposed amendment. The amendment as filed with the Commission must summarize the consultation with the resource agencies and Indian tribes on the proposed amendment, propose reasonable protection, mitigation, or enhancement measures to respond to impacts identified as being caused by the proposed amendment, and respond to any objections, recommendations, or conditions submitted by the agencies or Indian tribes. Copies of all written correspondence between the applicant, the agencies, and the tribes must be attached to the application.

(6) This section does not apply to any application for a new license, a nonpower license, a subsequent license, or surrender of a license subject to sections 14 and 15 of the Federal Power Act.

(7) If a potential applicant has any doubt as to whether a particular application or amendment would be subject to the pre-filing consultation requirements of this section or if a waiver of the pre-filing requirements would be appropriate, the applicant may file a written request for clarification or waiver with the Director, Office of Hydropower Licensing.

(b) *First stage of consultation.* (1) A potential applicant must promptly contact each of the appropriate resource agencies and affected Indian tribes; provide them with a description of the proposed project and supporting information; and confer with them on project design, the impact of the proposed project (including a description of any existing facilities, their operation, and any proposed changes), reasonable hydropower alternatives, and what studies the applicant should conduct. The potential applicant must provide to the resource agencies, Indian tribes, and the Commission the following information:

(i) Detailed maps showing project boundaries, if any, proper land descriptions of the entire project area by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of all proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(ii) A general engineering design of the proposed project, with a description of any proposed diversion of a stream through a canal or a penstock;

(iii) A summary of the proposed operational mode of the project;

(iv) Identification of the environment to be affected, the significant resources present, and the applicant's proposed environmental protection, mitigation, and enhancement plans, to the extent known at that time;

(v) Streamflow and water regime information, including drainage area, natural flow periodicity, monthly flow rates and durations, mean flow figures illustrating the mean daily streamflow curve for each month of the year at the point of diversion or impoundment, with location of the stream gauging station, the method used to generate the streamflow data provided, and copies of all records used to derive the flow data used in the applicant's engineering calculations;

(vi)(A) A statement (with a copy to the Commission) of whether or not the applicant will seek benefits under section 210 of PURPA by satisfying the requirements for qualifying hydroelectric small power production facilities in § 292.203 of this chapter;

(B) If benefits under section 210 of PURPA are sought, a statement on whether or not the applicant believes the project is located at a new dam or diversion (as that term is defined in § 292.202(p) of this chapter) and a request for the agencies' view on that belief, if any;

(vii) Detailed descriptions of any proposed studies and the proposed methodologies to be employed; and

(viii) Any statement required by § 4.301(a).

(2) No earlier than 30 days, but no later than 60 days, from the date of the potential applicant's letter transmitting the information to the agencies and Indian tribes under paragraph (b)(1) of this section, the potential applicant must:

(i) Hold a joint meeting at a convenient place and time, including an opportunity for a site visit, with all pertinent agencies and Indian tribes to explain the applicant's proposal and its potential environmental impact, to review the information provided, and to discuss the data to be obtained and studies to be conducted by the potential applicant as part of the consultation process;

(ii) Consult with the resource agencies and Indian tribes on the scheduling and agenda of the joint meeting; and

(iii) No later than 15 days in advance of the joint meeting, provide the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(3) Members of the public must be informed of and invited to attend the joint meeting held pursuant to paragraph (b)(2)(i) of this section by means of the public notice published in accordance with paragraph (g) of this section. Members of the public attending the meeting are entitled to participate in the meeting and to express their views regarding resource issues that should be

addressed in any application for license or exemption that may be filed by the potential applicant. Attendance of the public at any site visit held pursuant to paragraph (b)(2)(i) of this section will be at the discretion of the potential applicant. The potential applicant must make either audio recordings or written transcripts of the joint meeting, and must promptly provide copies of these recordings or transcripts to the Commission and, upon request, to any resource agency and Indian tribe.

(4) Not later than 60 days after the joint meeting held under paragraph (b)(2) of this section (unless extended within this time period by a resource agency or Indian tribe for an additional 60 days by sending written notice to the applicant and the Director of OHL within the first 60 day period, with an explanation of the basis for the extension), each interested resource agency and Indian tribe must provide a potential applicant with written comments:

(i) Identifying its determination of necessary studies to be performed or information to be provided by the potential applicant;

(ii) Identifying the basis for its determination;

(iii) Discussing its understanding of the resource issues and its goals and objectives for these resources;

(iv) Explaining why each study methodology recommended by it is more appropriate than other available methodology alternatives, including those identified by the potential applicant pursuant to paragraph (b)(1)(vii) of this section;

(v) Documenting that the use of each study methodology recommended by it is a generally accepted practice; and

(vi) Explaining how the studies and information requested will be useful to the agency or Indian tribe in furthering its resource goals and objectives that are affected by the proposed project.

(5)(i) If a potential applicant and a resource agency or Indian tribe disagree as to any matter arising during the first stage of consultation or as to the need to conduct a study or gather information referenced in paragraph (c)(2) of this section, the potential applicant or resource agency or Indian tribe may refer the dispute in writing to the Director of the Office of Hydropower Licensing (Director) for resolution.

(ii) At the same time as the request for dispute resolution is submitted to the Director, the entity referring the dispute must serve a copy of its written request for resolution on the disagreeing party and any affected resource agency or Indian tribe, which may submit to the Director a written response to the referral within 15 days of the referral's submittal to the Director.

(iii) Written referrals to the Director and written responses thereto pursuant to paragraphs (b)(5)(i) or (b)(5)(ii) of this section must be filed with the Secretary of the Commission in accordance with the Commission's Rules of Practice and Procedure, and must indicate that they are for the attention of the Director pursuant to § 4.38(b)(5).

(iv) The Director will resolve disputes by letter provided to the potential applicant and all affected resource agencies and Indian tribes.

(v) If a potential applicant does not refer a dispute regarding a request for information (other than a dispute regarding the information specified in paragraph (b)(1) of this section) or a study to the Director under paragraph (b)(5)(i) of this section, or if a potential applicant disagrees with the Director's resolution of a dispute regarding a request for information (other than a dispute regarding the information specified in paragraph (b)(1) of this section) or a study, and if the potential applicant does not provide the requested information or conduct the requested study, the potential applicant must fully explain the basis for its disagreement in its application.

(vi) Filing and acceptance of an application will not be delayed, and an application will not be considered deficient or patently deficient pursuant to §§ 4.32 (e)(1) or (e)(2), merely because the application does not include a particular study or particular information if the Director had previously found, under paragraph (b)(5)(iv) of this section, that such study or information is unreasonable or unnecessary for an informed decision by the Commission on the merits of the application or use of the study methodology requested is not a generally accepted practice.

(6) The first stage of consultation ends when all participating agencies and Indian tribes provide the written comments required under paragraph (b)(4) of this section or 60 days after the joint meeting held under paragraph (b)(2) of this section, whichever occurs first, unless a resource agency or Indian tribe timely notifies the applicant and the Director of OHL of its need for more time to provide written comments under paragraph (b)(4) of this section, in which case the first stage of consultation ends when all the participating agencies and Indian tribes provide the written comments required under paragraph (b)(4) of this section or 120 days after the joint meeting held under paragraph (b)(2) of this section, whichever occurs first.

(c) *Second stage of consultation.* (1) Unless determined to be unnecessary by the Director pursuant to paragraph (b)(5) of this section, a potential applicant must diligently conduct all reasonable studies and obtain all reasonable information requested by resource agencies and Indian tribes under paragraph (b) of this section that are necessary for the Commission to make an informed decision regarding the merits of the application. These studies must be completed and the information obtained:

(i) Prior to filing the application, if the results:

(A) Would influence the financial (*e.g.*, instream flow study) or technical feasibility of the project (*e.g.*, study of potential mass soil movement); or

(B) Are needed to determine the design or location of project features, reasonable alternatives to the project, the impact of the project on important natural or cultural resources (*e.g.*, resource surveys), or suitable mitigation or enhancement measures, or to minimize impact on significant resources (*e.g.*, wild and scenic river, anadromous fish, endangered species, caribou migration routes);

(ii) After filing the application but before issuance of a license or exemption, if the applicant otherwise complied with the provisions of paragraph (b)(1) of this section and the study or information gathering would take longer to conduct and evaluate than the time between the conclusion of the first stage of consultation and the expiration of the applicant's preliminary permit or the application filing deadline set by the Commission;

(iii) After a new license or exemption is issued, if the studies can be conducted or the information obtained only after construction or operation of proposed facilities, would determine the success of protection, mitigation, or enhancement measures (*e.g.*, post-construction monitoring studies), or would be used to refine project operation or modify project facilities.

(2) If, after the end of the first stage of consultation as defined in paragraph (b)(6) of this section, a resource agency or Indian tribe requests that the potential applicant conduct a study or gather information not previously identified and specifies the basis and reasoning for its request, under paragraphs (b)(4) (i)–(vi) of this section, the potential applicant must promptly initiate the study or gather the information, unless the study or information is unreasonable or unnecessary for an informed decision by the Commission on the merits of the

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application or use of the methodology requested by a resource agency or Indian tribe for conducting the study is not a generally accepted practice. The applicant may refer any such request to the Director of the Office of Hydropower Licensing for dispute resolution under the procedures set forth in paragraph (b)(5) of this section and need not conduct prior to filing any study determined by the Director to be unreasonable or unnecessary or to employ a methodology that is not generally accepted.

(3)(i) The results of studies and information-gathering referenced in paragraphs (c)(1)(ii) and (c)(2) of this section will be treated as additional information; and

(ii) Filing and acceptance of an application will not be delayed and an application will not be considered deficient or patently deficient pursuant to § 4.32 (e)(1) or (e)(2) merely because the study or information gathering is not complete before the application is filed.

(4) A potential applicant must provide each resource agency and Indian tribe with:

(i) A copy of its draft application that:

(A) Indicates the type of application the potential applicant expects to file with the Commission; and

(B) Responds to any comments and recommendations made by any resource agency and Indian tribe either during the first stage of consultation or under paragraph (c)(2) of this section;

(ii) The results of all studies and information-gathering either requested by that resource agency or Indian tribe in the first stage of consultation (or under paragraph (c)(2) of this section if available) or which pertain to resources of interest to that resource agency or Indian tribe and which were identified by the potential applicant pursuant to paragraph (b)(1)(vii) of this section, including a discussion of the results and any proposed protection, mitigation, or enhancement measures; and

(iii) A written request for review and comment.

(5) A resource agency or Indian tribe will have 90 days from the date of the potential applicant's letter transmitting the paragraph (c)(4) information to it to provide written comments on the information submitted by a potential applicant under paragraph (c)(4) of this section.

(6) If the written comments provided under paragraph (c)(5) of this section indicate that a resource agency or Indian tribe has a substantive disagreement with a potential applicant's conclusions regarding resource impacts or its proposed protection, mitigation, or enhancement measures, the potential applicant will:

(i) Hold a joint meeting with the disagreeing resource agency or Indian tribe and other agencies with similar or related areas of interest, expertise, or responsibility not later than 60 days from the date of the written comments of the disagreeing agency or Indian tribe to discuss and to attempt to reach agreement on its plan for environmental protection, mitigation, or enhancement measures;

(ii) Consult with the disagreeing agency or Indian tribe and other agencies with similar or related areas of interest, expertise, or responsibility on the scheduling of the joint meeting; and

(iii) At least 15 days in advance of the meeting, provide the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(7) The potential applicant and any disagreeing resource agency or Indian tribe may conclude a joint meeting with a document embodying any agreement among them regarding environmental protection, mitigation, or enhancement measures and any issues that are unresolved.

(8) The potential applicant must describe all disagreements with a resource agency or Indian tribe on technical or environmental protection, mitigation, or enhancement measures in its application, including an explanation of the basis for the applicant's disagreement with the resource agency or Indian tribe, and must include in its application any document developed pursuant to paragraph (c)(7) of this section.

(9) A potential applicant may file an application with the Commission if:

(i) It has complied with paragraph (c)(4) of this section and no resource agency or Indian tribe has responded with substantive disagreements by the deadline specified in paragraph (c)(5) of this section; or

(ii) It has complied with paragraph (c)(6) of this section and a resource agency or Indian tribe has responded with substantive disagreements.

(10) The second stage of consultation ends:

(i) Ninety days after the submittal of information pursuant to paragraph (c)(4) of this section in cases where no resource agency or Indian tribe has responded with substantive disagreements; or

(ii) At the conclusion of the last joint meeting held pursuant to paragraph (c)(6) of this section in cases where a resource agency or Indian tribe has responded with substantive disagreements.

(d) *Third stage of consultation.* (1) The third stage of consultation is initiated by the filing of an application for a license or exemption.

(2) When an applicant files such application documents with the Commission, or promptly after receipt in the case of documents described in paragraph (d)(2)(iii) of this section, it must serve on every resource agency and Indian tribe consulted, a copy of:

(i) Its application for a license or an exemption from licensing;

(ii) Any deficiency correction, revision, supplement, response to additional information request, or amendment to the application; and

(iii) Any written correspondence from the Commission requesting the correction of deficiencies or the submittal of additional information.

(e) *Waiver of compliance with consultation requirements.* (1) If a resource agency or Indian tribe waives in writing compliance with any requirement of this section, a potential applicant does not have to comply with that requirement as to that agency or tribe.

(2) If a resource agency or Indian tribe fails to timely comply with a provision regarding a requirement of this section, a potential applicant may proceed to the next sequential requirement of this section without waiting for the resource agency or Indian tribe to comply.

(3) The failure of a resource agency or Indian tribe to timely comply with a provision regarding a requirement of this section does not preclude its participation in subsequent stages of the consultation process.

(f) *Application requirements documenting consultation and any disagreements with resource agencies.* An applicant must show in Exhibit E of its application that it has met the requirements of paragraphs (b) through (d) and paragraphs (g) and (h) of this section, and must include a summary of the consultation process and:

(1) Any resource agency's or Indian tribe's letters containing comments, recommendations, and proposed terms and conditions;

(2) Any letters from the public containing comments and recommendations;

(3) Notice of any remaining disagreement with a resource agency or Indian tribe on:

(i) The need for a study or the manner in which a study should be conducted and the applicant's reasons for disagreement, and

(ii) Information on any environmental protection, mitigation, or enhancement measure, including the basis for the applicant's disagreement with the resource agency or Indian tribe;

(4) Evidence of any waivers under paragraph (e) of this section;

(5) Evidence of all attempts to consult with a resource agency or Indian tribe, copies of related documents showing the attempts, and documents showing the conclusion of the second stage of consultation;

(6) An explanation of how and why the project would, would not, or should not, comply with any relevant comprehensive plan as defined in § 2.19 of this chapter and a description of any relevant resource agency or Indian tribe determination regarding the consistency of the project with any such comprehensive plan;

(7)(i) With regard to certification requirements for a license applicant under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act):

(A) A copy of the water quality certification;

(B) A copy of the request for certification, including proof of the date on which the certifying agency received the request; or

(C) Evidence of waiver of water quality certification as described in paragraph (f)(7)(ii) of this section.

(ii) A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying agency has not denied or granted certification by one year after the date the certifying agency received a written request for certification. If a certifying agency denies certification, the applicant must file a copy of the denial within 30 days after the applicant received it.

(iii) Notwithstanding any other provision in title 18, chapter I, subpart B, any application to amend an existing license, and any amendment to a pending application for a license, requires a new request for water quality certification pursuant to paragraph (f)(7)(i) of this section if the amendment would have a material adverse impact on the water quality in the discharge from the project or proposed project.

(8) A description of how the applicant's proposal addresses the significant resource issues raised at the joint meeting held pursuant to paragraph (b)(2) of this section; and

(9) A list containing the name and address of every federal, state, and interstate resource agency and Indian tribe with which the applicant consulted pursuant to paragraph (a)(1) of this section.

(g) *Public participation.* (1) At least 14 days in advance of the joint meeting held pursuant to paragraph (b)(2) of this section, the potential applicant must publish notice, at least once, of the purpose, location, and timing of the joint meeting, in a daily or weekly newspaper published in each county in which the proposed project or any part thereof is situated. The notice shall include a summary of the major issues to be discussed at the joint meeting.

(2)(i) A potential applicant must make available to the public for inspection and reproduction the information specified in paragraph (b)(1) of this section from the date on which the notice required by paragraph (g)(1) of this section is first published until the date of the joint meeting required by paragraph (b)(2) of this section.

(ii) The provisions of § 4.32(b) will govern the form and manner in which the information is to be made available for public inspection and reproduction.

(iii) A potential applicant must make available to the public for inspection at the joint meeting required by paragraph (b)(2) of this section at least two copies of the information specified in paragraph (b)(1) of this section.

(h) *Transition provisions.* (1) The provisions of this section are not applicable to applications filed before June 19, 1991.

(2) The provisions of paragraphs (a) and (b) of this section are not applicable to potential applicants that complied with the provisions of paragraphs (a) and (b)(1) of this section prior to June 19, 1991.

(3) The provisions of paragraph (c) of this section are not applicable to potential applicants that complied with the provisions of paragraph (b)(2) of this section prior to June 19, 1991.

(4)(i) Any applicant that files its application on or after June 19, 1991, and that complied with the provisions of paragraphs (a) and (b)(1) of this section prior to June 19, 1991, must hold a public meeting, within 90 days from June 19, 1991, at or near the site of the proposed project, to generally explain the potential applicant's proposal for the site and to obtain the views of the public regarding resource issues that should be addressed in any application for license or exemption that may be filed by the potential applicant. The public meeting must include both day and evening sessions, and the potential applicant must make either audio recordings or written transcripts of both sessions.

(ii)(A) At least 15 days in advance of the meeting, the potential applicant must provide all affected resource agencies, Indian tribes, and the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(B) At least 14 days in advance of the meeting, the potential applicant must publish notice, at least once, of the purpose, location, and timing of the meeting, in a daily or weekly newspaper published in each county in which the proposed project or any part thereof is situated.

(iii)(A) A potential applicant must make available to the public for inspection and reproduction information comparable to that specified in paragraph (b)(1) of this section from the date on which the notice required by paragraph (h)(4)(ii) of this section is first published until the date of the public meeting required by paragraph (h)(4)(i) of this section.

(B) The provisions of § 4.32(b) will govern the form and manner in which the information is to be made available for public inspection and reproduction.

(C) A potential applicant must make available to the public for inspection at both sessions of the public meeting required by paragraph (h)(4)(i) of this section at least two copies of the information specified in paragraph (h)(4)(iii)(A) of this section.

(D) A potential applicant must promptly provide copies of the audio recordings or written transcripts of the sessions of the public meeting to the Commission and, upon request, to any resource agency or Indian tribe consulted.

(iv) Any applicant holding a public meeting pursuant to paragraph (h)(4)(i) of this section must include in its filed application a description of how the applicant's proposal addresses the significant resource issues raised during the public meeting.

7. In § 4.92, paragraphs (a)(2) and (a)(3) are revised and paragraph (a)(4) is added to read as follows:

§ 4.92 Contents of exemption application.

(a) * * *

(2) Exhibits A, B, E, and G;

(3) An appendix containing documentary evidence showing that the applicant has the real property interests required under § 4.31(b); and

(4) Identification of all Indian tribes that may be affected by the project.

* * * * *

8. In § 4.93, paragraph (b) is revised to read as follows:

§ 4.93 Action on exemption applications.

* * * * *

(b) The Commission will circulate a notice of application for exemption to interested agencies and Indian tribes at the time the applicant is notified that the application is accepted for filing.

* * * * *

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9. In § 4.105, paragraph (b)(1) is revised to read as follows:

§ 4.105 Action on exemption applications.

* * * * *

(b)(1) *Consultation.* The Commission will circulate a notice of application for exemption from licensing to interested agencies and Indian tribes at the time the applicant is notified that the application is accepted for filing.

* * * * *

10. In § 4.107, paragraph (a) is amended by adding the following sentence at the end to read as follows:

§ 4.107 Contents of application for exemption from licensing.

(a) *General requirements.* * * * The applicant must identify in its application all Indian tribes that may be affected by the project.

* * * * *

11. In § 4.201, paragraph (b) introductory text and paragraph (c), are revised to read as follows:

§ 4.201 Contents of application.

* * * * *

(b) *Required exhibits for capacity related amendments.* Any application to amend a license for a hydropower project that involves additional capacity not previously authorized, and that would increase the actual or proposed total installed capacity of the project, would result in an increase in the maximum hydraulic capacity of the project of 15 percent or more, and would result in an increase in the installed name-plate capacity of 2 megawatts or more, must contain the following exhibits, or revisions or additions to any exhibits on file, commensurate with the scope of the licensed project:

* * * * *

(c) *Required exhibits for non-capacity related amendments.* Any application to amend a license for a water power project that would not be a capacity related amendment as described in paragraph (b) of this section must contain those exhibits that require revision in light of the nature of the proposed amendments.

* * * * *

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

12. The authority citation for part 16 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

13. In § 16.2, paragraphs (d) and (f) are removed, and paragraph (e) is redesignated as paragraph (d).

14. In § 16.8, paragraphs (f)(7)(i)(B), (f)(7)(ii), and (f)(7)(iii) are revised to read as follows:

§ 16.8 Consultation requirements.

* * * * *

(f) * * *

(7)(i) * * *

(B) A copy of the request for certification, including proof of the date on which the certifying agency received the request; or

* * * * *

(ii) A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying agency has not denied or granted certification by one year after the date the certifying agency received a written request for certification. If a certifying agency denies certification, the applicant must file a copy of the denial within 30 days after the applicant received it.

(iii) Any amendment to an application for a license requires a new request for certification if the amendment would have a material adverse impact on the water quality in the discharge from the project.

* * * * *

15. In § 16.10, the heading is revised and new paragraph (f) is added to read as follows:

§ 16.10 Information to be provided by an applicant for new license: Filing requirements.

* * * * *

(f) *Filing requirements.* For all applications for new licenses due to be filed with the Commission on or after June 19, 1991, and prior to January 1, 1992, the following number of copies must be submitted to the Commission and served on resource agencies:

(1) If the application is hand-delivered to the Commission, as by messenger or courier service, only an original and five copies of the application need be delivered to the Secretary, but the filing must be accompanied by a transmittal letter certifying that at the same time five copies of the application are being hand-delivered to the Director, Division of Project Review, Office of Hydropower Licensing, and one copy is being mailed to each of the following:

(i) The Regional Office of the Commission for the area in which the project is located;

(ii) The U.S. Department of the Interior, Washington, DC;

(iii) The U.S. Bureau of Land Management District Office for the area in which the project is located; and

(iv) The U.S. Corps of Engineers District Office for the area in which the project is located.

(2) If the application is mailed to the Commission, only an original and ten copies of the application need be sent to the Secretary, but the application must be accompanied by a transmittal letter certifying that at the same time one copy of the application is being mailed to each of the offices listed in paragraphs (f)(1) (i) through (iv) of this section.

PART 375—THE COMMISSION

16. The authority citation for part 375 is revised to read as follows:

Authority: Omnibus Budget Reconciliation Act of 1986, 42 U.S.C. 7178; Electric Consumers Protection Act of 1986, 16 U.S.C. 791a note; Department of Energy Organization Act, 42 U.S.C. 7101–7352, E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551–557; Federal Power Act, 16 U.S.C. 791–828c, as amended; Natural Gas Act, 15 U.S.C. 717–717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, as amended.

17. In § 375.314, paragraphs (s) and (t) are added to read as follows:

§ 375.314 Delegations to the Director of the Office Hydropower Licensing.

* * * * *

(s) Make any preliminary determination of inconsistency between a fish and wildlife agency's fish and wildlife recommendation and applicable law, and conduct through staff whatever consultation with the agency that is necessary or appropriate in order to attempt to resolve any inconsistency, under section 10(j) of the Federal Power Act, and to take such related actions as are required under that section.

(t) Waive the pre-filing consultation requirements in §§ 4.38 and 16.8 of this title whenever the Director, in his discretion, determines that an emergency so requires, or that the potential benefit of expeditiously considering a proposed improvement in safety, environmental protection, efficiency, or capacity outweighs the potential benefit of requiring completion of the consultation process prior to the filing of an application.

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

18. The authority citation for part 380 is revised to read as follows:

Authority: National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370a; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009 3 CFR 1978 Comp., p. 142.

§ 380.3 [Amended]

19. In § 380.3, paragraph (b)(3) is amended by adding after the words "§ 4.38" the words "and § 16.8".

20. In § 380.2, paragraph (c)(1) is amended by adding after the words "Part 4" the words "or 16".

Note: This appendix will not be published in the Code of Federal Regulations

Appendix A—List of Commenters

Federal Agencies

1. U.S. Department of Energy (Energy)
2. U.S. Department of the Interior (Interior)
3. U.S. Department of Commerce (Commerce)
4. U.S. Department of Agriculture (Agriculture)
5. U.S. Environmental Protection Agency (EPA)
6. Council on Environmental Quality (CEQ)

State Agencies

7. Alabama Dept. of Conservation and Natural Resources (Alabama)
8. Arizona Game and Fish Dept. (Arizona)
9. California Dept. of Fish and Game (California Fish & Game)
10. California State Water Resources Control Board (Cal. Water Board)
11. Colorado Dept. of Natural Resources, Division of Wildlife (Colorado)
12. International Association of Fish and Wildlife Agencies (International Ass'n)
13. Michigan Dept. of Natural Resources (Michigan)
14. Minnesota Dept. of Natural Resources (Minnesota)
15. Missouri Dept. of Conservation (Missouri)
16. Montana Dept. of Fish, Wildlife and Parks (Montana DFWP)
17. Montana Dept. of Natural Resources and Conservation (Montana DNRC)
18. Nevada Dept. of Conservation and Natural Resources, Division of Environmental Protection (Nevada)
19. New Mexico Dept. of Game and Fish (New Mexico)
20. Oklahoma Attorney General (Oklahoma)
21. Oklahoma Water Resources Board (Oklahoma Water)
22. Oklahoma Dept. of Wildlife Conservation (Oklahoma Wildlife)
23. Oregon Water Resources Dept. (Oregon)
24. South Carolina Wildlife and Marine Resources Dept. (South Carolina)
25. Washington Dept. of Wildlife (Washington Wildlife)
26. Washington Dept. of Fisheries (Washington Fisheries)
27. West Virginia Dept. of Natural Resources (West Virginia)
28. Wisconsin Dept. of Natural Resources (Wisconsin)
29. Wyoming Game and Fish Dept. (Wyoming)

Indian Tribes and Representatives

30. California Indian Legal Services
31. Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians (Confederated Tribes)
32. The Klamath Tribe (Klamath)
33. Mississippi Band of Choctaw Indians (Choctaw)
34. Nambe Pueblo
35. National Congress of American Indians
36. Native American Rights Fund
37. Nez Perce Tribe (Nez Perce)
38. Pueblo de Cochiti
39. The Tulalip Tribes (Tulalip)

Municipalities, Associations, Companies, and Individuals

40. Alabama Power Company, Georgia Power Company, and Southern Company Services, Inc. (Alabama Power)
41. American Paper Institute (American Paper)
42. American Rivers, Inc., Friends of the River, Trout Unlimited, California Save Our Streams Council, and American Whitewater Affiliates (American Rivers)
43. Mark Begalovitz (Begalovitz)
44. Edison Electric Institute (EEI)
45. National Heritage Institute (National Heritage)
46. National Hydropower Association (NHA)
47. National Wildlife Federation (Wildlife Federation)
48. Myers Engineering Co. (Myers)
49. North Carolina Electric Membership Corp. (North Carolina Electric)
50. Pacific Gas and Electric Co. (PG&E)
51. Public Generating Pool
52. PUD District No. 1 of Pend Oreille County, Washington (Pend Oreille)
53. PUD District No. 2 of Grant County (Grant)
54. Seattle City Light (Seattle Light)
55. Solano Irrigation District (Solano)
56. City of Vernon, California (Vernon)
57. Wildlife Management Institute (Wildlife Institute)
58. Wisconsin River Power Co., Wisconsin Public Service Corp., Weyerhauser Paper Co., Nekoosa Papers, Inc., and Consolidated Water Power Co. (Wisconsin River)

Note: This appendix will not be published in the *Code of Federal Regulations.*

Appendix B—List of Addresses

U.S. Department of the Interior

Addresses	Area of Jurisdiction
U.S. Department of the Interior, 18th and C Street NW., Room 4238, Washington, DC 20240.	Nationwide.
Chief, Branch of Records, Bureau of Land Management, P.O. Box 36800, Billings, MT 59107.	Montana, North Dakota, and South Dakota.
Chief, Branch of Records, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003.	Wyoming and Nebraska.
Chief, Branch of Records, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87504.	New Mexico, Oklahoma, Kansas, and Texas.
State Director, Bureau of Land Management, 2850 Youngfield Street, Denver, CO 80215–7076.	Colorado.
Chief, Branch of Records, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.	Idaho.
Chief, Branch of Records, Bureau of Land Management, 324 South State, suite 301, Salt Lake City, UT 84111–2303.	Utah.
Chief, Branch of Records, Bureau of Land Management, P.O. Box 16563, Phoenix, AZ 85011.	Arizona.
Chief, Branch of Records, Bureau of Land Management, P.O. Box 2965, Portland, OR 97208.	Oregon and Washington.
Chief, Branch of Records, N-943.2, Bureau of Land Management, P.O. Box 12000, Reno, NV 89520, ATTN: Vienna Wolder.	Nevada.
Chief, Branch of Records, Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825.	California.
State Director, Bureau of Land Management, 701 C Street, Box 13, Anchorage, AK 99513, ATTN: Lands Section 966.	Alaska.
Bureau of Land Management, U.S. Department of the Interior, Interior Building, 1849 C Street NW., Washington, DC 20240.	All other regions.

U.S. Corps of Engineers

Lower Mississippi Valley Office

U.S. Corps of Engineers, P.O. Box 80, Vicksburg, MS 39180

Missouri River Office

U.S. Corps of Engineers, P.O. Box 103, Downtown Station, Omaha, NE 68101

South Atlantic Office

U.S. Corps of Engineers, 510 Title Building, Atlanta, GA 30303

Southwestern Office

U.S. Corps of Engineers, 1114 Commerce Street, Dallas, TX 75242–0216

New England Office

U.S. Corps of Engineers, 424 Trapelo Road, Waltham, MA 02154

North Atlantic Office

U.S. Corps of Engineers, 90 Church Street, New York, NY 10007

North Central Office

U.S. Corps of Engineers, 536 S. Clark Street, Chicago, IL 60605

South Pacific Office

U.S. Corps of Engineers, 630 Sansom Street, San Francisco, CA 94111

North Pacific Office

U.S. Corps of Engineers, 220 NW. 8th Avenue, Portland, OR 97209

Ohio River Office

U.S. Corps of Engineers, P.O. Box 1159, Cincinnati, OH 45201

Federal Energy Regulatory Commission Regional Offices

Atlanta Regional Office, 730 Peachtree Street, NE, room 800, Atlanta, GA 30308

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Chicago Regional Office, Federal Building, 230 South Dearborn Street, room 3130, Chicago, IL 60604
New York Regional Office, 201 Varick Street, room 664, New York, NY 10014
Portland Regional Office, suite 1340, Portland, OR 97204
San Francisco Regional Office, 901 Market Street, suite 350, San Francisco, CA 94103

MOLER, Commissioner, *dissenting in part:*

The regulations we adopt with this rule are of paramount importance if the Commission is to address hydropower licensing responsibly in the coming years. These new regulations invest our process with much needed discipline and, at the same time, balance the varied concerns of prospective licensees, interested parties, resource agencies and the public. I am an enthusiastic supporter of this final rule in all respects except one: The definition of the term "fishway".

The Notice of Proposed Rulemaking leading to this Final Rule included both upstream and downstream fish passage facilities in the definition of what constitutes a fishway. This Final Rule redefines the term fishway as a "one way" fishway; that is, it applies only to a structure, facility, or device for upstream passage. This result cannot be justified by reference to historical documents. It represents an arbitrary departure from Commission practice and precedent. It subjects downstream fishways to the weighing and balancing of the comprehensive development criteria of section 10(a) of the FPA. Finally, defining the term this way tortures the plain meaning of the term and simply does not make good sense.

The Historical Context

Congress has not defined the term "fishway".[1] Thus the task is up to this Commission. It is not surprising that a careful review of the literature and expert opinion reveals at least two points of view as to what is intended. The majority attempts to buttress its narrow reading of the term fishway by calling it "the more justifiable approach". They selectively invoke the technical literature and perceptions of past practice near the time of the 1920 legislation. This approach cannot be taken seriously. Recourse to technical experts is inappropriate. A preferable approach would be to look at the definition used at the time by the expert agency. In this case, it is the Department of Commerce. But the majority inexplicably rejects this established position.

The Department of Commerce, as long ago as 1917, provided the following definition of the term "fishway":

It is the function of a fishway, or fish ladder, to permit fish to pass over a dam from the stream below to the stream or pool above the dam, and also to permit the same or other fish to pass in the reverse direction without injury.[2]

This is also the common sense reading of the term "fishway".[3] It should be used.

The majority argues that the term "fishway" applies only to upstream passage since that was the principal concern at the time. To be sure, upstream passage then may well have "constituted the principal incentive for the construction of fishways".[4] It does not follow, however, that Congress therefore meant fishways to cover only upstream passage.

In the first place, as the above-quoted excerpt from the Department of Commerce's 1917 report on fishways demonstrates, downstream fish passage was indeed a problem "prior to passage of section 18".[5] Commerce explains why, "[i]t is, of course just as important for the young fish to return to the ocean as for the adult breeders to ascend the streams." [6] The fact that it was not as big a problem as upstream passage cannot be used to argue that Congress meant the Secretaries to ignore the problem altogether and vest the solution with the Commission instead. More to the point, the legislative history of the 1920 Act shows, rather, the problem Congress sought to address was not narrowly drawn to upstream passage but to the impact of hydropower development on the fishing industry as a whole.[7]

Commission Practice and Precedent

This is not the first time the Commission has interpreted what constitutes a fishway under section 18. The Commission has previously included facilities for both upstream and downstream fish passage. The Final Rule does not proffer any satisfactory explanation (saying simply that the past treatment, in retrospect, is "unduly broad") as to why those precedents are not applicable and are being disregarded.[8]

Section 18 vs. Section 10

It is incredible to assume that Congress, in providing the Secretaries of Commerce and Interior authority to prescribe fishways, meant only for the Departments to be concerned with upstream passage, leaving to the Commission's balancing under section 10 whether to provide for downstream passage. Yet this is exactly the majority's position.

The majority narrowly construes section 18, "to avoid imbuing it with the potential for interfering with the exercise of our judgement in balancing the factors Congress instructed us to consider." [9] The concern is obvious, if unstated. Fishways are expensive, particularly to retrofit existing projects. If they are to include downstream facilities, this places added authority in the hands of those statutorily responsible for protecting fisheries to (at least potentially) increase the cost of hydropower development. Whether or not this concern is well founded, Congress has decided the matter.

The problem with the majority's position is that, with section 18, Congress set fishways outside of the Commission's section 10 authority to balance competing factors.[10] The Commission cannot then rely on section 10 to circumscribe the Secretaries' authority under section 18. As the Supreme Court stated in rejecting the same argument when offered to limit the Secretaries' authority under section 4(e) of the Act to protect reservations:

It is thus clear enough that while Congress intended that the Commission would have exclusive authority to issue all licenses, it wanted the individual Secretaries to continue to play the major role in determining what conditions would be included in the license in order to protect the resources under their respective jurisdictions.[11]

[1] Section 18 of the Federal Power Act (FPA) reads, in pertinent part:

The Commission shall require the construction, maintenance, and operation by a licensee at its own expense of * * * such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate.

16 U.S.C. 811 (1988).

[2] *The Question of Fishways*, Department of Commerce Economic Circular No. 24 at 1 (May 8, 1917) (hereafter, Commerce).

[3] Common sense aside, this statement should be accepted as authoritative. Before the 1920 passage of the Federal Water Power Act, the Secretary of Commerce had primary responsibility for fish passage facilities at federally licensed projects. See, e.g., An Act to regulate the construction of dams across navigable waters, Pub. L. No. 262, 34 Stat. 386, § 3 (1906) ("The persons owning or operating any such dam shall maintain, at their own expense, * * * such fishways as the Secretary of Commerce and Labor shall prescribe"). With the passage of the 1920 Act, and until the reorganization of 1939 which brought Interior into the picture, Commerce had the exclusive authority under section 18 to prescribe fishways. See Act of 1920, Pub. L. No. 280, 41 Stat. 1073 (1920).

[4] Slip op. at 43.

[5] As the Solicitor General explained in a 1908 memorandum to Congress, the early dam licensing acts providing for fishways encompassed "sluiceways and ladders for fish." Memorandum by Solicitor General Hoyt (May 11, 1908) (reproduced at Papers submitted to the Committee on Commerce of the United States Senate at 80). Sluiceways are recognized as providing fish with downstream access.

[6] *Commerce* at 1.

[7] See 56 Cong. Rec. at H. 10035–36 (September 5, 1918) (colloquy discussing sections 18 and 25 of the legislation); see also *id.* at H. 10037.

[8] See, e.g., Eugene Water and Electric Board, 40 FERC ¶ 61,211 at 61,740–61,741, 61,743 and 61,757 (1988) (discussing need for and requirements of fishways to mitigate impact of project on, among other things, "downstream migrant protection"); Greenwood Ironworks, 41 FERC ¶ 62,023 at 63,032 and 63,040 (1987) (Director's Order: licensee to provide fishways as prescribed by Departments of Interior and Commerce "[t]o facilitate upstream and downstream passage of anadromous fishes"); Lynchburg Hydro Assoc., 39 FERC ¶ 61,079 at 61,219 (1987) (fish screens required under section 18 as part of "a system for upstream and downstream fish passage"); New England Power Company, 33 FERC ¶ 62,340 at 63,470 (1985)(Director's Order discussing need to modify fishways "to mitigate any adverse impacts to downstream migrating smolts or upstream migrating adults") (emphasis added in each).

[9] Slip op. at 43.

[10] The Commission, after a thorough discussion of section 18 and its history, adopted this view in its *Lynchburg* decision, *supra*, n.8 at 61,217–61,218. ("We have no discretionary authority in this regard; fishways must be required when properly prescribed by the Secretaries.") The majority rejects this precedent without discussion.

[11] *Escondido Mutual Water Co.* v. *La Jolla Band of Mission Indians*, 466 U.S. 765, 775 (1984). *Escondido*, of course, involves the mandatory conditioning authority provided the Departments under section 4(e) of the Act for the protection and

Continued

The logic applies equally here. By enacting section 18 Congress placed the protection of fish passage under the jurisdictions of the Secretaries. The Commission's attempt to change that statutory scheme as it applies to downstream fish passage facilities must fail.[12]

Conclusion

I cannot support the majority's reading of the term "fishways" in section 18 of the Act to mean devices providing for only the upstream passage of fish. Such a narrow reading—and with it the attempt to circumscribe the authority of the Secretaries of Interior and Commerce—cannot be squared with the statute or any common sense use of the term "fishway". It seems crazy to me for us to say that we think Congress meant to provide statutory protection for fish trying to make it upstream around hydropower facilities, and then to abandon that protection for fish on their way back downstream. Thus, I dissent on this important issue.

Elizabeth Anne Moler,
Commissioner.

[FR Doc. 91–11478 Filed 5–17–91; 8:45 am]

BILLING CODE 6717–01–M

utilization of reservations. But the fundamental rationale for the Commission's position there was the same as offered here: That no Department may impinge upon the Commission's licensing authority. The fault with this logic, as the Supreme Court recognized, is that the majority assumes the question presented, i.e., whether the Departments' authority is to be limited.

[12] It is no answer to claim, as the majority does, that its restrictive reading of the term fishway "will not result in any lessening of our efforts to ensure safe downstream passage of fish in licensing hydroelectric projects." Slip op. at 43. Those "efforts" are subject to the balancing mandated by section 10(a).

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federal register

Monday
May 20, 1991

Part III

Department of the Interior

Bureau of Indian Affairs

Piquat Sept of Ohio Shawnee Indians; Receipt of Petition for Federal Acknowledgement as an Indian Tribe; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Piquat Sept of Ohio Shawnee Indians; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

May 7, 1991.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Piquat Sept of Ohio Shawnee Indians, c/o Brian Dabe, Bancohio Building, suite 828, 4 W. Main Street, Springfield, Ohio 45502, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian Tribe. The petition was received by the Bureau of Indian Affairs (BIA) on April 16, 1991, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgement and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–11613 Filed 5–17–91; 8:45 am]

BILLING CODE 4310–02–M

federal register

Monday
May 20, 1991

Part IV

Department of the Interior

Bureau of Indian Affairs

Upper Kispoko Band of the Shawnee Indians; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Notice

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DEPARTMENT OF THE INTERIOR

Upper Kispoko Band of the Shawnee Nation; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

May 3, 1991.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Upper Kispoko Band of the Shawnee Nation, c/o Augustus J. Rosemont, 617 S. Washington Street, Kokomo, Indiana 46901, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on April 10, 1991, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362-MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208-3592.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-11812 Filed 5-17-91; 8:45 am]

BILLING CODE 4310-02-M

federal register

Monday
May 20, 1991

Part V

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

VOL 56 ISS 97 MY 20 1991 UMI

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

May 1, 1991.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special messages has been transmitted to Congress.

This report gives the status, as of May 1, 1991, of 27 rescission proposals and ten deferrals contained in four special messages for FY 1991. These messages were transmitted to Congress on October 4, 1990, January 9, 1991, February 28, 1991, and April 16, 1991.

Rescissions (Table A and Attachment A)

As of May 1, 1991, 27 rescission proposals totaling $4,312.3 million were pending before Congress.

Deferrals (Table B and Attachment B)

As of May 1, 1991, $5,735.1 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1991.

Information From Special Messages

The special messages containing information on rescissions and deferrals that are covered by this cumulative report are printed in the Federal Register cited below:

55 FR 41436, Thursday, October 11, 1990
56 FR 1704, Wednesday, January 16, 1991
56 FR 10082, Friday, March 8, 1991
56 FR 18644, Tuesday, April 23, 1991

Richard Darman,
Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1991 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	4,312.3
Accepted by the Congress.....	0
Funding never withheld.....	0
Pending before the Congress.....	4,312.3 1/

1/ Of the amount pending before Congress, $790.0 million has been made available.

****

TABLE B

STATUS OF FY 1991 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	9,342.6
Routine Executive releases through May 1, 1991..... (OMB/Agency releases of $3,608.2 million, partly offset by cumulative positive adjustment of $0.7 million.)	-3,607.6
Overturned by the Congress.....	0
Currently before the Congress.....	5,735.1

Attachments

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ATTACHMENT A
Status of FY 1991 Rescissions
(Amounts in thousands of dollars)

As of May 1, 1991 Agency/Bureau/Account	Rescission Number	Amount: Previously Considered by Congress	Amount: Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF AGRICULTURE								
Soil Conservation Service								
Watershed and flood prevention operations	R91-1		10,000	02-28-91				
DEPARTMENT OF DEFENSE								
Procurement								
Procurement of weapons and tracked combat vehicles, Army	R91-2		86,000	02-28-91				
Procurement of ammunition, Army	R91-3		13,000	02-28-91				
Aircraft procurement, Navy	R91-4		1,093,500	02-28-91				
Weapons procurement, Navy	R91-5		2,600	02-28-91				
Shipbuilding and conversion, Navy	R91-6		405,000	02-28-91				
Other procurement, Navy	R91-7		10,000	02-28-91				
Procurement, Marine Corps	R91-8		2,000	02-28-91				
Aircraft procurement, Air Force	R91-9		14,200	02-28-91				
Missile procurement, Air Force	R91-10		74,700	02-28-91				
Other procurement, Air Force	R91-11		254,200	02-28-91				
Procurement, Defense Agencies	R91-12		65,303	02-28-91				
National guard and reserve equipment	R91-13		289,900	02-28-91				
Research, Development, Test, and Evaluation								
Research, development, test, and evaluation, Army	R91-14		60,800	02-28-91				
Research, development, test, and evaluation, Navy	R91-15		834,500	02-28-91				

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ATTACHMENT A
Status of FY 1991 Rescissions
(Amounts in thousands of dollars)

As of May 1, 1991 Agency/Bureau/Account	Rescission Number	Amount: Previously Considered by Congress	Amount: Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Research, development, test, and evaluation, Air Force	R91-16		134,100	02-28-91				
Research, development, test, and evaluation, Defense Agencies	R91-17		29,300	02-28-91				
Military Construction								
Military construction, Navy	R91-18		48,962	02-28-91				
Military construction, Air Force	R91-19		91,800	02-28-91				
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Family Support Administration								
Interim assistance to States for legalization	R91-27		2,400	04-16-91				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R91-20		500,000	02-28-91		500,000	04-08-91	
Congregate services program	R91-21		9,500	02-28-91		9,500	04-09-91	
Nehemiah housing opportunity fund	R91-22		39,112	02-28-91		39,112	04-09-91	
Community Planning and Development								
Urban development action grants	R91-23		13,518	02-28-91		13,518	04-09-91	
Rental rehabilitation grants	R91-24		70,000	02-28-91		70,000	04-09-91	
Urban homesteading	R91-25		13,397	02-28-91		13,397	04-09-91	
Rehabilitation loan fund	R91-26		144,459	02-28-91		144,459	04-08-91	
TOTAL, RESCISSIONS PROPOSED			4,312,251			789,986		

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ATTACHMENT B
Status of FY 1991 Deferrals - As of May 1, 1991
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 5-1-91
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D91-1	149,319		10-04-90					
	D91-1A		1,943,510	01-09-91					
	D91-1B		830	02-28-91	1,021,004				1,072,655
Foreign military financing	D91-8	4,820,649		01-09-91	2,559,140				2,261,509
Peacekeeping operations	D91-9	5,177		01-09-91					5,177
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D91-2	135,955		10-04-90					135,955
Cooperative work	D91-3	273,468		10-04-90					
	D91-3A		235,572	01-09-91					509,040
Timber salvage sales	D91-10	103,684		02-28-91					103,684
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D91-4	1,186		10-04-90					1,186

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ATTACHMENT B
Status of FY 1991 Deferrals - As of May 1, 1991
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 5-1-91
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction).....	D91-5	7,127		10-04-90					7,127
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive....	D91-6	14,529		10-04-90					
	D91-6A		44,507	01-09-91	28,096			665	31,603
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund).....	D91-7	536,659		10-04-90					
	D91-7A		1,068,473	01-09-91					1,607,132
TOTAL, DEFERRALS.....		6,049,754	3,292,892		3,608,242			665	5,735,069

[FR Doc. 91-11817 Filed 5-17-91; 8:45 am]
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federal register

Monday
May 20, 1991

Part VI

Department of Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; Final Rule

VOL 56 ISS 97 MY 20 1991 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 222

RIN 1810-AB71

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Impact Aid maintenance and operations assistance program (sections 2, 3, and 4 of Pub. L. 81-874). These final regulations implement two of the amendments made to Public Law 81-874 by the 1992 National Assessment of chapter 1 Act, Public Law 101-305. These provisions may affect the amounts of payments for applicant school districts under sections 2 and 3(e) of Public Law 81-874.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments, with the exception of §§ 222.3 and 222.23. Sections 222.3 and 222.23 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register. As discussed below, the section 2 changes made by these regulations will affect Impact Aid payments beginning with fiscal year 1990 appropriations. The section 3(e) changes, although effective beginning with fiscal year 1990, will only affect Impact Aid payments beginning in fiscal year 1991 because that section was not funded for fiscal year 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hansen, Director, Impact Aid Programs, U.S. Department of Education, 400 Maryland Avenue, SW., room 2077, Washington, DC 20202-6244. Telephone: (202) 401-3637. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

Background

Regulations governing the Impact Aid maintenance and operations assistance program are found at 34 CFR part 222. On May 30, 1990, the President signed into law the 1992 National Assessment of Chapter 1 Act, Public Law 101-305. This law contains a number of amendments to Public Law 81-874, commonly known as the Impact Aid maintenance and operations law. The final regulations in this document implement two of the changes made by those amendments.

Technical changes to §§ 222.3, 222.23 and 222.94 of the regulations as a result of Public Law 101-305 are described below.

Section 222.3 Definitions.

In the definition of "Federal property," paragraph (3)(i) is revised, and a new paragraph (4) is added to implement section 7(a) of Public Law 101-305, which requires the Secretary, beginning with fiscal year 1990, to consider as eligible for the purposes of section 2 of Public Law 81-874 real property that has been transferred out of Federal ownership, but which remains subject to certain Federal restrictions. The Secretary notes that property qualifying under this provision remains eligible only so long as the Federal restrictions remain. If the United States relinquishes those restrictions, and the property does not otherwise qualify as section 2 Federal property, it no longer would be eligible as the basis for section 2 eligibility or entitlements.

Section 222.23 Entitlements under section 3(e).

Paragraphs (a) and (c) of § 222.23 are removed based upon section 3(b) of Public Law 101-305, which revises the payment formula under section 3(e) of Public Law 81-874 beginning with fiscal year 1990. The remaining regulatory provisions, which are redesignated, implement only the eligibility provisions of section 3(e), leaving the payment amounts for eligible applicants to be determined under the statute. The heading also is changed, and other minor clarifying and editorial changes made.

Section 222.94 What criteria must be met regarding Federal acquisition of real property in a school district?

In addition to amending the definition of "Federal property" as described above to implement section 7(a) of Public Law 101-305, several revisions are made to § 222.94. Paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added to clarify that, beginning with fiscal year 1990, property that the United States formerly owned, and then transferred subject to restrictions qualifying under paragraph (4) of the definition of "Federal property" in § 222.3, is considered to be "owned" by the Federal Government for section 2 purposes, notwithstanding the conditional transfer. Accordingly, language also is added to redesignated paragraph (c) to clarify that the Secretary does not redetermine a school district's eligibility under paragraph (a) on account of such a transfer. Conforming citation changes are made in redesignated paragraph (d)(2), and the authority citation also is amended.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Because these regulations merely incorporate statutory changes and make minor editorial and technical revisions, however, public comment could have no effect. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

This regulation has been reviewed in accordance with Executive Order 12291. It is not classified as major because it does not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act Certification

The Secretary has determined that these final regulations will not have the type of effect on a sufficient number of small entities that would require analysis under the Regulatory Flexibility Act. These amendments merely conform the existing regulations to new statutory requirements and make other minor editorial and technical revisions.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, grant programs—education, public housing, reports and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.041, Impact Aid—Maintenance and Operations.)

Dated: May 6, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 222 of title 34 of the Code of Federal Regulations as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. The authority citation for part 222 continues to read as follows:

Authority: 20 U.S.C. 236-241-1 and 242-244, unless otherwise noted.

2. In § 222.3, paragraph (3)(i) of the definition of "Federal property" is revised, and a new paragraph (4) is added, to read as follows:

§ 222.3 Definitions.

* * * * *

Federal property.

* * * * *

(3) * * *

(i) Except for Indian lands described in section 403(1)(A) of the Act (20 U.S.C. 244(1)(A)), and transferred property described in paragraph (4) of this definition, any real property that the United States does not own in fee simple, such as the following:

* * * * *

(4) Beginning with fiscal year 1990, for the purpose of determining eligibility and entitlements under section 2 of the Act, and notwithstanding any other provisions of this definition, the term includes real property formerly owned by the United States and described as follows:

(i) Prior to the transfer of ownership of real property by the United States—

(A) The property was Federal property for section 2 purposes under paragraphs (1) through (3) of this definition; and

(B) Met the requirements of § 222.94(a)(1), (2), and (3).

(ii) The United States transferred a portion of the property referred to in paragraph (4)(i) of this definition to another nontaxable entity.

(iii) With respect to the transferred portion of property referred to in paragraph (4)(ii) of this definition, the United States, for the year for which the determination is made—

(A) Restricts some or any construction on the property;

(B) Requires that the property be used in perpetuity for the public purposes for which it was conveyed;

(C) Requires the grantee of the property to report to the Federal Government (or its agent) setting forth information on the use of the property;

(D) Prohibits the sale, lease, assignment or other disposal of the property unless to another eligible government agency and with the approval of the Federal Government (or its agent); and

(E) Reserves to the Federal Government a right of reversion at any time the Federal Government (or its agent) deems it necessary for the national defense.

* * * * *

3. Section 222.23 is amended by removing paragraphs (a) and (c) and the paragraph designation "(b)," redesignating current paragraphs (b)(1), (2), and (3) as paragraphs (a), (b), and (c), respectively, and revising the heading of the section, the undesignated introductory text, and redesignated paragraph (b) to read as follows:

§ 222.23 Eligibility under section 3(e).

For an applicant to be eligible under section 3(e) of the Act—

* * * * *

(b) There must have been a substantial decrease, from the prior fiscal year to the first fiscal year for which section 3(e) assistance is sought, in the number of children determined under sections 3(a) and 3(b) of the Act, as a result of a decrease or cessation in Federal activities in the State within which the applicant is located. A decrease is substantial when it equals 3 percent of the current fiscal year's total ADA and at least 10 in ADA.

* * * * *

4. Section 222.94 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, adding a new paragraph (b), adding a second sentence to redesignated paragraph (c), revising the introductory text in redesignated paragraph (d)(2), and revising redesignated paragraph (d)(2)(i) and the authority citation, to read as follows:

§ 222.94 What criteria must be met regarding Federal acquisition of real property in a school district?

* * * * *

(b) Beginning with fiscal year 1990, Federal property described in paragraph (4) of the definition of "Federal property" in § 222.3 is considered to be owned by the United States for the purpose of paragraph (a) of this section.

(c) * * * This paragraph does not apply to a transfer, described in paragraph (4) of the definition of "Federal property" in § 222.3, of real property by the United States.

(d) * * *

(2) The Secretary bases the redetermination of an LEA's eligibility under paragraph (c) of this section only upon:

(i) Records described in paragraph (d)(1) of this section; or

(ii) * * *

* * * * *

Authority: 20 U.S.C. 237(a)(1) and (e).

[FR Doc. 91-11840 Filed 5-17-91; 8:45 am]

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Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Temporary Flight Restrictions in National Disaster Areas in the State of Hawaii; Final Rule

VOL 56 ISS 97 MY 20 1991 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26476, Amendment No. 91-222]

RIN 2120-AD07

Temporary Flight Restrictions in National Disaster Areas in the State of Hawaii

AGENCY: Federal Aviation Administration (FFA), DOT.

ACTION: Final rule.

SUMMARY: Through this regulation, the Administrator is authorized to prohibit, or otherwise restrict, aircraft overflights of inhabited areas within a declared national disaster area in the State of Hawaii. This rule implements legislation that requires the FAA to consider safety and humanitarian reasons in the issuance of temporary flight restrictions within declared national disaster areas in the State of Hawaii.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Malodie De Marr, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background and Need for Rulemaking

Section 9124 of the Aviation Safety and Capacity Expansion Act of 1990 provides in relevant part, "the Administrator (of the FAA), for safety and humanitarian reasons, shall issue such regulations as may be necessary to prohibit or otherwise restrict aircraft overflights of any inhabited area which has been declared a national disaster area in the State of Hawaii" (Pub. L. 101-508, November 5, 1990). On May 16, 1990, the area around the Kilauea volcano was declared a national disaster area. The legislation was enacted in response to problems encountered in populated areas within the national disaster area. It is the agency's understanding that the presence of low flying aircraft that were not directly involved in the relief effort or associated activities operating over affected inhabited areas interfered with and endangered those involved with the collection of scientific data and/or disaster relief efforts and adversely affected the inhabitants of those areas.

Currently, § 91.137 of the Federal Aviation Regulations (14 CFR 91.137) authorizes the Administrator to designate an area within which some or all flights are prohibited for reasons of safety. The regulation is designed to protect persons and property of the surface or in the air from a hazard associated with an incident on the surface; to provide a safe environment for the operation of disaster relief aircraft; and to prevent an unsafe congestion of sightseeing and other aircraft above an incident or event which may generate a high degree of public interest. In each case, the circumstances supporting implementation of a § 91.137 flight restriction involve issues of safety. Section 9124 of the Aviation Safety and Capacity Expansion Act of 1990 is intended to cover certain situations in the State of Hawaii that are not addressed in § 91.137. This regulation (14 CFR 91-138) is responsive to that Act and authorizes the Administrator to consider safety and humanitarian factors in the issuance of flight restrictions over inhabited areas within declared national disaster areas in the State of Hawaii.

National disaster areas are identified by Presidential declaration following a request by the Governor of the affected state. Such a request is based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the state and the affected local governments and that Federal assistance is necessary. National disaster areas have been declared on four occasions in the State of Hawaii in the ten years preceding this action:

(1) April 22, 1982 (heavy rains and flooding);

(2) November 27, 1982 (hurricane force);

(3) January 8, 1988 (severe storms, mudslides,) flooding); and

(4) May 18, 1990 (Kilauea volcano—lava flow.)

Based on historical data, the FAA expects this rule to be invoked on an infrequent basis. Section 91.138 flight restrictions will be invoked only upon the FAA's determination that the affected inhabited area is within a declared national disaster area in the State of Hawaii and the Governor of the State of Hawaii, or the Governor's designee, has forwarded to the Administrator of the FAA a request for and justification of the need for the application of this regulation for humanitarian reasons.

This regulation provides for the authorization of certain flights in the affected area by the official in charge. Such authorizations may be given for those aircraft involved in collecting scientific data, carrying accredited news or media personnel, or participating in disaster relief activities. Aircraft departing from or landing at airports with departure/approach procedures that would cause them to transit the affected area will be required to obtain an appropriate air traffic control (ATC) clearance. All other flights will be required to comply with the restrictions issued by the Administrator and described in the NOTAM.

Discussion of the Comments

In response to Notice 91-5, the FAA received two comments. One commenter, the Airports Administrator from the State of Hawaii Department of Transportation Airports Division, was in support of the proposed rulemaking. He stated that during the preparation of the FAR part 150 aircraft noise abatement plan for Hilo International Airport and the State Helicopter System Plan, several public meetings were held to receive public comment on the impact of aircraft noise. The majority of the complaints received at the public meetings were directed at the noise and low flights of helicopters. The Hawaii Airports Division further cited that testimony at those meetings was presented by the Director of Civil Defense for the Island of Hawaii and representatives of the National Park Service concerning the hazards created by helicopters on sightseeing tours over disaster areas resulting from the ongoing volcanic eruption. However, the Hawaii Airports Division voiced concern that the bureaucratic procedures necessary before flight restrictions can be established is too lengthy. Their recommendation is that a procedure be established for the immediate issuance of a NOTAM since sightseeing flights begin as soon as the disaster occurs when rescue operations could be seriously jeopardized. They suggest that the regulations should provide for the authorization by the Administrator of a designee located in Hawaii to act on the Administrator's behalf in such an event.

The current Federal Aviation Regulations § 91.137 gives the Administrator the authority to issue temporary flight restrictions for safety reasons. When necessary, the Administrator may issue a NOTAM under that section designating an area within which temporary flight restrictions apply in order to: Protect persons and property on the surface or in the air from a hazard associated with an incident on the surface; provide a safe environment for the operation of disaster relief aircraft; or, to prevent an unsafe congestion of sightseeing and other aircraft above an incident or event which may generate a high degree of public interest. Temporary flight restrictions could be invoked under this section on the local level without bureaucratic involvement. However, this new regulation § 91.138 will authorize temporary flight restrictions over inhabited areas within a declared national disaster area for humanitarian reasons. The FAA believes that the determination of humanitarian needs should be identified by the local government in Hawaii. The Governor of the State of Hawaii will be instrumental in both the declaration of a national disaster area and the determination of humanitarian needs for temporary flight restrictions to protect the inhabitants within that national disaster area. Therefore, the FAA will require the involvement of the Governor and/or the Governor's designee prior to the implementation of this regulation.

One commenter from Illinois felt that there is no demonstrated need for such a potentially limiting restriction on the use of the airspace. He stated that the regulation would allow unilateral issuance of flight restrictions by the FAA. By issuing this amendment to the regulations, the FAA is complying with its mandate to implement the provisions of the Aviation Safety and Capacity Expansion Act of 1990.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimates of the costs and benefits to the private sector, consumers, and Federal, state, and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or to modify existing regulations only if potential benefits to society outweigh potential costs for each regulatory change. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly-defined exigencies. A "major" rule is one that is likely to have an annual impact on the economy of $100 million or more, to have a major increase in consumer costs, to have a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this rule is not "major" as defined in the Executive Order. Therefore, a full regulatory analysis that includes the identification and evaluation of cost-reducing alternatives has not been prepared. Instead, the Agency has prepared a more concise regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. The complete regulatory evaluation, which contains more detailed economic information than this summary provides, is available in the docket.

Cost-benefit Analysis

The primary objective of this rule is to protect victims within national disaster areas in the State of Hawaii from aircraft that are operating in the area as a result of the occurrence of a national disaster. An examination of the costs and the benefits associated with the rule are presented below.

Costs

The FAA believes that there will be negligible costs associated with compliance with the rule. Because the rule will be invoked only in the case of a declared national disaster in the State of Hawaii and will apply only to those inhabited areas within those declared areas that are designated by the Governor or the Governor's representative, the only economic impact will be a slight inconvenience to scenic tour operators who want to operate in the area of the temporary flight restriction. Because such occurrences are expected to be infrequent and the restricted areas are expected to be limited in size, the FAA believes that any loss of business by the tour operators will be negligible.

Benefits

This rule is expected to produce potential benefits in the form of relief from noise and anxiety caused by low-flying aircraft. Although these benefits cannot be quantified, the FAA believes the benefits exceed any possible cost attributed to the temporary inconvenience of the flight restriction for commercial tour operators. Also, the agency notes that the rule is required by legislation, without regard to its cost-effectiveness.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) requires Federal agencies to review rules that may have a "significant economic impact on a substantial number of small entities." The FAA has adopted criteria and guidelines (U.S. Department of Transportation, FAA Order 2100.14A) for rulemaking officials to apply when determining whether a rule has a significant economic impact on a substantial number of small entities. The small entities that could be potentially affected by the implementation of this rule are the scenic tour operators who own nine or fewer aircraft.

Because there will be negligible costs associated with compliance with this rule, there will be no significant economic impact on a substantial number of small entities.

International Trade Impact Statement

This rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. The rule will not impose costs on aircraft operators or aircraft manufacturers (U.S. or foreign) that would result in a competitive disadvantage to either.

Federalism Implications

The regulations herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Effects

This action will establish temporary flight restrictions in designated areas for safety and humanitarian reasons and will curtail or limit certain aircraft operations within the affected area. As such, this rule will not establish specific operating procedures, nor will it limit the operation of an aircraft to a specific route or procedure. The designation of temporary flight restrictions pursuant to this action will be temporary in nature and effective only for the time necessary to protect inhabitants of an affected area within a declared national disaster area in the State of Hawaii. Air traffic control (ATC) will retain the ability to direct aircraft through the affected area in accordance with normal traffic flows. Therefore, this rule will accommodate the operation of an aircraft in compliance with existing safety and environmental requirements and procedures and will not alter or supersede those requirements.

The establishment of temporary flight restrictions under the regulation will result in a reduction of aircraft operations at low altitudes over

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inhabited areas within a declared national disaster area. As a result of these restrictions, the FAA believes that the number of aircraft operations in the vicinity of inhabited portions of national disaster areas will be reduced and noise levels will be lower than would have been if the temporary flight restrictions were not in place. Aircraft operators complying with the NOTAM restrictions will not be routed over any particular area or confined to operate within certain airspace. For the reasons stated above, the FAA concludes that any action taken under this rule will not significantly impact the quality of the human environment and that further environmental assessment is unnecessary.

The Rule

This amendment to part 91 adds a new § 91.138 which implements the provisions of the Aviation Safety and Capacity Expansion Act of 1990, that requires the FAA, through regulation, to prohibit or otherwise restrict aircraft overflights of any inhabited area that has been declared a national disaster area in the State of Hawaii, for both safety and humanitarian reasons. Except for minor editorial changes, this amendment is the same as that proposed in the notice.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation will not be major under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered signficant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 91 of the Federal Aviation Regulations (14 CFR part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. App. 1301(7), 1303, 1344, 1348, 1352, through 1355, 1401, 1421 through 1431, 1433, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Part 91 is amended by adding a new § 91.138 to subpart B to read as follows:

§ 91.138 Temporary flight restrictions in national disaster areas in the State of Hawaii.

(a) When the Administrator has determined, pursuant to a request and justification provided by the Governor of the State of Hawaii, or the Governor's designee, that an inhabited area within a declared national disaster area in the State of Hawaii is in need of protection for humanitarian reasons, the Administrator will issue a Notice to Airmen (NOTAM) designating an area within which temporary flight restrictions apply. The Administrator will designate the extent and duration of the temporary flight restrictions necessary to provide for the protection of persons and property on the surface.

(b) When a NOTAM has been issued in accordance with this section, no person may operate an aircraft within the designated airspace unless:

(1) That person has obtained authorization from the official in charge of associated emergency or disaster relief response activities, and is operating the aircraft under the conditions of that authorization;

(2) The aircraft is carrying law enforcement officials;

(3) The aircraft is carrying persons involved in an emergency or a legitimate scientific purpose;

(4) The aircraft is carrying properly accredited newspersons, and that prior to entering the area, a flight plan is filed with the appropriate FAA or ATC facility specified in the NOTAM and the operation is conducted in compliance with the conditions and restrictions established by the official in charge of on-scene emergency response activities; or,

(5) The aircraft is operating in accordance with an ATC clearance or instruction.

(c) A NOTAM issued under this section is effective for 90 days or until the national disaster area designation is terminated, whichever comes first, unless terminated by notice or extended by the Administrator at the request of the Governor of the State of Hawaii or the Governor's designee.

Issued in Washington, DC on May 13, 1991.

James B. Busey,

Administrator.

[FR Doc. 91-11850 Filed 5-15-91; 12:06 pm]

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federal register

Monday
May 20, 1991

Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Nehemiah Housing Opportunity Grants Program; Notice of Funding Availability

VOL 56 ISS 97 MY 20 1991 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3266; FR-2948-N-01]

Nehemiah Housing Opportunity Grants Program; Notice of Funding Availability

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability (NOFA).

DATES: The deadline for submission of an application for funding under this notice will be at least 30 days after the latter of the following: The date of publication of this notice or the date on which application packages become available. The actual deadline date will be specified in the application package.

SUMMARY: This NOFA announces HUD's funding for FY 1991 of the Nehemiah Housing Opportunity Grants Program (NHOP). In the body of this document is information concerning the purpose of the NOFA and information regarding eligibility, available amounts, selection criteria and information processing, including how to apply and how selections will be made.

FOR FURTHER INFORMATION CONTACT: Morris E. Carter, Director, Single Family Development Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, Room 9272, 451 Seventh Street, SW., Washington, DC 20410-8000; telephone (202) 708-2700. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free.) Application packages (request for grant application) may be obtained at the above address.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection contained in this NOFA has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C 3501-3520) and assigned OMB control number 2502-0385.

Purpose and Substantive Description

I. Authority

Title VI of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) established the Nehemiah Housing Opportunity Grants Program (NHOP). Under NHOP, HUD is authorized to make grants to nonprofit organizations to enable them to provide loans to families purchasing homes that are constructed or substantially rehabilitated in accordance with a HUD-approved program. On May 22, 1989, HUD published a final rule (24 CFR part 280) establishing the requirements for NHOP at 54 FR 22246. This final rule became effective on July 13, 1989.

II. Allocation Amounts

In the Departments of Veterans Affairs and Housing and Urban Development, Independent Agencies Appropriations Act, 1991 (Pub. L. 101-507, approved November 5, 1991), the Congress appropriated $35 million for NHOP. This notice announces the availability of this $35 million for NHOP, together with uncommitted carry-over balances of $4,111,259, and solicits applications for the use of these funds.

III. Eligibility

Under NHOP, HUD is authorized to make grants to nonprofit organizations to enable them to provide loans to families purchasing homes from the grantee that are constructed or substantially rehabilitated by the grantee in accordance with a HUD-approved program. The loans to the families must conform to the following criteria: (1) They may not exceed $15,000; (2) may bear no interest; (3) must be secured by a second mortgage held by the Secretary; and (4) must be repayable to the Secretary upon the sale, lease, or other transfer of the property.

IV. Selection Criteria/Ranking Factor

All applications must meet the threshold criteria of 24 CFR 280.215. If the amounts applied for with applications satisfying these threshold requirements exceed the amount available, applications will be ranked to determine the award in accordance with 24 CFR 280.225.

In accordance with 24 CFR 280.220(b), HUD announces that the maximum number of points that may be awarded under each of the ranking criteria is:

1. Contributions of land in accordance with §280.220(b)(1)—20 points.
2. Other contribution in accordance with § 280.220(b)(2)—15 points. Under this criterion, applicants that will receive non-Federal financial and other contributions under a State-designated enterprise zone program will be awarded additional points. HUD has decided to award an additional two points to such applications. Accordingly, the maximum number of points that may be awarded under this criterion to an applicant that will not receive contributions under a State-designated enterprise zone program is 13 points. The maximum number of points that may be awarded to an applicant that will receive such contributions is 15 points.
3. Cost effectiveness in accordance with § 280.220(b)(3)—15 points.
4. Neighborhood blight in accordance with § 280.220(b)(4)—20 points.
5. Construction cost in accordance with § 280.220(b)(5)—15 points.
6. Local resident involvement in accordance with § 280.220(b)(6)—15 points.

Additionally, HUD intends to use the appropriate quarterly local cost multipliers listed in the Residential Cost Handbook published by Marshall and Swift Publication Company to adjust for the construction costs between market areas as required under the ranking criteria in § 280.220 (b)(3) and (b)(5).

Application Process

An application package (request for grant application) describing the information that applicants for NHOP assistance must submit will be made available to the public on or after May 20, 1991. The application package will be provided upon the written request of any party made to: Single Family Development Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, room 9272, 451 Seventh Street, SW., Washington, DC 20410-8000. Applications must be submitted on the forms or photocopies of the forms prescribed by HUD and must be received no later than 5 p.m. on deadline date specified in the application package.

Following the expiration of the deadline for submission of applications, HUD Headquarters will review, and, if necessary, rate and rank applications in accordance with the procedures announced in the final rule. Each applicant awarded a NHOP grant will be notified of its selection or non-selection, in accordance with 24 CFR 280.225, as soon as practicable following the completion of the selection process. An announcement of all funding awards made under this NOFA will be published in the **Federal Register**.

Checklist of Application Submission Requirements

The following is a list of the contents of a NHOP application. The application package will provide additional details.

(A) Application for Nehemiah Housing Opportunity Grant Program (Form HUD-91102)

(B) Exhibits:

Section A—Program Identification and Location

1—Location Maps
2—Tax Exemption Letter
3—Applicant's Financial Statements
4—Description of Applicant Activities
5—Resumes of Principal Personnel
6—Articles of Incorporation & Bylaws
7—Resolution Authorizing Submission
8—List of Officers and Directors
9—Waiver Request for Project Size (if applicable)
10—Census Update Documentation (if applicable)
11—Certification from Local Government for multiple sites (if applicable)
12—Evidence Demonstrating Cost Reduction for multiple sites (if applicable)
13—Evidence Demonstrating Improvement to the Neighborhoods (if application)
14—Description of Impact on the Area
15—Documentation Designating Enterprise Zone (if applicable)
16—Documentation of Median Family Income in Census Tract (if applicable)
17—Documentation of Median Family Income in the Neighborhood (if applicable)
18—Alternative Documentation of Unemployment Rate (if applicable)
19—Documentation of Crime Rate
20—Neighborhood Location Maps; Census Tract and Exact Sites

Section B—Site and Construction Exhibits

21—Site and Floor Plans
22—One Page Narrative Describing the Construction or Rehabilitation Program
23—Applicant's Certification re: Complying with Home Quality Standards
24—Demonstration of Site Control
25—Demonstration of Permissive Zoning
26—Market Analysis; Demand
27—Description of Home Sales Program
28—Local Resident Participation: Publications and comments
29—Local Government Approval of Program
30—Program Schedule
31—Local Government Approval of Schedule
32—Projected Annual Budgets During Development

Section C—Program Financial Data

33—NHOP Cost Worksheet
34—Letters of Commitment for Financial Assistance
35—Appraisal of Property Contributed
36—Other "In-Kind" Contributions
37—Documentation that State Law Prohibits Government Contributions (if applicable)

Section D—Local Resident Involvement

38—Number and Types of Jobs Created for Local Residents
39—Local Resident Participation in Developing Proposal

Additional Statements

40—Byrd Amendment Disclosure (Form SF-LLL) and Certification
41—Drug Free Workplace Certification
42—Acknowledgement of Certain Program Requirements

Corrections to Deficient Applications

(a) Applicants will be given an opportunity to cure nonsubstantive, technical deficiencies in their applications. HUD will notify an applicant in writing, after the expiration of the application response deadline, of any technical deficiencies in the application. The applicant must, within 14 days of receipt of HUD's deficiency notification letter, correct the deficiency or supply the additional information requested. HUD will consider an applicant's failure to respond appropriately within the 14-day period as an abandonment of the application.

The kinds of technical deficiencies which can be cured after the submission date for applications has passed relate to items that: (1) Are not necessary for HUD review under the selection criteria/ranking factors; and (2) would not improve the substantive quality of the proposal.

Other Matters

On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

To the extent that HUD makes assistance under the program available on a competitive basis, part 12 requires HUD to:

—Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14(b)) HUD will provide further guidance on how this material may be accessed in a later Notice published in the **Federal Register**.
—Publish a Notice in the **Federal Register** at least quarterly indicating the recipients of the assistance. (§ 12.16(a))

Subpart C of the rule requires that applicants who seek assistance from HUD for a specific project or activity must make the disclosures required under § 12.32. If HUD makes assistance available for a specific housing project that contains other government assistance, Subpart D requires HUD to certify that the assistance will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources. (§ 12.52)

These Subparts will be made effective through later publication of a Notice in the **Federal Register**. Since they will apply to applications solicited on or after the effective date of the Notice, this NOFA is not subject to their provisions.

Lobbying Activities—Prohibition and Disclosure

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (Pub. L. 100-121) and the implementing regulations at 55 FR 6736 (February 26, 1990). These authorities generally prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Additionally, a recipient must file a disclosure if it has made or agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this NOFA will not have a potentially significant impact on family formation, maintenance, or general well-being and, therefore, is not subject to review under the order. The NOFA, insofar as it funds loans to families purchasing homes that are constructed or substantially rehabilitated in accordance with a HUD-approved program, increases family homeownership.

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Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The NOFA provides financial assistance to families purchasing homes, and none of its provisions has a direct effect on the relationship of the States or their jurisdictions with the Federal government.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410. An environmental review will be performed on each project before execution of a grant agreement.

The Catalog of Federal Domestic Assistance program number is 14.178.

Authority: Section 611 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988); Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 3, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-11863 Filed 5-17-91; 8:45 am]

BILLING CODE 4210-27-M

federal register

Monday
May 20, 1991

Part IX

Department of Agriculture

Cooperative State Research Service

Small Business Innovation Research Grants Program for Fiscal Year 1992; Solicitation of Applications; Notices

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DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Small Business Innovation Research Grants Program for Fiscal Year 1992; Solicitation of Applications

Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97-219), as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Public Law 99-591, 100 Stat. 3341, the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through Phase I of its Small Business Innovation Research (SBIR) Grants Program. This program will be administered by the Office of Grants and Program Systems, Cooperative State Research Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging minority and disadvantaged participation in technological innovation.

The total amount expected to be available for Phase I of the SBIR Program in fiscal year 1992 is approximately $2,000,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of September 1, 1991. The research to be supported is in the following topic areas:

1. Forests and Related Resources.
2. Plant Production and Protection.
3. Animal Production and Protection.
4. Air, Water, and Soils.
5. Food Science and Nutrition.
6. Rural and Community Development.
7. Aquaculture.
8. Industrial Applications.

The award of any grants under the provisions of this solicitation is subject to the availability of appropriations.

This program is subject to the provisions found at 7 CFR part 3403. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations, as amended (7 CFR part 3015), Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-free Workplace (Grants), (7 CFR part 3017), New Restrictions on Lobbying, (7 CFR part 3018), and Managing Federal Credit Programs, (7 CFR part 3), apply to this program. Copies of 7 CFR part 3403, 7 CFR part 3015, 7 CFR part 3017, 7 CFR part 3018, and 7 CFR part 3 may be obtained by writing or calling the office indicated below.

The solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted SBIR proposals for 1991 or who have recently requested placement on the list for 1992, will automatically receive a copy of the 1992 solicitation.

Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, DC 20250-2200, Telephone: (202) 401-5048.

Done at Washington, DC, this 13th day of May 1991.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 91-11872 Filed 5-17-91; 845 am]

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federal register

Monday
May 20, 1991

Part X

The President

Proclamation 6293—Emergency Medical Services Week, 1991 and 1992

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Presidential Documents

Title 3—

The President

Proclamation 6293 of May 15, 1991

Emergency Medical Services Week, 1991 and 1992

By the President of the United States of America

A Proclamation

Each year millions of Americans require immediate medical attention for illnesses and injuries. The Department of Health and Human Services reports that, on an average day in the United States, more than 170,000 men, women, and children are injured seriously enough to require professional emergency treatment. Responding to the needs of these Americans are members of the Nation's emergency medical services (EMS) systems.

Members of the Nation's EMS teams help to save thousands of lives each year by providing swift, specialized care for seriously ill and injured persons. The highly dedicated and specially trained paramedics, physicians, nurses, and medical technicians who serve on these teams are supported in their work by a vital network of transport specialists, dispatchers, administrators, and instructors. Thanks to the expertise and the hard work of all of these men and women, Americans are assured high quality emergency medical care.

Today emergency medical care providers are available on a 24-hour basis to anyone who needs immediate medical attention. Both professional and volunteer members of EMS teams respond to calls for help at all hours, often while working under difficult and even hazardous conditions.

In addition to their courageous, lifesaving efforts in the field, EMS personnel have made many important contributions to education and research in trauma care and cardiopulmonary resuscitation. They have also played an integral role in educating the public about accident prevention and wellness. For example, members of the Nation's EMS teams have helped to inform citizens of all ages about the dangers of drunk driving and the need to use automobile safety belts, child restraints, and motorcycle helmets.

This week we proudly salute the Nation's EMS personnel and gratefully acknowledge their outstanding contributions to the health and safety of their fellow Americans.

The Congress, by House Joint Resolution 109, has designated the weeks beginning May 12, 1991, and May 10, 1992, as "Emergency Medical Services Week" and has authorized and requested the President to issue a proclamation in observance of these occasions.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of May 12 through May 18, 1991, and the week of May 10 through May 16, 1992, as Emergency Medical Services Week. I call upon all Americans to observe this week with appropriate ceremonies and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-12005
Filed 5-17-91; 10:27 am]
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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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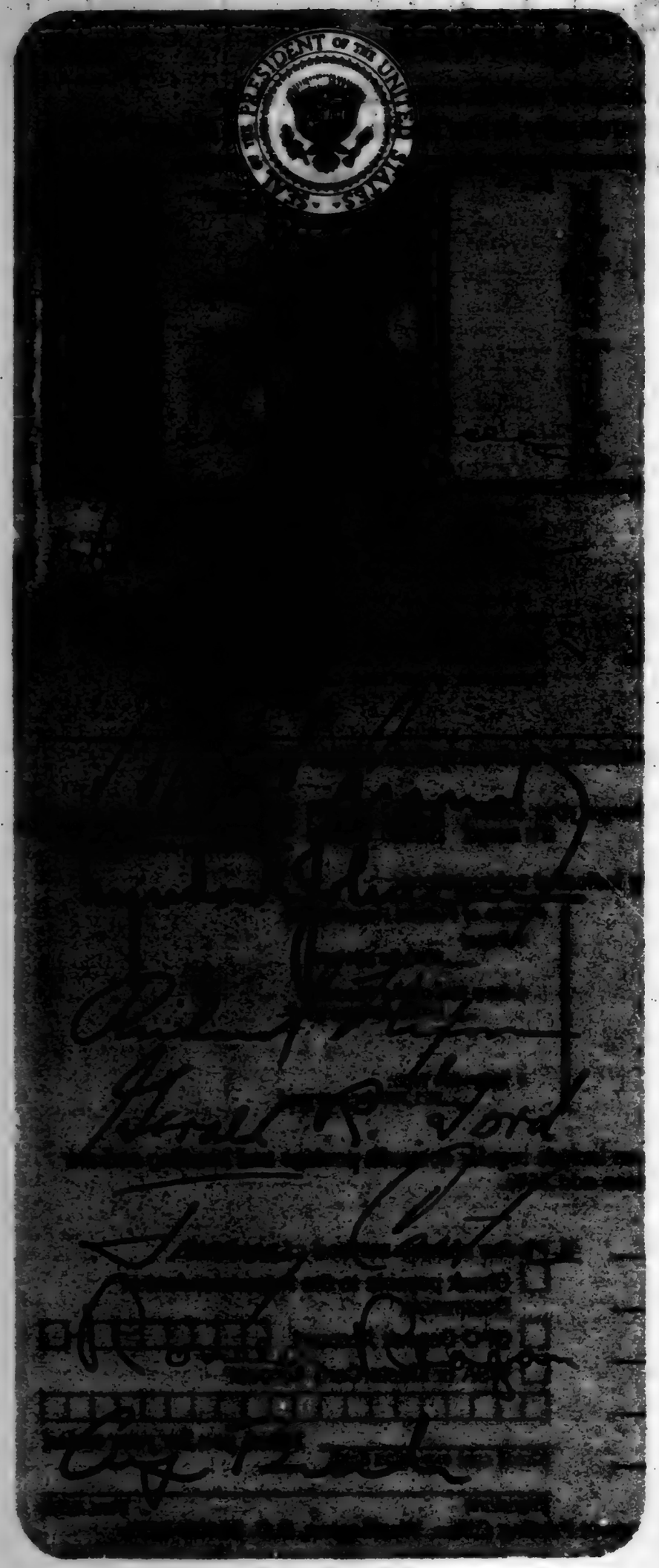

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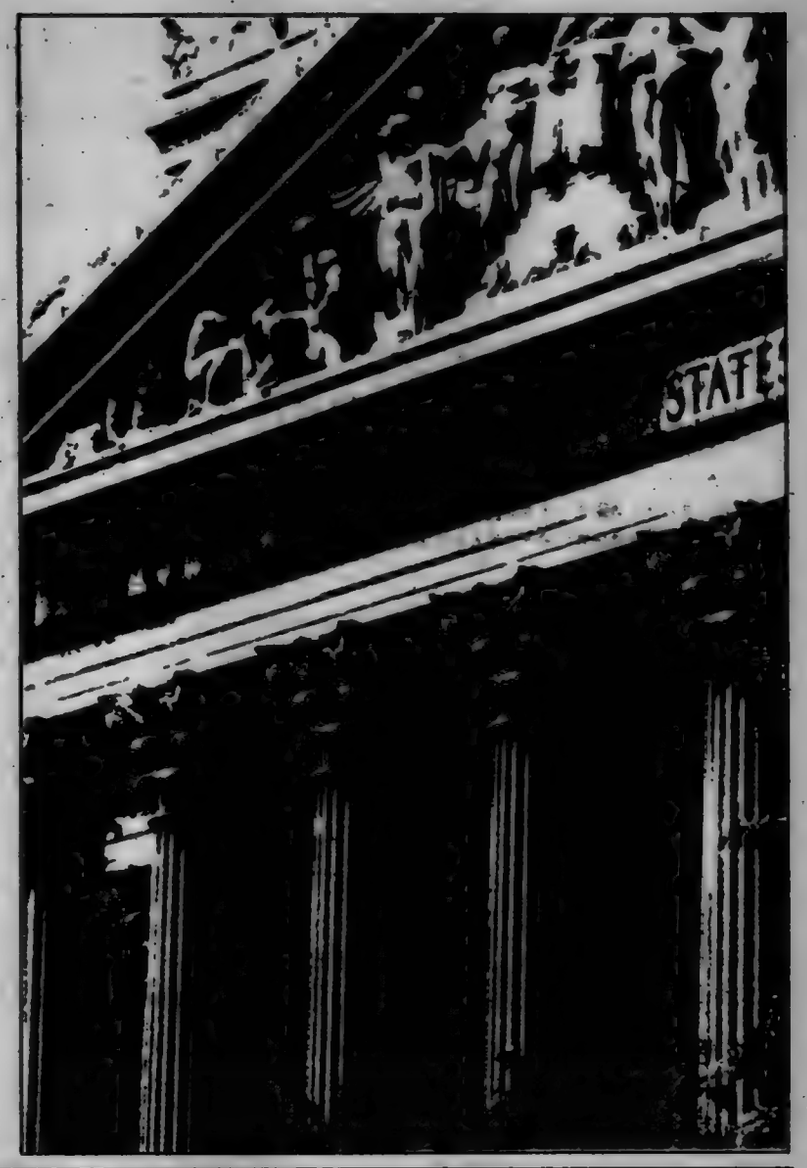

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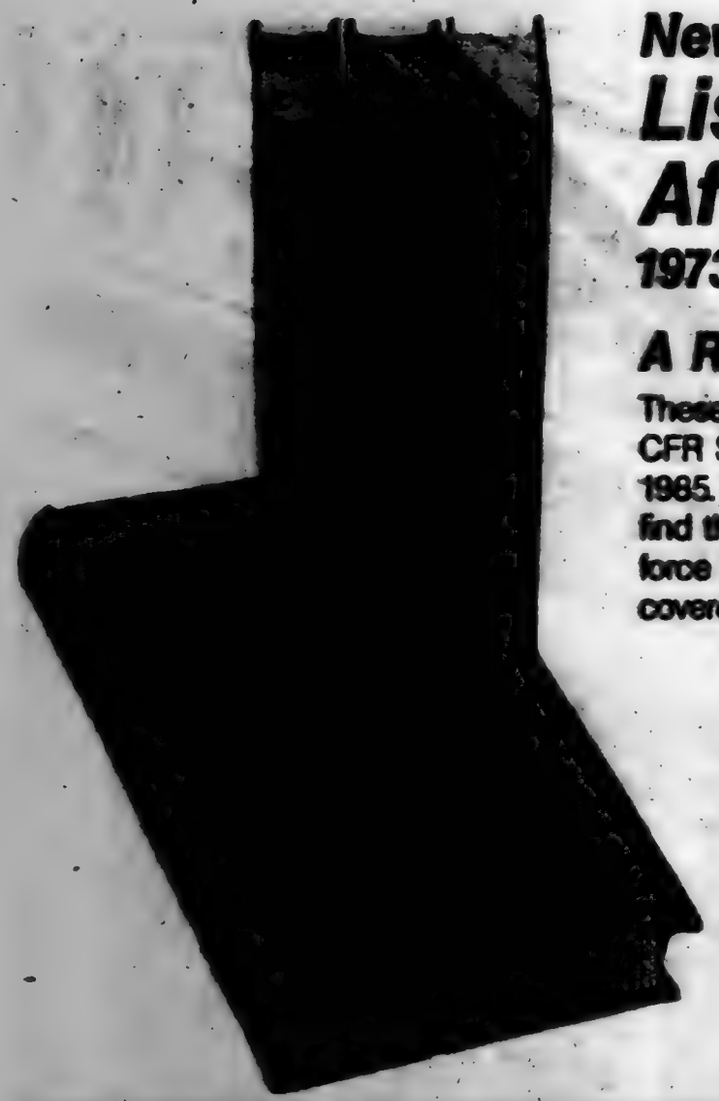

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Presidential Documents

Title 3—

The President

Proclamation 6294 of May 17, 1991

National Maritime Day, 1991

By the President of the United States of America

A Proclamation

Members of the American merchant marine carry on a long and distinguished tradition of service to our country. In addition to promoting the economic development of the United States through trade and commerce, our merchant seafarers have also provided vital support to our Armed Forces during times of conflict.

America's merchant sailors first proved their courage and mettle—and their value in military operations—during the Revolutionary War, when commercial vessels supplemented the 34 ships of the Continental Navy. These merchant vessels virtually immobilized enemy shipping and, in so doing, hastened the end of the war and the beginning of American Independence. During World War II, more than 6,000 of this Nation's civilian seafarers lost their lives as they helped to transport troops and to maintain supply lines to U.S. and Allied forces around the world. Today we are proud to salute the brave merchant mariners who served this Nation during that epic conflict.

Recent events have fostered renewed pride in America's merchant seafarers: providing essential support for Operations Desert Shield and Desert Storm, these individuals played a key role in the liberation of Kuwait. More than 90 percent of the materiel needed by our troops was transported by sea, and merchant vessels carried a significant portion of these goods. In addition to the merchant mariners who served on commercial ships during Operations Desert Shield and Desert Storm, more than 3,000 civilian sailors manned the Ready Reserve Force vessels that are maintained by the Department of Transportation for such contingencies.

The recent coalition victory in the Persian Gulf has demonstrated, once again, the importance of the American merchant marine to maintaining an adequate and reliable sea lift capacity for the United States. It has also underscored the patriotism and the devotion to duty shared by generations of U.S. merchant mariners. On this occasion, we gladly salute our Nation's civilian seafarers, our port terminal operators, and all those who serve in our vital maritime industries.

In recognition of the importance of the U.S. merchant marine, the Congress, by joint resolution approved May 20, 1933, has designated May 22 of each year as "National Maritime Day" and has authorized and requested the President to issue annually a proclamation calling for its appropriate observance. This date was chosen to commemorate the day in 1819 when the SS SAVANNAH left Savannah, Georgia, on the first transatlantic steamship voyage.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim May 22, 1991, as National Maritime Day. I encourage all Americans to observe this day by displaying the flag of the United States at their homes and other suitable places, and I request that all ships sailing under the American flag dress ship on that day.

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IN WITNESS WHEREOF, I have hereunto set my hand this 17 day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-12198
Filed 5-17-91; 3:11 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6295 of May 17, 1991

National Huntington's Disease Awareness Month, 1991

By the President of the United States of America

A Proclamation

Appearing without warning, Huntington's disease is a hereditary, progressive, neurodegenerative disorder that gradually robs its victims of their intellect, their emotional well-being, and their control of movement. The Department of Health and Human Services reports that approximately 25,000 people in the United States have this disease, and that another 125,000 are considered at risk of developing it. Each child of an affected parent has a chance of inheriting the Huntington's gene and developing the disease.

The onset of Huntington's disease varies, usually striking after the age of 30, although signs of the disease can appear in children. However, the effects are always tragic: as the disease progresses, its victims suffer increasingly from such symptoms as slurred speech, dementia, and writhing movements known as chorea. Because victims in the later stages of Huntington's disease invariably require total personal care, affected families often bear heavy financial costs in addition to the heartache of watching a mother, father, sibling, or child slowly deteriorate.

Fortunately, however, years of research have helped to increase our understanding of Huntington's disease. Thanks to advances in molecular genetics, individuals at risk can now undergo testing to determine whether they carry a genetic marker or "signpost" for the Huntington's disease gene. Today researchers across the country, supported primarily by the National Institute of Neurological Disorders and Stroke, are continuing their efforts to identify the exact location of this gene. Once the gene is located, they will be able to devise new medical treatments for Huntington's disease and, we hope, ultimately find a cure.

To enhance public awareness of Huntington's disease and to underscore our concern for its victims, the Congress, by Senate Joint Resolution 127, has designated May 1991 as "National Huntington's Disease Awareness Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of May 1991 as National Huntington's Disease Awareness Month. I encourage all Americans to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

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Presidential Documents

Proclamation 6296 of May 17, 1991

National Defense Transportation Day and National Transportation Week, 1991

By the President of the United States of America

A Proclamation

Our Nation's transportation system has not only enabled the American people to enjoy unparalleled mobility, it has also enabled us to benefit from a high degree of economic prosperity and military preparedness. Facilitating the safe, efficient movement of workers to jobs and goods to markets, our transportation system is vital to the Nation's economic productivity and competitiveness. Allowing for the prompt, large-scale deployment of manpower and equipment, it also ensures our ability to respond effectively to national emergencies.

The recent war in the Persian Gulf underscored both the importance and the effectiveness of America's transportation system. Working with government agencies and with various carriers, thousands of civilians made a substantial contribution to the mobilization of our Armed Forces during Operations Desert Shield and Desert Storm. For example, our oceangoing Ready Reserve Force of ships and our Civil Reserve Air Fleet of commercial airline aircraft were called upon for the first time. At the request of the Department of Defense, the Department of Transportation activated more than 70 Ready Reserve Fleet ships, crewed by U.S. merchant seamen, to assist in the delivery of supplies and equipment to our troops. Under the Civil Reserve Air Fleet program, 26 commercial air carriers made 3,800 flights, carrying some 382,000 people and 163,000 tons of equipment and supplies. Throughout the conflict in the Gulf, our national highway and rail systems likewise provided timely delivery of materials to airports and seaports—including more than 25,000 rail carloads of military equipment and munitions.

As much as we depend on a safe, convenient, and effective transportation system, such a transportation system depends on a sound infrastructure—a network of well-built and well-maintained roads, bridges, airports, seaports, and railroad facilities. Our National Transportation Policy, issued last year, has been designed with this fact in mind. Through this Policy—and through our proposed Surface Transportation Assistance Act of 1991—we will strengthen our investment in the Nation's transportation infrastructure. Wise investment in maintaining and improving this infrastructure will help to create jobs while upgrading the safety and convenience of our surface, air, and water transportation.

Today we are also working to restructure our transportation system to give State and local governments the flexibility and the tools that they need to meet critical transportation requirements close to home. Achieving these and other goals outlined in our National Transportation Policy will put America well on the way to a secure and prosperous future in our increasingly complex and competitive world.

In recognition of both the importance of transportation and the millions of Americans who work to meet our transportation needs, the Congress, by joint resolution approved May 16, 1957 (36 U.S.C. 160), has requested that the third Friday in May of each year be designated as "National Defense Transportation Day" and, by joint resolution approved May 14, 1962 (36 U.S.C. 166), that

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the week in which that Friday falls be proclaimed "National Transportation Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Friday, May 17, 1991, as National Defense Transportation Day and the week of May 12 through May 18, 1991, as National Transportation Week. I urge all Americans to observe these occasions with appropriate ceremonies that will give due recognition to the individuals and organizations that build, maintain, and safeguard our Nation's transportation system.

IN WITNESS WHEREOF, I have hereunto set my hand this 17 day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

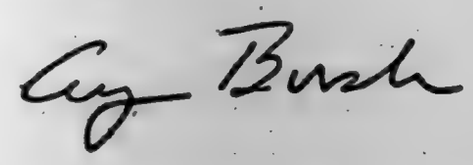

[FR Doc. 91-12260
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Editorial note: For the President's remarks on signing Proclamation 6290, see the *Weekly Compilation of Presidential Documents* (vol. 27, no. 20).

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1434

Honey Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On March 7, 1991, the Commodity Credit Corporation (CCC) issued an interim rule with respect to the Honey Price Support Program which is conducted by the CCC in accordance with the Agricultural Act of 1949, as amended (the 1949 Act). This rule is necessary in order to amend the regulations at 7 CFR part 1434 to implement the changes made by the Food Agriculture, Conservation and Trade Act of 1990 (the 1990 Act) and the Omnibus Budget Reconciliation Act of 1990 (1990 Budget Act). Generally, this rule amends the manner in which producers may participate in CCC Honey Price Support Program and the terms and conditions of such program, and specifies the CCC price support loan eligibility quality requirements for the 1991 and subsequent year's crops.

EFFECTIVE DATE: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Margaret Wright, Program Specialist, Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA) P.O. Box 2415, Washington, DC 20013, telephone (202) 447-8481.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under United States Department of Agriculture (USDA) procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and it has been determined to be "non-major" because the program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance program, as found in the catalogue or Federal Domestic Assistance, to which this final rule applies is Commodity Loans and Purchases, 10.051.

It has been determined that the Regulatory Flexibility Act is not applicable because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of these determinations.

It has been determined by environmental evaluations for the Honey Price Support Program that the program will have no significant impact on the quality of the human environment.

This program is not subject to the provision of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

Public reporting burden for the information collections contained in this final rule with respect to the Honey Price Support Program is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collection has previously been cleared by OMB, assigned number 0560-0087.

An interim rule was published in the Federal Register on March 7, 1991, at 56 FR 9592 which amended the regulations found at 7 CFR part 1434 with respect to the Honey Price Support Program which is conducted by CCC. The interim rule provided a 30-day public comment period which ended April 8, 1991.

Discussion of Comments

One respondent commented on CCC's determination to provide that a producer shall be considered to have divested beneficial interest in the honey if the purchaser or intended purchaser pays the producer any advance payment amount which CCC determines has provided the purchaser or intended purchaser a beneficial interest in the honey except with respect to approved cooperative marketing associations. Generally, the respondent believed that this would eliminate an effective marketing tool producers have in getting the best price for their honey and the elimination of this tool would result in lower producer prices. The interim rule did not change the manner in which CCC operates this program but merely set forth more clearly the policy of CCC which has been in place since enactment of the Food Security Act of 1985. However, as a result of the comments received, CCC has re-examined its current policy to determine if a more effective program can be achieved. CCC agrees that it is in the best interest of producers and users of honey to have efficient marketings which are not disrupted by CCC programs. Accordingly, after reviewing the comments received, it has been determined that § 1434.4(b)(2) should be amended to permit producers to execute an option to purchase and to receive an advance payment in return for such option if the option to purchase contains a specific provision allowing the producer to retain title, risk of loss, and beneficial interest until the earlier of the expiration of the option or the date CCC claims title to the honey. This will adequately protect CCC's interest in honey pledged as collateral for price support loans while allowing producers and buyers of honey to arrange for the potential sale of the honey prior to the expiration of the loan.

There was one respondent to CCC's determination that honey with moisture level in excess of 18.5 percent is ineligible to be pledged as collateral for a price support loan. In the event CCC takes possession of honey pledged as collateral for a price support loan, CCC must be able to store the commodity. Since honey is subject to fermentation, CCC believes that honey with a moisture content in excess of 18.5 percent can not be safely stored for the

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period of time necessary to arrange for CCC to dispose of the honey. In addition, while honey can be heated to reduce the level of moisture, this would be an added expense to CCC that would not be recovered in the sale by CCC of such honey. Accordingly, this suggestion is not adopted.

There was one respondent to CCC's determination to limit the quantity of honey for an additional disbursement to 120 percent of the mortgaged quantity for increases before the final loan availability date and 110 percent after the final loan availability date. This limit was necessary in order to be consistent with the limit CCC imposes on loans for other commodities. CCC has reviewed the comment and it has determined that, because honey pledged as collateral for loan is identified by producer in container lots, §§ 1434.8(c)(2), 1434.15(c)(1) and (2), and 1434.20(f) should be amended to allow for increases up to 100 percent of the quantity of honey as long as the number of containers sold as supported by disposition evidence acceptable to CCC is the same number of containers initially tendered for the loan or loan deficiency payment.

There were 2 comments concerning the requirement by CCC that loan collateral released for marketing must be redeemed before the authorization for release expires in thirty days. The comments stated that some producers will be unfairly disadvantaged because some buyers declare their intentions to purchase the producer's honey but later refuse to purchase. In addition, there was one comment on CCC's requirement that producers requesting a marketing authorization must sign the marketing authorization form and CCC must approve such authorization in writing before the producer was authorized to market the loan collateral. In the past, CCC allowed producers to telephone the county ASCS office and request authorization to market loan collateral.

Generally, commodity loans must be repaid before CCC releases claim to the loan collateral. However, in many cases, the producer does not have the cash to make such repayment. Accordingly, to allow producers to orderly market their commodity, CCC has historically allowed producers, upon agreement to repay the quantity released by the date the marketing authorization expires, to market the commodity pledged as collateral for loan and to repay such loan with the proceeds from the sale of the commodity. In addition, for commodities for which a marketing loan repayment is authorized, CCC has allowed the producer to establish the market loan repayment level as of the date the completed marketing authorization is filed with CCC. In such cases, CCC, if the producer agrees that the quantity authorized for marketing is redeemed by the ending date of such authorization, has honored the established market loan repayment level during the marketing authorization period even though such repayment level may have changed during the such period.

When loan collateral is released for maketing, it becomes impossible for CCC to acquire the commodity as necessary if the producer fails to repay the loan. For this reason, CCC has determined that the producer agreeing to the marketing authorization must be responsible for repayment of the loan amount for the quantity released. In addition, CCC has determined that if the producer does not repay such loan amount by the expiration of the authorization that the marketing loan repayment provision shall not be available to the producer for the quantity not repaid. In order to enforce this agreement between CCC and the producer, the producer must obtain this authorization in writing. Accordingly, CCC has determined to make no change.

There was one comment on the method CCC will use to allow producers to establish a market loan repayment rate which suggested using only one form to establish the loan repayment rate. CCC will allow the producer to establish a loan repayment rate as of a particular day for a specific period of time if requested by the producer. Producers may establish a market loan repayment level if the proceeds from the sale of the commodity are needed to repay the loan, or if the producer needs time to obtain the needed cash, other than by marketing the commodity, to make the loan repayment. CCC has determined that since there are two separate reasons for establishing a market loan repayment level that there be two separate forms to make such request. Accordingly, CCC has determined not to adopt the suggestion.

There was one comment on CCC's determination to announce the market loan repayment level each week and to limit the percentage that such level could be changed from one announcement to the next. It was pointed out that market pricing data for honey was not as readily available as it is for other commodities. Therefore, determining the repayment level on a monthly basis would provide CCC more opportunity to obtain more reflective pricing data. Also, the comment suggested that limiting the increase would not unduly disrupt orderly marketings.

CCC determines the marketing loan repayment level at such a level that will minimize the number of loan forfeitures; not result in excessive total stocks of honey; reduce the costs incurred in storing honey; and maintain the competiveness of honey in domestic and export markets. Since this cannot be accomplished by limiting the amount of change from one announcement to the next, this suggestion was not adopted. However, after reviewing the comments and the provisions for announcing marketing loan repayment level, CCC has determined that § 1434.24(e)(2) should be amended to provide that CCC shall determine and announce the honey marketing loan repayment level on a monthly basis.

There was one comment about CCC's definition of an eligible producer, stating that CCC should clarify the definition so that farm operators who legitimately share labor, equipment, and other resources as a normal course of operation are not penalized with respect to the payment and forfeiture limitations. Because CCC has determined that the definition is clear that such farm operators will not be unduly affected, the suggestion is not adopted.

Because several grammatical and technical changes have been made throughout the interim rule for clarity, the entire provision of part 1434 is set forth.

List of Subjects in 7 CFR Part 1434

Honey, loan programs—Agriculture, Price support programs.

Accordingly, 7 CFR part 1434 is revised to read as follows:

PART 1434—HONEY

Sec.
1434.1 Applicability.
1434.2 Administration.
1434.3 Eligible producers.
1434.4 Eligibility requirements.
1434.5 Miscellaneous requirements.
1434.6 Availability, disbursement, maturity, and expiration of loans.
1434.7 Eligible honey.
1434.8 Ineligible honey and ineligible containers.
1434.9 Approved storage.
1434.10 Warehouse receipts.
1434.11 Warehouse charges.
1434.12 Liens.
1434.13 Fees, charges and interest.
1434.14 Offsets.
1434.15 Determination of quantity.
1434.16 Determination of quality.
1434.17 Payment and forfeiture limitations.
1434.18 Transfer of producer's interest prohibited.

Sec.
1434.19 Insurance.
1434.20 Loss or damage.
1434.21 Personal liability of the producer.
1434.22 Quantity for loans.
1434.23 Unauthorized removal and unauthorized disposition.
1434.24 Release of the honey under loan.
1434.25 Liquidation of loans.
1434.26 Loan deficiency payments.
1434.27 Settlement.
1434.28 Foreclosure.
1434.29 Charges not to be assumed by CCC.
1434.30 Handling payments and collections not exceeding $9.99.
1434.31 Death, incompetency, or disappearance.
1434.32 Definitions.
1434.33 Paperwork Reduction Act assigned numbers.

Authority: 7 U.S.C. 1421, 1423, 1425a, 1446h, 4601 et seq.; 15 U.S.C. 714b and 714c.

§ 1434.1 Applicability.

(a) The regulations of this part are applicable to the 1991 and subsequent crops of extracted honey. These regulations set forth the terms and conditions under which price support loans shall be entered into and loan deficiency payments made by the Commodity Credit Corporation ("CCC"). Additional terms and conditions are set forth in the note and security agreement or the loan deficiency payment application which must be executed by a producer in order to receive a price support loan or loan deficiency payment. Purchase agreements shall not be offered for the 1991 and subsequent crops of honey.

(b) The schedule of premiums and discounts, and forms which are used in administering the price support program are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively). The forms for use in connection with the programs in this section shall be prescribed by CCC.

§ 1434.2 Administration.

(a) The price support and loan deficiency payment program which is applicable to a crop of honey shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees", respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authorty to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by the regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee or the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans, loan deficiency payment applications, and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1434.3 Eligible producers.

(a) An eligible producer shall be a person (i.e., an individual, partnership, association, corporation, estate, trust, or other legal entity) who:

(1) Extracts honey as an owner or sharecropper;

(2) Meets the eligibility requirements prescribed in 7 CFR part 12; and

(3) Shares in the risk of the bees and producing the honey.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate or a ward of an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the executor or administrator. Loan or loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive price support or loan deficiency payment only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable price support documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) A cooperative marketing association which is approved by the Executive Vice President, CCC, pursuant to part 1425 of this chapter, may obtain price support on the eligible production of such crop of the honey or loan deficiency payment with respect to such honey on behalf of the members of the cooperative who are eligible to receive price support with respect to a crop of honey. The term "producer" as used in this subpart and on applicable price support and loan deficiency payment forms shall refer both to an eligible producer as defined in paragraph (a), (b), and (c) of this section and to such an approved cooperative marketing association.

(e)(1) The county committee may deny a producer price support on farm-stored commodities if the producer has:

(i) Been convicted of a criminal act, or has made a misrepresentation, with respect to:

(A) Acquiring a farm-stored loan or

(B) In the maintenance of the commodity pledged as security for a farm-stored loan; or

(ii) Failed to protect adequately the interests of CCC in the commodity pledged as security for a farm-stored loan.

(2) In such cases, the producer shall be ineligible for subsequent farm-stored loans unless the county committee determines that the producer will adequately protect CCC's interest in the commodity which would be pledged as collateral for such a loan. A producer who is denied a farm-stored loan will be eligible to pledge a commodity as collateral for a warehouse-stored loan.

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(f)(1) Two or more eligible producers may obtain a joint loan on eligible honey produced and extracted by them if such honey is commingled and stored in the same eligible containers. In such cases, producers may not, in lieu of obtaining a joint loan, obtain an individual loan on such honey.

(2) Two or more producers may obtain a joint loan if the warehouse receipt is issued jointly to such producers. Each producer who is a party to a joint loan will be jointly and severally responsible and liable for the breach of the obligations set forth in the loan documents and in the applicable regulations in this subpart.

(g) Except as provided in § 1434.10, loans on warehouse stored honey may be made to a warehouseman who tenders to CCC, in the capacity as a producer, in accordance with paragraph (a) of this section, warehouse receipts issued by such warehouseman on honey where the issuance and pledge of such warehouse receipts is permitted under State law.

(h) If CCC determines that a producer knowingly pledged adulterated or imported honey as collateral to secure a price support loan or requested a loan deficiency payment for such honey, such producer shall, in addition to any other penalties or sanctions prescribed by law, be ineligible for any honey price support benefit or loan deficiency payment for 3 crop years succeeding such determination.

§ 1434.4 Eligibility requirements.

(a) In order to obtain price support and loan deficiency payments on eligible honey, a producer must request a price support loan no later than March 31 of the year following the year in which the honey was produced and extracted. March 31 is the final loan availability date.

(b)(1) To be eligible for price support, the beneficial interest in the honey must be in the producer tendering the honey as security for a loan or loan deficiency payment and must always have been in the producer or in such producer and a former producer whom the producer succeeded before such honey was extracted. Honey obtained by gift or purchase shall not be eligible to be tendered to CCC for price support. However, heirs shall be eligible for price support and loan deficiency payments as producers whether such succession occurs before or after extraction of honey, if such heirs:

(i) Succeed to the beneficial interest of a deceased producer;

(ii) Assume the decedent's obligation under a loan deficiency payment or loan if such loan deficiency payment or loan has already been obtained; and

(iii) Assure continued safe storage of the farm honey if such honey has been pledged as collateral for a farm stored loan.

(2) A producer shall not be considered to have divested the beneficial interest in the honey if the producer retains control of the honey, including the right to make all decisions regarding the tender of such honey to CCC for price support, and the producer:

(i) Executes an option to purchase whether or not an advance payment is made by the potential buyer with respect to such honey if the option to purchase contains the following provision:

"Notwithstanding any other provision of this option to purchase, title; risk of loss; and beneficial interest in the commodity, as specified in 7 CFR part 1434, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: (1) The maturity of any Commodity Credit Corporation price support loan which is secured by such commodity; (2) the date the Commodity Credit Corporation claims title to such commodity; or (3) such other date as provided in this option."; or

(ii) Enters into a contract to sell the honey if the producer retains title, risk of loss, and beneficial interest in the honey and the purchaser does not pay to the producer any advance payment amount or any incentive payment amount to enter into such contract except as provided in part 1425 of this chapter.

(3) If price support and loan deficiency payments are made available through an approved cooperative marketing association, the beneficial interest in the honey must always have been in the producer-members who delivered the honey to the approved cooperative or its member cooperatives. Honey so delivered to such cooperative marketing association shall not be eligible for price support if the producer-member who delivered the honey to the cooperative or its member cooperatives does not retain the right to share in the proceeds from the marketing of the honey as provided in part 1425 of this chapter.

(4) Honey purchased by a producer shall not be eligible for price support.

(c) Any producer or cooperative in doubt as to whether the beneficial interest in the honey complies with the requirements of this section shall, before requesting price support or loan deficiency payment, make available to the county committee all pertinent information which will permit a determination with respect to the beneficial interest to be made by CCC.

(d) Before the final availability date for the crop of honey, a producer may reoffer as collateral for such a loan any honey that has been previously pledged as collateral for a price support loan, except that the quantity of honey may not be pledged as collateral for a loan if such quantity:

(1) Has been redeemed at a level which is less than the loan level determined in accordance with § 1434.24(e)(1)(ii), and

(2) Is eligible to be pledged as collateral for a loan but for which the producer has received a loan deficiency payment in accordance with § 1434.26.

(e) Producers who redeem a quantity of honey at the lower loan repayment level in accordance with § 1434.24(e)(1)(ii) or, in lieu of receiving price support receive a loan deficiency payment in accordance with § 1434.26,

(1) Shall provide CCC with:

(i) Evidence of disposition of the redeemed honey such as sales receipts or other written documentation acceptable to CCC, or

(ii) The storage location of the redeemed honey which has not been otherwise disposed of and allow CCC access to such honey.

(2) Failing to provide proof of the quantity of honey redeemed in accordance with paragraph (e)(1) of this section shall be required to repay the amount of the market gain or loan deficiency payment and charges, plus interest.

(f) Producers who receive a loan deficiency payment for a commodity in accordance with paragraph (e) of this section must provide evidence of disposition of the honey acceptable to CCC within 12 months from the final loan availability date for crop year after the crop year for such commodity.

(g) If the producer fails to provide acceptable evidence of production as required in paragraph (e)(1) of this section, such producer shall be required to repay the market gain or loan deficiency payment and charges, plus interest.

§ 1434.5 Miscellaneous requirements.

A producer shall not delegate to any person (on the person's representative) who has any interest in storing, processing, or merchandising honey which is otherwise eligible for price support or a loan deficiency payment under a program to which this subpart is applicable authority to exercise on the behalf of the producer any of the producer's rights or privileges under such program, including the authority to execute any note and security agreement, other price support document, or loan deficiency payment application unless the person (or the person's representative) to whom authority is delegated, is serving in the capacity of a farm manager for the producer or unless the authority delegated is restricted specifically for the purpose of repaying the loan amount and charges plus interest or for the purpose of obtaining a loan deficiency payment, and such delegation is filed through the execution of Form ASCS-211, Power of Attorney, or other form as approved by CCC, with the county office and accepted by CCC.

§ 1434.6 Availability, disbursement, maturity, and expiration of loans.

(a) A producer must request price support and paragraph payments on honey stored on the farm at the county office of the county where the honey is stored. A producer shall request price support and loan deficiency payments on honey stored in an approved warehouse at the county office of the county where the warehouse is located or at the county office of the county where the producer is headquartered. An approved cooperative marketing association must request price support and loan deficiency payments at the county office for the county in which the principal office of the cooperative is located unless the State committee designates some other county office. In the case of an approved cooperative marketing association having operations in two or more States, requests may be made at the county office for the county in which its principal office for each such State is located.

(b) Price support loans at a national average price support rate of 53.8 cents per pound for the 1981 through 1995 crops of honey are available to producers as soon as announced by CCC but not earlier than April 1 of the year in which the honey is produced and extracted and not later than March 31 of the year following the year in which the honey is produced and extracted. However, whenever the final date of availability falls on a nonworkday for county offices, the applicable final date shall be extended to include the next workday. Price support loans mature on demand but not later than the last day of the ninth calendar month following the month in which the loan application is approved. However, when the final date of maturity falls on a nonworkday for county offices the final date shall be extended to include the next workday.

(c) Disbursement of loans will be made by county offices by checks drawn on the account of CCC or by credit to the producer's account.

(1) The loan documents shall not be presented for disbursement unless the honey subject to the note and security agreement:

(i) Is eligible to be pledged as collateral for a price support loan.

(ii) Is in existence.

(iii) Has been extracted, and

(iv) Is in approved storage. If all of the regulations were not met at the time of disbursement, the total amount disbursed under the loan and charges plus interest shall be refunded promptly by the producer.

(2) CCC shall limit any loan disbursement or loan deficiency payment disbursement based on a subsequent increase in the quantity of eligible honey by the final loan availability date to that quantity represented by the number of containers of honey pledged as collateral for the loan when the loan was disbursed.

(d) The request for a loan shall not be approved until all producers having an interest in the honey sign the note and security agreement and the county committee approves such note and security agreement.

§ 1434.7 Eligible honey.

Honey must meet the requirements of this section in addition to other applicable eligibility requirements of this part in order to be eligible for a loan, for delivery under a loan or for a loan deficiency payment. Honey described in § 1434.8 is not eligible for price support.

(a) The honey must have been produced in the United States by an eligible producer during the calendar year for which price support or loan deficiency payment is requested and extracted on or before December 31 of such calendar year.

(b) Honey from the floral sources listed below and honey having similar flavor shall be eligible for price support and shall be classed as follows:

(1) Table honey means any honey having a good flavor of the predominant floral source which can be readily marketed for table use in all parts of the country. Such sources include alfalfa, bird's-foot trefoil, blackberry, brazil brush, catsclaw, Chinese tallow, clover, cotton, fireweed, gallberry, huajillo, knapweed (American), lima bean, mesquite, orange, raspberry, sage, saw palmetto, sourwood, soybean, star thistle (barnaby's thistle), sunflower, sweet clover, tupelo, vetch western wild buckwheat, wild alfalfa, and similar mild flavors or blends of mild-flavored honeys as determined by the Director, Cotton, Grain, and Rice Price Support Division, ASCS.

(2) Nontable honey means honey having a predominant flavor of limited acceptability for table use but which may be considered suitable for table use in areas in which it is produced. Such honeys include those with a predominat flavor of aster, athel, avocado, Brazilian pepper, buckwheat (except western wild buckwheat), cabbage palmetto, Christmas berry, dandelion, eucalyptus, goldenrod, heartsease (smartweed), horsemint, kiawe, macadamia, mangrove, manzanita, mint, partidge pea, rattan vine, safflower, salt cedar (Tamarix Gallica) spanish needle, spikeweed, titi, toyon, tulip-poplar, wild cherry, and similarly-flavored honey or blends of such honeys as determined by the Director, Cotton, Grain, and Rice Price Support Division, ASCS.

(c) The honey must be packed in metal containers of a capacity of not less than 5 gallons or greater than 70 gallons. All containers shall meet the requirements of the Federal Food, Drug, and Cosmestic Act, as amended, and regulations issued thereunder. However, the container requirements provided in this paragraph (c) may be waived by CCC if a producer agrees to redeem, pursuant to the lower loan repayment provisions contained in § 1434.24(e), and pursuant to the loan deficiency payment provisions contained in § 1434.26, and within a time period specified by CCC, honey pledged by the producer for a price support loan.

(1) The 5-gallon containers must hold approximately 60 pounds of honey and shall be new, clean, sound, uncased, and free from appreciable dents, and rust. The handle of each container must be firm and strong enough to permit carrying the filled container. The cover and can opening must not be damaged in any way that will prevent a tight seal. Cans which are punctured or have been punctured and resealed by soldering will not be acceptable.

(2) Steel drums must be open-end type and filled no closer than 2 inches from the top of the drums. In addition, such drums must be new or must be used drums which have been reconditioned inside and outside. They must be clean, treated inside and outside to prevent rusting, fitted with gaskets which provide a tight seal and have an inside coating suitable for honey storage.

(d) To be eligible for price support, honey must not contain in excess of 18.6 percent moisture.

§ 1434.8 Ineligible honey and ineligible containers.

(a) Honey from the following floral sources is not eligible for price support regardless of whether it meets other

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eligibility requirements: Andromeda, bitterweed, broomweed, cajeput (melaleuca), carrot, chinquapin, dog fennel, desert hollyhock, gumweed, mescal, onion, pickly pear, prune, queen's delight, rabbit brush, snowbrush (ceanothus), snow-on-the-mountain, spurge (leafy spurge), tarweed, and similar objectionably-flavored honey or blends of honey as determined by the Director, Cotton, Grain, and Rice Price Support Division, ASCS. If any blends of honey contain such ineligible honey, the lot as a whole shall be considered ineligible for price support.

(b) Honey which is adulterated is not eligible for price support. Honey shall be considered adulterated if:

(1) Any substance including water has been substituted wholly or in part for such honey;

(2) Such honey contains a poisonous or deleterious substance that may render such honey injurious to health, except that in any case in which such substance is not added to honey, such honey shall not be considered adulterated if the quantity of such substance in or on such honey does not ordinarily render it injurious to health; or

(3) Such honey is for any other reason unsound, unhealthy, unwholesome, or otherwise unfit for human or animal consumption.

(c) Honey shall not be eligible to be pledged as collateral for price support loans if such honey is stored in:

(1) 55 gallon steel drums having a tare weight less than 38 pounds, 30 gallon steel drums having a tare weight less than 26 pounds, or drums having removable liners of polyethylene or other materials,

(2) Bung-type drums, or

(3) Bulk tanks,

(4) Plastic buckets and containers,

(5) Steel drums which are severely dented as to cause damage to the lining, improper seal, or stacking capabilities, and

(6) Rusted drums with corroded areas.

(d) Honey which has been scorched, burned, or subjected to excessive heat resulting in objectionable flavor, color deterioration or carmelization shall be ineligible for price support.

(e) Honey which is ineligible to be pledged as collateral for price support loans includes, but is not limited to:

(1) Honey containing excessive bees or bee parts, paint chips, wood chips, or other foreign matter;

(2) Honey that is fermenting; and

(3) Foreign produced honey.

§ 1434.9 Approved storage.

(a) Loans will be made only on honey in approved storage as defined in this section.

(1) Approved farm storage shall consist of a storage structure located on or off the farm (excluding public or commercial warehouses) which is determined by CCC to be under the control of the producer and to afford safe storage for honey pledged as collateral for a price support loan. Producers may also obtain loans on honey packed in eligible containers and stored on leased space in facilities owned by third parties in which the honey of more than one person is stored if the honey which is to be pledged as collateral for a loan and which is stored on such leased space is segregated from all other honey. Each container of the segregated quantity of honey shall be marked with the producer's name and lot number so as to identify the honey from other honey stored in the structure. If the honey which is to be pledged as collateral for a price support loan is stored on leased space, a copy of the lease shall be obtained by the county office before a loan is made. The lease shall authorize the producer and any person having an interest in the honey, including CCC, to enter the premises to inspect and examine the honey and shall permit a reasonable time to such persons to remove the honey from the premises upon the termination of the lease. The county office may require from the lessor, a lien waiver that fully protects the interests of CCC.

(2) Approved warehouse storage or an approved warehouse shall consist of:

(i) A public warehouse for which a CCC Honey Storage Agreement is in effect and which is approved for price support purposes, or

(ii) A warehouse operated by an approved cooperative as defined in § 1434.3(d) and licensed to store honey under the United States Warehouse Act.

(3) The names of approved warehouses may be obtained from the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141-6205, or from State and county offices.

(b) If the honey located in a storage structure is pledged as collateral that secures more than one loan, the honey must be segregated so as to preserve the identity of the honey securing such loan. Honey securing a loan must also be segregated from any honey not pledged as collateral for a price support loan which is stored in the same structure.

(c) Approved storage requirements provided in this section may be waived by CCC if producer agrees to forego obtaining a loan pursuant to the loan deficiency payment provisions contained in § 1434.26.

§ 1434.10 Warehouse receipts.

(a) Warehouse receipts representing honey stored in an approved warehouse to be pledged as collateral for a loan or, delivered in satisfaction of a loan, or for loan deficiency payment for honey that was stored on the farm, must meet the requirements of this section, and all other provisions of this part, and CCC program documents. For warehouse stored honey, a separate warehouse receipt must be submitted for each class, color, floral source, quality, and grade of honey tendered to CCC.

(b) Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank in order to vest title in the holder. Receipts must be issued by an approved warehouse and indicate that the honey is stored identity preserved in eligible containers. The receipts must be negotiable, must cover eligible honey actually in storage in the warehouse, and must be registered or recorded with appropriate State or local officials when required by State law.

(c) Each warehouse receipt, or extracted honey inspection and weight certificate which properly identifies the warehouse receipt must be issued in accordance with the Honey Storage Agreement or United States Warehouse Act, if applicable, and must show the following information:

(1) That the honey is stored identity preserved in containers;

(2) Number of containers;

(3) Size of containers;

(4) Gross weight;

(5) Net weight;

(6) Lot number;

(7) Average moisture for quantity represented by the receipt; and

(8) Class, color, floral source, and grade.

(d) When an extracted honey inspection and weight certificate is issued, it must show the following additional information:

(1) Warehouse receipt number;

(2) Lot number;

(3) Number and size of containers;

(4) Class, color, floral source, and grade; and

(5) Net weight.

(e) If the warehouse receipt is issued for honey which is owned by the warehouseman either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseman on the warehouseman's honey is invalid under State law, the warehouseman may offer the honey to CCC for loan if such warehouse is licensed and operating under the United States Warehouse Act. In such States, if the warehouseman is not licensed and operating under the U.S. Warehouse Act, the warehouseman may deliver the honey to CCC for purchase if the warehouse receipt is issued in the name of CCC.

(f) Each warehouse receipt representing honey stored in an approved warehouse which has a honey storage agreement with CCC shall indicate that the honey is insured in accordance with such agreement. The cost of such insurance shall not be for the account of CCC.

§ 1434.11 Warehouse charges.

(a) Before the honey which is stored in an approved warehouse is pledged as collateral for a loan, the producer shall arrange for payment of storage, inspection, and all other charges accruing through the loan maturity date for the honey. Such charges shall include charges incident to weight and grade determinations on identity-preserved honey. CCC will not assume warehouse storage charges accruing through the loan maturity date for loans on honey acquired by CCC.

(b) For honey delivered to CCC in settlement of a loan, CCC shall pay to the producer the warehouse charges for receiving the commodity, or in-charges. If the warehouse receipt delivered to CCC in settlement for loan shows that such charges:

(1) Have been paid, CCC shall issue such payment to the producer, or

(2) Have not been paid, the producer agrees to assign such payment to the warehouse and CCC shall issue such payment to the warehouse for the producer's account.

§ 1434.12 Liens.

(a) The county office shall file or record, as required by State law, all security agreements which are issued with respect to honey pledged as collateral for price support loans. The cost of filing and recording shall be for the account of CCC.

(b) If there are any liens or encumbrances on the honey, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the honey after the loan is approved.

§ 1434.13 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC. The amount of such fees are available in State and county office and are shown on the note and security agreement.

(b) Effective only for each of the 1991 through 1995 crops of honey, producers and producer-packers of honey as defined in paragraphs (5) and (9), respectively, of section 3 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4602) shall remit to CCC a nonrefundable marketing assessment. Such marketing assessment applicable to a crop of honey shall be computed by multiplying an amount equal to one percent of the national average price support loan rate by the loan quantity of the crop. The assessment shall be collected from the loan deficiency payments and loan proceeds for the crop of honey. However, producers exempt from the payment of the honey research and promotion fee as provided in paragraph (e) of this section are also exempt from this marketing assessment.

(c) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter.

(d) All or a portion of the interest which accrues with respect to a loan may be waived on a price support loan for with respect to a quantity of honey which has been redeemed at a level which is less than the principal amount of the loan plus charges and interest determined in accordance with § 1434.24(e)(1)(ii).

(e) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4602) requires an assessment from honey producers and producer-packers. CCC shall collect the assessment from loan and loan deficiency payment disbursements. The amount of assessment is determined by the National Honey Board and shall be collected from each producer or producer-packer that has not been determined to be exempt from such payment by the Board. Such assessment shall not be deducted from cooperative marketing associations approved by CCC.

(f) Additional fees representing amounts voted on by producers for marketing or promotional fees may be deducted from price support proceeds by CCC as requested and agreed to by the governing body of such marketing or promotional fee and CCC. Deduction of such fees from amounts due producers and the payment of such fees to such governing body shall be made by CCC in a manner and at such time as determined by CCC.

§ 1434.14 Offsets.

(a) If any installment(s) on any loan made by CCC on farm storage facilities or drying equipment are due and payable under the provisions of the note evidencing such loan out of any amount due the producer under the regulations in this subpart, the amount due the producer, after deduction of applicable fees and charges and amounts due prior lienholders, shall be applied to satisfy the amounts due and payable on such installment(s).

(b) If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under the regulations in this subpart, after deduction of amounts due and payable on farm storage facilities or drying equipment and other amounts provided in paragraph (a) of this section, shall be applied as provided in part 3 of this title and part 1403 of this chapter, to such indebtedness.

§ 1434.15 Determination of quantity.

(a) The estimated quantity of farm-stored honey and the quantity of warehouse-stored honey pledged as collateral for a loan shall be determined as provided in § 1434.22. Estimates of the quantity of farm-stored honey shall be made on the basis of 12 pounds for each gallon of rated capacity of the container.

(b) The quantity of honey acquired by CCC as the result of a loan forfeiture shall be determined by weighing the honey delivered under the direction of the State committee.

(1) The quantity of honey acquired in 5-gallon cans shall be determined by using a tare weight of 2.5 pounds for each can.

(2) The quantity of honey acquired in 55-gallon drums shall be determined by using a tare weight of 53 pounds for each drum unless the producer can provide evidence of a lesser tare weight. However, the tare weight of such drum shall not be less than 38 pounds.

(3) The quantity of honey acquired in 30-gallon drums shall be determined by using a tare weight of 32 pounds for each drum unless the producer can provide evidence of a lesser tare weight. However, the tare weight of such drum shall not be less than 26 pounds.

(4) Title to the containers shall vest in CCC.

(c) Notwithstanding any provision in this section:

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(1) Loans may be based on 100 percent of the net quantity specified on acceptable evidence of disposition of the honey pledged as collateral for the loan if the producer is repaying the loan at the lower loan repayment rate in accordance with § 1434.24(e)(1)(ii), and the proceeds of the disbursement will be applied to the loan amount as a repayment if CCC determines that such quantity represents the quantity for the number of containers of honey pledged as collateral for the loan when the loan was disbursed.

(2) Loan deficiency payments may be based on 100 percent of the net quantity specified on acceptable evidence of disposition of the honey certified as eligible for loan deficiency payment if CCC determines that such quantity represents the quantity for the number of containers of honey initially certified for the loan deficiency payment when such payment was disbursed.

§ 1434.16 Determination of quality.

(a)(1) Loans and loan deficiency payments on farm stored honey will be made on the basis of the floral source and color of the honey as declared and certified by the producer on Form CCC-666 (Honey) (Farm Stored Honey Loan Certification and Worksheet) at the time the honey is pledged as collateral for a loan or at the time the loan deficiency payment application is made. The producer is also required to declare and certify on the Farm Stored Honey Loan Certification and Worksheet the color and class (table or nontable) of the honey at the time the honey is pledged as collateral for a loan or at the time the loan deficiency payment application is made.

(2) Loans and loan deficiency payments on warehouse-stored honey will be made on the basis of the floral source of the honey as shown on the warehouse receipt or on the extracted honey inspection and weight certificate accompanying the warehouse receipt representing such honey.

(b) When honey is delivered to CCC in eligible containers, its quality and color shall be determined by the Agricultural Marketing Service (AMS), in accordance with CCC Specifications for Unprocessed Honey on the basis of samples drawn by ASCS representatives supervising delivery. Samples shall not be drawn until the producer has designated all lots. Single containers shall not be considered as lots unless necessitated by color or floral source. The cost of quality and color determinations for a maximum of four lots shall be paid by CCC, with all other costs to be paid by the producer.

(c) Table honey which is stored in eligible containers shall, insofar as is practicable, be segregated into lots by color to conform with the color categories which are set forth in the CCC Specifications for Unprocessed Honey.

(d) If the honey in eligible containers is not segregated so that it can be classified as table honey, the settlement rate shall be based on the support rate for nontable honey.

(e) In the case of blends of table and nontable honeys, the settlement rate shall be based on the support rate for nontable honey.

§ 1434.17 Payment and forfeiture limitations.

(a) The total amount of loan deficiency payments and marketing loan gains that a person, as defined in part 1497 of this chapter, may receive under this section may not exceed:

(1) $200,000 in the 1991 crop year;

(2) $175,000 in the 1992 crop year;

(3) $150,000 in the 1993 crop year; and

(4) $125,000 in each of the 1994 and subsequent crop years.

(b) The total amount of loan forfeitures which may be made in a year by a person, as defined in part 1497 of this chapter, shall not exceed the amounts specified in paragraph (a) of this section. Such forfeiture amounts shall be determined on the settlement value of the honey which is forfeited to CCC.

§ 1434.18 Transfer of producer's interest prohibited.

The producer shall not transfer either the remaining interest in or right to redeem honey pledged as collateral for a loan on farm stored honey nor shall anyone acquire such interest or right. Subject to the provisions of § 1434.24, a producer who wishes to liquidate all or part of a loan by contracting for the sale of the honey must obtain written approval of the county office on a form prescribed by CCC to remove a specified quantity of the honey from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers or prospective purchasers at the county office.

§ 1434.19 Insurance

CCC will not require the producer to insure the honey pledged as collateral for a farm-stored loan. However, if the producer insures such honey and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest after first satisfying the producer's equity in the honey involved in the loss.

§ 1434.21 Loss or damage.

The producer is responsible for any loss in quantity or quality of the honey pledged as collateral for a loan. CCC shall not assume any loss in quantity or quality of the loan collateral.

§ 1434.21 Personal liability of the producer.

(a) The making of any fraudulent representation by a producer in the loan documents, in obtaining a loan, loan deficiency payment, or in connection with settlement or delivery under a loan, or the unlawful disposition of any portion of the honey by the producer, shall render the producer subject to criminal prosecution under Federal law. Any such loans shall become payable and loan deficiency payments shall be refunded upon demand and, aside from any additional liability under Federal criminal and civil fraud statutes, the producer shall be personally liable for the amount of the loan or loan deficiency payment and charges, any additional amount paid to the producer in connection with the honey, and all costs which CCC would not have incurred had it not been for the producer's fraudulent representation or unlawful disposition, together with interest on any such amounts. With regard to amounts due for a loan, such producers may not repay such loan at the lower loan repayment rate as prescribed in § 1434.24(a)(2)(ii). Notwithstanding the provisions of the note and security agreement, if a producer has made any such fraudulent representation with respect to or unauthorized removal or disposition of the honey pledged as collateral for a price support loan without prior written approval from CCC, the amount with which the producer will be credited for any honey delivered to or removed by CCC will be the following:

(1) In the case of loans on farm stored honey, the market value of the honey as determined by CCC as of the date of delivery to or removal by CCC, or the loan settlement value, whichever is the lower, or

(2) If the honey is sold by CCC in order to determine its market value, the sales price, less any costs sustained by CCC, or the loan settlement value, whichever is the lower. If the unlawful disposition of the loan collateral is determined by CCC not to have been a willful conversion, the value of the honey or part thereof delivered to CCC or removed by CCC shall be the same as the settlement value for eligible honey acquired by CCC as provided in this subpart.

(b) If the amount disbursed under a loan or in settlement thereof, or a loan deficiency payment, exceeds the amount authorized under this part, the producer shall be personally liable for repayment of the amount of such excess and charges plus interest.

(c) A producer shall be personally liable for any damages resulting from honey delivered to or removed by CCC, containing mercurial compounds or other substances poisonous to humans, animals, or food commodites which are contaminated.

(d) If the amount collected from the producer in satisfaction of the loan or loan deficiency payment is less than the amount required to be remitted to CCC in accordance with the provisions of this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges plus interest.

(e) In the case of joint loans and loan deficiency payments, each producer signing the note or loan deficiency payment application shall be jointly and severally liable for any personal liability which may result due to the application of the provisions of this section.

(f) The amount with which the producer will be credited for any honey delivered to or removed by CCC in accordance with this section shall be subject to the payment limitation provisions set forth in § 1434.17.

§ 1434.22 Quantity for loans.

(a) The amount of a loan on the quantity of eligible honey packaged in eligible containers and stored identity-preserved in an approved warehouse shall be based on a percentage of the net weight specified on the warehouse receipt representing such honey which is pledged as security for the loan. Such percentage shall not exceed 90 percent of the weight so specified except as provided in accordance with § 1434.15(c).

(b) Loans on farm stored honey shall not be made on more than a percentage ("loan percentage"), as established by the State committee, which shall not exceed a percentage established by CCC, of the certified or measured quantity of the eligible honey stored in approved farm storage and covered by the note and security agreement. The maximum loan percentage shall not exceed 90 percent of the measured or certified quantity, except as provided in accordance with § 1434.15(c). The loan percentages may be lowered by the county committee on an individual basis when determined to be necessary in order to provide CCC with adequate protection. The county committee shall consider:

(1) The condition or suitability of the storage structure;

(2) The condition of the honey;

(3) The hazardous location of the storage structure, such as a location which exposes the structure to danger of flood, fire, and theft by a person not entrusted with possession of the honey;

(4) Any disagreement with respect to the quantity of honey to be pledged as collateral for a loan; and

(5) Such other factors which relate to the preservation or safety of the loan collateral.

(c) Loans may be made on less than the maximum quantity eligible for loan at the producer's request. If the loan quantity is reduced by the State committee, the county committee, or by request of the producer, the note and security agreement shall cover all of the honey in the lot on which the loan is made.

(d) Transfer of loan collateral from farm storage to warehouse storage. Upon request by the producer before transfer, the county committee may approve the transfer of honey or part thereof which is pledged as collateral for a loan and which is stored on the farm to warehouse storage at any time during the loan period.

(1) Liquidation of the loan on the farm stored honey or part thereof shall be made through the deposit with CCC of warehouse receipts for the honey pledged as collateral for a loan on the warehouse stored honey and the immediate payment by the producer of the amount, including charges, by which the loan on the warehouse stored honey is less than the loan on the farm stored honey or part thereof and charges plus interest.

(2) Any amounts due the producer shall be disbursed by the county office.

(3) The maturity date of the loan on the warehouse stored honey shall be the maturity date applicable to the loan on the farm stored honey which was transferred to such loan on the warehouse stored honey.

(e) The quantity of honey pledged as collateral for a loan on honey stored on the farm or for which a loan deficiency payment is requested may be based on measurement as provided in paragraph (a) of this section, or based on the basis of the quantity of honey which an eligible producer certifies in writing on Form CCC-666 (Honey) is eligible if the honey is in approved farm storage and is otherwise available for loan purposes.

(f)(1) If the county committee determines, by measurement or otherwise, that the actual quantity pledged as collateral for a loan based on certification by the producer is less than the loan quantity, the county committee shall call the loan.

(i) The producer shall have fifteen days to settle the loan, except that the producer may request reconsideration of the loan call and provide information regarding the circumstances leading to the incorrect certification. The county committee may reinstate the producer's loan if:

(A) The circumstances are of a highly meritorious nature;

(B) The producer acted in good faith;

(C) The producer did not knowingly provide an incorrect certification and made a reasonable attempt to determine the quantity; and

(D) The producer repays the amount of any overdisbursement and charges plus interest.

(ii) If the loan is called, the county committee may refuse to approve any further loans on farm-stored honey for honey produced by the producer through the end of the next crop year after the crop year in which the incorrect certification was made.

(iii) If the county committee determines, by measurement or otherwise, that the actual quantity for a loan deficiency payment based on certification by the producer is less than the quantity eligible for such payment, the county committee may refuse to approve any further loan deficiency payment without evidence of production acceptable to CCC, on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made. However, the producer may request reconsideration of the refusal and provide information regarding the circumstances leading to the incorrect certification. In such cases, the county committee may approve the producer's request if:

(A) The circumstances are of a highly meritorious nature,

(B) The producer acted in good faith,

(C) The producer did not knowingly provide an incorrect certification and made a reasonable attempt to determine the quantity; and

(D) The producer repays the overdisbursement and charges, plus interest for the shortage.

(2) If the producer has incorrectly certified quantities for a loan or a loan deficiency payment on more than one occasion, the county committee shall call the loan or loans involved and approve no further loan deficiency payment without acceptable production evidence or loans on farm storage honey for the producer on any commodity through the end of the next crop year

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after the crop year in which the incorrect certification was made. If the county committee feels the seriousness of the matter so justifies, they may deny further farm-stored loans to the producer for more than one year.

(3) If the loan is called in accordance with this subsection, the producer may not repay the loan at the lower loan repayment rate in accordance with § 1434.24(a)(2)(ii).

(g) Producers who have been refused a loan on farm-stored honey may apply for a loan on warehouse stored honey.

§ 1434.23 Unauthorized removal and unauthorized disposition.

(a) Producers obtaining a honey loan shall agree not to move or dispose of the collateral pledged as security for such loan without obtaining prior written approval for such action from the county committee in accordance with § 1434.24 of this part.

(1) Unauthorized removal is the movement without prior written consent from the county committee in accordance with § 1434.24 of any loan collateral from the storage structure in which the honey was stored when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm. In such cases:

(i) On the first offense:

(A) If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds and no additional liens or encumbrances shall be placed on the commodity. If such waivers cannot be obtained, CCC shall call the loan in accordance with § 1434.22(f). And,

(B) The county committee may refuse to approve any further loans on farm stored honey for honey produced by the producer through the end of the next crop year after the crop year in which the unauthorized removal occurred.

(ii) On the second and subsequent offense, the county committee shall:

(A) Call the loan, and

(B) Not approve any further loans on farm stored honey for honey produced by the producer through the end of the next crop year after the crop year in which the unauthorized removal occurred.

(2) Unauthorized disposition is the conversion of collateral under loan without prior written consent from the county committee in accordance with § 1434.24. If unauthorized disposition of a quantity of a commodity occurs, the producer and CCC agree that such unauthorized disposition will cause serious and substantial damages to CCC, including damages to CCC's price support program, and the incurring of substantial administrative and other costs. The producer and CCC further agree that it will be difficult, if not impossible, to prove the amount of such damages. Accordingly, in the event that the producer moves the loan collateral prior to receiving written approval from the county committee, the loan shall be called and liquidated damages shall be assessed, in addition to any applicable interest with respect to the loan, on the quantity so disposed of beginning on the date the county committee has determined the unauthorized disposition occurred and shall continue until the loan is repaid.

(i) If the date of the unauthorized disposition of the loan collateral cannot be determined, such disposition shall be considered to have occurred on the later of:

(A) The day following the latest inspection of the collateral by a representative of the county committee, or

(B) The day following disbursement of the loan.

(ii) Liquidated damages shall be computed by multiplying the loan principal which represents the quantity so disposed by 6.5 percent interest.

(3) If liquidated damages are assessed in accordance with paragraph (a)(2) of this section, the county committee:

(i) On the first offense:

(A) May waive the calling of the loan and some or all of such liquidated damages if the county committee determines that:

(1) The violation occurred inadvertently or because the producer acted to prevent spoilage of the commodity,

(2) The violation did not result in harm or damage to the right or interest of any person or government agency, and

(3) The producer repays the loan and charges plus interest with respect to the quantity of the collateral which has been disposed.

(B) In such cases, shall furnish a copy of its determination to the Administrator, ASCS, and the State committee. If the determination of the county committee is not disapproved by either the Administrator, ASCS, or his designee, or the State committee within sixty days from the date the determinations are received, such determination shall be considered to have been approved.

(ii) On the second and subsequent offense, may not waive the calling of the loan or any of the liquidated damages.

(iii) Shall not consider the following acts as inadvertent acts, unless prior written approval is obtained from CCC, for the purposes of determining if some or all of the liquidated damages, or required repayments and charges plus interest or other administrative actions may be waived:

(A) Movement of mortgaged collateral off the farm,

(B) Movement of mortgaged collateral from one storage structure to another on the farm, and

(C) Feeding of mortgaged collateral.

(b) Producers who have been refused a loan on farm stored honey may apply for a loan on warehouse stored honey.

(c) If the loan is called in accordance with this subsection, the producer may not repay the loan at the lower loan repayment rate in accordance with § 1434.24(a)(2)(ii).

(d) Upon request by the producer before the transfer, the county committee may authorize the transfer of honey pledged as collateral for a loan or part thereof for honey stored in an approved warehouse to a loan on honey stored on the farm. Quantities pledged as collateral for a loan for honey stored on the farm shall be based on a measurement by a representative of the county office before approving the loan on the honey stored on the farm. The producer must immediatley repay the amount by which the loan on the honey stored on the farm is less than the loan for the honey stored in an approved warehouse and charges plus interest on the shortage. Such loans on farm-stored honey shall be made in the manner prescribed herein and the maturity date shall be the maturity date applicable to the loan which was transferred.

§ 1434.24 Release of the honey under loan.

(a)(1) A producer shall not move or dispose of any honey pledged as collateral for a loan until prior written approval for such removal or disposition has been received from the county committee in accordance with this section.

(2) A producer may at any time obtain a release of all or part of the honey remaining under loan by paying to CCC:

(i) The amount of the loan and any charges which had been made by CCC to the producer with respect to the quantity of the honey released, plus interest, or

(ii) An amount, without interest, which is less than the loan level determined in accordance with § 1434.24(e)(1)(ii).

(3) When the proceeds of a sale of honey are needed to repay all or part of a loan, the producer must request and obtain prior written approval of the county committee on a form prescribed by CCC in order to remove a specified quantity of the honey from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by CCC. If a producer fails to repay a loan within the time period prescribed by CCC for a loan and such commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC-661-1, Marketing Authorization, such producer may not repay the loan at the level that is less than the loan level determined in accordance with § 1434.24(e)(1)(ii).

(b) The note and security agreement shall not be released by CCC until the loan has been satisfied in full.

(c) After satisfaction of aloan, CCC shall release CCC's security interest in the honey at the producer's request. The producer shall be responsible for payment of any fee for such release if such fee can be determined.

(d) For honey stored in an approved warehouse, each partial release must cover all of the honey represented by one warehouse receipt. Subject to provisions of § 1434.5, warehouse receipts redeemed by the producer upon repayment of the loan, as provided in this paragraph (d) shall be released only to the producer or the producer's authorized agent. However, redeemed warehouse receipts maybe released to persons designated in a written authorization filed with the county office by the producer or the producer's properly authorized agent and dated within 15 days prior to the date of repayment.

(e)(1) Producers of honey may repay honey price support loans at the level that is the lesser of:

(i) The loan level and charges, plus interest, determined for such crop; or

(ii) such level as the Secretary, or a designee, determines will:

(A) Minimize the number of loan forfeitures;

(B) Not result in excessive total stocks of honey;

(C) Reduce the costs incurred by the Federal Government in storing honey; and

(D) Maintain the competitiveness of honey in domestic and export markets.

(2) CCC shall determine and announce the repayment levels for each crop of honey on a monthly basis. CCC may allow producers with honey loans to request that a loan repayment rate, announced by CCC, to be the repayment level for not more than 30 days from the date of such request. In such cases:

(i) The producer shall file, on a form prescribed by CCC, an agreement to redeem all or a portion of the loan quantity pledged as collateral for a loan at the announced price entered on the form.

(ii) If such request is approved by CCC, the rate specified on such form shall be in effect for not more than 30 days from the date such request is made for such loan.

(iii) If the producer fails to redeem the specified loan quantity within the 30-day period, CCC will require the producer to redeem the loan quantity at not less than the loan level determined for such crop in accordance with § 1434.24(a)(2)(i).

§ 1434.25 Liquidation of loans.

(a) The producer is required to:

(1) Repay the loan by payment of the amount of loan and any charges, plus interest, or an amount, without interest, which is less than the loan level determined in accordance with § 1434.24(e)(1)(ii), or

(2) Deliver the honey under loan to CCC. Deliveries shall be made in accordance with written instructions issued by the county office which shall set forth the time and place of delivery. Delivery points shall be limited to those approved by the CCC Kansas City Commodity Office. CCC will not accept delivery of any quantity of eligible honey in satisfaction of the loan indebtedness in excess of:

(i) For honey stored on the farm, the larger of:

(A) 110 percent of the quantity pledged as collateral for the loan, or

(B) A sufficient quantity of honey having a settlement value equal to the loan amount and charges, plus interest.

(ii) For honey stored in an approved warehouse, the quantity shown on the warehouse receipts.

(iii) An amount having a settlement value in excess of the amounts shown in § 1434.17 for the applicable crop year.

(b) Settlement of the quantity determined shall be made as provided in § 1434.27.

(c) If the producer desires to deliver the honey to CCC, the producer must give the county committee notice in writing of such intention to do so within a reasonable time prior to the applicable maturity date. If the producer fails to deliver such commodities to CCC by the date specified on Form CCC-691, Commodity Delivery Notice, and the producer subsequently redeems the commodity pledge as collateral for the loan before delivery is completed, interest shall continue to be assessed on such amount in accordance with part 1405 of this chapter.

(d) If, prior to delivery to CCC, the honey in approved farm storage is going out of condition, the producer shall so notify the county office and confirm such notice in writing. If the county committee determines that:

(1) The honey is going out of condition or is in danger of going out of condition;

(2) The honey cannot be satisfactorily conditioned by the producer; and

(3) Delivery cannot be accepted within a reasonable length of time, the county committee shall arrange for an inspection and grade and quality determination. When delivery is completed, settlement shall be made subject to the provisions of §§ 1434.20 and 1434.21 on the basis of such grade and quality determination or on the basis of the grade and quality determination made at the time of delivery, whichever is higher, for the quantity actually delivered.

(e) When considered necessary to protect the interest of CCC or when requested by the producer, CCC may call the loan and accept delivery of the honey prior to the loan maturity date.

(f) If the loan maturity date is accelerated upon request of the producer and the acceleration is approved by CCC, the settlement value of the honey shall be reduced by one-sixtieth of 1 cent per pound per month or fraction thereof from the earlier of:

(1) The date delivery is accomplished, or

(2) The final date for delivery as shown in the delivery instructions up to and including the original loan maturity date.

(g) If a producer fails to settle the loan in accordance with paragraph (a) of this section within 30 days from the maturity date of such loan, or other reasonable time period as established by CCC, a claim for the loan amount and charges plus interest shall be established. CCC shall:

(1) Inform the producer before the maturity date of the loan of the date by which the loan must be settled or a claim will be established in accordance with part 1403 of this title; and

(2) If the producer delivers the loan collateral in accordance with paragraph (a)(2) of this section after a claim is established:

(i) Determine the value of such collateral in accordance with § 1434.27,

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(ii) Waive interest on the loan amount which accrued prior to the establishment of the claim with respect to the settlement value of the quantity delivered from the date such loan proceeds were disbursed through the loan maturity date. Interest which accrues after the establishment of the claim shall not be waived, and

(iii) Reduce the outstanding claim amount arising from the loan by the amount of the settlement value of the quantity delivered plus the interest that was waived.

(h) Producers may not acquire honey, which was pledged as collateral for a price support loan through the exchange of commodity certificates.

§ 1434.26 Loan deficiency payments.

(a) Loan deficiency payments shall be available with respect to the 1991 through 1995 crops of honey.

(b) In order to be eligible to receive loan deficiency payments for a crop of honey, the producer of such commodity must:

(1) Comply with all of the program requirements to be eligible to obtain loans in accordance with this part,

(2) Agree to forego obtaining such loans, and

(3) Otherwise comply with all program requirements.

(c) The loan deficiency payment rate for a crop shall be the amount by which the level of price support loan level for the crop exceeds the level at which CCC has announced that producers may repay their price support loans in accordance with § 1434.24.

(d) The loan deficiency payment applicable to a crop of honey shall be computed by multiplying the loan deficiency payment rate, as determined in accordance with paragraph (c) of this section, by the quantity of honey the producer is eligible to pledge as collateral for a price support loan for which a loan deficiency payment is requested.

(e) CCC will make 90 percent of the loan deficiency payment in accordance with paragraph (d) of this section pending the receipt of disposition evidence in accordance with § 1434.15.

(f) Notwithstanding any provisions in this section, loan deficiency payments may be based on 100 percent of the net quantity specified on acceptable evidence of disposition of the honey certified as eligible for a loan deficiency payment if CCC determines that such quantity represents the quantity for the number of containers of honey pledged as collateral for the loan when the loan was disbursed.

§ 1434.27 Settlement.

(a) Except as provided in §§ 1434.20, 1434.21, and paragraph (b) of this section, settlement with the producer for eligible honey acquired by CCC under loan will be made on the basis of the quantity, floral source, class, quality, grade, and color of such honey as provided in this section and other applicable provisions of this subpart. The settlement value of honey shall be the product of the support rate for the class, floral source, grade, and color, times the quantity acquired at the time of settlement adjusted by the applicable discounts. The support rate per pound of honey at which settlement will be made shall be the rate determined annually and available in ASCS county offices.

(b) Settlement for eligible honey stored identity preserved in an approved warehouse and acquired by CCC shall be made on the basis of the net weight shown on the extracted honey inspection and weight certificate and the class, floral source, color, and grade shown on the inspection certificate.

(c) If ineligible honey is inadvertently accepted by CCC, the settlement value shall be the market value as of the date of delivery as determined by CCC. The provisions of § 1434.21 shall be applicable to settlement on ineligible honey where there has been a fraudulent representation on the part of the producer.

(d) If the settlement value of the honey is less than the amount due on the loan (excluding interest), or if the settlement value has been limited in accordance with § 1434.17, the amount of any deficiency and charges plus interest thereon shall be paid to CCC.

(e) If the settlement value of the honey delivered to CCC exceeds the amount due on the loan (excluding interest), such excess amount shall be paid to the producer. Any payment due the producer on a loan will be made by check drawn on the account of CCC by the county office.

(f) A producer may be required to retain and store the honey that is pledged as collateral for a loan for a period of 60 days after the maturity date of a loan without any cost to CCC. If CCC is unable to take delivery of the honey within the 60-day period after the loan maturity date; the producer shall be paid a storage payment upon delivery of the honey to CCC. The storage payment shall be computed at the storage rate stated in the applicable CCC storage agreement for honey in effect at the delivery point where the producer delivers the honey. The period for earning such storage payment shall begin the day following the expiration of the 60-day period after such maturity date and extend through the earlier of:

(1) The final date of actual delivery, or

(2) The final date for delivery as specified in the delivery instructions issued to the producer by the county office.

§ 1434.28 Foreclosure.

(a) If the loan indebtedness (i.e., the unpaid amount of the note, charges, and interest) is not satisfied upon maturity of the note, CCC may remove the honey from storage and assign, transfer, and deliver the honey or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine at public or private sale. Any such disposition may similarly be accomplished without the prior removal of the honey from storage. The honey may be processed before sale. CCC may become the purchaser of the whole or any part of the honey at either a public or private sale.

(b) At CCC's election, title to all or any part of the unredeemed honey securing the note as CCC may designate shall, without a sale thereof, immediately vest in CCC upon maturity and nonpayment of the producer's note. Whenever CCC acquires title to the unredeemed honey, CCC shall have no obligation to pay for any market value which such honey may have in excess of the loan indebtedness, i.e., the unpaid amount of the note and charges plus interest.

(c) If honey is removed from storage by CCC and is sold pursuant to paragraph (a) of this section at less than the principal amount due CCC on the loan (excluding interest), or, if the settlement value has been limited in accordance with § 1434.17, the producer shall be liable to CCC for the difference between the settlement value of the honey (or the proceeds from the sale of the honey, if higher) and the amount of the loan and charges plus interest.

§ 1434.29 Charges not be assumed by CCC.

CCC will not assume any charges for insurance, storage, packaging, or processing.

§ 1434.30 Handling payments and collections not exceeding $9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less which are due the producer will be paid only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1434.31 Death, incompetency, or disappearance.

In the case of death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan, payment shall be made upon proper application to the county office which made the loan to the persons who would be entitled to such producer's payment under the regulations contained in part 707 of this title—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

§ 1434.32 Definitions.

(a) As used in the regulations in this subpart and in all instructions, forms, and documents in connection therewith, the words and phrases listed in this section shall have the meaning assigned to them herein unless the context or subject matter otherwise requires.

(b) The following definitions shall be applicable to this part:

Charges. The term "charges" means all fees, costs, and expenses incident to insuring, carrying, handling, storing, conditioning, and marketing the honey and otherwise protecting the interest in the loan collateral of CCC or the producer including foreclosure costs.

Chattel mortgage. The term "chattel mortgage" means any security instrument which secures a farm stored loan.

County committee. The term "county committee" means only the committee and not its representative.

County executive director. The term "county executive director" means the person employed by the county committee to execute the policies of the county committee and to be responsible for day-to-day operations of the ASCS county office or the person acting in such capacity.

Crop year. The crop year shall be the calendar year.

Person. The term "person" means the individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable a State, political subdivision of a State, or any agency thereof.

Representative of the county committee and county committee representative. The terms "representative of the county committee" and "county committee representative" mean a member of the county committee, the county executive director, or a person designated by the county executive director to act in behalf of the county executive director.

Request for price support. The term "request for price support" means a request for loan.

Settlement value. The term "settlement value" means the value at which settlement is made with the producer on the mortgaged or pledged honey, as determined under the provisions of the regulations in this part.

State committee. The term "State committee" means the persons in a State designated by the Secretary of Agriculture as the ASC State committee under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, except that for Puerto Rico and the Virgin Islands, the Caribbean ASCS shall, in so far as applicable, perform the functions of the State committee.

State Executive Director. The term "State Executive Director" means the person employed by the State committee to execute the policy of the State committee and to be responsible for the day-to-day operations of the State ASCS office, or the person acting in such capacity.

§ 1434.33 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations will be submitted to the Office of Management and Budget in accordance with 44 U.S.C. chapter 35 and an OMB number will be assigned.

Signed this 15 day of May 1991 in Washington, D.C.

John A Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-11949 Filed 5-20-91; 8:45 am]

BILLING CODE 3410-05

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 101 and 103

[INS Number: 1424-91]

Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court; Bona Fide Marriage Exemption to Marriage Fraud Amendments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 153 of the Immigration Act of 1990 (IMMACT 90), Public Law 101-649, November 29, 1990. The interim rule establishes a procedure for classification of certain aliens who have been declared dependent on a juvenile court in the United States as special immigrants. This rule also implements section 702 of IMMACT 90 by providing for appeals of denial of adjustment of status where the denial was based solely on failure to establish eligibility for the bona fide marriage exemption contained in section 245(e) of the Immigration and Nationality Act, as amended.

DATES: This interim rule is effective May 21, 1991. Written comments must be submitted on or before June 20, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference INS number 1424-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Rita A. Boie, Senior Immigration Examiner, Adjudications Branch, Immigration and Naturalization Service, 425 I Street, NW., room 7223, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION: Section 153 of IMMACT 90 establishes a special immigrant classification for juveniles who have been declared dependent upon a juvenile court in the United States, found to be eligible for long-term foster care and in whose best interests it would be not to return to his or her home country.

The grant of special immigrant classification allows these juveniles to become eligible for an immigrant visa or adjustment of status to that of a lawful permanent resident. The special immigrant classification is not currently subject to the numerical restrictions imposed by law on most immigrant categories. On and after October 1, 1991, special immigrants will be subject to numerical limitations.

Congress did not waive any provisions of section 245 of the Act for these aliens. Section 245(a) prohibits the adjustment of status of aliens who have not been inspected and admitted or paroled into the United States. Section 245(c) also prohibits the adjustment of status of aliens who have failed to continuously maintain lawful nonimmigrant status or who have been employed without authorization in the United States. The Service anticipates that many dependent juvenile aliens will not be eligible for adjustment of status because of these provisions of law and will therefore request corrective legislation.

Section 153 of IMMACT 90 waives certain grounds of deportability for

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dependent juvenile aliens. However, the statute does not waive any grounds of excludability. An excludable alien may not be issued an immigrant visa, unless the exclusion grounds are waived. Therefore, many dependent juveniles may also be ineligible to obtain immigrant visas abroad. The Service will also request corrective legislation to allow certain grounds of excludability to be waived for these juveniles.

Section 153 of IMMACT 90 also provides that the parents of any alien provided special immigrant status shall not be accorded, by virtue of such parentage, any right, privilege or status under the Act.

The juvenile, or any person acting on the juvenile's behalf, may file the petition for classification as a special immigrant juvenile. The petitioner is not required to be a citizen or permanent resident of the United States.

The juvenile must be unmarried, since marriage alters the dependent relationship to the juvenile court.

The petitioner may appeal the director's decision to deny a petition for a special immigrant juvenile to the Associate Commissioner, Examinations.

This rule also provides for automatic revocation of special immigrant classification if the alien ceases to be dependent upon the juvenile court prior to entering the United States with an immigrant visa or approval of an application for adjustment of status to that of a lawful permanent resident. This is necessary to ensure that the alien continues to meet the qualifications set forth in the Act at the time the juvenile is admitted to the United States for lawful permanent residence. An alien will not be required to remain in depenent juvenile status after becoming a lawful permanent resident.

This rule also amends 8 CFR part 103 to provide for the appeal of a denial of an application for adjustment of status under section 245 of the Act when the application was denied solely because the applicant failed to establish eligibility for the bona fide marriage exemption contained in section 245(e)(3) of the Act. Section 702 of IMMACT 90 provided for a single level of administrative review for denials of requests for the exemption. The Service has determined that these denials will be appealable to the Associate Commissioner, Examinations. Minor technical revisions are also made to this part to remove grammatical inconsistencies caused by the additions.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reason and the necessity for immediate implementation of this interim rule are as follows:

Public Law 101-649 (IMMACT 90) created a new special immigrant classification for juvenile aliens who have been declared dependent upon a juvenile court in the United States. Early implementation of this rule will allow eligible alien juveniles to immediately obtain special immigrant status and apply for immigrant visas or adjustment of status to that of a lawful permanent resident. Early implementation will further allow petitioners for special immigrant juveniles and applicants for adjustment of status whose applications were denied because the applicant failed to establish eligibility for the bona fide marriage exemption to appeal the initial decisions.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been forwarded to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act for review and clearance.

List of Subjects

8 CFR Part 101

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 103

Adminstrative practice and procedures, Archives and records, Authority delegation, Fees, Forms.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 101—PRESUMPTION OF LAWFUL ADMISSION

1. The authority citation for part 101 continues to read as follows:

Authority: 8 U.S.C. 1103, 8 CFR part 2.

2. A new section 101.8 is added to read as follows:

§ 101.8 Special immigrant status for certain aliens declared dependent on a juvenile court (Special Immigrant Juvenile).

(a) *Definitions.*

Juvenile court means a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles.

Long-term foster care means foster care that is of indefinite duration. A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority.

(b) *Petition for Special Immigrant Juvenile.* An alien may not be classified as a special immigrant juvenile unless the alien is the beneficiary of an approved petition to classify an alien as a special immigrant under 101(a)(27)(J) of the Act. The petition must be filed on Form I-360, Petition for Amerasian, Widow or Special Immigrant.

(1) *Who may file.* The alien juvenile, or any person acting on the alien juvenile's behalf, may file the petition for special immigrant juvenile status. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

(2) *Where to file.* The petition must be filed at the district office of the Immigration and Naturalization Service having jurisdiction over the juvenile's residence.

(c) *Eligibility.* An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if the alien:

(1) Is a juvenile under the law of the state in which the juvenile court upon which the alien has been declared dependent is located;

(2) Is unmarried;

(3) Has been declared dependent upon a juvenile court located in the United States while the juvenile was in the United States and under the jurisdiction of the court;

(4) Has been deemed eligible by the juvenile court for long-term foster care;

(5) Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated or otherwise ended; and

(6) Has been the subject of administrative or judicial proceedings in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents.

(d) *Documents which must be submitted in support of the petition.* A petition to classify an alien as a special immigrant under section 101(a)(27)(J) of the Act must be accompanied by:

(1) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary to be dependent upon that court;

(2) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary eligible for long-term foster care; and

(3) Evidence of a determination made in judicial or administrative proceedings by a court or agency authorized by law to make such decisions, that it would not be in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents.

(e) *Decision.* The petitioner will be notified of the director's decision, and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision to the Associate Commissioner, Examinations, in accordance with part 103 of this chapter.

(f) *Revocation of approval.* The approval of a petition for a juvenile special immigrant is revoked as of the date of approval if the Secretary of State terminates the beneficiary's registration pursuant to section 203(e) of the Act prior to October 1, 1991 or pursuant to section 203(g) of the Act on or after October 1, 1991, or if any of the following circumstances occur before the beneficiary's journey to the United States commences or, if the beneficiary is an applicant for adjustment of status to that of a permanent resident, before the decision on his or her application becomes final:

(1) The beneficiary ceases to be a juvenile under the laws of the state of the juvenile's residence;

(2) The beneficiary marries;

(3) The beneficiary ceases to be dependent upon the juvenile court;

(4) The beneficiary ceases to be eligible for long-term foster care; or

(5) It is determined in administrative or judicial proceedings that it is in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

3. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1304; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

4. Section 103.1(f)(2) is amended by removing the word "and" at the end of paragraph (f)(2)(xxxiii), and by removing the period at the end of paragraph (f)(2)(xxxiv) and adding, in its place, a semicolon.

5. Section 103.1 is further amended by adding new paragraphs (f)(2)(xxxv) and (f)(2)(xxxvi) to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(2) * * *

(xxxv) Petition for special immigrant juvenile under part 101.8 of this title; and

(xxxvi) Applications for adjustment of status under part 245 of this title when denied solely because the applicant failed to establish eligibility for the bona fide marriage exemption contained in section 245(e) of the Act.

* * * * *

Dated: March 19, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-11971 Filed 5-20-91; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 204

[INS No. 1401-91]

Transition for Employees of Certain United States Businesses Operating in Hong Kong

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements section 124 of the Immigration Act of 1990 (Pub. L. 101-649) by providing petition procedures to establish eligibility for immigrant visas for qualifying employees (as well as their spouses and dependent children) of certain United States businesses operating in Hong Kong. This rule is necessary to help United States companies operating in Hong Kong avoid the loss of key employees through emigration to countries other than the United States and transfers to non-United States businesses.

DATES: This interim rule is effective May 21, 1990. Written comments must be submitted on or before June 20, 1991.

ADDRESSES: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference the INS number 1401-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Edward H. Skerrett, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., room 7122, Washington, DC 20536, telephone (202) 514-3946.

SUPPLEMENTARY INFORMATION: Section 124 of the Immigration Act of 1990 (Pub. L. 101-649) provides that up to 12,000 additional immigrant visas shall be made available in each of fiscal years 1991 through 1993 for qualifying employees (as well as their spouses and dependent children) of certain United States businesses operating in Hong Kong. This section further provides that the United States business desiring to employ such an alien within the United States must file a classification petition with the Attorney General

Due to the scheduled reversion of Hong Kong to the People's Republic of China in 1997, United States companies operating in Hong Kong have already lost key employees through emigration from Hong Kong and transfers to non-United States businesses. Congress passed Section 124 and provided an additional 12,000 visas for Hong Kong residents who might be forced to choose between remaining in Hong Kong after 1997, or seeking employment with a company which is based in a country with a more liberal immigration policy. It was intended that this provision would help reduce the out-migration of Hong Kong residents that results in the potential loss by American companies of some key employees. Section 124 is intended to reduce these losses.

This rule amends part 204 of title 8 of the Code of Federal Regulations by adding a new § 204.8 which sets forth regulatory requirements for eligibility and a petition process.

Jurisdiction

This rule prescribes that the petition to be used for this process shall be Form I-140, Petition for Prospective Immigrant Employee. The petition must be filed with the Service Center of the United States Immigration and Naturalization Service (INS) having jurisdiction over the United States Corporate Headquarters of the United States business.

Section 124 does not preclude these employees from adjusting status to permanent residence in the United States; however, because of the wording of section 124, only employees who still are residents of and employed in Hong Kong and only temporarily in the United

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States would be adjustable as section 124 immigrants. Furthermore, because of the limited number of aliens involved and the short duration of this provision, this rule precludes the concurrent filing of Form I-140 with an application for status as a permanent resident (Form I-485).

United States Employer

Section 124 requires that the qualifying business entity must be owned and operated in the United States, or that it be the subsidiary or affiliate of a business owned and operated in the United States. The legislative history is quite clear in indicating that the qualifying business entity must be a United States entity and that a foreign entity which happens to have premises in both the United States and Hong Kong would not be a qualifying business.

The business entity must employ at least 100 employees in the United States and at least 50 employees outside the United States. Section 124 does not require that all of this latter group be employed in Hong Kong. Of course, aliens employed in and residing in foreign locations other than Hong Kong are not eligible for the benefits of the provision.

Hong Kong Employees

Section 124 requires that the alien employee be a resident of Hong Kong. There is no requirement that the alien be a native of Hong Kong. Further, the alien must be employed in Hong Kong at the time the petition is filed (and have been so employed during the 12 previous, consecutive months) as an officer or supervisor or in a capacity that is managerial, executive, or requires specialized knowledge. The definitions of "officer" and "supervisor" are set forth in section 124; the definitions of "managerial capacity" and "executive capacity" are set forth in section 123 of the Immigration Act of 1990; and the definition of "specialized knowledge" has the meaning given that term in section 214(c)(2)(B) as amended by section 206(b)(2) of the Immigration Act of 1990.

United States Job Offer

The provision requires that the offer of employment be effective from the time of filing the petition and including the time of entry into the United States. It is clear, therefore, that qualifying employment must continue and cannot be broken. Termination of employment prior to entry will result in termination of qualification for the benefits of this provision; however, transfers within the same company to different divisions, sections, subsidiaries, or affiliates in Hong Kong will not be disqualifying.

Since section 124 of the Immigration Act of 1990 permits deferral of immigration of the United States by residents of Hong Kong until September 1, 2001, this rule provides for two levels of documentation regarding the proposed job in the United States. If immigration is to be immediate, a specific job description must be included with employer's attestation that the alien will be employed in one of the qualifying positions and that salary and benefits will be comparable to those provided to others with similar responsibilities and experience within the same company. If immigration will be deferred, a simple commitment by the employer that a qualifying job will be available will be accepted. However, at the eventual time of application for an immigrant visa, the specificity required for immediate immigration will apply and must be presented.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reason and the necessity for immediate implementation of this interim rule is as follows: This provision has been mandated for immediate implementation by section 161(b)(3) of Public Law 101-649.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Employment, Immigration, Petitions.

Accordingly, part 204 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

1. The authority citation for part 204 continues to read as follows:

Authority: 69 Stat. 166, 173, 175, 178, 179, 182, 217; 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, and 8 CFR part 2.

2. A new § 204.6 is added to read as follows:

§ 204.6 Petitions for employees of certain United States businesses operating in Hong Kong.

(a) *General.* A petition to accord an alien status as an employee of a United States business operating in Hong Kong pursuant to section 124 of the Immigration Act of 1990 shall be filed by the employer on Form I-140, Petition for Prospective Immigrant Employee. Since section 124 provides for up to 12,000 additional visa numbers only in each of fiscal years 1991 through 1995, petitions for these employees will not be accepted after September 30, 1995.

(b) *Definitions.* As used in this section:

Affiliate means one of two subsidiaries both of which are owned and controlled by the same parent or individual or one of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

Executive capacity means an assignment within an organization in which the employee primarily:

(i) Directs the management of the organization or a major component or function of the organization;

(ii) Establishes the goals and policies of the organization, component, or function;

(iii) Exercises wide latitude in discretionary decision-making; and

(iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

Managerial capacity means an assignment within an organization in which the employee primarily:

(i) Manages the organization, or a department, subdivision, function, or component of the organization;

(ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised, or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) Exercises direction over the day-to-day operations of the activity or function for which the employee has authority.

Officer means, with respect to a business entity, the chairman or vice-chairman of the board of directors of the entity, the chairman or vice-chairman of the executive committee of the board of directors, the president, any vice-president, any assistant vice-president, any senior trust officer, the secretary, any assistant secretary, the treasurer, any assistant treasurer, any trust officer or associate trust officer, the controller, any assistant controller, or any other officer of the entity customarily performing functions similar to those performed by any of the foregoing officers.

Parent means a firm, corporation, or other legal entity which has subsidiaries.

Specialized knowledge means, with respect to an organization, that an alien has a special knowledge of the organization's product and its application in international markets or has an advanced level of knowledge of processes and procedures of the organization.

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power; or owns, directly or indirectly, less than half the entity, but in fact controls the entity.

Supervisor means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, award, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgement.

United States business, as used in this section, means an entity or organization created under the laws of the United States which has a United States principal place of business and which is at least 50 percent owned by United States citizens or permanent residents.

(c) *Jurisdiction.* The petition must be filed at the Service Center having jurisdiction over the corporate headquarters of the business in the United States. There will be no concurrent filing of a petition with an application for status as a permanent resident (Form I-485).

(d) *Eligibility.* The alien beneficiary must:

(1) Be a resident of Hong Kong who is employed in Hong Kong (and has been so employed during the 12 previous, consecutive months) as an officer or supervisor or in a capacity that is managerial, executive, or involves specialized knowledge, by a business entity which:

(i) Is owned and organized in the United States (or is the subsidiary or affiliate of a business owned and organized in the United States);

(ii) Employs at least 100 employees in the United States and at least 50 employees outside the United States (not necessarily all in Hong Kong); and

(iii) Has a gross annual income of at least $50,000,000.

(2) Have an offer of employment in the United States from the United States business entity as an officer or supervisor or in a capacity that is managerial or executive, or involves specialized knowledge. The offer of employment must:

(i) Be effective from the time of filing the petition through and including the time of entry into the United States, and

(ii) Provide for salary and benefits comparable to the salary and benefits provided to others with similar responsibilities and experience within the same company.

(e) *Determining managerial or executive capacities*—(1) *Supervisors as managers.* A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(2) *Staffing levels.* If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function shall be taken into account. An individual shall not be considered to be acting in a managerial or executive capacity merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

(f) *Evidence to accompany petition.* A petition filed on Form I-140 shall be accompanied by:

(1) Form ETA-750B, Statement of Qualifications of Alien; and

(2) A letter from the employer attesting to the information contained in paragraph (d) of this section. Since the alien's move to the United States from Hong Kong does not need to take place immediately, the employer's information on the job in the United States will be determined by the circumstances of the individual case. If immediate immigration is intended, a specific job description must be included with the employer's attestation. If immigration will be deferred, a simple commitment by the employer that a qualifying job will be available in the United States will be acceptable. Prior to seeking admission to the United States, a deferred visa applicant must present a specific job description letter for redetermination of eligibility. Such letter shall be presented to the visa-issuing consular post, or to the Service office where the alien is applying for adjustment of status in the United States.

(g) *Closing action*—(1) *Approval.* If the alien is residing in Hong Kong, an approved petition will be forwarded for visa processing to the United States Consulate at Hong Kong. Whether the alien is in Hong Kong or is adjusting in the United States, the legend "HONG KONG SEC. 124" will be clearly printed in the block used for indicating preference at the top of Form I-140.

(2) *Denial.* The denial of a petition filed under this provision shall be appealable to the Associate Commissioner, Examinations. Notification of denial and appeal rights, and the procedure for appeal shall be the same as those contained in 8 CFR 103.3.

(3) *Revocation.* A petition approved under this provision shall be automatically revoked for the same reasons provided in 8 CFR 205.1(c). The procedure for revocation on notice shall be the procedure described in 8 CFR 205.2. Termination of employment shall be grounds for automatic revocation; however, a transfer within the same company to a different division, section, subsidiary, or affiliate in Hong Kong will not be disqualifying.

Dated: March 18, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-11972 Filed 5-20-91; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 212

[INS No. 1410-91]

Consent to Reapply for Admission After Deportation, Removal or Departure at Government Expense

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 514 of the Immigration Act of 1990 (IMMACT), Public Law 101-649, November 29, 1990, by extending from ten to twenty years the bar on re-entry into the United States after deportation or removal of aliens who are convicted of one or more aggravated felonies. This change applies to admissions occurring on or after January 1, 1991, and is necessary to ensure implementation and regulatory compliance with the statute as enacted by Congress. This rule also provides other miscellaneous technical changes to 8 CFR 212.2.

DATES: This interim rule is effective May 21, 1991. Interested persons are invited to submit written comments on or before June 20, 1991.

ADDRESSES: Written comments should be submitted in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. Please include INS number 1410-91 on the mailing envelope to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Cindy N. Lechner, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., room 7228, Washington, DC 20536, telephone (202) 514-3946.

SUPPLEMENTARY INFORMATION: On November 29, 1990, section 212(a)(17) of the Immigration and Nationality Act (Act) was amended to bar the re-entry of an alien convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, within twenty (20) years of the date of deportation or removal. Such alien may not re-enter the United States until twenty (20) years have elapsed unless special permission to reapply for admission during the twenty (20) year period is granted by the Attorney General. This extended period barring aggravated felons relates to aliens who are applying for admission on or after January 1, 1991.

The Service's implementation of this rule as an interim rule, with provision of for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reason and the necessity for immediate implementation of this interim rule is that this amendment with respect to consent to reapply for admission after deportation, removal or departure at government expense, and the extension of the bar from ten to twenty years for aggravated felons is effective on January 1, 1991, under Public Law 101-649.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers of these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1228, 1252; and 8 CFR part 2.

2. Section 212.2 is revised to read as follows:

§ 212.2 Consent to reapply for admission after deportation, removal or departure at Government expense.

(a) *Evidence.* Any alien who has been deported or removed from the United States is inadmissible to the United States unless the alien has remained outside of the United States for five consecutive years since the date of deportation or removal. If the alien has been convicted of an aggravated felony, he or she must remain outside of the United States for twenty consecutive years from the deportation date before he or she is eligible to re-enter the United States. Any alien who has been deported or removed from the United States and is applying for a visa, admission to the United States, or adjustment of status, must present proof that he or she has remained outside of the United States for the time period required for re-entry after deportation or removal. The examining consular or immigration officer must be satisfied that since the alien's deportation or removal, the alien has remained outside the United States for more than five consecutive years, or twenty consecutive years in the case of an alien convicted of an aggravated felony as defined in section 101(a)(43) of the Act. Any alien who does not satisfactorily present proof of absence from the United States for more than five consecutive years, or twenty consecutive years in the case of an alien convicted of an aggravated felony, to the consular or immigration officer, and any alien who is seeking to enter the United States prior to the completion of the requisite five- or twenty-year absence, must apply for permission to reapply for admission to the United States as provided under this part. A temporary stay in the United States under section 212(d)(3) of the Act does not interrupt the five or twenty consecutive year absence requirement.

(b) *Alien applying to consular officer for nonimmigrant visa or nonresident alien border crossing card.* (1) An alien who is applying to a consular officer for a nonimmigrant visa or a nonresident alien border crossing card, must request permission to reapply for admission to the United States if five years, or twenty years if the alien's deportation was based upon a conviction for an aggravated felony, have not elapsed since the date of deportation or removal. This permission shall be requested in the manner prescribed through the consular officer, and may be granted only in accordance with sections 212(a)(17) and 212(d)(3)(A) of the Act and § 212.4 of this part. However, the alien may apply for such permission by submitting Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, to the consular officer if that officer is willing to accept the application, and recommends to the district director that the alien be permitted to apply.

(2) The consular officer shall forward the Form I-212 to the district director with jurisdiction over the place where the deportation or removal proceedings were held.

(c) *Special provisions for an applicant for nonimmigrant visa under section 101(a)(15)(K) of the Act.* (1) An applicant for a nonimmigrant visa under section 101(a)(15)(K) must:

(i) Be the beneficiary of a valid visa petition approved by the Service; and

(ii) File an application on Form I-212 with the consular officer for permission to reapply for admission to the United States after deportation or removal.

(2) The consular officer must forward the Form I-212 to the Service office with jurisdiction over the area within which the consular officer is located. If the alien is ineligible on grounds which, upon the applicant's marriage to the United States citizen petitioner, may be waived under section 212 (g), (h), or (i) of the Act, the consular officer must also forward a recommendation as to whether the waiver should be granted.

(d) *Applicant for immigrant visa.* An applicant for an immigrant visa who is not physically present in the United States and who requires permission to reapply must file Form I-212 with the district director having jurisdiction over the place where the deportation or removal proceedings were held. If the applicant also requires a waiver under section 212 (g), (h), or (i) of the Act, Form I-601, Application for Waiver of Grounds of Excludability, must be filed simultaneously with the Form I-212 with the American consul having jurisdiction over the alien's place of residence. The consul must forward these forms to the appropriate Service office abroad with jurisdiction over the area within which the consul is located.

(e) *Applicant for adjustment of status.* An applicant for adjustment of status under section 245 of the Act and Part 245 of this chapter must request permission to reapply for entry in conjunction with his or her application for adjustment of status. This request is made by filing an application for permission to reapply, Form I-212, with the district director having jurisdiction over the place where the alien resides. If the application under section 245 of the Act has been initiated, renewed, or is pending in a proceeding before an immigration judge, the district director must refer the Form I-212 to the immigration judge for adjudication.

(f) *Applicant for admission at port of entry.* Within five years of the deportation or removal, or twenty years in the case of an alien convicted of an aggravated felony, an alien may request permission at a port of entry to reapply for admission to the United States. The alien shall file the Form I-212 with the district director having jurisdiction over the port of entry.

(g) *Other applicants.* (1) Any applicant for permission to reapply for admission under circumstances other than those described in paragraphs (b) through (f) of this section must file Form I-212. This form is filed with either:

(i) The district director having jurisdiction over the place where the deportation or removal proceedings were held; or

(ii) The district director who exercised or is exercising jurisdiction over the applicant's most recent proceeding.

(2) If the applicant is physically present in the United States but is ineligible to apply for adjustment of status, he or she must file the application with the district director having jurisdiction over his or her place of residence.

(h) *Decision.* An applicant who has submitted a request for consent to reapply for admission after deportation or removal must be notified of the decision. If the application is denied, the applicant must be notified of the reasons for the denial and of his or her right to appeal as provided in part 103 of this chapter. Except in the case of an applicant seeking to be granted advance permission to reapply for admission prior to his or her departure from the United States, the denial of the application shall be without prejudice to the renewal of the application in the course of proceedings before an immigration judge under section 242 of the Act and this chapter.

(i) *Retroactive approval.* (1) If the alien filed Form I-212 when seeking admission at a port of entry, the approval of the Form I-212 shall be retroactive to either:

(i) The date on which the alien embarked or reembarked at a place outside the United States; or

(ii) The date on which the alien attempted to be admitted from foreign contiguous territory.

(2) If the alien filed Form I-212 in conjunction with an application for adjustment of status under section 245 of the Act, the approval of Form I-212 shall be retroactive to the date on which the alien embarked or reembarked at a place outside the United States.

(j) *Advance approval.* An alien whose departure will execute an order of deportation shall receive a conditional approval depending upon his or her satisfactory departure. However, the grant of permission to reapply does not waive inadmissibility under section 212(a) (16) or (17) of the Act resulting from exclusion, deportation, or removal proceedings which are instituted subsequent to the date permission to reapply is granted.

Dated: March 11, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-12020 Filed 5-20-91; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Part 237

[INS No. 1410-91]

Imposition of Penalty

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule removes 8 CFR 237.4 which references 8 CFR part 280 of the Code of Federal Regulations regarding the imposition of penalties and bond procedures of section 237 of the Immigration and Nationality Act (Act). The reference will be properly placed in the Immigration and Naturalization Service (Service) Operations Instructions (O.I.) 237.1. Part 237.4 is removed and reserved.

EFFECTIVE DATE: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Kathryn Sheehan, Director, Enforcement Implementation Team, Immigration and Naturalization Service, 425 I St. NW., room 2108, Washington, DC 20536, telephone (202) 514-6612.

SUPPLEMENTARY INFORMATION: Title 8, Code of Federal Regulations, part 237.4 states that penalties for violation of section 237 of the Act shall be imposed in accordance with the provisions of part 280 of the regulations. A bond or undertaking submitted to obtain clearance as provided in section 237(b) of the Act shall be on Form I-310. Prior to the enactment of the Immigration Act of 1990 (IMMACT 90), Public Law 101-649, 104 Stat. 4978, section 237 of the Act required any master, commanding officer, purser, person in charge, agent, owner, or consignee of any vessel or aircraft who violated the provisions of section 237 of the Act to pay to the District Director of Customs a fine of $300.00 for each violation. Section 543 of the IMMACT 90 increased this fine to $2,000.00 and authorized the Commissioner of the Immigration and Naturalization Service to collect this fine.

The Service is removing the reference to the procedure for imposition of penalties and for obtaining a clearance bond from 8 CFR 237.4, and properly placing the reference into Service Operations Instructions (O.I.) 237.1. This action will bring this section into conformity with similar sections that do not contain a reference in the Service Regulations about the imposition of penalties. Therefore, 8 CFR 237.4 is removed and reserved.

The Service's implementation of this rule as a final rule is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reason and the

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necessity for immediate implementation of this final rule is that the removal of 8 CFR 237.4 from the regulations will not have an impact on any other section or procedures as it merely refers to 8 CFR part 280, Imposition and Collection of Fines which describes procedures. This will simply bring 8 CFR 237 into conformity with similar sections which do not have a regulation for imposition of penalties.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have significant economic impact on a substantial number of small entities. This is not a major rule as defined in Section 1(b) of E.O. 12992, nor does this rule have Federalism implications warranting the preparation of the Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 237

Aliens.

Accordingly, part 237, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 237—DEPORTATION OF EXCLUDED ALIENS

1. The authority citation for part 237 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1227, and 1255.

§ 237.4 [Removed]

2. Section 237.4 is removed and reserved.

Dated: February 27, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-11970 Filed 5-20-91; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 242

[INS No. 1439-91]

Release Procedures; Lawful Permanent Residents Convicted of Aggravated Felonies

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements section 504 of the Immigration Act of 1990 (IMMACT), Public Law 101-649, enacted on November 29, 1990, by providing the procedures to be followed in determining release conditions for lawful permanent resident aliens who are in deportation proceedings and who have been convicted of aggravated felonies as defined in section 101(a)(43) of the Immigration and Nationality Act. This rule is necessary to provide that aggravated felons who are eligible for release are screened carefully to ensure that they do not pose a threat to the public.

DATES: This rule is effective May 21, 1991. Written comments must be submitted on or before June 20, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. To ensure proper handling please reference INS number 1439-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Gale David, telephone: (202) 514-1954.

SUPPLEMENTARY INFORMATION: This rule amends 8 CFR 242.2 by adding a new paragraph (h) relating to the release procedures for an alien lawfully admitted for permanent residence who has been convicted of an aggravated felony. This addition is necessitated by section 504 of the Immigration Act of 1990, which provides for the release from custody of permanent resident aliens who are in deportation proceedings and who are aggravated felons. This section sets forth the procedures for such release.

Background; Statutory Authority

The Anti-Drug Abuse Act of 1988 provided that any alien convicted of an aggravated felony on or after November 18, 1988 must be taken into custody and is ineligible under any circumstances for release from custody. However, section 504 of the Immigration Act of 1990 modifies this stricture and provides that a permanent resident alien convicted of an aggravated felony shall be released from detention on bond or such other conditions an may be prescribed if the Attorney General determines that he or she is not a threat to the community, and he or she is likely to appear for any scheduled hearings.

This interim rule establishes the criteria to be used in determining whether and under what conditions an aggravated felon lawfully admitted for permanent residence may be released from custody. This includes the seriousness of the crime (or crimes) committed, the alien's criminal history and prior immigration violations, whether any relief from deportation is available and the likelihood that it will be granted, and whether the alien poses a threat to the community, in determining whether the alien is a good candidate for release.

Amelioration of custody status is addressed in 8 CFR 242.2(c)(2). Generally, an alien should not be detained or required to post bond except upon a finding that he or she is a threat to the national security or a poor bail risk. However, this standard considers that the alien concerned has not been arrested or convicted of any crime, nor has he or she been involved with subversive or immoral activities or narcotics. Clearly, aggravated felons do not fall within the purview of this standard and a new standard must be developed.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reasons and the necessity for immediate implementation of this interim rule are as follows: Section 504 of the Immigration Act of 1990 was effective on the date of enactment, November 29, 1990. This regulatory authority is required immediately.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, not does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 242

Administrative practice and procedure, Aliens.

Accordingly, part 242 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. The authority citation for part 242 is revised to read as follows:

Authority: 104 Stat. 4978, 66 Stat. 173, 208, 214, 235, 100 Stat. 3537; 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1254, 1362; 8 CFR part 2.

2. Section 242.2 is amended by adding a new paragraph (h) to read as follows:

§ 242.2 Apprehension, custody, and detention.

* * * * *

(h) *Custody issues; release procedures.* (1) A lawful permanent resident alien convicted of an aggravated felony may be released from custody, after having completed serving the sentence for such conviction, if the Attorney General determines that he or she is not a danger to the community and that he or she is likely to appear for all scheduled hearings. Review of each case to determine custody or release conditions shall include, but need not be limited to, consideration of the following factors:

(i) Seriousness of the crime(s) of which convicted;

(ii) Prior criminal history, especially the nature of the crimes and number of arrests;

(iii) Sentence(s) imposed and time actually served;

(iv) History of failures to appear for court (defaults);

(v) Probation history;

(vi) Evidence of rehabilitative effort or recidivism;

(vii) Equities in the United States;

(viii) Availability of relief from deportation and the likelihood of its being granted; and

(ix) Prior immigration violations and history.

(2) If, after consideration of all factors listed in paragraph (h)(1) of this section, it is determined that the alien is not a threat to public safety and is likely to appear for all scheduled hearings, he or she may be released from custody under such conditions as the Attorney General may prescribe, including the giving of a bond. If an appearance bond is prescribed as a condition of such release, it shall be in an appropriate and sufficient amount to encourage compliance with demands for appearance and with any other conditions of release.

Dated: April 1, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-12021 Filed 5-20-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AAL-4]

Amendment to Adak Control Zone and Transition Area; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of the control zone and transition area of the Adak, AK, Naval Air Station (NAS). This action is due to a change in the airport reference point (ARP) and relocation of the tactical air navigational aid (TACAN) for Adak, AK, NAS.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On January 18, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the descriptions of the control zone and transition area of the Adak, AK, NAS (56 FR 1958). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Two comments, one from the Department of Defense and the other from the Department of State, were received regarding this proposal. Both parties concurred with the proposal. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the description of the control zone and transition area of the Adak, AK, NAS. A new Department of the Navy survey resulted in a new ARP for Adak Airport and relocation of the TACAN. This action corrects the descriptions of the Adak, AK, Control Zone and the 700-foot and the 1,200-foot Transition Area to reflect these changes.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Adak, AK [Revised]

Within a 5-mile radius of the Naval Air Station (NAS) Adak Airport (lat. 51°52'46" N., long. 176°38'37" W.); within 2 miles either side of the 052° bearing from the Adak RBN (lat. 51°55'06" N., long. 176°33'52" W.) extending from the 5-mile radius zone to 7 miles northeast of the airport, within 2 miles either side of the NAS Adak TACAN (lat. 51°52'22" N., long. 176°40'18" W.) 059° radial extending from the 5-mile radius zone to 7 miles northeast of the airport; and within 2 miles either side of the NAS Adak TACAN 250° radial extending from the 5-mile radius zone to 7 miles southwest of the airport.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Adak, AK [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Naval Air Station (NAS) Adak Airport (lat. 51°52'46" N., long. 176°38'37" W.); within 2 miles either side of the 052° bearing from the Adak RBN (lat. 51°55'06" N., long. 176°33'52" W.) extending from the 5-mile airport radius to 8.5 miles northeast of the airport, within 2 miles either side of the NAS Adak TACAN (lat. 51°52'22" N., long. 176°40'18" W.) 059° radial extending from the 5-mile radius to 8.5 miles northeast of the airport, within 2 miles either side of the NAS Adak TACAN 250° radial extending from the 5-mile radius to 8.5 miles southwest of the airport; and that airspace extending upward from 1,200 feet above the surface within 5 miles either side of the 052° bearing from the Adak RBN extending from the 5-mile airport radius to 15 miles northeast of the airport, within 5 miles either side of the NAS Adak

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TACAN 089° radial extending from the 5-mile radius to 15 miles northeast of the airport, within 5 miles either side of the NAS Adak TACAN 230° radial extending from the 5-mile radius to 15 miles southwest or the airport, excluding that airspace contained in the Adak, AK, Control Zone.

Issued in Washington, DC, on May 8, 1991.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-11969 Filed 5-20-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-AAL-9]

Establishment of VOR Federal Airway; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Federal Airway V-357 located between Kodiak and Homer, AK. This action will improve the flow of traffic between Kodiak and Homer, AK, by providing an additional navigable airway for departures to reduce delays at Kodiak. The establishment of this airway will improve the flow of traffic between Kodiak and Homer, AK, and reduce controller workload

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On October 12, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish VOR Federal Airway V-357 located between Kodiak and Homer, AK (55 FR 41544). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.125 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes VOR Federal Airway V-357 located between Kodiak and Homer, AK. Departures from Kodiak are often delayed by arrivals due to the lack of a navigable airway to apply the required lateral separation between opposite direction traffic. This action will provide an alternate route with a lower minimum en route altitude, which will enhance safety, reduce delays, and reduce controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.125 [Amended]

2. Section 71.125 is amended as follows:

V-357 [NEW]

From Kodiak, AK, 27 miles 12 AGL, 24 miles 35 MSL, 4 miles 65 MSL, INT Kodiak 033° and Homer, AK, 178° radials, 30 miles 65 MSL, 40 miles 12 AGL, to Homer.

Issued in Washington, DC, on May 8, 1991.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-11962 Filed 5-20-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 90-AAL-2]

Establishment of VOR Federal Airways and Jet Routes; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments establish new Jet Routes J-237 and J-238 and establish new Federal Airways V-500 and V-525 located in the State of Alaska between Shemya, AK; Amchitka, AK; and Adak, AK. These airways are necessary to improve the increasing flow of traffic between Amchitka, AK, and Adak, AK, and to increase the efficiency of air traffic to Shemya, AK, by providing a more precise means of navigation. These actions will enhance safety, improve traffic flow, and reduce controller workload.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9552.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1990, the FAA proposed to amend parts 71 and 75 of the Federal Aviation Regulations (14 CFR parts 71 and 75) to establish new Jet Routes J-237 and J-238 and to establish new VOR Federal Airways V-500 and V-525 located in the State of Alaska between Shemya, AK; Amchitka, AK; and Adak, AK (55 FR 13287). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, these amendments are the same as that proposed in the notice. Sections 71.125 and 75.100 of parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6G dated September 4, 1990.

The Rule

These amendments to parts 71 and 75 of the Federal Aviation Regulations designate Jet Routes J-237 and J-238 and establish Federal Airways V-500 and V-525 located in the State of Alaska between Shemya, AK; Amchitka, AK; and Adak, AK. These airways are necessary to improve the increasing flow of traffic between Amchitka, AK, and Adak, AK, and to increase the efficiency of air traffic to Shemya, AK, by providing a more precise means of navigation. With the commissioning of the Amchitka VORTAC and the designation of the Amchitka Island, AK, Control Zone, traffic is steadily increasing between Amchitka, AK, and Adak, AK. Due to the limitations of radar and communication coverage in this area, the need for primary and alternate navigable airspace is essential. These actions will enhance safety, improve traffic flow, and reduce controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways, Jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, parts 71 and 75 of the Federal Aviation Regulations (14 CFR parts 71 and 75) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.125 [Amended]

2. Section 71.125 is amended as follows:

V-500 [New]

From Shemya, AK; Amchitka, AK; to Adak, AK, NDB.

V-525 [New]

From Amchitka, AK, INT Amchitka 062° and Adak, AK, 275° radials; to Adak, AK, NDB.

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

3. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

4. Section 75.100 is amended as follows:

J-237 [New]

From Shemya, AK; Amchitka, AK; to Adak, AK, NDB.

J-238 [New]

From Amchitka, AK, INT Amchitka 062° and Adak, AK, 275° radials; to Adak, AK, NDB.

Issued in Washington, DC, on May 7, 1991.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-11965 Filed 5-20-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 89-ASO-12]

Alteration of VOR Federal Airways and Jet Routes; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects an error discovered in the description of V-35 located in the vicinity of Lee County, FL. The description omitted a dogleg that should be included between Lee County and St. Petersburg, FL. This action corrects that omission.

EFFECTIVE DATE: 0901 u.t.c., May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 91-8007 was published on April 5, 1991, altering the descriptions of several Federal airways and jet routes located in the vicinity of Fort Myers, FL (56 FR 14016). The description for VOR Federal Airway V-35 was written incorrectly. The description indicates that the segment after Lee County, FL., is a direct route to St. Petersburg, FL., when it should be a dogleg to the west of those two points. This action corrects that error.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, Federal Register Document 91-8007, as published in the Federal Register on April 5, 1991 (56 FR 14016), is corrected to read as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-35 [Amended]

By removing the words "INT Biscayne Bay 286° and Fort Myers, FL, 127° radials; Fort

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Myers: St. Petersburg, FL; " and substituting the words "INT Biscayne Bay 228° and Lee County, FL, 139° radials; Lee County; INT Lee County 326° and St. Petersburg, FL, 152° radials; St. Petersburg;"

Issued in Washington, DC, on May 10, 1991.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-11994 Filed 5-20-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 90-AEA-13]

Alteration of Jet Routes J-42 and J-225

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Jet Routes J-42 and J-225 located in the States of New York, Connecticut, Rhode Island, and Massachusetts. This alteration will realign the jet routes to simplify the issuance of clearances and improve the flow of air traffic in the Boston, MA, area.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

On February 11, 1991, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter the description of Jet Routes J-42 and J-225 located in the States of New York, Connecticut, Rhode Island, and Massachusetts (56 FR 5378). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment supporting the proposed alteration was received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 75 of the Federal Aviation Regulations alters Jet Routes J-42 and J-225 located in the States of New York, Connecticut, Rhode Island, and Massachusetts. This action will realign J-42 between Hartford, CT, and Boston, MA; and J-225 between Cedar Lake, NJ, and Providence, RI. Realigning the jet routes will simplify the issuance of clearances and improve air traffic ingress/egress in the Boston, MA, area. Modifying this jet route will facilitate the air traffic flow.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 75 of the Federal Aviation Regulations (14 CFR part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-42 [Amended]

By removing the words "Hartford; Providence, RI." and substituting the words "Hartford; Putman, CT; Boston, MA."

J-225 [Revised]

From Cedar Lake, NJ; INT Cedar Lake 037° and Kennedy, NY, 232° radials; Kennedy; INT Kennedy 048° and Providence, RI, 248° radials; to Providence.

Issued in Washington, DC, on May 10, 1991.

Richard Huff,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-11993 Filed 5-20-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 771

[Docket No. 910504-1104]

Expansion of General License GCT

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: As part of the Department of Commerce initiative to streamline export licensing requirements for exports to countries that are demonstrating increased ability to safeguard strategic goods and technology, the Bureau of Export Administration (BXA) is extending additional benefits to Austria, Finland, Ireland, and Switzerland consistent with the provisions of section 5(k) of the Export Administration Act of 1979, as amended (EAA). This action will lessen the administrative burden on U.S. exporters and their foreign customers.

Specifically, this rule expands General License GCT by authorizing certain shipments of U.S.-origin commodities to Austria, Finland, Ireland, and Switzerland.

EFFECTIVE DATE: This rule is effective May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Background

Although the Export Administration Act (EAA) expired on September 30, 1990, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the Export Administration Regulations (EAR) in Executive Order 12730 of September 30, 1990.

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005, 0694-0010, and 0694-0013. Licensing requirements will be reduced as a result of this rule, thereby reducing the paperwork burden on the public.

3. This rule does not contain a policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affair function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 771

Exports, Reporting and recordkeeping requirements.

Accordingly, part 771 of the Export Administration Regulations (15 CFR parts 930-799) is amended as follows:

PART 771—[AMENDED]

1. The authority citation for 15 CFR part 771 is revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); and E.O. 1730 of September 30, 1990 (55 FR 40373, October 2, 1990).

§ 771.25 [Amended]

3. In § 771.25, the heading is amended by revising the phrase "COCOM Trade" to read "eligible trade".

§ 771.25 [Amended]

4. In § 771.25, paragraph (a) is amended by revising the phrase "COCOM participating countries" to read "eligible countries".

§ 771.25 [Amended]

5. In § 771.25, paragraph (b) is amended by adding the word "Austria," immediately before the word "Belgium,"; by adding the word "Finland," immediately before the word "France,"; by adding the word "Ireland," immediately before the word "Italy,"; and by adding the word "Switzerland," immediately before the word "Turkey".

§ 771.25 [Amended]

6. In § 771.25, paragraph (d) introductory text is amended by revising the phrase "COMOM participating countries" to read "GCT eligible countries".

§ 771.25 [Amended]

7. In § 771.25, paragraph (e)(1) is amended by revising the phrase "COCOM participating country" to read "GCT eligible country".

§ 771.25 [Amended]

8. In § 771.25, paragraph (f)(2) is amended by revising the phrase " 'COCOM countries' " to read "COCOM countries, Austria, Finland, Ireland, and Switzerland" [2 references].

Dated: May 15, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91-11958 Filed 5-20-91; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Part 777

[Docket No. 910430-1090]

Exports of Crude Oil From the Strategic Petroleum Reserve

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: This interim rule amends § 777.6 of the Export Administration Regulations (EAR) to allow the Office of Export Licensing (OEL), Bureau of Export Administration, to issue validated licenses authorizing the export, during an emergency, of crude oil from the Strategic Petroleum Reserve, provided that the export would result directly in the import into the United States of refined petroleum products. This change is in accordance with section 10 of the Energy Policy and Conservation Act Amendments of 1990 (Pub. L. 101-383).

DATES: This rule is effective May 21, 1991. Comments must be received by June 20, 1991.

ADDRESSES: Written comments (six copies) should be sent to: Brad Botwin, Director, Strategic Analysis Division, Office of Industrial Resource Administration, Bureau of Export Administration, Department of Commerce, room 3878, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Senior Policy Advisor, Strategic Analysis Division, Office of Industrial Resource Administration, Bureau of Export Administration, Telephone: (202) 377-4060.

SUPPLEMENTARY INFORMATION:

Background

Section 10 of the Energy Policy and Conservation Act Amendments of 1990 (Pub. L. 101-383) permits the export, during an emergency, of crude oil from the Strategic Petroleum Reserve (SPR), for refining or exchange outside the United States, provided that the export is made in conjunction with an arrangement for delivering refined petroleum products to the United States. This interim rule amends § 777.6 of the EAR to allow the Office of Export Licensing (OEL) to issue validated licenses authorizing such exports, in cases where the Secretary of Commerce, in consultation with the Secretary of Energy, determines that the exports will directly result in the importation into the United States of refined petroleum products that are needed in the United States and that would otherwise not be available for importation.

Each application to export SPR crude oil must be supported by documentation that shows the applicant has title to the quantity of barrels stated in the application or has a contract to purchase the quantity of barrels stated in the application. Applicants who are issued validated licenses to export SPR crude oil must provide OEL with documentation showing that they have imported refined petroleum products into the United States in conjunction with the export of the SPR crude oil. This documentation must be submitted to OEL no later than two weeks following the importation of the refined petroleum products and must include the following:

(1) Evidence showing that the exporter of the SPR crude oil has title to or a contract to purchase refined petroleum products;

(2) A copy of the shipping manifest that identifies the refined petroleum products; and

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(3) A copy of the entry documentation required by the U.S. Customs Service that shows the refined petroleum products were imported into the United States (unless the refined petroleum products are for delivery to the U.S. military outside of the United States—then, a copy of the delivery receipt must be furnished).

Finally, both the export of the SPR crude oil and the import of the refined petroleum products must be accomplished within 30 days following the issuance of the export license, except in the case of delivery to the U.S. military outside of the United States, in which case the delivery of the refined petroleum products must be completed no later than the end of the term of the contract with the Department of Defense.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12861.

2. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0027. The public reporting burden to apply for a short supply crude oil license is estimated to average 4 hours. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, room 4513, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503—ATTN: Paperwork Reduction Project (0694–0005 and 0694–0027).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close June 20, 1991. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration, Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377–2593.

List of Subjects in 15 CFR Part 777

Administrative practice and procedure, Exports, Forests and forest products, Petroleum, Reporting and recordkeeping requirements.

Accordingly, part 777 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 777—[AMENDED]

1. The authority citation for 15 CFR part 777 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, by Pub. L. 100–180 of December 4, 1987, by Pub. L. 100–418 of August 23, 1988, and by Pub. L. 100–449 of September 28, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); sec. 103, Pub. L. 94–163 of December 22, 1985 (42 U.S.C. 6212), as amended by Pub. L. 99–58 of July 2, 1985; sec. 101, Pub. L. 93–153 of November 16, 1973 (30 U.S.C. 185); sec. 28, Pub. L. 95–372 of September 18, 1978 (43 U.S.C. 1354); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976), as amended; secs. 201(1) and 201(11)(e), Pub. L. 94–258 of April 5, 1976 (10 U.S.C. 7420 and 7430(e)); Presidential Findings of June 14, 1985 (50 FR 25159, June 18, 1985) and December 31, 1988 (54 FR 271, January 5, 1989); sec. 125, Pub. L. 99–64 of July 12, 1985 (46 U.S.C. 466(c)); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

2. Section 777.6 is amended by adding a new paragraph (d)(1)(xi), by redesignating paragraphs (g), (h), and (i) as new paragraphs (h), (i), and (j), respectively, and by adding a new paragraph (g), as follows:

§ 777.6 Petroleum and petroleum products.

* * * * *

(d) * * *

(1) * * *

(xi) *Refining or exchange of Strategic Petroleum Reserve oil.* The Group A commodity will be exported as part of an overall transaction that satisfies all of the following conditions:

(A) The Group A commodity will be withdrawn from the Strategic Petroleum Reserve;

(B) The direct result of the export of the Group A commodity will be the importation into the United States of needed refined petroleum products (Deliveries to the United States military outside are considered imports for the purposes of this section.);

(C) The refined petroleum products to be imported into the United States would not be available for import without the export of the Group A commodity; and

(D) All aspects of the transaction comply with the provisions of paragraph (g) of this section.

* * * * *

(g) *Refining or exchange of Strategic Petroleum Reserve oil pursuant to § 777.6(d)(1)(xi).* Crude oil withdrawn from the Strategic Petroleum Reserve (SPR crude), may be authorized for export in accordance with the requirements of paragraph (d)(1)(xi) of this section, if the Secretary of Commerce, in consultation with the Secretary of Energy determines that such exports will directly result in the importation into the United States of refined petroleum products that are needed in the United States and that otherwise would not be available for importation, as follows:

(1) Authorization may be granted to export, for refining or exchange outside of the United States, SPR crude that will be sold and delivered, pursuant to a drawdown and distribution of the SPR, in connection with an arrangement for importing refined petroleum products into the United States.

(2) Each application submitted to the Office of Export Licensing must be supported by documentation providing evidence that the applicant has either:

(i) Title to the quantity of barrels of SPR crude stated in the application; or

(ii) A contract to purchase, for importation into the United States, the quantity of barrels of SPR crude stated in the application.

(3) The exporter must submit the following documentation to the Office of Export Licensing no later than two weeks following the date that the refined petroleum products are imported into the United States (in exchange for the export of the SPR crude):

(i) Evidence showing that the exporter of the SPR crude has title to or a contract to purchase refined petroleum products;

(ii) A copy of the shipping manifest that identifies the refined petroleum products; and

(iii) A copy of the entry documentation required by the U.S. Customs Service that shows the refined petroleum products were imported into the United States, or a copy of the delivery receipt when the refined petroleum products are for delivery to the U.S. military outside of the United States.

(4) The exporter must complete both the export of the SPR crude and the import of the refined petroleum products no later than 30 days following the issuance of the export license, except in the case of delivery to the U.S. military outside of the United States, in which case the delivery of the refined petroleum products must be completed no later than the end of the term of the contract with the Department of Defense.

* * * * *

Dated: May 14, 1991.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 91–11969 Filed 5–20–91; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

Louisiana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Director of OSM is approving a proposed amendment submitted by the State of Louisiana as a modification to its permanent regulatory program (hereinafter referred to as the Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment, concerning operations extracting coal incidental to the extraction of other minerals, revises Louisiana's rules to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Louisiana program was conditionally approved by the Secretary of the Interior on October 10, 1980. Information on the general background, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Louisiana program was published in the October 10, 1980, Federal Register (45 FR 67340). Subsequent actions concerning the Louisiana program and program amendments can be found at 30 CFR 918.15 and 918.16.

II. Submission of Program Amendment

In accordance with the provisions of 30 CFR 732.17(d), OSM notified Louisiana by letter dated February 7, 1990 (administrative record No. LA–296), of changes to Louisiana's approved regulatory program that were necessary to make the program no less effective than the December 20, 1989, Federal regulations concerning the extraction of coal incidental to the extraction of other minerals.

In response to the 30 CFR part 732 notification, Louisiana, by letter dated August 14, 1990 (administrative record No. LA–307), submitted to OSM a proposed amendment to the Louisiana Surface Mining Regulations (LSMR). Louisiana proposed to add a new Chapter 4 entitled "Exemption for Coal Extraction Incidental to the Extraction of Other Minerals." OSM announced receipt of the proposed amendment in a notice in the September 14, 1990, publication of the Federal Register (55 FR 37903). In this notice, OSM opened a public comment period and provided an opportunity for a public hearing on the substantive adequacy of the revisions to the proposed amendment. The public comment period closed on October 15, 1990.

During its review of the proposed amendment, OSM identified concerns relating to sections: 1.07.C., applicability; 403.A.2. and 403.B., definitions; 405.A.1., 405.B., and 413.C., application requirements, conditions of exemptions, and right of inspection and entry; 405.D., application requirements and procedures; and 405.F.1. and F.2., and 417.C.2. and C.3., administrative review. OSM notified Louisiana of the concerns by letter dated November 14, 1990 (administrative record No. LA–313). Louisiana responded in a letter dated November 29, 1990, by submitting a revised amendment (administrative record No. LA–312).

OSM announced receipt of the revisions to the proposed amendment in a notice in the December 17, 1990, Federal Register (55 FR 51734). In this notice, OSM reopened the public comment period. The reopened public comment period closed on January 2, 1991.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, as discussed below, that the proposed amendment as submitted by Louisiana on August 14, 1990, and

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revised by it on December 4, 1990, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

1. Revisions to Louisiana's Regulations That Are Substantially Identical to the Corresponding Federal Regulations

Louisiana proposes revisions to the following rules of the LSMR that either contain language that is the same as or similar to the corresponding Federal regulations and are nonsubstantive in nature, or add specificity without adversely affecting other aspects of the Louisiana program.

LSMR 107.C, concerning the applicability of the Louisiana program to operations where the extraction of coal is incidental to the extraction of other minerals (corresponding Federal regulation 30 CFR 700.11(a)(4)); and

LSMR chapter 4, concerning the exemption for operations extracting coal incidental to the extraction of other minerals, including LSMR 401, scope; LSMR 403, definitions; LSMR 405, application requirements and procedures; LSMR 407, contents of applications for exemption; LSMR 409, public availability of information; LSMR 411, requirements for exemption; LSMR 415, stockpiling of minerals; LSMR 417, revocation and enforcement; and LSMR 419, reporting requirements (corresponding Federal regulation 30 CFR part 702).

Because the proposed revisions to these Louisiana regulations either contain language that is the same as or similar to the corresponding Federal regulations and are nonsubstantive in nature, or add specificity without adversely affecting other aspects of the program, the Director finds that these proposed revisions to Louisiana's regulations are no less effective than the corresponding Federal regulations. Therefore, the Director approves the proposed revisions.

2. LSMR 405.F.1 and 2 and 417.C.2, Administrative Review in Accordance With LSMR 3301

Louisiana proposes at LSMR 405.F.1 and 2 and 417.C.2 that any person adversely affected by determinations made by Louisiana concerning exemptions from its approved program for coal extraction incidental to the extraction of other minerals, or revocation and enforcement of these determinations, may request administrative review of such decisions in accordance with LSMR 3301.

The corresponding Federal regulations at 30 CFR 702.11(f) and 702.17(c)(2) state that these adversely affected persons may request administrative review of such decisions "in accordance with procedures established under 43 CFR 4.1280 when OSM is the regulatory authority or under corresponding State procedures when a State is the regulatory authority." 43 CFR 4.1280 is applicable to formal administrative review of decisions of the Director of OSM. Louisiana's referenced LSMR 3301 is also applicable to formal administrative review of decisions of the Louisiana regulatory authority.

Because Louisiana's proposed rules at LSMR 405.F.1 and 2 and 417.C.2, through their reference to LSMR 3301, do require that formal procedures be followed for requested administrative reviews, the Director finds that the proposed rules are no less effective than the corresponding Federal regulations at 30 CFR 702.11(f) and 702.17(c), which reference the formal administrative review procedures at 43 CFR 4.1280. The Director is approving the proposed rules.

IV. Public and Agency Comments

1. Public Comments

The Director solicited public comments on the proposed amendment and provided opportunity for a public hearing. No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments from various Federal and State agencies with an actual or potential interest in the Louisiana program.

By letter dated December 20, 1990, the U.S. Soil Conservation Service responded that it had no comments on the proposed amendment (administrative record No. LA–317).

By letter dated January 8, 1991, the U.S. Fish and Wildlife Service responded that it had no objections to the proposed amendment (administrative record No. LA–318).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of EPA with the respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the changes that Louisiana proposes to its rules pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence on the proposed amendment (administrative record No. LA–316). EPA did not respond to OSM's request.

4. State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation Comments (ACHP)

Pursuant to 30 CFR 732.17(h)(4), all amendments that may have an effect on historic properties are to be provided to the SHPO and ACHP for comment. OSM solicited comments from these offices. By letter dated January 24, 1991, the SHPO responded that he had no objections to the proposed amendment (administrative record No. LA–319). ACHP did not respond to OSM's solicitation for comments.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment as submitted by Louisiana on August 14, 1990, and as revised by it on November 29, 1990. The Director is approving the proposed rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 918 codifying decisions concerning the Louisiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Requirements

1. Compliance with the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of a State regulatory program. Accordingly, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 9, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 918—LOUISIANA

1. The authority citation for part 918 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 918.15 is amended by designating the introductory text as paragraph (a); by redesignating paragraph (a) and (b) as paragraph (a)(1) and (a)(2); and by adding a new paragraph (b) to read as follows:

§ 918.15 Approval of regulatory program amendments.

* * * * *

(b) The revisions to the following section and chapter of Louisiana Surface Mining Regulations (LSMR) submitted to OSM on August 14, 1990, and revised by Louisiana on November 29, 1990, are approved effective May 21, 1991: LSMR 107.C and chapter 4, concerning operations extracting coal incidental to the extraction of other minerals.

[FR Doc. 91–11994 Filed 5–20–91; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed Program Amendment Number 40 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to revise one Ohio administrative rule by adding a provision that would allow extensions of time without accompanying notices of violation for resoiling that is delayed because of climatic conditions.

EFFECTIVE DATE: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Submission of Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, Federal Register (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 984.16.

II. Submission of Amendment

By letter dated January 31, 1991 (Administrative Record No. 1441), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Ohio Program Amendment Number 40. This amendment revises Ohio Administrative Code (OAC) 1501:13–9–03, governing topsoil handling, by adding language that provides that, where resoiling and the protection of that resoiling cannot be reasonably done within a prescribed time because of climatic conditions, the permittee may request an extension of time without the issuance of a notice of violation.

OSM announced receipt of the proposed amendment in the February 19, 1991, Federal Register (56 FR 6597), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on March 21, 1991.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program submitted on January 31, 1991.

Ohio is proposing to add paragraph (D) to OAC 1501:13–9–03 to provide for an extension of time without the issuance of a notice of violation for resoiling that is delayed because of climatic conditions. Ohio is proposing to insert this language in OAC 1501:13–9–03 because of its topical relevance to the resoiling performance standards. Although there is no direct Federal counterpart to the provision Ohio is proposing to add, the Federal regulations at 30 CFR 816.22/817.22 address resoiling performance standards.

On June 26, 1981, OSM drafted revisions to the topsoil regulations. OSM considered all comments to the draft and in the March 11, 1982, Federal Register (47 FR 10742) proposed to revise to topsoil handling regulations because of the wide variations in topsoil characteristics and terrain. Further, the topsoil rules did not give adequate consideration to section 101(f) of SMCRA.

Section 101(f) of SMCRA requires that "because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States."

In line with section 101(f), in the May 16, 1983, Federal Register (48 FR 22092), OSM revised the topsoil handling regulations to allow each State more flexibility to develop further its own topsoil protection rules according to local soil, climatic, and topographic conditions. The new Federal rules require, among other things, persons conducting surface coal mining and reclamation operations to redistribute topsoil in a manner which enhances its capability to support vegetation and to control erosion.

Section 515(b)(16) of SMCRA requires "all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations * * *." OSM believes the term "as practicable" to include delays in resoiling of topsoil material for climatic reasons. Climatic conditions and the season of the year may not always be favorable for seeding and planting. Therefore, it may become necessary to delay the resoiling of topsoil material in order to avoid erosion losses of the material. Under the Federal rules there are no time

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limitations placed on reseiling in order to protect against erosion. On June 26, 1981, OSM made available to the public a pre-proposed draft of revisions to the topsoil handling regulations. A commenter to the pre-proposed draft suggested adding a provision to control the timing of redistributing topsoil to prevent erosion during the time of year when establishing vegetation may not be possible. In response to this comment, OSM believes the regulatory authority must have the flexibility to apply the most appropriate soil stabilizing techniques that fit local landscape features and weather conditions. 47 FR 10743 (March 11, 1982). The requirement for redistribution of topsoil in a manner that protects against erosion is contained in 30 CFR 816.22(d)/817.22(d).

Section 816.22(d)/817.22(d) requires that the person conducting the surface mining activity shall redistribute topsoil materials in a manner that achieves a uniform stable thickness, prevents excessive compaction, and protects the topsoil from wind and water erosion before and after it is seeded and planted.

By granting extensions of time to resoil, the operator is not forced to resoil when climatic conditions are not at their best. This approach would provide compliance with section 515(b)(16) of the Act by not proceeding with reclamation when it is not environmentally sound to do so.

Since there is no Federal counterpart to this rule and its inclusion does not render the Ohio program less effective than the Federal regulations, the Director finds the proposed amendment to be not inconsistent with the requirements of SMCRA and the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the February 19, 1991, Federal Register (56 FR 6597) closed on March 21, 1991. No comments from the public were received and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio Program. The U.S. Environmental Protection Agency, the U.S. Department of Agriculture, Soil Conservation Service, the U.S. Army Corps of Engineers, and the U.S. Department of Labor, Mine Safety and Health Administration, responded that they had no comments on the proposed amendment. No other comments were received.

V. Director's Decision

Based on the above findings, the Director is approving Ohio Program Amendment Number 49 as submitted by Ohio on January 31, 1991. The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore, unnecessary.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Papwerwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (ww) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(ww) The following amendment to the Ohio regulatory program, as submitted to OSM on January 31, 1991, is approved, effective May 21, 1991. Amendment Number 49 which amends provisions of the Ohio regulatory program concerning topsoil handling at Ohio Administrative Code (OAC) section 1501:03-9-13.

[FR Doc. 91-11995 Filed 5-20-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-91-16]

Special Local Regulations for Marine Events; 6th Annual Chesapeake Bay Bridge Swim Race, Chesapeake Bay, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.507.

SUMMARY: This notice implements 33 CFR 100.507 for the 6th Annual Chesapeake Bay Bridge Swim Race, an annual event to be held on June 9, 1991. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the swim, and their attending personnel.

EFFECTIVE DATES: The regulations in 33 CFR 100.507 are effective from 7 a.m. to 2:15 p.m., June 9, 1991. If inclement weather causes postponement of the event, the regulations are effective from 7 a.m. to 2:15 p.m., June 16, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

Fletcher Hanks, Director of the Chesapeake Bay Bridge Swim Race, has submitted an application on February 4, 1991 to hold the race on June 9, 1991. Approximately 1000 swimmers will start from Sandy Point State Park and swim between the William P. Lane Jr. Memorial Twin Bridges to the Eastern Shore. Since this is the type of event contemplated by these regulations, and the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.507 are being implemented. Vessel traffic will be permitted to transit the regulated area as the swim progresses, so commercial traffic should not be severely disrupted.

Dated: May 10, 1991.

P.A. Welling,

Commander, Fifth Coast Guard District.

[FR Doc. 91-11974 Filed 5-20-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-91-17]

Special Local Regulations for Marine Events; Virginia Beach Offshore Grand Prix; Atlantic Ocean, Rudee Inlet, Lake Rudee, Virginia Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Virginia Beach Offshore Grand Prix to be held in the Atlantic Ocean off Virginia Beach on May 18, 1991. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: The regulations are effective from 11:45 a.m. to 4 p.m., May 18, 1991. If inclement weather causes the postponement of the event, the regulations are effective from 11:45 a.m. to 4 p.m., May 19, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking concerning these regulations in the Federal Register on April 8, 1991 (56 FR 14224). Interested persons were requested to submit comments and none were received.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

The Eastern Virginia Offshore Racing Association (EVORA) submitted an application to hold the Virginia Beach Offshore Grand Prix on March 1, 1991. The race will consist of approximately 100 powerboats, from 22 to 50 feet in length, racing over a closed course off the beachfront at Virginia Beach, Virginia. As part of the application, the EVORA requested that the Coast Guard provide control of spectator and commercial traffic along the beachfront and Rudee Inlet areas.

Discussion of Regulations

These regulations will regulate the area surrounding the Virginia Beach Offshore Grand Prix. The race course is generally oval shaped, running parallel to the shoreline. The Rudee Inlet/Lake Rudee area will include the wet pits and dockage for patrol boats at the Riverhouse boat docks, and the Owl Creek boat ramp which will serve as the put in area for the race participants.

The Cape Henry Precautionary Area and the Dam Neck Danger Area are located to the north and south of the race course, respectively. While the race course does not encroach on either of these area, the regulated area includes the southwest corner of the Cape Henry Precautionary Area and the northeast corner of the Dam Neck Danger Area. To provide for the safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area and has established a temporary spectator anchorage for what is expected to be a large spectator fleet. Coast Guard patrol vessels will be positioned at Rudee Inlet to direct vessels to the temporary spectator anchorage. The sponsor will provide approximately 35 vessels, including 15 medical boats with paramedics on board to assist the Coast Guard and local government agencies in patrolling this event. All vessels will display Official Regatta Patrol signs and identity numbers. Representatives of the sponsors and members of the Coast Guard will be present in the vicinity of the race site to inform vessel operators of these regulations and other applicable laws.

Regulatory Evaluation

This final rule is not considered major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for several hours, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Most small entities located in the regulated area will be involved with providing services to the EVORA, the race participants, and race spectators. This should have a favorable impact, and only a few small businesses will not be involved. Since the impact of this rule on non-participating small entities will be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

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Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T0617 is added to read as follows:

§ 100.35–T0617 Atlantic Ocean, Rudee Inlet, Lake Rudee, Virginia Beach, Virginia.

(a) *Definitions*—(1) *Regulated area.* The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 36°54'23.0" North, longitude 75°59'28.0" West; thence east northeast to latitude 36°54'38" North, longitude 75°56'55" West; thence south southeast parallel to the Virginia Beach shoreline to latitude 36°49'08" North, longitude 75°55'58" West; thence west southwest to the shoreline at latitude 36°48'53" North, longitude 75°57'58" West, and the waters of Rudee Inlet and Lake Rudee including the Owl Creek Boat Ramp.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(3) *Spectator Anchorage Area.* The waters off the Virginia seacoast bounded by a line connecting the following points:

Latitude	*Longitude*
36°51'23.0" N	75°56'47.0" W
36°51'27.0" N	75°56'23.0" W
36°50'38.0" N	75°56'13.0" W
36°50'28.0" N	75°56'36.0" W.

(b) *Special Local Regulations.* (1) Except for participants in the Virginia Beach Offshore Grand Prix and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Spectator vessels may anchor in the spectator anchorage area specified in paragraph (a)(3) of these regulations.

(4) The Coast Guard Patrol Commander may allow vessels to transit the regulated area whenever a race heat is not being run.

(5) Vessel operators are advised to remain clear of the advisory area during the effective periods of this regulation.

(c) *Effective periods:* The regulations are effective from 11:45 a.m. to 4 p.m., May 18, 1991. If inclement weather causes the postponement of the event, the regulations are effective from 11:45 a.m. to 4 p.m., May 19, 1991.

Dated: May 13, 1991.

H. B. Gehring,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 91-11975 Filed 5-20-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD1 91-010]

Anchorage Ground; Port of New York Upper Bay

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the description of Federal Anchorage No. 23–A and Federal Anchorage No. 23–B. These anchorages are also known as the Stapleton Anchorages and are located adjacent to Naval Station New York on Staten Island, New York. These changes are necessary to conform with the restricted area established by the U.S. Army Corps of Engineers on February 8, 1991. The restricted area includes portions of these anchorages.

DATES: Effective date February 8, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) C.W. Jennings, Waterways Management Officer, Captain of the Port, New York at (212) 668–7933.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Following normal rulemaking procedures would have been unnecessary. The dimensions of the anchorages addressed in this rule have already been altered by the adjacent restricted area which became effective on February 8, 1991. This rule is published as an administrative action so the regulations will correctly reflect the actual dimensions of the affected anchorages.

Drafting Information

The drafters of this regulation are LTJG C.W. Jennings project officer, Captain of the Port, New York and LT R.E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

In the February 8, 1991 Federal Register, Vol. 56, No. 27, pg. 5300, the Army Corps of Engineers published a final rule which limited the space available for vessels wishing to anchor in Federal Anchorages 23–A and 23–B. The Coast Guard is amending the existing regulations which describe those anchorages to reflect this change.

List of Subjects in 33 CFR Part 110

Anchorage Grounds.

Final Regulations

In consideration of the foregoing, part 110 of title 33, Code of Federal Regulations, is amended to read as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.155, paragraphs (d)(13) introductory text and (d)(14) introductory text are revised; and paragraphs (d)(13)(v) and (d)(14)(iii) are added to read as follows:

§ 110.155 Port of New York

* * * * *

(d) * * *

(13) Anchorage No. 23–A. That area enclosed by coordinates starting at

40°38'36.5" N., 74°04'13.5" W.; to
40°38'37.0" N., 74°03'49.0" W.; to
40°38'23.4" N., 74°03'37.2" W.; to
40°37'49.5" N., 74°03'25.7" W.; to
40°37'49.8" N., 74°03'50.1" W.; to
40° 37' 50.0" N., 74° 03' 50.2 W.; to
40° 37' 53.0" N., 74° 04' 07.0 W.; thence back to
40° 38' 36.5" N., 74° 04' 13.5 W.;

* * * * *

(v) See 33 CFR 334.85 for information on anchoring near the U.S. Navy restricted area adjacent to this anchorage.

(14) Anchorage No. 23–B. That area enclosed by coordinates starting at

40°37'49.8" N., 74°03'50.1" W.; to
40°37'49.5" N., 74°03'25.7" W.; to
40°37'27.0" N., 74°03'18.1" W.; to
40°37'23.0" N., 74°03'59.0" W.; to
40°37'30.0" N., 74°04'04.0" W.; to
40°37'37.5" N., 74°03'46.0" W.; thence back to
40°37'49.8" N., 74°03'50.1" W.

* * * * *

(iii) See 33 CFR 334.85 for information on anchoring near the U.S. Navy restricted area adjacent to this anchorage.

* * * * *

Dated: April 25, 1991.

P.L. Collom,

Commander, First Coast Guard District, Acting.

[FR Doc. 91-11973 Filed 5-20-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3917-8]

Approval and Promulgation of State Implementation Plans; North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice is to inform the public of a clarification of the June 3, 1986 notice, which approved a recodification of the North Carolina regulations. On June 3, 1986, EPA published a final rule at (51 FR 19634) which approved the North Carolina regulations submitted on March 31, 1976. The purpose of this notice is to clarify the intent of the June 3, 1986 notice. EPA intended to approve only the 1976 recodification, reorganization and editorial changes on June 3rd, not the entire March 31, 1976, submittal of the North Carolina regulations. The EPA merely intended to approve the renumbering system submitted by the State. EPA did not review the substance of these regulations. These rules were approved into the State implementation Plan (SIP) in previous rulemakings. Therefore, the June 3, 1986, notice did not supercede any previous approvals. To the extent EPA has issued any SIP calls to the State with respect to the adequacy of any of the rules subject to the June 3, 1986, recodification, EPA will continue to require the State to correct any such rule deficiencies despite EPA's approval of the recodification in the June 3, 1986, final rule.

EFFECTIVE DATE: This notice is effective May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch at Region IV, 345 Courtland Street, Atlanta, Georgia 30365 and (404) 347–2864 (FTS 257–2864).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 18, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart II—North Carolina

2. Section 52.1770 is amended by removing and reserving paragraph (c)(41) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(41) [Reserved]

[FR Doc. 91-12009 Filed 5-20-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 721

[OPTS-50585A; FRL-3960-3]

RIN 2070-AB27

Sulfurized Alkylphenols; Withdrawal of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rule.

SUMMARY: EPA is withdrawing a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substances described generically as sulfurized alkylphenols and which were the subject of premanufacture notice (PMN) P–89–708. EPA initially published this SNUR using direct final procedures. EPA received a notice of intent from interested parties who wish to make adverse or critical comments on this rule. Therefore, the Agency is withdrawing this rule, as required under the Expedited SNUR rulemaking process (40 CFR 721 Subpart D). In a separate notice of proposed rulemaking in today's Federal Register, EPA is proposing a SNUR for this substance with a 30-day comment period.

EFFECTIVE DATE: This rule is effective July 22, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. E–543–B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 28, 1990, at 55 FR 39892, EPA issued several direct final SNURs including a SNUR for the substances described generically as sulfurized alkylphenols and identified by PMN number P–89–708. Under § 721.160, EPA is required to withdraw rules issued under direct final procedures if the Agency receives notice of intent to submit adverse or critical comments within 30 days of publication of the rule in the Federal Register. EPA has received such a notice of intent regarding the SNUR for PMN P–89–708 and is therefore withdrawing the subject SNUR and, according to § 716.160(a)(3)(iii), is proposing the rule elsewhere in today's Federal Register. For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 54 FR 31314 (July 27, 1989).

The record for the direct final SNUR for PMN P–89–708 which is being withdrawn by this rule was established at OPTS–50585. That record includes information considered by the Agency in developing this rule, and includes the notice of intent to submit adverse or critical comments to which the Agency has responded with this notice of withdrawal. The docket control number for the withdrawal is OPTS–50585A. For details refer to the proposal elsewhere in today's Federal Register. The relevent portions of the original docket for the direct final SNUR are being

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incorporated under OPTS-50686B, which is established for the proposed rule.

A public version of the records, without any CBI, is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in rm. NE-G004, 401 M St., SW., Washington, DC., 20460.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 14, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

§ 721.1541 [Removed]

2. By removing § 721.1541.

[FR Doc. 91-12081 Filed 5-20-91; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 766 and 799

[OPTS-40020; FRL 3940-6]

RIN 2070-AB97

Technical Amendments to Test Rules and Consent Orders

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to 40 CFR 790.55 and 790.68, EPA has approved by letter certain modifications to test standards and schedules for chemical testing programs under section 4 of the Toxic Substances Control Act (TSCA). These modifications, requested by test sponsors, will be incorporated and codified in the respective test regulation or consent order. Because these modifications do not significantly alter the scope of a test or significantly change the schedule for its completion, EPA approved these requests without seeking notice and comment. EPA will annually publish a notice describing all of the modifications granted by letter for the previous year. This is the third such annual notice.

EFFECTIVE DATE: This rule is effective on May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA issued an interim final rule published in the **Federal Register** of September 1, 1989 (54 FR 36311), amending procedure for modifying test standards and schedules for test rules and testing consent orders under section 4 of TSCA The amended procedures allow EPA to approve requested modifications which do not alter the scope of a test or significantly change the schedule for it completion. These modifications are approved by letter without public comment. The rule also requires immediate placement of these letters in EPA's public files and publication of these modifications in the **Federal Register**. This document includes modifications approved from October 1, 1989, through December 31, 1990. For a detailed description of the rationale for these modifications, refer to the submitters' letters and EPA's responses in the public record for this rulemaking.

I. Discussion of Modifications

Each chemical discussed in this rule is identified by a specific CAS number and docket number. Copies of correspondence relating to specific chemical modifications may be found in docket number (OPTS-40020) or the chemical specific docket established for this rule. The following table lists all chemical-specific modifications approved from October 1, 1989, through December 31, 1990:

MODIFICATIONS TO TEST STANDARDS AND CONSENT ORDERS OCTOBER 1, 1989 THROUGH DECEMBER 31, 1990

Chemical/CAS Number	Chemical FR Cite	Test	Modifications	Docket No.
Final Rule Chemicals:				
bis(2-chloroethoxy)methane (111-91-1)	799.5055	N/A	8	40020/42068J
cumene (98-82-8)	799.1285	Acute toxicity test with:	5	40020/42074D
		daphnia magna,		
		Salmo quairdneri,		
		Cyprinodon variegatus,		
		Mysidopsis bahia		
diethylenetriamine (111-40-0)	799.1575	chemical fate	3	40020/42012J
isopropanol (67-63-0)	795.250	developmental neurotoxicity test	7	40020/42097
unsubstituted phenylenediamine:				
m-pda (108-45-2), *o*-pda (95-54-5), *p*-pda (106-50-3)	799.3300	If triggered in one isomer: subchronic neurotoxicity, functional observational battery (FOB), motor activity test (MAT), neuropathological studies. If triggered in two isomers: subchronic neurotoxicity (FOB) test, motor activity test, neuropathology studies. If triggered in three isomers: subchronic neurotoxicity (FOB) test, motor activity test, neuropathology studies.	5	40020/42008H
	799.3300	acute toxicity testing in *Gammarus*	5	40020/42008H
	799.3300	*Daphnia* Life-cycle Test	5	40020/42008H
m-pda	799.3300	SLRL test, and acute toxicity in rainbow trout	5	40020/42008H
polyhalogenated dibenzo-*p*-dioxins/dibenzofurans:				
tetrabromobisphenol-A (79-94-7)	766.35	protocols submissions	5	40020/83002C
2,4,6-tribromophenol (118-79-6)	766.35	protocols submissions	5	40020/83002C
decabromodiphenyloxide (1163-19-5)	766.35	protocols submissions	5	40020/83002C
1,2-bis(tribromophenoxy)-ethane (37853-59-1)	766.35	protocols submissions	5	40020/83002C
octabromodiphenyloxide (32536-52-0)	766.35	protocols submissions	5	40020/83002C

MODIFICATIONS TO TEST STANDARDS AND CONSENT ORDERS OCTOBER 1, 1989 THROUGH DECEMBER 31, 1990—Continued

Chemical/CAS Number	Chemical FR Cite	Test	Modifications	Docket No.
alkyl ether of tetrabromobisphenol-A (25327-89-3)	766.35	protocols submissions	5	40020/83002C
pentabromodiphenyloxide (32534-81-9)	766.35	protocols submissions	5	40020/83002C
tetrabromodiphenol-A-bisethoxylate (4126-45-2)	766.35	protocols submissions	5	40020/83002C
3,4',5 tribromosalicylanilide	766.35	protocols submissions	5	40020/83002C
tributyl phosphate (126-73-8)	799.4360	pharmacokinetics, oral/dermal, developmental toxicity, vapor pressure, hydrolysis rate, sediment and soil adsorption isotherm, reproductive and fertility effects.	3,5	40020/42100C
triethylene glycol monomethyl ether (112-50-5)	799.4440	developmental neurotoxicity	5,7	40020/42080G
vinyl fluoride (75-02-5)	799.1700	oncogenicity	6	40020/42092L
Consent Orders:				
alkyl phthalates	799.5000	fish early life stage studies	3	40020/42092A
		analytical confirmation studies	3	40020/42092A
		adsorption isotherm studies	5	40020/42092A
2-chloroaniline (95-51-2)	799.5000	rainbow trout early life-stage toxicity	5	40020/42064D
C.I. Disperse Blue 79:1 (3618-72-2)	799.5000	rat development toxicity test	5	40020/42103A
		Fish early life stage studies	3	40020/42103A
4-nonylphenol branched (84852-15-3)	799.5000	octanol/water partition coefficient, sediment and soil adsorption isotherm.	5	40020/42104C
octamethylcyclotetrasiloxane (556-67-2)	799.5000	biodegradation study	5	40020/42071D
		bioconcentration study	5	40020/42071D
triethylene glycol monomethyl ether (112-50-5)	799.5000	dermal subchronic toxicity	3	40020/42080G

Modifications:

1. Modify sampling schedule.
2. Change to test substance (form/purity)
3. Change in non-critical test procedure or condition.
4. Add satellite group for further testing.
5. Extend test or protocol deadline, delete test initiation date.
6. Clarify and/or add specific guideline requirement.
7. Alternate specific guideline requirement approved for certain test(s).
8. CAS No. correction.

II. Public Record

EPA has established a public record for this rulemaking (docket number OPTS-40020). The record includes the information considered by EPA in evaluating the requested modifications.

The record is available for inspection from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in rm. G-004, NE Mall, 401 M St., SW., Washington, DC 20460.

III. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule, listing modifications of test standards and schedules for tests required under test rules and testing consent agreements under the authority of section 4 of TSCA, is not major because it does not meet any of the criteria set forth in section 1(b) of the Order.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., Pub. L. 96-354, September 19, 1980), EPA is certifying that this rule will not have a significant impact on a substantial number of small businesses because the modifications listed in this rule have been made to expedite the development of test data and to reduce certain paperwork burdens associated with current regulations.

C. Paperwork Reduction Act

The information collection requirements associated with this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq. and have been assigned OMB control number 2070-0033.

EPA has determined that this rule does not change existing recordkeeping or reporting requirements nor does it impose any additional recordkeeping or reporting requirements on the public.

Send comments regarding this rule to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070-0033) Washington, DC 20503.

List of Subjects in 40 CFR Parts 766 and 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Testing.

Dated: May 14, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I, subchapter E, parts 766 and 799 are amended as follows:

PART 766—[AMENDED]

1. In part 766:

a. The authority citation for part 766 continues to read as follows:

Authority: 15 U.S.C. 2603 and 2607.

b. In § 766.35, by revising paragraphs (a)(2)(i)(B) and (b)(4)(i) and adding paragraph and (f) to read as follows:

§ 766.35 Reporting requirements.

* * * * *

(a) * * *

(2) * * *

(i) * * *

(B) The protocol for each brominated chemical substance produced by each process to be tested must be submitted to EPA no later than 24 months after the effective date of this part except for the following chemicals.

(*1*) The deadline for submitting the protocols for tetrabromobisphenol-A (CAS No. 79-94-7); 2,4,6 tribromophenol (CAS. No. 118-79-6);

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decabromodiphenyloxide (CAS No. 1163-19-5); and 1,2-bis(tribromophenoxy)-ethane (CAS No. 37853-59-1) is January 31, 1991.

(2) The deadline for submitting protocols for octabromodiphenyloxide (CAS No. 32536-52-0) and allyl ether of tetrabromobisphenol-A (CAS No. 25327-89-3) is January 31, 1991.

(3) The deadline for submitting protocols for pentabromodiphenyloxide (CAS No. 32534-81-9) and tetrabromodisphenol-A-bisethoxylate (CAS No. 4126-45-2) is January 31, 1991.

(4) The deadline for submitting protocols for 3,4',5-tribromosalicylanilide (CAS No. 87-10-5) is September 5, 1990.

* * * * *

(b) * * *

(4) *Test results.* (i) Except as noted in the following specified substances, test results must be submitted to EPA not later than 270 days after EPA's transmission of comments or 180 days after a final protocol is submitted to EPA, whichever is shorter. The test results for 3,4'5-tribromosalicylanilide must be submitted 45 days after the test protocols have been approved by EPA. The test results for tetrabromobisphenol-A, 2,4,6 tribromophenol, decabromodiphenyloxide, 1,2-bis(tribromophenoxy)-ethane, octabromodiphenyloxide, allyl ether of tetrabromobisphenol-A, pentabromodiphenyloxide and tetrabromodiphenol-A-bisethoxylate must be submitted no later than 45 days after EPA has notified the test sponsor that EPA has accepted the protocol or 135 days from the date of submission of the test protocol to EPA, whichever is later.

* * * * *

(f) *Effective date.* (1) The effective date of this final rule is July 6, 1987, except for paragraphs (a)(2)(i)(B) and (b)(4)(i) of this section.

(2) The effective date for paragraphs (a)(2)(i)(B) and (b)(4)(i) of this section is May 21, 1991.

(3) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

PART 799—[AMENDED]

2. In part 799:

a. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. In § 799.1285 by redesignating paragraph (c)(3) "Neurotoxicity" as (c)(4), and by revising paragraphs (d)(2)(ii)(A) and (g) to read as follows:

§ 799.1285 Cumene.

* * * * *

(d) * * *

(2) * * *

(ii) *Reporting requirements.* (A) The acute toxicity tests conducted with *Daphnia magna, Salmo qairdneri,* and *Cyprinodon variegatus* shall be completed and the final reports submitted to EPA by March 9, 1990. The acute toxicity test conducted with *Mysidopsis bahia* shall be completed and the final report submitted to EPA by May 13, 1990.

* * * * *

(g) *Effective date.* (1) The effective date of the final rule for cumene is September 9, 1988, except for paragraphs (d)(1)(i), (d)(1)(ii)(A),(d)(2)(ii)(A), and (e)(1)(ii)(A) of this section. The effective date of paragraphs (d)(1)(i), (d)(1)(ii)(A), and (e)(1)(ii)(A) of this section is March 1, 1990. The effective date of paragraph (d)(2)(ii)(A) of this section is May 21, 1991.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

c. In § 799.1575, by revising paragraphs (d)(2) and (f) to read as follows:

§ 799.1575 Diethylenetriamine (DETA).

* * * * *

(d) * * *

(2) *Test standard.* The testing shall be conducted in accordance with the following revised EPA-approved modified study plan (June 7, 1990) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Modified Final Copy (04-17-90); Diethylenetriamine: Environmental Fate in Sewage, Lake Water and Soil". This revised EPA-modified study plan is available for inspection in the EPA's OTS Reading room, Room NE-G004, 401 M St., SW., Washington, DC 20460.

* * * * *

(f) *Effective date.* (1) The effective date of the final Phase II rule for diethylenetriamine is March 19, 1987, except for paragraphs (c)(4)(iii), (d)(2), and (d)(3) of this section. The effective date of paragraphs (c)(4)(iii), and (d)(3) of this section is March 1, 1990. The effective date for paragraph (d)(2) of this section is May 21, 1991.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

d. In § 799.1700, by revising paragraphs (c)(4)(i) and (d) to read as follows:

§ 799.1700 Fluorcaikenes.

* * * * *

(c) * * *

(4) *Oncogenicity*— (i) *Required testing.* (A) (*1*) Oncogenicity tests shall be conducted in both rats and mice by inhalation with VF in accordance with § 798.3300 of this chapter, except for the provisions in paragraph (b)(7)(vi) of § 798.3300.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Test procedures—observations of animals.* All mice of test groups in which survival is approximately 25 percent of mice at risk (approximately 25 percent of 70, or approximately 18 mice) will be sacrificed near the time that 25 percent survival is achieved. All mice surviving the 18-month test period will be sacrificed and necropsied. The order of sacrifice for mice at all pathological evaluations will be random among all exposure groups within a sex. Moribund animals should be removed and sacrificed when noticed.

(*ii*) [Reserved]

(B) Oncogenicity testing shall be conducted in mice with VDF in accordance with § 798.3300 of this chapter.

(C) Oncogenicity tests shall be conducted in both rats and mice with HFP if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(D) Oncogenicity tests shall also be conducted by inhalation in both rats and mice with TFE in accordance with § 798.3300 of this chapter if TFE yields a positive test result in any one of the following mutagenicity tests: The *in vitro* cytogenetics assay conducted pursuant to paragraph (c)(2)(i)(A) of this section, the mouse micronucleus cytogenetics assay conducted pursuant to paragraph (c)(2)(i)(B) of this section, the mammalian cells in culture assay conducted pursuant to paragraph (c)(1)(i)(A) of this section or the sex-linked recessive lethal assay in *Drosophila melanogaster* conducted pursuant to paragraph (c)(1)(i)(B) of this section if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated. Criteria for positive test results are established in 40 CFR 798.5375, 798.5385, 798.5300 and 798.5275 of this chapter, respectively.

* * * * *

(d) *Effective date.* (1) The effective date of the final rule is July 22, 1987, except for paragraphs (c)(1)(i)(C)(*1*), (c)(1)(ii)(A), and (c)(4)(i), of this section. The effective date of paragraphs (c)(1)(i)(C)(*1*), and (c)(1)(ii)(A) is May 21, 1990. The effective date of paragraph (c)(4)(i) of this section is May 21, 1991.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

e. In § 799.2325 by revising paragraphs (c)(6)(i)(D) and (d) to read as follows:

§ 799.2325 Isopropanol.

* * * * *

(c) * * *

(6) * * *

(i) * * *

(D) The developmental neurotoxicity test shall be conducted with isopropanol in accordance with § 795.250 of this chapter, except for paragraph (c)(1)(iv).

(*1*) For purposes of this section, the following provisions also apply:

(*i*) *Numbers of animals.* The objective is for a sufficient number of pregnant rats to be exposed to ensure that an adequate number of offspring are produced for neurotoxicity evaluation. At least 24 litters shall be used at each dose level.

(*ii*) [Reserved]

(*2*) [Reserved]

* * * * *

(d) *Effective dates.* (1) The effective date of this rule is December 4, 1989, except for the provisions of paragraphs (c)(5)(i)(C)(*1*), (c)(5)(ii)(A)(*3*), (c)(6)(i)(D) of this section. The effective date for paragraphs (c)(5)(i)(C)(*1*) and (c)(5)(ii)(A)(*3*) is May 21, 1990. The effective date for paragraph (c)(6)(i)(D) is May 21, 1991.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

f. In § 799.3300 by revising paragraphs (c)(1)(ii)(A), (c)(3)(ii)(A), (e)(1)(ii), (e)(2)(ii) and (f) to read as follows:

§ 799.3300 Unsubstituted phenylenediamine.

* * * * *

(c) * * *

(1) * * *

(ii) *Reporting requirements.* (A) The tests shall be completed and the final reports for the MBMC assay shall be submitted to the EPA no later than January 18, 1991. The final report for the SLRL in *Drosophila melanogaster* shall be submitted no later than April 15,1991.

* * * * *

(3) * * *

(ii) *Reporting requirements.* (A) The acute neurotoxicity tests shall be completed and the final report submitted to EPA no later than September 15, 1990. If triggered, the final report of the subchronic neurotoxicity testing and the neuropathological examination shall be submitted to EPA on the following schedules. If one isomer is triggered, the reporting deadline is July 15, 1990. If two isomers are triggered, the reporting deadline is January 15, 1992. If three isomers are triggered, the reporting deadline is July 15, 1992.

* * * * *

(e) * * *

(1) * * *

(ii) *Reporting requirements.* The final reports for acute toxicity testing shall be submitted as follows:

(A) Testing on the rainbow trout shall be completed and submitted to EPA 9 months after the effective date of the final rule for *o*-pda and *p*-pda. Testing for *m*-pda shall be completed and submitted by January 15, 1991.

(B) The acute toxicity testing in freshwater *Gammarus* shall be completed and submitted no later than January 15, 1991.

(2) * * *

(ii) *Reporting requirements.* (A) The fish partial life-cycle flow-through test shall be completed and final results shall be submitted to EPA no later than January 16, 1992.

(B) The invertebrate life-cycle flow-through toxicity test shall be completed and the final report submitted to EPA no later than July 15, 1991.

(C) Progress reports shall be submitted at 6 month intervals after the effective date of the final rule.

(f) *Effective dates.* (1) The effective date of this final rule is January 16, 1990, except for (c)(1)(i)(B), (c)(1)(ii)(A), (c)(1)(ii)(C), (c)(1)(ii)(F), (c)(3)(ii)(A), (e)(1)(ii) and (e)(2)(ii). The effective date of paragraphs (c)(1)(i)(B), (c)(1)(ii)(C) and (c)(1)(ii)(F) is May 21, 1990. The effective date of paragraphs (c)(1)(ii)(A), (c)(3)(ii)(A), (e)(1)(ii) and (e)(2)(ii) is May 21, 1991.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

g. In § 799.4360, by revising paragraphs (c)(2)(ii)(A), (c)(3)(ii)(A), (c)(8)(i), (c)(8)(ii)(A), (e)(1)(ii), (e)(2)(ii)(A), and (c)(3)(ii) and (f) to read as follows:

§ 799.4360 Tributyl phosphate.

* * * * *

(c) * * *

(2) * * *

(ii) *Reporting requirements.* (A) The developmental toxicity study required under paragraph (c)(2) of this section shall be completed and a final report submitted to EPA by January 27, 1991.

* * * * *

(3) * * *

(ii) *Reporting requirements.* (A) The reproduction and fertility effects study required under paragraph (c)(3) of this section shall be completed and a final report submitted to EPA by August 17, 1992.

* * * * *

(8) * * *

(i) *Required testing.* (A) A pharmacokinetics test shall be conducted with TBP in accordance with § 795.228 of this chapter, except for the provisions of paragraphs (c)(1)(iii)(B), (c)(2)(ii)(C)(*2*) and (c)(2)(ii)(C)(*2*) of § 795.228.

(B) For the purposes of this section, the following provisions also apply:

(*1*) *Animal care.* During the acclimatization period, the animals shall be housed in suitable cages. All animals shall be provided with certified feed and tap water *ad libitum.*

(*2*) *Dermal treatment.* For dermal treatment, two doses, comparable to the low and high oral doses, shall be dissolved in a suitable vehicle and applied in volumes adequate to deliver comparable doses. The backs of the animals should be lightly clipped with an electric clipper 24 hours before treatment. The test substance shall be applied to the intact clipped skin (approximately 2 cm^2 for rats, 40 cm^2 for mini-pigs). The dosed areas shall be protected with a suitable porous covering which is secured in place, and the animals shall be housed separately.

(ii) *Reporting requirements.* (A) The pharmacokinetics test required in paragraph (c)(8)(i) of this section shall be completed and the final report submitted to EPA by September 27, 1991

* * * * *

(e) * * *

(1) * * *

(ii) *Reporting requirements.* The vapor pressure test required in paragraph (d)(1) of this section shall be completed and the final report submitted to EPA by September 27, 1990.

(2) * * *

(ii) *Reporting requirements.* (A) The sediment and soil absorption isotherm test required under paragraph (d)(2) of

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this section shall be completed and the final report submitted to EPA by September 27, 1990.

* * * * *

(3) * * *

(ii) *Reporting requirements.* The hydrolysis test required under paragraph (e)(3)(i) of this section shall be completed and the final report submitted to EPA by September 27, 1990.

(f) *Effective date.* (1) The effective date of this final rule is September 27, 1989, except for paragraphs (c)(2)(ii)(A), (c)(3)(ii)(A), (c)(8)(i), and (c)(8)(ii)(A), (e)(1)(ii), (e)(2)(ii)(A), and (e)(3)(ii) of this section. The effective date for paragraphs (c)(2)(ii)(A), (c)(3)(ii)(A), (c)(8)(i), and (c)(8)(ii)(A), (e)(1)(ii), (e)(2)(ii)(A), and (e)(3)(ii) is May 21, 1991.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

h. In § 799.4440, by revising paragraphs (c)(2), (c)(3)(i) and (d) to read as follows:

§ 799.4440 Triethylene glycol monomethyl ether.

* * * * *

(c) * * *

(2) For the purpose of this section, the following provisions also apply:

(i) *Number of animals.* The objective is for a sufficient number of pregnant rats to be exposed to ensure that an adequate number of offspring are produced for neurotoxicity evaluation. At least 24 litters are recommended at each dose level.

(ii) *Dose levels and dose selection.* In the absence of developmental toxicity or maternal toxicity the maximum dose shall be 5 grams/kilogram.

(3) * * *

(i) The developmental neurotoxicity test shall be completed and the final report submitted to EPA within 21 months of the initiation of the test.

* * * * *

(d) *Effective date.* (1) The effective date of this final rule is May 17, 1989, except for paragraph (c)(2)(i) and (c)(3)(i) of this section. The effective date for paragraph (c)(2)(ii) and (c)(3)(i) of this section is May 21, 1991.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

i. In § 799.5055 by revising paragraphs (e)(1)(i)(A) and (f) to read as follows:

§ 799.5055 Hazardous waste constituents subject to testing.

* * * * *

(e) * * *

(1) * * *

(i) *Required test.* (A) An oral gavage subchronic toxicity test shall be conducted in the rat with the substances designated in paragraph (c) of this section except for bis(2-chloroethoxy) methane (CAS No. 111-91-1) in accordance with § 798.2650 of this chapter.

* * * * *

(f) *Effective date.* (1) The effective date of the final rule is July 29, 1988, except for paragraphs (d)(1)(i), (d)(1)(ii), (d)(2)(ii), (e)(1)(i), and (e)(1)(ii)(A) of this section. The effective date of paragraphs (d)(1)(i), (d)(1)(ii), (d)(2)(ii), (e)(1)(i)(B) and (e)(1)(ii)(A) of this section is March 1, 1990. The effective date of paragraph (e)(1)(i)(A), is May 21, 1991.

(2) The guidelines and other test methods cited here are referenced as they exist on the effective date of the final rule.

[FR Doc. 91-12012 Filed 5-20-91; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6859

[AK-932-4214-10; AA-62906]

Revocation of Public Land Order No. 4956, as Amended; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety a public land order as it affects approximately 1,095 acres of National Forest System land withdrawn for Powersite Classification No. 459 at Vodapad River and Green Lake, near Sitka, Alaska. The land is no longer needed for the purpose for which it was withdrawn. The power potential of the land has been fully developed under the Green Lake Hydroelectric Project (Power Project No. 2618) and the land has been conveyed to the State of Alaska. Therefore, this action is for record clearing purposes only.

EFFECTIVE DATE: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 4956, as amended, which withdrew land for Powersite Classification No. 459 is hereby revoked as it affects the following described land:

Copper River Meridian

Tongass National Forest

All land adjacent to Vodapad River and Green Lake upstream from the outlet at Silver Bay which lie below an altitude of 400 feet above sea level. The Port Alexander D-4 quadrangle map shows that the land will lie wholly or in part within:

T. 56 S., R. 65 E. (Unsurveyed)
Secs. 20, 21, 26, 27, 28, 29, 33, 34, 35 and 36.

The area described contains approximately 1,095 acres.

Dated: May 13, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-11907 Filed 5-20-91; 8:45 am]

BILLING CODE 4310-JA-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-249]

Radio Broadcasting Services; Waldron, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On reconsideration, the Commission grants the request of Good News Broadcasting Corporation, licensee of Station KRWA-FM, and Waldron Community Broadcasting Corporation, the proposed assignee, to substitute Channel 276C3 for Channel 276A at Waldron, Arkansas, and modify the license for Station KRWA-FM to operate on Channel 276C3, based upon their expressed intent to pursue and construct the Class C3 facility. The proposal was previously denied for failure of Good News Broadcasting Corporation to file supporting comments in response to the Notice. See 54 FR 26220, June 22, 1989. Coordinates for Channel 276C3 at Waldron are 34-51-44 and 94-04-26. With this action, the proceeding is terminated.

EFFECTIVE DATE: June 27, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM

Docket No. 89-249, adopted May 1, 1991, and released May 15, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 276A and adding Channel 276C3 at Waldron.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11909 Filed 5-20-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-482; RM-7172]

Radio Broadcasting Services; Lemoore and Tipton, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 285A from Lemoore to Tipton, California, and modifies the license of Lemoore Wireless Co., Inc., for Station KQYZ(FM) to specify operation on Channel 285B1, as requested, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. The allotment of Channel 285B1 to Tipton will provide the community with its first local broadcast service without depriving Lemoore of local aural service. See 55 FR 46960, November 8, 1990. Coordinates used for Channel 285B1 at Tipton are 36-02-58 and 119-29-08. With this action, the proceeding is terminated.

EFFECTIVE DATE: June 27, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-482, adopted May 1, 1991, and released May 15, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 285A at Lemoore and adding Channel 285B1, Tipton.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11910 Filed 5-20-91; 8:45 am]

BILLING CODE 6712-01-M

VOL 56 ISS 98 MY 21 1991 UMI

Proposed Rules

Federal Register
Vol. 56, No. 98
Tuesday, May 21, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 735

Cotton Warehouses—United States Warehouse Act (USWA)

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of withdrawal.

SUMMARY: On August 21, 1990, a proposed rule was published in the Federal Register (55 FR 34021). The rule proposed amendments to the regulations governing cotton warehousemen licensed under the USWA that would allow cotton warehousemen to: (1) Issue negotiable warehouse receipts for reginned motes; and (2) insert certain language relating to liens in their schedule of warehouse charges (aka "tariffs")

The proposal was in response to several industry requests.

A total of 18 respondents submitted comments. Four respondents commented on both issues. All sectors of the cotton industry were heard from: Warehousemen, merchants, bankers, shippers, textile manufacturers, and a State Department of Agriculture. Seven comments concerned the issue of reginned cotton motes. All comments were negative and urged us to withdraw the proposal. Fifteen comments concerned the insertion of lien language in a warehouseman's tariff. Thirteen respondents opposed the proposal. One of the respondents is a warehouseman and was in favor of the proposal, but is not licensed under the USWA. The other respondent supports the proposal, but feels that the proposed language would not provide full rights according to the Uniform Commercial Code.

Based on the Agency's review of the comments, it is hereby determined that the proposed rulemaking is being withdrawn.

EFFECTIVE DATE: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Lynda Moore, Agricultural Marketing Specialist, ASCS–USDA, telephone: (202) 382–8004.

Signed at Washington, DC on May 15, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91–11989 Filed 5–20–91; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7CFR Parts 916 and 917

[Docket No. FV–91–239 PR]

Nectarines and Peaches Grown in California; Proposed Amendment of Size, Container Marking and Maturity Requirements and Effective Dates for the 1991 Season: Marketing Order Nos. 916 for Nectarines and 917 for Fresh Pears, Plums, and Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on changes to the size, container marking and maturity requirements for fresh nectarines and peaches grown in California. The proposal would change the size requirements by adding several new varieties of nectarines and peaches to variety-specific size requirements. Other nectarine and peach varieties would be deleted from those requirements. Deleted varieties would be subject to the minimum size requirements for non-listed varieties. The proposal would also clarify size requirements for nectarines by making minor changes in terminology to standardize the format of the regulations. The proposed rule would exempt from certain container marking requirements packages of nectarines and peaches mailed directly to consumers. The proposed rule would add maturity assignments to two new nectarine varieties and four new peach varieties and revise the footnote of the maturity assignment tables for the two fruits. Additionally, the effective dates for regulating the grade, size, quality, maturity, container and pack of nectarines and peaches would be changed to establish the estimated beginning and ending shipment dates for these commodities for the 1991 and subsequent seasons. With the exception of the clarification of nectarine size regulations, the revised effective dates for regulating peaches, and the changes to the footnote to each fruit's maturity assignment table, all proposals were unanimously approved by the Nectarine Administrative Committee and the Peach Commodity Committee. The proposals are designed to provide handlers with more marketing flexibility, to more accurately define the size and maturity characteristics of the fruit, and to promote the marketing of both of the fruits.

DATES: Comments must be received by June 5, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to: Docket Clerk, Marketing Order Administration Branch, USDA/AMS/F&V–room 2525-South, PO Box 96456, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, USDA/AMS/F&V/room 2525-South, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 475–3919, or, Kurt Kimmel, Marketing Field Office, USDA/AMS, 2202 Monterey St., suite 102–B, Fresno, California 93721; telephone (209) 487–5901.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and fresh pears, plums and peaches grown in California. The orders are effective under the Agricultural Marketing Agreement Act of 1937 (Act) as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural

Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 300 handlers are subject to regulation under the marketing orders for California nectarines and peaches. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $3,500,000. There are about 1,800 producers of these tree fruits in California. Small agricultural producers have been defined by the SBA as those having annual receipts of less than $500,000. The majority of these handlers and producers may be classified as small entities.

Inspected shipments of California nectarines and peaches for the 1990 season totalled 18,256,000 and 16,083,000 packages, respectively.

They were marketed primarily in the fresh market.

The Nectarine Administrative Committee and the Peach Commodity Committee (hereinafter referred to as the nectarine and peach committees) unanimously recommended amending size requirements, amending maturity requirements, adding container marking requirements and exempting directly mailed consumer packages from certain container marking requirements.

This proposed rule is based upon the two committees' recommendations, on information submitted by the committees and their respective subcommittees, and on other available information. The proposed changes reflect crop and market conditions experienced in 1990 and expected in 1991.

Effective Dates

Because these regulations do not change substantially from season to season, they have been issued on a continuing (yearly) basis subject to amendment, modification or suspension as may be recommended by the applicable committee and approved by the Secretary. Currently, the marketing orders' regulations are effective on a yearly basis from January 1 through December 31. This action proposes changing the effective dates of the regulations to more closely coincide with the marketing season for California nectarines and peaches. The nectarine committee approved unanimously the dates April 15 through October 31. The peach committee did not consider any proposal to change that order's effective dates. Nonetheless, this proposal would also establish the period April 15 through October 31 as the effective dates for marketing California peaches. These proposed periods include additional time after the last day of harvest when some lots of the fruits may be kept in cold storage prior to shipment.

Size Requirements

This proposal would alter size requirements for nectarines and peaches by adding several new varieties now produced in commercially significant quantities to variety-specific (named variety) size requirements. Nectarine and peach varieties no longer produced in significant quantities would be deleted from variety-specific size requirements. Size requirements for named varieties and non-listed varieties not mentioned in this rulemaking would not be changed for the 1991 season.

Variety-specific size requirements are proposed when a variety is first produced in commercially significant quantities. Such quantity is considered by the two committees to be total shipments of a variety exceeding 10,000 packages during a season. In making this volume determination, individual consumer packages weighing 15 pounds net weight or less are converted to 25 pound equivalent packages. For instance, two individual nectarine consumer packages of 11 pounds and 14 pounds would be counted as one 25-pound package of the fruit.

Nectarine and peach varieties that exceeded 10,000 shipped packages for the first time during the 1990 season are listed in the regulations proposed in this rulemaking. These varieties would be regulated under variety-specific size requirements for each fruit.

When a variety is no longer produced in significant quantities—which the committees have determined to be less than 5,000 packages during a season—it is removed from the variety-specific size requirement list. The varieties listed below in this rulemaking are proposed to be removed from their respective variety-specific size requirement lists for the 1991 season. During the 1990 season these varieties were not produced in quantities significant enough to warrant variety-specific size coverage. However, these varieties would be subject to minimum size requirements for non-listed varieties because, in combination with other varieties of the fruit, they are produced in quantities significant enough to warrant some size coverage. The size requirements established for non-listed varieties are generally less restrictive than those established for listed varieties, but help provide retailers and consumers with the fruit they prefer. The 10,000 and 5,000 package quantities used in making these determinations have been used in prior seasons.

For nectarines, the variety-specific size requirements and non-listed size requirements are specified in paragraphs (a)(2) through (a)(6) of § 916.356, as amended on June 15, 1990 (55 FR 24215). To implement the nectarine committee's unanimous recommendations for this action, paragraph (a)(5)(i) of § 916.356 would be amended to establish variety-specific size requirements for five nectarine varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1990 season. These varieties are Alta Red, Del Rio Rey, Mid Glo, Super Red and Zee Glo.

The nectarine committee also unanimously recommended that four varieties be deleted from variety-specific size requirements because their production was less than 5,000 packages during the 1990 season. The nectarine varieties proposed to be removed from the variety-specific list and made subject to the non-listed variety size requirements specified in paragraphs (a)(6) through (a)(6) of § 916.356 are Late Tina Red, Mayfair, Nect–5 and 32–79–22. Also, paragraph (ii) of these paragraphs would be amended by changing the words "in any container" to "other than as specified in paragraph (ii) (respectively) of this section." This change is proposed to clarify that different sizing tests would be applied to different containers of the inspected nectarines.

For peaches, the variety-specific size requirements and non-listed size requirements are specified in paragraphs (a)(2) through (a)(6) and in paragraphs (b) and (c) of § 917.459, as amended on June 15, 1990 (55 FR 24215). The peach committee unanimously recommended that variety-specific size requirements be established for three peach varieties. Paragraph (a)(5) of § 917.459 would be amended to include new varieties Rich Lady and Sierra Lady. Paragraph (a)(6) would be amended to include new variety Topcrest.

The peach committee also unanimously recommended that three

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varieties be deleted from variety-specific size requirements because the production of these varieties was less than 5,000 packages during the 1990 season. The peach varieties proposed to be removed from the variety-specific list and made subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459 are Jefferson Sun, June Crest and Prima Fire.

Finally, the Department of Agriculture (Department) proposes clarifying changes in subparagraphs (i) and (ii) of paragraphs (a)(2), (3), (4), (5), (6), (7), and (8) of § 916.356. The terminology would be standardized and would be modeled after the format currently used in the peach grade and size regulations.

The addition of several new varieties of nectarines and peaches to the variety-specific size requirements, the removal of certain other varieties from those requirements, and the change in the effective dates for the application of requirements would not be detrimental to small entities. These changes are expected to help the two commodity industries to provide the sizes of fruit that are desired in fresh markets.

Container Marking Requirements

Table I of § 917.442(a)(3)(iv), as amended on June 15, 1991 (55 FR 24222) specifies that the size designations of peaches, loose-filled or tight-filled, in any container shall be marked according to the number of fruit when packed in molded forms (tray-packs) in No. 22D standard lug boxes and in accordance with standard pack requirements. Based on the experience of the 1990 season, the peach committee unanimously recommended that the table listing the tray-pack sizes and corresponding range of the number of fruit per 16-pound sample should be revised for 64, 50 and 48 size peaches to more accurately indicate the maximum number of the fruit in the sample. It is proposed that the maximum number of peaches in a 16-pound sample of size 64 peaches should be reduced by one to 53 peaches. The maximum number of peaches in 16-pound samples of size 50 and size 48 should increase by one to 39 peaches and 35 peaches, respectively.

The nectarine and peach committees also reviewed a request by one handler that direct mail consumer packages/gift boxes (hereinafter referred to as gift packs) be exempt from certain container marking requirements. The handler supports mandatory inspection under the program, but believes the container marking requirements impose an unnecessary burden on the marketing of direct mail consumer packages and gift boxes. Gift packs mailed directly to consumers are carefully designed to encourage consumer acceptance and increase purchases. The handler contends that the Federal-State lot stamp, varietal name and size count markings, required under the program, detract from the aesthetically pleasing appearance of the gift packs and interferes with the promotional program of the gift pack shipper. Because these gift packs are smaller, less space is available for the markings. As a result, gift packs appear cluttered when all of the required markings appear on the gift packs.

The handler also contends that the marking requirements are unnecessary and burdensome for the gift pack shipper to meet. The handler contends that lot stamp numbering is required to keep track of the commodity which may change ownership several times in regular trade channels. At any point in the course of shipment a question regarding the quality or condition of the fruit may arise, and the lot stamp number on the package allows the prospective buyer to verify the quality of the fruit. However, gift packs are mailed directly to consumers, and are not intended for resale. Therefore, consumers can contact the shipper directly if the consumer is not satisfied with the gift pack. In addition, most consumers are not knowledgeable about the lot stamp numbering system, and of how the numbers may be used to obtain additional information about the shipment of the commodity. Therefore, deletion of the lot stamp on gift packs would not affect the purchasers of this fruit.

Likewise, the handler also requested that the gift packs be exempt from the varietal name and size count marking requirements, because the requirements are burdensome for the packing houses to meet. The handler explained that each year a gift pack shipper contracts with a number of different packing houses to pack fruit under contract. Packing houses may pack different varieties and size counts of fruit at different times during the harvest season. Because container markings must be stamped at the time of packing, the imposition of such markings on individual gift boxes results in an additional expense for packing houses.

After debate the stone fruit committees unanimously recommended that gift packs be exempt from inspection lot stamp, varietal name and size count marking requirements. Committee members concluded the stone fruit quality assurance programs would not be affected by the marking exemptions because the direct sales market is distinct from regular market channels.

Therefore, to relieve gift pack handlers of unnecessary container marking requirements and to enhance the marketing opportunity for gift pack shippers, this proposed rule would exempt direct mail consumer gift packs from certain marking requirements by revising §§ 916.115 and 917.150 and paragraphs (a) of §§ 916.350 and 917.442.

The revision of weight equivalents for three sizes of peaches utilizing tray-pack designations and the exemption of certain container marking requirements for gift packs are expected to increase efficiency of handling the fruit in the marketplace and improve the marketing of the fruit. These changes are not expected to result in additional marketing costs to the industries.

Maturity Requirements

The maturity requirements established under these marketing orders are intended to provide fruit that better meet customer preferences. Over the years, consumers have indicated that they prefer fruit that is sweet and flavorful. To help ensure that fruit reaching the marketplace is well-matured, the maturity subcommittees of the nectarine and peach committees and the inspection service inspectors meet after each harvest season to review surface color of varieties observed during the last season against the designated maturity guides established for those varieties. Other tests used during the previous season to determine well-maturity are also reviewed. Appropriate changes are recommended for the following season. Changes in maturity guides are recommended to the respective committees. The determination of which color chip will apply to each variety is based upon careful analysis, usually over several seasons, by the inspection service and the maturity subcommittees. In certain instances, a color chip designation for any particular nectarine and peach variety may be changed during the course of a season through the maturity variance process. Then it must be determined which chip to use in the new season. This year the nectarine and peach committees recommended that the maturity assignments for their respective fruit varieties, in place at the beginning of the 1990 season, be carried over to the 1991 season, except that Babcock variety peaches be set at supervisor discretion.

This proposed rule would assign maturity guides to new varieties for which guides have not been previously specified. On the basis of inspection service advice, the nectarine committee unanimously recommended that the following two varieties and color chip maturity guides be added to Table I in paragraph (a) of § 916.356: Summer Star—G Color and Tasty Gold—H Color. On the basis of inspection service advice, the peach committee unanimously recommended that the following four varieties and color chip maturity guides be added to Table I in paragraph (a) of § 917.459: Amber Crest—G Color, June Sun—H Color, 50-178—G Color, and Snow Flame—Supervisor discretion.

Finally, the committees submitted accompanying material to help handlers verify the proposed changes in the nectarine and peach maturity requirements. The information from each committee included a revised NOTE: which offers advice for obtaining color standards or other maturity requirements applicable to any varieties not included in the table of maturity requirements. Table I of each commodity's "Subpart—Grade and Size Regulation" (§ 916.356(a)(1) for nectarines and § 917.459(a)(6) for peaches) would include the proposed explanations.

Although the committees did not formally vote on these revised explanations, the Department proposes for industry comment the revised explanatory notes to the nectarine and peach maturity tables. The Department proposes changing the wording of these notes to assist growers and handlers in determining the well-maturity of nectarines and peaches. The existing explanatory notes for nectarines and peaches read as follows:

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

The revised explanatory notes for nectarines and peaches are proposed to read as follows:

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the color standard applicable to varieties not listed above. Maturity determinations are to be made at time of picking. Consultation of the Inspection Supervisor regarding the established color standard is therefore advised prior to commencing harvest of any variety. Regular confirmation of the requirements in effect also is recommended.

The proposed actions assigning maturity guides to new varieties of the two fruits, the continuance in 1991 of 1990 maturity guides with a change for one peach variety, and the changes in the explanatory note following the maturity assignment tables would be expected to aid in improving the quality of the fruit marketed and would not be detrimental to small entities in the two industries.

Based on the above, the Administrator of the AMS has determined that the changes proposed above would not have a significant economic impact on a substantial number of small entities.

A comment period of less than 30 days is appropriate for this proposal. Shipment of the 1991 nectarine and peach crops is expected to begin before the end of April 1991. Growers and handlers should be given as much notice of regulatory changes as possible. Also, a shortened comment period will help implement the uniform application of the proposed regulations over the entire nectarine and peach marketing seasons.

The committee's recommendations, other information, and all written comments timely received will be considered before determinations are made on the proposed changes covered in this document. Commenters are urged to submit their reasons in support of or in opposition to this proposed rule.

List of Subjects in 7 CFR Parts 916 and 917

California, Marketing agreements and orders, Nectarines, Plums, Peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR parts 916 and 917 be amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: Sections 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Section 916.115 is revised to read as follows:

§ 916.115 Lot Stamping.

Except when loaded directly into railway cars, exempted under § 916.110, or mailed directly to consumers in consumer packages, cotainers of nectarines shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such nectarines have been inspected in accordance with § 916.55.

3. The introductory text of paragraph (a) and paragraphs (a) (2) and (3) of § 916.350 are revised to read as follows:

§ 916.350 Nectarine Regulation 8.

(a) During the period beginning April 15 and ending October 31, no handler shall ship any package or container of any variety of nectarines except in accordance with the following terms and conditions:

* * * * *

(2) Each package or container of nectarines shall bear, on one outside and in plain sight and in plain letters, the name "nectarines" and, except for consumer packages in master containers and consumer packages mailed directly to consumers, the name of the variety, if known or, when the variety is not known, the words "unknown variety."

(3) Each package or container of nectarines, except consumer packages mailed directly to consumers, shall bear, on one outside end in plain sight and in plain letters, the following count and/or size discription of the nectarines as applicable.

* * * * *

4. The introductory text of paragraph (a) of § 916.356 is amended to read as follows:

§ 916.356 Nectarine Regulation 14.

(a) During the period beginning April 15 and ending October 31, no handler shall ship:

* * * * *

5. Table I of paragraph (a)(1)(i) of § 916.356 is amended by adding in alphabetical order the following nectarine varieties to Column A and their corresponding maturity guides to Column B:

(a) * * *

(1) * * *

(i) * * *

Summer Star ..... G

* * * * *

Tasty Gold ..... H

* * * * *

6. The explanatory note following Table I of paragraph (a)(1)(i) of § 916.356 is revised to read as follows:

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the color standard applicable to varieties not listed above. Maturity determination are to be made at time of picking. Consultation of the Inspection Supervisor regarding the established color standard is therefore advised prior to commencing harvest of any variety. Regular confirmation of the requirements in effect also is recommended.

§ 916.356 [Amended]

7. Paragraph (a)(3) of § 916.356 is amended by removing the nectarine variety Mayfair.

§ 916.356 [Amended]

8. Paragraph (a)(2)(i) of § 916.356 is revised to read as follows:

(a) * * *

* * * * *

(2) * * *

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(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 106 nectarines in the lug box; or

* * * * *

§ 916.356 [Amended]

9. Paragraphs (a)(3)(i) and (a)(3)(ii) of § 916.356 are revised to read as follows:

(a) * * *

* * * * *

(3) * * *

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(3)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 87 nectarines.

§ 916.356 [Amended]

10. Paragraph (a)(4)(i) and (a)(4)(ii) of § 916.356 are revised to read as follows:

(a) * * *

* * * * *

(4) * * *

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(4)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 78 nectarines.

§ 916.356 [Amended]

11. Paragraph (a)(5) of § 916.356 is amended by adding in alphabetical order the nectarine varieties Alta Red, Del Rio Rey, Mid Glo, Super Red and Zee Glo and by removing the nectarine varieties Late Tina Red, Nect-5 and 32-79-22.

§ 916.356 [Amended]

12. Paragraphs (a)(5)(i) and (a)(5)(ii) of § 916.356 are revised to read as follows:

(a) * * *

* * * * *

(5) * * *

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 80 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(5)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 67 nectarines.

§ 916.356 [Amended]

13. The introductory text of paragraph (a)(6) of § 916.356 is revised to read as follows:

(a) * * *

(6) During April 15 through May 31 of each fiscal period, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraphs (a) (2), (3), (4), or (5) of this section unless:

* * * * *

§ 916.356 [Amended]

14. Paragraph (a)(6)(i) and (a)(6)(ii) of § 916.356 are revised to read as follows:

(a) * * *

* * * * *

(6) * * *

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(6)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 87 nectarines.

§ 916.356 [Amended]

15. Paragraph (a)(7)(i) and (a)(7)(ii) of § 916.356 are revised to read as follows:

(a) * * *

* * * * *

(7) * * *

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(7)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 78 nectarines.

§ 916.356 [Amended]

16. The introductory text of paragraph (a)(8) of § 916.356 is revised to read as follows:

(a) * * *

(8) During July 1 through October 31 of each fiscal period, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraph (a) (2), (3), (4), or (5) of this section unless:

* * * * *

§ 916.356 [Amended]

17. Paragraphs (a)(8)(i) and (a)(8)(ii) of § 916.356 are revised to read as follows:

(a) * * *

* * * * *

(8) * * *

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 80 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(8)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 67 nectarines.

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

18. Section 917.150 is revised to read as follows:

§ 917.150 Lot stamping.

Except when loaded directly into railway cars, exempted under § 917.143, or for peaches mailed directly to consumers in consumer packages, containers of fruit shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been inspected in accordance with § 917.45.

19. The introductory text of paragraph (a) and paragraphs (a) (2) and (3) of § 917.442 are revised to read as follows:

§ 917.442 Peach Regulation 8.

(a) During the period beginning April 15 and ending October 31, no handler shall ship any package or container of any variety of peaches except in accordance with the following terms and conditions:

* * * * *

(2) Each package or container of peaches shall bear, on one outside end in plain sight and in plain letters, the name "peaches" and, except for consumer packages in master containers and consumer packages mailed directly to consumers, the name of the variety, if known or, when the variety is not known, the words "unknown variety."

(3) Each package or container of peaches, except consumer packages mailed directly to consumers, shall bear on one outside end in plain sight and in plain letters, the following count and/or size description of the peaches as applicable:

* * * * *

§ 917.442 [Amended]

20. Paragraph (a)(3)(iv) of § 917.442 is revised to read as follows:

(a) * * *

* * * * *

(3) * * *

* * * * *

(iv) The size of peaches, when packed in loose-filled or tight-filled containers, shall be marked in accordance with the following table which specifies in Column A the number of peaches in a 16-pound sample of each size of the fruit listed in Column B:

TABLE I.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF PEACHES PACKED IN LOOSE OR TIGHT-FILLED CONTAINERS

Column A	Column B
Tray pack size designation	Number of peaches in 16-pound sample
96	84–96
88	78–83
84	74–79
80	65–73
72	60–64
70	54–59
64	47–53
60	46
56	44–45
54	40–43
50	35–39
48	31–35
42	27–30
40	26
36	25

* * * * *

21. The introductory text of paragraph (a) of § 917.459 is revised to read as follows:

§ 917.459 Peach Regulation 14.

(a) During the period beginning April 15 and ending October 31, no handler shall ship:

* * * * *

§ 917.459 [Amended]

22. Paragraph (a)(4) of § 917.459 is amended by removing the peach varieties June Crest and Prima Fire.

§ 917.459 [Amended]

23. Paragraph (a)(5) of § 917.459 is amended by adding in alphabetical order the peach varieties Rich Lady and Sierra Lady and by removing the peach variety Jefferson Sun.

§ 917.459 [Amended]

24. paragraph (a)(6) of § 917.459 is amended by adding in alphabetical order the peach variety Topcrest.

§ 917.459 [Amended]

25. Table I of paragraph (a) of § 917.459 is amended by adding in alphabetical order the following varieties of peaches to Column A and corresponding maturity guides to Column B:

* * * * *

Ambercrest ..... G

* * * *

June Sun ..... H

* * * * *

Snow Flame ..... Supervisor discretion

* * * * *

50-178 ..... G

* * * * *

§ 917.459 [Amended]

26. Table I of paragraph (a) of § 917.459 is amended by removing the maturity guide from Column B of the following peach variety under Column A and inserting the revised maturity guide for that variety in Column B:

Babcock Type ..... Supervisor discretion

§ 917.459 [Amended]

27. The explanatory note following Table I of paragraph (a) of § 917.459 is revised to read as follows:

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the color standard applicable to varieties not listed above. Maturity determinations are to be made at time of picking. Consultation of the Inspection Supervisor regarding the established color standard is therefore advised prior to commencing harvest of any variety. Regular confirmation of the requirements in effect also is recommended.

§ 917.459 [Amended]

28. The introductory text of paragraph (b) of § 917.459 is revised to read as follows:

(b) During the period April 15 through July 2 of each fiscal period, no handler shall handle any package or container of any variety of peaches not specifically named in paragraph (a) (2), (3), (4), or (5) of this section unless:

* * * * *

Dated: May 15, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-11897 Filed 5-20-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1212

[FV-90-158]

RIN 0581-AA48

Lime Research, Promotion and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule.

SUMMARY: The Department proposes to issue on order establishing a national industry-funded lime research and promotion program. A lime industry organization requested the issuance of such an order and submitted a proposed order in response to an invitation to submit proposals. The proposed order would require lime producers and importers to pay an assessment, which would be used in a national program of lime research, promotion, and consumer information. No interest was expressed in holding a public meeting to discuss the proposal, so none will be held.

DATES: Comments must be received by June 20, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material should be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register. Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for the Agricultural Marketing Service, USDA.

FOR FURTHER INFORMATION CONTACT: Jim Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 475-3916.

SUPPLEMENTARY INFORMATION: This proposed order is authorized under the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201-6212) hereinafter referred to as the Act.

This proposal has been reviewed by the Department in accordance with

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Executive Order 12291 and U.S. Department of Agriculture (USDA) Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained in the Executive Order.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

The most recent available census of agricultural producers indicates that there are 985 farms producing limes in the United States, an estimated 325 of whom would be subject to the proposed order. Of the latter number, the majority would be classified as small businesses. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms, which include lime handlers and importers, have been defined as those having annual receipts of less than $3,500,000. There are approximately 25 handlers and 5 importers of limes who would be subject to the provisions of this proposed order, the majority of whom would also be classified as small entities. The proposed order would require each lime producer and importer who produces or imports 35,000 pounds or more of fresh limes per year to pay an assessment not to exceed $0.01 per pound of limes. In addition, an estimated 25 first handlers of limes, virtually all of whom would be classified as small firms, would be required to collect and remit the assessments. Although the maximum assessment collection is expected to total about $2 million annually, the economic impact of a one cent or less assessment per pound on each non-exempt producer or importer woud not be significant. The proposed order would also impose a reporting and recordkeeping burden on first handlers and importers. It is estimated that this burden would average approximately six hours per year, so its economic impact would not be significant. In addition, the research and promotion program to be funded by the assessments should benefit lime producers, handlers, and importers by expanding and maintaining new and existing domestic and foreign markets and promoting new uses for limes. Such benefits are expected to outweigh any costs. Accordingly, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980, the information collection requirements contained in this action have been approved by the Office of Management and Budget (OMB). This action sets forth the provisions of a proposed order to establish a nation-wide program for lime research and promotion to be funded by lime producers and importers. Information collection requirements that are included in this proposal include:

(1) A monthly report by each first handler and importer who handles or imports at least 35,000 pounds of fresh limes per year. The estimated number of respondents is 30, each submitting a maximum of 12 responses per year, with an estimated average reporting burden of one-half hour per response. However, these persons may alternatively prepay assessments annually, requiring only an initial report of anticipated assessment and a final annual report of actual handling;

(2) A refund application form for persons who desire a refund of their assessments. The estimated number of respondents is 35, each submitting 10 responses per year, with an estimated average reporting burden of .25 hours per response;

(3) An exemption application for producers, handlers and importers of less than 35,000 pounds of limes annually to be exempt from assessments and recordkeepinig requirements. The estimated number of respondents for this form is 35, each submitting one response per year, with an estimated average burden of .25 hours per response;

(4) A referendum ballot to be used in 1993 and periodically thereafter to indicate whether producers and importers favor continuance of the order. The estimated maximum number of respondents for this form is 350 each submitting one response approximately every five years, with an estimated average reporting burden of .10 hours per response;

(5) A nominee background statement form for Board member and alternate member nominees. The estimated number of respondents for this form is 44 during the first year of order operations and approximately 16 annually thereafter. Each respondent would submit one response per year, with an estimated average reporting burden of .10 hours per response; and

(6) A requirement to maintain records sufficient to verify reports submitted under the order. The estimated number of recordkeepers necessary to comply with this requirement is 350, each of whom would have an estimated annual bruden of .12 hours.

Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC 20503. Attention: Desk Officer for Agricultural Marketing Service, USDA.

Background

The Lime Research, Promotion, and Consumer Information Act of 1990 (Subtitle D of Title XIX of the Food, Agricultural, Conservation, and Trade Act of 1990; Pub. L. 101-624) approved November 28, 1990, hereinafter referred to as the Act, authorizes the Secretary of Agriculture to establish a national lime research and promotion program. The program would be funded by an assessment on producers and importers not to exceed one cent per pound of fresh limes.

The Act provides for the submission of proposals for a lime research and promotion order by industry organizations or any interested person. The Act requires that such order provide for the establishment of a Lime Board. The Board would be composed of eleven members, including seven producers, three importers and one public member, with an alternate for each member.

The Department issued an invitation to submit proposals for an initial order in the January 30, 1991, issue of the **Federal Register** (56 FR 3425).

In response to the invitation to submit proposals, one proposal was received from Harold W. Furman II on behalf of the proponent industry group for a lime industry research and promotion program. The Department is publishing this proposed order, with some modification of proposed provisions. The Department will consider all comments received by the deadline, before issuing a final order.

Sections 1212.1-1212.20 of the proposed order define certain terms which are used in the order. Sections 1212.30-1212.40 include provisions relating to the establishment, membership, nomination, appointment, term of office, procedure, reimbursement, powers and duties of the Lime Board, which would be the body organized to administer the order subject to the oversight of the Secretary of Agriculture. Sections 1212.50-1212.51 concern research, promotion and consumer education. Section 1212.60 would authorize the Board to incur expenses necessary for the performance of its duties and recommend an annual budget. The proponent's proposal included a provision to permanently limit the Department's expenses for administering the order and conducting referenda to not exceed $50,000 per annum. This provision is not included in the proposed order set forth herein because it is not consistent with the Act. Sections 1212.62-1212.66 would authorize the collection of assessments, specify who pays them and how, and set forth procedures for the handling of a one-time refund. The maximum assessment rate would be one cent per pound of non-exempt fresh limes produced domestically or imported into the United States. The assessment sections also outline the procedures to be followed by first handlers and importers for remitting assessments; establish a 10 percent late payment charge and also a one and one-half percent per month interest charge; and provide for refunds of assessments paid if the initial continuance referendum fails.

Sections 1212.70-1212.75 concern reporting and recordkeeping requirements for persons subject to the order, and provide that all information obtained by the Board or the Department from records and reports required by the order would be kept confidential. The proponent's proposal regarding reports would have required much more information than has been typically deemed necessary for Boards to operate in similar research and promotion programs. The proponent's proposal included a complete breakdown by varieties when reporting the quantity received, the quantity disposed of and the quantity still on hand. It would also have required the identification of the carrier transporting such limes and the identification of an inspection certificate for each lot. Therefore, the applicable provisions have been modified to eliminate these specific reporting requirements. At a later time if additional information were deemed necessary, further consideration would be given to such requirements.

Sections 1212.80-1212.88 are miscellaneous provisions including the right of the Secretary; personal liability of Board members and employees; influencing governmental actions; termination of the order; separability of order provisions; handling of intellectual property arising from funds collected by the Board; and amendments to the order.

Miscellaneous changes also have been made to the proponent's proposal to eliminate duplicate provisions and to clarify language.

List of Subjects in 7 CFR Part 1212

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Limes, Reporting and recordkeeping requirements.

The proposal, set forth below, has not received the approval of the Secretary of Agriculture.

It is hereby proposed that title 7 of the Code of Federal Regulations be amended by adding part 1212 to read as follows:

PART 1212—LIME RESEARCH, PROMOTION, AND CONSUMER INFORMATION

Subpart A—Lime Research, Promotion, and Consumer Information Order

Definitions

Secs.
1212.1 Secretary.
1212.2 Act.
1212.3 Order.
1212.4 Board.
1212.5 Lime.
1212.6 Fresh market.
1212.7 Producer.
1212.8 Handle.
1212.9 Handler.
1212.10 Importer.
1212.11 Producer-Handler.
1212.12 Person.
1212.13 Promotion.
1212.14 Research.
1212.15 Marketing.
1212.16 Consumer information.
1212.17 State and United States.
1212.18 District.
1212.19 Fiscal period and marketing year.
1212.20 Programs and projects.

Lime Board

1212.30 Establishment and membership.
1212.31 Nomination.
1212.32 Appointment of producer and importer members.
1212.33 Public member nominations and selection.
1212.34 Term of office.
1212.35 Acceptance.
1212.36 Vacancies.
1212.37 Procedure.
1212.38 Compensation and reimbursement.
1212.39 Powers.
1212.40 Duties.

Research, Promotion, and Consumer Information

1212.50 Policy and objective.
1212.51 Programs and projects.

Expenses and Assessments

1212.60 Budget and expenses.
1212.61 Operating reserve.
1212.62 Determination of handler.
1212.63 Importer.
1212.64 Assessments.
1212.65 Payment of assessments.
1212.66 Failure to report and remit.
1212.67 Refunds.
1212.68 Exemption from assessment.
1212.69 Reports of disposition of exempted limes.

Reports, Books, and Records

1212.70 Reports.
1212.71 Books and records.
1212.72 Retention period for records.
1212.73 Availability of records.
1212.74 Confidential treatment.
1212.75 Confidential books, records, and reports.

Miscellaneous

1212.80 Right of the Secretary.
1212.81 Personal liability.
1212.82 Influencing governmental actions.
1212.83 Suspension or termination.
1212.84 Proceedings after termination.
1212.85 Effect of termination or amendment.
1212.86 Separability.
1212.87 Patents, copyrights, inventions, product formulations, and publications.
1212.88 Amendments.
1212.89 OMB control numbers.

Authority: The Lime Research, Promotion, and Consumer Information Act of 1990; 7 U.S.C. 6201 et seq.

SUBPART A—LIME RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

Definitions

§ 1212.1 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1212.2 Act.

Act means the Lime Research, Promotion, and Consumer Information Act of 1990. (Title XIX, Subtitle D of Pub. L. 101-624; 7 U.S.C. 6201 *et seq.*; 104 Stat. 3670-3681) and any amendments thereto.

§ 1212.3 Order.

Order means this Lime Research, Promotion, and Consumer Information Order issued by the Secretary pursuant to the Act.

§ 1212.4 Board.

Board means the administrative body referred to as the Lime Board, hereinafter established pursuant to § 1212.30.

§ 1212.5 Lime.

Lime means the fruit of a *Citrus aurantifolia* tree for the fresh market.

§ 1212.6 Fresh market.

Fresh market means the demand for whole limes not preserved by any recognized commercial process

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including canning, freezing, dehydration or fermentation, or converted into juice. It does not include the by-products of limes or products made with the by-products of limes.

§ 1212.7 Producer.

Producer means any person who produces limes in the United States for sale in commerce.

§ 1212.8 Handle.

Handle means to grade, pack, process, sell, transport, purchase, or in any other way to place or cause limes to which one has title or possession to be placed in the current of commerce. Such term shall not include the transportation or delivery of limes by the producer thereof to a handler for grading, sizing, packaging or processing.

§ 1212.9 Handler.

Handler means any person (except a common or contract carrier of limes owned by another person) who handles limes, including a producer-handler who handles limes of producer-handler's own production. For the purposes of this subpart, the term "handler" means the "first" person who performs the handling functions.

§ 1212.10 Importer.

Importer means any person who imports limes into the United States.

§ 1212.11 Producer-Handler.

Producer-Handler means any person who is both a producer and handler of limes.

§ 1212.12 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or other legal entity.

§ 1212.13 Promotion.

Promotion means any action taken by the Board, pursuant to the Act, to present a favorable image for limes to the public with the express intent of improving the competitive position of limes in the marketplace and stimulating sales of limes, and shall include, but not be limited to, paid advertising.

§ 1212.14 Research.

Research means any type of systematic study or investigation, and/or the evaluation of any study or investigation relating to the use and nutritional value of limes, and designed to advance the image, desirability, marketability, production, or quality of limes.

§ 1212.15 Marketing.

Marketing means the sale or other disposition of limes in commerce.

§ 1212.16 Consumer information.

Consumer information means any action taken to provide information to, and broaden the understanding of, the general public on the usage, nutritional attributes, and care of limes.

§ 1212.17 State and United States.

State and *United States* means any or all of the fifty States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1212.18 District.

District means the applicable one of the following described subdivisions of the production area, or other subdivisions as may be prescribed pursuant to § 1212.40(o):

(a) *District 1* shall include the States east of the Mississippi River, including Puerto Rico and the District of Columbia.

(b) *District 2* shall include the States west of the Mississippi River.

§ 1212.19 Fiscal period and marketing year.

Fiscal period and *marketing year* mean the 12 month period from April 1 to the following March 31 or such other period which may be recommended by the Board and approved by the Secretary.

§ 1212.20 Programs and projects.

Programs and *projects* mean those research, development, advertising, or promotion programs or projects developed by the Board pursuant to § 1212.51.

Lime Board

§ 1212.30 Establishment and membership.

(a) There is hereby established a Lime Board, hereinafter called the "Board". The Board shall be composed of eleven members to administer the terms and provisions of this part. Seven of the members shall be producers not exempt from paying assessments under the Act, three of the members shall be importers not exempt from paying assessments under the Act, and one shall be a public member. Each member shall have an alternate who shall have the same qualifications as the member for whom such person is an alternate.

(b) Membership on the Board shall be determined according to production and import volumes as set forth in the USDA Crop Production Annual Summary Reports and data on imports as reported by the Bureau of the Census. Therefore, initially six of the seven producer members shall be producers of limes in District 1, and one producer member shall be a producer of limes in District 2. One of the three importer members shall be an importer of limes in District 1, and two importer members shall be importers of limes in District 2. The public member shall be selected at large.

(c) After two years, the Board shall review the districts to determine whether realignment of the districts or reapportionments of members among the districts is necessary and at least every five years thereafter the Board shall make such a review. In making such review, it shall give consideration to:

(1) The most recent three years USDA production and import reports or Board assessment reports if USDA production reports are unavailable;

(2) Shifts and trends in quantities of limes produced and imported, and

(3) Other relevant factors.

As a result of this review, the Board may recommend realigning the districts or reapportion membership subject to the approval of the Secretary. Any such realignment or reapportionment shall be recommended by the Board to the Secretary at least six months prior to the date of the call for nominations and shall become effective at least 30 days prior to such date.

§ 1212.31 Nomination.

The Secretary shall appoint the members of the Board from nominations to be made in the following manner:

(a) Except for the member and alternate member who represent the general public, nominations of members to the Board shall be submitted to the Secretary for selection as soon as practicable after the effective date of this subpart. In subsequent years, nominations of members to the Board shall be submitted to the Secretary by the Board by August 1. Nominations may be made by means of group meetings of producers and importers: *Provided*, That nominations of producers and importers may be conducted by mail ballot.

(b) There shall be two individuals nominated for each vacant position who shall meet the qualifications as set forth in § 1212.30.

(c) In the event nominations for members and alternate members of the Board are not filed pursuant to, and within the time specified in this section, the Secretary may select such members and alternate members without regard to nominations, but selection shall be on the basis of the representation provided for in § 1212.30.

(d) Any producer or importer who desires to be represented at a particular nomination meeting may authorize an agent and participate through such agent in the nomination and election of nominees for producer or importer members and alternate members to fill positions on the Board as provided in § 1212.30(a), shall submit to the Board, prior to such meeting but not later than seven days preceding the meeting, a written statement containing the following:

(1) Name of producer or importer;

(2) Mailing address;

(3) Place or location of business;

(4) Volume of business (how many pounds of limes produced or imported); and

(5) Authorization, including the name, and address, of the person who is to represent said producer or importer at the nomination meeting.

(e) Producers or importers who have not filed a statement as prescribed in paragraph (d) of this section must be present at the nomination meeting and cast their own votes for them to be counted in connection with the nomination and election of nominees.

(f) Notwithstanding that a producer or importer has authorized an agent to cast his or her vote as specified in paragraph (d) of this section, such producer or importer may appear at the nomination meeting and cast his or her vote in person to the exclusion of such agent.

(g) Only producers may participate in the nomination and election of nominees for producer members and their alternates. Each producer shall be entitled to cast only one vote for each producer nominee. No producer shall participate in the election of nominees in more than one district in any one fiscal period.

(h) Only importers may participate in the nomination and election of nominees for importer members and their alternates. Each importer shall be entitled to cast only one vote for each importer nominee. No importer shall participate in the election of nominees in more than one district in any one fiscal period. If a person both produces and imports limes, such person shall elect the one group—either producer or importer—that he/she will participate in for nominating purposes.

(i) A chairperson of each nomination meeting shall be elected by a majority vote of the eligible voters in attendance.

(j) A typed copy of the minutes of each nomination meeting shall be provided by the Board to the Secretary in a manner that will ensure receipt within 14 calendar days of such meeting's completion.

(k) In the event of a mail ballot, all qualified persons interested in serving on the Board or who are interested in nominating another person to serve on the Board shall submit to the Board in writing such information as name, mailing address, number of pounds produced, marketed, handled, or imported, or other information as may be required, in order to place that person on the ballot: *Provided*, That in the case of nominating the initial Board, the Secretary shall mail out the ballots and cause press releases concerning the distribution of ballots and pertinent information on balloting to be distributed to the media in the lime producing and importing areas. These nominations shall be sent directly to the Secretary.

Subsequently, nominations for Board positions must be received by the Board at least three months before the ballot is issued. The Board shall mail ballots to all producers and importers of record. Distribution of ballots shall be announced by press releases furnishing pertinent information on balloting, issued by the Board through the media, including newspapers and other publications having general circulation in the lime producing and importing areas.

§ 1212.32 Appointment of producer and importer members.

From the nominations made pursuant to § 1212.31, or from other qualified persons, the Secretary shall appoint the seven producer members of the Board, the three importer members of the Board, and an alternate for each such member.

§ 1212.33 Public member nominations and selection.

The public member shall be nominated by the producer members and importer members of the Board and appointed by the Secretary. In the event the Board fails to nominate a public representative, the Secretary may appoint such a member. The public member shall have no direct financial interest in the commercial production or marketing of limes except as a consumer and shall not be a director, stockholder, officer or employee of any firm so engaged. The Board shall nominate two individuals for the public member position. Voting for public member nominees shall require a quorum of the Board and shall be on the basis of one vote per Board member. Election of nominees shall be on the basis of a simple majority of those present and voting.

§ 1212.34 Term of office.

(a) The members of the Board and their respective alternates shall serve concurrent terms of office and for terms of three years, except the members and their respective alternate members of the initial Board shall be designated for, and shall serve terms as follows: Two producer members from District 1 and one importer member from District 2 shall be appointed for a term of one year; two producer members from District 1, and one importer member from District 1, and the public member shall be appointed for a term of two years; and two producer members from District 1, one producer member from District 2, and an importer member from District 2 shall be appointed for a term of three years.

(b) The term of office for the initial Board shall begin immediately following appointment by the Secretary. Time in the interim period, from appointment until the term begins pursuant to this section, shall not count toward the initial "term of office". In subsequent years, the term of office shall begin on January 1 or such other period which may be approved by the Secretary.

(c) Board members and alternates shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No member shall serve more than two successive terms: *Provided*, That those members serving initial terms of one year may serve two additional consecutive three-year terms.

§ 1212.35 Acceptance.

Each person nominated to serve on the Board shall, prior to selection as a member or alternate member of the Board, qualify by filing with the Secretary a written acceptance indicating that person's willingness to serve.

§ 1212.36 Vacancies.

(a) In the event any member or alternate member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office.

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Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

(c) To fill any vacancy caused by the failure of producers and importers to nominate individuals for appointment, or if any person selected as a member of the Board fails to qualify, or in the event of the death, removal, resignation, or disqualification of any member, a successor shall be nominated and selected in the manner specified in § 1212.31 except that said nomination and replacement shall not be required if the unexpired term of office is less than six months. In the event of failure by the Board to provide nominees for such vacancies, the Secretary may appoint other eligible persons.

(d) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member until a successor for such member is selected and has qualified.

§ 1212.27 Procedure.

(a) Six members, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided*, That such alternates shall serve only whenever the member is absent from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may act upon the concurring votes of a majority of its members by mail, telephone, or by other means of communication: *Provided*, That each proposition is explained accurately, fully, and substantially identically to each member. All telephone votes shall be promptly confirmed in writing and recorded in the Board minutes.

(c) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with the By-Laws, when established by the Board.

§ 1212.28 Compensation and reimbursement.

Board members shall serve without compensation but shall be reimbursed for travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons employed intermittently in Government service under section 5703 of title 5, United States Code, which are incurred by them in the performance of their duties as Board members.

§ 1212.29 Powers.

The Board shall have the following powers subject to § 1212.83:

(a) To administer the provisions of this Order in accordance with its terms and conditions.

(b) To recommend to the Secretary rules and regulations to effectuate the terms and conditions of this Order.

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this Order; and

(d) To recommend to the Secretary amendments to this Order.

(e) To invest, pending disbursement under a program, plan, or project, funds collected only in: Obligations of the United States or any agency thereof; any interest-bearing account or certificate of deposit of any bank that is a member of the Federal Reserve System; or obligations fully guaranteed as to principal and interest by the United States.

(1) All obligations must be fully guaranteed by the United States and must be less than one year.

(2) All interest-bearing accounts or Certificates of Deposit (CD) must be risk-free and short-term. "Risk-free" requires all accounts and CDs to be fully insured or collateralized with Federal Government securities. "Short-term" requires that all accounts and CDs be less than one year.

(3) In the absence of collateral, accounts and CDs shall be established at financial institutions insured by the Federal Deposit Insurance Corporation, and each account, in the aggregate, must be less than $100,000.

(4) Accounts and CDs exceeding the $100,000 insurance coverage level must be fully collateralized by the financial institution. Collateral must be pledged before funds are sent to the institution. Only those securities specified in Treasury Department Circular No. 176 are acceptable as collateral. Collateral must be pledged at face value. Collateral must be segregated in the Board's name to assure that collateral is not double pledged. Collateral may be held at the local Federal Reserve Bank or at another depository.

§ 1212.40 Duties.

The Board shall, among other things, have the following duties:

(a) To meet, organize, and select from among its members a president and such other officers as may be necessary; to select committees and subcommittees of board members; to adopt such rules for the conduct of its business as it may deem advisable; and it may establish working committees of persons other than Board members;

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit for the Secretary's approval, prior to the beginning of each fiscal period, a recommended rate of assessment and a fiscal period budget of the anticipated expenses in the administration of this Plan, including the probable costs of all programs and projects;

(d) To develop programs and projects, which must be approved by the Secretary before becoming effective, and enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds collected pursuant to this Order;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(f) To prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board;

(g) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers and importers;

(h) To investigate violations of the Order and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the Order;

(i) To periodically prepare, make public and make available to producers and importers reports of its activities;

(j) To give the Secretary the same notice of meetings of the Board and its subcommittees as is given to its members;

(k) To act as intermediary between the Secretary and any producer or importer;

(l) To furnish the Secretary such information as the Secretary may request;

(m) To notify lime producers, producer-handlers, and importers of all Board meetings through press releases or other means;

(n) To appoint and convene, from time to time, working committees drawn from producers, handlers, producer-handlers, importers, exporters and the public to assist in the development of research and promotion programs for limes;

(o) With the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any district on the committee: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in lime production and/or importation within the districts and the production area;

(p) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of programs or projects to effectuate the declared purpose of the Act;

(q) To provide the Secretary with the same notification, written or oral, as provided to Board members concerning all conference calls and meetings, including executive, advisory, subcommittee, and other meetings related to Board matters, and grant access to all such calls and meetings;

(r) To prepare and make public, monthly, a report of its activities conducted, and an accounting for funds received and expended. Financial statements for each month shall be submitted to the Secretary and shall include at least (1) a balance sheet and (2) an expense budget showing expenditures during the accounting period, year to date expenditures, and an unexpended budget. Upon request, a summary of checks issued by the Board is to be made available. Such financial statements should be submitted within 30 days after the end of each month. An annual report should be submitted within 90 days after the end of fiscal year;

(s) To cause its books to be audited by an independent certified public accountant (CPA) at the end of each fiscal period and at such other times as the Secretary may request; and

(t) To follow the Department's equal opportunity and civil rights policies.

Research, Promotion, and Consumer Education

§ 1212.50 Policy and objective.

It shall be the policy of the Board to carry out an effective and coordinated program of research, development, advertising, and promotion in order to:

(a) Strengthen the competitive position of limes in the marketplace,

(b) Maintain and expand existing domestic and foreign markets,

(c) Develop new or improved markets,

(d) Educate the general public, and

(e) Insure equitable treatment of domestically produced and imported limes.

It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the lime industry.

§ 1212.51 Programs and projects.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for consumer education, advertising and other sales promotion of limes designed to strengthen the position of limes in the marketplace and to maintain, develop, and expand markets for limes;

(b) The establishment and conduct of research and development projects and studies to the end that the acquisition of knowledge pertaining to limes or their consumption and use may be encouraged or expanded, or to the end that marketing or other utilization of limes may be encouraged, expanded, improved, or made more efficient: *Provided*, That quality control, grade standards, supply management programs or other programs that would limit the right of the individual lime producer to produce limes shall not be conducted under, or as a part of, this Order;

(c) The development and expansion of lime sales in foreign markets;

(d) A prohibition on advertising or other pomotion programs that make any reference to private brand names or use false or unwarranted claims on behalf of limes or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each program or project authorized under this Order to insure that each program or project contributes to an effective and coordinated program of research and promotion and submission of such evaluation to the Secretary. If the Board or the Secretary finds that a program or project does not further the purposes of the Act, then the Board or the Secretary shall terminate such program or project; and

(f) The Board may, with the approval of the Secretary, enter into contracts or make agreements for the development and carrying out of research and promotion and pay for the costs of such contracts or agreements with funds collected pursuant to § 1212.64. Contractors and subcontractors who receive funds allocated by the Board shall be subject to the provisions of this part. All records of such contractors and subcontractors applicable to contracts entered into by the Board are subject to audit by the Secretary.

Expenses and Assessments

§ 1212.60 Budget and expenses.

(a) Prior to the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this Order. Each budget shall include a plan which shall include the probable costs of research, development, advertising, consumer information, and promotion of limes. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1212.61. The budget shall take effect on approval by the Secretary.

(b) Each budget shall include (1) a statement of objectives and strategy for each program, plan, and project, including reasons for significant changes from the preceding budget period, (2) a summary of anticipated revenue, with comparative data for at least one preceding year, (3) a summary of proposed expenditures by each program, plan, and project, with comparative data for at least one preceding year, and (4) staff and administrative expense breakdown, with comparative data for at least one preceding year. Comparative data reporting will not apply to the initial budget.

(c) The Board is authorized to incur such expenses for research, development, advertising, or promotion of limes, such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, and any referendum and administrative costs incurred by the Department of Agriculture. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1212.64 and from other funds available to the Board under this Order.

(d) The Board is hereby authorized to borrow money for the payment of administrative expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

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(e) The Board shall reimburse the Department of Agriculture for referenda and administrative costs incurred by the Department with respect to the Order: *Provided*, That in the case of referenda, expenses shall not include the salaries of Government employees. The Board shall pay those costs incurred by the Department for the conduct of Departmental duties under the Order as determined periodically by the Secretary. The Department will bill the Board quarterly and payment shall be due promptly after the billing of such costs. Funds to cover such expenses shall be paid from assessments collected pursuant to § 1212.64 and from other funds available to the Board under this Order.

(f) The Board may accept voluntary contributions from any person not subject to assessments under this Order. Furthermore, such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use. Such contributions shall be subject to the same fiscal, budget and audit controls as other funds of the Board.

(g) Any amendment to an approved budget shall be subject to approval by the Secretary, including shifting of funds from one program, plan, or project to another, except such shifts that are consistent with governing by-laws need not have prior approval by the Secretary.

§ 1212.61 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided*, That the funds in the reserve shall not exceed approximately one fiscal period's expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

§ 1212.62 Determination of handler.

Unless otherwise provided in this section, the assessments on domestic fresh market limes shall be paid by first handlers. The first handler is the person who initially performs a handling function as heretofore defined. Such person may be a fresh shipper, processor, or other person who first places the limes in the current of commerce.

(a) The following examples are provided to aid in the identification of first handlers:

(1) Producer grades, packs, and sells limes of own production to a handler. In this instance, it is the handler, not the producer, who places the limes in the current of commerce. The handler is responsible for payment of the assessments.

(2) Producer packs and sells limes of that producer's own production from the orchard, or storage, to a trucker, retail or wholesale outlet, or other buyer who is not a handler of limes. The producer places the limes in the current of commerce and is the first handler.

(3) Producer delivers orchard-run limes of own production to a handler for preparation for market and entry into the current of commerce. The handler, in this instance, is the first handler, regardless of whether the handler subsequently handles such limes for the account of the handler or for the account of the producer.

(4) Producer delivers orchard-run limes of own production to a handler for preparation for market and return to the producer for sale. The producer in this instance, is the first handler, except when the producer subsequently sells such limes directly to a handler.

(5) Producer delivers orchard-run limes of own production to a handler who takes title to limes. The handler who purchases such limes from the producer is the first handler.

(6) Producer supplies limes to a cooperative marketing association which sells or markets the limes and makes an accounting to the producer, or pays the proceeds of the sales to the producer. In this instance, the cooperative marketing association becomes the first handler upon physical delivery of the limes to such cooperative.

(7) Handler purchases limes from a producer's orchard for the purpose of preparing such limes for market or for transporting such limes to storage for subsequent handling. The handler who purchases such limes from the producer is the first handler.

(8) Broker receives limes from a producer and sells such limes in the Broker's company name. In this instance, the Broker is the first handler, regardless of whether the Broker took title to such limes.

(9) Broker, without taking title or possession of limes, sells such limes in the name of the producer. In this instance, the producer is the first handler.

(10) Processor purchases limes from the producer thereof, but sells them in the fresh market. In this instance, the processor is the first handler even though the producer may have graded, packed, or otherwise handled such limes.

(b) In the event of a handler's death, bankruptcy, receivership, or incapacity to act, the representative of the handler or the handler's estate shall be considered the first handler of the limes for the purpose of this subpart.

(c) In no event shall a handler who first handles fresh limes going to the processed market be considered a first handler.

§ 1212.63 Importer.

Each shipment of limes imported into the United States for the fresh market is subject to assessment under this Order. Such assessment shall be paid by the importer of such limes at the time of entry into the United States. Any person who imports limes into the United States as principal, agent, broker, or consignee for limes produced outside the United States and imported into the United States shall be the importer.

§ 1212.64 Assessments.

(a) Each first handler and importer shall pay to the Board, upon demand, such assessments on fresh market limes as may be approved by the Secretary pursuant to § 1212.60. Such assessments shall be the amount established by the Secretary pursuant to paragraph (c) of this section.

(b) Except as provided in § 1212.68 and in paragraphs (d) and (e) of this section, the first handler shall be responsible for the collection of such assessment from the producer and payment thereof to the Board. The first handler shall maintain separate records for each producer's limes handled, including those limes produced by such handler.

(c) The assessment on fresh market limes shall be levied at a rate recommended by the Board and fixed by the Secretary: *Provided*, That the assessment shall not exceed $0.01 per pound of limes.

(d) The importer of imported limes for the fresh market shall pay the assessment to the Board at the time of entry of such limes into the United States.

(e) Producer-handlers shall pay to the Board the assessment on the limes for which they act as first handler.

(f) Assessments shall be paid to the Board as provided in § 1212.65(c).

(g) The Board is authorized to accept advance payments of assessments by handlers, importers, or producer-handlers that shall be credited toward any amount for which the handlers, importers or producer-handlers may become liable. The Board shall not be obligated to pay interest on such advance payments.

(h) The Board may authorize other organizations to collect assessments in its behalf with the approval of the Secretary. Any reimbursement by the Board for such services shall be based on reasonable charges for services rendered.

(i) The U.S. Customs Service (USCS) will collect assessments on all limes at the time of entry and forward such assessments as per an agreement between the USCS and the USDA. Any importer or agent who is exempt from payment of assessments pursuant to § 1212.68 (a) and (b) of the Order may apply to the Board for reimbursement of such assessments paid.

§ 1212.65 Payment of assessments.

(a) *Time of payment.* The assessment shall become due at the time the first handler handles the limes for non-exempt purposes.

(b) *Responsibility for payment.* (1) First handlers and importers are responsible for the prompt payment of assessments. A handler may collect a producer's assessment from the producer, or deduct such producer's assessment from the proceeds paid to the producer on whose limes the producer assessment is made. Any such collection or deduction of producer assessments shall be made not later than the time when the first handler handles the limes.

(2) Importers shall be responsible for prompt payment of any assessment amount not collected by the U.S. Customs Service at the time of entry into the United States.

(c) *Payment direct to the Board.* (1) Except as provided in paragraph (e) of this section, each handler shall remit the required assessments, pursuant to § 1212.64 of this part, directly to the Board not later than 20 days after the end of the month such assessments are due. Remittance shall be by check, draft, or money order payable to the Lime Board, and shall be accompanied by a report, preferably on Board forms, pursuant to § 1212.70. To avoid late payment charges, the assessments must be mailed to the Board and postmarked within 20 days after the end of the month such assessments are due.

(2) Each handler shall file with the Board a report pursuant to § 1212.70 for each month that assessable limes were handled. All handler reports shall contain at least the following information:

(i) The handler's name, address, and telephone number;

(ii) Date of report (which is also the date of payment to the Board);

(iii) Period covered by the report;

(iv) Total quantity of limes handled during the reporting period;

(v) Date of last report remitting assessments to the Board; and

(vi) Listing of all persons for whom the handler handled limes, their addresses, pounds handled, and total assessments remitted for each producer. In lieu of such a list, the handler may substitute copies of settlement sheets given to each person or computer generated reports, provided such settlement sheets or computer reports contain all the information listed above.

(vii) Name, address, and pounds handled for each person claiming exemption from assessment.

(viii) If the handler handled limes for persons engaged in the production of less than 35,000 pounds of limes, the report shall indicate the name and address of such person and the quantity of limes handled for each person.

(3) Each importer shall file with the Board a monthly report containing at least the following information:

(i) The importer's name, address, and telephone or facsimile number.

(ii) The quantity of limes entered or withdrawn for consumption into the United States.

(iii) The amount of assessments paid on limes entered or withdrawn for consumption into the United States to the U.S. Customs Service at the time of entry or withdrawal for consumption.

(iv) The amount of any limes on which the assessment was not paid to the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States.

(4) The words "final report" shall be shown on the last report at the end of each fiscal period.

(5) Prepayment of assessments. (i) In lieu of the monthly assessment and reporting requirements of paragraph (b) of this section, the Board may permit producer-handlers or handlers to make advance payments of their estimated assessments for the season to the Board prior to their actual determination of assessable limes. Producers-handlers or handlers shall provide an initial report estimating assessable limes. If any such estimate appears unreasonably low, the Board may request additional information to justify such estimate. If, after reviewing any additional information, the Board concludes that such estimate is not reasonable, it shall notify the producer-handler or handler that he/she may not prepay such assessments. The Board shall not be obligated to pay interest on any advance payment.

(ii) Producer-handlers or handlers using such procedures shall provide a final annual report of actual handling and remit any unpaid assessments not later than 20 days after the end of the last month of the designated handler's or importer's fiscal period.

(iii) Producer-handlers or handlers using such procedures shall, after filing a final report, receive a reimbursement of any overpayment of assessment.

(iv) Producer-handlers or handlers using such procedures shall, at the request of the Board to verify a producer's claim under § 1212.67, provide the Board with a handling report on any and all producers for whom the handler has provided handling services but has not yet filed a handling report with the Board.

(v) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board on request.

(d) *Late payment charges and interest.* (1) A late payment charge shall be imposed on any importer who fails to make timely remittance of assessments due or any handler who fails to make timely remittance to the Board of the total producer and producer-handler assessments for which any such handler is liable. Such late payment charge shall be imposed on any assessments not received before the thirtieth day after the end of the month such assessments are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 20 days after the end of the month such assessments are due.

(2) In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance, including the late payment charge and any accrued interest, will be added to any accounts delinquent beyond 30 days after the twentieth day after the end of the month such assessments are due. Such interest will continue monthly until the outstanding balance is paid to the Board.

(e) *Payment through cooperative agency.* The Board may enter into agreements, subject to approval of the Secretary, authorizing other organizations to collect assessments in its behalf. In any State or area in which the Board has entered into such an agreement, the designated handler shall pay the assessment to such agency in the time and manner, and with such identifying information as specified in such agreement. Such agreement shall not provide any cooperating agency with authority to collect confidential information from handlers, importers, or producers. To qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes. If the Board requires further evidences of payment than provided by the

cooperating agency, it may acquire such evidence from individual handlers. All such agreements are subject to the requirements of the Act, Order, all applicable rules and regulations under the Act and the Order, and the approval of the Secretary.

§ 1212.66 Failure to report and remit.

Any producer-handler, handler, or importer who fails to submit reports and remittances according to the provisions of § 1212.65 shall be subject to appropriate action by the Board which may include one or more of the following actions:

(a) Audit of the producer-handler's, handler's, or importer's books and records to determine the amount owed the Board.

(b) Establishment of an escrow account for the deposit of assessments collected. Frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Board with the approval of the Secretary.

(c) Referral to the Secretary for appropriate enforcement action, which may include assessing a civil penalty for each violation as specified in section 1958(c)(1) of the Act.

§ 1212.67 Refunds.

(a) Subject to the provisions of this section any producer, producer-handler, or importer shall have the right to personally demand and receive from the Board a refund of assessments paid by or on behalf of such producer, producer-handler, or importer for any calendar month during the period beginning on the effective date of this Order and ending on the effective date of the referendum mandated by § 1960(a) of the Act; *Provided*, That:

(1) Such producer, producer-handler, or importer makes application and provides proof of payment as required in paragraphs (b)(1), (2), and (3) of this section;

(2) This Order is not approved pursuant to the referendum conducted under § 1960(a) of the Act.

(b) Refunds from escrow account. A portion of the assessments collected from producers, producer-handlers, and importers prior to announcement of the results of the initial referendum provided for in this section shall be held in an escrow account established only until the results of the referendum are published by the Secretary. The amount in the escrow account shall be equal to the product obtained by multiplying the total amount of assessments collected during such period by 10 percent. Each lime producer, producer-handler, or importer against whose limes an assessment became payable and was paid pursuant to this subpart may obtain a refund of the assessment amount in an escrow account if the plan is not approved pursuant to the initial referendum, conducted to determine if a plan should be issued, by following the procedures prescribed in this section

(1) *Application form.* A producer, producer-handler, or importer shall obtain a refund application form from the Board by written request which shall bear the producer's, producer-handler's, or importer's signature. For partnerships, corporations, associations, or other business entities, a partner or officer of the entity must sign the request and indicate his or her title.

(2) *Submission of refund application to the Board.* Any producer, producer-handler, or importer requesting a refund shall mail an application on the prescribed form to the Board not later than 90 days after the date of publication of the results of the initial referendum. The refund application shall show the following:

(i) Producer's, producer-handler's, or importer's name and address;

(ii) Handler's or Handlers' name(s) and address(es);

(iii) Number of pounds of limes on which refund is requested;

(iv) Total amount to be refunded;

(v) Proof of payment as described below; and

(vi) Producer's, producer-handler's, or importer's signature.

Where more than one producer, producer-handler, or importer shared in the assessment payment, the refund application shall show, in addition to other required information, the names, addresses and proportionate shares of such producers, producer-handlers, or importers and the signature of each. Request for refund of assessments paid may be in part.

(3) *Proof of payment of assessment.* Evidence of payment of assessments satisfactory to the Board, such as the receipt or a copy of the receipt given to the producer by the handler, or a copy of the handler's report, shall accompany the producer's, producer-handler's, or importer's refund application. Evidence submitted with refund applications shall not be returned to the applicant.

(4) *Payment of refund.* (i) If the Order is disapproved in the initial referendum, the Board shall make remittance to the applicant based on the amount in an escrow account, and as necessary, prorated among all eligible producers, producer-handlers, or importers who demand such refund. For joint applications, the remittance shall be made payable jointly.

(ii) If the referendum required by section 1960(a) of the Act shows that a majority of those voting do not favor continuation of this Order the Board shall pay refund requests within the time specified by the Secretary. Should the amount in the escrow account required by § 1212.60(e) be insufficient to refund the total amount of assessments demanded by eligible producers, producer-handlers, or importers the Board shall prorate the amount of such refunds among all eligible producers, producer-handlers, and importers who demand such refund. Names of individuals obtaining refunds shall be kept confidential and made available only to the Secretary and the Board employees essential to refund processing.

(iii) No refunds shall be paid to any producer, producer-handler, or importer making demand for such refund if this Order is approved by a majority of those voting in the referendum required by § 1960(a) of the Act, and all funds in the escrow account shall be returned to the Board for use by the Board in funding approved programs and projects.

§ 1212.68 Exemption from assessment.

(a) A producer who produces less than 35,000 pounds of limes per year, or a producer-handler who produces and handles less than 35,000 pounds of limes per year, or an importer who imports less than 35,000 pounds of limes per year shall be exempt from the assessment;

(b) To claim an exemption, a producer, producer-handler, or importer shall submit an application to the board stating the basis on which the exemption is claimed, and certify that each person will not exceed the limitation required for such exemption in such year.

(c) The Board may recommend to the Secretary that limes exported from the United States be exempted from the provisions of this Order, and procedures shall be established providing for the refund of assessments on such limes and for such safeguards as may be necessary to prevent improper use of this exemption.

§ 1212.69 Reports of disposition of exempted limes.

The Board may require reports by handlers on the handling and disposition of exempted limes and/or on the handling of limes for persons engaged in producing less than 35,000 pounds of limes. Authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

Reports, Books, and Records

§ 1212.70 Reports.

Each handler, producer-handler, and importer who is subject to this part shall be required to report to the authorized employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to, the following:

(a) For handlers and producer-handlers: Total quantity of limes acquired during the reporting period; total quantity handled during such period; amount of limes acquired from each producer, giving name and address of each producer, including those producers who claim exemption from assessment; copy of statements claiming exemption from those who claim such exemption; assessments collected or collectible during the reporting period; quantity of limes processed for sale from producer-handler's own production; and record of each transaction for limes on which assessment had already been paid, including statements from sellers that assessments had been paid.

(b) For importers: Total quantity of limes imported during the reporting period and a record of each importation of limes during such period, giving quantity, date, and port of entry.

§ 1212.71 Books and records.

Each handler, producer-handler, and importer shall maintain and during normal business hours make available for inspection by employees of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this Order and the regulations issued thereunder, including such records as are necessary to verify any required reports.

§ 1212.72 Retention period for records.

Each handler, producer-handler, and importer required to make reports pursuant to this subpart shall maintain and retain for at least 2 years beyond the marketing year of their applicability:

(a) One copy of each report made to the Board; and

(b) Such records as are necessary to verify reports.

§ 1212.73 Availability of records.

Each handler, producer-handler, and importer required to make reports pursuant to this subpart shall make available for inspection by authorizing employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports requird under this subpart.

§ 1212.74 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 1212.70 and 1212.71 shall be kept confidential and shall not be disclosed to the public by any person. Any disclosure of any confidential information by any employee of the Board, except as required by the law, shall be considered willful misconduct. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and invovling this subpart: Except that nothing in this subpart shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers, producer-handlers, or importers subject to this Order if such statements do not identify the information furnished by any one person;

(b) The publication by direction of the Secretary of the name of any person violating this Order, together with a statement of the particular provisions of this Order violated by such person.

§ 1212.75 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers, producer-handlers, or importers and all information with respet to refunds of assessments made to individual producers, handlers, and importers shall be kept confidential in the manner and to the extent provided for in § 1212.74.

Miscellaneous

§ 1212.80 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1212.81 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgement, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1212.82 Influencing governmental actions.

No funds collected by the Board under this order shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided for in this subpart.

§ 1212.83 Suspension or termination.

(a) Whenever the Secretary finds that this Order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this Order or such provision thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request if the Board or if 10 percent or more of the lime producers, producer-handlers, and importers subject to assessment under this Order submit a petition requesting such a referendum to determine if lime producers, producer-handlers, and importers favor termination or suspension of this Order. The Secretary shall suspend or terminate this Order at the end of the marketing year whenever the Secretary determines that suspension or termination is favored by a majority of the lime producers, producer-handlers, and importers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in producing or importing limes and who produced or imported more than 50 percent of the volume of limes produced or imported by those producers, producer-handlers, and importers voting in the referendum.

§ 1212.84 Proceedings after termination.

(a) Upon the termination of this Order, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees for all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or aggreements entered into by it pursuant to § 1212.40;

(3) From time-to-time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to person or persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to

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invest in such person or persons full title and right to all the funds, property, and claims vested in the Board or the trustees pursuant to this section.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) A reasonable effort shall be made by the Board or its trustees to return to producers, producer-handlers, and importers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers, producer-handlers, and importers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

§ 1212.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this Order or any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this order or any regulation issued thereunder, or

(b) Release or extinguish any violation of this Order or any regulation issued thereunder, or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person with respect to any such violation.

§ 1212.88 Separability.

If any provision of this Order is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Order or applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1212.87 Patents, copyrights, inventions, product formulations and publications.

Any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this Order shall be the property of the United States government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this part, § 1212.84 shall apply to determine the disposition of all such property.

§ 1212.88 Amendments.

The Secretary may from time to time amend provisions of this part. Any interested person or organization affected by the provisions of the Act may propose amendments to the Secretary.

§ 1212.89 OMB Control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511, is OMB number 0581-0093, except Board member nominee information sheets are assigned OMB number 0505-0001.

Dated: May 16, 1991.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 91-12043 Filed 5-20-91; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1403

Debt Settlement Policies and Procedures

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Proposed rule.

SUMMARY: The regulations at 7 CFR part 1403 set forth the debt settlement policies and procedures of CCC. These regulations are currently applicable to debts by and against CCC arising out of domestic transactions. This proposed rule would amend the regulations to provide that such provisions would be applicable to all debts by and against CCC, whether or not they arise from domestic transactions. This proposed rule would also amend other existing provisions for clarity and make technical changes.

DATES: Comments must be received by June 20, 1991.

ADDRESSES: Comments concerning this rule should be addressed to: Director, Financial Management Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All comments submitted in response to this proposed rule will be available for public inspection, in room 6094, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC, between 8:30 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paula Roney, Debt Management and Contract Procedures Branch, Financial Management Division, ASCS, (202) 447-4061.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs and prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under Departmental Regulation 1512-1. No sunset review date has been set for this regulation because review is ongoing.

This action will not increase the Federal paperwork burden for individuals, small businesses, and others and will not have a significant impact on a substantial number of small entities. Therefore this action is exempt from the provision of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

Background

The Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (the Act), (31 U.S.C. 3711, *et seq.*), and the joint regulations promulgated thereunder by the Comptroller General and the Attorney General (4 CFR parts 101-105) provide minimum standards for the administrative collection of claims by the United States. The Act also provides that nothing therein shall diminish the existing authority of the head of an agency to settle, compromise, or close claims. The CCC Charter Act, as amended (15 U.S.C. 714, *et seq.*), provides that CCC shall have authority to make final and conclusive settlement and adjustment of any claims by or against it irrespective of the amount at issue. CCC is, therefore, not subject to the provisions of the Federal Claims Collection Act or its implementing regulations. However, it has been CCC policy to follow the Federal Claims Collection Standards (FCCS) to the maximum practical extent. The FCCS require each federal agency to take aggressive action to collect debts owed it, and to cooperate with other federal agencies in their debt collection activities. Federal agencies are required to promulgate regulations consistent with the standards.

The regulations at 7 CFR 1403 currently has set forth the regulations which are applicable to debts by and against CCC arising out of domestic transactions. These transactions include, among other types of claims, cargo losses and damage claims arising under title II of Public Law 480 or other export relief programs and section 416 of the Agricultural Act of 1949, as amended. Since CCC may, on occasion, enter into transactions outside of the United States, CCC is proposing to amend these regulations to provide that such provisions will be applicable to all CCC transactions. This action would ensure a uniform debt settlement policy for all CCC debts. In addition, this proposed rule would amend 7 CFR part 1403 to clarify the manner in which administrative offset will be taken with respect to unsettled loans. Generally, the proposed rule would provide that in order to adequately protect the rights of CCC debtors, similar to the procedure for other delinquent debts, administrative offset would not be taken until after a CCC loan has been delinquent for at least 30 days and the borrower has been timely notified that offset may be taken.

This proposed rule would also amend 7 CFR part 1403 to revise the definitions of "carrier" and "shipment" in order to include all CCC related transactios by all carriers, whether or not CCC actually owned the commodity being transported since, in many foreign transactions, CCC does not own the commodity but has provided significant financial assistance concerning the sale or shipment of the commodity.

In addition, this proposed rule would amend 7 CFR part 1403 to provide that, with respect to debts resulting from price support loans, late payment interest shall begin to accrue from the date on which a claim is established, rather than from the date on which notice of the debt is first mailed or hand-delivered to the debtor. This change is necessary to prevent the charging of both loan interest and late payment interest during the period between the date of the demand letter and the date of claim establishment. As a result of this amendment, in order to maintain conformity, it is also necessary to change the date on which additional interest will be assessed on debts arising from price support loans to sixty days after the late payment interest start date rather than ninety days after the late payment interest start date. Furthermore, since no late payment interest is being charged on debts arising from price support loans during the period between the date of the demand letter and the date of claim establishment, there is no need for late payment interest to be waived during that period. Therefore, the provision providing for the waiver of late payment interest on a debt which is paid within 30 days after the date of which late payment interest began to accrue is being amended to exclude debts arising from price support loans.

Finally, this proposed rule makes minor technical changes to more closely conform with current procedures.

List of Subjects in 7 CFR Part 1403

Debt Settlement Policies and Procedures of Commodity Credit Corporation.

PART 1403—[AMENDED]

Accordingly, this proposed rule would amend the regulations at 7 CFR part 1403 as follows:

1. The authority citation for 7 CFR part 1403 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c.

§ 1403.1 [Amended]

2. Section 1403.1 is amended by removing the phrase "arising out of domestic transactions".

3. Section 1403.3 is amended by revising the definitions of "Carrier," "Deliquent debt" and "Shipment" to read as follows:

§ 1403.3 Definitions.

* * * * *

Carrier means a person or other entity, including but not limited to railroads, motor carriers, ocean carriers or piggyback enterprises, which provide transportation or other transportation related services for compensation.

* * * * *

Deliquent debt means: (1) Any debt owed to CCC that has not been paid by the date specified in the applicable statute, regulation, contract, or agreement; or (2) Any debt that has not been paid by the date of an initial notification of indebtedness mailed or hand-delivered pursuant to § 1403.4.

* * * * *

Shipment means a carload, truckload, containerload, or other conveyance load of freight shipped from one location by one shipper for delivery. Such shipment must be moved in accordance with the terms of a commercial or ocean bill of lading, or other similar agreement between the carrier and CCC. In the case of export shipments, the agreement may also be between the carrier and a private voluntary organization, foreign government, or the Agency for International Development.

* * * * *

4. Section 1403.4 is amended by revising paragraph (a)(4) and (5)(i) to read as follows:

§ 1403.4 Demand for payment of debts.

(a) When a debt is due CCC, an initial written demand for payment of such amount shall be mailed or hand-delivered to the debtor. If the debt is not paid in full by the date specified in the initial demand letter, or if a repayment schedule acceptable to CCC has not been arranged with the debtor, the initial demand may be followed by two subsequent written demands at approximately 30-day intervals. The initial or subseqent demand letters shall specify the following:

* * * * *

(4) CCC's intent, if applicable, to collect the debt 30 days from the date of the initial demand letter, or other applicable period of time, by administrative offset from any CCC or ASCS payments due or to become due to the debtor, and that the claim may be reported to other agencies of the Federal government for offset from any amounts due or to become due to the debtor;

(5) * * *

(i) Existence or amount of the debt, it must be made within 15 days from the date of the letter, unless a different time period is specified in the contract, agreement or program regulation;

* * * * *

5. Section 1403.7 is amended by revising paragraph (b)(3) and adding paragraph (t) to read as follows:

§ 1403.7 Collection by administrative offset.

* * * * *

(b) * * *

(3) The debtor has been notified in writing that the debt may be collected by administrative offset if not paid; and

* * * * *

(t)(1) Notwithstanding the provisions of paragraph (b) of this section and § 1403.4, with respect to debts which are based upon an unsettled CCC loan, offset action may be taken when the debtor has been:

(i) Provided written notification of the maturity date of the loan and the debtor has not repaid the loan by the maturity

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date, or in the case of a nonrecourse price support loan, has not repaid the loan or forfeited the loan collateral to CCC by the date specified by CCC;

(ii) Notified of CCC's intent to establish an account on a debt record 30 days after the maturity date, or other applicable period of time, if the loan is not settled in accordance with the loan agreement.

(iii) Notified of the right to pursue an administrative appeal in accordance with part 780 of this title if such an opportunity has not been previously provided;

(iv) Provided an opportunity to inspect and copy CCC records related to the debt; and

(v) Notified in writing that the debt may be collected by administrative offset if the loan is not repaid or, with respect to nonrecourse loans only, settled through forfeiture of the loan collateral.

(2) After a claim has been established by CCC with respect to a loan which has not been settled by the date specified in the loan agreement:

(i) In the event CCC takes possession of the collateral which is security for a nonrecourse or recourse loan made in accordance with parts 1421, 1427, 1434, or 1435 of this chapter, the value of such loan collateral shall be determined by CCC in accordance with the provisions of such parts which are used to determine the settlement value of the collateral. The value of such collateral shall be applied to the claim. Any amount remaining due on the claim must be paid by the debtor.

(ii) In the event CCC takes possession of the collateral which is the security for any other loan, the value of such collateral as determined by CCC, less any costs incurred by CCC in taking possession and disposing of the collateral, shall be applied to the claim. Any amount remaining due on the claim must be paid by the debtor.

6. Section 1403.9 is amended by revising paragraphs (d)(2), (e) and (g) to read as follows:

§ 1403.9 Late payment interest and administrative charges.

* * * * *

(d) * * *

(2) With respect to debts not resulting from a statute, regulation, contract or agreement containing specific provisions for late payment interest and payment due date, late payment interest shall begin to accrue from the date on which notice of the debt is first mailed or hand-delivered to the debtor, except that with respect to debts resulting from price support loans, late payment interest shall begin to accrue from the date on which a claim is established.

* * * * *

(e)(1) Except as specified in paragraphs (a)(2) and (e)(2) of this section, an additional interest rate of three (3) percent per annum will be assessed on any portion of a debt which remains unpaid 90 days after the date described in paragraphs (d)(1) or (d)(2) of this section, if no repayment schedule satisfactory to CCC has been agreed upon. Such rate will be assessed retroactively from the date late payment interest began to accure and apply on a daily basis. Such rate shall continue to accure until the delinquent debt has been paid.

(2) With respect to debts resulting from price support loans, an additional interest rate of three (3) percent per annum will be assessed on any portion of a debt which remains unpaid 60 days after the date on which a claim was established. Such rate will be assessed retroactively from the date of claim establishment and apply on a daily basis. Such rate shall continue to accure until the delinquent debt has been paid.

* * * * *

(g) When a debt is paid in partial or installment payments, payments will be applied first to administrative charges, second to additional interest assessed in accordance with paragraph (e) of this section and late payment interest, and third to outstanding principal.

7. Section 1403.10 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1403.10 Waiver of late payment interest, additional interest and administrative charges.

(a) Except for debts resulting from price support loans, CCC shall waive the collection of late payment interest and administrative charges on a debt or any portion of a debt which is paid within 30 days after the date on which late payment interst began to accrue.

(b) CCC shall waive the assessment and collection of additional interest on debts which are appealed in accordance with 7 CFR part 780 or other applicable appeal procedures from either the date of the appeal or the date such interest began to accrue, whichever is later, until the date a final administrative determination is issued. Such waiver shall not apply for any delay due to:

* * * * *

8. Section 1403.11 is revised to read as follows:

§ 1403.11 Administrative appeal.

If the opportunity to appeal the determination has not previously been provided under parts 24 or 780 of this title or any other appeal procedure, a debtor may obtain an administrative review under part 780 of this title or other applicable appeal procedures of CCC's determinition concerning the existance or amount of a debt, if a request is filed with the authority who made the determination within 15 days of the date of CCC's initial demand letter.

9. Section 1403.12 is revised to read as follows:

* * * * *

§ 1403.12 Additional administrative collection action.

Nothing contained in this part shall preclude the use of any other administrative or contractual remedy which may be available to CCC to collect debts owed to the Government.

10. Section 1403.16 is amended by revising paragraph (a) and adding paragraph (l) to read as follows:

§ 1403.16 Referral of delinquent debts to credit reporting agencies.

(a) This section specifies the procedures that will be followed by CCC and the rights that will be afforded to farm producers when CCC reports delinquent debts to credit reporting agencies.

* * * * *

(l) notwithstanding the provisions of paragraphs (a) through (k) of this section, all commercial debts owed by debtors other than farm producers may be reported to credit reporting agencies.

* * * * *

Signed at Washington, DC, on May 15, 1991.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-11991 Filed 5-20-91; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207 and 221

[Docket No. R-0730]

RIN 7100-AA99

Securities Credit Transactions; Regulations G and U; Transfers of Credit

May 16, 1991.

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing for public comment amendments to Regulations G and U (12 CFR parts 207 and 221) to permit transfers of loans between lenders subject to Regulation G and lenders subject to Regulation U on the same basis as transfers between two lenders subject to the same regulation. Adoption of these amendments would partially reverse a 1936 amendment to Regulation U and further the Board's goal of reducing unnecessary distinctions between lenders subject to Regulation G and lenders subject to Regulation U.

DATES: Comments should be received on or before June 24, 1991.

ADDRESSES: Comments, which should refer to Docket R-0730, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue, NW., Washington, DC 20551, or delivered at the C Street Entrance between 8:45 a.m. and 5:15 p.m. weekdays to room B-2223. Comments may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Scott Holz, Attorney, Division of Banking Supervision and Regulation (202) 452-2781. For the hearing impaired only, Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202) 452-3544.

SUPPLEMENTARY INFORMATION: Regulations G and U each permit the transfer of a validly-made, regulated loan between lenders even if the amount of the loan outstanding exceeds the maximum loan value of the collateral securing the credit at the time of transfer. This treatment is currently limited to transfers of credit between Regulation U lenders (banks) or between Regulation G lenders. If a Regulation G lender wants to transfer a regulated loan that is currently undersecured to a bank, the bank must treat the loan as a new loan, and the customer would be required to bring in additional collateral or pay down part of the loan to bring it into conformity with the initial margin requirements of Regulation U.

The Transfer Provision in Regulation U

When Regulation U first became effective on May 1, 1936, a bank was permitted to "accept the transfer of a loan from another lender * * * without following the requirements of this regulation as to the making of a loan, provided the loan is not increased and the collateral for the loan is not changed." However, a subsequent amendment to Regulation U, effective shortly thereafter, changed the phrase "from another lender" to "from another bank."

The Transfer Provision in Regulation G

In 1968, Regulation G was adopted by the Board to regulate lenders other than banks, brokers, or dealers. Unlike Regulations T and U, Regulation G did not originally have a provision on transfers of credit. An undermargined loan by a Regulation G lender could not be transferred to another Regulation G lender without bringing the loan into compliance as if it were a new extension of credit. This lack of parallel treatment among margin regulations was eliminated on December 6, 1979, when Regulation G was amended to permit transfers from one Regulation G lender to another on the same basis as transfers from one bank to another or from one broker to another.

One of the goals of the comprehensive revision of Regulations G and U in 1983 was to eliminate unnecessary differences between the regulations and make them as similar as possible. Allowing transfers between banks and Regulation G lenders would further this goal by reducing unnecessary distinctions between the two types of lenders.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Insurance companies, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Savings and loan associations, Securities.

12 CFR part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the Board's authority under sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), the Board proposes to amend 12 CFR parts 207 and 221 (Regulations G and U) as follows:

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS

1. The authority citation for part 207 continues to read as follows:

Authority: Secs. 2, 7, 8, 17, and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q, and 78w).

2. In § 207.3, paragraphs (i)(1)(i), (ii) and (3) are revised to read as follows:

§ 207.3 General requirements.

* * * * *

(i) *Transfers of credit.* (1) A transfer of a credit between customers or lenders or between a lender and a bank shall not be considered a new extension of credit if:

(i) The original credit was extended by a lender in compliance with this part or was extended by a bank in a manner that would have complied with this part;

(ii) The transfer is not made to evade this part or part 221 of this chapter;

* * * * *

(3) When a transfer is made between lenders or between a lender and a bank, the transferee shall obtain a copy of the Form FR G-3 or Form FR U-1 originally filed with the transferor lender and retain the copy with its records of the transferee account. If no form was originally filed with the transferor, the transferee may accept in good faith a statement from the transferor describing the purpose of the loan and the collateral securing it.

* * * * *

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS

1. The authority citation for part 221 continues to read as follows:

Authority: Secs. 2, 7, 8, and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h and 78w).

2. In § 221.3, paragraphs (i)(1)(i), (ii) and (3) are revised to read as follows:

§ 221.3 General requirements.

* * * * *

(i) *Transfers of credit.* (1) A transfer of a credit between customers or banks or between a bank and a lender subject to part 207 of this chapter shall not be considered a new extension of credit if:

(i) The original credit was extended by a bank in compliance with this part or by a lender subject to part 207 of this chapter in a manner that would have complied with this part;

(ii) The transfer is not made to evade this part or part 207 of this chapter;

* * * * *

(3) When a transfer is made between banks or between a bank and a lender subject to part 207 of this chapter, the transferee shall obtain a copy of the Form FR U-1 or Form FR G-3 originally filed with the transferor and retain the copy with its records of the transferee account. If no form was originally filed with the transferor, the transferee may accept in good faith a statement from the transferor describing the purpose of the loan and the collateral securing it.

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By order of the Board of Governors of the Federal Reserve System, May 15, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11999 Filed 5-20-91; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AEA-07]

Proposed Revocation of Transition Area; Riverhead, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA is proposing to revoke the 1,200 foot Transition Area established in the vicinity of Riverhead, NY. It was discovered that during the course of an airspace review, this area is contained within the New York State 1,200 foot Transition Area. This action would simplify airspace descriptions.

DATES: Comments must be received on or before June 19, 1991.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, System Management Branch, AEA-530, Docket No. 91-AEA-07, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamacia, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AEA-07". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the 1,200 foot Transition Area established in the vicinity of Riverhead, NY. This Transition Area is contained within the description for the New York State 1,200 foot Transition Area. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Riverhead, NY [Removed]

Issued in Jamaica, New York, on April 26, 1991.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 91-11997 Filed 5-20-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ASO-14]

Proposed Revocation of Transition Area, Union, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the Union, SC Transition Area. The 700-foot transition was established several years ago in order to provide controlled airspace protection for instrument flight rules (IFR) aircraft while executing a standard instrument approach procedure (SIAP) planned for the Union County Airport. The SIAP was never implemented, nor are instrument aeronautical operations planned for the airport, consequently the additional controlled airspace is not required.

DATES: Comments must be received on or before: July 5, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket 91-ASO-14, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ASO-14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must indentify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Union, SC Transition Area. The 700-foot transition area was designed to afford additional controlled airspace protection of IFR aircraft executing a non-directional radio beacon (NDB) SIAP being planned for the Union County Airport. The SIAP was never implemented nor is an instrument approach procedure planned to serve the airport. Hence, there is no requirement for the transition area. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Union, SC [Removed]

Issued in East Point, Georgia, on May 10, 1991.

Don Case,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 91-11998 Filed 5-20-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 90-ASO-5]

Proposed Establishment of Restricted Area R-2938 Horseshoe Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Restricted Area R-2938 located in the vicinity of Horseshoe Beach, FL. The U.S. Customs Service proposes to install an aerostat-borne radar system in R-2938. The aerostat-borne radar system would provide surveillance to detect suspected illegal drug transportation into the United States. The aerostat balloon is proposed to fly up to 15,000 feet mean sea level (MSL). This action would support the Drug Interdiction Program. Also, the Continental Control Area would be amended to reflect the 15,000-foot MSL altitude of R-2938.

DATES: Comments must be received on or before July 1, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500 Docket No. 90-ASO-5, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours

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at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASO-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposals

The FAA is considering amendments to parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) to establish Restricted Area R-2938 located in the vicinity of Horseshoe Beach, FL. The restricted area would provide airspace for the operation of a tethered aerostat-borne radar system. This system would provide surveillance of airspace to detect low-flying aircraft attempting to penetrate U.S. airspace undetected. The restricted area encompasses a 3-statute-mile radius of geographical lat. 29°29'59" N., long. 83°16'16" W., from the surface up to and including 15,000 feet MSL. The system would increase the probability of the interception and interdiction of suspect aircraft and provide low-altitude radar coverage for the Customs Service. The Continental Control Area would be amended to reflect R-2938. Section 71.151 of part 71 and 73.29 of part 73 of the Federal Aviation Regulations were republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, Restricted areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R-2938 Horseshoe Beach, FL [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.29 [Amended]

4. Section 73.29 is amended as follows.

R-2938 Horseshoe Beach, FL [New]

Boundaries. That airspace within a 3-mile circle, centered at lat. 29°29'59" N., long. 83°16'16" W.

Designated altitudes. Surface to and including 15,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. United States Customs Service.

Issued in Washington, DC, on May 10, 1991.

Richard Huff,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-11969 Filed 5-20-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Ch. I

[Docket Nos. RM91-11-000, RM91-3-000, and RM90-15-000]

In Re Pipeline Service Obligations; Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations and Revisions to the Purchased Gas Adjustment Regulations

May 14, 1991.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice setting deadline for the filing of supplemental comments.

SUMMARY: On May 10, 1991, the Commission held a public conference to afford interested persons an opportunity to discuss with the Commission the role of interstate natural gas pipelines in today's natural gas markets. (56 FR 15532, April 17, 1991). On May 14, 1991, the Commission issued a notice providing the opportunity for the filing of supplemental comments in response to the public conference held May 10, 1991.

DATES: The time for filing supplemental comments is extended to May 24, 1991.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St., NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Braunstein, (202) 208-2114.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11936 Filed 5-20-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-3957-6]

Advance Notice of Possible Meeting of Class II Underground Injection Control Program Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Possible advisory committee formation and meeting.

SUMMARY: Based on the results of months of convening efforts conducted to date, shortly EPA expects to Charter an Advisory Committee to explore recommendations for revising the Class II Underground Injection Control Program. Assuming this Committee is indeed formed, this is intended to serve as advance notice of the first Committee Meeting so parties can arrange their schedules in order to attend.

DATES: The first Committee meeting will take place on June 11 and 12, 1991. The June 11th meeting will begin at 10:00 a.m. and end at 5 p.m. The June 12th meeting will begin at 9 a.m. and end at 4 p.m.

ADDRESSES: The meeting will take place at the Quality Hotel Capitol Hill, 415 New Jersey Avenue NW., Washington, DC, 20001, (202) 638-1616.

FOR FURTHER INFORMATION CONTACT: If you need further information on substantive issues about the Underground Injection Control Program or the Advisory Committee's work please contact Jeffrey Smith, EPA, Office of Water at (202) 382-5566. If you need information on administrative matters such as Committee arrangements or procedures contact Angela Suber, EPA, Regulatory Development Branch at (202) 382-7205, or the Committee's independent co-convener, John Lingelbach at (202) 667-1037.

Dated: May 10, 1991.

Paul Lapsley,

Director, Regulatory Management Division, Office of Policy, Planning and Evaluation.

[FR Doc. 91-12006 Filed 5-20-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 721

[OPTS-50585B; FRL-3930-4]

RIN 2070-AB27

Sulfurized Alkylphenols; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substances described generically as sulfurized alkylphenols, which were the subject of premanufacture notice (PMN) P-89-708, and which are subject to a TSCA section 5(e) consent order issued by EPA. This proposal would require certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing any manufacturing or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: Written comments must be submitted to EPA by June 20, 1991.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, room E-105, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the chemical substances covered in this SNUR is OPTS-50585B. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit VII. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: David J. Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. EB-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This proposed SNUR would require persons to notify EPA at least 90 days before commencing that manufacture, import, or processing of P-89-708 for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the Federal Register its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

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II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354) and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provision which apply to this SNUR. In the Federal Register of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that Federal Register document. Interested persons should refer to these documents for further information.

III. Background

EPA published a direct final SNUR for the chemical substances which were the subject of PMN P-89-708 in the Federal Register of September 28, 1990, at 55 FR 39692. EPA received notice of intent to submit adverse comments during the 30 days following publication. Therefore, according to § 721.160, the final SNUR for P-89-708 is being withdrawn elsewhere in this issue of the Federal Register and this proposed rule on the substance is being issued. Based on statements which accompanied the notice of intent, EPA's understanding is that the commenter is taking issue with, or requesting clarification of, the applicability of § 721.1541(b) (Specific Requirements) as they relate to recordkeeping requirements imposed under § 721.125. EPA further anticipates that distinctions between entities defined as "processors" and "users" may also come under consideration. In particular, the commenter questioned whether the recordkeeping requirements described in § 721.125 and specified in § 721.1541(b) would apply to all manufacturers, importers, and processors of P-89-708, or only to persons who are manufacturing, importing, or processing P-89-708 for a significant new use. For the commenter's information, EPA interprets its regulations to provide that the requirements of § 721.125 apply to all manufacturers, importers, and processors of a substance when referenced in a specific SNUR such as the SNUR for P-89-708.

EPA is not soliciting and will not respond to comment on any of the other SNURs that were published in the September 28, 1990, Federal Register because those rules became final without comment effective October 28, 1990. The supporting rationale and background to this proposal are more fully set out in the preamble to the final SNUR for these substances and in the preamble to EPA's first direct final SNURs published in the Federal Register of April 24, 1990, at 55 FR 17370. Consult that preamble for further information on the objectives, rationale, and procedures for the proposal and on the basis for significant new use designations including provisions for developing test data.

IV. Substances Subject to This Rule

EPA is proposing significant new use and recordkeeping requirements for the following chemical substances under part 721 subpart E.

PMN number: P-89-708

Chemical name: (generic) Sulfurized alkylphenols.
CAS number: Not available.
Effective date of section 5(e) consent order: January 23, 1990.
Basis for action: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances are expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: A 28-day oral assay (OECD Guideline No. 407) including neurotox battery (40 CFR 798.6050), and, for the highest dose group, extending histopathological examination to include testes, ovaries, and lungs, plus neuropathology (40 CFR 798.6400); an acute oral test (40 CFR 798.1175); an Ames assay (40 CFR 798.5265); and a mouse micronucleus test with substance administered intraperitoneally (40 CFR 798.5395). The PMN submitter has agreed not to exceed the production limit without completing these studies.
CFR citation: 40 CFR 721.1541.

V. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. Because this SNUR was first published on September 28, 1990, as a direct final rule, that date will serve as the date after which uses will be considered to be new uses. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substances for uses regulated through this SNUR after September 28, 1990, will have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substances between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VI. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substances at the time of the direct final rule. The analysis is unchanged for the substances in this proposed rule. The Agency's complete economic analysis is available in the public record for this proposed rule (OPTS-50585B).

VII. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

VIII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50585B). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of the record, without any CBI, is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in rm. NE-G004, 401 M St., SW., Washington, DC.

IX. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substance involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 14, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.1541 to subpart E to read as follows:

§ 721.1541 Sulfurized alkylphenols.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances described generically as sulfurized alkylphenols (PMN P-89-708) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of these substances is any manner or method of manufacture, import, or processing associated with any use of these substances without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) Consent Order for these substances, the employer becomes aware that these substances may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If these substances are not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substances are reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, these substances from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (2)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of these substances, as specified in § 721.125 (a) through (c), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.578(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

[FR Doc. 91-12010 Filed 5-20-91; 8:45 am]

BILLING CODE 6560-50-F

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-188, RM-6936]

Radio Broadcasting Services; Santa Rosa and Tucumcari, New Mexico

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Commission dismisses the proceeding, initiated on the Commission's own motion, proposing to substitute Channel 249C3 for Channel 240A at Santa Rosa, New Mexico, and modify Don R. Davis' construction permit for Station KHWY to specify operation on the higher powered channel. See 54 FR 26220, June 22, 1989. By letter of February 8, 1991, the Commission cancelled Davis' construction permit for Station KHWY because of his failure to construct within the required time period. This action also dismisses Davis' counterproposal to substitute Channel 241C1 for Channel 240A at Santa Rosa, to reallot Channel 241C1 from Santa Rosa to Tucumcari, New Mexico, and modify Station KHWY's construction permit to specify Tucumcari as the community of license.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-188, adopted May 1, 1991, and released May 15, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11912 Filed 5-20-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-173, RM-7494]

Radio Broadcasting Services; Saltville, Virginia and Jefferson, North Carolina

AGENCY: Federal Communications Commission.

ACTION: Proposal rule.

SUMMARY: The Commission comments on a petiton by 106.1, Inc., permittee of Channel 291A, Saltville, Virginia, seeking the reallotment of its channel to Jefferson, North Carolina, as a Class C3 channel and modification of its authorization to specify Jefferson as its community of license. The allotment of Channel 291C3 to Jefferson could provide that community with its first local aural transmission service. Channel 291C3 can be allotted to Jefferson in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.1 kilometers (1.9 miles) north of the community to accommodate the petitioner's desired site. The coordinates for Channel 291C3 at Jefferson are North Latitute 36-27-00 and West Longitude 81-29-00. In accordance with § 420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 291C3 at Jefferson or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before July 5, 1991, and reply comments on or before July 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its channel or consultant, as follows: Dale Hendrix, 902 Kirkwood, Aurora, Missouri 65605 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-137, adopted May 1, 1991, and released May 15, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-11911 Filed 5-20-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 73 and 76

[MM Docket No. 91-122; FCC 91-126]

Broadcast and Cable Services; Spousal Attribution

AGENCY: Federal Communications Commission.

ACTION: Proposed rule: Proposed policy statement.

SUMMARY: This action solicits comment on the application of the Commission's spousal attribution policy, which provides that the media interests of one spouse are presumptively attributed to the other spouse in applying the Agency's multiple ownership and cross-ownership rules (ownership rules). The proceeding is needed to clarify the circumstances in which a spouse's media interests will be attributed to the other spouse.

DATES: Comments are due by July 2, 1991, and reply comments are due by August 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Inquiry (Notice) in MM Docket No. 91-122, FCC 91-126, adopted April 12, 1991, and released May 8, 1991.

The complete text of this Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1919 M Street, NW., Washington, DC 20037.

Synopsis of Notice of Inquiry

1. This Notice seeks comment on application of the Commission's spousal attribution policy, which provides that the media interests of one spouse are presumptively attributed to the other spouse in applying the Agency's ownership rules. In view of the steady increase in the number of married couples with dual careers and recent cases raising the spousal attribution issue, the Commission intends to develop a policy statement clarifying the circumstances in which a spouse's media interests will be attributed to the other spouse.

2. Specifically, the Commission proposes that, for the purposes of applying the Commission's ownership rules, a presumption of no spousal attribution operate when the spouses demonstrate a history of separate business interests and independent careers, and expressly represent that this past independence will continue. Indicia of such independence might include, but are not limited to, a showing that neither spouse holds a financial interest in his or her spouse's employer or its communications subsidiary; that neither is involved in providing services for, or on behalf of the other spouse's media company; and neither is involved in the management, operation, or finances of the other spouse's media company. The Commission would expect, at a minimum, that any such representation would clearly state whether and what financial interest or relationship exists between each spouse and the other spouse's employer.

3. The Commission also requests comment on whether application of these criteria should include consideration of the particular type of ownership interest at issue and the circumstances of the specific markets involved.

4. The party seeking to avoid attribution would bear the initial burden of submitting the representation. The facts set forth in the statement would be subject to review by the Commission and challenge by other interested parties. Any challenger would have the burden of showing either that the submitting party does not meet the policy's requirements or that, even if the party satisfies the requirements, the spousal interests still should be attributed for other specific reasons. In contrast to the current situation in which the petitioner or applicant bears the burden of rebutting the presumption of attribution, the Commission's proposal would place on the challenger the burden of rebutting a presumption of no attribution when the requirements are met. If a sufficient showing is not made, or is successfully challenged, spousal interests would be presumptively attributed. Under these circumstances, the parties would be free, as they are under the current policy, to seek waiver of the ownership rules or to rebut the presumption, but they would bear the burden of persuasion.

5. The Commission believes that once these requirements are satisfied, the Agency can regard each spouse's media interests as sufficiently independent that attribution of media interests between spouses is unnecessary for purposes of the ownership rules. Given these indicia of independence, the purposes of the spousal attribution policy in the context of the ownership rules—ensuring continued economic competition among stations and promoting diversity of program viewpoint—will be preserved. Thus, the proposed guidelines will serve the dual public interest goals of not unduly restricting married couples from pursuing independent careers in media industries, yet continue to ensure the integrity of the ownership rules. The Commission also believes that the proposed burden shifting procedure and more clearly articulated guidelines will promote administrative certainty and efficiency.

6. Finally, the Commission seeks comment generally on the sufficiency and efficacy of the proposed requirements in establishing a presumption of no spousal attribution for purposes of the ownership rules and on whether the circumstances under which the Commission will presume no spousal attribution should be either limited or broader in scope than proposed. Commenters should keep in mind the Agency's objective of presuming attribution only under those circumstances in which it is unlikely that our policies favoring economic competition and diversity of viewpoint will be impaired.

Procedural Matters

7. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 2, 1991, and reply comments on or before August 2, 1991. To file formally in this proceeding, you must file an original plus five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

List of Subjects

47 CFR Part 73

Radio broadcasting, Television broadcasting.

47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-12039 Filed 5-20-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 100

[MM Docket No. 89-358; FCC 91-140]

Direct Broadcast Satellite Service; Potential Uses of Certain Orbital Allocations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; termination of proceeding.

SUMMARY: The Commission terminates its proceeding regarding (1) the policies and requirements that will govern the permissible uses which can be made of Direct Broadcast Satellite (DBS) spectrum at certain satellite orbital positions; and (2) the need for minimum geographic service requirements for DBS operators. Based on the record in this proceeding, the Commission declines, at this time, to determine that western DBS orbital locations should be made permanently available for the provision of non-DBS service. Similarly, the Commission finds that a specific determination as to the nature and extent of minimum service levels for Alaska and Hawaii cannot be made at this time and can be made only after the long-term characteristics of DBS system configurations and operations are demonstrated or can be confidently predicted. The action taken, termination, is needed to conclude this proceeding.

EFFECTIVE DATE: May 21, 1991.

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FOR FURTHER INFORMATION CONTACT: Gina Harrison, Mass Media Bureau, Policy and Rules Division, (202) 632-7792, or Bruce Romano, Mass Media Bureau, Policy and Rules Division, (202) 632-5414.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 89-355, adopted April 24, 1991, and released May 14, 1991.

The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1919 M Street, NW., room 246, Washington, DC 20554.

Synopsis of Report and Order

1. The Notice of Proposed Rule Making (Notice) initiating this proceeding (54 FR 35009, August 23, 1989) sought comment on the policies that should govern the uses of DBS frequencies at western orbital locations when full-CONUS service was provided from corresponding eastern locations.[1] Specifically, the Notice asked whether non-DBS uses should be permitted at such western orbital locations, and if so, whether delivery of such non-DBS services could or should be restricted to the DBS licensees assigned such channels for DBS service. The Notice also recognized the possibility that use of full-CONUS signals could eliminate or reduce the origination of DBS service from western orbital locations, which could, in turn, also reduce service to Alaska and Hawaii. Accordingly, the Commission sought comment on whether DBS operators should be required to provide some level of service to Alaska and Hawaii or other specific geographically or politically defined regions of the United States.

2. The Commission in this Report and Order recognized that permitting alternative uses of western orbital DBS frequencies, depending on technological developments, could lessen some uncertainties, especially those related to venture risk, by providing additional sources of service, and could encourage DBS licensees to provide full services with the smallest amount of spectrum possible, thus encouraging spectrum efficiency. However, our existing policy with respect to non-conforming uses, which permits unrestricted non-conforming uses during the first license term and thereafter up to half of the use of each transponder, provides DBS operators with significant flexibility to ease their entry into service and minimize their risk. Moreover, neither this Commission nor the parties themselves can predict the future configurations of DBS systems, including the nature and extent of use of full-CONUS signals. Consequently, any present actions would carry a substantial risk that they could foreclose or prejudice future developments in the provision of DBS service. Moreover, the nature and feasibility of possible alternative services that DBS operators would provide at western locations, and upon which any regulatory regimen would be premised, is unclear at this time. For these reasons, the Commission will not formulate new policies for uses of western orbital locations at this point.

3. The Commission found that a specific determination as to the nature and extent of minimum service levels for Alaska and Hawaii cannot be made at this point. It stated that such a determination can be made only after the long-term characteristics of DBS system configurations and operations are demonstrated or can be confidently predicted. The Agency believes that it would be premature to now establish specific service requirements for Alaska and Hawaii, when it is unclear that full-CONUS delivery will be either exclusive or permanent, and in light of the Commission's decision not to provide for non-DBS services at western orbital positions at this time. The Commission also found the record inconclusive with respect to the ability of eastern orbital positions and the 148° W and 151° W western orbital positions to serve Alaska and Hawaii using conventionally modulated transmissions. In addition, the effect of digital modulation and compression techniques on harmful interference from satellite transmissions has not yet been assessed. Deferring decision on this matter should enable the Commission to take into account the effects, if any, of digital modulation and compression on the Agency's analysis of the interference issues arising from attempts to serve Alaska and Hawaii from orbital locations other than 166° W and 175° W. The Commission nevertheless is determined to ensure that DBS service is provided throughout the country, including Alaska and Hawaii. Although it appears likely that service to Alaska and Hawaii will evolve on its own, should it appear, as DBS develops, that these states will not be adequately served, the Commission will not hesitate to revisit this issue, and consider for example, conditioning any non-conforming uses from western DBS orbital locations on service to Alaska and Hawaii.

4. The policy issues in this proceeding can be considered again at a later time, of course, if and when such consideration becomes appropriate. In the interim, the Commission points out that the current DBS permittees all filed applications with the express expectation of providing DBS service, and the Agency has done nothing to alter or diminish the bases upon which such expectations presumably were founded. The Commission remains committed to its conviction that DBS has a significant role in serving this nation's future telecommunications needs. While the Agency has consistently followed a flexible regulatory approach for DBS, it has not changed the primary allocations of the spectrum. The Commission stated that DBS entities can thus be certain that this allocation will remain until they are given full reasonable opportunity to establish DBS service, but if demand for such service is so limited that it cannot ultimately stand on its own, the Agency may need to reconsider that spectrum allocation.

Final Regulatory Flexibility Statement

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this proceeding will not have a significant impact on a substantial number of small entities because the Commission did not adopt any new rules and thus did not change a Commission rule or policy.

Ordering Clause

6. *It is ordered that,* pursuant to the authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, this proceeding is terminated.

List of Subjects in 47 CFR Part 100

Satellites.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-12040 Filed 5-20-91; 8:45 am]

BILLING CODE 6712-01-M

[1] Signals covering half of the continental United States (CONUS) are referred to as "half-CONUS" signals, and those covering the entire continental United States are referred to as "full-CONUS" signals.

Notices

Federal Register
Vol. 56, No. 98
Tuesday, May 21, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Amendment of Existing Systems of Records and Addition of a New System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice is hereby given that USDA proposes to amend three existing systems of records and create a new system of records, USDA/OP-4, entitled "Leave Transfer Records, USDA/OP-4."

EFFECTIVE DATE: This notice will be adopted without further publication in the Federal Register on July 22, 1991, unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system which describes the "routine uses" of the system be published for comment, USDA invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before June 20, 1991.

FOR FURTHER INFORMATION CONTACT: Carolyn Wright, Security, Employee and Labor Relations Staff, Office of Personnel, Department of Agriculture, Room 18-W, Administration Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: Public Law 100-577, the Federal Employees Leave Sharing Act of 1988, provides for an experimental program for employees to donate annual leave to employees who are experiencing medical emergencies. The Office of Personnel Management (OPM) published implementing regulations for use of all Federal Agencies at 5 CFR 630.901-915.

Pursuant to the Privacy Act, 5 U.S.C. 552a, the Office of Personnel, USDA, is creating a new system of records to document its participation in the leave sharing program. The purpose of this notice is to announce the creation and character of this system of records. This new system, USDA/OP-4, contains information on recipients of donated leave, leave donors, and the number of hours donated.

In addition, three existing systems of records are being revised as follows:

USDA/OP-1, Personnel and Payroll System for USDA Employees, is being revised to change the addresses where employees may access their records. This system of records was last published in its entirety in 1984. Since that time, a number of the locations where personnel records are maintained have changed. This publication reflects the most current addresses. The Department is also amending one routine use to clarify that release may be made to a court, magistrate, or administrative tribunal, or to opposing counsel in the course of certain proceedings, or in response to a discovery request only when the Department has determined that the records are relevant to the proceedings. In addition, the Department is deleting as a routine use the referral of records to the Department of Commerce for distribution of Federal payrolls.

USDA/OP-2, Security Records for USDA Employees, is being revised to incorporate as a new routine use the referral of information to security officers of other Federal agencies who are conducting pre-employment investigations.

USDA/OP-3, Committee Management Records, is being revised to reflect that the records are now maintained on a data base rather than on keypunched cards; to redefine the reports produced from the records; to change the method of storing the records; and to add routine uses for disclosure to the General Services Administration in annual reports and to members of the public requesting a list of committee membership.

Reports required by 5 U.S.C. 552a(r), as implemented by OMB Circular A-120, were sent to the Chairman, Senate Committee on Governmental Affairs, the Chairman, House Committee on Government Operations, and to the Administrator, Office of Information and Regulatory Affairs, of the Office of Management and Budget on May 10, 1991.

Signed at Washington, DC on May 10, 1991.

Edward Madigan,

Secretary of Agriculture

USDA/OP-1

SYSTEM NAME:

Personnel and Payroll System for USDA Employees, USDA/OP-1

SYSTEM LOCATION:

Office of Personnel, USDA, Washington, DC.; the National Finance Center, New Orleans, Louisiana; and personnel offices at the following locations:

ALABAMA—Soil Conservation Service State Office, Soil Conservation Building, 665 Opelika Road, Auburn, Alabama 36830; Farmers Home Administration State Office, Aronov Building, Room 717, 474 S. Court Street, Montgomery, Alabama 36104; Forest Service, National Forests in Alabama, 1765 Highland Avenue, Montgomery, Alabama 36107.

ALASKA—Forest Service, Chugach National Forest, 201 E. 9th Avenue, Suite 206, Anchorage, Alaska 99501; Soil Conservation Service State Office, 201 E. 9th Avenue, Suite 300, Anchorage, Alaska 99501-3687; Forest Service Regional Office, Federal Office Building, P.O. Box 1628, Juneau, Alaska 99802; Forest Service, Tongass National Forest, Ketchikan Area, Federal Building, Ketchikan, Alaska 99901; Farmers Home Administration State Office, 634 S. Bailey, suite 103, Palmer, Alaska 99645; Forest Service, Tongass National Forest, Stikine Area, Box 309, Petersburg, Alaska 99833; Forest Service, Tongass National Forest, Chatham Area, 204 Siginaka Way, Sitka, Alaska 99835.

ARIZONA—Forest Service, Coconino National Forest, 2323 E. Greenlaw Lane, Flagstaff, Arizona 86004; Forestry Sciences Laboratory, Northern Arizona University, Flagstaff, Arizona 86001; Agricultural Marketing Service Milk Market Office, 1121 E. Missouri Street, Phoenix, Arizona 85014; Farmers Home Administration State Office, 201 E. Indianola, suite 275, Phoenix, Arizona 85012; Soil Conservation Service State Office, 201 E. Indianola, suite 260, Phoenix, Arizona 85012; Forest Service, Tonto National Forest, 2324 E. McDowell Road, P.O. Box 5348, Phoenix, Arizona 85010; Forest Service, Prescott National Forest, 344 S. Cortez, Prescott, Arizona 86303; Forest Service, Apache-

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Sitgreaves National Forest, Federal Building, P.O. Box 640, Springerville, Arizona 85938; Forest Service, Coronado National Forest, 300 W. Congress, Tucson, Arizona 85701; Forest Service, Kaibab National Forest, 800 S. 6th Street, Williams Arizona 86046.

ARKANSAS—Forest Service, Quachita National Forest, Federal Building, Reserve and Broadway Streets, P.O. Box 1270, Hot Springs National Park, Arkansas 71902; Farmers Home Administration State Office, 5529 Federal Office Building, P.O. Box 2778, 700 W. Capital, Little Rock, Arkansas 72203; Forest Service, Ozark-St. Francis National Forest, 605 W. Main, P.O. Box 1008, Russellville, Arkansas 72801; Soil Conservation Service State Office, Federal Office Building, 7600 W. Capitol Avenue, Little Rock, Arkansas 72201.

CALIFORNIA—Forest Service, Modoc National Forest, 441 N. Main Street, Alturas, California 96101; Forest Service Pacific Southwest Forest and Range Experiment Station, 1960 Addison Street, P.O. Box 245, Berkeley, California 94701; Forest Service, Inyo National Forest, 873 N. Main Street, Bishop, California 93514; Soil Conservation Service State Office, 2121–C 2nd Street, Davis, California 95616; Forest Service, Six Rivers National Forest, 507 F Street, Eureka, California 95501; Forest Service, Sierra National Forest, 1600 Tollhouse Road, Clovis, California 93612; Forest Service, Los Padres National Forest, 6144 Calle Real, Goleta, California 93117; Forest Service, Tahoe National Forest, Highway 49, Nevada City, California 95959; Forest Service, Angeles National Forest, 701 N. Santa Anita Avenue, Arcadia, California 91006; Forest Service, Eldorado National Forest, 100 Forni Road, Placerville, California 95667; Forest Service, Sequoia National Forest, 900 W. Grand Avenue, Porterville, California 93257–2035; Forest Service, Plumas National Forest, 159 Lawrence Street, P.O. Box 11500, Quincy, California 95971–6025; Forest Service, Shasta-Trinity National Forest, 2400 Washington Avenue, Redding, California 96001; Forest Service, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, California 92408–3430; Forest Service, Cleveland National Forest, 880 Front Street, room 5–N–14, San Diego, California 92188; Forest Service, Equipment Development Center, 444 E. Bonita Avenue, San Dimas, California 91773; Food and Nutrition Service Western Regional Office, 550 Kearny Street, room 400, San Francisco, California 94108; Forest Service Regional Office, 630 Sansome Street, San Francisco, California 94111; Forest Service, Stanislaus National Forest, 19777 Greenley Road, Sonora, California 95370; Forest Service, Lake Tahoe Basin Management Unit, 870 Emerald Bay Road, P.O. Box 731002, South Lake Tahoe, California 95731; Forest Service, Lassen National Forest, 55 S. Sacramento Street, Susanville, California 96130; Forest Service, Mendocino National Forest, 420 E. Laurel Street, Willows, California 95988; Farmers Home Administration State Office, 459 Cleveland Street, Woodland, California 95695; Forest Service, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097.

COLORADO—Agricultural Marketing Service Milk Marker Office, 2500 S. Parker Road, P.O. Box 440660, Aurora, Colorado 80044; Forest Service, Grand Mesa-Uncompahgre-Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416; Farmers Home Administration State Office, 2490 W. 26th Avenue, Room 231, Denver, Colorado 80211; Food and Nutrition Service, Mountain Plains Regional Office, 1244 Speer Boulevard, Denver, Colorado 80204; Soil Conservation Service, State Office, 655 Parfet Street, room E200C, Lakewood, Colorado 80215–5517; Forest Service, San Juan National Forest, Federal Building, 701 Camino Del Rio, room 301, Durango, Colorado 81301; Forest Service, Rocky Mountain Forest and Range Experiment Station, 240 W. Prospect Street, Fort Collins, Colorado 80526–2098; Forest Service, Arapaho-Roosevelt National Forest, 240 W. Prospect Street, Ft. Collins, Colorado 80526–2098; Forest Service, White River National Forest, Old Federal Building, Box 948, Glenwood Springs, Colorado 81602; Forest Service Regional Office, 11177 W. 8th Avenue, P.O. Box 25127, Lakewood, Colorado 80225; Forest Service, Rio Grande National Forest, 1803 W. Highway 160, Monte Vista, Colorado 81144; Forest Service, Pike-San Isabel National Forests, 1920 Valley Drive, Pueblo, Colorado 81008; Forest Service, Routt National Forest, 29587 W. U.S. 40, Suite 20, Steamboat Springs, Colorado 80487.

CONNECTICUT—Soil Conservation Service, State Office, 16 Professional Park Road, Storrs, Connecticut 06268.

DELAWARE—Farmers Home Administration State Office, 2319 S. DuPont Highway, Dover, Delaware 19901.

FLORIDA—Farmers Home Administration State Office, Federal Building, room 214, 4011 SE. 1st Avenue, Gainesville, Florida 32602; Soil Conservation Service, State Office, Federal Building, 401 SE. 1st Avenue, room 248, Gainesville, Florida 32601; Forest Service, National Forests in Florida, City Center Building, 227 N. Bronough Street, suite 4061, Tallahassee, Florida 32301; Agricultural Marketing Service Milk Market Office, 1205 S. Semoran Boulevard, P.O. Box 4790, Winter Park, Florida 32793.

GEORGIA—Agricultural Marketing Service Milk Market Office, 3610 Interstate 85, NE., Suite 109, P.O. Box 49025, Atlanta, Georgia 30359; Forest Service Regional Office, 1720 Peachtree Road, NW., Atlanta, Georgia 30367; Farmers Home Administration State Office, 355 E. Hancock Avenue, Stephens Federal Building, Athens, Georgia 30601; Soil Conservation Service State Office, Federal Building, Box 13, 355 E. Hancock Avenue, Athens, Georgia 30601; Forest Service, Chattahoochee-Oconee National Forest, 508 Oak Street, SE., Gainesville, Georgia 30501; Food and Nutrition Service, Southeast Regional Office, M. L. King Federal Annex Building, 77 Forsyth Street, Room 107, Atlanta, Georgia 30303.

HAWAII—Farmers Home Administration State Office, Federal Building, 154 Waianuenue Avenue, Room 311, Hilo, Hawaii 96720; Soil Conservation Service State Office, 300 Ala Moana Boulevard, Room 4316, Honolulu, Hawaii 96850.

IDAHO—Farmers Home Administration State Office, 3232 Elder Street, Boise, Idaho 83705; Forest Service, Boise National Forest, 1750 Front Street, Boise, Idaho 83702; Soil Conservation Service State Office, 3244 Elder Street, Room 124, Boise, Idaho 83705; Forest Service, Challis National Forest, Forest Service Building, Highway 93, P.O. Box 404, Challis, Idaho 83226; Forest Service, Idaho Panhandle National Forests, 1201 Ironwood Drive, Coeur d'Alene, Idaho 83814; Forest Service, Nez Perce National Forest, Route 2, Box 475, Grangeville, Idaho 83530; Forest Service, Payette National Forest, Forest Service Building, P.O. Box 1026, McCall, Idaho 83638; Forest Service, Clearwater National Forest, 12730 Highway 12, Orofino, Idaho 83544; Forest Service, Caribou National Forest, 250 S. 4th Avenue, Suite 294, Pocatello, Idaho 83201; Forest Service, Targhee National Forest, 420 N. Bridge Street, P.O. Box 208, St. Anthony, Idaho 83445; Forest Service, Salmon National Forest, P.O. Box 729, Salmon, Idaho 83467; Forest Service, Sawtooth National Forest, 2647 Kimberly Road, E., Twin Falls, Idaho 83301.

ILLINOIS—Farmers Home Administration State Office, Illini Plaza, 1817 S. Neil Street, Suite 103, Champaign, Illinois 61820; Soil Conservation Service State Office, 1902 Fox Drive, Champaign, Illinois 61820; Agricultural Marketing Service Milk Market Office, 800 Roosevelt Road, Building A, Suite 200, Glen Ellyn, Illinois 60137; Food and Nutrition Service Midwest Regional Office, 50 E. Washington Street, Chicago, Illinois 60602; Forest Service, Shawnee National Forest, 901 S. Commercial Street, Harrisburg, Illinois 62946.

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IOWA—Farmers Home Administration State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, Iowa 50309; Soil Conservation Service State Office, Federal Building, Room 693, 210 Walnut Street, Des Moines, Iowa 50309.

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KENTUCKY—Farmers Home Administration State Office, 333 Waller Avenue, Lexington, Kentucky 40504; Soil Conservation Service State Office, 333 Waller Avenue, Lexington, Kentucky 40504; Agricultural Marketing Service Milk Market Office, 3920 Bardstown Road, P.O. Box 18030, Louisville, Kentucky 40218; Forest Service, Daniel Boone National Forest, 100 Vaught Road, Winchester, Kentucky 40391.

LOUISIANA—Farmers Home Administration State Office, 3727 Government Street, Alexandria, Louisiana 71301; Soil Conservation Service State Office, 3737 Government Street, Alexandria, Louisiana 71302; Agricultural Marketing Service Milk Market Office, 630 Village Lane, North, P.O. Box 99, Mandeville, Louisiana 70448; Forest Service Southern Forest Experiment Station, T–10210 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, Louisiana 70113; Office of Finance and Management, National Finance Center, Administrative Management Staff, P.O. Box 60,000, New Orleans, Louisiana 70160; Forest Service, Kisatchie National Forest, P.O. Box 5500, 2500 Shreveport Highway, Pineville, Louisiana 71360.

MAINE—Farmers Home Administration State Office, 444 Stillwater Avenue, Suite 2, P.O. Box 405, Bangor, Maine 04401–0405; Soil Conservation Service State Office, USDA Building, University of Maine, Orono, Maine 04473.

MARYLAND—Soil Conservation Service State Office, John Hanson Business Center, 339 Revell Highway, Suite 301, Annapolis, Maryland 21401.

MASSACHUSETTS—Farmers Home Administration State Office, 451 West Street, Amherst, Massachusetts 01002; Soil Conservation Service State Office, 451 West Street, Amherst, Massachusetts 01002; Agricultural Marketing Service Milk Market Office, 90 Canal Street, P.O. Box 1478, Boston, Massachusetts 02205; Food and Nutrition Service, Northeast Regional Office, 10 Causeway Street, Room 501, Boston, Massachusetts 02222–1062.

MICHIGAN—Agricultural Marketing Service Milk Market Office, 2884 W. 11 Mile Road, Barkley, Michigan 49072; Forest Service, Huron-Manistee National Forest, 421 S. Mitchell Street, Cadillac, Michigan 49601; Farmers Home Administration State Office, 1405 S. Harrison Road, Room 209, East Lansing, Michigan 48823; Soil Conservation Service State Office, 101 Manly Miles Building, 1405 S. Harrison Road, East Lansing, Michigan 48823–5202; Forest Service, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, Michigan 49829; Forest Service, Ottawa National Forest, 2100 E. Cloverland Drive, Ironwood, Michigan 49938.

MINNESOTA—Forest Service, Chippewa National Forest, Cass Lake, Minnesota 56633; Forest Service, Superior National Forest, Box 338, Duluth, Minnesota 55801; Agricultural Marketing Service Milk Market Office, 4570 W. 77th Street, Suite 210, Minneapolis, Minnesota 55435; Animal and Plant Health Inspection Service Field Servicing Office, Butler Square, W., 5th Floor, 100 N. 6th street, Minneapolis, Minnesota 55403; Farmers Home Administration State Office, 252 Federal Office Building and U.S. Court House, St. Paul, Minnesota 55101; Food Safety and Inspection Service, Personnel Operations Branch, Butler Square, W., 4th Floor, 100 N. 6th Street, Minneapolis, Minnesota 55403; Forest Service North Central Forest Experiment Station, 1992 Folwell Avenue, St. Paul, Minnesota 55108; Soil Conservation Service State Office, 600 Farm Credit Building, 375 Jackson Street, St. Paul, Minnesota 55101–1854; Forest Service, Northeastern Area State and Private Forestry, 1992 Folwell Avenue, St. Paul, Minnesota 55108.

MISSISSIPPI—Farmers Home Administration State Office, Federal Building, Room 831, Jackson, Mississippi 39269; Soil Conservation Service State Office, Federal Building, Suite 1321, 100 W. Capitol Street, Jackson, Mississippi 39269; Forest Service, National Forest in Mississippi, 100 W. Capitol Street, Suite 1141, Jackson, Mississippi 39269.

MISSOURI—Farmers Home Administration State Office, 555 Vandiver Drive, Columbia, Missouri 65201; Soil Conservation Service State Office, 555 Vandiver Drive, Columbia, Missouri 65202; Agricultural Stabilization and Conservation Service, Kansas City Management Office, 8930 Ward Parkway, Kansas City Missouri 64114; Federal Crop Insurance Corporation, 9435 Holmes, Kansas City Missouri 64131; Forest Service, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, Missouri 65401; Agricultural Marketing Service Milk Market Office, 2550 Schuetz Road, P.O. Box 1485, Maryland Heights, Missouri, 63043; Farmers Home Administration Finance Office, 1520 Market Street, St. Louis, Missouri 63103.

MONTANA—Forest Service, Custer National Forest, P.O. Box 2556, Billings, Montana 59103; Farmers Home Administration State Office, Federal Building, P.O. Box 850, Bozeman, Montana 59715; Forest Service, Gallatin National Forest, Federal Building, P.O. Box 130, Bozeman, Montana 59771; Soil Conservation Service State Office, Federal Building, 10 E. Babock, Room 443, Bozeman, Montana 59715; Forest Service, Deerlodge National Forest, Federal Building, P.O. Box 400, Butte, Montana 59703; Forest Service, Beaverhead National Forest, 610 N. Montana Street, Dillon, Montana 59725; Forest Service, Lewis and Clark National Forest, 1101 15th Street, N., P.O. Box 871, Great Falls, Montana 59403; Forest Service, Bitterroot National Forest, 316 N. Third Street, Hamilton, Montana 59840; Forest Service, Helena National Forest, Federal Office Building, 301 S. Park, Drawer 10014, Helena, Montana 59626; Forest Service, Flathead National Forest, 1935 3rd Avenue, E., P.O. Box 147, Kalispell, Montana 59901; Forest Service, Kootenai National Forest, 506 W. Highway 2, Libby, Montana 59923; Forest Service Regional Office, Federal Building, P.O. Box 7669, Missoula, Montana 59807; Forest Service, Lolo National Forest, Building 24, Ft. Missoula, Montana 59801; Forest Service, International Forest and Range Experiment Station, Forestry Sciences and Northern Forest Fire Laboratories, Drawer G. Missoula, Montana 59808, Forest Service, Aerial Fire Depot, Box 6, Airport Terminal, Missoula, Montana 59801.

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NEVADA—Forest Service, Humboldt National Forest, 976 Mountain City Highway, Elko, Nevada 89801; Forest Service, Toiyabe National Forest, 1200 Franklin Way, Sparks Way, Nevada 89431; Soil Conservation Service State Office, 1201 Terminal Way, Room 219, Reno, Nevada 89502.

NEW HAMPSHIRE—Soil Conservation Service State Office, Federal Building, Durham, New Hampshire 03824; Forest Service, White Mountain National Forest, 719 Main Street, Federal Building, P.O. Box 638, Laconia, New Hampshire 03247.

NEW JERSEY—Farmers Home Administration State Office, 100 High Street, Suite 100, Mt. Holly, New Jersey 08691; Soil Conservation Service State Office, 1370 Hamilton Street, Somerset, New Jersey 08873; Food and Nutrition Service, Mid-Atlantic Regional Office, Mercer Corporate Park, CN 02150, Trenton, New Jersey 08650.

NEW MEXICO—Forest Service, Lincoln National Forest, Federal Building, 11th and New York Avenue, Alamogordo, New Mexico 88310; Farmers Home Administration State Office, Federal Building, Room 3414, 517 Gold Avenue, SW., Albuquerque, New Mexico 87102; Forest Service Regional Office, 517 Gold Avenue, SW., Albuquerque, New Mexico 87102; Forest Service, Cibola National Forest, 10308 Candelaria, NE., Albuquerque, New Mexico 87112; Soil Conservation Service State Office, 517 Gold Avenue, SW., Room 3301, Albuquerque, New Mexico 87102; Forest Service, Santa Fe National Forest, 1220 St. Francis Drive, P.O. Box 1689, Santa Fe, New Mexico 87504; Forest Service, Gila National Forest, 2610 N. Silver Street, Silver City, New Mexico 88061; Forest Service, Carson National Forest, Federal Building, 208 Cruz Alta Road, P.O. Box 558, Taos, New Mexico 87571.

NEW YORK—Agricultural Marketing Service Milk Market Office, 708 Third Avenue, 6th Floor, New York, New York 10017; Farmers Home Administration State Office, U.S. Courthouse and Federal Building, Room 871, 100 S. Clinton Street, Syracuse, New York 13202; Soil Conservation Service State Office, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260.

NORTH CAROLINA—Forest Service, Southeastern Forest Experiment Station, 200 Weaver Boulevard, P.O. Box 2680, Asheville, North Carolina 28802; Forest Service, National Forests in North Carolina, Post & Otis Streets, P.O. Box 2750, Asheville, North Carolina 28802; Farmers Home Administration State Office, Room 514, 310 New Bern Avenue, Raleigh, North Carolina 27601; Soil Conservation Service State Office, 4405 Bland Road, Raleigh, North Carolina 27609.

NORTH DAKOTA—Farmers Home Administration State Office, Federal Building, Room 208, 3rd and Rosser Avenue, Bismarck, North Dakota 58501; Soil Conservation Service State Office, Federal Building, 220 E. Rosser Avenue, Room 278, Bismarck, North Dakota 58502.

OHIO—Agricultural Marketing Service Milk Market Office, 7851 Freeway Circle, Middleburg Heights, P.O. Box 30128, Cleveland, Ohio 44130; Agricultural Marketing Service Milk Market Office, 5950 Sharon Woods Boulevard, P.O. Box 29226, Columbus, Ohio 42339; Farmers Home Administration State Office, Federal Building, Room 507, 200 N. High Street, Columbus, Ohio 43215; Soil Conservation Service State Office, 200 N. High Street, Room 522, Columbus, Ohio 43215.

OKLAHOMA—Farmers Home Administration State Office, Agricultural Center Office Building, Stillwater, Oklahoma 75074; Soil Conservation Service State Office, Agricultural Center Building, Stillwater, Oklahoma 74074; Agricultural Marketing Service Milk Market Office, 4325 E. 51st Street, P.O. Box 470563, Tulsa, Oklahoma 74147.

OREGON—Forest Service, Wallowa-Whitman National Forest, Federal Building, Main and Auburn, Box 907, Baker, Oregon 97814; Forest Service, Deschutes National Forest, 1645 Highway 20 East, Bend, Oregon 97701; Forest Service, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339; Forest Service, Willamette National Forest, Box 10607, Eugene, Oregon 97440; Forest Service, Siskiyou National Forest, Box 440, Grants Pass, Oregon 97526; Forest Service, Mt. Hood National Forest, 2955 NW. Division Street, Gresham, Oregon 97030; Forest Service, Malheur National Forest, 139 N.E. Dayton Street, John Day, Oregon 97845; Forest Service, Winema National Forest, 2819 Dahlia, Klamath Falls, Oregon 97601; Forest Service, Fremont National Forest, 524 N. G Street, Lakeview, Oregon 97630; Forest Service, Rogue River National Forest, Federal Building, 333 W. 8th Street, P.O. Box 520, Medford, Oregon 97501; Forest Service, Umatilla National Forest, 2517 SW. Hailey Avenue, Pendleton, Oregon 97801; Farmers Home Administration State Office, Federal Building, Room 1590, 1220 SW. 3rd Avenue, Portland, Oregon 97204; Forest Service, Pacific Northwest Forest and Range Experiment Station, 319 SW. Pine Street, P.O. Box 3890, Portland, Oregon 97208; Forest Service Regional Office, 319 SW. Pine Street, P.O. Box 3623, Portland, Oregon 97208; Soil Conservation Service State Office, Federal Building, 1220 SW. 3rd Avenue, 16th Floor, Portland, Oregon 97204; Soil Conservation Service Technical Center, 511 NW. Broadway, Room 248, Portland, Oregon 97209; Agricultural Marketing Service Milk Market Office, Tarbell Building, 9735 SW. Shady Lane, Tigard, P.O. Box 23605, Portland, Oregon 97223; Forest Service, Ochoco National Forest, Federal Building, P.O. Box 490, Prineville, Oregon 97754; Forest Service, Umpqua National Forest, Box 1008, Roseburg, Oregon 97470.

PENNSYLVANIA—Farmers Home Administration State Office, 1 Credit Union Place, Suite 330, Harrisburg, Pennsylvania 17110-2996; Soil Conservation Service State Office, 1 Credit Union Drive, Suite 340, Harrisburg, Pennsylvania 17110-2993; Forest Service, Northeastern Area State and Private Forestry, 370 Reed Road, Broomall, Pennsylvania 19008; Forest Service Northeastern Forest Experiment Station, 370 Reed Road, Broomall, Pennsylvania 19008; Soil Conservation Service Technical Service Center, 160 E. 7th Street, Chester, Pennsylvania 19013; Forest Service, Allegheny National Forest, 222 Liberty Street, P.O. Box 847, Warren, Pennsylvania 16365.

SOUTH CAROLINA—Farmers Home Administration State Office, Strom Thurmond Federal Building, Room 1007, 1835 Assembly Street, Columbia, South Carolina 29201; Forest Service, Francis Marion-Sumter National Forests, 1835 Assembly Street, P.O. Box 2227, Columbia, South Carolina 29202; Soil Conservation Service State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 950, Columbia, South Carolina 29201.

SOUTH DAKOTA—Forest Service, Black Hills National Forest, Forest Service Office Building, R.R. 2, Box 200, Custer, South Dakota 57730-9504; Farmers Home Administration State Office, Huron Federal Building, Room 208, 200 4th Street, SW., Huron, South Dakota 57350; Soil Conservation Service State Office, Federal Building, 200 4th Street, SW., Huron, South Dakota 57350.

TENNESSEE—Forest Service, Cherokee National Forest, 2800 N. Ocoee Street, NW., Box 2010, Cleveland, Tennessee 37311; Farmers Home Administration State Office, 538 U.S. Courthouse Building, 801 Broadway Street, Nashville, Tennessee 37203; Soil Conservation Service State Office, 675 Estes Kefauver Federal Building-U.S. Courthouse, 801 Broadway Street, Nashville, Tennessee 37203.

TEXAS—Agricultural Marketing Service Milk Market Office, 11117 Shady Trail, P.O. Box 29529, Dallas, Texas 75229; Food and Nutrition Service Southwest Regional Office, 1100 Commerce Street, Room 5 D 22, Dallas, Texas 75242; Forest Service National Forests, National Forests in Texas, Homer Garrison Federal Building, 701 N. 1st Street, Lufkin, Texas 75601; Farmers Home Administration State Office, W. R. Poage Federal Building, 101 S. Main Street, Temple, Texas 76501; Soil Conservation Service Technical Service Center, Ft. Worth Federal Center Building 23, Room 60, Felix and Hemphill Street, Ft. Worth, Texas 76116.

UTAH—Forest Service, Dixie National Forest, 82 North 100th, E., P.O. Box 580, Cedar City, Utah 84720; Forest Service Intermountion Forest and Range Experiment Station, Federal Building, 324 25th Street, Ogden, Utah 84401; Forest Service Regional Office, Federal Office Building, 324 25th Street, Ogden, Utah 84401; Forest Service, Manti-LaSal National Forest, 599 W. Price River Drive, Price, Utah 84501; Forest Service, Uinta National Forest, 88 W. 100th, N., Provo, Utah 84601; Forest Service, Fishlake National Forest, 115 E. 900th, N., Richfield, Utah 84701; Farmers Home Administration State Office, 18 Federal Building, Room 5438, 125 S. State Street, Salt Lake City, Utah 84138; Forest Service, Wasatch-Cache National Forest, 8226 Federal Building, 125 S. State Street, Salt Lake City, Utah 84138; Forest Service Geometronics Service Center, 8226 Federal Building, 125 S. State Street, Salt Lake City, Utah 84138; Soil Conservation Service State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4402, Salt Lake City, Utah 84138; Forest Service, Ashley National Forest, 355 N. Vernal Avenue, Vernal, Utah 84078.

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VIRGINIA—Agricultural Marketing Service Milk Market Office, 300 N. Lee Street, Room 320, P.O. Box 710, Alexandria, Virginia 22313; Forest Service, George Washington National Forest, P.O. Box 233, Harrison Plaza, Harrisonburg, Virginia 22801; Farmers Home Administration State Office, Federal Building, Room 6213, 400 N. 8th Street, P.O. Box 10108, Richmond, Virginia 23240; Soil Conservation Service State Office, Federal Building, 400 N. 8th Street, Room 9201, Richmond, Virginia 23240; Forest Service, Jefferson National Forest, 210 Franklin Road, SW., Room 954, Caller Service 2900, Roanoke, Virginia 24001.

WASHINGTON—Forest Service, Colville National Forest, 695 S. Main, Colville, Washington 99114; Forest Service, Okanogan National Forest, 1240 S. 2nd Avenue, Okanogan, Washington 98840; Forest Service, Olympia National Forest, Federal Building, P.O. Box 2288, Olympia, Washington 98507; Forest Service, Mt. Baker-Snoqualmie National Forests, 1022 1st Avenue, Seattle, Washington 98104; Soil Conservation Service State Office, 360 U.S. Courthouse, 920 W. Riverside Avenue, Room 360, Spokane, Washington 99201-1060; Forest Service, Gifford Pinchot National Forest, 6926 E. 4th Plain Blvd., Vancouver, Washington 98660; Farmers Home Administration State Office, Federal Office Building, Room 319, P.O. Box 2427, Wenatchee, Washington 98801; Forest Service, Wenatchee National Forest, Box 811, Wenatchee, Washington 98801.

WEST VIRGINA—Forest Service, Monongahela National Forest, USDA Building, 200 Sycamore Street, Elkins, West Virginia 26241-3962; Farmers Home Administration State Office, Federal Building, Room 320, 75 High Street, Room 301, Morgantown, West Virginia 26505; Soil Conservation Service State Office, 75 High Street, Morgantown, West Virginia 26505.

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WYOMING—Farmers Home Administration State Office, Federal Building, Room 1005, 100 E. B Street, Casper, Wyoming 82601; Soil Conservation Service State Office, Federal Office Building, 100 E. B Street, Room 3124, Casper, Wyoming 82601; Forest Service, Shoshone National Forest, 225 W. Yellowstone Highway, PO Box 2140, Cody, Wyoming 82414; Forest Service, Bridger-Teton National Forest, Forest Service Building, 340 N. Cache, PO Box 1888, Jackson, Wyoming 83001; Forest Service, Medicine Bow National Forest, 605 Skyline Drive, Laramie, Wyoming 82070; Forest Service, Bighorn National Forest, 1969 S. Sheridan Avenue, Sheridan, Wyoming 82801.

PUERTO RICO—Farmers Home Administration State Office, New San Juan Center Building, Room 501, 159 Carlos E. Chardon Street, Hato Rey, San Juan, Puerto Rico 00918-5481; Soil Conservation Service Caribbean Office, Federal Office Building, Room 633-639, Chardon Avenue, Hato Rey, Puerto Rico 00918; Forest Service, Caribbean National Forest and State and Private Forestry Programs, PO Box 25000, Rio Piedras, Puerto Rico 00928-2500.

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and Inspection Service, Personnel Division, Room 2133-S, Washington, DC 20250; Office of Inspector General, Personnel Management Staff, Room 18-E, Washington, DC 20250; Office of International Cooperation and Development, Personnel Office, Room 0330-S, Washington, DC 20250; Office of Personnel, Personnel Operations, Room 31-W, Washington, DC 20250; Soil Conservation Service, Personnel Staff, PO Box 2890, Washington, DC 20013; Soil Conservation Service National Office, Administrative Staff, Room 5215-S, PO Box 2890, Washington, DC 20013; Rural Electrification Administration, Personnel Management Division, Room 4031-S, Washington, DC 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and prior employees of USDA and applicants who were not hired, as well as its permittees, cooperators and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of personnel (Official Personnel Folders, Applicant Supply Files, performance files, retention lists, appeals, grievances, complaints, disciplinary, conflict of interest, health, suggestion and incentive awards, accident, training, time and attendance, travel voucher, and classification files) and payroll data needed to conform to all applicable laws, Government regulations and procedures, and the needs of the Department and agencies in carrying out their personnel management responsibilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Referral to: (1) Office of Personnel Management for required action, records and reports; (2) Department of Treasury for issuance of checks and bonds; (3) Department of Labor for Office of Workers Compensation Program and Office of Safety and Health Administration; (4) Congress for special reports, or to a congressional office from the record of an individual in response to an inquiry from a congressional office made at the request of that individual; (5) White House for special reports; (6) Office of Management and Budget for special reports; (7) General Accounting Office for special reports; (8) Department of Justice; (9) General Services Administration for records retirement and/or destruction; (10) State Department for passport and foreign assignments; (11) Department of Transportation, Environmental Protection Agency and cooperating state and local agencies for accident and safety records; (12) Internal Revenue Service and State and local government for matters in connection with payment of income taxes; (13) Social Security Administration for social security payment information; (14) Combined Federal Campaign for reports and records; (15) Department of Health and Human Services for scheduling physical examinations; (16) all Government agencies and potential employers concerning employment inquiries; (17) Equal Employment Opportunity Commission for handling complaints; (18) appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute or a rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statue or other particular program statute, or by rule, regulation or order issued pursuant thereto; (19) a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery to the extent that USDA determines that the records are relevant to the proceedings; (20) any agency of the Federal Government which has identified USDA employees as having defaulted in the repayment of an obligation incurred under any statutory authority except the Internal Revenue Code, the Social Security Act or the U.S. tariff laws; (21) the contractor selected to conduct a matching program relating to unemployment compensation; (22) the contractor selected to verify employment for specific claims relating to workers compensation; (23) the Internal Revenue Service to enable it to offset and satisfy past due, legally enforceable debts owed to USDA against Federal income tax refunds; (24) labor organizations recognized under 5 U.S.C. Chapter 71 to provide home addresses or designated mailing addresses of bargaining unit employees; and (25) the cooperator(s) selected to evaluate personnel-related demonstration projects.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and/or computer tape and disk storage at the applicable address listed above.

RETRIEVABILITY:

Records are indexed by name of employee and/or identification number.

SAFEGUARDS:

Records are kept in locked files, locked offices and/or in secured computer tape storage rooms.

RETENTION AND DISPOSAL:

Records are maintained until employees are separated from the Department and are then retired or transferred to a new employing agency or destroyed in conformance with appropriate General Services Administration retirement and/or destruction Schedules.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Personnel, USDA, Washington, DC 20250.

NOTIFICATION PROCEDURE:

Employees may request information from this system from the appropriate personnel office having custody of his/her records. A request for information should be addressed to the Director, Personnel Division (name of appropriate Agency), USDA, at the address shown under Location and should contain the name of requestor, employing agency in USDA or agency to which information was furnished, address of agency and particular information requested.

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him/her by submitting a written request to the appropriate office referred to in the preceding paragraph.

CONTESTING RECORD PROCEDURES:

Same as Record access procedures.

RECORD SOURCE CATEGORIES:

Information in this system comes from the employees, applicants, permittees, cooperators, contractors, employees' personnel offices, supervisors, references, investigative personnel, colleges and universities and former employers.

USDA/OP-2

SYSTEM NAME:

Security Records for USDA Employees, USDA/OP-2.

SYSTEM LOCATION:

Security, Employee and Labor Relations Staff, Office of Personnel, USDA, Room 18-W, Administration Building, 14th Street and Independence Avenue, SW., Washington, DC 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants for USDA employment and/or individuals investigated under the authority of Executive Order 10450.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of investigative files maintained by the Department Security Officer in fulfilling his/her responsibilities in granting security clearances under the Personal Security Program of the Department.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7312 and 7532 and Executive Order 10450.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the Office of Personnel Management and/or the Federal Bureau of Investigation for appropriate investigation; (2) referral to the agency which conducted the investigation upon the retirement or transfer of the employee; (3) referral to the General Services Administration for retirement and/or destruction purposes; (4) certification of Security Clearances to other Government agencies; (5) referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this System when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (6) referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery to the extent that USDA determines that the records are relevant to the proceedings; (7) Congress for special reports, or to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual; and (8) to security officers of other Federal agencies who are conducting pre-employment investigations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a locked Lektriever 100 and/or on microfiche film located in a locked room.

RETRIEVABILITY:

Records are indexed by name of the employee or applicant.

SAFEGUARDS:

As stated above under Storage.

RETENTION AND DISPOSAL:

Records are maintained until the employee has retired or transferred to another Government agency. They are then returned to the agency that conducted the investigation or retired to the General Services Administration for destruction under the appropriate destruction schedule.

SYSTEM MANAGER AND ADDRESS:

Department Security Officer, U.S. Department of Agriculture, Washington, DC 20250.

NOTIFICATION PROCEDURE:

Employees may request information from this System from the Department Security Officer, U.S. Department of Agriculture, under the address shown above in Location. All requests should include the name of the requestor, employing agency or agency to where application was made, address of requestor, location of employing agency, and particular information requested.

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to and contesting a record in the System which pertains to him/her by submitting a written request to the office mentioned above.

CONTESTING RECORD PROCEDURES:

Same as Record Access Procedures.

RECORD SOURCE CATEGORIES:

Information in this system comes from the employee, his or her references, present and former supervisors, educational institutions, the Office Personnel Management, the Federal Bureau of Investigation, the investigative arms of the various agencies of the Department of Defense, the investigative arms of other Executive Departments and Agencies, and various local and state law enforcement agencies.

USDA/OP-3

SYSTEM NAME:

Committee Management Records, USDA/OP-3.

SYSTEM LOCATION:

Security, Employee and Labor Relations Staff, Office of Personnel, Room 18-W, Administration Building, 14th Street and Independence Avenue, SW., Washington, DC 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All members of the advisory committees of the Department of Agriculture.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of information reflecting the name, position title, address, employer, organization represented, occupation, occupation or industry code, ethnic affiliation, major sources of income, date of appointment, and date of appointment expiration.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. No. 92-463 and Title XVIII of Pub. L. No. 95-113.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information contained in this system may be disclosed: (1) In annual reports to the General Services Administration, and (2) to members of the public requesting a list of committee membership from the System Manager.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer tape and disk storage.

RETRIEVABILITY:

Records can be retrieved by the individual's name or by the name of the committee on which he/she serves.

SAFEGUARDS:

Records are kept in locked rooms. Information concerning the individual's name, address, and business are part of statutory reports and, as such, are public information. All other personal information is used solely for administrative and/or statistical

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purposes and is not rel · l ta·le the Department

RETENTION AND DISPOSAL:

With the exception of the information contained in the reports referenced in Safeguards above, records are maintained only as long as the individual is serving as a member of an advisory committee. They are then destroyed in conformance with appropriate General Services Administration retirement and/or destruction schedules. Copies of the referenced reports are kept six years.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Personnel, U.S. Department of Agriculture, Washington, DC 20250.

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedure for gaining access to and contesting a record in the System that pertains to him/her by submitting a written request to the System Manager. Any individual may request a listing of the membership of any advisory committee by requesting it from the address shown above.

CONTESTING RECORD PROCEDURES:

Same as Record access procedures.

RECORD SOURCE CATEGORIES:

The information contained in this system is obtained from the agency which is responsible for the support of the advisory committee.

USDA/OP-4

SYSTEM NAME: LEAVE TRANSFER RECORDS—USDA/OP-4.

SYSTEM LOCATION:

Records for each leave recipient are kept in the Personnel Office of the recipient's agency. Addresses for these offices are published in the system of records identified as USDA/OP-1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current recipient and donor employees who are participating or have participated in the Department's Voluntary Leave Transfer Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The System consists of the recipient applications and supporting documentation, donor applications, periodic reports, as required, from the leave recipient as to the status of his/her medical emergency, and any other material associated with the individual case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6361, *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS:

There are no routine uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in folders in the recipient's personnel office (refer to USDA/OP-1 for addresses).

RETRIEVABILITY:

Records are indexed by the name of the recipient.

SAFEGUARDS:

Records are kept in locked files in locked offices.

RETENTION AND DISPOSAL:

Records are maintained for 3 years after the medical emergency ends or 3 years after the establishment of the file, whichever is later. At that time, they will be destroyed in conformance with appropriate General Services Administration retirement and/or destruction schedules.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Personnel, U.S. Department of Agriculture, Washington, DC 20250.

NOTIFICATION PROCEDURE:

Any individual may request information about this system of records, or information as to whether the System contains records pertaining to him or her from the System Manager.

RECORD ACCESS PROCEDURE:

Any individual may obtain information as to the procedures for gaining access to and contesting a record in the System that pertains to him or her by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Same as Record access procedures.

RECORD SOURCE CATEGORIES:

All information in this system comes from employees who have applied to participate as recipients in the Voluntary Leave Transfer Program and employees who have applied to donate annual leave to those recipients.

[FR Doc. 91-11992 Filed 5-20-91; 8:45 am]

BILLING CODE 3410-00-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Statement by Foreign Consignee in Support of a Special License Application.

Form Number: Agency—EAR sections 773.2, 773.3, 773.7 OMB Control No. 0694-0050.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 821 respondents; 411 reporting hours; 27 recordkeeping hours. Average time per respondent is 30 minutes for reporting and 2 minutes for recordkeeping.

Needs and Uses: Form BXA-6052P is used as supporting documentation for 3 of BXA's special licenses: Project License, Distribution License, Service Supply License. The completed form provides BXA with end-use and reexport information to aid in controlling commodities shipped under special licensing procedures.

Affected Public: Businesses or other for-profit institutions; small business or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: May 15, 1991.

Edward Michals,

Departmental Clearance Officer Office of Management and Organization.

[FR Doc. 91-12025 Filed 5-20-91; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct an administrative review of various antidumping and countervailing duty orders and findings with April anniversary dates. In accordance with the Commerce Regulations, we are initiating these administrative reviews.

EFFECTIVE DATE: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests in accordance with § 353.22(a)(1), of the Department's regulations, for an administrative review of various antidumping and countervailing duty orders and findings with April anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings with April anniversary dates. We intend to issue the final results of these reviews not later than April 30, 1992.

Antidumping duty proceedings	Periods to be reviewed
Japan:	
Roller Chain, Other Than Bicycle	
A-588-028	
Daido Kogyo/Daido Corp	4/1/90-3/31/9'
Enuma/Daido Corp	
Hitachi Metals	
Izumi	
Pulton Chain	
Pulton Chain/HIC	
Pulton Chain/I & OC	
Sugiyama/Hokoku	
Sugiyama/I & OC	
Sugiyama/Harima Enterp./San Fernando (Japan)	
Takasago	
Japan:	
3.5" Microdisks and Coated Media Thereof	
A-588-602	
Fuji Photo Film Co., Ltd	4/1/90-3/31/91
Teijin Memorimedia, Co., Ltd.	
Kao Corporation	
TDK Corporation	
Japan:	
Electrolytic Manganese Dioxide	
A-588-806	
Tosoh Corporation	4/1/90-3/31/91
Korea:	
Television Receivers	4/1/90-3/31/91
A-580-008	
Cosmos Electronics Co., Ltd.	
Goldstar Co., Ltd.	
Samsung Electronics Co., Ltd.	
Quantronics Manufacturing Korea, Ltd.	
Tongkook General Electronics Co., Ltd.	
Samwon Electronics, Inc.	
Daewoo Electronics Co., Ltd.	
Mexico:	
Fresh Cut Flowers	4/1/90-3/31/91
A-201-601	
Rancho El Toro	
Rancho El Aguaje	
Rancho Guacatay	
Rancho Mision El Descanso	
Tzitzic Tarsta, S.de R.L.	
Florex S.P.R.	
Visaflor	
Rancho Daley	
Rancho El Pacifico	
Taiwan:	
Color Television Receivers	4/1/90-3/31/91
A-583-009	
Action Electronics Co., Ltd.	
AOC International, Inc.	
Funai Electronic Co., Ltd.	
Hitachi Television (Taiwan) Ltd.	
Kuang Yuan Co., Ltd.	
Nettek Corp., Ltd.	
Paramount Electronics Co., Ltd.	
Proton Electronics Industrial Co., Ltd.	
RCA Taiwan, Ltd.	
Sampo Corporation	
Sanyo Electric (Taiwan) Co., Ltd.	
Shinlee Corp.	
Tatung Company	
Teco Electric & Machinery Co., Ltd.	
Countervailing Duty Proceedings	
Argentina:	
Certain Cold-Rolled Carbon Steel Flat-Rolled Products	1/1/90-12/31/90
C-357-005	
Brazil:	
Pig Iron	1/1/90-12/31/90
Malaysia:	
Carbon Steel Wire Rod	1/1/90-12/31/90
C-557-701	
Thailand:	
Rice	1/1/90-12/31/90
C-549-503	

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.4(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) (1989) and § 355.22(c) (1988).

Dated: May 10, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-12033 Filed 5-20-91; 8:45 am]

BILLING CODE 3510-DS-M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than May 31, 1991, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

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Antidumping duty proceedings	Period
Argentina: Light-Wall Welded Rectangular Carbon Steel Tubing (A-357-802)	05/01/90-04/30/91
Brazil: Certain Carbon Steel Butt-Weld Pipe Fittings (A-351-602)	05/01/90-04/30/91
Brazil: Certain Iron Construction Castings (A-351-503)	05/01/90-04/30/91
Brazil: Certain Tubeless Steel Disc Wheels (A-351-606)	05/01/90-04/30/91
Brazil: Frozen Concentrated Orange Juice (A-351-605)	05/01/90-04/30/91
Dominican Republic: Portland Cement, Other Than White, Nonstaining Portland Cement (A-247-003)	05/01/90-04/30/91
France: Ball Bearings, Cylindrical Roller Bearings, Spherical Plain Bearings, and Parts Thereof (A-427-801)	05/01/90-04/30/91
India: Certain Welded Carbon Steel Standard Pipes and Tubes (A-533-502)	05/01/90-04/30/91
Italy: Ball Bearings, Cylindrical Roller Bearings, and Parts Thereof (A-475-801)	05/01/90-04/30/91
Japan: Ball Bearings, Cylindrical Roller Bearings, Spherical Plain Bearings, and Parts Thereof (A-588-804)	05/01/90-04/30/91
Japan: Impression Fabric (A-588-066)	05/01/90-04/30/91
Japan: Portable Electric Typewriters (A-588-087)	05/01/90-04/30/91
Romania: Ball Bearings and Parts Thereof (A-485-801)	05/01/90-04/30/91
Singapore: Ball Bearings and Parts Thereof (A-559-801)	05/01/90-04/30/91
Sweden: Ball Bearings, Cylindrical Roller Bearings, and Parts Thereof (A-401-801)	05/01/90-04/30/91
Taiwan: Certain Circular Welded Carbon Steel Pipes and Tubes (A-583-008)	05/01/90-04/30/91
Taiwan: Malleable Cast-Iron Pipe Fittings, Other Than Grooved (A-583-507)	05/01/90-04/30/91
The Federal Republic of Germany: Ball Bearings, Cylindrical Roller Bearings, Spherical Plain Bearings, and Parts Thereof (A-428-801)	05/01/90-04/30/91
The People's Republic of China: Certain Iron Construction Castings (A-570-502)	05/01/90-04/30/91
The Republic of Korea: Malleable Cast Iron Pipe Fittings, Other Than Grooved (A-580-507)	05/01/90-04/30/91
The United Kingdom: Ball Bearings, Cylindrical Roller Bearings, and Parts Thereof (A-412-801)	05/01/90-04/30/91
Thailand: Ball Bearings and Parts Thereof (A-549-801)	05/01/90-04/30/91
Turkey: Welded Carbon Steel Standard Pipe and Tube Products (A-489-501)	05/01/90-04/30/91
Countervailing Duty Proceedings	
Brazil: Certain Heavy Iron Construction Castings (C-351-504)	01/01/90-12/31/90
Canada: Fresh Whole Atlantic Groundfish (C-122-507)	01/01/90-12/31/91
Mexico: Ceramic Tile (C-201-003)	01/01/90-12/31/90
Singapore: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof (C-559-802)	01/01/90-12/31/90
Sweden: Viscose Rayon Staple Fiber (C-401-056)	01/01/90-12/31/90
Thailand: Ball Bearings and Parts Thereof (C-549-802)	01/01/90-12/31/90

In accordance with § 353.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 of the Commerce Regulations, a copy of request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by May 31, 1991.

If the Department does not receive by May 31, 1991 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: May 10, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-12034 Filed 5-20-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-601]

Amendment to Final Determination of Sales at Less Than Fair Value and Amendment of Antidumping Duty Order in Accordance with Decision Upon Remand: Brass Sheet and Strip from Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On August 17, 1990, the United States Court of Appeals for the Federal Circuit (CAFC) reversed, in part, and remanded an opinion of the United States Court of International Trade (CIT) concerning the Department of Commerce's final determination of sales at less than fair value (LTFV) with respect to home market selling commissions and imputed costs of cretid. *LMI-La Metalli Industriale, S.p.A. versus United States*, 912 F.2d 455 (Fed. Cir. Aug. 17, 1990). Subsequently, the CIT on September 17,1990, ordered the Department to conduct further proceedings in accordance with the CAFC's opinion. The Department filed the required remand determination on December 7, 1990.

On April 22, 1991, the CIT affirmed the Department's remand determination in its entirety. *LMI-La Metalli Industriale, S.p.A. versus United States*, Court No. 87-03-00560, Slip Op. 91-63 (CIT Apr. 22, 1991).

Commerce will direct the U.S. Customs Service to continue the suspension of liquidation of all entries of the subject merchandise produced by La Metalli Industriale, S.p.A. (LMI), which were entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Joel Fischl or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Adminstration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1778 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1987, Commerce published a notice of "Final Determination of Sales at Less Than Fair Value" in the case of brass sheet and strip from Italy (52 FR 816). The notice stated that a margin of 12.06 percent was found for the respondent LMI. An order to that effect was published on March 6, 1987 (52 FR 6997). That margin was subsequently reduced to 9.74 percent in an amendment to the order published on April 8, 1987 (52 FR 11299).

A lawsuit was filed by LMI alleging that various aspects of the Department's LTFV determination was unlawful. On April 11, 1989, the CIT affirmed the Department's final determination. *LMI-La Metalli Industriale, S.p.A. versus United States*, 712 F. Supp. 959 (CIT Apr. 11, 1989). LMI appealed the CIT's opinion to the CAFC. The CAFC affirmed, in part, reversed, in part, and remanded the CIT's opinion, specifically with respect to home market selling commissions and imputed costs of U.S. credit. On December 5, 1990, Commerce issued remand results that amended the final determination on brass sheet and strip from Italy. Based on its recalculation of the dumping margins, Commerce determined that LMI's sales were at less than fair value during the period of investigation. These remand results were affirmed by the CIT, in their entirety, as a result of a ruling issued by it on April 22, 1991. *LMI-La Metalli Industriale, S.p.A. versus United States*, Court No. 87-03-00560, Slip Op. 91-33 (CIT Apr. 22, 1991).

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of brass sheet and strip from Italy produced by LMI, and all other companies, which were entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit for each entry in an amount equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to the amended determination exceeds the United States price. The suspension of liquidation will remain in effect until further notice. For purposes of requesting a review pursuant to 19 CFR 353.22(a), the anniversary for LMI will be March, the anniversary of the original antidumping duty order. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
La Metalli Industriale, S.p.A	5.44
All Others	5.44

Dated: May 14, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-12006 Filed 5-20-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-614-801]

Initiation of Antidumping Duty Investigation: Fresh Kiwifruit From New Zealand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of fresh kiwifruit from New Zealand are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commissions (ITC) of this action so that it may determine whether there is a resonable indication that an industry in the United States is materially injured, or is threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from New Zealand of fresh kiwifruit. The ITC will make its preliminary determination on or before June 10, 1991. If that determination is affirmative, we will make a preliminary determination on or before October 1, 1991.

EFFECTIVE DATE: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0186 or 377-1769, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On April 25, 1991, we received a petition filed in proper form by the Ad Hoc Committee for Fair Trade of the California Kiwifruit Commission (the Committee) and its members in their individual capacity. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioners allege that imports of fresh kiwifruit are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from New Zealand of fresh kiwifruit. Petitioners also allege that critical circumstances, as defined under 19 CFR 353.16, exist with respect to imports of fresh kiwifruit from New Zealand.

Petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act, and they have filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraph (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

United States Price and Foreign Market Value

Petitioners base their estimates of United States price on actual invoices and customer order forms obtained from regional marketing companies in the United States. Petitioners adjusted United States price for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. Customs user fees, U.S. brokerage and handling charges, U.S. inland freight, and U.S. selling expenses such as advertising, marketing, financing costs, and other selling expenses.

Petitioners have provided evidence that less-than-fair-value margins exist whether U.S. prices are compared to home market prices, third country prices, or constructed value. However, petitioners claim that home market

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prices cannot be used as a basis for estimating foreign market value because (1) the home market is not viable, (2) the majority of the kiwifruit sold in the home market is not of a comparable quality, and, as such, is not similar to that exported to the United States, and (3) home market sales of kiwifruit of a comparable quality to that exported to the United States are made at prices below their cost of production. Petitioners have also presented evidence that third country prices are below cost of production and are thus an inappropriate basis for foreign market value. (*See* "Sales Below Cost of Production" section of this notice.) Therefore, petitioners base foreign market value on constructed value pursuant to section 773(e)(1) of the Act. Constructed value consists of the cost of production, general expenses, profit and packing. Petitioners based the cost of production on (1) a study published by the New Zealand Ministry of Agriculture and Fisheries detailing grower costs for the 1990/1991 growing season (the MAF study) and (2) various 1990 publications which set forth post-harvest storage and marketing expenses of the New Zealand Kiwifrut Marketing Board (NZKMB), the sole exporter of fresh kiwifruit to the United States.

The MAF study calculates grower costs inclusive of packing, principal repayments on outstanding loans as a debt servicing expense, and certain other expenses which are more appropriately classified as general expenses. To the grower costs, petitioners added the NZKMB's expenses to arrive at the cost of production (inclusive of both grower and NZKMB costs).

To calculate constructed value, petitioners added to the cost of production the statutory minima of ten percent for selling, general, and administrative expenses (SG&A) and eight percent for profit. In accordance with the Department's methodology, we have deducted from the grower costs - packing, principal repayments, and general expenses. We have added to the cost of production the general expenses from the MAF study because they exceed the statutory minimum. To this sum, we have added the statutory minimum for profit and the packing expenses deducted from grower costs.

Based on a comparison of United States price and foreign market value, petitioners have calculated a weighted-average dumping margin of 255.02 percent. Based on our recalculation of the constructed value, we found a weighted-average dumping margin of approximately 220 percent.

Sales Below Cost of Production

Petitioners allege that home market and third country sales of the subject merchandise are made at prices below cost of production. Petitioners have calculated cost of production based on the grower costs presented in the MAF study (adjusted, in accordance with the Department's methodology, to exclude principal repayments and general expenses, but not packing) and the NZKMB's costs (see the "United States Price and Foreign Market Value" section of this notice). Petitioners have compared the cost of production with NZKMB's home market and third country prices obtained from various 1990 and 1991 publications. This analysis provides reasonable grounds to believe or suspect that the NZKMB has made sales in the home market and to third countries at prices below the cost of production. Therefore, pursuant to section 773(b) of the Act, we are initiating an investigation to determine whether home market sales (or third country sales in the event that we determine that the home market is not viable) are made at prices below cost of production.

Initiation of Investigation

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegations.

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of fresh kiwifruit from New Zealand are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 1, 1991.

Scope of Investigation

The product covered by this investigation is fresh kiwifruit. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or containing kiwifruit, are not covered under the scope of this investigation.

Fresh kiwifruit is classified under subheading 0810.90.20.60 of the Harmonized Tariff Schedule (HTS). This HTS subheading is provided for covenience and customs purposes. The written description remains dispositive.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of this action and to make available to it the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary of Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 10, 1991, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from New Zealand of fresh kiwifruit. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: May 15, 1991.

Eric I. Garfinkel,
Assistant Secretary for Import Administration.

[FR Doc. 91-12027 Filed 5-20-91; 8:45 am]
BILLING CODE 3510-DS-M

[A-122-503]

Iron Construction Castings From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 13, 1990, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on iron construction castings from Canada. The review covers four manufacturers/exporters of this merchandise and the period October 28, 1985, through February 28, 1987.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioners and the respondents. Based on the comments received, we have changed the margins from those presented in the preliminary results.

EFFECTIVE DATES: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 32939) the preliminary results of its administrative review of the antidumping duty order on iron construction castings from Canada (51 FR 17220, March 5, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by the review are shipments of certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water, and sanitary systems, classifiable as heavy castings under item number 657.0950 of the Tariff Schedules of the United States (TSUSA) and to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters, classifiable as light castings under TSUSA item number 657.0990. Heavy castings care currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7325.10.00.10 and 7325.10.00.5.. Light castings are classifiable under HTS item numbers 8306.29.00.00 and 8310.00.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers four manufacturers/exporters, Founderie Grand'Mere (Grand'Mere) Founderie Laroche (Laroche), LaPerle Foundry (LaPerle), and Mueller Canada (Muller), of certain Canadian iron construction castings, and the period October 28, 1985, through February 28, 1987.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioners and the respondents.

Comment 1: Petitioners argue that, although they requested that the Department verify the questionnaire responses of all respondents in this administrative review, the Department ignored the statutory requirement that it do so. Petitioners contend that verification of all responses submitted in the first administrative review of an antidumping duty order is required by law when requested by an interested party. Therefore, verification of the responses of Mueller and LaPerle should be conducted before the Department issues the final results of its administrative review.

Department's Position: Section 776(b)(3) of the Tariff Act states that the administering authority shall verify all information relied upon in making a review and determination under section 751(a) if verification is timely requested by an interested party and no verification was made during the two immediately preceding reviews and determination, except where good cause is shown. The instant administrative review is the first review of the antidumping duty order in this case. Thus, despite the petitioner's assertions to the contrary, the verification requirement of section 776(b)(3) of the Tariff Act does not apply because not only have there not been two administrative reviews in which the Department did not conduct a verification of Mueller and LaPerle, but there have been no preceding administrative reviews in this case.

Moreover, in support of their request for verification in the review, petitioners did not demonstrate "good cause" for verification of Mueller and LaPerle in this review, such as failed verifications in the fair value investigation. Because the conditions of section 776(b)(3) were not met, we did not verify the information which Mueller and LaPerle submitted.

Comment 2: Petitioners maintain that the Department applied the incorrect best information available rate for U.S. sales that had no contemporaneous home market product comparisons. In the preliminary results, the Department used the weighted-average margin from the matched sales in the case of Mueller and LaPerle and the "all other" rate from the original investigation for Laroche and Grand'Mere. Because Grand'Mere did not provide home market sales information on models it sold at a different level of trade than the U.S. sales, petitioners assert that the Department should apply the highest transaction margins to those sales for which the Department could not find contemporaneous matches. In addition, petitioners contend that the Department should apply the highest transaction margin or the "all other" rate from the original investigation for those sales for which all four companies in the review failed to provide complete cost information for difference in merchandise adjustments.

Department's Position: We have reviewed the record in this case and determined that the home market sales responses were complete. The inability to make matches in certain instances was due to a lack of home market sales within our usual 90/60 day contemporaneity guideline to match with certain U.S. sales, not due to respondents' failure to provide sales information.

In its response to our questionarie, Grand'Mere noted that it had not included certain sales of merchandise in its home market sales list which it concluded were not comparable to U.S. sales. We did not require Grand'Mere to report the information, and we subsequently verified Grand'Mere's response and found that it had reported all sales of comparable merchandise.

Because we lacked contemporaneous sales for certain models sold in the United States, we asked the firms to provide constructed value information for those models. Respondents informed us, however, that they were unable to provide this information. Therefore, we have applied the best information otherwise available for those sales. The best information available is the weighted-average margin from the matched sales for each firm.

Regarding petitioners' comment that respondents failed to provide cost information for difference in merchandise adjustments, we note that we make our U.S. price and foreign market value (FMV) calculations on a per pound basis and, therefore, did not require respondents to provide cost information for difference in merchandise adjustments.

Comment 3: Mueller argues that, in certain instances, the Department preliminarily based FMV on Canadian sales quantities that are trivial in comparison to the U.S. sales quantities subject to review. Some of the Canadian sales used in this review were sales of "odd lot" quantities which were not usual commercial quantities as required by the statute. Mueller contends that the Department's application of its 90/60

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day contemporaneity guideline resulted in the use of these home market sales. The Department should exclude these sales of trivial quantities in the final results of review.

Department's Position: We disagree. The definition of "usual commercial quantities" in section 771(17) of the Tariff Act provides that, before resorting to the price or prices of a specific aggregate quantity for the purpose of calculating FMV, the Department must be satisfied that there is a positive correlation between different quantities and different prices. For example, if all sales were made at the same price regardless of the quantity sold, then there would be no purpose in disregarding sales in particular quantities because they are not in "usual commercial quantities." Absent a correlation between price and quantity, the Department calculates a weighted-average FMV based on all relevant sales prices, in accordance with section 773 of the Tariff Act.

Mueller has not provided satisfactory evidence that it charged its home market customers different prices for different quantities. In fact, upon review of the U.S. sales listing, we found that many U.S. sales were made in similar quantities as those home market sales Mueller alleges to be trivial. Because information submitted to the Department indicates no specific correlation between prices and quantity, it is reasonable for the Department to use all sales of merchandise in its determination of FMV.

Comment 4: Mueller and LaPerle maintain that, in comparing U.S. and Canadian sales, the Department disregarded the different levels of trade, and, as a result, compared Canadian sales to end-users with U.S. sales to distributors. Respondents assert that the Department's 90/60 day guideline cannot preempt the regulatory requirement that comparisons should be made at the same level of trade. They state that the U.S. and Canadian sales listings submitted to the Department clearly distinguish between sales to distributors and end-users.

Department's Position: For the preliminary results of review, we neglected to differentiate between levels of trade in calculating monthly weighted-average FMVs for comparison to U.S. sales. For the final results, we have compared U.S. sales to the most similar merchandise sold contemporaneously in the home market. In those instances where respondents sold the most similar merchandise in a contemporaneous month at two levels of trade in the home market, we have calculated a weighted-average monthly FMV at the same level of trade as the sale to the United States. If the most similar merchandise was sold contemporaneously only at the other level of trade, we have made that comparison.

In choosing sales to use as the basis for FMV, the statute, our regulations, and our practice require us to consider many factors, including contemporaneity and level of trade. There is no clear hierarchy, however, of when one factor prevails over another. Respondents argue that the preference for making comparisons at the same level of trade should take precedence over the requirement of the use of contemporaneous sales of similar merchandise in the calculation of FMV. In essence, they argue that the Department should ignore the contemporaneity requirement. In this situation, however, the regulations provide a solution to the problem by allowing an adjustment to be made for differences in level of trade. In this case, the Department did not have the information needed to make such an adjustment.

Comment 5: Mueller points out that the Department's preliminary results contain a clerical error with regard to currency conversion.

Department's Position: We agree and have corrected this error in these final results of review.

Comment 6: LaPerle urges the Department to exclude from its foreign market value calculations certain Canadian sales of trivial quantities. LaPerle submits examples of FMVs based on sales of trivial quantities which were compared to U.S. sales amounting to great quantities. In addition, LaPerle notes examples of matches for which the Department did not apply its 90/60 day contemporaneity guideline.

Department's Position: LaPerle has not provided satisfactory evidence that the quantities we used in our weighted-average FMVs were not in the usual commercial quantities. In fact, upon review of the U.S. sales listing, we found that many U.S. sales were made in similar quantities as those home market sales LaPerle alleges to be trivial. See our response to Comment 3.

We note that the examples of inappropriate contemporaneity comparisons LaPerle gives in its case brief reflect computer programming errors in our preliminary results of review, which we have corrected for these final results.

Comment 7: LaPerle maintains that its list of home market sales contained an inadvertent key-punch error with respect to the price of one of its products and requests that the Department correct this error in the final results of review.

Department's Position: We agree. LaPerle submitted documentation to the Department showing that an incorrect price had been reported for the product in question. We have corrected this error in the final results of review.

Comment 8: LaPerle notes a clerical error in the Department's preliminary calculations. The Department neglected to multiply the per unit U.S. price by both the per unit weight of each casting and the quantity of each casting sold.

Department's Position: We agree and have corrected this error in these final results of review.

Comment 9: LaPerle suggests that, in certain instances, the Department should base FMV on Canadian sales that are more contemporaneous to certain U.S. sales. In the preliminary results, the Department compared U.S. sales to home market sales that were outside the Department's 90/60 day guideline for comparison purposes.

Department's Position: Due to a computer programming error, the comparisons in our calculations did not reflect our decisions regarding product comparability and contemporaneous sales. We have corrected this error for the final results.

Comment 10: Laroche and Grand'Mere disagree with the Department's use of best information available in those instances where there were no contemporaneous sales. In the preliminary results, the Department applied the "all other" rate from the original fair value investigation for U.S. sales for which there were no contemporaneous home market sales of comparable merchandise. Respondents suggest that, where there is no home market sale within the 90/60 day contemporaneity guideline, the Department should use the next closest sale date of the appropriate comparison model as best information available.

Department's Position: See our response to comment 2 for our decisions in situations where there were no contemporaneous sales of comparable merchandise.

Comment 11: Laroche argues that the Department compared certain customized home market sales with sales to the United States that were not customized. Laroche explains that the customized products require retooling which increases the price. Laroche requests that customized products not be used for model match comparisons.

Department's Position: During the review, we requested information to substantiate Laroche's claim that the customized products cost more to produce. We did not receive this information. Since we have no reason to believe that the merchandise is not comparable, we included it in our list of home market models on which to base FMV, and made no adjustments for differences in merchandise because this information was not provided.

Comment 12: Laroche maintains that, in certain instances, the Department made model matches which were not consistent with the Department's model match and/or contemporaneity criteria, and Laroche has recommended changes.

Department's Position: We have reviewed our comparisons and made changes where appropriate.

Comment 13: Grand'Mere believes that the Department made certain clerical errors with regard to model match comparisons.

Department's Position: We have reviewed our calculations and made appropriate changes.

Finald Results of Review

As a result of our review of the comments received, we have determined that the following margins exist for the period October 28, 1985, through February 28, 1987:

Manufacturer/exporter	Margin (percent)
Fonderie Grand'Mere	1.37
Fonderie Laroche	1.38
LaPerle Foundry	2.16
Mueller Canada	7.21

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign marekt value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for all shipments of Canadian iron construction castings from these firms. These cash deposit requirements are effective for all shipments from these four firms of Canadian iron construction castings entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next administrative review. The cash deposit requirements in our notice of final results of administrative review (55 FR 460, January 5, 1990) remain in effect for all other firms and new shippers.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(1990).

Dated: May 6, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-12028 Filed 5-20-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-038]

Roller Chain Other Than Bicycle From Japan; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke in Part

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke in part.

SUMMARY: In response to a request by the American Chain Association, the Department of Commerce has conducted an administrative review of the antidumping duty finding on roller chain, other than bicycle, from Japan. The review covers two manufacturers/exporters of this merchandise to the United States, and the period April 1, 1986, through March 31, 1987. The review indicates the existence of *de minimis* dumping margins during this period. As a result of this review, the Department of Commerce intends to revoke the finding with respect to these two manufacturers/exporters.

Interested parties are invited to comment on these preliminary results and intent to revoke in part.

EFFECTIVE DATE: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1987, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (52 FR 10917) of the antidumping duty finding on roller chain, other than bicycle, from Japan (38 FR 9926). On April 30, 1987, the American Chain Association requested an administrative review of the antidumping duty finding. We initiated the review, covering the period April 1, 1986, through March 31, 1987, on May 20, 1987 (52 FR 18937). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review of these companies were published in the Federal Register on May 13, 1987 (52 FR 18004). A Tentative Determination to Revoke the Antidumping Finding with respect to these two companies was published in the Federal Register on August 11, 1988 (53 FR 30325).

Scope of the Review

Imports covered by this review are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle," as used in this review includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain, other than bicycle, was classified under item numbers 652.1400 through 652.3600 of the Tariff Schedule of the United States Annotated (TSUSA) during the period of review. It is currently classifiable under various Harmonized Tariff Schedule (HTS) item numbers from 7315.11.00 through 7016.90.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Daido Kogyo Co., Ltd. (Daido Kogyo), and Enuma Chain Manufacturing Co., Ltd. (Enuma), both manufacturers/exporters of roller chain, other than bicycle, and the period April 1, 1986, through March 31, 1987.

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United States Price

In calculating United States price, the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate. PP was based on the packed, F.O.B. Japan prices to unrelated customers in the United States. ESP was based on packed, duty-paid, delivered prices to unrelated purchasers in the United States. Where applicable, we made adjustments for direct expenses, customs brokerage fees, and the bank charge for letters of credit. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price as defined in section 773 of the Tariff Act.

For Daido Kogyo, home market price was based on packed, delivered prices to unrelated purchasers in Japan. For Enuma, home market price was based on a price list covering the period June 1, 1986, through May 31, 1987. We made adjustments, where applicable, for discounts, movement expenses, and differences between U.S. and home market packing and credit. We also made an adjustment for indirect selling expenses in the home market to offset indirect selling expenses on ESP sales, and to offset U.S. commissions for PP sales. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Period	Margin (percent)
Daido Kogyo Co., Ltd.	04/01/86–03/31/87	.15
Enuma Chain Manufacturing Co., Ltd.	04/01/86–03/31/87	.09

Interested parties may request disclosure and/or an administrative protective order within five days of the date of publication of this notice and may request a hearing within eight days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication.

Since the margins for Daido Kogyo and Enuma are less than 0.50 percent, and therefore *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties from these firms. For any shipments from the remaining known manufacturers and exporters not covered by this review, the cash deposit will continue to be at the rate for each of those firms published in the final results of the last administrative review for each firm. The cash deposit rate for all other exporters/manufacturers shall continue to be 7.04 percent. This is the highest non-BIA rate established in the final results of the most recent administrative review (55 FR 42606; October 22, 1990).

On August 11, 1988, the Department published its tentative determination to revoke the antidumping duty finding with respect to Daido Kogyo and Enuma. Because our tentative determination to revoke was published prior to 1989, we are conducting this revocation under the pre-1989 regulations. In accordance with 19 CFR 353.54 (1985), Daido Kogyo and Enuma have requested revocation of the finding, and as provided for in 19 CFR 353.54(b)(1985), have agreed in writing to an immediate suspension of liquidation and reinstatement of the finding under circumstances specified in its written agreement with the Department. Therefore, pursuant to section 751(c) of the Tariff Act and 19 CFR 353.54 (1985), we intend to revoke the finding with respect to Daido Kogyo and Enuma based on at least two years of sales at either no margins or *de minimis* margins, the respondents' certified statements, and our determination that dumping is not likely to resume. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured and exported by Enuma and Daido Kogyo and entered, or withdrawn from the warehouse, for consumption on or after April 1, 1983.

This administrative review, intent to revoke in part, and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act, (19 U.S.C. 1675(a)(1), (c)), and the Department's regulations at 19 CFR 353.53a (1985) and 353.54 (1985).

Dated: May 10, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-12029 Filed 5-20-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-054]

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on tapered roller bearings, four inches or less in outside diameter, and components thereof, from Japan. The review covers three manufacturers/exporters of the subject merchandise to the United States during the period August 1, 1989, through July 31, 1990. The review indicates the existence of dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the difference between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Sheila Baker, James Doyle, or Lauri Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1990, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (55 FR 32279). The petitioner requested this administrative review. We initiated the review on September 24, 1990 (55 FR 39032), covering the period August 1, 1989, through July 31, 1990. The Department has conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The preliminary results of the last administrative review in this case were published in the Federal Register on April 12, 1991.

Scope of the Review

Imports covered by the review are sales or entries of tapered roller bearings (TRBs) four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers three manufacturers/exporters of TRBs during the period August 1, 1989, through July 31, 1990: Koyo Seiko, K.K. (Koyo), Nachi-Fujikoshi Corporation (Nachi), and Nippon Seiko, K.K. (NSK).

United States Price

The Department used exporter's sales price (ESP) for both Koyo and NSK, as defined in section 772 of the Tariff Act, to calculate U.S. price. ESP was based on the packed, delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign inland freight, ocean freight, marine insurance, export inspection fees, brokerage and handling, U.S. inland freight, U.S. duty, commissions to unrelated parties, U.S. credit, rebates, discounts, warranties, technical expenses, advertising, third-party payments, packing expenses incurred in the United States, and indirect selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

The Department used the home market price for both Koyo and NSK, as defined in section 773 of the Tariff Act, to calculate foreign market value (FMV). In general, the Department relies on monthly weighted-average prices in the calculation of FMV. In consideration of the significant volume of home market sales involved in this review, we examined whether it was appropriate to average respondents' home market sales in accordance with section 777A of the Tariff Act. To determine whether an annual average is representative of the transactions under consideration, we compared the monthly weighted-average home market price for each product with the weighted-average price for the entire review period. Because the weighted-average price for each model sold by Koyo and NSK over the entire period did not vary meaningfully from the monthly weighted-average prices of sales, we consider annual weighted-average prices to be representative of the transactions under consideration. Therefore, we calculated a single FMV for each model sold by Koyo and NSK on an annual weighted-average basis, in accordance with section 777A of the Tariff Act.

When we used home market sales as the basis of comparison, we based FMV on the packed, F.O.B., ex-factory, or delivered price to related purchasers, when an arm's-length relationship was demonstrated, or to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, packing, credit, commissions, and differences in physical characteristics. We adjusted FMV for indirect selling expenses in the home market, limited by the amount of the indirect selling expenses incurred in the United States. We added packing expenses incurred in Japan for U.S. sales to FMV.

Because we found sales below cost in the preceding review, we investigated whether Koyo and/or NSK sold merchandise covered by the finding in the home market at prices below the cost of production. In accordance with section 773(b) of the Tariff Act, we disregarded those sales below the cost of production. If all sales of a particular model were disregarded, we used constructed value as the basis of FMV.

We calculated constructed value in accordance with section 773(e) of the Tariff Act. We included the cost of materials, labor, and factory overhead in our calculations. Although we accepted Koyo's reported profit, we found that Koyo's reported selling, general and administrative expenses (SG&A) were less than the statutory minimum of ten percent of the cost of manufacture. Therefore, we used the statutory minimum for SG&A expenses in our calculation of constructed value. The actual SG&A expenses of NSK, which were greater than the statutory minimum of ten percent of the cost of manufacture, were used in our calculation of constructed value. However, the actual profit of NSK was less than the statutory minimum of eight percent. Therefore, we used the statutory minimum for profit in our calculation of constructed value.

Nachi reported that it had no shipments to the United States of the covered product during the period of review. We confirmed this claim with the U.S. Customs Service.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period August 1, 1989, through July 31, 1990:

Manufacturer/exporter	Margin (percent)
Koyo Seiko, K.K.	2.98
Nachi-Fujikoshi Corp.	18.07*
Nippon Seiko, K.D.	12.01

*No shipments during the period; margin from the last review in which there were shipments.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or on the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entires. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required on shipments of TRBs four inches and under, and components thereof from Japan. For any future entries of this merchandise from an exporter not covered in this or any previous review, and who is unrelated to any reviewed firm, a cash deposit of 12.01 percent shall be required. These deposit requirements are effective for all shipments of the covered merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 13, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12030 Filed 5-20-91; 8:45 am]

BILLING CODE 3510-DS-M

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[A-405-802]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Republic of Romania; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by an importer, the Department of Commerce is conducting an administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished, from the Republic of Romania. The review covers the sole exporter of this merchandise to the United States and the period June 1, 1988 through May 31, 1989. The review indicates the existence of no dumping margins during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 1169) the final results of the last administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished (TRBs), from the Republic of Romania (Romania) (52 FR 23320, June 17, 1987). In June 1989, an importer, Marsuda-Rodgers International, requested that we conduct an administrative review, in accordance with § 353.22(a) of the Commerce Regulations. We published the notice of initiation of the antidumping duty administrative review on July 25, 1989 (54 FR 30915), covering the period June 1, 1988 through May 31, 1989. The Department has now conducted the review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

In the most recent review of this order, the Department treated Romania as a non-market-economy country. Since the respondent has not contested non-market-economy status in this review, we have calculated foreign market value (FMV) in accordance with section 773(c) of the Tariff Act, as amended. We have chosen Yugoslavia as the surrogate for Romania. See the notice of final results of the last administrative review (56 FR 1169, January 11, 1991) for our rationale for choosing Yugoslavia. All currently reviewed sales involve TRBs produced during the period covered by the previous review. Thus, we were able to utilize the Romanian factors of production data and surrogate valuation data obtained from the previous review, which were resubmitted for this review.

Scope of the Review

Imports covered by this review are shipments of tapered roller bearings and parts thereof, finished or unfinished, from Romania. Prior to January 1, 1989, this merchandise was classifiable under item numbers 680.30, 680.39, 681.10, and 692.32 of the Tariff Schedules of the United States (TSUS). Effective January 1, 1989, this merchandise is classifiable under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00, 8482.91.00, 8482.99.30, 8483.20.40, 8483.30.40, and 8483.90.20. The TSUS and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

This review covers the sole Romanian exporter, Tehnoimportexport (TIE), and the period June 1, 1988 through May 31, 1989.

United States Price

In calculating United States price (U.S. price), the Department used purchase price, as defined in section 772 of the Tariff Act. U.S. price was based on the packed f.o.b. price to unrelated purchasers in the United States. We deducted the respondent's packing expenses and, as best information available, added surrogate packing expenses based on packing cost data from bearing producers in Thailand and Singapore, since Yugoslavian packing costs were unavailable. We made deductions for foreign inland freight and handling, based on Yugoslavian surrogate information. No other adjustments were claimed or allowed.

Foreign Market Value

We calculated an annual constructed value using surrogate country data based on a date of production estimated to occur two to four months prior to the date of shipment. We applied the exchange rate that existed in the month of the U.S. sale to convert the constructed value to dollars, in accordance with § 353.60(a) of the Department's regulations (19 CFR 353.60(a) (1990)). Normally, we use certified exchange rates furnished by the Federal Reserve Bank of New York, but no certified rates were available for Yugoslavia. Therefore, all currency conversions were made using exchange rates published by the International Monetary Fund, as best information available.

We made a circumstance-of-sale adjustment to account for the lag between the date of sale and the date of production given the hyper-inflation present in Yugoslavia.

We used the following data to value the factors of production:

- We based the values for steel used to manufacture the majority of the inner and outer rings (AISI 4118), the rollers and some rings (SAE 52100), and the cages (DIN 1623) on official Eurostat data for Yugoslavian imports of these types of steel from the European Community;
- In the absence of reliable data from the surrogate country, as best information available, we based scrap value on the Eurostat data for world exports of alloy scrap steel to Portugal;
- We based labor rates on data published by the International Labour Office for Yugoslavia;
- We based freight costs on public rates obtained from Yugoslavia;
- As best information available, we based overhead and indirect labor costs on the costs of a bearing company in Portugal;
- We used the statutory minimum of ten percent of the sum of materials and fabrication costs for general expenses;
- We used the statutory minimum of eight percent of the sum of materials costs, fabrication costs, and general expenses for profit;
- We added U.S. packing to the constructed value, in accordance with section 773(e)(1)(c) of the Tariff Act. For U.S. packing, we used the best information available, as described in the United States Price section of this notice.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Tehnoimport-export	06/01/88-05/31/89	0.00

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs and/or written comments within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing.

The Department will instruct the Customs Service to liquidate, without regard to antidumping duties, on all appropriate entries.

Since the margin for TIE is zero percent, the Department shall not require a cash deposit of dumping duties on entries of this merchandise from TIE. For all other exporters/manufacturers not related to TIE, no cash deposit shall be required. These deposit requirements are effective for all shipments of TRBs from Romania entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 12 CFR 353.22 (1990).

Dated: May 8, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-12031 Filed 5-20-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration/International Trade Administration Department of Commerce.

ACTION: Notice of final results of antidumpting duty adminstrative reviews.

SUMMARY: On January 30, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan. The reviews cover one manufacturer/exporter of this merchandise to the United States and the periods March 1, 1986 through February 28, 1987 and March 1, 1987 through February 29, 1988.

We gave interested parties an opportunity to comment on our preliminary results. At the request of the respondent, we held a hearing on April 8, 1991.

Based on our analysis of the comments received, we have changed the preliminary results of these reviews. The final margins are 4.15 percent and 0.52 percent, respectively.

EFFECTIVE DATE: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: David S. Levy or Melissa G. Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 3447) the preliminary results of its administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). We have now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Reviews

Imports covered by the reviews are shipments of television receivers, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. During the review periods, television receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 8528.10.80 and 8528.20.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

These reviews cover one manufacturer/exporter to the United States of Japanese television, Mitsubishi Electric Corporation (Mitsubishi), and the periods March 1, 1986 through February 28, 1987 and March 1, 1987 through February 29, 1988.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request of Mitsubishi, we held a public hearing on April 8, 1991. We received case briefs and rebuttal comments from two domestic parties to the proceeding, Zenith Electronics Corporation (Zenith) and the Unions (the United Electrical Workers of America, Independent, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, and the Industrial Union Department, AFL-CIO), and Mitsubishi.

We note at the outset that in its prehearing brief, Zenith listed several issues that have been raised in separate prior proceedings. However, there is no discussion of these issues in Zenth's brief or elsewhere in the record of these reviews. Zenith indicates that it chose not to burden these proceedings by rearguing these issues, and merely raised them in the hope that the Department would change its views. Since Zenith did not discuss these issues, we deem them not to have been properly raised in the context of these reviews, and we have not addressed them in these final results.

Comment 1: Mitsubishi argues that the Department erred in applying to Mitsubishi's eighth and ninth reviews a new "rule" requiring that advertising and sales promotion expenses be allocated on a "product-line" basis. Mitsubishi states that the Department's descision to reject the "model-specific" data submitted by Mitsubishi was wrong in both law and equity, and recommends that the Department use Mitsubishi's model-specific data to calculate its home market advertising and sales promotion expenses.

Mitsubishi argues further that even if the Department were correct in using its product-line "rule" in the eighth and ninth reviews, it applied the rule incorrectly because it calculated home market advertising and sales promotion expenses using data for the entire class or kind of merchandise, instead of

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product-line data. Mitsubishi argues that, in this instance, it is incorrect to treat all televisions as one product line.

According to Mitsubishi, projection televisions (PTVs) and 35-inch screen "direct view" televisions (35-inch CTVs) are sufficiently different from all other televisions, and from each other, to constitute separate product lines. Mitsubishi asserts that its PTVs and 35-inch CTVs are marketed to affluent consumers with advertising that emphasizes the large screen size and other features that are unique to these Mitsubishi televisions. In contrast, Mitsubishi claims that all brands of conventional televisions generally have similar features and are marketed using advertising that focuses on the price of the television. Mitsubishi argues further that the production processes and physical characteristics of PTVs and 35-inch CTV differentiate them from each other, and from conventional televisions. Finally, Mitsubishi states that it maintains separate advertising and sales promotion expense records for PTVs 35-inch CTVs, and conventional televisions. As a result, Mitsubishi recommends that if the Department uses a product-line methodology for allocating advertising and sales promotion expenses, it should consider PTVs and 35-inch CTVs as separate product lines.

Zenith and the Unions respond that the Department was correct in using the product-line rule in these reviews. Both parties also reject Mitsubishi's argument that PTVs and 35-inch CTVs should be treated as separate product lines. Both parties contend that Mitsubishi's agrument relies on screen size as the basis for determining the product lines. According to Zenth and the Unions, the Department has never used screen size to segment the class or kind of merchandise, and the International Trade Commission has consistently refused to consider televisions as separate like products on the basis of screen size. As a result, Zenith and the Union argue that the Department was correct in using data for the class or kind of merchandise in calculating product-line advertising and sales promotion expenses.

Department's Position: We agree in part with Mitsubishi. In this instance, we believe that model-specific allocations of advertising and sales promotion expenses lead to distorted results. Given that all PTVs and all 35-inch CTVs share certain characteristics, most notably large size and high price, we believe that advertisements and sales promotion efforts for specific models of PTV or 35-inch CTV have a spillover effect within each of these groups of televisions. Since model-specific allocations ignore the beneficial effects that advertising and sales promotion for one specific model of PTV or 35-inch CTV may have on sales of other models of the same type, we believe that they do not reflect Mitsubishi's experience in advertising the types of televisions subject to these reviews. As a result, we have not accepted the first of Mitsubishi's recommendations regarding the allocation of advertising and sales promotion expenses.

However, we agree with Mitsubishi's assertions that the televisions subject to these reviews, PTVs and 35-inch CTVs, differ markedly from conventional televisions because they offer unique features not found in conventional televisions, and are marketed to affluent consumers who are more concerned with the advantages of the large viewing screen than with the price of the television. We also agree that there are significant differences between PTVs and 35-inch CTVs, especially in the characteristics of the video image produced by each type of television. Mitsubishi recognizes the distinctions between the three groups of televisions in its accounting records; verification documents confirm that Mitsubishi does maintain separate advertising and sales promotion records for PTVs and for 35-inch CTVs. Moreover, the advertising and sales promotion expenses for PTVs and 35-inch CTVs are disproportionately large, so that allocating these expenses over sales of all televisions would not reflect Mitsubishi's experience in marketing these types of televisions. As a result, we determine that, for the purpose of allocating advertising and sales promotion expenses, PTVs and 35-inch CTVs constitute distinct product groups. Accordingly, we have allocated all PTV advertising and sales promotion expenses over all PTV sales, and all 35-inch CTV advertising and sales promotion expenses over all 35-inch CTV sales to calculate the direct advertising and sales promotion expenses for these final results.

Comment 2: Mitsubishi argues that the Department incorrectly included "Miscellaneous Direct Selling Expenses" and "Distributor Finance Expenses" in its COP calculations. According to Mitsubishi, these expenses were already reported, as royalty expenses and as "Distributor Indirect Selling Expenses," in Mitsubishi's response to the Department's COP questionnaire. As a result, Mitsubishi claims that the Department double-counted these expenses by including them as separate categories in its COP calculations. Mitsubishi asserts that the COP data that it submitted were verified by the Department, whose personnel found no discrepancies in Mitsubishi's submissions during the verifications. As a result, Mitsubishi contends that the Department has no grounds for including these two categories of expenses in its COP calculations.

Department's Position: We agree with Mitsubishi. We verified the accuracy and completeness of Mitsubishi's COP questionnaire response. As a result, we have no basis for including "Miscellaneous Direct Selling Expenses" and "Distributor Finance Expenses" as separate items in our COP calculations, and, therefore, have excluded these two categories of expenses from our COP calculations for these final results.

Comment 3: Mitsubishi argues that the Department incorrectly calculated the interest expenses that were added to COP by including all interest expenses, while allowing only a portion of short-term interest income as an offset to those expenses. According to Mitsubishi, the Department must treat all items of a particular type of interest in the same manner, regardless of whether they represent income or expense. Therefore, Mitsubishi asserts that the Department should either allow all interest income as an offset to interest expense, or include only short-term interest expenses and income in its calculations.

Department's Position: We disagree with Mitsubishi. We include interest expenses in our calculations, and allow interest income as an offset to interest expenses, if the interest in question is related to current operations. In the absence of evidence to the contrary, we presume that capital borrowed by a respondent company is used to fund the company's current operations. All interest expense incurred on those borrowings is therefore considered part of the company's production costs. We commonly allow respondent companies to offset a portion of their interest expense with interest income earned on certain short-term investments since such investments are considered to be temporary positions used to hold working capital until it is needed for operations. We do not consider investments held in long-term instruments to be sources of current working capital, and therefore do not allow income earned on such investments as an offset to interest expense and the company's cost of production. See Final Results of Administrative Review; Titanium Sponge From Japan (54 FR 13404, April 3, 1989).

In our preliminary results, we did not allow offsets to interest expenses for interest income earned from dividends, bank deposits, and long-term loans, because we determined that the income was not related to Mitsubishi's current operations. In the absence of any evidence that this income was related to Mitsubishi's current operations, we did not allow it as an offset to interest expense for these final results. Similarly, in the absence of any evidence that Mitsubishi's long-term interest expenses were not related to current operations, we retained them in our calculations of Mitsubishi's interest expenses.

Comment 4: Mitsubishi argues that the Department erroneously included "indirect selling expenses" for both distributors and sales offices in its preliminary COP calculations. According to Mitsubishi, distributors and sales offices provide alternative channels of distribution; for any given transaction, a television will pass through either a distributor or a sales office, but not both. As a result, Mitsubishi states that the Department should include only one of these two types of "indirect selling expenses" in its COP calculations, depending upon the distribution channel through which the merchandise was sold.

Department's Position: We agree with Mitsubishi. Since distributors and sales offices constitute altenative channels of distribution, including "Indirect Selling Expenses" for both in our COP calculations would have artificially increased Mitsubishi's production costs. Therefore, for these final results, we have included only the "Distributor Indirect Selling Expenses" in our COP calculations for all sales, as Mitsubishi did in its COP questionnaire response.

Comment 5: Mitsubishi argues that the Department erroneously excluded below-cost home market sales from its preliminary analysis. According to Mitsubishi, such sales were not made in substantial quantities over an extended period of time. Moreover, Mitsubishi contends that it has recoverd the costs of the home market models subject to these reviews over the life cycles of these models.

In addition, Mitsubishi notes that any below-cost sales of one model, the LVP-400, occurred as a result of a program instituted by Mitsubishi to liquidate existing stocks of this model as a new model was being introduced. Mitsubishi argues that Congress specifically intended that sales of obsolete or end-of-model merchandise not be excluded from consideration, and that, therefore, the Department should not exclude from its analysis below-cost sales of the LVP-400.

Department's Position: We disagree with Mitsubishi. We found that below-cost sales of models 37C960 and LVP-400 in the eighth review, and models LVP. 407, 37C960, and 37C963 in the ninth review, substantially exceeded the threshold of 10 percent of total sales of each model, and occurred throughout the review periods. In addition, we found that production costs substantially exceeded the adjusted selling prices to which they were compared; this was true throughout the review periods.

Although Mitsubishi argues that it has recovered its costs over the lives of these models, we note that this argument does not fulfill the requirements of section 773(b)(2) of the Tariff Act. This provision requires us to examine whether the prices determined to be below cost in the investigatory period are sufficient to recover costs within a reasonable period of time, and not whether prices over the life cycle of the product have been sufficient to permit cost recovery. Mitsubishi has provided us with no reason to believe that the below-cost prices found in these reviews are sufficient to permit the recovery of costs within a reasonable period of time. As a result, we have determined that Mitsubishi made below-cost sales in substantial quantities over an extended period of time, at prices that would not permit cost recovery within a reasonable period of time, and have excluded below-cost sales of models LVP-407, 37C960, and 37C963 from our analysis.

With regard to Mitsubishi's arguments about model LVP-400, we agree that the legislative history of the below-cost provision of the Trade Act of 1974 explicitly states that it is normal business practice both in the United States and in foreign countries to sell discontinued merchandise at less than cost. Therefore, such sales should not be automatically excluded from consideration. See H.R. Rep. No. 571, 93d Cong. 1st Sess. 71; S. Rep. No. 1298, 93d Cong., 2d Sess. 7310 (1973). However, we conclude that it would be inappropriate to compare close-out sales of model LVP-400 for the last two monhts of the review period, when it was discontinued in favor of the LVP-407, with U.S. sales of such or similar models that were not being discontinued. (See *Color Television Receivers From Korea; Final Results of Antidumping Duty Administrative Review, 53 FR 24975, July 1, 1988 (Comment 31)).*

Final Results of the Reviews

As a result of the comments received, we have revised our preliminary results for Mitsubishi, and we determine the margins to be:

Manufacturer	Review No.	Period of review	Margin (percent)
Mitsubishi	8	03/01/86–02/28/87	4.15
	9	03/01/87–02/29/88	0.92

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 35.40 percent will be required for Mitsubishi; this is Mitsubishi's rate from the eleventh administrative review. For shipments of this merchandise manfactured by Funai Electric, Fujitsu General, Ltd., Hitachi, Ltd., Mitsubishi Electric Corporation, NEC, Sanyo Electric Company, Ltd., Seiko Epson Corporation, Sharp Corporation, Toshiba, or Victor Corporation of Japan, the cash deposit rate will continue to be the same as the rates published in the final results of the last administrative reviews of these firms (56 FR 5392, February 11, 1991).

For all other manufacturers/exporters of this merchandise, a cash deposit of estimated antidumping duties of 38.26 percent shall be required. This is the highest non-BIA (best information available) rate for the most current review for any firm in this case. These deposit requirements will be effective for all shipments of Japanese television receivers, monochrome or color, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22).

Dated: May 8, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-12032 Filed 5-20-91; 8:45 am]

BILLING CODE 3510-DS-M

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Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application No. 89-00010.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to the Air-Conditioning & Refrigeration Institute ("ARI"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

Air-conditioning and refrigeration equipment, including unit coolers; drinking water coolers; mobile refrigeration systems; automatic commercial ice makers (self-contained, split system, and ice storage bins); humidifiers (residential); humidifiers (commercial); flow and contaminant control products; accessories other than valves; air heating and cooling coils; chemicals (refrigerants, lubricating oils, desiccants and other chemicals) used in conjunction with the refrigerating system; central station air handling units; room fan coil and air induction units; air control and distribution devices; air filters; air cooled/evaporative condensers; automatic controls; packaged terminal heat pumps; packaged terminal air conditioners; water source heat pumps (ARI Standard 320); water source heat pumps (ARI Standards 325); single package air-conditioning (0-64,999 Btuh); single package air-conditioning (65,000-134,999 Btuh); split system air-conditioning units (0-64,999 Btuh); split system air-conditioning units (65,000-134,999 Btuh); single package and split system heat pumps (0-64,999 Btuh); single package and split system heat pumps (65,000-134,999 Btuh); compressors and condensing units; fans and blowers; water cooled condensers, receivers, and liquid coolers; unitary large equipment (10-50 tons); unitary large equipment (over 50 tons); large tonnage liquid chillers; reciprocating chillers.

2. Services

Engineering and architectural services related to Products and to turn-key contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

3. Technology Rights

Patents, trademarks, service marks, trade names, copyrights (including neighboring rights), trade secrets, know-how, semiconductor mask works, utility models, industrial designs, petty patents, plant breeders rights, and *sui generis* forms of computer software protection associated with Products or Services.

4. Export Trade Facilitation Services (as they relate to the Export of Products, Services, and Technology Rights)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; services related to compliance with customs requirements; transportation; trade documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; liaison with U.S. and foreign government agencies, trade associations, and banking institutions; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except: (a) The United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, America Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands); and (b) Canada.

Export Trade Activities and Methods of Operation

1. ARI and/or one or more of the Members may:

a. Engage in joint bidding or other joint selling arrangements for Products and Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers of Products for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and Services;

e. Solicit nonmember Suppliers to sell their Products and/or Services or offer their Export Trade Facilitation Services through the certified activities of ARI and/or the Members; provided, however, that ARI and/or one or more of the Members shall make such solicitations or offers to nonmember Suppliers on a transaction-by-transaction basis only and then only when the Members are unable to supply, at a price competitive under the circumstances, the requisite Products or Services for such transaction; provided further that ARI and/or such Member may exchange only such information with such nonmember Suppliers as is reasonably required by such transaction;

f. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets;

g. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets;

h. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets; and

i. Operate and establish jointly owned subsidiaries or other joint venture entities, owned exclusively by Members, to export Products to Export Markets, operate warranty, service, and training centers in Export Markets, and provide Export Trade Facilitation Services to Members; provided, however, that any such jointly owned subsidiaries or other joint venture entities adhere to paragraph 3(c) of the Export Trade Activities and Methods of Operation.

2. ARI and/or the Members may enter into agreements wherein they agree to act in certain countries or markets as the Members' exclusive or nonexclusive Export Intermediary for Products and/or Services in that country or market. In exclusive Export Intermediary agreements, (i) ARI or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through ARI or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. ARI and/or any Member when acting as an exclusive Export Intermediary shall not unreasonably refuse to supply its services on non-discriminatory terms to those Members that are parties to the exclusive arrangement and which request such services.

3. ARI and/or the Members may exchange and discuss the following types of information solely about Export Markets:

a. Information that is already generally available to the trade or public;

b. Information about sales or marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demand in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the competitors' prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export, provided, however, that exchanges of information and discussions as to export prices, Product quality and/or quantity, source, and delivery dates must be on a transaction-by-transaction basis only and involve only those Members which are participating or have a genuine interest in participating in such transaction;

d. Information about terms, conditions and specifications of particular contracts for sale in Export Markets to be considered and/or bid on by ARI and the Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about ARI's or the Members' export operations, including without limitation sales and distribution networks established by ARI or the Members in Export Markets, and prior export sales by Members (including prior export price information).

4. ARI may provide the Members or other Suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products to Export Markets. This may be accomplished by ARI, or by agreement with Members or other parties.

5. ARI and/or the Members may meet to engage in the activities described in paragraphs one through four above.

6. ARI and/or the Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

7. Members may license and sub-license Technology Rights in Export Markets to non-members, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and such non-member without coordination with ARI or any other Member. Such licensees and sub-licenses may: convey exclusive or non-exclusive rights in Export Markets; impose requirements as to the prices at which Products or Services incorporating, or manufactured or produced using, Technology Rights may be sold or leased in Export Markets; impose requirements as to pricing and other terms and conditions of sub-licenses of Technology Rights in Export Markets; restrict licensees and sub-licensees as to fields of use, or maximum sales or operations, in Export Markets; impose territorial restrictions (relating to any Export Market) on foreign licensees and sub-licensees; require the assignment back or exclusive or non-exclusive grantback to the licensor Member of rights (in Export Markets) to all improvements in Technology Rights, whether or not such improvements fall within the field of use authorized in such license; require package licensing of Technology Rights; and require products or services (including, but not limited to, Products and Services) to be used, sold, or leased as a condition of the license of Technology Rights.

Definitions

1. *Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Members* (within the meaning of § 325.2(1) of the Regulations) means the firms listed in appendix A (attached hereto).

3. *Supplier* means a person who produces, provides, or sells a Product, Service, and/or Export Trade Facilitation Services, whether a Member or nonmember.

A copy of the Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 15, 1991.

George Muller,

Director Office of Export Trading Company Affairs.

Appendix A

ARI Certificate Members (members in addition to applicant):

Aerofin Corporation; Airguard Industries, Inc.; Airmax, Inc.; Artesian Building Systems, Inc.; Aspen Manufacturing, Inc.; ATOCHEM North America; Baltimore Aircoil Company, Subsidiary of Amsted Industries, Inc.; Barber-Colman Company, Environmental Controls Division; Bard Manufacturing Company; Brookside Group, Inc.; Carnes Company, Inc.; Copeland Corporation; Crystal Tips, Inc.; Dunham-Bush, Inc.; Elmwood Sensors, Inc.; Evcon Industries, Inc.; Furnas Electric Company; Goodman Manufacturing Corporation; Halsey Taylor, Scotsman Industries; Heatcraft Inc.; Honeywell Inc.; Hupp Industries, Inc.; Johnson Controls, Inc., Control Products Division; Kysor-Warren; Lake Air International, Inc.; Lau Industries; Lennox International, Inc.; Mammoth, A Nortek Company; Marvair Company; Miller-Picking Corporation; Morrison Products, Inc.; NIBCO, Inc., OEM Division; NORDYNE Inc.; Phillips Industries, Inc.; Ranco; Revco, Inc.; Rheem Manufacturing Company; SnyderGeneral Corporation; Standard Refrigeration Company; Sterling Radiator Division, Reed National Corp.; Sundstrand Heat Transfer, Inc., Sundstrand Corp.; Superior Valve Company, Division of Amcast Industrial Corp.; Titus Products, Division of Phillips Industries, Inc.; Trion, Inc.; Turbotec Products, Inc.; Vilter Manufacturing Corp.; Virginia KMP Corp.; WaterFurnace International, Inc.; York International Corp.;

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A. D. Auriema Inc.; and Win-Tron Electronics Ltd.

[FR Doc. 91-11960 Filed 5-20-91; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Request for Aluminum-Killed Cold-Rolled Steel Sheet

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments: certain aluminum-killed cold-rolled steel sheet.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 1,100 metric tons of certain aluminum-killed cold-rolled steel sheet for the remainder of 1991 under the U.S.-EC steel arrangement.

SHORT-SUPPLY REVIEW NUMBER: 50.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain aluminum-killed (AK) cold-rolled steel sheet used in the manufacture of aperture or shadow masks, a fundamental component of color television picture and data display tubes. On May 14, 1991, the Secretary received an adequate petition from Buckbee Mears Cortland, Inc. ("BMC") requesting a short-supply allowance for a total of 1,100 metric tons of certain AK cold-rolled steel sheet for the remainder of 1991 under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products. BMC states that the requested product is not produced domestically and that its potential foreign supplier only can supply this product during this time period with short-supply export licenses.

The requested product meets the following specifications:

Chemistry (in maximum values): Carbon (0.004 percent, aim 0.002 percent); Silicon (0.040 percent); Sulphur (0.030 percent); Aluminum (0.070 percent); Nitrogen (0.008 percent); Manganese (0.450 percent); Copper (0.080 percent); and Phosphorus (0.035 percent);

Width range (and tolerance): 15 in. to 30 in. (+/− 0.04 in.);

Thickness range (and tolerance): 0.001 in. to 0.0102 in. (+0.00028 in., −0.00020 in.);

Coil weight: 1.5 to 3.0 metric tons, with up to 20 percent in 0.5 to 1.5 metric ton weight.

Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Regulations require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filled if the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary, on the basis of available information, finds that this product is not produced in the United States at this time. Therefore, in accordance with section 4(b)(4)(B)(i)(III) of the Act and § 357.106(b)(1)(iii) of Commerce's Short-Supply Regulations, the Secretary will apply a rebuttable presumption that this product is presently in short-supply. Unless domestic steel producers provide comments in response to this notice proving that they can and will produce the requested quantity of this product within the desired period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than May 29, 1991.

COMMENTS: Interested parties wishing to comment on this review must send written comments not later than May 28, 1991 to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximately presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Mark B. Brechtl or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377-1386 or (202) 377-0159.

Dated: May 17, 1991.

Majorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-12100 Filed 5-20-91; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 90-205R. *Applicant:* National Institutes of Health, Gerontology Research Center, NIA, 4940 Eastern Avenue, room 3E16, Baltimore, MD 21224. *Instrument:* Spectro-fluorimeter, Model SF-17. *Manufacturer:* Applied Photophysics, Ltd., United Kingdom. *Intended Use:* Original notice of this resubmitted application was published in the Federal Register of December 11, 1990.

Docket Number: 91-058. *Applicant:* The Ohio State University, 116 West 19th Avenue, Columbus, OH 43210.

Instrument: Electron Microscope, Model JEM-2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for general morphological and structural studies of ceramics, and metals, including high temperature superconductors, high temperature metal alloys, evaporated metallic thin films, silicon bicrystals, soils and geological minerals, polymers and possibly some biological samples. *Application Received by Commissioner of Customs:* April 2, 1991.

Docket Number: 91-058. *Applicant:* National Institutes of Health, NICHD, 9000 Rockville Pike, 18T/101, Bethesda, MD 20892. *Instrument:* Electron Microscope, Model CM 10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for the study of the biology of the cell, including protein sorting, membrane cycling and organelle biogenesis. Experiments will be conducted using a biochemical approach; a specific molecule can be followed from its synthesis to the arrival to its specific site in the cell. Parallel morphological studies using electron microscopic techniques will be carried out to confirm the biochemical studies. *Application Received by Commissioner of Customs:* April 8, 1991.

Docket Number: 91-059. *Applicant:* NOAA/PMEL/MSRD, 7600 Sandy Point Way, NE, Seattle, WA 98115. *Instrument:* Drifters Argos. *Manufacturer:* SIEMAC Ltd., Canada. *Intended Use:* The instrument will be used in a research program conducted to understand the processes which lead to variations in recruitment. The focus has been to elucidate physical and biological phenomena and to understand how complex interactions between these two affect rates of mortality. The buoys will be deployed in the water and allowed to drift with the currents while their locations are collected by the ARGOS Satellite System. *Application Received by Commissioner of Customs:* April 12, 1991.

Docket Number: 91-060. *Applicant:* Iowa State University of Science and Technology, Purchasing Department, Ames, IA 50011. *Instrument:* Electron Beam Accelerator, Type Circe II. *Manufacturer:* CGR, France. *Intended Use:* The instrument is part of an irradiation facility which will be used for demonstration and research activities primarily with meat. The research objectives will be to:

(1) Assess economic feasibility of meat irradiation and impact on livestock and meat industry using the on-site irradiator as a model,

(2) Evaluate the effects of irradiation on meat relating to nutritional quality, sensory quality, packaging material interactions and microbial safety and profile,

(3) Conduct educational programs and assess their impact on consumer knowledge and acceptance of irradiation of meat,

(4) Test marketability of irradiated meat, and

(5) Develop information for USDA regulation.

Application Received by Commissioner of Customs: April 15, 1991.

Docket Number: 91-061. *Applicant:* University of Minnesota, Department of Geology and Geophysics, 310 Pillsbury Drive, Minneapolis, MN 55455. *Instrument:* High-Pressure/High-Temperature Materials Testing Apparatus. *Manufacturer:* Anutech Pty., Ltd., Australia. *Intended Use:* The instrument will be used to study the mechanical properties of rocks and silicate minerals while investigating the strength of the minerals olivine and enstatite to temperatures of 1400°C, to hydrostatic pressures of 700 MPa, and to uniaxial loads of 100 kN. In addition, the instrument will be used for educational purposes in two courses: (i) Solid-Earth Geophysics III, Physical Properties of Rocks and Minerals and (ii) Geophysics for Geologists which focus on the physical properties of rocks and minerals. *Application Received by Commissioner of Customs:* April 15, 1991.

Docket Number: 91-062. *Applicant:* Ames Laboratory—U.S. Department of Energy, Iowa State University, 133 Spedding Hall, Ames, IA 50010-3020. *Instrument:* Nanosecond Laser Photolysis Spectrometer. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* The instrument will be used for studies of various materials which are mostly transition metal complexes and organometallic compounds, including compounds of the elements Cr, Fe, V, Co, Rh, and Cu. The objectives of the research is to characterize the chemical reactivity of reactive molecules and excited states that are involved in reactions leading to synthetic fuels. In addition, the instrument will be used to train graduate students in research methodologies in chemistry. *Application Received by Commissioner of Customs:* April 16, 1991.

Docket Number: 91-063. *Applicant:* Georgia State University, 33 Gilmer Street, Atlanta, GA 30303. *Instrument:* Peltier Cooled CCD Camera. *Manufacturer:* Wright Instruments, Ltd., United Kingdom. *Intended Use:* The instrument will be the detector for a new spectroscopic facility which will be used to analyze the spectra of stars for several scientific purposes. The facility would be used to measure radial velocities near critical phases of those speckle binaries with periods of the order of one year or less, those with eccentric orbits, and those with faint secondary components. Another effort will be to determine whether the mass loss of Be stars into the surrounding disk is the result of both rapid rotation and the presence of nonradial pulsations. *Application Received by Commissioner of Customs:* April 18, 1991.

Docket Number: 91-064. *Applicant:* Bigelow Laboratory for Ocean Sciences, McKown Point, West Boothbay Harbor, ME 04575. *Instrument:* Electron Microscope with Imaging Spectrometer, Model EM902 PC/ST/C45. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used for (1) cellular studies, immunogold labeling for localization studies and elemental analysis, (2) indentifying and verifying phytoplankton, (3) identifying organisms and particles sorted by the instruments in the Flow Cytometry/Cell Sorting Facility and for research by visiting scientists. *Application Received by Commissioner of Customs:* April 22, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-12095 Filed 5-20-91; 8:45 am]

BILLING CODE 3510-DS-M

University of North Carolina at Chapel Hill; Decision of Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-015. *Applicant:* The University of North Carolina at Chapel Hill, Chapel Hill, NC 27599. *Instrument:* Mass Spectrometer, Model VG Sector 54. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 56 FR 8185, February 27, 1991.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is

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intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides: (1) A computer-controlled, 8-cup collector array, (2) an ion-counting Daly detector and (3) an abundance sensitivity of less than 0.3 ppm at RP=400 for uranium. This capability is pertinent to the applicant's intended purpose.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR. Doc. 91-12097 Filed 5-20-91; 8:45 am]

BILLING CODE 3510-DS-M

University of California, Davis; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-011. *Applicant:* University of California, Davis, Davis, CA 95616. *Instrument:* Beam Splitters for FTIR Spectrometer. *Manufacturer:* Bomen, Inc., Canada. *Intended Use:* See notice at 56 FR 6184, February 27, 1991.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-12098 Filed 5-20-91; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Department of The Navy

Navy Resale System Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory committee Act (5 U.S.C. app. 2), notice is given that the Navy Resale System Advisory Committee will meet May 17, 1991 in Jacksonville, Florida. Sessions of the meeting will commence at 7:45 a.m. and 8 a.m. The 8 a.m. to 4 p.m. session will be closed to the public because it is likely to relate solely to internal agency personnel rules and practices; may disclose trade secrets and commercial or financial information; and, may involve information which, if disclosed prematurely, would be likely to significantly frustrate implementation of a proposed agency action. The Secretary of the Navy has therefore determined that the 8 a.m. to 4 p.m. session of the meeting will be closed to the public because it will be concerned with matters listed in section 552b(c) (2), (4) and (9)(B) of Title 5, United States Code.

Operational necessity constitutes an exceptional circumstance not allowing notice to be published in the federal register at least 15 days before the date of this meeting.

For further information concerning this meeting contact: Commander W.T. Kaloupek, SC, USN, Naval Supply Systems Command, NAVSUP 09B, Room 606, Crystal Mall, Building No. 3, Arlington, VA 22202, Telephone Number: (703) 695-5457.

Dated: May 13, 1991.

Wayne T. Baucino,

LT, JAGC, USNR, Alternate Federal Register, Liaison Officer.

[FR Doc. 91-12101 Filed 5-17-91; 11:32 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Advisory Council on Educational Research and Improvement; Meeting

AGENCY: National Advisory Council on Educational Research and Improvement, Education.

ACTION: Full Council Meeting of the National Advisory Council on Educational Research and Improvement.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required section 10 (a) (2) of the Federal Advisory Committee Act.

DATES: June 10 and 11, 1991.

ADDRESSES: The Council will meet on June 10 from 10 a.m. to 1 pm. in Conference Room 3000, 400 Maryland Avenue, SW. From 1:30 to 4 p.m. the Council will meet in the U.S. Department of Education Research Library, 80 F Street, NW., Washington, DC 20208. On June 11 the Council will meet in a conference room (location to be posted) in the Grand Hyatt Washington Hotel, 1000 H Street, NW., Washington, DC 20001 from 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 330 C Street, SW., Suite 4076, Washington, DC 20202-7579, (202) 732-4504.

SUPPLEMENTARY INFORMATION: Meetings of the Council are open to the public. The agenda for June 10 will include briefings on Department of Education policies and procedures and on the research implications of America 2000, the President's Education Strategy, as well as the efforts of the Office of Educational Research and Improvement to fulfill the nation's education goals. On June 11, the Council will consider issues of demographics and plan its agenda for the rest of Fiscal Year 91. Records are kept of all Council Proceedings and are available for pubic inspection at the Office of the National Advisory Council on Educational Research and Improvement, 330 C Street, SW., suite 4076, Washington, DC 20202-7579, from 9 a.m. to 5 p.m. Monday through Friday.

Dated: May 15, 1991.

Mary Grace Lucier,

Executive Director.

[FR Doc. 91-11957 Filed 5-20-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ91-7-63-001]

Carnegie Natural Gas Co.; Compliance Filing

May 14, 1991.

Take notice that on May 7, 1991, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1:

Sub Fifth/Twelfth Revised Tariff Sheet No. 9

The above tariff sheet is proposed to be effective April 1, 1991.

Carnegie states that it is refiling Fifth-Twelfth Revised Tariff Sheet No. 9, originally filed by Carnegie on March 28, 1991, to comply with the Commission's order issued on April 26, 1991 in Docket No. TQ91-7-63-000. Carnegie states that, as directed by the Commission, the revised tariff sheet restates the amount originally shown in the cumulative adjustment column relating to the average cost of commodity purchased gas by enclosing that figure in parentheses to indicate a negative number. Carnegie states that this correction has no impact on the effective sales rates collected by Carnegie pursuant to this tariff sheet.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 21, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11931 Filed 5-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-4-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 14, 1991.

Take notice that Eastern Shore Natural Gas Company (ESNG) on May 8, 1991, tendered for filing certain revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with the proposed effective date of June 1, 1991.

Second Revised Sheet No. 6B

ESNG states that the purpose of the filing is to revise the billing amounts shown on First Revised Sheet No. 6B to comply with the provisions of ordering paragraph B of the Commission's August 26, 1988 order in ESNG's Docket No. RP88-226-000. ESNG states that the referenced order requires ESNG to file revised billing amounts to track any modifications to Transcontinental Gas Pipe Line Corporation's (Transco) take-or-pay charges ordered by the Commission.

ESNG states that the revised tariff sheets are being mailed to ESNG's jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 21, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11932 Filed 5-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-7-26-001]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

May 14, 1991.

Take notice that on May 9, 1991, Natural Gas Pipeline Company of America (Natural) tendered for filing Substitute Second Revised Sheet No. 182 and Substitute First Revised Sheet No. 184 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of the revised tariff sheet is June 1, 1991.

Natural states that the instant filing is intended to correct errors due to a flawed computer program in Natural's filing of May 1, 1991, in the above-docketed proceeding. Natural states that the filing reflects revised customer paments for October 1990, as set forth on Worksheet D, pages 11 and 12. Natural further states that such adjustments result in corrected customer balances as of October 31, 1990 forward, including appropriate interest, and revised billing amounts.

Naturals seeks any waivers which may be necessary to permit the tendered tariff sheets to take effect on June 1, 1991.

Natural states that copies of the filing have been mailed to Natural's jurisdictional sales customers, interested state regulatory agencies, and all parties set out on the official service list in Docket Nos. RP89-131-000, et al., RP89-183-000, et al., and RP91-81-000, et al.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 21, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc1 91-11933 Filed 5-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP-90-139-009]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

May 14, 1991.

Take notice that on May 9, 1991, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

Twenty-ninth Revised Sheet No. 9
Twenty-ninth Revised Sheet No. 16
Twenty-ninth Revised Sheet No. 27

The above-referenced tariff sheets are proposed to be effective June 1, 1991 and are filed in compliance with the Federal Energy Regulatory Commission's April 4, 1991 Order approving a Stipulation and Agreement (Stipulation) in the above-referenced proceedings. These proposed tariff sheets make service under Southern's one-par G-rate schedules available to the following customers which supported the Stipulation (Supporting Customers): (1) Those Supporting Customers which have Service Agreements with Southern containing Maximum Delivery Obligations of up to 3,750,000 cubic feet per day; and (2) those Supporting Customers which purchase 100% of their natural gas requirements from Southern, and have Service Agreements with Southern which contain Maximum Delivery Obligations of more than 3,750,000 cubic feet per day but not more than 10,000,000 cubic feet per day. Consistent with the terms of the Stipulation, the aforesaid eligibility thresholds will remain in effect on an interim basis pending resolution of the

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issue of the G service eligibility threshold in the above-referenced proceedings.

Southern states that copies of Southern's filing were served upon Southern's jurisdictional purchasers and interested state commissions and upon all parties listed service list compiled by the Secretary in the above-referenced proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 21, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11934 Filed 5-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-17-001]

Texas Eastern Transmission Corporation; Proposed Changes to FERC Gas Tariff

May 14, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 9, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Sub Thirty-second Revised Sheet No. 30.1
Sub Thirty-third Revised Sheet No. 30.2
Sub Thirty-third Revised Sheet No. 30A.1
Sub 24th Revised Sheet No. 30B.1
Sub 24th Revised Sheet No. 30C.1
Sub 24th Revised Sheet No. 30D.1

The proposed effective date of these revised tariff sheets is May 1, 1991.

Texas Eastern states that the purpose of this filing is to reflect a reduced demand rate to be billed by pipeline supplier, United Gas Pipe Line Company, pursuant to a rate settlement effective April 1, 1991 in compliance with the Commission's order dated April 24, 1991 in Docket No. TQ91-3-17.

Texas Eastern states that the impact of the demand rate reduction is $0.191/dth. This instant filing will have no effect of Texas Eastern's commodity current adjustment.

Texas Eastern states that the above-referenced tariff sheets are being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to section 23 (Purchased Gas Cost Adjustment Clause) of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1 to reflect changes in Texas Eastern's rates effective May 1, 1991.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 21, 1991. Protests will be considered by the Commisson in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Comission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11935 Filed 5-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-19-001]

Texas Gas Transmission Corp.; Report of Refunds

May 14, 1991.

Take notice that on February 14, 1991, as amended March 8, 1991, and April 24, 1991, Texas Gas Transmission Corporation (Texas Gas) filed to report that it refunded $6,731,645.79 ($6,523,379.83 Principal and $208,265.97 Interest) to its jurisdictional customers. Such refunds represents the jurisdictional portion of a refund received from Texas Eastern Transmission Corporation on October 30, 1990.

Texas Gas states that a copy of the report has been served on all parties on the official service list in the captioned docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 21, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11936 Filed 5-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-119-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 14, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 9, 1991 tendered for filing in compliance with the Commission's order issued April 10, 1991 in Docket Nos. RP91-119-000 and RP90-119-000 ("April 10 Order"), as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed on appendix A of the filing.

Texas Eastern states that the tariff sheets filed herewith as listed on appendix A reflect the directives contained in the Commission's April 10 Order.

The proposed effective date of these tariff sheets is April 16, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all parties in Docket No. RP91-119 and to all parties on the restricted service list in Docket Nos. RP89-67, *et al.*, (Phase I).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 21, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11937 Filed 5-20-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Tuesday, June 4, 1991, 8:30 a.m.-5 p.m., Wednesday, June 5, 1991, 8:30 a.m.-3 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue SW., room 1E245, Washington, DC 20585.

Note: To obtain badge at front desk it will be necessary to have a picture I.D. (For example, Driver's License, Passport or Company I.D.), however, due to increased security, all visitors will be escorted at all times.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, GTN, Washington, DC 20585, Telephone: (301) 353-4529.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

Tuesday, June 4, 1991 and Wednesday, June 5, 1991

—Discussion of National Science Foundation Elementary Particle Physics Programs.
—Discussion of Department of Energy High Energy Physics Programs.
—Discussion of Department of Energy Superconducting Super Collider (SSC) Project Activities.
—Discussion of the Impact of FY 1992 Presidential Budget on High Energy Physics Accelerator Laboratories.
—Report on the Linear Collider at the Stanford Linear Accelerator Center.
—Reports on and Discussions of Topics of General Interest in High Energy Physics.
—Public Comment.

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on May 16, 1991.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-12022 Filed 5-20-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $114,992.23, plus accrued interest, in alleged crude oil overcharge funds obtained from Stanco Petroleum, Inc., Case No. LEF-0031. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of publication of this notice in the Federal Register, and they should be addressed to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should display a prominent reference to case number LEF-0031.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute crude oil overcharge funds obtained from Stanco Petroleum, Inc. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has tentatively determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986) (MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchases of crude oil and refined products. Refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of crude oil price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for Refund should not be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the Federal Register and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: May 15, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Stanco Petroleum, Inc.
Date of Filing: April 18, 1991.
Case Number: LEF-0031.

May 15, 1991.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. 10 CFR § 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

On April 18, 1991, the ERA filed a Petition for the Implementation of Special Refund Procedures for the distribution of funds obtained from

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Stanco Petroleum, Inc. (Stanco) as a result of the DOE's enforcement of the federal petroleum price and allocation regulations concerning the resale of crude oil for the period August 19, 1973 through January 27, 1981. Stanco remitted $114,992.23 to the DOE pursuant to a June 6, 1986 Final Consent Order between the firm and the DOE. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Office of Enforcement, 9 DOE § 82,508 (1981) and Office of Enforcement, 8 DOE § 82,597 (1981). We have considered the ERA's request to implement subpart V procedures with respect to the monies received from Stanco, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (MSRP). The MSRP, issued as a result of a court approved Settlement Agreement in In Re: The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378 (D. Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of these funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP in all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of thirty days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (the Notice). The Notice set forth generalized procedures and provided guidance to assist claimants who wish to file refund applications for crude oil monies under the subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of Federal crude oil price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry would be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, the OHA stated that refunds would be calculated on the basis of a per-gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of crude oil overcharge monies that were in the DOE's escrow account at the time of settlement, or were subsequently deposited in the escrow account, and a portion of the escrow funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, see e.g., Shell Oil Co., 17 DOE § 85,204 (1988) (Shell Oil); Ernest A. Allerkamp, 17 DOE § 85,079 (1988) (Allerkamp), and the procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that court claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. In denying the Motion, the court concluded that the Settlement Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." In Re: The Department of Energy Stripper Well Exemption Litigation, 671 F. Supp. 1318, 1323 (D. Kan. 1987). The court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. Id. at 1323–24. The States appealed the latter ruling, but the Temporary Emergency Court of Appeals affirmed the Kansas District Court's decision. In re: The Department of Energy Stripper Well Exemption Litigation, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988).

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil subpart V proceeding that is the subject of the present determination. As noted above, $114,992.23 (plus interest) in crude oil funds is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of the alleged crude oil violation amount, or $22,998.45 (plus interest) for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. See Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following subpart V precedent, reasonable estimates of purchase volumes may be submitted. Greater Richmond Transit Co., 15 DOE ¶ 85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses were unrelated to the petroleum industry and who were not subject to the DOE price regulations, are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond proof of the volumes of product purchased during the period of crude oil price controls. A. Tarricone, Inc., 15 DOE ¶ 85,495 at 88,993–96 (1987). The end-user presumption of injury is, however, rebuttable. Berry Holding Co., 16 DOE ¶ 85,405, at 88,707 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on whether the specific end-user in question was injured, the applicant will be required to produce further evidence of injury. See New York Petroleum, 18 DOE ¶ at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. Id. They may, however, use econometric evidence of the type employed in the Report by the Office of Hearings and Appeals to the United States District Court of the District of Columbia, In re: The Department of Energy Stripper Well Exemption Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). See Petroleum Overcharge Distribution and Restitution Act section 3003(b)(2), 15 U.S.C. 4502(b)(2). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under subpart V. *See Mid-America Dairymen Inc.* v. *Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App. 1989); accord, Boise Cascade Corp., 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amount involved in this determination ($114,992.23) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). See Mountain Fuel, 14 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program.[1] This yields a volumetric refund amount of $.0000000569 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. Allerkamp, 17 DOE at 88,176. Any party that has previously submitted a refund in the crude oil refund proceedings need not file another application. The deadline for filing an application for refund for crude oil implementation orders issued since January 18, 1991 is June 30, 1992. Quintana Energy Corporation, 21 DOE ¶ 85,032 (1991). It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1992, at the rate of $.0006 per gallon. However, while applicants that filed their claims by June 30, 1988 will receive a supplemental refund payment, we will decide in the future whether claimants that filed later Applications should receive additional payments.

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $91,993.78 (plus interest), be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in exhibit H of the Stripper Well Exemption Litigation Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the Federal Register.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Stanco Petroleum, Inc. pursuant to the Final Consent Order executed on June 6, 1986 will be distributed in accordance with the foregoing Decision.

[FR Doc. 91–12023 Filed 5–20–91; 8:45 am]

BILLING CODE 6450–01–M

[1] The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism has the effect of evenly disbursing overcharges resulting from crude oil misconfigurations throughout the domestic refining industry. See Amber Refining Inc., 13 DOE ¶ 85,217 at 88,594 (1986).

FEDERAL COMMUNICATIONS COMMISSION

May 14, 1991.

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0085.
Title: Employment Inquiry.
Form Number: FCC Form 65.
Action: Reinstatement of a previously approved collection for which approval has expired.
Respondents: Individuals or households.
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 300 responses; .25 hours average burden response; 75 hours total annual burden.
Needs and Uses: The FCC Form 65 is used to obtain references from former supervisors, co-workers, and other personal references furnished by an applicant for employment. This is a long-term, standard practice for public and private employers. Reference contacts are made by personnel assistance and specialists. Contacts may be made by phone, with responses recorded on the form, or by mailing the form to the reference source (furnished by applicant), along with a return-addressed, franked envelope. The reference information is used by selecting officials to ensure that an applicant has an acceptable prior work history. Failure to collect such information would result in employment of a larger number of persons with performance and/or conduct problems.

Federal Communications Commission.
Donna R. Searcy,
Secretary.

[FR Doc. 91–12041 Filed 5–20–91; 8:45 am]

BILLING CODE 6712–01–M

Willis Broadcasting Corp. et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for renewal of license of Station WTJH(AM), East Point, Georgia, and for a New AM Station at East Point, Georgia:

Applicant, City and State	File No.	MM docket No.
A. Willis Broadcasting Corporation; East Point, Georgia.	BR-881130XB	91-125

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Applicant, City and State	File No.	MM docket No.
B. Steven J. Newman; East Point, Georgia.	BP-920301AD	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each issue has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant
1. Site Availability	B
2. Financial Qualifications	B
3. Comparative	A, B
4. Ultimate	A, B

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete Hearing Designation Order in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (Telephone [202] 452–1422).

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91–11913 Filed 5–20–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Caribbean Shipowners Association; Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010079–016.

Title: Caribbean Shipowners Association.

Parties: Tropical Shipping & Construction Co., Ltd., Sea-Land Services, Inc., Trailer Marine Transport Corporation, Puerto Rico Maritime Shipping Authority, Tecmarine Lines, Inc., Bernuth Line, Ltd., Interline Connection, Inc., Sea-Barge Group, Inc., West Indies Shipping Corporation (WISCO), Kirk Line, Inc., Seaboard Marine, Ltd.

Synopsis: The proposed amendment would add language to Article 5 to permit the Association members to discuss and agree on matters of commission, brokerage and freight forwarder compensation. Adherence to any agreement reached by the parties is strictly voluntary.

Dated: May 16, 1991.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 91–11999 Filed 5–20–91; 8:45 am]

BILLING CODE 6730–01–M

Request for Additional Information

Agreement No.: 224–200491.

Title: Independent Marine Terminal Discussion Agreement.

Parties: Cooper/T. Smith Corporation, Continental Stevedoring & Terminals, Inc., Eller & Company, Inc., Harrington & Company, Inc., International Terminal Operating Co., Inc., Maher Terminals, Inc., Marine Terminals Corp., Metropolitan Stevedore Company, Ryan-Walsh, Inc., Stevedoring Services of America.

Synopsis: Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 [46 U.S.C. app. 1701–1720], has requested additional information from the parties to the Agreement in order to complete the statutory review of Agreement No. 224–200491 as required by the Act. This action extends the review period as provided in section 6(c) of the Act.

By Order of the Federal Maritime Commission.

Dated: May 15, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–11916 Filed 5–20–91; 8:45 am]

BILLING CODE 6730–01–M

Municipality of Anchorage (Port) Totem Ocean Trailer Express, Inc. (Totem) et al.;

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.602 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200514.

Title: Municipality of Anchorage/Totem Ocean Trailer Express, Inc. Terminal Lease Agreement.

Parties: Municipality of Anchorage (Port), Totem Ocean Trailer Express, Inc. (Totem).

Filing Party: Mr. H. Glenzer, Jr., Port Director, Port of Anchorage, 2000 Anchorage Port Road, Anchorage, Alaska 99501.

Synopsis: The Agreement provides for the Port to lease Totem the premises known as Transit Area D, approximately 329,250 square feet of property, for a period of five years. Totem will use the premises for the operation of a marshalling yard for marine cargo and employee parking. Rental shall be paid in advance on the first day of every month in twelve equal monthly installments of $15,639.37.

Agreement No.: 224–003130–006.

Title: Municipality of Anchorage/Totem Ocean Trailer Express, Inc. Terminal Lease Agreement.

Parties: Municipality of Anchorage (Anchorage), Totem Ocean Trailer Express, Inc. (Totem).

Filing Party: Mr. H. Glenzer, Jr., Port Director, Port of Anchorage, 2000 Anchorage Port Road, Anchorage, Alaska 99501.

Synopsis: The Agreement, filed May 13, 1991, amends the parties' basic agreement to provide for: (1) Anchorage to grant Totem certain preferential berthing rights at Terminal No. 13, exclusive use of Transit Area C and 6.7 acres of paved staging area east of Terminal No. 3; (2) Totem to pay a sliding scale of wharfage rates based on volume of cargo; and (3) Totem to pay certain dockage rates based on the overall length of vessels berthing at Anchorage's terminal facility. The term of the Agreement will expire December 31, 1995.

Dated: May 15, 1991.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–11918 Filed 5–20–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Jerome S. Goodman, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 10, 1991.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Jerome S. Goodman, Cherry Hill, New Jersey; to acquire an additional 4.95 percent of the voting shares of First Peoples Financial Corporation, Westmont, New Jersey, for a total of 12.59 percent, and thereby indirectly acquire First Peoples Bank of New Jersey, Westmont, New Jersey.

2. John C. Tuten, Jr. and Margaret E. Tuten, Villanova, Pennsylvania; to acquire an additional 5.53 percent of the voting shares of Guaranty Bancshares Corporation, Shamokin, Pennsylvania, for a total of 15 percent, and thereby indirectly acquire Guaranty Bank, N.A., Shamokin, Pennsylvania.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Allen Lamar Smith, Springhill, Louisiana; to acquire 22.06 percent of the voting shares of Citizens Bankshares of Springhill, Inc., Springhill, Louisiana, for a total of 32.76 percent, and thereby indirectly acquire Citizens Bank & Trust Company, Springhill, Louisiana.

Board of Governors of the Federal Reserve System, May 15, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–11953 Filed 5–20–91; 8:45 am]

BILLING CODE 6210–01–F

Interban Holding Company Limited, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 10, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Interban Holding Company Limited, Nassau, Bahamas, and Interbank Holding Corp., Miami, Florida; to become bank holding companies by acquiring an additional 47.2 percent of the voting shares of Grovegate Bank, Coconut Grove, Florida, for a total of 53.33 percent.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Cleveland State Bancorp, Inc., Cleveland, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Cleveland State Bank, Cleveland, Mississippi.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Nebraska Bancs, Inc., Sidney, Nebraska; to acquire an additional 0.78 percent of the voting shares of First National Financial Corporation, Estes Park, Colorado, for a total of 5.75 percent, and thereby indirectly acquire First National Bank of Estes Park, Estes Park, Colorado.

2. Lisco State Company, Lisco, Nebraska; to acquire an additional 11.59 percent of the voting shares of First National Financial Corporation, Estes Park, Colorado, for a total of 16.57 percent, and thereby indirectly acquire First National Bank of Estes Park, Estes Park, Colorado.

3. Rawlins National Bancorporation, Rawlins, Wyoming; to become a bank holding company by acquiring at least 90 percent of the voting shares of The Rawlins National Bank, Rawlins, Wyoming.

Board of Governors of the Federal Reserve System, May 15, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–11954 Filed 5–20–91; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Board of Scientific Counselors, Center for Infectious Diseases; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control announces the following committee meeting.

Name: Board of Scientific Counselors, Center for Infectious Diseases (CID).

Time and Date: 8:30 a.m.–5 p.m., June 10–11, 1991.

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Place: Centers for Disease Control, Auditorium A, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, CID, will provide advice and guidance to the Director, Centers for Disease Control, and Director, CID, in the following areas: Program goals and objectives; strategies; program organization and resources for infectious diseases prevention and control; and program priorities.

Matters to be Discussed: The agenda will focus on the CID Strategic Plan and specific attention will be paid to implementation of the Plan. The discussion will include presentations by community, state, and Federal representatives. Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: James M. Hughes, M.D., Executive Secretary, Board of Scientific Counselors, CID, Centers for Disease Control, Mailstop C-12, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639-3945 or FTS 236-3945.

Dated: May 15, 1991.

Elvin Hilyer,

Associated Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-11950 Filed 5-20-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91N-0166]

Drug Export: "A" HIVAG-1 Monoclonal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Abbott Laboratories has filed an application requesting approval for the export of the biological product "A" HIVAG-1 Monoclonal to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Carl J. Chancey, Center for Biologics Evaluation and Research (HFB-124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Abbott Laboratories, Diagnostics Division, Abbott Park, IL 60064, has filed an application requesting approval for the export of the biological product "A" HIVAG-1 Monoclonal to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom. The "A" HIVAG-1, Monoclonal is an In Vitro Enzyme Immunoassay for the detection of Human Immunodeficiency Virus Type 1 (HIV-1) p24 antigen in human serum or plasma. It is intended to be used as an aid in the diagnosis and prognosis of patients with HIV-1 infection. The application was received and filed in the Center for Biologics Evaluation and Research on March 18, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 31, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 (CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: May 14, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-12042 Filed 5-20-91; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Bone Marrow Donor Registry; Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, Stat. 770-776) and section 222 of the Public Health Service Act, as amended (42 U.S. Code 217a), the Director, National Institutes of Health, announces the establishment by the Secretary, Department of Health and Human Services, of the National Bone Marrow Donor Registry Advisory Committee.

The National Bone Marrow Donor Registry Advisory Committee shall advise on the activities of the National Bone Marrow Donor Registry in carrying out its functions and complying with the criteria, standards, and procedures set forth in the Transplant Amendment Act of 1990. This program includes the establishment and management of a registry of volunteer marrow donors willing to donate to an unrelated individual; the selection and management of individuals actually donating marrow for the treatment of some disorders and research into the therapy of others; and the development of research resources, such as a cell repository of samples from each unrelated donor-recipient pair, and data concerning the outcomes of unrelated-donor marrow transplants.

Unless renewed by appropriate action prior to expiration, the National Bone Marrow Donor Registry Advisory Committee shall expire on June 30, 1992.

Dated: May 14, 1991.

Bernadine Healy,

Director, National Institutes of Health.

[FR Doc. 91-11944 Filed 5-20-91; 8:45 am]

BILLING CODE 4140-01-M

National Advisory Council for Human Genome Research; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, June 7, 1991, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland.

This meeting will be open to the public on June 7 from 8:30 a.m. to 9:30 a.m. to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec 10(d) of Public Law 92-463, the meeting will be closed to the public on June 7 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome Research, National Institutes of Health, Building 38A, room 605, Bethesda, Maryland 20892, (301) 496-0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: May 7, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-11943 Filed 5-20-91; 8:45 am]

BILLING CODE 4140-01-M

National Center for Nursing Research; National Advisory Council for Nursing Research and Planning Subcommittee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research and Planning Subcommittee, National Center for Nursing Research, June 18-20, 1991, Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on June 18 from 8 a.m. to 10:30 a.m. for the Planning Subcommittee. The full Council will meet in open session on June 19 from 9 a.m. to 2:30 p.m. and from 9 a.m. to adjournment on June 20. Agenda items to be discussed will include the NCNR Director's Report, Biennial Reports of the Council and NIH Director, Review of the Nursing Systems Branch Portfolio of Awards, The Honolulu Nursing Care Giver Study, and a Review of Initiatives for Extramural Programs.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d)) of Public Law 92-463, the meeting will be closed to the public on June 19 from 2:30 p.m. to approximately 4:30 p.m. and on June 20 from 8 a.m. to 9 a.m. for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarrranted invasion of personal privacy.

Ms. Vicki Thompson, Council Assistant, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, room 5B23, Bethesda, Maryland 20892 (301) 496-0207, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: May 7, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-11939 Filed 5-20-91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Asthma Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Friday, June 21, 1991, from 9 a.m. to 3 p.m., at the Holiday Inn Hotel, 8120 Wisconsin Avenue, Bethesda, Maryland, 20814, (301) 652-2000.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Asthma Education Program. Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary, contact: Mr. Robinson Fulwood, Coordinator, National Asthma Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A18, Bethesda, Maryland 20892, (301) 496-1051.

Dated: May 14, 1991.

Bernadine Healy,

Director, NIH.

[FR Doc. 91-11942 Filed 5-20-91; 8:45 am]

BILLING CODE 4140-01-M

National Institutes of Health

National Institute of Child Health and Human Development; Meetings

Pursuant to Public Law 92-463, notice if hereby given to meetings of the review committees of the National Institute of Child Health and Human Development for June 1991.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and scientific review administrators, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, Executive Plaza North Building, room 520, National Institutes of Health, Bethesda, Maryland, Area Code (301) 496-1485, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the Scientific Review Administrator indicated:

Name of Committee:
Population Research Committee.

Scientific Review Administrator:
Dr. A.T. Gregorie, room 520, Executive Plaza North Building, Telephone: (301) 496-1485.

Date of Meeting:
June 17-18, 1991.

Place of Meeting:
Holiday, Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland.

Open:

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June 17, 1991, 9 a.m.-10 a.m.
Closed:
June 17, 1991, 10 a.m.-5 p.m.
June 18, 1991, 8:30 a.m.-adjournment.
Name of Committee:
Maternal and Child Health Research Committee.
Scientific Review Administrator:
Dr. Gopal Bhatnagar, room 520, Executive Plaza North Building, Telephone: (301) 496-1455.
Date of Meeting:
June 25-26-1991.
Place of Meeting:
Hyatt Regency Bethesda, 1 Bethesda Metro Center, Bethesda, Maryland.
Open:
June 25, 1991, 9 a.m.-10 a.m.
Closed:
June 25, 1991, 10 a.m.-5 p.m.
June 26, 1991, 8:30 a.m.-adjournment.
Name of Committee:
Mental Retardation Research Committee.
Scientific Review Administrator:
Dr. Susan C. Streufert, room 520, Executive Plaza.
Date of Meeting:
June 26-27-28, 1991.
Place of Meeting:
Inn at the Colonnade, 4 West University Parkway, Baltimore, Maryland.
Open:
June 26, 1991, 7 p.m.-8 p.m.
Closed:
June 26, 1991, 8 p.m.-11 p.m.
June 27, 1991, 8 a.m.-5 p.m.
June 28, 1991, 8 a.m.-adjourment.

(Catalog of Federal Domestic Assistance, Program No. 13-864, Population Research, No. 13.865, Research for Mothers and Children, National Institute of Health)

Dated: May 7, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-11941 Filed 5-20-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of NIDR Special Grants Review Committee

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Special Grants Review Committee, National Institute of Dental Research, June 18-20, 1991, in Montgomery I Meeting Room, Marriott Residence Inn, 7335 Wisconsin Avenue, Bethesda, Maryland. The meeting will be open to the public from 8:30 to 9 a.m. on June 18 for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on June 18 from 9 a.m. to recess, on June 19 from 8:30 a.m. to recess and on June 20 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. William Gartland, Scientific Review Administrator, NIDR Special Grants Review Committee, NIH, Westwood Building, Room 519, Bethesda, MD 20892 (telephone 301/496-7658) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121-Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Peridontal and Soft Tissue Diseases; 13-122-Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13-845-Dental Research Institute; National Institutes of Health)

Dated: May 7, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-11940 Filed 5-20-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service (PHS)

Request for Public Comment on Data Issues Related to Minority Health

AGENCY: Public Health Service (PHS) Task Force on Minority Health Data.

ACTION: Request for public comment on minority health data issues.

SUMMARY: To assist in improving minority health data activities within the PHS, the Assistant Secretary for Health has established an internal PHS Task Force to conduct a short term, forward looking, policy oriented review of minority health related data plans and activities. The Task Force is inviting public comment from data users and other interested parties concerning data policy needs, gaps, uses, and other data issues relating to minority health.

ADDRESSES: Comments must be submitted to the PHS Task Force on Minority Health Data, 200 Independence Avenue, SW., room 721B, Washington, DC 20201, 202-245-2100.

DEADLINE: Comments must be received on or before June 20, 1991 to be considered in the preparation of recommendations to the Assistant Secretary for Health. Comments will be considered as meeting the deadline if they are either: (1) Received at the above address on or before the deadline date, or (2) sent to the above address on or before the deadline date and received before the first Task Force meeting scheduled after the due date. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Comments received after the deadline and too late for consideration by the Task Force will be forwarded to the appropriate program offices for consideration.

SUPPLEMENTARY INFORMATION:

Background

The 1985 Report of the Secretary's Task Force on Black and Minority Health identified significant disparities between minority and non-minority populations in health status and health care utilization. The Report further identified a lack of data to understand these disparities and to formulate policies and programs to address them. It concluded that timely and reliable data are needed to improve public health assessments and monitoring, to develop effective policies and programs, and to evaluate these programs.

Significant progress has been made in improving the statistical data needed to understand the health disparities among racial and ethnic populations. For example, most of the national PHS surveys use uniform race and ethnic categories for data collection and analysis. In addition, large scale surveys focusing on specific racial or ethnic populations have been conducted, e.g. the Hispanic Health and Nutrition Examination Survey and the Survey of American Indians and Alaska Natives. Also, cooperative efforts between the PHS and the States have resulted in the development and adoption, by many States, of a standard model for the collection of race and ethnic identifiers in vital statistics records (death, birth, marriage, and divorce certificates). These improvements are reflected in the Public Health Service publication, Health, U.S. 1990, an annual report on the health of the nation. Further improvements, however, are needed.

To assist in improving minority health data activities within the PHS, the Assistant Secretary for Health has established an internal PHS Task Force to conduct a comprehensive, data policy review of the data activities and plans of PHS agencies in the area of minority health. The Task Force includes representatives of all PHS agencies, and is co-chaired by the Office of Health Planning and Evaluation, the Office of Minority Health, and the National Center for Health Statistics within the Centers for Disease Control.

The Task Force will review PHS data plans and activities in light of current and anticipated policy/programmatic goals, data needs, identified gaps, uses of data, and other issues. The Task Force review also will support elements of Objective 22.4 of Healthy People 2000: National Health Promotion and Disease Prevention Objectives, which underscores the need to identify significant gaps in the Nation's disease prevention and health promotion data, including data on racial and ethnic minorities, and to develop mechanisms to address those gaps. Other policy goals such as those identified in the Disadvantaged Minority Health Improvement Act (Pub. L. 101-527) will also be considered in the context of this review. The Task Force will make recommendations for addressing high priority data needs over the next several years, with attention to data collection, analysis, and dissemination activities.

Definitions

Minority Health Data—In accordance with the OMB Statistical Policy Directive Number 15, the review will focus on data related to the following racial/ethnic minority groups and subgroups thereof: American Indian or Alaska Native, Asian or Pacific Islander, Black, and Hispanic.

Data Issues

The Task Force is especially interested in comments concerning the most critical data gaps in minority health. These gaps should be discussed in the context of issues affecting minority health status and should illustrate the ways in which the needed data can be used to address these issues. In addition, the perspectives of those who use minority health data concerning both the strengths and limitations of current minority health statistical activities and related data activities are invited. Discussion of methodological considerations in the development of minority health data are also invited. Comments may relate to data collection, analysis, or dissemination activities.

Comments will be considered in the context of the Task Force's deliberations and used to help formulate recommendations to the Assistant Secretary for Health. Because of the anticipated volume of response, the PHS Task Force on Minority Health Data cannot acknowledge or respond to individual comments submitted.

Dated: May 13, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-11977 Filed 5-20-91; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-920-01-4120-14; COC 51551]

Coal Lease Re-Offering By Sealed Bid; COC 51551

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Rio Blanco County, Colorado, will be re-offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.). On April 15, 1991, these resources were offered for competitive lease by sealed bid to the highest qualified bidder provided that the high bid met the fair market value of the coal resources as determined by the authorized officer after the sale. Western Fuels-Utah, Inc., was the only bidder. The bid submitted was in the amount of $101 per acre for a total of $137,360. The bid did not meet the fair market value established for this tract. Therefore, the bid was rejected. This re-offering is made as a result of the re-filing of the application by Western Fuels-Utah, Inc.

DATES: The lease sale will be held at 10 a.m., Wednesday, June 26, 1991. Sealed bids must be submitted not later than 9 a.m., Wednesday, June 26, 1991.

ADDRESSES: The lease sale will be held in the Atrium Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239-3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the typing high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale.

COAL OFFERED: The coal resource to be offered is limited to coal recoverable by underground mining methods in the following lands:

Sixth Principal Meridian

T. 3 N., R. 101 W.,
Sec. 25, S½;
Sec. 26, SE¼SE¼;
Sec. 34, S½NE¼ and N½SE¼;
Sec. 35, NE¼NE¼, S½N½, and N½S½;
Sec. 36, N½ and N½S½.

The land described contains 1360 acres.

Total recoverable reserves are estimated to be 8,724,000 tons. The underground mineable coal is ranked as high volatile C bituminous coal. The estimated coal quality for the B & D seams on an as-received basis is as follows:

	B Seam	D Seam
Btu	9,900 Btu/lb	10,200 Btu/lb.
Moisture	12.15%	11.27%.
Sulfur Content	0.39%	0.44%.
Ash Content	15.51%	12.19%.
Fixed Carbon	41.42%	43.99%.
Volatile Matter	30.84%	32.36%.

Rental and Royalty: The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.

Notice of Availability: Bidding instructions for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the satement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

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Dated: May 15, 1991.

Richard D. Tate,

Chief, Mining Law and Solid Minerals Adjudication Section.

[FR Doc. 91-11951 Filed 5-20-91; 8:45 am]

BILLING CODE 4310-JB-M

[CA-940-01-4214-10; CACA 17439]

Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 3,662.72 acres of public land in Imperial County, to protect valuable sand and gravel resources and mineral material sites. This notice closes the lands for up two years from surface entry and mining. The lands will remain open to mineral leasing.

EFFECTIVE DATE: May 21, 1991.

DATES: Comments and requests for a public meeting must be received by August 19, 1991.

ADDRESSES: Comments and meeting requests should be sent to the California State Director, BLM, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California Office, 2800 Cottage Way, Sacramento, California 95825, (916) 978-4820.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has filed an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

San Bernardino Meridian

T. 16 S., R. 9 E.,
Sec. 14, NW¼;
Sec. 15, NE¼.
T. 13 S., R. 18 E.,
Sec. 12, all;
Sec. 13, SE¼;
Sec. 14, N½, SW¼;
Sec. 22, all;
Sec. 23, SE¼;
Sec. 24, all.
T. 13 S., R. 19 E.,
Secs. 18, 19, lots 1 through 4, E½W½.

The areas described contain 3,662.72 acres in Imperial County.

The purpose of the withdrawal is to protect valuable sand and gravel deposits and mineral material sites.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized office that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the schedule date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land-use authorizations of a temporary nature.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 91-11915 Filed 5-20-91; 8:45 am]

BILLING CODE 4310-40-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitions or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than May 31, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than May 31, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 6th day of May 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition no.	Articles produced
Allied Signal Bendix (UAW)	Green Island, NY	05/06/91	04/29/91	25,766	Brak Lining & Resins.
Atron/High Q (Wkrs) Harnesses	Clarkesville, MI	05/06/91	04/22/91	25,767	Auto Wire.
Autobond Corp. (Company)	Grand Rapids, MI	05/06/91	04/22/91	25,768	Dies.
Audodie Corp. (Company)	Grand Rapids, MI	05/06/91	04/22/91	25,769	Dies.
Berko Hydraulics Processing (Wkrs)	Superior, WI	05/06/91	04/19/91	25,770	Loading & Equip.
Bell Plastics, Inc. (Wkrs)	Royal Oak, MI	05/06/91	04/22/91	25,771	Radiator Bottles.
Cooper Dist. Equipment Div. (IBEW)	Earlysville, VA	05/06/91	04/17/91	25,772	Circuit Breakers.
Electro Design, Inc. (Wkrs)	Mancelona, MI	05/06/91	04/24/91	25,773	Wire Harnesses.
Evans (UFCW)	New York, NY	05/06/91	04/22/91	25,774	Fur Garments.
GTE Sylvania (Products Corp)	Houston, TX	05/06/91	04/23/91	25,775	Light Bulbs.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition no.	Articles produced
Hein-Werner Corp	Waukesha, WI	05/06/91	04/18/91	25,776	Lifting Equipment.
Hudson's Bay Co. (Wkrs)	Carlstadt, NJ	05/06/91	03/06/91	25,777	Auction House for Furs.
Kelsey Hayes Milford (Wkrs)	Milford, MI	05/06/91	04/25/91	25,778	Auto Parts.
Laribee Wire Mfg. Co., Inc. (Wkrs)	Camden, NY	05/06/91	04/24/91	25,779	Uninsulated Wire.
Laribee Wire Mfg. Co., Inc. (Wkrs)	Jordan, NY	05/06/91	04/24/91	25,780	Uninsulated Wire.
Masonite Corp. (Wkrs)	Watsontown, PA	05/06/91	04/25/91	25,781	Component Parts.
Maytown Shoe Mfg. (6th Ave) (Wkrs)	Altoona, PA	05/06/91	04/23/91	25,782	Men's Shoes.
Maytown Shoe Mfg. (Beale Ave) (Wkrs)	Altoona, PA	05/06/91	04/23/91	25,783	Men's Shoes.
Maytown Shoe Mfg. (Wkrs)	Maytown, PA	05/06/91	04/23/91	25,784	Men's Shoes.
NER Data Products, Inc. (Company)	Des Moines, IA	05/06/91	04/26/91	25,785	Impact Imaging & Ribbons.
NexTech (Wkrs)	Turtle Creek, PA	05/06/91	04/29/91	25,786	Light Gauge Galvanized Steel.
P.I.E. (Wkrs)	Portland, OR	05/06/91	04/24/91	25,787	Trucking Services.
Texas Apparel Co. (ACTWU)	Carrizon Springs, TX	05/06/91	04/24/91	25,788	Baby Sleepers.
VTC, Inc. Subsidiary of Data (Wkrs)	Bloomington, MN	05/06/91	04/25/91	25,789	Computer Chips.
WACO Lehich Portland Cement Co. (Wkrs)	Waco, TX	05/06/91	04/26/91	25,790	Cement.

[FR Doc. 91-12002 Filed 5-20-91; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of April 1991 and May 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,320; Master, Inc of Hastings, Hastings, MN

TA-W-25,422; Magnesium Corp of America, Rowley Plant, Salt Lake City, UT

TA-W-25,446; Walker Manufacturing, Hebron, OH

TA-W-25,482; The Trane Co, Commercial Systems Group, Dunmore, PA

TA-W-25,345; Louis Sportswear, New Bedford, MA

TA-W-25,347; New Bedford Coat, New Bedford, MA

TA-W-25,348; New England Mackintosh Co., Inc., South Easton, MA

TA-W-25,380; Borge Textile Corp., Jefferson, WI

TA-W-25,489; Cooper Industries, Inc., Bussmann Div., Bristol, CT

TA-W-25,412; Bethlehem Steel Corp., Sparrows Point Plant, Baltimore, MD

TA-W-25,383; Durham Knitting Mills, Tellico Plains, TN

TA-W-25,493; Durham Knitting Mills, Soddy Daisy, TN

TA-W-25,531; Durham Knitting Mills, Layette, GA

TA-W-25,543; Durham Knitting Mills, Maynardville, TN

TA-W-25,706; Durham Knitting Mills, Rutledge, TN

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,528; Conquest Exploration Co., Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,711; Hurd Sales Co., Inc., Utica, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-25,544; Explosives Technologies Int'l, Inc., Madisonville, KY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-25,733; Furon, Ohio Div., Dover, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,592; Georgia Kaolin Co., Atlanta, GA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-25,548; Glasgow Manufacturing Co., Glasgow, KY

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,539; Sonnenschein Batteries, Inc., Cheshire, CT

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,521; Anchor Glass Container Corp., Royersford, PA

The investigation revealed that criterion (2) has not been met. Sales of production did not decline during the relevant period as required for certification.

TA-W-25,435; Rundel Products, Olympia, WA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,486; Barry of San Angelo, San Angelo, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,525; Barnes Pump, Inc., Mansfield, OH

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The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,435; Harnischfeger Corp., Oak Creek, WI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,050; Hatch Associates Consultants, Inc., Buffalo, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-25,494; EPI International, Port Newark, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-25,398; Robertshaw Controls, Youngwood, PA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,399; Robertshaw Controls, Laredo, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,400; Robertshaw Controls, Grove City, OH

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-25,462; Hart & Cooley, Inc., Holland, MI

A certificaiton was issued covering all workers separated on os after February 11, 1990 and before April 15, 1991.

TA-W-25,596; ITT Automotive SWF Auto Electric Div., Selmer, TN

A certification was issued covering all workers separated on or after March 25, 1990.

TA-W-25,480; Sherman Lumber Co., Sherman Station, ME

A certification was issued covering all workers separated on or after February 11, 1990.

TA-W-25,430; Milton Shoe Manufacturing, Milton, PA

A certification was issued covering all workers separated on or after February 4, 1990.

TA-W-25,513 Rowe International Wire Harness Dept., Whippany, NJ

A certification was issued covering all workers separated on or after February 19, 1990.

TA-W-25,523; ASARCO—Coeur Unit, Wallace, ID

A certification was issued covering all workers separated on or after February 27, 1990.

TA-W-25,507; Lucky Lynn Manufacturing, Salley, SC

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,524; Aspen Imaging International, Inc., Lafayette, CO

A certification was issued covering all workers separated on or after February 26, 1990.

TA-W-25,536; L.P. II, Inc., Forks, WA

A certification was issued covering all workers separated on or after February 23, 1990.

TA-W-25,722; Shelby Group International, Inc., Houlka, MS

A certification was issued covering all workers separated on or after April 9, 1990.

TA-W-25,585; Aircraft Electric Specialties, Inc., (Aes Interconnects), Kirkland, IN

A certification was issued covering all workers separated on or after March 9, 1990.

TA-W-25,522; Applied Vision Systems, Inc., Minneapolis, MN

A certification was issued covering all workers separated on or after February 23, 1990.

TA-W-25,647; Florsheim Shoe Co., Cape Girardeau, MO

A certification was issued covering all workers separated on or after March 27, 1990.

TA-W-25,455; Chase Gardens, Inc., Eugene, OR

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,487; AT&T Communication Products, Sourcing & Manufacturing, Shreveport, LA

A certification was issued covering all workers separated on or after December 30, 1990.

TA-W-25,475; Par Microsystems Corp., New Hartford, NY

A certification was issued covering all workers separated on or after January 13, 1990.

TA-W-25,427; Mainline Fashions, New York, NY

A certification was issued covering all workers separated on or after January 31, 1990.

TA-W-25,474; Obion Denton, Fulton, MS

A certification was issued covering all workers separated on or after February 12, 1990.

TA-W-25,389; Keystone Thermistor Corp., Mt. Jewett, PA

A certification was issued covering all workers separated on or after January 30, 1990.

TA-W-25,491; Crane Creek Cedar Corp., Amanda Park, WA

A certification was issued covering all workers separated on or after September 1, 1990 and before March 1, 1991.

TA-W-25,517; Western Atlas International, Atlas Wireline Service, St. Albans, WV

A certification was issued covering all workers separated on or after February 16, 1990.

TA-W-25,503; Ladd Petroleum Corp., Headquartered in Denver, CO

A certification was issued covering all workers separated on or after March 17, 1990.

TA-W-25,502; Ladd Petroleum Corp., Gulf Coast Region Headquartered in Houston, TX & Operating out of the Following States: TA-W-25,502A; AL, B; LA, C; MS

A certification was issued covering all workers separated on or after March 17, 1990.

TA-W-25,504 Ladd Petroleum Corp., Mid-Continent/East Region, Headquartered in Tulsa, OK & Operating out of the Following States: TA-W-25,504A; AR, B; OK (Except Tulsa) C; TX (Except Houston/Ozona/Midland)

A certification was issued covering all workers separated on or after March 17, 1990.

TA-W-25,505; Ladd Petroleum Corp., Mid-Continent/West Region, Headquartered in Denver, CO & Operating out of the Following States: TA-W-25,505A; MT, B; NM, C; ND, D; TX (Except Houston/Perryton)

A certification was issued covering all workers separated on or after March 17, 1990.

TA-W-25,506 & TA-W-25,506A; Ladd Petroleum Corp., Natural Gas Dept., Headquartered in Denver, CO & Operating out of Various Plants in The State of Texas

A certification was issued covering all workers separated on or after February 25, 1990.

I hereby certify that the aforementioned determinations were issued during the month of April and May, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: May 13, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-12003 Filed 5-20-91; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of April 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 280; Walbro Automotive, Meriden, CT

TA-W-25, 387; Hargro Industrial Packaging, Cedar Grove, NJ

TA-W-25, 348; Shelby Standard, Inc., Shelby, OH

TA-W-25, 309; Bojud Knitting Mills, Inc., Amsterdam, NY

TA-W-25, 363; Glovay Knitting Mills, Inc., Robesonia, PA

TA-W-25, 425; J Wood Division WCI, Milroy, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25, 090; Standard Motor Products, Inc., Long Island City, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25, 397; Plumley Rubber Co., Belzone, MS

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 393; Munsingwear, Inc., Homing, OK

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25, 364; Glovay Knitting Mills, Inc., Retail Outlet, Robesonia, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-25, 407 and TA-W-25, 408; Westbrook Wood Products, Inc., Norway, OR and Coquille, OR

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 416; Data General Corp, Education & Conference Center Woodstock, CT

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-25, 392; Mid-Atlantic Container, Linden, NJ

U.S. imports of steel drums are negligible during the period under investigation.

TA-W-25, 384; Eastern Airlines, Inc., Sea-Tac International Airport Seattle, WA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-25, 424; Hermance Machine Co., Williamsport, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25, 352; Custom Glass Industries, Vancouver, WA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 376; Zwicker Knitting Mills, Appleton, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25, 371; Sam Galloway Ford, Inc., Ft. Myers, FL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25, 375; Sun Plywood, Inc., North Bend, OR

U.S. imports of softwood plywood and veneer were negligible during the period under investigation.

TA-W-25, 360; Easco Aluminum Parlins, NJ

U.S. imports of aluminum declined absolutely and relative to domestic shipment in 1989 compared to 1988.

TA-W-25, 368; Lee C. Moore Corp., Neville Island, PA

U.S. imports of oil and gas field machinery were negligible in 1989 and 1990.

Affirmative Determinations

TA-W-25, 444; Universal/Univis, Inc., North Attleboro, MA

A certification was issued covering all workers separated on or after February 7, 1990.

TA-W-25, 361; Fasco D.C. Motors, Morristown, TN

A certification was issued covering all workers separated on or after January 4, 1990.

TA-W-25, 379; Airfoil Forging Textron, Euclid, OH

A certification was issued covering all workers separated on or after January 28, 1990.

TA-W-25, 377; Academy Knitters (Academy), Williamstown, NJ

A certification was issued covering all workers separated on or after January 31, 1990.

TA-W-25, 378; Academy Knitters (Saybrook), Williamstown, NJ

A certification was issued covering all workers separated on or after January 31, 1990.

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TA-W-25, 390; Lord Jeff Knitting Co., Inc., Norwood, NJ

A certification was issued covering all workers separated on or after January 31, 1990.

TA-W-25, 313; Denman Tire Corp, Warren, OH

A certification was issued covering all workers separated on or after January 7, 1990.

TA-W-25, 391; Marie Coat, Clifton, NJ

A certification was issued covering all workers separated on or after January 30, 1990.

TA-W-25, 337; Carter Footwear, Inc., Wilkes Barre, PA

A certification was issued covering all workers separated on or after July 27, 1990.

TA-W-25, 170; Laura Fashions, Inc., Avoca, PA

A certification was issued covering all workers separated on or after November 15, 1989.

TA-W-25, 417; Ditto Apparel of California, Westlaco, TX

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25, 230; Tredegar Molded Products, Brooklyn Heights, OH

A certification was issued covering all workers separated on or after December 10, 1989 and before December 21, 1990.

TA-W-25, 295; New England Sportswear Co. Peabody, MA

A certification was issued covering all workers separated on or after January 4, 1990.

TA-W-25, 287; Head Sportwear, D & B Manufacturing Div., Columbia, MD

A certification was issued covering all workers separated on or after Jaunary 5, 1990.

TA-W-25, 396; Old Dominion Glove Co., Austinville, VA

A certification was issued covering all workers separated on or after January 30, 1990.

I hereby certify that the aforementioned determinations were issued during the month of April 1991. Copies of these determinations are available for inspection in Room C-4318, U.S Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the the above address.

Date: April 15, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-12004 Filed 5-16-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,207 Plant #2; TA-W-25,208 Plant #8]

Manville Sales Corp., Defiance, OH; Negative Determination Regarding Application for Reconsideration

By an application dated May 1, 1991, Local #51 of the Glass, Molders and Pottery Workers Union requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notices were signed on March 21, 1991 and published in the **Federal Register** on April 2, 1991 (56 FR 13500).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers produce uncured wool, insulated automotive components, and equipment and handling insulation. The union claims that imported autos compete with insulated auto component parts produced at both plants.

In order for a worker group to become certified eligible to apply for adjustment assistance it must meet all three of the Group Eligibility Requirements of the Trade Act—a significant decrease in employment, an absolute decrease in sales or production and an increase in imports "contributing importantly" to worker separations and declines in sales or production. Failure to meet any one of these criteria would prevent the certification of the petitioning worker group.

The Department's denial for workers at both plants was based on the fact that the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met. U.S. imports of mineral wool were negligible during the period relevant to the petition.

Investigation files also show that the company does not import automotive fiberglass insulation products—auto headliners, topliners, hoodliners etc.; equipment and mechanical insulations and air filtration media. Further, production of equipment and mechanical insulations increased in quantity and value in the first nine months of 1990 compared to the same period in 1989.

The issue of components (automotive headliners, topliners, hoodliners, etc.) was addressed early in the administration of the worker adjustment assistance program. In *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d (D.C. Cir. 1974) the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Accordingly, increased imports of autos cannot be considered in determining import injury to workers producing automotive headliners, topliners and other insulated components for autos. Therefore, in determining import injury to workers at plants #2 and #8, the Department must consider imports of hoodliners for plant #2 and automotive headliners, topliners, etc. for plant #8.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 10th day of May, 1991.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-12006 Filed 5-20-91; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Metric Transition Plan

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of plan to convert to the International System of Units.

SUMMARY: The Mine Safety and Health Administration (MSHA) has established a metric transition plan that describes the Agency's program to comply with the Omnibus Trade and Competitiveness Act of 1988. The plan discusses MSHA's overall approach for converting to the use of the International System of Units (SI), commonly referred to as the metric system. The Agency plans to provide guidance to the mining industry to facilitate conversion rather than requiring metric conversion through rulemaking.

FOR FURTHER INFORMATION CONTACT: Madison McCulloch, Director, Office of Technical Support, MSHA, 4015 Wilson Boulevard, room 927, Arlington, Virginia 22203, (703) 235-1580.

SUPPLEMENTARY INFORMATION: All other industrialized and developed nations, including those that once used the inch-pound system, have adopted metric as their official measurement system. Interdependency in technology, manufacturing, and trade among all nations is increasing. Unless a conversion to the metric system is begun, the United States (U.S.) will face a growing handicap in this interdependency as 12 European countries merge into one market by 1992 and the U.S.-Canada free trade agreement takes effect.

Section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418) designates the metric system of measurement as the preferred system of weights and measures for U.S. trade and commerce. It charges each Federal agency with the responsibility of providing leadership and guidance to encourage conversion to metric measurement units. Federal agencies must use metric units in their grants, procurements, and other business-related activities by the end of 1992, unless such use is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms.

MSHA is committed to using metric units as the perferred system of weights and measures in all its activities. MSHA's transition plan emphasizes the Agency's role in providing leadership and guidance, as well as working closely with industry, to achieve conversion to the metric system. To encourage the use of the metric system, MSHA will begin establishing standards using metric units, whenever possible. Some requirements will retain use of the inch-pound units, thus permitting compliance in either the metric or inch-pound system.

Dated: May 14, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 91-11923 Filed 5-20-91; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Washington State Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

By letter dated August 17, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State, on its own initiative, submitted amendments to WAC 296-24-21707, Tire Servicing Equipment, WAC 296-24-68203, Cylinders and Containers; and WAC 296-24-78009, Care and Use of Ladders, comparable, respectively, to 29 CFR 1910.177(d), 1910.252(a)(2), and 1910.25(d). These standards were originally approved in the **Federal Register** (38 FR 2421) on January 26, 1973, and (41 FR 5461) February 6, 1976. The State standard amendments were adopted by the State on May 11, 1988, with an effective date of June 10, 1988, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08, as ordered and transmitted under Washington Administrative Order No. 88-04. These State-initiated housekeeping amendments renumber sections in the State standards, spell out numbers, and make corrections.

In response to Federal standards changes, the State has submitted by letter dated January 13, 1989, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standard amendments indentical to the Federal standard amendments to 29 CFR 1926.351(d)(5) and 29 CFR 1926.603(j)(3), Arc Welding and Cutting, and Compressed Air, as published in the **Federal Register** (51 FR 25318) on July 11, 1986. The State standard amendments are contained at WAC 296-155-405(4)(e) and WAC 296-155-745(10)(c). The State standard amendments were adopted on November 14, 1988, and effective December 14, 1988, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08 as ordered and transmitted under Washington Administrative Order No. 88-25. The original State standard for construction was approved on February 9, 1982 (47 FR 5956).

In response to Federal standards revocations, the State has submitted by letter dated June 24, 1987, from Richard A. Davis, Director, to James W. Lake, Regional Adminstrator, and incorporated as part of the plan, a State standard revocation identical to the Federal standard revocation of 29 CFR 1910.144(b), Color Specifications, published in the **Federal Register** (43 FR 49737), on October 24, 1978. The original State standard received approval on January 30, 1976 (41 FR 4689). The State standard revocation was adopted on July 13, 1983, and became effective on September 12, 1983, under Washington Administrative Order 83-19. The administrative order was adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08.

On its own initiative, the State of Washington has submitted by letter dated September 4, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, minor corrections and changes to six paragraphs (a) WAC 296-36-145(1) and (2), (b) WAC 296-36-170, (c) WAC 296-36-175, (d) WAC 296-36-180, and (e) WAC 296-36-210(6) in Compressed Air Work, comparable to 29 CFR 1926.803, to update the references to other State standards, and, for WAC 296-36-180 only, to add a section on signals and means of communication that was inadvertently lost in the September 30, 1976 repeal of chapter 70, Tunnels, Shafts, and Subways. (Chapter 70 was part of Washington's original OSHA-approved set of standards.) These changes were made under Washington Administrative Order 90-10, adopted August 13, 1990, effective September 24, 1990, pursuant to RCW 34.04.040(20, 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08.

(a) WAC 296-36-145(1) pertains to Ventilation, WAC 296-36-145(2) pertains to Protection Against Atmospheric Contaminants.

(b) WAC 296-36-170 pertains to Stairs and Ladders.

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(c) WAC 296-36-175 pertains to Lighting and Power Equipment.

(d) WAC 296-36-180 pertains to Signals and Means of Communication.

(e) WAC 296-36-210(8) pertains to First Aid Rooms.

In response to Federal standards changes, the State has submitted by letter dated June 24, 1987, from Richard A. Davis, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard comparable to the Federal standard at 29 CFR 1910.1003 through 1910.1016, Medical Record Surveillance for Carcinogens, which covers the following substances: 29 CFR 1910.1003, 4-Nitrobiphenyl; 29 CFR 1910.1004, alpha-Naphthylamine; 29 CFR 1910.1006, Methyl chloromethyl ether; 29 CFR 1910.1007, 3-3'-Dichlorobenzidine (and its salts); 29 CFR 1910.1008, bis-Chloromethyl ether; 29 CFR 1910.1009, beta-Naphthylamine; 29 CFR 1910.1010, Benzidene; 29 CFR 1910.1011, 4-Aminodiphenyl; 29 CFR 1910.1012, Ethyleneimine; 29 CFR 1910.1013, beta-Propiolactone, 29 CFR 1910.1014, 2-Acethylaminofluorene; 29 CFR 1910.1015, 4-Dimethylaminoazobenzene; and 29 CFR 1910.1016, N-Nitrosodimethylamine; published in the Federal Register (45 FR 102) on May 23, 1980. The original State standard, Carcinogens, received approval on August 17, 1978 (41 FR 160) and an amendment retaining 4.4 Methylene bis (2-chloroaniline) was approved on April 30, 1982 (47 FR 18004). This State standard amendment was adopted on July 13, 1983, and became effective on September 12, 1983, under Washington Administrative Order 83-19. The administrative order was adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08. References are made to the State's Access to Records standard; and the standard format is different because the State standard for medical record surveillance for carcinogens is contained in one section, WAC 296-24-07314, rather than in 13 separate standards (29 CFR 1910.1003 through 1910.1004, and 1910.1006 through 1910.1016).

By letter dated February 23, 1988, from Joseph A. Dear, Director to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State submitted amendments to WAC 296-24, Safety Standards for Electrical Work comparable to 29 CFR part 1910 subpart L, as published in the Federal Register (46 FR 4056) on January 16, 1981, and as corrected August 7, 1981 (46 FR 40183). Some State-initiated changes are also included. The standard was originally approved in the Federal Register (41 FR 11636) on March 19, 1976. The State standard amendments were adopted by the State on March 30, 1982, effective May 28, 1982, and on November 30, 1987, with an effective date of December 30, 1987, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08, as ordered and transmitted under Washington Administrative Orders No. 82-10 and 87-24. The State-initiated amendments correct editorial errors and also strengthen requirements for industrial substations. As adopted March 30, 1982, the State requires substations of 750 volts or more to comply with its more stringent electrical construction code.

On its own initiative, the State has submitted by letters dated July 1, 1987, February 23, 1988, and April 24, 1990, from Joseph A. Dear to James W. Lake, Regional Administrator and incorporated as part of the plan, three amendments to its State-initiated Logging Code. The State's original Logging Code received Federal Register approval (47 FR 8433) on February 26, 1982. The first amendment was adopted on November 30, 1983, with an effective date of December 30, 1983, under Washington's Administrative Order 8-34. The amendment revised WAC 296-54-511(3) and (9) to incorporate the provisions of WAC 296-62-7115, Respiratory Protection, and WAC 296-62-09045, Hearing Protection. This is a minor housekeeping change which simply makes clear that Washington's general respiratory and hearing protection requirements, which apply to all industries, also apply to logging operations. The second amendment was adopted on November 30, 1987, with an effective date of December 30, 1987, under Washington's Administrative Order 87-24. The amendment revises WAC 296-54-505(28) to clarify the definition of "Danger Trees." The third amendment was adopted on April 10, 1990, with an effective date of May 25, 1990, under Washington's Administrative Order 90-01. The amendment deletes subsection(2) of WAC 296-54-569, braking requirements on logging trucks, which said that logging truck tractors having more than two axles need not have brakes on the steering axle wheels. The deletion was made because this subject is now regulated by another State agency, the Washington State Patrol. All administrative orders were adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08.

2. Decision

Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standard amendments for Tire Servicing Equipment; Arc Welding and Cutting and Compressed Air; and Color Specifications (revocation) are identical to the Federal standard amendments and that the State's Electrical standard amendments are at least as effective as the Federal, as required by section 18(c)(2) of the Act. OSHA has also determined that with the exception of the more stringent requirement for industrial substations, the differences between the State and Federal electrical amendments are minimal and that the standards are thus substantially identical. The one more stringent provision has been in effect since May 28, 1982. During this time OSHA has received no indication of significant objection to the State's different provision either as to its effectiveness in comparison to the Federal standard or as to its conformance with the product clause requirements of section 18(c)(2) of the Act. Regarding the three Logging amendments, OSHA has determined that no directly comparable Federal standards exist but that the State's amendments are at least as effective as the general Federal standards provisions that would apply, as required by section 18(c)(2) of the Act. OSHA has also determined that the changes made to the previously-approved State logging code are minor. OSHA has also determined that the differences between the State and Federal standard amendments for Cylinders and Containers; Care and Use of Ladders; Compressed Air Work; and, Medical Record Surveillance for Carcinogens are minimal and that the standards are thus substantially identical. OSHA therefore approves these standards; however, the right to reconsider this approval for the State standard amendments for Logging, Electrical, Cylinders and Containers, Care and Use of Ladders, Compressed Air Work, and Medical Record Surveillance for Carcinogens is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, suite 715, Seattle, Washington 98101-3212; Department of Labor and Industries, General Administration Building, Olympia, Washington 98504; and the Office of State Programs, Occupational Safety and Health Administration, room N-3476, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards are as effective as the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standard amendments were adopted in accordance with the procedural requirements of State law which included opportunity for public comments and further public participation would be repetitious.

This decision is effective May 21, 1991.

Authority: Sec. 18, Pub. L. 91-596, 84 Stat. 6108 (29 U.S.C. 667).

Signed at Seattle, WA, this 13th day of December, 1990.

James W. Lake,

Regional Administrator.

[FR Doc. 91-12001 Filed 5-20-91; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Services to the Field Section) to the National Council on the Arts will be held on June 6 1991 from 9 a.m.-5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.-9:45 a.m. and 4:30 p.m.-5:30 p.m. The topics will be opening remarks, general program overview, and policy discussion.

The remaining portion of this meeting from 9:45 a.m.-4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(b) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-12015 Filed 5-20-91; 8:45 am]

BILLING CODE 7537-01-M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Rural Arts Initiative and Community Foundation Initiative Section) to the National Council on the Arts will be held on June 7, 1991 from 9 a.m.-5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.-9:30 a.m. and 5 p.m.-5:30 p.m. The topics will be opening remarks, general program overview, and policy discussion.

The remaining portion of this meeting from 9:30 a.m.-5 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 15, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-12016 Filed 5-20-91; 8:45 am]

BILLING CODE 7537-01-M

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Public Partnership Office Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (States Program Overview and Challenge III Section) to the National Council on the Arts will be held on June 6, 1991, from 9 a.m.-4 p.m. in room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be opening remarks, action on minutes, Challenge III application review, proposed changes in Challenge program, guidelines/review for Arts Projects in Underserved Communities, recommendation on NASAA cooperative agreement for Information Services, AIDS Working Group report, proposed application questions for regional organizations, proposed regional funding formula, and other business.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public. Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 14, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-12017 Filed 5-20-91; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Artistic Advancement; Special Projects; US/Japan Fellowships Section) to the National Council on the Arts will be held on June 6, 1991 from 9:30 a.m.-6:30 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:30 a.m.-10 a.m. and 5:30 p.m.-6:30 p.m. The topics will be opening remarks, policy and FY 92 guidelines discussion.

The remaining portion of this meeting from 10 a.m.-5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 16, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-12018 Filed 5-20-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Atmospheric Sciences Advisory Committee; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Atmospheric Sciences (ACAS).

Dates: June 3-4-5, 1991.

Time: 9 a.m.-5 p.m. each day.

Place: Room 642, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed—June 3—9 a.m. to 5 p.m., Closed—June 4—9 a.m. to 12 noon, Open—June 4—1 p.m. to 5 p.m., Open—June 5—9 a.m. to 5 p.m.

Contact: Dr. Eugene W. Bierly, Division Director, Division of Atmospheric Sciences, room 644, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9874.

Minutes: May be obtained from the Contact Person listed above.

Purpose: Discussion of Long-Range Planning.

Agenda: Oversight Reviews of Climate Dynamics, Magnetospheric Physics, and Mesoscale Dynamics Meteorology Program Closed, 6/3 (9 a.m.-5 p.m.); 6/4 (9 a.m.-12 noon). Remarks by the Assistant Director for Geosciences, 6/4 (1:15-1:45 p.m.). Remarks by the Director, NSF, 06/04 (3-3:30 p.m.). Long-range plan discussion, 6/5 (9 a.m.-12 noon). Presentation of Oversight Reviews, 6/5 (1-4 p.m.).

Reason for Closing: The Oversight Committee's review of proposal actions will include privileged intellectual property and personal information that could harm individuals if it were disclosed. If discussions were open to the public, these matters that are exempt under U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Reason for Late Notice: Difficulty in arranging an acceptable meeting date for members.

Dated: May 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-12019 Filed 5-20-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: Class Exemption for Reports Concerning Possible Non-Routine Generic Problems.

3. The form number if applicable: Not applicable.

4. How often the collection is required: On Occasion.

5. Who will be required or asked to report: Licensees and applicants for nuclear power plants.

6. An estimate of the number of responses: 119 (one request involving 119 respondents during the requested 3-year clearance period).

7. An estimate of the total number of hours needed to complete the requirement or request: 11,900 (100 per respondent).

8. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.

9. Abstract: NRC is requesting approval authority to collect information concerning emergency non-routine generic problems which would require prompt action to preclude potential threats to public health and safety.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room 2120 L Street, NW., Lower Level, Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150-0012), NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland this 13th day of May, 1991.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated Senior Official for Information Resources Management.

[FR Doc. 91-11980 Filed 5-20-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power & Light Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-23 issued to the Carolina Power & Light Company (the licensee) for the operation of the H.B. Robinson Steam Electric Plant, Unit No. 2 (HBR-2), located in Darlington County, Hartsville, South Carolina.

Environmental Assessment

Identification of Proposed Action

The amendment would consist of a change to the operating license to extend the expiration date to July 31, 2010. The application for a license amendment was submitted August 17, 1987, and was supplemented July 8, 1990. The Commission's staff has prepared an Environmental Assessment of the proposed action, dated

Summary of Environmental Assessment

The Commission's staff has reviewed the potential environmental impact of the proposed change in expiration date of the operating license for HBR-2. This evaluation considered the previous environmental studies, including, the "Final Environmental Statement Related to the Operation of H.B. Robinson Steam-Electric Plant Unit 2," NUREG-75/024, April 1975, and more recent NRC Policy.

Radiological Impacts

The staff concludes that the Exclusion Area (owned and controlled by the licensee), the Low Population Zone (area within 5 miles of the site), and the nearest population center distance will probably remain unchanged from those described in the May 1981 Final Environmental Statement (FES). Based on the 1988 census, indications are that the population density within the Low Population Zone (LPZ) surrounding the site has increased more slowly than projected in the original Final Safety Analysis Report (FSAR), which was based on the 1980 census. For example, for the year 2010, the projected population in the LPZ based on the 1980 census in 15,501. However, the projection based on the original 1980 census is 17,930.

The additional period of plant operation (approximately 36 months) would not significantly affect the probability or consequences of any reactor accident. Station radiological effluents to unrestricted areas during normal operation have been well within Commission regulations regarding as low as reasonably achievable (ALARA) limits and are indicative of future releases. The proposed additional years of reactor operation do not increase the annual public risk from reactor operation.

With regard to normal plant operations, the occupational exposure for HBR-2 have been less than predicted in the 1975 FES, but greater than the national average for pressurized water reactors. The licensee is striving for further dose reduction utilizing ALARA programs, dose-saving plant modifications, and use of robotics to reduce increased doses from probable increased maintenance and corrosion product build-up. Accordingly, annual radiological impacts on man, both offsite and onsite, are not more severe than those previously estimated in the FES, and the staff's previous cost-benefit conclusions remain valid.

The environmental impacts attributable to transportation of fuel and waste from HBR-2, with respect to normal conditions of transport and possible accidents in transport, would be bounded as set forth in Summary Table S-4 of 10 CFR 51.52. The values in Table S-4 would continue to represent the contribution to the environmental costs of transportation associated with plant operation.

Non-Radiological Impacts

The Commission has concluded that the proposed extensions will not cause a significant increase in the impacts to the environment and will not change any conclusions reached by the Commission in the FES.

Finding of Significant Impact

The Commission has reviewed the proposed changes to the expiration date of the Facility Operating License relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not a prepare

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an environmental impact statement for the proposed amendment.

For further details with respect to the action, see (1) the application for amendment dated August 17, 1987, as supplemented July 9, 1990, (2) the "Final Environmental Statement Related to Operation of H.B. Robinson Nuclear Steam-Electric Plant, Unit 2," issued in NUREG-75/024 April 1975, and (3) the Environmental Assessment dated May 14, 1991. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Dated at Rockville, Maryland, this 14 day of May 1991.

For the Nuclear Regulatory Commission.

Anthony Mendiola,

Acting Director, Project Directorate II-1, Division of Reactor Projects—I/II.

[FR Doc. 91-11984 Filed 5-20-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-3070]

Notice of Receipt of Application for License Notice of Availability of Applicant's Environmental Report; Notice of Consideration of Issuance of License; and Notice of Hearing and Commission Order; Louisiana Energy Services, L.P.; Claiborne Enrichment Center

I. Receipt of Application and Availability of Documents

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) has received by letter, dated January 31, 1991, an application, safety analysis report, and environmental report from Louisiana Energy Services, L.P. (or LES), for a license to possess and use byproduct, source, and special nuclear material and to enrich natural uranium to a maximum of 5 percent U-235 by the gas centrifuge process. The plant, to be know as the Claiborne Enrichment Center (or CEC), would be constructed near Homer, Louisiana, in Claiborne Parish, Louisiana.

LES is a limited partnership whose general partners are Urenco Investments, Inc. (a subsidiary of Urenco, Ltd.), Claiborne Fuels, L.P. (a subsidiary of Fluor Daniel, Inc.), Claiborne Energy Services, Inc. (a subsidiary of Duke Power Company), and Graystone Corporation (a subsidiary of Northern States Power Company). In addition, there are seven limited partners. The Claiborne Enrichment Center would be similar in technical respects to the newest Urenco gas centrifuge uranium enrichment plant in Gronau, Federal Republic of Germany, and would be adapted to United States technology by Fluor Daniel, Inc.

Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the regulations in 10 CFR part 51, the applicant has filed an environmental report. The report, which discusses environmental considerations related to the proposed construction and operation of the facility, is available at the Commission's Public Document Room in the Gelman Building, 2120 L Street, NW., Washington, DC and the Local Public Document Room in the Claiborne Parish Library, 901 Edgewood Drive, Homer, Louisiana 71040. NRC will complete an environmental evaluation in accordance with 10 CFR part 51, and prepare an environmental impact statement before the hearing on the issuance of a license is completed. This action will be the subject of a separate notice in the Federal Register.

Copies of the application and safety analysis report (except for portions thereof subject to withholding from public inspection in accordance with 10 CFR 2.790, Availability of Public Records) are also available for public inspection at the aforementioned locations. When available, the NRC staff evaluation of the application and its environmental evaluation (except for portions thereof subject to withholding from public inspection in accordance with 10 CFR 2.790, Availability of Public Records) will also be placed in the above identified Public Document Rooms. Copies of transcripts of prehearing conferences and hearings (except for portions thereof subject to withholding from public inspection in accordance with the 10 CFR 2.790, Availability of Public Records) will also be made available at these locations.

II. Notice of Hearing

1. Section 193 of the Atomic Energy Act of 1954, as amended (or the Act), as amended by the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Pub. L. 101-575), requires a single adjudicatory hearing on the record for the licensing of uranium enrichment facilities. The Commission has determined that its regulations for the conduct of licensing hearings in 10 CFR part 2, subparts G and I, are adequate and appropriate for complying with the statutory requirement. Accordingly, the Commission is ordering that a hearing be conducted according to the rules of procedure in subpart G, and to the extent that classified information becomes involved, subpart I. The applicant and NRC staff shall be parties to the proceeding.

Pursuant to section 191 of the Act, the hearing shall be conducted by an Atomic Safety and Licensing Board (or the Board) appointed by the Chairman of the Atomic Safety and Licensing Board Panel. Notice as to the membership of the Board will be published in the Federal Register at a later date.

2. The hearing will be held under the authority of section 53, 63, 189, 191, and 193 of the Act, in accordance with 10 CFR part 2, Rules of Practice for Domestic Licensing Proceedings.

3. The matters of fact and law to be considered are whether the application satisfies the standards set forth in 10 CFR 30.33, 40.32, and 70.23, and the special standards and instructions set forth in section III of this Notice , and whether the requirements of 10 CFR part 51 have been satisfied.

4. If this proceeding is not a contested proceeding, as defined by 10 CFR 2.4, the Board will determine the following, without conducting a *de novo* evaluation of the application: (1) Whether the application and record of the proceeding contain sufficient information and whether the NRC staff's review of the application has been adequate to support findings to be made by the Director of the Division of Industrial and Medical Nuclear Safety, with respect to the matters set forth in paragraph 3 of this section, and (2) whether the review conducted by the NRC staff pursuant to 10 CFR part 51 has been adequate.

5. Regardless of whether the proceeding is contested or uncontested, the Board will, in its initial decision, in accordance with subpart A of part 51: Determine whether requirements of sections 102(2) (A), (C), and (E) of NEPA and subpart A of part 51 have been complied with in the proceeding; independently consider final balance among conflicting factors contained in the record of proceeding with a view to determining the appropriate action to be taken; and determine whether a license should be issued, denied, or conditioned to protect the environment.

6. If the proceeding becomes a contested proceeding, the Board shall make findings of fact and conclusions of law on admitted contentions. With respect to matters set forth in paragraph 3 of this section but not covered by admitted contentions, the Board will make the determinations set forth in paragraph 4 without conducting a *de novo* evaluation of the application.

By June 20, 1991, any person whose interest may be affected by this proceeding, and who wishes to participate as a party in the proceeding, must file a written petition for leave to intervene. Petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2, subpart G. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room in the Gelman Building, 21201 L Street, NW., Washington, DC, and at the local public document room in the Claiborne Parish Library, 901 Edgewood Drive, Homer, Louisiana 71040. If a petition for leave to intervene is filed by the aforementioned date, the Atomic Safety and Licensing Board, designated by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the petition.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the preceeding. The petition should specifically explain the reasons why intervention should be permitted, with particular reference to the following factors: (1) The nature of the petitioner's right, under the Act, to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding in which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend a petition, without requesting leave of the Board, up to 15 days before the holding of the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than Fifteen (15) days before the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, that must include a list of contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and cross-examine witnesses, consistent with NRC security regulations, policies, and procedures.

The Board will set the time and place for any special prehearing conference, prehearing conferences, and evidentiary hearing, and the respective notices will be published in the Federal Register.

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by July 22, 1991. By the same date, representatives of interested States, counties, municipalities, and/or agencies thereof may request permission to participate under 10 CFR 2.715(c).

A petition for leave to intervene must be filed by June 20, 1991, with the Secretary of the Commission, U.S. Nuclear Regulatory Commission Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. When petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard E. Cunningham, Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. Michael McGarry, III, Esq., Winston & Strawn, 1400 L Street NW., Washington, DC 20005-3502, attorney for the applicant.

Non-timely filings of petitions for leave to intervene, amended petitions, and supplemental petitions will not be entertained absent a determination by the presiding Atomic Safety and Licensing Board that the petition should be granted, based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

III. Commission Order: Criteria for the Issuance of a License

In addition to the criteria for the issuance of byproduct, source, and special nuclear material licenses contained in codified regulations, by this Order the Commission is establishing special standards and instructions for the granting of a license for byproduct, source, and special nuclear material to be possessed and used at the Claiborne Enrichment Center. These special standards and instructions are based on the requirements of section 5 of the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Public Law 101-575), and upon special features of the CEC that must be addressed in order for the Commission to determine that the issuance of the licence will not be inimical to the common defense and security of the United States, and will not constitute an unreasonable risk to the health and safety of the public.

Special Standards and Instructions

1. If the applicant complies with the applicable codified regulations identified in Part IV of this Notice and Commission Order, and with the requirements for the issuance of a

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license under these special conditions and instructions, a single license will be issued authorizing: (1) The receipt, possession, use, delivery, and transfer of byproduct (e.g., calibration sources), source, and speical nuclear material in the Claiborne Enrichment Center; and (2) the construction and operation of the Claiborne Enrichment Center. The license shall include conditions governing the ownership, control, and possession of any equipment, device, or important component part specially designed for such equipment or device, capable of separating the isotopes of uranium or eariching uranium in the isotope U-235, deemed necessary and appropriate for protecting the common defense and security.

2. The draft "General Design Criteria" for uranium enrichment, in the Advanced Notice of Proposed Rulemaking, published on April 22, 1986 (53 FR 13276), shall be applied. Summaries of the comments on the Advanced Notice of Proposed Rulemaking, including the General Design Criteria, and the NRC's comments thereon are provided in Secy-89-107 and SECY-89-347. Both of these Commission papers are available for public inspection at the aforementioned Commission Public Document Rooms.

3. For the purposes of siting and design of the facility against accidental atmospheric releases of uranium hexafluoride, the following criteria contained in NUREG-1391, "Chemical Toxicity of Uranium Hexafluoride Compared to Acute Effects of Radiation," shall be applied: a limiting intake of 10 milligrams of uranium in soluble form, and a limiting exposure to hydrogen fluoride at a concentration of 25 milligrams per cubic meter of air for 30 minutes. For exposure times (t) other than 30 minutes, the limiting concentration (C) of hydrogen fluoride in air shall be calculated using the equation: $C=25mg/m^3(30\ min/t)^{0.6}$. Both limitations shall be applied at the boundary of the site under control of the applicant.

4. Public Law 101-575 precludes beginning of construction prior to issuance of a license. The legislation does not, however, define "construction." The Commission has generally allowed certain activities to take place onsite prior to the issuance of a license. The immediate concern is that activities should not take place that would result in any significant adverse environmental impact, should the application for a license be denied. It is the Commission's view that 10 CFR 70.23(a)(7) provides adequate guidance on the kinds of activities that may take place at the site prior to the issuance of a license, and the limitations of that provision shall be applied, as appropriate, to activities of the applicant at the site.

5. In the application, authorization is sought to allow operation to begin when the first of three plant units of the Claibrone Enrichment Center is completed and capable of operation. A plant unit is described as a feed station and take-off stations, necessary support systems, and at least one cascade of gas centrifuge machines all installed and tested. In terms of the definition of "production facility" in section 11v. of the Act and 10 CFR 50.4, such a uranium enrichment configuration is a licensable facility under Public Law 101-575. Accordingly, the license will be conditioned to permit the production operation of a plant unit only after the staff has inspected the installation of all systems in a plant unit essential for beginning the enrichment of uranium and has verified that the initial construction of the plant unit is in accordance with the requirements of the license. Subsequent cascades in a plant unit and additional plant units will be inspected and construction verified prior to cascades being added to an operating plant unit or additional plant units being added to CEC. Inspection results shall subsequently be published in the **Federal Register**.

6. Public Law 101-575 requires the licensee to have and maintain liability insurance of such type and in such amounts as the Commission judges appropriate to cover liability claims arising out of any occurrence in the United States, causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of the use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of chemical compounds containing source or special nuclear material. The legislative record for this provision indicates that it closely tracks the definition of nuclear incident in the Act and that it may be satisfied through the applicant's purchase of nuclear energy liability insurance.

The Commission is not establishing, at this time, the amount of public liability insurance that the applicant will need to provide, nor the precise terms of the policy. The Commission notes that its regulations in 10 CFR 140.15, 140.16, and 140.17 provide adequate guidance as to proof of financial protection (insurance), and that 10 CFR part 140, appendix A, provides models for the form, content, and coverage of nuclear energy liability insurance, to which the staff may refer in its evaluation of the applicant's submittal. As to amount, the applicant shall, in the first instance, justify the amount of insurance it intends to purchase, in terms of a reasonable evaluation of the risks required to be covered by the legislation, but in no case need the applicant provide an amount greater than the maximum amont available from commercial nuclear energy liability insurers.

7. Term of License. On June 18, 1990, the Commission published a notice in the **Federal Register** (55 FR 24948) that the license term for major fuel cycle licensees will be extended from a 5-year term to a 10-year term. However, the term for a materials license is a matter of Commission discretion and is not established either by statute or regulation. Concurrently, the Commission obtained Office of Management and Budget approval, under the Paperwork Reduction Act, to require licensees to update the safety demonstration sections of licensing documents every 2 years, to reflect any changes in licensee safety activities. For the purpose of license term, the Commission has decided that the term of the license for this specific facility should be 30 years and that, similar to other major fuel cycle licensees, a reporting requirement to update the safety demonstration sections (or equivalent) of licensing documents every 2 years should be imposed on the licensee.

8. Creditor Regulations. The creditor regulations in 10 CFR 50.81 shall apply to the creation of creditor interests in equipment, devices, or important component parts thereof, capable of separating the isotopes of uranium or enriching uranium in the isotope U-235. The creditor regulations in 10 CFR 70.44 shall apply to the creation of creditor interests in special nuclear material. These creditor regulations may be augmented by license conditions as necessary to allow ownership arrangements (such as sale and leaseback) not covered by 10 CFR 50.81, provided it can be found that such arrangements are not inimical to the common defense and security of the United States.

9. All matters of classification of information related to the design, construction, operation, and safeguarding of the CEC shall be governed by classification guidance in "Joint NRC/DOE Classification Guide for Louisiana Energy Services Gas Centrifuge Plant (CG-LES GCP-1)" (1991) (Confidential—National Security Information). Any person producing such information must adhere to the criteria in CG-LES GCP-1. All decisions on questions of classification or declassification of information shall be made by appropriate classification officials in the NRC Division of Security, and are not subject to *de novo* review in this proceeding.

The applicant, any person admitted as a party to the hearing, or an entity participating under 10 CFR 2.715(c) may move the Commission to reconsider any portion of part III of this notice and Commission Order. The petition to reconsider must be filed within 60 days after the person or entity is admitted as a party or admitted as a participant under 2.715(c) to the proceeding, or by November 18, 1991, whichever comes first. The petiton must contain all technical or other arguments to support the petition. Although petitions will be presented to the Commission, and not to the Atomic Safety and Licensing Board, the procedures of 10 CFR 2.730 shall be followed.

IV. Applicable Rules and Regulations

The Commission will license and regulate byproduct, source, and special nuclear material at the Claiborne Enrichment Center in accordance with the Atomic Energy Act of 1954, as amended. The Act was amended by Public Law 101-575, which, in amending the definition of a production facility in the Act, only excluded uranium enrichment from the licensing requirements for a production facility as used in chapters 10 and 16 of the Act. Thus, CEC remains a production facility for the purpose of all other Chapters of the Act. Chapter 19 includes the Agreement State program which, in section 274c.(1), requires the Commission to retain authority and responsibility for the regulation of production facilities. Therefore, in compliance with law, the Commission will be the sole licensing and regulatory agency with respect to byproduct, source, and special nuclear material for the Claiborne Enrichment Center, and with respect to the control and use of any equipment or device in connection therewith.

The Commission notes that many rules and regulations codified in 10 CFR chapter I are applicable by the terms of their scope to the licensing of a person to receive, possess, use, transfer, deliver, and process byproduct, source and special nuclear material in the quantities that would be possessed at the Claiborne Enrichment Center. Specific regulations are to be applied according to their terms as follows:

1. 10 CFR parts 19, 20, 21, 30, 40, 61, 70, and 140, for the licensing and regulation of byproduct, source, and special nuclear material, including requirements for notices to workers, reporting of defects, radiation protection, waste disposal, decommissioning funding, and insurance.

The Commission notes that since the CEC will not become operational for several years hence, LES will be subject to the revised requirements of 10 CFR part 20 that become effective no later than January 1, 1993.

These regulations also require that the applicant address the technical, financial, and insurance provisions and resources for dealing with the disposition of depleted uranium hexafluoride tails. Plausible strategies for the disposition of tails include: storing, as a potential resource, uranium hexafluoride tails at the plant site; continuously converting uranium hexafluoride tails to uranium oxide (or tetrafluoride) as a potential resource or for disposal; and a combination of both—onsite storage with conversion of uranium hexafluoride at the end of plant life. SECY-91-019, a Commission paper in which these strategies and issues relating to the disposition of depleted uranium tails from enrichment plants are discussed, is available for public inspection at the aforementioned Commission Public Document Rooms.

2. 10 CFR part 51, for the preparation of an environmental report and an environmental impact statement for a materials license. Alternatives for the disposition of depleted uranium hexafluoride tails will be addressed in these documents.

3. 10 CFR part 71, for packaging and transportation of byproduct, source, and special nuclear material.

4. 10 CFR part 73, for the physical protection of special nuclear material.

5. 10 CFR part 74, for the material control and accounting of special nuclear material, including the proposed rules applicable to uranium enrichment published in the **Federal Register** for comment on December 17, 1990 (55 FR 51726). If the proposed rules are not final by the time the hearing is completed, a license, if issued, will be amended as appropriate to conform to the final rule.

6. 10 CFR part 25, for granting access to classified information. Portions of LES' application for a license are classified Restricted Data or National Security Information. Persons needing access to those portions of the application will be required to have the appropriate security clearance for the level of classified information to which access is required. Access to certain classified Third Agency or Foreign Government Information may be subject to special controls and require the prior approval of the Director, Division of Security. These requirements apply equally to intervenors, their witnesses and counsel, employees of the applicant, its witnesses and counsel, NRC personnel, and others. Any person who believes that he or she will have a need for access to classified information for the purpose of this licensing proceeding, including the hearing, should immediately contact the U.S. Nuclear Regulatory Commission, Division of Security, Washington, DC 20555, for information on the clearance process. Telephone calls may be made to James J. Dunleavy, Chief, Personnel Security Branch. Telephone: (301) 492-7343.

7. 10 CFR part 95, for obtaining NRC security facility approval and for safeguarding classified information received or developed. Any person who requires possession of classified information in connection with the licensing proceeding may process, store, reproduce, transmit, or handle classified information only in a location for which facility security approval has been obtained from the NRC's Division of Security. (See aforementioned address.) Telephone calls may be made to David A. Dittmeier, Chief, Facilities Security and Operational Support Branch. Telephone: (301) 492-5069.

8. 10 CFR part 170, fees. The Commission notes that Public Law 101-575 exempts uranium enrichment from only chapters 10 and 16 of the Act. These chapters are not relevant to fees for licensing review. Therefore, the applicant is subject to 10 CFR 170.21, schedule item E, for fees.

V. Notice of Intent Regarding Classified Information

Section 2.907 of title 10 of the Code of Federal Regulations requires the NRC staff to file a notice of intent if, at the time of publication of Notice of Hearing, it appears that it will be impracticable for the staff to avoid the introduction of Restricted Data or National Security Information into a proceeding.

The applicant has submitted portions of its application that are classified. The Commission notes that, since the entire application becomes part of the record of the proceeding, the NRC staff has found it impracticable for it to avoid the introduction of Restricted Data or National Security Information into the proceeding.

Dated at Rockville, Maryland, this 15th day of May, 1991.

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For the Nuclear Regulatory Commission.
Samuel J. Chilk,
Secretary of the Commission.
[FR Doc. 91-11878 Filed 5-20-91; 8:45 am]
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[Docket No. 50-322]

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Director's Decision

Introduction

On July 14, 1989, James P. McGranery, Jr., filed a request with the Executive Director for Operations pursuant to 10 CFR 2.206 on behalf of the Shoreham-Wading River Central School District requesting that action be taken with regard to the Shoreham Nuclear Power Station, Unit 1 (hereinafter School District Petition). The School District supplemented this Petition by a letter of July 19, 1989. By letter of July 20, 1989, I acknowledged receipt of the School District Petition. The School District responded to my letter by letter of July 21, 1989.

On July 20, 1989, Mr. McGranery filed a Petition on behalf of Scientists and Engineers for Secure Energy, Inc., (SE2) (hereinafter SE2 Petition). The Petition stated that SE2 adopted and incorporated the July 14 request made by the School District as supplemented on July 19 and July 21, 1989, and requested that its Petition be consolidated with that of the School District. By letter of August 21, 1989, I acknowledged receipt of the SE2 Petition. A notice was published in the Federal Register indicating that the Petitioners [1] requests were under consideration. 54 FR 36077 (August 31, 1989). On July 31, 1989, and January 23, April 5, May 4, November 14, and November 29, 1990, additional supplements to the Petitions filed by the School District and SE2 were submitted.

On December 20, 1990, I issued a Director's Decision under 10 CFR 2.206 (DD-90-8) resolving all of the issues raised in the School District and SE2 Petitions[2] with the exception of those issues discussed in the Petitioners' November 29, 1990 supplement, and stated that the issues raised in that supplement would be addressed by a separate Director's Decision.

In their November 29 supplement, the Petitioners stated that the Long Island Lighting Company (LILCO) had "recently" informed the NRC that it was storing 137 fuel support castings and 12 peripheral pieces from the Shoreham reactor vessel on the south separator/reheater roof above the turbine deck, causing LILCO to post a "high radiation area." According to the Petitioners, those circumstances raised questions as to whether LILCO is violating NRC regulations and a Confirmatory Order issued on March 29, 1990, that required continued maintenance of structures, systems, and components necessary for full-power operation. The Petitioners also noted the pendency of a LILCO application for a license amendment that would allow LILCO to ship these parts for burial to the low-level waste storage facility at Barnwell, South Carolina. The Petitioners alleged that such a license amendment would be contrary to "the decision reached by the Commission on recommendations of SECY-89-247," other regulatory requirements of 10 CFR chapter I, the Low-Level Waste Policy Amendments Act of 1985, and the National Environmental Policy Act of 1969 as amended (NEPA), and that an attempt to bury these parts before issuance and judicial review of a possession-only license would violate section 236 of the Atomic Energy Act, 42 U.S.C. 2284, which provides for criminal penalties for certain acts relating to sabotage of nuclear facilities or fuel. Consequently, the Petitioners requested that the Commission issue a Notice of Violation including a proposed civil penalty and a remedial action plan to bring LILCO into compliance with the Confirmatory Order and other requirements and to ensure that these reactor parts are properly preserved.

I have now completed my evaluation of the Petitioners' supplement of November 29, 1990. I have determined, for the reasons set forth below, that the Petition should be granted, in part, and denied, in part.

Background

On February 28, 1989, LILCO entered into an agreement with the State of New York to transfer its Shoreham assets to an entity of the State of New York for decommissioning (Transfer Agreement). However, LILCO continued to seek from the NRC issuance of a full-power license to operate the Shoreham station. On April 21, 1989, the NRC issued Facility Operating License No. NPF-82 to LILCO, which allows full-power operation of the Shoreham plant. On June 23, 1989, LILCO's shareowners ratified LILCO's Transfer Agreement with the State of New York.

Consistent with the Transfer Agreement, which prohibits LILCO from further operating the Shoreham facility, LILCO began to defuel the facility on June 30, 1989, completed defueling on August 9, 1989, and reduced its operating and support staff. On September 19, 1989, LILCO submitted a letter to the NRC committing to protect those systems not required for safety in the defueled mode but necessary for full-power operation consistent with NRC regulations and LILCO's license obligations. Further, LILCO is discontinuing customary maintenance for systems that LILCO considers unnecessary to support operation when all the fuel is placed in the spent fuel pool, by deenergizing and protecting these systems rather maintaining them in a condition ready for operation. On January 12, 1990, LILCO submitted a letter to the NRC in which LILCO stated that it would not place nuclear fuel back into the reactor without first receiving the NRC's approval. On March 29, 1990, the NRC issued a Confirmatory Order (55 FR 12758; April 5, 1990) that prohibits licensee from placing fuel back into the reactor vessel without first receiving approval from the NRC and that further states the following:

> This Confirmatory Order in no way relieves the licensee of the terms and conditions of its operating license or of its commitments covering the continued maintenance of structures, systems, and components outlined in its letter of September 19, 1989.

On June 28, 1989, LILCO and the Long Island Power Authority (LIPA) submitted a joint application for an amendment to LILCO's license to authorize the transfer of the Shoreham facility to LIPA. That application is still pending before the staff. A notice regarding this application was published in the Federal Register on March 20, 1991 (56 FR 22781).

By letter of November 8, 1990, LILCO informed the staff that it intended to ship 137 fuel support castings and 12 peripheral pieces to the low-level radioactive waste repository at Barnwell, South Carolina, before December 7, 1990. On November 14, 1990, the staff responded to LILCO's letter of November 8, by informing LILCO that such an activity requires the NRC's authorization and that the staff was processing its letter of November 8 as a request for an amendment to its license. After reviewing this request, the Commission determined to deny the request for amendment and published a Notice of Amendment Denial in the Federal Register on April 12, 1991. (56 FR 16132).

[1] On August 6, 1989, Leonard Bickwit, Jr., submitted a Petition on behalf of the Long Island Association requesting action regarding the Shoreham facility similar to that requested by Mr. McGranery and on similar bases. All of the issues raised in that Petition also were resolved in DD-90-8.

Discussion

The Petitioners alleged that LILCO is storing 137 fuel support castings and 12 peripheral pieces from the Shoreham reactor vessel on the south separator/reheater roof above the turbine deck, causing the licensee to post, in accordance with 10 CFR part 20, the only "high radiation area now in effect at the plant." The Petitioners alleged that this action raises questions as to whether LILCO is violating NRC regulations and the March 29, 1990, Confirmatory Order requiring continued maintenance of structures, systems, and components necessary for full-power operation.

The staff has determined that LILCO's storage of the 137 fuel support castings and the 12 peripheral pieces on site does not violate the Shoreham license or any other NRC requirement. In particular, the on-site storage of these components does not violate the Confirmatory Order of March 29, 1990, because the storage of the components was not prohibited by that Order. The March 29th Order prohibited only the placing of nuclear fuel into the Shoreham reactor vessel without prior NRC approval. Although the Order emphasized that it in no way relieved the Licensee of complying with its license or its commitments of September 19, 1989, regarding maintenance of structures, systems, and components, the storage of the components is not inconsistent with the Shoreham license or those commitments. LILCO's storage of these components is consistent with its commitment in its September 19, 1989 letter to protect systems not required for safety in the defueled mode but necessary for full-power operation on a cost-effective basis consistent with NRC regulations and LILCO's license obligations pending plant disposition.

The Petitioners further alleged that a license amendment allowing LILCO to ship these parts for burial would be contrary to "the decision reached by the Commission on recommendations of SECY-89-247," other regulatory requirememts of 10 CFR Chapter I, the Low-Level Waste Policy Amendments Act of 1985, and NEPA, and that an attempt to bury these parts while LILCO possesses a full-power license would violate section 236 of the Atomic Energy Act.

Consequently, the Petitoners request that the Commission take prompt action to investigate LILCO's conduct, and correct and prevent alleged violations of the Atomic Energy Act and NEPA.

After a careful review of LILCO's request for ship the fuel support castings and peripheral pieces of the Shoreham reactor vessel for burial, the staff concluded that the request cannot be approved. Specifically, the staff concluded that LILCO's request was premature while LILCO possesses a full-power operating license. Accordingly, on April 12, 1991, the NRC issued a Notice of Denial of Amendment to Facility Operating License and Opportunity for Hearing (56 FR 16132) and an associated safety evaluation, (dated April, 1991) which denied LILCO's request. Therefore, to the extent that the Petition requests that the Commission take action to prevent LILCO from shipping the 137 fuel support castings and 12 peripheral pieces off site for burial while still possessing a full-power license, that aspect of the Petition has been granted. In view of the denial of LILCO's request for the amendment to its license to allow the shipment of these components for disposal prior to issuance of a possession-only license, it is not necessary to address the Petitioners' specific assertions that such an amendment would be contrary to the Commission's decision on recommendations of SECY-89-247, the regulatory requirements of 10 CFR Chapter I, the Low-Level Waste Policy Amendments Act of 1985, and NEPA, and that burial of these parts would violate the Atomic Energy Act.

The Petitioners also assert that the Commission should take prompt action to investigate LILCO's conduct and correct and/or prevent alleged violations of the Atomic Energy Act and NEPA, and issue a Notice of Violation, including a proposed civil penalty, to LILCO. However, as explained above, the components are presently being preserved in on-site storage in compliance with LILCO's September 19, 1990 commitment letter, the March 29, 1990 Confirmatory Order, the Shoreham license, and all other NRC regulations. Because the licensee is complying with the Confirmatory Order and other requirements, there is no basis to issue a Notice of Violation, including issuance of a proposed civil penalty. Therefore, to the extent that the Petition requests that the Commission take enforcement action including issuing a Notice of Violation and proposed civil penalty to LILCO, the Petition is denied.

Finally, the Petitioners assert that the NRC should issue a remedial action plan to bring LILCO into compliance with the Confirmatory Order and other requirements to assure proper preservation of these reactor internal components. However, these components are presently being maintained and preserved in accordance with all regulatory requirements, the storage of these components has not violated any regulatory requirements, and no substantial health and safety issues have been raised. Consequently, to the extent that the Petition requests that the Commission issue a remedial action plan to LILCO, the Petition is denied.[3]

Conclusion

For the reasons stated above, I find that, to the extent that the Petition requests that the Commission take action to prevent LILCO from shipping certain fuel support castings and peripheral pieces from the Shoreham reactor vessel to the Barnwell, South Carolina, low-level waste storage facility for burial, the Petition is granted.

With regard to the Petitioners' request that the Commission issue a Notice of Violation, including a proposed civil penalty, there are no violations of NRC requirements which would provide a basis for such action. With respect to the Petitioners' request that the Commission order LILCO to implement a remedial action plan, the institution of proceedings pursuant to 10 CFR 2.202 is appropriate only where substantial health and safety issues have been raised (see Consolidated Edison Company of New York (Indian Point, Units 1, 2 and 3), CLI-75-8, 2 NRC 173, 175 (1975); Washington Public Power Supply System (WPPSS Nuclear Project No. 2), DD-84-7, 19 NRC 899, 923 (1984)). This is the standard that I have applied to the concerns raised by the Petitioners in this decision to determine whether a remedial action plan should be ordered. For the reasons discussed above, I conclude that the Petitioners have not raised any substantial health and safety issues. Accordingly, this request is denied.

Accordingly, the Petition is granted, in part, and denied, in part. A copy of this decision will be filed with the Secretary

[3] Petitioners incorporate by reference a November 29, 1990, submission in connection with the staff consideration of the Licensee's request to submit the reactor components for burial ("Comment on Proposed No Significant Hazards Consideration Determination, Request for Hearing, Notice of Intent to Intervene, and Opposition to Issuance of Amendment By and On Behalf of Shoreham-Wading River Central School District and Scientists and Engineers for Secure Energy, Inc.," as corrected and supplemented). The staff has reviewed this document and determined that no additional information has been provided which was not considered in determining to deny the Licensee's request. Because the Licensee's request to ship these components at this time while in possession of a full-power license has been denied, it is not necessary to address in this decision, the arguments in the Petitioners' November 29, 1990 submission.

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for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Rockville, Maryland this 14th day of May 1991.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 91-11983 Filed 5-20-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322]

Long Island Lighting Co.; Shoreham Nuclear Power Station, Unit 1 Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Decision regarding Petitions filed requesting action with regard to the Shoreham Nuclear Power Station, Unit 1.

On July 14, 1989, James P. McGranery, Jr., filed a Petition on behalf of the Shoreham-Wading River Central School District (School District) with the Executive Director for Operations for the Nuclear Regulatory Commission requesting that certain actions be taken. That Petition was supplemented by submittals dated July 19 and July 21, 1989. By Petition dated July 20, 1989, Mr. McGranery, on behalf of Scientists and Engineers for Secure Energy, Inc. (SE2), requested that the same action be taken on the same bases as that which he requested on behalf of the School District. On July 31, 1989; and January 23, April 5, May 4, November 14, and November 29, 1990, additional supplements to the Petitions filed by the School District and SE2 were submitted. The U.S. Nuclear Regulatory Commission (NRC) resolved the issues raised in the original Petitions and all the supplements, except the November 29, 1990 supplement in a "Director's Decision Pursuant to 10 CFR § 2.206" (DD-90-8) issued December 20, 1990. The present Decision resolves the issues raised in the November 29, 1990 supplement.

Briefly summarized, the Petitioners alleged that the Long Island Lighting Company (LILCO) violated a March 29, 1989, Confirmatory Order and other regulations by the on site storage of certain reactor vessel internal components, and that the pendency of a LILCO application for a license amendment that would allow shipment of these components off site for disposal also would violate NRC regulations, the Low-Level Waste Policy Amendments Act of 1985 and the National Environmental Policy Act of 1969, as amended, (NEPA) and requested that a Notice of Violation, including a proposed civil penalty and a remedial action plan, be issued.

The Director has now completed his evaluation of the November 29, 1990, supplement. The Director has determined that the Petitioners' requests should be granted, in part, and denied, in part, for the reasons given in the "Director's Decision Pursuant to 10 CFR 2.206" (DD-91-3). This document is available for inspection and copying in the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the Shoreham Nuclear Power Station, Unit 1, at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York, 11786-0787.

A copy of the Decision will be filed with the Secretary of the Commission for review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided in 10 CFR 2.206(c), the Decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 14th day of May 1991.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 91-11981 Filed 5-20-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-528-OLA, 50-529-OLA, 50-530-OLA; ASLBP No. 91-638-04-OLA; (Shutdown Cooling Flowrate)]

Arizona Public Service Co., et al.; (Palo Verde Nuclear Generating Station, Units 1, 2 and 3); Cancelling Prehearing Conference

May 14, 1991.

Please take notice that the prehearing conference in the above-identified proceeding scheduled for May 29, 1991, in Phoenix, Arizona, has been cancelled.

The Petition for Leave to Intervene and Request for Hearing submitted by Allan L. Mitchell and Linda E. Mitchell, dated January 21, 1991, has been withdrawn by the Petitioners, and the Petition for Leave to Intervene and Request for Hearing submitted by Myron L. Scott, Barbara S. Bush and the Coalition for Responsible Energy Education, dated January 22, 1991, has been denied by the Licensing Board. The Licensing Board dismissed the proceeding on May 14, 1991.

Issued at Bethesda, Maryland, this 14th day of May 1991.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 91-11979 Filed 5-20-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-03537, License No. 53-00458-04, EA 90-132]

Order Imposing Civil Monetary Penalty

In the Matter of Department of the Army Tripler Army Medical Center Tripler AMC, Hawaii.

I

The Department of the Army, Tripler Army Medical Center (Licensee) is the holder of Materials License No. 53-00458-04, issued by the Nuclear Regulatory Commission (NRC or Commission) on September 29, 1986. The license authorizes the medical and research use of radioactive materials in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted from June 29 to July 2, 1990. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated October 22, 1990. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation. The Licensee responded to the Notice dated October 22, 1990 by letters dated December 7 and 21, 1990. In its December 21, 1990 response, the Licensee admitted the violation, but argued that the $5,000 civil penalty proposed by the NRC should be mitigated or remitted.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that the violation occurred as stated, but that mitigation of the propsed civil penalty by 50% is appropriate, and that a penalty in the amount opf $2,500 should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C.

2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $2,500 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region V, 1450 Maria Lane, suite 210, Walnut Creek, CA 94596.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

Whether on the basis of the violation admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 13th day of May 1991.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix

Evaluations and Conclusions

On October 22, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection. The Department of the Army, Tripler Army Medical Center (Licensee or Tripler) responded to the Notice on December 7 and 21, 1990. Tripler admitted the violation but argued for mitigation or remission of the $5,000 civil penalty proposed by the NRC. The NRC's evaluation and conclusion regarding the Licensee's request are as follows:

Restatement of Violation

A. 10 CFR 35.25(a)(2) provides, in part, that a licensee that permits the use of byproduct material by an individual under the supervision of an authorized user shall require the supervised individual to follow the instructions of the supervising authorized user.

The instructions of the supervising authorized user, entitled "Management of Pregnant Patients", dated May 25, 1989, require, in part, that all female patients between the ages of 12 and 60 fill out a pregnancy statement. The statement asks if the patient is pregnant or nursing (breast feeding). The instructions further require, with exceptions not applicable here, that no patient who indicates that she is pregnant or lactating be given a radioactive substance.

Contrary to the above, on June 19, 1990, a nuclear medicine technologist, an individual under the supervision of the licensee's authorized user, administered 4.89 millicuries of iodine-131 to a patient without having the patient complete the required "pregnancy statement", specifically, the portion that asks if the patient is nursing (breast feeding); and the patient was lactating at the time.

Summary of Licensee's Request for Mitigation or Remission

While admitting the violation in its December 7, 1990 Reply to the Notice of Violation, in its December 21, 1990 Answer to the Notice of Violation the Licensee requested mitigation or remission of the civil penalty. Tripler relies on several factors to support its request.

First, Tripler identified the incident and did not attempt to conceal it, seeking NRC guidance six days after the incident as to whether it was reportable.

Second, corrective actions were comprehensive and were implemented the day after Tripler's discovery of the incident.

Third, the misadministration was a one-time incident and immediate steps were taken to respond to the incident.

Fourth, in response to the NRC's explanation in its cover letter that the civil penalty was proposed to "emphasize the importance of strict compliance with" NRC safety requirements and of management controls adequate to prevent similar violations, Tripler argues that no such emphasis is needed because human error can and does occur despite constant emphasis on patient care and safety, because Tripler's actions and procedures met or exceeded the reasonable prudent person standard, because the lesson has already been learned and corrective action taken, and because the NRC's emphasis should be on what was done to correct and treat and not on making Tripler an example by penalty. In this connection, the Licensee argues that it should be an example of a medical center that reported and rectified the situation, and that other medical centers will change their procedures with the motive of providing better treatment and patient care, not because another center was fined.

Fifth, the Licensee states that the radiation dosimetry studies that it performed in connection with this incident provide further evidence of its spirit of cooperation and compliance, garnered praise from NRC's medical consultant, and will aid future research and patient care.

Sixth, the Licensee states that the amount of the civil penalty is not insignificant, especially with tightened Federal spending, and that it has already spent thousands of dollars and anticipates spending more than that amount for transportation and treatment connected with the incident.

NRC Evaluation of Licensee's Request for Mitigation

At the time the civil penalty of $5,000 was proposed, the NRC considered the facts that the Licensee identified and reported this event even though it may not fit the customary definition of "misadministration" in 10 CFR 35.2, that the Licensee took prompt and effective corrective action in strengthening its programmatic controls, that the Licensee subsequently established a program of follow-up medical care for the infant involved in the incident, that the Licensee is incurring significant cost in providing that care, and that the Licensee performed radiation dosimetry studies following the incident. Further, the NRC recognized that this was a one-time incident that involved human error, and that the adjustment factors in NRC's Enforcement Policy normally provide for mitigation of a civil penalty based on identification and reporting as well as prompt and effective corrective action. Nevertheless, the NRC determined that a civil penalty is appropriate in this case because of the very serious nature of the event (i.e., the event involved a significant injury having life-long effects on an individual), and to emphasize to this Licensee and similar licensees the importance of meticulous attention to detail in preventing such occurrences in the future. In reaching this decision, it was recognized that the Enforcement Policy is just that, a policy, and the NRC may deviate from it as is deemed appropriate under the circumstances, with statutory authority to impose civil penalties not to exceed $100,000 per violation per day.

However, the NRC staff, after consultation with the Commission, has reconsidered its position and has determined that the proposed civil penalty should be mitigated by 50% in recognition of the facts that the Licensee identified the event, reported it to the NRC, and promptly instituted aggressive corrective action. The NRC believes that 50% mitigation strikes the proper balance between the need to emphasize the very serious nature of this event and the need to encourage and support positive licensee actions that may be taken after such an event occurs.

Finally, in response to the Licensee's argument that other medical centers will change their procedures with the motive of providing better patient care and not because another center was fined, the NRC recognizes that licensees have many incentives and rewards for good performance. Nevertheless, this case involves an unintended and very serious radiation exposure. The purpose of the NRC's program of licensing and regulation is to avoid such events. By imposing a civil penalty in this case, the NRC expects that there will be a positive deterrent effect on this and similar licensees by

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providing an additional incentive for good performance.

NRC Conclusion

The NRC has concluded that this violation occurred as stated, but that mitigation of the proposed civil penalty by 50% is warranted. Consequently, as civil penalty in the amount of $2,500 should be imposed.

[FR Doc. 91-11982 Filed 5-20-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29194; File No. 4-308]

Joint Industry Plan; Order Approving Amendments to the Intermarket Trading System Plan Relating to Pre-Opening Application and Dispute Resolution

On December 13, 1990, the participants in the Intermarket Trading System ("ITS") submitted copies of proposed amendments to the restated ITS Plan,[1] created pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Act") for the purpose of creating and operating an Intermarket Communication Linkage ("ITS Plan"). The amendments were submitted pursuant to section 11A of the Act and rule 11Aa3-2 thereunder.

The purpose of the amendment to the ITS Plan is: (1) To require use of the Pre-Opening Application following Trading Halts in certain prescribed situations; (2) to provide for a process by which participants involved in an ITS-related dispute can obrain non-binding opinions from other participants as to the appropriate resolution [2]; and (3) to delete provisions governing pre-opening experiment authority.

Notice of the proposed amendments was given in Securities Exchange Act Release No. 29053 (April 5, 1991), 56 FR 15114. The Commission received no comments on the proposals. This order grants approval of the proposed amendments.

The pre-opening application amendment modifies section 7(a) of the Plan [3] by repealing the requirement of using the Pre-Opening Application after a regulatory halt and substituting the broader requirement of using the Pre-Opening Application following all defined trading halts. The proposed amendment defines trading halt to include both an operational halt due to order influx, order imbalance or equipment changeover (exchange system, equipment, communication or other technical problem with respect to such security) and a regulatory halt due to news pending or news dissemination.

The amendments to section 7(a) would also trigger the Pre-Opening Application whenever an "indication of interest" is sent to the CTA Plan Processor prior to the opening of trading in an ITS security or reopening following a trading halt, even if the anticipated price change is not greater than the "applicable price change," as defined in the Plan. Under the revised Plan and rule, the indication to the consolidated last sale reporting system would constitute the notice required under the Pre-Opening Application. Market makers would be expected to continue the practice of sending notifications through ITS whenever an indication is sent through the Consolidated Tape System. Isolated failures to do do would not obviate the rule's notification requirement.

The amendments to section 7(a) also provide that a market maker must accept only those pre-opening responses sent to that Participant market by market makers in other Participant markets that have not yet opened trading in that security or, in the case of a trading halt, that halted trading in the security contemporaneously with the halted market and that had not resumed trading when the pre-opening response is sent. However, where a market maker receives such a pre-opening response, he may, in his discretion, accept this pre-opening response. The amendments also include a general provision that market makers should not respond if they already opened or reopened their markets.

In the event that a Participant market opens or resumes trading after a market maker in that Participant market has sent a pre-opening response but before the opening or reopening on the Participant market that halted trading, the market maker who sent the pre-opening response to that Participant market must confirm the response by sending an administrative message through the system. If the responding market maker fails to confirm the pre-opening response, the receiving market maker need not, but may in his discretion, accept the original response for the purpose of inclusion in the opening or reopening transaction. The model rule states that the market in a security is opened (or reopened) with either a trade or quotation, if trades are being reported to the CTS and quotes are being disseminated to the Consolidated Quotation System ("CQS"), respectively. The purpose of this provision is to afford the opening market maker the ability to independently rely on firm quotations being disseminated via CQS or transactions being reported via CTS as a means of determining whether other markets are open.

The dispute resolution amendment replaces section 4(e) with a new section 4(e), and provides for a procedure by which participants can obtain a non-binding opinion on a dispute between ITS participants on the application or interpretation of the ITS Plan and model rules. The current section 4(e), which grants pre-opening experiment authority to the ITS Operating Committee, is being deleted; the authority granted under the provision expired on December 31, 1981.

Under this procedure, disputes will be presented by the members of the ITS Operating Committee representing the affected Participants to one or more other agreed upon Committee members for a non-binding, non-precedent setting opinion. The dispute must pertain to an ITS trade situation involving a minimum loss of $5,000, which must have been established pursuant to the ITS Plan and rules (including applicable mitigation provisions). All routine self-regulatory organization surveillance reviews respecting the initial ruling must be completed before parties can seek assistance pursuant to this procedure. Opinions would be subject to periodic review by the ITS Operating Committee.

The Commission finds that approval of these amendments is consistent with the Act, in particular, with sections 11A(a)(1)(C)(ii) and (D) which provide for fair competition among the Participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders. Further, the Commission finds that the amendments are consistent with rule 11Aa3-2(c)(2) because they are necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the Act.

It is therefore ordered, pursuant to section 11A(a)(3)(B) of the Act, that the amendments be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30(a)(29).

Dated: May 15, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11930 Filed 5-20-91; 8:45 am]

BILLING CODE 8010-01-M

[1] The participants in the ITS include the American Stock Exchange, Inc., the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Cincinnati Stock Exchange, Inc., the Midwest Stock Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Philadelphia Stock Exchange, Inc., and the Pacific Stock Exchange, Inc. Related proposed rule changes were submitted by these self-regulatory organizations and were published for comment and described in Securities Exchange Act Release No. 29052 (April 5, 1991), 56 FR 15115. In a separate release issued today the Commission approved those proposed rule changes. See Securities Exchange Act Release No. 34-29193 (May 15, 1991).

[2] The Commission has consistently encouraged the ITS Participants to resolve the issue of pre-opening notifications after order-imbalance trading halts, and to implement an effective dispute resolution mechanism. See, e.g., letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to Richard L. Fogel, Assistant Comptroller General, GAO, dated January 11, 1989, in which the Commission's efforts are outlined.

[3] Section 7(a) of the Plan sets forth the substance of the Pre-Opening Application, whereby a market maker in a participant market who wishes to open his market in an ITS stock may obtain any pre-opening interest in that stock of other market-makers registered in that stock in other participant markets.

[Release No. 34-29193; File Nos. SR-Amex-90-27; SR-BSE-90-18; SR-CBOE-91-04; SR-CSE-91-01; SR-MSE-91-02; SR-NASD-91-11; SR-NYSE-90-56; SR-Phlx-90-37; SR-PSE-90-40]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the American Stock Exchange, Inc., et al.; Relating to the Pre-Opening Application in the Intermarket Trading System

The American Stock Exchange, Inc., the Boston Stock Exchange Inc., the Chicago Board Options Exchange, Inc., the Cincinnati Stock Exchange, Inc., the Midwest Stock Exchange, Inc. ("MSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc., the Philadelphia Stock Exchange, Inc., and the Pacific Stock Exchange, Inc., who are participants in the Intermarket Trading System ("ITS"), filed with the Securities and Exchange Commission ("Commission") proposed rule changes [1] pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), to conform their ITS rules on pre-opening application to recent amendments to the ITS Plan.[2] The proposed rule change would amend the participants' rules governing the pre-opening application following trading halts in certain situations in ITS.[3]

The proposed rule changes were published in the Federal Register.[4] The Commission received no comments on the proposals. This order grants approval of the proposed rule changes.

These rules set forth procedures relating to the Pre-Opening Application under section 7(a) of the ITS Plan, which has been filed with and approved by the Commission for the purpose of creating and operating an intermarket communicatons linkage pursuant to section 11A(a)(3)(B) of the Act. The current rules contain basic definitions pertaining to ITS, prescribe the sorts of transactions that may be effected through ITS and the pricing of commitments to trade, and specify the procedures pertaining to the "Pre-Opening Application." The Pre-Opening Application procedures enable a market maker in any ITS Participant market who wishes to open his market in an ITS security to obtain any pre-opening interest of other market makers registered in that stock in other Participant markets.

The rules provide that whenever a specialist [5] anticipates that an opening transaction in an ITS security on the exchange will be at a price that represents a change from the security's previous day's consolidated closing price of more than the "applicable price change," then the specialist must notify other ITS Participant markets by sending a "pre-opening notification" through the System. The applicable price changes are:

Security	Consolidated closing price	Applicable price change (point limit)
Network A	Under $15	⅛ point.
	$15 or over [1]	¼ point.
Network B	Under $15	⅛ point.
	$5 or over	¼ point.

[1] If the previous day's consolidated closing price for a stock exceeded $100 and the stock does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price change" is one point.

The Pre-Opening Application currently applies where a market maker reopens trading in a security following a Regulatory Halt as defined in the CTA Plan. The proposed rule changes amend the participants' rules to also mandate the use of the Pre-Opening Application whenever an "indication of interest" is sent to the CTA Plan Processor prior to the opening of trading in an ITS security or reopening following a trading halt—even if the anticipated price change is not greater than the "applicable price change," as defined in the Plan. The amended rules define trading halt to include both an operational halt due to order influx, order imbalance, or equipment changeover and a regulatory halt due to news pending or news dissemination.

The amended rules provide that, following a trading halt on the exchange and compliance with Pre-Opening Application procedures, a specialist must accept only those pre-opening responses sent to the exchange from other Participant markets that halted trading in the security at the same time as the exchange and that had not resumed trading when the pre-opening response is sent. If a specialist receives responses from markets that either never halted, or have opened trading in the security, he may use his discretion to include or exclude them at the opening.

Currently all market centers, including the NASD, have the authority to halt trading for regulatory purposes; the NASDAQ market is not authorized to halt trading for operational reasons, however, and NASD rules prohibit withdrawal of quotations in recognition of an operational trading halt. Thus, the NASD also proposed amending its authority to halt trading so that ITS/CAES market makers may participate in the Pre-Opening after an operational trading halt. The NASD's proposed rule change allows the NASD to withdraw quotations and halt trading in listed securities traded through ITS/CAES in recognition of a primary market operational halt, thereby enabling ITS/CAES market makers to receive and respond to pre-opening indications. If all ITS/CAES market makers remain closed

[1] The proposed rule changes were filed on November 23, 1990, November 19, 1990, February 8, 1991, February 27, 1991, January 9, 1991, February 19, 1991, December 12, 1990, December 14, 1990, and December 18, 1990, respectively.

[2] The corresponding amendments to the ITS Plan were published for comment and described in Securities Exchange Act Release No. 29053 (April 5, 1991), 56 FR 15114 and are being approved today in a separate release. *See* Securities Exchange Act Release No. 29194 (May 15, 1991).

[3] The Commission has consistently encouraged the ITS participants to resolve the issue of pre-opening notifications after order-imbalance trading halts. *See, e.g.*, letter from Richard G. Ketchum, Director, Division of Market Regulations, SEC, to Richard L. Fogel, Assistant Comptroller General, GAO, dated January 11, 1989, in which the Commission's efforts are outlined.

[4] Securities Exchange Act Release No. 29052 (April 5, 1991), 56 FR 15115.

[5] On the CBOE, the provision applies to Order Book Officials, as well as specialists, and on the NASD, to ITS/CAES market makers.

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during the primary market's operational halt, all will be permitted to participate in the pre-opening application; if one or more ITS/CAES market makers reopen prior to the primary market's reopening, this action will preclude all ITS/CAES market makers from participating in the pre-opening application, unless the primary market specialist elects to accept their pre-opening responses.[6]

The Commission finds that approval of the proposed rule changes is consistent with and furthers the objectives of section 6(b)(5) and section 15A(b)(6) of the Act as they are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general to protect investors and the public interest. Further, these rule changes are consistent with section 11A(a)(1)(D) of the Act, which calls for the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the rule changes be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 15, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11929 Filed 5-20-91; 8:45 am]

BILLING CODE 8010-01-M

[6] In its filing, however, the NASD noted that trading effected by market makers that are not ITS/CAES market makers will not jeopardize the ITS/CAES market makers' ability to respond to pre-opening applications.

[Release No. 34-29198; File No. SR-MSE-91-09]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change of the Midwest Stock Exchange, Incorporated, Relating to Orders Received Over the MAX System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 1, 1991, the Midwest Stock Exchange, Incorporated, filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and simultaneously publishing an order granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Midwest Stock Exchange, Incorporated ("MSE") proposes to extend its pilot program, whereby the guaranteed execution price of small agency market orders received over the Midwest Automated Execution System (MAX) are automatically improved from the consolidated best bid or offer according to certain pre-defined criteria (SuperMAX) until November 14, 1991. The Commission first approved SuperMAX on a six-month pilot basis on May 14, 1990.[1] The current six-month extension of the pilot program [2] expires on May 14, 1991.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On November 14, 1990, the Commission approved the extension of SuperMAX on a pilot basis.[3] The MSE proposes to extend the pilot program for another six-month period. SuperMAX allows for small agency market orders to be guaranteed an execution at a price that is better than the consolidated best bid or offer according to certain pre-defined criteria. The six-month extension of the pilot period will allow the Exchange to better analyze the effectiveness of SuperMAX and provide the SEC with requested trading data.

The proposed rule change is consistent with section 6 of the Securities Exchange Act of 1934 (the "Act") in that it is designed to promote just and equitable principles of trade and will help to perfect the mechanism of a free and open market and a national market system and will foster competition among markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on SuperMAX were informally received from Members and were unanimously favorable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The MSE requests that the Commission find good cause for approving the proposed rule change extending its pilot program until November 14, 1991, prior to the thirtieth day after publication of the notice in the **Federal Register**. The proposed rule change implementing the pilot program has been published for comment in the **Federal Register** [4] previously, and there have been no adverse comments on it. The MSE believes it appropriate to approve the extension of the pilot program so that the Exchange can better analyze the effectiveness of SuperMAX and provide the SEC with requested trading data.

The Commission finds that the proposed rule change extending the pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSE and, in particular, the requirements of section 6, and the rules and regulations thereunder.

[1] See Securities Exchange Act Release No. 28014 (May 14, 1990), order approving File No. SR-MSE-90-05.

[2] See Securities Exchange Act Release No. 28617 (November 14, 1990), order partially approving MSE-90-17.

[3] See Securities Exchange Act Release No. 28617 (November 14, 1990), order partially approving SR-MSE-90-17.

[4] See Securities Exchange Act Release No. 28014 (May 14, 1990), 55 FR 20660

The Commission finds good cause for extending the pilot program prior to the thirtieth day after the date of publication of the notice of filing thereof, in that accelerated approval is appropriate to extend the pilot program until November 14, 1991, without interruption.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by (insert date 21 days from the publication date).

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change extending the pilot program until November 14, 1991, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 15, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12024 Filed 5-20-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18147; 811-4986]

Eaton Vance Corporate High Income Dollar Fund, L.P.; Application for Deregistration

May 14, 1991.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (Act).

APPLICANT: Eaton Vance Corporate High Income Dollar Fund, L.P.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on May 6, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personnally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 10, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 24 Federal Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504-2284, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3033 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company organized as a Delaware limited partnership. On January 23, 1987, applicant filed a notification of registration on form N-8A pursuant to section 8(a) of the Act. On the same date, applicant filed a registration statement on Form N-1A under the Securities Act of 1933. The registration statement was declared effective on April 28, 1987, and applicant's initial public offering commenced on May 7, 1987.

2. On October 9, 1990, applicant's managing general partners authorized the termination of applicant pursuant to applicant's agreement of limited partnership, and applicant provided written notice of the termination to its shareholders. No shareholder authorization was required or obtained in connection with applicant's liquidation.

3. Applicant redeemed the shares of all shareholders (except the shares held by Eaton Vance Management, its investment adviser and non-managing general partner) as of the close of business on December 21, 1990 for $6.28 per share, the net asset value thereof on such date. The shares held by Eaton Vance Management were liquidated on December 31, 1990 for $3.52 per share, the net asset value thereof on such date reduced by remaining unamortized organization expenses and other expenses.

4. Pursuant to Delaware law, a certificate of cancellation of applicant's certificate of limited partnership was filed in the Office of the Secretary of State of Delaware on April 3, 1991.

5. The expenses incurred in connection with the liquidation and dissolution of applicant were borne by applicant's investment adviser.

6. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11928 Filed 5-20-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18148; 811-4986]

Eaton Vance U.S. Government Income Dollar Fund, L.P.; Application for Deregistration

May 14, 1991.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (Act).

APPLICANT: Eaton Vance U.S. Government Income Dollar Fund, L.P.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on May 6, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 10, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a

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certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 24 Federal Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504-2284, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company organized as a Delaware limited partnership. On January 23, 1987, applicant filed a notification of registration on form N-8A pursuant to section 8(a) of the Act. On the same date, applicant filed a registration statement on Form N-1A under the Securities Act of 1933. The registration statement was declared effective on April 28, 1987, and applicant's initial public offering commenced on May 7, 1987.

2. On October 9, 1990, applicant's managing general partners authorized the termination of applicant pursuant to applicant's agreement of limited partnership, and applicant provided written notice of the termination to its shareholders. No shareholder authorization was required or obtained in connection with applicant's liquidation.

3. Applicant redeemed the shares of all shareholders (except the shares held by Eaton Vance Management, its investment adviser and non-managing general partner) as of the close of business on December 21, 1990 for $10.89 per share, the net asset value thereof on such date. The shares held by Eaton Vance Management were liquidated on December 31, 1990 for $8.67 per share, the net asset value thereof on such date reduced by remaining unamortized organization expenses and other expenses.

4. Pursuant to Delaware law, a certificate of cancellation of applicant's certificate of limited partnership was filed in the Office of the Secretary of State of Delaware on April 3, 1991.

5. The expenses incurred in connection with the liquidation and dissolution of applicant were borne by applicant's investment adviser.

6. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11827 Filed 5-20-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18146; 812-7097]

Shearson Lehman Brothers Inc., et al.; Notice of Application

May 14, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Shearson Lehman Brothers Inc. ("Sponsor"), and all presently outstanding and subsequently issued series (except any short term series with a maturity at the time of purchase not exceeding 280 days and any other series on which the maximum applicable sales charge is less than 3.00%) of Directions Unit Investment Trust, E.F. Hutton Corporate Income Trust, E.F. Hutton Tax-Exempt Trust, E.F. Hutton Trust for Government Guaranteed Securities, Hutton Investment Trust, Hutton Telephone Trust, Hutton Utility Trust, Michigan Fund, Penn State Tax-Exempt Investment Trust, Pennsylvania Fund, Shearson Lehman Brothers Unit Trusts, Shearson Lehman Hutton Unit Trusts, Tax-Exempt Municipal Trust, The Tax-Exempt Trust and The Uncommon Values Unit Trust (collectively, the "Funds").

RELEVANT 1940 ACT SECTIONS: Approval requested pursuant to section 11(a), permitting certain offers of exchange, and an exemption pursuant to section 6(c) from section 14(a) requested by certain applicants.

SUMMARY OF APPLICATION: Applicants seek orders (1) approving certain offers of exchange ("Exchange Option") to be made between the Funds, (2) approving an additional offer of exchange ("Conversion Option") to holders of any registered unit investment trust carrying a specified sales load, and (3) excepting the Sponsor from any requirement to take and hold for its own account or privately place at least $100,000 of units in each series of the Funds that do not hold exclusively "eligible trust securities."

FILING DATE: The application was filed on August 16, 1989 and amended on July 10, 1989 and April 11, 1991, and supplemented by a letter from applicant's counsel dated May 2, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 10, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Shearson Lehman Hutton Inc., Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Kimberly Warren, Staff Attorney, at (202) 272-3028, or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is registered as a unit investment trust under the Act and consists of one or more separate series, each holding a separate portfolio of securities and having a separate registration statement under the Securities Act of 1933 ("1933 Act"). While the structures of the Funds and the various series are similar in most respects, the investment objectives are different. For example, some series seek taxable interest income, others seek tax-exempt interest income, and still others, capital appreciation. Subgroupings of series have more particularized investment objectives within these general categories.

2. Nearly 500 series of the Funds are currently outstanding. Additional series are being created and offered to the public at a rate of two or more per quarter. To create a series, the Sponsor usually acquires a portfolio of securities believed to satisfy the investment objective of the particular series, and then deposits the securities with a bank ("Trustee") in exchange for units of fractional undivided interest ("Units") in the deposited portfolio. The Sponsor offers Units to the public at a price that is initially based on the offering prices of the underlying securities plus a sales charge. In the secondary market, the price of a unit is generally based on the bid prices of the underlying securities or, for listed common or preferred stock, the closing sale price, plus a sales charge.

3. The sales charge in the primary market is currently as high as 4.5% of the public offering price. This sales charge is reduced on purchases of 100,000 or more Units to 4.0% of the public offering price on purchases of less than 250,000 Units, to 3.50% on purchases of 250,000 to 499,999 Units, to 3.00% on purchases of 500,000 to 999,999 Units and to 2.5% on purchases of 1,000,000 or more Units. The secondary market sales charge on these series is typically 1% higher at each level. The sales charge in the secondary market on certain other series ranges between 5.50% and 3.0% of the public offering price with reductions based on the number of Units purchased.

4. The Sponsor maintains a secondary market for Units of outstanding series and continually offers to purchase those Units at prices normally based on the bid side evaluation of the underlying securities in the particular series. If the Sponsor discontinues maintaining this market, Units of the series can be liquidated by their holders ("Holders") by direct presentation to the Trustee at redemption prices also based on the bid side evaluation of the underlying securities. The evaluations are determined by an independent evaluator except in the case of series comprised principally of securities traded on a national securities exchange or for which over-the-counter quotations are readily available, in which case the Unit price is based on the closing sale prices of the underlying securities, as determined by the Trustee.

5. Units purchased in the secondary market by the Sponsor may be reoffered to the public, at a price generally based on the aggregate bid side evaluation of the underlying securities plus the applicable sales charge. Those Units may also be presented to the Trustee for redemption. If the Sponsor does not elect to repurchase Units, the Holder can present them to the Trustee for redemption at the repurchase price. The Sponsor may from time to time redeem Units that it has repurchased.

6. The Sponsor intends to allow Holders to exchange their Units of any series for Units of other series of Funds in which a secondary market is maintained ("Exchange Funds") at a reduced sales charge equal to 1.5% of the public offering price of Units. Applicants reserve the right to change these fixed charges subject to the terms and conditions of rule 22d-1 and may otherwise modify, amend or terminate the Exchange Option, provided that the existing Holders will be given prior notice if required by Condition 1 for the Exchange and Conversion Offers, described below.

7. The Exchange Option will provide Holders with a convenient means of transferring interests into Exchange Funds as their investment requirements change. It will also serve as an alternative to disposition of a Holder's interest either in the secondary market or through redemption.

8. The Exchange Option would operate in a manner similar to any secondary market transaction except for the reduced sales charge. The Exchange Option would only be available on series for which the Sponsor is maintaining a secondary market. The Sponsor does not currently anticipate that the Exchange Option would be offered with respect to Units of any Series currently available on original issue. However, the Sponsor may permit such exchanges in the future.

9. The Exchange Option would permit the Holder to acquire only those Units which the Sponsor has acquired in the secondary market and has legally available for sale in the sate in which the Holder resides. Exchanges would be effected for whole Units only, but if the cash proceeds of Units exchanged is insufficient to acquire an even number of whole Units of the Exchange Fund selected, the Holder would be permitted to add cash sufficient to round up to the next higher number of whole Units of the Exchange Fund.

10. The applicable sales charge for Units exchanged within five months from the date of purchase for Units of an Exchange Fund with a higher sales charge than that paid on the Units being exchanged, will be the greater of 1.50% exchange fee, or an amount ("Alternative Charge") that together with the sale scharge actually paid on the acquisition of the Units being exchanged, equals the sales charge applicable to the direct purchases of the quantity of Exchange Fund Units being acquired, determined as of the date of the exchange.

11. The Sponsor proposes to offer the Conversion Option to holders of registered unit investment trusts (other than the Exchange Funds) which were offered at a maximum applicable sales charge of at least 3.0% of the public offering price ("Conversion Trusts") under terms essentially identical to the Exchange Option as described above. All holders of Conversion Trusts would be eligible to participate in the Conversion Option, regardless of whether they are or were retail customers of the Sponsor or whether the Sponsor participated as an underwriter or selling dealer in the original public offering of Units of the Conversion Trust.

12. The Conversion Option provides a means for those holders to exchange their Units at a reduced sales charge for Units of any series in which the Sponsor maintains a secondary market. The holder of Conversion Trust units would order his or her broker to sell those units by presentation to the Trustee and apply the proceeds to purchase whole Units of an Exchange Fund available in the secondary market. The broker must certify to the Sponsor that the purchase is pursuant to the Conversion Option and therefore eligible for the reduced sales charge. The Sponsor intends to hold the Conversion Option open under most circumstances. Applicants, however, reserve the right to modify, suspend or terminate the Conversion Option at any time without further notice. The reduced sales charge for the Conversion Option will be identical to that for the Exchange Option. The Sponsor also reserves the right to change the reduced sales charge from time to time subject to the terms and conditions of rule 22d-1. The Alternative Charge would also apply to the exercise of the Conversion Option within five months of purchase of the units exchanged.

13. A prospectus for each series subject to the Exchange and Conversion Options will describe the reduced sales charge and the procedures to exercise the options. Upon request, the Sponsor will deliver a current prospectus for those series in which the holder indicates an interest and of which the Sponsor has Units lawfully available for sale in the state in which the holder resides.

14. The Sponsor has offered shares of three series of Uncommon Values Unit Trust, two series of Utility Value Trusts and one series of Real Estate Value Trust and requests relief from the

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provisions of section 14(a) of the Act as it applies to them.

15. The Sponsor states that each series covered by this request, including subsequent and similar series, is intended to, at the date of deposit of the underlying securities and before any Unit is offered to the public, have a net worth far in excess of $100,000. Each of these series also contemplates subsequent deposits of securities in connection with the creation of additional Units, maintaining to the extent practicable the original proportionate relationship among the number of shares of each security as originally deposited. Thus, the initial assets of the series can be expected to increase.

Applicants' Legal Analysis

1. Applicants are prohibited by reason of sections 11(a) and 11(c) of the Act from making an offer to the holders of Units of a series to exchange such Units for the securities of any other investment company unless the terms of the offer have first been submitted to and approved by the Commission.

2. Applicants submit that the effect of the requested order will be that participants in the Exchange Option and the Conversion Option will purchase and sell units of the Funds based upon the same portfolio pricing terms as all other investors who purchase and sell fund units through the Sponsor or the underwriters in regular transactions.

3. Applicants assert that the reduced sales charge is a reasonable and justifiable expense to be allocated for the professional assistance and operational expenses which are contemplated in connection with the Exchange Option. Applicant submits that the reduced sales charge will achieve the goal of passing savings on to investors.

4. Applicants further submit that the requirement that a person who has acquired Units at a lower sales charge pay the difference, if greater than the reduced fixed charge, upon exercising the Exchange Option during the first five months in which he or she has held the Units to be exchanged, is appropriate in order to maintain the equitable treatment of various investors in each series. Applicants claim that the imposition of the Alternate Charge until Units have been held for a sufficient time to lessen any discrimination against persons acquiring Units of an Exchange Fund in direct purchases at the full sales charge is appropriate because the sales charge on the original purchase is less than that for a direct purchase of the Exchange Fund Units.

5. Applicants submit that the selling effort required to explain the advantages and operations of this type of security and to identify the investment needs of an investor who already holds securities of another unit investment trust is less than the selling effort required for investors unfamiliar with unit investment trusts. Thus, the Conversion Option reflects these savings in selling expenses and in preparation of advertising and selling literature. The Sponsor believes that the proposed charge is a reasonable and justifiable expense to be allocated for the professional assistance and operational expenses which are contemplated in connection with Conversion Option transactions.

6. Applicants further submit that the Conversion Option should have little or no competitive effect on the unit investment trust market. Applicants state that Holders of Conversion Trusts will not be induced or encouraged to participate in the Conversion Option through an active advertising or sales campaign. The Sponsor recognizes its responsibility to its customers against generating excessive commissions through churning and claims that the sales charge collected will not be a significant economic incentive to salesmen to promote conversions.

7. Applicants claim that the Conversion Option will not be used to disrupt the markets of other sponsors. Applicants assert that the Conversion Option is expected to appeal to a limited group of Holders, principally of trusts were the Exchange Funds offer a better investment opportunity because of the greater variety available and the services offered by the Sponsor (such as an active secondary market).

8. With respect to its request for an exemption from the requirements of section 14(a) of the Act, the Sponsor believes that because each series will have a net worth far in excess of $100,000 fully invested in securities on the date of deposit, each series will comply, at the time of its creation, fully with section 14(a)(1). The Sponsor, therefore, submits that any requirement that it take for its own account or sell $100,000 worth of Units as suggested by section 14(a)(3) of the Act would be double compliance. However, applicants recognize that the Commission may not agree with this position. Consequently, applicants seek an exemption from section 14(a) permitting them to sell the Units of the six series previously offered which they hold and to exempt them from such a requirement on the creation of any subsequent or similar Series.

9. The applicants submit that any requirement that the Sponsor invest $100,000 or more in Units of each series under an investment letter representing that those Units are purchased for investment and not for resale to the public or to make a private placement, will only increase the costs to the Sponsor of marketing the Units without creating any significant increase in the protection of Holders.

10. The Sponsor submits that its history in the securities business and its intention to maintain a secondary market demonstrate that the problem of undercapitalization, to which section 14(a) is directed, will not occur.

11. Applicants submit that the orders requested are fair and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions for the Exchange and Conversion Offers

If the requested exemption from section 11(c) is granted, the applicants agree to the following conditions:

1. Whenever the Exchange Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that:

(a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new series eligible for the exchange option, or to delete a series which has terminated; and

(b) No notice need be given if, under extraordinary circumstances, either—

(i) There is a suspension of the redemption of units of the Exchange Fund under section 22(e) of the Act and the rules and regulations thereunder, or

(ii) An Exchange Fund temporarily delays or ceases the sale of its units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. The sales charge collected at the time of any exchange or conversion shall not exceed 1.5% of the public offering price of the unit being acquired on each exchange.

3. The prospectus of each Exchange Fund and any sales literature or advertising that mentions the existence of the Exchange Option will disclose that the Exchange Option is subject to modification, termination or suspension

Applicant's Conditions for Relief from Net Worth Requirements

If the requested exemption from section 14(a) is granted, the applicants agree to the following conditions:

1. The Sponsor will refund, on demand and without deduction, all sales charges to

purchasers of Units of any series holding other than "eligible trust securities" from the Sponsor or any underwriter or dealer participating in the distribution, and liquidate the securities held by that series and distribute the proceeds thereof, if, within ninety days from the effectiveness of the registration statement under the 1933 Act, the net worth of the series is reduced to less than $100,000 or the series is terminated.

2. The Sponsor will instruct the Trustee to terminate any such series in the event redemption by the Sponsor of Units which have not been sold in the initial distribution results in the series having a new worth of less than 40% of the net worth of securities in its original portfolio, and in that event, the Sponsor will refund, on demand and without deduction, all sales charges to purchasers of Units of that series from the Sponsor or from any underwriter or dealer participating in the distribution.

3. The Sponsor agrees to require any future sponsor, as a condition of becoming a sponsor, to agree to the foregoing conditions.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11825 Filed 5-20-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA General Docket No. 86-1]

Association of American Railroads; Report and Order

In accordance with 49 CFR 211.51, notice is hereby given that the Federal Railroad Administration (FRA) is authorizing, in response to a petition from the Association of American Railroads (AAR), a test program that will permit some freight car wheels to remain in service despite having reddish brown discoloration on the face of the wheel that extends more than four inches into the plate area of the wheel. To conduct the type of test program contemplated by AAR, a waiver of compliance with FRA regulations is needed.

FRA's Report

For the reasons explained below, FRA is granting a limited, conditional waiver of compliance with its Freight Car Safety Standards (49 CFR part 215). The waiver will permit railroads to continue operating freight cars enrolled in this test program that do not comply with the requirements of the § 215.103(h) which provides that a railroad may not use a freight car if "a wheel on the car shows signs of having been overheated as evidenced by a reddish brown discoloration, to a substantially equal extent on both the front and the back face of the rim, that extends on either face more than four inches into the plate area of that wheel measured from the inner edge of the front or back face of the rim".

For a number of years, FRA has been involved in a cooperative wheel safety research effort. Data from that research effort indicate significant variations in the ability of freight car wheels to resist thermal and mechanical damage. Freight car wheels designed with a curved plate, with rims that have been subjected to heat treatment, appear to be the most resistant to thermal and mechanical damage and therefore less likely to experience in-service failure. Laboratory research involving the saw cutting of freight car wheels and field research involving drag braking of such wheels strongly support the superior safety performance of curved-plate, heat-treated wheels. These findings are consistent with FRA's evaluation of data concerning freight car wheel failures that have resulted in reportable accidents.

At present, FRA's regulatory provision (§ 215.103(h)) does not differentiate between freight car wheels of differing plate designs. In addition, the rule does not differentiate between heat-treated and non-heat-treated wheels. AAR data indicate that about 875,000 cars (approximately 73 percent of the roughly 1.2 million freight cars currently in the national freight car fleet) are equipped with curved-plate wheels. Of these, approximately 268,000 cars (roughly 30 percent) are equipped with wheels that are both curved-plate and heat-treated, and this number has been increasing and can be expected to continue to increase, since the AAR recommends such a design as the standard to be used when railroads are acquiring new wheels.

To better quantify the relative safety performance of heat-treated, curved-plate wheels and assess the effectiveness of FRA's rule, an in-service test is needed. The purpose of this test program is to compare the safety performance of curved-plate, heat-treated wheels that have more than four inches of discoloration and such wheels that have less discoloration or no discoloration. The results of the test should permit FRA to assess the appropriateness of its current rule.

Prior to deciding to authorize the test program described in this report and order, FRA sought public comment on the test proposal. FRA published a notice describing the proposed test program on January 23, 1990 (55 FR 1974). Only limited response to that notice was received, and FRA has incorporated commenter suggestions in its design of this program.

The test effort FRA is authorizing will permit up to 300,000 freight cars to be enrolled in the program. In order to control such a potentially large fleet, FRA is limiting the number of entities that can place equipment in the test fleet. Only Trailer Train Company and the individual railroad companies that currently are members of the Association of American Railroads are eligible to place freight cars in this test program. Freight cars selected by these companies must either be owned by that company or operated by that company under long term lease arrangements. Railroad tank cars will be used as a control group for this test program and no tank cars are eligible for inclusion in the test fleet. A car may be enrolled in the test program if it is (1) completely equipped with heat-treated, curved-plate wheels, (2) inspected and detailed information about the condition of the car recorded, and (3) clearly marked to identify it as part of the test fleet. When a test car wheel develops discoloration that exceeds the threshold value contained in § 215.103(h), a second marking must be added to the car. That second marking will identify the designated cars as being subject to the terms and conditions of this report and order. Only cars having both markings are covered by the waiver of compliance granted by this order. No more than 60,000 cars in the test fleet may have this second marking applied and be operated under the terms of this waiver.

FRA is imposing detailed operational constraints on the test fleet. Among the more significant constraints is one that limits the types of commodities waivered test cars may transport. Once a car is placed in the waiver portion of the test fleet, that car shall not be used to transport any commodity that requires placarding as a hazardous material under Department of Transportation regulations (49 CFR parts 171–179). Although FRA is granting a waiver of compliance to all railroads that encounter a test car with both markings, thereby relieving a railroad of the duty to remove the car from service, FRA is requiring that a railroad that replaces a wheel on a test car install a heat-treated, curved-plate wheel as the replacement. Additional operational controls for the design and conduct of the test program and the operation of test cars are specified below.

The date for initiation of the test program is September 1, 1991, unless

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circumstances preclude AAR from commencing on that date. The duration of the test program will not exceed five years and may be terminated at an earlier date. Failure of the AAR (including a participating railroad) to adhere to the terms and conditions of this report and order, or a determination by FRA that continuation of the test program is not in the public interest based on its evaluation of the test data, shall be sufficient basis for terminating this test program in whole or in part. In addition, if at any time during the test interval, the rate of removal of waivered wheels (heat-treated, curved-plate, excessive discoloration wheels) from test cars exceeds the rate of removal of non-excessively discolored wheels from test cars, the test will be suspended. During the suspension, a determination will be made concerning the safety implications for this test program of such wheel removal data. Unless FRA concludes that there is an appropriate basis for believing that the test program may safely continue, FRA will terminate the test. Such a termination decision will be provided in writing to AAR and a notice to that effect published in the Federal Register.

FRA's order contains reporting requirements to document the conduct of this test program. Both initial and periodic reports on test progress and annual program reviews are provided for. Summaries of those reports will be placed in the public docket for this proceeding and will be available for public inspection purposes.

In prior instances in which FRA has granted waivers of compliance to permit the conduct of test programs there have been isolated incidents in which FRA has detected a failure to adhere to the conditions that were attached to the waiver. In those cases parties asserted that FRA had not made explicit the possibility that it would seek to impose civil penalties for failure to comply with such conditions. Thus, all parties are hereby notified that during the pendency of this test program, FRA reserves the right to institute civil penalty action against a railroad that does not comply with the terms and conditions of this report and order. In such an instance, FRA will consider a failure to comply with the provision of Freight Car Safety Standards being waived by this order. In such circumstances, FRA will proceed in accordance with the provisions of part 209 (49 CFR part 209), including its statement of enforcement policy contained in appendix A.

FRA's order granting this waiver contains the detailed conditions that apply to the conduct of this test program. The conditions have been organized as follows: Section A involves fleet composition; section B involves control of information concerning the test fleet; section C involves operational control of the test fleet; and section D involves administrative details.

FRA's Order

In consideration of the foregoing, a waiver of compliance with the provisions of § 215.103(h) is hereby granted to any person (including a railroad) who is obligated to comply with 49 CFR 215.103(h). The waiver is conditioned on adherence to the following terms and conditions:

Section A—Composition of Test Fleet

The conditions concerning composition of the test fleet are:

1. Freight cars included in the test fleet must be owned or leased by a railroad that is a member of the AAR or be a car owned or leased by Trailer Train Company and, in the aggregate, can not exceed a total of 300,000 cars.

2. The number of freight cars in the test fleet from any one railroad or Trailer Train Company shall not exceed that contributors proportional share of the national fleet of freight cars available for interchange service.

3. The AAR shall be responsible for monitoring the number of cars being placed in the test fleet and shall immediately notify FRA and all railroads (including Trailer Train Company) when the limit of 300,000 test cars and the limit of 60,000 waivered test cars has been reached.

4. No railroad (including Trailer Train Company) shall place a tank car, a car equipped with any type of straight-plate wheel, or a car equipped with any type of non-heat-treated, curved-plate wheel in the test program.

5. The AAR shall monitor the selection of cars for the test fleet and take appropriate action to ensure that the composition of the test fleet does not contain serious anomalies in terms of the composition of the national freight car fleet and that the proportionality provision of condition A–2 is not violated.

6. In order for a freight car to qualify for inclusion in the waiver portion of this test program, the car must be fully equipped with heat-treated, curved-plate wheels and have one or more wheels with discoloration of more than four inches into the plate of the wheel as described in 49 CFR 215.103(h).

Section B—Control of Test Fleet Data

The conditions concerning composition of the test fleet are:

1. The following information shall be recorded for any freight car being placed in the test program:
- Car number.
- Car type.
- Car capacity.
- Brake shoe type (composition or hi-phosphorous cast iron).
- Air brake type (AB, ABD, ABDW, DB60).
- Wheel manufacturer and ID number.
- Wheel type (cast steel or wrought steel).
- Wheel design (single wear, two wear or multiwear).
- Wheel diameter (28", 30", 33", 36").
- Wheel class (A, B or C).
- Wheel installation date and location (facility).

2. Any freight car placed in this test program shall be periodically examined, and if any subsequent wheel removal occurs the following information shall be recorded:
- Initial test car and wheel inventory data as detailed in condition number 1 shall be furnished to the AAR Research and Test Department, in a suitable format for data base entry prior to the cars entering the test.
- Subsequent wheel removal data reports shall be submitted to the AAR within 5 days of removal using forms provided by the AAR.
- All inventory and wheel removal data shall be made available to the FRA Office of Safety.

3. Each railroad (including Trailer Train Company) shall submit copies of inventory data acquired in compliance with condition B–1 to the AAR in a format suitable for data base entry. The submission shall occur prior to the car being allowed to operate as part of the test fleet.

4. Each railroad (including Trailer Train Company) shall submit copies of wheel removal data acquired in compliance with condition B–2 to the AAR in a format suitable for data base entry or on forms provided by the AAR. The submission shall occur within 5 days of wheel removal.

5. Within 45 days following the beginning of the test program and at subsequent 45-day intervals during the remainder of the test period, the AAR shall provide FRA a summary of the test progress and an evaluation of the results obtained during the preceding month of the progam.

6. The AAR shall notify the FRA Office of Safety as soon as practicable of any derailment or accident resulting from the failure of a heat-treated, curved-plate wheel included in the test, and the result of the AAR investigation regarding the failure mode of the subject wheel.

7. Within 12 months following the beginning of the test program, and at subsequent 12-month intervals during the remainder of the waiver period, the AAR shall provide a program review to the FRA summarizing the test progress and results obtained during the preceding 12 months of the test program. The program review presentations may be written and/or oral in format.

8. Each railroad participating in this test shall designate at least one location where test cars will receive inspection to detect thermal cracks in wheels and inform AAR of that location(s) prior to placing any car in the test fleet.

9. The AAR shall be responsible for acquainting all parties (member railroads, non-member railroads, contract maintenance facilities, and others such as railroad traffic personnel and car distribution personnel) of the FRA approved test program, the purpose of the test, test plans and required conditions. Additionally, the AAR shall provide for the necessary education and training to ensure that the test conditions are understood and met. All participants will be alerted by the AAR to ensure that intensified efforts are maintained to find thermal cracks on any wheel.

Section C—Operational Control of Test Fleet

The conditions concerning composition of the test fleet are:

1. Each car identified as meeting the criteria for inclusion in the test fleet shall be marked, in letters not less than 3-inches high, on the BL and AR side of the car to read as follows:

AAR TEST—HEAT-TREATED, CURVED-PLATE WHEELS ONLY

2. To the extent possible, test cars must be operated in representative service that requires moderate to heavy braking conditions such as that experienced by the national freight car fleet. In judging representative service, consideration should also include:
- Train consist (unit or designated, general)
- Terrain
- Train speed
- Annual car mileage
- Climate (Temperature, precipitation, etc.)

3. Any car that is part of the test fleet and requires wheel replacement shall have its wheel(s) replaced with a heat-treated, curved-plate wheel(s).

4. When a test car is found to have one or more wheels that have a discoloration of more than four inches into the plate of the wheel as described in 49 CFR 215.103(h), that car shall be considered to be a waivered car once it has been marked as provided below. The marking shall be in letters not less than 3-inches high on the BL and AR side of the car and read as follows:

WAIVER H–91–1

That marking shall be placed directly above the marking that reads:

AAR TEST—HEAT-TREATED, CURVED-PLATE WHEELS ONLY as provided for under condition one of this section.

5. Any car that is part of the waiver portion of the test fleet shall not be used to haul any commodity requiring placarding as a hazardous material under the provisions of 49 CFR part 171 to 179.

6. To the extent possible, waivered test cars shall be routed to avoid operation over the tracks owned and operated by the National Railroad Passenger Corporation (Amtrak) Northeast Corridor tracks between Washington, DC, and New York City. Trains containing test cars that are traveling over that trackage shall only be operated during the hours between 11 p.m. and 6 a.m.

Section D—Administrative Details

1. The waiver is effective September 1, 1991 and shall expire on September 1, 1996.

2. If at any time during the test period, the rate of removal of waivered wheels (heat treated, curved plate, excessively discolored wheels) from test cars equals or exceeds the rate of removal of non-waivered wheels (heat treated, curved plate, non-excessively discolored wheels) from test cars, the test will be suspended. During the period of suspension a determination will be made to see if there is a basis for safely permitting continuation of the test. Absent the finding by FRA that there is such a basis, the AAR will be notified that the test is terminated.

3. As soon as possible after receipt of a termination notice by AAR, all waivered test cars must be removed from service until brought into compliance. The period for removing cars from service shall not exceed 120 days. During this interval cars may be moved as necessary to allow cars under load to be off-loaded and then brought into compliance.

4. The failure of the AAR or any participating railroad to adhere to the conditions contained in this order throughout the duration of the test period shall be sufficient grounds for the FRA to terminate this waiver in whole or part.

5. Failure to adhere to the conditions of this waiver by a railroad shall be deemed to be the same as non-compliance with the provisions of 49 CFR 215.103(h) for the purpose of imposing civil penalties in accordance with the provisions of 49 CFR 215.7.

Issued in Washington, DC, on May 15, 1991.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 91–11945 Filed 5–20–91; 8:45 am]

BILLING CODE 4910–60–M

National Highway Traffic Safety Administration

Petition for Exemption from the Vehicle Theft Prevention Standard; Porsche Cars North America, Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition by Porsche Cars North America, Inc. (Porsche) for an exemption from the parts marking requirements of the vehicle theft prevention standard for a new Porsche car line for Model Year (MY) 1992. The agency grants this exemption under section 605 of the Motor Vehicle Information and Cost Savings Act. The agency has determined that the antitheft device that the petitioner intends to install on this line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements. Therefore, the agency grants the petition.

DATES: The exemption granted by this notice will become effective beginning with the 1992 model year.

SUPPLEMENTARY INFORMATION: On December 12, 1990, this agency received from Porsche a petition for exemption from the theft prevention standard for a new Model Year (MY) 1992 Porsche car line pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard. The agency reviewed the December 12, 1990 submission and requested further information on the reliability and durability of the device (§ 543.6(a)(3)(v)), reasons that would support Porsche's belief that the antitheft device will be effective in reducing and deterring motor vehicle theft (§ 543.6(a)(4)), and asked Porsche to provide information in support of its belief that NHTSA should determine that the antitheft device is likely to be as effective as compliance with parts-marking in reducing and deterring motor vehicle thefts (§ 543.6(a)(5)). The agency also requested information that would fulfill § 543.6(b), which requires the

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manufacturer to provide an explanation of its belief that the submitted data are sufficiently representative and reliable to warrant NHTSA's reliance upon them. The agency received this additional information on January 21, 1991. The agency reviewed both the December 12, 1990 and January 21, 1991 submissions and concluded that together they constituted a complete petition. Accordingly, January 21, 1991 is the date on which the statutory 120 day period for processing Porsche's petition began.

On January 15, 1991, this agency granted Porsche's request under 49 CFR part 512 to treat certain information in its petition regarding the nameplate of the new car line, the company's product plans for MY 1992, and certain details about the antitheft system, as confidential business information.

In its petition, Porsche included a detailed description and diagrams of the identity, design, and location of the components of the antitheft device for the new Porsche car line. Porsche stated that the antitheft system proposed for the new MY 1992 car line is identical to the system for which an exemption was granted by NHTSA for the MY 1990 Porsche 911 and 928 car lines (See 54 FR 23727; June 2, 1989). The antitheft device is a comprehensive security alarm system that is activated by removing the key from the ignition and locking either the driver or passenger door with the key. The central locking system then locks the remaining door and arms the alarm. The alarm monitors the doors, front hood, rear hatch, radio, and ignition switch. If a door, front hood or hatch is opened, the radio removed, or the ignition switch moved from the off position without the alarm first being disarmed with the key, the alarm will go off. When this happens, the horn sounds intermittently and the side marker lights and interior lights flash. After a maximum of four minutes, the horn shuts off. After a maximum of eight minutes, the side marker and interior lights turn off and the alarm resets. The car will not start as long as the alarm remains armed. If the system again senses another door, hood, or hatch being opened, the radio removed, or the engine trying to be started, the alarm will again activate. This cycle continues for as long as the vehicle has electrical power.

Porsche also stated that the system is designed to make attempts to defeat the system difficult and time consuming. The battery in the Porsche cannot be accessed from outside the car. The power lines from the battery to the alarm system are inside the vehicle and cannot be accessed from outside the car. The releases for the hood and the rear hatch of the new car line are all located in the passenger compartment. Porsche stated that a thief cannot gain access to the lock switches from outside the car, even if the lock cylinders are removed, without physically breaching the outer metal panels surrounding the locks.

Porsche states that the alarm control unit is solid state and located inside the passenger compartment. If a thief should enter the car through a broken window, Porsche asserts that it would take a minimum of 15 minutes to gain access to the alarm control unit and would require specific knowledge of the system in order to successfully bypass it. The thief would then need to bypass the ignition lock to start the car, taking even more time.

Porsche asserts that all system components are of high quality and tested to ensure reliability and durability to Porsche's standards. Porsche examined the reliability and durability of this system by subjecting it to the following tests: Environmental conditions; installation in car; ID marking; control unit construction; temperature and voltage statement; service voltage range; wiring current variation; contact insulation; over voltage and short circuit stability idle current consumption; electronic compatibility; wire directed interference; test with mobile radios; radio interference protection; utilization durability (duty cycle); durability testing; hot and cold tests; temperature and temperature change shock tests; climatic test; vibration (sine wave and random) tests; impact; and shock tests. Porsche stated that if the system did not pass these tests, the design would not have been deemed acceptable.

Porsche provided statistical data (issued by NHTSA) to support its belief that the alarm system for the new car line will be as effective in reducing and deterring theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541). Porsche stated that in MY 1989, Porsche lines 944, 911, and 928 were equipped with alarm systems as standard equipment. The MY 1989 system was identical to that used on MY 1990 944, 911, and 928 model lines and for which NHTSA granted an exemption for the 911 and 928 lines under part 543 (See 54 FR 23727; June 2, 1989). Porsche provided statistical data depicting a 70.7 percent decrease for the 944 car line from MY 1988 to MY 1989, a 47.4 percent decrease for the 911 line for the same model years, and a 60 percent decrease for the 928 line for the same model years. Porsche stated it believes that a large part of the significant decrease in the theft rate from MY 1988 to 1989 for all three car lines is due to the alarm system.

Porsche also identified other manufacturers' car lines with alarm systems with features similar to those described in its petition. One such system is installed on the Audi 5000 and 100/200 lines. Porsche stated that since Audi was granted an exemption in MY 1987 for the 5000 line and subsequently for the 100/200 lines (which replaced the Audi 5000), the theft rate has declined. For the Audi 5000, the theft rate for MY 1987 was 1.9827, for MY 1988 it was 1.2842, and for MY 1989 it was 1.2304.

Based on the above described substantial evidence, the agency believes that the antitheft device for the new Porsche car line in MY 1992 is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

This determination is based on the information that Porsche submitted with its petition, and on other available information. The agency believes that the device will provide the types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by section 605(b) of the statute and § 543.6(a)(4), the agency also finds that Porsche has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Porsche provided on its device. This information included a description of reliability and functional tests conducted by Porsche for the antitheft system and its components. The function and design of the Porsche antitheft device is similar to those of other devices, such as that on the Nissan 300ZX, General Motors Allante, and Audi 5000S that the agency previously has considered likely to be at least as effective as complying with part 541 would be.

For the foregoing reasons, the agency hereby exempts the new MY 1992 Porsche car line in whole from the requirements of 49 CFR part 541.

If Porsche decides not to use the exemption for the new car line, it should formally notify the agency. If it so decides, these car lines must be marked according to the requirements under 49 CFR §§ 451.6 and 541.5 (marking of major component parts and replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts making programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if Porsche wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 examination applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption was based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change in the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if Porsche contemplates making any changes the effects of which might be characterized as *de minimis*, then the company should consult the agency before preparing and submitting a petition to modify.

Authority: 15 U.S.C. 2025, delegation of authority at 49 CFR 1.50).

Issued on: May 15, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-11946 Filed 5-20-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

May 15, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550-0003.

Form Number: OTS Form 368.

Type of Review: Revision.

Title: Criminal Referral Reporting/Recordkeeping Requirement.

Description: Information must be reported to the OTS, Justice and the U.S. Attorney whenever a crime occurs or is suspected at an OTS-regulated thrift institution. The information is used to determine if further investigation is warranted. In addition, the information must be maintained for ten years at the affected institution for use by the OTS.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Response/Recordkeeping: 2 hrs., 36 mins.

Frequency of Response: Other (whenever a crime is suspected).

Estimated Total Recordkeeping/Reporting Burden: 7,600 hours.

Clearance Officer: John Turner (202) 906-6840, Office of Thrift Supervision, 1700 G Street, NW., 3rd Floor, Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-11976 Filed 5-20-91; 8:45 am]

BILLING CODE 4810-25-M

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 98
Tuesday, May 21, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 22, 1991.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Mid-Year Review.

The staff will brief the Commission on FY 1991 mid-year review issues including proposed operating plan changes and new funding proposals.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301-492-5800.

Dated: May 15, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91-12179 Filed 5-17-91; 1:30 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 23, 1991.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Automatic Residential Garage Door Openers.

The staff will brief the Commission on a final rule specifying requirements for automatic residential garage door openers as stated in Section 203 of the Consumer Protection Safety Improvement Act of 1990.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301-492-5800.

Dated: May 15, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91-12180 Filed 5-17-91; 1:30 pm]

BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Matter To Be Withdrawn From Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, May 21, 1991, in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.:

Memorandum and resolution re: Rulemaking petition for policy regarding state and local property taxes.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898-6757.

Dated: May 17, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-12188 Filed 5-17-91; 3:23 pm]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 16, 1991.

TIME AND DATE: 10:00 a.m., Thursday, May 23, 1991.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Bulk Transportation Service, Inc.*, Docket No. PENN 89-143. (Issues include whether Bulk is an "operator" under Section 3(d) of the Mine Act, and whether the Secretary of Labor abused her discretion by citing Bulk for a violation of 30 C.F.R. § 77.807-3.)

Any person intending to attend this meeting who requires special accessibility features, and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653-5629/(202) 708-9300 for TDD Relay 1-800-877-8339 Toll Free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 91-12201 Filed 5-17-91; 3:27 p.m]

BILLING CODE 6735-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, May 28, 1991.

PLACE: Marriner S. Eccles Federal Reserve Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of check processing and computer equipment within the Federal Reserve System. (This item was originally announced for a closed meeting on May 20, 1991.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward form a previous announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-12171 Filed 5-17-91; 1:28 pm]

BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, May 29, 1991.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5458—Revised Probable Cause: Aircraft Accident Report—Runway Collision of Eastern Airlines Flight 111 and Epps Air Service Beechcraft King Air A100, Atlanta, Georgia, January 18, 1990.

5167A—Railroad Accident Report: Derailment of CSX Freight Train and Release of Hazardous Materials, Freeland, Michigan, July 22, 1990.

NEWS MEDIA CONTACT: Item #1—Brent Bahler and Item #2—Alan Pollock—Telephone (202) 382-6600.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6526.

Dated: May 17, 1991.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 91-12174 Filed 5-17-91; 1:44 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 20, 27, June 3, and 10, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 20

Monday, May 20

9:00 a.m.
Briefing on Final Rule on Performance Based QA—Part 35 (Public Meeting)

Tuesday, May 21

10:00 a.m.
Briefing on BRC Consensus Process (Public Meeting)

2:00 p.m.
Briefing on Final Rule on License Renewal—Part 54 (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Return of Topaz II Reactor System to the Soviet Union (Tentative)

Week of May 27—Tentative

Friday, May 31

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 3—Tentative

Friday, June 7

1:30 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 10—Tentative

Monday, June 10

2:00 p.m.
Briefing on Proposed Rule on Training and Qualification of Nuclear Power Plant Personnel (Public Meeting)

Tuesday, June 11

10:00 a.m.
Briefing by Agreement States on Compatibility Issues (Public Meeting)

Wednesday, June 12

10:00 a.m.
Briefing on Progress of Design Certification Review and Implementation (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this issue.

To Verify the Status of Meetings Call (Recording)—(301) 492-0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: May 16, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-12150 Filed 5-17-91; 1:24 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [56 FR 22512 May 15, 1991].

STATUS: Open/closed meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Monday, May 13, 1991.

CHANGE IN THE MEETING: Additional items.

The following additional matter will be considered at an open meeting on Monday, May 20, 1991, at 3:00 p.m.

Consideration of whether to issue a release proposing for comment amendments to Rule 31-1 under the Securities Exchange Act of 1934 ("Act"), which governs exemptions from Section 31 transaction fees. The proposal would exempt from the imposition of Section 31 fees transactions effected after regular trading hours involving orders of 15 securities or more executed at one aggregate price. For further information, please contact Sharon Lawson at (202) 272-2406.

The following additional item will be considered at a closed meeting on Tuesday, May 21, 1991, at 2:30 p.m.

Formal order of investigation.

Commissioner Roberts, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ronald Mueller at (202) 272-2200.

Dated: May 16, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12169 Filed 5-17-91; 1:25 pm]

BILLING CODE 8010-01-M

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federal register

Tuesday
May 21, 1991

Part II

Department of Education

Minority Teacher Training Project (FIPSE Program); Proposed Priority for Fiscal Year 1991; Notice

VOL 56 ISS 98 MY 21 1991 UMI

DEPARTMENT OF EDUCATION

Minority Teacher Training Project (IPSE Program); Proposed Priority for Fiscal Year 1991

AGENCY: Department of Education.

ACTION: Notice of proposed priority for fiscal year 1991.

SUMMARY: The Secretary proposes a Minority Teacher Training Project priority for fiscal year 1991. The priority is intended to encourage activities to increase the number of Hispanics, Blacks and other minorities in the teaching profession.

DATES: Comments must be received on or before June 20, 1991.

ADDRESSES: All comments concerning this proposed priority should be addressed to: Mr. John L. Hunt, U.S. Department of Education, 400 Maryland Avenue, SW., room 3042, ROB-3, Washington, DC 20202-5336.

FOR FURTHER INFORMATION CONTACT: John L. Hunt, Telephone: (202) 708-8863. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington DC 202 area code, telephone 708-9300 between 8 a.m. and 7 p.m., Eastern time.)

SUPPLEMENTARY INFORMATION: The conference report accompanying Public Law 101-517, The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1991, states that the Department should use $1,000,000, later reduced to $976,000, of the appropriation for the Fund for the Improvement of Postsecondary Education (FIPSE), for a minority teacher training project.

Congress appropriated the funds for this project under the authority for FIPSE, and the competition for this project will be conducted under the FIPSE regulations in 34 CFR part 630. The minority teacher training project is the only project that will be funded under this competition.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority: Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only an application that meets this absolute priority:

Minority Teacher Recruitment and Training Project

The Secretary proposes to give absolute preference to a minority teacher recruitment and training project that has the following components:

(a) Activities by an institution or institutions of higher education to identify minority students at the secondary and postsecondary levels and to encourage them to enter teacher training programs. One of the recruitment activities must be collaboration of the institution or institutions of higher education providing the teacher training with participating local educational agencies (LEAs), including an in-service program for teachers in the participating LEAs.

(b) Specialized teacher training designed to meet the needs of all participating students in teacher training programs to which the minority students are recruited. The teacher training program must include, but is not limited to, instructional and support service activities that address—

(1) Socio-psychological concerns in learning, including learning by minority students;

(2) Language and cultural differences among students;

(3) Culture-sensitive instructional materials for use by participants in the teacher training;

(4) Training in the effective use of culture-sensitive instructional materials in the classroom; and

(5) Joint restructuring of methodology courses between the liberal arts and education faculties.

Funds awarded under this priority are not available for tuition or other costs of the participating students' attendance at institutions of higher education.

For the purpose of this project, "minority" is defined as "American Indian, Alaskan Native, Asian, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban and Central or South American origin), or Pacific Islander."

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority. The Secretary is particularly interested in comments on the proposed definition of "minority."

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3042 ROB-3, 7th & D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

34 CFR part 630, and the Education Department General Administrative Regulations, in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

Program Authority: 20 U.S.C. 1135-1135a-3.

(Catalog of Federal Domestic Assistance Number—84.116—Fund for the Improvement of Postsecondary Education)

Dated: April 19, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-11924 Filed 5-20- 1; 8:45 am]

BILLING CODE 4000-01-M

federal register

Tuesday
May 21, 1991

Part III

Department of Education

Proposed Priorities for the National Institute on Disability and Rehabilitation Research for Fiscal Years 1991-92; Notices

VOL 56 ISS 98 MY 21 1991 UMI

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research for Fiscal Years 1991–92; Proposed Priorities

AGENCY: Department of Education.

ACTION: Proposed Priorities for the National Institute on Disability and Rehabilitation Research for Fiscal Years 1991–92.

SUMMARY: The Secretary of Education proposes funding priorities under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1991–1992 for a program of activities to support the implementation of the Americans With Disabilities Act (ADA).

DATES: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before June 20, 1991.

ADDRESSES: All written comments and suggestions should be sent to Betty Jo Berland, National Institute on Disability and Rehabilitation Research, Department of Education, 400 Maryland Avenue, SW., Switzer Building, room 3422, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: David Esquith, National Institute on Disability and Rehabilitation Research (Telephone: (202) 732–5801). Deaf and hearing-impaired individuals may call (202) 732–5316 for TDD services.

SUPPLEMENTARY INFORMATION: Authority for the dissemination of information that will assist in improving the lives of individuals with disabilities is contained in sections 202 and 204 of the Rehabilitation Act of 1973, as amended. The specific provisions concerning the establishment of projects that will assist in the implementation of the ADA are included in the House and Senate Reports accompanying the Appropriations bills for the Departments of Labor, Health and Human Services, and Education for Fiscal Year 1991.

NIDRR proposes the priorities for these projects, as well as special selection criteria for these awards, in this notice. The projects will be supported under the Knowledge Dissemination and Utilization Program. Under this program, awards are made to public and private nonprofit and for-profit agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. NIDRR may make awards for up to 60 months, through grants or cooperative agreements. NIDRR regulations authorize the Secretary to establish priorities by reserving funds to support particular activities (see 34 CFR 355.32). NIDRR is proposing the following absolute priorities, as authorized by the Education Department General Administrative Regulations (EDGAR) is § 75.105(c)(3). Only applications that are responsive to these priorities can be funded. NIDRR invites public comment on the priorities individually and collectively, including suggested modifications to the proposed priorities. Interested respondents also are invited to suggest the types of expertise that would be needed for independent experts to review and evaluate applications under these proposed priorities.

NIDRR will review the comments received on these proposed priorities and will then announce final funding priorities, which will be based on the responses to this notice, available funds, and other Departmental considerations. The publication of these proposed funding priorities does not bind the Department of Education to fund projects under any or all of these priorities, except as otherwise provided by statute. Funding of particular projects depends on both the final priorities and the quality of the applications received.

In this notice, NIDRR is proposing priorities for three types of projects. There are two priorities to establish national peer training projects to enhance the capacity of persons with disabilities and their organizations to facilitate the implementation of the ADA; there are three priorities for projects to develop and test technical assistance and training programs in three areas of the Act; and a priority that proposes ten Regional Disability and Business Accommodation Centers (RDBACs) that would focus on providing information and technical assistance to employers and other covered entities to facilitate appropriate implementation of the ADA, successful employment outcomes for individuals with disabilities, and greater accessibility in public accommodations.

Proposed Priorities

Background

Since its establishment in 1978, the National Institute on Disability and Rehabilitation Research (NIDRR; formerly the National Institute on Handicapped Research) has supported research to improve the employment status and promote the independence of persons with disabilities. Along with other research initiatives, NIDRR has supported research addressing accessible environments, assistive technology, job accommodation strategies, worksite modifications, information dissemination and utilization techniques, independent living, empowerment and self-representation, and the nature of various specific disabilities.

Public Law 101–336, the Americans with Disabilities Act (ADA), was enacted on July 26, 1990, and prohibits discrimination against individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. The ADA requires a number of Federal agencies to issue regulations and undertake technical assistance efforts. In most cases, the ADA requires responsible agencies to issue their final regulations within one year of the date of enactment and develop technical assistance manuals and make them available no later than 180 days after the final regulations have been published. Because of NIDRR's experience in supporting information dissemination and technical assistance on issues related to disability, and its information base of knowledge resulting from NIDRR-supported research and demonstration efforts, Congress provided additional funds to NIDRR for FY 1991 to support a technical assistance initiative related to the implementation of the ADA.

The Senate Report accompanying the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Bill, 1991 (Senate Report No. 101–516) frames NIDRR's task in broad terms, referring to funding for "technical assistance related to implementation of the Americans with Disabilities Act." The House Appropriations Report (H.R. 101–591) is more specific and oriented to employment, directing NIDRR to fund " * * * up to ten new regional centers on disability. The primary focus of this new program is to ensure that information and expertise are available on how to make reasonable accommodations for disabled employees in the work setting." The Conference Report did not discuss the issue.

As suggested by the House in its 1991 Appropriations Report, NIDRR has consulted with a range of relevant Federal agencies, including the Department of Justice, the Equal Employment Opportunity Commission, the President's Committee on the Employment of People with Disabilities, and the National Council on Disability, as well as with representatives from business and disability organizations, to develop a responsive and meaningful program that will complement the planned efforts of other public and private agencies. The proposed priorities were developed on the basis of these consultations along with references to NIDRR's existing knowledge base of disability-related information. NIDRR intends to continue to coordinate activities under this program with other Federal agencies and with other public and private initiatives to implement the ADA.

In response to the Congressional directives and the needs expressed by the representatives of disability and business organizations that NIDRR has consulted, NIDRR is proposing to establish a program of regional centers—the Regional Disability and Business Accommodation Centers (RDBACs)—that will address a wide range of issues related to implementation of the ADA, but will place particular emphasis on employment and public accommodation issues. At the same time, NIDRR will support three projects to produce a core set of training materials, resources, and references that will be used by the centers in their technical assistance efforts and by others providing training and technical assistance related to the employment, public accommodations, and telecommunications requirements of the ADA. In addition, NIDRR will support national peer training projects aimed at enhancing the knowledge of the ADA and, thereby, the capacity of organizations of and for persons with disabilities, as well as the capacities of individuals with disabilities, to facilitate the implementation of the ADA.

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National Peer Training Projects

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Peer and Family Training Network

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Regional Disability and Business Accommodation Centers

Proposed Priorities for National Peer Training Projects

NIDRR believes that the full potential of the ADA can be realized only if the individuals who are protected under the Act are aware of the provisions of the law and of their rights and responsibilities under the Act. Further, persons with disabilities and organizations of and for individuals with disabilities have both an incentive to see the law successfully implemented and the experience and knowledge to facilitate that implementation.

Applicants for peer training projects must present a plan that describes a national target population, equitably dispersed geographically throughout the nation, for the training, presents a method for reaching a diverse target population, describes types of training approaches, which may include training-the-trainers, multimedia designs, providing training at national, State, or regional meetings of organizations representing the target population, or other approaches that maximize impact with the available resources. Applicants must detail their plans for dissemination and utilization of their products as well as evaluation. Applicants for these projects must provide evidence that they include individuals with disabilities or their family members or representatives in all aspects of the planning, management, implementation, and evaluation of the training activity. Applicants must identify key staff that are available and will be assigned as project staff. Grantees will be expected to submit reports and materials to NIDRR, the National Rehabilitation Information Center and other appropriate clearinghouses.

Peer Training for Local Capacity-Building in Independent Living Centers

It is imperative that we take advantage of existing resources in local communities and develop their capacity to facilitate the smooth implementation of the ADA. There are over 400 Independent Living Centers (ILCs) in the United States that emphasize consumer control and peer services. These ILCs are natural resources that will have an awareness of the ADA and a strong incentive to promote its full implementation. However, ILC staff, peer associates, and volunteers can be more effective in these ADA facilitation roles if they develop a solid expertise.

Applicants for funding under this priority must provide a plan for peer training that maximizes the roles of individuals with disabilities in the planning and operation of the training program. Applicants must provide evidence of their ability to have a nationwide scope, and must demonstrate the availability of staff and facilities to begin immediately to implement the grant activities. The project must develop training materials and curricula that apply to all individuals with disabilities who are covered under the ADA and that can be used by all ILCs.

A project to be funded under this priority will:

- Provide training to ILC staff, associates, and volunteers on the requirements of the ADA;
- Provide the ILC staff, associates, and volunteers with general awareness training on types of accommodations that can be made, innovative approaches to accommodations, and low cost accommodations;
- Provide training and technical assistance to ILC staff, associates, and volunteers to enhance their capacity to deliver training, information, publicity, and educational programs in their communities about the ADA;
- Provide followup and reinforcement of training, consultation, or technical assistance to ILC staff, associates, and volunteers as needed by trainees;
- Assist ILC staff, associates, and volunteers as needed by trainees to select and maintain resource files of instructional materials for various types of audiences, such as individuals with various types of disabilities and their families or representatives and service providers from various service systems, including in these resource files videotapes, audiocassettes, visual presentations, posters, brochures, computer demonstrations, and other media presentations;
- Provide training to ILC staff, associates, and volunteers in various methods to promote awareness and implementation of the ADA, such as displays of model accommodations in malls or at fairs, recognition and award ceremonies, use of local media presentations, and poster or essay contests;
- Provide training to ILC staff, associates, and volunteers on ways to use existing community facilities and resources, such as community colleges, voluntary associations, or public access channels to promote implementation of the ADA;
- Begin training of ILC staff, associates, and volunteers within three months of the grant award and have trained an adequate number of ILCs that can respond to community needs at the effective dates of specific titles of the Act; and
- Coordinate their technical assistance and training activities with those of other agencies that provide technical assistance on the ADA, such as the Equal Employment Opportunity Commission and the Department of Justice, the Architectural and Transportation Barriers Compliance Board (ATBCB) and with the Peer and Family Training Network project, the Materials Development Projects, and the RDBACs to be funded under these priorities.

Peer and Family Training Network

In order for the potential benefits of the ADA to be fully realized, the intended beneficiaries must be aware of the provisions of the statute, the

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practical interpretation of those provisions, methods to facilitate implementation of the statute, and sources of assistance. This priority is intended to accomplish those objectives by developing a peer and family training network in which individuals with disabilities or their parents or other family members will provide training to their peers throughout the country to enhance their awareness of: (1) The provisions of the ADA; (2) their rights and responsibilities under the Act; (3) effective ways in which the employment, public accommodations, and telecommunication provisions of the Act can be implemented; and (4) local and national resources available for expert assistance in resolving issues such as interpretation, reasonable accommodations, or technical aspects of compliance, that may arise concerning the implementation of the provisions of the ADA.

This training network must apply innovative approaches to the delivery of training, including training-the-trainers, training the target population in such settings as organization meetings and conventions, supported employment programs, school transition programs, parent and advisory groups involved in special education programs, parent outreach projects, and similar programs that reach the target population. The project shall prepare individuals with disabilities and their family members or representatives to develop their own skills and awareness, and also prepare them to train other groups in the community, including peers and covered entities. The training may include developing the capacity of local disability organizations to serve as community resources.

Applicants for support under this project must demonstrate representation of and an ability to reach individuals with various types of disabilities—including developmental, cognitive, emotional, physical, and sensory impairments—and their families. Applicants may propose various effective means of delivering the training, including through subcontracts that are made with organizations that also represent individuals with disabilities and their families. The training provided for under this priority must begin within three months of the grant award and additional training and related activities will be phased in over the three year period of the grant.

A project to be funded under this priority will:

• Provide training to individuals with disabilities and their families, by individuals with disabilities or family members, on the provisions of the ADA and on methods to facilitate the implementation of the ADA;

• Train individuals with disabilities and their family members to become trainers of their peers and of other key individuals in their communities, including employers and public or private service providers and administrators;

• Develop the capacity of organizations of and for individuals with disabilities to provide information, training, technical assistance, and education about the ADA within their communities, particularly to persons with disabilities and their families, or to organizations representing individuals with disabilities or those who provide services to them;

• Coordinate and cooperate with the Peer Training for Local Capacity-Building in Independent Living Centers project, the Materials Development Projects, and the RDBACs described in this notice, and share information with these and other relevant entities; and

• Coordinate their technical assistance and training activities with those of other agencies that provide technical assistance on the ADA, such as the Equal Employment Opportunity Commission, the Department of Justice, and the Architectural and Transportation Barriers Compliance Board.

Selection Criteria

The regulations that apply to the Knowledge Dissemination and Utilization program, 34 CFR 355, apply to these priorities. However, because of the specialized nature of these activities and the potential importance of these projects to the successful implementation of the Americans with Disabilities Act, NIDRR proposes to add several factors to the selection criteria in 34 CFR 350.34 by which applications under these priorities will be evaluated. NIDRR proposes to add 60 points to the selection criteria for these projects, so that the maximum possible score for an application in § 350.33(e) is increased to 160 points. NIDRR proposes to distribute the additional points as follows:

(1) The applicant demonstrates that individuals with disabilities, or where appropriate, their family members will plan, manage, implement, and evaluate the project. (Weight: 4; Total Points: 20)

(2) The applicant proposes an effective approach to the timely delivery of training in formats and styles that are accessible to individuals with a range of sensory, communication, cognitive, and learning disabilities. (Weight: 4; Total Points: 20)

(3) The applicant demonstrates an ability to begin immediate project operations, demonstrates that key staff and facilities are currently available, and demonstrates an ability to achieve a comprehensive nationwide program within the three-year period of the project. (Weight: 4; Total Points 20)

Proposed Priorities for Materials Development Projects

In order to ensure that the RDBACs have high quality, uniform materials to distribute and to make accessible training materials available to various segments of the population that need to know about the ADA, NIDRR proposes priorities to develop and test new informational and instructional materials.

NIDRR expects that the target audiences for the RDBACs, as well as the other populations likely to make use of these materials, will have a wide range of information processing styles and interests. As a result, the materials that the RDBACs distribute and the training that they provide must cover a broad range of topics, use a number of different visual, auditory, and experiential media, be available in a variety of accessible formats, and be presented so as to be understandable to a range of target audiences with cognitive or linguistic differences. In order to ensure the usefulness and appropriateness of the materials developed by these projects, NIDRR requires that persons with disabilities and their families must be involved in the development of these materials and resources to the maximum extent feasible.

NIDRR plans to support three two-year grants or cooperative agreements for materials and resource development and testing. These materials and resources will be available to the RDBACs and to the national peer training projects for reproduction to be distributed and disseminated regionally and nationally. They will also be available for use in further public information, technical assistance, and training activities conducted by the grantees or by other interested entities. Grantees will be expected to submit reports and materials to NIDRR, the National Rehabilitation Information Center and other appropriate clearinghouses.

Using a variety of media, these grantees will develop materials and resources for use by, and with, employers, disability organizations, commercial establishments, labor unions, State and local government agencies, service providers, voluntary organizations, and the general public. In addition, the grantees will develop

training materials that can be used by trainers, employers, and disability groups. These materials and resources will include, but not be limited to: Checklists, self-assessment guides, videotapes, audiotapes, self-guided instructional materials, information guides, manuals, curricula, and reference lists. The products of the grants must be developed in a variety of media and formats so as to be understandable by a wide audience with varying information processing styles and abilities. Each of the materials developed by the grants must be field-tested prior to final production. In order for these materials to have maximum impact on the implementation of the ADA, NIDRR requires that grantees be capable of producing high quality materials in a short time period, and be able to complete initial materials in the first three months of the projects.

NIDRR proposes three priority areas for materials development projects and intends to make one award in each of the three areas: (1) Accessibility and public accommodation; (2) employment; and (3) communication and telecommunication. NIDRR has identified four primary target audiences for the materials and resources grants and recognizes that numerous secondary target audiences exist. These four principal audiences are: Persons with disabilities and their families; employers; public and private entities that operate public accommodations; and public and private service providers. Some of the secondary target populations include health care providers, educators, journalists, and the general public. Each of the grantees must ensure that its products are tailored to the primary target audiences identified by NIDRR.

1. Accessibility and Public Accommodation

The concepts of accessibility and public accommodation must be viewed within the context of implementing the ADA. Examples of issues that are likely to emerge include: The accessibility of places of public accommodation—e.g., stores, restaurants, hotels; the accessibility of public facilities owned and operated by State and local governments—e.g., parks, museums, office buildings; and the adaptation of equipment, instructions, guidelines, and informational materials used by health care providers. The primary target audiences for this material are the general business community and State and local governments.

The project to be funded under this priority will:

• Develop or identify and adapt self-administered survey guides, checklists, and other instruments that can be used by the target audiences to evaluate the accessibility of a facility to individuals of all ages with disabilities and have these materials in trial application within three months of the date of the award;

• Develop or adapt training materials and resources that will enhance the skills and ability of the recipients of the technical assistance or training to make an environment, function, or service accessible to persons of all ages with disabilities, and place at least some of these materials into trial applications within six months of the date of the award;

• Develop or package information on design alternatives for renovations, refurbishing, refurnishing, or construction, including low-cost options, and begin trial application of these materials within nine months of the date of the award;

• Pilot test the materials developed on appropriate target audiences, which in all cases must include individuals with various types of disabilities and representatives of covered entities, evaluate their effectiveness, and modify the materials as needed;

• Coordinate the development, repackaging, and dissemination of materials with the Architectural and Transportation Barriers Compliance Board, the Department of Justice, and other agencies that provide technical assistance on the public accommodations provisions of the ADA;

• Assure that all materials are developed in more than one format to accommodate various individual communication modes;

• Provide copies of all materials along with a final report to NIDRR and file the final report with the National Rehabilitation Information Center (NARIC); and

• Coordinate their technical assistance and training activities with those of other agencies that provide technical assistance on the ADA, such as the Equal Employment Opportunity Commission and the Department of Justice.

(2) Employment

The ADA establishes a number of important safeguards regarding the employment of a person with a disability. These provisions affect the entire continuum of employment, from initial activities such as job development, recruitment and interviewing, through all aspects of employment, including the use of reasonable accommodations, employee benefits, and job structure and retention. In order for these safeguards to promote opportunities for employment, employers and persons with disabilities need information, training, and materials that will enable them to transform the ADA's safeguards into routine business practices. To meet the requirements of the ADA, employers will need to be flexible and resourceful regarding job accommodations that do not result in undue hardship; must be familiar with the array of job and employment strategies and have a readily available pool of expertise and information about existing technology and strategies for individuals of all ages.

The ADA is expected to lead to increased employment among persons with disabilities, and as a result a wider audience of employers will need information addressing workplace issues relating to employees with disabilities. These include, among others, issues of employee benefits, insurance coverage, labor relations, tax incentives, promotions, job retention, and physical accommodations at the workplace.

The principal target populations for these materials are individual employers and employer organizations, individuals with disabilities and their organizations, vocational rehabilitation agencies, insurance providers, and State and local governments. The materials shall address particularly the needs and resources of small businesses.

The project to be funded under this priority will:

• Develop training programs, materials and resources, or repackage appropriate existing materials, that address job structuring, advertising, job recruitment, interviewing, testing, drug testing, medical examinations, assessing job qualifications and hiring in order to attract and retain qualified persons with disabilities, emphasizing low-cost options, and begin the trial application of some of these materials within three months of the award;

• Develop training programs that include model interview guides and job descriptions as well as a model process for developing job descriptions and establishing job qualifications, and begin trial application of some of these materials within three months of the award;

• Develop training programs, materials, resources, strategies and models addressing work schedules, job analysis, job restructuring, and job reassignment, and begin trial applications within six months of the award;

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• Develop training programs, materials, and resources addressing retooling, specialized equipment, auxiliary aids, assistive devices, and assistive services, with emphasis on low-cost options and funding resources, and place these materials into trial applications within nine months of the award;

• Develop training programs, materials, and resources that address workers' compensation, tax incentives, liability insurance, health insurance, medication at the workplace, employee benefits, and labor relations as they relate to employees with disabilities, and begin trial applications of these materials within nine months of the award;

• Pilot test the materials developed on appropriate target audiences, which in all cases must include individuals with various types of disabilities and representatives of covered entities, evaluate their effectiveness, and modify the materials as needed;

• Assure that all materials are developed in more than one format to accommodate various individual communication modes;

• Provide copies of all materials along with its final report and file the final report with the National Rehabilitation Information Center (NARIC); and

• Coordinate with the Equal Employment Opportunity Commission, the Rehabilitation Services Administration, the President's Committee on Employment of People With Disabilities, the Job Accommodations Network (JAN) and the Architectural and Transportation Barriers Compliance Board in the development and repackaging of materials.

3. Accessibility in Communications

The relationship between opportunity and communication is clearly recognized in the ADA. While our potential ability to overcome barriers to communication is substantial, the successful implementation of the communication requirements of the ADA will depend on the extent to which the public is educated as to not only the communication problems facing persons with disabilities, but also the variety of strategies and technologies available to solve those problems. The target audiences for this project will be public and private operators of public accommodations, individuals with disabilities and their families, State and local governments, and public and private service providers.

The project to be funded under this priority will:

• Develop training programs, materials, resources, and strategies addressing telecommunication (including telephone relay systems), sensory aids, safety/emergency communication systems, signage, alternative methods of communication, and assistive technology, with emphasis on low-cost options;

• Pilot test the materials developed on appropriate target audiences, which in all cases must include individuals with various types of disabilities, including auditory and visual disabilities, evaluate their effectiveness, and modify the materials as needed;

• Assure that all materials are developed in more than one format to accommodate various individual communication modes;

• Coordinate with the Federal Communications Commission and other relevant agencies in the development and dissemination of materials; and

• Provide copies of all materials along with its final report and file the final report with the National Rehabilitation Information Center (NARIC).

Selection Criteria

The regulations that apply to the Knowledge Dissemination and Utilization program, 34 CFR 355, apply to these priorities. However, because of the specialized nature of these activities and the potential importance of these projects to the successful implementation of the Americans with Disabilities Act, NIDRR proposes to add several factors to the selection criteria in 34 CFR 350.34 by which applications under these priorities will be evaluated. NIDRR proposes to add 60 points to the selection criteria for these projects, so that the maximum possible score for an application in § 350.33(a) is increased to 160 points. NIDRR proposes to distribute the additional points as follows:

(1) The applicant proposes an effective approach to the timely development and production of materials and instructional content in formats and styles that are accessible to individuals with a range of sensory, communication, cognitive, and learning disabilities. (Weight: 4; Total Points: 20)

(2) The applicant presents an effective plan to pilot test, and evaluate and modify as needed, materials and training programs on appropriate target audiences, including individuals who have various types of disabilities and parents of individuals with disabilities, employers with various sized work forces, and appropriate representatives of service providers, business, labor, State and local governments, and the general public. (Weight: 4; Total Points: 20)

(3) The applicant involves individuals with disabilities, parents or other family members of individuals with disabilities, as well as representatives of the covered entities and other target populations, in the design and delivery of the informational and instructional content and format. (Weight: 4; Total Points: 20)

Proposed Priority for Regional Disability and Business Accommodation Centers (RDBACs)

The ADA is expected to provide a new impetus to current efforts to improve the employment status and independence of persons with disabilities. However, the full realization of the potential impact of the ADA on the lives of persons with disabilities will require both education and technical expertise. For example, the implementation of the employment provisions of the ADA (title I) in an efficient and cost-effective manner is a goal that NIDRR shares with the business community, individuals with disabilities, and others. Implementation of the employment provisions of the ADA could be a complex process, since the ADA not only prohibits policies, procedures, and activities that discriminate against persons with disabilities but also requires employers to make "reasonable accommodations" to permit individuals with disabilities to perform the "essential functions" of a job. Similarly, the implementation of other titles of the ADA is likely to require an understanding of the types of changes that are needed and knowledge of the range of options available to make those changes. Implementation of the accessibility aspects of the legislation will require a variety of public and private entities to take actions to make their facilities and services accessible. The RDBACs are proposed as one vehicle to facilitate the implementation process.

A regional center approach to providing technical assistance has a number of advantages. This approach attempts to make an equitable distribution of resources to all parts of the country and promotes the adaptation of the content and format of technical assistance to the unique needs and characteristics of a region.

NIDRR intends to exploit the advantages of the regional center approach while maintaining consistency and quality by providing all of the centers with a core set of technical assistance materials, resources, and references and establishing a national coordinating body (the Technical Assistance Coordinator, or TAC) whose

function it will be to identify and address issues, needs, and expertise that emerge in a number of regions.

NIDRR expects that the RDBACs will perform four basic functions: disseminate information; provide direct technical assistance; where appropriate, provide referrals for specialized information and technical assistance; and conduct training for interested and affected parties. The RDBAC will carry out these functions at the request of a potential client as well as on a proactive basis depending upon the needs of a locality or region.

NIDRR believes that in order for the RDBACs to be successful they must establish networks involving the business and disability communities in their activities, as well as linkages to State and local governments, service providers, and other relevant populations of potential information users. NIDRR believes that the operation of a successful RDBAC is likely to require the cooperation and collaboration of both organizations of and for persons with disabilities and covered entities, or organizations representing covered entities. Potential applicants are encouraged to consider forming consortia or other joint efforts.

This proposed priority will establish, by grant or cooperative agreement, one Regional Disability and Business Accommodation Center in each of the ten Federal regions. The RDBAC may be located anywhere within the region, but must provide evidence that the entire region will be covered by the Center's activities. Each RDBAC is encouraged to develop programs geared specifically to the needs of employers, with special attention to small businesses, other covered entities, and individuals with disabilities within its region, but each RDBAC must provide common core of functions. In providing information and technical assistance, the RDBAC and the experts to whom it makes referrals for specialized technical assistance, will provide the client with a range of options and will act only in an advisory capacity; the advice will not be considered a formal policy directive of any Federal agency, including NIDRR.

Each RDBAC will cooperate with the materials development projects to be funded under this program in providing information about needs for materials and in helping to test informational and instructional materials. Each RDBAC will cooperate with the technical assistance coordinator (TAC) that NIDRR intends to establish through grant or contract, that will provide technical information to the RDBACs, establish a network for coordination and information sharing among the RDBACs, and respond to the RDBACs' needs for information. Each RDBAC will be expected to disseminate accurate and current information as provided through the TAC. Grantees will be expected to submit reports and materials to NIDRR, the National Rehabilitation Information Center and other appropriate clearinghouses.

The RDBACs will be dynamic organizations, with a changing and expanding scope of responsibilities over the five-year life of the centers. The centers initially will disseminate existing information, provide general training to organizations in their regions about the requirements of the ADA, and promote the concepts and a general awareness of ADA. They will develop local and regional networks and establish a viable system for the delivery of Center activities throughout the region. Each RDBAC will develop a local resource pool, including experts in public accommodations and job accommodations. These expert pools will include rehabilitation engineers, representatives of independent living programs, architects, representatives of organizations of and for individuals with disabilities, management analysts, designers and engineers, and service providers. The RDBACS will continue throughout their five-year spans to provide general education and information, and will also provide, either directly or through referrals or brokerage, hands-on technical assistance to covered entities that must make accommodations for employees or the public.

Each center to be funded under this proposed priority will:

• Provide general education and distribute information about the ADA and disseminate informational materials that have been developed by various Federal and private agencies, including the Architectural and Transportation Barriers Compliance Board, or by the materials development projects and the peer training projects, beginning this activity within three months of the award of the grant;

• Provide information, using a variety of media, including materials developed by the materials development projects in this program, and such techniques as public speeches, graphic and audio materials, media announcements, telecommunications, hotlines, or computer databanks, to employers, the business community, individuals with disabilities and organizations that represent them, State and local government, and other target populations in the region, on the topics of: Disability awareness; the provisions of the ADA; public accessibility; ADA's impact on the hiring process; job accommodations; accessibility and accommodation in communications; and empowerment for individuals with disabilities in successful implementation of the ADA beginning these services within three months of the award of the grant;

• Provide and distribute information about the existence and future plans of the RDBAC, orient disability, business, and other groups in the region to the ADA and its general implications, and provide information as requested by the various target audiences in the region within three months of the award of the grant;

• Develop linkages to business organizations, disability organizations, State and local governments, service providers, labor organizations, educational institutions, regional and local media, voluntary organizations, and others that will be potential outlets or conduits for the dissemination of information, and develop a plan for marketing the RDBAC services to the primary target populations in the region within six months of the award of the grant;

• Conduct an assessment of the informational needs and preferred information conduits of employers and commercial establishments, and of the disability, public agency, labor, and service provider communities within the region within six months of the award of the grant;

• Provide training to organizations of employers, disability organizations, State and local governments, service providers, commercial establishments, labor organizations, voluntary associations, educators, and other appropriate target groups, on general issues of disability, provisions of the ADA, accessibility, hiring, early intervention in disability at the workplace, job accommodations, communications accessibility, and empowerment for individuals with disabilities in implementing the provisions of the ADA, beginning this activity within six months of the award of the grant;

• Develop information resources, databanks, reference guides, and expert pools that will serve as resources within the region for the implementation of the technical assistance program;

• Provide referrals immediately, if appropriate, to any of the target populations for additional specialized information or for expert assistance;

• Provide technical assistance, or arrange for technical assistance, directly to employers on issues of hiring, early intervention in disability at the

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workplace, a job accommodation and to business on accessibility and public accommodations, ensuring that inquirers will be offered a range of options wherever feasible; and

• Apply materials developed by the materials development projects, the coordinating entity, the RDBAC itself, or other sources that are presented in a variety of accessible media and formats.

Selection Criteria

The regulations that apply to the Knowledge Dissemination and Utilization program, 34 CFR 355, apply to these priorities. However, because of the specialized nature of these activities and the potential importance of these projects to the successful implementation of the Americans with Disabilities Act, NIDRR proposes to add several factors to the selection criteria in 34 CFR 350.34 by which applications under these priorities will be evaluated. NIDRR proposes to supplement those criteria by adding an additional possible 60 points to the score for each application. Each application could then receive a maximum of 160 points under § 350.33(e). NIDRR proposes to award the additional 60 points as follows:

(1) Demonstrates the capacity of the applicant entity in the delivery of technical assistance and training to each of the primary target populations. (Weight: 4; Total Points: 20)

(2) Demonstrates the capacity of the applicant entity to reach the range of covered entities in the region in a timely manner. (Weight: 4; Total Points: 20)

(3) Proposes a collaboration of organizations of or for people with disabilities that have knowledge of the provisions of the ADA with entities, or associations representing such entities that are covered by the provisions of the Act, particularly the employment, public accessibility, and telecommunications provisions of the Act. (Weight: 4; Total Points: 20)

(Authority: 29 U.S.C. 760–762)

(Catalog of Federal Domestic Number 84.133D; National Institute on Disability and Rehabilitation Research)

Dated: May 15, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–11923 Filed 5–20–91; 8:45 am]

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Tuesday
May 21, 1991

Part IV

Department of Education

34 CFR Part 307

Special Education and Rehabilitative Services: Individuals With Disabilities Education Act, Implementation; Service for Children With Deaf-Blindness Program; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 307

RIN 1820-AA99

Services for Children With Deaf-Blindness Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Services for Children With Deaf-Blindness Program to incorporate changes to section 622 of the Individuals with Disabilities Education Act (IDEA), as amended by Public Law 101-476. The proposed regulations add LEAs and part H lead agencies to SEAs as beneficiaries of assistance provided by recipients; add references to infants and toddlers and early intervention services to the scope of the program; expand the age of youth with deaf-blindness whose transition from educational to other service options is facilitated by the program; provide a definition of children with deaf-blindness; add authority for pilot supplementary activities by single and multi-State projects; authorize establishment of a national clearinghouse; add authority to support pilot, research, demonstration, replication, preservice and inservice training, and parental involvement activities; and provide selection criteria for evaluation of newly authorized activities.

DATES: Comments must be received on or before June 20, 1991.

ADDRESSES: Send comments to Charles Freeman, Severely Handicapped Branch, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 4617), Washington, DC 20202-2734.

FOR FURTHER INFORMATION CONTACT: Charles Freeman, telephone (202) 732-1165. TDD (202) 732-1169.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act Section of this preamble.

SUPPLEMENTARY INFORMATION: These proposed regulations implement changes in section 622 of part C of the Individuals with Disabilities Education Act (IDEA), as amended by Public Law 101-476. These changes do not alter principal objectives of the program but clarify and expand upon the types of activities the program supports.

In addition to other technical amendments, the most significant changes made in order to conform with Public Law 101-476 are:

- Specific inclusion of infants and toddlers and early intervention services to the scope of the program;
- Addition of more flexibility in the provision of services to facilitate transition from educational to other services by making "adolescents" and "youth, upon attaining age twenty-two" eligible for such services and by explicitly adding competitive employment and independent living as examples of these services.
- Addition of LEAs and part H lead agencies as recipients of technical assistance;
- Addition of a definition of children with deaf-blindness;
- Addition of authority for pilot supplementary services for children with deaf-blindness and their families by single and multi-State projects;
- Addition of authority to establish a national clearinghouse for children with deaf-blindness with responsibility to emphasize information concerning effective practices in working with these children;
- Addition of authority to support pilot; research; development, improvement, or demonstration; replication; preservice and inservice training; and parental involvement activities;
- Addition of language indicating that the Secretary shall take into consideration the availability and quality of existing services for children with deaf-blindness in the country, and, to the extent practicable, ensure that all parts of the country have an opportunity to receive assistance under the program; and
- Addition of language promoting appropriate dissemination of information concerning activities of funded projects.

In addition, these regulations propose the following program changes:

- Addition of selection criteria for evaluating applications proposing to conduct activities newly authorized by the amendments, with varied weights on certain criteria that reflect their relative importance in differing types of competitions; and
- Inclusion within the definition of children with deaf-blindness of those infants and toddlers who have been identified as having deaf-blindness, to clarify those children eligible to partipate under this program.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Sections 307.33, 307.35, 307.36, and 307.42 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

Information described at sections 307.33, 307.35, 307.36, and 307.42 is required to be provided by applicants seeking support to conduct activities authorized under section 622 of the Individuals with Disabilities Act. This information will be used to determine grant eligibility, acceptability of proposals, and award. Respondents eligible to submit applications are public or nonprofit private agencies, institutions, or organizations. Respondent data burden is estimated to be the same as that required under current program regulations, and is included in the data burden estimated for all OSEP programs using the OMB Form 1820-0028 (approved through June 30, 1992).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested individuals are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4617, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulations burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 307

Education, Education of individuals with disabilities, Education—research, Grants program—education, Reporting and recordkeeping requirements, Teachers.

(Catalog of Federal Domestic Assistance Number 84.025, Services for Children with Deaf-Blindness Program)

Dated: May 15, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by amending part 307 as follows:

PART 307—SERVICES FOR CHILDREN WITH DEAF-BLINDNESS

1. The title of part 307 is revised to read as set forth above.

2. The authority citation for part 307 continues to read as follows:

Authority: 20 U.S.C. 1422, unless otherwise noted.

§§ 307.1, 307.2, 307.3, 307.4, 307.11, 307.12, 307.31, 307.33, and 307.41 [Amended]

§ 307.36 [Redesignated]

3. In 34 CFR part 307 remove the words "deaf-blind children and youth" and add, in their place, the words "children with deaf-blindness" in the following places:

(a) Section 307.1 heading and twice in text;

(b) Section 307.2 heading;

(c) Section 307.3 heading;

(d) Section 307.4 heading;

(e) Section 307.11(a) (1); (2); (2) (i), (iii), (iv), (v), and (vi); (3); (c) (1), (2), and (3);

(f) Section 307.12(b);

(g) Section 307.31 (b) and (c);

(h) Section 307.33(a) (1); (2); (3); and (4); (b) (2), (3), (4), (8), (9); (c); (c)(3); (f)(2); and (g);

(i) Section 307.36, redesignated as 307.35(a); (a) (2) and (3); and

(j) Section 307.41.

4. In 34 CFR part 307 remove the words "Part B of the Education of the Handicapped Act" and add, in their place, the words "Part B of the Individuals with Disabilities Education Act" in section 307.11 (a)(1); (a)(2)(i); and (a)(3).

§ 307.1 [Amended]

5. Section 307.1 is amended by adding after the words "State educational agencies" a comma and the words "local educational agencies, designated lead agencies under Part H" and a comma, and by adding after the words "involved in the" the words "early intervention or".

§ 307.2 [Amended]

6. Section 307.2 is amended by adding after the words "or organizations" the words, "including an Indian tribe and the Bureau of Indian Affairs of the Department of the Interior (if acting on behalf of schools operated by the Bureau for children and students on Indian reservations) and tribally controlled schools funded by the Department of the Interior".

7. Section 307.4 is amended by revising the heading and the introductory paragraph (b); removing the definitions "Deaf-blind (§ 300.5(b)(2))", "Handicapped children (§ 300.5)" and "Severely handicapped children and youth (§ 315.4(d))"; and adding a new paragraph (c) to read as follows:

§ 307.4 What definitions apply to the Services for Children with Deaf-Blindness program?

* * * * *

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR part 300.

* * * * *

(c) *Other definitions.*

Children with deaf-blindness. For the purposes of this part, the term, "children with deaf-blindness," means children and youth having auditory and visual impairments, the combination of which creates such severe communication and other developmental and learning needs that they cannot be appropriately educated in special education programs solely for children with hearing impairments, visual impairments, or severe disabilities, without supplementary assistance to address their educational needs due to these concurrent disabilities. This term also means infants and toddlers with deaf-blindness.

Children with disabilities. For the purposes of this part, the term "children with disabilities" means children with mental retardation; hearing impairments, including deafness; speech or language impairments; visual impairments, including blindness; serious emotional disturbance; orthopedic impairments; autism; traumatic brain injury; other health impairments; or specific learning disabilities; who, by reason thereof, need special education and related services.

Infants and toddlers with deaf-blindness. For the purposes of this part, the term "infants and toddlers with deaf-blindness" means individuals from birth through age 2 who are experiencing developmental delays in hearing and vision, have a diagnosed physical or mental condition that has a high probability of resulting in developmental delays in hearing and vision, or are at risk of having substantial developmental delays in hearing and vision if early intervention services are not provided.

* * * * *

8. Section 307.10 is revised to read as follows:

§ 307.10 What types of activities are considered for support under this part?

The Secretary may provide financial assistance under this part to support the following activities:

(a) Technical assistance to agencies, institutions, or organizations providing educational or early intervention services to children with deaf-blindness;

(b) Preservice or inservice training to paraprofessionals, professionals, or related services personnel preparing to serve, or serving, children with deaf-blindness;

(c) Replication of successful innovative approaches to providing educational, early intervention, or related services to children with deaf-blindness;

(d) Pilot projects that are designed to—

(i) Expand local educational agency capabilities by providing services to children with deaf-blindness that supplement services already provided to children and youth through State and local resources; and

(ii) Encourage eventual assumption of funding responsibility by State and local authorities;

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(e) Development, improvement, or demonstration of new or existing methods, approaches, or techniques that contribute to the adjustment, early intervention, and education of children with deaf-blindness;

(f) Facilitation of parental involvement in the education of their children with deaf-blindness;

(g) Research to identify and meet the full range of special needs of those children;

(h) Technical assistance for transitional services, as described in § 307.13; and

(i) A national clearinghouse for children with deaf-blindness as described in § 307.15.

Authority: 20 U.S.C. 1422.

9. Section 307.11 is amended by revising the heading and paragraph (a); revising paragraph (a)(1) by adding after the words "Special education" a comma and the words "early intervention" and a comma; and by revising paragraphs (a)(1)(i), (ii), and (iii) to read as follows:

§ 307.11 What types of services and technical assistance by State and multi-State projects are considered for support under this part?

(a) The Secretary may provide financial assistance under this part to State and multi-State projects to support the following activities—

(1) * * *

(i) The diagnosis and educational evaluation of children who are likely to be diagnosed as having deaf-blindness;

(ii) Programs of adjustment, education, and orientation for children with deaf-blindness; and

(iii) Consultative, counseling, and training services for the families of children with deaf-blindness.

* * * * *

§ 307.11 [Amended]

10. Section 307.11(a)(1)(iv) is amended by removing the words "child and youth" and adding, in their place, the words "child with deaf-blindness".

§ 307.11 [Amended]

11. Section 307.11(a)(2) is amended by adding after the word "providing" the words "early intervention" and a comma.

§ 307.11 [Amended]

12. Section 307.11(a)(2)(i) is amended by adding after the words "some other authority" the words "and provide early intervention services under Part H of IDEA".

§ 307.11 [Amended]

13. Section 307.11(a)(2)(ii) is amended by removing the words "deaf-blind children or youth" and adding, in their place, the words "children with deaf-blindness".

§ 307.11 [Amended]

14. Section 307.11(a)(2)(iii) is amended by adding after the word "providing" the words "early intervention" and a comma.

§ 307.11 [Amended]

15. Section 307.11(a)(2)(v) is amended by deleting twice the words "and youth" following the words "those children".

§ 307.11 [Amended]

16. Section 307.11(a)(2)(vi) is amended by removing the words "other handicapped and nonhandicapped children and youth" and adding, in their place, the words "children with other disabilities and without disabilities".

§ 307.11 [Amended]

17. Section 307.11(b)(2) is amended by removing the words "the services described in paragraph (a)(3) of this section" and adding, in their place, the words "pilot projects".

§ 307.11 [Amended]

18. Section 307.11(c)(3) is amended by removing the words "Part H of the EHA" and adding, in their place, the words "Part H of the IDEA".

§ 307.12 [Amended]

19. Section 307.12(b) is amended by adding after the words "grantee under § 307.11" a comma and the words "the lead agency under part H" and a comma; adding after the words "§ 307.11 grantee" a comma and the words "the lead agency under Part H" and a comma; adding after the words "educational agency to" the words "local educational agencies and designated lead agencies under Part H of IDEA, and".

§ 307.12 [Amended]

20. Section 307.12(b)(1) is amended by adding after the word "education" the words "and early intervention"; and removing the words "deaf-blind and severely handicapped children and youth" and adding in their place, the words "children with deaf-blindness".

§ 307.12 [Amended]

21. Section 307.12(b)(2) is amended by adding after the word "educational" the words "and early intervention".

§ 307.12 [Amended]

22. Section 307.12(b)(3) is amended by deleting the words "deaf-blind children and youth" and adding, in their place, the words "children with deaf-blindness, and in providing early intervention services to children with deaf-blindness".

§ 307.12 [Amended]

23. Section 307.12(c) is amended by adding after the words "§ 307.11 grantee" a comma and the words "the lead agency under Part H" and a comma.

§ 307.13 [Amended]

24. Section 307.13(a) is amended by removing the words "deaf-blind youth upon attaining the age of 22" and adding, in their place, the words "adolescents and young adults with deaf-blindness".

§ 307.13 [Amended]

25. Section 307.13(b)(1) is amended by removing the words "organizations (in addition to State educational agencies providing, or proposing to provide transitional services to deaf-blind youth who have attained the age of 22)" and adding, in their place, the words "organizations that are preparing adolescents and young adults with deaf-blindness for adult placement, or that are preparing to receive adolescents or young adults with deaf-blindness into adult living and work environments, or that serve, or propose to serve adolescents and young adults with deaf-blindness".

§ 307.13 [Amended]

26. Section 307.13(b)(2) is amended by removing the word "youth" with the words "adolescents and young adults".

§ 307.13 [Amended]

27. Section 307.13(b)(3) and 307.13(c)(2) are amended by adding, after the comma following the word "rehabilitative", the word "supervised" and a comma.

§ 307.13 [Amended]

28. Section 307.13(c) (1), (2), and (3) are amended by removing the words "deaf-blind youth" and adding, in their place, the words "adolescents and young adults with deaf-blindness".

§ 307.13 [Amended]

29. Section 307.13(d) is amended by removing the words "providing services to deaf-blind youth 22 years of age and older" and adding, in their place, a comma and the words "institutions, and organizations that are preparing adolescents and young adults with deaf-blindness for adult placements, or that are preparing to receive adolescents or young adults with deaf-blindness into adult living and work environments, or that serve, or propose to serve

adolescents or young adults with deaf-blindness".

§ 307.13 [Amended]

30. Section 307.13(e) is amended by removing the words "deaf-blind children and youth" and adding, in their place, the words "adolescents and young adults with deaf-blindness".

31. A new § 307.14 is added to read as follows:

§ 307.14 What types of pilot projects are considered for support to successful § 307.11 applicants under this part?

The Secretary may provide financial assistance under this part to successful applicants under § 307.11, to support pilot projects described at § 307.10(d).

(Authority: 20 U.S.C. 1422)

32. A new § 307.15 is added to read as follows:

§ 307.15 What types of activities are supported in a national clearinghouse for children with deaf-blindness?

The Secretary may provide financial assistance under this part to support the following activities:

(a) Identification, coordination, and dissemination of information on deaf-blindness, emphasizing information concerning practices developed through research, development or demonstration activities that have produced statistical or narrative data establishing their effectiveness in working with children with deaf-blindness, including—

(1) Special educational and early intervention programs, services, and resources;

(2) Related medical, health, social, and recreational services;

(3) The nature of deaf-blindness and its early intervention, educational, and employment implications;

(4) Legal issues affecting persons with disabilities; and

(5) Information on available services and programs in postsecondary education for adolescents and young adults with deaf-blindness.

(b) Interaction with educators, professional groups, and parents to identify areas for programming, materials development, training, and expansion of specific services.

(c) Maintenance of a computerized data base on local, regional, and national resources.

(d) Responding to information requests from professionals, parents, and members of the public.

(Authority: 20 U.S.C. 1422).

§ 307.31 [Amended]

33. Section 307.31 is amended by removing the words "deaf-blind services project" and adding, in their place, the words "project for children with deaf-blindness".

§ 307.31 [Amended]

34. Section 307.31(a) is amended by removing the words "and youth".

35. Section 307.33 is amended by revising the heading to read as follows:

§ 307.33 What criteria does the Secretary use to evaluate a State or multi-State application under § 307.11?

36. Section 307.33(a)(1) is amended by removing the words "Part B of the EHA" and adding, in their place, the words "Part B of the IDEA".

§ 307.33 [Amended]

37. Section 307.33(a)(2) is amended by removing the word "Specific" and adding in its place, the word "specific"; removing the words "Parts B and H" and adding, in their place, the words "Parts B and H of the IDEA"; adding after the words "provision of" the words "early intervention" and a comma; and adding a comma after the word "educational".

§ 307.33 [Amended]

38. Section 307.33(a)(4) is amended by adding after the words "providing the" the words "early intervention" and a comma; and adding a comma after the word "educational".

§ 307.33 [Amended]

39. Section 307.33(b)(1) is amended by adding after the words "each of the" the words "early intervention" and a comma; and adding a comma after the word "educational".

§ 307.33 [Amended]

40. Section 307.33(b)(4) is amended by adding after the words "provision of" the words "early intervention" and a comma; adding a comma after the word "educational"; and adding a comma after the word "related services".

§ 307.33 [Amended]

41. Sections 307.33(b) (6) and (10) and (f) (1) and (2) are amended by removing the acronym "EHA" and adding, in its place, "IDEA".

§ 307.33 [Amended]

42. Sections 307.33(b)(7) and (c)(5) are amended by removing the word "handicapping" and adding, in its place, the word "disabling".

§ 307.33 [Amended]

43. Section 307.33(b)(8) is amended by adding after the word "providing" the words "early intervention" and a comma; and adding a comma after the word "consultative".

§ 307.35 [Removed]

44. Section 307.35 is removed.

§ 307.36 [Redesignated as § 307.35]

45. Section 307.36 is redesignated as § 307.35.

46. Redesignated § 307.35 is amended by revising the heading and introductory paragraph to read as follows:

§ 307.35 What criteria are used to evaluate a technical assistance application under § 307.10, § 307.12, or § 307.13?

The Secretary uses the following criteria to evaluate an application for the provision of technical assistance under § 307.10, § 307.12, and § 307.13. Each application may receive up to a total of 100 points:

* * * * *

§ 307.35 [Amended]

47. In redesignated § 307.35(b)(5) and (c)(1)(iv) the word "handicapping" is removed and adding in its place, the word "disabling".

48. A new § 307.36 is added to read as follows:

§ 307.36 What criteria are used to evaluate an application for other than technical assistance under § 307.10, or for an application under § 307.14 or § 307.15?

The Secretary uses the following criteria to evaluate the quality of an application submitted under § 307.10 (except for technical assistance projects), and under § 307.14 and § 307.15. Each applicant may receive up to a total of 100 points.

(a) *Importance and impact.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part, including—

(i) The significance of the problem or issues to be addressed;

(ii) The extent to which the project is based on previous results, research and evaluation findings, or other information related to the problem or issue;

(iii) The contribution that project findings or products will make to current knowledge and practice; and

(iv) The extent to which findings, information, or products of the project will be designed to promote their adaptation by and usefulness to others in conducting related projects.

(2) In determining the extent of the importance and impact of the application, the Secretary also considers the relevance of proposed activities in addressing the unique needs of children targeted by the project.

(3) In determining the importance and impact of the application the Secretary considers the extent to which the project

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addresses the unique needs of children with disabilities from minority backgrounds.

(b) *Technical soundness.* (1) The Secretary reviews each application to determine the technical soundness of the project, including—

(i) The quality of the design of the project;

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, or disabling conditions; and

(iii) The anticipated outcomes.

(2) In determining the technical soundness of an application, the Secretary also considers—

(i) For pilot projects under § 307.14—

(A) The correlation with and relevance to the activities under § 307.11 for a State or multi-State project; and

(B) The extent to which practices of the pilot project can be adopted in other settings within the State;

(ii) For the clearinghouse project under § 307.15—

(A) The extent to which the applicant evidences awareness of the magnitude and importance of effective public awareness, the existence of already existing materials and resources available to meet general and specific educator and consumer needs, and gaps in the bank of resources and materials to meet those needs;

(B) The quality of the information retrieval, assimilation, revision and dissemination systems that the applicant will utilize in meeting general requests of the public as well as the specific needs of educators, administrators, and consumers; and

(C) The adequacy of project procedures for addressing, through products and outreach procedures, the unique needs of users from traditionally underrepresented groups;

(iii) For research projects—

(A) The comprehensiveness of the review of research to the problem or issues to be addressed by the project and to the nature of the population to be included in the project;

(B) The theoretical soundness of the conceptual framework and research hypotheses upon which the research is to be conducted;

(C) The appropriateness of the data analysis, procedures, and instrumentation;

(D) The effectiveness of the research design in testing the research hypotheses; and

(E) How the anticipated research results can be utilized in subsequent research or demonstration projects, if applicable;

(iv) For model development, improvement, or demonstration projects—

(A) The extent to which the project is focused on the development or adaptation of innovative educational practices;

(B) The nature and extent to which the proposed practices to be included in the model demonstration have been identified and validated through prior research or related model developmental efforts with the same or similar target populations;

(C) The extent to which the practices to be demonstrated promote the integration of children with deaf-blindness with peers who are not disabled in least-restrictive environments; and

(D) The extent to which the project will develop materials and procedures that can be used by others to implement the model;

(v) For replication, outreach, or utilization projects—

(A) The nature and extent to which the practices to be disseminated through outreach strategies have been validated for effectiveness;

(B) The extent to which the practices to be replicated or utilized promote the integration of children with deaf-blindness with peers who are not disabled in least-restrictive environments; and

(C) The extent to which the practices to be replicated or utilized are economically feasible for other non federally supported replications, and lend themselves for adaptations with other relevant populations.

(vi) For preservice or inservice training projects—

(A) Where appropriate, the degree to which the proposed activities relate to and are coordinated with specific training needs identified by the State educational agency under part B and State lead agency under part H in its Comprehensive System of Personnel Development plan;

(B) The extent to which the training will result in certification, recertification or licensure for participants completing the training;

(C) The extent to which the curriculum is theoretically sound, incorporates validated effective practices, is appropriate in scope and sequence, incorporates appropriate practicum experiences, and can be used by others to train personnel with similar training needs;

(D) The quality of the practicum training sites, including evidence that they are sufficiently available, apply state-of-the-art services and model teaching practices, materials and technology, provide adequate supervision to trainees, and offer opportunities for trainees to teach and foster interactions between children with disabilities and their peers who are not disabled; and

(E) The extent to which training addresses the needs of a range of children including children with disabilities from minority backgrounds; and

(vii) For parent involvement projects—

(A) The extent to which the project will address specific needs and interests of those parents of children with deaf-blindness upon which the project is focused;

(B) The extent to which the project promotes the active involvement of parents in the design, implementation, and ongoing review of the educational and related services to be provided to their children with deaf-blindness for which the project is to provide benefit; and

(C) The extent to which the project is designed to meet the unique needs of parents of children with disabilities from minority backgrounds.

(3) The maximum possible score awarded under this criterion is indicated in parentheses by the type of project proposed, as follows:

(i) For pilot projects (15 points).

(ii) For the clearinghouse project under § 307.15 (10 points).

(iii) For research projects (30 points).

(iv) For development, improvement, demonstration, or other projects (20 points).

(v) For replication, outreach, or utilization projects (15 points).

(vi) For preservice or inservice training projects (15 points).

(vii) For parent involvement projects (15 points).

(c) *Plan of operation.* (1) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The extent to which the plan of management is effective for the type of project proposed and ensures proper and efficient administration of the project;

(ii) The adequacy of the applicant's resources and plan for use of resources and personnel to achieve project objectives;

(iii) How the budget proposed by the applicant is adequate to support the activities and that the costs are reasonable in relation to the objectives of the project;

(iv) The adequacy of the applicant's procedures for initiating and maintaining coordination with relevant State, local and professional organizations and agencies, for the purpose of furthering achievement of the project objectives;

(v) The adequacy of the applicant's plan to involve project participants with disabilities and, as appropriate, family members in the development, implementation, and on-going review of project outcomes; and

(vi) The adequacy of the applicant's plan to determine the effectiveness and timeliness in completion of the managerial procedures and objectives of the project's plan of operation.

(2) The maximum possible score awarded under this criterion is indicated in parentheses by the type of project proposed, as follows:

(i) For pilot projects (30 points).

(ii) For the clearinghouse project under § 307.15 (35 points).

(iii) For research projects (15 points).

(iv) For development, improvement, demonstration, or other projects (25 points).

(v) For replication, outreach, or utilization projects (30 points).

(vi) For preservice or inservice training projects (30 points).

(vii) For parent involvement projects (30 points).

(d) *Key personnel.* (20 points) (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) the time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) Strategies of the applicant to identify and recruit personnel with disabilities or from traditionally under-represented groups.

(2) In determining the qualifications of each person referred to in paragraphs (d)(1) (i) and (ii) the Secretary also considers—

(i) Experience and training in conducting, documenting, and applying the types of activities to be conducted; and

(ii) Knowledge of the results and findings of relevant projects and potential for application of this information in addressing the unique needs of the children with deaf-blindness to be included in the project.

(e) *Evaluation.* (15 points) (1) The Secretary reviews each application to determine the quality of the plan for evaluating the project, including—

(i) The adequacy of the applicant's plan to determine, to the extent relevant, the effectiveness of the project in achieving measurable change and positive outcomes for children with deaf-blindness who were served by the project and others for whom the project was designed to benefit;

(ii) The adequacy of the applicant's plan to determine the effectiveness and timeliness in completion of the managerial procedures and objectives of the project's plan of operation; and

(iii) The procedures for recording, reviewing, analyzing, and interpreting for relevant audiences, data generated through conducting project activities.

(Authority: 20 U.S.C. 1422)

49. A new § 307.37 is added to read as follows:

§ 307.37 What additional consideration will be given by the Secretary in carrying out this part?

In carrying out this part, the Secretary takes into consideration the availability and quality of existing services for children with deaf-blindness in the country, and, to the extent practicable, ensures that all parts of the country have an opportunity to receive assistance under this part.

(Authority: 20 U.S.C. 1422)

§ 307.41 [Amended]

50. In § 307.41 the introductory paragraph is amended by removing the words "deaf-blind child or youth" and adding, in their place, the words "child or youth with deaf-blindness".

51. A new § 307.42 is added to read as follows:

§ 307.42 What other conditions must be met by a grantee under this program?

(a) The Secretary, if appropriate, requires grantees to prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of those procedures, findings, and information.

(b) The Secretary requires delivery of those reports, as appropriate, to—

(1) The regional and Federal resource centers, the clearinghouses, and the technical assistance to parents programs assisted under parts C and D of the Act;

(2) The National Diffusion Network;

(3) The ERIC Clearinghouse on the Handicapped and Gifted;

(4) The Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health;

(5) Appropriate parent and professional organizations;

(6) Organizations representing individuals with disabilities; and

(7) Such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1410(g))

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Part V

Department of Education

34 CFR Part 347

Technology-Related Assistance for Individuals with Disabilities; Training and Public Awareness Projects of National Significance; Proposed rule

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DEPARTMENT OF EDUCATION

34 CFR Part 347

RIN 1820-AA83

Technology-Related Assistance for Individuals with Disabilities: Training and Public Awareness Projects of National Significance

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to implement the Training and Public Awareness Projects of National Significance under the Technology-Related Assistance for Individuals with Disabilities Program. The regulations implement part C of title II of the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100-407). The regulations describe the purposes of the program, the types of activities that may be supported, how the Secretary establishes priorities under the program, application requirements, the selection criteria by which the Secretary evaluates applications, and the requirements that must be met by those applicants that receive awards under the program.

DATES: Comments must be received on or before June 20, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Betty Jo Berland, National Institute on Disability and Rehabilitation Research, Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Carol Cohen; Telephone: (202) 732-5607; deaf or hearing-impaired persons who use telecommunication devices for the deaf (TDD) may call (202) 732-5316.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

SUPPLEMENTARY INFORMATION: The Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100-407) was enacted on August 19, 1988. In the Act, the Congress noted that there have been major advances in technology during the past decade. The Congress found that the provision of assistive technology devices and services can enable some persons with disabilities to have greater control over their own lives, increase their participation in education, employment, family, and community activities, interact to a greater extent with individuals who do not have disabilities, and otherwise benefit from opportunities that are commonly available to individuals who do not have disabilities. On August 9, 1989, the Secretary published final regulations to implement title I of the Act, the State Grants Program for Technology-Related Assistance for Individuals with Disabilities. That program provides funds to States, on a competitive basis, to develop consumer-responsive comprehensive statewide programs of technology-related assistance for individuals of all ages who have disabilities. On August 13, 1990, the Secretary published final regulations to implement part D of title II of the Act—Demonstration and Innovation Projects.

These proposed regulations are to implement part C of title II of the Act. These proposed regulations describe the activities that may be supported under each of the three project types and state the priorities that may be applied to each of them. From time to time, the Secretary will publish a notice in the **Federal Register** requesting applications for awards under this program; the notice may specify particular priorities under one or more of the project types. The Secretary will refer complete applications to one or more panels of expert peer reviewers, which will evaluate the applications according to the selection criteria in §§ 347.31, 347.32, or 347.33, as appropriate. The Secretary will seek the involvement, as members of the peer review panels, of: Individuals with disabilities, members of the families of individuals with disabilities, and others who have expertise, by reason of training or experience, in such areas as the provision of assistive technology devices or services; public administration; development and implementation of public systems; evaluation of service delivery programs; education, training, and public information; provision of services to individuals with disabilities and their families; health care and benefits administration; personal use of assistive technology; administration of direct loan programs; rehabilitation research; engineering, especially rehabilitation engineering; product testing; and other areas related to the purposes of the program.

In the Act, the Congress specified that the Secretary should seek public input in the development of the priorities under this program, and should publish in **Federal Register** a description of how the priorities were derived. In order to develop these priorities, NIDRR held a public hearing on September 28, 1990 in Washington, DC. This meeting was announced in the **Federal Register** and NIDRR mailed copies of the meeting announcement along with invitations to testify to an extensive list of organizations and individuals who had expressed interest in technology assistance in the past. The mailing went to title I State technology projects, State vocational rehabilitation agencies, applicants and grantees in the title II part D program, Rehabilitation Engineering Centers, Rehabilitation Research and Training Centers, and consumer organizations. Thirty-three organizations presented oral testimony. NIDRR also accepted and considered written comments for one month after the hearing. In all, over one hundred comments and letters of recommendation were received. On the basis of an analysis of the testimony and written comments, NIDRR developed the proposed priorities contained in this document. As provided by § 75.105 of the Education Department General Administrative Regulations (EDGAR), the Secretary may elect to establish other priorities in the future by proposing additional priorities for public comment.

The selection criteria for applications for technology training and public awareness projects are detailed in §§ 347.31, 347.32, and 347.33 and include the extent to which the proposed project addresses an important need; provides a plan of activities that indicates a likelihood of achieving the goals and objectives of the project; includes an appropriate plan for managing the activities under the grant; substantively involves individuals with disabilities or their families or representatives; and has a plan for disseminating the project results and a plan for evaluating the project that will provide an assessment of the extent to which the project has met its goals. The proposed regulations also clarify the obligations of a grantee with respect to information sharing and reporting. Grantees are required by EDGAR to provide final reports to NIDRR. The Department may also require individual grantees to provide reports and documents to information clearinghouses as appropriate to the purpose of the grant.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is excluded from the intergovernmental review provisions of section 204 of the Demonstration Cities and Metropolitan Development Act because these are demonstration projects of national significance and do not directly affect State and local governments.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Only a small number of discretionary awards would be made under this program. Although small entities could apply for these grants, the grants would not have a significant economic impact on the recipients nor any impact on most small entities.

Paperwork Reduction Act of 1980

Sections 347.31, 347.32, 347.33, 347.40, and 347.41 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

These regulations affect private nonprofit and for-profit entities and institutions of higher education, which are the types of entities eligible to receive awards under this program. The Department needs and uses the information to evaluate the applications and select the entities that will receive the awards.

Annual public reporting and recordkeeping burden for this collection of information is expected to average 16 hours per response for 40 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3422, 330 C Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirements for reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burden found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 347

Administrative practice and procedure, Education, Educational research, Grant programs—education, Handicapped, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.236, National Institute on Disability and Rehabilitation Research)

Dated: May 15, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 347 to read as follows:

PART 347—TRAINING AND PUBLIC AWARENESS PROJECTS OF NATIONAL SIGNIFICANCE IN TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Sec.
347.1 What is the training and public awareness projects program?
347.2 What are the purposes of the training and public awareness projects program?
347.3 Who is eligible for assistance under this program?
347.4 What regulations apply to this program?
347.5 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

347.10 What types of projects may be supported under this program?
347.11 What are the priorities under the technology training program?
347.12 What are the priorities under the technology careers program?
347.13 What are the priorities under the public awareness projects program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

347.30 How does the Secretary evaluate applications under this program?
347.31 What selection criteria are used to evaluate applications for technology training projects under this program?
347.32 What selection criteria are used to evaluate applications for technology careers development projects under this program?
347.33 What selection criteria are used to evaluate applications for public awareness projects under this program?

Subpart E—What Conditions Must Be Met After an Award?

347.40 What are the requirements of a grantee for coordination and information sharing?
347.41 What are the reporting requirements for a grantee?

Authority: 29 U.S.C. 2201-2271, unless otherwise noted.

Subpart A—General

§ 347.1 What is the training and public awareness projects program?

(a) The technology training program provides awards to nonprofit or for-profit entities to develop, demonstrate, disseminate, and evaluate curricula, materials, and methods used to train individuals with disabilities, their family members or representatives, employers, insurers, and persons providing services to or otherwise having contact with persons with disabilities, regarding the provision of technology-related assistance. This program also supports the conduct of training sessions related to technology-related assistance for these entities.

(b) The technology careers program provides support to institutions of higher education to prepare personnel for careers relating to the provision of technology-related assistance to individuals with disabilities.

(c) The public awareness program provides awards to for-profit and nonprofit entities, to carry out national projects that recognize and build awareness of the importance and efficacy of assistive technology devices and assistive technology services for individuals of all ages with disabilities, functioning in various settings in daily life.

(Authority: 29 U.S.C. 2251 and 2252)

§ 347.2 What are the purposes of the training and public awareness projects program?

(a) The purposes of technology training projects are to develop and test curricula, materials, and techniques, and to conduct projects to train individuals

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of all ages with disabilities functioning in various settings of daily life.

(b) The purpose of technology careers projects is to prepare individuals for careers relating to the provision of technology-related assistance to individuals with disabilities through undergraduate and graduate level education, continuing education, and in-service training.

(c) The purpose of public awareness projects is to build awareness of the importance and efficacy of assistive technology devices and services for individuals of all ages with disabilities functioning in various settings of daily life.

(Authority: 29 U.S.C. 2251–2252)

§ 347.3 Who is eligible for assistance under this program?

(a) Nonprofit and for-profit entities are eligible to receive awards under the technology training program. Public agencies are not eligible to receive awards under the technology training program.

(b) Institutions of higher education are eligible to receive awards under the technology careers program.

(c) Nonprofit and for-profit entities are eligible to receive awards under the public awareness projects program. Public agencies are not eligible to receive awards under the public awareness projects program.

(Authority: 29 U.S.C. 2251 and 2252)

§ 347.4 What regulations apply to this program?

The following regulations apply to the Training and Public Awareness Projects program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), Part 82 (New Restrictions on Lobbying), Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)), and Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 347.

(Authority: 29 U.S.C. 2201–2253)

§ 347.5 What definitions apply to this program?

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant
Grant period
Nonprofit
Nonpublic
Private
Project
Project Period
Public

(b) Definitions in the Technology-Related Assistance for Individuals with Disabilities Act of 1988. The following terms used in the part are defined in section 3 of the Act.

Assistive technology device
Assistive technology service
Individual with disabilities
Institution of higher education
Secretary
Technology-related assistance
Underserved group

(c) Additional definition. As used in this part—"Act" means the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100–407).

(Authority: 29 U.S.C. 2201–2271)

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 347.10 What types of projects may be supported under this program?

Under this program, the Secretary awards funds to support the following types of projects:

(a) Technology training projects that may include—

(1) Development, demonstration, delivery, evaluation, and dissemination of training modules on the use of technology-related assistance for consumer organizations, individuals with disabilities or their families or representatives, and advocates;

(2) In-service training for individuals who provide services to or representation for individuals with disabilities, including in-service training for health care workers, teachers, rehabilitation engineers, and other rehabilitation workers;

(3) Training for policymakers and administrators in public and private agencies that have contact with or impact on individuals with disabilities; and

(4) Training regarding the provision of technology-related assistance for employers, manufacturers, and insurers, including training related to product use, financing, and marketing.

(b) Technology career development projects that may include undergraduate and graduate level instructional courses, curriculum development, traineeships, or fellowships and other educational stipends or allowances to prepare personnel for careers relating to the provision of technology-related assistance to individuals with disabilities, especially projects that will train individuals who will provide technical assistance, administer programs, or prepare personnel necessary to support the development and implementation of consumer-responsive, statewide programs of technology-related assistance for individuals with disabilities.

(c) Public awareness projects of a national scope that use: general or specialized media to disseminate information on the benefits and availability of technology-related assistance; techniques to prepare and disseminate analyses of the efficacy of technology-related assitance; national or regional conferences to promote knowledge and interest in technology-related assistance; and award and recognition programs to promote public credit for sustained outstanding effort in the development and use of technology-related assistance.

(Authority: 29 U.S.C. 2251–2253)

§ 347.11 What are the priorities under the technology training program?

(a) Each year the Secretary may establish priorities to support training for individuals with disabilities, their families or representatives, service providers, and other relevant parties, including projects in one or more of the following areas:

(1) Development and implementation of training programs for the purpose of informing consumers and their families about assistive technology services and devices, including training in self-advocacy, funding sources, and policy development.

(2) Development and dissemination of instructional materials for consumers and their families, including self-instruction and multimedia materials, on a range of available technologies and technology information resources, using a variety of accessible formats.

(3) Development and evaluation of training programs that include use of telecommunications, TDD, computer conferences, and other available technologies to instruct consumers and their families about assistive technology.

(4) Development, testing, and dissemination of models for consumers to evaluate different approaches to assistive technology training, including consumer training.

(5) Development, evaluation, and dissemination of models using consumers and their families to train other consumers and their families about the availability and utility of assistive technology.

(6) Development and implementation of approaches to involve manufacturers of assistive technology in improved training of consumers and their families in the use of assistive technology.

(7) Development and implementation of methods for training consumers in rural areas in the use of assistive technology.

(8) Conduct of inservice training for rehabilitation counselors in the provision of assistive technology.

(9) Development, evaluation, implementation, and dissemination of training for representatives of business, industry, and employers on the availability and value of assistive technology for persons with disabilities in employment and in work settings.

(10) Development and implementation of training programs for private insurers and other third party payment representatives on the availability and benefits of assistive technology.

(11) Development, evaluation, implementation, and dissemination of inservice training programs on assistive technology for persons with disabilities for physical therapists.

(12) Development, evaluation, implementation, and dissemination of inservice training programs on assistive technology for persons with disabilities for speech-language pathologists.

(13) Development, evaluation, implementation, and dissemination of inservice training programs on assistive technology for persons with disabilities for occupational therapists.

(14) Development, evaluation, implementation, and dissemination of inservice training programs on assistive technology and application of technology for persons with disabilities for rehabilitation engineers and other engineers who have contact with persons with disabilities in the provision of assistive technology.

(15) Development, evaluation, implementation, and dissemination of models for training low-incidence disability groups on the uses and benefits of assistive technology.

(16) Development, evaluation, implementation, and dissemination of training programs for underserved populations, including economically disadvantaged populations, in the uses of assistive technology.

(17) Development, evaluation, implementation, and dissemination of training modules for older Americans with disabilities who can benefit from assistive technology.

(18) Development, evaluation, implementation, and dissemination of training programs on the use and adaption of commercially available, mass-marketed technologies that have application for persons with disabilities.

(19) Development, evaluation, implementation, and dissemination of training programs about assistive technologies with special application for employment specifically for persons with disabilities who are preparing to enter the job market.

(b) The Secretary will announce the priorities, if any, in an application notice in the Federal Register.

(Authority: 29 U.S.C. 2201–2271)

§ 347.12 What are the priorities under the technology careers program?

(a) Each year the Secretary may establish priorities to support training for individuals with disabilities, their families or representatives, service providers, and other relevant parties, with special emphasis on training individuals who will administer programs, provide technical assistance to, or prepare personnel necessary to support the consumer-responsive, statewide programs of technology-related assistance for individuals with disabilities, including projects in one or more of the following areas:

(1) Development of curricula that will ensure competency in rehabilitation technology for engineers.

(2) Development of curricula for speech-language pathologists to ensure competency in the provision of assistive technology.

(3) Development of curricula for occupational therapists to ensure competency in the provision of assistive technology.

(4) Development of curricula for career training programs for physical therapists to ensure competency in the provision of assistive technology.

(5) Development of curricula to prepare personnel for assistive technology careers, including careers in program administration.

(6) Development of training curricula that focus on funding, policy, and advocacy of persons training to be involved in direct service delivery.

(7) Implementation of curricula involving classroom instruction and clinical experience in community-based and at-home settings for either physical therapists, occupational therapists, nurses, physicians in specialities relevant to disability, rehabilitation counselors, speech-language-hearing pathologists, rehabilitation educators, or rehabilitation engineers.

(8) Development and implementation of technology career training programs for students from underserved population groups, including minorities, who are preparing to become service delivery professionals.

(9) Conduct of training programs for individuals preparing to become administrators of programs that provide technology-related assistance.

(10) Implementation of training programs for individuals who will prepare personnel for work in programs that provide technology-related assistance.

(11) Implementation of scholarships, fellowships, and traineeships for undergraduate or graduate students preparing for careers in the management or delivery of technology-related assistance to individuals with disabilities.

(b) The Secretary will announce the priorities, if any, in an application notice in the Federal Register.

(Authority: 29 U.S.C. 2201–2271)

§ 347.13 What are the priorities under the public awareness projects program?

(a) The Secretary may establish annual priorities for public awareness projects, including projects in one or more of the following areas:

(1) Development and implementation with consumer involvement, of a multimedia public awareness campaign using national media such as radio, TV, newspapers, and other publications.

(2) Development and implementation of a model public awareness campaign using specialized media, including minority media, to reach previously underserved populations.

(3) Conduct of national or regional conferences that focus on public awareness of the benefits of assistive technology and that include manufacturers, industry representatives, and employers.

(4) Conduct of national or regional conferences for third party payers and private insurance representatives that focus on awareness of the benefits of assistive technology.

(5) Development and dissemination of useful marketing strategies to increase public awareness of assistive technology.

(6) Development of a series of videotapes on assistive technology designed to inform and change attitudes that could be used by medical

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practitioners and other clinical service providers.

(7) Development and dissemination of a course for training service providers and consumers to improve and foster public awareness.

(8) Development and dissemination of a public awareness campaign for use by general service organizations, professional associations, and other representational and information groups to increase public awareness of techniques for the provision of assistive technology.

(b) The Secretary will announce the priorities, if any, in an application notice in the **Federal Register**.

(Authority: 29 U.S.C. 2201–2271)

Subpart C [Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 347.30 How does the Secretary evaluate applications under this program?

(a) The Secretary evaluates each application—

(1) For technology training project according to the selection criteria in § 347.31;

(2) For technology career project according to the criteria in § 347.32;

(3) For a public awareness project according to the criteria in § 347.33.

(b) The Secretary awards each application a value of zero to five (0–5) for each of the criteria listed in §§ 347.31, 347.32, and 347.33 respectively. These values are based on how well the application addresses each criterion, as follows: Outstanding (5); Superior (4); Satisfactory (3); Marginal (2); Poor (1); or not addressed in the application (0). In this way, each criterion is judged according to a uniform scale.

(c) Because the Secretary considers certain criteria to be more important than others, the Secretary has weighted each criterion as indicated in §§ 347.31, 347.32, and 347.33 respectively. The value awarded to each criterion in an application is multiplied by the standard weight accorded to that criterion in § 347.31, § 347.32, or § 347.33 as appropriate.

(d) The final score for each application is determined by totaling the scores computed for each criterion.

(e) The maximum score for each application is 100 points.

(Authority: 29 U.S.C. 2251)

§ 347.31 What selection criteria are used to evaluate applications for technology training projects under this program?

The Secretary reviews each application for a model technology training project award to determine the degree to which—

(a) *Importance and significance of proposed activity (Weight: 3; Total Points: 15).* (1) The project responds adequately to all of the requirements of the announced priority, if any;

(2) The proposed activity addresses a significant need in the provision of technology-related training, and the development, dissemination, and evaluation of curricula, materials, and methods used to train individuals with disabilities, their families, and the professionals who work with persons with disabilities; and

(3) The proposed project is likely to result in new, improved, and useful techniques for training individuals about assistive technology services, devices, and information resources;

(b) *Plan of activities* (Weight: 4; Total Points: 20). (1) Indicates a likelihood that the proposed activities will accomplish the goals and objectives of the project;

(2) Is based on a sound conceptual and instructional model;

(3) Uses appropriate materials and populations;

(4) Provides appropriate review of literature and related activities and indicates a familiarity with state-of-the-art in assistive technology services, devices, and information; and

(5) Uses appropriate methodology for measurement and analysis of the effectiveness of the training program;

(c) *Inclusion of individuals with disabilities and their families or representatives* (Weight: 4; Total Points: 20). (1) In the development of the project, including the assessment of problems and needs;

(2) In the establishment of goals and objectives for the project;

(3) In the planning and implementation of the functions and activities to be carried out under the project grant;

(4) In the evaluation of activities under the grant and the assessment of the training program; and

(5) In the dissemination of training models and curricula;

(d) *Management plan* (Weight: 4; Total Points: 20). (1) Includes an adequate number of staff qualified by training and experience to implement the proposed activities;

(2) Appropriately manages and accounts for the fiscal resources of the project;

(3) Details internal procedures for the management of the resources under the grant, including specification of responsibilities and administrative authority, and provisions for internal monitoring of progress;

(4) Includes realistic timelines for the implementation of project activities so as to ensure accomplishment of proposed goals and objectives within the time period proposed in the application;

(5) Allots sufficient and appropriate resources from the grant or other sources for the accomplishment of the proposed project activities; and

(6) Details resources, experience, and capabilities of the institution or organization to accomplish the goals and objectives proposed in the application;

(e) *Dissemination plan* (Weight: 2; Total Points: 10). (1) Provides for the dissemination of findings and the documentation of the project for replication purposes;

(2) Provides indications that the model curricula, training programs, and informational materials, if successful, are likely to be replicable in other settings involving training in the use of technology-related assistance;

(3) Indicates with appropriate analysis and support the potential for program expansion, enhancement, and replication of any special strategies or materials developed; and

(4) Provides mechanisms to assure the likely adoption and use of the curricula;

(f) *Evaluation plan* (Weight: 3; Total Points: 15). (1) Specifies adequate indicators of accomplishment for each of the goals and objectives;

(2) Specifies appropriate measures to be used and the data elements needed for these measures;

(3) Specifies appropriate and feasible data sources and data collection methods;

(4) Specifies appropriate methods of data analysis that are likely to yield objective and meaningful evaluation results; and

(5) Allocates sufficient resources including personnel, funds, and administrative priority, to the evaluation.

(Authority: 29 U.S.C. 2201–2271)

§ 347.32 What selection criteria are used to evaluate applications for technology career development projects under this program?

The Secretary reviews each application for a technology career development project award to determine the degree to which—

(a) *Importance and significance of proposed activities* (Weight: 3; Total Points: 15). (1) The project responds adequately to all of the requirements of the announced priority, if any;

(2) The applicant proposes to develop or provide career training in an assistive-technology-related discipline or in an area of study in which there is a shortage of qualified and trained personnel, or to provide training to a trainee population in which there is a need for more qualified personnel; and

(3) The proposed project is likely to result in new, improved and useful programs for preparing personnel for careers relating to the provision of technology-related assistance for persons with disabilities;

(b) *Plan of activities* (Weight: 4; Total Points: 20). (1) Indicates a likelihood that the proposed activities will accomplish the goals and objectives of the project;

(2) Is based on a sound conceptual and instructional model;

(3) Uses appropriate materials and populations; and

(4) Provides appropriate review of literature and related activities and indicates a familiarity with state-of-the-art in assistive technology, services, information, and related studies.

(c) *Inclusion of individuals with disabilities and their families or representatives* (Weight: 4; Total Points: 20). (1) In the development of the project, including the assessment of problems and needs;

(2) In the establishment of goals and objectives for the project;

(3) In the planning and implementation of the functions and activities to be carried out under the project grant;

(4) In the evaluation of activities under the grant and the assessment of the demonstration model; and

(5) In the dissemination of project findings and of replicable models;

(d) *Management plan* (Weight: 4; Total Points: 20). (1) Includes an adequate number of staff qualified by training and experience to implement the proposed activities;

(2) Appropriately manages and accounts for the fiscal resources of the project;

(3) Details internal procedures for the management of the resources under the grant, including specification of responsibilities and administrative authority, and provisions for internal monitoring of progress;

(4) Includes realistic timelines for the implementation of project activities so as to ensure accomplishment of proposed goals and objectives within the time period proposed in the application;

(5) Allots sufficient and appropriate resources from the grant or other sources for the accomplishment of the proposed project activities; and

(6) Details resources experience, and capabilities of the institution to accomplish the goals and objectives proposed in the application;

(e) *Dissemination plan* (Weight: 2; Total Points: 10). (1) Provides for the dissemination of findings and the documentation of the project for replication purposes;

(2) Provides indications that the model, if successful, is likely to be replicable in other settings involving training for careers in the provision of assistive technology services to persons with disabilities;

(3) Indicates with appropriate analysis and support the potential for program expansion, enhancement, and replication of any special strategies or materials developed; and

(4) Provides mechanisms to assure the likely adoption and use of the curricula;

(f) *Evaluation plan* (Weight: 3; Total Points: 15). (1) Specifies adequate indicators of accomplishment for each of the goals and objectives;

(2) Specifies appropriate measures to be used and the data elements needed for these measures;

(3) Specifies appropriate and feasible data sources and data collection methods;

(4) Specifies appropriate methods of data analysis that are likely to yield objective and meaningful evaluation results; and

(5) Allocates sufficient resources including personnel, funds, and administrative priority, to the evaluation.

(Authority: 29 U.S.C. 2201–2271)

§ 347.33 What selection criteria are used to evaluate applications for public awareness projects under this program?

The Secretary reviews each application for a public awareness project award to determine the degree to which—

(a) *Importance and significance of proposed activities* (Weight: 3; Total Points: 15). (1) The project responds adequately to all of the requirements of the announced priority; in any;

(2) The proposed activity addresses a significant problem not now being addressed or addresses problems in a new and different way;

(3) The applicant proposes to carry out projects that recognize and build awareness of the importance and efficacy of assistive technology devices and assistive technology services for individuals with disabilities; and

(4) The proposed project is likely to result in new, improved, and useful programs for informing individuals about assistive technology.

(b) *Plan of activities* (Weight: 5; Total Points: 25). (1) Indicates a likelihood that the proposed activities will accomplish the goals and objectives of the project;

(2) Uses appropriate media and materials and addresses appropriate target populations;

(3) Demonstrates a thorough knowledge of the statute and of the literature and related activities, and indicates a familiarity with state-of-the-art in consumer needs, assistive technology services, information, and related activities;

(4) Demonstrates familiarity with needs assessment research as it relates to public awareness about assistive technology services, devices, and information; and

(5) Indicates an awareness of and familiarity with various general and specialized media necessary to achieve the project's public awareness objectives;

(c) *Inclusion of individuals with disabilities and their families or representatives* (Weight: 4; Total Points: 20). (1) In the development of the project, including the assessment of problems and needs;

(2) In the establishment of goals and objectives for the project;

(3) In the planning and implementation of the functions and activities to be carried out under the project grant;

(4) In the evaluation of activities under the grant and the assessment of the demonstration model; and

(5) In the dissemination of project findings and of replicable models;

(d) *Management plan* (Weight: 4; Total Points: 20). (1) Includes an adequate number of staff qualified by training and experience to implement the proposed activities;

(2) Appropriately manages and accounts for the fiscal resources of the project;

(3) Details internal procedures for the management of the resources under the grant, including specification of responsibilities and administrative authority, and provisions for internal monitoring of progress;

(4) Includes realistic timelines for the implementation of project activities so as to ensure accomplishment of proposed goals and objectives within the time period proposed in the application;

(5) Allots sufficient and appropriate resources from the grant or other sources for the accomplishment of the proposed project activities; and

(6) Details resources experience, and capabilities of the institution or organization to accomplish the goals and objectives proposed in the application:

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(e) *Dissemination plan* (Weight: 2; Total Points: 10). (1) Provides for the dissemination of findings and the documentation of the project for replication purposes;

(2) Provides indications that the model, if successful, is likely to be replicable or adaptable in other settings involving the provision of assistive technology services to persons with disabilities;

(3) Indicates, with appropriate analysis and support, the potential for program expansion, enhancement and replication of any special strategies or materials developed; and

(4) Provides mechanisms to assure the likely adoption and use of the model;

(f) *Evaluation plan* (Weight: 3, Total Points: 15). (1) Specifies adequate indicators of accomplishment for each of the goals and objectives;

(2) Specifies appropriate measures to be used and the data elements needed for these measures;

(3) Specifies appropriate and feasible data sources and data collection methods;

(4) Specifies appropriate methods of data analysis that are likely to yield objective and meaningful evaluation results; and

(5) Allocates sufficient resources including personnel, funds, and administrative priority, to the evaluation.

(Authority: 29 U.S.C. 2201–2271)

Subpart E—What Conditions Must Be Met after an Award?

§ 347.40 What are the requirements of a grantee for coordination and information sharing?

(a) The Secretary may require each grantee under this program to provide information, including data about program activities and results, to—

(1) Grantees under the State Grants for Technology-Related Assistance for Individuals with Disabilities Program;

(2) The entity providing technical assistance to the State Grants for Technology-Related Assistance for Individuals with Disabilities program as prescribed in section 106(b)(1) of the Act;

(3) Agencies designated by Governors to make applications under the State Grants for Technology-Related Assistance for Individuals with Disabilities program;

(4) Entities conducting evaluations of the State Grants for Technology-Related Assistance for Individuals with Disabilities program for the Secretary;

(5) The Secretary; and

(6) Any other entity designated by the Secretary.

(b) Grantees receiving assistance under this program that are located in States with State Grants for Technology-Related Assistance for Individuals with Disabilities shall provide evidence of their efforts to coordinate activities with those grantees.

(c) Grantees must share information on project activities and findings with any technical assistance and information network designated by the Secretary if such a network is established.

(Authority: 29 U.S.C. 2211–2271)

§ 347.41 What are the reporting requirements for a grantee?

(a) Each grantee shall submit a copy of its final report to the National Rehabilitation Information Center.

(b) Each grantee shall submit to the Department a copy of any curriculum or training program that is developed or implemented, as well as copies of any media materials, videotapes, audio-visual materials, scripts, or other training and public awareness materials developed under the grant.

(Authority: 29 U.S.C. 2211–2271)

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Tuesday
May 21 1991

Part VI

Nuclear Regulatory Commission

10 CFR Part 20 et al.
Standards for Protection Against Radiation; Final Rule

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 19, 20, 30, 31, 32, 34, 35, 39, 40, 50, 61 and 70

RIN 3150-AA39

Standards for Protection Against Radiation

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its standards for protection against ionizing radiation. This action is necessary to incorporate updated scientific information and to reflect changes in the basic philosophy of radiation protection. The revision conforms the Commission's regulations to the Presidential Radiation Protection Guidance to Federal Agencies for Occupational Exposure and to recommendations of national and international radiation protection organizations.

EFFECTIVE DATE: This regulation becomes effective on (30 days after publication in the **Federal Register**). However, licensees may defer implementation of this rule until January 1, 1993. The information collection requirements are not effective until NRC publishes the OMB Clearance in the **Federal Register** (see § 20.1009).

ADDRESSES: Copies of documents relating to the proposed rule published on January 9, 1986 (51 FR 1092), or this document may be examined and copied for a fee in the Commission's Public Document Room at 2120 L Street NW. (Lower-Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Harold T. Peterson, Jr., Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-3640.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Purpose of the Revision

The purpose of this amendment to 10 CFR part 20 is to modify the NRC's radiation protection standards to reflect developments in the principles and scientific knowledge underlying radiation protection that have occurred since part 20 was originally issued more than 30 years ago. These developments not only include updated scientific information on radionuclide uptake and metabolism, but also reflect changes in the basic philosophy of radiation protection. Incorporation of these changes will ensure that part 20 continues to provide adequate protection of public health and safety.

It is also the purpose of this final rule to implement the 1987 Presidential guidance on occupational radiation exposure (see section II.D). The Atomic Energy Commission (AEC) and the NRC have followed past Federal radiation protection guidance, and conformance with the guidance is viewed by the Commission as being necessary to ensure that NRC licensees are using levels of protection comparable to those used by Federal agencies.

The AEC and the NRC have generally followed the basic radiation protection recommendations of the International Commission on Radiological Protection (ICRP) and its U.S. counterpart, the National Council on Radiation Protection and Measurements (NCRP), in formulating basic radiation protection standards. In 1977, ICRP issued revised recommendations for a system of radiation dose limitation. This system, which was described in ICRP Publication 26,[1] introduced a number of significant modifications to existing concepts and recommendations of the ICRP and the NCRP that are now being incorporated in the NRC regulations. In particular, this amendment to part 20 puts into practice recommendations from ICRP Publication 26 and subsequent ICRP publications. The Federal radiation protection guidance signed by the President on January 20, 1987, is also based upon the ICRP 1977 recommendations in ICRP Publication 26.

In adopting the basic tenets of the ICRP system of dose limitation, the Nuclear Regulatory Commission recognizes that, when application of the dose limits is combined with the principle of keeping all radiation exposures "as low as is reasonably achievable," the degree of protection could be significantly greater than from relying upon the dose limits alone.

B. Fundamental Radiation Protection Principles

The radiation protection standards in this final rule are based upon the assumptions that—

(1) Within the range of exposure conditions usually encountered in radiation work, there is a linear relationship, without threshold, between dose and probability of stochastic health effects (such as latent cancer and genetic effects) occurring;

(2) The severity of each type of stochastic health effect is independent of dose; and

(3) Nonstochastic (nonrandom) radiation-induced health effects can be prevented by limiting exposures so that doses are below the thresholds for their induction.

The first assumption, the linear nonthreshold dose-effect relationship, implies that the potential health risk is proportional to the dose received and that there is an incremental health risk associated with even very small doses, even radiation doses much smaller than doses received from naturally occurring radiation sources. These health risks, such as cancer, are termed stochastic because they are statistical in nature; i.e., for a given level of dose, not every person exposed would exhibit the effect. The second assumption means that when a stochastic effect is induced, the severity of the effect is not related to the radiation dose received. The third assumption implies that there are effects, termed nonstochastic effects, for which there is an apparent threshold; i.e., a dose level below which the effect is unlikely to occur. An example of a nonstochastic effect is the formation of radiation-induced cataracts of the eyes.

The above assumptions are necessary because it is generally impossible to determine whether or not there are any increases in the incidence of disease at very low doses and low dose rates, particularly in the range of doses to members of the general public resulting from NRC-licensed activities. It is firmly established, both from animal studies and human epidemiological studies (such as those of the radium dial painters, radiologists, and the atomic bomb survivors) that there is an increased incidence of certain cancers associated with radiation exposure at high doses and high dose rates. However, whether these effects occur at very low doses and, if they occur, whether their occurrence is linearly proportional to dose are not firmly established. This creates considerable uncertainty in the magnitude of the risk at low doses and low dose rates. There is no clear human evidence of radiation-induced genetic damage to the children of irradiated parents. Such effects are inferred from studies of mice and nonmammalian species (e.g., fruit flies).

In the absence of convincing evidence that there is a dose threshold or that low levels of radiation are beneficial, the Commission believes that the assumptions regarding a linear nonthreshold dose-effect model for cancers and genetic effects and the existence of thresholds only for certain nonstochastic effects remain appropriate for formulating radiation protection standards and planning radiation protection programs.

[1] Recommendations of the International Commission on Radiological Protection, January 13, 1977, ICRP Publication No. 26 (1977). (Available for sale from Pergamon Press, Inc., Elmsford, NY 10523.)

C. Background

Standards for radiation protection were originally issued by the former AEC in the late 1950s (22 FR 548, January 29, 1957) and republished in 1960. These standards have been modifed since that time by a series of amendments relating to specific issues; however, no complete revision of part 20 has been made since the original standards were issued.

The NRC issued an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** of March 20, 1980 (45 FR 18023). This ANPRM requested comments on possible topics in part 20 that should be revised. The responses received to this announcement were considered in the formulation of the proposed rule.

During the development of this rule, early comments from licensees, labor unions, public interest groups, other Federal agencies, and scientific organizations were solicited, discussed, and considered in formulating the proposed rule. In addition, the NRC staff has benefited from its participation in several public meetings held by the Environmental Protection Agency (EPA) in connection with the guidance for occupational radiation exposure. These amendments to part 20 and the Federal guidance on occupational exposure were developed in parallel and are both based primarily on the ICRP recommendations. The comments made in these EPA-sponsored meetings and those received by EPA on the draft guidance published by EPA in the January 23, 1981 **Federal Register** (46 FR 7836) were reviewed by the NRC staff and considered in preparing the proposed part 20.

The NRC published the proposed revision of the 10 CFR part 20 rule in the **Federal Register** on January 9, 1986 (51 FR 1092). More than 800 sets of public comments were received on the proposed revision. The public comments on the proposed revision were categorized, analyzed, and taken into account in developing the final rule. The principal public comments and the NRC staff responses to them are discussed in section VI.

II. Developments Since the Proposed Revision Was Issued

A. ICRP 1985 Paris Meeting

In March 1985, the International Commission on Radiological Protection (ICRP) held a meeting in Paris, France, to review the work of the various ICRP task groups and committees. One of the outcomes of this meeting was an ICRP statement [2] that the ICRP intended the principal dose limit for members of the general public to be 1 millisievert (100 millirems) in a year, rather than 5 millisieverts (500 millirems). This clarification has been taken into account for the limits adopted for members of the public in the final rule and is discussed more fully in the discussion on proposed § 20.301.

A second recommendation of the ICRP made at that time concerned the appropriate quality factor for converting the absorbed dose from neutrons (in rads or grays) to a dose equivalent (in rems or sieverts). The ICRP statement recommended increasing the quality factor for high-energy neutrons by a factor of 2. The quality factor for fast neutrons, for example, would be increased from 10 to 20. This change has the effect of doubling the apparent biological effectiveness of high-energy neutrons. For reasons explained in the discussion of quality factors (see the discussion of proposed § 20.4), the NRC has not adopted this recommendation in this final rule.

B. ICRP 1987 Washington Meeting

The primary focus of the statement issued by the ICRP following the 1987 meeting in Washington [3] was ICRP Publication No. 48.[4] That publication discussed higher transfer factors for transport of certain transuranic elements across the intestinal walls. These higher fractional absorption factors have been incorporated in revisions to the annual limits on intake (ALIs) and derived air concentrations (DACs) in appendix B to §§ 20.1001–20.2401 of this final rule. The changes resulting from the use of these revised factors would not change either the ingestion or inhalation ALIs for plutonium in the oxide or nitrate forms, but would lower the ALIs for other compounds or mixtures by a factor of 10. The transfer factor for the gut transfer of neptunium was found to be an order of magnitude lower than the value used in ICRP–30 and, consequently, the ingestion ALI can be increased by almost an order of magnitude. The transfer factors for americium, curium, and californium were found to be a factor of 2 higher than the ICRP–30 value so the ingestion ALIs are reduced by a factor of 2. Parameters applicable to inhalation ALIs and DACs are less affected by the new intestinal absorption factor than the ingestion ALIs as the transfer from the gastrointestinal (GI) tract to the blood for these radionuclides is generally far less significant than transfer from the lung to the blood.

C. ICRP 1987 Como Meeting

Following its 1987 meeting in Como, Italy, the ICRP issued a statement [5] that reviewed the existing estimates of the biological risks of ionizing radiation and, in particular, the preliminary data from the reanalysis of the Hiroshima-Nagasaki atomic bomb followup studies. Reanalysis of these data indicated that the risks from gamma radiation are approximately a factor of 2 higher than previous estimates for the general population and are also higher, but by a smaller factor, for workers. The ICRP concluded in 1987 that this information alone was "not considered sufficient at that time to warrant a change in the dose limits for occupational exposure and, for the general population, the increase in risk indicated by the new data is not considered to require an immediate change in the recommended dose limits, following the reduction by the ICRP (in 1985) in the principal limit from 5 to 1 mSv in a year (from sources other than medical and natural background radiation)." The ICRP also noted that the potential higher risks indicated by the reanalysis of the atomic bomb data should not be a major consideration as the dose limits should not be of primary importance in controlling doses if the principle of keeping radiation exposures "as low as is reasonably achievable" is being practiced. This position has since been modified by the ICRP 1990 Statement (see section II.I below).

[2] International Commission on Radiological Protection. "Statement from the 1985 Paris Meeting of the [ICRP]," British Journal of Radiology, Vol. 58, page 910: 1985; also Health Physics, 48(6): 828–829 (June 1985).

[3] International Commission on Radiological Protection. "ICRP Statement from 1987 Washington Meeting," Health Physics 53(3): 338–342 (1987).

[4] International Commission on Radiological Protection. "The Metabolism of Plutonium and Related Elements," ICRP Publication No. 48 (Available for sale from Pergamon Press, Inc., Elmsford, NY 10523.) (1986).

[5] International Commission on Radiological Protection. "Statement from the 1987 Como Meeting of the [ICRP]," Health Physics. 54(1): 125–133 (1988).

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D. Federal Radiation Protection Guidance on Occupational Exposure

On January 20, 1987, President Reagan approved revised guidance to Federal agencies for occupational radiation protection. This guidance, which was published in the Federal Register (52 FR 2822; January 27, 1987), generally adopts the philosophy and methodology of ICRP Publications 26 and 30. The amendments to part 20 in this final rule were developed in parallel with the development of the guidance. Because of this parallel development, the proposed part 20 rule conformed with the draft Federal guidance available at the time the proposed part 20 rule was written. However, because of changes made to both the draft guidance and the draft part 20 revision, there were a few differences between the guidance in its final published form and the proposed part 20 revision. As discussed in the respective sections below, changes to the proposed rule have been made in order to implement the final version of the Federal guidance.

E. NCRP Report No. 91

On June 1, 1987, the National Council on Radiation Protection and Measurements (NCRP) issued a report [6] containing updated NCRP recommendations for radiation protection limits. These recommendations replace recommendations published in 1971. The majority of these recommendations are in accord with the 1977 recommendations of the ICRP and, consequently, were already reflected in the proposed part 20 rule. There are, however, several NCRP recommendations that were not in the ICRP–26 recommendations. These NCRP recommendations are:

(1) A general "guideline" that the cumulative effective dose equivalent to a worker should not exceed 1 times the worker's age in years; i.e., 1×N instead of the former 5(N−18) formula;

(2) Use of committed effective dose equivalent for planning purposes and the use of annual (rather than committed) doses for post-(internal) exposure control;

(3) A monthly dose limit as well as a limit on total gestation dose to the embryo/fetus;

(4) Adoption of a 0.1-rem (1 mSv) effective doses equivalent limit for exposure of the general public with the condition that the "site operator" assess the total exposure to the most exposed individual if estimated or measured exposures exceed 25 percent of this limit (25 millirems or 0.25 mSv per year);

(5) The use of "reference levels" set up by the radiation user below the regulatory limits;

(6) A Negligible Individual Risk Level of 1 millirem (0.01 mSv) per year. This level is the ". . . average annual excess risk of fatal health effects attributable to irradication, below which further effort to reduce radiation exposure to the individual is unwarranted" (NCRP No. 91, p. 43).

These NCRP recommendations were issued after publication of the proposed part 20 rule and, consequently, there has not been an opportunity for public comment on them. For this reason, these NCRP recommendations are not being adopted in the amendments to part 20 presented in this final rule.

F. The 1988 Report of the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR–88)

The United Nations Scientific Committee on the Effects of Atomic Radiation has analyzed data on the sources and effects of atomic radiation and published a series of reports containing summaries of the sources of radiation, the doses received by workers and members of the general public from these sources, and an analysis of the potential health risks from exposure to ionizing radiation.

The latest report in this series is the 1988 report. The 1988 report [7] contains more recent information on the health risks of ionizing radiation determined from a reevaluation of the data on the survivors of the Hiroshima-Nagasaki atomic bombings. Based upon these data, the radiation risk at high doses and high dose rates is estimated to be 7.1×10^{-4} fatal health effects per rad (0.071 effects per gray). For estimating the risk from radiation doses below 100 rads, the UNSCEAR report recommended that a dose rate reduction factor be applied to account for the reduced effectiveness of lower doses and lower dose rates. This would lead to an estimated risk of fatality of between $(0.7 \text{ to } 3.5) \times 10^{-4}$ health effects per rad for low doses such as those encountered in routine occupational exposure and the even lower doses that might be received by members of the general public from NRC- (or Agreement State) licensed activities. The fatal cancer risk value associated with the 1977 ICRP recommendations,[4] is 1.25×10^{-4} (the proposed part 20 rule, 51 FR 1162, January 9, 1986) so that the risks as estimated by the 1988 UNSCEAR report for low doses are between 1.7 times lower to 2.8 times higher than the earlier ICRP estimate. Implications of an increased risk are discussed in section II.I.

G. The 1988 Report of the National Academy of Sciences' Committee on the Biological Effects of Ionizing Radiation (BEIR–IV) [8]

The 1988 BEIR–IV report supplements the 1980 BEIR–III report by providing a more detailed analysis of the risks from internal alpha-emitting radionuclides to complement the emphasis of the BEIR–III report on gamma and beta radiation. Revised risk estimates are given for intakes of radon, radium, polonium, thorium, uranium, and higher transuranic elements (e.g., plutonium).

The radionuclide given the greatest emphasis in the BEIR–IV report is radon (radon–222), the gaseous decay product of radium–226. The radon dose conversion factor in the BEIR–IV report for exposure conditions representative of those of the general public is consistent with the value used to derive the airborne effluent concentration limit for radon–222 in appendix B to §§ 20.1001–20.2401, table 2 of the amendments of 10 CFR part 20 contained in this final rule.

H. The 1990 Report of the National Academy of Sciences' Committee on the Biological Effects of Ionizing Radiation (BEIR–V) [9]

The BEIR–V report is another comprehensive reevaluation of the health risks of radiation exposure based upon the revised dose estimates for the survivors of the atomic bombings of Hiroshima and Nagasaki. The BEIR–V report gives risk estimates for leukemia and non-leukemia (solid cancers) that are about two to five times higher than the estimates in the 1980 BEIR–III report. The BEIR–V report gives the following factors as the principal reasons for this increase: (1) Use of different dose-response and risk projection models, (2) revised estimates of the doses to the individual survivors of the atomic bombings in Japan, and (3) improved epidemiological data from additional years of followup studies since the BEIR–III report was completed in 1980.

The BEIR–V Committee uses the linear dose response model and the relative risk projection model to extrapolate the fatal tumor risk to future periods. The relative risk projection model assumes the risk to be proportional to the natural cancer incidence, which generally increases with age. Because of this dependence on age, the relative risk model generally predicts higher future (lifetime) risks than the absolute risk model which employs a constant added risk per year with increasing age. Estimates are given of the risk as a function of the time since the exposure occurred and the age and sex of the exposed person. The BEIR–V report, like the UNSCEAR–88 report, indicates that a reduction factor should be applied to the risk estimates derived from high doses and dose rates in order to apply them to low dose and low dose-rate situations. Although neither the BEIR–V report nor the UNSCEAR–88 report recommends a specific value for this factor, both reports indicate that this factor should be greater than 2 (larger reduction factors would give a lower risk per unit dose). Assuming a factor of 2 reduction in the risk estimates derived from high doses and high dose rates, BEIR–V would give a lifetime risk of a radiation-induced cancer fatality of about 4×10^{-4} fatal cancers/rem (0.04 per sievert) for workers and 5×10^{-4} per rem (0.05 per sievert) for the general population, the higher value for the public being associated with the higher sensitivity and the longer period of elevated risk associated with the younger ages present in the general population. The values of 5×10^{-4} is three times as large as the recommended value in the 1980 BEIR–III report and four times as large as the estimate in the 1977 ICRP–26[1] report (see section II.F).

The BEIR–V report also summarized the data on the frequency of severe mental retardation found in the children of Hiroshima and Nagasaki atomic bomb survivors. These children were exposed *in utero* at gestational ages of 8–15 weeks and the risk of severe mental retardation during this period is about 4×10^{-3} per rem with a possible threshold for the effect in the range of 20 to 40 rem. The risk of severe retardation was less during other gestational ages; there was no evidence of increased risk in survivors exposed earlier than 8 weeks or later than 26 weeks after conception.

The estimates of genetic effects to the offspring of irradiated individuals remained similar to those in the 1972 BEIR–I and 1980 BEIR–III reports. As radiation-induced inherited abnormalities have not been observed directly in humans, estimates of genetic effects have been based primarily upon experimental studies with mice. These studies suggest that it would take a dose of about 100 rads to double the natural frequency of genetically transmitted diseases.

I. ICRP 1990 Recommendations

On June 22, 1990, the International Commission on Radiological Protection issued a press release indicating that it would issue revised recommendations for radiation protection based upon the newer studies of radiation risks (such as those described in sections F, G, and H above). The press release indicated that the ICRP would recommend a reduction in the occupational dose limit from an equivalent of 5 rems per year to an average of 2 rems per year with some allowance for year-to-year flexibility. The ICRP dose limit for long-term exposure of members of the general public would remain equivalent to the level adopted in this amendment to part 20, 0.1 rem per year.

The Nuclear Regulatory Commission does not believe that additional reductions in the dose limits are urgently required by the latest radiation risk estimates. Due to the practice of maintaining radiation exposures ALARA ("as low as is reasonably achievable"), the average radiation dose to occupationally exposed individuals is well below the limits in either the previous or amended part 20 and also below the limits recommended by the ICRP. For example, in 1987 about 97 percent of the workers in nuclear power plants, industrial radiography, reactor fuel fabrication, and radioisotope manufacturing, four of the industries having the highest potential for occupational radiation exposures, received annual doses of less than 2 rems, which is the occupational limit proposed by the ICRP.

As a result of the application of the ALARA philosophy to effluent release standards in appendix I to 10 CFR part 50 for nuclear power reactors and EPA's 40 CFR part 190 for the uranium fuel cycle, doses from radioactive effluents from fuel cycle facilities are already much less than the 0.1 rem per year standard in this final rule. The 0.1 rem per year remains as the level recommended by the ICRP for protection of the general public.

Until the final ICRP recommendations are published, and the need for further revisions in NRC standards established, the Commission believes it would be advisable to proceed with the promulgation of the proposed dose limits, rather than deferring the dose reductions that are already associated with the amendments to part 20 in this final rule. The Commission will carefully review the final recommendations of the International Commission on Radiological Protection, the comments of the scientific community and others on these recommendations, and the ICRP response to these comments. In addition, the Commission staff will review the recommendations of other expert bodies, such as the National Council on Radiation Protection and Measurements, and participate in the deliberations of the U.S. Committee on Interagency Radiation Research and Policy Coordination and any interagency task force convened by the Environmental Protection Agency to consider revised Federal radiation guidance. Any future reductions in the dose limits by the Commission would be the subject of a future rulemaking proceeding.

III. Issues Being Resolved Separately

As noted in the above discussion, there are several areas where the Commission believes a better scientific consensus is needed before adopting values different from those in the present part 20. There are also several areas where issues raised in the public comments (see section VI) are being resolved in other NRC rulemaking proceedings because of either their scope, complexity, or timing. The following issues are being or will be resolved in other NRC rulemaking proceedings:

(1) Establishment of "Below Regulatory Concern (BRC)" levels (related to *de minimis* levels and a negligible level of risk). On June 27, 1990, the Commission announced the issuance of a policy statement on Below Regulatory Concern, which was subsequently published in the Federal Register on July 3, 1990 (55 FR 27522). This policy statement establishes the framework for the Commission to formulate rules and licensing decisions to exempt certain practices involving small quantities of radioactive materials from some or all regulatory controls. The BRC policy statement sets forth criteria for protection of both individuals (individual dose criteria) and population groups (a collective dose criterion).

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[6] National Council on Radiation Protection and Measurements (NCRP), "Recommendations on Limits for Exposure to Ionizing Radiation," NCRP Report No. 91 (June 1, 1987). (Available for sale from the NCRP, 7910 Woodmont Avenue, suite 800, Bethesda, MD 20814-3095.)

[7] United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR), "Sources, Effects and Risks of Ionizing Radiation, 1988 Report to the General Assembly, Sales Section, United Nations, NY 10017 (1988).

[8] National Academy of Sciences-National Research Council, Committee on the Biological Effects of Ionizing Radiation, "Health Risks of Radon and Other Internally Deposited Alpha-Emitters. (BEIR–IV)," National Research Council, National Academy Press, Washington, DC 20418 (1988).

[9] National Academy of Sciences-National Research Council, Committee on the Biological Effects of Ionizing Radiation, "Health Effects of Exposure to Low Levels of Ionizing Radiation. (BEIR–V)," National Research Council, National Academy Press, Washington, DC 20418 (1990).

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(2) Limits for decontaminating of nuclear facilities and for residual radioactive contamination. This is being actively pursued by the NRC staff by developing criteria for residual contamination of soils and structures, which are one aspect of the implementation of the Below Regulatory Concern policy and are necessary to fully implement the Commission's earlier rulemaking on General Requirements for Decommissioning Nuclear Facilities (53 FR 24018, June 27, 1988). The NRC staff is also participating in an EPA Interagency Task Force on Residual Radioactivity.

(3) Limits and calculational procedures for dealing with the "hot particle" issue (small particles found in nuclear reactors that, because of their high activity and small size, produce high localized doses to skin). The NRC notes that the National Council on Radiation Protection and Measurements (NCRP) has recently issued new recommendations regarding "hot particles" in NCRP Report No. 106, "Limit for Exposure to 'Hot Particles' On the Skin," December 31, 1989. A modified NRC enforcement policy statement with regard to the "hot particle issue" was published in the Federal Register of July 31, 1990 (55 FR 31113). The NCRP report, together with a forthcoming ICRP report on the biological effects of skin irradiation and other technical analyses, will be considered in a future rulemaking to set limits for skin irradiation.

(4) Modification of NRC incident notification requirements. A modification of the incident notification requirements was issued for public comment on May 14, 1990 (55 FR 19990). If this proposal is adopted as a final rule, it would modify both §§ 20.1–20.601 and the amendments contained in §§ 20.1001–20.2401.

(5) Publication of a separate rule for large irradiators. A new part 36 has been proposed for public comment (Federal Register of December 4, 1990, 55 FR 50008). The detailed requirements for irradiators presently in the amended part 20 (§ 20.1603) will eventually be deleted and replaced by the provisions incorporated in the new part 36.

There are also additional areas where the scientific basis is not yet resolved sufficiently to justify a change from current practice. These two areas require better scientific consensus on the appropriate position: (1) The need for and impact of a lifetime cumulative dose limit of 1 rem per year of age and (2) quality factors, especially for neutrons, low-energy beta-emitters, and high-energy gamma photons. These issues will be reconsidered as consensus positions are reached by the scientific community.

IV. Need for Additional Regulatory Guidance

The Commission recognizes that the incorporation of many new concepts into part 20 will require additional guidance and explanation on their application to practical problems in radiation protection. The Commission also notes the desirability of having such additional guidance available at the same time that the final rule is issued in effective form. However, it was impractical, both for reasons of scheduling and availability of resources, for these guides to be developed concurrently with part 20. Some of the regulatory guides being developed or revised to assist in the implementation of the amended part 20 are:

(1) Content of Radiation Protection Programs at Nuclear Power Plants;

(2) Interpretation of Bioassay Measurements (Draft Regulatory Guide 8.9, Revision 1);

(3) Criteria and Procedures for Summation of Internal and External Occupational Doses;

(4) Acceptable Criteria for Planned Special Exposures and for Satisfying Documentation Requirements;

(5) Methods and Parameters for Calculating the Dose to the Embryo/Fetus;

(6) Instructions for Recording and Reporting Occupational Radiation Exposures (includes NRC Forms 4 and 5).

The Commission has instructed the staff to have these and other draft guides published for public comment early in 1991 and published in final form by December 31, 1991.

V. Implementation and Existing License Conditions

Section 20.1006 of the amendments to part 20 in this final rule provides that NRC licensees must implement the rule on or before January 1, 1993. Until January 1, 1993, applicants seeking new licenses and holders of existing licenses have the option of complying with the new provisions of part 20 in §§ 20.1001–20.2401 or with the earlier provisions of part 20 in §§ 20.1–20.601. Early implementation may benefit applicants for new licenses or license renewals as they could avoid having to adopt and implement the earlier provisions of part 20 for only a short period of time prior to the required implementation date of the final rule. Licensees (or applicants) that wish to adopt the provisions of this final rule prior to the required implementation date should notify either the Director, Office of Nuclear Reactor Regulation (for power and research reactors) or the Director, Office of Nuclear Material Safety and Safeguards (for industrial, academic, and medical licensees, fuel cycle and waste disposal facilities).

The amendments to part 20 in this final rule have been incorporated into the existing 10 CFR part 20 while retaining the existing requirements. However, the new requirements have been renumbered to run from § 20.1001 to § 20.2401 in order to satisfy legal conditions associated with the necessity of having two sets of requirements on the same subject in effect at the same time. The existing part 20 retains its current section numbers (§§ 20.1–20.601). Licensees are required to comply with either §§ 20.1–20.601 inclusive or with the requirements in § 20.1001–20.2401 inclusive, but not both sets of requirements. Licensees cannot comply with selected requirements from both the new rule and the earlier version, but must comply with the complete set of requirements in either §§ 20.1–20.601 or in §§ 20.1001–20.2401.

The NRC will issue a regulatory guide that provides the section and paragraph identifiers in the amendments to part 20 (§§ 20.1001–20.2401) and the corresponding sections or paragraphs in the earlier part 20 (§§ 20.1–20.601). This document will be issued shortly after the publication of this rule and will enable licensees to locate sections of the amendments to part 20 that correspond to sections of the earlier part 20 cited in license conditions and technical specifications.

NRC Agreement States each have regulations compatible with the existing 10 CFR Part 20. Agreement States normally amend their regulations to preserve compatibility within three years after NRC issues final rules. In the Commission's view, it is desirable to minimize the period when different radiation standards and methods of determining doses are in effect across the nation. The States and the public have had extensive advance knowledge of the planned revision of part 20. Consequently, the Commission believes that the Agreement States must proceed as quickly as possible to conform to the amendments to part 20 presented in this final rule and should require that all Agreement State licensees comply on or before January 1, 1994. The States are encouraged to provide the flexibility for early adoption should licensees so choose. As just discussed, the Commission has provided what it believes is adequate time (until January 1, 1993) from publication of the final rule before all NRC licensees must comply. Agreement States may also wish to provide additional time for their licensees to comply to facilitate transition and the Commission would have no objection so long as compliance is required by January 1, 1994.

VI. Summary of Public Comments and Changes from Proposed Rule

The purpose of this section is to respond to comments raised on the proposed rule and to explain and highlight the changes made to the proposed rule. This section presents, for each paragraph or section of the rule, the principal public comments on the proposed rule, an NRC staff response to the comments (where appropriate), and a summary of the principal changes that were made to the proposed rule. This section has been arranged so that it corresponds to the structure of the proposed rule. However, the following text is not intended to create any additional requirement not already in the regulatory text.

Subpart A—General Provisions

Proposed Section 20.1 Purpose [Section 20.1001 in This Final Rule]

Final rule: A new sentence was added to convey the intent of the former § 20.9 in the proposed rule (which has been removed) that the regulations in Part 20 should not hinder a licensee's actions to protect health and safety in the event of an emergency. It is the Commission's intent that the regulations be observed to the extent practicable during emergencies, but that conformance with the regulations should not hinder any actions that are necessary to protect public health and safety such as lifesaving or maintaining confinement of radioactive materials.

In this regard, the Commission notes that the Federal guidance on occupational radiation protection states that those dose standards only apply to normal operating conditions. The Commission believes that the dose limits for normal operation should remain the primary guidelines in emergencies. However, the Commission also recognizes that, in an emergency, operations that do not conform to the regulations may have to be carried out to achieve the high-priority tasks of worker, public, and facility protection. The purpose of the addition to this section is to assure licensees that their first priority should be to carry out those actions that are necessary to protect workers and the public from radiation exposure, to perform lifesaving activities, to prevent or limit the spread of radioactive contamination or the release of radioactive materials to the environment, and to preserve an adequate margin of safety. In evaluating any ensuing violations and their severity, the Commission will consider on a case-by-case basis any extenuating circumstances.

Proposed Section 20.2 Scope [Section 20.1002 in This Final Rule]

Final rule: The statement of scope remains essentially the same as in the proposed rule except that "background radiation" has replaced "natural background." This change was made to include residual global fallout and ambient radon levels within the definition of "background."

Proposed Section 20.3 Definitions [Section 20.1003 in This Final Rule]

General: Because of the large number of comments that dealt primarily with wording changes or that questioned the need for or the use of particular definition, the individual comments will not be discussed separately. However, these comments did result in substantial revisions to many of the definitions that appeared in the proposed rule. Those definitions that were added, modified, or deleted as a result of the public comments are listed below.

Comment: Differentiation among different kinds of dose equivalents. The potential for confusion among different dose equivalents was noted. Commenters noted that effective dose equivalents, committed effective dose equivalents, and doses to the lens of eye, skin, or extremities were all expressed in units of rems or sieverts and may be difficult to distinguish from one another.

Response: In the final rule the NRC staff has applied unique names for these previously undesignated quantities including: eye dose equivalent, shallow-dose equivalent (skin), shallow-dose equivalent (extremities), and total effective dose equivalent. The ICRP did not give these quantities specific names. The use of characteristic names is intended to reduce confusion in using these units. In this regard, it should be noted that the licensee is required to designate, in a clear and unambiguous manner, the quantities that are being recorded (see § 20.2101(b)).

Final rule: All the important definitions have been collected into one section, § 20.1003 Definitions. Unlike the proposed rule, which employed groups of related terms ("Area Terms," "Dose Terms," "Monitoring Terms," etc.), all of the definitions in the amended rule are listed in strict alphabetical order. This organization also avoids the presence of "local definitions" that appear only in a specific section of the regulation.

1. New Terms. The following definitions have been added to the final rule. These definitions have been added to clarify the meaning of the terms:

a. "Activity"
b. "Background radiation"
c. "Derived air concentration-hours" ("DAC-hours")
d. "Dosimetry processor"
e. "Entrance or access point"
f. "Generally applicable environmental standard"
g. "Individual monitoring device"
h. "Quality factor"
i. "Sanitary sewerage"
j. "Total effective dose equivalent (TEDE)."

2. Revised Definitions. The following definitions have been revised or modified from the definition used in the proposed rule:

a. "Absorbed dose"
b. "Annual limit *on* intake"
c. "Class"
d. "Committed dose equivalent"
e. "Committed effective dose equivalent"
f. "Derived air concentration"
g. "Dose equivalent"
h. "Effective dose equivalent"
i. "Embryo/fetus"
j. "Eye dose equivalent"
k. "Member of the public"
l. "Nonstochastic"
m. "Person"
n. "Planned special exposure"
o. "Quarter"
p. "Survey"
q. "Weighting factor"
r. "Working level"
s. "Year"

3. Definitions and terms deleted. Two definitions were deleted because the terms no longer appear in the rule: "Collective effective dose equivalent" and "Roentgen." "Natural background" has been replaced by "Background radiation."

Proposed Section 20.4 Units of Radiation Dose [Section 20.1004 in This Final Rule]

Comment: Choice of the system of units. Several commenters expressed a preference for retaining the older "special" units (the curie, rad, and rem) rather than allowing the use of the newer SI units. Reasons cited for retaining the older system included: present widespread use and licensee familiarity, potential for misunderstandings with the newer units, the need for worker retraining (particularly while learning the new ICRP system of dose limitation), and the costs associated with changing recordkeeping systems. A smaller

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number of commenters favored changing over to the SI units: becquerels, grays, and sieverts.

Response: Although both the "special units" and the SI units appear in the text of part 20 (to increase the familiarity of licensees with the SI units), the Commission has decided that adoption of the SI units at this time is not necessary. The Commission recognizes that the new terms and methodological approaches in the amendments to part 20 are complex and that imposition of the SI system of units on top of this complexity would further increase the potential for confusion. Consequently, at the present time, the recordkeeping, reporting, and notification requirements require the use of the "special units," the rad, the rem, and the curie. However, as the national move to metrication continues, as anticipated in section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), at some later time there may be amendments to part 20 that would require the use of SI units only (becquerels, grays, and sieverts).

Final rule: The amendments to part 20 in this final rule include the International System of Units (SI units) for distance, area, and volume. The older "special units" are retained for licensee use in records or reports, i.e., activity (curie), absorbed dose (rad), and dose equivalent (rem).

Comment: Quality factors for neutrons. The quality factor is the conversion factor between the absorbed dose (rads) and the dose equivalent (rems). Several publications [10, 11, 12a] have recommended changes in neutron quality factors that are a factor of 2 higher than those in proposed part 20. These changes would raise the quality factor for fast neutrons from 10 to 20.

Response: Increases in the quality factor for neutrons are suggested by some animal experimental data on the relative biological effectiveness (RBE) of neutrons. However, there appears to be considerable uncertainty as to whether the data actually demonstrate an increase in the hazard of neutrons. Because the RBE is defined as a ratio of doses to produce equivalent biological effects, it is not clear whether the apparent increase in the neutron RBE is due to the increased effectiveness of neutrons or whether it actually results from the decreased effectiveness of the reference gamma radiation at low doses.

Final rule: The NRC has decided not to revise the neutron quality factor at this time but to defer any change until there is greater scientific consensus on the most appropriate value. A major consideration underlying this decision is that neutron exposures at most NRC-licensed facilities are currently small and the potential increase of a factor of 2 would not have a major health or regulatory impact.

The decision to defer any change is consistent with recommendations of the Committee on Interagency Radiation Research and Policy Coordination (CIRRPC) of the Office of Science and Technology Policy that there should not be a revision of the value of the neutron quality factor at this time without more study. This position is also reflected in papers from the United Kingdom National Radiological Protection Board (UKNRPB) [13] and a statement of the neutron quality factor from the British Committee on Radiation Units and Measurements.[13]

Comment: Table of neutron quality factors. Several commenters questioned the accuracy and timeliness of the table of neutron quality factors and fluence rates (to give dose equivalents of 1 rem) that appeared in the proposed rule. Some commenters suggested that there were more appropriate tables published by the NCRP or ICRP.

Response: The tables in the proposed and amended rules were taken from NCRP Report No. 38 [14] and are appropriate for the neutron dose equivalent at a soft tissue depth of 1 centimeter (which is the depth specified for the determination of the deep dose equivalent). There are newer tables from the ICRP, but these tables incorporate the factor of 2 increase in the neutron quality factor. (See the preceding discussion of the neutron quality factor.)

Subpart B—Radiation Protection Programs

Proposed Section 20.102 "As Low As Is Reasonably Achievable" (ALARA) [Section 20.1101 Radiation Protection Programs in This Final Rule]

Comment: The concept of ALARA is a philosophical principle of radiation protection and, as such, it should not be made into a regulatory requirement. A primary objection to changing the status of ALARA from the hortatory suggestion in § 20.1(c) of §§ 20.1–20.601 ("licensees should") to a mandatory requirement ("licensees shall") in proposed § 20.102 is that there are no guidelines (except for light-water-reactor (LWR) effluents) as to what constitutes ALARA. Because of the subjective nature of an "ALARA level," there are problems in the retrospective evaluation of licensee performance by NRC inspectors and, at least in one case, interpretations by the courts concerning whether the levels achieved were truly "as low as is reasonably achievable."

Response: There were a number of comments that expressed similar concerns regarding the proposed implementation of "ALARA." The emphasis on ALARA actions has been revised from detailed requirements to document all ALARA actions to a requirement to have a radiation protection program that includes measures to keep doses and intakes "as low as is reasonably achievable." This shift is to emphasize that the ALARA concept is intended to be an operating principle rather than an absolute minimization of exposures.

Comment: Any requirement for ALARA should include a lower bound. Many commenters felt that there should be a "floor" for ALARA.

Response: The Commission agrees that there would be advantages to establishing such a "floor," below which efforts to further reduce doses would not be necessary. An NRC policy statement on "Below Regulatory Concern" was announced on June 27, 1990, and published in the **Federal Register** on July 3, 1990 (55 FR 27522). The Below Regulatory Concern levels in that policy statement delineate criteria below which additional licensee actions to further reduce doses would not be required. Specific rulemaking actions will be carried out to define operational thresholds for particular classes of activities such as disposal of very low-level contaminated materials. The BRC policy statement provides a framework for evaluating these case-specific actions. (See also discussion on proposed § 20.304.)

[10] International Commission on Radiological Units and Measurements, "The Quality Factor in Radiation Protection," ICRU Report No. 40 (1986). (Available for sale from ICRU Publications, 7910 Woodmont Avenue, suite 800, Bethesda, MD 20814-3095.)

[11] International Commission on Radiological Protection, "Data for Use in Protection Against External Radiation," ICPR Publication No. 51 (January 1988). (Available for sale from Pergamon Press, Inc., Elmsford, NY 10523.)

[12a] See footnotes 2, 3, and 4.

[13] J.A. Dennis, "The Relative Biological Effectiveness of Neutron Radiation and Its Implications for Quality Factor and Dose Limitation," Nuclear Energy 20(2), 133–140 (1987).

[13] British Committee on Radiation Units and Measurements (BCRU), "Memorandum from the BCRU: Effective Quality Factor for Neutrons," Physics in Medicine and Biology 31 (7):797–799 (1986).

[14] National Council on Radiation Protection and Measurements, "Protection Against Neutron Radiation," NCRP Report No. 38 (January 1971). (Available for sale from the NCRP, 7910 Woodmont Avenue, suite 800, Bethesda, MD 20814-3095.)

Comment: Compliance with "ALARA-based" standards should constitute being ALARA. Several commenters supported the statement in the proposed part 20 (20.102[b]) that compliance with EPA's 40 CFR part 190 and with appendix I to 10 CFR part 50 should constitute *de facto* compliance with the requirement to keep LWR effluents ALARA. Environmental Protection Agency (EPA) comments did not support this view.

Response: Appendix I to 10 CFR part 50 defines ALARA levels of radioactive materials in LWR effluents. If the design objectives of appendix I are met, it constitutes a demonstration that the effluents are ALARA and no additional effort is required to reduce the effluent levels. Although the EPA interprets 40 CFR part 190 as an "ALARA-based" standard, it also believes that 40 CFR part 190 constitutes an upper bound, not a lower bound, to ALARA efforts.[15] Consequently, compliance with 40 CFR part 190 is not in itself sufficient to demonstrate that releases and doses are ALARA.

As appendix I to part 50 defines ALARA design objectives that constitute ALARA effluent levels, meeting these levels is sufficient to demonstrate ALARA effluent releases. In order for light-water reactors to demonstrate that doses from both effluents and direct radiation are ALARA, it is necessary to demonstrate that effluents meet the design objectives of appendix I to 10 CFR part 50, that direct radiation from onsite sources (gamma radiation from external radwaste tanks and turbines ("turbine shine")) is also ALARA, and the total dose to any member of the public is within the numerical standards in 40 CFR part 190. Meeting these conditions will constitute sufficient evidence that offsite doses from LWRs are ALARA and in conformance with both appendix I and 40 CFR part 190.

Comment: The NRC should establish "reference levels" in its rules. One commenter thought that the NRC should have "reference levels" for licensee action in part 20.

Response: The Commission recognizes that licensees generally establish their own lower "reference levels" in order to keep from reaching and exceeding the Commission's formal dose limits. Based upon the public comments on the reference level for exposure of members of the public, which was in the proposed § 20.203, this approach would not be favored by a majority of licensees. Several commenters viewed the reference level for the dose to members of the public as being applied exactly as if it were a limit. Consequently, if the NRC were to specify generic reference levels for licensee action, the impact might be similar to lowering the magnitude of the dose limits. The Commission believes that the use of the ALARA philosophy is a preferable means to keep exposures well below the limits established by the Commission.

Final rule. The final rule establishes a requirement for all licensees to have a radiation protection program that includes provisions for keeping radiation doses ALARA. It is expressly intended that the level of this program and efforts to document it are commensurate with the size of the licensed facility and the potential hazards from radiation exposure and the intake of radioactive materials.

The requirement for a radiation protection program is not new; it was discussed in the proposed rule (under ALARA) and is consistent with requirements in part 33 (§§ 33.13, 33.14, and 33.15), part 34 (§ 34.11), part 35 (§§ 35.20–35.31), and part 40 (§ 40.32) of the NRC regulations, with the information requested in chapter 12 of Regulatory Guide 1.70, "Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants," and with the conditions in most licenses issued by the Commission. The extent of this program and requirements for written records and procedures for operating the program are intended to be commensurate with the scope and potential hazards associated with the licensee's activities. The Commission recognizes the need to provide guidance on the scopes of radiation protection programs and such guidance will be prepared in the form of regulatory guides.

The Commission continues to emphasize the importance of the ALARA concept to an adequate radiation protection program. In order to strengthen this concept, the Commission has adopted a requirement that all licensees include provisions for maintaining radiation doses and intakes of radioactive materials as low as is reasonably achievable as part of their radiation protection programs. Compliance with this requirement will be judged on whether the licensee has incorporated measures to track and, if necessary, to reduce exposures and not whether exposures and doses represent an absolute minimum or whether the licensee has used all possible methods to reduce exposures. This shift in emphasis should reduce potential problems of retrospective evaluation of licensee performance under admittedly subjective criteria. However, the licensee should be able to demonstrate that periodic reviews of performance have been made and that efforts have been made to achieve ALARA. As noted above, the level of effort expended on the radiation protection programs should reflect the magnitude of the potential exposures, both the magnitude of average and maximum individual doses and, in facilities with large numbers of employees, collective (population) doses. A nuclear power reactor licensee would be expected to have a considerably larger program than a licensee with only small sealed sources.

The Commission has not adopted a requirement that a numerical cost-benefit analysis (optimization analysis) be used to demonstrate ALARA. The quantitative approach is useful for those situations where both costs and benefits (dose reduction) can be quantitated, such as in shielding design or analysis of decontamination methods. The Commission encourages licensees to employ quantified analyses to define ALARA, but their use is not required. One reason for this is that many ALARA procedures simply reflect sound operating practice and do not lend themselves to a numerical analysis. Another reason is that cost-benefit analyses could have a cost associated with obtaining the necessary information and carrying out the analysis that may exceed the monetary value of the dose reduction. Thus, the quantitative optimization analysis would be expected to be used primarily in situations where both the costs of control and the resultant benefits were not only quantifiable, but also appreciable compared to the cost of performing the analysis.

Subpart C—Occupational Dose Limits

Proposed Section 20.201 Occupational Dose Limits for Adults [Section 20.1201 in This Final Rule]

Comment: Elimination of the 5(N–18) age-prorated cumulative dose limit and the adoption of the 5-rem annual effective dose limit. Most commenters favored this change noting that licensees have generally succeeded in keeping doses below 5 rems per year for the past

[15] Letter of January 7, 1988, from Sheldon Meyers, Director, Office of Radiation Programs, Office of Air and Radiation, U.S. Environmental Protection Agency, to Robert B. Minogue, Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission. (This letter is reproduced as enclosure B to the comments of the Environmental Protection Agency on the 10 CFR part 20 revision (Docket PR–20, 20, 30 et al.; 53 FR 51992, Comment # 700).)

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few years and, therefore, are already meeting the new limit.

Comment: Lifetime dose limits. A few commenters believe that there should be a limit on the cumulative total dose that can be received by any individual in a lifetime.

Response: The Commission considered the use of a lifetime dose limit but rejected it. The EPA had proposed such a limit (100 rems) in its proposed Federal Guidance on Occupational Radiation Exposure (46 FR 7836, January 23, 1981) but withdrew it.

If the magnitude of the annual dose is limited, there is a *de facto* limitation of the lifetime dose that can be received. The Commission believes that such a *de facto* lifetime limit is preferable to an actual cumulative lifetime dose limit because the cumulative limit could act to limit employability. This, in turn, raises questions concerning the right of an individual to pursue employment in a chosen profession. If an individual were to deplete the "dose bank" provided by a lifetime dose limit, it might be difficult to obtain future employment using ionizing radiation.

Comment: Quarterly dose limit. A number of commenters noted that the ICRP system of dose limitation does not have quarterly or other limits covering periods less than a year. The public comments also noted the possibility of giving rise to two violations for the same event (i.e., the possibility of exceeding both the quarterly and annual dose limits in one event), thereby incurring two penalties.

Response: The quarterly limit (only for deep-dose equivalent) had been retained in the proposed rule as a result of suggestions received from several groups during the development of the rule. The primary protection function of retaining a quarterly limit was to reduce the potential for receiving several high doses within a relatively short period of time. However, there is not much of a radiobiological significance between 10 rems (two 5-rem doses) and 6 rems (two 3-rem doses) received in a short time period. One consideration is the employability of a worker who has exceeded the dose limit. A worker who exceeded the 5-rem annual dose limit might have to work in a job not involving radiation for a year (or take part in a planned special exposure) instead of only a calendar quarter if a quarterly dose was used.

Final rule: In order to maintain compatibility with the ICRP and to eliminate the possibility of double violations, the quarterly limit has not been kept and only annual limits are stated.

Comment: Eye dose limit. Some commenters questioned the 15-rem (0.15-sievert) eye limit used in the proposed rule noting that ICRP Publication No. 26 contains a recommended value of 0.3 sieverts (30 rems).

Response: The ICRP recommended a reduction in the limit for the eye to 0.15 sieverts (15 rems) at their Brighton, England, meeting in 1980.[16] This was done because the ICRP concluded that, for a lifetime of occupational exposure at the former 0.3-sievert (30-rem) limit, some opacities in the lens of the eye might be produced that could develop to the point of causing deterioration of vision (even without further radiation exposure). In most situations, the limits for the deep-dose equivalent and the shallow-dose equivalent to the skin should ensure that the eye dose limit is also met. Consequently, the reduction from 30 rems to 15 rems is not expected to have a significant impact on either health protection or control cost.

Comment: Parameters defining the shallow-dose equivalent ("skin dose"). The proposed rule would have established a dose limit for the skin of 50 rems averaged over 10 square centimeters (10 cm^2). There were several comments concerning the scientific basis for this area. Some commenters suggested other surface areas, such as 15 cm^2, as being better suited to measurement conditions. Proponents of the larger areas generally favored these areas because of their compatibility with either contamination survey practices or with the physical size of survey instrument detector probes.

One set of comments prepared by the developer of the NRC's VARSKIN computer program for skin dose calculation (comment letter No. 262 in the NRC Public Document Room) contains a well-documented discussion of the selection of an appropriate area over which to average the skin dose. These comments conclude that 1 cm^2 is a more appropriate area than either 10 cm^2 or 100 cm^2.

Response: ICRP Publication 26 contains two recommendations for such areas: a 100-cm^2 area and a 1-cm^2 area, the larger area being associated with routine monitoring for skin contamination and the smaller area being associated with accident dose evaluation. After reviewing these comments and various recommendations regarding skin dose measurements, the Commission has decided to use the smaller area of 1 cm^2 for routine skin dose evaluations. The 1-cm^2 area is consistent with the prior recommendations in NCRP Report No. 39 [17] and ICRP Publication No. 9 [18] as well as the smaller area recommended in ICRP Publication No. 26.

Within the past several years, there have been instances where very small (5–250 μm) "hot" particles of fuel or activated corrosion products have been discovered in reactor facilities, on workers or their clothing, and, in a few isolated cases, in workers' vehicles or homes. These particles are generally too large to pose a significant risk from inhalation, but are capable of producing intense beta-radiation doses over very small areas of the skin. The principal hazard appears to be skin ulceration if the particles remain localized on the skin surface. The primary uncertainty associated with evaluating the hazard of these small particles is determining the skin area or tissue volume to which the dose is to be computed (or even whether "dose" is the most appropriate indicator of the hazard). The NRC requested the National Council on Radiation Protection and Measurements (NCRP) to look into the hot particle issue and make recommendations. The NCRP's recommendations have been published in NCRP Report No. 106 [19] and use a criterion based upon the number of radioactive disintegrations that have occurred (μCi-hours) rather than dose. The NRC staff is reviewing these recommendations and has issued an Information Notice on a modified enforcement policy for hot particles.

Final rule: The amendments to part 20 in this final rule specify an area of 1 cm^2 for skin dose evaluations.

Comment: Effective dose equivalent for external exposure. The most prevalent comment concerning the effective dose equivalent is the restriction in the proposed rule of the risk-weighted organ dose "effective dose" concept to internal doses without

[16] International Commission on Radiological Protection, "Statement and Recommendations of the 1980 Brighton Meeting." *Annuals of the ICRP* 4(4) Oxford, England: Pergamon Press (1980). (Available for sale from Pergamon Press, Inc., Elmsford, NY 10523.)

[17] National Council on Radiation Protection and Measurements, "Basic Radiation Protection Criteria," NCRP Report No. 39 (January 15, 1971), page 79, paragraph 207. (Available for sale from the NCRP, 7910 Woodmont Avenue, suite 800, Bethesda, MD 20814–3095.)

[18] International Commission on Radiological Protection, "Recommendations of the International Commission on Radiological Protection (adopted September 17, 1965)," ICRP Publication No. 9 (1966), page 6, paragraph 28. (Available for sale from Pergamon Press, Inc., Elmsford, NY 10523.)

[19] National Council on Radiation Protection and Measurements, "Limit for Exposure to 'Hot Particles' on the Skin," NCRP Report No. 106 (December 31, 1989). (Available for sale from the NCRP, 7910 Woodmont Avenue, suite 800, Bethesda MD 20814–3095.)

permitting a similar approach to be employed for external doses. There were several comments that noted the desirability of using organ weighting factors for external doses.

Response: The ICRP and NCRP recommendations and the 1987 Federal guidance on occupational radiation exposure in principle permit the use of external weighting factors. However, none of the principal standard-setting organizations has included specific recommendations for the use of weighting factors for external dose.

The application of weighting factors also entails calculation of organ doses instead of whole-body doses from external radiation. One component of this calculation is estimation of the attenuation of the radiation as a function of the depth of the organ in the body. There are practical problems in the determination of the type and energies of the radiation involved and of the orientation of the individual with respect to the source of the radiation that have to be considered in making such calculations. Therefore, application of weighting factors for external exposures will be evaluated on a case-by-case basis until more guidance and additional weighting factors (such as for the head and the extremities) are recommended.

Final rule: External doses to the head, trunk (including male gonads), arms above the elbow, or legs above the knee are to be treated as whole-body doses. For the purpose of weighting the external whole-body dose (for adding it to the internal dose), a single weighting factor, $w_T = 1.0$, has been specified. The use of other weighting factors for external exposure may be approved on a case-by-case basis upon request to the NRC.

Comment: Allowance for exposure after limits are exceeded. Commenters noted that allowance of an additional 1 rem per quarter dose limit for a worker who had already exceeded the 5-rem annual limit might be counterproductive. Workers who remain under the annual limit, and whose dose was X rems, would be constrained to receive (5 − X) rems, whereas workers who received more than 5 rems in the first quarter could be allowed an additional 4 rems (1 rem in each of the four quarters). One commenter suggested that this could provide an incentive for individuals who are approaching the dose limit to deliberately exceed the limit and thereby protect their employability by taking advantage of the extra dose allowance available to those who have exceeded the limits. Another commenter believed that such a blanket authorization to exceed the limits was inappropriate and preferred prior NRC review of the use of these extra doses on a case-by-case basis.

Response: The purpose of the dose allowance was to protect the worker's employability after having received a dose above the dose limits. Although intentionally getting additional exposure might be in the worker's interest for employability reasons, such an action would not be in the worker's interest with respect to health protection. Licensees having workers with critical skills who are approaching the dose limits early in the year or workers who have received an accidental overexposure should consider use of the planned special exposure (§ 20.1206) to permit continued employment.

Final rule: The allowance of an additional 1 rem per quarter following an exposure in excess of the limits has been deleted.

Proposed Section 20.202 Compliance with Requirements for Summation of Internal and External Dose [Section 20.1202 in This Final Rule]

Comment: Implementation burden. Many commenters felt that the burden of adding external and internal doses was substantial, particularly as most licensees would be faced with either external exposure situations or internal dose situations, but not both.

Response: The NRC staff disagrees that there will be a substantial recordkeeping burden because this summation will be required only if both the internal dose and the external dose are each likely to exceed 10 percent of the dose limit. Thus, in most situations, as noted in the comments, only one component will be required to be measured and, consequently, summation of internal and external doses will not be required.

Final rule: The requirement remains that the committed effective dose equivalent and the deep-dose equivalent should be summed to give the total effective dose equivalent. However, this summation need only be performed if both components are required to be monitored (i.e., exceed 10% of an applicable dose limit). If the summation of doses is not required, then the limit applies to the component (internal or external) that is measured. The NRC is planning to issue additional guidance in the form of a regulatory guide. This guide will be on procedures to be used in estimating committed effective dose equivalents and deep-dose equivalents and guidance on when internal and external doses have to be summed.

Comment: Use of individual metabolic or dosimetric data. Several commenters thought that the proposed rule required the use of specific metabolic and dosimetric parameters for the exposed individual. One commenter also thought that the use of such parameters would "invalidate the stochastic approach of the regulation, which presumes that the effects of radiation exposure at these levels are statistical in nature."

Response: It was not intended that licensees would be required to collect and use specific metabolic or dosimetric information on exposed individuals for use in dose assessments. The intent was to permit the use of personal data for dose assessment when such data were available. The use of parameters that are more appropriate for a particular exposed individual than those assumed for the "Reference Man" should improve the accuracy of the dose estimate for that individual. This is unrelated to the concept of stochastic health effects.

The statistical nature of the potential stochastic effects of low doses of ionizing radiation does not require that the associated dose estimates be based on Reference Man doses. However, it is necessary to resort to population-averaged dose-to-risk conversion factors as there are no health risk coefficients available for specific individuals.

(Monitoring thresholds and thresholds for summation of internal and external dose—see discussion under proposed § 20.502)

Note: Section 20.1202(c) in this final rule states that: "The assigned deep-dose equivalent and shallow-dose equivalent must be for the part of the body receiving the highest exposure." This requirement is intended to apply primarily to situations where there are steep gradients in the radiation dose rate, depending upon location within the facility and spatial orientation of the worker's body. For example, good practice for a worker in a nuclear power plant who is reaching up into a radioactive steam generator would be to wear at least two personnel dosimeters: one to monitor the extremity dose (worn on the finger or wrist) and one to monitor the whole-body dose (worn on the upper arm). For routine monitoring in relatively homogeneous radiation fields, special consideration to identify the actual "highest" exposed area would not be required.

Proposed Section 20.203 Determination of External Dose from Airborne Radioactive Material [Section 20.1203 in This Final Rule]

Comment: This could be read to require that the air concentration be measured at two locations. This section appears to require that the air concentration be measured at the location of the individual and at the point of maximum concentration in the cloud. The regulation should emphasize

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the reliance on personnel dosimeters or other monitoring devices.

Response and final rule: The proposed rule § 20.208 (section 20.1203 in this final rule) has been shortened considerably. The revised section emphasizes the use of survey instruments and personnel monitoring devices to evaluate the external dose. The remaining technical guidance from this section in the proposed rule will be incorporated into a regulatory guide.

Proposed Section 20.204 Determination of Internal Exposure [Section 20.1204 in This Final Rule]

Comment: Interim dose calculation factors and parameters. The portion of part 20 in §§ 20.1–20.601 was based on ICRP-2 [20] dosimetry and metabolic models. The amendments to part 20 in this final rule employ the ICRP-30 [21] dose parameters. There was concern regarding whether the more recent ICRP-30 parameters should be used, particularly when the value is to be compared with the concentration limits associated with §§ 20.1–20.601 of part 20.

Response: The NRC is planning to issue a regulatory guide that will address the use of bioassay measurements for determining compliance with part 20. Appropriate parameters for calculating organ doses from radionuclide intakes can be found in ICRP-30 and its supplements. Dose factors in Federal Guidance Report #11 [22] are also acceptable for use in calculating occupational exposures for compliance with either §§ 20.1–20.601 or with §§ 20.1001–20.2401, except that the individual organ dose values must be used for §§ 20.1–20.601. The effective dose factors can be used for evaluating compliance with §§ 20.1001–20.2401, but cannot be used in evaluating compliance with §§ 20.1–20.601.

The effective dose equivalent factors in Federal Guidance Report #11 do not employ a rounding method suggested in ICRP-30. For this reason, the dose factors in Report #11 may be slightly higher (10–30 percent) than the effective dose factors that correspond to the ALIs and DACs in both the amended part 20 and Report #11. These dose factors would be more restrictive (give slightly higher doses for the same intake) than dose factors computed using the ICRP-30 roundoff procedure, but they can be used for evaluating compliance with part 20.

Proposed Section 20.205 [Deleted] Further Provisions—Internal Exposure Involving Radionuclides With Very Long Effective Half-Lives

Comment: Exemption for long-lived radionuclides and the use of the committed dose equivalent concept. The use of the concept of a "committed dose equivalent" drew numerous comments. This approach entails assigning to the year of intake the future internal dose (the "committed dose equivalent" over 50 years) from radionuclides taken into the body during that year. The proposed rule (in § 20.205) allowed an exemption from the use of committed dose equivalents for several long-lived radionuclides.

Many of the commenters objected to having to assign the future 50-year dose to a single year. Others suggested that variable integration periods be allowed instead of one fixed 50-year value. One argument offered in support of either of these positions is that many adult workers would not normally be expected to live long enough to accrue the full 50-year committed dose equivalent. Commenters pointed out that while pre-exposure controls (such as the annual limits on intake and the derived air concentrations) should be based upon the committed dose equivalent concept for planning and control, the use of controls based upon limiting the annual effective dose equivalent rate (rather than using the committed dose equivalent) might be preferable for post-exposure management following actual radionuclide intakes.

It was also noted that there were several additional nuclides that had similar half-lives and retention characteristics but were not included in the proposed exception. Among these were cobalt, strontium, and americium. The approach in the proposed rule was characterized as appearing to place almost complete emphasis on the control of the work environment rather than on the assessment and control of the individual worker.

Response: The concept of dose commitment is not new; this concept has been used as the basis for controlling internal doses since the late 1950s when ICRP Publication No. 2 [23a] and the present 10 CFR part 20 were published. However, the term "committed dose equivalent" applied to future doses from internal emitters initially appeared in 1977 in ICRP Publication No. 26. [23b]

The concentration limits for air and water in the appendix B to §§ 20.1–20.601 were based upon concentrations which, if continually inhaled (for air) or ingested (for water) over a 50-year period, would produce a dose rate in the "critical organ" in the 50th year that was numerically equal to the annual organ dose limit. For certain radionuclides that slowly approached a constant body burden, primarily those radionuclides that have both long radiological half-lives and long biological clearance half-times, the limiting organ dose rate is not reached by the 50th year. For shorter-lived radionuclides and those that are rapidly removed from the body, equilibrium may be attained more rapidly and the limiting annual organ dose rate could persist over many years.

The limiting dose rate in the 50th year from a constant intake of a radionuclide each year over a 50-year period is numerically equal to the total dose integrated over the 50-year period from a single year's intake of the same magnitude. Therefore, controlling the integrated future ("committed") dose for each year's radionuclide intake also controls the annual dose rate in the 50th year to be within the dose limit.

It was noted that use of limits to annual doses in some cases would not ensure that doses in future years would be within limits. The example of the ingrowth of americium-241 from plutonium-241 was cited in which, even if the initial annual dose from plutonium-241 were within the limit, the ingrowth of the radiologically more significant americium-241 would lead to doses higher than the limits in subsequent years.

There are only a few radionuclides that would not attain an equilibrium level (and a constant annual organ dose rate) within time periods of less than 50 years. The use of the committed dose equivalent, rather than controlling internal dose on the basis of annual dose, substantially overestimates annual doses only for those radionuclides that do not reach an equilibrium level in the body early in the working lifetime. These radionuclides are primarily the long-lived radionuclides for which the exemptions of § 20.205 in the proposed rule were intended. Radionuclides (such as cobalt-60, strontium-90, and americium-241) that were easily measured at airborne concentrations or body burdens below the DAC and ALI values were not included in the list of exempted radionuclides because an exemption was not believed to be necessary for them.

The annual limits on intake and derived air concentrations are used mainly for pre-exposure control rather than post-exposure dose assessment so that fine-tuning these values to specific ages or adjusting them for factors such as the length of the period over which the committed dose is evaluated or to differences in individual organ sizes (as were suggested) is not warranted for occupational dose assessment. The use of age-dependent committed dose factors as suggested by some commenters would add needless complexity to the assessment of internal doses and cannot be justified on the basis of the availability of information on either age-dependent metabolic parameters or age-dependent radiobiological risk information.

The use of an annual dose limitation system, even with a reduction in the allowable dose limit from 5 rems to 3 rems such as in the proposed § 20.205, does not provide a limitation on the lifetime radiation dose or risk equivalent to that provided by the committed dose limitation system of this final rule for all classes of workers. Although long-term workers would be protected to the same degree under either the annual or committed dose systems, short-term or temporary workers could get somewhat higher lifetime doses under a dose limitation system based on limiting only individual annual dose. Furthermore, it is neither reasonable nor practical to expect future employers to take special measures to control radiation dose to workers who transfer because a previous employer, working under annual organ dose limits, permitted intakes that would result in future dose rates that are appreciable fractions of the allowable dose limits. Such a practice would not be fair to workers whose future employability may be limited because of the additional restrictions a new employer would have to put on their exposure, or to future employers of these workers who may have to assess internal doses from residual body burdens of internal radionuclides in order to show compliance. The annual dose system also requires a complex bookkeeping effort because the annual dose limit for each worker depends upon the worker's pre-existing body burden of radioactive materials.

Final rule: For the reasons discussed above, the Commission has decided not to adopt proposed § 20.205 and the exemptions for certain long-lived radionuclides for the final rule. The use of the committed dose equivalent will be applied uniformly to all radionuclides, regardless of half-life. The Commission recognizes that the removal of this exemption, combined with the lowering of the airborne concentration limits for several radionuclides (notably thorium and uranium), could impact on the current and future facilities that use these materials. Licensees that are affected by these changes may request an extension of the implementation time in order to make the necessary modifications to comply with the revised limits as they relate to long-lived radionuclides identified in the proposed § 20.205. In addition, licensees should note the flexibility provided in §§ 20.1001–20.2401 for more accurate dose assessments to be made that might show that additional controls were not required in order to meet the dose limits. Specifically, § 20.1204 allows the use of actual particle-size distributions and physicochemical characteristics of airborne particulates to define a site-specific derived air concentration to be used in lieu of the generic values in appendix B to §§ 20.1001–20.2401. Such adjustments result in the use of more precise dose estimates because of a better characterization of the actual exposure conditions. Although these adjustments might permit higher airborne radionuclide concentration limits to be used, the same degree of health protection would exist because the radiation dose (and risk) would remain the same. This section also allows for whole-body counting or bioassay measurements to determine the behavior of radioactive materials in the individual and the use of these data to estimate intakes and calculate internal doses. A 7-month delay between a bioassay or retention measurement and recording of the associated dose is also permitted in order to make confirmatory measurements.

The Commission recognizes that alternative methods may be identified in the future that might achieve the same degree of lifetime risk limitation for both short-term and long-term workers as the dose system recommended by the ICRP and the Radiation Protection Guidance to Federal Agencies for Occupational Exposure, and adopted in amendments to 10 CFR part 20 in this final rule. The Commission further believes that, to be acceptable, such alternatives should not result in an adverse impact on worker employability or result in undue recordkeeping or excessive monitoring requirements for the future employers of transferring workers.

Proposed Section 20.206 Planned Special Exposures [Section 20.1206 in This Final Rule]

Comment: The use of planned special exposures could result in lifetime cumulative doses greater than those doses formerly permitted under the 5(N − 18) formula. One commenter noted that the new regulatory scheme, including planned special exposures, allowed a higher total lifetime dose than was permitted using the 5(N − 18) formula. The calculation presumes a working lifetime of 47 years (starting at age 18 and ending at age 65). Under the amendments to part 20 in this final rule, the lifetime limiting dose would be 260 rems ((5 rems per year) × (47 years) + 5(5 rems) (planned special exposures) = 235 + 25 = 260 rems). Under the 5(N − 18) formula, at age 65 (N = 65), the cumulative dose would be 5(47) = 235 rems. The comment further noted that the NCRP recommended (in NCRP Report No. 91) a cumulative dose limit of 1 rem × age; the Department of Energy has proposed a 100-rem lifetime dose limit, and the ICRP at its 1984 Stockholm meeting inferred a goal of 1 rem per year. Other commenters noted that, because of the potential lifetime dose including the planned special exposure, the claim on 51 FR 1121 (Table 5), of the proposed rule that "Individuals receiving highest exposure will be reduced" is unjustified and incorrect.

Response: The analysis of maximum doses discussed above is overly simplified because it assumes that there are individuals who will be exposed at the allowable dose limit every year of their working lifetime. Under the old 5(N − 18) formula, the unused portion of the dose limit (the difference between the actual dose received and 5 rems) became part of a "dose bank" that could be drawn on in later years (at a rate up to 3 rems per quarter or 12 rems per year). This "dose bank," which is inherent in the age-prorated formula of 5(N − 18), does not exist with the straight annual dose limit. If the worker's exposure is under the 5-rem annual dose limit, there is no way to recapture the difference for use in future years. Consequently, the average annual dose (for the more highly exposed workers) associated with amendments to part 20 in this final rule is expected to be less than under the former rule.

As noted above (see Response under proposed § 20.201—Occupational Dose Limits), the Commission considered the

[20] International Commission on Radiological Protection, "Report of Committee II on Permissible Dose for Internal Radiation," ICRP Publication No. 2 (1959). (Available for sale from Pergamon, Press, Inc., Elmsford, NY 10523.)

[21] International Commission on Radiological Protection, "Limits for Intakes of Radionuclides by Workers," ICRP Publication No. 30. (Available for sale from Pergamon, Press, Inc., Elmsford, NY 10523.)

[22] Environmental Protection Agency, Federal Guidance Report No. 11, "Limiting Values of Radionuclide Intake and Air Concentration, and Dose Conversion Factors for Inhalation, Submersion and Ingestion." USEPA Report EPA-520/1-88-020 (September 1988). (Available from the USEPA, Office of Radiation Programs, 401 M Street, SW., Washington, DC 20460.)

[23a] See footnote 20.

[23b] See footnote 1.

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use of a lifetime dose limit but rejected it.

Comment: Planned special exposures should not be limited to external exposures but should also be permitted for internal exposures. Several commenters noted that it was inconsistent to treat internal and external doses as equivalent by summing them and then restricting planned special exposures to only external doses. Commenters also pointed out that the total effective dose equivalent (TEDE) could be minimized in some cases if some external doses were reduced at the expense of incurring some internal doses.

Response: The Commission agrees that restricting the use of planned special exposures to only external doses would be inconsistent with the ALARA principle and the presumed equivalence of internal and external doses inherent in the amendments to part 20 in this final rule. Consequently, the requirements have been modified so that internal doses may be included in planned special exposures in order that the total dose (TEDE) can be controlled in keeping with ALARA.

Comment: The annual dose allowed in a planned special exposure does not agree with the recommendations of the ICRP. A few commenters thought that the allowable annual dose from planned special exposures should be 10 rems as stated in the ICRP recommendations. Other commenters agreed with the NRC's modification to reduce the annual dose for planned special exposures to 5 rems.

Response: The NRC has intentionally reduced the dose allowed in any year from a planned special exposure from the 10-rem value proposed by the ICRP to 5 rems. The lifetime total limit from planned special exposures of 25 rems remains the same as the ICRP recommendation. The Commission believes that it would be better to distribute the dose over the lifetime more evenly than to permit a large portion of the cumulative dose to be received within a small period of time. In this sense it should be recalled that the planned special exposure is in addition to the normal dose limits. The initial ICRP proposal would have permitted a 15-rem dose in 1 year, 10 rems from planned special exposures and 5 rems from routine operation. Under the Part 20 condition, it would be theoretically possible to get a 10-rem dose in 1 year, 5 rems from a planned special exposure and 5 rems from routine operation. This is roughly equivalent to the 12 rems (3 rems/quarter) that could be received under the present Part 20 limitations using the 5(N − 18) formula.

Comment: Subtraction of emergency doses. Some commenters suggested that doses received under emergency conditions, up to a lifetime total of 25 rems, not be subtracted from the lifetime allowance for planned special exposures. It was also suggested that the employability of the individual might be jeopardized if the dose "bank" were depleted.

Response: The NRC has not officially sanctioned the 25-rem "forgivable" emergency dose that has been recommended by some organizations for a once-in-a-lifetime dose that would not be counted against an individual's lifetime dose. Consequently, all doses received as result of occupational exposure must be recorded in an individual worker's record.

The Commission believes that planned special exposures will be used infrequently so that the lack of a dose bank for some individuals would not be a major drawback to their employability.

Comment: The time period for notifying exposed individuals of their dose is too short. A number of commenters thought that the 15-day period for notifying exposed individuals of their exposure from a planned special exposure was too short. Some commenters noted that most NRC reporting requirements provide a 30-day, not a 15-day, period. Other commenters suggested that the 15-day period could give the impression (to the worker) that an inordinate risk was involved when that was not the case.

Response: The 15-day period for notification was intended to be unique and to further emphasize that "planned special exposures" were indeed "special." However, the Commission has extended the time period for notification of the individual from 15 days to 30 days to allow licensees additional time to estimate internal exposures that are now permitted in §§ 20.1001–20.2401 of the amended part 20 rule to be part of a planned special exposure. The requirement to notify the NRC (see § 20.2204) that a planned special exposure has taken place is also 30 days.

Comment: Doses received during a planned special exposure that do not exceed the dose limits for normal operation should not have to be recorded as planned special exposures or be subtracted from the lifetime planned special exposure limit. A few commenters expressed concern that exposures during planned special exposures that did not result in doses to an individual in excess of the occupational annual dose limits would nevertheless have to be reported separately and subtracted from the individual's lifetime allotment for planned special exposures.

Response: The intent of the planned special exposure was that it would be used infrequently in circumstances where the elimination of the 5(N − 18) lifetime cumulative limit might create a severe handicap to the licensee's operations. Being able to switch doses between planned special exposures and routine dose limits would tend to encourage the use of planned special exposures as the licensee would have nothing to lose by using the planned special exposure. This is contrary to the Commission's intent that the planned special exposures be restricted to "special" situations. Once a licensee decides to conduct a planned special exposure, all of the unique limitations, reporting, and recordkeeping requirements are to apply, even if the doses actually received fall within the dose limits for routine operations.

Final rule: The provisions of planned special exposures have been extended to include internal exposures, and the reporting time to the individuals involved and the NRC have been changed to 30 days to allow sufficient time for analysis of internal dose.

Proposed Section 20.207 Occupational Dose Limits for Minors [Section 20.1207 in This Final Rule]

Comment: Exposure of Minors. One commenter stated that minors should not be exposed to radiation because they do not meet the criteria for occupational radiation exposure. The commenter argued that minors are not trained regarding radiation protection, do not derive a benefit from employment, and would require the preparation of an NRC Form 4 if they were workers.

Response: Allowing minors to be occupationally exposed to radiation is permitted in § 20.104. All individuals, including minors, who enter a restricted area are required (10 CFR 19.12) to be instructed as to the risks involved. Minors who are employed receive salaries and other associated benefits of employment so that there does not appear to be a major difference in this respect from other workers. Furthermore, licensees are required under §§ 20.1–20.601 and under §§ 20.1001–20.2401 to maintain the same exposure records for minors as for adults.

An alternative to this procedure would be to exclude minors completely

from radiation-related work. This does not appear to be desirable as the monetary, experience, and educational benefits that may accrue to the minor appear to outweigh the small incremental risk involved (Particularly considering the reduced dose limits applied to minors). Consequently, no change has been made from the proposed rule.

Proposed Section 20.208 Dose to an Embryo/Fetus [Section 20.1208 in This Final Rule]

Comment: Biologic basis for lower dose limits for pregnant women. There were comments that cited older studies and recommendations for dose limits for the embryo/fetus that are considerably higher than 0.5 rem. These comments questioned the biological basis for the 0.5 rem dose limit for the embryo/fetus in the proposed rule.

Response: The biological effects of ionizing radiation upon the embryo/fetus are summarized in Regulatory Guide 8.13.[23] The limit of 0.5 rem during the entire gestation period is based upon a recommendation by the NCRP in 1977.[24] The International Commission on Radiological Protection (ICRP–26)[25] recommended 0.3 times the annual dose limit or 15 mSv (1.5 rems) over the full gestation period and 5 mSv (0.5 rem) in the first 2 months of pregnancy. More detailed information can be found in publications of the NCRP,[24] ICRP,[25] UNSCEAR,[26] and the OECD/NEA.[27]

Final rule: The limit for the embryo/fetus of a declared pregnant woman is 0.5 rem over the entire gestation period. There is also an admonition that the licensee avoid substantial variation above the average monthly exposure rate that would comply with the 0.5-rem limit. These conditions are consistent with the Federal guidance on occupational radiation exposure and with the recommendations of the NCRP in NCRP Report No. 91.

Comment: Licensee's Responsibilities to Protect the Embryo/Fetus of an Undeclared Pregnant Woman. Several commenters raised the question of whether the licensee had any responsibility for protecting the embryo/fetus of an obviously pregnant female employee who had not formally declared her pregnancy to the employer.

Response: It is the fundamental responsibility of the pregnant worker to decide when or whether she will formally declare her condition to her employer. This position is derived from court rulings concerning a pregnant woman's rights regarding termination of the pregnancy. Having a woman formally declaring her pregnancy to her employer derives from legal, not health protection, considerations. If she chooses not to declare her pregnancy, the licensee will not be required under the Commission's regulations to limit her dose to the 0.5-rem limit.

Undeclared pregnant women are protected under the NRC regulations for all workers. The normal occupational dose limits would still be in effect and would have to be complied with, and the dose would also have to be kept "as low as is reasonably achievable." In addition, as part of her initial employment, the woman should have received instructions in radiation protection (10 CFR 19.12), and she should have been provided with a copy of the current version of Regulatory Guide 8.13.

It might be prudent for a licensee to remind a pregnant, but undeclared, worker of the special limit for protection of the embryo/fetus of a declared pregnant woman and to provide another copy of Regulatory Guide 8.13 to her. However, if the licensee has previously provided this information to the employee, it is not a Commission requirement that it be done again. If the requirements referred to in the previous paragraph have been fulfilled, the licensee will not be cited for a violation of the Commission's regulations if the estimated dose to the embryo/fetus of an undeclared pregnant woman exceeds the 0.5-rem limit, even if the worker's pregnant state seems obvious.

Section 161c. of the Atomic Energy Act gives NRC the authority to require such information to be provided by the worker. However, such a requirement could be considered to be discriminatory and an invasion of personal privacy. It would also be unenforceable because only the woman and her physician know when she knew of the pregnancy and patient-doctor communications are privileged. Infringement on personal privacy is also a drawback that applies to requiring the female worker to supply information concerning her "fertility" or "infertility."

Comment: Estimation of Dose to the Embryo/Fetus. The assignment to the embryo/fetus of a dose equal to the dose to the declared pregnant woman was questioned. For example, would it be reasonable to assign to the embryo/fetus a dose based upon the dose received by the woman's shoulder or head?

Commenters also indicated that licensees should be permitted to employ factors other than a factor of 2 and take into account shielding of the embryo/fetus by maternal organs and the placenta in evaluating the external dose component of the embryo/fetus.

Response: The concept used in the proposed rule of relating the dose to the embryo/fetus to the dose received by the mother has been modified. The final rule permits direct calculation of the dose to the embryo/fetus. This was done so that the use of more accurate dose assessments would not be precluded by the rule. The internal dose to the embryo/fetus may or may not be directly proportional to the dose received by the mother.

A forthcoming regulatory guide will provide guidance on methods for calculating the dose to the embryo/fetus. For interim assessments of the dose to the embryo/fetus, it may be assumed that the dose to the embryo/fetus from external radiation and from radionuclides in the body that are relatively uniformly distributed, such as cesium-137 and compounds of tritium and carbon-14 that are not organically bound, is the same as the dose to the mother since under these circumstances the same energy would be deposited per gram of tissue in both the mother and the fetus. For external gamma irradiation, the assumption that the dose to the fetus is the same as to the mother should be conservative (yield calculated doses that are somewhat higher than the actual doses determined by more precise evaluations).

Permitting calculations of the embryo/fetal dose using reduction factors for attenuation within the body of the mother would entail knowledge of the energy spectra of the incident radiation. As noted previously (Response for proposed § 20.201), photon spectral measurements, although technically feasible, are not currently required by the Commission and are considered to be beyond the scope of routine radiation

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[23] U.S. Nuclear Regulatory Commission, "Instructions Concerning Prenatal Radiation Exposure," Regulatory Guide 8.13, Rev. 2, December 1987.

[24] National Council on Radiation Protection and Measurements, "Review of Radiation Dose Limit for Embryo and Fetus in Occupationally Exposed Women," NCRP Report No. 53 (1977). (Available for sale from the NCRP, 7910 Woodmont Avenue, suite 800, Bethesda, MD 20814–9095.)

[24a] See footnote 2.

[25] International Commission on Radiological Protection, "Developmental Effects of Irradiation on the Brain of the Embryo and Fetus," Annals of the ICRP 10 4) (1986). (Available for sale from Pergamon Press, Inc., Elmsford, NY 10523.)

[26] United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR), "Genetic and Somatic Effects of Ionizing Radiation". Sales Section, United Nations, NY (1986) particularly Chapter III, Biological Effects of Pre-natal Irradiation."

[27] Organization for Economic Cooperation and Development/Nuclear Energy Agency, "The Biological Basis for the Control of Prenatal Irradiation," OECD/NEA, Paris, France (1985).

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protection survey measurements. The small amount of reduction in the calculated dose afforded by such attenuation corrections would be secondary in importance compared to uncertainties due to body orientation, partial-body exposure from collimated beams of radiation, and the radiobiological sensitivity of the embryo/fetus.

In situations where the use of a single dose measurement would be inappropriate for both the woman and the embryo/fetus, a solution would be to monitor the two doses separately.

Comment: Additional Dose Increment Allowed to Pregnant Women Beyond the Dose Limits. The rationale was requested by a few commenters for permitting an extra 0.05 rem (0.5 millisievert) beyond the 0.5-rem (5 millisieverts) dose limit to an embryo/fetus.

Response: The small additional dose is intended to apply in situations where the embryo/fetus has accumulated a substantial fraction of the dose limit or has already exceeded the limit before the woman formally declares herself to be a "declared pregnant woman." If the incremental 0.05-rem dose were not available, a woman having already received a dose in excess of the 0.5-rem limit might not be able to be further employed in a radiation-related job. The licensee could be in "instant noncompliance" as the embryo/fetus dose limit could have been exceeded before the licensee was aware that it was applicable (i.e., before the woman declared her pregnancy). Thus, the small incremental 0.05-rem dose provides a means of ensuring continued employment for the woman and also removes the threat of inadvertent noncompliance on the part of the licensee. The additional risk posed by this incremental dose to the embryo/fetus is small compared to the potential risk from the overall 0.5-rem dose limit.

Final rule: The final rule corrects an anomaly in the proposed rule regarding the application of the additional 0.05-rem incremental dose. In the proposed rule, the additional 0.05-rem dose was available if the embryo/fetal dose limit had been exceeded prior to the woman's declaration of pregnancy (even if the dose were 0.501 rem). However, the additional 0.05-rem dose increment would not have been available if the embryo/fetal dose were less than the 0.5-rem limit (even if the dose were as much as 0.499 rem). There is no significant difference in risk between 0.551 (0.501 + 0.05) rem and 0.549 (0.499 + 0.05) rem. This provision would have resulted in unnecessary penalties to both the licensee and the declared pregnant woman. In the final rule, the 0.05-rem dose increment is available as an additional dose if the embryo/fetal dose at the time of declaration is greater than 0.45 rem (0.45 = 0.5 − 0.05).

Subpart D—Radiation Dose Limits for Individual Members of the Public

Proposed Section 20.301 Dose Limits for Individual Members of the Public [Section 20.1301 in This Final Rule]

Comment: NRC should defer changes to limits for the general public until the EPA issues revised Federal guidance. The EPA suggested that NRC not modify its radiation limits for protection of the general public until EPA prepares revised Federal guidance on dose limits applicable to the general public (the recently issued Federal guidance applied only to occupational radiation protection).

Response: Although it would be desirable to use Federal guidance as a basis for the revision of the limits for the public, the Commission believes that Part 20 needs to be based on a consistent set of principles and concepts rather than having its standards for workers using one dose limitation system and its standards for the general public using an entirely different (and outmoded) system. The latest Federal guidance does not address radiation exposure of the general public and, although the NRC staff is represented on an EPA Task Group which is developing draft Federal guidance on doses to members of the general public, the Commission has chosen not to defer these limits until this Task Group has completed drafting the guidance and EPA makes recommendations to the President for its issuance. The Commission's intent to address these limits was noted explicitly in the statement of considerations that accompanied the proposed rule (51 FR 1118, section XXVIII).

Comment: Facilities that are subject to other lower standards should not have to demonstrate compliance with the 0.1-rem limit ["reference level"]. Several commenters expressed concern that additional efforts would be required to demonstrate compliance with the proposed 0.1-rem "reference level." For licensees that were already subject to the 0.025-rem (25-millirem) limits of EPA's 40 CFR part 190, this appeared to be an unnecessary burden.

Response: The concept that 0.1 rem represents a "Reference Level" has been eliminated. The 0.1-rem value in the final rule represents the primary dose limit for protection of the public. This change from the proposed rule reflects the clarifications by the ICRP (see section II.A.) regarding the usage of the 0.1-rem and 0.5-rem recommended dose levels. This change does not represent a major change from the proposed rule. Many commenters had indicated a belief that, because of the reporting and control requirements associated with the 0.1-rem reference level, it already represented a *de facto* limit.

Demonstration of compliance with the limits in 40 CFR part 190 or with the design objectives of appendix I to 10 CFR part 50 will be deemed to demonstrate compliance with the 0.1-rem dose limit for most licensed facilities. Power reactor licensees that comply with appendix I may also have to demonstrate that they are within the 0.025-rem limit in 40 CFR part 190. Demonstration of compliance with the limits of 40 CFR part 190 will be considered to demonstrate compliance with the 0.1-rem limit. For uranium mills it will be necessary to show that the dose from radon and its daughters, when added to the dose calculated for 40 CFR part 190 compliance, does not exceed 0.1 rem.

The dose rate limit of 2 millirems in any 1 hour from § 20.105(b)(1) of the present part 20 was omitted in the proposed rule but has been reinstated in the final rule. The reason for this is that this limit provides a more readily measurable quantity than the 100 millirem per year value and can be more easily verified by short-term measurements.

Comment: Inclusion of doses from other licensed or unlicensed radiation sources. Many commenters expressed an opinion that the dose should not be all-inclusive and should not include fallout from nuclear weapons tests, transportation of radioactive material, or other sources of radiation not under the control of the licensee.

Response: The new lower dose limit for members of the general public (which was described as a "reference level" in the proposed rule) applies only to doses from radiation and radioactive materials under the licensee's control. The EPA's generally applicable environmental radiation limit for nuclear power operations (40 CFR part 190) does apply to the total dose from all sources within the uranium fuel cycle. However, in its practical implementation, the sources would have to be located within a few miles of each other for the combined dose contributions to be significantly different from the dose from either facility alone.

The definition of "natural background" has been replaced by "background radiation," which means radiation from cosmic sources; naturally occurring radioactive materials, including radon (except as a decay product of source or special nuclear material), and global fallout as it exists in the environment from the testing of nuclear explosive devices. This clarifies sources of radiation and radionuclides that can be excluded from evaluations of the dose from licensed activities.

Comment: Differentiation of limits for long-term operation and for shorter-term transient operation. A number of commenters noted that ICRP-26 described the 0.1 rem (1 mSv) per year value as intended to be an average goal for long-term operation but that 0.5 rem (5 mSv) was intended as the primary annual dose limit for members of the public. Some commenters suggested that a lifetime dose limit be established for members of the public.

Response: As noted above in section II.A., the ICRP has modified its interpretation in the ICRP statement issued following their 1985 Paris meeting,[27a] so that the primary standard is 1 mSv (0.1 rem) per year. This clarification of ICRP philosophy is reflected in part 20 by the change of the 0.1 rem per year value from a "reference level" in the proposed rule to a primary limit in the final rule.

Final rule: It should be emphasized that the 0.1 rem per year limit in Part 20 is not intended to be applied as a long-term average goal. It is an annual limit. As a matter of practicality, long-term (or lifetime) dose limits for members of the public cannot be implemented unless each year's dose is kept within the long-term goal. Doses to individuals in the general public are not usually monitored directly (locations rather than individuals in the offsite environment are monitored). As individuals may change residency and there is no reporting or tracking system, lifetime doses to specific individuals in the general population are very difficult to determine.

The 0.5 rem per year limit is available only upon specific application to and approval by the Commission (see § 20.1301(c)). A 0.5-rem value has been retained in order to apply to transient situations and to alleviate the immediate need to redesign or rebuild existing facilities that were designed to meet the former 0.5-rem limit. The 0.5-rem limit is intended to be applied primarily to temporary situations where operation of a facility, or the person's exposure to radiation and radioactive emissions, is not expected to result in doses above 0.1 rem over long periods of time. For design of new installations, the 0.1-rem limit should be used. However, existing facilities may apply for NRC approval to use the 0.5-rem limit while more complete evaluation of the need for any additional modifications is performed. Such facilities may include, for example, hospitals with existing teletherapy machines that were designed, constructed, and installed to comply with a 0.5 rem annual dose limit.

The Commission is aware that some categories of licensees, such as uranium mills and *in situ* uranium mining facilities, may experience difficulties in determining compliance with the values in appendix B to §§ 20.1001–20.2401, Table 2, for certain radionuclides, such as radon-222. Provision has been made for licensees to use air and water concentration limits for protection of members of the general public that are different from those in appendix B to §§ 20.1001–20.2401, table 2, if the licensee can demonstrate that the physicochemical properties of the effluent justify such modification and the revised value is approved by the NRC. For example, uranium mill licensees could, under this provision, adjust the table 2 value for radon (with daughters) to take into account the actual degree of equilibrium present in the environment. This provision permits (upon NRC approval) the use of concentration limits for members of the general public that better represent actual exposure conditions. This is similar to the allowance for use of modified derived air concentrations (with Commission approval) in § 20.1204(c)(2). In both situations, licensees would be permitted to propose radionuclide concentration limits for their facility that reflect actual properties of the effluents rather than using the generic concentration-to-dose assumptions associated with values in appendix B to §§ 20.1001–20.2401. These adjustments tailor the concentration limits to specific conditions, provide the same limitation of dose, and do not permit any greater risk even though the adjusted concentration limits (for members of the general public or for workers) may be higher than the appendix B to §§ 20.1001–20.2401 generic values.

Use of this provision, applied to the percentage of radionuclide equilibrium existing in radioactive decay chains, could provide a factor of 2 or 3 upward change in the appropriate air concentration limit. In addition, the licensee can demonstrate compliance by calculating the dose to the nearest resident rather than meeting the air concentration limit at the site boundary in accordance with 10 CFR 20.1302(b)(1). This should provide an additional factor of 2 or 3 allowance. Lastly, if the 0.1-rem effective dose limit still cannot be met, the licensee can apply to NRC under § 20.1301(c) for permission to use a temporary 0.5 rem per year limit rather than the 0.1 rem per year limit. Section 20.1301(c) of final rule requires that, in order to receive permission for use of this higher dose limit, the licensee has to specify (1) the need for and expected duration of the higher value, (2) their program to assess and control doses, and (3) procedures to control doses to be ALARA. These options used singularly or in combination coupled with process or operational modifications of these facilities is expected to provide sufficient flexibility to enable most uranium recovery facilities to comply with the provisions of the amendment to 10 CFR part 20 in this final rule.

Proposed Section 20.303 [Reserved]

The former 0.1-rem "Reference Level" and the EPA Standard for Nuclear Power Operations that were in this section in the proposed rule are included as primary limits for members of the public in § 20.1301 of the final rule.

Proposed Section 20.304 De Minimis Level and Collective Dose Evaluations [Deleted]

Comment: Adoption of a threshold for calculating collective (population) doses. The proposed § 20.304 would have allowed licensees to disregard doses to individuals that were less than 1 millirem per year when evaluating collective (population or "person-rem") doses. A major criticism of this section was the narrowness of its scope. The section pertained only to a change in the calculational methodology for estimating collective doses and would not have permitted unrestricted release of any materials or equipment.

Most comments from people and organizations within the nuclear power and radiation applications industry favored this measure as an initial step toward developing more general "below regulatory concern" (BRC) levels. Several commenters thought that NRC acknowledgment of the concept of a BRC level was more important than the specific proposal to truncate collective dose calculations. Many commenters thought that a generic BRC level would limit unnecessary expenditure of resources that would otherwise have to be spent to control inconsequential risks.

There were also a number of comments that were not in favor of either the proposed collective dose

[27a] See footnote 2.

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cutoff or the more general application of the concept of below regulatory concern. A few commenters expressed opinions that it did not appear feasible to arrive at a universal *de minimis* level because the level that would appear to be truly insignificant to most people would be too low to result in any appreciable saving to the industry. There also were comments that noted that the proposed collective dose cutoff could cause large numbers of potential adverse health effects to be overlooked if they resulted from small radiation doses delivered to very large numbers of people. Many commenters, both pro and con regarding the adoption of a BRC level, thought that a threshold value for collective dose should also be developed. A few commenters noted that the focus of the more generic BRC concept tended to be for single licensees and that it might be necessary to consider the impacts from multiple licensees.

Many of the commenters who supported a generic BRC concept did not agree with the numerical value (0.001 rem per year) proposed for the cutoff, believing it to be too low. An explanation for this opinion was that if 0.001 rem represented an insignificant level of risk, then all larger doses might be perceived as representing "significant" levels of risk. A value of 0.010 rem was noted by several commenters as being a more suitable value and still represented an inconsequential risk.

Response: The Commission agrees that "Below Regulatory Concern" (BRC) levels would be useful and has issued a policy statement on the application of the concept of BRC with regard to waste disposal ("Radioactive Waste Below Regulatory Concern," 51 FR 30639, August 29, 1986) and a general policy statement on BRC (55 FR 27522, July 3, 1990). The general policy statement establishes the framework for the Commission to formulate rules and licensing decisions to exempt certain practices involving small quantities of radioactive materials from some or all regulatory controls. The BRC policy statement sets forth criteria for protection of both individuals (individual dose criteria) and population groups (a collective dose criterion).

In order to ensure that any computational changes reflect the effort to develop the BRC policy, the Commission removed the threshold for truncating collective doses (Proposed § 20.304) from part 20 and has included such a threshold in the generic BRC policy statement. This deletion is also consistent with comments that noted that this section described a method for calculating a quantity (collective dose) that was not required to be calculated by part 20 and comments that such details of calculations would be better in a regulatory guide rather than in a regulation.

Subpart E—[Reserved]

Subpart F—Surveys and Monitoring

Proposed Section 20.501 Surveys [Section 20.1501 in This Final Rule]

Comment: Accreditation of Personnel Monitoring Processors. There were a number of comments concerning the desirability of requiring accreditation of personnel dosimetry processors.

It was also noted that the National Voluntary Laboratory Accreditation Program (NVLAP) does not provide accreditation for doses delivered to the lens of the eye, a depth equivalent to approximately 0.3 centimeter (an areal density of 300 milligrams per square centimeter). The only tissue depth equivalents that are accredited at this time are 1.0 centimeter (the deep-dose equivalent) and 0.007 centimeter (the shallow or "skin" dose equivalent).

Response: The issuance of a dosimetry accreditation requirement or "NVLAP Rule" overlapped the part 20 rulemaking. Because this issue was the subject of a recent separate NRC rulemaking, issues concerning the desirability of such a program were considered and addressed in the rulemaking on accreditation. No revision from the dosimeter processor accreditation rule (52 FR 4601; February 13, 1987) has been made, and the amendments to part 20 in this final rule incorporates the final form of the accreditation rule.

As noted in the discussion of the "eye dose equivalent" in section XI, "Standards for Occupational Exposure of Individuals," of the proposed part 20 rule, the Commission believes that compliance with the eye dose limit will be generally ensured by compliance with the deep-dose limit. Consequently, the lack of accreditation for this depth should not have a major impact on the degree of protection of the eye.

Comment: The accreditation requirement requires the use of a commercial dosimetry service.

Response: This is an incorrect interpretation of the dosimetry accreditation rule (52 FR 4601; February 13, 1987). That rule, which is incorporated into the amendments to part 20 in this final rule, states that the dosimetry processor must be accredited. It is possible for licensees that provide their own dosimetry services to be accredited.

Comment: Lack of specificity in monitoring requirements. Commenters noted that the monitoring requirements, both in the present part 20 and in the proposed rule, were general and imprecise.

Response: Many portions of part 20 are not very specific and detailed because part 20 contains the NRC's general radiation protection requirements and applies to all classes of licensees, including large power reactors, universities, and medical institutions as well as small radionuclide and sealed source users. Because of this breadth of application, the requirements in part 20 cannot be very detailed for any one type of facility. However, the requirements in part 20 are designed to provide the framework for all licensees and to establish provisions that the NRC considers to be fundamental to basic radiation protection.

Proposed Section 20.502 Conditions Requiring Individual Monitoring of External and Internal Occupational Dose [Section 20.1502 in This Final Rule]

Comment: Monitoring Thresholds. A number of commenters questioned the rationale for the lack of agreement of the thresholds in the proposed rule for monitoring external doses (10 percent of the annual limits) and for requiring monitoring of internal doses (30 percent of the annual limit). It was frequently mentioned that starting to require monitoring at 30 percent of the dose limit could result in overlooking doses of 1.5 rems (30 percent of 5 rems). The 1.5-rem value would have been above the limits for minors and for the embryo/fetus (0.5 rem) and was characterized as being a rather substantial fraction of the deep-dose equivalent limit. In this connection, it was also noted that the possibility existed, when large external doses were expected, of exceeding a total effective dose equivalent limit of 5 rems because the licensee was not aware of the internal dose contribution.

Some commenters thought that the monitoring thresholds would be understood more easily if they were expressed as doses instead of percentages.

Response: The unequal thresholds for requiring monitoring of internal doses (30 percent of the dose limit) and external doses (10 percent of the dose limit) were originally set because of the difficulties in performing low-level bioassay analyses of alpha-emitting radionuclides at fuel fabrication and other facilities where actinides may be prevalent. (Bioassays for the radionuclides most commonly found at

nuclear power reactors were viewed as generally being able to meet the 10 percent threshold set for external doses.) In situations such as bioassay for alpha-emitting radionuclides, it may be difficult to detect 10 percent of the ALI or 10 percent of the dose limit by bioassay measurements on excreta.

The monitoring threshold is a predetermined level of anticipated dose for carrying out bioassay procedures and does not represent a required level of detection sensitivity. If, by a reasonable analysis of the working environment, it appears that a worker is likely to inhale radioactive materials at concentrations that could produce an annual committed effective dose equivalent of 0.5 rem (10 percent of the 5-rem limit) or more, then that worker's intake should be monitored using measurements of exposure (e.g., estimates of DAC-hours based upon measured air concentrations) or intake (such as by whole-body counting or other bioassay technique) or by measurements of both exposure and intake. Whether the actual doses received were in excess of 10 percent of the limits could only be determined from these subsequent measurements. The TEDE has to be evaluated if *both* the internal and external dose components have to be monitored.

The monitoring thresholds are specified as percentages of the dose limits rather than as doses because the thresholds apply to several different dose limits: the total effective dose equivalent, the eye dose equivalent, and the shallow-dose equivalent.

Final rule: The threshold for monitoring internal doses have been dropped from 30 percent of the dose limit to 10 percent of the limit. This provides consistency in the internal and external monitoring requirements. The Commission acknowledges that, in some cases, particularly bioassay measurements of transuranic elements, it may not be feasible to actually confirm such levels by bioassay. However, the monitoring threshold is not a requirement on the capability of the measurement. Average airborne radionuclide concentrations and the expected time of exposure can be used to estimate radionuclide intakes and the need for bioassay or other monitoring methods.

The Commission intends to issue a regulatory guide on the procedures to be used in estimating committed effective dose equivalents and deep-dose equivalents and guidance on when they have to be summed.

Comment: Evaluation of radionuclide intakes for respirator wearers. Several commenters mentioned that internal dose monitoring, such as bioassays, should not be required solely because respiratory protection devices were used. The rationale given by the commenters was that the requirement provides a negative incentive for using respirators and is, therefore, counter to ALARA operating practices.

Response: The requirement (in § 20.502(b)(3) of the proposed rule) for bioassays for anyone using respiratory protection has been dropped. The Commission agrees that such a requirement might be a disincentive for using respirators as part of an ALARA effort. There is, however, a requirement (in § 20.1703) for bioassays to be conducted, as appropriate, as part of a respiratory protection program. Whether bioassays are necessary for a particular individual will depend upon whether that individual could have exceeded 10 percent of the annual limit on intake (ALI) or was exposed to airborne radionuclide concentrations in excess of the monitoring threshold. An evaluation of internal dose would be required if there were a potential for exceeding 10 percent of an annual limit on intake (0.1 ALI), whether or not a respirator is worn.

Note: Because the requirement for performing bioassays for a particular individual has been separated from the wearing of a respirator, the concentrations to be used for evaluating monitoring thresholds are those of the ambient atmosphere before credit is taken for respiratory protective factors. One of the purposes of such bioassays is to confirm the effectiveness of the respiratory protection being provided. If bioassay were made dependent upon the corrected air concentration (after dividing by the protection factor), it would be equivalent to assuming that the intended protection factor was correct without further verification.)

Subpart G—Control of Exposure from External Sources in Restricted Areas

Proposed Sections 20.601, 20.602, and 20.603 Control of Access to High and Very High Radiation Areas [Sections 20.1601, 20.1602, and 20.1603 in This Final Rule]

Comment: Inapplicability of requirements to nuclear power reactors. Many commenters indicated that the proposed requirements for control of entry into very high radiation areas could not be applied to nuclear power reactors because of the number and size of potential "very high radiation areas" and the physical inability to restrict access to these areas. Similarly, interlocks that can result in the withdrawal or cessation of the radiation source may be unworkable in nuclear power reactors. Several commenters proposed incorporating requirements for power reactors that are similar to reactor license conditions in reactor technical specifications.

Response: The Commission recognizes that the detailed requirements applicable to large irradiators that are currently in § 20.203(c)(6) should be in a specific regulation dealing with these facilities rather than in part 20. For this reason, these detailed requirements will be placed in a future part 36 of title 10 which has been issued for public comment (Federal Register of December 4, 1990; 55 FR 50008) and applies specifically to irradiators. When that rule is made effective, the Commission will transfer these requirements from part 20 to part 36. In the meantime, the NRC staff will issue a regulatory guide that provides more specific detailed guidance for nuclear power reactors on high and very high radiation areas.

Comment: Choice of Dose Rate Defining a "Very High Radiation Area." Several commenters believed that the 500 rads per hour dose rate that defines a "very high radiation area" was too high, noting the proximity of this value to the median lethal dose (LD_{50}) for acute radiation exposures. Alternative values, such as 1 rem per hour at 30 centimeters, were proposed.

Response: The seriousness of this dose rate was a factor in its adoption. The 500 rads per hour value appears in 10 CFR 20.203(c)(6) as a criterion for additional access controls for irradiators (similar in scope to the requirements of § 20.1603 in the final rule). However, § 20.203 does not use a unique designation such as the "very high radiation area" designation used in the proposed and final part 20 rules. The difference between the 1 rem per hour definition of a "very-high" radiation area used in reactor technical specifications and the 500 rads per hour definition used in amendments to part 20 in the final rule is discussed in a regulatory guide.

Comment: Meaning of "direct surveillance." Several commenters thought that the term "direct surveillance" used in the proposed § 20.601 could be interpreted to require stationing an observer at the entrance to the "high" or "very high" radiation areas.

Response: The final rule permits "* * * continuous direct or electronic surveillance over a high radiation area that is capable of preventing unauthorized entry * * *". This removes the burden of having to station a person in or near a "radiation area," but requires interlocks or electronic locks so that the remotely located

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observer may prevent entry into the area when necessary.

Final rule: The section on very high radiation areas has been divided into two sections. Section § 20.1602 provides a general requirement for restricting access to such areas. This general requirement applies to all very high radiation areas, regardless of the type of licensed operation, including those at nuclear power reactors. A second, more detailed, set of requirements applies only to large gamma irradiators. This section, § 20.1603, restates requirements for irradiators that are in § 20.203(c)(6).

Subpart H—Respiratory Protection and Controls to Restrict Internal Exposure in Restricted Areas

Proposed Sections 20.701 and 20.702 Use of Process or Other Engineering Controls and Use of Other Controls [Sections 20.1701 and 20.1702 in This Final Rule]

Comment: "Use of other controls." Commenters suggested that, if workers could be exposed to concentrations of radioactive materials greater than 1 derived air concentration, ALARA should be applied to the total of internal and external doses (to the total effective dose equivalent). It was noted that this condition was included in the Federal Guidance on Occupational Radiation Exposure.

Response: Modifications have been made in the final rule to permit ALARA considerations to apply to the total effective dose equivalent rather than just the internal dose portion.

Comment: Some commenters indicated that the use of respirators should be permitted even if their use would not be able to reduce airborne concentrations below 1 DAC. They noted that this would be consistent with the ALARA philosophy.

Response: Proposed § 20.702 has been rewritten to clarify the intent that the concentration of 1 DAC is not a cutoff on the voluntary use of respirators but is intended to be the point where some corrective action (including, but not limited to, the use of respirators) by the licensee would be required when the use of ventilation and process controls cannot further reduce the airborne concentrations of radioactive materials.

Proposed Section 20.703 Use of Individual Respiratory Protection Equipment [Section 20.1703 in This Final Rule]

Comment: The proposed rule permits low estimates but not high estimates of intake to be corrected. Commenters noted that the proposed rule (§ 20.703(a)(1)) was not balanced as correction of intake estimates based upon dividing DAC-hours by the respirator protection factor was only permitted if the initial estimate was later shown (by bioassay results) to have been low.

Response: The rule has been modified so that corrected estimates of actual intake can be used in records in place of earlier estimated intakes, regardless of whether the change would result in an increase or in a decrease in the intake estimate.

Comment: NRC should provide a recommended minimum acceptable standard for determining an individual's physical fitness for respirator use. Part 20 requires that a physician determine that an individual worker is physically able to wear a respirator. NRC should, therefore, provide guidance to the physician on minimum standards for wearing respirators.

Response: The NRC policy is that the decision as to medical fitness has been, and continues to be, left to the physician; i.e., the medical doctor should decide what constitutes minimum health standards for respirator wearers. Furthermore, the requirements may vary, depending on the respirator used and physical situations, such as the type of work to be performed, which are outside the scope of part 20. Licensees desiring more guidance should obtain ANSI Standard Z88.6(1984), "For Respiratory Protection—Respirator Use—Physical Qualifications For Personnel," which was developed as an industry consensus standard that provides definitive guidance to "identify the responsibilities of the physician, the employee, and management in determining the employee's ability to use a respirator."

Comment: NRC should permit a health professional to certify physical capability to use a respirator rather than requiring a physician to perform each required certification. The proposed rule requires that a physician annually certify a worker's physical suitability for using a respirator. This should be broadened to permit any qualified health professional, acting under a physician's orders, to perform the actual certification rather than requiring a doctor to do this.

Response: As noted in the previous response, the decision on the physical ability of an individual to wear a respirator is a subjective judgment that, in the Commission's opinion, requires the decisionmaker to have a medical degree. The Commission notes that this annual certification could easily be included in an annual physical checkup.

Comment: The selection of respirator protection factors based upon "average concentrations" and not "peak airborne concentrations" is an improvement. The proposed rule permitted protection factors to be applied to the time-averaged air concentration rather than the peak air concentration in part 20 (§§ 20.1–20.601).

Response: Despite some favorable comments on this change, the Commission has determined that the use of the average airborne concentration may not provide an adequate margin for health protection and, in the final rule, has reverted to the use of the anticipated peak concentration.

Final rule: The proposed rule has been modified to require a respiratory protection program when respiratory protection devices are being used to limit intakes, whether or not credit is taken for respiratory protection factors. Allowance has been made for use of respirators that do not provide protection factors that would keep exposures below the derived air concentrations if (and only if) such use would keep the total effective dose equivalent ALARA. Such a determination should only be reached after careful consideration of the trade-off between calculated reductions in total dose based on ALARA evaluations and increased internal doses resulting from alternative procedures that do not minimize internal exposures.

Proposed Section 20.704 Further Restrictions on the Use of Respiratory Protection Equipment [Section 20.1704 in This Final Rule]

Comment: Proposed § 20.704 should be deleted. This section, which states that the Commission may impose additional conditions on respirator use, is not necessary because proposed § 20.1302 permits the NRC to place additional requirements on a licensee.

Response: Although the commenters are correct that proposed § 20.1302 in this final rule gives the Commission general authority to impose additional requirements on licensees, the Commission believes that the restatement of this policy in a section pertaining specifically to respiratory protection is desirable. As noted by the comments, this section does not create any additional requirement on the licensee not otherwise contained in the regulations.

Final rule: The requirements contained in the proposed rule are retained.

Subpart I—Storage and Control of Licensed Material

Proposed Sections 20.801 and 20.802 Security of Stored Material and Control of Material Not in Storage [Sections 20.1801 and 20.1802 in This Final Rule]

Comment: Definition of "secure." Several commenters requested a definition of the term "secure," which they felt was vague and did not provide an indication of the required licensee action.

Response: The phrase has been rearranged and now reads "secure from unauthorized removal or access," which is similar to the wording in the part 20. This should provide sufficient clarification of what was intended by "secure."

Comment: Unnecessary restrictions on research. One commenter thought that the requirement to secure small quantities of radioactive materials when they are not in use would interfere with university research.

Response: The Commission believes that locking radiotracer laboratories when they are not being used is a small nuisance compared to the consequences of unauthorized access to or theft of the radioactive materials, which could result in contamination of unrestricted areas or exposure of individuals, as well as having to report a loss of licensed material to the NRC.

Subpart J—Precautionary Procedures

Proposed Section 20.901 Caution Signs [Section 20.1901 in This Final Rule]

Comment: Black should be permitted as an acceptable color for the radiation warning symbol. Several commenters requested that the color black should also be allowed to be used on signs and for stenciling on packages. The fading of magenta inks in sunlight and the use of black for marking international shipments were cited as supporting this position.

Response: The Commission believes that, although the "magenta-on-yellow" color scheme has provided a unique warning of possible radiation hazards, "black-on-yellow" would also be acceptable. The fading of the magenta color as cited above may reduce the visibility of the sign with time. Because of the cost impacts if existing warning signs had to be replaced, the Commission is permitting the use of black in addition to continued approval of magenta and purple, rather than requiring replacement.

Final rule: This section has been modified to add black as an acceptable color for the radiation warning symbol.

Proposed Section 20.902 Posting Requirements [Section 20.1902 in This Final Rule]

Comment: The terms "Caution" and "Danger" are not used consistently. Commenters noted that "Caution" or "Danger" could be used on signs for "Radiation Areas," "High Radiation Areas," and "Very High Radiation Areas" despite the considerable variation in the hazards that might exist in these different areas.

Response and final rule: The Commission agrees that the terms "Caution" and "Danger" should be used in a more consistent manner. The final rule permits only the term "Caution" to be used in "Radiation Areas." "Caution" or "Danger" may be used in "High Radiation Areas," since it covers a considerable range from 0.1 rem per hour to over 500 rads per hour. Only "Grave Danger" may be used in "Very High Radiation Areas." This could provide more emphasis on the use of "Danger," the importance of which might have been diminished by its prior applicability to the lower hazard "Radiation Area." "Caution" is inappropriate for use in "very high radiation areas" because of the potential hazard.

Comment: There should be a requirement to post all "restricted areas" whether or not it is a radiation or an airborne radioactivity area.

Response: The objective of posting is to warn personnel of a potential hazard. A "restricted area," *per se*, does not warrant such a warning. There is nothing to prevent a licensee from posting a notice designating a "restricted area," but such action is not required.

Comment: The definition of "airborne radioactivity area" would require tracking of employee "stay times" (time spent in the area). The second option to the definition of "airborne radioactivity area" would require performing surveys of airborne activity and tracking the time spent by workers in the area. The present rule would have only necessitated the survey.

Response: There are two alternative definitions of an "airborne radioactivity area"; only the second one would require consideration of stay times. This second option does not require posting in areas that have low occupancy times and airborne radioactivity concentrations between 0.3 and 1.0 times the applicable DACs.

Comment: Areas containing only noble gases should not require posting as "airborne radioactivity areas." The hazard associated with such areas is primarily from external radiation.

Response: The DACs in appendix B that apply to noble gases (and define an "airborne radioactivity area") are based upon submersion doses; therefore, the relationship remains valid. It should be noted that, because some short-lived noble gases have particulate daughters (such as ^{88}Rb and ^{138}Cs), the warning denoted by posting as an "airborne radioactivity area" may still be required.

Comment: There is no evident need to post all rooms containing 10 times the proposed appendix C levels. The requirement to post a caution sign in rooms that store ten times the appendix C concentrations is unwarranted. There was some concern noted that such posting could deter firefighters or other emergency workers from entering an otherwise safe area, and increased damages could result.

Response: Complete dispersion of 10 times the activity listed in appendix C to §§ 20.1001–20.2401 could produce air concentrations for some radionuclides in excess of the occupational DACs. For example, if 10 times the appendix C quantities were dispersed in a 1,000 cubic foot (10 ft. x 10 ft. x 10 ft.) room, the resulting concentrations would be 35 times the DAC for organic carbon-14, 58 times the DAC for cesium-137, about 18 times the DACs for iodine-131 and tritium (water vapor), and approximately 6 times the DAC for technetium-99m. These appear to be sufficiently large to justify a posting requirement, particularly to caution firefighters in case of a fire.

Comment: The posting requirement should not be applied to sealed sources, such as gauges. Posting the entrances to areas having radioisotopic gauges could require multiple postings in large buildings.

Response: Posting is only required at entrances to the room containing the source and only when the dose rate at 30 centimeters would exceed 0.005 rem (0.05 mSv) in any hour (§ 20.1903(c)) unless areas outside the room warrant posting as "radiation areas" and are already posted.

Proposed Section 20.903 Exceptions to Posting Requirements [Section 20.1903 in This Final Rule]

Comment: The proposed rule omits the past exemption for posting rooms containing only packages prepared for transportation.

Response: The Commission believes that there should be posting of these areas because there is no restriction on the length of time that packages may remain in a room. If the packages contain only small quantities of radioactive materials, then posting of

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the room would still be exempted under the remaining exemptions. The term "prepared for transportation" does include packages that are intended to be carried in a "sole use" vehicle. Such packages are permitted to have higher allowable dose rates than those specified in DOT (or NRC) limits for general shipment.

Final rule: The exception for posting areas containing packages prepared for transportation has not been reinstated.

Comment: The requirement for a person in attendance would be unworkable in a hospital. The requirement (in lieu of posting the room containing a radiotherapy patient) for a person in attendance in order to prevent entry was interpreted as requiring a 24-hour escort for each radiotherapy patient.

Response: The intent was to generally require posting of therapy patients' rooms. (As noted in one of the comments, the dose rate from patients even with diagnostic nuclear medicine treatments might exceed dose rates of 0.002 rem per hour.) The intent of "in attendance" would be satisfied by a duty nurse at a nursing station, providing that the station was in sight of the entrance to the patient's room.

Proposed Section 20.904 Labeling Containers [Section 20.1904 in This Final Rule]

Comment: There is no way to meet the requirement to label containers in some nuclear power plants or in hot cells. It is difficult to mark the detailed information on a container in some areas of a plant or in hot cells.

Response: Section 20.1905 contains exceptions to the labeling requirements that take care of the problem noted by the commenter.

(Note: For the purpose of this section, "Mixed Fission Products" and "Fission and Activation Products" may be regarded as radionuclides, provided that the total activity is also specified. Designations as to the process stream or location sampled or type of sample (e.g., "primary coolant") may also be helpful as an additional designation of the potential hazard.)

Proposed Section 20.905 Exemptions to Labeling Requirements [Section 20.1905 in This Final Rule]

Comment: The proposed rule omits existing exemptions for packages containing only exempt quantities and those containing less than 10 mCi or less of tritium, iodine-125, carbon-14, and sulfur-35.

Response: While these sources pose little external hazard from gamma radiation, the quantities could be a potential internal hazard if the package were ruptured and the contents were released. Consequently, some warning remains appropriate.

Comment: The proposed rule omitted the existing exemption from labeling for packages labeled for shipment in accordance with DOT requirements.

Response and final rule: The exemption for DOT-labeled packages has been restored because the Commission agrees that the DOT labeling is sufficient to denote the presence of radioactive materials and provide an indication of any potential hazard. Quantities and concentrations not requiring DOT labels would not warrant an NRC labeling requirement. (See § 20.1905(d).)

Proposed Section 20.906 Procedures for Handling Packages [Section 20.1906 in this Final Rule]

Comment: The requirement to monitor all packages is unnecessary. The requirement to monitor all incoming packages containing radioactive materials is unnecessary and in large installations creates a substantial monitoring burden.

Response: This requirement has been reevaluated and modified in order to reduce the burden.

Final rule: Section 20.1906 in the final rule requires incoming packages to be monitored when: (1) They are labeled as containing radioactive materials according to DOT regulations, or (2) when a package is damaged or leaking. The first provision would reinstate the exemption from monitoring for shipments of small quantities of radioactive materials that would not require DOT labeling.

Comment: The requirement to survey external surfaces of packages is unnecessary. Several commenters with extensive experience in monitoring packages noted that external contamination was rarely if ever present and that wipe tests are time-consuming both to make the smears and to count them.

Response: Experience in the shipment of thousands of packages each year has been very good. However, potential problems with leaking packages during transit warrant continued monitoring upon receipt to ensure that leaking packages are found and reported. Appropriate action can then be taken to determine the extent of contamination in transport vehicles and storage areas in order to limit the consequences and avoid recurrence. However, an exemption from the contamination survey requirement has been provided for special form (sealed) sources that are being moved to and from work sites in licensee owned or operated vehicles. This partially restores an exemption for all special form sources from the package survey requirements in § 20.205(b)(1)(iii).

The Commission believes that restoring this exemption will not result in any additional hazard. An external radiation survey of the package is still required. The primary purpose of this external survey of sealed sources is to ensure that the source is still properly secured and shielded after transporting it.

Final rule: The requirement to monitor external surfaces of packages has been retained and applies to the two classes of packages for which surveys are required (labeled "radioactive" and damaged or leaking). A partial exemption to sealed sources transported for field use has been reinstated because of the difficulty in making field measurements of surface contamination and because the transporting vehicle is not in general commerce.

Comment: The requirement to monitor packages within 3 hours is unwarranted. This requirement would be difficult to meet for several types of licensees, some of which do not have a full-time health physics staff person.

Response: Licensees receiving labeled packages of radioactive materials to which this requirement applies are expected to have available persons who are qualified to perform such monitoring. However, the person monitoring the package need not be a board-certified health physicist.

Final rule: The 3-hour period in § 20.205(b)(1) has been retained except if the package is received after normal working hours (§ 20.1906(c)).

Subpart K—Waste Disposal

Proposed Section 20.1001 General Requirements [Section 20.2001 in this Final Rule]

Comment: Decay in storage as a disposal option. Many commenters noted favorably the addition of "decay in storage" as an allowed waste disposal option. Several commenters, however, did not believe that the option, as expressed in the proposed rule, was particularly helpful.

Response: Technically, the "decay in storage" option has always been available to a licensee since the license permitted possession of the radioactive materials and these materials naturally underwent radioactive decay. The option was formally included in the proposed and final rules because the list of disposal options is exclusive and there have been questions as to whether this is currently allowed under §§ 20.1–20.601. It should be noted that this option does not allow material that has "decayed in storage" to be released to unrestricted area unless it meets the requirements of one of the other allowed forms of waste disposal in part 20, or the requirements of § 32.92, "Decay-in-Storage," of 10 CFR part 35, or the specific requirements given in any NRC or Agreement State license conditions.

The NRC staff considered adding a separate "Disposal by Decay in Storage" option with specific criteria for unrestricted release of material after decay. These criteria are commonly included in source and byproduct material licenses. However, the provisions included in 10 CFR 35.92 and certain specific license conditions pertain to relatively short-lived radionuclides and are neither appropriate nor applicable to other classes of licenses, such as those issued under part 50. Also, when evaluated for a specific licensed activity, it is possible to consider existing pathways of exposure and to establish specific criteria for decay.

General criteria in a rule would need to be sufficiently conservative to take into account all reasonably conceivable pathways, thereby reducing the applicable level from what would be permitted in a case-by-case evaluation.

Final rule: The final rule has been modified to explicitly list "decay-in-storage" as an authorized form of disposal. Section 20.2001 has been modified to incorporate the requirements that were in § 20.1002(b) of the proposed rule. These provisions require NRC licensees for persons who receive wastes containing licensed radioactive materials for treatment, for treatment or disposal by incineration, decay-in-storage, or disposal in facilities licensed under part 60 or part 61.

Proposed Section 20.1003 Disposal by Release into Sanitary Sewerage [Section 20.2003 in this Final rule]

Comment: Removal of allowance for disposal of "dispersible wastes." A number of commenters felt that the restriction of wastes released to sanitary sewers to soluble wastes would have an adverse impact on certain licensees that had disposed of "dispersible" but insoluble radioactive materials under § 20.303(a). In particular, the practice was mentioned of grinding up animal carcasses with subsequent sewer disposal of the ground residue. This practice is permitted by § 20.303(a) but would not have been permitted under the proposed rule.

Response: In the final rule, the Commission has modified the conditions in the proposed rule for disposal of radioactive wastes into sanitary sewer systems so that "dispersible biological materials" may continue to be disposed of by release to sanitary sewers. This means of disposal is advantageous compared with other alternatives for disposal of this type of biological material.

The prohibition on disposal of insoluble materials via the sanitary sewer was intended to prevent disposal via sanitary sewers of material in which the radioactive material is primarily in an insoluble for, such as flakes of metallic foil containing americium-241. Such materials may accumulate in the sewer system, in the sewer treatment plants, and in the sewer sludge.

Final rule: The final rule permits disposal into sanitary sewers of: (1) Radionuclides in soluble form or (2) radionuclides in readily dispersible biological material, provided that the limits in appendix B to §§ 20.1001–20.2401, table 3, on the average monthly concentrations and the limits in § 20.2003(a)(4) on the total activity released annually are met. The disposal of nonbiological insoluble materials is no longer permitted because of potential reconcentration of these materials in the sanitary sewer system, sewage treatment plants, and sewage sludge. This prohibition for insoluble materials is the reasons why there are no values listed for insoluble materials in table 3 of appendix B to §§ 20.1001–20.2401.

Comment: The rationale for the reduction in the limits for sewer disposal is not explained. The concentration limits for radionuclides released to sanitary sewer systems in the proposed rule have been reduced by a factor of 10 from the former rule. The reduction did not appear to take into account the dilution afforded from multiple users of the sewer system. Commenters indicated that they thought that this reduction would increase the amount of material that would have to be disposed of via a low-level radioactive waste burial site and could result in increased radiation doses to workers having to package this material.

Response: This assumption noted by many commenters that radionuclides discharged into sanitary sewer systems are not ingested is not necessarily true because water in large lake or river systems may be recycled. The dilution afforded by having multiple users of a sewer systems can be offset in part because there can also be several users that discharge radioactive wastes into the same sewer system. The amendments to part 20 in this final rule permit a higher concentration limit for discharges into sanitary sewers than for other liquid effluent releases of radioactive materials, but have lower concentration limits than were allowed for sewage. In view of past contamination incidents (involving cobalt-60 and americium-241) and the reduction in the dose limit for members of the public, the Commission believes that continuation of the higher limits is no longer desirable.

The NRC has underway a study of the dose pathways associated with disposal of radioactive materials via sanitary sewers. This study will help clarify the potential for human exposure.

Comment: The exemption on disposal of human excreta should be removed. Hospitals should have to comply with the same regulations as other licensees.

Response: Disposal into a sanitary sewer system (which was designed specifically to handle this type of waste) is the preferred method of disposal because of the other health considerations in handling human excreta in addition to radiation protection. This exemption is currently in 20.303(d) of part 20.

Proposed Section 20.1004 Treatment or Disposal by Incineration [Section 20.2004 in this Final Rule]

Comment: Relaxation of specific NRC authorization for incineration. A number of comments questioned the need for the existing requirement that incineration of radioactive materials requires specific prior NRC approval (except for small quantities of tritium and carbon-14, which are specifically exempted). These commenters noted that the source of the released material (from an incinerator stack or from a fume hood vent) should not be the basis of requiring specific prior NRC approval of incineration while permitting general effluent releases.

Response: Relaxation of the prior approval requirement for incineration was considered in connection with the amendments to part 20 of this final rule. The requirement for prior NRC approval of incineration remains in the amendments to part 20 in this final rule because the acceptability of incineration as a disposal option, except for exempted quantities of radioactive materials, must be determined on a site-specific basis considering: (1) Incinerator design, (2) the variable isotopic composition and activity of the material to be burned, and (3) potential human exposure to effluents, which may require special calculational methods because of complex meterorologic conditions and other factors.

Final rule: Disposal by incineration still requires specific approval by the Commission (or Agreement State)

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whether done only for wastes from the licensed facility or whether done for wastes received from other licensees.

Proposed Section 20.1006 Disposal of Specific Wastes [Section 20.2005 in this Final Rule]

Comment: There should be a definition of ALARA for solid wastes. Many commenters suggested the need for ALARA or exempt quantities of radioactive material in solid wastes so that very low-level solid wastes could be disposed of without regard to their radioactivity.

Response: The Commission agrees that such levels would be useful and has developed a policy statement regarding levels of dose and risk that can be used to determine that specific practices involve radiation hazards that are Below Regulatory Concern (BRC). This policy statement was published in the Federal Register on July 3, 1990 (55 FR 27522). The BRC policy statement provides a comprehensive policy that will establish a disciplined and consistent framework for all future Commission exemption decisions. This includes potential application to rulemaking or licensing actions for disposal of slightly contaminated solid radioactive wastes. The Commission is developing a program for implementing the BRC policy separate from this part 20 rulemaking.

Proposed Section 20.1006 Transfer for Disposal and Manifests [Section 20.2006 in this Final Rule]

Comment: This section should not be in part 20.

Response and final rule: This section is in part 20 because it relates to the radiation protection aspects of low-level waste shipments.

Proposed Section 20.1007 Compliance with Environmental and Health Protection Regulations [Section 20.2007 in this Final Rule]

Final rule: This section has a counterpart in the present part 20 and in the proposed rule (§ 20.1006) stating that meeting part 20 requirements does not remove the responsibility of licensees, when disposing of licensed radioactive materials, from meeting the requirements of other applicable Federal, State, and local regulations applicable to toxic or hazardous wastes.

The advisory statement in the final rule has been expanded to cover all methods of waste disposal. This section of the rule is advisory and is not intended to imply that NRC will take enforcement action for violations of other environmental protection regulations issued under statutes other than the Atomic Energy Act.

Subpart L—Records

Standardization of Record Retention Requirements

Final rule: Records directly pertaining to effluents released to the general environment, waste disposal, and doses received by individuals are to be kept until the "Commission terminates each pertinent license requiring the record." Other record retention requirements in this subpart generally have been modified to be "3 years after the record is made." This change is in conformance with the final rule published in the Federal Register on May 27, 1988 (53 FR 19240) on record retention requirements for other parts of the NRC regulations. This change provides for consistent record retention requirements throughout the NRC regulations in 10 CFR chapter I.

Proposed Section 20.1101 General Requirements [Section 20.2101 in this Final Rule]

Comment: The units used in records should be limited to those commonly in use: the rad, the rem, and the curie. Some commenters thought that the use of SI units (gray, sievert, and becquerel) should not be allowed.

Response and final rule: The Commission agrees that the use of "special units," the rad, the rem, and the curie, is preferable at this time. This will avoid any difficulties arising from trying to implement both a new regulation and new units. This will reduce potential problems in records and reports that could result from some licensees using the "SI units" and some using the older "special units." The final rule requires the use of the "special units" instead of the "SI units." (See the discussion of this topic under proposed § 20.4 Units.)

Proposed Section 20.1102 Records of Radiation Protection Programs [Revised Section 20.2102 in this Final Rule]

Comment: Added implementation burden associated with requirements for formal radiation programs. A number of commenters thought that the requirement to have a formal ALARA program would result in substantial increased costs due to additional recordkeeping, procedural requirements, and quality assurance requirements.

Response: As discussed under proposed § 20.101, these provisions have been modified to require ALARA as one part of a licensee's radiation protection program. The adoption of requirements for licensees to have a formal radiation protection program was not intended to cause large implementation costs. Much of the cost associated with the recordkeeping requirements in the proposed rule was a result of the ALARA documentation requiremer ts. These recordkeeping requirements have been reduced in the final rule by deleting specific reference to documenting ALARA actions. Specific types of records will be developed by each licensee as part of its radiation protection pgram. Therefore, this section contains general recordkeeping requirements associated with the radiation protection program.

Comment: The recordkeeping burden for small licensees requires a commitment of resources that is not commensurate with the risk. (In section XXXVI of the proposed rul. (51 FR 1121–1122), NRC specifically requested comments on the magnitude of the impact of the proposed rule on small licensees and requested suggestions on how these impacts could be reduced.) Quite a few commenters expressed their belief that the proposed rule will require more extensive monitoring and recordkeeping efforts than are required by §§ 20.1–20.601. Several commenters suggested that the NRC explore possible exemptions or exclusions for academic licensees and other users of small quantities of licensed material. Other commenters expressed the view that the protection of public health for both the worker and the general public should be the same regardless of the size or economic resources of the licensee.

Response: Because of the changes to reduce the recordkeeping burden discussed in response to the preceding comment and because the basic requirement in § 20.1101 calls for effort "* * * commensurate with the scope and extent of licensed activities * * *," the Commission has not made further exemptions or exclusions from the recordkeeping requirements in this section for certain types of licensees.

Proposed Section 20.1104 Determination of Prior Occupational Dose [Section 20.2104 in this Final Rule]

Comment: Medical and academic licensees would have difficulty in complying with the requirement to determine prior exposures. The transitory nature of personnel in these facilities would make meeting these requirements very costly. Doses to employees are small fractions of the limits so that such costs would be difficult to justify.

Response: The requirement to determine dose received in the current year implements the annual dose limits. The requirement to attempt to obtain records of lifetime cumulative doses follows one of the provisions of the guidance to Federal agencies on occupational radiation protection. Efforts to obtain prior exposure histories are only required for workers who are required to be monitored under § 20.1502. Determination of prior doses received during planned special exposures or doses in excess of the annual limits are required only for workers who will be used in planned special exposures.

Comment: The recording of "fictitious" radiation doses should be avoided. The present and proposed rules state that, when information is not available regarding the dose received for a specific period, the licensee should assume that the dose received was at the dose limit. Several commenters thought that this was inappropriate. Some commenters mentioned that this practice might be nonconservative as it would tend to overestimate the dose used in any epidemiological studies of radiation effects, thereby resulting in an underestimate of the risk associated with a unit radiation dose.

Response and final rule: The final rule has been modified so that it does not require any assumed dose value to be recorded in case of incomplete prior dose histories. Only the lack of data must be recorded for periods where there is no information. However, for the current year, where there are missing data, an assumption is to be made for establishing administrative controls: the portion of the dose limit remaining for the current year is reduced by 1.25 rems for each calendar quarter for which information is missing. (The values for other limits, such as the shallow dose equivalent or eye dose equivalent should be reduced by one-quarter of their annual limit for each unreported quarter.) The licensee must note the absence of this information on the employee's record but should not enter the assumed dose value as part of the employee's permanent dose record. For example, an employee who had prior radiation working experience joins Company X on July 1st but does not have the prior radiation records. This employee's dose should be limited to 2.5 rems (5 rems-2(1.25)=2.5 rems) until such time as the records are obtained.

Comment: There should be a quarterly dose limit to cover workers whose records have not been received from a former employer. A 0.5-rem dose might be appropriate for this purpose.

Response: If data were missing for all four quarters (employment commenced late in the fourth calendar quarter), then the employee could not be exposed to radiation above the level for a member of the general public. However, this limit is 0.1 rem per year not 0.5 rem.

Proposed Section 20.1105 Records of Planned Special Exposures [Section 20.2105 in this Final Rule]

See discussion under proposed section 20.1204.

Proposed Section 20.1106 Records of Individual Monitoring Results [Section 20.2106 in this Final Rule]

Comment: NRC should not require reporting or recording of cumulative doses. A number of commenters noted that the ICRP system of dose limitation is based (as one of the principles) on controlling annual doses. Consequently, they questioned the need for recording cumulative doses.

Response: Although the commenters are correct that there is no longer a cumulative dose restriction in part 20 (such as the former 5(N–18) formula), the Federal Guidance on Occupational Exposure (see section II.D) contains a recommendation that cumulative dose records be maintained and provided to the worker.

Comment: The proposed rule does not require recording annual doses as listed in the 1987 Federal occupational guidance.

Response: "Annual dose" is specified in the guidance and is the same as the annual deep-dose equivalent for external doses. However, "annual dose" is not required to be recorded by the amendments to part 20 in this final form for internal doses. This is consistent with an exception noted in footnote 5 to the Federal guidance (Federal Register of January 27, 1977; 52 FR 2832):

> When these conditions on intake of radioactive materials have been satisfied [i.e., meeting the committed dose limits], it is not necessary to assess contributions from such intakes to annual doses in future years, and, as an operational procedure, such doses may be assigned to the year of intake for the purpose of assessing compliance.

Proposed Paragraph 20.1106(b)—See Discussion under Proposed § 20.1204

Comment: The recordkeeping requirement in the proposed § 20.1106(d)(2) would require that all records begin at the beginning of a calendar year. This would create an unnecessary hardship on dosimeter processors since they could not stagger the dosimeter changeover schedules to provide a more uniform workload distribution.

Response and final rule: The term "year" in § 20.1003 replaces the term "calendar year" in proposed § 20.3 and permits the licensee to define the year to begin anytime in January. A licensee may change the starting date, provided that the change is made at the beginning of the year and provided that no day is omitted and no day is included twice in consecutive years.

Comment: The requirement in proposed § 20.1106(e) for each licensee to keep a copy of the dosimeter processor's accreditation certificate creates an undue burden on commercial processors. Commercial dosimeter processors would have to print and distribute thousands of their certificates so that each user had a copy.

Response: The proposed rule contained a requirement for the licensee to maintain a copy of the dosimetry processing accreditation certificate issued to the processor providing dosimetry services to the licensee. This requirement, which was in the proposed dosimetry accreditation rule, was considered unnecessary and was dropped as a requirement in the final version of that rule. Consequently, it has been deleted from this final rule. Licensees who provide their own dosimeter processing services do have to maintain a copy of their NVLAP accreditation certificate for inspection.

Comment: The NRC should consider a "traveling dose history" that can move with the worker. This was suggested, particularly for transient workers and for workers employed concurrently by two employers. The master record will reside with the current employer and would have to be transmitted by the worker to a new employer.

Response: Because the NRC can only regulate its licensees and has no authority over individual workers, the recordkeeping and transmittal requirements for dose histories are placed on the licensee and not on the worker. The concept of a "passport" incorporating security and dosimetry data has been used successfully in Japan and elsewhere. The requirements for determination of prior exposures that are in § 20.2104 provide a similar record to a "moving history," but this would have to be updated by each new employer.

Concurrent employment with two (or more) employers requires special attention so that the combined doses from both employers would not exceed the dose limits. When two employers are aware of such concurrent employment, the simplest expedient to achieve this goal is for them to agree that the dose limit they will use for this employee in the individual programs is less than one-half of the NRC dose limits (the fraction of the dose limit allocated to each employer might also be determined on the basis of the relative

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amount of time worked at each location).

The problem of dual employment is more of a problem when the employee has not confided in the employer. The licensee is required to ascertain the employment and dose record for the current year for new employees (§ 20.2104). If the employee deliberately falsifies this information, the licensee would not know of concurrent employment and the licensee would not be penalized for combined doses from both employers that exceeded the dose limits. If a current employee takes on additional outside radiation work without informing the employer, the employer should not be penalized. It should be noted that, under the new reporting requirements in § 20.2206, individual dose records will be required to be submitted to the NRC for all workers for those categories of licensees formerly subject to § 20.407, including nuclear power reactor licensees.

Final rule: Section 20.2106 has been modified in order to separate the requirement for keeping a record from the format of the record. A clarification has been added that the dose information on an embryo/fetus be kept with the mother's dose record.

Proposed Section 20.1107 Records of Doses to Individual Members of the Public [Section 20.2107 of this Final Rule]

Comment: Reporting requirements for exceeding "reference levels." The proposed rule contained requirements for reporting exposures in excess of the "reference levels" for doses to members of the general public. Many commenters thought that this was excessive because this was not an actual regulatory limit.

Response: The 100 millirems per year "reference level" for doses to members of the general public in the proposed rule has been incorporated as the dose limit in the final rule for members of the general public so that the associated recording and reporting requirements now pertain to a regulatory limit.

Final rule: Section 20.2107 has been broadened in scope from "effluents" in the proposed § 20.1107 to pertain to records of all estimates of doses received by individual members of the public. Doses to member of the public are calculated from measurements of direct radiation, and radionuclides in effluents, and the environment rather than as measurements pertaining to a particular individual. This difference in method of dose assessment from the more direct measurements used for occupational exposure does not imply any lessening of requirements for keeping adequate records of effluents released to unrestricted areas.

Proposed Section 20.1108 Records of Waste Disposal [section 20.2108 of this Final Rule]

Final rule: Section 20.2108 is unchanged from § 20.1108 of the proposed rule.

Proposed Section 20.1109 Records of Testing Entry Control Devices for Very High Radiation Areas [Section 20.2109 of this Final Rule]

Final rule: Section 20.2109 contains an addition to the proposed rule for keeping records of tests of entry control devices for very high radiation areas. This addition is based upon a requirement in § 20.203(c)(6).

Proposed Section 20.1110 Form of Records [Section 20.2110 in this Final Rule]

Comment: NRC should allow computerized recordkeeping systems to handle records. A few licensees suggested that NRC allow "electronic" recordkeeping systems and provide guidance for their use.

Response: The Commission agrees that there is great value in the use of "electronic media." There are a growing number of licensees that are using computer information networks for retaining and transmitting radiation dose histories and other worker-related information among different facilities.

Final rule: The amendments to part 20 in this final rule expand the definition of "record" to include "electronic media." The use of electronic media requires authentication and the prevention of alteration or loss of the records. As with requirements for paper records, the electronic media must be capable of producing a legible copy of the record.

Subpart M—Reports

Proposed Section 20.1201 Reports of Theft or Loss of Licensed Material [Section 20.2201 in this Final Rule]

Comment: The term "substantial exposure" in proposed § 20.1201(a) should be defined. The requirement to report the loss of radiation sources capable of producing "substantial exposure" needs to be more precise.

Response: The term "substantial exposure" in the proposed rule has been replaced in the final rule by a specific designation of the activity of lost source that requires immediate reporting to the Commission. This quantity is 1,000 times the activity levels in appendix C to §§ 20.1001–20.2401. For sealed sources of cobalt-60, cesium-137, or iridium-192, this activity would produce a dose of about 25 rems at 1 foot over a 30-day period (25 rems is the dose that requires immediate Commission notification). Although somewhat similar doses may be projected from inhalation of dispersible material, the exact exposure conditions would have to be known in order to make a valid activity-to-dose relationship.

Final rule: The final rule now contains specific activity criteria for immediate reporting rather than the vague term, "substantial exposure."

Comment: The quantity for reporting the loss of a source is too low (too high). The reportable quantity of 10 times the appendix C activity values appeared to some commenters to be overly restrictive; others thought that all lost or missing radiation sources should be reported.

Response: The specified 30-day reporting level is a compromise between having higher reporting levels and having a requirement that all lost or missing sources be reported. Further, the report permits review of the circumstances involved including any lack of security of materials or weakness in the licensee's control program that may be unrelated to the sources being stolen or lost, but may be pertinent in avoiding recurrent theft or loss.

Final rule: The activity levels in appendix C to §§ 20.1001–20.2401 for some long-lived radionuclides have been increased from those specified in appendix C to the proposed rule. This increase means that the loss of milligram quantities of natural uranium will not have to be reported as was the case in the proposed rule.

Comment: A 30-day telephone report should not be required concomitant with a written report. Proposed §§ 20.1201(a)(1)(ii) and 20.1201(b) both call for a 30-day report; the first requires a telephone report and the latter section requires a written report.

Response and final rule: The rule has been revised to clarify that the written reports required by § 20.2201(b) are to be submitted within 30 days of the telephone notification required by § 20.2201(a), rather than both being within 30 days of learning of the theft or loss.

Comment: The rule should provide for a "grace period" before having to report a lost source to NRC. Commenters noted that, in many instances, a source "lost" in transit eventually turns up. Some specified period, such as 7 days, should be permitted before a "lost" source would have to be reported to the NRC.

Response: The final rule contains two notification requirements: the one for immediate notification only pertains to those sources that exceed 1,000 times the activity levels in appendix C to §§ 20.1001–20.2401. The second notification requirement pertains to sources that exceed 10 times the activity levels in appendix C and that are still missing after 30 days. This provides a grace period of 30 days for reporting the loss of most sources.

Proposed Section 20.1202 Notification of Incidents [Section 20.2202 in this Final Rule]

Comment: The requirements for immediate notification of NRC are too low. Some commenters thought that the doses associated with the requirements for immediate reporting to NRC (five times the respective annual limits) would not produce any discernible harmful effects to the individual to warrant immediate reporting.

Response: Doses of the order of 25 rems (5 times the 5-rem annual dose limit) can produce discernible biological effects in the body in the form of chromosome aberrations and changes in the white blood cell populations. Although the majority of these effects are temporary, they could be discerned. However, irrespective of the potential for discernible effects, doses at these levels represent a major breakdown in the licensee's control over the radioactive material, and the Commission believes that it is important that NRC be promptly notified so that it can take actions, if necessary, to limit further consequences.

Final rule: The final rule retains the previous reporting requirement.

Comment: Immediate reporting should be required if there is any potential for dose reduction. The Environmental Protection Agency (EPA) suggested that incidents always be reported if there is the potential for significantly reducing public doses through protective actions. It is believed by the EPA that this would occur at doses significantly less than those of the proposed reporting criteria.

Response: The incident reporting levels and response times have been selected to limit attention to the more potentially serious events without the entire NRC emergency response network being activated unduly for events involving only small quantities of radioactive materials. For most cases, it is expected that the licensee would have initiated any necessary remedial measures.

Comment: Immediate and 24-hour notification requirements should be suspended in the case of a declared emergency at a nuclear power plant. Commenters felt that any emergency at a nuclear power plant will involve onsite NRC staff and that stopping emergency activities to make the part 20 incident reports could be a burden on the licensee.

Response and final rule: These reports are particularly easy to make for nuclear power reactors (the reactor operator merely has to pick up the dedicated NRC telephone line to get the NRC Operations Center). There are certain functions of the NRC (such as activating the NRC Incident Response Plan) that require that NRC be notified; therefore, this notification requirement has been retained.

Proposed Section 20.1203 Reports of Exposures, Radiation Levels, and Concentrations [Section 20.2203 in this Final Rule]

Comment: There is no requirement for reporting doses that exceed the limit for protection of the embryo/fetus in proposed § 20.208.

Response and final rule: A requirement has been added to the final rule in § 20.2203(a)(2)(iii).

Comment: The identifiers required in proposed § 20.1203(b)(2) for the embryo/fetus should be those of the mother. As the fetus has no date of birth and no Social Security account number, those of the mother should be used.

Response and final rule: A footnote to this effect has been added to § 20.2203.

Comment: Reports of exceeding the 0.1-rem reference level should not be required. A number of commenters noted that the 0.1-rem reference level was not a limit and, therefore, exceeding it should not necessitate a report to the NRC.

Response: As a result of changes in the ICRP interpretation of the 0.1-rem level and the former 0.5-rem dose limit, the 0.1-rem level is now the recommended limit. Consequently, 0.1 rem is the primary limit applicable to members of the general public and reports are justified when it is exceeded.

Comment: Smaller licensees, such as nuclear medicine facilities, should be exempted from the reporting requirements of proposed § 20.1203. Licensees are required to report concentrations in unrestricted areas that exceed 10 times any applicable limit in the license. Because some nuclear medicine units use the room air volume for dilution, calculated concentrations exceeding 10 times the appendix B limits might frequently occur. This would require either more frequent reporting to NRC or use of more sophisticated atmospheric dispersion models.

Response: The reporting requirements are very similar to those in the part 20 §§ 20.1–20.601. Part 35 of the Commission's regulations, which deals with medical applications, covers the medical use of noble gases and in § 35.205(a) limits airborne concentrations to the 10 CFR part 20 appendix B to §§ 20.1–20.601 concentrations. Experience has not indicated large numbers of reports of such limits being exceeded.

Proposed Section 20.1204 Reports of Planned Special Exposures [Section 20.2204 in this Final Rule]

Comment: The license should not have to file a separate report to NRC for Planned Special Exposures. Several commenters objected to having to file these separate reports each time a Planned Special Exposure is carried out. This was viewed as representing a reporting requirement for operating within the NRC regulations. It was suggested that this information be included in the employee's records without reporting to NRC.

Response: Because of the newness of the concept, the NRC wishes to monitor carefully the use of the Planned Special Exposures. Further, while the Planned Special Exposures are provided in the final rule, its use does represent a situation in which the licensee is operating outside of the normal dose limits, and of which the Commission should be aware.

Comment: Period for reporting planned special exposures. Several commenters noted that the 15-day period for reporting planned special exposures is shorter than the 30-day period usually allowed for similar reports.

Response: The reporting period of a planned special exposure has been increased from 15 days to 30 days to be more consistent with other reporting requirements.

Proposed Section 20.1206 Reports of Individual Monitoring [Section 20.2206 in this Final Rule]

Comment: Could the requirement for the reporting of individual exposures be construed as an invasion of privacy? Some commenters believed that requiring the reporting of individual doses rather than a statistical summary might constitute an invasion of personal privacy.

Response: The Commission does not believe that submission of individual dose data constitutes an invasion of privacy. Such data have been reported to the NRC routinely in the termination reports for some time. Such information will be protected in accordance with the Privacy Act and will be restricted, as it has been in the past, to use by NRC officials, NRC contractors, or qualified

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scientific investigators. Instructions on protecting this information appear in § 20.2108(d).

Comment: If the radiation exposure data are collected into a central repository, would the NRC be the proper place for it? One commenter felt that the radiation exposure data might be better maintained by an agency whose charter encompasses the analysis of the data for estimates of risk.

Response: Arguments might be made for other agencies having the lead role in the storage and analysis of those data; however, it is the NRC that has the statutory authority to require that these data be collected. Although the part 20 recordkeeping requirements are intended primarily to fulfill NRC's information needs for regulation, the NRC has continuing contacts with agencies that have expertise in conducting epidemiological studies (such as the National Cancer Institute of the National Institutes of Health and the Office of Health and Safety of the Department of Energy) to ensure that the part 20 reporting and recordkeeping requirements do not lose information that would be vital to carrying out studies of this type.

Comment: The total collective (person-rem) dose should be reported. It was felt by one commenter that NRC should require the total collective dose to be reported so that the numbers used in NUREG-0473 (NRC's annual summary of occupational radiation doses) will be the same as those calculated by the licensee.

Response: The reason for a possible discrepancy between a licensee's estimate of the collective dose to workers and the estimate published by the NRC has been that the licensee may sum the actual individual doses and the NRC estimate is based upon the statistical summary rather than the actual individual dose reports. Such differences should be reduced in the future because NRC will also be using dose information for individuals. The final rule requires licensees who previously submitted the dose summaries to report the individual dose data to NRC. Both collective dose calculations should then be using the same data base.

Comment: The termination report required in proposed § 20.1207 should (or should not) be replaced with an annual report for all personnel monitored. Some commenters felt that an annual report just to the NRC should replace the present requirement for a termination report. Other commenters felt that annual reports to the NRC of doses to individuals constituted a considerably larger burden than did a statistical summary. Some commenters, who disagree with filing an annual report to the NRC, were in favor of giving such an annual dose summary to the worker. Other commenters suggested that all licensees be required to submit an annual report to NRC on each monitored individual.

Response: The reporting of individual monitoring data will help track doses to individuals who are exposed at several facilities during any given year and whose total dose would be underreported by statistical reports prepared at each work site. Such information is shown at the present time only by analysis of the termination reports.

Licensees who were previously required to file both annual statistical summaries and termination reports with the NRC will, instead, submit annual dose reports to NRC for all workers for whom monitoring is required under § 20.1502. A copy of the annual report to NRC could also be given to the individual worker in order to satisfy the revised reporting requirement in § 19.13 of 10 CFR part 19. Although this may entail some additional burden to licensees, the use of "electronic media" for recordkeeping might in fact reduce overall costs. It is intended that large employers (such as nuclear power reactor licensees) would submit an electronic copy of their dose reports in a prescribed format to the NRC in lieu of paper copies of individual records.

Subpart N—Exemptions and Additional Requirements

Proposed Section 20.1301 Applications for Exemptions [Section 20.2301 in this Final Rule]

Comment: NRC should make the issuance of exemptions a matter of public record. Several commenters felt that the issuance of any exemptions under this section should require public notice and comment. The EPA stated that exemptions could adversely affect its ability to control radionuclides under the Safe Drinking Water Act.

Response: The NRC has issued few exemptions under this longstanding provision and has not exempted anyone from the dose limits for a worker or for a member of the public. Any exemption that could have a significant impact on the environment would be evaluated in accordance with the Commission's requirements in 10 CFR part 51 under the National Enviernmental Policy Act. Regarding EPA's comment on controlling radionuclides under the Safe Drinking Water Act, the Commission will ensure that potential impacts on water resources and drinking water supply systems are considered in evaluations of proposed exemptions, such as alternative liquid effluent concentration limits. Where appropriate, NRC will coordinate with EPA to ensure that drinking water supplies are appropriately protected by any proposed exemptions.

Proposed Appendix A (Appendix A to §§ 20.1001–20.2401—Protection Factors for Respirators in this Final Rule)

Comment: The protection factor for air-purifying respirators with particulate elements is too low. The listed protection factor for air-purifying respirators with particulate filters is 50, whereas both ANSI Z88.2 and the OSHA regulations in 29 CFR part 134 use 100.

Response: The NRC never endorsed ANSI Z88.2–1980, whereas the OSHA regulations generally follow ANSI standards. The current NRC-allowed protection factors (PFs) are based upon research conducted by the Los Alamos National Laboratory (LANL). These recommendations included a PF of 50 for full face respirators, based on experimental data on actual testing of personnel using respirators under carefully controlled conditions. In actual use, there is essentially no difference between a PF of 50 versus a PF of 100, so that there should be little or no real impact on field use of respirators or on operations at nuclear facilities that would result from using the higher protection factor.

Comment: Several respiratory equipment specifications in appendix A should be applicable only for areas that are "immediately dangerous to life and health." Footnotes "h" and "i" contain specifications for air flow rates and flow calibration and a requirement for standby rescuers to be available when using supplied-air suits. These were felt to be unneeded considering that, if the air flow failed, the person could withstand a small exposure to the airborne radionuclides while exiting the area after removing the protective hood.

Response: The supposition that conditions "immediately dangerous to life and health" do not exist is not always correct. Failure of an airline in supplied-air suits may be considered as "immediately dangerous to life and health" because there is an acute danger of suffocation if the air supply is interrupted and the hood cannot be removed by the wearer. Rapid recovery of and assistance to the individual in the supplied-air suit necessitates the presence of a pre-equipped rescuer.

Proposed Appendix B (Appendix B to §§ 20.1001–20.2401—Annual Limits on Intake (ALIs) and Derived Air Concentrations (DACs) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sewerage in the Final Rule)

General comments: Most of the comments from radiation protection professionals favored the adoption of the ICRP–26/ICRP–30 annual limits on intake and the derived air concentrations. Comments from private citizens were against adoption of the ICRP values because the majority of the values would increase (as stated in Section XXIX of the proposed rule, 51 FR 1120).

Response: From an occupational protection standpoint, the changes that result from adoption of the ICRP risk-based approach lead to higher limiting intake values than in appendix B to §§ 20.1–20.601. These increases result from the increase in the allowable ceiling for organ doses. The values that served as the basis for calculating the concentration limits used in appendix B to §§ 20.1–20.601 were organ dose limits of 5, 15, and 30 rems. The new concentration limits in appendix B to §§ 20.1001–20.2401 are based upon the effective (weighted) organ dose or upon the nonstochastic limit that forms an organ dose ceiling when the stochastic risk is not limiting. These changes increase the limiting annual organ doses (when only one organ is irradiated) for those doses that are limited by the stochastic (effective dose) limit from 5 rems to 20 rems for the gonads, from 15 rems to 32 rems per year for the breast, and from 15 rems to 42 rems for the lung. Limiting doses to other organs increase from the former 15- and 30-rem values to the 50-rem nonstochastic limit.

The former ICRP–2 "critical organ" concept based the limiting intake upon controlling the dose rate to the organ receiving the highest dose rate (the "critical organ"). The doses to organs other than the critical organ did not have to be evaluated, even if these doses were close to the estimated dose to the critical organ. The ICRP–26/30 system evaluates the doses to the major organs and the six remaining organs that receive the next highest doses. These doses are then multiplied by the appropriate weighting factors (w_T) and are summed to give a risk-weighted "effective dose." The concentration limits that are based upon this ICRP approach reflect the doses to all principal organs that are irradiated, not just the one organ that receives the highest dose as was done in §§ 20.1–20.601.

Many of the comments from private citizens do not appear to reflect the proposed rule because many of the comments objected to raising the limits for radionuclide concentrations applicable to the general public. As noted in the discussion of appendix B in the notice of proposed rulemaking (section XXIX, 51 FR 1119–1120), the concentration limits for members of the public were based upon a "reference level" dose (now the dose limit for members of the general public) of 0.1 rem per year and incorporated an additional factor of 2 reduction (proposed appendix B; 51 FR 1145) for age-dependency and combined air and water intakes. Thus, the concentration limits for the public reflect a reduction in their basis from a whole-body annual dose of 0.5 rem in part 20 (§§ 20.1–20.601) to 0.05 rem in the proposed and final rules. The concentration limits for individual radionuclides may be higher or lower for members of the general public in unrestricted areas in appendix B to §§ 20.1001–20.2401 than in the former tables because of changes that occurred in the intervening 25 years in the metabolic and other parameters used to calculate internal doses. These changes are reflected in ICRP Publication 30 and its supplements and amendments. However, these changes are a result of changes in the scientific techniques and parameters used in calculating doses and do not reflect an increase in the allowable dose limits, which, in reality, have been decreased in the amendment to part 20 in this final rule.

Comment: NRC should consider deleting table 2 from appendix B. The concentration limits in appendix B do not provide adequate protection of children and infants because they do not take into account age dependency in a proper manner. Compliance with the dose limits, rather than with these concentration limits, should be required.

Response: The use of the effective dose equivalent concept reduces the importance of age-dependent intake-to-dose factors. Age dependency is of primary importance in calculating organ doses. Those organs for which age dependency is important, such as the thyroid gland, are of lesser importance because of lower w_T values (for the thyroid, for example, w_T=0.03) used to calculate the effective dose. A factor of 2 is included in the calculation of concentration limits for release to air and water, which, in part, accounts for age dependency. In addition, the Commission believes that there is a lack of detailed age-dependent metabolic data for all but the most common radionuclides that will inhibit such attempts to increase the precision of the dose estimates.

Many smaller licensees routinely use concentrations and the appendix B tables in order to demonstrate compliance. The use of concentration limits for determining compliance is a well-established practice that is economical for many of the smaller licensees. Despite the growing availability of simplified dose assessment models, the Commission is continuing to accept the use of concentrations to demonstrate compliance with the dose limits.

Comment: The appendix B tables fail to account for the chemical toxicity of natural and low-enriched uranium. This fails to take into account the possible kidney (renal) damage associated with the chemical toxicity.

Response: There is a separate limit for uranium intake that is based upon the chemical toxicity. This limit was expressed as footnote 3 to appendix B, page 1199 of the January 9, 1986 notice of proposed rulemaking and also as § 20.204(i) on page 1131. In the final rule, it appears as footnote 3 in appendix B to §§ 20.1001–20.2401, but the limit also has been moved up in the text to the section on dose limits and now appears as § 20.1201(e).

Comment: The limits for occupational and nonoccupational exposure to radon-222 and its particulate daughters do not appear to be consistent with the airborne concentration limits for other radionuclides in terms of risk.

Response: The occupational concentration limits for radon-222 are based on the existing Federal guidance, which is 4 WLM (4 Working-Level Months) per year. The annual limit on intake (ALI) is stated as 100 μCi or 4 working-level months. The derived air concentration (DAC) in Part 20 for occupational exposure to radon-222 of 3 x 10^{-8} is equivalent to 0.33 working levels (this equivalence is also given in the appendix B table). The concentration limit for members of the general public is a factor of 300 lower and, like the other airborne concentration limits, represents an effective dose of 0.05 rem per year.

Comment: Concentration limits for tritium omit chemical forms other than for tritiated water vapor.

Response: As there is expected to be no occupational intake via oral ingestion, and most of the commonly used organic tritiated compounds are not volatile, inhalation and transpiration through the skin are the principal pathways of exposure. Different intake limits would apply to hydrogen gas (H^1

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or T_2) and tritiated water vapor (HTO). The HT or T_2 gas is rapidly converted to HTO by isotopic exchange and oxidation (both in air and in the body) so that specifying a submersion dose limit for HT would understate the actual radiological impact. Comparison with other derived limits for other chemical forms shows that the use of the concentration limits for HTO provides an adequate level of protection for most of the other chemical forms.

Comment: No concentration limits are listed for natural thorium. There are limits for natural uranium, but corresponding concentration limits for natural thorium are not given. The isotopic composition of thorium can vary somewhat with different ores and with different times after chemical separation.

Response: A licensee should use the thorium-232 value or, if a more precise value is desired, use the procedure for mixtures in appendix B to §§ 20.1001–20.2401 applied to the actual isotopic concentrations present.

Comment: The derived air concentrations for the general public are not always 0.1 times the occupational values.

Response: The limits for the general public are calculated solely from the stochastic risks. This differs from ICRP, which would use a "capping" organ dose limit of 5 rems (0.1 x the nonstochastic limit of 50 rems) in deriving the organ dose limit for organs that are limited by the nonstochastic risk. If there is a threshold for nonstochastic effects for the worker at 50 rems, it would also apply to a member of the public. Rather than applying a factor of 10 reduction to a nonstochastic value, the limiting stochastic (effective) dose was used to calculate the concentration limits for the general public. Values are not based on the nonstochastic risk for members of the public, even if they were the basis for the calculation of the DACs and ALIs for the worker. This difference in method of calculation accounts for the lack of a consistent ratio between worker DACs and effluent limits for the public.

Proposed Appendix C (Appendix C to §§ 20.1001–20.2401—Quantities of Licensed Material Requiring Labeling in the Final Rule)

Comment: The reduction from 100 μCi to 0.001 μCi for thorium values will require posting of areas where thoriated-nickel machine parts are used.

Response: On the basis of specific activity considerations, the 100 μCi limit has been retained for long-lived radionuclides (half-lives longer than 10^9 years) such as thorium-232, which would require several grams of material to produce the stated activity level. Because this is based on half-life, two isotopes may be treated differently, e.g., uranium-235, which does not meet the half-life criterion, has a value in Appendix C to §§ 20.1001–20.2401 of 0.001 μCi, and uranium-238, which exceeds the 10^8-year criterion, has a value of 100 μCi.

Proposed Appendix D (Appendix D to §§ 20.1001–20.2401—United States Nuclear Regulatory Commission Regional Offices in the Final Rule)

No comments were received on this section.

Proposed Appendix E (Appendix E to §§ 20.1001–20.2401 [Reserved in this Final Rule])

Final rule: The calculational guidelines and equations that appeared in proposed appendix E are being incorporated into a regulatory guide on summation of internal and external doses. This will make it easier to revise and clarify the calculational methods without having to resort to formal rulemaking. (Note: NRC routinely issues regulatory guides for public comment before making them final.)

Proposed Appendix F (Appendix F to §§ 20.1001–20.2401—Requirements for Low-Level Waste Transfer for Disposal at Land Disposal Facilities and Manifests in this Final Rule)

(Note: Appendix F is derived directly from requirements inserted by the Part 61 rulemaking proceeding on low-level radioactive waste disposal sites. These requirements were in § 20.311. Because these requirements are relatively recent, they were not modified in the amendments to Part 20 in this final rule. The Commission is considering revisions to the manifest requirements in a rulemaking separate from this Part 20 rulemaking.)

VII. Conforming Amendments

Accompanying these amendments to part 20 in this final rule are amendments to other parts of chapter I that update citations to 10 CFR part 20 that are found in these other regulations. These conforming amendments are to be implemented in accordance with the schedule for implementing the amendments to part 20 in this final rule as reflected in § 20.1008.

Two amendments are particularly important as they go beyond updating cross-reference citations. One amendment to appendix C to 10 CFR part 2 updates and modifies the examples of the severity levels associated with violations of 10 CFR part 20. In accordance with the implementation schedule above, licensees will remain subject to the version of part 2, appendix C, supplement IV of the NRC enforcement policy in redesignated supplement IV for §§ 20.1–20.601. The conforming amendments to supplement IV for §§ 20.1001–20.2401 of appendix C to 10 CFR part 2 would only apply after January 1, 1993, or when a licensee implements the part 20 before that date.

The Commission does not believe that solicitation of public comment on the conforming changes to appendix C (of 10 CFR part 2) is required before they are issued in final form.

The second major change to other parts is the requirement to provide all workers with information on their radiation doses. This modification was made to conform to the 1987 Federal guidance on occupational radiation exposure. Formerly, part 19 required licensees to furnish such a report at least annually upon the request of the worker. The change deletes the words "upon request." Public comment is not being solicited on this change as the comments were requested in the proposed rule (section XXVII, 51 FR 1118) on the option of requiring reports to individual workers. (These comments are discussed with regard to proposed § 20.1109). Part 19 has been amended to require licensees to advise each worker at least annually of the worker's dose recorded when requested (if the licensee is still implementing §§ 20.1–20.601) or annually, whether requested or not, when the licensee adopts §§ 20.1001–20.2401.

VIII. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended and the Commission's regulations in subpart A of 10 CFR part 51 that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The amendments to part 20 in this final rule change the level for protection of the general public from an implicit limit of 0.5 rem per year to an explicit limit of 0.1 rem per year. There are also numerous changes in airborne and water radionuclide concentration limits. These changes result from changes in the models and parameters used to estimate the radiation dose associated with intake of a radionuclide. Some of the concentration limits for the general public are higher or lower than previous concentration limits; and some are of the same magnitude as the previous limits.

Despite the changes in the dose and concentration limits, the Commission believes that issuance of the final rule will not have a major impact on the environment. The primary basis for this conclusion is that NRC (and Agreement State) licensees have implemented radiation protection measures that keep radiation exposures and radioactive effluents as low as reasonably achievable (ALARA) in accordance with provisions of 10 CFR 20.1(c) and comparable State provisions. These measures, whether established by rule, license, or good management practice, have been particularly successful in minimizing effluents to the general environment and exposures to members of the public and radiation workers. The final rule will make such ALARA programs mandatory as a part of licensee radiation protection programs.

In addition to 10 CFR part 20 and existing ALARA programs, there are other regulations that govern allowable doses to members of the public and that remain unchanged by the amendments to part 20. These other regulations include appendix I to 10 CFR part 50, 10 CFR parts 60 and 61, and the EPA's generally-applicable environmental standards in 40 CFR part 190. These standards set limits or design objectives (appendix I) for releases of radioactive material to the general environment that are generally more restrictive than the dose limits in part 20. Consequently, since these more restrictive standards remained essentially unchanged by the part 20 amendments, the level of public protection and the associated environmental impact are not changed appreciably from those associated with existing practice under the §§ 20.1–20.601 of part 20 and the aforenamed regulations.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower-Level), Washington, DC 20555. Single copies of the environmental assessment and finding of no significant impact are available from Harold T. Peterson, Jr., Nuclear Regulatory Commission, NL/S-139, Washington, DC 20555, telephone: (301) 492-3942.

IX. Paperwork Reduction Act Statement

The final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). The requirements contained in §§ 20.101–20.601 were approved by the Office of Management and Budget approval numbers 3150-0014. Forms 4 and 5 in current use were approved under OMB approval numbers 3150-0005 and 3150-0008.

Additional information collection requirements in §§ 20.1001–20.2401 will be submitted by NRC to the Office of Budget and Management for review and approval of the paperwork requirements before they can become effective. Notice of OMB approval will be published by the NRC in the Federal Register.

X. Revised Regulatory Analysis

The Commission has issued a final regulatory analysis for this regulation. This revised analysis was based on the draft regulatory analysis as modified to account for the changes from the proposed rule resulting from public comments on both the proposed rule and the staff's modified rule in SECY-88-315 and supplemental papers. Copies of both the draft and final regulatory analysis are available for inspection and copying for a fee in the NRC Public Document Room (See ADDRESSES.)

XI. Final Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission has prepared a regulatory flexibility analysis that indicated the new amendments will apply to all NRC licensees. The NRC has approximately 7,800 licensees, approximately one-quarter of which are classified as small entities.

(Note: Agreement States, which implement comparable regulations under Section 274 of the Atomic Energy Act of 1954, as amended, have about 10,000 licensees of which a comparable number are assumed to be small entities.)

The types of small entities that would be affected by this rule include physicians, small hospitals, small laboratories, industrial applications in small industries, radiographers, and well loggers.

Copies of the draft and final regulatory analysis are available for inspection and copying, for a fee, in the NRC Public Document Room (See ADDRESSES.)

XII. Backfit Analysis

A final backfit analysis has been prepared for this rule and may be examined and copied for a fee in the Commission's Public Document Room (see ADDRESSES). For the reasons stated in this backfit analysis, the Commission has concluded that the amendments to part 20 in this final rule, as applied to nuclear power reactors, provide a substantial increase in overall protection of public health and safety both for workers and for members of the general public. The Commission's conclusion rests on both quantitative and qualitative grounds. The Commission believes that the reductions in allowable dose limits that are embodied in these part 20 amendments contribute to substantial increases in the protection of public health and safety. Although current practice, including the philosophy of keeping radiation exposures as low as is reasonably achievable (ALARA), generally has kept radiation exposures well below the existing limits, the reductions in the allowable dose limits ensure that such doses will also remain low in the future.

There are several qualitative factors that support the Commission's conclusion that the part 20 amendments provide a substantial increase in protection. One of the main qualitative factors is that it is necessary to revise the 30-year-old part 20 to ensure that the NRC regulations reflect the current state of radiation protection science. Any future revisions in dose limits recommended by ICRP or NCRP would undoubtedly be based upon the 1977 ICRP and 1987 NCRP recommendations and, therefore, would be more easily incorporated into the framework of the amended part 20 (§§ 20.1001–20.2401) than in the framework of §§ 20.1–20.601 of part 20. Other qualitative factors include: maintaining consistency with international radiation protection programs, keeping the radiation protection requirements consistent with current risk assessment methodologies, and having the NRC's standards conform to Federal radiation protection guidance.

The Commission is adopting the final rule based in part on the conclusions of this analysis that the rule provides for a substantial increase in the over-all protection of the public health and safety and that the direct and indirect costs of its implementation are justified in terms of the quantitative and qualitative benefits associated with the rule. The Commission notes, however, that, even had the analysis not concluded that the amendments to part 20 in this final rule provide a substantial increase in the overall public health and safety, it could have gone forward with the rule because the changes made to part 20 also amount to a redefinition of the level of adequate protection and the backfit rule's substantial increase in protection and cost justification standards do not apply to a redefinition of adequate protection.

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Additional Views of Commissioner Curtiss with Respect to Backfit

I have examined the proposed Part 20 amendments from the standpoint of whether and, if so, how the backfit rule should apply to this particular rulemaking. The nature and effects of the proposed changes to part 20 lead me to the conclusion that the proposed amendments, in essence, would redefine what is necessary for adequate protection of the public health and safety in the radiation protection area. Thus, while I believe that we should apply the backfit rule to this part 20 rulemaking effort, I also believe that this rulemaking constitutes a redefinition of adequate protection as described in 10 CFR 50.109(a)(4)(iii) and that the usual backfit analysis and cost-benefit balancing are therefore not required in this instance.

On the question of whether such an approach would require this rule to be renoticed for further public comment, I have concluded that there was ample indication in the notice of proposed rulemaking that the Commission is rethinking its radiation protection standards across-the-board in this part 20 rulemaking. Moreover, this initiative was explained in a manner that could logically be construed to encompass the approach to backfitting described above. Of particular importance, the notice of proposed rulemaking itself seems to indicate that the Commission is contemplating an action that would redefine what is necessary for adequate protection in the radiation protection area. For example, the notice states that:

[T]he Nuclear Regulatory Commission (NRC) is proposing a major revision of its regulations in 10 CFR Part 20 which provide the requirements for the protection of individuals who are exposed * * * to ionizing radiation from routine activities * * * which are licensed by the NRC * * * * The intent of the revision is to improve NRC radiation protection standards by reflecting developments in the principles that underlie radiation protection and advances in related sciences that have occurred since the promulgation of 10 CFR Part 20 nearly thirty years ago * * * * The expected result of promulgating and implementing the proposed revised rule is an improved rule that provides better assurance of protection; establishes a clear health protection basis for limits and other regulatory actions taken to protect public health; applies to all licensees in a consistent manner; and reflects current information on health risk, dosimetry, and radiation protection practices and experiences.

51 FR 1082 (January 9, 1986).

With regard to existing Part 20 standards, the Commission noted that:

[i]n promulgating these standards, the AEC emphasized "that the standards are subject to change with the development of new knowledge, with significant increase in the average exposure of the whole population to radiation and with further experience in the administration of the Commission's regulatory program." Consistent with this emphasis, the proposed revision reflects new knowledge, increased uses of radiation and generation of radiation sources, and experience gained during the past twenty years* * * * [Earlier] revisions [to the existing part 20] have not kept the regulations in accord with more recent recommendations of scientific organizations * * * to improve overall protection and establish a clear health risk rationale * * * * [T]he central thrust of the revision [is] to ensure that radiation protection is adequate and defendable when judged by good protection practices and contemporary standards.

51 FR 1093, 1094 (citations omitted).

In discussing the benefits of the proposed rulemaking, the Commission indicated that:

[t]he proposed revision to Part 20 includes numerous changes required to bring the radiation protections standards into accord with current defendable [sic] scientific knowledge, and to reflect contemporary scientific and philosophical approaches to protection against radiation * * * * The Commission anticipates that promulgating and implementing the proposed rule will result in a regulation that provides better assurance of protection, establishes a clear health protection basis for limits, applies to all licensees, including small entities, in a consistent manner, and reflects current information on health risk, dosimetry, and radiation protection practices and experiences.

51 FR 1120, 1122.

Consistent with all of these statements on the nature of the proposed changes to part 20, a supplemental notice of proposed rulemaking that requested comments on a proposed backfit analysis indicated that:

[T]his is the first complete revision of these regulations in over 25 years. This revision will bring the Commission's radiation protection standards into accord with current recommendations of the International Commission on Radiological Protection (ICRP).

The proposed revision to 10 CFR part 20 [is] intended to:

a. Update the quarter-century-old 10 CFR Part 20 to incorporate advances in science and new concepts of radiation protection methodology and philosophy;

b. Implement pending Federal radiation guidance on occupational radiation protection;

c. Implement the principal current dose-limiting recommendations of the ICRP;

d. Incorporate the ICRP "effective dose equivalent" concept;

e. Update the limits on airborne radionuclide intakes, effluent releases and doses from inhaled or ingested radionuclides using up-to-date metabolic models and dose factors; and

f. Require that licensees have programs for keeping radiation exposures "as low as is reasonably achievable" (ALARA).

51 FR 30870, 30871 (August 29, 1986).

Overall, these various characteristics of the purpose, intent, and nature of the proposed changes to part 20 lead to the conclusion that the Commission is, in fact, rethinking its radiation protection standards. For these reasons, I believe that the notice adequately describes the nature and substance of the proposed rule changes and that renoticing to further reflect a Commission judgment that the proposed changes constitute a redefinition of adequate protection is not necessary.

List of Subjects

10 CFR Part 20

Byproduct material, licensed material, nuclear materials, nuclear power plants and reactors, occupational safety and health, packaging and containers, penalty, radiation protection, reporting and recordkeeping requirements, special nuclear material, source material, waste treatment and disposal.

10 CFR Parts 2, 19, 30, 31, 32, 34, 35, 39, 40, 50, 61, and 70

Radiation protection.

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the following amendments to 10 CFR parts 2, 19, 20, 30, 31, 32, 34, 35, 39, 40, 50, 61 and 70 are published as a document subject to codification.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 is revised to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (U.S.C. 5841, 5842, 5846).

Section 20.408 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 20.101, 20.102, 20.103 (a), (b), and (f), 20.104 (a) and (b), 20.105(b), 20.106(a), 20.201, 20.202(a), 20.205, 20.207, 20.301, 20.303, 20.304, 20.305, 20.1102, 20.1201–20.1204, 20.1206, 20.1207, 20.1208, 20.1301, 20.1302, 20.1501, 20.1502, 20.1601 (a) and (d), 20.1602, 20.1603, 20.1701, 20.1704, 20.1801, 20.1802, 20.1901(a), 20.1902, 20.1904, 20.1906, 20.2001, 20.2002, 20.2003, 20.2004, 20.2005 (b) and (c), 20.2006, 20.2101–20.2110, 20.2201–20.2206, and 20.2301 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 20.2202(f) is issued under the Privacy Act of 1974, Pub. L. 93-579, 5 U.S.C. 552a; and §§ 20.102, 20.103(a), 20.408–20.407, 20.408(b), 20.409, 20.1102(a) (2) and (4), 20.1204(c), 20.1206 (g) and (h), 20.1904(c)(4), 20.1905 (c) and (d), 20.2005(c), 20.2006(b)–(d), 20.2101–20.2108, 20.2109(b)–(d), 20.2105–20.2108, and 20.2201–20.2207 are issued under sec. 161o, 68 Stat. 948, as amended (42 U.S.C. 2201(o)).

2. Appendix A is redesignated as appendix A to §§ 20.1–20.601 and the heading for appendix A is revised to read as follows:

Appendix A to §§20.1–20.601—Protection Factors for Respirators

3. Appendix B is redesignated as appendix B to §§ 20.1–20.601 and the heading for appendix B is revised to read as follows:

Appendix B §§ 20.1–20.601—Concentrations in Air and Water Above Natural Background

4. Appendix C is redesignated as appendix C to §§ 20.1–20.601 and the heading for appendix C is revised to read as follows:

Appendix C to §§ 20.1–20.601

5. Appendix D is redesignated as appendix D to §§ 20.1–20.601 and the heading for appendix D is revised to read as follows:

Appendix D to §§ 20.1–20.601—United States Nuclear Regulatory Commission Regional Offices

6. Part 20 is amended by adding a center heading and Subparts A through O to read as follows:

Regulations Mandatory as of January 1, 1993 With Earlier Compliance Encouraged

Subpart A—General Provisions

Sec.
20.1001 Purpose.
20.1002 Scope.
20.1003 Definitions.
20.1004 Units of radiation dose.
20.1005 Units of radioactivity.
20.1006 Interpretations.
20.1007 Communications.
20.1008 Implementation.
20.1009 Reporting, recording, and application requirements: OMB approval.

Subpart B—Radiation Protection Programs

20.1101 Radiation protection programs.

Subpart C—Occupational Dose Limits

20.1201 Occupational dose limits for adults.
20.1202 Compliance with requirements for summation of external and internal doses.
20.1203 Determination of external dose from airborne radioactive material.
20.1204 Determination of internal exposure.
20.1205 [Reserved]
20.1206 Planned special exposures.
20.1207 Occupational dose limits for minors.
20.1208 Dose to an embryo/fetus.

Subpart D—Radiation Dose Limits for Individual Members of the Public

20.1301 Dose limits for individual members of the public.
20.1302 Compliance with dose limits for individual members of the public.

Subpart E—[Reserved]

Subpart F—Surveys and Monitoring

20.1501 General.
20.1502 Conditions requiring individual monitoring of external and internal occupational dose.

Subpart G—Control of Exposure From External Sources in Restricted Areas

20.1601 Control of access to high radiation areas.
20.1602 Control of access to very high radiation areas.
20.1603 Control of access to very high radiation areas—irradiators.

Subpart H—Respiratory Protection and Controls to Restrict Internal Exposure in Restricted Areas

20.1701 Use of process or other engineering controls.
20.1702 Use of other controls.
20.1703 Use of individual respiratory protection equipment.
20.1704 Further restrictions on the use of respiratory protection equipment.

Subpart I—Storage and Control of Licensed Material

20.1801 Security of stored material.
20.1802 Control of material not in storage.

Subpart J—Precautionary Procedures

20.1901 Caution signs.
20.1902 Posting requirements.
20.1903 Exceptions to posting requirements.
20.1904 Labeling containers.
20.1905 Exemptions to labeling requirements.
20.1906 Procedures for receiving and opening packages.

Subpart K—Waste Disposal

20.2001 General requirements.
20.2002 Method for obtaining approval of proposed disposal procedures.
20.2003 Disposal by release into sanitary sewerage.
20.2004 Treatment or disposal by incineration.
20.2005 Disposal of specific wastes.
20.2006 Transfer for disposal and manifests.
20.2007 Compliance with environmental and health protection regulations.

Subpart L—Records

20.2101 General provisions.
20.2102 Records of radiation protection programs.
20.2103 Records of surveys.
20.2104 Determination of prior occupational dose.
20.2105 Records of planned special exposures.
20.2106 Records of individual monitoring results.
20.2107 Records of dose to individual members of the public.
20.2108 Records of waste disposal.
20.2109 Records of testing entry control devices for very high radiation areas.
20.2110 Form of records.

Subpart M—Reports

20.2201 Reports of theft or loss of licensed material.
20.2202 Notification of incidents.
20.2203 Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the limits.
20.2204 Reports of planned special exposures.
20.2205 [Reserved]
20.2206 Reports of individual monitoring.

Subpart N—Exemptions and Additional Requirements

20.2301 Applications for exemptions.
20.2302 Additional requirements.

Subpart O—Enforcement

20.2401 Violations.

Regulations Mandatory as of January 1, 1993 With Earlier Compliance Encouraged

Subpart A—General Provisions

§ 20.1001 Purpose.

(a) The regulations in this part establish standards for protection against ionizing radiation resulting from activities conducted under licenses issued by the Nuclear Regulatory Commission. These regulations are issued under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended.

(b) It is the purpose of the regulations in this part to control the receipt, possession, use, transfer, and disposal of licensed material by any licensee in such a manner that the total dose to an individual (including doses resulting from licensed and unlicensed radioactive material and from radiation sources other than background radiation) does not exceed the standards for protection against radiation prescribed in the regulations in this part. However, nothing in this part shall be construed as limiting actions that may be necessary to protect health and safety.

§ 20.1002 Scope.

The regulations in this part apply to persons licensed by the Commission to receive, possess, use, transfer, or dispose of byproduct, source, or special nuclear material or to operate a production or utilization facility under parts 30 through 35, 39, 40, 50, 60, 61, 70, or 72 of this chapter. The limits in this part do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of

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medical diagnosis or therapy, or to voluntary participation in medical research programs.

§ 20.1003 Definitions.

As used in this part:

Absorbed dose means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

Act means the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), as amended.

Activity is the rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

Adult means an individual 18 or more years of age.

Airborne radioactive material means radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

Airborne radioactivity area means a room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed material, exist in concentrations—

(1) In excess of the derived air concentrations (DACs) specified in appendix B, to §§ 20.1001–20.2401, or

(2) To such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.

ALARA (acronym for "as low as is reasonably achievable") means making every reasonable effort to maintain exposures to radiation as far below the dose limits in this part as is practical consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed materials in the public interest.

Annual limit on intake (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 5 rems (0.05 Sv) or a committed dose equivalent of 50 rems (0.5 Sv) to any individual organ or tissue. (ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table 1, Columns 1 and 2, of appendix B to §§ 20.1001–20.2401).

Background radiation means radiation from cosmic sources; naturally occurring radioactive materials, including radon (except as a decay product of source or special nuclear material) and global fallout as it exists in the environment from the testing of nuclear explosive devices. "Background radiation" does not include radiation from source, byproduct, or special nuclear materials regulated by the Commission.

Bioassay (radiobioassay) means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.

Byproduct material means—

(1) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(2) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition.

Class (or *lung class* or *inhalation class*) means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D (Days) of less than 10 days, for Class W (Weeks) from 10 to 100 days, and for Class Y (Years) of greater than 100 days.

Collective dose is the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

Commission means the Nuclear Regulatory Commission or its duly authorized representatives.

Committed dose equivalent ($H_{T,50}$) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

Committed effective dose equivalent ($H_{E,50}$) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to those organs or tissues ($H_{E,50} = \Sigma w_T H_{T,50}$).

Controlled area means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason.

Declared pregnant woman means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception.

Deep-dose equivalent (H_d), which applies to external whole-body exposure, is the dose equivalent at a tissue depth of 1 cm (1000 mg/cm^2).

Department means the Department of Energy established by the Department of Energy Organization Act (Pub. L. 95–91, 91 Stat. 565, 42 U.S.C. 7101 et seq.) to the extent that the Department, or its duly authorized representatives, exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers, and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104 (b), (c), and (d) of the Energy Reorganization Act of 1974 (Pub. L. 93–438, 88 Stat. 1233 at 1237, 42 U.S.C. 5814) and retransferred to the Secretary of Energy pursuant to section 301(a) of the Department of Energy Organization Act (Pub. L. 95–91, 91 Stat 565 at 577–578, 42 U.S.C. 7151).

Derived air concentration (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work (inhalation rate 1.2 cubic meters of air per hour), results in an intake of one ALI. DAC values are given in Table 1, Column 3, of appendix B to §§ 20.1001–20.2401.

Derived air concentration-hour (DAC-hour) is the product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 5 rems (0.05 Sv).

Dose or *radiation dose* is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent, as defined in other paragraphs of this section.

Dose equivalent (H_T) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

Dosimetry processor means an individual or an organization that processes and evaluates individual monitoring equipment in order to determine the radiation dose delivered to the equipment.($H_{E,50} = \Sigma w_T H_{T,50}$)

Effective dose equivalent (H_E) is the sum of the products of the dose equivalent to the organ or tissue (H_T) and the weighting factors (w_T) applicable to each of the body organs or tissues that are irradiated ($H_E = \Sigma w_T H_T$).

Embryo/fetus means the developing human organism from conception until the time of birth.

Entrance or access point means any location through which an individual could gain access to radiation areas or to radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

Exposure means being exposed to ionizing radiation or to radioactive material.

External dose means that portion of the dose equivalent received from radiation sources outside the body.

Extremity means hand, elbow, arm below the elbow, foot, knee, or leg below the knee.

Eye dose equivalent applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

Generally applicable environmental radiation standards means standards issued by the Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

Government agency means any executive department, commission, independent establishment, corporation wholly or partly owned by the United States of America, which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

Gray (See § 20.1004).

High radiation area means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 mSv) in 1 hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.

Individual means any human being.

Individual monitoring means—

(1) The assessment of dose equivalent by the use of devices designed to be worn by an individual;

(2) The assessment of committed effective dose equivalent by bioassay (see *Bioassay*) or by determination of the time-weighted air concentrations to which an individual has been exposed, i.e., DAC-hours; or

(3) The assessment of dose equivalent by the use of survey data.

Individual Monitoring Devices (individual monitoring equipment) means devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

Internal dose means that portion of the dose equivalent received from radioactive material taken into the body.

License means a license issued under the regulations in parts 30 through 35, 39, 40, 50, 60, 61, 70, or 72 of this chapter.

Licensed material means source material, special nuclear material, or byproduct material received, possessed, used, transferred or disposed of under a general or specific license issued by the Commission.

Licensee means the holder of a license.

Limits (dose limits) means the permissible upper bounds of radiation doses.

Lost or missing licensed material means licensed material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

Member of the public means an individual in a controlled or unrestricted area. However, an individual is not a member of the public during any period in which the individual receives an occupational dose.

Minor means an individual less than 18 years of age.

Monitoring (radiation monitoring, radiation protection monitoring) means the measurement of radiation levels, concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.

Nonstochastic effect means health effects, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect (also called a deterministic effect).

NRC means the Nuclear Regulatory Commission or its duly authorized representatives.

Occupational dose means the dose received by an individual in a restricted area or in the course of employment in which the individual's assigned duties involve exposure to radiation and to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the general public.

Person means—

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission or the Department of Energy (except that the Department shall be considered a person within the meaning of the regulations in 10 CFR chapter I to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission under section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), the Uranium Mill Tailings Radiation Control Act of 1978 (92 Stat. 3021), the Nuclear Waste Policy Act of 1982 (96 Stat. 2201), and section 3(b)(2) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (99 Stat. 1842)), any State or any political subdivision of or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and

(2) Any legal successor, representative, agent, or agency of the foregoing.

Planned special exposure means an infrequent exposure to radiation, separate from and in addition to the annual dose limits.

Public dose means the dose received by a member of the public from exposure to radiation and to radioactive material released by a licensee, or to another source of radiation either within a licensee's controlled area or in unrestricted areas. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, or from voluntary participation in medical research programs.

Quality Factor (Q) means the modifying factor (listed in tables

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1004(b).1 and 1004(b).2 of § 20.1004) that is used to derive dose equivalent from absorbed dose.

Quarter means a period of time equal to one-fourth of the year observed by the licensee (approximately 13 consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

Rad (See § 20.1004).

Radiation (ionizing radiation) means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. Radiation, as used in this part, does not include non-ionizing radiation, such as radio- or microwaves, or visible, infrared, or ultraviolet light.

Radiation area means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 mSv) in 1 hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.

Reference man means a hypothetical aggregation of human physical and physiological characteristics arrived at by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.

Rem (See § 20.1004).

Respiratory protective device means an apparatus, such as a respirator, used to reduce the individual's intake of airborne radioactive materials.

Restricted area means an area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

Sanitary sewerage means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

Shallow-dose equivalent (H_s), which applies to the external exposure of the skin or an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm²) averaged over an area of 1 square centimeter.

Sievert (See § 20.1004).

Site boundary means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

Source material means—

(1) Uranium or thorium or any combination of uranium and thorium in any physical or chemical form; or

(2) Ores that contain, by weight, one-twentieth of 1 percent (0.05 percent), or more, of uranium, thorium, or any combination of uranium and thorium. Source material does not include special nuclear material.

Special nuclear material means—

(1) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched by any of the foregoing but does not include source material.

Stochastic effects means health effects that occur randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects.

Survey means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of radioactive material or other sources of radiation. When appropriate, such an evaluation includes a physical survey of the location of radioactive material and measurements or calculations of levels of radiation, or concentrations or quantities of radioactive material present.

Total Effective Dose Equivalent (TEDE) means the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

Unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Uranium fuel cycle means the operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel to the extent that these activities directly support the production of electrical power for public use. Uranium fuel cycle does not include mining operations, operations at waste disposal sites, transportation of radioactive material in support of these operations, and the reuse of recovered non-uranium special nuclear and byproduct materials from the cycle.

Very high radiation area means an area, accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in 1 hour at 1 meter from a radiation source or from any surface that the radiation penetrates.

(Note: At very high doses received at high dose rates, units of absorbed dose (e.g., rads and grays) are appropriate, rather than units of dose equivalent (e.g., rems and sieverts)).

Week means 7 consecutive days starting on Sunday.

Weighting factor w_T, for an organ or tissue (T) is the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

ORGAN DOSE WEIGHTING FACTORS

Organ or tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	[1] 0.30
Whole Body	[2] 1.00

[1] 0.30 results from 0.06 for each of 5 "remainder" organs (excluding the skin and the lens of the eye) that receive the highest doses.

[2] For the purpose of weighting the external whole body dose (for adding it to the internal dose), a single weighting factor, $w_T = 1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

Whole body means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.

Working level (WL) is any combination of short-lived radon daughters (for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212) in 1 liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy.

Working level month (WLM) means an exposure to 1 working level for 170 hours (2,000 working hours per year/12 months per year = approximately 170 hours per month).

Year means the period of time beginning in January used to determine compliance with the provisions of this part. The licensee may change the starting date of the year used to determine compliance by the licensee provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

§ 20.1004 Units of radiation dose.

(a) Definitions. As used in this part, the units of radiation dose are:

Gray (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule/kilogram (100 rads).

Rad is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs/gram or 0.01 joule/kilogram (0.01 gray).

Rem is the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rems is equal to the absorbed dose in rads multiplied by the quality factor (1 rem = 0.01 sievert).

Sievert is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv = 100 rems).

(b) As used in this part, the quality factors for converting absorbed dose to dose equivalent are shown in table 1004(b).1.

TABLE 1004(b).1.—QUALITY FACTORS AND ABSORBED DOSE EQUIVALENCIES

Type of radiation	Quality factor (Q)	Absorbed dose equal to a unit dose equivalent [a]
X-, gamma, or beta radiation	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

[a] Absorbed dose in rad equal to 1 rem or the absorbed dose in gray equal to 1 sievert.

(c) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in rems per hour or sieverts per hour, as provided in paragraph (b) of this section, 1 rem (0.01 Sv) of neutron radiation of unknown energies may, for purposes of the regulations in this part, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee may use the fluence rate per unit dose equivalent or the appropriate Q value from table 1004(b).2 to convert a measured tissue dose in rads to dose equivalent in rems.

TABLE 1004(b).2.—MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS

	Neutron energy (MeV)	Quality factor [a] (Q)	Fluence per unit dose equivalent [b] (neutrons cm⁻² rem⁻¹)
(thermal)	2.5×10^{-8}	2	980×10^6
	1×10^{-7}	2	980×10^6
	1×10^{-6}	2	810×10^6
	1×10^{-5}	2	810×10^6
	1×10^{-4}	2	840×10^6
	1×10^{-3}	2	980×10^6
	1×10^{-2}	2.5	1010×10^6
	1×10^{-1}	7.5	170×10^6
	5×10^{-1}	11	39×10^6
	1	11	27×10^6
	2.5	9	29×10^6
	5	8	23×10^6
	7	7	24×10^6
	10	6.5	24×10^6
	14	7.5	17×10^6
	20	8	16×10^6
	40	7	14×10^6
	60	5.5	16×10^6
	1×10^2	4	20×10^6
	2×10^2	3.5	19×10^6
	3×10^2	3.5	16×10^6
	4×10^2	3.5	14×10^6

[a] Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-cm diameter cylinder tissue-equivalent phantom.

[b] Monoenergetic neutrons incident normally on a 30-cm diameter cylinder tissue-equivalent phantom.

§ 20.1005 Units of radioactivity.

For the purposes of this part, activity is expressed in the special unit of curies (Ci) or in the SI unit of becquerels (Bq), or their multiples, or disintegrations (transformations) per unit of time.

(a) One becquerel = 1 disintegration per second (s^{-1}). (b) One curie = 3.7×10^{10} disintegrations per second = 3.7×10^{10} becquerels = 2.22×10^{12} disintegrations per minute.

§ 20.1006 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 20.1007 Communications.

Unless otherwise specified, communications or reports concerning the regulations in this part should be addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A communication, report, or application may be delivered in person to the Office of the Executive Director for Operations, 11555 Rockville Pike, Rockville, MD 20852.

§ 20.1008 Implementation.

(a) Licensees shall implement the provisions of §§ 20.1001–20.2401 on or before January 1, 1993. If a licensee chooses to implement the provisions of §§ 20.1001–20.2401 prior to January 1, 1993, the licensee shall implement all provisions of these sections not otherwise exempted by paragraph (d) of this section, and shall provide written notification to either the Director of the Office of Nuclear Materials Safety and Safeguards or the Director of the Office of Nuclear Reactor Regulation, as appropriate, that the licensee is adopting early implementation of §§ 20.1001–20.2401 and associated appendices. Until January 1, 1993, or until the licensee notifies the Commission of early implementation, compliance will be required with §§ 20.1–20.601 of this part.

(b) After the time the licensee implements §§ 20.1001–20.2401, the applicable section of §§ 20.1001–20.2401 shall be used in lieu of any section in §§ 20.1–20.601 of this part that is cited in license conditions or technical specifications, except as specified in paragraphs (c), (d) and (e) of this section. If the requirements of this part are more restrictive than the existing license condition, then the licensee shall comply with this part unless exempted by paragraph (d) of this section.

(c) Any existing license condition or technical specification that is more restrictive than a requirement in §§ 20.1001–20.2401 remains in force until there is a technical specification change, license amendment, or license renewal.

(d) If a license condition or technical specification exempted a licensee from a provision of Part 20 in §§ 20.1–20.601, it exempts a licensee from the corresponding provision of §§ 20.1001–20.2401.

(e) If a license condition cites provisions in §§ 20.1–20.601 and there are no corresponding provisions in §§ 20.1001–20.2401, then the license condition remains in force until there is a technical specification change, license amendment, or license renewal that modifies or removes this condition.

§ 20.1009 Reporting, recording, and application requirements: OMB approval.

(a) The Nuclear Regulatory Commission will submit the information collection requirements contained in this part to the Office of Management and Budget for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The information collection requirements in this part will not become effective until OMB clearance is obtained and published in the Federal Register.

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(b) The information collection requirements contained in this part appear in §§ 20.1101, 20.1202, 20.1204, 20.1206, 20.1301, 20.1501, 20.1601, 20.1603, 20.1703, 20.1901, 20.1902, 20.1904, 20.1906, 20.2002, 20.2004, 20.2006, 20.2102, 20.2103, 20.2104, 20.2105, 20.2106, 20.2107, 20.2108, 20.2109, 20.2110, 20.2201, 20.2202, 20.2203, 20.2204, 20.2206, Appendix F to §§ 20.1001–20.2401, and NRC Form 4 and NRC Form 5.

Subpart B—Radiation Protection Programs

§ 20.1101 Radiation protection programs.

(a) Each licensee shall develop, document, and implement a radiation protection program commensurate with the scope and extent of licensed activities and sufficient to ensure compliance with the provisions of this part. (See § 20.2102 for recordkeeping requirements relating to these programs.)

(b) The licensee shall use, to the extent practicable, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable (ALARA).

(c) The licensee shall periodically (at least annually) review the radiation protection program content and implementation.

Subpart C—Occupational Dose Limits

§ 20.1201 Occupational dose limits for adults.

(a) The licensee shall control the occupational dose to individual adults, except for planned special exposures under § 20.1206, to the following dose limits.

(1) An annual limit, which is the more limiting of—

(i) The total effective dose equivalent being equal to 5 rems (0.05 Sv); or

(ii) The sum of the deep-dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 50 rems (0.5 Sv).

(2) The annual limits to the lens of the eye, to the skin, and to the extremities, which are:

(i) An eye dose equivalent of 15 rems (0.15 Sv), and

(ii) A shallow-dose equivalent of 50 rems (0.50 Sv) to the skin or to any extremity.

(b) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, must be subtracted from the limits for planned special exposures that the individual may receive during the current year (see § 20.1206(e)(1)) and during the individual's lifetime (see § 20.1206(e)(2)).

(c) The assigned deep-dose equivalent and shallow-dose equivalent must be for the part of the body receiving the highest exposure. The deep-dose equivalent, eye dose equivalent and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

(d) Derived air concentration (DAC) and annual limit on intake (ALI) values are presented in table 1 of appendix B to §§ 20.1001–20.2401 and may be used to determine the individual's dose (see § 20.2108) and to demonstrate compliance with the occupational dose limits.

(e) In addition to the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity (see footnote 3 of appendix B to §§ 20.1001–20.2401).

(f) The licensee shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person (see § 20.2104(e)).

§ 20.1202 Compliance with requirements for summation of external and internal doses.

(a) If the licensee is required to monitor under both §§ 20.1502(a) and (b), the licensee shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee is required to monitor only under § 20.1502(a) or only under § 20.1502(b), then summation is not required to demonstrate compliance with the dose limits. The licensee may demonstrate compliance with the requirements for summation of external and internal doses by meeting one of the conditions specified in paragraph (b) of this section and the conditions in paragraphs (c) and (d) of this section.

(Note: The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.)

(b) *Intake by inhalation.* If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep-dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

(1) The sum of the fractions of the inhalation ALI for each radionuclide, or

(2) The total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000, or

(3) The sum of the calculated committed effective dose equivalents to all significantly irradiated[1] organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit.

(c) *Intake by oral ingestion.* If the occupationally exposed individual also receives an intake of radionuclides by oral ingestion greater than 10 percent of the applicable oral ALI, the licensee shall account for this intake and include it in demonstrating compliance with the limits.

(d) *Intake through wounds or absorption through skin.* The licensee shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption.

Note: The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be further evaluated.

§ 20.1203 Determination of external dose from airborne radioactive material.

Licensees shall, when determining the dose from airborne radioactive material, include the contribution to the deep-dose equivalent, eye dose equivalent, and shallow-dose equivalent from external exposure to the radioactive cloud (see appendix B to §§ 20.1001–20.2401, footnotes 1 and 2).

Note: Airborne radioactivity measurements and DAC values should not be used as the primary means to assess the deep-dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep-dose equivalent to an individual should be based upon measurements using instruments or individual monitoring devices.

§ 20.1204 Determination of internal exposure.

(a) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee shall, when required under § 20.1502, take suitable and timely measurements of—

(1) Concentrations of radioactive materials in air in work areas; or

(2) Quantities of radionuclides in the body; or

[1] An organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T, and the committed dose equivalent, H_{50}, per unit intake is greater than 10 percent of the maximum weighted value of H_{50} (i.e., $w_T H_{50,T}$) per unit intake for any organ or tissue.

(3) Quantities of radionuclides excreted from the body; or

(4) Combinations of these measurements.

(b) Unless respiratory protective equipment is used, as provided in § 20.1703, or the assessment of intake is based on bioassays, the licensee shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(c) When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior or the material in an individual is known, the licensee may—

(1) Use that information to calculate the committed effective dose equivalent, and, if used, the licensee shall document that information in the individual's record; and

(2) Upon prior approval of the Commission, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material (e.g., aerosol size distribution or density); and

(3) Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide (see appendix B to §§ 20.1001–20.2401) to the committed effective dose equivalent.

(d) If the licensee chooses to assess intakes of Class Y material using the measurements given in § 20.1204(a)(2) or (3), the licensee may delay the recording and reporting of the assessments for periods up to 7 months, unless otherwise required by §§ 20.2202 or 20.2203, in order to permit the licensee to make additional measurements basic to the assessments.

(e) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours must be either—

(1) The sum of the ratios of the concentration to the appropriate DAC value (e.g., D, W, Y) from appendix B to §§ 20.1001–20.2401 for each radionuclide in the mixture; or

(2) The ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(f) If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture must be the most restrictive DAC of any radionuclide in the mixture.

(g) When a mixture of radionuclides in air exists, licensees may disregard certain radionuclides in the mixture if—

(1) The licensee uses the total activity of the mixture in demonstrating compliance with the dose limits in § 20.1201 and in complying with the monitoring requirements in § 20.1502(b), and

(2) The concentration of any radionuclide disregarded is less than 10 percent of its DAC, and

(3) The sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30 percent.

(h)(1) In order to calculate the committed effective dose equivalent, the licensee may assume that the inhalation of one ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 5 rems (0.05 Sv) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(2) When the ALI (and the associated DAC) is determined by the nonstochastic organ dose limit of 50 rems (0.5 Sv), the intake of radionuclides that would result in a committed effective dose equivalent of 5 rems (0.05 Sv) (the stochastic ALI) is listed in parentheses in table 1 of appendix B to §§ 20.1001–20.2401. In this case, the licensee may, as a simplifying assumption, use the stochastic ALIs to determine committed effective dose equivalent. However, if the licensee uses the stochastic ALIs, the licensee must also demonstrate that the limit in § 20.1201(a)(1)(i) is met.

§ 20.1205 [Reserved]

§ 20.1206 Planned special exposures.

A licensee may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in § 20.1201 provided that each of the following conditions is satisfied—

(a) The licensee authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the higher exposure are unavailable or impractical.

(b) The licensee (and employer if the employer is not the licensee) specifically authorizes the planned special exposure, in writing, before the exposure occurs.

(c) Before a planned special exposure, the licensee ensures that the individuals involved are—

(1) Informed of the purpose of the planned operation;

(2) Informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

(3) Instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(d) Prior to permitting an individual to participate in a planned special exposure, the licensee ascertains prior doses as required by § 20.2104(b) during the lifetime of the individual for each individual involved.

(e) Subject to § 20.1201(b), the licensee does not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed—

(1) The numerical values of any of the dose limits in § 20.1201(a) in any year; and

(2) Five times the annual dose limits in § 20.1201(a) during the individual's lifetime.

(f) The licensee maintains records of the conduct of a planned special exposure in accordance with § 20.2105 and submits a written report in accordance with § 20.2204.

(g) The licensee records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures is not to be considered in controlling future occupational dose of the individual under § 20.1201(a) but is to be included in evaluations required by § 20.1206 (d) and (e).

§ 20.1207 Occupational dose limits for minors.

The annual occupational dose limits for minors are 10 percent of the annual dose limits specified for adult workers in § 20.1201.

§ 20.1208 Dose to an embryo/fetus.

(a) The licensee shall ensure that the dose to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 0.5 rem (5 mSv). (For recordkeeping requirements, see § 20.2106.)

(b) The licensee shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in paragraph (a) of this section.

(c) The dose to an embryo/fetus shall be taken as the sum of—

(1) The deep-dose equivalent to the declared pregnant woman; and

(2) The dose to the embryo/fetus from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman.

(d) If the dose to the embryo/fetus is found to have exceeded 0.5 rem (5 mSv),

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or is within 0.05 rem (0.5 mSv) of this dose, by the time the woman declares the pregnancy to the licensee, the licensee shall be deemed to be in compliance with paragraph (a) of this section if the additional dose to the embryo/fetus does not exceed 0.05 rem (0.5 mSv) during the remainder of the pregnancy.

Subpart D—Radiation Dose Limits for Individual Members of the Public

§ 20.1301 Dose limits for individual members of the public.

(a) Each licensee shall conduct operations so that—

(1) The total effective dose equivalent to individual members of the public from the licensed operation does not exceed 0.1 rem (1 mSv) in a year, exclusive of the dose contribution from the licensee's disposal of radioactive material into sanitary sewerage in accordance with § 20.2003, and

(2) The dose in any unrestricted area from external sources does not exceed 0.002 rem (0.02 mSv) in any one hour.

(b) If the licensee permits members of the public to have access to controlled areas, the limits for members of the public continue to apply to those individuals.

(c) A licensee or license applicant may apply for prior NRC authorization to operate up to an annual dose limit for an individual member of the public of 0.5 rem (5 mSv). The licensee or license applicant shall include the following information in this application:

(1) Demonstration of the need for and the expected duration of operations in excess of the limit in paragraph (a) of this section;

(2) The licensee's program to assess and control dose within the 0.5 rem (5 mSv) annual limit; and

(3) The procedures to be followed to maintain the dose as low as is reasonably achievable.

(d) In addition to the requirements of this part, a licensee subject to the provisions of EPA's generally applicable environmental radiation standards in 40 CFR Part 190 shall comply with those standards.

(e) The Commission may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee may release in effluents in order to restrict the collective dose.

§ 20.1302 Compliance with dose limits for individual members of the public.

(a) The licensee shall make or cause to be made, as appropriate, surveys of radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in § 20.1301.

(b) A licensee shall show compliance with the annual dose limit in § 20.1301 by—

(1) Demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed operation does not exceed the annual dose limit; or

(2) Demonstrating that—

(i) The annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in table 2 of appendix B to §§ 20.1001–20.2401; and

(ii) If an individual were continually present in an unrestricted area, the dose from external sources would not exceed 0.002 rem (0.02 mSv) in an hour and 0.05 rem (0.5 mSv) in a year.

(c) Upon approval from the Commission, the licensee may adjust the effluent concentration values in appendix B to §§ 20.1001–20.2401, table 2, for members of the public, to take into account the actual physical and chemical characteristics of the effluents (e.g., aerosol size distribution, solubility, density, radioactive decay equilibrium, chemical form).

Subpart E—[Reserved]

Subpart F—Surveys and Monitoring

§ 20.1501 General.

(a) Each licensee shall make or cause to be made, surveys that—

(1) May be necessary for the licensee to comply with the regulations in this part; and

(2) Are reasonable under the circumstances to evaluate—

(i) The extent of radiation levels; and

(ii) Concentrations or quantities of radioactive material; and

(iii) The potential radiolcgical hazards that could be present.

(b) The licensee shall ensure that instruments and equipment used for quantitative radiation measurements (e.g., dose rate and effluent monitoring) are calibrated periodically for the radiation measured.

(c) All personnel dosimeters (except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to the extremities) that require processing to determine the radiation dose and that are used by licensees to comply with § 20.1201, with other applicable provisions of this chapter, or with conditions specified in a license must be processed and evaluated by a dosimetry processor—

(1) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(2) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

§ 20.1502 Conditions requiring individual monitoring of external and internal occupational dose.

Each licensee shall monitor exposures to radiation and radioactive material at levels sufficient to demonstrate compliance with the occupational dose limits of this part. As a minimum—

(a) Each licensee shall monitor occupational exposure to radiation and shall supply and require the use of individual monitoring devices by—

(1) Adults likely to receive, in 1 year from sources external to the body, a dose in excess of 10 percent of the limits in § 20.1201(a),

(2) Minors and declared pregnant women likely to receive, in 1 year from sources external to the body, a dose in excess of 10 percent of any of the applicable limits in § 20.1207 or § 20.1208, and

(3) Individuals entering a high or very high radiation area.

(b) Each licensee shall monitor (see § 20.1204) the occupational intake of radioactive material by and assess the committed effective dose equivalent to—

(1) Adults likely to receive, in 1 year, an intake in excess of 10 percent of the applicable ALI(s) in table 1, Columns 1 and 2, of appendix B to §§ 20.1001–20.2401; and

(2) Minors and declared pregnant women likely to receive, in 1 year, a committed effective dose equivalent in excess of 0.05 rem (0.5 mSv).

Subpart G—Control of Exposure From External Sources in Restricted Areas

§ 20.1601 Control of access to high radiation areas.

(a) The licensee shall ensure that each entrance or access point to a high radiation area has one or more of the following features—

(1) A control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep-dose equivalent of 0.1 rem (1 mSv) in 1 hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates;

(2) A control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

(3) Entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entry.

(b) In place of the controls required by paragraph (a) of this section for a high radiation area, the licensee may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

(c) A licensee may apply to the Commission for approval of alternative methods for controlling access to high radiation areas.

(d) The licensee shall establish the controls required by paragraphs (a) and (c) of this section in a way that does not prevent individuals from leaving a high radiation area.

(e) Control is not required for each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the regulations of the Department of Transportation provided that—

(1) The packages do not remain in the area longer than 3 days; and

(2) The dose rate at 1 meter from the external surface of any package does not exceed 0.01 rem (0.1 mSv) per hour.

(f) Control of entrance or access to rooms or other areas in hospitals is not required solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who will take the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the limits established in this part and to operate within the ALARA provisions of the licensee's radiation protection program.

§ 20.1602 Control of access to very high radiation areas.

In addition to the requirements in § 20.1601, the licensee shall institute additional measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at 500 rads (5 grays) or more in 1 hour at 1 meter from a radiation source or any surface through which the radiation penetrates.

§ 20.1603 Control of access to very high radiation areas—irradiators.

(a) Each area in which there may exist radiation levels in excess of 500 rads (5 grays) in 1 hour at 1 meter from a sealed radioactive source [2] that is used to irradiate materials must meet the following requirements.

(1) Each entrance or access point must be equipped with entry control devices which—

(i) Function automatically to prevent any individual from inadvertently entering the area when very high radiation levels exist;

(ii) Permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the sealed source, to be reduced below that at which it would be possible for an individual to receive a deep-dose equivalent in excess of 0.1 rem (1 mSv) in 1 hour; and

(iii) Prevent operation of the source if the source would produce radiation levels in the area that could result in a deep-dose equivalent to an individual in excess of 0.1 rem (1 mSv) in 1 hour.

(2) Additional control devices must be provided so that, upon failure of the entry control devices to function as required by paragraph (a)(1) of this section—

(i) The radiation level within the area, from the sealed source, is reduced below that at which it would be possible for an individual to receive a deep-dose equivalent in excess of 0.1 rem (1 mSv) in 1 hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard and at least one other authorized individual, who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices.

(3) The licensee shall provide control devices so that, upon failure or removal of physical radiation barriers other than the source's shielded storage container—

(i) The radiation level from the source is reduced below that at which it would be possible for an individual to receive a deep-dose equivalent in excess of 0.1 rem (1 mSv) in 1 hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make potentially affected individuals aware of the hazard and the licensee or at least one other individual, who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier.

(4) When the shield for the stored source is a liquid, the licensee shall provide means to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding.

(5) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of paragraphs (a) (3) and (4) of this section.

(6) Each area must be equipped with devices that will automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source can be put into operation and in sufficient time for any individual in the area to operate a clearly identified control device, which must be installed in the area and which can prevent the source from being put into operation.

(7) Each area must be controlled by use of such administrative procedures and such devices as are necessary to ensure that the area is cleared of personnel prior to each use of the source.

(8) Each area must be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after any use of the source, the radiation level from the source in the area is below that at which it would be possible for an individual to receive a deep-dose equivalent in excess of 0.1 rem (1 mSv) in 1 hour.

(9) The entry control devices required in paragraph (a)(1) of this section must have been tested for proper functioning (see § 20.2109 for recordkeeping requirements).

(i) Testing must be conducted prior to initial operation with the source of radiation on any day (unless operations were continued uninterrupted from the previous day); and

(ii) Testing must be conducted prior to resumption of operation of the source of radiation after any unintended interruption; and

(iii) The licensee shall submit and adhere to a schedule for periodic tests of the entry control and warning systems.

[2] This section applies to radiation from byproduct, source, or special nuclear materials that are used in sealed sources in non-self-shielded irradiators. This section does not apply to radioactive sources that are used in teletherapy, in radiography, or in completely self-shielded irradiators in which the source is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create high levels of radiation in an area that is accessible to any individual. This section also does not apply to sources from which the radiation is incidental to some other use or to nuclear reactor-generated radiation.

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(10) The licensee may not conduct operations, other than those necessary to place the source in safe condition or to effect repairs on controls, unless control devices are functioning properly.

(11) Entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by individuals, must be controlled by such devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by any individual through these portals. Exit portals for processed materials must be equipped to detect and signal the presence of any loose radiation sources that are carried toward such an exit and to automatically prevent loose radiation sources from being carried out of the area.

(b) Persons holding licenses or applicants for licenses for radiation sources that are within the purview of paragraph (a) of this section and that will be used in a variety of positions or in locations, such as open fields or forests, that make it impracticable to comply with certain requirements of paragraph (a) of this section, such as those for the automatic control of radiation levels, may apply to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, for approval of the use of alternative safety measures. Any alternative safety measures must provide a degree of personnel protection at least eqivalent to those specified in paragraph (a) of this section. At least one of the alternative measures must include an entry-preventing interlock control based on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where such radiation sources are used.

(c) The entry control devices required by paragraphs (a) and (b) of this section must be established in such a way that no individual will be prevented from leaving the area.

Subpart H—Respiratory Protection and Controls to Restrict Internal Exposure in Restricted Areas

§ 20.1701 Use of process or other engineering controls.

The licensee shall use, to the extent practicable, process or other engineering controls (e.g., containment or ventilation) to control the concentrations of radioactive material in air.

§ 20.1702 Use of other controls.

When it is not practicable to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, the licensee shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

(a) Control of access;

(b) Limitation of exposure times;

(c) Use of respiratory protection equipment; or

(d) Other controls.

§ 20.1703 Use of individual respiratory protection equipment.

(a) If the licensee uses respiratory protection equipment to limit intakes pursuant to § 20.1702—

(1) The licensee shall use only respiratory protection equipment that is tested and certified or had certification extended by the National Institute for Occupational Safety and Health/Mine Safety and Health Administration (NIOSH/MSHA).

(2) If the licensee wishes to use equipment that has not been tested or certified by NIOSH/MSHA, has not had certification extended by NIOSH/MSHA, or for which there is no schedule for testing or certification, the licensee shall submit an application for authorized use of that equipment, including a demonstration by testing, or a demonstration on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

(3) The licensee shall implement and maintain a respiratory protection program that includes—

(i) Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate exposures;

(ii) Surveys and bioassays, as appropriate, to evaluate actual intakes;

(iii) Testing of respirators for operability immediately prior to each use;

(iv) Written procedures regarding selection, fitting, issuance, maintenance, and testing of respirators, including testing for operability immediately prior to each use; supervision and training of personnel; monitoring, including air sampling and bioassays; and recordkeeping; and

(v) Determination by a physician prior to initial fitting of respirators, and at least every 12 months thereafter, that the individual user is physically able to use the respiratory protection equipment.

(4) The licensee shall issue a written policy statement on respirator usage covering—

(i) The use of process or other engineering controls, instead of respirators;

(ii) The routine, nonroutine, and emergency use of respirators; and

(iii) The periods of respirator use and relief from respirator use.

(5) The licensee shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(6) The licensee shall use equipment within limitations for type and mode of use and shall provide proper visual, communication, and other special capabilities (such as adequate skin protection) when needed.

(b) In estimating exposure of individuals to airborne radioactive materials, the licensee may make allowance for respiratory protection equipment used to limit intakes pursuant to § 20.1702, provided that the following conditions, in addition to those in § 20.1703(a), are satisfied:

(1) The licensee selects respiratory protection equipment that provides a protection factor (see appendix A to §§ 20.1001–20.2401) greater than the multiple by which peak concentrations of airborne radioactive materials in the working area as expected to exceed the values specified in appendix B to §§ 20.1001–20.2401, table 1, column 3. If the selection of a respiratory protection device with a protection factor greater than the peak concentration is inconsistent with the goal specified in § 20.1702 of keeping the total effective dose equivalent ALARA, the licensee may select respiratory protection equipment with a lower protection factor only if such a selection would result in keeping the total effective dose equivalent ALARA. The concentration of radioactive material in the air that is inhaled when respirators are worn may be initially estimated by dividing the average concentration in air, during each period of uninterrupted use, by the protection factor. If the exposure is later found to be greater than estimated, the corrected value must be used; if the exposure is later found to be less than estimated, the corrected value may be used.

(2) The licensee shall obtain authorization from the Commission before assigning respiratory protection factors in excess of those specified in appendix A to §§ 20.1001–20.2401. The Commission may authorize a licensee to use higher protection factors on receipt of an application that—

(i) Describes the situation for which a need exists for higher protection factors, and

(ii) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

(c) The licensee shall use as emergency devices only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by NOISH/MSHA.

(d) The licensee shall notify, in writing, the Director of the appropriate NRC Regional Office listed in appendix D to §§ 20.1001–20.2401 at least 30 days before the date that respiratory protection equipment is first used under the provisions of either § 20.1703 (a) or (b).

§ 20.1704 Further restrictions on the use of respiratory protection equipment.

The Commission may impose restrictions in addition to those in §§ 20.1702, 20.1703, and appendix A to §§ 20.1001–20.2401 to—

(a) Ensure that the respiratory protection program of the licensee is adequate to limit exposures of individuals to airborne radioactive materials; and

(b) Limit the extent to which a licensee may use respiratory protection equipment instead of process or other engineering controls.

Subpart I—Storage and Control of Licensed Material

§ 20.1801 Security of stored material.

The licensee shall secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas.

§ 20.1802 Control of material not in storage.

The licensee shall control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

Subpart J—Precautionary Procedures

§ 20.1901 Caution signs.

(a) *Standard radiation symbol.* Unless otherwise authorized by the Commission, the symbol prescribed by this part shall use the colors magenta, or purple, or black on yellow background. The symbol prescribed by this part is the three-bladed design:

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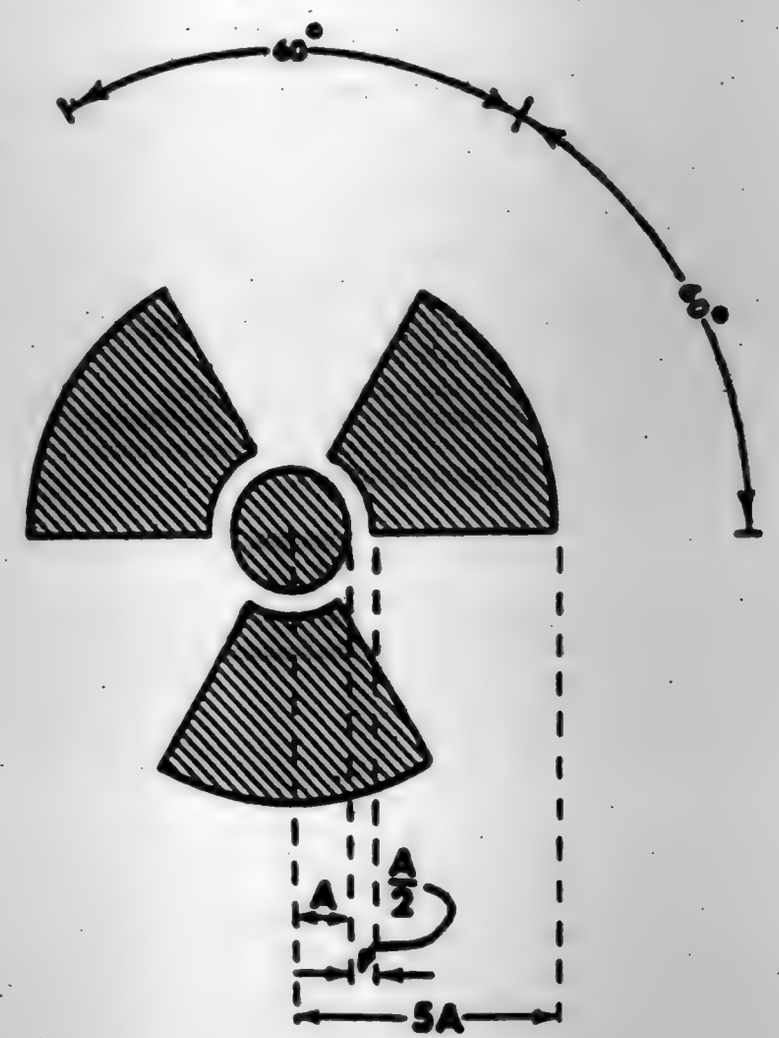

RADIATION SYMBOL

(1) Cross-hatched area is to be magenta, or purple, or black, and

(2) The background is to be yellow.

(b) *Exception to color requirements for standard radiation symbol.* Notwithstanding the requirements of paragraph (a) of this section, licensees are authorized to label sources, source holders, or device components containing sources of licensed materials that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(c) *Additional information on signs and labels.* In addition to the contents of signs and labels prescribed in this part, the licensee may provide, on or near the required signs and labels, additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.

§ 20.1902 Posting requirements.

(a) *Posting of radiation areas.* The licensee shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(b) *Posting of high radiation areas.* The licensee shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(c) *Posting of very high radiation areas.* The licensee shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "GRAVE DANGER, VERY HIGH RADIATION AREA."

(d) *Posting of airborne radioactivity areas.* The licensee shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA."

(e) *Posting of areas or rooms in which licensed material is used or stored.* The licensee shall post each area or room in which there is used or stored an amount of licensed material exceeding 10 times the quantity of such material specified in appendix C to §§ 20.1001–20.2401 with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)."

§ 20.1903 Exceptions to posting requirements.

(a) A licensee is not required to post caution signs in areas or rooms containing radioactive materials for

periods of less than 8 hours, if each of the following conditions is met:

(1) The materials are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to radiation or radioactive materials in excess of the limits established in this part; and

(2) The area or room is subject to the licensee's control.

(b) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to § 20.1902 provided that—

(1) The patient is being treated with sealed sources or has been treated with unsealed radioactive material in quantities less than 30 millicuries (110 MBq, or the measured dose rate at 1 meter from the patient is less than 0.005 rem (0.05 mSv) per hour; and

(2) There are personnel in attendance who will take the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the limits established in this part and to operate within the ALARA provisions of the licensee's radiation protection program.

(c) A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 centimeters from the surface of the source container or housing does not exceed 0.005 rem (0.05 mSv) per hour.

§ 20.1904 Labeling containers.

(a) The licensee shall ensure that each container of licensed material bears a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label must also provide sufficient information (such as the radionuclide(s) present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment) to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(b) Each licensee shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

§ 20.1905 Exemptions to labeling requirements.

A licensee is not required to label—

(a) Containers holding licensed material in quantities less than the quantities listed in appendix C to §§ 20.1001–20.2401; or

(b) Containers holding licensed material in concentrations less than those specified in table 3 of appendix B to §§ 20.1001–20.2401; or

(c) Containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by this part; or

(d) Containers when they are in transport and packaged and labeled in accordance with the regulations of the Department of Transportation,[8] or

(e) Containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record (examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells). The record must be retained as long as the containers are in use for the purpose indicated on the record; or

(f) Installed manufacturing or process equipment, such as reactor components, piping, and tanks.

§ 20.1906 Procedures for receiving and opening packages.

(a) Each licensee who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as defined in § 71.4 and appendix A to part 71 of this chapter, shall make arrangements to receive—

(1) The package when the carrier offers it for delivery; or

(2) Notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

(b) Each licensee shall monitor the external surfaces of a package known to contain radioactive material for radioactive contamination and radiation levels if the package—

(1) Is labeled as containing radioactive material; or

(2) Has evidence of potential contamination, such as packages that are crushed, wet, or damaged.

(c) The licensee shall perform the monitoring required by paragraph (b) of this section as soon as practicable after receipt of the package, but not later than 3 hours after the package is received at the licensee's facility if it is received during the licensee's normal working hours, or not later than 3 hours from the beginning of the next working day if it is received after working hours.

(d) The licensee shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the Administrator of the appropriate NRC Regional Office listed in appendix D to §§ 20.1001–20.2401 when—

(1) Removable radioactive surface contamination exceeds the limits of § 71.87(i) of this chapter; or

(2) External radiation levels exceed the limits of § 71.47 of this chapter.

(e) Each licensee shall—

(1) Establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(2) Ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(f) Licensees transferring special form sources in licensee-owned or licensee-operated vehicles to and from a work site are exempt from the contamination monitoring requirements of paragraph (b) of this section, but are not exempt from the survey requirement in paragraph (b) of this section for measuring radiation levels that is required to ensure that the source is still properly lodged in its shield.

[8] Labeling of packages containing radioactive materials is required by the Department of Transportation (DOT) if the amount and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by DOT regulations 49 CFR 173.403 (m) and (w) and 173.421–424.

Subpart K—Waste Disposal

§ 20.2001 General requirements.

(a) A licensee shall dispose of licensed material only—

(1) By transfer to an authorized recipient as provided in § 20.2006 or in the regulations in parts 30, 40, 60, 61, 70, or 72 of this chapter; or

(2) By decay in storage; or

(3) By release in effluents within the limits in § 20.1301; or

(4) As authorized under §§ 20.2002, 20.2003, 20.2004, or § 20.2005.

(b) A person must be specifically licensed to receive waste containing licensed material from other persons for:

(1) Treatment prior to disposal; or

(2) Treatment or disposal by incineration; or

(3) Decay in storage; or

(4) Disposal at a land disposal facility licensed under part 61 of this chapter; or

(5) Disposal at a geologic repository under part 60 of this chapter.

§ 20.2002 Method for obtaining approval of proposed disposal procedures.

A licensee or applicant for a license may apply to the Commission for approval of proposed procedures, not

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otherwise authorized in the regulations in this chapter, to dispose of licensed material generated in the licensee's activities. Each application shall include:

(a) A description of the waste containing licensed material to be disposed of, including the physical and chemical properties important to risk evaluation, and the proposed manner and conditions of waste disposal; and

(b) An analysis and evaluation of pertinent information on the nature of the environment; and

(c) The nature and location of other potentially affected licensed and unlicensed facilities; and

(d) Analyses and procedures to ensure that doses are maintained ALARA and within the dose limits in this part.

§ 20.2003 Disposal by release into sanitary sewerage.

(a) A licensee may discharge licensed material into sanitary sewerage if each of the following conditions is satisfied:

(1) The material is readily soluble (or is readily dispersible biological material) in water; and

(2) The quantity of licensed or other radioactive material that the licensee releases into the sewer in 1 month divided by the average monthly volume of water released into the sewer by the licensee does not exceed the concentration listed in table 3 of appendix B to §§ 20.1001–20.2401; and

(3) If more than one radionuclide is released, the following conditions must also be satisfied:

(i) The licensee shall determine the fraction of the limit in table 3 of appendix B to §§ 20.1001–20.2401 represented by discharges into sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee into the sewer by the concentration of that radionuclide listed in table 3 of appendix B to §§ 20.1001–20.2401; and

(ii) The sum of the fractions for each radionuclide required by paragraph (a)(3)(i) of this section does not exceed unity; and

(4) The total quantity of licensed and other radioactive material that the licensee releases into the sanitary sewerage system in a year does not exceed 5 curies (185 GBq) of hydrogen-3, 1 curie (37 GBq) of carbon-14, and 1 curie (37 GBq) of all other radioactive materials combined.

(b) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in paragraph (a) of this section.

§ 20.2004 Treatment or disposal by incineration.

A licensee may treat or dispose of licensed material by incineration only in the amounts and forms specified in § 20.2005 or as specifically approved by the Commission pursuant to § 20.2002.

§ 20.2005 Disposal of specific wastes.

(a) A licensee may dispose of the following licensed material as if it were not radioactive:

(1) 0.05 microcurie (1.85 kBq), or less, of hydrogen-3 or carbon-14 per gram of medium used for liquid scintillation counting; and

(2) 0.05 microcurie (1.85 kBq), or less, of hydrogen-3 or carbon-14 per gram of animal tissue, averaged over the weight of the entire animal.

(b) A licensee may not dispose of tissue under paragraph (a)(2) of this section in a manner that would permit its use either as food for humans or as animal feed.

(c) The licensee shall maintain records in accordance with § 20.2108.

§ 20.2006 Transfer for disposal and manifests.

(a) The requirements of this section and appendix F to §§ 20.1001–20.2401 are designed to control transfers of low-level radioactive waste intended for disposal at a land disposal facility (as defined in part 61 of this chapter), establish a manifest tracking system, and supplement existing requirements concerning transfers and recordkeeping for those wastes.

(b) Each shipment of radioactive waste intended for disposal at a licensed land disposal facility must be accompanied by a shipment manifest as specified in section I of appendix F to §§ 20.1001–20.2401.

(c) Each shipment manifest must include a certification by the waste generator as specified in section II of appendix F to §§ 20.1001–20.2401.

(d) Each person involved in the transfer for disposal and disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in section III of appendix F to §§ 20.1001–20.2401.

§ 20.2007 Compliance with environmental and health protection regulations.

Nothing in this subpart relieves the licensee from complying with other applicable Federal, State, and local regulations governing any other toxic or hazardous properties of materials that may be disposed of under this subpart.

Subpart L—Records

§ 20.2101 General provisions.

(a) Each licensee shall use the units: curie, rad, rem, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this part.

(b) The licensee shall make a clear distinction among the quantities entered on the records required by this part (e.g., total effective dose equivalent, shallow-dose equivalent, eye dose equivalent, deep-dose equivalent, committed effective dose equivalent).

§ 20.2102 Records of radiation protection programs.

(a) Each licensee shall maintain records of the radiation protection program, including:

(1) The provisions of the program; and

(2) Audits and other reviews of program content and implementation.

(b) The licensee shall retain the records required by paragraph (a)(1) of this section until the Commission terminates each pertinent license requiring the record. The licensee shall retain the records required by paragraph (a)(2) of this section for 3 years after the record is made.

§ 20.2103 Records of surveys.

(a) Each licensee shall maintain records showing the results of surveys and calibrations required by §§ 20.1501 and 20.1906(b). The licensee shall retain these records for 3 years after the record is made.

(b) The licensee shall retain each of the following records until the Commission terminates each pertinent license requiring the record:

(1) Records of the results of surveys to determine the dose from external sources and used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents; and

(2) Records of the results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose; and

(3) Records showing the results of air sampling, surveys, and bioassays required pursuant to § 20.1703(a)(3) (i) and (ii); and

(4) Records of the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

§ 20.2104 Determination of prior occupational dose.

(a) For each individual who may enter the licensee's restricted or controlled area and is likely to receive, in a year, an occupational dose requiring monitoring pursuant to § 20.1502, the licensee shall—

(1) Determine the occupational radiation dose received during the current year; and

(2) Attempt to obtain the records of lifetime cumulative occupational radiation dose.

(b) Prior to permitting an individual to participate in a planned special exposure, the licensee shall determine—

(1) The internal and external doses from all previous planned special exposures; and

(2) All doses in excess of the limits (including doses received during accidents and emergencies) received during the lifetime of the individual.

(c) In complying with the requirements of paragraph (a) of this section, a licensee may—

(1) Accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual may have received during the current year;

(2) Accept, as the record of lifetime cumulative radiation dose, an up-to-date NRC Form 4, or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer (if the individual is not employed by the licensee); and

(3) Obtain reports of the individual's dose equivalent(s) from the most recent employer for work involving radiation exposure, or the individual's current employer (if the individual is not employed by the licensee) by telephone, telegram, electronic media, or letter. The licensee shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(d) The licensee shall record the exposure history, as required by paragraph (a) of this section, on NRC Form 4, or other clear and legible record, of all the information required on that form.[4] The form or record must show each period in which the individual received occupational exposure to radiation or radioactive material and must be signed by the individual who received the exposure. For each period for which the licensee obtains reports, the licensee shall use the dose shown in the report in preparing NRC Form 4. For any period in which the licensee does not obtain a report, the licensee shall place a notation on NRC Form 4 indicating the periods of time for which data are not available.

(e) If the licensee is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee shall assume—

(1) In establishing administrative controls under § 20.1201(f) for the current year, that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 mSv) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and

(2) That the individual is not available for planned special exposures.

(f) The licensee shall retain the records on NRC Form 4 or equivalent until the Commission terminates each pertinent license requiring this record. The licensee shall retain records used in preparing NRC Form 4 for 3 years after the record is made.

§ 20.2105 Records of planned special exposures.

(a) For each use of the provisions of § 20.1205 for planned special exposures, the licensee shall maintain records that describe—

(1) The exceptional circumstances requiring the use of a planned special exposure; and

(2) The name of the management official who authorized the planned special exposure and a copy of the signed authorization; and

(3) What actions were necessary; and

(4) Why the actions were necessary; and

(5) How doses were maintained ALARA; and

(6) What individual and collective doses were expected to result, and the doses actually received in the planned special exposure.

(b) The licensee shall retain the records until the Commission terminates each pertinent license requiring these records.

§ 20.2106 Records of individual monitoring results.

(a) *Recordkeeping requirement.* Each licensee shall maintain records of doses received by all individuals for whom monitoring was required pursuant to § 20.1502, and records of doses received during planned special exposures, accidents, and emergency conditions. These records [5] must include, when applicable—

(1) The deep-dose equivalent to the whole body, eye dose equivalent, shallow-dose equivalent to the skin, and shallow-dose equivalent to the extremities; and

(2) The estimated intake or body burden of radionuclides (see § 20.1202); and

(3) The committed effective dose equivalent assigned to the intake or body burden of radionuclides; and

(4) The specific information used to calculate the committed effective dose equivalent pursuant to § 20.1204(c); and

(5) The total effective dose equivalent when required by § 20.1202; and

(6) The total of the deep-dose equivalent and the committed dose to the organ receiving the highest total dose.

(b) *Recordkeeping frequency.* The licensee shall make entries of the records specified in paragraph (a) of this section at least annually.

(c) *Recordkeeping format.* The licensee shall maintain the records specified in paragraph (a) of this section on NRC Form 5, in accordance with the instructions for NRC Form 5, or in clear and legible records containing all the information required by NRC Form 5.

(d) *Privacy protection.* The records required under this section should be protected from public disclosure because of their personal privacy nature. These records are protected by most State privacy laws and, when transferred to the NRC, are protected by the Privacy Act of 1974, Public Law 93–579, 5 U.S.C. 552a, and the Commission's regulations in 10 CFR part 9.

(e) the licensee shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy shall also be kept on file, but may be maintained separately from the dose records.

(f) The licensee shall retain each required form or record until the Commission terminates each pertinent license requiring the record.

§ 20.2107 Records of dose to individual members of the public.

(a) Each licensee shall maintain records sufficient to demonstrate compliance with the dose limit for

[4] Licensees are not required to recevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed under §§ 20.1–20.601. Further, occupational exposure histories obtained and recorded on NRC Form 4 before January 1, 1991, would not have included effective dose equivalent, but may be used in the absence of specific information on the intake of radionuclides by the individual.

[5] Assessments of dose equivalent and records made using units in effect before the licensee's adoption of this part need not be changed.

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individual members of the public (see § 20.1301).

(b) The licensee shall retain the records required by paragraph (a) of this section until the Commission terminates each pertinent license requiring the record.

§ 20.2108 Records of waste disposal.

(a) Each licensee shall maintain records of the disposal of licensed materials made under §§ 20.2002, 20.2003, 20.2004, 20.2005, 10 CFR part 61 and disposal by burial in soil, including burials authorized before January 28, 1981.[6]

(b) The licensee shall retain the records required by paragraph (a) of this section until the Commission terminates each pertinent license requiring the record.

§ 20.2109 Records of testing entry control devices for very high radiation areas.

(a) Each licensee shall maintain records of tests made under § 20.1601(a)(9) on entry control devices for very high radiation areas. These records must include the date, time, and results of each such test of function.

(b) The licensee shall retain the records required by paragraph (a) of this section for 3 years after the record is made.

§ 20.2110 Form of records.

Each record required by this part must be legible throughout the specified retention period. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, must include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

Subpart M—Reports

§ 20.2201 Reports of theft or loss of licensed material.

(a) Telephone reports. (1) Each licensee shall report by telephone as follows:

(i) Immediately after its occurrence becomes known to the licensee, any lost, stolen, or missing licensed material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in appendix C to §§ 20.1001–20.2401 under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas; or

(ii) Within 30 days after the occurrence of any lost, stolen, or missing licensed material becomes known to the licensee, all licensed material in a quantity greater than 10 times the quantity specified in appendix C to §§ 20.1001–20.2401 that is still missing at this time.

(2) Reports must be made as follows:

(i) Licensees having an installed Emergency Notification System shall make the reports to the NRC Operations Center in accordance with § 50.72 of this chapter, and

(ii) All other licensees shall make reports to the NRC Operations Center.

(b) *Written reports.* (1) Each licensee required to make a report under paragraph (a) of this section shall, within 30 days after making the telephone report, make a written report setting forth the following information:

(i) A description of the licensed material involved, including kind, quantity, and chemical and physical form; and

(ii) A description of the circumstances under which the loss or theft occurred; and

(iii) A statement of disposition, or probable disposition, of the licensed material involved; and

(iv) Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas; and

(v) Actions that have been taken, or will be taken, to recover the material; and

(vi) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

(2) Reports must be made as follows:

(i) For holders of an operating license for a nuclear power plant, the events included in paragraph (b) of this section must be reported in accordance with the procedures described in § 50.73(b), (c), (d), (e), and (g) of this chapter and must include the information required in paragraph (b)(1) of this section, and

(ii) All other licensees shall make reports to the Administrator of the appropriate NRC Regional Office listed in appendix D to §§ 20.1001–20.2401.

(c) A duplicate report is not required under paragraph (b) of this section if the licensee is also required to submit a report pursuant to §§ 30.55(c), 40.64(c), 50.72, 50.73, 70.52, 73.27(b), 73.67(e)(3)(vi), 73.67(g)(3)(iii), 73.71, or § 150.19(c) of this chapter.

(d) Subsequent to filing the written report, the licensee shall also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

(e) The licensee shall prepare any report filed with the Commission pursuant to this section so that names of individuals who may have received exposure to radiation are stated in a separate and detachable part of the report.

§ 20.2202 Notification of incidents.

(a) Immediate notification. Notwithstanding any other requirements for notification, each licensee shall immediately report any event involving byproduct, source, or special nuclear material possessed by the licensee that may have caused or threatens to cause any of the following conditions—

(1) An individual to receive—

(i) A total effective dose equivalent of 25 rems (0.25 Sv) or more; or

(ii) An eye dose equivalent of 75 rems (0.75 Sv) or more; or

(iii) A shallow-dose equivalent to the skin or extremities of 250 rads (2.5 Gy) or more; or

(2) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake five times the occupational annual limit on intake (the provisions of this paragraph do not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures); or

(3) A loss of 1 working week or more of the operation of any facilities affected; or

(4) Damage to property in excess of $200,000.

(b) Twenty-four hour notification. Each licensee shall, within 24 hours of discovery of the event, report any event involving loss of control of licensed material possessed by the licensee that may have caused, or threatens to cause, any of the following conditions:

(1) An individual to receive, in a period of 24 hours—

(i) A total effective dose equivalent exceeding 5 rems (0.05 Sv); or

(ii) An eye dose equivalent exceeding 15 rems (0.15 Sv); or

(iii) A shallow-dose equivalent to the skin or extremities exceeding 50 rems (0.5 Sv); or

(2) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational annual limit on intake (the provisions of this paragraph do not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures); or

(3) A loss of 1 day or more of the operation of any facilities affected; or

(4) Damage to property in excess of $2,000.

(c) The licensee shall prepare any report filed with the Commission pursuant to this section so that names of individuals who have received exposure to radiation or radioactive material are stated in a separate and detachable part of the report.

(d) Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees having an installed Emergency Notification System shall make the reports required by paragraphs (a) and (b) of this section to the NRC Operations Center in accordance with 10 CFR 50.72; and

(2) All other licensees shall make the reports required by paragraphs (a) and (b) of this section by telephone to the NRC Operations Center and by telegram, mailgram, or facsimile to the Administrator of the appropriate NRC Regional Office listed in appendix D to §§ 20.1001–20.2401.

(e) The provisions of this section do not include doses that result from planned special exposures, that are within the limits for planned special exposures, and that are reported under § 20.2204.

§ 20.2203 Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the limits.

(a) Reportable events. In addition to the notification required by § 20.2202, each licensee shall submit a written report within 30 days after learning of any of the following occurrences:

(1) Any incident for which notification is required by § 20.2202; or

(2) Doses in excess of any of the following:

(i) The occupational dose limits for adults in § 20.1201; or

(ii) The occupational dose limits for a minor in § 20.1207; or

(iii) The limits for an embryo/fetus of a declared pregnant woman in § 20.1208; or

(iv) The limits for an individual member of the public in § 20.1301; or

(v) Any applicable limit in the license; or

(3) Levels of radiation or concentrations of radioactive material in—

(i) A restricted area in excess of any applicable limit in the license; or

(ii) An unrestricted area in excess of 10 times any applicable limit set forth in this part or in the license (whether or not involving exposure of any individual in excess of the limits in § 20.1301); or

(4) For licensees subject to the provisions of EPA's generally applicable environmental radiation standards in 40 CFR part 190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to these standards.

(b) Contents of reports. (1) Each report required by paragraph (a) of this section must describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(i) Estimates of each individual's dose; and

(ii) The levels of radiation and concentrations of radioactive material involved; and

(iii) The cause of the elevated exposures, dose rates, or concentrations; and

(iv) Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, generally applicable environmental standards, and associated license conditions.

(2) Each report filed pursuant to paragraph (a) of this section must include for each individual [7] exposed: the name, Social Security account number, and date of birth. The report must be prepared so that this information is stated in a separate and detachable part of the report.

(c) For holders of an operating license for a nuclear power plant, the occurrences included in paragraph (a) of this section must be reported in accordance with the procedures described in § 50.73(b), (c), (d), (e), and (g) of this chapter and must also include the information required by paragraph (b) of this section. Occurrences reported in accordance with § 50.73 of this chapter need not be reported by a duplicate report under paragraph (a) of this section.

(d) All licensees, other than those holding an operating license for a nuclear power plant, who make reports under paragraph (a) of this section shall submit the report in writing to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, with a copy to the appropriate NRC Regional Office listed in appendix D to §§ 20.1001–20.2401.

§ 20.2204 Reports of planned special exposures.

The licensee shall submit a written report to the Administrator of the appropriate NRC Regional Office listed in appendix D to §§ 20.1001–20.2401 within 30 days following any planned special exposure conducted in accordance with § 20.1208, informing the Commission that a planned special exposure was conducted and indicating the date the planned special exposure occurred and the information required by § 20.2105.

§ 20.2205 [Reserved]

§ 20.2206 Reports of individual monitoring.

(a) This section applies to each person licensed by the Commission to—

(1) Operate a nuclear reactor designed to produce electrical or heat energy pursuant to § 50.21(b) or § 50.22 of this chapter or a testing facility as defined in § 50.2 of this chapter; or

(2) Possess or use byproduct material for purposes of radiography pursuant to Parts 30 and 34 of this chapter; or

(3) Possess or use at any one time, for purposes of fuel processing, fabricating, or reprocessing, special nuclear material in a quantity exceeding 5,000 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof pursuant to part 70 of this chapter; or

(4) Possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter; or

(5) Possess spent fuel in an independent spent fuel storage installation (ISFSI) pursuant to part 72 of this chapter; or

(6) Receive radioactive waste from other persons for disposal under part 61 of this chapter; or

(7) Possess or use at any time, for processing or manufacturing for distribution pursuant to parts 30, 32, 33 or 35 of this chapter, byproduct material in quantities exceeding any one of the following quantities:

Radionuclide	Quantity of radionuclide [1] in curies
Cesium-137	1
Cobalt-60	1
Gold-198	100
Iodine-131	1
Iridium-192	10
Krypton-85	1,000
Promethium-147	10
Technetium-99m	1,000

[1] The Commission may require as a license condition, or by rule, regulation, or order pursuant to § 20.2002, reports from licensees who are licensed to use radionuclides not on this list, in quantities sufficient to cause comparable radiation levels.

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[6] A previous § 20.304 permitted burial of small quantities of licensed materials in soil before January 28, 1981, without specific Commission authorization.

[7] With respect to the limit for the embryo-fetus (§ 20.1208), the identifiers should be those of the declared pregnant woman.

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(b) Each licensee in a category listed in paragraph (a) of this section shall submit an annual report of the results of individual monitoring carried out by the licensee for each individual for whom monitoring was required by § 20.1502 during that year. The licensee may include additional data for individuals for whom monitoring was provided but not required. The licensee shall use Form NRC 5 or electronic media containing all the information required by Form NRC 5.

(c) The licensee shall file the report required by § 20.2206(b), covering the preceding year, on or before April 30 of each year. The licensee shall submit the report to the Director, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555.

Subpart N—Exemptions and Additional Requirements

§ 20.2301 Applications for exemptions.

The Commission may, upon application by a licensee or upon its own initiative, grant an exemption from the requirements of the regulations in this part if it determines the exemption is authorized by law and would not result in undue hazard to life or property.

§ 20.2302 Additional requirements.

The Commission may, by rule, regulation, or order, impose requirements on a licensee, in addition to those established in the regulations in this part, as it deems appropriate or necessary to protect health or to minimize danger to life or property.

Subpart O—Enforcement

§ 20.2401 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107 or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

(c) Any person who willfully violates a provision of the Atomic Energy Act or regulation or order issued under the requirements of that Act may be guilty of a crime and, upon conviction, be punished by fine or imprisonment or both, as provided by law.

7. Part 20 is amended by adding Appendix A to §§ 20.1001—20.2401 to read as follows:

APPENDIX A TO §§ 20.1001—20.2401—PROTECTION FACTORS FOR RESPIRATORS.[a]

Description[b]	Modes[c]	Protection Factors[d]			Tested & Certified Equipment
		Particulates only	Particulates, gases, & vapors[e]		National Institute for Occupational Safety and Health/Mine Safety and Health Administration tests for permeability
I. Air-Purifying Respirators:[f]					
Facepiece, half-mask[g]	NP	10			30 CFR Part 11, Subpart K.
Facepiece, full	NP	50			
Facepiece, half-mask full, or hood	PP	1000			
II. Atmosphere-Supplying Respirators:					
1. Air-line respirator:					
Facepiece, half-mask	CF		1000		30 CFR Part 11, Subpart J.
Facepiece, half-mask	D		5		
Facepiece, full	CF		2000		
Facepiece, full	D		5		
Facepiece, full	PD		2000		
Hood	CF		(h)		
Suit	CF		(h)	(h)	
2. Self-contained breathing apparatus (SCBA):					
Facepiece, full	D		50		30 CFR Part 11, Subpart H.
Facepiece, full	PD		[i] 10,000		
Facepiece, full	RD		50		
Facepiece, full	RP		[i] 5,000		
III. Combination Respirators:					
Any combination of air-purifying and atmosphere-supplying respirators		Protection factor for type and mode of operation as listed above.			30 CFR Part 11, § 11.83(b).

Footnotes

a. For use in the selection of respiratory protective devices to be used only where the contaminants have been identified and the concentrations (or possible concentrations) are known.

b. Only for shaven faces and where nothing interferes with the seal of tight-fitting facepieces against the skin. (Hoods and suits are excepted.)

c. The mode symbols are defined as follows:

CF = continuous flow
D = demand
NP = negative pressure (i.e., negative phase during inhalation)
PD = pressure demand (i.e., always positive pressure)

PP = positive pressure
RD = demand, recirculating (closed circuit)
RP = pressure demand, recirculating (closed circuit)

d. 1. The protection factor is a measure of the degree of protection afforded by a respirator, defined as the ratio of the concentration of airborne radioactive material outside the respiratory protective equipment to that inside the equipment (usually inside the facepiece) under conditions of use. It is applied to the ambient airborne concentration to estimate the concentrations inhaled by the wearer according to the following formula:

$$\text{Concentration inhaled} = \frac{\text{Ambient airborne concentration}}{\text{Protection factor}}$$

2. The protection factors apply:

(a) Only for individuals trained in using respirators and wearing properly fitted respirators that are used and maintained under supervision in a well-planned respiratory protective program.

(b) For air-purifying respirators only when high efficiency particulate filters (above 99.97% removal efficiency by thermally generated 0.3 μm dioctyl phthalate (DOP) test or equivalent) are used in atmospheres not deficient in oxygen and not containing radioactive gas or vapor respiratory hazards.

(c) No adjustment is to be made for the use of sorbents against radioactive material in the form of gases or vapors.

(d) For atmosphere-supplying respirators only when supplied with adequate respirable air. Respirable air shall be provided of the quality and quantity required in accordance with NIOSH/MSHA certification (described in 30 CFR part 11). Oxygen and air shall not be used in the same apparatus.

e. Excluding radioactive contaminants that present an absorption or submersion hazard. For tritium oxide, approximately one-third of the intake occurs by absorption through the skin so that an overall protection factor of less than 3 is appropriate when atmosphere-supplying respirators are used to protect against tritium oxide. If the protection factor for a device is 5 the effective protection factor for tritium is about 1.4; for devices with protection factors of 10 the effective factor for tritium oxide is about 1.7, and for devices with protection factors of 100 or more the effective factor for tritium oxide is about 1.9. Air-purifying respirators are not suitable for protection against tritium oxide. See also footnote i concerning supplied-air suits.

f. Canisters and cartridges shall not be used beyond service-life limitations.

g. Under-chin type only. This type of respirator is not satisfactory for use where it might be possible (e.g., if an accident or emergency were to occur) for the ambient airborne concentrations to reach instantaneous values greater than 10 times the pertinent values in table 1, column 3 of appendix B to §§ 20.1001—20.2401 of this part. This type of respirator is not suitable for protection against plutonium or other high-toxicity materials. The mask is to be tested for fit prior to use, each time it is donned.

h. 1. Equipment shall be operated in a manner that ensures that proper air flow-rates are maintained. A protection factor of no more than 1000 may be utilized for tested-and-certified supplied-air hoods when a minimum air flow of 6 cubic feet (0.17 cubic meters) per minute is maintained and calibrated air-line pressure gauges or flow measuring devices are used. A protection factor of up to 2000 may be used for tested and certified hoods only when the air flow is maintained at the manufacturer's recommended maximum rate for the equipment, this rate is greater than 6 cubic feet (0.17 cubic meters) per minute, and calibrated air-line pressure gauges or flow measuring devices are used.

2. The design of the supplied-air hood or helmet (with a minimum flow of 6 cfm (0.17 m^3 per minute) of air) may determine its overall efficiency and the protection it provides. For example, some hoods aspirate contaminated air into the breathing zone when the wearer works with hands-over-head. This aspiration may be overcome if a short cape-like extension to the hood is worn under a coat or overalls. Other limitations specified by the approval agency shall be considered before using a hood in certain types of atmospheres (see footnote i).

i. Appropriate protection factors shall be determined, taking into account the design of the suit and its permeability to the contaminant under conditions of use. There shall be a standby rescue person equipped with a respirator or other apparatus appropriate for the potential hazards and communications equipment whenever supplied-air suits are used.

j. No approval schedules are currently available for this equipment. Equipment is to be evaluated by testing or on the basis of reliable test information.

k. This type of respirator may provide greater protection and be used as an emergency device in unknown concentrations for protection against inhalation hazards. External radiation hazards and other limitations to permitted exposure, such as skin absorption, must be taken into account in such circumstances.

l. Quantitative fit testing shall be performed on each individual and no more than 8.02% leakage is allowed with this type of apparatus. Perceptible outward leakage of gas from this or any positive pressure self-contained breathing apparatus is unacceptable because service life will be reduced substantially. Special training in the use of this type of apparatus shall be provided to the wearer.

Note 1: Protection factors for respirators as may be approved by the U.S. Bureau of Mines/National Institute for Occupational Safety and Health (NIOSH), according to applicable approvals for respirators for type and mode of use to protect against airborne radionuclides, may be used to the extent that they do not exceed the protection factors listed in this table. The protection factors listed in this table may not be appropriate to circumstances where chemical or other respiratory hazards exist in addition to radioactive hazards. The selection and use of respirators for such circumstances should take into account applicable approvals of the U.S. Bureau of Mines/NIOSH.

Note 2: Radioactive contaminants for which the concentration values in Table 1, Column 3 of Appendix B to §§ 20.1001–20.2401 of this part are based on internal dose due to inhalation may, in addition, present external exposure hazards at higher concentrations. Under these circumstances, limitations on occupancy may have to be governed by external dose limits.

8. Part 20 is amended by adding Appendix B to §§ 20.1001–20.2401 to read as follows:

Appendix B to §§ 20.1001–20.2401—Annual Limits on Intake (ALIs) and Derived Air Concentrations (DACs) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sewerage

Introduction

For each radionuclide Table 1 indicates the chemical form which is to be used for selecting the appropriate ALI or DAC value. The ALIs and DACs for inhalation are given for an aerosol with an activity median aerodynamic diameter (AMAD) of 1 μm and for three classes (D,W,Y) of radioactive material, which refer to their retention (approximately days, weeks or years) in the pulmonary region of the lung. This classification applies to a range of clearance half-times of less than 10 days, for W from 10 to 100 days, and for Y greater than 100 days. Table 2 provides concentration limits for airborne and liquid effluents released to the general environment. Table 3 provides concentration limits for discharges to sanitary sewer systems.

Notation

The values in Tables 1, 2, and 3 are presented in the computer "E" notation. In this notation a value of 6E−02 represents a value of 6×10^{-2} or 0.06, 6E+2 represents 6×10^{2} or 600, and 6E+0 represents 6×10^{0} or 6.

Table 1 "Occupational"

Note that the columns in Table 1, of this appendix captioned "Oral Ingestion ALI,"

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"Inhalation ALI," and "DAC," are applicable to occupational exposure to radioactive material.

The ALIs in this appendix are the annual intakes of a given radionuclide by "Reference Man" which would result in either (1) a committed effective dose equivalent of 5 rems (stochastic ALI) or (2) a committed dose equivalent of 50 rems to an organ or tissue (non-stochastic ALI). The stochastic ALIs were derived to result in a risk, due to irradiation of organs and tissues, comparable to the risk associated with deep dose equivalent to the whole body of 5 rems. The derivation includes multiplying the committed dose equivalent to an organ or tissue by a weighting factor, w_T. This weighting factor is the proportion of the risk of stochastic effects resulting from irradiation of the organ or tissue, T, to the total risk of stochastic effects when the whole body is irradiated uniformly. The values of w_T are listed under the definition of weighting factor in § 20.1003. The non-stochastic ALIs were derived to avoid non-stochastic effects, such as prompt damage to tissue or reduction in organ function.

A value of w_T = 0.03 is applicable to each of the five organs or tissues in the "remainder" category receiving the highest dose equivalents, and the dose equivalents of all other remaining tissues may be disregarded. The following parts of the GI tract—stomach, small intestine, upper large intestine, and lower large intestine—are to be treated as four separate organs.

Note that the dose equivalents for extremities (hands and forearms, feet and lower legs), skin, and lens of the eye are not considered in computing the committed effective dose equivalent, but are subject to limits that must be met separately.

When an ALI is defined by the stochastic dose limit, this value alone is given. When an ALI is determined by the non-stochastic dose limit to an organ, the organ or tissue to which the limit applies is shown, and the ALI for the stochastic limit is shown in parentheses. (Abbreviated organ or tissue designations are wbrt: LLI wall = lower large intestine wall; St. wall = stomach wall; Blad wall = bladder wall; and Bone surf = bone surface.)

The use of the ALIs listed first, the more limiting of the stochastic and non-stochastic ALIs, will ensure that non-stochastic effects are avoided and that the risk of stochastic effects is limited to an acceptably low value. If, in a particular situation involving a radionuclide for which the non-stochastic ALI is limiting, use of that non-stochastic ALI is considered unduly conservative, the licensee may use the stochastic ALI to determine the committed effective dose equivalent. However, the licensee shall also ensure that the 50-rem dose equivalent limit for any organ or tissue is not exceeded by the sum of the external deep dose equivalent plus the internal committed dose to that organ (not the effective dose). For the case where there is no external dose contribution, this would be demonstrated if the sum of the fractions of the nonstochastic ALIs (ALI_{ns}) that contribute to the committed dose equivalent to the organ receiving the highest dose does not exceed unity (i.e., Σ (intake (in μCi) of each radionuclide/ALI_{ns}) < 1.0). If there is an external deep dose equivalent contribution of H_d then this sum must be less than $1-(H_d/50)$ instead of being <1.0.

Note that the dose equivalents for extremities (hand and forearms, feet and lower legs), skin, and lens of the eye are not considered in computing the committed effective dose equivalent, but are subject to limits that must be met separately.

The derived air concentration (DAC) values are derived limits intended to control chronic occupational exposures. The relationship between the DAC and the ALI is given by: DAC=ALI(in μCi)/(2000 hours per working year×60 minutes/hour×2×10^4 ml per minute)=(ALI/2.4×10^9) μCi/ml, where 2×10^4 ml is the volume of air breathed per minute at work by "Reference Man" under working conditions of "light work."

The DAC values relate to one of two modes of exposure: either external submersion or the internal committed dose equivalents resulting from inhalation of radioactive materials. Derived air concentrations based upon submersion are for immersion in a semi-infinite cloud of uniform concentration and apply to each radionuclide separately.

The ALI and DAC values relate to exposure to the single radionuclide named, but also include contributions from the in-growth of any daughter radionuclide produced in the body by the decay of the parent. However, intakes that include both the parent and daughter radionuclides should be treated by the general method appropriate for mixtures.

The value of ALI and DAC do not apply directly when the individual both ingests and inhales a radionuclide, when the individual is exposed to a mixture of radionuclides by either inhalation or ingestion or both, or when the individual is exposed to both internal and external radiation (see § 20.1202). When an individual is exposed to radioactive materials which fall under several of the translocation classifications (i.e., Class D, Class W, or Class Y) of the same radionuclide, the exposure may be evaluated as if it were a mixture of different radionuclides.

It should be noted that the classification of a compound as Class D, W, or Y is based on the chemical form of the compound and does not take into account the radiological half-life of different radioisotopes. For this reason, values are given for Class D, W, and Y compounds, even for very short-lived radionuclides.

Table 2

The columns in Table 2 of this appendix captioned "Effluents," "Air," and "Water," are applicable to the assessment and control of dose to the public, particularly in the implementation of the provisions of § 20.1302. The concentration values given in Columns 1 and 2 of Table 2 are equivalent to the radionuclide concentrations which, if inhaled or ingested continuously over the course of a year, would produce a total effective dose equivalent of 0.05 rem (50 millirem or 0.5 millisievert).

Consideration of non-stochastic limits has not been included in deriving the air and water effluent concentration limits because non-stochastic effects are presumed not to occur at the dose levels established for individual members of the public. For radionuclides, where the non-stochastic limit was governing in deriving the occupational DAC, the stochastic ALI was used in deriving the corresponding airborne effluent limit in Table 2. For this reason, the DAC and airborne effluent limits are not always proportional as was the case in appendix B to §§ 20.1–20.601.

The air concentration values listed in Table 2, Column 1, were derived by one of two methods. For those radionuclides for which the stochastic limit is governing, the occupational stochastic inhalation ALI was divided by 2.4×10^9, relating the inhalation ALI to the DAC, as explained above, and then divided by a factor of 300. The factor of 300 includes the following components: a factor of 50 to relate the 5-rem annual occupational dose limit to the 0.1-rem limit for members of the public, a factor of 3 to adjust for the difference in exposure time and the inhalation rate for a worker and that for members of the public; and a factor of 2 to adjust the occupational values (derived for adults) so that they are applicable to other age groups.

For those radionuclides for which submersion (external dose) is limiting, the occupational DAC in Table 1, Column 2, was divided by 219. The factor of 219 is composed of a factor of 50, as described above, and a factor of 4.38 relating occupational exposure for 2,000 hours per year to full-time exposure (8,760 hours per year). Note that an additional factor of 2 for age considerations is not warranted in the submersion case.

The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^5. The factor of 7.3×10^5 (ml) includes the following components: the factors of 50 and 2 described above and a factor of 7.3×10^4(ml) which is the annual water intake of "Reference Man."

Note 2 of this appendix provides groupings of radionuclides which are applicable to unknown mixtures of radionuclides. These groupings (including occupational inhalation ALIs and DACs, air and water effluent concentrations and sewerage) require demonstrating that the most limiting radionuclides in succession chains are absent. The limit for the unknown mixture is defined when the presence of the one of the listed radionuclides cannot be definitely excluded as being present either from knowledge of the radionuclide composition of the source or from actual measurements.

Table 3 "Sewer Disposal"

The monthly average concentrations for release to sanitary sewers are applicable to the provisions in § 20.2003. The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^5(ml). The factor of 7.3×10^5(ml) is composed of a factor of 7.3×10^4(ml), the annual water intake by "Reference Man," and a factor of 10, such that the concentrations, if the sewage released by the licensee were the only source of water ingested by a reference man during a year, would result in a

committed effective dose equivalent of 0.5 rem.

LIST OF ELEMENTS

Name	Atomic Symbol	Atomic No.
Actinium	Ac	89
Aluminum	Al	13
Americium	Am	95
Antimony	Sb	51
Argon	Ar	18
Arsenic	As	33
Astatine	At	85
Barium	Ba	56
Berkelium	Bk	97
Beryllium	Be	4
Bismuth	Bi	83
Bromine	Br	35
Cadmium	Cd	48
Calcium	Ca	20
Californium	Cf	98
Carbon	C	6
Cerium	Ce	58
Cesium	Cs	55
Chlorine	Cl	17
Chromium	Cr	24
Cobalt	Co	27
Copper	Cu	29
Curium	Cm	96
Dysprosium	Dy	66
Einsteinium	Es	99
Erbium	Er	68
Europium	Eu	63
Fermium	Fm	100
Fluorine	F	9
Francium	Fr	87
Gadolinium	Gd	64

LIST OF ELEMENTS—Continued

Name	Atomic Symbol	Atomic No.
Gallium	Ga	31
Germanium	Ge	32
Gold	Au	79
Hafnium	Hf	72
Holmium	Ho	67
Hydrogen	H	1
Indium	In	49
Iodine	I	53
Iridium	Ir	77
Iron	Fe	26
Krypton	Kr	36
Lanthanum	La	57
Lead	Pb	82
Lutetium	Lu	71
Magnesium	Mg	12
Manganese	Mn	25
Mendelevium	Md	101
Mercury	Hg	80
Molybdenum	Mo	42
Neodymium	Nd	60
Neptunium	Np	93
Nickel	Ni	28
Niobium	Nb	41
Osmium	Os	76
Palladium	Pd	46
Phosphorus	P	15
Platinum	Pt	78
Plutonium	Pu	94
Polonium	Po	84
Potassium	K	19
Praseodymium	Pr	59
Promethium	Pm	61
Protactinium	Pa	91
Radium	Ra	88

LIST OF ELEMENTS—Continued

Name	Atomic Symbol	Atomic No.
Radon	Rn	86
Rhenium	Re	75
Rhodium	Rh	45
Rubidium	Rb	37
Ruthenium	Ru	44
Samarium	Sm	62
Scandium	Sc	21
Selenium	Se	34
Silicon	Si	14
Silver	Ag	47
Sodium	Na	11
Strontium	Sr	38
Sulfur	S	16
Tantalum	Ta	73
Technetium	Tc	43
Tellurium	Te	52
Terbium	Tb	65
Thallium	Tl	81
Thorium	Th	90
Thulium	Tm	69
Tin	Sn	50
Titanium	Ti	22
Tungsten	W	74
Uranium	U	92
Vanadium	V	23
Xenon	Xe	54
Ytterbium	Yb	70
Yttrium	Y	39
Zinc	Zn	30
Zirconium	Zr	40

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Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
1	Hydrogen-3	Water, DAC includes skin absorption	8E+4	8E+4	2E-5	1E-7	1E-3	1E-2
		Gas (HT or T_2) dimension[1]: Use above values as HT and T_2 oxidize in air and in the body to HTO.						
4	Beryllium-7	W, all compounds except those given for Y	4E+4	3E+4	9E-6	3E-8	6E-4	6E-3
		Y, oxides, halides, and nitrates	-	2E+4	8E-6	3E-8	-	-
4	Beryllium-10	W, see ^{7}Be	1E+3	2E+2	6E-8	2E-10	-	-
			LLI wall (1E+3)	-	-	-	2E-5	2E-4
		Y, see ^{7}Be	-	5E+1	8E-8	3E-11	-	-
6	Carbon-11[2]	Monoxide	-	3E+6	5E-4	2E-6	-	-
		Dioxide	-	6E+5	3E+4	9E-7	-	-
		Compounds	4E+5	4E+5	2E+4	6E-7	6E-3	6E-2
6	Carbon-14	Monoxide	-	2E+4	7E-4	2E-6	-	-
		Dioxide	-	2E+5	9E-5	3E-7	-	-
		Compounds	2E+3	3E+3	1E-6	3E-9	3E-5	3E-4
9	Fluorine-18[2]	D, fluorides of H, Li, Na, K, Rb, Cs, and Fr	5E+4	3E+4	3E-5	1E-7	-	-
			St wall (5E+4)	-	-	-	7E-4	7E-3
		W, fluorides of Be, Mg, Ca, Sr, Ba, Ra, Al, Ga, In, Tl, As, Sb, Bi, Fe, Ru, Os, Co, Rh, Ir, Pd, Pt, Cu, Ag, Au, Zn, Cd, Hg, Sc, Y, Ti, Zr, V, Nb, Ta, Mn, Tc, and Re	-	9E+4	4E-5	1E-7	-	-
		Y, lanthanum fluoride	-	8E+4	3E-5	1E-7	-	-
11	Sodium-22	D, all compounds	4E+2	6E+2	3E-7	9E-10	6E-6	6E-5
11	Sodium-24	D, all compounds	4E+3	5E+3	2E-6	7E-9	5E-5	5E-4
12	Magnesium-28	D, all compounds except those given for W	7E+2	2E+3	7E-7	2E-9	9E-6	9E-5
		W, oxides, hydroxides, carbides, halides, and nitrates	-	1E+3	5E-7	2E-9	-	-
13	Aluminum-26	D, all compounds except those given for W	4E+2	6E+1	3E-8	9E-11	6E-6	6E-5
		W, oxides, hydroxides, carbides, halides, and nitrates	-	9E+1	4E-8	1E-10	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
14	Silicon-31	D, all compounds except those given for W and Y	5E+3	2E+4	1E-6	4E-8	1E-4	1E-3
		W, oxides, hydroxides, carbides, and nitrates	-	3E+4	1E-5	5E-8	-	-
		Y, aluminosilicate glass	-	3E+4	1E-5	4E-8	-	-
14	Silicon-32	D, see ^{31}Si	2E+3	2E+2	1E-7	3E-10	-	-
			LLI wall (3E+3)	-	-	-	4E-5	4E-4
		W, see ^{31}Si	-	1E+2	5E-8	2E-10	-	-
		Y, see ^{31}Si	-	5E+0	2E-9	7E-12	-	-
15	Phosphorus-32	D, all compounds except phosphates given for W	6E+2	9E+2	4E-7	1E-9	9E-6	9E-5
		W, phosphates of Zn^{2+}, S^{3+}, Mg^{2+}, Fe^{3+}, Bi^{3+}, and lanthanides	-	4E+2	8E-7	8E-10	-	-
15	Phosphorus-33	D, see ^{32}P	6E+3	8E+3	4E-6	1E-8	8E-5	8E-4
		W, see ^{32}P	-	3E+3	1E-6	4E-9	-	-
16	Sulfur-35	Vapor	-	1E+4	6E-6	2E-8	-	-
		D, sulfides and sulfates except those given for W	1E+4	2E+4	7E-6	2E-8	-	-
			LLI wall (8E+3)	-	-	-	1E-4	1E-3
		W, elemental sulfur, sulfides of Sr, Ba, Ge, Sn, Pb, As, Sb, Bi, Cu, Ag, Au, Zn, Cd, Hg, V, and Mo. Sulfates of Co, Sr, Ba, Ra, As, Sb, and Bi	8E+3					
			-	2E+3	9E-7	3E-9	-	-
17	Chlorine-36	D, chlorides of H, Li, Na, K, Rb, Cs, and Fr	3E+3	5E+3	2E-6	3E-9	2E-5	2E-4
		W, chlorides of lanthanides, Be, Mg, Ca, Sr, Ba, Ra, Al, Ga, In, Tl, Ge, Sn, Pb, As, Sb, Bi, Fe, Ru, Os, Co, Rh, Ir, Ni, Pd, Pt, Cu, Ag, Au, Zn, Cd, Hg, Sc, Y, Ti, Zr, Hf, V, Nb, Ta, Cr, Mo, W, Mn, Tc, and Re	-	2E+2	1E-7	3E-10	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
17	Chlorine-36[2]	D, see ^{36}Cl	2E+4	4E+4	2E-5	6E-8	-	-
			St. wall (3E+4)	-	-	-	3E-4	3E-3
		W, see ^{36}Cl	-	5E+4	2E-5	6E-8	-	-
17	Chlorine-38[2]	D, see ^{36}Cl	2E+4	5E+4	2E-5	7E-8	-	-
			St. wall (4E+4)	-	-	-	5E-4	5E-3
		W, see ^{36}Cl	-	6E+4	2E-5	8E-8	-	-
18	Argon-37	Submersion[1]	-	-	1E+0	6E-3	-	-
18	Argon-39	Submersion[1]	-	-	2E-4	8E-7	-	-
18	Argon-41	Submersion[1]	-	-	3E-6	1E-8	-	-
19	Potassium-40	D, all compounds	3E+2	4E+2	2E-7	6E-10	4E-6	4E-5
19	Potassium-42	D, all compounds	5E+3	5E+3	2E-6	7E-9	6E-5	6E-4
19	Potassium-43	D, all compounds	6E+3	9E+3	4E-6	1E-8	9E-5	9E-4
19	Potassium-44[2]	D, all compounds	2E+4	7E+4	3E-5	9E-8	-	-
			St. wall (4E+4)	-	-	-	5E-4	5E-3
19	Potassium-45[2]	D, all compounds	3E+4	1E+5	5E-5	2E-7	-	-
			St. wall (5E+4)	-	-	-	7E-4	7E-3
20	Calcium-41	W, all compounds	3E+3	4E+3	2E-6	-	-	-
			Bone surf (4E+3)	Bone surf (4E+3)	-	5E-9	6E-5	6E-4
20	Calcium-45	W, all compounds	2E+3	8E+2	4E-7	1E-9	2E-5	2E-4
20	Calcium-47	W, all compounds	8E+2	9E+2	4E-7	1E-9	1E-5	1E-4
21	Scandium-43	Y, all compounds	7E+3	2E+4	9E-6	3E-8	1E-4	1E-3
21	Scandium-44m	Y, all compounds	5E+2	7E+2	3E-7	1E-9	7E-6	7E-5
21	Scandium-44	Y, all compounds	4E+3	1E+4	5E-6	2E-8	5E-5	5E-4
21	Scandium-46	Y, all compounds	9E+2	2E+2	1E-7	3E-10	1E-5	1E-4
21	Scandium-47	Y, all compounds	2E+3	3E+3	1E-6	4E-9	-	-
			LLI wall (3E+3)	-	-	-	4E-5	4E-4
21	Scandium-48	Y, all compounds	8E+2	1E+3	6E-7	2E-9	1E-5	1E-4
21	Scandium-49[2]	Y, all compounds	2E+4	5E+4	2E-5	6E-8	3E-4	3E-3
22	Titanium-44	D, all compounds except those given for W and Y	3E+2	1E+1	5E-9	2E-11	4E-6	4E-5
		W, oxides, hydroxides, carbides, halides, and nitrates	-	3E+1	1E-8	4E-11	-	-
		Y, $SrTiO_3$	-	6E+0	2E-9	8E-12	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
22	Titanium-45	D, see ^{44}Ti	9E+3	3E+4	1E-5	3E-8	1E-4	1E-3
		W, see ^{44}Ti	-	4E+4	2E-5	5E-8	-	-
		Y, see ^{44}Ti	-	3E+4	1E-5	4E-8	-	-
23	Vanadium-47[2]	D, all compounds except those given for W	3E+4	8E+4	3E-5	1E-7	-	-
			St. wall (3E+4)	-	-	-	4E-4	4E-3
		W, oxides, hydroxides, carbides, and halides	-	1E+5	4E-5	1E-7	-	-
23	Vanadium-48	D, see ^{47}V	6E+2	2E+3	9E-7	2E-9	9E-6	9E-5
		W, see ^{47}V	-	6E+2	9E-7	9E-10	-	-
23	Vanadium-49	D, see ^{47}V	7E+4	3E+4	1E-5	-	-	-
			LLI wall (9E+4)	Bone surf (3E+4)	-	5E-8	1E-3	1E-2
		W, see ^{47}V	-	2E+4	8E-6	2E-8	-	-
24	Chromium-48	D, all compounds except those given for W and Y	6E+3	3E+4	9E-6	2E-8	8E-5	8E-4
		W, halides and nitrates	-	7E+3	3E-6	1E-8	-	-
		Y, oxides and hydroxides	-	7E+3	3E-6	1E-8	-	-
24	Chromium-49[2]	D, see ^{48}Cr	3E+4	8E+4	4E-5	1E-7	4E-4	4E-3
		W, see ^{48}Cr	-	3E+5	4E-5	1E-7	-	-
		Y, see ^{48}Cr	-	8E+4	4E-5	1E-7	-	-
24	Chromium-51	D, see ^{48}Cr	4E+4	3E+4	2E-5	6E-8	5E-4	5E-3
		W, see ^{48}Cr	-	2E+4	1E-5	3E-8	-	-
		Y, see ^{48}Cr	-	2E+4	8E-6	3E-8	-	-
25	Manganese-51[2]	D, all compounds except those given for W	2E+4	9E+4	3E-5	7E-8	3E-4	3E-3
		W, oxides, hydroxides, halides, and nitrates	-	8E+4	3E-5	8E-8	-	-
25	Manganese-52m[2]	D, see ^{51}Mn	3E+4	9E+4	4E-5	1E-7	-	-
			St. wall (4E+4)	-	-	-	5E-4	5E-3
		W, see ^{51}Mn	-	1E+5	4E-5	1E-7	-	-
25	Manganese-52	D, see ^{51}Mn	7E+2	1E+3	5E-7	2E-9	1E-5	1E-4
		W, see ^{51}Mn	-	9E+2	4E-7	1E-9	-	-
25	Manganese-53	D, see ^{51}Mn	5E+4	1E+4	5E-6	-	7E-4	7E-3
			-	Bone surf (2E+4)	-	3E-8	-	-
		W, see ^{51}Mn	-	1E+4	5E-6	2E-8	-	-
25	Manganese-54	D, see ^{51}Mn	2E+3	9E+2	4E-7	1E-9	3E-5	3E-4
		W, see ^{51}Mn	-	8E+2	3E-7	1E-9	-	-
25	Manganese-56	D, see ^{51}Mn	9E+3	2E+4	8E-6	2E-8	7E-5	7E-4
		W, see ^{51}Mn	-	2E+4	8E-6	3E-8	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
26	Iron-52	D, all compounds except those given for W	9E+2	3E+3	1E-6	4E-9	1E-5	1E-4
		W, oxides, hydroxides, and halides	-	2E+3	1E-6	3E-9	-	-
26	Iron-55	D, see ^{52}Fe	9E+2	2E+3	8E-7	3E-9	1E-4	1E-3
		W, see ^{52}Fe	-	4E+3	2E-6	6E-9	-	-
26	Iron-59	D, see ^{52}Fe	9E+2	3E+2	1E-7	5E-10	1E-5	1E-4
		W, see ^{52}Fe	-	5E+2	2E-7	7E-10	-	-
26	Iron-60	D, see ^{52}Fe	2E+1	6E+0	3E-9	9E-12	4E-7	4E-6
		W, see ^{52}Fe	-	2E+1	8E-9	3E-11	-	-
27	Cobalt-55	W, all compounds except those given for Y	1E+3	3E+3	1E-6	4E-9	2E-5	2E-4
		Y, oxides, hydroxides, halides, and nitrates	-	3E+3	1E-6	4E-9	-	-
27	Cobalt-56	W, see ^{55}Co	5E+2	3E+2	1E-7	4E-10	6E-6	6E-5
		Y, see ^{55}Co	4E+2	2E+2	8E-8	3E-10	-	-
27	Cobalt-57	W, see ^{55}Co	8E+3	3E+3	1E-6	4E-9	8E-5	8E-4
		Y, see ^{55}Co	4E+3	7E+2	3E-7	9E-10	-	-
27	Cobalt-58m	W, see ^{55}Co	6E+4	9E+4	4E-5	1E-7	8E-4	8E-3
		Y, see ^{55}Co	-	6E+4	3E-5	9E-8	-	-
27	Cobalt-58	W, see ^{55}Co	2E+3	1E+3	5E-7	2E-9	2E-5	2E-4
		Y, see ^{55}Co	1E+3	7E+2	3E-7	1E-9	-	-
27	Cobalt-60[2]	W, see ^{55}Co	1E+6	4E+6	2E-3	6E-6	-	-
			St. wall (1E+6)	-	-	-	2E-2	2E-1
		Y, see ^{55}Co	-	3E+6	1E-3	4E-6	-	-
27	Cobalt-60	W, see ^{55}Co	5E+2	2E+2	7E-8	2E-10	3E-6	3E-5
		Y, see ^{55}Co	2E+2	3E+1	1E-8	5E-11	-	-
27	Cobalt-61[2]	W, see ^{55}Co	2E+4	6E+4	3E-5	9E-8	3E-4	3E-3
		Y, see ^{55}Co	2E+4	6E+4	2E-5	8E-8	-	-
27	Cobalt-62m[2]	W, see ^{55}Co	4E+4	2E+5	7E-5	2E-7	-	-
			St. wall (5E+4)	-	-	-	7E-4	7E-3
		Y, see ^{55}Co	-	2E+5	6E-5	2E-7	-	-
28	Nickel-56	D, all compounds except those given for W	1E+3	2E+3	8E-7	3E-9	2E-5	2E-4
		W, oxides, hydroxides, and carbides	-	1E+3	5E-7	2E-9	-	-
		Vapor	-	1E+3	5E-7	2E-9	-	-
28	Nickel-57	D, see ^{56}Ni	2E+3	5E+3	2E-6	7E-9	2E-5	2E-4
		W, see ^{56}Ni	-	3E+3	1E-6	4E-9	-	-
		Vapor	-	6E+3	3E-6	9E-9	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
28	Nickel-59	D, see ^{56}Ni	2E+4	6E+3	2E-6	5E-9	3E-4	3E-3
		W, see ^{56}Ni	-	7E+3	3E-6	1E-8	-	-
		Vapor	-	2E+3	8E-7	3E-9	-	-
28	Nickel-63	D, see ^{56}Ni	9E+3	2E+3	7E-7	2E-9	1E-4	1E-3
		W, see ^{56}Ni	-	3E+3	1E-6	4E-9	-	-
		Vapor	-	8E+2	3E-7	1E-9	-	-
28	Nickel-65	D, see ^{56}Ni	8E+3	2E+4	1E-5	3E-8	1E-4	1E-3
		W, see ^{56}Ni	-	3E+4	1E-5	4E-8	-	-
		Vapor	-	2E+4	7E-6	2E-8	-	-
28	Nickel-66	D, see ^{56}Ni	4E+2	2E+3	7E-7	2E-9	-	-
			LLI wall (5E+2)	-	-	-	6E-6	6E-5
		W, see ^{56}Ni	-	6E+2	3E-7	9E-10	-	-
		Vapor	-	3E+3	1E-6	4E-9	-	-
29	Copper-60[2]	D, all compounds except those given for W and Y	3E+4	9E+4	4E-5	1E-7	-	-
			St. wall (3E+4)	-	-	-	4E-4	4E-3
		W, sulfides, halides, and nitrates	-	1E+5	5E-5	2E-7	-	-
		Y, oxides and hydroxides	-	1E+5	4E-5	1E-7	-	-
29	Copper-61	D, see ^{60}Cu	1E+4	3E+4	1E-5	4E-8	2E-4	2E-3
		W, see ^{60}Cu	-	4E+4	2E-5	6E-8	-	-
		Y, see ^{60}Cu	-	4E+4	1E-5	5E-8	-	-
29	Copper-64	D, see ^{60}Cu	1E+4	3E+4	1E-5	4E-8	2E-4	2E-3
		W, see ^{60}Cu	-	2E+4	1E-5	3E-8	-	-
		Y, see ^{60}Cu	-	2E+4	9E-6	3E-8	-	-
29	Copper-67	D, see ^{60}Cu	5E+3	8E+3	3E-6	1E-8	6E-5	6E-4
		W, see ^{60}Cu	-	5E+3	2E-6	7E-9	-	-
		Y, see ^{60}Cu	-	5E+3	2E-6	6E-9	-	-
30	Zinc-62	Y, all compounds	1E+3	3E+3	1E-6	4E-9	2E-5	2E-4
30	Zinc-63[2]	Y, all compounds	2E+4	7E+4	3E-5	9E-8	-	-
			St. wall (3E+4)	-	-	-	3E-4	3E-3
30	Zinc-65	Y, all compounds	4E+2	3E+2	1E-7	4E-10	5E-6	5E-5
30	Zinc-69m	Y, all compounds	4E+3	7E+3	3E-6	1E-8	6E-5	6E-4
30	Zinc-69[2]	Y, all compounds	6E+4	1E+5	6E-5	2E-7	8E-4	8E-3
30	Zinc-71m	Y, all compounds	6E+3	2E+4	7E-6	2E-8	8E-5	8E-4
30	Zinc-72	Y, all compounds	1E+3	1E+3	5E-7	2E-9	1E-5	1E-4
31	Gallium-65[2]	D, all compounds except those given for W	5E+4	2E+5	7E-5	2E-7	-	-
			St. wall (6E+4)	-	-	-	9E-4	9E-3
		W, oxides, hydroxides, carbides, halides, and nitrates	-	2E+5	8E-5	3E-7	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
31	Gallium-66	D, see ^{65}Ga	1E+3	4E+3	1E-6	5E-9	1E-5	1E-4
		W, see ^{65}Ga	-	3E+3	1E-6	4E-9	-	-
31	Gallium-67	D, see ^{65}Ga	7E+3	1E+4	6E-6	2E-8	1E-4	1E-3
		W, see ^{65}Ga	-	1E+4	4E-6	1E-8	-	-
31	Gallium-68[2]	D, see ^{65}Ga	2E+4	4E+4	2E-5	6E-8	2E-4	2E-3
		W, see ^{65}Ga	-	9E+4	2E-5	7E-8	-	-
31	Gallium-70[2]	D, see ^{65}Ga	9E+4	2E+5	7E-5	2E-7	-	-
			St. wall (7E+4)	-	-	-	1E-3	1E-2
		W, see ^{65}Ga	-	2E+5	8E-5	3E-7	-	-
31	Gallium-72	D, see ^{65}Ga	1E+3	4E+3	1E-6	5E-9	2E-5	2E-4
		W, see ^{65}Ga	-	3E+3	1E-6	4E-9	-	-
31	Gallium-73	D, see ^{65}Ga	5E+3	2E+4	6E-6	2E-8	7E-5	7E-4
		W, see ^{65}Ga	-	2E+4	6E-6	2E-8	-	-
32	Germanium-66	D, all compounds except those given for W	2E+4	3E+4	1E-5	4E-8	3E-4	3E-3
		W, oxides, sulfides, and halides	-	2E+4	9E-6	3E-8	-	-
32	Germanium-67[2]	D, see ^{66}Ga	3E+4	9E+4	4E-5	1E-7	-	-
			St. wall (4E+4)	-	-	-	6E-4	6E-3
		W, see ^{66}Ga	-	1E+5	4E-5	1E-7	-	-
32	Germanium-68	D, see ^{66}Ga	5E+3	4E+3	2E-6	5E-9	6E-5	6E-4
		W, see ^{66}Ga	-	1E+2	4E-8	1E-10	-	-
32	Germanium-69	D, see ^{66}Ga	1E+4	2E+4	6E-6	2E-8	2E-4	2E-3
		W, see ^{66}Ga	-	8E+3	3E-6	1E-8	-	-
32	Germanium-71	D, see ^{66}Ga	5E+5	4E+5	2E-4	6E-7	7E-3	7E-2
		W, see ^{66}Ga	-	4E+4	2E-5	6E-8	-	-
32	Germanium-77[2]	D, see ^{66}Ga	4E+4	8E+4	3E-5	1E-7	-	-
			St. wall (7E+4)	-	-	-	9E-4	9E-3
		W, see ^{66}Ga	-	8E+4	4E-5	1E-7	-	-
32	Germanium-78	D, see ^{66}Ga	9E+3	1E+4	4E-6	1E-8	1E-4	1E-3
		W, see ^{66}Ga	-	6E+3	2E-6	6E-9	-	-
32	Germanium-78[2]	D, see ^{66}Ga	2E+4	2E+4	9E-6	3E-8	-	-
			St. wall (2E+4)	-	-	-	3E-4	3E-3
		W, see ^{66}Ga	-	2E+4	9E-6	3E-8	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
33	Arsenic-69[2]	W, all compounds	3E+4	1E+5	5E-5	2E-7	-	-
			St. wall (4E+4)	-	-	-	6E-4	6E-3
33	Arsenic-70[2]	W, all compounds	1E+4	5E+4	2E-5	7E-8	2E-4	2E-3
33	Arsenic-71	W, all compounds	4E+3	9E+3	2E-6	6E-9	5E-5	5E-4
33	Arsenic-72	W, all compounds	9E+2	1E+3	6E-7	2E-9	1E-5	1E-4
33	Arsenic-73	W, all compounds	8E+3	2E+3	7E-7	2E-9	1E-4	1E-3
33	Arsenic-74	W, all compounds	1E+3	8E+2	3E-7	1E-9	2E-5	2E-4
33	Arsenic-76	W, all compounds	1E+3	1E+3	6E-7	2E-9	1E-5	1E-4
33	Arsenic-77	W, all compounds	4E+3	9E+3	2E-6	7E-9	-	-
			LLI wall (5E+3)	-	-	-	8E-5	8E-4
33	Arsenic-78[2]	W, all compounds	8E+3	2E+4	9E-6	3E-8	1E-4	1E-3
34	Selenium-70[2]	D, all compounds except those given for W	2E+4	4E+4	2E-5	5E-8	1E-4	1E-3
		W, oxides, hydroxides, carbides, and elemental Se	1E+4	4E+4	2E-5	6E-8	-	-
34	Selenium-73m[2]	D, see ^{70}Se	6E+4	2E+5	6E-5	2E-7	4E-4	4E-3
		W, see ^{70}Se	5E+4	1E+5	6E-5	2E-7	-	-
34	Selenium-73	D, see ^{70}Se	3E+3	1E+4	5E-6	2E-8	4E-5	4E-4
		W, see ^{70}Se	-	2E+4	7E-6	2E-8	-	-
34	Selenium-75	D, see ^{70}Se	5E+2	7E+2	3E-7	1E-9	7E-6	7E-5
		W, see ^{70}Se	-	6E+2	3E-7	8E-10	-	-
34	Selenium-79	D, see ^{70}Se	6E+2	8E+2	3E-7	1E-9	9E-6	8E-5
		W, see ^{70}Se	-	6E+2	2E-7	8E-10	-	-
34	Selenium-81m[2]	D, see ^{70}Se	4E+4	7E+4	3E-5	9E-8	3E-4	3E-3
		W, see ^{70}Se	2E+4	7E+4	3E-5	1E-7	-	-
34	Selenium-81[2]	D, see ^{70}Se	8E+4	2E+5	9E-5	3E-7	-	-
			St. wall (8E+4)	-	-	-	1E-3	1E-2
		W, see ^{70}Se	-	2E+5	1E-4	3E-7	-	-
34	Selenium-83[2]	D, see ^{70}Se	4E+4	1E+5	5E-5	2E-7	4E-4	4E-3
		W, see ^{70}Se	3E+4	1E+5	5E-5	2E-7	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
35	Bromine-74m[2]	D, bromides of H, Li, Na, K, Rb, Cs, and Fr	1E+4	4E+4	2E-5	5E-8	-	-
			St. wall (2E+4)	-	-	-	3E-4	3E-3
		W, bromides of lanthanides, Be, Mg, Ca, Sr, Ba, Ra, Al, Ga, Se, Tl, Ge, Sn, Pb, As, Sb, Bi, Fe, Ru, Os, Co, Rh, Ir, Ni, Pd, Pt, Cu, Ag, Au, Zn, Cd, Hg, Sc, V, Y, Zr, Hf, V, Nb, Ta, Mn, Tc, and Re	-	4E+4	2E-5	6E-8	-	-
35	Bromine-74[2]	D, see ^{74m}Br	2E+4	7E+4	3E-5	1E-7	-	-
			St. wall (4E+4)	-	-	-	5E-4	5E-3
		W, see ^{74m}Br	-	8E+4	4E-5	1E-7	-	-
35	Bromine-75[2]	D, see ^{74m}Br	3E+4	5E+4	2E-5	7E-8	-	-
			St. wall (4E+4)	-	-	-	5E-4	5E-3
		W, see ^{74m}Br	-	5E+4	2E-5	7E-8	-	-
35	Bromine-76	D, see ^{74m}Br	4E+3	5E+3	2E-6	7E-9	5E-5	5E-4
		W, see ^{74m}Br	-	4E+3	2E-6	6E-9	-	-
35	Bromine-77	D, see ^{74m}Br	3E+4	2E+4	1E-5	3E-8	2E-4	2E-3
		W, see ^{74m}Br	-	2E+4	8E-6	3E-8	-	-
35	Bromine-80m	D, see ^{74m}Br	3E+4	2E+4	7E-6	2E-8	3E-4	3E-3
		W, see ^{74m}Br	-	1E+4	6E-6	2E-8	-	-
35	Bromine-80[2]	D, see ^{74m}Br	5E+4	2E+5	8E-5	3E-7	-	-
			St. wall (9E+4)	-	-	-	1E-3	1E-2
		W, see ^{74m}Br	-	2E+5	9E-5	3E-7	-	-
35	Bromine-82	D, see ^{74m}Br	3E+3	4E+3	2E-6	6E-9	4E-5	4E-4
		W, see ^{74m}Br	-	4E+3	2E-6	5E-9	-	-
35	Bromine-83	D, see ^{74m}Br	9E+4	6E+4	3E-5	9E-8	-	-
			St. wall (7E+4)	-	-	-	9E-4	9E-3
		W, see ^{74m}Br	-	6E+4	3E-5	9E-8	-	-
35	Bromine-84[2]	D, see ^{74m}Br	2E+4	6E+4	2E-5	8E-8	-	-
			St. wall (3E+4)	-	-	-	4E-4	4E-3
		W, see ^{74m}Br	-	6E+4	3E-5	9E-8	-	-
36	Krypton-74[2]	Submersion[1]	-	-	3E-6	1E-8	-	-
36	Krypton-76	Submersion[1]	-	-	9E-6	4E-8	-	-
36	Krypton-77[2]	Submersion[1]	-	-	4E-6	2E-8	-	-
36	Krypton-79	Submersion[1]	-	-	2E-5	7E-8	-	-
36	Krypton-81	Submersion[1]	-	-	7E-4	3E-6	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
36	Krypton-83m[2]	Submersion[1]			1E-2	5E-5	-	
36	Krypton-85m	Submersion[1]	-	-	2E-5	3E-7	-	-
36	Krypton-85	Submersion[1]	-	-	1E-4	7E-7	-	-
36	Krypton-87[2]	Submersion[1]	-	-	9E-6	2E-8	-	-
36	Krypton-88	Submersion[1]	-	-	2E-6	9E-9	-	-
37	Rubidium-79[2]	D, all compounds	6E+4	1E+5	5E-5	2E-7	-	-
			St. wall (6E+4)	-	-	-	8E-4	8E-3
37	Rubidium-81m[2]	D, all compounds	2E+5	3E+5	1E-4	5E-7	-	-
			St. wall (3E+5)	-	-	-	4E-3	4E-2
37	Rubidium-81	D, all compounds	4E+4	5E+4	2E-5	7E-8	5E-4	5E-3
37	Rubidium-82m	D, all compounds	1E+4	2E+4	7E-6	2E-8	2E-4	2E-3
37	Rubidium-83	D, all compounds	6E+2	1E+3	4E-7	1E-9	9E-6	9E-5
37	Rubidium-84	D, all compounds	5E+2	8E+2	3E-7	1E-9	7E-6	7E-5
37	Rubidium-86	D, all compounds	5E+2	8E+2	3E-7	1E-9	7E-6	7E-5
37	Rubidium-87	D, all compounds	1E+3	2E+3	6E-7	2E-9	1E-5	1E-4
37	Rubidium-88[2]	D, all compounds	2E+4	6E+4	3E-5	9E-8	-	-
			St. wall (3E+4)	-	-	-	4E-4	4E-3
37	Rubidium-89[2]	D, all compounds	4E+4	1E+5	6E-5	2E-7	-	-
			St. wall (6E+4)	-	-	-	9E-4	9E-3
38	Strontium-80[2]	D, all soluble compounds except $SrTiO_3$	4E+3	1E+4	5E-6	2E-8	6E-5	6E-4
		Y, all insoluble compounds and $SrTiO_3$	-	1E+4	5E-6	2E-8	-	-
38	Strontium-81[2]	D, see ^{80}Sr	3E+4	8E+4	3E-5	1E-7	3E-4	3E-3
		Y, see ^{80}Sr	2E+4	8E+4	3E-5	1E-7	-	-
38	Strontium-82	D, see ^{80}Sr	3E+2	4E+2	2E-7	6E-10	-	-
			LLI wall (2E+2)	-	-	-	3E-6	3E-5
		Y, see ^{80}Sr	2E+2	9E+1	4E-8	1E-10	-	-
38	Strontium-83	D, see ^{80}Sr	3E+3	7E+3	3E-6	1E-8	3E-5	3E-4
		Y, see ^{80}Sr	2E+3	4E+3	1E-6	5E-9	-	-
38	Strontium-85m[2]	D, see ^{80}Sr	2E+5	6E+5	3E-4	9E-7	3E-3	3E-2
		Y, see ^{80}Sr	-	8E+5	4E-4	1E-6	-	-
38	Strontium-85	D, see ^{80}Sr	3E+3	3E+3	1E-6	4E-9	4E-5	4E-4
		Y, see ^{80}Sr	-	2E+3	6E-7	2E-9	-	-
38	Strontium-87m	D, see ^{80}Sr	5E+4	1E+5	5E-5	2E-7	6E-4	6E-3
		Y, see ^{80}Sr	4E+4	2E+5	6E-5	2E-7	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
38	Strontium-80	D, see ^{80}Sr	6E+2	8E+2	4E-7	1E-9	-	-
			LLI wall (6E+2)	-	-	-	8E-6	8E-5
		Y, see ^{80}Sr	5E+2	1E+0	6E-8	2E-10	-	-
38	Strontium-81	D, see ^{81}Sr	3E+1	2E+1	8E-9	-	-	-
			Bone surf (4E+1)	Bone surf (2E+1)	-	3E-11	5E-7	5E-6
		Y, see ^{81}Sr	-	4E+0	2E-9	6E-12	-	-
38	Strontium-82	D, see ^{82}Sr	2E+3	6E+3	2E-6	8E-9	2E-5	2E-4
		Y, see ^{82}Sr	-	4E+3	1E-6	5E-9	-	-
38	Strontium-83	D, see ^{83}Sr	3E+3	9E+3	4E-6	1E-8	4E-5	4E-4
		Y, see ^{83}Sr	-	7E+3	3E-6	9E-9	-	-
38	Strontium-85	D, see ^{85}Sr	3E+3	9E+3	4E-6	1E-8	4E-5	4E-4
		Y, see ^{85}Sr	-	7E+3	3E-6	9E-9	-	-
38	Strontium-85m	D, see ^{85m}Sr	6E+4	8E+4	4E-5	1E-7	-	-
			St. wall (6E+4)	-	-	-	8E-4	8E-3
		Y, see ^{85m}Sr	-	8E+4	3E-5	1E-7	-	-
38	Strontium-87m	D, see ^{87m}Sr	1E+4	2E+4	8E-6	3E-8	-	-
			St. wall (1E+4)	-	-	-	2E-4	2E-3
		Y, see ^{87m}Sr	-	2E+4	8E-6	3E-8	-	-
38	Strontium-89	D, see ^{89}Sr	2E+3	6E+3	2E-6	8E-9	2E-5	2E-4
		Y, see ^{89}Sr	-	4E+3	1E-6	5E-9	-	-
38	Strontium-90	D, see ^{90}Sr	6E+1	1E+1	5E-9	-	-	-
			Bone surf (6E+1)	Bone surf (1E+1)	-	2E-11	3E-7	3E-6
		Y, see ^{90}Sr	-	2E+0	8E-10	3E-12	-	-
38	Strontium-91	D, see ^{91}Sr	2E+3	6E+3	2E-6	8E-9	2E-5	2E-4
		Y, see ^{91}Sr	-	4E+3	1E-6	5E-9	-	-
38	Strontium-92	D, see ^{92}Sr	3E+3	9E+3	4E-6	1E-8	4E-5	4E-4
		Y, see ^{92}Sr	-	7E+3	3E-6	9E-9	-	-
39	Yttrium-86m[2]	W, all compounds except those given for Y	2E+4	6E+4	2E-5	8E-8	3E-4	3E-3
		Y, oxides and hydroxides	-	5E+4	2E-5	8E-8	-	-
39	Yttrium-86	W, see ^{86m}Y	1E+3	3E+3	1E-6	5E-9	2E-5	2E-4
		Y, see ^{86m}Y	-	3E+3	1E-6	5E-9	-	-
39	Yttrium-87	W, see ^{86m}Y	2E+3	3E+3	1E-6	5E-9	3E-5	3E-4
		Y, see ^{86m}Y	-	3E+3	1E-6	5E-9	-	-
39	Yttrium-88	W, see ^{86m}Y	1E+3	3E+2	1E-7	3E-10	1E-5	1E-4
		Y, see ^{86m}Y	-	2E+2	1E-7	3E-10	-	-
39	Yttrium-90m	W, see ^{86m}Y	8E+3	1E+4	5E-6	2E-8	1E-4	1E-3
		Y, see ^{86m}Y	-	1E+4	5E-6	2E-8	-	-
39	Yttrium-90	W, see ^{86m}Y	4E+2	7E+2	3E-7	9E-10	-	-
			LLI wall (5E+2)	-	-	-	7E-6	7E-5
		Y, see ^{86m}Y	-	6E+2	3E-7	9E-10	-	-
39	Yttrium-91m[2]	W, see ^{86m}Y	1E+5	2E+5	1E-4	3E-7	2E-3	2E-2
		Y, see ^{86m}Y	-	2E+5	7E-5	2E-7	-	-
39	Yttrium-91	W, see ^{86m}Y	5E+2	2E+2	7E-8	3E-10	-	-
			LLI wall (6E+2)	-	-	-	8E-6	8E-5
		Y, see ^{86m}Y	-	1E+2	5E-8	2E-10	-	-
39	Yttrium-92	W, see ^{86m}Y	3E+3	9E+3	4E-6	1E-8	4E-5	4E-4
		Y, see ^{86m}Y	-	8E+3	3E-6	1E-8	-	-
39	Yttrium-93	W, see ^{86m}Y	1E+3	3E+3	1E-6	4E-9	2E-5	2E-4
		Y, see ^{86m}Y	-	2E+3	1E-6	3E-9	-	-
39	Yttrium-94[2]	W, see ^{86m}Y	2E+4	8E+4	3E-5	1E-7	-	-
			St. wall (3E+4)	-	-	-	4E-4	4E-3
		Y, see ^{86m}Y	-	8E+4	3E-5	1E-7	-	-
39	Yttrium-95[2]	W, see ^{86m}Y	4E+4	2E+5	6E-5	2E-7	-	-
			St. wall (5E+4)	-	-	-	7E-4	7E-3
		Y, see ^{86m}Y	-	1E+5	6E-5	2E-7	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
40	Zirconium-86	W, all compounds except those given for W and Y	1E+3	4E+3	2E-6	8E-9	2E-5	2E-4
		W, oxides, hydroxides, halides, and nitrates	-	3E+3	1E-6	4E-9	-	-
		Y, carbide	-	2E+3	1E-6	3E-9	-	-
40	Zirconium-88	D, see ^{88}Zr	4E+3	2E+2	9E-8	3E-10	5E-5	5E-4
		W, see ^{88}Zr	-	5E+2	2E-7	7E-10	-	-
		Y, see ^{88}Zr	-	3E+2	1E-7	4E-10	-	-
40	Zirconium-89	D, see ^{89}Zr	2E+3	4E+3	1E-6	5E-9	2E-5	2E-4
		W, see ^{89}Zr	-	2E+3	1E-6	3E-9	-	-
		Y, see ^{89}Zr	-	3E+3	1E-6	3E-9	-	-
40	Zirconium-93	D, see ^{93}Zr	1E+3	6E+0	3E-9	-	-	-
			Bone surf (3E+3)	Bone surf (2E+1)	-	3E-11	4E-5	4E-4
		W, see ^{93}Zr	-	3E+1	1E-8	-	-	-
				Bone surf				
		Y, see ^{93}Zr	-	(8E+1)	-	9E-11	-	-
			-	6E+1	3E-8	-	-	-
				Bone surf				
			-	(7E+1)	-	9E-11	-	-
40	Zirconium-95	D, see ^{95}Zr	1E+3	2E+2	9E-8	-	2E-5	2E-4
				Bone surf				
			-	(3E+2)	-	4E-10	-	-
		W, see ^{95}Zr	-	4E+2	2E-7	9E-10	-	-
		Y, see ^{95}Zr	-	3E+2	1E-7	4E-10	-	-
40	Zirconium-97	D, see ^{97}Zr	6E+2	3E+3	8E-7	3E-9	9E-6	9E-5
		W, see ^{97}Zr	-	1E+3	6E-7	2E-9	-	-
		Y, see ^{97}Zr	-	1E+3	5E-7	2E-9	-	-
41	Niobium-88[2]	W, all compounds except those given for Y	5E+4	2E+5	9E-5	3E-7	-	-
			St. wall (7E+4)	-	-	-	1E-3	1E-2
		Y, oxides and hydroxides	-	2E+5	9E-5	3E-7	-	-
41	Niobium-89m[2] (66 min)	W, see ^{89}Nb	1E+4	4E+4	2E-5	6E-8	1E-4	1E-3
		Y, see ^{89}Nb	-	4E+4	2E-5	6E-8	-	-
41	Niobium-89 (122 min)	W, see ^{89}Nb	5E+3	2E+4	8E-6	3E-8	7E-5	7E-4
		Y, see ^{89}Nb	-	2E+4	8E-6	2E-8	-	-
41	Niobium-90	W, see ^{90}Nb	1E+3	3E+3	1E-6	4E-9	1E-5	1E-4
		Y, see ^{90}Nb	-	2E+3	1E-6	3E-9	-	-
41	Niobium-93m	W, see ^{93m}Nb	9E+3	2E+3	8E-7	3E-9	-	-
			LLI wall (3E+4)	-	-	-	2E-4	2E-3
		Y, see ^{93m}Nb	-	2E+2	7E-8	2E-10	-	-
41	Niobium-94	W, see ^{93m}Nb	9E+2	2E+2	9E-8	3E-10	1E-5	1E-4
		Y, see ^{93m}Nb	-	2E+1	6E-9	2E-11	-	-
41	Niobium-95m	W, see ^{93m}Nb	2E+3	3E+3	1E-6	4E-9	-	-
			LLI wall (2E+3)	-	-	-	3E-5	3E-4
		Y, see ^{93m}Nb	-	2E+3	9E-7	3E-9	-	-

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Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
41	Niobium-95	W, see ^{95}Nb	2E+3	1E+3	5E-7	2E-9	3E-5	3E-4
		Y, see ^{95}Nb	-	1E+3	5E-7	2E-9	-	-
41	Niobium-96	W, see ^{95}Nb	1E+3	3E+3	1E-6	4E-9	2E-5	2E-4
		Y, see ^{95}Nb	-	2E+3	1E-6	3E-9	-	-
41	Niobium-97[2]	W, see ^{95}Nb	2E+4	8E+4	3E-5	1E-7	3E-4	3E-3
		Y, see ^{95}Nb	-	7E+4	3E-5	1E-7	-	-
41	Niobium-98[2]	W, see ^{95}Nb	1E+4	5E+4	2E-5	8E-8	2E-4	2E-3
		Y, see ^{95}Nb	-	5E+4	2E-5	7E-8	-	-
42	Molybdenum-90	D, all compounds except those given for Y	4E+3	7E+3	3E-6	1E-8	3E-5	3E-4
		Y, oxides, hydroxides, and MoS_2	2E+3	5E+3	2E-6	6E-9	-	-
42	Molybdenum-93m	D, see ^{90}Mo	5E+3	2E+4	7E-6	2E-8	6E-5	6E-4
		Y, see ^{90}Mo	4E+3	1E+4	6E-6	2E-8	-	-
42	Molybdenum-93	D, see ^{90}Mo	4E+3	5E+3	2E-6	8E-9	5E-5	5E-4
		Y, see ^{90}Mo	2E+4	2E+2	8E-8	2E-10	-	-
42	Molybdenum-99	D, see ^{90}Mo	2E+3	3E+3	1E-6	4E-9	-	-
			LLI wall (1E+3)	-	-	-	2E-5	2E-4
		Y, see ^{90}Mo	1E+3	1E+3	6E-7	2E-9	-	-
42	Molybdenum-101[2]	D, see ^{90}Mo	4E+4	1E+5	6E-5	2E-7	-	-
			St. wall (5E+4)	-	-	-	7E-4	7E-3
		Y, see ^{90}Mo	-	1E+5	6E-5	2E-7	-	-
43	Technetium-93m[2]	D, all compounds except those given for W	7E+4	2E+5	6E-5	2E-7	1E-3	1E-2
		W, oxides, hydroxides, halides, and nitrates	-	3E+5	1E-4	4E-7	-	-
43	Technetium-93	D, see ^{93m}Tc	3E+4	7E+4	3E-5	1E-7	4E-4	4E-3
		W, see ^{93m}Tc	-	1E+5	4E-5	1E-7	-	-
43	Technetium-94[2]	D, see ^{93m}Tc	2E+4	4E+4	2E-5	6E-8	3E-4	3E-3
		W, see ^{93m}Tc	-	6E+4	2E-5	8E-8	-	-
43	Technetium-94	D, see ^{93m}Tc	9E+3	2E+4	8E-6	3E-8	1E-4	1E-3
		W, see ^{93m}Tc	-	2E+4	1E-5	3E-8	-	-
43	Technetium-96m	D, see ^{93m}Tc	4E+3	5E+3	2E-6	8E-9	5E-5	5E-4
		W, see ^{93m}Tc	-	2E+3	8E-7	3E-9	-	-
43	Technetium-96	D, see ^{93m}Tc	1E+4	2E+4	9E-6	3E-8	1E-4	1E-3
		W, see ^{93m}Tc	-	2E+4	8E-6	3E-8	-	-
43	Technetium-96[2]	D, see ^{93m}Tc	2E+5	3E+5	1E-4	4E-7	2E-3	2E-2
		W, see ^{93m}Tc	-	2E+5	1E-4	3E-7	-	-
43	Technetium-97	D, see ^{93m}Tc	2E+3	3E+3	1E-6	5E-9	3E-5	3E-4
		W, see ^{93m}Tc	-	2E+3	9E-7	3E-9	-	-
43	Technetium-97m	D, see ^{93m}Tc	5E+3	7E+3	3E-6	-	6E-5	6E-4
			-	St. wall (7E+3)	-	1E-8	-	-
		W, see ^{93m}Tc	-	1E+3	5E-7	2E-9	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
43	Technetium-97	D, see ^{93m}Tc	4E+4	9E+4	2E-5	7E-8	5E-4	5E-3
		W, see ^{93m}Tc	-	8E+3	3E-6	8E-9	-	-
43	Technetium-98	D, see ^{93m}Tc	1E+3	2E+3	7E-7	3E-9	1E-5	1E-4
		W, see ^{93m}Tc	-	3E+2	1E-7	4E-10	-	-
43	Technetium-99m	D, see ^{93m}Tc	6E+4	2E+5	6E-5	2E-7	1E-3	1E-2
		W, see ^{93m}Tc	-	2E+5	1E-4	3E-7	-	-
43	Technetium-99	D, see ^{93m}Tc	4E+3	5E+3	2E-6	-	8E-5	6E-4
			-	St. wall (6E+3)	-	8E-9	-	-
		W, see ^{93m}Tc	-	7E+2	3E-7	9E-10	-	-
43	Technetium-101[2]	D, see ^{93m}Tc	9E+4	3E+5	1E-4	9E-7	-	-
			St. wall (1E+5)	-	-	-	2E-3	2E-2
		W, see ^{93m}Tc	-	4E+5	2E-4	9E-7	-	-
43	Technetium-104[2]	D, see ^{93m}Tc	2E+4	7E+4	3E-5	1E-7	-	-
			St. wall (3E+4)	-	-	-	4E-4	4E-3
		W, see ^{93m}Tc	-	9E+4	4E-5	1E-7	-	-
44	Ruthenium-94[2]	D, all compounds except those given for W and Y	2E+4	4E+4	2E-5	6E-8	2E-4	2E-3
		W, halides	-	6E+4	3E-5	9E-8	-	-
		Y, oxides and hydroxides	-	6E+4	2E-5	8E-8	-	-
44	Ruthenium-97	D, see ^{94}Ru	8E+3	2E+4	8E-6	3E-8	1E-4	1E-3
		W, see ^{94}Ru	-	1E+4	5E-6	2E-8	-	-
		Y, see ^{94}Ru	-	1E+4	5E-6	2E-8	-	-
44	Ruthenium-103	D, see ^{94}Ru	2E+3	8E+3	3E-7	2E-9	3E-5	3E-4
		W, see ^{94}Ru	-	1E+3	4E-7	1E-9	-	-
		Y, see ^{94}Ru	-	6E+2	3E-7	9E-10	-	-
44	Ruthenium-105	D, see ^{94}Ru	5E+3	1E+4	6E-6	2E-8	7E-5	7E-4
		W, see ^{94}Ru	-	1E+4	6E-6	2E-8	-	-
		Y, see ^{94}Ru	-	1E+4	5E-6	2E-8	-	-
44	Ruthenium-106	D, see ^{94}Ru	2E+2	9E+1	4E-8	1E-10	-	-
			LLI wall (2E+2)	-	-	-	3E-6	3E-5
		W, see ^{94}Ru	-	9E+1	3E-8	8E-11	-	-
		Y, see ^{94}Ru	-	1E+1	5E-9	2E-11	-	-
45	Rhodium-99	D, all compounds except those given for W and Y	3E+4	6E+4	2E-5	8E-8	2E-4	2E-3
		W, halides	-	8E+4	3E-5	1E-7	-	-
		Y, oxides and hydroxides	-	7E+4	3E-5	9E-8	-	-
45	Rhodium-99	D, see ^{99m}Rh	2E+3	3E+3	1E-6	4E-9	3E-5	3E-4
		W, see ^{99m}Rh	-	2E+3	9E-7	3E-9	-	-
		Y, see ^{99m}Rh	-	2E+3	8E-7	3E-9	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Table 1 Occupational Values: Col. 2 Inhalation ALI (µCi)	Table 1 Occupational Values: Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Table 2 Effluent Concentrations: Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
45	Rhodium-100	D, see	2E+3	4E+3	2E-6	7E-9	2E-5	2E-4
		W, see	-	4E+3	2E-6	6E-9	-	-
		Y, see	-	4E+3	2E-6	5E-9	-	-
45	Rhodium-101m	D, see	6E+3	2E+4	8E-6	2E-8	8E-5	8E-4
		W, see	-	8E+3	4E-6	1E-8	-	-
		Y, see	-	8E+3	3E-6	8E-9	-	-
45	Rhodium-101	D, see	2E+3	5E+2	2E-7	7E-10	3E-5	3E-4
		W, see	-	8E+2	3E-7	8E-9	-	-
		Y, see	-	2E+2	4E-8	2E-10	-	-
45	Rhodium-102m	D, see	3E+3	3E+2	2E-7	7E-10	-	-
			LLI wall (3E+3)	-	-	-	2E-5	2E-4
		W, see	-	4E+2	2E-7	5E-10	-	-
		Y, see	-	1E+2	5E-8	2E-10	-	-
45	Rhodium-102	D, see	6E+2	9E+1	4E-8	1E-10	8E-6	8E-5
		W, see	-	2E+2	7E-8	2E-10	-	-
		Y, see	-	6E+1	2E-8	6E-11	-	-
45	Rhodium-103m[2]	D, see	8E+6	3E+6	8E-4	2E-8	6E-3	6E-2
		W, see	-	1E+6	5E-4	2E-6	-	-
		Y, see	-	1E+6	5E-4	2E-6	-	-
45	Rhodium-105	D, see	4E+3	1E+4	5E-6	2E-8	-	-
			GLI wall (4E+3)	-	-	-	9E-5	9E-4
		W, see	-	6E+3	3E-6	9E-9	-	-
		Y, see	-	6E+3	2E-6	8E-9	-	-
45	Rhodium-106m	D, see	6E+3	3E+4	1E-5	4E-8	1E-4	1E-3
		W, see	-	4E+4	2E-5	5E-8	-	-
		Y, see	-	4E+4	2E-5	5E-8	-	-
45	Rhodium-107[2]	D, see	3E+4	2E+5	3E-4	3E-7	-	-
			St. wall (3E+4)	-	-	-	1E-3	1E-2
		W, see	-	2E+5	3E-4	4E-7	-	-
		Y, see	-	2E+5	3E-4	3E-7	-	-
46	Palladium-100	D, all compounds except those given for W and Y	1E+3	1E+3	6E-7	2E-9	2E-5	2E-4
		W, nitrates	-	2E+3	9E-7	2E-9	-	-
		Y, oxides and hydroxides	-	2E+3	6E-7	2E-9	-	-
46	Palladium-101	D, see ^{100}Pd	1E+4	3E+4	1E-5	5E-8	3E-4	3E-3
		W, see ^{100}Pd	-	2E+4	3E-5	9E-8	-	-
		Y, see ^{100}Pd	-	3E+4	1E-5	4E-8	-	-
46	Palladium-103	D, see ^{100}Pd	8E+3	9E+3	3E-6	9E-9	-	-
			LLI wall (3E+3)	-	-	-	1E-4	3E-3
		W, see ^{100}Pd	-	4E+3	2E-6	6E-9	-	-
		Y, see ^{100}Pd	-	4E+3	2E-6	5E-9	-	-
46	Palladium-107	D, see ^{100}Pd	3E+4	2E+4	9E-6	-	-	-
			LLI wall (4E+4)	Kidneys (2E+4)	-	3E-8	5E-4	5E-3
		W, see ^{100}Pd	-	7E+3	3E-6	1E-8	-	-
		Y, see ^{100}Pd	-	4E+2	2E-7	6E-10	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Table 1 Occupational Values: Col. 2 Inhalation ALI (µCi)	Table 1 Occupational Values: Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Table 2 Effluent Concentrations: Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
46	Palladium-109	D, see ^{100}Pd	2E+3	6E+3	3E-6	9E-9	3E-5	3E-4
		W, see ^{100}Pd	-	5E+3	2E-6	8E-9	-	-
		Y, see ^{100}Pd	-	5E+3	2E-6	6E-9	-	-
47	Silver-102[2]	D, all compounds except those given for W and Y	5E+4	2E+5	8E-5	2E-7	-	-
			St. wall (6E+4)	-	-	-	9E-4	9E-3
		W, nitrates and sulfides	-	3E+5	9E-5	3E-7	-	-
		Y, oxides and hydroxides	-	2E+5	8E-5	3E-7	-	-
47	Silver-103[2]	D, see ^{102}Ag	4E+4	1E+5	4E-5	1E-7	5E-4	5E-3
		W, see ^{102}Ag	-	1E+5	5E-5	2E-7	-	-
		Y, see ^{102}Ag	-	1E+5	5E-5	2E-7	-	-
47	Silver-104m[2]	D, see ^{102}Ag	3E+4	9E+4	4E-5	1E-7	4E-4	4E-3
		W, see ^{102}Ag	-	1E+5	5E-5	2E-7	-	-
		Y, see ^{102}Ag	-	1E+5	5E-5	2E-7	-	-
47	Silver-104[2]	D, see ^{102}Ag	2E+4	7E+4	3E-5	1E-7	3E-4	3E-3
		W, see ^{102}Ag	-	1E+5	6E-5	2E-7	-	-
		Y, see ^{102}Ag	-	1E+5	6E-5	2E-7	-	-
47	Silver-105	D, see ^{102}Ag	3E+3	1E+3	4E-7	1E-9	4E-5	4E-4
		W, see ^{102}Ag	-	2E+3	7E-7	2E-9	-	-
		Y, see ^{102}Ag	-	2E+3	7E-7	2E-9	-	-
47	Silver-106m	D, see ^{102}Ag	8E+2	7E+2	3E-7	1E-9	1E-5	1E-4
		W, see ^{102}Ag	-	9E+2	4E-7	1E-9	-	-
		Y, see ^{102}Ag	-	9E+2	4E-7	1E-9	-	-
47	Silver-106[2]	D, see ^{102}Ag	6E+4	2E+5	8E-5	3E-7	-	-
			St. wall (6E+4)	-	-	-	9E-4	9E-3
		W, see ^{102}Ag	-	2E+5	9E-5	3E-7	-	-
		Y, see ^{102}Ag	-	2E+5	8E-5	3E-7	-	-
47	Silver-108m	D, see ^{102}Ag	6E+2	3E+2	8E-8	3E-10	9E-6	9E-5
		W, see ^{102}Ag	-	3E+2	1E-7	4E-10	-	-
		Y, see ^{102}Ag	-	2E+1	1E-8	3E-11	-	-
47	Silver-110m	D, see ^{102}Ag	5E+2	1E+2	5E-8	2E-10	6E-6	6E-5
		W, see ^{102}Ag	-	2E+2	8E-8	3E-10	-	-
		Y, see ^{102}Ag	-	9E+1	4E-8	1E-10	-	-
47	Silver-111	D, see ^{102}Ag	9E+2	2E+3	6E-7	-	-	-
			LLI wall (1E+3)	Liver (2E+3)	-	2E-9	2E-5	2E-4
		W, see ^{102}Ag	-	9E+2	4E-7	1E-9	-	-
		Y, see ^{102}Ag	-	9E+2	4E-7	1E-9	-	-
47	Silver-112	D, see ^{102}Ag	3E+3	8E+3	3E-6	1E-8	4E-5	4E-4
		W, see ^{102}Ag	-	1E+4	4E-6	1E-8	-	-
		Y, see ^{102}Ag	-	9E+3	4E-6	1E-8	-	-

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Atomic No.	Radionuclide	Class	Table 1 Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers Monthly Average Concentration (µCi/ml)
47	Silver-115[2]	D, see ^{102}Ag	3E+4	5E+4	4E-5	1E-7	-	-
			St. wall (3E+4)	-	-	-	4E-4	4E-3
		W, see ^{102}Ag	-	5E+4	4E-5	1E-7	-	-
		Y, see ^{102}Ag	-	8E+4	3E-5	1E-7	-	-
48	Cadmium-104[2]	D, all compounds except those given for W and Y	2E+4	7E+4	3E-5	9E-8	3E-4	3E-3
		W, sulfides, halides, and nitrates	-	1E+5	5E-5	2E-7	-	-
		Y, oxides and hydroxides	-	1E+5	5E-5	2E-7	-	-
48	Cadmium-107	D, see ^{104}Cd	2E+4	9E+4	2E-5	8E-8	3E-4	3E-3
		W, see ^{104}Cd	-	6E+4	2E-5	8E-8	-	-
		Y, see ^{104}Cd	-	5E+4	2E-5	7E-8	-	-
48	Cadmium-109	D, see ^{104}Cd	3E+2 Kidneys (4E+2)	4E+1 Kidneys (5E+1)	1E-8 -	- 7E-11	- 6E-6	- 6E-5
		W, see ^{104}Cd	- -	3E+2 Kidneys (3E+2)	5E-8 -	- 2E-10	- -	- -
		Y, see ^{104}Cd	-	1E+2	5E-8	2E-10	-	-
48	Cadmium-113m	D, see ^{104}Cd	2E+1 Kidneys (4E+1)	3E+0 Kidneys (4E+0)	3E-9 -	- 5E-12	- 5E-7	- 5E-6
		W, see ^{104}Cd	- -	8E+0 Kidneys (8E+1)	4E-9 -	- 2E-11	- -	- -
		Y, see ^{104}Cd	-	1E+1	5E-9	2E-11	-	-
48	Cadmium-115	D, see ^{104}Cd	2E+1 Kidneys (3E+1)	2E+0 Kidneys (3E+0)	9E-10 -	- 5E-12	- 4E-7	- 4E-6
		W, see ^{104}Cd	- -	6E+0 Kidneys (8E+1)	3E-9 -	- 2E-11	- -	- -
		Y, see ^{104}Cd	-	3E+0	6E-9	2E-11	-	-
48	Cadmium-115m	D, see ^{104}Cd	3E+2	5E+1 Kidneys (8E+1)	2E-8 -	- 1E-10	4E-6 -	4E-5 -
		W, see ^{104}Cd	-	3E+2	5E-8	2E-10	-	-
		Y, see ^{104}Cd	-	1E+2	6E-8	2E-10	-	-
48	Cadmium-117	D, see ^{104}Cd	9E+2 LLI wall (3E+3)	1E+3	4E-7	3E-9	-	-
		W, see ^{104}Cd	-	3E+3	9E-7	2E-9	1E-5	1E-4
		Y, see ^{104}Cd	-	1E+3	6E-7	2E-9	-	-
48	Cadmium-117m	D, see ^{104}Cd	5E+3	3E+4	9E-6	2E-8	-	-
		W, see ^{104}Cd	-	2E+4	7E-6	2E-8	6E-5	6E-4
		Y, see ^{104}Cd	-	1E+4	6E-6	2E-8	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers Monthly Average Concentration (µCi/ml)
48	Cadmium-117	D, see ^{104}Cd	9E+3	1E+4	5E-6	2E-8	6E-5	6E-4
		W, see ^{104}Cd	-	2E+4	7E-6	2E-8	-	-
		Y, see ^{104}Cd	-	1E+4	6E-6	2E-8	-	-
49	Indium-109	D, all compounds except those given for W	2E+4	6E+4	2E-5	6E-8	3E-4	3E-3
		W, oxides, hydroxides, halides, and nitrates	-	6E+4	3E-5	9E-8	-	-
49	Indium-110[2] (69.1 min)	D, see ^{109}In	2E+4	4E+4	2E-5	6E-8	2E-4	2E-3
		W, see ^{109}In	-	6E+4	2E-5	8E-8	-	-
49	Indium-110 (4.9 h)	D, see ^{109}In	9E+3	2E+4	7E-6	2E-8	7E-5	7E-4
		W, see ^{109}In	-	2E+4	8E-6	3E-8	-	-
49	Indium-111	D, see ^{109}In	4E+3	6E+3	3E-6	9E-9	8E-5	8E-4
		W, see ^{109}In	-	6E+3	3E-6	9E-9	-	-
49	Indium-112[2]	D, see ^{109}In	2E+5	6E+5	3E-4	9E-7	2E-3	2E-2
		W, see ^{109}In	-	7E+5	3E-4	3E-6	-	-
49	Indium-113m[2]	D, see ^{109}In	5E+4	1E+5	6E-5	2E-7	7E-4	7E-3
		W, see ^{109}In	-	2E+5	8E-5	3E-7	-	-
49	Indium-114m	D, see ^{109}In	3E+2 LLI wall (4E+2)	6E+1	3E-8	9E-11	-	-
		W, see ^{109}In	-	1E+2	4E-8	3E-10	5E-6	5E-5
4	Indium-115m	D, see ^{109}In	1E+4	4E+4	2E-5	6E-8	2E-4	2E-3
		W, see ^{109}In	-	5E+4	2E-5	7E-8	-	-
49	Indium-115	D, see ^{109}In	4E+1	1E+0	6E-10	2E-12	5E-7	5E-6
		W, see ^{109}In	-	5E+0	2E-9	6E-12	-	-
49	Indium-116m[2]	D, see ^{109}In	3E+4	8E+4	3E-5	1E-7	3E-4	3E-3
		W, see ^{109}In	-	1E+5	5E-5	2E-7	-	-
49	Indium-117m[2]	D, see ^{109}In	1E+4	3E+4	1E-5	5E-8	2E-4	3E-3
		W, see ^{109}In	-	4E+4	2E-5	6E-8	-	-
49	Indium-117[2]	D, see ^{109}In	4E+4	2E+5	7E-5	2E-7	8E-4	8E-3
		W, see ^{109}In	-	2E+5	9E-5	3E-7	-	-
49	Indium-119m[2]	D, see ^{109}In	4E+4	1E+5	5E-5	2E-7	-	-
			St. wall (5E+4)	-	-	-	2E-4	2E-3
		W, see ^{109}In	-	1E+5	6E-5	2E-7	-	-
50	Tin-110	D, all compounds except those given for W	4E+3	1E+4	5E-6	2E-8	5E-5	5E-4
		W, sulfides, oxides, hydroxides, halides, nitrates, and stannic phosphate	-	1E+4	5E-6	2E-8	-	-
50	Tin-111[2]	D, see ^{110}Sn	7E+4	2E+5	9E-5	3E-7	1E-3	1E-2
		W, see ^{110}Sn	-	3E+5	1E-4	4E-7	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
50	Tin-113	D, see ^{110}Sn	2E+3	1E+3	5E-7	2E-9	-	-
			LLI wall (2E+3)	-	-	-	3E-5	3E-4
		W, see ^{110}Sn	-	5E+2	2E-7	8E-10	-	-
50	Tin-117m	D, see ^{110}Sn	2E+3	1E+3	5E-7	-	-	-
			LLI wall (2E+3)	Bone surf (2E+3)	-	3E-9	3E-5	3E-4
		W, see ^{110}Sn	-	1E+3	6E-7	2E-9	-	-
50	Tin-119m	D, see ^{110}Sn	3E+3	2E+3	1E-6	3E-9	-	-
			LLI wall (4E+3)	-	-	-	6E-5	6E-4
		W, see ^{110}Sn	-	1E+3	4E-7	1E-9	-	-
50	Tin-121m	D, see ^{110}Sn	3E+3	9E+2	4E-7	1E-9	-	-
			LLI wall (4E+3)	-	-	-	9E-5	9E-4
		W, see ^{110}Sn	-	5E+2	2E-7	8E-10	-	-
50	Tin-121	D, see ^{110}Sn	6E+3	2E+4	6E-6	2E-8	-	-
			LLI wall (6E+3)	-	-	-	8E-5	8E-4
		W, see ^{110}Sn	-	1E+4	5E-6	2E-8	-	-
50	Tin-123m[2]	D, see ^{110}Sn	5E+4	1E+5	5E-5	2E-7	7E-4	7E-3
		W, see ^{110}Sn	-	1E+5	6E-5	2E-7	-	-
50	Tin-123	D, see ^{110}Sn	5E+2	6E+2	3E-7	9E-10	-	-
			LLI wall (6E+2)	-	-	-	9E-6	9E-5
		W, see ^{110}Sn	-	2E+2	7E-8	2E-10	-	-
50	Tin-125	D, see ^{110}Sn	4E+2	9E+2	4E-7	1E-9	-	-
			LLI wall (5E+2)	-	-	-	6E-6	6E-5
		W, see ^{110}Sn	-	4E+2	1E-7	5E-10	-	-
50	Tin-126	D, see ^{110}Sn	3E+2	6E+1	2E-8	8E-11	4E-6	4E-5
		W, see ^{110}Sn	-	7E+1	3E-8	9E-11	-	-
50	Tin-127	D, see ^{110}Sn	7E+3	2E+4	8E-6	3E-8	9E-5	9E-4
		W, see ^{110}Sn	-	2E+4	8E-6	3E-8	-	-
50	Tin-128[2]	D, see ^{110}Sn	9E+3	3E+4	1E-5	4E-8	1E-4	1E-3
		W, see ^{110}Sn	-	4E+4	1E-5	5E-8	-	-
51	Antimony-115[2]	D, all compounds except those given for W	8E+4	2E+5	1E-4	3E-7	1E-3	1E-2
		W, oxides, hydroxides, halides, sulfides, sulfates, and nitrates	-	3E+5	1E-4	4E-7	-	-
51	Antimony-116m[2]	D, see ^{115}Sb	2E+4	7E+4	3E-5	1E-7	3E-4	3E-3
		W, see ^{115}Sb	-	1E+5	6E-5	2E-7	-	-
51	Antimony-116[2]	D, see ^{115}Sb	7E+4	3E+5	1E-4	4E-7	-	-
			St. wall (9E+4)	-	-	-	1E-3	1E-2
		W, see ^{115}Sb	-	3E+5	1E-4	5E-7	-	-
51	Antimony-117	D, see ^{115}Sb	7E+4	2E+5	9E-5	3E-7	9E-4	9E-3
		W, see ^{115}Sb	-	3E+5	1E-4	4E-7	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
51	Antimony-118m	D, see ^{115}Sb	6E+3	2E+4	8E-6	3E-8	7E-5	7E-4
		W, see ^{115}Sb	9E+3	2E+4	9E-6	3E-8	-	-
51	Antimony-119	D, see ^{115}Sb	2E+4	5E+4	2E-5	6E-8	3E-4	3E-3
		W, see ^{115}Sb	2E+4	3E+4	1E-5	4E-8	-	-
51	Antimony-120[2] (16 min)	D, see ^{115}Sb	1E+5	4E+5	2E-4	6E-7	-	-
			St. wall (2E+5)	-	-	-	2E-3	2E-2
		W, see ^{115}Sb	-	5E+5	2E-4	7E-7	-	-
51	Antimony-120 (5.76 d)	D, see ^{115}Sb	1E+3	2E+3	9E-7	3E-9	1E-5	1E-4
		W, see ^{115}Sb	9E+2	1E+3	5E-7	2E-9	-	-
51	Antimony-122	D, see ^{115}Sb	8E+2	2E+3	1E-6	3E-9	-	-
			LLI wall (8E+2)	-	-	-	1E-5	1E-4
		W, see ^{115}Sb	7E+2	1E+3	4E-7	2E-9	-	-
51	Antimony-124m[2]	D, see ^{115}Sb	3E+5	6E+5	4E-4	1E-6	3E-3	3E-2
		W, see ^{115}Sb	2E+5	6E+5	2E-4	8E-7	-	-
51	Antimony-124	D, see ^{115}Sb	6E+2	9E+2	4E-7	1E-9	7E-6	7E-5
		W, see ^{115}Sb	5E+2	2E+2	1E-7	3E-10	-	-
51	Antimony-125	D, see ^{115}Sb	2E+3	2E+3	1E-6	3E-9	3E-5	3E-4
		W, see ^{115}Sb	-	5E+2	2E-7	7E-10	-	-
51	Antimony-126m[2]	D, see ^{125}Sb	5E+4	2E+5	8E-5	3E-7	-	-
			St. wall (7E+4)	-	-	-	9E-4	9E-3
		W, see ^{125}Sb	-	2E+5	8E-5	3E-7	-	-
51	Antimony-126	D, see ^{115}Sb	8E+2	1E+3	9E-7	2E-9	7E-6	7E-5
		W, see ^{115}Sb	9E+2	5E+2	2E-7	7E-10	-	-
51	Antimony-127	D, see ^{125}Sb	8E+2	2E+3	9E-7	3E-9	-	-
			LLI wall (8E+2)	-	-	-	1E-5	1E-4
		W, see ^{125}Sb	7E+2	9E+2	4E-7	3E-9	-	-
51	Antimony-128[2] (10.4 min)	D, see ^{115}Sb	8E+4	4E+5	2E-4	5E-7	-	-
			St. wall (1E+5)	-	-	-	1E-3	1E-2
		W, see ^{115}Sb	-	4E+5	2E-4	6E-7	-	-
51	Antimony-128 (9.01 h)	D, see ^{115}Sb	1E+3	4E+3	2E-6	8E-9	2E-5	2E-4
		W, see ^{115}Sb	-	3E+3	1E-6	5E-9	-	-
51	Antimony-129	D, see ^{115}Sb	3E+3	9E+3	4E-6	1E-8	4E-5	4E-4
		W, see ^{115}Sb	-	9E+3	4E-6	1E-8	-	-
51	Antimony-130[2]	D, see ^{115}Sb	2E+4	6E+4	3E-5	9E-8	3E-4	3E-3
		W, see ^{115}Sb	-	8E+4	3E-5	1E-7	-	-
51	Antimony-131[2]	D, see ^{115}Sb	1E+4	2E+4	1E-5	-	-	-
			Thyroid (2E+4)	Thyroid (4E+4)	-	6E-8	2E-4	2E-3
		W, see ^{115}Sb	-	2E+4	1E-5	-	-	-
			-	Thyroid (4E+4)	-	6E-8	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
52	Tellurium-116	D, all compounds except those given for W	8E+3	2E+4	9E-6	3E-8	1E-4	1E-3
		W, oxides, hydroxides, and nitrates	-	3E+4	1E-5	4E-8	-	-
52	Tellurium-121m	D, see ^{116}Te	5E+2	2E+2	8E-8	-	-	-
			Bone surf (7E+2)	Bone surf (4E+2)	-	5E-10	1E-5	1E-4
		W, see ^{116}Te	-	4E+2	2E-7	6E-10	-	-
52	Tellurium-121	D, see ^{116}Te	3E+3	4E+3	2E-6	6E-9	4E-5	4E-4
		W, see ^{116}Te	-	3E+3	1E-6	4E-9	-	-
52	Tellurium-123m	D, see ^{116}Te	6E+2	2E+2	9E-8	-	-	-
			Bone surf (1E+3)	Bone surf (5E+2)	-	8E-10	1E-5	1E-4
		W, see ^{116}Te	-	5E+2	2E-7	8E-10	-	-
52	Tellurium-123	D, see ^{116}Te	5E+2	2E+2	8E-8	-	-	-
			Bone surf (1E+3)	Bone surf (5E+2)	-	7E-10	2E-5	2E-4
		W, see ^{116}Te	-	4E+2	2E-7	-	-	-
			-	Bone surf (1E+3)	-	2E-9	-	-
52	Tellurium-125m	D, see ^{116}Te	1E+3	4E+2	2E-7	-	-	-
			Bone surf (1E+3)	Bone surf (1E+3)	-	1E-9	2E-5	2E-4
		W, see ^{116}Te	-	7E+2	3E-7	1E-9	-	-
52	Tellurium-127m	D, see ^{116}Te	6E+2	3E+2	1E-7	-	9E-6	9E-5
			-	Bone surf (4E+2)	-	6E-10	-	-
		W, see ^{116}Te	-	3E+2	1E-7	4E-10	-	-
52	Tellurium-127	D, see ^{116}Te	7E+3	2E+4	9E-6	3E-8	1E-4	1E-3
		W, see ^{116}Te	-	2E+4	7E-6	2E-8	-	-
52	Tellurium-129m	D, see ^{116}Te	5E+2	6E+2	3E-7	9E-10	7E-6	7E-5
		W, see ^{116}Te	-	2E+2	1E-7	3E-10	-	-
52	Tellurium-129[2]	D, see ^{116}Te	3E+4	6E+4	3E-5	9E-8	4E-4	4E-3
		W, see ^{116}Te	-	7E+4	3E-5	1E-7	-	-
52	Tellurium-131m	D, see ^{116}Te	3E+2	4E+2	2E-7	-	-	-
			Thyroid (6E+2)	Thyroid (1E+3)	-	2E-9	8E-6	8E-5
		W, see ^{116}Te	-	4E+2	2E-7	-	-	-
			-	Thyroid (9E+2)	-	1E-9	-	-
52	Tellurium-131[2]	D, see ^{116}Te	3E+3	5E+3	2E-6	-	-	-
			Thyroid (6E+3)	Thyroid (1E+4)	-	2E-8	9E-5	9E-4
		W, see ^{116}Te	-	5E+3	2E-6	-	-	-
			-	Thyroid (1E+4)	-	2E-8	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
52	Tellurium-132	D, see ^{116}Te	2E+2	2E+2	9E-8	-	-	-
			Thyroid (7E+2)	Thyroid (8E+2)	-	1E-9	9E-6	9E-5
		W, see ^{116}Te	-	2E+2	9E-8	-	-	-
			-	Thyroid (6E+2)	-	9E-10	-	-
52	Tellurium-133m[2]	D, see ^{116}Te	3E+3	5E+3	2E-6	-	-	-
			Thyroid (6E+3)	Thyroid (1E+4)	-	2E-8	9E-5	9E-4
		W, see ^{116}Te	-	5E+3	2E-6	-	-	-
			-	Thyroid (1E+4)	-	2E-8	-	-
52	Tellurium-133[2]	D, see ^{116}Te	1E+4	2E+4	9E-6	-	-	-
			Thyroid (3E+4)	Thyroid (6E+4)	-	8E-8	4E-4	4E-3
		W, see ^{116}Te	-	2E+4	9E-6	-	-	-
			-	Thyroid (6E+4)	-	8E-8	-	-
52	Tellurium-134[2]	D, see ^{116}Te	2E+4	2E+4	1E-5	-	-	-
			Thyroid (2E+4)	Thyroid (5E+4)	-	7E-8	3E-4	3E-3
		W, see ^{116}Te	-	2E+4	1E-5	-	-	-
			-	Thyroid (5E+4)	-	7E-8	-	-
53	Iodine-120m[2]	D, all compounds	1E+4	2E+4	9E-6	3E-8	-	-
			Thyroid (1E+4)	-	-	-	2E+4	2E-3
53	Iodine-120[2]	D, all compounds	4E+3	9E+3	4E-6	-	-	-
			Thyroid (8E+3)	Thyroid (1E+4)	-	2E-8	1E-4	1E-3
53	Iodine-121	D, all compounds	1E+4	2E+4	9E-6	-	-	-
			Thyroid (3E+4)	Thyroid (5E+4)	-	7E-8	4E-4	4E-3
53	Iodine-123	D, all compounds	3E+3	6E+3	3E-6	-	-	-
			Thyroid (1E+4)	Thyroid (2E+4)	-	2E-8	1E-4	1E-3
53	Iodine-124	D, all compounds	5E+1	8E+1	3E-8	-	-	-
			Thyroid (2E+2)	Thyroid (3E+2)	-	4E-10	3E-6	2E-5
53	Iodine-125	D, all compounds	4E+1	6E+1	3E-8	-	-	-
			Thyroid (1E+2)	Thyroid (2E+2)	-	3E-10	2E-6	2E-5
53	Iodine-126	D, all compounds	2E+1	4E+1	1E-8	-	-	-
			Thyroid (7E+1)	Thyroid (1E+2)	-	2E-10	1E-6	1E-5
53	Iodine-128[2]	D, all compounds	4E+4	1E+5	5E-5	2E-7	-	-
			St. wall (6E+4)	-	-	-	8E-4	8E-3
53	Iodine-129	D, all compounds	5E+0	5E+0	4E-9	-	-	-
			Thyroid (2E+1)	Thyroid (3E+1)	-	4E-11	2E-7	2E-6

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			Table 1 Occupational Values			Table 2 Effluent Concentrations		Table 3 Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation				
Atomic No.	Radionuclide	Class	ALI (µCi)	ALI (µCi)	DAC (µCi/ml)	Air (µCi/ml)	Water (µCi/ml)	Monthly Average Concentration (µCi/ml)
53	Iodine-130	D, all compounds	4E+2 Thyroid (1E+3)	7E+2 Thyroid (2E+3)	3E-7	-	-	-
					-	3E-9	2E-5	2E-4
53	Iodine-131	D, all compounds	3E+1 Thyroid (9E+1)	5E+1 Thyroid (2E+2)	2E-8	-	-	-
					-	2E-10	1E-6	1E-5
53	Iodine-132m[2]	D, all compounds	4E+3 Thyroid (1E+4)	8E+3 Thyroid (2E+4)	4E-6	-	-	-
					-	3E-8	1E-4	1E-3
53	Iodine-132	D, all compounds	4E+3 Thyroid (9E+3)	8E+3 Thyroid (1E+4)	3E-6	-	-	-
					-	2E-8	1E-4	1E-3
53	Iodine-133	D, all compounds	1E+2 Thyroid (5E+2)	3E+2 Thyroid (9E+2)	1E-7	-	-	-
					-	1E-9	7E-6	7E-5
53	Iodine-134[2]	D, all compounds	2E+4 Thyroid (3E+4)	5E+4	2E-5	6E-8	-	-
				-	-	-	4E-4	4E-3
53	Iodine-135	D, all compounds	6E+2 Thyroid (3E+3)	2E+3 Thyroid (4E+3)	7E-7	-	-	-
					-	6E-9	3E-5	3E-4
54	Xenon-120[2]	Submersion[1]	-	-	1E-5	4E-8	-	-
54	Xenon-121[2]	Submersion[1]	-	-	2E-6	3E-8	-	-
54	Xenon-122	Submersion[1]	-	-	7E-5	3E-7	-	-
54	Xenon-123	Submersion[1]	-	-	6E-6	3E-8	-	-
54	Xenon-125	Submersion[1]	-	-	2E-5	7E-8	-	-
54	Xenon-127	Submersion[1]	-	-	1E-5	6E-8	-	-
54	Xenon-129m	Submersion[1]	-	-	2E-4	9E-7	-	-
54	Xenon-131m	Submersion[1]	-	-	4E-4	2E-6	-	-
54	Xenon-133m	Submersion[1]	-	-	1E-4	6E-7	-	-
54	Xenon-133	Submersion[1]	-	-	1E-4	5E-7	-	-
54	Xenon-135m[2]	Submersion[1]	-	-	9E-6	4E-8	-	-
54	Xenon-135	Submersion[1]	-	-	1E-5	7E-8	-	-
54	Xenon-138[2]	Submersion[1]	-	-	4E-6	2E-8	-	-
55	Cesium-125[2]	D, all compounds	9E+4	1E+5	6E-5	2E-7	-	-
			St. wall (9E+4)	-	-	-	1E-3	1E-2
55	Cesium-127	D, all compounds	6E+4	9E+4	4E-5	1E-7	9E-4	9E-3

			Table 1 Occupational Values			Table 2 Effluent Concentrations		Table 3 Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation				
Atomic No.	Radionuclide	Class	ALI (µCi)	ALI (µCi)	DAC (µCi/ml)	Air (µCi/ml)	Water (µCi/ml)	Monthly Average Concentration (µCi/ml)
55	Cesium-129	D, all compounds	2E+4	3E+4	1E-5	5E-8	3E-4	3E-3
55	Cesium-130[2]	D, all compounds	6E+4	2E+5	8E-5	3E-7	-	-
			St. wall (1E+5)	-	-	-	1E-3	1E-2
55	Cesium-131	D, all compounds	2E+4	3E+4	1E-5	4E-8	3E-4	3E-3
55	Cesium-132	D, all compounds	3E+3	4E+3	2E-6	6E-9	4E-5	4E-4
55	Cesium-134m	D, all compounds	1E+5	1E+5	6E-5	2E-7	-	-
			St. wall (1E+5)	-	-	-	2E-3	2E-2
55	Cesium-134	D, all compounds	7E+1	1E+2	4E-8	2E-10	9E-7	9E-6
55	Cesium-135m[2]	D, all compounds	1E+5	2E+5	8E-5	3E-7	1E-3	1E-2
55	Cesium-135	D, all compounds	7E+2	1E+3	9E-7	2E-9	1E-5	1E-4
55	Cesium-136	D, all compounds	4E+2	7E+2	3E-7	9E-10	6E-6	6E-5
55	Cesium-137	D, all compounds	1E+2	2E+2	6E-8	2E-10	1E-6	1E-5
55	Cesium-138[2]	D, all compounds	2E+4	6E+4	2E-5	8E-8	-	-
			St. wall (3E+4)	-	-	-	4E-4	4E-3
56	Barium-126[2]	D, all compounds	6E+3	2E+4	6E-6	2E-8	8E-5	8E-4
56	Barium-128	D, all compounds	5E+2	2E+3	7E-7	2E-9	7E-6	7E-5
56	Barium-131m[2]	D, all compounds	4E+5	1E+6	6E-4	2E-6	-	-
			St. wall (5E+5)	-	-	-	7E-3	7E-2
56	Barium-131	D, all compounds	3E+3	8E+3	3E-6	1E-8	4E-5	4E-4
56	Barium-133m	D, all compounds	2E+3	9E+3	4E-6	1E-8	-	-
			LLI wall (3E+3)	-	-	-	4E-5	4E-4
56	Barium-133	D, all compounds	2E+3	7E+2	3E-7	9E-10	2E-5	2E-4
56	Barium-139m	D, all compounds	3E+3	1E+4	5E-6	2E-8	4E-5	4E-4
56	Barium-139[2]	D, all compounds	1E+4	3E+4	1E-5	4E-8	2E-4	2E-3
56	Barium-140	D, all compounds	5E+2	1E+3	6E-7	2E-9	-	-
			LLI wall (6E+2)	-	-	-	8E-6	8E-5
56	Barium-141[2]	D, all compounds	2E+4	7E+4	3E-5	1E-7	3E-4	3E-3
56	Barium-142[2]	D, all compounds	5E+4	1E+5	6E-5	2E-7	7E-4	7E-3
57	Lanthanum-131[2]	D, all compounds except those given for W	5E+4	1E+5	5E-5	2E-7	6E-4	6E-3
		W, oxides and hydroxides	-	2E+5	7E-5	2E-7	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
57	Lanthanum-132	D, see ^{131}La	3E+3	1E+4	4E-6	1E-8	4E-5	4E-4
		W, see ^{131}La	-	1E+4	5E-6	2E-8	-	-
57	Lanthanum-135	D, see ^{131}La	4E+4	1E+5	4E-5	1E-7	5E-4	5E-3
		W, see ^{131}La	-	9E+4	4E-5	1E-7	-	-
57	Lanthanum-137	D, see ^{131}La	3E+4	6E+1	3E-8	-	2E-4	2E-3
			-	Liver (7E+1)	-	1E-10	-	-
		W, see ^{131}La	-	3E+2	1E-7	-	-	-
			-	Liver (3E+2)	-	4E-10	-	-
57	Lanthanum-138	D, see ^{131}La	9E+2	4E+0	1E-9	5E-12	1E-6	1E-4
		W, see ^{131}La	-	1E+1	6E-9	2E-11	-	-
57	Lanthanum-140	D, see ^{131}La	6E+2	1E+3	6E-7	2E-9	9E-6	9E-5
		W, see ^{131}La	-	1E+3	5E-7	2E-9	-	-
57	Lanthanum-141	D, see ^{131}La	4E+3	9E+3	4E-6	1E-8	5E-5	5E-4
		W, see ^{131}La	-	1E+4	5E-6	2E-8	-	-
57	Lanthanum-142[2]	D, see ^{131}La	8E+3	2E+4	9E-6	3E-8	1E-4	1E-3
		W, see ^{131}La	-	3E+4	1E-5	5E-8	-	-
57	Lanthanum-143[2]	D, see ^{131}La	4E+4	1E+5	4E-5	1E-7	-	-
			St. wall (4E+4)	-	-	-	5E-4	5E-3
		W, see ^{131}La	-	9E+4	4E-5	1E-7	-	-
58	Cerium-134	W, all compounds except those given for Y	5E+2	7E+2	3E-7	1E-9	-	-
			LLI wall (6E+2)	-	-	-	8E-6	8E-5
		Y, oxides, hydroxides, and fluorides	-	7E+2	3E-7	9E-10	-	-
58	Cerium-135	W, see ^{134}Ce	2E+3	4E+3	2E-6	5E-9	2E-5	2E-4
		Y, see ^{134}Ce	-	4E+3	1E-6	5E-9	-	-
58	Cerium-137m	W, see ^{134}Ce	2E+3	4E+3	2E-6	6E-9	-	-
			LLI wall (2E+3)	-	-	-	3E-5	3E-4
		Y, see ^{134}Ce	-	4E+3	2E-6	5E-9	-	-
58	Cerium-137	W, see ^{134}Ce	5E+4	1E+5	6E-5	2E-7	7E-4	7E-3
		Y, see ^{134}Ce	-	1E+5	5E-5	2E-7	-	-
58	Cerium-139	W, see ^{134}Ce	5E+3	8E+2	3E-7	1E-9	7E-5	7E-4
		Y, see ^{134}Ce	-	7E+2	3E-7	9E-10	-	-
58	Cerium-141	W, see ^{134}Ce	2E+3	7E+2	3E-7	1E-9	-	-
			LLI wall (2E+3)	-	-	-	3E-5	3E-4
		Y, see ^{134}Ce	-	4E+2	2E-7	6E-10	-	-
58	Cerium-143	W, see ^{134}Ce	1E+3	2E+3	8E-7	3E-9	-	-
			LLI wall (1E+3)	-	-	-	2E-5	2E-4
		Y, see ^{134}Ce	-	2E+3	7E-7	2E-9	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
58	Cerium-144	W, see ^{134}Ce	2E+2	3E+1	1E-8	4E-11	-	-
			LLI wall (3E+2)	-	-	-	3E-6	3E-5
		Y, see ^{134}Ce	-	1E+1	6E-9	2E-11	-	-
59	Praseodymium-136[2]	W, all compounds except those given for Y	9E+4	2E+5	1E-4	3E-7	-	-
			St. wall (7E+4)	-	-	-	1E-3	1E-2
		Y, oxides, hydroxides, carbides, and fluorides	-	2E+5	9E-5	3E-7	-	-
59	Praseodymium-137[2]	W, see ^{136}Pr	4E+4	2E+5	6E-5	2E-7	5E-4	5E-3
		Y, see ^{136}Pr	-	1E+5	6E-5	2E-7	-	-
59	Praseodymium-138m	W, see ^{136}Pr	1E+4	5E+4	2E-5	6E-8	1E-4	1E-3
		Y, see ^{136}Pr	-	4E+4	2E-5	6E-8	-	-
59	Praseodymium-139	W, see ^{136}Pr	4E+4	1E+5	5E-5	2E-7	6E-4	6E-3
		Y, see ^{136}Pr	-	1E+5	5E-5	2E-7	-	-
59	Praseodymium-142m[2]	W, see ^{136}Pr	8E+4	2E+5	7E-5	2E-7	1E-3	1E-2
		Y, see ^{136}Pr	-	1E+5	6E-5	2E-7	-	-
59	Praseodymium-142	W, see ^{136}Pr	1E+3	2E+3	9E-7	3E-9	1E-5	1E-4
		Y, see ^{136}Pr	-	2E+3	8E-7	3E-9	-	-
59	Praseodymium-143	W, see ^{136}Pr	9E+2	8E+2	3E-7	1E-9	-	-
			LLI wall (1E+3)	-	-	-	2E-5	2E-4
		Y, see ^{136}Pr	-	7E+2	3E-7	9E-10	-	-
59	Praseodymium-144[2]	W, see ^{136}Pr	3E+4	1E+5	5E-5	2E-7	-	-
			St. wall (4E+4)	-	-	-	6E-4	6E-3
		Y, see ^{136}Pr	-	1E+5	5E-5	2E-7	-	-
59	Praseodymium-145	W, see ^{136}Pr	3E+3	9E+3	4E-6	1E-8	4E-5	4E-4
		Y, see ^{136}Pr	-	8E+3	3E-6	1E-8	-	-
59	Praseodymium-147[2]	W, see ^{136}Pr	5E+4	2E+5	8E-5	3E-7	-	-
			St. wall (8E+4)	-	-	-	1E-3	1E-2
		Y, see ^{136}Pr	-	2E+5	8E-5	3E-7	-	-
60	Neodymium-136[2]	W, all compounds except those given for Y	1E+4	6E+4	2E-5	8E-8	8E-4	8E-3
		Y, oxides, hydroxides, carbides, and fluorides	-	5E+4	2E-5	8E-8	-	-
60	Neodymium-138	W, see ^{136}Nd	2E+3	6E+3	3E-6	9E-9	3E-5	3E-4
		Y, see ^{136}Nd	-	5E+3	2E-6	7E-9	-	-
60	Neodymium-139m	W, see ^{136}Nd	5E+3	2E+4	7E-6	2E-8	7E-5	7E-4
		Y, see ^{136}Nd	-	1E+4	6E-6	2E-8	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
60	Neodymium-139[2]	W, see ^{136}Nd Y, see ^{136}Nd	9E+4 -	3E+5 3E+5	1E-4 1E-4	9E-7 4E-7	1E-3 -	1E-2 -
60	Neodymium-141	W, see ^{136}Nd Y, see ^{136}Nd	2E+5 -	7E+5 6E+5	3E-4 3E-4	1E-6 9E-7	2E-3 -	2E-2 -
60	Neodymium-147	W, see ^{136}Nd	1E+3 LLI wall (1E+3)	9E+2 -	4E-7 -	1E-9 -	- 2E-5	- 2E-4
		Y, see ^{136}Nd	-	8E+2	4E-7	1E-9	-	-
60	Neodymium-149[2]	W, see ^{136}Nd Y, see ^{136}Nd	1E+4 -	3E+4 2E+4	1E-5 1E-5	4E-8 3E-8	1E-4 -	1E-3 -
60	Neodymium-151[2]	W, see ^{136}Nd Y, see ^{136}Nd	7E+4 -	2E+5 2E+5	8E-5 8E-5	3E-7 3E-7	9E-4 -	9E-3 -
61	Promethium-141[2]	W, all compounds except those given for Y	5E+4 St. wall (6E+4)	2E+5 -	8E-5 -	3E-7 -	- 8E-4	- 8E-3
		Y, oxides, hydroxides, carbides, and fluorides	-	2E+5	7E-5	2E-7	-	-
61	Promethium-143	W, see ^{141}Pm Y, see ^{141}Pm	9E+3 -	6E+2 7E+2	2E-7 3E-7	8E-10 1E-9	7E-5 -	7E-4 -
61	Promethium-144	W, see ^{141}Pm Y, see ^{141}Pm	1E+3 -	1E+2 1E+2	5E-8 5E-8	2E-10 2E-10	2E-5 -	2E-4 -
61	Promethium-145	W, see ^{141}Pm	1E+4	2E+2 Bone surf (2E+2)	7E-8 -	- 3E-10	1E-4 -	1E-3 -
		Y, see ^{141}Pm	-	2E+2	8E-8	3E-10	-	-
61	Promethium-146	W, see ^{141}Pm Y, see ^{141}Pm	2E+0 -	5E+1 4E+1	2E-8 2E-8	7E-11 6E-11	2E-5 -	2E-4 -
61	Promethium-147	W, see ^{141}Pm	4E+3 LLI wall (5E+3)	1E+2 Bone surf (2E+2)	5E-8 -	- 3E-10	- 7E-5	- 7E-4
		Y, see ^{141}Pm	-	1E+2	6E-8	2E-10	-	-
61	Promethium-148m	W, see ^{141}Pm Y, see ^{141}Pm	7E+2 -	3E+2 3E+2	1E-7 1E-7	4E-10 5E-10	1E-5 -	1E-4 -
61	Promethium-148	W, see ^{141}Pm	4E+2 LLI wall (5E+2)	5E+2 -	2E-7 -	8E-10 -	- 7E-6	- 7E-5
		Y, see ^{141}Pm	-	5E+2	2E-7	7E-10	-	-
61	Promethium-149	W, see ^{141}Pm	1E+3 LLI wall (1E+3)	2E+3 -	8E-7 -	3E-9 -	- 2E-5	- 2E-4
		Y, see ^{141}Pm	-	2E+3	8E-7	2E-9	-	-
61	Promethium-150	W, see ^{141}Pm Y, see ^{141}Pm	5E+3 -	2E+4 2E+4	8E-6 7E-6	3E-8 2E-8	7E-5 -	7E-4 -
61	Promethium-151	W, see ^{141}Pm Y, see ^{141}Pm	2E+3 -	4E+3 3E+3	1E-6 1E-6	5E-9 4E-9	2E-5 -	2E-4 -

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
62	Samarium-141m[2]	W, all compounds	3E+4	1E+5	4E-5	1E-7	4E-4	4E-3
62	Samarium-141[2]	W, all compounds	5E+4 St. wall (6E+4)	2E+5 -	8E-5	2E-7 -	- 8E-4	- 8E-3
62	Samarium-142[2]	W, all compounds	8E+3	3E+4	1E-5	4E-8	1E-4	1E-3
62	Samarium-145	W, all compounds	6E+3	5E+2	2E-7	7E-10	8E-5	8E-4
62	Samarium-146	W, all compounds	1E+1 Bone surf (3E+1)	4E-2 Bone surf (6E-2)	1E-11 -	- 9E-14	- 3E-7	- 3E-6
62	Samarium-147	W, all compounds	2E+1 Bone surf (3E+1)	4E-2 Bone surf (7E-2)	2E-11 -	- 1E-13	- 4E-7	- 4E-6
62	Samarium-151	W, all compounds	1E+4 LLI wall (1E+4)	1E+2 Bone surf (2E+2)	4E-8 -	- 2E-10	- 2E-4	- 2E-3
62	Samarium-153	W, all compounds	2E+3 LLI wall (2E+3)	3E+3 -	1E-6 -	4E-9 -	- 3E-5	- 3E-4
62	Samarium-155[2]	W, all compounds	6E+4 St. wall (8E+4)	2E+5 -	9E-5 -	3E-7 -	- 1E-3	- 1E-2
62	Samarium-156	W, all compounds	5E+3	9E+3	4E-6	1E-8	7E-5	7E-4
63	Europium-145	W, all compounds	2E+3	2E+3	8E-7	3E-9	2E-5	2E-4
63	Europium-146	W, all compounds	1E+3	1E+3	5E-7	2E-9	1E-5	1E-4
63	Europium-147	W, all compounds	3E+3	2E+3	7E-7	2E-9	4E-5	4E-4
63	Europium-148	W, all compounds	1E+3	4E+2	1E-7	5E-10	1E-5	1E-4
63	Europium-149	W, all compounds	1E+4	3E+3	1E-6	4E-9	2E-4	2E-3
63	Europium-150 (12.62 h)	W, all compounds	3E+3	8E+3	4E-6	1E-8	4E-5	4E-4
63	Europium-150 (34.2 y)	W, all compounds	8E+2	2E+1	8E-9	3E-11	1E-5	1E-4
63	Europium-152m	W, all compounds	3E+3	6E+3	3E-6	9E-9	4E-5	4E-4
63	Europium-152	W, all compounds	8E+2	2E+1	1E-8	3E-11	1E-5	1E-4
63	Europium-154	W, all compounds	5E+2	2E+1	8E-9	3E-11	7E-6	7E-5
63	Europium-155	W, all compounds	4E+3	9E+1 Bone surf (1E+2)	4E-8 -	- 2E-10	5E-5 -	5E-4 -
63	Europium-156	W, all compounds	6E+2	5E+2	2E-7	6E-10	8E-6	8E-5

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
63	Europium-157	W, all compounds	2E+3	5E+3	2E-6	7E-9	3E-5	3E-4
63	Europium-158[2]	W, all compounds	2E+4	6E+4	2E-5	8E-8	3E-4	3E-3
64	Gadolinium-145[2]	D, all compounds except those given for W	5E+4	2E+5	6E-5	2E-7	-	-
			St. wall (5E+4)	-	-	-	6E-4	6E-3
		W, oxides, hydroxides, and fluorides	-	2E+6	7E-5	2E-7	-	-
64	Gadolinium-146	D, see ^{145}Gd	1E+3	1E+2	5E-8	2E-10	2E-5	2E-4
		W, see ^{145}Gd	-	3E+2	1E-7	4E-10	-	-
64	Gadolinium-147	D, see ^{145}Gd	2E+3	4E+3	2E-6	6E-9	3E-5	3E-4
		W, see ^{145}Gd	-	4E+3	1E-6	5E-9	-	-
64	Gadolinium-148	D, see ^{145}Gd	1E+1	8E-3	3E-12	-	-	-
			Bone surf (2E+1)	Bone surf (2E-2)	-	2E-14	3E-7	3E-6
		W, see ^{145}Gd	-	3E-2	1E-11	-	-	-
			-	Bone surf (6E-2)	-	8E-14	-	-
64	Gadolinium-149	D, see ^{145}Gd	3E+3	2E+3	9E-7	3E-9	4E-5	4E-4
		W, see ^{145}Gd	-	2E+3	1E-6	5E-9	-	-
64	Gadolinium-151	D, see ^{145}Gd	6E+3	4E+2	2E-7	-	9E-5	9E-4
			-	Bone surf (6E+2)	-	9E-10	-	-
		W, see ^{145}Gd	-	1E+3	5E-7	2E-9	-	-
64	Gadolinium-152	D, see ^{145}Gd	2E+1	1E-2	4E-12	-	-	-
			Bone surf (3E+1)	Bone surf (2E-2)	-	3E-14	4E-7	4E-6
		W, see ^{145}Gd	-	6E-2	2E-11	-	-	-
			-	Bone surf (8E-2)	-	1E-13	-	-
64	Gadolinium-153	D, see ^{145}Gd	5E+3	1E+2	6E-8	-	6E-5	6E-4
			-	Bone surf (2E+2)	-	3E-10	-	-
		W, see ^{145}Gd	-	6E+2	2E-7	8E-10	-	-
64	Gadolinium-159	D, see ^{145}Gd	3E+3	8E+3	3E-6	1E-8	4E-5	4E-4
		W, see ^{145}Gd	-	8E+3	2E-6	8E-9	-	-
65	Terbium-147[2]	W, all compounds	5E+3	3E+4	1E-5	5E-8	1E-4	1E-3
65	Terbium-149	W, all compounds	5E+3	7E+2	3E-7	1E-9	7E-5	7E-4
65	Terbium-150	W, all compounds	5E+3	2E+4	9E-6	3E-8	7E-5	7E-4
65	Terbium-151	W, all compounds	4E+3	9E+3	4E-6	1E-8	5E-5	5E-4
65	Terbium-153	W, all compounds	5E+3	7E+3	3E-6	1E-8	7E-5	7E-4
65	Terbium-154	W, all compounds	2E+2	4E+3	2E-6	6E-9	2E-5	2E-4
65	Terbium-155	W, all compounds	6E+3	8E+3	3E-6	1E-8	8E-5	8E-4
65	Terbium-156m (5.0 h)	W, all compounds	2E+4	3E+4	1E-5	4E-8	2E-4	2E-3

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
65	Terbium-156m (24.4 h)	W, all compounds	7E+3	8E+3	3E-6	1E-8	1E-4	1E-3
65	Terbium-156	W, all compounds	1E+3	1E+3	6E-7	2E-9	1E-5	1E-4
65	Terbium-157	W, all compounds	5E+4	3E+2	1E-7	-	-	-
			LLI wall (5E+4)	Bone surf (6E+2)	-	8E-10	7E-4	7E-3
65	Terbium-158	W, all compounds	1E+3	2E+1	8E-9	3E-11	2E-5	2E-4
65	Terbium-160	W, all compounds	8E+2	2E+2	9E-8	3E-10	1E-5	1E-4
65	Terbium-161	W, all compounds	8E+3	2E+3	7E-7	2E-9	-	-
			LLI wall (2E+3)	-	-	-	3E-5	3E-4
66	Dysprosium-155	W, all compounds	9E+3	3E+4	1E-5	4E-8	1E-4	1E-3
66	Dysprosium-157	W, all compounds	2E+4	8E+4	3E-5	9E-8	3E-4	3E-3
66	Dysprosium-159	W, all compounds	1E+4	2E+3	1E-6	3E-9	2E-4	2E-3
66	Dysprosium-165	W, all compounds	1E+4	5E+4	2E-5	6E-8	2E-4	2E-3
66	Dysprosium-166	W, all compounds	6E+2	7E+2	3E-7	1E-9	-	-
			LLI wall (8E+2)	-	-	-	1E-5	1E-4
67	Holmium-156[2]	W, all compounds	4E+4	2E+5	6E-5	8E-7	6E-4	6E-3
67	Holmium-157[2]	W, all compounds	3E+5	1E+6	5E-4	2E-6	4E-3	4E-2
67	Holmium-159[2]	W, all compounds	2E+5	1E+6	6E-4	1E-6	3E-3	3E-2
67	Holmium-161	W, all compounds	1E+5	4E+5	2E-4	6E-7	1E-3	1E-2
67	Holmium-162m[2]	W, all compounds	5E+4	3E+5	1E-4	4E-7	7E-4	7E-3
67	Holmium-164[2]	W, all compounds	5E+5	2E+6	1E-3	3E-6	-	-
			St. wall (5E+5)	-	-	-	1E-2	1E-1
67	Holmium-164m[2]	W, all compounds	1E+5	5E+5	1E-4	4E-7	1E-3	1E-2
67	Holmium-166[2]	W, all compounds	2E+5	6E+5	3E-4	9E-7	-	-
			St. wall (2E+5)	-	-	-	3E-3	3E-2
67	Holmium-166m	W, all compounds	6E+2	7E+0	3E-9	9E-12	9E-6	9E-5
67	Holmium-166	W, all compounds	9E+2	2E+3	7E-7	2E-9	-	-
			LLI wall (9E+2)	-	-	-	1E-5	1E-4
67	Holmium-167	W, all compounds	2E+4	6E+4	2E-5	8E-8	2E-4	2E-3
68	Erbium-161	W, all compounds	2E+4	6E+4	3E-5	9E-8	2E-4	2E-3
68	Erbium-165	W, all compounds	6E+4	2E+5	8E-5	3E-7	9E-4	9E-3

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
68	Erbium-169	W, all compounds	3E+3	3E+3	1E-6	4E-9	-	-
			LLI wall (4E+3)	-	-	-	5E-5	5E-4
68	Erbium-171	W, all compounds	4E+3	1E+4	4E-6	1E-8	5E-5	5E-4
68	Erbium-172	W, all compounds	1E+3	1E+3	6E-7	2E-9	-	-
			LLI wall (2E+3)	-	-	-	2E-5	2E-4
69	Thulium-162[2]	W, all compounds	7E+4	3E+5	1E-4	4E-7	-	-
			St. wall (7E+4)	-	-	-	1E-3	1E-2
69	Thulium-166	W, all compounds	4E+3	1E+4	6E-6	2E-8	6E-5	6E-4
69	Thulium-167	W, all compounds	2E+3	2E+3	8E-7	3E-9	-	-
			LLI wall (2E+3)	-	-	-	3E-5	3E-4
69	Thulium-170	W, all compounds	8E+2	2E+2	9E-8	3E-10	-	-
			LLI wall (3E+3)	-	-	-	1E-5	1E-4
69	Thulium-171	W, all compounds	3E+4	3E+2	1E-7	-	-	-
			LLI wall (3E+4)	Bone surf (6E+2)	-	8E-10	2E-6	2E-5
69	Thulium-172	W, all compounds	7E+2	1E+3	5E-7	2E-9	-	-
			LLI wall (8E+2)	-	-	-	1E-5	1E-4
69	Thulium-173	W, all compounds	4E+3	1E+4	5E-6	2E-8	6E-5	8E-4
69	Thulium-176[2]	W, all compounds	7E+4	3E+5	1E-4	4E-7	-	-
			St. wall (9E+4)	-	-	-	1E-3	1E-2
70	Ytterbium-162[2]	W, all compounds except those given for Y	7E+4	3E+5	1E-4	4E-7	1E-3	1E-2
		Y, oxides, hydroxides, and fluorides	-	3E+5	1E-4	4E-7	-	-
70	Ytterbium-166	W, see ^{162}Yb	1E+3	2E+3	8E-7	3E-9	2E-5	2E-4
		Y, see ^{162}Yb	-	2E+3	8E-7	3E-9	-	-
70	Ytterbium-167[2]	W, see ^{162}Yb	3E+5	8E+5	3E-4	1E-6	4E-3	4E-2
		Y, see ^{162}Yb	-	7E+5	3E-4	1E-6	-	-
70	Ytterbium-169	W, see ^{162}Yb	2E+3	8E+2	4E-7	1E-9	2E-5	2E-4
		Y, see ^{162}Yb	-	7E+2	3E-7	1E-9	-	-
70	Ytterbium-175	W, see ^{162}Yb	3E+3	4E+3	1E-6	5E-9	-	-
			LLI wall (3E+3)	-	-	-	4E-5	4E-4
		Y, see ^{162}Yb	-	3E+3	1E-6	5E-9	-	-
70	Ytterbium-177[2]	W, see ^{162}Yb	2E+4	5E+4	2E-5	7E-8	2E-4	2E-3
		Y, see ^{162}Yb	-	5E+4	2E-5	6E-8	-	-
70	Ytterbium-178[2]	W, see ^{162}Yb	1E+4	4E+4	2E-5	6E-8	2E-4	2E-3
		Y, see ^{162}Yb	-	4E+4	2E-5	5E-8	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
71	Lutetium-169	W, all compounds except those given for Y	3E+3	4E+3	2E-6	6E-9	3E-5	3E-4
		Y, oxides, hydroxides, and fluorides	-	4E+3	2E-6	6E-9	-	-
71	Lutetium-170	W, see ^{169}Lu	1E+3	2E+3	9E-7	3E-9	2E-5	2E-4
		Y, see ^{169}Lu	-	2E+3	8E-7	3E-9	-	-
71	Lutetium-171	W, see ^{169}Lu	2E+3	2E+3	8E-7	3E-9	3E-5	3E-4
		Y, see ^{169}Lu	-	2E+3	8E-7	3E-9	-	-
71	Lutetium-172	W, see ^{169}Lu	1E+3	1E+3	5E-7	2E-9	1E-5	1E-4
		Y, see ^{169}Lu	-	1E+3	5E-7	2E-9	-	-
71	Lutetium-173	W, see ^{169}Lu	5E+3	3E+2	1E-7	-	7E-5	7E-4
			-	Bone surf (5E+2)	-	6E-10	-	-
		Y, see ^{169}Lu	-	3E+2	1E-7	4E-10	-	-
71	Lutetium-174m	W, see ^{169}Lu	2E+3	2E+2	1E-7	-	-	-
			LLI wall (3E+3)	Bone surf (3E+2)	-	5E-10	4E-5	4E-4
		Y, see ^{169}Lu	-	2E+2	9E-8	3E-10	-	-
71	Lutetium-174	W, see ^{169}Lu	5E+3	1E+2	5E-8	-	7E-5	7E-4
			-	Bone surf (2E+2)	-	3E-10	-	-
		Y, see ^{169}Lu	-	2E+2	6E-8	2E-10	-	-
71	Lutetium-176m	W, see ^{169}Lu	8E+3	3E+4	1E-5	3E-8	1E-4	1E-3
		Y, see ^{169}Lu	-	2E+4	9E-6	3E-8	-	-
71	Lutetium-176	W, see ^{169}Lu	7E+2	5E+0	2E-9	-	1E-5	1E-4
			-	Bone surf (1E+1)	-	2E-11	-	-
		Y, see ^{169}Lu	-	8E+0	3E-9	1E-11	-	-
71	Lutetium-177m	W, see ^{169}Lu	7E+2	1E+2	5E-8	-	1E-5	1E-4
			-	Bone surf (1E+2)	-	2E-10	-	-
		Y, see ^{169}Lu	-	8E+1	3E-8	1E-10	-	-
71	Lutetium-177	W, see ^{169}Lu	2E+3	2E+3	9E-7	3E-9	-	-
			LLI wall (3E+3)	-	-	-	4E-5	4E-4
		Y, see ^{169}Lu	-	2E+3	9E-7	3E-9	-	-
71	Lutetium-178m[2]	W, see ^{169}Lu	5E+4	2E+5	8E-5	3E-7	-	-
			St. wall (6E+4)	-	-	-	8E-4	9E-3
		Y, see ^{169}Lu	-	2E+5	7E-5	2E-7	-	-
71	Lutetium-178[2]	W, see ^{169}Lu	4E+4	1E+5	5E-5	2E-7	-	-
			St. wall (4E+4)	-	-	-	6E-4	6E-3
		Y, see ^{169}Lu	-	1E+5	5E-5	2E-7	-	-
71	Lutetium-179	W, see ^{169}Lu	6E+3	2E+4	8E-6	3E-8	9E-5	9E-4
		Y, see ^{169}Lu	-	2E+4	6E-6	3E-8	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
72	Hafnium-170	D, all compounds except those given for W	3E+3	6E+3	2E-6	8E-9	4E-5	4E-4
		W, oxides, hydroxides, carbides, and nitrates	-	5E+3	2E-6	8E-9	-	-
72	Hafnium-172	D, see ^{170}Hf	1E+3	9E+0	4E-9	-	3E-5	2E-4
			-	Bone surf (2E+1)	-	3E-11	-	-
		W, see ^{170}Hf	-	4E+1	2E-8	-	-	-
			-	Bone surf (6E+1)	-	8E-11	-	-
72	Hafnium-173	D, see ^{170}Hf	9E+3	1E+4	5E-6	2E-8	7E-5	7E-4
		W, see ^{170}Hf	-	1E+4	5E-6	2E-8	-	-
72	Hafnium-175	D, see ^{170}Hf	3E+3	9E+2	4E-7	-	4E-5	4E-4
			-	Bone surf (1E+3)	-	1E-9	-	-
		W, see ^{170}Hf	-	1E+3	5E-7	2E-9	-	-
72	Hafnium-177m[2]	D, see ^{170}Hf	2E+4	6E+4	2E-5	8E-8	3E-4	3E-3
		W, see ^{170}Hf	-	9E+4	4E-5	1E-7	-	-
72	Hafnium-178m	D, see ^{170}Hf	3E+2	1E+0	5E-10	-	3E-6	3E-5
			-	Bone surf (2E+0)	-	3E-12	-	-
		W, see ^{170}Hf	-	5E+0	2E-9	-	-	-
			-	Bone surf (9E+0)	-	1E-11	-	-
72	Hafnium-179m	D, see ^{170}Hf	1E+3	3E+2	1E-7	--	2E-5	2E-4
			-	Bone surf (6E+2)	-	8E-10	-	-
		W, see ^{170}Hf	-	6E+2	3E-7	8E-10	-	-
72	Hafnium-180m	D, see ^{170}Hf	7E+3	2E+4	9E-6	3E-8	1E-5	1E-3
		W, see ^{170}Hf	-	3E+4	1E-5	4E-8	-	-
72	Hafnium-181	D, see ^{170}Hf	1E+3	2E+2	7E-8	-	2E-5	2E-4
			-	Bone surf (4E+2)	-	6E-10	-	-
		W, see ^{170}Hf	-	4E+2	2E-7	6E-10	-	-
72	Hafnium-182m[2]	D, see ^{170}Hf	4E+4	9E+4	4E-5	1E-7	5E-4	5E-3
		W, see ^{170}Hf	-	1E+5	6E-5	2E-7	-	-
72	Hafnium-182	D, see ^{170}Hf	2E+2	8E-1	3E-10	-	-	-
			Bone surf (4E+2)	Bone surf (2E+0)	-	2E-12	9E-6	9E-5
		W, see ^{170}Hf	-	3E+0	1E-9	-	-	-
			-	Bone surf (7E+0)	-	1E-11	-	-
72	Hafnium-183[2]	D, see ^{170}Hf	2E+4	5E+4	2E-5	6E-8	3E-4	3E-3
		W, see ^{170}Hf	-	6E+4	2E-5	8E-8	-	-
72	Hafnium-184	D, see ^{170}Hf	2E+3	8E+3	3E-6	1E-8	3E-5	3E-4
		W, see ^{170}Hf	-	6E+3	3E-6	9E-9	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
73	Tantalum-172[2]	W, all compounds except those given for Y	4E+4	1E+5	5E-5	2E-7	5E-4	5E-3
		Y, elemental Ta, oxides, hydroxides, halides, carbides, nitrates, and nitrides	-	1E+5	4E-5	1E-7	-	-
73	Tantalum-173	W, see ^{172}Ta	7E+3	2E+4	8E-6	3E-8	9E-5	9E-4
		Y, see ^{172}Ta	-	2E+4	7E-6	2E-8	-	-
73	Tantalum-174[2]	W, see ^{172}Ta	3E+4	1E+5	4E-5	1E-7	4E-4	4E-3
		Y, see ^{172}Ta	-	9E+4	4E-5	1E-7	-	-
73	Tantalum-175	W, see ^{172}Ta	6E+3	2E+4	7E-6	2E-8	8E-5	8E-4
		Y, see ^{172}Ta	-	1E+4	6E-6	2E-8	-	-
73	Tantalum-176	W, see ^{172}Ta	4E+3	1E+4	5E-6	2E-8	5E-5	5E-4
		Y, see ^{172}Ta	-	1E+4	5E-6	2E-8	-	-
73	Tantalum-177	W, see ^{172}Ta	1E+4	2E+4	8E-6	3E-8	2E-4	2E-3
		Y, see ^{172}Ta	-	2E+4	7E-6	2E-8	-	-
73	Tantalum-178	W, see ^{172}Ta	2E+4	9E+4	4E-5	1E-7	2E-4	2E-3
		Y, see ^{172}Ta	-	7E+4	3E-5	1E-7	-	-
73	Tantalum-179	W, see ^{172}Ta	2E+4	5E+3	2E-6	8E-9	3E-4	3E-3
		Y, see ^{172}Ta	-	9E+2	4E-7	1E-9	-	-
73	Tantalum-180m	W, see ^{172}Ta	2E+4	7E+4	3E-5	9E-8	3E-4	3E-3
		Y, see ^{172}Ta	-	6E+4	2E-5	8E-8	-	-
73	Tantalum-180	W, see ^{172}Ta	1E+3	4E+2	2E-7	6E-10	2E-5	2E-4
		Y, see ^{172}Ta	-	2E+1	1E-8	3E-11	-	-
73	Tantalum-182m[2]	W, see ^{172}Ta	2E+5	5E+5	2E-4	6E-7	-	-
			St. wall (2E+5)	-	-	-	3E-3	3E-2
		Y, see ^{172}Ta	-	4E+5	2E-4	6E-7	-	-
73	Tantalum-182	W, see ^{172}Ta	8E+2	3E+2	1E-7	5E-10	1E-5	1E-4
		Y, see ^{172}Ta	-	1E+2	6E-8	2E-10	-	-
73	Tantalum-183	W, see ^{172}Ta	9E+2	1E+3	5E-7	2E-9	-	-
			LLI wall (1E+3)	-	-	-	2E-5	2E-4
		Y, see ^{172}Ta	-	1E+3	4E-7	1E-9	-	-
73	Tantalum-184	W, see ^{172}Ta	2E+3	5E+3	2E-6	6E-9	3E-5	3E-4
		Y, see ^{172}Ta	-	5E+3	2E-6	7E-9	-	-
73	Tantalum-185[2]	W, see ^{172}Ta	3E+4	7E+4	3E-5	1E-7	4E-4	4E-3
		Y, see ^{172}Ta	-	6E+4	3E-5	9E-8	-	-
73	Tantalum-186[2]	W, see ^{172}Ta	5E+4	2E+5	1E-4	3E-7	-	
			St. wall (7E+4)	-	-	-	1E-3	1E-2
		Y, see ^{172}Ta	-	2E+5	9E-5	3E-7	-	-
74	Tungsten-176	D, all compounds	1E+4	5E+4	2E-5	7E-8	1E-4	1E-3
74	Tungsten-177	D, all compounds	2E+4	9E+4	4E-5	1E-7	3E-4	3E-3

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
74	Tungsten-178	D, all compounds	5E+3	2E+4	8E-6	3E-8	7E-5	7E-4
74	Tungsten-179[2]	D, all compounds	9E+5	2E+6	7E-4	2E-6	7E-3	7E-2
74	Tungsten-181	D, all compounds	2E+4	3E+4	1E-5	5E-8	2E-4	2E-3
74	Tungsten-185	D, all compounds	2E+3	7E+3	3E-6	9E-9	-	-
			LLI wall (3E+3)	-	-	-	4E-5	4E-4
74	Tungsten-187	D, all compounds	2E+3	9E+3	4E-6	1E-8	3E-5	3E-4
74	Tungsten-188	D, all compounds	4E+2	1E+3	5E-7	2E-9	-	-
			LLI wall (5E+2)	-	-	-	7E-6	7E-5
75	Rhenium-177[2]	D, all compounds except those given for W	9E+4	3E+5	1E-4	4E-7	-	-
			St. wall (3E+5)	-	-	-	2E-3	2E-2
		W, oxides, hydroxides, and nitrates	-	4E+5	2E-4	5E-7	-	-
75	Rhenium-178[2]	D, see ^{177}Re	7E+4	3E+5	1E-4	4E-7	-	-
			St. wall (2E+5)	-	-	-	1E-3	1E-2
		W, see ^{177}Re	-	3E+5	1E-4	4E-7	-	-
75	Rhenium-181	D, see ^{177}Re	5E+4	9E+3	4E-6	1E-8	7E-5	7E-4
		W, see ^{177}Re	-	9E+3	4E-6	1E-8	-	-
75	Rhenium-182 (12.7 h)	D, see ^{177}Re	7E+3	1E+4	5E-6	2E-8	9E-5	9E-4
		W, see ^{177}Re	-	2E+4	6E-6	2E-8	-	-
75	Rhenium-182 (64.0 h)	D, see ^{177}Re	1E+3	2E+3	1E-6	3E-9	2E-5	2E-4
		W, see ^{177}Re	-	2E+3	9E-7	3E-9	-	-
75	Rhenium-184	D, see ^{177}Re	2E+3	3E+3	1E-6	4E-9	3E-5	3E-4
		W, see ^{177}Re	-	4E+2	2E-7	6E-10	-	-
75	Rhenium-186	D, see ^{177}Re	2E+3	4E+3	1E-6	5E-9	3E-5	3E-4
		W, see ^{177}Re	-	1E+3	6E-7	2E-9	-	-
75	Rhenium-186m	D, see ^{177}Re	1E+3	2E+3	7E-7	-	-	-
			St. wall (2E+3)	St. wall (2E+3)	-	3E-9	2E-5	2E-4
		W, see ^{177}Re	-	2E+2	6E-8	2E-10	-	-
75	Rhenium-188	D, see ^{177}Re	2E+3	3E+3	1E-6	4E-9	3E-5	3E-4
		W, see ^{177}Re	-	2E+3	7E-7	2E-9	-	-
75	Rhenium-189	D, see ^{177}Re	6E+5	8E+5	4E-4	-	8E-3	8E-2
			-	St. wall (9E+5)	-	1E-6	-	-
		W, see ^{177}Re	-	1E+5	4E-5	1E-7	-	-
75	Rhenium-190[2]	D, see ^{177}Re	8E+4	1E+5	6E-5	3E-7	1E-3	1E-2
		W, see ^{177}Re	-	1E+5	6E-5	2E-7	-	-
75	Rhenium-192	D, see ^{177}Re	2E+3	3E+3	1E-6	4E-9	2E-5	2E-4
		W, see ^{177}Re	-	9E+3	1E-6	4E-9	-	-

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75	Rhenium-193	D, see ^{177}Re	3E+3	5E+3	2E-6	7E-9	4E-5	4E-4
		W, see ^{177}Re	-	4E+3	2E-6	6E-9	-	-
76	Osmium-180[2]	D, all compounds except those given for W and Y	1E+5	4E+5	2E-4	5E-7	1E-3	1E-2
		W, halides and nitrates	-	5E+5	2E-4	7E-7	-	-
		Y, oxides and hydroxides	-	5E+5	2E-4	6E-7	-	-
76	Osmium-181[2]	D, see ^{180}Os	1E+4	6E+4	2E-5	8E-8	2E-4	2E-3
		W, see ^{180}Os	-	5E+4	2E-5	6E-8	-	-
		Y, see ^{180}Os	-	4E+4	2E-5	6E-8	-	-
76	Osmium-182	D, see ^{180}Os	2E+3	6E+3	2E-6	8E-9	3E-5	3E-4
		W, see ^{180}Os	-	4E+3	2E-6	6E-9	-	-
		Y, see ^{180}Os	-	4E+3	2E-6	6E-9	-	-
76	Osmium-185	D, see ^{180}Os	2E+3	5E+2	2E-7	7E-10	3E-5	3E-4
		W, see ^{180}Os	-	8E+2	3E-7	1E-9	-	-
		Y, see ^{180}Os	-	8E+2	3E-7	1E-9	-	-
76	Osmium-189m	D, see ^{180}Os	8E+4	2E+5	1E-4	3E-7	1E-3	1E-2
		W, see ^{180}Os	-	2E+5	9E-5	3E-7	-	-
		Y, see ^{180}Os	-	2E+5	7E-5	2E-7	-	-
76	Osmium-191m	D, see ^{180}Os	1E+4	3E+4	1E-5	4E-8	2E-4	2E-3
		W, see ^{180}Os	-	2E+4	8E-6	3E-8	-	-
		Y, see ^{180}Os	-	2E+4	7E-6	2E-8	-	-
76	Osmium-191	D, see ^{180}Os	2E+3	2E+3	9E-7	3E-9	-	-
			LLI wall (3E+3)	-	-	-	3E-5	3E-4
		W, see ^{180}Os	-	2E+3	7E-7	2E-9	-	-
		Y, see ^{180}Os	-	1E+3	6E-7	2E-9	-	-
76	Osmium-193	D, see ^{180}Os	2E+3	8E+3	3E-6	6E-9	-	-
			LLI wall (2E+3)	-	-	-	2E-5	2E-4
		W, see ^{180}Os	-	3E+3	1E-6	4E-9	-	-
		Y, see ^{180}Os	-	3E+3	1E-6	4E-9	-	-
76	Osmium-194	D, see ^{180}Os	4E+2	4E+1	2E-8	6E-11	-	-
			LLI wall (6E+2)	-	-	-	8E-6	8E-5
		W, see ^{180}Os	-	6E+1	2E-8	8E-11	-	-
		Y, see ^{180}Os	-	3E+0	3E-9	1E-11	-	-
77	Iridium-182[2]	D, all compounds except those given for W and Y	4E+4	1E+5	6E-5	2E-7	-	-
			St. wall (4E+4)	-	-	-	6E-4	6E-3
		W, halides, nitrates, and metallic iridium	-	2E+5	6E-5	2E-7	-	-
		Y, oxides and hydroxides	-	1E+5	5E-5	2E-7	-	-
77	Iridium-184	D, see ^{182}Ir	8E+3	2E+4	1E-5	3E-8	1E-4	1E-3
		W, see ^{182}Ir	-	3E+4	1E-5	5E-8	-	-
		Y, see ^{182}Ir	-	3E+4	1E-5	4E-8	-	-

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77	Iridium-185	D, see ^{182}Ir	5E+3	1E+4	5E-6	2E-8	7E-5	7E-4
		W, see ^{182}Ir	-	3E+4	5E-6	2E-8	-	-
		Y, see ^{182}Ir	-	1E+4	4E-6	1E-8	-	-
77	Iridium-186	D, see ^{182}Ir	2E+3	6E+3	3E-6	1E-8	3E-5	3E-4
		W, see ^{182}Ir	-	6E+3	3E-6	9E-9	-	-
		Y, see ^{182}Ir	-	6E+3	2E-6	8E-9	-	-
77	Iridium-187	D, see ^{182}Ir	1E+4	3E+4	1E-5	5E-8	1E-4	1E-3
		W, see ^{182}Ir	-	3E+4	1E-5	4E-8	-	-
		Y, see ^{182}Ir	-	3E+4	1E-5	4E-8	-	-
77	Iridium-188	D, see ^{182}Ir	2E+3	5E+3	2E-6	6E-9	3E-5	3E-4
		W, see ^{182}Ir	-	4E+3	1E-6	5E-9	-	-
		Y, see ^{182}Ir	-	3E+3	1E-6	5E-9	-	-
77	Iridium-189	D, see ^{182}Ir	5E+3 LLI wall (3E+3)	9E+3	2E-6	7E-9	-	-
		W, see ^{182}Ir	-	4E+3	2E-6	5E-9	7E-5	7E-4
		Y, see ^{182}Ir	-	4E+3	1E-6	5E-9	-	-
77	Iridium-190m[2]	D, see ^{182}Ir	2E+5	2E+5	8E-5	3E-7	2E-3	2E-2
		W, see ^{182}Ir	-	2E+5	9E-5	3E-7	-	-
		Y, see ^{182}Ir	-	2E+5	8E-5	3E-7	-	-
77	Iridium-190	D, see ^{182}Ir	1E+3	9E+2	4E-7	1E-9	1E-5	1E-4
		W, see ^{182}Ir	-	1E+3	4E-7	1E-9	-	-
		Y, see ^{182}Ir	-	9E+2	4E-7	1E-9	-	-
77	Iridium-190n	D, see ^{182}Ir	3E+3	9E+1	4E-8	1E-10	4E-5	4E-4
		W, see ^{182}Ir	-	2E+2	9E-8	3E-10	-	-
		Y, see ^{182}Ir	-	2E+1	6E-8	3E-11	-	-
77	Iridium-192	D, see ^{182}Ir	9E+2	3E+2	1E-7	4E-10	1E-5	1E-4
		W, see ^{182}Ir	-	4E+2	2E-7	6E-10	-	-
		Y, see ^{182}Ir	-	3E+2	9E-8	3E-10	-	-
77	Iridium-194m	D, see ^{182}Ir	6E+2	9E+1	4E-8	1E-10	9E-6	9E-5
		W, see ^{182}Ir	-	2E+2	7E-8	2E-10	-	-
		Y, see ^{182}Ir	-	1E+2	4E-8	1E-10	-	-
77	Iridium-194	D, see ^{182}Ir	1E+3	3E+3	1E-6	4E-9	1E-5	1E-4
		W, see ^{182}Ir	-	2E+3	9E-7	3E-9	-	-
		Y, see ^{182}Ir	-	2E+3	8E-7	3E-9	-	-
77	Iridium-195m	D, see ^{182}Ir	8E+3	2E+4	1E-5	3E-8	1E-4	1E-3
		W, see ^{182}Ir	-	3E+4	1E-5	4E-8	-	-
		Y, see ^{182}Ir	-	2E+4	9E-6	3E-8	-	-
77	Iridium-195	D, see ^{182}Ir	1E+4	4E+4	2E-5	6E-8	2E-4	2E-3
		W, see ^{182}Ir	-	5E+4	2E-5	7E-8	-	-
		Y, see ^{182}Ir	-	4E+4	2E-5	6E-8	-	-
78	Platinum-186	D, all compounds	1E+4	4E+4	2E-5	5E-8	2E-4	2E-3
78	Platinum-188	D, all compounds	2E+3	2E+3	7E-7	2E-9	2E-5	2E-4
78	Platinum-189	D, all compounds	1E+4	3E+4	1E-5	4E-8	1E-4	1E-3
78	Platinum-191	D, all compounds	4E+3	8E+3	4E-6	1E-8	5E-5	5E-4

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78	Platinum-193m	D, all compounds	3E+3 LLI wall (3E+4)	6E+3	3E-6	8E-9	-	-
			-	-	-	-	4E-5	4E-4
78	Platinum-193	D, all compounds	6E+4 LLI wall (5E+4)	2E+4	1E-5	3E-8	-	-
			-	-	-	-	8E-4	8E-3
78	Platinum-195m	D, all compounds	2E+3 LLI wall (2E+3)	6E+3	2E-6	6E-9	-	-
			-	-	-	-	3E-5	3E-4
78	Platinum-197[2]	D, all compounds	2E+4	6E+4	3E-5	8E-8	2E-4	3E-3
78	Platinum-197	D, all compounds	3E+3	1E+4	4E-6	1E-8	4E-5	4E-4
78	Platinum-199[2]	D, all compounds	5E+4	1E+5	6E-5	2E-7	7E-4	7E-3
78	Platinum-200	D, all compounds	1E+3	3E+3	1E-6	5E-9	2E-5	2E-4
79	Gold-193	D, all compounds except those given for W and Y	9E+3	3E+4	1E-5	4E-8	1E-4	1E-3
		W, halides and nitrates	-	2E+4	9E-6	3E-8	-	-
		Y, oxides and hydroxides	-	2E+4	8E-6	3E-8	-	-
79	Gold-194	D, see ^{193}Au	3E+3	8E+3	3E-6	1E-8	4E-5	4E-4
		W, see ^{193}Au	-	9E+3	3E-6	8E-9	-	-
		Y, see ^{193}Au	-	9E+3	2E-6	7E-9	-	-
79	Gold-195	D, see ^{193}Au	5E+3	1E+4	5E-6	2E-8	7E-5	7E-4
		W, see ^{193}Au	-	1E+3	6E-7	2E-9	-	-
		Y, see ^{193}Au	-	4E+2	3E-7	6E-10	-	-
79	Gold-198m	D, see ^{193}Au	1E+3	3E+3	1E-6	4E-9	1E-5	1E-4
		W, see ^{193}Au	-	1E+3	5E-7	2E-9	-	-
		Y, see ^{193}Au	-	1E+3	5E-7	2E-9	-	-
79	Gold-198	D, see ^{193}Au	1E+3	4E+3	2E-6	5E-9	2E-5	2E-4
		W, see ^{193}Au	-	2E+3	8E-7	3E-9	-	-
		Y, see ^{193}Au	-	3E+3	7E-7	2E-9	-	-
79	Gold-199	D, see ^{193}Au	3E+3 LLI wall (3E+3)	9E+3	4E-6	1E-8	-	-
			-	-	-	-	4E-5	4E-4
		W, see ^{193}Au	-	4E+3	2E-6	6E-9	-	-
		Y, see ^{193}Au	-	4E+3	2E-6	6E-9	-	-
79	Gold-200m	D, see ^{193}Au	1E+3	4E+3	1E-6	5E-9	2E-5	2E-4
		W, see ^{193}Au	-	3E+3	1E-6	4E-9	-	-
		Y, see ^{193}Au	-	2E+3	1E-6	3E-9	-	-
79	Gold-200[2]	D, see ^{193}Au	3E+4	8E+4	3E-5	9E-8	4E-4	4E-3
		W, see ^{193}Au	-	8E+4	3E-5	1E-7	-	-
		Y, see ^{193}Au	-	7E+4	3E-5	1E-7	-	-
79	Gold-201[2]	D, see ^{193}Au	7E+4 St. wall (9E+4)	2E+5	9E-5	3E-7	-	-
			-	-	-	-	1E-3	1E-2
		W, see ^{193}Au	-	2E+5	1E-4	3E-7	-	-
		Y, see ^{193}Au	-	2E+5	9E-5	3E-7	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
80	Mercury-193m	Vapor	-	8E+3	4E-6	3E-8	-	-
		Organic D	4E+3	1E+4	5E-6	2E-8	6E-5	6E-4
		D, sulfates	3E+3	9E+3	4E-6	1E-8	4E-5	4E-4
		W, oxides, hydroxides, halides, nitrates, and sulfides	-	8E+3	3E-6	1E-8	-	-
80	Mercury-193	Vapor	-	3E+4	1E-5	4E-8	-	-
		Organic D	2E+4	6E+4	3E-5	9E-8	3E-4	3E-3
		D, see ^{193m}Hg	2E+4	6E+4	3E-5	9E-8	2E-4	2E-3
		W, see ^{193m}Hg	-	4E+4	2E-5	6E-8	-	-
80	Mercury-194	Vapor	-	3E+1	1E-8	4E-11	-	-
		Organic D	3E+1	3E+1	1E-8	4E-11	2E-7	2E-6
		D, see ^{193m}Hg	8E+2	4E+1	2E-8	6E-11	1E-5	1E-4
		W, see ^{193m}Hg	-	1E+2	5E-8	2E-10	-	-
80	Mercury-195m	Vapor	-	4E+3	2E-6	6E-9	-	-
		Organic D	3E+3	6E+3	3E-6	8E-9	4E-5	4E-4
		D, see ^{193m}Hg	2E+3	5E+3	2E-6	7E-9	3E-5	3E-4
		W, see ^{193m}Hg	-	4E+3	2E-6	5E-9	-	-
80	Mercury-195	Vapor	-	3E+4	1E-5	4E-8	-	-
		Organic D	2E+4	5E+4	2E-5	6E-8	2E-4	2E-3
		D, see ^{193m}Hg	1E+4	4E+4	1E-5	5E-8	2E-4	2E-3
		W, see ^{193m}Hg	-	3E+4	1E-5	5E-8	-	-
80	Mercury-197m	Vapor	-	5E+3	2E-6	7E-9	-	-
		Organic D	4E+3	9E+3	4E-6	2E-8	5E-5	5E-4
		D, see ^{193m}Hg	3E+3	7E+3	3E-6	1E-8	4E-5	4E-4
		W, see ^{193m}Hg	-	5E+3	2E-6	7E-9	-	-
80	Mercury-197	Vapor	-	8E+3	4E-6	1E-8	-	-
		Organic D	7E+3	1E+4	6E-6	2E-8	9E-5	9E-4
		D, see ^{193m}Hg	6E+3	1E+4	5E-6	2E-8	8E-5	8E-4
		W, see ^{193m}Hg	-	9E+3	4E-6	1E-8	-	-
80	Mercury-199m[2]	Vapor	-	8E+4	3E-5	1E-7	-	-
		Organic D	6E+4	2E+5	7E-5	2E-7	-	-
			St. wall (1E+5)	-	-	-	1E-3	1E-2
		D, see ^{193m}Hg	6E+4	1E+5	6E-5	2E-7	8E-4	8E-3
		W, see ^{193m}Hg	-	2E+5	7E-5	2E-7	-	-
80	Mercury-203	Vapor	-	8E+2	4E-7	1E-9	-	-
		Organic D	5E+2	8E+2	3E-7	1E-9	7E-6	7E-5
		D, see ^{193m}Hg	2E+2	1E+3	5E-7	2E-9	3E-5	3E-4
		W, see ^{193m}Hg	-	1E+3	5E-7	2E-9	-	-
81	Thallium-194m[2]	D, all compounds	8E+4	2E+5	6E-5	2E-7	-	-
			St. wall (7E+4)	-	-	-	1E-3	1E-2

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
81	Thallium-194[2]	D, all compounds	3E+5	8E+5	3E-4	8E-7	-	-
			St. wall (3E+5)	-	-	-	4E-3	4E-2
81	Thallium-195[2]	D, all compounds	8E+4	1E+5	5E-5	2E-7	9E-4	9E-3
81	Thallium-197	D, all compounds	7E+4	1E+5	5E-5	2E-7	1E-3	1E-2
81	Thallium-198m[2]	D, all compounds	3E+4	5E+4	2E-5	8E-8	4E-4	4E-3
81	Thallium-198	D, all compounds	2E+4	3E+4	1E-5	5E-8	3E-4	3E-3
81	Thallium-199	D, all compounds	6E+4	8E+4	4E-5	3E-7	9E-4	9E-3
81	Thallium-200	D, all compounds	8E+3	1E+4	5E-6	3E-8	1E-4	1E-3
81	Thallium-201	D, all compounds	2E+4	2E+4	9E-6	3E-8	2E-4	2E-3
81	Thallium-202	D, all compounds	4E+3	5E+3	2E-6	7E-9	5E-5	5E-4
81	Thallium-204	D, all compounds	2E+3	2E+3	9E-7	3E-9	2E-5	2E-4
82	Lead-198m[2]	D, all compounds	6E+4	2E+5	8E-5	3E-7	8E-4	8E-3
82	Lead-198	D, all compounds	3E+4	6E+4	3E-5	9E-8	4E-4	4E-3
82	Lead-199[2]	D, all compounds	2E+4	7E+4	3E-5	1E-7	3E-4	3E-3
82	Lead-200	D, all compounds	3E+3	6E+3	3E-6	9E-9	4E-5	4E-4
82	Lead-201	D, all compounds	7E+3	2E+4	8E-6	3E-8	1E-4	1E-3
82	Lead-202m	D, all compounds	9E+3	3E+4	1E-5	4E-8	1E-4	1E-3
82	Lead-202	D, all compounds	2E+2	5E+1	2E-8	7E-11	2E-6	2E-5
82	Lead-203	D, all compounds	5E+3	9E+3	4E-6	1E-8	7E-5	7E-4
82	Lead-205	D, all compounds	4E+3	1E+3	8E-7	2E-9	9E-5	9E-4
82	Lead-209	D, all compounds	2E+4	8E+4	3E-5	8E-8	3E-4	3E-3
82	Lead-210	D, all compounds	8E-2	2E-1	1E-10	-	-	-
			Bone surf (1E+0)	Bone surf (9E-1)	-	6E-13	1E-8	1E-7
82	Lead-211[2]	D, all compounds	2E+4	8E+2	3E-7	9E-10	2E-4	2E-3
82	Lead-212	D, all compounds	8E+1	3E+1	1E-8	5E-11	-	-
			Bone surf (1E+2)	-	-	-	2E-6	2E-5
82	Lead-214[2]	D, all compounds	9E+3	9E+2	3E-7	1E-9	1E-4	1E-3
83	Bismuth-200[2]	D, nitrates	3E+4	8E+4	4E-5	1E-7	4E-4	4E-3
		W, all other compounds	-	1E+5	4E-5	1E-7	-	-
83	Bismuth-201[2]	D, see ^{200}Bi	1E+4	3E+4	1E-5	4E-8	2E-4	2E-3
		W, see ^{200}Bi	-	4E+4	2E-5	5E-8	-	-
83	Bismuth-202[2]	D, see ^{200}Bi	1E+4	4E+4	2E-5	6E-8	2E-4	2E-3
		W, see ^{200}Bi	-	8E+4	3E-5	1E-7	-	-

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Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
83	Bismuth-203	D, see ^{200}Bi	2E+3	7E+3	3E-6	9E-9	3E-5	3E-4
		W, see ^{200}Bi	-	6E+3	3E-6	9E-9	-	-
83	Bismuth-205	D, see ^{200}Bi	1E+3	3E+3	1E-6	3E-9	2E-5	2E-4
		W, see ^{200}Bi	-	1E+3	5E-7	2E-9	-	-
83	Bismuth-206	D, see ^{200}Bi	6E+2	1E+3	6E-7	2E-9	9E-6	9E-5
		W, see ^{200}Bi	-	9E+2	4E-7	1E-9	-	-
83	Bismuth-207	D, see ^{200}Bi	1E+3	2E+3	7E-7	2E-9	1E-5	1E-4
		W, see ^{200}Bi	-	4E+2	1E-7	5E-10	-	-
83	Bismuth-210m	D, see ^{200}Bi	4E+1 Kidneys (6E+1)	5E+0 Kidneys (6E+0)	2E-9	-	-	-
		W, see ^{200}Bi	-	7E-1	3E-10	9E-12 9E-13	8E-7 -	8E-6 -
83	Bismuth-210	D, see ^{200}Bi	8E+2	2E+2 Kidneys (4E+2)	1E-7	-	1E-5	1E-4
		W, see ^{200}Bi	-	3E+1	1E-8	5E-10 4E-11	- -	- -
83	Bismuth-212[2]	D, see ^{200}Bi	5E+3	2E+2	1E-7	3E-10	7E-5	7E-4
		W, see ^{200}Bi	-	3E+2	1E-7	4E-10	-	-
83	Bismuth-213[2]	D, see ^{200}Bi	7E+3	3E+2	1E-7	4E-10	1E-4	1E-3
		W, see ^{200}Bi	-	4E+2	1E-7	5E-10	-	-
83	Bismuth-214[2]	D, see ^{200}Bi	2E+4 St. wall (2E+4)	8E+2	3E-7	1E-9	-	-
		W, see ^{200}Bi	-	9E-2	4E-7	1E-9	3E-4 -	3E-3 -
84	Polonium-203[2]	D, all compounds except those given for W	3E+4	6E+4	3E-5	9E-8	3E-4	3E-3
		W, oxides, hydroxides, and nitrates	-	9E+4	4E-5	1E-7	-	-
84	Polonium-205[2]	D, see ^{203}Po	2E+4	4E+4	2E-5	5E-8	3E-4	3E-3
		W, see ^{203}Po	-	7E+4	3E-5	1E-7	-	-
84	Polonium-207	D, see ^{203}Po	8E+3	3E+4	1E-5	3E-8	1E-4	1E-3
		W, see ^{203}Po	-	3E+4	1E-5	4E-8	-	-
84	Polonium-210	D, see ^{203}Po	3E+0	6E-1	3E-10	9E-13	4E-8	4E-7
		W, see ^{203}Po	-	6E-1	3E-10	9E-13	-	-
85	Astatine-207[2]	D, halides	6E+3	3E+3	1E-6	4E-9	8E-5	8E-4
		W	-	2E+3	9E-7	3E-9	-	-
85	Astatine-211	D, halides	1E+2	8E+1	3E-8	1E-10	2E-6	2E-5
		W	-	5E+1	2E-8	8E-11	-	-
86	Radon-220	With daughters removed	-	2E+4	7E-6	2E-8	-	-
		With daughters present	-	2E+1 (or 12 working level months)	9E-9 (or 1.0 working level)	3E-11	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
86	Radon-222	With daughters removed	-	1E+4	4E-6	1E-8	-	-
		With daughters present	-	1E+2 (or 4 working level months)	3E-8 (or 0.33 working level)	1E-10	-	-
87	Francium-222[2]	D, all compounds	2E+3	5E+2	2E-7	6E-10	3E-5	3E-4
87	Francium-223[2]	D, all compounds	6E+2	3E+2	1E-7	1E-9	8E-6	8E-5
88	Radium-223	W, all compounds	5E+0 Bone surf (9E+0)	7E-1 -	3E-10 -	9E-13 -	- 1E-7	- 1E-6
88	Radium-224	W, all compounds	8E+0 Bone surf (2E+1)	2E+0 -	7E-10 -	2E-12 -	- 2E-7	- 2E-6
88	Radium-225	W, all compounds	8E+0 Bone surf (2E+1)	7E-1 -	3E-10 -	9E-13 -	- 2E-7	- 2E-6
88	Radium-226	W, all compounds	2E+0 Bone surf (5E+0)	6E-1 -	3E-10 -	9E-13 -	- 6E-8	- 6E-7
88	Radium-227[2]	W, all compounds	2E+4 Bone surf (2E+4)	1E+4 Bone surf (2E+4)	6E-6 -	- 3E-8	- 3E-4	- 3E-3
88	Radium-228	W, all compounds	2E+0 Bone surf (4E+0)	1E+0 -	5E-10 -	2E-12 -	- 6E-8	- 6E-7
89	Actinium-224	D, all compounds except those given for W and Y	2E+3 LLI wall (2E+3)	3E+1 Bone surf (6E+1)	1E-8 -	- 5E-11	- 3E-5	- 3E-4
		W, halides and nitrates	-	5E+1	2E-8	7E-11	-	-
		Y, oxides and hydroxides	-	5E+1	2E-8	6E-11	-	-
89	Actinium-225	D, see ^{224}Ac	5E+1 LLI wall (5E+1)	3E-1 Bone surf (5E-1)	1E-10 -	- 7E-13	- 7E-7	- 7E-6
		W, see ^{224}Ac	-	6E-1	3E-10	9E-13	-	-
		Y, see ^{224}Ac	-	6E-1	3E-10	9E-13	-	-
89	Actinium-226	D, see ^{224}Ac	1E+2 LLI wall (1E+2)	3E+0 Bone surf (4E+0)	1E-9 -	- 5E-12	- 2E-6	- 2E-5
		W, see ^{224}Ac	-	5E+0	2E-9	7E-12	-	-
		Y, see ^{224}Ac	-	5E+0	2E-9	6E-12	-	-
89	Actinium-227	D, see ^{224}Ac	2E-1 Bone surf (4E-1)	4E-4 Bone surf (8E-4)	2E-13 -	- 1E-15	- 9E-9	- 9E-8
		W, see ^{224}Ac	-	2E-3 Bone surf (3E-3)	7E-13 -	- 4E-15	- -	- -
		Y, see ^{224}Ac	-	4E-3	2E-12	6E-15	-	-

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Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
89	Actinium-225	D, see ^{224}Ac	2E+3	9E+0	4E-9	-	3E-5	3E-4
		W, see ^{224}Ac	-	Bone surf (2E+1)	-	2E-11	-	-
			-	4E+1	2E-8	-	-	-
		Y, see ^{224}Ac	-	Bone surf (6E+1)	-	8E-11	-	-
			-	4E+1	2E-8	6E-11	-	-
90	Thorium-226[2]	W, all compounds except those given for Y	5E+3	2E+2	6E-8	2E-10	-	-
			St. wall (5E+3)	-	-	-	7E-5	7E-4
		Y, oxides and hydroxides	-	1E+2	6E-8	2E-10	-	-
90	Thorium-227	W, see ^{226}Th	1E+2	3E-1	1E-10	5E-13	2E-6	2E-5
		Y, see ^{226}Th	-	3E-1	1E-10	5E-13	-	-
90	Thorium-228	W, see ^{226}Th	6E+0	1E-2	4E-12	-	-	-
			Bone surf (1E+1)	Bone surf (2E-2)	-	3E-14	2E-7	2E-6
		Y, see ^{226}Th	-	2E-2	7E-12	2E-14	-	-
90	Thorium-229	W, see ^{226}Th	6E-1	9E-4	4E-13	-	-	-
			Bone surf (1E+0)	Bone surf (2E-3)	-	3E-15	2E-8	2E-7
		Y, see ^{226}Th	-	2E-3	1E-12	-	-	-
			-	Bone surf (3E-3)	-	4E-15	-	-
90	Thorium-230	W, see ^{226}Th	4E+0	6E-3	3E-12	-	-	-
			Bone surf (9E+0)	Bone surf (2E-2)	-	2E-14	1E-7	1E-6
		Y, see ^{226}Th	-	2E-2	6E-12	-	-	-
			-	Bone surf (2E-2)	-	3E-14	-	-
90	Thorium-231	W, see ^{226}Th	4E+3	6E+3	3E-6	9E-9	5E-5	5E-4
		Y, see ^{226}Th	-	6E+3	3E-6	9E-9	-	-
90	Thorium-232	W, see ^{226}Th	7E-1	1E-3	5E-13	-	-	-
			Bone surf (2E+0)	Bone surf (3E-3)	-	4E-15	3E-8	3E-7
		Y, see ^{226}Th	-	3E-3	1E-12	-	-	-
			-	Bone surf (4E-3)	-	6E-15	-	-
90	Thorium-234	W, see ^{226}Th	3E+2	2E+2	8E-8	3E-10	-	-
			LLI wall (4E+2)	-	-	-	5E-6	5E-5
		Y, see ^{226}Th	-	2E+2	6E-8	2E-10	-	-
91	Protactinium-227[2]	W, all compounds except those given for Y	4E+3	1E+2	5E-8	2E-10	5E-5	5E-4
		Y, oxides and hydroxides	-	1E+2	4E-8	1E-10	-	-
91	Protactinium-228	W, see ^{227}Pa	1E+3	1E+1	5E-9	-	2E-5	2E-4
			-	Bone surf (2E+1)	-	3E-11	-	-
		Y, see ^{226}Pa	-	1E+1	5E-9	2E-11	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
91	Protactinium-230	W, see ^{227}Pa	6E+2	9E+0	2E-9	7E-12	-	-
			Bone surf (9E+2)	-	-	-	1E-5	1E-4
		Y, see ^{227}Pa	-	4E+0	2E-9	5E-12	-	-
91	Protactinium-231	W, see ^{227}Pa	2E-1	2E-3	6E-13	-	-	-
			Bone surf (5E-1)	Bone surf (4E-3)	-	6E-15	6E-9	6E-8
		Y, see ^{226}Pa	-	4E-3	2E-12	-	-	-
			-	Bone surf (8E-3)	-	8E-15	-	-
91	Protactinium-232	W, see ^{227}Pa	1E+3	2E+1	9E-9	-	2E-5	2E-4
			-	Bone surf (6E+1)	-	8E-11	-	-
		Y, see ^{227}Pa	-	6E+1	2E-8	-	-	-
			-	Bone surf (7E+1)	-	1E-10	-	-
91	Protactinium-233	W, see ^{227}Pa	1E+3	7E+2	3E-7	1E-9	-	-
			LLI wall (2E+3)	-	-	-	2E-5	2E-4
		Y, see ^{227}Pa	-	6E+2	2E-7	8E-10	-	-
91	Protactinium-234	W, see ^{227}Pa	2E+3	6E+3	3E-6	1E-8	3E-5	3E-4
		Y, see ^{227}Pa	-	7E+3	3E-6	9E-9	-	-
92	Uranium-230	D, UF_6, UO_2F_2, $UO_2(NO_3)_2$	4E+0	6E-1	2E-10	-	-	-
			Bone surf (6E+0)	Bone surf (6E-1)	-	8E+13	8E-8	8E-7
		W, UO_3, UF_4, UCl_4	-	4E-1	1E-10	5E-13	-	-
		Y, UO_2, U_3O_8	-	3E-1	1E-10	4E-13	-	-
92	Uranium-231	D, see ^{230}U	5E+3	8E+3	3E-6	1E-8	-	-
			LLI wall (4E+3)	-	-	-	6E-5	6E-4
		W, see ^{230}U	-	6E+3	3E-6	8E-9	-	-
		Y, see ^{230}U	-	5E+3	2E-6	6E-9	-	-
92	Uranium-232	D, see ^{230}U	2E+0	2E-1	9E-11	-	-	-
			Bone surf (4E+0)	Bone surf (4E-1)	-	6E-13	6E-8	6E-7
		W, see ^{230}U	-	4E-1	2E-10	5E-13	-	-
		Y, see ^{230}U	-	8E-3	3E-12	1E-14	-	-
92	Uranium-233	D, see ^{230}U	1E+1	1E+0	5E-10	-	-	-
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7	3E-6
		W, see ^{230}U	-	7E-1	3E-10	1E-12	-	-
		Y, see ^{230}U	-	4E-2	2E-11	5E-14	-	-
92	Uranium-234[3]	D, see ^{230}U	1E+1	1E+0	5E-10	-	-	-
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7	3E-6
		W, see ^{230}U	-	7E-1	3E-10	1E-12	-	-
		Y, see ^{230}U	-	4E-2	2E-11	5E-14	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
92	Uranium-230[3]	D, see ^{230}U	1E+1	1E+0	6E-10	-	-	-
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7	3E-6
		W, see ^{230}U	-	8E-1	3E-10	1E-12	-	-
		Y, see ^{230}U	-	4E-2	2E-11	6E-14	-	-
92	Uranium-231	D, see ^{230}U	1E+1	1E+0	5E-10	-	-	-
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7	3E-6
		W, see ^{230}U	-	8E-1	3E-10	1E-12	-	-
		Y, see ^{230}U	-	4E-2	2E-11	6E-14	-	-
92	Uranium-232	D, see ^{230}U	2E+3	3E+3	1E-6	4E-9	-	-
			LLI wall (2E+3)	-	-	-	3E-5	3E-4
		W, see ^{230}U	-	2E+3	7E-7	2E-9	-	-
		Y, see ^{230}U	-	2E+3	6E-7	2E-9	-	-
92	Uranium-233	D, see ^{230}U	1E+1	1E+0	6E-10	-	-	-
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7	3E-6
		W, see ^{230}U	-	8E-1	3E-10	1E-12	-	-
		Y, see ^{230}U	-	4E-2	2E-11	6E-14	-	-
	Uranium-234[2]	D, see ^{230}U	7E+4	2E+5	8E-5	3E-7	9E-4	9E-3
		W, see ^{230}U	-	2E+5	7E-5	2E-7	-	-
		Y, see ^{230}U	-	2E+5	6E-5	2E-7	-	-
92	Uranium-235	D, see ^{230}U	1E+3	4E+3	2E-6	5E-9	2E-5	2E-4
		W, see ^{230}U	-	3E+3	1E-6	4E-9	-	-
		Y, see ^{230}U	-	2E+3	1E-6	3E-9	-	-
92	Uranium-natural[3]	D, see ^{230}U	1E+1	1E+0	5E-10	-	-	-
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7	3E-6
		W, see ^{230}U	-	8E-1	3E-10	9E-13	-	-
		Y, see ^{230}U	-	5E-2	2E-11	9E-14	-	-
93	Neptunium-232[2]	W, all compounds	1E+5	2E+3	7E-7	-	2E-3	2E-2
			-	Bone surf (5E+2)	-	8E-9	-	-
93	Neptunium-233[2]	W, all compounds	8E+5	3E+6	1E-3	4E-6	1E-2	1E-1
93	Neptunium-234	W, all compounds	2E+3	3E+3	1E-6	4E-9	3E-5	3E-4
93	Neptunium-235	W, all compounds	2E+4	8E+2	3E-7	-	-	-
			LLI wall (2E+4)	Bone surf (1E+3)	-	2E-9	3E-4	3E-3
93	Neptunium-236 (1.15E+5 y)	W, all compounds	3E+0	2E-2	9E-12	-	-	-
			Bone surf (6E+0)	Bone surf (5E-2)	-	8E-14	9E-8	9E-7
93	Neptunium-236m (22.5 h)	W, all compounds	3E+3	3E+1	1E-8	-	-	-
			Bone surf (4E+3)	Bone surf (7E+1)	-	1E-10	5E-5	5E-4
93	Neptunium-237	W, all compounds	5E-1	4E-3	2E-12	-	-	-
			Bone surf (1E+0)	Bone surf (1E-2)	-	1E-14	2E-8	2E-7

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
93	Neptunium-238	W, all compounds	1E+3	8E+1	3E-8	-	2E-5	2E-4
			-	Bone surf (2E+2)	-	2E-10	-	-
93	Neptunium-239	W, all compounds	2E+3	2E+3	9E-7	3E-9	-	-
			LLI wall (2E+3)	-	-	-	2E-5	2E-4
93	Neptunium-240[2]	W, all compounds	2E+4	8E+4	3E-5	1E-7	3E-4	3E-3
94	Plutonium-234	W, all compounds except PuO_2	8E+3	2E+2	9E-8	3E-10	1E-4	1E-3
		Y, PuO_2	-	2E+2	8E-8	3E-10	-	-
94	Plutonium-235[2]	W, see ^{234}Pu	9E+5	3E+6	1E-3	4E-6	1E-2	1E-1
		Y, see ^{234}Pu	-	3E+6	1E-3	3E-6	-	-
94	Plutonium-236	W, see ^{234}Pu	3E+0	2E-2	8E-12	-	-	-
			Bone surf (4E+0)	Bone surf (4E-2)	-	5E-14	6E-8	6E-7
		Y, see ^{234}Pu	-	4E-2	2E-11	6E-14	-	-
94	Plutonium-237	W, see ^{234}Pu	1E+4	2E+3	1E-6	5E-9	2E-4	2E-3
		Y, see ^{234}Pu	-	3E+3	1E-6	4E-9	-	-
94	Plutonium-238	W, see ^{234}Pu	9E-1	7E-3	3E-12	-	-	-
			Bone surf (2E+0)	Bone surf (1E-2)	-	9E-14	2E-8	2E-7
		Y, see ^{234}Pu	-	2E-2	8E-12	2E-14	-	-
94	Plutonium-239	W, see ^{234}Pu	8E-1	6E-3	3E-12	-	-	-
			Bone surf (1E+0)	Bone surf (1E-2)	-	2E-14	2E-8	2E-7
		Y, see ^{234}Pu	-	2E-2	7E-12	-	-	-
			-	Bone surf (2E-2)	-	2E-14	-	-
94	Plutonium-240	W, see ^{234}Pu	8E-1	6E-3	3E-12	-	-	-
			Bone surf (1E+0)	Bone surf (1E-2)	-	2E-14	2E-8	2E-7
		Y, see ^{234}Pu	-	2E-2	7E-12	-	-	-
			-	Bone surf (2E-2)	-	2E-14	-	-
94	Plutonium-241	W, see ^{234}Pu	4E+1	3E-1	1E-10	-	-	-
			Bone surf (7E+1)	Bone surf (6E-1)	-	8E-13	1E-6	1E-5
		Y, see ^{234}Pu	-	8E-1	3E-10	-	-	-
			-	Bone surf (1E+0)	-	3E-12	-	-

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
94	Plutonium-242	W, see ^{234}Pu	8E-1 Bone surf (1E+0)	7E-3 Bone surf (1E-2)	3E-12	-	-	-
		Y, see ^{234}Pu	-	2E-2 Bone surf (2E-2)	7E-12	2E-14	2E-8	2E-7
94	Plutonium-243	W, see ^{234}Pu Y, see ^{234}Pu	2E+4	4E+4	2E-5	5E-8	2E-4	2E-3
94	Plutonium-244	W, see ^{234}Pu Y, see ^{234}Pu	8E-1 Bone surf (2E+0)	7E-3 Bone surf (1E-2)	3E-12	-	-	-
		Y, see ^{234}Pu	-	2E-2 Bone surf (2E-2)	7E-12	2E-14	2E-8	2E-7
94	Plutonium-245	W, see ^{234}Pu Y, see ^{234}Pu	2E+3	5E+3	2E-6	6E-9	3E-5	3E-4
94	Plutonium-246	W, see ^{234}Pu	4E+2 LLI wall (4E+2)	3E+2	1E-7	4E-10	-	-
		Y, see ^{234}Pu	-	3E+2	1E-7	4E-10	6E-6	6E-5
95	Americium-237[2]	W, all compounds	8E+4	3E+5	1E-4	4E-7	1E-3	1E-2
95	Americium-238[2]	W, all compounds	4E+4	3E+3 Bone surf (6E+3)	1E-6	-	5E-4	5E-3
95	Americium-239	W, all compounds	5E+3	1E+4	5E-6	2E-8	7E-5	7E-4
95	Americium-240	W, all compounds	2E+3	3E+3	1E-6	4E-9	3E-5	3E-4
95	Americium-241	W, all compounds	8E-1 Bone surf (1E+0)	6E-3 Bone surf (1E-2)	3E-12	-	-	-
95	Americium-242m	W, all compounds	8E-1 Bone surf (1E+0)	6E-3 Bone surf (1E-2)	3E-12	-	-	-
95	Americium-242	W, all compounds	4E+3	8E+1 Bone surf (9E+1)	4E-8	-	5E-5	5E-4
95	Americium-243	W, all compounds	8E-1 Bone surf (1E+0)	6E-3 Bone surf (1E-2)	3E-12	-	-	-
95	Americium-244m[2]	W, all compounds	8E+4 St. wall (8E+4)	4E+3 Bone surf (7E+3)	2E-6	-	-	-
95	Americium-244	W, all compounds	3E+3	2E+2 Bone surf (3E+2)	8E-8	-	4E-5	4E-4
95	Americium-245	W, all compounds	3E+4	8E+4	3E-5	1E-7	4E-4	4E-3

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
95	Americium-246m[2]	W, all compounds	5E+4 St. wall (6E+4)	2E+5	8E-5	3E-7	-	-
				-	-	-	8E-4	8E-3
95	Americium-246[2]	W, all compounds	3E+4	1E+5	4E-5	1E-7	4E-4	4E-3
96	Curium-238	W, all compounds	2E+4	1E+3	5E-7	2E-9	2E-4	2E-3
96	Curium-240	W, all compounds	6E+1 Bone surf (6E+1)	6E-1 Bone surf (6E-1)	2E-10	-	-	-
					-	9E-13	1E-6	1E-5
96	Curium-241	W, all compounds	1E+3	3E+1 Bone surf (4E+1)	1E-8	-	2E-5	2E-4
			-		-	5E-11	-	-
96	Curium-242	W, all compounds	3E+1 Bone surf (5E+1)	3E-1 Bone surf (3E-1)	1E-10	-	-	-
					-	4E-13	7E-7	7E-6
96	Curium-243	W, all compounds	1E+0 Bone surf (2E+0)	9E-3 Bone surf (2E-2)	4E-12	-	-	-
					-	2E-14	3E-8	3E-7
96	Curium-244	W, all compounds	1E+0 Bone surf (3E+0)	1E-2 Bone surf (2E-2)	5E-12	-	-	-
					-	3E-14	3E-8	3E-7
96	Curium-245	W, all compounds	7E-1 Bone surf (1E+0)	6E-3 Bone surf (1E-2)	3E-12	-	-	-
					-	2E-14	2E-8	2E-7
96	Curium-246	W, all compounds	7E-1 Bone surf (1E+0)	6E-3 Bone surf (1E-2)	3E-12	-	-	-
					-	2E-14	2E-8	2E-7
96	Curium-247	W, all compounds	8E-1 Bone surf (1E+0)	6E-3 Bone surf (1E-2)	3E-12	-	-	-
					-	2E-14	2E-8	2E-7
96	Curium-248	W, all compounds	2E-1 Bone surf (4E-1)	2E-3 Bone surf (3E-3)	7E-13	-	-	-
					-	4E-15	5E-9	5E-8
96	Curium-249[2]	W, all compounds	5E+4	2E+4 Bone surf (3E+4)	7E-6	-	7E-4	7E-3
			-		-	4E-8	-	-
96	Curium-250	W, all compounds	4E-2 Bone surf (6E-2)	3E-4 Bone surf (5E-4)	1E-13	-	-	-
					-	8E-16	9E-10	9E-9
97	Berkelium-245	W, all compounds	2E+3	1E+3	5E-7	2E-9	3E-5	3E-4
97	Berkelium-246	W, all compounds	3E+3	3E+3	1E-6	4E-9	4E-5	4E-4
97	Berkelium-247	W, all compounds	5E-1 Bone surf (1E+0)	4E-3 Bone surf (9E-3)	2E-12	-	-	-
					-	1E-14	2E-8	2E-7
97	Berkelium-249	W, all compounds	2E+2 Bone surf (5E+2)	2E+0 Bone surf (4E+0)	7E-10	-	-	-
					-	5E-12	6E-6	6E-5

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Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Table 1: Col. 2 Inhalation ALI (µCi)	Table 1: Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Table 2: Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
97	Berkelium-250	W, all compounds	9E+3	3E+2	1E-7	-	1E-4	1E-3
			-	Bone surf (7E+2)	-	3E-9	-	-
98	Californium-244[2]	W, all compounds except those given for Y	3E+4	6E+2	2E-7	8E-10	-	-
			St. wall (3E+4)	-	-	-	4E-4	4E-3
		Y, oxides and hydroxides	-	6E+2	2E-7	8E-10	-	-
98	Californium-246	W, see ^{244}Cf	4E+2	9E+0	4E-9	1E-11	5E-6	5E-5
		Y, see ^{244}Cf	-	9E+0	4E-9	1E-11	-	-
98	Californium-248	W, see ^{244}Cf	8E+0	6E-2	3E-11	-	-	-
			Bone surf (2E+1)	Bone surf (1E-1)	-	8E-13	2E-7	2E-6
		Y, see ^{244}Cf	-	1E-1	4E-11	1E-13	-	-
98	Californium-249	W, see ^{244}Cf	5E-1	4E-3	2E-12	-	-	-
			Bone surf (1E+0)	Bone surf (9E-3)	-	1E-14	2E-8	2E-7
		Y, see ^{244}Cf	-	1E-2	4E-12	-	-	-
			-	Bone surf (1E-2)	-	1E-14	-	-
98	Californium-250	W, see ^{244}Cf	1E+0	9E-3	4E-12	-	-	-
			Bone surf (2E+0)	Bone surf (2E-2)	-	3E-14	3E-8	3E-7
		Y, see ^{244}Cf	-	3E-2	1E-11	4E-14	-	-
98	Californium-251	W, see ^{244}Cf	5E-1	4E-3	2E-12	-	-	-
			Bone surf (1E+0)	Bone surf (9E-3)	-	1E-14	2E-8	2E-7
		Y, see ^{244}Cf	-	1E-2	4E-12	-	-	-
			-	Bone surf (1E-2)	-	2E-14	-	-
98	Californium-252	W, see ^{244}Cf	2E+0	2E-2	8E-12	-	-	-
			Bone surf (5E+0)	Bone surf (4E-2)	-	5E-14	7E-8	7E-7
		Y, see ^{244}Cf	-	3E-2	1E-11	5E-14	-	-
98	Californium-253	W, see ^{244}Cf	2E+2	2E+0	8E-10	3E-12	-	-
			Bone surf (4E+2)	-	-	-	5E-6	5E-5
		Y, see ^{244}Cf	-	2E+0	7E-10	2E-12	-	-
98	Californium-254	W, see ^{244}Cf	2E+0	2E-2	9E-12	3E-14	3E-8	3E-7
		Y, see ^{244}Cf	-	2E-2	7E-12	2E-14	-	-
99	Einsteinium-250	W, all compounds	4E+4	5E+2	2E-7	-	6E-4	6E-3
			-	Bone surf (1E+3)	-	2E-9	-	-
99	Einsteinium-251	W, all compounds	7E+3	9E+2	4E-7	-	1E-4	1E-3
			-	Bone surf (1E+3)	-	2E-9	-	-
99	Einsteinium-253	W, all compounds	2E+2	1E+0	6E-10	2E-12	2E-6	2E-5

Atomic No.	Radionuclide	Class	Table 1 Occupational Values: Col. 1 Oral Ingestion ALI (µCi)	Table 1: Col. 2 Inhalation ALI (µCi)	Table 1: Col. 3 Inhalation DAC (µCi/ml)	Table 2 Effluent Concentrations: Col. 1 Air (µCi/ml)	Table 2: Col. 2 Water (µCi/ml)	Table 3 Releases to Sewers: Monthly Average Concentration (µCi/ml)
99	Einsteinium-254m	W, all compounds	3E+2	1E+1	4E-9	1E-11	-	-
			LLI wall (3E+2)	-	-	-	4E-6	4E-5
99	Einsteinium-254	W, all compounds	8E+0	7E-2	3E-11	-	-	-
			Bone surf (2E+1)	Bone surf (1E-1)	-	2E-10	2E-7	2E-6
100	Fermium-252	W, all compounds	5E+2	1E+1	5E-9	2E-11	6E-6	6E-5
100	Fermium-253	W, all compounds	1E+3	1E+1	4E-9	1E-11	1E-5	1E-4
100	Fermium-254	W, all compounds	3E+3	9E+1	4E-8	1E-10	4E-5	4E-4
100	Fermium-255	W, all compounds	5E+2	2E+1	9E-9	3E-11	7E-6	7E-5
100	Fermium-257	W, all compounds	2E+1	2E-1	7E-11	-	-	-
			Bone surf (4E+1)	Bone surf (2E-1)	-	3E-13	5E-7	5E-6
101	Mendelevium-257	W, all compounds	7E+3	8E+1	4E-8	-	1E-4	1E-3
			-	Bone surf (9E+1)	-	1E-10	-	-
101	Mendelevium-258	W, all compounds	3E+1	2E-1	1E-10	-	-	-
			Bone surf (5E+1)	Bone surf (3E-1)	-	5E-13	6E-7	6E-6
-	Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactive half-life less than 2 hours	Submersion[1]	-	2E+2	1E-7	1E-9	-	-
-	Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactive half-life greater than 2 hours	....	-	2E-1	1E-10	1E-12	1E-8	1E-7
-	Any single radionuclide not listed above that decays by alpha emission or spontaneous fission, or any mixture for which either the identity or the concentration of any radionuclide in the mixture is not known	....	-	4E-4	2E-13	1E-15	2E-9	2E-8

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FOOTNOTES:

[1]"Submersion" means that values given are for submersion in a hemispherical semi-infinite cloud of airborne material.

[2]These radionuclides have radiological half-lives of less than 2 hours. The total effective dose equivalent received during operations with these radionuclides might include a significant contribution from external exposure. The DAC values for all radionuclides, other than those designated Class "Submersion," are based upon the committed effective dose equivalent due to the intake of the radionuclide into the body and do NOT include potentially significant contributions to dose equivalent from external exposures. The licensee may substitute 1E-7 μCi/ml for the listed DAC to account for the submersion dose prospectively, but should use individual monitoring devices or other radiation measuring instruments that measure external exposure to demonstrate compliance with the limits. (See § 20.1203.)

[3]For soluble mixtures of U-238, U-234, and U-235 in air, chemical toxicity may be the limiting factor (see § 20.1201(e)): If the percent by weight (enrichment) of U-235 is not greater than 5, the concentration value for a 40-hour workweek is 0.2 milligrams uranium per cubic meter of air average. For any enrichment, the product of the average concentration and time of exposure during a 40-hour workweek shall not exceed 8E-3 (SA) μCi-hr/ml, where SA is the specific activity of the uranium inhaled. The specific activity for natural uranium is 6.77E-7 curies per gram U. The specific activity for other mixtures of U-238, U-235, and U-234, if not known, shall be:

SA = 3.6E-7 curies/gram U U-depleted

SA = [0.4 + 0.38 (enrichment) + 0.0034 (enrichment)^2] E-6 , enrichment $\geq$ 0.72

where enrichment is the percentage by weight of U-235, expressed as percent.

NOTE:

1. If the identity of each radionuclide in a mixture is known but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

2. If the identity of each radionuclide in the mixture is not known, but it is known that certain radionuclides specified in this appendix are not present in the mixture, the inhalation ALI, DAC, and effluent and sewage concentrations for the mixture are the lowest values specified in this appendix for any radionuclide that is not known to be absent from the mixture; or

	Table 1 Occupational Values			Table 2 Effluent Concentrations		Table 3 Releases to Sewers
	Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
	Oral Ingestion	Inhalation				
Radionuclide	ALI (μCi)	ALI (μCi)	DAC (μCi/ml)	Air (μCi/ml)	Water (μCi/ml)	Monthly Average Concentration (μCi/ml)
If it is known that Ac-227-D and Cm-250-W are not present	-	7E-4	3E-13	-	-	-
If, in addition, it is known that Ac-227-W,Y, Th-229-W,Y, Th-230-W, Th-232-W,Y, Pa-231-W,Y, Np-237-W, Pu-239-W, Pu-240-W, Pu-242-W, Am-241-W, Am-242m-W, Am-243-W, Cm-245-W, Cm-246-W, Cm-247-W, Cm-248-W, Bk-247-W, Cf-249-W, and Cf-251-W are not present	-	7E-3	3E-12	-	-	-
If, in addition, it is known that Sm-146-W, Sm-147-W, Gd-148-D,W, Gd-152-D,W, Th-228-W,Y, Th-230-Y, U-232-Y, U-233-Y, U-234-Y, U-235-Y, U-236-Y, U-238-Y, Np-236-W, Pu-236-W,Y, Pu-238-W,Y, Pu-239-Y, Pu-240-Y, Pu-242-Y, Pu-244-W,Y, Cm-243-W, Cm-244-W, Cf-248-W, Cf-249-Y, Cf-250-W,Y, Cf-251-Y, Cf-252-W,Y, and Cf-254-W,Y are not present	-	7E-2	3E-11	-	-	-
If, in addition, it is known that Pb-210-D, Bi-210m-W, Po-210-D,W, Ra-223-W, Ra-225-W, Ra-226-W, Ac-225-D,W,Y, Th-227-W,Y, U-230-D,W,Y, U-232-D,W, Pu-241-W, Cm-240-W, Cm-242-W, Cf-248-Y, Es-254-W, Fm-257-W, and Md-258-W are not present	-	7E-1	3E-10	-	-	-

	Table 2 Occupational Values			Table 2 Effluent Concentrations		Table 3 Releases to Sewers
	Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
	Oral Ingestion	Inhalation				
Radionuclide	ALI (μCi)	ALI (μCi)	DAC (μCi/ml)	Air (μCi/ml)	Water (μCi/ml)	Monthly Average Concentration (μCi/ml)
If, in addition, it is known that Si-32-Y, Ti-44-Y, Fe-60-D, Sr-90-Y, Zr-93-D, Cd-113m-D, Cd-113-D, In-115-D,W, La-138-D, Lu-176-W, Hf-178m-D,W, Hf-182-D,W, Bi-210m-D, Ra-224-W, Ra-228-W, Ac-226-D,W,Y, Pa-230-W,Y, U-233-D,W, U-234-D,W, U-235-D,W, U-236-D,W, U-238-D,W, Pu-241-Y, Bk-249-W, Cf-253-W,Y, and Es-253-W are not present	-	7E+0	3E-9	-	-	-
If it is known that Ac-227-D,W,Y, Th-229-W,Y, Th-232-W,Y, Pa-231-W,Y, Cm-248-W, and Cm-250-W are not present	-	-		1E-14	-	-
If, in addition, it is known that Sm-146-W, Gd-148-D,W, Gd-152-D, Th-228-W,Y, Th-230-W,Y, U-232-Y, U-233-Y, U-234-Y, U-235-Y, U-236-Y, U-238-Y, U-Nat-Y, Np-236-W, Np-237-W, Pu-236-W,Y, Pu-238-W,Y, Pu-239-W,Y, Pu-240-W,Y, Pu-242-W,Y, Pu-244-W,Y, Am-241-W, Am-242m-W, Am-243-W, Cm-243-W, Cm-244-W, Cm-245-W, Cm-246-W, Cm-247-W, Bk-247-W, Cf-249-W,Y, Cf-250-W,Y, Cf-251-W,Y, Cf-252-W,Y, and Cf-254-W,Y are not present	-	-	-	1E-13	-	-
If, in addition, it is known that Sm-147-W, Gd-152-W, Pb-210-D, Bi-210m-W, Po-210-D,W, Ra-223-W, Ra-225-W, Ra-226-W, Ac-225-D,W,Y, Th-227-W,Y, U-230-D,W,Y, U-232-D,W, U-Nat-W, Pu-241-W, Cm-240-W, Cm-242-W, Cf-248-W,Y, Es-254-W, Fm-257-W, and Md-258-W are not present			-	1E-12	-	-
If, in addition it is known that Fe-60, Sr-90, Cd-113m, Cd-113, In-115, I-129, Cs-134, Sm-145, Sm-147, Gd-148, Gd-152, Hg-194 (organic), Bi-210m, Ra-223, Ra-224, Ra-225, Ac-225, Th-228, Th-230, U-233, U-234, U-235, U-236, U-238, U-Nat, Cm-242, Cf-248, Es-254, Fm-257, and Md-258 are not present	-	-	-	-	1E-6	1E-5

[3] If a mixture of radionuclides consists of uranium and its daughters in ore dust (10 μm AMAD particle distribution assumed) prior to chemical separation of the uranium from the ore, the following values may be used for the DAC of the mixture: 6E-11 μCi of gross alpha activity from uranium-238, uranium-234, thorium-230, and radium-226 per milliliter of air; 3E-11 μCi of natural uranium per milliliter of air; or 45 micrograms of natural uranium per cubic meter of air.

[4] If the identity and concentration of each radionuclide in a mixture are known, the limiting values should be derived as follows: determine, for each radionuclide in the mixture, the ratio between the concentration present in the mixture and the concentration otherwise established in Appendix B for the specific radionuclide when not in a mixture. The sum of such ratios for all of the radionuclides in the mixture may not exceed "1" (i.e., "unity").

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Example: If radionuclides "A," "B," and "C" are present in concentrations C_A, C_B, and C_C, and if the applicable DACs are DAC_A, DAC_B, and DAC_C, respectively, then the concentrations shall be limited so that the following relationship exists:

$$\frac{C_A}{DAC_A} + \frac{C_B}{DAC_B} + \frac{C_C}{DAC_C} < 1$$

BILLING CODE 7590-01-C

9. Part 20 is amended by adding appendix C to §§ 20.1001–20.2401 to read as follows:

APPENDIX C TO §§ 20.1001–20.2401 QUANTITIES [1] OF LICENSED MATERIAL REQUIRING LABELING

Radionuclide	Quantity (μCi)
Hydrogen-3	1,000
Beryllium-7	1,000
Beryllium-10	1
Carbon-11	1,000
Carbon-14	1,000
Fluorine-18	1,000
Sodium-22	10
Sodium-24	100
Magnesium-28	100
Aluminum-26	10
Silicon-31	1,000
Silicon-32	1
Phosphorus-32	10
Phosphorus-33	100
Sulfur-35	100
Chlorine-36	10
Chlorine-38	1,000
Chlorine-39	1,000
Argon-39	1,000
Argon-41	1,000
Potassium-40	100
Potassium-42	1,000
Potassium-43	1,000
Potassium-44	1,000
Potassium-45	1,000
Calcium-41	100
Calcium-45	100
Calcium-47	100
Scandium-43	1,000
Scandium-44m	100
Scandium-44	100
Scandium-46	10
Scandium-47	100
Scandium-48	100
Scandium-49	1,000
Titanium-44	1
Titanium-45	1,000
Vanadium-47	1,000
Vanadium-48	100
Vanadium-49	1,000
Chromium-48	1,000
Chromium-49	1,000
Chromium-51	1,000
Manganese-51	1,000
Manganese-52m	1,000
Manganese-52	100
Manganese-53	1,000
Manganese-54	100
Manganese-56	1,000
Iron-52	100
Iron-55	100
Iron-59	10
Iron-60	1
Cobalt-55	100
Cobalt-56	10
Cobalt-57	100
Cobalt-58m	1,000
Cobalt-58	100
Cobalt-60m	1,000
Cobalt-60	1
Cobalt-61	1,000
Cobalt-62m	1,000
Nickel-56	100
Nickel-57	100
Nickel-59	100
Nickel-63	100
Nickel-65	1,000
Nickel-66	10
Copper-60	1,000
Copper-61	1,000
Copper-64	1,000

APPENDIX C TO §§ 20.1001–20.2401 QUANTITIES [1] OF LICENSED MATERIAL REQUIRING LABELING—Continued

Radionuclide	Quantity (μCi)
Copper-67	1,000
Zinc-62	100
Zinc-63	1,000
Zinc-65	10
Zinc-69m	100
Zinc-69	1,000
Zinc-71m	1,000
Zinc-72	100
Gallium-65	1,000
Gallium-66	100
Gallium-67	1,000
Gallium-68	1,000
Gallium-70	1,000
Gallium-72	100
Gallium-73	1,000
Germanium-68	1,000
Germanium-67	1,000
Germanium-69	10
Germanium-69	1,000
Germanium-71	1,000
Germanium-75	1,000
Germanium-77	1,000
Germanium-78	1,000
Arsenic-69	1,000
Arsenic-70	1,000
Arsenic-71	100
Arsenic-72	100
Arsenic-73	100
Arsenic-74	100
Arsenic-76	100
Arsenic-77	100
Arsenic-78	1,000
Selenium-70	1,000
Selenium-73m	1,000
Selenium-73	100
Selenium-75	100
Selenium-79	100
Selenium-81m	1,000
Selenium-81	1,000
Selenium-83	1,000
Bromine-74m	1,000
Bromine-74	1,000
Bromine-75	1,000
Bromine-76	100
Bromine-77	1,000
Bromine-80m	1,000
Bromine-80	1,000
Bromine-82	100
Bromine-83	1,000
Bromine-84	1,000
Krypton-74	1,000
Krypton-76	1,000
Krypton-77	1,000
Krypton-79	1,000
Krypton-81	1,000
Krypton-83m	1,000
Krypton-85m	1,000
Krypton-85	1,000
Krypton-87	1,000
Krypton-88	1,000
Rubidium-79	1,000
Rubidium-81m	1,000
Rubidium-81	1,000
Rubidium-82m	1,000
Rubidium-83	100
Rubidium-84	100
Rubidium-86	100
Rubidium-87	100
Rubidium-88	1,000
Rubidium-89	1,000
Strontium-80	100
Strontium-81	1,000
Strontium-83	100
Strontium-85m	1,000
Strontium-85	100
Strontium-87m	1,000

APPENDIX C TO §§ 20.1001–20.2401 QUANTITIES [1] OF LICENSED MATERIAL REQUIRING LABELING—Continued

Radionuclide	Quantity (μCi)
Strontium-89	10
Strontium-90	0.1
Strontium-91	100
Strontium-92	100
Yttrium-86m	1,000
Yttrium-86	100
Yttrium-87	100
Yttrium-88	10
Yttrium-90m	1,000
Yttrium-90	10
Yttrium-91m	1,000
Yttrium-91	10
Yttrium-92	100
Yttrium-93	100
Yttrium-94	1,000
Yttrium-95	1,000
Zirconium-86	100
Zirconium-88	10
Zirconium-89	100
Zirconium-93	1
Zirconium-95	10
Zirconium-97	100
Niobium-88	1,000
Niobium-89m (66 min)	1,000
Niobium-89 (122 min)	1,000
Niobium-90	100
Niobium-93m	10
Niobium-94	1
Niobium-95m	100
Niobium-95	100
Niobium-96	100
Niobium-97	1,000
Niobium-98	1,000
Molybdenum-90	100
Molybdenum-93m	100
Molybdenum-93	10
Molybdenum-99	100
Molybdenum-101	1,000
Technetium-93m	1,000
Technetium-93	1,000
Technetium-94m	1,000
Technetium-94	1,000
Technetium-96m	1,000
Technetium-96	100
Technetium-97m	100
Technetium-97	1,000
Technetium-98	10
Technetium-99m	1,000
Technetium-99	100
Technetium-101	1,000
Technetium-104	1,000
Ruthenium-94	1,000
Ruthenium-97	1,000
Ruthenium-103	100
Ruthenium-105	1,000
Ruthenium-106	1
Rhodium-99m	1,000
Rhodium-99	100
Rhodium-100	100
Rhodium-101m	1,000
Rhodium-101	10
Rhodium-102m	10
Rhodium-102	10
Rhodium-103m	1,000
Rhodium-105	100
Rhodium-106m	1,000
Rhodium-107	1,000
Palladium-100	100
Palladium-101	1,000
Palladium-103	100
Palladium-107	10
Palladium-109	100
Silver-105	1,000
Silver-105	1,000
Silver-104m	1,000
Silver-104	1,000

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APPENDIX C TO §§ 20.1001–20.2401 QUANTITIES [1] OF LICENSED MATERIAL REQUIRING LABELING—Continued

Radionuclide	Quantity (μCi)
Silver-105	100
Silver-106m	100
Silver-108	1,000
Silver-110m	10
Silver-111	100
Silver-112	100
Silver-115	1,000
Cadmium-105	1,000
Cadmium-107	1,000
Cadmium-109	1
Cadmium-113m	0.1
Cadmium-115	100
Cadmium-115m	10
Cadmium-115	100
Cadmium-117m	1,000
Cadmium-117	1,000
Indium-106	1,000
Indium-110 (69.1min.)	1,000
Indium-110 (4.9h)	1,000
Indium-111	100
Indium-112	1,000
Indium-113m	1,000
Indium-114m	10
Indium-115m	1,000
Indium-115	100
Indium-116m	1,000
Indium-117m	1,000
Indium-117	1,000
Indium-119m	1,000
Tin-113	100
Tin-117	1,000
Tin-121	100
Tin-123	100
Tin-125	100
Tin-126	100
Tin-121m	100
Tin-121	1,000
Tin-123m	1,000
Tin-125	10
Tin-125	10
Tin-126	10
Tin-127	1,000
Tin-128	1,000
Antimony-115	1,000
Antimony-116m	1,000
Antimony-116	1,000
Antimony-117	1,000
Antimony-118m	1,000
Antimony-119	1,000
Antimony-120 (15min.)	1,000
Antimony-120 (5.76d)	100
Antimony-122	100
Antimony-124m	1,000
Antimony-124	10
Antimony-125	100
Antimony-126m	1,000
Antimony-126	100
Antimony-127	100
Antimony-128 (10.4min.)	1,000
Antimony-128 (9.01h)	100
Antimony-129	100
Antimony-130	1,000
Antimony-131	1,000
Tellurium-116	1,000
Tellurium-121m	10
Tellurium-121	100
Tellurium-123m	10
Tellurium-123	100
Tellurium-125m	10
Tellurium-127m	10
Tellurium-127	1,000
Tellurium-129m	10
Tellurium-129	1,000
Tellurium-131m	10
Tellurium-131	100

APPENDIX C TO §§ 20.1001–20.2401 QUANTITIES [1] OF LICENSED MATERIAL REQUIRING LABELING—Continued

Radionuclide	Quantity (μCi)
Tellurium-132	10
Tellurium-133m	100
Tellurium-133	1,000
Tellurium-134	1,000
Iodine-130m	1,000
Iodine-130	100
Iodine-131	1
Iodine-132	10
Iodine-133	1
Iodine-134	10
Iodine-135	1
Xenon-120	1,000
Xenon-121	1,000
Xenon-122	1,000
Xenon-123	1,000
Xenon-125	1,000
Xenon-127	1,000
Xenon-129m	1,000
Xenon-131m	1,000
Xenon-133m	1,000
Xenon-133	1,000
Xenon-135m	1,000
Xenon-135	1,000
Xenon-138	1,000
Cesium-125	1,000
Cesium-127	1,000
Cesium-129	1,000
Cesium-130	1,000
Cesium-131	1,000
Cesium-132	100
Cesium-134m	1,000
Cesium-134	10
Cesium-135m	1,000
Cesium-135	100
Cesium-136	10
Cesium-137	10
Cesium-138	1,000
Barium-128	1,000
Barium-129	100
Barium-131m	1,000
Barium-131	100
Barium-133m	100
Barium-133	100
Barium-135m	100
Barium-139	1,000
Barium-140	100
Barium-141	1,000
Barium-142	1,000
Lanthanum-131	1,000
Lanthanum-132	100
Lanthanum-135	1,000
Lanthanum-137	10
Lanthanum-138	100
Lanthanum-140	100
Lanthanum-141	100
Lanthanum-142	1,000
Lanthanum-143	1,000
Cerium-134	100
Cerium-135	100
Cerium-137m	100
Cerium-137	1,000
Cerium-139	100
Cerium-141	100
Cerium-143	100
Cerium-144	1
Praseodymium-136	1,000
Praseodymium-137	1,000

APPENDIX C TO §§ 20.1001–20.2401 QUANTITIES [1] OF LICENSED MATERIAL REQUIRING LABELING—Continued

Radionuclide	Quantity (μCi)
Praseodymium-138m	100
Praseodymium-139	1,000
Praseodymium-142m	1,000
Praseodymium-143	100
Praseodymium-144	1,000
Praseodymium-145	100
Praseodymium-147	1,000
Neodymium-138	1,000
Neodymium-139	100
Neodymium-139m	1,000
Neodymium-139	1,000
Neodymium-141	1,000
Neodymium-147	100
Neodymium-149	1,000
Neodymium-151	1,000
Promethium-141	1,000
Promethium-143	100
Promethium-144	10
Promethium-145	10
Promethium-146	1
Promethium-147	10
Promethium-148m	10
Promethium-148	10
Promethium-149	100
Promethium-150	1,000
Promethium-151	100
Samarium-141m	1,000
Samarium-141	1,000
Samarium-142	1,000
Samarium-145	100
Samarium-146	1
Samarium-147	100
Samarium-151	10
Samarium-153	100
Samarium-155	1,000
Samarium-156	1,000
Europium-145	100
Europium-146	100
Europium-147	100
Europium-148	10
Europium-149	100
Europium-150 (12.62h)	100
Europium-150 (34.2y)	1
Europium-152m	100
Europium-152	1
Europium-154	1
Europium-155	10
Europium-156	100
Europium-157	100
Europium-158	1,000
Gadolinium-145	1,000
Gadolinium-146	10
Gadolinium-147	100
Gadolinium-148	0.001
Gadolinium-149	100
Gadolinium-151	10
Gadolinium-152	10
Gadolinium-153	10
Gadolinium-159	100
Terbium-147	1,000
Terbium-149	100
Terbium-150	1,000
Terbium-151	100
Terbium-153	1,000
Terbium-154	100
Terbium-155	1,000
Terbium-156m (5.0h)	1,000
Terbium-156m (24.4h)	1,000
Terbium-156	100
Terbium-157	10
Terbium-158	1
Terbium-160	10
Terbium-161	100
Dysprosium-155	1,000
Dysprosium-157	1,000

APPENDIX C TO §§ 20.1001–20.2401 QUANTITIES [1] OF LICENSED MATERIAL REQUIRING LABELING—Continued

Radionuclide	Quantity (μCi)
Dysprosium-159	100
Dysprosium-165	1,000
Dysprosium-166	100
Holmium-155	1,000
Holmium-157	1,000
Holmium-159	1,000
Holmium-161	1,000
Holmium-162m	1,000
Holmium-162	1,000
Holmium-164m	1,000
Holmium-164	1,000
Holmium-166m	1
Holmium-166	100
Holmium-167	1,000
Erbium-161	1,000
Erbium-165	1,000
Erbium-169	100
Erbium-171	100
Erbium-172	100
Thulium-162	1,000
Thulium-166	100
Thulium-167	100
Thulium-170	10
Thulium-171	10
Thulium-172	100
Thulium-173	100
Thulium-175	1,000
Ytterbium-162	1,000
Ytterbium-166	100
Ytterbium-167	1,000
Ytterbium-169	100
Ytterbium-175	100
Ytterbium-177	1,000
Ytterbium-178	1,000
Lutetium-169	100
Lutetium-170	100
Lutetium-171	100
Lutetium-172	100
Lutetium-173	10
Lutetium-174m	10
Lutetium-174	10
Lutetium-176m	1,000
Lutetium-176	100
Lutetium-177m	10
Lutetium-177	100
Lutetium-178m	1,000
Lutetium-178	1,000
Lutetium-179	1,000
Hafnium-170	100
Hafnium-172	1
Hafnium-173	1,000
Hafnium-175	100
Hafnium-177m	1,000
Hafnium-178m	0.1
Hafnium-179m	10
Hafnium-180m	1,000
Hafnium-181	10
Hafnium-182m	1,000
Hafnium-182	0.1
Hafnium-183	1,000
Hafnium-184	100
Tantalum-172	1,000
Tantalum-173	1,000
Tantalum-174	1,000
Tantalum-175	1,000
Tantalum-176	100
Tantalum-177	1,000
Tantalum-178	1,000
Tantalum-179	100
Tantalum-180m	1,000
Tantalum-180	100
Tantalum-182m	1,000
Tantalum-182	10
Tantalum-183	100
Tantalum-184	100
Tantalum-185	1,000

APPENDIX C TO §§ 20.1001–20.2401 QUANTITIES [1] OF LICENSED MATERIAL REQUIRING LABELING—Continued

Radionuclide	Quantity (μCi)
Tantalum-186	1,000
Tungsten-176	1,000
Tungsten-177	1,000
Tungsten-178	1,000
Tungsten-179	1,000
Tungsten-181	1,000
Tungsten-185	100
Tungsten-187	100
Tungsten-188	10
Rhenium-177	1,000
Rhenium-178	1,000
Rhenium-181	1,000
Rhenium-182 (12.7h)	1,000
Rhenium-182 (64.0h)	100
Rhenium-184m	10
Rhenium-184	100
Rhenium-186m	10
Rhenium-186	100
Rhenium-187	1,000
Rhenium-188m	1,000
Rhenium-188	100
Rhenium-189	100
Osmium-180	1,000
Osmium-181	1,000
Osmium-182	100
Osmium-185	100
Osmium-189m	1,000
Osmium-191m	1,000
Osmium-191	100
Osmium-193	100
Osmium-194	1
Iridium-182	1,000
Iridium-184	1,000
Iridium-185	1,000
Iridium-186	100
Iridium-187	1,000
Iridium-188	100
Iridium-189	100
Iridium-190m	1,000
Iridium-190	100
Iridium-192 (73.8d)	1
Iridium-192m (1.4min.)	10
Iridium-194m	10
Iridium-194	100
Iridium-195m	1,000
Iridium-195	1,000
Platinum-186	1,000
Platinum-188	100
Platinum-189	1,000
Platinum-191	100
Platinum-193m	100
Platinum-193	1,000
Platinum-195m	100
Platinum-197m	1,000
Platinum-197	100
Platinum-199	1,000
Platinum-200	100
Gold-193	1,000
Gold-194	100
Gold-195	10
Gold-196m	100
Gold-196	100
Gold-198	100
Gold-199	100
Gold-200m	100
Gold-200	1,000
Gold-201	1,000
Mercury-193m	100
Mercury-193	1,000
Mercury-194	1
Mercury-195m	100
Mercury-195	1,000
Mercury-197m	100
Mercury-197	1,000
Mercury-199m	1,000
Mercury-203	100
Thallium-194m	1,000

APPENDIX C TO §§ 20.1001–20.2401 QUANTITIES [1] OF LICENSED MATERIAL REQUIRING LABELING—Continued

Radionuclide	Quantity (μCi)
Thallium-194	1,000
Thallium-195	1,000
Thallium-197	1,000
Thallium-198m	1,000
Thallium-198	1,000
Thallium-199	1,000
Thallium-200	1,000
Thallium-201	1,000
Thallium-202	100
Thallium-204	100
Lead-195m	1,000
Lead-198	1,000
Lead-199	1,000
Lead-200	100
Lead-201	1,000
Lead-202m	1,000
Lead-202	10
Lead-203	1,000
Lead-205	100
Lead-209	1,000
Lead-210	0.0
Lead-211	100
Lead-212	1
Lead-214	100
Bismuth-200	1,000
Bismuth-201	1,000
Bismuth-202	1,000
Bismuth-203	100
Bismuth-205	100
Bismuth-206	100
Bismuth-207	10
Bismuth-210m	0.1
Bismuth-210	1
Bismuth-212	10
Bismuth-213	10
Bismuth-214	100
Polonium-203	1,000
Polonium-205	1,000
Polonium-207	1,000
Polonium-210	0.1
Astatine-207	100
Astatine-211	10
Radon-220	1
Radon-222	1
Francium-222	100
Francium-223	100
Radium-223	0.1
Radium-224	0.1
Radium-225	0.1
Radium-226	0.1
Radium-227	1,000
Radium-228	0.1
Actinium-224	1
Actinium-225	0.01
Actinium-226	0.1
Actinium-227	0.001
Actinium-228	1
Thorium-226	10
Thorium-227	0.01
Thorium-228	0.001
Thorium-229	0.001
Thorium-230	0.001
Thorium-231	100
Thorium-232	100
Thorium-234	10
Thorium-natural	100
Protactinium-227	10
Protactinium-228	1
Protactinium-230	0.1
Protactinium-231	0.001
Protactinium-232	1
Protactinium-233	100
Protactinium-234	100
Uranium-230	0.01
Uranium-231	100
Uranium-232	0.001

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APPENDIX C TO §§ 20.1001–20.2401
QUANTITIES[1] OF LICENSED MATERIAL REQUIRING LABELING—Continued

Radionuclide	Quantity (μCi)
Uranium-233	0.001
Uranium-234	0.001
Uranium-235	0.001
Uranium-236	0.001
Uranium-237	100
Uranium-238	100
Uranium-239	1,000
Uranium-240	100
Uranium-natural	100
Neptunium-232	100
Neptunium-233	1,000
Neptunium-234	100
Neptunium-235	100
Neptunium-236 (1.15x10⁵y)	0.001
Neptunium-236 (22.5h)	1
Neptunium-237	0.001
Neptunium-238	10
Neptunium-239	100
Neptunium-240	1,000
Plutonium-234	10
Plutonium-235	1,000
Plutonium-236	0.001
Plutonium-237	100
Plutonium-238	0.001
Plutonium-239	0.001
Plutonium-240	0.001
Plutonium-241	0.01
Plutonium-242	0.001
Plutonium-243	1,000
Plutonium-244	0.001
Plutonium-245	100
Americium-237	1,000
Americium-238	100
Americium-239	1,000
Americium-240	100
Americium-241	0.001
Americium-242m	0.001
Americium-242	10
Americium-243	0.001

APPENDIX C TO §§ 20.1001–20.2401
QUANTITIES[1] OF LICENSED MATERIAL REQUIRING LABELING—Continued

Radionuclide	Quantity (μCi)
Americium-244m	100
Americium-244	10
Americium-245	1,000
Americium-246m	1,000
Americium-246	1,000
Curium-238	100
Curium-240	0.1
Curium-241	1
Curium-242	0.01
Curium-243	0.001
Curium-244	0.001
Curium-245	0.001
Curium-246	0.001
Curium-247	0.001
Curium-248	0.001
Curium-249	1,000
Berkelium-245	100
Berkelium-246	100
Berkelium-247	0.001
Berkelium-249	0.1
Berkelium-250	10
Californium-244	100
Californium-246	1
Californium-248	0.01
Californium-249	0.001
Californium-250	0.001
Californium-251	0.001
Californium-252	0.001
Californium-253	0.1
Californium-254	0.001
Any alpha emitting radionuclide not listed above or mixtures of alpha emitters of unknown composition	0.001
Einsteinium-250	100
Einsteinium-251	100
Einsteinium-253	0.1
Einsteinium-254m	1
Einsteinium-254	0.01
Fermium-252	1

APPENDIX C TO §§ 20.1001–20.2401
QUANTITIES[1] OF LICENSED MATERIAL REQUIRING LABELING—Continued

Radionuclide	Quantity (μCi)
Fermium-253	1
Fermium-254	10
Fermium-255	1
Fermium-257	0.01
Mendelevium-257	10
Mendelevium-258	0.01
Any radionuclide other than alpha emitting radionuclides not listed above, or mixtures of beta emitters of unknown composition	0.01

[1] The quantities listed above were derived by taking 1% of the most restrictive ALI listed in table 1, columns 1 and 2, of appendix B to §§ 20.1001–20.2401 of this part, rounding to the nearest factor of 10, and arbitrarily constraining the values listed between 0.001 and 1,000 μCi. Values of 100 μCi have been assigned for radionuclides having a radioactive half-life in excess of 10⁸ years (except thorium, 1000 μCi) to take into account their low specific activity.

Note: For purposes of §§ 20.1902(e), 20.1905(g), and 20.2201(a) where there is involved a combination of radionuclides in known amounts, the limit for the combination should be derived as follows: determine, for each radionuclide in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific radionuclide when not in combination. The sum of such ratios for all radionuclides in the combination may not exceed "1" (i.e., "unity").

10. Part 20 is amended by adding appendix D to §§ 20.1001–20.2401 to read as follows:

Appendix D to §§ 20.1001–20.2401—United States Nuclear Regulatory Commission Regional Offices

	Address	Telephone (24 hour)
Region I: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.	USNRC, Region I, 475 Allendale Road, King of Prussia, PA 19406.	(215) 337-5000, (FTS) 346-5000.
Region II: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia, Virgin Islands, and West Virginia.	USNRC, Region II, 101 Marietta Street, NW., Suite 2900, Atlanta, GA 30323.	(404) 331-4503, (FTS) 841-4503.
Region III: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	USNRC, Region III, 799 Roosevelt Road, Glen Ellyn, IL 60137.	(708) 790-5500, (FTS) 388-5500.
Region IV: Arkansas, Colorado, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.	USNRC, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, TX 76011.	(817) 860-8100, (FTS) 728-8100.
Region IV: Field Office	USNRC, Region IV, Uranium Recovery Field Office, 730 Simms Street, Suite 100a, Golden, CO 80401, Mail: P.O. Box 25325, Denver, CO 80225.	(303) 231-5600, (FTS) 554-5600.
Region V: Alaska, Arizona, California, Hawaii, Nevada, Oregon, Washington, and U.S. territories and possessions in the Pacific.	USNRC, Region V, 1450 Maria Lane, Suite 210, Walnut Creek, CA 94596.	(415) 975-5000.

11. Part 20 is amended by adding and reserving appendix E to §§ 20.1001–20.2401.

Appendix E to §§ 20.1001–20.2401 [Reserved]

12. Part 20 is amended by adding appendix F to §§ 20.1001–20.2401 to read as follows:

Appendix F to §§ 20.1001–20.2401—Requirements for Low-Level-Waste Transfer for Disposal at Land Disposal Facilities and Manifests

I. Manifest

The shipment manifest shall contain the name, address, and telephone number of the person generating the waste. The manifest shall also include the name, address, and telephone number or the name and EPA hazardous waste identification number of the person transporting the waste to the land disposal facility. The manifest must also indicate as completely as practicable: a physical description of the waste, the volume, radionuclide identity and quantity, the total radioactivity, and the principal chemical form. The solidification agent must be specified. Waste containing more than 0.1% chelating agents by weight must be identified and the weight percentage of the chelating agent estimated. Wastes classified as Class A, Class B, or Class C in § 61.55 of this chapter must be clearly identified as such in the manifest. The total quantity of the radionuclides ^{3}H, ^{14}C, ^{99}Tc, and ^{129}I must be shown. The manifest required by this paragraph may be shipping papers used to meet Department of Transportation or Environmental Protection Agency regulations or requirements of the receiver, provided all the required information is included. Copies of manifests required by this section may be legible carbon copies or legible photocopies.

II. Certification

The waste generator shall include in the shipment manifest a certification that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation and the Commission. An authorized representative of the waste generator shall sign and date the manifest.

III. Control and Tracking

A. Any generating licensee who transfers radioactive waste to a land disposal facility or a licensed waste collector shall comply with the requirements in paragraphs A.1 through 8 of this section. Any generating licensee who transfers waste to a licensed waste processor who treats or repackages waste shall comply with the requirements of paragraphs A.4 through 8 of this section. A licensee shall:

1. Prepare all wastes so that the waste is classified according to § 61.55 of this chapter and meets the waste characteristics requirements in § 61.56 of this chapter;

2. Label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with § 61.55 of this chapter;

3. Conduct a quality control program to ensure compliance with §§ 61.55 and 61.56 of this chapter; the program must include management evaluation of audits;

4. Prepare shipping manifests to meet the requirements of sections I and II of this appendix;

5. Forward a copy of the manifest to the intended recipient, at the time of shipment, or deliver to a collector at the time the waste is collected, obtaining acknowledgment of receipt in the form of a signed copy of the manifest or equivalent documentation from the collector;

6. Include one copy of the manifest with the shipment;

7. Retain a copy of the manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by parts 30, 40, and 70 of this chapter; and

8. For any shipments or any part of a shipment for which acknowledgment of receipt has not been received within the times set forth in this section, conduct an investigation in accordance with paragraph E of this appendix.

B. Any waste collector licensee who handles only prepackaged waste shall:

1. Acknowledge receipt of the waste from the generator within 1 week of receipt by returning a signed copy of the manifest or equivalent documentation;

2. Prepare a new manifest to reflect consolidated shipments; the new manifest shall serve as a listing or index for the detailed generator manifests. Copies of the generator manifests shall be a part of the new manifest. The waste collector may prepare a new manifest without attaching the generator manifests, provided the new manifest contains for each package the information specified in section I of this appendix. The collector licensee shall certify that nothing has been done to the waste that would invalidate the generator's certification;

3. Forward a copy of the new manifest to the land disposal facility operator at the time of shipment;

4. Include the new manifest with the shipment to the disposal site;

5. Retain a copy of the manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by parts 30, 40, and 70 of this chapter, and retain information from generator manifest until disposition is authorized by the Commission; and

6. For any shipments or any part of a shipment for which acknowledgment of receipt is not received within the times set forth in this section, conduct an investigation in accordance with section III, E of this appendix.

C. Any licensed waste processor who treats or repackages wastes shall:

1. Acknowledge receipt of the waste from the generator within 1 week of receipt by returning a signed copy of the manifest or equivalent documentation;

2. Prepare a new manifest that meets the requirements of sections I and II of this appendix. Preparation of the new manifest reflects that the processor is responsible for the waste;

3. Prepare all wastes so that the waste is classified according to § 61.55 of this chapter and meets the waste characteristics requirements in § 61.56 of this chapter;

4. Label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with §§ 61.55 and 61.57 of this chapter;

5. Conduct a quality control program to ensure compliance with §§ 61.55 and 61.56 of this chapter. The program shall include management evaluation of audits;

6. Forward a copy of the new manifest to the disposal site operator or waste collector at the time of shipment, or deliver to a collector at the time the waste is collected, obtaining acknowledgment of receipt in the form of a signed copy of the manifest or equivalent documentation by the collector;

7. Include the new manifest with the shipment;

8. Retain copies of original manifests and new manifests and documentation of acknowledgment of receipt as the record of transfer of licensed material required by parts 30, 40, and 70 of this chapter; and

9. For any shipment or part of a shipment for which acknowledgment is not received within the times set forth in this section, conduct an investigation in accordance with section III. E of this appendix.

D. The land disposal facility operator shall:

1. Acknowledge receipt of the waste within 1 week of receipt by returning a signed copy of the manifest or equivalent documentation to the shipper. The shipper to be notified is the licensee who last possessed the waste and transferred the waste to the operator. The returned copy of the manifest or equivalent documentation shall indicate any discrepancies between materials listed on the manifest and materials received;

2. Maintain copies of all completed manifests or equivalent documentation until the Commission authorizes their disposition; and

3. Notify the shipper (i.e., the generator, the collector, or processor) and the Administrator of the nearest Commission Regional Office listed in appendix D to this part when any shipment or part of a shipment has not arrived within 60 days after the advance manifest was received.

E. Any shipment or part of a shipment for which acknowledgment is not received within the times set forth in this section must:

1. Be investigated by the shipper if the shipper has not received notification or receipt within 20 days after transfer; and

2. Be traced and reported. The investigation shall include tracing the shipment and filing a report with the nearest Commission Regional Office listed in appendix D to this part. Each licensee who conducts a trace investigation shall file a written report with the appropriate NRC Regional Office within 2 weeks of completion of the investigation.

Conforming Amendments

The following amendments to other parts of Chapter I of title 10 generally update citations to 10 CFR part 20 that are found in these other parts of the NRC regulations. Two amendments are particularly important as they go beyond updating cross-reference citations. The amendment to 10 CFR part 2 appendix C to §§ 20.1001–20.2401 updates and modifies the examples of the severity levels associated with violations of 10 CFR part 20 (§§ 20.1001–20.2401). The earlier version of the severity levels, which is retained as Part 2, appendix C for §§ 20.1–20.601, will apply until January 1, 1993 or until the licensee adopts the amendments to part 20 in this final rule (§§ 20.1001–20.2401). Because appendix C is a policy statement of the Commission, and not a regulation, the Commission is issuing the amendments to the Commission's enforcement policy in 10 CFR part 2, appendix C in final form without public comment.

The other important change in the conforming amendments is the deletion of "upon request" from § 19.13(b). This has the effect of requiring annual dose reports to all workers rather than only upon a request by the worker. This change conforms to the 1987 Federal Radiation Guidance from the President. The requirement to report doses to the worker at least annually applies to licensees adopting the amendments to part 20 in this final rule (§§ 20.1001–

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20.2401) and will apply to all licensees on January 1, 1993.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

13. The authority citation for part 2 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

14. In appendix C to 10 CFR part 2, supplement IV is amended by revising the existing subject center heading and by adding a new subject center heading and paragraphs F through J to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

Supplement IV—Severity Categories

Health Physics 10 CFR Part 20 (to accompany §§ 20.1–20.601)[18]

* * * * *

Health Physics 10 CFR Part 20 (to accompany §§ 20.1001–20.2401)[18a]

F. Severity I—Violations Involving For Example

1. Single radiation exposure of a worker in excess of 25 rems total effective dose equivalent, 75 rems to the lens of the eye, or 250 rads to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. Single radiation exposure of the embryo/fetus of a declared pregnant woman in excess of 2.5 rems total effective dose equivalent;

3. Single radiation exposure of a minor in excess of 2.5 rems total effective dose equivalent, 7.5 rems to the lens of the eye, or 25 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. Annual exposure of a member of the public in excess of 2.5 rems total effective dose equivalent;

5. Release of radioactive material to an unrestricted area at concentrations in excess of 50 times the limits or members of the public in table 2 of appendix B of §§ 20.1001–20.2401 of 10 CFR part 20; or

6. Disposal of licensed material in quantities or concentrations in excess of 10 times the limits of 10 CFR 20.2003.

G. Severity II—Violations Involving For Example

1. Single radiation exposure of a worker in excess of 10 rems total effective dose equivalent, 30 rems to the lens of the eye, or 100 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. Single radiation exposure of the embryo/fetus of a declared pregnant woman in excess of 1.0 rem total effective dose equivalent;

3. Single radiation exposure of a minor in excess of 1 rem total effective dose equivalent; 3.0 rems to the lens of the eye, or 10 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. Annual exposure of a member of the public in excess of 0.5 rem total effective dose equivalent;

5. Release of radioactive material to an unrestricted area at concentrations in excess of 10 times the limits for members of the public in table 2 of appendix B to §§ 20.1001–20.2401 of 10 CFR part 20;

6. Disposal of licensed material in quantities or concentrations in excess of five times the limits of 10 CFR 20.2003; or

7. Failure to make an immediate notification as required by 10 CFR 20.2202 (a)(1) or (a)(2).

H. Severity III—Violations Involving For Example:

1. Single radiation exposure of a worker in excess of 5 rems total effective dose equivalent, 15 rems to the lens of the eye, or 50 rems to the skin of the whole body or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. Single radiation exposure of the embryo/fetus of a declared pregnant woman in excess of 0.5 rem total effective dose equivalent;

3. Single radiation exposure of a minor in excess of 0.5 rem total effective dose equivalent; 1.5 rems to the lens of the eye, or 5 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. Worker exposure above regulatory limits when such exposure reflects a programmatic (rather than an isolated) weakness in the radiation control program;

5. Annual exposure of a member of the public in excess of 0.1 rem total effective dose equivalent (except when operation up to 0.5 rem a year has been approved by the Commission under § 20.1301(c));

6. Release of radioactive material to an unrestricted area at concentrations in excess of two times the effluent concentration limits in table 2 of appendix B to §§ 20.1001–20.2401 of 10 CFR part 20 (except when operation up to 0.5 rem a year has been approved by the Commission under § 20.1301(c));

7. Failure to make a 24-hour notification required by 10 CFR 20.2202(b) or an immediate notification required by 10 CFR 20.2201(a)(1)(i);

8. Substantial potential for exposures or releases in excess of the applicable limits in 10 CFR part 20 §§ 20.1001–20.2401 whether or not such exposure or release occurs (e.g., operation of a radiation facility with a nonfunctioning interlock system or entry into high radiation areas, such as under reactor vessels or in the vicinity of exposed radiographic sources, without having performed an adequate survey);

9. Improper disposal of licensed material not covered in Severity Levels I or II;

10. Release for unrestricted use of contaminated or radioactive material or equipment that poses a realistic potential for exposure of the public to levels or doses exceeding the annual dose for limit for members of the public, or that reflects a programmatic (rather than an isolated) weakness in the radiation control program;

11. Conduct of licensee activities by a technically unqualified person; or

12. Significant failure to control licensed material.

I. Severity IV—Violations Involving For Example:

1. Exposures in excess of the limits of 10 CFR 20.1201, 20.1207, or 20.1208 not constituting Severity Level I, II, or III violations;

2. Release of radioactive material to an unrestricted area at concentrations in excess of the limits for members of the public in appendix B to §§ 20.1001–20.2401 of 10 CFR part 20 (except when operation up to 0.5 rem a year has been approved by the Commission under § 20.1301(c));

3. A radiation dose rate in an unrestricted or controlled area in excess of 0.002 rem in any 1 hour (2 millirem/hour) or 50 millirems in a year;

4. Failure to maintain and implement radiation programs to keep radiation exposures as low as is reasonably achievable;

5. Doses to a member of the public in excess of any EPA generally applicable environmental radiation standards, such as 40 CFR part 190;

6. Failure to make the 30-day notification required by 10 CFR 20.2201(a)(1)(ii) or 20.2203(a);

7. Failure to make a timely written report as required by 10 CFR 20.2201(b), 20.2204, or 20.2206; or

8. Any other matter that has more than a minor safety, health, or environmental significance.

J. Severity V—Violations that are of a Minor Safety, Health, or Environmental Significance

* * * * *

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTIONS

15. The authority citation for part 19 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

16. Section 19.3 is amended by revising the definition for *Restricted area* to read as follows:

§ 19.3 Definitions.

* * * * *

Restricted area means an area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

* * * * *

[18] Personnel overexposures and associated violations, incurred during a life-saving effort, will be treated on a case-by-case basis.

[18a] See footnote 18.

17. In § 19.13, paragraph (d) is amended by changing the reference to "§ 20.405 and § 20.408" to read "§ 20.405 and § 20.408 or, for licensees implementing the provisions of §§ 20.1001–20.2401, §§ 20.2202, 20.2203, 20.2204, or § 20.2206," and by revising paragraphs (b), (c), and (e) to read as follows:

§ 19.13 Notifications and reports to individuals.

* * * * *

(b) Each licensee shall advise each worker annually of the worker's dose as shown in records maintained by the licensee pursuant to part 20 (§ 20.401 and § 20.501 or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.2106). Prior to January 1, 1993 licensees operating under §§ 20.1–20.601 are required to provide this information only upon request of the worker.

(c) At the request of a worker formerly engaged in licensed activities controlled by the licensee, each licensee shall furnish to the worker a report of the worker's exposure to radiation or radioactive material for each year the worker was required to be monitored under either § 20.107 or § 20.202 or, for licensees implementing the provisions of §§ 20.1001–20.2401, under § 20.1502. Such report shall be furnished within 30 days from the time the request is made, or within 30 days after the exposure of the individual has been determined by the licensee, whichever is later. This report shall cover the period of time that the worker's activities involved exposure to radiation from radioactive materials licensed by the Commission and shall include the date and locations of licensed activities in which the worker participated during this period.

* * * * *

(e) At the request of a worker who is terminating employment with the licensee that involved exposure to radiation or radioactive materials, during the current calendar quarter or the current year, each licensee shall provide at termination to each such worker, or to the worker's designee, a written report regarding the radiation dose received by that worker from operations of the licensee during the current year or fraction thereof. If the most recent individual monitoring results are not available at that time, a written estimate of the dose shall be provided together with a clear indication that this is an estimate. Licensees required by §§ 20.407–20.408 of §§ 20.1–20.601 to provide termination reports and statistical summaries of occupational doses to the Commission shall continue to provide these reports until they adopt the provisions of §§ 20.1001–20.2401, or until January 1, 1993.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

18. The authority citation for part 30 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

19. In § 30.35, paragraph (a) is amended by revising the references to "appendix C to 10 CFR part 20" and "appendix C" to read "appendix C to §§ 20.1–20.601 of 10 CFR part 20"; paragraph (d) is amended by revising the three references to "appendix C of the part 20" to read "appendix C to §§ 20.1–20.601 of 10 CFR part 20"; and by adding a note at the end of the section to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

Note: Appendix C of §§ 20.1–20.601 of 10 CFR Part 20 applies for the purpose of estimating decommissioning costs regardless of whether the licensee adopts 10 CFR 20.1001–20.2401 or continues to use 10 CFR 20.1–20.601.

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

20. The authority citation for part 31 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 31.5 [Amended]

21. In § 31.5(c)(10), the reference to "§§ 20.402 and 20.403" is revised to read "§§ 20.402 and 20.403 or, for licensees implementing the provisions of §§ 20.1001–20.2401, §§ 20.1201 and 20.1202."

§ 31.7 [Amended]

22. In § 31.7(b), the reference to "§§ 20.402 and 20.405" is revised to read "§§ 20.402 and 20.403 or, for licensees implementing the provisions of §§ 20.1001–20.2401, §§ 20.1201 and 20.1202."

§ 31.10 [Amended]

23. In § 31.10(b)(1), the reference to § 20.501" is revised to read "§ 20.201 or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1001."

24. In § 31.10(b)(3) the reference to "§§ 20.301, 20.402, and 20.405" is revised to read "§§ 20.301, 20.402, and 20.403 or, for licensees implementing the provisions of §§ 20.1001–20.2401, §§ 20.1001, 20.1201, and 20.1202."

§ 31.11 [Amended]

25. In § 31.11(c)(6), the reference to "§ 20.301" is revised to read "§ 20.301 or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1001."

26. In § 31.11(f), the reference to "§§ 20.301, 20.402, and 20.405" is revised to read "§§ 20.301, 20.402, and 20.403 or, for licensees implementing the provisions of §§ 20.1001–20.2401, §§ 20.1001, 20.1201, and 20.1202."

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

27. The authority citation for part 32 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201), sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

28. In § 32.51, paragraphs (a)(2)(ii) and (c) are revised to read as follows:

§ 32.51 Byproduct material contained in devices for use under § 31.5; requirements for license to manufacture, or initially transfer.

(a) * * *

(2) * * *

(ii) Under ordinary conditions of handling, storage, and use of the device, the byproduct material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive in any period of 1 calendar quarter a dose in excess of 10 percent of the limits specified in the table in § 20.101(a) of this chapter or, for licensees implementing the provisions of §§ 20.1001–20.2401 of this chapter, will receive in 1 year a dose in excess of 10 percent of the annual limits specified in § 20.1201(a) of this chapter; and

* * * * *

(c) In the event the applicant desires that the general licensee under § 31.5 of this chapter, or under equivalent regulations of an Agreement State, be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the on-off mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with such activity or activities, and the bases for

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these estimates. The submitted information must demonstrate that performance of this activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive in a calendar quarter a dose in excess of 10 percent of the limits in § 20.101(a) of this chapter or, for licensees implementing the provisions of §§ 20.1001–20.2401 of this chapter, a dose in excess of 10 percent of the annual limits specified in § 20.1201(a) of this chapter.

§ 32.61 [Amended]

29. In § 32.61(d), the reference to "§ 20.203(a)" is revised to read "§ 20.203(a) or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1901(a)."

§ 32.71 [Amended]

30. In § 32.71(c)(2), the reference to "§ 20.203(a)(1)" is revised to read "§ 20.203(a)(1) or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1901(a)."

31. In § 32.71(e), the reference to "§ 20.301" is revised to read "§ 20.301 or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.2001."

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

32. The authority citation for part 34 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 34.29 [Amended]

33. In § 34.29(a), the reference to "§ 20.203(c) (2)(ii), (2)(iii), or (4)" is revised to read "§ 20.203(c) (2)(ii), (2)(iii), or (4) or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1601 (a)(2), (a)(3), or (b)."

§ 34.41 [Amended]

34. In § 34.41, the reference to "§ 20.203(c)(2)" is revised to read "§ 20.203(c)(2) or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1601 (a)(1), (a)(2), or (a)(3)."

§ 34.42 [Amended]

35. In § 34.42, the reference to § 20.204(c)" is revised to read "§ 20.204(c) or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1903" and the reference to "§ 20.203 (b) and (c)(1)" is revised to read "§ 20.203 (b) and (c)(1) or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1902 (a) and (b)."

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

36. The authority citation for part 35 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201), sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 35.92 [Amended]

37. In § 35.92, the introductory text of paragraph (a) is amended by revising the reference to "§ 20.301" to read "§ 20.301 or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.2001."

§ 35.315 [Amended]

38. In § 35.315(a)(6), the reference to "§ 20.401(c)(1)" is revised to read "§ 20.401(c)(1) of this chapter or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.2108(a) of this chapter."

§ 35.415 [Amended]

39. In § 35.415(a)(1), the reference to "§ 20.105(b)" is revised to read "§ 20.105(b) or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1301(a)."

§ 35.630 [Amended]

40. In § 35.630 (a)(1) and (a)(2), the reference to "National Bureau of Standards" is revised to read: "National Institute of Standards and Technology."

§ 35.641 [Amended]

41. In § 35.641(a)(2)(i), the reference to "§ 20.101" is revised to read "§ 20.101 or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1201."

42. In § 35.641(a)(2)(ii), the reference to "§ 20.105(b)" is revised to read "§ 20.105(b) or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1301."

43. In § 35.641(b)(2), the reference to "§ 20.501" is revised to read "§ 20.501 or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1301."

§ 35.643 [Amended]

44. In § 35.643, the introductory text of paragraph (a) is amended by revising the reference to "§ 20.105(b)" to read "§ 20.105(b) or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1301."

45. In § 35.643(a)(1), the reference to "§ 20.105(b)" is revised to read "§ 20.105(b) of this chapter or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1301(c) of this chapter."

46. In § 35.643(b), the reference to "§ 20.205(a)" is revised to read "§ 20.205(a) or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1301(c)"; and the reference to "§ 20.105(b)" is revised to read "§ 20.105(b) of this chapter or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1301(a) of this chapter."

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

47. The authority citation for part 39 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201), sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 39.15 [Amended]

48. In § 39.15(a)(5)(iii)(B), the reference to "§ 20.203" is revised to read "§ 20.203 or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1901(a)."

§ 39.31 [Amended]

49. In § 39.31(a)(1), the reference to "§ 20.203" is revised to read "§ 20.203 or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1901(a)."

50. In § 39.31(a)(2), the reference to "§ 20.203" is revised to read "§ 20.203 or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1901(a)."

§ 39.77 [Amended]

51. In § 39.77(b), the reference to "§§ 20.402, 20.403, and 20.405" is revised to read "§§ 20.402, 20.403, and 20.405 or, for licensees implementing the provisions of §§ 20.1001–20.2401, §§ 20.2201, 20.2202, and 20.2203."

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

52. The authority citation for part 40 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948 as amended (42 U.S.C. 2201), sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

53. Section § 40.34 is amended by revising paragraph (a)(2) to read as follows:

§ 40.34 Special requirements for issuance of specific licenses.

(a) * * *

(2) The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the industrial product or device to provide reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive in any period of 1 calendar quarter a radiation dose in excess of 10 percent of the limits specified in § 20.101(a) of this chapter, or, for licensees implementing the provisions of §§ 20.1001–20.2401 of this chapter, cause any individual to receive in 1 year a radiation dose in excess of 10 percent of the annual limits specified in § 20.2101(a) of this chapter; and

* * * * *

Appendix A to Part 40—[Amended]

54. In the first paragraph of the Introduction to appendix A, the reference to "§ 20.1(c)" is revised to read "§ 20.1(c), or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1003."

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

55. The authority citation for part 50 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

56. In § 50.34, paragraph (f)(2)(viii) is revised to read as follows:

§ 50.34 Contents of applications; technical information.

* * * * *

(f) * * *

(2) * * *

(viii) Provide a capability to promptly obtain and analyze samples from the reactor coolant system and containment that may contain TID–14844 source term radioactive materials without radiation exposures to any individual exceeding 5 rems to the whole body or 75 rems to the extremities or, for licensees implementing the provisions of §§ 20.1001–20.2401 of this chapter, 5 rems to the whole body or 50 rems to the extremities. Materials to be analyzed and quantified include certain radionuclides that are indicators of the degree of core damage (e.g., noble gases, iodines and cesiums, and nonvolatile isotopes), hydrogen in the containment atmosphere, dissolved gases, chloride, and boron concentrations. (II.B.3)

* * * * *

57. In § 50.36a, the introductory text of paragraph (a) is amended by revising the reference to "§ 20.106" to read "§ 20.106 or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1301" and paragraph (b) is revised to read as follows:

§ 50.36a Technical specifications on effluents from nuclear power reactors.

* * * * *

(b) In establishing and implementing the operating procedures described in paragraph (a) of this section, the licensee shall be guided by the following considerations: Experience with the design, construction, and operation of nuclear power reactors indicates that compliance with the technical specifications described in this section will keep average annual releases of radioactive material in effluents and their resultant committed effective dose equivalents at small percentages of the dose limits specified in this chapter (§ 20.106 or, for licensees implementing the provisions of §§ 20.1001–20.2401, 20.1301) and in the operating license. At the same time, the licensee is permitted the flexibility of operation, compatible with considerations of health and safety, to assure that the public is provided a dependable source of power even under unusual operating conditions which may temporarily result in releases higher than such small percentages, but still within the dose values specified in § 20.1301 of this chapter and in the operating license. It is expected that in using this operational flexibility under unusual operating conditions, the licensee will exert its best efforts to keep levels of radioactive material in effluents as low as is reasonably achievable. The guides set out in appendix I provide numerical guidance on limiting conditions for operation for light-water-cooled nuclear power reactors to meet the requirement that radioactive materials in effluents released to unrestricted areas be kept as low as is reasonably achievable.

58. In § 50.72 in paragraph (a), Footnote 1, the reference to "§§ 20.205, § 20.403, 50.36, and 73.71" is revised to read "§§ 20.205, 20.403 or, for licensees implementing the provisions of §§ 20.1001–20.2401, §§ 20.1906, 20.2202, 50.36, and 73.71" and paragraph (b)(2)(iv) is revised to read as follows:

§ 50.72 Immediate notification requirements for operating nuclear power reactors.

* * * * *

(b) * * *

(2) * * *

(iv)(A) Any airborne radioactive release that, when averaged over a time period of 1 hour, results in concentrations in unrestricted area that exceed 2 times the applicable concentration limits specified in appendix B to §§ 20.1–20.601, table II, column 1 of part 20 of this chapter or, for licensees implementing the provisions of §§ 20.1001–20.2401 of this chapter, 20 times the applicable concentration specified in appendix B to §§ 20.1601–20.2401, table 2, column 1, of part 20 of this chapter.

(B) Any liquid effluent release that, when averaged over a time period of 1 hour, exceeds 2 times the limiting combined concentration limits in appendix B to §§ 20.1–20.601, table II, column 2 (see note 1 to appendix B to §§ 20.1–20.601), or, for licensees implementing the provisions of §§ 20.1001–20.2401 of this chapter, exceeds 20 times the applicable concentration specified in appendix B to §§ 20.1001–20.2401, table 2, column 2, of part 20 of this chapter, at the point of entry into the receiving waters (i.e., unrestricted area) for all radionuclides except tritium and dissolved noble gases. (Immediate notifications made under this paragraph also satisfy the requirements of paragraphs (a)(2) and (b)(2) of § 20.403 of this chapter; or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.2202 of this chapter.)

* * * * *

59. In § 50.73, paragraphs (a)(2)(viii) and (a)(2)(ix) are revised to read as follows:

§ 50.73 Licensee event report system.

(a) * * *

(2) * * *

(viii)(A) Any airborne radioactivity release that, when averaged over a time period of 1 hour, resulted in airborne radionuclide concentrations in an unrestricted area that exceeded 2 times the applicable concentration limits specified in appendix B to §§ 20.1–20.601, table II, column 1, of part 20 of this chapter or, for licensees implementing the provisions of §§ 20.1001–20.2401 of this chapter, exceeded 20 times the applicable concentration limits specified in appendix B to §§ 20.1001–20.2401, table 2, column 1, of part 20 of this chapter.

(B) Any liquid effluent release that, when averaged over a time period of 1 hour, exceeded 2 times the limiting combined concentration limits in appendix B to §§ 20.1–20.601, table II, column 2 (see note 1 to appendix B to §§ 20.1–20.601), or, for licensees implementing the provisions of §§ 20.1001–20.2401 of this chapter, exceeds 20 times the applicable concentration specified in appendix B to §§ 20.1001–20.2401, table 2, column 2, of part 20 of this chapter at the point of

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entry into the receiving waters (i.e., unrestricted area) for all radionuclides except tritium and dissolved noble gases.

(ix) Reports submitted to the Commission in accordance with paragraph (a)(2)(viii) of this section also meet the effluent release reporting requirements of § 20.405(a)(5) of this chapter, or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.1305(a)(5) of this chapter.

* * * * *

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

60. The authority citation for part 61 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 61.52 (Amended)

61. In § 61.52(a)(6), the reference to "§ 20.105" is revised to read "§ 20.105, or, for licensees implementing the provisions of §§ 20.1001–20.2401, §§ 20.301 and 20.302."

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

62. The authority citation for part 70 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

Section 70.31 is also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended, (42 U.S.C. 2273), §§ 70.3, 70.19(c), 70.21(c), 70.22 (a), (b), (d)–(k), 70.24 (a) and (b), 70.32(a) (3), (5), and (8), (d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3), and (h)–(j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.38, 70.51 (c)–(g), 70.56, 70.57 (b) and (d), 70.58 (a)–(g)(2) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k) and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 234a, 68 Stat. 958, as amended (42 U.S.C. 2282(c)).

63. In § 70.25, paragraph (a) is amended by revising the references to "appendix C to 10 CFR part 20" and "appendix C" to read "appendix C to §§ 20.1–20.601 of 10 CFR part 20"; paragraph (d) is amended by revising the two references to "appendix C of part 20" to read "appendix C to §§ 20.1–20.601 of 10 CFR part 20"; and by adding a note to the end of the section to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

[Note: Appendix C of §§ 20.1–20.601 of 10 CFR part 20 applies for the purpose of estimating decommissioning costs regardless of whether the licensee adopts 10 CFR 20.1001–20.2401 or continues to use 10 CFR 20.1–20.601.]

Dated at Rockville, Maryland, this 2d day of April 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–6162 Filed 5–20–91; 8:45 am]

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Part VII

Department of Justice

Bureau of Prisons

28 CFR Parts 545 and 571

Control, Custody, Care, Treatment and Instruction of Inmates; Financial Responsibility, Work and Performance Pay Programs; Release Gratuities, and List of Bureau of Prisons Institutions; Final Rules and Notice

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 545

Control, Custody, Care, Treatment and Instruction of Inmates; Inmate Financial Responsibility Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is amending its rule on the Inmate Financial Responsibility Program, which permits and encourages inmates to meet their legitimate financial obligations. This amendment clarifies the effects of non-participation by the inmate and is intended to encourage participation in the program.

EFFECTIVE DATE: June 20, 1991.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its rule on the Inmate Financial Responsibility Program. A proposed rule on this subject was published in the Federal Register October 22, 1990 (55 FR 42680 *et seq.*). The proposed rule revised provisions contained in 28 CFR 545.11(c) to clarify the effects of non-participation. A summary of public comment and agency response follows.

One commenter stated that the existing policy and proposed revisions fail to take into account indigent inmates and the lack of earning potential in federal penitentiaries, particularly with respect to inmates who receive maintenance pay or are unassigned due to conditions beyond their control. As stated in the Federal Register on April 1, 1987 (52 FR 10528) and on December 1, 1989 (54 FR 49944), the Bureau does not believe the use of a legal standard of indigency is necessary. Financial plans ordinarily can be developed for most inmates because they are eligible for, and receive, compensation for work performed within the institution. Existing regulations (28 CFR 545.10) provide that staff will assist the inmate in developing a financial plan. Implementing instructions to staff specify that an inmate who is unable to secure employment in UNICOR or advance beyond maintenance pay due to conditions beyond the inmate's control is to be considered temporarily exempt from participation and, consequently, not subject to the effects of non-participation.

Several commenters submitted identical letters raising objections, stating that Congress did not mandate the Bureau of Prisons to be a collection agency for the federal government, that the proposed provisions are violative of the Constitution (specifically citing, but not exclusive to, section 10 of Article I and the Thirteenth and Fourteenth Amendments), that some of the provisions are violative of unspecified Federal and state laws, that the proposed changes will be a dangerous tool in the hands of irresponsible or vindictive Bureau staff, that the proposed changes will have arbitrary and capricious effects on inmates who do not have fines to pay but want to work in UNICOR, and that the proposed changes will also be discriminatory. The Bureau disagrees. The Victim and Witness Protection Act of 1982, the Victims of Crime Act of 1984, the Criminal Fine Enforcement Act of 1984, and the Comprehensive Crime Control Act of 1987 require a diligent effort on the part of all law enforcement agencies to collect court-ordered financial obligations. The Bureau believes that the proposed rule is not violative of the cited portions of the Constitution (nor of any other section). Neither is the Bureau aware of any controlling Federal or state law to the contrary, nor is one specified by the commenters. Inasmuch as Bureau staff are expected and trained to enforce Bureau policy in an objective manner, the Bureau sees no reason to believe that the proposed provisions will be used in an irresponsible or vindictive manner. Nor will the proposed changes have arbitrary or capricious effects on inmates who want to work in UNICOR but do not have fines. This rule has no effect on inmates without fines. The Bureau does not believe that the proposed changes are discriminatory. The rule is intended to encourage an inmate to meet his financial obligations, and uses the UNICOR work program as one means to achieve this.

Another commenter objected to provisions in existing regulations (28 CFR 545.11(b)) which require inmates assigned grades 1 through 4 in UNICOR to allot ordinarily not less than 50% of their monthly pay to the payment process. The commenter recommended an allotment of 25%. This provision was not contained in the proposed rule published in the Federal Register on October 22, 1990, but had instead been previously published for public comment in the Federal Register on March 27, 1989 (54 FR 11332) and adopted in the Federal Register on December 1, 1989 (54 FR 49944). As adopted, the provision was amended in response to public comment to clarify that the allotment, which is ordinarily 50% of the inmate's earnings, could be modifed as appropriate. While this provision was not published for public comment in the current rulemaking proceeding, the Bureau is clarifying this provision further in this final rule by adding a sentence to a revised paragraph (B)(2), allowing an allotment to be less than 50% only when approved by the Warden of the facility.

Another commenter recommended that the regulation be limited to the compulsory payment of restitution fees of up to approximately fifty dollars, and that other fines would be subject to payment only after consideration of the nature of the offense and humanitarian concerns. The imposition of a fine is a matter for the sentencing court. The Bureau believes that the clarifying amendment to § 545.11(b)(2), as noted above, allows for modification, as warranted.

In adopting the proposed rule as final the Bureau is publishing the entire regulation in order to incorporate various editorial amendments or changes which are not more restrictive on inmates. Specifically, § 545.10 is reworded for the sake of clarity, and a sentence is added at the end which specifies that the provisions of this rule do not apply to study and observation cases, pretrial detainees, and inmates in holdover status pending designation. In § 545.11, the introductory text and paragraphs (a) and (b) are reworded and/or reorganized for the sake of clarity. The intent remains unchanged. Because these new changes are not more restrictive on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public comment. Members of the public may submit comments concerning these additional changes by writing to the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 545

Prisoners.

Dated: May 15, 1991.

J. Michael Quinlan,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), subchapter C of 28 CFR chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 545—WORK AND COMPENSATION

1. The authority citation for 28 CFR part 545 is revised to read as follows, and all other authority citations in the part are removed:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3621, 3622, 3624, 3663, 4081, 4042, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 4126, 5006-5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. In 28 CFR part 545, subpart B, consisting of §§ 545.10 and 545.11, is revised to read as follows:

Subpart B—Inmate Financial Responsibility Program

Sec.
545.10 Purpose and scope.
545.11 Procedures.

Subpart B—Inmate Financial Responsibility Program

§ 545.10 Purpose and scope.

The Bureau of Prisons encourages each sentenced inmate to meet his or her legitimate financial obligations. As part of the initial classification process, staff will assist the inmate in developing a financial plan for meeting those obligations, and at subsequent program reviews, staff shall consider the inmate's efforts to fulfill those obligations as indicative of that individual's acceptance and demonstrated level of responsibility. The provisions of this rule apply to all inmates in federal facilities, except: Study and observation cases, pretrial detainees, and inmates in holdover status pending designation.

§ 545.11 Procedures.

When an inmate has a financial obligation, unit staff shall help that inmate develop a financial plan and shall monitor the inmate's progress in meeting that obligation.

(a) *Developing a Financial Plan.* At initial classification, the unit team shall review an inmate's financial obligations, using all available documentation, including, but not limited to, the Presentence Investigation and the Judgment and Commitment Order(s). The financial plan developed shall be documented and will include the following obligations, ordinarily to be paid in the priority order as listed:

(1) Special Assessments imposed under 18 U.S.C. 3013;

(2) Court-Ordered restriction;

(3) Fines and court costs;

(4) State or local court obligations; and

(5) Other federal government obligations.

(b) *Payment.* The inmate is responsible for making satisfactory progress in meeting his/her financial responsibility plan and for providing documentation of these payments to unit staff. Payments may be made from institution resources or non-institution (community) resources.

(1) Ordinarily, the minimum payment for non-UNICOR and UNICOR grade 5 inmates will be $25.00 per quarter. This minimum payment may exceed $25.00, taking into consideration the inmate's specific obligations, institution resources, and community resources.

(2) Inmates assigned grades 1 through 4 in UNICOR ordinarily will be expected to allot not less than 50% of their monthly pay to the payment process. Any allotment which is less than the 50% minimum must be approved by the Warden of the facility. Allotments may also exceed the 50% minimum after considering the individual's specific obligations and resources.

(c) *Monitoring.* Participation and/or progress in the Inmate Financial Responsibility Program will be reviewed each time staff assess an inmate's demonstrated level of responsible behavior.

(d) *Effects of non-participation.* Refusal by an inmate to participate in the financial responsibility program or to comply with the provisions of his financial plan ordinarily shall result in the following:

(1) Where applicable, the Parole Commission will be notified of the inmate's failure to participate;

(2) The inmate will not receive any furlough (other than possibly an emergency furlough);

(3) The inmate will not receive performance pay above the maintenance pay level, or bonus pay, or vacation pay;

(4) The inmate will not be assigned to any work detail outside the secure perimeter of the facility;

(5) The inmate will not be placed in UNICOR. Any inmate assigned to UNICOR who fails to make adequate progress on his/her financial plan will be removed from UNICOR, and once removed, may not be placed on a UNICOR waiting list for six months. Any exceptions to this require approval of the Warden;

(6) The inmate will not be permitted to purchase any items in excess of the monthly spending limitation, including special purchase items like sports equipment, hobby crafts, etc.;

(7) The inmate will be quartered in the lowest housing status (dormitory, double bunking, etc.);

(8) The inmate will not be placed in a community-based program;

(9) The inmate will not receive a release gratuity unless approved by the Warden.

[FR Doc. 91-11969 Filed 5-20-91; 8:45 am]
BILLING CODE 4410-05-M

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28 CFR Part 545

Control, Custody, Care, Treatment and Instruction of Inmates; Inmate Work and Performance Pay Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its rule on the Inmate Work and Performance Pay Program to make changes necessary to conform with the revised provisions of the Inmate Financial Responsibility Program. These changes specify the effects on inmates of non-participation in that program. In addition, this amendment updates references to the Literacy Program, removes from the regulatory text accounting provisions and makes other minor changes, primarily of an editorial nature. The intended effect of this amendment is to update Bureau regulations.

EFFECTIVE DATE: June 20, 1991.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its rule on the Inmate Work and Performance Pay Program. A final rule on this subject was published in the Federal Register October 1, 1984 (49 FR 38915 *et seq.*). A proposed rule on the Inmate Financial Responsibility Program (28 CFR part 545, subpart B) was published in the Federal Register October 22, 1990 (55 FR 42680 *et seq.*); a final rule on that subject is published elsewhere in today's Federal Register. A proposed rule on the Literacy Program (28 CFR part 544,

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subpart H) was published in the Federal Register on January 17, 1991 (56 FR 1698 *et seq.*); a final rule on that subject was published in the Federal Register May 1, 1991 (56 FR 20088 *et seq.*). A summary of the specific changes to the Bureau's rule on Inmate Work and Performance Pay follows.

In § 545.21, the definition of "inmate" in paragraph (a) is amended in recognition of the statutory change in 18 U.S.C. 3621 applicable to offenses committed on or after November 1, 1987.

References to the Adult Basic Education (ABE) program and to General Educational Development (GED) have been replaced where appropriate with references to the Literacy program in § 545.23(a) and in redesignated §§ 545.25(a) and 545.26.

Section 545.25, which described funding for and allocation of performance pay, is removed in its entirety. These administrative provisions are controlled through the Bureau's accounting management system and are more properly addressed in the Bureau's manual on that subject. All subsequent sections of the rule are redesignated as a result of this deletion.

Redesignated § 545.25 (previously § 545.26) is modified through the addition of paragraph (c) to reflect the impact of an inmate's refusal to participate in the Inmate Financial Responsibility Program.

A number of minor editorial changes are being made to the rule. The last sentence of redesignated § 545.23(a) is reworded for clarity and to correct a misspelling; the intent is unchanged. In redesignated § 545.23(b), the word "pre-trial" and the misspelled word "pre-trail" are revised to read "pretrial" wherever they appear; there is no change in the intent of the paragraph. In redesignated § 545.24, paragraphs (a) and (e) are reworded for clarity with no change in meaning. The first sentence of redesignated § 545.26(d) is amended to reflect that an inmate will be eligible for performance pay from a work assignment for only those hours during which satisfactory work is performed. This amendment is made to be consistent with the provisions of paragraph (e) of this section and represents no change in the application of Bureau policy. Redesignated § 545.26(e)(1) is amended to delete the unnecessary words "or better" from the phrase "satisfactorily or better." For editorial consistency, the semicolon at the end of redesignated § 545.29(a)(1) is replaced by a period. In redesignated § 545.30, the word "State" is revised as "state".

Because those provision of this rule which implement the Inmate Financial Responsibility Program (28 CFR part 545, subpart B) or the Literacy Program (28 CFR part 544) have already been published as a proposed rule and adopted in a final rule, and all other amendments to this rule are either administrative or editorial in nature, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 122291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 545

Prisoners.

Dated: May 15, 1991.

J. Michael Quinlan,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), subchapter C of 28 CFR chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTION MANAGEMENT

PART 545—WORK AND COMPENSATION

1. The authority citation for 28 CFR part 545 is revised to read as follows, and all other authority citations in the part are removed:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to conducted occurring on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 545.21, paragraph (a) is revised to read as follows:

§ 545.21 Definitions.

(a) *Inmate.* For purposes of this rule, the term "inmate" refers to any person who is committed to the custody of the Bureau of Prisons or who is committed to, or in the custody of, the U.S. Attorney General.

* * * * *

3. In § 545.23, paragraph (a) is amended by revising the last two sentences and paragraph (b) is revised to read as follows:

§ 545.23 Inmate work/program assignment.

(a) * * * An inmate shall be assigned to an educational or vocational program, or either a full or part-time basis, where this involvement is mandated by Bureau policy (for example, Literacy program) or statute (for example, Youth Corrections Act). An inmate, for whom educational or vocational participation is not required by either policy or statute, may request and, upon approval of the Warden or designee, participate in an educational or vocational training program rather than work full-time.

(b) A pretrial inmate may not be required to work in any assignment or area other than housekeeping tasks in the inmate's own cell and in the community living area. Unless the pretrial inmate signs a waiver, the Warden may not permit the pretrial inmate to work with convicted inmates or in any assignment or area other than housekeeping tasks (see 28 CFR part 551, subpart J).

* * * * *

4. In § 545.24, paragraphs (a) and (e) are revised to read as follows:

§ 545.24 Inmate work conditions.

(a) The scheduled work day for an inmate in a federal institution ordinarily consists of a minimum of seven hours.

* * * * *

(e) An inmate is expected to perform the work assignment in a safe manner, using safety equipment as instructed by the work supervisor. In the event to any work related injury, the inmate shall notify the work supervisor so that appropriate action (for example, medical attention, and submission of necessary reports) may be taken.

§ 545.25 [Removed]

§§ 545.26–545.32 [Redesignated as §§ 545.25–545.31]

5. Section 545.25 is removed and §§ 545.26 through 545.32 are redesignated as §§ 545.25 through 545.31.

6. Redesignated § 545.25 is amended by revising paragraph (a)(2), by removing paragraph (a)(3), by redesignating paragraphs (a) (4) and (5) as paragraphs (a) (3) and (4), and by adding paragraph (c) to read as follows:

§ 545.25 Eligibility for performance pay.

(a) * * *

* * * * *

(2) Literacy program participation;

* * * * *

(c) An inmate who refuses to participate in the financial responsibility program shall not ordinarily receive performance pay above the maintenance pay level, or bonus pay, or vacation pay in accordance with 28 CFR part 545, subpart B.

7. In redesignated § 545.26, paragraph (b) is amended by removing the word "and" from the end of the listing for Grade 3, and paragraphs (d) and (e)(1) are revised to read as follows:

§ 545.26 Performance pay provisions.

* * * * *

(d) An inmate is eligible to receive performance pay only for those hours during which the inmate is actually performing satisfactory work or actively participating in an educational or vocational training program. Absences from the inmate's scheduled assignment for such reasons as call-outs, visits, sick call, interviews, or making telephone calls shall be deducted from the monthly number of hours worked and will accordingly reduce the amount of pay received by the inmate.

(e) * * *

(1) An inmate shall receive performance pay only for those hours during which the inmate is satisfactorily performing work or is actively participating in an educational/vocational program.

* * * * *

§ 545.28 [Amended]

8. Redesignated § 545.28 is amended by revising the phrase "who completes Adult Basic Education, GED," to read "who completes Literacy program,".

9. In redesignated § 545.29, paragraph (a)(1) is revised to read as follows:

§ 545.29 Special awards.

(a) * * *

(1) An act of heroism.

* * * * *

§ 545.30 [Amended]

10. Redesignated § 545.30 is amended by revising the word "State" to read "state".

[FR Doc. 91–11967 Filed 5–20–91; 8:45 am]

BILLING CODE 4410–05–M

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28 CFR Part 571

Control, Custody, Care, Treatment and Instruction of Inmates; Release Gratuities, Transportation, and Clothing

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its rule on Release Gratuities. The only significant change is an increase in the maximum release gratuity an inmate may receive. That change is the result of a change in the United States Code, specifically 18 U.S.C. 3624(d), which provides that the Bureau of Prisons may furnish an inmate with an amount of money up to $500. The previous statutory maximum amount was $100. The effect is only to bring the rule into agreement with the statute. Other editorial changes are made only for readability and clarity.

EFFECTIVE DATE: May 21, 1991.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307–2062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its rule on Release Gratuities. A final rule on this subject was published in the Federal Register June 29, 1979 (44 FR 38238) and amended on December 4, 1981 (46 FR 59668). A summary of the specific changes follows.

The first sentence in § 571.20 is revised to more fully encompass Bureau policy and to remove gender-specific references and to substitute "he or she." The general intent is unchanged. The last sentence is changed to reflect an increase in the maximum gratuity that can be given an inmate who is being released, as specified in 18 U.S.C. 3624(d).

The second sentence in § 571.21(a), which stated that "the Warden may give greater consideration to an inmate without funds or community resources," was changed to say that "greater consideration may be given to an inmate without funds or community resources." In practice, such decisions are ordinarily made by staff designated by the Warden, rather than by the Warden personally. That intent is unchanged. For similar reasons, the first sentence in § 571.21(e) which stated that "The Warden shall insure that each alien released to immigration authorities has $10 cash" was changed to say that "Staff shall ensure that each alien released to immigration authorities has $10 cash."

In § 571.21(b), as well as several other places in this rule, "community programs officer" is replaced with "community corrections manager," to reflect a change in title. Also, rather than specifying that a "release gratuity up to $100" can be paid to a federal inmate being released from a nonfederal facility, the revised rule stated that the amount of release gratuity is to be determined "in accordance with the purpose and scope of this regulation." Again, the intent is unchanged.

The title of § 571.22 is changed from "Release Clothing" to "Release Clothing and Transportation", and a new § 571.22(c) is added to indicate that transportation will be provided to an inmate's place of conviction, his legal residence within the United States, or to other such place as authorized and approved. Such transportation is also required by 18 U.S.C. 3624(d)(3), and this is not a new practice for the Bureau of Prisons. It is included only to make this rule more inclusive of policy regarding the release of inmates.

Section 571.22 (a) and (b) are reworded for clarity, but their intent is unchanged.

Because the only significant change in this rule is one mandated by a change in statute, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 122291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 571

Prisoners.

Dated: May 15, 1991.

J. Michael Quinlan,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), part 571 in subchapter D of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

1. The authority citation for 28 CFR part 571 is revised to read as follows, and all other authority citations within the part are removed:

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Authority: 5 U.S.C. 301; 18 U.S.C. 3059 (Repealed as to conduct occurring on or after November 1, 1987), 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 4161–4166 and 4251–4255 (Repealed as to conduct occurring on or after November 1, 1987), 5039–5041 (Repealed October 12, 1984 as to conduct occurring after that date); 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95–0.99.

2. In 28 CFR part 571, subpart C, consisting of §§ 571.20 through 571.22, is revised to read as follows:

Subpart C—Release Gratuities, Transportation, and Clothing

Sec.

571.20 Purpose and scope.
571.21 Procedures.
571.22 Release clothing and transportation.

Subpart C—Release Gratuities, Transportation, and Clothing

§ 571.20 Purpose and scope.

It is the policy of the Bureau of Prisons that an inmate being released to the community will have suitable clothing, transportation to the inmate's release destination, and some funds to use until he or she begins to receive income.

Based on the inmate's need and financial resources, a discretionary gratuity of up to $500.00 may be granted. (18 U.S.C. 3624(d))

§ 571.21 Procedures.

(a) An inmate is eligible for a gratuity as determined by the availability of personal and community resources. Greater consideration may be given to an inmate without funds or community resources.

(b) A federal prisoner boarded in a non-federal facility is eligible for a release gratuity. The director of the non-federal facility housing federal inmates or the community corrections manager shall determine the amount of release gratuity in accordance with the purpose and scope of this regulation for federal inmates housed in non-federal facilities.

(c) An inmate who is without personal funds may receive a gratuity when transferred to a community corrections center. The amount shall enable the inmate to care for needs in transit and allow for the purchase of necessary personal items upon arrival.

(d) Staff shall provide the inmate released to a detainer with information on how to apply for a gratuity if released prior to expiration of the federal sentence.

(e) Staff shall ensure that each alien released to immigration authorities has $10 cash. This provision does not apply to aliens serving 60 days or less in contract facilities.

§ 571.22 Release clothing and transportation.

(a) Staff shall provide release clothing appropriate for the time of year and the inmate's geographical destination. Upon request, work clothing will be provided. Nonavailability of work clothing may limit this practice.

(b) Inmates transferring to a community corrections center will be provided adequate clothing to complete a job search and perform work. Additionally, an outer garment, seasonably suited for the geographical destination will be provided.

(c) Transportation will be provided to an inmate's place of conviction, his legal residence within the United States, or to other such place as authorized and approved.

[FR Doc. 91–11988 Filed 5–20–91; 8:45 am]
BILLING CODE 4410–05–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Modification to List of Bureau of Prisons Institutions

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: In this document, the Bureau of Prisons is amending the listing of its institutions in order to include the new Bureau institution at Carville, Louisiana, designated as a Federal Medical Center, and the Bureau institution scheduled to be opened in September, 1991 at Schuylkill, Pennsylvania, designated as a Federal Correctional Institution. The temporary detention center at Fort Gordon, Georgia, has been closed and is removed from the listing.

ADDRESS: Office of General Counsel, Bureau of Prisons, 320 First Street NW., HOLC Room 754, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, (202) 307–3062.

SUPPLEMENTARY INFORMATION: Attorney General Order No. 646–76 (41 FR 14805), as amended, classifies and lists the various Bureau of Prisons institutions. Attorney General Order No. 960–81, Reorganization Regulations, published in the Federal Register October 27, 1981 (at 46 FR 52339 et seq.) delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(r), the authority to establish and designate Bureau of Prisons institutions. The last listing of the Bureau's institutions was published in the Federal Register on November 21, 1990 (55 FR 48803).

This notice is not a rule within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(4), the Regulatory Flexibility Act, 5 U.S.C. 601(2), or Executive Order No. 12291, Sec. 1(a).

By virtue of the authority vested in the Attorney General in 18 U.S.C. 3621, 4001, 4003, 4042, 4081, and 4082 (repealed in part October 12, 1984) and delegated to the Director, Bureau of Prisons by 28 CFR 0.96(r), it is hereby ordered as follows:

The Federal Detention Center at Fort Gordon, Georgia, has been closed and is therefore removed from the listing.

The following institutions are established and designated as places of confinement for the detention of persons held under authority of any Act of Congress, and for persons charged with or convicted of offenses against the United States or otherwise placed in the custody of the Attorney General of the United States.

A. The Bureau of Prisons institution at Schuylkill, Pennsylvania, is designated as a Federal Correctional Institution.

B. The Bureau of Prisons institution at Carville, Louisiana, is designated as a Federal Medial Center.

Dated: May 9, 1991.

J. Michael Quinlan,
Director, Federal Bureau of Prisons.

[FR Doc. 91–11985 Filed 5–20–91; 8:45 am]
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May 21, 1991

Part VIII

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 271 and 278

Food Stamp Program: Penalties for Unlawful Use of Acceptance of Food Stamp Coupons; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 278

[Amdt. No. 334]

Food Stamp Program: Penalties for Unlawful Use or Acceptance of Food Stamp Coupons

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: Title XVII of the Mickey Leland Memorial Domestic Hunger Relief Act (Pub. L. 101-624) amended the Food Stamp Act of 1977, as amended (the Act) by making a number of modifications and additions to the penalties imposed against firms and persons for unlawful use or redemption of food stamp coupons. The purpose of this rule is to implement these statutory changes. More specifically, this proposed rulemaking provides for increased civil money penalties for trafficking in food coupons; permanent disqualification from the Food Stamp Program for accepting food coupons in exchange for firearms, ammunition, explosives or controlled substances; fines for the acceptance of loose coupons not authorized to be used in changemaking; and, fines against unauthorized persons who illegally accept or redeem food coupons. In addition, the rulemaking provides for increased criminal penalties against persons who unlawfully issue, redeem, use, transfer, acquire, alter or possess food coupons or other food stamp benefit access devices. These changes are intended to broaden and toughen anti-fraud actions against unauthorized use and redemption of food stamps and to improve the integrity of the Food Stamp Program.

DATES: Comments on this proposed rulemaking must be received on or before June 20, 1991, to be assured of consideration. The regulatory modifications to §§ 271.2 and 271.5 are mandated by the Act and are therefore nondiscretionary; these provisions will be effective retroactively to November 28, 1990, as specified in Public Law 101-624, once final rulemaking is published.

ADDRESSES: Comments should be submitted in writing to Dwight Moritz, Chief, Coupon and Retailer Branch, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) in room 706, 3101 Park Center Drive, Alexandria, Virginia, 22302.

FOR FURTHER INFORMATION CONTACT: Dwight Moritz, Coupon and Retailer Branch, Benefit Redemption Division, Food and Nutrition Service, Alexandria, Virginia, 22302, (703) 756-3418.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The Department has reviewed this proposed rule under Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has classified it as "not major". The rule will affect the economy by less than $100 million a year. The rule is not likely to result in a major increase in costs or prices for consumers, industries, government agencies, or geographic regions. There will be no adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Although this rule will affect the business community, the effect would be of a non-economic nature and is not expected to be significant. Therefore, the Department has classified this rule as "not major".

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983, or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354). The Administrator of the Food and Nutrition Service has certified that this action does not have a significant economic impact on a substantial number of small entities. The rule would have almost no impact on the vast majority of authorized firms, most of whom follow the program rules carefully.

Paperwork Reduction Act

This proposed rule does not contain recordkeeping or reporting requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Criminal Penalties for Unlawful Use or Acceptance of Food Stamp Coupons

The changes to Section 15 of the Food Stamp Act of 1977, as amended, (the Act), by sections 1747, 1748 and 1749 of Public Law 101-624 regarding criminal penalties for the unlawful use or acceptance of food stamp coupons are nondiscretionary and became effective on November 28, 1990, the date of enactment, as specified in section 1781 of Public Law 101-624. Section 1747 provides for criminal penalties for persons who unlawfully use or accept benefit access devices. Section 1748 increases the criminal penalties for unauthorized use, transfer, acquisition, alteration or possession of food coupons that are valued at $5,000 or more to a maximum fine of $250,000 and a maximum jail sentence of twenty years. Section 1749 increases the maximum fine for unauthorized redemption of food coupons valued at $100 or more from $10,000 to $20,000.

This rulemaking reorganizes and conforms the language of § 271.5 of the regulations to the amended language of Section 15 of the Act, and adds the definition of "access device" to § 271.2 of the regulations. Section 1747 of Public Law 101-624 defines "access device" as any card, plate, code, account number, or other means of access of a type that is used under the Act or regulation, alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods or other things of value, or that can be used to initiate a transfer of funds under the (Food Stamp Act)."

Fines for the Acceptance of Loose Coupons

Section 1744 of Public Law 101-624 amends section 12(e) of the Food Stamp Act, as amended, by providing the Secretary with the discretion to impose a fine against any retail food store or wholesale food concern that accepts food coupons that are not accompanied by the corresponding book cover (hereinafter referred to as "loose coupons"). This provision is not applicable to any denomination of coupons authorized by the Food Stamp Program regulations to be used for change-making in food stamp transactions.

The law provides the Secretary with the authority to establish the amount of fines imposed. Section 278.6(l) of this rule proposes that the fine assessed against a firm found to have accepted loose coupons shall be $500 per investigation plus an amount that is equal to double the face value for each loose coupon that has been illegally accepted during the investigation. The fine would have to be paid within 30 days of the firm's receipt of notification from FNS to pay the fine. The Department is aware that the acceptance of loose coupons sometimes occurs due to occasional carelessness or inadvertent error.

Consequently, fines for the acceptance of loose coupons will be imposed only when a pattern of acceptance of loose coupons has been established.

These proposed provisions will convey to firm management a sense of the seriousness with which the Department regards these violations; while preventing the fines from being unduly harsh. The Department expects the fine to serve as a deterrent to prevent the illegal circulation of coupons as currency in places where such use of coupons has become common practice.

This proposed rule would revise § 278.1(l) to provide that FNS may, consistent with current policy regarding a firm's business integrity withdraw the authorization of any firm, including any location that is under the same ownership, that has failed to pay such a fine within 30 days of notification from FNS to pay the fine. This action would be taken in addition to any action initiated by the government to collect the fine. As provided in section 14 of the Act, retail or wholesale food concerns that are fined for the acceptance of loose coupons may receive administrative and judicial review of the assessments. 7 CFR part 279.

This proposed rule would revise § 278.1(k) of the regulations to provide that any firm that has any such fines outstanding shall be denied authorization. This would be consistent with the current requirements regarding fiscal claims and business integrity of applicants 7 CFR 278.1.

In addition, imposition of such a fine would not preclude the assessment and collection of any claim established under either the False Claims Act (31 U.S.C. 3729 *et seq.*) or the Program Fraud and Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Fines for Unauthorized Third Parties That Accept Food Stamps

Section 1745 of Public Law 101-624 provides the Secretary with the authority to impose a fine against any person not authorized to accept and redeem food coupons for violations of any provision of the Food Stamp Act or the program regulations, including the acceptance of food coupons. The Department interprets the term "person" to include a sole proprietorship, partnership, corporation or other legal entity, in addition to an individual.

In § 278.6(m) the Department proposes that the amount of such fine shall be $1,000 for each violation plus an amount that is equal to three times the face value of the coupons accepted. Tripling the face value of coupons in computing the fine parallels provisions of the False Claims Act for establishing penalties. It must be clear, however, that fines established under this proposed rule are not predicated on the False Claims Act. Imposition of such a fine does not preclude the assessment and collection of any claim established under either the False Claims Act or the Program Fraud and Civil Remedies Act of 1986. The fine would have to be paid within 30 days of the firm's receipt of notification from FNS to pay the fine, or judicial action may be instituted to collect the fine.

The acceptance of coupons by unauthorized third parties has a very serious impact on program integrity and results in the diversion of benefits away from their specific purpose which is to provide food for low-income families. The Department believes the penalty for such offenses should be substantial and should convey a clear message that such abuses will not be tolerated. Thus, the intent of the Department is to set the proposed amount of the fines at a high level to reflect the seriousness of the offense and to deter illegal acceptance of coupons by persons and firms that are not entitled to be in possession of them.

This proposed rule would revise § 278.1(k) to require that any unauthorized firm that has any such fines outstanding shall be denied authorization to accept food coupons should that firm apply for authorization. In addition, this proposed rule would revise § 278.1(l) to allow FNS to withdraw the authorization of any store that is under the same ownership as an unauthorized firm or individual that has any such fines outstanding. This would be consistent with the current requirements regarding business integrity of authorized firms.

7 CFR 278.1. As with the fines for acceptance of loose coupons, part 279 of program regulations would afford persons fined under this provision both administrative and judicial review of this action.

Civil Money Penalties in Lieu of Permanent Disqualification for Trafficking

The Hunger Prevention Act of 1988, Public Law 100-435, provided the Secretary with the discretion to impose a civil money penalty (CMP) of up to $20,000 in lieu of permanent disqualification of a firm for trafficking in food coupons and other program benefit instruments if the Secretary determines that there is substantial evidence that the firm had an effective policy and program in effect to prevent violations of the Act and the program regulations.

Section 1743 of Public Law 101-624 changes the trafficking CMP to $20,000 per trafficking violation, rather than the current maximum of $20,000 per investigation. The law, however, specifies that the amount of trafficking CMPs imposed on a firm may not exceed $40,000 during a 2-year period.

Section 1743 of Public Law 101-624 also provides for the permanent disqualification of a firm for the sale of firearms, ammunition, explosives, or controlled substances and gives the Secretary the discretion to impose a CMP in lieu of permanent disqualification if the Secretary determines that there is substantial evidence that the firm had an effective policy and program in effect to prevent violations of the Act and program regulations. The criteria applied in such a case would be the current criteria set forth in § 278.6(i).

This proposed rule would amend § 278.6 to incorporate the above statutory changes into the program regulations. In addition, this proposed rule would amend § 271.2 to include the sale of firearms, ammunition, explosives or controlled substances in the definition of "trafficking."

In addition, this proposed rule would revise the definition of "manager" included in Criterion 4 of § 278.6(i) of the regulations to conform with the definitions suggested by House and Senate conferees in the Conference Report (H.R. Rep. No. 101-916, 2d Sess. 1098 (1990)). Under the current definition, for the purposes of trafficking civil money penalty eligibility, a person who holds the title of manager is considered to be a part of firm management if that individual carries out either the responsibility for personnel functions such as hiring, firing or evaluating staff or financial functions, such as completing redemption documents, depositing food coupons, etc. Under the revised definition a person would be considered a part of

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firm "management" if that individual performs substantial supervisory responsibilities, i.e., supervises the work of other employees and directs the activities and work assignments of store employees.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food Stamps, Grant programs-social programs.

7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries-retail, Groceries, General line-wholesalers, Penalties.

Accordingly, 7 CFR parts 271 nd 278 are proposed to be amended as follows:

1. The authority citation for parts 271 and 278 continues to read as follows:

Authority: 7 U.S.C. 2011-2031.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2:

a. A definition for the term "Access device" is added in alphabetical order; and,

b. The definitions of Coupon and Trafficking are revised.

The proposed addition and revisions read as follows:

§ 271.2 Definitions.

Access device means any card, plate, code, account number, or other means of access that can be used alone, or in conjunction with, another access device, to obtain payments, allotments, benefits, money, goods, or other things of value, or that can be used to initiate a transfer of funds under the Food Stamp Act of 1977, as amended.

* * * * *

Coupon means any coupon, stamp, access device or type of certification provided pursuant to the provisions of this subchapter for the purchase of eligible food.

* * * * *

Trafficking means the buying or selling of coupons, ATP cards or other benefit instruments for cash or consideration other than eligible food; or the exchange of firearms, ammunition, explosives, or controlled substances, as the term is defined in section 802 of title 21, United States Code, for coupons.

* * * * *

3. In § 271.5, paragraph (b) is revised to read as follows:

§ 271.5 Coupons as obligations of the United States, crimes and offenses.

* * * * *

(b) *Penalties.* Any unauthorized issuance, redemption, use, transfer, acquisition, alteration, or possession of coupons, ATP cards, or other program access device may subject an individual, partnership, corporation, or other legal entity to prosecution under sections 15 (b) and (c) of the Food Stamp Act or under any other applicable Federal, State or local law, regulation or ordinance.

(1) Section 15(b)(1) of the Food Stamp Act reads as follows:

Subject to the provisions of paragraph (2) of this subsection, whoever knowingly uses, transfers, acquires, alters, or possesses coupons, authorization cards, or access devices in any manner contrary to this Act or the regulations issued pursuant to this Act shall, if such coupons, authorization cards, or access devices are of a value of $5000 or more, be guilty of a felony and shall be fined not more than $250,000 or imprisoned for not more than twenty years, or both, and shall if such coupons or authorization cards are of a value of $100 or more but less than $5000 or if the item used, transferred, acquired, altered, or possessed is an access device that has a value of $100 or more but less than $5000 be guilty of a felony and shall upon the first conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not less than six months nor more than five years and may also be fined not more than $10,000 or, if such coupons or authorization cards are of a value of less than $100, or if the item used, transferred, acquired, altered, or possessed is an access device that has a value of less than $100, shall be guilty of a misdemeanor, and upon the first conviction thereof, shall be fined not more than $1000 or imprisoned for not more than one year, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than $1000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.

(2) Section 15(b)(2) of the Food Stamp Act reads as follows:

In the case of any individual convicted of an offense under paragraph (b)(1) of this section, the court may permit such individual to perform work approved by the court for the purpose of providing restitution for losses incurred by the United States and the State agency as a result of the offense for which such individual was convicted. If the court permits such individual to perform such work and such individual agrees thereto, the court shall withhold the imposition of the sentence on the condition that such individual perform the assigned work. Upon the successful completion of the assigned work the court may suspend such sentence.

(3) Section 15(c) of the Food Stamp Act reads as follows:

Whoever presents, or causes to be presented, coupons for payment or redemption of the value of $100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Act or the regulations issued pursuant to this Act, shall be guilty of a felony and, upon the first conviction thereof, shall be fined not more than $20,000 or imprisoned for not more than five years, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not less than one year nor more than five years and may also be fined not more than $20,000 or if such coupons are of a value of less than $100, shall be guilty of a misdemeanor and, upon the first conviction thereof, shall be fined not more than $1,000 or imprisoned for not more than one year, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than $1,000. In addition to such penalties, any persons convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.

* * * * *

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

4. In § 278.1 the first sentence of paragraph (j)(2) is revised, the word "or" is removed from the end of paragraph (k)(1)(iii), paragraph (k)(1)(iv) is redesignated as paragraph (k)(1)(v), and a new paragraph (k)(1)(iv) is added. The revision and addition read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

* * * * *

(j) *Denying authorization.* * * *

(2) The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7 or any fines assessed under § 278.6(l) or § 278.6(m). * * *

(k) *Withdrawing authorization.*

(1) * * *

(iv) The firm has failed to pay fines assessed under § 278.6(l) or § 278.6(m); or

* * * * *

5. In § 278.6:

a. Paragraph (a) is amended by removing the words "in coupons or ATP cards" where they appear in the second sentence and replacing them with the words "as defined in § 271.2"; and by revising the last sentence;

b. Paragraph (b)(2)(i) is amended by removing the words "in food coupons, ATP cards or other benefit instruments" and replacing them with the words "as defined in § 271.2.";

c. Paragraph (e)(1)(i) is amended by removing the words "in coupons or ATP cards" and replacing them with the words "as defined in § 271.2";

d. The introductory text of paragraph (i) is amended by removing the words "in food coupons, ATP cards or other Program benefit instruments" in the first sentence and replacing them with the words "as defined in § 271.2", and by revising the second sentence of Criterion 4.

e. Paragraph (i)(2)(iii) is revised.

f. The introductory text of paragraph (j) is amended by revising the first sentence.

g. Paragraphs (l) and (m) are redesignated as (n) and (o) respectively, and new paragraphs (l) and (m) are added.

The additions and revisions read as follows:

§ 278.6 Disqualification of retail food stores and wholesale food concerns, and the imposition of civil money penalties in lieu of disqualifications.

(a) *Authority to disqualify or subject to a civil money penalty.* * * * FNS may impose a civil money penalty of up to $20,000 for each violation in lieu of a permanent disqualification for trafficking, as defined in § 271.2, in accordance with the provisions of § 278.6(i) and § 278.6(j).

* * * * *

(i) *Criteria for eligibility for a civil money penalty in lieu of permanent disqualification for trafficking.* * * *

Criterion 4. * * * For purposes of this section, a person is considered to be part of firm management if that individual supervises the work of other employees and directs the activities and work assignments of store employees.

* * * * *

(2) *Compliance training program standards.* * * *

(iii) Written materials, which may include FNS publications and program regulations that are available to all authorized firms, are used in the training program. Training materials shall clearly state that the following acts are prohibited and are in violation of the Food Stamp Act and regulations: the exchange of food coupons, ATP cards or other program access devices for cash; and, in exchange for coupons, the sale of firearms, ammunition, explosives or controlled substances, as the term is defined in section 802 of title 21, United States Code.

(j) *Amount of civil money penalty in lieu of permanent disqualification for trafficking.* A civil money penalty assessed in accordance with § 278.6(i) shall not exceed $20,000 for each violation, and shall not exceed $40,000 during a 2-year period. * * *

* * * * *

(l) *Fines for the acceptance of loose coupons.* FNS many impose a fine against any retail food store or wholesale food concern that accepts coupons that are not accompanied by the corresponding book cover, other than the denomination of coupons used for making change as specified in § 278.2(d). The fine to be assessed against a firm found to be accepting loose coupons shall be $500 per investigation *plus* an amount equal to double the face value of each loose coupon accepted, and may be assessed and collected in addition to any fiscal claim established by FNS. The fine shall be paid in full within 30 days of the firm's receipt of FNS' notification to pay the fine. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the store or concern to collect the fine. FNS may withdraw the authorization of the store, as well as other authorized locations of a multi-unit firm which are under the same ownership, for failure to pay such a fine as specified under § 278.1(l). FNS may deny the authorization of any firm that has failed to pay such fines as specified under § 278.1(k).

(m) *Fines for unauthorized third parties that accept food stamps.* FNS may impose a fine against any individual, sole proprietorship, partnership, corporation or other legal entity not approved by FNS to accept and redeem food coupons for any violation of the provisions of the Food Stamp Act or the program regulations, including violations involving the acceptance of coupons. The fine shall be $1000 for each violation *plus* an amount equal to three times the face value of the illegally accepted food coupons. The fine shall be paid in full within 30 days of the individual's or legal entity's receipt of FNS' notification to pay the fine. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine. FNS may withdraw the authorization of any firm that is under the same ownership as an unauthorized firm that has failed to pay such a fine, as specified under § 278.1(l). FNS may deny authorization to any firm that has failed to pay such a fine, as specified under § 278.1(k).

* * * * *

Dated: May 15, 1991.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

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H.J. Res. 109/Pub. L. 102-44

Designating each of the weeks beginning May 12, 1991, and May 10,1992, as "Emergency Medical Services Week". (May 15, 1991; 105 Stat. 245; 2 pages) Price: $1.00

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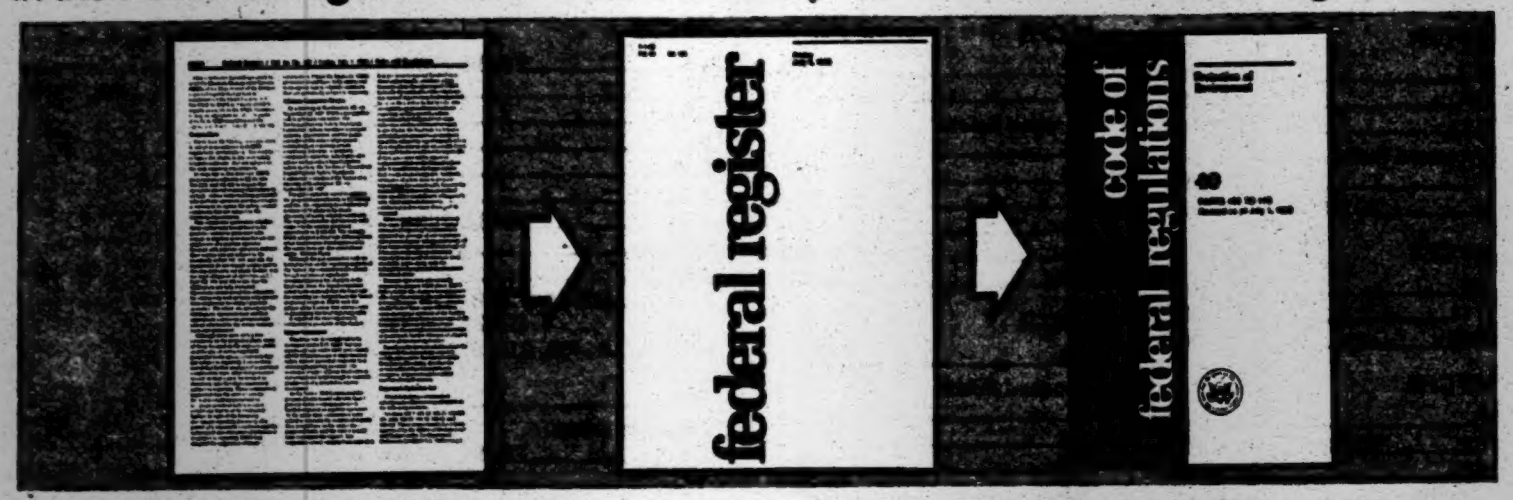

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